(B) for fiscal year 2012, $400,000; and
(C) for each subsequent fiscal year, the amount specified under this paragraph for the previous fiscal year increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) as estimated by the Secretary for the 12-month period ending with March of the previous year.

(2) WTC Health Program Scientific/Technical Advisory Committee

For the purpose of carrying out section 300mm–1(a) of this title—
(A) for the last calendar quarter of fiscal year 2011, $25,000;
(B) for fiscal year 2012, $100,000; and
(C) for each subsequent fiscal year, the amount specified under this paragraph for the previous fiscal year increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) as estimated by the Secretary for the 12-month period ending with March of the previous year.

(3) Education and outreach

For the purpose of carrying out section 300mm–2 of this title—
(A) for the last calendar quarter of fiscal year 2011, $500,000;
(B) for fiscal year 2012, $2,000,000; and
(C) for each subsequent fiscal year, the amount specified under this paragraph for the previous fiscal year increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) as estimated by the Secretary for the 12-month period ending with March of the previous year.

(4) Uniform data collection

For the purpose of carrying out section 300mm–3 of this title and for reimbursing Data Centers (as defined in section 300mm–4(b)(2) of this title) for the costs incurred by such Centers in carrying out activities under contracts entered into under section 300mm–4(a)(2) of this title—
(A) for the last calendar quarter of fiscal year 2011, $2,500,000;
(B) for fiscal year 2012, $10,000,000; and
(C) for each subsequent fiscal year, the amount specified under this paragraph for the previous fiscal year increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) as estimated by the Secretary for the 12-month period ending with March of the previous year.

(5) Research regarding certain health conditions

For the purpose of carrying out section 300mm–51 of this title—
(A) for the last calendar quarter of fiscal year 2011, $3,750,000;
(B) for fiscal year 2012, $15,000,000; and
(C) for each subsequent fiscal year, the amount specified under this paragraph for the previous fiscal year increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) as estimated by the Secretary for the 12-month period ending with March of the previous year.

(6) World Trade Center Health Registry

For the purpose of carrying out section 300mm–52 of this title—
(A) for the last calendar quarter of fiscal year 2011, $1,750,000;
(B) for fiscal year 2012, $7,000,000; and
(C) for each subsequent fiscal year, the amount specified under this paragraph for the previous fiscal year increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) as estimated by the Secretary for the 12-month period ending with March of the previous year.


CHAPTER 7—SOCIAL SECURITY

SUBCHAPTER I—GRANTS TO STATES FOR OLD-AGE ASSISTANCE

8 sec.
301. Authorization of appropriations.
302. State old-age plans.
303. Payments to States and certain territories; computation of amount; eligibility of State to receive payment.
304. Stopping payment on deviation from required provisions of plan or failure to comply therewith.
305. Omitted.
306. Definitions.

SUBCHAPTER II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

401. Trust Funds.
401a. Omitted.
402. Old-age and survivors insurance benefit payments.
403. Reduction of insurance benefits.
404. Overpayments and underpayments.
405. Evidence, procedure, and certification for payments.
405a. Regulations pertaining to frequency or due dates of payments and reports under voluntary agreements covering State and local employees; effective date.
406. Representation of claimants before Commission.
408. Penalties.
409. “Wages” defined.
410a. Definitions relating to employment.
410b. Transferred.
411. Definitions relating to self-employment.
412. Self-employment income credited to calendar years.
413. Quarter and quarter of coverage.
414. Insured status for purposes of old-age and survivors insurance benefits.
415. Computation of primary insurance amount.
416. Additional definitions.
418. Voluntary agreements for coverage of State and local employees.
419. Repealed.
420. Disability provisions inapplicable if benefit rights impaired.
421. Rehabilitation determinations.
422. Rehabilitation services.
423. Disability insurance benefit payments.
424. Repealed.
424a. Reduction of disability benefits.
425. Additional rules relating to benefits based on disability.
426. Entitlement to hospital insurance benefits.
426-1. End stage renal disease program.
426a. Transitional provision on eligibility of uninsured individuals for hospital insurance benefits.
427. Transitional insured status for purposes of old-age and survivors benefits.
428. Benefits at age 72 for certain uninsured individuals.
429. Benefits in case of members of uniformed services.
430. Adjustment of contribution and benefit base.
431. Benefits for certain individuals interned by United States during World War II.
432. Processing of tax data.
433. International agreements.
434. Demonstration project authority.

SUBCHAPTER IV—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION

501. Use of available funds.
502. Payments to States; computation of amounts.
503. State laws.
504. Judicial review.

SUBCHAPTER V—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

PART A—Block grants to States for temporary assistance for needy families

601. Purpose.
602. Eligible States; State plan.
603. Grants to States.
603a. Transferred.
604. Use of grants.
604a. Services provided by charitable, religious, or private organizations.
605. Administrative provisions.
606. Federal loans for State welfare programs.
607. Mandatory work requirements.
608. Prohibitions; requirements.
608a. Fraud under means-tested welfare and public assistance programs.
609. Penalties.
610. Appeal of adverse decision.
611. Data collection and reporting.
611a. State required to provide certain information.
612. Direct funding and administration by Indian tribes.
613. Research, evaluations, and national studies.
614. Study by Census Bureau.
615. Waivers.
616. Administration.
617. Limitation on Federal authority.
618. Funding for child care.
619. Definitions.

PART B—Child and family services

SUBPART 1—Child welfare services

620. Repealed.
621. Purpose.
622. State plans for child welfare services.
623. Allotments to States.
624. Payment to States.
625. Limitations on authorization of appropriations.
626. Research, training, or demonstration projects.
627. Family connection grants.
628. Payments to Indian tribal organizations.
628a. Transferred.

SUBPART 2—Promoting safe and stable families

629. Purpose.
629a. Definitions.
629b. State plans.
629c. Allotments to States.
629d. Payments to States.
629e. Evaluations; research; technical assistance.
629f. Authorization of appropriations; reservation of certain amounts.
629g. Discretionary and targeted grants.
629h. Entitlement funding for State courts to assess and improve handling of proceedings relating to foster care and adoption.
629i. Grants for programs for mentoring children of prisoners.

SUBPART 3—Common provisions

629m. Data standardization for improved data matching.

PART C—Work incentive program for recipients of aid under State plan approved under Part A of Subchapter V

630 to 645. Repealed or omitted.

PART D—Child support and establishment of paternity

651. Authorization of appropriations.
652. Duties of Secretary.
655. Payments to States.
655a. Provision for reimbursement of expenses.
656. Support obligation as obligation to State; amount; discharge in bankruptcy.
657. Distribution of collected support.
658. Repealed.
658a. Incentive payments to States.
659. Consent by United States to income withholding, garnishment, and similar proceedings for enforcement of child support and alimony obligations.
659a. International support enforcement.
660. Civil action to enforce child support obligations; jurisdiction of district courts.
661. Authorization of appropriations.
662. Repealed.
663. Use of Federal Parent Locator Service in connection with enforcement or determination of child custody in cases of parental kidnapping of child.
664. Collection of past-due support from Federal tax refunds.
665. Allotments from pay for child and spousal support owed by members of uniformed services on active duty.
666. Requirement of statutory prescribed procedures to improve effectiveness of child support enforcement.
901. Social Security Administration.

711. Maternal, infant, and early childhood programs.

801. Repealed.

710. Separate program for abstinence education.

714 to 731. Omitted or Repealed.

712. Services to individuals with a postpartum condition and their families.

713. Personal responsibility education.

675. Definitions.

676. Administration.

678. Rule of construction.

679. Collection of data relating to adoption assistance.


679b. Annual report.

679c. Programs operated by Indian tribal organizations.

679d. Interstate compacts.

679e. Interstate compacts.

679f. Interstate compacts.

679g. Interstate compacts.

679h. Interstate compacts.

679i. Interstate compacts.

679j. Interstate compacts.

679k. Interstate compacts.

679l. Interstate compacts.

679m. Interstate compacts.

679n. Interstate compacts.

679o. Interstate compacts.

679p. Interstate compacts.

679q. Interstate compacts.

679r. Interstate compacts.

679s. Interstate compacts.

679t. Interstate compacts.

679u. Interstate compacts.

679v. Interstate compacts.

679w. Interstate compacts.

679x. Interstate compacts.

679y. Interstate compacts.

679z. Interstate compacts.

680. Nonavailability of allotments after close of fiscal year.

681. Administrative and fiscal accountability.

682. Criminal penalty for false statements.

683. Use of allotment funds.

684. Omitted.

685. Application for block grant funds.

686. Omitted.

701. Authorization of appropriations; purpose; definitions.

702. Allotment to States and Federal set-aside.

703. Payments to States.

703a. Omitted.

704. Omitted.

704a. Use of allotment funds.

705. Omitted.

706. Administrative and fiscal accountability.

707. Criminal penalty for false statements.

708. Nondiscrimination provisions.

709. Administration of Federal and State programs.

710. Separate program for abstinence education.

711. Maternal, infant, and early childhood home visiting programs.

712. Services to individuals with a postpartum condition and their families.

713. Personal responsibility education.

714 to 731. Omitted or Repealed.

SUBCHAPTER VI—TEMPORARY STATE FISCAL RELIEF

801. Repealed.

SUBCHAPTER VII—ADMINISTRATION

901. Social Security Administration.

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902. Commissioner; Deputy Commissioner; other officers.

903. Social Security Advisory Board.

904. Administrative duties of Commissioner.

905. Transferred.

905a. Training grants for public welfare personnel.

906. Repealed.


908. Omitted.

909. Delivery of benefit checks.


911. Budgetary treatment of trust fund operations.

912. Office of Rural Health Policy.

913. Duties and authority of Secretary.

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1001. Basic entitlement to benefits.

1002. Qualified individuals.

1003. Residence outside the United States.

1004. Disqualifications.

1005. Benefit amount.

1006. Applications and furnishing of information.

1007. Representative payees.

1008. Overpayments and underpayments.

1009. Hearings and review.

1010. Other administrative provisions.

1010a. Optional Federal administration of State recognition payments.

1011. Penalties for fraud.

1012. Definitions.

1013. Appropriations.

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1101. Employment security administration account.

1102. Transfers between Federal unemployment account and employment security administration account.

1103. Amounts transferred to State accounts.

1104. Unemployment Trust Fund.

1105. Extended unemployment compensation account.

1106. Unemployment compensation research program.

1107. Personnel training.


1109. Federal Employees Compensation Account.

1110. Borrowing between Federal accounts.

SUBCHAPTER X—GRANTS TO STATES FOR AID TO BLIND


1202. State plans for aid to blind.

1202a. Payment to States.

1203. Operation of State plans.

1204. Omitted.

1205. Omitted.

1206. "Aid to the blind" defined.

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

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1301a. Omitted.

1302. Rules and regulations; impact analyses of Medicare and Medicaid rules and regulations on small rural hospitals.
1320a–7e.  Health care fraud and abuse data collection program.
1320a–7f.  Coordination of medicare and medicaid surety bond provisions.
1320a–7g.  Funds to reduce medicaid fraud and abuse.
1320a–7h.  Transparency reports and reporting of physician ownership or investment interests.
1320a–7i.  Reporting of information relating to drug samples.
1320a–7j.  Accountability requirements for facilities.
1320a–7k.  Medicare and medicaid program integrity provisions.
1320a–7l.  Nationwide program for national and state background checks on direct patient access employees of long-term care facilities and providers.
1320a–7m.  Use of predictive modeling and other analytics technologies to identify and prevent waste, fraud, and abuse in the medicare fee-for-service program.
1320a–7n.  Civil monetary penalties and assessments for subchapters II, VIII and XVI.
1320a–7o.  Administrative procedure for imposing penalties for false or misleading statements.
1320a–7p.  Attempts to interfere with administration of this chapter.
1320a–7q.  Demonstration projects.
1320a–7r.  Effect of failure to carry out State plan.
1320a–7s.  Repealed.
1320a–7t.  Notification of Social Security claimant with respect to deferred vested benefits.
1320a–7u.  Period within which certain claims must be filed.
1320a–7v.  Applicants or recipients under public assistance programs not to be required to make election respecting certain veterans' benefits.
1320a–7w.  Nonprofit hospital or critical access hospital philanthropy.
1320a–7x.  Authority to waive requirements during national emergencies.
1320a–7y.  Exclusion of representatives and health care providers convicted of violations from participation in social security programs.
1320a–7z.  Income and eligibility verification system.
1320a–8.  Hospital protocols for organ procurement and national emergency.
1320a–8a.  Authority to waive requirements during national emergencies.
1320a–8b.  Exclusion of representatives and health care providers convicted of violations from participation in social security programs.
1320a–8c.  Income and eligibility verification system.
1320a–8d.  Repealed.
1320a–8e.  Research on outcomes of health care services and procedures.
1320a–8f.  Social security account statements.
1320a–8g.  Outreach efforts to increase awareness of the availability of medicare cost-sharing and subsidies for low-income individuals under subchapter XVIII.
1320a–8h.  Protection of social security and medicare trust funds.
1320a–8i.  Public disclosure of certain information on hospital financial interest and referral patterns.
1320a–8j.  Cross-program recovery of overpayments from benefits.
1320a–8k.  Repealed.
1320a–8l.  The Ticket to Work and Self-Sufficiency Program.
1320c. Work incentives outreach program.
1320c–1. State grants for work incentives assistance to disabled beneficiaries.
1320c–2. Grants to develop and establish State infrastructure to support working individuals with disabilities.
1320c–3. Pharmacy benefit managers transparency requirements.
1320c–5. Obligations of health care practitioners and providers of health care services; sanctions and penalties; hearings and review.
1320c–6. Limitation on liability.
1320c–7. Application of this part to certain State health care facilities.
1320c–8. Authorization for use of certain funds to be included in the quality improvement program.
1320c–9. Prohibition against disclosure of individually identifiable health information.
1320c–10. Right to hearing and judicial review.
1320c–11. Exemptions for religious nonmedical health care institutions.
1320c–12. Medical officers in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands to be included in the quality improvement program.
1320c–13 to 1320c–22. Repealed or Omitted.

PART B—PEER REVIEW OF UTILIZATION AND QUALITY OF HEALTH CARE SERVICES

1320c–c. Purpose.
1320c–d. Definition of quality improvement organizations.
1320c–e. Contracts with quality improvement organizations.
1320c–f. Right to hearing and judicial review.
1320c–g. Obligations of health care practitioners and providers of health care services; sanctions and penalties; hearings and review.
1320c–h. Limitation on liability.
1320c–i. Application of this part to certain State programs receiving Federal financial assistance.
1320c–j. Authorization for use of certain funds to administer provisions of this part.
1320c–k. Prohibition against disclosure of information.
1320c–l. Annual reports.
1320c–m. Exemptions for religious nonmedical health care institutions.
1320c–n. Medical officers in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands to be included in the quality improvement program.
1320c–o. Definitions.
1320c–p. General requirements for adoption of standards.
1320c–q. Standards for information transactions and data elements.
1320c–r. Timetables for adoption of standards.
1320c–s. Requirements.
1320c–t. General penalty for failure to comply with requirements and standards.
1320c–u. Wrongful disclosure of individually identifiable health information.
1320c–v. Effect on State law.
1320c–w. Processing payment transactions by financial institutions.
1320c–x. Application of HIPAA regulations to genetic information.

PART C—ADMINISTRATIVE SIMPLIFICATION

1320d. Definitions.
1320d–1. General requirements for adoption of standards.
1320d–2. Standards for information transactions and data elements.
1320d–3. Timetables for adoption of standards.
1320d–4. Requirements.
1320d–5. General penalty for failure to comply with requirements and standards.
1320d–6. Wrongful disclosure of individually identifiable health information.
1320d–8. Processing payment transactions by financial institutions.

PART D—COMPARATIVE CLINICAL EFFECTIVENESS RESEARCH

1320e. Comparative clinical effectiveness research.
1320e–1. Limitations on certain uses of comparative clinical effectiveness research.
1320e–2. Trust Fund transfers to Patient-Centered Outcomes Research Trust Fund.

SUBCHAPTER XII—ADVANCES TO STATE UNEMPLOYMENT FUNDS

1321. Eligibility requirements for transfer of funds; reimbursement by State; application; certification; limitation.
1395b. Option to individuals to obtain other health insurance protection.
1395b–1. Incentives for economy while maintaining or improving quality in provision of health services.
1395b–2. Notice of medicare benefits; medicare and medigap information.
1395b–3. Health insurance advisory service for eligible individuals.
1395b–4. Health insurance information, counseling, and assistance grants.
1395b–8. Chronic care improvement.
1395b–10. Addressing health care disparities.

PART A—HOSPITAL INSURANCE BENEFITS FOR AGED AND DISABLED

1395c. Description of program.
1395d. Scope of benefits.
1395e. Deductibles and coinsurance.
1395f. Conditions of and limitations on payment for services.
1395g. Payments to providers of services.
1395h. Provisions relating to the administration of part A.
1395i. Federal Hospital Insurance Trust Fund.
1395i–1. Authorization of appropriations.
1395i–2. Hospital insurance benefits for uninsured elderly individuals not otherwise eligible.
1395i–2a. Hospital insurance benefits for disabled individuals who have exhausted other entitlement.
1395i–3. Requirements for, and assuring quality of care in, skilled nursing facilities.
1395i–3a. Protecting residents of long-term care facilities.
1395i–4. Medicare rural hospital flexibility program.
1395i–5. Conditions for coverage of religious nonmedical health care institutional services.

PART B—SUPPLEMENTARY MEDICAL INSURANCE BENEFITS FOR AGED AND DISABLED

1395j. Establishment of supplementary medical insurance program for aged and disabled.
1395k. Scope of benefits; definitions.
1395l. Payment of benefits.
1395m. Special payment rules for particular items and services.
1395n. Procedure for payment of claims of providers of services.
1395o. Eligible individuals.
1395p. Enrollment periods.
1395q. Coverage period.
1395r. Amount of premiums for individuals enrolled under this part.
1395s. Payment of premiums.
1395t. Federal Supplementary Medical Insurance Trust Fund.
1395u. Provisions relating to the administration of part B.

PART C—MEDICARE+CHOICE PROGRAM

SUBPART 1—PART D ELIGIBLE INDIVIDUALS AND PRESCRIPTION DRUG BENEFITS

1395w–1. Repealed.
1395w–21. Eligibility, enrollment, and information.
1395w–24. Premiums and bid amounts.
1395w–25. Organizational and financial requirements for Medicare+Choice organizations; provider-sponsored organizations.
1395w–27. Contracts with Medicare+Choice organizations.
1395w–27a. Special rules for MA regional plans.

SUBPART 2—PRESCRIPTION DRUG PLANS; PDP SPONSORS; FINANCING

1395w–102. Prescription drug benefits.
1395w–103. Access to a choice of qualified prescription drug coverage.
1395w–104. Beneficiary protections for qualified prescription drug coverage.
1395w–105. PDP regions; submission of bids; plan approval.
1395w–111. Premiums; late enrollment penalty.
1395w–112. Premiums; late enrollment penalty.
1395w–113. Premium and cost-sharing subsidies for low-income individuals.
1395w–114. Medicare coverage gap discount program.
1395w–114a. Medicare coverage gap discount program.
1395w–115. Subsidies for part D eligible individuals for qualified prescription drug coverage.

SUBPART 3—APPLICATION TO MEDICARE ADVANTAGE PROGRAM AND TREATMENT OF EMPLOYER-SPONSORED PROGRAMS AND OTHER PRESCRIPTION DRUG PLANS

1395w–131. Application to Medicare Advantage program and related managed care programs.
1395w–132. Special rules for employer-sponsored programs.
1395w–133. State Pharmaceutical Assistance Programs.
1395w–134. Coordination requirements for plans providing prescription drug coverage.

SUBPART 4—MEDICARE PRESCRIPTION DRUG DISCOUNT CARD AND TRANSITIONAL ASSISTANCE PROGRAM

1395w–135. Medicare prescription drug discount card and transitional assistance program.
1395w–151. Definitions; treatment of references to provisions in part C.

1395w–152. Miscellaneous provisions.

1395w–153. Condition for coverage of drugs under this part.

1395w–154. Improved Medicare prescription drug plan and MA–PD plan complaint system.

1395x. Definitions.

1395w–151. Definitions; treatment of references to provisions in part C.

1395w–152. Miscellaneous provisions.

1395w–153. Condition for coverage of drugs under this part.

1395w–154. Improved Medicare prescription drug plan and MA–PD plan complaint system.

1395w–151. Definitions; treatment of references to provisions in part C.

1395w–152. Miscellaneous provisions.

1395w–153. Condition for coverage of drugs under this part.

1395w–154. Improved Medicare prescription drug plan and MA–PD plan complaint system.

1395w–151. Definitions; treatment of references to provisions in part C.

1395w–152. Miscellaneous provisions.

1395w–153. Condition for coverage of drugs under this part.

1395w–154. Improved Medicare prescription drug plan and MA–PD plan complaint system.

1395w–151. Definitions; treatment of references to provisions in part C.

1395w–152. Miscellaneous provisions.

1395w–153. Condition for coverage of drugs under this part.

1395w–154. Improved Medicare prescription drug plan and MA–PD plan complaint system.

1395w–151. Definitions; treatment of references to provisions in part C.

1395w–152. Miscellaneous provisions.

1395w–153. Condition for coverage of drugs under this part.

1395w–154. Improved Medicare prescription drug plan and MA–PD plan complaint system.

1395w–151. Definitions; treatment of references to provisions in part C.

1395w–152. Miscellaneous provisions.

1395w–153. Condition for coverage of drugs under this part.

1395w–154. Improved Medicare prescription drug plan and MA–PD plan complaint system.

1395w–151. Definitions; treatment of references to provisions in part C.

1395w–152. Miscellaneous provisions.

1395w–153. Condition for coverage of drugs under this part.

1395w–154. Improved Medicare prescription drug plan and MA–PD plan complaint system.

1395w–151. Definitions; treatment of references to provisions in part C.

1395w–152. Miscellaneous provisions.

1395w–153. Condition for coverage of drugs under this part.

1395w–154. Improved Medicare prescription drug plan and MA–PD plan complaint system.

1395w–151. Definitions; treatment of references to provisions in part C.

1395w–152. Miscellaneous provisions.

1395w–153. Condition for coverage of drugs under this part.

1395w–154. Improved Medicare prescription drug plan and MA–PD plan complaint system.

1395w–151. Definitions; treatment of references to provisions in part C.

1395w–152. Miscellaneous provisions.

1395w–153. Condition for coverage of drugs under this part.

1395w–154. Improved Medicare prescription drug plan and MA–PD plan complaint system.

1395w–151. Definitions; treatment of references to provisions in part C.

1395w–152. Miscellaneous provisions.

1395w–153. Condition for coverage of drugs under this part.

1395w–154. Improved Medicare prescription drug plan and MA–PD plan complaint system.

1395w–151. Definitions; treatment of references to provisions in part C.

1395w–152. Miscellaneous provisions.

1395w–153. Condition for coverage of drugs under this part.

1395w–154. Improved Medicare prescription drug plan and MA–PD plan complaint system.
1396r–3. Correction and reduction plans for intermediate care facilities for mentally retarded.

1396r–4. Adjustment in payment for inpatient hospital services furnished by disproportionate share hospitals.

1396r–5. Treatment of income and resources for certain institutionalized spouses.

1396r–6. Extension of eligibility for medical assistance.

1396r–7. Repealed.

1396r–8. Payment for covered outpatient drugs.

1396u. Community supported living arrangements.

1396u–1. Assuring coverage for certain low-income families.


1396u–3. State coverage of medicare cost-sharing for additional low-income medicare beneficiaries.

1396u–4. Program of all-inclusive care for elderly (PACE).

1396u–5. Special provisions relating to medicare prescription drug benefit.

1396u–6. Medicaid Integrity Program.

1396u–7. State flexibility in benefit packages.

1396u–8. Health opportunity accounts.

1396u–9. References to laws directly affecting medicare program.

1396w. Asset verification through access to information held by financial institutions.

1396w–1. Medicaid Improvement Fund.

1396w–2. Authorization to receive relevant information.

1396w–3. Enrollment simplification and coordination with State health insurance exchanges.

1396w–4. State option to provide coordinated care through a health home for individuals with chronic conditions.

1396w–5. Addressing health care disparities.

SUBCHAPTER XXI—STATE CHILDREN’S HEALTH INSURANCE PROGRAM

1397m. Enhancement of long-term care.

1397m–1. Adult protective services functions and grant programs.

1397m–2. Long-term care ombudsman program grants and training.

1397m–3. Provision of information regarding, and evaluations of, elder justice programs.


1397m–5. Rule of construction.

SUBPART A—ELDER JUSTICE COORDINATING COUNCIL AND ADVISORY BOARD ON ELDER ABUSE, NEGLECT, AND EXPLOITATION

1397k. Elder Justice Coordinating Council.

1397k–1. Advisory Board on Elder Abuse, Neglect, and Exploitation.

1397k–2. Research protections.


SUBPART B—ELDER ABUSE, NEGLECT, AND EXPLOITATION FORENSIC CENTERS

1397l. Establishment and support of elder abuse, neglect, and exploitation forensic centers.

PART II—PROGRAMS TO PROMOTE ELDER JUSTICE

1397m. Enhancement of long-term care.

1397m–1. Adult protective services functions and grant programs.

1397m–2. Long-term care ombudsman program grants and training.

1397m–3. Provision of information regarding, and evaluations of, elder justice programs.


1397m–5. Rule of construction.

SUBCHAPTER XXII—STATE CHILDREN’S HEALTH INSURANCE PROGRAM

1397aa. Purpose: State child health plans.

1397ab. General contents of State child health plans; eligibility; outreach.

1397ac. Coverage requirements for children’s health insurance.

1397ad. Allotments.

1397ae. Payments to States.

1397af. Process for submission, approval, and amendment of State child health plans.

1397ag. Strategic objectives and performance goals; plan administration.

1397ah. Annual reports; evaluations.

1397ai. Miscellaneous provisions.

1397aj. Definitions.

1397ak. Phase-out of coverage for nonpregnant childless adults; conditions for coverage of parents.

1397al. Optional coverage of targeted low-income pregnant women through a State plan amendment.

1397am. Grants to improve outreach and enrollment.

SUBCHAPTER I—GRANTS TO STATES FOR OLD-AGE ASSISTANCE

REPEAL OF SUBCHAPTER I OF THIS CHAPTER: INAPPLICABILITY OF REPEAL TO PUERTO RICO, GUAM, AND VIRGIN ISLANDS

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

AMENDMENTS


§301. Authorization of appropriations

For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish financial assistance to aged
needy individuals, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health and Human Services (hereinafter referred to as the "Secretary''), State plans for old-age assistance.


Repeal of Section
Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1494, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

Amendments
1961—Pub. L. 92–603 substituted "purpose of enabling" for "purpose (a) of enabling", struck out provisions designated as cl. (b) and (c) which authorized appropriations for the purpose of enabling each State to furnish medical assistance to aged individuals who are not recipients of old-age assistance but whose income and resources are insufficient to meet the cost of necessary medical care and of encouraging each State to furnish rehabilitation and other services to individuals to attain and retain capability for self-care, and struck out "... or for medical assistance for the aged, or for old-age assistance and medical assistance for the aged" after "plans for old-age assistance".

1962—Pub. L. 87–543 amended first sentence generally, striking from cl. (a) provision relating to the purpose of encouraging each State, as far as practicable under the conditions in the State, to help aged needy individuals attain self-care, and adding cl. (c) incorporating the struck out provision.

1969—Pub. L. 96–778 amended section generally, authorizing appropriations for the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish medical assistance on behalf of aged individuals who are not recipients of old-age assistance but whose income and resources are insufficient to meet the costs of necessary medical services.


1950—Act Aug. 28, 1950, § 361(a), substituted "Federal Security Administrator (hereinafter referred to as the 'Administrator'))" for "Social Security Board established by subchapter I of this chapter (hereinafter referred to as the 'Board'))".

Effective Date of 1960 Amendment
Section 604 of Pub. L. 96–778 provided that: "The amendments made by section 604 of this Act [amending this section and sections 302, 303, 304, and 306 of this title] shall take effect October 1, 1960, and the amendments made by section 602 [amending section 1308 of this title] shall be effective with respect to fiscal years ending after 1960."

Change of Name
Secretary of Health and Human Services substituted in text for Secretary of Health, Education, and Welfare pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 302. State old-age plans

Short Title
For short title of this chapter and of amendments thereto, see section 1305 of this title and Short Title notes set out thereunder.

Declaration of Purpose of Title III of Act
August 1, 1966

Section 300 of act Aug. 1, 1956, provided that: "It is the purpose of this title (enacting sections 906 and 1310 of this title and amending this title and sections 302, 303, 601, 602, 603, 606, 1201, 1202, 1203, 1301, 1308, 1351, 1352, and 1353 of this title) (a) to promote the health of the Nation by assisting States to extend and broaden their provisions for meeting the costs of medical care for persons eligible for public assistance by providing for separate matching of assistance expenditures for medical care, (b) to promote the well-being of the Nation by encouraging the States to place greater emphasis on helping to strengthen family life and helping needy families and individuals attain the maximum economic and personal independence of which they are capable, (c) to assist in improving the administration of public assistance programs (1) through making grants and contracts, and entering into jointly financed cooperative arrangements, for research or demonstration projects and (2) through Federal-State programs of grants to institutions and traineeships and fellowships so as to provide training of public welfare personnel, thereby securing more adequately trained personnel, and (d) to improve aid to dependent children."

Puerto Rico, Guam, and the Virgin Islands
Pub. L. 92–603, title III, § 303(b), Oct. 30, 1972, 86 Stat. 1494, provided that: "The amendments made by sections 301 (enacting sections 1381 to 1383 of this title) and 302 [enacting sections 801 to 805 of this title] and the repeal made by subsection (a) [repealing this section and sections 302 to 306, 1201 to 1206, and 1351 to 1353 of this title] shall not be applicable in the case of Puerto Rico, Guam, and the Virgin Islands.

§ 302. State old-age plans

(a) Contents

A State plan for old-age assistance must—

(1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for assistance under the plan is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing;

(5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect
to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency.

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan;

(8) provide that all individuals wishing to make application for assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide, if the plan includes assistance for or on behalf of individuals in private or public institutions, for the establishment or maintenance of a system which meets the requirements of this subchapter.

(10) if the State plan includes old-age assistance—

(A) provide that the State agency shall, in determining need for such assistance, take into consideration any other income and resources of an individual claiming old-age assistance, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (i) the State agency may disregard not more than $7.50 per month of any income and (ii) of the first $80 per month of additional income which is earned the State agency may disregard not more than the first $20 thereof plus one-half of the remainder;

(B) include reasonable standards, consistent with the objectives of this subchapter, for determining eligibility for and the extent of such assistance; and

(C) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of such assistance to help them attain self-sufficiency and, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and

(11) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title.

(b) Approval by Secretary

The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for assistance under the plan—

(1) an age requirement of more than sixty-five years; or

(2) any residence requirement which (A) in the case of applicants for old-age assistance, excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old-age assistance and has resided therein continuously for one year immediately preceding the application, and (B) in the case of applicants for medical assistance for the aged, excludes any individual who resides in the State;

(3) any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this subchapter.

(c) Limitation on number of plans

Nothing in this subchapter shall be construed to permit a State to have in effect with respect to any period more than one State plan approved under this subchapter.


Repeal of Section

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

Amendments


1961—Subsec. (a). Pub. L. 87–35 struck out in provision preceding par. (1) "or for medical assistance for the aged," or for medical assistance and medical assistance for the aged" par. (11) which specified the contents the
State plan must contain if it includes medical assistance for the aged, par. (12) which specified the contents the State plan must contain if it includes assistance to or in behalf of individuals who are patients in institutions for mental diseases, and par. (13) which provided that if the State plan includes assistance to or in behalf of patients in public institutions for mental diseases, it show that the State is making satisfactory progress towards developing and implementing a comprehensive mental health program.

1972—Subsec. (a)(1). Pub. L. 92–603, § 410(a), inserted “except to the extent permitted by the Secretary with respect to services” before “provide”.

Subsec. (a)(4). Pub. L. 92–603, § 407(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (a)(7). Pub. L. 92–603, § 412(a), substituted provisions permitting use or disclosure of information concerning applicants or recipients to public officials requiring such information in connection with their official duties and to other persons for purposes directly connected with administration of the State plan, for provisions restricting use or disclosure of such information to purposes directly connected with administration of the State plan.

Subsec. (a)(10)(C). Pub. L. 92–603, § 405(a), inserted provision relating to use of whatever internal organizational arrangement found appropriate.

Subsec. (b), (c). Pub. L. 92–603, § 406(a), inserted provision relating to furnishing of manuals and other policy issuances to persons without charge and at option of the State.

1968—Subsec. (a)(5). Pub. L. 90–248, § 210(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(10)(C). Pub. L. 92–603, § 405(a), inserted provision relating to use of whatever internal organizational arrangement found appropriate.

Subsec. (a)(11). Pub. L. 92–603, § 406(a), placed a ceiling of $5 on amount of any income which the State may disregard in making its determination of need, and substituted “$80″ and “$20″ for “$50″ and “$30″ respectively.


1962—Subsec. (a)(10)(A). Pub. L. 87–543 inserted “as well as any expenses reasonably attributable to the earning of any such income” and exception provision.

1960—Subsec. (a). Pub. L. 86–778 amended subsec. (a) generally, inserting provisions relating to plans for medical assistance, and required plans that include old-age assistance to include reasonable standards, consistent with objectives of this subchapter, for determining eligibility for and extent of such assistance.

Subsec. (b), Pub. L. 86–778 amended subsec. (b) generally, substituting “eligibility for assistance under the plan” for “eligibility for old-age assistance under the plan” in opening provisions, struck out provisions from par. (1) which permitted plan to impose an age requirement of as much as 70 years until Jan. 1, 1940, and inserted provisions in par. (2) requiring the Secretary to disapprove any plan, in the case of applicants for medical assistance for the aged, which excludes any individual who resides in the State.

Subsec. (c), Pub. L. 86–778 added subsec. (c).

1956—Subsec. (a)(11). Pub. L. 85–440 inserted provisions in par. (11) requiring the State plan to include a description of the steps taken to assure, in provision of such services, maximum utilization of other agencies providing similar or related services.


1950—Subsec. (a)(11). Pub. L. 85–440, inserted “for” in place of “or” at end of clause (1) relating to expenses reasonably attributable to the earning of any such income.

1949—Added subsec. (a)(11).

§ 303. Payments to States and certain territories; computation of amount; eligibility of State to receive payment

(a) Computation of amounts

From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing October 1, 1960—


(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as old-age assistance under the State plan, not counting so much of any expenditure with respect to any month as exceeds $7.50 multiplied by the total number of recipients of old-age assistance for such month; plus


(4) in the case of any State, an amount equal to 50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

(b) Method of computing and paying amounts

The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health and Human Services shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State’s proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of aged individuals in the State, and (C) such other investigation as the Secretary of Health and Human Services may find necessary.

(2) The Secretary of Health and Human Services shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health and Human Services, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) of this section for such quarter, and (B) reduced by a sum equivalent to the prorata share to which the United States is equitably entitled, as determined by the Secretary of Health and Human Services, of the net amount recovered during any prior quarter by the State or any political subdivision thereof with respect to assistance furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health and Human Services for such prior quarter.

Provided. That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department and prior to audit or settlement by the Government Accountability Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.


Repeal of Section

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

AMENDMENTS


1999—Subsec. (a)(A). Pub. L. 105-168 substituted “50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.” for “the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan.”

(A) 75 per cent of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

“(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1320b-7(d) of this title; plus

“(C) one-half of the remainder of such expenditures.”

1986—Subsec. (a)(4)(B), (C). Pub. L. 99-603 added subpar. (B) and redesignated former subpar. (B) as (C).


Subsec. (a)(2). Pub. L. 97-35, § 2186(a)(4)(B), amended par. (2) generally, striking out provisions including as old-age assistance under the State plan expenditures for premiums under part B of chapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care and increasing amount payable by larger of two specifically computable amounts.

Subsec. (a)(3). Pub. L. 97-35, § 2186(a)(4)(A), struck out par. (3) which provided for payment, in the case of any State, of an amount equal to the Federal medical percentage of total amounts expended for each quarter as medical assistance for the aged under the State plan, including expenditures for insurance premiums for medical or any other type of remedial care or cost thereof.

Subsec. (a)(4). Pub. L. 97-35, § 2353(a)(1)(A), substituted provision making payments available to any State for provision making payments available to any State whose State plan approved under section 302 of this title meets the requirements of subsection (c)(1) of this section and “Secretary of Health, Education, and Welfare”, inserted provision including within the meaning of training both short and long term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions, and struck out provisions which included in the computation of the amount payable for services and provisions which specified what services were included.

Subsec. (a)(5). Pub. L. 97-35, § 2353(a)(1)(B), struck out par. (5) which provided payment, in the case of any State whose State plan approved under section 302 of this title which did not meet the requirements of subsection (c)(1) of this section, of an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

Subsec. (b). Pub. L. 97-35, § 2353(a)(2), struck out subsec. (c) which provided for an eligibility requirement in order for a State to qualify for payments under subsec. (a)(4) of this section and prescribed action to be taken by the Secretary upon failure of the State to comply.

Subsec. (d). Pub. L. 97-35, § 2186(a)(4)(C), struck out subsec. (d) which provided that the amount determined for any State for any quarter which is attributable to expenditures with respect to patients in institutions for mental diseases be paid only to the extent that the net increase of the Federal share of expenditures in the State from Federal, State, and local sources for mental health services under State and local public health and public welfare programs in such quarter exceed the average of the total expenditures in the State from such sources for such services under such programs for each quarter of fiscal year ending June 30, 1965.

1975—Subsec. (a). Pub. L. 93-647, § 3(e)(2), struck out “(subject to section 1320b of this title)” after “the Secretary of the Treasury shall.”

Subsec. (a)(4)(A)(iv). Pub. L. 93-647, § 5(a), inserted “(including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions)” after “training”.

1972—Subsec. (a). Pub. L. 92-512, § 301(d), substituted “shall (subject to section 1320b of this title) pay” for “shall pay” in text preceding par. (1).

Subsec. (a)(4)(E). Pub. L. 92-512, § 301(b), substituted “under conditions which shall be” for “subject to limitations”.

1966—Subsec. (a)(4)(D). Pub. L. 90-238 inserted “, except to the extent specified by the Secretary” after “shall” in introductory text to subpar. (D).

1965—Subsec. (a)(1). Pub. L. 89-97, § 112, inserted “premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other” after “expenditures for” in parenthetical phrase appearing in so much of par. (1) as precedes cl. (A), and changed first step of formula for determining Federal payments to States with approved plans for old-age assistance under this subchapter, contained in cl. (A), by providing Federal sharing in $37 of first $35 of the average monthly assistance payment instead of $37 of the average monthly assistance payment, extended the application of the Federal percentage in second step of formula to an additional $38 of the State’s average payment, restated formula for second and third steps by striking out cl. (C) and combining such steps in cl. (B) and making provision therein to give recognition to the State’s expenditures for medical care before determining the Federal percentage to remaining expenditures for which Federal participation is available, respectively.

Subsec. (a)(2)(A). Pub. L. 89-97, § 122, inserted premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other” after “expenditures for” in parenthetical phrase.


1962—Subsec. (a)(1). Pub. L. 87-543, § 132(a), substituted “$30” and “$35” for “four-fifths” and “$31”, respectively, in subpar. (A), “$70” for “$66” in subpar. (B), and “$65” and “$70” for “$61” and “$66”, respectively, in subpar. (C).

Subsec. (a)(2). Pub. L. 87-543, § 132(a), inserted “$37.50” for “$35.50” in subpar. (A) and “$45.50” and “$37.50” for “$43” and “$35.50”, respectively, in subpar. (B).

Subsec. (a)(4). Pub. L. 87-543, § 101(a)(1), (b)(1)(A), inserted in opening provisions “whose State plan approved under section 302 of this title meets the requirements of subsection (c) of this section” after “any State”, and substituted provisions which increased the Federal share of expenditures in the State from Federal, State, and local public assistance plans by providing quarterly payments of the sum of 75 per cent of the quarterly expenses for certain prescribed services to help attain and retain capability for self-care, services likely to prevent or reduce dependency, and services appropriate for individuals who were or are likely to become applicants for medical assistance payments under State plans and other services.” for “other services.”
for or recipients of assistance and request such services, and training of State or local public assistance personnel administering such plans and one-half of other administrative expenses, permitted State health or vocational rehabilitation or other appropriate State agencies to furnish such services, except vocational rehabilitation services, and required the determination of the portion of expenses covered by the 75 and 50 per centum provisions in accordance with methods and procedures permitted by the Secretary for former provisions requiring quarterly payments of one-half of quarterly expenses of administration of State plans, including staff services of State or local public assistance agencies to applicants for and recipients of old-age assistance to help him attain self-care for which amount shall be used for paying the costs of administering the State plan or for old-age assistance, or both, and for no other purpose in cl. (3).

1954—Subsec. (b). Act Sept. 1, 1954, § 303(b), substituted "subsection (a)" for "clause (1) of subsection (a)"; wherever appearing, substituted "such subsection" for "such clause" in par. (1), and struck out "increased by five per centum" at end of par. (3).

1952—Subsec. (a). Act July 18, 1952, increased Federal share of State's average monthly payment to four-fifths of the first $25 plus one-half of the remainder within individual maximums of $55, and changed formulas for computing Federal share of public assistance for Puerto Rico and Virgin Islands.

1950—Act Aug. 28, 1950, substituted "Administrator" for "Board", and "he", "him" or "his" for "it", or "its" wherever appearing and in subsec. (a) changed basis for computation of Federal portion of old-age assistance.


1946—Subsec. (a). Act Aug. 10, 1946, § 501(a), temporarily increased maximum monthly State expenditure for an individual to which Federal Government will contribute from $40 to $45, increased Federal contribution for assistance from one-half the State's expenditure to two-thirds the State's expenditure up to $15 monthly individual plus one-half the State's expenditure over $15 and changed the Federal contribution for administration from 5 percent of Federal contribution for assistance to one-half the State expenditure for administration. See Effective and Termination Date of 1946 Amendment note below.

1940—Act Aug. 10, 1939, amended section generally, including substitution of $40 for $30 in subsec. (a).

**Effective Date of 1993 Amendment**

Section 13741(c) of Pub. L. 103–66 provided that: "(1) IN GENERAL.—Except as provided in paragraph (2) of this subsection, the amendments made by subsections (a) and (b) [amending this section and sections 1383, 1385, and 1387 of this title [amending section 1383 of this title] shall be effective with respect to calendar quarters beginning on or after April 1, 1994.

(2) SPECIAL RULE.—In the case of a State whose leg-islature meets biennially, and does not have a regular session scheduled in calendar year 1994, the amendment made by subsections (a) and (b) shall be effective no later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Aug. 10, 1993]."

**Effective Date of 1986 Amendment**


**Effective Date of 1981 Amendment**


**Effective Date of 1975 Amendment**

The amendments made by sections 2 and 5 of this Act [enacting sections 1397 to 1397f of this title and amending this section, sections 603, 1203, and 1333 of this title, and provisions set out as a note under section 1336 of this title] shall be effective with respect to payments for quarters commencing after September 30, 1975.

(2) Notwithstanding the provisions of section 2044 of the Social Security Act, as amended by this Act [section 1397f of this title], the first services program year of each State shall begin on October 1, 1975, and end with the close of, at the option of the State—

(A) the day in the twelve-month period beginning October 1, 1975, or

(B) the day in the twelve-month period beginning October 1, 1976, which is the last day of the twelve-month period established by the State as its services program year under that section. Notwithstanding the provisions of subsection (b) of section 2003 of the Social Security Act, as amended by this Act [section 1397(a)(9)(A)(ii) of such Act] with respect to the first services program year of each State shall be the amount which bears the same ratio to the amount that would otherwise be required under that subsection as the number of months in the State’s first services program year bears to twelve.

(3) Notwithstanding paragraph (1) of this subsection or section 302(d) [set out as a note under section 1397a of this title], payments under title IV [subchapter IV of this chapter] or section 2002(a)(1) of the Social Security Act [section 1397a(a)(1) of this title] with respect to expenditures made prior to October 1, 1975, in connection with the provision of child day care services in day care centers and group day care homes, in the case of children between the ages of six weeks and six years, may be made without regard to the requirements relating to staffing standards which are imposed by or under section 2002(a)(9)(A)(ii) of such Act [section 1397a(a)(9)(A)(ii) of this title], so long as the staffing standards actually being applied in the provision of the services involved (A) comply with applicable State law (as in effect at the time the services are provided), (B) are no lower than the corresponding staffing standards which were imposed or required by applicable State law on September 15, 1975, and (C) are no lower, in the case of any day care center or group day care home, than the corresponding standards actually being applied in such center or home on September 15, 1975.

(b) The amendments made by section 3 of this Act [amending this section and sections 602, 603, 606, 622, 1203, 1308, 1315, 1316, 1320b note, and 1383 note of this title, repealing sections 801 to 805 and 1320b of this title, and enacting provisions set out as a note under section 1336 of this title] shall be effective in the case of expenditures, under a State plan approved under title I, X, or XIV of the Social Security Act [subchapter I, X, or XIV of the Social Security Act [subchapter I, IV, X, or XIV of this chapter], as the case may be, after August 31, 1962.

The amendments made by section 101(a) [amending this section and sections 603, 1203, and 1333 of this title] shall be applicable in the case of expenditures, under a State plan approved under title I, X, or XIV of the Social Security Act [subchapter I, IV, X, or XIV of this chapter], as the case may be, effective—

(A) the day in the twelve-month period beginning October 1, 1972, or

(B) the day in the twelve-month period beginning October 1, 1973.

(1) in the case of money payments, under a State plan approved under title I, X, or XIV of the Social Security Act [subchapter I, IV, X, or XIV of this chapter], for months after September 1958, and

(2) in the case of assistance in the form of medical or any other type of remedial care, under such a plan, for months after September 1961.

The amendments made by section 101(a) [amending this section and sections 603, 1203, and 1333 of this title] shall be applicable in the case of expenditures, under a State plan approved under title I, X, or XIV of the Social Security Act, as the case may be, effective—

(A) the day in the twelve-month period beginning October 1, 1972, or

(B) the day in the twelve-month period beginning October 1, 1973.

The amendments made by section 3 of this Act [amending this section and sections 1203, 1308, 1315, and 1316 of this title] shall become effective, for purposes of expenditures, under a State plan approved under title I, X, or XIV of the Social Security Act, as the case may be, effective—

(A) the day in the twelve-month period beginning October 1, 1972, or

(B) the day in the twelve-month period beginning October 1, 1973.

The amendments made by section 101(a) [amending this section and sections 603, 1203, and 1333 of this title] shall be applicable in the case of expenditures, under a State plan approved under title I, X, or XIV of the Social Security Act, as the case may be, effective—

(A) the day in the twelve-month period beginning October 1, 1972, or

(B) the day in the twelve-month period beginning October 1, 1973.

The amendments made by section 3 of this Act [amending this section and sections 1203, 1308, 1315, and 1316 of this title] shall become effective, for purposes of expenditures, under a State plan approved under title I, X, or XIV of the Social Security Act, as the case may be, effective—

(A) the day in the twelve-month period beginning October 1, 1972, or

(B) the day in the twelve-month period beginning October 1, 1973.

The amendments made by section 101(a) [amending this section and sections 603, 1203, and 1333 of this title] shall be applicable in the case of expenditures, under a State plan approved under title I, X, or XIV of the Social Security Act, as the case may be, effective—

(A) the day in the twelve-month period beginning October 1, 1972, or

(B) the day in the twelve-month period beginning October 1, 1973.
poses of title V of the Social Security Act [subchapter V of this chapter], for fiscal years ending after June 30, 1959. The amendments made by section 507 [amending section 1308 of this title] shall be effective for fiscal years ending after June 30, 1958. The amendment made by section 508 [amending section 1301 of this title] shall be effective for fiscal years ending after June 30, 1959. The amendment made by section 510 shall become effective October 1, 1958."

**Effective and Termination Date of 1956 Amendment**

Section 345 of act Aug. 1, 1956, provided that: "The amendments made by this part [part V (§§341–345) of this Act] shall become effective for the period beginning October 1, 1956, and ending with the close of June 30, 1959, and after such amendments cease to be in effect any provision of law amended thereby shall be in full force and effect as though this part had not been enacted."

**Effective Date of 1956 Amendment**

Section 305 of act Aug. 1, 1956, as amended by Pub. L. 85-110, July 17, 1957, 71 Stat. 308, provided that:

"(a) Except as provided in subsection (b), the amendments made by this part [part I (§§301–305) of title III of act Aug. 1, 1956, amending this section and sections 603, 1203, and 1333 of this title] shall become effective July 1, 1957.

"(b) The amendments made by any section of this part shall not apply to any State (as defined in section 1101 of the Social Security Act (section 1301 of this title) for purposes of title I thereof (subchapter I of this chapter)) for any fiscal year for which there is in effect an election by it not to have the amendments made by such section apply to it. Any such election shall be in effect for a fiscal year only if notice of the election has been filed with the Secretary of Health, Education, and Welfare at some time prior to May 16 of the preceding fiscal year, except that any such election shall be in effect for the fiscal year beginning July 1, 1957, if notice of the election is filed with the Secretary prior to August 1, 1957. An election by a State under this subsection shall continue in effect until the close of any fiscal year designated in a notice of termination of such election which is filed with the Secretary of Health, Education, and Welfare prior to May 16 of such year. Elections hereunder shall be made, and notices thereof and notices of termination shall be filed, on such form or forms and in such manner as the Secretary of Health, Education, and Welfare may prescribe."

**Effective and Termination Date of 1952 Amendment**

Section 8(e) of act July 18, 1952, as amended by act Sept. 1, 1954, title III, §301, provided that: "The amendments made by this section [amending this section and sections 603, 1203, and 1333 of this title] shall be effective for the period beginning October 1, 1952, and ending with the close of September 30, 1956, and after such amendments cease to be in effect any provision of law amended thereby shall be in full force and effect as though this Act (July 18, 1952) had not been enacted."

**Effective Date of 1950 Amendment**

Section 302(b) of act Aug. 28, 1950, provided that: "The amendment made by subsection (a) [amending this section] shall take effect October 1, 1950."

**Effective Date of 1948 Amendment**

Section 3(d) of act June 14, 1948, provided that: "The amendments made by this section [amending this section and sections 603 and 1203 of this title] shall become effective on October 1, 1948."

**Effective and Termination Date of 1946 Amendment**

Section 504 of act Aug. 10, 1946, as amended by act Aug. 6, 1947, ch. 510, §3, 61 Stat. 794, provided that:

"Sections 501, 502, and 503 [amending this section and sections 603 and 1203 of this title] shall be effective with respect to the period commencing October 1, 1946, and ending on June 30, 1950."

**Effective Date of 1939 Amendment**

Section 102 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

**Transfer of Functions**

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3301 of this title, Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953, Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 508(b) of Pub. L. 96-88 which is classified to section 308(b) of Title 20, Education.

"Fiscal Service" substituted for "Division of Disbursements" in subsec. (b) on authority of section 1(a)(1) of Reorg. Plan No. III of 1940, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5, Government Organization and Employees, which consolidated such division into Fiscal Service of Treasury Department. See section 306 of Title 31, Money and Finance.

**Nonduplication of Payments to States: Prohibition of Payments After December 31, 1969**

Prohibition of payments under this subchapter to States with respect to aid or assistance in form of medical or other type of remedial care for any period for which States received payments under subchapter XIX of this chapter or for any period after Dec. 31, 1969, see section 121(b) of Pub. L. 89-97, set out as a note under section 1398b of this title.

**§ 304. Stopping payment on deviation from required provisions of plan or failure to comply therewith**

In the case of any State plan which has been approved under this subchapter by the Secretary, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

1. that the plan has been so changed as to impose any age, residence, or citizenship requirement prohibited by section 302(b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

2. that in the administration of the plan there is a failure to comply substantially with any provision required by section 302(a) of this title to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).
§ 305

TITLE 42—THE PUBLIC HEALTH AND WELFARE

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REPEAL OF SECTION

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

AMENDMENTS

1968—Pub. L. 90-248 inserted “(or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), after further payments will not be made to the State”, and substituted in last sentence “further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure)” for “further certification to the Secretary of the Treasury with respect to such State”.

1960—Pub. L. 86-778 substituted “State plan which has been approved under this subchapter for “State plan for old-age assistance which has been approved”.


EFFECTIVE DATE OF 1960 AMENDMENT


TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 301 of this title, Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 508(b) of Pub. L. 98-243 which is classified to section 508(b) of Title 20, Education.

§ 305. Omitted

CODIFICATION


§ 306. Definitions

(a) For the purposes of this subchapter, the term “old-age assistance” means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for assistance) medical care in behalf of or any type of remedial care recognized under State law in behalf of, needy individuals who are 65 years of age or older, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution). Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State which under section 302 of this title includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such assistance through payments described in this sentence; (2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of old-age assistance to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made; (3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds; and (4) periodic review by such State agency of the determination under paragraph (1) of this subsection to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that such action will best serve the interests of such needy individual; and

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

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


REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1444, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Subsecs. (b), (c). Pub. L. 97–35 struck out subsecs. (b) and (c) which defined "medical assistance for the aged" and "Federal medical percentage", respectively.

1972—Subsec. (a). Pub. L. 92–603 authorized the State, at its option, to include within term "old-age assistance" provisions relating to money payments to an individual absent from such State for more than 90 consecutive days, and provisions relating to rent payments made directly to a public housing agency.

1965—Subsec. (a). Pub. L. 89–97, § 221(a)(2), struck out from definition of "old-age assistance" the exclusion of (1) payments to or medical care in behalf of any individual who is a patient in an institution for tuberculosis or mental diseases, or (2) payments to any individual who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result of such diagnosis, for forty-two days.

Pub. L. 89–97, § 462(a), extended definition of "old-age assistance" to include payments made on behalf of the recipient to an individual who (as determined in accordance with the standards prescribed by the Secretary) is interested in or concerned with the welfare of the recipient and inserted an enumeration of the five characteristics required of State plans under which such payments can be made, including provision for finding of inability to manage funds, payment to meet all needs, special efforts to protect welfare, periodic review, and opportunity for fair hearing.

Subsec. (b). Pub. L. 89–97, §§ 221(a)(2), 222(a), struck out from provision at end of cl. (12) excluding certain payments from definition of "medical assistance for the aged" payments with respect to care or services for any individual who is a patient in an institution for tuberculosis or mental diseases or for any individual who is a patient in a medical institution as a result of a diagnosis of tuberculosis or psychosis, with respect to any period after the individual has been a patient in such an institution, as a result of such diagnosis, for forty-two days.

Pub. L. 89–97, § 462(a), extended definition of "old-age assistance" to include payments made on behalf of the recipient to an individual who (as determined in accordance with the standards prescribed by the Secretary) is interested in or concerned with the welfare of the recipient and inserted an enumeration of the five characteristics required of State plans under which such payments can be made, including provision for finding of inability to manage funds, payment to meet all needs, special efforts to protect welfare, periodic review, and opportunity for fair hearing.

Subsec. (b). Pub. L. 89–97, §§ 221(a)(2), 222(a), struck out from provision at end of cl. (12) excluding certain payments from definition of "medical assistance for the aged" payments with respect to care or services for any individual who is a patient in an institution for tuberculosis or mental diseases or for any individual who is a patient in a medical institution as a result of a diagnosis of tuberculosis or psychosis, with respect to any period after the individual has been a patient in such an institution, as a result of such diagnosis, for forty-two days.

1962—Subsec. (a). Pub. L. 87–543, § 156(a)(1), inserted "(if provided in or after the third month before the month in which the recipient makes application for assistance)" before "medical care".

Subsec. (b). Pub. L. 87–543, § 156(a)(2), inserted "(if provided in or after the third month before the month in which the recipient makes application for assistance)" after "care and services".

1960—Subsec. (a). Pub. L. 86–778, § 601(f)(1), (2), designated existing provisions as subsec. (a) and inserted provisions excluding from definition of "old-age assistance" any care in behalf of any individual, who is a patient in a medical institution as a result of a diagnosis that he has tuberculosis or psychosis, with respect to any period after the individual has been a patient in an institution, as a result of such diagnosis, for forty-two days.

Subsecs. (b), (c). Pub. L. 86–778, § 601(f)(2), added subsecs. (b) and (c).

1950—Act Aug. 28, 1950, redefined "old-age assistance".

1939—Act Aug. 10, 1939, inserted "needy" before "individuals who".

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 221 of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 223(e) of Pub. L. 89–97, set out as a note under section 302 of this title.

Section 222(c) of Pub. L. 89–97 provided that: "The amendments made by this section (amending this section and sections 1206, 1335, and 1335 of this title) shall apply in the case of expenditures made after December 31, 1965, under a State plan approved under title I, X, XIV or XVI of the Social Security Act [subchapter I or XVI of this chapter] with respect to care and services provided under such plan after June 1965."

Section 402(e) of Pub. L. 89–97 provided that: "The amendments made by this section (amending this section and sections 1206, 1335, and 1335 of this title) shall apply in the case of expenditures made after September 30, 1962, under a State plan approved under title I, IV, X, or XIV of the Social Security Act [subchapter I, IV, X or XIV of this chapter]."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 156(e) of Pub. L. 87–543 provided that: "The amendments made by this section (amending this section and sections 606, 1206, and 1335 of this title) shall apply in the case of applications made after September 30, 1962, under a State plan approved under title I, IV, X, or XIV of the Social Security Act [subchapter I, IV, X or XIV of this chapter]."

EFFECTIVE DATE OF 1960 AMENDMENT


EFFECTIVE DATE OF 1950 AMENDMENT

Section 303(b) of act Aug. 28, 1950, provided that: "The amendment made by subsection (a) [amending this section] shall take effect October 1, 1950, except that the exclusion of money payments to needy individuals described in clause (a) or (b) of section 6 of the Social Security Act as so amended [clauses (a) or (b) of this section] shall, in the case of any of such individuals who are not patients in a public institution, be effective July 1, 1952."

SUBCHAPTER II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

AMENDMENTS


§ 401. Trust Funds

(a) Federal Old-Age and Survivors Insurance Trust Fund

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Old-Age and Survivors Insurance Trust Fund". The Federal Old-Age and Survivors Insurance Trust Fund shall consist of the securities held by the Secretary of the Treasury for the Old-Age Reserve Account and the amount standing to the credit of the Old-Age Reserve Account on the books of the Treasury on January 1, 1940, which securities and amount the Secretary of the Treasury is authorized and directed to transfer to the Federal Old-Age and Survivors Insurance Trust Fund, and, in addition, such gifts and bequests as may
be made as provided in subsection (1) of this section, and such amounts as may be appropriated to, or deposited in, the Federal Old-Age and Survivors Insurance Trust Fund as hereinafter provided. There is hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1941, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) the taxes (including interest, penalties, and additions to the taxes) received under subchapter A of chapter 9 of the Internal Revenue Code of 1939 (and covered into the Treasury) which are deposited into the Treasury by collectors of internal revenue before January 1, 1951; and

(2) the taxes certified each month by the Commissioner of Internal Revenue as taxes received under subchapter A of chapter 9 of such Code, which are deposited into the Treasury by collectors of internal revenue after December 31, 1950, and before January 1, 1953, with respect to assessments of such taxes made before January 1, 1951; and

(3) the taxes imposed by subchapter A of chapter 9 of such Code with respect to wages (as defined in section 1426 of such Code), and by chapter 21 (other than sections 3101(b) and 3111(b)) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 3101(b) of such Code) reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 after December 31, 1950, or to the Secretary of the Treasury or his delegates pursuant to subtitle F of the Internal Revenue Code of 1954 after December 31, 1954, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such subchapter or chapter 21 (other than sections 3101(b) and 3111(b)) to such wages, which shall be certified by the Commissioner of Social Security in accordance with such reports, less the amounts specified in clause (1) of subsection (b) of this section; and

(4) the taxes imposed by subchapter E of chapter 1 of the Internal Revenue Code of 1939, with respect to self-employment income (as defined in section 4101(b) of such Code), and by chapter 2 (other than section 1401(b)) of the Internal Revenue Code of 1954 with respect to self-employment income (as defined in section 1402 of such Code) reported to the Commissioner of Internal Revenue on tax returns under such subchapter or to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such subchapter or chapter (other than section 1401(b)) to such self-employment income, which self-employment income shall be certified by the Commissioner of Social Security on the basis of the records of self-employment income established and maintained by the Commissioner of Social Security in accordance with such returns, less the amounts specified in clause (2) of subsection (b) of this section.

The amounts appropriated by clauses (3) and (4) of this subsection shall be transferred from time to time from the general fund in the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund, and the amounts appropriated by clauses (1) and (2) of this section shall be transferred from time to time from the general fund in the Treasury to the Federal Disability Insurance Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in clauses (3) and (4) of this subsection, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such clauses (3) and (4) of this subsection. All amounts transferred to either Trust Fund under the preceding sentence shall be invested by the Managing Trustee in the same manner and to the same extent as the other assets of such Trust Fund. Notwithstanding the preceding sentence, in any case in which the Secretary of the Treasury determines that the assets of either such Trust Fund would otherwise be inadequate to meet such Fund's obligations for any month, the Secretary of the Treasury shall transfer to such Trust Fund on the first day of such month the amount which would have been transferred to such Fund under this section as in effect on October 1, 1983, and such Trust Fund shall pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on January 1, 1983) equal to the rate earned by the investments of such Fund in the same month under subsection (d) of this section.

(b) Federal Disability Insurance Trust Fund

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Disability Insurance Trust Fund". The Federal Disability Insurance Trust Fund shall consist of such gifts and bequests as may be made as provided in subsection (1) of this section, and such amounts as may be appropriated to, or deposited in, such fund as provided in this section. There is hereby appropriated to the Federal Disability Insurance Trust Fund for the fiscal year ending June 30, 1957, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1)(A) ½ of 1 per centum of the wages (as defined in section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1956, and before January 1, 1966, and reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, (B) 0.70 of 1 per centum of the wages (as so defined) paid after December 31, 1965, and before January 1, 1968, and so reported, (C) 0.95 of 1 per centum of the wages (as so defined) paid after December 31, 1967, and before January 1, 1970, and so reported, (D)
1.10 per centum of the wages (as so defined) paid after December 31, 1969, and before January 1, 1973, and so reported, (E) 1.1 per centum of the wages (as so defined) paid after December 31, 1972, and before January 1, 1974, and so reported, (P) 1.15 per centum of the wages (as so defined) paid after December 31, 1973, and before January 1, 1978, and so reported, (G) 1.55 per centum of the wages (as so defined) paid after December 31, 1977, and before January 1, 1979, and so reported, (H) 1.50 per centum of the wages (as so defined) paid after December 31, 1981, and before January 1, 1983, and so reported, (I) 1.12 per centum of the wages (as so defined) paid after December 31, 1979, and before January 1, 1981, and so reported, (J) 1.30 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1982, and so reported, (K) 1.65 per centum of the wages (as so defined) paid after December 31, 1981, and before January 1, 1983, and so reported, (L) 1.25 per centum of the wages (as so defined) paid after December 31, 1982, and before January 1, 1984, and so reported, (M) 1.00 per centum of the wages (as so defined) paid after December 31, 1983, and before January 1, 1988, and so reported, (N) 1.06 per centum of the wages (as so defined) paid after December 31, 1987, and before January 1, 1990, and so reported, (O) 1.20 per centum of the wages (as so defined) paid after December 31, 1989, and before January 1, 1994, and so reported, (P) 1.88 per centum of the wages (as so defined) paid after December 31, 1993, and before January 1, 1997, and so reported, (Q) 1.70 per centum of the wages (as so defined) paid after December 31, 1996, and before January 1, 2000, and so reported, and (R) 1.80 per centum of the wages (as so defined) paid after December 31, 1999, and so reported, which wages shall be certified by the Commissioner of Social Security on the basis of the records of wages established and maintained by such Commissioner in accordance with such reports; and

(2) (A) ⅙ of 1 per centum of the amount of self-employment income (as defined in section 1402 of the Internal Revenue Code of 1954) reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of the Internal Revenue Code of 1954 for any taxable year beginning after December 31, 1956, and before January 1, 1966, (B) 0.525 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1965, and before January 1, 1968, (C) 0.7125 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1967, and before January 1, 1970, (D) 0.825 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1969, and before January 1, 1973, (E) 0.795 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1971, and before January 1, 1974, (F) 0.815 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1972, and before January 1, 1975, (G) 0.890 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1974, and before January 1, 1978, (H) 0.909 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1979, (I) 0.900 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1982, (J) 0.9750 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1981, and before January 1, 1983, (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1982, and before January 1, 1984, (M) 1.00 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1983, and before January 1, 1988, (N) 1.06 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1987, and before January 1, 1990, (O) 1.20 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989, and before January 1, 1994, (P) 1.88 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1993, and before January 1, 1997, and so reported, (Q) 1.70 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1996, and before January 1, 2000, and so reported, and (R) 1.80 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1999, which self-employment income shall be certified by the Commissioner of Social Security on the basis of the records of self-employment income established and maintained by the Commissioner of Social Security in accordance with such returns.

(c) Board of Trustees; duties; reports to Congress

With respect to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund (hereinafter in this subchapter called the ‘‘Trust Funds’’), there is hereby created a body to be known as the Board of Trustees of the Trust Funds (hereinafter in this subchapter called the ‘‘Board of Trustees’’) which Board shall be composed of the Commissioner of Social Security, the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and
confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this subchapter called the "Managing Trustee"). The Deputy Commissioner of Social Security shall serve as Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Funds;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Funds during the preceding fiscal year and on their expected operation and status during the next ensuing five fiscal years;

(3) Report immediately to the Congress whenever the Board of Trustees is of the opinion that the amount of either of the Trust Funds is unduly small;

(4) Recommend improvements in administrative procedures and policies designed to effectuate the proper coordination of the old-age and survivors insurance and Federal-State unemployment compensation program; and

(5) Review the general policies followed in managing the Trust Funds, and recommend changes in such policies, including necessary changes in the provisions of the law which govern the way in which the Trust Funds are to be managed.

The report provided for in paragraph (2) of this subsection shall include a statement of the assets of, and the disbursements made from, the Trust Funds during the preceding fiscal year, an estimate of the expected future income to, and disbursements to be made from, the Trust Funds during each of the next ensuing five fiscal years, and a statement of the actuarial status of the Trust Funds. Such statement shall include a finding by the Board of Trustees as to whether the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, individually and collectively, are in close actuarial balance (as defined by the Board of Trustees). Such report shall include an actuarial opinion by the Chief Actuary of the Social Security Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable. Such report shall also include an actuarial analysis of the benefit disbursements made from the Federal Old-Age and Survivors Insurance Trust Fund with respect to disabled beneficiaries. Such report shall be printed as a House document of the session of the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Funds.

(d) Investments

It shall be the duty of the Managing Trustee to invest such portion of the Trust Funds as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Funds. Such obligations issued for purchase by the Trust Funds shall have maturities fixed with due regard for the needs of the Trust Funds and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month: except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest of such obligations shall be the multiple of one-eighth of 1 centum nearest such market yield. Each obligation issued for purchase by the Trust Funds under this subsection shall be evidenced by a paper instrument in the form of a bond, note, or certificate of indebtedness issued by the Secretary of the Treasury setting forth the principal amount, date of maturity, and interest rate of the obligation, and stating on its face that the obligation shall be incontestable in the hands of the Trust Fund to which it is issued, that the obligation is supported by the full faith and credit of the United States, and that the United States is pledged to the payment of the obligation with respect to both principal and interest. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(e) Sale of acquired obligations

Any obligations acquired by the Trust Funds (except public-debt obligations issued exclusively to the Trust Funds) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(f) Proceeds from sale or redemption of obligations; interest

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall be credited to and form a part of the Federal Old-Age and Survivors Insurance Trust Fund and the Disability Insurance Trust Fund, respectively. Payment from the general
fund of the Treasury to either of the Trust Funds of any such interest or proceeds shall be in the form of paper checks drawn on such general fund to the order of such Trust Fund.

(g) Payments into Treasury

(1)(A) The Managing Trustee of the Trust Funds (which for purposes of this paragraph shall include also the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by subchapter XVIII of this chapter) is directed to pay from the Trust Funds into the Treasury—

(i) the amounts estimated by the Managing Trustee, the Commissioner of Social Security, and the Secretary of Health and Human Services which will be expended, out of moneys appropriated from the general fund in the Treasury, during a three-month period by the Department of Health and Human Services for the administration of subchapter XVIII of this chapter, and by the Department of the Treasury for the administration of subchapters II and XVIII of this chapter and chapters 2 and 21 of the Internal Revenue Code of 1986, less the amounts estimated (pursuant to the applicable method prescribed under paragraph (4) of this subsection) by the Commissioner of Social Security which will be expended, out of moneys made available for expenditures from the Trust Funds, during such three-month period to cover the cost of carrying out the functions of the Social Security Administration, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 other than those referred to in clause (i) and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee.

Such payments shall be carried into the Treasury as the net amount of repayments due the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by subchapter XVIII of this chapter, and the Federal Old-Age and Survivors Insurance Trust Fund, and the Federal Disability Insurance Trust Fund under the preceding sentence, there are hereby authorized to be made available from either or both of such Trust Funds for continuing disability reviews—

(i) for fiscal year 1996, $260,000,000; (ii) for fiscal year 1997, $360,000,000; (iii) for fiscal year 1998, $570,000,000; (iv) for fiscal year 1999, $720,000,000; (v) for fiscal year 2000, $720,000,000; (vi) for fiscal year 2001, $720,000,000; and (vii) for fiscal year 2002, $720,000,000.

For purposes of this subparagraph, the term «continuing disability review» means a review conducted pursuant to section 421(i) of this title and a review or disability eligibility redetermination conducted to determine the continuing disability and eligibility of a recipient of benefits under the supplemental security income program under subchapter XVI of this chapter, including any review or redetermination conducted pursuant to section 207 or 208 of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103–296).

(B) After the close of each fiscal year—

(i) the Commissioner of Social Security shall determine—

(I) the portion of the costs, incurred during such fiscal year, of administration of this subchapter, subchapter VIII of this chapter, subchapter XVI of this chapter, and subchapter XVIII of this chapter for which the Commissioner is responsible and of carrying out the functions of the Social Security Administration, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)) and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee, which should have been borne by the general fund of the Treasury.

(II) the portion of such costs which should have been borne by the Federal Old-Age and Survivors Insurance Trust Fund,

(III) the portion of such costs which should have been borne by the Federal Disability Insurance Trust Fund,

(IV) the portion of such costs which should have been borne by the Federal Hospital Insurance Trust Fund, and

(V) the portion of such costs which should have been borne by the Federal Supplementary Medical Insurance Trust Fund (and, of such portion, the portion of such costs

1 So in original. Two cls. (i) and (ii) have been enacted.

2 So in original. Probably should be «(vii)». 
which should have been borne by the Medicare Prescription Drug Account in such Trust Fund), and

(ii) the Secretary of Health and Human Services shall determine—

(I) the portion of the costs, incurred during such fiscal year, of the administration of subchapter XVIII of this chapter for which the Secretary is responsible, which should have been borne by the general fund of the Treasury,

(II) the portion of such costs which should have been borne by the Federal Hospital Insurance Trust Fund, and

(III) the portion of such costs which should have been borne by the Federal Supplementary Medical Insurance Trust Fund (and, of such portion, the portion of such costs which should have been borne by the Medicare Prescription Drug Account in such Trust Fund).

(C) After the determinations under subparagraph (B) have been made for any fiscal year, the Commissioner of Social Security and the Secretary shall each certify to the Managing Trustee the amounts, if any, which should be transferred from one to any of the other such Trust Funds and the amounts, if any, which should be transferred between the Trust Funds (or one of the Trust Funds) and the general fund of the Treasury, in order to ensure that each of the Trust Funds and the general fund of the Treasury have borne their proper share of the costs, incurred during such fiscal year; for—

(i) the parts of the administration of this subchapter, subchapter VIII of this chapter, subchapter XVI of this chapter, and subchapter XVIII of this chapter for which the Commissioner of Social Security is responsible,

(ii) the parts of the administration of subchapter XVIII of this chapter for which the Secretary is responsible, and

(iii) carrying out the functions of the Social Security Administration, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)) and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee.

The Managing Trustee shall transfer any such amounts in accordance with any certification so made.

(D) The determinations required under subclauses (IV) and (V) of subparagraph (B)(i) shall be made in accordance with the cost allocation methodology in existence on August 15, 1994, until such time as the methodology for making the determinations required under such subclauses is revised by agreement of the Commissioner and the Secretary, except that the determination of the amounts to be borne by the general fund of the Treasury with respect to expenditures incurred in carrying out the functions of the Social Security Administration specified in section 422 of this title and the functions of the Social Security Administration in connection with the withholding of taxes from benefits as described in section 407(c) of this title shall be made pursuant to the applicable method prescribed under paragraph (4).

(2) The Managing Trustee is directed to pay from time to time from the Trust Funds into the Treasury the amount estimated by him as taxes imposed under section 3301(a) of the Internal Revenue Code of 1986 which are subject to refund under section 6413(c) of such Code with respect to wages (as defined in section 3121 of such Code). Such taxes shall be determined on the basis of the records of wages maintained by the Commissioner of Social Security in accordance with the wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code, and the Commissioner of Social Security shall furnish the Managing Trustee such information as may be required by the Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections. Payments pursuant to the first sentence of this paragraph shall be made from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund in the ratio in which amounts were appropriated to such Trust Funds under clause (3) of subsection (a) of this section and clause (1) of subsection (b) of this section.

(3) Repayments made under paragraph (1) or (2) of this subsection shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under either such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(4) The Commissioner of Social Security shall utilize the method prescribed pursuant to this paragraph, as in effect immediately before August 15, 1994, for determining the costs which should be borne by the general fund of the Treasury of carrying out the functions of the Commissioner, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of paragraph (1)(A)). The Board of Trustees of such Trust Funds shall prescribe the method of determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee. If at any time or times thereafter the Boards of Trustees of such Trust Funds consider such action advisable, they may modify the method of determining such costs.

(h) Benefit payments

Benefit payments required to be made under section 423 of this title, and benefit payments

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So in original. Probably should be "Commissioner."
required to be made under subsection (b), (c), or (d) of section 402 of this title to individuals entitled to disability insurance benefits, shall be made only from the Federal Disability Insurance Trust Fund. All other benefit payments required to be made under this subchapter (other than section 426 of this title) shall be made only from the Federal Old-Age and Survivors Insurance Trust Fund.

(i) Gifts and bequests

(1) The Managing Trustee may accept on behalf of the United States money gifts and bequests made unconditionally to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, the Federal Supplementary Medical Insurance Trust Fund (and for the Medicare Prescription Drug Account and the Transitional Assistance Account in such Trust Fund) or to the Social Security Administration, the Department of Health and Human Services, or any part or officer thereof, for the benefit of any of such Funds or any activity financed through such Funds.

(2) Any such gift accepted pursuant to the authority granted in paragraph (1) of this subsection shall be deposited in—

(A) the specific trust fund designated by the donor or

(B) if the donor has not so designated, the Federal Old-Age and Survivors Insurance Trust Fund.

(j) Travel expenses

There are authorized to be made available for expenditure, out of the Federal Old-Age and Survivors Insurance Trust Fund, or the Federal Disability Insurance Trust Fund (as determined appropriate by the Commissioner of Social Security), such amounts as are required to pay travel expenses, either on an actual cost or commuted basis, to individuals for travel incident to medical examinations requested by the Commissioner of Social Security in connection with disability determinations under this subchapter, and to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 410(i) of this title) to attend reconsideration interviews and proceedings before administrative law judges with respect to any determination under this subchapter. The amount available under the preceding sentence for payment for air travel by any person shall not exceed the coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Commissioner of Social Security) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations. The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.

(k) Experiment and demonstration project expenditures

Expenditures made for experiments and demonstration projects under section 193 of this title shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security.

(l) Interfund borrowing

(1) If at any time prior to January 1988 the Managing Trustee determines that borrowing authorized under this subsection is appropriate in order to best meet the need for financing the benefit payments from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, the Managing Trustee may borrow such amounts as he determines to be appropriate from the other such Trust Fund, or, subject to paragraph (5), from the Federal Hospital Insurance Trust Fund established under section 1395i of this title, for transfer to and deposit in the Trust Fund whose need for financing is involved.

(2) In any case where a loan has been made to a Trust Fund under paragraph (1), there shall be transferred on the last day of each month after such loan is made, from the borrowing Trust Fund to the lending Trust Fund, the total interest accrued to such day with respect to the unrepaid balance of such loan at a rate equal to the rate which the lending Trust Fund would earn on the amount involved if the loan were an investment under subsection (d) of this section (even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan).

(3)(A) If in any month after a loan has been made to a Trust Fund under paragraph (1), the Managing Trustee determines that the assets of such Trust Fund are sufficient to permit repayment of all or part of any loans made to such Fund under paragraph (1), he shall make such repayments as he determines to be appropriate.

(B)(i) If on the last day of any year after a loan has been made under paragraph (1) by the Federal Hospital Insurance Trust Fund to the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, the Managing Trustee determines that the OASDI trust fund ratio exceeds 15 percent, he shall transfer from the borrowing Trust Fund to the Federal Hospital Insurance Trust Fund an amount that—

(I) together with any amounts transferred from another borrowing Trust Fund under this paragraph for such year, will reduce the OASDI trust fund ratio to 15 percent; and

(II) does not exceed the outstanding balance of such loan.

(ii) Amounts required to be transferred under clause (i) shall be transferred on the last day of the first month of the year succeeding the year
in which the determination described in clause (I) is made. For purposes of this subparagraph, the term "OASDI trust fund ratio" means, with respect to any calendar year, the ratio of (I) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as of the last day of such calendar year, to (II) the amount estimated by the Commissioner of Social Security to be the total amount to be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during the calendar year following such calendar year for all purposes authorized by this section (other than payments of interest on, and repayments of, loans from the Federal Hospital Insurance Trust Fund under paragraph (1), but excluding any transfer payments between such trust funds and reducing the amount of any transfer to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account).

(C)(i) The full amount of all loans made under paragraph (1) (whether made before or after January 1, 1983) shall be repaid at the earliest feasible date and in any event no later than December 31, 1989.

(ii) For the period after December 31, 1987, and before January 1, 1990, the Managing Trustee shall transfer each month to the Federal Hospital Insurance Trust Fund from any Trust Fund with any amount outstanding on a loan made from the Federal Hospital Insurance Trust Fund under paragraph (1) an amount not less than an amount equal to (I) the amount owed to the Federal Hospital Insurance Trust Fund by such Trust Fund at the beginning of such month (plus the interest accrued on the outstanding balance of such loan during such month), divided by (II) the number of months elapsed after the preceding month and before January 1990. The Managing Trustee may, during this period, transfer larger amounts than prescribed by the preceding sentence.

(4) The Board of Trustees shall make a timely report to the Congress of any amounts transferred (including interest payments) under this subsection.

(5)(A) No amounts may be borrowed from the Federal Hospital Insurance Trust Fund under paragraph (1) during any month if the Hospital Insurance Trust Fund ratio for such month is less than 10 percent.

(B) For purposes of this paragraph, the term "Hospital Insurance Trust Fund ratio" means, with respect to any month, the ratio of—

(i) the balance in the Federal Hospital Insurance Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under this subsection, as of the last day of the second month preceding such month, to

(ii) the amount obtained by multiplying by twelve the total amount which (as estimated by the Secretary) will be paid from the Federal Hospital Insurance Trust Fund during the month for which such ratio is to be determined (other than payments of interest on, or repayments of loans from another Trust Fund under this subsection), and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfer into the Hospital Insurance Trust Fund from that Account.

(m) Accounting for unnegotiated benefit checks

(1) The Secretary of the Treasury shall implement procedures to permit the identification of each check issued for benefits under this subchapter that has not been presented for payment by the close of the sixth month following the month of its issuance.

(2) The Secretary of the Treasury shall, on a monthly basis, credit each of the Trust Funds for the amount of all benefit checks (including interest thereon) drawn on such Trust Fund more than 6 months previously but not presented for payment and not previously credited to such Trust Fund, to the extent provided in advance in appropriation Acts.

(3) If a benefit check is presented for payment to the Treasury and the amount thereof has been previously credited pursuant to paragraph (2) to one of the Trust Funds, the Secretary of the Treasury shall nevertheless pay such check, if otherwise proper, reauthorize such Trust Fund, and notify the Commissioner of Social Security.

(4) A benefit check bearing a current date may be issued to an individual who did not negotiate the original benefit check and who surrenders such check for cancellation if the Secretary of the Treasury determines it is necessary to effect proper payment of benefits.

(n) Payments to Funds in satisfaction of obligations

Not later than July 1, 2004, the Secretary of the Treasury shall transfer, from amounts in the general fund of the Treasury that are not otherwise appropriated—

(1) $624,971,854 to the Federal Old-Age and Survivors Insurance Trust Fund;

(2) $105,379,671 to the Federal Disability Insurance Trust Fund;

(3) $173,306,134 to the Federal Hospital Insurance Trust Fund.

Amounts transferred in accordance with this subsection shall be in satisfaction of certain outstanding obligations for deemed wage credits for 2000 and 2001.
Medicare Prescription Drug Account in such Trust Fund" after "Trust Fund".


Subsec. (k). Pub. L. 106–170 substituted "section 434 of this title" for "section 505(a) of the Social Security Disability Amendments of 1980".

1988—Subsec. (g)(1)(A). Pub. L. 105–277, § 4005(b)(2), which directed the amendment of subsec. (g) by inserting "and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee" before period at end of paragraph (1)(A), was executed by inserting this material after "the first sentence of this subparagraph" in provisions following cl. (ii) to reflect the probable intent of Congress.

Subsec. (g)(1)(A)(ii). Pub. L. 105–277, § 4005(b)(1), inserted before period at end "and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee".

Subsec. (g)(1)(B)(1)(D). Pub. L. 105–277, § 4005(b)(3), substituted "subparagraph (A) and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee, for "subparagraph (A)), "

Subsec. (g)(1)(C)(iii). Pub. L. 105–277, § 4005(b)(4), inserted before period at end "and the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee".

Subsec. (g)(1)(D). Pub. L. 105–277, § 4005(b)(5), inserted "and the functions of the Social Security Administration in connection with the withholding of taxes from benefits as described in section 407(c) of this title, after "section 432 of this title".

Subsec. (g)(4). Pub. L. 105–277, § 4005(b)(6), inserted after first sentence "The Board of Trustees of such Trust Funds shall prescribe the method of determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Social Security Administration in connection with the withholding of taxes from benefits, as described in section 407(c) of this title, pursuant to requests by persons entitled to such benefits or such persons' representative payee.

1996—Subsec. (g)(1)(A). Pub. L. 104–121 inserted at end "Of the amounts authorized to be made available out of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under the preceding sentence, there are hereby authorized to be made available from either or both of such Trust Funds for continuing disability reviews—

(i) for fiscal year 1996, $620,000,000;

(ii) for fiscal year 1997, $630,000,000;

(iii) for fiscal year 1998, $570,000,000;

(iv) for fiscal year 1999, $720,000,000;

(v) for fiscal year 2000, $720,000,000; and

(vi) for fiscal year 2001, $720,000,000; and

(vii) for fiscal year 2002, $720,000,000."

AMENDMENTS


2003—Subsec. (g)(1)(B)(1)(V), (ii)(III). Pub. L. 108–173, § 101(e)(3)(A), inserted "and, of such portion, the portion of such costs which should have been borne by the
For purposes of this subparagraph, the term ‘continuing disability review’ means a review conducted pursuant to section 421(i) of this title and a review or disability redetermination conducted to determine the continuing disability and eligibility of a recipient of benefits under the supplementary security income program under subchapter XVI of this chapter, including any review or redetermination conducted pursuant to section 207 or 208 of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103–296).


Subsec. (a)(3). Pub. L. 103–296, § 107(b)(1), (2), substituted “Commissioner of Social Security” and “such Commissioner” for “Secretary of Health and Human Services” and “such Secretary”, respectively.


Subsec. (b)(1). Pub. L. 103–296, § 107(b)(1), substituted “Commissioner of Social Security” and “such Commissioner” for “Secretary of Health and Human Services” and “such Secretary”, respectively.


Subsec. (b)(3)(O) to (R). Pub. L. 103–387, § 3(a), substituted “(O) 1.20 per centum of the wages (as so defined) paid after December 31, 1989, and before January 1, 1994, and so reported,” (P) 1.88 per centum of the wages (as so defined) paid after December 31, 1993, and before January 1, 1994, and so reported, (Q) 1.70 per centum of the wages (as so defined) paid after December 31, 1996, and before January 1, 2000, and so reported, and (R) 1.80 per centum of the wages (as so defined) paid after December 31, 1999, and so reported,” for “(O) 1.20 per centum of the wages (as so defined) paid after December 31, 1989, and before January 1, 2000, and so reported, and (P) 1.42 per centum of the wages (as so defined) paid after December 31, 1999,”.


Subsec. (d). Pub. L. 103–296, § 301(a), inserted after fifth sentence “Each obligation issued for purchase by the Trust Funds under the provisions of this section shall be evidenced by a paper instrument in the form of a bond, note, or certificate of indebtedness issued by the Secretary of the Treasury setting forth the principal amount, date of maturity, and interest rate of the obligation, and stating on its face that the obligation shall be incontestable in the hands of the Trust Fund to which it is issued, that the obligation is supported by the faith and credit of the United States, and that the United States is pledged to the payment of the obligation with respect to both principal and interest.”

Subsec. (f). Pub. L. 103–296, § 301(b), inserted at end “Payment from the general fund of the Treasury to either of the Trust Funds of any such interest or proceeds of paper checks drawn on such general fund to the order of such Trust Fund.”

Subsec. (g)(1)(A). Pub. L. 103–296, § 107(b)(4)(A), in text amended by Pub. L. 103–296, § 321(c)(1)(A)(i)(III), substituted “subsections II, XVI, and XVIII of this chapter” for “subsections II, XVI, and XVIII” in second sentence and amended last sentence generally. Prior to amendment, last sentence read as follows: “There are hereby authorized to be made available for expenditure, out of any or all of the Trust Funds, such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this subchapter, subchapter XVI, and subchapter XVIII of this chapter for which the Secretary of Health and Human Services is responsible and of carrying out the functions of the Department of Health and Human Services, specified in section 422 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 other than those referred to in clause (i) of the first sentence of this subparagraph.”


Subsec. (g)(1)(A)(iii). Pub. L. 103–296, § 321(c)(1)(A)(i)(K), substituted “by the Managing Trustee, the Commissioner of Social Security, and the Secretary of Health and Human Services” for “by him and the Secretary of Health and Human Services” and “by the Department of Health and Human Services for the administration of subchapter XVIII of this chapter” for “by the Department of Health and Human Services and the Treasury Department for the administration of subchapters II, XVI, and XVIII of this chapter”.
made unconditionally to any one or more of such Trust Funds or to the Department of Health and Human Services, or any part or officer thereof, for the benefit of any of such funds or any activity financed through such funds.”

Subsec. (j). Pub. L. 103–296, §107(b)(8), substituted “Commissioner of Social Security” for “Secretary wherever appearing.”

Subsec. (k). Pub. L. 103–296, §107(b)(8), substituted “Commissioner of Social Security” for “Secretary.”

Subsec. (l). Pub. L. 103–296, §107(b)(9), substituted “Commissioner of Social Security” for “Secretary.”

Subsec. (m)(3). Pub. L. 103–296, §107(b)(10), substituted “Commissioner of Social Security” for “Secretary of Health and Human Services.”

1990—Subsec. (a). Pub. L. 101–508, §511(a), in first sentence following cl. (4), substituted “from time to time” for “monthly” and “on the first day of each calendar month” for “on the first day of each month,” and in last sentence substituted “Fund. Notwithstanding the preceding sentence, in any case in which the Secretary of the Treasury determines that the assets of either such Trust Fund would otherwise be inadequate to meet such Fund’s obligations for any month, the Secretary of the Treasury shall transfer to such Trust Fund the amount which would have been transferred to such Fund under this section as in effect on October 1, 1990; and” for “;”.

Subsec. (c). Pub. L. 101–508, §13304, inserted after first sentence following cl. (5) “Such statement shall include a finding by the Board of Trustees as to whether the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, individually and collectively, are in close actuarial balance (as defined by the Board of Trustees).”.

Subsec. (j). Pub. L. 101–508, §13106(c), inserted at end “The amount available for payment under this subsection for travel for a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.”

1989—Subsecs. (g)(1)(A), (1)(B), Pub. L. 101–234 repealed Pub. L. 100–360, §212(c)(1), and provided that the provisions of law amended or repealed by such section were restored or revised as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (c). Pub. L. 100–647 inserted after first sentence “‘A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member’s term until the earlier of the time at which the member’s successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member’s term.”’.


1986—Subsec. (c). Pub. L. 99–272, in provisions following par. (5), substituted “Provided, That the certification shall not refer to economic assumptions underlying the Trustee’s report, and shall” for “Provided, That the certification shall not refer to economic assumptions underlying the Trustee’s report.”

1939. (as so defined) so reported for any taxable year beginning after December 31, 1985, and before January 1, 1986, and before January 1, 1966, and 0.525 of 1 percentum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1966, and 0.525 of 1 percentum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1966; and added cls. (H) to (J).


Subsec. (b)(2). Pub. L. 89–97, § 306(b), inserted “and before January 1, 1966, and 0.525 of 1 percentum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1965,” after “December 31, 1965,” and “and 0.79 of 1 percentum of the wages (as so defined) paid after December 31, 1965, and so reported,” after “1954,”.

Subsec. (c). Pub. L. 89–97, § 327, extended from once each six months to once each calendar year the minimum number of times the Board of Trustees must meet.

Subsec. (g)(1). Pub. L. 89–97, § 108(a)(3), included the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund among the Trust Funds available for reimbursement of the Treasury for administrative costs of this subchapter and subchapter XVIII of this chapter, deleted references to administrative costs of subchapter VIII of this chapter and subchapter E of chapter 1 and subchapter 9 of the Internal Revenue Code of 1939, and also provided for adjustment among the Trust Funds during each fiscal year so that the Funds bear the proportionate share of the administrative costs.

Subsec. (g)(2). Pub. L. 89–97, § 108(a)(4), inserted “imposed under section 3101(a)” after “the amount estimated by him as taxes.”

Subsec. (h). Pub. L. 89–97, § 108(a)(5), inserted “(other than section 426 of this title)” after “this subchapter”.

1960—Subsec. (c). Pub. L. 86–778, § 701(a)–(c), required the Board of Trustees to meet not less frequently than once each six months, struck out provisions from cl. (3) which required the Board to report immediately to the Congress whenever the Board is of the opinion that during the ensuing five fiscal years either of the Trust Funds will exceed three times the highest annual expenditures from such Trust Fund anticipated during that five-fiscal-year period, and added cl. (5).

Subsec. (d). Pub. L. 86–778, § 701(d), substituted “shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years.”
years from the end of such calendar month” for “bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue or for matured interest-bearing obligations of the United States then forming a part of the Public Debt that are not due or callable until after the expiration of five years from the date of original issue’’ and substituted provisions authorizing the purchase of other interest-bearing obligations when the Managing Trustee determines that it is in the public interest for provisions which authorized the issuance of obligations to the Trust Funds only if the Managing Trustee determined that the purchase of other obligations was not in the public interest.

Subsec. (e), Pub. L. 85–778, §767(c), substituted “public-debt obligations” for “special obligations” in two places.

1959—Subsec. (d), Pub. L. 86–146 substituted “on original issue at price” for “on original issue at par”.

1958—Subsec. (h), Pub. L. 85–840 provided that benefit payments required to be made under subsection (b), (c), or (d) of section 402 of this title to individuals entitled to benefits on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits be made only from the Federal Disability Insurance Trust Fund.

1956—Act Aug. 1, 1956, amended section generally, inserting references to taxes imposed by the Internal Revenue Code of 1954, substituting “Secretary of Health, Education, and Welfare” for “Federal Security Administrator,” creating the Federal Disability Insurance Trust Fund, requiring obligations issued for purchase by the Trust Funds to have maturities fixed with due regard for the needs of the Trust Funds, authorizing to be made available for expenditure out of the Trust Funds such amounts as Congress deems necessary to pay costs of administration of subchapter, and requiring the Secretary of Health, Education, and Welfare to analyze costs of administration so that each Trust Fund may be charged with its proper share.

1955—Subsec. (a), Act Aug. 28, 1955, §196(a)(1)–(7), substituted “such amounts as may be appropriated to, or deposited in, the Trust Fund” for “such amounts as may be appropriated to the Trust Fund” in second sentence, simplified the accounting and collection processes required for determining the amounts appropriated to the trust fund, as set out in third sentence, and struck out fourth sentence authorizing appropriation of additional funds.

1954—Subsec. (a), Act Aug. 28, 1954, §196(a)(4)–(8), substituted “Federal Security Administrator” for “Chairman of the Social Security Board”, changed filing date for first day of each regular session of Congress to March 1 of each year, added par. (4), inserted sentence to require report to be printed as a House document, and made Commissioner of Social Security the Secretary of the Board of Trustees.

Subsec. (f), Act Aug. 28, 1954, §196(a)(9), changed reference in text from Title II of the Federal Insurance Contributions Act to subchapter A of chapter 9 and subchapter E of chapter 1 of the Internal Revenue Code of 1939 to avoid confusion and to include the new provisions of such Code relating to the collection of taxes from the self-employed.

1944—Subsec. (a), Act Feb. 25, 1944, inserted sentence authorizing appropriation of additional funds.


EFFECTIVE DATE OF 1998 AMENDMENT


EFFECTIVE DATE OF 1994 AMENDMENTS

Section 3(c) of Pub. L. 103–387 provided that: “The amendments made by this section [amending this section] shall apply with respect to wages paid after December 31, 1993, and self-employment income for taxable years beginning after such date.”

Section 110 of title I of Pub. L. 103–217 provided that: “Section 1000 of title 2, the Congress.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 110 of title I of Pub. L. 103–217 provided that: “The amendments made by this section [amending this section] shall become effective on the first day of the second month beginning after the month in which this Act is enacted [October 1993].”

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–232 provided that: “The provisions of subsection (a) [set out below] shall take effect January 1, 1990, and the repeal of section 211 of
MCCA [Pub. L. 100–360, which amended sections 1395r, 1395w, and 1395mm of this title] and enacted provisions set out as a note under section 1395r of this title] shall apply to premiums for months beginning after December 31, 1989.''

**Effective Date of 1988 Amendment**

Section 8005(b) of Pub. L. 100–647 provided that: 'The amendments made by this section [amending this section and sections 1395i and 1395t of this title] shall apply to members of the Boards of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, of the Federal Hospital Insurance Trust Fund, and of the Federal Supplementary Medical Insurance Trust Fund serving such Board of Trustees as members of the public on or after the date of the enactment of this Act [Nov. 10, 1988].'

**Effective Date of 1986 Amendment**

Section 921(c) of Pub. L. 99–272 provided that: 'The amendments made by this section [amending this section and sections 1395i and 1395t of this title] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].'

**Effective Date of 1984 Amendment**

Section 2661 of Pub. L. 98–369 provided that: '“(a) Except as otherwise specifically provided, the amendments made by sections 2661 and 2662 [amending this section and sections 402, 403, 405, 409, 410, 415, 416, 423, 428, and 429 of this title and sections 86, 131, 421A, 3121, 3306, and 6024 of Title 26, Internal Revenue Code, enacting provisions set out as notes under sections 402 and 403 of this title and sections 3121 and 3306 of Title 26, and amending provisions set out as notes under sections 415 and 902 of this title, section 3121 of Title 26, and section 3023 [now 5123] of Title 18, Veterans’ Benefits] shall be effective as though they had been included in the enactment of the Social Security Amendments of 1983 [Public Law 98–21].

“(b) Except to the extent otherwise specifically provided in this subtitle [subtitle D (§§2661–2694) of Pub. L. 98–369], the amendments made by section 2663 [amending this section and sections 402, 403, 405, 409, 410, 415, 416, 423, 428, 429, 430, 431, 433, 502, 503, 602, 603, 606, 607, 609, 610, 614, 615, 620, 631, 632, 633, 634, 636, 641, 643–645, 652–656, 656, 660, 662, 674, 902, 903, 907, 1101, 1104, 1108, 1301, 1302, 1306, 1307, 1314–1316, 1320, 1320a–5, 1320b–1, 1381a–1382a, 1382c, 1382d, 1382e, 1382j, 1383, 1395i, 1395s–1395u, 1396, 1397a, and 1397e of this title] and sections 51, 1401, 3121, 6057, 6103, and 6511 of Title 26, repealing sections 1331–1336 of this title, and enacting provisions set out as notes under sections 1301 and 1307 of this title] shall be effective on the date of enactment of this Act [July 19, 1984]; but none of such amendments shall be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date.''

**Effective Date of 1983 Amendment**

Section 141(c) of Pub. L. 98–21 provided that: 'The amendments made by this section [amending this section and section 1395i of this title] shall become effective on the first day of the month following the month in which this Act is enacted [April 1983].'

Section 154(e) of Pub. L. 98–21 provided that: 'The amendments made by this section [amending this section and sections 1395i and 1395t of this title] shall take effect on the date of the enactment of this Act [Apr. 20, 1983].'

Section 341(d) of Pub. L. 98–21 provided that: 'The amendments made by this section [amending this section and sections 1395i and 1395t of this title] shall become effective on the date of enactment of this Act [Apr. 20, 1983].'

**Effective Date of 1981 Amendment**

Section 1(c) of Pub. L. 97–123 provided that: 'The amendments made by this section [amending this section and section 1395i of this title] shall be effective on the date of the enactment of this Act [Dec. 29, 1981].'

**Effective Date of 1980 Amendment**

Section 2 of Pub. L. 96–403 provided that: 'The amendments made by the first section of this Act [amending this section] shall apply with respect to remuneration paid, and taxable years beginning after December 31, 1979.'

**Effective Date of 1977 Amendment**

Amendment by Pub. L. 95–216 applicable with respect to remuneration paid or received, and taxable years beginning after 1977, see section 194 of Pub. L. 95–216, set out as a note under section 1401 of Title 26, Internal Revenue Code.

**Effective Date of 1972 Amendment**

Section 132(f) of Pub. L. 92–603 provided that: 'The amendments made by this section [amending this section] shall take effect on the first day of the first month beginning after the date of enactment of this Act [Oct. 30, 1972].'

Section 305(c) of Pub. L. 92–603 provided that: 'The provisions of this section [amending this section and enacting provisions set out as a note under this section] shall become effective on the date of enactment of this Act [Oct. 30, 1972].'

**Effective Date of 1960 Amendment**

Section 701(f) of Pub. L. 86–778 provided that: 'The amendments made by this section [amending this section] shall take effect on the first day of the first month following the enactment of this Act.'

**Effective Date of 1958 Amendment**

Amendment by Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after Aug. 28, 1958, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

**Effective Date of 1939 Amendment**

Section 231 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

**Construction of 1994 Amendment**

Section 321(d) of Pub. L. 103–269 provided that:

"(1) The provisions of this section [amending this section and sections 402, 403, 405, 408 to 411, 413, 415, 416, 423, 429, 430, and 432 of this title, and enacting provisions set out as notes under this section and sections 402 and 430 of this title] shall be construed only as technical and clerical corrections and as reflecting the original intent of the provisions amended thereby.

"(2) Any reference in title II of the Social Security Act [this subchapter] to the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] shall be construed to include a reference to the Internal Revenue Code of 1954 to the extent necessary to carry out the provisions of paragraph (1).'

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that the income and balances of such trust funds are not reduced as a result of the enactment of this Act.

STUDY BY GENERAL ACCOUNTING OFFICE OF EXISTING COORDINATION OF THE DI AND SSI PROGRAMS AS THEY RELATE TO INDIVIDUALS ENTERING OR LEAVING CONCURRENT ENTITLEMENTS TO:

Pub. L. 106–170, title III, § 303(b), Dec. 17, 1999, 113 Stat. 1104, provided that, as soon as practicable after Dec. 17, 1999, the Comptroller General was to undertake a study to evaluate the coordination of the disability insurance program under title II of the Social Security Act (42 U.S.C. 401 et seq., and the supplemental security income program under title XVI (42 U.S.C. 1381 et seq.) of that Act, as such programs related to individuals entering or leaving concurrent entitlement under such programs, specifically addressing the effectiveness of work incentives under such programs and the effectiveness of coverage of such individuals under titles XVII and XIX of that Act (42 U.S.C. 1305 et seq., and not later than 3 years after Dec. 17, 1999, was to transmit to the appropriate congressional committees a report presenting the results of the study and any appropriate recommendations for legislative or administrative changes.

USE OF CONTINUING DISABILITY REVIEW FUNDS AND REPORT REQUIREMENT

Section 103(d) of Pub. L. 104–121, as amended by Pub. L. 104–193, title II, § 211(d)(5)(D), Aug. 22, 1996, 110 Stat. 2192, provided that:

"(1) IN GENERAL.—The Commissioner of Social Security shall ensure that funds made available for continuing disability reviews (as defined in section 201(g)(1)(A) of the Social Security Act [subsec. (g)(1)(A) of this section]) are used, to the greatest extent practicable, to maximize the combined savings in the old-age, survivors, and disability insurance, supplemental security income, Medicare, and medicaid programs, except that the amounts appropriated pursuant to the authorization and discretionary spending allowance provisions in section 211(d)(2)(5) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [probably means section 211(d)(5) of Pub. L. 104–193, which amended sections 665e and 901 of Title 2, The Congress, enacted provisions set out as a note under section 1382c of this title, and amended this note] shall be used only for continuing disability reviews and redeterminations under title XVI of the Social Security Act [subchapter XVI of this chapter].

"(2) REPORT.—The Commissioner of Social Security shall provide annually (at the conclusion of each of the fiscal years 1996 through 2002) to the Congress a report on continuing disability reviews which includes—

(A) the amount spent on continuing disability reviews in the fiscal year covered by the report, and the number of reviews conducted, by category of review;

(B) the results of the continuing disability reviews in terms of cessations of benefits or determinations of continuing eligibility, by program; and

(C) the estimated savings over the short-, medium-, and long-term to the old-age, survivors, and disability insurance, supplemental security income, Medicare, and medicaid programs from continuing disability reviews which result in cessations of benefits and the estimated present value of such savings.

REPEAL OF CHANGES IN MEDICARE PART B MONTHLY PREMIUM AND FINANCING

Section 202(a) of Pub. L. 101–234 provided that: "Sections 211 through 213 (other than sections 211(b) and 211(c)(9)(B) of MCCA [Pub. L. 100–360, which enacted sections 1995–1 and 1995–2 of this title, amended this section and sections 1995i, 1995j, 1995s, 1995t, 1995w, and 1995mm of this title, and enacted provisions set out as a note under section 1995r of this title] are repealed and the provisions of law amended or repealed by such sections are restored or revised as if such sections had not been enacted."
TRANSFER OF EQUIVALENT OF 1983 TAX INCREASES TO PAYOR FUNDS; REPORTS


"(1) IN GENERAL.—(A) There are hereby appropriated to each payor fund amounts equivalent to (i) the aggregate increase in tax liabilities under chapter 1 of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] which is attributable to the application of sections 86 and 871(a)(3) of such Code (as added by this section) [26 U.S.C. 86, 871(a)(3)] to payments from such payor fund, less (ii) the amounts equivalent to the aggregate increase in tax liabilities under chapter 1 of the Internal Revenue Code of 1986 which is attributable to the amendments to section 86 of such Code made by section 13215 of the Revenue Reconciliation Act of 1993 [Pub. L. 103-66].

"(B) There are hereby appropriated to the hospital insurance trust fund amounts equal to the increase in tax liabilities described in subparagraph (A)(ii). Such appropriated amounts shall be transferred from the general fund of the Treasury on the basis of estimates of such tax liabilities made by the Secretary of the Treasury. Transfers shall be made pursuant to a schedule made by the Secretary of the Treasury that takes into account estimated timing of collection of such liabilities.

"(2) TRANSFERS.—The amounts appropriated by paragraph (1)(A) to any payor fund shall be transferred from time to time (but not less frequently than quarterly) from the general fund of the Treasury on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in such paragraph. Any such quarterly payment shall be made on the first day of such quarter and shall take into account social security benefits estimated to be received during such quarter. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior transfers were in excess of or less than the amounts required to be transferred.

"(3) DEFINITIONS.—For purposes of this subsection

"(A) PAYOR FUND.—The term ‘payor fund’ means any trust fund or account from which payments of social security benefits are made.

"(B) HOSPITAL INSURANCE TRUST FUND.—The term ‘hospital insurance trust fund’ means the fund established pursuant to section 1817 of the Social Security Act [section 1395i of this title].

"(C) SOCIAL SECURITY BENEFITS.—The term ‘social security benefits’ has the meaning given such term by section 86(d)(1) of the Internal Revenue Code of 1986 [26 U.S.C. 86(d)(1)].

"(4) REPORTS.—The Secretary of the Treasury shall submit annual reports to the Congress and to the Secretary of Health and Human Services and the Railroad Retirement Board on—

"(A) the transfers made under this subsection during the year, and the methodology used in determining the amount of such transfers and the funds or account to which made, and

"(B) the anticipated operation of this subsection during the next 5 years.”

[For termination, effective May 15, 2000, of provisions relating to submission of annual reports to Congress in section 121(e)(4) of Pub. L. 98-21, set out above, see section 3005 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and item 17 on page 143 of House Document No. 103-7.]

REIMBURSEMENT TO TRUST FUNDS FOR UNNEGOTIATED BENEFIT CHECKS

Section 152(c) of Pub. L. 98-21 provided that:

"(1) The Secretary of the Treasury shall transfer from the general fund of the Treasury to —

"(A) the Federal Old-Age and Survivors Insurance Trust Fund and to the Federal Disability Insurance Trust Fund, in the month following the month in which this Act is enacted [April 1983] and in each of the succeeding 30 months, such sums as may be necessary to reimburse such Trust Funds in the total amount of all checks (including checks issued in error) which he and the Secretary of Health and Human Services jointly determine to be unnegotiated benefit checks, to the extent provided in advance in appropriation Acts. After any amounts authorized by this subsection have been transferred to a Trust Fund with respect to any benefit check, the provisions of paragraphs (3) and (4) of section 201(m) of the Social Security Act (subsection (m)(3), (4) of this section) (as added by subsection (a) of this section) shall be applicable to such check.

"(2) As used in paragraph (1), the term ‘unnegotiated benefit checks’ means checks for benefits under title II of the Social Security Act [this subchapter] which are issued prior to the twenty-fourth month following the month in which this Act is enacted [April 1983], which remain untransferred after the sixth month following the date on which they were issued, and with respect to which no transfers have previously been made in accordance with the first sentence of such paragraph.’’

STUDY OF FLOAT PERIOD OF MONTHLY INSURANCE BENEFIT CHECKS

Section 153 of Pub. L. 98-21 directed Secretary of Health and Human Services and Secretary of the Treasury jointly to undertake a thorough study with respect to period of time (referred to as “float period”) between issuance of checks from general fund of Treasury in payment of monthly insurance benefits under title II of the Social Security Act [this subchapter] and transfer to general fund from Federal Old-Age and Survivors Insurance Trust Fund or Federal Disability Insurance Trust Fund, as applicable, of amounts necessary to compensate general fund for issuance of such checks, with Secretaries to submit a report to President an Congress not later than twelve months after Apr. 20, 1983, on their findings as to necessity of making adjustments in procedures governing payment of monthly insurance benefits.

DUE DATE FOR 1983 REPORT ON OPERATION AND STATUS OF TRUST FUND

Section 154(d) of Pub. L. 98-21 provided that notwithstanding sections 401(c)(2), 1366(b)(2), and 1365(b)(2) of this title, the annual reports of the Boards of Trustees of the Trust Funds which are required in calendar year 1983 under those sections may be filed at any time not later than forty-five days after Apr. 20, 1983.

STUDY RELATING TO ESTABLISHMENT OF TIME LIMITATIONS FOR DECISIONS ON CLAIMS FOR BENEFITS; REPORT

Section 308 of Pub. L. 96-265 directed Secretary of Health and Human Services to submit to Congress, no later than July 1, 1980, a report recommending establishment of appropriate time limitations governing decisions on claims for benefits under this subchapter, taking into account both need for expeditious processing of claims for benefits and need to assure that all such claims will be thoroughly considered and accurately determined.

EFFECTS OF CERTAIN AMENDMENTS BY PUB. L. 96-265; REPORT

Section 312 of Pub. L. 96-265 directed Secretary of Health and Human Services to submit to Congress, no later than Jan. 1, 1985, a full and complete report as to effects produced by reason of preceding provisions of this Act and amendments made thereby (see Tables for classification).

APPOINTMENT AND COMPENSATION OF INDIVIDUALS NECESSARY TO ASSIST THE BOARD OF TRUSTEES

Section 8(e) of Pub. L. 94-292 provided that: ‘‘Any persons the Board of Trustees finds necessary to employ to assist it in performing its functions under section
201(b)(4) of the Social Security Act [subsec. (g)(4) of this section] may be appointed without regard to the civil service or classification laws, shall be compensated, while so employed, at rates fixed by the Board of Trustees, but not exceeding $100 per day, and, while away from their homes or regular places of business, they may be allowed traveling expenses, including per diem allowances of subsistence, as authorized by law for persons in the Government service employed intermittently.''

**METHOD OF DETERMINING COSTS PREScribed BY THE BOARD OF TRUSTEES CERTIFICATION AND TRANSFER OF FUNDS**

Section 8(f) of Pub. L. 94–202, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ‘‘The Secretary shall not make any estimates pursuant to section 201(g)(1)(A)(ii) of the Social Security Act [subsec. (g)(4) of this section] before the Board of Trustees prescribes the method of determining costs as provided in section 201(g)(4) of such Act [subsec. (g)(4) of this section]. The determinations pursuant to section 201(g)(1)(B) of the Social Security Act [subsec. (g)(4) of this section] with respect to the carrying out of the functions of the Department of Health, Education, and Welfare [now Health and Human Services] specified in section 232 of such Act [section 232 of this title] shall be utilized from time to time, in amounts certified under the second sentence of section 201(g)(1)(A) of the Social Security Act [subsec. (g)(4) of this section], to repay the Trust Funds for expenditures made from such Funds in accordance with any certification so made.’’

**ADVANCES FROM TRUST FUNDS FOR ADMINISTRATIVE EXPENSES**

Section 305(b) of Pub. L. 92–603 provided that: ‘‘For the purpose of Federal income, estate, and gift taxes, any gift or bequest to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, the Federal Supplementary Medical Insurance Trust Fund, or the Federal Unemployment Insurance Trust Fund, or to the Department of Health, Education, and Welfare [now Health and Human Services], or any part or officer thereof, for the benefit of any of such Funds or any activity financed through any of such Funds, which is accepted by the Managing Trustee of such Trust Funds under the authority of section 201(i) of the Social Security Act [subsec. (i) of this section], shall be considered as a gift or bequest to or for the use of the United States and as made for exclusively public purposes.’’

**TAXES ON SERVICES RENDERED BY EMPLOYEES OF INTERNATIONAL ORGANIZATIONS PRIOR TO JAN. 1, 1946**

Section 5(b) of act Dec. 29, 1945, ch. 652, title I, § 5(b), 59 Stat. 671, prohibited collection of tax under title VIII or IX of the Social Security Act or under the Federal Insurance Contributions Act or the Federal Unemployment Tax Act with respect to services rendered prior to January 1, 1946, which were described in paragraph (10) of sections 1426(b) and 1677(c) of the Internal Revenue Code of 1939, and authorized refund of taxes collected.

**EXECUTIVE ORDER No. 12335**

Ex. Ord. No. 12335, Dec. 16, 1981, 46 F.R. 61633, as amended by Ex. Ord. No. 12397, Dec. 23, 1982, 47 F.R. 57651; Ex. Ord. No. 12402, Jan. 15, 1983, 48 F.R. 2311, which established the National Commission on Social Security Reform and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Social Security Act [subsec. (i) of this section], shall be considered as a gift or bequest to or for the use of the United States and as made for exclusively public purposes.’’

**§ 401a. OMITTED**

**COMPARISON**

1, 1959, at which time the Council terminated, provided for subsequent Advisory Councils to be appointed in 1963, 1966, and every fifth year thereafter and to submit reports to Congress, and required additional information be included in these reports, was omitted in view of the termination of the initial Advisory Council on submission of their report not later than Jan. 1, 1959, the employment of subsec. (e) by Pub. L. 89–97, title I, §109(b), July 30, 1965, 79 Stat. 340, which provided for the subsequent Advisory Councils, and the obsolescence of subsec. (f), which provided for additional information in reports to Congress, upon the repeal of subsec. (e).

§ 402. Old-age and survivors insurance benefit payments

(a) Old-age insurance benefits

Every individual who—

(1) is a fully insured individual (as defined in section 414(a) of this title), the first month in which such individual meets the criteria specified in paragraphs (1) and (2) (if in that month he meets the criterion specified in paragraph (3)), and ending with the month preceding the month in which he dies. Except as provided in subsection (q) and subsection (w) of this section, such individual’s old-age insurance benefit for any month shall be equal to his primary insurance amount (as defined in section 415(a) of this title) for such month.

(b) Wife’s insurance benefits

(1) The wife (as defined in section 416(b) of this title) and every divorced wife (as defined in section 416(d) of this title) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife—

(A) has filed application for wife’s insurance benefits,

(B) has attained age 62 or (in the case of a wife) has in her care (individually or jointly with such individual) at the time of filing such application a child entitled to a child’s insurance benefit on the basis of the wages and self-employment income of such individual,

(C) in the case of a divorced wife, is not married, and

(D) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual,

shall (subject to subsection (s) of this section) be entitled to a wife’s insurance benefit for each month, beginning with—

(i) in the case of a wife or divorced wife (as so defined) of an individual entitled to old-age benefits, if such wife or divorced wife has attained retirement age (as defined in section 416(l) of this title), the first month in which she meets the criteria specified in subparagraphs (A), (B), (C), and (D), or

(ii) in the case of a wife or divorced wife (as so defined) of—

(I) an individual entitled to old-age insurance benefits, if such wife or divorced wife has not attained retirement age (as defined in section 416(l) of this title), or

(II) an individual entitled to disability insurance benefits,

the first month throughout which she is such a wife or divorced wife and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month she meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding the month in which any of the following occurs—

(E) she dies,

(F) such individual dies,

(G) in the case of a wife, they are divorced and either (i) she has not attained age 62, or

(ii) she has attained age 62 but has not been married to such individual for a period of 10 years immediately before the date the divorce became effective,

(H) in the case of a divorced wife, she marries a person other than such individual,

(I) in the case of a wife who has not attained age 62, no child of such individual is entitled to a child’s insurance benefit,

(J) she becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

(K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

(2) Except as provided in subsections (k)(5) and (q) of this section, such wife’s insurance benefit for each month shall be equal to one-half of the primary insurance amount of her husband (or, in the case of a divorced wife, her former husband) for such month.

(3) In the case of any divorced wife who marries—

(A) an individual entitled to benefits under subsection (c), (f), (g), or (h) of this section, or

(B) an individual who has attained the age of 62 and is entitled to benefits under subsection (d) of this section,

such divorced wife’s entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) (but subject to subsection (s) of this section), not be terminated by reason of such marriage.

(4)(A) Notwithstanding the preceding provisions of this subsection, except as provided in subparagraph (B), the divorced wife of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined in section 414 of this title), if such divorced wife—
(i) meets the requirements of subparagraphs (A) through (D) of paragraph (1), and
(ii) has been divorced from such insured individual for not less than 2 years,
shall be entitled to a wife's insurance benefit under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Commissioner of Social Security) in the manner otherwise provided for wife's insurance benefits under this subsection, as if such insured individual had become entitled to old-age insurance benefits on the date on which the divorced wife first meets the criteria for entitlement set forth in clauses (i) and (ii).

(B) A wife's insurance benefit provided under this paragraph which has not otherwise terminated in accordance with subparagraph (E), (F), (H), or (J) of paragraph (1) shall terminate with the month preceding the first month in which the insured individual is no longer a fully insured individual.

(c) Husband's insurance benefits

(1) The husband (as defined in section 416(f) of this title) and every divorced husband (as defined in section 416(d) of this title) of an individual entitled to old-age or disability insurance benefits, if such husband or such divorced husband—

(A) has filed application for husband's insurance benefits,

(B) has attained age 62 or (in the case of a husband) has in his care (individually or jointly with such individual) at the time of filing such application a child entitled to child's insurance benefits on the basis of the wages and self-employment income of such individual,

(C) in the case of a divorced husband, is not married, and

(D) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual,

shall (subject to subsection(s) of this section) be entitled to a husband's insurance benefit for each month, beginning with—

(i) in the case of a husband or divorced husband (as so defined) of an individual who is entitled to an old-age insurance benefit, if such husband or divorced husband has attained retirement age (as defined in section 416(l) of this title), the first month in which he meets the criteria specified in subparagraphs (A), (B), (C), and (D), or

(ii) in the case of a husband or divorced husband (as so defined) of—

(I) an individual entitled to old-age insurance benefits, if such husband or divorced husband has not attained retirement age (as defined in section 416(l) of this title), or

(II) an individual entitled to disability insurance benefits,

the first month throughout which he is such a husband or divorced husband and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month he meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding the month in which any of the following occurs:

(E) he dies,

(F) such individual dies,

(G) in the case of a husband, they are divorced and either (i) he has not attained age 62, or (ii) he has attained age 62 but has not been married to such individual for a period of 10 years immediately before the divorce became effective,

(H) in the case of a divorced husband, he marries a person other than such individual,

(I) in the case of a husband who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,

(J) he becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

(K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

(2) Except as provided in subsections (k)(5) and (q) of this section, such husband's insurance benefit for each month shall be equal to one-half of the primary insurance amount of his wife (or, in the case of a divorced husband, his former wife) for such month.

(3) In the case of any divorced husband who marries—

(A) an individual entitled to benefits under subsection (b), (e), (g), or (h) of this section, or

(B) an individual who has attained the age of 18 and is entitled to benefits under subsection (d) of this section, by reason of paragraph (1)(B)(i)(II) thereof, such divorced husband's entitlement to benefits under this subsection, notwithstanding the provisions of paragraph (1) (but subject to subsection (s) of this section), shall be terminated by reason of such marriage.

(4)(A) Notwithstanding the preceding provisions of this subsection, except as provided in subparagraph (B), the divorced husband of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined in section 414 of this title), if such divorced husband—

(i) meets the requirements of subparagraphs (A) through (D) of paragraph (1), and

(ii) has been divorced from such insured individual for not less than 2 years,

shall be entitled to a husband's insurance benefit under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Commissioner of Social Security) in the manner otherwise provided for husband's insurance benefits under this subsection, as if such insured individual had become entitled to old-age insurance benefits on the date on which the divorced husband first meets the criteria for entitlement set forth in clauses (i) and (ii).

(B) A husband's insurance benefit provided under this paragraph which has not otherwise terminated in accordance with subparagraph (E), (F), (H), or (J) of paragraph (1) shall termi-
nate with the month preceding the first month in which the insured individual is no longer a fully insured individual.

(d) Child’s insurance benefits

(1) Every child (as defined in section 416(e) of this title) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, if such child—
   (A) has filed application for child’s insurance benefits,
   (B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time elementary or secondary school student and had not attained the age of 19, or (ii) is under a disability (as defined in section 423(d) of this title) which began before he attained the age of 22, and
   (C) was dependent upon such individual—
      (i) if such individual is living, at the time such application was filed,
      (ii) if such individual has died, at the time of such death, or
      (iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

shall be entitled to a child’s insurance benefit for each month, beginning with—

   (i) in the case of a child (as so defined) of such an individual who has died, the first month in which such child meets the criteria specified in subparagraphs (A), (B), and (C), or
   (ii) in the case of a child (as so defined) of an individual entitled to an old-age insurance benefit or to a disability insurance benefit, the first month throughout which such child is a child (as so defined) and meets the criteria specified in subparagraph (A),

whichever is earlier, and ending with the month preceding whichever of the following first occurs—

   (D) the month in which such child dies, or marries,
   (E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time elementary or secondary school student during any part of such month,
   (F) if such child was not under a disability (as so defined) at the time he attained the age of 18, the earlier of—
      (i) the first month during no part of which he is a full-time elementary or secondary school student, or
      (ii) the month in which he attains the age of 19,
   (G) if such child was under a disability (as so defined) at the time he attained the age of 18 or if he was not under a disability (as so defined) at such time but was under a disability

(as so defined) at or prior to the time he attained (or would attain) the age of 22—

   (i) the termination month, subject to section 423(e) of this title (and for purposes of this subparagraph, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity),

or (if later) the earlier of—

   (i) the first month during no part of which he is a full-time elementary or secondary school student, or
   (ii) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month; or

   (H) if the benefits under this subsection are based on the wages and self-employment income of a stepparent who is subsequently divorced from such child’s natural parent, the month after the month in which such divorce becomes final.

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the month before the first month for which such individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month. No payment under this paragraph may be made to a child who would not meet the definition of disability in section 423(e) of this title except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity.

(2) Such child’s insurance benefit for each month shall, if the individual on the basis of whose wages and self-employment income the child is entitled to such benefit has not died prior to the end of such month, be equal to one-half of the primary insurance amount of such individual for such month. Such child’s insurance benefit for each month shall, if such individual has died in or prior to such month, be equal to three-fourths of the primary insurance amount of such individual.

(3) A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) of this subsection unless, at such time, such individual was not living with or contributing to the support of such child and—
(A) such child is neither the legitimate nor adopted child of such individual, or
(B) such child has been adopted by some other individual.

For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 416(h)(2)(B) or section 416(h)(3) of this title shall be deemed to be the legitimate child of such individual.

(4) A child shall be deemed dependent upon his stepfather or stepmother at the time specified in paragraph (1)(C) of this subsection if, at such time, the child was receiving at least one-half of his support from such stepfather or stepmother.

(5) In the case of a child who has attained the age of eighteen and who marries—
(A) an individual entitled to benefits under subsection (a), (b), (c), (e), (f), (g), or (h) of this section or under section 423(a) of this title, or
(B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection,

such child’s entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage.

(6) A child whose entitlement to child’s insurance benefits on the basis of the wages and self-employment income of an insured individual terminated with the month preceding the month in which such child attained the age of 18, or with a subsequent month, may again become entitled to such benefits (provided no event specified in paragraph (1)(D) has occurred) beginning with the first month thereafter in which he—
(A)(i) is a full-time elementary or secondary school student and has not attained the age of 19, or (ii) is under a disability (as defined in section 423(d) of this title) and has not attained the age of 22, or
(B) is under a disability (as so defined) which began (i) before the close of the 84th month following the month in which his most recent entitlement to child’s insurance benefits terminated because he ceased to be under such disability, or (ii) after the close of the 84th month following the month in which his most recent entitlement to child’s insurance benefits terminated because he ceased to be under such disability due to performance of substantial gainful activity, but only if he has filed application for such re-entitlement.

Such re-entitlement shall end with the month preceding whichever of the following first occurs:
(C) the first month in which an event specified in paragraph (1)(D) occurs;
(D) the earlier of (i) the first month during no part of which he is a full-time elementary or secondary school student or (ii) the month in which he attains the age of 19, but only if he is not under a disability (as so defined) in such earlier month; or
(E) if he was under a disability (as so defined), the termination month (as defined in paragraph (1)(G)(i), subject to section 423(e) of this title, or (if later) the earlier of—
1. (i) the first month during no part of which he is a full-time elementary or secondary school student, or
(ii) the month in which he attains the age of 19.

(7) For the purposes of this subsection—
(A) A “full-time elementary or secondary school student” is an individual who is in full-time attendance as a student at an elementary or secondary school, as determined by the Commissioner of Social Security (in accordance with regulations prescribed by the Commissioner) in the light of the standards and practices of the schools involved, except that no individual shall be considered a “full-time elementary or secondary school student” if he is paid by his employer while attending an elementary or secondary school at the request, or pursuant to a requirement, of his employer. An individual shall not be considered a “full-time elementary or secondary school student” for the purpose of this section while that individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense (committed after the effective date of this sentence1) which constituted a felony under applicable law. An individual who is determined to be a full-time elementary or secondary school student shall be deemed to be such a student throughout the month with respect to which such determination is made.

(B) Except to the extent provided in such regulations, an individual shall be deemed to be a full-time elementary or secondary school student during any period of nonattendance at an elementary or secondary school at which he has been in full-time attendance if (i) such period is 4 calendar months or less, and (ii) he shows to the satisfaction of the Commissioner of Social Security that he intends to continue to be in full-time attendance at an elementary or secondary school immediately following such period. An individual who does not meet the requirement of clause (ii) with respect to such period of nonattendance shall be deemed to have met such requirement (as of the beginning of such period) if he is in full-time attendance at an elementary or secondary school immediately following such period.

(C)(i) An “elementary or secondary school” is a school which provides elementary or secondary education, respectively, as determined under the law of the State or other jurisdiction in which it is located.

(ii) For the purpose of determining whether a child is a “full-time elementary or secondary school student” or “intends to continue to be in full-time attendance at an elementary or secondary school”, within the meaning of this subsection, there shall be disregarded any education provided, or to be provided, beyond grade 12.

(D) A child who attains age 19 at a time when he is a full-time elementary or secondary school student (as defined in subparagraph (A) of this paragraph and without application of subparagraph (B) of such paragraph) but has not (at such time) completed the requirements for, or received, a diploma or equivalent certificate from a secondary school (as defined in

1 See References in Text note below.
subparagraph (C)(i)) shall be deemed (for purposes of determining whether his entitlement to benefits under this subsection has terminated under paragraph (1)(F) and for purposes of determining his initial entitlement to such benefits under clause (i) of paragraph (1)(B)) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the elementary or secondary school (as defined in this paragraph) in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is so enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(8) In the case of—
(A) an individual entitled to old-age insurance benefits (other than an individual referred to in subparagraph (B)), or
(B) an individual entitled to disability insurance benefits, or an individual entitled to old-age insurance benefits who was entitled to disability insurance benefits for the month preceding the first month for which he was entitled to old-age insurance benefits,
a child of such individual adopted after such individual became entitled to such old-age or disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) unless such child—
(C) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or
(D)(i) was legally adopted by such individual in an adoption decreed by a court of competent jurisdiction within the United States, and
(ii) in the case of a child who attained the age of 18 prior to the commencement of proceedings for adoption, the child was living with or receiving at least one-half of the child’s support from such individual for the year immediately preceding the month in which the adoption is decreed.

(9)(A) A child who is a child of an individual under clause (3) of the first sentence of section 416(e) of this title and is not a child of such individual under clause (1) or (2) of such first sentence shall be deemed not to be dependent on such individual at the time specified in subparagraph (1)(C) of this subsection unless (i) such child was living with such individual in the United States and receiving at least one-half of his support from such individual (I) for the year immediately before the month in which such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (II) if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, or disability insurance benefits, or died, for the year immediately before the month in which such period of disability began, and (ii) the period during which such child was living with such individual began before the child attained age 18.
(B) In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of such child’s birth.

(10) For purposes of paragraph (1)(H)—
(A) each stepparent shall notify the Commissioner of Social Security of any divorce upon such divorce becoming final; and
(B) the Commissioner shall annually notify any stepparent of the rule for termination described in paragraph (1)(H) and of the requirement described in subparagraph (A).

(e) Widow’s insurance benefits

(1) The widow (as defined in section 416(c) of this title) and every surviving divorced wife (as defined in section 416(d) of this title) of an individual who died a fully insured individual, if such widow or such surviving divorced wife—
(A) is not married,
(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 423(d) of this title) which began before the end of the period specified in paragraph (4),
(C)(i) has filed application for widow’s insurance benefits,
(ii) was entitled to wife’s insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which such individual died, and—
(I) has attained retirement age (as defined in section 416(l) of this title),
(II) is not entitled to benefits under subsection (a) of this section or section 423 of this title, or
(III) has in effect a certificate (described in paragraph (8)) filed by her with the Commissioner of Social Security, in accordance with regulations prescribed by the Commissioner of Social Security, in which she elects to receive widow’s insurance benefits (subject to reduction as provided in subsection (q) of this section), or
(iii) was entitled, on the basis of such wages and self-employment income, to mother’s insurance benefits for the month preceding the month in which she attained retirement age (as defined in section 416(l) of this title), and
(D) is not entitled to old-age insurance benefits or is entitled to old-age insurance benefits each of which is less than the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (2)) of such deceased individual,
shall be entitled to a widow’s insurance benefit for each month, beginning with—
(E) if she satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which she becomes so entitled to such insurance benefits, or
(F) if she satisfies subparagraph (B) by reason of clause (ii) thereof—
(i) the first month after her waiting period (as defined in paragraph (9)) in which she be-
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comes so entitled to such insurance benefits, or
(ii) the first month during all of which she is under a disability and in which she becomes so entitled to such insurance benefits, but only if she was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (4) and (II) after the month in which a previous entitlement to such benefits on such basis terminated, and ending with the month preceding the first month in which any of the following occurs: she remarries, dies, becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (2) of such deceased individual, or, if she became entitled to such benefits before she attained age 60, subject to section 423(e) of this title, the termination month (unless she attains retirement age (as defined in section 416(l) of title, the termination month (unless she attains age 60, subject to section 423(e) of this title, the termination month (unless she attains retirement age (as defined in section 416(l) of this title) on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which her disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the second year preceding the year in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which she engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which she engages or is determined able to engage in substantial gainful activity.

(ii) For purposes of this subsection, in any case in which such deceased individual dies before attaining age 62 and section 415(a)(1) of this title (as in effect after December 1978) is applicable in determining such individual’s primary insurance amount—

(I) such primary insurance amount shall be determined under the formula set forth in section 415(a)(1)(B)(i) and (ii) of this title which is applicable to individuals who initially become eligible for old-age insurance benefits in the second year after the year specified in clause (ii),

(ii) the year specified in clause (ii) shall be substituted for the second calendar year specified in section 415(b)(3)(A)(ii) of this title, and

(iii) such primary insurance amount shall be increased under section 415(i) of this title as if it were the primary insurance amount referred to in section 415(i)(2)(A)(ii)(II) of this title, except that it shall be increased only for years beginning after the first year after the year specified in clause (ii).

(iii) The year specified in this clause is the earlier of:

(I) the year in which the deceased individual attained age 60, or would have attained age 60 had he lived to that age, or

(II) the second year preceding the year in which the widow or surviving divorced wife first meets the requirements of paragraph (1)(B) or the second year preceding the year in which the deceased individual died, whichever is later.

(iii) This subparagraph shall apply with respect to any benefit under this subsection only to the extent its application does not result in a primary insurance amount for purposes of this subsection which is less than the primary insurance amount otherwise determined for such deceased individual under section 415 of this title.

(C) If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which he was receiving (or would upon application have received) for the month prior to the month in which he died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of such subsection (w) of this section) the number of increment months shall include any month in the months of the calendar year in which he died prior to the month in which he died, which satisfy the conditions in paragraph (2) of such subsection (w) of this section.

(D) If the deceased individual (on the basis of whose wages and self-employment income) was entitled to a widow's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q) of this section, the widow’s insurance benefit of such widow or surviving divorced wife for any month shall, if the amount of the widow’s insurance benefit of such widow or surviving divorced wife (as determined under subparagraph (A) and after application of subsection (q) of this section) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased individual would have been entitled (after application of subsection (q) of this section) for such month if such individual were still living and section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title were applied, where applicable, and

(ii) 82% percent of the primary insurance amount (as determined without regard to subparagraph (C) of such deceased individual,
be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(3) For purposes of paragraph (1), if—
(A) a widow or surviving divorced wife marries after attaining age 50 (or after attaining age 50 if she was entitled before such marriage occurred to benefits based on disability under this subsection), or
(B) a disabled widow or disabled surviving divorced wife described in paragraph (1)(B)(ii) marries after attaining age 50,
such marriage shall be deemed not to have occurred.

(4) The period referred to in paragraph (1)(B)(ii), in the case of any widow or surviving divorced wife, is the period beginning with whichever of the following is the latest:
(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income her benefits are or would be based, or
(B) the last month for which she was entitled to mother’s insurance benefits on the basis of the wages and self-employment income of such individual, or
(C) the month in which a previous entitlement to widow’s insurance benefits on the basis of such wages and self-employment income terminated because her disability had ceased, and ending with the month before the month in which she attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(5) (A) The waiting period referred to in paragraph (1)(F)’, in the case of any widow or surviving divorced wife, is the earliest period of five consecutive calendar months—
(i) throughout which she has been under a disability, and
(ii) which begins not earlier than with whichever of the following is the later: (I) the first day of the seventeenth month before the month in which her application is filed, or (II) the first day of the fifth month before the month in which the period specified in paragraph (4) begins.

(B) For purposes of paragraph (1)(F)’(i), each month in the period commencing with the first month for which such widow or surviving divorced wife is first eligible for supplemental security income benefits under subchapter XVI of this chapter, or State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) which are paid by the Commissioner of Social Security under an agreement referred to in section 1382e(a) of this title (or in section 212(b) of Public Law 93–66) which are paid by the Commissioner of Social Security under an agreement referred to in section 1382e(a) of this title (or in section 212(b) of Public Law 93–66), for the month for which all requirements of paragraph (4) for entitlement to benefits under this subsection (other than being under a disability) are met.

(f) Widower’s insurance benefits

(1) The widower (as defined in section 416(e)(1) of this title) and every surviving divorced husband (as defined in section 416(d) of this title) of an individual who died a fully insured individual, if such widower or such surviving divorced husband—
(A) is not married,
(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 223(d) of the title) which began before the end of the period specified in paragraph (4) begins.

(C)(i) has filed application for widower’s insurance benefits,

(ii) was entitled to husband’s insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which such individual died, and—
(I) has attained retirement age (as defined in section 416(l) of this title),
(II) is not entitled to benefits under subsection (a) of this section or section 423 of this title, or
(III) has in effect a certificate (described in paragraph (8)) filed by him with the Commissioner of Social Security, in accordance with regulations prescribed by the Commissioner of Social Security, in which he elects to receive widower’s insurance benefits (subject to reduction as provided in subsection (q) of this section), or

(iii) was entitled, on the basis of such wages and self-employment income, to father’s insur-
ance benefits for the month preceding the month in which he attained retirement age (as defined in section 416(i) of this title), and
(D) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits, each of which is less than the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (3)) of such deceased individual,
shall be entitled to a widower’s insurance benefit for each month, beginning with—
(E) if he satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which he becomes so entitled to such insurance benefits, or
(F) if he satisfies subparagraph (B) by reason of clause (ii) thereof—
(i) the first month after his waiting period (as defined in paragraph (5)) in which he becomes so entitled to such insurance benefits,
(ii) the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (4) and (II) after the month in which such previous entitlement to such benefits on such basis terminated, and ending with the month preceding the first month in which any of the following occurs: he remarries, dies, or becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (3)) of such deceased individual, or, if he became entitled to such benefits before he attained age 60, subject to section 423(e) of this title, the termination month (unless he attains retirement age (as defined in section 416(i) of this title) on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.
(2)(A) Except as provided in subsection (k)(5) of this section, subsection (q) of this section, and subparagraph (D) of this paragraph, such widower’s insurance benefit for each month shall be equal to the primary insurance amount (as determined for purposes of this subsection after application of subparagraphs (B) and (C)) of such deceased individual.
(B)(i) For purposes of this subsection, in any case in which such deceased individual dies before attaining age 62 and section 415(a)(1) of this title (as in effect after December 1978) is applicable in determining such individual’s primary insurance amount—
(I) such primary insurance amount shall be determined under the formula set forth in section 415(a)(1)(B)(i) and (ii) of this title which is applicable to individuals who initially become eligible for old-age insurance benefits in the second year after the year specified in clause (ii),
(II) the year specified in clause (ii) shall be substituted for the second calendar year specified in section 415(b)(3)(A)(ii)(I) of this title, and
(III) such primary insurance amount shall be increased under section 415(i) of this title as if it were the primary insurance amount referred to in section 415(i)(2)(A)(ii)(II) of this title, except that it shall be increased only for years beginning after the first year after the year specified in clause (ii).
(ii) The year specified in this clause is the earlier of—
(I) the year in which the deceased individual attained age 60, or would have attained age 60 had she lived to that age, or
(II) the second year preceding the year in which the widower or surviving divorced husband first meets the requirements of paragraph (1)(B) or the second year preceding the year in which the deceased individual died, whichever is later.
(iii) This subparagraph shall apply with respect to any benefit under this subsection only to the extent its application does not result in a primary insurance amount for purposes of this subsection which is less than the primary insurance amount otherwise determined for such deceased individual under section 415 of this title.
(C) If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual’s primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which she was receiving (or would upon application have received) for the month prior to the month in which she died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of such subsection (w) of this section) the number of increment months shall include any month in the months of the calendar year in which she died, prior to the month in which she died, which satisfy the conditions in paragraph (2) of such subsection (w) of this section.
(D) If the deceased individual (on the basis of whose wages and self-employment income a widower or surviving divorced husband is entitled to widower’s insurance benefits under this sub-
section was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q) of this section, the widower's insurance benefit of such widower or surviving divorced husband for any month in which, if the amount of the widow's insurance benefit of such widower or surviving divorced husband (as determined under subparagraph (A) and after application of subsection (q) of this section) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased individual would have been entitled (after application of subsection (q) of this section) for such month if such individual were still living and section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title were applied, where applicable, and

(ii) 82 percent of the primary insurance amount (as determined without regard to subparagraph (C)) of such deceased individual;

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(3) For purposes of paragraph (1), if—

(A) a widower or surviving divorced husband marries after attaining age 60 (or after attaining age 50 if he was entitled before such marriage occurred to benefits based on disability under this subsection), or

(B) a disabled widower or surviving divorced husband described in paragraph (1)(B)(ii) marries after attaining age 50,

such marriage shall be deemed not to have occurred.

(4) The period referred to in paragraph (1)(B)(ii), in the case of any widower or surviving divorced husband, is the period beginning with whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income his benefits are or would be based,

(B) the last month for which he was entitled to father's insurance benefits on the basis of the wages and self-employment income of such individual, or

(C) the month in which a previous entitlement to widower's insurance benefits on the basis of such wages and self-employment income terminated because his disability had ceased,

and ending with the month before the month in which he attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(5)(A) The waiting period referred to in paragraph (1)(F'), in the case of any widower or surviving divorced husband, is the earliest period of five consecutive calendar months—

(i) throughout which he has been under a disability, and

(ii) which begins not earlier than with whichever of the following is the later: (I) the fifth day of the seventeenth month before the month in which his application is filed, or (II) the first day of the fifth month before the month in which the period specified in paragraph (4) begins.

(B) For purposes of paragraph (1)(F')(i), each month in the period commencing with the first month for which such widower or surviving divorced husband is first eligible for supplemental security income benefits under subchapter XVI of this chapter, or State supplementary payments of the type referred to in section 1396a(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) which are paid by the Commissioner of Social Security under an agreement referred to in section 1396a(a) of this title (or in section 212(b) of Public Law 93–66), shall be included as one of the months of such waiting period for which the requirements of subparagraph (A) have been met.

(6) In the case of an individual entitled to monthly insurance benefits payable under this section for any month prior to January 1973 whose benefits were not redetermined under section 102(g) of the Social Security Amendments of 1972, such benefits shall not be redetermined pursuant to such section, but shall be increased pursuant to any general benefit increase (as defined in section 415(i)(3) of this title) or any increase in benefits made under or pursuant to section 415(i) of this title, including for this purpose the increase provided effective for March 1974, as though such redetermination had been made.

(7) Any certificate filed pursuant to paragraph (1)(C)(i)(III) shall be effective for purposes of this subsection—

(A) for the month in which it is filed and for any month thereafter, and

(B) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which he attains age 62.

(8) An individual shall be deemed to be under a disability for purposes of paragraph (1)(B)(ii) if such individual is eligible for supplemental security income benefits under subchapter XVI of this chapter, or State supplementary payments of the type referred to in section 1396a(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) which are paid by the Commissioner of Social Security under an agreement referred to in such section 1396a(a) of this title (or in section 212(b) of Public Law 93–66), for the month for which all requirements of paragraph (1) for entitlement to benefits under this subsection (other than being under a disability) are met.

(g) Mother's and father's insurance benefits

(1) The surviving spouse and every surviving divorced parent (as defined in section 416(d) of this title) of an individual who died a fully or currently insured individual, if such surviving spouse or surviving divorced parent—

(A) is not married,

(B) is not entitled to a surviving spouse's insurance benefit,

(C) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than three-fourths of the primary insurance amount of such individual,

(D) has filed application for mother's or father's insurance benefits, or was entitled to a
spouse’s insurance benefit on the basis of the wages and self-employment income of such individual for the month preceding the month in which such individual died.

(E) At the time of filing such application has in her or his care a child of such individual entitled to a child’s insurance benefit, and

(F) In the case of a surviving divorced parent—

(i) the child referred to in subparagraph (E) is his or her son, daughter, or legally adopted child, and

(ii) the benefits referred to in such subparagraph are payable on the basis of such individual’s wages and self-employment income,

shall (subject to subsection (s) of this section) be entitled to a mother’s or father’s insurance benefit for each month, beginning with the first month in which he or she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to a child’s insurance benefit, such surviving spouse or surviving divorced parent becomes entitled to an old-age insurance benefit equal to or exceeding three-fourths of the primary insurance amount of such deceased individual, he or she becomes entitled to a surviving spouse’s insurance benefit, he or she remarries, or he or she dies. Entitlement to such benefits shall also end, in the case of a surviving divorced parent, with the month immediately preceding the first month in which no son, daughter, or legally adopted child of such surviving divorced parent is entitled to a child’s insurance benefit on the basis of the wages and self-employment income of such deceased individual.

(2) Such mother’s or father’s insurance benefit for each month shall be equal to three-fourths of the primary insurance amount of such deceased individual.

(3) In the case of a surviving spouse or surviving divorced parent who marries

(A) an individual entitled to benefits under this subsection or subsection (a), (b), (c), (e), (f), or (h) of this section, or under section 423(a) of this title, or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d) of this section,

the entitlement of such surviving spouse or surviving divorced parent to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage.

(h) Parent’s insurance benefits

(1) Every parent (as defined in this subsection) of an individual who died a fully insured individual, if such parent—

(A) has attained age 62,

(B) (i) was receiving at least one-half of his or her support from such individual at the time of such individual’s death or, if such individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of such death, and (ii) filed proof of such support within two years after the date of such death, or, if such individual had such a period of disability, within two years after the month in which such individual filed application with respect to such period of disability or two years after the date of such death, as the case may be,

(C) has not married since such individual’s death,

(D) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than 82 1⁄2 percent of the primary insurance amount of such deceased individual if the amount of the parent’s insurance benefit for such month is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case), and

(E) has filed application for parent’s insurance benefits,

shall be entitled to a parent’s insurance benefit for each month beginning with the first month after August 1950 in which such parent becomes entitled to such parent’s insurance benefits and ending with the month preceding the first month in which any of the following occurs: such parent dies, marries, or becomes entitled to an old-age insurance benefit equal to or exceeding 82 1⁄2 percent of the primary insurance amount of such deceased individual if the amount of the parent’s insurance benefit for such month is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case).

(2)(A) Except as provided in subparagraphs (B) and (C), such parent’s insurance benefit for each month shall be equal to 82 1⁄2 percent of the primary insurance amount of such deceased individual.

(B) For any month for which more than one parent is entitled to parent’s insurance benefits on the basis of such deceased individual’s wages and self-employment income, such benefit for each such parent for such month shall (except as provided in subparagraph (C)) be equal to 75 percent of the primary insurance amount of such deceased individual.

(C) In any case in which—

(i) any parent is entitled to a parent’s insurance benefit for a month on the basis of a deceased individual’s wages and self-employment income, and

(ii) another parent of such deceased individual is entitled to a parent’s insurance benefit for such month on the basis of such wages and self-employment income, and on the basis of an application filed after such month and after the month in which the application for the parent’s benefits referred to in clause (i) was filed,

the amount of the parent’s insurance benefit of the parent referred to in clause (i) for the month referred to in such clause shall be determined under subparagraph (A) instead of subparagraph (B) and the amount of the parent’s insurance benefit of a parent referred to in clause (ii) for such month shall be equal to 150 percent of the primary insurance amount of the deceased individual minus the amount (before the application of section 403(a) of this title) of the benefit for
such month of the parent referred to in clause (i).

(3) As used in this subsection, the term “parent” means the mother or father of an individual, a stepparent of an individual by a marriage contracted before such individual attained the age of sixteen, or an adopting parent by whom an individual was adopted before he attained the age of sixteen.

(4) In the case of a parent who marries—

(A) an individual entitled to benefits under this subsection or subsection (b), (c), (e), (f), or (g) of this section, or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d) of this section,

such parent’s entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage.

(i) Lump-sum death payments

Upon the death, after August 1950, of an individual who died a fully or currently insured individual, an amount equal to three times such individual’s primary insurance amount (as determined without regard to the amendments made by section 2201 of the Omnibus Budget Reconciliation Act of 1981, relating to the repeal of the minimum benefit provisions), or an amount equal to $255, whichever is the smaller, shall be paid in a lump sum to the person, if any, determined by the Commissioner of Social Security to be the widow or widower of the deceased and to have been living in the same household with the deceased at the time of death. If there is no such person, or if such person dies before receiving payment, then such amount shall be paid—

(1) to a widow (as defined in section 416(c) of this title) or widower (as defined in section 416(g) of this title) who is entitled (or would have been so entitled had a timely application been filed), on the basis of the wages and self-employment income of such insured individual, to benefits under subsection (e), (f), or (g) of this section for the month in which occurred such individual’s death; or

(2) if no person qualifies for payment under paragraph (1), or if such person dies before receiving payment, in equal shares to each person who is entitled (or would have been so entitled had a timely application been filed), on the basis of the wages and self-employment income of such insured individual, to benefits under subsection (d) of this section for the month in which occurred such individual’s death.

No payment shall be made to any person under this subsection unless application therefor shall have been filed, by or on behalf of such person (whether or not legally competent), prior to the expiration of two years after the date of death of such insured individual, or unless such person was entitled to wife’s or husband’s insurance benefits, on the basis of the wages and self-employment income of such insured individual, for the month preceding the month in which such individual died. In the case of any individual

who died outside the forty-eight States and the District of Columbia after December 1953 and before January 1, 1957, whose death occurred while he was in the active military or naval service of the United States, and who is returned to any of such States, the District of Columbia, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa for interment or reinterment, the provisions of the preceding sentence shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment. In the case of any individual who died outside the fifty States and the District of Columbia after December 1956 while he was performing service, as a member of a uniformed service, to which the provisions of section 410(h)(1) of this title are applicable, and who is returned to any State, or to any Territory or possession of the United States, for interment or reinterment, the provisions of the third sentence of this subsection shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment.

(j) Application for monthly insurance benefits

(1) Subject to the limitations contained in paragraph (4), an individual who would have been entitled to a benefit under subsection (a), (b), (c), (d), (e), (f), (g), or (h) of this section for any month after August 1950 had he filed application therefor prior to the end of such month shall be entitled to such benefit for such month if he files application therefor prior to—

(A) the end of the twelfth month immediately succeeding such month in any case where the individual (i) is filing application for a benefit under subsection (e) or (f) of this section, and satisfies paragraph (1)(B) of such subsection by reason of clause (ii) thereof, or (ii) is filing application for a benefit under subsection (b), (c), or (d) of this section on the basis of the wages and self-employment income of a person entitled to disability insurance benefits, or

(B) the end of the sixth month immediately succeeding such month in any case where subparagraph (A) does not apply.

Any benefit under this subchapter for a month prior to the month in which application is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such application, the Commissioner of Social Security has certified for payment for such prior month.

(2) An application for any monthly benefits under this section filed before the first month in which the applicant satisfies the requirements for such benefits shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the
Commissioner of Social Security makes a final decision on the application and no request under section 405(b) of this title for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made regardless of whether such decision becomes the final decision of the Commissioner of Social Security.

(3) Notwithstanding the provisions of paragraph (1), an individual may, at his option, waive entitlement to any benefit referred to in paragraph (1) for any one or more consecutive months (beginning with the earliest month for which such individual would otherwise be entitled to such benefit) which occur before the month in which such individual files application for such benefit; and, in such case, such individual shall not be considered as entitled to such benefits for any such month or months before such individual filed such application. An individual shall be deemed to have waived such entitlement for any such month for which such benefit would, under the second sentence of paragraph (1), be reduced to zero.

(4)(A) Except as provided in subparagraph (B), no individual shall be entitled to a monthly benefit under subsection (a), (b), (c), (e), or (f) of this section for any month prior to the month in which he or she files an application for benefits under that subsection if the amount of the monthly benefit to which such individual would otherwise be entitled for any such month would be subject to reduction pursuant to subsection (q) of this section.

(B)(i) If the individual applying for retroactive benefits is a widow, surviving divorced wife, or widower and is under a disability (as defined in section 423(d) of this title), and such individual would, except for subparagraph (A), be entitled to retroactive benefits as a disabled widow or widower or disabled surviving divorced wife for any month before attaining the age of 60, then subparagraph (A) shall not apply with respect to such month or any subsequent month.

(ii) Subparagraph (A) does not apply to a benefit under subsection (e) or (f) of this section for the month immediately preceding the month of application, if the insured individual died in that preceding month.

(iii) As used in this subparagraph, the term “retroactive benefits” means benefits to which an individual becomes entitled for a month prior to the month in which application for such benefits is filed.

(5) In any case in which it is determined to the satisfaction of the Commissioner of Social Security that an individual failed as of any date to apply for monthly insurance benefits under this subchapter by reason of misinformation provided to such individual by any officer or employee of the Social Security Administration relating to such individual’s eligibility for benefits under this subchapter, such individual shall be deemed to have applied for such benefits on the later of —

(A) the date on which such misinformation was provided to such individual, or

(B) the date on which such individual met all requirements for entitlement to such benefits (other than application therefor).

(b) Simultaneous entitlement to benefits

(1) A child, entitled to child’s insurance benefits on the basis of the wages and self-employment income of an insured individual, who would be entitled, on filing application, to child’s insurance benefits on the basis of the wages and self-employment income of some other insured individual, shall be deemed entitled, subject to the provisions of paragraph (2) of this subsection, to child’s insurance benefits on the basis of the wages and self-employment income of such other individual if an application for child’s insurance benefits on the basis of the wages and self-employment income of such other individual has been filed by any other child who would, on filing application, be entitled to child’s insurance benefits on the basis of the wages and self-employment income of both such insured individuals.

(2)(A) Any child who under the preceding provisions of this section is entitled for any month to child’s insurance benefits on the wages and self-employment income of more than one insured individual shall, notwithstanding such provisions, be entitled to only one of such child’s insurance benefits for such month. Such child’s insurance benefits for such month shall be the benefit based on the wages and self-employment income of the insured individual who has the greatest primary insurance amount, except that such child’s insurance benefits for such month shall be the largest benefit to which such child could be entitled under subsection (d) of this section (without the application of section 403(a) of this title) or subsection (m) of this section if entitlement to such benefit would not, with respect to any person, result in a benefit lower (after the application of section 403(a) of this title) than the benefit which would be applicable if such child were entitled on the wages and self-employment income of the individual with the greatest primary insurance amount. Where more than one child is entitled to child’s insurance benefits pursuant to the preceding provisions of this paragraph, each such child who is entitled on the wages and self-employment income of the same insured individuals shall be entitled on the wages and self-employment income of the same such insured individual.

(B) Any individual (other than an individual to whom subsection (e)(3) or (f)(3) of this section applies) who, under the preceding provisions of this section and under the provisions of section 422 of this title, is entitled for any month to more than one monthly insurance benefit (other than an old-age or disability insurance benefit) under this subchapter shall be entitled to only one such monthly benefit for such month, such benefit to be the largest of the monthly benefits to which he (but for this subparagraph) would otherwise be entitled for such month. Any individual who is entitled for any month to more than one widow’s or widower’s insurance benefit to which subsection (e)(3) or (f)(3) of this section applies shall be entitled to only one such benefit for such month, such benefit to be the largest of such benefits.

(3)(A) If an individual is entitled to an old-age or disability insurance benefit for any month and to any other monthly insurance benefit for
such month, such other insurance benefit for such month, after any reduction under subsection (q), subsection (e)(2) or (f)(2) of this section, and any reduction under section 403(a) of this title, shall be reduced, but not below zero, by an amount equal to such other monthly insurance benefit (after reduction under such subsection (q) of this section).

(B) If an individual is entitled for any month to a widow’s or widower’s insurance benefit to which subsection (e)(3) or (f)(3) of this section applies and to any other monthly insurance benefit under this section (other than an old-age insurance benefit), such other insurance benefit for such month, after any reduction under subparagraph (A) of this paragraph, any reduction under subsection (q) of this section, and any reduction under section 403(a) of this title, shall be reduced, but not below zero, by an amount equal to such widow’s or widower’s insurance benefit after any reduction or reductions under such subparagraph (A) and such section 403(a).

(4) Any individual who, under this section and section 423 of this title, is entitled for any month to both an old-age insurance benefit and a disability insurance benefit under this subchapter shall be entitled to only the larger of such benefits for such month, except that, if such individual so elects, he shall instead be entitled to only the smaller of such benefits for such month.

(5)(A) The amount of a monthly insurance benefit of any individual for each month under subsection (b), (c), (e), (f), or (g) of this section (as determined after application of the provisions of this section and the preceding provisions of this subsection) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit based on service which constituted “employment” as defined in section 410(m) of this title.

(B)(i) Subparagraph (A)(i) shall not apply with respect to monthly periodic benefits based wholly on service as a member of a uniformed service (as defined in section 410(m)(2) of this title).

(ii) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted “employment” as defined in section 410(m) of this title if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which such individual is eligible for benefits under this subchapter and has made a valid application for such benefits.

(C) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Commissioner of Social Security) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term “periodic benefit” includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(i) Entitlement to survivor benefits under railroad retirement provisions

If any person would be entitled, upon filing application therefor to an annuity under section 2 of the Railroad Retirement Act of 1974 [45 U.S.C. 231a], or to a lump-sum payment under section 6(b) of such Act [45 U.S.C. 231(e)(b)], with respect to the death of an employee (as defined in such Act) no lump-sum death payment, and no monthly benefit for the month in which such employee died or for any month thereafter, shall be paid under this section to any person on the basis of the wages and self-employment income of such employee.


(n) Termination of benefits upon removal of primary beneficiary

(1) If any individual is (after September 1, 1954) removed under section 1227(a) of title 8 (other than under paragraph (1)(C) of such section) or under section 1182(a)(6)(A) of title 8, then, notwithstanding any other provisions of this subchapter—

(A) no monthly benefit under this section or section 423 of this title shall be paid to such individual, on the basis of his wages and self-employment income, for any month occurring after the month in which the Commissioner of Social Security is notified by the Attorney General or the Secretary of Homeland Security that such individual has been so removed, and (ii) before the month in which such individual is thereafter lawfully admitted to the United States for permanent residence.

(B) if no benefit could be paid to such individual (or if no benefit could be paid to him if he were alive) for any month by reason of subparagraph (A), no monthly benefit under this

$0.10, shall be rounded to the next higher multiple of $0.10.
section shall be paid, on the basis of his wages and self-employment income, for such month to any other person who is not a citizen of the United States and is outside the United States for any part of such month, and

(3) no lump-sum death payment shall be made on the basis of such individual’s wages and self-employment income if he dies (i) in or after the month in which such notice is received, and (ii) before the month in which he is thereafter lawfully admitted to the United States for permanent residence.

Section 403(b), (c), and (d) of this title shall not apply with respect to any such individual for any month for which no monthly benefit may be paid to him by reason of this paragraph.

(2) As soon as practicable after the removal of any individual under any of the paragraphs of section 1227(a) of title 8 (other than under paragraph (1)(C) of such section) or under section 1182(a)(6)(A) of title 8, the Attorney General or the Secretary of Homeland Security shall notify the Commissioner of Social Security of such removal.

(3) For purposes of paragraphs (1) and (2) of this subsection, an individual against whom a final order of removal has been issued under paragraph (4)(D) of section 1227(a) of title 8 (relating to participating in Nazi persecutions or genocide) shall be considered to have been removed under such paragraph (4)(D) as of the date on which such order became final.

(o) Application for benefits by survivors of members and former members of uniformed services

In the case of any individual who would be entitled to benefits under subsection (d), (e), (g), or (h) of this section upon filing proper application therefor, the filing with the Administrator of Veterans’ Affairs by or on behalf of such individual of an application for such benefits, on the form described in section 5105 of title 38, shall satisfy the requirement of such subsection (d), (e), (g), or (h) that an application for such benefits be filed.

(p) Extension of period for filing proof of support and applications for lump-sum death payment

In any case in which there is a failure—

(1) to file proof of support under subparagraph (B) of subsection (h)(1) of this section, or under clause (B) of subsection (f)(1) of this section as in effect prior to the Social Security Act Amendments of 1950, within the period prescribed by such subparagraph or clause, or

(2) to file, in the case of a death after 1946, application for a lump-sum death payment under subsection (i) of this section, or under subsection (g) of this section as in effect prior to the Social Security Act Amendments of 1950, within the period prescribed by such subsection,

any such proof or application, as the case may be, which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Commissioner of Social Security that there was good cause for failure to file such proof or application within such period. The determination of what constitutes good cause for purposes of this subsection shall be made in accordance with regulations of the Commissioner of Social Security.

(q) Reduction of benefit amounts for certain beneficiaries

(1) Subject to paragraph (9), if the first month for which an individual is entitled to an old-age, wife’s, husband’s, widow’s, or widower’s insurance benefit is a month before the month in which such individual attains retirement age, the amount of such benefit for such month and for any subsequent month shall be reduced under paragraphs of this subsection, be reduced by—

(A) 5⁄9 of 1 percent of such amount if such benefit is an old-age insurance benefit, 5⁄9 of 1 percent of such amount if such benefit is a wife’s or husband’s insurance benefit, or 2⁄3 of 1 percent of such amount if such benefit is a widow’s or widower’s insurance benefit, multiplied by

(B)(i) the number of months in the reduction period for such benefit (determined under paragraph (6)), if such benefit is for a month before the month in which such individual attains retirement age, or

(ii) if less, the number of such months in the adjusted reduction period for such benefit (determined under paragraph (7)), if such benefit is (I) for the month in which such individual attains age 62, or (II) for the month in which such individual attains retirement age.

(2) If an individual is entitled to a disability insurance benefit for a month after a month for which such individual was entitled to an old-age insurance benefit, such disability insurance benefit for each month shall be reduced by the amount such old-age insurance benefit would be reduced under paragraphs (1) and (4) for such month had such individual attained retirement age (as defined in section 416(i) of this title) in the first month for which he most recently became entitled to a disability insurance benefit.

(3)(A) If the first month for which an individual both is entitled to a wife’s, husband’s, widow’s, or widower’s insurance benefit and has attained age 62 (in the case of a wife’s or husband’s insurance benefit) or age 50 (in the case of a widow’s or widower’s insurance benefit) is a month for which such individual is also entitled to—

(i) an old-age insurance benefit (to which such individual was first entitled for a month before he attains retirement age (as defined in section 416(i) of this title)), or

(ii) a disability insurance benefit,

then in lieu of any reduction under paragraph (1) (but subject to the succeeding paragraphs of this subsection) such wife’s, husband’s, widow’s, or widower’s insurance benefit for each month shall be reduced as provided in subparagraph (B), (C), or (D).

(B) For any month for which such individual is entitled to an old-age insurance benefit and is not entitled to a disability insurance benefit, such individual’s wife’s or husband’s insurance benefit shall be reduced by the sum of—

(i) the amount by which such old-age insurance benefit is reduced under paragraph (1) for such month, and

(ii) 5⁄9 of 1 percent of such amount, reduced by the amount the benefit for such month was reduced by under paragraph (3)(A)(ii) for such month.
(i) the amount by which such wife’s or husband’s insurance benefit would be reduced under paragraph (1) for such month if it were equal to the excess of such wife’s or husband’s insurance benefit (before reduction under this subsection) over such old-age insurance benefit (before reduction under this subsection).

(C) For any month for which such individual is entitled to a disability insurance benefit, such individual’s wife’s, husband’s, widow’s, or widower’s insurance benefit shall be reduced by the sum of:

(i) the amount by which such disability insurance benefit is reduced under paragraph (2) for such month (if such paragraph applied to such benefit), and

(ii) the amount by which such wife’s, husband’s, widow’s, or widower’s insurance benefit would be reduced under paragraph (1) for such month if it were equal to the excess of such wife’s, husband’s, widow’s, or widower’s insurance benefit (before reduction under this subsection) over such disability insurance benefit (before reduction under this subsection).

(D) For any month for which such individual is entitled neither to an old-age insurance benefit nor to a disability insurance benefit, such individual’s wife’s, husband’s, widow’s, or widower’s insurance benefit shall be reduced by the amount by which it would be reduced under paragraph (1).

(E) Notwithstanding subparagraph (A) of this paragraph, if the first month for which an individual is entitled to an old-age insurance benefit to which such individual was first entitled for that month or for a month before she or he became entitled to a widow’s or widower’s benefit, the reduction in such widow’s or widower’s insurance benefit shall be determined under paragraph (1).

(4) If—

(A) an individual is or was entitled to a benefit subject to reduction under paragraph (1) or (3) of this subsection, and

(B) such benefit is increased by reason of an increase in the primary insurance amount of the individual on whose wages and self-employment income such benefit is based,

then the amount of the reduction of such benefit (after the application of any adjustment under paragraph (7) for each month beginning with the month of such increase in the primary insurance amount shall be computed under paragraph (1) or (3), whichever applies, as though the increased primary insurance amount had been in effect for and after the month for which the individual first became entitled to such monthly benefit reduced under such paragraph (1) or (3).

(5)(A) No wife’s or husband’s insurance benefit shall be reduced under this subsection—

(i) for any month before the first month for which there is in effect a certificate filed by him or her with the Commissioner of Social Security, in accordance with regulations prescribed by the Commissioner of Social Security, in which he or she elects to receive wife’s or husband’s insurance benefits reduced as provided in this subsection, or

(ii) for any month in which he or she has in his or her care (individually or jointly with the person on whose wages and self-employment income the wife’s or husband’s insurance benefit is based) a child of such person entitled to child’s insurance benefits.

(B) Any certificate described in subparagraph (A)(i) shall be effective for purposes of this subsection (and for purposes of preventing deductions under section 403(c)(2) of this title)—

(i) for the month in which it is filed and for any month thereafter, and

(ii) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which he or she attains age 62, nor shall it be effective for any month to which subparagraph (A)(ii) applies.

(C) If an individual does not have in his or her care a child described in subparagraph (A)(ii) in the first month for which he or she is entitled to a wife’s or husband’s insurance benefit, and if such first month is a month before the month in which he or she attains retirement age (as defined in section 416(i) of this title), he or she shall be deemed to have filed in such first month the certificate described in subparagraph (A)(i).

(D) No widow’s or widower’s insurance benefit for a month in which he or she has in his or her care a child of his or her deceased spouse (or deceased former spouse) entitled to child’s insurance benefits shall be reduced under this subsection below the amount to which he or she would have been entitled had he or she been entitled for such month to mother’s or father’s insurance benefits on the basis of his or her deceased spouse’s (or deceased former spouse’s) wages and self-employment income.

(6) For purposes of this subsection, the “reduction period” for an individual’s old-age, wife’s, husband’s, widow’s, or widower’s insurance benefit is the period—

(A) beginning—

(i) in the case of an old-age insurance benefit, with the first day of the first month for which such individual is entitled to such benefit,

(ii) in the case of a wife’s or husband’s insurance benefit, with the first day of the first month for which a certificate described in paragraph (5)(A)(i) is effective, or

(iii) in the case of a widow’s or widower’s insurance benefit, with the first day of the first month for which such individual is entitled to such benefit or the first day of the month in which such individual attains age 66, whichever is the later, and

(B) ending with the last day of the month before the month in which such individual attains retirement age.

(7) For purposes of this subsection, the “adjusted reduction period” for an individual’s old-age, wife’s, husband’s, widow’s, or widower’s insurance benefit is the reduction period prescribed in paragraph (6) for such benefit, excluding—
(A) any month in which such benefit was subject to deductions under section 403(b), 403(c)(1), 403(d)(1), or 422(b) of this title,

(B) in the case of wife’s or husband’s insurance benefits, any month in which such individual had in his or her care (individually or jointly with the person on whose wages and self-employment income such benefit is based) a child of such person entitled to child’s insurance benefits,

(C) in the case of wife’s or husband’s insurance benefits, any month in which the reduction in the amount of such benefit was determined under paragraph (5)(D),

(E) in the case of widow’s or widower’s insurance benefits, any month before the month in which she or he attained age 62, and also for any later month before the month in which she or he attained retirement age, for which she or he was not entitled to such benefit because of the occurrence of an event that terminated her or his entitlement to such benefits, and

(F) in the case of old-age insurance benefits, any month for which such individual was entitled to a disability insurance benefit.

(8) This subsection shall be applied after reduction under section 403(a) of this title and before application of section 415(g) of this title. If the amount of any reduction computed under paragraph (1), (2), or (3) is not a multiple of $0.10, it shall be increased to the next higher multiple of $0.10.

(9) The amount of the reduction for early retirement specified in paragraph (1)—

(A) for old-age insurance benefits, wife’s insurance benefits, and husband’s insurance benefits, shall be the amount specified in such paragraph for the first 36 months of the reduction period (as defined in paragraph (6)) or adjusted reduction period (as defined in paragraph (7)), and five-twelfths of 1 percent for any additional months included in such periods; and

(B) for widow’s insurance benefits and widower’s insurance benefits, shall be periodically revised by the Commissioner of Social Security such that—

(i) the amount of the reduction at early retirement age as defined in section 416(i) of this title shall be 28.5 percent of the full benefit; and

(ii) the amount of the reduction for each month in the reduction period (specified in paragraph (6)) or the adjusted reduction period (specified in paragraph (7)) shall be established by linear interpolation between 28.5 percent at the month of attainment of early retirement age and 0 percent at the month of attainment of retirement age.

(10) For purposes of applying paragraph (4), with respect to monthly benefits payable for any month after December 1977 to an individual who was entitled to a monthly benefit as reduced under paragraph (1) or (3) prior to January 1978, the amount of reduction in such benefit for the first month for which such benefit is increased by reason of an increase in the primary insurance amount of the individual on whose wages and self-employment income such benefit is based and for all subsequent months (and similarly for all subsequent increases) shall be increased by a percentage equal to the percentage increase in such primary insurance amount (such increase being made in accordance with the provisions of paragraph (8)). In the case of an individual whose reduced benefit under this section is increased as a result of the use of an adjusted reduction period (in accordance with paragraphs (1) and (3) of this subsection), then for the first month for which such increase is effective, and for all subsequent months, the amount of such reduction (after the application of the previous sentence, if applicable) shall be determined—

(A) in the case of old-age, wife’s, and husband’s insurance benefits, by multiplying such amount by the ratio of (i) the number of months in the adjusted reduction period prior to age 62 multiplied by \(\frac{19}{40}\) of 1 percent, plus the number of months in the reduction period multiplied by \(\frac{19}{40}\) of 1 percent, and

(B) in the case of widow’s and widower’s insurance benefits for the month in which such individual attains age 62, by multiplying such amount by the ratio of (i) the number of months in the reduction period beginning with age 62 multiplied by \(\frac{19}{40}\) of 1 percent, plus the number of months in the adjusted reduction period prior to age 62 multiplied by \(\frac{19}{40}\) of 1 percent, and

(C) in the case of widow’s and widower’s insurance benefits for the month in which such individual attains retirement age (as defined in section 416(i) of this title), by multiplying such amount by the ratio of (i) the number of months in the adjusted reduction period multiplied by \(\frac{19}{40}\) of 1 percent to (ii) the number of months in the reduction period multiplied by \(\frac{19}{40}\) of 1 percent,

such determination being made in accordance with the provisions of paragraph (8).

(11) When an individual is entitled to more than one monthly benefit under this subchapter and one or more of such benefits are reduced under this subsection, paragraph (10) shall apply separately to each such benefit reduced under this subsection before the application of this section (pertaining to the method by which monthly benefits are offset when an individual is entitled to more than one kind of benefit) and the application of this paragraph shall operate in conjunction with paragraph (3).

(v) Presumed filing of application by individuals eligible for old-age insurance benefits and for wife’s or husband’s insurance benefits

(1) If the first month for which an individual is entitled to an old-age insurance benefit is a month before the month in which such individual attains retirement age (as defined in section...
416(l) of this title), and if such individual is eligi-
ble for a wife’s or husband’s insurance benefit for such first month, such individual shall be deemed to have filed an application in such month for wife’s or husband’s insurance bene-
fits.

(2) If the first month for which an individual is entitled to a wife’s or husband’s insurance benefit reduced under subsection (q) of this section is a month before the month in which such individual attains retirement age (as defined in section 423(d) of this title), and if such individual is entitled (but for subsection (k)(4) of this section) for an old-age insurance benefit for such first month, such individual shall be deemed to have filed an application for old-age insurance bene-
fits—

(A) in such month, or

(B) if such individual is also entitled to a disability insurance benefit for such month, in the first subsequent month for which such individual is not entitled to a disability insurance benefit.

(3) For purposes of this subsection, an individual shall be deemed eligible for a benefit for a month if, upon filing application therefor in such month, he would be entitled to such benefit for such month.

(s) Child over specified age to be disregarded for certain benefit purposes unless disabled

(1) For the purposes of subsections (b)(1), (c)(1), (g)(1), (q)(5), and (q)(7) of this section and paragraphs (2), (3), and (4) of section 403(c) of this title, a child who is entitled to child’s in-

surance benefits under subsection (d) of this section for any month, and who has attained the age of 16 but is not in such month under a disabil-

ity (as defined in section 423(d) of this title), shall be deemed not entitled to such benefits for such month, unless he was under such a disabil-

ity in the third month before such month.

(2) So much of subsections (b)(3), (c)(4), (d)(5), (g)(3), and (h)(4) of this section as precedes the semicolon, shall not apply in the case of any child unless such child, at the time of the marriage referred to therein, was under a disability (as defined in section 423(d) of this title) or had been under such a disability in the third month before the month in which such marriage oc-
curred.

(3) The last sentence of subsection (c) of section 403 of this title, subsection (f)(1)(C) of section 403 of this title, and subsections (b)(3)(B), (c)(6)(B), (f)(3)(B), and (g)(6)(B) of section 416 of this title shall not apply in the case of any child with respect to any month referred to therein unless in such month or the third month prior thereto such child was under a disability (as defined in section 423(d) of this title).

(t) Suspension of benefits of aliens who are out-

side United States; residency requirements for dependents and survivors

(1) Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title to any individual who is not a citizen or national of the United States for any month which is—

(A) after the sixth consecutive calendar month during all of which the Commissioner of Social Security finds, on the basis of inform-

ation furnished to the Commissioner by the Attorney General or information which other-

wise comes to the Commissioner’s attention, that such individual is outside the United States, and

(B) prior to the first month thereafter for all of which such individual has been in the United States.

For purposes of the preceding sentence, after an individual has been outside the United States for any period of thirty consecutive days he shall be treated as remaining outside the United States until he has been in the United States for a period of thirty consecutive days.

(2) Subject to paragraph (11), paragraph (1) of this subsection shall not apply to any individual who is a citizen of a foreign country which the Commissioner of Social Security finds has in effect a social insurance or pension system which is of general application in such country and under which—

(A) periodic benefits, or the actuarial equiv-

alent thereof, are paid on account of old age, retirement, or death, and

(B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

(3) Paragraph (1) of this subsection shall not apply in any case where its application would be contrary to any treaty obligation of the United States in effect on August 1, 1956.

(4) Subject to paragraph (11), paragraph (1) of this subsection shall not apply to any benefit for any month if—

(A) not less than forty of the quarters elaps-

ing before such month are quarters of coverage for the individual on whose wages and self-employment income such benefit is based,
or

(B) the individual on whose wages and self-

employment income such benefit is based has, before such month, resided in the United States for a period or periods aggregating ten years or more, or

(C) the individual entitled to such benefit is outside the United States while in the active military or naval service of the United States, or

(D) the individual on whose wages and self-

employment income such benefit is based died, before such month, either (i) while on active duty or inactive duty training (as those terms are defined in section 410(l)(2) and (3) of this title) as a member of a uniformed service (as defined in section 410(m) of this title), or (ii) as the result of a disease or injury which the Secretary of Veterans Affairs determines was incurred or aggravated in line of duty while on active duty (as defined in section 410(l)(2) of this title), or an injury which he determines was incurred or aggravated in line of duty while on inactive duty training (as defined in section 410(l)(3) of this title), as a member of a uniformed service (as defined in section 410(m) of this title), if the Secretary of Veterans Af-
fairs determines that such individual was discharged or released from the period of such active duty or inactive duty training under conditions other than dishonorable, and if the Secretary of Veterans Affairs certifies to the Commissioner of Social Security his determinations with respect to such individual under this clause, or

(E) the individual on whose employment such benefit is based had been in service covered by the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 228a et seq., 231 et seq.] which was treated as employment covered by this chapter pursuant to the provisions of section 5(k)(1) of the Railroad Retirement Act of 1937 [45 U.S.C. 228ec(k)(1)] or section 18(2) of the Railroad Retirement Act of 1974 [45 U.S.C. 231q(2)];

except that subparagraphs (A) and (B) of this paragraph shall not apply in the case of any individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies subparagraph (A) but not subparagraph (B) of paragraph (2), or who is a citizen of a foreign country that has no social insurance or pension system of general application if at any time within five years prior to the month in which the Social Security Amendments of 1967 are enacted (or the first month thereafter for which his benefits are subject to suspension under paragraph (1)) payments to individuals residing in such country were withheld by the Treasury Department under sections 3329(a) and 3330(a) of title 31.

(5) No person who is, or upon application would be, entitled to a monthly benefit under this section for December 1956 shall be deprived, by reason of paragraph (1) of this subsection, of such benefit or any other benefit based on the wages and self-employment income such entitlement is based, for a total period of not less than 5 years. For purposes of this subparagraph, a period of time for which an individual bears a spousal relationship to another person consists of a period throughout which the individual has been, with respect to such other person, a wife, a husband, a widower, a divorced wife, a divorced husband, a surviving divorced wife, a surviving divorced husband, a surviving divorced mother, a surviving divorced father, or (as applicable in the course of such period) any two or more of the foregoing.

(6) If an individual is outside the United States when he dies and no benefit may, by reason of paragraph (1) or (10) of this subsection, be paid to him for the month preceding the month in which he dies, no lump-sum death payment may be made on the basis of such individual's wages and self-employment income.

(7) Subsections (b), (c), and (d) of section 403 of this title shall not apply with respect to any individual for any month for which no monthly benefit may be paid to him by reason of paragraph (1) of this subsection.

(8) The Attorney General shall certify to the Commissioner of Social Security such information regarding aliens who depart from the United States to any foreign country (other than a foreign country which is territorially contiguous to the continental United States) as may be necessary to enable the Commissioner of Social Security to carry out the purposes of this subsection and shall otherwise aid, assist, and cooperate with the Commissioner of Social Security in obtaining such other information as may be necessary to enable the Commissioner of Social Security to carry out the purposes of this subsection.

(9) No payments shall be made under part A of subchapter XVIII of this chapter with respect to items or services furnished to an individual in any month for which the prohibition in paragraph (1) against payment of benefits to him is applicable (or would be if he were entitled to any such benefits).

(10) Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title, for any month beginning after June 30, 1968, to an individual who is not a citizen or national of the United States and who resides during such month in a foreign country if payments for such month to individuals residing in such country are withheld by the Treasury Department under sections 3329(a) and 3330(a) of title 31.

(11) (A) Paragraph (2) and subparagraphs (A), (B), (C), and (E) of paragraph (4) shall apply with respect to an individual's monthly benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of this section only if such individual meets the residency requirements of this paragraph with respect to those benefits.

(B) An individual entitled to benefits under subsection (b), (c), (e), (f), or (g) of this section meets the residency requirements of this paragraph with respect to those benefits only if such individual has resided in the United States, and while so residing bore a spousal relationship to the person on whose wages and self-employment income such entitlement is based, for a total period of not less than 5 years. For purposes of this subparagraph, a period of time for which an individual bears a spousal relationship to another person consists of a period throughout which the individual has been, with respect to such other person, a wife, a husband, a widower, a divorced wife, a divorced husband, a surviving divorced wife, a surviving divorced husband, a surviving divorced mother, a surviving divorced father, or (as applicable in the course of such period) any two or more of the foregoing.

(C) An individual entitled to benefits under subsection (d) of this section meets the residency requirements of this paragraph with respect to those benefits only if—

(i) such individual has resided in the United States (as the child of the person on whose wages and self-employment income such entitlement is based) for a total period of not less than 5 years, or

(ii) the person on whose wages and self-employment income such entitlement is based, and the individual's other parent (within the meaning of subsection (h)(3) of this section), if any, have each resided in the United States for a total period of not less than 5 years (or died while residing in the United States), and

(iii) in the case of an individual entitled to such benefits as an adopted child, such individual was adopted within the United States by the person on whose wages and self-employment income such entitlement is based, and has lived in the United States with such person and received at least one-half of his or her support from such person for a period (beginning before such individual attained age 18) consisting of—

(I) the year immediately before the month in which such person became eligible for old-age insurance benefits or disability insur-
ance benefits or died, whichever occurred first, or

(II) if such person had a period of disability which continued until he or she became entitled to old-age insurance benefits or disability insurance benefits or died, the year immediately before the month in which such period of disability began.

(D) An individual entitled to benefits under subsection (h) of this section meets the residency requirements of this paragraph with respect to those benefits only if such individual has resided in the United States, and while so residing was a parent (within the meaning of subsection (h)(3) of this section) of the person on whose wages and self-employment income such entitlement is based, for a total period of not less than 5 years.

(E) This paragraph shall not apply with respect to any individual who is a citizen or resident of a foreign country with which the United States has an agreement in force concluded pursuant to section 433 of this title, except to the extent provided by such agreement.

(u) Conviction of subversive activities, etc.

(1) If any individual is convicted of any offense (committed after August 1, 1956) under—

(A) chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), or chapter 115 (relating to treason, sedition, and subversive activities) of title 18, or

(B) section 783 of title 50,

then the court may, in addition to all other penalties provided by law, impose a penalty that in determining whether any monthly insurance benefit under this section or section 423 of this title is payable to such individual for any such month, there shall not be taken into account—

(C) any wages paid to such individual or to any other individual in the calendar year in which such conviction occurs or in any prior calendar year, and

(D) any net earnings from self-employment derived by such individual or by any other individual during a taxable year in which such conviction occurs or during any prior taxable year.

(2) As soon as practicable after an additional penalty has, pursuant to paragraph (1) of this subsection, been imposed with respect to any individual, the Attorney General shall notify the Commissioner of Social Security of such imposition.

(3) If any individual with respect to whom an additional penalty has been imposed pursuant to paragraph (1) of this subsection is granted a pardon of the offense by the President of the United States, such additional penalty shall not apply for any month beginning after the date on which such pardon is granted.

(v) Waiver of benefits

(1) Notwithstanding any other provisions of this subchapter, and subject to paragraph (3), in the case of any individual who files a waiver pursuant to section 1402(g) of the Internal Revenue Code of 1986 and is granted a tax exemption thereunder, no benefits or other payments shall be payable under this subchapter to him, no payments shall be made on his behalf under part A of subchapter XVIII of this chapter, and no benefits or other payments under this subchapter shall be payable on the basis of his wages and self-employment income to any other person, after the filing of such waiver.

(2) Notwithstanding any other provision of this subchapter, and subject to paragraph (3), in the case of any individual who files a waiver pursuant to section 3127 of the Internal Revenue Code of 1986 and is granted a tax exemption thereunder, no benefits or other payments under this subchapter shall be payable on the basis of his wages and self-employment income to any other person, after the filing of such waiver.

(3) If, after an exemption referred to in paragraph (1) or (2) is granted to an individual, such exemption ceases to be effective, the waiver referred to in such paragraph shall cease to be applicable in the case of benefits and other payments under this subchapter and part A of subchapter XVIII of this chapter to the extent based on—

(A) his wages for and after the calendar year following the calendar year in which occurs the failure to meet the requirements of section 1402(g) or 3127 of the Internal Revenue Code of 1986 on which the cessation of such exemption is based, and

(B) his self-employment income for and after the taxable year in which occurs such failure.

(w) Increase in old-age insurance benefit amounts on account of delayed retirement

(1) The amount of an old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 415(a)(3) of this title as in effect in December 1978 or section 415(a)(1)(C)(i) of this title as in effect thereafter) which is payable without regard to this subsection to an individual shall be increased by—

(A) the applicable percentage (as determined under paragraph (6)) of such amount, multiplied by

(B) the number (if any) of the increment months for such individual.

(2) For purposes of this subsection, the number of increment months for any individual shall be a number equal to the total number of the months—

(A) which have elapsed after the month before the month in which such individual attained retirement age (as defined in section 416(i) of this title) or (if later) December 1970 and prior to the month in which such individual attained age 70, and

(B) with respect to which—

(i) such individual was a fully insured individual (as defined in section 414(a) of this title),

(ii) such individual either was not entitled to an old-age insurance benefit or, if so enti-
tled, did not receive benefits pursuant to a request by such individual that benefits not be paid, and

(iii) such individual was not subject to a penalty imposed under section 1320a–8a of this title.

(3) For purposes of applying the provisions of paragraph (1), a determination shall be made under paragraph (2) for each year, beginning with 1972, of the total number of an individual's increment months through the year for which the determination is made and the total so determined shall be applicable to such individual's old-age insurance benefits beginning with benefits for January of the year following the year for which such determination is made; except that the total number applicable in the case of an individual who attains age 70 after 1972 shall be determined through the month before the month in which he attains such age and shall be applicable to his old-age insurance benefit beginning with the month in which he attains such age.

(4) This subsection shall be applied after reduction under section 403(a) of this title.

(5) If an individual's primary insurance amount is determined under paragraph (3) of section 415(a) of this title as in effect in December 1978, or section 415(a)(1)(C)(i) of this title as in effect thereafter, and, as a result of this subsection, he would be entitled to a higher old-age insurance benefit based upon his primary insurance benefit if his primary insurance amount were determined under section 415(a) of this title (whether before, in, or after December 1978) without regard to such paragraph, such individual's old-age insurance benefit based upon his primary insurance amount determined under such paragraph shall be increased by an amount equal to the difference between such benefit and the benefit to which he would be entitled if his primary insurance amount were determined under such section without regard to such paragraph.

(6) For purposes of paragraph (1)(A), the "applicable percentage" is—

(A) ½ of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in any calendar year before 1978;

(B) ¼ of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in any calendar year after 1978 and before 1987;

(C) in the case of an individual who first becomes eligible for an old-age insurance benefit in a calendar year after 1986 and before 2005, a percentage equal to the applicable percentage in effect under this paragraph for persons who first became eligible for an old-age insurance benefit in the preceding calendar year (as increased pursuant to this subparagraph), plus ½ of 1 percent if the calendar year in which that particular individual first becomes eligible for such benefit is not evenly divisible by 2; and

(D) ½ of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in a calendar year after 2004.

(x) Limitation on payments to prisoners, certain other inmates of publicly funded institutions, fugitives, probationers, and parolees

(1)(A) Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title to any individual for any month ending with or during or beginning with or during a period of more than 30 days throughout all of which such individual—

(i) is confined in a jail, prison, or other penal institution or correctional facility pursuant to his conviction of a criminal offense;

(ii) is confined by court order in an institution at public expense in connection with—

(I) a verdict or finding that the individual is guilty but insane, with respect to a criminal offense,

(II) a verdict or finding that the individual is not guilty of such an offense by reason of insanity,

(III) a finding that such individual is incompetent to stand trial under an allegation of such an offense, or

(IV) a similar verdict or finding with respect to such an offense based on similar factors (such as a mental disease, a mental defect, or mental incompetence);

(iii) immediately upon completion of confinement as described in clause (i) pursuant to conviction of a criminal offense an element of which is sexual activity, is confined by court order in an institution at public expense pursuant to a finding that the individual is a sexually dangerous person or a sexual predator or a similar finding;

(iv) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed, or

(v) is violating a condition of probation or parole imposed under Federal or State law.

(B)(i) For purposes of clause (i) of subparagraph (A), an individual shall not be considered confined in an institution comprising a jail, prison, or other penal institution or correctional facility during any month throughout which such individual is residing outside such institution at no expense (other than the cost of monitoring) to such institution or the penal system or to any agency to which the penal system has transferred jurisdiction over the individual.

(ii) For purposes of clauses (ii) and (iii) of subparagraph (A), an individual confined in an institution as described in such clause (ii) shall be treated as remaining so confined until—

(I) he or she is released from the care and supervision of such institution, and

(II) such institution ceases to meet the individual's basic living needs.

(iii) Notwithstanding subparagraph (A), the Commissioner shall, for good cause shown, pay the individual benefits that have been withheld
(I) the offense described in clause (iv) or underlying the imposition of the probation or parole described in clause (v) was nonviolent and not drug-related, and

(ii) in the case of an individual from whom benefits have been withheld or otherwise would be withheld pursuant to subparagraph (A)(v), the action that resulted in the violation of a condition of probation or parole was nonviolent and not drug-related.

(2) Benefits which would be payable to any individual (other than a confined individual to whom benefits are not payable by reason of paragraph (1)) under this subchapter on the basis of the wages and self-employment income of such a confined individual but for the provisions of paragraph (1), shall be payable as though such a confined individual were receiving such benefits under this section or section 423 of this title.

(3)(A) Notwithstanding the provisions of this subchapter; and

(I) the institution shall provide to the Commissioner, on a monthly basis and in a manner specified by the Commissioner, the names, Social Security account numbers, dates of birth, confinement commencement dates, and, to the extent available to the institution, such other identifying information concerning the individuals confined in the institution as the Commissioner may require for the purpose of carrying out paragraph (1) and other provisions of this subchapter; and

(II) the Commissioner shall pay to the institution, with respect to information described in subclause (I) concerning each individual who is confined therein as described in paragraph (1)(A), who receives a benefit under this subchapter for the month preceding the first month of such confinement, and whose benefit under this subchapter is determined by the Commissioner to be not payable by reason of confinement based on the information provided by the institution, $400 (subject to reduction under clause (ii)) if the institution furnishes the information to the Commissioner within 30 days after the date such individual's confinement in such institution begins, or $200 (subject to reduction under clause (ii)) if the institution furnishes the information after 30 days after such date but within 90 days after such date.

(ii) The dollar amounts specified in clause (I)(II) shall be reduced by 50 percent if the Commissioner is also required to make a payment to the institution with respect to the same individual under an agreement entered into under section 1382(e)(1)(I) of this title.

(iii) There are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as appropriate, such sums as may be necessary to enable the Commissioner to make payments to institutions required by clause (I)(II).

(iv) The Commissioner shall maintain, and shall provide on a reimbursable basis, information obtained pursuant to agreements entered into under this paragraph to any agency administering a Federal or federally-assisted cash, food, or medical assistance program for eligibility and other administrative purposes under such program.

(C) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law, any agency of the United States Government or of any State (or political subdivision thereof) shall make available to the Commissioner of Social Security, upon written request, the name and social security account number of any individual who is confined as described in paragraph (1) if the confinement is under the jurisdiction of such agency and the Commissioner of Social Security requires such information to carry out the provisions of this section.

(B)(i) The Commissioner shall enter into an agreement under this subparagraph with any interested State or local institution comprising a jail, prison, penal institution, or correctional facility, or comprising any other institution a purpose of which is to confine individuals as described in paragraph (1)(A)(ii). Under such agreement—

(I) the institution shall provide to the Commissioner, on a monthly basis and in a manner specified by the Commissioner, the names, Social Security account numbers, dates of birth, confinement commencement dates, and, to the extent available to the institution, such other identifying information concerning the individuals confined in the institution as the Commissioner may require for the purpose of carrying out paragraph (1) and other provisions of this subchapter; and

(ii) the location or apprehension of the beneficiary is within the officer's official duties.

(y) Limitation on payments to aliens

Notwithstanding any other provision of law, no monthly benefit under this subchapter shall be payable to any alien in the United States for any month during which such alien is not lawfully present in the United States as determined by the Attorney General.

Subsec. (h)(7) to (9), Pub. L. 108–203, § 418(b)(3)(B), redesignated pars. (8) and (9) as (7) and (8), respectively, and struck out former par. (7), which related to reduction of a widow’s insurance benefit for each month, in certain circumstances, by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the widow for such month which is based upon her earnings while in the service of the Federal Government or any State or political subdivision thereof.


Subsec. (i)(1)(F), Pub. L. 108–203, § 418(b)(4)(B)(i), in cl. (i), substituted “paragraph (5)” for “paragraph (6)” and, in cl. (ii), substituted “paragraph (4)” for “paragraph (5)”.

Subsec. (f)(2), Pub. L. 108–203, § 418(b)(4)(A)(i), redesignated par. (3) as (2) and struck out former par. (2), which related to reduction of a widower’s insurance benefit for each month, in certain circumstances, by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the widower for such month which is based upon his earnings while in the service of the Federal Government or any State or political subdivision thereof.

Subsec. (f)(2)(A), Pub. L. 108–203, § 418(b)(4)(A)(ii), substituted “subsection (k)(5)” of this section, paragraph (q) of this section, for “subsection (q) of this section, paragraph 2 of this subsection.”.

Subsec. (f)(3), (4), Pub. L. 108–203, § 418(b)(4)(A)(iii), redesignated pars. (4) and (5) as (3) and (4), respectively. Former par. (3) redesignated (2).


Subsec. (f)(6) to (9), Pub. L. 108–203, § 418(b)(4)(A)(v), redesignated pars. (7) to (9) as (6) to (8), respectively. Former par. (6) redesignated (5).

Subsec. (g)(2), Pub. L. 108–203, § 418(b)(5)(A), substituted “Such” for “Except as provided in paragraph (4) of this subsection, such”.

Subsec. (g)(4), Pub. L. 108–203, § 418(b)(5)(B), struck out par. (4), which related to reduction of a mother’s or father’s insurance benefit for each month, in certain circumstances, by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the individual for such month which is based upon the individual’s earnings while in the service of the Federal Government or any State or political subdivision thereof.


Subsec. (k)(3)(A), Pub. L. 108–203, § 418(b)(4)(B)(v), substituted “or (2)” for “or (2)”.

Subsec. (k)(3)(B), Pub. L. 108–203, § 418(b)(4)(B)(v), substituted “or (1)” for “or (1)(E)”. 


Pub. L. 108–203, § 412(a)(1), substituted “section 1227(a) of title 8 (other than under paragraph (1)(C) of such section) or under section 1182(a)(6)(A) of title 8” for “section 1227(a) of title 8 (other than under paragraph (1)(C) or (1)(E) thereof)” in introductory provisions.


Pub. L. 108–203, § 412(a)(2), substituted “section 1227(a) of title 8 (other than under paragraph (1)(C) of such sec-
tion) or under section 1128(a)(6)(A) of title 8, for "section 1227(a)" of title 8 (other than under paragraph (1)(C) or (1)(E) thereof)."

Subsec. (n)(3). Pub. L. 108–203, § 412(a)(4), (b)(1)(A), (B), substituted "removed" for "deported" and "removal" for "deportation" and made technical amendment to reference in original act which appears in text as reference to section 1227(a) of title 8.

Pub. L. 108–203, § 412(a)(3), substituted "paragraph (4)(D) of section 1227(a) of title 8 (relating to participation in Nazi persecutions or genocide) shall be considered to have been deported under such paragraph (4)(D)" for "paragraph (19) of section 1227(a) of title 8 (relating to persecution of others on account of race, religion, national origin, or political opinion, under the direction or in association with the Nazi government of Germany or its allies) shall be considered to have been deported under such paragraph (19)".

Subsec. (x). Pub. L. 108–203, § 320(a)(x), substituted "prisoners, certain other inmates of publicly funded institutions, fugitives, probationers, and parolees" for "prisoners and certain other inmates of publicly funded institutions" in heading.


1996—Subsec. (w)(2)(B)(i). Pub. L. 104–133, § 602(b)(1), substituted "criminal offense" for "an offense punishable by imprisonment for more than 1 year".

Subsec. (x)(1)(A). Pub. L. 106–170, § 402(b)(1)(A), substituted "ending with or during or beginning with or during a period of more than 90 days throughout all of which for "during which" in introductory provisions.  Pub. L. 106–170, § 402(b)(1)(A), struck out "or" at end.

Pub. L. 106–170, § 402(b)(1)(B), substituted a "criminal offense" for "an offense punishable by imprisonment for more than 1 year regardless of the actual sentence imposed".


Substituted "Commissioner of Social Security" for "Secretary" wherever appearing.


Subsec. (x)(1)(B)(ii). Pub. L. 106–170, § 402(d)(2), substituted "clauses (ii) and (iii)" for "clause (ii)".

Subsec. (x)(3). Pub. L. 106–170, § 402(d)(1), designated existing provisions as subpar. (A) and added subpar. (B).


Substituted "Commissioner of Social Security" for "Secretary" wherever appearing.


any such month would be subject to reduction pursuant to which such individual would otherwise be entitled.


\( \text{Subsec. } (x) \) Pub. L. 103–327–367, § 4(a)(1), inserted "and certain other inmates of publicly funded institutions" in heading.

\( \text{Subsec. } (x)(1) \) Pub. L. 103–327–87, § 4(a)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Notwithstanding any other provision of this subsection, no monthly benefit shall be paid under this section or under section 423 of this title to any individual for any month during which such individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense which constituted a felony under applicable law, unless such individual is actively and satisfactorily participating in a rehabilitation program which has been specifically approved for such individual by a court of law and, as determined by the Commissioner of Social Security, is expected to result in such individual being able to engage in substantial gainful activity upon release and within a reasonable time."

\( \text{Pub. L. 103–296, } \text{§ 107(a)(4)}, \text{ substituted "Commissioner of Social Security" for "Secretary".} \)

\( \text{Subsec. } (x)(3) \) Pub. L. 103–327–367, § 4(a)(3), substituted "Secretary of Veterans Affairs" for "Administrator of Veteran's Affairs" before "determines was". "Secretary of Veterans Affairs" for "If the Administrator before "determines that", and "Secretary of Veterans Affairs " and "Secretary of Veterans Affairs " for "If the Administrator before "certifies"."

\( \text{1990—Subsec. } (e)(5) \) Pub. L. 101–508, § 5103(c)(2)(A), designated existing provision as subpar. (A), redesignated former subpars. (A) and (B) as cl. (i) and (ii), respectively, in cl. (i) substituted "(I)" and "(II)" for "(i)" and "(ii)", respectively, and added subpar. (B).

\( \text{Subsec. } (e)(9) \) Pub. L. 101–508, § 5103(d)(1), added par. (5).

\( \text{Subsec. } (f)(6) \) Pub. L. 101–508, § 5103(c)(2)(B), designated existing provision as subpar. (A), redesignated former subpars. (A) and (B) as cl. (i) and (ii), respectively, in cl. (ii) substituted "(I)" and "(II)" for "(i)" and "(ii)", respectively, and added subpar. (B).


\( \text{Subsec. } (j)(4)(A) \) Pub. L. 101–508, § 5116(a)(1), substituted "the amount of the monthly benefit to which such individual would otherwise be entitled for any such month would be subject to reduction pursuant to subsection (q) of this section" for "the effect of entitlement to such benefit would be to reduce, pursuant to subsection (q) of this section, the amount of the monthly benefit to which such individual would otherwise be entitled for the month in which such application is filed".

\( \text{Subsec. } (j)(4)(B)(i) \) Pub. L. 101–508, § 5116(a)(2), redesignated cl. (i) as (ii) and struck out former cl. (i) which read as follows: "If the individual applying for retroactive benefits has excess earnings (as defined in section 403(f) of this title) in the year in which he or she files an application for such benefits which could, except for subparagraph (A), be charged to months in such year prior to the month of application, then subparagraph (A) shall not apply to so many of such months immediately preceding the month of application as are required to charge such excess earnings to the maximum extent possible."

\( \text{Former cl. } (ii) \) redesignated (i).

\( \text{Subsec. } (n)(1) \) Pub. L. 101–508, § 321(b)(1), substituted "under section 1251(a) of title 8 (other than under paragraph (1)(C) or (1)(E) thereof)" for "under paragraph (1), (2), (4), (5), (6), (7), (9), (11), (12), (14), (15), (17), (19), or (19) of section 1251(a) of title 8".

\( \text{Subsec. } (n)(2) \) Pub. L. 101–649, § 603(b)(5)(A), substituted "other than under paragraph (1)(C) or (1)(E) thereof" for "enumerated in paragraph (1) in this subsection".

\( \text{1969—Subsec. } (d)(8) \) Pub. L. 101–239, § 10031(b), struck out at end "In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from substantially all of the period which begins on the date of birth of such child.".

\( \text{Subsec. } (d)(8)(D) \) Pub. L. 101–239, § 10301(a), inserted "and" after comma at end of cl. (i), added cl. (ii), and struck out former cls. (i) and (iii) which related to children living with such individual in the United States and receiving at least one-half of his support from such individual and who had not attained the age of 18 before living with such individual.


\( \text{Subsec. } (q)(3) \) Pub. L. 101–239, § 10203(a), redesignated subpar. (H) as (E) and struck out former subpars. (E), (F), and (G) which related to reductions in benefits for individuals entitled to both old-age and widow's or widower's insurance, reductions in benefits for individuals age 62 or over who are entitled to both disability insurance and widow's or widower's insurance, and reductions in benefits for individuals under age 62 who are entitled to both disability insurance and widow's or widower's insurance.

\( \text{1968—Subsecs. } (b)(4)(A)(i)(II), (c)(2)(A)(i)(II) \) Pub. L. 100–647, § 8014(a), substituted "the Federal Employees' Retirement System Retirement provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1960" for "chapter 84 of title 5".

\( \text{Subsec. } (e)(1)(C) \) Pub. L. 100–647, § 8010(a)(1), (2), redesignated former cl. (i) as (iii) added cl. (i) and (ii), and struck out former cl. (i) which read as follows: "If the individual applying for retroactive benefits had excess earnings (as defined in section 403(f) of this title) in the year in which he or she files an application for such benefits which could, except for subparagraph (A), be charged to months in such year prior to the month of application, then subparagraph (A) shall not apply to so many of such months immediately preceding the month of application as are required to charge such excess earnings to the maximum extent possible."

\( \text{Former cl. } (ii) \) redesignated (i).

\( \text{Subsec. } (v)(3)(A) \) Pub. L. 100–647, § 5116(a)(2), redesignated cls. (ii) and (iii) for (ii) and (iii), respectively, and struck out cl. (iv) which read as follows: "If the individual applying for retroactive benefits has excess earnings (as defined in section 403(f) of this title) in the year in which he or she files an application for such benefits which could, except for subparagraph (A), be charged to months in such year prior to the month of application, then subparagraph (A) shall not apply to so many of such months immediately preceding the month of application as are required to charge such excess earnings to the maximum extent possible."

\( \text{Former subsection (g)(4)(ii)} \) Pub. L. 100–647, § 8014(a), substituted "the Federal Employees' Retirement System Retirement provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1960" for "chapter 84 of title 5".

\( \text{Subsec. } (e)(7)(A)(i)(II) \) Pub. L. 100–647, § 8014(a), substituted "the Federal Employees' Retirement System Retirement provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1960" for "chapter 84 of title 5".

\( \text{Subsec. } (e)(2)(B)(ii) \) Pub. L. 100–647, § 8010(a)(1), (2), redesignated former cl. (i) as (iii), added cl. (i) and (ii), and struck out former cl. (i) which read as follows: "If the individual applying for retroactive benefits had excess earnings (as defined in section 403(f) of this title) in the year in which he or she files an application for such benefits which could, except for subparagraph (A), be charged to months in such year prior to the month of application, then subparagraph (A) shall not apply to so many of such months immediately preceding the month of application as are required to charge such excess earnings to the maximum extent possible."

\( \text{Former cl. } (ii) \) redesignated (i).

\( \text{Subsec. } (v)(3)(A) \) Pub. L. 100–647, § 5116(a)(2), redesignated cls. (ii) and (iii) for (ii) and (iii), respectively, and struck out cl. (iv) which read as follows: "If the individual applying for retroactive benefits has excess earnings (as defined in section 403(f) of this title) in the year in which he or she files an application for such benefits which could, except for subparagraph (A), be charged to months in such year prior to the month of application, then subparagraph (A) shall not apply to so many of such months immediately preceding the month of application as are required to charge such excess earnings to the maximum extent possible."

\( \text{Former cl. } (ii) \) redesignated (i).
provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 for "chapter 84 of title 5".


Subsec. (f)(1)(C). Pub. L. 100–647, § 8010(b)(1), (2), redesignated former cl. (ii) as (ii), former cls. (i) and (ii), and struck out former cl. (i) which read as follows: "has filed application for widower’s insurance benefits or was entitled to husband’s insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which she died, and (I) has attained retirement age (as defined in section 416(l) of this title) or (II) is not entitled to benefits under subsection (a) of this section or section 423 of this title, or".

Subsec. (g)(2)(A)(i)(II). Pub. L. 100–647, § 8014(a), substituted "the Federal Employees’ Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980" for "chapter 84 of title 5".


Subsec. (g)(4)(A)(ii). Pub. L. 100–647, § 8014(a), substituted "the Federal Employees’ Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980" for "chapter 84 of title 5".

Subsec. (n)(1). Pub. L. 100–647, § 8004(a), inserted reference to par. (19) of section 1251(a) of title 8 in introductory provisions.

Subsec. (n)(2). Pub. L. 100–647, § 8004(b), added par. (3).

Subsec. (v). Pub. L. 100–647, § 8007(b), designated existing provisions as par. (1), inserted "and subject to paragraph (3)," after "Notwithstanding any other provisions of this subchapter,", struck out "; except that, if thereafter such individual’s tax exemption under section 162(g) ceases to be effective, such waiver shall cease to be applicable in the case of benefits and other payments under this subchapter and part A of subchapter XVIII of this chapter to the extent based on his self-employment income for and after the first taxable year for which such tax exemption ceases to be effective and on his wages for and after the calendar year (if any) which begins in or with the beginning of such taxable year" after "the filing of such waiver", and added pars. (2) and (3).

1967—Subsec. (b)(4). Pub. L. 90–203, § 307(j), substituted "or divorced wife" for "or divorced wife".

Subsec. (c)(2). Pub. L. 100–203, § 307(j), added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: "The amount of a widow’s insurance benefit for each month as determined after application of the provisions of subsections (k) and (q) of this section, paragraph (2)(D), and paragraph (3) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such widow for such month which is based upon her earnings while in the service of the Federal Government or any State (or any political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day she was employed by such entity, such service did not constitute ‘employment’ as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.""
$0.10.


Subsec. (d)(6). Pub. L. 98–21, § 301(a)(3)(A), redesignated par. (6) as (5) and added subpar. (B) as (D).

Subsec. (e)(1). Pub. L. 98–21, § 304, substituted “(as determined after application of subparagraphs (B) and (C) of paragraph (2))” after “primary insurance amount”.

Subsec. (e)(2). Pub. L. 98–21, § 301(a)(1), added subpar. (B) and redesignated former subpar. (B) as (D).


Subsec. (e)(4). Pub. L. 98–21, § 301(a)(3)(A), redesignated par. (5) as (4) and redesignated (3).


Subsec. (e)(8). Pub. L. 98–21, § 301(b)(2), substituted “such deceased individual” for “his deceased wife” in provisions following subpar. (F).

Subsec. (f)(1). Pub. L. 98–21, § 301(b)(1), inserted “and every surviving divorced husband (as defined in section 416(d) of this title)” before “of an individual”, and “or such surviving divorced husband” after “if such widower”, in provisions preceding subpar. (A).

Subsec. (f)(2)(A). Pub. L. 98–21, § 301(b)(2), substituted “such deceased individual” for “his deceased wife” in provisions following subpar. (F).

Subsec. (f)(3). Pub. L. 98–21, § 301(c)(1)(A), substituted reference to retirement age as defined in section 416(f) of this title for reference to age 65 in provisions following subpar. (F).


Pub. L. 98–21, § 301(c)(1)(A), substituted “by an amount equal to two-thirds of the amount of any monthly periodic benefit” for “by an amount equal to the amount of any periodic benefit, and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10”.

Pub. L. 98–21, § 301(b)(2), inserted “such deceased individual” for “his deceased wife” in provisions following subpar. (F).

Subsec. (f)(5). Pub. L. 98–21, § 301(c)(1)(A), substituted reference to retirement age as defined in section 416(f) of this title for reference to age 65 in provisions following subpar. (F).

Subsec. (f)(6). Pub. L. 98–21, § 301(c)(2)(A), inserted “as determined after application of subparagraphs (B) and (C) of paragraph (3)” after “primary insurance amount” in provisions following subpar. (F).


Pub. L. 98–21, § 306(g), substituted reference to retirement age as defined in section 416(l) of this title for reference to age 65.

Subsec. (f)(1)(C)(ii). Pub. L. 98–21, § 301(c)(1)(A), which directed the substitution of “retirement age (as defined in section 416(l) of this title)” for “age 65” in cl. (i) was executed to those provisions after the execution of section 306(g) of Pub. L. 98–21 as the probable intent of Congress.

Pub. L. 98–21, § 306(g), added cl. (ii).

Subsec. (f)(1)(D). Pub. L. 98–21, § 301(b)(2), substituted “such deceased individual” for “his deceased wife”.

Pub. L. 98–21, § 313(b)(2)(A), inserted “(as determined after application of subparagraphs (B) and (C) of paragraph (3))” after “primary insurance amount”.


Subsec. (f)(1)(A). Pub. L. 98–21, § 306(b), replaced “by an amount equal to two-thirds of the amount of any monthly periodic benefit”, and “by an amount equal to two-thirds of the amount of any periodic benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10” for “by an amount equal to two-thirds of the amount of any periodic benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10”.


Pub. L. 97–455, § 7(c), inserted “for purposes of this subparagraph” after “as defined in section 419 of this title”.

Subsec. (f)(3)(A). Pub. L. 98–21, § 133(b)(1)(B), amended subpar. (A) generally. Prior to the amendment subpar. (A) read as follows: “Except as provided in subsection (q) of this section, paragraph (2) of this subsection, and subparagraph (B) of this paragraph, such widower’s insurance benefit for each month shall be equal to the primary insurance amount (as determined after application of the following sentence) of his deceased wife. If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual’s primary insurance amount, if less than the old-age insurance benefit increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 416(g) of this title, shall be deemed not to have occurred, for provision that if a widower married after attaining age 50 (or after attaining age 50 if entitled before such marriage occurred to benefits based on disability under this subsection), or a disabled widower described in paragraph (1)(B)(ii) married after attaining age 50 (or if entitled before such marriage occurred to benefits based on disability under this subsection), such marriage would be deemed not to have occurred, for provision that if a widower married after attaining age 60, such marriage would be deemed not to have occurred for purposes of par. (1) of the amendment which had provided that if a widower, before attaining age 60, remarried an individual entitled to benefits under subsection (b), (e), (g), or (h) or an individual who had attained the age of eighteen and was entitled to benefits under subsection (d), such widower’s entitlement to benefits under this subsection would, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s), not be terminated by reason of such marriage, was struck out.


Subsec. (f)(5)(B), (C). Pub. L. 98–21, § 306(b), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (f)(6). Pub. L. 98–21, § 301(b)(4), inserted “or surviving divorced husband” after “widower”.

Pub. L. 98–21, § 131(b)(3)(A), (E), redesignated par. (7) as (6) and substituted reference to par. (5) for reference to par. (6). Former par. (6) redesignated (5).


Subsec. (g). Pub. L. 98–21, § 306(a)(7), inserted “or father’s” after “mother’s” wherever appearing.

Pub. L. 98–21, § 306(a)(8), struck out “after August 1960” after “beginning with the first month” in provisions following subpar. (F).

Pub. L. 98–21, § 306(a)(1), (2), (5), (6), substituted “surviving spouse” for “widow”, “surviving spouse’s” for “widow’s”, “he or she” for “she”, and “parent” for “mother”, wherever appearing.

Pub. L. 98–21, § 306(a)(3), substituted “a spouse’s insurance benefit” for “wife’s insurance benefit” and “such individual” for “he”.

Pub. L. 98–21, § 306(a)(4), substituted “his or her” for “her”.

Pub. L. 98–21, § 306(a)(7), struck out exception in provisions following subpar. (E), (F), (i). Pub. L. 98–21, § 306(a)(4), substituted “his or her” for “her”.

Subsec. (g)(3). Pub. L. 98–21, § 307(a)(1), struck out exception in provisions following subpar. (B) that in the case of such a marriage to an individual entitled to benefits under section 423(a) of this title or subsec. (d) the preceding provisions of this paragraph would not apply with respect to benefits for months after the month in which such individual was entitled to such benefits under section 423(a) of this title or subsec. (d) unless he ceased to be so entitled by reason of his death, or in the case of an individual entitled to benefits under section 423(a) of this title, he was entitled, for the month following such last month, to benefits under subsection (a).

Pub. L. 98–21, § 306(a)(1), (6), substituted “surviving spouse” for “widow” and “parent” for “mother” wherever appearing.

Subsec. (g)(3)(A). Pub. L. 98–21, § 306(a)(9)(B), inserted reference to this subsection and subsec. (b) and (e).

Pub. L. 98–21, § 301(b)(6), inserted reference to subsec. (c).

Pub. L. 98–21, § 337(a), substituted “by an amount equal to two-thirds of the amount of any monthly periodic benefit” for “by an amount equal to the amount of any monthly periodic benefit”, and
inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the nearest higher multiple of $0.10.

Pub. L. 97–455, §7(c), inserted “for purposes of this subchapter” after “as defined in section 410 of this title.”

Subsec. (h)(4). Pub. L. 98–21, §307(a), struck out exception in provisions following subpar. (B) that in the case of such a marriage to a male individual entitled to benefits under subsec. (d), the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under subsec. (d) unless he ceased to be so entitled by reason of his death.


Subsec. (i)(1)(B)(iii) to (v). Pub. L. 98–21, §334(a), added cl. (iii) and redesignated former cls. (iii) and (iv) as (iv) and (v), respectively.

Subsec. (k)(2)(B), (3)(B). Pub. L. 98–21, §131(b)(3)(F), (G), substituted references to subsecs. (e)(3) and (f)(4) for references to subsecs. (e)(4) and (f)(5), respectively, wherever appearing.

Subsec. (m). Pub. L. 98–21, §111(a)(7), 134(b), in par. (1) substituted “November” for “May” and in par. (2)(B) substituted “subsection (q)(6)(B)” for “subsection (q)(6)(A)(i)”, as subsec. (m) (notwithstanding its repeal by Pub. L. 97–35 continuing to apply in certain cases) by reason of section 2(j)(2)–(4) of Pub. L. 97–123, set out as an Effective Date of 1981 Amendment note under section 416 of this title. As thus amended subsec. (m) would read as follows:

“(1) In any case in which an individual is entitled to a monthly benefit under this section on the basis of a primary insurance amount computed under section 415(a) or (d) of this title, as in effect after December 1978, on the basis of the wages and self-employment income of a deceased individual for any month and no other person is (without the application of subsection (j)(1) of this section) entitled to a monthly benefit under this section for that month on the basis of such wages and self-employment income, the individual’s benefit amount for that month, prior to reduction under subsection (k)(3) of this section, shall not be less than that provided by subparagraph (C)(1)(I) of section 415(a)(1) of this title and increased under section 415(i) of this title for months after November of the year in which the insured individual died as though such benefit were a primary insurance amount.

“(2) In the case of any such individual who is entitled to a monthly benefit under subsection (e) or (f) of this section, such individual’s benefit amount, after reduction under subsection (q)(1) of this section, shall be not less than—

“(A) $84.50, if his first month of entitlement to such benefit is the month in which such individual attained age 62 or a subsequent month, or

“(B) $84.50 reduced under subsection (q)(1) of this section as if retirement age as specified in subsection (q) of this section were age 62 instead of the age specified in subsection (q)(9) of this section, if his first month of entitlement to such benefit is before the month in which he attained age 62.

“(3) In the case of any individual whose benefit amount was computed (or recomputed) under the provisions of paragraph (2) and such individual was entitled to benefits under subsection (e) or (f) of this section for a month prior to any month after 1972 for which a general benefit increase under this subchapter (as defined in section 415(j)(3) of this title) or a benefit increase under section 415(b) of this title becomes effective, the benefit amount of such individual as computed under paragraph (2) without regard to the reduction specified in subparagraph (B) thereof shall be increased by the percentage increase applicable for such benefit increase, prior to the application of subsection (q)(1) of this section pursuant to paragraph (2)(B) and subsection (q)(4) of this section.

“(A) Pub. L. 98–21, §301(b)(2), substituted “subject to paragraph (9), if” for “If” at beginning of par. (1).
before the month in which such individual attained age 60.

Subsec. (q)(6)(A)(1). Pub. L. 98–21, § 309(d)(1), struck out "or husband's" after "old-age".

Subsec. (q)(6)(A)(ii). Pub. L. 98–21, § 309(d)(1), inserted "or husband's" after "wife's".

Subsec. (q)(7). Pub. L. 98–21, § 313(a)(3), amended provisions of subsection (A) generally, substituting reference to par. (6) for reference to par. (6)(A), and striking out provision that the additional adjusted reduction period for an individual's, widow's, or widower's insured benefit was the additional reduction period prescribed by par. (6)(B) for such benefit, with the same exclusions as from the adjusted reduction period.

Subsec. (q)(7)(B). Pub. L. 98–21, § 309(d)(2)(A), inserted "or husband's" after "wife's", substituted "such individual" for "she", and inserted "his or" before "her".

Subsec. (q)(7)(D). Pub. L. 98–21, § 309(d)(2)(B), inserted "or widower's" after "widow's".

Subsec. (q)(9). Pub. L. 98–21, § 201(b)(1), amended par. (9) generally, substituting provisions defining the amount of reduction for early retirement specified in par. (1) for provision that, for purposes of this subsection, the term "retirement age" meant age 65.

Subsec. (q)(10). Pub. L. 98–21, § 313(a)(4)(A), in that part of second sentence preceding cl. (A) struck out "or an additional adjusted reduction period" after "the use of an adjusted reduction period".

Subsec. (q)(10)(B)(i). Pub. L. 98–21, § 313(a)(4)(B), struck out ", plus the number of months in the adjusted additional reduction period multiplied by 1⁄40 of 1 percent" before "to (ii)".

Subsec. (q)(10)(B)(ii). Pub. L. 98–21, § 313(a)(4)(B), struck out ", plus the number of months in the adjusted additional reduction period multiplied by 1⁄40 of 1 percent," after "1 percent".

Subsec. (q)(10)(C). Pub. L. 98–21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(i) of this title for reference to age 65.

Subsec. (q)(10)(C)(i). Pub. L. 98–21, § 313(a)(4)(B), struck out ", plus the number of months in the adjusted additional reduction period multiplied by 1⁄40 of 1 percent" before "to (ii)".

Subsec. (q)(10)(C)(ii). Pub. L. 98–21, § 313(a)(4)(C), struck out ", plus the number of months in the adjusted additional reduction period multiplied by 1⁄40 of 1 percent," after "1 percent".

Subsec. (r)(1)(1), (2). Pub. L. 98–21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(i) of this title for reference to age 65.


Pub. L. 98–21, § 131(c)(1), substituted "So much of subsections (b)(3), (d)(5), (g)(3), and (h)(4)" for "Subsection (f)(4), and so much of subsections (b)(3), (d)(5), (e)(3), (g)(3), and (h)(4)".

Subsec. (s)(3). Pub. L. 98–21, § 309(e)(3), substituted "The last sentence" for "So much of subsections (b)(3), (d)(5), (g)(3), and (h)(4) of this section as follows the semicolon, the last sentence".

Pub. L. 98–21, § 131(c)(2), struck out ", (e)(3)," after "(d)(5)".

Subsec. (t)(1)(2). Pub. L. 98–21, § 340(b)(1), substituted "Subject to paragraph (11), paragraph (1)" for "Paragraph (1)".


Subsec. (w)(1)(A). Pub. L. 98–21, § 314(a), substituted a definition of the multiplicand as the applicable percentage (as determined under paragraph (6)) of such amount for a definition of the multiplicand as 1⁄40 of 1 percent of such amount, or, in the case of an individual who first becomes eligible for an old-age insurance benefit after December 1978, one-quarter of 1 percent of such amount.


Pub. L. 98–21, § 114(c)(1), substituted "age 70" for "age 72".

Subsec. (w)(3). Pub. L. 98–21, § 114(c)(1), substituted "age 70" for "age 72".


1981—Subsec. (a). Pub. L. 97–35, § 220(a)(1), substituted in provision following par. (3) provision specifying the beginning month of entitlement in the case of an individual who has attained age 65 and in the case of an individual who has attained the age of 62, but not the age of 65, for provision specifying the beginning month of entitlement as the first month after August 1950 in which the individual becomes entitled.

Subsec. (b)(1). Pub. L. 97–35, § 220(b)(1), substituted in provision following subpar. (D) provision specifying the beginning month of entitlement in the case of a woman or divorced wife who has not attained the age of 65 or of an individual entitled to disability insurance benefits for provision specifying the beginning month of entitlement of such child becomes entitled to benefits.

Subsec. (d)(1). Pub. L. 97–35, §§ 220(d)(1), 222(a)(1), (5)(A), substituted in subpar. (B)(i), (E)(ii), (F)(i), and (G)(III) "full-time elementary or secondary school student" for "full-time student" in subpar. (B)(i), (F)(i), and (G)(IV) "19" for "22", and in provision following subpar. (C) provision specifying the beginning month of entitlement of a child in an individual who has died and of a child of an individual entitled to an old-age insurance benefit or a disability insurance benefit for provision specifying the beginning month of entitlement as the first month after August 1950 in which such child becomes entitled to benefits.

Subsec. (d)(6)(A). Pub. L. 97–35, § 222(a)(5)(B), substituted "full-time elementary or secondary school student and has not attained the age of 19, or (ii) is under a disability (as defined in section 422(d) of this title) and has not attained the age of 22" for "full-time student or is under a disability (as defined in section 422(d) of this title), and (ii) had not attained the age of 22".

Subsec. (d)(7)(A). Pub. L. 97–35, § 222(a)(1), (2), substituted "full-time elementary or secondary school student" for "full-time student" and in cl. (ii) "19" for "22".

Subsec. (d)(7)(A). Pub. L. 97–35, §§ 222(d)(2), 222(a)(1), (2), substituted "full-time elementary or secondary school student for "full-time student" wherever appearing, "elementary or secondary school" for "educational institution" wherever appearing, and "schools involved" for "institutions involved" and inserted provision that an individual who is determined to be a full-time elementary or secondary school student be deemed to be such a student throughout the month with respect to which such determination is made.

Subsec. (d)(7)(A). Pub. L. 97–35, § 222(a)(3), substituted provision defining "elementary or secondary school" and provision that for the purpose of determining whether a child is a "full-time elementary or secondary school student" or "intends to continue to be in full-time attendance at an elementary or secondary school" there be disregarded any education provided, or to be provided, beyond grade 12 for provision defining the term "educational institution".

or secondary school student" for "full-time student", "diploma or equivalent certificate from a secondary school (as defined in subparagraph (C)(1))" for "degree from a four-year college or university", and "elementary or secondary school" for "educational institution".

Subsec. (b). Pub. L. 97–35, § 2201(b)(2), substituted in par. (1) provision that a qualifying widow or widower be paid for provision that unpaid burial expenses to a funeral home be paid and in par. (2) provision for payment in the event that no one qualifies or if the person entitled dies before receiving payment for provision for payment if all burial expenses incurred by or through a funeral home were paid, and struck out subs. (3) and (4), which provided for payment if the body of the insured is not available for burial but expenses were incurred for a memorial marker, service, etc., and for distribution of available for burial but expenses were incurred for a memorial marker, service, etc., and for distribution of

Subsec. (a) of the preceding sentence)" after "No payment".

Subsec. (a). Pub. L. 97–35, § 2202(a)(4), substituted provisions relating to reduction of the amount of the husband’s insurance benefit for each month as determined after application of the provisions of subsecs. (q) and (k) of this section for provisions relating to applicability of provisions of former subsec. (c)(1)(C) of this section, as subject to subsec. (a) of this section.

Subsec. (c)(3). Pub. L. 95–216, § 2204(b)(3), inserted reference to par. (2) of this subsection.

Subsec. (e)(2)(A). Pub. L. 95–216, §§ 2204(a), 334(c)(1), 336(a)(1), inserted "(as determined after application of the following sentence)" after "primary insurance amount" provisions relating to entitlement of the deceased to an old-age insurance benefit which was increased or was to be increased on account of delayed retirement, and reference to par. (b) of this subsection, and struck out reference to par. (4) of this subsection.

Subsec. (e)(2)(B)(i). Pub. L. 95–216, § 2204(b), substituted "living and" section 415(f)(5) or (6) of this title were applied, where applicable, and "for "living, and". See 1980 Amendment note above.

Subsec. (e)(3). Pub. L. 95–216, § 2203(a)(2), substituted "If a widow, before attaining age 60, or a surviving divorced wife," for "In the case of a widow or surviving divorced wife who"

Subsec. (e)(4). Pub. L. 95–216, § 2203(a)(3), struck out reference to an individual (other than one described in subj. (e)(3)(A) or (B) of this section) as the husband, and provisions relating to benefits during the marriage.

Subsec. (e)(5). Pub. L. 95–216, § 2203(c), added par. (8).

Subsec. (f)(1). Pub. L. 95–216, § 2203(d)(1), struck out subpar. (D) which related to receipt of support by the widower in accordance with regulations promulgated by the Secretary, and redesignated former subs. (E) to (G) as (D) to (F), respectively.

Subsec. (f)(2). Pub. L. 95–216, § 2203(d)(2), substituted provisions relating to reduction of the amount of the widower’s insurance benefit for each month as determined after application of the provisions of subsecs. (k) and (q) of this section and par. (3)(B) and (5) of this subsection for provisions relating to applicability of former subj. (f)(1)(D) of this section, as subject to subj. (e) of this section.

Subsec. (g)(3)(A). Pub. L. 95–216, §§ 2204(c), 334(d)(3), 336(b)(1), inserted "(as determined after application of the following sentence)" after "primary insurance amount", inserted provisions relating to entitlement of the deceased to an old-age insurance benefit which was increased or was to be increased on account of delayed retirement, and substituted reference to par. (2) of this subsection for reference to par. (5) of this subsection.


Subsec. (f)(4). Pub. L. 95–216, § 2203(b)(2), substituted "If a widower, before attaining age 60," for "In the case of a widower who"

Subsec. (f)(5). Pub. L. 95–216, § 2203(b)(3), struck out reference to an individual (other than one described in subj. (f)(4)(A) or (B) of this section) as the wife, and provisions relating to benefits during the marriage.


Subsec. (g)(2). Pub. L. 95–216, § 2203(e)(1), substituted "Except as provided in paragraph (4) of this subsection, such" for "Such".


Subsec. (j)(1). Pub. L. 95–216, § 2203(f)(1), substituted "Subject to the limitations contained in paragraph (4), am" for "An"


Subsec. (m)(1). Pub. L. 95–216, § 2205(a), substituted provisions relating to entitlement to monthly benefits under this section on the basis of primary insurance
...amounts computed under section 415(a) or (d) of this title as in effect before Dec., 1978, for provisions relating to entitlement to monthly benefits under this section on the basis of wages and self-employment income of deceased individuals for any month.

Subsec. (p)(1). Pub. L. 95–216, §334(d)(5), struck out references to subsecs. (c)(1)(C) and (f)(1)(D)(i) or (II) of this section.

Subsec. (q)(3)(H). Pub. L. 95–216, §331(c)(2), inserted “for that month or” after “first entitled”.

Subsec. (q)(4). Pub. L. 95–216, §331(a), substituted provisions setting forth factors for the computation of the amount of the reduction of the benefit for each month beginning with the month of the increase in the primary insurance amount, after application of any adjustment under par. (7) of this subsec., for provisions setting forth factors for the computation of the amount of the reduction of the benefit for each month.

Subsec. (q)(7)(C). Pub. L. 95–216, §331(c)(1), substituted “of the occurrence of an event that terminated her or his entitlement to such benefits” for “the spouse on whose wages and self-employment income such benefits were based ceased to be under a disability”.

Subsec. (q)(10), (11). Pub. L. 95–216, §331(b), added pars. (10) and (11).

Subsec. (s)(3). Pub. L. 95–216, §334(d)(6), substituted “So” for “Subsections (c)(2)(B) and (f)(2)(B) of this section, so”.


Subsec. (w)(1). Pub. L. 95–216, §203(1), 205(b)(1), substituted “The amount of an old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 415(a)(3) of this title) which is payable without regard to this subsection to an individual” for “If the first month for which an old-age insurance benefit becomes payable to an individual is not earlier than the month in which such individual attains age 65 (or his benefit payable at such age is not reduced under subsection (q) of this section), the amount of the old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 415(a)(3) of this title) which is payable without regard to this subsection to such individual”.


Subsec. (w)(5). Pub. L. 95–216, §203(b)(2), (3), inserted “as in effect in December 1978 or section 415(a)(1)(C)(i)(II) of this title as in effect thereafter” after “(3) of section 415(a) of this title” and “whether, before, in, or after December 1978” after “under section 415(a) of this title”.

1974—Subsec. (i). Pub. L. 93–445 substituted “annuity under section 2 of the Railroad Retirement Act of 1974, or to a lump-sum payment under section 6(b) of such Act: (1) the death of an employee (as defined in such Act) for “annuity under section 5 of the Railroad Retirement Act of 1937 or to a lump-sum payment under subsection (f)(1) of such section with respect to the death of an employee (as defined in such Act)”.


Subsec. (f)(8). Pub. L. 93–233, §1(g), added part (8).


1972—Subsec. (a). Pub. L. 92–603, §103(b), inserted reference to subsection (w) of this section.

Subsec. (b)(1). Pub. L. 92–603, §114(a), struck out subpar. (D) which covered support aspects involved with a surviving divorced wife and redesignated subpar. (E) through (G) as subpars. (B) through (F), respectively.

Subsec. (d)(1). Pub. L. 92–603, §§103(a)(1), 107(a)(1), (2), substituted “age 60” for “age 62” in subpar. (E) and provisions following subpar. (F), inserted “and (I) has attained age 65 or (II) is not entitled to benefits under subsection (a) of this section or section 423 of this title,” at end of subpar. (C)(I), and substituted “age 65” for “age 62” in subpar. (C)(II) and in provisions following subpar. (F).

Subsec. (e)(2). Pub. L. 92–603, §102(a)(2), designated existing provisions as subpar. (A), added subpar. (B), in subpar. (A) as so designated inserted reference to subpar. (B) of this par., and substituted “the primary insurance amount” for “82 1⁄2 percent of the primary insurance amount”.


Subsec. (f)(1). Pub. L. 92–603, §§102(b)(1), 107(a)(1), (2), substituted “age 60” for “age 62” in subpar. (B), substituted “the primary insurance amount” for “82 1⁄2 percent of the primary insurance amount” in subpar. (E) and provisions following subpar. (G), inserted “and (I) has attained age 65 or (II) is not entitled to benefits under subsection (a) of this section or section 423 of this title,” at end of subpar. (C), and substituted “age 65” for “age 62” and inserted “, if he became entitled to such benefits before he attained age 66,” before the “third month” in provisions following subpar. (G).

Subsec. (f)(3). Pub. L. 92–603, §102(b)(2), designated existing provisions as subpar. (A), added subpar. (B), in subpar. (A) as so designated inserted reference to subpar. (B) of this par., and substituted “the primary insurance amount” for “82 1⁄2 percent of the primary insurance amount”.

Subsec. (f)(5). Pub. L. 92–603, §107(a)(3), substituted “the age of 60” for “the age of 62”.


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primary insurance amount.

employment of the insured individual with greatest

benefits in the case where the child is entitled on more

than one wage record shall be based on wages and self-

employment of the insured individual with greatest

primary insurance amount.

Subsec. (k)(3)(A). Pub. L. 92–603, § 102(d), inserted ref-

erence to subsection (c)(2) or (f)(3) of this section.


(m) generally to increase the minimums on survivor's

benefits.

Subsec. (q)(1). Pub. L. 92–603, § 102(e)(1), generally pro-

vided for an increase in widow's and widower's insur-

ance benefits through the insertion of provisions cover-

ing such benefits in subpar. (A), and in provisions pre-

ceding subpar. (C), and through the substitution of a

\[ \frac{43}{198} \] 

fraction in subpar. (C) for a \[ \frac{43}{198} \] 

fraction.

Subsec. (q)(3). Pub. L. 92–603, § 102(e)(2), (3), redesign-

ated existing provisions of subpars. (E)(i) and (F)(i) as subcls.

(1) and (2) and in subcls. (1) of each such sub-

par. as so redesignated substituted “would be reduced

under paragraph (1) if the period specified in paragraph

(par. as so redesignated substituted “would be reduced

as subcls. (I) and (II) and in subcls. (I) of each such sub-

nated existing provisions of subpars. (E)(ii) and (F)(ii)

(i) covering the support aspects of a surviving divorced

stepmother'' after ''stepfather'' in two places.

Subsec. (q)(9). Pub. L. 92–603, § 102(e)(3), divided exist-

ting source references for “adjusted reduction period

and “additional adjusted reduction period” into sepa-

rate references to subpars. (A) and (B) of par. (6) in the

provisions preceding subpar. (A) and, in subpar. (E),

substituted “attained age 62, and also for any later

month before the month in which he attained retire-

ment age,” for “attained retirement age.”


provisions which had set age 62 as the meaning of “re-

tirement age” with respect to a widow’s and widower’s

insurance benefits.

Subsec. (a). Pub. L. 92–603, § 108(e), struck out “which

began before he attained such age” after “disability (as

defined in section 423(d) of this title)” in par. (1) and

struck out “which began before such child attained

the age of 18” after “disability (as defined in section 423(d)

of this title)” in pars. (2) and (3).


Subsec. (i)(4). Pub. L. 92–223, § 1(a), (b), redesignated

former cl. (3) as (4) and included reference to cl. (3) in

the second sentence.

1969—Subsec. (b)(2). Pub. L. 91–172, § 1004(c), removed

$105 ceiling on insurance benefits of wives.

Subsec. (c)(4). Pub. L. 91–172, § 1004(d), removed $105

ceiling on insurance benefits of husbands.

Subsec. (e)(4). Pub. L. 90–248, § 158(c), substituted “$105

for ‘‘section 423(d)’’ for ‘‘section 423(c)’’.

Subsec. (d)(3). Pub. L. 90–248, § 151(a), inserted in first

sentence “or his mother or adopting mother,” after

“adopting father,” and struck out in second sentence.

“if such individual is the child’s father,” after “title

shall”.

Subsec. (d)(4). Pub. L. 90–248, § 151(b), inserted, “or

stepmother” after “stepfather” in two places.

Subsec. (d)(5) to (8). Pub. L. 90–248, § 151(c), struck out

former par. (5) which provided that “(i) a child is deemed

dependent on his mother or adopting mother if she is

currently insured, and (2) a child is deemed dependent

on a mother who is not currently insured only if she is

contributing one-half of the child’s support or, if the

child is not living with his father nor being supported

by him, only if she is then living with or supporting the

child, and redesignated former pars. (6) to (9) as (5) to

(8), respectively.

Subsec. (d)(8). Pub. L. 90–248, § 112(a), § 151(c), added

subpar. (E) and redesignated former par. (9) as (8), re-

respectively. Former par. (8) redesignated (7).

Subsec. (d)(9). Pub. L. 90–248, § 115(c), (d)(1), redesign-

ated former par. (10) as (9) and substituted “paragraph

(8)” for “paragraph (9)”. Former par. (9) redesignated

(8).

Subsec. (d)(10). Pub. L. 90–248, § 115(c), redesignated

former par. (10) as (9).

Subsec. (e)(1). Pub. L. 90–248, § 104(a)(2), set out part of

text formerly following subpar. (E) after subpar. (G),

inserted therein: “or, if she became entitled to such

benefits before she attained age 60, the third month

following the month in which her disability ceases (unless

she attains age 62 on or before the last day of such third

month)”.

Subsec. (e)(1)(B). Pub. L. 90–248, § 104(a)(1), provided

that a widow or surviving divorced wife may become

entitled to widow’s insurance benefits if she is disabled

and her disability began within the period specified in

subsec. (e)(5) even though she has not attained age 60.


designated part of material formerly following subpar. (E) as

subpar. (F) and inserted provision requiring satisfaction

with subpar. (B) clause (1).

Subsec. (e)(1)(G). Pub. L. 90–248, § 104(a)(2), added sub-

par. (G).

Subsec. (e)(4). Pub. L. 90–248, § 103(c), provided that a

remarried widow’s insurance benefit may not exceed $105.


pars. (5) and (6).


text preceding subpar. (A) “and currently” before “in-

sured individual” and in cl. (ii) of subpar. (D) “,” and

she was a currently insured individual,” after “from

such individual”.


that a dependent widow may become entitled to wid-

ower’s insurance benefits if he is disabled and his dis-

ability began within the specified period even though

such individual has not attained age 62.


text of subpar. (E) after subpar. (G) and inserted, “or the third month following the month in which his disability ceases (unless he attains age 62 on or before the last day of such third month)”.


designated part of text of subpar. (E) as subpar. (F) and

inserted provision requiring satisfaction with subpar. (B) clause (1).

Subsec. (f)(1)(G). Pub. L. 90–248, § 104(b)(2), added sub-

par. (G).

Subsec. (f)(2). Pub. L. 90–248, § 157(b)(2), substituted in

text preceding subpar. (A) “The provisions of subpara-

graph (D) of this subsection” for “The requirement in paragraph (1) of this subsection that the deceased fully insured individual also be a currently in-

sured individual, and the provisions of subparagraph (D) of such paragraph.”

Subsec. (f)(3). Pub. L. 90–248, § 104(b)(3), inserted re-

ference to subsec. (q).

Subsec. (q). Pub. L. 90–248, §104(c)(1), substituted “Reduction of benefit amounts for certain beneficiaries for a subsequent old-age, disability, wife's, husband's, or widow's insurance benefit amount” in heading.

Subsec. (q)(1). Pub. L. 90–248, §104(c)(2)(A), substituted “widow's” for “widow's” wherever appearing as “widow's, or widower's” for “or widow's” in text preceding subpar. (A), “widow's, or widower's” for “widow's” in subpar. (1); “widow's, or widower’s” for “widow's” in subpar. (2); “widow's” for “widow's, or widower's” in subpar. (3); “widow's, or widower's” for “widow's” in subpar. (4); “widow's” for “widow's, or widower's” in subpar. (5); “widow's, or widower’s” for “widow's” in subpar. (6); and “widow's, or widower’s” for “widow's” in subpar. (7).

Subsec. (q)(2). Pub. L. 90–248, §104(c)(2)(B), provided for further reduction of a widow's or widower's insurance benefit.

Subsec. (q)(3)(A). Pub. L. 90–248, §104(c)(5), substituted “widow’s, or widower’s” for “widow’s” wherever appearing as “widow’s, or widower’s” for “widow’s.”

Subsec. (q)(3)(C). Pub. L. 90–248, §104(c)(6), substituted “widow’s, or widower’s” for “widow’s” wherever appearing.

Subsec. (q)(3)(D). Pub. L. 90–248, §104(c)(7), substituted “widow’s, or widower’s” for “widow’s.”

Subsec. (q)(3)(E). Pub. L. 90–248, §104(c)(8), inserted “in the case of a widow or surviving divorced wife or subsection (f)(1) in the case of a widower” after “(e)(1) of this section”, and “or he” after “she”, and substituted “widow’s or widower’s” for “widow’s” wherever appearing.

Subsec. (q)(3)(F). Pub. L. 90–248, §104(c)(9), inserted “in the case of a widow or surviving divorced wife or subsection (f)(1) in the case of a widower” after “(e)(1) of this section”, and “or he” after “she”, and substituted “widow’s or widower’s” for “widow’s” wherever appearing.

Subsec. (q)(3)(G). Pub. L. 90–248, §104(c)(10), inserted “in the case of a widow or surviving divorced wife or subsection (f)(1) in the case of a widower” before “(e)(1) of this section”, and “she or” before “he”, and substituted “widow’s or widower’s” for “widow’s” wherever appearing.

Subsec. (q)(6). Pub. L. 90–248, §104(c)(11), extended definition of “reduction period” to apply to widower’s insurance benefit, inserted second alternative in subpar. (A)(v) that the reduction period for a widow’s or widower’s insurance benefit begins with the “first day of the month in which such individual attains age 60, whichever is the later”, substituted paragraph “(5)” for “(4)” in item (II) of subpar. (A)(v), and added subpar. (B).

Subsec. (q)(7). Pub. L. 90–248, §104(c)(12), in text preceding subpar. (A), inserted “or additional adjusted reduction period” after “the adjusted reduction period”, “or additional reduction period (as the case may be)” after “the reduction period”, and substituted “widow’s, or widower’s” for “widow’s, or widower’s”.


Subsec. (s). Pub. L. 90–248, §158(c)(2), substituted “section 423(d)” for “section 423(c)” in pars. (1) to (3).

Subsec. (t)(1). Pub. L. 90–248, §162(a)(1), provided that “(1) For purposes of the preceding sentence, after an individual has been outside the United States for any period of thirty consecutive days he shall be treated as remaining outside the United States until he has been in the United States for a period of thirty consecutive days.”

Subsec. (t)(4). Pub. L. 90–248, §162(b)(1), provided for exception to application of subpars. (A) and (B) of par. (4).


1965—Subsec. (b)(1). Pub. L. 89–97, §308(a), made provisions applicable to divorced wife by inclusion of references to divorced wife in provisions preceding subpar. (A), substituted “such individual” for “her husband” in subpars. (B), (E), (G), (J) to (L); inserted in subpar. (B) “(in the case of a widow)” after “age 62 or”; added subpars. (C) and (D); redesignated former subpar. (C) as (E); in provisions after subpar. (E), inserted “subject to subsection (s) of this section” and struck out “after August 1950” after “beginning with the first month” designated existing provisions as subpars. (F), (G), (J) to (L); and substituted provisions designated as subpars. (H) and (I) for former provisions reading “they are divorced from vinculo matrimonii.”

Subsec. (b)(2). Pub. L. 89–97, §308(a), inserted “(or, in the case of a divorced wife, her former husband)”. Pub. L. 89–97, §308(a), added par. (3).

Subsec. (c)(1). Pub. L. 89–97, §308(d)(1), substituted “divorced” for “divorced a vinculo matrimonii” in provisions following subpar. (D).

Subsec. (c)(2). Pub. L. 89–97, §§306(c)(2), 334(e), inserted in text preceding subpar. (A) “subject to subsection (s) of this section” after “shall”, and added subpar. (C).

Subsec. (d)(1). Pub. L. 89–97, §§306(a)(1), (2), 323(a)(1), 343(a), inserted in subpart (B)(i) and (ii) “or was a full-time student and had not attained the age of 22” and “which began before he attained the age of 22” respectively, and substituted “was” for “is” in subpar. (C) and substituted “preceding whichever of the following first occurs” for “preceding the first month in which any of the following occurs” following provisions of subpar. (C), incorporated existing provisions in subpar. (D) and (E), substituting in such subpar. (E) “but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time student during any part of such month” for former provision and is not under a disability (as defined in section 423(c) of this title), which began before he attained such age”, added subpars. (F) and (G), and repealed the second sentence which provided for the termination of entitlement of any child to benefits under this subsection with the month preceding the third month following the month in which he ceases to be under a disability after the month in which he attains age eighteen; struck out the last sentence which related to adoptions by disabled workers; and substituted “uncle, brother, or sister” for “or uncle” in subpar. (D), respectively.


Subsec. (d)(6). Pub. L. 89–97, §308(c)(3), inserted in text following subpar. (B) “but subject to subsection (s) of this section” after “notwithstanding the provisions of paragraph (1) of this subsection”.

Subsec. (d)(10). Pub. L. 89–97, §§308(b)(2)(A), inserted reference to subsec. (b) of this section.

Subsec. (e)(1). Pub. L. 89–97, §§307(a)(1), 308(b)(1), substituted “age 60” for “age 62” in subpar. (B); and inserted references to surviving divorced wife in the provisions preceding subpar. (A), substituted in subpar. (A) “is not married” for “has not remarried”, added subpar. (D), redesignated former subpar. (D) as (E) substituted in subpar. (E) and following provision “such deceased individual” “her deceased husband”, and struck out from provisions following subpar. (E) “after August 1950” after “beginning with the first month”, respectively.

Subsec. (e)(2). Pub. L. 89–97, §§307(a)(2), 308(b)(1), 334(a)(2), inserted introductory phrase “Except as provided in subsection (q) of this section” substituted “such deceased individual” for “her deceased husband” and inserted “and paragraph (4) of this subsection” before the comma, respectively.

Subsec. (e)(3). Pub. L. 89–97, §§306(c)(4), 308(b)(2), (3), inserted “but subject to subsection (s) of this section” after “notwithstanding the provisions of paragraph (1)” following subpar. (B); repealed former par. (3) which provided for reinstatement of benefits to a widow if she
married a person who died within one year and was not a fully insured individual; and redesignated former par. (4) as (3), and substituted “widow or surviving divorced wife” for “widow” and “widow’s”, respectively.


Subsec. (f)(1). Pub. L. 89–97, § 306(c)(6), inserted “with respect to the application and that the application shall be deemed to have been filed in the first month if the applicant is found to satisfy the requirements for entitlement.”

Subsec. (k)(2)(B). Pub. L. 89–97, § 333(c)(1), inserted “‘other than an individual to whom subsection (i)(1) or (f)(5) of this section applies’” after “Any individual” and inserted provision limiting to the largest of such benefits any individual who is entitled for any month to widow’s insurance benefit or widow’s insurance benefit amounts under this subsection (a) and substituted “but to subsection (a) of this section.”

Subsec. (p). Pub. L. 89–97, § 332(a), removed the 2-year limit on the allowed extension during which, for good cause shown, applications or proof may be filed and still be deemed filed within the prescribed period for filing applications or proof.

Subsec. (q). Pub. L. 89–97, § 304(b), substituted “Reduction of old-age, disability, wife’s, husband’s, or widow’s insurance benefit amounts” for “Adjustment of old-age, wife’s or husband’s insurance benefit amounts in accordance with age of beneficiary” in heading.

Subsec. (r). Pub. L. 89–97, § 304(c), redesignated former par. (2) as (3), and redesignated former par. (3) as (4).


Subsec. (u)(1). Pub. L. 89–97, §§ 306(c)(7), 306(d)(3)–(5), inserted “subparagraph (3) of this section” after “shall” and added subpar. (C).

Subsec. (v)(3). Pub. L. 89–97, § 333(b)(2), substituted “Except as provided in paragraph (5), such” for “Such”. Subsec. (f)(4). Pub. L. 89–97, § 306(c)(6), inserted in text following subpar. (B) “but subject to subsection (a) of this section” after “notwithstanding the provisions of paragraph (1) of this subsection”.


Subsec. (g)(1). Pub. L. 89–97, §§ 306(c)(7), 306(d)(3)–(5), inserted “subject to subsection (a) of this section” after “shall” in provisions following subpar. (F); substituted “in subpar. (A) ‘is not married’ for ‘has not re-married’; in subpar. (F), substituted ‘surviving divorced mother’ for ‘former wife divorced’.”

Subsec. (h)(3). Pub. L. 89–97, §§ 306(c)(8), 306(d)(5), (13), inserted “subject to subsection (c) of this section” after “reduction under this subsection” applicable to old-age, disability, and survivors insurance benefit amounts” and inserted “in the case of a widow or former wife divorced” or “widow’s or surviving divorced wife’s” for “widow” and “widow’s”, respectively.

Subsec. (i)(3). Pub. L. 89–97, § 304(c), redesignated former par. (2) as (3), and redesignated former par. (3) as (4).

Subsec. (j)(3). Pub. L. 89–97, § 304(c), redesignated former par. (2) as (3), and redesignated former par. (3) as (4).

Subsec. (m)(3). Pub. L. 89–97, § 307(b)(2), redesignated former par. (2) as (3), and made provisions of subpar. (A) applicable to widow’s insurance benefit and inserted “in the case of a widow or former husband’s insurance benefit or age 65 (in the case of a widow’s insurance benefit)” after “age 62”, respectively.

Subsec. (n)(3). Pub. L. 89–97, §§ 304(c), 307(b)(2), redesignated former par. (2) as (3), and redesignated former par. (3) as (4).

Subsec. (o)(3)(A). Pub. L. 89–97, §§ 304(c), 307(b)(2), redesignated former par. (2) as (3), and made provisions of subpar. (A) applicable to widow’s insurance benefit and inserted “in the case of a widow or former husband’s insurance benefit or age 65 (in the case of a widow’s insurance benefit)” after “age 62”, respectively.

Subsec. (p). Pub. L. 89–97, § 304(b), substituted “Reduc- 

tion of old-age, disability, wife’s, husband’s, or widow’s insurance benefit amounts” for “Adjustment of old-age, wife’s or husband’s insurance benefit amounts in accordance with age of beneficiary” in heading.

Subsec. (q). Pub. L. 89–97, § 304(b), substituted “Reduction of old-age, disability, wife’s, husband’s, or widow’s insurance benefit amounts” for “Adjustment of old-age, wife’s or husband’s insurance benefit amounts in accordance with age of beneficiary” in heading.

Subsec. (r). Pub. L. 89–97, § 304(c), redesignated former par. (2) as (3), and redesignated former par. (3) as (4).

Subsec. (s)(3)(A). Pub. L. 89–97, §§ 304(c), 307(b)(2), redesignated former par. (2) as (3), and made provisions of subpar. (A) applicable to widow’s insurance benefit and inserted “in the case of a widow or former husband’s insurance benefit or age 65 (in the case of a widow’s insurance benefit)” after “age 62”, respectively.

Subsec. (q)(3)(A). Pub. L. 89–97, §§ 304(c), 307(b)(2), redesignated former par. (2) as (3), and redesignated former par. (3) as (4).

Subsec. (q)(3)(B). Pub. L. 89–97, § 304(c), redesignated former par. (2) as (3), and redesignated former par. (3) as (4).

Subsec. (q)(3)(C). Pub. L. 89–97, § 304(c), redesignated former par. (2) as (3), and made provisions of subpar. (C) applicable to widow’s insurance benefit, inserted cl. (1), incorporated existing provisions in cl. (ii), and inserted in such cl. (ii) “for such month” and “be- cause shown, applications or proof may be filed” respectively.

Subsec. (q)(3)(D). Pub. L. 89–97, §§ 304(c), 307(b)(2), redesignated former par. (2) as (3), and made provisions of subpar. (D) applicable to widow’s insurance benefit, and added subpar. (E), respectively.

Subsec. (q)(3)(E). Pub. L. 89–97, §§ 304(c), 307(b)(2), redesignated former par. (2) as (3), and added subpars. (F) and (G), respectively.

Subsec. (q)(3)(F). Pub. L. 89–97, §§ 304(c), 307(b)(2), redesignated former par. (2) as (3) and added subpars. (F) and (G), respectively.

Subsec. (q)(3)(G). Pub. L. 89–97, §§ 304(c), 307(b)(2), redesignated former par. (2) as (3) and renumbered text following subpar. (B) cross references to par. (2) as (3) in three places, and substituted in subpar. (A) “under paragraph (1) or (3) of this subsection” for “under this sub- section”, respectively. Former par. (4) redesignated (5).

Subsec. (q)(5)(D). Pub. L. 89–97, §§ 304(c), 307(b)(5), redesignated former par. (4) as (5) and added subpar. (D), respectively. Former par. (5) redesignated (6).

Subsec. (q)(6). Pub. L. 89–97, §§ 304(c), 307(b)(6), redesignated former par. (5) as (6) and renumbered in subpar. (A) cross reference to par. (4) as (6), and made provi- sions preceding subpar. (A) and subpar. (B)(i) and (ii), substituted “(B)” and “(C)” for “(6)” and “(7)” in subpar. (B)(i) and (ii) and “any month” for “any other month” in subpar. (B)(ii).

Subsec. (q)(7). Pub. L. 89–97, § 304(c), redesignated former par. (6) as (7) and renumbered in text preceding subpar. (A) cross reference to par. (5) as (6),
1961—Subsec. (a)(2). Pub. L. 87–64, §102(a), substituted ‘‘has attained age 62’’ for ‘‘has attained retirement age (as defined in section 416(a) of this title)’’.
Subsec. (b)(1). Pub. L. 87–64, §102(a), (e), (1), (2), substituted ‘‘age 62’’ for ‘‘retirement age’’ in two places, ‘‘less than one-half of the primary insurance amount of her husband’’ for ‘‘less than one-half of an old-age or disability insurance benefit of her husband’’, and ‘‘equal to or exceeds one-half of the primary insurance amount of her husband’’ for ‘‘equal to or exceeds one-half of an old-age or disability insurance benefit of her husband’’.
Subsec. (b)(2). Pub. L. 87–64, §102(b)(3), substituted ‘‘primary insurance amount’’ for ‘‘old-age or disability insurance benefit’’.
Subsec. (c)(1). Pub. L. 87–64, §102(a), (e), (4), (5), substituted ‘‘has attained age 62’’ for ‘‘has attained retirement age’’ in cl. (B), ‘‘based on a primary insurance amount which is less than one-half’’ for ‘‘each of which is less than one-half’’ in cl. (D), and ‘‘based on a primary insurance amount which is equal to or exceeds one-half’’ for ‘‘equal to or exceeding one-half’’ in closing provisions.
Subsec. (c)(2)(A). Pub. L. 87–64, §102(a), substituted ‘‘attainment of age 62’’ for ‘‘attainment of retirement age’’.
Subsec. (c)(3). Pub. L. 87–64, §102(e)(6), substituted ‘‘Except as provided in subsection (q) of this section, such’’ for ‘‘Such’’.
Subsec. (d)(1). Pub. L. 87–64, §§102(a), 104(d)(1), substituted ‘‘has attained age 62’’ for ‘‘has attained retirement age’’ in subpar. (B). ‘‘attainment of age 62’’ for ‘‘attainment of retirement age’’ and ‘‘attained age 62’’ for ‘‘attained retirement age’’ in subpar. (C), and ‘‘two-thirds’’ for ‘‘three-fourths’’ in subpar. (D) and in closing provisions.
Subsec. (e)(2). Pub. L. 87–64, §104(a), substituted ‘‘82 percent’’ for ‘‘three-fourths’’.
Subsec. (e)(1). Pub. L. 87–64, §§102(a), 104(d)(1), substituted ‘‘has attained age 62’’ for ‘‘has attained retirement age’’ in subpar. (B), ‘‘82 percent’’ for ‘‘three-fourths’’ in subpar. (E) and in closing provisions.
Subsec. (f)(3). Pub. L. 87–64, §104(b), substituted ‘‘82 percent’’ for ‘‘three-fourths’’.
Subsec. (h)(1). Pub. L. 87–64, §§102(a), 104(d)(2), substituted ‘‘has attained age 62’’ for ‘‘has attained retirement age’’ in subpar. (A), and ‘‘82 percent of the primary insurance amount of such deceased individual if the amount of the parent’s insurance benefit for such month is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case)’’ for ‘‘fourths of the primary insurance amount of such deceased individual in case paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case)’’.
Subsec. (h)(2). Pub. L. 87–64, §104(c), designated existing provisions as subpar. (A), increased the benefit from three-fourths to 82 percent of the primary insurance amount and added subpars. (B) and (C).
Subsec. (j). Pub. L. 87–64, §102(b)(3), extended provisions which formerly authorized waiver of old-age benefits or wife’s benefits by a woman to permit waiver of any benefit by any individual.
Subsec. (i). Pub. L. 86–78, §103(a), substituted "Subsections (b), (c), and (d) of this title" for "Section 403(b) and (c) of this title" in last sentence of cl. (1).

Subsec. (j)(6). Pub. L. 86–78, §211(k), substituted "section 403(b), under section 403(c)(1), under section 403(d)(1), or under section 403(e) of this title" for "under section 403(c) of this title" for "Section 403(b), section 403(c), and section 403(d) of this title" in cl. (a).

Subsec. (k)(6). Pub. L. 86–78, §205(e), inserted provisions entitling a widower to an insurance benefit if he was receiving at least one-half of his support from the individual, if the individual had a period of disability which did not end prior to the month in which she died, at the time such period began, or at the time of her death, or at the time she became entitled to old-age or disability insurance benefits, and he filed proof of such support within two years after the month in which she filed application with respect to the period of disability or two years after the date of her entitlement to old-age or disability insurance benefits.

Subsec. (l)(2). Pub. L. 85–840, §301(c)(1), added par. (2) and redesignated former par. (2) as (3).

Subsec. (m). Pub. L. 85–840, §307(d), inserted par. (4). Another par. (3), which was added by Pub. L. 85–788, was repealed by Pub. L. 85–840, §303(b), effective with respect to benefits payable for any month following August 1958.


Subsec. (p). Pub. L. 85–840, §307(c), added par. (4). Subsec. (q)(1)(P). Pub. L. 85–840, §205(f), inserted provisions entitling a former wife divorced to an insurance benefit, if she was receiving at least one-half of her support from an individual, if the individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of his death.

Subsec. (r)(3). Pub. L. 85–840, §303(a), added par. (3). Subsec. (s). Pub. L. 85–840, §307(d), added par. (4). Subsec. (t)(1)(D). Pub. L. 85–840, §205(h), substituted "old-age or disability insurance" for "old-age insurance" wherever appearing, inserted provisions in support of a clause which prevented payment of a parent's benefit if the deceased individual left a widow who met the conditions in subsec. (e)(1)(D) of this section, a widower who met the conditions in subsec. (h)(1)(D) of this section, an unmarried child who had not attained the age of eighteen and was under a disability which began before he attained such age and is not entitled to such benefit on such individual under subsec. (d)(3), (4), or (5) of this section, or an unmarried child who had attained the age of eighteen and was under a disability which began before he attained such age and is not entitled to such benefit on such individual under subsec. (d)(6) of this section.

Subsec. (u)(1)(B). Pub. L. 85–840, §205(g), inserted provisions entitling a parent to an insurance benefit if the parent was receiving at least one-half of his support from the individual, if the individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of such death, and the parent filed proof of such support within two years after the month in which the individual filed application with respect to such period of disability or two years after the date of such death.


Subsec. (d)(3) to (5). Pub. L. 85–840, §306(a), struck out "who has not attained the age of eighteen" after "A child wherever appearing in".

Subsec. (d)(6). Pub. L. 85–840, §307(a), added par. (6), and Pub. L. 85–840, §306(a), repealed former par. (6), which related to dependency of a child who has attained the age of eighteen and who is under a disability which began before he attained the age of eighteen.

Subsec. (e)(3)(B). Pub. L. 85–840, §301(b)(1), substituted "which occurs within one year after such marriage and he did not die a fully insured individual" for "but she is not his widow (as defined in section 416(c) of this title)".

Subsect. (f)(3)(a). Pub. L. 85–840, §307(b), added par. (4). Subsec. (j)(1)(D). Pub. L. 85–840, §205(e), inserted provisions entitling a widower to an insurance benefit if he was receiving at least one-half of his support from the individual, if the individual had a period of disability which did not end prior to the month in which she died, at the time such period began, or at the time of her death, or at the time she became entitled to old-age or disability insurance benefits, and he filed proof of such support within two years after the month in which she filed application with respect to the period of disability or two years after the date of her entitlement to old-age or disability insurance benefits.

Subsec. (j)(2), (3). Pub. L. 85–840, §301(c)(1), added par. (2) and redesignated former par. (2) as (3).

Subsec. (l)(4). Pub. L. 85–840, §307(c), added par. (4). Subsec. (g)(1)(P). Pub. L. 85–840, §205(f), inserted provisions entitling a former wife divorced to an insurance benefit, if she was receiving at least one-half of her support from an individual, if the individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of his death.

Subsec. (g)(3). Pub. L. 85–840, §303(a), added par. (3). Another par. (3), which was added by Pub. L. 85–788, was repealed by Pub. L. 85–840, §303(b), effective with respect to benefits payable for any month following August 1958.

Subsec. (g)(4). Pub. L. 85–840, §307(d), added par. (4). Subsec. (h)(1). Pub. L. 85–840, §304(a)(1), struck out from opening clause provisions which prevented payment of a parent's benefit if the deceased individual left a widow who met the conditions in subsec. (e)(1)(D) of this section, a widower who met the conditions in subsec. (h)(1)(D) of this section, an unmarried child who had not attained the age of eighteen and was under a disability which began before he attained such age and is not entitled to such benefit on such individual under subsec. (d)(3), (4), or (5) of this section, or an unmarried child who had attained the age of eighteen and was under a disability which began before he attained such age and is not entitled to such benefit on such individual under subsec. (d)(6) of this section.

Subsec. (h)(1)(B). Pub. L. 85–840, §205(g), inserted provisions entitling a parent to an insurance benefit if the parent was receiving at least one-half of his support from the individual, if the individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of such death, and the parent filed proof of such support within two years after the month in which the individual filed application with respect to such period of disability or two years after the date of such death.


Subsec. (k). Pub. L. 85–840, §205(h), substituted "old-age or disability insurance" for "old-age insurance" wherever appearing.

Subsec. (m). Pub. L. 85–840, §191(e), substituted "less than the first figure in column IV of the table in section 415(a) of this title" for "less than $30", and "in-
creased to the first figure in column IV of the table in section 410(a) of this title for “increased to $30”.

Subsec. (o). Pub. L. 85–857 substituted “described in section 3065 of title 38” for “as prescribed under section 601 of the Servicemen’s and Veterans’ Survivor Benefits Act”.

Subsec. (q)(5). Pub. L. 85–840, § 206(h)(1), (2), inserted reference to section 422(b) of this title in subpar. (B), added subpar. (D), and substituted “clauses (A), (B), (C), and (D)” for “clauses (A), (B), and (C)” in closing provisions.

Subsec. (p). Pub. L. 85–840, § 208(i)(3), (4), inserted reference to section 422(b) of this title in subpar. (A), added subpar. (C), redesignated former subpar. (C) as (D), and substituted “clauses (A), (B), (C), and (D)” for “clauses (A), (B), and (C)” in closing provisions.


1975—Subsec. (b)(1). Pub. L. 85–238, § 3(a), redesignated subpar. (C) as (D), and substituted “clauses (A), (B), and (C)” for “clauses (A), (B), and (C)” in closing provisions.

Subsec. (s). Pub. L. 85–238, § 3(a), redesignated subpar. (D) as (C), and substituted “clauses (A), (B), (C), and (D)” for “clauses (A), (B), and (C)” in closing provisions.


Subsec. (u). Pub. L. 85–338, § 3(a), redesignated subpar. (D) as (C), and substituted “clauses (A), (B), (C), and (D)” for “clauses (A), (B), and (C)” in closing provisions.

Subsec. (v). Pub. L. 85–338, § 3(a), redesignated subpar. (C) as (D), and substituted “clauses (A), (B), (C), and (D)” for “clauses (A), (B), and (C)” in closing provisions.

Subsec. (w). Pub. L. 85–338, § 3(a), redesignated subpar. (B) as (A), and substituted “clauses (A), (B), (C), and (D)” for “clauses (A), (B), and (C)” in closing provisions.

Subsec. (x). Pub. L. 85–338, § 3(a), redesignated subpar. (A) as (B), and substituted “clauses (A), (B), (C), and (D)” for “clauses (A), (B), and (C)” in closing provisions.

Subsec. (y). Pub. L. 85–338, § 3(a), redesignated subpar. (B) as (A), and substituted “clauses (A), (B), (C), and (D)” for “clauses (A), (B), and (C)” in closing provisions.

Subsec. (z). Pub. L. 85–338, § 3(a), redesignated subpar. (A) as (B), and substituted “clauses (A), (B), (C), and (D)” for “clauses (A), (B), and (C)” in closing provisions.

Subsec. (a). Act Aug. 1, 1956, ch. 836, § 102(d)(8), added par. (3).

Subsec. (b). Act Aug. 1, 1956, ch. 836, § 102(c), added par. (3).

Subsec. (c). Act Aug. 1, 1956, ch. 836, § 102(c), added subsec. (p) to (s).

Subsec. (d). Act Aug. 1, 1956, ch. 836, §§ 118(d), 118(d), added subsecs. (s) (t) and (u).


1954—Subsec. (e)(1)(C). Act Sept. 1, 1954, § 110(a), provided that applications for widow’s insurance benefits would not be required if the widow was entitled to a mother’s insurance benefit in the month prior to the month in which she attained retirement age.

Subsec. (e)(1)(D). Act Sept. 1, 1954, § 110(b), provided that applications for mother’s insurance benefits would not be required if the widow was entitled to a mother’s insurance benefit in the month preceding the month in which the insured individual died.

Subsec. (f)(1). Act Sept. 1, 1954, §§ 102(d)(2), 110(c), inserted “except as provided in subsection (q) of this section”.

Subsec. (g)(1)(C). Act Sept. 1, 1954, § 110(a), provided that applications for widow’s insurance benefits would not be required if the widow was entitled to a mother’s insurance benefit in the month prior to the month in which the insured individual died.

Subsec. (g)(1)(D). Act Sept. 1, 1954, § 110(b), provided that applications for mother’s insurance benefits would not be required if the widow was entitled to a mother’s insurance benefit in the month preceding the month in which the insured individual died.

Subsec. (j)(1). Act Sept. 1, 1954, § 105(a), substituted “‘twelfth’ for ‘sixth’.”

Subsecs. (m), (n). Act Sept. 1, 1954, §§ 102(d)(1), 107, added subsec. (m) and (n), respectively.


1950—Subsec. (a). Act Aug. 28, 1950, changed the name of the benefit provided by this subsection from “primary insurance benefit” to “old-age insurance benefit”, and continued the conditions under which an individual becomes entitled to the benefits.

Subsec. (b). Act Aug. 28, 1950, continued the conditions required for the wife to be entitled to the benefits.

Subsec. (c). Act Aug. 28, 1950, provided benefits for the dependent husband of a female old-age insurance beneficiary who was currently insured at the time of her entitlement to the old-age insurance benefit.

Subsec. (d). Act Aug. 28, 1950, increased the total amount of the family benefits in a survivor family in
which there is at least one entitled child by one-fourth of the worker’s old-age benefit and restates the circumstances under which a child is deemed dependent upon an individual.

Subsec. (e).—Act Aug. 28, 1950, permitted a wife entitled to wife’s insurance benefits to become entitled to widow’s insurance benefits upon the husband’s death without filing a new application.

Subsec. (f).—Act Aug. 28, 1950, provided benefits for the dependent widower of a woman who is fully and currently insured at the time of her death.

Subsec. (g).—Act Aug. 28, 1950, changed title of widow’s current insurance benefits to mother’s insurance benefits and provided for payment of such benefits to the divorced wife of a deceased insured worker if she had been receiving at least half her support from the worker, and if she is caring for her son, daughter, or legally adopted child who is receiving benefits on the worker’s wage record.

Subsec. (h).—Act Aug. 28, 1950, changed the requirement that a parent must have been chiefly dependent upon and supported by the wage earner to the requirement that the parent only need have been receiving one-half his support in order for the parent to be found a dependent.

Subsec. (i).—Act Aug. 28, 1950, limited the amount of the lump-sum death payment to three times the worker’s primary insurance amount instead of six times the amount.

Subsec. (j).—Act Aug. 28, 1950, increased from 3 to 6 the number of months for which benefits may be paid retroactively to individuals who failed to file their applications as soon as they were otherwise eligible.

1966—Subsec. (c).—Act Aug. 10, 1946, § 402, changed paragraph (1) to prevent termination of benefits on adoption by a stepparent, grandparent, aunt or uncle and changed paragraph (3)(C) to omit qualification as to the time of such individual’s death and to require the child to be chiefly supported by the stepfather.

Subsec. (d)(1).—Act Aug. 10, 1946, § 403(a), provided that benefits payments to parents are prevented only if the individual leaves a widow or child who could become entitled to benefits and required parents to be chiefly instead of wholly dependent.

Subsec. (d)(2).—Act Aug. 10, 1946, § 403(b), required that a widow or widower must have been living with deceased at time of death to be entitled to a lump sum payment and provided that the payment will be made to the person or persons equitably entitled thereto in the proportion and to the extent that he or they have paid the burial expenses.

Subsec. (h).—Act Aug. 10, 1946, § 405(a), extended provision for payment of benefits retroactively for three months to the primary beneficiary and provided that retroactive benefits shall be reduced so as not to render any benefit previously paid.


CHANGE OF NAME

Reference to Administrator of Veterans’ Affairs deemed to refer to Secretary of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans’ Benefits.

Effective Date of 2004 Amendment

Pub. L. 108–203, title IV, § 420A(b), Mar. 2, 2004, 118 Stat. 535, provided that: “The amendments made by this subsection [amending this section; sections 420A of this title; and section 505A of Title 5, Government Organization and Employees] shall apply to individuals whose period of confinement in an institution commences on or after the first day of the fourth month beginning after the month in which this Act is enacted [Dec. 1999].”

Effective Date of 1999 Amendments

Pub. L. 106–170, title IV, § 422(a)(4), Dec. 17, 1999, 113 Stat. 1908, provided that: “The amendments made by this subsection [amending this section; sections 1382 of this title; and section 552A of Title 5, Government Organization and Employees] shall apply to individuals whose period of confinement in an institution commences on or after the first day of the fourth month beginning after the month in which this Act is enacted [Dec. 1999].”

Effective Date of 2000 Amendment

Pub. L. 106–182, § 5, Apr. 7, 2000, 114 Stat. 199, provided that: “The amendments made by this Act [amending this section and section 403 of this title] shall apply with respect to taxable years ending after December 31, 1999.”
individuals whose period of confinement in an institution commences on or after the first day of the fourth month beginning after the month in which this Act is enacted.

Pub. L. 106–170, title IV, §402(d)(3), Dec. 17, 1999, 113 Stat. 1839, provided that: "The amendments made by this subsection [amending this section] shall apply with respect to benefits for months ending after the date of the enactment of this Act [Dec. 17, 1999]."

Pub. L. 106–169, title II, §307(e), Dec. 14, 1999, 113 Stat. 1839, provided that: "The amendments made by this section [enacting section 1320a–8a of this title, amending this section and section 1382 of this title, and enacting provisions set out as a note under section 1320a–8a of this title] shall apply to statements and representations made on or after the date of the enactment of this Act [Dec. 14, 1999]."

**Effective Date of 1996 Amendments**

Amendment by section 308(g)(1) of Pub. L. 104–208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

Section 503(b) of div. C of Pub. L. 104–208 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to benefits for which applications are filed on or after the first day of the first month that begins at least 60 days after the date of the enactment of this Act [Sept. 30, 1996]."

Section 104(a)(2) of Pub. L. 104–121 provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to benefits of individuals who become entitled to such benefits for months after the third month following the month in which this Act is enacted [March 1996]."

Section 104(b)(3) of Pub. L. 104–121 provided that:

"(A) The amendments made by paragraph (1) [amending this section] shall apply with respect to final divorces occurring after the third month following the month in which this Act is enacted [March 1996]."

"(B) The amendment made by paragraph (2) [amending this section] shall take effect on the date of the enactment of this Act [Mar. 29, 1996]."

**Effective Date of 1994 Amendments**

Section 4(b) of Pub. L. 103–397 provided that: "The amendments made by this section [amending this section] shall apply with respect to benefits for months commencing after 90 days after the date of the enactment of this Act [Oct. 22, 1994]."


Section 308(c) of Pub. L. 103–296 provided that: "The amendments made by this section [amending this section and section 415 of this title] shall apply (notwithstanding section 215(c) of the Social Security Act [section 415(b) of this title]) with respect to benefits payable for months after December 1994.

Section 321(b)(1) of Pub. L. 103–296 provided that the amendment made by that section is effective as if included in section 603(b)(5)(A) of Pub. L. 101–649.

**Effective Date of 1990 Amendments**

Amendment by Pub. L. 101–649 not applicable to deportation proceedings for which notice has been provided to the alien before Mar. 1, 1991, see section 602(d) of Pub. L. 101–649, set out as a note under section 1227 of Title 8, Aliens and Nationality.

Section 510(e) of Pub. L. 101–649 provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 416, 423, 426, and 1383c of this title] (other than paragraphs (1) and (2)(C) of subsection (c) [amending sections 428 and 1383 of this title]) shall apply with respect to monthly insurance benefits for months after December 1990 for which applications are filed on or after January 1, 1991, or are pending on such date. The amendments made by subsection (c)(1) [amending section 1383c of this title] shall apply with respect to medical assistance provided after December 1990. The amendments made by subsection (c)(2)(C) [amending section 426 of this title] shall apply with respect to items and services furnished after December 1990.

"(2) APPLICATION REQUIREMENTS FOR CERTAIN INDIVIDUALS ON BENEFIT ROLLS.—In the case of any individual who—

"(A) is entitled to disability insurance benefits under section 223 of the Social Security Act [section 423 of this title] for December 1990 or is eligible for supplemental security income benefits under title XVI of such Act [subsection XVI of this chapter], or

State supplementary payments of the type referred to in section 1616(a) of such Act [section 1382e(a) of this title] (or payments of the type described in section 221(a) of Public Law 93–66 [set out as a note under section 1382 of this title]), for January 1991.

"(B) applied for widow's or widower's insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act during 1990 [subsection (e) or (f) of this section], and

"(C) is not entitled to such benefits under such subsection (e) or (f) for any month on the basis of such application by reason of the definition of disability under section 223(d)(2)(B) of the Social Security Act (as in effect immediately before the date of the enactment of this Act [Nov. 5, 1990]), and would have been so entitled for such month on the basis of such application if the amendments made by this section had been applied with respect to such application, for purposes of determining such individual's entitlement to such benefits under subsection (e) or (f) of section 202 of the Social Security Act for months after December 1990, the requirement of paragraph (1)(C)(i) of such subsection shall be deemed to have been met.

Section 511(b) of Pub. L. 101–506 provided that: "The amendments made by this section [amending this section] shall apply with respect to applications for benefits filed on or after January 1, 1991."

**Effective Date of 1989 Amendment**

Section 10203(b) of Pub. L. 101–219 provided that: "The amendments made by this section [amending this section] shall apply—

"(1) in the case of any individual's old-age insurance benefit referred to in section 202(q)(3)(E) of the Social Security Act [subsection (q)(3)(E) of this section] (as in effect before the amendments made by this section), only if such individual attains age 62 on or after January 1, 1990, and

"(2) in the case of any individual's disability insurance benefit referred to in section 202(q)(3)(F) or (G) of such Act (as so in effect), only if such individual both attains age 62 and becomes disabled on or after such date."

Section 10301(c) of Pub. L. 101–219 provided that: "The amendments made by this section [amending this section] shall apply with respect to benefits payable for months after December 1989, but only on the basis of applications filed on or after January 1, 1990.

Section 10302(a)(2) of Pub. L. 101–219 provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to misinformation furnished after December 1982 and to benefits for months after December 1982."

**Effective Date of 1988 Amendment**

Section 800(c) of Pub. L. 100–647 provided that: "The amendments made by this section [amending this section] shall apply only in the case of a deportation order, and final orders of deportation issued, on or after the date of enactment of this Act [Nov. 10, 1988], and
only to benefits for months beginning (and deaths occurring) on or after such date.'"

Amendment by section 807(b) of Pub. L. 100–647 applicable to benefits paid for (and items and services furnished in) months after December 1988, see section 807(d) of Pub. L. 100–647, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Section 809(b) of Pub. L. 100–647 provided that: "The amendments made by this section (amending this section) shall apply to benefits payable under section 202(e) or section 202(f) of the Social Security Act (subsec. (e) or (f) of this section) on the basis of the wages and self-employment income of an individual who dies after the month in which this Act is enacted [Nov. 10, 1983]."

Section 809(c) of Pub. L. 100–647 provided that: "The preceding provisions of this section (including the amendments made by subsection (a)) [amending this section and enacting provisions set out below] shall apply as if they had been included or reflected in the provisions of section 9007 of the Omnibus Budget Reconciliation Act of 1987 (101 Stat. 1330–289) [Pub. L. 100–203, amending this section and enacting provisions set out below] at the time of its enactment [Dec. 22, 1987]."

**Effective Date of 1987 Amendment**

Section 9007(f) of Pub. L. 100–203 provided that: "The amendments made by this section [amending this section] shall apply only with respect to benefits for months after December 1987; except that nothing in this section and amendments set out as notes under sections 602 and 678 of this title, repealing section 1397f of this title, enacting provisions set out as notes under sections 1402 and 3121 of Title 26, Internal Revenue Code, or amending provisions set out as a note under section 1397f of this title] shall apply only with respect to benefits for which application is made on or after January 1, 1988, and shall apply with respect to—

"(1) individuals who are entitled to benefits which are payable under subsection (d)(1)(B)(i), (d)(5)(A)(ii), (d)(6)(B), (e)(1)(B)(ii), or (f)(1)(B)(ii) of section 202 of the Social Security Act [this section] or subsection (a)(1) of section 223 of such Act [section 423 of this title] for any month after December 1987, and

"(2) individuals who are entitled to benefits which are payable under any provision referred to in paragraph (1) for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by this section has not elapsed as of January 1, 1988."

**Effective Date of 1986 Amendments**

Section 883(c) of Pub. L. 99–514 provided that: "Except as otherwise provided in this section, the amendments made by this section [amending this section and sections 410, 411, 415, 418, 421, 423, 602, 657, 658, 664, 674, 1301, 1320b–6, 1382a, 1383, and 1397b of this title and sections 1402 and 3121 of Title 26, Internal Revenue Code, repealing section 1397f of this title, enacting provisions set out as notes under sections 602 and 678 of this title, and amending provisions set out as a note under section 419 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 1986]."

Section 12104(b) of Pub. L. 99–272 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to benefits for which application is filed after the date of the enactment of this Act [Apr. 7, 1986]."

Section 12107(c) of Pub. L. 99–272 provided that: "The amendments made by this section [amending this section and section 423 of this title] are effective December 1, 1980, and shall apply with respect to any individual who is under a disability (as defined in section 223(d) of the Social Security Act [section 423(d) of this title]) on or after that date."

**Effective Date of 1984 Amendment**

Amendment by sections 2661(b)–(f) and 2662(c)(1) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401(f) of this title.

Amendment by section 2663(a)(2) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

**Effective Date of 1983 Amendments**

Section 111(a)(8) of Pub. L. 98–21 provided that: "The amendments made by this subsection [amending this section and sections 403, 415, and 430 of this title] shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act [section 415(i) of this title] for years after 1982."

Section 114(c)(2) of Pub. L. 98–21 provided that: "The amendments made by paragraph (1) [amending this section] shall apply with respect to incremental months in calendar years after 1983."

Section 131(d) of Pub. L. 98–21 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to costs of living increases for benefits for which application is made on or after January 1, 1985.

Section 133(c) of Pub. L. 98–21 provided that: "The amendments made by this section [amending this section] shall apply with respect to benefits for months after December 1984 but only on the basis of applications filed on or after January 1, 1985.

Section 301(a)(5) of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title VI, §2662(d), July 18, 1984, 98 Stat. 1159, provided that the amendment made by that section is effective with respect to monthly insurance benefits for months after December 1984 but only on the basis of applications filed on or after January 1, 1985.

Section 307(b) of Pub. L. 98–21 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to benefits under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [April 1983], but only in cases in which the 'last month' referred to in the provision amended is a month after the month in which this Act is enacted."

Section 310 of title III of Pub. L. 98–21 provided that: "(a) Except as otherwise specifically provided in this title, the amendments made by this part (part A (§§301–310) of title III of Pub. L. 98–21, amending this section and sections 403, 405, 416, 417, 422, 423, 425, 426, 427, and 428 of this title) apply only with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [April 1983]."
"(b) Nothing in any amendment made by this part shall be construed as affecting the validity of any benefit which was paid, prior to the effective date of such amendment, as a result of a judicial determination."

Section 334(b) of Pub. L. 98–21 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to survivors whose applications for benefits in respect of periods of employment income of individuals who die after December 1978."

Section 335(b) of Pub. L. 98–21, as amended by Pub. L. 98–617, §2(a)(1), Nov. 8, 1984, 98 Stat. 3294, provided that: "The amendments made by subsection (a) of this section [amending this section] shall apply only with respect to monthly insurance benefits payable under title II of the Social Security Act [this subchapter] for months after August 1983."

Section 2(a)(2) of Pub. L. 98–617 provided that: "The amendments made by this subchapter [amending section 337(b) of Pub. L. 98–21, set out above] shall apply to benefits payable under title II of the Social Security Act [this subchapter] for months beginning after the month of enactment of this Act [November 1984]."

Section 339(c) of Pub. L. 98–21 provided that: "The amendments made by subsections (a) and (b) [amending this section and section 423 of this title] shall apply with respect to monthly insurance benefits payable for months beginning on or after the date of enactment of this Act [Apr. 20, 1983]."

Section 340(c) of Pub. L. 98–21 provided that: "The amendments made by this section [amending section 1100 of the Social Security Act and section 205(a) of this title] shall be effective with respect to any individual whose disability has not been determined to have ceased prior to such first day."

Section 7(d) of Pub. L. 97–455 provided that: "The amendments made by subsections (a) [enacting and amending provisions set out as notes under this section] and (c) [amending this section] of this section shall be effective with respect to monthly insurance benefits for months after November 1982."

**Effective Date of 1981 Amendments**

Amendment by section 2201(b)(10), (11), (d)(1), (2) of Pub. L. 97–35 and amendment by section 2(e) of Pub. L. 97–123 applicable with respect to months after December 1981, and amendment by section 2201(f) of Pub. L. 97–35 applicable with respect to deaths occurring after December 1981, with certain exceptions, see section 2(g)(2)–(4) of Pub. L. 97–123, set out as a note under section 410 of the Social Security Act. Amendment by section 2202(b) of Pub. L. 97–35 provided that: "The amendments made by subsection (a) [amending this section and section 415 of this title] shall apply only with respect to deaths occurring after August 1981."

Section 2203(f)(1), (2) of Pub. L. 97–35 provided that: "(1) The amendments made by subsections (a), (b), and (c) [amending this section and section 415 of this title] of this section shall apply only to monthly insurance benefits payable to individuals who attain age 62 after August 1981.

"(2) The amendments made by subsection (d) of this section [amending this section and section 415 of this title] shall apply to monthly insurance benefits for months after August 1981, and only in the case of individuals who were not entitled to such insurance benefits for August 1981 or any preceding month."

Section 2205(b) of Pub. L. 97–35 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to a wife's and mother's insurance benefits for months after the month in which this Act is enacted [August 1981], except that, in the case of an individual who was entitled to such a benefit (on the basis of having a child in her care) in the month in which this Act is enacted [August 1981], such amendments shall not take effect until the first day of the first month which begins 2 years or more after the date of enactment of this Act [Dec. 5, 1980]."

Section 2206(b) of Pub. L. 97–35 provided that: "The amendments made by subsection (a) [amending this section] shall apply to a child's insurance benefits under section 202(d) of the Social Security Act [subject (d) of this section] for months after July 1982."

**Effective Date of 1980 Amendments**

Section 1011(b) of Pub. L. 96–499 provided that: "The amendment made by subsection (a) [amending this section] shall be effective with respect to applications filed on or after the first day of the month which begins 60 days or more after the date of the enactment of this Act [Dec. 5, 1980]."

Section 5(d) of Pub. L. 96–473 provided that: "The amendments made by this section [amending sections 416 and 423 of this title] shall be effective with respect to benefits payable for months beginning on or after October 1, 1980."

Section 333(d) of Pub. L. 96–263 provided that: "The amendments made by this section [amending sections 416, 422, 423, 1382c, and 1382o of this title] shall become effective on the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980], and shall apply with respect to any individual whose disability has not been determined to have ceased prior to such first day."

Section 336(d) of Pub. L. 96–263 provided that: "The amendments made by this section [amending sections 416 and 423 of this title] shall apply to applications filed after the month in which this Act is enacted [June 9, 1980]."

**Effective Date of 1978 Amendment**

Amendment by Pub. L. 95–500 effective Oct. 4, 1976, see section 753(c) of Pub. L. 95–500, set out as a note under section 46 of Title 26, Internal Revenue Code.

**Effective Date of 1977 Amendment**

Section 206 of title II of Pub. L. 95–216 provided that: "The amendments made by the provisions of this title other than sections 201(d), 204, and 205(a) [amending this section and sections 403, 415, 417, 424a, and 1395r of this title] shall be effective with respect to monthly insurance benefits under title II of the Social Security Act [subject (b) of this subchapter] payable for months after December 1978 and with respect to lump-sum death payments with respect to deaths occurring after such month. The amendments made by section 201(d) [amending section 415 of this title] shall be effective with respect to monthly insurance benefits for months after May 1978. The amendment made by section 205(a) [amending this section] shall be effective with respect to monthly insurance benefits payable for months after December 1978 based on the wages and self-employment income of individuals who die after December 1977."

Section 331(d) of Pub. L. 95–216 provided that: "The amendments made by this section [amending this section] shall be effective with respect to monthly insurance benefits payable for months after December 1977."

Section 332(b) of Pub. L. 95–216 provided that: "The amendments made by subsection (a) [amending section 415(e) of this title] shall apply only with respect to benefits payable under title II of the Social Security Act [this subchapter] to which an individual becomes entitled on the basis of an application filed on or after January 1, 1978."

Section 334(f) of Pub. L. 95–216 as amended by section 7(a)(2) of Pub. L. 97–455, provided that: "Subject to sub-
sections (g) and (h) [section 334(g) and (h) of Pub. L. 95-216, set out as notes below], the amendments made by this section [amending this section and section 426 of this title and enacting provisions set out as notes under this section] shall apply with respect to monthly insurance benefits payable under title II of the Social Security Act [this subchapter] for months beginning with the month in which this Act is enacted [December 1977], on the basis of applications filed in or after the month in which this Act is enacted."

Section 336(c)(1) of Pub. L. 95-216 provided that: "The amendments made by this section [amending this section] shall apply only with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after December 1978, and, in the case of individuals who are not entitled to benefits of the type involved for December 1978, only on the basis of applications filed on or after January 1, 1979."

Section 337(c) of Pub. L. 95-216 provided that: "The amendments made by this section [amending this section and section 416 of this title] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after January 1, 1979."

Section 333(f)(1) of Pub. L. 95-216 provided that the amendment made by that section is effective with respect to convictions after Dec. 31, 1977.

**EFFECTIVE DATE OF 1974 AMENDMENT**

Section 603 of Pub. L. 93-445 provided that: "The provision of title II of this Act [set out as a note under section 231 of Title 45, Railroads] and the amendments made by title III and title IV of this Act [amending this section and sections 405, 410, 416, 426, 135es, 1395a, 1395v, 1395gg, and 1395kk of this title and sections 352, 354, 360, 361, and 362 of Title 45] shall become effective on January 1, 1976."

**EFFECTIVE DATE OF 1973 AMENDMENT**

Section 240(b) of Pub. L. 93-66 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [July 1973] on the basis of applications for such benefits filed in or after the month in which this Act is enacted."
tion and sections 403, 416, 422, and 425 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after the month in which this Act is enacted [January 1968]."

Section 112(b) of Pub. L. 89–248 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after January 1968, but only on the basis of applications filed after the date of enactment of this Act [Jan. 2, 1968]."

Section 151(e) of Pub. L. 90–248 provided that: "The amendments made by this section [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] (and annuities accruing under the Railroad Retirement Act of 1972 [this subchapter]) for months after January 1968, but only on the basis of applications filed in or after the month in which this Act is enacted [January 1968]."

Section 157(d) of Pub. L. 90–248 provided that: "The amendments made by this section [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after January 1968, but only on the basis of applications filed in or after the month in which this Act is enacted [January 1968]."

Section 162(a)(2) of Pub. L. 90–248 provided that: "The amendments made by paragraph (1) [amending this section] shall apply only with respect to six-month periods (within the meaning of section 202(t)(1)(A) of the Social Security Act [subsec. (t)(1)(A) of this section]) which begin after the date of the enactment of this Act [Jan. 2, 1968]."

Section 162(b)(2) of Pub. L. 90–248 provided that: "The amendment made by paragraph (1) [amending this section] shall apply only with respect to applications for disability insurance benefits under section 423 of this title and to disability determinations under section 416(i) of this title, see section 158(e) of Pub. L. 90–248, set out as a note under section 423 of this title.

Section 303(d) of Pub. L. 89–97 provided that: "The amendments made by this section [amending this section and sections 403, 416, 422, and 425 of this title] shall apply with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] for and after the second month following the month in which this Act is enacted [July 1965], only on the basis of applications filed in or after the month in which this Act is enacted, and

(1) no monthly insurance benefit shall be payable for any month before the second month following the month in which this Act is enacted [July 1965] by reason of section 202(d)(1)(B)(ii) of the Social Security Act [subsec. (d)(1)(B)(ii) of this section] as amended by this section.

Section 307(c) of Pub. L. 89–97 provided that: "The amendments made by this section [amending this section] shall apply with respect to monthly insurance benefits under section 202 of the Social Security Act [this section] for and after the second month following the month [July 1965] in which this Act is enacted, but only on the basis of applications filed in or after the month in which this Act is enacted."

Section 308(e) of Pub. L. 89–97 provided that: "The amendments made by this section [amending this section and sections 403, 405, 416, and 425 of this title] shall be applicable with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] beginning with the second month following the month in which this Act is enacted [July 1965]; but, in the case of an individual who was not entitled to a monthly insurance benefit under section 202 of such Act [this section] for the first month following the month in which this Act is enacted [July 1965], only on the basis of an application filed in or after the month in which this Act is enacted."

Amendment by section 318(d) of Pub. L. 89–97 applicable with respect to taxable years beginning after December 31, 1967, is not in force because of section 104(a) of Pub. L. 90–248, is not in force because of section 104(a) of Pub. L. 90–248, shall be applicable to persons who file applications, or on whose behalf applications are filed, for benefits under section 202(d) of the Social Security Act [subsec. (d)(1)(B) of this section] as amended by this section for legally adopting a child shall not apply in the case of any child who is adopted before the end of the 12-month period following the month in which this section is enacted."

Section 323(b) of Pub. L. 89–97 provided that: "The amendments made by this section [amending this section] shall be effective with respect to (1) applications for lump-sum death payments filed in or after the month [July 1965] in which this Act is enacted, and (2) monthly benefits based on applications filed in or after such month."

Amendment by section 328(a) of Pub. L. 89–97 applicable with respect to applications filed in or after July 30, 1965, is not in force because of section 104(a) of Pub. L. 90–248, is not in force because of section 104(a) of Pub. L. 90–248, shall be applicable with respect to monthly insurance benefits under section 202 of the Social Security Act [this section] beginning with the second month following the month in which this Act is enacted [July 1965]; but, in the case of an individual who was not entitled to a monthly insurance benefit under section 202 of such Act [this section] as amended by this section for the first month following the month in which this Act is enacted [July 1965], only on the basis of an application filed in or after the month in which this Act is enacted."

Amendment by section 333(d) of Pub. L. 89–97 provided that: "The amendments made by this section [amending this section] shall apply with respect to monthly insurance benefits under section 202 of the Social Security Act [this section] beginning with the second month following the month in which this Act is enacted [July 1965]; but, in the case of an individual who was not entitled to a monthly insurance benefit under section 203(e) or (f) of such Act [subsec. (e) or (f) of this section] for the first month following the month in which this Act is enacted, only on the basis of an application filed in or after the month in which this Act is enacted."

Section 333(g) of Pub. L. 89–97 provided that: "The amendments made by this section [amending this section and section 416 of this title] shall be applicable with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] be-
gining with the second month following the month in which this Act is enacted [July 1965], but only on the basis of applications filed in or after the month in which this Act is enacted."

Amendment by section 339(b) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under subchapter II of this chapter beginning with September 1965 but only on the basis of applications filed in or after July 1965, see section 339(c) of Pub. L. 89–97, set out as a note under section 416 of this title.

Section 339(b) of Pub. L. 89–97 provided that: "The amendment made by subsection (a) [amending this section] shall apply only with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] for months after the month in which this Act was enacted, such amendment shall apply only on the basis of an application filed in or after the month in which this Act is enacted."

**Effective Date of 1961 Amendment**

Section 102(f) of title I of Pub. L. 87–64 provided that: "(1) The amendments made by subsection (a) [amending this section] shall apply with respect to monthly benefits for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above], but only if the increase described in such section 202(q)(3)—

"(i) is not effective for any month beginning before the effective date of this title, or

"(ii) is based on an application for a recomputation filed on or after the effective date of this title.

"(C) In the case of any individual who attained age 65 before the effective date of this title, the adjustment in such individual's reduction period provided for in section 202(q)(6) of such Act [subsec. (q)(6) of this section], as amended by subsection (b)(1), shall apply with respect to monthly benefits for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above], but only if the amount of such benefit for each month thereafter is, solely by reason of the change in section 202(q) of such Act [subsec. (q) of this section] made by subsection (b)(1), lower than the amount of such benefit for such last month, then it shall be increased to the amount of such benefit for such last month.

"(3) Section 202(r) of such Act [subsec. (r) of this section], as amended by subsection (b)(1), shall apply only with respect to monthly benefits for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above], except that subparagraph (B) of section 202(r) (as so amended) shall apply only if the first subsequent month described in such subparagraph (B) is a month beginning on or after the effective date of this title.

"(4) The amendments made by subsection (b)(2) [amending this section and sections 416 and 423 of this title] shall take effect on the effective date of this title [see Effective Date of 1961 Amendment note set out above].

"(5) The amendments made by subsection (b)(3) [amending this section] shall apply with respect to applicatio

**Effective Date of 1960 Amendments**

Section 103(v) of Pub. L. 86–778, as amended by Pub. L. 90–514, §2, Oct. 22, 1966, 80 Stat. 2055, provided that: "(1) The amendments made by subsection (a) [amending this section and provisions set out as notes under this section] shall apply only with respect to reenactments after the date of the enactment of this Act [Sept. 13, 1960]. The amendments made by subsections (b), (e), and (f) [amending sections 403 and 410 of this title] shall apply only with respect to service performed after 1960; except that insofar as the carrying on of a trade or business (other than performance of service as an employee) is concerned, such amendments shall apply only in the case of taxable years beginning after 1960. The amendments made by subsections (d), (i), (o), and (p) [amending section 410 of this title and section 3121 of Title 26, Internal Revenue Code, and amending section 418 of this title and section 3121 of Title 26] shall apply only with respect to service performed after 1960. The amendments made by subsections (h) and (l) [amending section 411 of this title and section 1402 of Title 26] shall apply only in the case of taxable years beginning after 1960. The amendments made by subsections (o), (q), and (r) [amending sections 3125 of Title 26 and amending section 410 of this title and sections 3121, 6205, and 6413 of Title 26] shall apply only with respect to service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing the desire to have the insurance system established by title II of the Social Security Act [this subchapter] extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the fore-
going wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by such title II extended to the officers and employees of such Government and such political sub-divisions and instrumentalities. The amendments made by subsections (g) and (k) [amending section 411 of this title and section 1402 of Title 26] shall apply only in the case of taxable years beginning after 1960, except that, insofar as they involve the nonapplication of section 932 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 932 of Title 26] to the Virgin Islands for purposes of chapter 2 of such Code and section 211 of the Social Security Act [section 411 of this title], such amendments shall be effective in the case of all taxable years with respect to which such chapter 2 (and corresponding provisions of prior law) and such section 211 [section 411 of this title] are applicable. The amendments made by subsections (j), (o), and (t) [amending this section and sections 405, 409, 410, 411, 415, 417, and 418 of this title and sections 7213 and 7701 of Title 26 and repealing section 419 of this title] shall take effect on the date of the enactment of this Act [Sept. 13, 1960]; and there are authorized to be appropriated such sums as may be necessary for the performance by any officer or employee of functions delegated to him by the Secretary of the Treasury in accordance with the amendment made by such subsection (t) [amending section 7701 of Title 26].

The amendments made by subsections (c) and (n) [amending section 410 of this title and section 3121 of Title 26] shall have application only as expressly provided therein, and determinations as to whether an officer or employee of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, is an employee of the United States or any agency or instrumentality thereof within the meaning of any provision of law not affected by such amendments, shall be made without any inferences drawn from such amendments.

(3) The repeal by subsection (j)(1) of section 219 of the Social Security Act [section 419 of this title], and the elimination by subsections (e), (f), (h), (j)(2), and (j)(3) of other provisions of such Act [from sections 410 and 411 of this title] making reference to such section 219 [section 419 of this title], shall not be construed as changing or otherwise affecting the effective date specified in such section for the extension to the Commonwealth of Puerto Rico of the insurance system under title II of such Act [this subchapter], the manner or consequences of such extension, or the status of any individual with respect to whom the provisions so eliminated are applicable.

Section 201(c) of Pub. L. 86-778 provided that: "The amendments made by this section [amending this section] shall apply as though this Act had been enacted on August 28, 1958, and with respect to monthly benefits under section 302 of the Social Security Act [this section] for months after August 1958 based on applications for such benefits filed on or after August 28, 1958." Section 202(b) of Pub. L. 86-778 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months beginning with the month in which this Act is enacted [September 1960], but only if an application for such benefits is filed in or after such month."

Section 203(b) of Pub. L. 86-778 provided that: "The amendments made by subsection (a) [amending this section] shall apply—

(1) in the case of the death of an individual occurring on or after the date of the enactment of this Act [Sept. 13, 1960], and

(2) in the case of the death of an individual occurring prior to such date, but only if no application for a lump-sum death payment under section 202(i) of the Social Security Act [subsec. (i) of this section] is filed on the basis of such individual's wages and self-employment income prior to the third calendar month beginning after such date."

Section 205(d) of Pub. L. 86-778 provided that: "The preceding provisions of this section and the amendments ending with this section shall apply only in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [September 1960], on the basis of applications filed in or after such month."

Amendment by section 208(d) of Pub. L. 86-778 applicable (1) with respect to monthly benefits under this subchapter for months beginning with September 1960 on the basis of an application filed in or after such month, and (2) in the case of a lump-sum death payment under this subchapter based on an application filed in or after September 1960, but only if no person, other than the person filing such application, has filed an application for a lump-sum death payment under this subchapter prior to Sept. 13, 1960 with respect to the death of the same individual, see section 208(f) of Pub. L. 86-778, set out as a note under section 416 of this title.

Amendment by section 211(s)-(t) of Pub. L. 86-778 effective in the manner prescribed in section 211(s)-(t) of Pub. L. 86-778, see section 211(t)-(s) of Pub. L. 86-778 set out as a note under section 403 of this title.

Section 301(b) of Pub. L. 86-778 provided that: "The amendment made by this section [amending this section] shall apply only with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after the second month following the month in which this Act is enacted [September 1960]."

Amendment by section 403(d) of Pub. L. 86-778 applicable only with respect to benefits under subsection (d) of this section for months after September 1960, in the case of individuals who, without regard to such amendment, would have been entitled to such benefits for September 1960, or for any succeeding month, see section 403(e) of Pub. L. 86-778, set out as a note under section 422 of this title.

Section 47(e) of Pub. L. 86-624 provided that: "The amendment made by section 30(c)(1) [amending this section] shall be applicable in the case of deaths occurring on or after August 21, 1959."

EFFECTIVE DATE OF 1959 AMENDMENT

Section 47(e) of Pub. L. 86-70 provided that: "The amendment made by paragraph (1) of subsection (c) of section 32 [amending this section] shall apply in the case of deaths occurring on or after January 3, 1959."

EFFECTIVE DATE OF 1958 AMENDMENTS

Section 302 of Pub. L. 85-927 provided that: "The amendments made by section 301 of this Act [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after December 1958, and with respect to lump-sum death payments under such section 202 in the case of deaths occurring after December 1958."

Amendment by Pub. L. 85-857 effective Jan. 1, 1959, see section 2 of Pub. L. 85-857, set out as an Effective Date note preceding section 101 of Title 38, Veterans' Benefits.

Amendment by section 101(e) of Pub. L. 85-840 applicable in the case of monthly benefits under subchapter II of this chapter for months after December 1958, and in the case of lump-sum death payments under subchapter II of this chapter, with respect to deaths occurring after such month, see section 101(g) of Pub. L. 85-840, set out as a note under section 415 of this title.

Amendment by section 206(b)-(i) of Pub. L. 85-840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after Aug. 28,
Section 301(a) of Pub. L. 85–440 provided that: "The amendments made by this subsection [amending this section and section 416 of this title] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months beginning after the date of enactment of this Act [Aug. 28, 1958], but only if an application for such benefits is filed on or after such date.'" Section 304(a)(2) of Pub. L. 85–440 provided that: "The amendments made by this subsection [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months beginning after the date of enactment of this Act [Aug. 28, 1958], but only if an application for such benefits is filed on or after such date.'"

Section 305(c) of Pub. L. 85–440 provided that: "The amendments made by this section [amending this section and section 416 of this title] shall apply in the case of lump-sum death payments under such section 202(i) [subsec. (i) of this section] on the basis of the wages and self-employment income of any individual who dies after the month in which this Act is enacted [August 1958]." Section 306(b) of Pub. L. 85–440 provided that: "The amendments made by this section [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months beginning after the date of enactment of this Act [Aug. 28, 1958], but only if an application for such benefits is filed on or after such date.'"

Section 307(h)(1) of Pub. L. 85–440 provided that: "The amendments made by this section (other than by subsection (d) and (g) [amending this section]) shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months following the month in which this Act is enacted [August 1958]; except that in any case in which benefits were terminated with the close of the month in which this Act is enacted or any prior month and, if the amendments made by this section had been in effect for such month, such benefits would not have been terminated, the amendments made by this section shall apply with respect to monthly benefits under section 202 of the Social Security Act for months beginning after the date of enactment of this Act, but only if an application for such benefits is filed after such date.'"

**Effective Date of 1957 Amendment**

Section 2 of Pub. L. 85–238 provided that: "The amendments made by the first section of this Act [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after December 1956, and with respect to lump-sum death payments under such section 202 in the case of deaths occurring after December 1956.'"

Section 3(i) of Pub. L. 85–238 provided that: "(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 416 of this title] shall apply in the case of monthly benefits under section 202 of the Social Security Act [this section] for months after the month in which this Act is enacted [August 1957]." "(2) The amendment made by subsection (f) [amending this section] shall not apply in the case of benefits under section 202(h) of the Social Security Act [subsec. (h) of this section], based on the wages and self-employment income of a deceased individual who died in or prior to the month in which this Act is enacted [August 1957] for any parent who files the proof of support, required by such section 202(h), in or prior to the month in which this Act is enacted; and the amendment to section 218(h)(1) of such Act [section 418(h)(1) of this title] made by subsection (h) of this section shall not operate to deprive any surviving parent of benefits to which he would otherwise be entitled under section 202(h) of such Act.'"
cases of applications for benefits under that Act filed after December 31, 1946.’’

Section 494(b) of act Aug. 10, 1946, provided that: ‘‘The amendment made by subsection (a) of this section [amending this section] shall be applicable only in cases where the death of the insured individual occurs after December 31, 1946.’’

Section 494(b) of act Aug. 10, 1946, provided that: ‘‘The amendment made by subsection (a) of this section [amending this section] shall be applicable only in cases of applications for benefits under this title [this subchapter] filed after December 31, 1946.’’

**Effective Date of 1939 Amendment**

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

**Construction of 1994 Amendments**

Section 7 of Pub. L. 103–387 provided that: ‘‘Until March 31, 1995, any reference in this Act [see Short Title of 1994 Amendments note, set out under section 1 of Title 26, Internal Revenue Code] (other than section 3(d) (108 Stat. 4075)) or any amendment made by this Act to the Commissioner of Social Security shall be deemed a reference to the Secretary of Health and Human Services.’’

**Pilot Study of Efficacy of Providing Individualized Information to Recipients of Old-Age and Survivors Insurance Benefits**

Pub. L. 104–121, title I, § 104, Mar. 29, 1996, 110 Stat. 855, directed the Commissioner of Social Security, during a 2-year period beginning in 1996, to conduct a pilot study of the efficacy of providing certain individualized information, in the form of annual statements designed to promote better understanding of contributions and benefits, to recipients of monthly insurance benefits under 42 U.S.C. 402 whose entitlement began in or after 1984, and to report to Congress regarding the results of the pilot study not later than 60 days after the completion of the study.

**Treatment of Employees Whose Federal Employment Terminated After Making Election into Social Security Coverage But Before Effective Date of Election**


**Annual Statements to Recipients of Old-Age and Survivors Insurance Benefits**


‘‘(a)(1) The head of the agency shall pay each month an amount determined under paragraph (2) to a person—

‘‘(A) who is the surviving spouse of a member or former member of the Armed Forces described in subsection (c);

‘‘(B) who has in such person’s care a child of such member or former member who has attained sixteen years of age but not eighteen years of age and is entitled to a child’s insurance benefit under section 202(d) of the Social Security Act (42 U.S.C. 402(d));

‘‘(C) who is entitled for such month to a mother’s insurance benefit under section 202(g) of the Social Security Act (42 U.S.C. 402(g)), or to the equivalent of such benefit based on meeting the requirements of section 1312(a) of title 38, United States Code, and—

‘‘(1) who has reached the age of eighteen years or

‘‘(2) whose care has been approved by the head of the agency;

‘‘(3) who has such person’s care as a result of a service-connected disability of such person (whether such disability is incurred in the performance of active duty or service during a period of war or conflict, or as a result of the service of such person in a public school, college, or university that is an educational institution (as such terms were defined in section 108 of title 38, United States Code));

‘‘(4) who is not entitled for such month to a child’s insurance benefit under section 202(d) of the Social Security Act (42 U.S.C. 402(d));

‘‘(5) who is entitled for such month to a child’s insurance benefit under section 202(g) of the Social Security Act (42 U.S.C. 402(g)), or to the equivalent of such benefit; and

‘‘(6) whose care has been approved by the head of the agency.

‘‘(2) The head of the agency shall—

‘‘(A) pay each person—

‘‘(i) who is eligible for benefits under section 202(d) of the Social Security Act (42 U.S.C. 402(d));

‘‘(ii) who is eligible for benefits under section 202(g) of the Social Security Act (42 U.S.C. 402(g));

‘‘(B) pay each person—

‘‘(i) who is eligible for benefits under section 202(d) of the Social Security Act (42 U.S.C. 402(d));

‘‘(ii) who is eligible for benefits under section 202(g) of the Social Security Act (42 U.S.C. 402(g));

‘‘(C) who is entitled for such month to a mother’s insurance benefit under section 202(g) of the Social Security Act (42 U.S.C. 402(g)), or to the equivalent of such benefit based on meeting the requirements of section 1312(a) of title 38, United States Code, by reason of having such child (or any other child of such member or former member) in her care.

‘‘(3) A payment under paragraph (2) for any month shall be—

‘‘(A) paid on a monthly basis (or, at the discretion of the head of the agency, on a biweekly basis);

‘‘(B) payable to the person entitled to such payment;

‘‘(C) payable to the person entitled to such payment, or to his or her surviving spouse or legal representative;

‘‘(D) reduced for any month by the amount of any other payment (other than a payment under paragraph (2)) payable to such person for such month;

‘‘(E) reduced for any month by any amount payable to such person for such month as a result of the head of the agency’s exercise of its discretion under paragraph (6) to pay the amount payable under paragraph (2) for such month to more than one person.

‘‘(4) The amount payable to a person under paragraph (2) shall be reduced for any month by the amount of any other payment (other than a payment under paragraph (2)) payable to such person for such month.”
The Secretary of Health and Human Services shall provide to the head of the agency such information as the head of the agency may require to carry out this section.

The head of the agency shall carry out this section under regulations which the head of the agency shall prescribe. Such regulations shall be prescribed not later than ninety days after the date of the enactment of this section [Dec. 21, 1962].

Unless otherwise provided by law—

(1) Each time after December 31, 1961, that an increase is made by law in the dependency and indemnity compensation paid under section 1311 of title 38, United States Code, the head of the agency shall, at the same time and effective as of the same date on which such increase takes effect, increase the benefits paid under subsection (a) by a percentage that is equal to the overall average (rounded to the nearest one-tenth of 1 per centum) of the percentages by which each of the dependency and indemnity compensation rates under section 1311 of such title are increased above the rates as in effect immediately before such increase; and

(2) Each time after December 31, 1961, that an increase is made by law in the rates of educational assistance allowances provided for under section 3531(b) of title 38, United States Code, the head of the agency shall, at the same time and effective as of the same date on which such increase takes effect, increase the benefits paid under subsection (b) by a percentage that is equal to the overall average (rounded to the nearest one-tenth of 1 per centum) of the percentages by which each of the educational assistance allowance rates provided for under section 3531(b) of such title are increased above the rates as in effect immediately before such increase.

The amount of the benefit payable to any person under subsection (a) or (b) and the amount of any increase in any such benefit made pursuant to clause (1) or (2) of this subsection, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

Payments under subsections (a) and (b) shall be made only for months after the month in which this section is enacted.

During each fiscal year the Secretary of Defense shall transfer from time to time to the head of the agency such amounts as the head of the agency determines to be necessary to pay the benefits provided for under subsections (a) and (b) during such fiscal year and to pay the administrative expenses incurred in paying such benefits during such fiscal year. During fiscal year 1983, transfers under this subsection shall be made from the 'Retired Pay, Defense' account of the Department of Defense. During subsequent fiscal years, such transfers shall be made from such account or from funds otherwise available to the Secretary for the purpose of the payment of such benefits and expenses. The Secretary of Defense may transfer funds under this subsection in advance of the payment of benefits and expenses by the head of the agency.

The head of the agency shall establish on the books of the agency over which he exercises jurisdiction a new account to be used for the payment of benefits under subsections (a) and (b) and shall credit to such account all funds transferred to him for such purpose by the Secretary of Defense.

The head of the agency and the Secretary of Health and Human Services may enter into an agreement to provide for the payment by the Secretary or the head of the agency of benefits provided for under subsection (a) and benefits provided for under section 202(g) of the Social Security Act (42 U.S.C. 402(g)) in a single monthly payment and for the payment by the Secretary or the head of the agency of benefits provided for under subsection (b) and benefits provided for under section 202(d) of the Social Security Act (42 U.S.C. 402(d)) in a single monthly payment, if the head of the agency and the Secretary agree that such action would be practicable and cost effective to the Government.

For the purposes of this section:

(1) The term 'head of the agency' means the head of such department or agency of the Government as the President shall designate to administer the provisions of this section.

(2) The terms 'active military, naval, or air service' and 'service-connected' have the meanings given those terms in paragraphs (24) and (16), respectively, of section 101 of title 38, United States Code, except that for the purposes of this section such terms do not apply to any service in the commissioned corps of the Public Health Service or the National Oceanic and Atmospheric Administration.

Section 221(c) of Pub. L. 97–35 provided that:

(1) Notwithstanding the provisions of section 202(d) of the Social Security Act [subsec. (d) of this section] (as in effect prior to or after the amendments made by subsection (a)), any individual who—

(A) has attained the age of 18;

(B) is not under a disability (as defined in section 223(d) of such Act) [section 423(d) of this title];

(C) is entitled to a child's insurance benefit under such section 202(d) (subsec. (d) of this section) for August 1981; and

(D) is a full-time student at a postsecondary school, college, or university that is an educational institution (as such terms are defined in section 202(d)(7)(A) and (C) of such Act as in effect prior to the amendments made by subsection (a)) for any month prior to May 1982;

shall be entitled to a child's benefit under section 202(d) of such Act in accordance with the provisions of such section as in effect prior to the amendments made by subsection (a) for any month after July 1981 and prior to August 1985 if such individual would be entitled to such child's benefit for such month under such section 202(d) if subsections (a) and (b) of this section [amending subsec. (d) of this section and enacting a provision set out as a note under this section] had not been enacted, but such benefits shall be subject to the limitations set forth in this subsection.

No benefit described in paragraph (1) shall be paid to an individual to whom paragraph (1) applies for the months of May, June, July, and August, beginning with benefits otherwise payable for May 1982.

The amount of the monthly benefit payable under paragraph (1) to an individual to whom paragraph (1) applies for the months of May, June, July, and August, beginning with benefits otherwise payable for May 1982, shall be—

(A) during the months after July 1982 and before August 1983, equal to 25 percent of such benefit for August 1981; and

(B) during the months after July 1983 and before August 1984, equal to 50 percent of such benefit for August 1981; and

(C) during the months after July 1984 and before August 1985, equal to 75 percent of such benefit for August 1981.

Any individual to whom the provisions of paragraph (1) apply and whose entitlement to benefits under paragraph (1) ends after August 1981 shall not subsequently become entitled, or reentitled, to benefits under paragraph (1) or under section 202(d) of the Social Security Act [subsec. (d) of this section] as in effect after the amendments made by subsection (a) unless he

(i) For the purposes of this section:

(ii) The term 'head of the agency' means the head of such department or agency of the Government as the President shall designate to administer the provisions of this section.

(iii) The terms 'active military, naval, or air service' and 'service-connected' have the meanings given those terms in paragraphs (24) and (16), respectively, of section 101 of title 38, United States Code, except that for the purposes of this section such terms do not apply to any service in the commissioned corps of the Public Health Service or the National Oceanic and Atmospheric Administration.
meets the requirements of section 202(d)(1)(B)(i) of that Act as so in effect.”


Section 334(g) of Pub. L. 95–216, as amended by Pub. L. 98–617, §2(b)(1), Nov. 8, 1984, 98 Stat. 3294, provided that:

“(1) The amendments made by the preceding provisions of this section [see section 334(f) of Pub. L. 95–216, set out as an Effective Date of 1977 Amendment note above] shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act [this section], to an individual—

“A(i) to whom there is payable for any month within the 60-month period beginning with the month in which this Act [December 1977] is enacted (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual’s earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act) [section 418(b)(2) of this title], or (ii) who would have been eligible for such a monthly periodic benefit (within the meaning of paragraph (2)) before the close of such 60-month period, except for a requirement which postponed eligibility (as so defined) for such monthly periodic benefit until the month following the month in which all other requirements were met; and

“(B) who at time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g)—

“(i) meets the dependency test of one-half support set forth in paragraph (1)(C) of such subsection (c) as it read prior to the enactment of the amendments made by this section [see section 334(f) of Pub. L. 95–216, set out as an Effective Date of 1977 Amendment note above], or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (b) or (c), or

“(ii) meets the dependency test of one-half support set forth in paragraph (1)(D) of such subsection (f) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (e), (f), or (g).”

Redetermination of Widow’s and Widower’s Monthly Insurance Benefits for Months After December 1978

Section 336(c)(2) of Pub. L. 95–216 provided that: “In the case of an individual who was entitled for the month of December 1978 on the basis of the monthly insurance benefits under section (a) or (f) of section 202 of the Social Security Act [subsection (e) or (f) of this section] to which the provisions of subsection (e)(4) or (f)(5) applied, the Secretary shall, if such benefits would be increased by the amendments made by this section [amending this section] redetermine the amount of such benefits for months after December 1978 as if such amendments had been in effect for the first month for which the provisions of section 202(e)(4) or 202(f)(5) became applicable.”

Minimum Monthly Insurance Benefits for Months After December 1978, for Widow or Widower and Other Jointly Entitled Individuals

Section 336(d) of Pub. L. 95–216 provided that:

“[as amended by this section]—

“(1) two or more persons are entitled to monthly benefits under section 202 of the Social Security Act [this section] for December 1978 on the basis of the wages and self-employment income of an deceased individual, and one or more of such persons is so entitled under subsection (e) or (f) of such section 202 [subsection (e) or (f) of this section], and

“(2) one or more of such persons is entitled on the basis of such wages and self-employment income to monthly benefits under subsection (e) or (f) of such section 202 (as amended by this section) for January 1979; and

“(3) the total of benefits to which all persons are entitled under section 202 of such Act on the basis of such wages and self-employment income for January 1979 is reduced by reason of section 203(a) of such Act as amended by this Act [section 403(a) of this title] (or would, but for the first sentence of section 203(a)(4), be so reduced),

then the amount of the benefit to which each such person referred to in paragraph (1) is entitled for months after December 1978 shall in no case be less after the application of this section [see section 336(c)(1) of Pub. L. 95–216, set out as an Effective Date of 1977 Amendment note under this section and such section’s title] than the amount it would have been without the application of this section.”
TERMINATION OF SPECIAL $50 PAYMENTS UNDER TAX REDUCTION ACT OF 1975

Pub. L. 95–93, title IV, §406, May 23, 1977, 91 Stat. 156, provided that: "Notwithstanding the provisions of section 402(a) of the Tax Reduction Act of 1975 [see Pub. L. 94–12, §702, set out as a note under this section], no payment shall, after the date of the enactment of this Act [May 23, 1977], be made under that section."

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Pub. L. 94–12, title VII, §702, Mar. 29, 1975, 89 Stat. 66, provided that the Secretary of the Treasury, at the earliest practicable date after Mar. 29, 1975, make a $50 payment to each individual, who for the month of March, 1975, was entitled, without regard to section 402(j)(1) or 423(b) of this title or section 213(a)(1) of Title 45, Railroads, to a monthly insurance benefit payable under this subchapter, a monthly annuity or pension payment under the Railroad Retirement Act of 1937, or the Railroad Retirement Act of 1974, or a benefit under the supplemental security income benefits program under subchapter XVI of this title, except that payment be made only to individuals who were paid a benefit for March 1975 in a check issued no later than Aug. 31, 1975, that no payment be made to any individual who is not a resident of the United States as defined in section 101(a) of this title, and if an individual is entitled to under two or more programs, this individual receive only one $50 payment, and that this payment received not be considered as income, or for the calendar year 1975, as a reimbursement for purposes of any Federal or State program which undertakes to furnish aid or assistance to individuals or families, where eligibility for the program is based upon need of the individual or family involved or as income for federal income tax purposes.

MARCH THROUGH MAY 1974 MONTHLY INSURANCE BENEFIT FOR ONLY INDIVIDUAL ENTITLED TO BENEFIT ON BASIS OF WAGES AND SELF-EMPLOYMENT INCOME OF DECEASED INDIVIDUAL

Section 1(1) of Pub. L. 93–233 provided that: "In the case of an individual to whom monthly benefits are payable under title II of the Social Security Act [this subchapter] for February 1974 (without the application of section 202(j)(1) or 223(b) of such Act [subsec. (j)(1) of this section or section 223(b) of this title]), and to whom section 202(m) of such Act [subsec. (m) of this section] is applicable for such month, such section shall continue to be applicable to such benefits for the months of March through May 1974 for which such individual remains the only individual entitled to a monthly benefit on the basis of the wages and self-employment income of the deceased insured individual."

COST-OF-LIVING INCREASE IN SOCIAL SECURITY BENEFITS: EFFECTIVE DATE; CONSUMER PRICE INDEX PERCENTAGE

Section 201 of Pub. L. 93–233, §1(a)(e), Dec. 30, 1973, 87 Stat. 947, provided that:

"(a) The Secretary of Health, Education, and Welfare [now Health and Human Services] (hereinafter in this section referred to as the 'Secretary') shall, in accordance with the provisions of this section, increase the monthly benefits and lump-sum death payments payable under title II of the Social Security Act [this subchapter] by 7 per centum.

"(2) The provisions of this section and the increase in benefits made hereunder shall be effective, in the case of monthly benefits under title II of the Social Security Act [this subchapter] only for months after February 1974 and prior to June 1974, and, in the case of lump-sum death payments under such title [this subchapter], only with respect to deaths which occur after February 1974 and prior to June 1974.

"(b) The increase in social security benefits authorized under this section shall be provided, and any determination of cost of living increases authorized under title II of such Act [this subchapter] except that—

"(1) the amount of such increase shall be 7 per centum.

"(2) in the case of any individual entitled to monthly insurance benefits payable pursuant to section 202(e) of such Act [subsec. (e) of this section] for February 1974 (without the application of section 202(j)(1) or 223(b) of such Act [subsec. (j)(1) of this section or section 223(b) of this title]), including such benefits based on a primary insurance amount determined under section 215(a)(3) of such Act [section 415(a)(3) of this title] as amended by this section, such increase shall be determined without regard to paragraph (3)(B) of such section 202(e), and

"(3) in the case of any individual entitled to monthly insurance benefits payable pursuant to section 202(f) of such Act for February 1974 (without the application of section 202(j)(1) or 223(b) of such Act), including such benefits based on a primary insurance amount determined under section 215(a)(3) of such Act as amended by this section, such increase shall be determined without regard to paragraph (3)(B) of such section 202(f).

"(c) The increase in social security benefits provided by this section shall—

"(1) not be considered to be an increase in benefits made under or pursuant to section 215(i) of the Social Security Act [section 415(i) of this title], and

"(2) not (except for purposes of section 203(a)(2) of such Act [section 403(a)(2) of this title], as in effect after February 1974) be considered to be a 'general benefit increase under title II' [this subchapter] (as such term is defined in section 215(i)(3) of such Act) [section 415(i)(3) of this title] and nothing in this section shall be construed as authorizing any increase in the 'contribution and benefit base' (as such term is employed in section 230 of such Act) [section 430 of this title], or any increase in the 'exempt amount' (as such term is used in section 203(i)(8) of such Act [section 403(i)(8) of this title]).

"(d) Nothing in this section shall be construed to authorize (directly or indirectly) any increase in monthly benefits under title II of the Social Security Act [this subchapter] for any month after May 1974, or any increase in lump-sum death payments payable under such title in the case of deaths occurring after May 1974. The recognition of the existence of the increase in benefits authorized by the preceding subsections of this section (including the effect) in the application, after May 1974, of the provisions of sections 205(q) and 203(a) of such Act [subsec. (q) of this section and section 403(a) of this title] shall not, for purposes of the preceding sentence, be considered to be an increase in a monthly benefit for a month after May 1974;"

REDETERMINATION OF WIDOW'S AND WIDOWER'S BENEFITS FOR DECEMBER 1972 AND AFTER TO PROVIDE FOR 1972 INCREASES

Section 102(g) of Pub. L. 92–603 provided that:

"(1) in the case of an individual who is entitled to widow's or widower's insurance benefits for the month of December 1972 the Secretary shall, if it would increase such benefits, redetermine the amount of such benefits for months after December 1972 under title II of the Social Security Act [this subchapter], as if the amendments made by this section [amending this section and section 403 of this title] had been in effect for the first month of such individual's entitlement to such benefits.

"(2) For purposes of paragraph (1)—

"(A) any deceased individual on whose wages and self-employment income the benefits of an individual referred to in paragraph (1) are based, shall be deemed not to have been entitled to benefits if the record, of insured individuals who were entitled to
benefits, that is readily available to the Secretary contains no entry for such deceased individual; and

"(B) any deductions under subsections (b) and (c) of section 203 of such Act (section 403 of this title), applicable to the benefits of an individual referred to in paragraph (1) for any month prior to September 1965, shall be disregarded in applying the provisions of section 203(a)(7) of such Act (section 403(a) of this title) (as amended by this Act) (Pub. L. 92–603)."

ADJUSTMENT OF BENEFITS BASED ON DISABILITY WHICH BEGAN BETWEEN AGE 18 AND 22

Section 108(g) of Pub. L. 92–603 provided that:

"Where—

"(1) one or more persons are entitled (without the application of sections 202(j)(1) and 223(b) of the Social Security Act [subsec. (j)(1) of this section and section 423(b) of this title]) to monthly benefits under section 202 or 223 of such Act for December 1972 on the basis of the wages and self-employment income of an insured individual, and

"(2) one or more persons (not included in paragraph (1)) are entitled to monthly benefits under such section 202 or 223 (this section or section 423 of this title) for January 1973 solely by reason of the amendments made by this section on the basis of such wages and self-employment income, and

the total of benefits to which all persons are entitled under such sections 202 and 223 (this section and section 423 of this title) on the basis of such wages and self-employment income for January 1973 is reduced by reason of section 202(a) of such Act [section 403(a) of this title] as amended by this Act, or would, but for the penultimate sentence of such section 203(a), be so reduced,

then the amount of the benefit to which each person referred to in paragraph (1) of this subsection is entitled for months after December 1972 shall in no case be less after the application of this title and such section 203(a) than the amount it would have been without the application of this section."

Section 114(e) of Pub. L. 92–603 provided that:

"Where—

"(1) one or more persons are entitled (without the application of sections 202(j)(1) and 223(b) of the Social Security Act [subsec. (j)(1) of this section and section 423(b) of this title]) to monthly benefits under section 202 or 223 of such Act for December 1972 on the basis of the wages and self-employment income of an insured individual, and

"(2) one or more persons (not included in paragraph (1)) are entitled to monthly benefits under such section 202 or 223 (this section or section 423 of this title) for January 1973 solely by reason of the amendments made by this section on the basis of such wages and self-employment income, and

the total of benefits to which all persons are entitled under such sections 202 and 223 (this section and section 423 of this title) on the basis of such wages and self-employment income for January 1973 is reduced by reason of section 203(a) of such Act [section 403(a) of this title] as amended by this Act (or would, but for the penultimate sentence of such section 203(a), be so reduced),

then the amount of the benefit to which each person referred to in paragraph (1) of this subsection is entitled for months after December 1972 shall be adjusted, after the application of such section 203(a) [as amended by this Act], or would, but for the penultimate sentence of such section 203(a), be so reduced, to an amount no less than the amount it would have been if the person or persons referred to in paragraph (2) of this subsection were not entitled to a benefit referred to in such paragraph (2)."

TERMINATION OF CHILD’S INSURANCE BENEFITS BY REASON OF ADOPTION

Section 112(c) of Pub. L. 92–603 provided that: "Any child—

"(1) whose entitlement to child’s insurance benefits under section 202(d) of the Social Security Act [subsec. (d) of this section] was terminated by reason of his adoption, prior to the date of the enactment of this Act [Oct. 30, 1972], and

"(2) who, except for such adoption, would be entitled to child’s insurance benefits under such section for a month after the month in which this Act is enacted [October 1972], may, upon filing application for child’s insurance benefits under the Social Security Act after the date of enactment of this Act, become reentitled to such benefits; except that no child shall, by reason of the enactment of this section, become reentitled to such benefits for any month prior to the month after the month in which this Act is enacted."

SAVINGS PROVISION

1972—Section 102(h) of Pub. L. 92–603 provided that:

Where—

"(1) two or more persons were entitled (without the application of subsection (j)(1) of section 202 of the Social Security Act [subsec. (j)(1) of this section]) to monthly benefits under the section 202 for the month month beginning before the effective date of this title [see Effective Date note of 1961 Amendment note set out above] on the basis of such individual’s wages and self-employment income, and one or more of such persons is entitled to a monthly insurance benefit under subsection (e), (f), or (h) of such section 202 for such last month; and

"(2) no person, other than the persons referred to in paragraph (1) of this subsection, is entitled to benefits under such section 202 on the basis of such individual’s wages and self-employment income for a subsequent month or for any month after such last month and before such subsequent month; and

the total of the benefits to which all persons are entitled under such section 202 on the basis of such individual’s wages and self-employment income for such subsequent month is reduced by reason of the application of section 203(a) of such Act [section 403(a) of this title],

then the amount of the benefit to which each person referred to in paragraph (1) of this subsection is entitled for such subsequent month shall be determined without regard to this Act if, after the application of this Act, such benefit for such month is less than the amount of such benefit for such last month. The preceding provisions of this subsection shall not apply to any monthly benefit for any month beginning after the effective date of this title [see Effective Date note of 1961 Amendment note set out above]
unless paragraph (3) also applies to such benefit for the month beginning on such effective date (or would so apply but for the next to the last sentence of section 202(h) of the Social Security Act (subsec. (c) of this section)).

1960—Section 208(e) of Pub. L. 86–778 provided that:

"Where—

"(1) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to monthly benefits under section 202 of such Act for the month before the month in which this Act is enacted (September 1960) on the basis of the wages and self-employment income of an individual; and

"(2) any person is entitled to benefits under subsection (f) of such section 202 of the Social Security Act for any subsequent month on the basis of such individual's wages and self-employment income and such person would not be entitled to such benefits for the enactment of this section; and

"(3) the total of the benefits to which all persons are entitled under section 202 of the Social Security Act on the basis of such individual's wages and self-employment income for such subsequent month is reduced by reason of the application of section 203(a) of such Act [section 403(a) of this title],

then the amount of the benefit to which each such person referred to in paragraph (1) of this subsection is entitled for such subsequent month shall be increased, after the application of such section 203(a), to the maximum of benefits payable, as provided in section 202(f) of such Act [subsec. (c) of this section]; and

"(4) in case such person is entitled to benefits under section 202(d), (e), (f), or (g) of the Social Security Act but would not be entitled except for the enactment of section 202 of this Act [section 408 of this title], is entitled to benefits under such section 202 [this section] on the basis of such individual's wages and self-employment income and such person would not be entitled to such benefits for the enactment of this section; and

"5. the total of the benefits to which all persons referred to in paragraph (1) of this subsection are entitled under section 202 of the Social Security Act on the basis of such individual's wages and self-employment income, then the amount of the benefit to which each such person referred to in paragraph (1) of this subsection is entitled for such subsequent month shall be increased, after the application of such section 203(a), to the amount it would have been if no person referred to in paragraph (2) of this subsection was entitled to a benefit referred to in such paragraph for such subsequent month on the basis of such wages and self-employment income of such individual.''

Section 301(c) of Pub. L. 86–778 provided that:

"Where—

"(1) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to monthly benefits under section 202 of such Act for the month following the month in which this Act is enacted (September 1960) on the basis of the wages and self-employment income of a deceased individual (but not including any person who became so entitled by reason of section 208 of this Act [section 408 of this title]); and

"(2) a person, other than (1) those persons referred to in paragraph (1) of this subsection (ii) those persons who are entitled to benefits under section 202(d), (e), (f), or (g) of the Social Security Act but would not be entitled except for the enactment of section 202 of this Act [section 408 of this title], is entitled to benefits under such section 202 [this section] on the basis of such individual's wages and self-employment income and such person would not be entitled to such benefits for the enactment of this section; and

"(3) the total of the benefits to which all persons referred to in paragraph (1) of this subsection are entitled under section 202 of the Social Security Act on the basis of such individual's wages and self-employment income, then the amount of the benefit to which each such person referred to in paragraph (1) of this subsection is entitled for such subsequent month shall be increased, after the application of such section 203(a), to the amount it would have been—

"(d) if, in the case of a parent's insurance benefit, the person referred to in paragraph (b) was not entitled to the benefit referred to in such paragraph, or

"(e) if, in the case of a benefit referred to in paragraph (b), no person was entitled to a parent's insurance benefit for such subsequent month on the basis of such wages and self-employment income.

PILING OF PROOF OF SUPPORT

1968—Section 157(c) of Pub. L. 90–248 provided that:

"In the case of any husband who would not be entitled to husband's insurance benefits under section 202(c) of the Social Security Act [subsec. (c) of this section] or any widower who would not be entitled to widow's or mother's insurance benefits under section 202(h) of such Act for the month in which this Act [August 1967] is enacted on the basis of the wages and self-employment income of an individual; and

"(a) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to parent's insurance benefits under section 202(h) of such Act for the month in which this Act [August 1967] is enacted on the basis of the wages and self-employment income of an individual; and

"(b) a person becomes entitled to a widow's, widow'er's or mother's insurance benefit under section 202(h), (e), (f), or (g) of the Social Security Act for any subsequent month on the basis of such wages and self-employment income;

"(c) the total of the benefits to which all persons are entitled under section 202 of the Social Security Act, on the basis of such wages and self-employment income for such subsequent month are reduced by reason of the application of section 203(a) of such Act [section 403(a) of this title];

"(d) if, in the case of a parent's insurance benefit, the person referred to in paragraph (b) was not entitled to the benefit referred to in such paragraph, or

"(e) if, in the case of a benefit referred to in paragraph (b), no person was entitled to a parent's insurance benefit for such subsequent month on the basis of such wages and self-employment income.

1957—Section 5 of Pub. L. 85–238 provided that:

"Where—

"(a) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to parent's insurance benefits under section 202(h) of such Act for the month in which this Act [August 1957] is enacted on the basis of the wages and self-employment income of an individual; and

"(b) a person becomes entitled to a widow's, widow'er's or mother's insurance benefit under section 202(h), (e), (f), or (g) of the Social Security Act for any subsequent month on the basis of such wages and self-employment income;

"(c) the total of the benefits to which all persons are entitled under section 202 of the Social Security Act, on the basis of such wages and self-employment income for such subsequent month are reduced by reason of the application of section 203(a) of such Act [section 403(a) of this title];

"(d) if, in the case of a parent's insurance benefit, the person referred to in paragraph (b) was not entitled to the benefit referred to in such paragraph, or

"(e) if, in the case of a benefit referred to in paragraph (b), no person was entitled to a parent's insurance benefit for such subsequent month on the basis of such wages and self-employment income.

FILEING OF PROOF OF SUPPORT

1961—Section 103(c) of title I of Pub. L. 87–64 provided that:

"In the case of any widower or parent who would not be entitled to widow's insurance benefits under section 202(f) of the Social Security Act [subsec. (f) of this section], or parent's insurance benefits under section 202(h) of the Social Se-
curity Act except for the enactment of this Act (other than this subsection), the requirement in sections 202(f)(1)(D) and 202(h)(1)(B), respectively, of the Social Security Act relating to the time within which proof of support must be filed shall not apply if such proof of support is filed before the close of the 2-year period which begins on the effective date of this title [see Effect Date of 1961 Amendment note set out above] August 1958—Section 207(b) of Pub. L. 85–840 provided that: "In the case of any husband, widower, or parent who would not be entitled to benefits under section 202(c), section 202(f), and section 202(h), respectively, of the Social Security Act [subsecs. (c), (f), and (h) of this section] except for the enactment of section 205 of this Act [amending this section and sections 401, 403, 414, 422, and 425 of this title], the requirement in such section 202(c), section 202(f), or section 202(h), as the case may be, that proof of support be filed within a two-year period shall not apply if such proof is filed within two years after the month in which this Act is enacted [August 1958]." Section 304(c) of Pub. L. 85–840 provided that: "In the case of any parent who would not be entitled to parent's benefits under section 202(h) of the Social Security Act [subsec. (h) of this section] except for the enactment of this section, the requirement in such section 202(h) that proof of support be filed within two years after the date of death of the insured individual referred to therein shall not apply if such proof is filed within the two-year period beginning with the first day of the month after the month in which this Act is enacted [August 1958]." 1954—Section 113 of act Sept. 1, 1954, provided that: "(a) For the purpose of determining the entitlement of any individual to husband's insurance benefits under subsection (c) of section 202 of the Social Security Act [subsec. (c) of this section] on the basis of his wife's wages and self-employment income, the requirements of paragraph (1)(D) of such subsection shall be deemed to be met if—

"(1) such individual was receiving at least one-half of his support, as determined in accordance with regulations prescribed by the Secretary of Health, Education, and Welfare, from his wife on the first day of the first month (A) for which she was entitled to a monthly benefit under subsection (a) of such section 202, and (B) in which an event described in paragraph (1) or (2) of section 203(b) of such Act [section 403(b) of this title] (as in effect before or after the enactment of this Act [Sept. 1, 1954]) did not occur.

"(2) such individual has filed proof of such support within two years after such first month, and

"(3) such wife was, without the application of subsection (j)(1) of such section 202, entitled to a primary insurance benefit under such Act for August 1950.

"(b) For the purpose of determining the entitlement of any individual to widower's insurance benefits under subsection (f) of section 202 of the Social Security Act on the basis of his deceased wife's wages and self-employment income, the requirements of paragraph (1)(E)(ii)(I) of such subsection shall be deemed to be met if—

"(1) such individual was receiving at least one-half of his support, as determined in accordance with regulations prescribed by the Secretary of Health, Education, and Welfare, from his wife, and she was a currently insured individual, on the first day of the first month (A) for which she was entitled to a monthly benefit under subsection (a) of such section 202, and (B) in which an event described in paragraph (1) or (2) of section 203(b) of such Act (as in effect before or after the enactment of this Act [Sept. 1, 1954]) did not occur.

"(2) such individual has filed proof of such support within two years after such first month, and

"(3) such wife was, without the application of subsection (j)(1) of such section 202, entitled to a primary insurance benefit under such Act for August 1950.

"(c) For purposes of subsection (b)(1) of this section, and for purposes of section 202(c)(1) of the Social Security Act in cases to which subsection (a) of this section is applicable, the wife of an individual shall be deemed a currently insured individual if she had not less than six quarters of coverage (as determined under section 213 of the Social Security Act) [section 413 of this title] during the thirteen-quarter period ending with the calendar quarter in which occurs the first month (1) for which she was entitled to a primary insurance benefit under section 202(a) of such Act, and (2) in which an event described in paragraph (1) or (2) of section 203(b) of such Act (as in effect before or after the enactment of this Act [Sept. 1, 1954]) did not occur.

"(d) This section shall apply only with respect to husband's insurance benefits under section 202(c) of the Social Security Act [subsec. (c) of this section], and widower's insurance benefits under section 202(f) of such Act [subsec. (f) of this section], for months after August 1954, and only with respect to benefits based on applications filed after such month."

1950—Section 101(c) of act Aug. 28, 1950, provided that:

"(1) Any individual entitled to primary insurance benefits or widow's current insurance benefits under section 202 of the Social Security Act [this section] as in effect prior to its amendment by this Act who would, but for the enactment of this Act, be entitled to such benefits for September 1950 shall be deemed to be entitled to old-age insurance benefits or mother's insurance benefits (as the case may be) under section 202 of the Social Security Act, as amended by this Act, as though such individual became entitled to such benefits in such month.

"(2) Any individual entitled to any other monthly insurance benefits under section 202 of the Social Security Act as in effect prior to its amendment by this Act who would, but for the enactment of this Act, be entitled to such benefits for September 1950 shall be deemed to be entitled to such benefits under section 202 of the Social Security Act, as amended by this Act, as though such individual became entitled to such benefits in such month.

"(3) Any individual who files application after August 1950 for monthly benefits under any subsection of section 202 of the Social Security Act who would, but for the enactment of this Act, be entitled to benefits under such subsection (as in effect prior to such enactment) for any month prior to September 1950 shall be deemed entitled to such benefits for such month prior to September 1950 to the same extent and in the same amounts as though this Act had not been enacted."

EXTENSION OF FILING PERIOD FOR HUSBAND'S, WIDOWER'S, OR PARENT'S BENEFITS IN CERTAIN CASES

Section 210 of Pub. L. 86–778 provided that:

"(a) In the case of any husband who would not be entitled to husband's insurance benefits under section 202(c) of the Social Security Act [subsec. (c) of this section] except for the enactment of this Act, the requirement in section 202(c)(1)(C) of the Social Security Act relating to the time within which proof of support must be filed shall not apply if such proof of support is filed within two years after the month in which this Act is enacted (September 1960).

"(b) In the case of any widower who would not be entitled to widower's insurance benefits under section 202(f) of the Social Security Act except for the enactment of this Act, the requirement in section 202(f)(1)(D) of the Social Security Act relating to the time within which proof of support must be filed shall not apply if such proof of support is filed within two years after the month in which this Act is enacted.

"(c) In the case of any parent who would not be entitled to parent's insurance benefits under section 202(h) of the Social Security Act except for the enactment of this Act, the requirement in section 202(h)(1)(B) of the Social Security Act relating to the time within which proof of support must be filed shall not apply if such
proof of support is filed within two years after the month in which this Act is enacted.’’

DISREGARDING OASDI BENEFIT INCREASES AND CHILD’S INSURANCE BENEFIT PAYMENTS BEYOND AGE 18 TO THE EXTENT ATTRIBUTABLE TO RETROACTIVE EFFECTIVE DATE OF 1965 AMENDMENTS

Authorization to disregard, in determining need for aid or assistance under an approved State plan, amounts paid under this subchapter for months occurring after December 1964 and before October 1965 to the extent to which payment is attributable to the payment of child’s insurance benefits under the old-age, survivors, and disability insurance system after attainment of age 18, in the case of individuals attending school, resulting from enactment of section 306 of Pub. L. 89–97, see section 406 of Pub. L. 89–97, set out as a note under section 415 of this title.

LUMP-SUM PAYMENTS WHERE DEATH OCCURRED PRIOR TO SEPTEMBER 1, 1950

Section 101(d) of act Aug. 28, 1950, as amended July 18, 1962, ch. 945, §8(e)(1), 66 Stat. 775; Sept. 13, 1960, Pub. L. 86–778, title I, §103(a)(2), 74 Stat. 906, provided that: ‘‘Lump-sum death payments shall be made in the case of any individual who died prior to September 1, 1950 as though this Act had not been enacted; except that in the case of any individual who died outside the forty-eight States and District of Columbia after December 6, 1941, and prior to August 10, 1946, the last sentence of section 202(g) of the Social Security Act [see subsec. (g) of this section] as in effect prior to the enactment of this Act shall not be applicable if application for a lump-sum death payment is filed prior to September 1, 1952, and except that in the case of any individual who died outside the forty-eight States and District of Columbia on or after June 25, 1950, and prior to September 1950, whose death occurred while he was in the active military or naval service of the United States, and who is returned to any of such States, the District of Columbia, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa for interment or reinterment after December 1964 and prior to January 1965, whose death occurred while he was in the active military or naval service of the United States, and who is returned to any of such States, the District of Columbia, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa for interment or reinterment, the last sentence of section 202(g) of the Social Security Act [subsec. (g) of this section] shall not prevent payment to any person under the second sentence thereof if application for a lump-sum death payment with respect to such deceased individual is filed under such section by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment.’’

LUMP-SUM PAYMENTS FOR DEATHS BEFORE 1940; TIME LIMITATION

Lump-sum payments of 9½ percent of total wages paid with respect to employment after Dec. 31, 1936 and before reaching the age of 65 were provided for persons who were not qualified individuals upon reaching the age by section 204 of act Aug. 14, 1935, before amendment in 1939. Such lump-sum payments, except to the estate of an individual who died prior to Jan. 1, 1940, were prohibited after Aug. 10, 1939, by section 902(g) of act Aug. 10. 1939. Section 415 of act Aug. 10, 1946, provided that no lump-sum payments shall be made under section 204 of the 1935 act or section 902(g) of the 1939 act unless application therefor has been filed prior to the expiration of six months after Aug. 10, 1946.

DEATH OUTSIDE U.S.: EXTENSION OF FILING TIME FOR LUMP-SUM PAYMENTS

Section 8(e)(2) of act July 18, 1962, ch. 945, 66 Stat. 775, as amended by Pub. L. 86–778, title I, §103(a)(2), Sept. 13, 1960, 74 Stat. 936, provided that: ‘‘In the case of any individual who died outside the forty-eight States and the District of Columbia after August 1936 and prior to January 1965, whose death occurred while he was in the active military or naval service of the United States, and who is returned to any of such States, the District of Columbia, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa for interment or reinterment under the second sentence of section 202(g) of the Social Security Act [subsec. (g) of this section] shall not prevent payment to any person under the second sentence thereof if application for a lump-sum death payment with respect to such deceased individual is filed under such section by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment.’’

PAYMENT OF ANNUITIES TO OFFICERS AND EMPLOYEES OF THE UNITED STATES CONVICTED OF CERTAIN OFFENSES

Section 121(b) of act Aug. 1, 1956, ch. 836, provided that: ‘‘The amendment made by subsection (a) of this section [amending this section] shall not be construed to restrict or otherwise affect any of the provisions of the Act entitled ‘An Act to prohibit payments of annuities to officers and employees of the United States convicted of certain offenses, and for other purposes’, approved September 1, 1954 (Public Law 769, Eighty-third Congress) [sections 2281 to 2288 of former Title 5, Executive Departments and Government Officers and Employees, and are covered by section 3211 et seq. of Title 5, Government Organization and Employees].’’

APPLICATION FOR BENEFITS BY SURVIVORS OF MEMBERS AND FORMER MEMBERS OF UNIFORMED SERVICES

Forms for use by survivors of members and former members of the uniformed services in filing applications for benefits under this subchapter to be prescribed jointly by the Secretary of Veterans Affairs and the Secretary of Health and Human Services, see section 5185 of Title 38, Veterans’ Benefits.

PAYMENTS OF ALIENS’ BENEFITS WITHHELD UNDER FOREIGN DELIVERY RESTRICTION OF CHECKS AGAINST FEDERAL FUNDS

Section 162(c)(3) of Pub. L. 90–248 provided that: ‘‘Whenever benefits which an individual who is not a citizen or national of the United States was entitled to receive under title II of the Social Security Act [this subchapter] are, on June 30, 1963, being withheld by the Treasury Department under the first section of the Act of October 9, 1940 (31 U.S.C. 123) (31 U.S.C. 3329(a) and 3339(a)), any such benefits, payable to such individual for months after the month in which the determination by the Treasury Department that the benefits should be so withheld was made, shall not be paid—’’

‘‘(A) to any person other than such individual, or, if such individual dies before such benefits can be paid, to any person other than an individual who was entitled for the month in which the deceased individual died (with the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to a monthly benefit under title II of such Act [this subchapter] on the basis of the same wages and self-employment income as such deceased individual, or

‘‘(B) in excess of the equivalent of the last twelve months’ benefits that would have been payable to such individual.’’

STUDY OF RETIREMENT TEST AND OF DRUG STANDARDS ACT COVERAGE

Section 405 of Pub. L. 90–248 authorized the Secretary of Health, Education, and Welfare to make a study of the existing retirement test and proposals for the modification of the test, the quality and cost standards for drugs for which payments are made under this chapter, and the coverage of drugs under part B of subchapter XVIII of this chapter, and submit a report to the President and to Congress concerning his findings and recommendations on or before Jan. 1, 1969.

EX. ORD. NO. 12436. PAYMENT OF CERTAIN BENEFITS TO SURVIVORS OF PERSONS WHO DIED IN OR AS A RESULT OF MILITARY SERVICE

Ex. Ord. No. 12436, July 29, 1963, 48 F.R. 34931, provided:
By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 156 of Public Law 97–377 (96 Stat. 1920; 42 U.S.C. 402 note), in order to provide certain benefits to the surviving spouses and children of certain persons who died in or as a result of military service, it is here-by ordered as follows:

Sec. 1. The Administrator of Veterans’ Affairs is designated to administer the provisions of Section 156 of Public Law 97–377.

Sec. 2. The Secretary of Health and Human Services shall provide to the Administrator of Veterans’ Affairs such information and such technical assistance as the Administrator may reasonably require to discharge his responsibilities under Section 156. The Administrator of Veterans’ Affairs shall reimburse the Department of Health and Human Services for all expenses it incurs in providing such information and technical assistance to the Veterans’ Administration. Such expenses shall be paid from the Veterans’ Administration account described in Section 3 of this Order.

Sec. 3. During fiscal year 1983 and each succeeding fiscal year, the Secretary of Defense shall transfer, from time to time, from the “Retired Pay, Defense” account of the Department of Defense to an account established in the Veterans Administration, such amounts as the Administrator of Veterans’ Affairs determines to be necessary to pay the benefits authorized by Section 156 during fiscal year 1983 and each succeeding fiscal year, and the expenses incurred by the Veterans’ Administration in paying such benefits during fiscal year 1983 and each succeeding fiscal year. Such transfers shall, to the extent feasible, be made in advance of the payment of benefits and expenses by the Veterans’ Administration.

Sec. 4. This Order shall be effective as of January 1, 1983.

RONALD REAGAN.

§ 403. Reduction of insurance benefits

(a) Maximum benefits

(1) In the case of an individual whose primary insurance amount has been computed or recomputed under section 415(a)(1) or (4) of this title, or section 415(d) of this title, as in effect after December 1978, the total monthly benefits to which beneficiaries may be entitled under section 402 or 423 of this title for a month on the basis of the wages and self-employment income of such individual shall, except as provided by paragraphs (3) and (6) of this subsection, result from the application of paragraph (2)(A)(ii)(III) of section 415(i) of this title, be reduced as necessary so as not to exceed—

(A) 150 percent of such individual’s primary insurance amount to the extent that it does not exceed the amount established with respect to this subparagraph by paragraph (2).

(B) 272 percent of such individual’s primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (A) but does not exceed the amount established with respect to this subparagraph by paragraph (2).

(C) 134 percent of such individual’s primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (B) but does not exceed the amount established with respect to this subparagraph by paragraph (2), and

(D) 175 percent of such individual’s primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (C).

Any such amount that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10.

(2) (A) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in any calendar year after 1979, the amounts established with respect to subparagraphs (A), (B), and (C) of paragraph (1) shall be $230, $332, and $433, respectively.

(B) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in any calendar year after 1979, each of the amounts so established shall equal the product of the corresponding amount established for the calendar year 1979 by subparagraph (A) of this paragraph and the quotient obtained under subparagraph (B)(ii) of section 415(a)(1) of this title, with such product being rounded in the manner prescribed by section 415(a)(1)(B)(iii) of this title.

(C) In each calendar year after 1978 the Commissioner of Social Security shall publish in the Federal Register, on or before November 1, the formula which (except as provided in section 415(i)(2)(D) of this title is applicable under this paragraph to individuals who become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in the following calendar year.

(D) A year shall not be counted as the year of an individual’s death or eligibility for purposes of this paragraph or paragraph (8) in any case where such individual was entitled to a disability insurance benefit for any of the 12 months immediately preceding the month of such death or eligibility (but there shall be counted instead the year of the individual’s eligibility for the disability insurance benefits to which he was entitled during such 12 months).

(3) (A) When an individual who is entitled to benefits on the basis of the wages and self-employment income of any insured individual and to whom this subsection applies would (but for the provisions of section 402(k)(2)(A) of this title) be entitled to child’s insurance benefits for a month on the basis of the wages and self-employment income of one or more other insured individuals, the total monthly benefits to which all beneficiaries are entitled on the basis of such wages and self-employment income shall not be reduced under this subsection to less than the smaller of—

(i) the sum of the maximum amounts of benefits payable on the basis of the wages and self-employment income of all such insured individuals, or

(ii) an amount (I) initially equal to the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title, for January of the year determined for purposes of this clause under the following two sentences, with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 430 of this title, and (II) thereafter increased in accordance with the provisions of section 415(d)(2)(A)(ii) of this title.

The year established for purposes of clause (ii) shall be 1983 or, if it occurs later with respect to
any individual, the year in which occurred the month that the application of the reduction provisions contained in this subparagraph began with respect to benefits payable on the basis of the wages and self-employment income of the insured individual. If for any month subsequent to the first month for which clause (i) applies (with respect to benefits payable on the basis of the wages and self-employment income of the insured individual) the reduction under this subparagraph ceases to apply, then the year determined under the preceding sentence shall be re-determined (for purposes of any subsequent application of this subparagraph with respect to benefits payable on the basis of such wages and self-employment income) as though this subparagraph had not been previously applicable.

(B) When two or more persons were entitled (without the application of section 402(j)(1) of this title and section 423(b) of this title) to monthly benefits under section 402 or 423 of this title for January 1971 or any prior month on the basis of the wages and self-employment income of such insured individual and the provisions of this subsection as in effect for any such month were applicable in determining the benefit amount of any persons on the basis of such wages and self-employment income, the total of benefits for any month after January 1971 shall not be reduced to less than the largest of—

(i) the amount determined under this subsection without regard to this subparagraph,

(ii) the largest amount which has been determined for any month under this subsection for persons entitled to monthly benefits on the basis of such insured individual’s wages and self-employment income, or

(iii) such entitlements are based on the wages and self-employment income of the same insured individual,

the benefit of the entitled individual whose entitlement is based on a valid marriage (as determined without regard to subparagraphs (A)(ii) and (B) of section 416(h)(1) of this title) to such insured individual shall, for such month and all months thereafter, be determined without regard to this subsection, and the benefits of all other individuals who are entitled for such month or any month thereafter, to monthly benefits under section 402 of this title based on the wages and self-employment income of such insured individual shall be determined as if no such divorced spouse or surviving divorced spouse were entitled to benefits for such month.

(D) In any case in which—

(i) two or more individuals are entitled to monthly benefits for the same month as a spouse under subsection (b) or (c) of section 402 of this title, or as a surviving spouse under subsection (e), (f), or (g) of section 402 of this title,

(ii) at least one of such individuals is entitled by reason of subparagraph (A)(ii) or (B) of section 416(h)(1) of this title, and

(iii) such entitlements are based on the wages and self-employment income of the same insured individual,

the benefit of the entitled individual whose entitlement is based on a valid marriage (as determined without regard to subparagraphs (A)(ii) and (B) of section 416(h)(1) of this title) to such insured individual shall, for such month and all months thereafter, be determined without regard to this subsection, and the benefits of all other individuals who are entitled for such month or any month thereafter, to monthly benefits under section 402 of this title based on the wages and self-employment income of such insured individual shall be determined as if such entitled individual were not entitled to benefits for such month.

(4) In any case in which benefits are reduced pursuant to the provisions of this subsection, the reduction shall be made after any deductions under this section and after any deductions under section 422(b) of this title. Notwithstanding the preceding sentence, any reduction under this subsection in the case of an individual who is entitled to a benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title for any month on the basis of the same wages and self-employment income as another person—

(A) who also is entitled to a benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title for such month,

(B) who does not live in the same household as such individual, and

(C) whose benefit for such month is suspended (in whole or in part) pursuant to subsection (h)(3) of this section,

shall be made before the suspension under subsection (h)(3) of this section. Whenever a reduction is made under this subsection in the total

\[ \text{See References in Text note below.} \]
of monthly benefits to which individuals are entitled for any month on the basis of the wages and self-employment income of an insured individual, each such benefit other than the old-age or disability insurance benefit shall be proportionately decreased.

(5) Notwithstanding any other provision of law, when—

(A) two or more persons are entitled to monthly benefits for a particular month on the basis of the wages and self-employment income of an insured individual and (for such particular month) the provisions of this subsection are applicable to such monthly benefits, and

(B) such individual’s primary insurance amount is increased for the following month under any provision of this subchapter,

then the total of monthly benefits for all persons on the basis of such wages and self-employment income for such particular month, as determined under the provisions of this subsection, shall for purposes of determining the total monthly benefits for all persons on the basis of such wages and self-employment income for months subsequent to such particular month be considered to have been increased by the smallest amount that would have been required in order to assure that the total of monthly benefits payable on the basis of such wages and self-employment income for any such subsequent month will not be less (after the application of the other provisions of this subsection and section 402(q) of this title) than the total of monthly benefits (after the application of the other provisions of this subsection and section 402(q) of this title) payable on the basis of such wages and self-employment income for such particular month.

(6) Notwithstanding any of the preceding provisions of this subsection other than paragraphs (3)(A), (3)(C), (3)(D), (4), and (5) (but subject to section 415(i)(2)(A)(ii) of this title), the total monthly benefits to which beneficiaries may be entitled under sections 402 and 423 of this title for any month on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall be reduced (before the application of section 424a of this title) to the smaller of—

(A) 85 percent of such individual’s average indexed monthly earnings (or 100 percent of his primary insurance amount, if larger), or

(B) 150 percent of such individual’s primary insurance amount.

(7) In the case of any individual who is entitled for any month to benefits based upon the primary insurance amounts of two or more insured individuals, one or more of which primary insurance amounts were determined under section 415(a) or (d) of this title as in effect (without regard to the table contained therein) prior to January 1979 and one or more of which primary insurance amounts were determined under section 415(a)(1) or (4) of this title, or section 415(d) of this title, as in effect after December 1978, the total benefits payable to that individual and all other individuals entitled to benefits for that month based upon those primary insurance amounts shall be reduced to an amount equal to the amount determined in accordance with the provisions of paragraph (3)(A)(ii) of this subsection, except that for this purpose the references to subparagraph (A) in the last two sentences of paragraph (3)(A) shall be deemed to be references to paragraph (7).

(8) Subject to paragraph (7) and except as otherwise provided in paragraph (10)(C), this subsection as in effect in December 1978 shall remain in effect with respect to a primary insurance amount computed under section 415(a) or (d) of this title, as in effect (without regard to the table contained therein) in December 1978 and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990, except that a primary insurance amount so computed with respect to an individual who first becomes eligible for an old-age or disability insurance benefit, or dies (before becoming eligible for such a benefit), after December 1978, shall instead be governed by this section as in effect after December 1978. For purposes of the preceding sentence, the phrase “rounded to the next higher multiple of $0.10”, as it appeared in subsection (a)(2)(C) of this section as in effect in December 1978, shall be deemed to read “rounded to the next lower multiple of $0.10”.

(9) When the provisions of this subsection other than paragraphs (3)(A), (3)(C), (3)(D), (4), and (5) (but subject to section 415(i)(2)(A)(ii) of this title) are applicable to such monthly benefits, increased for this purpose by the general benefit increases and other increases under section 415(i) of this title, an amount shall be deemed to read “rounded to the next lower multiple of $0.10”.

(A) one or more persons were entitled (without the application of section 402(j)(1) of this title) to monthly benefits under section 402 of this title for May 1978 on the basis of the wages and self-employment income of an individual,

(B) the benefit of at least one such person for June 1978 is increased by reason of the amendments made by section 204 of the Social Security Amendments of 1977; and

(C) the total amount of benefits to which all such persons are entitled under such section 402 of this title are reduced under the provisions of this subsection (or would be so reduced except for the first sentence of subsection (a)(4) of this section), then the amount of the benefit to which each such person is entitled for months after May 1978 shall be increased (after such reductions are made under this subsection) to the amount such benefits would have been if the benefit of the person or persons referred to in subparagraph (B) had not been so increased.

(A) Subject to subparagraphs (B) and (C)—

(i) the total monthly benefits to which beneficiaries may be entitled under sections 402 and 423 of this title for a month on the basis of the wages and self-employment income of an individual whose primary insurance amount is computed under section 415(a)(2)(B)(i) of this title shall equal the total monthly benefits which were authorized by this section with respect to such individual’s primary insurance amount for the last month of his prior entitlement to disability insurance benefits, increased for this purpose by the general benefit increases and other increases under section 415(i) of this title that would have applied to such total monthly benefits had the individual remained entitled to disability insurance benefits until the month in which he became entitled to old-age insurance benefits or reentitled to disability insurance benefits or died, and
(i) the total monthly benefits to which beneficiaries may be entitled under sections 402 and 423 of this title for a month on the basis of the wages and self-employment income of an individual whose primary insurance amount is computed under section 415(a)(2)(C) of this title shall equal the total monthly benefits which were authorized by this section with respect to such individual's primary insurance amount for the last month of his prior entitlement to disability insurance benefits.

(B) In any case in which—

(i) the total monthly benefits with respect to such individual's primary insurance amount for the last month of his prior entitlement to disability insurance benefits was computed under paragraph (6), and

(ii) the individual's primary insurance amount is computed under subparagraph (D)(i) or (C) of section 415(a)(2) of this title by reason of the individual’s entitlement to old-age insurance benefits or death,

the total monthly benefits shall equal the total monthly benefits that would have been authorized with respect to the primary insurance amount for the last month of his prior entitlement to disability insurance benefits if such total monthly benefits had been computed without regard to paragraph (6).

(C) This paragraph shall apply before the application of paragraph (3)(A), and before the application of subsection (a)(1) of this section as in effect in December 1978.

(b) Deductions on account of work

(1) Deductions, in such amounts and at such time or times as the Commissioner of Social Security shall determine, shall be made from any payment or payments under this subchapter to which an individual is entitled, and from any payment or payments to which any other persons are entitled on the basis of such individual’s wages and self-employment income, until the total of such deductions equals—

(A) such individual’s benefit or benefits under section 402 of this title for any month, and

(B) if such individual was entitled to old-age insurance benefits under section 402(a) of this title for such month, the benefit or benefits of all other persons for such month under section 402 of this title based on such individual’s wages and self-employment income.

if for such month he is charged with excess earnings, under the provisions of subsection (f) of this section, equal to the total of benefits referred to in clauses (A) and (B). If the excess earnings so charged are less than such total of benefits, such deduction with respect to such month shall be equal only to the amount of such excess earnings. If a child who has attained the age of 18 and is entitled to child’s insurance benefits, or a person who is entitled to mother’s or father’s insurance benefits, is married to an individual entitled to old-age insurance benefits under section 402(a) of this title, such child or such person, as the case may be, shall, for the purposes of this subsection and subsection (f) of this section, be deemed to be entitled to such benefits on the basis of the wages and self-employment income of such individual entitled to old-age insurance benefits. If a deduction has already been made under this subsection with respect to a person’s benefit or benefits under section 402 of this title, he shall be deemed entitled to payments under such section for such month for purposes of further deductions under this subsection, and for purposes of charging of each person’s excess earnings under subsection (f) of this section, only to the extent of the total of his benefits remaining after such earlier deductions have been made. For purposes of this subsection and subsection (f) of this section—

(i) an individual shall be deemed to be entitled to payments under section 402 of this title equal to the amount of the benefit or benefits to which he is entitled under such section after the application of subsection (a) of this section, but without the application of the first sentence of paragraph (4) thereof; and

(ii) if a deduction is made with respect to an individual’s benefit or benefits under section 402 of this title because of the occurrence in any month of an event specified in subsection (c) or (d) of this section or in section 422(b) of this title, such individual shall not be considered to be entitled to any benefits under such section 402 for such month.

(2)(A) Except as provided in subparagraph (B), in any case in which—

(i) any of the other persons referred to in paragraph (1)(B) is entitled to monthly benefits as a divorced spouse under section 402(b) or (c) of this title for any month, and

(ii) such person has been divorced for not less than 2 years,

the benefit to which he or she is entitled on the basis of the wages and self-employment income of the individual referred to in paragraph (1) for such month shall be determined without regard to deductions under this subsection as a result of excess earnings of such individual, and the benefits of all other individuals who are entitled for such month to monthly benefits under section 402 of this title on the basis of the wages and self-employment income of such individual referred to in paragraph (1) shall be determined as if no such divorced spouse were entitled to benefits for such month.

(B) Clause (ii) of subparagraph (A) shall not apply with respect to any divorced spouse in any case in which the individual referred to in paragraph (1) became entitled to old-age insurance benefits under section 402(a) of this title before the date of the divorce.

(c) Deductions on account of noncovered work outside United States or failure to have child in care

Deductions, in such amounts and at such time or times as the Commissioner of Social Security shall determine, shall be made from any payment or payments under this subchapter to which an individual is entitled, until the total of such deductions equals such individual’s benefits or benefit under section 402 of this title for any month—

(1) in which such individual is under retirement age (as defined in section 416(l) of this
(2) in which such individual, if a wife or husband under retirement age (as defined in section 416(l) of this title) entitled to a wife’s or husband’s insurance benefit, did not have in his or her care (individually or jointly with his or her spouse) a child of such spouse entitled to a child’s insurance benefit and such wife’s or husband’s insurance benefit for such month was not reduced under the provisions of section 402(q) of this title;

(3) in which such individual, if a widow or widower entitled to a mother’s or father’s insurance benefit, did not have in his or her care a child of his or her deceased spouse entitled to a child’s insurance benefit; or

(4) in which such an individual, if a surviving divorced mother or father entitled to a mother’s or father’s insurance benefit, did not have in his or her care a child of his or her deceased former spouse who (A) is his or her son, daughter, or legally adopted child and (B) is entitled to a child’s insurance benefit on the basis of the wages and self-employment income of such deceased former spouse.

For purposes of paragraphs (2), (3), and (4) of this subsection, a child shall not be considered to be entitled to a child’s insurance benefit for any month in which paragraph (1) of section 402(a) of this title applies or an event specified in section 422(b)(3) of this title occurs with respect to such child. Subject to paragraph (3) of such section 402(a) of this title, no deduction shall be made under this subsection from any child’s insurance benefit for the month in which the child entitled to such benefit attained the age of eighteen or any subsequent month; nor shall any deduction be made under this subsection from any widow’s or widower’s insurance benefit if the widow, surviving divorced wife, widower, or surviving divorced husband involved became entitled to such benefit prior to attaining age 60.

(d) Deductions from dependents’ benefits on account of noncovered work outside United States by old-age insurance beneficiary

(1) (A) Deductions shall be made from any wife’s, husband’s, or child’s insurance benefit, based on the wages and self-employment income of an individual entitled to old-age insurance benefits, to which a wife, divorced wife, husband, divorced husband, or child is entitled, until the total of such deductions equals such wife’s, husband’s, or child’s insurance benefit or benefits under section 402 of this title for any month in which such individual is under retirement age (as defined in section 416(l) of this title) and for more than forty-five hours of work outside the United States.

(B) (i) Except as provided in clause (ii), in any case in which—

(I) a divorced spouse is entitled to monthly benefits under section 402(b) or (c) of this title for any month, and

(II) such divorced spouse has been divorced for not less than 2 years,

the benefit to which he or she is entitled for such month on the basis of the wages and self-employment income of the individual entitled to old-age insurance benefits referred to in subparagraph (A) shall be determined without regard to deductions under this paragraph as a result of excess earnings of such individual, and

the benefits of all other individuals who are entitled for such month to monthly benefits under section 402 of this title on the basis of the wages and self-employment income of such individual referred to in subparagraph (A) shall be determined as if no such divorced spouse were entitled to benefits for such month.

(ii) Subclause (II) of clause (i) shall not apply with respect to any divorced spouse in any case in which the individual entitled to old-age insurance benefits referred to in subparagraph (A) became entitled to such benefits before the date of the divorce.

(2) Deductions shall be made from any child’s insurance benefit to which a child who has attained the age of eighteen is entitled, or from any mother’s or father’s insurance benefit to which a person is entitled, until the total of such deductions equals such child’s insurance benefit or benefits or mother’s or father’s insurance benefit or benefits under section 402 of this title for any month in which such child or person entitled to mother’s or father’s insurance benefits is married to an individual under retirement age (as defined in section 416(l) of this title) who is entitled to old-age insurance benefits and for more than forty-five hours of work outside the United States.

(e) Occurrence of more than one event

If more than one of the events specified in subsections (c) and (d) of this section and section 422(b) of this title occurs in any one month which would occasion deductions equal to a benefit for such month, only an amount equal to such benefit shall be deducted.

(f) Months to which earnings are charged

For purposes of subsection (b) of this section—

(1) The amount of an individual’s excess earnings (as defined in paragraph (3)(i)) shall be charged to months as follows: There shall be charged to the first month of such taxable year an amount of his excess earnings equal to the sum of the payments to which he and all other persons (excluding divorced spouses referred to in subsection (b)(2) of this section) are entitled for such month under section 402 of this title on the basis of his wages and self-employment income (or the total of his excess earnings if such excess earnings are less than such sum), and the balance, if any, of such excess earnings shall be charged to each succeeding month in such year to the extent, in the case of each such month, of the sum of the payments to which such individual and all such other persons are entitled for such month under section 402 of this title on the basis of his wages and self-employment income, until the total of such excess has been so charged. Where an individual is entitled to benefits under section 402(a) of this title and other persons (excluding divorced spouses referred to in subsection (b)(2) of this section) are entitled to benefits under section 402(b), (c), or (d) of this title on the basis of the wages and self-em-
employment income of such individual, the excess earnings of such individual for any taxable year shall be charged in accordance with the provisions of this subsection before the excess earnings of such persons for a taxable year are charged to months in such individual's taxable year. Notwithstanding the preceding provisions of this paragraph but subject to section 402(e) of this title, no part of the excess earnings of an individual shall be charged to any month (A) for which such individual was not entitled to a benefit under this subchapter, (B) in which such individual was at or above retirement age (as defined in section 416(l) of this title), (C) in which such individual, if a child entitled to child's insurance benefits, has attained the age of 16, (D) for which such individual is entitled to widow's or widower's insurance benefits if such individual became so entitled prior to attaining age 60, (E) in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8), if such month is in the taxable year in which occurs the first month after December 1977 that is both (i) a month for which the individual is entitled to benefits under subsection (a), (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title (without having been entitled for the preceding month to a benefit under any other of such subsections), and (ii) a month in which the individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8), or (F) in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8), in the case of an individual entitled to benefits under section 402(b) or (c) of this title (but only by reason of having a child in his or her care within the meaning of paragraph (1)(B) of subsection (b) or (c) of this section, as may be applicable), or under section 402(d) or (g) of this title, if such month is in a year in which such entitlement ends for a reason other than the death of such individual, and such individual is not entitled to any benefits under this subchapter for the month following the month during which such entitlement under section 402(b), (d), or (g) of this title ended.

(2) As used in paragraph (1), the term "first month of such taxable year" means the earliest month in such year to which the charging of excess earnings described in such paragraph is not prohibited by the application of clauses (A), (B), (C), (D), (E), and (F) thereof.

(3) For purposes of paragraph (1) and subsection (h) of this section, an individual's excess earnings for a taxable year shall be 33⅓ percent of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8) in the case of an individual who has attained (or, for the individual's death, would have attained) retirement age (as defined in section 416(l) of this title) before the close of such taxable year, or 50 percent of his earnings for such year in excess of such product in the case of any other individual, multiplied by the number of months in such year, except that in determining an individual's excess earnings for the taxable year in which he attains retirement age (as defined in section 416(l) of this title), there shall be excluded any earnings of such individual for the month in which he attains such age and any subsequent month (with any net earnings or net loss from self-employment in such year being prorated in an equitable manner under regulations of the Commissioner of Social Security). For purposes of the preceding sentence, notwithstanding section 411(e) of this title, the number of months in the taxable year in which an individual dies shall be 12. The excess earnings as derived under the first sentence of this paragraph, if not a multiple of $1, shall be reduced to the next lower multiple of $1.

(4) For purposes of clause (E) of paragraph (1)—

(A) An individual will be presumed, with respect to any month, to have been engaged in self-employment in such month until it is shown to the satisfaction of the Commissioner of Social Security that such individual rendered no substantial services in such month with respect to any trade or business the net income or loss of which is includable in computing (as provided in paragraph (5) of this subsection) his net earnings or net loss from self-employment for any taxable year. The Commissioner of Social Security shall by regulations prescribe the methods and criteria for determining whether or not an individual has rendered substantial services with respect to any trade or business.

(B) An individual will be presumed, with respect to any month, to have rendered services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8) until it is shown to the satisfaction of the Commissioner of Social Security that such individual did not render such services in such month for more than such amount.

(5) (A) An individual's earnings for a taxable year shall be (i) the sum of his wages for services rendered in such year and his net earnings from self-employment for such year, minus (ii) any net loss from self-employment for such year.

(B) For purposes of this section—

(i) an individual's net earnings from self-employment for any taxable year shall be determined as provided in section 411 of this title, except that paragraphs (1), (4), and (5) of section 411(c) of this title shall not apply and the gross income shall be computed by excluding the amounts provided by subparagraph (D) of this paragraph, and

(ii) an individual's net loss from self-employment for any taxable year is the excess of the deductions (plus his distributive share of loss described in section 702(a)(8) of the Internal Revenue Code of 1986) taken into...

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account under clause (i) over the gross income (plus his distributive share of income so described) taken into account under clause (i).

(C) For purposes of this subsection, an individual's wages shall be computed without regard to the limitations as to amounts of remuneration specified in paragraphs (1), (6)(B), (6)(C), (7)(B), and (8) of section 409(a) of this title; and in making such computation services which do not constitute employment as defined in section 410 of this title, performed within the United States by the individual as an employee or performed outside the United States in the active military or naval service of the United States, shall be deemed to be employment as so defined if the remuneration for such services is not includible in computing his net earnings or net loss from self-employment. The term "wages" does not include—

(i) the amount of any payment made to, or on behalf of, an employee or any of his dependents (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement, or

(ii) any payment or series of payments by an employer to an employee or any of his dependents upon or after the termination of the employee's employment relationship because of retirement after attaining an age specified in a plan referred to in section 409(a)(1)(B) of this title or in a pension plan of the employer.

(D) In the case of—

(i) an individual who has attained retirement age (as defined in section 416(i) of this title) on or before the last day of the taxable year, and who shows to the satisfaction of the Commissioner of Social Security that he or she is receiving royalties attributable to a copyright or patent obtained before the taxable year in which he or she attained such age and that the property to which the copyright or patent relates was created by his or her own personal efforts, or

(ii) an individual who has become entitled to insurance benefits under this subchapter, other than benefits under section 422 of this title or benefits payable under section 402(d) of this title by reason of being under a disability, and who shows to the satisfaction of the Commissioner of Social Security that he or she is receiving, in a year after his or her initial year of entitlement to such benefits, any other income not attributable to services performed after the month in which he or she initially became entitled to such benefits, there shall be excluded from gross income any such royalties or other income.

(E) For purposes of this section, any individual's net earnings from self-employment which result from or are attributable to the performance of services by such individual as a director of a corporation during any taxable year shall be deemed to have been derived (and received) by such individual in that year, at the time the services were performed, regard-

less of when the income, on which the computation of such net earnings from self-employment is based, is actually paid to or received by such individual (unless such income was actually paid and received prior to that year).

(6) For purposes of this subsection, wages (determined as provided in paragraph (5)(C)) which, according to reports received by the Commissioner of Social Security, are paid to an individual during a taxable year shall be presumed to have been paid to him for services performed in such year until it is shown to the satisfaction of the Commissioner of Social Security that they were paid for services performed in another taxable year. If such reports with respect to an individual show his wages for a calendar year, such individual's taxable year shall be presumed to be a calendar year for purposes of this subsection until it is shown to the satisfaction of the Commissioner of Social Security that his taxable year is not a calendar year.

(7) Where an individual's excess earnings are charged to a month and the excess earnings so charged are less than the total of the payments (without regard to such charging) to which all persons (excluding divorced spouses referred to in subsection (b)(2) of this section) are entitled under section 402 of this title for such month on the basis of his wages and self-employment income, the difference between such total and the excess so charged to such month shall be paid (if it is otherwise payable under this subchapter) to such individual and other persons in the proportion that the benefit to which each of them is entitled (without regard to such charging, without the application of section 402(e)(3) of this title, and prior to the application of section 403(a) of this title) bears to the total of the benefits to which all of them are entitled.

(8)(A) Whenever the Commissioner of Social Security pursuant to section 415(c) of this title increases benefits effective with the month of December following a cost-of-living computation quarter\(^2\) the Commissioner shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals which are to be applicable (unless prevented from becoming effective by subparagraph (C)) with respect to taxable years ending in (or with the close of) the calendar year after the calendar year in which such benefit increase is effective (or, in the case of an individual who dies during the calendar year after the calendar year in which the benefit increase is effective, with respect to such individual's taxable year which ends, upon his death, during such year).

(B) Except as otherwise provided in subparagraph (D), the exempt amount which is applicable to individuals described in such subparagraph and the exempt amount which is applicable to other individuals, for each month of a particular taxable year, shall each be whichever of the following is the larger—

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\(^2\)So in original. Probably should be followed by a comma.
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(i) the corresponding exempt amount which is in effect with respect to months in the taxable year in which the determination under subparagraph (A) is made, or
(ii) the product of the corresponding exempt amount which is in effect with respect to months in the taxable year ending after 2001 and before 2003 (with respect to individuals described in subparagraph (D)) or the taxable year ending after 1993 and before 1995 (with respect to other individuals), and the ratio of—

(I) the national average wage index (as defined in section 409(k)(1) of this title) for the calendar year before the calendar year in which the determination under subparagraph (A) is made, to

(II) the national average wage index (as so defined) for 2000 (with respect to individuals described in subparagraph (D)) or 1992 (with respect to other individuals),

with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such product is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

Whenever the Commissioner of Social Security determines that an exempt amount is to be increased in any year under this paragraph, the Commissioner shall notify the House Committee on Ways and Means and the Senate Committee on Finance within 30 days after the close of the base quarter (as defined in section 415(i)(1)(A) of this title) in such year of the estimated amount of such increase, indicating the new exempt amount, the actuarial assumptions and methodology used in preparing such estimates.

(C) Notwithstanding the determination of a new exempt amount by the Commissioner of Social Security under subparagraph (A) (and notwithstanding any publication thereof under such subparagraph or any notification thereof under the last sentence of subparagraph (B)), such new exempt amount shall not take effect pursuant thereto if during the calendar year in which such determination is made a law increasing the exempt amount is enacted.

(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 416(2) of this title) before the close of the taxable year involved shall be—

(i) for each month of any taxable year ending after 1995 and before 1997, $1,041.66,

(ii) for each month of any taxable year ending after 1996 and before 1998, $1,125.00,

(iii) for each month of any taxable year ending after 1997 and before 1999, $1,208.33,

(iv) for each month of any taxable year ending after 1998 and before 2000, $1,291.66,

(v) for each month of any taxable year ending after 1999 and before 2001, $1,416.66,

(vi) for each month of any taxable year ending after 2000 and before 2002, $2,083.33, and

(vii) for each month of any taxable year ending after 2001 and before 2003, $2,500.00.

(E) Notwithstanding subparagraph (D), no deductions in benefits shall be made under subsection (b) of this section with respect to the earnings of any individual in any month beginning with the month in which the individual attains retirement age (as defined in section 416(l) of this title).

(9) For purposes of paragraphs (3), (5)(D)(i), (8)(D), and (8)(E), the term “retirement age (as defined in section 416(l) of this title)”, with respect to any individual entitled to monthly insurance benefits under section 402 of this title, means the retirement age (as so defined) which is applicable in the case of old-age insurance benefits, regardless of whether or not the particular benefits to which the individual is entitled (or the only such benefits) are old-age insurance benefits.

(g) Penalty for failure to report certain events

Any individual in receipt of benefits subject to deduction under subsection (c) of this section, or who is in receipt of such benefits on behalf of another individual, because of the occurrence of an event specified therein, who fails to report such occurrence to the Commissioner of Social Security prior to the receipt and acceptance of an insurance benefit for the second month following the month in which such event occurred, shall suffer deductions in addition to those imposed under subsection (c) of this section as follows:

(1) if such failure is the first one with respect to which an additional deduction is imposed by this subsection, such additional deduction shall be equal to his benefit or benefits for the first month of the period for which there is a failure to report even though such failure is with respect to more than one month;

(2) if such failure is the second one with respect to which an additional deduction is imposed by this subsection, such additional deduction shall be equal to two times his benefit or benefits for the first month of the period for which there is a failure to report even though such failure is with respect to more than two months; and

(3) if such failure is the third or a subsequent one for which an additional deduction is imposed under this subsection, such additional deduction shall be equal to three times his benefit or benefits for the first month of the period for which there is a failure to report even though the failure to report is with respect to more than three months;

except that the number of additional deductions required by this subsection shall not exceed the number of months in the period for which there is a failure to report. As used in this subsection, the term “period for which there is a failure to report” with respect to any individual means the period for which such individual received and accepted insurance benefits under section 402 of this title without making a timely report and for which deductions are required under subsection (c) of this section.

(h) Report of earnings to Commissioner

(1)(A) If an individual is entitled to any monthly insurance benefit under section 402 of
this title during any taxable year in which he has earnings or wages, as computed pursuant to paragraph (5) of subsection (f) of this section, in excess of the product of the applicable exempt amount as determined under subsection (f)(8) of this section times the number of months in such year, such individual (or the individual who is in receipt of such benefit on his behalf) shall make a report to the Commissioner of Social Security of his earnings (or wages) for such taxable year. Such report shall be made on or before the fifteenth day of the fourth month following the close of such year, and shall contain such information and be made in such manner as the Commissioner of Social Security may by regulations prescribe. Such report need not be made for any taxable year—

(i) beginning with or after the month in which such individual attained retirement age (as defined in section 416(l) of this title), or

(ii) if benefit payments for all months (in such taxable year) in which such individual is under retirement age (as defined in section 416(l) of this title) have been suspended under the provisions of the first sentence of paragraph (3) of this subsection, unless—

(I) such individual is entitled to benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title;

(II) such benefits are reduced under subsection (a) of this section for any month in such taxable year, and

(III) in any such month there is another person who also is entitled to benefits under subsection (b), (d), (e), (f), (g), or (h) of section 402 of this title;

(3) If the Commissioner of Social Security determines, on the basis of information obtained by or submitted to the Commissioner, that it may reasonably be expected that an individual entitled to benefits under section 402 of this title for any taxable year will suffer deductions imposed under subsection (b) of this section by reason of his earnings for such year, the Commissioner of Social Security may, before the close of such taxable year, suspend the total or any part of any such benefits payable on the basis of such individual’s wages and self-employment income, and such suspension shall remain in effect with respect to the benefits for any month until the Commissioner finds that there is valid reason for a delay, but in no case may the period be extended more than four months.

(B) if the benefit payments of an individual have been suspended for all months in any taxable year under the provisions of the first sentence of paragraph (3) of this subsection, no benefit payment shall be made to such individual for any such month in such taxable year after the expiration of the period of three years, three months, and fifteen days following the close of such taxable year unless within such period the individual, or some other person entitled to benefits under this subchapter on the basis of the same wages and self-employment income, files with the Commissioner of Social Security information showing that a benefit for such month is payable to such individual.

(2) If an individual fails to make a report required under paragraph (1) of this subsection, within the time prescribed by or in accordance with such paragraph, for any taxable year and any deduction is imposed under subsection (b) of this section by reason of his earnings for such year, he shall suffer additional deductions as follows:

(A) if such failure is the first one with respect to which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 402 of this title, except that if the deduction imposed under subsection (b) of this section by reason of his earnings for such year is less than the amount of his benefit (or benefits) for the last month of such year for which he was entitled to a benefit under section 402 of this title, the additional deduction shall be equal to the amount of the deduction imposed under subsection (b) of this section but not less than $10;

(B) if such failure is the second one for which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to two times his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 402 of this title;

(C) if such failure is the third or a subsequent one for which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to three times his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 402 of this title;

except that the number of the additional deductions required by this paragraph with respect to a failure to report earnings for a taxable year shall not exceed the number of months in such year for which such individual received and accepted insurance benefits under section 402 of this title and for which deductions are imposed under subsection (b) of this section by reason of his earnings. In determining whether a failure to report earnings is the first or a subsequent failure for any individual, all taxable years ending prior to the imposition of the first additional deduction under this paragraph, other than the latest one of such years, shall be disregarded.

(3) If the Commissioner of Social Security determines, on the basis of information obtained by or submitted to the Commissioner, that it may reasonably be expected that an individual entitled to benefits under section 402 of this title for any taxable year will suffer deductions imposed under subsection (b) of this section by reason of his earnings for such year, the Commissioner of Social Security may, before the close of such taxable year, suspend the total or less than the total payment for each month in such year (or for only such months as the Commissioner of Social Security may specify) of the benefits payable on the basis of such individual’s wages and self-employment income; and such suspension shall remain in effect with respect to the benefits for any month until the Commissioner of Social Security has determined whether or not any deduction is imposed for such month under subsection (b) of this section. The Commissioner of Social Security is authorized, before the close of the taxable year of an individual entitled to benefits during such year, to request of such individual that he make, at such time or times as the Commissioner of Social Security may specify, a declaration of his estimated earnings for the taxable year and that he furnish to the Commissioner of Social Security such other information with respect to such
earnings as the Commissioner of Social Security may specify. A failure by such individual to comply with any such request shall in itself constitute justification for a determination under this paragraph that it may reasonably be expected that the individual will suffer deductions imposed under subsection (b) of this section by reason of his earnings for such year. If, after the close of a taxable year of an individual entitled to benefits under section 402 of this title for such year, the Commissioner of Social Security requests such individual to furnish a report of his earnings (as computed pursuant to paragraph (5) of subsection (f) of this section) for such taxable year or any other information with respect to such earnings which the Commissioner of Social Security may specify, and the individual fails to comply with such request, such failure shall in itself constitute justification for a determination that such individual’s benefits are subject to deductions under subsection (b) of this section for each month in such taxable year (or only for such months thereof as the Commissioner of Social Security may specify) by reason of his earnings for such year.

(4) The Commissioner of Social Security shall develop and implement procedures in accordance with this subsection to avoid paying more than the correct amount of benefits to any individual under this subchapter as a result of such individual’s failure to file a correct report or estimate of earnings or wages. Such procedures may include identifying categories of individuals who are likely to be paid more than the correct amount of benefits and requesting that they estimate their earnings or wages more frequently than other persons subject to deductions under this section on account of earnings or wages.


(j) Attainment of retirement age

For the purposes of this section, an individual shall be considered as having attained retirement age (as defined in section 416(i) of this title) during the entire month in which he attains such age.

(k) Noncovered remunerative activity outside United States

An individual shall be considered to be engaged in non-covered remunerative activity outside the United States if he performs services outside the United States as an employee and such services do not constitute employment as defined in section 410 of this title and are not performed in the active military or naval service of the United States, or if he carries on a trade or business outside the United States (other than the performance of service as an employee) the net income or loss of which (1) is not includible in computing his net earnings from self-employment for a taxable year and (2) would not be excluded from net earnings from self-employment, if carried on in the United States, by any of the numbered paragraphs of section 411(a) of this title. When used in the preceding sentence with respect to a trade or business (other than the performance of service as an employee), the term “United States” does not include the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa in the case of an alien who is neither a resident of the United States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa); and the term “trade or business” shall have the same meaning as when used in section 162 of the Internal Revenue Code of 1986.

(ii) Good cause for failure to make reports required

The failure of an individual to make any report required by subsection (g) or (h)(1)(A) of this section within the time prescribed therein shall not be regarded as such a failure if it is shown to the satisfaction of the Commissioner of Social Security that he had good cause for failing to make such report within such time. The determination of what constitutes good cause for purposes of this subsection shall be made in accordance with regulations of the Commissioner of Social Security, except that making any such determination, the Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).


REFERENCES IN TEXT
Section 422(b) of this title, referred to in subsecs. (a)(9), (b), (c), (e), was repealed by Pub. L. 106–170, title I, §101(b)(1)(C), Dec. 17, 1999, 113 Stat. 1873.

AMENDMENTS
2000—Subsec. (c). Pub. L. 106–182, §4(a)(1), in last sentence of concluding provisions substituted “nor shall any deduction be made under this subsection from any widow’s or widower’s insurance benefit if the widow, surviving divorced wife, widower, or surviving divorced husband involved became entitled to such benefit prior to attaining age 60” for “nor shall any deduction be made under this subsection from any widow’s insurance benefit for any month in which the widow or surviving divorced wife is entitled and has not attained retirement age (as defined in section 416(i) of this title) before the close of the taxable year involved—

(i) shall be $353.33 for each month of any taxable year ending after 1977 and before 1979,
(ii) shall be $375 for each month of any taxable year ending after 1978 and before 1980,
(iii) shall be $418.66 for each month of any taxable year ending after 1979 and before 1981,
(iv) shall be $538.33 for each month of any taxable year ending after 1980 and before 1982, and
(v) shall be $500 for each month of any taxable year ending after 1981 and before 1983.”
Subsec. (a)(4). Pub. L. 103–296, §309(b), substituted “section 422(b) of this title. Notwithstanding the preceding sentence, any reduction under this subsection in the case of an individual who is entitled to a benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title for any month on the basis of the same wages and self-employment income as another person—

(A) who also is entitled to a benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title for any month on the basis of the same wages and self-employment income as another person,
(B) who does not live in the same household as such individual, and
(C) whose benefit for such month is suspended (in whole or in part) pursuant to subsection (h)(3) of this section, shall be made before the suspension under subsection (h)(3) of this section. Whenever “section 422(b) of this title. Whenever”:
Subsec. (a)(8), Pub. L. 103–296, §310(b), substituted “subject to paragraph (7) and except as otherwise provided in paragraph (10)(C)” for “subject to paragraph (7)”,
Subsec. (f)(8)(A). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” and “the Commissioner” for “he.”
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Subsec. (f)(3). Pub. L. 100–647 inserted ``(or, but for the individual's death, would have attained)'' after ``who has attained'' in first sentence, inserted after first sentence ``(For purposes of the preceding sentence, notwithstanding section 411(e) of this title, the number of months in the taxable year in which an individual dies shall be 12),'' and substituted ``first sentence of this paragraph'' for ``preceding sentence'' in last sentence.

1986—Subsec. (a)(4). Pub. L. 99–272, § 12108(a)(1), struck out ``(or, but for the individual's death, would have attained)'' after ``(or, but for the individual's death, would have attained)'' after ``who has attained'' in first sentence, inserted after first sentence ``(For purposes of the preceding sentence, notwithstanding section 411(e) of this title, the number of months in the taxable year in which an individual dies shall be 12),'' and substituted ``first sentence of this paragraph'' for ``preceding sentence'' in last sentence.

1985—Subsec. (a)(4). Pub. L. 99–272, § 12108(a)(1), struck out ``(or, but for the individual's death, would have attained)'' after ``(or, but for the individual's death, would have attained)'' after ``who has attained'' in first sentence, inserted after first sentence ``(For purposes of the preceding sentence, notwithstanding section 411(e) of this title, the number of months in the taxable year in which an individual dies shall be 12),'' and substituted ``first sentence of this paragraph'' for ``preceding sentence'' in last sentence.

1985—Subsec. (a)(4). Pub. L. 99–272, § 12108(a)(1), struck out ``(or, but for the individual's death, would have attained)'' after ``(or, but for the individual's death, would have attained)'' after ``who has attained'' in first sentence, inserted after first sentence ``(For purposes of the preceding sentence, notwithstanding section 411(e) of this title, the number of months in the taxable year in which an individual dies shall be 12),'' and substituted ``first sentence of this paragraph'' for ``preceding sentence'' in last sentence.
Subsec. (d)(1)(A). Pub. L. 98–369, § 2661(g)(1)(A)(i), substituted “for more than fifty-four hours of which each individual engaged” for “on seven or more different calendar days of which he engaged”.
Subsec. (d)(2). Pub. L. 98–369, § 2663(a)(3)(B), substituted “than individual under the age of seventy who is entitled” for “an individual who is entitled”.
Pub. L. 98–369, § 2661(g)(1)(A)(ii), substituted “for more than forty-five hours” for “on seven or more different calendar days”.
See 1983 Amendment note below.
1983—Subsec. (a)(3)(A). Pub. L. 98–21, § 331(a)(1), amended cl. (ii) generally, substituting provisions relating to an amount (I) initially equal to the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title for January of the year determined for purposes of this clause under the following two sentences, with respect to average indexed monthly earnings equal to one-twelfth of the attained retirement age (as defined in section 416(l) of this title) for the year under section 430 of this title, and (II) thereafter increased in accordance with the provisions of section 415(i)(2)(A)(ii) of this title, for provisions relating to an amount equal to the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title for that month with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 430 of this title, and inserted provisions following cl. (I).
Subsec. (a)(7). Pub. L. 98–21, § 331(a)(2), substituted “the amount determined in accordance with the provisions of paragraph (3)(A)(ii) of this subsection, except that for this purpose the references to subparagraph (A) in the last two sentences of paragraph (3)(A) shall be deemed to be references to paragraph (7) for “the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title for that month with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined under section 430 of this title for the year in which that month occurs”.”
Subsec. (b)(1). Pub. L. 98–21, § 309(f), inserted “or father’s” after “mother’s” in provisions following subpar. (B).
Pub. L. 98–21, § 132(b)(1)(A)(III), inserted “clauses (A) and (B)” for “clauses (1) and (2)” in provisions following subpar. (B).
Pub. L. 98–21, § 132(b)(1)(A)(I), (II), (IV), designated existing provisions of subsec. (b) as par. (I), and in par. (I), as so designated, redesignated cl. (1) and (2) as (A) and (B), respectively, and cl. (A) and (B) as (i) and (ii), respectively.
Subsec. (b)(1)(i). Pub. L. 98–21, § 331(b), substituted “first sentence of paragraph (4)” for “penultimate sentence”.
Subsec. (c). Pub. L. 98–21, § 201(c)(2), substituted “retirement age (as defined in section 416(l) of this title)” for “‘age sixty-five’”.
Pub. L. 98–21, § 201(c)(1)(B), substituted “retirement age (as defined in section 416(l) of this title)” for “‘age sixty-five’” wherever appearing in provisions following par. (4).
Pub. L. 98–21, § 201(c)(1)(B), substituted “benefit base” for “benefits base”.
Subsec. (c)(1). Pub. L. 98–21, § 309(b)(1), substituted “entitled on the basis” for “entitled on the bases”.
Subsec. (f)(1). Pub. L. 98–21, § 132(b)(1)(B)(ii), inserted “‘excluding divorced spouses referred to in subsection (b)(2) of this section’” after “and all other persons” and after “other persons” and inserted “such” after “payments to which such individual and all” in first sentence.
Subsec. (f)(2). Pub. L. 98–21, § 209(b), inserted “or father’s” after “mother’s” in three places.
Subsec. (f)(3). Pub. L. 98–21, § 132(b)(1)(B)(i), inserted “‘excluding divorced spouses referred to in subsection (b)(2) of this section’” after “and all other persons” and after “other persons” and inserted “such” after “payments to which such individual and all” in first sentence.
Subsec. (f)(4). Pub. L. 98–21, § 324(a)(4), inserted provision excluding from “wages” certain payments on account of retirement or under a pension plan of the employer.
Subsec. (f)(5)(D)(i). Pub. L. 98–21, § 201(c)(1)(B), as amended by Pub. L. 98–369, § 2662(c)(1), substituted “retirement age (as defined in section 416(l) of this title)” for “‘age of 65’”.
Subsec. (f)(7). Pub. L. 98–21, § 132(b)(1)(B)(ii), inserted “‘excluding divorced spouses referred to in subsection (b)(2) of this section’” after “all other persons”.
Subsec. (f)(8)(D). Pub. L. 98–21, § 201(c)(1)(B), substituted “retirement age (as defined in section 416(l) of this title)” for “‘age of 65’”.
Subsec. (a)(8). Pub. L. 97–123, § 2(f), struck out “modified by the application of section 415(a)(6) of this title”.
Pub. L. 97–35, §§ 2201(c)(6), 2206(b)(4), inserted “modified by the application of section 415(a)(6) of this title” and inserted provision that for the purposes of the preceding sentence, the phrase “rounded to the next higher multiple of $10.10,” as it appeared in subsec. (a)(2)(C) of this section as in effect in December 1978, be deemed to read “rounded to the next lower multiple of $10.10.”
1980—Subsec. (a). Pub. L. 96–265 added par. (6), redesignated former pars. (6) to (8) as (7) to (9), respectively, and made conforming amendments to pars. (1), (2)(D), and (8).
Subsec. (f)(5)(D). Pub. L. 96–473, §3(a), revised former cl. (i) and (ii) into cl. (i), inserted reference to women, and added cl. (ii).
1977—Subsec. (a)(1) to (7). Pub. L. 95–216, §302, generally restated the provisions of existing pars. (1) to (5) which changes to take into account the revised system for computing primary insurance amounts based on wage-indexed earnings and redistributed those existing provisions as thus restated into pars. (1) to (5). Pub. L. 95–216, §304(e), added par. (8).
Subsec. (d)(1)(E). Pub. L. 95–216, §§301(d), 303(a), substituted “‘the applicable exempt amount’” for “‘$200 or the exempt amount’” and inserted “‘if such month is in the taxable year in which occurs the first month that is both (i) a month for which the individual is entitled to benefits under subsection (a), (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title (without having been entitled for the preceding month to a benefit under any other of such subsections), and (ii) a month in which the individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5)) of more than the applicable exempt amount as determined under paragraph (8)” after “as determined under paragraph (8)”.
Subsec. (f)(1)(B). Pub. L. 95–216, §301(d), substituted “‘the applicable exempt amount’” for “‘$200 or the exempt amount’”.
Pub. L. 95–216, §302(b), substituted “age 70” for “age 72”.
Subsec. (f)(4)(B). Pub. L. 95–216, §301(d), substituted “‘the applicable exempt amount’” for “‘$200 or the exempt amount’”.
Subsec. (f)(6)(A). Pub. L. 95–216, §301(a), substituted “‘the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable (unless prevented from becoming effective by subparagraph (C) with respect to taxable years ending in (or with the close of) the calendar year after the calendar year for “a new exempt amount which shall be effective (unless such new exempt amount is prevented from becoming effective by subparagraph (C) of this paragraph) with respect to any individual’s taxable year which ends after the calendar year)”.
Subsec. (f)(6)(B). Pub. L. 95–216, §§301(b), 355(a), applied with respect to taxable years ending after Dec. 1977, substituted “Except as otherwise provided in subparagraph (D), the exempt amount which is applicable to individuals described in such subparagraph and the exempt amount which is applicable to other individuals for each month of a particular taxable year, shall each be” for “The exempt amount for each month of a particular taxable year shall be” in provisions preceding cl. (i), substituted “the corresponding exempt amount for” for “the exempt amount” in cl. (i), and, in provisions following cl. (i), substituted “an exempt amount” for “the exempt amount”, and effective Jan. 1, 1979, substituted “is” for “was” in cl. (i) and, in cl. (ii), substituted “‘(1) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 406(a) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year before the calendar year in which the determination under subparagraph (A) is made to’” for “‘(1) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year before the most recent calendar year’” for “‘(1) the average of the total wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year in which the determination under subparagraph (A) was made to’” for “‘(1) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the most recent calendar year’” and struck out reference to wages for calendar year 1978.
Subsec. (h)(1)(A). Pub. L. 95–216, §301(d), substituted “‘the applicable exempt amount’” for “‘$300 or the exempt amount’”.
Pub. L. 95–216, §302(c), substituted “age 70” for “the age of 72” and for “age 72”.
Subsec. (i). Pub. L. 95–216, §302(a), (d), substituted “seventy” for “seventy-two” in heading and in text.
1976—Subsec. (f)(8)(B)(ii). Pub. L. 94–202 substituted “wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year” for “taxable wages of all employees as reported to the Secretary for the first calendar quarter of the calendar year” in cl. (i), substituted “wages of all employees as reported to the Secretary of the Treasury for the calendar year 1973, or, if later, the calendar year preceding” for “taxable wages of all employees as reported to the Secretary for the first calendar quarter of 1973, or, if later, the first calendar quarter of” in cl. (ii), and directed that the average wages for calendar year 1978, or any prior calendar year, be deemed equal to 400% of the average wages reported for the first quarter of that year.
Subsec. (i)(8)(A). Pub. L. 93–233, §3(k)(1), substituted: “with the month of June following” for “with the first month of the calendar year following”, “which ends after the calendar year in which such benefit increase is effective” for “which ends with the close of or after the calendar year with the first month of which such benefit increase is effective”, and “during the calendar year after the calendar year in which the benefit increase is effective” for “during such calendar year”; and struck out after “such quarter occurs” and before “a new exempt amount” parenthetical “(along with the publication of such benefit increase as required by section 415(i)(2)(D) of this title)”.
Subsec. (i)(8)(B)(ii). Pub. L. 93–233, §18(a), substituted “within 30 days after the close of the base quarter (as defined in section 415(i)(1)(A) of this title)” in such year” for “no later than August 15 of such year”.
Subsec. (i)(8)(C). Pub. L. 93–233, §3(k)(3), struck out “or providing a general benefit increase under this subchapter (as defined in section 415(i)(3) of this title)” after “law increasing the exempt amount”.
Subsec. (a)(2). Pub. L. 92–336, §202(a)(2)(B), as amended by Pub. L. 92–603, §§103(c), 144(a)(3), substituted provisions relating to the reduction in the total benefits for any month after January 1971 where two or more persons were entitled to monthly benefits under section 402 or 423 of this title for January 1971 or any prior month, for provisions relating to the reduction in the total of benefits for September 1972 or any subsequent month where two or more persons were entitled to monthly benefits under section 402 or 423 of this title for January 1971.
such person (other than a person who would not be entitled to such benefits for such month without the application of the amendments made by section 306 of the Social Security Amendments of 1965) for the month of enactment, by 107 percent and raising each such increased amount, if it is not a multiple of $0.10, to the next higher multiple of $0.10.

Subsec. (c). Pub. L. 90–797, § 104(d)(1)(A), inserted after "any subsequent month" in third sentence "; nor shall any deduction be made under this subsection from any widow's insurance benefit for any month in which the widow is entitled and has not attained age 62." Subsec. (c)(1). Pub. L. 90–248, §§ 104(d)(1)(B), 107(a)(1), inserted in third sentence subpar. (E) and redesignated existing provisions as subpar. (E), and substituted "$140" for "$125". Subsec. (c)(2). Pub. L. 90–248, § 104(d)(1)(C), substituted "(D), and (E)" for "(and D)". Subsec. (c)(3). Pub. L. 90–248, § 104(d)(1)(D), substituted "$140" for "$125".

Subsec. (f)(1). Pub. L. 90–248, §§ 104(d)(1)(B), 107(a)(1), inserted, in third sentence subpar. (D) and redesignated existing provisions as subpar. (E), and substituted "$140" for "$125".


Subsec. (g). Pub. L. 90–248, § 161(b), substituted provisions that the penalty for the first failure to report will equal one month's benefit, for the second failure to report—two month's benefits, for the third or a subsequent failure to report—three month's benefits but in no case will the penalty exceed the number of months in the period for which there is a failure to report, and defining "period for which there is a failure to report" for present provisions that the penalty for the first failure to report is one month's benefit and for subsequent failures, the penalty is an amount equal to the total amount of the benefits for all the months in which the event occurred but was not reported within the prescribed time. Subsec. (h)(1)(A). Pub. L. 90–248, §§ 107(a)(2), 160(a), inserted last sentence authorizing the Secretary to extend time to report earnings up to three months if there is a valid reason for delay, and substituted "$410" for "$415".

Subsec. (h)(2). Pub. L. 90–248, § 160(b), substituted in text preceding subpar. (A) "by or in accordance with such paragraph" for "therein". Subsec. (h)(3)(A). Pub. L. 90–248, § 161(a), inserted exception provision that if the deduction is less than the amount of his benefits for the last month for which he was entitled to benefits, the additional deduction will be the amount of the deduction under subsec. (b) but not less than ten dollars.

1965—Subsec. (a)(2). Pub. L. 89–97, § 301(c), substituted provisions to assure an increase in the family benefits for families who were on the benefit rolls after December 1964 and whose benefits were determined under former provisions by providing that the maximum family benefit of each month after December 1964 will be the larger of (1) the family maximum specified in column V of the new table or (2) the sum of all family members' benefits after each such benefit has been increased by seven percent (and rounded to the next higher ten cents if it is not already a multiple of ten cents), for former provisions restricting the reduction of total benefits to individuals entitled to monthly benefits under section 402 or 423 of this title for December 1965 and whose benefits were determined under former provisions by providing that the maximum family benefit of each month after December 1964 will be the larger of (1) the family maximum specified in column V of the new table or (2) the sum of all family members' benefits after each such benefit has been increased by seven percent (and rounded to the next higher ten cents if it is not already a multiple of ten cents), for former provisions restricting the reduction of total benefits to individuals entitled to monthly benefits under section 402 or 423 of this title for December 1964 and whose benefits were determined under such par. (3) are now covered by subsec. (a)(2) of this section, and added par. (3), respectively.

Subsec. (c). Pub. L. 89–97, § 306(c)(10), (11), inserted in penultimate sentence "paragraph (1) of section 402(s) of title 42 of this title" and in last sentence the introductory phrase "Subject to paragraph (3) of such section 402(s)".
Subsec. (c)(4). Pub. L. 89–97, §308(d)(7), substituted "surviving divorced mother" for "former wife divorced".


Subsec. (f)(1). Pub. L. 89–97, §§306(c)(12), 310(a)(1), inserted "but subject to section 402(e) of this title" after "containing the preceding provisions of this paragraph" in last sentence and substituted "$125" for "$100".


Subsec. (b). Pub. L. 89–97, §308(d)(8), inserted "for" "in" in two places.

Subsec. (c). Pub. L. 89–97, §308(d)(8), inserted "in column V of the table appearing in section 415(a) of this title" in cl. (C).

Subsec. (b). Pub. L. 86–778, §211(c), amended subsec. (b) generally, and among other changes, authorized deductions from payments to which any other persons are entitled on the basis of an individual's wages and self-employed income, substituted provisions requiring deductions for months in which an individual is charged with excess earnings under the provisions of subsec. (f) of this section for provisions which required deductions for months in which an individual is charged with any earnings under the provisions of subsec. (e) of this section, and inserted the second, third, fourth and fifth sentences. Former cls. (2)–(5) and the closing paragraph of subsec. (b) are covered by subsec. (c) of this section.

Subsec. (c). Pub. L. 89–97, §310(a)(1), redesignated the opening provisions, cls. (2) to (5) and the closing provisions of former subsec. (b) of this section as the opening provisions, cls. (1) to (4) and the closing provisions of subsec. (c), respectively. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 86–778, §211(c), added subsec. (d) and redesignated former subsec. (d) as (e). Provisions of subsec. (d) were formerly contained in subsec. (c) of this section.

Subsec. (e). Pub. L. 86–778, §211(c), (d), redesignated former subsec. (d) as (e), substituted "subsections (c) and (d) of this section" for "subsections (b) and (c) of this section", and struck out provisions which required the charging of any earnings to any month to be treated as an event occurring in such month. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 86–778, §211(c), (e), redesignated former subsec. (e) as (f), and amended such subsection by inserting pars. (3) and (7), substituting provisions requiring an amount of an individual's excess earnings equal to the sum of the payments to which he and all other persons are entitled for the month under section 402 of this title on the basis of his wages and self-employment income (or the total of such excess earnings is less than such sum) to be charged to the first month of the taxable year, and the balance, if any, of such excess earnings to be charged to each succeeding month in such year to the extent, in the case of each month, of the sum of the payments to which such individual and all other persons are entitled for such month under section 402 of this title on the basis of his wages and self-employment income, until the total of such excess has been so charged, for provisions limiting the total of such earnings requiring an amount of $1,200 to be charged to the first month of the taxable year, and the balance, if any, at the rate of $30 per month to each succeeding month in such year until all of the balance has been applied, and inserted provisions requiring the excess earnings of an individual for any taxable year, where an individual is entitled to benefits under section 402(a) of this title and other persons are entitled to benefits under section 402(b), (c), or (d) of this title on the basis of the wages and self-employment income of such individual, to be charged in accordance with the provisions of this subsection before the excess earnings of such persons for a taxable year are charged to months in such individual's taxable year. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 86–778, §306(a), (b), redesignated former subsec. (f) as (g), and substituted therein "subsection (c) of this section" for "subsection (b) or (c) of this section" in two places, and struck out "(other than an event specified in subsection (b)(1) or (c)(1) of this section)" after "of an event specified therein." Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 86–778, §211(c), redesignated former subsec. (g) as (h), and substituted therein "paragraph (5) of subsection (f) of this section" for "paragraph (4) of subsection (e) of this section" in two places, "paragraph (3) of this section" for "subsection (3) of subsection (g) of this section", "subsection (b) of this section" for "subsection (b)(1) of this section" in five places, and "suspend the total or less than the total payment" for "suspend the payment. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 86–778, §211(c), (g), redesignated former subsec. (h) as (i) and substituted therein "subsection (b), (c), (g), or (h) of this section" for "subsection (b), (f), or (g) of this section." Former subsec. (i) was repealed by Act Sept. 1, 1954, ch. 1206, title I, §112(a), 68 Stat. 1085.

Subsec. (k). Pub. L. 86–778, §103(b), substituted "the Commonwealth of Puerto Rico, the Virgin Islands, Guam or American Samoa" for "Puerto Rico or the Virgin Islands", and "the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa" for "Puerto Rico and the Virgin Islands".

Subsec. (l). Pub. L. 86–778, §211(b), substituted "subsection (g) or (h)(1)(A) of this section" for "subsection (f) or (g)(1)(A) of this section".

Subsec. (m). Pub. L. 85–840, §101(f), substituted provisions limiting the total of monthly benefits under sections 402 and 423 of this title to the amount provided in column V of the table in section 415(a) of this title for provisions which limited the total of monthly benefits under sections 402 of this title to $50, or 80% of the average monthly wage, or one and one-half times the primary insurance amount, whichever is greater, with a maximum amount of $200 and inserted provisions limiting the reduction for individuals who were entitled to monthly benefits under section 402 or 423 of this title for December 1958, and for individuals entitled to monthly benefits with respect to whom a period of disability began prior to January 1959 and continued until he became entitled to benefits under section 402 or 423 of this title, or he died, whichever first occurred.

Subsec. (n). Pub. L. 85–840, §308(d), inserted, based on the wages and self-employment income of an individual entitled to old-age insurance benefits, "before to which a wife" in opening provisions of par. (1), and Pub. L. 85–840, §307(f), designated existing provisions of subsec. (c) as par. (1), redesignated subpars. (1) and (2) of par. (1) as subpars. (A) and (B), substituted in subpar. (B) of par. (1) "subparagraph (A)" for "paragraph (1)", and added par. (2).

Subsec. (o)(2). Pub. L. 85–840, §308(a), (c), substituted "first month" for "last month" and "succeeding
month” for “preceding month” wherever appearing, and “$100” for “$30” in cl. (D).

Subsec. (e)(3). Pub. L. 85-840, § 308(b), (c), substituted “the term ‘first month of such taxable year’ means the earliest month” for “the term ‘first month of such taxable year’ means the latest month” in cl. (A), and “$100” for “$30” in cl. (B)(i).

Subsec. (g)(1). Pub. L. 85-840, § 308(d), designated existing provisions thereof as subpar. (A) and inserted provisions therein dispensing with the need for a report for any taxable year if benefit payments for all months in such taxable year in which such individual is under age 72 have been suspended under the provisions of the first sentence of par. (3) of this subsection, and added subpar. (B).

Subsec. (h). Pub. L. 85-840, § 205(k), struck out provisions that related to reductions by reason of the provisions of section 422 of this title.

Subsec. (i). Penalties. Pub. L. 85-840, § 308(e), substituted “(g)(1)(A) of this section” for “(g) of this section”.

1956—Subsec. (a). Act Aug. 1, 1956, § 101(d), inserted “after any deduction under section 422(b) of this title, and after any reduction under section 424 of this title” in two places.

Subsec. (b). Act Aug. 1, 1956, § 101(e), inserted paragraphs providing that a child should not be considered to be entitled to a child’s insurance benefit for any month in which an event specified in section 422(b) of this title occurs with respect to such child, and prohibiting any deduction from any child’s insurance benefit for the month in which the child entitled to such benefit attained the age of 18 or any subsequent month.

Subsec. (b)(3). Act Aug. 1, 1956, § 102(d)(11), substituted “‘age 65’” for “‘retirement age’” and inserted “any such wife’s insurance benefit for such month was not reduced under the provisions of section 402(q) of this title”.

Subsec. (d). Act Aug. 1, 1956, § 101(f), included events specified in section 422(b) of this title.

Subsec. (e)(4)(C). Act Aug. 1, 1956, § 112(a), inserted “or performed outside the United States in the active military or naval service of the United States” after “performed within the United States by the individual as an employee”.

Subsec. (g)(1). Act Aug. 1, 1956, § 107(a), permitted reports to be made on or before the fifteenth day of the fourth month following the close of the year.

Subsec. (h). Act Aug. 1, 1956, § 102(a), included deductions by reason of the provisions of section 422(b) of this title, and reduced by reason of the provisions of section 424 of this title.

Subsec. (i). Act Aug. 1, 1956, § 112(b), inserted “and are not performed in the active military or naval service of the United States” after “section 410 of this title”.


Subsec. (b)(1), (2). Act Sept. 1, 1954, § 103(a), (i)(3), put into effect an annual retirement test for beneficiaries whether they have wage or self-employment earnings, or both, inserted provision for making deductions on account of noncovered remunerative activity outside the United States, and provided that deductions because of such provisions be made from an individual’s benefits only for months in which he is under the age of 72, rather than 75.

Subsec. (c). Act Sept. 1, 1954, § 103(b), (1)(3), provided that deductions be made from a dependent’s benefits for any month in which the primary beneficiary was under the age of 72, and for which he was charged with any earnings for work deduction purposes under subsec. (e) or on 7 or more different calendar days of which he engaged in noncovered remunerative activity outside the United States.

Subsec. (d). Act Sept. 1, 1954, § 103(c), provided that the charging of earnings shall be treated as an event occurring in the month to which such earnings are charged.

Subsec. (e)(1), (2). Act Sept. 1, 1942, § 103(d)(1), (2), (i)(3), provided a method for charging earnings to particular months of the year for purposes of determining the deductions required under subsecs. (b) and (c).

Subsec. (e)(3)(B). Act Sept. 1, 1954, § 103(d)(3), provided authority to presume, for purposes of charging earnings to calendar months, that an individual rendered services for wages of more than $30 in any month.


Subsec. (f). Act Sept. 1, 1954, § 103(e), clarified the penalty provisions.


Subsec. (g)(1). Act Sept. 1, 1954, § 103(f)(2), (3), provided that if an individual entitled to any monthly benefit in a taxable year has earnings or wages in excess of $100 times the number of months in such year, he must make a report to the Secretary of his earnings for such taxable year, and substituted “seventy-two” for “seventy-five”.

Subsec. (g)(2). Act Sept. 1, 1954, § 103(f)(4), provided a schedule of penalty deductions for failure to make required reports within the time prescribed by subsec. (y)(1) if any deduction is imposed because of earnings in such year.

Subsec. (g)(3). Act Sept. 1, 1954, § 103(f)(5), substituted “subsection (b)(1)” for “subsection (b)(2)”,”earnings” for “net earnings from self-employment”, and “such earnings” for “such net earnings”, and added a new sentence at the end.

Subsec. (i). Act Sept. 1, 1954, § 112(a), repealed subsec. (i), effective Sept. 1, 1954, and also provided that no deductions should be made pursuant to such subsec. (i) from any benefits for any month after August 1954.


Subsec. (k). Act Sept. 1, 1954, § 103(g), added subsec. (k).


Subsec. (b)(1), (2), (c)(1), (2), (e), (g). Act July 18, 1952, § 4(a)-(d), substituted $75 for $50 wherever appearing.

1950—Subsec. (a). Act Aug. 28, 1950, § 102(a), amended subsec. (a) generally to consolidate provisions of former subsecs. (a) to (c) of this section and to liberalize the maximum amount of monthly benefits payable.

Subsec. (b). Act Aug. 28, 1950, § 103(a), provided that deductions are to be made from benefits for any month in which a beneficiary is under age 75 and either renders services for wages of more than $50, or is charged with net earnings from self-employment of more than $50, and provided that deductions are to be made for any month in which a wife, widow or divorced wife does not have in her care a child or her husband or former husband entitled to a child’s insurance benefit.

Subsec. (c). Act Aug. 28, 1950, § 103(a), provided for the making of deductions from dependents benefits for any month in which the old-age beneficiary suffers a reduction in his benefit.

Subsec. (d). Act Aug. 28, 1950, § 103(a), inserted second sentence.

Subsec. (e). Act Aug. 28, 1950, § 103(a), provided the method for charging net earnings from self-employment to the particular months of the taxable year for the purpose of determining deductions under subsecs. (b) and (c) of this section.

Subsec. (f). Act Aug. 28, 1950, § 103(a), continued provisions requiring the reporting of any event which causes a deduction from benefits.

Subsec. (g). Act Aug. 28, 1950, § 103(a), outlined circumstances under which beneficiaries with net earnings from self-employment are required to file report with the Federal Security Administrator.

Subsec. (h). Act Aug. 28, 1950, § 103(a), pointed out circumstances under which deductions otherwise required under subsecs. (b), (f), and (g) of this section will not be made.

Subsecs. (i), (j). Act Aug. 28, 1950, § 103(a), added subsecs. (i) and (j).
1946—Subsec. (g), Act Aug. 10, 1946, §406(a), inserted exception limiting the first deduction for failure to report to one month's benefit.

1984—Act Aug. 10, 1946, §406(a), struck out par. (2) which related to deductions for failure to attend school.


**Effective Date of 2000 Amendment**

Amendment by Pub. L. 106–182 applicable with respect to taxable years ending after Dec. 31, 1999, see section 5 of Pub. L. 106–182, set out as a note under section 402 of this title.

**Effective Date of 1996 Amendment**

Section 102(c) of Pub. L. 104–121 provided that: "The amendments made by this section [amending this section and section 423 of this title] shall apply with respect to taxable years ending after December 1995."

**Effective Date of 1994 Amendment**


Section 309(e)(1) of Pub. L. 103–296 provided that: "The amendments made by subsections (a), (b), and (c) [amending this section] shall apply with respect to benefits payable for months after December 1995."

Section 310(c) of Pub. L. 103–296 provided that: "The amendments made by this section [amending this section and sections 402 and 423 of this title] based on the wages and self-employment income of an individual who—

'(1) becomes entitled to an old-age insurance benefit under section 202(a) of such Act, or

'(2) becomes reentitled to a disability insurance benefit under section 223 of such Act, or

'(3) dies, after December 1995."

Section 314(b) of Pub. L. 103–296 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to reports of earnings for taxable years ending on or after December 31, 1994."

Section 321(g)(3)(B) of Pub. L. 103–296 provided that: "The amendment made by paragraph (2) [amending this section] shall be effective with respect to the determination of the exempt amounts applicable to any taxable year ending after 1994."

**Effective Date of 1990 Amendment**

Section 5117(a)(4) of Pub. L. 101–508 provided that:

'(A) In general.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and section 415 of this title] shall apply with respect to the computation of the primary insurance amount of any insured individual in any case in which a person becomes entitled to benefits under section 202 or 223 (section 402 or 423 of this title) on the basis of such insured individual's wages and self-employment income for months after the 18-month period following the month in which this Act is enacted [November 1990], except that such amendments shall not apply if any person is entitled to benefits based on the wages and self-employment income of such insured individual for the month preceding the initial month of such person's entitlement to such benefits under section 202 or 223.

'(B) Recomputations.—The amendments made by this subsection shall apply with respect to any primary insurance amount upon the recomputation of such primary insurance amount if such recomputation is first effective for monthly benefits for months after the 18-month period following the month in which this Act is enacted."

Section 5118(e) of Pub. L. 101–508 provided that:

'(1) In general.—The amendments made by this section [amending this section and section 416 of this title] shall apply with respect to benefits for months after December 1990.

'(2) Application requirement.—

'(A) General rule.—Except as provided in subparagraph (B), the amendments made by this section shall apply only with respect to benefits for which application is filed with the Secretary of Health and Human Services after December 31, 1990.

'(B) Exception from application requirement.—Subparagraph (A) shall not apply with respect to the benefits of any individual if such individual is entitled to a benefit under subsection (b), (c), (e), or (f) of section 202 of the Social Security Act [section 402(b), (c), (e), or (f) of this title] for December 1990 and the individual on whose wages and self-employment income such benefit for December 1990 is based is the same individual on the basis of whose wages and self-employment income application would otherwise be required under subparagraph (A)."

Section 5123(b) of Pub. L. 101–508 provided that: "The amendments made by this section [amending this section, section 411 of this title, and section 1402 of Title 26, Internal Revenue Code] shall apply with respect to income received for services performed in taxable years beginning after December 31, 1990."

Section 5127(c) of Pub. L. 101–508 provided that: "The amendments made by this section [amending this section] shall apply with respect to benefits for months after December 1990."

**Effective Date of 1989 Amendment**

Amendment by section 10238(b)(1)(A), (B) of Pub. L. 101–239 applicable with respect to computation of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10238(c) of Pub. L. 101–239, set out as a note under section 430 of this title.

Section 10305(f) of Pub. L. 101–239 provided that: "The amendments made by this section [amending this section and sections 404, 423, and 1393 of this title] shall apply with respect to determinations made on or after July 1, 1990."

**Effective Date of 1988 Amendment**

Section 8002(c) of Pub. L. 100–647 provided that: "The amendments made by this section [amending this section] shall apply to deaths after the date of the enactment of this Act [Nov. 10, 1988]."

**Effective Date of 1986 Amendment**

Section 12108(b) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, §189(a), Oct. 22, 1986, 100 Stat. 2931, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to benefits payable for months after December 1986."

**Effective Date of 1984 Amendment**

Section 2622(b) of Pub. L. 98–369 provided that: "The amendment made by subsection (a) [amending this section] shall be effective upon the date of the enactment of this Act [July 14, 1984]."

Section 2661(g)(1)(B) of Pub. L. 98–369 provided that: "The amendments made by subparagraph (A) [amending this section] shall apply only with respect to months beginning with the second month after the month in which this Act is enacted [July 1984]."

Section 2661(g)(2)(B) of Pub. L. 98–369 provided that: "The amendment made by subparagraph (A) [amending this section] shall be effective as though it had been enacted on April 20, 1983, as a part of section 201 of the Social Security Amendments of 1983 [section 201 of Pub. L. 98–21]."

Amendment by section 2662(c)(1) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 404 of this title.

Amendment by section 2663(a)(3) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as chang-
Amendment by section 111(a)(4) of Pub. L. 98–21 applicable with respect to cost-of-living increases determined under section 415(1) of this title for years after 1982, see section 111(a)(8) of Pub. L. 98–21, set out as a note under section 402 of this title.

Amendment by sections 306(l) and 309(f)–(h) of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Amendment by section 324(c)(4) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1983, except for certain employer contributions made during 1984 under a qualified deferred compensation arrangement, and except in the case of an agreement with certain nonqualified deferred compensation plans in existence on Mar. 24, 1983, see section 324(d) of Pub. L. 98–21, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Section 331(c) of Pub. L. 98–21 provided that: "The amendments made by subsection (b) [amending this section] shall apply with respect to monthly insurance benefits for months after December 1984."

Amendment by sections 334(a) and 306(l)–(h) of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after December 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Amendment by section 347(b) of Pub. L. 98–21 provided that: "The amendments made by subsection (a) [amending this section] shall be effective with respect to payments made for months after December 1983."

Amendment by section 348(b)(2)–(4) of Pub. L. 98–21 applicable only with respect to initial calculations and adjustments of primary insurance amounts and benefit amounts which are attributable to periods after August 1983, see section 348(c) of Pub. L. 98–21, set out as a note under section 402 of this title.

**Effective Date of 1981 Amendments**

Amendment by section 220(c)(6) of Pub. L. 97–35 and by section 2(1) of Pub. L. 97–123, applicable with respect to benefits for months after December 1981 with certain exceptions, see section 2(j)(2)–(4) of Pub. L. 97–123, set out as a note under section 415 of this title.

Amendment by section 226(b)(2)–(4) of Pub. L. 97–35 applicable only with respect to initial calculations and adjustments of primary insurance amounts and benefit amounts which are attributable to periods after August 1981, see section 226(c) of Pub. L. 97–35, set out as a note under section 402 of this title.

**Effective Date of 1980 Amendments**

Section 1(b) of Pub. L. 96–473 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable for months after December 1977."

Section 2(b) of Pub. L. 96–473 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1977, but only with respect to benefits payable for months after December 1977."

Section 4(b) of Pub. L. 96–473 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable for months after December 1977."

Section 191(c) of Pub. L. 96–285 provided that: "The amendments made by this section [amending this section and section 415 of this title] shall apply only with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes eligible for benefits (determined under sections 215(a)(3)(B) and 215(a)(2)(A) of the Social Security Act [sections 415(a)(3)(B) and (2)(A) of this title]), with respect to periods after December 1976, and who first becomes entitled to disability insurance benefits after June 30, 1980."
year of attaining age 72] shall apply with respect to taxable years ending after December 1972.’’

Effective Date of 1971 Amendment

Amendment by Pub. L. 92–5 applicable with respect to monthly benefits under subchapter II of this chapter for months after December 1970 and with respect to lump-sum death payments under such subchapter in the case of deaths occurring in and after March 1971, see section 301(e) of Pub. L. 92–5, set out as a note under section 415 of this title.

Effective Date of 1969 Amendment

Amendment by Pub. L. 91–172 applicable with respect to monthly benefits under this subchapter for months after December 1969 and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after December 1969, see section 102(e) of Pub. L. 91–172, set out as a note under section 415 of this title.

Effective Date of 1968 Amendment

Amendment by section 101(b) of Pub. L. 90–248 applicable with respect to monthly benefits and lump-sum death benefits in the case of deaths occurring after January 1968, under this subchapter for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 106(e) of Pub. L. 90–248, set out as a note under section 402 of this title.

Section 107(b) of Pub. L. 90–248 provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 1967.’’

Section 163(a)(2) of Pub. L. 90–248 provided that: ‘‘The amendment made by paragraph (1) [amending this section] shall apply only with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] with respect to individuals who become entitled to benefits under section 202(d) of such Act [section 402(d) of this title] solely by reason of section 216(b)(3) of such Act [section 416(b)(3) of this title] in or after January 1968 (but without regard to section 202(j)(1) of such Act [section 402(j)(1) of this title]). The provisions of section 170 of this Act [set out as Savings Provisions note below] shall not apply with respect to any such individual.’’

Effective Date of 1965 Amendment

Amendment by section 301(c) of Pub. L. 89–97 applicable with respect to monthly benefits under this subchapter for months after December 1964 and with respect to lump-sum death payments under such subchapter in the case of deaths occurring in or after July 1965, see section 301(d) of Pub. L. 89–97, set out as a note under section 415 of this title.

Amendment by section 308(d)(4)–(5) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter beginning with the second month following July 1965, but, in the case of an individual who was not entitled to a monthly insurance benefit under section 402 of this title for the first month following July 1965, only on the basis of an application filed in or after July 1965, see section 308(e) of Pub. L. 89–97, set out as a note under section 402 of this title.

Section 310(b) of Pub. L. 89–97 provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1965.’’

Section 323(b) of Pub. L. 89–97 provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply with respect to the computation of net earnings from self-employment and the net loss from self-employment for taxable years beginning after 1964.’’

Effective Date of 1961 Amendment

Section 108(b) of Pub. L. 87–64 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply in the case of taxable years ending after the enactment of this Act [June 30, 1961].’’

Effective Date of 1960 Amendment

Amendment by section 103(b) of Pub. L. 86–778 applicable only with respect to service performed after 1960, except that insofar as the carrying on of a trade or business (other than performance of service as an employee) is concerned, the amendment shall be applicable only in the case of taxable years beginning after 1960, see section 109(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

Section 211(b) of Pub. L. 86–778 provided that:

‘‘(p) Section 203(c), (d), (e), (g), and (l) of the Social Security Act [subsecs. (c), (d), (e), (g), and (l) of this section] as amended by this Act shall be effective with respect to monthly benefits for months after December 1960.

‘‘(q) Section 203(b), (f), and (h) of the Social Security Act [subsecs. (b), (f), and (h) of this section] as amended by this Act shall be effective with respect to taxable years beginning after December 1960.

‘‘(r) Section 203(i) of the Social Security Act [subsec. (l) of this section] as amended by this Act, to the extent that it applies to section 203(g) of the Social Security Act as amended by this Act, shall be effective with respect to monthly benefits for months after December 1960 and, to the extent that it applies to section 203(b)(1)(A) of the Social Security Act as amended by this Act, shall be effective with respect to taxable years beginning after December 1960.

‘‘(s) The amendments made by subsections (i), (j), (k), (l), (m), (n), and (o) [amending sections 402, 403, and 415 of this title and sections 228c and 228e of Title 45, Railroads], to the extent that they make changes in references to provisions of section 203 of the Social Security Act [this section], shall take effect in the manner provided in subsections (p) and (q) of this section for the provisions of such section 203 to which the respective references so changed relate.’’

Section 302(b) of Pub. L. 86–778 provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply only in the case of monthly benefits under section 202 of section 223 of the Social Security Act [section 402 or section 425 of this title] for months after the month following the month in which this Act is enacted [September 1960], and then only (1) if the insured individual on the basis of whose wages and self-employment income such monthly benefits are payable became entitled (without the application of section 202(j)(1) or section 223(b) of such Act) to benefits under section 202(a) or section 223 of such Act after the month following the month in which this Act is enacted, or (2) if such insured individual died before becoming so entitled and no person was entitled (without the application of section 202(j)(1) or section 223(b) of such Act) on the basis of such wages and self-employment income to monthly benefits under title II of the Social Security Act [this subchapter] for the month following the month in which this Act is enacted [September 1960] or any prior month.’’

Effective Date of 1958 Amendment

Amendment by section 101(f) of Pub. L. 85–830 applicable in the case of monthly benefits under subchapter II of this chapter for months after December 1958, and in the case of lump-sum death payments under subchapter II of this chapter, with respect to deaths occurring after such month, see section 101(g) of Pub. L. 85–830, set out as a note under section 415 of this title.

Amendment by section 205(j) of Pub. L. 85–830 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after December 31, 1958, and amendment by section 205(k) of Pub. L. 85–830 applicable with respect to monthly benefits under this
subchapter for August 1958 and succeeding months, see section 207(a) of Pub. L. 85-840, set out as a note under section 416 of this title.

Section 207(h)(2) of Pub. L. 85-840 provided that: ‘‘The amendments made by subsection (f) [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [section 406 of this title] for months in any taxable year, of the individual to whom the person entitled to such benefits is married, beginning after the month in which this Act is enacted [August 1958].’’

Section 308(f) of Pub. L. 85-840 provided that: ‘‘The amendments made by this section [amending this section] shall be applicable with respect to taxable years beginning after the month in which this Act is enacted [August 1958].’’

**Effective Date of 1956 Amendment**

Amendment by section 103(d)–(g) of act Aug. 1, 1956, applicable in the case of lump-sum death payments under section 402 of this title for months after December 1956, but only on the basis of an application filed after September 1956, see section 101(h) of act Aug. 1, 1956, set out as a note under section 402 of this title.

Section 107(a) of act Aug. 1, 1956, provided that: ‘‘The amendment made by that section is applicable in the case of monthly benefits under this subchapter for months after August 1954 of the individual entitled to such benefits beginning after 1954.’’

Section 112(c) of act Aug. 1, 1956, provided that: ‘‘The amendments made by subsections (a) and (b) [amending this section] shall be applicable with respect to taxable years ending after 1955.’’

**Effective Date of 1954 Amendment**

Section 103(i)(3) of act Sept. 1, 1954, provided that: ‘‘Subsections (b)(1), (b)(2), (c), (e), and (f) of section 202 of the Social Security Act [this section] as in effect prior to the enactment of this Act, to the extent they are in effect with respect to months after 1954, are each amended by striking out ‘seventy-five’ and inserting in lieu thereof ‘seventy-two’, but only with respect to such months after 1954.’’

Amendment by section 102(e)(7) of act Sept. 1, 1954, applicable in the case of lump-sum death payments under section 402 of this title with respect to deaths occurring, and in the case of monthly benefits under such section for months after August 1954, see section 102(f) of act Sept. 1, 1954, as amended, set out as a note under section 415 of this title.

Section 103(i)(1), (2) of act Sept. 1, 1954, provided that: ‘‘(1) The amendments made by subsection (f) and by paragraph (1) of subsection (a) of this section [amending this section] shall be applicable in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months in any taxable year of the individual entitled to such benefits beginning after December 1954. The amendments made by paragraph (1) of subsection (b) of this section [amending this section] shall be applicable in the case of monthly benefits under such title II for months after August 1954, as each amended by striking out ‘seventy-five’ and inserting in lieu thereof ‘seventy-two’, but only with respect to such months after 1954.’’

**Effective Date of 1950 Amendment**

Amendment by section 102(b) of act Aug. 28, 1950, provided that: ‘‘The amendment made by subsection (a) of this section [amending this section] shall be applicable with respect to benefits for months after August 1950.’’

Section 103(b) of act Aug. 28, 1950, provided that: ‘‘The amendments made by this section [amending this section] shall take effect September 1, 1950, except that the provisions of subsections (d), (e), and (f) of section 203 of the Social Security Act [this subchapter] shall apply in the case of monthly benefits under such title II for months in any taxable year of the individual entitled to such benefits ending after August 1952. The amendments made by subsection (d) [amending this section] shall apply in the case of taxable years ending after August 1952. As used in this section, the term ‘‘taxable year’’ shall have the meaning assigned to it by section 211(e) of the Social Security Act [section 411(e) of this title].’’

**Effective Date of 1950 Amendment**

Section 201 of act Aug. 10, 1959, provided that the amendment made by that section is effective Jan. 1, 1959.

**Savings Provisions**

Section 201(h)(2) of Pub. L. 92-336 provided that: ‘‘In any case in which the provisions of section 1002(b)(2) of the Social Security Amendments of 1969 [set out as a note under this section] were applicable with respect to benefits for any month in 1970, the total of monthly benefits as determined under section 1002(a) of the Social Security Act [subsection (a) of this section] shall, for months after 1970, be increased to the amount that would be required in order to assure that the total of such monthly benefits (after the application of section 1002(q) of such Act [section 202(q) of this title]) will not be less than the total of monthly benefits that was applicable (after the application of such sections 1002(a) and 202(q)) for the first month for which the provisions of such section 1002(b)(2) are based.’’

Section 1002(b)(2) of Pub. L. 91-172 provided that: ‘‘Notwithstanding any other provisions of law, when

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two or more persons are entitled to monthly insurance benefits under title II of the Social Security Act [this subchapter] for any month after 1965 on the basis of the wages and self-employment income of an insured individual (and at least one of such persons was so entitled for a month before January 1971 on the basis of an application filed before 1971), the total of the benefits to which such persons are entitled under such title of such month (after the application of sections 203(a) and 204(q) of such Act [subsec. (a) of this section and section 402(q) of this title]) shall be not less than the total of the monthly insurance benefits to which such persons would be entitled under such title for such month (after the application of such sections 203(a) and 204(q) without regard to the amendment made by subsection (a) of this section [amending section 415 of this title])."

Section 170 of Pub. L. 90–248 provided that: "Where—"

"(1) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to monthly benefits under section 202 or 223 of such Act [section 402 or 423 of this title] for January 1968 on the basis of the wages and self-employment income of an individual, and

"(2) one or more persons (not included in paragraph (1)) become entitled to monthly benefits under such section 202 or 223 of this title for February 1968 on the basis of such wages and self-employment by reason of the amendments made to such Act [this chapter] by sections 104 [amending this section and sections 402, 416, 422, and 425 of this title], 112 [amending section 402 of this title], 150 [amending section 416 of this title], 151 [amending section 402 of this title and section 226 of Title 45, Railroads], 156 [amending section 415 of this title], and 157 of this Act [amending section 402 and 402 note of this title], and

"(3) the total of benefits to which all persons are entitled under such section 202 or 223 (section 402 or 423 of this title) on the basis of such wages and self-employment for February 1968 are reduced by reason of section 203(a) of such Act, as amended by this Act (or would, but for the penultimate sentence of such section 203(a), be so reduced),

then the amount of the benefit to which each such person referred to in paragraph (1) is entitled for months after January 1968 shall be increased, after the application of such section 203(a) (subsec. (a) of this section), to the amount it would have been if the person or persons referred to in paragraph (2) were not entitled to a benefit referred to in such paragraph.

Section 102(h) of act Sept. 1, 1954, provided that:

"(1) Where—"

"(A) an individual was entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to an old-age insurance benefit under title II of such Act [this subchapter] for August 1954,

"(B) one or more other persons were entitled (without the application of such section 202(j)(1) of this title) to monthly benefits under such title for such month on the basis of the wages and self-employment income of such individual; and

"(C) the total of the benefits to which all persons are entitled under such title on the basis of such individual's wages and self-employment income for any subsequent month for which he is entitled to an old-age insurance benefit for such month computed as if the amendments made by the preceding subsections of this section had been applicable in the case of such benefit for such month over (i) the amount of his old-age insurance benefit for such month, or (ii) the amount of his old-age insurance benefit for such month, or

"(F) the amount determined pursuant to section 2(d)(1) of the Social Security Act Amendments of 1952 [set out as a note under section 415 of this title] for August 1954 plus the excess of (i) the amount of his old-age insurance benefit for such month computed as if the amendments made by the preceding subsections of this section had been applicable in the case of such benefit for such month over (ii) the amount of his old-age insurance benefit for such month.

"(2) Where—"

"(A) two or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to monthly benefits under title II of such Act [this subchapter] for August 1954 on the basis of the wages and self-employment income of a deceased individual, and

"(B) to total of the benefits to which all such persons are entitled on the basis of such deceased individual's wages and self-employment income for any subsequent month would (but for the provisions of this paragraph) be reduced by reason of the first sentence of section 203(a) of the Social Security Act [subsec. (a) of this section] as amended by this Act,

then, notwithstanding any other provision in title II of the Social Security Act [this subchapter], such deceased individual's average monthly wage shall, for purposes of such section 203(a), be whichever of the following is the larger:

"(C) his average monthly wage determined pursuant to section 215 of such Act (section 415 of this title), as amended by this Act; or

"(D) his average monthly wage determined under such section 215, as in effect prior to the enactment of this Act [Sept. 1, 1954], plus $7.''

TEMPORARY EXTENSION OF EARNINGS LIMITATIONS TO INCLUDE ALL PERSONS AGED LESS THAN SEVENTY-TWO YEARS

Section 2204 of Pub. L. 97–35 provided that:

"(a) Notwithstanding subsection (e) of section 302 of the Social Security Amendments of 1977 (91 Stat. 1531; Public Law 95–216) [set out as an Effective Date of 1977 Amendment note above], the amendments made to section 203 of the Social Security Act [this section] by subsections (a) through (d) of such section 302 shall, except as provided in subsection (b) of this section, apply only with respect to monthly insurance benefits payable under title II of the Social Security Act [this subchapter] for months after December 1981;

"(b) in the case of any individual whose first taxable year (as in effect on the date of the enactment of this Act [Aug. 13, 1981]) ending after December 31, 1981, begins before January 1, 1982, the amendments made by section 302 of the Social Security Amendments of 1977 [amending this section] shall apply with respect to taxable years beginning with such taxable year."
individuals other than those described in section 203(c)(8)(D) of such Act (as so added)."

RETIREMENT TEST EXEMPT AMOUNT FOR 1976

By notice of the Secretary of Health, Education, and Welfare, Oct. 22, 1975, 40 F.R. 50556, it was determined and announced that, pursuant to authority contained in subsection [(f)](8) of this section, the monthly exempt amount under the retirement test would be $230 with respect to taxable years ending in calendar year 1976.

COST-OF-LIVING INCREASE IN BENEFITS

For purposes of subsection [(f)](8) of this section, the increase in benefits provided by section 2 of Pub. L. 93–233, revising benefits table of section 415(a) of this title and amending sections 427(a), (b) and 428(b)(1), (2), (c)(3)(A), (B) of this title considered an increase under section 415(i) of this title, see section 3(i) of Pub. L. 93–233, set out as a note under section 415 of this title.

PENALTIES FOR FAILURE TO FILE TIMELY REPORTS OF EARNINGS AND OTHER EVENTS

Section 161(c) of Pub. L. 90–248 provided that: "The amendments made by this section [amending this section] shall apply with respect to any deductions imposed on or after the date of the enactment of this Act [Jan. 2, 1968] under subsections [(g)] and [(h)] of section 203 of the Social Security Act [this section] on account of failure to make a report required thereby."

COMPUTATION OF BENEFITS FOR CERTAIN CHILDREN

Section 163(b) of Pub. L. 90–248 provided that:

"(1) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to monthly benefits under section 202 or 223 of such Act [sections 402 or 423 of this title] for January 1968 on the basis of the wages and self-employment income of an individual, and

"(2) one or more persons became entitled to monthly benefits before January 1968 under section 202(d) of such Act [section 402(d) of this title] by reason of section 216(h)(3) of such Act [section 416(h)(3) of this section] (but without regard to section 202(j)(1)), on the basis of such wages and self-employment income and are so entitled for January 1968, and

"(3) the total of benefits to which all persons are entitled under such section 202 or 223 of such Act [sections 402 or 423 of this title] on the basis of such wages and self-employment for January 1968 are reduced by reason of section 203(a) of such Act [subsection [(a)] of this section], as amended by this Act (or would, but for the penultimate sentence of such section 203(a), be so reduced),

then the amount of the benefit to which each such person referred to in paragraph (1) above (but not including persons referred to in paragraph (2) above) is entitled for months after January 1968 shall be increased, after the application of such section 203(a), to the amount it would have been if the person or persons referred to in paragraph (2) were not entitled to a benefit referred to in such paragraph (2)."

PROHIBITION ON IMPOSITION OF DEDUCTION FOR FAILURE TO FILE CERTAIN REPORTS OF EVENTS

Section 209(b) of Pub. L. 86–778 provided that: "No deduction shall be imposed on or after the date of the enactment of this Act [Sept. 13, 1960] under section 209(b) of the Social Security Act [subsection [(i)] of this section], as in effect prior to such date, on account of failure to file a report of an event described in section 203(c)(2)(F) of such Act, as in effect prior to such date; and no such deduction imposed prior to such date shall be collected after such date."

PROHIBITION ON PAYMENT OF BENEFITS TO CERTAIN SPOUSES OR CHILDREN

Section 211(t) of Pub. L. 86–778 provided that: "In any case where—

"(1) an individual has earnings (as defined in section 203(e)(4) of the Social Security Act [subsection [(e)(4)] of this section] as in effect prior to the enactment of this Act [Sept. 13, 1960] in a taxable year which begins before 1961 and ends in 1961 (but not on December 31, 1961), and

"(2) such individual's spouse or child entitled to monthly benefits on the basis of such individual's self-employment income has excess earnings (as defined in section 203(f)(3) of the Social Security Act as amended by this Act) in a taxable year which begins after 1960, and

"(3) one or more months in the taxable year specified in paragraph (2) are included in the taxable year specified in paragraph (1), then, if a deduction is imposed against the benefits payable to such individual with respect to a month described in paragraph (3), such spouse or child, as the case may be, shall not, for purposes of subsections [(b)] and [(f)] of section 203 of the Social Security Act as amended by this Act, be entitled to a payment for such month."

§ 404. Overpayments and underpayments

(a) Procedure for adjustment or recovery

(1) Whenever the Commissioner of Social Security finds that more or less than the correct amount of payment has been made to any person under this subchapter, proper adjustment or recovery shall be made, under regulations prescribed by the Commissioner of Social Security, as follows:

(A) With respect to payment to a person of more than the correct amount, the Commissioner of Social Security shall decrease any payment under this subchapter to which such overpaid person is entitled, or shall require such overpaid person or his estate to refund the amount in excess of the correct amount, or shall decrease any payment under this subchapter payable to his estate or to any other person on the basis of the wages and self-employment income which were the basis of the payments to such overpaid person, or shall obtain recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31, or shall apply any combination of the foregoing. A payment made under this subchapter on the basis of an erroneous report of death by the Department of Defense of an individual in the line of duty while he is a member of the uniformed services (as defined in section 410(m) of this title) on active duty (as defined in section 410(l) of this title) shall not be considered an incorrect payment for any month prior to the month such Department notifies the Commissioner of Social Security that such individual is alive.

(B)(i) Subject to clause (ii), with respect to payment to a person of less than the correct amount, the Commissioner of Social Security shall make payment of the balance of the amount due such underpaid person, or, if such person dies before payments are completed or before negotiating one or more checks representing correct payments, disposition of the amount due shall be made in accordance with subsection [(d)] of this section.

(ii) No payment shall be made under this subparagraph to any person during any period for which monthly insurance benefits of such person—
(I) are subject to nonpayment by reason of section 402(x)(1) of this title, or
(II) in the case of a person whose monthly insurance benefits have terminated for a reason other than death, would be subject to nonpayment by reason of section 402(x)(1) of this title but for the termination of such benefits,

until section 402(x)(1) of this title no longer applies, or would no longer apply in the case of benefits that have terminated.

(iii) Nothing in clause (ii) shall be construed to limit the Commissioner’s authority to withhold amounts, make adjustments, or recover amounts due under this subchapter, subchapter VIII or subchapter XVI that would be deducted from a payment that would otherwise be payable to such person but for such clause.

(2) Notwithstanding any other provision of this section, when any payment of more than the correct amount is made to or on behalf of an individual who has died, and such payment—

(A) is made by direct deposit to a financial institution;

(B) is credited by the financial institution to a joint account of the deceased individual and another person; and

(C) such other person was entitled to a monthly benefit on the basis of the same wages and self-employment income as the deceased individual for the month preceding the month in which the deceased individual died,

the amount of such payment in excess of the correct amount shall be treated as a payment of more than the correct amount to such other person. If any payment of more than the correct amount is made to a representative payee on behalf of an individual after the individual’s death, the representative payee shall be liable for the repayment of the overpayment, and the Commissioner of Social Security shall establish an overpayment control record under the social security account number of the representative payee.

(b) No recovery from persons without fault

In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if such adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience. In making for purposes of this subsection any determination of whether any individual is without fault, the Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).

(c) Nonliability of certifying and disbursing officers

No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any person where the adjustment or recovery of such amount is waived under subsection (b) of this section, or where adjustment under subsection (a) of this section is not completed prior to the death of all persons against whose benefits deductions are authorized.

(d) Payment to survivors or heirs when eligible person is deceased

If an individual dies before any payment due him under this subchapter is completed, payment of the amount due (including the amount of any unnegotiated checks) shall be made—

(1) to the person, if any, who is determined by the Commissioner of Social Security to be the surviving spouse of the deceased individual and who either (i) was living in the same household with the deceased at the time of his death or (ii) was, for the month in which the deceased individual died, entitled to a monthly benefit on the basis of the same wages and self-employment income as was the deceased individual;

(2) if there is no person who meets the requirements of paragraph (1), or if the person who meets such requirements dies before the payment due him under this subchapter is completed, to the child or children, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(3) if there is no person who meets the requirements of paragraph (1) or (2), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the parent or parents, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent);

(4) if there is no person who meets the requirements of paragraph (1), (2), or (3), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the person, if any, determined by the Commissioner of Social Security to be the surviving spouse of the deceased individual;

(5) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), or (5), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the person or persons, if any, determined by the Commissioner of Social Security to be the child or children of the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(6) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), or (5), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the parent or parents, if any, of the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent); or

(7) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), or
(6), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the legal representative of the estate of the deceased individual, if any.

(e) Adjustments due to supplemental security income payments

For payments which are adjusted by reason of payment of benefits under the supplemental security income program established by subchapter XVI of this chapter, see section 1320a-6 of this title.

(f) Collection of delinquent amounts

(1) With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(f), 3716, 3717, and 3718 of title 31 and in section 5514 of title 5, all as in effect immediately after April 26, 1996.

(2) For purposes of paragraph (1), the term "delinquent amount" means an amount—

(A) in excess of the correct amount of payment under this subchapter;

(B) paid to a person after such person has attained 18 years of age; and

(C) determined by the Commissioner of Social Security, under regulations, to be otherwise unrecoverable under this section after such person ceases to be a beneficiary under this subchapter.

(g) Cross-program recovery of overpayments

For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1320b-17 of this title.


AMENDMENTS

2009—Subsec. (a)(2)(B). Pub. L. 111–115 designated existing provisions as cl. (i), substituted "Subject to clause (ii), with" for "With", and added cls. (ii) and (iii).

2004—Subsec. (g). Pub. L. 108–283 amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: "For payments which are adjusted or withheld to recover an overpayment of supplemental security income benefits paid under subchapter XVI of this chapter (including State supplementary payments paid under an agreement pursuant to section 1396(a) of this title or section 212(b) of Public Law 83–66), see section 1320–17 of this title."

1999—Subsec. (a)(2). Pub. L. 106–169, §201(a), inserted at end "If any payment of more than the correct amount is made to a representative payee on behalf of an individual after the individual’s death, the representative payee shall be liable for the repayment of the overpayment and the Commissioner of Social Security shall establish an overpayment control record under the social security account number of the representative payee."

Subsec. (f)(1). Pub. L. 106–169, §203(c), substituted "3711(f)" for "3711(e)" and inserted "all" before "as in effect;"


1996—Subsec. (f). Pub. L. 104–134, which directed that subsec. (f) be amended to read as follows: "(f)(1) With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(f), 3716, 3717, and 3718 of title 31 as in effect immediately after April 26, 1996. ", was executed by substituting the new language for par. (1) only to reflect the probable intent of Congress. Prior to amendment, par. (1) read as follows: "With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(f), 3716, and 3718 of title 31 as in effect on October 1, 1994."

Subsec. (f)(1). Pub. L. 104–316 substituted "sections 3711(e)" for "sections 3711(f)."


1990—Subsec. (a)(1)(A). Pub. L. 101–581 inserted "or shall obtain recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury as permitted under section 732A of title 31, after "payments to such overpaid person."

1989—Subsec. (b). Pub. L. 101–239 inserted at end "In making for purposes of this subsection any determination of whether any individual is without fault, the Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language)."

1986—Subsec. (a). Pub. L. 99–272 redesignated existing subsec. (a) as (a)(1) and pars. (1) and (2) thereof as subpars. (A) and (B), respectively, and added par. (2).

1986—Subsec. (c). Pub. L. 99–166 substituted "Commissioner of Social Security" for "Secretary's authority to include recovery of overpayments."

Subsec. (a)(1). Pub. L. 90–248, §152(a), incorporated in text preceding par. (1) part of existing provisions and broadened the Secretary’s authority to include recovery of overpayments.

Subsec. (a)(1). Pub. L. 90–248, §153(a), inserted last sentence which provided that payments made on an erroneous report by the Defense Department of the death, in the line of duty, of a member of the uniformed services on active duty are not to be deemed incorrect payments until the Department notifies the Secretary that he is alive.

Subsec. (a)(2). Pub. L. 90–248, §152(a), incorporated in par. (2) part of existing provisions and broadened Secretary’s authority to provide that in the case of underpayments, the Secretary is to pay the balance due the underpaid person but if he dies before receiving the full amount due him or before negotiating checks representing the correct payments, the balance due or the amount for which the checks were issued but not negotiated are to be paid under subsec. (d) of this section.

Subsec. (b). Pub. L. 90–248, §152(b), authorized the Secretary to waive adjustment or recovery of overpayments from any person who is without fault, even where he is not the overpaid person and the latter is at fault, whereas heretofore a condition for waiver was that the overpaid person be without fault.

So in original. Probably should be “delinquent”. 
Subsec. (d). Pub. L. 90–248, §154(a), struck out, in text preceding par. (1), provision excepting subsec. (d) from subsec. (a) and provision that the total amount due at the time of death may not exceed the amount of the monthly insurance benefit to which an individual was entitled for the month preceding the month in which he died, added cl. (ii) in par. (1), added pars. (2) to (6), designated existing provisions as pars. (7) and inserted therein references to pars. (1) to (6).

Effective Date of 1939 Amendment

Amendment by Act Aug. 10, 1939, omitted former provisions relating to payments to aged individuals not qualified for benefits and substituted the present section relating to overpayments and underpayments.

Effective Date of 2009 Amendment

Pub. L. 111–115, §2(c), Dec. 15, 2009, 123 Stat. 3030, provided that: "The amendments made by this section (amending this section and section 1383 of this title) shall be effective for payments that would otherwise be made on or after the date of the enactment of this Act [Dec. 15, 2009]."

Effective Date of 2004 Amendment

Pub. L. 108–203, title II, §210(c), Mar. 2, 2004, 118 Stat. 517, provided that: "The amendments and repeal made by this section (amending this section and sections 1008, 1320b–17, and 1383 of this title and repealing section 1320b–18 of this title) shall take effect on the date of enactment of this Act [Mar. 2, 2004], and shall be effective with respect to overpayments under titles II, VIII, and XVI of the Social Security Act (subchapters II, VIII, and XVI of this chapter) that are outstanding on or after such date."

Effective Date of 1999 Amendment

Pub. L. 106–169, title II, §201(c), Dec. 14, 1999, 113 Stat. 1831, provided that: "The amendments made by this section (amending this section and section 1383 of this title) shall apply to overpayments made 12 months or more after the date of the enactment of this Act [Dec. 14, 1999]."

Amendment by section 203(c) of Pub. L. 106–169 applicable to debt outstanding on or after Dec. 14, 1999, see section 203(d) of Pub. L. 106–169, set out as a note under section 3701 of Title 31, Money and Finance.

Effective Date of 1998 Amendment

Pub. L. 105–306, §8(c), Oct. 28, 1998, 112 Stat. 2930, provided that: "The amendments made by this section (amending this section and section 1383 of this title) shall apply to overpayments made 12 months or more after the date of the enactment of this Act [Oct. 28, 1998] and shall apply to amounts incorrectly paid which remained outstanding on or after such date."

Effective Date of 1994 Amendments


Effective Date of 1990 Amendment


Effective Date of 1989 Amendment

Amendment by Pub. L. 101–239 applicable with respect to determinations made on or after July 1, 1990, see section 10305(f) of Pub. L. 101–239, set out as a note under section 403 of this title.

Effective Date of 1986 Amendment

Section 12113(c) of Pub. L. 99–272 provided that: "The amendments made by this section (amending this section and section 1383 of this title) shall apply only in the case of deaths of which the Secretary is first notified on or after the date of the enactment of this Act [Apr. 7, 1986]."

Effective Date of 1980 Amendment

Amendment by Pub. L. 96–265 applicable in the case of payments of monthly insurance benefits under this subchapter, entitlement for which is determined on or after July 1, 1981, see section 501(d) of Pub. L. 96–265, set out as an Effective Date note under section 1320a–8 of this title.

Effective Date of 1968 Amendment

Section 153(b) of Pub. L. 90–248 provided that: "The amendment made by this section (amending this section) shall apply with respect to benefits under title II of the Social Security Act [this subchapter] if the individual to whom such benefits were paid would have been entitled to such benefits in or after the month in which this Act was enacted [January 1968] if the report mentioned in the amendment made by subsection (a) of this section had been correct (but without regard to the provisions of section 202(a)(1) of such Act [section 402(j)(1) of this title])."

Effective Date of 1939 Amendment

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

§405. Evidence, procedure, and certification for payments

(a) Rules and regulations; procedures

The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this subchapter, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

(b) Administrative determination of entitlement to benefits; findings of fact; hearings; investigations; evidentiary hearings in reconsiderations of disability benefit terminations; subsequent applications

(1) The Commissioner of Social Security is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this subchapter. Any such decision by the Commissioner of Social Security which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Commissioner’s determination and the reason or reasons upon which it is based. Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, surviving divorced father, husband, divorced husband, widower, surviving divorced husband, child, or parent who

\[\text{Note: Additional text not fully transcribed.}\]
makes a showing in writing that his or her rights may be prejudiced by any decision the Commissioner of Social Security has rendered, the Commissioner shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse the Commissioner’s findings of fact and such decision. Any such request with respect to such a decision must be filed within sixty days after notice of such decision is received by the individual making such request. The Commissioner of Social Security is further authorized, on the Commissioner’s own motion, to hold such hearings and to conduct such investigations and other proceedings as the Commissioner may deem necessary or proper for the administration of this subchapter. In the course of any hearing, investigation, or other proceeding, the Commissioner may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Commissioner of Social Security even though inadmissible under rules of evidence applicable to court procedure.

(2) In any case where—

(A) an individual is a recipient of disability insurance benefits, or of child’s, widow’s, or widower’s insurance benefits based on disability,

(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and

(C) as a consequence of the finding described in subparagraph (B), such individual is determined by the Commissioner of Social Security not to be entitled to such benefits,

any reconsideration of the finding described in subparagraph (B), in connection with a reconsideration by the Commissioner of Social Security (before any hearing under paragraph (1) on the issue of such entitlement) of the Commissioner’s determination described in subparagraph (C), shall be made only after opportunity for an evidentiary hearing, with regard to the finding described in subparagraph (B), which is reasonably accessible to such individual. Any reconsideration of a finding described in subparagraph (B) may be made either by the State agency or the Commissioner of Social Security where the finding was originally made by the State agency, and shall be made by the Commissioner of Social Security where the finding was originally made by the Commissioner of Social Security, and after such verification thereof as the Commissioner deems necessary, the Commissioner of Social Security shall establish and maintain records of the amounts of wages paid to, and the amounts of self-employment income derived by, each individual and of the periods in which such wages were paid and such income was derived and, upon request, shall inform any individual or his survivor, or the legal rep-

(c) Wage records

(1) For the purposes of this subsection—

(A) The term “year” means a calendar year when used with respect to wages and a taxable year when used with respect to self-employment income.

(B) The term “time limitation” means a period of three years, three months, and fifteen days.

(C) The term “survivor” means an individual’s spouse, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent, who survives such individual.

(D) The term “period” when used with respect to self-employment income means a taxable year and when used with respect to wages means—

(i) a quarter if wages were reported or should have been reported on a quarterly basis on tax returns filed with the Secretary of the Treasury or his delegate under section 6011 of the Internal Revenue Code of 1986 or regulations thereunder (or on reports filed by a State under section 418(e) of this title (as in effect prior to December 31, 1986) or regulations thereunder),

(ii) a year if wages were reported or should have been reported on a yearly basis on such tax returns or reports, or

(iii) the half year beginning January 1 or July 1 in the case of wages which were reported or should have been reported for calendar year 1937.

(2)(A) On the basis of information obtained by or submitted to the Commissioner of Social Security, and after such verification thereof as the Commissioner deems necessary, the Commissioner of Social Security shall establish and maintain records of the amounts of wages paid to, and the amounts of self-employment income derived by, each individual and of the periods in which such wages were paid and such income was derived and, upon request, shall inform any individual or his survivor, or the legal rep-

1 See References in Text note below.
resentative of such individual or his estate, of the amounts of wages and self-employment income of such individual and the periods during which such wages were paid and such income was derived, as shown by such records at the time of such request.

(B)(i) In carrying out the Commissioner’s duties under subparagraph (A) and subparagraph (F), the Commissioner of Social Security shall take affirmative measures to assure that social security account numbers will, to the maximum extent practicable, be assigned to all members of appropriate groups or categories of individuals by assigning such numbers (or ascertaining that such numbers have already been assigned): (I) to aliens at the time of their lawful admission to the United States either for permanent residence or under other authority of law permitting them to engage in employment in the United States and to other aliens at such time as their status is so changed as to make it lawful for them to engage in such employment;

(ii) to any individual who is an applicant for or recipient of benefits under any program financed in whole or in part from Federal funds including any child on whose behalf such benefits are claimed by another person; and

(iii) to any other individual when it appears that he could have been but was not assigned an account number under the provisions of subclauses (I) or (II) but only after such investigation as is necessary to establish the satisfaction of the Commissioner of Social Security, the identity of such individual, the fact that an account number has not already been assigned to such individual, and the fact that such individual is a citizen or a noncitizen who is not, because of his alien status, prohibited from engaging in employment;

and, in carrying out such duties, the Commissioner of Social Security is authorized to take affirmative measures to assure the issuance of social security numbers:

(IV) to or on behalf of children who are below school age at the request of their parents or guardians; and

(V) to children of school age at the time of their first enrollment in school.

(ii) The Commissioner of Social Security shall require of applicants for social security account numbers such evidence as may be necessary to establish the age, citizenship, or alien status, and true identity of such applicants, and to determine which (if any) social security account number has previously been assigned to such individual. With respect to an application for a social security account number for an individual who has not attained the age of 18 before such application, such evidence shall include the information described in subparagraph (C)(ii).

(iii) In carrying out the requirements of this subparagraph, the Commissioner of Social Security shall enter into such agreements as may be necessary with the Attorney General and other officials and with State and local welfare agencies and school authorities (including nonpublic school authorities).

(C)(i) It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver’s license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of establishing the identity of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Commissioner of Social Security.

(ii) In the administration of any law involving the issuance of a birth certificate, each State shall require each parent to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if the parent has more than one such number) issued to the parent unless the State, in accordance with regulations prescribed by the Commissioner of Social Security finds good cause for not requiring the furnishing of such number. The State shall make numbers furnished under this subclause available to the Commissioner of Social Security and the agency administering the State’s plan under part D of subchapter IV of chapter 3 of subpart I, in accordance with Federal or State law and regulation. Such numbers shall not be recorded on the birth certificate. A State shall not use any social security account number, obtained with respect to the issuance by the State of a birth certificate, for any purpose other than for the enforcement of child support orders in effect in the State, unless section 7(a) of the Privacy Act of 1974 does not prohibit the State from requiring the disclosure of such number, by reason of the State having adopted, before January 1, 1975, a statute or regulation requiring such disclosure.

(iii)(I) In the administration of section 9 of the Food and Nutrition Act of 2008 (7 U.S.C. 2018) involving the determination of the qualifications of applicants under such Act [7 U.S.C. 2011 et seq.], the Secretary of Agriculture may require each applicant retail store or wholesale food concern to furnish to the Secretary of Agriculture the social security account number of each individual who is an officer of the store or concern and, in the case of a privately owned applicant, furnish the social security account numbers of the owners of such applicant. No officer or employee of the Department of Agriculture shall have access to any such number for any purpose other than the establishment and maintenance of a list of the names and social security account numbers of such individuals for use in determining those applicants who have been previously sanctioned or convicted under section 12 or 15 of such Act (7 U.S.C. 2021 or 2024).

(II) The Secretary of Agriculture may share any information contained in any list referred to in subclause (I) with any other agency or instrumentality of the United States which otherwise has access to social security account numbers in accordance with this subsection or other applicable Federal law, except that the Secretary of Agriculture may share such informa-
tation only to the extent that such Secretary determines such sharing would assist in verifying and matching such information against information maintained by such other agency or instrumentality. Any such information shared pursuant to this subclause may be used by such other agency or instrumentality only for the purpose of effective administration and enforcement of the Food and Nutrition Act of 2008 [7 U.S.C. 2011 et seq.] or for the purpose of investigation of violations of other Federal laws or enforcement of such laws.

(III) The Secretary of Agriculture, and the head of any other agency or instrumentality referred to in this subclause, shall restrict, to the satisfaction of the Commissioner of Social Security, access to social security account numbers obtained pursuant to this clause only to officers and employees of the United States whose duties or responsibilities require access for the purposes described in subclause (II).

(IV) The Secretary of Agriculture, and the head of any agency or instrumentality with which information is shared pursuant to clause (II), shall provide such other safeguards as the Commissioner of Social Security determines to be necessary or appropriate to protect the confidentiality of the social security account numbers.

(iv) In the administration of section 506 of the Federal Crop Insurance Act [7 U.S.C. 1506], the Federal Crop Insurance Corporation may require each policyholder and each reinsured company to furnish to the insurer or to the Corporation the social security account number of such policyholder, subject to the requirements of this clause. No officer or employee of the Federal Crop Insurance Corporation shall have access to any such number for any purpose other than the establishment of a system of records necessary for the effective administration of such Act [7 U.S.C. 1501 et seq.]. The Manager of the Corporation may require each policyholder to provide to the Manager, at such times and in such manner as prescribed by the Manager, the social security account number of each individual that holds or acquires a substantial beneficial interest in the policyholder. For purposes of this clause, the term "substantial beneficial interest" means not less than 5 percent of all beneficial interest in the policyholder. The Secretary of Agriculture shall restrict, to the satisfaction of the Commissioner of Social Security, access to social security account numbers obtained pursuant to this clause only to officers and employees of the United States or authorized persons whose duties or responsibilities require access for the administration of the Federal Crop Insurance Act. The Secretary of Agriculture shall provide such other safeguards as the Commissioner of Social Security determines to be necessary or appropriate to protect the confidentiality of such social security account numbers. For purposes of this clause the term "authorized person" means an officer or employee of an insurer whom the Manager of the Corporation designates by rule, subject to appropriate safeguards including a prohibition against the release of such social security account number (other than to the Corporation) by such person.

(v) If and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in clause (i), such provision shall, on and after October 4, 1976, be null, void, and of no effect. If and to the extent that any such provision is inconsistent with the requirement set forth in clause (ii), such provision shall, on and after October 13, 1988, be null, void, and of no effect.

(vi)(I) For purposes of clause (i) of this subparagaph, an agency of a State (or political subdivision thereof) charged with the administration of any general public assistance, driver's license, or motor vehicle registration law which did not use the social security account number for identification under a law or regulation adopted before January 1, 1975, may require an individual to disclose his or her social security number to such agency solely for the purpose of administering the laws referred to in clause (i) above and for the purpose of responding to requests for information from an agency administering a program funded under part A of subchapter IV of this chapter or an agency operating pursuant to the provisions of part D of such subchapter.

(II) Any State or political subdivision thereof (and any person acting as an agent of such an agency or instrumentality), in the administration of any driver's license or motor vehicle registration law within its jurisdiction, may not display a social security account number issued by the Commissioner of Social Security (or any derivative of such number) on any driver's license, motor vehicle registration, or personal identification card (as defined in section 7221(a)(2) of the 9/11 Commission Implementation Act of 2004), or include, on any such license, registration, or personal identification card, a magnetic strip, bar code, or other means of communication which conveys such number (or derivative thereof).

(vii) For purposes of this subparagraph, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(viii)(I) Social security account numbers and related records that are obtained or maintained by authorized persons pursuant to this clause only to officers and employees of the United States or authorized persons whose duties or responsibilities require access for the administration of the Federal Crop Insurance Act. The Secretary of Agriculture shall provide such other safeguards as the Commissioner of Social Security determines to be necessary or appropriate to protect the confidentiality of such social security account numbers. For purposes of this clause the term "authorized person" means an officer or employee of an insurer whom the Manager of the Corporation designates by rule, subject to appropriate safeguards including a prohibition against the release of such social security account number (other than to the Corporation) by such person.
paragraph applies with respect to offers (in exchange for any return or return information) described in such paragraph.

(III) For purposes of this clause, the term “authorized person” means an officer or employee of the United States, an officer or employee of any State, political subdivision of a State, or agency of a State or political subdivision of a State, and any other person (or officer or employee thereof), who has or had access to social security account numbers or related records pursuant to any provision of law enacted on or after October 1, 1990. For purposes of this subclause, the term “officer or employee” includes a former officer or employee.

(IV) For purposes of this clause, the term “related record” means any record, list, or compilation that indicates, directly or indirectly, the identity of any individual with respect to whom a social security account number or a request for a social security account number is maintained pursuant to this clause.

(IX) In the administration of the provisions of chapter 8 of title 5 and the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.), the Secretary of Labor may require by regulation that any person filing a notice of injury or a claim for benefits under such provisions provide as part of such notice or claim such person’s social security account number, subject to the requirements of this clause. No officer or employee of the Department of Labor shall have access to any such number for any purpose other than the establishment of a system of records necessary for the effective administration of such provisions. The Secretary of Labor shall restrict, to the satisfaction of the Commissioner of Social Security, access to social security account numbers obtained pursuant to this clause to officers and employees of the United States whose duties or responsibilities require access for the administration or enforcement of such provisions. The Secretary of Labor shall provide such other safeguards as the Commissioner of Social Security determines to be necessary or appropriate to protect the confidentiality of the social security account numbers.

(X) The Secretary of Health and Human Services, and the Exchanges established under section 1311 of the Patient Protection and Affordable Care Act [42 U.S.C. 18031], are authorized to collect and use the names and social security account numbers of individuals as required to administer the provisions of, and the amendments made by, such Act. For purposes of this clause, the term “prisoner” means an individual confined in a jail, prison, or other penal institution or correctional facility pursuant to such individual’s conviction of a criminal offense.

For purposes of this clause, the term “prisoner” means an individual confined in a jail, prison, or other penal institution or correctional facility pursuant to such individual’s conviction of a criminal offense.

(D)(I) It is the policy of the United States that—

(I) any State (or any political subdivision of a State) and any authorized blood donation facility may utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of identifying blood donors, and

(II) any State (or political subdivision of a State) may require any individual who donates blood within such State (or political subdivision) to furnish to such State (or political subdivision), to any agency thereof having related administrative responsibility, or to any authorized blood donation facility the social security account number (or numbers, if the donor has more than one such number) issued to the donor by the Commissioner of Social Security.

(ii) If and to the extent that any provision of Federal law enacted before November 10, 1988, is inconsistent with the policy set forth in clause (i), such provision shall, on and after November 10, 1988, be null, void, and of no effect.

(iii) For purposes of this subparagraph—

(I) the term “authorized blood donation facility” means an entity described in section 3220–11(h)(1)(B) of this title, and

(II) the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(E)(I) It is the policy of the United States that—

(I) any State (or any political subdivision of a State) may utilize the social security account numbers issued by the Commissioner of Social Security for the additional purposes described in clause (ii) if such numbers have been collected and are otherwise utilized by such State (or political subdivision) in accordance with applicable law, and

(II) any district court of the United States may use, for such additional purposes, any such social security account numbers which have been so collected and are so utilized by any State.

(ii) The additional purposes described in this clause are the following:

(I) Identifying duplicate names of individuals on master lists used for jury selection purposes.

(II) Identifying on such master lists those individuals who are ineligible to serve on a jury by reason of their conviction of a felony.

(iii) To the extent that any provision of Federal law enacted before August 15, 1994, is inconsistent with the policy set forth in clause (i), such provision shall, on and after August 15, 1994, be null, void, and of no effect.

(iv) For purposes of this subparagraph, the term “State” has the meaning such term has in subparagraph (D).
(F) The Commissioner of Social Security shall require, as a condition for receipt of benefits under this subchapter, that an individual furnish satisfactory proof of a social security account number assigned to such individual by the Commissioner of Social Security or, in the case of an individual to whom no such number has been assigned, that such individual make proper application for assignment of such a number.

(G) The Commissioner of Social Security shall issue a social security card to each individual at the time of the issuance of a social security account number to such individual. The social security card shall be made of banknote paper, and (to the maximum extent practicable) shall be a card which cannot be counterfeited.

(H) The Commissioner of Social Security shall share with the Secretary of the Treasury the information obtained by the Commissioner pursuant to the second sentence of subparagraph (B)(ii) and to subparagraph (C)(ii) for the purpose of administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on support or residence of children.

(3) The Commissioner's records shall be evidence for the purpose of proceedings before the Commissioner of Social Security or any court of the amounts of wages paid to, and self-employment income derived by, an individual and of the periods in which such wages were paid and such income was derived. The absence of an entry in such records as to wages alleged to have been paid to, or as to self-employment income alleged to have been derived by, an individual in any period shall be evidence that no such alleged wages were paid to, or that no such alleged income was derived by, such individual during such period.

(4) Prior to the expiration of the time limitation following any year the Commissioner of Social Security may, if it is brought to the Commissioner's attention that any entry of wages or self-employment income in the Commissioner's records for such year is erroneous or that any item of wages or self-employment income for the Commissioner's records as to wages alleged to have been paid to, or as to self-employment income alleged to have been derived by, an individual during any period in such year shall be conclusive for the purposes of this subchapter;

(A) the Commissioner's records (with changes, if any, made pursuant to paragraph (5) of this subsection) of the amounts of wages paid to, and self-employment income derived by, an individual during any period in such year shall be conclusive for the purposes of this subchapter;

(B) the absence of an entry in the Commissioner's records as to the wages alleged to have been paid by an employer to an individual during any period in such year shall be presumptive evidence for the purposes of this subchapter that no such alleged wages were paid to such individual in such period; and

(C) the absence of an entry in the Commissioner's records as to the self-employment income alleged to have been derived by an individual in such year shall be conclusive for the purposes of this subchapter that no such alleged self-employment income was derived by such individual in such year unless it is shown that he filed a tax return of his self-employment income for such year before the expiration of the time limitation following such year in which case the Commissioner of Social Security shall include in the Commissioner's records of such year as evidence for the purpose of proceedings before the Commissioner of Social Security the self-employment income in the Commissioner's records of such year for such individual or include in the Commissioner's records of such year for such individual any omitted item of wages or self-employment income but only—

(A) if an application for monthly benefits or for a lump-sum death payment was filed within the time limitation following such year; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon the application for monthly benefits or lump-sum death payment;

(B) if within the time limitation following such year an individual or his survivor makes a request for a change or deletion, or for an inclusion of an omitted item, and alleges in writing that the Commissioner's records of the wages paid to, or the self-employment income derived by, such individual in such year are in one or more respects erroneous; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon such request. Written notice of the Commissioner's decision on any such request shall be given to the individual who made the request;

(C) to correct errors apparent on the face of such records;

(D) to transfer items to records of the Railroad Retirement Board if such items were credited under this subchapter when they should have been credited under the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 231 et seq., 231 et seq.], or to enter items transferred by the Railroad Retirement Board which have been credited under the Railroad Retirement Act of 1937 or 1974 when they should have been credited under this subchapter;

(E) to delete or reduce the amount of any entry which is erroneous as a result of fraud;

(F) to conform the Commissioner's records to—

(i) tax returns or portions thereof (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act, under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code of 1939, under chapter 2 or 21 of the Internal Revenue Code of 1954 or the Internal Revenue Code of 1986, or under regulations made under authority of such title, subchapter, or chapter;

(ii) wage reports filed by a State pursuant to an agreement under section 418 of this
title or regulations of the Commissioner of Social Security thereunder; or

(iii) assessments of amounts due under an agreement pursuant to section 418 of this title (as in effect prior to December 31, 1980), if such assessments are made within the period specified in subsection (q) of such section (as so in effect), or allowances of credits or refunds of overpayments by a State under an agreement pursuant to such section;

except that no amount of self-employment income of an individual for any taxable year (if such return or statement was filed after the expiration of the time limitation following the taxable year) shall be included in the Commissioner’s records pursuant to this subparagraph;

(G) to correct errors made in the allocation, to individuals or periods, of wages or self-employment income entered in the records of the Commissioner of Social Security;

(H) to include wages paid during any period in such year to an individual by an employer;

(I) to enter items which constitute remuneration for employment under subsection (o) of this section, such entries to be in accordance with certified reports of records made by the Railroad Retirement Board pursuant to section 5(k)(3) of the Railroad Retirement Act of 1937 [45 U.S.C. 228e(k)(3)] or section 7(b)(7) of the Railroad Retirement Act of 1974 [45 U.S.C. 231f(b)(7)]; or

(J) to include self-employment income for any taxable year, up to, but not in excess of, the amount of wages deleted by the Commissioner of Social Security as payments erroneously included in such records as wages paid to such individual, if such income (or net earnings from self-employment), not already included in such records as self-employment income, is included in a return or statement (referred to in subparagraph (F) of this subsection) filed before the expiration of the time limitation following the taxable year in which such deletion of wages is made.

(6) Written notice of any deletion or reduction under paragraph (4) or (5) of this subsection shall be given to the individual whose record is involved or to his survivor, except that (A) in the case of a deletion or reduction with respect to any entry of wages such notice shall be given to such individual only if he has previously been notified by the Commissioner of Social Security of the amount of his wages for the period involved, and (B) such notice shall be given to such survivor only if he or the individual whose record is involved has previously been notified by the Commissioner of Social Security of the amount of such individual’s wages and self-employment income for the period involved.

(7) Upon request in writing (within such period, after any change or refusal of a request for a change of the Commissioner’s records pursuant to this subsection, as the Commissioner of Social Security may prescribe), opportunity for hearing with respect to such change or refusal shall be afforded to any individual or his survivor. If a hearing is held pursuant to this paragraph the Commissioner of Social Security shall make findings of fact and a decision based upon the evidence adduced at such hearing and shall include any omitted items, or change or delete any entry, in the Commissioner’s records as may be required by such findings and decision.

(8) A translation into English by a third party of a statement made in a foreign language by an applicant for or beneficiary of monthly insurance benefits under this subchapter shall not be regarded as reliable for any purpose under this subchapter unless the third party, under penalty of perjury—

(A) certifies that the translation is accurate; and

(B) discloses the nature and scope of the relationship between the third party and the applicant or recipient, as the case may be.

(9) Decisions of the Commissioner of Social Security under this subsection shall be reviewable by commencing a civil action in the United States district court as provided in subsection (g) of this section.

(d) Issuance of subpenas in administrative proceedings

For the purpose of any hearing, investigation, or other proceeding authorized or directed under this subchapter, or relative to any other matter within the Commissioner’s jurisdiction hereunder, the Commissioner of Social Security shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the Commissioner of Social Security. Such attendance of witnesses and production of evidence at the designated place of such hearing, investigation, or other proceeding may be required from any place in the United States or in any Territory or possession thereof. Subpenas of the Commissioner of Social Security shall be served by anyone authorized by the Commissioner (1) by delivering a copy thereof to the individual named therein, or (2) by registered mail or by certified mail addressed to such individual at his last dwelling place or principal place of business. A verified return by the individual so serving the subpena setting forth the manner of service, or, in the case of service by registered mail or by certified mail, the return post-office receipt therefor signed by the individual so served, shall be proof of service. Witnesses so subpoenaed shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(e) Judicial enforcement of subpenas; contempt

In case of contumacy by, or refusal to obey a subpena duly served upon, any person, any district court of the United States for the judicial district in which said person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Commissioner of Social Security, shall have jurisdiction to issue an order requiring such person to appear and give testimony, or to appear and produce evidence, or both; any failure to obey such order of the court may be punished by said court as contempt thereof.

(g) Judicial review

Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia. As part of the Commissioner’s answer the Commissioner of Social Security shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing. The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Commissioner of Social Security or a decision is rendered under subsection (b) of this section which is adverse to an individual who was a party to the hearing before the Commissioner of Social Security, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) of this section, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court may, on motion of the Commissioner of Social Security made for good cause shown before the Commissioner files the Commissioner’s answer, remand the case to the Commissioner of Social Security for further action by the Commissioner of Social Security, and it may at any time order additional evidence to be taken before the Commissioner of Social Security, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding; and the Commissioner of Social Security shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm the Commissioner’s findings of fact or the Commissioner’s decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and, in any case in which the Commissioner has not made a decision fully favorable to the individual, a transcript of the additional record and testimony upon which the Commissioner’s action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Commissioner of Social Security or any vacancy in such office.

(h) Finality of Commissioner’s decision

The findings and decision of the Commissioner of Social Security after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Commissioner of Social Security, or any officer or employee thereof shall be brought under section 1331 or 1346 of title 28 to recover on any claim arising under this subchapter.

(i) Certification for payment

Upon final decision of the Commissioner of Social Security, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this subchapter, the Commissioner of Social Security shall certify to the Managing Trustee the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the Managing Trustee, through the Fiscal Service of the Department of the Treasury, and prior to any action thereon by the Government Accountability Office, shall make payment in accordance with the certification of the Commissioner of Social Security (except that in the case of (A) an individual who will have completed ten years of service (or five or more years of service, all of which accrues after December 31, 1995) creditable under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] or the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], (B) the wife or husband of such an individual, (C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to an annuity under section 2 of the Railroad Retirement Act of 1974 [45 U.S.C. 231a], and (D) any other person entitled to benefits under section 402 of this title on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry, as defined in the Railroad Retirement Act of 1974, at the time of his death), such certification shall be made to the Railroad Retirement Board which shall provide for such payment or payments to such person on behalf of the Managing Trustee in accordance with the provisions of the Railroad Retirement Act of 1974): Provided, That where a review of the Commissioner’s decision is or may be sought under subsection (g) of this section the Commissioner of Social Security may withhold certification of payment pending such review. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certification by the Commissioner of Social Security.
(j) Representative payees

(1)(A) If the Commissioner of Social Security determines that the interest of any individual under this subchapter would be served thereby, certification of payment of such individual's benefit under this subchapter may be made, regardless of the legal competency or incompetency of the individual, either for direct payment to the individual, or for his or her use and benefit, to another individual, or an organization, with respect to whom the requirements of paragraph (2) have been met (hereinafter in this subsection referred to as the individual's “representative payee”). If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee has misused any individual's benefit paid to such representative payee pursuant to this subsection or section 1007 or 1323 of this title, the Commissioner of Social Security shall promptly revoke certification for payment of benefits to such representative payee pursuant to this subsection and certify payment to an alternative representative payee, which shall be conducted in regulations.

(B)(i) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.

(ii) Any certification made under paragraph (1) for payment of benefits to an individual's representative payee shall be made on the basis of—

(i) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of such certification and shall, to the extent practicable, include a face-to-face interview with such person, and

(ii) adequate evidence that such certification is in the interest of such individual (as determined by the Commissioner of Social Security in regulations).

(B)(i) As part of the investigation referred to in subparagraph (A)(i), the Commissioner of Social Security shall—

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity has been submitted with an application for benefits under this subchapter, subchapter VIII of this chapter, or subchapter XVI of this chapter.

(II) verify such person's social security account number (or employer identification number), if necessary for the officer to conduct the officer's official duties, and

(III) the location or apprehension of such person is within the officer's official duties.

(C)(i) Benefits of an individual may not be certified for payment to any other person pursuant to this subsection if—

(I) such person has previously been convicted as described in subparagraph (B)(i)(III), (II) except as provided in clause (II), certification of payment of benefits to such person under this subsection has previously been revoked as described in subparagraph (B)(i)(VI).
the designation of such person as a representa-
tive payee has been revoked pursuant to sec-
tion 1007(a) of this title, or payment of bene-
fits to such person pursuant to section 1383(a)(2)(A)(ii) of this title has previously been ter-
minated as described in section 1383(a)(2)(B)(ii)(VI) of this title.

(Ill) except as provided in clause (iii), such
person is a creditor of such individual who
provides such individual with goods or services
for consideration.

(iv) such person has previously been con-
victed as described in subparagraph (B)(i)(IV),
unless the Commissioner determines that such
certification would be appropriate notwithstanding such conviction, or

(V) such person is a person described in sec-
tion 402(x)(1)(A)(iv) of this title.

(ii) The Commissioner of Social Security shall
prescribe regulations under which the Com-
missioner of Social Security may grant exemptions
to any person from the provisions of clause
(i)(II) on a case-by-case basis if such exemption
is in the best interest of the individual whose
benefits would be paid to such person pursuant
to this subsection.

(iii) Clause (i)(III) shall not apply with respect
to any person who is a creditor referred to there-
in if such creditor is—

(I) a relative of such individual if such rel-
ative resides in the same household as such individ-
ual.

(II) a legal guardian or legal representative
of such individual,

(III) a facility that is licensed or certified as
care facility under the law of a State or a pol-
tical subdivision of a State

(IV) a person who is an administrator,
owner, or employee of a facility referred to in
subclause (III) if such individual resides
in such facility, and the certification of payment
to such facility or such person is made only
after good faith efforts have been made by the
local servicing office of the Social Security
Administration to locate an alternative rep-
resentative payee to whom such certification
of payment would serve the best interests of
such individual, or

(V) an individual who is determined by the
Commissioner of Social Security, on the basis
of written findings and under procedures
which the Commissioner of Social Security
shall prescribe by regulation, to be acceptable
to serve as a representative payee.

(iv) The procedures referred to in clause
(iii)(V) shall require the individual who will
serve as representative payee to establish, to
the satisfaction of the Commissioner of Social
Security, that—

(I) such individual poses no risk to the bene-

(ii)(I) Except as provided in subclause (II), any
deferral or suspension of direct payment of a
benefit pursuant to clause (i) shall be for a pe-
period of not more than 1 month.

(ii) Subclause (I) shall not apply in any case in
which the individual is, as of the date of the
Commissioner's determination, legally incom-
petent, under the age of 15 years, or described in
paragraph (1)(B).

(iii) Payment pursuant to this subsection of
any benefits which are deferred or suspended
pending the selection of a representative payee
shall be made to the individual or the represen-
tative payee as a single sum or over such period
of time as the Commissioner of Social Security
determines is in the best interest of the individ-
ual entitled to such benefits.

(E)(i) Any individual who is dissatisfied with a
determination by the Commissioner of Social
Security to certify payment of such individual's
benefit to a representative payee under para-
graph (1) or with the designation of a particular
person to serve as representative payee shall be
titled to a hearing by the Commissioner of So-
cial Security to the same extent as is provided in
subsection (b) of this section, and to judicial
review of the Commissioner's final decision as is
provided in subsection (g) of this section.

(ii) In advance of the certification of payment
of an individual's benefit to a representative
payee under paragraph (1), the Commissioner of
Social Security shall provide written notice of
the Commissioner's initial determination to cer-
tify such payment. Such notice shall be provided
to such individual, except that, if such individual—

(I) is under the age of 15,

(ii) is under the age of 15.

(iii) is an unemancipated minor under the
age of 18, or

(III) is legally incompetent,

then such notice shall be provided solely to the
legal guardian or legal representative of such in-
dividual.
(iii) Any notice described in clause (ii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual’s representative payee, and shall explain to the reader the right under clause (i) of such individual or of such individual’s legal guardian or legal representative—

(I) to appeal a determination that a representative payee is necessary for such individual’s payments;

(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

(III) to review the evidence upon which such designation is based and submit additional evidence.

(3)(A) In any case where payment under this subchapter is made to a person other than the individual entitled to such payment, the Commissioner of Social Security shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

(B) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Commissioner of Social Security shall establish a system of accountability monitoring for institutions in each State.

(C) Subparagraph (A) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

(D) Notwithstanding subparagraphs (A), (B), and (C), the Commissioner of Social Security may require a report at any time from any person receiving payments on behalf of another, if the Commissioner of Social Security has reason to believe that the person receiving such payments is misusing such payments.

(E) In any case in which the person described in subparagraph (A) or (D) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under subparagraph (A) or (D), the Commissioner may, after furnishing notice to such person and the individual entitled to such payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.

(F) The Commissioner of Social Security shall maintain a centralized file, which shall be updated periodically and which shall be in a form which will be readily retrievable by each servicing office of the Social Security Administration, of—

(i) the address and the social security account number (or employer identification number) of each representative payee who is receiving benefit payments pursuant to this subsection, section 1007 of this title, or section 1383(a)(2) of this title, and

(ii) the address and social security account number of each individual for whom each representative payee is reported to be providing services as representative payee pursuant to this subsection, section 1007 of this title, or section 1383(a)(2) of this title.

(G) Each servicing office of the Administration shall maintain a list, which shall be updated periodically, of public agencies and certified community-based nonprofit social service agencies (as defined in paragraph (10)) which are qualified to serve as representative payees pursuant to this subsection or section 1007 or 1383(a)(2) of this title and which are located in the area served by such servicing office.

(4)(A)(i) Except as provided in the next sentence, a qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual’s representative payee pursuant to this subsection if such fee does not exceed the lesser of—

(I) 10 percent of the monthly benefit involved, or

(II) $25.00 per month ($50.00 per month in any case in which the individual is described in paragraph (1)(B)).

A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual’s benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual’s benefit for purposes of paragraphs (5) and (6). The Commissioner shall adjust annually (after 1995) each dollar amount set forth in subclause (II) under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(i)(2)(A) of this title, except that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00. Any agreement providing for a fee in excess of the amount permitted under this subsection shall be void and shall be treated as misuse by such organization of such individual’s benefits.

(ii) In the case of an individual who is no longer currently entitled to monthly insurance benefits under this subchapter but to whom all past-due benefits have not been paid, for purposes of clause (i), any amount of such past-due benefits payable in any month shall be treated as a monthly benefit referred to in clause (i)(I).

(B) For purposes of this paragraph, the term “qualified organization” means any State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any certified community-based nonprofit social service agency (as defined in paragraph (10)), if such agency, in accordance with any applicable regulations of the Commissioner of Social Security—

(i) regularly provides services as the representative payee, pursuant to this subsection
(ii) demonstrates to the satisfaction of the Commissioner of Social Security that such agency is not otherwise a creditor of any such individual.

The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exception from clause (ii) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

(C) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under subparagraph (A) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with title 18, or imprisoned not more than 6 months, or both.

(5) In cases where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall certify to another individual pursuant to the appointment of such person or agency as a representative payee under this subsection, the representative payee shall be liable for the amount of such benefit so misused. The amount certified for payment to such payee (A) is not an individual (regardless of whether it is a “qualified organization” within the meaning of paragraph (4)(B)); or

(B) an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this chapter, subchapter VIII of this chapter, subchapter XVI of this chapter, or any combination of such subchapters;

misuses all or part of an individual’s benefit paid to such representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary’s alternative representative payee an amount equal to such misused benefits. In any case in which a representative payee that—

(A) is not an individual (regardless of whether it is a “qualified organization” within the meaning of paragraph (4)(B)); or

(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this subchapter, subchapter VIII of this chapter, subchapter XVI of this chapter, or any combination of such subchapters;

misuses all or part of an individual’s benefit paid to such representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary’s alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of paragraph (7)(B). The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(6)(A) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency located in the United States that receives the benefits payable under this subchapter (alone or in combination with benefits payable under chapter VIII of this chapter or subchapter XVI of this chapter) to another individual pursuant to the appointment of such person or agency as a representative payee under this subsection, section 1007 of this title, or section 1383(a)(2) of this title in any case in which—

(i) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals; (ii) the representative payee is a certified community-based nonprofit social service agency (as defined in paragraph (10) of this subsection or section 1383(a)(2)(1) of this title); or

(iii) the representative payee is an agency (other than an agency described in clause (ii)) that serves in that capacity with respect to 50 or more such individuals.

(B) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to subparagraph (A) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this subchapter. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

(i) the number of such reviews;

(ii) the results of such reviews;

(iii) the number of cases in which the representative payee was changed and why;

(iv) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

(v) the number of cases discovered in which there was a misuse of funds;

(vi) how any such cases of misuse of funds were dealt with by the Commissioner;

(vii) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

(viii) such other information as the Commissioner deems appropriate.

(7)(A) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual’s benefit that was paid to such representative payee under this subsection, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this subchapter to the representative payee for all purposes of this chapter and related laws pertaining to the recovery of such overpayments. Subject to subparagraph (B), upon recovering all or any part of such amount, the Commissioner shall certify an amount equal to the recovered amount for payment to such individual or such individual’s alternative representative payee.

(B) The total of the amount certified for payment to such individual or such individual’s alternative representative payee under subparagraph (A) and the amount certified for payment under paragraph (5) may not exceed the total benefit amount misused by the representative payee with respect to such individual.

(8) For purposes of this subsection, the term “benefit based on disability” of an individual means a disability insurance benefit of such individual under section 423 of this title or a
child’s, widow’s, or widower’s insurance benefit of such individual under section 402 of this title based on such individual’s disability.

(9) For purposes of this subsection, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this subchapter for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term “use and benefit” for purposes of this paragraph.

(10) For purposes of this subsection, the term “certified community-based nonprofit social service agency” means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.

(k) Payments to incompetents

Any payment made after December 31, 1939, under conditions set forth in subsection (j) of this section, any payment made before January 1, 1940, to or on behalf of, a legally incompetent individual, and any payment made after December 31, 1939, to a legally incompetent individual without knowledge by the Commissioner of Social Security of incompetency prior to certification of payment, if otherwise valid under this subchapter, shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

(f) Delegation of powers and duties by Commissioner

The Commissioner of Social Security is authorized to delegate to any member, officer, or employee of the Social Security Administration designated by the Commissioner any of the powers conferred upon the Commissioner by this section, and is authorized to be represented by the Commissioner’s own attorneys in any court in any case or proceeding arising under the provisions of subsection (e) of this section.


(n) Joint payments

The Commissioner of Social Security may, in the Commissioner’s discretion, certify to the Managing Trustee any two or more individuals of the same family for joint payment of the total benefits payable to such individuals for any month, and if one of such individuals dies before a check representing such joint payment is negotiated, payment of the amount of such unnegotiated check to the surviving individual or individuals may be authorized in accordance with regulations of the Secretary of the Treasury; except that appropriate adjustment or recovery shall be made under section 404(a) of this title with respect to so much of the amount of such check as exceeds the amount to which such surviving individual or individuals are entitled under this subchapter for such month.

(o) Crediting of compensation under Railroad Retirement Act

If there is no person who would be entitled, upon application therefor, to an annuity under section 2 of the Railroad Retirement Act of 1974 [45 U.S.C. 231a], or to a lump-sum payment under section 6(b) of such Act [45 U.S.C. 231b(b)], presumed to have been paid in a calendar year before January 1, 1940, to a legally incompetent individual, and any payment made after December 31, 1939, to, or on behalf of, a legally incompetent individual, the amount of any lump-sum death payment under such Act on the basis of such individual’s disability, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term “use and benefit” for purposes of this paragraph, then, notwithstanding section 410(a)(9) of this title, compensation (as defined in such Railroad Retirement Act, but excluding compensation attributable as having been paid during any month on account of military service creditable under section 3(l) of such Act [45 U.S.C. 231b(l)] if wages are deemed to have been paid to such employee during such month under subsection (a) or (e) of section 417 of this title) of such employee shall constitute remuneration for employment for purposes of determining (A) entitlement to and the amount of any lump-sum death payment under this subchapter, or (B) entitlement to and the amount of any monthly benefit under this subchapter, for the month in which such employee died or for any month thereafter, on the basis of such wages and self-employment income. For such purposes, compensation (as so defined) paid in a calendar year before 1978 shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee rendered services for such compensation.

(p) Special rules in case of Federal service

(1) With respect to service included as employment under section 410 of this title which is performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including service, performed as a member of a uniformed service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act [22 U.S.C. 2501 et seq.], to which the provisions of section 410(o) of this title are applicable, the Commissioner of Social Security shall not make determinations as to the amounts of remuneration for such service, or the periods in which or for which such remuneration was paid, but shall accept the determinations with respect thereto of the head of the appropriate Federal agency or instrumentality, and of such agents as such head may designate, as evidenced by returns filed in accordance with the provisions of section 3122 of the Internal Revenue Code of 1954 and certifications made pursuant to this subsection. Such determinations shall be final and conclusive. Nothing in this paragraph shall be construed to affect the Commissioner’s authority to determine under sections 409 and 409A of this title whether any such service constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages.
(2) The head of any such agency or instrumentality is authorized and directed, upon written request of the Commissioner of Social Security, to make certification to the Commissioner with respect to any matter determinable for the Commissioner of Social Security by such head or his agents under this subsection, which the Commissioner of Social Security finds necessary in administering this subchapter.

(3) The provisions of paragraphs (1) and (2) of this subsection shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of paragraphs (1) and (2) of this subsection the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of paragraphs (1) and (2) shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Homeland Security, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of paragraphs (1) and (2) the Secretary of Homeland Security shall be deemed to be the head of such instrumentality.

(q) Expedited benefit payments

(1) The Commissioner of Social Security shall establish and put into effect procedures under which expedited payment of monthly insurance benefits under this subchapter will, subject to paragraph (r) of this subsection, be made as set forth in paragraphs (2) and (3) of this subsection.

(2) In any case in which—

(A) an individual makes an allegation that a monthly benefit under this subchapter was due him in a particular month but was not paid to him, and

(B) such individual submits a written request for the payment of such benefit—

(i) in the case of an individual who received a regular monthly benefit in the month preceding the month with respect to which such allegation is made, not less than 30 days after the 15th day of the month with respect to which such allegation is made (and in the event that such request is submitted prior to the expiration of such 30-day period, it shall be deemed to have been submitted upon the expiration of such period), and

(ii) in any other case, not less than 90 days after the later of (I) the date on which such benefit is alleged to have been due, or (II) the date on which such individual furnished the last information requested by the Commissioner of Social Security (and such written request will be deemed to be filed on the day on which it was filed, or the ninetieth day after the first day on which the Commissioner of Social Security has evidence that such allegation is true, whichever is later),

the Commissioner of Social Security shall, if the Commissioner finds that benefits are due, certify such benefits for payment, and payment shall be made within 15 days immediately following the date on which the written request is deemed to have been filed.

(3) In any case in which the Commissioner of Social Security determines that there is evidence, although additional evidence might be required for a final decision, that an allegation described in paragraph (2)(A) is true, the Commissioner may make a preliminary certification of such benefit for payment even though the 30-day or 90-day periods described in paragraph (2)(B)(i) and (B)(ii) have not elapsed.

(4) Any payment made pursuant to a certification under paragraph (3) of this subsection shall not be considered an incorrect payment for purposes of determining the liability of the certifying or disbursing officer.

(5) For purposes of this subsection, benefits payable under section 428 of this title shall be treated as monthly insurance benefits payable under this subchapter. However, this subsection shall not apply with respect to any benefit for which a check has been negotiated, or with respect to any benefit alleged to be due under either section 423 of this title, or section 402 of this title to a wife, husband, or child of an individual entitled to or applying for benefits under section 423 of this title, or to a widow or widower on the basis of being under a disability.

(r) Use of death certificates to correct program information

(1) The Commissioner of Social Security shall undertake to establish a program under which—

(A) States (or political subdivisions thereof) voluntarily contract with the Commissioner of Social Security to furnish the Commissioner of Social Security periodically with information (in a form established by the Commissioner of Social Security in consultation with the States) concerning individuals with respect to whom death certificates (or equivalent documents maintained by the States or subdivisions) have been officially filed with them; and

(B) there will be (i) a comparison of such information on such individuals with information on such individuals in the records being used in the administration of this chapter, (ii) validation of the results of such comparisons, and (iii) corrections in such records to accurately reflect the status of such individuals.

(2) Each State (or political subdivision thereof) which furnishes the Commissioner of Social Security with information on records of deaths in the State or subdivision under this subsection may be paid by the Commissioner of Social Security from amounts available for administration of this chapter the reasonable costs (established by the Commissioner of Social Security...
in consultations with the States) for transcribing and transmitting such information to the Commissioner of Social Security.

(3) In the case of individuals with respect to whom federally funded benefits are provided by (or through) a Federal or State agency other than under this chapter, the Commissioner of Social Security shall to the extent feasible provide such information through a cooperative arrangement with such agency, for ensuring proper payment of those benefits with respect to such individuals if—

(A) under such arrangement the agency provides reimbursement to the Commissioner of Social Security for the reasonable cost of carrying out such arrangement, and

(B) such arrangement does not conflict with the duties of the Commissioner of Social Security under paragraph (1).

(4) The Commissioner of Social Security may enter into similar agreements with States to provide information for their use in programs wholly funded by the States if the requirements of subparagraphs (A) and (B) of paragraph (3) are met.

(5) The Commissioner of Social Security may use or provide for the use of such records as may be corrected under this section, subject to such safeguards as the Commissioner of Social Security determines are necessary or appropriate to protect the information from unauthorized use or disclosure, for statistical and research activities conducted by Federal and State agencies.

(6) Information furnished to the Commissioner of Social Security under this subsection may not be used for any purpose other than the purpose described in this subsection and is exempt from disclosure under section 552 of title 5 and from the requirements of section 552a of such title.

(7) The Commissioner of Social Security shall include information on the status of the program established under this section and impediments to the effective implementation of the program in the 1984 report required under section 904 of this title.

(8)(A) The Commissioner of Social Security shall, upon the request of the official responsible for a State driver's license agency pursuant to the Help America Vote Act of 2002—

(i) enter into an agreement with such official for the purpose of verifying applicable information, so long as the requirements of subparagraphs (A) and (B) of paragraph (3) are met; and

(ii) include in such agreement safeguards to assure the maintenance of the confidentiality of any applicable information disclosed and procedures to permit such agency to use the applicable information for the purpose of maintaining its records.

(B) Information provided pursuant to an agreement under this paragraph shall be provided at such time, in such place, and in such manner as the Commissioner determines appropriate.

(C) The Commissioner shall develop methods to verify the accuracy of information provided by the agency with respect to applications for voter registration, for whom the last 4 digits of a social security number are provided instead of a driver's license number.

(D) For purposes of this paragraph—

(i) the term "applicable information" means information regarding whether—

(I) the name (including the first name and any family forename or surname), the date of birth (including the month, day, and year), and social security number of an individual provided to the Commissioner match the information contained in the Commissioner's records, and

(II) such individual is shown on the records of the Commissioner as being deceased; and

(ii) the term "State driver's license agency" means the State agency which issues driver's licenses to individuals within the State and maintains records relating to such licensure.

(E) Nothing in this paragraph may be construed to require the provision of applicable information with regard to a request for a record of an individual if the Commissioner determines there are exceptional circumstances warranting an exception (such as safety of the individual or interference with an investigation).

(F) Applicable information provided by the Commissioner pursuant to an agreement under this paragraph or by an individual to any agency that has entered into an agreement under this paragraph shall be considered as strictly confidential and shall be used only for the purposes described in this paragraph and for carrying out an agreement under this paragraph. Any officer or employee or former officer or employee of a State, or any officer or employee or former officer or employee of a contractor of a State who, without the written authority of the Commissioner, publishes or communicates any applicable information in such individual's possession by reason of such employment or position as such an officer, shall be guilty of a felony and upon conviction thereof shall be fined or imprisoned, or both, as described in section 408 of this title.

(9)(A) The Commissioner of Social Security shall, upon the request of the Secretary or the Inspector General of the Department of Health and Human Services—

(i) enter into an agreement with the Secretary or such Inspector General for the purpose of matching data in the system of records of the Social Security Administration and the system of records of the Department of Health and Human Services; and

(ii) include in such agreement safeguards to assure the maintenance of the confidentiality of any information disclosed.

(B) For purposes of this paragraph, the term "system of records" has the meaning given such term in section 552a(a)(5) of title 5.

(s) Notice requirements

The Commissioner of Social Security shall take such actions as are necessary to ensure that any notice to one or more individuals issued pursuant to this subchapter by the Commissioner of Social Security or by a State agency—

(1) is written in simple and clear language, and
(2) includes the address and telephone number of the local office of the Social Security Administration which serves the recipient.

In the case of any such notice which is not generated by a local servicing office, the requirements of paragraph (2) shall be treated as satisfied if such notice includes the address of the local office of the Social Security Administration which services the recipient of the notice and a telephone number through which such office can be reached.

(t) Same-day personal interviews at field offices in cases where time is of essence

In any case in which an individual visits a field office of the Social Security Administration and represents during the visit to an officer or employee of the Social Security Administration in the office that the individual’s visit is occasioned by—

(1) the receipt of a notice from the Social Security Administration indicating a time limit for response by the individual, or

(2) the theft, loss, or nonreceipt of a benefit payment under this subchapter;

the Commissioner of Social Security shall ensure that the individual is granted a face-to-face interview at the office with an officer or employee of the Social Security Administration before the close of business on the day of the visit.

(u) Redetermination of entitlement

(1)(A) The Commissioner of Social Security shall immediately redetermine the entitlement of an individual to monthly insurance benefits under this subchapter if there is reason to believe that fraud or similar fault was involved in the application of the individual for such benefits, unless a United States attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that such action by the Commissioner of Social Security would jeopardize the criminal prosecution of a person involved in a suspected fraud.

(B) When redetermining the entitlement, or making an initial determination of entitlement, of an individual under this subchapter, the Commissioner of Social Security shall disregard any evidence if there is reason to believe that fraud or similar fault was involved in the providing of such evidence.

(2) For purposes of paragraph (1), similar fault is involved with respect to a determination if—

(A) an incorrect or incomplete statement that is material to the determination is knowingly made; or

(B) information that is material to the determination is knowingly concealed.

(3) If, after redetermining pursuant to this subsection the entitlement of an individual to monthly insurance benefits, the Commissioner of Social Security determines that there is insufficient evidence to support such entitlement, the Commissioner of Social Security may terminate such entitlement and may treat benefits paid on the basis of such insufficient evidence as overpayments.
omitted from the Code as superseded by the provisions of the Internal Revenue Code of 1939 and the Internal Revenue Code of 1966.

Subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (c)(5)(F)(i), were comprised of sections 480 to 482 and 1400 to 1422, respectively, and were repealed (subject to certain exceptions) by section 7854(a)(14(A), (3) of the Internal Revenue Code of 1966.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1966 Code, see section 7852(b) of the 1966 Code. For table of comparisons of the 1939 Code to the 1966 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1966 is classified generally to Title 26.

Chapters 2 and 21 of the Internal Revenue Code of 1964, referred to in subsec. (c)(5)(F)(i), were redesignated chapters 2 and 21 of the Internal Revenue Code of 1966, and are classified to sections 1401 et seq. and 3101 et seq., respectively, of Title 26.

The Peace Corps Act, referred to in subsec. (p)(1), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.


The Internal Revenue Code of 1986, referred to in subsecs. (c)(2)(C)(viii)(I), (H) and (j)(2)(B)(iii), is classified generally to Title 26, Internal Revenue Code.

The Longshore and Harbor Workers’ Compensation Act, referred to in subsec. (c)(2)(C)(ix), is act Mar. 4, 1927, ch. 599, 44 Stat. 1242, which is classified generally to chapter 18 (§501 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.


The Railroad Retirement Act of 1940, referred to in subsec. (c)(5)(D), (I), and (o), is act Aug. 29, 1937, ch. 382, 50 Stat. 307, as amended generally by Pub. L. 93–446, Oct. 21, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Transportation. Pub. L. 109–458, which was formerly classified to subchapter I (§1501 et seq.) of chapter 36 of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1501 of Title 7 and Tables.

Chapters 2 and 21 of the Internal Revenue Code of 1964, referred to in subsec. (c)(5)(F)(i), were redesignated chapters 2 and 21 of the Internal Revenue Code of 1966, and are classified to sections 1401 et seq. and 3101 et seq., respectively, of Title 26.

The Peace Corps Act, referred to in subsec. (p)(1), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.


Codicification

October 13, 1988, referred to in subsec. (c)(2)(C)(v), was in the original “the date of the enactment of such subclause”, as the probable intent of Congress. The clause in question, cl. (i) of subsec. (c)(2)(C)(v), was originally enacted as subcl. (I) of subsec. (c)(2)(C)(i), see 1968 Amendment note below, and was subsequently redesignated as cl. (I) of subsec. (c)(2)(C), see 1990 Amendment note below.

August 15, 1994, referred to in subsec. (c)(2)(E)(iii), was in the original “the date of the enactment of chapter 1 of this title and Tables.”

Amendments


Subsec. (g). Pub. L. 108–203, §411(a), substituted “and, in every case in which the Commissioner has not made a decision fully favorable to the individual, a transcript of the additional record and testimony” for “and a transcript of the additional record and testimony”.


Subj. (j)(2)(B)(i)(IV) to (VI). Pub. L. 108–203, §103(a)(2), added subcls. (IV) and (V) and redesignated former subcl. (IV) as (VI).


Subj. (j)(2)(C)(iv), (v), Pub. L. 108–203, §105(a)(2), substituted paragraph (10)” for “paragraph (9)”.

Pub. L. 108–203, §102(a)(1)(A), substituted “a certified community-based nonprofit social service agency (as defined in paragraph (9))” for “a community-based nonprofit social service agency licensed or bonded by the State”.


Pub. L. 108–203, §105(a)(2), substituted “paragraph (10)” for “paragraph (9)”.

Pub. L. 108–203, §102(a)(1)(B), substituted “certified community-based nonprofit social service agencies (as defined in paragraph (9)) for “community-based nonprofit social service agencies”.


Subj. (j)(4)(A)(ii). Pub. L. 108–203, §104(a)(2), which directed amendment of cl. (i) in concluding provisions by substituting “A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or the Secretary”, was executed by making the substitution for “The Commissioner of Social Security” to reflect the probable intent of Congress. See 1994 Amendment note below.

Pub. L. 108–203, §104(a)(1), substituted “Except as provided in the next sentence, a” for “A” in introductory provisions.


Pub. L. 108–203, §102(a)(1)(C), substituted “any certified community-based nonprofit social service agency (as defined in paragraph (9)) for “any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative payee” in introductory provisions.

Subj. (j)(5). Pub. L. 108–203, §101(a)(1), designated first sentence of existing provisions as introductory provisions and inserted “In any case in which a representative payee that—” after “misused benefits,” added subpars (A) and (B), and designated second sentence of existing provisions as concluding provisions and inserted “misuses all or part of an individual’s benefit paid to such representative payee, the Commissioner of Social Security shall certify for payment to the Social Security Administration or the beneficiary or the representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of paragraph (7)(B),” before “The Commissioner of Social Security shall make”.

Subj. (j)(6). Pub. L. 108–203, §102(b)(1), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “The Commissioner of Social Security shall include as part of the annual report required under section 904 of this title information with respect to the implementation of the preceding provisions of this subsection, including the number of cases in which the representative payee was charged, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Commissioner of Social Security, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Commissioner of Social Security determines to be appropriate.”


2001—Subj. (e)(8). Pub. L. 107–90 inserted “‘or five or more years of service, all of which accrues after December 31, 1965’” after “‘ten years of service’”.


Subj. (j)(2)(B)(i)(IV). Pub. L. 106–169, §251(b)(2)(D), inserted “, the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title,” before “or payment of benefits” and “, chapter VIII of this chapter,” before “or chapter XVI of this chapter”.


1997—Subj. (c)(2)(B)(ii). Pub. L. 105–34, §1090(b)(1)(A), inserted at end “With respect to an application for a social security account number for an individual who has not attained the age of 18 before application, such evidence shall include the information described in subparagraph (C)(i)”.


1996—Subj. (c)(2)(C)(vi). Pub. L. 104–183 inserted “an agency administering a program funded under part A of subchapter IV of this chapter, or before “an agency operating” and substituted “part D of such subchapter” for “part A or D of subchapter IV of this chapter”. 

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Subsec. (j)(1)(B). Pub. L. 104–121, §105(a)(2)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "In the case of an individual entitled to benefits based on disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is under a disability, certification of payment of such benefits to a representative payee shall be deemed to serve the interest of such individual under this subparagraph.

Prior to amendment, subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "In the case of an individual entitled to benefits based on disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is under a disability, certification of payment of such benefits to a representative payee shall be deemed to serve the interest of such individual under this subparagraph.

Subsec. (j)(2)(C)(iv). Pub. L. 104–121, §105(a)(2)(B), substituted "described in paragraph (1)(B)" for "entitled to benefits based on disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is under a disability."
Subsec. (c)(5)(B). Pub. L. 103–296, §107(a)(4), substituted “Commissioner’s” for “Secretary’s” in two places.

Subsec. (c)(5)(F). Pub. L. 103–296, §107(a)(4), substituted “the Commissioner’s” for “his” in introductory provisions, “Commissioner of Social Security” for “Secretary” in cl. (ii), and “Commissioner’s” for “Secretary’s” in closing provisions.


Subsec. (c)(5)(G), (J), (6), (7). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing and “the Commissioner’s” for “his” before “records” in two places in par. (7).


Subsec. (d). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing, “the Commissioner’s” for “his” before “jurisdiction”, and “by the Commissioner” for “by him”.

Subsec. (e). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary”.

Subsec. (g). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing, “the Commissioner’s” for “his” wherever appearing except in second sentence, and “the Commissioner files” for “he files”.

Subsec. (h). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing and “Commissioner’s” for “Secretary’s”.


Subsec. (j)(1). Pub. L. 103–296, §201(a)(1)(A), designated existing provisions as subpar. (A); in last sentence inserted “", if the interest of the individual under this subchapter would be served thereby," after "payee or", and added subpar. (B).

Pub. L. 103–296, §107(a)(4), in par. (1) as amended by Pub. L. 103–296, §201(a)(1)(A), substituted “Commissioner of Social Security” for “Secretary” wherever appearing and “Commissioner’s” for “Secretary’s” in two places in par. (B).


Subsec. (j)(2)(D)(ii)(I). Pub. L. 103–296, §201(a)(1)(B), substituted “, under the age of 15 years, or (if alcoholism or drug addiction is a contributing factor material to the Secretary’s determination that the individual is under a disability) is eligible for benefits under this subchapter by reason of disability.” for “or under the age of 15.”


Subsec. (j)(2)(E)(I), (III), (E), (I), (II), (D), (E). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing and “Commissioner’s” for “Secretary’s” in par. (2)(E)(ii) and (ii).

Subsec. (j)(4)(A). Pub. L. 103–296, §201(a)(2)(B)(i), redesignated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, added new subcl. (II) and struck out former subcl. (II) as redesignated which read “$25.00 per month.”, inserted “The Secretary shall adjust annually (after 1995) each dollar amount set forth in subclause (II) under procedures for adjusting in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(a)(2)(A) of this title, except that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00,” before “Any agreement” in concluding provisions, and added cl. (I).

Pub. L. 103–296, §107(a)(4), in subpar. (A) as amended by Pub. L. 103–296, §201(a)(2)(B)(ii), substituted “Commissioner’s” for “Secretary’s” and “Commissioner of Social Security” for “Secretary”.

Subsec. (j)(4)(B). Pub. L. 103–296, §201(a)(2)(B)(ii), in introductory provisions, inserted “State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any” after “means any”, substituted “representative payee, if such agency,” for “representative payee and which,”, substituted “period for ”, and “at end of cl. (ii), and struck out cl. (iii) which read as follows: “was in existence on October 1, 1988.”


Subsec. (j)(4)(D). Pub. L. 103–296, §201(a)(2)(B)(iii), struck out subpar. (D) which read as follows: “This paragraph shall cease to be effective on July 1, 1994.”


Subsec. (k). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary”.


Pub. L. 103–296, §107(a)(2), (4), substituted “the Social Security Administration” for “Department of Health and Human Services”, “by the Commissioner” for “by him”, “upon the Commissioner” for “upon him”, and “the Commissioner’s” for “his”.

Subsec. (n). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security may, in the Commissioner’s discretion” for “Secretary may, in his discretion”.

Subsec. (p)(1), (2). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing, “the Commissioner’s” for “Secretary’s” in par. (1), and “to the Commissioner” for “to him” in par. (2).

Subsec. (q). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing, “the Commissioner finds” for “he finds” in subsec. (q)(2), and “the Commissioner may” for “he may” in subsec. (q)(3).

Subsec. (s). Pub. L. 103–296, §321(a)(11), made technical amendment to heading.


Subsec. (c)(2)(C). Pub. L. 101–624, §§1735(a), (b), 2201(b), (c), made similar amendments redesignating subcls. (I) and (II) of former cl. (i) as cl. (i) and (ii), respectively, and adding two clgs. (iii) which are different, redesignating former clgs. (ii) to (iv) as (i) to (iv), respectively, and adding two substantially identical clgs. (v), (vi), and (vii), as added by §1735 of Pub. L. 101–624, are set out first and clgs. (i) and (ii), as added by §2201 of Pub. L. 101–624, are set out second.
Subsec. (j)(1). Pub. L. 101–508, §5105(a)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "When it appears to the Secretary that the interest of an applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person."
Subsec. (j)(2). Pub. L. 101–508, §5105(a)(2)(A)(i), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Any certification made under paragraph (1) for payment to a person other than the individual entitled to such payment must be made on the basis of an investigation, carried out either prior to such certification or within forty-five days after such certification, and on the basis of adequate evidence that such certification is in the interest of the individual entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such certifications are adequately reviewed."
Subsec. (j)(3)(B), (C). Pub. L. 101–508, §5105(b)(1)(A)(i), (ii), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read as follows: "Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual."
Subsec. (j)(4). Pub. L. 101–508, §5105(b)(1)(A)(ii), (iii), redesignated subpar. (E) as (D) and substituted "(A), (B), and (C)" for "(A), (B), (C), and (D)". Former subpar. (D) redesignated (C).
"(B) The Secretary shall include as a part of the annual report required under section 904 of this title, information with respect to the implementation of paragraphs (2) and (3), including the number of cases in which the payee was changed, the number discovered where there has been a misuse of funds, how any such cases were dealt with by the Secretary, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Secretary determines to be appropriate.
Pub. L. 101–508, §5105(c)(2), redesignated par. (5), relating to annual report, as (6).
1989—Subsec. (c)(5)(H). Pub. L. 101–239, §10304, struck out "if there is an absence of an entry in the Secretary's records of wages having been paid by such employer to such individual in such period" before semicolon at end.
Subsec. (c)(2)(C)(i). Pub. L. 100–485, §125(a)(1), designated existing provisions as subcl. (I) and added subcl. (II).
Subsec. (c)(2)(C)(ii). Pub. L. 100–485, §125(a)(2), substituted "subparagraph (I) for "(clause (i) of this subparagraph)" and inserted at end "If and to the extent that any such provision is inconsistent with the requirement set forth in subparagraph (II) of clause (i), such provision shall, on and after October 13, 1988, be null, void, and of no effect."
Subsec. (c)(2)(C)(iii). Pub. L. 100–647, §8016(a)(1), substituted "of this Act" for "of the Social Security Act", which for purposes of codification was translated as "of this chapter".
Pub. L. 100–647, §8009(a)(1), redesignated former subpar. (D) as (E).
Subsec. (p)(1). Pub. L. 100–647, §8015(a)(1), substituted "the Secretary shall not make determinations as to the amounts of remuneration for such service, or the periods in which or for which such remuneration was paid" for "the Secretary shall not make determinations as to whether an individual has performed such service, the periods of such service, the amounts of remuneration for such service which constitute wages under the provisions of section 409 of this title, or the periods in which or for which such wages were paid and inserted at end "Nothing in this paragraph shall be construed to affect the Secretary's authority to determine under sections 409 and 410 of this title whether any such service constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages."
Subsec. (c)(5)(F)(ii). Pub. L. 99–509, §902(c)(2)(B), inserted "(as in effect prior to December 31, 1986)" and "(as so in effect)".
Subsec. (c)(5)(J). Pub. L. 98–369, §2663(a)(4)(C), inserted "an order" for "on order".
Subsec. (i). Pub. L. 98–369, §2663(a)(4)(E), substituted "the Fiscal Service of the Department of the Treasury for "the Division of Disbursement of the Treasury Department".
Subsec. (j). Pub. L. 98–460 designated existing provisions as par. (1) and added paras. (2) to (4).
Subsec. (r)(4). Pub. L. 98–369, § 2691(h)(1), substituted “subparagraphs (A) and (B) of paragraph (3)” for “paragraph (3)(A) and (B)”.  
Subsec. (w)(7). Pub. L. 98–369, § 2691(h)(2), substituted “this Act” for “the Act” which was translated as “this title”.  
Pub. L. 97–455 designated existing provisions as par. (1) and added par. (2).  
1980—Subsec. (b). Pub. L. 96–265, § 305(a), inserted provisions relating to the information that must accompany a decision by the Secretary.  
Subsec. (g). Pub. L. 96–265, § 307, substituted “The court may, on motion of the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the Secretary, and it may at any time order additional evidence to be taken before the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding;” for “The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and, at any time, on good cause shown, order additional evidence to be taken before the Secretary.”.  
1978—Subsec. (p)(3). Pub. L. 95–600 substituted “Secretary of Transportation” for “Secretary of the Treasury” in two places.  
1976—Subsec. (b). Pub. L. 94–202 substituted provisions that a request for a hearing following the decision of the Secretary be made within sixty days after notice of such decision is received for provisions which authorized the Secretary to prescribe by regulation the period within which to file a request, including the limitation that the period so prescribed be not less than six months after notice of the decision mailed.  
Subsec. (o). Pub. L. 93–445, § 303, substituted “annuity under section 2 of the Railroad Retirement Act of 1974” for “section 5 of the Railroad Retirement Act of 1937”, “section 6(b) of such Act” for “subsection 2(f)(1) of such section”, and “section 3(i) of such Act” for “section 4 of such Act”.  
1972—Subsec. (o)(2). Pub. L. 92–603 designated existing provisions as par. (A) and added par. (B).  
1970—Subsec. (f). Pub. L. 91–452 struck out subsec. (f) which related to the immunity from prosecution of any person compelled to testify or produce evidence after claiming this privilege against self-incrimination.  
1965—Subsec. (b). Pub. L. 89–97, § 308(d)(9), substituted in second sentence “wife, divorced wife, widow, surviving divorced wife, surviving divorced mother,” for “wife, widow, former wife divorced,”.  
Subsec. (n). Pub. L. 89–97, § 330, provided that Secretary of the Treasury may authorize paying payees of a combined benefit check to cash one or more such checks which were not negotiated before one of the payees died, provided that part of proceeds from each check that represents an overpayment is to be adjusted or recovered as provided in section 404(a) of this title.  
1961—Subsec. (p)(1). Pub. L. 87–293 provided that head of Federal agency having control of service or such agents as the head may designate would make determinations with respect to employment and wages in case of service performed by volunteers and volunteer leaders in Peace Corps.  
1960—Subsec. (c)(5)(F). Pub. L. 86–778, § 102(f)(2), authorized the Secretary to add, change, or delete entries to conform his records to assessments of amounts due under an agreement pursuant to section 418 of this title, if such assessments are made within the period specified in subsection (q) of such section, or allowances of credits or refunds of overpayments by a State under an agreement pursuant to such section, and inserted references to chapters 2 and 21 of the Internal Revenue Code of 1954.  
Subsec. (d). Pub. L. 86–507 inserted “or by certified mail” after “registered mail” in two places.  
Subsec. (g). Pub. L. 86–778, § 102(a), inserted sentence providing that any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.  
1956—Subsec. (b). Act Aug. 1, 1956, ch. 836, § 111(a), required requests with respect to decisions to be filed within such period as the Secretary prescribes by regulation, which period may not be less than six months after notice of the decision is mailed.  
Subsec. (c)(1)(B). Act Aug. 1, 1956, ch. 836, § 107(b), substituted “three months” for “two months”.  
Subsec. (c)(5)(F). Act Aug. 1, 1956, ch. 836, § 117, struck out provisions prohibiting inclusion in records of amount of self-employment income in excess of the amount which had been deleted as payments erroneously included in such records as wages paid to such individual in such taxable year, which provisions are now covered by subsec. (c)(5)(J) of this section.  
Subsec. (p)(1). Act Aug. 1, 1956, ch. 837, provided for determinations with respect to service performed as a member of a uniformed service to which the provisions of section 410(m)(1) of this title are applicable.  
Subsec. (p)(3). Act Sept. 1, 1954, § 101(c)(3), inserted provisions making subsec. (p)(1) and (2) applicable to services performed by a civilian employee in the Coast Guard Exchanges or certain other activities at Coast Guard installations.  
1952—Subsec. (o). Act July 18, 1952, substituted “section (a) or (e) of section 417 of this title” for “section 417(a)(d) of this title”.  
Subsec. (b). Act Aug. 28, 1950, § 108(b), amended subsec. (c) generally to include definitions, to provide for the maintaining of records of self-employed persons, to allow for the revision of the Administrator’s record, to
authorize corrections after the times limitations if an application for monthly benefits or a lump-sum death payment is filed within the time limitation and no final determination has been issued on it, to continue the requirement that written notice of any deletion or reduction of wages be given to the individual whose record is involved, to give the Administrator discretion to prescribe the period, after any change or refusal to change his records, within which an individual may be granted a hearing, and to provide for judicial review.


Subsecs. (o), (p). Act Aug. 28, 1950, §108(c), added subsecs. (o) and (p).

1999—Added former section 485 relating to payments of $500 or less to estates, and added subsecs. (a) to (n).

Effective Date of 2010 Amendment
Pub. L. 111–318, §2(a)(2), Dec. 18, 2010, 124 Stat. 3455, provided that: "The amendment made by this subsection [amending this section] shall apply with respect to payments of $500 or less to estates, and added subsecs. (a) to (n).

Section 102(c)
Amendment of this section [amending this section and sections 1007 and 1383 of this title] shall apply to any month involving benefit misuse after 180 days after the date of the enactment of this Act [Mar. 2, 2004]."

Pub. L. 110–203, title I, §106(d), Mar. 2, 2004, 118 Stat. 505, provided that: "The amendments made by this section [amending this section and sections 1007 and 1383 of this title] shall apply to benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after the date of the enactment of this Act [Mar. 2, 2004]."

Pub. L. 108–203, title I, §106(d), Mar. 2, 2004, 118 Stat. 506, provided that: "The amendments made by this section [amending this section and sections 1007 and 1383 of this title] shall apply to benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after the date of the enactment of this Act [Mar. 2, 2004]."

Pub. L. 110–246, title IV, §411(b), Mar. 2, 2004, 118 Stat. 527, provided that: "The amendment made by this section [amending this section] shall apply with respect to final determinations issued (upon remand) on or after the date of the enactment of this Act [Mar. 2, 2004]."

Effective Date of 2001 Amendment
Pub. L. 107–90, title I, §103(j), Dec. 21, 2001, 115 Stat. 882, provided that: "The amendments made by this section [amending this section] shall apply with respect to employment of prisoners, or entry into contract with prisoners, after the date that is 1 year after the date of enactment of this Act [Dec. 18, 2010]."

Effective Date of 2000 Amendment
Section 1090(b)(2) of Pub. L. 105–34 provided that: "(A) The amendment made by paragraph (1)(A) [amending this section] shall apply to applications made after the date which is 180 days after the date of the enactment of this Act [Aug. 5, 1997]." "(B) The amendments made by subparagraphs (B) and (C) of paragraph (1) [amending this section] shall apply to information obtained on, before, or after the date of the enactment of this Act."

Effective Date of 1999 Amendments
Amendment by Pub. L. 106–170, title IV, §401(a), (b), Dec. 17, 1999, 113 Stat. 1385, 1386, provided that: "The amendments made after the date which is 180 days after the date of enactment of this Act [Aug. 5, 1997] shall apply to information obtained on, before, or after the date of the enactment of this Act."

Effective Date of 1997 Amendment
Section 1090(b)(2) of Pub. L. 105–34 provided that: "(A) The amendment made by paragraph (1)(A) [amending this section] shall apply to applications made after the date which is 180 days after the date of the enactment of this Act [Aug. 5, 1997]." "(B) The amendments made by subparagraphs (B) and (C) of paragraph (1) [amending this section] shall apply to information obtained on, before, or after the date of the enactment of this Act."

Effective Date of 1996 Amendments
Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Section 105(a)(5) of Pub. L. 104–121, as amended by Pub. L. 106–170, title IV, §401(a), (b), Dec. 17, 1999, 113 Stat. 1506, provided that: "(A) The amendments made by paragraphs (1) and (4) [amending sections 423 and 425 of this title] shall apply to any individual who applies for, or whose claim is finally adjudicated with respect to, benefits under title II of the Social Security Act [this subchapter] based on disability on or after the date of the enactment of this Act [Mar. 29, 1996] and, in the case of any individual who has applied for, and whose claim has been finally adjudicated with respect to, such benefits before such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

(B) The amendments made by paragraphs (2) and (3) [amending sections 422 of this title] shall take effect on July 1, 1996, with respect to any individual— (i) whose claim for benefits is finally adjudicated on or after the date of the enactment of this Act [Mar. 29, 1996]; or (ii) whose entitlement to benefits is based upon an entitlement redetermination made pursuant to subparagraph (C)."

(C) Within 90 days after the date of the enactment of this Act [Mar. 29, 1996], the Commissioner of Social
Security shall notify each individual who is entitled to monthly insurance benefits under title II of the Social Security Act based on disability for the month in which this Act is enacted and whose entitlement to such benefits would terminate by reason of the amendments made by this subsection (amending this section and sections 422, 423, and 425 of this title). If such an individual's entitlement to benefits under title II of Pub. L. 103–296 (as amended by this Act) based on disability within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the entitlement redetermination (including a new medical determination) with respect to such individual pursuant to the procedures of such title.

"(D) For purposes of this paragraph, an individual’s claim, with respect to benefits under title II based on disability, which has been denied in whole before the date of the enactment of this Act, may not be considered to be finally adjudicated before such date if, on or after such date—

"(i) there is pending a request for either administrative or judicial review with respect to such claim;

"(ii) there is pending, with respect to such claim, a readjudication by the Commissioner of Social Security pursuant to relief in a class action or implementation of the requirements of section 205(j)(3)(E) of the Social Security Act [subsec. (j)(7) of this section], as amended by this Act, based on disability within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the entitlement redetermination before the date prescribed in subparagraph (C), the Commissioner shall perform such entitlement redetermination in lieu of a continuing disability review whenever the Commissioner determines that the individual’s entitlement is subject to redetermination based on the preceding provisions of this paragraph, and the provisions of section 223(f) [section 423(f) of this title] shall not apply to such redetermination.

"(E) Notwithstanding the provisions of this paragraph, with respect to any individual for whom the Commissioner of Social Security does not perform the entitlement redetermination before the date prescribed in subparagraph (C), the Commissioner shall perform such entitlement redetermination in lieu of a continuing disability review whenever the Commissioner determines that the individual’s entitlement is subject to redetermination based on the preceding provisions of this paragraph, and the provisions of section 223(f) [section 423(f) of this title] shall not apply to such redetermination.

"(F) The amendments made by paragraph (1) shall apply to entitlement redeterminations made on or after July 1, 1994, and shall apply to determinations made before, on, or after such date—

"(i) certifications of payment of benefits under title II of the Social Security Act [subsec. (j)(7) of this section], as amended by this section, and

"(ii) provisions for payment of benefits under title II of the Social Security Act [subsec. (j)(7) of this section], as amended by this section, under section 1383 of this title shall apply to translations made on or after October 1, 1994.

"(G) The amendments made by this subsection [amending this section and section 1383 of this title] shall take effect on October 1, 1994, and shall apply to determinations made before, on, or after such date.

"(H) The amendments made by this section [amending this section and section 1383 of this title] shall apply to determinations made before, on, or after such date—

"(i) there is pending a request for either administrative or judicial review with respect to such claim;

"(ii) there is pending, with respect to such claim, a readjudication by the Commissioner of Social Security pursuant to relief in a class action or implementation of the requirements of section 205(j)(3)(E) of the Social Security Act [subsec. (j)(7) of this section], as amended by this Act, based on disability within 120 days after the date of the enactment of this Act, the Commissioner of Social Security shall, not later than January 1, 1997, complete the entitlement redetermination before the date prescribed in subparagraph (C), the Commissioner shall perform such entitlement redetermination in lieu of a continuing disability review whenever the Commissioner determines that the individual’s entitlement is subject to redetermination based on the preceding provisions of this paragraph, and the provisions of section 223(f) [section 423(f) of this title] shall not apply to such redetermination.

"(J) Certification of payment of such individual’s benefits to a representative payee.''

Section 201(a)(2)(B)(iii) of Pub. L. 103–296 provided that the amendments made by that section is effective July 1, 1994.

Section 201(a)(2)(D) of Pub. L. 103–296 provided that: “Except as provided in subparagraph (B)(iii) [set out above], the amendments made by this paragraph [amending this section] shall apply with respect to 180 days after the date of the enactment of this Act [Aug. 15, 1994].”

Section 206(a)(3) of Pub. L. 103–296 provided that: “The amendments made by this subsection [amending this section and section 1383 of this title] shall apply to translations made on or after October 1, 1994.”

Section 206(d)(3) of Pub. L. 103–296 provided that: “The amendments made by this subsection [amending this section and section 1383 of this title] shall apply to determinations made before, on, or after such date.”

Section 304(c) of Pub. L. 103–296 provided that: “The amendments made by this section [amending this section and section 1320–10 of this title] shall take effect on the date of the enactment of this Act [Aug. 15, 1994].”

Section 323(f)(5) of Pub. L. 103–296 provided that: “Each amendment made by this subsection [amending this section and sections 406, 422, 1320a–6, and 1383 of this title] shall take effect as if included in the provisions of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508] to which such amendment relates, except that the amendments made by paragraph (1) [amending sections 406 and 1320a–6 of this title] shall apply with respect to favorable judgments made after 180 days after the date of the enactment of this Act [Aug. 15, 1994].”

**EFFECTIVE DATE OF 1990 AMENDMENTS** Amend by section 1735(a), (b) of Pub. L. 101–624 effective and implemented first day of month beginning 120 days after publication of implementing regulations to be promulgated not later than Oct. 1, 1991, see section 1781(a) of Pub. L. 101–624, set out as a note under section 1202 of Title 7, Agriculture.

Section 5105(a)(5) of Pub. L. 101–508 provided that: “(A) USE AND SELECTION OF REPRESENTATIVE PAYEES.—The amendments made by paragraphs (1) and (2) [amending this section and section 1383 of this title] shall take effect July 1, 1991, and shall apply only with respect to—

"(i) certifications of payment of benefits under title II of the Social Security Act [subchapter XVI of this chapter] to representative payees made on or after such date;

"(B) COMPENSATION OF REPRESENTATIVE PAYEES.—The amendments made by paragraph (3) [amending this section and section 1383 of this title] shall take effect July 1, 1991, and the Secretary of Health and Human Services shall prescribe initial regulations necessary to carry out such amendments not later than such date.”

Section 5105(b)(1)(B) of Pub. L. 101–508 provided that: “The amendments made by subparagraph (A) [amending this section and section 1383 of this title] shall apply to determinations made on or after such date.

"(ii) provisions for payment of benefits under title II of the Social Security Act [subsec. (j)(7) of this section], as amended by this section, under section 1383 of such Act [subchapter XVI of this chapter] to representative payees made on or after such date.

"(B) COMPENSATION OF REPRESENTATIVE PAYEES.—The amendments made by paragraph (3) [amending this section and section 1383 of this title] shall take effect July 1, 1991, and the Secretary of Health and Human Services shall prescribe initial regulations necessary to carry out such amendments not later than such date.”

Section 5105(b)(1)(B) of Pub. L. 101–508 provided that: “The amendments made by subparagraph (A) [amending this section and section 1383 of this title] shall apply to determinations made on or after such date.

"(ii) provisions for payment of benefits under title II of the Social Security Act [subsec. (j)(7) of this section], as amended by this section, under section 1383 of such Act [subchapter XVI of this chapter] to representative payees made on or after such date.

"(B) COMPENSATION OF REPRESENTATIVE PAYEES.—The amendments made by paragraph (3) [amending this section and section 1383 of this title] shall take effect July 1, 1991, and the Secretary of Health and Human Services shall prescribe initial regulations necessary to carry out such amendments not later than such date.”

Section 5107(b) of Pub. L. 101–508 provided that: “The amendments made by this section [amending this section and section 1383 of this title] shall apply with respect to adverse determinations made on or after July 1, 1991.”
tion and section 1383 of this title] shall apply with respect to
notices issued on or after July 1, 1991.''

**Effective Date of 1989 Amendment**

Section 10303(c) of Pub. L. 101–239 provided that: ‘‘The
amendments made by this section [amending this section and
section 1383 of this title] shall apply to visits to field offices
of the Social Security Administration on or after January 1, 1990.’’

**Effective Date of 1988 Amendments**

Section 8009(b) of Pub. L. 100–647 provided that: ‘‘The
amendments made by this section [amending this section]
shall apply to benefits entitlement to which
commences after the sixth month following the month in
which this Act is enacted [November 1988].’’

Amendment by section 8015(a)(1) of Pub. L. 100–647
applicable to determinations relating to service
commenced in any position on or after Nov. 10, 1988, see
section 8015(a)(3) of Pub. L. 100–647, set out as a note
under section 3122 of Title 26, Internal Revenue Code.

Amendment by section 8016(a)(1) of Pub. L. 100–647
effective Nov. 10, 1988, except that any amendment to a
provision of a particular Public Law which is referred to
by its number, or to a provision of the Social Security
Act [42 U.S.C. 301 et seq.], or to Title 26, as added or
amended by a provision of a particular Public Law which
is so referred to, effective as though included or
reflected in the relevant provisions of that Public Law
at the time of its enactment, see section 8016(b) of Pub.
L. 100–647, set out as a note under section 3111 of Title 26.

Section 125(b) of Pub. L. 100–485 provided that: ‘‘The
amendments made by subsection (a) [amending this section]
shall become effective on the first day of the
25th month which begins on or after the date of the
enactment of this Act [Oct. 13, 1988].’’

**Effective Date of 1986 Amendment**

Amendment by Pub. L. 99–609 effective with respect to
day payments due with respect to wages paid after Dec.
31, 1986, except that any amendment to a
provision of a particular Public Law which is so referred to,
effective as though included or reflected in the relevant
provisions of that Public Law at the time of its enactment,
see section 9002(d) of Pub. L. 99–509 set out as a note
under section 418 of this title.

**Effective Date of 1984 Amendments**

Section 16(d) of Pub. L. 98–460 provided that: ‘‘The
amendments made by this section [amending this section
days and sections 408, 1383, and 1383a of this title] shall
become effective on the date of the enactment of this
Act [Oct. 9, 1984], and, in the case of the amendments
made by subsection (c) [amending sections 408 and 1383a
of this title], shall become effective on or after the date of
the enactment of this Act [Jan. 2, 1976].’’

Amendment by subsection (a) [amending this section]
shall apply with respect to violations occurring on or after
such date.

Amendment by section 2661(b) of Pub. L. 98–369 effective
as though included in the enactment of the Social Security
Amendments of 1983, Pub. L. 98–21, see section
2664(a)(1) of Pub. L. 98–369, set out as a note under
section 401 of this title.

Amendment by section 2664(a)(4), (j)(4) of Pub. L. 98–369
effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or
interpretation which existed under the provisions of law
involved before that date, see section 2664(b) of Pub.
L. 98–369, set out as a note under section 401 of this title.

**Effective Date of 1983 Amendments**

Amendment by sections 301(d) and 309(i) of Pub. L. 98–21 applicable only with respect to monthly payments
payable under this subchapter for months after April,
1983, see section 310 of Pub. L. 98–21, set out as a note
under section 402 of this title.

Section 409(b) of Pub. L. 98–21 provided that: ‘‘The
amendments made by this section [amending this section]
shall apply with respect to all new and replacement
social security cards issued more than 193 days
after the date of the enactment of this Act [Apr. 20,
1983].’’

Section 4(b) of Pub. L. 97–455 provided that: ‘‘The
amendments made by subsection (a) [amending this section]
shall apply with respect to reconsiderations of findings described in section 205(b)(2)(B) of the Social Security
Act [subsec. (b)(2)(B) of this section] which are requested on or after such date as the Secretary of
Health and Human Services may specify, but in any
event not later than January 1, 1984.’’

**Effective Date of 1980 Amendment**

Section 2664(a) of Pub. L. 98–369 provided that: ‘‘The
amendments made by this section [amending this section and
section 1383 of this title] shall apply with respect to
decisions made on or after the first day of the
13th month following the month in which this Act is
enacted [June, 1980].’’

**Effective Date of 1978 Amendment**

Amendment by Pub. L. 95–600 effective Oct. 4, 1976,
see section 703(c) of Pub. L. 95–600, set out as a note
under section 46 of Title 26, Internal Revenue Code.

**Effective Date of 1977 Amendment**

Amendment by Pub. L. 95–215 effective Jan. 1, 1978,
see section 353(g) of Pub. L. 95–215, set out as a note
under section 418 of this title.

**Effective Date of 1976 Amendment**

Section 5 of Pub. L. 94–202 provided that: ‘‘The
amendments made by the first two sections of this Act
[amending section 1383 of this title], and the provisions of
section 3 [enacting provisions set out as a note
under section 1383 of this title], shall take effect on the date
of the enactment of this Act [Jan. 2, 1976]. The amend-
ments made by section 4 of this Act [amending this section]
shall apply with respect to any decision or determination
of which notice is received, by the individual requesting the
hearing involved, after February 29, 1976. The amendment
made by the first section of this Act [amending section 1383 of this title], to the extent that it changes the period within which hearings
must be requested, shall apply with respect to any decision
or determination of which notice is received, by the
individual requesting the hearing involved, on or after
the date of the enactment of this Act.’’

**Effective Date of 1974 Amendment**

Section 303(b) of Pub. L. 93–445 provided that: ‘‘The
amendments made by this section [amending this section]
shall apply only with respect to benefits payable to
individuals who first become entitled to benefits
under title II of the Social Security Act [this sub-
chapter] after 1974.’’

Amendment by section 303 of Pub. L. 93–445 effective
Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a
note under section 402 of this title.

**Effective Date of 1970 Amendment**

Amendment by Pub. L. 91–452 effective on sixtieth
day following Oct. 15, 1970, and not to affect any
immunity to which any individual is entitled under this
section by reason of any testimony given before sixtieth
day following Oct. 15, 1970, see section 260 of Pub. L.
91–452, set out as an Effective Date; Savings Provisions
note under section 6001 of Title 18, Crimes and Criminal
Procedure.

**Effective Date of 1968 Amendment**

Section 171(b) of Pub. L. 90–248 provided that: ‘‘The
amendments made by subsection (a) of this section
[amending this section] shall be effective with respect to
written requests filed under section 205(g) of the So-
Social Security Act [subsec. (g) of this section] after June
30, 1968.’’

**Effective Date of 1965 Amendment**

Amendment by section 308(d)(9), (10) of Pub. L. 89–97
applicable with respect to monthly insurance benefits
under this subchapter beginning with the second month following July 1965, but, in the case of an individual who was not entitled to a monthly insurance benefit under section 402 of this title for the first month following July 1965, only on the basis of an application filed in or after July 1965, see section 303(e) of Pub. L. 89–97, set out as a note under section 402 of this title.

**Effective Date of 1961 Amendment**

Amendment by Pub. L. 87–293 applicable with respect to service performed after Sept. 22, 1961, but in the case of persons serving under the Peace Corps agency established by executive order applicable with respect to service performed on or after the effective date of enrollment, see section 202(c) of Pub. L. 87–293, set out as a note under section 2121 of Title 26, Internal Revenue Code.

**Effective Date of 1960 Amendment**

Amendment by section 102(y)(2) of Pub. L. 86–778 effective on first day of second calendar year following 1960, see section 102(y)(3) of Pub. L. 86–778, set out as a note under section 418 of this title.


Section 702(b) of Pub. L. 86–778 provided that: "The amendment made by subsection (a) [amending this section] shall apply to actions which are pending in court on the date of the enactment of this Act or are commenced after such date."

**Effective Date of 1956 Amendments**

Section 111(b) of act Aug. 1, 1956, ch. 836, provided that: "The amendment made by subsection (a) [amending this section] shall be effective upon enactment [Aug. 1, 1956]; except that the period of time prescribed by the Secretary pursuant to the third sentence of section 205(b) of the Social Security Act [subsec. (b) of this section] as amended by subsection (a) of this section, shall be applicable only with respect to remuneration paid after 1954. The amount of net earnings from self-employment derived during any taxable year ending in, and not with the close of, 1955 shall be credited to calendar quarters in which such taxable year ends and to each of the three or fewer preceding quarters any part of which is in such taxable year; and, for purposes of the preceding sentence of this subsection, net earnings from self-employment so credited to calendar quarters in 1955 shall be deemed to have been derived after 1954."

**Effective Date of 1950 Amendment**

Section 108(d) of act Aug. 28, 1950, provided that: "The amendments made by subsections (a) and (c) of this section [amending this section] shall take effect on September 1, 1950. The amendment made by subsection (b) of this section [amending this section] shall take effect January 1, 1951, except that, effective on September 1, 1950, the husband or former wife divorced of an individual shall be treated the same as a parent of such individual, and the legal representative of an individual or his estate shall be treated the same as the individual, for purposes of section 205(c) of the Social Security Act [subsec. (c) of this section] as in effect prior to the enactment of this Act [Aug. 28, 1950]."

Section 101(b)(2) of act Aug. 28, 1950, provided that: "Section 205(m) of the Social Security Act [subsec. (m) of this section] as amended by subsection (a) of this section] is repealed effective with respect to monthly payments under section 202 of the Social Security Act [this section], as amended by this Act, for months after August 1950."

**Effective Date of 1959 Amendment**

Section 201 of act Aug. 10, 1959, provided that the amendment made by that section is effective Jan. 1, 1959.

**Repeals: Amendments and Application of Amendments Unaffected**

Section 302(b)(3) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, §5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under section 2515 of Title 22, Foreign Relations and Intercourse.

**Termination of Trust Territory of the Pacific Islands**

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

**Social Security Cards and Numbers**


"(a) Security Enhancements.—The Commissioner of Social Security shall—

1) not later than 1 year after the date of enactment of this Act [Dec. 17, 2004]—

(A) restrict the issuance of multiple replacement social security cards to any individual to 3 per year and 10 for the life of the individual, except that the Commissioner may allow for reasonable exceptions from the limits under this paragraph on a case-by-case basis in compelling circumstances; 

(B) establish minimum standards for the verification of documents or records submitted by an individual to establish eligibility for an original or replacement social security card, other than for purposes of enumeration at birth; and

(C) require independent verification of any birth record submitted by an individual to establish eligibility for a social security account number, other

"The amount of net earnings from self-employment derived during any taxable year ending in, and not with the close of, 1955 shall be credited to calendar quarters in which such taxable year ends and to each of the three or fewer preceding quarters any part of which is in such taxable year; and, for purposes of the preceding sentence of this subsection, net earnings from self-employment so credited to calendar quarters in 1955 shall be deemed to have been derived after 1954."

"The amendments made by subsections (a) and (c) of this section [amending this section] shall take effect on September 1, 1950. The amendment made by subsection (b) of this section [amending this section] shall take effect January 1, 1951, except that, effective on September 1, 1950, the husband or former wife divorced of an individual shall be treated the same as a parent of such individual, and the legal representative of an individual or his estate shall be treated the same as the individual, for purposes of section 205(c) of the Social Security Act [subsec. (c) of this section] as in effect prior to the enactment of this Act [Aug. 28, 1950]."

"Section 101(b)(2) of act Aug. 28, 1950, provided that: "Section 205(m) of the Social Security Act [subsec. (m) of this section] as amended by subsection (a) of this section] is repealed effective with respect to monthly payments under section 202 of the Social Security Act [this section], as amended by this Act, for months after August 1950."

"The amendment made by that section is effective Jan. 1, 1959."
than for purposes of enumeration at birth, except that the Commissioner may allow for reasonable exceptions from the requirement for independent verification under this subparagraph on a case by case basis in compelling circumstances; and

"(2) notwithstanding section 205(r) of the Social Security Act (42 U.S.C. 666(r)) and any agreement entered into thereunder, not later than 18 months after the date of enactment of this Act with respect to death indicators and not later than 36 months after the date of enactment of this Act with respect to fraud indicators, add death and fraud indicators to the social security number verification systems for employers, State agencies issuing driver's licenses and identity cards, and other verification routines that the Commissioner determines to be appropriate.

"(b) INTERAGENCY SECURITY TASK FORCE.—The Commissioner of Social Security, in consultation with the Secretary of Homeland Security, shall form an interagency task force for the purpose of further improving the security of social security cards and numbers. Not later than 18 months after the date of enactment of this Act [Dec. 17, 2004], the task force shall establish, and the Commissioner shall provide for the implementation of, security requirements, including—

"(1) standards for safeguarding social security cards from counterfeiting, tampering, alteration, and theft;

"(2) requirements for verifying documents submitted for the issuance of replacement cards; and

"(3) actions to increase enforcement against the fraudulent use or issuance of social security numbers and cards.

"(c) ENUMERATION AT BIRTH.—

"(1) IMPROVEMENT OF APPLICATION PROCESS.—As soon as practicable after the date of enactment of this Act [Dec. 17, 2004], the Commissioner of Social Security shall undertake to make improvements to the enumeration at birth program for the issuance of social security account numbers to newborns. Such improvements shall be designed to prevent—

"(A) the assignment of social security account numbers to unnamed children;

"(B) the issuance of more than 1 social security account number to the same child; and

"(C) other opportunities for fraudulently obtaining a social security account number.

"(2) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Commissioner shall transmit to each House of Congress a report specifying in detail the extent to which the improvements required under paragraph (1) have been made.

"(d) STUDY REGARDING PROCESS FOR ENUMERATION AT BIRTH.—

"(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act [Dec. 17, 2004], the Commissioner of Social Security shall conduct a study to determine the most efficient options for ensuring the integrity of the process for enumeration at birth. This study shall include an examination of available methods for reconciling hospital birth records with birth registrations submitted to agencies of States and political subdivisions thereof and with information provided to the Commissioner as part of the process for enumeration at birth.

"(2) REPORT.—Not later than 18 months after the date of enactment of this Act, the Commissioner shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the results of the study conducted under paragraph (1).

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commissioner of Social Security for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out this section.

DEVELOPMENT OF PROTOTYPE OF COUNTERFEIT-RESISTANT SOCIAL SECURITY CARD


"(a) DEVELOPMENT.—

"(1) IN GENERAL.—The Commissioner of Social Security (in this section referred to as the ‘Commissioner’) shall, in accordance with the provisions of this section, develop a prototype of a counterfeit-resistant social security card. Such prototype card—

"(A) shall be made of a durable, tamper-resistant material such as plastic or polyester;

"(B) shall employ technologies that provide security features, such as magnetic stripes, holograms, and integrated circuits; and

"(C) shall be developed so as to provide individuals with reliable proof of citizenship or legal resident alien status.

"(2) ASSISTANCE BY ATTORNEY GENERAL.—The Attorney General shall provide such information and assistance as the Commissioner deems necessary to achieve the purposes of this section.

"(b) STUDIES AND REPORTS.—

"(1) IN GENERAL.—The Comptroller General and the Commissioner of Social Security shall each conduct a study, and issue a report to the Congress, that examines different methods of improving the social security card application process.

"(2) ELEMENTS OF STUDIES.—The studies shall include evaluations of the cost and work load implications of issuing a counterfeit-resistant social security card for all individuals over a 3, 5, and 10 year period. The studies shall also evaluate the feasibility and cost implications of imposing a user fee for replacement cards and cards issued to individuals who apply for such a card prior to the scheduled 3, 5, and 10 year phase-in options.

"(3) DISTRIBUTION OF REPORTS.—Copies of the reports described in this subsection, along with facsimiles of the prototype cards as described in subsection (a), shall be submitted to the Committees on Ways and Means and Judiciary of the House of Representatives and the Committees on Finance and Judiciary of the Senate not later than 1 year after the date of the enactment of this Act [Sept. 30, 1996].

Similar provisions were contained in the following prior act:


NINETY-DAY DELAY IN DEPENDRAL OR SUSPENSION OF BENEFITS FOR CURRENT BENEFICIARIES

Section 201(a)(1)(C) of Pub. L. 103–296 provided that: "In the case of an individual who died more than 180 days after the date of the enactment of this Act [Aug. 13, 1994], has been determined to be under a disability, if alcoholism or drug addiction is a contributing factor material to the determination of the Secretary of Health and Human Services that the individual is under a disability, the Secretary may, notwithstanding clauses (i) and (ii) of section 205(d)(2)(D) of the Social Security Act [subsec. (j)(2)(D) of this section], make direct payment of benefits to such individual during the 90-day period commencing with the date on which such individual is provided the notice described in subparagraph (D)(ii) of this paragraph [set out above], until such time during such period as the selection of a representative payee is made pursuant to section 205(c) of such Act [subsec. (j) of this section]."

STUDY REGARDING FEASIBILITY, COST, AND EQUITY OF REQUIRING REPRESENTATIVE PAYEES FOR ALL DISABILITY BENEFICIARIES SUFFERING FROM ALCOHOLISM OR DRUG ADDICTION

Services, as soon as practicable after Aug. 15, 1994, to conduct a study of the feasibility, cost, and equity of requiring representative payees for all disability beneficiaries under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) who suffer from alcoholism or drug addiction, irrespective of whether the alcoholism or drug addiction was material to the determination of disability, the feasibility, cost, and equity of providing benefits through non-cash means; and the extent to which child beneficiaries and children’s representative payees are affiliated by drug addition or alcoholism and ways of addressing such affiliation, and required the Secretary to submit a report to the appropriate committees of Congress by July 1, 1995.

ANNUAL REPORTS ON REVIEWS OF OASDI AND SSI CASES

Section 206(g) of Pub. L. 103–296, as amended by Pub. L. 103–296, title I, §108(b)(10)(B), Aug. 15, 1994, 108 Stat. 1483, provided that: “The Commissioner of Social Security shall annually submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the extent to which the Commissioner has exercised his authority to review cases of entitlement to monthly insurance benefits under title II of the Social Security Act (this subchapter) and supplemental security income cases under title XVI of such Act (subchapter XVI of this chapter), and the extent to which the cases reviewed were those that involved a high likelihood or probability of fraud.”

REPORT ON FEASIBILITY OF OBTAINING READY ACCESS TO CRIMINAL FRAUD RECORDS

Pub. L. 101–508, title V, §5105(a)(2)(B), Nov. 5, 1990, 104 Stat. 1388–260, provided that, as soon as practicable after Nov. 5, 1990, the Secretary of Health and Human Services, in consultation with the Attorney General of the United States and the Secretary of the Treasury, was to establish pursuant to 42 U.S.C. 406(c)(2) or 42 U.S.C. 1383a(a)(2)(B), and to submit study results and recommendations to the appropriate committees of Congress by July 1, 1992.

REPORTS ON ORGANIZATIONS SERVING AS REPRESENTATIVE PAYEES AND FEES FOR SERVICES

Pub. L. 101–508, title V, §5105(a)(3)(B), Nov. 5, 1990, 104 Stat. 1388–262, required the Secretary of Health and Human Services to transmit a report to the appropriate committees of Congress on the desirability of legislation implementing the programs set forth in sections 1383(a)(2)(B), 1383(a)(2)(C), and to report to the appropriate committees of Congress the results of the study and any recommendations by July 1, 1992.

DEMONSTRATION PROJECTS RELATING TO PROVISION OF INFORMATION TO LOCAL AGENCIES PROVIDING CHILD AND ADULT PROTECTIVE SERVICES

Pub. L. 101–508, title V, §5105(b)(5), Nov. 5, 1990, 104 Stat. 1388–264, required the Secretary of Health and Human Services, as soon as practicable after Nov. 5, 1990, to implement a demonstration project to make available to the State agencies responsible for regulating care facilities or providing for child and adult protective services a list of addresses where benefits under titles II and XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) were received by five or more individuals, and to report to the appropriate committees of Congress by July 1, 1992, on the feasibility and desirability of legislation implementing the programs established pursuant to section 5105(b)(5) of Pub. L. 101–508 on a permanent basis.

COUNTERFEITING OF SOCIAL SECURITY ACCOUNT NUMBER RECORDS

Pub. L. 99–603, title I, §101(f), Nov. 6, 1986, 100 Stat. 3373, directed the Comptroller General of the United States to investigate technological alternatives for producing and issuing social security account number cards that are more resistant to counterfeiting and to report to the appropriate committees of Congress not later than one year after Nov. 6, 1986.

INCLUSION OF SELF-EMPLOYMENT INCOME IN RECORDS OF SECRETARY OF HEALTH, EDUCATION, AND WELFARE

Section 331(c) of Pub. L. 89–97 provided that: “Notwithstanding any provision of section 205(c)(5)(F) of the Social Security Act [subsec. (c)(5)(F) of this section], the Secretary of Health, Education, and Welfare may conform, before April 16, 1970, his records to tax returns or statements of earnings which constitute self-employment income solely by reason of the filing of a certificate which is effective under section 1402(e)(3)(B) or 1402(e)(3)(B) of such Code [section 1402(e)(3)(B) of Title 26, Internal Revenue Code].”

Section 101(e) of Pub. L. 99–787, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The provisions of section 205(c)(5)(F) of the Social Security Act [subsec. (c)(5)(F) of this section], insofar as they prohibit inclusion in the records of the Secretary of Health, Education, and Welfare of self-employment income for a taxable year when the return or statement including such income is filed after the time limitation following such taxable year, shall not be applicable to earnings which are derived in any taxable year ending before 1969 and which constitute self-employment income solely by reason of the filing of a certificate which is effective under section 1402(e)(3)(B) or (5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 1402(e)(3)(B) or (5) of Title 26].”

§405a. Regulations pertaining to frequency or due dates of payments and reports under voluntary agreements covering State and local employees; effective date

Notwithstanding any other provision of law, no regulation and no modification of any regulation, promulgated by the Secretary of Health
and Human Services, after January 2, 1976, shall become effective prior to the end of the eighteen-month period which begins with the first day of the first calendar month which begins after the date on which such regulation or modification of a regulation is published in the Federal Register, if and insofar as such regulation or modification of a regulation pertains, directly or indirectly, to the frequency or due dates for payments and reports required under section 418(e) of this title.


REFERENCES IN TEXT
Subsec. (e) of section 418 of this title, referred to in text, which related to payments and reports by States, was repealed, and subsec. (f) of section 418 of this title was redesignated as subsec. (e), by Pub. L. 99–509, title IX, §902(c)(1), Oct. 21, 1986, 100 Stat. 1971.

CODIFICATION
Section was not enacted as part of the Social Security Act which comprises this chapter.

CHANGE OF NAME
"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in text pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TIME FOR MAKING SOCIAL SECURITY CONTRIBUTIONS WITH RESPECT TO COVERED STATE AND LOCAL EMPLOYEES
Pub. L. 96–265, title V, §503(c), June 9, 1980, 94 Stat. 471, provided that: "The provisions of section 7 of Public Law 94–202 [this section] shall not be applicable to any regulation which becomes effective on or after July 1, 1980, and which is designed to carry out the purposes of subsection (a) of this section [amending section 418 of this title]."

§ 406. Representation of claimants before Commissioner

(a) Recognition of representatives; fees for representation before Commissioner

(1) The Commissioner of Social Security may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys as hereinafter provided, representing claimants before the Commissioner of Social Security, and may require of such agents or other persons, before being recognized as representatives of claimants that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Commissioner of Social Security. Notwithstanding the preceding sentences, the Commissioner, after due notice and opportunity for hearing, (A) may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency, and (B) may refuse to recognize, and may disqualify, as a non-attorney representative any attorney who has been disqualified or suspended pursuant to this section from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before the Social Security Administration as a representative until full restitution is made to the claimant and, thereafter, may be considered for reinstatement only under such rules as the Commissioner may prescribe. The Commissioner of Social Security may, after due notice and opportunity for hearing, suspend or prohibit from further practice before the Commissioner any such person, agent, or attorney who refuses to comply with the Commissioner’s rules and regulations or who violates any provision of this section for which a penalty is prescribed. The Commissioner of Social Security may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Commissioner of Social Security under this subchapter, and any agreement in violation of such rules and regulations shall be void. Except as provided in paragraph (2)(A), whenever the Commissioner of Social Security, in any claim before the Commissioner for benefits under this subchapter, makes a determination favorable to the claimant, the Commissioner shall, if the claimant was represented by an attorney in connection with such claim, fix (in accordance with the regulations prescribed pursuant to the preceding sentence) a reasonable fee to compensate such attorney for the services performed by him in connection with such claim.

(2)(A) In the case of a claim of entitlement to past-due benefits under this subchapter, if—

(i) an agreement between the claimant and another person regarding any fee to be recovered by such person to compensate such person for services with respect to the claim is presented in writing to the Commissioner of Social Security prior to the time of the Commissioner’s determination regarding the claim,

(ii) the fee specified in the agreement does not exceed the lesser of—

(I) 25 percent of the total amount of such past-due benefits (as determined before any applicable reduction under section 1320a–6(a) of this title), or

(II) $4,000, and

(iii) the determination is favorable to the claimant,

then the Commissioner of Social Security shall approve that agreement at the time of the favorable determination, and (subject to paragraph (3)) the fee specified in the agreement shall be

1 See References in Text note below.
the maximum fee. The Commissioner of Social Security may from time to time increase the dollar amount under clause (ii)(II) to the extent that the rate of increase in such amount, as determined over the period since January 1, 1991, does not at any time exceed the rate of increase in primary insurance amounts under section 415(i) of this title since such date. The Commissioner of Social Security shall publish any such increased amount in the Federal Register.

(B) For purposes of this subsection, the term "past-due benefits" excludes any benefits with respect to which payment has been continued pursuant to subsection (g) or (h) of section 423 of this title.

(C) In any case involving—

(i) an agreement described in subparagraph (A) with any person relating to both a claim of entitlement to past-due benefits under this subchapter and a claim of entitlement to past-due benefits under subchapter XVI of this chapter, and

(ii) a favorable determination made by the Commissioner of Social Security with respect to both such claims,

the Commissioner of Social Security may approve such agreement only if the total fee or fees specified in such agreement does not exceed, in the aggregate, the dollar amount in effect under subparagraph (A)(ii)(II).

(D) In the case of a claim with respect to which the Commissioner of Social Security has approved an agreement pursuant to subparagraph (A), the Commissioner of Social Security shall provide the claimant and the person representing the claimant a written notice of—

(i) the dollar amount of the past-due benefits (as determined before any applicable reduction under section 1320a–6(a) of this title) and the dollar amount of the past-due benefits payable to the claimant,

(ii) the dollar amount of the maximum fee which may be charged or recovered as determined under this paragraph, and

(iii) a description of the procedures for review under paragraph (3).

(3)(A) The Commissioner of Social Security shall provide by regulation for review of the amount which would otherwise be the maximum fee as determined under paragraph (2) if, within 15 days after receipt of the notice provided pursuant to paragraph (2)(D)—

(i) the claimant, or the administrative law judge or other adjudicator who made the favorable determination, submits a written request to the Commissioner of Social Security to reduce the maximum fee, or

(ii) the person representing the claimant submits a written request to the Commissioner of Social Security to increase the maximum fee.

Any such review shall be conducted after providing the claimant, the person representing the claimant, and the adjudicator with reasonable notice of such request and an opportunity to submit written information in favor of or in opposition to such request. The adjudicator may request the Commissioner of Social Security to reduce the maximum fee only on the basis of evidence of the failure of the person representing the claimant to represent adequately the claimant’s interest or on the basis of evidence that the fee is clearly excessive for services rendered.

(B)(i) In the case of a request for review under subparagraph (A) by the claimant or by the person representing the claimant, such review shall be conducted by the administrative law judge who made the favorable determination or, if the Commissioner of Social Security determines that such administrative law judge is unavailable or if the determination was not made by an administrative law judge, such review shall be conducted by another person designated by the Commissioner of Social Security for such purpose.

(ii) In the case of a request by the adjudicator for review under subparagraph (A), the review shall be conducted by the Commissioner of Social Security or by an administrative law judge or other person (other than such adjudicator) who is designated by the Commissioner of Social Security.

(C) Upon completion of the review, the administrative law judge or other person conducting the review shall affirm or modify the amount which would otherwise be the maximum fee. Any such amount so affirmed or modified shall be considered the amount of the maximum fee which may be recovered under paragraph (2).

Any such amount so affirmed or modified shall be considered the amount of the maximum fee which may be recovered under paragraph (2). The decision of the administrative law judge or other person conducting the review shall not be subject to further review.

(4) Subject to subsection (d) of this section, if the claimant is determined to be entitled to past-due benefits under this subchapter and the person representing the claimant is an attorney, the Commissioner of Social Security shall, notwithstanding section 406(i) of this title, certify for payment out of such past-due benefits (as determined before any applicable reduction under section 1320a–6(a) of this title) to such attorney an amount equal to so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under section 1320a–6(a) of this title).

(5) Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this subchapter by word, circular, letter or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Commissioner of Social Security shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both. The Commissioner of Social Security shall maintain in the electronic information retrieval system used by the Social Security Administration a current record, with respect to any claimant before the Commissioner of Social Security, of the identity of any person representing such claimant in accordance with this subsection.

(b) Fees for representation before court

(1)(A) Whenever a court renders a judgment favorable to a claimant under this subchapter who
was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment, and the Commissioner of Social Security may, notwithstanding the provisions of section 405(i) of this title, but subject to subsection (d) of this section, certify the amount of such fee for payment to such attorney out of, and not in addition to, the amount of such past-due benefits. In case of any such judgment, no other fee may be payable or certified for payment for such representation except as provided in this paragraph.

(B) For purposes of this paragraph—

(i) the term “past-due benefits” excludes any benefits with respect to which payment has been continued pursuant to subsection (g) or (h) of section 423 of this title, and

(ii) amounts of past-due benefits shall be determined before any applicable reduction under section 1303a-6(a) of this title.

(2) Any attorney who charges, demands, receives, or collects for services rendered in connection with proceedings before a court to which paragraph (1) of this subsection is applicable any amount in excess of that allowed by the court therefor shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500, or imprisonment for not more than one year, or both.

(c) Notification of options for obtaining attorneys

The Commissioner of Social Security shall notify each claimant in writing, together with the notice to such claimant of an adverse determination, of the options for obtaining attorneys to represent individuals in presenting their cases before the Commissioner of Social Security. Such notification shall also advise the claimant of the availability to qualifying claimants of legal services organizations which provide legal services free of charge.

(d) Assessment on attorneys

(1) In general

Whenever a fee for services is required to be certified for payment to an attorney from a claimant’s past-due benefits pursuant to subsection (a)(4) or (b)(1) of this section, the Commissioner shall impose on the attorney an assessment calculated in accordance with paragraph (2).

(2) Amount

(A) The amount of an assessment under paragraph (1) shall be equal to the product obtained by multiplying the amount of the representative’s fee that would be required to be so certified by subsection (a)(4) or (b)(1) of this section before the application of this subsection, by the percentage specified in subparagraph (B), except that the maximum amount of the assessment may not exceed the greater of $75 or the adjusted amount as provided pursuant to the following two sentences. In the case of any calendar year beginning after the amendments made by section 301 of the Social Security Protection Act of 2003

1 take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 415(i)(2)(A)(ii) of this title, except such adjustment shall be based on the higher of $75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of $1 shall be rounded to the next lowest multiple of $1, but in no case less than $75.

(B) The percentage specified in this subparagraph is—

(i) for calendar years before 2001, 6.3 percent, and

(ii) for calendar years after 2000, such percentage rate as the Commissioner determines is necessary in order to achieve full recovery of the costs of determining and certifying fees to attorneys from the past-due benefits of claimants, but not in excess of 6.3 percent.

(3) Collection

The Commissioner may collect the assessment imposed on an attorney under paragraph (1) by offset from the amount of the fee otherwise required by subsection (a)(4) or (b)(1) of this section to be certified for payment to the attorney from a claimant’s past-due benefits.

(4) Prohibition on claimant reimbursement

An attorney subject to an assessment under paragraph (1) may not, directly or indirectly, request or otherwise obtain reimbursement for such assessment from the claimant whose claim gave rise to the assessment.

(5) Disposition of assessments

Assessments on attorneys collected under this subsection shall be credited to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as appropriate.

(6) Authorization of appropriations

The assessments authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended, for administrative expenses in carrying out this subchapter and related laws.

(e) Extension of fee withholding and assessment procedures to qualified non-attorney representatives

(1) The Commissioner shall provide for the extension of the fee withholding procedures and assessment procedures that apply under the preceding provisions of this section to agents and other persons, other than attorneys, who represent claimants under this subchapter before the Commissioner.

(2) Fee-withholding procedures may be extended under paragraph (1) to any nonattorney

1 See References in Text note below.

2 So in original. Probably should be “non-attorney”.
representative only if such representative meets at least the following prerequisites:

(A) The representative has been awarded a bachelor’s degree from an accredited institution of higher education, or has been determined by the Commissioner to have equivalent qualifications derived from training and work experience.

(B) The representative has passed an examination, written and administered by the Commissioner, which tests knowledge of the relevant provisions of this chapter and the most recent developments in agency and court decisions affecting this subchapter and subchapter XVI.

(C) The representative has secured professional liability insurance, or equivalent insurance, which the Commissioner has determined to be adequate to protect claimants in the event of malpractice by the representative.

(D) The representative has undergone a criminal background check to ensure the representative’s fitness to practice before the Commissioner.

(E) The representative demonstrates ongoing completion of qualified courses of continuing education, including education regarding ethics and professional conduct, which are designed to enhance professional knowledge in matters related to entitlement to, or eligibility for, benefits based on disability under this subchapter and subchapter XVI. Such continuing education, and the instructors providing such education, shall meet such standards as the Commissioner may prescribe.

(3)(A) The Commissioner may assess representative fees to cover the cost to the Social Security Administration of administering the prerequisites described in paragraph (2).

(B) Fees collected under subparagraph (A) shall be credited to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, or deposited as miscellaneous receipts in the general fund of the Treasury, based on such allocations as the Commissioner determines appropriate.

(C) The fees authorized under this paragraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available in advance in appropriations Acts. Amounts so adjusted that are not a multiple of $1 shall be rounded to the next lowest multiple of $1, and any amount so adjusted that is not a multiple of $1 shall be rounded to the next lowest multiple of $1, but in no case less than $75.

1999—Subsec. (a)(4). Pub. L. 106-170, § 406(a)(2)(A), (b), struck out “A” after “(4)”, substituted “subsection (d)(1)” for “subsection (B)” in (3)(A) and (B), and struck out subpar. (B) which read as follows: “The Commissioner of Social Security shall not in any case certify any amount for payment to the attorney pursuant to this paragraph before the expiration of the 15-day period referred to in paragraph (3)(A) or, in the case of any review conducted under paragraph (3), before the completion of such review.”

Subsec. (b)(1)(A). Pub. L. 106-170, § 406(a)(2)(B), inserted “, but subject to subsection (d) of this section” after “section 405(i) of this title”.


1994—Subsec. (a)(1), (2)(A). Pub. L. 103-296, § 107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing, “before the Commissioner” for “before him” in two places, “Commissioner’s” for “Secretary’s” in two places, and “the Commissioner shall, if the” for “the Commissioner shall, if the” in par. (1).


REFERENCES IN TEXT


AMENDMENTS


2004—Subsec. (a)(1). Pub. L. 108-203, § 205, inserted “Notwithstanding the preceding sentences, the Commissioner, after due notice and opportunity for hearing, (A) may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency, and (B) may refuse to recognize, and may disqualify, as a non-attorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice. A representative who has been disqualified or suspended pursuant to this section from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the amount authorized until full restitution is made to the claimant and, thereafter, may be considered for reinstatement only under such rules as the Commissioner may prescribe.” after “claimants before the Commissioner of Social Security.”.

Subsec. (d)(2)(A). Pub. L. 108-203, § 301(a), inserted “, except that the maximum amount of the assessment may not exceed the greater of $75 or the adjusted amount as provided pursuant to the following two sentences” after “paragraph (B)” and inserted at end.

In the case of any calendar year beginning after the amendments made by section 301 of the Social Security Protection Act of 2003 take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 415(1)(2)(A)(i) of this title, except such adjustment shall be based on the higher of $75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of $1 shall be rounded to the next lowest multiple of $1, but in no case less than $75.
§ 406

TITLE 42—THE PUBLIC HEALTH AND WELFARE

1990—Subsec. (a). Pub. L. 101–508 designated existing provisions as par. (1), substituted “Except as provided in paragraph (2)(A), whenever” for “Whenever” in fifth sentence, substituted pars. (2) to (4) for “If as a result of such determination, such claimant is entitled to past-due benefits under this subchapter, the Secretary shall, notwithstanding section 405(i) of this title, certify for payment (out of such past-due benefits) to such attorney an amount equal to whichever of the following is the smaller: (A) 25 per centum of the total amount of such past-due benefits, (B) the amount of the attorney’s fee so fixed, or (C) the amount agreed upon between the claimant and such attorney as the fee for such attorney’s services.”, and inserted “(5)” before “Any person who”.
1989—Subsec. (a). Pub. L. 101–239, § 10307(a)(1), inserted at end “The Secretary shall maintain in the electronic information retrieval system used by the Social Security Administration a current record, with respect to any claimant before the Secretary, of the identity of any person representing such claimant in accordance with this subsection.”
1984—Pub. L. 98–369 substituted “Secretary” and “Secretary’s” for “Administrator” and “Administrator’s”, respectively, wherever appearing.
1988—Pub. L. 105–114midnight provisions which required attorneys to file a certificate of their right to practice.
1989—Act Aug. 28, 1989, substituted “Administrator” for “Board” and “Administrator’s” for “Board’s”.
1939—Act Aug. 10, 1939, provided that the amendments of this section for former provisions relating to overpayments during life, now covered by section 404 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT
Pub. L. 111–142, § 3(c), Feb. 27, 2010, 124 Stat. 39, provided that: “The amendments made by this subsection [amending this section shall apply with respect to fees for representation of claimants which are first required to be certified or paid under section 206 of the Social Security Act [this section] on or after the first day of the first month that begins after 180 days after the date of the enactment of this Act [Mar. 2, 2004].”

EFFECTIVE DATE OF 1999 AMENDMENT
Pub. L. 106–170, title IV, § 406(d), Dec. 17, 1999, 113 Stat. 1913, provided that: “The amendments made by this section [amending this section and enacting provisions set out as a note under this section] shall apply in the case of any attorney with respect to whose fee for services is required to be certified for payment from a claimant’s past-due benefits pursuant to subsection (a)(4) or (b)(1) of section 206 of the Social Security Act [this section] after the later of—
‘‘(1) December 31, 1999, or
‘‘(2) the last day of the first month beginning after the month in which this Act is enacted [Dec. 1999].’’

EFFECTIVE DATE OF 1994 AMENDMENT

EFFECTIVE DATE OF 1990 AMENDMENT
Amendment by Pub. L. 101–508 applicable with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after Apr. 1, 1991, see section 5106(d) of Pub. L. 101–508, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT
Section 10307(a)(3) of Pub. L. 101–239 provided that: “The amendments made by this subsection [amending this section and section 1383 of this title] shall take effect—
‘‘(A) as designated by Pub. L. 111–142, § 3(b)(2), Feb. 27, 2010, 124 Stat. 39, provided that:
‘‘(a) IN GENERAL.—The Commissioner of Social Security (hereafter in this section referred to as the ‘Commissioner’) shall develop and carry out a nationwide demonstration project under this section with respect to adverse determinations made on or after January 1, 1991.’’

EFFECTIVE DATE OF 1939 AMENDMENT
Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

NATIONWIDE DEMONSTRATION PROJECT PROVIDING FOR EXTENSION OF FEE WITHHOLDING PROCEDURES TO NON-ATTORNEY REPRESENTATIVES
Pub. L. 108–203, title III, § 303, Mar. 2, 2004, 118 Stat. 521, as amended by Pub. L. 111–142, § 3(b)(2), Feb. 27, 2010, 124 Stat. 39, provided that: “(a) IN GENERAL.—The Commissioner of Social Security shall provide for full implementation of the provisions of section 206(e) of the Social Security Act [42 U.S.C. 406(e)] (added by subsection (a) and the amendments made by subsection (b) [amending section 1383 of this title and provisions set out as a note under this section] not later than March 1, 2010.”

EFFECTIVE DATE OF 2004 AMENDMENT
Pub. L. 108–203, title III, § 301(b), Mar. 2, 2004, 118 Stat. 519, provided that: “The amendments made by this section [amending this section shall apply with respect to fees for representation of claimants which are first required to be certified or paid under section 206 of the Social Security Act [this section] on or after the first day of the first month that begins after 180 days after the date of the enactment of this Act [Mar. 2, 2004].”
effect of such extension on claimants and program administration.

(b) Standards for Inclusion in Demonstration Programs.—Fee-withholding procedures may be extended under the demonstration project carried out pursuant to subsection (a) to any non-attorney representative only if such representative meets at least the following prerequisites:

(1) The representative has been awarded a bachelor’s degree from an accredited institution of higher education, or has been determined by the Commissioner to have equivalent qualifications derived from training and work experience.

(2) The representative has passed an examination, written and administered by the Commissioner, which tests knowledge of the relevant provisions of the Social Security Act (this chapter) and the most recent developments in agency and court decisions affecting titles II and XVI of such Act [subchapters II and XVI of this chapter].

(3) The representative has secured professional liability insurance, or equivalent insurance, which the Commissioner has determined to be adequate to protect claimants in the event of malpractice by the representative.

(4) The representative has undergone a criminal background check to ensure the representative’s fitness to practice before the Commissioner.

(5) The representative demonstrates ongoing completion of qualified courses of continuing education, including education focusing on ethics and professionalism, which are designed to enhance professional knowledge in matters related to entitlement to, or eligibility for, benefits based on disability under titles II and XVI of such Act. Such continuing education, and the instructors providing such education, shall meet such standards as the Commissioner may prescribe.

(c) Assessment of Fees.—

(1) In General.—The Commissioner may assess representatives reasonable fees to cover the cost to the Social Security Administration of administering the prerequisite described in subsection (b).

(2) Disposition of Fees.—Fees collected under paragraph (1) shall be credited to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, or deposited as miscellaneous receipts in the general fund of the Treasury, based on such allocations as the Commissioner of Social Security determines appropriate.

(3) Authorization of Appropriations.—The fees authorized under this subparagraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended for administering the prerequisites described in subsection (b).

(d) Notice to Congress and Applicability of Fee Withholding Procedures.—Not later than 1 year after the date of enactment of this Act [Mar. 2, 2004], the Commissioner shall complete such actions as are necessary to fully implement the requirements for full operation of the demonstration project and shall submit to each House of Congress a written notice of the completion of such actions [Such notices submitted Feb. 28, 2005]. The applicability under this section to non-attorney representatives of the fee withholding procedures and assessment procedures under sections 206 and 1633(d)(2) of the Social Security Act [sections 406 and 1383(c)(2) of this title] shall be effective with respect to fees for representation of claimants in the case of claims for benefits with respect to which the agreement for representation is entered into by such non-attorney representatives during the period beginning with the date of the submission of such notice by the Commissioner to Congress and ending with the termination date of the demonstration project.

(e) Reports by the Commissioner: Termination.—

(1) Interim Reports.—On or before the date which is 1 year after the date of enactment of this Act [Mar. 2, 2004], and annually thereafter, the Commissioner shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate an annual interim report on the progress of the demonstration project carried out under this section, together with any related data and materials that the Commissioner may consider appropriate.

(2) Termination Date.—The termination date of the demonstration project under this section is the date which is 5 years after the date of the submission of the notice by the Commissioner to each House of Congress pursuant to subsection (d). The authority under the preceding provisions of this section shall not apply in the case of claims for benefits with respect to which the agreement for representation is entered into after the termination date.

Gao Study Regarding the Fee Payment Process for Claimant Representatives

Pub. L. 108–203, title III, § 304, Mar. 2, 2004, 118 Stat. 523, directed the Comptroller General of the United States to study and evaluate the appointment and payment of attorney and non-attorney claimant representatives appearing before the Commissioner of Social Security in connection with benefit claims under titles II and XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) and to report to the appropriate committees of Congress not later than 3 years after the date of the submission by the Commissioner of Social Security to Congress pursuant to section 303(d) of Pub. L. 108–203 (set out above) of written notice of completion of full implementation of the requirements for operation of the demonstration project pursuant to section 303 of Pub. L. 108–203.

Gao Study and Report

Pub. L. 106–170, title IV, § 406(c), Dec. 17, 1999, 113 Stat. 1212, directed the Comptroller General of the United States to conduct a study, and to submit a report on the study’s results to the appropriate committees of Congress not later than 1 year after Dec. 17, 1999, that examined the costs incurred by the Social Security Administration in administering 42 U.S.C. 406(a)(4), (b)(1) and itemized the components of such costs; identified efficiencies that the Administration could implement to reduce such costs; examined the feasibility and advisability of linking the payment of, or the amount of, the assessment under 42 U.S.C. 406(d) to the timeliness of the payment of the fee to the attorney as certified by the Commissioner of Social Security pursuant to 42 U.S.C. 406(a)(4), (b)(1); determined whether 42 U.S.C. 406(a)(4), (b)(1) should be applied to claims under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.); determined the feasibility and advisability of stating fees under 42 U.S.C. 406(d) in terms of a fixed dollar amount as opposed to a percentage; determined whether the dollar limit specified in 42 U.S.C. 406(a)(2)(A) (II) should be raised; and determined whether the assessment on attorneys required under 42 U.S.C. 406(d) impaired access to legal representation for claimants.

§ 407. Assignment of benefits

(a) In general

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) Amendment of section

No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit,
supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

(c) Withholding of taxes

Nothing in this section shall be construed to prohibit withholding taxes from any benefit under this subchapter, if such withholding is done pursuant to a request made in accordance with section 3402(p)(1) of the Internal Revenue Code of 1986 by the person entitled to such benefit or such person’s representative payee.


REFERENCES IN TEXT

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

Codification

In subsec. (b), “April 20, 1983” substituted for “the date of the enactment of this section”, which was translated as meaning the date of enactment of this subchapter, as the probable intent of Congress.

Amendments


1983—Pub. L. 98–21 designated existing provisions as subsec. (a) and added subsec. (b).


Effective Date of 1983 Amendment

Section 335(c) of Pub. L. 98–21 provided that: “The amendments made by subsection (a) [amending this section] shall apply only with respect to benefits payable or rights existing under the Social Security Act [this chapter] on or after the date of the enactment of this Act [Apr. 20, 1983].”

Effective Date of 1939 Amendment

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

§ 408. Penalties

(a) In general

Whoever—

(1) for the purpose of causing an increase in any payment authorized to be made under this subchapter, or for the purpose of causing any payment to be made where no payment is authorized under this subchapter, shall make or cause to be made any false statement or representation (including any false statement or representation in connection with any matter arising under subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939, or chapter 2 or 21 or subtitle F of the Internal Revenue Code of 1954) as to—

(A) whether wages were paid or received for employment (as said terms are defined in this subchapter and the Internal Revenue Code), or the amount of wages or the period during which paid or the person to whom paid; or

(B) whether net earnings from self-employment (as such term is defined in this sub-

chapter and in the Internal Revenue Code) were derived, or as to the amount of such net earnings or the period during which or the person by whom derived; or

(C) whether a person entitled to benefits under this subchapter had earnings in or for a particular period (as determined under section 403(f) of this title for purposes of deductions from benefits), or as to the amount thereof; or

(2) makes or causes to be made any false statement or representation of a material fact in any application for any payment or for a disability determination under this subchapter; or

(3) at any time makes or causes to be made any false statement or representation of a material fact for use in determining rights to payment under this subchapter; or

(4) having knowledge of the occurrence of any event affecting (1) his initial or continued right to any payment under this subchapter, or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized; or

(5) having made application to receive payment under this subchapter for the use and benefit of another and having received such a payment, knowingly and willfully converts such a payment, or any part thereof, to a use other than for the use and benefit of such other person; or

(6) willfully, knowingly, and with intent to deceive the Commissioner of Social Security as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner of Social Security with respect to any information required by the Commissioner of Social Security in connection with the establishment and maintenance of the records provided for in section 405(c)(2) of this title; or

(7) for the purpose of causing an increase in any payment authorized under this subchapter (or any other program financed in whole or in part from Federal funds), or for the purpose of causing a payment under this subchapter (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for the purpose of obtaining anything of value from any person, or for any other purpose—

(A) willfully, knowingly, and with intent to deceive, uses a social security account number, assigned by the Commissioner of Social Security (in the exercise of the Commissioner’s authority under section 405(c)(2) of this title to establish and maintain records) on the basis of false information furnished to the Commissioner of Social Security by him or by any other person; or

(B) with intent to deceive, falsely represents a number to be the social security account number assigned by the Commiss-
sioner of Social Security to him or to another person, when in fact such number is not the social security account number assigned by the Commissioner of Social Security to him or to such other person; or

(C) knowingly alters a social security card issued by the Commissioner of Social Security, buys or sells a card that is, or purports to be, a card so issued, counterfeits a social security card, or possesses a social security card or counterfeited social security card with intent to sell or alter it; or

(8) discloses, uses, or compels the disclosure of the social security number of any person in violation of the laws of the United States; shall be guilty of a felony and upon conviction thereof shall be fined under title 18 or imprisoned for not more than five years, or both.

(b) Restitution

(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a) of this section, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the victims of such offense specified in paragraph (4).

(2) Sections 3612, 3663, and 3664 of title 18 shall apply with respect to the issuance and enforcement of orders of restitution to victims of such offense under this subsection.

(3) If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

(4) For purposes of paragraphs (1) and (2), the victims of an offense under subsection (a) of this section are the following:

(A) Any individual who suffers a financial loss as a result of the defendant’s violation of subsection (a) of this section.

(B) The Commissioner of Social Security, to the extent that the defendant’s violation of subsection (a) of this section results in—

(i) the Commissioner of Social Security making a benefit payment that should not have been made; or

(ii) an individual suffering a financial loss due to the defendant’s violation of subsection (a) of this section in his or her capacity as the individual’s representative payee appointed pursuant to section 406(j) of this title.

(5)(A) Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited in the Federal Old-Age and Survivors Insurance Trust Fund, or the Federal Disability Insurance Trust Fund, as appropriate.

(B) In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (4)(B)(ii), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual’s outstanding financial loss, except that such amount may be reduced by the amount of any overpayments of benefits owed under this subchapter, subchapter VIII of this chapter, or subchapter XVI of this chapter by the individual.

(c) Violations by certified payees

Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 405(j) of this title on behalf of another individual (other than such person’s spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined under title 18 or imprisoned for not more than five years, or both.

(d) Effect upon certification as payee; definitions

Any individual or entity convicted of a felony under this section or under section 1383a(b) of this title may not be certified as a payee under section 405(j) of this title. For the purpose of subsection (a)(7) of this section, the terms “social security number” and “social security account number” mean such numbers as are assigned by the Commissioner of Social Security under section 405(c)(2) of this title whether or not, in actual use, such numbers are called social security numbers.

(e) Application of subsection (a)(6) and (7) to certain aliens

(1) Except as provided in paragraph (2), an alien—

(A) whose status is adjusted to that of lawful permanent resident under section 1160 or 1255a of title 8 or under section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989,

(B) whose status is adjusted to that of permanent resident—

(i) under section 202 of the Immigration Reform and Control Act of 1986, or

(ii) pursuant to section 1259 of title 8, or

(C) who is granted special immigrant status under section 1101(a)(27)(I) of title 8, shall not be subject to prosecution for any alleged conduct described in paragraph (6) or (7) of subsection (a) of this section if such conduct is alleged to have occurred prior to 60 days after November 5, 1990.

(2) Paragraph (1) shall not apply with respect to conduct (described in subsection (a)(7)(C) of this section) consisting of—

(A) selling a card that is, or purports to be, a social security card issued by the Commissioner of Social Security,

(B) possessing a social security card with intent to sell it, or

(C) counterfeiting a social security card with intent to sell it.

(3) Paragraph (1) shall not apply with respect to any criminal conduct involving both the conduct described in subsection (a)(7) of this section to which paragraph (1) applies and any other criminal conduct if such other conduct would be criminal conduct if the conduct described in subsection (a)(7) of this section were not committed.


1 See References in Text note below.
The page contains a section of a legal document that discusses the Internal Revenue Code of 1986 and its amendments. It references various sections and titles of the code, indicating the historical context and evolution of tax laws and regulations. The text is technical and detailed, likely intended for a legal or financial audience. The specific sections and subsections mentioned are critical for understanding the legal framework governing taxation.
Title 42—The Public Health and Welfare

Chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1954,” for “the Federal Insurance Contributions Act”.


Effective Date of 2004 Amendment
Pub. L. 108–203, title II, §209(d), Mar. 2, 2004, 118 Stat. 516, provided that: “The amendments made by subsections (a), (b), and (c) amending this section and sections 1011 and 1338a of this title shall apply with respect to violations occurring on or after the date of enactment of this Act [Mar. 2, 2004].”

Effective Date of 2000 Amendment
Pub. L. 106–554, §1(a)(4) [div. A, §213(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–180, provided that: “The amendments made by this section [amending this section, section 10601 of this title, and section 2709 of Title 22, Foreign Relations and Intercourse, repealing section 1320b–23 of this title, amending provisions set out as section 10601 of this title, and section 2709 of Title 22, Judiciary and Judicial Procedure, and repealing sections 524 of Title 28, Judiciary and Judicial Procedure, and repealing sections set out as notes under this section and sections 1395 and 1320b–23 of this title] shall take effect as if included in the enactment of Pub. L. 106–553 on the date of its enactment [Dec. 21, 2000].”


Pub. L. 106–553, §1(a)(2) [title VI, §635(c)(2)(3)], Dec. 21, 2000, 114 Stat. 2762, 2762A–177, which provided that the amendments made by §1(a)(2) [title VI, §635(c)] of Pub. L. 106–553, enacting section 1320b–23 of this title and amending this section, would apply with respect to violations occurring on or after the date that is 2 years after the date of the enactment of Pub. L. 106–554, §1(a)(4) [div. A, §213(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A–180, see above.

Effective Date of 1994 Amendment

Effective Date of 1990 Amendment
Amendment by section 105(a)(1) of Pub. L. 101–508 effective Oct. 19, 1990, and applicable with respect to violations occurring on or after such date, see section 164(d) of Pub. L. 101–508, set out as a note under section 405 of this title.

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

Effective Date of 1981 Amendment
Section 4(c) of Pub. L. 97–123 provided that: “The amendments made by subsections (a) and (b) [amending this section] shall be effective with respect to violations committed after the date of the enactment of this Act [Dec. 29, 1981].”

Effective Date of 1972 Amendment
Section 130(b) of Pub. L. 92–653 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to information furnished to the Secretary after the date of the enactment of this Act [Oct. 30, 1972].”

Effective Date of 1960 Amendment
Amendment by Pub. L. 86–778 effective in the manner provided in section 211(p), (q) of Pub. L. 86–778, section 211(e) of Pub. L. 86–778, set out as a note under section 403 of this title.

Effective Date of 1939 Amendment
Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

§409. “Wages” defined
(a) In general
For the purposes of this subsection, the term “wages” means remuneration paid prior to 1951 which was wages for the purposes of this subchapter under the law applicable to the payment of such remuneration, and remuneration paid after 1950 for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that, in the case of remuneration paid after 1950, such term shall not include—

(1)(A) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $3,600 with respect to employment has been paid to an individual during any calendar year prior to 1955, is paid to such individual during such calendar year;

(B) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $4,200 with respect to employment (other than remuneration referred to in the succeeding subsections of this section) equal to $4,800 with respect to employment (other than remuneration referred to in the succeeding subsections of this section) equal to $7,800 with respect to employment has been paid to an individual during any calendar year after 1965 and prior to 1968, is paid to such individual during such calendar year;

(C) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $4,000 with respect to employment has been paid to an individual during any calendar year after 1954 and prior to 1959, is paid to such individual during such calendar year;

(D) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $5,000 with respect to employment has been paid to an individual during any calendar year after 1968 and prior to 1972, is paid to such individual during such calendar year;

(E) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $6,000 with respect to employment has been paid to an individual during any calendar year after 1972 and prior to 1976, is paid to such individual during such calendar year;

(F) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $7,000 with respect to employment has been paid to an individual during any calendar year after 1976 and prior to 1981, is paid to such individual during such calendar year;

(G) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $8,000 with respect to employment has been paid to an individual during any calendar year after 1981 and prior to 1990, is paid to such individual during such calendar year;

(H) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $9,000 with respect to employment has been paid to an individual during any calendar year after 1990 and prior to 1995, is paid to such individual during such calendar year;
employment has been paid to an individual during any calendar year after 1967 and prior to 1972, is paid to such individual during such calendar year;

(F) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $9,000 with respect to employment has been paid to an individual during any calendar year after 1971 and prior to 1973, is paid to such individual during any such calendar year;

(G) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $10,800 with respect to employment has been paid to an individual during any calendar year after 1972 and prior to 1974, is paid to such individual during such calendar year;

(H) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $13,200 with respect to employment has been paid to an individual during any calendar year after 1973 and prior to 1975, is paid to such individual during such calendar year;

(I) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to the contribution and benefit base (determined under section 430 of this title) with respect to employment has been paid to an individual during any calendar year after 1974 with respect to which such contribution and benefit base is effective, is paid to such individual during such calendar year;

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of (A) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this clause shall exclude from the term “wages” only payments which are received under a workmen’s compensation law), or (B) medical or hospitalization expenses in connection with sickness or accident disability, or (C) death, except that this subsection does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee under the Internal Revenue Code of 1986;

(3) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

(4) Any payment made to, or on behalf of, an employee or his beneficiary (A) from or to a trust exempt from tax under section 165(a) of the Internal Revenue Code of 1939 at the time of such payment or, in the case of a payment after 1954, under sections 401 and 501(a) of the Internal Revenue Code of 1954 or the Internal Revenue Code of 1986, unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or (B) under or to an annuity plan which, at the time of such payment, meets the requirements of section 165(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1939 or, in the case of a payment after 1954 and prior to 1963, the requirements of section 401(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1954, or (C) under or to an annuity plan which, at the time of any such payment after 1962, is a plan described in section 403(a) of the Internal Revenue Code of 1986, or (D) under or to a bond purchase plan which, at the time of any such payment after 1962, is a qualified bond purchase plan described in section 405(a) of the Internal Revenue Code of 1939 (as in effect before August 18, 1962), or (E) under or to an annuity contract described in section 403(b) of the Internal Revenue Code of 1986, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise), or (F) under or to an exempt governmental deferred compensation plan (as defined in section 3121(v)(3) of such Code), or (G) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this subsection to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)(B)(ii)); or (H) under a simplified employee pension (as defined in section 403(k)(1) of such Code), other than any contributions described in section 403(k)(6) of such Code, or (I) under a cafeteria plan (within the meaning of section 125 of the Internal Revenue Code of 1986) if such payment would not be treated as wages as wages for purposes of this paragraph; or (J) under an arrangement to which section 403(b) applies, other than any elective contributions under paragraph (2)(A)(i) thereof; or (K) under a plan described in section 457(e)(1)(A)(ii) of the Internal Revenue Code of 1986 and maintained by an eligible employer (as defined in section 457(e)(1) of such Code);

(5) The payment by an employer (without deduction from the remuneration of the employee)—

(A) of the tax imposed upon an employee under section 3101 of the Internal Revenue Code of 1986, or

(B) of any payment required from an employee under a State unemployment compensation law,
with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(6)(A) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer’s trade or business or for domestic service in a private home of the employer;

(B) Cash remuneration paid by an employer in any calendar year to an employee for domestic service in a private home of the employer (including domestic service on a farm operated for profit), if the cash remuneration paid in such year by the employer to the employee for such service is less than the applicable dollar threshold (as defined in section 3121(x) of the Internal Revenue Code of 1986) for such year;

(C) Cash remuneration paid by an employer in any calendar year to an employee for service not in the course of the employer’s trade or business, if the cash remuneration paid in such year by the employer to the employee for such service is less than $100. As used in this paragraph, the term “service not in the course of the employer’s trade or business” does not include domestic service in a private home of the employer and does not include service described in section 410(f)(5) of this title;

(7)(A) Remuneration paid in any medium other than cash for agricultural labor;

(B) Cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless—

(i) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or

(ii) the employer’s expenditures for agricultural labor in such year equal or exceed $2,500,

except that clause (ii) shall not apply in determining whether remuneration paid to an employee constitutes “wages” under this section if such employee (I) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (II) commutes daily from his permanent residence to the farm on which he is so employed, and (III) has been employed in agriculture less than 13 weeks during the preceding calendar year;

(8) Remuneration paid by an employer in any year to an employee for service described in section 410(j)(3)(C) of this title (relating to home workers), if the cash remuneration paid in such year by the employer to the employee for such service is less than $100;

(9) Remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the Internal Revenue Code of 1986 (determined without regard to section 274(n) of such Code);

(10)(A) Tips paid in any medium other than cash;

(B) Cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more;

(11) Any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(A) upon or after the termination of an employee’s employment relationship because of (A) 1 Death, or (B) 1 retirement for disability, and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents), other than any such payment or series of payments which would have been paid if the employee’s employment relationship had not been so terminated;

(12) Any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(13) Any payment made by an employer to an employee, if at the time such payment is made such employee is entitled to disability insurance benefits under section 423(a) of this title and such entitlement commenced prior to the calendar year in which such payment is made, and if such employee did not perform any services for such employer during the period for which such payment is made;

(14)(A) Remuneration paid by an organization exempt from income tax under section 501 of the Internal Revenue Code of 1986 in any calendar year to an employee for service rendered in the employ of such organization, if the remuneration paid in such year by the organization to the employee for such service is less than $100;

(B) Any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 of the Internal Revenue Code of 1986 (relating to amounts received under qualified group legal services plans);

(15) Any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129 of the Internal Revenue Code of 1986;

(16) The value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the Internal Revenue Code of 1986;

(17) Any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 108(f)(4), 117, or 132 of the Internal Revenue Code of 1986;

(18) Remuneration consisting of income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights);

1 So in original. Probably should be designated cls. (i) and (ii), respectively.
(19) Remuneration on account of—
    (A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b) of the Internal Revenue Code of 1986) or under an employee stock purchase plan (as defined in section 422(b) of such Code), or
    (B) any disposition by the individual of such stock; or

(20) Any benefit or payment which is excludable from the gross income of the employee under section 139B(b) of the Internal Revenue Code of 1986.2

(b) Regulations providing exclusions from term

Nothing in the regulations prescribed for purposes of chapter 24 of the Internal Revenue Code of 1986 (relating to income tax withholding) which provides an exclusion from “wages” as used in such chapter shall be construed to require a similar exclusion from “wages” in the regulations prescribed for purposes of this subchapter.

(c) Individuals performing domestic services

For purposes of this subchapter, in the case of domestic service described in subsection (a)(6)(B) of this section, any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this subchapter, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (a)(6)(B) of this section.

(d) Members of uniformed services

For purposes of this subchapter, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of section 410(l)(1) of this title are applicable, the term “wages” shall, subject to the provisions of subsection (a)(1) of this section, include as such individual’s remuneration for such service only amounts certified as payable pursuant to section 5(c) or 6(l) of the Peace Corps Act (22 U.S.C. 2504(c) or 2505(1)), and (2) any such amount shall be deemed to have been paid to such individual at the time the service, with respect to which it is paid, is performed.

(f) Tips

For purposes of this subchapter, tips received by an employee in the course of his employment shall be considered remuneration for employment. Such remuneration shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code of 1986 or (if no statement including such tips is so furnished) at the time received.

(g) Members of religious orders

For purposes of this subchapter, in any case where an individual is a member of a religious order (as defined in section 3121(r)(2) of the Internal Revenue Code of 1986) performing service in the exercise of duties required by such order, and an election of coverage under section 3121(r) of such Code is in effect with respect to such order or with respect to the autonomous subdivision thereof to which such member belongs, the term “wages” shall, subject to the provisions of subsection (a) of this section, include as such individual’s remuneration for such service the fair market value of any board, lodging, clothing, and other perquisites furnished to such member by such order or subdivision thereof or by any other person or organization pursuant to an agreement with such order or subdivision, except that the amount included as such individual’s remuneration under this paragraph shall not be less than $100 a month.

(h) Retired justices and judges

For purposes of this subchapter, in the case of an individual performing service under the provisions of section 294 of title 28 (relating to assignment of retired justices and judges to active duty), the term “wages” shall not include any payment under section 371(b) of such title which is received during the period of such service.

(i) Employer contributions under sections 401(k) and 414(b)(2) of Internal Revenue Code

Nothing in any of the foregoing provisions of this section (other than subsection (a) of this section) shall exclude from the term “wages”—
    (1) Any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986) to the extent not included in gross income by reason of section 402(a)(8) of such Code, or
    (2) Any amount which is treated as an employer contribution under section 414(h)(2) of such Code where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).

(j) Amounts deferred under nonqualified deferred compensation plans

Any amount deferred under a nonqualified deferred compensation plan (within the meaning of

2 So in original. The closing parenthesis probably should not appear.
section 3121(v)(2)(C) of the Internal Revenue Code of 1986) shall be taken into account for purposes of this subchapter as of the later of when the services are performed, or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of the preceding sentence (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this subchapter.

(k) "National average wage index" and "deferred compensation amount" defined


See References in Text note below.
§ 409

TITLE 42—THE PUBLIC HEALTH AND WELFARE

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Subsec. (d). Pub. L. 101–239, § 10208(d)(1)(A)–(K), inserted “(a)” at beginning of text and in subsec. (a) as subsec. (a)(4)(D), redesignated subpar. (B) as (1), redesignated former subsec. (a)(1)(9) to (1) as (12), inserted “if such payment would not be treated as wages” after “Section 125 would not treat any wages as contained in section 402(a)(8) are contained in section 206 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.


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more, or (B) the employer's expenditures for agricultural labor in such year equal or exceed $2,500.

Subsec. (b). Pub. L. 97–282, § 324(a)(1), substituted "death," for "only his basic pay as described in chapter 3 and section 1009 of title 37" for "death." (B) and struck out former cl. (B) which read as follows:

Subsec. (c). Pub. L. 98–21, § 324(a)(1), substituted "for "death." for "only his basic pay as described in chapter 3 and section 1009 of title 37" for "death." (B) and struck out former cl. (B) which read as follows:

Subsec. (d). Pub. L. 98–21, § 324(a)(1), struck out subpar. (C) which related to retirement after attaining an age specified in the plan referred to in par. (2) or in a pension plan of the employer.

Subsec. (e)(5) to (7), Pub. L. 98–21, § 324(c)(2), added cls. (5) to (7).

Subsec. (e)(6). Pub. L. 98–21, § 324(c)(3), struck out subsec. (i) which related to any payment (other than vacation or sick pay) made to an employee after the month in which he attained age 62, if he did not work for the employer in the period of "week" in which such payment was made, and provided for this subsection that "sick pay" included remuneration for service in the employ of a State, a political subdivision (as defined in section 410(b)(2) of this title) of which such service, or an instrumentality of two or more States, paid to an employee thereof for a period during which he was absent from work because of sickness.

Subsec. (m)(1)(C). Pub. L. 98–21, § 324(c)(3)(C), struck out subpar. (C) which related to retirement after attaining an age specified in the plan referred to in par. (2) or in a pension plan of the employer.

Subsec. (r). Pub. L. 98–21, § 327(b)(2), inserted, immediately following subsec. (r), provision that nothing in the regulations prescribed for purposes of chapter 21 of the Internal Revenue Code of 1954 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this subchapter.

Pub. L. 98–21, § 324(c)(1), inserted, at end of section, two undesignated pars. specifying the inclusion of certain employer contributions as "wages" and directing that any amount deferred under a nonqualified deferred compensation plan be taken into account under certain conditions but not treated as wages thereafter for purposes of this subchapter.

Pub. L. 98–21, § 101(c)(1), inserted, at end of section, undesignated par. defining "wages" for purposes of this subchapter in the case of an individual performing service under provisions of section 24(1) of title 28 (relating to assignment of retired justices and judges to active duty) to include payments under section 371(b) of title 28 that is received during the period of such service.

1981—Subsec. (b)(2). Pub. L. 97–123 inserted "but, in the case of payments made to an employee or any of his dependents, this clause shall exclude from the term ‘wages’ only payments which are received under a worker’s compensation law” after “sickness or accident disability”.

Subsec. (q). Pub. L. 97–34 substituted “section 127 or 129” for “section 127”.

1980—Subsec. (f). Pub. L. 96–499 substituted “section 1301 of the Internal Revenue Code of 1954” for “section 1400 of the Internal Revenue Code of 1939” in subpars. (1) and (2) and inserted “with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor”.


1977—Subsecs. (g)(3), (j). Pub. L. 95–216, § 351(a)(1), (2), substituted “year” for “quarter” wherever appearing and “$100” for “$50”.

Subsec. (n). Pub. L. 95–216, § 351(a)(3)(A), struck out “or” after “such employee died”.

Subsec. (o). Pub. L. 95–216, § 351(a)(3)(B), substituted “payment is made; or” for “payment is made”.


Pub. L. 93–251 substituted “$3,200” for “$3,100”.

Pub. L. 93–646 substituted “$3,100” for “$3,000”.

Pub. L. 93–646 substituted “$2,900” for “$2,700”.

Subsec. (b)(3). Pub. L. 92–603, § 104(g), struck out “(if a woman and age 65 (if a man) after “attains age 62”.


Pub. L. 92–603, § 123(c)(1), added par. at end defining “wages” in the case of members of a religious order when an election under section 3212(r) of the Internal Revenue Code of 1954 is in effect.


Subsec. (l). Pub. L. 89–97, §313(a)(1), added subsec. (l). Pub. L. 89–97, §313(a)(2), added paragraph at end providing that tips be considered remuneration and that such remuneration be deemed paid as of the filing of a written statement or as of the time received.

1964—Subsec. (e). Pub. L. 88–272 included as “wages” payments after 1964 under or to trust exempt under sections 401 and 501(a), I.R.C. 1954, under annuity plans after 1954 and prior to 1963, under section 401(a)(3), (4), (5), and (6), I.R.C. 1954, under or to annuity plans which at the time of any payment after 1962, is a qualified bond purchase plan described in section 405(a), I.R.C. 1954.


1961—Subsec. (i). Pub. L. 87–64 substituted “attains age 62 (if a woman) or age 65 (if a man)” for “attains retirement age (as defined in section 416(a) of this title)”. Pub. L. 87–293 added last paragraph providing for computation of wages for Peace Corps volunteer service.


Pub. L. 86–778, §103(j)(2)(C), substituted “section 410(m)(1)” of this title for “section 410(m)(1) of section 416 of Title 29, Labor Code”.


Subsec. (i). Pub. L. 85–786 inserted sentence to include remuneration for service in State employment paid to employee for period he was absent for illness within a calendar year.

1956—Subsec. (h)(2). Act Aug. 1, 1956, ch. 837, added penultimate par. to define “wages” in the case of an individual performing service, as a member of a uniformed service, to which the provisions of section 410(m)(1) of this title are applicable.

1954—Subsec. (a). Act Sept. 1, 1954, §104(a), provided that for years after 1954 “wages” would exclude any remuneration in excess of $1,000 paid to an individual with respect to employment during a calendar year.

Subsec. (g)(2). Act Sept. 1, 1954, §101(a)(1), made coverage of domestic service depend solely on receipt by the employee, in a quarter, of $50 in cash remuneration from one employer for such service.


1946—Subsec. (a). Act Aug. 10, 1946, §414, in amending subsec. (a), made par. (1) and (2) applicable only to payments before Jan. 1, 1947, added a new par. (3), applicable to payments after that date, and renumbered former pars. (3) to (6) to be pars. (4) to (7), respectively.

Subsec. (b). Act Aug. 10, 1946, §407(a), in amending subsec. (b), required a currently insured individual to have not less than six quarters of coverage during the period consisting of the quarter in which he died and the twelve preceding quarters.

Subsec. (i). Act Aug. 10, 1946, §408(a), in amending subsec. (i), required only that a wife be married to the insured individual for 36 months instead of requiring that they be married before Jan. 1, 1939, or before he became 60 years of age, as was formerly the case.

Subsec. (k). Act Aug. 10, 1946, §409(a), in amending subsec. (k), changed requirement that a stepchild or adopted child must have been such before the individual reached age 60 to require, in the case of a living individual, that the child must have been a stepchild or adopted child for 36 months.


1944—Subsec. (o)(1). Act Apr. 4, 1944, §2, inserted “but shall not include any such service performed (1) under a contract entered into without the United States and during the performance of which the vessel does not touch at a port in the United States, or (2) on a vessel documented under the laws of any foreign country and bareboat chartered to the War Shipping Administration”.


Effective Date of 2008 Amendment

Amendment by Pub. L. 110–245 effective as if included in section 5 of Pub. L. 110–142, see section 115(d) of Pub. L. 110–245, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Effective Date of 2004 Amendment


Amendment by section 320(b)(5) of Pub. L. 108–357 applicable to amounts received by an individual in taxable years beginning after Dec. 31, 2003, see section 320(c) of Pub. L. 108–357, set out as a note under section 108 of Title 26, Internal Revenue Code.

Effective Date of 1996 Amendment

Amendment by section 1421(b)(8)(B) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of Title 26, Internal Revenue Code.

Amendment by section 1458(b)(2) of Pub. L. 104–188 applicable to remuneration paid after Dec. 31, 1996, see section 1458(c)(2) of Pub. L. 104–188, set out as a note under section 3121 of Title 26.

Effective Date of 1994 Amendments


Effective Date of 1990 Amendments

Amendment by Pub. L. 101–508 effective as if included in the enactment of Pub. L. 101–239, §1209B, see section 5130(b) of Pub. L. 101–508, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Effective Date of 1989 Amendments

Amendment by section 10208(a) of Pub. L. 101–239 applicable with respect to computation of average total
wage amounts (under amended provisions) for calendar years after 1990, see section 10238(c) of Pub. L. 101-239, set out as a note under section 430 of this title.

Amendment by Pub. L. 101-140 effective as if included in section 1151 of Pub. L. 99-514, see section 233(c) of Pub. L. 101-140, set out as a note under section 79 of Title 26, Internal Revenue Code.

**Effective Date of 1988 Amendment**

Amendment by sections 1001(g)(4)(C), 1011(f)(8), and 1011B(a)(23)(B) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by section 1011B(a)(23)(F) of Pub. L. 100-647 not applicable to any individual who separated from service with the employer before Jan. 1, 1989, see section 1011B(a)(23)(E) of Pub. L. 100-647, set out as a note under section 3121 of Title 26.

Amendment by section 3043(a) of Pub. L. 100-647 applicable to all periods beginning before, on, or after Nov. 10, 1988, with no inference created as to existence or non-existence or scope of any exemption from tax for any employer contributions made during 1984 under a qualified cash or deferred arrangement, and except in the case of an agreement with certain nonqualified deferred compensation plans in existence on Mar. 24, 1983, see section 324(d) of Pub. L. 98-21, set out as a note under section 3121 of Title 26.

Amendment by section 3044 of Pub. L. 100-647 effective, except as otherwise provided, as if included in amendments made by section 531(h) of Pub. L. 98-369, set out as a note under section 3121 of Title 26.

Amendment by section 3043(a) of Pub. L. 100-647 applicable to remuneration paid after Dec. 31, 1983, see section 324(c)(1)-(3) of Pub. L. 98-21, applicable to remuneration paid after Dec. 31, 1983, except for certain employer contributions made during 1984 under a qualified cash or deferred arrangement, and except in the case of an agreement with certain nonqualified deferred compensation plans in existence on Mar. 24, 1983, see section 324(d) of Pub. L. 98-21, set out as a note under section 3121 of Title 26.

Amendment by section 3044 of Pub. L. 100-647 applicable to remuneration paid after Dec. 31, 1983, see section 327(d)(1) of Pub. L. 98-21, as amended, set out as a note under section 3121 of Title 26.

Amendment by section 3043(a) of Pub. L. 100-647 applicable to remuneration paid after Dec. 31, 1983, see section 327(d)(2) of Pub. L. 98-21, as amended, set out as a note under section 3121 of Title 26.

Amendment by section 3044 of Pub. L. 100-647 applicable to remuneration paid after Dec. 31, 1983, see section 328(d)(1) of Pub. L. 98-21, set out as a note under section 3121 of Title 26.

**Effective Date of 1981 Amendments**

Amendment by Pub. L. 97-123 applicable, except as otherwise provided, to remuneration paid after Dec. 31, 1981, see section 3(g) of Pub. L. 97-123, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 97-34 applicable with respect to taxable years beginning after Dec. 31, 1978, see section 101(d) of Pub. L. 98-21, as amended, set out as a note under section 3121 of Title 26.

Amendment by section 124(f) of Pub. L. 97-34, set out as a note under section 21 of Title 26.

**Effective Date of 1980 Amendment**

For effective date of amendment by Pub. L. 96-499, see section 1411(c) of Pub. L. 96-499, set out as a note under section 3121 of Title 26, Internal Revenue Code.

**Effective Date of 1978 Amendments**

Amendment by Pub. L. 95-600 applicable with respect to taxable years beginning after Dec. 31, 1978, see section 164(d) of Pub. L. 95-600, set out as an Effective Date note under section 127 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 95-472 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 3(d) of Pub. L. 95-472, set out as a note under section 3121 of Title 26.

**Effective Date of 1977 Amendment**

Section 351(d) of Pub. L. 95-216 provided that: "The amendments made by subsection (a) [amending this section and section 410 of this title] shall apply with respect to remuneration paid and services rendered after December 31, 1977. The amendments made by subsections (b) and (c) [amending sections 412 and 413 of this title] shall be effective January 1, 1978."

**Effective Date of 1973 Amendments**

Section 5(e) of Pub. L. 93-233 provided that: "The amendments made by this section [amending this section and sections 411, 413, and 430 of this title and sec-
tions 3121, 3122, 3125, 6413, and 6654 of Title 26, Internal Revenue Code], except subsection (a)(4), shall apply only with respect to remuneration paid after, and taxable years beginning after, 1973. The amendments made by subsection (a)(4) [amending section 415 of this title] shall apply with respect to calendar years after 1973.  
  
Section 230(e) of Pub. L. 93–68 provided that: "The amendments made by this section [amending this section and sections 411, 415, and 6654 of Title 26] except subsection (a)(4), shall apply only with respect to remuneration paid after, and taxable years beginning after, 1973. The amendments made by subsection (a)(4) [amending section 415 of this title] shall apply with respect to calendar years after 1973."

**Effective Date of 1972 Amendments**

Amendment by section 104(g) of Pub. L. 92–603 applicable only with respect to payments after 1974, see section 104(j) of Pub. L. 92–603, set out as a note under section 414 of this title.

Section 122(c) of Pub. L. 92–603 provided that: "The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply in the case of any payment made after December 1972."

Section 138(c) of Pub. L. 92–603 provided that: "The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply in the case of any payment made after December 1972."

Section 230(c) of Pub. L. 92–336 provided that: "The amendments made by subsections (a)(1) and (a)(3)(A) [amending this section and section 413 of this title], and the amendments made by subsection (b) [amending sections 3121, 3122, 3125, and 6413 of Title 26, Internal Revenue Code] (except paragraphs (1) and (7) thereof), shall apply only with respect to remuneration paid after December 1972. The amendments made by subsection (a)(4) [amending section 415 of this title] shall apply only with respect to calendar years after 1972."

**Effective Date of 1971 Amendment**

Section 230(c) of Pub. L. 92–5 provided that: "The amendments made by subsections (a)(1) and (a)(3)(A) [amending this section and section 413 of this title], and the amendments made by subsection (b) [amending sections (a)(2), (a)(3)(B), (b)(1), and (b)(7) [amending sections 411 and 413 of this title and sections 1402 and 6654 of Title 26] shall apply only with respect to taxable years beginning after 1971. The amendment made by subsection (a)(4) [amending section 415 of this title] shall apply only with respect to calendar years after 1971."

**Effective Date of 1968 Amendment**

Section 108(c) of Pub. L. 90–248 provided that: "The amendment made by subsections (a)(1) and (a)(3)(A) [amending this section and section 423 of this title], and the amendments made by subsection (b) [except paragraph (1) thereof] [amending sections 3121, 3122, 3125, and 6413 of Title 26, Internal Revenue Code], shall apply only with respect to remuneration paid after December 1967. The amendments made by subsections (a)(2), (a)(3)(B), and (b)(1) [amending sections 411 and 413 of this title and section 1402 of Title 26] shall apply only with respect to taxable years ending after 1967, except that the amounts which under section 218(e) [section 418 of this title] would have been payable with respect to remuneration of all members of such coverage group had the amendment made by section 1 been in effect on and after January 1, 1951, failure by a State to make such payments prior to January 1, 1959, shall be treated the same as failure to make payments when due under section 218(e)."

**Effective Date of 1956 Amendment**

Amendment by act Aug. 1, 1956, ch. 676, effective Jan. 1, 1967, see section 605(c) of Pub. L. 89–17, set out as a note under section 3121 of Title 26.

Amendment by section 504(c) of Pub. L. 90–248 applicable with respect to remuneration paid after Jan. 2, 1968, see section 504(d) of Pub. L. 90–248, set out as a note under section 3121 of Title 26.

**Effective Date of 1965 Amendment**

Amendment by section 313(a) of Pub. L. 89–97 applicable only with respect to tips received by employees after December 1965, see section 313(f) of Pub. L. 89–97, set out as an Effective Date note under section 605(c) of Title 26, Internal Revenue Code.

Amendment by section 320(a)(1) of Pub. L. 89–97 applicable with respect to remuneration paid after December 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of Title 26.

**Effective Date of 1964 Amendments**

Amendment by Pub. L. 88–650 applicable with respect to remuneration paid on or after the first day of the first calendar month which begins more than ten days after Oct. 13, 1964, see section 4(d) of Pub. L. 88–650, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 88–272 applicable to remuneration paid after Dec. 31, 1962, see section 220(d) of Pub. L. 88–272, set out as an Effective Date note under section 406 of Title 26.

**Effective Date of 1961 Amendments**

Amendment by Pub. L. 87–293 applicable with respect to service performed after Sept. 22, 1961, but in the case of persons serving under the Peace Corps agency established by executive order applicable with respect to service performed on or after the effective date of enrollment, see section 202(c) of Pub. L. 87–293, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 87–64 applicable with respect to monthly benefits for months beginning on or after May 1, 1965, see section 320(c) of Pub. L. 87–64, set out as an Effective Date note under section 406 of Title 26.

**Effective Date of 1960 Amendment**


**Effective Date of 1958 Amendment**

Section 2 of Pub. L. 85–786 provided that: "The amendment made by section 1 [amending this section] shall be applicable to remuneration paid after the enactment of this Act [Aug. 27, 1958], except that, in the case of any coverage group which is included under the agreement of a State under section 218 of the Social Security Act [section 418 of this title], the amendment made by section 1 shall also be applicable to remuneration for any member of such coverage group with respect to services performed after the effective date, specified in such agreement, for such coverage group, if such State has paid or agrees, prior to January 1, 1959, to pay, prior to such date, the amounts which under section 218(e) [section 418(e) of this title] would have been payable with respect to remuneration of all members of such coverage group had the amendment made by section 1 been in effect on and after January 1, 1951."

**Effective Date of 1956 Amendment**

Amendment by act Aug. 1, 1956, ch. 837, effective Jan. 1, 1957, see section 605(a) of Pub. L. 89–97, set out as a note under section 406 of Title 26.
several ations 414 to 416 of this title] shall be applicable (1) in
amendment made by that section is effective Jan. 1,
this section] shall be applicable with respect to services
''The amendment made by subsection (a) [amending
ation] shall take effect January 1, 1951, except that sec -
amendment made by subsection (a) [amending this sec -
1954, applicable only with respect to remuneration paid
section (a) of this section [amending this section] shall
be applicable only in cases of applications for benefits
1954, applicable only in cases of applications for benefits
The term ''employment'' means any service
ners, and other actions issued, undertaken, or
amendments to this section contained in such provi -
section or section 3121(a) of Title 26, Internal Revenue
31, 1946.''
ED EFFECTIVE DATE OF 1948 AMENDMENT
Section 10(b) of act Apr. 20, 1948, provided in part that:
''The amendment made by subsection (a) [amending this
section] shall be applicable with respect to services
1950, and (2) in the case of lump-sum death payments
with respect to deaths after August 1950.''
ED EFFECTIVE DATE OF 1946 AMENDMENT
Sections 407(b), 408(b), and 409(b) of act Aug. 10, 1946,
each provided that: ''The amendment made by sub -
section (a) of this section [amending this section] shall
be applicable only in cases of applications for benefits
under this title [this subchapter] filed after December
31, 1946.''
ED EFFECTIVE DATE OF 1945 AMENDMENT
Section 5(a) of act Dec. 29, 1945, provided that the
amendment made by that section is effective Jan. 1,
1946.
ED EFFECTIVE DATE OF 1939 AMENDMENT
Section 201 of act Aug. 10, 1939, provided that the
amendment made by that section is effective Jan. 1,
1940.
REFRAILS: AMENDMENTS AND APPLICATION OF
AMENDMENTS UNAFFECTED
Section 202(b)(2) of Pub. L. 87–238, cited as a credit to
this section, was repealed by Pub. L. 89–572. §5(a), Sept.
13, 1966, 80 Stat. 765. Such repeal not deemed to affect
amendments to this section contained in such provi -
sions, and continuation in full force and effect until
modified by appropriate authority of all determina -
tions, authorization, regulations, orders, contracts,
agreements, and other actions issued, undertaken, or
entered into under authority of the repealed provisions,
see section 5(b) of Pub. L. 89–572, set out as a note under
former section 2515 of Title 22, Foreign Relations and
Exclusion FROM WAGES AND COMPENSATION OF
REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE
FOR Duplications OF MEDICARE BENEFITS BY HEALTH
Care BENEFITS PROVIDED BY EMPLOYERS
For purposes of this subchapter, the term ''wages''
shall not include the amount of any refund required
note], see section 10202 of Pub. L. 97–194, set out as a note
under Title 42, Public Health and Welfare.
NONENFORCEMENT OF AMENDMENT MADE BY SECTION
1151 OF PUB. L. 96–514; MONIES APPROPRIATED FOR
FISCAL YEAR 1990 NOT TO BE USED FOR ENFORCE -
MENT OR IMPLEMENTATION OF AMENDMENT
No monies appropriated by Pub. L. 101–136 to be used
to implement or enforce section 1151 of Pub. L. 96–514
or the amendments made by such section, see section
528 of Pub. L. 101–136, set out as a note under section 89
of Title 26, Internal Revenue Code.
SOCIAL SECURITY COVERAGE OF RETIRED FEDERAL
JUDGES ON ACTIVE DUTY
Notwithstanding section 101(d) of Pub. L. 98–21, set
out as an Effective Date of 1983 Amendment note above,
the amendment of this section by section 101(c)(1) of
Pub. L. 98–21 is applicable only with respect to remu -
ernation paid after Dec. 31, 1985, with remuneration paid
prior to Jan. 1, 1986, under section 371(b) of Title 28,
Judiciary and Judicial Procedure, to an individual
performing service under section 294 of Title 28 not to
be included in the term ''wages'' for purposes of this
section or section 3121(a) of Title 26, Internal Revenue
Code, see section 4 of Pub. L. 98–118, set out as a note
under section 3121 of Title 26.
PAYMENTS UNDER STATE TEMPORARY DISABILITY LAW
To Be Treated As REMUNERATION FOR SERVICE
For purposes of applying this section with respect to
the parenthetical matter contained in subsection (b)(2) of
this section, payments under a State temporary dis -
ability law to be treated as remuneration for service,
see section 3(c) of Pub. L. 97–194, set out as a note under
section 3121 of Title 26, Internal Revenue Code.
SERVICES FOR COOPERATIVES PRIOR TO 1951
Section 110 of act Aug. 28, 1950, provided that: ''In
any case in which—
(1) an individual has been employed at any time
prior to 1951 by organizations enumerated in the first
sentence of section 101(12) of the Internal Revenue
Code [1939],
(2) the service performed by such individual during
the time he was so employed constituted agricultural
labor as defined in section 209(l) of the Social Secu -
rity Act [former subsec. (i) of this section] and section
1240(b) of the Internal Revenue Code [1939], as in
effect prior to the enactment of this Act [Apr. 28,
1950], and such service would, but for the provisions
of such sections, have constituted employment for
purposes of title II of the Social Security Act
this subchapter) and subchapter A of chapter 9 of
such Code [1939],
(3) the taxes imposed by sections 1400 and 1410 of
the Internal Revenue Code [1939] have been paid with
respect to any part of the remuneration paid to such
individual by such organization for such service and
the payment of such taxes by such organization has
been made in good faith upon the assumption that
such service did not constitute agricultural labor as
so defined, and
(4) no refund of such taxes has been obtained,
the amount of such remuneration with respect to which
such taxes have been paid shall be deemed to constitute
remuneration for employment as defined in section
209(b) of the Social Security Act [former subsec. (b)
of this section] as in effect prior to the enactment of this
Act [Aug. 28, 1950] (but it shall not constitute wages for
purposes of deductions under section 203 of such Act
[section 403 of this title] for months for which benefits
under title II of such Act [this subchapter] have been
certified and paid prior to the enactment of this act.''
REFUNDS OR CREDITS FOR OVERPAYMENTS
Section 3 of act Apr. 20, 1948, provided that: ''If any
amount paid prior to the date of the enactment of this
Act [Apr. 20, 1948] constitutes an overpayment of tax
solely by reason of an amendment made by this Act
[amending this section], no refund or credit shall be
made or allowed with respect to the amount of such
overpayment.''
§ 410. Definitions relating to employment
For the purposes of this subchapter:
(a) Employment
The term "employment" means any service
performed after 1936 and prior to 1951 which was

employment for the purposes of this subchapter under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 (A) by an employee for the person employing him, irrespective of the citizenship or residence of either; (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft. It touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee (i) of an American employer (as defined in section 3121(c) of the Internal Revenue Code of 1986) of an American employer during any period for which there is in effect an agreement, entered into pursuant to section 3121(c) of such Code, with respect to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before or after December 31, 1983, then such service shall be considered continuous,

continuous weeks in the calendar quarter in which the service is rendered;

(4) Service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft when outside the United States and (B) such individual is not a citizen of the United States or (ii) the employer is not an American employer;

(5) Service performed in the employ of the United States or any instrumentality of the United States, if such service (A) would be excluded from the term “employment” for purposes of this subchapter if the provisions of paragraphs (5) and (6) of this subsection as in effect in January 1963 had remained in effect, and (B) is performed by an individual who—

(i) has been continuously performing service described in subparagraph (A) since December 31, 1963, and for purposes of this clause—

(1) Service performed by foreign agricultural workers lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

(2) Domestic service performed in a local college, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(iii) if an individual performing service described in subparagraph (A) returns to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before or after December 31, 1983, then such service shall be considered continuous,

(II) if an individual performing service described in subparagraph (A) returns to the performance of such service after being detailed or transferred to an international organization, or after December 31, 1983, then such service shall be considered continuous,

(III) if an individual performing service described in subparagraph (A) is reemployed or reinstated after being separated from such service for the purpose of accepting employment with the American Institute of Taiwan as provided under section 3343 of subchapter III of chapter 33 of title 5 or under section 3581 of chapter 35 of such title, then the service performed for that organization shall be considered service described in subparagraph (A),

(IV) if an individual performing service described in subparagraph (A) returns to the performance of such service after performing service as a member of a uniformed service (including, for purposes of this clause, service in the National Guard and temporary service in the Coast Guard Reserve) and after exercising restoration or reemployment rights as provided under chapter 43 of title 38, then the service so performed as a member of a uniformed service shall be considered service described in subparagraph (A), and

(V) if an individual performing service described in subparagraph (A) returns to the performance of such service after employment (by a tribal organization) to
which section 450(e)(2) of title 25 applies, then the service performed for that tribal organization shall be considered service described in subparagraph (A); or

(ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services);

except that this paragraph shall not apply with respect to any such service performed on or after any date on which such individual performs—

(C) service performed as the President or Vice President of the United States,

(D) service performed—

(i) in a position placed in the Executive Schedule under sections 5312 through 5317 of title 5,

(ii) as a noncareer appointee in the Senior Executive Service or as a noncareer member of the Senior Foreign Service, or

(iii) in a position to which the individual is appointed by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107(a)(1) or (b)(1) of title 3, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule,

(E) service performed as the Chief Justice of the United States, an Associate Justice of the Supreme Court, a judge of a United States court of appeals, a judge of a United States district court (including the district court of a territory), a judge of the United States Court of Federal Claims, a judge of the United States Court of International Trade, a judge of the United States Tax Court, a United States magistrate judge, or a referee in bankruptcy or United States bankruptcy judge,

(F) service performed as a Member, Delegate, or Resident Commissioner of or to the Congress,

(G) any other service in the legislative branch of the Federal Government if such service—

(i) is performed by an individual who was not subject to subchapter III of chapter 83 of title 5 or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983, or

(ii) is performed by an individual who has, at any time after December 31, 1983, received a lump-sum payment under section 8342(a) of title 5 or under the corresponding provision of the law establishing the other retirement system described in clause (i), or

(iii) is performed by an individual after such individual has otherwise ceased to be subject to subchapter III of chapter 83 of title 5, (without having an application pending for coverage under such subchapter), while performing service in the legislative branch (determined without regard to the provisions of subparagraph (B) relating to continuity of employment), for any period of time after December 31, 1983, and for purposes of this subparagraph (G) an individual is subject to such subchapter III or to any such other retirement system at any time only if (a) such individual's pay is subject to deductions, contributions, or similar payments (concurrent with the service being performed at that time) under section 8333(a) of such title 5 or the corresponding provision of the law establishing such other system, or (in a case to which section 8332(k)(1) of such title applies) such individual is making payments of amounts equivalent to such deductions, contributions, or similar payments while on leave without pay, or (b) such individual is receiving an annuity from the Civil Service Retirement and Disability Fund, or is receiving benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), or

(H) service performed by an individual—

(i) on or after the effective date of an election by such individual, under section 301 of the Federal Employees' Retirement System Act of 1986, section 2157 of title 50, or the Federal Employees' Retirement System Open Enrollment Act of 1997 to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, or

(ii) on or after the effective date of an election by such individual, under regulations issued under section 860 of the Foreign Service Act of 1980 [22 U.S.C. 4071i], to become subject to the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of such Act [22 U.S.C. 4071 et seq.];

(6) Service performed in the employ of the United States or any instrumentality of the United States if such service is performed—

(A) in a penal institution of the United States by an inmate thereof;

(B) by any individual as an employee included under section 3351(2) of title 5 (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training; or

(C) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this paragraph shall not apply in the case of—

(A) service included under an agreement under section 418 of this title,

1 So in original. Probably should be followed by a comma.
(B) service which, under subsection (k) of this section, constitutes covered transportation service,

(C) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this subparagraph—

(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, be regarded as an officer or employee of the United States or any agency or instrumentality thereof, and

(ii) the remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, whichever is appropriate.

(D) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States (other than the Federal Employees Retirement System provided in chapter 84 of title 5) except that the provisions of this subparagraph shall not be applicable to service performed—

(i) in a hospital or penal institution by a patient or inmate thereof;

(ii) by any individual as an employee in a position compensated solely on a fee basis which is treated pursuant to section 411(c)(2)(E) of this title as a trade or business for purposes of inclusion of such fees in net earnings from self-employment;

for purposes of this subparagraph, except as provided in regulations prescribed by the Secretary of the Treasury, the term ‘retirement system’ has the meaning given such term by section 418(b)(4) of this title;

(8)(A) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, except that this subparagraph shall not apply to service performed by a member of such an order in the exercise of such duties, if an election of coverage under section 3121(r) of the Internal Revenue Code of 1986 is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs;

(B) Service performed in the employ of a church or qualified church-controlled organization if such church or organization has in effect an election under section 3121(w) of the Internal Revenue Code of 1986, other than service in an unrelated trade or business (within the meaning of section 513(a) of such Code);

(9) Service performed by an individual as an employee or employee representative as defined in section 3231 of the Internal Revenue Code of 1986;

(10) Service performed in the employ of—

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) of the Internal Revenue Code of 1986 if the organization is organized, and at all
times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services in its employ performed by a student referred to in section 418(c)(5) of this title are covered under the agreement between the Commissioner of Social Security and such State entered into pursuant to section 418 of this title;

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a non-diplomatic representative);

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses’ training school by an individual who is enrolled and is regularly attending classes at a nurses’ training school chartered or approved pursuant to State law;

(14)(A) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(15) Service performed in the employ of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669) [22 U.S.C. 288 et seq.], except service which constitutes “employment” under subsection (r) of this section;

(16) Service performed by an individual under an arrangement with the owner or tenant of land pursuant to which—

(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land,

(B) the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(C) the amount of such individual’s share depends on the amount of the agricultural or horticultural commodities produced;

(17) Service in the employ of any organization which is performed (A) in any year during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950, as amended [50 U.S.C. 781 et seq.], as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;

(18) Service performed in Guam by a resident of the Republic of the Philippines while in Guam on a temporary basis as a non-immigrant alien admitted to Guam pursuant to section 1101(a)(15)(H)(ii) of title 8;

(19) Service which is performed by a non-resident alien individual for the period he is temporarily present in the United States as a non-immigrant under subparagraph (F), (J), (M), or (Q) of section 1101(a)(15) of title 8, and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q) as the case may be;

(20) Service (other than service described in paragraph (3)(A)) performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat pursuant to which—

(A) such individual does not receive any additional compensation other than as provided in subparagraph (B) and other than cash remuneration—

(i) which does not exceed $100 per trip;

(ii) which is contingent on a minimum catch; and

(iii) which is paid solely for additional duties (such as mate, engineer, or cook) for which additional cash remuneration is traditional in the industry,

(B) such individual receives a share of the boat’s (or the boats’ in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch, and

(C) the amount of such individual’s share depends on the amount of the boat’s (or boats’ in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life, but only if the operating crew of such boat (or each boat from which the individual receives a share in the case of a fishing operation involv-
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nized under the laws of the United States or of
dents of the United States or corporations orga-
ployed solely by one or more citizens or resi-
laws of any foreign country, if its crew is em-
of the United States nor documented under the
neither documented or numbered under the laws
United States; and includes any vessel which is

(b) Included and excluded service

For purposes of paragraph (20), the operating
crew of a boat shall be treated as normally made
up of fewer than 10 individuals if the average
size of the operating crew on trips made during
the preceding 4 calendar quarters consisted of
fewer than 10 individuals.

(b) Included and excluded service

If the services performed during one-half or
more of any pay period by an employee for the
person employing him constitute employment,
all the services of such employee for such period
shall be deemed to be employment; but if the
services performed during more than one-half of
any such pay period by an employee for the per-
son employing him do not constitute employ-
ment, then none of the services of such em-
ployee for such period shall be deemed to be em-
ployment. As used in this subsection, the term
“pay period” means a period (of not more than
thirty-one consecutive days) for which a pay-
ment of remuneration is ordinarily made to the
employee by the person employing him. This
subsection shall not be applicable with respect
to services performed in a pay period by an em-
ployee for the person employing him, where any
of such service is excepted by paragraph (9) of
subsection (a) of this section.

(c) American vessel

The term “American vessel” means any vessel
registered under the laws of the United States;
and includes any vessel which is
neither documented or numbered under the laws
of the United States nor documented under the
laws of any foreign country, if its crew is em-
ployed solely by one or more citizens or resi-
dents of the United States or corporations orga-
nized under the laws of the United States or of
any State.

(d) American aircraft

The term “American aircraft” means an air-
craft registered under the laws of the United
States.

(e) American employer

(1) The term “American employer” means an
employer which is (A) the United States or any
instrumentality thereof, (B) a State or any po-
itical subdivision thereof, or any instrumentali-
ty of any one or more of the foregoing, (C) an
individual who is a resident of the United
States, (D) a partnership, if two-thirds or more
of the partners are residents of the United
States, (E) a trust, if all of the trustees are resi-
dents of the United States, or (F) a corporation
organized under the laws of the United States or
of any State.

(2)(A) If any employee of a foreign person is
performing services in connection with a con-
tract between the United States Government (or
any instrumentality thereof) and any member of
any domestically controlled group of entities
which includes such foreign person, such foreign
person shall be treated as an American employer
with respect to such services performed by such
employee.

(b) For purposes of this paragraph—

(i) The term “domestically controlled group
of entities” means a controlled group of enti-
ties the common parent of which is a domestic
corporation.

(ii) The term “controlled group of entities”
means a controlled group of corporations as
defined in section 1563(a)(1) of the Internal
Revenue Code of 1986, except that—

(I) “more than 50 percent” shall be sub-
stituted for “at least 80 percent” each place
it appears therein, and

(II) the determination shall be made without
regard to subsections (a)(4) and (b)(2) of
section 1563 of such Code.

A partnership or any other entity (other than a
corporation) shall be treated as a member of
a controlled group of entities if such entity is
controlled (within the meaning of section
954(d)(3) of such Code) by members of such
group (including any entity treated as a member
of such group by reason of this sentence).

(C) Subparagraph (A) shall not apply to any
services to which paragraph (1) of section 3121(z)
of the Internal Revenue Code of 1986 does not
apply by reason of paragraph (4) of such section.

(f) Agricultural labor

The term “agricultural labor” includes all
service performed—

(1) On a farm, in the employ of any person,
in connection with cultivating the soil, or in
connection with raising or harvesting any agri-
cultural or horticultural commodity, includ-
ing the raising, shearing, feeding, caring for,
training, and management of livestock, bees,
poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or
other operator of a farm, in connection with
the operation, management, conservation, im-
provement, or maintenance of such farm and
its tools and equipment, or in salvaging tim-
ber or clearing land of brush and other debris
left by a hurricane, if the major part of such
service is performed on a farm.

(3) In connection with the production or har-
esting of any commodity defined as an agri-
cultural commodity in section 1141j(g) of title
12, or in connection with the ginning of cot-
ton, or in connection with the operation or
maintenance of ditches, canals, reservoirs, or
waterways, not owned or operated for profit,
used exclusively for supplying and storing
water for farming purposes.

(4)(A) In the employ of the operator of a
farm in handling, planting, drying, packing,
packaging, processing, freezing, grading, stor-
ing, or delivering to storage or to market or to
a carrier for transportation to market, in its
unmanufactured state, any agricultural or
horticultural commodity; but only if such op-
erator produced more than one-half of the
commodity with respect to which such service
is performed.

See References in Text note below.
(B) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A) of this paragraph, but only if such operators produced all of the commodity with respect to which such service is performed. For the purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than twenty at any time during the calendar year in which such service is performed.

(5) On a farm operated for profit if such service is not in the course of the employer’s trade or business.

The provisions of subparagraphs (A) and (B) of paragraph (4) of this subsection shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(g) Farm

The term “farm” includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(h) State

The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(i) United States

The term “United States” when used in a geographical sense means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(j) Employee

The term “employee” means—

(1) any officer of a corporation; or
(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or
(3) any individual (other than an individual who is an employee under paragraph (1) or (2) of this subsection) who performs services for remuneration for any person—
(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;
(B) as a full-time life insurance salesman;
(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or
(D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term “employee” under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

(k) Covered transportation service

(1) Except as provided in paragraph (2) of this subsection, all service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

(2) Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation service if—
(A) any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system is, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, cannot be diminished or impaired; or
(B) no part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951; except that if such State or political subdivision makes an acquisition after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who—
(C) became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of such part, and
(D) prior to such acquisition rendered service in employment in connection with the operation of such part of the transportation system acquired by the State or political subdivision,

the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee
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is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees described in subparagraph (C) of this paragraph.

(3) All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(4) For the purposes of this subsection—

(A) The term “general retirement system” means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this subchapter, and some of such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term “political subdivision” includes an instrumentality of (i) a State, (ii) one or more political subdivisions of a State, or (iii) a State and one or more of its political subdivisions.

(l) Service in uniformed services

(1) Except as provided in paragraph (4), the term “employment” shall, notwithstanding the provisions of subsection (a) of this section, include—

(A) service performed after December 1956 by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

(B) service performed after December 1987 by an individual as a member of a uniformed service on inactive duty training.

(2) The term “active duty” means “active duty” as described in paragraph (21) of section 101 of title 38, except that it shall also include “active duty for training” as described in paragraph (22) of such section.

(3) The term “inactive duty training” means “inactive duty training” as described in paragraph (22) of such section.

(4)(A) Paragraph (1) of this subsection shall not apply in the case of any service, performed by an individual as a member of a uniformed service, which is creditable under section 231b(i) of title 45. The Railroad Retirement Board shall notify the Commissioner of Social Security, with respect to all such service which is so creditable.

(B) In any case where benefits under this subchapter are already payable on the basis of such individual’s wages and self-employment income, certified by the Commissioner of Social Security prior to the time such notification (with respect to such individual) is received by the Commissioner of Social Security, the Commissioner of Social Security shall certify no further benefits for payment under this subchapter on the basis of such individual’s wages and self-employment income, or shall recompute the amount of any further benefits payable on the basis of such wages and self-employment income, as may be required as a consequence of subparagraph (A) of this paragraph. No payment of a benefit to any person on the basis of such individual’s wages and self-employment income, certified by the Commissioner of Social Security prior to the end of the month in which the Commissioner receives such notification from the Railroad Retirement Board, shall be deemed by reason of this subparagraph to have been an erroneous payment or a payment to which such person was not entitled. The Commissioner of Social Security shall, as soon as possible after the receipt of such notification from the Railroad Retirement Board, advise such Board whether or not any such benefit will be reduced or terminated by reason of this paragraph, and if any such benefit will be so reduced or terminated, specify the first month with respect to which such reduction or termination will be effective.

(m) Member of a uniformed service

The term “member of a uniformed service” means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, or Marine Corps, or Coast Guard (including a reserve component as defined in section 101(27) of title 38), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey, the National Oceanic and Atmospheric Administration Corps, or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

(1) a retired member of any of those services;

(2) a member of the Fleet Reserve or Fleet Marine Corps Reserve;

(3) a cadet at the United States Military Academy, a midshipman at the United States Naval Academy, and a cadet at the United States Coast Guard Academy or United States Air Force Academy;

(4) a member of the Reserve Officers’ Training Corps, the Naval Reserve Officers’ Training Corps, or the Air Force Reserve Officers’ Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and

(5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the military, naval, or air service—

3So in original. The comma probably should not appear.
by reason of paragraph (1)(B) if the service is performed—

(B) who, under the Military Selective Service Act [50 U.S.C. App. 451 et seq.], has been selected for active military, naval, or air service;

and has been ordered or directed to proceed to such place.

The term does not include a temporary member of the Coast Guard Reserve.

(n) Crew leader

The term "crew leader" means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. A crew leader shall, with respect to services performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person.

(o) Peace Corps volunteer service

The term "employment" shall, notwithstanding the provisions of subsection (a) of this section, include service performed by an individual as a volunteer or volunteer leader within the meaning of the Peace Corps Act [22 U.S.C. 2501 et seq.].

(p) Medicare qualified government employment

(1) For purposes of sections 426 and 426-1 of this title, the term "medicare qualified government employment" means any service which would constitute "employment" as defined in subsection (a) of this section but for the application of the provisions of—

(A) subsection (a)(5) of this section, or

(B) subsection (a)(7) of this section, except as provided in paragraphs (2) and (3).

(2) Service shall not be treated as employment by reason of paragraph (1)(B) if the service is performed—

(A) by an individual who has been provisionally accepted for such duty; or

(B) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $1,000 with respect to service performed during any calendar year commencing on or after January 1, 1996, ending on or before December 31, 1999, and the adjusted amount determined under section 418(c)(8)(B) of this title for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year.

As used in this paragraph, the terms "State" and "political subdivision" have the meanings given those terms in section 418(b) of this title.

(3) Service performed for an employer shall not be treated as employment by reason of paragraph (1)(B) if—

(A) such service would be excluded from the term "employment" for purposes of this section if paragraph (1)(B) did not apply;

(B) such service is performed by an individual—

(i) who was performing substantial and regular service for remuneration for that employer before April 1, 1986,

(ii) who is a bona fide employee of that employer on March 31, 1986, and

(iii) whose employment relationship with that employer was not entered into for purposes of meeting the requirements of this subparagraph; and

(C) the employment relationship with that employer has not been terminated after March 31, 1986.

(4) For purposes of paragraph (3), under regulations (consistent with regulations established under section 3121(u)(2)(D) of the Internal Revenue Code of 1986)—

(A) all agencies and instrumentalities of a State (as defined in section 418(b) of this title) or of the District of Columbia shall be treated as a single employer, and

(B) all agencies and instrumentalities of a political subdivision of a State (as so defined) shall be treated as a single employer and shall not be treated as described in subparagraph (A).

(q) Treatment of real estate agents and direct sellers

Notwithstanding any other provision of this subchapter, the rules of section 3508 of the Internal Revenue Code of 1986 shall apply for purposes of this subchapter.

(r) Service in employ of international organizations by certain transferred Federal employees

(1) For purposes of this subchapter, service performed in the employ of an international organization by an individual pursuant to a transfer of such individual to such international organization pursuant to section 3582 of title 5 shall constitute "employment" if—

(A) immediately before such transfer, such individual performed service with a Federal agency which constituted "employment" as defined in subsection (a) of this section, and

(B) such individual would be entitled, upon separation from such international organiza-
2006—Subsec. (a)(5)(E). Pub. L. 109–280 inserted "or special trial judge" before "of the United States Tax Court.".

1994—Subsec. (f)(5). Pub. L. 108–203 struck out "or is domestic service in a private home of the employer" before period at end.

1993—Subsec. (a)(7)(D). Pub. L. 103–277 added Pub. L. 103–33, § 11246(b)(2)(B), to be omitted at end "For purposes of paragraph (20), the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals.".


1991—Subsec. (a)(5)(H). Pub. L. 100–647, § 8015(b)(1), amended subpar. (H) generally. Prior to amendment, subpar. (H) read as follows: "service performed by an individual on or after the effective date of an election by such individual under section 301(a) of the Federal Employees’ Retirement System Act of 1966, or under regulations issued under section 806 of the Foreign Service Act of 1980 or section 307 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, to become subject to chapter 84 of title 5, to be administered by the United States Court of Federal Claims,".


1988—Subsec. (a)(5). Pub. L. 100–647, § 8015(c)(1), in provision following subpar. (B) inserted "any such service performed on or after any date on which such individual performs" after "with respect to".


1985—Subsec. (a)(7)(D). Pub. L. 100–203, § 1900(a)(7)(A), substituted "“For purposes of paragraph (20), the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals.”" for "“For purposes of paragraph (20), the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals.”".


1983—Subsec. (a)(20)(A). Pub. L. 100–647, § 1001(d)(2)(E), substituted "(F), (J), or (M)" for "(F) or (J)" in two places.


1980—Pub. L. 100–203, § 9004(a)(1), struck out reference to service performed by an individual in the employ of his spouse.

1979—Subsec. (a)(3)(B). Pub. L. 100–203, § 9005(a)(2), substituted introductory provisions for former introductory provisions which read as follows: "Service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service if—".

1978—Subsec. (b)(1). Pub. L. 100–203, § 9001(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Except as provided in paragraph (4) of this subsection, the term 'employment' shall, notwithstanding the provisions of subsection (a) of this section, include service performed after December 1966 by an individual as a member of a uniformed service on active duty; but such term shall not include any such service which is performed while on leave without pay."

1977—Subsec. (p)(2)(E). Pub. L. 95–232, § 9023(p), directed that the heading of subsec. (p) be amended to read the same as it was set out in the general amendment of subsec. (p) by Pub. L. 99–272, see 1986 Amendment note below.


1970—Subsec. (a)(5). Pub. L. 91–508, § 9005(a)(2), substituted introductory provisions for former introductory provisions which read as follows: "As used in this subsection, the term 'employment' means any service which constitutes 'employment' as defined in subsection (a) of this section but for the application of the provisions of subsection (a)(5) of this section."


1966—Subsec. (a). Pub. L. 98–369, § 2963(a)(7)(A), struck out "(A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended, or (B)".
Subsec. (a)(5)(B). Pub. L. 98–369, § 2601(a)(1), in amending subpar. (B) generally, substituted “(i) has been continuously in the employ of the United States or in the employ of any instrumentality thereof since December 31, 1983, and (ii) in provisions following “except that this paragraph shall not be applicable to—” redesignated cl. (i), (ii), (iii), and (iv) as subpars. (C), (D), (E), and (F), respectively, and redesignated former subcls. (I), (ii), and (iii) as cls. (i), (ii), and (iii), respectively, of the redesignated subpar. (D).

Subsec. (a)(5)(G). Pub. L. 98–369, § 2601(a)(2)(A), (B), in provisions following “except that this paragraph shall not apply with respect to—” redesignated cls. (i), (ii), (iii), and (iv) as subpars. (C), (D), (E), and (F), respectively, and redesignated former subcls. (I), (ii), and (iii) as cls. (i), (ii), and (iii), respectively, of the redesignated subpar. (D).


Subsec. (a)(8). Pub. L. 98–369, § 2630(a)(1), designated existing provisions as subpar. (A), substituted “this subparagraph” for “this paragraph”, and added subpar. (B).


Subsec. (a)(19). Pub. L. 98–369, § 2630(a)(7)(D), struck out the comma after “;” or “.”


Subsec. (j)(3). Pub. L. 98–369, § 2663(a)(7)(F), substituted “paragraph (23) of such section 101” for “section 102 of the Servicemen’s and Veterans’ Survivors’ Benefits Act”.


Subsec. (m). Pub. L. 98–369, § 2663(a)(7)(C)(I), (II), in provisions preceding subpar. (I), substituted “a reserve component as defined in section 101(27) of title 38” for “a reserve component of a unified service as defined in section 103(3) of the Servicemen’s and Veterans’ Survivors’ Benefits Act” and inserted reference to the National Oceanic and Atmospheric Administration Corps.


Pub. L. 98–21, § 322(a)(2), substituted “a citizen or resident of the United States” for “a citizen of the United States” in cl. (B) in provisions preceding par. (1).

Subsec. (a)(5). Pub. L. 98–21, § 101(a)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows:

“(A) Service performed in the employment of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by law of the United States; “(B) Service performed by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939, by virtue of any provision of law which specifically refers to such section in granting such exemption;”.

Subsec. (a)(6). Pub. L. 98–21, § 101(a)(1), amended par. (6) generally. Prior to amendment, par. (6) read as follows:

“(A) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by law of the United States; “(B) Service performed in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939, by virtue of any provision of law which specifically refers to such section in granting such exemption;”.

Subsec. (a)(7). Pub. L. 98–21, § 321(b), amended cl. (B) in provisions preceding par. (1) generally, substituting reference to section 3121(l)(8) of the Internal Revenue Code of 1954 for “section 3121(l)(8)” of such Code “an American employer” for “a domestic corporation (as determined in accordance with section 7701 of the Internal Revenue Code of 1954)”, and “affiliate” for “subsidiary” after “with respect to”.

Subsec. (a)(8). Pub. L. 98–21, § 323(a)(2), substituted “a citizen or resident of the United States” for “a citizen of the United States” in cl. (B) in provisions preceding par. (1).

Subsec. (a)(9). Pub. L. 98–21, § 322(a)(1), added cl. (C) and struck out “either” before “A” in provisions preceding par. (1).
“(vi) by any individual to whom subchapter III of chapter 83 of title 5 does not apply because such individual is subject to another retirement system (other than the retirement system of the Tennessee Valley Authority)’’.

Subsec. (a)(8). Pub. L. 98–21, §102(a), struck out subpar. (A) designation, struck out subpar. (B) which had related to service performed by employees of nonprofit organizations, and substituted “this paragraph” for “this subparagraph”.

Subsec. (p). Pub. L. 98–21, §101a(2), struck out designations for pars. (1) and of subpar. (1) which related to application of the provisions of subparagraph (A), (B), or (C)(i), (ii), or (vi) of subsection (a)(6) of this section.

Subsec. (q). Pub. L. 97–448 redesignated subsec. (p), relating to treatment of real estate agents and direct sellers, as (q).


1978—Subsec. (a)(6)(B)(v). Pub. L. 95–600 substituted “Secretary of Transportation” for “Secretary of the Treasury”.

1977—Subsec. (a)(10). Pub. L. 95–216, §351(a)(3)(B), struck out subpar. (A) which related to service performed in the employ of any exempt organization under section 101 of the Internal Revenue Code of 1939, and designated existing provisions of subpar. (B) as entire subsec. (a)(10) and, as so designated, redesignated cls. (1) and (ii) as subpars. (A) and (B).


1976—Subsec. (a)(8)(B). Pub. L. 94–563 inserted “(or deemed to have been so filed under paragraph (4) or (5) of such section 3121(k))” after “section 3121(k) of the Internal Revenue Code of 1984” in provisions preceding cl. (i), inserted “(or deemed to have been filed)” after “filed” in cls. (i), (ii), and (iii), and substituted “is (or is deemed to be) in effect” for “is in effect in provisions following cl. (ii)”.}


1965—Subsec. (a)(6)(C)(v). Pub. L. 89–97, §311(a)(3), inserted “other than as a medical or dental intern or a medical or dental resident in training”.


1960—Subsec. (a)(3). Pub. L. 86–778, §104(a), designated existing provisions as cl. (A), struck out provisions which related to service performed by an individual in the employ of his son or daughter and added cl. (B).

Subsec. (a)(7). Pub. 86–778, §103(c), excluded service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any territory of the United States, or of any corporation in the employ of the Secretary of the Navy and any subgroup of the foregoing which is wholly owned thereby, performed by an officer or employee thereof.


Pub. L. 86–624 substituted “includes the District of Columbia and” for “includes Hawaii, the District of Columbia, and”.

Subsec. (j) to (o). Pub. L. 86–778, §103(j)(2)(A), (B), repealed subsec. (j) and redesignated subsecs. (j) to (o) as (k) to (n), respectively.


1958—Subsec. (a)(1). Pub. L. 85–840, §311(a), struck out provisions which excluded from coverage service performed in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 1141(g) of title 12.

Subsec. (a)(8)(B). Pub. L. 85–416, §312(a), substituted references to the Internal Revenue Code of 1954 for references to the Internal Revenue Code of 1939, and inserted provisions making subparagraph inapplicable to service performed during the period for which a certificate was filed with respect to a group described in section 3121(k)(1)(E) of the Internal Revenue Code of 1954, became a member of such group, and making subparagraph applicable with respect to service performed by an employee as a member of a group described in section 3121(k)(1)(E) with respect to which no certificate is in effect.

1956—Subsec. (a)(1)(B). Act Aug. 1, 1956, ch. 836, §104(a), excluded from coverage service performed by foreign agricultural workers lawfully admitted on a temporary basis from any foreign country or possession thereof.


Subsec. (i)(17). Act Aug. 1, 1956, ch. 836, §104(c)(11), 121(c), added pars. (16) and (17).

Subsecs. (m), (n). Act Aug. 1, 1956, ch. 837, added subsecs. (m) and (n).


1954—Subsec. (a)(B). Act Sept. 1, 1954, §101(m), included within definition of “employment” service performed outside the United States by citizens of the United States as employees for foreign subsidiaries of domestic corporations under certain conditions.

Subsec. (a)(1). Act Sept. 1, 1954, §101(a)(4), removed specific exception from employment of services performed in connection with the ginning of cotton, and added an exception for services performed by West Indian agricultural workers lawfully admitted to the United States on a temporary basis.

Subsec. (a)(3). Act Sept. 1, 1954, §101(a)(5), redesignated par. (4) as (3) and struck out former par. (3).
Amendment by Pub. L. 105–33 applicable with respect to all months beginning after the date on which the Director of the Office of Personnel Management issues regulations to carry out section 11–1729, District of Columbia Code, see section 11246(b)(4) of Pub. L. 105–33, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Effective Date of 1996 Amendment
Amendment by Pub. L. 104–188 applicable to remuneration paid after Dec. 31, 1994, and, unless payor treated such remuneration when paid as being subject to tax under chapter 21 of Title 26, Internal Revenue Code, after Dec. 31, 1984, and before Jan. 1, 1995, see section 1116(a)(3) of Pub. L. 104–188, set out as a note under section 3121 of Title 26.

Effective Date of 1994 Amendments


Section 303(e) of Pub. L. 103–296 provided that: "The amendments made by subsections (a), (b), and (c) [amending this section, section 410 of the Internal Revenue Code, and section 3121 of Title 26, Internal Revenue Code] shall apply with respect to service performed on or after January 1, 1995."

Amendment by section 319(b)(1), (3) of Pub. L. 103–296 applicable with respect to services performed after calendar quarter following calendar quarter in which Aug. 15, 1994, occurs, see section 319(c) of Pub. L. 103–296, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Amendment by section 320(b) of Pub. L. 103–296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103–296, set out as a note under section 761 of Title 26.

Effective Date of 1992 Amendment

Effective Date of 1990 Amendment
Amendment by Pub. L. 101–508 applicable with respect to service performed after July 1, 1991, see section 11532(d) of Pub. L. 101–508, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Effective Date of 1989 Amendment
Amendment by Pub. L. 101–239 applicable with respect to any agreement in effect under section 3121(i) of Title 26, Internal Revenue Code, on or after June 15, 1989, with respect to which no notice of termination is in effect on such date, see section 10201(c) of Pub. L. 101–239, set out as a note under section 406 of Title 26.

Effective Date of 1988 Amendment
Amendment by section 1001(d)(2)(E) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by section 8015(b)(1) of Pub. L. 100–647 applicable as if such amendment had been included or reflected in section 304 of Federal Employees’ Retirement System Act of 1986, Pub. L. 99–340, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by section 8015(b)(1) of Pub. L. 100–647 applicable to any individual only upon the performance...
by such individual of service described in subpar. (C), (D), (E), (F), (G), or (H) of subsec. (a)(6) of this section on or after Nov. 10, 1988, see section 3015(c)(3) of Pub. L. 100–647, set out as a note under section 3211 of Title 26. Amendment by section 8016(a)(3)(B), (C) of Pub. L. 100–647 effective Nov. 10, 1988, except that any amendment to a provision of a particular Public Law which is referred to by its number in section 1395c of this title or to a provision of the Social Security Act [42 U.S.C. 301 et seq.], or to Title 26, as added or amended by a provision of a particular Public Law which is so referred to, effective as though included or reflected in the relevant provisions of that Public Law at the time of its enactment, see section 8016(b) of Pub. L. 100–647, set out as a note under section 3111 of Title 26.

**Effective Date of 1987 Amendment**

Amendment by section 9001(a)(1) of Pub. L. 100–203 applicable with respect to remuneration paid after Dec. 31, 1987, see section 9001(d) of Pub. L. 100–203, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 9004(a) of Pub. L. 100–203 applicable with respect to remuneration paid after Dec. 31, 1987, see section 9004(c) of Pub. L. 100–203, set out as a note under section 3121 of Title 26.

Amendment by section 9005(a) of Pub. L. 100–203 applicable with respect to remuneration paid after Dec. 31, 1987, see section 9005(c) of Pub. L. 100–203, set out as a note under section 3121 of Title 26.


Amendment by section 1885(b)(18)(B) of Pub. L. 99–514 applicable to services performed after Mar. 31, 1986, see section 1885(b)(18)(C) of Pub. L. 99–514, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 1885(b)(19) of Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1885(c) of Pub. L. 99–272, set out as a note under section 162 of Title 26.

Section 13205(d)(2) of Pub. L. 99–272 provided that:

"(A) In General.—The amendments made by subsection (b) [amending this section and sections 426, 426–1, and 1395c of this title] shall be effective after the date of the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1885(c) of Pub. L. 99–272, set out as a note under section 162 of Title 26.

"(B) Treatment of Certain Disabilities.—For purposes of establishing entitlement to hospital insurance benefits under part A of title XVIII of the Social Security Act [section 1395c et seq. of this title] pursuant to the amendments made by subsection (b), no individual may be considered to be under a disability for any period beginning before April 1, 1986."

**Effective Date of 1985 Amendment**

Section 3(c) of Pub. L. 99–221 provided that: "The amendments made by subsection (b) [amending this section and section 3211 of Title 26, Internal Revenue Code] apply to any return to the performance of service in the employ of the United States, or of an instrumentality thereof, after 1983."

**Effective Date of 1984 Amendment**

Section 2601(c) of Pub. L. 98–369 provided that: "Except as provided in subsection (d) [set out as a Qualification and Requalification of Federal Employees for Benefits note below], the amendments made by subsections (a) and (b) [amending this section and section 3121 of Title 26, Internal Revenue Code] and (provisions of subsection (e) [set out as a Services Performed for Nonprofit Organizations by Federal Employees note below]) shall be effective with respect to service performed after December 31, 1983."

Section 2603(e) of Pub. L. 98–369 provided that: "The amendments made by this section (amending this section and section 411 of this title and sections 1402 and 3121 of Title 26 and enacting provisions set out as a note under section 3121 of Title 26) shall apply to service performed after December 31, 1985."


Amendment by section 2663(a)(7), (j)(3)(A)(i) of Pub. L. 98–369 effective as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

**Effective Date of 1983 Amendment**

Amendment by section 101(a) of Pub. L. 98–21 effective with respect to service performed after Dec. 31, 1983, see section 101(d) of Pub. L. 98–21, as amended, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 102(a) of Pub. L. 98–21 effective with respect to service performed after Dec. 31, 1983, see section 102(c) of Pub. L. 98–21, set out as a note under section 3121 of Title 26.

Amendment by section 321(b) of Pub. L. 98–21 applicable to agreements entered into after Apr. 20, 1983, except that at the election of any American employer such amendment shall also apply to any agreement entered into on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98–21, set out as a note under section 406 of Title 26.

Amendment by section 322(a)(1) of Pub. L. 98–21 effective in taxable years beginning on or after Apr. 20, 1983, see section 322(c) of Pub. L. 98–21, set out as a note under section 3121 of Title 26.

Amendment by section 322(a)(2) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1983, see section 322(c)(1) of Pub. L. 98–21, set out as a note under section 3121 of Title 26.

**Effective Date of 1982 Amendment**

Amendment by section 269(b) of Pub. L. 97–248 applicable to services performed after Dec. 31, 1982, see section 269(e)(1) of Pub. L. 97–248, set out as an Effective Date note under section 3308 of Title 26, Internal Revenue Code.


**Effective Date of 1978 Amendment**

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(c) of Pub. L. 95–600, set out as a note under section 46 of Title 26, Internal Revenue Code.

**Effective Date of 1977 Amendment**

Amendment by Pub. L. 95–216 applicable with respect to remuneration paid and services rendered after Dec. 31, 1977, see section 351(d) of Pub. L. 95–216, set out as a note under section 409 of this title.

**Effective Date of 1976 Amendment**

Amendment by Pub. L. 94–563 applicable with respect to services performed after 1950, to the extent covered by waiver certificates filed or deemed to have been filed under section 3121(k)(4) or (5) of Title 26, see section 102 of Pub. L. 94–563, set out as a note under section 3121 of Title 26, Internal Revenue Code.

**Effective Date of 1974 Amendment**

going wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by this subchapter extended to the officers and employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1), (2) of Pub. L. 86-778, set out as a note under section 402 of this title.

Amendment by section 103(d) of Pub. L. 86-778 applicable only with respect to service performed after 1960, see section 103(v)(1) of Pub. L. 86-778, set out as a note under section 402 of this title.

Amendment by section 103(e), (f) of Pub. L. 86-778 applicable only with respect to service performed after 1960, except that insofar as the carrying on of a trade or business (other than performance of service as an employee) is concerned, the amendment shall be applicable only in the case of taxable years beginning after 1960, see section 103(v)(1), (3) of Pub. L. 86-778, set out as a note under section 402 of this title.

Amendment by section 103(j)(2)(A), (B) of Pub. L. 86-778 effective Sept. 13, 1960, see section 47(f) of Pub. L. 86-624, set out as a note under section 201 of this title.

Effective date of 1959 amendments


Effective date of 1958 amendments


Effective date of 1956 amendments

Amendment by act Aug. 1, 1956, ch. 837, effective Jan. 1, 1957, see section 603(a) of act Aug. 1, 1956.


Effective date of 1955 amendments

Amendment by section 103(e) in subsection (b) of section 103(f) of Pub. L. 86-778 shall apply with respect to services performed after 1954.

Amendment by section 103(f) in subsection (a) of section 103(e) of Pub. L. 86-778 shall apply with respect to services performed after 1954.

Amendment by section 103(f) in subsection (b) of section 103(e) of Pub. L. 86-778 shall apply with respect to services performed after 1954.
“(2)(A) Except as provided in subparagraphs (B) and (C), the amendments made by subsection (b) [amending this section] shall apply only with respect to service performed after June 30, 1957, and only if—


“(ii) in the case of the amendment made by paragraph (2) of such subsection [amending this section], the conditions prescribed in subparagraph (C) are met.


“(C) The amendment made by paragraph (2) of subsection (b) [amending this section] shall be effective only if—

“(1) the Board of Directors of the Tennessee Valley Authority submits to the Secretary of Health, Education, and Welfare, and the Secretary approves, before July 1, 1957, a plan, with respect to employees of the Tennessee Valley Authority, for the coordination, on an equitable basis, of the benefits provided by the retirement system applicable to such employees with the benefits provided by title II of the Social Security Act [this subchapter]; and

“(ii) such plan specifies, as the effective date of the plan, July 1, 1957, or the first day of a prior calendar quarter beginning not earlier than January 1, 1956. If the plan specifies as the effective date of the plan a day before July 1, 1957, the amendment made by paragraph (2) of subsection (b) [amending this section] shall apply with respect to service performed on or after such effective date; except that, if such effective date is prior to the day on which the Secretary approves the plan, such amendment shall not apply with respect to service performed, prior to the day on which the Secretary approves the plan, by an individual who is not an employee of the Tennessee Valley Authority on such day.

“(D) The Secretary of Health, Education, and Welfare shall, on or before July 31, 1957, submit a report to the Congress setting forth the details of any plan approved by him under subparagraph (B) or (C).”

Amendment by section 106(b) of act Aug. 1, 1956, ch. 826, applicable with respect to service performed after 1956, see section 105(d) of such act Aug. 1, 1956, set out as a note under section 409 of this title.

**Effective Date of 1954 Amendment**

Amendment by section 101(a)(4), (5) of act Sept. 1, 1954, applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the renumeration is paid after 1954, and amendment by section 101(b), (c)(1), (2), (e), and (f) of act Sept. 1, 1954, applicable only with respect to services performed after 1954, see section 101(n) of act Sept. 1, 1954, set out as a note under section 409 of this title.

**Effective Date of 1950 Amendment**

Section as added by section 104(a) of act Aug. 28, 1950, effective Jan. 1, 1951, see section 104(b) of act Aug. 28, 1950, set out as a note under section 409 of this title. Former section 410 was struck out effective Sept. 1, 1950, by section 105 of act Aug. 28, 1950.

**Line Item Veto**


**Repeals:** Amendments and Application of Amendments Unaffected

Section 202(b)(1) of Pub. L. 87–283, cited as a credit to this section, was repealed by Pub. L. 89–572, §5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorizations, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under section 2515 of Title 22, Foreign Relations and Intercourse.

### Transfer of Functions

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 406(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under section 542 of Title 6.

**Plan Amendments Not Required Until January 1, 1989**

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI §§1101–1147 and 1171–1177 or title XVIII §§1800–1899A of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, set out as a note under section 401 of Title 26, Internal Revenue Code.

**Federal Legislative Branch Employees Who Contribute Reduced Amounts by Reason of the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983**


### Qualification and Requalification of Federal Employees for Benefits


“(A) was subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983 (as determined for purposes of section 210(a)(5)(G) of the Social Security Act [subsec. (a)(5)(G) of this section]), and

“(B)(i) received a lump-sum payment under section 8342(a) of such title 5, or under the corresponding provision of the law establishing the other retirement system described in subparagraph (A), after December 31, 1983, and prior to June 15, 1984, or received such a payment on or after June 15, 1984, pursuant to an application which was filed in accordance with such section 8342(a) or the corresponding provision of the law establishing such other retirement system prior to that date, or

“(ii) otherwise ceased to be subject to subchapter III of chapter 83 of title 5, United States Code, for a period after December 31, 1983, to which section 210(a)(5)(G)(ii) of the Social Security Act applies.”
shall, if such individual again becomes subject to sub-
chapter III of chapter 83 of title 5 (or effectively applies for
coverage under such subchapter) after the date on which he
last ceased to be subject to such subchapter, but prior to, or
within 30 days after, the date of the enact-
ment of this Act [July 18, 1984], requalify for the ex-
emption from social security coverage and taxes under
section 210(a)(5) of the Social Security Act and section
3121(b)(5) of the Internal Revenue Code of 1986 [formerly
I.R.C. 1954] [26 U.S.C. 3121(b)(5)] as if the cessation of
coverage under title 5 had not occurred.

(2) An individual meeting the requirements of sub-
paragraphs (A) and (B) of paragraph (1) who is not in
the employ of the United States or an instrumentality
thereof on the date of the enactment of this Act [July
18, 1984] may requalify for such exemptions in the same
manner as under paragraph (1) if such individual again
becomes subject to subchapter III of chapter 83 of title
5 (or effectively applies for coverage under such sub-
chapter) within 30 days after the date on which he first
returns to service in the legislative branch after such
date of enactment, if such date (on which he returns to
service) is within 365 days after he was last in the em-
ploy of the United States or an instrumentality there-
of.

(3) If an individual meeting the requirements of sub-
paragraphs (A) and (B) of paragraph (1) does not again
become subject to subchapter III of chapter 83 of title
5 (or effectively apply for coverage under such sub-
chapter) prior to the date of the enactment of this Act
or within the relevant 30-day period as provided in
paragraph (1) or (2), social security coverage and taxes
by reason of section 210(a)(5)(G) of the Social Security
Act and section 3121(b)(5)(G) of the Internal Revenue
Code of 1986 shall, with respect to such individual’s
service in the legislative branch of the Federal Govern-
ment, become effective with the first month beginning
after such 30-day period.

(4) The provisions of paragraphs (1) and (2) shall
apply only for purposes of reestablishing an exemption
from social security coverage and taxes, and do not af-
fect the amount of service to be credited to an individ-
ual for purposes of title 5, United States Code.

Section 2601(e) of Pub. L. 98-369, as amended by Pub.
L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2065, provided that:

(3) If the individual meets the requirements of sub-
paragraphs (A) and (B) of paragraph (1) which is also
employment for purposes of this subchapter, the
amount of such accrued entitlements shall reduce the
accrued entitlements to future benefits under the Fed-
eral Retirement System of current and retired Federal
employees and their families.

Section 125(a) of Pub. L. 92-603, as amended by Pub.
L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2065, provided that:

"The provisions of section 210(a)(6)(B)(ii) of the Social
Security Act (as in effect on the date of the enact-
ment of this Act [July 18, 1984]) shall reduce the
amount of service to be credited to an individ-
ual for purposes of title 5, United States Code, by
the amount of service performed in the employ of a
Federal home loan bank.

"(1) with respect to all service performed in the
employ of a Federal home loan bank on and after the
date of the enactment of this Act [July 18, 1984]; and

"(2) in the case of individuals who are in the em-
ploy of a Federal home loan bank on such first day,
with respect to any service performed in the employ
of a Federal home loan bank after the last day of the
sixth calendar year preceding the year in which this
Act is enacted [1972]; but this paragraph shall be ef-
fective only if an amount equal to the taxes imposed
by sections 3101 and 3111 of such Code [sections 3101
and 3111 of Title 26, Internal Revenue Code] with re-
spect to the services of such individuals performed
in the employ of Federal home loan banks after the
last day of the sixth calendar year preceding the year
in which this Act is enacted [1972] are paid under the
provisions of section 3112 of such Code (section 3112
of Title 26) by July 1, 1973, or by such later date as may
be provided in an agreement entered into before such
date with the Secretary of the Treasury or his dele-
gate for purposes of this paragraph."

Section 115 of act Sept. 1, 1964, which prohibited
counting employment under other Federal retirement
systems in determining eligibility for benefits under
this subchapter, was repealed by Pub. L. 91-630, § 1, Dec.
31, 1969, 84 Stat. 1675. Section 2 of Pub. L. 91-630 pro-
vided that such repeal shall not apply in the case of a
person who, on Dec. 31, 1970, is receiving or is entitled
to receive benefits under any retirement system estab-
lished by the United States or any instrumentality
thereof unless he requests, in writing, the office which
administers his retirement system to apply it in this
case, and that any additional benefits payable pursuant
to such request shall commence on Jan. 1, 1971.

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, pro-
vided that in the interpretation of this section, the
term "net earnings from self-employment" means the gross income, as computed
under subtitle A of the Internal Revenue Code of
1986, derived by an individual from any trade or
business.
business carried on by such individual, less the deductions allowed under such subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of the ordinary net income or loss, as computed under section 702(a)(8) of such Code, from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary net income or loss—

(1) There shall be excluded rentals from real estate and from personal property leased with the real estate (including such rentals paid in crop shares, and including payments under section 363(2) of title 16 to individuals receiving (agricultural or horticultural) commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) in the production or the management of the production of such agricultural or horticultural commodities, and (B) there is material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) with respect to any such agricultural or horticultural commodity; and

(2) There shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest benefits (1) There shall be excluded rentals from real estate (including such rentals paid in crop shares, and including payments under section 363(2) of title 16 to individuals receiving (agricultural or horticultural) commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) in the production or the management of the production of such agricultural or horticultural commodities, and (B) there is material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) with respect to any such agricultural or horticultural commodity; and

(3) There shall be excluded any gain or loss (A) which is considered under subtitle A of the Internal Revenue Code of 1986 as gain or loss from the sale or exchange of a capital asset, (B) from the cutting of timber, or the disposal of timber, coal, or iron ore, if section 631 of the Internal Revenue Code of 1986 applies to such gain or loss, or (C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither (1) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor (ii) property held primarily for sale to customers in the ordinary course of the trade or business;

(4) The deduction for net operating losses provided in section 172 of the Internal Revenue Code of 1986 shall not be allowed;

(5)(A) If any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions;

(B) If any portion of a partner’s distributive share of the ordinary net income or loss from a trade or business carried on by a partnership is community income, all of the income derived from such trade or business (other than a trade or business carried on by a partner pursuant to a written plan of the partnership, which meets such requirements as are prescribed by the Secretary of the Treasury or his delegate, and which provides for payments on account of retirement, on a periodic basis, to partners generally or to a class or classes of partners, such payments to continue at least until such partner’s death, if—

(A) such partner rendered no services with respect to any trade or business carried on by such partnership (or its successors) during the taxable year of such partnership (or its successors), ending within or with his taxable year, in which such amounts were received, and

1 So in original. Probably should be “coupons”. See 2008 Amendment note below.
§ 411

By an individual or by a partnership and in case of any trade or business which is carried on the partnership for any taxable year of the partnership (even though beginning prior to 1951) net earnings from self-employment shall be which he is required to include in computing his that of the partnership, the distributive share

The exclusion from gross income provided by section 911(a)(1) of the Internal Revenue Code of 1986 shall not apply;

In lieu of the deduction provided by section 164(f) of the Internal Revenue Code of 1986 (relating to deduction for one-half of self-employment taxes), there shall be allowed a deduction equal to the product of—

(A) the taxpayer’s net earnings from self-employment for the taxable year (determined without regard to this paragraph), and

(B) one-half of the sum of the rates imposed by subsections (a) and (b) of section 1401 of such Code for such year;

There shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) of the Internal Revenue Code of 1986 to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services;

In the case of church employee income, the special rules of subsection (1)(1) of this section shall apply;

There shall be excluded income described in section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights);

The deduction under section 162(l) of the Internal Revenue Code of 1986 (relating to health insurance costs of self-employed individuals) shall not be allowed; and

Notwithstanding the preceding provisions of this subsection, each spouse’s share of income or loss from a qualified joint venture shall be taken into account as provided in section 761(f) of the Internal Revenue Code of 1986 in determining net earnings from self-employment of such spouse.

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based upon the ordinary net income or loss of the partnership for any taxable year of the partnership (even though beginning prior to 1951) ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 432(f) of this title—

(i) in the case of an individual, if the gross income derived by him from such trade or business is not more than the upper limit, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be 66% percent of such gross income; or

(ii) in the case of an individual, if the gross income derived by him from such trade or business is more than the upper limit and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than the lower limit, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be the lower limit; and

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1986 applies) is not more than the upper limit, his distributive share of income described in section 702(a)(8) of such Code derived from such trade or business may, at his option, be deemed to be an amount equal to 66% percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1986 applies) is more than the upper limit and his distributive share (whether or not distributed) of income described in section 702(a)(8) of such Code derived from such trade or business (computed under this subsection without regard to this sentence) is less than the lower limit, his distributive share of gross income described in such section 702(a)(8) derived from such trade or business may, at his option, be deemed to be the lower limit.

For purposes of the preceding sentence, gross income means—

(v) in the case of any such trade or business in which the income is computed under a cash receipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (6) and paragraph (8) of this subsection; and

(vi) in the case of any such trade or business in which the income is computed under an accrual method, the gross income from such trade or business, adjusted in accordance with the provisions of paragraphs (1) through (6) and paragraph (8) of this subsection;

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

The preceding sentence and clauses (i) through (iv) of the second preceding sentence shall also
apply in the case of any trade or business (other than a trade or business specified in such second preceding sentence) which is carried on by an individual who is self-employed on a regular basis as defined in subsection (g) of this section, or by a partnership of which an individual is a member on a regular basis as defined in subsection (g) of this section, but only if such individual’s net earnings from self-employment in the taxable year as determined without regard to this sentence are less than the lower limit and less than 5 taxable years in the case of any individual, and in no case in which an individual elects to determine the amount of his net earnings from self-employment for a taxable year under the provisions of the two preceding sentences with respect to a trade or business to which the second preceding sentence applies and with respect to a trade or business to which this sentence applies shall such net earnings for such year exceed the lower limit.

(b) Self-employment income

The term “self-employment income” means the net earnings from self-employment derived by an individual (other than a nonresident alien individual, except as provided by an agreement covered under section 433 of this title) during any taxable year beginning after 1950; except that such term shall not include—

(1) That part of the net earnings from self-employment which is in excess of—

(A) For any taxable year ending prior to 1955, (i) $3,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(B) For any taxable year ending after 1954 and prior to 1959, (i) $4,200, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(C) For any taxable year ending after 1958 and prior to 1966, (i) $4,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(D) For any taxable year ending after 1965 and prior to 1968, (i) $6,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(E) For any taxable year ending after 1967 and beginning prior to 1972, (i) $7,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(F) For any taxable year beginning after 1971 and prior to 1973, (i) $9,000, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(G) For any taxable year beginning after 1972 and prior to 1974, (i) $10,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(H) For any taxable year beginning after 1973 and prior to 1975, (i) $13,200, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(1) For any taxable year beginning in any calendar year after 1974, (i) an amount equal to the contribution and benefit base (as determined under section 402 of this title) which is effective for such calendar year, minus (ii) the amount of the wages paid to such individual during such taxable year; or

(2) The net earnings from self-employment, if such net earnings for the taxable year are less than $400.

An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for the purpose of this subsection, be considered to be a nonresident alien individual. In the case of church employee income, the special rules of subsection (i)(2) of this section shall apply for purposes of paragraph (2).

(c) Trade or business

The term “trade or business”, when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 of the Internal Revenue Code of 1986; except that such term shall not include—

(1) The performance of the functions of a public office, other than the functions of a public office of a State or a political subdivision thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered into by such State and the Commissioner of Social Security pursuant to section 418 of this title;

(2) The performance of service by an individual as an employee, other than—

(A) service described in section 410(a)(14)(B) of this title performed by an individual who has attained the age of eighteen,

(B) service described in section 410(a)(16) of this title,

(C) service described in section 410(a)(11), (12), or (15) of this title performed in the United States by a citizen of the United States, except service which constitutes “employment” under section 410(r) of this title,

(D) service described in paragraph (4) of this subsection,

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Commissioner of Social Security pursuant to section 418 of this title;

(F) service described in section 410(a)(20) of this title, and

(G) service described in section 410(a)(8)(B) of this title;

(3) The performance of service by an individual as an employee or employee representative as defined in section 3231 of the Internal Revenue Code of 1986;

(4) The performance of service by a duly ordained, commissioned, or licensed minister of
a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(5) The performance of service by an individual in the exercise of his profession as a Christian Science practitioner; or

(6) The performance of service by an individual during the period for which an exemption under section 1402(g) of the Internal Revenue Code of 1986 is effective with respect to him.

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under section 1402(e) of the Internal Revenue Code of 1986 is effective with respect to him.

(d) Partnership and partner

The term “partnership” and the term “partner” shall have the same meaning as when used in subchapter K of chapter 1 of the Internal Revenue Code of 1986.

(e) Taxable year

The term “taxable year” shall have the same meaning as when used in subtitle A of the Internal Revenue Code of 1986; and the taxable year of any individual shall be a calendar year unless he has a different taxable year for the purposes of subtitle A of such Code, in which case his taxable year for the purposes of this subchapter shall be the same as his taxable year under such subtitle A.

(f) Partner’s taxable year ending as result of death

In computing a partner’s net earnings from self-employment for his taxable year which ends as a result of his death (but only if such taxable year ends within, and not with, the taxable year of the partnership), there shall be included so much of the deceased partner’s distributive share of the partnership’s ordinary income or loss for the partnership taxable year as is not attributable to an interest in the partnership during any period beginning on or after the first day of the first calendar month following the month in which such partner died. For purposes of this subsection—

(1) in determining the portion of the distributive share which is attributable to any period specified in the preceding sentence, the ordinary income or loss of the partnership shall be treated as having been realized or sustained ratably over the partnership taxable year; and

(2) the term “deceased partner’s distributive share” includes the share of his estate or of any other person succeeding, by reason of his death, to rights with respect to his partnership interest.

(g) Regular basis

An individual shall be deemed to be self-employed on a regular basis in a taxable year, or to be a member of a partnership on a regular basis in such year, if he had net earnings from self-employment, as defined in the first sentence of subsection (a) of this section, of not less than $400 in at least two of the three consecutive taxable years immediately preceding such taxable year from trades or businesses carried on by such individual or such partnership.

(h) Option dealers and commodity dealers

(1) In determining the net earnings from self-employment of any options dealer or commodities dealer—

(A) notwithstanding subsection (a)(3)(A) of this section, there shall not be excluded any gain or loss (in the normal course of the taxpayer’s activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts, and

(B) the deduction provided by section 1292 of the Internal Revenue Code of 1986 shall not apply.

(2) For purposes of this subsection—

(A) The term “options dealer” has the meaning given such term by section 1256(g)(8) of such Code.

(B) The term “commodities dealer” means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

(C) The term “section 1256 contracts” has the meaning given to such term by section 1256(b) of such Code.

(i) Church employee income

(1) In applying subsection (a) of this section—

(A) church employee income shall not be reduced by any deduction;

(B) church employee income and deductions attributable to such income shall not be taken into account in determining the amount of other net earnings from self-employment.

(2)(A) Subsection (b)(2) of this section shall be applied separately—

(i) to church employee income, and

(ii) to other net earnings from self-employment.

(B) In applying subsection (b)(2) of this section to church employee income, “$100” shall be substituted for “$400”.

(3) Paragraph (1) shall not apply to any amount allowable as a deduction under subsection (a)(11) of this section, and paragraph (1) shall be applied before determining the amount so allowable.

(4) For purposes of this section, the term “church employee income” means gross income for services which are described in section 410(a)(B)(B) of this title (and are not described in section 410(a)(B)(A) of this title).

(j) Codification of treatment of certain termination payments received by former insurance salesmen

Nothing in subsection (a) of this section shall be construed as including in the net earnings from self-employment of an individual any amount received during the taxable year from an insurance company on account of services performed by such individual as an insurance salesman for such company if—

(1) such amount is received after termination of such individual’s agreement to perform such services for such company,
(2) such individual performs no services for such company after such termination and before the close of such taxable year,

(3) such individual enters into a covenant not to compete against such company which applies over the 1-year period beginning on the date of such termination, and

(4) the amount of such payment—

(A) depends primarily on policies sold by or credited to the account of such individual during the last year of such agreement or the extent to which such policies remain in force for some period after such termination, or both, and

(B) does not depend to any extent on length of service or overall earnings from services performed for such company (without regard to whether eligibility for payment depends on length of service).

(k) Upper and lower limits

For purposes of subsection (a)—

(1) The lower limit for any taxable year is the sum of the amounts required under section 413(d) of this title for a quarter of coverage in effect with respect to each calendar quarter ending with or within such taxable year.

(2) The upper limit for any taxable year is the amount equal to 150 percent of the lower limit for such taxable year.


REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in text, is classified to Title 26, Internal Revenue Code.

**AMENDMENTS**

2008—Subsec. (a). Pub. L. 110–246, § 15352(b)(1), in concluding provisions, substituted “the upper limit” for “$2,400” wherever appearing and “the lower limit” for “$1,600” wherever appearing.

Subsec. (a)(1). Pub. L. 110–246, § 15301(b), inserted “...and including payments under section 3833(2) of title 16 to individuals receiving benefits under section 402 or 422 of this title after “crop shares”.”

Subsec. (a)(2). Pub. L. 110–246, § 4115(c)(1)(A)(i), (B)(iii), substituted “benefits” for “coupons”.


**CODIFICATION**

Subsec. (c)(2)(C). Pub. L. 103–296, § 319(b)(2), which directed that subpar. (C) be amended by inserting ‘‘, except service which constitutes ‘employment’ under section 414(r) of this title’’ before the semicolon, was executed by making the insertion before the comma at end, to reflect the probable intent of Congress.


1990—Subsec. (a). Pub. L. 101–506, § 5123(a)(1), redesignated last undesignated paragraph, relating to income of an individual which results from or is attributable to performance of services by such individual as a director of a corporation, as subsec. (b)(5) of section 403 of this title.


Subsec. (a)(14). Pub. L. 100–147, § 3043(b), added par. (14) relating to the exclusion of income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (income derived by Indians from exercise of fishing rights).

Pub. L. 100–147, § 1011B(b)(4), added par. (1) relating to nonallowability of deduction under section 162(m) (health insurance costs of self-employed individuals).

1987—Subsec. (a). Pub. L. 100–203, § 9022(a), inserted par. at end relating to income of an individual which results from or is attributable to the performance of services by such individual as a director of a corporation.


Subsec. (a)(8). Pub. L. 100–203, § 9023(b)(2), amended par. (8) generally. Prior to amendment, par. (8) read as follows: ‘‘The term ‘possession of the United States’ as used in sections 931 (relating to income from sources within the possessions of the United States) and 932 (relating to possessions of possessions of the United States) of the Internal Revenue Code of 1986 shall be deemed not to include the Virgin Islands, Guam, or American Samoa.’’

1986—Subsec. (a)(13). Pub. L. 99–514, § 1882(b)(2)(B)(1), amended par. (13) generally. Prior to amendment, par. (13) read as follows: ‘‘With respect to remuneration for service which are treated as services in a trade or business under subsection (c)(2)(G) of this section—

‘‘(A) no deduction for trade or business expenses provided under the Internal Revenue Code of 1954 (other than the deduction under paragraph (11) of this subsection) shall apply; and

‘‘(B) the provisions of subsection (b)(2) of this section shall not apply; and

‘‘(C) if the amount of such remuneration from an employer for the taxable year is less than $100, such remuneration from that employer shall not be included in self-employment income.’’

Subsec. (b). Pub. L. 99–514, § 1882(b)(2)(B)(1), inserted at end ‘‘In the case of church employer income, the special rules of subsection (1)(c) of this section shall apply for purposes of paragraph (2).’’


Pub. L. 98–369, § 2663(a)(8)(D), in provisions following numbered par., substituted ‘‘702(a)(8)’’ for ‘‘702(a)(7)’’ in cl. (iii) and in two places in cl. (iv).


Subsec. (b)(1)(D), (G) to (I). Pub. L. 98–369, § 2663(a)(8)(E), realigned margins of subpars. (D) and (G) to (I).


Subsec. (g)(2). Pub. L. 98–369, § 2663(a)(8)(J), substituted ‘‘substitutes for such individual as a director of a corporation.’’

1983—Subsec. (a)(10). Pub. L. 98–21, § 323(b)(2)(A), substituted ‘‘The exclusion from gross income provided by section 911(a)(1) of the Internal Revenue Code of 1954 shall not apply’’ for ‘‘In the case of an individual described in section 911(d)(1)(B) of the Internal Revenue Code of 1954, the exclusion from gross income provided by section 911(a)(1) of such Code shall not apply’’.

Pub. L. 98–21, § 323(b)(2)(B), temporarily amended par. (10) by substituting ‘‘In the case of an individual described in section 911(d)(1)(B) of the Internal Revenue Code of 1954, the exclusion from gross income provided by section 911(a)(1) of such Code shall not apply’’ for ‘‘In the case of an individual who has been a resident of the United States during the entire taxable year, the exclusion from gross income provided by section 911(a)(2) of the Internal Revenue Code of 1954 shall not apply’’.

‘‘See Effective and Termination Dates of 1983 Amendment note below.’’


Subsec. (b). Pub. L. 98–21, § 323(b)(1), as amended by Pub. L. 98–21, § 124(c)(2), inserted ‘‘, except as provided by an agreement under section 433 of this title’’ after ‘‘non-resident alien individual’’ in provisions preceding par. (1).
such owner or tenant)" after "material participation by the owner or tenant" wherever appearing.


1972—Subsec. (a). Pub. L. 92–603, §§ 121(a)(1), 124(a), 140(a), struck out provisions of par. (7) relating to citizens of the United States performing the specified services as an employee of an American employer (as defined in section 410(e) of this title) or as a minister in a foreign country who has a congregation composed predominantly of United States citizens, inserted provisions in par. (7) relating to the applicability of sections 911 and 931 of title 26, and added par. (10) and provisions for an optional method for determining self-employment earnings.


Subsec. (c). Pub. L. 90–248, § 115(a), substituted in last sentence "unless an exemption under section 1402(e) of the Internal Revenue Code of 1954 is effective with respect to him" for "during the period for which a certificate filed under section 1402(e) of the Internal Revenue Code of 1954 is in effect".

Subsec. (c)(1). Pub. L. 90–248, § 122(a)(1), included in term "trade or business" functions of a public office of a State or political subdivision thereof with respect to fees received in a position compensated solely on a fee basis and which position is not covered under a State social security coverage agreement.


1965—Subsec. (a). Pub. L. 89–97, § 312(a), substituted "$2,000" for "$1,800" in cls. (i) to (iv) and "$1,000" for "$1,200" in cls. (ii) and (iv) of second sentence following par. (8), wherever appearing.

Subsec. (b)(1)(C). Pub. L. 89–97, § 320(a)(2)(A), inserted "and prior to 1966" after "1958" and substituted "and" for "or" after the semicolon.

Subsec. (b)(1)(D). Pub. L. 89–97, § 320(a)(2)(B), added subpar. (D). Subsec. (d). Pub. L. 89–97, § 311(a)(1), (2), struck out par. (5) "doctor of medicine or" before, and "or character of a partnership" after "service described in paragraph (4) of this subsection to be performed in the United States by a citizen of the United States who is ministers in foreign countries and have congregations composed predominantly of United States citizens, and optometrists.

1954—Subsec. (a)(1). Act Sept. 1, 1954, § 104(c)(2), struck out from exclusion, income derived by an owner or tenant from land if such income is derived under an arrangement with another individual for the production by such individual of agricultural or horticultural commodities if such arrangement provides for material participation by the owner or tenant in the production or the management of the production of such commodities, and there is material participation by the owner or tenant with respect to any such commodity.

Subsec. (a)(7)(B). Act Aug. 1, 1956, § 104(h), included citizens of the United States who are ministers in foreign countries and have congregations composed predominantly of citizens of the United States.

Subsec. (c)(2). Act Aug. 1, 1956, § 104(c)(3), included within term "trade or business" service described in section 410(a)(16) of this title.

Subsec. (c)(3)(C). Act Sept. 1, 1954, § 104(a)(3), included in term "trade or business" services in which the income is computed under an accrual method, and partnerships, to change the method of computation of net earnings for individuals by permitting those whose gross income is not more than $1,800 to deem their net earnings to be 66% percent of such gross income, and those whose gross income is more than $1,800 and the net earnings are less than $1,200, to deem the net earnings to be $1,200, and to provide for the computation of net earnings for members of partnerships.

Subsec. (a)(11). Act Aug. 1, 1956, § 104(c)(2), struck out from exclusion, income derived by an owner or tenant from land if such income is derived under an arrangement with another individual for the production by such individual of agricultural or horticultural commodities if such arrangement provides for material participation by the owner or tenant in the production or the management of the production of such commodities, and there is material participation by the owner or tenant with respect to any such commodity.

Subsec. (a)(2). Act Sept. 1, 1954, § 104(g)(1), redesignated par. (3) as (2), and struck out former par. (2).

Subsec. (a)(3). Act Sept. 1, 1954, § 104(g)(3), redesignated par. (4) as (3), and struck out from "net earnings from self-employment" the gain or loss derived from coal royalties under certain conditions. Former par. (3) redesignated (2).

Subsec. (a)(4) to (6). Act Sept. 1, 1954, § 104(g)(1), redesignated paras. (5) to (7) as (4) to (6), respectively. Former par. (4) redesignated (3).


Subsec. (a). Act Sept. 1, 1954, § 104(g)(1), inserted two sentences at end.

Subsec. (b)(1). Act Sept. 1, 1954, § 104(b), excluded from self-employment income, for taxable years after 1954 any amount in excess of $4,200 minus the amount of the wages paid to an individual during the taxable year.

Subsec. (c). Subsec. Act Sept. 1, 1954, § 104(d)(2), inserted two sentences at end making provisions of par. (4) inapplicable to service performed during the period for which a certificate filed under section 1402(e) of title 26 is in effect.

Subsec. (c)(2). Act Sept. 1, 1954, § 101(d)(1), inserted "and other than service described in paragraph (4) of this subsection after "eighteen">

Subsec. (c)(3). Act Sept. 1, 1954, § 101(y)(4), struck out exclusion from coverage in case of architects, certified public accountants, accountants registered or licensed as accountants under State or municipal law, full-time
practicing public accountants, funeral directors, or professional engineers.

1950—Subsec. (a)(7). Act Sept. 23, 1950, made provisions applicable to Puerto Rico and provided the basis for computation of net earnings.

Effective Date of 2008 Amendment


Amendment by section 15301(b) of Pub. L. 110–246 applicable to payments made after Dec. 31, 2007, see section 15301(c) of Pub. L. 110–246, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Amendment by section 15352(b)(1), (2) of Pub. L. 110–246 applicable to taxable years beginning after Dec. 31, 2007, see section 15352(c) of Pub. L. 110–246, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Effective Date of 2007 Amendment
Amendment by Pub. L. 110–28 applicable to taxable years beginning after Dec. 31, 2006, see section 8215(c) of Pub. L. 110–28, set out as a note under section 761 of Title 26, Internal Revenue Code.

Effective Date of 2004 Amendment
Pub. L. 108–203, title IV, §422(b), Mar. 2, 2004, 118 Stat. 586, provided that: "The amendment made by this section [amending this section shall apply to years beginning before, on, or after December 31, 1994."

Effective Date of 1997 Amendment
Amendment by Pub. L. 105–34 applicable to payments after Dec. 31, 1997, see section 922(c) of Pub. L. 105–34, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Effective Date of 1994 Amendment
Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1994, see section 110(a) of Pub. L. 103–296, set out as a note under section 402 of Title 26, Internal Revenue Code.

Effective Date of 1993 Amendment
Amendment by section 5123(a)(1) of Pub. L. 101–508 applicable with respect to services performed in taxable years beginning after Dec. 31, 1990, see section 5123(b) of Pub. L. 101–508, set out as a note under section 402 of Title 26, Internal Revenue Code.

Effective Date of 1990 Amendment
Amendment by section 5130(a)(2) of Pub. L. 101–508 applicable to taxable years beginning after July 15, 1994, occurs, see section 5130(c) of Pub. L. 101–508, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Effective Date of 1988 Amendment
Amendment by section 1011b(b)(4) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019 of Pub. L. 100–647, set out as a note under section 1401 of Title 26, Internal Revenue Code.

Amendment by section 3043(b) of Pub. L. 100–474 applicable to all periods beginning before, on, or after Nov. 10, 1988, with no inference created as to existence or non-existence or scope of any exemption from tax for income derived from fishing rights secured as of Mar. 17, 1988, by any treaty, law, or Executive Order, see section 3044 of Pub. L. 100–647, set out as an Effective Date note under section 7873 of Title 26.

Amendment by section 8016(a)(2) of Pub. L. 100–474 effective Nov. 10, 1988, except that any amendment to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.], or to Title 26, as added or amended by a provision of a particular Public Law which is so referred to, effective as though included or reflected in the relevant provisions of that Public Law at the time of its enactment, see section 8016(b) of Pub. L. 100–474, set out as a note under section 111 of Title 26.

Effective Date of 1987 Amendment
Amendment by section 9022(a) of Pub. L. 100–203 applicable with respect to services performed in taxable years beginning on or after Jan. 1, 1988, see section 9022(c) of Pub. L. 100–203, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Effective Date of 1986 Amendment
Amendment by section 1882(b)(2) of Pub. L. 99–514 applicable to remuneration paid or derived in taxable years beginning after Dec. 31, 1985, see section 1882(b)(3) of Pub. L. 99–514, set out as a note under section 1402 of Title 26, Internal Revenue Code.


Effective Date of 1984 Amendment
Amendment by section 102(c)(2) of Pub. L. 98–369 applicable to taxable years beginning after July 15, 1984, except as otherwise provided, see section 102(c)(3), (g) of Pub. L. 98–369, set out as a note under section 1256 of Title 26, Internal Revenue Code.

Amendment by section 2663(b)(1), (d)(1) of Pub. L. 98–369 applicable to service performed after Dec. 31, 1983, see section 2663(e) of Pub. L. 98–369, set out as a note under section 410 of this title.

Amendment by section 2663(a)(6) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 410 of this title.

Effective and Termination Dates of 1983 Amendment
Amendment by section 124(c)(3) of Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note under section 1401 of Title 26, Internal Revenue Code.

Amendment by section 322(b)(2) of Pub. L. 98–21 effective in taxable years beginning on or after Apr. 20, 1983, see section 322(c) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note under section 3121 of Title 26.

Amendment by section 323(b)(2)(A) of Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, see section 323(c)(2) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note under section 1402 of Title 26.

Section 323(b)(2)(B) of Pub. L. 98–21 provided that the amendment made by such section 323(b)(2)(B) is effective with respect to taxable years beginning after Dec. 31, 1981, and before Jan. 1, 1984.

Effective Date of 1978 Amendment
Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(c) of Pub. L. 95–600, set out as a note under section 46 of Title 26, Internal Revenue Code.
Section 313(c) of Pub. L. 95–216 provided that: "The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply with respect to taxable years beginning after December 31, 1971."

Section 106(c) of Pub. L. 93–368 provided that: "The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply with respect to taxable years beginning after December 31, 1973."

Effective Date of 1973 Amendments
Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after December 31, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of this title.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 268(e) of Pub. L. 93–66, set out as a note under section 409 of this title.

Effective Date of 1972 Amendments
Section 121(c) of Pub. L. 92–461 provided that: "The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply only with respect to taxable years beginning after December 31, 1972."

Section 121(c) of Pub. L. 92–683 provided that: "The amendments made by this section [amending this section and section 1402 of Title 26] shall apply with respect to taxable years beginning after December 31, 1971."

Section 140(c) of Pub. L. 92–683 provided that: "The amendments made by this section [amending this section and section 1402 of Title 26] shall apply with respect to taxable years beginning after December 31, 1972."

Amendment by Pub. L. 92–338 applicable only with respect to taxable years beginning after 1972, see section 252(c) or 261(b), set out as a note under section 409 of this title.

Effective Date of 1971 Amendment
Amendment by Pub. L. 92–5 applicable only with respect to taxable years beginning after 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of this title.

Effective Date of 1968 Amendment
Amendment by section 108(a)(2) of Pub. L. 90–248 applicable only with respect to taxable years ending after 1967, see section 115(c) of Pub. L. 90–248, set out as a note under section 409 of this title.

Amendment by section 115(a) of Pub. L. 90–248 applicable only with respect to taxable years ending after 1967, see section 115(c) of Pub. L. 90–248, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Amendment by section 118(b) of Pub. L. 90–248 applicable only with respect to taxable years ending on or after Dec. 31, 1967, see section 118(c) of Pub. L. 90–248, set out as a note under section 1402 of Title 26.

Amendment by section 122(a)(1), (2) of Pub. L. 90–248 applicable with respect to fees received after 1967 and with respect to election to exempt fees from coverage as self-employment income, see section 122(c) of Pub. L. 90–248, set out as a note under section 1402 of Title 26.

Effective Date of 1965 Amendment
Amendment by section 311(a)(1), (2) of Pub. L. 89–97 applicable only with respect to taxable years ending on or after Dec. 31, 1965, see section 311(c) of Pub. L. 89–97, set out as a note under section 410 of this title.

Section 312(c) of Pub. L. 89–97 provided that: "The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply only with respect to taxable years beginning after December 31, 1965."

Amendment by section 318(b) of Pub. L. 89–97 applicable with respect to taxable years beginning after December 31, 1956, see section 318(e) of Pub. L. 89–97, set out as a note under section 1402 of Title 26.

Amendment by section 328(a)(2) of Pub. L. 89–97 applicable with respect to taxable years ending after 1965, see section 329(c) of Pub. L. 89–97, set out as a note under section 3121 of Title 26.

Effective Date of 1964 Amendment
Amendment by Pub. L. 88–272 applicable with respect to amounts received or accrued in taxable years beginning after Dec. 31, 1963, attributable to iron ore mined in such years, see section 272(c) of Pub. L. 88–272, set out as a note under section 272 of Title 26, Internal Revenue Code.

Effective Date of 1960 Amendment
Amendment by section 103(g) of Pub. L. 86–778 applicable only in the case of taxable years beginning after 1960, except that, insofar as involves the nonapplication of section 932 of Title 26, Internal Revenue Code, to the Virgin Islands for purposes of sections 1401 et seq. of Title 26 and this section, such amendment shall be effective in the case of all taxable years with respect to which such sections 1401 et seq. (and corresponding provisions of prior law) and this section are applicable, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

Amendment by section 103(b) of Pub. L. 86–778 applicable only in the case of taxable years beginning after 1960, see section 103(v)(1), (3) of Pub. L. 86–778, set out as a note under section 402 of this title.


Section 106(c) of Pub. L. 86–778 provided that: "The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply only with respect to taxable years ending on or after December 31, 1960; except that for purposes of section 203 of the Social Security Act [section 403 of this title], the amendment made by subsection (a) [amending this section] shall apply only with respect to taxable years (of the individual performing the service involved) beginning after the date of the enactment of this Act [Sept. 13, 1960]."

Effective Date of 1958 Amendment
Section 313(b) of Pub. L. 85–840 provided that: "The amendment made by subsection (a) [amending this section] shall apply—

"(1) with respect to individuals who die after the date of the enactment of this Act [Aug. 28, 1958], and

"(2) with respect to any individual who died after 1955 and on or before the date of the enactment of this Act [Aug. 28, 1958], but only if the requirements of section 603(b)(2) of this Act [section 603(b)(2) of this title] are met."

Effective Date of 1957 Amendment
Amendment by Pub. L. 85–239 applicable, except for purposes of section 403 of this title, only with respect to taxable years ending on or after December 31, 1957, see section 5(c) of Pub. L. 85–239, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Effective Date of 1956 Amendment
Amendment by section 104(c)(3), (d) of act Aug. 1, 1956, applicable with respect to taxable years ending after 1955, see section 104(i) of such act Aug. 1, 1956, set out as a note under section 410 of this title.

Amendment by section 104(c)(3) of act Aug. 1, 1956, applicable with respect to taxable years ending after 1954, see section 104(i) of act Aug. 1, 1956, set out as a note under section 410 of this title.
Amendment by section 104(h) of act Aug. 1, 1956, applicable with respect to the same taxable years with respect to which the amendment to section 312(k)(1) of Title 26, Internal Revenue Code, applies, see section 104(i) of act Aug. 1, 1956, set out as a note under section 410 of this title, and section 201(m)(2) of such act Aug. 1, 1956, set out as a note under section 412 of this title.

Section 106(b) of act Aug. 1, 1956, provided that: "The amendment made by subsection (a) [amending this section] shall be effective with respect to taxable years ending on or after December 31, 1956."

**Effective Date of 1954 Amendment**

Amendments by section 101(d), (g)(1), (2), (4) of act Sept. 1, 1954, applicable only with respect to taxable years beginning after 1950, and, for purposes of section 403 of this title, the amendments made by paragraphs (1), (2), and (4) of subsection (g) and by subsection (d) [of said section 101] effective with respect to net earnings from self-employment derived after 1954, see section 101(m) of act Sept. 1, 1954, set out as a note under section 406 of this title.

**Effective Date of 1956 Amendment**

Amendment by act Sept. 23, 1956, applicable with respect to taxable years beginning after Dec. 31, 1959, see section 221(k) of act Sept. 23, 1956.

**Plan Amendments Not Required Until January 1, 1989**

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

**Treaty Obligations**

Section 214 of act Sept. 23, 1956, provided that: "No amendment made by this Act [see Tables for classification] shall apply in any case where its application would be contrary to any treaty obligation of the United States."

§ 412. Self-employment income credited to calendar years

(a) Taxable years prior to 1978

For the purposes of determining average indexed monthly earnings, average monthly wage, and quarters of coverage the amount of self-employment income derived during any taxable year which begins before 1978 shall—

(1) in the case of a taxable year which is a calendar year, be credited equally to each quarter of such calendar year; and

(2) in the case of any other taxable year, be credited equally to the calendar quarter in which such taxable year ends and to each of the next three or fewer preceding quarters any part of which is in such taxable year.

(b) Taxable years after 1977

Except as provided in subsection (c), for the purposes of determining average indexed monthly earnings, average monthly wage, and quarters of coverage the amount of self-employment income derived during any taxable year which begins after 1977 shall—

(1) in the case of a taxable year which is a calendar year or which begins with or during a calendar year and ends with or during such year, be credited to such calendar year; and

(2) in the case of any other taxable year, be allocated proportionately to the two calendar years, portions of which are included within such taxable year, on the basis of the total of months in each such calendar year which are included completely within the taxable year.

For purposes of clause (2), the calendar month in which a taxable year ends shall be treated as included completely within that taxable year.

(c) Proportional allocation

For the purpose of determining average indexed monthly earnings, average monthly wage, and quarters of coverage in the case of any individual who elects the option described in clause (ii) or (iv) in the matter following section 411(a)(16) of this title for any taxable year that does not begin with or during a particular calendar year and end with or during such year, the self-employment income of such individual deemed to be derived during such taxable year shall be allocated to the two calendar years, portions of which are included within such taxable year, in the same proportion to the total of such deemed self-employment income as the sum of the amounts applicable under section 413(d) of this title for the calendar quarters ending with or within each such calendar year bears to the lower limit for such taxable year specified in section 411(k)(1) of this title.


**Classification**


**AMENDMENTS**

2008—Subsec. (b). Pub. L. 110–246, §15352(b)(3)(A), substituted “Except as provided in subsection (c), for the purposes” for “For the purposes” in introductory provisions.


1977—Pub. L. 95–216 designated existing provisions as subsec. (a), substituted provisions relating to crediting of self-employment income to calendar years for provisions relating to crediting of self-employment income to calendar quarters, and added subsec. (b).

**Effective Date of 2008 Amendment**


Amendment by section 15352(b)(3) of Pub. L. 110–246 applicable to taxable years beginning after Dec. 31, 2007, see section 15352(c) of Pub. L. 110–246, set out as a note under section 1402 of Title 26, Internal Revenue Code.
under section 409 of this title.

see section 351(d) of Pub. L. 95–216, set out as a note under section 490 of this title.

§ 413. Quarter and quarter of coverage

(a) Definitions

For the purposes of this subchapter—

(1) The term “quarter”, and the term “calendar quarter”, mean a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(2)(A) The term “quarter of coverage” means—

(i) for calendar years before 1978, and subject to the provisions of subparagraph (B), a quarter in which an individual has been paid $50 or more in wages (except wages for agricultural labor paid after 1954) or for which he has been credited (as determined under section 412 of this title) with $100 or more of self-employment income; and

(ii) for calendar years after 1977, and subject to the provisions of subparagraph (B), each portion of the total of the wages paid and the self-employment income credited (pursuant to section 412 of this title) to an individual in a calendar year which equals the amount required for a quarter of coverage in that calendar year (as determined under subsection (d) of this section), with such quarter of coverage being assigned to a specific calendar quarter in such calendar year only if necessary in the case of any individual who has attained age 62 or died or is under a disability and the requirements for insured status in subsection (a) or (b) of section 414 of this title, the requirements for entitlement to a computation or recomputation of his primary insurance amount, or the requirements of paragraph (3) of section 416(i) of this title would not otherwise be met.

(B) Notwithstanding the provisions of subparagraph (A)—

(i) no quarter after the quarter in which an individual dies shall be a quarter of coverage, and no quarter any part of which is included in a period of disability (other than the initial quarter and the last quarter of such period) shall be a quarter of coverage;

(ii) if the wages paid to an individual in any calendar year equal $3,000 in the case of a calendar year before 1951, or $3,600 in the case of a calendar year after 1954 and before 1955, or $4,200 in the case of a calendar year after 1954 and before 1959, or $4,800 in the case of a calendar year after 1958 and before 1966, or $6,600 in the case of a calendar year after 1965 and before 1968, or $7,800 in the case of a calendar year after 1967 and before 1972, or $9,000 in the case of a calendar year after 1966 and before 1971, or $10,800 in the case of a calendar year after 1970 and before 1974, or $13,200 in the case of a calendar year after 1973 and before 1975, or an amount equal to the contribution and benefit base (as determined under section 430 of this title) which is effective for the calendar year in the case of any taxable year beginning in any calendar year after 1974 and before 1978, each quarter any part of which falls in such year shall (subject to clauses (i) and (v)) be a quarter of coverage;

(iv) if an individual is paid wages for agricultural labor in a calendar year after 1954 and before 1978, then, subject to clauses (i) and (v), (I) the last quarter of such year which can be but is not otherwise a quarter of coverage shall be a quarter of coverage if such wages equal or exceed $100 but are less than $200; (II) the last two quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if such wages equal or exceed $200 but are less than $300; (III) the last three quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if such wages equal or exceed $300 but are less than $400; and (IV) each quarter of such year which is not otherwise a quarter of coverage shall be a quarter of coverage if such wages are $400 or more;

(v) no quarter shall be counted as a quarter of coverage prior to the beginning of such quarter;

(vi) not more than one quarter of coverage may be credited to a calendar quarter; and

(vii) no more than four quarters of coverage may be credited to any calendar year after 1977.

If in the case of an individual who has attained age 62 or died or is under a disability and who has been paid wages for agricultural labor in a calendar year after 1954 and before 1978, the requirements for insured status in subsection (a) or (b) of section 414 of this title, the requirements for entitlement to a computation or recomputation of his primary insurance amount, or the requirements of paragraph (3) of section 416(i) of this title are not met after assignment of quarters of coverage to quarters in such year as provided in clause (iv) of the preceding sentence, but would be met if such quarters of coverage were assigned to different quarters in such year, then such quarters of coverage shall instead be assigned, for purposes only of determining compliance with such requirements, to such different quarters. If, in the case of an individual who did not die prior to January 1, 1955, and who attained age 62 (if a woman) or age 65 (if a man) or died before July 1, 1957, the requirements for insured status in section 414(a)(3) of
this title are not met because of his having too few quarters of coverage but would be met if his quarters of coverage in the first calendar year in which he had any covered employment had been determined on the basis of the period during which wages were earned rather than on the basis of the period during which wages were paid (any such wages paid that are reallocated on an earned basis shall not be used in determining quarters of coverage for subsequent calendar years), then upon application filed by the individual or his survivors and satisfactory proof of his record of wages earned being furnished by such individual or his survivors, the quarters of coverage in such calendar year may be determined on the basis of the periods during which wages were earned.

(b) Crediting of wages paid in 1937

With respect to wages paid to an individual in the six-month periods commencing either January 1, 1937, or July 1, 1937: (A) if wages of not less than $100 were paid in any such period, one-half of the total amount thereof shall be deemed to have been paid in each of the calendar quarters in such period; and (B) if wages of less than $100 were paid in any such period, the total amount thereof shall be deemed to have been paid in the latter quarter of such period, except that if in any such period, the individual attained age sixty-five, all of the wages paid in such period shall be deemed to have been paid before such age was attained.

(c) Alternative method for determining quarters of coverage with respect to wages in period from 1937 to 1950

For purposes of sections 414(a) and 415(d) of this title, an individual shall be deemed to have one quarter of coverage for each $400 of his total wages prior to 1951 (as defined in section 415(d)(1)(C) of this title), except where such individual is not a fully insured individual on the basis of the number of quarters of coverage so derived plus the number of quarters of coverage derived from the wages and self-employment income credited to such individual for periods after 1950.

(d) Amount required for a quarter of coverage

(1) The amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage in any year under subsection (a)(2)(A)(i) of this section shall be $250 in the calendar year 1978 and the amount determined under paragraph (2) of this subsection for years after 1978.

(2) The Commissioner of Social Security shall, on or before November 1 of 1978 and of every year thereafter, determine and publish in the Federal Register the amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage in the succeeding calendar year. The amount required for a quarter of coverage shall be the larger of—

(A) the amount in effect in the calendar year in which the determination under this subsection is made, or

(B) the product of the amount prescribed in paragraph (1) which is required for a quarter of coverage in 1978 and the ratio of the national average wage index (as defined in section 409(k)(1) of this title) for the calendar year before the year in which the determination under this paragraph is made to the national average wage index (as so defined) for 1976, with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.


AMENDMENTS

1994—Subsec. (c). Pub. L. 103–296, § 321(a)(15), substituted “sections” for “section” before “414(a) and 415(d) of this title”.


Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title] reported to the Secretary of the Treasury or his delegate” and “(as defined in regulations promulgated by the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title)” for “(as so defined and computed)”.


1977—Subsec. (a)(2). Pub. L. 95–216, §§ 351(c), 352(a), substituted provisions relating to factors respecting definition of “quarters of coverage” for calendar years before 1978, subject to the provisions of subpar. (B) of this part, and for calendar years after 1977, subject to the provisions of subpar. (B) of this part, for provisions relating to factors respecting definition of “quarter of coverage” as quarters of which the individual has been paid $50 or more in wages (except wages for agricultural labor paid after 1954) or for which he has been credited (as determined under section 412 of this title) with $100 or more of self-employment income.


1973—Subsec. (a)(2)(ii), (iii). Pub. L. 93–233 substituted “subject to” for “subject to clause (i) of this subparagraph”.

Subsec. (a)(2)(B). Pub. L. 96–473 inserted “and without regard to the limitations specified in section 409(a)(1) of this title”.

Pub. L. 93–472, § 409(a)(1) for “409(a)”.  
1960—Subsec. (a)(2). Pub. L. 86–778 required each quarter of coverage if the individual received wages after 1954.


1956—Subsec. (a)(2)(B)(iv). Act Aug. 1, 1956, substituted “if such wages equal or exceed $100 but are less than $200” for “if such wages are less than $200”.

1954—Subsec. (a)(2)(A). Act Sept. 1, 1954, § 106(a)(1), redefined “quarter of coverage”, in the case of quarters occurring before 1951, to exclude any quarter any part of which was included in a period of disability, other than the initial quarter of such period, and which provided that any quarter any part of which was included in a period of disability, other than the first quarter of such period, could not be counted as a quarter of coverage in a calendar year in which wages of $3,000 or more were paid.

Subsec. (a)(2)(B). Act Sept. 1, 1954, § 104(c), provided that for calendar years after 1954 an individual shall be credited with a quarter of coverage for each quarter of the year if his wages for the year equal $4,200 and he shall be credited with a quarter of coverage for each quarter of a taxable year ending after 1954 in which the sum of his wages and self-employment income equal $4,200.

Act Sept. 1, 1954, § 108(b), provided for crediting quarters of coverage on basis of annual amounts of wages received for agricultural labor.

Subsec. (a)(2)(B). Act Sept. 1, 1954, § 106(a)(2), redefined “quarter of coverage”, for quarters occurring after 1950, to exclude any quarter any part of which was included in a period of disability, other than the first and last quarters of such period.


Subsec. (a)(2)(B)(i). Act July 18, 1952, § 3(a)(2), inserted “and no quarter any part of which was included in a period of disability (other than the initial quarter and the last quarter of such period) shall be a quarter of coverage”.

Subsec. (a)(2)(B)(ii). Act July 18, 1952, § 3(a)(3), substituted “shall (subject to clause (i) of this subpara - graph) be a quarter of coverage” for “shall be a quarter of coverage”.

Effective Date of 1994 Amendment

Effective Date of 1990 Amendment
Section 5117(c)(3) of Pub. L. 101–508 provided that: “The amendments made by this subsection [amending this section and provisions set out as a note below] shall apply only with respect to individuals whose: “(A) make application for benefits under section 302 of the Social Security Act [section 402 of this title] after the 18-month period following the month in which this Act is enacted [November 1990], and “(B) are not entitled to benefits under section 227 or 228 of such Act [section 427 or 428 of this title] for the month in which such application is made.”

Effective Date of 1989 Amendment
Amendment by section 10208(b)(2)(A), (B) of Pub. L. 101–239 applicable with respect to computation of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10208(c) of Pub. L. 101–239, set out as a note under section 430 of this title.
Effective Date of 1984 Amendment
Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under provisions of law involved) before that date; see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

Effective Date of 1977 Amendment
Amendment by section 351(c) of Pub. L. 95–216 effective Jan. 1, 1978, see section 351(d) of Pub. L. 95–216, set out as a note under section 409 of this title.

Section 352 of Pub. L. 95–216 provided that: "That the amendments made by this section [amending this section] shall be effective January 1, 1978."

Effective Date of 1973 Amendments
Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of this title.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1972, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of this title.

Effective Date of 1972 Amendment

Effective Date of 1971 Amendment
Amendment by section 203(a)(3)(A) of Pub. L. 92–5 applicable only with respect to remuneration paid after December 1971, and amendment by section 203(a)(3)(B) of Pub. L. 92–5 applicable only with respect to taxable years beginning after 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of this title.

Effective Date of 1968 Amendment
Amendment by section 108(a)(3)(A) of Pub. L. 90–248 applicable only with respect to remuneration paid after December 1967, and amendment by section 108(a)(3)(B) applicable only with respect to taxable years ending after 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of this title.

Section 155(b)(2) of Pub. L. 90–248, as amended by Pub. L. 101–508, title V, § 5117(c)(2), Nov. 5, 1990, 104 Stat. 1388–278, provided that: "The amendment made by paragraph (1) [amending this section] shall apply only in the case of an individual who applies for benefits under section 202(a) of the Social Security Act [section 402(a) of this title] after the date of the enactment of this Act [Jan. 2, 1968], or who dies without being entitled to benefits under section 202(a) or 223 of such Act [section 415 of this title], and (unless he dies a currently insured individual but not a fully insured individual (as those terms are defined in section 214(1) of such Act [section 414 of this title])) without leaving any individual entitled (on the basis of his wages and self-employment income) to survivor's benefits or a lump-sum death payment under section 202 of such Act [section 402 of this title] on the basis of an application filed prior to the month in which this Act is enacted [September 1960]; or

"(C) who dies without becoming entitled to benefits under section 202(a) or 223 of the Social Security Act [section 402(a) or 423 of this title], and (unless he dies a currently insured individual but not a fully insured individual (as those terms are defined in section 214 of such Act [section 414 of this title])) without leaving any individual entitled (on the basis of his wages and self-employment income) to survivor's benefits or a lump-sum death payment under section 202 of such Act [section 402 of this title] on the basis of an application filed prior to the month in which this Act is enacted [September 1960]; or

"(D) who dies in or after the month in which this Act is enacted [September 1960] and whose survivors are (or would, but for the provisions of section 215(f)(6) of the Social Security Act [section 415(f)(6) of this title], be) entitled to a recomputation of his primary insurance amount under section 215(f)(4)(A) of such Act; or

"(E) who dies prior to the month in which this Act is enacted [September 1960] and (i) whose survivors are (or would, but for the provisions of section 215(f)(6) of the Social Security Act, be) entitled to a recomputation of his primary insurance amount under section 215(f)(4)(A) of such Act [section 415(f)(4)(A) of this title], and (ii) on the basis of whose wages and self-employment income no individual was entitled to survivor's benefits or a lump-sum death payment under section 202 of such Act [section 402 of this title] on the basis of an application filed prior to the month in which this Act is enacted [September 1960] and whose survivors are (or would, but for the fact that such recomputation would not result in a higher primary insurance amount, be) entitled to have his primary insurance amount recomputed under such subparagraph; or

"(F) files an application for a recomputation under section 102(f)(2)(B) of the Social Security Amendments of 1954 [set out as a note under section 415 of this title] in or after the month in which this Act is enacted [September 1960] and is (or would, but for the fact that such recomputation would not result in a higher primary insurance amount, be) entitled to have his primary insurance amount recomputed under such subparagraph; or

"(G) who dies and whose survivors are (or would, but for the fact that such recomputation would not result in a higher primary insurance amount for such individual, be) entitled, on the basis of an application filed in or after the month in which this Act [September 1960] is enacted, to have his primary insurance amount recomputed under section 102(f)(2)(B) of the Social Security Amendments of 1954 [set out as a note under section 415 of this title]."

The amendment made by subsection (a) [amending this section] shall apply: (1) in the case of any individual who dies (or would, but for the provisions of section 215(f)(6) of the Social Security Act [section 415(f)(6) of this title], be) entitled to a recomputation of his primary insurance amount under section 215(f)(4)(A) of such Act; and (2) to the case of any individual who dies after August 1, 1961, and (a) in the case of such individual who would be entitled to benefits under section 202(a) or 223 of such Act [section 402(a) or 423 of this title] on the basis of an application filed in or after the month in which this Act is enacted [September 1960]; or

"(A) who becomes entitled to benefits under section 202(a) or 223 of such Act [section 402(a) or 423 of this title] on the basis of an application filed in or after the month in which this Act is enacted [September 1960]; or

"(B) who is (or would, but for the provisions of section 215(f)(6) of the Social Security Act [section 415(f)(6) of this title], be) entitled to a recomputation of his primary insurance amount under section 215(f)(2)(A) of such Act on the basis of an application filed in or after the month in which this Act is enacted [September 1960]; or

"(C) who dies without becoming entitled to benefits under section 202(a) or 223 of the Social Security Act [section 402(a) or 423 of this title], and (unless he dies a currently insured individual but not a fully insured individual (as those terms are defined in section 214 of such Act [section 414 of this title])) without leaving any individual entitled (on the basis of his wages and self-employment income) to survivor's benefits or a lump-sum death payment under section 202 of such Act [section 402 of this title] on the basis of an application filed prior to the month in which this Act is enacted [September 1960]; or

"(D) who dies in or after the month in which this Act is enacted [September 1960] and whose survivors are (or would, but for the provisions of section 215(f)(6) of the Social Security Act [section 415(f)(6) of this title], be) entitled to a recomputation of his primary insurance amount under section 215(f)(4)(A) of such Act; or

"(E) who dies prior to the month in which this Act is enacted [September 1960] and (i) whose survivors are (or would, but for the provisions of section 215(f)(6) of the Social Security Act, be) entitled to a recomputation of his primary insurance amount under section 215(f)(4)(A) of such Act [section 415(f)(4)(A) of this title], and (ii) on the basis of whose wages and self-employment income no individual was entitled to survivor's benefits or a lump-sum death payment under section 202 of such Act [section 402 of this title] on the basis of an application filed prior to the month in which this Act is enacted [September 1960] and whose survivors are (or would, but for the fact that such recomputation would not result in a higher primary insurance amount, be) entitled to have his primary insurance amount recomputed under such subparagraph; or

"(F) files an application for a recomputation under section 102(f)(2)(B) of the Social Security Amendments of 1954 [set out as a note under section 415 of this title] in or after the month in which this Act is enacted [September 1960] and is (or would, but for the fact that such recomputation would not result in a higher primary insurance amount, be) entitled to have his primary insurance amount recomputed under such subparagraph; or

"(G) who dies and whose survivors are (or would, but for the fact that such recomputation would not result in a higher primary insurance amount for such individual, be) entitled, on the basis of an application filed in or after the month in which this Act [September 1960] is enacted, to have his primary insurance amount recomputed under section 102(f)(2)(B) of the Social Security Amendments of 1954 [set out as a note under section 415 of this title]."

"(2) The amendment made by subsection (a) [amending this section] shall also be applicable in the case of applications for disability determination under section 216(i) of the Social Security Act [section 416(i) of this title] filed in or after the month in which this Act is enacted [September 1960]."

"(3) Notwithstanding any other provisions of this subsection, in the case of any individual who would not
be a fully insured individual under section 214(a) of the Social Security Act [section 414(a) of this title] except for the enactment of this section, no benefits shall be payable on the basis of his wages and self-employment income for any month prior to the month in which this Act is enacted [September 1960].''

Section 3 of Pub. L. 88–442 provided in part that: "This amendment (amending this section) shall be applicable in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months after June 1957, and in the case of the lump-sum death payments under such title, with respect to deaths occurring after such month: the requirements for filing applications for such benefits and payments [within certain time limits, as prescribed in sections 202(i) and 202(j)] of such title (sections 402(i) and 402(j) of this title), shall not apply if an application is filed within the one-year period beginning with the first day of the month after the month in which this Act is enacted [April 1960].''

**Effective Date of 1954 Amendment**

Section 106(h) of act Sept. 1, 1954, provided that: "Notwithstanding the provisions of section 215(f)(1) of the Social Security Act [section 415(f) of this title], the amendments made by subsections (a), (b), (c), (d), (e), and (f) of this section (amending this section and sections 414 to 417 of this title and section 228e of Title 45, Railroads) shall apply with respect to monthly benefits under title II of the Social Security Act [subsection II of this chapter] for months after June 1955, and with respect to lump-sum death payments under such title [in the case of deaths occurring after June 1955; but no recomputation [of benefits by reason of such amendments] shall be regarded as a recomputation for purposes of section 215(f) of the Social Security Act [section 415(f) of this title].''

**Effective and Termination Date of 1952 Amendment**

Section 3(f) of act July 18, 1952, provided that: "Notwithstanding the provisions of section 215(f)(1) of the Social Security Act [section 415(f)(1) of this title], the amendments made by subsections (a), (b), (c), and (d) of this section (amending this section and sections 414 to 417 of this title) shall apply to monthly benefits under title II of the Social Security Act [subsection II of this chapter] for months after June 1953, and to lump-sum death payments under such title in the case of deaths occurring after June 1955; but no recomputation of benefits by reason of such amendments shall be regarded as a recomputation for purposes of section 215(f) of the Social Security Act [section 415(f) of this title].''

Section 3(g) of act July 18, 1952, provided that: "Notwithstanding the preceding provisions of this section and the amendments made thereby (amending this section and sections 414 to 416, 420, and 421 of this title), such provisions and amendments shall cease to be in effect at the close of June 30, 1953, and after such amendments cease to be in effect any provision of law amended thereby shall be in full force and effect as though this Act had not been enacted.''

### §414. Insured status for purposes of old-age and survivors insurance benefits

For the purposes of this subchapter—

(a) "Fully insured individual" defined

The term "fully insured individual" means any individual who had not less than—

1. one quarter of coverage (whenever acquired) for each calendar year ending after 1950 (or, if later, the year in which he attained age 21) and before the year in which he died or (if earlier) the year in which he attained age 62, except that in no case shall an individual be a fully insured individual unless he has at least 6 quarters of coverage; or

2. 40 quarters of coverage; or

3. in the case of an individual who died before 1951, 6 quarters of coverage; not counting as an elapsed year for purposes of paragraph (1) any year any part of which was included in a period of disability (as defined in section 416(i) of this title), and who satisfies the criterion specified in subsection (c) of this section.

(b) "Currently insured individual" defined

The term "currently insured individual" means any individual who had not less than six quarters of coverage during the thirteen-quarter period ending with (1) the quarter in which he died, (2) the quarter in which he became entitled to old-age insurance benefits, (3) the quarter in which he became entitled to primary insurance benefits under this subchapter as in effect prior to August 28, 1950, or (4) in the case of any individual entitled to disability insurance benefits, the quarter in which he most recently became entitled to disability insurance benefits, not counting as part of such thirteen-quarter period any quarter any part of which was included in a period of disability unless such quarter was a quarter of coverage, and who satisfies the criterion specified in subsection (c) of this section.

(c) Criterion described

For purposes of subsections (a) and (b) of this section, the criterion specified in this subsection is that the individual, if not a United States citizen or national—

1. has been assigned a social security account number that was, at the time of assignment, or at any later time, consistent with the requirements of subclause (I) or (III) of section 405(c)(2)(B)(i) of this title; or

2. at the time any such quarters of coverage are earned—

A. is described in subparagraph (B) or (D) of section 110(a)(15) of title 8,

B. is lawfully admitted temporarily to the United States for business (in the case of an individual described in such subparagraph (B)) or the performance as a crewman (in the case of an individual described in such subparagraph (D)),

C. the business engaged in or service as a crewman performed is within the scope of the terms of such individual's admission to the United States.


### Codification

Section 211(a) of Pub. L. 108–203, which directed amendment of section 214, was executed to this section, which is section 214 of the Social Security Act, to reflect the probable intent of Congress. See 2004 Amendment notes below.
AMENDMENTS

2004—Subsec. (a). Pub. L. 108–203, § 211(a)(1), inserted ‘‘, and who satisfies the criterion specified in subsection (c) of this section’’ before period at end. See Codification note above.

Subsec. (b). Pub. L. 108–203, § 211(a)(2), inserted ‘‘, and who satisfies the criterion specified in subsection (c) of this section’’ before period at end. See Codification note above.


1972—Subsec. (a)(2). Pub. L. 92–603 struck out provi-
sions setting a separate age computation point for
women and reduced from age 65 to age 62 the age
computation point for men.

1961—Subsec. (a). Pub. L. 87–64 required one quarter of
coverage for each calendar year elapsing after 1950 (or
after the year in which the individual attained age 21,
if that was later than 1950) instead of one quarter of
coverage for each three of the quarters elapsing after
1950, and struck out ‘‘unless such quarter was a quarter of
coverage’’ after ‘‘a period of disability (as defined in
section 411(i) of this title’’.

which required an individual to have one quarter of
coverage for each two quarters to provide that an indi-
vidual is fully insured if he has not less than one quar-
ter of coverage for each three of the quarters elapsing after
Dec. 31, 1950, or, if later, December 31 of the year in
which he attained the age of 21 years, and inserted pro-
visions defining fully insured in the case of an individ-
ual who died prior to 1951 as one who had six quarters of
coverage.

1958—Subsec. (b), (b). Pub. L. 85–840 included within defi-
nition of ‘‘currently insured individual’’ an individual
entitled to disability insurance benefits who has not
less than six quarters of coverage during the thirteen-
quarter period ending with the quarter in which he
most recently became entitled to disability insurance
benefits.

1956—Subsec. (a)(3), Act Aug. 1, 1956, provided that an
individual who had at least six quarters of coverage
after 1954 would be fully insured if all but four of the
quarters elapsing after 1954 and prior to July 1, 1957, or
if later, the quarter in which he attained retirement
age or died, whichever first occurred, are quarters of
coverage.

excluded from the elapsed period under subsec. (a)(2)(A)
any quarter any part of which was included in a period
of disability, unless such quarter was a quarter of
coverage.

(3) and redesignated former par. (3) as (4). Subsec. (b).
Act Sept. 1, 1954, § 106(b)(2), inserted ‘‘, not counting as part of such thirteen-quarter period any quarter any part of which was included in a period of disability unless such quarter was a quarter of
coverage.’’

1952—Subsec. (a)(2)(B). Act July 18, 1952, § 3(b)(1), in-
serted ‘‘not counting as an elapsed quarter for purposes
of subparagraph (A) any quarter any part of which was
included in a period of disability (as defined in section
416(i) of this title unless such quarter was a quarter of
coverage’’.

Subsec. (b). Act July 18, 1952, § 3(b)(2), inserted ‘‘not
counting as part of such thirteen-quarter period any
quarter any part of which was included in a period of
disability unless such quarter was a quarter of
coverage’’ after ‘‘August 29, 1950’’.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title II, § 211(c), Mar. 2, 2004, 118 Stat. 518, provided that: ‘‘The amendments made by this section [amending this section and sections 415, 416, 423, and 427 of this title and provisions set out as a note under section 415 of this title] (except the amendment made by sub-
section (i), and the amendment made by subsection (g)
to section 208(i) of the Social Security Act) shall apply
only in the case of a man who attains (or would attain)
age 62 after December 1974. The amendment made by
subsection (i), and the amendment made by subsection
(g) to section 208(i) of the Social Security Act [section
409(i) of this title and title 312(a)(9) of Title 26, In-
ternal Revenue Code], shall apply only with respect to
payments after 1974.’’

‘‘(2) In the case of a man who attains age 62 prior to
1975, the number of his elapsed years for purposes of
section 215(b)(3) of the Social Security Act [section
415(b)(3) of this title] shall be equal to (A) the number
determined under such section as in effect on Septem-
ber 1, 1972, or (B) if less, the number determined as
though he attained age 65 in 1973, except that monthly
benefits under title II of the Social Security Act [this
subchapter] for months prior to January 1973 payable on
the basis of his wages and self-employment income
shall be determined as though this section had not been
enacted.

‘‘(3)(A) In the case of a man who attains or will attain
age 62 in 1973, the figure ‘65’ in sections 214(a)(1),
223(c)(1)(A), and 216(i)(3)(A) of the Social Security Act
[section (i) of this section and sections 423(c)(1)(A)
and 416(i)(3)(A) of this title] shall be deemed to read
‘63’.’’

‘‘(B) In the case of a man who attains or will attain
age 62 in 1974, the figure ‘65’ in sections 214(a)(1),
223(c)(1)(A), and 216(i)(3)(A) of the Social Security Act
[section (i) of this section and sections 423(c)(1)(A)
and 416(i)(3)(A) of this title] shall be deemed to read
‘63’.‘’

EFFECTIVE DATE OF 1961 AMENDMENT

Section 103(b) of Pub. L. 87–64 provided that: ‘‘The amendment made by subsection (a) [amending this sec-
ction] shall apply—

(1) in the case of monthly benefits under title II of
the Social Security Act [this subchapter] for months
beginning on or after the effective date of this title
[see note set out under section 402 of this title], based
on applications filed in or after March 1961.

‘‘(2) in the case of lump-sum death payments under
such title with respect to deaths on or after the effec-
tive date of this title, and

(3) in the case of an application for a disability de-
termination (with respect to a period of disability, as
defined in section 216(i) of such Act [section 416(i) of
this title] filed in or after March 1961.’’

EFFECTIVE DATE OF 1960 AMENDMENT

Section 204(d)(1) of Pub. L. 86–778 provided that: ‘‘The amendments made by subsections (a) and (b) of this
section [amending this section and provisions set out
as a note under section 415 of this title] shall be applic-
able (A) in the case of monthly benefits under title II
of the Social Security Act [this subchapter], for months
after the month in which this Act is enacted [Sep-
tember 1960], on the basis of applications filed in or
after such month, (B) in the case of lump-sum death
payments under such title with respect to deaths oc-
curring after such month, and (C) in the case of an
application for a disability determination with respect to
a period of disability (as defined in section 216(i) of the
Social Security Act [section 416(i) of this title]) filed
after such month.’’

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 206(l) of Pub. L. 85–840 applicable
with respect to monthly benefits under this sub-
chapter for months after August 1958, but only if an
application for such benefits is filed on or after Aug. 28,
1958, see section 207(a) of Pub. L. 85–840, set out as a
note under section 416 of this title.
(a) Primary insurance amount

(1)(A) The primary insurance amount of an individual shall (except as otherwise provided in this section) be equal to the sum of—

(i) 90 percent of the individual’s average indexed monthly earnings (determined under subsection (b) of this section) to the extent that such earnings do not exceed the amount established for purposes of this clause by subparagraph (B),

(ii) 32 percent of the individual’s average indexed monthly earnings to the extent that such earnings exceed the amount established for purposes of clause (i) but do not exceed the amount established for purposes of this clause by subparagraph (B), and

(iii) 15 percent of the individual’s average indexed monthly earnings to the extent that such earnings exceed the amount established for purposes of clause (ii), rounded, if not a multiple of $0.10, to the next lower multiple of $0.10, and thereafter increased as provided in subsection (i) of this section.

(B)(i) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in the calendar year 1979, the amount established for purposes of clause (i) and (ii) of subparagraph (A) shall be $180 and $1,085, respectively.

(ii) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in any calendar year after 1979, each of the amounts so established shall equal the product of the corresponding amount established with respect to the calendar year 1979 under clause (i) of this subparagraph and the quotient obtained by dividing—

(I) the national average wage index (as defined in section 409(k)(1) of this title) for the second calendar year preceding the calendar year for which the determination is made, by

(II) the national average wage index (as so defined) for 1977.

(iii) Each amount established under clause (ii) for any calendar year shall be rounded to the nearest $1, except that any amount so established which is a multiple of $0.50 but not of $1 shall be rounded to the next higher $1.

(C)(i) No primary insurance amount computed under subparagraph (A) may be less than an amount equal to $1,500 multiplied by the individual’s years of coverage in excess of 10, or the increased amount determined for purposes of this clause under subsection (i) of this section.

(ii) For purposes of clause (i), the term “years of coverage” with respect to any individual means the number (not exceeding 30) equal to the sum of (I) the number (not exceeding 14 and disregarding any fraction) determined by dividing (a) the total of the wages credited to such individual (including wages deemed to be paid prior to 1951 to such individual under section 417 of this title, compensation under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] prior to 1951 which is creditable to such individual pursuant to this subchapter, and wages deemed to be paid prior to 1951 to such individual under section 431 of this title) for years after

§415. Computation of primary insurance amount

For the purposes of this subchapter—
1936 and before 1951 by (b) $900, plus (II) the number equal to the number of years after 1950 each of which is a computation base year (within the meaning of subsection (b)(2)(B)(ii) of this section) and in each of which he is credited with wages (including wages deemed to be paid to such individual under section 417 of this title, compensation under the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 228a et seq., 231 et seq.] which is creditable to such individual pursuant to this subchapter, and wages deemed to be paid to such individual under section 429 of this title) and self-employment income of not less than 25 percent (in the case of a year after 1950 and before 1978) of the maximum amount which (pursuant to subsection (e) of this section) may be counted for such year, or 25 percent (in the case of a year after 1977 and before 1991) of the maximum amount which (pursuant to subsection (e) of this section) could be counted for such year if section 430 of this title as in effect immediately prior to December 20, 1977, had remained in effect without change (except that, for purposes of subsection (b) of such section 430 of this title as so in effect, the reference to the contribution and benefit base in paragraph (1) of such subsection (b) shall be deemed a reference to an amount equal to $45,000, each reference in paragraph (2) of such subsection (b) to the average of the wages of all employees as reported to the Secretary of the Treasury shall be deemed a reference to the national average wage index (as defined in section 409(k)(1) of this title), the reference to a preceding calendar year in paragraph (2)(A) of such subsection (b) shall be deemed a reference to the calendar year before the calendar year in which the determination under subsection (a) of such section 430 of this title is made, and the reference to a calendar year in paragraph (2)(B) of such subsection (b) shall be deemed a reference to 1992).

(D) In each calendar year the Commissioner of Social Security shall publish in the Federal Register, on or before November 1, the formula for computing benefits under this paragraph and for adjusting wages and self-employment income under subsection (b)(3) of this section in the case of an individual who becomes eligible for an old-age insurance benefit, or (if earlier) becomes eligible for a disability insurance benefit or dies, in the following year, and the national average wage index (as defined in section 409(k)(1) of this title) on which that formula is based.

(2)(A) A year shall not be counted as the year of an individual’s death or eligibility for purposes of this subsection or subsection (i) of this section in any case where such individual was entitled to a disability insurance benefit for any of the 12 months immediately preceding the month of such death or eligibility (but there shall be counted instead the year of the individual’s eligibility for the disability insurance benefit or benefits to which he was entitled during such 12 months).

(B) In the case of an individual who was entitled to a disability insurance benefit for any of the 12 months before the month in which he became entitled to an old-age insurance benefit, became reentitled to a disability insurance benefit, or died, the primary insurance amount for determining any benefit attributable to that entitlement, reentitlement, or death is the greater of—

(i) the primary insurance amount upon which such disability insurance benefit was based, increased by the amount of each general benefit increase (as defined in subsection (i)(3) of this section), and each increase provided under subsection (i)(2) of this section, that would have applied to such primary insurance amount had the individual remained entitled to such disability insurance benefit until the month in which he became so entitled or reentitled or died, or

(ii) the amount computed under paragraph (1)(C).

(C) In the case of an individual who was entitled to a disability insurance benefit for any month, and with respect to whom a primary insurance amount is required to be computed at any time after the close of the period of the individual’s disability (whether because of such individual’s subsequent entitlement to old-age insurance benefits or to a disability insurance benefit based upon a subsequent period of disability, or because of such individual’s death), the primary insurance amount so computed may in no case be less than the primary insurance amount with respect to which such former disability insurance benefit was most recently determined.

(3)(A) Paragraph (1) applies only to an individual who was not eligible for an old-age insurance benefit prior to January 1979 and who in that or any succeeding month—

(i) becomes eligible for such a benefit,

(ii) becomes eligible for a disability insurance benefit, or

(iii) dies,

and (except for subparagraph (C)(i) thereof) it applies to every such individual except to the extent otherwise provided by paragraph (4).

(B) For purposes of this subchapter, an individual is deemed to be eligible—

(i) for old-age insurance benefits, for months beginning with the month in which he attains age 62, or

(ii) for disability insurance benefits, for months beginning with the month in which his period of disability began as provided under section 416(i)(2)(C) of this title, except as provided in paragraph (2)(A) in cases where fewer than 12 months have elapsed since the termination of a prior period of disability.

(4) Paragraph (1) (except for subparagraph (C)(i) thereof) does not apply to the computation or recomputation of a primary insurance amount for—

(A) an individual who was eligible for a disability insurance benefit for a month prior to January 1979 unless, prior to the month in which occurs the event described in clause (i), (ii), or (iii) of paragraph (3)(A), there occurs a period of at least 12 consecutive months for which he was not entitled to a disability insurance benefit, or

(B) an individual who had wages or self-employment income credited for one or more years prior to 1979, and who was not eligible for an old-age or disability insurance benefit,
and did not die, prior to January 1979, if in the
year for which the computation or recomputa-
tion would be made the individual’s primary
insurance amount would be greater if com-
punted or recomputed—
(1) under this subsection as in effect in De-
cember 1978, for purposes of old-age insur-
ance benefits in the case of an individual
who becomes eligible for such benefits prior
to 1984, or
(ii) as provided by subsection (d) of this
section, in the case of an individual to whom
such section applies.

In determining whether an individual’s primary
insurance amount would be greater if computed
or recomputed as provided in subparagraph (B),
(I) the table of benefits in effect in December
1978, as modified by paragraph (6), shall be ap-
plicated without regard to any increases in that
table which may become effective (in accord-
ance with subsection (i)(4) of this section) for
years after 1978 (subject to clause (ii) of sub-
section (i)(2)(A) of this section) and (II) such in-
dividual’s average monthly wage shall be com-
puted as provided by subsection (b)(4) of this
section.
(5)(A) Subject to subparagraphs (B), (C), (D)
and (E), for purposes of computing the primary
insurance amount (after December 1978) of an
individual to whom paragraph (1) does not apply
(other than an individual described in paragraph
(4)(B)), this section as in effect in December 1978
shall remain in effect, except that, effective for
January 1979, the dollar amount specified in
paragraph (3) of this subsection shall be in-
creased to $11.50.—
(B)(i) Subject to clauses (ii), (iii), and (iv), and
notwithstanding any other provision of law, the
primary insurance amount of any individual de-
scribed in subparagraph (C) shall be, in lieu of
the primary insurance amount as computed pur-
suant to any of the provisions referred to in sub-
paragraph (D), the primary insurance amount
computed under subsection (a) of this section as
in effect in December 1978, without regard to
subsections (b)(4) and (c) of this section as so in
effect.—
(ii) The computation of a primary insurance
amount under this subparagraph shall be subject
to section 104(j)(2) of the Social Security
Amendments of 1972 (relating to the number of
elapsed years under subsection (b) of this
section).
(iii) In computing a primary insurance
amount under this subparagraph, the dollar amount
specified in paragraph (3) of subsection (a) of
this section (as in effect in December 1978) shall
be increased to $11.50.
(iv) In the case of an individual to whom sub-
section (d) of this section applies, the primary
insurance amount of such individual shall be the
greater of—
(I) the primary insurance amount computed
under the preceding clauses of this subpara-
graph, or
(II) the primary insurance amount computed
under subsection (d) of this section.
(C) An individual is described in this subpara-
graph if—
(i) paragraph (1) does not apply to such indi-
vidual by reason of such individual’s eligi-
Bility for an old-age or disability insurance
benefit, or the individual’s death, prior to 1979, and
(ii) such individual’s primary insurance
amount computed under this section as in ef-
fect immediately before November 5, 1990,
would have been computed under the provi-
sions described in subparagraph (D).
(D) The provisions described in this subpara-
graph are—
(i) the provisions of this subsection as in ef-
fect prior to July 30, 1985, if such provisions
would preclude the use of wages prior to 1951
in the computation of the primary insurance
amount,
(ii) the provisions of section 409 of this title
as in effect prior to August 28, 1960, and
(iii) the provisions of subsection (d) of this
section as in effect prior to December 20, 1977.
(E) For purposes of this paragraph, the table
for determining primary insurance amounts and
maximum family benefits contained in this sec-
tion in December 1978 shall be revised as pro-
vided by subsection (i) of this section for each
year after 1978.
(6)(A) In applying the table of benefits in
effect in December 1978 under this section for pur-
poses of the last sentence of paragraph (4), such
table, revised as provided by subsection (i) of
this section, as applicable, shall be extended for
average monthly wages of less than $76.00 and
primary insurance benefits (as determined under
subsection (d) of this section) of less than $16.20.
(B) The Commissioner of Social Security shall
determine and promulgate in regulations the
methodology for extending the table under sub-
paragraph (A).
(7)(A) In the case of an individual whose pri-
mary insurance amount would be computed
under paragraph (1) of this subsection, who—
(i) attains age 62 after 1985 (except where he
or she became entitled to a disability insur-
ance benefit before 1986 and remained so enti-
titled in any of the 12 months immediately pre-
ceding his or her attainment of age 62), or
(ii) would attain age 62 after 1985 and be-
comes eligible for a disability insurance bene-
fit after 1985, and who first becomes eligible after 1985 for a
monthly periodic payment (including a payment
determined under subparagraph (C), but exclud-
ing (I) a payment under the Railroad Retire-
ment Act of 1974 or 1937 [45 U.S.C. 231 et seq.,
228a et seq.], (II) a payment by a social security
system of a foreign country based on an agree-
ment concluded between the United States and
such foreign country pursuant to section 433 of
this title, and (III) a payment based wholly on
service as a member of a uniformed service (as
defined in section 410(m) of this title)) which is
based in whole or in part upon his or her earn-
ings for service which did not constitute ‘‘em-
ployment’’ as defined in section 410 of this title
for purposes of this subchapter (hereafter in this
paragraph and in subsection (d)(3) of this section
referred to as ‘‘noncovered service’’), the pri-
mary insurance amount of that individual dur-
ning his or her concurrent entitlement to such
monthly periodic payment and to old-age or dis-
ability insurance benefits shall be computed or
recomputed under subparagraph (B).
(B) If paragraph (1) of this subsection would apply to such an individual (except for subparagraph (A) of this paragraph), there shall first be computed an amount equal to the individual’s primary insurance amount under paragraph (1) of this subsection, except that for purposes of such computation the percentage of the individual’s average indexed monthly earnings established by subparagraph (A)(i) of paragraph (1) shall be the percent specified in clause (ii). There shall then be computed (without regard to this paragraph) a second amount, which shall be equal to the individual’s primary insurance amount under paragraph (1) of this subsection, except that such second amount shall be reduced by an amount equal to one-half of the portion of the monthly periodic payment which is attributable to noncovered service performed after 1956 but such attribution being based on the proportionate number of years of such noncovered service) and to which the individual is entitled (or is deemed to be entitled) for the initial month of his or her concurrent entitlement to such monthly periodic payment and old-age or disability insurance benefits. The individual’s primary insurance amount shall be the larger of the two amounts computed under this subparagraph (before the application of subsection (i) of this section) and shall be deemed to be computed under paragraph (1) of this subsection for the purpose of applying other provisions of this subchapter.

(ii) For purposes of clause (i), the percent specified in this clause is—

(I) 80.0 percent with respect to individuals who become eligible (as defined in paragraph (3)(B)) for old-age insurance benefits (or became eligible as so defined for disability insurance benefits before attaining age 62) in 1986;

(II) 70.0 percent with respect to individuals who so become eligible in 1987;

(III) 60.0 percent with respect to individuals who so become eligible in 1988;

(IV) 50.0 percent with respect to individuals who so become eligible in 1989; and

(V) 40.0 percent with respect to individuals who so become eligible in 1990 or thereafter.

(C)(i) Any periodic payment which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly payment (as determined by the Commissioner of Social Security), and such equivalent monthly payment shall constitute a monthly periodic payment for purposes of this paragraph.

(ii) In the case of an individual who has elected to receive a periodic payment that has been reduced so as to provide a survivor’s benefit to any other individual, the payment shall be increased (for purposes of any computation under this paragraph or subsection (d)(3) of this section) by the amount of such reduction.

(iii) For purposes of this paragraph, the term “periodic payment” includes a payment payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(D) This paragraph shall not apply in the case of an individual who has 30 years or more of coverage. In the case of an individual who has more than 20 years of coverage but less than 30 years of coverage (as so defined), the percent specified in the applicable subdivision of subparagraph (B)(ii) shall (if such percent is smaller than the applicable percent specified in the following table) be deemed to be the applicable percent specified in the following table:

<table>
<thead>
<tr>
<th>Number of such individual’s years of coverage (as so defined)</th>
<th>The applicable percent is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>29</td>
<td>85 percent</td>
</tr>
<tr>
<td>28</td>
<td>80 percent</td>
</tr>
<tr>
<td>27</td>
<td>75 percent</td>
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<td>26</td>
<td>70 percent</td>
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<td>25</td>
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<td>60 percent</td>
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<td>23</td>
<td>55 percent</td>
</tr>
<tr>
<td>22</td>
<td>50 percent</td>
</tr>
<tr>
<td>21</td>
<td>45 percent</td>
</tr>
</tbody>
</table>

For purposes of this subparagraph, the term “year of coverage” shall have the meaning provided in paragraph (1)(C)(ii), except that the reference to “15 percent” therein shall be deemed to be a reference to “25 percent”.

(E) This paragraph shall not apply in the case of an individual whose eligibility for old-age or disability insurance benefits is based on an agreement concluded pursuant to section 433 of this title or an individual who on January 1, 1984—

(i) is an employee performing service to which social security coverage is extended on that date solely by reason of the amendments made by section 101 of the Social Security Amendments of 1983; or

(ii) is an employee of a nonprofit organization which (on December 31, 1983) did not have in effect a waiver certificate under section 312(l)(k) of the Internal Revenue Code of 1954 and to the employees of which social security coverage is extended on that date solely by reason of the amendments made by section 102 of that Act, unless social security coverage had previously extended to service performed by such individual as an employee of that organization under a waiver certificate which was subsequently (prior to December 31, 1983) terminated.

(b) Average indexed monthly earnings; average monthly wage

(1) An individual’s average indexed monthly earnings shall be equal to the quotient obtained by dividing—

(A) the total (after adjustment under paragraph (3)) of his wages paid in and self-employment income credited to his benefit computation years (determined under paragraph (2)), by

(B) the number of months in those years.

(2) (A) The number of an individual’s benefit computation years equals the number of years reduced—

(i) in the case of an individual who is entitled to old-age insurance benefits (except as provided in the second sentence of this subparagraph), or who has died, by 5 years, and

(ii) in the case of an individual who is entitled to disability insurance benefits, by the number of years equal to one-fifth of such in-
individual's elapsed years (disregarding any resulting fractional part of a year), but not by more than 5 years.

Clause (ii), once applicable with respect to any individual, shall continue to apply for purposes of determining such individual's primary insurance amount for purposes of any subsequent eligibility for disability or old-age insurance benefits unless prior to the month in which such eligibility begins there occurs a period of at least 12 consecutive months for which he was not entitled to a disability or an old-age insurance benefit. If an individual described in clause (ii) is living with a child (of such individual or his or her spouse) under the age of 3 in any calendar year which is included in such individual's computation base years, but which is not disregarded pursuant to clause (ii) or to subparagraph (B) (in determining such individual's benefit computation years) by reason of the reduction in the number of such individual's elapsed years under clause (ii), the number by which such elapsed years are reduced under this subparagraph shall in no event be less than 2.

(d) In the case of an individual who has attained age 62, this subsection and (III) this sentence shall apply only to the computation base years for purposes of the selection therefrom of benefit computation years under paragraph (2) shall be deemed to be equal to the product of—

(i) the wages and self-employment income paid in or credited to such year (as determined without regard to this subparagraph), and

(ii) the quotient obtained by dividing—

(I) the national average wage index (as defined in section 409(k)(1) of this title) for the second calendar year preceding the earliest of the year of the individual's death, eligibility for an old-age insurance benefit, or eligibility for a disability insurance benefit (except that the year in which the individual dies, or becomes eligible, shall not be considered as such year if the individual was entitled to disability insurance benefits for any month in the 12-month period immediately preceding such death or eligibility, but there shall be counted instead the year of the individual's eligibility for the disability insurance benefit to which he was entitled in such 12-month period), by

(II) the national average wage index (as so defined) for the computation base year for which the determination is made.

(B) Wages paid in or self-employment income credited to an individual's computation base year which—

(i) occurs after the second calendar year specified in subparagraph (A)(1)(D), or

(ii) is a year treated under subsection (f)(2)(C) of this section as though it were the last year of the period specified in paragraph (2)(B)(ii),

shall be available for use in determining an individual's benefit computation years, but without applying subparagraph (A) of this paragraph.

(4) For purposes of determining the average monthly wage of an individual whose primary insurance amount is computed (after 1978) under subsection (a) or (d) of this section as in effect (except with respect to the table contained therein) in December 1978, by reason of subsection (a)(4)(B) of this section, this subsection as in effect in December 1978 shall remain in effect, except that paragraph (2)(C) (as then in effect) shall be deemed to provide that "computation base years" include only calendar years in the period after 1950 (or, if later, the year in which the individual attained age 21) and before the year in which the individual died, or, if it occurred earlier (but after 1960), the year in which he attained age 62; except that such term excludes any calendar year any part of which is included in a period of disability.

(3)(A) Except as provided by subparagraph (B), the wages paid in and self-employment income credited to each of an individual's computation base years for purposes of the selection therefrom of benefit computation years under paragraph (2) shall be deemed to be equal to the product of—

(i) the wages and self-employment income paid in or credited to such year (as determined without regard to this subparagraph), and

(ii) the quotient obtained by dividing—

(I) the national average wage index (as defined in section 409(k)(1) of this title) for the second calendar year preceding the earliest of the year of the individual's death, eligibility for an old-age insurance benefit, or eligibility for a disability insurance benefit (except that the year in which the individual dies, or becomes eligible, shall not be considered as such year if the individual was entitled to disability insurance benefits for any month in the 12-month period immediately preceding such death or eligibility, but there shall be counted instead the year of the individual's eligibility for the disability insurance benefit to which he was entitled in such 12-month period), by

(II) the national average wage index (as so defined) for the computation base year for which the determination is made.

(B) Wages paid in or self-employment income credited to an individual's computation base year which—

(i) occurs after the second calendar year specified in subparagraph (A)(1)(D), or

(ii) is a year treated under subsection (f)(2)(C) of this section as though it were the last year of the period specified in paragraph (2)(B)(ii),

shall be available for use in determining an individual's benefit computation years, but without applying subparagraph (A) of this paragraph.
in which he died. Any calendar year all of which is included in a period of disability shall not be included as a computation base year for such purposes.

(c) Application of prior provisions in certain cases

Subject to the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1978, this subsection as in effect in December 1978 shall remain in effect with respect to an individual to whom subsection (a)(1) of this section does not apply by reason of the individual’s eligibility for an old-age or disability insurance benefit, or the individual’s death, prior to 1979.

(d) Primary insurance amount under 1959 Act

(1) For purposes of column I of the table appearing in subsection (a) of this section, as that subsection was in effect in December 1977, an individual’s primary insurance benefit shall be computed as follows:

(A) The individual’s average monthly wage shall be determined as provided in subsection (b) of this section, as in effect in December 1977 (but without regard to paragraph (4) thereof and subject to section 104(j)(2) of the Social Security Amendments of 1972), except that for purposes of paragraphs (2)(C) and (3) of that subsection (as so in effect) 1936 shall be used instead of 1950.

(B) For purposes of subparagraphs (B) and (C) of subsection (b)(2) of this section (as so in effect)—

(i) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual—

(I) shall, in the case of an individual who attained age 21 prior to 1950, be divided by the number of years (hereinafter in this subparagraph referred to as the “divisor”) elapsing after the year in which the individual attained age 20, or 1936 if later, and prior to the earlier of the year of death or 1951, except that such divisor shall not include any calendar year entirely included in a period of disability, and in no case shall the divisor be less than one, and

(II) shall, in the case of an individual who died before 1950 and before attaining age 21, be divided by the number of years (hereinafter in this subparagraph referred to as the “divisor”) elapsing after the second year prior to the year of death, or 1936 if later, and prior to the year of death, and in no case shall the divisor be less than one; and

(ii) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who either attained age 21 after 1949 or died after 1949 before attaining age 21, shall be divided by the number of years (hereinafter in this subparagraph referred to as the “divisor”) elapsing after 1949 and prior to 1951.

The quotient so obtained shall be deemed to be the individual’s wages credited to each of the years which were used in computing the amount of the divisor, except that—

(iii) if the quotient exceeds $3,000, only $3,000 shall be deemed to be the individual’s wages for each of the years which were used in computing the amount of the divisor, and the remainder of the individual’s total wages prior to 1951 (I) if less than $3,000, shall be deemed credited to the computation base year (as defined in subsection (b)(2) of this section as in effect in December 1977) immediately preceding the earliest year used in computing the amount of the divisor, or (II) if $3,000 or more, shall be deemed credited, in $3,000 increments, to the computation base year (as so defined) immediately preceding the earliest year to which a full $3,000 increment was credited; and

(iv) no more than $42,000 may be taken into account, for purposes of this subparagraph, as total wages after 1936 and prior to 1951.

(C) For the purposes of subparagraph (B), “total wages prior to 1951” with respect to an individual means the sum of (i) remuneration credited to such individual prior to 1951 on the records of the Commissioner of Social Security, (ii) wages deemed paid prior to 1951 to such individual under section 417 of this title, (iii) compensation under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] prior to 1951 creditable to him pursuant to this subchapter, and (iv) wages deemed paid prior to 1951 to such individual under section 431 of this title.

(D) The individual’s primary insurance benefit shall be 40 percent of the first $50 of his average monthly wage as computed under this subsection, plus 10 percent of the next $200 of his average monthly wage, increased by 1 percent for each increment year. The number of increment years is the number, not more than 14 nor less than 4, that is equal to the individual’s total wages prior to 1951 divided by $1,650 (disregarding any fraction).

(2) The provisions of this subsection shall be applicable only in the case of an individual—

(A) with respect to whom at least one of the quarters elapsing prior to 1951 is a quarter of coverage;

(B) who attained age 22 after 1950 and with respect to whom less than six of the quarters elapsing after 1950 are quarters of coverage, or who attained such age before 1951; and

(C)(i) who becomes entitled to benefits under section 402(a) or 423 of this title or who dies, or

(ii) whose primary insurance amount is required to be recomputed under paragraph (2), (6), or (7) of subsection (f) of this section or under section 431 of this title.

(3) In the case of an individual whose primary insurance amount is not computed under paragraph (1) of subsection (a) of this section by reason of paragraph (4)(B)(ii) of that subsection, who—

(A) attains age 62 after 1985 (except where he or she became entitled to a disability insur-
ance benefit before 1986, and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

(B) would attain age 62 after 1985 and becomes eligible for a disability insurance benefit after 1985,

and who first becomes eligible after 1985 for a monthly periodic payment (including a payment determined under subsection (a)(7)(C) of this section, but excluding (I) a payment under the Railroad Retirement Act of 1974 or 1937 [45 U.S.C. 231 et seq., 228a et seq.], (II) a payment by a social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 433 of this title, and (III) a payment based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title)) which is based (in whole or in part) upon his or her earnings in noncovered service, the primary insurance amount of such individual during his or her concurrent entitlement to such monthly periodic payment and to old-age or disability insurance benefits shall be the primary insurance amount computed or recomputed under this subsection (without regard to this paragraph and before the application of subsection (i) of this section) reduced by an amount equal to the smaller of:

(i) one-half of the primary insurance amount (computed without regard to this paragraph and before the application of subsection (i) of this section), or

(ii) one-half of the portion of the monthly periodic payment (or payment determined under subsection (a)(7)(C) of this section) which is attributable to noncovered service performed after 1956 (with such attribution being based on the proportionate number of years of such noncovered service) and to which that individual is entitled (or is deemed to be entitled) for the initial month of such concurrent entitlement.

This paragraph shall not apply in the case of any individual to whom subsection (a)(7) of this section would not apply by reason of subparagraph (E) or the first sentence of subparagraph (D) thereof.

(e) Certain wages and self-employment income not to be counted

For the purposes of subsections (b) and (d) of this section—

(1) in computing an individual’s average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage, there shall not be counted the excess over $4,200 in the case of any calendar year after 1950 and before 1955, the excess over $4,200 in the case of any calendar year after 1954 and before 1959, the excess over $4,200 in the case of any calendar year after 1967 and before 1972, the excess over $6,000 in the case of any calendar year after 1965 and before 1968, the excess over $7,800 in the case of any calendar year after 1971 and before 1973, the excess over $10,800 in the case of any calendar year after 1972 and before 1974, the excess over $13,200 in the case of any calendar year after 1973 and before 1975, and the excess over an amount equal to the contribution and benefit base (as determined under section 430 of this title) in the case of any calendar year after 1974 with respect to which such contribution and benefit base is effective, (before the application, in the case of average indexed monthly earnings, of subsection (b)(3)(A) of this section) of (A) the wages paid to him in such year, plus (B) the self-employment income credited to such year (as determined under section 412 of this title); and

(2) if an individual’s average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage, computed under subsection (b) of this section or for the purposes of subsection (d) of this section is not a multiple of $1, it shall be reduced to the next lower multiple of $1.

(f) Recomputation of benefits

(1) After an individual’s primary insurance amount has been determined under this section, there shall be no recomputation of such individual’s primary insurance amount except as provided in this subsection or, in the case of a World War II veteran who died prior to July 27, 1954, as provided in section 417(b) of this title.

(2)(A) If an individual has wages or self-employment income for a year after 1978 for any part of which he is entitled to old-age or disability insurance benefits, the Commissioner of Social Security shall, at such time or times and within such period as the Commissioner may by regulation prescribe, recomputate the individual’s primary insurance amount for that year.

(B) For the purpose of applying subparagraph (A) of subsection (a)(4) of this section to the average indexed monthly earnings of an individual to whom that subsection applies and who receives a recomputation under this paragraph, there shall be used, in lieu of the amounts established by subsection (a)(1)(B) of this section for purposes of clauses (i) and (ii) of subsection (a)(1)(A) of this section, the amounts so established that were (or, in the case of an individual described in subsection (a)(4)(B) of this section, would have been) used in the computation of such individual’s primary insurance amount prior to the application of this subsection.

(C) A recomputation of any individual’s primary insurance amount under this paragraph shall be made as provided in subsection (a)(1) of this section as though the year with respect to which it is made is the last year of the period specified in subsection (b)(2)(B)(ii) of this section; and subsection (b)(3)(A) of this section shall apply with respect to any such recomputation as it is applied in the computation of such individual’s primary insurance amount prior to the application of this subsection.

(D) A recomputation under this paragraph with respect to any year shall be effective—

(i) in the case of an individual who did not die in that year, for monthly benefits beginning with benefits for January of the following year; or
(ii) in the case of an individual who died in that year, for monthly benefits beginning with benefits for the month in which he died.


(4) A recomputation shall be effective under this subsection only if it increases the primary insurance amount by at least $1.

(5) In the case of a man who became entitled to old-age insurance benefits and died before the month in which he attained retirement age (as defined in section 416(l) of this title), the Commissioner of Social Security shall recompute his primary insurance amount as provided in subsection (a) of this section as though he became entitled to old-age insurance benefits in the month in which he died; except that (i) his computation base years referred to in subsection (b)(2) of this section shall include the year in which he died, and (ii) his elapsed years referred to in subsection (b)(3) of this section shall not include the year in which he died or any year thereafter. Such recomputation of such primary insurance amount shall be effective for and after the month in which he died.

(6) Upon the death after 1967 of an individual entitled to benefits under section 402(a) or section 423 of this title, if any person is entitled to monthly benefits or a lump-sum death payment, on the wages and self-employment income of such individual, the Commissioner of Social Security shall recompute the decedent’s primary insurance amount, but only if the decedent during his lifetime was paid compensation which was treated under section 405(o) of this title as remuneration.

(7) This subsection as in effect in December 1978 shall continue to apply to the recomputation of a primary insurance amount computed under subsection (a) or (d) of this section as in effect (without regard to the table in subsection (a) of this section) in that month, and, where appropriate, under subsection (d) as in effect in December 1977, including a primary insurance amount computed under any such subsection whose operation is modified as a result of the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990. For purposes of recomputing a primary insurance amount determined under subsection (a) or (d) of this section (as so in effect) in the case of an individual to whom those subsections apply by reason of subsection (a)(4)(B) of this section as in effect after December 1978, no remuneration shall be taken into account for the year in which the individual initially became eligible for an old-age or disability insurance benefit or died, or for any year thereafter, and (effective January 1982) the recomputation shall be modified by the application of subsection (a)(6) of this section where applicable.

(8) The Commissioner of Social Security shall recompute the primary insurance amounts applicable to beneficiaries whose benefits are based on a primary insurance amount which was computed under subsection (a)(3) of this section effective prior to January 1979, or would have been so computed if the dollar amount specified therein were $11.50. Such recomputation shall be effective January 1979, and shall include the effect of the increase in the dollar amount provided by subsection (a)(1)(C)(i) of this section. Such primary insurance amount shall be deemed to be provided under such section for purposes of subsection (i) of this section.

(9)(A) In the case of an individual who becomes entitled to a periodic payment determined under subsection (a)(7)(A) of this section (including a payment determined under subsection (a)(7)(C) of this section) in a month subsequent to the first month in which he or she becomes entitled to an old-age or disability insurance benefit, and whose primary insurance amount has been computed without regard to either such subsection or subsection (d)(3) of this section, such individual’s primary insurance amount shall be recomputed (notwithstanding paragraph (4) of this subsection), in accordance with either such subsection or subsection (d)(3) of this section, as may be applicable, effective with the first month of his or her concurrent entitlement to such benefit and such periodic payment.

(B) If an individual’s primary insurance amount has been computed under subsection (a)(7) or (d)(3) of this section, and it becomes necessary to recompute that primary insurance amount under this subsection—

(1) so as to increase the monthly benefit amount payable with respect to such primary insurance amount (except in the case of the individual’s death), such increase shall be determined as though the recomputed primary insurance amount were being computed under subsection (a)(7) or (d)(3) of this section, or

(ii) by reason of the individual’s death, such primary insurance amount shall be recomputed without regard to (and as though it had never been computed with regard to) subsection (a)(7) or (d)(3) of this section.

(g) Rounding of benefits

The amount of any monthly benefit computed under section 402 or 423 of this title which (after any reduction under sections 403(a) and 424a of this title and any deduction under section 403(b) of this title, and after any deduction under section 1395s(a)(1) of this title) is not a multiple of $1 shall be rounded to the next lower multiple of $1.

(h) Service of certain Public Health Service Officers

(1) Notwithstanding the provisions of subchapter III of chapter 83 of title 5, remuneration paid for service to which the provisions of section 410(l)(1) of this title are applicable and which is performed by an individual as a commissioned officer of the Reserve Corps of the Public Health Service prior to July 1, 1960, shall not be included in computing entitlement to or the amount of any monthly benefit under this subchapter, on the basis of his wages and self-employment income, for any month after June 1960 and prior to the first month with respect to which the Director of the Office of Personnel Management certifies to the Commissioner of Social Security that, by reason of a waiver filed as provided in paragraph (2), no further annuity will be paid to him, his wife, and his children, or, if he has died, to his widow and children, under subchapter III of chapter 83 of title 5 on the basis of such service.

(2) In the case of a monthly benefit for a month prior to that in which the individual, on
whose wages and self-employment income such benefit is based, dies, the waiver must be filed by such individual; and such waiver shall be irrevocable and shall constitute a waiver on behalf of himself, his wife, and his children. If such individual did not file a waiver before he died, then in the case of a benefit for the month in which he died or any month thereafter, such waiver must be filed by his widow, if any, and by or on behalf of all his children, if any; and such waivers shall be irrevocable. Such a waiver by a child shall be filed by his legal guardian or guardians, or, in the absence thereof, by the person (or persons) who has the child in his care.

(i) Cost-of-living increases in benefits

(1) For purposes of this subsection—

(A) the term “base quarter” means (i) the calendar quarter ending on September 30 in each year after 1982, or (ii) any other calendar quarter in which occurs the effective month of a general benefit increase under this subchapter;

(B) the term “cost-of-living computation quarter” means a base quarter, as defined in subparagraph (A)(i), with respect to which the applicable increase percentage is greater than zero; except that there shall be no cost-of-living computation quarter in any calendar year if in the year prior to such year a law has been enacted providing a general benefit increase under this subchapter or if in such prior year such a general benefit increase becomes effective;

(C) the term “applicable increase percentage” means—

(i) with respect to a base quarter or cost-of-living computation quarter in any calendar year before 1984, or in any calendar year after 1983 and before 1989 for which the OASDI fund ratio is 15.0 percent or more, or in any calendar year after 1988 for which the OASDI fund ratio is 20.0 percent or more, the CPI increase percentage; and

(ii) with respect to a base quarter or cost-of-living computation quarter in any calendar year after 1983 and before 1989 for which the OASDI fund ratio is less than 15.0 percent, or in any calendar year after 1988 for which the OASDI fund ratio is less than 20.0 percent, the CPI increase percentage or the wage increase percentage, whichever (with respect to that quarter) is the lower;

(D) the term “CPI increase percentage”, with respect to a base quarter or cost-of-living computation quarter in any calendar year, means the percentage (rounded to the nearest one-tenth of 1 percent) by which the Consumer Price Index for that quarter (as prepared by the Department of Labor) exceeds such index for the most recent prior calendar quarter which was a base quarter under subparagraph (A)(ii) or, if later, the most recent cost-of-living computation quarter under subparagraph (B);

(E) the term “wage increase percentage”, with respect to a base quarter or cost-of-living computation quarter in any calendar year, means the percentage (rounded to the nearest one-tenth of 1 percent) by which the national average wage index (as defined in section 409(c)(1) of this title) for the year immediately preceding such calendar year exceeds such index for the year immediately preceding the most recent prior calendar year which included a base quarter under subparagraph (A)(ii) or, if later, which included a cost-of-living computation quarter;

(F) the term “OASDI fund ratio”, with respect to any calendar year, means the ratio of—

(i) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund as of the beginning of such year, including the taxes transferred under section 401(a) of this title on the first day of such year and reduced by the outstanding amount of any loan (including interest thereon) theretofore made to either such Fund from the Federal Hospital Insurance Trust Fund under section 401(l) of this title, to

(ii) the total amount which (as estimated by the Commissioner of Social Security) will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during such calendar year for all purposes authorized by section 401 of this title (other than payments of interest on, or repayments of, loans from the Federal Hospital Insurance Trust Fund under section 401(l) of this title), but excluding any transfer payments between such trust funds and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account;¹

(G) the Consumer Price Index for a base quarter, a cost-of-living computation quarter, or any other calendar quarter shall be the arithmetical mean of such index for the 3 months in such quarter.

(2) (A)(i) The Commissioner of Social Security shall determine each year beginning with 1975 (subject to the limitation in paragraph (1)(B)) whether the base quarter (as defined in paragraph (1)(A)(ii) in such year is a cost-of-living computation quarter.

(ii) If the Commissioner of Social Security determines that the base quarter in any year is a cost-of-living computation quarter, the Commissioner shall, effective with the month of December of that year as provided in subparagraph (B), increase—

(I) the benefit amount to which individuals are entitled for that month under section 427 or 428 of this title,

(II) the primary insurance amount of each other individual on which benefit entitlement is based under this subchapter, and

(III) the amount of total monthly benefits based on any primary insurance amount which is permitted under section 403 of this title (and such total shall be increased, unless otherwise so increased under another provision of this subchapter, at the same time as such primary insurance amount) or, in the case of a primary insurance amount computed under subsection (a) of this section as in effect (without regard

1 So in original. Probably should be followed by “and”.
to the table contained therein) prior to January 1979, the amount to which the beneficiaries may be entitled under section 403 of this title as in effect in December 1978, except as provided by section 403(a)(7) and (8) of this title as in effect after December 1978.

The increase shall be derived by multiplying each of the amounts described in subdivisions (I), (II), and (III) (including each of those amounts as previously increased under this subparagraph) by the applicable increase percentage; and any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10. Any increase under this subsection in a primary insurance amount determined under subparagraph (C)(i) of this section shall be applied after the initial determination of such primary insurance amount under that subparagraph (with the amount of such increase, in the case of an individual who becomes eligible for old-age or disability insurance benefits or dies in a calendar year after 1979, being determined from the range of possible primary insurance amounts published by the Commissioner of Social Security under the last sentence of subparagraph (D)).

(iii) In the case of an individual who becomes eligible for an old-age or disability insurance benefit, or who dies prior to becoming so eligible, in a year in which there occurs an increase provided under clause (ii), the individual’s primary insurance amount (without regard to the time of entitlement to that benefit) shall be increased (unless otherwise so increased under another provision of this subchapter and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section in the case of an individual to whom that subsection (as in effect in December 1981) applied, subject to the provisions of subsection (a)(1)(C)(i)(I) of this section and clauses (iv) and (v) of this subparagraph (as then in effect)) by the amount of that increase and subsequent applicable increases, but only with respect to benefits payable for months after November of that year.

(C)(i) Whenever the Commissioner of Social Security determines that a base quarter in a calendar year is also a cost-of-living computation quarter, the Commissioner shall publish in the Federal Register within 45 days after the close of such quarter a determination that a benefit increase is subsequently required and the percentage thereof. The Commissioner shall also publish in the Federal Register at that time (b) a revision of the range of the primary insurance amounts which are possible after the application of this subsection based on the dollar amount specified in subparagraph (C)(i) of subsection (a)(1) of this section (with such revised primary insurance amounts constituting the increased amounts determined for purposes of such subparagraph (C)(i) under this subsection), or specified in subsection (a)(3) of this section as in effect prior to 1979, and (ii) a revision of the range of maximum family benefits which correspond to such primary insurance amounts (with such maximum benefits being effective notwithstanding section 403(a) of this title except for paragraph (3)(B) thereof (or paragraph (2) thereof as in effect prior to 1979)). Notwithstanding the preceding sentence, such revision of maximum family benefits shall be subject to paragraph (6) of section 403(a) of this title (as added by section 101(a)(3) of the Social Security Disability Amendments of 1980).

(3) As used in this subsection, the term “general benefit increase under this subchapter” means an increase (other than an increase under this subsection) in all primary insurance amounts on which monthly insurance benefits under this subchapter are based.

(4) This subsection as in effect in December 1978, and as amended by sections 111(a)(6), 111(b)(2), and 112 of the Social Security Amendments of 1983 and by section 9001 of the Omnibus Budget Reconciliation Act of 1986, shall continue to apply to subsections (a) and (d) of this section, as then in effect and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990, for purposes of computing the primary insurance amount of an individual whom subsection (a) of this section, as in effect after December 1978, does not apply (including an individual to whom subsection (a) of this section does not apply in any year by reason of paragraph (4)(B) of that subsection (but the application of this subsection in such cases shall be modified by the application of subdivision (I) in the last sentence of paragraph (4) of that subsection), except that for this purpose, in applying paragraphs (2)(A)(ii), (2)(D)(iv), and (2)(D)(v)
of this subsection as in effect in December 1978, the phrase “increased to the next higher multiple of $0.10” shall be deemed to read “decreased to the next lower multiple of $0.10”. For purposes of computing primary insurance amounts and maximum family benefits for individuals to whom such paragraph (4)(B) applies), the Commissioner of Social Security shall revise the table of benefits contained in subsection (a) of this section, as in effect in December 1978, in accordance with the requirements of paragraph (2)(D) of this subsection as then in effect, except that the requirement in such paragraph (2)(D) that the Commissioner of Social Security publish such revision of the table of benefits in the Federal Register shall not apply.

(5)(A) If—

(i) with respect to any calendar year the “applicable increase percentage” was determined under clause (ii) of paragraph (1)(C) rather than under clause (i) of such paragraph, and the increase becoming effective under paragraph (2) in such year was accordingly determined on the basis of the wage increase percentage rather than the CPI increase percentage (or there was no such increase becoming effective under paragraph (2) in that year because there was no wage increase percentage greater than zero), and

(ii) for any subsequent calendar year in which an increase under paragraph (2) becomes effective the OASDI fund ratio is greater than 32.0 percent.

then each of the amounts described in subdivisions (I), (II), and (III) of paragraph (2)(A)(ii), as increased under paragraph (2) effective with the month of December in such subsequent calendar year, shall be further increased (effective with such month) by an additional percentage, which shall be determined under subparagraph (B) and shall apply as provided in subparagraph (C). Any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10.

(B) The applicable additional percentage by which the amounts described in subdivisions (I), (II), and (III) of paragraph (2)(A)(ii) are to be further increased under paragraph (A) in the subsequent calendar year involved shall be the amount derived by—

(i) subtracting (I) the compounded percentage benefit increases that were actually paid under paragraph (2) and this paragraph from (II) the compounded percentage benefit increases that would have been paid if all increases under paragraph (2) had been made on the basis of the CPI increase percentage,

(ii) dividing the difference by the sum of the compounded percentage in clause (I)(i) and 100 percent and

(iii) multiplying such quotient by 100 so as to yield such applicable additional percentage (which shall be rounded to the nearest one-tenth of 1 percent),

with the compounded increases referred to in clause (i) being measured—

(iv) in the case of amounts described in subdivision (I) of paragraph (2)(A)(ii), over the period beginning with the calendar year in which monthly benefits described in such subdivision were first increased on the basis of the wage increase percentage and ending with the year before such subsequent calendar year, and

(v) in the case of amounts described in subdivisions (II) and (III) of paragraph (2)(A)(ii), over the period beginning with the calendar year in which the individual whose primary insurance amount is increased under such subdivision (II) became eligible (as defined in subsection (a)(3)(B) of this section) for the old-age or disability insurance benefit that is being increased under this subsection, or died before becoming so eligible, and ending with the year before such subsequent calendar year;

except that if the Commissioner of Social Security determines in any case that the application (in accordance with subparagraph (C)) of the additional percentage as computed under the preceding provisions of this subparagraph would cause the OASDI fund ratio to fall below 32.0 percent in the calendar year immediately following such subsequent year, the Commissioner shall reduce such applicable additional percentage to the extent necessary to ensure that the OASDI fund ratio will remain at or above 32.0 percent through the end of such following year.

(C) Any applicable additional percentage increase in an amount described in subdivision (I), (II), or (III) of paragraph (2)(A)(ii), made under this paragraph in any calendar year, shall thereafter be treated for all the purposes of this chapter as a part of the increase made in such amount under paragraph (2) for that year.

The Railroad Retirement Act of 1935 was classified to Title II, § 201, which amended sections 403, 413, and 417 of this title, and amended provisions set out as notes under sections 403 and 413 of this title.

The 1939 Act, referred to in the text, probably means act Aug. 10, 1939, ch. 666, 53 Stat. 1360, known as the Social Security Act Amendments of 1939, which enacted sections 901a, 1939 and 1940. See also subchapters I (§§ 201–261), II (§§ 261–332), III (§§ 332–417), and IV (§§ 417–601).


Sections 111(a)(6), 111b(2), and 112 of the Social Security Amendments of 1983, referred to in subsec. (i)(4), are sections 111(a)(6), 111b(2), and 112 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 72, which amended subc. (i) of this section and enacted provisions set out as notes below. See 1983 Amendment notes below.


REFERENCES IN TEXT

The Railroad Retirement Act of 1935, as amended and revised the 1937 Act was redesignated the Railroad Retirement Act of 1947 below.


AMENDMENTS

1994—Subsec. (a)(1)(C)(i). Pub. L. 103–296, § 321(e)(2)(B), in subcl. (I) substituted “national average wage index” for “deemed average total wages” and in subcl. (II) substituted “the national average wage index (as so defined) for 1977.” for “the average of the total wages (as defined in regulations of the Secretary and computed without regard to subparagraph (B)(ii) and (C)(ii) of section 414 of this title and section 3121 of Title 26).”

Subsec. (a)(1)(C)(ii). Pub. L. 103–296, § 321(g)(1)(C), substituted “except that, for purposes of subsection (b) of such section 430 of this title as so in effect, the reference to the contribution and benefit base in paragraph (1) of such subsection (b) shall be deemed a reference to an amount equal to $45,000, each reference in this paragraph (2) of such subsection (b) to the average of the wages of all employees as reported to the Secretary of the Treasury shall be deemed a reference to the national average wage index (as defined in section 409(k)(1) of this title), the reference to a preceding calendar year in paragraph (2)(B) of such subsection (b) shall be deemed a reference to the calendar year before the calendar year in which the determination under subheading (a) of such section 430 of this title is made, and the reference to a calendar year in paragraph (2)(B) of such subsection (b) shall be deemed a reference to 1992.” for “except that, for purposes of subsection (b)(2)(A) of such section 430 of this title as so in effect, the reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed a reference to the national average wage index (within the meaning of section 498(k)(1) of this title) for such calendar year.”

Pub. L. 103–296, § 321(e)(2)(D), substituted “national average wage index” for “deemed average total wages” before “(within the meaning of section 498(k)(1) of this title)” and struck out at end “With the initial publication required by this subparagraph, the Secretary shall also publish in the Federal Register the average of the total wages (as so described) for each calendar year after 1990.”
Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary”.

Subsec. (a)(5)(B)(i). Pub. L. 103–296, §321(a)(16), substituted “subsections” for “subsection” before “(b)(4) and (c)”.


Subsec. (a)(7)(A). Pub. L. 103–296, §308(b), in closing provisions struck out “and” before “(II)” and inserted “(II) a payment based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title)” after “section 433 of this title”.

Pub. L. 103–296, §308(a)(1), in closing provisions substituted Railroad Retirement Act of 1974 or 1937, and (II) a payment under the social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 433 of this title” for “but excluding a payment under the Railroad Retirement Act of 1974 or 1973”.


Subsec. (a)(7)(E). Pub. L. 103–296, §308(a)(2), in introductory provisions inserted “whose eligibility for old-age or disability insurance benefits is based on an agreement concluded pursuant to section 433 of this title or an individual” before “who on January 1, 1990”.

Pub. L. 103–296, §308(a)(3), inserted “national average wage index” for “deemed average total wages”.


Subsec. (d)(3). Pub. L. 103–296, §308(b), in closing provisions struck out “and” before “(II)” and inserted “(I) a payment under the Railroad Retirement Act of 1974 or 1937, and (II) a payment under the social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 433 of this title” for “but excluding a payment under the Railroad Retirement Act of 1974 or 1973”.

Subsec. (f)(2)(A). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” and “the Commissioner may” for “he may”.


Subsec. (i)(1)(G). Pub. L. 103–296, §308(b), struck out former cls. (i) and (ii) which read as follows: “(i) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who attained age 21 after 1936 and prior to 1950 shall be determined as provided by subsection (i) of this section for each year after 1978.”

Subsec. (i)(1)(H). Pub. L. 103–296, §308(b), amended cls. (i) and (ii) generally. Prior to amendment, cl. (i) read as follows: “(i) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who attained age 21 after 1936 and prior to 1950 shall be determined as provided by the number of years (hereinafter in this subparagraph referred to as the ‘divisor’) elapsing after the year in which the individual attained age 20 and prior to 1951, and “(ii) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who..."
attained age 21 after 1949 shall be divided by the number of years (hereinafter in this subparagraph referred to as the ‘divisor’) elapsing after 1949 and prior to 1951.

Subsec. (d)(3)(B). Pub. L. 101–508, § 5117(a)(2)(B), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “if the quotient exceeds $3,000, only $3,000 shall be deemed to be the individual’s wages for each of the years which were used in computing the amount of the divisor, and the remainder of the individual’s total wages prior to 1951 (I) if less than $3,000, shall be deemed credited to the year immediately preceding the earliest year used in computing the amount of the divisor and to each year consecutively preceding that year, with any remainder less than $3,000 being credited to the year immediately preceding the earliest year to which a full $3,000 increment was credited; and


Subsec. (d)(2)(C). Pub. L. 101–508, § 5117(a)(2)(C)(ii), added subpar. (C) and struck out former subpar. (C) which read as follows:

“(C) who becomes entitled to benefits under section 402(a) or 423 of this title on January 2, 1968, or

(“(C) who becomes entitled to benefits under section 402(a) or 423 of this title, or

(“(C) whose primary insurance amount is required to be recomputed under subsection (f)(2) or (6) of this section or section 431 of this title.

Subsec. (d)(3) to (5). Pub. L. 101–508, § 5117(a)(2)(D)(ii), redesignated par. (5) as (3) and struck out former pars. (3) and (4) which read as follows:

“(3) The provisions of this subsection as in effect prior to January 2, 1968, shall be applicable in the case of an individual who had a period of disability which began prior to 1951, but only if the primary insurance amount resulting theredrom is higher than the primary insurance amount resulting from the application of this section (as amended by the Social Security Amendments of 1967) and section 420 of this title.

“(4) The provisions of this subsection as in effect in December 1977 shall be applicable to individuals who become eligible for old-age or disability insurance benefits or die prior to 1978.”

Subsec. (f)(9)(A). Pub. L. 101–508, § 5117(a)(3)(D), substituted “including a primary insurance amount computed under any such subsection whose operation is modified as a result of the amendments made by section 431 of the Omnibus Budget Reconciliation Act of 1990” for “as in effect on January 2, 1968.”

Subsec. (f)(9)(A). Pub. L. 101–508, § 5117(a)(3)(E)(i), redesignated par. (3) as (9) and struck out former par. (9) which read as follows:

“(9) The provisions of this subsection as in effect prior to January 2, 1968, shall be applicable in the case of an individual who had a period of disability which began prior to 1951, but only if the primary insurance amount resulting theredrom is higher than the primary insurance amount resulting from the application of this section (as amended by the Social Security Amendments of 1967) and section 420 of this title.

“(a) Definitions—

(1) (A) In this subparagraph—

(i) ‘‘change’’ for ‘‘change’’ except that, for purposes of sub-

section (b)(2)(A) of such section 430 of this title as so in effect

reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed to only refer to the deceased average total wages (within the meaning of section 409(k)(1) of this title) for such calendar year’’ for ‘‘change’’.

(ii) (B) Pub. L. 101–239, § 10208(b)(1)(C), struck out ‘‘(after 1976)’’ after ‘‘calendar year’’.

Pub. L. 101–239, § 10208(b)(1)(A), substituted ‘‘the deceased average total wages (as defined in section 409(k) of this title) which read as follows: ‘‘the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate’’.

Subsec. (b)(3)(A)(i)(I). Pub. L. 101–239, § 10208(b)(1)(B), substituted ‘‘the deceased average total wages (as so defined)’’ for ‘‘the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate’’.

Subsec. (i)(1)(G). Pub. L. 101–239, § 10208(b)(3), substituted ‘‘the amount determined for such calendar year under subsection (b)(3)(A)(i)(I)’’ for ‘‘the average of the total wages reported to the Secretary of the Treasury or his delegate as determined for purposes of subsection (b)(3)(A)(ii)’’.

1988—Subsec. (a)(7)(A). Pub. L. 100–647, § 8011(a)(1), struck out ‘‘with respect to the initial month in which the individual becomes eligible for such benefits’’ before period at end.

Subsec. (a)(7)(B)(i). Pub. L. 100–647, § 8011(a)(2), substituted ‘‘concurrent entitlement to such monthly periodic payment and old-age or disability insurance benefits’’ for ‘‘eligibility for old-age or disability insurance benefits’’.

Subsec. (a)(7)(D)(i), (iv). Pub. L. 100–647, § 8011(a)(3), redesignated cl. (iv) as (iii) and struck out former cl. (iii) which read as follows: ‘‘If an individual to whom subparagraph (A) applies is eligible for a periodic payment beginning with a month that is subsequent to the month in which he or she becomes eligible for old-age or disability insurance benefits, the amount of that payment (for purposes of subparagraph (B)) shall be deemed to be the amount to which he or she is, or is deemed to be entitled, subject to clauses (i), (ii), and (iv) of the following subparagraph in such subsequent month.’’

Subsec. (a)(7)(D)(ii). Pub. L. 100–647, § 8003(a), in introductory provisions, substituted ‘‘20 years for ‘‘25 years’’ and ‘‘shall (if such percent is smaller than the applicable percent specified in the following table) be deemed to be’’ for ‘‘shall (if such percent is smaller than the applicable percent specified in whichever of the following clauses applies) be deemed to be’’ and substituted table for former cl. 6 of which which read as follows: ‘‘(i) 89 percent, in the case of an individual who has 29 of such years of coverage;

(ii) 70 percent, in the case of an individual who has 28 of such years;

(iii) 60 percent, in the case of an individual who has 27 of such years; and

(iv) 50 percent, in the case of an individual who has 26 of such years.’’

Subsec. (d)(5)(ii). Pub. L. 100–647, § 8011(b), substituted ‘‘such concurrent entitlement for ‘‘his or her eligibility for old-age or disability insurance benefits’’.

1986—Subsec. (i)(1)(B). Pub. L. 99–509, § 9011(d), substituted ‘‘percentage is greater than zero’’ for ‘‘percentage is 3 percent or more’’.

Pub. L. 99–509, § 8001(b)(2)(A), amended subpar. (B), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by striking out ‘‘, by not less than 3 per centum,’’ after ‘‘Department of Labor excesses’’.

Subsec. (i)(2)(B)(ii). Pub. L. 99–509, § 9001(d)(1), redesignated cl. (i) as (ii) and struck out former cl. (i) which read as follows: ‘‘Whenever the level of the Con-
sumer Price Index as published for any month exceeds by 2.5 percent or more the level of such index for the most recent base quarter (as defined in paragraph (1)(C)(ii)) or, if later, the most recent cost-of-living computation quarter, the Secretary shall (within 5 days after such publication) report the amount of such excess to the House Committee on Ways and Means and the Senate Committee on Finance.”

Subsec. (i)(2)(C)(i). Pub. L. 99–509, § 9001(b)(2)(A), redesignated cl. (ii) as (i) and substituted “under clause (i)” for “under clause (ii)”.

Subsec. (i)(2)(C)(ii). Pub. L. 99–509, § 9001(b)(1)(B), amended subpar. (C), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by striking out cl. (i) which read as follows: “Whenever the level of the Consumer Price Index as published for any month exceeds by 2.5 percent or more the level of such index for the most recent base quarter (as defined in paragraph (1)(A)(ii)) or, if later, the most recent cost-of-living computation quarter, the Secretary shall (within 5 days after such publication) report the amount of such excess to the House Committee on Ways and Means and the Senate Committee on Finance.”


Pub. L. 99–572 substituted “the Secretary shall revise the table of benefits contained in subsection (a) of this section, as in effect in December 1978, in accordance with the requirements of paragraph (2)(D) of this subsection as then in effect, except that the requirement in such paragraph (2)(D) that the Secretary publish such revision of the table of benefits in the Federal Register shall not apply” for “the Secretary shall publish such revision of the table of benefits contained in subsection (a) of this section, as in effect in December 1978, as required by paragraph (2)(D) of this subsection as then in effect”. Pub. L. 99–572 substituted “because there was no wage increase percentage greater than zero” for “because the wage increase percentage was less than 3 percent”.

Subsec. (i)(5). Pub. L. 99–572, § 9001(b)(1)(C), substituted “‘as though the recomputed primary insurance amount were being computed under subsection (a)(7) or (d)(5)” for “‘as though such primary insurance amount had initially been computed without regard to subsection (a)(7) or (d)(5)”.

Subsec. (b)(1). Pub. L. 98–369, § 2661(a)(10)(D)(ii), substituted “Director of the Office of Personnel Management” for “Civil Service Commission”. Pub. L. 98–369, § 2661(k)(4), inserted provision that any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10.

Subsec. (i)(5)(B)(iii). Pub. L. 98–369, § 2661(k)(5)(A), substituted “so as to yield an applicable additional percentage (which shall be rounded to the nearest one-tenth of 1 percent)” for “and rounding to the nearest one-tenth of 1 percent”.

Subsec. (i)(5)(B)(iv). Pub. L. 98–369, § 2661(k)(5)(B), substituted “ending with the year before such subsequent calendar year” for “ending with such subsequent calendar year” in cls. (iv) and substituted “became eligible” for “became entitled” in cl. (v) of such section for the old-age or disability insurance benefit that is being increased under this subsection” for “initially became eligible for an old-age or disability insurance benefit” in cl. (v).


Subsec. (f)(9). Pub. L. 98–21, § 201(c)(1)(C), substituted “retirement age (as defined in section 416(l) of this title)” for “age 65”.


Subsec. (i)(1)(B). Pub. L. 99–509, § 9001(b), substituted “the Index in the later of (i) the last prior cost-of-living computation quarter which was established under this subparagraph, or (ii) the most recent calendar quarter in which occurred the effective month of a general benefit increase under this subchapter” for “the Index in the later of (i) the last prior cost-of-living computation quarter which was established under this subparagraph, or (ii) the most recent calendar quarter in which occurred the effective month of an increase under this subchapter”.

Subsec. (i)(1)(C) to (H). Pub. L. 98–21, § 112(a)(3), (4), added paras. (C) to (G) and redesignated former subpar. (C) as (H).

Subsec. (i)(2)(A)(ii). Pub. L. 98–21, § 112(b), in provisions immediately following subcl. (ii), substituted “by the applicable increase percentage” for “by the same percentage (rounded to the nearest one-tenth of 1 percent) as the percentage by which the Consumer Price Index for that cost-of-living computation quarter exceeds such index for the most recent prior calendar quarter which was a base quarter under paragraph (1)(A)(ii) or, if later, the most recent cost-of-living computation quarter under paragraph (1)(B)”. Pub. L. 98–21, § 111(a)(1), substituted “December” for “June” in provisions preceding subcl. (I).

Pub. L. 98–21, § 112(a)(6), amended par. (2), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by substituting in the provisions preceding subpar. (A)(i) “December” for “June”.


Pub. L. 98–21, § 111(a)(6), amended par. (2), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by substituting in subpar. (B) “November” for “May” in two places.


Subsec. (i)(2)(A)(ii). Pub. L. 97–35, § 2201(b)(5), (6), in subcl. (II) struck out "(including a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section, but subject to the provisions of such subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph)" after "under this subparagraph" and in provision following subcl. (III) substituted "subparagraph (C)(i)(II)" for "subparagraph (C)(i)(I)".

Pub. L. 97–35, § 2206(b)(6), substituted in provision following subcl. (III) "decreased to the next lower" for "increased to the next higher".

Subsec. (i)(2)(A)(iii). Pub. L. 97–123, § 2(c), inserted "and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i) of this section, subject to the provisions of subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph (as then in effect)" after "provision of this subchapter".

Pub. L. 97–35, § 2201(b)(7), struck out "and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section, subject to the provisions of subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph (as then in effect)" after "provision of this subchapter".

Subsec. (b)(2)(A). Pub. L. 96–265, § 102(a), designated existing provisions as cl. (I), inserted provision limiting its applicability to individuals who are entitled to old-age insurance benefits, individuals entitled to insurance benefits under section 402(e) and (f) of this title, that would otherwise apply except for provisions of this clause, and increases occurring in a later year not applicable to the primary insurance amount on account of provisions of this clause.

Pub. L. 97–35, § 2201(b)(8), struck out cl. (iv) which related to increases in the primary insurance amount for individuals entitled to old-age insurance benefits, individuals entitled to insurance benefits under section 402(e) and (f) of this title, increases that would otherwise apply except for provisions of this clause, and increases occurring in a later year not applicable to the primary insurance amount on account of provisions of this clause.

Subsec. (b)(3)(A). Pub. L. 96–265, § 101(b)(3), substituted "(except as provided in this paragraph)" for "but without regard to clauses (iv) and (v) thereof" after "subsection (i)(2)(A) of this section".

Subsec. (b)(3)(B). Pub. L. 96–265, § 101(b)(1), struck out "and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section, subject to the provisions of subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph (as then in effect)" after "provision of this subchapter".
Subsec. (b). Pub. L. 95–216, §201(b), substituted provisions setting up a formula for determining an individual’s average indexed monthly earnings using benefit computation years, computation base years, and elapsed years as factors in the determination, for provisions that had set a formula for determining an individual’s average monthly wage.

(c). Pub. L. 95–216, §201(c), substituted provisions that this subsection as in effect in Dec. 1978, will remain in effect with respect to an individual to whom subsection (a)(1) of this section does not apply by reason of the individual’s eligibility for an old-age or disability insurance benefit, or the individual’s death, prior to 1979, for provisions under which, for the purposes of column II of the latest table that had appeared in (or was deemed to have appeared in) subsec. (a) of this section, an individual’s primary insurance amount was to be computed on the basis of the law in effect prior to the month in which the latest such table had become effective, but with a limitation that this subsection was to be applicable only in the case of an individual who had become entitled to benefits under section 402(a) or section 423 of this title, or who had died, before such effective month.

Subsec. (d)(1)(A). Pub. L. 95–216, §201(d)(1), inserted provisions in subsec. (d)(1)(A) and preceding introductory provision directing that existing references to subsections (a) and (b) of this section be deemed reference to such subsections. (a) and (b) as they were in effect in Dec. 1977.

Subsec. (d)(1)(B). Pub. L. 95–216, §201(d)(1), made a parenthetical insertion which limited the existing references to subpars. (B) and (C) of subsec. (b)(2) of this section to those provisions as they had been in effect in Dec. 1977, and introduced a simplified method, using the concept of a divisor and a quotient, for computing the primary insurance amounts of workers age 21 after 1936 and before 1951 when wages before 1951 are included in the computations.

Subsec. (d)(1)(D). Pub. L. 95–216, §201(d)(2), substituted “40 percent” for “45.6 per centum” and “plus 10 percent of the next $200 of his average monthly wage” for “plus 11.4 per centum of the next $200 of such average monthly wage” in existing provisions and inserted provisions that the number of increment years in the numerator, not more than 14 nor less than 4, that is equal to the individual’s total wages prior to 1951 divided by $1,650 (disregarding any fraction).

Subsec. (d)(3). Pub. L. 95–216, §201(d)(3), struck out requirement that when wages prior to 1951 are included in computing the average monthly wages of an individual who attains age 21 after 1936 and before 1951 when wages before 1951 are included in the primary insurance amounts of workers age 21 after 1936 and before 1951 when wages before 1951 are included in the computations.


1973—Subsec. (a). Pub. L. 93–233, §2(a), in revising benefits table: in column II, struck out subsec. (a)(1) “Primary insurance amount effective for September 1972” and inserted “Primary insurance amount effective for September 1972” for “Primary insurance amount under 1971 Act” and increased benefit amounts to $84.50–$404.50 from $76 to $996–$1,000; in column IV, increased benefit amounts to $76 to $1,064–$1,100 from $76 to $996–$1,000; in column IV, increased benefit amounts to $93.80–$469.00 from $94.50–$404.50; and in column V, increased benefit amounts to $140.80–$220.80 from $136.80–$207.90.

Subsec. (a)(3). Pub. L. 93–233, §1(h)(1), substituted “$9.00” for “$3.50”.


Pub. L. 93–66 substituted “$12,600” for “$12,000”.

Subsec. (i)(1)(A)(i). Pub. L. 93–233, §3(a), substituted “calendar quarter ending on March 31 in each year after 1974” for “calendar quarter ending on June 30 in each year after 1974”.

Subsec. (i)(1)(B)(i). Pub. L. 93–233, §3(b), substituted in exception provision “if in the year prior to such year a law has been enacted providing a general benefit increase under this subchapter or if in such prior year such a general benefit increase becomes effective” for “in which a law has been enacted providing a general benefit increase under this subchapter or in which such a benefit increase becomes effective”. Pub. L. 92–233, §3(c), substituted “1975” for “1974” and struck out “and to subparagraph (E) of this paragraph after paragraph (1)(B)”.

Subsec. (f)(4). Pub. L. 95–216, §201(f)(3), substituted “A recomputation shall be effective under this subsection only if it increases the primary insurance amount by at least $1” for “Any recomputation under this subsection shall be effective only if such recomputation results in a higher primary insurance amount”.


Subsec. (i)(2)(A)(ii). Pub. L. 95–216, §201(g)(1), specified that an automatic benefit increase effective for June of a year in which the Secretary determines that a cost-of-living computing quarter, which triggers such an increase, has occurred will apply to benefits of those entitled to special payments under sections 427 and 428 of this title, to the primary insurance amounts on which beneficiaries are entitled including the frozen minimum primary insurance amounts and special minimum primary insurance amounts, and to the maximum family benefits at the same time as the primary insurance amounts on which they are based, where a primary insurance amount was computed under the law in effect in December 1978 will be increased at the same time as the primary insurance amounts, except as provided in section 402(a)(7) and (g) of this title.


Subsec. (i)(2)(D). Pub. L. 95–216, §201(g)(3), substituted provisions directing publication in the Federal Register of revisions of the range of primary insurance amounts and of the range of maximum family benefits that had directed publication of the revision of the table of benefits formerly set out in subsec. (a) and had set out the method of determining the revision of the table.

Subsec. (i)(2)(D)(v). Pub. L. 95–216, §201(h), substituted in cl. (v) “is equal to, or exceeds by less than $5, one-twelfth of the new contribution and benefit base” for “is equal to one-twelfth of the new contribution and benefit base” and “plus 20 percent of the excess of the second figure in the last line of column III as extended under the preceding sentence over such second figure for the calendar year in which the table of benefits is revised” for “plus 20 percent of one-twelfth of the excess of the new contribution and benefit base for the calendar year following the calendar year in which such table of benefits is revised (as determined under section 430 of this title) over such base for the calendar year in which the calendar year in which the table of benefits is revised” in third sentence.

visions setting a separate age computation point for women and reduced from age 65 to age 62 the age computed benefits after August 1972 in subpar. (A), substituted "August 1972" for "December 1970" in two places.

Subsec. (c). Pub. L. 92–336, §202(a)(3)(C), substituted provisions relating to the computation of an individual's primary insurance amount based on the law in effect prior to the month in which the latest table appearing in (or is deemed to be appearing in) subsec. (a) of this section becomes effective, for provisions relating to the computation of an individual's primary insurance amount based on the law in effect prior to September 1972 in subpar. (1), and substituted "or who died, before such effective month" for "before September 1972, or who died before such month" in subpar. (2).

Pub. L. 92–336, §201(e), substituted "September 1972" for "March 17, 1971" in two places, and "month" for "date".


Subsec. (d)(2). Pub. L. 92–603, §§134(b), 142(c), inserted references to subsec. (f)(6) of this section and section 431 of this title.

Subsec. (e)(1). Pub. L. 92–336, §203(a)(4), inserted provisions eliminating from the computation of an individual's average monthly wage subcolumn of column III, $755–$1000 under maximum average monthly wage subcolumn of column III, $751–$996 under minimum average monthly wage subcolumn of column III, without $70.40–$295.40 for $64.00 or less—$250.70 in column II, adding $650–$750 under maximum average monthly wage subcolumn of column III, adding $755–$1000 under maximum average monthly wage subcolumn of column III, substituting $64.50–$94.90 for $60.40–$95.60 in column IV, and $105.60–$517.00 for $96.00–$434.40 in column V.

Pub. L. 92–336, §201(a), revised benefits table by substituting "Primary insurance amount under 1971 Act" for "Primary insurance amount under 1969 Act" and the case of any calendar year after 1971" for "the case of any calendar year after 1969".

Subsec. (i)(2)(B). Pub. L. 93–233, §3(e), substituted "or, if larger, the amount in column IV of the latest table listed" for "or, if larger than the amount in column IV of the latest table listed" in subpar. (2), and as so redesignated, inserted provisions relating to an individual who becomes entitled to benefits in or after the month in which a new table appears in (or is deemed to be appearing in) subsec. (a) of this section becomes effective, for provisions relating to an individual's primary insurance amount based on the law in effect prior to the month in which the latest table appearing in (or is deemed to be appearing in) subsec. (a) of this section becomes effective, for provisions relating to an individual's primary insurance amount based on the law in effect prior to September 1972 in subpar. (1), and substituted "or who died, before such effective month" for "before September 1972, or who died before such month" in subpar. (2).

Subsec. (i)(2)(D). Pub. L. 93–233, §3(g), substituted "whether enacted by another law or deemed to be such law" in subpar. (2), and as so redesignated, inserted provisions relating to an individual who becomes entitled to benefits in or after the month in which a new table appears in (or is deemed to be appearing in) subsec. (a) of this section becomes effective, for provisions relating to an individual's primary insurance amount based on the law in effect prior to the month in which the latest table appearing in (or is deemed to be appearing in) subsec. (a) of this section becomes effective, for provisions relating to an individual's primary insurance amount based on the law in effect prior to September 1972 in subpar. (1), and substituted "or who died, before such effective month" for "before September 1972, or who died before such month" in subpar. (2).

Subsec. (f)(2). Pub. L. 92–603, §§101(d), 134(a)(1), inserted reference to subsec. (a)(3) of this section in provisions preceding subpar. (A) and in subpar. (B) struck out provision relating to any individual whose increase in his primary insurance amount is attributable to compensation which, upon his death, is treated as remuneration for employment under section 405(e) of this title.

Subsec. (e)(1). Pub. L. 92–336, §201(e), substituted "September 1972" for "March 17, 1971" in two places, and "month" for "date".


Subsec. (1)(2)(A)(i). Pub. L. 92–603, §101(e), inserted "but not including a primary insurance amount determined under subsection (a)(3) of this section" after "under this subchapter".


Subsec. (c). Pub. L. 92–5, §201(d), substituted "prior to March 17, 1971" for "prior to December 30, 1969" in subpar. 1, and substituted "before March 17, 1971, or who died before such date" for "before January 1970, or who died before such month" in subpar. 2.

Subsec. (e)(1). Pub. L. 92–5, §201(a), substituted "the excess over $7,800 in the case of any calendar year after 1967 and before 1972, and the excess over $9,000 in the case of any calendar year after 1971" for "and the excess over $7,800 in the case of any calendar year after 1967".

1969—Subsec. (a). Pub. L. 91–172, §1002(a)(4), substituted "June of such year for "June of such year" and "January of the next calendar year" for "January of any calendar year" in subsec. (c) of this section.

Subsec. (c). Pub. L. 91–172, §1002(a)(4), substituted "June of such year for "June of such year" and "January of the next calendar year" for "January of any calendar year".
the case of any calendar year after 1967” for “and the after 1965 and before 1968, and the excess over $7,800 in

(3) generally. Prior to amendment, par. (3) read as fol-

exceptions at beginning of subpar. (B), and added

out subpar. (B), redesignated subpar. (C) as (B), inserted

subpar. (C).

mary insurance benefit shall be computed as provided

ing in subsection (a) of this section. An individual’s pri-

lows: “For the purposes of column I of the table appear-

in this subchapter as in effect prior to August 28, 1950,

Social Security Amendments of 1967” for “as provided

basis of the law in effect prior to the enactment of the

Act” for “1958 Act, as modified” in heading and “on the

percentage of eligible monthly earnings for people who become entitled

to benefits or a recomputation of benefits before 1966.


(4) generally, substituting “January 1968” for “Decem-

ber 1965” in subpars. (A) and (B), striking out “, as

amended by the Social Security Amendments of 1965;

at end of subpar. (C), and striking out provision that

the subsection would not apply to any individual de-

scribed therein for purposes of monthly benefits for

months before January 1966.

Subsec. (b)(5). Pub. L. 90–248, §101(c)(2), struck out

par. (5) which preserved the method in effect before the

enactment of the 1965 amendments of computing aver-

age monthly earnings for people who become entitled

to benefits or a recomputation of benefits before 1966.

Subsec. (c). Pub. L. 90–248, §101(d), substituted “1965

Act” for “1958 Act, as modified” in heading and “on the

basis of the law in effect prior to the enactment of the

Social Security Amendments of 1967” for “as provided

in, and subject to the limitations specified in, (A) this

section as in effect prior to July 30, 1965 and (B) the

applicable provisions of the Social Security Amendments

of 1960” in par. (1) and “the month of February 1968,

or who died before such month” for “July 30, 1965 or who

died before such date” in par. (2).


(1) generally. Prior to amendment, par. (1) read as fol-

lows: “For the purposes of column I of the table appear-

ing in subsection (a) of this section. An individual’s pri-

mary insurance benefit shall be computed as provided in

this subchapter as in effect prior to August 28, 1950,

except that—

“(A) In the computation of such benefit, such indi-

vidual’s average monthly wage shall be determined as pro-

vided in subsec. (b)(5) of this title as in effect prior to

August 28, 1950, for any part of which an individual was

entitled to old-age insurance benefits, that such re-

computation was to be made as provided in subsec. (b)(1) and (3) if such year was either the year in which

he became entitled to such old-age insurance benefits or the preceding year or as provided in subsec. (a)(1) in

any other case, and that in all cases such recomputa-

tion was to be made as though the year with respect to which it was to be made was the last year of the period

specified in subsec. (b)(2)(C); and redesignated subpars.

(E) and (F) as (A) and (B).


Subsec. (h)(1). Pub. L. 90–248, §403(b), substituted “subchapter III of chapter 83 of title 5” for “the Civil

Service Retirement Act” in two places.

Subsec. (i). Pub. L. 90–248, §101(e), amended (A) and (B), redesignated subpars. (E) and (F) as (A) and (B).

Subsec. (j). Pub. L. 90–248, §130(a)(1), substituted “the primary insurance amount upon which such disability insurance benefit is based” for “such disability insurance benefit”.  
Pub. L. 89–97, §303(e), amended introductory provi-

sions generally. Prior to amendment, introductory pro-

visions read as follows: “In the case of—

“(A) a woman who was entitled to a disability in-

surance benefit for the month in which she died or became entitled to old-age insurance benefits, or

“(B) a man who was entitled to a disability insur-

ance benefit for the month in which he died or attained age 65.”.

Subsec. (k). Pub. L. 89–97, §303(a)(1), excluded

from an insured individual’s computation base years

the year in which he became entitled to benefits and in-

cluded in his computation base years (for purposes of survivors’ benefits) the year in which he died to make

an individual’s computation base years the calendar

years occurring after 1960 and up to the year in which

his first month of entitlement to a benefit occurred or

the year after which the year in which he died.

Subsec. (m)(A) to (C). Pub. L. 89–97, §302(a)(2), substi-

tuted in: cl. (A) “, if it occurred earlier but after 1960, in the year in which she attained age 62,” for “(if ear-

lier) the first year after 1960 in which she both was fully

insured and had attained age 62;” cl. (B) “, if it occurred earlier but after 1960, in the year in which he at-

tained age 65,” for “(if earlier) the first year after 1960

in which he both was fully insured and had attained age

65”; and cl. (C) “the year occurring after 1960 in which

he attained (or would attain) age 65,” for “the first year

after 1960 in which he attained (or would attain) age 65

or (if later) the first year in which he was fully insu-

red”.


(4) and (5) generally. Prior to amendment, pars. (4)

and (5) read as follows:
“(4) The provisions of this subsection shall be applicable only in the case of an individual with respect to whom not less than six of the quarters elapsing after 1950 are quarters of coverage and—

“(A) who becomes entitled to benefits after December 1960 under section (section 402(a) or section 423 of this title); or

“(B) who dies after December 1960 without being entitled to benefits under section (section 402(a) or section 423 of this title); or

“(C) who files an application for a recomputation under subsection (f)(4) of this section after December 1960 and is (or would, but for the provisions of subsection (f)(6) of this section, be) entitled to have his primary insurance amount recomputed under subsection (f)(2)(A) of this section; or

“(D) who dies after December 1960 and whose survivors are (or would, but for the provisions of subsection (f)(6) of this section, be) entitled to a recomputation of his primary insurance amount under subsection (f)(4) of this section.

“(5) In the case of any individual—

“(A) to whom the provisions of this subsection are not made applicable by paragraph (4), but

“(B) prior to 1961, met the requirements of this paragraph (including subparagraph (E) thereof) as in effect prior to the enactment of the Social Security Amendments of 1960, or (ii) after 1960, meets the conditions of subparagraph (E) of this paragraph as in effect prior to such enactment, then the provisions of this subsection as in effect prior to such enactment shall apply to such individual for the purposes of column III of the table appearing in subsection (a) of this section.”

Subsec. (c). Pub. L. 89–97, § 301(b), substituted in par. (1)(A) “prior to the enactment of the Social Security Amendments of 1965” and executed in the Code “prior to July 30, 1965” for “prior to the enactment of the Social Security Amendments of 1958” and executed in the Code “prior to August 28, 1958”; in par. (1)(B) “Social Security Amendments of 1960” for “Social Security Amendments of 1965”; in par. (2), formerly designated (2)(A), “before July 30, 1965 or who died before such date” for “or died prior to January 1959”; and deleted par. (2)(B) making the provisions of the subsection applicable only in the case of an individual “to whom the provisions of neither paragraph (4) nor paragraph (5) of subsection (b) of this section are applicable.”


Subsec. (d)(2). Pub. L. 89–97, § 302(b)(2), substituted “1960” for “1969” in two places and struck out at the end “but without regard to whether such individual has six quarters of coverage after 1950.”

Subsec. (e)(1). Pub. L. 89–97, § 328(a)(4), substituted the excess over $4,400 in the case of any calendar year after 1958 and before 1966, and the excess over $6,600 in the case of any calendar year after 1965 for “the excess over $4,000 in the case of any calendar year after 1958 and before 1966, and the excess over $5,800 in the case of any calendar year after 1965.”

Subsec. (e)(3). Pub. L. 89–97, § 302(c), struck out par. (3) which provided that for the purposes of subsections (b), (c), and (d) of this section, if an individual had self-employment income in a taxable year which began prior to the calendar year in which he became entitled to old-age insurance benefits and ended after the last day of the month preceding the month in which he became so entitled, the self-employment income which came in such taxable year should not be counted in determining his benefit computation years, except as provided in subsection (f)(3)(C) of this section.”

Subsec. (f). Pub. L. 89–97, § 302(d)(1), substituted provisions for annual automatic recomputation of benefits, taking into account any earnings the person had in or after the year in which he became entitled to benefits and effective in the case of a living beneficiary with January of the year following the year in which the earnings were received and in death cases for survivors’ benefits beginning with the month of death for former provisions which required an application for the recomputation to include earnings in a year after entitlement and that the person have six quarters of coverage after 1950 to qualify for the recomputation and was not available unless the person had earnings of more than $1,200 for the year.

Subsec. (f)(3). Pub. L. 89–97, § 302(d)(2), redesignated par. (5) as (3) and repealed former par. (3) which provided for a recomputation of benefits to include earnings in the year of entitlement to benefits or in the year in which an individual’s benefits were recomputed on account of additional earnings and is now covered by the annual automatic recomputation of benefits provision of subsection (f)(2) of this section.

Subsec. (f)(4). Pub. L. 89–97, § 302(d)(2), redesignated par. (6) as (4) and repealed former par. (4) which provided for a recomputation of benefits for the purpose of paying benefits to survivors of an individual who died after 1960 and who had been entitled to old-age insurance benefits and is now covered by the annual automatic recomputation of benefits provision of subsection (f)(2) of this section.

1961—Subsec. (a). Pub. L. 87–64, §§ 101(a), 102(d)(1), increased minimum primary insurance amount from $33 to $40, and minimum family benefit from $33 to $60, and in the case of a man, limited provisions which permit the primary insurance amount to be equal to the disability insurance benefit for the month before the month in which the man became entitled to old-age insurance benefits only if the man first became entitled to old-age insurance benefits at age 65.

Subsec. (b)(3). Pub. L. 87–64, § 102(d)(2), substituted “For purposes of paragraph (2), the number of an individual’s elapsed years is the number of calendar years after 1950 (or, if later, the year in which he attained age 21) and before—

“(A) in the case of a woman, the year in which she died or (if earlier) the first year after 1960 in which she both was fully insured and had attained age 62.

“(B) in the case of a man who has died, the year in which he died or (if earlier) the first year after 1960 in which he both was fully insured and had attained age 65, or

“(C) in the case of a man who has not died, the first year after 1960 in which he attained (or would attain) age 65 or (if later) the first year in which he was fully insured”

for the following provisions: “For the purposes of paragraph (2), an individual’s elapsed years shall be the number of calendar years—

“(A) after (i) December 31, 1950, or (ii) if later, December 31 of the year in which he attained the age of twenty-one, and

“(B) prior to (i) the year in which he died, or (ii) if earlier, the first year after December 31, 1960, in which he both was fully insured and had attained retirement age.”


1960—Subsec. (b)(1). Pub. L. 86–778, § 303(a), substituted provisions defining “average monthly wage” and the quotients obtained by dividing the total of an individual’s wages paid in and self-employment income credited to his benefit computation years, by (B) the number of months in such years, for provisions which defined the term as the quotient obtained by dividing the total of his wages and self-employment income after his starting date and prior to his closing date by the number of months elapsing after such starting date and prior to such closing date, and excluding the month in which he both attained the age of 22 if less than two quarters of such
prior years were quarters of coverage and the months in any year any part of which was included in a period of disability except the months in the year in which such period of disability began, in which his inclusion will result in a higher primary insurance amount.

Subsec. (b)(2). Pub. L. 86–778, § 303(a), substituted provisions relating to benefit computation years and to certain base years for provisions which defined an individual’s starting date as December 31, 1950, or if later, the last day of the year in which he attains the age of 21, whichever results in the higher primary insurance amount.

Subsec. (b)(3). Pub. L. 86–778, § 303(a), substituted provisions defining an individual’s elapsed years for provisions which defined an individual’s closing date as the first day of the year in which he died or became entitled to old-age insurance benefits, whichever first occurred, or the first day of the first year in which he both was fully insured and had attained retirement age, whichever results in the higher primary insurance amount.

Subsec. (b)(4). Pub. L. 86–778, § 303(a), substituted provisions prescribing the applicability of subsec. (f) for provisions which required the Secretary to determine the five or fewer calendar years after an individual’s starting date and prior to his closing date which, if the months of such years and such wages and self-employment income for such years were excluded in computing his average monthly wage, would produce the highest primary insurance amount, and which required exclusion of such months and such wages and self-employment income for purposes of computing an individual’s average monthly wage.

Subsec. (b)(5). Pub. L. 86–778, § 303(a), substituted provisions making subsec. (f) applicable in the case of an individual to whom the provisions of subsec. (f) are not made applicable by par. (4) but prior to 1961, met the requirements of this paragraph as in effect prior to Sept. 13, 1960, or, after 1961, meets the conditions of subpar. (E) of this paragraph as in effect prior to Sept. 13, 1960, for provisions which prescribed the applicability of subsec. (f) of this section. Former provisions of par. (5) were covered by par. (4) of this section.

Subsec. (c)(2)(B). Pub. L. 86–778, § 303(b), substituted “to whom the provisions of neither paragraph (4) nor paragraph (5) of subsection (b) of this section are applicable” for “to whom the provisions of paragraph (5) of subsection (b) of this section are not applicable”.

Subsec. (d)(1)(A). Pub. L. 86–778, § 303(c)(1), substituted “be determined as provided in subsection (b) of this section (but without regard to paragraphs (4) and (5) thereof), except that for the purposes of paragraphs (2) and (3) of subsection (b) of this section, December 31, 1956, shall be the date instead of December 31, 1950 “for “be determined as provided in subsection (b) of this section (but without regard to paragraph (5) thereof), except that his starting date shall be December 31, 1950”.

Subsec. (d)(1)(C). Pub. L. 86–778, § 303(c)(2), substituted “all of which was included” for “any part of which was included”, and struck out provisions which required the wages paid in the year in which the period of disability began to be counted if the counting of such wages would result in a higher primary insurance amount.

Subsec. (d)(2)(B). Pub. L. 86–778, § 303(c)(3), substituted “paragraph (4) of subsection (b) of this section” for “paragraph (5) of subsection (b) of this section”.


Subsec. (e)(3). Pub. L. 86–778, § 303(d)(1), substituted “if an individual has self-employment income in a taxable year which begins prior to the calendar year in which he becomes entitled to old-age insurance benefits, there shall not be counted, in determining his average monthly wage, his self-employment income in such taxable year”.

Subsec. (e)(4). Pub. L. 86–778, § 303(d)(2), struck out par. (4) which prohibited, in computing an individual’s average monthly wage, the counting of any wages paid such individual in any year any part of which was included in a period of disability, or any self-employment income of such individual credited pursuant to section 412 of this title to any year any part of which was included in a period of disability, unless the months of such year are included as elapsed months pursuant to subsec. (b)(1)(B) of this section.


Subsec. (f)(2)(B). Pub. L. 86–778, § 303(e)(2), substituted provisions requiring a recomputation pursuant to subpar. (A) to be made only as provided in subsec. (a)(1) of this section, if the provisions of subsec. (b) of this section, as amended by Pub. L. 86–778, were applicable to the last previous computation of the individual’s primary insurance amount, or as provided in subsec. (a)(1) and (3) of this section in all other cases for provisions which required a recomputation to be made only as provided in subsec. (a) of this section, inserted provisions requiring the computation base years, if cl. (1) of this subparagraph is applicable to such recomputation, to include only calendar years occurring prior to the year in which he filed his application for such recomputation, and struck out provisions which prescribed the method of making the recomputation if subsec. (b)(4) of this section were applicable to the previous computation.

Subsec. (f)(3)(A). Pub. L. 86–778, § 303(e)(3), substituted “December 1960” for “August 1954” in two places, struck out provisions which related to applications by individuals whose primary insurance amount was recomputed under section 102(e)(5) or 102(f)(2)(B) of the Social Security Amendments of 1964, and substituted “except that such individual’s computation base years referred to in subsection (b)(2) of this section shall include the calendar year referred to in the preceding sentence” for “except that his closing date for purposes of subsection (b) of this section shall be the first day of the year following the year in which he became entitled to old-age insurance benefits or in which he filed his application for the last recomputation (to which he is entitled) of his primary insurance amount under any provision of law referred to in clause (ii) or (iii) of the preceding sentence, whichever is later”.
in which was filed the application for the last previous computation of his primary insurance amount or in which the individual died, whichever first occurred.

§ 415. Subsec. (f)(3)(c). Pub. L. 86–778, § 306(c)(3), substituted ‘‘In the case of an individual who becomes entitled to old-age insurance benefits in a calendar year after 1960, if such individual has self-employment income in a taxable year which begins prior to June 30, 1960, and ends after the last day of the month preceding the month in which he became so entitled, the Secretary shall recompute such individual’s primary insurance amount after the close of such taxable year and shall take into account in determining the individual’s benefit computation years only such self-employment income in such taxable year as is accurate to section 412 of this title, to the year preceding the year in which he became so entitled’’ for ‘‘If an individual’s closing date is determined under paragraph (3) of this section and he has self-employment income in a taxable year which begins prior to such closing date and ends after the last day of the month preceding the month in which he became so entitled under such recomputation any compensation (described in section 405(o) of this title) paid to him prior to the closing date which would have been applicable under such paragraph, and substituted ‘‘which were considered in the last previous computation of his primary insurance amount and the compensation (described in section 405(o) of this title) paid to him in the years in which such wages were paid or to which such self-employment income credited to such year unless the months of such year are included as elapsed months’’, inserted ‘‘five’’ for ‘‘four’’, and struck out provisions which required the maximum number of calendar years determined under this clause to be five in the case of any individual who has not less than 20 quarters of coverage.


Subsec. (b)(1). Act Aug. 1, 1956, § 113(a), excluded from computation of an individual’s average wage the months in any year any part of which was included in a period of disability, except the months in any year in which a period of disability began if their inclusion would result in a higher primary insurance amount.

Subsec. (b)(4). Act Aug. 1, 1956, § 106(a), substituted ‘‘five’’ for ‘‘four’’, and struck out provisions which required the maximum number of calendar years determined under this clause to be five in the case of any individual who has not less than 20 quarters of coverage.

Subsec. (d)(5). Act Aug. 1, 1956, § 115(b), excluded from the computation all quarters in any year prior to 1951 in which such individual was not entitled to old-age insurance benefits in a calendar year after 1954, and before 1959, and in the year in which a period of disability began if the inclusion of such quarters would result in a higher primary insurance amount.

Subsec. (e)(4). Act Aug. 1, 1956, § 116(c), excluded any wages paid to an individual in any year any part of which was included in a period of disability, and any self-employment income credited to such year unless the months of such year are included as elapsed months.

Subsec. (g). Act Aug. 1, 1956, § 103(c)(5), inserted references to sections 423 and 424 of this title.

1954—Subsec. (a). Act Sept. 1, 1954, § 102(a), provided a new benefit formula, for computing primary insurance amount for certain individuals, of 55 percent of the first $110 of average monthly wage of 20 percent of the next $240 and provided that other individuals have their primary insurance amount computed under subsection (c) of this section.

Subsec. (b). Act Sept. 1, 1954, § 102(b), provided standard end-of-the-year starting and beginning-of-the-year closing dates, applicable to both wage earners and self-employed individuals, for computation of the average monthly wage, and provided for the exclusion of the first 5 years in which earnings were lowest (or non-existent) from the average monthly wage computation.

Subsec. (c). Act Sept. 1, 1954, § 102(c), inserted ‘‘and any month in any quarter any part of which was included in a period of disability (as defined in section 416(i) of this title) unless such quarter was a quarter of coverage’’ after ‘‘quarters of coverage’’.

Subsec. (d). Act Sept. 1, 1954, § 102(d), inserted provisions for computation of a primary insurance amount for purposes of the conversion table.


Subsec. (e). Act Sept. 1, 1954, § 104(d), provided that earnings up to $1,200, in any calendar year after 1954, shall be used in the computation of an individual’s average monthly wage.

Subsec. (f)(2). Act Sept. 1, 1954, §102(e)(2), substituted a provision for determining eligibility for a recomputation to take into account additional earnings after entitlement.
Subsec. (f)(4). Act Sept. 1, 1954, §102(e)(4), provided for recomputation of the primary insurance on the death after 1954 of an old-age insurance beneficiary, if any person is entitled to monthly survivors benefits or to a lump-sum death payment on the basis of his wages and self-employment income.
1952—Subsec. (a)(1). Act July 18, 1952, §2(b)(1), provided a new benefit formula for the computation of benefits based entirely on wages paid and self-employment income derived after 1950 of 55 percent of the first $100 of average monthly wage and 15 percent of next $200 and increased the primary insurance amount.
Subsec. (b)(1). Act July 18, 1952, §3(c)(1), inserted "and any month in any quarter any part of which was included in a period of disability (as defined in section 416(i) of this title) unless such quarter was quarter of coverage" after "not a quarter of coverage,"
Subsec. (c)(2). Act July 18, 1952, §2(a)(2), provided that individuals, whose primary insurance amounts are governed by regulations, shall have the same increase as is provided for individuals governed by the new conversion table.
Subsec. (f)(2). Act July 18, 1952, §6(a), provided that upon application an individual will have his benefit recomputed by the new formula prescribed in subsec. (a)(1) of this section under certain conditions.
Subsec. (f)(5). Act July 18, 1952, §6(b), added par. (5) and redesignated former par. (5) as (6).

**Effective Date of 1994 Amendment**
Amendment by section 107(a)(4) of Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of this title. Amendment by section 107(c) of Pub. L. 103-296 provided that: "The amendments made by this section [amending this section and section 1395f of this title] shall apply (notwithstanding section 215(f)(1) of the Social Security Act [as currently in effect, and as in effect in December 1978 and applied in certain cases under the provisions of such Act [as this chapter] in effect after December 1978] in 1986 and subsequent years." Amendment by section 308(b) of Pub. L. 103-296 applicable (notwithstanding subsec. (f) of this section) with respect to cost-of-living increases determined under section 215(i) of the Social Security Act [section 1395f of this title] in 1987 and subsequent years.

**Effective Date of 1988 Amendments**

**Effective Date of 1986 Amendments**
Section 8003(b) of Pub. L. 100-477 provided that: "The amendments made by subsection (a) [amending this section] shall apply to benefits payable for months after December 1986." Section 8011(c) of Pub. L. 100-477 provided that: "The amendments made by this section [amending this section] shall apply to benefits based on applications filed after the month in which this Act is enacted (November 1986)."

**Effective Date of 1984 Amendment**
Amendment by section 2665(k) of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of this title. Amendment by section 2663(a)(10) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

**Effective Date of 1983 Amendment**
Amendment by section 111(a)(1)–(3), (6), (b)(1), (2), (c) of Pub. L. 98-21 applicable with respect to cost-of-living
increases determined under subsec. (i) of this section for years after 1982, see section 111(a)(8) of Pub. L. 98–21, set out as a note under section 402 of this title.

Section 112(e) of Pub. L. 98–21 provided that: "The amendments made by this subsection [amending this section] shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act [subsec. (i) of this section] for years after 1983."

Section 112(e) of Pub. L. 98–21 provided that: "The amendments made by the preceding provisions of this section [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1983."

**Effective Date of 1981 Amendments**

Section 2(j)(2)–(4) of Pub. L. 97–123, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2005, provided: "(2) Except as provided in paragraphs (3) and (4), the amendments made by section 2201 of the Omnibus Budget Reconciliation Act of 1981 [enacting section 1382k of this title, amending this section and sections 402, 403, 417, and 433 of this title] (other than subsection (f) thereof [amending section 402 of this title]), together with the amendments made by the preceding subsections of this section [amending this section and sections 402, 403, 417, and 433 of this title and repealing section 1382k of this title and a provision set out as a note under section 1382k of this title], shall apply with respect to benefits under this subchapter payable for months after December 1981, and the amendment made by subsection (f) of such section 2201 shall apply with respect to deaths occurring after December 1981.

(3) Such amendments shall not apply—

"(A) in the case of an old-age insurance benefit, if the individual who is entitled to such benefit first became eligible (as defined in section 215(a)(3)[B] of the Social Security Act [subsec. (a)(3)(B) of this section]) for such benefit before January 1982.

"(B) in the case of a disability insurance benefit, if the individual who is entitled to such benefit first became eligible (as so defined) for such benefit before January 1982, or attained age sixty-two before January 1982.

"(C) in the case of a wife's or husband's insurance benefit, or a child's insurance benefit based on the wages and self-employment income of a living individual, if the individual on whose wages and self-employment income such benefit is based is entitled to an old-age or disability insurance benefit with respect to which such amendments do not apply, or

"(D) in the case of a survivors insurance benefit, if the individual on whose wages and self-employment income such benefit is based died before January 1982, or dies in or after January 1982 and at the time of his death is eligible (as so defined) for an old-age or disability insurance benefit with respect to which such amendments do not apply.

"(4) In the case of an individual who is a member of a religious order (within the meaning of section 312(h)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) [section 312(h)(2) of Title 26, Internal Revenue Code], or an autonomous subdivision of such order, whose members are required to take a vow of poverty, and which order or subdivision elected coverage under title II of the Social Security Act [this subchapter] before the date of the enactment of this Act [Dec. 29, 1981], or who would be such a member except that such individual is considered retired because of old age or total disability, paragraphs (2) and (3) shall apply, except that each reference therein to 'December 1981' or 'January 1982' shall be considered a reference to 'December 1971' or 'January 1972' respectively.

Section 2206(a), (b)(5)–(7) of Pub. L. 97–35 applicable only with respect to initial calculations and adjustments of primary insurance amounts and benefit amounts which are attributable to periods after August 1981, see section 2206(c) of Pub. L. 97–35, set out as a note under section 402 of this title.

**Effective Date of 1980 Amendment**

Section 102(c) of Pub. L. 96–265 provided that: "The amendments made by this section [amending this section and section 423 of this title] shall apply only with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes entitled to disability insurance benefits on or after July 1, 1980; except that the third sentence of section 216(b)(2)(A) of the Social Security Act [subsec. (b)(2)(A) of this section] (as added by such amendments) shall apply only with respect to monthly benefits payable for months beginning on or after July 1, 1981."

For effective date of amendment by section 101(b)(3), (4) of Pub. L. 96–265, see section 101(c) of Pub. L. 96–265, set out as a note under section 403 of this title.

**Effective Date of 1977 Amendment**

Amendment by section 103(d) of Pub. L. 95–216 applicable with respect to remuneration paid or received, and taxable years beginning after 1977, see section 104 of Pub. L. 95–216, set out as a note under section 1401 of Title 26, Internal Revenue Code.

Amendment by section 201 of Pub. L. 95–216 effective only with respect to monthly benefits under this subchapter payable for months after December 1978 and with respect to lump-sum death payments with respect to deaths occurring after December 1978, except that amendment by section 201(d) of Pub. L. 95–216 effective with respect to monthly benefits of an individual who becomes eligible for an old-age or disability insurance benefit, or dies after December 1977, see section 206 of Pub. L. 95–216, set out as a note under section 402 of this title.

**Effective Date of 1973 Amendments**

Section 1(h)(2) of Pub. L. 93–233 provided that: "The amendment made by paragraph (1) [amending this section] shall be effective with respect to benefits payable for months after February 1974.

Section 2(c) of Pub. L. 93–233 provided that: "The amendment made by subsections (a) and (b) [amending this section and sections 427 and 428 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after 1973, and with respect to lump-sum death payments under section 202(i) of such Act [section 402(i) of this title] in the case of deaths occurring after such month."

Amendment by section 5(a)(4) of Pub. L. 93–233 applicable with respect to calendar years after 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of this title.

Amendment by Pub. L. 93–66 applicable with respect to calendar years after 1973, see section 203(e) of Pub. L. 93–68, set out as a note under section 409 of this title.

**Effective Date of 1972 Amendments**

Section 101(g) of Pub. L. 92–663 provided that: "The amendments made by this section [amending this section and section 403 of this title] shall apply with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] for months after December 1972 (without regard to when the insured individual became entitled to such benefits or when he died) and with respect to lump-sum death payments under such title in the case of deaths occurring after such month."

Amendment by section 104(b) of Pub. L. 92–663 applicable only in the case of a man who attains (or would attain) age 62 after Dec. 1974, with provision for the determination of the number of elapsed years for purposes of subsec. (b)(3) of this section in the case of a man who attains age 62 prior to 1975, see section 104(j) of Pub. L. 92–663, set out as a note under section 411 of this title.

Amendment by section 144(a)(1) of Pub. L. 92–683 effective in like manner as if such amendment had been
included in title II of Pub. L. 92–336, see section 144(b) of Pub. L. 92–603, set out as a note under section 403 of this title.

Section 201(l) of Pub. L. 92–336 provided that: "The amendments made by this section [amending this section and section 403 of this title] (other than the amendments made by subsections (g) and (h)) shall apply with respect to monthly benefits under title II of the Social Security Act [this chapter] for months after August 1972 and with respect to lump-sum death payments under such title in the case of deaths occurring after such month. The amendments made by subsection (g) [amending sections 427 and 428 of this title] shall apply with respect to monthly benefits under title II of such Act for months after August 1972. The amendments made by subsection (h)(1) [amending section 403 of this title] shall apply with respect to monthly benefits under title II of such Act for months after December 1971.''


Amendment by section 203(a)(4) of Pub. L. 92–336 applicable only with respect to calendar years after 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of this title.

**Effective Date of 1971 Amendment**

Section 201(e) of Pub. L. 92–5 provided that: "The amendments made by this section [amending this section and section 403 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1970 and with respect to lump-sum death payments under such title in the case of deaths occurring in and after the month in which this Act is enacted [March 1971]."  

Amendment by section 203(a)(4) of Pub. L. 92–5 applicable only with respect to calendar years after 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of this title.

**Effective Date of 1969 Amendment**

Section 1002(e) of Pub. L. 91–172 provided that: "The amendments made by this section [amending this section and section 403 of this title] shall apply in the case of calendar years after 1968 with respect to lump-sum death payments under title II of the Social Security Act [this subchapter] for months after December 1969 and with respect to lump-sum death payments under such title in the case of deaths occurring after December 1969.''

**Effective Date of 1968 Amendment**

Section 101(e) of Pub. L. 90–248 provided that: "The amendments made by this section [amending this section and section 403 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968 and with respect to lump-sum death payments under such title in the case of deaths occurring after January 1968.''

Amendment by section 108(a)(4) of Pub. L. 90–248 applicable only with respect to calendar years after 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of this title.

Section 155(a)(7), (9) of Pub. L. 90–248 provided that: "(7) (A) The amendments made by paragraphs (4) and (5) [amending this section] shall apply with respect to recomputations made under section 215(f)(2) of the Social Security Act [subsec. (f)(2) of this section] after the date of the enactment of this Act [Jan. 2, 1965].

"(B) The amendments made by paragraph (6) [amending this section] shall apply with respect to individuals who die after the date of enactment of this Act [Jan. 2, 1965].

"(9) The amendment made by paragraphs (1) and (2) [amending this section] shall not apply with respect to monthly benefits for any month prior to January 1967.''

**Effective Date of 1965 Amendment**

Section 301(d) of Pub. L. 89–97 provided that: "The amendments made by subsections (a), (b), and (c) of this section [amending this section and section 403 of this title] shall apply to monthly benefits for months after August 1964 and with respect to lump-sum death payments under such title in the case of deaths occurring in or after the month in which this Act is enacted (July 1965).

Section 302(d)(2) of Pub. L. 89–97 provided that the amendment made by that section is effective Jan. 2, 1966.

Section 302(f)(1)–(5) of Pub. L. 89–97 provided as follows:

"(1) The amendments made by subsection (c) [amending this section] shall apply only to individuals who become entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] after 1965.

"(2) Any individual who would, upon filing an application prior to January 2, 1966, be entitled to a recomputation of his monthly benefit amount for purposes of title II of the Social Security Act [this subchapter] shall be deemed to have filed such application on the earliest date on which such application could have been filed, or on the date on which this Act is enacted [July 30, 1965], whichever is the later.

"(3) In the case of an individual who died after 1960 and prior to 1966 and who was entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] at the time of his death, the provisions of sections 215(f)(3)(B) and 215(f)(4) of such Act [subsecs. (f)(3)(B) and (f)(4) of this section] as in effect before the enactment of this Act [July 30, 1965] shall apply.

"(4) In the case of a man who attains age 65 prior to 1966, or dies before such year, the provisions of section 215(f)(7) of the Social Security Act as in effect before the enactment of this Act [July 30, 1965] shall apply.

"(5) The amendments made by subsection (e) of this section [amending section 423 of this title] shall apply in the case of individuals who become entitled to disability insurance benefits under section 223 of the Social Security Act [section 423 of this title] after December 1965.''

Section 303(f)(2) of Pub. L. 89–97 provided that: "The amendment made by subsection (e) [amending this section] shall apply in the case of the primary insurance amounts of individuals who attain age 65 after the date of enactment of this Act [July 30, 1965]."

Amendment by section 304(k) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter for and after the second month following July 1965 but only on the basis of applications filed in or after July 1965, see section 304(e) of Pub. L. 89–97, set out as a note under section 402 of this title.

Amendment by section 320(a)(4) of Pub. L. 89–97 applicable with respect to calendar years after 1965, see section 320(e) of Pub. L. 89–97, set out as a note under section 3121 of Title 26, Internal Revenue Code.

**Effective Date of 1961 Amendment**

Section 101(b) of Pub. L. 87–64 provided that: "The amendments made by subsection (a) [amending this section] shall apply only in the case of monthly insurance benefits under title II of the Social Security Act [this subchapter] for months beginning on or after the effective date of this title [see note set out under section 402 of this title], and in the case of lump-sum death payments under such title with respect to deaths on or after such effective date."

Amendment by section 102(d)(1), (2) of Pub. L. 87–64 applicable with respect to monthly benefits for months beginning on or after Aug. 1, 1961, based on applications filed in or after March 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after Aug. 1, 1961, and amendment by section 102(d)(3) of Pub. L. 87–64 effective Aug. 1, 1961.
see sections 102(f)(6), (7) and 109 of Pub. L. 87–64, set out as notes under section 402 of this title.

**Effective Date of 1960 Amendment**


Amendment by section 211(a) of Pub. L. 86–778 effective in the manner provided in section 211(p) and (q) of Pub. L. 86–778, see section 211(s) of Pub. L. 86–778, set out as a note under section 403 of this title.

Section 303(d)(1) of Pub. L. 86–778 provided that the amendment made by that section is effective with respect to individuals who become entitled to benefits under section 402(a) of this title after 1960.

Section 303(d)(1) of Pub. L. 86–778 provided that the amendment made by that section is effective with respect to individuals who meet any of the subparagraphs of paragraph (4) of subsec. (b) of this section, as amended by Pub. L. 86–778.

Section 303(e)(1) of Pub. L. 86–778 provided that the amendment made by that section is effective with respect to applications for recomputation under subsection (f)(4) of this section filed after 1960.

Section 303(e)(4)(B) of Pub. L. 86–778 provided that the amendment made by that section is effective in the case of deaths occurring on or after Sept. 13, 1960.

**Effective Date of 1958 Amendment**

Section 101(g) of Pub. L. 85–840 provided that: "The amendments made by this section (amending this section and sections 402 and 403 of this title) shall be applicable in the case of monthly benefits under title II of the Social Security Act [this subchapter], for months after December 1958, and in the case of the lump-sum death payments under such title, with respect to deaths occurring after such month."

Amendment by section 205(m) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for August 1958 and succeeding months, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

**Effective Date of 1956 Amendment**

Section 109(b) of act Aug. 1, 1956, provided that: "The amendment made by subsection (a) [amending this section] shall apply in the case of monthly benefits under section 202 of the Social Security Act [section 402 of this title], and the lump-sum death payment in the case of death occurring after such month."

The preceding subsections of this subchapter for months after, August 1954.


"(1) The amendments made by the preceding subsections [amending this section and section 403 of this title], other than subsection (b) and paragraphs (1), (2), (3), and (4) of subsection (e), shall (subject to the provisions of paragraph (2) and notwithstanding the provisions of section 215(f)(1) of the Social Security Act [subsection (f)(1) of this section]) apply in the case of lump-sum death payments under section 202 of such Act [section 402 of this title] with respect to deaths occurring after, and in the case of monthly benefits under such section for months after, August 1954.

"(2)(A) The amendment made by subsection (b)(2) [amending this section] shall be applicable only in the case of monthly benefits for months after August 1954, and the lump-sum death payment in the case of death after August 1954, based on the wages and self-employment income of an individual—

(i) who becomes entitled to benefits under subsection (a) of such section on the basis of an application filed on or after the date of enactment of this Act [Aug. 1, 1956]; or

(ii) who is (but for the provisions of subsection (f)(6) of such section 215 of the Social Security Act [subsection (f)(6) of this section]) entitled to a recomputation of his primary insurance amount under subsection (f)(4)(A) of such section 215 based on an application filed on or after the date of enactment of this Act [Aug. 1, 1956]; or

(iii) who dies without becoming entitled to benefits under subsection (a) of such section 215, and the lump-sum death payment under such section, based on the wages and self-employment income of an individual—

(A) who becomes entitled to benefits under subsection (a) of such section 215 based on an application filed on or after the date of enactment of this Act [Aug. 1, 1956]; or

(B) who (but for the provisions of subsection (f)(6) of such section 215 [subsection (f)(6) of this section]) entitled to a recomputation of his primary insurance amount under subsection (f)(4)(A) of such section 215; or

(C) whose survivors are entitled to survivor’s benefits and no lump-sum death payment was payable under such section 202 on the basis of an application filed prior to such date of enactment, and no individual was entitled to have his primary insurance amount recomputed under section 221 of the Social Security Act [section 402 of this title], or who is or has been entitled to have his primary insurance amount recomputed under section 215 of the Social Security Act, as amended by subsection (e)(2) of this section, or under subsection (e)(3)(B) of this section, or (iv) with respect to whom not less than six of the quarters elapsed after June 1953 are quarters of coverage (as defined in such Act), or (v) who files an application for a disability determination which is accepted as an application for purposes of section 216 of such Act [section 416 of this title]."

Section 115(d) of act Aug. 1, 1956, provided that: "The provisions of this Act [amending this section] shall apply in the case of an individual (1) who becomes entitled (without the application of section 202(a)(1) of the Social Security Act [section 402(a)(1) of this title]) to benefits under section 202(a) of such Act [section 402(a) of this title] after the date of enactment of this Act [Aug. 1, 1956], or (2) who dies without becoming entitled to benefits under such section 202(a) and on the basis of whose wages and self-employment income an application for benefits or a lump-sum death payment under section 202 of such Act is filed after the date of enactment of this Act, or (3) who becomes entitled to benefits under section 223 of such Act [section 423 of this title], or (4) who files, after the date of enactment of this Act, an application for a disability determination which is accepted as an application for purposes of section 216 of such Act [section 416 of this title]."
“(3) The amendments made by subsections (b)(1), (e)(1), and (e)(3)(B) [amending this section] shall be applicable only in the case of monthly benefits based on the wages and self-employment income of an individual who does not become entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] until after August 1954, or who dies after August 1954 without becoming entitled to such benefits, or who files an application after August 1954 and is entitled to a recomputation under paragraph (2) or (4) of section 215(f) of the Social Security Act [as amended by this Act [subsec. (f)(2) or (4) of this section]], or who is entitled to a recomputation under paragraph (5) of subsection (e) [set out as a note under this section].”

“(4) The amendments made by subsection (e)(2) [amending this section] shall be applicable only in the case of applications for recomputation filed after 1954. The amendment to subsec. (f)(4) made by subsection (e)(4) shall be applicable only in the case of deaths after 1954.

“(5) The amendments made by subparagraph (A) of subsec. (e)(5) [amending this section] shall be applicable only in the case of applications for recomputation filed after 1954.

“(6) No increase in any benefit by reason of the amendments made by this Act [subsec. (e)(6) of this section] or by reason of subparagraph (B) of paragraph (2) of this subsection shall be regarded as a recomputation for purposes of section 215(f) of the Social Security Act [subsec. (f)(1) of this section].”

Amendment by section 106(c) of act Sept. 1, 1954, applicable with respect to monthly benefits under this subchapter for months after June 1955, and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after June 1955; but that no recomputation of benefits by reason of such amendments should be regarded as a recomputation for purposes of subsec. (f) of this section, see section 106(h) of act Sept. 1, 1954, set out as a note under section 413 of this title.

Effective and Termination Date of 1952 Amendments

For effective and termination dates of amendment by act July 18, 1952, see section 3(f), (g) of act July 18, 1952, set out as a note under section 413 of this title.

Section 2(c)(1), (3) of act July 18, 1952, provided that:

“(1) The amendments made by subsection (a) [amending this section] shall, subject to the provisions of paragraph (2) of this subsection and notwithstanding the provisions of section 215(f)(1) of the Social Security Act [subsec. (f)(1) of this section], apply in the case of lump-sum death payments under section 202 of such Act [section 402 of this title] with respect to deaths occurring after, and in the case of monthly benefits under such section for any month after, August 1952.

“(2) The amendments made by subsection (b) [amending this section and section 403 of this title] shall (notwithstanding the provisions of section 215(f)(1) of the Social Security Act [subsec. (f)(1) of this section]) apply in the case of lump-sum death payments under section 202 of such Act [section 402 of this title] with respect to deaths occurring after August 1952, and in the case of monthly benefits under such section for months after August 1952.”

Savings Provision

1960—Section 303(i) of Pub. L. 86–778 provided that in the case of an application for recomputation under subsec. (f)(2) of this section, the provisions of subsec. (f)(2) as in effect prior to Sept. 13, 1960, were to apply where the application was filed after 1954 and before 1961, and that in the case of an individual who died after 1954 and before 1961 and who was entitled to an old-age insurance benefit under section 215 of such Act [this section], the provisions of subsec. (f)(4) as in effect prior to Sept. 13, 1960 were to apply.

1958—Section 101(i) of Pub. L. 85–940 provided that: “In the case of any individual to whom the provisions of subsection (b)(5) of section 215 of the Social Security Act [this section], as amended by this Act, are applicable and on the basis of whose wages and self-employment income benefits are payable for months prior to January 1959, his primary insurance amount for purposes of benefits for such prior months shall, if based on an application for such benefits or for a recomputation of such amount, as the case may be, filed after December 1958, be determined under section 215 of this Act [amended by this Act, such larger primary insurance amount (increased to the next higher dollar if it is not a multiple of a dollar) shall, for months after December 1958, be his primary insurance amount for purposes of such section 215 (and of the other provisions) of the Social Security Act as amended by this Act in lieu of the amount determined without regard to this subsection.

1952—Subsec. (d) of section 2 of act July 18, 1952, provided that:

“(1) Where—

(A) an individual was entitled (without the application of section 203(a) of the Social Security Act [section 402(a) of this title]) to an old-age insurance benefit under title II of such Act [this subchapter] for August 1952;

(B) two or more other persons were entitled (without the application of such section 203(a) [section 402(a) of this title]) to monthly benefits under such title for such month on the basis of the wages and self-employment income of such individual, and

(C) the total of the benefits to which all persons are entitled under such title [this subchapter] on the basis of such individual’s wages and self-employment income for any subsequent month for which he is entitled to an old-age insurance benefit under such title, would (but for the provisions of this paragraph) be reduced by reason of the application of section 203(a) of the Social Security Act, as amended by this Act [section 403(a) of this title],

then the total of benefits, referred to in clause (C), for such subsequent month shall be reduced to whichever of the following is the larger:

(D) the amount determined pursuant to section 203(a) of the Social Security Act, as amended by this Act [section 403(a) of this title]; or

(E) the amount determined pursuant to such section, as in effect prior to the enactment of this Act [July 18, 1952], for August 1952 plus the excess of (i) the amount of his old-age insurance benefit for August 1952 computed as if the amendments made by the preceding subsections of this section had been applicable in the case of such benefit for August 1952, over (ii) the amount of his old-age insurance benefit for August 1952.

“(2) No increase in any benefit by reason of the amendments made by this section or by reason of paragraph (2) of subsection (c) of this section shall be regarded as a recomputation for purposes of section 215(f) of the Social Security Act [subsec. (f) of this section].”

Transfer of Functions

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, 31 F.R. 8855, 80 Stat. 1610, effective June 23, 1966, set out in the Appendix to Title 5, Government Organization and Employees. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 506(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.
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So much of section 215(i)(1)(B) [subsec. (i)(1)(B) of this section] of section 203(f)(8) [section 403(f)(8) of this title], the calculation of primary insurance amounts for certain beneficiaries, was repealed by Pub. L. 97–123, § 2(i), December 22, 1981, as amended by this section and by other provisions of sections 403(f)(8) and (215(i)(1)(B) of such Act shall be deemed to read ‘is greater than zero’ (and the phrase ‘exceeds, by not less than 3 per centum, such Index’ appearing in section 215(i)(1)(B) of such Act as in effect in December 1978 shall be deemed to read ‘exceeds such Index’).

(b) For purposes of section 215(i) of such Act, the provisions of subsection (a) shall not constitute a ‘general benefit increase’.

‘Base Quarter’ in Calendar Year 1983

Section 111(d) of Pub. L. 98–21 provided that: ‘Notwithstanding any provision in this section, 215(i) of the Social Security Act [subsec. (i) of this section], the ‘base quarter’ (as defined in paragraph (1)(A)(1) of such section) in the calendar year 1983 shall be a ‘cost-of-living computation quarter’ within the meaning of paragraph (1)(B) of such section and shall be deemed to have been determined by the Secretary of Health and Human Services to be a ‘cost-of-living computation quarter’ under paragraph (1)(B) of such section for all of the purposes of such Act [this chapter] as amended by this section and by other provisions of such Act, without regard to the extent by which the Consumer Price Index has increased since the last prior cost-of-living computation quarter which was established under such paragraph (1)(B).’

Combined Balance in Trust Funds Used in Determining OASDI Fund Ratio with Respect to Calendar Year 1984

Section 112(f) of Pub. L. 98–21, as amended by Pub. L. 98–389, div. B, title VI, §401(a), July 18, 1984, 98 Stat. 1199, provided that: ‘Notwithstanding anything to the contrary in section 215(i)(1)(F) of the Social Security Act [subsec. (i)(1)(F) of this section], the combined balance in the Trust Funds which is to be used in determining the ‘OASDI fund ratio’ with respect to the calendar year 1984 under such section shall be the estimated combined balance in such Funds as of the close of that year (rather than as of its beginning), including the taxes transferred under section 201(a) of such Act [section 401(a) of this title] on the first day of the year following that year.’

Recalculation of Primary Insurance Amounts Applicable to Certain Beneficiaries

Section 230(c) of Pub. L. 97–35, which provided for recalculation of primary insurance amounts for certain beneficiaries, was repealed by Pub. L. 97–123, §2(c), Dec. 29, 1981, 95 Stat. 1661.

Cost-of-Living Increase in Benefits

Section 3(1) of Pub. L. 93–233 provided that: ‘For purposes of section 203(f)(8) [section 403(f)(8) of this title], so much of section 215(i)(1)(B) [subsec. (i)(1)(B) of this section] as follows the semicolon, and section 230(a) of the Social Security Act [section 430(a) of this title], the increase in benefits provided by section 2 of this Act amending this section and sections 427 and 428 of this title shall be considered an increase under section 215(i) of the Social Security Act.’

Increase of Old-Age or Disability Insurance Benefits Following Increase in Primary Insurance Amount or Entitlement to Benefits on a Higher Amount

Section 101(f) of Pub. L. 92–603 provided that: ‘Whenever an insured individual is entitled to benefits for a month which are based on a primary insurance amount under paragraph (1) or paragraph (3) of section 215(a) of the Social Security Act [subsec. (a)(1) or (3) of this section] and for the following month such primary insurance amount is increased or such individual becomes entitled to benefits on a higher primary insurance amount under a different paragraph of such section 215(a), such individual’s old-age or disability insurance benefit (beginning with the effective month of the increased primary insurance amount) shall be increased by an amount equal to the difference between his primary insurance amount and the primary insurance amount on which such benefit was based for the month prior to such effective month, after the application of section 202(q) of such Act [section 402(q) of this title] where applicable, to such difference.’

Table Modification and Extension: Effective Date; Publication in Federal Register

Section 230(f) of Pub. L. 93–66 provided that effective June 1, 1974, the Secretary of Health, Education, and Welfare would prescribe and publish in the Federal Register all necessary modifications and extensions in the table formerly contained in subsec. (a) of this section.

Conversion of Disability Insurance Benefits to Old-Age Insurance Benefits

Section 101(f) of Pub. L. 92–5 provided that: ‘If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for December 1970 or after the filing of an application filed in or after the month in which this Act is enacted [March 1971], and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for January 1971, then, for purposes of section 215(a)(4) of the Social Security Act [subsec. (a)(4) of this section] (if applicable), the amount in column IV of the table appearing in such section 215(c) [probably means section 215(a) which is subsec. (a) of this section] for such individual shall be the amount in such column on the line on which in column II appears the primary insurance amount (as determined under section 215(c) of such Act [section 402(c) of this title]) and for the following month such primary insurance amount on which his disability insurance benefit is based.’

Section 1002(f) of Pub. L. 91–172 provided that: ‘If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for December 1969 and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for January 1970, or he died in such month, then, for purposes of section 215(a)(4) of the Social Security Act [subsec. (a)(4) of this section] (if applicable), the amount in column IV of the table appearing in such section 215(c) for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act [section 402(c) of this title]) instead of the amount in column IV equal to the primary insurance amount on which his disability insurance benefit is based.’

Section 101(f) of Pub. L. 90–248 provided that: ‘If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title]...’

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of this title] for the month of January 1968 and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for the month of February 1968, or a person who died in such month, then, for purposes of section 215(a)(4) of the Social Security Act [subsection (a)(4) of this section] (if applicable) the amount in column IV of the table appearing in such section 215(a) for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act) instead of the amount in column IV equal to the primary insurance amount on which his disability insurance benefit is based."

Section 301(e) of Pub. L. 89–97 provided that: "If an individual is entitled to a disability insurance benefit under section 223 of the Social Security Act [section 233 of this title] for December 1964 on the basis of an application filed after enactment of this Act [July 30, 1965] and is entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for January 1965, then, for purposes of section 215(a)(4) of the Social Security Act [subsection (a)(4) of this section] (if applicable) the amount in column IV of the table appearing in such section 215(a) for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act) instead of the amount in column IV equal to his disability insurance benefit."

Section 101(h) of Pub. L. 85–840 provided that: "If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [subsection (b) of such section] for December 1958, and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title], or died in January 1959, then, for purposes of subsection (c) of section 215(d) of the Social Security Act [subsection (a)(4) of this section], as amended by this Act, the amount in column IV of the table appearing in such section 215(a) for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under subsection (c) of such section 215) instead of the amount in column IV equal to his disability insurance benefit.""
to the enactment of this Act, the Secretary shall, in applying the provisions of such section 215(a) (except paragraph (4) thereof), for purposes of determining benefits payable under such section of such individual's wages and self-employment income, determine such individual's average monthly wage under the provisions of section 215 of the Social Security Act (this section) in effect prior to the enactment of this Act [Sept. 13, 1960]. The provisions of this paragraph shall not apply with respect to any such individual, entitled to such old-age insurance benefits, (i) who applies, after 1960, for a recomputation (to which he is entitled) of his primary insurance amount under section 215(f)(2) of such Act [subsec. (f)(2) of this section], or (ii) who dies after 1960 and meets the conditions for a recomputation of his primary insurance amount under section 215(f)(4) of such Act.”

AVERAGE MONTHLY WAGE FOR CERTAIN INDIVIDUALS ENTITLED TO MONTHLY BENEFITS OR TO RECOMPUTATION OF PRIMARY INSURANCE AMOUNT FOR MONTHS PRIOR TO JANUARY 1961

Section 303(j) of Pub. L. 86-778 provided that: “In the case of an individual whose average monthly wage is computed under the provisions of section 215(b) of the Social Security Act [subsec. (b) of this section], as amended by this Act, and—

(1) who is, and (b) the amount of such increase is paid separately from the rest of the monthly benefit of such individual for January, February, March, or April 1971 resulting from the enactment of this Act [Sept. 13, 1960]. The provisions of this paragraph shall not apply with respect to any such individual, entitled to such old-age insurance benefits, (i) who applies, after 1960, for a recomputation (to which he is entitled) of his primary insurance amount under section 215(f)(2) of such Act [subsec. (f)(2) of this section], or (ii) who dies after 1960 and meets the conditions for a recomputation of his primary insurance amount under section 215(f)(4) of such Act.”

LAD RECOMPUTATION PRESERVED FOR CERTAIN INDIVIDUALS ELIGIBLE OR DEAD PRIOR TO SEPTEMBER 1954

Section 102(e)(5) of act Sept. 1, 1954, as amended by Pub. L. 86-778, title III, §304(c), Sept. 13, 1960, 74 Stat. 966, provided that: “In the case of an individual who became (without the application of section 202(j)(1) [section 423(b) of this title] to a disability benefit amount recomputed effective for a month prior to January 1961, his average monthly wage as determined under the provisions of such section 215(b) [subsec. (b) of this section] shall be his average monthly wage for the purposes of determining his primary insurance amount for such prior month.”

RIGHT TO RECOMPUTATION UNDER LAW PRIOR TO ENACTMENT OF ACT SEPTEMBER 1, 1954

Section 102(e)(5) of act Sept. 1, 1954, as amended by Pub. L. 86-778, title III, §304(b), Sept. 13, 1960, 74 Stat. 966, provided that: “(A) In the case of any individual who, upon filing application therefor before September 1954, would (but for the provisions of section 215(f)(5) of the Social Security Act [subsec. (f)(6) of this section]) be entitled to a recomputation under subparagraph (A) or (B) of section 215(f)(2) of such Act as in effect prior to the enactment of this Act [Sept. 1, 1954], the Secretary shall recom-pute such individual’s primary insurance amount, but only if he files an application therefor or, in case he died before filing such application, an application for monthly benefits or a lump-sum death payment based on the basis of his wages and self-employment income is filed. Such recomputation shall be made only as pro-
vided in subsection (a)(2) of section 215 of the Social Security Act, as amended by this Act, through the use of a primary insurance amount determined under subsection (b) of such section (as the same manner as for an individual to whom subsection (a)(1) of such section, as in effect prior to the enactment of this Act [Sept. 1, 1954], is applicable, and such recomputation shall take into account only such wages and self-employment income or as would be taken into account under section 215(b) of the Social Security Act if the month in which the application for recomputation is filed, or if the individual died without filing the application for recomputation, the month in which he died, were deemed to be the month in which he became entitled to old-age insurance benefits. In the case of monthly benefits, such recomputation shall be effective for and after the month in which such application for recomputation is filed or, if the individual has died without filing the application, for and after the month in which the person filing the application for monthly survivor benefits becomes entitled to such benefits.

"(B) In the case of—

"(i) any individual who is entitled to a recomputation under subparagraph (A) of section 215(f)(2) of the Social Security Act [subsec. (f)(2)(A) of this section] as in effect prior to the enactment of this Act [Sept. 1, 1954] or the month in which he died, whichever first occurred, where he has died at the time of the application for recomputation of such individual's primary insurance amount, or would have been applicable to such computation if there had been taken into account—

"(A) his wages and self-employment income in the year in which he became entitled to old-age insurance benefits or if he was entitled to such benefits) the year in which application for recomputation under this subsection, or

"(B) his wages and self-employment income in the year in which he died without becoming entitled to old-age insurance benefits, or (if he was entitled to such benefits) the year in which application for recomputation was filed and the application for such recomputation is effective for and after the month in which the person filing the application for monthly survivors benefits becomes entitled to such benefits.

"(C) An individual or, in case of his death, his survivors entitled to a lump-sum death payment or to monthly benefits under section 202 of the Social Security Act on the basis of his wages and self-employment income shall be entitled to a recomputation of his primary insurance amount under section 215(f)(2) or section 215(f)(4) of the Social Security Act [subsec. (f)(2) or (4) of this section] as in effect prior to the date of enactment of this Act [Sept. 1, 1954] only if (i) he had not less than six quarters of coverage in the period after 1950 and prior to January 1, 1955, and (ii) the twelfth month referred to in subparagraph (A) of such section 215(f)(2) occurred prior to January 1, 1955, or he attained the age of 75 prior to 1955, and (iii) he met the other conditions of entitlement to such a recomputation. No individual shall be entitled to a computation under subparagraph (A) or (B) of this paragraph if his primary insurance amount has previously been recomputed under either of such subparagraphs.

"(D) Notwithstanding the provisions of subparagraphs (A), (B), and (C), the primary insurance amount of an individual shall not be recomputed under such provisions unless such individual files the application referred to in subparagraph (A) of this section prior to January 1961 or, if he dies without filing such application, his death occurred prior to January 1961.

RECOMPUTATION OF PRIMARY INSURANCE AMOUNT IN CERTAIN CASES WHERE APPLICATION FOR RECOMPUTATION IS FILED ON OR AFTER SEPTEMBER 13, 1960

Section 303(h) of Pub. L. 86–778 provided that: "In any case where application for recomputation under section 215(f)(3) of the Social Security Act [subsec. (f)(3) of this section] is filed on or after the date of the enactment of this Act [Sept. 13, 1960] with respect to an individual for whom the last previous computation of his primary insurance amount was based on an application filed prior to 1961, or who died before 1961, the provisions of section 215 of such Act [this section] as in effect prior to the enactment of this Act shall apply except that—

"(1) such recomputation shall be made as provided in section 215(a) of the Social Security Act [subsec. (a) of this section] (as in effect prior to the enactment of this Act) and as though such individual had first become entitled to old-age insurance benefits in the month in which he filed his application for such recomputation or died without filing such an application, and his closing date for such purposes shall be as specified in such section 215(a); and

"(2) the provisions of section 215(b)(4) of the Social Security Act [subsec. (b)(4) of this section] (as in effect prior to the enactment of this Act and as modified by this subsection) shall apply only if they were applicable to the last previous recomputation of such individual's primary insurance amount, or would have been applicable to such computation if there had been taken into account—

"(A) his wages and self-employment income in the year in which he became entitled to old-age insurance benefits or filed application for the last previous recomputation of his primary insurance amount, where he is living at the time of the application for recomputation under this subsection, or

"(B) his wages and self-employment income in the year in which he died without becoming entitled to old-age insurance benefits, or (if he was entitled to such benefits) the year in which application for recomputation was filed for the last previous computation of his primary insurance amount or in which such event occurred, where he has died at the time of the application for such recomputation.

If the primary insurance amount of an individual was recomputed under section 215(f)(3) of the Social Security Act [subsec. (f)(3) of this section] as in effect prior to the enactment of this Act, and such amount would have been larger if the recomputation had been made under such section as modified by this subsection, then the Secretary shall recompute such primary insurance amount under such section as so modified, but only if an application for such recomputation is filed on or after the date of the enactment of this Act [Sept. 13, 1960]. A recomputation under the preceding sentence shall be effective for and after the first month for which the last previous recomputation of such individual's primary insurance amount under such section 215(f)(3) [this section] was effective, but in no event for any month prior to the twenty-fourth month before the month in which the application for a recomputation is filed under the preceding sentence."

SPECIAL STARTING AND CLOSING DATES FOR CERTAIN INDIVIDUALS FOR COMPUTATION OF 1967 BENEFIT AMOUNTS

Section 110 of act Aug. 1, 1966, provided that: "In the case of an individual who died or became (without the application of section 202(j)(1) of the Social Security Act)
Act (section 402(j)(1) of this title) entitled to old-age insurance benefits in 1957 and with respect to whom not less than six of the quarters elapsing after 1955 and prior to the quarter following the quarter in which he died or became entitled to old-age insurance benefits, whichever first occurred, are quarters of coverage, his primary insurance amount shall be computed under section 215(a)(1)(A) of such Act [subsec. (a)(1)(A) of this section], with a starting date of December 31, 1955, and a closing date of July 1, 1957, but only if it would result in a higher primary insurance amount. For the purposes of section 215(f)(3)(C) of such Act, the determination of an individual’s closing date under the preceding sentence shall be considered as a determination of the individual’s closing date under section 215(b)(3)(A) of such Act and the recomputation provided for by such section 215(f)(3)(C) shall be made using July 1, 1957, as the closing date, but only if it would result in a higher primary insurance amount. In any such computation on the basis of a July 1, 1957, closing date, the total of his wages and self-employment income after December 31, 1956, shall, if it is in excess of $2,100, be reduced to such amount.

**SPECIAL STARTING AND CLOSING DATES FOR CERTAIN INDIVIDUALS FOR COMPUTATION OF 1956 BENEFIT AMOUNTS**

Section 102(e)(6) of act Sept. 1, 1954, provided that: ‘’In the case of an individual who died or became (without the application of section 202(1)(1) of the Social Security Act [section 402(1)(1) of this title] entitled to old-age insurance benefits in 1956 and with respect to whom not less than six of the quarters elapsing after 1954 and prior to the quarter following the quarter in which he died or became entitled to old-age insurance benefits, whichever first occurred, are quarters of coverage, his primary insurance amount shall be computed under section 215(a)(1)(A) of such Act, as amended by this Act [subsec. (a)(1)(A) of this section], with a starting date of December 31, 1954, and a closing date of July 1, 1956, but only if it would result in a higher primary insurance amount. For the purposes of section 215(f)(3)(C) of such Act, the determination of an individual’s closing date under the preceding sentence shall be considered as a determination of the individual’s closing date under section 215(b)(3)(A) of such Act, and the recomputation provided for by such section 215(f)(3)(C) shall be made using July 1, 1956, as the closing date, but only if it would result in a higher primary insurance amount. In any such computation on the basis of a July 1, 1956, closing date, the total of his wages and self-employment income after December 31, 1956, shall, if it is in excess of $2,100, be reduced to such amount.’’

**STUDY OF FEASIBILITY OF INCREASING BENEFITS**

Section 404 of act Sept. 1, 1954, authorized the Secretary of Health, Education, and Welfare to conduct a feasibility study with a view toward increasing the minimum old-age insurance benefit under this subchapter to $55, $60, or $75 per month and required him to report the results of his study to the Congress at the earliest practicable date.

**CHANGE OF WAGE CLOSING DATE OF CERTAIN INDIVIDUALS DEAD OR ELIGIBLE IN 1952 TO THE FIRST WAY OF THE QUARTER OF DEATH OR ENTITLEMENT**

Section 6(c) of act July 18, 1952, provided that: ‘’In the case of an individual who died or became (without the application of section 202(1) of the Social Security Act [section 402(1) of this title] entitled to old-age insurance benefits in 1952 and with respect to whom not less than six of the quarters elapsing after 1950 and prior to the quarter following the quarter in which he died or became entitled to old-age insurance benefits, whichever first occurred, are quarters of coverage, his wage closing date shall be the first day of such quarter of death or entitlement instead of the day specified in section 215(b)(3) of such Act [subsec. (b)(3) of this section], but only if it would result in a higher primary income and such primary insurance amounts differ from each other by not more than $0.10, then the benefit of such individual for such month of August 1952 shall, for the purposes of the last sentence of such section 2(c)(2)(A) [set out as a note under this section], be deemed to have been derived from the larger of such two primary insurance amounts.’’

**COMPUTATION OF INCREASED BENEFITS FOR DEPENDENTS AND SURVIVORS ON BENEFIT ROLLS FOR AUGUST 1952**

Section 2(c)(2) of act July 18, 1952, as amended by act Sept. 1, 1954, §102(g), eff. Sept. 1, 1954, provided that:

‘’(A) In the case of any individual who is (without the application of section 202(1) of the Social Security Act [section 402(1) of this title] entitled to a monthly benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of such section 202 for August 1952, whose benefit for such month is computed through use of a primary insurance amount determined under paragraph (1) or (2) of section 215(c) of such Act [subsec. (c) of this section], who is entitled to such benefit for any succeeding month on the basis of the same wages and self-employment income, the amendments to section 215(d)(3)(A) of such Act (as a result of the enactment of this Act [July 18, 1952]) for August 1952, increased, if it is not a multiple of $0.10, shall be increased to the next higher multiple of $0.10, and further in increased, if such product is not a multiple of $0.10, to the next higher multiple of $0.10. The provisions of section 203(a) of the Social Security Act, as amended by this section (and, for purposes of section 203(a), the provisions of section 215(c)(4) of the Social Security Act, as amended by this section), shall apply to such benefit as computed under the preceding sentence of this subparagraph, and the resulting amount, if not a multiple of $0.10, shall be increased to the next higher multiple of $0.10. ‘’

‘’(B) The provisions of this paragraph shall cease to apply to the benefit of any individual under title II of the Social Security Act [this subchapter] for any month after August 1954.’’

**DETERMINATION OF PRIMARY INSURANCE AMOUNT OF INDIVIDUALS WHO DIED AFTER 1939 AND PRIOR TO 1951**

Section 204(b) of Pub. L. 86–778 provided that: ‘’The primary insurance amount (for purposes of title II of the Social Security Act [this subchapter]) of any indi-
individual who died after 1939 and prior to 1951 shall be determined as provided in section 215(a)(2) of such Act [subsec. (a)(2) of this section]."

Benefits in Certain Cases of Deaths Before September 1950

Section 109 of act Sept. 1, 1954, as amended by Pub. L. 86–778, title II, § 1204(c), Sept. 13, 1960, 74 Stat. 966, provided that in the case of an individual who died prior to Sept. 1, 1950, and was not a fully insured individual when he died and who had at least six quarters of coverage under this subchapter, such individual was generally to be deemed to have died fully insured, his primary insurance amount was to be deemed to be computed under subsec. (a)(2) of this section, the proof of support requirement in section 402(b) of this title was not to be applicable where such proof was filed before Sept. 1956, and that the provisions of this section were to apply to monthly benefits under section 402 of this title for months after Aug. 1954 and in or prior to Sept. 1960.

Computation of Primary Insurance Amount of Individuals Who Died Prior to 1940

Section 205(c) of Pub. L. 86–778 provided that: "The primary insurance amount (for purposes of title II of the Social Security Act [this subchapter]) of any individual who died prior to 1940, and who had not less than six quarters of coverage (as defined in section 213 of such Act [section 413 of this title]), shall be computed under section 215(a)(2) of such Act [subsec. (a)(2) of this section]."

(Section 205(c) of Pub. L. 86–778 as applicable only in the case of monthly benefits under this subchapter for months after September 1960, on the basis of applications filed in or after such month, see section 205(d) of Pub. L. 86–778, set out as an Effective Date of 1960 Amendment note under section 402 of this title.)

§ 416. Additional definitions

For the purposes of this subchapter—

(a) Spouse; surviving spouse

(1) The term "spouse" means a wife as defined in subsection (b) of this section or a husband as defined in subsection (f) of this section.

(2) The term "surviving spouse" means a widow as defined in subsection (c) of this section or a widower as defined in subsection (g) of this section.

(b) Wife

The term "wife" means the wife of an individual, but only if she (1) is the mother of his son or daughter, (2) was married to him for a period of not less than one year immediately preceding the day on which her application is filed, or (3) in the month prior to the month of her marriage to him (A) was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (b), (e), or (h) of section 402 of this title, (B) had attained age eighteen and was entitled to, or on application therefor and attainment of the required age (if any) would have been entitled to, a widow's, child's (after attainment of age 18), or parent's insurance annuity under section 215(a)(2) of such Act [subsec. (a)(2) of this section], (C) during the period of the prior wife's institutionalization, the individual would have divorced the prior wife and married the surviving wife, but the individual did not so because such divorce would have been unlawful, by reason of the prior wife's institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security), (D) the prior wife continued to remain institutionalized up to the time of her death, and (E) the individual married the surviving wife within 60 days after the prior wife's death.

(d) Divorced spouses; divorce

(1) The term "divorced wife" means a woman divorced from an individual, but only if she had been married to such individual for a period of 10 years immediately before the date the divorce became effective.

(2) The term "surviving divorced wife" means a woman divorced from an individual who has died, but only if she had been married to the individual for a period of 10 years immediately before the date the divorce became effective.
(3) The term "surviving divorced mother" means a woman divorced from an individual who has died, but only if (A) she is the mother of his son or daughter, (B) she legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of 18, (C) he legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of 18, or (D) she was married to him at the time both of them legally adopted a child under the age of 18.

(4) The term "divorced husband" means a man divorced from an individual, but only if he had been married to such individual for a period of 10 years immediately before the date the divorce became effective.

(5) The term "surviving divorced husband" means a man divorced from an individual who has died, but only if he had been married to the individual for a period of 10 years immediately before the divorce became effective.

(6) The term "surviving divorced father" means a man divorced from an individual who has died, but only if (A) he is the father of her son or daughter, (B) he legally adopted her son or daughter while he was married to her and while such son or daughter was under the age of 18, (C) she legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of 18, or (D) he was married to her at the time both of them legally adopted a child under the age of 18.

(7) The term "surviving divorced parent" means a surviving divorced mother as defined in paragraph (3) of this subsection or a surviving divorced father as defined in paragraph (6).

(8) The terms "divorce" and "divorced" refer to a divorce a vinculo matrimonii.

(e) Child

The term "child" means (1) the child or legally adopted child of an individual, (2) a stepchild who has been such stepchild for not less than one year immediately preceding the day on which application for child's insurance benefits is filed or (if the insured individual is deceased) not less than nine months immediately preceding the day on which such individual died, and (3) a person who is the grandchild or stepgrandchild of an individual or his spouse, but only if (A) there was no natural or adoptive parent (other than such a parent who was under a disability, as defined in section 423(d) of this title) of such person living at the time (i) such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (ii) if such individual had a period of disability which continued until such individual became entitled to old-age insurance benefits or disability insurance benefits, or died, at the time such period of disability began, or (B) such person was legally adopted after the death of such individual by such individual's surviving spouse in an adoption that was decreed by a court of competent jurisdiction within the United States and such person's natural or adopting parent or stepparent was not living in such individual's household and making regular contributions toward such person's support at the time such individual died. For purposes of clause (1), a person shall be deemed, as of the date of death of an individual, to be the legally adopted child of such individual if such person was either living with or receiving at least one-half of his support from such individual at the time of such individual's death and was legally adopted by such individual's surviving spouse after such individual's death but only if (A) proceedings for the adoption of the child had been instituted by such individual before his death, or (B) such child was adopted by such individual's surviving spouse before the end of two years after (i) the day on which such individual died or (ii) August 28, 1958. For purposes of clause (2), a person who is not the stepchild of an individual shall be deemed the stepchild of such individual if such individual was not the mother or adopting mother or the father or adopting father of such person and such individual and the mother or adopting mother, or the father or adopting father, as the case may be, of such person went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in the last sentence of subsection (h) of this section, would have been a valid marriage. For purposes of clause (2), a child shall be deemed to have been the stepchild of an individual for a period of one year throughout the month in which occurs the expiration of such one year. For purposes of clause (3), a person shall be deemed to have no natural or adoptive parent living (other than a parent who was under a disability) throughout the most recent month in which a natural or adoptive parent (not under a disability) dies.

(f) Husband

The term "husband" means the husband of an individual, but only if (1) he is the father of her son or daughter, (2) he was married to her for a period of not less than one year immediately preceding the day on which his application is filed, or (3) in the month prior to the month of his marriage to her (A) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (c), (f) or (h) of section 422 of this title, (B) he had attained age eighteen before the date the divorce became effective.

(g) Widower

The term "widower" (except when used in the first sentence of section 402(i) of this title) means the surviving husband of an individual, but only if (A) he is the father of her son or daughter, (B) he legally adopted her son or
married at such time, such applicant shall, nevertheless be deemed to be the wife, husband, widow, or widower, as the case may be, of such insured individual if such applicant would, under the laws applied by such courts in determining the devolution of intestate personal property, have the same status with respect to the taking of such property as a wife, husband, widow, or widower of such insured individual.

(B)(i) In any case where under subparagraph (A) an applicant is not (and is not deemed to be) the wife, widow, husband, or widower of a fully or currently insured individual, or where under subsection (b), (c), (d), (f), or (g) of this section such applicant is not the wife, divorced wife, widow, surviving divorced wife, husband, divorced husband, widower, or surviving divorced husband of such individual, but it is established to the satisfaction of the Commissioner of Social Security that such applicant in good faith went through a marriage ceremony with such individual resulting in a purported marriage between them which, for a legal impediment not known to the applicant at the time of such ceremony, would have been a valid marriage, then, for purposes of subparagraph (A) and subsections (b), (c), (d), (f), and (g) of this section, such purported marriage shall be deemed to be a valid marriage. Notwithstanding the preceding sentence, in the case of any person who would be deemed under the preceding sentence a wife, widow, husband, or widower of the insured individual, such marriage shall not be deemed to be a valid marriage unless the applicant and the insured individual were living in the same household at the time of the death of the insured individual or (if the insured individual is living) at the time the applicant files the application. A marriage that is deemed to be a valid marriage by reason of the preceding sentence shall continue to be deemed a valid marriage if the insured individual and the person entitled to benefits as the wife or husband of the insured individual are no longer living in the same household at the time of the death of such insured individual.

(ii) The provisions of clause (i) shall not apply if the Commissioner of Social Security determines, on the basis of information brought to the Commissioner's attention, that such applicant entered into such purported marriage with such insured individual with knowledge that it would not be a valid marriage.

(iii) The entitlement to a monthly benefit under subsection (b) or (c) of section 402 of this title, based on the wages and self-employment income of such insured individual, of a person who would not be deemed to be a wife or husband of such insured individual but for this subparagraph, shall end with the month before the month in which such person enters into a marriage, valid without regard to this subparagraph, with a person other than such insured individual.

(iv) For purposes of this subparagraph, a legal impediment to the validity of a purported marriage includes only an impediment (I) resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution, or (II) resulting from a defect in the procedure followed in connection with such purported marriage.
(2)(A) In determining whether an applicant is the child or parent of a fully or currently insured individual for purposes of this subchapter, the Commissioner of Social Security shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual is domiciled at the time such applicant files application, or, if such insured individual is dead, by the courts of the State in which he was domiciled at the time of his death, or, if such insured individual is or was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking intestate personal property as a child or parent shall be deemed such.

(B) If an applicant is a son or daughter of a fully or currently insured individual but is not (and is not deemed to be) the child of such insured individual under subparagraph (A), such applicant shall nevertheless be deemed to be the child of such insured individual if such insured individual and the mother or father, as the case may be, of such applicant went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in the last sentence of paragraph (1)(B), would have been a valid marriage.

(3) An applicant who is the son or daughter of a fully or currently insured individual, but who is not (and is not deemed to be) the child of such insured individual under paragraph (2) of this subsection, shall nevertheless be deemed to be the child of such insured individual if:

(A) in the case of an insured individual entitled to old-age insurance benefits (who was not, in the month preceding such entitlement, entitled to disability insurance benefits)—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his or her son or daughter,

(II) has been decreed by a court to be the mother or father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant at the time such applicant’s application for benefits was filed;

(B) in the case of an insured individual entitled to disability insurance benefits—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his or her son or daughter,

(II) has been decreed by a court to be the mother or father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant at the time such applicant’s application for benefits was filed;

and such acknowledgment, court decree, or court order was made before such insured individual’s most recent period of disability began; or

(ii) such insured individual is shown by evidence satisfactory to the Commissioner of Social Security to be the mother or father of the applicant and was living with or contributing to the support of the applicant at the time such applicant’s application for benefits was filed;

(C) in the case of a deceased individual—

(i) such insured individual—

(I) had acknowledged in writing that the applicant is his or her son or daughter,

(II) had been decreed by a court to be the mother or father of the applicant, or

(III) had been ordered by a court to contribute to the support of the applicant because the applicant was his or her son or daughter,

and such acknowledgment, court decree, or court order was made before the death of such insured individual, or

(ii) such insured individual is shown by evidence satisfactory to the Commissioner of Social Security to have been the mother or father of the applicant, and such insured individual was living with or contributing to the support of the applicant at the time such insured individual died.

For purposes of subparagraphs (A)(i) and (B)(i), an acknowledgement, court decree, or court order shall be deemed to have occurred on the first day of the month in which it actually occurred.

(i) Disability; period of disability

(1) Except for purposes of sections 402(d), 402(e), 402(f), 423, and 425 of this title, the term “disability” means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term “blindness” means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less. The provisions of paragraphs (2)(A), (2)(B), (3), (4), (5), and (6) of section 423(d) of this title shall be applied for purposes of determining whether an individual is under a disability within the meaning of the first sentence of this paragraph in the same manner as they are applied for purposes of paragraph (1) of such section. Nothing in this subchapter shall be construed as authorizing the Commissioner of Social Security or any other
officer or employee of the United States to interfere in any way with the practice of medicine or with relationships between practitioners of medicine and their patients, or to exercise any supervision or control over the administration or operation of any hospital.

(2)(A) The term “period of disability” means a continuous period (beginning and ending as hereinafter provided in this subsection) during which an individual was under a disability (as defined in paragraph (1)), but only if such period is of not less than five full calendar months’ duration or such individual was entitled to benefits under section 423 of this title for one or more months in such period.

(B) No period of disability shall begin as to any individual unless such individual files an application for a disability determination with respect to such period; and no such period shall begin as to any individual after such individual attains retirement age (as defined in subsection (i) of this section). In the case of a deceased individual, the requirement of an application under the preceding sentence may be satisfied by an application for a disability determination filed with respect to such individual within 3 months after the month in which he died.

(C) A period of disability shall begin—

(i) on the day the disability began, but only if the individual satisfies the requirements of paragraph (3) on such day; or

(ii) if such individual does not satisfy the requirements of paragraph (3) on such day, then on the first day of the first quarter thereafter in which he satisfies such requirements.

(D) A period of disability shall end with the close of whichever of the following months is the earlier: (i) the month preceding the month in which the individual attains retirement age (as defined in subsection (i) of this section), or (ii) the month preceding (I) the termination month (as defined in section 423(a)(1) of this title), or, if earlier (II) the first month for which no benefit is payable by reason of section 423(e) of this title, where no benefit is payable for any of the preceding months during the 36-month period referred to in such section. The provisions set forth in section 423(f) of this title with respect to determinations of whether entitlement to benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual is terminated (on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling).

(E) Except as is otherwise provided in subparagraph (F), no application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraph (B) and this subparagraph) shall be accepted as an application for purposes of this paragraph.

(F) An application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraphs (B) and (E)) shall be accepted as an application for purposes of this paragraph if—

(i) in the case of an application filed by or on behalf of an individual with respect to a disability which ends after January 1968, such application is filed not more than 36 months after the month in which such disability ended, such individual is alive at the time the application is filed, and the Commissioner of Social Security finds in accordance with regulations prescribed by the Commissioner that the failure of such individual to file an application for a disability determination within the time specified in subparagraph (E) was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application, and

(ii) in the case of an application filed by or on behalf of an individual with respect to a period of disability which ends in or before January 1968—

(I) such application is filed not more than 12 months after January 1968,

(II) a previous application for a disability determination has been filed by or on behalf of such individual (1) in or before January 1968, and (2) not more than 36 months after the month in which his disability ended, and

(III) the Commissioner of Social Security finds in accordance with regulations prescribed by the Commissioner, that the failure of such individual to file an application within the then specified time period was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application.

In making a determination under this subsection, with respect to the disability or period of disability of any individual whose application for a determination thereof is accepted solely by reason of the provisions of this subparagraph (F), the provisions of this subsection (other than the provisions of this subparagraph) shall be applied as such provisions are in effect at the time such determination is made.

(G) An application for a disability determination filed before the first day on which the applicant satisfies the requirements for a period of disability under this subsection shall be deemed a valid application (and shall be deemed to have been filed on such first day) only if the applicant satisfies the requirements for a period of disability before the Commissioner of Social Security makes a final decision on the application and no request under section 405(b) of this title for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Commissioner of Social Security).

(3) The requirements referred to in clauses (i) and (ii) of paragraph (C) of this subsection are satisfied by an individual with respect to any quarter only if—

(A) he would have been a fully insured individual (as defined in section 414 of this title)
had he attained age 62 and filed application for benefits under section 402(a) of this title on the first day of such quarter; and

(B)(i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with such quarter, or

(ii) if such quarter ends before he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with such quarter and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage, or

(iii) in the case of an individual (not otherwise insured under clause (i)) who, by reason of clause (ii), had a prior period of disability that began during a period before the quarter in which he or she attained age 31, not less than one-half of the quarters beginning after such individual attained age 21 and ending with such quarter are quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter are quarters of coverage;

except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of “blindness” as defined in paragraph (1)). For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage.

(j) Periods of limitation ending on nonwork days

Where this subchapter, any provision of another law of the United States (other than the Internal Revenue Code of 1986) relating to or changing the effect of this subchapter, or any regulation issued by the Commissioner of Social Security pursuant thereto provides for a period within which an act is required to be done which affects eligibility for or the amount of any benefit or payment under this subchapter or is necessary to establish or protect any rights under this subchapter, and such period ends on a Saturday, Sunday, or legal holiday, or on any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order, then such act shall be considered as done within such period if it is done on the first day thereafter which is not a Saturday, Sunday, or legal holiday or any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order, or for purposes of this subchapter, the day on which a period ends shall include the day on which an extension of such period, as authorized by law or by the Commissioner of Social Security pursuant to law, ends. The provisions of this subchapter shall not extend the period during which benefits under this subchapter may (pursuant to section 402(j)(2) or 423(b) of this title) be accepted as such.

(k) Waiver of nine-month requirement for widow, stepchild, or widower in case of accidental death or in case of serviceman dying in line of duty, or in case of remarriage to same individual

The requirement in clause (E) of subsection (c)(1) of this section or clause (E) of subsection (g)(1) of this section that the surviving spouse of an individual have been married to such individual for a period of not less than nine months immediately prior to the day on which such individual died in order to qualify as such individual’s widow or widower, or the subsection (e) of this section that the stepchild of a deceased individual have been such stepchild for not less than nine months immediately preceding the day on which such individual died in order to qualify as such individual’s child, shall be deemed to be satisfied where such individual dies within the applicable nine-month period, if—

(1) his death—

(A) is accidental, or

(B) occurs in line of duty while he is a member of a uniformed service serving on active duty (as defined in section 410(j)(2) of this title),

unless the Commissioner of Social Security determines that at the time of the marriage involved the individual could not have reasonably been expected to live for nine months, or

(2)(A) the widow or widower of such individual had been previously married to such individual and subsequently divorced and such requirement would have been satisfied at the time of such divorce if such previous marriage had been terminated by the death of such individual at such time instead of by divorce; or

(B) the stepchild of such individual had been the stepchild of such individual during a previous marriage of such stepchild’s parent to such individual which ended in divorce and such requirement would have been satisfied at the time of such divorce if such previous marriage had been terminated by the death of such individual at such time instead of by divorce;

except that paragraph (2) of this subsection shall not apply if the Commissioner of Social Security determines that at the time of the marriage involved the individual could not have reasonably been expected to live for nine months. For purposes of paragraph (1)(A) of this subsection, the death of an individual is accidental if he receives bodily injuries solely through violent, external, and accidental means and, as a direct result of the bodily injuries and independently of all other causes, loses his life not later than three months after the day on which he receives such bodily injuries.

(l) Retirement age

(1) The term “retirement age” means—

(A) with respect to an individual who attains early retirement age (as defined in paragraph (2)) before January 1, 2000, 65 years of age;

(B) with respect to an individual who attains early retirement age after December 31, 1999,
and before January 1, 2005, 65 years of age plus the number of months in the age increase factor (as determined under paragraph (3)) for the calendar year in which such individual attains early retirement age;

(2) with respect to an individual who attains early retirement age after December 31, 2004, and before January 1, 2017, 66 years of age;

(D) with respect to an individual who attains early retirement age after December 31, 2016, and before January 1, 2022, 66 years of age plus the number of months in the age increase factor (as determined under paragraph (3)) for the calendar year in which such individual attains early retirement age; and

(E) with respect to an individual who attains early retirement age after December 31, 2021, 67 years of age.

(2) The term "early retirement age" means age 62 in the case of an old-age, wife's, or husband's insurance benefit, and age 60 in the case of a widow's or widower's insurance benefit.

(3) The age increase factor for any individual who attains early retirement age in a calendar year within the period to which subparagraph (D) or (D) of paragraph (1) applies shall be determined as follows:

(A) With respect to an individual who attains early retirement age in the 5-year period consisting of the calendar years 2000 through 2004, the age increase factor shall be equal to two-twelfths of the number of months in the period beginning with January 2000 and ending with December of the year in which the individual attains early retirement age.

(B) With respect to an individual who attains early retirement age in the 5-year period consisting of the calendar years 2005 through 2020, the age increase factor shall be equal to two-twelfths of the number of months in the period beginning with January 2005 and ending with December of the year in which the individual attains early retirement age.

(2004—Subsec. (c). Pub. L. 108–203, § 414(a), designated existing provisions as par. (1), redesignated former cls. (1) to (6) as cls. (A) to (F), respectively, of par. (1), in cl. (E) inserted "except as provided in paragraph (2)," before "was married," in cl. (F) redesignated former subcls. (A) to (C) as subs. (i) to (iii), respectively, and added par. (2).

Subsec. (g). Pub. L. 108–203, § 414(b), redesignated provisions as par. (1), redesignated former cls. (1) to (6) as cls. (A) to (F), respectively, of par. (1), in cl. (E) inserted "except as provided in paragraph (2)," before "was married," in cl. (F) redesignated former subscls. (A) to (C) as subs. (i) to (iii), respectively, and added par. (2).


1990—Subsec. (e). Pub. L. 101–508, § 510(a), substituted "other living with or receiving at least one-half of his support from such individual at the time of such individual's death for "at the time of such individual's death living in such individual's household" and struck out before period at end of second sentence "; except that this sentence shall not apply if at the time of such individual's death such person was receiving regular contributions toward his support from someone other than such individual or his spouse, or from any public or private welfare program which furnishes services or assistance for children".

Subsec. (h)(1)(A). Pub. L. 101–508, § 5119(a)(1), designated first and second sentences as cls. (i) and (ii), respectively.

Subsec. (h)(1)(B)(i). Pub. L. 101–508, § 5119(b), substituted "where under subsection (b), (c), (d), (f), or (g) of this section such applicant is not the wife, divorced
wife, widow, surviving divorced wife, husband, divorced husband, widower, or surviving divorced husband of such individual” for “where under subsection (b), (c), (f), or (g) of this section (such applicant is not the wife, widow, husband, or widower of such individual)”, struck out “and such applicant and the insured individual were living in the same household at the time of the death of such insured individual or (if such insured individual is living) at the time such applicant files the application,” after “valid marriage,”, substituted “subsections (b), (c), (d), (f), and (g)” for “subsections (b), (c), (d), (f), and (g)”, and inserted at end “Notwithstanding the preceding sentence, in the case of any person who would be deemed under the preceding sentence a wife, widow, husband, or widower of the insured individual, such marriage shall not be deemed to be a valid marriage unless the applicant and the insured individual were living in the same household at the time of the death of such insured individual or (if the insured individual is living) at the time the applicant files the application. A marriage that is deemed to be a valid marriage by reason of the preceding sentence shall continue to be deemed a valid marriage if the insured individual and the person entitled to benefits as the wife, widow, husband, or widower of such individual is no longer living in the same household at the time of the death of such insured individual.

Pub. L. 101–508, §5119(a)(2)(A), inserted “(1)” after “(B)”.

Subsec. (h)(1)(B)(i). Pub. L. 101–508, §5119(a)(2)(B), (C), substituted “(ii) The provisions of clause (i) shall not apply” for “The provisions of the preceding sentence shall not apply if (i) another person is or has been entitled to a benefit under subsection (b), (c), (d), (f), or (g) of section 402 of this title on the basis of the wages and self-employment income of such insured individual and such other person is (or is deemed to be) a wife, widow, husband, or widower of such insured individual under subparagraph (A) at the time such applicant files the application, or (ii)”.

Subsec. (h)(1)(B)(iii). Pub. L. 101–508, §5119(a)(2)(D)–(G), substituted “(iii) The entitlement to a monthly benefit under subsection (b) or (c)” for “The entitlement to a monthly benefit under subsection (b), (c), (e), (f), or (g)”, and inserted at end “wages and self-employment income of such insured individual under subparagraph (A)”.


1984—Subsec. (f). Pub. L. 98–369, §2661(f)(1), inserted provision that for purposes of subparagraph (C) of section 423(f)(1) of this title, a divorced husband shall be deemed not to be married throughout the month which he becomes divorced.


Subsec. (h)(3)(A)(i). Pub. L. 98–369, §2661(i)(2), substituted “subsection (i) of this section for “section 416(f) of this title”.


Subsec. (i)(2)(A). Pub. L. 98–369, §2661(i)(3), substituted “subsection (i) of this section” for “section 416(f) of this title”.


Subsec. (i)(2)(D). Pub. L. 98–369, §2662(b), inserted “The provisions set forth in section 423(f) of this title with respect to determinations of whether entitlement to benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual is terminated (on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling).”

Pub. L. 98–369, §2661(i)(3), substituted “subsection (i) of this section” for “section 416(f) of this title”.


Subsec. (d)(4), (5). Pub. L. 98–21, §301(c)(1), added pars. (4) and (5). Former par. (4) redesignated (6).

Subsec. (d)(6). Pub. L. 98–21, §306(c), added par. (6) and redesignated former par. (6) as (8).


Subsec. (d)(8). Pub. L. 98–21, §306(c), redesignated former par. (6) as (8).


Subsec. (h)(3)(A)(i). Pub. L. 98–21, §301(c)(1)(D), substituted “his or her” for “his”.


Subsec. (h)(3)(B)(i). Pub. L. 98–21, §303(d)(1), substituted “his or her” for “his”.

Subsec. (h)(3)(B)(ii). Pub. L. 98–21, §303(c), substituted “such applicant’s application for benefits was filed” for “such insured individual became entitled to benefits or attained retirement age (as defined in subsection (l) of this section) and such application was filed.”

Subsec. (h)(3)(B)(iii). Pub. L. 98–21, §303(c), substituted “such applicant’s application for benefits was filed” for “such insured individual became entitled to benefits or attained retirement age (as defined in subsection (l) of this section) and such application was filed.”

Subsec. (i)(2). Pub. L. 98–21, §201(c)(1)(D), substituted “retirement age (as defined in subsection (l) of this section)” for “age 65”.

Subsec. (i)(3)(A)(i). Pub. L. 98–21, §303(d)(1), substituted “his or her” for “his”.

Subsec. (i)(3)(A)(ii). Pub. L. 98–21, §303(a), inserted “mother or” before “father”.

Subsec. (i)(3)(A)(iii). Pub. L. 98–21, §303(d)(1), substituted “his or her” for “his”.

Subsec. (i)(3)(A)(i)(II). Pub. L. 98–21, §303(a), inserted “mother or” before “father” and substituted “such applicant’s application for benefits was filed” for “such insured individual became entitled to benefits or attained retirement age (as defined in subsection (l) of this section) and such application was filed.”

Subsec. (i)(3)(B)(i). Pub. L. 98–21, §303(c), substituted “he or she” for “he” in provisions preceding cl. (i).

Subsec. (i)(3)(B)(ii). Pub. L. 98–21, §303(c), substituted “such applicant’s application for benefits was filed” for “such insured individual became entitled to benefits or attained retirement age (as defined in subsection (l) of this section) and such application was filed.”

Subsec. (i)(3)(B)(iii). Pub. L. 98–21, §303(c), substituted “such applicant’s application for benefits was filed” for “such insured individual became entitled to benefits or attained retirement age (as defined in subsection (l) of this section) and such application was filed.”

Subsec. (i)(3)(C)(i). Pub. L. 98–21, §303(d)(1), substituted “his or her” for “his”.

Subsec. (i)(3)(C)(ii). Pub. L. 98–21, §303(a), inserted “mother or” before “father”.

Subsec. (i)(3)(C)(iii). Pub. L. 98–21, §303(d)(1), substituted “his or her” for “his”.

Subsec. (i)(3)(C)(iv). Pub. L. 98–21, §303(a), inserted “mother or” before “father”.

Subsec. (i)(3)(D)(i). Pub. L. 98–21, §201(c)(1)(D), as amended by Pub. L. 98–369, §2662(c)(1), substituted “re-
provisions that for purposes of cl. (2), a wife be deemed to have been married to an individual for a period of one year throughout the month in which occurs the first anniversary of her marriage to such individual and for purposes of cl. (3), a child be deemed to have no natural or adoptive parent during the 15-month period referred to in such section “and he would satisfy such requirement if a three-month period were substituted for the nine-month period”, and in material following par. (2) substituted “except that paragraph (2) of this subsection shall not apply” for “except that this subsection shall not apply”.

1968—Subsec. (c)(5). Pub. L. 90–248, § 156(a), substituted “not less than nine months” for “not less than one year”.

Subsec. (e). Pub. L. 90–248, §§ 150(a), 156(b), inserted in first sentence “not less than nine months immediately preceding” before “the day on which such individual died”, and added, in second sentence, cl. (A) and incorporated existing provisions in cl. (B).

Subsec. (g)(5). Pub. L. 90–248, § 156(c), substituted “not less than nine months” for “not less than one year”.

Subsec. (i)(1)(B). Pub. L. 90–248, §§ 104(d)(2), 156(d), 172(a), (b), inserted “402(e), 402(f),” after “402(d),”, redefined “blindness” to mean central visual acuity of 20/200 or less for former provision deeming an eye in which visual field is reduced to five degrees or less concentric contraction as having a central visual acuity of 20/200 or less, respectively, and deleted former third sentence which provided that an individual was not deemed under a disability unless he furnished proof as required and added third sentence making section 423(d)(2)(A), (3), (4), and (5) of this title applicable to determine if an individual is under a disability.

Subsec. (i)(2)(E) to (G). Pub. L. 90–248, § 111(b), inserted introductory exception phrase, inserted subpar. (F), and redesignated former subpar. (P) as (G).

Subsec. (j)(3)(B)(ii). Pub. L. 90–248, § 105(a), struck out “and he is under a disability by reason of blindness (as defined in paragraph (1) of this subsection)” after “age 31”.


1965—Subsec. (b). Pub. L. 89–97, §§ 306(c)(13), 306(d)(2)(B), 306(a), inserted “subject, however, to section 402(s) of this title)” and “and he is under a disability by reason of blindness (as defined in paragraph (1) of this subsection)” after “blindness “subject, however, to section 402(s) of this title)” and “subject, however, to section 402(s) of this title)” for “except that this subsection shall not apply”.

Subsec. (f). Pub. L. 89–97, §§ 306(c)(13), 334(b), inserted “subject, however, to section 402(s) of this title)” and “subject, however, to section 402(s) of this title)” for “except that this subsection shall not apply”.

Subsec. (g). Pub. L. 89–97, §§ 306(c)(13), 334(c), inserted “subject, however, to section 402(s) of this title)” and “subject, however, to section 402(s) of this title)” for “except that this subsection shall not apply”.

Subsec. (h). Pub. L. 89–97, § 339(a), added par. (3), defined “divorced wife”, “surviving divorced wife”, and “and divorced”, and incorporated definition of “former wife divorced” in par. (3), inserting “who has died” after “individual” and redesignating cls. (1) to (4) as (A) to (D), respectively.

Subsec. (i). Pub. L. 89–97, §§ 306(c)(13), 334(c), inserted “subject, however, to section 402(s) of this title)” and “subject, however, to section 402(s) of this title)” for “except that this subsection shall not apply”.

Subsec. (j). Pub. L. 89–97, §§ 306(c)(13), 334(d), inserted “subject, however, to section 402(s) of this title)” and “subject, however, to section 402(s) of this title)” for “except that this subsection shall not apply”.

Subsec. (k). Pub. L. 89–97, § 339(a), added par. (3).

Subsec. (l)(1)(A). Pub. L. 89–97, §§ 306(a), 306(a)(1), substituted “or has lasted or can be expected to last for a continuous period of not less than 12 months” for “or to be of long continued and indefinite duration”.

Subsec. (i)(2). Pub. L. 89–97, § 303(b)(1), struck out sixth sentence providing that: “Any application for a disability determination which is filed within such three months period or six months period shall be deemed to have been filed on such first day or in such first month, as the case may be.”


Subsec. (k). Pub. L. 89–97, § 303(b)(1), designated second sentence as subpar. (B).

Subsec. (l). Pub. L. 89–97, § 303(b)(1), designated second sentence as subpar. (B), substituted therein “No
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less such individual”.

struck out ‘‘, while under such disability,’’ after ‘‘un -

ject to section 423(a)(3) of this title)’’ before ‘‘begin’’,

and redesignated cls. (A) and (B) thereof as (i) and (ii);

ignated third sentence as subpar. (D), substituted ‘‘the close of

whichever of the following months is the earlier: (i) the month

preceding the month in which the individual attains age 65, or (ii) the second month following the month in which the disability ceases’’.

Subsec. (i)(2)(E). Pub. L. 89–97, § 303(b)(1), designated fifth sentence as subpar. (E), substituted ‘‘12 months for ‘‘three months’’ and ‘‘after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraph (B) and this subparagraph)’’ for ‘‘before the first day on which a period of disability can begin (as deter-

mined under this paragraph), or, in any case in which clause (i) of section 423(a)(1) of this title is applicable, more than six months before the first month for which such applicant becomes entitled to benefits under section 423 of this title,’’, and struck out ‘‘, and no such application which is filed prior to January 1, 1955, shall be treated as filed after for purposes of this paragraph’’.


Subsec. (i)(3). Pub. L. 89–97, §§ 303(b)(2), 344(a), sub-

stituted ‘‘clauses (i) and (ii) of paragraph (2)’’ for ‘‘clauses (A) and (B) of paragraph (2)’’, removed from existing subpar. (B) provision prohibiting the inclusion, as part of such 40-quarter period, of any quarter any part of which was included in a prior period of disabili-

ty unless such quarter was a quarter of coverage, and designated such subpar., as so amended, as subpar. (B)(i), added subpar. (B)(ii), and, in the material follow-

ing subpar. (B)(i), inserted provision prohibiting inclu-

sion of any quarter as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage and call-

ing for reduction by one of the number of quarters in any period whenever such number of quarters is an odd number, respectively.

1964—Subsec. (i)(2). Pub. L. 88–650, §1(a), struck out provisions which directed that a period of disability shall begin if the individual satisfies the requirements of clause (3) of this subsection on such day, on the first day of the eighteen-month period which ends with the day before the day on which the individual files such application.

Subsec. (i)(3). Pub. L. 88–650, §1(b), substituted ‘‘para-

graph (2) of this subsection’’ for ‘‘paragraphs (2) and (4) of this subsection’’.

Subsec. (i)(4). Pub. L. 88–650, §1(c), repealed par. (4) which related to the beginning of the period of disability for individuals who filed an application for a disabil-

ity determination after Dec. 1964, and before July 1962, with respect to a disability which began before January 1961.


Subsecs. (b), (c), (f), (g). Pub. L. 87–64, §102(c)(2)(B), substituted ‘‘attainment of age 62’’ for ‘‘attainment of retirement age’’.

Subsec. (i)(2). Pub. L. 87–64, §102(b)(2)(D), substituted ‘‘a period of disability shall (subject to section 423(a)(3) of this title) begin’’ for ‘‘a period of disability shall begin in third sentence.’’

Subsec. (i)(3)(A). Pub. L. 87–64, §102(c)(3)(C), sub-

stituted ‘‘attainment age 62 (if a woman) or age 65 (if a man)’’ for ‘‘attained retirement age’’.


1960—Subsec. (b). Pub. L. 86–778, §207(a), substituted ‘‘one year’’ for ‘‘three years’’.

Subsec. (e). Pub. L. 86–778, §§207(b), 208(c), in first sentence, reduced the period for eligibility for a period of disability of a living individual from three years immediately preced-

ing the day on which application for child’s benefits is filed to one year immediately preceding the day on which application for child’s benefits is filed.

Subsec. (e). Pub. L. 86–778, §§402(e), 403(c), redif-

fined ‘‘period of disability’’ to include a period of less than six full calendar months’ duration if the individual was entitled to benefits under section 423 of this title for one or more months in such period, prohibited accept-

ance of an application, in any case in which clause (ii) of section 423(a) of this title is applicable, filed more than six months before the first month for which the applicant becomes entitled to benefits under section 423 of this title, substituted provisions requiring a period of disability to end with the close of the last day of the period preceding whichever of the following months is the earlier: the month in which the individual attains age 65 or the third month following the month in which the disability ceases, for provisions which required a period of disability to end with the close of the last day of the first month in which either the disability ceases or the individual attains the age of 65, and inserted sentence providing that any application for a disability de-

termination which is filed within such three months’ period or six months’ period shall be deemed to have been filed on such first day or in such first month, as the case may be.


1958—Subsec. (b). Pub. L. 85–940, §301(d), included within definition of ‘‘wife’’ a woman who, in the month prior to the month of her marriage, was entitled to, or on application thereto and attainment of retirement age in such prior month would have been entitled to, benefits under subsection (e) or (h) of section 402 of this title, or had attained age eighteen and was entitled to, or on application thereto would have been entitled to, benefits under subsection (d) of section 402 of this title.

Subsec. (c). Pub. L. 85–940, §301(b)(2) included within definition of ‘‘widow’’ a woman whose husband had legally adopted her son or daughter while she was mar-

ried to him and while such son or daughter was under the age of eighteen, and a woman who, in the month prior to the month of her marriage, was entitled to, or on application thereto and attainment of retirement age in such prior month would have been entitled to, benefits under subsection (e) or (h) of section 402 of this title, or had attained age eighteen and was entitled to, or on application thereto would have been entitled to, benefits under subsection (d) of section 402 of this title.

Subsec. (d). Pub. L. 85–940, §301(e), included within definition of ‘‘former wife divorced’’ a woman whose husband legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of eighteen.

Subsec. (e). Pub. L. 85–940, §302(a), struck out require-

ment that an adopted child of a living individual must have been adopted for not less than three years immedi-

ately preceding the day on which application for for
child's benefits is filed, and inserted provisions requiring a child to be deemed, as of the date of death of an individual, to be the legally adopted child of such individual if the child was living in the decedent’s household at the time of his death and was legally adopted by the surviving spouse after the individual’s death but before the end of two years after the day on which the individual died. The child was not receiving regular contributions toward his support from someone other than the individual or his spouse, or from any public or private welfare organization.

Subsec. (f). Pub. L. 85–840, §301(a)(2), included within definition of “husband” a person who in the month prior to the month of his marriage was entitled to, or on application therefor and attainment of retirement age in such prior month would have been entitled to, benefits under subsection (f) or (h) of section 402 of this title, or who had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of section 402 of this title.

Subsec. (g). Pub. L. 85–840, §301(c)(2), included within definition of “widower” a person whose wife had legally adopted his son or daughter while he was married to her, while such son or daughter was under the age of eighteen, and a person who, in the month before the month of his marriage, was entitled to, or on application therefor and attainment of retirement age in such month would have been entitled to, benefits under subsection (f) or (h) of section 402 of this title, or who had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of section 402 of this title.

Subsec. (h)(3). Pub. L. 85–840, §305(b), repealed par. (3) which defined “living with” for purposes of section 402(i) of this title.

Subsec. (i)(2). Pub. L. 85–840, §201, substituted “while under such disability” for “while under a disability” in opening provisions, and “eighteen-month period” for “one-year period” in cl. (A)(ii).

Subsec. (i)(3). Pub. L. 85–840, §204(a), struck out provisions that required, for a period of disability to begin with respect to any quarter, an individual to have not less than six quarters of coverage during the thirteen-quarter period which ends with such quarter, and inserted provisions requiring an individual to be fully insured.


1957—Subsec. (h). Pub. L. 85–238 amended subsec. (h) generally to provide that the applicant is the wife, husband, widow, or widower if there is a finding that the applicant and the insured individual were validly married at the time the application for benefits is filed, or at the time the insured individual died, and to eliminate provisions which preceded certain conditions under which a wife or husband would be deemed to have been living with his or her spouse, and which related to determination of status of parent.


1956—Subsec. (a). Act Aug. 1, 1956, §102(a), reduced the retirement age in the case of a woman from age sixty-five to age sixty-two.

Subsec. (i)(1). Act Aug. 1, 1956, §103(c)(6), inserted “Except for purposes of sections 402(d), 423, and 425 of this title”.

Subsec. (i)(2). Act Aug. 1, 1956, §102(d)(12), substituted “the age of sixty-five” for “retirement age” in two places.

1954—Subsec. (1). Act Sept. 1, 1954, §106(d), added subsec. (i). Former subsec. (i), which was added by act July 18, 1952, §3(d), ceased to be in effect at the close of June 30, 1953. See Effective and Termination Date of 1952 Amendment note set out under section 413 of this title. 1952—Subsec. (1). Act July 18, 1952, added subsec. (i).

**Effective Date of 2004 Amendment**

Pub. L. 108–203, title IV, §414(d), Mar. 2, 2004, 118 Stat. 530, provided that: “The amendments made by this section [amending this section] shall be effective with respect to applications for benefits under title II of the Social Security Act [this subchapter] filed after the end of the 15-month period described in the applicable provisions of sections 402 and 423 of this title for any month after December 1987, and inapplicable with respect to applications filed after December 30, 1987, and inapplicable with respect to applications filed before August 1, 1988, for which applications are filed on or after Jan. 1, 1988, and are pending on such date, see section 416(a)(1) of Pub. L. 100–203, set out as a note under section 402 of this title.

**Effective Date of 1994 Amendment**


**Effective Date of 1990 Amendment**

Amendment by section 510(b)(1) of Pub. L. 101–508 applicable with respect to monthly insurance benefits for months after December 1990 for which applications are filed on or after Jan. 1, 1991, and are pending on such date, see section 510(e) of Pub. L. 101–508, set out as a note under section 402 of this title.

Section 510(b) of Pub. L. 101–508 provided that: ‘‘The amendments made by this section [amending this section] shall apply with respect to benefits payable for months after December 1990, but only on the basis of applications filed after December 31, 1990.’’

Amendment by section 107(a)(4) of Pub. L. 101–508 applicable with respect to benefits for months after December 1990, and applicable only with respect to benefits for which application is filed with Secretary of Health and Human Services before Dec. 31, 1990, with exception from application requirement, see section 5119(e) of Pub. L. 101–508, set out as a note under section 403 of this title.

**Effective Date of 1987 Amendment**

Amendment by Pub. L. 100–203 effective Jan. 1, 1988, and applicable with respect to individuals entitled to benefits under specific provisions of sections 402 and 423 of this title for any month after December 1987, and individuals entitled to benefits payable under specific provisions of sections 402 and 423 of this title for any month before January 1986 and with respect to whom the 15-month period described in the applicable provision amended by section 9010 of Pub. L. 100–203 has not elapsed as of Jan. 1, 1988, see section 9010(f) of Pub. L. 100–203, set out as a note under section 402 of this title.

**Effective Date of 1984 Amendments**

Amendment by section 2(b) of Pub. L. 98–460 applicable to determinations made by the Secretary on or after Oct. 9, 1984, with certain enumerated exceptions and qualifications, see section 2(d) of Pub. L. 98–460, set out as a note under section 423 of this title.

Amendment by section 4(a)(2) of Pub. L. 98–460 applicable with respect to determinations made on or after the first day of the first month beginning after 30 days after Oct. 9, 1984, see section 4(c) of Pub. L. 98–460, set out as a note under section 423 of this title.


Amendment by section 2663(a)(11) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed under the provisions of law involved before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

**Effective Date of 1983 Amendment**

Amendment by sections 301(c), 303, 304(c), 306(c), and 309(i) of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Section 322(c) of Pub. L. 98–21 provided that: ‘‘The amendments made by this section [amending this section and section 425 of this title] shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act [section 423 of this title].’’
of this title), and for disability determinations under section 1216(i) of such Act [subsec. (i) of this section], filed after the date of the enactment of this Act [Apr. 20, 1968] shall be effective with respect to applications for disability determinations filed on or after the month in which this Act is enacted [October 1972]."

Amendment by section 116(d) of Pub. L. 92-603 effective with respect to applications for disability determinations under subsec. (i) of this section filed on or after October 1972 or before October 1972 under specified conditions, see section 116(e) of Pub. L. 92-603, set out as a note under section 423 of this title.

Amendment by section 117(a) of Pub. L. 92-603 effective with respect to applications for disability determinations under subsec. (i) of this section filed in or after October 1972 or before October 1972 under specified conditions, see section 117(c) of Pub. L. 92-603, set out as a note under section 423 of this title.

Section 118(c) of Pub. L. 92-603 provided that: "The amendments made by this section [amending this section and section 423 of this title] shall apply in the case of deaths occurring after December 31, 1969. For purposes of such amendments (and for purposes of sections 202(j)(1) and 223(b) of the Social Security Act [sections 422(j)(1) and 423(b) of this title], any application with respect to an individual whose death occurred after December 31, 1969, but before the date of the enactment of this Act [Oct. 30, 1972] which is filed in, or within 3 months after the month in which this Act is enacted [October 1972] shall be deemed to have been filed in the month in which such death occurred."

Section 146(b) of Pub. L. 92-603 provided that: "The amendments made by this section [amending this section] shall apply only with respect to benefits payable under title II of the Social Security Act [this subchapter] for months after December 1972 on the basis of applications filed in or after the month in which this Act is enacted [October 1972]."

**Effective Date of 1968 Amendment**

Amendment by section 104 of Pub. L. 90-248 applicable with respect to monthly benefits under this subchapter for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 104(e) of Pub. L. 90-248, set out as a note under section 402 of this title.

Section 105(c) of Pub. L. 90-248 provided that: "The amendment made by subsection (a) [amending this section] shall apply only with respect to applications for disability determinations filed under section 216(i) of the Social Security Act [subsec. (i) of this section] in or after the month in which this Act is enacted [January 1968]. The amendments made by subsection (b) [amending section 423 of this title] shall apply with respect to monthly benefits under title II of such Act [this subchapter] for months after January 1968, but only on the basis of applications for such benefits filed in or after the month in which this Act is enacted [January 1968]."

Section 111(b) of Pub. L. 90-248 provided that: "No monthly insurance benefits under title II of the Social Security Act [this subchapter] shall be payable or increased for any month before the month in which this Act is enacted [January 1968] by reason of amendments made by subsection (a) [amending this section]."

Section 150(b) of Pub. L. 90-248 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after January 1968, but only on the basis of an application filed in or after the month in which this Act is enacted [January 1968]."

Section 156(e) of Pub. L. 90-248 provided that: "The amendments made by this section [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968, but only on the basis of applications filed in or after the month in which this Act is enacted [January 1968]."

Amendment by section 158(b) of Pub. L. 90-248 applicable with respect to applications for disability insurance benefits under section 423 of this title and to disability determinations under subsec. (i) of this section, see section 158(e) of Pub. L. 90-248, set out as a note under section 423 of this title.

Section 172(c) of Pub. L. 90-248 provided that: "The amendments made by this section [amending this sec-
the second month following July 1965, but, in the case of an individual who was not entitled to a monthly insurance benefit under section 402 of this title for the first month following July 1965, only on the basis of an application filed in or after July 1965, see section 308(e) of Pub. L. 89-97, set out as a note under section 402 of this title.

Amendment by section 334(a)-(d) of Pub. L. 89-97 applicable only with respect to monthly insurance benefits under section 401 et seq. of this title beginning with September 1965 but only on the basis of applications filed in or after July 1965, see section 334(g) of Pub. L. 89-97, set out as a note under section 402 of this title.

Amendment by section 338(c) of Pub. L. 89-97 provided that: "The amendments made by subsections (a) and (b) [amending this section and section 402 of this title] shall be applicable with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] beginning with the second month following the month in which this Act is enacted (July 1965) but only on the basis of an application filed in or after the month in which this Act is enacted.

Amendment by section 303(a)(1), (b)(1), (2) of Pub. L. 89-97 effective with respect to applications for disability insurance benefits under section 423 of this title, and for disability determinations under subsec. (i) of this section, filed in or after July 1965 or before July 1965, if the applicant has not died before such month, and notice of final administrative decision has not been given to the applicant before such month, except that monthly insurance benefits under this subchapter shall not be payable or increased by reason of amendments to subsecs. (i)(1)(A), (2), (3) of this section for months before the second month following July 1965, see section 303(f)(1) of Pub. L. 89-97, set out as a note under section 423 of this title.

Amendment by section 304(b) of Pub. L. 89-97 applicable with respect to monthly insurance benefits under this subchapter for and after the second month following July 1965 but only on the basis of applications filed in or after July 1965, see section 304(e) of Pub. L. 89-97, set out as a note under section 402 of this title.

Section 328(d) of Pub. L. 89-97 provided that: "The amendments made by this section [amending this section and sections 402 and 416 of this title] shall apply with respect to (1) applications filed on or after the date of enactment of this Act [July 30, 1965], (2) applications as to which the Secretary has not made a final decision before the date of enactment of this Act, and (3) if a civil action with respect to final decision by the Secretary has been commenced under section 205(g) of the Social Security Act [section 405(g) of this title] before the date of enactment of this Act, applications as to which there has been no final judicial decision before the date of enactment of this Act.

Section 344(e) of Pub. L. 89-97 provided that: "The amendments made by this section [amending this section and section 423 of this title] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after the first month following the month in which this Act is enacted (July 1965), on the basis of applications for such benefits filed in or after the month in which this Act is enacted.

Effective Date of 1964 Amendment

Section 1(d) of Pub. L. 88-650 provided that:

"(1) The amendments made by subsections (a), (b), and (c) [amending this section] shall apply in the case of applications for disability determinations under section 223 of the Social Security Act [subsec. (i) of this section] filed after the month following the month in which this Act is enacted [October 1964].

"(2) Except as provided in the preceding paragraphs, such amendments shall also apply, and as though such amendments had been enacted on July 1, 1962, in the case of applications for disability determinations filed under section 223 of the Social Security Act [subsec. (i) of this section] during the period beginning July 1, 1962, and ending with the close of the month following the month in which this Act is enacted [October 1964], by an individual who-

"(A) has been under a disability (as defined in such section 223(i)) continuously since he filed such application and up to (i) the first day of the second month following the month in which this Act is enacted or (ii) if earlier, the first day of the month in which he attained the age of 65,

"(B) is living on the day specified in subparagraph (A)(i),

"(3) In the case of an individual to whom paragraph (2) applies and who filed an application for disability insurance benefits under section 223 of the Social Security Act [section 423 of this title] during the period specified in such paragraph-

"(A) if such individual was under a disability (as defined in section 223(c) of such Act) throughout such period and was not entitled to disability insurance benefits under such section 223 for any month in such period (except for the amendments made by this section), such application and any application filed during such period for benefits under section 202 of the Social Security Act [section 402 of this title] on the basis of the wage and self-employment income of such individual shall, notwithstanding section 202(j)(2) and the first sentence of section 223(b), be deemed an effective application, or

"(B) if such individual was entitled (without the application of this section) to disability insurance benefits under section 223 [section 423 of this title] for a continuous period of months immediately preceding-

"(1) the second month following the month in which this Act was enacted [October 1964], or

"(ii) if earlier, the month in which he became entitled to benefits under section 202(a) [section 402(a) of this title], his primary insurance amount shall be recomputed, but only if such amount would be increased solely by reason of the enactment of this section.

"(4) No monthly insurance benefits, and no increase in monthly insurance benefits, may be paid under title II of the Social Security Act [this subchapter] by reason of the enactment of this section for any month before the eleventh month before the month in which this Act is enacted [October 1964], and

"(5) In the case of an individual (A) who is entitled under section 202 of the Social Security Act [section 402 of this title] (but without the application of subsection (j)(1) of such section) to a widow's, widower's, or parent's insurance benefit, or to an old-age, wife's or husband's insurance benefit which is reduced under section 202(q) of such Act, for any month in the period referred to in paragraph (2) of this subsection, (B) who was under a disability (as defined in section 223(c) of the Social Security Act [section 423(c) of this title]) which began prior to the sixth month before the first month for which the benefits referred to in clause (A) are payable and which continued through the month following the month in which this Act is enacted [October 1964], and (C) who files an application for disability insurance benefits under section 222(a)(1) of the Social Security Act—

"(i) subsection (a)(3) of section 223 of the Social Security Act shall not prevent him from being entitled to such disability insurance benefits;

"(ii) the provisions of subsection (a)(1) of such section 223 terminating entitlement to disability insur-
ance benefits by reason of entitlement to old-age insurance benefits shall not apply with respect to him unless and until he again becomes entitled to such old-age insurance benefits under the provisions of section 202 of such Act;

"(iii) such individual shall, for any month for which he is thereby entitled to both old-age insurance benefits and disability insurance benefits, be entitled only to such disability insurance benefits; and

"(iv) in case the benefits reduced under subsection (q) of section 202 of such Act are old-age insurance benefits (I) such old-age insurance benefits for the months in the period referred to in paragraph (2) of this subsection shall not be recomputed solely by reason of the enactment of this section, and, if otherwise recomputed, the provisions of and amendments made by this section shall not apply to such recomputation; and (II) the months for which he received such old-age insurance benefits before or during the period for which he becomes entitled, by reason of such enactment, to disability insurance benefits under such section 223 and the months for which he received such disability insurance benefits shall be excluded from the 'reduction period' and the 'adjusted reduction period', as defined in paragraphs (5) and (6), respectively, of such subsection (q) for purposes of determining the amount of the old-age insurance benefits to which he may subsequently become entitled; and

"(6) The entitlement of any individual to benefits under section 202 of the Social Security Act [section 402 of this title] shall not be terminated solely by reason of the enactment of this section, except where such individual is entitled to benefits under section 202(a) or 223 of such Act [section 402(a) or 423 of this title] in an amount which (but for this subsection) would have required termination of such benefits under such section 202.''

**Effective Date of 1961 Amendment**

Amendment by section 102(b)(2)(D) of Pub. L. 87–64 effective Aug. 1, 1961, and amendment by section 102(c)(1), (2)(B), (3)(C) of Pub. L. 87–64 applicable with respect to monthly benefits for months beginning on or after Aug. 1, 1961, on the basis of applications filed in or after March 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after Aug. 1, 1961, see sections 102(f)(4), (6) and 109 of Pub. L. 87–64, set out as notes under section 402 of this title.

Section 105 of Pub. L. 87–64 provided that the amendment made by that section is effective with respect to applications for disability determinations filed on or after July 1, 1961.

**Effective Date of 1960 Amendment**

Section 207(d) of Pub. L. 86–778 provided that: "The amendments made by this section [amending this section] shall apply only with respect to monthly benefits under section 202 of the Social Security Act [section 402 of this title] for months beginning with the month in which this Act is enacted [September 1960], on the basis of applications filed in or after such month."

Section 208(f) of Pub. L. 86–778 provided that: "The amendments made by the preceding provisions of this section [amending this section and section 402 of this title] shall be applicable (1) with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months beginning with the month in which this Act is enacted [September 1960] on the basis of an application filed in or after such month, and (2) in the case of a lump-sum death payment under such title based on an application filed in or after such month, but only if no person, other than the person filing such application, has filed an application for a lump-sum death payment under such title prior to the date of the enactment of this Act [Sept. 13, 1960] with respect to the death of the same individual."

Amendment by section 402(e) of Pub. L. 86–778 applicable only in the case of individuals who become entitled to benefits under section 423 of this title in or after September 1960, see section 402(f) of Pub. L. 86–778, set out as a note under section 423 of this title.

Amendment by section 408(c) of Pub. L. 86–778 applicable only in the case of individuals who have a period of disability (as defined in subsec. (i) of this section) beginning on or after Sept. 13, 1960, or beginning before Sept. 13, 1960 and continuing, without regard to any amendment, beyond the end of September 1960, see section 408(e) of Pub. L. 86–778, set out as a note under section 422 of this title.

**Effective Date of 1958 Amendment**

Section 207(a) of Pub. L. 85–840 provided that: "The amendments made by this section [amending this section] shall apply with respect to applications for a disability determination under section 216(i) of the Social Security Act [subsec. (i) of this section] filed after June 1958. The amendments made by this section [amending this section and section 423 of this title] shall apply with respect to applications for disability insurance benefits under section 223 of such Act filed after December 1957. The amendments made by section 203 [amending section 402 of this title] shall apply with respect to applications for a disability determination under such section 216(i) filed after June 1958. The amendments made by section 204 [amending section 423 of this title] shall apply with respect to (1) applications for disability insurance benefits under such section 223 or for a disability determination under such section 216(i) filed on or after the date of enactment of this Act [Aug. 28, 1958], and (2) applications for such benefits or for such a determination filed after 1957 and prior to such date of enactment if the applicant has not died prior to such date of enactment and if notice to the applicant of the Secretary's decision with respect thereto has not been given to him on or prior to such date, except that (A) no benefits under title II of the Social Security Act [this subchapter] for the month in which this Act is enacted [August 1958] or any prior month shall be payable or increased by reason of the amendments made by section 204 of this Act, and (B) the provisions of section 215(f)(1) of the Social Security Act [section 415(f)(1) of this title] shall not prevent recomputation of monthly benefits under this Act for the months for which the applicant has not died prior to such date of enactment (but no such recomputation shall be regarded as a recomputation for purposes of section 215(f) of such Act). The amendments made by section 205 (other than by subsections (k) and (m) [amending sections 401, 402, 403, 414, 422, and 425 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted, but only if an application for such benefits is filed on or after the date of enactment of this Act. The amendments made by section 206 (repealing section 424 of this title) and by subsections (k) and (m) of section 205 [amending sections 403 and 415 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for the month in which this Act is enacted and succeeding months."

Amendment by section 301(a)(2), (b)(2), (c)(2), (d), (e) of Pub. L. 85–840 applicable with respect to monthly benefits under section 402 of this title for months beginning after Aug. 28, 1958, but only if an application for such benefits is filed on or after such date, see section 301(f) of Pub. L. 85–840, set out as a note under section 402 of this title.

Section 302(b) of Pub. L. 85–840 provided that: "The amendment made by this section [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [section 402 of this title] for months beginning after the date of enactment of this Act [Aug. 28, 1958], but only if an application for such benefits is filed on or after such date, see section 302(b) of Pub. L. 85–840, set out as a note under section 402 of this title.

Amendment by section 305(b) of Pub. L. 85–840 applicable in the case of lump-sum death payments under section 402(i) of this title on the basis of the wages and self-employment income of any individual who dies after August 1958, see section 305(c) of Pub. L. 85–840, set out as a note under section 402 of this title."
Section applicable (1) in case of monthly benefits for months after August 1950, and (2) in the case of lump-sum death payments with respect to deaths after August 1950, see section 409(b) of act Aug. 29, 1950, set out as an Effective Date of 1950 Amendment note under section 409 of this title.

RETROACTIVE BENEFITS

For provisions relating to entitlement to retroactive benefits under section 2 of Pub. L. 98–460 (which amended subsec. (1)(2)(D) of this section), see section 2(f) of Pub. L. 98–460, set out as a note under section 423 of this title.

STUDY OF EFFECT OF RAISING RETIREMENT AGE ON THOSE UNLIKELY TO BENEFIT FROM IMPROVEMENTS IN LONGEVITY

Section 201(d) of Pub. L. 98–21 required the Secretary to conduct a comprehensive study and analysis of the implications of the changes made by this section (amending sections 402, 403, 415, 416, and 423 of this title) in retirement age in the case of certain individuals and submit to Congress no later than January 1, 1986, a full report on the study and analysis, including any recommendations for legislative changes.

SPECIAL INSURED STATUS TEST IN CERTAIN CASES FOR DISABILITY PURPOSES

Section 404 of Pub. L. 86–778 provided that:

“(a) In the case of any individual who does not meet the requirements of section 216(i)(3) of the Social Security Act [subsec. (3) of this section] with respect to any quarter, or who is not insured for disability insurance benefits under section 2 of Pub. L. 98–460 (which amending subsec. (1)(2)(D) of this section), see section 2(f) of Pub. L. 98–460, set out as a note under section 423 of this title.

§ 417. Benefits for veterans

(a) Determination of benefits

(1) For purposes of determining entitlement to and the amount of any monthly benefit for any
The provisions of clause (B) of this paragraph shall not apply in the case of any monthly benefit or lump-sum death payment under this subchapter if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 415 of this title prior to any recomputation thereof pursuant to section 415(f) of this title) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) of this paragraph shall also not apply for purposes of section 416(i)(3) of this title.

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Commissioner of Social Security shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless the Commissioner has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran during World War II, a benefit described in clause (B) of paragraph (1) of this subsection has been determined by such agency or instrumentality to be payable by it. If the Commissioner has not been so notified, the Commissioner of Social Security shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) of this subsection is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Commissioner of Social Security, and the Commissioner of Social Security shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service during World War II shall, at the request of the Commissioner of Social Security, certify to the Commissioner, with respect to any veteran, such information as the Commissioner of Social Security deems necessary to carry out the Commissioner's functions under paragraph (2) of this subsection.

(b) Determination of insurance status

(1) Subject to paragraph (3), any World War II veteran who died during the period of three years immediately following his separation from the active military or naval service of the United States shall be deemed to have died a fully insured individual whose primary insurance amount is the amount determined under section 415(c) of this title as in effect in December 1978. Notwithstanding section 415(d) of this title as in effect in December 1978, the primary insurance benefit (for purposes of section 415(c) of this title as in effect in December 1978) of such veteran shall be determined as provided in this subchapter as in effect prior to August 28, 1950, except that the 1 per centum addition provided for in section 409(a)(4)(B) of this title as in effect prior to August 28, 1950, shall be applicable only with respect to calendar years prior to 1951. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application;

(B) a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran during World War II is determined by any agency or wholly owned instrumentality of the United States (other than the Department of Veterans Affairs) to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

(2) Upon an application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Commissioner of Social Security shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless the Commissioner has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran during World War II, a benefit described in clause (B) of paragraph (1) of this subsection has been determined by such agency or instrumentality to be payable by it. If the Commissioner has not been so notified, the Commissioner of Social Security shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) of this subsection is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Commissioner of Social Security, and the Commissioner of Social Security shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service during World War II shall, at the request of the Commissioner of Social Security, certify to the Commissioner, with respect to any veteran, such information as the Commissioner of Social Security deems necessary to carry out the Commissioner's functions under paragraph (2) of this subsection.
this subsection to any individual, not exceeding the amount of any accrued pension or compensation payable to him by the Secretary of Veterans Affairs, shall (notwithstanding the provisions of section 5301 of title 38) be deemed to have been paid to him by that Secretary on account of such accrued pension or compensation. No such payment certified by the Commissioner of Social Security, and no payment certified by the Commissioner for any month prior to the first month for which any pension or compensation is paid by the Secretary of Veterans Affairs shall be deemed by reason of this subsection to have been an erroneous payment.

(3)(A) The preceding provisions of this subsection shall apply for purposes of determining the entitlement to benefits under section 402 of this title, based on the primary insurance amount of the deceased World War II veteran, of any surviving individual only if such surviving individual makes application for such benefits before the end of the 18-month period after November 1990.

(B) Subparagraph (A) shall not apply if any person is entitled to benefits under section 402 of this title based on the primary insurance amount of such veteran for the month preceding the month in which such application is made.

c) Filing proof of support

In the case of any World War II veteran to whom subsection (a) of this section is applicable, proof of support required under section 402(h) of this title may be filed by a parent at any time prior to July 1951 or prior to the expiration of two years after the date of the death of such veteran, whichever is the later.

d) Definitions

For the purposes of this section—

(1) The term ‘‘World War II’’ means the period beginning with September 16, 1940, and ending at the close of July 24, 1947.

(2) The term ‘‘World War II veteran’’ means any individual who served in the active military or naval service of the United States at any time during World War II and who, if discharged or released therefrom, was so discharged or released under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty; but such term shall not include any individual who died while in the active military or naval service of the United States if his death was inflicted (other than by an enemy of the United States) as lawful punishment for a military or naval offense.

e) Determination based on wages and self-employment

(1) For purposes of determining entitlement to and the amount of any monthly benefit or lump-sum death payment payable under this subchapter on the basis of wages and self-employment income of any veteran (as defined in paragraph (4) of this subsection), and for purposes of section 416(i)(3) of this title, such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of $160 in each month during any part of which he served in the active military or naval service of the United States on or after July 25, 1947, and prior to January 1, 1957. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, is determined by any agency or wholly owned instrumentality of the United States (other than the Department of Veterans Affairs) to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) of this paragraph shall not apply in the case of any monthly benefit or lump-sum death payment under this subchapter if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 415 of this title prior to any recomputation thereof pursuant to subsection (f) of section 415 of this title) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) of this paragraph shall also not apply for purposes of section 416(i)(3) of this title. In the case of monthly benefits under this subchapter for months after December 1956 (and any lump-sum death payment under this subchapter with respect to a death occurring after December 1956) based on the wages and self-employment income of a veteran who performed service (as a member of a uniformed service) to which the provisions of section 410(i)/(1) of this title are applicable, wages which would, but for the provisions of clause (B) of this paragraph, be deemed under this subsection to have been paid to such veteran with respect to his active military or naval service performed after December 1950 shall be deemed to have been paid to him with respect to such service notwithstanding the provisions of such clause, but only if the benefits referred to in such clause which are based (in whole or in part) on such service are payable solely by the Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, National Oceanic and Atmospheric Administration Corps, or Public Health Service.

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any veteran, the Commissioner of Social Security shall make a determination by such agency or wholly owned instrumentality of the United States that, on the basis of the military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, a benefit described in clause (B) of paragraph (1) of this subsection unless the Commissioner has been notified by some other agency or instrumentality of the United States that a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, is determined by any agency or wholly owned instrumentality of the United States to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

This subsection shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) of this subsection shall be payable by it under any other law of the United States or under a system established by such agency or instrumentality.
scribed in clause (B) of paragraph (1) of this subsection is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Commissioner of Social Security, who shall notify the Commissioner of Social Security that (by reason of such waiver) no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(g) Appropriation to trust funds

(1) Within thirty days after April 20, 1983, the Commissioner of Social Security shall determine the amount equal to the excess of—
(A) the actuarial present value as of April 20, 1983, of the past and future benefit payments from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund under this subchapter and subchapter XVIII of this chapter, together with associated administrative costs, resulting from the operation of this section (other than this subsection) and section 410 of this title as in effect before the enactment of the Social Security Amendments of 1950, over
(B) any amounts previously transferred from the general fund of the Treasury to such Trust Funds pursuant to the provisions of this section as in effect immediately before April 20, 1983.

Such actuarial present value shall be based on the relevant actuarial assumptions set forth in the report of the Board of Trustees of each such Trust Fund for 1983 under sections 401(c) and 1395i(b) of this title. Within thirty days after April 20, 1983, the Secretary of the Treasury shall transfer the amount determined under this paragraph with respect to each such Trust Fund from such Trust Fund from amounts in the general fund of the Treasury not otherwise appropriated.

(2) The Commissioner of Social Security shall revise the amount determined under paragraph (1) with respect to each such Trust Fund in 1985 and each fifth year thereafter, as determined appropriate by the Commissioner of Social Security from data which becomes available to the Commissioner after the date of the determination under paragraph (1) on the basis of the amount of benefits and administrative expenses actually paid from such Trust Fund under this subchapter or subchapter XVIII of this chapter and the relevant actuarial assumptions set forth in the report of the Board of Trustees of such Trust Fund for such year under section 401(c) or 1395i(b) of this title. Within 30 days after any such revision, the Secretary of the Treasury, to the extent provided in advance in appropriation Acts, shall transfer to such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, or from such Trust Fund to the general fund of the Treasury, such amounts as the Secretary of the Treasury determines necessary to take into account such revision.
(h) Determination of veterans status

(1) For the purposes of this section, any individual who the Commissioner of Social Security finds—

(A) served during World War II (as defined in subsection (d)(1) of this section) in the active military or naval service of a country which was on September 16, 1940, at war with a country with which the United States was at war during World War II;

(B) entered into such active service on or before December 8, 1941;

(C) was a citizen of the United States throughout such period of service or lost his United States citizenship solely because of his entrance into such service;

(D) had resided in the United States for a period or periods aggregating four years during the five-year period ending on the day of, and was domiciled in the United States on the day of, such entrance into such active service; and

(E)(i) was discharged or released from such service under conditions other than dishonorable or (ii) died while in such service,

shall be considered a War II veteran (as defined in subsection (d)(2) of this section) and such service shall be considered to have been performed in the active military or naval service of the United States.

(2) In the case of any individual to whom paragraph (1) applies, proof of support required under section 402(f) or (h) of this title may be filed at any time prior to the expiration of two years after the date of such individual’s death or August 28, 1958, whichever is the later.


REFERENCES IN TEXT


AMENDMENTS

1994—Subsec. (a)(2), (3). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing, “unless the Commissioner” for “unless he” and “If the Commissioner” for “If he” in par. (2), and “to the Commissioner” for “to him” and “the Commissioner’s functions” for “his functions” in par. (3).

Subsec. (b)(2). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing except where appearing before “of Veterans Affairs” or after “that” and substituted “unless the Commissioner” for “unless he” and “certified by the Commissioner” for “certified by him”.

Subsec. (e)(2), (3). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing, “the Commissioner has” for “he has” in two places in par. (2), and “certify to the Commissioner” for “certify to him” and “the Commissioner’s” for “his” in par. (3).

Subsec. (f)(1). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing, “the Commissioner” for “the Secretary” and paragraph (3) for par. (4).

Subsec. (g). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing, “the Commissioner” for “the Secretary” and paragraph (2) for par. (3).


Subsec. (b)(1)(B). Pub. L. 102–54, §13(q)(3)(D), substituted “Secretary of Veterans Affairs to be payable by him” for “Veterans’ Administration to be payable by it”.

Subsec. (b)(2). Pub. L. 102–54, §13(q)(3)(E), substituted references to Secretary of Veterans Affairs and Secretary for references to Veterans Administration and Administration, wherever appearing.

Pub. L. 102–40 substituted “section 5301 of title 38” for “section 3101 of title 38”.


1990—Subsec. (b)(1). Pub. L. 101–508, §5117(b)(1), substituted “Subject to paragraph (3), any” for “Any”.


miration of amounts to be appropriated to trust funds and to revisions of such amounts for provisions which had formerly required that, in September of 1965, 1970, and in every fifth October thereafter up to and including October 2010, the Secretary determine the amount which, if paid in equal installments at the beginning of each fiscal year in the period beginning (A) with July 1, 1965, in the case of the first such determination, and (B) with the beginning of the first fiscal year commencing after the determination in the case of all other such determinations, and ending with the close of September 30, 2015, would accumulate, with interest compounded annually, to an amount equal to the amount needed to place each of the Trust Funds and the Federal Hospital Insurance Trust Fund in the same position at the close of September 30, 2015, as he estimated they would otherwise be in at the close of that date if section 410 of this title as in effect prior to the Social Security Act Amendments of 1950, and this section, had not been enacted, with the interest to be used in determining such amount to be the rate determined under section 401(d) of this title for public-debt obligations which were or could have been issued for purchase by the Trust Funds in the June preceding the September in which the determinations in 1965, 1970, and 1975 were made and in the September preceding the October in which all other such determinations were made.

1981—Subsec. (b)(1). Pub. L. 97–123 struck out "", and as modified by the application of section 415(a)(6) of this title"

1976—Subsec. (g)(1). Pub. L. 94–273, §14, substituted provisions relating to determination of the required amount for payment in September of 1965, 1970, and 1975, and in October 1980 and in every fifth October thereafter up to and including October 2010, and ending with the close of September 30, 2015, for provisions relating to determination of the required amount for payment in September 1965, and in every fifth September thereafter up to and including September 2010, and ending with the close of June 30, 2015, and inserted provisions relating to the rate of interest for the determination of the required amount in the September preceding the October for all the other determinations subsequent to the 1975 determination.


1965—Subsec. (g)(1). Pub. L. 89–97 substituted provisions requiring the Secretary to determine, in September 1965, and every fifth September thereafter, up to and including September 2010, the amount necessary to place each of the Trust Funds and the Federal Hospital Insurance Trust Fund in the same position at the close of June 30, 2015, as they would otherwise have been in at the close of that date if section 410 of this title, as in effect prior to the Social Security Act Amendments of 1950, and this section had not been enacted and providing for determination of interest in accordance with section 401(d) of this title, for provisions authorizing the appropriation of sums necessary to meet additional costs resulting from payment of benefits after June 1965 under subsecs. (a), (b), and (e), including lump-sum death payments.

Subsec. (g)(2). Pub. L. 89–97 substituted provisions authorizing appropriation to the Trust Funds and the Federal Hospital Insurance Trust Fund in the fiscal years ending with the close of June 30, 2015, for provisions requiring the Secretary to determine before October 1, 1958, the amount necessary to place the Federal Old-Age and Survivors Insurance Trust Fund in the same position it would have been at the close of June 30, 1956, if section 410 of this title, as in effect prior to the Social Security Act Amendments of 1950, and this section had not been enacted and authorizing appropriations during the first ten years beginning after such determination had been made aggregating the sum so determined plus interest.

Subsec. (g)(3), (4). Pub. L. 89–97 added pars. (3) and (4).

1960—Subsec. (e)(1). Pub. L. 86–778 substituted "section 410(h)(1) of this title" for "section 410(m)(1) of this title".

1958—Subsec. (b)(2). Pub. L. 85–857 substituted "section 3101 of title 38" for "section 454a of title 38".

Subsec. (g). Pub. L. 85–846, §314(b), substituted "Trust Funds" for "Trust Fund" in par. (1), and "the Federal Old-Age and Survivors Insurance Trust Fund in" for "the Trust Fund in", "such Trust Fund annually", and "such Trust Fund during" for "the Trust Fund during" in par. (2).


1956—Subsec. (e). Act Aug. 1, 1956, §404(a), amended subsec. (e) generally, substituting "January 1, 1957" for "April 1, 1956" in five places, and inserting provisions in par. (1) relating to monthly benefits for months after December 1956 and any lump-sum death payment under this subchapter with respect to a death occurring after December 1956.

Subsecs. (f), (g). Act Aug. 1, 1956, §§404(b), 406, added subsecs. (f) and (g), respectively.


Subsec. (e)(1). Act Sept. 1, 1954, §106(e)(2), (3), inserted "and for purposes of section 416(i)(3) of this title" after "veteran (as defined in paragraph (4) of this subsection)" and inserted sentence at end.


Subsec. (a)(1). Act July 5, 1952, §5(d)(1), inserted provision following cl. (B) that cl. (B) not apply in the case of any monthly benefits or lump-sum death payments under this subchapter.


CHANGE OF NAME


EFFECTIVE DATE OF 1994 AMENDMENT


EFFECTIVE DATE OF 1984 AMENDMENT

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

Effective Date of 1963 Amendment
Amendment by section 308 of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Effective Date of 1961 Amendment
Amendment by section 2201(c)(7) of Pub. L. 97–35 and by section 2(g) of Pub. L. 97–123 applicable with respect to benefits for months after December 1961 with certain exceptions, see section 2(j)(2)–(4) of Pub. L. 97–123, set out as a note under section 415 of this title.

Effective Date of 1977 Amendment
Amendment by Pub. L. 95–216 effective with respect to monthly benefits and lump-sum death payments for deaths occurring after December 1977, see section 206 of Pub. L. 95–216, set out as a note under section 402 of this title.

Effective Date of 1960 Amendment

Effective Date of 1958 Amendments

Section 314(c)(1) of Pub. L. 85–840 provided that: "The amendment made by subsection (a) [amending this section] shall apply only with respect to (A) monthly benefits under sections 202 and 223 of the Social Security Act [sections 402 and 423 of this title] for months after the month in which this Act is enacted [August 1958], (B) lump-sum death payments under such section 202 in the case of deaths occurring after the month in which this Act is enacted, and (C) periods of disability under section 216(i) [section 416(i) of this title] in the case of applications for a disability determination filed after the month in which this Act is enacted."  

Effective Date of 1956 Amendment

Section 409(c) of act Aug. 1, 1956, provided that: "Except for the last sentence of section 217(e)(1) of the Social Security Act [subsection (e)(1) of this section] as amended by subsection (a) of this section, the amendments made by such subsection (a) [amending this section] shall be effective as though they had been enacted on March 31, 1956. Such last sentence of section 217(e)(1) of the Social Security Act shall become effective January 1, 1967."  

Amendment by section 406 of act Aug. 1, 1956, effective Jan. 1, 1957, see section 603(a) of act Aug. 1, 1956.

Effective Date of 1954 Amendment
Amendment by section 106(e) of act Sept. 1, 1954, applicable with respect to monthly benefits under subchapter II of this chapter for months after June 1955, and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after June 1955, but that no recomputation of benefits by reason of such amendments shall be regarded as a recomputation for purposes of section 415(d) of this title, see section 106(h) of act Sept. 1, 1954, set out as a note under section 415 of this title.

Effective Date of 1952 Amendment
Section 5(c) of act of July 18, 1952, as amended by Pub. L. 86–778, title III, §304(d), Sept. 13, 1960, 74 Stat. 966, provided that:  

"(1) The amendments made by subsections (a) and (b) [amending this section and section 405 of this title] shall apply with respect to monthly benefits under section 202 of the Social Security Act [section 402 of this title] for months after August 1952, and with respect to lump-sum death payments in the case of deaths occurring after August 1952, except that, in the case of any individual who is entitled, on the basis of the wages and self-employment income of any individual to whom section 217(e) of the Social Security Act [subsection (e) of this section] applies, to monthly benefits under such section 202 for August 1952, such amendments shall apply (A) only if an application for recomputation by reason of such amendments is filed by such individual, or any other individual, entitled to benefits under such section 202 on the basis of such wages and self-employment income, and (B) only with respect to such benefits for months after whichever of the following is the later: August 1952 of the seventh month before the month in which such application was filed. Recomputations of benefits as required to carry out the provisions of this paragraph shall be made notwithstanding the provisions of section 215(f)(1) of the Social Security Act [section 415(f)(1) of this title]; but no such recomputation shall be regarded as a recomputation for purposes of section 215(f) of such act. Notwithstanding the preceding provisions of this paragraph, the primary insurance amount of an individual shall not be recomputed under such provisions unless such individual files the application referred to in clause (A) of the first sentence of this paragraph prior to January 1961 or, if he dies without filing such application, his death occurred prior to January 1961.  

"(2) In the case of any veteran (as defined in section 217(e)(4) of the Social Security Act [subsection (e)(4) of this section]) who died prior to September 1954, the requirement in subsections (f) and (h) of section 202 of the Social Security Act that proof of support be filed within two years of the date of such death shall not apply if such proof is filed prior to September 1954."

Section 5(d)(2) of act July 18, 1952, provided that: "The amendment made by paragraph (1) of this subsection [amending this section] shall apply only in the case of applications for benefits under section 202 of the Social Security Act [section 402 of this title] filed after August 1952.

Effective Date
Section 105 of act Aug. 28, 1950, provided that this section is effective Sept. 1, 1950.

Transfer of Functions
For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 466(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation, and functions, powers, and duties relating to Coast Guard, of Secretary of the Treasury and of other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, §6(b)(1), Oct. 13, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

Recomputation of Primary Insurance Amount of Certain Individuals
Section 314(c)(2) of Pub. L. 95–840 provided that: "(A) who is a World War II veteran (as defined in section 217(d)(2) of the Social Security Act [subsec.
(d)(2) of this section)) wholly or partly by reason of service described in section 217(h)(1)(A) of such Act; and

"(B) who (i) became entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] or to disability insurance benefits under section 223 of such Act [section 423 of this title] prior to the first day of the month in which this Act is enacted, following the month in which this Act is enacted [Aug. 1958], or (ii) died prior to such first day, and whose widow, former wife divorced, widower, child, or parent is entitled for the month in which this Act is enacted, on the basis of his wages and self-employment income, to a monthly benefit under section 202 of such Act; and

"(C) any part of whose service described in section 217(h)(1)(A) of the Social Security Act was not included in the computation of his primary insurance amount under section 215 of such Act [section 415 of this title] but would have been included in such computation if the amendment made by subsection (a) of this section had been effective prior to the date of such computation,

the Secretary of Health, Education, and Welfare [now Health and Human Services] shall, notwithstanding the provisions of section 215(f)(1) of the Social Security Act, recompute the primary insurance amount of such individual upon the filing of an application, after the month in which this Act is enacted [Aug. 1958], by him or (if he has died without filing such an application) by any person entitled to monthly benefits under section 202 of the Social Security Act on the basis of his wages and self-employment income. Such recomputation shall be made only in the manner provided in title II of the Social Security Act [this subchapter] as in effect at the time of the last previous computation or recomputation of such individual's primary insurance amount, and as though application therefor was filed in the month in which the application is filed, in no case for the month before the first month in which such widow or child is entitled by reason of section 217(f) of the Social Security Act to have such active military or naval service included in the computation of such monthly benefits. The terms used in this subsection shall have the same meaning as when used in title II of the Social Security Act [this subchapter]."

§ 418. Voluntary agreements for coverage of State and local employees

(a) Purpose of agreement

(1) The Commissioner of Social Security shall, at the request of any State, enter into an agreement with such State for the purpose of extending the insurance system established by this subchapter to services performed by individuals as employees of such State or any political subdivision thereof. Each such agreement shall contain such provisions, not inconsistent with the provisions of this section, as the State may request.

(2) Notwithstanding section 410(a) of this title, for the purposes of this subchapter the term "employment", includes any service included under an agreement entered into under this section.

(b) Definitions

For the purposes of this section—

(1) The term "State" does not include the District of Columbia, Guam, or American Samoa.

(2) The term "political subdivision" includes an instrumentality of (A) a State, (B) one or more political subdivisions of a State, or (C) a State and one or more of its political subdivisions.

(3) The term "employee" includes an officer of a State or political subdivision.

(4) The term "retirement system" means a pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof.

(5) The term "coverage group" means (A) employees of the State other than those engaged in performing service in connection with a proprietary function; (B) employees of a political subdivision of a State other than those engaged in performing service in connection with a proprietary function; (C) employees of a State engaged in performing service in connection with a single proprietary function; or (D) employees of a political subdivision of a State engaged in performing service in connection with a single proprietary function. If under the preceding sentence an employee would be included in more than one coverage group by reason of the fact that he performs service in connection with two or more proprietary functions or in connection with both a proprietary function and a nonproprietary function, he shall be included in only one such
coverage group. The determination of the coverage group in which such employee shall be included shall be made in such manner as may be specified in the agreement. Persons employed under section 709 of title 32, who elected under section 6 of the National Guard Technicians Act of 1968 to remain covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, shall, for the purposes of this chapter, be employees of the State or the Commonwealth of Puerto Rico and (notwithstanding the preceding provisions of this paragraph), shall be deemed to be a separate coverage group. For purposes of this section, individuals employed pursuant to an agreement, entered into pursuant to section 1624 of title 7 or section 409n of title 7, between a State and the United States Department of Agriculture to perform services as inspectors of agricultural products may be deemed, at the option of the State, to be employees of the State and (notwithstanding the preceding provisions of this paragraph) shall be deemed to be a separate coverage group.

c) Services covered

(1) An agreement under this section shall be applicable to any one or more coverage groups designated by the State.

(2) In the case of each coverage group to which the agreement applies, the agreement must include all services (other than services excluded by or pursuant to subsection (d) or paragraph (3), (5), or (6) of this subsection) performed by individuals as members of such group.

(3) Such agreement shall, if the State requests it, exclude (in the case of any coverage group) any one or more of the following:

(A) All services in any class or classes of (i) elective positions, (ii) part-time positions, or (iii) positions the compensation for which is on a fee basis;

(B) All services performed by individuals as members of a coverage group in positions covered by a retirement system on the date such agreement is made applicable to such coverage group, but only in the case of individuals who, on such date (or, if later, the date on which they first occupy such positions), are not eligible to become members of such system and whose services in such positions have not already been included under such agreement pursuant to subsection (d)(3) of this section.

(4) The Commissioner of Social Security shall, at the request of any State, modify the agreement with such State so as to (A) include any coverage group to which the agreement did not previously apply, or (B) include, in the case of any coverage group to which the agreement applies, services previously excluded from the agreement; but the agreement as so modified may not be inconsistent with the provisions of this section applicable in the case of an original agreement with a State. A modification of an agreement pursuant to clause (B) of the preceding sentence may apply to individuals to whom paragraph (3)(B) of this subsection is applicable (whether or not the previous exclusion of the service of such individuals was pursuant to such paragraph), but only if such individuals are, on the effective date specified in such modification, ineligible to be members of any retirement system or if the modification with respect to such individuals is pursuant to subsection (d)(3) of this section.

(5) Such agreement shall, if the State requests it, exclude (in the case of any coverage group) any agricultural labor, or service performed by a student, designated by the State. This paragraph shall apply only with respect to service which is excluded from employment by any provision of section 410(a) of this title other than paragraph (7) of such section and service the remuneration for which is excluded from wages by subparagraph (B) of section 409(a)(7) of this title.

(6) Such agreement shall exclude—

(A) service performed by an individual who is employed to relieve him from unemployment,

(B) service performed in a hospital, home, or other institution by a patient or inmate thereof,

(C) covered transportation service (as determined under section 410(k) of this title),

(D) service (other than agricultural labor or service performed by a student) which is excluded from employment by any provision of section 410(a) of this title other than paragraph (7) of such section,

(E) service performed by an individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency, and

(F) service described in section 410(a)(7)(F) of this title which is included as “employment” under section 410(a) of this title.

(7) No agreement may be made applicable (either in the original agreement or by any modification thereof) to service performed by any individual to whom paragraph (3)(B) of this subsection is applicable unless such agreement provides (in the case of each coverage group involved) either that the service of any individual to whom such paragraph is applicable and who is a member of such coverage group shall continue to be covered by such agreement in case he thereafter becomes eligible to be a member of a retirement system, or that such service shall cease to be so covered when he becomes eligible to be a member of such a system (but only if the agreement is not already applicable to such system pursuant to subsection (d)(3) of this section), whichever may be desired by the State.

(8)(A) Notwithstanding any other provision of this section, the agreement with any State entered into under this section may at the option of the State be modified at any time to exclude service performed by election officials or election workers if the remuneration paid in a calendar year for such service is less than $1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under subparagraph (B) for any calendar year commencing on or after January 1, 2000, with respect to service performed by election officials or election workers if the remuneration paid in a calendar year for such service is less than $1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under subparagraph (B) for any calendar year commencing on or after January 1, 2000, with respect to service performed during any calendar year in which the modification is mailed or de-
§ 418

To the amounts referred to in section 415(a)(1)(B)(ii) of this title with respect to the amounts referred to in section 415(a)(1)(B)(i) of this title, except that—

(i) for purposes of this subparagraph, 1997 shall be substituted for the calendar year referred to in section 415(a)(1)(B)(i)(II) of this title, and

(ii) such amount as so adjusted, if not a multiple of $100, shall be rounded to the nearest multiple of $100 where such amount is a multiple of $50 and to the nearest multiple of $100 in any other case.

The Commissioner of Social Security shall determine and publish in the Federal Register each adjusted amount determined under this subparagraph not later than November 1 preceding the year for which the adjustment is made.

(d) Positions covered by retirement systems

(1) No agreement with any State may be made applicable (either in the original agreement or by any modification thereof) to any service performed by employees as members of any coverage group in positions covered by a retirement system either (A) on the date such agreement is made applicable to such coverage group, or (B) on September 1, 1954 (except in the case of positions which are, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to September 1, 1954, no longer covered by a retirement system on the date referred to in clause (A), and except in the case of positions excluded by paragraph (5)(A) of this subsection). The preceding sentence shall not be applicable to any service performed by an employee as a member of any coverage group in a position (other than a position excluded by paragraph (5)(A) of this subsection) on the date referred to in clause (A), and except in the case of positions excluded by paragraph (5)(A) of this subsection). The preceding sentence shall not be applicable to any service performed by an employee as a member of any coverage group in a position (other than a position excluded by paragraph (5)(A) of this subsection) on the date referred to in clause (A), and except in the case of positions excluded by paragraph (5)(A) of this subsection).

(2) It is declared to be the policy of the Congress in enacting the succeeding paragraphs of this subsection that the protection afforded employees in positions covered by a retirement system on the date an agreement under this section shall authorize the extension of the insurance system established by this subchapter to such retirement system, nor shall any referendum with respect to a retirement system be valid for purposes of this paragraph if held less than one year after the last previous referendum held with respect to such retirement system.

(3) Notwithstanding paragraph (1) of this subsection, an agreement with a State may be made applicable (either in the original agreement or by any modification thereof) to service performed by employees in positions covered by a retirement system (including positions specified in paragraph (4) of this subsection but not including positions excluded by or pursuant to paragraph (5), if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Commissioner of Social Security that the following conditions have been met:

(A) A referendum by secret written ballot was held on the question of whether service in positions covered by such retirement system should be excluded from or included under an agreement under this section;

(B) An opportunity to vote in such referendum was given (and was limited) to eligible employees;

(C) Not less than ninety days’ notice of such referendum was given to all such employees;

(D) Such referendum was conducted under the supervision of the governor or an agency or individual designated by him; and

(E) A majority of the eligible employees voted in favor of including service in such positions under an agreement under this section.

An employee shall be deemed an “eligible employee” for purposes of any referendum with respect to any retirement system if, at the time such referendum was held, he was in a position covered by such retirement system and was a member of such system, and if he was in such a position at the time notice of such referendum was given as required by clause (C) of the preceding sentence; except that he shall not be deemed an “eligible employee” if, at the time the referendum was held, he was in a position to which the State agreement already applied, or if he was in a position excluded by or pursuant to paragraph (5). No referendum with respect to a retirement system shall be valid for purposes of this paragraph unless held within the two-year period which ends on the date of execution of the agreement or modification which extends the insurance system established by this subchapter to such retirement system, nor shall any referendum with respect to a retirement system be valid for purposes of this paragraph if held less than one year after the last previous referendum held with respect to such retirement system.

(4) For the purposes of subsection (c) of this section, the following employees shall be deemed to be a separate coverage group—

(A) all employees in positions which were covered by the same retirement system on the date the agreement was made applicable to such system (other than employees to whose services the agreement already applied on such date);

(B) all employees in positions which became covered by such system at any time after such date; and

(C) all employees in positions which were covered by such system at any time before such date and to whose services the insurance system established by this subchapter has not been extended before such date because the positions were covered by such retirement system (including employees to whose services the agreement was not applicable on such date because such services were excluded pursuant to subsection (c)(3)(B) of this section).

(5)(A) Nothing in paragraph (3) of this subsection shall authorize the extension of the insurance system established by this subchapter to service in any policeman’s or fireman’s position.
(B) At the request of the State, any class or classes of positions covered by a retirement system which may be excluded from the agreement pursuant to paragraph (3) or (5) of subsection (c) of this section, and to which the agreement does not already apply, may be excluded from the agreement at the time it is made applicable to such retirement system; except that, notwithstanding the provisions of paragraph (3)(B) of such subsection, such exclusion may not include any services to which such paragraph (3)(B) is applicable. In the case of any such exclusion, each such class so excluded shall, for purposes of this subsection, constitute a separate retirement system in case of any modification of the agreement thereafter agreed to.

(6)(A) If a retirement system covers positions of employees of the State and positions of employees of one or more political subdivisions of the State, or covers positions of employees of two or more political subdivisions of the State, then, for purposes of the preceding paragraphs of this subsection, there shall, if the State so desires, be deemed to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned. Where a retirement system covering positions of employees of a State and positions of employees of one or more political subdivisions of the State, or covering positions of employees of two or more political subdivisions of the State, is not divided into separate retirement systems pursuant to the preceding sentence or pursuant to subparagraph (C), then the State may, for purposes of subsection (e) of this section only, deem the system to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned.

(6)(B) If a retirement system covers positions of employees of one or more institutions of higher learning, then, for purposes of such preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of each such institution of higher learning. For the purposes of this subparagraph, the term “institutions of higher learning” includes junior colleges and teachers colleges. If a retirement system covers positions of employees of a hospital which is an integral part of a political subdivision, then, for purposes of the preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of such hospital.

(C) For the purposes of this subsection, any retirement system established by the State of Alaska, California, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, Wisconsin, or Hawaii, or any political subdivision of any such State, which, on, before, or after August 1, 1956, is divided into two divisions or parts, one of which is composed of positions of members of such system who desire coverage under an agreement under this section and the other of which is composed of positions of members of such system who do not desire such coverage, shall, if the State so desires and if it is provided that there shall be included in such division or part composed of members desiring such coverage the positions of individuals who become members of such system after such coverage is extended, be deemed to be a separate retirement system with respect to each such division or part. If, in the case of a separate retirement system which is deemed to exist by reason of subparagraph (A) and which has been divided into two divisions or parts pursuant to the first sentence of this subparagraph, such individuals become members of such system by reason of action taken by a political subdivision after coverage under an agreement under this section has been extended to the division or part thereof composed of positions of individuals who desire such coverage, the positions of such individuals who become members of such retirement system by reason of the action so taken shall be included in the division or part of such system composed of positions of members who do not desire such coverage if (i) such individuals, on the day before becoming such members, were in the division or part of another separate retirement system (deemed to exist by reason of subparagraph (A)) composed of positions of members of such system who do not desire coverage under an agreement under this section, and (ii) all of the positions in the separate retirement system of which such individuals so become members and all of the positions in the separate retirement system referred to in clause (i) would have been covered by a single retirement system if the State had not taken action to provide for separate retirement systems under this paragraph.

(D)(i) The position of any individual which is covered by any retirement system to which subparagraph (C) is applicable shall, if such individual is ineligible to become a member of such system on August 1, 1956, or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under the insurance system established under this subchapter.

(ii) Notwithstanding clause (i), the State may, pursuant to subsection (c)(4)(B) of this section and subject to the conditions of continuation or termination of coverage provided for in subsection (c)(7) of this section, modify its agreement under this section to include services performed by all individuals described in clause (i) other than those individuals to whose services the agreement already applies. Such individuals shall be deemed (on and after the effective date of the modification) to be in positions covered by the separate retirement system consisting of the positions of members of the division or part who desire coverage under the insurance system established under this subchapter.

(E) An individual who is in a position covered by a retirement system to which subparagraph
(C) is applicable and who is not a member of such system but is eligible to become a member thereof shall, for purposes of this subsection (other than paragraph (8) of this subsection), be regarded as a member of such system; except that in the case of any retirement system a division or part of which is covered under the agreement (either in the original agreement or by a modification thereof), which coverage is agreed to prior to 1960, the preceding provisions of this subsection shall apply only if the State so requests, be treated, after division of the retirement system pursuant to such subparagraph (C), the same as individuals in positions referred to in subparagraph (F).

(F) In the case of any retirement system divided pursuant to subparagraph (C), the position of any member of the division or part composed of positions of members who do not desire coverage may be transferred to the separate retirement system composed of positions of members who desire such coverage if it is so provided in a modification of such agreement which is mailed, or delivered by other means, to the Commissioner of Social Security prior to 1970 or, if later, the expiration of two years after the date on which such agreement, or the modification thereof making the agreement applicable to such separate retirement system, as the case may be, is agreed to, but only if, prior to such modification or such later modification, as the case may be, the individual occupying such position files with the State a written request for such transfer. Notwithstanding subsection (e)(1) of this section, any such modification or later modification, providing for the transfer of additional positions within a retirement system previously divided pursuant to subparagraph (C) to the separate retirement system composed of positions of members who desire coverage, shall be effective with respect to services performed after the same effective date as that which was specified in the case of such previous division.

(G) For the purposes of this subsection, in the case of any retirement system of the State of Florida, Georgia, Minnesota, North Dakota, Pennsylvania, Washington, or Hawaii which covers positions of employees of such State who are compensated in whole or in part from grants made to such State under subchapter III of this chapter, there shall be deemed to be, if such State so desires, a separate retirement system with respect to any of the following:

(i) the positions of such employees;

(ii) the positions of all employees of such State covered by such retirement system who are employed in the department of such State in which the employees referred to in clause (i) are employed; or

(iii) employees of such State covered by such retirement system who are employed in such department of such State in positions other than those referred to in clause (i).

(7) The certification by the governor (or an official of the State designated by him for the purpose) required under paragraph (3) of this subsection shall be deemed to have been made, in the case of a division or part (created under subparagraph (C) of paragraph (6) of this subsection or the corresponding provision of prior law) consisting of the positions of members of a retirement system who desire coverage under the agreement under this section, if the governor (or the official so designated) certifies to the Commissioner of Social Security that—

(A) an opportunity to vote by written ballot on the question of whether they wish to be covered under an agreement under this section was given to all individuals who were members of such system at the time the vote was held; 

(B) not less than ninety days' notice of such vote was given to all individuals who were members of such system on the date the notice was issued; 

(C) the vote was conducted under the supervision of the governor or an agency or individual designated by him; and

(D) such system was divided into two parts or divisions in accordance with the provisions of subparagraphs (C) and (D) of paragraph (6) of this subsection or the corresponding provision of prior law.

For purposes of this paragraph, an individual in a position to which the State agreement already applied or in a position excluded by or pursuant to paragraph (5) of this subsection shall not be considered a member of the retirement system.

(8)(A) Notwithstanding paragraph (1) of this subsection, if under the provisions of this subsection an agreement is, after December 31, 1958, made applicable to service performed in positions covered by a retirement system, service performed by an individual in a position covered by such a system may not be excluded from the agreement because such position is also covered under another retirement system.

(B) Subparagraph (A) shall not apply to service performed by an individual in a position covered under a retirement system if such individual, on the day the agreement is made applicable to service performed in positions covered by such retirement system, is not a member of such system and is a member of another system.

(C) If an agreement is made applicable, prior to 1959, to service in positions covered by any retirement system, the preceding provisions of this paragraph shall be applicable in the case of such system if the agreement is modified to so provide.

(D) Except in the case of State agreements modified as provided in subsection (l) of this section and agreements with interstate instrumentality, nothing in this paragraph shall authorize the application of an agreement to service in any policeman's or fireman's position.

(e) Effective date of agreement; retroactive coverage.

(1) Any agreement or modification of an agreement under this section shall be effective with respect to services performed after an effective date specified in such agreement or modification; except that such date may not be earlier than the last day of the sixth calendar year preceding the year in which such agreement or modification, as the case may be, is mailed or delivered by other means to the Commissioner of Social Security.

(2) In the case of service performed by members of any coverage group—
(A) to which an agreement under this section is made applicable, and

(B) with respect to which the agreement, or modification thereof making the agreement so applicable, specifies an effective date earlier than the date of execution of such agreement and such modification, respectively, the agreement shall, if so requested by the State, be applicable to such services (to the extent the agreement was not already applicable) performed before such date of execution and after such effective date by any individual as a member of such coverage group if he is such a member on a date, specified by the State, which is earlier than such date of execution, except that in no case may the date so specified be earlier than the date such agreement or such modification, as the case may be, is mailed, or delivered by other means, to the Commissioner of Social Security.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, in the case of services performed by individuals as members of any coverage group to which an agreement under this section is made applicable, and with respect to which there were timely paid in good faith to the Internal Revenue Service the taxes equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 had such services constituted employment for purposes of chapter 21 of such Code at the time they were performed, and with respect to which refunds were not obtained, such individuals may, if so requested by the State, be deemed to be members of such coverage group on the date designated pursuant to paragraph (2).  

(f) Duration of agreement

No agreement under this section may be terminated, either in its entirety or with respect to any coverage group, on or after April 20, 1983.

(g) Instrumentalities of two or more States

(1) The Commissioner of Social Security may, at the request of any instrumentation of two or more States, enter into an agreement with such instrumentation for the purpose of extending the insurance system established by this subchapter to services performed by individuals as employees of such instrumentation. Such agreement, to the extent practicable, shall be governed by the provisions of this section applicable in the case of an agreement with a State.

(2) In the case of any instrumentation of two or more States, if—

(A) employees of such instrumentation are in positions covered by a retirement system of such instrumentation or of any of such States or any of the political subdivisions thereof, and

(B) such retirement system is (on, before, or after August 30, 1957) divided into two divisions or parts, one of which is composed of positions of members of such system who are employees of such instrumentation and who desire such coverage, and the other of which is composed of positions of members of such system who are employees of such instrumentation and who do not desire such coverage, and

(C) it is provided that there shall be included in such division or part composed of the positions of members desiring such coverage the positions of employees of such instrumentation who become members of such system after such coverage is extended,

then such retirement system shall, if such instrumentation so desires, be deemed to be a separate retirement system with respect to each such division or part. An individual who is in a position covered by a retirement system divided pursuant to the preceding sentence and who is a member of such system but is eligible to become a member thereof shall, for purposes of this subsection, be regarded as a member of such system. Coverage under the agreement of any such individual shall be provided under the same conditions, to the extent practicable, as are applicable in the case of the States to which the provisions of subsection (d)(6)(C) of this section apply. The position of any employee of any such instrumentation which is covered by any retirement system to which the first sentence of this paragraph is applicable shall, if such individual is ineligible to become a member of such system on August 30, 1957, or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under the insurance system established under this subchapter. Services in positions covered by a separate retirement system created pursuant to this subsection (and consisting of the positions of members who desire coverage under an agreement under this section) shall be covered under such agreement on compliance, to the extent practicable, with the same conditions as are applicable to coverage under an agreement under this section of services in positions covered by a separate retirement system created pursuant to subparagraph (C) of subsection (d)(6) of this section or the corresponding provision of prior law (and consisting of the positions of members who desire coverage under such agreement).  

(3) Any agreement with any instrumentation of two or more States entered into pursuant to this chapter may, notwithstanding the provisions of subsection (d)(6)(A) of this section and the references thereto in subsections (d)(1) and (d)(3) of this section, apply to service performed by employees of such instrumentation in any policeman's or fireman's position covered by a separate retirement system, but only upon compliance, to the extent practicable, with the requirements of subsection (d)(3) of this section. For the purpose of the preceding sentence, a retirement system which covers positions of policemen or firemen or both, and other positions shall, if the instrumentation concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

(h) Delegation of functions

The Commissioner of Social Security is authorized, pursuant to agreement with the head of any Federal agency, to delegate any of the Commissioner's functions under this section to any officer or employee of such agency and otherwise to utilize the services and facilities of
such agency in carrying out such functions, and payment therefor shall be in advance or by way of reimbursement, as may be provided in such agreement.

(i) Wisconsin Retirement Fund

(1) Notwithstanding paragraph (1) of subsection (d) of this section, the agreement with the State of Wisconsin may, subject to the provisions of this subsection, be modified so as to apply to service performed by employees in positions covered by the Wisconsin retirement fund or any successor system.

(2) All employees in positions covered by the Wisconsin retirement fund at any time on or after January 1, 1951, shall, for the purposes of subsection (c) only, be deemed to be a separate coverage group; except that there shall be excluded from such separate coverage group all employees in positions to which the agreement applies without regard to this subsection.

(3) The modification pursuant to this subsection shall exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) service performed by any individual during any period before he is included under the Wisconsin retirement fund.

(4) The modification pursuant to this subsection shall, if the State of Wisconsin requests it, exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) all service performed in policeman’s positions, all service performed in firemen’s positions, or both.

(j) Certain positions no longer covered by retirement systems

Notwithstanding subsection (d) of this section, an agreement with any State entered into under this section prior to September 1, 1954, may, prior to January 1, 1958, be modified pursuant to subsection (c)(4) of this section so as to apply to services performed by employees, as members of any coverage group to which such agreement already applies (and to which such agreement applied on September 1, 1954), in positions (1) to which such agreement does not already apply, (2) which were covered by a retirement system on the date such agreement was made applicable to such coverage group, and (3) which, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to September 1, 1954, are no longer covered by a retirement system on the date such agreement is made applicable to such services.

(k) Certain employees of State of Utah

Notwithstanding the provisions of subsection (d) of this section, the agreement with the State of Utah entered into pursuant to this section may be modified pursuant to subsection (c)(4) of this section so as to apply to services performed for any of the following, the employees performing services for each of which shall constitute a separate coverage group: Weber Junior College, Carbon Junior College, Dixie Junior College, Central Utah Vocational School, Salt Lake Area Vocational School, Utah State Industrial School, State Training School, State Board of Education, and Utah School Employees Retirement Board. Any modification agreed to prior to January 1, 1955, may be made effective with respect to services performed by employees as members of any of such coverage groups after an effective date specified therein, except that in no case may such date be earlier than December 31, 1950. Coverage provided for in this subsection shall not be affected by a subsequent change in the name of a group.

(l) Policemen and firemen in certain States

Any agreement with a State entered into pursuant to this section may, notwithstanding the provisions of subsection (d)(5)(A) of this section and the references thereto in subsections (d)(1) and (d)(3) of this section, be modified pursuant to subsection (c)(4) of this section to apply to service performed by employees of such State or any political subdivision thereof in any policeman’s or fireman’s position covered by a retirement system in effect on or after August 1, 1956, but only upon compliance with the requirements of subsection (d)(3) of this section. For the purposes of the preceding sentence, a retirement system which covers positions of policemen or firemen, or both, and other positions shall, if the State concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

(m) Positions compensated solely on a fee basis

(1) Notwithstanding any other provision in this section, an agreement entered into under this section may be made applicable to service performed after 1967 in any class or classes of positions compensated solely on a fee basis to which such agreement did not apply prior to 1968 only if the State specifically requests that its agreement be made applicable to such service in such class or classes of positions.

(2) Notwithstanding any other provision in this section, an agreement entered into under this section may be modified, at the option of the State, at any time after 1967, so as to exclude services performed in any class or classes of positions compensation for which is solely on a fee basis.

(3) Any modification made under this subsection shall be effective with respect to services performed after the last day of the calendar year in which the modification is mailed or delivered by other means to the Commissioner of Social Security.

(4) If any class or classes of positions have been excluded from coverage under the State agreement by a modification agreed to under this subsection, the Commissioner of Social Security and the State may not thereafter modify such agreement so as to again make the agreement applicable with respect to such class or classes of positions.

(n) Optional medicare coverage of current employees

(1) The Commissioner of Social Security shall, at the request of any State, enter into or modify any State entered into pursuant to the Social Security Act under this chapter, for the purpose of extending the provisions of subchapter XVIII of this chapter, and sections 426 and 426-1 of this title, to services performed by employees of such State or any political sub-

1989—Subsec. (c)(5). Pub. L. 101–239 substituted “subparagraph (B) of section 499(a)(7)” for “paragraph (2) of section 409(h)”.

1987—Subsec. (n). Pub. L. 100–203, §9023(c), redesignated subsec. (v) as (n), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3), which had previously been struck out of subsec. (v) by section 4099(a)(7) of Pub. L. 100–203 prior to its redesignation as subsec. (n) by Pub. L. 100–203, §9023(c)(1). See below.

Subsec. (v). Pub. L. 100–203, §9023(c)(1), redesignated subsec. (v) as (n).

Subsec. (v)(3). Pub. L. 100–203, §4909(a)(7), struck out par. (3) which read as follows: “Payments by the State required under subsection (e) of this section with respect to employees covered under this subsection shall be limited to amounts equivalent to the sum of the taxes which would be imposed by sections 3101(b) and 3111(b) of the Internal Revenue Code of 1954 if such services for which wages were paid to such employees constituted ‘employment’ as defined in section 3121 of such Code.”


Subsec. (e). Pub. L. 99–509, §9002(c)(1), (2)(E), redesignated subsec. (f) as (e), substituted “Any agreement” for “Except as provided in subsection (e)(2) of this section, any agreement”, and struck out former subsec. (e) which required that agreements under this section include certain provisions relating to payments and reports by States and allowed inclusion of certain provisions relating to employees employed by two or more political subdivisions of a State.


Subsec. (f)(1). Pub. L. 99–272, §12110(a), substituted “is mailed or delivered by other means to the Secretary” for “is agreed to by the Secretary and the State”.

Subsec. (g). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (k) as (g). Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (l) as (h) and struck out former subsec. (h) which required that amounts received by the Secretary of the Treasury under an agreement made under this section be deposited in the Trust Funds and the Federal Hospital Insurance Trust Fund in certain ratio and provided for judicial review of decisions by Secretary of Health and Human Services under former subsec. (s) of this section.

Subsec. (i). Pub. L. 99–509, §9002(c)(1), redesignated subsec. (u) as (m).

Subsec. (u)(3). Pub. L. 99–272, §12110(b), substituted “is mailed or delivered by other means to the Secretary” for “is agreed to by the Secretary and the State”.


Subsec. (w). Pub. L. 99–509, §9002(c)(1), struck out subsec. (w) which read as follows: “Notwithstanding sections 3125(a), 6205(a)(5), 6113(a)(5), and 6413(c)(2)(G) of the Internal Revenue Code of 1954, any State shall make payments of the taxes imposed with respect to services of employees of such State and of a political subdivision thereof under sections 3101(b) and 3111(b) of such Code, and reports of such services, under the same procedures as apply to payments and reports under subsection (e) of this section, but only if any employees of such State or of such political subdivision thereof respectively are covered under an agreement pursuant to this section.”

Pub. L. 99–272, §12325(c), added subsec. (w).


Subsec. (o)(1)(A). Pub. L. 98–21, §432(a), amended subpar. (A) generally, designating existing provisions as cl. (i), and in (i) as so designated, substituting “on the last day of each calendar month” for “within the thirty-day period immediately following the last day of each calendar month” and inserting “with respect to the period which includes the first fifteen days of such calendar month” before “if the services”, and adding cl. (ii).

Subsec. (o)(1)(A). Pub. L. 98–21, §432(a), amended subsec. (g) generally, substituting provision that no agreement under this section may be terminated on or after April 20, 1983, for provision that had authorized the termination of agreements of States with the Secretary conditioned upon the giving of advance notice.

Subsec. (o). Pub. L. 98–21, §432(a), inserted provision that coverage provided for in this subsection shall not be affected by a subsequent change in the name of a group.

1980—Subsec. (e)(1)(A). Pub. L. 96–265, §503(a), substituted: “(A) that the State will pay to the Secretary of the Treasury, within the thirty-day period immediately following the last day of each calendar month,
amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 of the Internal Revenue Code of 1964 if the services for which wages were paid in such month to employees covered by the agreement constituted employment as defined in section 3121 of such Code" for "(A) that the State will pay to the Secretary of the Treasury, at such time or times as the Secretary of Health, Education, and Welfare may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 1400 and 1410 of the Internal Revenue Code of 1939, if the services of employees covered by the agreement constituted employment as defined in section 1426 of the Internal Revenue Code of 1939".

1977—Subsec. (c)(6). Pub. L. 95–216, § 333(b)(1), substituted "year" for "quarter" and "$100" for "$50".
Subsec. (g)(1). Pub. L. 95–216, § 333(b)(2), substituted "year" for "quarter".
Subsec. (m)(1). Pub. L. 95–216, § 321, inserted "or any successor system" after "Wisconsin retirement fund".
Subsec. (q)(4)(B). Pub. L. 95–216, § 333(b)(3), substituted references to calendar years for references to calendar quarters wherever appearing.
Subsec. (q)(6)(B). Pub. L. 95–216, § 333(b)(4), substituted "period or periods designated by the State in such wage reports as the period or" for "calendar quarters designated by the State in such wage reports as the".
Subsec. (r)(1). Pub. L. 95–216, § 333(b)(5), in provisions preceding cl. (A) and in cl. (B) substituted "year" for "quarter", and in cl. (A) struck out "in which occurred the calendar quarter" after "year".

1968—Subsec. (b)(5). Pub. L. 90–486 substituted provisions pertaining to the coverage of persons employed under section 709 of title 32, who elected under section 6 of the National Guard Technicians Act of 1968 to remain covered by an employee retirement system of, or plan sponsored by, a state or the Commonwealth of Puerto Rico, such persons, for the purposes of this chapter, to be considered employees of the state or the Commonwealth of Puerto Rico, for provisions pertaining to the coverage of civilian employees of National Guard units of a state who are employed pursuant to section 21 of title 32, and who are paid from funds allocated to such units by the Department of the Defense, such persons, for the purposes of this section, to be deemed employees of the state.

Subsec. (c)(3). Pub. L. 90–234, § 116(b)(1)(A), struck out subpar. (A) which provided for the exclusion of any service of an emergency nature and redesignated subpars. (B) and (C) as (A) and (B), respectively.
Subsec. (c)(4). Pub. L. 90–234, § 116(b)(1)(B), substituted "3(B)(B)" for "3(C)".
Subsec. (c)(7). Pub. L. 90–234, § 116(b)(1)(B), substituted "3(B)(B)" for "3(C)".
Subsec. (c)(8). Pub. L. 90–234, § 116(c), added par. (8).
Subsec. (d)(4)(C). Pub. L. 90–234, § 116(b)(1)(C), substituted "c(3)(3)" for "c(3)(C)".
Subsec. (d)(6)(D). Pub. L. 90–234, § 116(a), designated existing provisions as cl. (i) and added cl. (ii).
which such individuals so become members and all of the positions in the separate retirement system would have been covered by a single retirement system if the States had not taken action to provide for separate retirement systems, and included retirement systems established by the State of Texas.

Subsec. (d)(7). Pub. L. 85–840, §315(a)(2), substituted “(created under subparagraph (C) of paragraph (6))” for “(created under the fourth sentence of paragraph (6))”.

Subsec. (m). Act Sept. 1, 1954, §101(h)(7), struck out “paragraph (5) of subsection (d)”. (n).


Subsec. (d)(7). Act Sept. 1, 1954, §101(h)(1)(A), struck out “paragraph (7)” for “paragraph (8),” and inserted sentence at end “and service the remuneration for which is excluded from wages by paragraph (2) of section 209(h).”.

Subsec. (c)(5). Act Sept. 1, 1954, §101(a)(5). (6), substituted “paragraph (7)” for “paragraph (8),” and inserted sentence at end “and service the remuneration for which is excluded from wages by paragraph (2) of section 209(h).”.

Subsec. (c)(6)(D). Act Sept. 1, 1954, §101(a)(5), substituted “paragraph (7)” for “paragraph (8).”.


Subsec. (d). Act Sept. 1, 1954, §101(h)(1)(A), struck out “Exclusion of” in heading, redesignated the subsection as (d)(1), and inserted sentence at end.

Subsec. (d)(1). Act Sept. 1, 1954, §101(h)(1)(B), inserted provisions requiring an individual who is in a position covered by a retirement system divided pursuant to the preceding sentence and who is not a member of such system but is eligible to become a member thereof to be regarded, for the purposes of this subsection, as a member of such system, and providing for coverage under the agreement of any such individual.


Subsec. (p). Pub. L. 85–798, §3, included agreements made by the appropriate governmental unit, no longer covered by a retirement system when the coverage group which included employees in such positions was brought under an agreement.

Subsec. (d)(2) to (6). Act Sept. 1, 1954, §101(h)(2), added pars. (2) to (6).

Subsec. (f). Act Sept. 1, 1954, §101(h)(6), permitted agreements or modifications entered into during 1955, 1956, and 1957 to be made retroactive to a date not earlier than December 31, 1956.

Subsec. (m)(1). Act Sept. 1, 1954, §101(h)(7), substituted “paragraph (1) of subsection (d)” for “subsection (d)”. (n).


Subsec. (m). Act Aug. 15, 1953, added subsec. (m).

case of any such request, such amendment shall apply only with respect to wages paid on and after the date on which such request is filed.”

Section 102(c)(3) of Pub. L. 86–778 provided that: “The amendment made by paragraph (1) [amending this section] shall apply in the case of any agreement or modification of an agreement under section 218 of the Social Security Act [this section] which is agreed to on or after January 1, 1960; except that in the case of any such agreement or modification agreed to before January 1, 1961, the effective date specified therein shall not be earlier than December 31, 1955. The amendment made by paragraph (2) [amending this section] shall apply in the case of any such agreement or modification which is agreed to on or after the date of the enactment of this Act [Sept. 13, 1960].”

Section 102(f)(3) of Pub. L. 86–778 provided that:

“(A) The amendments made by paragraphs (1) and (2) [amending this section and section 405 of this title] shall become effective on the first day of the second calendar year following the year in which this Act is enacted [1960].

“(B) In any case in which the Secretary of Health, Education, and Welfare has notified a State prior to the beginning of such second calendar year that there is an amount due by such State, that such State’s claim for a credit or refund of an overpayment is disallowed, or that such State has been allowed or received an overpayment, under an agreement pursuant to section 218 of the Social Security Act [this section], then the Secretary shall be deemed to have made an assessment of such amount due as provided in section 218(q) of such Act or notified the State of such allowance or disallowance, as the case may be, on the first day of such second calendar year. In such a case the 90-day limitation in section 218(e) of such Act shall not be applicable with respect to the assessment so deemed to have been made or the notification of allowance or disallowance so deemed to have been given the State. However, the preceding sentences of this subparagraph shall not apply if the Secretary makes an assessment of such amount due or notifies the State of such allowance or disallowance on or after the first day of the second calendar year following the year in which this Act is enacted [1960] and within the period specified in section 218(q) of the Social Security Act or the period specified in section 218(r) of such Act, as the case may be.”


**Effective Date of 1958 Amendment**

Section 315(c)(2) of Pub. L. 85–840 provided that: “The amendment made by this subsection [amending this section] shall apply in the case of any agreement, or modification of an agreement, under section 218 of the Social Security Act [this section], which is executed after the date of enactment of this Act [Aug. 28, 1958].”

**Effective Date of 1954 Amendment**

Section 101(h)(9) of act Sept. 1, 1954, provided that: “The amendments made by this subsection, other than paragraph (1)(B) [amending this section], shall take effect January 1, 1955.”

Section 101(h)(1) of act Sept. 1, 1954, provided that the amendment made by that section is effective as of January 1, 1954.

Section 101(i)(2) of act Sept. 1, 1954, provided that the amendment made by that section is effective January 1, 1955.

Section 101(i)(3) of act Sept. 1, 1954, provided that: “In the case of any coverage group to which the amendment made by paragraph (1) [amending this section] is applicable, any agreement or modification of an agreement agreed to prior to January 1, 1956, if such agreement or modification is effective January 1, 1951.”

Section 101(i)(4) of act Sept. 1, 1954, provided that the amendment made by that section is effective as of January 1, 1951.

Amendment by section 101(a)(5), (6) of act Sept. 1, 1954, shall be applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the remuneration is paid after 1954, see section 101(n) of act Sept. 1, 1954, set out as a note under section 405 of this title.

**Effective Date of 1953 Amendment**

Section 2 of act Aug. 15, 1953, provided that: “For the purposes of section 418(1) of the Social Security Act (relating to effective date of agreements) [subsec. (1) of this section], the amendment made by the first section of this Act [amending this section] shall take effect as of January 1, 1951.”

**Exemption for Students Employed by State Schools, Colleges, or Universities**

Pub. L. 105–277, div. J, title II, § 2023, Oct. 21, 1998, 112 Stat. 2831–904, provided that: “(a) In General.—Notwithstanding section 218 of the Social Security Act [this section], any agreement with a State (or any modification thereof) entered into pursuant to section 218 of such Act may, at the option of such State, be modified at any time on or after January 1, 1999, and on or before March 31, 1999, so as to exclude service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university.

“(b) Effective Date of Modification.—Any modification of an agreement pursuant to subsection (a) shall be effective with respect to services performed after June 30, 2000.

“(c) Irrevocability of Modification.—If any modification of an agreement pursuant to subsection (a) terminates coverage with respect to service performed in the employ of a school, college, or university, by a student who is enrolled and regularly attending classes at such school, college, or university, the Commissioner of Social Security and the State may not thereafter modify such agreement so as to again make the agreement applicable to such service performed in the employ of such school, college, or university.”

**Treatment of Certain Credits as Amounts Deposited in Social Security Trust Funds Pursuant to Agreement**

Section 123(b)(4) of Pub. L. 98–21, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2681–904, provided that: “For purposes of subsection (b) of section 218 of the Social Security Act [subsec. (b) of this section] (relating to deposits in social security trust funds of amounts received under section 218 agreements), amounts allowed as a credit pursuant to subsection (d) of section 3510 of the Internal Revenue Code of 1986 (formerly section 350 of title 26 U.S.C. relating to credit for remuneration paid during 1984 which is covered under an agreement under section 218 of the Social Security Act) shall be treated as amounts received under such an agreement.”

**Modification of Agreement With State of Iowa To Provide Coverage for Certain Policemen and Firemen**

Section 9008 of Pub. L. 100–203 provided that: “(a) In General.—Notwithstanding subsection (g)(9) of section 218 of the Social Security Act [subsec. (d)(9) of this section] and the references thereto in subsections (d)(3) and (d)(5) of section 218, the agreement with the State of Iowa heretofore entered into pursuant to such section 218 may, at any time
prior to January 1, 1989, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed in policemen's or firemen's positions required to be covered by the agreements with the State of Iowa, the State of West Virginia, and the District of Columbia pursuant to section 410.1 of the Iowa Code as in effect on July 1, 1953, if the State of West Virginia has at any time prior to the date of the enactment of this Act [Dec. 22, 1987] paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date). “(b) SERVICE TO BE COVERED.—Notwithstanding the provisions of subsection (e) of section 218 of the Social Security Act [as redesignated by section 9002(c)(1) of the Omnibus Budget Reconciliation Act of 1986], any modification in the agreement with the State of Iowa under subsection (a) shall be made effective with respect to—

“(1) all services performed in any policeman's or fireman's position to which the modification relates on or after January 1, 1987, and

“(2) all services performed in such a position before January 1, 1987, with respect to which the State of Iowa has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date) at the time or times established pursuant to such subsection (e)(1), if and to the extent that—

“(A) no refund of the sums so paid has been obtained, or

“(B) a refund of part or all of the sums so paid has been obtained but the State of Iowa repays to the Secretary of the Treasury the amount of such refund within ninety days after the date on which the modification is agreed to by the State and the Secretary of Health and Human Services.”

MODIFICATION OF AGREEMENT WITH STATE OF CONNECTICUT TO PROVIDE COVERAGE FOR CONNECTICUT STATE POLICE

Section 12114 of Pub. L. 99-272 provided that: “Notwithstanding any provision of section 218 of the Social Security Act (this section), the Secretary of Health, Education, and Welfare shall, upon the request of the Governor of Connecticut, modify the agreement under such section between the Secretary and the State of Connecticut to provide that service performed after the date of the enactment of this Act (Apr. 7, 1986) by members of the Division of the State Police within the Connecticut Department of Public Safety, who are hired on or after June 30, 1986, with respect to any of the services performed in such positions, shall be covered under such agreement.”

MODIFICATION OF AGREEMENT WITH STATE OF ILLINOIS TO PROVIDE COVERAGE FOR CERTAIN POLICEMEN AND FIREMEN

Section 318 of Pub. L. 99-272 provided that the agreement with the State of Illinois entered into pursuant to this section could, at any time prior to Jan. 1, 1979, be modified pursuant to subsection (c)(4) of this section so as to apply to services performed in the policeman's or fireman's positions covered by the Illinois Municipal Retirement Fund on Dec. 30, 1977, if the State of Illinois had prior to such date paid to the Secretary of the Treasury, with respect to any of the services performed in such positions, the sums prescribed pursuant to subsection (e)(1) of this section.

MODIFICATION OF REPORTING PROCEDURES IN EFFECT DECEMBER 31, 1975, UNDER FEDERAL-STATE AGREEMENTS

Pub. L. 94-292, §8(k), Jan. 2, 1976, 89 Stat. 1140, provided that: “Notwithstanding the provisions of section 218(b) of the Social Security Act [subsection (i) of this section], nothing contained in the amendments made by the preceding provisions of this section [enacting section 432 of this title and amending sections 401, 403, 424a, and 430 of this title and title 6] shall be construed to authorize or require the Secretary, in promulgating regulations or amendments thereto under such subsection so as to modify such procedures, as in effect on December 1, 1975, for the reporting by States to the Secretary of the wages of individuals covered by social security pursuant to Federal-State agreements entered into pursuant to section 218 of the Social Security Act [this section].”

MODIFICATION OF AGREEMENT WITH STATE OF WEST VIRGINIA WITH RESPECT TO CERTAIN POLICEMEN AND FIREMEN

Pub. L. 94-302, §6, Jan. 2, 1976, 89 Stat. 1136, provided that:

“(a) Notwithstanding the provisions of subsection (d)(5)(A) of section 218 of the Social Security Act [subsection (d)(5)(A) of this section] and the references thereto in subsections (d)(1) and (d)(3) of such section 218, the agreement with the State of West Virginia hereinafter entered into pursuant to such section 218 (this section) may, at any time prior to 1977, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed in policemen's or firemen's positions covered by a retirement system on the date of the enactment of this Act (Jan. 2, 1976) by individuals as employees of any class III or class IV municipal corporation (as defined in or under the laws of the State) if the State of West Virginia has at any time prior to the date of the enactment of this Act paid to the Secretary of the Treasury, with respect to any of the services performed in such positions by individuals as employees of such municipal corporation, the sums prescribed pursuant to subsection (e)(1) of such section 218. For purposes of this subsection, a retirement system which covers positions of policemen or firemen, or both, and other positions, shall, if the State of West Virginia so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

“(b) Notwithstanding the provisions of subsection (i) of section 218 of the Social Security Act, any modification in the agreement with the State of West Virginia under subsection (a) of this section, to the extent it involves services performed by individuals as employees of any class III or class IV municipal corporation, may be made effective with respect to—

“(1) all services performed in such a position before such date of enactment with respect to which the State of West Virginia has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of such section 218 at the time or times established pursuant to such subsection (e)(1) if and to the extent that—

“(A) no refund of the sums so paid has been obtained, or

“(B) a refund of part or all of the sums so paid has been obtained but the State of West Virginia repays to the Secretary of the Treasury the amount of such refund within ninety days after the date that the modification is agreed to by the State and the Secretary of Health, Education, and Welfare.”

Section 143 of Pub. L. 92-603 provided that:

“(a) Notwithstanding the provisions of subsection (d)(5)(A) of section 218 of the Social Security Act [subsection (d)(5)(A) of this section] and the references thereto in subsections (d)(1) and (d)(3) of such section 218 the agreement with the State of West Virginia hereinafter entered into pursuant to such section 218 (this section) may, at any time prior to 1974, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to
services performed in policemen’s or firemen’s positions covered by a retirement system on the date of the enactment of this Act [Oct. 30, 1972] by individuals as employees of any class III or class IV municipal corporation (as defined in or under the laws of the State) if the State of West Virginia has at any time prior to the date of the enactment of this Act paid to the Secretary of the Treasury, with respect to any of the services performed in such positions by individuals as employees of such municipal corporation, the sums prescribed pursuant to subsection (e)(1) of such section 218.

For purposes of this subsection, a retirement system which covers positions of policemen or firemen, or both, and other positions, shall, if the State of West Virginia so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

“(b) Notwithstanding the provisions of subsection (a) of section 218 of the Social Security Act, any modification in the agreement with the State of West Virginia under subsection (a) of this section, to the extent it involves services performed by individuals as employees of any class III or class IV municipal corporation, may be made effective with respect to—

“(1) all services performed by such individual, in any policeman’s or fireman’s position to which the modification relates, on or after the date of the enactment of this Act; and

“(2) all services performed by such individual in such a position before such date of enactment with respect to which the State of West Virginia has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of such section 218 at the time or times established pursuant to such subsection (e)(1), if and to the extent that—

“(A) no refund of the sums so paid has been obtained, or

“(B) a refund of part of all of the sums so paid has been obtained but the State of West Virginia repays to the Secretary of the Treasury the amount of such refund within ninety days after the date that the modification is agreed to by the State and the Secretary of Health, Education, and Welfare.

MODIFICATION OF EXISTING AGREEMENT WITH STATE OF NEW MEXICO TO COVER CERTAIN HOSPITAL EMPLOYEES

Section 127 of Pub. L. 92–663 provided that: “Notwithstanding any provisions of section 218 of the Social Security Act [this section], the Agreement with the State of New Mexico heretofore entered into pursuant to such section may at the option of such State be modified at any time prior to the first day of the fourth month after the month in which this Act is enacted [October 1972], so as to apply to the services of employees of a hospital which is an integral part of a political subdivision which an agreement under this section has not been made applicable, as a separate coverage group within the meaning of section 218(b)(5) of such Act [subsec. (b)(5) of this section], but only if such hospital has prior to 1966 withdrawn from a retirement system which had been applicable to the employees of such hospital.”

MODIFICATION OF AGREEMENT WITH STATE OF LOUISIANA WITH RESPECT TO VOTER REGISTRARS

Section 139 of Pub. L. 92–663 provided that: “(a) Notwithstanding the provisions of section 218(g)(1) of the Social Security Act [subsec. (g)(1) of this section], the Secretary may, under such conditions as he deems appropriate, permit the State of Louisiana to modify its agreement entered into under section 218 of such Act [this section] so as to terminate the coverage of all employees who are in positions under the Registrars of Voters Employees’ Retirement System, effective after December 1973, but only if such State files with him notice of termination on or before December 1973.

“(b) If the coverage of such employees in positions under such retirement system is terminated pursuant to subsection (a), coverage cannot later be extended to employees in positions under such retirement system.”

MODIFICATION OF AGREEMENTS WITH STATES WITH RESPECT TO CERTAIN STUDENTS AND PART-TIME EMPLOYEES

Section 141 of Pub. L. 92–663 provided that: “(a) Notwithstanding any provision of section 218 of the Social Security Act [this section], the agreement with any State (or any modification thereof) entered into pursuant to such section may, at the option of such State, be modified at any time prior to January 1, 1974, so as to exclude either or both of the following:

“(1) service in any class or classes of part-time positions; or

“(2) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university.

“(b) Any modification of such agreement pursuant to this section shall be effective with respect to services performed after the end of the calendar quarter following the calendar quarter in which such agreement is modified.

“(c) If any such modification terminates coverage with respect to service in any class or classes of part-time positions in any coverage group, the Secretary of Health, Education, and Welfare and the State may not thereafter modify such agreement so as to again make the agreement applicable to service in such positions in such coverage group; if such modification terminates coverage with respect to service performed in the employ of a school, college, or university, by a student who is enrolled and regularly attending classes at such school, college, or university, the Secretary of Health, Education, and Welfare and the State may not thereafter modify such agreement so as to again make the agreement applicable to such service performed in the employ of such school, college, or university.

MODIFICATION OF AGREEMENT WITH STATE OF MASSACHUSETTS WITH RESPECT TO EMPLOYEES OF THE MASSACHUSETTS TURNPIKE AUTHORITY

Section 124 of Pub. L. 90–248 provided that: “(a) Notwithstanding the provisions of section 218(g)(1) of the Social Security Act [subsec. (g)(1) of this section] the Secretary may, under such conditions as he deems appropriate, permit the State of Massachusetts to modify its agreement entered into under section 218 of such Act [this section] so as to terminate the coverage of the employees of the Massachusetts Turnpike Authority effective at the end of any calendar quarter within the two years next following the date on which such agreement is so modified.

“(b) If the coverage of employees of the Massachusetts Turnpike Authority is terminated pursuant to subsection (a), coverage cannot later be extended to the employees of such Authority.”

MODIFICATION OF AGREEMENTS WITH STATES OF NORTH DAKOTA AND IOWA WITH RESPECT TO CERTAIN STUDENTS

Section 338 of Pub. L. 89–97 provided that: “Notwithstanding any provision of section 218 of the Social Security Act [this section], the agreements with the States of North Dakota and Iowa entered into pursuant to such section may, at the option of the State, be modified so as to exclude service performed in any calendar quarter in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university and if the remuneration for such service is less than $56. Any modification of either of such agreements pursuant to this Act shall be effective with respect to services performed after an effective date specified in such modification, except that
such date shall not be earlier than the date of enactment of this Act [July 30, 1965].''

Modification of Existing Agreement With State of Nebraska Prior to February 1966


(1) Notwithstanding any provision of section 218 of the Social Security Act [this section], the agreement with the State of Nebraska entered into pursuant to such section may, at the option of such State, be modified so as to exclude services performed within such State by individuals as justices of the peace or constables, if such individuals are compensated for such services on a fee basis. Any modification of such agreement pursuant to this subsection shall be effective with respect to services performed after an effective date specified in such modification, except that such date shall not be earlier than the date of enactment of this Act [Sept. 13, 1960].''

Modification of Existing Agreement With State of California Prior to February 1966


(1) Notwithstanding any provision of section 218 of the Social Security Act [this section], the agreement with the State of California heretofore entered into pursuant to such section may at the option of such State be modified, at any time prior to 1962, pursuant to subsection (c)(4) of such section 218 [subsection (c)(4) of this section], so as to apply to services performed by any individual who, on or after January 1, 1967, and on or before December 31, 1959, was employed by such State (or any political subdivision thereof) in any hospital employee's position which, on September 1, 1954, was covered by a retirement system, but which, prior to 1962, was removed from coverage by such retirement system prior to July 1, 1961, thereby losing pension rights and to good faith to the Secretary of the Treasury, with respect to any of the services performed by such individual in any such position, the amounts equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954 [formerly I.R.C. 1954] [sections 3101 and 3111 of title 26, Internal Revenue Code] if such services had constituted employment for purposes of chapter 21 of such Code [section 3101 et seq. of title 26] at the time they were performed. Notwithstanding the provisions of subsection (f) of such section 218, such modification shall be effective with respect to (i) all services performed by such individual in any such position on or after the date of enactment of this Act, and (ii) all such services, performed before such date, with respect to which such State has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e) of such section 218, at the time or times established pursuant to such subsection.

Modification of Existing Agreement With State of Maine Prior to July 1, 1967

Section 316 of Pub. L. 86-449, as amended by Pub. L. 86-778, there have been paid to the Secretary of the Treasury, with respect to any of the services performed by any individual in any such position, the amounts equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954 [formerly I.R.C. 1954] [sections 3101 and 3111 of title 26, Internal Revenue Code] if such services had constituted employment for purposes of chapter 21 of such Code [section 3101 et seq. of title 26] at the time they were performed. Notwithstanding the provisions of subsection (f) of such section 218, such modification shall be effective with respect to (i) all services performed by such individual in any such position on or after January 1, 1960, and (ii) all such services, performed before such date, with respect to which the amounts equivalent to such taxes have, prior to the date of enactment of this subsection [Sept. 13, 1960], been paid.

(2) Such agreement, as modified pursuant to paragraph (1), may at the option of such State be further modified, at any time prior to the seventh month after the month [July 1965] in which this paragraph is enacted, so as to apply to services performed for any hospital affected by such earlier modification by any individual who after December 31, 1959, is or was employed by such State (or any political subdivision thereof) in any position described in paragraph (1). Such modification shall be effective with respect to (A) all services performed by such individual in any such position on or after January 1, 1962, and (B) all such services, performed before such date, with respect to which the amounts equivalent to such taxes have, prior to the date of enactment of this paragraph [July 30, 1965], been paid.

Modification of Existing Agreements With States of California, Connecticut, Minnesota, or Rhode Island Prior to 1960

Section 2 of Pub. L. 85-227 provided that: "Notwithstanding the provisions of subsection (f) of section 218 of the Social Security Act [subsection (f) of this section], any modification of the agreement with the State of California, Connecticut, Minnesota, or Rhode Island under such section which makes such agreement applicable to services performed in positions covered by a separate retirement system created pursuant to the fourth sentence of subsection (d)(6) of such section (and consisting of the positions of members who desire coverage under the agreement) may, if such modification is agreed to prior to 1960, be made pursuant to subsection (c)(4) of such section 218 so as to apply to services performed for any hospital employee's position which, on September 1, 1954, was covered by a retirement system in effect on the date of enactment of this Act [Sept. 16, 1959]." If (1) in the case of an individual performing such services on such date, such individual is ineligible to become a member of such retirement system, and, in the case of an individual who prior to such date has ceased to perform such services, such individual was, on the last day he did perform such services, ineligible to become a member of such retirement system, and (2) such State has, prior to 1959, paid to the Secretary of the Treasury, with respect to any of the services performed by such individual in any such position, the amounts prescribed pursuant to subsection (e)(1) of such section 218. Notwithstanding the provisions of subsection (f) of such section 218, such modification shall be effective with respect to (i) all services performed by such individual in any such position on or after the date of enactment of this Act, and (ii) all such services, performed before such date, with respect to which such State has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e) of such section 218, at the time or times established pursuant to such subsection."
no case may such date be earlier than December 31, 1955.''

MODIFICATION OF EXISTING AGREEMENTS WITH STATES OF FLORIDA, NEVADA, NEW MEXICO, MINNESOTA, OKLAHOMA, PENNSYLVANIA, TEXAS, WASHINGTON, OR HAWAII PRIOR TO JULY 1, 1962

Section 104(f) of act Aug. 1, 1956, as amended by Pub. L. 86–284, §1, provided that: ‘‘Notwithstanding the provisions of subsection (d) of section 218 of the Social Security Act [subsection (d) of this section], any agreement under such section entered into prior to the date of enactment of this Act [Aug. 1, 1956] by the State of Florida, Nevada, New Mexico, Minnesota, Oklahoma, Pennsylvania, Texas, Washington, or the Territory of Hawaii shall if the State or Territory concerned so requests, be modified prior to July 1, 1962, so as to apply to services performed by employees of the respective public school districts of such State or Territory who, on the date such agreement is made applicable to such services, are not in positions the incumbents of which are required by State or Territorial law or regulation to have valid State or Territorial teachers’ or administrators’ certificates in order to receive pay for their services. The provisions of this subsection shall not apply to services of any such employees to which any such agreement applies without regard to this subsection.’’

MODIFICATION OF EXISTING AGREEMENT WITH STATE OF ARIZONA PRIOR TO JANUARY 1, 1956

Section 101(k) of act Sept. 1, 1954, provided that: ‘‘If, prior to January 1, 1956, the agreement with the State of Arizona entered into pursuant to section 218 of the Social Security Act [this section] is modified pursuant to subsection (d)(3) of such section so as to apply to service performed by employees in positions covered by the Arizona Teachers’ Retirement System the modification may, notwithstanding section 218(f) of the Social Security Act, be made effective with respect to service performed in such positions after an effective date specified in the modification, but in no case may such effective date be earlier than December 31, 1950. For the purposes of any such modification, all employees in positions covered by the Arizona Teachers’ Retirement System shall be deemed, notwithstanding the provisions of section 218(d)(6) of such Act, to constitute a separate coverage group.’’

EXTENSION OF COVERAGE TO SERVICE IN FIREMEN’S POSITION

Section 120(b) of Pub. L. 90–248 provided that: ‘‘Nothing in the amendments made by subsection (a) [amending this section] shall authorize the extension of the insurance system established by title II of the Social Security Act [this subchapter] under the provisions of section 218(d)(6)(C) of such Act [subsection (d)(6)(C) of this section] to service in any fireman’s position.’’

VALIDATION OF COVERAGE FOR CERTAIN FIREFIENDS IN THE STATE OF NEBRASKA


‘‘(1) an individual has performed services prior to the enactment of this Act [Jan. 2, 1968] in the employ of a political subdivision of the State of Nebraska in a fireman’s position, and

‘‘(2) amounts, equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954 [formerly I.R.C. 1954] [sections 3101 and 3111 of Title 26, Internal Revenue Code] had such services constituted employment for purposes of section 21 of such Code [section 21 of Title 26] at the time they were performed, were timely paid in good faith to the Secretary of the Treasury, and

‘‘(3) no refunds of such amounts paid in lieu of taxes have been obtained,

the amount of the remuneration for such services with respect to which such amounts have been paid shall be deemed to constitute remuneration for employment as defined in section 209 of the Social Security Act [section 409 of this title].’’

VALIDATION OF COVERAGE FOR CERTAIN EMPLOYEES OF AN INTEGRAL UNIT OF A POLITICAL SUBDIVISION OF ALASKA

Section 342 of Pub. L. 89–97 provided that: ‘‘For purposes of the agreement under section 218 of the Social Security Act [this section] entered into by the State of Alaska, or its predecessor the Territory of Alaska, where employees of an integral unit of a political subdivision of the State or Territory of Alaska have in good faith been included under the State or Territory’s agreement as a coverage group on the basis that such integral unit of a political subdivision was a political subdivision, then such unit of the political subdivision shall, for purposes of section 218(b)(2) of such Act, be deemed to be a political subdivision, and employees performing services within such unit shall be deemed to be a coverage group, effective with the effective date specified in such agreement or modification of such agreement with respect to such coverage group and ending with the last day of the year in which this Act is enacted [1965].’’

VALIDATION OF COVERAGE FOR DISTRICT ENGINEERING AIDES OF SOIL AND WATER CONSERVATION DISTRICTS OF OKLAHOMA

Pub. L. 88–650, §3, Oct. 13, 1964, 78 Stat. 1077, provided that: ‘‘For purposes of the agreement under section 218 of the Social Security Act [this section] entered into by the State of Oklahoma, remuneration paid to district engineering aides of soil and water conservation districts of the State of Oklahoma which was reported by the State as amounts paid to such aides as employees of the State for services performed by them during the period beginning January 1, 1951, and ending with the close of June 30, 1962, shall be deemed to have been paid to such aides for services performed by them in the employ of the State.’’

VALIDATION OF COVERAGE FOR CERTAIN EMPLOYEES OF AN INTEGRAL UNIT OF A POLITICAL SUBDIVISION OF ARKANSAS

Section 1 of Pub. L. 87–478 provided: ‘‘That, for purposes of the agreement under section 218 of the Social Security Act [this section] entered into by the State of Arkansas, where employees of an integral unit of a political subdivision of the State of Arkansas have in good faith been included under the State’s agreement as a coverage group on the basis that such integral unit of a political subdivision was a political subdivision, then such unit of the political subdivision shall, for purposes of section 218(b)(2) of such Act, be deemed to be a political subdivision, and employees performing services within such unit shall be deemed to be a coverage group, effective with the effective date specified in such agreement or modification of such agreement with respect to such coverage group and ending with the last day of the year in which this Act is enacted [1962].’’

VALIDATION OF COVERAGE FOR CERTAIN MISSISSIPPI TEACHERS

Section 102(h) of Pub. L. 89–778 provided that: ‘‘For purposes of the agreement under section 218 of the Social Security Act [this section] entered into by the State of Mississippi, services of teachers in such State performed after February 28, 1951, and prior to October 1, 1959, shall be deemed to have been performed by such teachers as employees of the State. The term ‘teacher’ as used in the preceding sentence means—

‘‘(1) any individual who is licensed to serve in the capacity of teacher, librarian, registrar, supervisor, principal, or superintendent and who is principally engaged in the public elementary or secondary school
system of the State in any one or more of such capacities; 
(2) any employee in the office of the county super-
intendent of education or the county school super-
vise, or in the office of the principal of any county 
or municipal public elementary or secondary school
in the State; and 
(3) any individual licensed to serve in the capacity
of teacher who is engaged in any educational capac-
ity in any day or night school conducted under the 
supervision of the State department of education as
a part of the adult education program provided for
under the laws of Mississippi or under the laws of the
United States.

Presumption of Work Deductions for Services
Performed Prior to 1956 in Case of Certain Ret-
roactive State Agreements: Recomputation
Section 103(1) of act Sept. 1, 1954, provided that:
“(1) In the case of any services performed prior to
1955 to which an agreement under section 218 of the
Social Security Act [this section] was made applicable,
deductions which—
“(A) were not imposed under section 203 of such Act
[section 403 of this title] with respect to such services
performed prior to the date the agreement was agreed
or, if the original agreement was not applicable to
such services, performed prior to the date the modi-
fication making such agreement applicable to such
services was agreed to, and
“(B) would have been imposed under such section
203 had such agreement, or modification, as the case
may be, been agreed to on the date it became effec-
tive,
shall be deemed to have been imposed, but only for pur-
poses of section 215(f)(2)(A) or section 215(f)(4)(A) of
such Act [section 415(f)(2)(A) or section 415(f)(4)(A)
of this title] as in effect prior to the enactment of this
Act [Sept. 1, 1954]. An individual with respect to whose
services the preceding sentence is applicable, or in the
case of his death, his survivors entitled to monthly
benefits under section 202 of the Social Security Act
[section 402 of this title] on the basis of his wages and
self-employment income, shall be entitled to a re-
computation of his primary insurance amount under
such section 215(f)(2)(A) or section 215(f)(4)(A), as the
case may be, if the conditions specified therein are met
and if, with respect to a recomputation under such sec-
tion 215(f)(2)(A), such individual files the application
referred to in such section after August 1954 and prior
to January 1956 or, with respect to a recomputation
under such section 215(f)(4)(A), such individual died
prior to January 1956 and any of such survivors entitled
to monthly benefits files an application, in addition to
the application filed for such monthly benefits, for a
recomputation under such section 215(f)(4)(A).
“(2) For purposes of a recomputation made by reason
of paragraph (1) of this subsection, the primary
insurance amount of the individual who performed the
services referred to in such paragraph shall be computed
under subsection (a)(2) of section 215 of the Social Secu-
ity Act, as amended by this Act (but, for such pur-
poses, without application of subsection (d)(4) of such
section, as in effect prior to the enactment of this Act
or as amended by this Act) and as though he became
entitled to old-age insurance benefits in whichever of
the following months yields the highest primary insur-
ance amount:
“(A) the month following the last month for which
deductions are deemed, pursuant to paragraph (1) of
this subsection, to have been made; or
“(B) the first month after the month determined
under subparagraph (A) (and prior to September 1954)
in which his benefits under section 202(a) of the So-
cial Security Act [section 402(a) of this title] were no
longer subject to deductions under section 203(b) of
such Act [section 403(b) of this title]; or
“(C) the first month after the last month (and prior
to September 1954) in which his benefits under section
202(a) of the Social Security Act were subject to de-
ductions under section 203(b) of such Act; or
“(D) the month in which such individual filed his
application for recomputation referred to in para-
graph (1) of this subsection or, if he died without fil-
ing such application and prior to January 1, 1956, the
month in which he died, and in any such case (but, if
the individual is deceased, only if death occurred
after August 1954) the amendments made by sub-
sections (b)(1), (e)(1) and (e)(3)(B) of section 102 of this
Act [amending section 415 of this title] shall be appli-
cable.
Such recomputation shall be effective for and after the
month in which the application required by paragraph
(1) of this subsection is filed. The provisions of this sub-
section shall not be applicable in the case of any indi-
vidual if his primary insurance amount has been re-
computed under section 215(f)(2) of the Social Security
Act on the basis of an application filed prior to Sep-
tember 1954.
“(3) If any recomputation under section 215(f) of
the Social Security Act is made by reason of deductions
deemed pursuant to paragraph (1) of this subsection
or, been agreed to on the date it became effec-
tive, to have been imposed with respect to benefits based on the
wages and self-employment income of any individual,
the total of the benefits based on such wages and self-
employment income for months for which such deduc-
tions are so deemed to have been imposed shall be re-
covered by making, in addition to any other deductions
under section 203 of such Act, deductions from in-
come, resulting from such recomputation.”
Sept. 13, 1960, 74 Stat. 937

Section. act Aug. 14, 1935, ch. 531, title II, § 219, as
added Aug. 28, 1950, ch. 809, title I, § 107, 64 Stat. 517,
prescribed the effective date of this subchapter in Puer-
to Rico as January 1 of the first calendar year which
begins more than 90 days after the date on which the
President received a certification from the Governor of
Puerto Rico.

Effective Date of Repeal
Repeal effective Sept. 13, 1960, see section 103(v)(1), (3)
of Pub. L. 86–778, set out as an Effective Date of 1960
Amendment note under section 402 of this title.

§ 420. Disability provisions inapplicable if benefit
rights impaired

None of the provisions of this subchapter relating to
periods of disability shall apply in any case in which their application would result in the
denial of monthly benefits or a lump-sum death payment which would otherwise be pay-
able under this subchapter; nor shall they apply in the case of any monthly benefit or lump-sum
death payment under this subchapter if such benefit or payment would be greater without
their application.

(Aug. 14, 1935, ch. 531, title II, § 220, as added
1061.)

Prior Provisions
A prior section 420, act Aug. 14, 1935, ch. 531, title II,
§ 220, as added July 18, 1952, ch. 945, § 3(e), 66 Stat. 772,
relating to inapplicability of disability provisions if
benefits were reduced, ceased to be in effect at the
close of June 30, 1953, See Effective and Termination
Date of 1962 Amendment note set out under section 413
of this title.

§ 421. Disability determinations
(a) State agencies

(1) In the case of any individual, the deter-
mination of whether or not he is under a disabi-
ity (as defined in section 416(i) or 423(d) of this title) and of the day such disability began, and the determination of the day on which such disability ceases, shall be made by a State agency, notwithstanding any other provision of law, in any State that notifies the Administrator of Social Security in writing that it wishes to make such disability determinations commencing with such month as the Commissioner of Social Security and the State agree upon, but only if (A) the Commissioner of Social Security has not found, under subsection (b)(1) of this section, that the State agency has substantially failed to make disability determinations in accordance with the applicable provisions of this section or rules issued thereunder, and (B) the State has not notified the Commissioner of Social Security, under subsection (b)(2) of this section, that it does not wish to make such determinations. If the Commissioner of Social Security once makes the finding described in clause (A) of the preceding sentence, or the State gives the notice referred to in clause (B) of such sentence, the Commissioner of Social Security may thereafter determine whether (and, if so, beginning with which month and under what conditions) the State may again make disability determinations under this paragraph.

(2) The disability determinations described in paragraph (1) made by a State agency shall be made in accordance with the pertinent provisions of this subchapter and the standards and criteria contained in regulations or other written guidelines of the Commissioner of Social Security pertaining to matters such as disability determinations, the class or classes of individuals with respect to which a State may make disability determinations (if it does not wish to do so with respect to all individuals in the State), and the conditions under which it may choose not to make such determinations. In addition, the Commissioner of Social Security shall promulgate regulations specifying, in such detail as the Commissioner deems appropriate, performance standards and administrative requirements and procedures to be followed in performing the disability determination function in order to assure effective and uniform administration of the disability insurance program throughout the United States. The regulations may, for example, specify matters such as—

(A) the administrative structure and the relationship between various units of the State agency responsible for disability determinations;

(B) the physical location of and relationship among agency staff units, and other individuals or organizations performing tasks for the State agency, and standards for the availability to applicants and beneficiaries of facilities for making disability determinations;

(C) State agency performance criteria, including the rate of accuracy of decisions, the time periods within which determinations must be made, the procedures for and the scope of review by the Commissioner of Social Security, and, as the Commissioner finds appropriate, by the State, of its performance in individual cases and in classes of cases, and rules governing access of appropriate Federal officials to State offices and to State records relating to its administration of the disability determination function;

(D) fiscal control procedures that the State agency may be required to adopt, and

(E) the submission of reports and other data, in such form and at such time as the Commissioner of Social Security may require, concerning the State agency’s activities relating to the disability determination.

Nothing in this section shall be construed to authorize the Commissioner of Social Security to take any action except pursuant to law or to regulations promulgated pursuant to law.

(b) Determinations by Commissioner

(1) If the Commissioner of Social Security finds, after notice and opportunity for a hearing, that a State agency is substantially failing to make disability determinations in a manner consistent with the Commissioner’s regulations and other written guidelines, the Commissioner of Social Security shall, not earlier than 180 days following the Commissioner’s finding, and after the Commissioner has complied with the requirements of paragraph (3), make the disability determinations referred to in subsection (a)(1) of this section.

(2) If a State, having notified the Commissioner of Social Security of its intent to make disability determinations under subsection (a)(1) of this section, no longer wishes to make such determinations, it shall notify the Commissioner of Social Security in writing of that fact, and, if an agency of the State is making disability determinations at the time such notice is given, it shall continue to do so for not less than 180 days, or (if later) until the Commissioner of Social Security has complied with the requirements of paragraph (3). Thereafter, the Commissioner of Social Security shall make the disability determinations referred to in subsection (a)(1) of this section.

(3) (A) The Commissioner of Social Security shall develop and initiate all appropriate procedures to implement a plan with respect to any partial or complete assumption by the Commissioner of Social Security of the disability determination function from a State agency, as provided in this section, under which employees of the affected State agency who are capable of performing duties in the disability determination process for the Commissioner of Social Security shall, notwithstanding any other provision of law, have a preference over any other individual in filling an appropriate employment position with the Commissioner of Social Security (subject to any system established by the Commissioner of Social Security for determining hiring priority among such employees of the State agency) unless any such employee is the Administrator, the Deputy Administrator, the Assistant Administrator (or his equivalent) of the State agency, in which case the Commissioner of Social Security may accord such priority to such employee.

(B) The Commissioner of Social Security shall not make such assumption of the disability determination function until such time as the Secretary of Labor determines that, with respect to employees of such State agency who will be displaced from their employment on account of
such assumption by the Commissioner of Social Security and who will not be hired by the Commissioner of Social Security to perform duties in the disability determination process, the State has made fair and equitable arrangements to protect the interests of employees so displaced. Such protective arrangements shall include only those provisions which are provided under all applicable Federal, State and local statutes including, but not limited to, (i) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements; (ii) the continuation of collective-bargaining rights; (iii) the assignment of affected employees to other jobs or to retraining programs; (iv) the protection of individual employees against a worsening of their positions with respect to their employment; (v) the protection of health benefits and other fringe benefits; and (vi) the provision of severance pay, as may be necessary.

(c) Review of determination by Commissioner

(1) The Commissioner of Social Security may on the Commissioner's own motion or as required under paragraphs (2) and (3) review a determination, made by a State agency under this section, that an individual is or is not under a disability (as defined in section 416(i) or 423(d) of this title) and, as a result of such review, may modify such agency's determination and determine that such individual either is or is not under a disability (as so defined) or that such individual's disability began on a day earlier or later than that determined by such agency, or that such disability ceased on a day earlier or later than that determined by such agency. A review by the Commissioner of Social Security on the Commissioner's own motion of a State agency determination under this paragraph may be made before or after any action is taken to implement such determination.

(2) The Commissioner of Social Security (in accordance with paragraph (3)(A)) shall review determinations, made by State agencies pursuant to this section, that individuals are under disabilities (as defined in section 416(i) or 423(d) of this title). Any review by the Commissioner of Social Security of a State agency determination under this paragraph shall be made before any action is taken to implement such determination.

(3)(A) In carrying out the provisions of paragraph (2) with respect to the review of determinations made by State agencies pursuant to this section that individuals are under disabilities (as defined in section 416(i) or 423(d) of this title), the Commissioner of Social Security shall review—

(i) at least 50 percent of all such determinations made by State agencies on applications for benefits under this subchapter, and

(ii) other determinations made by State agencies pursuant to this section to the extent necessary to assure a high level of accuracy in such other determinations.

(B) In conducting reviews pursuant to subparagraph (A), the Commissioner of Social Security shall, to the extent feasible, select for review those determinations which the Commissioner of Social Security identifies as being the most likely to be incorrect.

(C) Not later than April 1, 1992, and annually thereafter, the Commissioner of Social Security shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report setting forth the number of reviews conducted under subparagraph (A)(ii) during the preceding fiscal year and the findings of the Commissioner of Social Security based on such reviews of the accuracy of the determinations made by State agencies pursuant to this section.

(d) Hearings and judicial review

Any individual dissatisfied with any determination under subsection (a), (b), (c), or (g) of this section shall be entitled to a hearing thereon by the Commissioner of Social Security to the same extent as is provided in section 405(b) of this title with respect to decisions of the Commissioner of Social Security, and to judicial review of the Commissioner's final decision after such hearing as is provided in section 405(g) of this title.

(e) State's right to cost from Trust Funds

Each State which is making disability determinations under subsection (a) of this section shall be entitled to receive from the Trust Funds, in advance or by way of reimbursement, as determined by the Commissioner of Social Security, the cost to the State of making disability determinations under subsection (a)(i) of this section. The Commissioner of Social Security shall from time to time certify such amount as is necessary for this purpose to the Managing Trustee, reduced or increased, as the case may be, by any sum (for which adjustment hereunder has not previously been made) by which the amount certified for any prior period was greater or less than the amount which should have been paid to the State under this subsection for such period; and the Managing Trustee, prior to audit or settlement by the Government Accountability Office, shall make payment from the Trust Funds at the time or times fixed by the Commissioner of Social Security, in accordance with such certification. Appropriate adjustments between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund with respect to the payments made under this subsection shall be made in accordance with paragraph (1) of subsection (g) of section 401 of this title (but taking into account any refunds under subsection (f) of this section) to insure that the Federal Disability Insurance Trust Fund is charged with all expenses incurred which are attributable to the administration of section 423 of this title and the Federal Old-Age and Survivors Insurance Trust Fund is charged with all other expenses.

(f) Use of funds

All money paid to a State under this section shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned to the Treasury of the United States for deposit in the Trust Funds.
(g) Regulations governing determinations in certain cases

In the case of individuals in a State which does not undertake to perform disability determinations under subsection (a)(1) of this section, or which has been found by the Commissioner of Social Security to have substantially failed to make disability determinations in a manner consistent with the Commissioner's regulations and guidelines, in the case of individuals outside the United States, and in the case of any class or classes of individuals for whom no State undertakes to make disability determinations, the determinations referred to in subsection (a) of this section shall be made by the Commissioner of Social Security in accordance with regulations prescribed by the Commissioner.

(h) Evaluation of mental impairments by qualified medical professionals

An initial determination under subsection (a), (c), (g), or (i) of this section that an individual is not under a disability, in any case where there is evidence which indicates the existence of a mental impairment, shall be made only if the Commissioner of Social Security has made every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment.

(i) Review of disability cases to determine continuing eligibility; permanent disability cases; appropriate number of cases reviewed; reporting requirements

(1) In any case where an individual is or has been determined to be under a disability, the case shall be reviewed by the applicable State agency or the Commissioner of Social Security (as may be appropriate), for purposes of continuing eligibility, at least once every 3 years, subject to paragraph (2); except that where a finding has been made that such disability is permanent, such reviews shall be made at such times as the Commissioner of Social Security determines to be appropriate. Reviews of cases under the preceding sentence shall be in addition to, and shall not be considered as a substitute for, any other reviews which are required or provided for under or in the administration of this subchapter.

(2) The requirement of paragraph (1) that cases be reviewed at least every 3 years shall not apply to the extent that the Commissioner of Social Security determines, on a State-by-State basis, that such requirement should be waived to insure that only the appropriate number of such cases are reviewed. The Commissioner of Social Security shall determine the appropriate number of cases to be reviewed in each State after consultation with the State agency performing such reviews, based upon the backlog of pending reviews, the projected number of new applications for disability insurance benefits, and the current and projected staffing levels of the State agency, but the Commissioner of Social Security shall provide for a waiver of such requirement only in the case of a State which makes a good faith effort to meet proper staffing requirements for the State agency and to process case reviews in a timely fashion. The Commissioner of Social Security shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the determinations made by the Commissioner of Social Security under the preceding sentence.

(3) The Commissioner of Social Security shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the number of reviews of continuing disability carried out under paragraph (1), the number of such reviews which result in an initial termination of benefits, the number of requests for reconsideration of such initial termination or for a hearing with respect to such termination under subsection (d) of this section, or both, and the number of such initial terminations which are overturned as the result of a reconsideration or hearing.

(4) In any case in which the Commissioner of Social Security initiates a review under this subsection of the case of an individual who has been determined to be under a disability, the Commissioner of Social Security shall notify such individual of the nature of the review to be carried out, the possibility that such review could result in the termination of benefits, and the right of the individual to provide medical evidence with respect to such review.

(5) For suspension of reviews under this subsection in the case of an individual using a ticket to work and self-sufficiency, see section 1320b–19(i) of this title.

(j) Rules and regulations; consultative examinations

The Commissioner of Social Security shall prescribe regulations which set forth, in detail—

(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations;

(2) standards for the type of referral to be made; and

(3) procedures by which the Commissioner of Social Security will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 553(b)(A) of title 5, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.

(k) Establishment of uniform standards for determination of disability

(1) The Commissioner of Social Security shall establish by regulation uniform standards which shall be applied at all levels of determination, review, and adjudication in determining whether individuals are under disabilities as defined in section 416(i) or 423(d) of this title.

(2) Regulations promulgated under paragraph (1) shall be subject to the rulemaking procedures established under section 553 of title 5.
(l) Special notice to blind individuals with respect to hearings and other official actions

(1) In any case where an individual who is applying for or receiving benefits under this subchapter on the basis of disability by reason of blindness is entitled to receive notice from the Commissioner of Social Security of any decision or determination made or other action taken or proposed to be taken with respect to his or her rights under this subchapter, such individual shall at his or her election be entitled either (A) to receive a supplementary notice of such decision, determination, or action, by telephone, within 5 working days after the initial notice is mailed, (B) to receive the initial notice in the form of a certified letter, or (C) to receive notification by some alternative procedure established by the Commissioner of Social Security and agreed to by the individual.

(2) The election under paragraph (1) may be made at any time, but an opportunity to make such an election shall in any event be given to every individual who is an applicant for benefits under this subchapter on the basis of disability by reason of blindness, at the time of his or her application. Such an election, once made by an individual, shall apply with respect to all notices of decisions, determinations, and actions which such individual may thereafter be entitled to receive under this subchapter until such time as it is revoked or changed.

(m) Work activity as basis for review

(1) In any case where an individual entitled to disability insurance benefits under section 423 of this title or to monthly insurance benefits under section 402 of this title based on such individual’s disability (as defined in section 423(d) of this title) has received such benefits for at least 24 months—

(A) no continuing disability review conducted by the Commissioner may be scheduled for the individual solely as a result of the individual’s work activity;

(B) no work activity engaged in by the individual may be used as evidence that the individual is no longer disabled; and

(C) no cessation of work activity by the individual may give rise to a presumption that the individual is unable to engage in work.

(2) An individual to which paragraph (1) applies shall continue to be subject to—

(A) continuing disability reviews on a regularly scheduled basis that is not triggered by work; and

(B) termination of benefits under this subchapter in the event that the individual has earnings that exceed the level of earnings established by the Commissioner to represent substantial gainful activity.


Prior Provisions


Amendments


1994—Pub. L. 103–296 substituted “Commissioner of Social Security” for “Secretary” wherever appearing except where appearing before “of Labor” in subsec. (b)(3)(B) and substituted “the Commissioner deems” for “the Commissioner finds” for “he finds” in subsec. (a)(2), “the Commissioner’s” for “his” wherever appearing in subsecs. (b)(1), (c)(1), and (g), “the Commissioner has compiled” for “he has compiled” in subsec. (b)(1), “Commissioner’s” for “Secretary’s” in subsec. (d), and “prescribed by the Commissioner” for “prescribed by him” in subsec. (g).

1990—Subsec. (c)(3). Pub. L. 101–508 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “In carrying out the provisions of paragraph (2) with respect to the review of determinations, made by State agencies pursuant to this section, that individuals are under disabilities (as defined in section 416(i) or 423(d) of this title), the Secretary shall review—

(1) at least 15 percent of all such determinations made by State agencies in the fiscal year 1982, and

(2) at least 35 percent of all such determinations made by State agencies in the fiscal year 1982.”


1986—Subsec. (i). Pub. L. 100–678 substituted “semi-annually” for “annually”.

1986—Subsec. (e). Pub. L. 99–514 struck out “under this section” before “shall be entitled”. 1984—Subsec. (a)(1)(A). Pub. L. 98–460, §17(a)(2), (b), temporarily substituted “subsection (b)(1)(C) of this section” for “subsection (b)(1) of this section”. See Effective and Termination Dates of 1984 Amendments note below. Subsec. (b)(1). Pub. L. 98–460, §17(a)(1), (b), temporarily amended par. (1) generally. Prior to amendment, par. (1) read as follows: “If the Secretary finds, after notice and opportunity for a hearing, that a State agency is substantially failing to make disability determinations in a manner consistent with his regulations and other written guidelines, the Secretary shall, not earlier than 180 days following his finding, and after he has complied with the requirements of paragraph (3), make the disability determinations referred to in subsection (a)(1) of this section.” See Effective and Termination Dates of 1984 Amendments note below. Subsec. (b)(3). Pub. L. 98–460, §17(a)(3), (b), temporarily substituted “Except as provided in subparagraph
(D)(1) of paragraph (1), the Secretary" for "The Secretary"
"in subpars. (A) and (B). See Effective and Ter-
minal Dates of 1984 Amendments note below.
Subsec. (d), Pub. L. 98–468, §17a(a)(4), b, temporarily
substituted "Except as provided in subsection (b)(1)(D)
"effective with the first month following one year after
Secretary'' in subpars. (A) and (B). See Effective and Ter-
minated date of such amendments. Thereafter, a State may
Subsec. (b)(1)(D) of this section, any individual" for "Any individual''.
See Effective and Termination Dates of 1984 Amend-
sed to be below.
Subsec. (e), Pub. L. 98–369 substituted "Federal Dis-
ability Insurance Trust Fund is charged" for "Federal
Disability Insurance Trust Fund is charged''.
Subsec. (h), Pub. L. 98–468, §8(a), added subsec. (h).
Subsec. (i)(4), Pub. L. 98–460, §6(a), added par. (4).
Subsec. (j), Pub. L. 98–468, §9a(x), added subsec. (j).
Subsec. (k), Pub. L. 98–468, §10(a), added subsec. (k).
Subsec. (c), Pub. L. 96–265, §904(c), designated existing
1881, provided that: "The amendment made by sub-
section (a) [amending this section] shall apply with respect to determinations made
by State agencies in fiscal years after fiscal year 1990.''
Effective Date of 1989 Amendment
Section 10306(a)(3) of Pub. L. 101–239 provided that:
"The amendment made by this section [amending this
section] shall apply with respect to notices issued on or
after July 1, 1990.''
Effective Date of 1988 Amendment
Section 812(b) of Pub. L. 100–647 provided that: "The
amendment made by this section [amending this
section] shall apply to reports required to be submitted
after the date of the enactment of this Act [Nov. 10,
1988].''
Effective and Termination Dates of 1984
Amendments
Section 8(c) of Pub. L. 98–468 provided that: "The
amendments made by this section [amending section
and section 1382c of this title] shall apply to deter-
minations made after 60 days after the date of the en-
actment of this Act [Oct. 9, 1984].''
Section 17(b) of Pub. L. 98–468 provided that: "The
amendments made by subsection (a) of this section
[amending this section] shall become effective on the
date of the enactment of this Act [Oct. 9, 1984] and shall
expire on December 31, 1987. The provisions of the So-
cial Security Act amended by subsection (a) of this
section (as such provisions were in effect immediately
before the date of the enactment of this Act) shall be
effective after December 31, 1987.''
Amendment by Pub. L. 98–369 effective July 18, 1984,
but not to be construed as changing or affecting any
right, liability, status, or interpretation which existed
under the provisions of law involved) before that date,
before the date of the enactment of this Act [Jan. 12, 1983].''
Effective Date of 1980 Amendment
Section 304(b) of Pub. L. 96–265 provided that: "The
amendments made by subsection (a) [amending this
section] shall become effective on the date of the en-
actment of this Act [Oct. 19, 1980].''
Amendment by Pub. L. 90–248 applicable with respect to application for disability insurance benefits under section 423 of this title and to disability determinations under section 416(i) of this title, see section 158(e) of Pub. L. 90–248, set out as a note under section 423 of this title.

Election Under Subsection (i)(1) by Current Recipients

Section 10106(a)(2) of Pub. L. 101–239 provided that: ‘‘Not later than July 1, 1990, the Secretary of Health and Human Services shall provide every individual receiving benefits under title II of the Social Security Act [this subchapter] on the basis of disability by reason of blindness an opportunity to make an election under section 221(i)(1) of such Act [subsec. (i)(1) of this section] (as added by paragraph (1)).’’

Moratorium on Mental Impairment Reviews

Section 5 of Pub. L. 98–460 provided that:

‘‘(a) The Secretary of Health and Human Services (hereafter in this section referred to as the ‘Secretary’) shall revise the criteria embodied under the category ‘Mental Disorders’ in the ‘Listing of Impairments’ in effect on the date of the enactment of this Act [Oct. 9, 1984] under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individuals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Regulations establishing such revised criteria and listings shall be published no later than 120 days after the date of the enactment of this Act.

‘‘(b)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(i) of the Social Security Act [subsec. (i) of this section], or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act [subchapter XVI of this chapter], with respect to any individual previously determined to be under a disability by reason of a mental impairment, if—

‘‘(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act, or

‘‘(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after July 6, 1983.

For purposes of this paragraph and subsection (c)(1) the term ‘continuing eligibility review’, when used to refer to a review of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

‘‘(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual other than an individual eligible to receive benefits under section 1619 of the Social Security Act [section 1382h of this title] is determined by the Secretary to be engaged in substantial gainful activity (or gainful activity, in the case of a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 220(e) and (f) of such Act [section 402(e), (f) of this title]).

‘‘(c)(1) Any initial determination that an individual is not under a disability by reason of a mental impairment and any determination that an individual is not under a disability by reason of a mental impairment made under or in accordance with title II or XVI of such Act in a reconsideration of, hearing on, review by the Appeals Council of, or judicial review of a decision rendered in any continuing eligibility review to which subsection (b)(1) applies, shall be redetermined by the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

‘‘(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on re-determination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

‘‘(3) Any individual with a mental impairment who was found to be not disabled pursuant to an initial disability determination or a continuing eligibility review between March 1, 1981, and the date of the enactment of this Act [Oct. 9, 1984], and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the re-application.’’

Institution of Notification System

Section 6(c) of Pub. L. 98–460 provided that: ‘‘The Secretary shall institute a system of notification required by the amendments made by subsections (a) and (b) [amending this section and section 1383c of this title] as soon as is practicable after the date of the enactment of this Act [Oct. 9, 1984].’’

Demonstration Projects; Opportunity for Personal Appearance Prior to Disability Determinations; Report to Congressional Committees

Pub. L. 98–460, §6(d), (e), Oct. 9, 1984, 98 Stat. 1802, 1803, required the Secretary of Health and Human Services, as soon as practicable after Oct. 9, 1984, to implement demonstration projects in at least five States in which the opportunity for a personal appearance prior to a determination of ineligibility for disability benefits under 42 U.S.C. 422(i) or prior to initial disability determinations under 42 U.S.C. 422(a), (c), (g) and title XVI of the Social Security Act (42 U.S.C. 1382c) was substituted for the face to face evidentiary hearing required by 42 U.S.C. 405(b)(2), and to report to the appropriate committees of Congress by Dec. 31, 1986.

Promulgation of Regulations

Section 9(a)(2) of Pub. L. 98–460 provided that: ‘‘The Secretary of Health and Human Services shall promulgate final regulations, within 180 days after the date of the enactment of this Act [Oct. 9, 1984], which establish the standards to be used by the Secretary in determining the frequency of reviews under section 221(i) of the Social Security Act [subsec. (j) of this section]. Until such regulations have been issued as final regulations, no in-
individual may be reviewed more than once under section 221(i) of the Social Security Act.”

**TRAVEL EXPENSES FOR MEDICAL EXAMINATIONS, RECONSIDERATION INTERVIEWS, AND PROCEEDINGS BEFORE ADMINISTRATIVE LAW JUDGES**

Provisions authorizing payment of travel expenses either on an actual cost or commuted basis, to an individual for travel incident to medical examinations, and to parties, their representatives and all reasonably necessary witnesses for travel within the United States, Puerto Rico, and the Virgin Islands, to reconsider interviews and to proceedings before administrative law judges under subchapters II, XVI, and XVIII of this chapter were contained in the following appropriation acts:


**REVIEW OF DECISIONS RENDERED BY ADMINISTRATIVE LAW JUDGES AS RESULT OF DISABILITY HEARINGS; REPORT TO CONGRESS**

Section 304(g) of Pub. L. 96–265 provided that: “The Secretary of Health and Human Services shall implement a program of reviewing, on his own motion, decisions rendered by administrative law judges as a result of hearings under section 221(i) of the Social Security Act (subsection (d) of this section), and shall report to the Congress by January 1, 1962, on his progress.”

**ASSUMPTION BY SECRETARY OF FUNCTIONS AND OPERATIONS OF STATE DISABILITY DETERMINATION UNITS**

Section 304(i) of Pub. L. 96–265 directed Secretary of Health and Human Services to submit to Congress by July 1, 1980, a detailed plan on how he intended to assume functions and operations of a State disability determination unit when this became necessary under amendments made by this section (amending this section), and how he intended to meet requirements of section 221(b)(3) of Social Security Act (subsection (b)(3) of this section). Such plan was to assume the uninterrupted operation of disability determination function and utilization of best qualified personnel to carry out such function, and was to include recommendations for any amendment of Federal law or regulation required to carry out such plan.

§ 422. Rehabilitation services


(c) “Period of trial work” defined

(1) The term “period of trial work”, with respect to an individual entitled to benefits under section 423, 402(d), 402(e), or 402(f) of this title, means a period of months beginning and ending as provided in paragraphs (3) and (4).

(2) For purposes of sections 416(i) and 423 of this title, any services rendered by an individual during a period of trial work shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. For purposes of this subsection the term “services” means activity (whether legal or illegal) which is performed for remuneration or gain or is determined by the Commissioner of Social Security to be of a type normally performed for remuneration or gain.

(3) A period of trial work for any individual shall begin with the month in which he becomes entitled to disability insurance benefits, or, in the case of an individual entitled to benefits under section 402(d) of this title who has attained the age of eighteen, with the month in which he becomes entitled to such benefits or the month in which he attains the age of eighteen, whichever is later, or, in the case of an individual entitled to widow’s or widower’s insurance benefits under section 402(e) or (f) of this title who became entitled to such benefits prior to attaining age 60, with the month in which such individual becomes so entitled. Notwithstanding the preceding sentence, no period of trial work may begin for any individual prior to the beginning of the month following September 1960; and no such period may begin for an individual in a period of disability of such individual in which he had a previous period of trial work.

(4) A period of trial work for any individual shall end with the close of whichever of the following months is the earlier:

(A) the ninth month, in any period of 60 consecutive months, in which the individual renders services (whether or not such nine months are consecutive); or

(B) the month in which his disability as defined in section 423(d) of this title ceases (as determined after application of paragraph (2) of this subsection).

(5) Upon conviction by a Federal court that an individual has fraudulently concealed work activity during a period of trial work from the Commissioner of Social Security by—

(A) providing false information to the Commissioner of Social Security as to whether the individual had earnings in or for a particular period, or as to the amount thereof;

(B) receiving disability insurance benefits under this subchapter while engaging in work activity under another identity, including under another social security account number or a number purporting to be a social security account number;

(C) taking other actions to conceal work activity with an intent fraudulently to secure payment in a greater amount than is due or when no payment is authorized, no benefit shall be payable to such individual under this subchapter with respect to a period of disability for any month before such conviction during which the individual rendered services during the period of trial work with respect to which the fraudulently concealed work activity occurred, and amounts otherwise due under this subchapter as restitution, penalties, assessments, fines, or other repayments shall in all cases be in addition to any amounts for which
such individual is liable as overpayments by reason of such concealment.

(d) **Cost of rehabilitation services from trust funds**

(1) For purposes of making vocational rehabilitation services more readily available to disabled individuals who are—

(A) entitled to disability insurance benefits under section 423 of this title,

(B) entitled to child’s insurance benefits under section 402(d) of this title after having attained age 18 (and are under a disability),

(C) entitled to widow’s insurance benefits under section 402(e) of this title prior to attaining age 60, or

(D) entitled to widower’s insurance benefits under section 402(f) of this title prior to attaining age 60.

(2) Payments under this subsection shall be made by the Commissioner of Social Security to reimburse the State for the reasonable and necessary costs of vocational rehabilitation services furnished such individuals (including services during their waiting periods), under a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.], (i) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (ii) in cases where such individuals receive benefits as a result of section 425(b) of this title (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual’s ninth consecutive month of substantial gainful activity or the close of the month in which he or her entitlement to such benefits ceases, whichever first occurs), and (iii) in cases where such individuals, without good cause, refuse to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation. The determination that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation, and the determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria formulated by the Commissioner.

(2) In the case of any State which is unwilling to participate or does not have a plan which meets the requirements of paragraph (1), the Commissioner of Social Security may provide such services in such State by agreement or contract with other public or private agencies, organizations, institutions, or individuals. The provision of such services shall be subject to the same conditions as otherwise apply under paragraph (1).

(3) Payments under this subsection shall be made in advance or by way of reimbursement, with necessary adjustments for overpayments and underpayments.

(4) Money paid from the Trust Funds under this subsection for the reimbursement of the costs of providing services to individuals who are entitled to benefits under section 424 of this title (including services during their waiting periods), or who are entitled to benefits under section 402(d) of this title on the basis of the wages and self-employment income of such individuals, shall be charged to the Federal Disability Insurance Trust Fund, and all other money paid from the Trust Funds under this subsection shall be charged to the Federal Old-Age and Survivors Insurance Trust Fund. The Commissioner of Social Security shall determine according to such methods and procedures as the Commissioner may deem appropriate—

(A) the total amount to be reimbursed for the cost of services under this subsection, and

(B) subject to the provisions of the preceding sentence, the amount which should be charged to each of the Trust Funds.

(5) For purposes of this subsection the term "vocational rehabilitation services" shall have the meaning assigned to it in title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.], except that such services may be limited in type, scope, or amount in accordance with regulations of the Commissioner of Social Security designed to achieve the purpose of this subsection.

(e) **Treatment referrals for individuals with alcoholism or drug addiction condition**

In the case of any individual whose benefits under this subchapter are paid to a representative payee pursuant to section 405(c)(1)(B) of this title, the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under part II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (e), is act July 1, 1944, ch. 735, 58 Stat. 682, as amended. Subpart II of part B of title XIX of the Act is classified generally to subpart II (§ 300x–21 et seq.) of part B of chapter XVII of title 42, which is classified generally to subchapter I (§ 701 et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

AMENDMENTS

"It is declared to be the policy of the Congress that the maximum number of such individuals may be rehabilitated into productive activity." Subsec. (b). Pub. L. 106–170, § 101(b)(1)(C), struck out heading and text of subsec. (b), which authorized deductions from payments under this subchapter up to amounts of benefits on account of refusal without good cause to accept rehabilitation services, and authorized deductions from payments to husbands, wives, or children of individuals who refuse to accept such services with exception for children between 18 and 22 who are full-time students.

Subsec. (c)(2). Pub. L. 103–296, § 203(a)(4)(R), inserted "(whether legal or illegal)" after "activity".
Pub. L. 103–296, § 107(a)(4), which directed the amendment of this subchapter by substituting "Commissioner for him" where such word referred to the Secretary, was executed in closing provisions by substituting "the Commissioner for "him" where referring to the Commissioner of Social Security, to reflect the probable intent of Congress.
Subsec. (d)(4). Pub. L. 103–296, § 107(a)(4), substituted "Commissioner of Social Security for Secretary" and "the Commissioner may" for "he may".
1990—Subsec. (c)(4)(A). Pub. L. 101–508, § 112(a)(1), substituted "in any period of 60 consecutive months" for "beginning on or after the first day of such period".
Subsec. (c)(5). Pub. L. 101–508, § 112(a)(2), struck out par. (5) which read as follows: "In the case of an individual who becomes entitled to benefits under section 423 of this title for any month as provided in clause (1) of subsection (a)(1) of such section, the preceding provisions of this subsection do not apply with respect to services in any month beginning with the first month for which he is so entitled and ending with the first month thereafter for which he is not entitled to benefits under section 423 of this title.
Subsec. (b)(2). Pub. L. 98–369, § 2663(a)(15)(B), substituted "equals" for "equal".
Subsec. (b)(4). Pub. L. 98–369, § 2663(a)(15)(C), substituted "full-time elementary or secondary school student" for "full-time student".
Subsec. (d)(1). Pub. L. 98–369, § 111(a), in provisions following subpar. (D) struck out "into substantial gainful activity" after "rehabilitating such individuals", designated existing provisions as cl. (i), added cls. (ii) and (iii), and substituted "of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation," for "of such individuals to substantial gainful activity after cl. (iii).
1983—Subsec. (b)(1). Pub. L. 98–21, § 309(1), substituted "surviving divorced wife, or surviving divorced husband" for "or surviving divorced wife".
Subsec. (b)(2). Pub. L. 98–21, § 309(m), inserted "or father's" after "mother's" wherever appearing.
Subsec. (b)(3). Pub. L. 98–21, § 309(n), inserted "divorced husband," after "husband,".
1981—Subsec. (d). Pub. L. 97–35 substituted provisions authorizing the transfer of funds as may be necessary to enable the Secretary to reimburse the State for the reasonable and necessary costs of vocational rehabilitation, under a State plan approved under title I of the Rehabilitation Act of 1973, which results in performance of substantial gainful activity for a continuous period of nine months, with the determination that the vocational rehabilitation services contributed to the successful return to substantial gainful activity and the amount of costs to be reimbursed made by the Commissioner of Social Security for provisions authorizing the transfer of funds as may be necessary to enable the Secretary to pay the cost of vocational rehabilitation services, restricting the amount of such cost that may be expended in any one fiscal year, establishing specific criteria which a State plan must meet, and providing that the selection of individuals to receive services be made in conformance with criteria formulated by the Secretary.
1980—Subsec. (c)(1). Pub. L. 96–265, § 303(a)(1), inserted references to sections 402(e) and 402(f) of this title.
Subsec. (c)(3). Pub. L. 96–265, § 303(a)(2), inserted reference to individuals entitled to widow's or widower's insurance benefits under section 402(e) or (f) of this title who became entitled to such benefits prior to attaining age 60.
1972—Subsec. (b)(1). Pub. L. 92–683, § 107(b)(5), substituted "a widow, widower, or surviving divorced wife who has not attained age 60" or "a widow or surviving divorced wife who has not attained age 60, a widower who has not attained age 62".
Subsec. (d)(1). Pub. L. 92–683, §§ 107(b)(4), 131, substituted "age 60" for "age 62", and inserted provisions increasing applicable percentages so that the total amount made available pursuant to subsec. (d) may not exceed 1.25 percent, in fiscal year ending June 30, 1973, and 1.5 percent, in fiscal year ending June 30, 1974, and thereafter, of the total of the benefits under section 402(d) of this title for children who have attained age 18 and are under a disability.
Subsec. (b)(1). Pub. L. 90–248, § 104(d)(3)(B), substituted "child's insurance benefits, a widow or surviving divorced wife who has not attained age 60, a widower who has not attained age 62, or" for "child's insurance benefits or if their...".
Subsec. (c)(4)(B). Pub. L. 90–248, § 158(c)(5), substituted reference to "423(d)" for "423(c)(2)".
Subsec. (d)(1). Pub. L. 90–248, §104(d)(4), added subpars. (C) and (D), and inserted “the benefits under section 402(e) of this title for widows and surviving divorced wives who have not attained age 60 and are under a disability, the benefits under section 402(f) of this title for widowers who have not attained age 62,” after “disability,” in text following subpar. (D).


1960—Subsec. (c). Pub. L. 86–778 amended subsection generally by substituting provisions relating to period of trial work for provisions which related to services performed pursuant to a State-approved rehabilitation program.

1958—Subsec. (b). Pub. L. 85–840 designated existing provisions thereof as par. (1) and added pars. (2) and (3).

1956—Subsec. (a). Act Aug. 1, 1956, designated existing provisions as subsec. (a), authorized referral of disabled individuals who are entitled to child’s insurance benefits, and substituted “rehabilitated into productive activity” for “restored to productive activity”.

Subsecs. (b), (c). Act Aug. 1, 1956, added subsecs. (b) and (c).

**Effective Date of 2004 Amendment**

Pub. L. 108–203, title II, §208(b), Mar. 2, 2004, 118 Stat. 513, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to work activity performed after the date of the enactment of this Act [Mar. 2, 2004].”

**Effective Date of 1999 Amendment**

Amendment by Pub. L. 106–170 effective with the first month following one year after Dec. 17, 1999, subject to section 132(b) of Pub. L. 106–170, see set out as an Effective Date note under section 132(b)–19 of this title.

**Effective Date of 1996 Amendment**

Amendment by Pub. L. 104–121 effective July 1, 1996, with respect to any individual whose claim for benefits is finally adjudicated on or after Mar. 29, 1996, or whose entitlement to benefits is based upon an entitlement redetermination made pursuant to section 105(a)(5)(C) of Pub. L. 104–121, see section 105(a)(5) of Pub. L. 104–121, as amended, set out as a note under section 405 of this title.

**Effective Date of 1994 Amendment**

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title. Section 201(a)(4)(C) of Pub. L. 103–296 provided that: “The amendments made by this paragraph [amending this section and section 423 of this title] shall take effect on the date of the enactment of this Act [Aug. 16, 1994].”

**Effective Date of 1990 Amendment**

Section 512(b) of Pub. L. 101–508 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1992.”

**Effective Date of 1984 Amendments**

Section 11(c) of Pub. L. 98–480 provided that: “The amendments made by this section [amending this section and section 1382d of this title] shall apply with respect to individuals who receive benefits as a result of section 226(b) or section 1631(a)(6) of the Social Security Act [section 226(b) or 1383(a)(6) of this title], or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following the month in which this Act is enacted [October 1984].”

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2864(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

**Effective Date of 1983 Amendment**

Amendment by Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 319 of Pub. L. 98–21, set out as a note under section 402 of this title.

**Effective Date of 1981 Amendment**

Section 2209(b) of Pub. L. 97–35 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to services rendered on or after October 1, 1981.”

**Effective Date of 1980 Amendment**

Amendment by Pub. L. 96–263 effective on first day of sixth month which begins after June 9, 1980, and applicable to any individual whose disability has not been determined to have ceased prior to such first day, see section 303(d) of Pub. L. 96–263, set out as a note under section 402 of this title.

**Effective Date of 1972 Amendment**

Amendment by Pub. L. 92–663 applicable with respect to monthly benefits under this subchapter for months after Dec. 1972, with specified exceptions, see section 107(c) of Pub. L. 92–663, set out as a note under section 402 of this title.

**Effective Date of 1968 Amendment**

Amendment by section 104(d)(3), (4) of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 104(e) of Pub. L. 90–248, set out as a note under section 402 of this title.

**Effective Date of 1965 Amendment**

Amendment by section 158(c)(5) of Pub. L. 90–248 applicable with respect to applications for disability insurance benefits under section 423 of this title and to disability determinations under section 416(i) of this title, see section 158(e) of Pub. L. 90–248, set out as a note under section 423 of this title.

**Effective Date of 1964 Amendment**

Amendment by section 308(d)(11) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter beginning with the second month following July 1965, but in the case of an individual who was not entitled to a monthly insurance benefit under section 402 of this title for the first month following July 1965, only on the basis of an application filed in or after July 1965, see section 308(e) of Pub. L. 89–97, set out as a note under section 402 of this title.

**Effective Date of 1960 Amendment**

Section 403(e) of Pub. L. 86–778 provided that:

“(1) The amendment made by subsection (a) [amending this section] shall be effective only with respect to months beginning after the month in which this Act is enacted [September 1960].

“(2) The amendments made by subsections (b) and (d) [amending sections 423 and 402 of this title] shall apply only with respect to benefits under section 223(a) or 202(d) of the Social Security Act [section 423(a) or 402(d) of this title] for months after the month in which this Act is enacted in the case of individuals who, without regard to such amendments, would have been entitled to such benefits for the month in which this Act is enacted or for any succeeding month.

“(3) The amendment made by subsection (c) [amending section 416 of this title] shall apply only in the case of individuals who have a period of disability (as defined in section 216(i) of the Social Security Act [sec-
§ 423. Disability insurance benefit payments

(a) Disability insurance benefits

(1) Every individual who—

(A) is insured for disability insurance benefits (as determined under subsection (c)(1) of this section),

(B) has not attained retirement age (as defined in section 416(l) of this title),

(C) if not a United States citizen or national—

(i) has been assigned a social security account number that was, at the time of assignment, or at any later time, consistent with the requirements of subclause (I) or (II) of section 405(c)(2)(B)(i) of this title; or

(ii) at the time any quarters of coverage are earned—

(I) is described in subparagraph (B) or (D) of section 1101(a)(15) of title 8,

(II) is lawfully admitted temporarily to the United States for business (in the case of an individual described in such subparagraph (B)) or the performance as a crewman (in the case of an individual described in such subparagraph (D)), and

(III) the business engaged in or service as a crewman performed is within the scope of the terms of such individual’s admission to the United States.1

(D) has filed application for disability insurance benefits, and

(E) is under a disability (as defined in subsection (d) of this section) shall be entitled to a disability insurance benefit (i) for each month beginning with the first month after his waiting period (as defined in subsection (c)(2) of this section) in which he becomes so entitled to such insurance benefits, or (ii) for each month beginning with the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was entitled to disability insurance benefits which terminated, or had a period of disability (as defined in section 416(l) of this title) which ceased, within the 60-month period preceding the first month in which he is under such disability, and ending with the month preceding whichever of the following months is the earliest: the month in which he dies, the month in which he attains retirement age (as defined in section 416(l) of this title), or, subject to subsection (e) of this section, the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity. No payment under this paragraph may be made to an individual who would not meet the definition of disability in subsection (d) of this section except for paragraph 1)(B) thereof for any month in which he engages in substantial gainful activity, and no payment may be made for such month under subsection (b), (c), or (d) of section 402 of this title to any person on the basis of the wages and self-employment income of such individual. In the case of a deceased individual, the requirement of subparagraph (C) may be satisfied by an application for benefits filed with respect to such individual within 3 months after the month in which he died.

(2) Except as provided in section 402(q) of this title and section 415(b)(2)(A)(i) of this title, such individual’s disability insurance benefit for any month shall be equal to his primary insurance amount for such month determined under section 415 of this title as though he had attained age 62 in—

(A) the first month of his waiting period, or

(B) in any case in which clause (ii) of paragraph (1) of this subsection is applicable, the first month for which he becomes entitled to such disability insurance benefits, and as though he had become entitled to old-age insurance benefits in the month in which the application for disability insurance benefits was filed and he was entitled to an old-age insurance benefit for each month for which (pursuant to subsection (b) of this section) he was entitled to a disability insurance benefit. For the purposes of the preceding sentence, in the case of an individual who attained age 62 in or before the first month referred to in subparagraph (A) or (B) of such sentence, as the case may be, the elapsed years referred to in section 415(b)(5) of this title shall not include the year in which he attained age 62, or any year thereafter.

(b) Filing application

An application for disability insurance benefits filed before the first month in which the applicant satisfies the requirements for such benefits (as prescribed in subsection (a)(1) of this sec-

1 So in original. The period probably should be a comma.
tion) shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the Commissioner of Social Security makes a final decision on the application and no request under section 405(b) of this title for notice and opportunity for a hearing thereon is made, or if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Commissioner of Social Security). An individual who would have been entitled to a disability insurance benefit for any month had he filed application therefor before the end of such month shall be entitled to such benefit for such month if such application is filed before the end of the 12th month immediately succeeding such month.

(c) Definitions; insured status; waiting period

For purposes of this section—

(1) An individual shall be insured for disability insurance benefits in any month if—

(A) he would have been a fully insured individual (as defined in section 414 of this title) had he attained age 62 and filed application for benefits under section 402(a) of this title on the first day of such month, and

(B)(i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with the quarter in which such month occurred, or

(ii) if such month ends before the quarter in which he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with the quarter in which such month occurred and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage, or

(iii) in the case of an individual (not otherwise insured under clause (i)) who, by reason of section 416(i)(3)(B)(ii) of this title, had a prior period of disability that began during a period before the quarter in which he or she attained age 31, not less than one-half of the quarters beginning after such individual attained age 21 and ending with the quarter in which such month occurs are quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter are quarters of coverage;

except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of "blindness" as defined in section 416(i)(1) of this title), had a prior period of disability that began during a period before the quarter in which he or she attained age 31, not less than one-half of the quarters beginning after such individual attained age 21 and ending with the quarter in which such month occurs are quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter are quarters of coverage;

(2) The term "waiting period" means, in the case of any application for disability insurance benefits, the earliest period of five consecutive calendar months—

(A) throughout which the individual with respect to whom such application is filed has been under a disability, and

(B)(i) which begins not earlier than with the first day of the seventeenth month before the month in which such application is filed if such individual is insured for disability insurance benefits in such seventeenth month, or

(ii) if he is not so insured in such month, which begins not earlier than with the first day of the first month after such seventeenth month in which he is so insured.

Notwithstanding the preceding provisions of this paragraph, no waiting period may begin for any individual before January 1, 1957.

(d) "Disability" defined

(1) The term "disability" means—

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) in the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

(2) For purposes of paragraph (1)(A)—

(A) An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(B) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Commissioner of Social Security shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Commissioner of Social Security does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.
(C) An individual shall not be considered to be disabled for purposes of this subsection if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.

(3) For purposes of this section, a "physical or mental impairment" is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(4)(A) The Commissioner of Social Security shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. No individual who is blind shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed an amount equal to the exempt amount which would be applicable under section 403(f)(8) of this title, to individuals described in subparagraph (D) thereof, if section 102 of the Senior Citizens' Right to Work Act of 1996 had not been enacted. Notwithstanding the provisions of paragraph (2), an individual whose services or earnings meet such criteria shall, except for purposes of section 422(c) of this title, be found not to be disabled. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Commissioner of Social Security in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Commissioner of Social Security may prescribe.

(B) In determining under subparagraph (A) when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity, the Commissioner of Social Security shall apply the criteria described in subparagraph (A) with respect to services performed by any individual without regard to the legality of such services.

(5)(A) An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Commissioner of Social Security may require. An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical impairment that results from anatomical, physiological, or psychological abnormalities which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual or his physician as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability. Objective medical evidence of pain or other symptoms established by medically acceptable clinical or laboratory techniques (for example, deteriorating nerve or muscle tissue) must be considered in reaching a conclusion as to whether the individual is under a disability. Any non-Federal hospital, clinic, laboratory, or other provider of medical services, or physician not in the employ of the Federal Government, which supplies medical evidence required and requested by the Commissioner of Social Security under this paragraph shall be entitled to payment from the Commissioner of Social Security for the reasonable cost of providing such evidence.

(B) In making any determination with respect to whether an individual is under a disability or continues to be under a disability, the Commissioner of Social Security shall consider all evidence available in such individual's case record, and shall develop a complete medical history of at least the preceding twelve months for any case in which a determination is made that the individual is not under a disability. In making any determination the Commissioner of Social Security shall make every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to evaluating medical evidence obtained from any other source on a consultative basis.

(6)(A) Notwithstanding any other provision of this subsection, any physical or mental impairment which arises in connection with the commission by an individual (after October 19, 1980) of an offense which constitutes a felony under applicable law and for which such individual is subsequently convicted, or which is aggravated in connection with such an offense (but only to the extent so aggravated), shall not be considered in determining whether an individual is under a disability.

(B) Notwithstanding any other provision of this subsection, any physical or mental impairment which arises in connection with an individual's confinement in a jail, prison, or other penal institution or correctional facility pursuant to such individual's conviction of an offense (committed after October 19, 1980) constituting a felony under applicable law, or which is aggravated in connection with such a confinement (but only to the extent so aggravated), shall not be considered in determining whether such individual is under a disability for purposes of benefits payable for any month during which such individual is so confined.

(e) Engaging in substantial gainful activity

(1) No benefit shall be payable under subsection (d)(1)(B)(ii), (d)(4)(A)(ii), (d)(6)(B),
Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this subchapter or subchapter XVIII of this chapter based on an individual's disability is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity, cannot be located, or fails, without good cause, to cooperate in a review of the entitlement to such benefits or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity. In making for purposes of the preceding sentence any determination relating to fraudulent behavior by any individual or failure by any individual without good cause to cooperate or to take any required action, the Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language). Any determination under this section shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Commissioner of Social Security. Any determination made under this section shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled. For purposes of this subsection, a benefit under this subchapter is based on an individual's disability if it is a disability insurance benefit, a child's, widow's, or widower's insurance benefit based on disability, or a mother's or father's insurance benefit based on the disability of the mother's or father's child who has attained age 18.

(g) Continued payment of disability benefits during appeal

(1) In any case where—

(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

(C) a timely request for a hearing under section 421(d) of this title, or for an administrative review prior to such hearing, is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Commissioner of Social Security shall by regulations prescribe) to have the payment of such benefits, the payment of any other benefits under this subchapter based on such individual's wages and self-employment income, the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained

(f) Standard of review for termination of disability benefits

A recipient of benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

(1) substantial evidence which demonstrates that—

(A) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

(B) the individual is now able to engage in substantial gainful activity; or

(2) substantial evidence which—

(A) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that—

(i) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

(ii) the individual is now able to engage in substantial gainful activity, or

(B) demonstrates that—

(i) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

(ii) the individual is now able to engage in substantial gainful activity; or

(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

(4) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

(e)(1)(B)(ii), or (f)(1)(B)(ii) of section 402 of this title or under subsection (a)(1) of this section to an individual for any month, after the third month, in which he engages in substantial gainful activity during the 36-month period following the end of his trial work period determined by application of section 422(c)(4)(A) of this title.

(2) No benefit shall be payable under section 402 of this title on the basis of the wages and self-employment income of an individual entitled to a benefit under subsection (a)(1) of this section for any month for which the benefit of such individual under subsection (a)(1) of this section is not payable under paragraph (1).

(d) Continued payment of disability benefits

(1) In any case where—

(A) an individual is a recipient of benefits under this subchapter or subchapter XVIII of this chapter based on an individual's disability, and

(B) the individual's impairment or combination of impairments (other than medical impairment) which demonstrates that a prior determination was in error.

(c) Notice of determination

(1) Notice shall be given to any individual under subsection (a)(1) of this section who is entitled to a benefit under this subchapter or subchapter XVIII of this chapter during the 36-month period following the end of his trial work period determined by application of section 422(c)(4)(A) of this title.

(2) The notice shall include—

(A) the basis for the determination

(b) General rules

(1) the individual is not so entitled,
age 16, and the payment of benefits under sub-
chapter XVIII of this chapter based on such indi-
vidual’s disability, continued for an additional
period beginning with the first month beginning
after January 12, 1983, for which (under such de-
termination) such benefits are no longer other-
wise payable, and ending with the earlier of (i)
the month preceding the month in which a deci-
sion is made after such a hearing, or (ii) the
month preceding the month in which no such re-
quest for a hearing or an administrative review is
pending.

(2)(A) If an individual elects to have the pay-
ment of his benefits continued for an additional
period under paragraph (1), and the final deci-
sion of the Commissioner of Social Security af-
firms the determination that he is not entitled
to such benefits, any benefits paid under this
subchapter pursuant to such election (for months in such additional period) shall be con-
sidered overpayments for all purposes of this
subchapter, except as otherwise provided in sub-
paragraph (B).

(B) If the Commissioner of Social Security de-
determines that the individual’s appeal of his ter-
nmination of benefits was made in good faith, all
of the benefits paid pursuant to such individ-
ual’s election under paragraph (1) shall be sub-
ject to waiver consideration under the provi-
sions of section 404 of this title. In making for
purposes of this subparagraph any determina-
tion of whether any individual’s appeal is made
in good faith, the Commissioner of Social Secu-
rity shall specifically take into account any
physical, mental, educational, or linguistic limi-
tation such individual may have (including any
lack of facility with the English language).

(h) Interim benefits in cases of delayed final de-
cisions

(1) In any case in which an administrative law
judge has determined after a hearing as provided
under section 405(b) of this title that an individ-
ual is entitled to disability insurance benefits or
child’s, widow’s, or widower’s insurance benefits
based on disability and the Commissioner of So-
cial Security has not issued the Commissioner’s
final decision in such case within 110 days after
the date of the administrative law judge’s deter-
mation, such benefits shall be currently paid
for the months during the period beginning with
the month preceding the month in which such
110-day period expires and ending with the month
preceding the month in which such final
decision is issued.

(2) For purposes of paragraph (1), in determi-
ning whether the 110-day period referred to in
paragraph (1) has elapsed, any period of time for
which the action or inaction of such individual
or such individual’s representative without good
cause results in the delay in the issuance of the
Commissioner’s final decision shall not be taken
into account to the extent that such period of
time exceeds 20 calendar days.

(3) Any benefits currently paid under this sub-
chapter pursuant to this subchapter (for the
months described in paragraph (1)) shall not be
considered overpayments for any purpose of this
subchapter (unless payment of such benefits was
fraudulently obtained), and such benefits shall
not be treated as past-due benefits for purposes
of section 406(b)(1) of this title.

(i) Reinstatement of entitlement

(1)(A) Entitlement to benefits described in
subparagraph (B)(i)(I) shall be reinstated in any case
where the Commissioner determines that
an individual described in subparagraph (B) has
filed a request for reinstatement meeting the re-
quirements of paragraph (2)(A) during the period
prescribed in subparagraph (C). Reinstatement
of such entitlement shall be in accordance with
the terms of this subsection.

(B) An individual is described in this subpar-
agraph if—

(i) prior to the month in which the individ-
ual files a request for reinstatement—

(I) the individual was entitled to benefits
under this section or section 402 of this title
on the basis of disability pursuant to an
application filed therefor; and

(II) such entitlement terminated due to
the performance of substantial gainful
activity;

(ii) the individual is under a disability and
the physical or mental impairment that is the
basis for the finding of disability is the same
as (or related to) the physical or mental im-
pairment that was the basis for the finding of
disability that gave rise to the entitlement de-
scribed in clause (i); and

(iii) the individual’s disability renders the
individual unable to perform substantial gain-
ful activity.

(C)(i) Except as provided in clause (ii), the pe-
riod prescribed in this subparagraph with re-
spect to an individual is 60 consecutive months
beginning with the month following the most re-
cent month for which the individual was enti-
titled to a benefit described in subparagraph
(B)(i)(I) prior to the entitlement termination de-
scribed in subparagraph (B)(i)(II).

(ii) In the case of an individual who fails to
file a reinstatement request within the period
prescribed in clause (i), the Commissioner may
extend the period if the Commissioner deter-
mines that the individual had good cause for the
failure to so file.

(2)(A)(i) A request for reinstatement shall be
filed in such form, and containing such informa-
tion, as the Commissioner may prescribe.

(ii) A request for reinstatement shall include
express declarations by the individual that the
individual meets the requirements specified in
clauses (ii) and (iii) of paragraph (1)(B).

(B) A request for reinstatement filed in ac-
cordance with subparagraph (A) may constitute
an application for benefits in the case of any in-
dividual who the Commissioner determines is
not entitled to reinstated benefits under this
subsection.

(3) In determining whether an individual
meets the requirements of paragraph (1)(B)(ii),
the provisions of subsection (f) of this section
shall apply.

(4)(A)(i) Subject to clause (ii), entitlement to
benefits reinstated under this subsection shall
commence with the benefit payable for the
month in which a request for reinstatement is
filed.

(ii) An individual whose entitlement to a bene-
fit for any month would have been reinstated
under this subsection had the individual filed a
request for reinstatement before the end of such month shall be entitled to such benefit for such month if such request for reinstatement is filed before the end of the twelfth month immediately succeeding such month.

(ii) Subject to clauses (i) and (iii), the amount of the benefit payable for any month pursuant to the reinstatement of entitlement under this subsection shall be determined in accordance with the provisions of this subchapter.

(ii) For purposes of computing the primary insurance amount of an individual whose entitlement to benefits under this section is reinstated under this subsection, the date of onset of the individual’s disability shall be the date of onset used in determining the individual’s most recent period of disability arising in connection with such benefits payable on the basis of an application.

(iii) Benefits under this section or section 402 of this title payable for any month pursuant to a request for reinstatement filed in accordance with paragraph (2) shall be reduced by the amount of any provisional benefit paid to such individual for such month under paragraph (7).

(C) No benefit shall be payable pursuant to an entitlement reinstated under this subsection to an individual for any month in which the individual engages in substantial gainful activity.

(ii) The entitlement of any individual that is reinstated under this subsection shall end with the benefits payable for the month preceding whichever of the following months is the earliest:

(i) The month in which the individual dies.

(ii) The month in which the individual attains retirement age.

(iii) The third month following the month in which the individual’s disability ceases.

(5) Whenever an individual’s entitlement to benefits under this section is reinstated under this subsection, entitlement to benefits payable on the basis of such individual’s wages and self-employment income may be reinstated with respect to any person previously entitled to such benefits on the basis of an application if the Commissioner determines that such person satisfies all the requirements for entitlement to such benefits except requirements related to the filing of an application. The provisions of paragraph (4) shall apply to the reinstated entitlement of any such person to the same extent that they apply to the reinstated entitlement of such individual.

(6) An individual to whom benefits are payable under this section or section 402 of this title pursuant to a reinstatement of entitlement under this subsection for 24 months (whether or not consecutive) shall, with respect to benefits so payable after such twenty-fourth month, be deemed for purposes of paragraph (1)(B)(1)(I) and the determination, if appropriate, of the termination month in accordance with subsection (a)(1) of this section, or subsection (d)(1), (e)(1), or (f)(1) of section 402 of this title, to be entitled to such benefits on the basis of an application filed therefor.

(7)(A) An individual described in paragraph (1)(B) who files a request for reinstatement in accordance with the provisions of paragraph (2)(A) shall be entitled to provisional benefits payable in accordance with this paragraph, unless the Commissioner determines that the individual does not meet the requirements of paragraph (1)(B)(i) or that the individual’s declaration made in accordance with paragraph (2)(A)(ii) is false. Any such determination by the Commissioner shall be final and not subject to review under subsection (b) or (g) of section 405 of this title.

(B) The amount of a provisional benefit for a month shall equal the amount of the last monthly benefit payable to the individual under this subchapter on the basis of an application increased by an amount equal to the amount, if any, by which such last monthly benefit would have been increased as a result of the operation of section 415(i) of this title.

(C)(i) Provisional benefits shall begin with the month in which a request for reinstatement is filed in accordance with paragraph (2)(A).

(ii) Provisional benefits shall end with the earliest of—

(I) the month in which the Commissioner makes a determination regarding the individual’s entitlement to reinstated benefits;

(II) the fifth month following the month described in clause (i);

(III) the month in which the individual performs substantial gainful activity; or

(IV) the month in which the Commissioner determines that the individual does not meet the requirements of paragraph (1)(B)(i) or that the individual’s declaration made in accordance with paragraph (2)(A)(ii) is false.

(D) In any case in which the Commissioner determines that an individual is not entitled to reinstated benefits, any provisional benefits paid to the individual under this paragraph shall not be subject to recovery as an overpayment unless the Commissioner determines that the individual knew or should have known that the individual did not meet the requirements of paragraph (1)(B).

(j) Limitation on payments to prisoners

For provisions relating to limitation on payments to prisoners, see section 402(x) of this title.

## REFS IN TEXT

Section 102 of the Senior Citizens’ Right to Work Act of 1996, referred to in subsec. (d)(4)(A), is section 102 of title I of Pub. L. 104–121, which amended this section and section 403 of this title and enacted provisions set out as a note under section 403 of this title.

### AMENDMENTS

2004—Subsec. (a)(1)(C) to (E). Pub. L. 108–203 added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

1996—Subsec. (d)(2)(B). Pub. L. 104–121, § 105(a)(1), added subpar. (C). Subsec. (d)(4)(A). Pub. L. 104–121, § 102(b)(2), substituted “an amount equal to the exempt amount which would be applicable under section 403(f)(8) of this title, to individuals described in subparagraph (D) thereof” for “the exempt amount under section 403(f)(8) of this title which would be applicable under section 403(f)(8) of this title.”


Subsec. (f). Pub. L. 101–508, § 5103(b)(5), struck out “(or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband)” after “gainful activity” in two places in first sentence following par. (4).

Subsec. (g)(1). Pub. L. 101–508, § 5103(b)(3), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “(ii) the individual is now able to engage in substantial gainful activity, or

“(i) the individual is now able to engage in substantial gainful activity, or

“(ii) if the individual is a widow or surviving divorced wife under section 402(e) of this title, the severity of his or her impairment or impairments is no longer deemed, under regulations prescribed by the Secretary, sufficient to preclude the individual from engaging in gainful activity; or”.

Subsec. (h)(1). Pub. L. 101–508, § 5118(a), designated existing provision as par. (1) and added par. (2).


Subsec. (i). Pub. L. 103–296, § 102(b)(2), struck out “therefore—” and subpars. (A) and (B) which read as follows:

“(A) on or after January 12, 1983, or prior to such date but only on the basis of a timely request for a hearing under section 422(d) of this title, or for an administrative review prior to such hearing, and

“(B) prior to January 1, 1991.”

1989—Subsec. (f). Pub. L. 101–239, § 10305(c), inserted after first sentence of concluding provisions “In making for purposes of the preceding sentence any determination relating to fraudulent behavior by any individual or failure by any individual without good cause to cooperate or to take any required action, the Sec-
retary shall specifically take into account any phys-
ical, mental, educational, or linguistic limitation such
individual may have (including any lack of facility
with the English language)."
Subsec. (g)(1)(iii). Pub. L. 101–239, § 1010(1), sub-
stituted “1991” for “1990”.
end of paragraph for purposes of this subparagraph any
determination of whether any individual’s appeal is
made in good faith, the Secretary shall specifically
take into account any physical, mental, educational, or
linguistic limitation such individual may have (including
any lack of facility with the English language)."
Subsec. (g)(3)(B). Pub. L. 101–239, § 1010(2), sub-
stituted “1991” for “1990”.
1986—Subsec. (g)(3)(ii). Pub. L. 100–647, § 8006(1), sub-
stituted “June 1990” for “June 1989”.
Subsec. (g)(3)(B). Pub. L. 100–647, § 8006(2), substituted
“January 1, 1990” for “January 1, 1989”.
Subsec. (h). Pub. L. 100–647, § 8001(a), added sub-
sec. (h) and redesignated former subsec. (h) as (i).
1987—Subsec. (a)(1). Pub. L. 100–203, § 9010(a), sub-
stituted “36 months” for “15 months”.
Subsec. (e). Pub. L. 100–203, § 9010(e)(2), substituted
“36-month period” for “15-month period”.
Subsec. (g)(1). Pub. L. 100–203, § 9008(1), substituted
“June 1988” for “June 1987” in cl. (iii) at end.
Subsec. (g)(3)(B). Pub. L. 100–203, § 9009(2), substituted
“January 1, 1989” for “January 1, 1988”.
(6)(B)” a comma after “payment of such benefits” in provisions
following subpar. (C).
§ 201(c)(3). See 1983 Amendment note below.
Subsec. (d)(2)(A). Pub. L. 98–369, § 2663(a)(16), sub-
stituted “An individual” for “an individual”.
Subsec. (d)(2)(C). Pub. L. 98–369, § 2663(a)(16), added sub-
par. (C).
Subsec. (d)(5). Pub. L. 98–460, § 9(b)(1), designated exis-
ting provisions as subpar. (A) and added subpar. (B).
Pub. L. 98–460, § 3(a)(1), inserted provisions relating to
activities of blind individuals.
Subsec. (c)(1). Pub. L. 98–369, § 2662(c)(2), substituted (f), in general, substituting provisions relating to the
standard of review for termination of disability bene-
fits for provisions relating to suspension of benefits for
inmates of penal institutions.
Subsec. (g)(1). Pub. L. 98–369, § 7(a)(1), in provisions
following subpar. (C) substituted reference to benefits
under this subchapter for reference to benefits under
this chapter, inserted reference to the payment of
mother’s or father’s insurance benefits to such individ-
ual’s mother or father based on the disability of such
individual as a child who has attained age 16, sub-
stituted reference to benefits under subchapter XVIII of
this chapter based on such individual’s disability for
reference to benefits under subchapter XVIII of this
chapter, and substituted “June 1988” for “June 1981” in
cl. (iii).
“January 1, 1988” for “December 7, 1983”.
L. 98–21, § 339(b), resulting in addition of subsec. (h) of
this section. See 1983 Amendment note below.
1985—Subsec. (a)(1). Pub. L. 98–21, § 201(c)(1)(E), sub-
stituted “1991” for “1990”.
Subsec. (d)(2). Pub. L. 98–21, § 339(b), substituted “wid-
ower, or surviving divorced husband” for “or widower”
whenever appearing.
Subsec. (f). Pub. L. 98–21, § 339(b), before amendment
by Pub. L. 98–369, § 2662(1), struck out subsec. (f) relat-
ing to suspension of benefits for inmates of penal insti-
tutions. See note below for subsec. (h).
Subsec. (g). Pub. L. 97–455 added subsec. (g).
7, 1983” for “October 1, 1983”.
L. 98–369, § 2662(1), added subsec. (h).
1980—Subsec. (a)(1). Pub. L. 96–460, § 9(b)(1), added sub-
sec. (A) and redesignated former subsec. (e) of this section and provi-
sions relating to an individual’s termination month.
Subsec. (a)(2). Pub. L. 96–365, § 102(b), substituted “Ex-
cess as provided in section 402(q) and section 415(b)(2)(A)(ii) of this title” for “Except as provided in section 402(q) of this title”.
Subsec. (b). Pub. L. 96–365, § 306(c), inserted provisions relating to limitations on the prospective effect of
applications.
Subsec. (d)(4). Pub. L. 96–265, § 302(a)(1), inserted provisions relating to extraordinary work expenses due to
severe disability.
Subsec. (d)(5). Pub. L. 96–265, § 309(a)(1), inserted provisions relating to payment for existing medical evi-
dence.
(e)(2).
1972—Subsec. (a)(1). Pub. L. 92–603, § 118(a)(1), inserted provision for filing of an application for disability insur-
ce benefits after death of insured individual.
Subsec. (a)(2). Pub. L. 92–603, §§ 104(c), 118(a)(2), struck out “(if a woman) or age 65” in subpar. (A) and
subpar. (B) and substituted “age 62” and substituted “an individual” for “a woman”, “in which he attained age 62” for “in which she at-
tained age 62”, and “the application for disability in-
surance benefits was filed and he was” for “he filed his application for disability insurance benefits and was”.
Subsec. (b). Pub. L. 92–603, § 118(a)(3), substituted “if such application is filed” for “if he files such application”.
Subsec. (c)(1). Pub. L. 92–603, §§ 104(d), 117(b), struck out “(if a woman) or age 65 (if a man)” after “attained
age 62” in subpar. (A) and in provisions following sub-
par. (B) inserted provisions eliminating the disability insured status requirement of substantial recent covered
work in the case of individuals who are blind.
five consecutive calendar months” in provisions preceding
subpar. (A), substituted “with respect to whom such appli-
cation is filed” for “who files such application” in
subpar. (A), and substituted “seventeenth” for “eighth-
teenth” in subpar. (B).
1968—Subsec. (a)(1). Pub. L. 90–248, § 158(a)(6)–(8), substi-
tuted in subpart. (D) reference to “subsection (d)” for
“subsection (c)(2)”, in text of first sentence following subpar. (D) reference to “subsection (c)(2) for “subsection (c)(3)” and in last sentence following subpar. (D) reference to “subsection (d)” except for paragraph
thereof” for “subsection (c)(2) except for subpara-
graph (B) thereof”, respectively.
Subsec. (c). Pub. L. 90–248, § 158(a), restricted heading to
definitions of “insured status” and “waiting period”, struck out former par. (2) defining “disability” and re-
quiring medical and other evidence of disability, now incorporated in subsec. (d)(1)(A), (5) of this section, and redesignated former par. (2) as (3).
Subsec. (c)(1)(B)(ii). Pub. L. 90–248, § 105(b), substi-
tuted in cl. (i) “before the quarter in which he at-

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tains” for “before he attains” and struck out “and he is under a disability by reason of blindness (as defined in section 416(i)(1) of this title) after ‘age 31’.”

Subsec. (d). Pub. L. 90–248, § 158(b), redesignated former first sentence of former subsec. (c)(2), comprising subpars. (A) and (B), as par. (1)(A), (B), added par. (2) to (4), and redesignated former second sentence of former subsec. (c)(2) as par. (5).

1965—Subsec. (a)(1). Pub. L. 89–97, §§ 336(b)(3), 344(c), struck out from subpar. (D) “at the time such application is filed,” after parenthetical provision and from provisions following subpar. (D) “the first month for which he is entitled to old-age insurance benefits” after “age 65;” and prohibit payment to an individual who would not meet the definition of disability in subsec. (c)(2) except for subpar. (B) thereof for any month in which he engages in substantial gainful activity, and payment for such month under subsec. (b), (c), or (d) of section 402 of this title to any person on the basis of the wages and self-employment income of such individual, respectively.

Subsec. (a)(2). Pub. L. 89–97, §§ 302(e), 304(m), inserted in first sentence “and was entitled to an old-age insurance benefit for each month for which” (pursuant to subsection (b) of this section) he was entitled to a disability insurance benefit and “Except as provided in section (b) of this title” in last sentence substituted “shall not include the year” for “shall not include the first year” and struck out “both was fully insured and had” before “attained age 62” in two places, respectively.

Subsec. (a)(3). Pub. L. 89–97, § 304(n), repealed par. (3) which prohibited an individual from becoming entitled to disability insurance benefits if he is entitled to a widow’s, widower’s, or parent’s insurance benefit, or an old-age, wife’s or husband’s insurance benefit.

Subsec. (b). Pub. L. 89–97, §§ 336(c), 328(c), struck out from last sentence “after June 1967” after “for any months” and substituted “before” for “prior to” where first appearing and “if he files such application before the end of the 12th month immediately succeeding such month” for “if he is continuously under a disability after such month and until he files application therefor and he files said application prior to the end of the twelfth month immediately succeeding such month”; and substituted provisions calling for an application for benefits filed before the first month in which the applicant satisfies the requirements for such benefits to be deemed a valid application only if the applicant satisfies the requirements before the Secretary makes a final decision and the application on the age for the application to be deemed filed in the first month if the applicant is found to satisfy the requirements for providing an outer limit on the time prior to entitlement during which an application would be deemed filed during the first month prior to entitlement, respectively.

Subsec. (c)(1). Pub. L. 89–97, § 344(b), removed from existing subpar. (B) provision prohibiting the inclusion, as part of such 40-quarter period, of any quarter any part of which was included in a prior period of disability unless such quarter was a quarter of coverage, and designated such subpar., as so amended as subpar. (B)(i), added subpar. (B)(ii), and added the material following subpar. (B)(i) prohibiting inclusion of any quarter as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage and calling for reduction by one of the number of quarters in any period whenever such number of quarters is an odd number.

Subsec. (c)(2)(A). Pub. L. 89–97, § 303(a)(2), designated existing provisions as subpar. (A) and substituted “which has lasted or can be expected to last for a continuous period of not less than 12 months; or” for “to be of long-continued and indefinite duration”.


Subsec. (c)(3)(A). Pub. L. 89–97, § 303(b)(4), struck out “which continues until such application is filed” after “disability”.

1961—Subsec. (a)(1). Pub. L. 87–64, § 102(b)(2)(C), substituted “the month in which he attains age 65, the first month for which he is entitled to old-age insurance benefits” for “the month in which he attains the age of sixty-five”.

Subsec. (a)(2). Pub. L. 87–64, § 102(c)(2)(C), (3)(D), substituted “as though he had attained age 62 (if a woman)” for “as though he had attained retirement age”, and “fully insured and had attained age 62” for “fully insured and had attained retirement age”, in two places.


Subsec. (c)(1)(A). Pub. L. 87–64, § 102(c)(3)(B), added substituted “attained age 62 (if a woman) or age 65 (if a man)” for “attained retirement age”.

1960—Subsec. (a)(1). Pub. L. 86–778, §§ 401(a), 492(a), 403(b), struck out provisions from cl. (B) which required an individual to have attained the age of 50, inserted provisions authorizing payment of benefits to an individual for each month beginning with the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was entitled to disability insurance benefits which terminated, or had a period of disability which ceased, within the 60-month period preceding the first month for which such disability terminated, or had a period of disability which ceased, within the 60-month period preceding the first month for which such disability terminated, if he files his application for benefits in the first month of his waiting period.‘‘(A) the first month of his waiting period, or

*(B) in any case in which clause (ii) of paragraph (1) of this subsection is applicable, the first month for which he becomes so entitled to such disability insurance benefits.’’

Pub. L. 86–778, § 402(b), amended subsec. (a)(2) generally. Prior to amendment, subsec. (a)(2) read as follows: ‘‘Such individual’s disability insurance benefit for any month shall be equal to his primary insurance amount for such month determined under section 415 of this title as though he became entitled to old-age insurance benefits in—

(A) the first month of his waiting period, or

(B) in any case in which clause (ii) of paragraph (1) of this subsection is applicable, the first month for which he becomes so entitled to such disability insurance benefits.’’

Pub. L. 86–778, § 402(b), amended subsec. (a)(2) generally. Prior to amendment, subsec. (a)(2) read as follows: ‘‘Such individual’s disability insurance benefit for any month shall be equal to his primary insurance amount for such month determined under section 415 of this title as though he became entitled to old-age insurance benefits in the first month of his waiting period.’’

Pub. L. 86–778, § 402(c), (d), prohibited acceptance of an application, in any case in which cl. (ii) of par. (1) of subsec. (a) of this section is applicable, if it is filed more than six months before the first month for which the applicant becomes entitled to benefits, inserted provisions requiring any application filed within the nine months’ period or six months’ period, as the case may be, to be deemed to have been filed in such first month, and substituted “if he is continuously under a disability after such month and until he files application therefor, and he files such application’’ for “if he files application therefor’’.

Subsec. (c)(3). Pub. L. 86–778, § 401(b), struck out provisions which prohibited a waiting period for any individual from beginning before the first day of the sixth month before the month in which he attains the age of 50.

1958—Sub. (b).Pub. L. 85–840, § 202(a), provided that individuals who would have been entitled to disability insurance benefits for any month after June 1957 had they filed application therefor prior to the end of such month shall be entitled to disability benefits for such month if they file application therefor prior to the end of the twelfth month immediately succeeding such month.
Subsec. (c)(1). Pub. L. 85–840, § 204(b), substituted ‘‘fully insured’’ for ‘‘fully and currently insured’’ in cl. (A).
Subsec. (c)(3). Pub. L. 85–840, § 202(b), inserted ‘‘which continues until such application is filed’’ after ‘‘under a disability’’ in cl. (A), and substituted ‘‘eighteenth month’’ for ‘‘sixth month’’ in three instances in cl. (B).

**Effective Date of 2004 Amendment**
Amendment by Pub. L. 108–203 applicable to benefit applications based on social security account numbers issued on or after Jan. 1, 2004, see section 211(c) of Pub. L. 108–203, set out as a note under section 414 of this title.

**Effective Date of 1999 Amendment**
Pub. L. 106–170, title I, § 112(c), Dec. 17, 1999, 113 Stat. 1886, provided that:

‘‘(1) In General.—The amendments made by this section [amending this section and section 1383 of this title] shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act [Dec. 17, 1999].

‘‘(2) Limitation.—No benefit shall be payable under this subchapter or XVI of the Social Security Act, subchapter II or XVI of this chapter) on the basis of a request for reinstatement filed under section 223(i) or 1631(p) of the Social Security Act (42 U.S.C. 423(i), 1383(p)) before the effective date described in paragraph (1).’’

**Effective Date of 1996 Amendment**
Amendment by section 102(b)(2) of Pub. L. 104–121 applicable with respect to taxable years ending after 1995, see section 102(c) of Pub. L. 104–121, set out as a note under section 405 of this title.

Amendment by section 105(a)(1) of Pub. L. 104–121 applicable to individual who applies for, or whose claim is finally adjudicated with respect to, benefits under this subchapter based on disability on or after Mar. 29, 1996, with special rule for any individual who applied, and whose claim has been finally adjudicated, before Mar. 29, 1996, see section 105(a)(5) of Pub. L. 104–121, set out as a note under section 405 of this title.

**Effective Date of 1994 Amendment**


**Effective Date of 1990 Amendment**
Amendment by section 5103(a), (b)(2)–(5) of Pub. L. 101–508 applicable with respect to monthly insurance benefits for months after December 1990 for which applications are filed on or after Jan. 1, 1991, or are pending on such date, see section 5103(e) of Pub. L. 101–508, set out as a note under section 405 of this title.

Section 5108(b) of Pub. L. 101–508 provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply with respect to benefits for months after the date of the enactment of this Act [Nov. 6, 1990].’’

**Effective Date of 1989 Amendment**
Amendment by section 10305(c), (d) of Pub. L. 101–239 applicable with respect to determinations made on or after July 1, 1990, see section 10305(f) of Pub. L. 101–239, set out as a note under section 403 of this title.

**Effective Date of 1988 Amendment**
Section 8001(c) of Pub. L. 100–647 provided that: ‘‘The amendments made by this section [amending this section and section 1383 of this title] shall apply to determinations by administrative law judges of entitlement to benefits made after 180 days after the date of the enactment of this Act [Nov. 10, 1988].’’

**Effective Date of 1987 Amendment**
Amendment by section 9010(a), (e)(2) of Pub. L. 100–203 effective Jan. 1, 1988, and applicable with respect to individuals entitled to benefits under specific provisions of this section and section 402 of this title for any month after December 1987, and individuals entitled to benefits payable under specific provisions of this section and section 402 of this title for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by section 9010 of Pub. L. 100–203 has not elapsed as of Jan. 1, 1988, see section 9010(c) of Pub. L. 100–203, set out as a note under section 402 of this title.

**Effective Date of 1986 Amendment**
Amendment by Pub. L. 99–272 effective Dec. 1, 1980, and applicable with respect to any individual who is under a disability (as defined in subsection (d) of this section) on or after that date, see section 12107(c) of Pub. L. 99–272, set out as a note under section 402 of this title.

**Effective Date of 1984 Amendments**
Section 222 of Pub. L. 98–460 provided that:

‘‘(1) The amendments made by this section [amending this section and sections 416 and 1382c of this title and enacting provisions set out as notes under this section] shall apply only as provided in this subsection.

‘‘(2) The amendments made by this section shall apply to—

‘‘(A) determinations made by the Secretary on or after the date of the enactment of this Act [Oct. 9, 1984];

‘‘(B) determinations with respect to which a final decision of the Secretary has not yet been made as of the date of the enactment of this Act [Oct. 9, 1984] and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act [section 405 of this title] and regulations of the Secretary;

‘‘(C) determinations with respect to which a request for judicial review was pending on September 19, 1984, and which involve an individual litigant or a member of a class in a class action who is identified by name in such pending action on such date; and

‘‘(D) determinations with respect to which a timely request for judicial review is or has been made by an individual litigant of a final decision of the Secretary made within 60 days prior to the date of the enactment of this Act [Oct. 9, 1984].’’

In the case of determinations described in subparagraphs (C) and (D) in actions relating to medical improvement, the court shall remand such cases to the Secretary for review in accordance with the provisions of the Social Security Act as amended by this section.

‘‘(3) In the case of a recipient of benefits under title II, XVI, or XVIII of the Social Security Act [this subchapter or subchapter XVI or XVIII of this chapter]—

‘‘(A) who has been determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits were provided has ceased, does not exist, or is not disabling, and

‘‘(B) who was a member of a class certified on or before September 19, 1984, in a class action relating to medical improvement pending on September 19, 1984, but was not identified by name as a member of the class on such date, the court shall remand such case to the Secretary. The Secretary shall notify such individual by certified mail that he may request a review of the determination described in subparagraph (A) based on the provisions of this section and the provisions of the Social Security Act as amended by this section. Such notification shall

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specify that the individual must request such review within 120 days after the date on which such notification is received. If such request is made in a timely manner, the Secretary shall apply with respect to such review, and the determination described in subparagraph (A) (and any redetermination resulting from such review) shall be subject to further administrative and judicial review, only if such request is made in a timely manner.

“(4) The decision by the Secretary on a case remanded by a court pursuant to this subsection shall be regarded as a new decision on the individual’s claim for benefits, which supersedes the final decision of the Secretary. The new decision shall be subject to further administrative review and to judicial review only in conformance with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act (section 405 of this title) and regulations issued by the Secretary in conformance with such section.

“(5) No class in a class action relating to medical improvement may be certified after September 19, 1984, if the class action seeks judicial review of a decision terminating entitlement (or a period of disability) made by the Secretary of Health and Human Services prior to September 19, 1984.

“(6) For purposes of this subsection, the term ‘action relating to medical improvement’ means an action raising the issue of whether an individual who has had his entitlement to benefits under title II, XVI, or XVIII of the Social Security Act (this subchapter or subchapter XVI or XVIII of this chapter) based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.”

Section 3(a)(3) of Pub. L. 98–460 provided that: “The amendments made by paragraphs (1) and (2) [amending this section and section 1392c of this title] shall apply to determinations made prior to January 1, 1987.”

Section 4(c) of Pub. L. 98–460 provided that: “The amendments made by this section [amending this section and sections 416 and 1382c of this title] shall apply with respect to determinations made on or after the first day of the first month beginning after 30 days after the date of the enactment of this Act [Oct. 9, 1980].”

Section 9(b)(2) of Pub. L. 98–460 provided that: “The amendments made by this subsection [amending this section] shall apply to determinations made on or after the first day of the first month beginning after 30 days after the date of the enactment of this Act [Oct. 9, 1984].”

Amendment by sections 2661(m) and 2662(c)(2), (1) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 3(a)(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(16) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

**Effective Date of 1983 Amendment**

Amendment by section 309(c) of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Amendment by section 323(b) of Pub. L. 98–21 effective with respect to applications for disability insurance benefits under this section filed after Apr. 20, 1983, except that no monthly benefits under this subchapter shall be payable or increased by reason of such amendment for months before the month following April, 1983, see section 332(c) of Pub. L. 98–21, set out as a note under section 416 of this title.

Amendment by section 333(b) of Pub. L. 98–21 applicable with respect to monthly benefits payable for months beginning on or after April 20, 1983, see section 338(c) of Pub. L. 98–21, set out as a note under section 402 of this title.

**Effective Date of 1980 Amendments**

Amendment by Pub. L. 96–473 effective with respect to benefits payable for months beginning on or after Oct. 1, 1980, see section 5(d) of Pub. L. 96–473, set out as a note under section 402 of this title.

For effective date of amendment by section 102(b) of Pub. L. 96–265, see section 102(c) of Pub. L. 96–265, set out as a note under section 415 of this title.

Section 302(c) of Pub. L. 96–265 provided that: “The amendments made by this section [amending this section and sections 1382a and 1382c of this title] shall apply with respect to expenses incurred on or after the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980].”

For effective date of amendment by section 303(b)(1)(A), (2)(A) of Pub. L. 96–265, see section 303(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

Amendment by section 306(c) of Pub. L. 96–265 applicable to applications filed after June 1980, see section 306(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

Section 309(b) of Pub. L. 96–265 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to evidence requested on or after the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980].”

**Effective Date of 1972 Amendment**

Amendment by section 104(c), (d) of Pub. L. 92–603 applicable only in the case of a man who attains (or would attain) age 62 after Dec. 1974, with the figure “65” in subsec. (c)(1)(A) of this section to be deemed to read “64” in the case of a man who attains age 62 in 1973, and deemed to read “63” in the case of a man who attains age 62 in 1974, see section 104(j) of Pub. L. 92–603, set out as an Effective Date of 1972 Amendment note under section 415 of this title.

Section 106(e) of Pub. L. 92–603 provided that: “The amendments made by this section [amending this section and sections 402 and 416 of this title] shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act [this section], applications for widow’s and widower’s insurance benefits based on disability under section 202 of such Act [section 423 of this title], and applications for disability determinations under section 218 of such Act [section 416 of this title], filed—

“(1) in or after the month in which this Act is enacted [October 1972], or

“(2) before the month in which this Act is enacted, if—

“(A) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month, or

“(B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act [section 406(g) of this title] (whether before, in, or after such month) and the decision in such civil action has not become final before such month, except that no monthly benefits under title II of the Social Security Act [this subchapter] shall be payable or increased by reason of the amendments made by this section for any month before January 1973.”

Section 117(c) of Pub. L. 92–603 provided that: “The amendments made by this section [amending this sec-
tion and section 416 of this title] shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act [this section], and for disability determinations under section 216(i) of such Act [section 416(i) of this title], filed—

"(1) in or after the month in which this Act is enacted, or

"(2) before the month in which this Act is enacted if—

"(A) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month; or

"(B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act [section 405(g) of this title] (whether before, in, or after such month) and the decision in such civil action has not become final before such month;

except that no monthly benefits under title II of the Social Security Act [this subchapter] shall be payable or increased by reason of the amendments made by this section for months before January 1973.

Amendment by section 118(a) of Pub. L. 92–603 applicable in the case of deaths occurring after Dec. 31, 1969, with any applications with respect to an individual whose death occurred after Dec. 31, 1969, but before Oct. 30, 1972, to be deemed to have been filed in the month in which death occurred if filed in or within three months after Oct. 1972, see section 118(c) of Pub. L. 92–603, set out as a note under section 416 of this title.

**Effective Date of 1968 Amendment**

Amendment by section 105(b) of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for months after January 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 105(c) of Pub. L. 90–248, set out as a note under section 416 of this title.

Section 158(e) of Pub. L. 90–248 provided that: "The amendments made by this section [amending this section and sections 402, 406, 421, and 425 of this title] shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act [this section], and for disability determinations under section 216(i) of such Act [section 416(i) of this title], filed—

"(1) in or after the month in which this Act is enacted [January 1968], or

"(2) before the month in which this Act is enacted if the applicant has not died before such month and if—

"(A) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month; or

"(B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act [section 405(g) of this title] (whether before, in, or after such month) and the decision in such civil action has not become final before such month."

**Effective Date of 1965 Amendment**

Amendment by section 302(e) of Pub. L. 89–97 applicable in the case of individuals who become entitled to disability insurance benefits under this section after December 1965, see section 302(f)(2) of Pub. L. 89–97, set out as a note under section 415 of this title.

Section 303(f)(1) of Pub. L. 89–97 provided that: "The amendments made by subsection (a) [amending this section and section 416 of this title], paragraphs (3) and (4) of subsection (b) [amending this section], and subsections (c) and (d) [amending this section and section 402 of this title], and the provisions of subparagraphs (B) and (E) of section 216(i)(2) of the Social Security Act [section 416(i) of this title], shall be effective with respect to applications for disability insurance benefits under section 223 [this section], and for disability determinations under section 216(i) of the Social Security Act filed—

"(A) in or after the month in which this Act is enacted [July 1965], or

"(B) before the month in which this Act is enacted, if the applicant has not died before such month and if—

"(1) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month; or

"(2) the notice referred to in subparagraph (i) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act [section 405(g) of this title] (whether before, in, or after such month) and the decision in such civil action has not become final before such month;

except that no monthly insurance benefits under title II of the Social Security Act [this subchapter] shall be payable or increased by reason of the amendments made by subsections (a) and (b) [amending this section and section 416 of this title] for months before the second month following the month in which this Act is enacted [July 1965]. The preceding sentence shall also be applicable in the case of applications for monthly insurance benefits under title II of the Social Security Act [this subchapter] for self-employment income of an applicant with respect to whose application for disability insurance benefits under section 223 of such Act [this section] such preceding sentence is applicable.

Amendment by section 303(c) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter for and after the second month following July 1965 but only on the basis of applications filed in or after July 1965, see section 303(e) of Pub. L. 89–97, set out as a note under section 402 of this title.

Amendment by section 328(c) of Pub. L. 89–97 applicable with respect to applications filed on or after July 30, 1965, see section 328(e) of Pub. L. 89–97, set out as a note under section 416 of this title.

Amendment by section 344(b) of Pub. L. 89–97 applicable only with respect to monthly benefits under subchapter II of this chapter for months after August 1965 on the basis of applications for such benefits filed on or after July 1965, see section 344(e) of Pub. L. 89–97, set out as a note under section 416 of this title.

**Effective Date of 1961 Amendment**

Amendment by section 102(b)(2)(B), (C) of Pub. L. 87–64 effective Aug. 1, 1961, and amendment by section 102(c)(2)(C), (3)(D), (E) of Pub. L. 87–64 applicable with respect to monthly benefits for months beginning on or after August 1, 1961, based on applications filed in or after March 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after August 1, 1961, see sections 102(l)(4), (6) and 109 of Pub. L. 87–64, set out as notes under section 402 of this title.

**Effective Date of 1960 Amendment**

Section 355(f) of Pub. L. 88–778 provided that the amendment made by such section 355(f) is effective with respect to individuals who become entitled to benefits under this section after 1960.

Section 401(c) of Pub. L. 88–778 provided that: "The amendments made by this section [amending this section and section 402 of the Social Security Act [this section and section 402 of this title] for months after the month following the month in which this Act is enacted [September 1960] which are based on the wages and self-employment income of an individual..."
who did not attain the age of fifty in or prior to the
month following the month in which this Act is en-
acted, but only where applications for such benefits are
filed in or after the month in which this Act is en-
acted.''

Section 402(f) of Pub. L. 88–778 provided that: "The
amendments made by subsections (a) and (b) [amending
this section] shall apply only with respect to benefits
under section 223 of the Social Security Act [this sec-
tion] for the month in which this Act is enacted [Sep-
tember 1960] and subsequent months. The amendment
made by subsection (c) [amending this section] shall
apply only in the case of applications for benefits under
such section 223 filed after the seventh month before
the month in which this Act is enacted. The amend-
ment made by subsection (d) [amending this section] shall
only in the case of applications for benefits under
such section 223 filed in or after the month in
which this Act is enacted. The amendment made by
subsection (e) [amending section 416 of this title] shall
only in the case of individuals who become enti-
tled to benefits under such section 223 in or after the
month in which this Act is enacted.''

Amendment by section 403(b) of Pub. L. 88–778 appli-
cable only with respect to benefits under this section
for months after September 1960, in the case of indi-
viduals who, without regard to such amendment, would
have been entitled to such benefits for September 1960,
or for any succeeding month, see section 403(e) of Pub.
L. 88–778, set out as a note under section 422 of this
title.

**Effective Date of 1958 Amendment**

Amendment by section 202 of Pub. L. 85–840 applicable
with respect to applications for disability insurance
benefits under this section filed after December 1957,
see section 207(a) of Pub. L. 85–840, set out as a note
under section 416 of this title.

For applicability of amendment by section 204(b) of
Pub. L. 85–840, see section 207(a) of Pub. L. 85–840,
set out as a note under section 416 of this title.

**Effective Date**

Section 163(g) of act Aug. 1, 1956, provided that:

"(1) The amendment made by subsection (a) [enact-
ing this section and sections 424 and 425 of this title]
shall apply only with respect to monthly benefits under title
II of the Social Security Act (this subchapter) for
months after June 1957.

"(2) For purposes of determining entitlement to a dis-
ability insurance benefit for any month after June 1957
and before December 1957, an application for disabil-
ity insurance benefits filed by any individual after July
1957 and before January 1958 shall be deemed to
have been filed during the first month after June 1957
for which such individual would (without regard to this
paragraph) have been entitled to a disability insurance
benefit had he filed application before the end of such
month.''

**Election of Payments**

Section 2(e) of Pub. L. 98–460 provided that: "Any indi-
vidual whose case is remanded to the Secretary pur-
suant to subsection (d) [set out as a note above] whose
request for a review is made in a timely manner
pursuant to subsection (d), may elect, in accordance
with section 223(g) or 161(a)(7) of the Social Security
Act [subsec. (g) of this section or section 1383(a)(7)
of this title], to have payments made beginning with the
month in which he makes such election, and ending as
under such section 223(g) or 161(a)(7). Notwithstanding
such section 223(g) or 161(a)(7), such payments (if elect-
ed)—

"(1) shall be made at least until an initial redeter-
mination is made by the Secretary; and

"(2) shall begin with the payment for the month in
which such individual makes such election.''

**Retroactive Benefits**

Section 2(f) of Pub. L. 98–460 provided that: "In the
case of any individual who is found to be under a dis-
ability after a review required under this section, such
individual shall be entitled to retroactive benefits be-
begining with benefits payable for the first month to
which the most recent termination of benefits ap-
plied.''

**Prolongation of Regulations**

Section 2(g) of Pub. L. 98–460 provided that: "The Sec-
retary of Health and Human Services shall prescribe
regulations necessary to implement the amendments
made by this section [amending this section and sec-
ctions 416 and 1982 of this title] and enacting provisions
so set out as notes under this section upon such date as
the Administrator of the Social Security Administration
shall set out as notes under this section for sixty
days after the date of the enactment of this Act [Oct.
9, 1984].''

**Commission on Evaluation of Pain**

Section 3(b) of Pub. L. 98–460 provided that:

"(1) The Secretary of Health and Human Services
shall appoint a Commission on the Evaluation of Pain
(hereafter in this section referred to as the ‘Commis-
sion’) to conduct a study concerning the evaluation of
pain in determining under titles II and XVI of the So-
cial Security Act [sections 401 et seq., 1381 et seq. of
this title] whether an individual is under a disability.
Such study shall be conducted in consultation with the
National Academy of Sciences.

"(2) The Commission shall consist of at least twelve
experts, including a significant representation from the
field of medicine who are involved in the study of pain,
and representation from the fields of law, administra-
tion of disability insurance programs, and other ap-
propriate fields of expertise.

"(3) The Commission shall be appointed by the Sec-
retary of Health and Human Services (without regard
to the requirements of the Federal Advisory Com-
mittee Act [Pub. L. 92–463, set out in the Appendix to Title
5, Government Organization and Employees]) within 60
days after the date of the enactment of this Act [Oct.
9, 1984]. The Secretary shall from time to time appoint
one of the members to serve as Chairman. The Commis-

sion shall meet as often as the Secretary deems nec-

essary.

"(4) Members of the Commission shall be appointed
without regard to the provisions of title 5, United
States Code, governing appointments in the competi-
tive service. Members who are not employees of the
United States, while attending meetings of the Com-
mission or otherwise serving on the business of the
Commission, shall be paid at a rate equal to the per
diem equivalent of the rate provided for level IV of the
Executive Schedule under section 5315 of title 5, United
States Code, for each day, including traveltime, during
which they are engaged in the actual performance of
duties vested in the Commission. While engaged in
the performance of such duties away from their homes or
regular places of business they may be allowed travel
expenses, including per diem in lieu of subsistence, as
authorized by section 5703 of title 5, United States
Code, for persons in the Government service employed
intermittently.

"(5) The Commission may engage such technical as-
sistance from individuals skilled in medical and other
aspects of pain as may be necessary to carry out its
functions. The Secretary shall make available to the
Commission such secretarial, clerical, and other assist-
ance and any pertinent data prepared by the Depart-
ment of Health and Human Services as the Commission
may require to carry out its functions.

"(6) The Secretary shall submit the results of the
study under paragraph (1), together with any recom-
endations, to the Committee on Ways and Means of
the House of Representatives and the Committee on Fi-
nance of the Senate not later than December 31, 1985.

**Section 402 of Public Law 85-840**

Section 402 of Public Law 85-840 provided that:

"The amendments made by subsection (a) and (b) [amending
this section] shall apply only with respect to benefits
under section 223 of the Social Security Act [this sec-
tion] for the month in which this Act is enacted [Sep-
tember 1960] and subsequent months. The amendment
made by subsection (c) [amending this section] shall
apply only in the case of applications for benefits under
such section 223 filed after the seventh month before
the month in which this Act is enacted. The amend-
ment made by subsection (d) [amending this section] shall
apply only in the case of applications for benefits under
such section 223 filed in or after the month in
which this Act is enacted. The amendment made by
subsection (e) [amending section 416 of this title] shall
apply only in the case of individuals who become enti-
tled to benefits under such section 223 in or after the
month in which this Act is enacted.''

Amendment by section 403(b) of Pub. L. 88–778 applic-
cable only with respect to benefits under this section
for months after September 1960, in the case of indi-
viduals who, without regard to such amendment, would
have been entitled to such benefits for September 1960,
or for any succeeding month, see section 403(e) of Pub.
L. 88–778, set out as a note under section 422 of this
title.
The Commission shall terminate at the time such results are submitted."

STUDY AND REPORT TO CONGRESSIONAL COMMITTEES ON EFFECT OF CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL ON TRUST FUND EXPENDITURES AND THE RATE OF APPEALS

Section 7(c) of Pub. L. 98–460 provided that:

"(1) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act [Oct. 9, 1984], conduct a study concerning the effect which the enactment and continued operation of section 224(g) of the Social Security Act [subsec. (g) of this section] is having on expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund, and the rate of appeals to administrative law judges of unfavorable determinations relating to disability or periods of disability.

"(2) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986."

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March, 1975, was entitled to a monthly insurance benefit payable under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of this title.

LUMP-SUM PAYMENT OF DISABILITY INSURANCE BENEFITS FOR PERIOD BEGINNING AFTER 1959 AND ENDING PRIOR TO 1964; FILING OF APPLICATION

Section 133 of Pub. L. 92–603 provided that:

"(a) If an individual would (upon the timely filing of an application for a disability determination under section 416(i) of the Social Security Act [section 416(i) of this title]) and of an application for disability insurance benefits under section 223 of such Act (this section)] have been entitled to disability insurance benefits under such section 223 for a period which began after 1959 and ended prior to 1964, such individual shall, upon filing application for disability insurance benefits under section 223 with respect to such period prior to the month in which such period began, such individual shall, upon filing application for disability insurance benefits under section 223 with respect to such period not later than 6 months after the date of enactment of this section [Oct. 30, 1972], be entitled, notwithstanding any other provision of title II of the Social Security Act [this subchapter], to receive in a lump sum as disability insurance benefits payable under section 223 an amount equal to the total amounts of disability insurance benefits which would have been payable to him for such period if he had timely filed such an application for a disability determination and such an application for disability insurance benefits with respect to such period; but only if—

"(1) prior to the date of enactment of this section and after the date of enactment of the Social Security Amendments of 1967 [Jan. 2, 1968] such period was determined (under section 216(i) of the Social Security Act [section 416(i) of this title]) to be a period of disability as to such individual; and

"(2) the application giving rise to the determination (under such section 216(i)) that such period is a period of disability as to such individual would not have been accepted as an application for such a determination except for the provisions of section 216(i)(2)(F).

"(b) No payment shall be made to any individual by reason of the provisions of subsection (a) except upon the basis of an application filed after the date of enactment of this section."

SPECIAL INSURED STATUS TEST IN CERTAIN CASES FOR DISABILITY PURPOSES

Individuals not insured for disability benefits as determined under subsec. (c)(1) of this section with respect to any month in a quarter deemed to have met such requirements in certain cases, see section 404 of Pub. L. 86–778, set out as a note under section 416 of this title.


EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to monthly benefits under this subchapter for August 1958 and succeeding months, see section 207(a) of Pub. L. 85–840, set out as an Effective Date of 1958 Amendment note under section 416 of this title.

§ 424a. Reduction of disability benefits

(a) Conditions for reduction; computation

If for any month prior to the month in which an individual attains the age of 65—

(1) such individual is entitled to benefits under section 423 of this title, and

(2) such individual is entitled for such month to—

(A) periodic benefits on account of his or her total or partial disability (whether or not permanent) under a workmen's compensation law or plan of the United States or a State, or

(B) periodic benefits on account of his or her total or partial disability (whether or not permanent) under any other law or plan of the United States, a State, a political subdivision (as that term is used in section 418(b)(2) of this title), or an instrumentality of two or more States (as that term is used in section 418(g) of this title), other than (1) benefits payable under title 38, (ii) benefits payable under a program of assistance which is based on need, (iii) benefits based on service all or substantially all of which was included under an agreement entered into by a State and the Commissioner of Social Security under section 418 of this title, and (iv) benefits under a law or plan of the United States based on service all or substantially all of which is employment as defined in section 410 of this title, the total of his benefits under section 423 of this title for such month and of any benefits under section 422 of this title for such month based on his wages and self-employment income shall be reduced (but not below zero) by the amount by which the sum of—

(3) such total of benefits under sections 423 and 422 of this title for such month, and

(4) such periodic benefits payable (and actually paid) for such month to such individual under such laws or plans,

exceeds the higher of—

(5) 80 per centum of his "average current earnings"; or

(6) the total of such individual's disability insurance benefits under section 423 of this
title for such month and of any monthly insurance benefits under section 402 of this title for such month based on his wages and self-employment income, prior to reduction under this section.

In no case shall the reduction in the total of such benefits under sections 423 and 402 of this title for a month (in a continuous period of months) reduce such total below the sum of—

(7) the total of the benefits under sections 423 and 402 of this title, after reduction under this section, with respect to all persons entitled to benefits on the basis of such individual’s wages and self-employment income for such month which were determined for such individual and such persons for the first month for which reduction under this section was made (or which would have been so determined if all of them had been so entitled in such first month), and

(8) any increase in such benefits with respect to such individual and such persons, before reduction under this section, which is made effective for months after the first month for which reduction under this section is made.

For purposes of clause (5), an individual’s average current earnings means the largest of (A) the average monthly wage (determined under section 415(b) of this title as in effect prior to January 1979) used for purposes of computing his benefits under section 423 of this title, (B) one-twelfth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 409(a)(1) and 411(b)(1) of this title) for the calendar year in which he had the highest such wages and income during the period consisting of the calendar year in which he became disabled (as defined in section 423(d) of this title) and the five years preceding that year.

(b) Reduction where benefits payable on other than monthly basis

If any periodic benefit for a total or partial disability under a law or plan described in subsection (a)(2) of this section is payable on other than a monthly basis (excluding a benefit payable as a lump sum except to the extent that it is a commutation of, or a substitute for, periodic payments), the reduction under this section shall be made at such time or times and in such amounts as the Commissioner of Social Security finds will approximate as nearly as practicable the reduction prescribed by subsection (a) of this section.

c) Reductions and deductions under other provisions

Reduction of benefits under this section shall be made after any reduction under subsection (a) of section 403 of this title, but before deductions under such section and under section 422(b) of this title.

(d) Exception

The reduction of benefits required by this section shall not be made if the law or plan described in subsection (a)(2) of this section under which a periodic benefit is payable provides for the reduction thereof when anyone is entitled to benefits under this subchapter on the basis of the wages and self-employment income of an individual entitled to benefits under section 423 of this title, and such law or plan so provided on February 18, 1981.

e) Conditions for payment

If it appears to the Commissioner of Social Security that an individual may be eligible for periodic benefits under a law or plan which would give rise to reduction under this section, the Commissioner may require, as a condition of certification for payment of any benefits under section 423 of this title to any individual for any month and of any benefits under section 402 of this title for such month based on such individual’s wages and self-employment income, that such individual certify (i) whether he has filed or intends to file any claim for such periodic benefits, and (ii) if he has so filed, whether there has been a decision on such claim. The Commissioner of Social Security may, in the absence of evidence to the contrary, rely upon such a certification by such individual that he has not filed and does not intend to file such a claim, or that he has so filed and no final decision thereon has been made, in certifying benefits for payment pursuant to subsection (a)(1) of this title.

(f) Redetermination of reduction

(1) In the second calendar year after the year in which reduction under this section in the total of an individual’s benefits under section 423 of this title and any benefits under section 402 of this title based on his wages and self-employment income was first required (in a continuous period of months), and in each third year thereafter, the Commissioner of Social Security shall redetermine the amount of such benefits which are still subject to reduction under this section; but such redetermination shall not result in any decrease in the total amount of benefits payable under this subchapter on the basis of such individual’s wages and self-employment income. Such redetermined benefit shall be determined as of, and shall become effective with, the January following the year in which such redetermination was made.

(2) In making the redetermination required by paragraph (1), the individual’s average current earnings (as defined in subsection (a) of this section) shall be deemed to be the product of—

(A) his average current earnings as initially determined under subsection (a) of this section; and

(B) the ratio of (i) the national average wage index (as defined in section 409(k)(1) of this title) for the calendar year before the year in which such redetermination is made to (ii) the national average wage index (as so defined) for the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability).

See References in Text note below.
Any amount determined under this paragraph which is not a multiple of $1 shall be reduced to the next lower multiple of $1.

(g) Proportionate reduction; application of excess

Whenever a reduction in the total of benefits for any month based on an individual’s wages and self-employment income is made under this section, each benefit, except the disability insurance benefit, shall first be proportionately decreased, and any excess of such reduction over the sum of all such benefits other than the disability insurance benefits shall then be applied to such disability insurance benefit.

(h) Furnishing of information

(1) Notwithstanding any other provision of law, the head of any Federal agency shall provide such information within its possession as the Commissioner of Social Security may require for purposes of making a timely determination of the amount of the reduction, if any, required by this section in benefits payable under this subchapter, or verifying other information necessary in carrying out the provisions of this section.

(2) The Commissioner of Social Security is authorized to enter into agreements with States, political subdivisions, and other organizations that administer a law or plan subject to the provisions of this section, in order to obtain such information as the Commissioner may require to carry out the provisions of this section.

References in Text

Section 422(b) of this title, referred to in subsec. (c), was repealed by Pub. L. 106–170, title I, §101(b)(1)(C), Dec. 17, 1999, 113 Stat. 1873.

Prior Provisions


Amendments

1994—Subsecs. (a)(2)(B), (b), (e), (f)(1). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing and “the Commissioner may require” for “he may require” in subsec. (e).

Subsec. (f)(2). Pub. L. 103–296, §321(e)(2)(H), inserted “and” at end of subpar. (A), added subpar. (B), and struck out former subpars. (B) and (C) which read as follows: “(B) the ratio of (i) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the year in which such redetermination is made to (ii) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate for calendar year 1977 or, if later, the calendar year before the year in which the redetermination was first computed (but not counting any reduction made in benefits for a previous period of disability), if such calendar year is before 1991, or (II) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the year in which the redetermination was first computed (but not counting any reduction made in benefits for a previous period of disability), if such calendar year is after 1990; and

“(C) in any case in which the redetermination was first computed before 1978, the ratio of (i) the average of the taxable wages reported to the Secretary for the first calendar quarter of 1977 to (ii) the average of the taxable wages reported to the Secretary for the first calendar quarter of the calendar year before the year in which such redetermination is made to (ii) the average of the taxable wages reported to the Secretary for the first calendar quarter of the calendar year before the year in which the redetermination was first computed (but not counting any reduction made in benefits for a previous period of disability),”.

Subsec. (b). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” in pars. (1) and (2) and “the Commissioner may” for “he may” in par. (2).

1989—Subsec. (a). Pub. L. 101–239, §10208(d)(2)(A)(ii), substituted “‘(A)’” for “‘(A)’” in cls. (B) and (C) of last sentence.

Subsec. (f)(2)(B)(i). Pub. L. 101–239, §10208(b)(2)(A), substituted “‘(i) the deemed average total wages (as defined in section 409(k)(1) of this title)’” for “‘the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate’”.

Pub. L. 101–239, §10208(d)(2)(A)(i), substituted “‘(B)’” for “‘(B)’” in cls. (B) and (C).

Subsec. (f)(2)(B)(ii). Pub. L. 101–239, §10208(b)(2)(C), inserted “‘(I)’” after “‘(i)’”, substituted “‘(as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title)’” for “‘as so defined and computed’” and inserted “‘, if such calendar year is before 1991, or (II) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability), if such calendar year is after 1990’” before “;” and “;” at end.

1986—Subsec. (a)(2). Pub. L. 99–272, §12109(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “such individual is entitled for such month to periodic benefits on account of such individual’s total or partial disability (whether or not permanent) under—

“(A) a workmen’s compensation law or plan of the United States or a State, or

“(B) any other law or plan of the United States, a State, a political subdivision (as that term is used in section 418(b)(2) of this title), or an instrumentality of two or more States (as that term is used in section 418(k) of this title), other than benefits payable under title 38, benefits payable under a program of assistance which is based on need, benefits based on service all or substantially all of which was included under an agreement entered into by a State and the Secretary under section 418 of this title, and benefits under a law or plan of the United States based on service all or part of which is employment as defined in section 410 of this title.”.


"age of 62", in par. (2) inserted provisions including periodic benefits under any other law or plan of the United States, a State, a political subdivision, or an institution of two or more States and excluded specified benefits and struck out provision requiring that the Secretary receive notice, in a prior month, of the entitlement for such month, and in par. (4) substituted "such laws or plans" for "the workmen's compensation law or plan".

Subsec. (b). Pub. L. 97–35, §2208(a)(5), substituted "for a total or partial disability under a law or plan described in subsection (a)(2) of this section" for "under a workmen's compensation law or plan".

Subsec. (d). Pub. L. 97–35, §2208(a)(6), substituted "law or plan described in subsection (a)(2) of this section" for "workmen's compensation law or plan" and "section 423 of this title, and such law or plan so provided on February 18, 1981" for "section 423 of this title".

Subsec. (e). Pub. L. 97–35, §2208(a)(7), struck out "workmen's compensation" after "periodic benefits under a".


1977—Subsec. (a). Pub. L. 95–216, §§205(d), 353(c)(1), struck out provisions following par. (4) under which the Secretary, in cases where an individual's wages and self-employment income reported to the Secretary for a calendar year reached the limitations specified in section 409(a) and 411(b)(1) of this title, was required to estimate the total of such wages and self-employment income on the basis of such information as might be available to him indicating the extent (if any) by which the wages and self-employment income exceeded limitations, and, effective with respect to monthly benefits under this subchapter payable for months after Dec. 1978, inserted "(determined under section 415(b) of this title as in effect prior to January 1979)" after "(A) the average monthly wage" in provisions following par. (4).

Subsec. (g). Pub. L. 95–216, §353(c)(3), added existing provisions into subpars. (A) and (B), added subpar. (C), and in subpar. (B) as so redesignated substituted "(i) the average of the total wages (as defined in regulation of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year before the year in which such person first became entitled to benefits under this Act is enacted [April 1986]." effective Jan. 1, 1979, see section 353(c)(2) of Pub. L. 95–216, set out as a note under section 418 of this title.

1976—Subsec. (f)(2). Pub. L. 94–202 substituted "calendar year before the calendar year for "calendar year" and "taxable year before the calendar year" for "calendar year" and "taxable year before the calendar year" for "calendar year before the calendar year for "taxable year".

1972—Subsec. (a). Pub. L. 92–603 added cl. (C) in provisions for the determination of an individual's average current earnings so as to introduce into the formula a factor of one-twelfth of the total wages and self-employment income for the calendar year in which he had the highest such wages and income during the year in which he became disabled and the five years preceding that year.

1968—Subsec. (a). Pub. L. 90–248 inserted in cl. (B) of first sentence following par. (8) "(computed without regard to the limitations specified in sections 409(a) and 411(b)(1) of this title)" before "for the five", and inserted last sentence authorizing the Secretary, in certain cases, to estimate the total of wages and self-employment income for purposes of cl. (B) indicating the extent such earnings exceed the limitations in sections 409(a) and 411(b)(1) of this title.

Effective Date of 1994 Amendment

Effective Date of 1989 Amendment
Amendment by section 10208(b)(2)(A), (C) of Pub. L. 101–239 applicable with respect to computation of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10208(c) of Pub. L. 101–239, set out as a note under section 430 of this title.

Effective Date of 1986 Amendments
Amendment by Pub. L. 99–509 effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 402(e)(2) of this title prior to Oct. 21, 1986, with certain exceptions, see section 9002(d) of Pub. L. 99–509 set out as a note under section 418 of this title.

Section 12109(b) of Pub. L. 99–272 provided that:

(1) The amendment made by subsection (a)(1) [amending this section] shall be effective as though it had been included or reflected in the amendment made by section 2208(a)(3) of the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97–35, amending this section].

(2) The amendment made by subsection (a)(2) [amending this section] shall apply only with respect to monthly benefits payable on the basis of the wages and self-employment income of individuals who become disabled (within the meaning of section 223(d) of the Social Security Act [section 423(d) of this title]) after the month in which this Act is enacted [April 1986].

Effective Date of 1981 Amendment
Section 2208(b) of Pub. L. 97–35 provided that: "The amendments made by subsection (a) [amending this section] shall be effective with respect to individuals who first become entitled to benefits under section 223(a) of the Social Security Act [section 423(a) of this title] for months beginning after the month in which this Act is enacted [April 1986]."

Effective Date of 1977 Amendment
Amendment by section 205(d) of Pub. L. 95–216 effective with respect to monthly benefits under this subchapter payable for months after December 1978 and with respect to lump-sum death payments with respect to deaths occurring after December 1978, see section 205 of Pub. L. 95–216, set out as a note under section 402 of this title.

Section 353(c)(1) of Pub. L. 95–216 provided that the amendment made by that section is effective with respect to the estimates for calendar years beginning after Dec. 31, 1977.

Amendment by section 353(c)(2) of Pub. L. 95–216 effective Jan. 1, 1979, see section 353(g) of Pub. L. 95–216, set out as a note under section 418 of this title.

Effective Date of 1972 Amendment
Section 119(c) of Pub. L. 92–603 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1972."

Effective Date of 1968 Amendments; Determination of Average Current Earnings Upon Redetermination of Benefits Subject to Reduction
Section 159(b) of Pub. L. 90–248 provided that:

(1) The amendments made by subsection (a) [amending this section] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968.
“(2) For purposes of any redetermination which is made under section 224(f) of the Social Security Act [subsec. (f) of this section] in the case of benefits subject to reduction under section 224 of such Act, where such reduction as first computed was effective with respect to benefits for the month in which this Act is enacted [January 1968] or a prior month, the amendments made by subsection (a) of this section [amending subsec. (a) of this section] shall also be deemed to have applied in the initial determination of the ‘average current earnings’ of the individual whose wages and self-employment income are involved.”

**Effective Date**

Section 335 of Pub. L. 89–97 provided that this section is effective with respect to benefits under this subchapter for months after December 1965 based on the wages and self-employment income of individuals entitled to benefits under section 423 of this title whose period of disability (as defined in this subchapter) began after June 1, 1965.

§ 425. Additional rules relating to benefits based on disability

**(a) Suspension of benefits**

If the Commissioner of Social Security, on the basis of information obtained by or submitted to the Commissioner, believes that an individual entitled to benefits under section 423 of this title, or that a child who has attained the age of eighteen and is entitled to benefits under section 402(d) of this title, or that a widow or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 402(e) of this title, or that a widower or surviving divorced husband who has not attained age 60 and is entitled to benefits under section 402(f) of this title, may have ceased to be under a disability, the Commissioner of Social Security may suspend the payment of benefits under such section 402(d), 402(e), 402(f), or 423 of this title until it is determined (as provided in section 421 of this title) whether or not such individual’s disability has ceased or until the Commissioner of Social Security believes that such disability has not ceased. In the case of any individual whose disability is subject to determination under an agreement with a State under section 421(b) of this title, the Commissioner of Social Security shall promptly notify the appropriate State of the Commissioner’s action under this subsection and shall request a prompt determination of whether such individual’s disability has ceased. For purposes of this subsection, the term “disability” has the meaning assigned to such term in section 423(d) of this title. Whenever the benefits of an individual entitled to a disability insurance benefit are suspended for any month, the benefits of any individual entitled thereto under subsection (b), (c), or (d) of section 402 of this title, on the basis of the wages and self-employment income of such individual, shall be suspended for such month. The first sentence of this subsection shall not apply to any child entitled to benefits under section 402(d) of this title, if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 402(d) of this title).

**(b) Continued payments during rehabilitation program**

Notwithstanding any other provision of this subchapter, payment to an individual of benefits based on disability (as described in the first sentence of subsection (a) of this section) shall not be terminated or suspended because the physical or mental impairment, on which the individual’s entitlement to such benefits is based, has or may have ceased, if—

1. such individual is participating in a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1320b–19 of this title or another program of vocational rehabilitation services, employment services, or other support services approved by the Commissioner of Social Security, and

2. the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the disability benefit rolls.


**Amendments**

1999—Subsec. (b)(1). Pub. L. 106–170 substituted “a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1320b–19 of this title or another program of vocational rehabilitation services, employment services, or other support services” for “a program of vocational rehabilitation services”.

1996—Subsec. (c). Pub. L. 104–121 struck out subsec. (c) which related to nonpayment or termination of benefits where entitlement involved alcoholism or drug addiction.


Pub. L. 103–296, § 107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing, “to the Commissioner” for “to him”, and “the Commissioner’s” for “his”.


Pub. L. 103–296, § 107(a)(4), substituted “Commissioner of Social Security” for “Secretary” in pars. (1) and (2).


Pub. L. 103–296, § 107(a)(4), in subsec. (c) as added by Pub. L. 103–296, § 201(a)(3)(A)(ii), substituted “Commissioner of Social Security” for “Secretary” wherever appearing and “Commissioner’s” for “Secretary’s” wherever appearing.

1990—Subsec. (b)(1). Pub. L. 101–508, § 5113(a)(1), added par. (1) and struck out former par. (1) which read as follows: “such individual is participating in an approved vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973, and”.


**Footnotes**

(a) For purposes of any redetermination which is made under section 224(f) of the Social Security Act [subsec. (f) of this section] in the case of benefits subject to reduction under section 224 of such Act, where such reduction as first computed was effective with respect to benefits for the month in which this Act is enacted [January 1968] or a prior month, the amendments made by subsection (a) of this section [amending subsec. (a) of this section] shall also be deemed to have applied in the initial determination of the ‘average current earnings’ of the individual whose wages and self-employment income are involved.”
1983—Subsec. (a). Pub. L. 98–21 inserted "or surviving divorced husband" after "widower".

1980—Pub. L. 96–265 designated existing provisions as subsec. (a), made conforming amendments in subsec. (a) as so designated, and added subsec. (b).

1972—Pub. L. 92–403 substituted "age 60" for "age 62".

1965—Pub. L. 89–97 inserted "or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 402(e) of this title, or that a widower who has not attained age 62 and is entitled to benefits under section 402(f) of this title," after "section 402(d) of this title," and substituted "402(d), 402(e), 402(f)," for "423 or 402(d)", and substituted in third sentence reference to "423(d)" for "423(c)(2)".

1963—Pub. L. 85–840 provided that whenever the benefits of an individual entitled to a disability insurance benefit are suspended for any month, the benefits of any individual entitled thereto based on subsection (b), (c), or (d) of section 402 of this title, on the basis of the wages and self-employment income of such individual, shall be suspended for such month.

**Effective Date of 1999 Amendment**

Amendment by Pub. L. 106–170 effective with respect to monthly benefits payable under this subchapter for months after September 1998, see section 1320b–19 of this title.

**Effective Date of 1996 Amendment**

Amendment by Pub. L. 104–121 applicable only to any individual who applies for, or whose claim is finally adjudicated with respect to, benefits under this subchapter based on disability on or after Mar. 29, 1996, with special rule for any individual who applied, and whose claim has been finally adjudicated, before Mar. 29, 1996, see section 105(a)(5) of Pub. L. 104–121, set out as a note under section 423 of this title.

**Effective Date of 1994 Amendment; Sunset Provision**

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title. Section 201(a)(3)(C), (E) of Pub. L. 103–296 provided that:

"(C) Sunset of 3–Month Rule.—Section 225(c)(7) of the Social Security Act [subsec. (c)(7) of this section] (added by subparagraph (A)) shall cease to be effective with respect to benefits based on disability (as so defined) for months beginning after 180 days after the date of the enactment of this Act.

"(E) Effective Date.—

"(i) In General.—Except as otherwise provided in this paragraph, the amendments made by this paragraph [amending this section and sections 426 and 428 of this title] shall apply with respect to benefits based on disability (as so defined in section 225(c)(9) of the Social Security Act [subsec. (c)(9) of this section], added by this section) which are otherwise payable in months beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994]. The Secretary of Health and Human Services shall issue regulations necessary to carry out the amendments made by this paragraph not later than 180 days after the date of the enactment of this Act.

"(ii) Referral and Monitoring Agencies.—Section 225(c)(5) of the Social Security Act [subsec. (c)(5) of this section] added by this subsection shall take effect 180 days after the date of the enactment of this Act.

"(iii) Termination After 36 Months.—Section 225(c)(7) of the Social Security Act [subsec. (c)(7) of this section] (added by this subsection) shall apply with respect to benefits based on disability (as so defined) for months beginning after 180 days after the date of the enactment of this Act."
not received regular drug testing since the effective date of such provision, prior to repeal by Pub. L. 105–33, title V, §525(c), Aug. 5, 1997, 111 Stat. 625.

TRANSITION RULES FOR CURRENT BENEFICIARIES

Section 201(a)(3)(F) of Pub. L. 103–296 provided that: “In any case in which an individual is entitled to benefits based on disability, the determination of disability was made by the Secretary of Health and Human Services during or before the 180-day period following the date of the enactment of this Act [Aug. 15, 1994], and alcoholism or drug addiction is a contributing factor material to the Secretary’s determination that the individual is under a disability—

“(1) TREATMENT REQUIREMENT.—Paragraphs (1) through (4) of section 225(c) of the Social Security Act [subsec. (c)(1) to (d) of this section] (added by this subsection) shall apply only with respect to benefits paid in months after the month in which such individual is notified by the Secretary in writing that alcoholism or drug addiction is a contributing factor material to the Secretary’s determination and that such individual is therefore required to comply with the provisions of section 225(c) of such Act.

“(ii) TERMINATION AFTER 36 MONTHS.—

“(I) IN GENERAL.—For purposes of section 225(c)(7) of the Social Security Act [subsec. (c)(7) of this section] (added by this subsection), the first month of entitlement beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994] shall be treated as the individual’s first month of entitlement to such benefits.

“(II) CONCURRENT BENEFICIARIES CURRENTLY UNDER TREATMENT.—In any case in which the individual is also entitled to benefits under title XVI [subchapter XVI of this chapter] and, as of 180 days after the date of the enactment of this Act, such individual is undergoing treatment required under section 1611(e)(3) of the Social Security Act [section 1322(e)(3) of this title] (as in effect immediately before the date of the enactment of this Act), the Secretary of Health and Human Services shall notify such individual of the provisions of section 225(c)(7) of the Social Security Act (added by this subsection) not later than 180 days after the date of the enactment of this Act.

“(III) CONCURRENT BENEFICIARIES NOT CURRENTLY UNDER TREATMENT.—In any case in which the individual is also entitled to benefits under title XVI but, as of 180 days after the date of the enactment of this Act, such individual is not undergoing treatment described in subparagraph (II), section 225(c)(7) (added by this subsection) shall apply only with respect to benefits paid in months after the month in which such individual is notified by the Secretary in writing that alcoholism or drug addiction is a contributing factor material to the Secretary’s determination that the individual is under a disability—

“(a) Every individual who—

“(I) has attained age 65, and

“(ii) would meet the requirements of subparagraph (A) upon filing application for the monthly insurance benefits involved in medicare qualified government employment (as defined in section 410(p) of this title) were treated as employment (as defined in section 410(a) of this title) for purposes of this subchapter, and

“(B) is a qualified railroad retirement beneficiary, or

“(C)(i) would meet the requirements of subparagraph (A) upon filing application for the monthly insurance benefits involved in medicare qualified government employment (as defined in section 410(p) of this title) were treated as employment (as defined in section 410(a) of this title) for purposes of this subchapter, and

“(ii) files an application, in conformity with regulations of the Secretary, for hospital insurance benefits under part A of subchapter XVIII of this chapter, shall be entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter for each month for which he meets the condition specified in paragraph (2), beginning with the first month after June 1966 for which he meets the conditions specified in paragraphs (1) and (2).

(b) INDIVIDUALS UNDER 65 YEARS

Every individual who—

“(I) has not attained age 65, and

“(ii) is entitled to, and has for 24 calendar months been entitled to, (i) disability insurance benefits under section 423 of this title or (ii) child’s insurance benefits under section 402(d) of this title by reason of a disability (as defined in section 422(d) of this title) or (iii) widow’s insurance benefits under section 402(e) of this title or widower’s insurance benefits under section 402(f) of this title by reason of a disability (as defined in section 422(d) of this title),

“(B) is, and has been for not less than 24 months, a disabled qualified railroad retirement beneficiary, within the meaning of section 231(f)(d) of title 45, or

“(C)(i) has filed an application, in conformity with regulations of the Secretary, for hospital insurance benefits under part A of subchapter XVIII of this chapter pursuant to this subparagraph, and

“(ii) would meet the requirements of subparagraph (A) (as determined under the disability criteria, including reviews, applied under this

§ 426. Entitlement to hospital insurance benefits

(a) INDIVIDUALS OVER 65 YEARS

Every individual who—

“(1) has attained age 65, and

“(2)(A) is entitled to monthly insurance benefits under section 402 of this title, would be entitled to those benefits except that he has not filed an application therefor (or application has not been made for a benefit the entitlement to which for any individual is a condition of entitlement therefor), or would be entitled to such benefits but for the failure of another individual, who meets all the criteria of entitlement to monthly insurance benefits, to meet such criteria throughout a month, and, in conformity with regulations of the Secretary, files an application for hospital insurance benefits under part A of subchapter XVIII of this chapter, shall be entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter for each month for which he meets the condition specified in paragraph (2), beginning with the first month after June 1966 for which he meets the conditions specified in paragraphs (1) and (2).

(b) INDIVIDUALS UNDER 65 YEARS

Every individual who—

“(1) has not attained age 65, and

“(2)(A) is entitled to, and has for 24 calendar months been entitled to, (i) disability insurance benefits under section 423 of this title or (ii) child’s insurance benefits under section 402(d) of this title by reason of a disability (as defined in section 422(d) of this title) or (iii) widow’s insurance benefits under section 402(e) of this title or widower’s insurance benefits under section 402(f) of this title by reason of a disability (as defined in section 422(d) of this title),

“(B) is, and has been for not less than 24 months, a disabled qualified railroad retirement beneficiary, within the meaning of section 231(f)(d) of title 45, or

“(C)(i) has filed an application, in conformity with regulations of the Secretary, for hospital insurance benefits under part A of subchapter XVIII of this chapter pursuant to this subparagraph, and

“(ii) would meet the requirements of subparagraph (A) (as determined under the disability criteria, including reviews, applied under this

DEMONSTRATION PROJECTS RELATING TO REFERRAL, MONITORING, AND TREATMENT FOR ALCOHOLICS OR DRUG ADDICTS

Section 201(c) of Pub. L. 103–296 related to demonstration projects relating to referral, monitoring, and treatment for alcoholics or drug addicts, prior to repeal by Pub. L. 104–121, title I, §105(c), Mar. 29, 1996, 110 Stat. 855.

PAYMENT OF COSTS OF REHABILITATION SERVICES

Amendment of sections 422 and 1382d of this title by section 11(a), (b) of Pub. L. 98–460 applicable with respect to individuals who receive benefits as a result of section 422(b) or section 1382a(d) of this title, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilita-

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subchapter), including the requirement that he has been entitled to the specified benefits for 24 months, if—

(I) medicare qualified government employment (as defined in section 410(p) of this title) were treated as employment (as defined in section 410(a) of this title) for purposes of this subchapter, and

(II) the filing of the application under clause (i) of this subparagraph were deemed to be the filing of an application for the disability-related benefits referred to in clause (I), (II), or (III) of subparagraph (A).

shall be entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter for each month beginning with the later of (I) July 1973 or (II) the twenty-fifth month of his entitlement or status as a qualified railroad retirement beneficiary described in paragraph (2), and ending (subject to the last sentence of this subsection) with the month following the month in which notice of termination of such entitlement to benefits or status as a qualified railroad retirement beneficiary described in paragraph (2) is mailed to him, or if earlier, with the month before the month in which he attains age 65. In applying the previous sentence in the case of an individual described in paragraph (2)(C), the “twenty-fifth month of his entitlement” refers to the first month after the twenty-fourth month of entitlement to specified benefits referred to in paragraph (2)(C) and “notice of termination of such entitlement” refers to a notice that the individual would no longer be determined to be entitled to such specified benefits under the conditions described in that paragraph. For purposes of this subsection, an individual who has had a period of trial work which ended as provided in section 422(c)(4)(A) of this title, and whose entitlement to benefits or status as a qualified railroad retirement beneficiary as described in paragraph (2) has subsequently terminated, shall be deemed to be entitled to such benefits or to occupy such status (notwithstanding the termination of such entitlement or status) for the period of consecutive months throughout all of which the physical or mental impairment, on which such entitlement or status was based, continues, and throughout all of which such individual would have been entitled to monthly insurance benefits under part A of subchapter XVIII of this title or would have been a qualified railroad retirement beneficiary, for the month in which he died if he would have been entitled to such benefits, or would have been a qualified railroad retirement beneficiary, for such month had he died in the next month.

(d) “Qualified railroad retirement beneficiary” defined

For purposes of this section, the term “qualified railroad retirement beneficiary” means an individual whose name has been certified to the Secretary by the Railroad Retirement Board under section 231(f)(d) of title 45. An individual shall cease to be a qualified railroad retirement beneficiary at the close of the month preceding the month which is certified by the Railroad Retirement Board as the month in which he ceased to meet the requirements of section 231(f)(d) of title 45.

(e) Benefits for widows and widowers

(1)(A) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section in the case of widows and widowers described in paragraph (2)(A)(i) thereof—

(i) the term “age 60” in sections 402(e)(1)(B)(ii), 402(e)(4), 402(f)(1)(B)(ii), and 402(f)(4) of this title shall be deemed to read “age 65”; and

(ii) the phrase “before she attained age 60” in the matter following subparagraph (F) of section 402(e)(1) of this title and the phrase “before he attained age 60” in the matter following subparagraph (F) of section 402(f)(1) of this title shall each be deemed to read “based on a disability”.

(B) For purposes of subsection (b)(2)(A)(iii) of this section, each month in the period commencing with the first month for which an individual is first eligible for supplemental security income benefits under subchapter XVI of this chapter, or State supplementary payments of the type referred to in section 1902(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) which are paid by the Secretary under an agreement referred to
in section 1382e(a) of this title (or in section 212(b) of Public Law 93–66), shall be included as one of the 24 months for which such individual must have been entitled to widow’s or widower’s insurance benefits on the basis of disability in order to become entitled to hospital insurance benefits on that basis.

(2) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section in the case of an individual who has been entitled to benefits under section 402 of this title, and who was entitled to widow’s insurance benefits or widower’s insurance benefits based on disability for the month before the first month in which such individual was so entitled to old-age insurance benefits (but ceased to be entitled to such widow’s or widower’s insurance benefits upon becoming entitled to such old-age insurance benefits), such individual shall be deemed to have continued to be entitled to such widow’s insurance benefits or widower’s insurance benefits for and after such first month.

(3) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section, any disabled widow aged 50 or older who is entitled to mother’s insurance benefits (and who would have been entitled to widow’s insurance benefits by reason of disability if she had filed for such widow’s benefits), and any disabled widower aged 50 or older who is entitled to father’s insurance benefits (and who would have been entitled to widower’s insurance benefits by reason of disability if he had filed for such widower’s benefits), shall, upon application for such hospital insurance benefits, be deemed to have filed for such widow’s or widower’s insurance benefits.

(4) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section in the case of an individual described in clause (i) of subsection (b)(2)(A) of this section, the entitlement of such individual to widow’s or widower’s insurance benefits under section 402(e) or (f) of this title by reason of a disability shall be deemed to be the entitlement to such benefits that would result if such entitlement were determined without regard to the provisions of section 402(j)(4) of this title.

(5) Medicare waiting period for recipients of disability benefits

For purposes of subsection (b) of this section (and for purposes of section 1395p(g)(1) of this title and section 231f(d)(2)(ii) of title 45), the 24 months for which an individual has to have been entitled to specified monthly benefits on the basis of disability in order to become entitled to hospital insurance benefits on such basis effective with any particular month (or to be deemed to have enrolled in the supplementary medical insurance program, on the basis of such entitlement, by reason of section 1395p(f) of this title), where such individual had been entitled to specified monthly benefits of the same type during a previous period which terminated—

(1) more than 60 months before the month in which his current disability began in any case where such monthly benefits were of the type specified in clause (A)(ii) or (A)(iii) of such subsection,

shall not include any month which occurred during such previous period, unless the physical or mental impairment which is the basis for disability is the same as (or directly related to) the physical or mental impairment which served as the basis for disability in such previous period.

(g) Information regarding eligibility of Federal employees

The Secretary and Director of the Office of Personnel Management shall jointly prescribe and carry out procedures designed to assure that all individuals who perform medicare qualified government employment by virtue of service described in section 410(a)(5) of this title are fully informed with respect to (1) their eligibility or potential eligibility for hospital insurance benefits (based on such employment) under part A of subchapter XVIII of this chapter, (2) the requirements for and conditions of such eligibility, and (3) the necessity of timely application as a condition of entitlement under subsection (b)(2)(C) of this section, giving particular attention to individuals who apply for an annuity under chapter 83 of title 5 or under another similar Federal retirement program, and whose eligibility for such an annuity is or would be based on a disability.

(h) Waiver of waiting period for individuals with ALS

For purposes of applying this section in the case of an individual medically determined to have amyotrophic lateral sclerosis (ALS), the following special rules apply:

(1) Subsection (b) of this section shall be applied as if there were no requirement for any entitlement to benefits, or status, for a period longer than 1 month.

(2) The entitlement under such subsection shall begin with the first month (rather than twenty-fifth month) of entitlement or status.

(3) Subsection (f) of this section shall not be applied.

(i) Continuing eligibility of certain terminated individuals

For purposes of this section, each person whose monthly insurance benefit for any month is terminated or is otherwise not payable solely by reason of paragraph (1) or (7) of section 425(c) of this title shall be treated as entitled to such benefit for such month.

(j) Certain uninsured individuals

For entitlement to hospital insurance benefits in the case of certain uninsured individuals, see section 426a of this title.


See References in Text note below.

REFERENCES IN TEXT

Section 212 of Public Law 93–66, referred to in subsec. (e)(3), is section 212 of Pub. L. 93–66 which is set out as a note under section 1382 of this title.


AMENDMENTS


2000—Subsecs. (b), (j). Pub. L. 106–554 added subsec. (b) and redesignated former subsec. (b) as (j) and transferred such subsec. to appear at end of section.


1994—Subsec. (a). Pub. L. 103–296 amended former subsec. (a) as follows:

1993—Subsec. (b). Pub. L. 103–296 substituted “1991—Subsec. (a)(2). Pub. L. 97–35 substituted “would be entitled” for “‘or would be entitled’” and inserted inserted “‘for the failure of such individual to provide necessary medical care’”.


1982—Subsec. (a)(2). Pub. L. 97–248, §278(b)(2)(A), re-designated existing provisions as subpar. (A), struck out “or is a qualified railroad retirement beneficiary,” after “‘of this chapter,’” and added subpars. (B) and (C).

1980—Subsec. (a)(2). Pub. L. 96–265, §104(a), substituted “24 calendar months” for “24 months”, and added provisions that a qualified railroad retirement beneficiary, after “‘of this chapter,’” and added subpars. (B) and (C).

1981—Subsec. (a)(2). Pub. L. 97–35 substituted “would be entitled” for “‘or would be entitled’” and inserted inserted “‘for the failure of such individual to provide necessary medical care’”.

1978—Subsec. (b). Pub. L. 95–55 substituted “24 months” for “24 consecutive calendar months” and “24 consecutive months”, respectively, in par. (2) and, in provisions following par. (2), substituted the twenty-fifth month” for “the twenty-fifth consecutive month”.

1975—Subsec. (c)(1). Pub. L. 94–499 substituted “and home health services” for “and post-hospital home health services” and struck out “or post-hospital home health services” before “unless the diagnosis”.

1970—Subsec. (a)(2). Pub. L. 96–265, §103(a)(1), substituted “24 calendar months” for “24 months”, and added provisions that a qualified railroad retirement beneficiary, after “‘of this chapter,’” and added subpars. (B) and (C).


1962—Subsec. (a)(2). Pub. L. 97–248, §278(b)(2)(A), re-designated existing provisions as subpar. (A), struck out “or is a qualified railroad retirement beneficiary,” after “‘of this chapter,’” and added subpars. (B) and (C).

1961—Subsec. (a)(2). Pub. L. 97–35 substituted “would be entitled” for “‘or would be entitled’” and inserted inserted “‘for the failure of such individual to provide necessary medical care’”.


Subsec. (b). Pub. L. 96–265, §104(a), in provisions following par. (2), inserted “‘subject to the last sentence of this subsection’”, and inserted provision that, for purposes of this subsection, an individual who has had a period of trial work which ended as provided in section 422(c)(4)(A) of this title, and whose entitlement to benefits or status as a qualified railroad retirement beneficiary as described in paragraph (2) has subsequently terminated, shall be deemed to be entitled to such benefits or to occupy such status (notwithstanding the termination of such entitlement or status) for the period of consecutive months throughout all of which the physical or mental impairment, on which such entitlement or status was based, continues, and throughout all of which such individual would have been entitled to monthly insurance benefits under this subchapter.

Pub. L. 96–265, §103(a)(1), substituted “24 calendar months” and “24 months”, respectively, in par. (2) and, in provisions following par. (2), substituted the twenty-fifth month” for “the twenty-fifth consecutive month”.

Subsec. (c)(1). Pub. L. 96–499 substituted “‘and home health services’” for “‘and post-hospital home health services’” and struck out “or ‘post-hospital home health services’” before “unless the diagnosis”.

Subsecs. (f), (g). Pub. L. 96–265, §103(b), added subsec. (f) and redesignated former subsec. (f) as (g).
1978—Subsec. (a). Pub. L. 95–292, §3(a), substituted "condition specified in paragraph (1), beginning with the first month after June 1966 for which he meets the conditions specified in paragraphs (1) and (2)" for "condition specified in subparagraph (B), beginning with the first month after June 1966 for which he meets the conditions specified in subparagraphs (A) and (B)".

Subsec. (e). Pub. L. 95–292 strike out subsec. (d), redesignated subsec. (h) as (e) and, in subsec. (e) as so redesignated, inserted a technical error resulting from the 1973 amendment of pars. (2) and (3) by Pub. L. 93–233 under which a reference to subsec. (b) of this section had been inserted without the required parentheses. Former subsec. (e), relating to Medicare eligibility of persons medically determined to have chronic renal disease requiring hemodialysis or renal transplantation, was struck out. See section 426–1 of this title.

Subsec. (f). Pub. L. 95–292, §1(b)(1), (2), redesignated subsec. (i) as (f). Former subsec. (f), relating to the duration of hospital insurance benefits pursuant to this section, was redesignated subsec. (h) and inserted reference to section 423 of this title.

Subsec. (g). Pub. L. 95–292, §1(b)(1), struck out subsec. (g) which related to reimbursement for kidney transplant and kidney treatment. See section 1363f of this title.

Subsecs. (h), (i). Pub. L. 95–292, §1(b)(2), redesignated subsecs. (b) and (i) as (f) and (e), respectively.


Subsec. (f). Pub. L. 95–233, §18(f)(1)(A), redesignated subsec. (a)(1) as subsec. (a), and redesignated subpar. (D) of subsec. (a)(1) as subpar. (B). Former subsec. (d)(1), redesignated subsec. (a)(1), and redesignated pars. (1) and (2) as paras. (A) and (B).

Subsec. (b), Pub. L. 92–603, §201(b)(1), added subsec. (b). Former subsec. (b) redesignated subsec. (c).

Subsec. (c)(1). Pub. L. 92–603, §201(b)(2), (5), redesignated subsec. (b)(1) as subsec. (c)(1) and, in subsec. (c)(1) as so redesignated, inserted reference to entitlement to benefits, as redesignated, under subsec. (c)(2) and inserted reference to section 423 of this title. Former subsec. (c) redesignated subsec. (d).


1968—Subsec. (b)(1). Pub. L. 90–248 struck out patient hospital diagnostic services from services for which hospital insurance benefits are payable.

Effective Date of 2004 Amendment

Amendment by Pub. L. 108–203 applicable with respect to applications for benefits under this subchapter filed on or after the first day of the first month that begins after Mar. 2, 2004, see section 418(c) of Pub. L. 108–203, set out as a note under section 402 of this title.

Effective Date of 2000 Amendment

Pub. L. 106–554, §1(a)(6) [title I, §115(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–474, provided that: "The amendments made by this section [amending this section and section 1395p of this title] shall apply to benefits for months beginning July 1, 2001."

Effective Date of 1999 Amendment

Pub. L. 106–170, title II, §203(b), Dec. 17, 1999, 113 Stat. 1894, provided that: "The amendment made by subsection (a) [amending this section] shall be effective on and after October 1, 2000."

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–296 applicable with respect to benefits based on disability (as defined in section 223 of the Social Security Act) which are otherwise payable in months beginning after 180 days after Aug. 15, 1994, with Secretary of Health and Human Services to issue regulations necessary to carry out such amendment not later than 180 days after Aug. 15, 1994, see section 201(a)(3)(E)(i) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment; Sunset Provision note under section 423 of this title.

Effective Date of 1990 Amendment

Amendment by Pub. L. 101–508 applicable with respect to items and services furnished after December 1990, see section 5103(e) of Pub. L. 101–508, set out as a note under section 402 of this title.

Effective Date of 1988 Amendments

Section 608(f)(5) of Pub. L. 100–485 provided that the amendment made by such section 608(f)(5) is effective as of the date of enactment of Pub. L. 95–292, which was approved June 13, 1978.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a)(1) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title I, General Provisions.
Section 403(b), formerly section 403(a)(2) of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, §411(e)(2), July 1, 1988, 102 Stat. 775, provided that:

"(1) The amendment made by subsection (a) [amending this section] shall apply to months beginning after the end of the 60-day period beginning on the date of enactment of this Act [Dec. 22, 1987]."

"(2) The amendment made by subsection (a) shall not apply so as to include (for the purposes described in section 226(f) of the Social Security Act [subsec. (f) of this section]) monthly benefits paid for any month in a previous period (described in that section) that terminated before the end of the 60-day period described in paragraph (1)."

Amendment by section 9010(c)(3) of Pub. L. 100–203 effective Jan. 1, 1988, and applicable with respect to individuals entitled to benefits under specific provisions of sections 402 and 423 of this title for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by section 9010 of Pub. L. 100–203 has not elapsed as of Jan. 1, 1988, see section 9010(f) of Pub. L. 100–203, set out as a note under section 402 of this title.

Effective Date of 1986 Amendment
Amendment by Pub. L. 99–272 effective after Mar. 31, 1986, with no individual to be considered under disability for any period beginning before Apr. 1, 1986, for purposes of hospital insurance benefits, see section 13205(d)(2) of Pub. L. 99–272, set out as a note under section 410 of this title.

Effective Date of 1984 Amendment
Amendment by Pub. L. 98–369 effective July 18, 1994, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2064(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

Effective Date of 1983 Amendments
Amendment by section 131(a)(3)(H), (b)(3)(G) of Pub. L. 98–21 effective with respect to monthly benefits payable under specific provisions of sections 402 and 423 of this title for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by section 9010 of Pub. L. 100–203 has not elapsed as of Jan. 1, 1988, see section 9010(f) of Pub. L. 100–203, set out as a note under section 402 of this title.

Effective Date of 1984 Amendment
Amendment by Pub. L. 98–369 effective July 18, 1994, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2064(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

Effective Date of 1983 Amendments
Amendment by section 131(a)(3)(H), (b)(3)(G) of Pub. L. 98–21 effective with respect to monthly benefits payable under this subchapter for months after December 1983, and in the case of an individual who was not entitled to a monthly benefit of the type involved under this subchapter for December 1983, no benefit shall be payable under this subchapter for December 1983, and in the case of an individual who was not entitled to benefits under specific provisions of sections 402 and 423 of this title for any month after January 1988 and with respect to whom the 15-month period described in the applicable provision amended by section 9010 of Pub. L. 100–203 has not elapsed as of Jan. 1, 1988, see section 9010(f) of Pub. L. 100–203, set out as a note under section 402 of this title.

Effective Date of 1986 Amendment
Amendment by Pub. L. 99–272 effective after Mar. 31, 1986, with no individual to be considered under disability for any period beginning before Apr. 1, 1986, for purposes of hospital insurance benefits, see section 13205(d)(2) of Pub. L. 99–272, set out as a note under section 410 of this title.
Section 104(b) of Pub. L. 96–283 provided that: "The amendments made by subsection (a) [amending this section] shall become effective on the first day of the sixth month which begins after the date of the enactment of this Act (June 9, 1980), and shall apply with respect to any individual whose disability has not been determined to have ceased prior to such first day."

**Effective Date of 1978 Amendment**

Section 6 of Pub. L. 95–292 provided that: "The amendments made by the preceding sections of this Act [enacting sections 426–1 and 1395rr of this title and amending this section and sections 1395c, 1395i, 1395l, 1395s, 1395cc, and 1395mm of this title] shall become effective with respect to services, supplies, and equipment furnished after the third calendar month which begins after the date of the enactment of this Act (June 13, 1978), except that those amendments providing for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers shall become effective with respect to a facility's or provider's first accounting period which begins after the last day of the twelfth month following the month of the enactment of this Act (June 13, 1978), and those amendments providing for reimbursement rates for home dialysis shall become effective on April 1, 1979."

**Effective Date of 1977 Amendment**

Amendment by section 332(a)(3) of Pub. L. 95–216 effective with respect to monthly insurance benefits under this subchapter to which an individual becomes entitled on the basis of an application filed on or after Jan. 1, 1978, see section 332(b) of Pub. L. 95–216, set out as a note under section 402 of this title.

Amendment by section 334(d)(4)(B) of Pub. L. 95–216 applicable with respect to monthly insurance benefits payable under this subchapter for months beginning after December 1977, on the basis of applications filed in or after December 1977, see section 334(f) of Pub. L. 95–216, set out as a note under section 402 of this title.

**Effective Date of 1974 Amendment**


**Effective Date of 1973 Amendment**

Section 4(a) of Pub. L. 93–58 provided that: "The provisions of this Act [amending this section and sections 226 and 2265 of Title 45, Railroads], except the provisions of section 1, shall be effective as of the date the corresponding provisions of Public Law 92–603 are effective as follows: clause (xi) [section 226(c)(xii) of Title 45] effective with respect to services provided on and after July 1, 1973. The provisions of clauses (xi) and (xii), which are added by section 1 of this Act, shall be effective as follows: clause (xi) [section 226(c)(xii)] of Title 45 shall be effective with respect to calendar years after 1971 for annuities accruing after December 1972, and clause (xii) [section 226(c)(xii)] of Title 45 shall be effective as of the date the delayed retirement provision of Public Law 92–603 is effective [section 402(w) of this title applicable with respect to old-age insurance benefits payable under this subchapter for months beginning after 1972]."

**Effective Date of 1972 Amendment**

Section 299I of Pub. L. 92–603 provided that the amendment made by that section is effective with respect to services provided on and after July 1, 1973.

**Effective Date of 1968 Amendment**

Amendment by Pub. L. 90–248 applicable with respect to services furnished after March 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.
§ 426-1

TITLE 42—THE PUBLIC HEALTH AND WELFARE

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Adopted child's reenlistment to annuity

Section 4(b) of Pub. L. 93–58 provided that: "Any child (1) whose entitlement to an annuity under section 5(c) of the Railroad Retirement Act (section 228c of Title 45, Railroads) was terminated by reason of his adoption prior to the enactment of this Act (July 6, 1973), and (2) who, except for such adoption, would be entitled to an annuity under such section for a month after the month in which this Act is enacted (July 1973), may, upon filing application for an annuity under the Railroad Retirement Act (section 228a et seq. of Title 45) after the date of enactment of this Act (July 6, 1973), become reentitled to such annuity; except that no child shall, by reason of the enactment of this Act [amending this section and sections 228c, 228e of Title 45] become reentitled to such annuity for any month prior to the effective date of the relevant amendments made by this Act to section 5(i)(i)(II) of the Railroad Retirement Act [section 228e(c)(1)(I)]."

§ 426-1. End stage renal disease program

(a) Entitlement to benefits

Notwithstanding any provision to the contrary in section 426 of this title or subchapter XVIII of this chapter, every individual who—

1. (1)(A) is fully or currently insured (as such terms are defined in section 414 of this title), or would be fully or currently insured if (i) his service as an employee (as defined in the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.]) after December 31, 1936, were included within the meaning of the term "employment" for purposes of this subchapter, and (ii) his Medicare qualified government employment (as defined in section 410(p) of this title) were included within the meaning of the term "employment" for purposes of this subchapter;

2. (B) is entitled to monthly insurance benefits under this subchapter, (ii) is entitled to an annuity under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], or (iii) would be entitled to a monthly insurance benefit under this subchapter if Medicare qualified government employment (as defined in section 410(p) of this title) were included within the meaning of the term "employment" for purposes of this subchapter; or

3. (C) is the spouse or dependent child (as defined in regulations) of an individual described in subparagraph (A) or (B);

4. (2) is medically determined to have end stage renal disease; and

5. (3) has filed an application for benefits under this section;

shall, in accordance with the succeeding provisions of this section, be entitled to benefits under part A and eligible to enroll under part B of subchapter XVIII of this chapter, subject to the deductible, premium, and coinsurance provisions of that subchapter.

(b) Duration of period of entitlement

Subject to subsection (c) of this section, entitlement of an individual to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter by reasons of this section on the basis of end stage renal disease—

1. (1) shall begin with—

(A) the third month after the month in which a regular course of renal dialysis is initiated, or

(B) the month in which such individual receives a kidney transplant, or (if earlier) the first month in which such individual is admitted as an inpatient to an institution which is a hospital meeting the requirements of section 1395x(e) of this title (and such additional requirements as the Secretary may prescribe under section 1395rr(b) of this title for such institutions) in preparation for or anticipation of kidney transplantation, but only if such transplantation occurs in that month or in either of the next two months, whichever first occurs (but no earlier than one year preceding the month of the filing of an application for benefits under this section); and

2. (2) shall end, in the case of an individual who receives a kidney transplant, with the thirty-sixth month after the month in which such individual receives such transplant or, in the case of an individual who has not received a kidney transplant and no longer requires a regular course of dialysis, with the twelfth month after the month in which such course of dialysis is terminated.

(c) Individuals participating in self-care dialysis training programs; kidney transplant failures; resumption of previously terminated regular course of dialysis

Notwithstanding the provisions of subsection (b) of this section—

1. (1) in the case of any individual who participates in a self-care dialysis training program prior to the third month after the month in which such individual initiates a regular course of renal dialysis in a renal dialysis facility or provider of services meeting the requirements of section 1395rr(b) of this title, entitlement to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter shall begin with the month in which such regular course of renal dialysis is initiated;

2. (2) in any case in which a kidney transplant fails (whether during or after the thirty-six-month period specified in subsection (b)(2) of this section) and as a result the individual who received such transplant initiates or resumes a regular course of renal dialysis, entitlement to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter shall begin with the month in which such course is initiated or resumed; and

3. (3) in any case in which a regular course of renal dialysis is resumed subsequent to the termination of an earlier course, entitlement to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter shall begin with the month in which such regular course of renal dialysis is resumed.

1 So in original. Probably should be "(d)".

1 So in original. Probably should be "(d)".
is terminated or is otherwise not payable solely by reason of paragraph (1) or (7) of section 425(c) of this title shall be treated as entitled to such benefit for such month.


REFERENCES IN TEXT


AMENDMENTS


1982—Subsec. (a)(1)(A). Pub. L. 97–248 designated existing provisions as cl. (i), substituted “within the meaning of the term ‘employment’ for purposes of this subchapter” for “in the term ‘employment’ as defined in this chapter”, and added cl. (ii).

Subsec. (a)(1)(B). Pub. L. 97–248 designated “is entitled to monthly insurance benefits under this subchapter” as cl. (i), substituted “(ii) is entitled to an annuity under the Railroad Retirement Act of 1974” for “or an annuity under the Railroad Retirement Act of 1974”, and added cl. (iii).

Subsec. (a)(1)(C), (D). Pub. L. 97–448 combined former subpars. (C) and (D) into subpar. (C) and substituted a reference to individuals described in subpar. (A) or (B) for a more detailed definition of such individuals.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 applicable with respect to benefits based on disability (as defined in section 425(c) of this title) which are otherwise payable in months beginning after 180 days after Aug. 15, 1994, with Secretary of Health and Human Services to issue regulations necessary to carry out such amendment not later than 180 days after Aug. 15, 1994, see section 201(a)(3)(E)(i) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment; Sunset Provision note under section 426 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 97–448 effective as of Aug. 15, 1986, see section 309(c)(2) of Pub. L. 97–448 provided that: “Any amendment to the Social Security Act [this chapter] made by this section [amending this section and sections 410, 1320c–2, 1320c–3, 1395d, 1395f, 1395r, 1395y, 1395cc, 1395mm, 1395ww, 1396b, 1396n, 1396o, and 1396p of this title] shall be effective as if it had been originally included as a part of that provision of the Social Security Act to which it relates, as such provision of such Act was amended or added by the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248, Sept. 3, 1982, 96 Stat. 324].”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 97–248 applicable with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility’s or provider’s first accounting period beginning after the last day of the tenth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as an Effective Date of 1978 Amendment note under section 426 of this title.

§426a. Transitional provision on eligibility of uninsured individuals for hospital insurance benefits

(a) Entitlement to benefits

Anyone who—

(1) has attained the age of 65,

(2)(A) attained such age before 1968, or (B) has not less than 3 quarters of coverage (as defined in this subchapter or section 226(t) of title 45), whenever acquired, for each calendar year elapsing after 1966 and before the year in which he attained such age,

(3) is not, and upon filing application for monthly insurance benefits under section 402 of this title would not be, entitled to hospital insurance benefits under section 426 of this title, and is not certifiable as a qualified railroad retirement beneficiary under section 228s–2 of title 45,

(4) is a resident of the United States (as defined in section 410(i) of this title), and is (A) a citizen of the United States or (B) an alien lawfully admitted for permanent residence who has resided in the United States (as so defined) continuously during the 5 years immediately preceding the month in which he files application under this section, and

(5) has filed an application under this section in such manner and in accordance with such other requirements as may be prescribed in regulations of the Secretary,

shall (subject to the limitations in this section) be deemed, solely for purposes of section 426 of this title, to be entitled to monthly insurance benefits under such section 402 for each month, beginning with the first month in which he meets the requirements of this subsection and ending with the month in which he dies, or, if earlier, the month before the month in which he becomes (or upon filing application for monthly insurance benefits under section 402 of this title which would become) entitled to hospital insurance benefits such subsection and section 426 of this title or be-
comes certifiable as a qualified railroad retirement beneficiary. An individual who would have met the preceding requirements of this subsection in any month had he filed application under paragraph (5) hereof before the end of such month shall be deemed to have met such requirements in such month if he files such application before the end of the twelfth month following such month. No application under this section which is filed by an individual more than 3 months before the first month in which he meets the requirements of paragraphs (1), (2), (3), and (4) shall be accepted as an application for purposes of this section.

(b) Persons ineligible

The provisions of subsection (a) of this section shall not apply to any individual who—

(1) is, at the beginning of the first month in which he meets the requirements of subsection (a), a member of any organization referred to in section 410(a)(17) of this title,

(2) was, prior to the beginning of such first month, been convicted of any offense listed in section 402(u) of this title, or

(3)(A) at the beginning of such first month is covered by an enrollment in a health benefits plan under chapter 89 of title 5, or

(B) has, prior to the beginning of such first month, been covered by an enrollment in a health benefits plan under chapter 89 of title 5, if he or some other person had availed himself of opportunities to enroll in a health benefits plan under such chapter and to continue such enrollment (but this subparagraph shall not apply unless he or such other person was a Federal employee at any time after February 15, 1965).

Paragraph (3) shall not apply in the case of any individual for the month (or any month thereafter) in which coverage under such a health benefits plan ceases (or would have ceased if he had had such coverage) by reason of his or some other person’s separation from Federal service, if he or such other person was not (or would not have been) eligible to continue such coverage after such separation.

(c) Authorization of appropriations

There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund (established by section 1395l of this title) from time to time such sums as the Secretary deems necessary for any fiscal year, on account of—

(1) payments made or to be made during such fiscal year from such Trust Fund under part A of subchapter XVIII of this chapter with respect to individuals who are entitled to hospital insurance benefits under section 426 of this title solely by reason of this section.

(2) the additional administrative expenses resulting or expected to result therefrom, and

(3) any loss in interest to such Trust Fund resulting from the payment of such amounts, in order to place such Trust Fund in the same position at the end of such fiscal year in which it would have been if the preceding subsections of this section had not been enacted.


References in Text

Sections 238e(l) and 228s–2 of title 45, referred to in subsec. (a)(2), (3), are references to sections 5(l) and 21 of the Railroad Retirement Act of 1937. That Act was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305. That Act, as amended and revised, was redesignated the Railroad Retirement Act of 1974, and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Sections 229e and 228s–2 of title 45 are covered by sections 231e and 231f of Title 45, respectively.

Codification

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

Amendments


Subsec. (b)(3)(A), (C). Pub. L. 90–248, § 403(h)(1), (2), substituted “chapter 89 of title 5” and “such chapter” for “the Federal Employees Health Benefits Act of 1959” and “such Act” in subpars. (A) and (C), respectively.

§ 427. Transitional insured status for purposes of old-age and survivors benefits

(a) Determination of entitlement to benefits under section 402(a) to (c) of this title

In the case of any individual who attains the age of 72 before 1969 but who does not meet the requirements of section 414(a) of this title, the 6 quarters of coverage referred to in paragraph (1) of section 414(a) of this title shall, instead, be 3 quarters of coverage for purposes of determining entitlement of such individual to benefits under section 402(a) of this title, and of the spouse to benefits under section 402(b) or section 402(c) of this title, but, in the case of such spouse, only if he or she attains the age of 72 before 1969 and only with respect to spouse’s insurance benefits under section 402(b) or section 402(c) of this title for and after the month in which he or she attains such age. For each month before the month in which any such individual meets the requirements of section 414(a) of this title, the amount of the old-age insurance benefit shall, notwithstanding the provisions of section 402(a) of this title, be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(l) of this title.

(b) Determination of entitlement to surviving spouse’s benefits under section 402(e) or (f) of this title

In the case of any individual who has died, who does not meet the requirements of section 414(a) of this title, and whose surviving spouse attains age 72 before 1969, the 6 quarters of coverage referred to in paragraph (3) of section 414(a) of this title and in paragraph (1) thereof shall, for purposes of determining the entitlement to surviving spouse’s insurance benefits under section 402(e) or section 402(f) of this title, instead be—

(1) 3 quarters of coverage if such surviving spouse attains the age of 72 in or before 1966,
(2) 4 quarters of coverage if such surviving spouse attains the age of 72 in 1967, or
(3) 5 quarters of coverage if such surviving spouse attains the age of 72 in 1968.

The amount of the surviving spouse’s insurance benefit for each month shall, notwithstanding the provisions of section 402(e) or section 402(f) of this title (and section 402(m) of this title), be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title.

c) Deceased individual entitled to benefits by reason of subsection (a) deemed to meet requirements of subsection (b)

In the case of any individual who becomes, or upon filing application therefor would become, entitled to benefits under section 402(a) of this title by reason of the application of subsection (a) of this section, who dies, and whose surviving spouse attains the age of 72 before 1969, such deceased individual shall be deemed to meet the requirements of subsection (b) of this section for purposes of determining entitlement of such surviving spouse to surviving spouse’s insurance benefits under section 402(e) or section 402(f) of this title.


REFERENCES IN TEXT

AMENDMENTS
1983—Subsec. (a). Pub. L. 98–21, § 309(a), substituted “spouse” for “wife”, “spouse’s” for “wife’s”, and “he or she” for “she”, wherever appearing, substituted “the” for “his” after “402(a)” of this title, and of precede “spouse” in two places and preceding “old-age insurance”, and inserted “or section 402(e)” after “section 402(b)” wherever appearing.

Subsec. (b). Pub. L. 98–21, § 309(b), substituted “surviving spouse” for “widow” and “surviving spouse’s” for “widow’s” wherever appearing, substituted “the” for “her” after “determining” and “The amount of”, and inserted “or section 402(e)” after “section 402(e)” wherever appearing.

Subsec. (c). Pub. L. 98–21, § 309(b)(1), (2), (4), substituted “surviving spouse” for “widow” there appearing and “surviving spouse’s” for “widow’s”, and inserted “or section 402(e)” after “section 402(e)”.

1973—Subsec. (a). Pub. L. 92–336, § 2(b)(1), substituted “the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title” for “$58.00”.

Subsec. (b). Pub. L. 93–233, § 2(b)(1), substituted “the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title” for “$58.00”.

1972—Subsec. (a). Pub. L. 92–336, § 201(g)(1)(A), substituted “$58.00” for “$48.30” and “$29.00” for “$24.20”.

Subsec. (a)(1). Pub. L. 92–603, § 104(e), substituted “paragraph (1) of section 414(a) of this title” for “so much of paragraph (1) of section 414(a) of this title as follows clause (C)”.

Subsec. (b). Pub. L. 92–336, § 201(g)(1)(B), substituted “$58.00” for “$48.30”.

Subsec. (b)(1). Pub. L. 92–603, § 104(1), substituted “paragraph (1) thereof” for “so much of paragraph (1) thereof as follows clause (C)”.


Subsec. (b). Pub. L. 91–172, § 1003(a)(2), substituted “$46” for “$40”.

1968—Subsec. (a). Pub. L. 90–248, § 102(a)(1), substituted “$40” for “$35” and “$20” for “$17.50”.

Subsec. (b). Pub. L. 90–248, § 102(a)(2), substituted “$40” for “$35”.

See References in Text note below.

1974 Amendment
Amendment by Pub. L. 92–336 applicable with respect to monthly payments payable under this subchapter for months after August 1974, see section 310 of Pub. L. 98–21 set out as a note under section 402 of this title.

1973 Amendment
Section 2(b)(1) of Pub. L. 90–248 provided that the amendment made by that section is effective June 1, 1974.

1972 Amendment
Amendment by Pub. L. 92–603 applicable only in the case of a man who attains (or would attain) age 62 after December 1974, see section 194(j) of Pub. L. 92–603, set out as a note under section 414 of this title.

1968 Amendment
Amendment by Pub. L. 92–336 applicable with respect to monthly benefits under this subchapter for months after May 1974, and with respect to lump-sum death payments under section 402(i) of this title, see title II of Pub. L. 93–233, set out as a note under section 415 of this title.

1969 Amendment
Section 1003(c) of Pub. L. 91–172 provided that “The amendments made by subsections (a) and (b) [amending this section and section 428 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1979.”

1968 Amendment
Section 102(c) of Pub. L. 90–248 provided that “The amendments made by subsections (a) and (b) [amending this section and section 428 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968.”

1969 Amendment
Section 309(b) of Pub. L. 89–97 provided that: “The amendment made by subsection (a) [enacting this sec-
§ 428

Benefits at age 72 for certain uninsured individuals

(a) Eligibility

Every individual who—

1. has attained the age of 72,
2. (A) attained such age before 1968, or (B) attained such age after 1967, and has not less than 3 quarters of coverage, whenever acquired, for each calendar year elapsing after 1966 and before the year in which he or she attained such age,
3. is a resident of the United States (as defined in subsection (e) of this section), and is
   (A) a citizen of the United States or (B) an alien lawfully admitted for permanent residence who has resided in the United States (as defined in section 410(i) of this title) continuously during the 5 years immediately preceding the month in which he or she files application under this section, and
4. has filed application for benefits under this section,

shall (subject to the limitations in this section) be entitled to a benefit under this section for each month beginning with the first month after September 1966 in which he or she becomes so entitled to such benefits and ending with the month preceding the month in which he or she dies. No application under this section which is filed by an individual more than 3 months before the month for which the determination of eligibility is being made.

(b) Amount of benefits

The benefit amount to which an individual is entitled under this section for any month shall be the larger of $58.00 or the amount most recently established in lieu thereof under section 415(i) of this title.

(c) Reduction for government pension system benefits

(1) The benefit amount of any individual under this section for any month shall be reduced (but not below zero) by the amount of any periodic benefits under governmental pension systems for which he or she is eligible for such month.

(2) In the case of a husband and wife only one of whom is entitled to benefits under this section for any month, the benefit amount, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (A) the total amount of any periodic benefits under governmental pension systems for which the spouse who is not entitled to benefits under this section is eligible for such month, over (B) the benefit amount as determined without regard to this subsection.

(3) In the case of a husband or wife both of whom are entitled to benefits under this section for any month, the benefit amount of each spouse, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (A) the total amount of any periodic benefits under governmental pension systems for which the other spouse is eligible for such month, over (B) the benefit amount of such other spouse as determined without regard to this subsection.

(4) For purposes of this subsection, in determining whether an individual is eligible for periodic benefits under a governmental pension system—

(A) such individual shall be deemed to have filed application for such benefits,
(B) to the extent that entitlement depends on an application by such individual’s spouse, such spouse shall be deemed to have filed application, and
(C) to the extent that entitlement depends on such individual or his or her spouse having retired, such individual and his or her spouse shall be deemed to have retired before the month for which the determination of eligibility is being made.

(5) For purposes of this subsection, if any periodic benefit is payable on any basis other than a calendar month, the Commissioner of Social Security shall allocate the amount of such benefit to the appropriate calendar months.

(6) If, under the foregoing provisions of this section, the amount payable for any month would be less than $1, such amount shall be reduced to zero. In the case of a husband and wife both of whom are entitled to benefits under this section for the month, the preceding sentence shall be applied with respect to the aggregate amount so payable for such month.

(7) If any benefit amount computed under the foregoing provisions of this section is not a multiple of $0.10, it shall be raised to the next higher multiple of $0.10.

(8) Under regulations prescribed by the Commissioner of Social Security, benefit payments under this section to an individual (or aggregate benefit payments under this section in the case of a husband and wife) of less than $5 may be accumulated until they equal or exceed $5.

(d) Suspension for months in which cash payments are made under public assistance or in which supplemental security income benefits are payable

The benefit to which any individual is entitled under this section for any month shall not be paid for such month if—

1. such individual receives aid or assistance in the form of money payments in such month.
under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, or under a State program funded under part A of subchapter IV of this chapter, or

(2) such individual’s husband or wife receives such aid or assistance in such month, and under the State plan the needs of such individual were taken into account in determining eligibility for (or amount of) such aid or assistance,

unless the State agency administering or supervising the administration of such plan notifies the Commissioner of Social Security, that such payments to such individual (or such individual’s husband or wife) under such plan are being terminated with time and in such manner as may be prescribed in accordance with regulations of the Commissioner of Social Security, that such payments to such individual are not a resident of the United States. For purposes of this subsection, the term ‘United States’ means the 50 States and the District of Columbia.

(f) Treatment as monthly insurance benefits

For purposes of subsections (t) and (u) of section 402 of this title, and of section 1399s of this title, a monthly benefit under this subsection shall be treated as a monthly insurance benefit payable under section 402 of this title.

(g) Annual reimbursement of Federal Old-Age and Survivors Insurance Trust Fund

There are authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1969, and for each fiscal year thereafter, such sums as the Commissioner of Social Security deems necessary on account of—

(1) payments made under this section during the second preceding fiscal year and all fiscal years prior thereto to individuals who, as of the beginning of the calendar year in which falls the month for which payment was made, had less than 3 quarters of coverage,

(2) the additional administrative expenses resulting from the payments described in paragraph (1), and

(3) any loss in interest to such Trust Fund resulting from such payments and expenses,

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if such payments had not been made.

(h) Definitions

For purposes of this section—

(1) The term ‘quarter of coverage’ includes a quarter of coverage as defined in section 228e(l) of title 45.

(2) The term “governmental pension system” means the insurance system established by this subchapter or any other system or fund established by the United States, a State, any political subdivision of a State, or any wholly owned instrumentality of any one or more of the foregoing which provides for payment of (A) pensions, (B) retirement or retired pay, or (C) annuities or similar amounts payable on account of personal services performed by any individual (not including any payment under any workmen’s compensation law or any payment by the Secretary of Veterans Affairs for compensation for service-connected disability or death).

(3) The term “periodic benefit” includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(4) The determination of whether an individual is a husband or wife for any month shall be made under subsection (h) of section 416 of this title without regard to subsections (b) and (f) of section 416 of this title.


REFERENCES IN TEXT

Section 211 of Pub. L. 93–66, referred to in subsec. (d), is set out as a note under section 1382 of this title.

Section 228e(d) of title 45, referred to in subsec. (b)(1), is a reference to section 5(l) of the Railroad Retirement Act of 1937. That Act was amended in its entirety and completely revised by Pub. L. 93–446, Oct. 16, 1974, 88 Stat. 1305. The Act, as thus amended and revised, was redesignated the Railroad Retirement Act of 1974, and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Section 228e of title 45 is covered by section 251e of Title 45.

AMENDMENTS

1996—Subsec. (d)(1). Pub. L. 104–193 inserted “under a State program funded under” before “part A of subchapter IV of this chapter”.

1994—Subsecs. (c)(5), (8), (d), (g). Pub. L. 103–296 substituted “Commissioner of Social Security” for “Secretary” wherever appearing.

1983—Subsec. (b)(2). Pub. L. 92–54 substituted “Secretary of Veterans Affairs” for “Veterans Administration”. 


1983—Subsec. (a), Pub. L. 98–21, § 305(d)(1), substituted “‘he or she’ for “he” wherever appearing.

Subsec. (b). Pub. L. 98–21, § 305(a), substituted “The” for “(1) Except as provided in paragraph (2), the” and struck out par. (2), which had provided that if both husband and wife were entitled or would have been entitled upon application to benefits under this section for any month, the amount of the husband’s benefit for such month would be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title, and the amount of the wife’s benefit for such month would be the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

Subsec. (c)(1). Pub. L. 98–21, § 305(d)(1), substituted “‘he or she’ for “he.”

Subsec. (c)(2). Pub. L. 98–21, § 305(b), substituted “(B) the benefit amount as determined without regard to this subsection” for “(B) the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.”

Subsec. (c)(3). Pub. L. 98–21, § 305(c), amended par. (3) generally, substituting provisions relating to either a husband or wife for provision that the benefit amount of the wife, after any reduction under paragraph (1), would be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the husband was eligible for such month, over (ii) the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title, and that the benefit amount of the husband, after any reduction under paragraph (1), would be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the wife was eligible for such month, over (ii) the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

Subsec. (c)(4)(C). Pub. L. 98–21, § 305(d)(3), as amended by Pub. L. 98–389, § 2662(e), substituted “‘his or her” for “his” wherever appearing.

1973—Subsec. (b). Pub. L. 92–233, § 2(b)(1), substituted “the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title” for “$58.00” in par. (1) and (2) and “the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title” for “$20” in par. (2).

Subsec. (c). Pub. L. 92–233, § 2(b)(1), substituted “the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title” for “$58.00” in par. (3), subpar. (A) and “the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title” for “$20” in par. (2) and par. (3) subpar. (B).

Subsec. (d). Pub. L. 92–233, § 18(c) provided for elimination of benefits at age 72 for uninsured individuals receiving supplemental security income benefits.


Subsec. (b)(2). Pub. L. 92–336, § 201(g)(2)(B), substituted “$38.00” for “$48.30” and “$20” for “$23”.

Subsec. (c)(1). Pub. L. 92–336, § 201(g)(2)(C), substituted “$20” for “$23”.

Subsec. (c)(2). Pub. L. 92–336, § 201(g)(2)(D), substituted “$38.00” for “$48.30”.


Subsec. (c)(2). Pub. L. 91–172, § 1003(b)(3), substituted “$30” for “$20”.


Subsec. (b)(2). Pub. L. 90–202, § 102(b)(2), substituted “$50” for “$45” and “$20” for “$20”.

Subsec. (c)(2). Pub. L. 90–202, § 102(b)(3), substituted “$20” for “$20”.


Subsec. (b)(2). Pub. L. 90–202, § 102(b)(5), substituted “$40” for “$35”.

Subsec. (c)(3)(B). Pub. L. 90–202, § 102(b)(6), substituted “$20” for “$17.50”.

Subsec. (d)(1). Pub. L. 90–202, § 241(a), struck out “IV,” after “I,” and inserted “or part A of subchapter IV of this chapter,” after “XVI of this chapter,”.

**Effective Date of 1996 Amendment**

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

**Effective Date of 1994 Amendment**


**Effective Date of 1990 Amendment**

Section 511(b) of Pub. L. 101–506 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to benefits payable on the basis of applications filed after the date of the enactment of this Act [Nov. 5, 1990].”

**Effective Date of 1984 Amendment**


Amendment by section 2663(j)(3)(A)(iv) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

**Effective Date of 1983 Amendment**

Amendment by Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of this chapter for months after April 1983, see section 310 of this title.

**Effective Date of 1973 Amendment**

Section 2(b)(1) of Pub. L. 93–233 provided that the amendment made by that section is effective June 1, 1974.
Amendment by section 2(b)(1) of Pub. L. 93–233 applicable with respect to monthly benefits under this subchapter for months after May 1974, and with respect to lump-sum death payments under section 402(i) of this title, see section 2(c) of Pub. L. 93–233, set out as a note under section 415 of this title.

**Effective Date of 1972 Amendment**
Amendment by Pub. L. 92–336 applicable with respect to monthly benefits under subchapter II of this chapter for months after December 1972, see section 202(c) of Pub. L. 92–336, set out as a note under section 415 of this title.

**Effective Date of 1971 Amendment**
Amendment by Pub. L. 92–5 applicable with respect to monthly benefits under subchapter II of this chapter for months after December 1970, see section 202(c) of Pub. L. 92–5, set out as a note under section 427 of this title.

**Effective Date of 1969 Amendment**
Amendment by Pub. L. 91–172 applicable for months after December 1969, see section 1006(c) of Pub. L. 91–172, set out as a note under section 427 of this title.

**Effective Date of 1968 Amendment**
Amendment by section 102(b) of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for months after January 1968, see section 102(c) of Pub. L. 90–248, set out as a note under section 427 of this title.

**Repeal of Amendment of Subsecs. (b)(1), (2) and (c)(3)(A), (B) Prior to Effective Date**
Section 302(a)(4) of Pub. L. 92–336, title II, July 1, 1972, 86 Stat. 416, which, effective Jan. 1, 1973, substituted "the larger of $50.00 or the amount most recently established in lieu thereof under section 415(a) of this title", for "$50.00" and "the larger of $29.00 or the amount most recently established in lieu thereof under section 415(a) of this title" for "$29.00", was repealed prior to its effective date by Pub. L. 93–233, § 2(b)(2), Dec. 31, 1973, 87 Stat. 952, applicable with respect to monthly benefits under this subchapter for months after May 1974, and with respect to lump-sum death payments under section 402(i) of this title. See section 2(c) of Pub. L. 93–233, set out as an Effective Date of 1973 Amendment note under section 415 of this title.

**Application to Northern Mariana Islands**
For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 56595, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

**Increases To Take Into Account General Benefit Increases**
Section 303(e) of Pub. L. 98–21 provided that: "The Secretary shall increase the amounts specified in section 228 of the Social Security Act [this section], as amended by this section, to take into account any general benefit increases (as referred to in section 215(i)(3) of such Act [section 415(i)(3) of this title]) and any increases under section 215(i) of such Act, which have occurred after June 1974 or may hereafter occur."

**Special $50 Payment Under Tax Reduction Act of 1975**
Special payment of $50 as soon as practicable after Mar. 29, 1975, by Secretary of the Treasury to each individual who, for month of March 1975, was entitled to a monthly insurance benefit payable under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of this title.

**Applications for Transitional Coverage of Uninsured Individuals for Hospital Insurance Benefits**
Section 302(b) of Pub. L. 89–368 provided that: "For purposes of paragraph (4) of section 228(a) of the Social Security Act [subsec. (a)(4) of this section] (added by subsection (a) of this section), an application filed under section 103 of the Social Security Amendments of 1965 [set out as a note under section 428 of this title] before July 1966 shall be regarded as an application under such section 228 [this section] and shall, for purposes of such paragraph and of the last sentence of such section 228(a), be deemed to have been filed in July 1966, unless the person by whom or on whose behalf such application was filed notifies the Secretary that he does not want such application so regarded."

§ 429. Benefits in case of members of uniformed services
For purposes of determining entitlement to and the amount of any monthly benefit for any month after December 1972, or entitlement to and the amount of any lump-sum death payment in case of a death after such month, under this subchapter on the basis of the wages and self-employment income of any individual, and for purposes of section 416(i)(3) of this title, such individual, if he was paid wages for service as a member of a uniformed service (as defined in section 410(m) of this title) which was included in the term 'employment' as defined in section 410(a) of this title as a result of the provisions of section 410(i)(1)(A) of this title, shall be deemed to have been paid—

1. in each calendar quarter occurring after 1956 and before 1978 in which he was paid such wages, additional wages of $300, and

2. in each calendar year occurring after 1977 and before 2002 in which he was paid such wages, additional wages of $100 for each $300 of such wages, up to a maximum of $1,200 of additional wages for any calendar year.


**Amendments**
2004—Pub. L. 108–203, § 420(b)(1), struck out subsec. (a) designation before "For purposes of" and struck out subsec. (b), which authorized to be appropriated to each of the Trust Funds, for transfer on July 1 of each calendar year to such Fund, an amount equal to the total of the additional amounts which would be appropriated to such Fund for the fiscal year ending Sept. 30 of such calendar year under section 401 or 1395i of this title if the amounts of the additional wages deemed to have been paid for such calendar year constituted remuneration for employment for purposes of the taxes imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 and set forth provisions relating to the distribution of amounts authorized to be appropriated and adjustments to such amounts.
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Amendment by Pub. L. 94–216 effective Jan. 1, 1978, see section 353(g) of Pub. L. 95–216, set out as a note under section 418 of this title.

Effective Date of 1972 Amendment

Section 120(b) of Pub. L. 92–603 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1972 and with respect to lump-sum death payments under such title in the case of deaths occurring after December 1972 except that, in the case of any individual who is entitled, on the basis of the wages and self-employment income of any individual to whom section 229 of such Act [this section] applies, to monthly benefits under title II of such Act for the month in which this Act is enacted [October 1972], such amendments shall apply (1) only if a written request for a recalculation of such benefits (by reason of such amendments) under the provisions of section 251(b) and (d) of such Act [section 415(b) and (d) of this title], as in effect at the time such request is filed, is filed by such individual, or any other individual, entitled to benefits under such title II on the basis of such wages and self-employment income, and (2) only with respect to such benefits for months beginning with whichever of the following is later: January 1973 or the twelfth month before the month in which such request was filed. Recalculations of benefits as required to carry out the provisions of this section shall be made notwithstanding the provisions of section 251(f)(1) of the Social Security Act, and no such recalculation shall be regarded as a recomputation for purposes of section 251(f) of such Act."

Payment of Wages After 2001

Pub. L. 107–117, div. A, title VIII, § 8134, Jan. 10, 2002, 115 Stat. 2278, provided that: "Notwithstanding section 229(a) of the Social Security Act [section (a) of this section], no wages shall be deemed to have been paid to any individual pursuant to that section in any calendar year after 2001."

Compensatory Payments to Trust Funds

Section 151(b)(3) of Pub. L. 98–21, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "(A) Within thirty days after the date of the enactment of this Act [Apr. 20, 1983], the Secretary of Health and Human Services shall determine the additional amounts which would have been appropriated to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund under sections 201 and 1817 of the Social Security Act [sections 401 and 1861 of this title] if the additional wages deemed to have been paid under section 229(a) of the Social Security Act [subsection (a) of this section] prior to 1984 had constituted remuneration for employment (as defined in section 3121(b) of the Internal Revenue Code of 1986 [former I.R.C. 1304] [26 U.S.C. 3121(b)]) for purposes of the taxes imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 [26 U.S.C. 3101, 3111], and the amount of interest which would have been earned on such amounts if they had been so appropriated.

(B)(i) Within thirty days after the date of the enactment of this Act [Apr. 20, 1983], the Secretary of the Treasury shall transfer to each such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, an amount equal to the amount determined with respect to such Trust Fund under subparagraph (A) less any amount appropriated to such Trust Fund pursuant to the provisions of section 229(b) of the Social Security Act [subsection (b) of this section] prior to the date of the determination made under subparagraph (A) with respect to wages deemed to have been paid for calendar years prior to 1984."

(ii) The Secretary of Health and Human Services shall revise the amount determined under clause (i)
with respect to each such Trust Fund within one year after the date of the transfer made to such Trust Fund under clause (i), as determined appropriate by such Secretary from data which becomes available to him after the date of the transfer under clause (i). Within 30 days after any such revision, the Secretary of the Treasury shall transfer to such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, or from such Trust Fund to the general fund of the Treasury, such amounts as the Secretary of Health and Human Services certifies as necessary to take into account such revision."

§ 430. Adjustment of contribution and benefit base

(a) Determination and publication by Commissioner in Federal Register subsequent to cost-of-living benefit increase; effective date

Whenever the Commissioner of Social Security pursuant to section 415(i) of this title increases benefits effective with the December following a cost-of-living computation quarter, the Commissioner shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the contribution and benefit base determined under subsection (b) or (c) of this section which shall be effective with respect to remuneration paid after the calendar year in which such quarter occurs and taxable years beginning after such year.

(b) Determination of amount

The amount of such contribution and benefit base shall (subject to subsection (c) of this section) be the amount of the contribution and benefit base in effect in the year in which the determination is made or, if larger, the product of—

(1) $60,600, and

(2) the ratio of (A) the national average wage index (as defined in section 409(k)(1) of this title) for the calendar year before the calendar year in which the determination under subsection (a) of this section is made to (B) the national average wage index (as so defined) for 1992, with such product, if not a multiple of $300, being rounded to the next higher multiple of $300 where such product is a multiple of $150 but not of $300 and to the nearest multiple of $300 in any other case.

(c) Amount of base for period prior to initial cost-of-living benefit increase

For purposes of this section, and for purposes of determining wages and self-employment income under sections 409, 411, 413, and 415 of this title and sections 1402, 3121, 3122, 3125, 6413, and 6654 of the Internal Revenue Code of 1986, (1) the "contribution and benefit base" with respect to remuneration paid in (and taxable years beginning in) any calendar year after 1973 and prior to the calendar year with the June of which the first increase in benefits pursuant to section 415(i) of this title becomes effective shall be $33,200 or (if applicable) such other amount as may be specified in a law enacted subsequent to the law which added this section, and (2) the "contribution and benefit base" with respect to remuneration paid (and taxable years beginning—

(A) in 1978 shall be $17,700,

(b) in 1979 shall be $22,900,

(c) in 1980 shall be $25,900, and

(d) in 1981 shall be $29,700.

For purposes of determining under subsection (b) of this section the "contribution and benefit base" with respect to remuneration paid (and taxable years beginning) in 1982 and subsequent years, the dollar amounts specified in clause (2) of the preceding sentence shall be considered to have resulted from the application of such subsection (b) of this section and to be the amount determined (with respect to the years involved) under that subsection.

(d) Determinations for calendar years after 1976 for purposes of retirement benefit plans

Notwithstanding any other provision of law, the contribution and benefit base determined under this section for any calendar year after 1976 for purposes of section 1322(b)(3)(B) of title 29, with respect to any plan, shall be the contribution and benefit base that would have been determined for such year if this section as in effect immediately prior to the enactment of the Social Security Amendments of 1977 had remained in effect without change (except that, for purposes of subsection (b) of such section 430 of this title as so in effect, the reference to the contribution and benefit base in paragraph (1) of such subsection (b) shall be deemed a reference to an amount equal to $45,000, each reference in paragraph (2) of such subsection (b) to the average of the wages of all employees as reported to the Secretary of the Treasury shall be deemed a reference to the national average wage index (as defined in section 409(k)(1) of this title), the reference to a preceding calendar year in paragraph (2)(A) of such subsection (b) shall be deemed a reference to the calendar year in which the determination under subsection (a) of such section 430 of this title is made, and the reference to a calendar year in paragraph (2)(B) of such subsection (b) shall be deemed a reference to 1992).


REFERENCES IN TEXT

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

"Subsequent to the law which added this section", referred to in subsec. (c), means subsequent to the enactment of Pub. L. 92–336, which was approved July 1, 1972.

**AMENDMENTS**

1994—Subsec. (a). Pub. L. 103–296, § 107(a)(4), substituted “Commissioner of Social Security” for “Secretary and the Commission shall” for “(a) the contribution and benefit base which is in effect with respect to remuneration paid in (and taxable years beginning in) the calendar year in which the determination under subsection (a) of this section is made, and (2) the ratio of (A) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the calendar year in which the determination under subsection (a) of this section is made to (B) the deemed average total wages (as so defined) for the calendar year before the most recent calendar year in which an increase in the contribution and benefit base was enacted or a determination resulting in such an increase was made under subsection (a) of this section’’.


Subsec. (d). Pub. L. 103–296, § 321(g)(1)(B), at end substituted ‘‘(except that, for purposes of subsection (b)(2)(A) of this section as so in effect, the reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed a reference to the deemed average total wage (within the meaning of section 409(k)(1) of this title) for such calendar year)’’ for ‘‘(1984)’’ after ‘‘Code of’’.

Subsec. (b)(2)(B). Pub. L. 101–239, § 10208(b)(1)(B), as amended by Pub. L. 103–296, § 321(b)(2), substituted ‘‘the deemed average total wages (as defined in section 409(k)(1) of this title) for ‘‘the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year in which the determination under subsection (a) of this section is made to (B) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year before’’ for ‘‘(A) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year in which the determination under subsection (a) of this section with respect to such particular calendar years was made to (B) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year 1973 or, if later, the calendar year preceding’’.

Subsec. (b)(2)(C). Pub. L. 105–314, § 313(b)(1), added ‘‘(C) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year which for purposes of this subsection, the average of the wages for the calendar year 1978 (or any prior calendar year), in the case of determinations made under subsection (a) of this section prior to December 31, 1979, be deemed to be an amount equal to 400 per centum of the amount of the average of the taxable wages of all employees as reported to the Secretary for the first calendar quarter of such calendar year’’.

Subsec. (c). Pub. L. 105–314, § 313(b), designated existing provisions as introductory material and cl. (1) and added cl. (2) and closing material.


1976—Subsec. (b). Pub. L. 94–292 substituted ‘‘wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year’’ for ‘‘taxable wages of all employees as reported to the Secretary for the first calendar quarter of the calendar year’’ and made to ‘‘taxable wages of all employees as reported to the Secretary for the first calendar quarter of 1973 or, if later, the calendar year preceding’’.

Subsec. (c). Pub. L. 94–292 substituted ‘‘(A) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year 1978 (or any prior calendar year), in the case of determinations made under subsection (a) of this section prior to December 31, 1979, be deemed to be an amount equal to 400 per centum of the amount of the average of the taxable wages of all employees as reported to the Secretary for the first calendar quarter of such calendar year’’.

Section 10208(b)(1) of the Revised Statutes, as added by Pub. L. 95–216, § 353(1), substituted ‘‘(1984)’’ for ‘‘1984’’ as in original, which had been translated as ‘‘section 231b(a) or (f)(3) of title 45’’.

1973—Subsec. (a). Pub. L. 93–233, § 3(j)(1), substituted ‘‘June’’ for ‘‘the first month of the calendar year’’ and struck out ‘‘(along with the publica-
tion of such benefit increase as required by section 415(c)(2)(D) of this title”) after “such quarter occurs” and “(unless such increase in benefits is prevented from becoming effective by section 415(a)(B) of this title) after “shall be effective”, respectively.

Subsec. (c). Pub. L. 93-233, §§3(2)(2), 5(c), substituted “the June” for “the first month” and “$13,200” for “$12,600”, respectively.

Pub. L. 93-66 substituted “$12,600” for “$12,000”.


**Effective Date of 1994 Amendment**

Amendment by section 107(a)(4) of Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of this title.

Section 321(b)(2) of Pub. L. 103-296 provided that the amendment made by that section is effective as if included in section 10208(b)(1) of Pub. L. 101-239.

Amendment by section 231(a)(1), (B) of Pub. L. 103-296 effective with respect to the determination of the contribution and benefit base for years after 1994, see section 321(g)(3)(A) of Pub. L. 103-296, set out as a note under section 415 of this title.

**Effective Date of 1989 Amendment**

Section 10208(c) of Pub. L. 101-239 provided that:

“(1) In general.—The amendments made by subsections (a) and (b) [amending this section and sections 403, 409, 413, 415, and 424a of this title] shall apply with respect to the computation of average total wage amounts (under the amended provisions) for calendar years after 1990.

“(2) Transitional rule.—For purposes of determining the contribution and benefit base for 1990, 1991, and 1992 under section 230(b) of the Social Security Act [subsec. (b) of this section] (and section 230(b) of such Act as in effect immediately prior to enactment of the Social Security Amendments of 1977 [Pub. L. 95-216, approved Dec. 20, 1977])—

“(A) the average of total wages for 1988 shall be deemed to be equal to the amount which would have been determined without regard to this paragraph, plus 2 percent of the amount which has been determined in accordance with the provisions of this Act [Act of Oct. 24, 2011, 76 F.R. 66111, it was determined and

Social Security Amendments of 1977], the average of total wages for 1990 shall be determined without regard to subparagraph (C) of paragraph (2).

“(B) the average of total wages for 1989 shall be deemed to be equal to the amount which would have been determined without regard to this paragraph, plus 2 percent of the amount which would have been determined to be the average of total wages for 1987.

“(C) the average of total wages for 1988 shall be deemed to be equal to the product of—

“(i) the SSA average wage index (as defined in section 215(i)(1)(G) of the Social Security Act [section 415(i)(1)(G) of this title] and promulgated by the Secretary) for 1989, and

“(ii) the quotient obtained by dividing—

“(I) the average of total wages (as defined in regulations of the Secretary and computed without regard to the limitations of section 209(a)(1) of the Social Security Act [section 409(a)(1) of this title]) and by including deferred compensation amounts, within the meaning of section 209(k)(2) of such Act as added by this section) reported to the Secretary of the Treasury or his delegate for 1989, by

“(II) the average of total wages (as so defined and computed without regard to the limitations specified in such section 209(a)(1) and by excluding deferred compensation amounts within the meaning of such section 209(k)(2) reported to the Secretary of the Treasury or his delegate for 1989.

“(3) Determination of contribution and benefit base for 1991.—For purposes of determining the contribution and benefit base for 1993 under section 230(b) of the Social Security Act (and section 230(b) of such Act as in effect immediately prior to enactment of the Social Security Amendments of 1977), the average of total wages for 1990 shall be determined without regard to subparagraph (C) of paragraph (2).

“(4) Revised determination for section 230 of the Social Security Act.—As soon as possible after the enactment of this Act [Dec. 19, 1989], the Secretary of Health and Human Services shall revise and publish, in accordance with the provisions of this Act [Pub. L. 101-239, see Tables for classification] and the amendments made thereby, the contribution and benefit base under section 230 of the Social Security Act with respect to remuneration paid after 1989 and taxable years beginning after calendar year 1989.”

**Effective Date of 1984 Amendment**

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

**Effective and Termination Dates of 1983 Amendments**

Amendment by section 211(d) of Pub. L. 98-76 applicable to compensation paid for services rendered after Dec. 31, 1983, and before Jan. 1, 1985, see section 212 of Pub. L. 98-76, set out as a note under section 3201 of Title 26, Internal Revenue Code.

Amendment by section 225(a)(4) of Pub. L. 98-76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98-76, set out as a note under section 3201 of Title 26.

Amendment by Pub. L. 98-21 applicable with respect to cost-of-living increases determined under section 415(i) of this title for years after 1982, see section 111(a)(8) of Pub. L. 98-21, set out as an Effective Date of 1983 Amendment note under section 401 of this title.

**Effective Date of 1981 Amendment**

Amendment by Pub. L. 97-34 applicable to compensation paid for services rendered after Sept. 30, 1981, see section 741(e) of Pub. L. 97-34, set out as a note under section 3201 of Title 26, Internal Revenue Code.

**Effective Date of 1977 Amendment**

Amendment by section 103(a), (b) of Pub. L. 95-216 applicable with respect to remunerations paid or received, and taxable years beginning after, 1987, see section 353(e) of Pub. L. 95-216 provided that: ‘‘The amendments made by paragraph (1) [amending this section] shall apply with respect to plan terminations occurring after the date of the enactment of this Act [Dec. 20, 1977].’’

Amendment by section 333(e) of Pub. L. 95-216 effective Jan. 1, 1979, see section 333(g) of Pub. L. 95-216, set out as a note under section 418 of this title.

**Effective Date of 1973 Amendments**

Amendment by Pub. L. 93-233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93-233, set out as a note under section 409 of this title.

Amendment by Pub. L. 93-66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 263(e) of Pub. L. 93-66, set out as a note under section 409 of this title.

**Effective Date of 1972 Amendment**

Amendment by Pub. L. 92-603 effective in like manner as if such amendment had been included in title II of Pub. L. 92-336, see section 144(b) of Pub. L. 92-603, set out as a note under section 403 of this title.

**Social Security Contribution and Benefit Base**

2012—By notice of the Commissioner of Social Security, Oct. 24, 2011, 76 F.R. 66111, it was determined and
announced that the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2012 is $110,100.

By notice of the Commissioner of Social Security, Oct. 20, 2010, 75 F.R. 74123, it was determined and announced that the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2011 will remain $106,800.

2010—By notice of the Commissioner of Social Security, Oct. 20, 2009, 74 F.R. 59384, it was determined and announced that the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2010 will remain $106,800.

2009—By notice of the Commissioner of Social Security, Oct. 24, 2008, 73 F.R. 66653, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2009 is $106,800.

2008—By notice of the Commissioner of Social Security, Oct. 19, 2007, 72 F.R. 60703, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2008 is $102,000.

2007—By notice of the Commissioner of Social Security, Oct. 19, 2006, 71 F.R. 62638, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2007 is $97,500.

2006—By notice of the Commissioner of Social Security, Oct. 18, 2005, 70 F.R. 61677, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2006 is $94,200.

2005—By notice of the Commissioner of Social Security, Oct. 26, 2004, 69 F.R. 62497, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2005 is $90,000.

2004—By notice of the Commissioner of Social Security, Oct. 16, 2003, 68 F.R. 60937, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2004 is $87,900.

2003—By notice of the Commissioner of Social Security, Oct. 18, 2002, 67 F.R. 65620, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2003 is $84,900.

2002—By notice of the Commissioner of Social Security, Oct. 18, 2000, 65 F.R. 63663, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2001 is $80,400.

2001—By notice of the Commissioner of Social Security, Oct. 20, 1999, 64 F.R. 57596, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 2000 is $76,200.

1999—By notice of the Commissioner of Social Security, Oct. 21, 1998, 63 F.R. 58446, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1999 is $72,600.

1998—By notice of the Commissioner of Social Security, Oct. 22, 1997, 62 F.R. 58782, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1998 is $68,400.

1997—By notice of the Commissioner of Social Security, Oct. 18, 1996, 61 F.R. 53348, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1997 is $65,400.

1996—By notice of the Commissioner of Social Security, Oct. 18, 1995, 60 F.R. 54751, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1996 is $62,700.

1995—By notice of the Secretary of Health and Human Services, Oct. 25, 1994, 59 F.R. 54646, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1995 is $60,600.

1994—By notice of the Secretary of Health and Human Services, Oct. 20, 1993, 58 F.R. 58004, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1994 is $60,600.

1993—By notice of the Secretary of Health and Human Services, Oct. 20, 1992, 57 F.R. 48619, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1993 is $57,600.

1992—By notice of the Secretary of Health and Human Services, Oct. 21, 1991, 56 F.R. 55325, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1992 is $55,500.

1991—By notice of the Secretary of Health and Human Services, Oct. 21, 1990, 55 F.R. 45684, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1991 is $53,400.

1990—By notice of the Secretary of Health and Human Services, Oct. 26, 1989, 54 F.R. 45803, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1990 is $50,400.

1989—By notice of the Secretary of Health and Human Services, Oct. 27, 1988, 53 F.R. 43862, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1989 is $48,000.

1988—By notice of the Secretary of Health and Human Services, Oct. 19, 1987, 52 F.R. 41672, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1988 is $45,000.

1987—By notice of the Secretary of Health and Human Services, Oct. 31, 1986, 51 F.R. 40256, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1987 is $43,800.
1986—By notice of the Secretary of Health and Human Services, Oct. 29, 1985, 50 F.R. 45599, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1986 is $42,000.

1985—By notice of the Secretary of Health and Human Services, Oct. 29, 1984, 49 F.R. 43775, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1985 is $39,600.

1983—By notice of the Secretary of Health and Human Services, Nov. 4, 1982, 47 F.R. 51603, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base with respect to remuneration paid in, and for which he was an internee, wages (in addition to any wages actually paid to him) at a weekly rate of basic pay during such period as follows—

(A) in the case such individual was not employed prior to the beginning of such period, 40 multiplied by the minimum hourly rate or rates in effect at any such time under section 206(a)(1) of title 29, for each full week during such period; and

(B) in the case such individual who was employed prior to the beginning of such period, 40 multiplied by the greater of (i) the highest hourly rate received during any such employment, or (ii) the minimum hourly rate or rates in effect at any such time under section 206(a)(1) of title 29, for each full week during such period.

(2) This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump-sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon internment during any period from December 7, 1941, through December 31, 1946, at a place within the United States operated by the Government of the United States for the internment of United States citizens of Japanese ancestry, is determined by any agency or wholly owned instrumentality of the United States to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) shall not apply in the case of any monthly benefit or lump-sum death payment under this subchapter if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 415 of this title prior to any recomputation thereof pursuant to subsection (f) of such section) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) shall also not apply for purposes of section 416(i)(3) of this title.

(3) Upon application for benefits, a recalculation of benefits (by reason of this section), or a lump-sum death payment on the basis of the wages and self-employment income of any individual, who was an internee, the Commissioner of Social Security shall accept the certification of the Secretary of Defense or his designee concerning any period of time for which an internee is to receive credit under paragraph (1) and shall make a decision without regard to clause (B) of paragraph (2) of this subsection unless the Commissioner has been notified by some other agency or instrumentality of the United States that, on the basis of the period for which such individual was an internee, a benefit described in clause (B) of paragraph (2) has been determined.
by such agency or instrumentality to be payable by it. If the Commissioner of Social Security has not been so notified, the Commissioner shall then ascertain whether some other agency or wholly owned instrumentality of the United States shall decide that a benefit described in clause (B) of paragraph (2) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Commissioner of Social Security, and the Commissioner of Social Security shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by this section.

(4) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on any period for which any individual was an internee shall, at the request of the Commissioner of Social Security, certify to the Commissioner, with respect to any individual who was an internee, such information as the Commissioner of Social Security deems necessary to carry out the Commissioner's functions under paragraph (3) of this subsection.

(c) Authorization of appropriations

There are authorized to be appropriated to the Trust Funds and the Federal Hospital Insurance Trust Fund for the fiscal year ending June 30, 1978, such sums as the Commissioner of Social Security and the Secretary jointly determine would place the Trust Funds and the Federal Hospital Insurance Trust Fund in the position in which they would have been if the preceding provisions of this section had not been enacted.


AMENDMENTS

1994—Subsec. (b)(3). Pub. L. 103–296, §107(a)(1), (4), substituted “Commissioner of Social Security” for “Secretary of Health and Human Services” after “an internee, the”, after “If the”, and after “so notify the”, substituted “the Commissioner” for “he” before “has been notified” and before “shall then ascertain”, and substituted “Commissioner of Social Security” for “Secretary” before “shall certify no”.

Subsec. (b)(4). Pub. L. 103–296, §107(a)(1), (4), substituted “Commissioner of Social Security, certify to the Commissioner, with respect to any individual who was an internee, such information as the Commissioner of Social Security deems necessary to carry out the Commissioner’s functions under paragraph (3) of this subsection” for “Secretary of Health and Human Services, certify to him, with respect to any individual who was an internee, such information as the Commissioner deems necessary to carry out his functions under paragraph (3) of this subsection”.

Subsec. (c). Pub. L. 103–296, §107(c), substituted “Commissioner of Social Security and the Secretary jointly determine” for “Secretary determines”.


**Effective Date of 1994 Amendment**


**Effective Date of 1984 Amendment**

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

**Special $50 Payment Under Tax Reduction Act of 1975**

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March 1975, was entitled to a monthly insurance benefit payable under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 422 of this title.

§ 432. Processing of tax data

The Secretary of the Treasury shall make available information returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1986, to the Commissioner of Social Security for the purposes of this subchapter and subchapter XI of this chapter. The Commissioner of Social Security and the Secretary of the Treasury are authorized to enter into an agreement for the processing by the Commissioner of Social Security of information contained in returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1986. Notwithstanding the provisions of section 6103(a) of the Internal Revenue Code of 1986, the Secretary of the Treasury shall make available to the Commissioner of Social Security such documents as may be agreed upon as being necessary for purposes of such processing. The Commissioner of Social Security shall process any withholding tax statements or other documents made available to the Commissioner by the Secretary of the Treasury pursuant to this section. Any agreement made pursuant to this section shall remain in full force and effect until modified or otherwise changed by mutual agreement of the Commissioner of Social Security and the Secretary of the Treasury.


REFERENCES IN TEXT

Part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1986, referred to in text, is classified to section 6031 et seq. of Title 26, Internal Revenue Code.

AMENDMENTS


Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing, except where appearing before “of the Treasury” and substituted “available to the Commissioner” for “available to him”.

**Effective Date of 1994 Amendment**


**Effective Date**

Section 8(c) of Pub. L. 94–202 provided that: “Section 232 of the Social Security Act [this section], as added
§ 433. International agreements

(a) Purpose of agreement

The President is authorized (subject to the succeeding provisions of this section) to enter into agreements establishing totalization arrangements between the social security system established by this subchapter and the social security system of any foreign country, for the purposes of establishing entitlement to and the amount of old-age, survivors, disability, or derivative benefits based on a combination of an individual’s periods of coverage under the social security system established by this subchapter and the social security system of such foreign country.

(b) Definitions

For the purposes of this section—

(1) the term “social security system” means, with respect to a foreign country, a social insurance or pension system which is of general application in the country and under which periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, death, or disability; and

(2) the term “period of coverage” means a period of payment of contributions or a period of earnings based on wages for employment or on self-employment income, or any similar period recognized as equivalent thereto under this subchapter or under the social security system of a country which is a party to an agreement entered into under this section.

(c) Crediting periods of coverage; conditions of payment of benefits

(1) Any agreement establishing a totalization arrangement pursuant to this section shall provide—

(A) that in the case of an individual who has at least 6 quarters of coverage as defined in section 413 of this title and periods of coverage under the social security system of a foreign country which is a party to such agreement, periods of coverage of such individual under such social security system of such foreign country may be combined with periods of coverage under this subchapter and otherwise considered for the purposes of establishing entitlement to and the amount of old-age, survivors, and disability insurance benefits under this subchapter;

(B)(i) that employment or self-employment, or any service which is recognized as equivalent to employment or self-employment under this subchapter or the social security system of a foreign country which is a party to such agreement, shall, on or after the effective date of such agreement, result in a period of coverage under the system established under this subchapter or under the system established under the laws of such foreign country, but not under both, and (ii) the methods and conditions for determining under which system employment, self-employment, or other service shall result in a period of coverage; and

(C) that where an individual’s periods of coverage are combined, the benefit amount payable under this subchapter shall be based on the proportion of such individual’s periods of coverage which was completed under this subchapter.

(2) Any such agreement may provide that an individual who is entitled to cash benefits under this subchapter shall, notwithstanding the provisions of section 402(t) of this title, receive such benefits while he resides in a foreign country which is a party to such agreement.

(3) Section 426 of this title shall not apply in the case of any individual to whom it would not be applicable but for this section or any agreement or regulation under this section.

(4) Any such agreement may contain other provisions which are not inconsistent with the other provisions of this subchapter and which the President deems appropriate to carry out the purposes of this section.

(d) Regulations

The Commissioner of Social Security shall make rules and regulations and establish procedures which are reasonable and necessary to implement and administer any agreement which has been entered into in accordance with this section.

(e) Reports to Congress; effective date of agreements

(1) Any agreement to establish a totalization arrangement entered into pursuant to this section shall be transmitted by the President to the Congress together with a report on the estimated number of individuals who will be affected by the agreement and the effect of the agreement on the estimated income and expenditures of the programs established by this chapter.

(2) Such an agreement shall become effective on any date, provided in the agreement, which occurs after the expiration of the period (following the date on which the agreement is transmitted in accordance with paragraph (1)) during which at least one House of the Congress has been in session on each of 60 days; except that such agreement shall not become effective if, during such period, either House of the Congress adopts a resolution of disapproval of the agreement.


AMENDMENTS


1983—Subsec. (e)(2). Pub. L. 98–21 struck out “during which at least one House of the Congress has been in session on each of 60 days” for “during which each House of the Congress has been in session on each of 90 days”.

1981—Subsec. (c)(2). Pub. L. 97–35 struck out provision permitting the agreement to provide that if the benefit paid by the United States to an individual who legally
resides in the United States when added to the benefit paid by the foreign country is less than the benefit amount payable to such individual based on the first figure in, column IV of the table in section 415(a) of this title in the case of an individual becoming eligible before Jan. 1, 1979, or based on a primary insurance amount determined under section 415(a)(3)(i)(I) of this title in the case of an individual becoming eligible for such benefit on or after such date, the benefit paid by the United States be increased so that the two benefits equal the benefit amount that would be payable.

**Effective Date of 1994 Amendment**


**Effective Date of 1984 Amendment**

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

**Effective Date of 1983 Amendment**

Section 326(b) of Pub. L. 98–21 provided that: "The amendment made by subsection (a) [amending this section] shall be effective on the date of the enactment of this Act [Apr. 20, 1983]."

**Effective Date of 1981 Amendment**

Amendment by Pub. L. 97–35 applicable with respect to benefits for months after December 1981, with certain exceptions, see section 2(j)(2)–(4) of Pub. L. 97–123, set out as a note under section 401 of this title.

§ 434. Demonstration project authority

(a) Authority

(1) In general

The Commissioner of Social Security (in this section referred to as the "Commissioner") shall develop and carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of—

(A) various alternative methods of treating the work activity of individuals entitled to disability insurance benefits under section 423 of this title or to monthly insurance benefits under section 402 of this title based on such individual's disability (as defined in section 423(d) of this title), including such methods as a reduction in benefits based on earnings, designed to encourage the return to work of such individuals;

(B) altering other limitations and conditions applicable to such individuals (including lengthening the trial work period (as defined in section 422(c) of this title), altering the 24-month waiting period for hospital insurance benefits under section 426 of this title, altering the manner in which the program under this subchapter is administered, earlier referral of such individuals for rehabilitation, and greater use of employers and others to develop, perform, and otherwise stimulate new forms of rehabilitation); and

(C) implementing sliding scale benefit offsets using variations in—

(i) the amount of the offset as a proportion of earned income;

(ii) the duration of the offset period; and

(iii) the method of determining the amount of income earned by such individuals,

to the end that savings will accrue to the Trust Funds, or to otherwise promote the objectives or facilitate the administration of this subchapter.

(2) Authority for expansion of scope

The Commissioner may expand the scope of any such experiment or demonstration project to include any group of applicants for benefits under the program established under this subchapter with impairments that reasonably may be presumed to be disabling for purposes of such demonstration project, and may limit any such demonstration project to any such group of applicants, subject to the terms of such demonstration project which shall define the extent of any such presumption.

(b) Requirements

The experiments and demonstration projects developed under subsection (a) of this section shall be of sufficient scope and shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods under consideration while giving assurance that the results derived from the experiments and projects will obtain generally in the operation of the disability insurance program under this subchapter without committing such program to the adoption of any particular system either locally or nationally.

(c) Authority to waive compliance with benefits requirements

In the case of any experiment or demonstration project initiated under subsection (a) of this section on or before December 17, 2005, the Commissioner may waive compliance with the benefits requirements of this subchapter and the requirements of section 1320i–19 of this title as they relate to the program established under this subchapter, and the Secretary may (upon the request of the Commissioner) waive compliance with the benefits requirements of subchapter XVIII of this chapter, insofar as is necessary for a thorough evaluation of the alternative methods under consideration. No such experiment or project shall be actually placed in operation unless at least 90 days prior thereto a written report, prepared for purposes of notification and information only and containing a full and complete description thereof, has been transmitted by the Commissioner to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate. Periodic reports on the progress of such experiments and demonstration projects shall be submitted by the Commissioner to such committees. When appropriate, such reports shall include detailed recommendations for changes in administration or law, or both, to carry out the objectives stated in subsection (a) of this section.

(d) Reports

(1) Interim reports

On or before June 9 of each year, the Commissioner shall submit to the Committee on
Ways and Means of the House of Representatives and to the Committee on Finance of the Senate an annual interim report on the progress of the experiments and demonstration projects carried out under this subsection together with any related data and materials that the Commissioner may consider appropriate.

(2) Termination and final report

The authority to initiate projects under the preceding provisions of this section shall terminate on December 18, 2005. Not later than 90 days after the termination of any experiment or demonstration project carried out under this section, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a final report with respect to that experiment or demonstration project.

(2004—Subsec. (c). Pub. L. 108–203, § 401(1), substituted "initiated under subsection (a) of this section on or before December 17, 2005" for "conducted under subsection (a) of this section". Subsec. (d)(2). Pub. L. 108–203, § 401(2), substituted "The authority to initiate projects under the preceding provisions of this section shall terminate on December 18, 2005." for "The authority under the preceding provisions of this section (including any waiver granted pursuant to subsection (c) of this section) shall terminate 5 years after December 17, 1999.''

DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS


"(a) AUTHORITY.—The Commissioner of Social Security shall conduct demonstration projects for the purpose of evaluating, through the collection of data, a program for title II disability beneficiaries (as defined in section 1148(k)(3) of the Social Security Act (section 1220b–19(k)(3) of this title)) under which benefits payable under section 223 of such Act (section 423 of this title), or under section 402 of such Act (section 402 of this title) are reduced by $1 for each $2 of the beneficiary’s earnings that is above a level to be determined by the Commissioner. Such projects shall be conducted at a number of localities which the Commissioner shall determine is sufficient to adequately evaluate the appropriateness of national implementation of such a program. Such projects shall identify reductions in Federal expenditures that may result from the permanent implementation of such a program.

(b) SCOPE AND SCALE AND MATTERS TO BE DETERMINED.—

(1) IN GENERAL.—The demonstration projects developed under subsection (a) shall be of sufficient duration, shall be of sufficient scope, and shall be carried out on a wide enough scale to permit a thorough evaluation of the project to determine—

"(A) the effects, if any, of induced entry into the project and reduced exit from the project;

"(B) the extent, if any, to which the project being tested is affected by whether it is in operation in a locality within an area under the administration of the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (section 1220b–19 of this title);

"(C) the savings that accrue to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and other Federal programs under the project being tested.

The Commissioner shall take into account advice provided by the Ticket to Work and Work Incentives Advisory Panel pursuant to section 101(f)(2)(H)(ii) of this Act [set out as a note under section 1220b–19 of this title].

(2) ADDITIONAL MATTERS.—The Commissioner shall also determine with respect to each project—

"(A) the annual cost (including net cost) of the project and the annual cost (including net cost) that would have been incurred in the absence of the project;

"(B) the determinants of return to work, including the characteristics of the beneficiaries who participate in the project; and

"(C) the employment outcomes, including wages, occupations, benefits, and hours worked, of beneficiaries who return to work as a result of participation in the project.

The Commissioner may include within the matters evaluated under the project the merits of trial work periods and periods of extended eligibility.

(c) WAIVERS.—The Commissioner may waive compliance with the benefits provisions of title II of the Social Security Act (42 U.S.C. 401 et seq.) and the requirements of section 1148 of such Act (42 U.S.C. 1220b–19) as they relate to the program established under title II of such Act, and the Secretary of Health and Human Services may waive compliance with the benefit requirements of title XVIII of such Act (42 U.S.C. 1395 et seq.), insofar as is necessary for a thorough evaluation of the alternative methods under consideration. No such project shall be actually placed in operation unless at least 90 days prior thereto a written report, prepared for purposes of notification and information only and containing a full and complete description thereof, has been transmitted by the Commissioner to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate. Periodic reports on the progress of such projects shall be submitted by the Commissioner to such committees. When appropriate, such reports shall include detailed recommendations for changes in administration or law, or both, to carry out the objectives stated in subsection (a).

(d) INTERIM REPORTS.—Not later than 2 years after the date of the enactment of this Act [Dec. 17, 1999], and annually thereafter, the Commissioner of Social Security shall submit to the Congress an interim report on the progress of the demonstration projects carried out under this subsection together with any related data and materials that the Commissioner of Social Security may consider appropriate.

(e) FINAL REPORT.—The Commissioner of Social Security shall submit to the Congress a final report with respect to all demonstration projects carried out under this section not later than 1 year after their completion.

(f) EXPENDITURES.—Administrative expenses for demonstration projects under this section shall be paid from funds available for the administration of title II or XVIII of the Social Security Act [subchapters II and XVIII of this chapter], as appropriate. Benefits payable to or on behalf of individuals by reason of participation in projects under this section shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and from the Federal Supplementary Medical Insurance Trust Fund, as determined appropriate by the

1 So in original. Probably should be "section".
Secretary of Health and Human Services, from funds available for benefits under such title II or XVIII.

STUDY BY GENERAL ACCOUNTING OFFICE OF THE IMPACT OF THE SUBSTANTIAL GAINFUL ACTIVITY LIMIT ON RETURN TO WORK

Pub. L. 106–170, title III, §303(c), Dec. 17, 1999, 113 Stat. 1170, provided that, as soon as practicable after Dec. 17, 1999, the Comptroller General was to undertake a study of the substantial gainful activity level applicable as of that date to recipients of benefits under sections 452 and 423 of this title and the effect of such level as a disincentive for those recipients to return to work, to address the merits of increasing the substantial gainful activity level applicable to recipients and the rationale for not yearly indexing that level to inflation, and not later than 2 years after Dec. 17, 1999, to transmit to the appropriate congressional committees a written report presenting the results of the Comptroller General’s study conducted pursuant to this subsection and appropriate recommendations for legislative or administrative changes.

STUDY BY THE GOVERNMENT ACCOUNTABILITY OFFICE OF SOCIAL SECURITY ADMINISTRATION’S DISABILITY INSURANCE PROGRAM DEMONSTRATION AUTHORITY

Pub. L. 106–170, title III, §303(e), Dec. 17, 1999, 113 Stat. 1170, provided that, as soon as practicable after Dec. 17, 1999, the Comptroller General of the United States was to undertake a study to assess the results of the Social Security Administration’s efforts to conduct disability demonstrations authorized under prior law as well as under 2 U.S.C. 434 and, not later than 5 years after Dec. 17, 1999, to transmit to the appropriate congressional committees a written report presenting the results of the Comptroller General’s study conducted pursuant to 42 U.S.C. 434 and a recommendation as to whether the demonstration authority authorized under 42 U.S.C. 434 should be made permanent.

SUBCHAPTER III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION

§ 501. Use of available funds

The amounts made available pursuant to section 1101(c)(1)(A) of this title for the purpose of assisting the States in the administration of their unemployment compensation laws shall be used as hereinafter provided.


AMENDMENTS

1960—Pub. L. 86–778 struck out provisions prescribing specific sums for fiscal years 1936–1939 and for each fiscal year thereafter and inserted provisions relating to amounts made available pursuant to section 1101(c)(1)(A) of this title.

1939—Act Apr. 19, 1939, provided increased appropriation for fiscal year ending June 30, 1939, and for each fiscal year thereafter.

§ 502. Payments to States; computation of amounts

(a) Certification of amounts

The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Secretary of Labor under the Federal Unemployment Tax Act, such amounts as the Secretary of Labor determines to be necessary for the proper and efficient administration of such law during the fiscal year for which such payment is to be made, including 100 percent of so much of the reasonable expenditures of the State as are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1320c–7(d) of this title. The Secretary of Labor’s determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper and efficient administration of such law; and (3) such other factors as the Secretary of Labor finds relevant. The Secretary of Labor shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Payment of amounts

Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a) of this section, pay, through the Fiscal Service of the Department of the Treasury and prior to audit or settlement by the Government Accountability Office, to the State agency charged with the administration of such law the amount so certified.

(c) Mailing costs

No portion of the cost of mailing a statement under section 6050(b) of the Internal Revenue Code of 1986 (relating to unemployment compensation) shall be treated as not being a cost for the proper and efficient administration of the State unemployment compensation law by reason of including with such statement information about the earned income credit provided by section 32 of the Internal Revenue Code of 1986. The preceding sentence shall not apply if the inclusion of such information increases the postage required to mail such statement.


REFERENCES IN TEXT


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


1986—Subsec. (a). Pub. L. 99–603 inserted at end of first sentence “, including 100 percent of so much of the reasonable expenditures of the State as are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1320b–7(d) of this title.”.

1984—Subsec. (b). Pub. L. 98–369 substituted “the Fiscal Service of the Department of the Treasury” for “the Division of Disbursement of the Treasury Department”.


EFFECTIVE DATE OF 1992 AMENDMENT

Section 302(b) of Pub. L. 102–318 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 3, 1992].”

EFFECTIVE DATE OF 1986 AMENDMENT

Section 121(c)(2) of Pub. L. 99–603 provided that: “The amendments made by subsection (b) (enacting section 1437t of this title, amending this section and sections 303, 603, 1203, 1353, and 1396b of this title, section 2025 of Title 7, Agriculture, and section 1086 of Title 26, Education and amending provisions set out as a Puerto Rico, Guam, and Virgin Islands note under section 1383 of this title) take effect on October 1, 1987.”

EFFECTIVE DATE OF 1984 AMENDMENT

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

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 5 of 1950, § 3, May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of Federal Security Administrator with respect to unemployment compensation transferred to Secretary of Labor by Reorg. Plan No. 2 of 1949, set out in the Appendix to Title 5.

Section 1 of Reorg. Plan No. 2 of 1949, also provided that functions transferred by this section shall be performed by Secretary of Labor, or subject to his direction and control, by such officers, agencies, and employees of Department of Labor as he shall designate.

“Administrator” substituted for “Board” by section 4 of Reorg. Plan No. 2 of 1946, set out in the Appendix to Title 5.

REPORT ON METHOD OF ALLOCATING ADMINISTRATIVE FUNDS AMONG STATES


“(a) IN GENERAL.—The Secretary of Labor shall submit to the Congress, before December 31, 1994, a comprehensive report setting forth a proposal for revising the method of allocating grants among the States under section 302 of the Social Security Act [this section].

“(b) SPECIFIC REQUIREMENTS.—The report required by subsection (a) shall include an analysis of—

“(1) the use of unemployment insurance workload levels as the primary factor in allocating grants among the States under section 302 of the Social Security Act [this section],

“(2) ways to ensure that each State receive not less than a minimum grant amount for each fiscal year,

“(3) the use of nationally available objective data to determine the unemployment compensation administrative costs of each State, with consideration of legitimate cost differences among the States,

“(4) ways to simplify the method of allocating such grants among the States,

“(5) ways to eliminate the disincentives to productivity and efficiency which exist in the current method of allocating such grants among the States,

“(6) ways to promote innovation and cost-effective practices in the method of allocating such grants among the States, and

“(7) the effect of the proposal set forth in such report on the grant amounts allocated to each State.

“(c) CONGRESSIONAL REVIEW PERIOD.—The Secretary of Labor may not revise the method in effect on the date of the enactment of this Act [Nov. 15, 1991] for allocating grants among the States under section 302 of the Social Security Act [this section], until after the expiration of the 12-month period beginning on the date on which the report required by subsection (a) is submitted to the Congress.”

§ 503. State laws

(a) Provisions required

The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.], includes provision for—

1So in original. Probably should be “Unemployment Trust Fund”.

(1) Such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices or such other agencies as the Secretary of Labor may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act [26 U.S.C. 3305(b)]) immediately upon such receipt, to the Secretary of the Treasury to the credit of the unemployment trust fund established by section 1104 of this title; and

(5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the
provisions of section 3305(b) of the Federal Unemployment Tax Act [26 U.S.C. 3305(b)]: Provided, That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: Provided further, That the amounts specified by section 1103(c)(2) or 1103(d)(4) of this title may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices: Provided further, That nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance, or the withholding of Federal, State, or local individual income tax, if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor: Provided further, That amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g) of this section: Provided further, That amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor: Provided further, That amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t) of the Internal Revenue Code of 1986 [26 U.S.C. 3306(t)]); and

(6) The making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient’s rights to further compensation under such law; and

(8) Effective July 1, 1941, the expenditure of all moneys received pursuant to section 502 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law; and

(9) Effective July 1, 1941, the replacement, within a reasonable time, of any moneys received pursuant to section 502 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of such State law; and

(10) A requirement that, as a condition of eligibility for regular compensation for any week, any claimant who has been referred to reemployment services pursuant to the profiling system under subsection (j)(1)(B) of this section participate in such services or in similar services unless the State agency charged with the administration of the State law determines—

(A) such claimant has completed such services; or

(B) there is justifiable cause for such claimant’s failure to participate in such services; and

(11)(A) At the time the State agency determines an erroneous payment from its unemployment fund was made to an individual due to fraud committed by such individual, the assessment of a penalty on the individual in an amount of not less than 15 percent of the amount of the erroneous payment; and

(B) The immediate deposit of all assessments paid pursuant to subparagraph (A) into the unemployment fund of the State.

(b) Failure to comply; payments stopped

Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a) of this section;

the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such denial or failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State: Provided, That there shall be no finding under clause (1) until the question of entitlement shall have been decided by the highest judicial authority given jurisdiction under such State law: Provided further, That any costs may be paid with respect to any claimant by a State and included as costs of administration of its law.

(c) Denial of certification; availability of records to Railroad Retirement Board; cooperation with Federal agencies

The Secretary of Labor shall make no certification for payment to any State if he finds, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law—

(1) that such State does not make its records available to the Railroad Retirement Board, and furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board such copies thereof as the Railroad Retirement Board deems necessary for its purposes;

(2) that such State is failing to afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law; or

(3) that any interest required to be paid on advances under subchapter XII of this chapter has not been paid by the date on which such interest is required to be paid or has been paid
directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) by such State from amounts in such State’s unemployment fund, until such interest is properly paid.

(d) Disclosure of unemployment compensation information; coordination with supplemental nutrition assistance program benefits agencies; non-compliance of State agency

(1) The State agency charged with the administration of the State law—

(A) shall disclose, upon request and on a reimbursable basis, to officers and employees of any State supplemental nutrition assistance program benefits agency any of the following information contained in the records of such State agency—

(i) wage information,

(ii) whether an individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received (or to be received) by such individual,

(iii) the current (or most recent) home address of such individual, and

(iv) whether an individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay therefor, and

(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to assure that information disclosed under subparagraph (A) is used only for purposes of determining an individual’s eligibility for benefits, or the amount of benefits, under the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 [7 U.S.C. 2011 et seq.].

(2)(A) For purposes of this paragraph, the term “unemployment compensation” means any unemployment compensation payable under the State law (including amounts payable pursuant to an agreement under a Federal unemployment compensation law).

(B) The State agency charged with the administration of the State law—

(i) may require each new applicant for unemployment compensation to disclose whether the applicant owes an uncollected overissuance (as defined in section 13(c)(1) of the Food and Nutrition Act of 2008 [7 U.S.C. 2022(c)(1)]) of supplemental nutrition assistance program benefits agency,

(ii) may notify the State supplemental nutrition assistance program benefits agency to which the uncollected overissuance is owed that the applicant has been determined to be eligible for unemployment compensation if the applicant discloses under clause (i) that the applicant owes an uncollected overissuance and the applicant is determined to be so eligible,

(iii) may deduct and withhold from any unemployment compensation otherwise payable to an individual—

(I) the amount specified by the individual to the State agency to be deducted and withheld under this clause,

(II) the amount (if any) determined pursuant to an agreement submitted to the State supplemental nutrition assistance program benefits agency under section 13(c)(3)(A) of the Food and Nutrition Act of 2008 [7 U.S.C. 2022(c)(3)(A)], or

(III) any amount otherwise required to be deducted and withheld from the unemployment compensation pursuant to section 13(c)(3)(B) of such Act [7 U.S.C. 2022(c)(3)(B)], and

(iv) shall pay any amount deducted and withheld under clause (iii) to the appropriate State supplemental nutrition assistance program benefits agency.

(C) Any amount deducted and withheld under subparagraph (B)(iii) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the State supplemental nutrition assistance program benefits agency to which the uncollected overissuance is owed as repayment of the individual’s uncollected overissuance.

(D) A State supplemental nutrition assistance program benefits agency to which an uncollected overissuance is owed shall reimburse the State agency charged with the administration of the State unemployment compensation law for the administrative costs incurred by the State agency under this paragraph that are attributable to repayment of uncollected overissuance to the State supplemental nutrition assistance program benefits agency to which the uncollected overissuance is owed.

(3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.

(4) For purposes of this subsection, the term “State supplemental nutrition assistance program benefits agency” means any agency described in section 3(t)(1) of the Food and Nutrition Act of 2008 [7 U.S.C. 2012(t)(1)] which administers the supplemental nutrition assistance program established under such Act.

(e) Disclosure of wage information; non-compliance of State agency

(1) The State agency charged with the administration of the State law—

(A) shall disclose, upon request and on a reimbursable basis, to officers or employees of any State or local child support enforcement agency any wage information contained in the records of such State agency, and

(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to assure that information disclosed under subparagraph (A) is used only for purposes of establishing and collecting child support obligations from, and locating, individuals owing such obligations.

So in original.
For purposes of this subsection, the term “child support obligations” only includes obligations which are being enforced pursuant to a plan described in section 654 of this title which has been approved by the Secretary of Health and Human Services under part D of subchapter IV of this chapter.

(2)(A) The State agency charged with the administration of the State law—

(i) shall require each new applicant for unemployment compensation to disclose whether or not such applicant owes child support obligations (as defined in the last sentence of paragraph (1)),

(ii) shall notify the State or local child support enforcement agency enforcing such obligations, if any applicant discloses under clause (i) that he owes child support obligations and he is determined to be eligible for unemployment compensation, that such applicant has so determined to be eligible,

(iii) shall deduct and withhold from any unemployment compensation otherwise payable to an individual—

(I) the amount specified by the individual to the State agency to be deducted and withheld under this clause,

(II) the amount (if any) determined pursuant to an agreement submitted to the State agency under section 654(19)(B)(i) of this title, or

(III) any amount otherwise required to be so deducted and withheld from such unemployment compensation through legal process (as defined in section 662(e) of this title), and

(iv) shall pay any amount deducted and withheld under clause (iii) to the appropriate State or local child support enforcement agency.

Any amount deducted and withheld under clause (iii) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the State or local child support enforcement agency in satisfaction of his child support obligations.

(B) For purposes of this paragraph, the term “unemployment compensation” means any compensation payable under the State law (including amounts payable pursuant to agreements under any Federal unemployment compensation law).

(C) Each State or local child support enforcement agency shall reimburse the State agency charged with the administration of the State unemployment compensation law for the administrative costs incurred by such State agency under this paragraph which are attributable to child support obligations being enforced by the State or local child support enforcement agency.

(3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1) or (2), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.

(4) For purposes of this subsection, the term “State or local child support enforcement agency” means any agency of a State or political subdivision thereof operating pursuant to a plan described in the last sentence of paragraph (1).

(5) A State or local child support enforcement agency may disclose to any agent of the agency that is under contract with the agency to carry out the purposes described in paragraph (1)(B) wage information that is disclosed to an officer or employee of the agency under paragraph (1)(A). Any agent of a State or local child support agency that receives wage information under this paragraph shall comply with the safeguards established pursuant to paragraph (1)(B).

(f) Income and eligibility verification system

The State agency charged with the administration of the State law shall provide that information shall be requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title.

(g) Recovery of unemployment benefit payments

(1) A State may deduct from unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to such individual under an unemployment benefit program of the United States or of any other State, and not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program such overpayment was made. Any such deduction shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing as apply to the recovery of overpayments of regular unemployment compensation paid by such State.

(2) Any State may enter into an agreement with the Secretary of Labor under which—

(A) the State agrees to recover from unemployment benefits otherwise payable to an individual by such State any overpayments made under an unemployment benefit program of the United States to such individual and not previously recovered, in accordance with paragraph (1), and to pay such amounts recovered to the United States for credit to the appropriate account, and

(B) the United States agrees to allow the State to recover from unemployment benefits otherwise payable to an individual under an unemployment benefit program of the United States any overpayments made by such State to such individual under a State unemployment benefit program and not previously recovered, in accordance with the same procedures as apply under paragraph (1).

(3) For purposes of this subsection, “unemployment benefits” means unemployment compensation, trade adjustment allowances, and other unemployment assistance.

See References in Text note below.
(h) Disclosure to Secretary of Health and Human Services of wage and unemployment compensation claims information; suspension by Secretary of Labor of payments to State for noncompliance

(1) The State agency charged with the administration of the State law shall, on a reimbursable basis—
(A) disclose quarterly, to the Secretary of Health and Human Services, wage and claim information, as required pursuant to section 653(i)(1) of this title, contained in the records of such agency;
(B) ensure that information provided pursuant to subparagraph (A) meets such standards relating to correctness and verification as the Secretary of Health and Human Services, with the concurrence of the Secretary of Labor, may find necessary; and
(C) establish such safeguards as the Secretary of Labor determines are necessary to insure that information disclosed under subparagraph (A) is used only for purposes of subsections (i)(1), (i)(3), and (j) of section 653 of this title.

(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he or she is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he or she shall make no further certification to the Secretary of the Treasury with respect to such State.

(3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he or she is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he or she shall make no further certification to the Secretary of the Treasury with respect to such State.

(4) For purposes of this subsection, the term “public housing agency” means any agency described in section 1437a(b)(6) of this title.

(j) Worker profiling

(1) The State agency charged with the administration of the State law shall establish and utilize a system of profiling all new claimants for regular compensation that—
(A) identifies which claimants will be likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;
(B) refers claimants identified pursuant to subparagraph (A) to reemployment services, such as job search assistance services, available under any State or Federal law;
(C) collects follow-up information relating to the services received by such claimants and the employment outcomes for such claimants subsequent to receiving such services and utilizes such information in making identifications pursuant to subparagraph (A); and
(D) meets such other requirements as the Secretary of Labor determines are appropriate.

(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he or she is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.
(k) Transfer of unemployment experience upon transfer of business

(1) For purposes of subsection (a) of this section, the unemployment compensation law of a State must provide—

(A) that if an employer transfers its business to another employer, and both employers are (at the time of transfer) under substantially common ownership, management, or control, then the unemployment experience attributable to the transferred business shall also be transferred to (and combined with the unemployment experience attributable to) the employer to whom such business is so transferred,

(B) that unemployment experience shall not, by virtue of the transfer of a business, be transferred to the person acquiring such business if—

(i) such person is not otherwise an employer at the time of such acquisition, and

(ii) the State agency finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions,

(C) that unemployment experience shall (or shall not) be transferred in accordance with such regulations as the Secretary of Labor may prescribe to ensure that higher rates of contributions are not avoided through the transfer or acquisition of a business,

(D) that meaningful civil and criminal penalties are imposed with respect to—

(i) persons that knowingly violate or attempt to violate those provisions of the State law which implement subparagraph (A) or (B) or regulations under subparagraph (C), and

(ii) persons that knowingly advise another person to violate those provisions of the State law which implement subparagraph (A) or (B) or regulations under subparagraph (C), and

(E) for the establishment of procedures to identify the transfer or acquisition of a business for purposes of this subsection.

(2) For purposes of this subsection—

(A) the term "unemployment experience", with respect to any person, refers to such person’s experience with respect to unemployment or other factors bearing a direct relation to such person’s unemployment risk;

(B) the term "employer" means an employer as defined under the State law;

(C) the term "business" means a trade or business (or a part thereof);

(D) the term "contributions" has the meaning given such term by section 3306(g) of the Internal Revenue Code of 1986;

(E) the term "knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved; and

(F) the term "person" has the meaning given such term by section 7701(a)(1) of the Internal Revenue Code of 1986.


REFERENCES IN TEXT

The Federal Unemployment Tax Act, referred to in subsec. (a), is act Aug. 16, 1954, ch. 736, §§ 3301–3311, 68A Stat. 439, which is classified generally to chapter 23 (§ 3301 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3311 of Title 26 and Tables.


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

CITATION


AMENDMENTS


Subsec. (d)(4). Pub. L. 110–246, § 4115(c)(2)(F), substituted “section 3(c)(1)” for “section 3(n)(1)”.

Pub. L. 110–246, § 4002(b)(1)(A), (B), (D), (2)(V), substituted “supplemental nutrition assistance program benefits” for “food stamp agency” “Food and Nutrition Act of 2008” for “Food Stamp Act of 1977”, and “supplemental nutrition assistance program establishment” for “food stamp program established”.


1997—Subsec. (h)(1)(C). Pub. L. 105–33 substituted “subsections (i)(1), (i)(3), and (j) of section 653 of this title” for “section 653(c)(1) of this title” in carrying out the child support enforcement program under subchapter IV of this chapter.

Subsec. (i)(5). Pub. L. 105–65 struck out par. (5) which read as follows: “The provisions of this subsection shall cease to be effective beginning on October 1, 1996.”


Subsec. (h). Pub. L. 104–193, § 316(g)(3), amended subsec. (h) generally. Prior to amendment subsec. (h) read as follows: “(1) The State agency charged with the administration of the State law shall take such actions (in such manner as may be provided in the agreement between the Secretary of Health and Human Services and the Secretary of Labor under section 656 of this title) as may be necessary to enable the Secretary of Health and Human Services to obtain prompt access to any wage and unemployment compensation claims information (including any information that might be useful in locating an absent parent or such parent’s employer) for use by the Secretary of Health and Human Services, for purposes of section 653 of this title, in carrying out the child support enforcement program under subchapter IV of this chapter.

“(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirement of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until such Secretary is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, such Secretary shall make no further certification to the Secretary of the Treasury with respect to such State.”

1994—Subsec. (a)(5). Pub. L. 103–465 inserted “or, the withholding of Federal, State, or local individual income tax.” after “health insurance”.

1993—Subsec. (a)(5). Pub. L. 103–128 substituted “Provided further, That amounts may be withdrawn.” for “provided further.”

1992—Subsec. (a)(5). Pub. L. 102–318 inserted “Provided further, That amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor” before “; and” at end.


1986—Subsec. (a)(5). Pub. L. 99–272, § 14201(a)(1), inserted provision at end that amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g) of this section.


1985—Subsec. (d)(2) to (4). Pub. L. 99–198 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.


Subsec. (a)(5). Pub. L. 98–369, § 12663(b)(3), substituted “section 3305(b)” for “section 1606(b)” and before last proviso substituted a colon for erroneous punctuation.

Subsec. (c)(1). Pub. L. 98–369, § 12663(b)(4), substituted “that” for “That”.

Subsec. (e)(2)(A). Pub. L. 98–369, § 12663(b)(5), substituted “child support obligations” for “child support obligations”.


1983—Subsec. (a)(5). Pub. L. 98–21, § 523(b), inserted provision that nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor.

Subsec. (c)(3). Pub. L. 98–21, § 515(a), added par. (3).


1981—Subsec. (e)(1). Pub. L. 97–35, § 2335(b)(3), in provision following subpar. (B) substituted “this subsection” for “the preceding sentence”.

Subsec. (e)(2). Pub. L. 97–35, § 2335(b)(1), added par. (2) and redesignated former par. (2) as (3).

Subsec. (e)(3), (4). Pub. L. 97–35, § 2335(b)(1), (2), redesignated former par. (2) as (3) and substituted “paragraph (1) or (2)” for “paragraph (1)”.

Former par. (3) redesignated (4).


Another subsec. (d), as added by Pub. L. 96–265, was redesignated (e) by Pub. L. 96–473.


1974—Subsec. (a)(5). Act Aug. 5, 1974, made it clear that the funds credited to the State account may, subject to certain restrictions, be used for administrative expenses of the State in connection with its unemployment compensation law.


Subsec. (h). Pub. L. 90–234, inserted “Feder al Unemployment Tax Act” for “sections 1101–1110 of this title”, amended pars. (1), (4), and (5) generally, and added pars. (8) and (9).

Subsec. (i)(2). Act June 20, 1939, substituted “unemployment” for “employment”.


Effective Date of 2011 Amendment

Pub. L. 112–40, title II, § 251(c), Oct. 21, 2011, 125 Stat. 421, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to erroneous payments established after the end of the 2-year period beginning on the date of the enactment of this Act [Oct. 21, 2011].

“(2) AUTHORITY.—A State may amend its State law to apply such amendments to erroneous payments established prior to the end of the period described in paragraph (1).”

Effective Date of 2008 Amendment

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

Amendment by sections 4002(b)(1)(A), (B), (D), (2)(V), and 4115(c)(1)(A)(i), (B)(ii), (2)(F) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

Effective Date of 2004 Amendment; Definitions

Pub. L. 108–295, §2(c), (d), Aug. 9, 2004, 118 Stat. 1891, provided that:

“(c) Effective Date.—The amendment made by subsection (a) [amending this section] shall, with respect to a State, apply to certifications for payments (under section 305(a) of the Social Security Act [section 502(a) of this title]) in rate years beginning after the end of the 26-week period beginning on the first day of the first regularly scheduled session of the State legislature beginning on or after the date of the enactment of this Act [Aug. 9, 2004].

“(d) Definitions.—For purposes of this section—

“(1) the term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;

“(2) the term ‘rate year’ means the rate year as defined in the applicable State law; and

“(3) the term ‘State law’ means the unemployment compensation law of the State, approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1986 [26 U.S.C. 3304].”

Effective Date of 1997 Amendment

Section 542(a)(2) of Pub. L. 105–65 provided that: “The amendment made by this subsection [amending this section] shall apply to any request for information made after the date of the enactment of this Act [Oct. 27, 1997].”

Effective Date of 1996 Amendment

For effective date of amendment by Pub. L. 104–193, see section 395(a)(3) of Pub. L. 104–193, set out as a note under section 655 of this title.

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–465 applicable to payments made after Dec. 31, 1996, see section 762(d) of Pub. L. 103–465, set out as a note under section 3304 of Title 26, Internal Revenue Code.

Effective Date of 1993 Amendment

Section 4(f) of Pub. L. 103–152 provided that: ”(1) The amendments made by subsections (a) and (b) [amending this section and section 504 of this title] shall take effect on the date one year after the date of the enactment of this Act [Nov. 24, 1993].

“(2) The provisions of subsections (c), (d), and (e) [enacting provisions set out as notes below and repealing provisions set out as a note under section 3304 of Title 26, Internal Revenue Code] shall take effect on the date of enactment of this Act.”

Effective Date of 1988 Amendments

Amendment by Pub. L. 100–628 effective Sept. 30, 1989, with provision for optional early implementation and provision for States whose legislatures have not been in session for at least 30 days between Nov. 7, 1988, and Sept. 30, 1989, see section 3544(d) of this title.

Amendment by Pub. L. 100–465 effective on first day of first calendar quarter beginning one year or more after Oct. 13, 1988, see section 124(c)(1) of Pub. L. 100–465, set out as a note under section 653 of this title.

Effective Date of 1986 Amendment

Section 12401(c) of Pub. L. 99–272 provided that: “The amendments made by this section [amending this section and sections 3304 and 3306 of Title 26, Internal Revenue Code] shall apply to recoveries made on or after the date of the enactment of this Act [Apr. 7, 1986] and shall apply with respect to overpayments made before, on, or after such date.”

Effective Date of 1984 Amendment

Amendment by section 2651(d) of Pub. L. 98–369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(i)(2) of Pub. L. 98–369, set out as an Effective Date note under section 13207–7 of this title.

Amendment by section 2653(b)(3) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2654(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

Effective Date of 1983 Amendment

Amendment by section 523(b) of Pub. L. 98–21 effective Apr. 29, 1983, see section 523(c) of Pub. L. 98–21 set out as a note under section 3904 of Title 26, Internal Revenue Code.

Effective Date of 1982 Amendment

Section 171(c) of Pub. L. 97–248 provided that: “The amendments made by this section [amending this section and sections 655, 654, and 653 of this title] shall be effective on and after August 13, 1981.”

Section 175(b) of Pub. L. 97–248 provided that: “The amendments made by this section [amending this section and section 652 of this title] shall be effective as of October 1, 1981.”

Effective Date of 1981 Amendment

Section 2335(c) of Pub. L. 97–35 provided that: “The amendments made by this section [amending this section and section 654 of this title] shall take effect on the date of the enactment of this Act [Aug. 13, 1981], except that such amendments shall not be requirements under section 454 or 303 of the Social Security Act [sections 654 or 503 of this title] before October 1, 1982.”

Effective Date of 1980 Amendments

Section 908(b)(3) of Pub. L. 96–265 provided that: “The amendments made by this subsection [amending this section and section 504 of this title] shall take effect July 1, 1980.”

Section 127(b)(3) of Pub. L. 96–249 provided that: “The amendments made by this subsection [amending this section and section 504 of this title] shall take effect on January 1, 1983.”

Transfer of Functions

Functions, powers, and duties of Secretary of Labor under subsec. (a)(1) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(2)(B) of this title.

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of Federal Security Administrator with respect to unemployment compensation transferred to Secretary of Labor by section 1 of Reorg. Plan No. 2 of 1949 set out in the Appendix to Title 5.

Section 1 of Reorg. Plan No. 2 of 1949 also provided for transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of Federal Security Administrator with respect to unemployment compensation transferred to Secretary of Labor by section 1 of Reorg. Plan No. 2 of 1949 set out in the Appendix to Title 5.

Section 1 of Reorg. Plan No. 2 of 1949 also provided for transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of Federal Security Administrator with respect to unemployment compensation transferred to Secretary of Labor by section 1 of Reorg. Plan No. 2 of 1949 set out in the Appendix to Title 5.

Application to Federal Payments

Pub. L. 112–40, title II, § 251(b), Oct. 21, 2011, 125 Stat. 421, provided that:
“(1) In general.—As a condition for administering any unemployment compensation program of the United States (as defined in paragraph (2)) as an agent of the United States, if the State determines that an erroneous payment was made by the State to an individual under any such program due to fraud committed by such individual, the State shall assess a penalty on such individual and deposit any such penalty received in the same manner as the State assesses and deposits such penalties under provisions of State law implementing section 303(a)(11) of the Social Security Act (42 U.S.C. 503(a)(11)), as added by subsection (a).

“(2) Definition.—For purposes of this subsection, the term ‘unemployment compensation program of the United States’ means—

“(A) unemployment compensation for Federal civilian employees under subchapter I of chapter 85 of title 5, United States Code;

“(B) unemployment compensation for ex-service members under subchapter II of chapter 85 of title 5, United States Code;

“(C) trade readjustment allowances under sections 231 through 234 of the Trade Act of 1974 (19 U.S.C. 2291–2294);

“(D) disaster unemployment assistance under section 18(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5177(a));

“(E) any Federal temporary extension of unemployment compensation;

“(F) any Federal program which increases the weekly amount of unemployment compensation payable to individuals; and

“(G) any other Federal program providing for the payment of unemployment compensation.”

CLARIFYING PROVISION RELATING TO BASE PERIODS

Section 6401 of Pub. L. 101–33 provided that:

“(a) IN GENERAL.—No provision of a Federal law under which the base period for such State is defined or otherwise determined shall, for purposes of section 303(a)(11) of the Social Security Act (42 U.S.C. 503(a)(11)), be considered a provision for a method of administering, the meanings given them under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (Pub. L. 91–373) (26 U.S.C. 3304 note).

“(c) EFFECTIVE DATE.—This section shall apply for purposes of any period beginning before, on, or after the date of the enactment of this Act [Aug. 5, 1997].”

PROFILING SYSTEM TECHNICAL ASSISTANCE

Section 4(c) of Pub. L. 103–152 provided that: “The Secretary of Labor shall make technical assistance and advice to assist the States in implementing the profiling system required under the amendments made by subsection (a) (amending this section and section 504 of this title). Such assistance shall include the development and identification of model profiling systems.”

PROFILING SYSTEM REPORT TO CONGRESS

Pub. L. 103–152, §4(d), Nov. 24, 1993, 107 Stat. 1518, provided that, not later than 3 years after Nov. 24, 1993, the Secretary of Labor was to report to the Congress on the operation and effectiveness of the profiling system required under the amendments made by section 4(a) of Pub. L. 103–152 (amending this section and section 504 of this title) and the participation requirement provided by the amendments made under section 4(b) of Pub. L. 103–152 (amending this section).

§ 504. Judicial review

(a) Finding by Secretary of Labor; petition for review; filing of record

Whenever the Secretary of Labor—

(1) finds that a State law does not include any provision specified in section 503(a) of this title, or

(2) makes a finding with respect to a State under subsection (b), (c), (i), (j), (k), (l), (m), or (n) of section 503 of this title, such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of Appeals for the District of Columbia, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 212(2) of title 28.

(b) Findings of fact by Secretary of Labor; new or modified findings

The findings of fact by the Secretary of Labor, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary of Labor to take further evidence and the Secretary of Labor may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Affirmance or setting aside of Secretary's action; review by Supreme Court

The court shall have jurisdiction to affirm the action of the Secretary of Labor or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(d) Stay of Secretary's action

(1) The Secretary of Labor shall not withhold any certification for payment to any State under section 502 of this title until the expiration of 60 days after the Governor of the State has been notified of the action referred to in paragraph (1) or (2) of subsection (a) of this section or until the State has filed a petition for review of such action, whichever is earlier.

(2) The commencement of judicial proceedings under this section shall stay the Secretary's action for a period of 30 days, and the court may thereafter grant interim relief if warranted, including a further stay of the Secretary's action and including such other relief as may be necessary to preserve status or rights.


AMENDMENTS

1993—Subsec. (a)(2). Pub. L. 103–152 substituted ‘‘(1), or (j)’’ for ‘‘or (1)’’.
1988—Subsec. (a)(2). Pub. L. 100–628 substituted “(e), (h), or (i)” for “(e), or (h)”. Pub. L. 100–485 substituted “(e), or (h)” for “or (e)”. Pub. L. 98–620 struck out subsec. (e) which provided that any judicial proceedings under this section were entitled to, and upon request of the Secretary or the State would receive, a preference and be heard and determined as expeditiously as possible.


Pub. L. 96–249 and Pub. L. 96–265 made identical amendments, substituting “subsection (b), (c), or (d)” for “subsection (b) or (c)”.

**Effective Date of 1993 Amendment**

**Effective Date of 1988 Amendments**
Amendment by Pub. L. 100–628 effective Sept. 30, 1988, with provision for optional early implementation and provision for States whose legislatures have not been in session for at least 30 days between Nov. 7, 1988, and Sept. 30, 1989, see section 354(d) of this title.

Amendment by Pub. L. 100–645 effective on first day of first calendar quarter beginning one year or more after Oct. 13, 1988, see section 124(c)(1) of Pub. L. 100–645, set out as a note under section 653 of this title.

**Effective Date of 1984 Amendment**
Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1637 of Title 28, Judiciary and Judicial Procedure.

**Effective Date of 1980 Amendments**


**SUBCHAPTER IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES**

**Amendments**


**PART A—BLOCK GRANTS TO STATES FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**

**Prior Provisions**

§ 601. Purpose

(a) In general

The purpose of this part is to increase the flexibility of States in operating a program designed to—

1. provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
2. the dependance of needy parents on government benefits by promoting job preparation, work, and marriage;
3. prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
4. encourage the formation and maintenance of two-parent families.

(b) No individual entitlement

This part shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part.


**Prior Provisions**

**AMENDMENTS**

**Effective Date of 1997 Amendment**
Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5514(c) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

**Effective Date**

“(a) Effective Dates.—

“(1) In general.—Except as otherwise provided in this title [see Tables for classification], this title and the amendments made by this title shall take effect on July 1, 1997.

“(2) Delayed effective date for certain provisions.—Notwithstanding any other provision of this section (but subject to subsection (b)(1)(A)(ii)), paragraphs (2), (3), (4), (5), (8), and (10) of section 409(a) and section 411(a) of the Social Security Act [sections 609(a) and 611(a) of this title] (as added by the amendments made by section 103(a) of this Act) shall not take effect with respect to a State until, and shall apply only with respect to conduct that occurs on or after, the later of—

“(A) July 1, 1997; or

“(B) the date that is 6 months after the date the Secretary of Health and Human Services receives from the State a plan described in section 422(a) of the Social Security Act [section 622(a) of this title] (as added by such amendment).

“(3) Grants to outlying areas.—The amendments made by section 103(b) [amending section 1308 of this title] shall take effect on October 1, 1996.

“(4) Elimination of child care programs.—The amendments made by section 103(c) [amending sections 652 and 663 of this title] shall take effect on October 1, 1996.

“(5) Definitions applicable to new child care entitlement.—Sections 403(a)(1)(C), 403(a)(1)(D), and...
419(4) of the Social Security Act [sections 603(a)(1)(C), (D) and 619(4) of this title], as added by the amendments made by section 103(a) of this Act, shall take effect on the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act [section 602(a) of this title] (as added by the amendment made by section 103(a)(1) of this Act), which -

(6) Research, evaluations, and national studies.—Section 413 of the Social Security Act [section 613 of this title], as added by the amendment made by section 103(a) of this Act, shall take effect on the date of the enactment of this Act [Aug. 22, 1996].

"(b) Transition Rules.—Effective on the date of the enactment of this Act [Aug. 22, 1996]:

(1) State option to accelerate effective date; limitation on fiscal years 1996 and 1997 payments.—

(A) In general.—If the Secretary of Health and Human Services receives from a State a plan described in section 402(a) of the Social Security Act [section 602(a) of this title] (as added by the amendment made by section 103(a)(1) of this Act), then—

(1) on and after the date of such receipt—

(I) except as provided in clause (ii), this title and the amendments made by this title (other than by section 103(c) of this Act [amending sections 602 and 603 of this title]) shall apply with respect to the State; and

(II) the State shall be considered an eligible State for purposes of part A of title IV of the Social Security Act [this part] (as in effect pursuant to the amendments made by such section 103(a)); and

(2) during the period that begins on the date of such receipt and ends on the later of June 30, 1997, or the day before the date described in subparagraph (A) of this section, there shall remain in effect with respect to the State—

(I) section 606(h) of the Social Security Act [section 606(h) of this title] (as in effect on September 30, 1995); and

(II) all State reporting requirements under parts A and F of title IV of the Social Security Act [this part and part F of this subchapter] (as in effect on September 30, 1995), modified by the Secretary as appropriate, taking into account the State program under part A of title IV of the Social Security Act (as in effect pursuant to the amendments made by such section 103(a)).

(B) Limitations on federal obligations.—

"(1) Under AFDC program.—The total obligations of the Federal Government to a State under part A of title IV of the Social Security Act (as in effect on September 30, 1995) with respect to expenditures in fiscal year 1997 shall not exceed an amount equal to the State family assistance grant.

"(ii) Under temporary family assistance program.—Notwithstanding section 403(a)(1) of the Social Security Act [section 603(a)(1) of this title] (as in effect pursuant to the amendments made by section 103(a) of this Act), the total obligations of the Federal Government to a State under such section 403(a)(1)—

(1) for fiscal year 1996, shall be an amount equal to—

(aa) the State family assistance grant; multiplied by

(bb) 15% of the number of days during the period that begins on the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act [section 602(a) of this title] (as added by the amendment made by section 103(a)(1) of this Act) and ends on September 30, 1996; and

(2) for fiscal year 1997, shall be an amount equal to the lesser of—

(aa) the amount (if any) by which the sum of the State family assistance grant and the amount, if any, that the State would have been eligible to be paid under the Contingency Fund for State Welfare Programs established under section 403(b) of the Social Security Act [section 603(b) of this title] (as amended by section 103(a)(1) of this Act), during the period beginning on October 1, 1996, and ending on the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act [section 602(a) of this title] (as so amended) if, with respect to such State, the effective date of this Act [title] under subsection (a)(1) were August 22, 1996, exceeds the total obligations of the Federal Government to the State under part A of title IV of the Social Security Act [this part] (as in effect on September 30, 1995) with respect to expenditures in fiscal year 1997; or

(bb) the sum of the State family assistance grant, multiplied by 15% of the number of days during the period that begins on October 1, 1996, or the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act (as added by the amendment made by section 103(a)(1) of this Act), whichever is later, and ends on September 30, 1997, and the amount, if any, that the State would have been eligible to be paid under the Contingency Fund for State Welfare Programs established under section 403(b) of the Social Security Act (as amended by section 103(a)(1) of this Act), during the period beginning on October 1, 1996, and ending on the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act (as so amended) if, with respect to such State, the effective date of this Act [title] under subsection (a)(1) were August 22, 1996.

"(III) Child care obligations included in determining federal AFDC obligations.—As used in this subparagraph, the term 'obligations of the Federal Government to the State under part A of title IV of the Social Security Act' does not include any obligation of the Federal Government with respect to child care expenditures by the State.

"(C) Submission of State plan for fiscal year 1996 or 1997 deemed acceptance of grant limitations and formula and termination of AFDC entitlement.—The submission of a plan by a State pursuant to subparagraph (A) is deemed to constitute—

"(i) the State's acceptance of the grant limitations and formula under subparagraph (B) (including the formula for computing the amount of the reduction); and

"(ii) the termination of any entitlement of any individual or family to benefits or services under the State AFDC program.

"(D) Definitions.—As used in this paragraph:

"(i) State AFDC program.—The term 'State AFDC program' means the State program under parts A and F of title IV of the Social Security Act (as in effect on September 30, 1995).

"(ii) State.—The term 'State' means the 50 States and the District of Columbia.

"(III) State family assistance grant.—The term 'State family assistance grant' means the State family assistance grant (as defined in section 403(a)(1)(B) of the Social Security Act [section 603(a)(1)(B) of this title], as added by the amendment made by section 103(a)(1) of this Act).

"(2) Claims, actions, and proceedings.—The amendments made by this title [see Tables for classification] shall not apply with respect to—

(A) powers, duties, functions, rights, claims, penalties, or obligations applicable to aid, assistance, or services provided before the effective date of this title under the provisions amended; and

(B) administrative actions and proceedings commenced before such date, or authorized before such date to be commenced, under such provisions.
"(3) Closing out account for those programs terminated or substantially modified by this title.—In closing out accounts, Federal and State officials may use scientifically acceptable statistical sampling techniques. Claims made with respect to State expenditures under a State plan approved under part A of title IV of the Social Security Act (this part) (as in effect on September 30, 1985) with respect to assistance or services provided on or before September 30, 1985, shall be treated as claims with respect to expenditures during fiscal year 1985 for purposes of reimbursement even if payment was made by a State on or after October 1, 1985. Each State shall complete the filing of all claims under the State plan (as so in effect) within 2 years after the date of the enactment of this Act [Aug. 22, 1996]. The head of each Federal department shall—

"(A) use the single audit procedure to review and resolve any claims in connection with the close out of programs under such State plans; and

"(B) reimburse States for any payments made for assistance or services provided during a prior fiscal year from funds for fiscal year 1985, rather than from funds authorized by this title.

"(4) Contingent in office of Assistant Secretary for family support.—The individual who, on the day before the effective date of this title, is serving as Assistant Secretary for Family Support under section 417 of the Social Security Act (section 617 of this title) (as in effect before such effective date), and

"(i) have the powers and duties of the Assistant Secretary for Family Support under section 417 of the Social Security Act (section 617 of this title) (as in effect before such effective date); and

"(ii) perform the functions of the Secretary of Health and Human Services, shall, until a successor is appointed to such position—

"(A) continue to serve in such position, and

"(B) except as otherwise provided by law—

"(5) Termination of entitlement under AFDC program.—Effective October 1, 1996, no individual or family shall be entitled to any benefits or services under any State plan approved under part A or F of title IV of the Social Security Act (this part or part F of this subchapter) (as in effect on September 30, 1995)."

Congressional findings

Section 101 of Pub. L. 104-193 provided that: "The Congress makes the following findings:

"(1) Marriage is the foundation of a successful society.

"(2) Marriage is an essential institution of a successful society which promotes the interests of children.

"(3) Promotion of responsible fatherhood and motherhood is integral to successful child rearing and the well-being of children.

"(4) In 1992, only 54 percent of single-parent families with children had a child support order established and, of that 54 percent, only about one-half received the full amount due. Of the cases enforced through the public child support enforcement system, only 18 percent of the caseload has a collection.

"(5) The number of individuals receiving aid to families with dependent children (in this section referred to as 'AFDC') has more than tripled since 1965. More than two-thirds of these recipients are children. Eighty-nine percent of children receiving AFDC benefits now live in homes in which no father is present.

"(6) While the number of children receiving AFDC benefits increased nearly threefold between 1965 and 1992, the total number of children in the United States aged 0 to 18 has declined by 5.5 percent.

"(7) Citing the increase in the number of children receiving public assistance is closely related to the increase in births to unmarried women. Between 1970 and 1991, the percentage of live births to unmarried women increased nearly threefold, from 10.7 percent to 29.5 percent.

"(8) The increase of out-of-wedlock pregnancies and births is well documented as follows:

"(A) It is estimated that the rate of nonmarital teen pregnancy rose 25 percent from 54 pregnancies per 1,000 unmarried teenagers in 1976 to 66.7 pregnancies in 1991. The overall rate of nonmarital pregnancy rose 14 percent from 90.8 pregnancies per 1,000 unmarried women in 1980 to 103 in both 1991 and 1992. In contrast, the overall pregnancy rate for married couples decreased 7.3 percent between 1980 and 1991, from 126.9 pregnancies per 1,000 married women in 1980 to 117.4 pregnancies in 1991.

"(B) The total of all out-of-wedlock births between 1970 and 1991 has risen from 10.7 percent to 29.5 percent and if the current trend continues, 40 percent of all births by the year 2015 will be out-of-wedlock.

"(C) An effective strategy to combat teenage pregnancy must address the issue of male responsibility, including statutory rape culpability and prevention. The increase of teenage pregnancies among the youngest girls is particularly severe and is linked to predatory sexual practices by men who are significantly older.

"(D) It is estimated that in the late 1980's, the rate for girls age 14 and under giving birth increased 26 percent.

"(E) Data indicates that at least half of the children born to teenage mothers are fathered by adult men. Available data suggests that almost 70 percent of births to teenage girls are fathered by men over age 20.

"(F) Surveys of teen mothers have revealed that a majority of such mothers have histories of sexual and physical abuse, primarily with older adult men.

"(G) The negative consequences of an out-of-wedlock birth on the mother, the child, the family, and society are well documented as follows:

"(i) Young women 17 and under who give birth outside of marriage are more likely to go on public assistance and to spend more years on welfare once enrolled. These combined effects of 'younger and longer' increase total AFDC costs per household by 25 percent to 30 percent for 17-year-olds.

"(ii) Children born out-of-wedlock have a substantially higher risk of being born at a very low or moderately low birth weight.

"(iii) Children born out-of-wedlock are more likely to experience low verbal cognitive attainment, as well as more child abuse, and neglect.

"(iv) Children born out-of-wedlock were more likely to have lower cognitive scores, lower educational aspirations, and a greater likelihood of becoming teenage parents themselves.

"(v) Being born out-of-wedlock significantly reduces the chances of the child growing up to have an intact marriage.

"(vi) Children born out-of-wedlock are 3 times more likely to be on welfare when they grow up.

"(vii) Currently 35 percent of children in single-parent homes were born out-of-wedlock, nearly the same percentage as that of children in single-parent homes whose parents are divorced (37 percent). While many parents find themselves, through divorce or tragic circumstances beyond their control, facing the difficult task of raising children alone, nevertheless, the negative consequences of raising children in single-parent homes are well documented as follows:"
“(A) Only 9 percent of married-couple families with children under 18 years of age have income below the national poverty level. In contrast, 46 percent of female-headed households with children under 18 years of age are below the national poverty level.

“(B) Among single-parent families, nearly 1/4 of the mothers who never married received AFDC while only 1/5 of divorced mothers received AFDC.

“(C) Children born into families receiving welfare assistance are 3 times more likely to be on welfare when they reach adulthood than children not born into families receiving welfare.

“(D) Mothers under 20 years of age are at the greatest risk of bearing low birth weight babies.

“(E) The younger the single-parent mother, the less likely she is to finish high school.

“(F) Young women who have children before finishing high school are more likely to receive welfare assistance for a longer period of time.

“(G) Between 1985 and 1996, the public cost of births to teenage mothers under the aid to families with dependent children program, the food stamp program, and the medicaid program has been estimated at $120,000,000,000.

“(H) The absence of a father in the life of a child has a negative effect on school performance and peer adjustment.

“(I) Children of teenage single-parents have lower cognitive scores, lower educational aspirations, and a greater likelihood of becoming teenage parents themselves.

“(J) Children of single-parent homes are 3 times more likely to fail and repeat a year in grade school than are children from intact 2-parent families.

“(K) Children from single-parent homes are at least 4 times more likely to be expelled or suspended from school.

“(L) Neighborhoods with larger percentages of youth aged 12 through 20 and areas with higher percentages of single-parent households have higher rates of violent crime.

“(M) Of those youth held for criminal offenses within the State juvenile justice system, only 29.8 percent lived primarily in a home with both parents. In contrast to these incarcerated youth, 73.9 percent of the 62,800,000 children in the Nation's resident population were living with both parents.

“(10) Therefore, in light of this demonstration of the crisis in our Nation, it is the sense of the Congress that prevention of out-of-wedlock pregnancy and reduction in out-of-wedlock birth are very important Government interests and the policy contained in part A of title IV of the Social Security Act [this part] (as amended by section 103(a) of this Act) is intended to address the crisis.”

[References to the food stamp program established under the Food and Nutrition Act of 2008 considered to refer to the supplemental nutrition assistance program established under that Act, see section 402(c) of Pub. L. 110–246, set out as a note under section 2012 of Title 7, Agriculture.]

Appropriation by State Legislatures

Section 901 of Pub. L. 104–193 provided that:

“(a) In General.—Any funds received by a State under the provisions of law specified in subsection (b) shall be subject to appropriation by the State legislature, consistent with the terms and conditions required under such provisions of law.

“(b) Provisions of Law.—The provisions of law specified in this subsection are the following:

“(1) Part A of title IV of the Social Security Act [this part] (relating to block grants for temporary assistance for needy families).

“(2) The Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) (relating to block grants for child care).”

§ 602. Eligible States; State plan

(a) In general

As used in this part, the term "eligible State" means, with respect to a fiscal year, a State that, during the 27-month period ending with the close of the 1st quarter of the fiscal year, has submitted to the Secretary a plan that the Secretary has found includes the following:

(1) Outline of family assistance program

(A) General provisions

A written document that outlines how the State intends to do the following:

(i) Conduct a program, designed to serve all political subdivisions in the State (not necessarily in a uniform manner), that provides assistance to needy families with (or expecting) children and provides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient.

(ii) Require a parent or caretaker receiving assistance under the program to engage in work (as defined by the State) once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months (whether or not consecutive), whichever is earlier, consistent with section 607(e)(2) of this title.

(iii) Ensure that parents and caretakers receiving assistance under the program engage in work activities in accordance with section 607 of this title.

(iv) Take such reasonable steps as the State deems necessary to restrict the use and disclosure of information about individuals and families receiving assistance under the program attributable to funds provided by the Federal Government.

(v) Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies, with special emphasis on teenage pregnancies, and establish numerical goals for reducing the illegitimacy ratio of the State (as defined in section 603(a)(2)(C)(iii) of this title) for calendar years 1996 through 2005.

(vi) Conduct a program, designed to reach State and local law enforcement officials, the education system, and relevant counseling services, that provides education and training on the problem of statutory rape so that teenage pregnancy prevention programs may be expanded in scope to include men.

(B) Special provisions

(i) The document shall indicate whether the State intends to treat families moving into the State from another State differently than other families under the program, and if so, how the State intends to treat such families under the program.

(ii) The document shall indicate whether the State intends to provide assistance under the program to individuals who are...
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State will operate a child support enforcement program of the State that, during the fiscal year, the program under the State plan approved under part D of this subchapter.

(iv) Not later than 1 year after August 22, 1996, unless the chief executive officer of the State opts out of this provision by notifying the Secretary, a State shall, consistent with the exception provided in section 607(e)(2) of this title, require a parent or caretaker receiving assistance under the program who, after receiving such assistance for 2 months is not exempt from work requirements and is not engaged in work, as determined under section 607(c) of this title, to participate in community service employment, with minimum hours per week and tasks to be determined by the State.

(v) The document shall indicate whether the State intends to assist individuals to train for, seek, and maintain employment—

(I) providing direct care in a long-term care facility (as such terms are defined under section 1397 of this title); or

(II) in other occupations related to elder care determined appropriate by the State for which the State identifies an unmet need for service personnel,

and, if so, shall include an overview of such assistance.

(2) Certification that the State will operate a child support enforcement program

A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the State plan approved under part D of this subchapter.

(3) Certification that the State will operate a foster care and adoption assistance program

A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a foster care and adoption assistance program under the State plan approved under part E of this subchapter, and that the State will take such actions as are necessary to ensure that children receiving assistance under such part are eligible for medical assistance under the State plan under subchapter XIX of this chapter.

(4) Certification of the administration of the program

A certification by the chief executive officer of the State specifying which State agency or agencies will administer and supervise the program referred to in paragraph (1) for the fiscal year, which shall include assurances that local governments and private sector organizations—

(A) have been consulted regarding the plan and design of welfare services in the State so that services are provided in a manner appropriate to local populations; and

(B) have had at least 45 days to submit comments on the plan and the design of such services.

(5) Certification that the State will provide Indians with equitable access to assistance

A certification by the chief executive officer of the State that, during the fiscal year, the State will provide each member of an Indian tribe, who is domiciled in the State and is not eligible for assistance under a tribal family assistance plan approved under section 612 of this title, with equitable access to assistance under the State program funded under this part attributable to funds provided by the Federal Government.

(6) Certification of standards and procedures to ensure against program fraud and abuse

A certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to ensure against program fraud and abuse, including standards and procedures concerning nepotism, conflicts of interest among individuals responsible for the administration and supervision of the State program, kickbacks, and the use of political patronage.

(7) Optional certification of standards and procedures to ensure that the State will screen for and identify domestic violence

(A) In general

At the option of the State, a certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to—

(i) screen and identify individuals receiving assistance under this part with a history of domestic violence while maintaining the confidentiality of such individuals; (ii) refer such individuals to counseling and supportive services; and (iii) waive, pursuant to a determination of good cause, other program requirements such as time limits (for so long as necessary) for individuals receiving assistance, residency requirements, child support cooperation requirements, and family cap provisions, in cases where compliance with such requirements would make it more difficult for individuals receiving assistance under this part to escape domestic violence or unfairly penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence.

(B) “Domestic violence” defined

For purposes of this paragraph, the term “domestic violence” has the same meaning as the term “battered or subjected to extreme cruelty”, as defined in section 668(a)(7)(C)(iii) of this title.

(b) Plan amendments

Within 30 days after a State amends a plan submitted pursuant to subsection (a) of this section, the State shall notify the Secretary of the amendment.

(c) Public availability of State plan summary

The State shall make available to the public a summary of any plan or plan amendment submitted by the State under this section.
Section 603(a)(2) of this title, referred to in subsec. (a)(3)(A), was amended generally by Pub. L. 109–173, title VII, §7103(a), Apr. 8, 2006, 120 Stat. 138, and, as so amended, no longer defines "illegitimacy ratio".

References in Text

Section 603(a)(2) of this title, referred to in subsec. (c), was amended generally by Pub. L. 109–173, title VII, §7103(a), Feb. 8, 2006, 120 Stat. 138, and, as so amended, no longer defines "illegitimacy ratio".

Prior Provisions


Effective Date of 2010 Amendment


Effective Date of 1999 Amendment

Pub. L. 106–169, title IV, §401(q), Dec. 19, 1999, 113 Stat. 1959, provided that: "Except as provided in subsection (b) [amending this section and enacting provisions set out as a note under section 604 of this title], the amendments made by this section [amending this section and sections 604, 609, 613, 629a, 652, 654, 655, 657, 663, 667, 671, and 1320(b)–7 of this title] shall take effect as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2105)."

Effective Date of 1997 Amendment

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

Effective Date

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.
in May 1987, as alternative to AFDC program under this subchapter, would more effectively break the cycle of poverty and provide families with opportunities for economic independence and strengthened family functioning, prior to repeal by Pub. L. 104–193, title I, §110(b), Aug. 22, 1996, 110 Stat. 2171.

CHILD SUPPORT DEMONSTRATION PROGRAM IN NEW YORK STATE

Section 9122 of Pub. L. 100–203 authorized State of New York, upon application by State and approval by Secretary of Health and Human Services, to conduct demonstration program in accordance with this section for purpose of testing State's Child Support Supplemental Program as alternative to the program of Aid to Families with Dependent Children under this subchapter, prior to repeal by Pub. L. 104–193, title I, §110(c), Aug. 22, 1996, 110 Stat. 2171.

UTILITY PAYMENTS MADE BY TENANTS IN ASSISTED HOUSING

Pub. L. 98–181, title II, §221, Nov. 30, 1983, 97 Stat. 1188, as amended by Pub. L. 98–479, title I, §102(g)(3), Oct. 17, 1984, 98 Stat. 2222, provided that notwithstanding any other provision of law, for purposes of determining eligibility, or amount of benefits payable, under this part, any utility payment made in lieu of any rental payment by person living in dwelling unit in lower income housing project assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) or section 1715z–1 of Title 12, Banks and Banking, was to be considered to be shelter payment, prior to repeal by Pub. L. 104–193, title I, §110(d), Aug. 22, 1996, 110 Stat. 2171.

EXCLUSION FROM INCOME

Section 159 of Pub. L. 97–248 provided that payments made under statutorily established State program to meet certain needs of children receiving aid under State's plan approved under this part were to be excluded from income of such children and their families for purposes of section 609(a) of this title and for all other purposes of this part and of such plan, effective Sept. 3, 1982, if the payments were made to such children by State agency administering such plan, but were made without Federal financial participation under section 609(a) of this title or otherwise, and if State plan approved under this part were to be shelter payment, prior to repeal by Pub. L. 104–193, title I, §110(d), Aug. 22, 1996, 110 Stat. 2171.

STATE PLANS TO DISREGARD EARNED INCOME OF INDIVIDUALS IN DETERMINATION OF NEED FOR AID; EFFECTIVE DATE

Section 202(d) of Pub. L. 90–248 provided that effective with respect to quarters beginning after June 30, 1968, in determining need of individuals claiming aid under State plan approved under this part, State was to apply provisions of this part notwithstanding any provisions of law other than this chapter requiring State to disregard earned income of such individuals in determining need under such State plan, prior to repeal by Pub. L. 104–193, title I, §110(f), Aug. 22, 1996, 110 Stat. 2171.

§ 603. Grants to States

(a) Grants

(1) Family assistance grant

(A) In general


(B) State family assistance grant

The State family assistance grant payable to a State for a fiscal year shall be the amount that bears the same ratio to the amount specified in subparagraph (C) of this paragraph as the amount required to be paid to the State under this paragraph for fiscal year 2002 (determined without regard to any reduction pursuant to section 609 or 612(a)(1) of this title) bears to the total amount required to be paid under this paragraph for fiscal year 2002 (as so determined).

(C) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal year 2003 $16,566,542,000 for grants under this paragraph.

(2) Healthy marriage promotion and responsible fatherhood grants

(A) In general

(i) Use of funds

Subject to subparagraphs (B), (C), and (E), the Secretary may use the funds made available under subparagraph (D) for the purpose of conducting and supporting research and demonstration projects by public or private entities, and providing technical assistance to States, Indian tribes and tribal organizations, and such other entities as the Secretary may specify that are receiving a grant under another provision of this part.

(ii) Limitations

The Secretary may not award funds made available under this paragraph on a noncompetitive basis, and may not provide any such funds to an entity for the purpose of carrying out healthy marriage promotion activities or for the purpose of carrying out activities promoting responsible fatherhood unless the entity has submitted to the Secretary an application (or, in the case of an entity seeking funding to carry out healthy marriage promotion activities or activities promoting responsible fatherhood, a combined application that contains assurances that the entity will carry out such activities under separate programs and shall not combine any funds awarded to carry out either such activities) which—

(I) describes—

(aa) how the programs or activities proposed in the application will address, as appropriate, issues of domestic violence; and

(bb) what the applicant will do, to the extent relevant, to ensure that participation in the programs or activities is voluntary, and to inform potential participants that their participation is voluntary; and

(II) contains a commitment by the entity—

(aa) to not use the funds for any other purpose; and

(bb) to consult with experts in domestic violence or relevant community domestic violence coalitions in developing the programs and activities.
(iii) Healthy marriage promotion activities
In clause (ii), the term "healthy marriage promotion activities" means the following:
(I) Public advertising campaigns on the value of marriage and the skills needed to increase marital stability and health.
(II) Education in high schools on the value of marriage, relationship skills, and budgeting.
(III) Marriage education, marriage skills, and relationship skills programs, that may include parenting skills, financial management, conflict resolution, and job and career advancement.
(IV) Pre-marital education and marriage skills training for engaged couples and for couples or individuals interested in marriage.
(V) Marriage enhancement and marriage skills training programs for married couples.
(VI) Divorce reduction programs that teach relationship skills.
(VII) Marriage mentoring programs which use married couples as role models and mentors in at-risk communities.
(VIII) Programs to reduce the disincentives to marriage in means-tested aid programs, if offered in conjunction with any activity described in this subparagraph.

(B) Limitation on use of funds for demonstration projects for coordination of provision of child welfare and TANF services to tribal families at risk of child abuse or neglect
(i) In general
Of the amounts made available under subparagraph (D) for a fiscal year, the Secretary may not award more than $2,000,000 on a competitive basis to fund demonstration projects designed to test the effectiveness of tribal governments or tribal consortia in coordinating the provision to tribal families at risk of child abuse or neglect of child welfare services and services under tribal programs funded under this part.

(ii) Limitation on use of funds
A grant made pursuant to clause (i) to such a project shall not be used for any purpose other than—
(I) to improve case management for families eligible for assistance from such a tribal program;
(II) for supportive services and assistance to tribal children in out-of-home placements and the tribal families caring for such children, including families who adopt such children; and
(III) for prevention services and assistance to tribal families at risk of child abuse and neglect.

(iii) Reports
The Secretary may require a recipient of funds awarded under this subparagraph to provide the Secretary with such information as the Secretary deems relevant to enable the Secretary to facilitate and oversee the administration of any project for which funds are provided under this subparagraph.

(C) Limitation on use of funds for activities promoting responsible fatherhood
(i) In general
Of the amounts made available under subparagraph (D) for a fiscal year, the Secretary may not award more than $75,000,000 on a competitive basis to States, territories, Indian tribes and tribal organizations, and public and nonprofit community entities, including religious organizations, for activities promoting responsible fatherhood.

(ii) Activities promoting responsible fatherhood
In this paragraph, the term "activities promoting responsible fatherhood" means the following:
(I) Activities to promote marriage or sustain marriage through activities such as counseling, mentoring, disseminating information about the benefits of marriage and 2-parent involvement for children, enhancing relationship skills, education regarding how to control aggressive behavior, disseminating information on the causes of domestic violence and child abuse, marriage preparation programs, premarital counseling, marital inventories, skills-based marriage education, financial planning seminars, including improving a family's ability to effectively manage family business affairs by means such as education, counseling, or mentoring on matters related to family finances, including household management, budgeting, banking, and handling of financial transactions and home maintenance, and divorce education and reduction programs, including mediation and counseling.
(II) Activities to promote responsible parenting through activities such as counseling, mentoring, and mediation, disseminating information about good parenting practices, skills-based parenting education, encouraging child support payments, and other methods.
(III) Activities to foster economic stability by helping fathers improve their economic status by providing activities such as work first services, job search, job training, subsidized employment, job retention, job enhancement, and encouraging education, including career-advancing education, dissemination of employment materials, coordination with existing employment services such as welfare-to-work programs, referrals to local employment training initiatives, and other methods.
(IV) Activities to promote responsible fatherhood that are conducted through a contract with a nationally recognized,
nonprofit fatherhood promotion organization, such as the development, promotion, and distribution of a media campaign to encourage the appropriate involvement of parents in the life of any child and specifically the issue of responsible fatherhood, and the development of a national clearinghouse to assist States and communities in efforts to promote and support marriage and responsible fatherhood.

(D) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal year 2011 for expenditure in accordance with this paragraph—

(i) $75,000,000 for awarding funds for the purpose of carrying out healthy marriage promotion activities; and

(ii) $75,000,000 for awarding funds for the purpose of carrying out activities promoting responsible fatherhood.

If the Secretary makes an award under subparagraph (B)(i) for fiscal year 2011, the funds for such award shall be taken in equal portion from the amounts appropriated under clauses (i) and (ii).

(E) Preference

In awarding funds under this paragraph for fiscal year 2011, the Secretary shall give preference to entities that were awarded grants funded under this paragraph. If the Secretary makes an award under subparagraph (B)(i) for fiscal year 2011, the funds for such award shall be taken in equal portion from the amounts appropriated under clauses (i) and (ii).

(3) Supplemental grant for population increases in certain States

(A) In general

Each qualifying State shall, subject to subparagraph (F), be entitled to receive from the Secretary—

(i) for fiscal year 1998 a grant in an amount equal to 2.5 percent of the total amount required to be paid to the State under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994; and

(ii) for each of fiscal years 1999, 2000, and 2001, a grant in an amount equal to the sum of—

(I) the amount (if any) required to be paid to the State under this paragraph for the immediately preceding fiscal year; and

(II) 2.5 percent of the sum of—

(aa) the total amount required to be paid to the State under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994; and

(bb) the amount (if any) required to be paid to the State under this paragraph for the fiscal year preceding the fiscal year for which the grant is to be made.

(B) Preservation of grant without increases for States failing to remain qualifying States

Each State that is not a qualifying State for a fiscal year specified in subparagraph (A)(ii) but was a qualifying State for a prior fiscal year shall, subject to subparagraph (F), be entitled to receive from the Secretary for the specified fiscal year, a grant in an amount equal to the amount required to be paid to the State under this paragraph for the most recent fiscal year for which the State was a qualifying State.

(C) Qualifying State

(i) In general

For purposes of this paragraph, a State is a qualifying State for a fiscal year if—

(I) the level of welfare spending per poor person by the State for the immediately preceding fiscal year is less than the national average level of State welfare spending per poor person for such preceding fiscal year; and

(II) the population growth rate of the State (as determined by the Bureau of the Census) for the most recent fiscal year for which information is available exceeds the average population growth rate for all States (as so determined) for such most recent fiscal year.

(ii) State must qualify in fiscal year 1998

Notwithstanding clause (i), a State shall not be a qualifying State for any fiscal year after 1998 by reason of clause (i) if the State is not a qualifying State for fiscal year 1998 by reason of clause (i).

(iii) Certain States deemed qualifying States

For purposes of this paragraph, a State is deemed to be a qualifying State for fiscal years 1998, 1999, 2000, and 2001 if—

(I) the level of welfare spending per poor person by the State for fiscal year 1994 is less than 35 percent of the national average level of State welfare spending per poor person for fiscal year 1994; or

(II) the population of the State increased by more than 10 percent from April 1, 1990 to July 1, 1994, according to the population estimates in publication CB94-204 of the Bureau of the Census.

(D) Definitions

As used in this paragraph:

(i) Level of welfare spending per poor person

The term “level of State welfare spending per poor person” means, with respect to a State and a fiscal year—

(I) the sum of—

(aa) the total amount required to be paid to the State under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994; and

(bb) the amount (if any) required to be paid to the State under this paragraph for the fiscal year preceding the fiscal year for which the grant is to be made.

(II) the number of individuals, according to the 1990 decennial census, who were residents of the State and whose income was below the poverty line.
(ii) National average level of State welfare spending per poor person

The term “national average level of State welfare spending per poor person” means, with respect to a fiscal year, an amount equal to—

(I) the total amount required to be paid to the States under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994; divided by

(II) the number of individuals, according to the 1990 decennial census, who were residents of any State and whose income was below the poverty line.

(iii) State

The term “State” means each of the 50 States of the United States and the District of Columbia.

(E) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1998, 1999, 2000, and 2001 such sums as are necessary for grants under this paragraph, in a total amount not to exceed $800,000,000.

(F) Grants reduced pro rata if insufficient appropriations

If the amount appropriated pursuant to this paragraph for a fiscal year (or portion of a fiscal year) is less than the total amount of payments otherwise required to be made under this paragraph for the fiscal year (or portion of the fiscal year), then the amount otherwise payable to any State for the fiscal year (or portion of the fiscal year) under this paragraph shall be reduced by a percentage equal to the amount so appropriated divided by such total amount.

(G) Budget scoring

Notwithstanding section 907(b)(2) of title 2, the baseline shall assume that no grant shall be made under this paragraph after fiscal year 2001.

(H) Reauthorization

Notwithstanding any other provision of this paragraph—

(i) any State that was a qualifying State under this paragraph for fiscal year 2001 or any prior fiscal year shall be entitled to receive from the Secretary for each of fiscal years 2002 and 2003 a grant in an amount equal to the amount required to be paid to the State under this paragraph for the most recent fiscal year in which the State was a qualifying State;

(ii) subparagraph (G) shall be applied as if “fiscal year 2011” were substituted for “fiscal year 2001”;

(iii) out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for each of fiscal years 2002 and 2003 such sums as are necessary for grants under this subparagraph.

(4) Bonus to reward high performance States

(A) In general

The Secretary shall make a grant pursuant to this paragraph to each State for each bonus year for which the State is a high performing State.

(B) Amount of grant

(i) In general

Subject to clause (ii) of this subparagraph, the Secretary shall determine the amount of the grant payable under this paragraph to a high performing State for a bonus year, which shall be based on the score assigned to the State under subparagraph (D)(i) for the fiscal year that immediately precedes the bonus year.

(ii) Limitation

The amount payable to a State under this paragraph for a bonus year shall not exceed 5 percent of the State family assistance grant.

(C) Formula for measuring State performance

Not later than 1 year after August 22, 1996, the Secretary, in consultation with the National Governors’ Association and the American Public Welfare Association, shall develop a formula for measuring State performance in operating the State program funded under this part so as to achieve the goals set forth in section 601(a) of this title.

(D) Scoring of State performance; setting of performance thresholds

For each bonus year, the Secretary shall—

(i) use the formula developed under subparagraph (C) to assign a score to each eligible State for the fiscal year that immediately precedes the bonus year; and

(ii) prescribe a performance threshold in such a manner so as to ensure that—

(I) the average annual total amount of grants to be made under this paragraph for each bonus year equals $200,000,000; and

(II) the total amount of grants to be made under this paragraph for all bonus years equals $1,000,000,000.

(E) Definitions

As used in this paragraph:

(i) Bonus year


(ii) High performing State

The term “high performing State” means, with respect to a bonus year, an eligible State whose score assigned pursuant to subparagraph (D)(i) for the fiscal year immediately preceding the bonus year equals or exceeds the performance threshold prescribed under subparagraph (D)(ii) for such preceding fiscal year.

(F) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1999
through 2003 $1,000,000,000 for grants under this paragraph.

(5) Welfare-to-work grants

(A) Formula grants

(i) Entitlement

A State shall be entitled to receive from the Secretary of Labor a grant for each fiscal year specified in subparagraph (H) of this paragraph for which the State is a welfare-to-work State, in an amount that does not exceed the lesser of—

(I) 2 times the total of the expenditures by the State (excluding qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title) and any expenditure described in subclause (I), (II), or (IV) of section 609(a)(7)(B)(iv) of this title) during the period permitted under subparagraph (C)(vii) of this paragraph for the expenditure of funds under the grant for activities described in subparagraph (C)(i) of this paragraph; or

(II) the allotment of the State under clause (iii) of this subparagraph for the fiscal year.

(ii) Welfare-to-work State

A State shall be considered a welfare-to-work State for a fiscal year for purposes of this paragraph if the Secretary of Labor determines that the State meets the following requirements:

(I) The State has submitted to the Secretary of Labor and the Secretary of Health and Human Services (in the form of an addendum to the State plan submitted under section 602 of this title) a plan which—

(aa) describes how, consistent with this subparagraph, the State will use any funds provided under this subparagraph during the fiscal year;

(bb) specifies the formula to be used pursuant to clause (vi) to distribute funds in the State, and describes the process by which the formula was developed;

(cc) contains evidence that the plan was developed in consultation and coordination with appropriate entities in sub-State areas;

(dd) contains assurances by the Governor of the State that the private industry council (and any alternate agency designated by the Governor under item (ee)) for a service delivery area in the State will coordinate the expenditure of any funds provided under this subparagraph for the benefit of the service delivery area with the expenditure of the funds provided to the State under paragraph (1);

(ee) if the Governor of the State desires to have an agency other than a private industry council administer the funds provided under this subparagraph for the benefit of 1 or more service delivery areas in the State, contains an application to the Secretary of Labor for a waiver of clause (viii)(I) with respect to the area or areas in order to permit an alternate agency designated by the Governor to so administer the funds; and

(ff) describes how the State will ensure that a private industry council to which information is disclosed pursuant to section 603(a)(5)(K) or 654A(f)(5) of this title has procedures for safeguarding the information and for ensuring that the information is used solely for the purpose described in that section.

(II) The State has provided to the Secretary of Labor an estimate of the amount that the State intends to expend during the period permitted under subparagraph (C)(vii) of this paragraph for the expenditure of funds under the grant (excluding expenditures described in section 609(a)(7)(B)(iv) of this title (other than subclause (III) thereof)) pursuant to this paragraph.

(III) The State has agreed to negotiate in good faith with the Secretary of Health and Human Services with respect to the substance and funding of any evaluation under section 613(j) of this title, and to cooperate with the conduct of any such evaluation.

(IV) The State is an eligible State for the fiscal year.

(V) The State certifies that qualified State expenditures (within the meaning of section 609(a)(7) of this title) for the fiscal year will be not less than the applicable percentage of historic State expenditures (within the meaning of section 609(a)(7) of this title) with respect to the fiscal year.

(iii) Allocations to welfare-to-work States

(A) In general

Subject to this clause, the allotment of a welfare-to-work State for a fiscal year shall be the available amount for the fiscal year, multiplied by the State percentage for the fiscal year.

(B) Minimum allotment

The allotment of a welfare-to-work State (other than Guam, the Virgin Islands, or American Samoa) for a fiscal year shall not be less than 0.25 percent of the available amount for the fiscal year.

(C) Pro rata reduction

Subject to subclause (II), the Secretary of Labor shall make pro rata reductions in the allotments to States under this clause for a fiscal year as necessary to ensure that the total of the allotments does not exceed the available amount for the fiscal year.

(D) Available amount

As used in this subparagraph, the term “available amount” means, for a fiscal year, the sum of—

2So in original. Probably should be “entities”.

3See References in Text note below.
(I) 75 percent of the sum of—
   (aa) the amount specified in subpara-
   graph (H) for the fiscal year, minus the
   total of the amounts reserved pursuant
to subparagraphs (E), (F), and (G) for
   the fiscal year; and
   (bb) any amount reserved pursuant
to subparagraph (E) for the imme-
diately preceding fiscal year that has
not been obligated; and

(II) any available amount for the im-
mediately preceding fiscal year that has
not been obligated by a State, other than
funds reserved by the State for distribu-
tion under clause (vi)(III) and funds dis-
tributed pursuant to clause (vi)(I) in any
State in which the service delivery area
is the State.

(v) State percentage
As used in clause (iii), the term "State
percentage" means, with respect to a fis-
cal year, ½ of the sum of—
(I) the percentage represented by the
number of individuals in the State whose
income is less than the poverty line di-
vided by the number of such individuals
in the United States; and

(II) the percentage represented by the
number of adults who are recipients of
assistance under the State program
funded under this part divided by the
number of individuals in the State whose
income is less than the poverty line di-
vided by the number of such individuals
in the United States.

(vi) Procedure for distribution of funds
within States
(I) Allocation formula
A State to which a grant is made under
this subparagraph shall devise a formula
for allocating not less than 85 percent of
the amount of the grant among the serv-
ice delivery areas in the State, which—
   (aa) determines the amount to be al-
located for the benefit of a service de-
ivery area in proportion to the num-
ber (if any) by which the population of
the area with an income that is less
than the poverty line exceeds 7.5 per-
cent of the total population of the
area, relative to such number for all
such areas in the State with such an
excess, and accords a weight of not less
than 50 percent to this factor;

   (bb) may determine the amount to be
allocated for the benefit of such an
area in proportion to the number of
unemployed individuals residing in the
area relative to the number of such in-
dividuals residing in the State.

(II) Distribution of funds
   (aa) In general
   If the amount allocated by the for-
mula to a service delivery area is at
least $100,000, the State shall distribute
the amount to the entity administ-
ring the grant in the area.

   (bb) Special rule
   If the amount allocated by the for-
mula to a service delivery area is less
than $100,000, the amount shall be avail-
able for distribution in the State under
subclause (III) during the fiscal year.

(III) Projects to help long-term recipients
   of assistance enter unsubsidized jobs
The Governor of a State to which a
grant is made under this subparagraph
may distribute not more than 15 percent
of the grant funds (plus any amount re-
quired to be distributed under this sub-
clause by reason of subclause (II)(bb)) to
projects that appear likely to help long-
term recipients of assistance under the
State program funded under this part
(whether in effect before or after the
amendments made by section 103(a) of
the Personal Responsibility and Work
Opportunity Reconciliation Act of 1996
first applied to the State) enter unsubsi-
dized employment.

(vii) Administration
   (I) Private industry councils
   The private industry council for a serv-
ice delivery area in a State shall have
sole authority, in coordination with the
chief elected official (as defined in sec-
tion 101 of the Workforce Investment Act
of 1998 [29 U.S.C. 2801]) of the area, to ex-
pend the amounts distributed under
clause (vi)(II)(aa) for the benefit of the
service delivery area, in accordance with
the assurances described in clause
(II)(I)(dd) provided by the Governor of
the State.

   (II) Enforcement of coordination of ex-
penditures with other expenditures
under this part
Notwithstanding subclause (I) of this
clause, on a determination by the Gov-
ernor of a State that a private industry
council (or an alternate agency described
in clause (II)(I)(dd)) has used funds pro-
vided under this subparagraph in a man-
er inconsistent with the assurances de-
scribed in clause (II)(I)(dd)—
   (aa) the private industry council (or
such alternate agency) shall remit the
funds to the Governor; and

   (bb) the Governor shall apply to the
Secretary of Labor for a waiver of sub-
clause (I) of this clause with respect to
the service delivery area or areas in-
volved in order to permit an alternate
agency designated by the Governor to administer the funds in accordance with the assurances.

(III) Authority to permit use of alternate administering agency

The Secretary of Labor shall approve an application submitted under clause (ii)(vii)(ee) or subclause (II)(bb) of this clause to waive subclause (I) of this clause with respect to 1 or more service delivery areas if the Secretary determines that the alternate agency designated in the application would improve the effectiveness or efficiency of the administration of amounts distributed under clause (vi)(II)(aa) for the benefit of the area or areas.

(viii) Data to be used in determining the number of adult TANF recipients

For purposes of this subparagraph, the number of adult recipients of assistance under a State program funded under this part for a fiscal year shall be determined using data for the most recent 12-month period for which such data is available before the beginning of the fiscal year.

(ix) Reversion of unallotted formula funds

If at the end of any fiscal year any funds available under this subparagraph have not been allotted due to a determination by the Secretary that any State has not met the requirements of clause (ii), such funds shall be transferred to the General Fund of the Treasury of the United States.

(B) Competitive grants

(i) In general

The Secretary of Labor shall award grants in accordance with this subparagraph, in fiscal years 1998 and 1999, for projects proposed by eligible applicants, based on the following:

(I) The effectiveness of the proposal in—

(aa) expanding the base of knowledge about programs aimed at moving recipients of assistance under State programs funded under this part who are at least job ready into unsubsidized employment; and

(bb) moving recipients of assistance under State programs funded under this part who are at least job ready into unsubsidized employment; and

(cc) moving recipients of assistance under State programs funded under this part who are at least job ready into unsubsidized employment, even in labor markets that have a shortage of low-skill jobs.

(II) At the discretion of the Secretary of Labor, any of the following:

(aa) The history of success of the applicant in moving individuals with multiple barriers into work.

(bb) Evidence of the applicant’s ability to leverage private, State, and local resources.

(cc) Use by the applicant of State and local resources beyond those required by subparagraph (A).

(dd) Plans of the applicant to coordinate with other organizations at the local and State level.

(ee) Use by the applicant of current or former recipients of assistance under a State program funded under this part as mentors, case managers, or service providers.

(ii) Eligible applicants

As used in clause (i), the term “eligible applicant” means a private industry council for a service delivery area in a State, a political subdivision of a State, or a private entity applying in conjunction with the private industry council for such a service delivery area or with such a political subdivision, that submits a proposal developed in consultation with the Governor of the State.

(iii) Determination of grant amount

In determining the amount of a grant to be made under this subparagraph for a project proposed by an applicant, the Secretary of Labor shall provide the applicant with an amount sufficient to ensure that the project has a reasonable opportunity to be successful, taking into account the number of long-term recipients of assistance under a State program funded under this part, the level of unemployment, the job opportunities and job growth, the poverty rate, and such other factors as the Secretary of Labor deems appropriate, in the area to be served by the project.

(iv) Consideration of needs of rural areas and cities with large concentrations of poverty

In making grants under this subparagraph, the Secretary of Labor shall consider the needs of rural areas and cities with large concentrations of residents with an income that is less than the poverty line.

(v) Funding

For grants under this subparagraph for each fiscal year specified in subparagraph (H), there shall be available to the Secretary of Labor an amount equal to the sum of—

(I) 25 percent of the sum of—

(aa) the amount specified in subparagraph (H) for the fiscal year, minus the total of the amounts reserved pursuant to subparagraphs (E), (F), and (G) for the fiscal year; and

(bb) any amount reserved pursuant to subparagraph (E) for the immediately preceding fiscal year that has not been obligated; and

(II) any amount available for grants under this subparagraph for the immediately preceding fiscal year that has not been obligated.

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4So in original. The period probably should be a semicolon.
(C) Limitations on use of funds

(i) Allowable activities

An entity to which funds are provided under this paragraph shall use the funds to move individuals into and keep individuals in lasting unsubsidized employment by means of any of the following:

(I) The conduct and administration of community service or work experience programs.
(II) Job creation through public or private sector employment wage subsidies.
(III) On-the-job training.
(IV) Contracts with public or private providers of readiness, placement, and post-employment services, or if the entity is not a private industry council or workforce investment board, the direct provision of such services.
(V) Job vouchers for placement, readiness, and postemployment services.
(VI) Job retention or support services if such services are not otherwise available.
(VII) Not more than 6 months of vocational educational or job training.

Contracts or vouchers for job placement services supported by such funds must require that at least \( \frac{1}{2} \) of the payment occur after an eligible individual placed into the workforce has been in the workforce for 6 months.

(ii) General eligibility

An entity that operates a project with funds provided under this paragraph may expend funds provided to the project for the benefit of recipients of assistance under the program funded under this part of the State in which the entity is located who—

(I) has received assistance under the State program funded under this part (whether in effect before or after the amendments made by section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 first apply to the State) for at least 30 months (whether or not consecutive); or
(II) within 12 months, will become ineligible for assistance under the program funded under this part.

(ii) General eligibility

An entity that operates a project with funds provided under this paragraph may use the funds to provide services in a form described in clause (i) to noncustodial parents with respect to whom the requirements of the following subclauses are met:

(I) The noncustodial parent is unemployed or underemployed, or having difficulty in paying child support obligations.
(II) At least 1 of the following applies to a minor child of the noncustodial parent (with preference in the determination of the noncustodial parents to be provided services under this paragraph to be provided by the entity to those noncustodial parents with minor children who meet, or who have custodial parents who meet, the requirements of item (aa)):

(aa) The minor child or the custodial parent of the minor child meets the requirements of subclause (I) or (II) of clause (ii).
(bb) The minor child is eligible for, or is receiving, benefits under the program funded under this part.
(cc) The minor child received benefits under the program funded under this part in the 12-month period preceding the date of the determination but no longer receives such benefits.
(dd) The minor child is eligible for, or is receiving, assistance under the Food and Nutrition Act of 2008 [7 U.S.C. 2011 et seq.], benefits under the supplemental security income program under subchapter XVI of this chapter, medical assistance under subchapter XIX of this chapter, or child health assistance under subchapter XXI of this chapter.

(iii) Noncustodial parents

An entity that operates a project with funds provided under this paragraph may use the funds to provide services in a form described in clause (i) to noncustodial parents with respect to whom the requirements of the following subclauses are met:

(I) The noncustodial parent is unemployed or underemployed, or having difficulty in paying child support obligations.
(II) At least 1 of the following applies to a minor child of the noncustodial parent (with preference in the determination of the noncustodial parents to be provided services under this paragraph to be provided by the entity to those noncustodial parents with minor children who meet, or who have custodial parents who meet, the requirements of item (aa)):

(aa) The minor child or the custodial parent of the minor child meets the requirements of subclause (I) or (II) of clause (ii).
(bb) The minor child is eligible for, or is receiving, benefits under the program funded under this part.
(cc) The minor child received benefits under the program funded under this part in the 12-month period preceding the date of the determination but no longer receives such benefits.
(dd) The minor child is eligible for, or is receiving, assistance under the Food and Nutrition Act of 2008 [7 U.S.C. 2011 et seq.], benefits under the supplemental security income program under subchapter XVI of this chapter, medical assistance under subchapter XIX of this chapter, or child health assistance under subchapter XXI of this chapter.

(iii) Noncustodial parents

An entity that operates a project with funds provided under this paragraph may expend funds provided to the project for the benefit of recipients of assistance under the program funded under this part of the State in which the entity is located who—

(I) has received assistance under the State program funded under this part (whether in effect before or after the amendments made by section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 first apply to the State) for at least 30 months (whether or not consecutive); or
(II) within 12 months, will become ineligible for assistance under the program funded under this part.

An entity to which funds are provided under this paragraph may not provide services in a form described in clause (i) to noncustodial parents who meet, the requirements of item (aa):
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expend not more than 30 percent of all funds provided to the project for programs funded under this paragraph may use the funds to provide assistance in a form described in clause (i) of this subclause shall not be construed to require any other provision of law requiring a custodial parent to cooperate in establishing the paternity of a child or establishing or enforcing a support order with respect to a child, or entitling a custodial parent to refuse, for good cause, to provide such cooperation as a condition of assistance or benefit under any program, shall not be construed to require such cooperation by the custodial parent as a condition of participation of either parent in the program authorized under this paragraph, and shall not be construed to require a custodial parent to cooperate with or participate in any activity under this clause. The entity operating a project under this clause with funds provided under this paragraph shall consult with domestic violence prevention and intervention organizations in the development of the project.

(iv) Targeting of hard to employ individuals with characteristics associated with long-term welfare dependence

An entity that operates a project with funds provided under this paragraph may expend not more than 30 percent of all funds provided to the project for programs that provide assistance in a form described in clause (i)—

(I) to recipients of assistance under the program funded under this part of the State in which the entity is located who have characteristics associated with long-term welfare dependence (such as school dropout, teen pregnancy, or poor work history), including, at the option of the State, by providing assistance in such form as a condition of receiving assistance under the State program funded under this part;

(II) to children—

(aaa) who have attained 18 years of age but not 25 years of age; and

(bb) who, before attaining 18 years of age, were recipients of foster care maintenance payments (as defined in section 675(4) of this title) under part E of this subchapter or were in foster care under the responsibility of a State;

(III) to recipients of assistance under the State program funded under this part, determined to have significant barriers to self-sufficiency, pursuant to criteria established by the local private industry council; or

(IV) to custodial parents with incomes below 100 percent of the poverty line (as defined in section 902(2) of this title, including any revision required by such section, applicable to a family of the size involved).

To the extent that the entity does not expend such funds in accordance with the preceding sentence, the entity shall expend such funds in accordance with clauses (ii) and (iii) and, as appropriate, clause (v).

(v) Authority to provide work-related services to individuals who have reached the 5-year limit

An entity that operates a project with funds provided under this paragraph may use the funds to provide assistance in a form described in clause (i) of this subparagraph to, or for the benefit of, individuals who (but for section 608(a)(7) of this title) would be eligible for assistance under the program funded under this part of the State in which the entity is located.

(vi) Relationship to other provisions of this part

(I) Rules governing use of funds

The rules of section 604 of this title, other than subsections (b), (f), and (h) of section 604 of this title, shall not apply to a grant made under this paragraph.

(II) Rules governing payments to States

The Secretary of Labor shall carry out the functions otherwise assigned by section 605 of this title to the Secretary of Health and Human Services with respect to the grants payable under this paragraph.

(III) Administration

Section 616 of this title shall not apply to the programs under this paragraph.

(vii) Prohibition against use of grant funds for any other fund matching requirement

An entity to which funds are provided under this paragraph shall not use any part of the funds, nor any part of State expenditures made to match the funds, to fulfill any obligation of any State, political subdivision, or private industry council to contribute funds under subsection (b) of this section or section 618 of this title or any other provision of this chapter or any other Federal law.

(viii) Deadline for expenditure

An entity to which funds are provided under this paragraph shall remit to the Secretary of Labor any part of the funds that are not expended within 5 years after the date the funds are so provided.
(ix) Regulations
Within 90 days after August 5, 1997, the Secretary of Labor, after consultation with the Secretary of Health and Human Services and the Secretary of Housing and Urban Development, shall prescribe such regulations as may be necessary to implement this paragraph.

(x) Reporting requirements
The Secretary of Labor, in consultation with the Secretary of Health and Human Services, States, and organizations that represent State or local governments, shall establish requirements for the collection and maintenance of financial and participant information and the reporting of such information by entities carrying out activities under this paragraph.

(D) Definitions
(i) Individuals with income less than the poverty line
For purposes of this paragraph, the number of individuals with an income that is less than the poverty line shall be determined for a fiscal year—
(I) based on the methodology used by the Bureau of the Census to produce and publish intercensal poverty data for States and counties (or, in the case of Puerto Rico, the Virgin Islands, Guam, and American Samoa, other poverty data selected by the Secretary of Labor); and
(II) using data for the most recent year for which such data is available before the beginning of the fiscal year.

(ii) Private industry council
As used in this paragraph, the term “private industry council” means, with respect to a service delivery area, the private industry council or local workforce investment board established for the service delivery area pursuant to title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.], as appropriate.

(iii) Service delivery area
As used in this paragraph, the term “service delivery area” shall have the meaning given such term for purposes of the Job Training Partnership Act or.

(E) Funding for Indian tribes
1 percent of the amount specified in subparagraph (H) for fiscal year 1998 and $15,000,000 of the amount so specified for fiscal year 1999 shall be reserved for grants to Indian tribes under section 612(a)(3) of this title.

(F) Funding for evaluations of welfare-to-work programs
0.6 percent of the amount specified in subparagraph (H) for fiscal year 1998 and $9,000,000 of the amount so specified for fiscal year 1999 shall be reserved for use by the Secretary to carry out section 613(j) of this title.

(G) Funding for evaluation of abstinence education programs
(i) In general
0.2 percent of the amount specified in subparagraph (H) for fiscal year 1998 and $3,000,000 of the amount so specified for fiscal year 1999 shall be reserved for use by the Secretary to evaluate programs under section 710 of this title, directly or through grants, contracts, or interagency agreements.

(ii) Authority to use funds for evaluations of welfare-to-work programs
Any such amount not required for such evaluations shall be available for use by the Secretary to carry out section 613(j) of this title.

(iii) Deadline for outlays
Outlays from funds used pursuant to clause (i) for evaluation of programs under section 710 of this title shall not be made after fiscal year 2005.

(iv) Interim report
Not later than January 1, 2002, the Secretary shall submit to the Congress an interim report on the evaluations referred to in clause (i).

(H) Appropriations
(i) In general
Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for grants under this paragraph—
(I) $1,500,000,000 for fiscal year 1998; and
(II) $1,400,000,000 for fiscal year 1999.

(ii) Availability
The amounts made available pursuant to clause (i) shall remain available for such period as is necessary to make the grants provided for in this paragraph.

(I) Worker protections
(i) Nondisplacement in work activities
(1) General prohibition
Subject to this clause, an adult in a family receiving assistance attributable to funds provided under this paragraph may fill a vacant employment position in order to engage in a work activity.

(II) Prohibition against violation of contracts
A work activity engaged in under a program operated with funds provided under this paragraph shall not violate an existing contract for services or a collective bargaining agreement, and such a work activity that would violate a collective bargaining agreement shall not be undertaken without the written concurrence of the labor organization and employer concerned.

(III) Other prohibitions
An adult participant in a work activity engaged in under a program operated with funds provided under this paragraph shall not be employed or assigned—
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(aa) when any other individual is on layoff from the same or any substantially equivalent job;

(bb) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the participant; or

(cc) if the employer has caused an involuntary reduction to less than full time in hours of any employee in the same or a substantially equivalent job.

(ii) Health and safety

Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees shall be equally applicable to working conditions of other participants engaged in a work activity under a program operated with funds provided under this paragraph.

(iii) Nondiscrimination

In addition to the protections provided under the provisions of law specified in section 608(c) of this title, an individual may not be discriminated against by reason of gender with respect to participation in work activities engaged in under a program operated with funds provided under this paragraph.

(iv) Grievance procedure

(I) In general

Each State to which a grant is made under this paragraph shall establish and maintain a procedure for grievances or complaints from employees alleging violations of clause (i), (ii), or (iii).

(II) Hearing

The procedure shall include an opportunity for a hearing.

(III) Remedies

The procedure shall include remedies for violation of clause (i), (ii), or (iii), which may continue during the pendency of the procedure, and which may include—

(aa) suspension or termination of payments from funds provided under this paragraph;

(bb) prohibition of placement of a participant with an employer that has violated clause (i), (ii), or (iii);

(cc) where applicable, reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions and privileges of employment; and

(dd) where appropriate, other equitable relief.

(IV) Appeals

(aa) Filing

Not later than 30 days after a grievant or complainant receives an adverse decision under the procedure established pursuant to subclause (I), the grievant or complainant may appeal the decision to a State agency designated by the State which shall be independent of the State or local agency that is administering the programs operated with funds provided under this paragraph and the State agency administering, or supervising the administration of, the State program funded under this part.

(bb) Final determination

Not later than 120 days after the State agency designated under item (aa) receives a grievance or complaint made under the procedure established by a State pursuant to subclause (I), the State agency shall make a final determination on the appeal.

(v) Rule of interpretation

This subparagraph shall not be construed to affect the authority of a State to provide or require workers' compensation.

(vi) Nonpreemption of State law

The provisions of this subparagraph shall not be construed to preempt any provision of State law that affords greater protections to employees or to other participants engaged in work activities under a program funded under this part than is afforded by such provisions of this subparagraph.

(J) Information disclosure

If a State to which a grant is made under this section establishes safeguards against the use or disclosure of information about applicants or recipients of assistance under the State program funded under this part, the safeguards shall not prevent the State agency administering the program from furnishing to a private industry council the names, addresses, telephone numbers, and identifying case number information in the State program funded under this part, of noncustodial parents residing in the service delivery area of the private industry council, for the purpose of identifying and contacting noncustodial parents regarding participation in the program under this paragraph.

(b) Contingency Fund

(1) Establishment

There is hereby established in the Treasury of the United States a fund which shall be known as the “Contingency Fund for State Welfare Programs” (in this section referred to as the “Fund”).

(2) Deposits into Fund

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 2011 and 2012 such sums as are necessary for payment to the Fund in a total amount not to exceed, in the case of fiscal year 2011, such sums as are necessary for amounts obligated on or after October 1, 2010, and before December 8, 2010, and in the case of fiscal year 2012, $612,000,000.
(3) Grants

(A) Provisional payments

If an eligible State submits to the Secretary a request for funds under this paragraph during an eligible month, the Secretary shall, subject to this paragraph, pay to the State, from amounts appropriated pursuant to paragraph (2), an amount equal to the amount of funds so requested.

(B) Payment priority

The Secretary shall make payments under subparagraph (A) in the order in which the Secretary receives requests for such payments.

(C) Limitations

(i) Monthly payment to a State

The total amount paid to a single State under subparagraph (A) during a month shall not exceed \( \frac{1}{12} \) of 20 percent of the State family assistance grant.

(ii) Payments to all States

The total amount paid to all States under subparagraph (A) during fiscal year 2011 and 2012, respectively, shall not exceed the total amount appropriated pursuant to paragraph (2) for each such fiscal year.

(4) “Eligible month” defined

As used in paragraph (3)(A), the term “eligible month” means, with respect to a State, a month in the 2-month period that begins with any month for which the State is a needy State.

(5) Needy State

For purposes of paragraph (4), a State is a needy State for a month if—

(A) the average rate of—

(i) total unemployment in such State (seasonally adjusted) for the period consisting of the most recent 3 months for which data for all States are published equal or exceeds 6.5 percent; and

(ii) total unemployment in such State (seasonally adjusted) for the 3-month period ending in the 2 preceding calendar years; or

(B) as determined by the Secretary of Agriculture (in the discretion of the Secretary of Agriculture), the monthly average number of individuals (as of the last day of each month) participating in the supplemental nutrition assistance program in the State in the then most recently concluded 3-month period for which data are available exceeds by not less than 10 percent the lesser of—

(i) the monthly average number of individuals (as of the last day of each month) in the State that would have participated in the supplemental nutrition assistance program in the corresponding 3-month period in fiscal year 1994 if the amendments made by titles IV and VIII of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 had been in effect throughout fiscal year 1995; or

(ii) the monthly average number of individuals (as of the last day of each month) in the State that would have participated in the supplemental nutrition assistance program in the corresponding 3-month period in fiscal year 1994 if the amendments made by titles IV and VIII of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 had been in effect throughout fiscal year 1995.

(6) Annual reconciliation

(A) In general

Notwithstanding paragraph (3), if the Secretary makes a payment to a State under this subsection in a fiscal year, then the State shall remit to the Secretary, within 1 year after the end of the first subsequent period of 3 consecutive months for which the State is not a needy State, an amount equal to the amount (if any) by which—

(i) the total amount paid to the State under paragraph (3) of this subsection in the fiscal year; exceeds

(ii) the product of—

(I) the Federal medical assistance percentage for the State (as defined in section 1396d(b) of this title, as such section was in effect on September 30, 1995);

(II) the State’s reimbursable expenditures for the fiscal year; and

(III) \( \frac{1}{12} \) times the number of months during the fiscal year for which the Secretary made a payment to the State under such paragraph (3).

(B) Definitions

As used in subparagraph (A):

(i) Reimbursable expenditures

The term “reimbursable expenditures” means, with respect to a State and a fiscal year, the amount (if any) by which—

(I) countable State expenditures for the fiscal year; exceeds

(II) historic State expenditures (as defined in section 609(a)(7)(B)(iii) of this title), excluding any amount expended by the State for child care under subsection (g) or (i) of section 602 of this title (as in effect during fiscal year 1994) for fiscal year 1994.

(ii) Countable State expenditures

The term “countable expenditures” means, with respect to a State and a fiscal year—

(I) the qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title (other than the expenditures described in subclause (I)(bb) of such section)) under the State program funded under this part for the fiscal year; plus

(II) any amount paid to the State under paragraph (3) during the fiscal year that is expended by the State under the State program funded under this part.

(C) Adjustment of State remittances

(i) In general

The amount otherwise required by subparagraph (A) to be remitted by a State for...
a fiscal year shall be increased by the lesser of—
(I) the total adjustment for the fiscal year, multiplied by the adjustment percentage for the State for the fiscal year; or
(II) the unadjusted net payment to the State for the fiscal year.

(ii) Total adjustment
As used in clause (i), the term “total adjustment” means—
(I) in the case of fiscal year 1998, $2,000,000;
(II) in the case of fiscal year 1999, $9,000,000;
(III) in the case of fiscal year 2000, $16,000,000; and
(IV) in the case of fiscal year 2001, $13,000,000.

(iii) Adjustment percentage
As used in clause (i), the term “adjustment percentage” means, with respect to a State and a fiscal year—
(I) the unadjusted net payment to the State for the fiscal year; or
(II) the sum of the unadjusted net payments to all States for the fiscal year.

(iv) Unadjusted net payment
As used in this subparagraph, the term, “unadjusted net payment” means with respect to a State and a fiscal year—
(I) the total amount paid to the State under paragraph (3) in the fiscal year; minus
(II) the amount that, in the absence of this subparagraph, would be required by subparagraph (A) or by section 609(a)(10) of this title to be remitted by the State in respect of the payment.

(7) “State” defined
As used in this subsection, the term “State” means each of the 50 States and the District of Columbia.

(8) Annual reports
The Secretary shall annually report to the Congress on the status of the Fund.

Subsec. (a)(2)(B) to (E). Pub. L. 108–40, § 3(a)(2), added subpars. (B) and (C) and struck out former subpars. (D) to (E) which related to, in subpar. (D), definition of “State family assistance grant”, in subpar. (C), definition of “total amount required to be paid to the State under section 603 of this title”, in subpar. (B), redesignation of subpar. (d) as (c), and in subpar. (E), information to be used in determining amounts of grants for fiscal years 1995 to 2005, and, in subpar. (E), appropriations for fiscal years 1996 to 2002.
Subsec. (a)(3)(F). Pub. L. 108–40, § 3(d)(1), substituted “subparagraph (F)” for “subparagraph (G), and (H)”.
Subsec. (a)(4) to (7). Pub. L. 108–40, § 3(e)(1), designated former cl. (iv) as (v), inserted “clauses (ii) and (iii)”, and struck out former subcls. (v) and (vi) which read respectively as follows: “(aa) who are noncustodial parents of minors whose custodial parent is such a recipient; and (bb) who have such characteristics.”
Subsec. (a)(5)(C)(v) to (ix). Pub. L. 108–113, § 1000(a)(4) [title VIII, § 801(b)(1)(B)], added subcls. (J) to (IV), and struck out former subcl. (D) which read as follows: “(aa) who are noncustodial parents of minors whose custodial parent is such a recipient; and (bb) who have such characteristics.”
Subsec. (a)(5)(A)(iv)(II). Pub. L. 105–306, § 107(a), (c), redesignated subpar. (I) as (H) and substituted “$1,600,000,000” for “$1,450,000,000” in cl. (ii). Former subpar. (G) redesignated (F).
Pub. L. 108–246, § 2402(2), substituted “9,000,000” for “$900,000”.
Subsec. (a)(5)(H). Pub. L. 106–554, § 1(a)(1) [title I, § 107(a), (c), redesignated subpar. (I) as (H) and substituted “$1,600,000,000” for “$1,450,000,000” in cl. (ii)]. Former subpar. (I) redesignated (G).
Subsec. L. 108–246, § 2402(3), substituted “$3,000,000” for “300,000” in cl. (I).
Subsec. (a)(5)(I) to (J). Pub. L. 106–554, § 1(a)(1) [title I, § 107(a)], redesignated subpars. (J) and (K) as (I) and (J), respectively. Former subpar. (I) redesignated (H).
Subsec. (a)(5)(C)(i)(IV). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 803], inserted before period at end “, or if the entity is not a private industry council or workforce investment board, the direct provision of such services”.
Subsec. (a)(5)(C)(iv). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 801(c)], inserted “hard to employ” before “individuals” in heading, substituted “clauses (ii) and (iii)” and, as appropriate, clause (v’) for “clause (iii)” before period at end of concluding provisions, added subcls. (I) to (IV), and struck out former subcl. (J) which read as follows: “(aa) who are noncustodial parents of minors whose custodial parent is such a recipient; and (bb) who have such characteristics.”
Pub. L. 105-277, §101(f) [title VIII, §406(d)(30)(A)(i), substituted “(as described in section 103(c) of the Job Training Partnership Act or defined in section 101 of the Workforce Investment Act of 1998)” for “(as described in section 103(c) of the Job Training Partnership Act)”.


Subsec. (a)(5)(C)(ii). Pub. L. 105-200, §408(1), struck out “of minors whose custodial parent is such a recipient” after “nons custodial parents” in introductory provisions.


Pub. L. 105-277, §101(f) [title VIII, §406(d)(30)(B)(i)], substituted “means, with respect to a service delivery area, the private industry council or local workforce investment board established for the service delivery area pursuant to the Job Training Partnership Act or title I of the Workforce Investment Area of 1998, as appropriate” for “means, with respect to a service delivery area, the private industry council or successor entity established for the service delivery area pursuant to the Job Training Partnership Act”.

Subsec. (a)(5)(D)(iii). Pub. L. 105-277, §101(f) [title VIII, §406(d)(30)(B)(ii)], substituted “shall have the meaning given such term for purposes of the Job Training Partnership Act or shall mean a local area as defined in section 101 of the Workforce Investment Act of 1998, as appropriate” for “shall have the meaning given such term (or the successor to such term) for purposes of the Job Training Partnership Act”.

1997—Pub. L. 105-33, §5514(c), made technical amendment to directory language of Pub. L. 104-193, §103(a)(1), which enacted this section.

Subsec. (a)(2). Pub. L. 105-33, §5502(b)(1), inserted “inout-of-wedlock births” after “after subpara- graph (C)(vii) of this paragraph for the expenditure of funds under the grant” for “during the fiscal year”.

Subsec. (b)(2). Pub. L. 105-33, §504(a), inserted “50 States of the United States and the District of Columbia.”

Subsec. (b)(4). Pub. L. 105-33, §5502(a)(2), redesignated par. (5) as (6) and (6) as (5), and struck out former par. (4) which required each State to remit to the Secretary at the end of each fiscal year certain excess amounts paid to the State under par. (3) during the fiscal year.


Pub. L. 105-33, §5502(e)(2), redesignated par. (6) as (5).

Pub. L. 105-33, §5502(a)(1), substituted “calendar years” for “fiscal years”.


Subsec. (a)(5). Pub. L. 105-33, §5001(a)(1), added par. (5).

Subsec. (a)(5)(A)(i)(I), (II). Pub. L. 105-78 substituted “during the period permitted under subparagraph (C)(vii) of this paragraph for the expenditure of funds under the grant” for “during the fiscal year”.

Subsec. (b)(2). Pub. L. 105-33, §504(a), inserted “50 States of the United States and the District of Columbia.”

Subsec. (b)(7). Pub. L. 105-33, §5502(f), amended heading and text of par. (7) generally. Prior to amendment, text read as follows: “(A) STATE.—The term ‘State’ means each of the 50 States of the United States and the District of Columbia.”

“(B) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury.”


Subsec. (b)(4)(A)(ii)(I). Pub. L. 104-327, §1(b)(2), inserted “the sum of” before “the expenditures” and “, and any additional qualified State expenditures, as defined in section 609(a)(7)(B)(i) of this title, for child care assistance made under the Child Care and Development Block Grant Act of 1990” before “; exceeds”.

Effective Date of 2009 Amendment; Savings Provision

Pub. L. 111-5, div. B, title II, §2101(a)(2), Feb. 17, 2009, 123 Stat. 448, provided that: “Effective October 1, 2010, section (c) of section 403 of the Social Security Act (42 U.S.C. 603) (as added by paragraph (1)) is repealed, except that paragraph (9) of such subsection shall remain in effect until October 1, 2011, but only with respect to section 407(b)(3)(A)(i) of such Act (42 U.S.C. 607(b)(3)(A)(i)).”

Effective Date of 2008 Amendment

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


Effective Date of 2006 Amendment

Pub. L. 110-171, title VII, §7701, Feb. 8, 2006, 120 Stat. 155, provided that: “Except as otherwise provided in this title [amending this section and sections 607, 608,
amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

**Effective Date of 1996 Amendment**

Section 1(d) of Pub. L. 104–327 provided that: "The amendments made by this section [amending this section and provisions set out as a note under section 601 of this title] shall take effect as if included in the provisions of and the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193]."

**Effective Date**

Subsec. (a)(1)(C), (D) of this section effective Oct. 1, 1996, and remainder of this section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuity in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

**Regulations**

Pub. L. 106–113, div. B, § 1000(a)(1) [title VIII, § 801(f)], Nov. 29, 1999, 113 Stat. 1559, 1501A–284, provided that: "Interim final regulations shall be prescribed to implement the amendments made by this section [amending this section and sections 604 and 612 of this title] not later than January 1, 2000. Final regulations shall be prescribed within 90 days after the date of the enactment of this Act [Nov. 29, 1999] to implement the amendments made by this Act to section 403(a)(5) of the Social Security Act [subsec. (a)(5) of this section], in the same manner as described in section 403(a)(5)(C)(ix) of the Social Security Act (as so redesignated by subsection (b)(1)(A) of this section)."

§ 603a. Transferred

**Codification**

Section, Pub. L. 94–566, title V, § 508(b), Oct. 20, 1976, 90 Stat. 2689; Pub. L. 104–193, title I, § 110(a), Aug. 22, 1996, 110 Stat. 2171, which related to reimbursement to State employment offices for expenses incurred for furnishing information requested of such offices by State or local agency administering this part, was transferred to section 659a of this title.

§ 604. Use of grants

**General rules**

Subject to this part, a State to which a grant is made under section 603 of this title may use the grant—

1. in any manner that is reasonably calculated to accomplish the purpose of this part, including to provide low income households with assistance in meeting home heating and cooling costs; or
2. in any manner that the State was authorized to use amounts received under part A or F of this subchapter, as such parts were in effect on September 30, 1985, or (at the option of the State) August 21, 1996.

(b) Limitation on use of grant for administrative purposes

1. Limitation

A State to which a grant is made under section 603 of this title shall not expend more than 15 percent of the grant for administrative purposes.
Exception

Paragraph (1) shall not apply to the use of a grant for information technology and computerization needed for tracking or monitoring required by or under this part.

c) Authority to treat interstate immigrants under rules of former State

A State operating a program funded under this part may apply to a family the rules (including benefit amounts) of the program funded under this part of another State if the family has moved to the State from the other State and has resided in the State for less than 12 months.

d) Authority to use portion of grant for other purposes

(1) In general

Subject to paragraph (2), a State may use not more than 30 percent of the amount of any grant made to the State under section 603(a) of this title for a fiscal year to carry out a State program pursuant to any or all of the following provisions of law:

(A) Division A of subchapter XX of this chapter.

(B) The Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9856 et seq.].

(2) Limitation on amount transferable to division A of subchapter XX programs

(A) In general

A State may use not more than the applicable percent of the amount of any grant made to the State under section 603(a) of this title for a fiscal year to carry out State programs pursuant to division A of subchapter XX of this chapter.

(B) Applicable percent

For purposes of subparagraph (A), the applicable percent is 4.25 percent in the case of fiscal year 2001 and each succeeding fiscal year.

(3) Applicable rules

(A) In general

Except as provided in subparagraph (B) of this paragraph, any amount paid to a State under this part that is used to carry out a State program pursuant to a provision of law specified in paragraph (1) shall not be subject to the requirements of this part, but shall be subject to the requirements that apply to Federal funds provided directly to a family through the program, and the expenditure of any amount so used shall not be considered to be an expenditure under this part.

(B) Exception relating to division A of subchapter XX programs

All amounts paid to a State under this part that are used to carry out State programs pursuant to division A of subchapter XX of this chapter shall be used only for programs and services to children or their families whose income is less than 200 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

e) Authority to carry over certain amounts for benefits or services or for future contingencies

A State or tribe may use a grant made to the State or tribe under this part for any fiscal year to provide, without fiscal year limitation, any benefit or service that may be provided under the State or tribal program funded under this part.

(f) Authority to operate employment placement program

A State to which a grant is made under section 603 of this title may use the grant to make payments (or provide job placement vouchers) to State-approved public and private job placement agencies that provide employment placement services to individuals who receive assistance under the State program funded under this part.

g) Implementation of electronic benefit transfer system

A State to which a grant is made under section 603 of this title is encouraged to implement an electronic benefit transfer system for providing assistance under the State program funded under this part, and may use the grant for such purpose.

(h) Use of funds for individual development accounts

(1) In general

A State to which a grant is made under section 603 of this title may use the grant to carry out a program to fund individual development accounts (as defined in paragraph (2)) established by individuals eligible for assistance under the State program funded under this part.

(2) Individual development accounts

(A) Establishment

Under a State program carried out under paragraph (1), an individual development account may be established by or on behalf of an individual eligible for assistance under the State program operated under this part for the purpose of enabling the individual to accumulate funds for a qualified purpose described in subparagraph (B).

(B) Qualified purpose

A qualified purpose described in this subparagraph is 1 or more of the following, as provided by the qualified entity providing assistance to the individual under this subsection:

(i) Postsecondary educational expenses

Postsecondary educational expenses paid from an individual development account directly to an eligible educational institution.

(ii) First home purchase

Qualified acquisition costs with respect to a qualified principal residence for a qualified first-time homebuyer, if paid from an individual development account

See References in Text note below.
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(4) No reduction in benefits

Amounts paid from an individual development account directly to a business capitalization account which is established in a federally insured financial institution and is restricted to use solely for qualified business capitalization expenses.

(C) Contributions to be from earned income

An individual may only contribute to an individual development account such amounts as are derived from earned income as defined in section 911(d)(2) of the Internal Revenue Code of 1986.

(D) Withdrawal of funds

The Secretary shall establish such regulations as may be necessary to ensure that funds held in an individual development account are not withdrawn except for 1 or more of the qualified purposes described in subparagraph (B).

(3) Requirements

(A) In general

An individual development account established under this subsection shall be a trust created or organized in the United States and funded through periodic contributions by the establishing individual and matched by or through a qualified entity for a qualified purpose (as described in paragraph (2)(B)).

(B) “Qualified entity” defined

As used in this subsection, the term “qualified entity” means—

(1) a not-for-profit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; or

(2) a State or local government agency acting in cooperation with an organization described in clause (i).

(4) No reduction in benefits

Notwithstanding any other provision of Federal law (other than the Internal Revenue Code of 1986) that requires consideration of 1 or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such law to be provided to or for the benefit of such individual, funds (including interest accruing) in an individual development account under this subsection shall be disregarded for such purpose with respect to any period during which such individual maintains or makes contributions into such an account.

(5) Definitions

As used in this subsection—

(A) Eligible educational institution

The term “eligible educational institution” means the following:

(i) An institution described in section 1088(a)(1) or 1141(a) of title 20, as such sections are in effect on August 22, 1996.

(ii) An area vocational education school (as defined in subparagraph (C) or (D) of section 2471(4) of title 20) which is in any State (as defined in section 2471(33) of title 20), as such sections are in effect on August 22, 1996.

(B) Post-secondary educational expenses

The term “post-secondary educational expenses” means—

(i) tuition and fees required for the enrollment or attendance of a student at an eligible educational institution, and

(ii) fees, books, supplies, and equipment required for courses of instruction at an eligible educational institution.

(C) Qualified acquisition costs

The term “qualified acquisition costs” means the costs of acquiring, constructing, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing costs.

(D) Qualified business

The term “qualified business” means any business that does not contravene any law or public policy (as determined by the Secretary).

(E) Qualified business capitalization expenses

The term “qualified business capitalization expenses” means qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan.

(F) Qualified expenditures

The term “qualified expenditures” means expenditures incurred in a qualified plan, including capital, plant, equipment, working capital, and inventory expenses.

(G) Qualified first-time homebuyer

(i) In general

The term “qualified first-time homebuyer” means a taxpayer (and, if married, the taxpayer’s spouse) who has no present ownership interest in a principal residence during the 3-year period ending on the date of acquisition of the principal residence to which this subsection applies.

(ii) Date of acquisition

The term “date of acquisition” means the date on which a binding contract to acquire, construct, or reconstruct the principal residence to which this subparagraph applies is entered into.

(H) Qualified plan

The term “qualified plan” means a business plan which—

(i) is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity,

(ii) includes a description of services or goods to be sold, a marketing plan, and projected financial statements, and

(iii) may require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

(I) Qualified principal residence

The term “qualified principal residence” means a principal residence (within the
meaning of section 1034 of the Internal Revenue Code of 1986), the qualified acquisition costs of which do not exceed 100 percent of the average area purchase price applicable to such residence (determined in accordance with paragraphs (2) and (3) of section 143(e) of such Code).

(i) Sanction welfare recipients for failing to ensure that minor dependent children attend school

A State to which a grant is made under section 603 of this title shall not be prohibited from sanctioning a family that includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government or under the supplemental nutrition assistance program, as defined in section 2012(l) of title 7, if such adult fails to ensure that the minor dependent children of such adult attend school as required by the law of the State in which the minor children reside.

(j) Requirement for high school diploma or equivalent

A State to which a grant is made under section 603 of this title shall not be prohibited from sanctioning a family that includes an adult who is older than age 20 and younger than age 51 and who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government or under the supplemental nutrition assistance program, as defined in section 2012(l) of title 7, if such adult does not have, or is not working toward attaining, a secondary school diploma or its recognized equivalent unless such adult has been determined in the judgment of medical, psychiatric, or other appropriate professionals to lack the requisite capacity to complete successfully a course of study that would lead to a secondary school diploma or its recognized equivalent.

(k) Limitations on use of grant for matching under certain Federal transportation program

(1) Use limitations

A State to which a grant is made under section 603 of this title may not use any part of the grant to match funds made available under section 603 of the Transportation Equity Act for the 21st Century, unless—

(A) the grant is used for new or expanded transportation services (and not for construction) that benefit individuals described in subparagraph (C), and not to subsidize current operating costs;

(B) the grant is used to supplement and not supplant other State expenditures on transportation;

(C) the preponderance of the benefits derived from such use of the grant accrues to individuals who are—

(i) recipients of assistance under the State program funded under this part;

(ii) former recipients of such assistance; or

(iii) noncustodial parents who are described in section 603(a)(5)(C)(iii) of this title; and

(iv) low-income individuals who are at risk of qualifying for such assistance; and

(D) the services provided through such use of the grant promote the ability of such recipients to engage in work activities (as defined in section 607(d) of this title).

(2) Amount limitation

From a grant made to a State under section 603(a) of this title, the amount that a State uses to match funds described in paragraph (1) of this subsection shall not exceed the amount (if any) by which 30 percent of the total amount of the grant exceeds the amount (if any) of the grant that is used by the State to carry out any State program described in subsection (d)(1) of this section.

(3) Rule of interpretation

The provision by a State of a transportation benefit under a program conducted under section 3037 of the Transportation Equity Act for the 21st Century, to an individual who is not otherwise a recipient of assistance under the State program funded under this part, using funds from a grant made under section 603(a) of this title, shall not be considered to be the provision of assistance to the individual under this program funded under this part.
those in former section 1088(a)(1) are now contained in section 1002(a)(1) of Title 20, Education.


**CODIFICATION**


**PRIOR PROVISIONS**


**AMENDMENTS**

2009—Subsec. (e). Pub. L. 111–5 amended subsec. (e) generally. Prior to amendment, text read as follows: “A State or tribe may reserve amounts paid to the State for the purpose of providing, without fiscal year limitation, as authorized under section 603(a) of this title for a fiscal year to a State or tribe under this part for any fiscal year for the purpose of providing, without fiscal year limitation, assistance under the State or tribal program funded under this part.”


Pub. L. 110–246, § 4002(b)(1)(A), (B), (2)(V), substituted “supplemental nutrition assistance program” for “food stamp program” and made technical amendment to reference in original act which appears in text as reference to section 2012(h) of title 7.

1999—Subsec. (e). Pub. L. 106–169 inserted “or tribal” after “the State” and “to the State” and inserted “or tribal” after “under the State”.


1996—Subsec. (d)(2). Pub. L. 104–193 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “A State may use no more than 10 percent of the amount of any grant made to the State under section 603(a) of this title for the fiscal year to carry out State programs pursuant to subchapter XX of this chapter.”


1991—Pub. L. 102–320 struck out “of” after “For the purpose” and inserted “for the purpose of providing, without fiscal year limitation, as authorized under the State or tribal program funded under this part.”


Subsec. (d)(1). Pub. L. 103–33, § 5002(a)(1), substituted “Subject to paragraph (2), a State may” for “A State may”.

Subsec. (d)(2). Pub. L. 105–33, § 5002(a)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “Notwithstanding paragraph (1), not more than ½ of the total amount paid to a State under this part for a fiscal year that is used to carry out State programs pursuant to provisions of law specified in paragraph (1) may be used to carry out State programs pursuant to subchapter XX of this chapter.”

**EFFECTIVE DATE OF 2008 AMENDMENT**


**EFFECTIVE DATE OF 1999 AMENDMENTS**


For effective date of amendment by Pub. L. 106–113, see section 1009(a)(4) [title VII, § 801(a)] of Pub. L. 106–113, set out as a note under section 801 of this title.

**EFFECTIVE DATE OF 1998 AMENDMENT**


**EFFECTIVE DATE OF 1997 AMENDMENT**

Section 5002(b) of Pub. L. 105–33 provided that: “The amendments made by subsection (a) of this section [amending this section] shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].”

Amendment by section 5503 of Pub. L. 106–33 effective as if included in section 108(a) [amending this section] of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 108(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 106–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

**EFFECTIVE DATE**

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuity in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

**ASSETS FOR INDEPENDENCE**

"SEC. 401. SHORT TITLE.

"This title may be cited as the `Assets for Independence Act'.

"SEC. 402. FINDINGS.

"Congress makes the following findings:

"(1) Economic well-being does not come solely from income, spending, and consumption, but also requires savings, investment, and accumulation of assets because assets can improve economic independence and stability, connect individuals with a viable and hopeful future, stimulate development of human and other capital, and enhance the welfare of offspring.

"(2) Fully 1⁄2 of all Americans have either no, negligible, or negative assets available for investment, just as the price of entry to the economic mainstream, the cost of a house, an adequate education, and starting a business, is increasing. Further, the household savings rate of the United States lags far behind other industrial nations, presenting a barrier to economic growth.

"(3) In the current tight fiscal environment, the United States should invest existing resources in high-yield initiatives. There is reason to believe that the financial returns, including increased income, tax revenue, and decreased welfare cash assistance, resulting from individual development accounts will far exceed the cost of investment in those accounts.

"(4) Traditional public assistance programs concentrating on income and consumption have rarely been successful in promoting and supporting the transition to increased economic self-sufficiency. Income-based domestic policy should be complemented with asset-based policy because, while income-based policies ensure that consumption needs (including food, child care, rent, clothing, and health care) are met, asset-based policies provide the means to achieve greater independence and economic well-being.

"SEC. 403. PURPOSES.

"The purposes of this title are to provide for the establishment of demonstration projects designed to determine

"(1) the social, civic, psychological, and economic effects of providing to individuals and families with limited means an incentive to accumulate assets by saving a portion of their earned income;

"(2) the extent to which an asset-based policy that promotes saving for postsecondary education, homeownership, and microenterprise development may be used to enable individuals and families with limited means to increase their economic self-sufficiency; and

"(3) the extent to which an asset-based policy stabilizes and improves families and the community in which the families live.

"SEC. 404. DEFINITIONS.

"In this title:

"(1) APPLICABLE PERIOD.—The term `applicable period' means, with respect to amounts to be paid from a grant made for a project year, the calendar year immediately preceding the calendar year in which the grant is made.

"(2) ELIGIBLE INDIVIDUAL.—The term `eligible individual' means an individual who is selected to participate in a demonstration project by a qualified entity under section 409.

"(3) EMERGENCY WITHDRAWAL.—The term `emergency withdrawal' means a withdrawal by an eligible individual that—

"(A) is a withdrawal of only those funds, or a portion of those funds, deposited by the individual in the individual development account of the individual;

"(B) is permitted by a qualified entity on a case-by-case basis; and

"(3) is made for—

"(i) expenses for medical care or necessary to obtain medical care, for the individual or a spouse or dependent of the individual described in paragraph (8)(D);

"(ii) payments necessary to prevent the eviction of the individual from the residence of the individual, or foreclosure on the mortgage for the principal residence of the individual, as defined in paragraph (8)(B); or

"(iii) payments necessary to enable the individual to meet necessary living expenses following loss of employment.

"(4) HOUSEHOLD.—The term `household' means all individuals who share use of a dwelling unit as primary quarters for living and eating separate from other individuals.

"(5) INDIVIDUAL DEVELOPMENT ACCOUNT.—

"(A) IN GENERAL.—The term `individual development account' means a trust created or organized in the United States exclusively for the purpose of paying the qualified expenses of an eligible individual, or enabling the eligible individual to make an emergency withdrawal, but only if the written governing instrument creating the trust contains the following requirements:

"(i) No contribution will be accepted unless the contribution is in cash or by check.

"(ii) The trustee is a federally insured financial institution, or a State insured financial institution if no federally insured financial institution is available.

"(iii) The assets of the trust will be invested in accordance with the direction of the eligible individual after consultation with the qualified entity providing deposits for the individual under section 410.

"(iv) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

"(B) CUSTODIAL ACCOUNTS.—For purposes of subparagraph (A), a custodial account shall be treated as a trust if the assets of the custodial account are held by a bank (as defined in section 408(n) of the Internal Revenue Code of 1986 [26 U.S.C. 408(n)]) or another person who demonstrates to the satisfaction of the Secretary, that the manner in which such person will administer the custodial account will be consistent with the requirements of this title, and if the custodial account would, except for the fact that it is not a trust, constitute an individual development account described in subparagraph (A). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of that custodial account shall be treated as the trustee of the account.

"(C) GENERAL.—The term `qualified entity' means—

"(i) one or more not-for-profit organizations described in section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)] and exempt from taxation under section 501(a) of such Code;

"(ii) a State or local government agency, or a tribal government, submitting an application prescribed in section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)] and exempt from taxation under section 501(a) of such Code;

"(D) TRUST ACCOUNT.—The term `trust account' means a custodial account treated as a trust by reason of the foregoing definition that—

"(i) is held by a bank (as defined in section 408(n) of the Internal Revenue Code of 1986 [26 U.S.C. 408(n)]) or another person who demonstrates to the satisfaction of the Secretary, that the manner in which such person will administer the custodial account will be consistent with the requirements of this title, and if the custodial account would, except for the fact that it is not a trust, constitute a custodial account described in subsection (D) of this subparagraph; and

"(ii) is permitted by a qualified entity on a case-by-case basis; and

"(iii) is made for—

"(I) expenses for medical care or necessary to obtain medical care, for the individual or a spouse or dependent of the individual described in paragraph (8)(D);
under section 406 jointly with an organization described in clause (i); or

(iii) an entity that—

(I) is—

(aa) a credit union designated as a low-income credit union by the National Credit Union Administration (NCUA); or

(bb) an organization designated as a community development financial institution by the Secretary of the Treasury (or the Community Development Financial Institutions Fund); and

(II) can demonstrate a collaborative relationship with a local community-based organization whose activities are designed to address poverty in the community and the needs of community members for economic independence and stability.

"(B) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as preventing an organization described in subparagraph (A)(i) from collaborating with a financial institution or for-profit community development corporation to carry out the purposes of this title.

"(8) QUALIFIED EXPENSES.—The term 'qualified expenses' means one or more of the following, as provided by a qualified entity:

"(A) POSTSECONDARY EDUCATIONAL EXPENSES.—

Postsecondary educational expenses paid from an individual development account directly to an eligible educational institution. In this subparagraph:

"(i) POSTSECONDARY EDUCATIONAL EXPENSES.—

The term 'postsecondary educational expenses' means the following:

(I) TUITION AND FEES.—Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution.

(II) FEES, BOOKS, SUPPLIES, AND EQUIPMENT.—

Fees, books, supplies, and equipment required for courses of instruction at an eligible educational institution.

(ii) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' means the following:


(II) POSTSECONDARY VOCATIONAL EDUCATION SCHOOL.—An area vocational education school (as defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)) which is in any State (as defined in section 521(3) of such Act), as such sections are in effect on the date of enactment of this title [Oct. 27, 1998].

(III) IN-HOME PURCHASE.—Qualified acquisition costs with respect to a principal residence for a qualified first-time homebuyer, if paid from an individual development account directly to the persons to whom the amounts are due.

(iii) PRINCIPAL RESIDENCE.—The term 'qualified acquisition costs' means the costs of acquiring, constructing, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing costs.

("I) QUALIFIED ACQUISITION COSTS.—The term 'qualified acquisition costs' means the costs of acquiring, constructing, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing costs.

("I) IN GENERAL.—The term 'qualified first-time homebuyer' means an individual participating in the project involved (and, if married, the individual's spouse) who has no present ownership interest in a principal residence during the 3-year period ending on the date of acquisition of the principal residence to which this subparagraph applies.

("I) DATE OF ACQUISITION.—The term 'date of acquisition' means the date on which a binding contract to acquire, construct, or reconstruct the principal residence to which this subparagraph applies is entered into.

("I) BUSINESS CAPITALIZATION.—Amounts paid from an individual development account directly to a business capitalization account that is established in a federally insured financial institution (or in a State insured financial institution if no federally insured financial institution is available) and is restricted to use solely for qualified business capitalization expenses. In this subparagraph:

("I) QUALIFIED BUSINESS CAPITALIZATION EXPENSES.—The term 'qualified business capitalization expenses' means qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan.

("I) QUALIFIED EXPENDITURES.—The term 'qualified expenditures' means expenditures included in a qualified plan, including capital, plant, equipment, working capital, and inventory expenses.

("I) QUALIFIED BUSINESS.—The term 'qualified business' means any business that does not contravene any law or public policy (as determined by the Secretary).

("I) QUALIFIED PLAN.—The term 'qualified plan' means a business plan, or a plan to use a business asset purchased, which

(I) is approved by a financial institution, a microenterprise development organization, or a nonprofit loan fund having demonstrated fiduciary integrity;

(ii) includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and

(iii) may require the eligible individual to obtain the assistance of an experienced entrepreneurial adviser.

("I) TRANSFERS TO IDA'S OF FAMILY MEMBERS.—

Amounts paid from an individual development account directly into another such account established for the benefit of an eligible individual who is

(I) the individual's spouse; or

(ii) any dependent of the individual with respect to whom the individual is allowed a deduction under section 151 of the Internal Revenue Code of 1986 [26 U.S.C. 151].

("I) QUALIFIED SAVINGS OF THE INDIVIDUAL FOR THE PERIOD.—The term 'qualified savings of the individual for the period' means any amount of the amounts contributed by an individual to the individual development account of the individual during the period.

("I) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services, acting through the Director of Community Services.

("I) TRIBAL GOVERNMENT.—The term 'tribal government' means a tribal organization, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) or a Native Hawaiian organization, as defined in section 7207 of the Native Hawaiian Education Act (20 U.S.C. 7217).

"SEC. 405. APPLICATIONS.

"(a) ANNOUNCEMENT OF DEMONSTRATION PROJECTS.—

Not later than 3 months after the date of enactment of this title [Oct. 27, 1998], the Secretary shall publicly announce the availability of funding under this title for demonstration projects and shall ensure that applications to conduct the demonstration projects are widely available to qualified entities.

("b) SUBMISSION.—Not later than 6 months after the date of enactment of this title, a qualified entity may submit to the Secretary an application to conduct a demonstration project under this title.

("c) CRITERIA.—In considering whether to approve an application to conduct a demonstration project under this title, the Secretary shall assess the following:
“(1) Sufficiency of Project.—The degree to which the project described in the application appears likely to aid project participants in achieving economic self-sufficiency through activities requiring one or more qualified expenses.

“(2) Administrative Ability.—The experience and ability of the applicant to responsibly administer the project.

“(3) Ability to Assist Participants.—The experience and ability of the applicant in recruiting, educating, and assisting project participants to increase their economic independence and general well-being through the development of assets.

“(4) Commitment of Non-Federal Funds.—The aggregate amount of direct funds from non-Federal public sector and from private sources that are formally committed to the project as matching contributions.

“(5) Adequacy of Plan for Providing Information for Evaluation.—The adequacy of the plan for providing information relevant to an evaluation of the project.

“(6) Other Factors.—Such other factors relevant to the purposes of this title as the Secretary may specify.

“(d) Preferences.—In considering an application to conduct a demonstration project under this title, the Secretary shall give preference to an application that—

“(1) demonstrates the willingness and ability to select individuals described in section 408 who are predominantly from households in which a child (or children) is living with the child’s biological mother or father, or with the child’s legal guardian;

“(2) provides a commitment of non-Federal funds with a proportionately greater amount of such funds committed from private sector sources; and

“(3) targets such individuals residing within one or more relatively well-defined neighborhoods or communities (including rural communities) that experience high rates of poverty or unemployment.

“(e) Approval.—Not later than 9 months after the date of enactment of this title [Oct. 27, 1998], the Secretary shall, on a competitive basis, approve such applications to conduct demonstration projects under this title as the Secretary considers to be appropriate, taking into account the assessments required by subsections (c) and (d). The Secretary shall ensure, to the maximum extent practicable, that the applications that are approved involve a range of communities (both rural and urban) and diverse populations.

“(f) Contracts with Nonprofit Entities.—The Secretary may contract with an entity described in section 501(c)(3) and exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)] and accountable for amounts in the Reserve Fund established under subsection (a). The Secretary shall prescribe regulations with respect to accounting for amounts in the Reserve Fund established under subsection (a).

“(g) General Authority to Invest Funds.—The Secretary shall establish guidelines for investing the amount of any TRY Fund in a manner that provides an appropriate balance between return, liquidity, and risk.

“(h) Limitation on Uses.—Not more than 15 percent of the amounts provided to a qualified entity under section 407 shall be used by the qualified entity for purposes described in subparagraphs (A), (C), and (D) of paragraph (1), of which not less than 2 percent of the amounts shall be used by the qualified entity for the purposes described in subparagraphs (A), (C), and (D) of paragraph (1), of which not less than 7.5 percent shall be used for administrative func-
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- **SEC. 409. SELECTION OF INDIVIDUALS TO PARTICIPATE.**
  - From among the individuals eligible to participate in a demonstration project conducted under this title, each qualified entity shall select the individuals—
    - (1) that the qualified entity determines to be best suited to participate; and
    - (2) to whom the qualified entity will provide deposits in accordance with section 410.

- **SEC. 410. DEPOSITS BY QUALIFIED ENTITIES.**
  - (a) **IN GENERAL.**—Not less than once every 3 months during each project year, each qualified entity under this title shall deposit in the individual development account of each individual participating in the project, or into a parallel account maintained by the qualified entity—
    - (1) from the non-Federal funds described in section 406(c)(4), a matching contribution of not less than $0.50 and not more than $4 for every $1 of earned income (as defined in section 911(d)(2) of the Internal Revenue Code of 1986 [26 U.S.C. 911(d)(2)]) deposited in the account by a project participant during that period;
    - (2) from the grant made under section 406(b), an amount equal to the matching contribution made under paragraph (1); and
  - (b) **LIMITATION ON DEPOSITS FOR AN INDIVIDUAL.**—Not more than $2,000 from a grant made under section 406(b) shall be provided to any one individual over the course of the demonstration project.
  - (c) **LIMITATION ON DEPOSITS FOR A HOUSEHOLD.**—Not more than $4,000 from a grant made under section 406(b) shall be provided to any one household over the course of the demonstration project.

- **SEC. 411. LOCAL CONTROL OVER DEMONSTRATION PROJECTS.**
  - A qualified entity under this title, other than a State or local government agency or a tribal government, shall, subject to the provisions of section 413, have sole authority over the administration of the project. The Secretary may prescribe only such regulations or guidelines with respect to demonstration projects conducted under this title as are necessary to ensure compliance with the approved applications and the requirements of this title.

- **SEC. 412. ANNUAL PROGRESS REPORTS.**
  - (a) **IN GENERAL.**—Each qualified entity under this title shall prepare an annual report on the progress of the demonstration project. Each report shall include both program and participant information and shall specify for the period covered by the report the following information:
    - (1) The number and characteristics of individuals making a deposit into an individual development account;
    - (2) The amounts in the Reserve Fund established with respect to the project.
“(3) The amounts deposited in the individual development accounts.

“(4) The amounts withdrawn from the individual development accounts and the purposes for which such amounts were withdrawn.

“(5) The balances remaining in the individual development accounts.

“(6) The savings account characteristics (such as threshold amounts and match rates) required to stimulate participation in the demonstration project, and how such characteristics vary among different populations or communities.

“(7) What service configurations of the qualified entity (such as configurations relating to peer support, structured planning exercises, mentoring, and case management) increased the rate and consistency of participation in the demonstration project and how such configurations varied among different populations or communities.

“(8) Such other information as the Secretary may require to evaluate the demonstration project.

“(b) Submission of Reports.—The qualified entity shall submit each report required to be prepared under subsection (a) to—

“(1) the Secretary; and

“(2) the Treasurer (or equivalent official) of the State in which the project is conducted, if the State or a local government or a tribal government committed funds to the demonstration project.

“(c) Timing.—The first report required by subsection (a) shall be submitted not later than 60 days after the end of the project year in which the Secretary authorized the qualified entity to conduct the demonstration project, and subsequent reports shall be submitted every 12 months thereafter, until the conclusion of the project.

“SEC. 413. SANCTIONS.

“(a) Authority to Terminate Demonstration Project.—If the Secretary determines that a qualified entity under this title is not operating a demonstration project in accordance with the entity’s approved application under section 405 or the requirements of this title (and has not implemented any corrective recommendations directed by the Secretary), the Secretary shall terminate such entity’s authority to conduct the demonstration project.

“(b) Actions Required upon Termination.—If the Secretary terminates the authority to conduct a demonstration project, the Secretary—

“(1) shall suspend the demonstration project; and

“(2) shall take control of the Reserve Fund established pursuant to section 407.

“(c) The Treasurer (or equivalent official) of the State in which the project is conducted, if the State or a local government or a tribal government committed funds to the demonstration project.

“(d) The balances remaining in the individual development accounts shall be submitted to the Secretary not later than 90 days after the date of enactment of this title [Oct. 27, 1998], and

“(e) The Secretary may expend not more than $500,000 for such fiscal year from the Reserve Fund established as part of the project, remit to each source that provided funds under section 405(c)(4) to the entity originally authorized to conduct the project, an amount that bears the same ratio to the amount so remaining as the amount provided from the source under section 405(c)(4) bears to the amount provided from all such sources under that section.

“SEC. 414. EVALUATIONS.

“(a) In General.—Not later than 10 months after the date of enactment of this title [Oct. 27, 1998], the Secretary shall enter into a contract with an independent research organization to evaluate the demonstration projects conducted under this title, individually and as a group, including evaluating all qualified entities participating in and sources providing funds for the demonstration projects conducted under this title.

“(b) Factors to Evaluate.—In evaluating any demonstration project conducted under this title, the research organization shall address the following factors:

“(1) The effects of incentives and organizational or institutional support on savings behavior in the demonstration project.

“(2) The savings rates of individuals in the demonstration project based on demographic characteristics including gender, age, family size, race or ethnic background, and income.

“(3) The economic, civic, psychological, and social effects of asset accumulation, and how such effects vary among different populations or communities.

“(4) The effects of individual development accounts on savings rates, homeownership, level of post-secondary education attained, and self-employment, and how such effects vary among different populations or communities.

“(5) The potential financial returns to the Federal Government and to other public sector and private sector investors in individual development accounts over a 5-year and 10-year period of time.

“(6) The lessons to be learned from the demonstration projects conducted under this title and if a permanent program of individual development accounts should be established.

“(7) Such other factors as may be prescribed by the Secretary.

“(c) Methodological Requirements.—In evaluating any demonstration project conducted under this title, the research organization shall—

“(1) for at least one site, use control groups to compare participants with nonparticipants;

“(2) before, during, and after the project, obtain such quantitative data as are necessary to evaluate the project thoroughly; and

“(3) develop a qualitative assessment, derived from sources such as in-depth interviews, of how asset accumulation affects individuals and families.

“(d) Reports by the Secretary.

“(1) Interim Reports.—Not later than 90 days after the end of the project year in which the Secretary first authorizes a qualified entity to conduct a demonstration project under this title, and every 12 months thereafter until all demonstration projects conducted under this title are completed, the Secretary shall submit to Congress an interim report setting forth the results of the reports submitted pursuant to section 412(b).

“(2) Final Reports.—Not later than 12 months after the conclusion of all demonstration projects conducted under this title, the Secretary shall submit to Congress a final report setting forth the results and findings of all reports and evaluations conducted pursuant to this title.

“(e) Evaluation Expenses.—Of the amount appropriated under section 416 for a fiscal year, the Secretary may expend not more than $500,000 for such fiscal year to carry out the objectives of this section.

“SEC. 415. NO REDUCTION IN BENEFITS.

“Notwithstanding any other provision of Federal law (other than the Internal Revenue Code of 1986 [26 U.S.C. § 604]...
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1 et seq.), that requires consideration of one or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such law to be provided to or for the benefit of such individual, funds (including interest accruing) in an individual development account under this Act [see Short Title of 1998 Amendment note set out under section 9001 of this title] shall be disregarded for such purpose with respect to any period during which such individual maintains or makes contributions into such an account.

"SEC. 416. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated to carry out this title, $23,000,000 for each of fiscal years 1999, 2000, 2001, 2002, and 2003, to remain available until expended.

"[Pub. L. 106–554, §1(a)(1) [title VI, §607(b)], Dec. 21, 2000, 114 Stat. 2783, 2783A–76, provided that: "Notwithstanding the amendment made by subsection (a) [amending section 412(c) of Pub. L. 105–285, set out above], the submission of the initial interim report of the Secretary under section 412(c) [section 412(c) of Pub. L. 105–285, set out above] shall not be required prior to the date that is 90 days after the date of enactment of this title [Dec. 21, 2000]."]"

"[Pub. L. 106–554, §1(a)(1) [title VI, §608(b)], Dec. 21, 2000, 114 Stat. 2783, 2783A–76, provided that: "Notwithstanding the amendment made by subsection (a) [amending section 414(d)(1) of Pub. L. 105–285, set out above], the submission of the initial interim report of the Secretary under section 412(c) [section 412(c) of Pub. L. 105–285, set out above] shall not be required prior to the date that is 90 days after the date of enactment of this title [Dec. 21, 2000]."]"

§ 604a. Services provided by charitable, religious, or private organizations

(a) In general

(1) State options

A State may—

(A) administer and provide services under the programs described in subparagraphs (A) and (B)(i) of paragraph (2) through contracts with charitable, religious, or private organizations; and

(B) provide beneficiaries of assistance under the programs described in subparagraphs (A) and (B)(ii) of paragraph (2) with certificates, vouchers, or other forms of disbursement which are redeemable with respect to any period during which such individual maintains or makes contributions into such an account.

(2) Programs described

The programs described in this paragraph are the following programs:

(A) A State program funded under this part (as amended by section 103(a) of this Act).

(B) Any other program established or modified under title I or II of this Act, that—

(i) permits contracts with organizations; or

(ii) permits certificates, vouchers, or other forms of disbursement to be provided to beneficiaries, as a means of providing assistance.

(b) Religious organizations

The purpose of this section is to allow States to contract with religious organizations, or to allow religious organizations to accept certificates, vouchers, or other forms of disbursement under any program described in subsection (a)(2) of this section, on the same basis as any other nongovernmental provider without impairing the religious character of such organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under such program.

(c) Nondiscrimination against religious organizations

In the event a State exercises its authority under subsection (a) of this section, religious organizations are eligible, on the same basis as any other private organization, as contractors to provide assistance, or to accept certificates, vouchers, or other forms of disbursement, under any program described in subsection (a)(2) of this section so long as the programs are implemented consistent with the Establishment Clause of the United States Constitution. Except as provided in subsection (k) of this section, neither the Federal Government nor a State receiving funds under such programs shall discriminate against an organization which is or applies to be a contractor to provide assistance, or which accepts certificates, vouchers, or other forms of disbursement, on the basis that the organization has a religious character.

(d) Religious character and freedom

(1) Religious organizations

A religious organization with a contract described in subsection (a)(1)(A) of this section, or which accepts certificates, vouchers, or other forms of disbursement under subsection (a)(1)(B) of this section, shall retain its independence from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs.

(2) Additional safeguards

Neither the Federal Government nor a State shall require a religious organization to—

(A) alter its form of internal governance; or

(B) remove religious art, icons, scripture, or other symbols; in order to be eligible to contract to provide assistance, or to accept certificates, vouchers, or other forms of disbursement, funded under a program described in subsection (a)(2) of this section.

(e) Rights of beneficiaries of assistance

(1) In general

If an individual described in paragraph (2) of this section, on the same basis as any other nongovernmental provider without impairing the religious character of such organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under such program.

(2) Individual described

An individual described in this paragraph is an individual who receives, applies for, or re-
quests to apply for, assistance under a program described in subsection (a)(2) of this section.

(f) Employment practices
A religious organization’s exemption provided under section 2000e–1 of this title regarding employment practices shall not be affected by its participation in, or receipt of funds from, programs described in subsection (a)(2) of this section.

(g) Nondiscrimination against beneficiaries
Except as otherwise provided in law, a religious organization shall not discriminate against an individual in regard to rendering assistance funded under any program described in subsection (a)(2) of this section on the basis of religion, a religious belief, or refusal to actively participate in a religious practice.

(h) Fiscal accountability
(1) In general
Except as provided in paragraph (2), any religious organization contracting to provide assistance funded under any program described in subsection (a)(2) of this section shall be subject to the same regulations as other contractors to account in accord with generally accepted auditing principles for the use of such funds provided under such programs.

(2) Limited audit
If such organization segregates Federal funds provided under such programs into separate accounts, then only the financial assistance provided with such funds shall be subject to audit.

(i) Compliance
Any party which seeks to enforce its rights under this section may assert a civil action for injunctive relief exclusively in an appropriate State court against the entity or agency that allegedly commits such violation.

(j) Limitations on use of funds for certain purposes
No funds provided directly to institutions or organizations to provide services and administer programs under subsection (a)(2) of this section shall be expended for sectarian worship, instruction, or proselytization.

(k) Preemption
Nothing in this section shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations.


§ 605. Administrative provisions

(a) Quarterly
The Secretary shall pay each grant payable to a State under section 603 of this title in quarterly installments, subject to this section.

(b) Notification
Not later than 3 months before the payment of any such quarterly installment to a State, the Secretary shall notify the Secretary of the amount of any reduction determined under section 612(a)(1)(B) of this title with respect to the State.

(c) Computation and certification of payments to States
(1) Computation
The Secretary shall estimate the amount to be paid to each eligible State for each quarter under this part, such estimate to be based on a report filed by the State containing an estimate by the Secretary of the total sum to be expended by the State in the quarter under the State program funded under this part and such other information as the Secretary may find necessary.

(2) Certification
The Secretary of Health and Human Services shall certify to the Secretary of the Treasury the amount estimated under paragraph (1) with respect to a State, reduced or increased to the extent of any overpayment or underpayment which the Secretary of Health and Human Services determines was made under this part to the State for any prior quarter and with respect to which adjustment has not been made under this paragraph.

(d) Payment method
Upon receipt of a certification under subsection (c)(2) of this section with respect to a State, the Secretary of the Treasury shall, through the Fiscal Service of the Department of the Treasury and before audit or settlement by the Government Accountability Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.


PRIOR PROVISIONS
§ 606. Federal loans for State welfare programs

(a) Loan authority

(1) In general

The Secretary shall make loans to any loan-eligible State, for a period to maturity of not more than 3 years.

(2) Loan-eligible State

As used in paragraph (1), the term ‘loan-eligible State’ means a State against which a penalty has not been imposed under section 609(a)(1) of this title.

(b) Rate of interest

The Secretary shall charge and collect interest on any loan made under this section at a rate equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the period to maturity of the loan.

(c) Use of loan

A State shall use a loan made to the State under this section only for any purpose for which grant amounts received by the State under section 603(a) of this title may be used, including—

(1) welfare anti-fraud activities; and

(2) the provision of assistance under the State program to Indian families that have moved from the service area of an Indian tribe with a tribal family assistance plan approved under section 612 of this title.

(d) Limitation on total amount of loans to State

The cumulative dollar amount of all loans made to a State under this section during fiscal years 1997 through 2003 shall not exceed 10 percent of the total amount of all loans made to other States under this section during such fiscal year.

(e) Limitation on total amount of outstanding loans

The total dollar amount of all loans outstanding under this section may not exceed $1,700,000,000.

(f) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated such sums as may be necessary for the cost of loans under this section.


Prior Provisions


Amendments


Effective Date of 2003 Amendment


Effective Date of 1997 Amendment

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518 of Pub. L. 104–193, as amended, set out as a note under section 603 of this title.

§ 607. Mandatory work requirements

(a) Participation rate requirements

(1) All families

A State to which a grant is made under section 603 of this title for a fiscal year shall achieve the minimum participation rate specified in the following table for the fiscal year with respect to all families receiving assist-
ance under the State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title):

The minimum participation rate is:

<table>
<thead>
<tr>
<th>If the fiscal year is:</th>
<th>The minimum participation rate is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>25</td>
</tr>
<tr>
<td>1998</td>
<td>30</td>
</tr>
<tr>
<td>1999</td>
<td>35</td>
</tr>
<tr>
<td>2000</td>
<td>40</td>
</tr>
<tr>
<td>2001</td>
<td>45</td>
</tr>
<tr>
<td>2002 or thereafter</td>
<td>50</td>
</tr>
</tbody>
</table>

(2) 2-parent families

A State to which a grant is made under section 603 of this title for a fiscal year shall achieve the minimum participation rate specified in the following table for the fiscal year with respect to 2-parent families receiving assistance under the State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title):

The minimum participation rate is:

<table>
<thead>
<tr>
<th>If the fiscal year is:</th>
<th>The minimum participation rate is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>75</td>
</tr>
<tr>
<td>1998</td>
<td>75</td>
</tr>
<tr>
<td>1999 or thereafter</td>
<td>90</td>
</tr>
</tbody>
</table>

(b) Calculation of participation rates

(1) All families

(A) Average monthly rate

For purposes of subsection (a)(1) of this section, the participation rate for all families of a State for a fiscal year is the average of the participation rates for all families of the State for each month in the fiscal year.

(B) Monthly participation rates

The participation rate of a State for all families of the State for a month, expressed as a percentage, is—

(i) the number of families receiving assistance under the State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title) that include an adult or a minor child head of household who is engaged in work for the month; divided by

(ii) the average monthly number of families receiving assistance during the immediately preceding fiscal year under the State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title) is less than

(ii) the average monthly number of families that received assistance under any State program referred to in clause (i) during fiscal year 2005.

The minimum participation rate shall not be reduced to the extent that the Secretary determines that the reduction in the number of families receiving such assistance is required by Federal law.

(B) Eligibility changes not counted

The regulations required by subparagraph (A) shall not take into account families that are diverted from a State program funded under this part as a result of differences in eligibility criteria under a State program funded under this part and the eligibility criteria in effect during fiscal year 2005. Such regulations shall place the burden on the Secretary to prove that such families were diverted as a direct result of differences in such eligibility criteria.

(4) State option to include individuals receiving assistance under a tribal family assistance plan or tribal work program

For purposes of paragraphs (1)(B) and (2)(B), a State may, at its option, include families in the State that are receiving assistance under a tribal family assistance plan approved under section 612 of this title or under a tribal work
program to which funds are provided under this part.

(5) State option for participation requirement exemptions

For any fiscal year, a State may, at its option, not require an individual who is a single custodial parent caring for a child who has not attained 12 months of age to engage in work, and may disregard such an individual in determining the participation rates under section (a) of this section for not more than 12 months.

c) Engaged in work

(1) General rules

(A) All families

For purposes of subsection (b)(1)(B) of this section, a recipient is engaged in work for a month in a fiscal year if the recipient is participating in work activities for at least the minimum average number of hours per week specified in the following table during the month, not fewer than 20 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d) of this section, subject to this subsection:

<table>
<thead>
<tr>
<th>Year in fiscal year</th>
<th>Hours per week</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>20</td>
</tr>
<tr>
<td>1998</td>
<td>20</td>
</tr>
<tr>
<td>1999</td>
<td>25</td>
</tr>
<tr>
<td>2000 or thereafter</td>
<td>30</td>
</tr>
</tbody>
</table>

(B) 2-parent families

For purposes of subsection (b)(2)(B) of this section, an individual is engaged in work for a month in a fiscal year if—

(i) the individual and the other parent in the family are participating in work activities for a total of at least 35 hours per week during the month, not fewer than 30 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d) of this section, subject to this subsection; and

(ii) if the family of the individual receives federally-funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child, the individual and the other parent in the family are participating in work activities for a total of at least 55 hours per week during the month, not fewer than 50 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d) of this section.

(2) Limitations and special rules

(A) Number of weeks for which job search counts as work

(i) Limitation

Notwithstanding paragraph (1) of this subsection, an individual shall not be considered to be engaged in work by virtue of participation in an activity described in subsection (d)(6) of this section of a State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title), after the individual has participated in such an activity for 6 weeks (or, if the unemployment rate of the State is at least 50 percent greater than the unemployment rate of the United States or the State is a needy State (within the meaning of section 603(b)(6) of this title), 12 weeks), or if the participation is for a week that immediately follows 4 consecutive weeks of such participation.

(ii) Limited authority to count less than full week of participation

For purposes of clause (i) of this subparagraph, on not more than 1 occasion per individual, the State shall consider participation of the individual in an activity described in subsection (d)(6) of this section for 3 or 4 days during a week as a week of participation in the activity by the individual.

(B) Single parent or relative with child under age 6 deemed to be meeting work participation requirements if parent or relative is engaged in work for 20 hours per week

For purposes of determining monthly participation rates under subsection (b)(1)(B) of this section, a recipient who is the only parent or caretaker relative in the family of a child who has not attained 6 years of age is deemed to be engaged in work for a month if the recipient is engaged in work for an average of at least 20 hours per week during the month.

(C) Single teen head of household or married teen who maintains satisfactory school attendance deemed to be meeting work participation requirements

For purposes of determining monthly participation rates under subsection (b)(1)(B) of this section, a recipient who is married or a head of household and has not attained 20 years of age is deemed to be engaged in work for a month in a fiscal year if the recipient—

(i) maintains satisfactory attendance at secondary school or the equivalent during the month; or

(ii) participates in education directly related to employment for an average of at least 20 hours per week during the month.

(D) Limitation on number of persons who may be treated as engaged in work by reason of participation in educational activities

For purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b) of this section, not more than 30 percent of the number of individuals in all families and in 2-parent families, respectively, in a State who are treated as engaged in work for a month may consist of individuals who are determined to be engaged in work for the month by reason of participation in vocational educational training, or (if the month is in fiscal year
Penalties against individuals

(1) In general

Except as provided in paragraph (2), if an individual in a family receiving assistance under the State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(1) of this title) refuses to engage in work required in accordance with this section, the State shall—

(A) reduce the amount of assistance otherwise payable to the family pro rata (or more, at the option of the State) with respect to any period during a month in which the individual so refuses; or

(B) terminate such assistance, subject to such good cause and other exceptions as the State may establish.

(2) Exception

Notwithstanding paragraph (1), a State may not reduce or terminate assistance under the State program funded under this part or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(1) of this title) based on a refusal of an individual to engage in work required in accordance with this section if the individual is a single custodial parent caring for a child who has not attained 6 years of age, and the individual proves that the individual has a demonstrated inability (as determined by the State) to obtain needed child care, for 1 or more of the following reasons:

(A) Unavailability of appropriate child care within a reasonable distance from the individual’s home or work site.

(B) Unavailability or unsuitability of informal child care by a relative or under other arrangements.

(C) Unavailability of appropriate and affordable formal child care arrangements.

(f) Nondisplacement in work activities

(1) In general

Subject to paragraph (2), an adult in a family receiving assistance under a State program funded under this part attributable to funds provided by the Federal Government may fill a vacant employment position in order to engage in a work activity described in subsection (d) of this section.

(2) No filling of certain vacancies

No adult in a work activity described in subsection (d) of this section which is funded, in whole or in part, by funds provided by the Federal Government shall be employed or assigned—

(A) when any other individual is on layoff from the same or any substantially equivalent job; or

(B) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy so created with an adult described in paragraph (1).

(3) Grievance procedure

A State with a program funded under this part shall establish and maintain a grievance procedure for resolving complaints of alleged violations of paragraph (2).

(4) No preemption

Nothing in this subsection shall preempt or supersede any provision of State or local law that provides greater protection for employees from displacement.

(g) Sense of Congress that States should impose certain requirements on noncustodial, non-supporting minor parents

It is the sense of the Congress that States should require noncustodial, nonsupporting parents who have not attained 18 years of age to fulfill community work obligations and attend appropriate parenting or money management classes after school.

(i) Verification of work and work-eligible individuals in order to implement reforms

(1) Secretarial direction and oversight

(A) Regulations for determining whether activities may be counted as "work activities", how to count and verify reported hours of work, and determining who is a work-eligible individual

(I) In general

Not later than June 30, 2006, the Secretary shall promulgate regulations to en-
sure consistent measurement of work participation rates under State programs funded under this part and State programs funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title), which shall include information with respect to—

(I) determining whether an activity of a recipient of assistance may be treated as a work activity under subsection (d);

(II) uniform methods for reporting hours of work by a recipient of assistance;

(III) the type of documentation needed to verify reported hours of work by a recipient of assistance; and

(IV) the circumstances under which a parent who resides with a child who is a recipient of assistance should be included in the work participation rates.

(ii) Issuance of regulations on an interim final basis

The regulations referred to in clause (i) may be effective and final immediately on an interim basis as of the date of publication of the regulations. If the Secretary provides for an interim final regulation, the Secretary shall provide for a period of public comment on the regulation after the date of publication. The Secretary may change or revise the regulation after the public comment period.

(B) Oversight of State procedures

The Secretary shall review the State procedures established in accordance with paragraph (2) to ensure that such procedures are consistent with the regulations promulgated under subparagraph (A) and are adequate to ensure an accurate measurement of work participation under the State programs funded under this part and any other State programs funded with qualified State expenditures (as so defined).

(2) Requirement for States to establish and maintain work participation verification procedures

Not later than September 30, 2006, a State to which a grant is made under section 603 of this title shall establish procedures for determining, with respect to recipients of assistance under the State program funded under this part or under any State programs funded with qualified State expenditures (as so defined), whether activities may be counted as work activities, how to count and verify reported hours of work, and who is a work-eligible individual, in accordance with the regulations promulgated pursuant to paragraph (1)(A)(i) and shall establish internal controls to ensure compliance with the procedures.

 subsection appropriated to the States for any fiscal year under this part for the period ending September 30, 2006, is the amount of funds appropriated for the programs under the State plan approved under part A of this subchapter (as such plan and such programs were in effect on September 30, 1995) during fiscal year 1995.

 AMENDMENTS

2009—Subsec. (b)(3)(A)(ii). Pub. L. 111–5, § 2101(d)(2), struck out "(or if the immediately preceding fiscal year is fiscal year 2008, 2009, or 2010, then, at State option, during the emergency fund base year of the State with respect to the average monthly assistance caseload of the State (within the meaning of section 603(c)(9) of this title), except that, if a State elects such option for fiscal year 2008, the emergency fund base year of the State with respect to such caseload shall be fiscal year 2007)" before "under the State".

 Pub. L. 111–5, § 2101(b), inserted "(or if the immediately preceding fiscal year is fiscal year 2008, 2009, or 2010, then, at State option, during the emergency fund base year of the State with respect to the average monthly assistance caseload of the State (within the meaning of section 603(c)(9) of this title), except that, if a State elects such option for fiscal year 2008, the emergency fund base year of the State with respect to such caseload shall be fiscal year 2007)" before "under the State".

2006—Subsecs. (a)(1), (2), (b)(1)(B)(i). Pub. L. 109–171, § 7102(b)(1), inserted "or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title)" after "this part".

Subsec. (b)(3)(A)(i). Pub. L. 109–171, § 7102(a)(1)(A), inserted "or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title)" after "this part".

Subsec. (b)(3)(A)(ii). Pub. L. 109–171, § 7102(a)(1)(B), added cl. (ii) and struck out former cl. (i) which read as follows: "the average of the monthly number of families that received aid under the State plan approved under part A of this subchapter (as in effect on September 30, 1995) during fiscal year 1995.

Subsec. (b)(4)(B). Pub. L. 109–171, § 7102(a)(2), substituted "and the eligibility criteria in effect during fiscal year 2005 for "and eligibility criteria under the State program operated under the State plan approved under part A of this subchapter (as such plan and such part were in effect on September 30, 1995)".

Subsecs. (c)(2)(A)(i), (e)(1), (2). Pub. L. 109–171, § 7102(b)(1), inserted "or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title)" after "this part".

Subsec. (1). Pub. L. 109–171, § 7102(c)(1), amended heading and text generally. Prior to amendment, text read as follows: "During fiscal year 1999, the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate shall hold hearings and engage in other appropriate activities to review the implementation of this section by the States, and shall invite the Governors of the States to testify before them regarding such implementation.

(Prior Provisions

Based on such hearings, such Committees may introduce such legislation as may be appropriate to remedy any problems with the State programs operated pursuant to this section.


Subsec. (b)(3). Pub. L. 105–33, §5504(b), inserted “and not resulting from changes in State eligibility criteria” after “Federal law” in heading.

Subsec. (b)(4). Pub. L. 105–33, §5504(c), inserted “or tribal work program” after “assistance plan” in heading and “and under a tribal work program to which funds are provided under this part” before period at end of text.

Subsec. (c)(1)(B). Pub. L. 105–33, §5504(e), substituted “participating” for “making progress” in cls. (i) and (ii).

Subsec. (c)(1)(B)(i). Pub. L. 105–33, §5504(d)(1), substituted “‘is’ and inserted ‘a total of’ before ‘at least’.

Subsec. (c)(1)(B)(ii). Pub. L. 105–33, §5504(d)(2), substituted “individual and the other parent in the family are” for “individual’s spouse is”, inserted “for a total of at least 55 hours per week” before “during the month”, and substituted “90” for “20” and “(6), (7), (8), or (12)” for “(7)”.

Subsec. (c)(2)(A)(i). Pub. L. 105–33, §5504(f), inserted “or the State is a needy State (within the meaning of section 603(b)(6) of this title)” after “United States”.

Subsec. (c)(2)(B). Pub. L. 105–33, §5504(g), inserted “or relative” after “parent” in two places in heading and substituted “who is the only parent or caretaker relating to the family” for “in a 1-parent family who is the parent”.

Subsec. (c)(2)(C). Pub. L. 105–33, §5504(h), in heading substituted “Single teen head of household or married teen” for “Teen head of household” and, in introductory provisions, substituted “married or a” for “a single and struck out “subject to subparagraph (D) of this paragraph,” after “is deemed”.

Subsec. (c)(2)(C)(ii). Pub. L. 105–33, §5504(i), substituted an average of at least 20 hours per week during the month for “at least the minimum average number of hours per week specified in the table set forth in paragraph (1)(A) of this subsection”.

Subsec. (c)(2)(D). Pub. L. 105–33, §5503(a), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: “For purposes of determining monthly participation rates under paragraphs (1)(B)(1) and (2)(B) of subsection (b) of this section, not more than 2 percent of individuals in all families and in 2-parent families may be determined to be engaged in work in the State for a month by reason of participation in vocational or educational training deemed to be engaged in work by reason of subparagraph (C) of this paragraph.”

Subsec. (e)(2). Pub. L. 105–33, §5504(j), substituted “engage in work required in accordance with this section” for “work” in introductory provisions.

Effective Date of 2009 Amendment

Effective Date of 2006 Amendment
Amendment by section 7102(c)(1) of Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

Pub. L. 109–171, title VII, §7102(d), Feb. 8, 2006, 120 Stat. 137, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 611 of this title] shall take effect on October 1, 2006.”

Effective Date of 1997 Amendment
Section 5003(b) of Pub. L. 105–33 provided that: “The amendment made by subsection (a) of this section [amending this section] shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].”

Amendment by section 5504 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.

§608. Prohibitions; requirements
(a) In general
(1) No assistance for families without a minor child
A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to a family, unless the family includes a minor child who resides with the family (consistent with paragraph (10)) or a pregnant individual.

(2) Reduction or elimination of assistance for noncooperation in establishing paternity or obtaining child support
If the agency responsible for administering the State plan approved under part D of this subchapter determines that an individual is not cooperating with the State in establishing paternity or in establishing, modifying, or enforcing a support order with respect to a child of the individual, and the individual does not qualify for any good cause or other exception established by the State pursuant to section 654(29) of this title, then the State—
(A) shall deduct from the assistance that would otherwise be provided to the family of the individual under the State program funded under this part an amount equal to not less than 25 percent of the amount of such assistance; and

(B) may deny the family any assistance under the State program.

(3) No assistance for families not assigning certain support rights to the State
A State to which a grant is made under section 603 of this title shall require, as a condition of paying assistance to a family under the State program funded under this part, that a member of the family assign to the State any right the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total...
§ 608

(4) No assistance for teenage parents who do not attend high school or other equivalent training program

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to an individual who has not completed a high-school education (or its equivalent), if the individual does not participate in—

(A) educational activities directed toward the attainment of a high school diploma or its equivalent; or

(B) an alternative educational or training program that has been approved by the State.

(5) No assistance for teenage parents not living in adult-supervised settings

(A) In general

(i) Requirement

Except as provided in subparagraph (B), a State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to an individual described in clause (ii) of this subparagraph if the individual and the minor child referred to in clause (ii)(II) do not reside in a place of residence maintained by a parent, legal guardian, or other adult relative of the individual as such parent’s, guardian’s, or adult relative’s own home.

(ii) Individual described

For purposes of clause (i), an individual described in this clause is an individual who—

(I) has not attained 18 years of age; and

(II) is not married, and has a minor child in his or her care.

(B) Exception

(i) Provision of, or assistance in locating, adult-supervised living arrangement

In the case of an individual who is described in clause (ii), the State agency referred to in section 602(a)(4) of this title shall provide, or assist the individual in locating, a second chance home, maternity home, or other appropriate adult-supervised supportive living arrangement, taking into consideration the needs and concerns of the individual, unless the State agency determines that the individual’s current living arrangement is appropriate, and thereafter shall require that the individual and the minor child referred to in subparagraph (A)(II) reside in such living arrangement as a condition of the continued receipt of assistance under the State program funded under this part attributable to funds provided by the Federal Government (or in an alternative appropriate arrangement, should circumstances change and the current arrangement cease to be appropriate).

(ii) Individual described

For purposes of clause (i), an individual is described in this clause if the individual is described in subparagraph (A)(ii), and—

(I) the individual has no parent, legal guardian, or other appropriate adult relative described in clause (II) of his or her own who is living or whose whereabouts are known;

(II) no living parent, legal guardian, or other appropriate adult relative, who would otherwise meet applicable State criteria to act as the individual’s legal guardian, of such individual allows the individual to live in the home of such parent, guardian, or relative;

(III) the State agency determines that—

(aa) the individual or the minor child referred to in subparagraph (A)(ii)(II) is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the individual’s own parent or legal guardian; or

(bb) substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the individual and the minor child lived in the same residence with the individual’s own parent or legal guardian; or

(IV) the State agency otherwise determines that it is in the best interest of the minor child to waive the requirement of subparagraph (A) with respect to the individual or the minor child.

(iii) Second-chance home

For purposes of this subparagraph, the term “second-chance home” means an entity that provides individuals described in clause (ii) with a supportive and supervised living arrangement in which such individuals are required to learn parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote their long-term economic independence and the well-being of their children.

(6) No medical services

(A) In general

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide medical services.

(B) Exception for prepregnancy family planning services

As used in subparagraph (A), the term “medical services” does not include prepregnancy family planning services.

(7) No assistance for more than 5 years

(A) In general

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to a family that includes an adult who has re-
ceived assistance under any State program funded under this part attributable to funds provided by the Federal Government, for 60 months (whether or not consecutive) after the date the State program funded under this part commences, subject to this paragraph.

(B) Minor child exception

In determining the number of months for which an individual who is a parent or pregnant has received assistance under the State program funded under this part, the State shall disregard any month for which such assistance was provided with respect to the individual and during which the individual was—

(i) a minor child; and

(ii) not the head of a household or married to the head of a household.

(C) Hardship exception

(i) In general

The State may exempt a family from the application of subparagraph (A) by reason of hardship or if the family includes an individual who has been battered or subjected to extreme cruelty.

(ii) Limitation

The average monthly number of families with respect to which an exemption made by a State under clause (i) is in effect for a fiscal year shall not exceed 20 percent of the average monthly number of families to which assistance is provided under the State program funded under this part during the fiscal year or the immediately preceding fiscal year (but not both), as the State may elect.

(iii) Battered or subject to extreme cruelty defined

For purposes of clause (i), an individual has been battered or subjected to extreme cruelty if the individual has been subjected to—

(I) physical acts that resulted in, or threatened to result in, physical injury to the individual;

(II) sexual abuse;

(III) sexual activity involving a dependent child;

(IV) being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;

(V) threats of, or attempts at, physical or sexual abuse;

(VI) mental abuse; or

(VII) neglect or deprivation of medical care.

(D) Disregard of months of assistance received by adult while living in Indian country or an Alaskan Native village with 50 percent unemployment

(i) In general

In determining the number of months for which an adult has received assistance under a State or tribal program funded under this part, the State or tribe shall disregard any month during which the adult lived in Indian country or an Alaskan Native village if the most reliable data available with respect to the month (or a period including the month) indicate that at least 50 percent of the adults living in Indian country or in the village were not employed.

(ii) “Indian country” defined

As used in clause (i), the term “Indian country” has the meaning given such term in section 1151 of title 18.

(E) Rule of interpretation

Subparagraph (A) shall not be interpreted to require any State to provide assistance to any individual for any period of time under the State program funded under this part.

(F) Rule of interpretation

This part shall not be interpreted to prohibit any State from expending State funds not originating with the Federal Government on benefits for children or families that have become ineligible for assistance under the State program funded under this part by reason of subparagraph (A).

(G) Inapplicability to welfare-to-work grants and assistance

For purposes of subparagraph (A) of this paragraph, a grant made under section 603(a)(5) of this title shall not be considered a grant made under section 606 of this title, and noncash assistance from funds provided under section 603(a)(5) of this title shall not be considered assistance.

(8) Denial of assistance for 10 years to a person found to have fraudulently misrepresented residence in order to obtain assistance in 2 or more States

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide cash assistance to an individual during the 10-year period that begins on the date the individual is convicted in Federal or State court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from 2 or more States under programs that are funded under this subchapter, subchapter XIX of this chapter, or the Food and Nutrition Act of 2008 [7 U.S.C. 2011 et seq.], or benefits in 2 or more States under the supplemental security income program under subchapter XVI of this chapter. The preceding sentence shall not apply with respect to a vacation of an individual, for any month beginning after the President of the United States grants a pardon with respect to the conduct which was the subject of the conviction.

(9) Denial of assistance for fugitive felons and probation and parole violators

(A) In general

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to any individual who is—

(i) fleeing to avoid prosecution, or custody or confinement after conviction,
under the laws of the place from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or
(ii) violating a condition of probation or parole imposed under Federal or State law.
The preceding sentence shall not apply with respect to conduct of an individual, for any month beginning after the President of the United States grants a pardon with respect to the conduct.

(B) Exchange of information with law enforcement agencies
If a State to which a grant is made under section 603 of this title establishes safeguards against the use or disclosure of information about applicants or recipients of assistance under the State program funded under this part, the safeguards shall not prevent the State agency administering the program from furnishing a Federal, State, or local law enforcement officer, upon the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that—
(i) the recipient—
(I) is described in subparagraph (A); or
(II) has information that is necessary for the officer to conduct the official duties of the officer; and
(ii) the location or apprehension of the recipient is within such official duties.

(10) Denial of assistance for minor children who are absent from the home for a significant period

(A) In general
A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance for a minor child who has been, or is expected by a parent (or other caretaker relative) of the child to be, absent from the home for a period of 45 consecutive days or, at the option of the State, such period of not less than 30 and not more than 180 consecutive days as the State may provide for in the State plan submitted pursuant to section 602 of this title.

(B) State authority to establish good cause exceptions
The State may establish such good cause exceptions to subparagraph (A) as the State considers appropriate if such exceptions are provided for in the State plan submitted pursuant to section 602 of this title.

(C) Denial of assistance for relative who fails to notify State agency of absence of child
A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance for an individual who is a parent (or other caretaker relative) of a minor child and who fails to notify the agency administering the State program funded under this part of the absence of the minor child from the home for the period specified in or provided for pursuant to subparagraph (A), by the end of the 5-day period that begins with the date that it becomes clear to the parent (or relative) that the minor child will be absent for such period so specified or provided for.

(11) Medical assistance required to be provided for certain families having earnings from employment or child support

(A) Earnings from employment
A State to which a grant is made under section 603 of this title and which has a State plan approved under subchapter XIX of this chapter shall provide that in the case of a family that is treated (under section 1396a–1(b)(1)(A) of this title for purposes of subchapter XIX of this chapter) as receiving aid under a State plan approved under this part (as in effect on July 16, 1996), that would become ineligible for such aid because of hours of or income from employment of the caretaker relative (as defined under this part as in effect on such date) or because of section 602(a)(8)(B)(II) of this title (as so in effect), and that was so treated as receiving such aid in at least 3 of the 6 months immediately preceding the month in which such ineligibility begins, the family shall remain eligible for medical assistance under the State’s plan approved under subchapter XIX of this chapter for an extended period or periods as provided in section 1396r–6 or 1396a(e)(1) of this title (as applicable), and that the family will be appropriately notified of such extension as required by section 1396r–6(a)(2) of this title.

(B) Child support
A State to which a grant is made under section 603 of this title and which has a State plan approved under subchapter XIX of this chapter shall provide that in the case of a family that is treated (under section 1396a–1(b)(1)(A) of this title for purposes of subchapter XIX of this chapter) as receiving aid under a State plan approved under this part (as in effect on July 16, 1996), that would become ineligible for such aid as a result (wholly or partly) of the collection of child or spousal support under part D of this subchapter and that was so treated as receiving such aid in at least 3 of the 6 months immediately preceding the month in which such ineligibility begins, the family shall remain eligible for medical assistance under the State’s plan approved under subchapter XIX of this chapter for an extended period or periods as provided in section 1396a–1(c)(1) of this title.

(b) Individual responsibility plans

(1) Assessment
The State agency responsible for administering the State program funded under this part shall make an initial assessment of the skills, prior work experience, and employability of each recipient of assistance under the program who—
(A) has attained 18 years of age; or
(B) has not completed high school or obtained a certificate of high school equivalency, and is not attending secondary school.

(2) Contents of plans
(A) In general
On the basis of the assessment made under subsection (a) of this section with respect to an individual, the State agency, in consultation with the individual, may develop an individual responsibility plan for the individual, which—
(i) sets forth an employment goal for the individual and a plan for moving the individual immediately into private sector employment;
(ii) sets forth the obligations of the individual, which may include a requirement that the individual attend school, maintain certain grades and attendance, keep school age children of the individual in school, immunize children, attend parenting and money management classes, or do other things that will help the individual become and remain employed in the private sector;
(iii) to the greatest extent possible is designed to move the individual into whatever private sector employment the individual is capable of handling as quickly as possible, and to increase the responsibility and amount of work the individual is to handle over time;
(iv) describes the services the State will provide the individual so that the individual will be able to obtain and keep employment in the private sector, and describe the job counseling and other services that will be provided by the State; and
(v) may require the individual to undergo appropriate substance abuse treatment.

(B) Timing
The State agency may comply with paragraph (1) with respect to an individual—
(i) within 90 days (or, at the option of the State, 180 days) after the effective date of this part, in the case of an individual who, as of such effective date, is a recipient of aid under the State plan approved under part A of this subchapter (as in effect immediately before such effective date); or
(ii) within 30 days (or, at the option of the State, 90 days) after the individual is determined to be eligible for such assistance, in the case of any other individual.

(3) Penalty for noncompliance by individual
In addition to any other penalties required under the State program funded under this part, the State may reduce, by such amount as the State considers appropriate, the amount of assistance otherwise payable under the State program to a family that includes an individual who fails without good cause to comply with an individual responsibility plan signed by the individual.

(4) State discretion
The exercise of the authority of this subsection shall be within the sole discretion of the State.

(c) Sanctions against recipients not considered wage reductions
A penalty imposed by a State against the family of an individual by reason of the failure of the individual to comply with a requirement under the State program funded under this part shall not be construed to be a reduction in any wage paid to the individual.

(d) Nondiscrimination provisions
The following provisions of law shall apply to any program or activity which receives funds provided under this part:
(1) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).
(2) Section 794 of title 29.
(4) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(e) Special rules relating to treatment of certain aliens
For special rules relating to the treatment of certain aliens, see title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [8 U.S.C. 1601 et seq.].

(f) Special rules relating to treatment of non-213A aliens
The following rules shall apply if a State elects to take the income or resources of any sponsor of a non-213A alien into account in determining whether the alien is eligible for assistance under the State program funded under this part, or in determining the amount or types of such assistance to be provided to the alien:

(1) Deeming of sponsor’s income and resources
For a period of 3 years after a non-213A alien enters the United States:

(A) Income deeming rule
The income of any sponsor of the alien and of any spouse of the sponsor is deemed to be income of the alien, to the extent that the total amount of the income exceeds the sum of—
(i) the lesser of—
(I) 20 percent of the total of any amounts received by the sponsor or any such spouse in the month as wages or salary or as net earnings from self-employment, plus the full amount of any costs incurred by the sponsor and any such spouse in producing self-employment income in such month; or
(II) $175;
(ii) the cash needs standard established by the State for purposes of determining eligibility for assistance under the State program funded under this part for a family of the same size and composition as the sponsor and any other individuals living in the same household as the sponsor who are claimed by the sponsor as dependents for purposes of determining the sponsor’s Federal personal income tax liability but whose needs are not taken into account in determining whether the sponsor’s family has met the cash needs standard;
(iii) any amounts paid by the sponsor or any such spouse to individuals not living
in the household who are claimed by the sponsor as dependents for purposes of determining the sponsor’s Federal personal income tax liability; and
(iv) any payments of alimony or child support with respect to individuals not living in the household.

(B) Resource deeming rule
The resources of a sponsor of the alien and of any spouse of the sponsor are deemed to be resources of the alien to the extent that the aggregate value of the resources exceeds $1,500.

(C) Sponsors of multiple non-213A aliens

If a person is a sponsor of 2 or more non-213A aliens who are living in the same home, the income and resources of the sponsor and any spouse of the sponsor that would be deemed income and resources of any such alien under subparagraph (A) shall be divided into a number of equal shares equal to the number of such aliens, and the State shall deem the income and resources of each such alien to include 1 such share.

(2) Ineligibility of non-213A aliens sponsored by agencies; exception

A non-213A alien whose sponsor is or was a public or private agency shall be ineligible for assistance under a State program funded under this part, during a period of 3 years after the alien enters the United States, unless the State agency administering the program determines that the sponsor either no longer exists or has become unable to meet the alien’s needs.

(3) Information provisions

(A) Duties of non-213A aliens

A non-213A alien, as a condition of eligibility for assistance under a State program funded under this part, is required to provide to the State agency administering the program—
(i) such information and documentation with respect to the sponsor as may be necessary in order for the State agency to make any determination required under this subsection, and to obtain any cooperation from the sponsor necessary for any such determination; and
(ii) such information and documentation as the State agency may request and which the alien or the alien’s sponsor provided in support of the alien’s immigration application.

(B) Duties of Federal agencies

The Secretary shall enter into agreements with the Secretary of State and the Attorney General under which any information available to them and required in order to make any determination required under this subsection will be provided by them to the Secretary (who may, in turn, make the information available, upon request, to a concerned State agency).

(4) “Non-213A alien” defined

An alien is a non-213A alien for purposes of this subsection if the affidavit of support or similar agreement with respect to the alien that was executed by the sponsor of the alien’s entry into the United States was executed other than pursuant to section 213A of the Immigration and Nationality Act [8 U.S.C. 1183a].

(5) Inapplicability to alien minor sponsored by a parent

This subsection shall not apply to an alien who is a minor child if the sponsor of the alien or any spouse of the sponsor is a parent of the alien.

(6) Inapplicability to certain categories of aliens

This subsection shall not apply to an alien who is—
(A) admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157];
(B) paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182(d)(5)] for a period of at least 1 year; or
(C) granted political asylum by the Attorney General under section 208 of such Act [8 U.S.C. 1158].

(g) State required to provide certain information

Each State to which a grant is made under section 603 of this title shall, at least 4 times annually and upon request of the Immigration and Nationalization Service, furnish the Immigration and Nationalization Service with the name and address of, and other identifying information on, any individual who the State knows is not lawfully present in the United States.

Title 42—The Public Health and Welfare


Subsec. (a)(7)(C)(ii). Pub. L. 106–33, §5505(d)(1), substituted “The number” for “The number” and inserted “during the fiscal year or the immediately preceding fiscal year (but not both), as the State may elect” before period at end.

Subsec. (a)(7)(D). Pub. L. 105–33, §5505(d)(2), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: “In determining the number of months for which an adult has received assistance under the State program funded under this part, the State shall disregard any month during which the adult lived on an Indian reservation or in an Alaskan Native village if, during the month—

“(i) at least 1,000 individuals were living on the reservation or in the village; and

“(ii) at least 50 percent of the adults living on the reservation or in the village were unemployed.”

Subsec. (a)(7)(E). Pub. L. 105–33, §5501(h)(1), added subsec. (E) and redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).


Subsecs. (c), (d). Pub. L. 105–33, §5001(h)(1), added subsec. (c) and redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 106–33, §5505(e), added subsec. (e) and struck out heading and text of former subsec. (e). Text read as follows: ‘‘For special rules relating to the treatment of aliens, see section 1612 of title 8.’’

Pub. L. 105–33, §5001(h)(1)(A), redesignated subsec. (d) as (e).


Subsec. (g). Pub. L. 105–33, §5881(a), added subsec. (g).

Effective Date of 2006 Amendment


Effective Date of 2006 Amendment

Pub. L. 109–171, title VII, §7301(e), Feb. 8, 2006, 120 Stat. 154, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this section, the amendments made by the preceding provisions of this section shall take effect as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].”

The amendments made by section 5001(h)(2) of Pub. L. 105–33 provided that: “The amendments made by paragraph (1) [amending this section] shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].”

Amendment by section 5505 of Pub. L. 106–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of
1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 692 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 692 of Title 21, Food and Drugs.


“(a) In General.—Except as provided as subsection (b), the amendments made by this chapter [chapter 3 (§§5551–5557) of subtitle F of title V of Pub. L. 105–33, amending this section, sections 652 to 654, 654b, 655, 656, 657 to 659, 663, 664, and 666 of this title, section 1790B of Title 28, Judiciary and Judicial Procedure, and provisions set out as a note under section 655 of this title] shall take effect as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2105).

“(b) Exception.—The amendments made by section 5524(c)(2) of this title [amending this section] shall take effect as if the amendments had been included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2112). The amendment made by section 5556(1)(A) [amending section 666 of this title] shall not take effect in respect to a State until October 1, 2000, or such earlier date as the State may select.”


Section 5581(a) of Pub. L. 105–33 provided that the amendment made by that section is effective July 1, 1997.

**Effective Date**

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

**Abolition of Immigration and Naturalization Service and Transfer of Functions**

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

§608a. Fraud under means-tested welfare and public assistance programs

(a) In general

If an individual’s benefits under a Federal, State, or local law relating to a means-tested welfare or a public assistance program are reduced because of an act of fraud by the individual under the law or program, the individual may not, for the duration of the reduction, receive an increased benefit under any other means-tested welfare or public assistance program for which Federal funds are appropriated as a result of a decrease in the income of the individual (determined under the applicable program) attributable to such reduction.

(b) Welfare or public assistance programs for which Federal funds are appropriated

For purposes of subsection (a) of this section, the term “means-tested welfare or public assistance program for which Federal funds are appropriated” includes the food stamp program under the Food Stamp Act of 1977 (7 U.S.C. 2001 et seq.), any program of public or assisted housing under title I of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), and any State program funded under this part.


**References in Text**


**Codification**

Section was enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and not as part of the Social Security Act which comprises this chapter.

**Change of Name**

References to the food stamp program established under the Food and Nutrition Act of 2008 considered to refer to the supplemental nutrition assistance program established under that Act, see section 4002(c) of Pub. L. 110–246, set out as a note under section 2012 of Title 7, Agriculture.

§609. Penalties

(a) In general

Subject to this section:

(1) Use of grant in violation of this part

(A) General penalty

If an audit conducted under chapter 75 of title 31 finds that an amount paid to a State under section 603 of this title for a fiscal year has been used in violation of this part, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year quarter by the amount so used.

(B) Enhanced penalty for intentional violations

If the State does not prove to the satisfaction of the Secretary that the State did not intend to use the amount in violation of this part, the Secretary shall further reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year quarter by an amount equal to 5 percent of the State family assistance grant.

(C) Penalty for misuse of competitive welfare-to-work funds

If the Secretary of Labor finds that an amount paid to an entity under section
(2) Failure to submit required report
(A) Quarterly reports
   (i) In general
   If the Secretary determines that a State has not, within 45 days after the end of a fiscal quarter, submitted the report required by section 611(a) of this title for the quarter, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to 4 percent of the State family assistance grant.
   (ii) Recission of penalty
   The Secretary shall rescind a penalty imposed on a State under clause (i) with respect to a report if the State submits the report before the end of the fiscal quarter that immediately succeeds the fiscal quarter for which the report was required.
(B) Report on engagement in additional work activities and expenditures for other benefits and services
   (i) In general
   If the Secretary determines that a State has not submitted the report required by section 611(c)(1)(A) of this title if the State submits the report not later than—
      (I) in the case of the report required under section 611(c)(1)(A)(i) of this title, by May 31, 2011; or the report required by section 611(c)(1)(A)(ii) of this title by August 31, 2011, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to more than 4 percent of the State family assistance grant.
      (II) in the case of the report required under section 611(c)(1)(A)(ii) of this title, September 15, 2011.
   (ii) Recission of penalty
   The Secretary shall rescind a penalty imposed on a State under clause (i) with respect to a report required by section 611(c)(1)(A)(i) of this title if the State submits the report not later than—
      (I) in the case of the report required under section 611(c)(1)(A)(i) of this title, June 15, 2011; and
      (II) in the case of the report required under section 611(c)(1)(A)(ii) of this title, September 15, 2011.
   (iii) Penalty based on severity of failure
   The Secretary shall impose a reduction under clause (i) with respect to a fiscal year based on the degree of noncompliance.
   (3) Failure to satisfy minimum participation rates
(A) In general
   If the Secretary determines that a State to which a grant is made under section 603 of this title for a fiscal year has failed to comply with section 607(a) of this title for the fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to the applicable percentage of the State family assistance grant.
(B) “Applicable percentage” defined
   As used in subparagraph (A), the term “applicable percentage” means, with respect to a State—
   (i) if a penalty was not imposed on the State under subparagraph (A) for the immediately preceding fiscal year, 5 percent; or
   (ii) if a penalty was imposed on the State under subparagraph (A) for the immediately preceding fiscal year, the lesser of—
      (I) the percentage by which the grant payable to the State under section 603(a)(1) of this title was reduced for such preceding fiscal year, increased by 2 percentage points; or
      (II) 21 percent.
(C) Penalty based on severity of failure
   The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance, and may reduce the penalty if the noncompliance is due to circumstances that caused the State to become a needy State (as defined in section 603(b)(6) of this title) during the fiscal year or if the noncompliance is due to extraordinary circumstances such as a natural disaster or regional recession. The Secretary shall provide a written report to Congress to justify any waiver or penalty reduction due to such extraordinary circumstances.
   (4) Failure to participate in the income and eligibility verification system
   If the Secretary determines that a State program funded under this part is not participating during a fiscal year in the income and eligibility verification system required by section 1320b–7 of this title, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not more than 2 percent of the State family assistance grant.
   (5) Failure to comply with paternity establishment and child support enforcement requirements under part D
   Notwithstanding any other provision of this chapter, if the Secretary determines that the State agency that administers a program funded under this part does not enforce the penalties requested by the agency administering part D of this subchapter against recipients of assistance under the State program who fail to cooperate in establishing paternity or in establishing, modifying, or enforcing a child support order in accordance with such part and who do not qualify for any good cause or other exception established by the State under section 654(29) of this title, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year (with-
out regard to this section) by not more than 5 percent.

(6) Failure to timely repay a Federal Loan Fund for State Welfare Programs

If the Secretary determines that a State has failed to repay any amount borrowed from the Federal Loan Fund for State Welfare Programs established under section 606 of this title within the period of maturity applicable to the loan, plus any interest owed on the loan, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year quarter (without regard to this section) by the outstanding loan amount, plus the interest owed on the outstanding amount. The Secretary shall not forgive any outstanding loan amount or interest owed on the outstanding amount.

(7) Failure of any State to maintain certain level of historic effort

(A) In general


(B) Definitions

As used in this paragraph:

(i) Qualified State expenditures

(I) In general

The term “qualified State expenditures” means, with respect to a State and a fiscal year, the total expenditures by the State during the fiscal year, under all State programs, for any of the following with respect to eligible families:

(aa) Cash assistance, including any amount collected by the State as support pursuant to a plan approved under part D of this subchapter, on behalf of a family receiving assistance under the State program funded under this part, that is distributed to the family under section 657(a)(1)(B) of this title and disregarded in determining the eligibility of the family for, and the amount of, such assistance.

(bb) Child care assistance.

(cc) Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except expenditures which involve the provision of services or assistance to a member of an eligible family which is not generally available to persons who are not members of an eligible family.

(dd) Administrative costs in connection with the matters described in items (aa), (bb), (cc), and (ee), but only to the extent that such costs do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year.

(ee) Any other use of funds allowable under section 604(a)(1) of this title.

(II) Exclusion of transfers from other State and local programs

Such terms does not include expenditures under any State or local program during a fiscal year, except to the extent that—

(aa) the expenditures exceed the amount expended by the State or local program in the fiscal year most recently ending before August 22, 1996;

(bb) the State is entitled to a payment under former section 603 of this title (as in effect immediately before August 22, 1996) with respect to the expenditures.

(III) Exclusion of amounts expended to replace penalty grant reductions

Such term does not include any amount expended in order to comply with paragraph (12).

(IV) Eligible families

As used in subclause (I), the term “eligible families” means families eligible for assistance under the State program funded under this part, families that would be eligible for such assistance but for the application of section 608(a)(7) of this title, and families of aliens lawfully present in the United States that would be eligible for such assistance but for the application of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [8 U.S.C. 1601 et seq.].

(V) Counting of spending on certain program activities

The term “qualified State expenditures” includes the total expenditures by the State during the fiscal year under all State programs for a purpose described in paragraph (3) or (4) of section 601(a) of this title.

(ii) Applicable percentage

The term “applicable percentage” means for fiscal years 1997 through 2012, 80 percent (or, if the State meets the requirements of section 607(a) of this title for the fiscal year, 75 percent).

(iii) Historic State expenditures

The term “historic State expenditures” means, with respect to a State, the lesser of—

(I) the expenditures by the State under parts A and F of this subchapter (as in effect during fiscal year 1994) for fiscal year 1994; or

(II) the amount which bears the same ratio to the amount described in subclause (I) as—

(aa) the State family assistance grant, plus the total amount required
to be paid to the State under former section 603 of this title for fiscal year 1994 with respect to amounts expended by the State for child care under subsection (g) or (i) of section 602 of this title (as in effect during fiscal year 1994); bears to

(b) the total amount required to be paid to the State under former section 603 of this title (as in effect during fiscal year 1994) for fiscal year 1994.

Such term does not include any expenditures under the State plan approved under part A of this subchapter (as so in effect) on behalf of individuals covered by a tribal family assistance plan approved under section 612 of this title, as determined by the Secretary.

(iv) Expenditures by the State

The term “expenditures by the State” does not include—

(I) any expenditure from amounts made available by the Federal Government;

(II) any State funds expended for the medicaid program under subchapter XIX of this chapter;

(III) any State funds which are used to match Federal funds provided under section 603(a)(5) of this title; or

(IV) any State funds which are expended as a condition of receiving Federal funds other than under this part.

Notwithstanding subclause (IV) of the preceding sentence, such term includes expenditures by a State for child care in a fiscal year to the extent that the total amount of the expenditures does not exceed the amount of State expenditures in fiscal year 1994 or 1995 (whichever is the greater) that equal the non-Federal share for the programs described in section 638(a)(1)(A) of this title.

(v) Source of data

In determining expenditures by a State for fiscal years 1994 and 1995, the Secretary shall use information which was reported by the State on ACF Form 231 or (in the case of expenditures under part F of this subchapter) ACF Form 331, available as of the dates specified in clauses (ii) and (iii) of section 603(a)(1)(D) of this title.

(8) Noncompliance of State child support enforcement program with requirements of part D

(A) In general

If the Secretary finds, with respect to a State’s program under part D of this subchapter, in a fiscal year beginning on or after October 1, 1997—

(i) (I) on the basis of data submitted by a State pursuant to section 654(15)(B) of this title, or on the basis of the results of a review conducted under section 652(a)(4) of this title, that the State program failed to achieve the paternity establishment per-

centages (as defined in section 652(g)(2) of this title), or to meet other performance measures that may be established by the Secretary;

(ii) on the basis of the results of an audit or audits conducted under section 652(a)(4)(C)(i) of this title that the State data submitted pursuant to section 654(15)(B) of this title is incomplete or unreliable; or

(iii) on the basis of the results of an audit or audits conducted under section 652(a)(4)(C) of this title that a State failed to substantially comply with 1 or more of the requirements of part D of this subchapter (other than paragraph (24), or subparagraph (A) or (B)(i) of paragraph (27), of section 654 of this title); and

(B) Amount of reductions

The reductions required under subparagraph (A) shall be—

(i) not less than 1 nor more than 2 percent;

(ii) not less than 2 nor more than 3 percent, if the finding is the 2nd consecutive finding made pursuant to subparagraph (A); or

(iii) not less than 3 nor more than 5 percent, if the finding is the 3rd or a subsequent consecutive such finding.

(C) Disregard of noncompliance which is of a technical nature

For purposes of this section and section 652(a)(4) of this title, a State determined as a result of an audit—

(i) to have failed to have substantially complied with 1 or more of the requirements of part D of this subchapter shall be determined to have achieved substantial compliance only if the Secretary determines that the extent of the noncompliance is of a technical nature which does not adversely affect the performance of the State’s program under part D of this subchapter; or

(ii) to have submitted incomplete or unreliable data pursuant to section 654(15)(B)
of this title shall be determined to have submitted adequate data only if the Secretary determines that the extent of the incompleteness or unreliability of the data is of a technical nature which does not adversely affect the determination of the level of the State’s paternity establishment percentages (as defined under section 652(g)(2) of this title) or other performance measures that may be established by the Secretary.

(9) Failure to comply with 5-year limit on assistance

If the Secretary determines that a State has not complied with section 608(a)(7) of this title during any fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to 5 percent of the State family assistance grant.

(10) Failure of State receiving amounts from Contingency Fund to maintain 100 percent of historic effort

If, at the end of any fiscal year during which amounts from the Contingency Fund for State Welfare Programs have been paid to a State, the Secretary finds that the qualified State expenditures (as defined in paragraph (7)(B)(1) (other than the expenditures described in subclause (I)(bb) of that paragraph)) under the State program funded under this part for the fiscal year are less than 100 percent of historic State expenditures (as defined in paragraph (7)(B)(iii) of this subsection), excluding any amount expended by the State for child care under subsection (g) or (i) of section 602 of this title (as in effect during fiscal year 1994) for fiscal year 1994, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by the total of the amounts so paid to the State that has not submitted under section 603(b)(6) of this title.

(11) Failure to maintain assistance to adult single custodial parent who cannot obtain child care for child under age 6

(A) In general

If the Secretary determines that a State to which a grant is made under section 603 of this title for a fiscal year has violated section 607(e)(2) of this title during the fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not more than 5 percent of the State family assistance grant.

(B) Penalty based on severity of failure

The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.

(12) Requirement to expend additional State funds to replace grant reductions; penalty for failure to do so

If the grant payable to a State under section 603(a)(1) of this title for a fiscal year is reduced by reason of this subsection, the State shall, during the immediately succeeding fiscal year, expend under the State program funded under this part an amount equal to the total amount of such reductions. If the State fails during such succeeding fiscal year to make the expenditure required by the preceding sentence from its own funds, the Secretary may reduce the grant payable to the State under section 603(a)(1) of this title for the fiscal year that follows such succeeding fiscal year by an amount equal to the sum of—

(A) not more than 2 percent of the State family assistance grant; and

(B) the amount of the expenditure required by the preceding sentence.

(13) Penalty for failure of State to maintain historic effort during year in which welfare-to-work grant is received

If a grant is made to a State under section 603(a)(5)(A) of this title for a fiscal year and paragraph (7) of this subsection requires the grant payable to the State under section 603(a)(1) of this title to be reduced for the immediately succeeding fiscal year, then the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for such succeeding fiscal year by the amount of the grant made to the State under section 603(a)(5)(A) of this title for the fiscal year.

(14) Penalty for failure to reduce assistance for recipients refusing without good cause to work

(A) In general

If the Secretary determines that a State to which a grant is made under section 603 of this title in a fiscal year has violated section 607(e) of this title during the fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not less than 1 percent and not more than 5 percent of the State family assistance grant.

(B) Penalty based on severity of failure

The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.

(15) Penalty for failure to establish or comply with work participation verification procedures

(A) In general

If the Secretary determines that a State to which a grant is made under section 603 of this title in a fiscal year has violated section 607(i)(2) of this title during the fiscal year, the Secretary shall reduce the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year by an amount equal to not less than 1 percent and not more than 5 percent of the State family assistance grant.

(B) Penalty based on severity of failure

The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance.
(b) Reasonable cause exception

(1) In general

The Secretary may not impose a penalty on a State under subsection (a) with respect to a requirement if the Secretary determines that the State has reasonable cause for failing to comply with the requirement.

(2) Exception

Paragraph (1) of this subsection shall not apply to any penalty under paragraph (6), (7), (8), (10), (12), or (13) of subsection (a) and, with respect to the penalty under paragraph (2)(B) of subsection (a), shall only apply to the extent the Secretary determines that the reasonable cause for failure to comply with a requirement of that paragraph is as a result of a one-time, unexpected event, such as a widespread data system failure or a natural or man-made disaster.

c) Corrective compliance plan

(1) In general

(A) Notification of violation

Before imposing a penalty against a State under subsection (a) of this section with respect to a violation of this part, the Secretary shall notify the State of the violation and allow the State the opportunity to enter into a corrective compliance plan in accordance with this subsection which outlines how the State will correct or discontinue, as appropriate, the violation and how the State will insure continuing compliance with this part.

(B) 60-day period to propose a corrective compliance plan

During the 60-day period that begins on the date the Secretary receives a notice provided under subparagraph (A) with respect to a violation, the State may submit to the Federal Government a corrective compliance plan to correct or discontinue, as appropriate, the violation.

(C) Consultation about modifications

During the 60-day period that begins with the date the Secretary receives a corrective compliance plan submitted by a State in accordance with subparagraph (B), the Secretary may consult with the State on modifications to the plan.

(D) Acceptance of plan

A corrective compliance plan submitted by a State in accordance with subparagraph (B) is deemed to be accepted by the Secretary if the Secretary does not accept or reject the plan during the 60-day period that begins on the date the plan is submitted.

(2) Effect of correcting or discontinuing violation

The Secretary may not impose any penalty under subsection (a) of this section with respect to any violation covered by a State corrective compliance plan accepted by the Secretary if the State corrects or discontinues, as appropriate, the violation pursuant to the plan.

(3) Effect of failing to correct or discontinue violation

The Secretary shall assess some or all of a penalty imposed on a State under subsection (a) of this section with respect to a violation if the State does not, in a timely manner, correct or discontinue, as appropriate, the violation pursuant to a State corrective compliance plan accepted by the Secretary.

(4) Inapplicability to certain penalties

This subsection shall not apply to the imposition of a penalty against a State under paragraph (2)(B), (6), (7), (8), (10), (12), or (13) of subsection (a) of this section.

d) Limitation on amount of penalties

(1) In general

In imposing the penalties described in subsection (a) of this section, the Secretary shall not reduce any quarterly payment to a State by more than 25 percent.

(2) Carryforward of unrecovered penalties

To the extent that paragraph (1) of this subsection prevents the Secretary from recovering during a fiscal year the full amount of penalties imposed on a State under subsection (a) of this section for a prior fiscal year, the Secretary shall apply any remaining amount of such penalties to the grant payable to the State under section 603(a)(1) of this title for the immediately succeeding fiscal year.


References in Text

Part D of this subchapter, referred to in subsec. (a)(2), (7)(B)(i)(I)(aa), (8), is classified to section 651 et seq. of this title.


Prior Provisions

AMENDMENTS


2010—Subsec. (a)(2). Pub. L. 111–291, § 812(b)(1), designated existing provisions as subpar. (A), inserted heading, redesignated former subpars. (A) and (B) as clss. (i) and (ii), respectively, of subpar. (A), in subpar. (A)(ii), substituted “(i)” for “subsection (A)” and added subpar. (B).


Subsec. (a)(7)(B)(ii). Pub. L. 106–113 substituted “paragraph (24), or subparagraph (A) or (B)(i) of paragraph (27), of section 654 of this title for section 654(24) of this title” for “section 654(24) of this title”.


Subsec. (a)(2)(A). Pub. L. 105–33, § 5506(a), substituted “45 days” for “1 month”.

Subsec. (a)(3)(A). Pub. L. 105–33, § 5506(n)(1), struck out “not more than” after “an amount equal to”.

Subsec. (a)(3)(C). Pub. L. 105–33, § 5506(n)(2), inserted before period at end “if the noncompliance is due to extraordinary circumstances such as a natural disaster or regional recession. The Secretary shall provide a written report to Congress to justify any waiver or penalty reduction due to such extraordinary circumstances”.

Subsec. (a)(7)(B)(1)(I)(aa). Pub. L. 105–33, § 5506(b), inserted before period at end “…, including any amount collected by the State as support pursuant to a plan approved under part D of this subchapter, on behalf of a family receiving assistance under the State program funded under this part, that is distributed to the family under section 607(a)(1)(B) of this title and disregarded in determining the eligibility of the family for, and of, the amount of such assistance”.


Subsec. (a)(7)(B)(1)(IV). Pub. L. 105–33, § 5506(d), substituted “this part, families” for “this part, and families” and “section 608(a)(7) of this title, and families of aliens lawfully present in the United States that would be eligible for such assistance but for the application of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996” for “section 608(a)(7) of this title or section 1612(a) of title 8”.

Pub. L. 105–33, § 5506(c), redesignated subcl. (III) as (IV).

Subsec. (a)(7)(B)(ii). Pub. L. 105–33, § 5506(e), struck out “reduced (if appropriate) in accordance with subparagraph (C)(ii)” after “75 percent”.

Subsec. (a)(7)(B)(iv). Pub. L. 105–33, § 5001(a)(2), amended heading and text of cl. (c) generally. Prior to amendment, text read as follows: “The term ‘expenditures by the State’ does not include—

"(1) any expenditures from amounts made available by the Federal Government;

"(II) any State funds expended for the medicaid program under subchapter XIX of this chapter;

"(III) any State funds which are used to match Federal funds; or

"(IV) any State funds which are expended as a condition of receiving Federal funds under Federal programs other than under this part.

Notwithstanding subclause (IV) of the preceding sentence, such term includes expenditures by a State for child care in a fiscal year to the extent that the total amount of such expenditures does not exceed an amount equal to the amount of State expenditures in fiscalyear 1994 or 1995 (whichever is greater) that equal the non-Federal share for the programs described in section 618(a)(1)(A) of this title.


Subsec. (a)(8). Pub. L. 105–33, § 5506(g), amended heading and text of par. (8) generally. Prior to amendment, par. (8) provided that if a State program operated under part D of this subchapter was found to not have complied substantially with the requirements of such part for any quarter, and was not complying substantially with such requirements at the time of the finding, the Secretary was to reduce the grant payable to the State under section 606(a)(1) of this title for certain quarters until the program was found to be in substantial compliance with such requirements.


Subsec. (a)(10). Pub. L. 105–33, § 5506(i), substituted “the qualified State expenditures (as defined in paragraph (7)(B)(i) (other than the expenditures described in subclause (I)(bb) of that paragraph)) under the State
program funded under this part for the fiscal year’’ for
‘‘the expenditures under the State program funded under this part for the fiscal year (excluding any amounts made available by the Federal Government),’’ inserted ‘‘excluding any amount expended by the State for child care under subsection (g) or (i) of section 602 of this title (as in effect during fiscal year 1994) for fiscal year 1994, after ‘‘(as defined in paragraph (7)(B)(ii) of this subsection),’’ and inserted before period at end ‘‘that the State has not remitted under section 603(b)(6) of this title’’.

Subsec. (a)(12). Pub. L. 105–33, § 5506(j), in heading substituted ‘‘Requirement’’ for ‘‘Failure’’ and ‘‘reductions; penalty for failure to do so’’ for ‘‘reductions’’ and in text inserted at end ‘‘If the State fails during such succeeding fiscal year to make the expenditure required by the preceding sentence from its own funds, the Secretary may reduce the grant payable to the State under section 685(a)(1) of this title for the fiscal year that follows such succeeding fiscal year by an amount equal to the sum of—

(A) not more than 2 percent of the State family assistance grant; and

(B) the amount of the expenditure required by the preceding sentence.’’


Subsec. (b)(2). Pub. L. 105–33, § 5506(k), substituted ‘‘(6), (7), (8), (10), or (12)’’ for ‘‘(7) or (8)’’.

Pub. L. 105–33, § 5001(g)(1)(B), substituted ‘‘(12), or (13)’’ for ‘‘(12)’’.

Subsec. (c)(1)(A). (B). Pub. L. 105–33, § 5506(h)(1), inserted ‘‘or discontinue, as appropriate,’’ after ‘‘correct’’.

Subsec. (c)(2). Pub. L. 105–33, § 5506(h)(2), inserted ‘‘or discontinuing’’ after ‘‘correcting’’ in heading and ‘‘or discontinues, as appropriate’’ after ‘‘corrects’’ in text.

Subsec. (c)(3). Pub. L. 105–33, § 5506(h)(3), inserted ‘‘or discontinue’’ after ‘‘correct’’ in heading and ‘‘or discontinue, as appropriate’’ before ‘‘the violation’’ in text.

Subsec. (c)(4). Pub. L. 105–33, § 5506(m), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ‘‘This subsection shall not apply to the imposition of a penalty against a State under subsection (a)(6) of this title.’’

Pub. L. 105–33, § 5001(g)(1)(C), substituted ‘‘(12), or (13)’’ for ‘‘(12)’’.

Effective Date of 2006 Amendment
Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2000, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

Effective Date of 2003 Amendment

Effective Date of 1999 Amendments

Pub. L. 106–113, div. B, § 1006(a)(4) [title VIII, § 807(c)], Nov. 29, 1999, 113 Stat. 1535, 1501A–267, provided that: ‘‘The amendments made by this section [amending this section and section 655 of this title] shall take effect on October 1, 1999.’’

Effective Date of 1997 Amendment
Section 5004(b) of Pub. L. 105–33 provided that: ‘‘The amendment made by subsection (a) of this section [amending this section] shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193].’’

Amendment by section 5506 of Pub. L. 105–33 effective as if included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 662a of Title 21, Food and Drugs.

Effective Date
Section effective July 1, 1997, with delayed effective date for subsec. (a)(2)–(5), (8), (10) of this section, and with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of the Administrator for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, set out as a note under section 601 of this title.

§ 610. Appeal of adverse decision

(a) In general

Within 5 days after the date the Secretary takes any adverse action under this part with respect to a State, the Secretary shall notify the chief executive officer of the State of the adverse action, including any action with respect to the State plan submitted under section 602 of this title or the imposition of a penalty under section 609 of this title.

(b) Administrative review

(1) In general

Within 60 days after the date a State receives notice under subsection (a) of this section of an adverse action, the State may appeal the action, in whole or in part, to the Departmental Appeals Board established in the Department of Health and Human Services (in this section referred to as the ‘‘Board’’) by filing an appeal with the Board.

(2) Procedural rules

The Board shall consider an appeal filed by a State under paragraph (1) on the basis of such documentation as the State may submit and the Board may require to support the final decision of the Board. In deciding whether to uphold an adverse action or any portion of such an action, the Board shall conduct a thorough review of the issues and take into account all relevant evidence. The Board shall make a final determination with respect to an appeal filed under paragraph (1) not less than 60 days after the date the appeal is filed.

(c) Judicial review of adverse decision

(1) In general

Within 90 days after the date of a final decision by the Board under this section with respect to an adverse action taken against a State, the State may obtain judicial review of the final decision (and the findings incorporated into the final decision) by filing an action in—

(A) the district court of the United States for the judicial district in which the principal or headquarters office of the State agency is located; or
§ 611. Data collection and reporting

(a) Quarterly reports by States

(1) General reporting requirement

(A) Contents of report

Each eligible State shall collect on a monthly basis, and report to the Secretary on a quarterly basis, the following disaggregated case record information on the families receiving assistance under the State program funded under this part (except for information relating to activities carried out under section 603(a)(5) of this title) or any other State program funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title):

(i) The county of residence of the family.

(ii) Whether a child receiving such assistance or an adult in the family is receiving—

(I) Federal disability insurance benefits;

(II) benefits based on Federal disability status;

(III) aid under a State plan approved under subchapter XVI of this chapter (as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972);1

(IV) aid or assistance under a State plan approved under subchapter XIV of this chapter (as in effect pursuant to such amendment) by reason of being permanently and totally disabled; or

(V) supplemental security income benefits under subchapter XVI of this chapter (as in effect pursuant to such amendment) by reason of disability.

(iii) The ages of the members of the family.

(iv) The number of individuals in the family, and the relation of each family member to the head of the family.

(v) The employment status and earnings of the employed adult in the family.

(vi) The marital status of the adults in the family, including whether such adults have never married, are widowed, or are divorced.

(vii) The race and educational level of each adult in the family.

(viii) The race and educational level of each child in the family.

(ix) Whether the family received subsidized housing, medical assistance under the State plan approved under subchapter XIX of this chapter, supplemental nutrition assistance program benefits, or subsidized child care, and if the latter 2, the amount received.

(x) The number of months that the family has received each type of assistance under the program.

(xi) If the adults participated in, and the number of hours per week of participation under the program.

(xii) Information necessary to calculate participation rates under section 607 of this title.

(xiii) The type and amount of assistance received under the program, including the

1 So in original. The second parenthesis probably should not appear.
amount of and reason for any reduction of assistance (including sanctions).
(xiv) Any amount of unearned income received by any member of the family.
(xv) The citizenship of the members of the family.
(xvi) From a sample of closed cases, whether the family left the program, and if so, whether the family left due to—
(I) employment;
(II) marriage;
(III) the prohibition set forth in section 608(a)(7) of this title;
(IV) sanction; or
(V) State policy.
(xvii) With respect to each individual in the family who has not attained 20 years of age, whether the individual is a parent of a child in the family.

(B) Use of samples
(i) Authority
A State may comply with subparagraph (A) by submitting disaggregated case record information on a sample of families selected through the use of scientifically acceptable sampling methods approved by the Secretary.

(ii) Sampling and other methods
The Secretary shall provide the States with such case sampling plans and data collection procedures as the Secretary deems necessary to produce statistically valid estimates of the performance of State programs funded under this part and any other State programs funded with qualified State expenditures (as defined in section 609(a)(7)(B)(i) of this title). The Secretary may develop and implement procedures for verifying the quality of data submitted by the States.

(2) Report on use of Federal funds to cover administrative costs and overhead
The report required by paragraph (1) for a fiscal quarter shall include a statement of the percentage of the funds paid to the State under this part for the quarter that are used to cover administrative costs or overhead, with a separate statement of the percentage of such funds that are used to cover administrative costs or overhead incurred for programs operated with funds provided under section 603(a)(5) of this title.

(3) Report on State expenditures on programs for needy families
The report required by paragraph (1) for a fiscal quarter shall include a statement of the total amount expended by the State during the quarter on programs for needy families, with a separate statement of the total amount expended by the State during the quarter on programs operated with funds provided under section 603(a)(5) of this title.

(4) Report on noncustodial parents participating in work activities
The report required by paragraph (1) for a fiscal quarter shall include the number of noncustodial parents in the State who participated in work activities (as defined in section 607(d) of this title) during the quarter, with a separate statement of the number of such parents who participated in programs operated with funds provided under section 603(a)(5) of this title.

(5) Report on transitional services
The report required by paragraph (1) for a fiscal quarter shall include the total amount expended by the State during the quarter to provide transitional services to a family that has ceased to receive assistance under this part because of employment, along with a description of such services.

(6) Report on families receiving assistance
The report required by paragraph (1) for a fiscal quarter shall include for each month in the quarter—
(A) the number of families and individuals receiving assistance under the State program funded under this part (including the number of 2-parent and 1-parent families);
(B) the total dollar value of such assistance received by all families; and
(C) with respect to families and individuals participating in a program operated with funds provided under section 603(a)(5) of this title—
(i) the total number of such families and individuals; and
(ii) the number of such families and individuals whose participation in such a program was terminated during a month.

(7) Regulations
The Secretary shall prescribe such regulations as may be necessary to define the data elements with respect to which reports are required by this subsection, and shall consult with the Secretary of Labor in defining the data elements with respect to programs operated with funds provided under section 603(a)(5) of this title.

(b) Annual reports to Congress by Secretary
Not later than 6 months after the end of fiscal year 1997, and each fiscal year thereafter, the Secretary shall transmit to the Congress a report describing—
(1) whether the States are meeting—
(A) the participation rates described in section 607(a) of this title; and
(B) the objectives of—
(i) increasing employment and earnings of needy families, and child support collections; and
(ii) decreasing out-of-wedlock pregnancies and child poverty;
(2) the demographic and financial characteristics of families applying for assistance, families receiving assistance, and families that become ineligible to receive assistance;
(3) the characteristics of each State program funded under this part; and
(4) the trends in employment and earnings of needy families with minor children living at home.
(c) Pre-reauthorization State-by-State reports on engagement in additional work activities and expenditures for other benefits and services

(1) State reporting requirements

(A) Reporting periods and deadlines

Each eligible State shall submit to the Secretary the following reports:

(i) March 2011 report

Not later than May 31, 2011, a report for the period that begins on March 1, 2011, and ends on March 31, 2011, that contains the information specified in subparagraphs (B) and (C).

(ii) April-June, 2011 report

Not later than August 31, 2011, a report for the period that begins on April 1, 2011, and ends on June 30, 2011, that contains with respect to the 3 months that occur during that period—

(I) the average monthly numbers for the information specified in subparagraph (B); and

(II) the information specified in subparagraph (C).

(B) Engagement in additional work activities

(i) With respect to each work-eligible individual in a family receiving assistance during a reporting period specified in subparagraph (A), whether the individual engages in any activities directed toward attaining self-sufficiency during a month occurring in a reporting period, and if so, the specific activities—

(I) that do not qualify as a work activity under section 607(d) of this title but that are otherwise reasonably calculated to help the family move toward self-sufficiency; or

(II) that are of a type that would be counted toward the State participation rates under section 607 of this title but for the fact that—

(aa) the work-eligible individual did not engage in sufficient hours of the activity;

(bb) the work-eligible individual has reached the maximum time limit allowed for having participation in the activity counted toward the State’s work participation rate; or

(cc) the number of work-eligible individuals engaged in such activity exceeds a limitation under such section.

(ii) Any other information that the Secretary determines appropriate with respect to the information required under clause (i), including if the individual has no hours of participation, the principal reason or reasons for such non-participation.

(C) Expenditures on other benefits and services

(i) Detailed, disaggregated information regarding the types of, and amounts of, expenditures made by the State during a reporting period specified in subparagraph (A)

using—

(I) Federal funds provided under section 603 of this title that are (or will be) reported by the State on Form ACF-196 (or any successor form) under the category of other expenditures or the category of benefits or services provided in accordance with the authority provided under section 604(a)(2) of this title; or

(II) State funds expended to meet the requirements of section 609(a)(7) of this title and reported by the State in the category of other expenditures on Form ACF-196 (or any successor form).

(ii) Any other information that the Secretary determines appropriate with respect to the information required under clause (i).

(2) Publication of summary and analysis of engagement in additional activities

Concurrent with the submission of each report required under paragraph (1)(A), an eligible State shall publish on an Internet website maintained by the State agency responsible for administering the State program funded under this part (or such State-maintained website as the Secretary may approve)—

(A) a summary of the information submitted in the report:

(B) an analysis statement regarding the extent to which the information changes measures of total engagement in work activities from what was (or will be) reported by the State in the quarterly report submitted under subsection (a) for the comparable period; and

(C) a narrative describing the most common activities contained in the report that are not countable toward the State participation rates under section 607 of this title.

(3) Application of authority to use sampling

Subparagraph (B) of subsection (a)(1) shall apply to the reports required under paragraph (1) of this subsection in the same manner as subparagraph (B) of subsection (a)(1) applies to reports required under subparagraph (A) of subsection (a)(1).

(4) Secretarial reports to Congress

(A) March 2011 report

Not later than June 30, 2011, the Secretary shall submit to Congress a report on the information submitted by eligible States for the March 2011 reporting period under paragraph (1)(A)(i). The report shall include a State-by-State summary and analysis of such information, identification of any States with missing or incomplete reports, and recommendations for such administrative or legislative changes as the Secretary determines are necessary to require eligible States to report the information on a recurring basis.

(B) April-June, 2011 report

Not later than September 30, 2011, the Secretary shall submit to Congress a report on the information submitted by eligible States for the April-June 2011 reporting period under paragraph (1)(A)(ii). The report shall include a State-by-State summary and analysis of such information, identification of any States with missing or incomplete reports, and recommendations for such admin-
istrative or legislative changes as the Secretary determines are necessary to require eligible States to report the information on a recurring basis.

(5) Authority for expeditious implementation

The requirements of chapter 5 of title 5 (commonly referred to as the “Administrative Procedure Act”) or any other law relating to rulemaking or publication in the Federal Register shall not apply to the issuance of guidance or instructions by the Secretary with respect to the implementation of this subsection to the extent the Secretary determines that compliance with any such requirement would impede the expeditious implementation of this subsection.


REFERENCES IN TEXT


CODIFICATION


PRIOR PROVISIONS


AMENDMENTS


1999—Subsec. (a)(1)(A). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 804(a)(4)], in introductory provisions, inserted “except for information relating to activities carried out under section 603(a)(5) of this title” after “part”.

Subsec. (a)(1)(A)(xviii). Pub. L. 106–113, § 1000(a)(4) [title VIII, § 804(a)(2)], struck out cl. (xviii) which related to families participating in a program operated with funds provided under section 603(a)(5) of this title.


Subsec. (a)(1)(B). Pub. L. 105–33, § 5507(1)(A)(ii), substituted “samples” for “estimates” in heading and “disaggregated case record information on a sample of families selected” for “an estimate which is obtained” in cl. (i).

Subsec. (a)(2). Pub. L. 105–33, § 5001(e)(2), inserted before period at end “, with a separate statement of the percentage of such funds that are used to cover administrative costs or overhead incurred for programs operated with funds provided under section 603(a)(5) of this title”.

Subsec. (a)(3). Pub. L. 105–33, § 5001(e)(3), inserted before period at end “, with a separate statement of the total amount expended by the State during the quarter on programs operated with funds provided under section 603(a)(5) of this title”.

Subsec. (a)(4). Pub. L. 105–33, § 5001(e)(4), inserted before period at end “, with a separate statement of the number of such parents who participated in programs operated with funds provided under section 603(a)(5) of this title”.


Pub. L. 105–33, § 5001(e)(6), inserted before period at end “, and shall consult with the Secretary of Labor in defining the data elements with respect to programs operated with funds provided under section 603(a)(5) of this title”.

Effective Date of 2008 Amendment


Effective Date of 2006 Amendment


Effective Date of 1997 Amendment

Amendment by section 5507 of Pub. L. 106–33 effective as if included in section 168(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see sec-
§ 611a. State required to provide certain information
Each State to which a grant is made under section 603 of this title shall, at least 4 times annually and upon request of the Immigration and Naturalization Service, furnish the Immigration and Naturalization Service with the name and address of, and other identifying information on, any individual who the State knows is unlawfully in the United States.


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

§ 612. Direct funding and administration by Indian tribes
(a) Grants for Indian tribes
(1) Tribal family assistance grant
(A) In general
For each of fiscal years 1997, 1998, 1999, 2000, 2001, 2002, and 2003, the Secretary shall pay to each Indian tribe that has an approved tribal family assistance plan a tribal family assistance grant for the fiscal year in an amount equal to the amount determined under subparagraph (B), which shall be reduced for each quarter, in the case of a tribal family assistance plan approved during a fiscal year for which the plan is to be in effect, and shall reduce the grant payable under section 603(a)(1) of this title to any State in which the service area or areas of the Indian tribe lies by that portion of the amount so determined that is attributable to expenditures by the State.

(B) Amount determined
(i) In general
The amount determined under this subparagraph is an amount equal to the total amount of the Federal payments to a State or States under section 603 of this title (as in effect during such fiscal year) for fiscal year 1994 attributable to expenditures (other than child care expenditures) by the State or States under parts A and F of this subchapter (as so in effect) for fiscal year 1994 for Indian families residing in the service area or areas identified by the Indian tribe pursuant to subsection (b)(1)(C) of this section.

(ii) Use of State submitted data
(I) In general
The Secretary shall use State submitted data to make each determination under clause (i).

(II) Disagreement with determination
If an Indian tribe or tribal organization disagrees with State submitted data described under subclause (I), the Indian tribe or tribal organization may submit to the Secretary such additional information as may be relevant to making the determination under clause (i) and the Secretary may consider such information before making such determination.

(2) Grants for Indian tribes that received jobs funds
(A) In general
For each of fiscal years 1997, 1998, 1999, 2000, 2001, 2002, and 2003, the Secretary shall pay to each eligible Indian tribe that proposes to operate a program described in subparagraph (C) a grant in an amount equal to the amount received by the Indian tribe in fiscal year 1994 under section 682(i) of this title (as in effect during fiscal year 1994).

(B) Eligible Indian tribe
For purposes of subparagraph (A), the term “eligible Indian tribe” means an Indian tribe or Alaska Native organization that conducted a job opportunities and basic skills training program in fiscal year 1995 under section 682(i) of this title (as in effect during fiscal year 1995).

(C) Use of grant
Each Indian tribe to which a grant is made under this paragraph shall use the grant for the purpose of operating a program to make work activities available to such population and such service area or areas as the tribe specifies.

(D) Appropriation
Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $7,633,287 for each fiscal year specified in subparagraph (A) for grants under subparagraph (A).

(3) Welfare-to-work grants
(A) In general
The Secretary of Labor shall award a grant in accordance with this paragraph to an Indian tribe for each fiscal year specified in section 603(a)(5)(H) of this title for which the Indian tribe is a welfare-to-work tribe, in such amount as the Secretary of Labor deems appropriate, subject to subparagraph (B) of this paragraph.

(B) Welfare-to-work tribe
An Indian tribe shall be considered a welfare-to-work tribe for a fiscal year for purposes of this paragraph if the Indian tribe meets the following requirements:
(i) The Indian tribe has submitted to the Secretary of Labor a plan which describes how, consistent with section 603(a)(5) of this title, the Indian tribe will use any funds provided under this paragraph during the fiscal year. If the Indian tribe has a tribal family assistance plan, the plan referred to in the preceding sentence shall be in the form of an addendum to the tribal family assistance plan.

(ii) The Indian tribe is operating a program under a tribal family assistance plan approved by the Secretary of Health and Human Services, a program described in paragraph (2)(C), or an employment program funded through other sources under which substantial services are provided to recipients of assistance under a program funded under this part.

(iii) The Indian tribe has provided the Secretary of Labor with an estimate of the amount that the Indian tribe intends to expend during the fiscal year (excluding tribal expenditures described in section 609(a)(7)(B)(iv) (other than subclause (III) thereof) of this title) pursuant to this paragraph.

(iv) The Indian tribe has agreed to negotiate in good faith with the Secretary of Health and Human Services with respect to the substance and funding of any evaluation under section 613(j) of this title, and to cooperate with the conduct of any such evaluation.

(C) Limitations on use of funds

(i) In general

Section 603(a)(5)(C) of this title shall apply to funds provided to Indian tribes under this paragraph in the same manner in which such section applies to funds provided under section 603(a)(5) of this title.

(ii) Waiver authority

The Secretary of Labor may waive or modify the application of a provision of section 603(a)(5)(C) (other than clause (viii) thereof) of this title with respect to an Indian tribe to the extent necessary to enable the Indian tribe to operate a more efficient or effective program with the funds provided under this paragraph.

(iii) Regulations

Within 90 days after August 5, 1997, the Secretary of Labor, after consultation with the Secretary of Health and Human Services and the Secretary of Housing and Urban Development, shall prescribe such regulations as may be necessary to implement this paragraph.

(b) 3-year tribal family assistance plan

(1) In general

Any Indian tribe that desires to receive a tribal family assistance grant shall submit to the Secretary a 3-year tribal family assistance plan that—

(A) outlines the Indian tribe’s approach to providing welfare-related services for the 3-year period, consistent with this section;

(B) specifies whether the welfare-related services provided under the plan will be provided by the Indian tribe or through agreements, contracts, or compacts with inter-tribal consortia, States, or other entities;

(C) identifies the population and service area or areas to be served by such plan;

(D) provides that a family receiving assistance under the plan may not receive duplicative assistance from other State or tribal programs funded under this part;

(E) identifies the employment opportunities in or near the service area or areas of the Indian tribe and the manner in which the Indian tribe will cooperate and participate in enhancing such opportunities for recipients of assistance under the plan consistent with any applicable State standards; and

(F) applies the fiscal accountability provisions of section 5(f)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450c(f)(1)), relating to the submission of a single-agency audit report required by chapter 75 of title 31.

(2) Approval

The Secretary shall approve each tribal family assistance plan submitted in accordance with paragraph (1).

(3) Consortium of tribes

Nothing in this section shall preclude the development and submission of a single tribal family assistance plan by the participating Indian tribes of an intertribal consortium.

(c) Minimum work participation requirements and time limits

The Secretary, with the participation of Indian tribes, shall establish for each Indian tribe receiving a grant under this section minimum work participation requirements, appropriate time limits for receipt of welfare-related services under the grant, and penalties against individuals—

(1) consistent with the purposes of this section;

(2) consistent with the economic conditions and resources available to each tribe; and

(3) similar to comparable provisions in section 607(e) of this title.

(d) Emergency assistance

Nothing in this section shall preclude an Indian tribe from seeking emergency assistance from any Federal loan program or emergency fund.

(e) Accountability

Nothing in this section shall be construed to limit the ability of the Secretary to maintain program funding accountability consistent with—

(1) generally accepted accounting principles; and

(2) the requirements of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(f) Eligibility for Federal loans

Section 606 of this title shall apply to an Indian tribe with an approved tribal assistance plan in the same manner as such section applies to a State, except that section 606(c) of this title shall be applied by substituting “section 612(a)” for “section 603(a)”.

§612
(g) Penalties

(1) Subsections (a)(1), (a)(6), (b), and (c) of section 609 of this title, shall apply to an Indian tribe with an approved tribal assistance plan in the same manner as such subsections apply to a State.

(2) Section 609(a)(3) of this title shall apply to an Indian tribe with an approved tribal assistance plan by substituting “meet minimum work participation requirements established under section 612(c) of this title” for “comply with section 607(a) of this title”.

(h) Data collection and reporting

Section 611 of this title shall apply to an Indian tribe with an approved tribal family assistance plan.

(i) Special rule for Indian tribes in Alaska

(1) In general

Notwithstanding any other provision of this section, and except as provided in paragraph (2), an Indian tribe in the State of Alaska that receives a tribal family assistance grant under this section shall use the grant to operate a program in accordance with requirements comparable to the requirements applicable to the program of the State of Alaska funded under this part. Comparability of programs shall be established on the basis of program criteria developed by the Secretary in consultation with the State of Alaska and such Indian tribes.

(2) Waiver

An Indian tribe described in paragraph (1) may apply to the appropriate State authority to receive a waiver of the requirement of paragraph (1).


REFERENCES IN TEXT


AMENDMENTS


Subsec. (a)(1)(A). Pub. L. 105–33, § 5508(a), inserted “which shall be reduced for a fiscal year, on a pro rata basis for each quarter, in the case of a tribal family assistance plan approved during a fiscal year for which the plan is to be in effect,” before “and shall”.


Subsec. (a)(2)(C). Pub. L. 105–33, § 5508(c), substituted “such population and such service area or areas of the tribe specifies” for “members of the Indian tribe”.


Subsec. (a)(3). Pub. L. 105–33, § 5001(c), added par. (3).


Subsec. (f)(1). Pub. L. 105–33, § 5508(e), substituted “(b), and (c)” for “(b and (c)”.

Subsecs. (g) to (i). Pub. L. 105–33, § 5508(f), redesignated subsecs. (f) to (h) as (g) to (i), respectively.

EFFECTIVE DATE OF 2003 AMENDMENT


EFFECTIVE DATE OF 2000 AMENDMENT


EFFECTIVE DATE OF 1999 AMENDMENT

For effective date of amendment by Pub. L. 106–113, see section 1006(a)(4) [title VIII, § 801(e)] of Pub. L. 106–113, set out as a note under section 682 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5508 of Pub. L. 106–33 effective as if included in section 106(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 106(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 621 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 662 of Title 21, Food and Drugs.

EFFECTIVE DATE

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.
§ 613. Research, evaluations, and national studies

(a) Research

The Secretary, directly or through grants, contracts, or interagency agreements, shall conduct research on the benefits, effects, and costs of operating different State programs funded under this part, including time limits relating to eligibility for assistance. The research shall include studies on the effects of different programs and the operation of such programs on welfare dependency, illegitimacy, teen pregnancy, employment rates, child well-being, and any other area the Secretary deems appropriate. The Secretary shall also conduct research on the costs and benefits of State activities under section 607 of this title.

(b) Development and evaluation of innovative approaches to reducing welfare dependency and increasing child well-being

(1) In general

The Secretary may assist States in developing, and shall evaluate, innovative approaches for reducing welfare dependency and increasing the well-being of minor children living at home with respect to recipients of assistance under programs funded under this part. The Secretary may provide funds for training and technical assistance to carry out the approaches developed pursuant to this paragraph.

(2) Evaluations

In performing the evaluations under paragraph (1), the Secretary shall, to the maximum extent feasible, use random assignment as an evaluation methodology.

(c) Dissemination of information

The Secretary shall develop innovative methods of disseminating information on any research, evaluations, and studies conducted under this section, including the facilitation of the sharing of information and best practices among States and localities through the use of computers and other technologies.

(d) Annual ranking of States and review of most and least successful work programs

(1) Annual ranking of States

The Secretary shall rank annually the States to which grants are paid under section 603 of this title in the order of their success in placing recipients of assistance under the State program funded under this part into long-term private sector jobs, reducing the overall welfare caseload, and, when a practicable method for calculating this information becomes available, diverting individuals from formally applying to the State program and receiving assistance. In ranking States under this subsection, the Secretary shall take into account the average number of minor children living at home in families in the State that have incomes below the poverty line and the amount of funding provided each State for such families.

(2) Annual review of most and least successful work programs

The Secretary shall review the programs of the 3 States most recently ranked highest under paragraph (1) and the 3 States most recently ranked lowest under paragraph (1) that provide parents with work experience, assistance in finding employment, and other work preparation activities and support services to enable the families of such parents to leave the program and become self-sufficient.

(e) Annual ranking of States and review of issues relating to out-of-wedlock births

(1) In general

The Secretary shall annually rank States to which grants are made under section 603 of this title based on the following ranking factors:

(A) Absolute out-of-wedlock ratios

The ratio represented by—

(i) the total number of out-of-wedlock births in families receiving assistance under the State program under this part in the State for the most recent year for which information is available; and

(ii) the total number of births in families receiving assistance under the State program under this part in the State for the year.

(B) Net changes in the out-of-wedlock ratio

The difference between the ratio described in subparagraph (A) with respect to a State for the most recent year for which such information is available and the ratio with respect to the State for the immediately preceding year.

(2) Annual review

The Secretary shall review the programs of the 5 States most recently ranked highest under paragraph (1) and the 5 States most recently ranked the lowest under paragraph (1).

(f) State-initiated evaluations

A State shall be eligible to receive funding to evaluate the State program funded under this part if—

(1) the State submits a proposal to the Secretary for the evaluation;

(2) the Secretary determines that the design and approach of the evaluation is rigorous and is likely to yield information that is credible and will be useful to other States; and

(3) unless otherwise waived by the Secretary, the State contributes to the cost of the evaluation, from non-Federal sources, an amount equal to at least 10 percent of the cost of the evaluation.

(g) Report on circumstances of certain children and families

(1) In general

Beginning 3 years after August 22, 1996, the Secretary of Health and Human Services shall prepare and submit to the Committees on Ways and Means and on Education and the Workforce of the House of Representatives and to the Committees on Finance and on Labor and Resources of the Senate annual reports that examine in detail the matters described in paragraph (2) with respect to each of the following groups for the period after August 22, 1996:
(A) Individuals who were children in families that have become ineligible for assistance under a State program funded under this part by reason of having reached a time limit on the provision of such assistance.
(B) Children born after August 22, 1996, to parents who, at the time of such birth, had not attained 20 years of age.
(C) Individuals who, after August 22, 1996, became parents before attaining 20 years of age.

(2) Matters described
The matters described in this paragraph are the following:
(A) The percentage of each group that has dropped out of secondary school (or the equivalent), and the percentage of each group at each level of educational attainment;
(B) The percentage of each group that is employed;
(C) The percentage of each group that has been convicted of a crime or has been adjudicated as a delinquent;
(D) The rate at which the members of each group are born, or have children, out-of-wedlock, and the percentage of each group that is married;
(E) The percentage of each group that continues to participate in State programs funded under this part;
(F) The percentage of each group that has health insurance provided by a private entity (broken down by whether the insurance is provided through an employer or otherwise), the percentage that has health insurance provided by an agency of government, and the percentage that does not have health insurance;
(G) The average income of the families of the members of each group.
(H) Such other matters as the Secretary deems appropriate.

(h) Funding of studies and demonstrations

(1) In general
Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $15,000,000 for each of fiscal years 1997 through 2002 for the purpose of paying—
(A) the cost of conducting the research described in subsection (a) of this section;
(B) the cost of developing and evaluating innovative approaches for reducing welfare dependency and increasing the well-being of minor children under subsection (b) of this section;
(C) the Federal share of any State-initiated study approved under subsection (f) of this section; and
(D) an amount determined by the Secretary to be necessary to operate and evaluate demonstration projects, relating to this part, that are in effect or approved under section 1315 of this title as of August 22, 1996, and are continued after such date.

(2) Allocation
Of the amount appropriated under paragraph (1) for a fiscal year—
(A) 50 percent shall be allocated for the purposes described in subparagraphs (A) and (B) of paragraph (1), and
(B) 50 percent shall be allocated for the purposes described in subparagraphs (C) and (D) of paragraph (1).

(3) Demonstrations of innovative strategies
The Secretary may implement and evaluate demonstrations of innovative and promising strategies which—
(A) provide one-time capital funds to establish, expand, or replicate programs;
(B) test performance-based grant-to-loan financing in which programs meeting performance targets receive grants while programs not meeting such targets repay funding on a prorated basis; and
(C) test strategies in multiple States and types of communities.

(i) Child poverty rates

(1) In general
Not later than May 31, 1998, and annually thereafter, the chief executive officer of each State shall submit to the Secretary a statement of the child poverty rate in the State as of August 22, 1996, or the date of the most recent prior statement under this paragraph.

(2) Submission of corrective action plan
Not later than 90 days after the date a State submits a statement under paragraph (1) which indicates that, as a result of the amendments made by section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the child poverty rate of the State has increased by 5 percent or more since the most recent prior statement under paragraph (1), the State shall prepare and submit to the Secretary a corrective action plan in accordance with paragraph (3).

(3) Contents of plan
A corrective action plan submitted under paragraph (2) shall outline the manner in which the State will reduce the child poverty rate in the State. The plan shall include a description of the actions to be taken by the State under such plan.

(4) Compliance with plan
A State that submits a corrective action plan that the Secretary has found contains the information required by this subsection shall implement the corrective action plan until the State determines that the child poverty rate in the State is less than the lowest child poverty rate on the basis of which the State was required to submit the corrective action plan.

(5) Methodology
The Secretary shall prescribe regulations establishing the methodology by which a State shall determine the child poverty rate in the State. The methodology shall take into account factors including the number of children who receive free or reduced-price lunches, the number of supplemental nutrition assistance program benefits households, and, to the extent available, county-by-county estimates of children in poverty as determined by the Census Bureau.
(j) Evaluation of welfare-to-work programs

(1) Evaluation

The Secretary, in consultation with the Secretary of Labor and the Secretary of Housing and Urban Development—

(A) shall develop a plan to evaluate how grants made under sections 609(a)(5) and 612(a)(3) of this title have been used;

(B) may evaluate the use of such grants by such grantees as the Secretary deems appropriate, in accordance with an agreement entered into with the grantees after good-faith negotiations; and

(C) is urged to include the following outcome measures in the plan developed under subparagraph (A):

(i) Placements in unsubsidized employment, and placements in unsubsidized employment that last for at least 6 months.

(ii) Placements in the private and public sectors.

(iii) Earnings of individuals who obtain employment.

(iv) Average expenditures per placement.

(2) Reports to the Congress

(A) In general

Subject to subparagraphs (B) and (C), the Secretary, in consultation with the Secretary of Labor and the Secretary of Housing and Urban Development, shall submit to the Congress reports on the projects funded under section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in amendments to this section. The amendments by Pub. L. 110–234 and Pub. L. 110–246 substituted “Education and the Workforce” for “Economic and Educational Opportunities”.

1997—Pub. L. 106–169 substituted “Education and the Workforce” for “Economic and Educational Opportunities”.


1995—Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, which enacted this section.

Subsec. (a). Pub. L. 105–33, § 5509(a), inserted “directly or through grants, contracts, or interagency agreements,” before “shall conduct” and substituted “section 607” for “section 609”.

Subsec. (e)(1). Pub. L. 105–33, § 5509(b), amended heading and text of par. (1) generally. Prior to amendment, text read as follows:

“(A) IN GENERAL.—The Secretary shall annually rank States to which grants are made under section 603 of this title based on the following ranking factors:

(i) Absolute out-of-wedlock ratio.—The ratio represented by—

(I) the total number of out-of-wedlock births in families receiving assistance under the State program under this part in the State for the most recent fiscal year for which information is available; over

(II) the total number of births in families receiving assistance under the State program under this part in the State for such year.

(ii) Net changes in the out-of-wedlock ratio.—The difference between the ratio described in subparagraph (A)(i) with respect to a State for the most recent fiscal year for which such information is available and the ratio with respect to the State for the immediately preceding year.”


Subsec. (i)(5). Pub. L. 105–33, § 5509(d)(2), substituted “to the extent available, county-by-county” for “the county-by-county”.


Effective Date of 2008 Amendment


Effective Date of 1999 Amendment


Effective Date of 1997 Amendment

Amendment by section 5509 of Pub. L. 105–33 effective as if included in section 106(a) of the Personal Respon-
sibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 103(a) became law, see section 5518(a) of Pub. L. 105–33, set out as a note under section 602 of this title.

Amendment by section 5514(c) of Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 662a of Title 21, Food and Drugs.

**Effective Date**

Section effective Aug. 22, 1996, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 5518(d) of Pub. L. 105–33, as amended, set out as a note under section 601 of this title.

**Coordination of Substance Abuse and Child Protection Services**

Pub. L. 105–49, title IV, § 405, Nov. 19, 1997, 111 Stat. 2135, required the Secretary of Health and Human Services, based on information from the Substance Abuse and Mental Health Services Administration and the Administration for Children and Families in the Department of Health and Human Services, to submit to the appropriate committees of Congress a report which described the extent and scope of the problem of substance abuse in the child welfare population, the types of services provided to such population, and the outcomes resulting from the provision of such services to such population, along with appropriate recommendations for legislative changes.

**GAO Study of Effect of Family Violence on Need for Public Assistance**

Pub. L. 105–33, title V, § 5001(c), Aug. 5, 1997, 111 Stat. 593, directed the Comptroller General to conduct a study of the effect of family violence on the use of public assistance programs, and in particular the extent to which family violence prolongs or increases the need for public assistance, and to submit a report to the appropriate committees of Congress within 1 year after Aug. 5, 1997.

**Study on Alternative Outcomes Measures**


**§ 614. Study by Census Bureau**

(a) In general

The Bureau of the Census shall continue to collect data on the 1992 and 1993 panels of the Survey of Income and Program Participation as necessary to obtain such information as will enable interested persons to evaluate the impact of the amendments made by title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on a random national sample of recipients of assistance under State programs funded under this part and (as appropriate) other low-income families, and in doing so, shall pay particular attention to the issues of out-of-wedlock birth, welfare dependency, the beginning and end of welfare spells, and the causes of repeat welfare spells, and shall obtain information about the status of children participating in such panels.

(b) Appropriation


**References in Text**


**Prior Provisions**


**Amendments**


**Effective Date of 2003 Amendment**


**Effective Date of 1997 Amendment**

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 662a of Title 21, Food and Drugs.

**Effective Date**

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

**§ 615. Waivers**

(a) Continuation of waivers

(1) Waivers in effect on August 22, 1996

(A) In general

Except as provided in subparagraph (B), if any waiver granted to a State under section
1315 of this title or otherwise which relates to the provision of assistance under a State plan under this part (as in effect on September 30, 1996) is in effect as of August 22, 1996, the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (other than by section 103(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) shall not apply with respect to the State before the expiration (determined without regard to any extensions) of the waiver to the extent such amendments are inconsistent with the waiver.

(B) Financing limitation

Notwithstanding any other provision of law, beginning with fiscal year 1996, a State operating under a waiver described in subparagraph (A) shall be entitled to payment under section 603 of this title for the fiscal year, in lieu of any other payment provided for in the waiver.

(2) Waivers granted subsequently

(A) In general

Except as provided in subparagraph (B), if any waiver granted to a State under section 1315 of this title or otherwise which relates to the provision of assistance under a State plan under this part (as in effect on September 30, 1996) is submitted to the Secretary before August 22, 1996, and approved by the Secretary on or before July 1, 1997, and the State demonstrates to the satisfaction of the Secretary that the waiver will not result in Federal expenditures under subchapter IV of this chapter (as in effect without regard to the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) that are greater than would occur in the absence of the waiver, the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (other than by section 103(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) shall not apply with respect to the State before the expiration (determined without regard to any extensions) of the waiver to the extent the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are inconsistent with the waiver.

(B) No effect on new work requirements

Notwithstanding subparagraph (A), a waiver granted under section 1315 of this title or otherwise which relates to the provision of assistance under a State program funded under this part (as in effect on September 30, 1996) shall not affect the applicability of section 607 of this title to the State.

(b) State option to terminate waiver

(1) In general

A State may terminate a waiver described in subsection (a) of this section before the expiration of the waiver.

(2) Report

A State which terminates a waiver under paragraph (1) shall submit a report to the Secretary summarizing the waiver and any available information concerning the result or effect of the waiver.

(3) Hold harmless provision

(A) In general

Notwithstanding any other provision of law, a State that, not later than the date described in subparagraph (B) of this paragraph, submits a written request to terminate a waiver described in subsection (a) of this section shall be held harmless for accrued cost neutrality liabilities incurred under the waiver.

(B) Date described

The date described in this subparagraph is 90 days following the adjournment of the first regular session of the State legislature that begins after August 22, 1996.

(c) Secretarial encouragement of current waivers

The Secretary shall encourage any State operating a waiver described in subsection (a) of this section to continue the waiver and to evaluate, using random sampling and other characteristics of accepted scientific evaluations, the result or effect of the waiver.

(d) Continuation of individual waivers

A State may elect to continue 1 or more individual waivers described in subsection (a) of this section.

Amendments


Effective Date of 1997 Amendment

Amendment by Pub. L. 105–33 effective as if included in the provision of Pub. L. 104–193 amended at the time the provision became law, see section 5518(d) of Pub. L. 105–33, set out as a note under section 862a of Title 21, Food and Drugs.
§ 616. Administration

The programs under this part and part D of this subchapter shall be administered by an Assistant Secretary for Family Support within the Department of Health and Human Services, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be in addition to any other Assistant Secretary of Health and Human Services provided for by law, and the Secretary shall reduce the Federal workforce within the Department of Health and Human Services by an amount equal to the sum of 75 percent of the full-time equivalent positions at such Department that relate to any direct spending program, or any program funded through discretionary spending, that has been converted into a block grant program under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the amendments made by such Act, and by an amount equal to 75 percent of that portion of the total full-time equivalent departmental management positions at such Department that bears the same relationship to the amount appropriated for any direct spending program, or any program funded through discretionary spending, that has been converted into a block grant program under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the amendments made by such Act, as such amount relates to the total amount appropriated for use by such Department, and, notwithstanding any other provision of law, the Secretary shall take such actions as may be necessary, including reductions in force actions, consistent with sections 3302 and 3595 of title 5, to reduce the full-time equivalent positions within the Department of Health and Human Services by 245 full-time equivalent positions related to the program converted into a block grant under the amendments made by section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and by 60 full-time equivalent managerial positions in the Department.


REFERENCES IN TEXT


Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in text, is section 103 of Pub. L. 104–193, which enacted this part, amended sections 602, 603, and 1308 of this title, and repealed provisions formerly set out as this part. For complete classification of section 103 to the Code, see Tables.

§ 617. Limitation on Federal authority

No officer or employee of the Federal Government may regulate the conduct of States under this part or enforce any provision of this part, except to the extent expressly provided in this part.


PRIOR PROVISIONS


AMENDMENTS

§ 618. Funding for child care

(a) General child care entitlement

(1) General entitlement

Subject to the amount appropriated under paragraph (3), each State shall, for the purpose of providing child care assistance, be entitled to payments under a grant under this subsection for a fiscal year in an amount equal to the greater of—

(A) the total amount required to be paid to the State under section 603 of this title for fiscal year 1994 or 1995 (whichever is greater) with respect to expenditures for child care under subsections (g) and (i) of section 602 of this title (as in effect before October 1, 1995); or

(B) the average of the total amounts required to be paid to the State for fiscal years 1992 through 1994 under the subsections referred to in subparagraph (A).

(2) Remainder

(A) Grants

The Secretary shall use any amounts appropriated for a fiscal year under paragraph (3), and remaining after the reservation described in paragraph (4) and after grants are awarded under paragraph (1), to make grants to States under this paragraph.

(B) Allotments to States

The total amount available for payments to States under this paragraph, as determined under subparagraph (A), shall be allotted among the States based on the formula used for determining the amount of Federal payments to each State under section 600(n) of this title (as in effect before October 1, 1995).

(C) Federal matching of State expenditures exceeding historical expenditures

The Secretary shall pay to each eligible State for a fiscal year an amount equal to the lesser of the State’s allotment under subparagraph (B) or the Federal medical assistance percentage for the State for the fiscal year (as defined in section 1396d(b) of this title, as such section was in effect on September 30, 1995) of so much of the State’s expenditures for child care in that fiscal year as exceed the total amount of expenditures by the State (including expenditures from amounts made available from Federal funds) in fiscal year 1994 or 1995 (whichever is greater) for the programs described in paragraph (1)(A).

(D) Redistribution

(i) In general

With respect to any fiscal year, if the Secretary determines (in accordance with clause (ii)) that any amounts allotted to a State under this paragraph for such fiscal year will not be used by such State during such fiscal year for carrying out the purpose for which such amounts are allotted, the Secretary shall make such amounts available in the subsequent fiscal year for carrying out such purpose to one or more States which apply for such funds to the extent the Secretary determines that such States will be able to use such additional amounts for carrying out such purpose. Such available amounts shall be redistributed to a State pursuant to section 603(n) of this title (as such section was in effect before October 1, 1995) by substituting “the number of children residing in all States applying for such funds” for “the number of children residing in the United States in the second preceding fiscal year”.

(ii) Time of determination and distribution

The determination of the Secretary under clause (i) for a fiscal year shall be made not later than the end of the first quarter of the subsequent fiscal year. The redistribution of amounts under clause (i) shall be made as close as practicable to the date on which such determination is made. Any amount made available to a State from an appropriation for a fiscal year in accordance with this subparagraph shall, for purposes of this part, be regarded as part of such State’s payment (as determined under this subsection) for the fiscal year in which the redistribution is made.

(3) Appropriation

For grants under this section, there are appropriated—

(A) $1,967,000,000 for fiscal year 1997;

(B) $2,067,000,000 for fiscal year 1998;

(C) $2,167,000,000 for fiscal year 1999;

(D) $2,267,000,000 for fiscal year 2000;

(E) $2,367,000,000 for fiscal year 2001;

(F) $2,467,000,000 for each of fiscal years 2002 and 2003;1

(G) $2,567,000,000 for each of fiscal years 2006 through 2010.

(4) Indian tribes

The Secretary shall reserve not less than 1 percent, and not more than 2 percent, of the aggregate amount appropriated to carry out this section in each fiscal year for payments to Indian tribes and tribal organizations.

(5) Data used to determine State and Federal shares of expenditures

In making the determinations concerning expenditures required under paragraphs (1)

1 So in original. Probably should be followed by “and”.
and (2)(C), the Secretary shall use information that was reported by the State on ACF Form 231 and available as of the applicable dates specified in clauses (i)(I), (ii), and (iii)(III) of section 605(a)(1)(D) of this title.

(b) Use of funds

(1) In general

Amounts received by a State under this section shall only be used to provide child care assistance. Amounts received by a State under a grant under subsection (a)(1) of this section shall be available for use by the State without fiscal year limitation.

(2) Use for certain populations

A State shall ensure that not less than 70 percent of the total amount of funds received by the State in a fiscal year under this section are used to provide child care assistance to families who are receiving assistance under a State program under this part, families who are attempting through work activities to transition off of such assistance program, and families who are at risk of becoming dependent on such assistance program.

(c) Application of Child Care and Development Block Grant Act of 1990

Notwithstanding any other provision of law, amounts provided to a State under this section shall be transferred to the lead agency under the Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9658 et seq.], integrated by the State into the programs established by the State under such Act, and be subject to requirements and limitations of such Act.

(d) “State” defined

As used in this section, the term “State” means each of the 50 States and the District of Columbia.


REFERENCES IN TEXT

Section 605(a)(1)(D) of this title, referred to in subsec. (a)(5), was repealed by Pub. L. 105–33, § 6501(a)(1)(B), struck out “the sum of” before “the total amount”, substituted “expenditures” for “amounts expended” and “subsections (g) and (i) of section 602 of this title (as in effect before October 1, 1995); or” for “section—”, and struck out cls. (i) and (ii) which read as follows:

“(i) 602(g) of this title (as such section was in effect before October 1, 1995); and
“(ii) 602(i) of this title (as so in effect); or”.

Subsec. (a)(1)(B). Pub. L. 105–33, § 6501(a)(1)(C), substituted “subsections” for “sections” and a period for the semicolon at end.

Subsec. (a)(2)(B). Pub. L. 105–33, § 6501(a)(2)(A), added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: “Subject to subparagraph (C), the amount of a grant awarded to a State for a fiscal year under this paragraph shall be based on the formula used for determining the amount of Federal payments to the State under section 605(b) of this title (as such section was in effect before October 1, 1995).”

Subsec. (a)(2)(C). Pub. L. 105–33, § 6501(a)(2)(B), added subpar. (C) and struck out heading and text of former subpar. (C). Text read as follows: “Subject to subparagraph (C), the amount of a grant awarded to a State for a fiscal year under this paragraph shall be based on the formula used for determining the amount of Federal payments to the State under section 605(b) of this title (as such section was in effect before October 1, 1995).”

Subsec. (a)(2)(D)(1). Pub. L. 105–33, § 6501(a)(2)(C), substituted “any amounts allotted” for “amounts under any grant awarded” and “such amounts are allotted” for “the grant is made”.


Subsec. (d). Pub. L. 105–33, § 6501(c), substituted “and” for “or” before “the District”.

Effective Date of 2006 Amendment

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

Effective Date of 2003 Amendment


Effective Date of 1997 Amendment

Section 5603 of title V of Pub. L. 105–33 provided that:

“(a) In General.—Except as provided in subsection (b), this chapter [chapter 6 (§§ 5601–5603) of subtitle F of title V of Pub. L. 105–33, amending this section and sections 9855c, 9858i, 9858m, and 9858n of this title] and the amendments made by this chapter shall take effect as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193, 110 Stat. 2278).

“(b) Exceptions.—The amendment made by section 5601(a)(2)(B) [amending this section] shall take effect on October 1, 1997.”

Effective Date

Section effective Oct. 1, 1996, see section 615 of Pub. L. 104–193, set out as an Effective Date of this title as in amendment note under section 9858 of this title.

§ 619. Definitions

As used in this part:

(1) Adult

The term “adult” means an individual who is not a minor child.
(2) Minor child

The term "minor child" means an individual who—
(A) has not attained 18 years of age; or
(B) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

(3) Fiscal year

The term "fiscal year" means any 12-month period ending on September 30 of a calendar year.

(4) Indian, Indian tribe, and tribal organization

(A) In general

Except as provided in subparagraph (B), the terms "Indian", "Indian tribe", and "tribal organization" have the meaning given such terms by section 450b of title 25.

(B) Special rule for Indian tribes in Alaska

The term "Indian tribe" means, with respect to the State of Alaska, only the Metlakatla Indian Community of the Annette Islands Reserve and the following Alaska Native regional nonprofit corporations:
(i) Arctic Slope Native Association.
(ii) Kawerak, Inc.
(iii) Maniilaq Association.
(iv) Association of Village Council Presidents.
(v) Tanana Chiefs Conference.
(vi) Cook Inlet Tribal Council.
(vii) Bristol Bay Native Association.
(viii) Aleutian and Pribilof Island Association.
(ix) Chugachmuit.
(x) Tlingit Haida Central Council.
(xi) Kodiak Area Native Association.
(xii) Copper River Native Association.

(5) State

Except as otherwise specifically provided, the term "State" means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.


Effective Date

Par. (4) of this section effective Oct. 1, 1996, with remainder of section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 101–193, as amended, set out as a note under section 601 of this title.

Part B—Child and Family Services

Amendments


Subpart 1—Stephanie Tubbs Jones Child Welfare Services Program

Amendments


Effective Date of Repeal

Repeal effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, see section 12(a) of Pub. L. 109–288, set out as an Effective Date of 2006 Amendment note under section 621 of this title.

§ 621. Purpose

The purpose of this subpart is to promote State flexibility in the development and expansion of a coordinated child and family services program that utilizes community-based agencies and ensures all children are raised in safe, loving families, by—
(1) protecting and promoting the welfare of all children;
(2) preventing the neglect, abuse, or exploitation of children;
(3) supporting at-risk families through services which allow children, where appropriate, to remain safely with their families or return to their families in a timely manner;
(4) promoting the safety, permanence, and well-being of children in foster care and adoptive families; and
(5) providing training, professional development and support to ensure a well-qualified child welfare workforce.


Prior Provisions


Effective Date of 2006 Amendment

Pub. L. 109–288, § 12, Sept. 28, 2006, 120 Stat. 1255, provided that:
(a) In General.—Except as otherwise provided in this Act [see Short Title of 2006 Amendment note set out under section 1305 of this title], the amendments
made by this Act shall take effect on October 1, 2006, and shall apply to payments under parts B and E of title IV of the Social Security Act (this part and part E of this subchapter) for calendar quarters beginning on or after such date, without regard to whether regulations to implement the amendments are promulgated by such date.

RELATION TO STATE LEGISLATION—If the Secretary of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required in order for a State plan developed pursuant to subsection 1 of part B (this subpart), or a State plan approved under subsection 2 of part B (part 2 of this subchapter), or part E (part E of this subchapter), of title IV of the Social Security Act to meet the additional requirements imposed by the amendments made by this Act, the plan shall not be regarded as failing to meet any of the additional requirements before the 1st day of the 1st calendar quarter beginning after the first regular session of the State legislature that begins after the date of the enactment of this Act [Sept. 28, 2006]. If the State has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.

AVAILABILITY OF PROMOTING SAFE AND STABLE FAMILIES RESOURCES FOR FISCAL YEAR 2006.—Section 3(c) [120 Stat. 1225] shall take effect on the date of the enactment of this Act [Sept. 28, 2006].

EFFECTIVE DATE
Pub. L. 90–248, title II, §240(e)(2), Jan. 2, 1968, 81 Stat. 915, provided that: “Part B of title IV of the Social Security Act (as added by subsection (c) of this section) [this part], and the amendments made by subsections (a) and (b) of this section [amending subchapter IV and enacting part A heading] shall become effective on the date this Act is enacted [Jan. 2, 1968].”

FINDINGS

(1) For Federal fiscal year 2004, protective services (CPS) staff nationwide reported investigating or assessing an estimated 3,000,000 allegations of child maltreatment, and determined that 872,000 children had been abused or neglected by their parents or other caregivers.

(2) Combined, the Child Welfare Services (CWS) and Promoting Safe and Stable Families (PSSF) programs provide States about $700,000,000 per year, the largest source of targeted Federal funding in the child protection system for services to ensure that children are not abused or neglected and, whenever possible, help children remain safely with their families.

(3) A 2003 report by the Government Accountability Office (GAO) reported that little research is available on the effectiveness of activities supported by CWS funds—evaluations of services supported by PSSF funds have generally shown little or no effect.

(4) Further, the Department of Health and Human Services recently completed initial Child and Family Service Reviews (CFSRs) in each State. No State was in full compliance with all measures of the CFSRs. The CFSRs also revealed that States need to work to prevent repeat abuse and neglect of children, improve services provided to families to reduce the risk of future harm (including by better monitoring the participation of families in services), and strengthen up-front services provided to families to prevent unnecessary family break-up and protect children who remain at home.

(5) Federal policy should encourage States to invest their CWS and PSSF funds in services that promote and protect the welfare of children, support strong, healthy families, and reduce the reliance on out-of-home care, which will help ensure all children are raised in safe, loving families.

(6) CFSRs also found a strong correlation between frequent caseworker visits with children and positive outcomes for these children, such as timely achievement of permanency and other indicators of child well-being.

(7) However, a December 2005 report by the Department of Health and Human Services Office of Inspector General found that only 20 States were able to produce reports to show whether caseworkers actually visited children in foster care on at least a monthly basis, despite the fact that nearly all States had written standards suggesting monthly visits were State policy.

(8) A 2003 GAO report found that the average tenure for a child welfare caseworker is less than 2 years and this level of turnover negatively affects safety and permanency for children.

(9) Targeting CWS and PSSF funds to ensure children in foster care are visited on at least a monthly basis will promote better outcomes for vulnerable children, including by preventing further abuse and neglect.

“(10) According to the Office of Applied Studies of the Substance Abuse and Mental Health Services Administration, the annual number of new uses of Methamphetamine, also known as ‘meth,’ has increased 72 percent over the past decade. According to a study conducted by the National Association of Counties which surveyed 500 county law enforcement agencies in 45 states, 88 percent of the agencies surveyed reported increases in meth related arrests starting 5 years ago.

“(11) According to the 2004 National Survey on Drug Use and Health, nearly 12,000,000 Americans have tried methamphetamine. Meth making operations have been uncovered in all 50 states, but the most wide-spread abuse has been concentrated in the western, southwestern, and Midwestern United States.

“(12) Methamphetamine abuse is on the increase, particularly among women of child-bearing age. This is having an impact on child welfare systems in many States. According to a survey administered by the National Association of Counties (‘The Impact of Meth on Children’), conducted in 300 counties in 13 states, meth is a major cause of child abuse and neglect. Forty percent of all the child welfare officials in the survey reported an increase in out-of-home placements because of meth in 2005.

“(13) It is appropriate also to target PSSF funds to address this issue because of the unique strain the meth epidemic puts on child welfare agencies. Outcomes for children affected by meth are enhanced when services provided by law enforcement, child welfare and substance abuse agencies are integrated.”

§ 622. State plans for child welfare services

(a) Joint development

In order to be eligible for payment under this subpart, a State must have a plan for child welfare services which has been developed jointly by the Secretary and the State agency designated pursuant to subsection (b)(1) of this section, and which meets the requirements of subsection (b) of this section.

(b) Requisite features of State plans

Each plan for child welfare services under this subpart shall—

(1) provide that (A) the individual or agency that administers or supervises the administration of the State’s services program under division A of subchapter XX of this chapter will administer or supervise the administration of the plan (except as otherwise provided in section 103(d) of the Adoption Assistance and Child Welfare Act of 1980), and (B) to the ex-
tent that child welfare services are furnished by the staff of the State agency or local agency administering the plan, a single organizational unit in such State or local agency, as the case may be, will be responsible for furnishing such child welfare services;

(2) provide for coordination between the services provided for children under the plan and the services and assistance provided under division A of subchapter XX of this chapter, under the State program funded under part A of this subchapter, under the State plan approved under subpart 2 of this part, under the State plan approved under the State plan approved under part E of this subchapter, under and other State programs having a relationship to the program under this subpart, with a view to provision of welfare and related services which will best promote the welfare of such children and their families;

(3) include a description of the services and activities which the State will fund under the State program carried out pursuant to this subpart, and how the services and activities will achieve the purpose of this subpart;

(4) contain a description of—

(A) the steps the State will take to provide child welfare services statewide and to expand and strengthen the range of existing services and develop and implement services to improve child outcomes; and

(B) the child welfare services staff development and training plans of the State;

(5) provide, in the development of services for children, for utilization of the facilities and experience of voluntary agencies in accordance with State and local programs and arrangements, as authorized by the State;

(6) provide that the agency administering or supervising the administration of the plan will furnish such reports, containing such information, and participate in such evaluations, as the Secretary may require;

(7) provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed;

(8) provide assurances that the State—

(A) is operating, to the satisfaction of the Secretary—

(i) a statewide information system from which can be readily determined the status, demographic characteristics, location, and goals for the placement of every child who is (or, within the immediately preceding 12 months, has been) in foster care;

(ii) a case review system (as defined in section 675(5) of this title) for each child receiving foster care under the supervision of the State;

(iii) a service program designed to help children—

(I) where safe and appropriate, return to families from which they have been removed; or

(II) be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement, which may include a residential educational program; and

(iv) a preplacement preventive services program designed to help children at risk of foster care placement remain safely with their families; and

(B) has in effect policies and administrative and judicial procedures for children abandoned at or shortly after birth (including policies and procedures providing for legal representation of the children) which enable permanent decisions to be made expeditiously with respect to the placement of the children;

(9) contain a description, developed after consultation with tribal organizations (as defined in section 450f of title 25) in the State, of the specific measures taken by the State to comply with the Indian Child Welfare Act [25 U.S.C. 1901 et seq.];

(10) contain assurances that the State shall make effective use of cross-jurisdictional resources (including through contracts for the purchase of services), and shall eliminate legal barriers, to facilitate timely adoptive or permanent placements for waiting children;

(11) contain a description of the activities that the State has undertaken for children adopted from other countries, including the provision of adoption and post-adoption services;

(12) provide that the State shall collect and report information on children who are adopted from other countries and who enter into State custody as a result of the disruption of a placement for adoption or the dissolution of an adoption, including the number of children, the agencies who handled the placement or adoption, the plans for the child, and the reasons for the disruption or dissolution;

(13) demonstrate substantial, ongoing, and meaningful collaboration with State courts in the development and implementation of the State plan under this subpart, the State plan approved under subpart 2, and the State plan approved under part E, and in the development and implementation of any program improvement plan required under section 1320a-2a of this title;

(14) not later than October 1, 2007, include assurances that not more than 10 percent of the expenditures of the State with respect to activities funded from amounts provided under this subpart will be for administrative costs;

(15)(A) provides that the State will develop, in coordination and collaboration with the State agency referred to in paragraph (1) and the State agency responsible for administering the State plan approved under subchapter XIX, and in consultation with pediatricians, other experts in health care, and experts in and recipients of child welfare services, a plan for the ongoing oversight and coordination of health care services for any child in a foster care placement, which shall ensure a coordi-

2So in original.

3So in original. Probably should be “provide”.
nated strategy to identify and respond to the health care needs of children in foster care placements, including mental health and dental health needs, and shall include an outline of—

(i) a schedule for initial and follow-up health screenings that meet reasonable standards of medical practice;

(ii) how health needs identified through screenings will be monitored and treated, including emotional trauma associated with a child’s maltreatment and removal from home;

(iii) how medical information for children in care will be updated and appropriately shared, which may include the development and implementation of an electronic health record;

(iv) steps to ensure continuity of health care services, which may include the establishment of a medical home for every child in care;

(v) the oversight of prescription medicines, including protocols for the appropriate use and monitoring of psychotropic medications;

(vi) how the State actively consults with and involves physicians or other appropriate medical or non-medical professionals in assessing the health and well-being of children in foster care and in determining appropriate medical treatment for the children; and

(vii) steps to ensure that the components of the transition plan development process required under section 675(5)(H) of this title that relate to the health care needs of children aging out of foster care, including the requirements to include options for health insurance, information about a health care power of attorney, health care proxy, or other similar document recognized under State law, and to provide the child with the option to execute such a document, are met; and

(A) subparagraph (A) shall not be construed to reduce or limit the responsibility of the State agency responsible for administering the State plan approved under subchapter XIX to administer and provide care and services for children with respect to whom services are provided under the State plan developed pursuant to this subpart;

(16) provide that, not later than 1 year after September 28, 2006, the State shall have in place procedures providing for how the State programs assisted under this subpart, subpart 2 of this part, or part E would respond to a disaster, in accordance with criteria established by the Secretary which should include how a State would—

(A) identify, locate, and continue availability of services for children under State care or supervision who are displaced or adversely affected by a disaster;

(B) respond, as appropriate, to new child welfare cases in areas adversely affected by a disaster, and provide services in those cases;

(C) remain in communication with caseworkers and other essential child welfare personnel who are displaced because of a disaster;

(D) preserve essential program records; and

(E) coordinate services and share information with other States;

(17) not later than October 1, 2007, describe the State standards for the content and frequency of caseworker visits for children who are in foster care under the responsibility of the State, which, at a minimum, ensure that the children are visited on a monthly basis and that the caseworker visits are well-planned and focused on issues pertinent to case planning and service delivery to ensure the safety, permanency, and well-being of the children;

(18) include a description of the activities that the State has undertaken to reduce the length of time children who have not attained 5 years of age are without a permanent family, and the activities the State undertakes to address the developmental needs of such children who receive benefits or services under this part or part E; and

(19) contain a description of the sources used to compile information on child maltreatment deaths required by Federal law to be reported by the State agency referred to in paragraph (1), and to the extent that the compilation does not include information on such deaths from the State vital statistics department, child death review teams, law enforcement agencies, or offices of medical examiners or coroners, the State shall describe why the information is not so included and how the State will include the information.

(c) Definitions

In this subpart:

(1) Administrative costs

The term "administrative costs" means costs for the following, but only to the extent incurred in administering the State plan developed pursuant to this subpart: procurement, payroll management, personnel functions (other than the portion of the salaries of supervisors attributable to time spent directly supervising the provision of services by caseworkers), management, maintenance and operation of space and property, data processing and computer services, accounting, budgeting, auditing, and travel expenses (except those related to the provision of services by caseworkers or the oversight of programs funded under this subpart).

(2) Other terms

For definitions of other terms used in this part, see section 675 of this title.

REFERENCES IN TEXT

Division A of subchapter XX, referred to in subsec. (b)(1), (2), was in the original a reference to subtitl e 1 of title XX, which was translated as if referring to subtitl e A of title XX of the Social Security Act, to reflect the probable intent of Congress. Title XX of the Act, enacting subchapter XX of this chapter, does not contain a subtitl e 1.

Section 103(d) of the Adoption Assistance and Child Welfare Act of 1980, referred to in subsec. (b)(1), is section 103(d) of Pub. L. 96–272, which is set out as a note below.


AMENDMENTS


2010—Subsec. (b)(1), (2), Pub. L. 111–148, §6703(d)(2)(B), inserted “division A of” before “subchapter XX”.


2008—Subsec. (b)(15). Pub. L. 110–351 amended par. (15) generally. Prior to amendment, par. (15) read as follows: “describe how the State actively consults with and involves physicians or other appropriate medical professionals in—

(A) assessing the health and well-being of children in foster care under the responsibility of the State; and

(B) determining appropriate medical treatment for the children;”.

2006—Subsec. (b)(3). Pub. L. 109–288, §§6(c)(1)(A), added par. (3) and struck out former par. (3) which read as follows: “provide that the standards and requirements imposed with respect to child day care under subchapter XX of this chapter shall apply with respect to day care services under this subpart, except insofar as eligibility for such services is involved.”

Subsec. (b)(4). Pub. L. 109–288, §§6(c)(1)(A), (B), added par. (4) and struck out former par. (4) which read as follows: “provide for the training and effective use of paid professional staff, with particular emphasis on the full-time or part-time employment of persons of low income, as community service aides, in the administration of the plan, and for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency;”.

Subsec. (b)(5). Pub. L. 109–288, §§6(c)(1)(A), (C), redesignated par. (7) as (5) and struck out former par. (5) which read as follows: “contain a description of the services to be provided and specify the geographic areas where such services will be available;”.

Subsec. (b)(6). Pub. L. 109–288, §§6(c)(1)(B), (C), redesignated par. (8) as (6) and struck out former par. (6) which read as follows: “contain a description of the steps which the State will take to provide child welfare services and to make progress in—

(A) covering additional political subdivisions.

(B) reaching additional children in need of services, and

(C) expanding and strengthening the range of existing services and developing new types of services, along with a description of the services to be provided, such as, but not limited to, the State child welfare services staff development and training plans;”.


Subsec. (b)(8)(B), (9). Pub. L. 109–288, §§6(c)(1)(D), redesignated pars. (10) and (11) as (8) and (9), respectively. Former pars. (8) and (9) redesignated (6) and (7), respectively.


Subsec. (b)(10)(A). Pub. L. 109–288, §§6(c)(1)(D)(i), (iii), redesignated subpar. (A) as (A) and struck out former subpar. (A) which read as follows: “since June 17, 1980, has implemented the outreach plan contained in the action plan which the State will take to provide child welfare services and to make progress in—

(i) the appropriateness of, and necessity for, the foster care placement;

(ii) whether the child could or should be returned to the parents of the child or should be freed for adoption or other permanent placement; and

(iii) the services necessary to facilitate the return of the child or the placement of the child for adoption or legal guardianship;”.


Subsec. (b)(10)(B)(ii)(I). Pub. L. 109–288, §§6(c)(1)(D)(ii), inserted “, which may include a residential educational program” after “in some other planned, permanent living arrangement”.

Subsec. (b)(10)(C). Pub. L. 109–288, §§6(c)(1)(D)(iv), struck out subpar. (C) which read as follows: “(i) has reviewed (or within 12 months after October 31, 1994, will review) State policies and administrative and judicial procedures in effect for children abandoned at or shortly after birth (including policies and procedures providing for legal representation of such children); and

(ii) is implementing (or within 24 months after October 31, 1994, will implement) such policies and procedures as the State determines, on the basis of the review described in clause (i), to be necessary to enable permanent decisions to be made expeditiously with respect to the placement of such children;”.


Pub. L. 109–239 substituted “make” for “develop plans for the” and inserted “(including through contracts for the purchase of services), and shall eliminate legal barriers,” after “resources”.


1998—Subsec. (b)(2). Pub. L. 105–200 struck out “under” before “the State plan approved under part E of this subchapter”.


Pub. L. 105–33, §592(a)(1)(A)(iii), redesignated par. (9), relating to providing assurances that the State has met certain requirements to protect foster children, as (10). Pub. L. 105–33, §592(a)(1)(A)(i), amended par. (9) relating to diligent recruitment of potential foster and adoptive families by substituting a semicolon for period at end.


Subsec. (b)(12). Pub. L. 105–89, §202(a), added par. (12). 1996—Subsec. (b)(2). Pub. L. 104–193 substituted “program funded under part A of this subchapter” for “plan approved under part A of this subchapter” and “under the State plan approved under part E of this subchapter” for “part E of this subchapter”.


Pub. L. 103–382, §554(1), struck out “and” at end. Subsec. (b)(8). Pub. L. 103–432, §204(a)(1), struck out “and” at end. Pub. L. 103–432, §202(a)(2), which directed amendment of par. (8) by substituting “; and” for period at end, could not be executed because there was no period at end subsequent to amendment by Pub. L. 103–382, §554(2). See below.


Subsec. (b)(2). Pub. L. 103–66, §1371(b)(1)(B), (C), inserted “under the State plan approved under subpart 2 of this part,” after “part A of this subchapter,” and substituted “under this subpart” for “under this part”. Subsec. (b)(8). Pub. L. 103–66, §1371(b)(1)(B), substituted “under this subpart” for “under this part”.

1989—Subsec. (b)(1)(A). Pub. L. 101–239 substituted “the individual or agency that administers or supervises the administration of the State’s services program under subchapter XX of this chapter” for “the individual or agency designated pursuant to section 1397d(1)(C) of this title to administer or supervise the administration of the State’s services program for the period immediately preceding the 1st day of the 1st calendar quarter beginning after the regular session of the State legislature that begins after the date of enactment of this Act [Sept. 30, 1989]”. Pub. L. 96–272 substituted substituted provisions relating to State plans covering child welfare services for provisions relating to the payments to States and the computation of amounts.

1975—Subsec. (a)(1)(A). Pub. L. 93–647, §3(a)(8), substituted “the individual or agency designated pursuant to section 1397d(1)(C) of this title to administer or supervise the administration of the State’s services program” for “the State agency designated pursuant to section 602(a)(3) of this title to administer or supervise the administration of the plan of the State approved under part A of this subchapter”.

Subsec. (a)(1)(A)(i). Pub. L. 93–647, §3(a)(7), substituted “a single organizational unit in such State or local agency, as the case may be,” for “the organizational unit in such State or local agency established pursuant to section 602(a)(15) of this title”.

Subsec. (c). Pub. L. 92–657, §3(b), added subsec. (c).

1968—Subsec. (a)(1). Pub. L. 90–248, §240(d), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

Effective Date of 2011 Amendment
Pub. L. 112–34, title I, §107, Sept. 30, 2011, 125 Stat. 738, provided that:

“(a) IN GENERAL.—Except as otherwise provided in this title [enacting section 629m of this title, amending sections 622 to 625, 629a to 629c, 629f to 629h, 673, 675, 679b of this title, and enacting provisions set out as notes under sections 628 and 629m of this title], this title and the amendments made by this title shall take effect on October 1, 2011, and shall apply to payments under parts B and E of title IV of the Social Security Act [42 U.S.C. 620 et seq.], 670 et seq. for calendar quarters beginning on or after such date, without regard to whether regulations to implement the amendments are promulgated by such date.”

“(b) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.—If the Secretary of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required in order for a State to receive payments under this part and part E of title IV of the Social Security Act, the Secretary of Health and Human Services may delay the implementation of this title until such date, without regard to whether regulations to implement the amendments are promulgated by such date.”

Effective Date of 2010 Amendment
Pub. L. 111–166, title II, §2855(d), Mar. 23, 2010, 124 Stat. 353, provided that: “The amendments made by this section [amending this section and sections 675 and 677 of this title] take effect on October 1, 2010.”

Effective Date of 2008 Amendment
Amendment by Pub. L. 110–351 effective Oct. 7, 2008, and applicable to payments under this part and part E of this subchapter for quarters beginning on or after such date, with delay permitted if State legislation is required to meet additional requirements, see section 601 of Pub. L. 110–351, set out as a note under section 671 of this title.

Effective Date of 2006 Amendment
Amendment by Pub. L. 109–239 effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, with delay permitted if State legislation is required to meet additional requirements, see section 601 of Pub. L. 110–351, set out as a note under section 671 of this title.
“(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this Act (enacting section 673c of this title, amending this section and sections 629b, 671, and 675 of this title, and repealing section 673c of this title) shall take effect on October 1, 2006, and shall apply to payments under parts B and E of title IV of the Social Security Act [this part and part E of this subchapter] for calendar quarters beginning on or after such date, without regard to whether regulations to implement the amendments are promulgated by such date.

“(b) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.—If the Secretary of Health and Human Services determines that State legislation (other than legislation imposing requirements) is required in order for a State plan under part B or E of title IV of the Social Security Act to meet the additional requirements imposed by the amendments made by a provision of this Act, this provision shall not be regarded as failing to meet any of the additional requirements before the 1st day of the 1st calendar quarter beginning after the first regular session of the State legislature that begins after the date of enactment of this Act [July 3, 2006]. If the State has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.’’

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

**Effective Date of 2000 Amendment**

Amendment by Pub. L. 106–279 effective Oct. 6, 2000, with transition rule, see section 505(a)(1), (b) of Pub. L. 106–279, set out as an Effective Dates; Transition Rule note under section 14901 of this title.

**Effective Date of 1997 Amendments**

Section 501 of Pub. L. 105–89 provided that:

“(a) IN GENERAL.—Except as otherwise provided in this Act [enacting sections 673b, 678, and 679b of this title, amending this section, sections 603, 629, 629a, 629b, 632, 671 to 673, 674, 675, 677, and 1320a–9 of this title, and sections 615 and 901 of Title 2, The Congress, enacting part E of this subchapter], the provisions set out as not being operative in Title 5, section 505(a)(1), of this title, and amending part F of Title 5, section 505(a)(2), of this title, and repealing provisions set out as a note under section 670 of this title, the amendments made by this Act take effect on the date of enactment of this Act [Nov. 19, 1997].

“(b) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.—In the case of a State plan under part B or E of title IV of the Social Security Act [this part and part E of this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this Act, the State plan shall not be regarded as failing to meet any of the requirements of such part solely on the basis of the failure of the plan to meet such additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Nov. 19, 1997]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.”

Section 5503 of title V of Pub. L. 106–33 provided that:


**Effective Date of 1996 Amendment**

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

**Effective Date of 1994 Amendment**

Section 302(e) of Pub. L. 103–432 provided that: ‘‘The amendments and repeal made by this section [amending this section and sections 629 to 629e and 672 of this title and repealing section 627 of this title] shall be effective with respect to fiscal years beginning on or after April 1, 1996.’’

Section 204(b) of Pub. L. 103–432 provided that: ‘‘The amendments made by subsection (a) [amending this section] shall be effective with respect to fiscal years beginning on or after October 1, 1995.’’

**Effective Date of 1993 Amendment**

Section 13711(c) of Pub. L. 103–66 provided that: ‘‘The amendments made by this section [amending this section and sections 623, 628, and 671 of this title] shall be effective with respect to calendar quarters beginning on or after October 1, 1993.’’

**Effective Date of 1989 Amendment**

Section 10403(b)(2) of Pub. L. 101–239 provided that: ‘‘The amendments made by paragraph (1) [amending this section] shall take effect as if such amendment had been included in section 1883(e)(1) of the Tax Reform Act of 1986 [Pub. L. 99–514, amending section 1397b of this title] on the date of the enactment of such Act [Oct. 22, 1986].’’

**Effective Date of 1975 Amendment**

Amendment by section 3 of Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, except that amendment by section 3(a) of Pub. L. 93–647 not effective with respect to the Commonwealth of Puerto Rico, the Virgin Islands, or Guam, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

**Effective Date of 1968 Amendment; Different State Agencies for Administration of State Plans Under Parts A and B**

Section 240(e)(3) of Pub. L. 90–248 provided that: ‘‘The amendments made by paragraphs (1) and (2) of subsection (d) [amending this section] shall become effective July 1, 1968, except that (A) if on the date of enactment of this Act [Jan. 2, 1968] the agency of a State administering its plan for child-welfare services developed under part B of title IV of the Social Security Act [this part] is different from the agency of the State designated pursuant to section 402(a)(3) of such Act [section 602(a)(3) of this title], so much of paragraph (1) of section 422(a) of such Act [sec. (a) of this section] as precedes subparagraph (B) (as added by paragraph (2) of such subsection) shall not apply with respect to such agencies but only so long as such agencies of the State are different, and (B) if on such date the local agency administering the plan of a State for child-welfare services developed under part B of title IV of the Social Security Act [this part] is different from the local agency in such subdivision administering the plan of such State under part A of title IV of such Act [part A of this subchapter], so much of such paragraph (1) as precedes such subparagraph (B) shall not apply with respect to such local agencies but only so long as such local agencies are different.’’

**Findings and Purpose**

Section 552 of Pub. L. 103–382 provided that:
"(a) Findings.—The Congress finds that—

"(1) nearly 500,000 children are in foster care in the United States;

"(2) tens of thousands of children in foster care are waiting for adoption;

"(3) 2 years and 8 months is the median length of time that children wait to be adopted;

"(4) child welfare agencies should work to eliminate racial, ethnic, and national origin discrimination and bias in adoption and foster care recruitment, selection, and placement procedures; and

"(5) active, creative, and diligent efforts are needed to recruit foster and adoptive parents of every race, ethnicity, and culture in order to facilitate the placement of children in foster and adoptive homes which will best meet each child's needs.

"(b) Purpose.—It is the purpose of this subpart [section 5001, or as amended by this section] to promote the best interests of children by—

"(1) decreasing the length of time that children wait to be adopted;

"(2) preventing discrimination in the placement of children on the basis of race, color, or national origin; and

"(3) facilitating the identification and recruitment of foster and adoptive families that can meet children's needs."

GUAM, PUERTO RICO, VIRGIN ISLANDS, AND COMMONWEALTH OF NORTHERN MARIANA ISLANDS

Section 103(c) of Pub. L. 96–272 provided that in the case of Guam, Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, subsection (b)(1) of this section (as otherwise amended by section 103(a) of Pub. L. 96–272), is deemed to read as follows:

"(1) provide that (A) the State agency designated pursuant to section 602(a)(3) of this title to administer or supervise the management of the plan for child welfare services, and (B) to the extent that child welfare services are furnished by the staff of the State agency or local agency administering such plan for child welfare services, the organizational unit in such State or local agency established pursuant to section 602(a)(15) of this title will be responsible for furnishing such child welfare services.”

ADMINISTRATION OF STATE PLAN FOR CHILD WELFARE SERVICES BY NON-DESIGNATED AGENCY

Section 103(d) of Pub. L. 96–272 provided that: “Notwithstanding section 422(b)(1) of the Social Security Act (as amended by subsection (a) of this section) [subsec. (b)(1) of this section] if on December 1, 1974, the agency of a State administering its plan for child welfare services under part B of title IV of such Act [section 1397b(a)(1) of this title], such section 422(b)(1) shall not apply with respect to such agency, but only so long as such agency is not the agency designated under section 2003(d)(1)(C) of that Act [section 1397b(d)(1)(C) of this title]; and if on December 1, 1974, the local agency administering the plan of a State under part B of title IV of such Act in a subdivision of the State was not the local agency in such subdivision administering the plan of such State under part A of that title [part A of this subchapter], such section 422(b)(1) shall not apply with respect to such local agency, but only so long as such local agency is not the local agency administering the program of the State for the provision of services under title XX of such Act [subchapter XX of this chapter].”

§ 623. Allotments to States

(a) In general

The sum appropriated pursuant to section 625 of this title for each fiscal year shall be allotted by the Secretary for use by cooperating State public welfare agencies which have plans developed jointly by the State agency and the Secretary as follows: The Secretary shall first allot $70,000 to each State, and then shall allot to each State an amount which bears the same ratio to the remainder of such sum as the product of (1) the population of such State; (2) the age of twenty-one and (2) the allotment percentage of the State (as determined under this section) bears to the sum of the corresponding products of all the States.

(b) Determination of State allotment percentages

The “allotment percentage” for any State shall be 100 percent less the State percentage; and the State percentage shall be the percentage which bears the same ratio to 50 percent as the per capita income of such State bears to the per capita income of the United States; except that (1) the allotment percentage shall in no case be less than 30 percent or more than 70 percent, and (2) the allotment percentage shall be 70 percent in the case of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(c) Promulgation of State allotment percentages

The allotment percentage for each State shall be promulgated by the Secretary between October 1 and November 30 of each even-numbered year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning October 1 next succeeding such promulgation.

(d) United States defined

For purposes of this section, the term “United States” means the 50 States and the District of Columbia.

(e) Reallocation of funds

(1) In general

The amount of any allotment to a State for a fiscal year under the preceding provisions of this section which the State certifies to the Secretary will not be required for carrying out the State plan developed as provided in section 622 of this title shall be available for reallocation from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines—

(A) need sums in excess of the amounts allotted to such other States under the preced-
(2) Considerations

The Secretary shall make the reallocations on the basis of the State plans so developed, after taking into consideration—

(A) the population under 21 years of age;

(B) the per capita income of each of such other States as compared with the population under 21 years of age; and

(C) the per capita income of all such other States with respect to which such a determination by the Secretary has been made.

(3) Amounts reallocated to a State deemed part of State allotment

Any amount so reallocated to a State is deemed part of the allotment of the State under this section.

(Pub. L. 109–288, § 11(a)(1)(A), which directed amendment of section by substituting “percent” for “per centum” wherever appearing, was not executed due to prior amendment by Pub. L. 109–288, § 6(b)(2), Sept. 28, 2006, 120 Stat. 1244, and transferred to section 624 of this title.

CODIFICATION

Section was formerly classified to section 621 of this title prior to renumbering by Pub. L. 109–288.

PRIOR PROVISIONS


AMENDMENTS

2011—Subsec. (b), Pub. L. 112–34, provided that:

Amendment by Pub. L. 112–34 effective Oct. 1, 2011, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 107 of Pub. L. 112–34, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 9135(c) of Pub. L. 100–203 provided that: “The amendments made by this section (amending this section and sections 1301 and 1307b of this title) shall apply with respect to fiscal years beginning on or after October 1, 1988.”

§ 624. Payment to States

(a) Payment schedule

From the sums appropriated therefor and the allotment under this subpart, subject to the conditions set forth in this section, the Secretary shall from time to time pay to each State that has a plan developed in accordance with section 622 of this title an amount equal to 75 percent of the total sum expended under the plan (including the cost of administration of the plan) in meeting the costs of State, district, county, or other local child welfare services.

(b) Computation and method of payment

The method of computing and making payments under this section shall be as follows:

(1) The Secretary shall, prior to the beginning of each period for which a payment is to be made, estimate the amount to be paid to the State for such period under the provisions of this section.

(2) From the allotment available therefor, the Secretary shall pay the amount so estimated, reduced or increased, as the case may be, by any sum (not previously adjusted under this section) by which he finds that his estimate of the amount to be paid to the State for any prior period under this section was greater or less than the amount which should have been paid to the State for such prior period under this section.

(c) Limitation on use of Federal funds for child care, foster care maintenance payments, or adoption assistance payments

The total amount of Federal payments under this subpart for a fiscal year beginning after September 30, 2007, that may be used by a State for expenditures for child care, foster care maintenance payments, or adoption assistance payments shall not exceed the total amount of such payments for fiscal year 2005 that were so used by the State.

(d) Limitation on use by States of non-Federal funds for foster care maintenance payments to match Federal funds

For any fiscal year beginning after September 30, 2007, State expenditures of non-Federal funds for foster care maintenance payments shall not be considered to be expenditures under the State plan developed under this subpart for the fiscal
year to the extent that the total of such expenditures for the fiscal year exceeds the total of such expenditures under the State plan developed under this subpart for fiscal year 2005.

(e) Limitation on reimbursement for administrative costs

A payment may not be made to a State under this section with respect to expenditures during a fiscal year for administrative costs, to the extent that the total amount of the expenditures exceeds 10 percent of the total expenditures of the State during the fiscal year for activities funded from amounts provided under this subpart.

(f) Child visitation by caseworkers

(1)(A) Each State shall take such steps as are necessary to ensure that the total number of visits made by caseworkers on a monthly basis to children in foster care under the responsibility of the State during a fiscal year is not less than 90 percent (or, in the case of fiscal year 2015 or thereafter, 95 percent) of the total number of such visits that would occur during the fiscal year if such child were so visited once every month while in such care.

(B) If the Secretary determines that a State has failed to comply with subparagraph (A) for a fiscal year, then the percentage that would otherwise apply for purposes of subsection (a) for the fiscal year shall be reduced by—

(i) 1, if the number of full percentage points by which the State fell short of the percentage specified in subparagraph (A) is less than 10;

(ii) 3, if the number of full percentage points by which the State fell short, as described in clause (i), is not less than 10 and less than 20; or

(iii) 5, if the number of full percentage points by which the State fell short, as described in clause (i), is not less than 20.

(2)(A) Each State shall take such steps as are necessary to ensure that not less than 50 percent of the total number of visits made by caseworkers to children in foster care under the responsibility of the State during a fiscal year occur in the residence of the child involved.

(B) If the Secretary determines that a State has failed to comply with subparagraph (A) for a fiscal year, then the percentage that would otherwise apply for purposes of subsection (a) for the fiscal year shall be reduced by—

(i) 1, if the number of full percentage points by which the State fell short of the percentage specified in subparagraph (A) is less than 10;

(ii) 3, if the number of full percentage points by which the State fell short, as described in clause (i), is not less than 10 and less than 20; or

(iii) 5, if the number of full percentage points by which the State fell short, as described in clause (i), is not less than 20.


CODIFICATION

Section was formerly classified to section 623 of this title prior to renumbering by Pub. L. 109–288.

PRIORITY


AMENDMENTS

2011—Subsecs. (e), (f). Pub. L. 112–34 added subsec. (f) and struck out subsec. (e) relating to caseworker visitation standard.


Subsecs. (c), (d). Pub. L. 109–288, §6(e)(1), added subsecs. (c) and (d) and struck out former subsecs. (c) and (d) which related to prohibited payments and minimum State expenditures, respectively.

Subsec. (e). Pub. L. 109–288, §7(b), added subsec. (e) relating to limitation on reimbursement for administrative costs.

1994—Subsec. (a). Pub. L. 103–432 struck out “and in section 627 of this title” after “‘set forth in this section’”.

1993—Subsec. (a). Pub. L. 103–432 substituted “under this subpart” for “under this part”.


1976—Subsec. (c). Pub. L. 94–273 substituted “October” for “July” wherever appearing and “November 30” for “August 31”.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–34 effective Oct. 1, 2011, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date and with delay permitted if State legislation is required to meet additional requirements, see section 167 of Pub. L. 112–34, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–288, §6(e)(2)(B), Sept. 28, 2006, 120 Stat. 1255, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to expenditures made on or after October 1, 2007.”

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, except as otherwise provided, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective with respect to fiscal years beginning on or after Apr. 1, 1996, see
section 20(e) of Pub. L. 103–432, set out as a note under section 622 of this title.

Effective Date of 1993 Amendment
Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Oct. 1, 1993, see section 13711(c) of Pub. L. 103–66, set out as a note under section 622 of this title.

§ 625. Limitations on authorization of appropriations

To carry out this subpart (other than sections 626, 627, and 628b of this title), there are authorized to be appropriated to the Secretary not more than $325,000,000 for each of fiscal years 2012 through 2016.


Prior Provisions

Amendments
2008—Pub. L. 110–351 inserted “(other than sections 626, 627, and 628b of this title)” after “this subpart”.

Effective Date of 2011 Amendment
Amendment by Pub. L. 112–34 effective Oct. 1, 2011, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 107 of Pub. L. 112–34, set out as a note under section 622 of this title.

Effective Date of 2008 Amendment
Amendment by Pub. L. 110–351 effective Oct. 7, 2008, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, with delay permitted if State legislation is required to meet additional requirements, see section 601 of Pub. L. 110–351, set out as a note under section 671 of this title.

Effective Date
Section effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as an Effective Date of 2006 Amendment note under section 621 of this title.

§ 626. Research, training, or demonstration projects

(a) Authorization of appropriations

There are hereby authorized to be appropriated for each fiscal year such sums as the Congress may determine—

(1) for grants by the Secretary—
(A) to public or other nonprofit institutions of higher learning, and to public or other nonprofit agencies and organizations engaged in research or child-welfare activities, for special research or demonstration projects in the field of child welfare which are of regional or national significance and for special projects for the demonstration of new methods or facilities which show promise of substantial contribution to the advancement of child welfare;
(B) to State or local public agencies responsible for administering, or supervising the administration of, the plan under this part, for projects for the demonstration of the utilization of research (including findings resulting therefrom) in the field of child welfare in order to encourage experimental and special types of welfare services; and
(C) to public or other nonprofit institutions of higher learning for special projects for training personnel for work in the field of child welfare, including traineeships described in section 628a1 of this title with such stipends and allowances as may be permitted by the Secretary; and
(2) for contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research, special projects, or demonstration projects relating to such matters.

(b) Payments; advances or reimbursements; installments; conditions

Payments of grants or under contracts or cooperative arrangements under this section may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made in the manner described under subsection (a)(1)(C) only if the application—
(1) provides assurances that each individual who receives a stipend with such traineeship (in this section referred to as a “recipient”) will enter into an agreement with the institution under which the Secretary finds necessary to carry out the purposes of the grants, contracts, or other arrangements.
(A) to participate in training at a public or private nonprofit child welfare agency on a regular basis (as determined by the Secretary) for the period of the traineeship;
(B) to be employed for a period of years equivalent to the period of the traineeship, in a public or private nonprofit child welfare agency in any State, within a period of time (determined by the Secretary in accordance with regulations) after completing the post-secondary education for which the traineeship was awarded;
(C) to furnish to the institution and the Secretary evidence of compliance with subparagraphs (A) and (B); and

1See References in Text note below.


(D) if the recipient fails to comply with subparagraph (A) or (B) and does not qualify for any exception to this subparagraph which the Secretary may prescribe in regulations, to repay to the Secretary all (or an appropriately prorated part) of the amount of the stipend, plus interest, and, if applicable, reasonable collection fees (in accordance with regulations promulgated by the Secretary);

(2) provides assurances that the institution will—

(A) enter into agreements with child welfare agencies for onsite training of recipients;

(B) permit an individual who is employed in the field of child welfare services to apply for a traineeship with a stipend if the traineeship furthers the progress of the individual toward the completion of degree requirements; and

(C) develop and implement a system that, for the 3-year period that begins on the date any recipient completes a child welfare services program of study, tracks the employment record of the recipient, for the purpose of determining the percentage of recipients who secure employment in the field of child welfare services and remain employed in the field.


REFERENCES IN TEXT

Section 628a of this title, referred to in subsec. (a)(1)(C), was transferred and redesignated as subsec. (c) of this section by Pub. L. 109–288, §§6(f)(2), 11(b), Sept. 28, 2006, 120 Stat. 1247, 1255.

CODIFICATION

Section 628a of this title, which was transferred and redesignated as subsec. (c) of this section by Pub. L. 109–288, was based on act Aug. 14, 1935, ch. 531, title IV, § 426, as added Pub. L. 100–203, title II, § 205(a), Oct. 31, 1994, 108 Stat. 4463.

AMENDMENTS

2006—Subsec. (b), Pub. L. 109–288, §11(b), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to appropriations for demonstration projects for development of alternate care arrangements for infants not requiring hospitalization.

Subsec. (c), Pub. L. 109–288, §6(f)(2), amended section as amended by Pub. L. 109–288, §11(b), by transferring section 628a of this title and redesignating it as subsec. (c) of this section. See Codification note above.

Pub. L. 109–288, §11(b), redesignated subsec. (c) as (b), 1994—Subsec. (a)(1)(C), Pub. L. 103–432 inserted “described in section 628a of this title” after “including traineeships”.

1987—Subsecs. (b), (c), Pub. L. 100–203 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 205(c) of Pub. L. 103–432 provided that: “The amendments made by this section [enacting section 628a of this title and amending this section] shall apply to grants awarded on or after October 1, 1995.”

APPROPRIATIONS OR GRANTS

Section 240(g) of Pub. L. 90–248 provided that any appropriations or grants made pursuant to section 726 of this title, as in effect prior to Jan. 2, 1968, were to be deemed to have been appropriated or made under this section.

§ 627. Family connection grants

(a) In general

The Secretary of Health and Human Services may make matching grants to State, local, or tribal child welfare agencies, and private nonprofit organizations that have experience in working with foster children or children in kinship care arrangements, for the purpose of helping children who are in, or at risk of entering, foster care reconnect with family members through the implementation of—

(1) a kinship navigator program to assist kinship caregivers in learning about, finding, and using programs and services to meet the needs of the children they are raising and their own needs, and to promote effective partnerships among public and private agencies to ensure kinship caregiver families are served, which program—

(A) shall be coordinated with other State or local agencies that promote service coordination or provide information and referral services, including the entities that provide 2–1–1 or 3–1–1 information systems where available, to avoid duplication or fragmentation of services to kinship care families;

(B) shall be planned and operated in consultation with kinship caregivers and organizations representing them, youth raised by kinship caregivers, relevant government agencies, and relevant community-based or faith-based organizations;

(C) shall establish information and referral systems that link (via toll-free access) kinship caregivers, kinship support group facilitators, and kinship service providers to—

(i) each other;

(ii) eligibility and enrollment information for Federal, State, and local benefits;

(iii) relevant training to assist kinship caregivers in caregiving and in obtaining benefits and services; and

(iv) relevant legal assistance and help in obtaining legal services;

(D) shall provide outreach to kinship care families, including by establishing, distributing, and updating a kinship care website, or other relevant guides or outreach materials;

(E) shall promote partnerships between public and private agencies, including schools, community based or faith-based or-
organizations, and relevant government agencies, to increase their knowledge of the needs of kinship care families to promote better services for those families;
(F) may establish and support a kinship care ombudsman with authority to intervene and help kinship caregivers access services; and
(G) may support any other activities designed to assist kinship caregivers in obtaining benefits and services to improve their caregiving;

(2) intensive family-finding efforts that utilize search technology to find biological family members for children in the child welfare system, and once identified, work to reestablish relationships and explore ways to find a permanent family placement for the children;
(3) family group decision-making meetings for children in the child welfare system, that—
(A) enable families to make decisions and develop plans that nurture children and protect them from abuse and neglect, and
(B) when appropriate, shall address domestic violence issues in a safe manner and facilitate connecting children exposed to domestic violence to appropriate services, including reconnection with the abused parent when appropriate; or
(4) residential family treatment programs that—
(A) enable parents and their children to live in a safe environment for a period of not less than 6 months; and
(B) provide, on-site or by referral, substance abuse treatment services, children’s early intervention services, family counseling, medical, and mental health services, nursery and pre-school, and other services that are designed to provide comprehensive treatment that supports the family.

(b) Applications
An entity desiring to receive a matching grant under this section shall submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require, including—
(1) a description of how the grant will be used to implement 1 or more of the activities described in subsection (a);
(2) a description of the types of children and families to be served, including how the children and families will be identified and recruited, and an initial projection of the number of children and families to be served;
(3) if the entity is a private organization—
(A) documentation of support from the relevant local or State child welfare agency; or
(B) a description of how the organization plans to coordinate its services and activities with those offered by the relevant local or State child welfare agency; and
(4) an assurance that the entity will cooperate fully with any evaluation provided for by the Secretary under this section.

c) Limitations
(1) Grant duration
The Secretary may award a grant under this section for a period of not less than 1 year and not more than 3 years.

(2) Number of new grantees per year
The Secretary may not award a grant under this section to more than 30 new grantees each fiscal year.

(d) Federal contribution
The amount of a grant payment to be made to a grantee under this section during each year in the grant period shall be the following percentage of the total expenditures proposed to be made by the grantee in the application approved by the Secretary under this section:
(1) 75 percent, if the payment is for the 1st or 2nd year of the grant period.
(2) 50 percent, if the payment is for the 3rd year of the grant period.

e) Form of grantee contribution
A grantee under this section may provide not more than 50 percent of the amount which the grantee is required to expend to carry out the activities for which a grant is awarded under this section in kind, fairly evaluated, including plant, equipment, or services.

(f) Use of grant
A grantee under this section shall use the grant in accordance with the approved application for the grant.

g) Reservations of funds
(1) Kinship navigator programs
The Secretary shall reserve $5,000,000 of the funds made available under subsection (h) for each fiscal year for grants to implement kinship navigator programs described in subsection (a)(1).

(2) Evaluation
The Secretary shall reserve 3 percent of the funds made available under subsection (h) for each fiscal year for the conduct of a rigorous evaluation of the activities funded with grants under this section.

(3) Technical assistance
The Secretary may reserve 2 percent of the funds made available under subsection (h) for each fiscal year to provide technical assistance to recipients of grants under this section.

(h) Appropriation
Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Secretary for purposes of making grants under this section $15,000,000 for each of fiscal years 2009 through 2013.


Prior Provisions

Effective Date
Section effective Oct. 7, 2008, and applicable to payments under this part and part E of this subchapter for
§ 628. Payments to Indian tribal organizations

(a) Amounts

The Secretary may, in appropriate cases (as determined by the Secretary) make payments under this subpart directly to an Indian tribal organization within any State which has a plan for child welfare services approved under this subpart. Such payments shall be made in such manner and in such amounts as the Secretary determines to be appropriate.

(b) Inclusion in State allotment

Amounts paid under subsection (a) of this section shall be deemed to be a part of the allotment (as determined under section 623 of this title) for the State in which such Indian tribal organization is located.

(c) “Indian tribe” and “tribal organization” defined

For purposes of this section, the terms “Indian tribe” and “tribal organization” shall have the meanings given to such terms by subsections (e) and (l) of section 450b of title 25, respectively.

Effective Date of 1993 Amendment

Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Oct. 1, 1993, see section 13711(c) of Pub. L. 103–66, set out as a note under section 622 of this title.

§ 628a. Transferred

CODIFICATION


§ 628b. National random sample study of child welfare

(a) In general

The Secretary shall conduct (directly, or by grant, contract, or interagency agreement) a national study based on random samples of children who are at risk of child abuse or neglect, or are determined by States to have been abused or neglected.

(b) Requirements

The study required by subsection (a) of this section shall—

(1) have a longitudinal component; and

(2) yield data reliable at the State level for as many States as the Secretary determines is feasible.

(c) Preferred contents

In conducting the study required by subsection (a) of this section, the Secretary should—

(1) carefully consider selecting the sample from cases of confirmed abuse or neglect; and

(2) follow each case for several years while obtaining information on, among other things—

(A) the type of abuse or neglect involved;

(B) the frequency of contact with State or local agencies;

(C) whether the child involved has been separated from the family, and, if so, under what circumstances;

(D) the number, type, and characteristics of out-of-home placements of the child; and

(E) the average duration of each placement.

(d) Reports

(1) In general

From time to time, the Secretary shall prepare reports summarizing the results of the study required by subsection (a) of this section.

(2) Availability

The Secretary shall make available to the public any report prepared under paragraph (1), in writing or in the form of an electronic data tape.

(3) Authority to charge fee

The Secretary may charge and collect a fee for the furnishing of reports under paragraph (2).

(e) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there...
are appropriated to the Secretary for each of fiscal years 1996 through 2002 $6,000,000 to carry out this section.


PRIOR PROVISIONS

A prior section 429 of act Aug. 14, 1935, was renumbered section 426(c) and is classified to section 626(c) of this title.

AMENDMENTS

1997—Pub. L. 105–33, § 5592(a)(1)(C), transferred section in original to end of this subpart.

Subsec. (a). Pub. L. 105–33, § 5591(a), inserted "(directly, or by grant, contract, or interagency agreement)" after "conduct".

AMENDMENT EFFECTIVE DATES


SUBPART 2—PROMOTING SAFE AND STABLE FAMILIES

§ 629a. Definitions

2006—Pub. L. 109–288 substituted "Purpose" for "Findings and purpose" in section catchline, struck out subsec. (a) relating to findings, and struck out subsec. (b) designation and heading before "The purpose".

2002—Pub. L. 107–133 amended section generally, substituting subsecs. (a) and (b) relating to findings and purpose for former subsecs. (a) to (d) relating to purposes. Limitations on authorizations of appropriations, description of amounts, inflation percentage, and reservation of certain amounts.

1997—Subsec. (a). Pub. L. 105–89, § 305(b)(3)(A), substituted "... community-based family support services, time-limited family reunification services, and adoption promotion and support services" for "... community-based family support services".

Subsec. (b)(6) to (8). Pub. L. 105–89, § 305(a)(1), added pars. (6) to (8).


EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT


"(a) IN GENERAL.—Subject to subsection (b), the amendments made by this Act (enacting sections 629f to 629i of this title and amending this section and sections 629a, 629c, 629d, 629e, 629i, and 677 of this title) shall take effect on the date of the enactment of this Act.

"(b) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.—In the case of a State plan under this subpart, the implementation date of such plan (as defined in section 629l of this title) shall begin not earlier than the date of the enactment of this Act.

For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, the first year of the session shall be deemed to be a separate regular session of the State legislature."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

EFFECTIVE DATE

Subpart effective with respect to calendar quarters beginning on or after Oct. 1, 1997, see section 13711(c) of Pub. L. 105–89, set out as an Effective Date of 1993 Amendment note under section 622 of this title.

§ 629a. Definitions

(a) In general

As used in this subpart:
(1) Family preservation services
The term “family preservation services” means services for children and families designed to help families (including adoptive and extended families) at risk or in crisis, including—
(A) service programs designed to help children—
(i) where safe and appropriate, return to families from which they have been removed; or
(ii) be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be safe and appropriate for a child, in some other planned, permanent living arrangement;
(B) preplacement preventive service programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain safely within their families;
(C) service programs designed to provide followup care to families to whom a child has been returned after a foster care placement;
(D) respite care of children to provide temporary relief for parents and other caregivers (including foster parents);
(E) services designed to improve parenting skills (by reinforcing parents’ confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition; and
(F) infant safe haven programs to provide a way for a parent to safely relinquish a newborn infant at a safe haven designated pursuant to a State law.

(2) Family support services
(A) In general
The term “family support services” means community-based services designed to carry out the purposes described in subparagraph (B).

(B) Purposes described
The purposes described in this subparagraph are the following:
(i) To promote the safety and well-being of children and families,
(ii) To increase the strength and stability of families (including adoptive, foster, and extended families).
(iii) To increase parents’ confidence and competence in their parenting abilities.
(iv) To afford children a safe, stable, and supportive family environment.
(v) To strengthen parental relationships and promote healthy marriages.
(vi) To enhance child development, including through mentoring (as defined in section 629i(b)(2) of this title).

(3) State agency
The term “State agency” means the State agency responsible for administering the program under subpart 1.

(4) State
The term “State” includes an Indian tribe or tribal organization, in addition to the meaning given such term for purposes of subpart 1.

(5) Indian tribe
The term “Indian tribe” has the meaning given the term in section 628(c) of this title.

(6) Tribal organization
The term “tribal organization” has the meaning given the term in section 628(c) of this title.

(7) Time-limited family reunification services
(A) In general
The term “time-limited family reunification services” means the services and activities described in subparagraph (B) that are provided to a child that is removed from the child’s home and placed in a foster family home or a child care institution and to the parents or primary caregiver of such a child, in order to facilitate the reunification of the child safely and appropriately within a timely fashion, but only during the 15-month period that begins on the date that the child, pursuant to section 675(5)(F) of this title, is considered to have entered foster care.

(B) Services and activities described
The services and activities described in this subparagraph are the following:
(i) Individual, group, and family counseling.
(ii) Inpatient, residential, or outpatient substance abuse treatment services.
(iii) Mental health services.
(iv) Assistance to address domestic violence.
(v) Services designed to provide temporary child care and therapeutic services for families, including crisis nurseries.
(vi) Peer-to-peer mentoring and support groups for parents and primary caregivers.
(vii) Services and activities designed to facilitate access to and visitation of children by parents and siblings.
(viii) Transportation to or from any of the services and activities described in this subparagraph.

(8) Adoption promotion and support services
The term “adoption promotion and support services” means services and activities designed to encourage more adoptions out of the foster care system, when adoptions promote the best interests of children, including such activities as pre- and post-adoption services and activities designed to expedite the adoption process and support adoptive families.

(9) Non-Federal funds
The term “non-Federal funds” means State funds, or at the option of a State, State and local funds.

(b) Other terms
For other definitions of other terms used in this subpart, see section 675 of this title.

PRIOR PROVISIONS

A prior section 431 of Pub. L. 1914, was classified to section 631 of this title prior to repeal by Pub. L. 100–485.

AMENDMENTS

2011—Subsec. (a)(2). Pub. L. 112–34, §102(c)(1), amended par. (2) generally. Prior to amendment, text read as follows: “The term ‘family support services’ means community-based services to promote the safety and well-being of children and families designed to increase the strength and stability of families (including adoptive, foster, and extended families), to increase parents’ confidence and competence in their parenting abilities, to afford children a safe, stable, and supportive family environment, to strengthen parental relationships and promote healthy marriages, and otherwise to enhance child development.”

Subsec. (a)(5), (6). Pub. L. 112–34, §102(d), added pars. (5) and (6) and struck out former pars. (5) and (6) which read as follows: “(5) TRIBAL ORGANIZATION.—The term ‘tribal organization’ means the recognized governing body of any Indian tribe.”

“(6) INDIAN TRIBE.—The term ‘Indian tribe’ means any Indian tribe (as defined in section 682(i)(5) of this title, as in effect before August 22, 1996) and any Alaska Native organization (as defined in section 682(i)(7)(A) of this title, as so in effect).”

Subsec. (a)(7)(B)(vii) to (viii). Pub. L. 112–34, §102(c)(2), added clss. (vi) and (vii) and redesignated former cl. (vi) as (viii).


EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–34 effective Oct. 1, 2011, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 107 of Pub. L. 112–34, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

§629b. State plans

(a) Plan requirements

A State plan meets the requirements of this subsection if the plan—

(1) provides that the State agency shall administer, or supervise the administration of, the State program under this subpart;

(2) (A) sets forth the goals intended to be accomplished under the plan by the end of the 5th fiscal year in which the plan is in operation in the State, and (ii) is updated periodically to set forth the goals intended to be accomplished under the plan by the end of each 5th fiscal year thereafter;

(3) describes the methods to be used in measuring progress toward accomplishment of the goals;

(4) contains assurances that the State—

(II) will develop (in consultation with the entities required to be consulted pursuant to subsection (b) of this section) and add to the plan a statement of the goals intended to be accomplished by the end of the 5th succeeding fiscal year;

(3) provides for coordination, to the extent feasible and appropriate, of the provision of services under the plan and the provision of services under other Federal programs with respect to the group of families intended to be served by this program for fiscal years 2002 through 2012; and

(4) contains assurances that the State—

(A) will provide an assessment of the extent to which the requirements of this program are being met;

(B) will make available the assessment to the public; and

(C) will ensure that the assessment and the data on which it is based are made available to the Secretary.

(b) Additional requirements


EFFECTIVE DATE OF 1999 AMENDMENT


EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 305(b)(2), (c)(2) of Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

Section 305(d)(2) of Pub. L. 105–89 provided that: “The amendment made by paragraph (1) [amending this section] takes effect as if included in the enactment of section 13711 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–33 [103–66]; 107 Stat. 649).”
services or benefits under other Federal or federally assisted programs serving the same populations;

(4) contains assurances that not more than 10 percent of expenditures under the plan for any fiscal year with respect to which the State is eligible for payment under section 629d of this title for the fiscal year shall be for administrative costs, and that the remaining expenditures shall be for programs of family preservation services, community-based family support services, time-limited family reunification services, and adoption promotion and support services, with significant portions of such expenditures for each such program;

(5) contains assurances that the State will—

(A) annually prepare, furnish to the Secretary, and make available to the public a description (including separate descriptions with respect to family preservation services, community-based family support services, time-limited family reunification services, and adoption promotion and support services) of—

(i) the service programs to be made available under the plan in the immediately succeeding fiscal year;
(ii) the populations which the programs will serve; and
(iii) the geographic areas in the State in which the services will be available; and

(B) perform the activities described in subparagraph (A)—

(i) in the case of the 1st fiscal year under the plan, at the time the State submits its initial plan; and
(ii) in the case of each succeeding fiscal year, by the end of the 3rd quarter of the immediately preceding fiscal year;

(6) provides for such methods of administration as the Secretary finds to be necessary for the proper and efficient operation of the plan;

(7)(A) contains assurances that Federal funds provided to the State under this subpart will not be used to supplant Federal or non-Federal funds for existing services and activities which promote the purposes of this subpart; and

(B) provides that the State will furnish reports to the Secretary, at such times, in such format, and containing such information as the Secretary may require, that demonstrate the State’s compliance with the prohibition contained in subparagraph (A);

(8)(A) provides that the State agency will furnish such reports, containing such information, and participate in such evaluations, as the Secretary may require; and

(B) provides that, not later than June 30 of each year, the State will submit to the Secretary—

(i) copies of form CFS–101 (including all parts and any successor forms) that report on planned child and family services expenditures by the agency for the immediately succeeding fiscal year; and

(ii) copies of form CFS–101 (including all parts and any successor forms) that provide, with respect to the programs authorized under this subpart and subpart 1 and, at State option, other programs included on such forms, for the most recent preceding fiscal year for which reporting of actual expenditures is complete—

(I) the numbers of families and of children served by the State agency;

(II) the population served by the State agency;

(III) the geographic areas served by the State agency; and

(IV) the actual expenditures of funds provided to the State agency;

(9) contains assurances that in administering and conducting service programs under the plan, the safety of the children to be served shall be of paramount concern; and

(10) describes how the State identifies which populations are at the greatest risk of maltreatment and how services are targeted to the populations.

(b) Approval of plans

(1) In general

The Secretary shall approve a plan that meets the requirements of subsection (a) of this section only if the plan was developed jointly by the Secretary and the State, after consultation by the State agency with appropriate public and nonprofit private agencies and community-based organizations with experience in administering programs of services for children and families (including family preservation, family support, time-limited family reunification, and adoption promotion and support services).

(2) Plans of Indian tribes or tribal consortia

(A) Exemption from inappropriate requirements

The Secretary may exempt a plan submitted by an Indian tribe or tribal consortium from the requirements of subsection (a)(4) of this section to the extent that the Secretary determines those requirements would be inappropriate to apply to the Indian tribe or tribal consortium, taking into account the resources, needs, and other circumstances of the Indian tribe or tribal consortium.

(B) Special rule

Notwithstanding subparagraph (A) of this paragraph, the Secretary may not approve a plan of an Indian tribe or tribal consortium under this subpart to which (but for this subparagraph) an allotment of less than $10,000 would be made under section 629c(a) of this title if allotments were made under section 629c(a) of this title to all Indian tribes and tribal consortia with plans approved under this subpart with the same or larger numbers of children.

(c) Annual submission of State reports to Congress

(1) In general

The Secretary shall compile the reports required under subsection (a)(8)(B) and, not later than September 30 of each year, submit such compilation to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.
(2) Information to be included

The compilation shall include the individual State reports and tables that synthesize State information into national totals for each element required to be included in the reports, including planned and actual spending by service category for the program authorized under this subpart and planned spending by service category for the program authorized under subpart 1.

(3) Public accessibility

Not later than September 30 of each year, the Secretary shall publish the compilation on the website of the Department of Health and Human Services in a location easily accessible by the public.


Prior Provisions

A prior section 432 of act Aug. 14, 1935, was classified to section 632 of this title prior to repeal by Pub. L. 100–71.

AMENDMENTS

2011—Subsec. (a)(8)(B), added par. (10).

Subsec. (c), Pub. L. 112–34, § 102(b), designated existing provisions as par. (1), inserted heading, and added paras. (2) and (3).

2006—Subsec. (a)(8), Pub. L. 109–288, § 3(e)(1), designated existing provisions as subpar. (A) and added subpar. (B).


Subsec. (b)(2)(A), Pub. L. 109–288, § 5(c), substituted “as a note under section 621 of this title” for “as a note under section 622 of this title”.


Subsec. (b)(1), Pub. L. 105–89, § 306(b)(1)(B), substituted “and family support services” for “and family support service”.


Effective Date of 2011 Amendment

Amendment by Pub. L. 112–34 effective Oct. 1, 2011, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 107 of Pub. L. 112–34, set out as a note under section 622 of this title.

Effective Date of 2006 Amendment

Pub. L. 109–288, § 3(e)(3), Sept. 28, 2006, 120 Stat. 1236, provided that: “The amendments made by this subsection [amending this section] take effect on the date of enactment of this Act [Sept. 28, 2006]. Each State with an approved plan under subpart 1 or 2 of part B of title IV of the Social Security Act [subpart 1 or 2 of this part] shall make its initial submission of the forms required under section 432(a)(8)(B) of the Social Security Act [subsec. (a)(8)(B) of this section] to the Secretary of Health and Human Services by June 30, 2007, and the Secretary of Health and Human Services shall submit the first compilation required under section 432(c) of the Social Security Act [subsec. (c) of this section] by September 30, 2007.”

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, except as otherwise provided, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

Effective Date of 1997 Amendment

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

§629c. Allotments to States

(a) Indian tribes or tribal consortia

From the amount reserved pursuant to section 629(f)(3) of this title for any fiscal year, the Secretary shall allot to each Indian tribe with a plan approved under this subpart an amount that bears the same ratio to such reserved amount as the number of children in the Indian tribe bears to the total number of children in all Indian tribes with State plans so approved, as determined by the Secretary on the basis of the most current and reliable information available to the Secretary. If a consortium of Indian tribes submits a plan approved under this subpart, the Secretary shall allot to the consortium an amount equal to the sum of the allotments determined for each Indian tribe that is part of the consortium.

(b) Territories

From the amount described in section 629(f)(3) of this title for any fiscal year that remains after applying section 629(f)(3) of this title for the fiscal year, the Secretary shall allot to each of the jurisdictions of Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, and American Samoa an amount determined in the same manner as the allotment to each of such jurisdictions is determined under section 623 of this title.

(c) Other States

(1) In general

From the amount described in section 629(f)(3) of this title for any fiscal year that remains

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(d) Reallotments

The amount of any allotment to a State under subsection (a), (b), or (c) of this section for any fiscal year that the State certifies to the Secretary such documentation as may be necessary to verify that the State has complied with section 629f(b)(4)(B)(ii) of this title during the fiscal year, an amount equal to such remaining amount multiplied by the supplemental nutrition assistance program benefits percentage of the State under the preceding provisions of this section, that has provided to the Secretary such documentation as may be necessary to verify that the State has complied with section 629f(b)(4)(B)(ii) of this title during the fiscal year, an amount equal to such remaining amount multiplied by the supplemental nutrition assistance program benefits percentage of the State (as defined in subsection (c)(2) of this section) for the fiscal year, except that in applying subsection (c)(2)(A) of this section, “subsection (e)(2)” shall be substituted for “such paragraph (1)”.

(2) Supplemental nutrition assistance program benefits percentage defined

(A) In general

As used in paragraph (1) of this subsection, the term “supplemental nutrition assistance program benefits percentage” means, with respect to a State and a fiscal year, the average monthly number of children receiving supplemental nutrition assistance program benefits in the States for months in the 3 fiscal years referred to in subparagraph (B) of this paragraph, as determined from sample surveys made under section 2025(c) of title 7, expressed as a percentage of the average monthly number of children receiving supplemental nutrition assistance program benefits in the States described in such paragraph (1) for months in such 3 fiscal years, as so determined.

(B) Fiscal years used in calculation

For purposes of the calculation pursuant to subparagraph (A), the Secretary shall use data for the 3 most recent fiscal years, preceding the fiscal year for which the State’s allotment is calculated under this subsection, for which such data are available to the Secretary.

(d) Reallotments

The amount of any allotment to a State under subsection (a), (b), or (c) of this section for any fiscal year that the State certifies to the Secretary such documentation as may be necessary to verify that the State has complied with section 629f(b)(4)(B)(ii) of this title during the fiscal year, an amount equal to such remaining amount multiplied by the supplemental nutrition assistance program benefits percentage of the State described in such paragraph (1) for months in such 3 fiscal years, as so determined.

(e) Allotment of funds reserved to support monthly caseworker visits

(1) Territories

From the amount reserved pursuant to section 629f(b)(4)(A) of this title for any fiscal year, the Secretary shall allot to each jurisdiction specified in subsection (b) of this section, that has provided to the Secretary such documentation as may be necessary to verify that the jurisdiction has complied with section 629f(b)(4)(B)(ii) of this title during the fiscal year, an amount determined in the same manner as the allotment to each of such jurisdictions is determined under section 623 of this title (without regard to the initial allotment of $70,000 to each State).

(2) Other States

From the amount reserved pursuant to section 629f(b)(4)(A) of this title for any fiscal year that remains after applying paragraph (1) of this subsection for the fiscal year, the Secretary shall allot to each State (other than an Indian tribe) not specified in subsection (b) of this section, that has provided to the Secretary such documentation as may be necessary to verify that the State has complied with section 629f(b)(4)(B)(ii) of this title during the fiscal year, an amount equal to such remaining amount multiplied by the supplemental nutrition assistance program benefits percentage of the State (as defined in subsection (c)(2) of this section) for the fiscal year.
§ 629d. Payments to States

(a) Entitlement

Each State that has a plan approved under section 629b of this title shall, subject to subsection (d), be entitled to payment of the sum of—

(1) the lesser of—

(A) 75 percent of the total expenditures by the State for activities under the plan during the fiscal year or the immediately succeeding fiscal year; or

(B) the allotment of the State under subsection (a), (b), or (c) of section 629c of this title, whichever is applicable, for the fiscal year; and

(2) the lesser of—

(A) 75 percent of the total expenditures by the State in accordance with section 629f(b)(1)(B) of this title during the fiscal year or the immediately succeeding fiscal year; or

(B) the allotment of the State under section 629c(e) of this title for the fiscal year.

(b) Prohibitions

(1) No use of other Federal funds for State match

Each State receiving an amount paid under subsection (a) of this section may not expend any Federal funds to meet the costs of services under the State plan under section 629b of this title not covered by the amount so paid.

(2) Availability of funds

A State may not expend any amount paid under subsection (a) of this section for any fiscal year after the end of the immediately succeeding fiscal year.

(c) Direct payments to tribal organizations of Indian tribes or tribal consortia

The Secretary shall pay any amount to which an Indian tribe or tribal consortium is entitled under this section directly to the tribal organization of the Indian tribe or in the case of a payment to a tribal consortium, such tribal organizations of, or entity established by, the Indian tribes that are part of the consortium as the consortium shall designate.

(d) Limitation on reimbursement for administrative costs

The Secretary shall not make a payment to a State under this section with respect to expenditures for administrative costs during a fiscal year, to the extent that the total amount of the expenditures exceeds 10 percent of the total expenditures of the State during the fiscal year under the State plan approved under section 629b of this title.
§ 629e. Evaluations; research; technical assistance

(a) Evaluations

(1) In general

The Secretary shall evaluate and report to the Congress biennially on the effectiveness of the programs carried out pursuant to this subpart in accomplishing the purposes of this subpart, and may evaluate any other Federal, State, or local program, regardless of whether federally assisted, that is designed to achieve the same purposes as the program under this subpart, in accordance with criteria established in accordance with paragraph (2).

(2) Criteria to be used

In developing the criteria to be used in evaluations under paragraph (1), the Secretary shall consult with appropriate parties, such as—

(A) State agencies administering programs under this part and part E of this subchapter;

(B) persons administering child and family services programs (including family preservation and family support programs) for private, nonprofit organizations with an interest in child welfare; and

(C) other persons with recognized expertise in the evaluation of child and family services programs (including family preservation and family support programs) or other related programs.

(3) Timing of report

Beginning in 2003, the Secretary shall submit the biennial report required by this sub-section not later than the end of the fiscal year.

(b) Coordination of evaluations

The Secretary shall develop procedures to coordinate evaluations under this section, to the extent feasible, with evaluations by the States of the effectiveness of programs under this subpart.

(c) Evaluation, research, and technical assistance with respect to targeted program resources

Of the amount reserved under section 629f(b)(1) of this title for a fiscal year, the Secretary shall use not less than—

(1) $1,000,000 for evaluations, research, and providing technical assistance with respect to providing monthly caseworker visits with children who are in foster care under the responsibility of the State, in accordance with section 629f(b)(4)(B)(i) of this title; and

(2) $1,000,000 for evaluations, research, and providing technical assistance with respect to grants under section 629g(f) of this title.

(d) Technical assistance

To the extent funds are available therefor, the Secretary shall provide technical assistance that helps States and Indian tribes or tribal consortia to—

(1) develop research-based protocols for identifying families at risk of abuse and neglect of use in the field;

(2) develop treatment models that address the needs of families at risk, particularly families with substance abuse issues;

(3) implement programs with well-articulated theories of how the intervention will result in desired changes among families at risk;

(4) establish mechanisms to ensure that service provision matches the treatment model; and

(5) establish mechanisms to ensure that postadoption services meet the needs of the individual families and develop models to reduce the disruption rates of adoption.

REFERENCES IN TEXT


PRIOR PROvisions

A prior section 435 of act Aug. 14, 1935, was classified to section 635 of this title prior to repeal by Pub. L. 100–485.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–288, § 4(c), amended heading and text of subsec. (c) generally. Prior to amendment, subsec. (c) related to topics for research and evaluation.


§ 629f. Authorization of appropriations; reservation of certain amounts

(a) Authorization

In addition to any amount otherwise made available to carry out this subpart, there are authorized to be appropriated to carry out this subpart $345,000,000 for each of fiscal years 2012 through 2016.

(b) Reservation of certain amounts

From the amount specified in subsection (a) of this section for a fiscal year, the Secretary shall reserve amounts as follows:

(1) Evaluation, research, training, and technical assistance

The Secretary shall reserve $6,000,000 for expenditure by the Secretary—

(A) for research, training, and technical assistance costs related to the program under this subpart; and

(B) for evaluation of State programs based on the plans approved under section 629b of this title and funded under this subpart, and any other Federal, State, or local program, regardless of whether federally assisted, that is designed to achieve the same purposes as the State programs.

(2) State court improvements

The Secretary shall reserve $30,000,000 for grants under section 629h of this title.

(3) Indian tribes or tribal consortia

After applying paragraphs (4) and (5) (but before applying paragraphs (1) or (2)), the Secretary shall reserve 3 percent for allotment to Indian tribes or tribal consortia in accordance with section 629c(a) of this title.

(4) Support for monthly caseworker visits

(A) Reservation

The Secretary shall reserve for allotment in accordance with section 629c(e) of this title $20,000,000,000 for each of fiscal years 2012 through 2016.

(B) Use of funds

(i) In general

A State to which an amount is paid from amounts reserved under subparagraph (A) shall use the amount to improve the quality of monthly caseworker visits with children who are in foster care under the responsibility of the State, with an emphasis on improving caseworker decision making on the safety, permanency, and well-being of foster children and on activities designed to increase retention, recruitment, and training of caseworkers.

(ii) Nonsupplantation

A State to which an amount is paid from amounts reserved pursuant to subparagraph (A) shall not use the amount to supplant any Federal funds paid to the State under part E that could be used as described in clause (i).

(5) Regional partnership grants

The Secretary shall reserve for awarding grants under section 629g(f) of this title $20,000,000,000 for each of fiscal years 2012 through 2016.


Prior Provisions

A prior section 436 of act Aug. 14, 1935, was classified to section 636 of this title prior to repeal by Pub. L. 100–485.

Amendments


Subsec. (b)(4)(A). Pub. L. 112–34, § 103(a)(1), substituted “629c(e) of this title $20,000,000 for each of fiscal years 2012 through 2016.” for “629c(e) of this title—

(i) $5,000,000 for fiscal year 2008;

(ii) $10,000,000 for fiscal year 2009; and

(iii) $20,000,000 for each of fiscal years 2010 and 2011.”

Subsec. (b)(4)(B)(i). Pub. L. 112–34, § 103(b), substituted “improve the quality of” for “support” and “an emphasis on improving caseworker decision making on the safety, permanency, and well-being of foster children and on activities designed to increase retention, recruitment, and training of caseworkers.” for “a primary emphasis on activities designed to improve caseworker retention, recruitment, training, and ability to access the benefits of technology.”

Subsec. (b)(5). Pub. L. 112–34, § 103(a)(2), substituted “629g(f) of this title $20,000,000 for each of fiscal years 2012 through 2016.” for “629g(f) of this title—

(A) $40,000,000 for fiscal year 2007;

(B) $35,000,000 for fiscal year 2008;

(C) $30,000,000 for fiscal year 2009; and

(D) $20,000,000 for each of fiscal years 2010 and 2011.”

2010—Subsec. (a). Pub. L. 111–242, § 133(1)(A)(ii), which directed insertion of “, and $365,000,000 for fiscal year 2011” before the period, was executed by making the insertion at the end of subsec. (a) to reflect the probable intent of Congress because there was no period.


Subsec. (b)(2). Pub. L. 111–242, § 133(1)(B), substituted “$30,000,000” for “$10,000,000.”
2006—Subsec. (a). Pub. L. 109–171, §3(a), substituted “each of fiscal years 2007 through 2011” for “fiscal year 2006." Notwithstanding the preceding sentence, the total amount authorized to be so appropriated for fiscal year 2006 under this subsection and under this section (as in effect before February 8, 2006) is $345,000,000.”

Pub. L. 109–171 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out the provisions of this subpart $305,000,000 for each of fiscal years 2002 through 2006.”


Pub. L. 109–288, §8(a)(1), (3), substituted “After applying paragraphs (1) or (2), the” for “The” and “3 percent” for “1 percent”.


 EFFECTIVE DATE OF 2011 AMENDMENT
 Amendment by Pub. L. 112–34 effective Oct. 1, 2011, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 107 of Pub. L. 112–34, set out as a note under section 622 of this title.

 EFFECTIVE DATE OF 2010 AMENDMENT

 EFFECTIVE DATE OF 2006 AMENDMENT
 Pub. L. 109–288, §8(a), Sept. 28, 2006, 120 Stat. 2634, provided that the amendment made by section 8(a) is effective Oct. 1, 2006.

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, except as otherwise provided, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

§ 629g. Discretionary and targeted grants

(a) Limitations on authorization of appropriations

In addition to any amount appropriated pursuant to section 629f of this title, there are authorized to be appropriated to carry out this section $200,000,000 for each of fiscal years 2012 through 2016.

(b) Reservation of certain amounts

From the amount (if any) appropriated pursuant to subsection (a) of this section for any fiscal year, the Secretary shall reserve the amount equal to the lesser of—

(1) 75 percent of the total expenditures by the State for activities under the plan during the fiscal year or the immediately succeeding fiscal year for each of such fiscal years 2012 through 2016;

(2) the allotment to Indian tribes or tribal consortia in accordance with subsection (b)(1) of this title.

The rules of subsections (b) and (c) of section 629d of this title shall apply in like manner to such remaining amount multiplied by the supplemental nutrition assistance program benefits percentage (as defined in section 629(c)(2) of this title) of the State for the fiscal year.

(c) Allotments

(1) Indian tribes or tribal consortia

From the amount (if any) reserved pursuant to subsection (b) of this section for any fiscal year, the Secretary shall allot to each Indian tribe with a plan approved under this subpart an amount equal to the sum of the allotments determined for each Indian tribe that is part of the consortium.

(2) Territories

From the amount (if any) appropriated pursuant to subsection (a) of this section for any fiscal year that remains after applying subsection (b) of this section for the fiscal year, the Secretary shall allot to each of the jurisdictions of Puerto Rico, Guan, the Virgin Islands, the Northern Mariana Islands, and American Samoa an amount determined in the same manner as the allotment to each of such jurisdictions is determined under section 623 of this title.

(3) Other States

From the amount (if any) appropriated pursuant to subsection (a) of this section for any fiscal year that remains after applying subsection (b) of this section and paragraph (2) of this subsection for the fiscal year, the Secretary shall allot to each State (other than an Indian tribe) which has a plan approved under this subpart an amount equal to such remaining amount multiplied by the supplemental nutrition assistance program benefits percentage (as defined in section 629(c)(2) of this title) of the State for the fiscal year.

(d) Grants

The Secretary may make a grant to a State which has a plan approved under this subpart in an amount equal to the lesser of—

(1) 75 percent of the total expenditures by the State for activities under the plan during the fiscal year or the immediately succeeding fiscal year; or

(2) the allotment of the State under subsection (c) of this section for the fiscal year.

(e) Applicability of certain rules

The rules of subsections (b) and (c) of section 629d of this title shall apply in like manner to

1 So in original. Probably should be “subsection”.

§ 629g. Discretionary and targeted grants

(a) Limitations on authorization of appropriations

In addition to any amount appropriated pursuant to section 629f of this title, there are authorized to be appropriated to carry out this section $200,000,000 for each of fiscal years 2012 through 2016.

(b) Reservation of certain amounts

From the amount (if any) appropriated pursuant to subsection (a) of this section for a fiscal year, the Secretary shall reserve the amount equal to the lesser of—

(1) 75 percent of the total expenditures by the State for activities under the plan during the fiscal year or the immediately succeeding fiscal year; or

(2) the allotment of the State under subsection (c) of this section for the fiscal year.

(e) Applicability of certain rules

The rules of subsections (b) and (c) of section 629d of this title shall apply in like manner to
the amounts made available pursuant to subsection (a).

(f) Targeted grants to increase the well-being of, and to improve the permanency outcomes for, children affected by substance abuse

(1) Purpose

The purpose of this subsection is to authorize the Secretary to make competitive grants to regional partnerships to provide, through interagency collaboration and integration of programs and services, services and activities that are designed to increase the well-being of, improve permanency outcomes for, and enhance the safety of children who are in an out-of-home placement or are at risk of being placed in an out-of-home placement as a result of a parent’s or caretaker’s substance abuse.

(2) Regional partnership defined

(A) In general

In this subsection, the term “regional partnership” means a collaborative agreement (which may be established on an interstate or intrastate basis) entered into by at least 2 of the following:

(i) The State child welfare agency that is responsible for the administration of the State plan under this part and part E.

(ii) The State agency responsible for administering the substance abuse prevention and treatment block grant provided under subpart II of part B of title XIX of the Public Health Service Act [42 U.S.C. 300x–21 et seq.].

(iii) An Indian tribe or tribal consortium.

(iv) Nonprofit child welfare service providers.

(v) For-profit child welfare service providers.

(vi) Community health service providers.

(vii) Community mental health providers.

(viii) Local law enforcement agencies.

(ix) Judges and court personnel.

(x) Juvenile justice officials.

(xi) School personnel.

(xii) Tribal child welfare agencies (or a consortium of such agencies).

(xiii) Any other providers, agencies, personnel, officials, or entities that are related to the provision of child and family services under this subpart.

(B) Requirements

(i) State child welfare agency partner

Subject to clause (ii)(I), a regional partnership entered into for purposes of this subsection shall include the State child welfare agency that is responsible for the administration of the State plan under this part and part E as 1 of the partners.

(ii) Regional partnerships entered into by Indian tribes or tribal consortia

If an Indian tribe or tribal consortium enters into a regional partnership for purposes of this subsection, the Indian tribe or tribal consortium—

(I) may (but is not required to) include such State child welfare agency as a partner in the collaborative agreement; and

(II) may not enter into a collaborative agreement only with tribal child welfare agencies (or a consortium of such agencies).

(iii) No State agency only partnerships

If a State agency described in clause (i) or (ii) of subparagraph (A) enters into a regional partnership for purposes of this subsection, the State agency may not enter into a collaborative agreement only with the other State agency described in such clause (i) or (ii).

(3) Authority to award grants

(A) In general

In addition to amounts authorized to be appropriated to carry out this section, the Secretary shall award grants under this subsection, from the amounts reserved for each of fiscal years 2012 through 2016 under section 629f(b)(5) of this title, to regional partnerships that satisfy the requirements of this subsection, in amounts that are not less than $500,000 and not more than $1,000,000 per grant per fiscal year.

(B) Required minimum period of approval

(i) In general

A grant shall be awarded under this subsection for a period of not less than 2, and not more than 5, fiscal years, subject to clause (ii).

(ii) Extension of grant

On application of the grantee, the Secretary may extend for not more than 2 fiscal years the period for which a grant is awarded under this subsection.

(C) Multiple grants allowed

This subsection shall not be interpreted to prevent a grantee from applying for, or being awarded, separate grants under this subsection.

(4) Application requirements

To be eligible for a grant under this subsection, a regional partnership shall submit to the Secretary a written application containing the following:

(A) Recent evidence demonstrating that substance abuse has had a substantial impact on the number of out-of-home placements for children, or the number of children who are at risk of being placed in an out-of-home placement, in the partnership region.

(B) A description of the goals and outcomes to be achieved during the funding period for the grant that will—

(i) enhance the well-being of children receiving services or taking part in activities conducted with funds provided under the grant;

(ii) lead to safety and permanence for such children; and

(iii) decrease the number of out-of-home placements for children, or the number of children who are at risk of being placed in
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an out-of-home placement, in the partnership region.

(C) A description of the joint activities to be funded in whole or in part with the funds provided under the grant, including the sequencing of the activities proposed to be conducted under the funding period for the grant.

(D) A description of the strategies for integrating programs and services determined to be appropriate for the child and where appropriate, the child’s family.

(E) A description of the strategies for—
   (i) collaborating with the State child welfare agency described in paragraph (2)(A)(i) (unless that agency is the lead applicant for the regional partnership); and
   (ii) consulting, as appropriate, with—
      (I) the State agency described in paragraph (2)(A)(ii); and
      (II) the State law enforcement and judicial agencies.

To the extent the Secretary determines that the requirement of this subparagraph would be inappropriate to apply to a regional partnership that includes an Indian tribe, tribal consortium, or a tribal child welfare agency or a consortium of such agencies, the Secretary may exempt the regional partnership from the requirement.

(F) Such other information as the Secretary may require.

(5) Use of funds

Funds made available under a grant made under this subsection shall only be used for services or activities that are consistent with the purpose of this subsection and may include the following:

(A) Family-based comprehensive long-term substance abuse treatment services.

(B) Early intervention and preventative services.

(C) Children and family counseling.

(D) Mental health services.

(E) Parenting skills training.

(F) Replication of successful models for providing family-based comprehensive long-term substance abuse treatment services.

(6) Matching requirement

(A) Federal share

A grant awarded under this subsection shall be available to pay a percentage share of the costs of services provided or activities conducted under such grant, not to exceed—
   (i) 85 percent for the first and second fiscal years for which the grant is awarded to a recipient;
   (ii) 80 percent for the third and fourth such fiscal years;
   (iii) 75 percent for the fifth such fiscal year;
   (iv) 70 percent for the sixth such fiscal year; and
   (v) 65 percent for the seventh such fiscal year.

(B) Non-Federal share

The non-Federal share of the cost of services provided or activities conducted under a grant awarded under this subsection may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed from non-Federal sources.

(7) Considerations in awarding grants

In awarding grants under this subsection, the Secretary shall take into consideration the extent to which applicant regional partnerships—

(A) demonstrate that substance abuse by parents or caretakers has had a substantial impact on the number of out-of-home placements for children, or the number of children who are at risk of being placed in an out-of-home placement, in the partnership region;

(B) have limited resources for addressing the needs of children affected by such abuse;

(C) have a lack of capacity for, or access to, comprehensive family treatment services; and

(D) demonstrate a plan for sustaining the services provided by or activities funded under the grant after the conclusion of the grant period.

(8) Performance indicators

(A) In general

Not later than 9 months after September 28, 2006, the Secretary shall establish indicators that will be used to assess periodically the performance of the grant recipients under this subsection in using funds made available under such grants to achieve the purpose of this subsection.

(B) Consultation required

In establishing the performance indicators required by subparagraph (A), the Secretary shall consult with the following:

(i) The Assistant Secretary for the Administration for Children and Families.

(ii) The Administrator of the Substance Abuse and Mental Health Services Administration.

(iii) Representatives of States in which a State agency described in clause (i) or (ii) of paragraph (2)(A) is a member of a regional partnership that is a grant recipient under this subsection.

(iv) Representatives of Indian tribes, tribal consortia, or tribal child welfare agencies that are members of a regional partnership that is a grant recipient under this subsection.

(9) Reports

(A) Grantee reports

(i) Annual report

Not later than September 30 of the first fiscal year in which a recipient of a grant under this subsection is paid funds under the grant, and annually thereafter until September 30 of the last fiscal year in which the recipient is paid funds under the grant, the recipient shall submit to the Secretary a report on the services provided or activities carried out during that fiscal year.
year with such funds. The report shall contain such information as the Secretary determines is necessary to provide an accurate description of the services provided or activities conducted with such funds.

(ii) Incorporation of information related to performance indicators

Each recipient of a grant under this subsection shall incorporate into the first annual report required by clause (i) that is submitted after the establishment of performance indicators under paragraph (b), information required in relation to such indicators.

(B) Reports to Congress

On the basis of the reports submitted under subparagraph (A), the Secretary annually shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on—

(i) the services provided and activities conducted with funds provided under grants awarded under this subsection;

(ii) the performance indicators established under paragraph (b); and

(iii) the progress that has been made in addressing the needs of families with substance abuse problems who come to the attention of the child welfare system and in achieving the goals of child safety, permanence, and family stability.

(10) Limitation on use of funds for administrative expenses of the Secretary

Not more than 5 percent of the amounts appropriated or reserved for awarding grants under this subsection for each of fiscal years 2012 through 2016 may be used by the Secretary for salaries and Department of Health and Human Services administrative expenses in administering this subsection.


REFERENCES IN TEXT


CODIFICATION


PRIOR PROVISIONS

A prior section 437 of Act Aug. 14, 1935, was classified to section 637 of this title prior to repeal by Pub. L. 100–485.
additional requirements, see section 107 of Pub. L. 112–34, set out as a note under section 622 of this title.

**Effective Date of 2008 Amendment**


**Section effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as an Effective Date of 2002 Amendment note under section 629 of this title.**

**§ 629h. Entitlement funding for State courts to assess and improve handling of proceedings relating to foster care and adoption**

**(a) In general**

The Secretary shall make grants, in accordance with this section, to the highest State courts in States participating in the program under part E of this subchapter, for the purpose of enabling such courts—

1. to conduct assessments, in accordance with such requirements as the Secretary shall publish, of the role, responsibilities, and effectiveness of State courts in carrying out State laws requiring proceedings (conducted by or under the supervision of the courts)—
   (A) that implement this part and part E of this subchapter;
   (B) that determine the advisability or appropriateness of foster care placement;
   (C) that determine whether to terminate parental rights;
   (D) that determine whether to approve the adoption or other permanent placement of a child;
   (E) that determine the best strategy to use to expedite the interstate placement of children, including—
      (i) requiring courts in different States to cooperate in the sharing of information;
      (ii) authorizing courts to obtain information and testimony from agencies and parties in other States without requiring interstate travel by the agencies and parties; and
      (iii) permitting the participation of parents, children, other necessary parties, and attorneys in cases involving interstate placement without requiring their interstate travel; and

2. to implement improvements the highest state courts deem necessary as a result of the assessments, including—
   (A) to provide for the safety, well-being, and permanence of children in foster care, as set forth in the Adoption and Safe Families Act of 1997 (Public Law 105–89), including the requirements in the Act related to concurrent planning;
   (B) to implement a corrective action plan, as necessary, resulting from reviews of child and family service programs under section 1320a–2a of this title; and
   (C) to increase and improve engagement of the entire family in court processes relating to child welfare, family preservation, family reunification, and adoption;

3. to ensure that the safety, permanence, and well-being needs of children are met in a timely and complete manner; and

4. (A) to provide for the training of judges, attorneys and other legal personnel in child welfare cases; and

  (B) to increase and improve engagement of the entire family in court processes relating to child welfare, family preservation, family reunification, and adoption.

**(b) Applications**

1. In general

In order to be eligible to receive a grant under this section, a highest State court shall have in effect a rule requiring State courts to ensure that foster parents, pre-adoptive parents, and relative caregivers of a child in foster care under the responsibility of the State are notified of any proceeding to be held with respect to the child, and shall submit to the Secretary an application at such time, in such form, and including such information and assurances as the Secretary may require, including—

(A) in the case of a grant for the purpose described in subsection (a)(3), a description of how courts and child welfare agencies on the local and State levels will collaborate and jointly plan for the collection and sharing of all relevant data and information to demonstrate how improved case tracking and analysis of child abuse and neglect cases will produce safe and timely permanency decisions;

(B) in the case of a grant for the purpose described in subsection (a)(4), a demonstration that a portion of the grant will be used for cross-training initiatives that are jointly planned and executed with the State agency or any other agency under contract with the State to administer the State program under the State plan under subpart 1, the State plan approved under section 629d of this title, or the State plan approved under part E; and

(C) in the case of a grant for any purpose described in subsection (a), a demonstration of meaningful and ongoing collaboration among the courts in the State, the State agency or any other agency under contract

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1 So in original. Probably should be followed by "and".
2 So in original. The word "and" probably should not appear.
3 So in original. Probably should be capitalized.
with the State who is responsible for administering the State program under this part or part E, and, where applicable, Indian tribes.

(2) Single grant application

Pursuant to the requirements under paragraph (1) of this subsection, a highest State court desiring a grant under this section shall submit a single application to the Secretary that specifies whether the application is for a

(A) the purposes described in paragraphs (1) and (2) of subsection (a);

(B) the purpose described in subsection (a)(3);

(C) the purpose described in subsection (a)(4); or

(D) the purposes referred to in 2 or more (specifically identified) of subparagraphs (A), (B), and (C) of this paragraph.

(c) Amount of grant

(1) In general

With respect to each of subparagraphs (A), (B), and (C) of subsection (b)(2) that refers to 1 or more grant purposes for which an application of a highest State court is approved under this section, the court shall be entitled to payment, for each of fiscal years 2012 through 2016, from the amount allocated under paragraph (1) of this subsection with respect to the purposes referred to in 2 or more (specifically identified) of subparagraphs (A), (B), and (C) of this paragraph.

(2) Amount described

The amount described in this paragraph for any fiscal year with respect to the purpose or purposes referred to in a subparagraph of subsection (a);

(A) Mandatory funds

Of the amounts reserved under section 629h(b)(2) of this title for any fiscal year, the Secretary shall allocate—

(i) $9,000,000 for grants for the purposes described in paragraphs (1) and (2) of subsection (a);

(ii) $10,000,000 for grants for the purpose described in subsection (a)(3);

(iii) $10,000,000 for grants for the purpose described in subsection (a)(4); and

(iv) $1,000,000 for grants to be awarded on a competitive basis among the highest courts of Indian tribes or tribal consortia that—

(I) are operating a program under part E, in accordance with section 670e of this title;

(II) are seeking to operate a program under part E and have received an imple-
Subsec. (a)(4). Pub. L. 112–34, § 104(a)(2), designated existing provisions as subpar. (A) and added subpar. (B).


Subsec. (b)(2). Pub. L. 112–34, § 104(b), amended par. (2) generally. Prior to amendment, text read as follows: ‘‘(A) A grant for the purposes described in paragraphs (1) and (2) of subsection (a).’’

Subsec. (c). Pub. L. 112–34, § 104(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) related to allotments.


Subsec. (e). Pub. L. 112–34, § 104(e), inserted ‘‘paragraph (2) of this subsection’’, in subpar. (A), substituted ‘‘this paragraph’’ for ‘‘paragraph (1) of this subsection’’, and inserted ‘‘for such a grant’’ after ‘‘subsection (b)’’, and added par. (2).


Subsec. (e)(3). Pub. L. 112–34, § 104(h), substituted ‘‘2012’’ for ‘‘2006’’.

§ 629i. Grants for programs for mentoring children of prisoners

(a) Findings and purposes

(1) Findings

(A) In the period between 1991 and 1999, the number of children with a parent incarcerated in a Federal or State correctional facility increased by more than 100 percent, from approximately 900,000 to approximately 2,000,000. In 1999, 2.1 percent of all children in the United States had a parent in Federal or State prison.

(B) Prior to incarceration, 64 percent of female prisoners and 44 percent of male prisoners in State facilities lived with their children.

(C) Nearly 90 percent of the children of incarcerated fathers live with their mothers, and 79 percent of the children of incarcerated mothers live with a grandparent or other relative.

(D) Parental arrest and confinement lead to stress, trauma, stigmatization, and separation problems for children. These problems are coupled with existing problems that include poverty, violence, parental substance abuse, high-crime environments, intrafamilial abuse, child abuse and neglect, multiple care givers, and/or prior separations. As a result, these children often exhibit a broad variety of behavioral, emotional, health, and educational problems that are often compounded by the pain of separation.

(E) Empirical research demonstrates that mentoring is a potent force for improving children’s behavior across all risk behaviors affecting health. Quality, one-on-one relationships that provide young people with caring role models for future success have profound, life-changing potential. Done right, mentoring markedly advances youths’ life prospects. A widely cited 1995 study by Public/Private Ventures measured the impact of one Big Brothers Big Sisters program and found significant effects in the lives of youth—cutting first-time drug use by almost half and first-time alcohol use by about a third, reducing school absenteeism by half, cutting assaultive behavior by a third, improving parental and peer relationships, giving youth greater confidence in their school work, and improving academic performance.

(2) Purposes

The purposes of this section are to authorize the Secretary—

(A) to make competitive grants to applicants in areas with substantial numbers of children of incarcerated parents, to support the establishment or expansion and operation of programs using a network of public and private community entities to provide mentoring services for children of prisoners; and

(B) to enter into on a competitive basis a cooperative agreement to conduct a service delivery demonstration project in accordance with the requirements of subsection (g).

(b) Definitions

In this section:

(1) Children of prisoners

The term “children of prisoners” means children one or both of whose parents are incarcerated in a Federal, State, or local correctional facility. The term is deemed to include children who are in an ongoing mentoring relationship in a program under this section at the time of their parents’ release from prison, for purposes of continued participation in the program.

(2) Mentoring

The term “mentoring” means a structured, managed program in which children are appropriately matched with screened and trained adult volunteers for one-on-one relationships, involving meetings and activities on a regular basis, intended to meet, in part, the child’s need for involvement with a caring and supportive adult who provides a positive role model.

(3) Mentoring services

The term “mentoring services” means those services and activities that support a structured, managed program of mentoring, including the management by trained personnel of outreach to, and screening of, eligible children; outreach to, education and training of, and liaison with sponsoring local organizations; screening and training of adult volunteers; matching of children with suitable adult volunteer mentors; support and oversight of the mentoring relationship; and establishment of goals and evaluation of outcomes for mentored children.

(c) Program authorized

From the amounts appropriated under subsection (i) of this section for a fiscal year that remain after applying subsection (i)(2) of this section, the Secretary shall make grants under this section for each of fiscal years 2007 through 2011 to State or local governments, tribal consortia, faith-based organizations, and community-based organizations in areas that have significant numbers of children of prisoners and that submit applications meeting the requirements of this section, in amounts that do not exceed $5,000,000 per grant.

(d) Application requirements

In order to be eligible for a grant under this section, the chief executive officer of the applicant must submit to the Secretary an application containing the following:

(1) Program design

A description of the proposed program, including—

(A) a list of local public and private organizations and entities that will participate in the mentoring network;

(B) the name, description, and qualifications of the entity that will coordinate and oversee the activities of the mentoring network;

(C) the number of mentor-child matches proposed to be established and maintained annually under the program;
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(2) Community consultation; coordination with other programs
A demonstration that, in developing and implementing the program, the applicant will, to the extent feasible and appropriate—
(A) consult with public and private community entities, including religious organizations, and including, as appropriate, Indian tribal organizations and urban Indian organizations, and with family members of potential clients;
(B) coordinate the programs and activities under the program with other Federal, State, and local programs serving children and youth; and
(C) consult with appropriate Federal, State, and local corrections, workforce development, and substance abuse and mental health agencies.

(3) Equal access for local service providers
An assurance that public and private entities and community organizations, including religious organizations and Indian organizations, will be eligible to participate on an equal basis.

(4) Records, reports, and audits
An agreement that the applicant will maintain such records, make such reports, and cooperate with such reviews or audits as the Secretary may find necessary for purposes of oversight of project activities and expenditures.

(5) Evaluation
An agreement that the applicant will cooperate fully with the Secretary’s ongoing and final evaluation of the program under the plan, by means including providing the Secretary access to the program and program-related records and documents, staff, and grantees receiving funding under the plan.

(e) Federal share
(1) In general
A grant for a program under this section shall be available to pay a percentage share of the costs of the program up to—
(A) 75 percent for the first and second fiscal years for which the grant is awarded; and
(B) 50 percent for the third and each succeeding such fiscal years.

(2) Non-Federal share
The non-Federal share of the cost of projects under this section may be in cash or in kind.

(f) Considerations in awarding grants
In awarding grants under this section, the Secretary shall take into consideration—
(1) the qualifications and capacity of applicants and networks of organizations to effectively carry out a mentoring program under this section;
(2) the comparative severity of need for mentoring services in local areas, taking into consideration data on the numbers of children (and in particular of low-income children) with an incarcerated parents; and
(3) evidence of consultation with existing youth and family service programs, as appropriate; and
(4) any other factors the Secretary may deem significant with respect to the need for or the potential success of carrying out a mentoring program under this section.

(g) Service delivery demonstration project
(1) Purpose; authority to enter into cooperative agreement
The Secretary shall enter into a cooperative agreement with an eligible entity that meets the requirements of paragraph (2) for the purpose of requiring the entity to conduct a demonstration project consistent with this subsection under which the entity shall—
(A) identify children of prisoners in need of mentoring services who have not been matched with a mentor by an applicant awarded a grant under this section, with a priority for identifying children who—
(i) reside in an area not served by a recipient of a grant under this section;
(ii) reside in an area that has a substantial number of children of prisoners;
(iii) reside in a rural area; or
(iv) are Indians;
(B) provide the families of the children so identified with—
(i) a voucher for mentoring services that meets the requirements of paragraph (5); and
(ii) a list of the providers of mentoring services in the area in which the family resides that satisfy the requirements of paragraph (6); and
(C) monitor and oversee the delivery of mentoring services by providers that accept the vouchers.

(2) Eligible entity
(A) In general
Subject to subparagraph (B), an eligible entity under this subsection is an organization that the Secretary determines, on a competitive basis—
(i) has substantial experience—
(I) in working with organizations that provide mentoring services for children of prisoners; and
(II) in developing quality standards for the identification and assessment of mentoring programs for children of prisoners; and

1So in original. Probably should be “parent”.

(1) the qualifications and capacity of applicants and networks of organizations to effectively carry out a mentoring program under this section;
(2) the comparative severity of need for mentoring services in local areas, taking into consideration data on the numbers of children (and in particular of low-income children) with an incarcerated parents; and
(3) evidence of consultation with existing youth and family service programs, as appropriate; and
(4) any other factors the Secretary may deem significant with respect to the need for or the potential success of carrying out a mentoring program under this section.

(g) Service delivery demonstration project
(1) Purpose; authority to enter into cooperative agreement
The Secretary shall enter into a cooperative agreement with an eligible entity that meets the requirements of paragraph (2) for the purpose of requiring the entity to conduct a demonstration project consistent with this subsection under which the entity shall—
(A) identify children of prisoners in need of mentoring services who have not been matched with a mentor by an applicant awarded a grant under this section, with a priority for identifying children who—
(i) reside in an area not served by a recipient of a grant under this section;
(ii) reside in an area that has a substantial number of children of prisoners;
(iii) reside in a rural area; or
(iv) are Indians;
(B) provide the families of the children so identified with—
(i) a voucher for mentoring services that meets the requirements of paragraph (5); and
(ii) a list of the providers of mentoring services in the area in which the family resides that satisfy the requirements of paragraph (6); and
(C) monitor and oversee the delivery of mentoring services by providers that accept the vouchers.

(2) Eligible entity
(A) In general
Subject to subparagraph (B), an eligible entity under this subsection is an organization that the Secretary determines, on a competitive basis—
(i) has substantial experience—
(I) in working with organizations that provide mentoring services for children of prisoners; and
(II) in developing quality standards for the identification and assessment of mentoring programs for children of prisoners; and

1So in original. Probably should be “parent”.

(1) the qualifications and capacity of applicants and networks of organizations to effectively carry out a mentoring program under this section;
(2) the comparative severity of need for mentoring services in local areas, taking into consideration data on the numbers of children (and in particular of low-income children) with an incarcerated parents; and
(3) evidence of consultation with existing youth and family service programs, as appropriate; and
(4) any other factors the Secretary may deem significant with respect to the need for or the potential success of carrying out a mentoring program under this section.

(g) Service delivery demonstration project
(1) Purpose; authority to enter into cooperative agreement
The Secretary shall enter into a cooperative agreement with an eligible entity that meets the requirements of paragraph (2) for the purpose of requiring the entity to conduct a demonstration project consistent with this subsection under which the entity shall—
(A) identify children of prisoners in need of mentoring services who have not been matched with a mentor by an applicant awarded a grant under this section, with a priority for identifying children who—
(i) reside in an area not served by a recipient of a grant under this section;
(ii) reside in an area that has a substantial number of children of prisoners;
(iii) reside in a rural area; or
(iv) are Indians;
(B) provide the families of the children so identified with—
(i) a voucher for mentoring services that meets the requirements of paragraph (5); and
(ii) a list of the providers of mentoring services in the area in which the family resides that satisfy the requirements of paragraph (6); and
(C) monitor and oversee the delivery of mentoring services by providers that accept the vouchers.

(2) Eligible entity
(A) In general
Subject to subparagraph (B), an eligible entity under this subsection is an organization that the Secretary determines, on a competitive basis—
(i) has substantial experience—
(I) in working with organizations that provide mentoring services for children of prisoners; and
(II) in developing quality standards for the identification and assessment of mentoring programs for children of prisoners; and

1So in original. Probably should be “parent”).
(ii) submits an application that satisfies the requirements of paragraph (3).

(B) Limitation

An organization that provides mentoring services may not be an eligible entity for purposes of being awarded a cooperative agreement under this subsection.

(3) Application requirements

To be eligible to be awarded a cooperative agreement under this subsection, an entity shall submit to the Secretary an application that includes the following:

(A) Qualifications

Evidence that the entity—

(i) meets the experience requirements of paragraph (2)(A)(i); and

(ii) is able to carry out—

(I) the purposes of this subsection identified in paragraph (1); and

(II) the requirements of the cooperative agreement specified in paragraph (4).

(B) Service delivery plan

(i) Distribution requirements

Subject to clause (iii), a description of the plan of the entity to ensure the distribution of not less than—

(I) 3,000 vouchers for mentoring services in the first year in which the cooperative agreement is in effect with that entity;

(II) 8,000 vouchers for mentoring services in the second year in which the agreement is in effect with that entity; and

(III) 13,000 vouchers for mentoring services in any subsequent year in which the agreement is in effect with that entity.

(ii) Satisfaction of priorities

A description of how the plan will ensure the delivery of mentoring services to children identified in accordance with the requirements of paragraph (1)(A).

(iii) Secretarial authority to modify distribution requirement

The Secretary may modify the number of vouchers specified in subclauses (I) through (III) of clause (i) to take into account the availability of appropriations and the need to ensure that the vouchers distributed by the entity are for amounts that are adequate to ensure the provision of mentoring services for a 12-month period.

(C) Collaboration and cooperation

A description of how the entity will ensure collaboration and cooperation with other interested parties, including courts and prisons, with respect to the delivery of mentoring services under the demonstration project.

(D) Other

Any other information that the Secretary may find necessary to demonstrate the capacity of the entity to satisfy the requirements of this subsection.

(4) Cooperative agreement requirements

A cooperative agreement awarded under this subsection shall require the eligible entity to do the following:

(A) Identify quality standards for providers

To work with the Secretary to identify the quality standards that a provider of mentoring services must meet in order to participate in the demonstration project and which, at a minimum, shall include criminal records checks for individuals who are prospective mentors and shall prohibit approving any individual to be a mentor if the criminal records check of the individual reveals a conviction which would prevent the individual from being approved as a foster or adoptive parent under section 671(a)(20)(A) of this title.

(B) Identify eligible providers

To identify and compile a list of those providers of mentoring services in any of the 50 States or the District of Columbia that meet the quality standards identified pursuant to subparagraph (A).

(C) Identify eligible children

To identify children of prisoners who require mentoring services, consistent with the priorities specified in paragraph (1)(A).

(D) Monitor and oversee delivery of mentoring services

To satisfy specific requirements of the Secretary for monitoring and overseeing the delivery of mentoring services under the demonstration project, which shall include a requirement to ensure that providers of mentoring services under the project report data on the children served and the types of mentoring services provided.

(E) Records, reports, and audits

To maintain any records, make any reports, and cooperate with any reviews and audits that the Secretary determines are necessary to oversee the activities of the entity in carrying out the demonstration project under this subsection.

(F) Evaluations

To cooperate fully with any evaluations of the demonstration project, including collecting and monitoring data and providing the Secretary or the Secretary's designee with access to records and staff related to the conduct of the project.

(G) Limitation on administrative expenditures

To ensure that administrative expenditures incurred by the entity in conducting the demonstration project with respect to a fiscal year do not exceed the amount equal to 10 percent of the amount awarded to carry out the project for that year.

(5) Voucher requirements

A voucher for mentoring services provided to a family of a child identified in accord-
ance with paragraph (1)(A) shall meet the following requirements:

(A) Total payment amount; 12-month service period

The voucher shall specify the total amount to be paid a provider of mentoring services for providing the child on whose behalf the voucher is issued with mentoring services for a 12-month period.

(B) Periodic payments as services provided

(i) In general

The voucher shall specify that it may be redeemed with the eligible entity by the provider accepting the voucher in return for agreeing to provide mentoring services for the child on whose behalf the voucher is issued.

(ii) Demonstration of the provision of services

A provider that redeems a voucher issued by the eligible entity shall receive periodic payments from the eligible entity during the 12-month period that the voucher is in effect upon demonstration of the provision of significant services and activities related to the provision of mentoring services to the child on whose behalf the voucher is issued.

(6) Provider requirements

In order to participate in the demonstration project, a provider of mentoring services shall—

(A) meet the quality standards identified by the eligible entity in accordance with paragraph (1);

(B) agree to accept a voucher meeting the requirements of paragraph (5) as payment for the provision of mentoring services to a child on whose behalf the voucher is issued;

(C) demonstrate that the provider has the capacity, and has or will have nonfederal resources, to continue supporting the provision of mentoring services to the child on whose behalf the voucher is issued;

(D) if the provider is a recipient of a grant under this section, demonstrate that the provider has exhausted its capacity for providing mentoring services under the grant.

(7) 3-year period; option for renewal

(A) In general

A cooperative agreement awarded under this subsection shall be effective for a 3-year period.

(B) Renewal

The cooperative agreement may be renewed for an additional period, not to exceed 2 years and subject to any conditions that the Secretary may specify that are not inconsistent with the requirements of this subsection or subsection (1)(2)(B), if the Secretary determines that the entity has satisfied the requirements of the agreement and evaluations of the service delivery demonstration project demonstrate that the voucher service delivery method is effective in providing mentoring services to children of prisoners.

(8) Independent evaluation and report

(A) In general

The Secretary shall enter into a contract with an independent, private organization to evaluate and prepare a report on the first 2 fiscal years in which the demonstration project is conducted under this subsection.

(B) Deadline for report

Not later than 90 days after the end of the second fiscal year in which the demonstration project is conducted under this subsection, the Secretary shall submit the report required under subparagraph (A) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The report shall include—

(i) the number of children as of the end of such second fiscal year who received vouchers for mentoring services; and

(ii) any conclusions regarding the use of vouchers for the delivery of mentoring services for children of prisoners.

(9) No effect on eligibility for other Federal assistance

A voucher provided to a family under the demonstration project conducted under this subsection shall be disregarded for purposes of determining the eligibility for, or the amount of, any other Federal or federally-supported assistance for the family.

(h) Independent evaluation; reports

(1) Independent evaluation

The Secretary shall conduct by grant, contract, or cooperative agreement an independent evaluation of the programs authorized under this section, including the service delivery demonstration project authorized under subsection (g).

(2) Reports

Not later than 12 months after September 28, 2006, the Secretary shall submit a report to the Congress that includes the following:

(A) The characteristics of the mentoring programs funded under this section;

(B) The plan for implementation of the service delivery demonstration project authorized under subsection (g).

(C) A description of the outcome-based evaluation of the programs authorized under this section, including the service delivery demonstration project authorized under subsection (g).

(D) The date on which the Secretary shall submit a final report on the evaluation to the Congress.

(i) Authorization of appropriations; reservations of certain amounts

(1) Limitations on authorization of appropriations

To carry out this section, there are authorized to be appropriated to the Secretary such
sums as may be necessary for fiscal years 2007 through 2011.

(2) Reservations

(A) Research, technical assistance, and evaluation

The Secretary shall reserve 4 percent of the amount appropriated for each fiscal year under paragraph (1) for expenditure by the Secretary for research, technical assistance, and evaluation related to programs under this section.

(B) Service delivery demonstration project

(i) In general

Subject to clause (ii), for purposes of awarding a cooperative agreement to conduct the service delivery demonstration project authorized under subsection (g), the Secretary shall reserve not more than:

(I) $5,000,000 of the amount appropriated under paragraph (1) for the first fiscal year in which funds are to be awarded for the agreement;

(II) $10,000,000 of the amount appropriated under paragraph (1) for the second fiscal year in which funds are to be awarded for the agreement; and

(III) $15,000,000 of the amount appropriated under paragraph (1) for the third fiscal year in which funds are to be awarded for the agreement.

(ii) Assurance of funding for general program grants

With respect to any fiscal year, no funds may be awarded for a cooperative agreement under subsection (g), unless at least $25,000,000 of the amount appropriated under paragraph (1) for that fiscal year is used by the Secretary for making grants under this section for that fiscal year.

(Aug. 14, 1935, ch. 531, title IV, § 439, as added Pub. L. 109–288, § 8(b)(1)(G), added subsec. (g). Former subsec. (g) redesignated (h). Subsec. (b), Pub. L. 109–288, § 8(b)(2)(C), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “The Secretary shall conduct an evaluation of the programs conducted pursuant to this section, and submit to the Congress not later than April 15, 2005, a report on the findings of the evaluation.”

Pub. L. 109–288, § 8(b)(1)(A), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i). Subsec. (h)(1), Pub. L. 109–288, § 8(a)(2)(A), added par. (1) and struck out heading and text of former par. (1). Text read as follows: “There are authorized to be appropriated to carry out this section $67,000,000 for each of fiscal years 2002 and 2003, and such sums as may be necessary for each succeeding fiscal year.”

Subsec. (h)(2), Pub. L. 109–288, § 8(a)(2)(B), substituted “4 percent” for “2.5 percent”.


Effective Date of 2006 Amendment

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part E of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 629 of this title.

Effective Date

Section effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as an Effective Date of 2002 Amendment note under section 629 of this title.

Subpart 3—Common Provisions

§ 629m. Data standardization for improved data matching

(a) Standard data elements

(1) Designation

The Secretary, in consultation with an interagency work group established by the Office of Management and Budget, and considering State perspectives, shall, by rule, designate standard data elements for any category of information required to be reported under this part.

(2) Data elements must be nonproprietary and interoperable

The standard data elements designated under paragraph (1) shall, to the extent practicable, be nonproprietary and interoperable.

(3) Other requirements

In designating standard data elements under this subsection, the Secretary shall, to the extent practicable, incorporate—

(A) interoperable standards developed and maintained by an international voluntary consensus standards body, as defined by the Office of Management and Budget, such as the International Organization for Standardization;

(B) interoperable standards developed and maintained by intergovernmental partner-
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§ 632a. Omitted

$632a. Omitted

§ 632a. Omitted

Effective Date of Repeal
Repeal effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates, see section 204(a), (b)(1)(A), of Pub. L. 100–485, set out as an Effective Date of 1988 Amendment note under section 671 of this title.


**Effective Date of Repeal**

Repeal effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates, see section 204(a), (b)(1)(A), of Pub. L. 100–485, set out as an Effective Date of 1986 Amendment note under section 671 of this title.

**Part D—Child Support and Establishment of Paternity**

§ 651. Authorization of appropriations

For the purpose of enforcing the support obligations owed by noncustodial parents to their children and the spouse (or former spouse) with whom such children are living, locating noncustodial parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A of this subchapter) for whom such assistance is requested, “for and obtaining child and spousal support.”

1961—Pub. L. 97–35 substituted “children and the spouse (or former spouse) with whom such children are living” for “children” and “child and spousal support” for “child support.”

**Effective Date of 1996 Amendment**

Amendment by section 108(c)(1) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

For effective date of amendment by section 395(d)(1)(A) of Pub. L. 104–193, see section 395(a)(2) of Pub. L. 104–193, set out as a note under section 654 of this title.

**Effective Date of 1981 Amendment**

Section 2336 of Pub. L. 97–35 provided that:

“(a) Except as otherwise specifically provided in the preceding sections of this chapter [sections 2331–2335 of Pub. L. 97–35] or in subsection (b), the provisions of this chapter and the amendments made by this chapter [amending this section, sections 652, 653, 654, 657, and 664 of this title, and sections 6305 and 6402 of Title 26, Internal Revenue Code] shall become effective on October 1, 1981.

“(b) If a State agency administering a plan approved under part D of title IV of the Social Security Act [this part] demonstrates, to the satisfaction of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of an amendment made by this chapter to which the effective date specified in subsection (a) applies, the Secretary may prescribe that, in the case of such State, the amendment will become effective beginning with the first month beginning after the close of the first session of such State’s legislature ending on or after October 1, 1981. For purposes of the preceding sentence, the term ‘session of a State’s legislature’ includes any regular, special, budget, or other session of a State legislature.”

**Effective Date**

Section 101(f) of Pub. L. 93–647, as amended by Pub. L. 94–46, §2, June 30, 1975, 89 Stat. 245, provided that: “The amendments made by this section [enacting this part and section 6305 of Title 26, Internal Revenue Code, amending sections 602, 603, 604, 606, and 1381 of this title, replacing section 610 of this title, and enacting provisions set out as notes under this section and section 662 of this title] shall become effective on August 1, 1975, except that section 459 of the Social Security Act [this section] shall become effective upon the date of the enactment of this Act [Jan. 4, 1975].”

**Short Title**

This part is popularly known as the “Child Support Enforcement Act.”

**Study on Effectiveness of Enforcement of Medical Support by State Agencies**

Pub. L. 105–200, title IV, §401(a), July 16, 1998, 112 Stat. 659, directed the Secretary of Health and Human Services and the Secretary of Labor to jointly establish a Medical Child Support Working Group for the purpose of identifying impediments to the effective enforcement of medical support by State agencies administer-
ing the programs operated pursuant to part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.), required the Working Group to submit to the Secretaries a report, containing recommendations not later than 18 months after July 16, 1998, required the Secretaries to submit a report to each House of the Congress regarding the recommendations not later than 2 months after receipt of report from the Working Group, and provided for the termination of the Working Group 30 days after the date of the issuance of its report.

**Promulgation of National Medical Support Notice**

Pub. L. 105-200, title IV, § 401(b), July 16, 1998, 112 Stat. 660, directed the Secretary of Health and Human Services and the Secretary of Labor to jointly develop and promulgate by regulation a National Medical Support Notice, to be issued by States as a means of enforcing the health care coverage provisions in a child support order; required interim regulations to be issued not later than 10 months after July 16, 1998 (such regulations were issued on Nov. 15, 1999; see 64 F.R. 62054); and required final regulations to be issued not later than 1 year after the issuance of the interim regulations (such regulations were issued on Dec. 27, 2000; see 65 F.R. 82128).

**Authorization of Appropriations**

Pub. L. 93-647, § 101(e), Jan. 4, 1975, 88 Stat. 2361, provided that: “There are authorized to be appropriated to the Secretary of Health, Education, and Welfare such sums as may be necessary to plan and prepare for the implementation of the program established by this section [this part and section 6305 of Title 26, Internal Revenue Code].”

§ 652. Duties of Secretary

(a) Establishment of separate organizational unit; duties

The Secretary shall establish, within the Department of Health and Human Services a separate organizational unit, under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall—

1. establish such standards for State programs for locating noncustodial parents, establishing paternity, and obtaining child support and support for the spouse (or former spouse) with whom the noncustodial parent’s child is living as he determines to be necessary to assure that such programs will be effective;

2. establish minimum organizational and staffing requirements for State units engaged in carrying out such programs under plans approved under this part;

3. review and approve State plans for such programs;

4. (A) review data and calculations transmitted by State agencies pursuant to section 654(15)(B) of this title on State program accomplishments with respect to performance indicators for purposes of subsection (g) of this section and section 658a of this title;

(B) review annual reports submitted pursuant to section 654(15)(A) of this title and, as appropriate, provide to the State comments, recommendations for additional or alternative corrective actions, and technical assistance; and

(C) conduct audits, in accordance with the Government auditing standards of the Comptroller General of the United States—

(i) at least once every 3 years (or more frequently, in the case of a State which fails to meet the requirements of this part concerning performance standards and reliability of program data) to assess the completeness, reliability, and security of the data and the accuracy of the reporting systems used in calculating performance indicators under subsection (g) of this section and section 658a of this title;

(ii) of the adequacy of financial management of the State program operated under the State plan approved under this part, including assessments of—

(I) whether Federal and other funds made available to carry out the State program are being appropriately expended, and are properly and fully accounted for; and

(II) whether collections and disbursements of support payments are carried out correctly and are fully accounted for; and

(iii) for such other purposes as the Secretary may find necessary;

5. assist States in establishing adequate reporting procedures and maintain records of the operations of programs established pursuant to this part in each State, and establish procedures to be followed by States for collecting and reporting information required to be provided under this part, and establish uniform definitions (including those necessary to enable the measurement of State compliance with the requirements of this part relating to expedited processes) to be applied in following such procedures;

6. maintain records of all amounts collected and disbursed under programs established pursuant to the provisions of this part and of the costs incurred in collecting such amounts;

7. provide technical assistance to the States to help them establish effective systems for collecting child and spousal support and establishing paternity, and specify the minimum requirements of an affidavit to be used for the voluntary acknowledgment of paternity which shall include the social security number of each parent and, after consultation with the States, other common elements as determined by such designee;

8. receive applications from States for permission to utilize the courts of the United States to enforce court orders for support against noncustodial parents and, upon a finding that (A) another State has not undertaken to enforce the court order of the originating State against the noncustodial parent within a reasonable time, and (B) that utilization of the Federal courts is the only reasonable method of enforcing such order, approve such applications;

9. operate the Federal Parent Locator Service established by section 653 of this title;

10. not later than three months after the end of each fiscal year, beginning with the year 1977, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part, which report shall include, but not be limited to, the following:

(A) total program costs and collections set forth in sufficient detail to show the cost to
the States and the Federal Government, the distribution of collections to families, State and local governmental units, and the Federal Government; and an identification of the financial impact of the provisions of this part, including—

(i) the total amount of child support payments collected as a result of services furnished during the fiscal year to individuals receiving services under this part;
(ii) the cost to the States and to the Federal Government of so furnishing the services; and
(iii) the number of cases involving families—
(I) who became ineligible for assistance under State programs funded under part A of this subchapter during a month in the fiscal year; and
(II) with respect to whom a child support payment was received in the month;
(B) costs and staff associated with the Office of Child Support Enforcement;
(C) the following data, separately stated for cases where the child is receiving assistance under a State program funded under part A of this subchapter (or foster care maintenance payments under part E of this subchapter), or formerly received such assistance or payments and the State is continuing to collect support assigned to it pursuant to section 608(a)(3) of this title or under section 671(c)(17) or 1396k of this title, and for all other cases under this part:
(i) the total number of cases in which a support obligation has been established in the fiscal year for which the report is submitted;
(ii) the total number of cases in which a support obligation has been established;
(iii) the number of cases in which support was collected during the fiscal year;
(iv) the total amount of support collected during such fiscal year and distributed as current support;
(v) the total amount of support collected during such fiscal year and distributed as arrearages;
(vi) the total amount of support due and unpaid for all fiscal years; and
(vii) the number of support cases filed in each State in such fiscal year, and the amount of the collections made in each State in such fiscal year, on behalf of children residing in another State or against parents residing in another State;
(D) the status of all State plans under this part as of the end of the fiscal year last ending before the report is submitted, together with an explanation of any problems which are delaying or preventing approval of State plans under this part;
(E) data, by State, on the use of the Federal Parent Locator Service, and the number of locate requests submitted without the noncustodial parent’s social security account number;
(F) the number of cases, by State, in which an applicant for or recipient of assistance under a State program funded under part A

of this subchapter has refused to cooperate in identifying and locating the noncustodial parent and the number of cases in which refusal so to cooperate is based on good cause (as determined by the State);
(G) data, by State, on use of the Internal Revenue Service for collections, the number of court orders on which collections were made, the number of paternity determinations made and the number of parents located, in sufficient detail to show the cost and benefits to the States and to the Federal Government;
(H) the major problems encountered which have delayed or prevented implementation of the provisions of this part during the fiscal year last ending prior to the submission of such report; and
(I) compliance, by State, with the standards established pursuant to subsections (h) and (i) of this section; and

(11) not later than October 1, 1996, after consulting with the State directors of programs under this part, promulgate forms to be used by States in interstate cases for—
(A) collection of child support through income withholding;
(B) imposition of liens; and
(C) administrative subpoenas.

(b) Certification of child support obligations to Secretary of the Treasury for collection

The Secretary shall, upon the request of any State having in effect a State plan approved under this part, certify to the Secretary of the Treasury for collection pursuant to the provisions of section 6305 of the Internal Revenue Code of 1986 the amount of any child support obligation (including any support obligation with respect to the parent who is living with the child and receiving assistance under the State program funded under part A of this subchapter) which is assigned to such State or is undertaken to be collected by such State pursuant to section 654(4) of this title. No amount may be certified for collection under this subsection except on the amount of the delinquency under a court or administrative order for support and upon a showing by the State that such State has made diligent and reasonable efforts to collect such amounts utilizing its own collection mechanisms, and upon an agreement that the State will reimburse the Secretary of the Treasury for any costs involved in making the collection. All reimbursements shall be credited to the appropriation accounts which bore all or part of the costs involved in making the collections. The Secretary after consultation with the Secretary of the Treasury may, by regulation, establish criteria for accepting amounts for collection and for making certification under this subsection including imposing such limitations on the frequency of making such certifications under this subsection.

c) Payment of child support collections to States

The Secretary of the Treasury shall from time to time pay to each State for distribution in accordance with the provisions of section 657 of this title the amount of each collection made on behalf of such State pursuant to subsection (b) of this section.
(d) Child support management information system

(1) Except as provided in paragraph (3), the Secretary shall not approve the initial and annually updated advance automated data processing planning document, referred to in section 654(16) of this title, unless he finds that such document, when implemented, will generally carry out the objectives of the management system referred to in such subsection, and such document—

(A) provides for the conduct of, and reflects the results of, requirements analysis studies, which include consideration of the program mission, functions, organization, services, constraints, and current support, of, in, or relating to, such system,

(B) contains a description of the proposed management system referred to in section 654(16) of this title, including a description of information flows, input data, and output reports and uses,

(C) sets forth the security and interface requirements to be employed in such management system,

(D) describes the projected resource requirements for staff and other needs, and the resources available or expected to be available to meet such requirements,

(E) contains an implementation plan and backup procedures to handle possible failures,

(F) contains a summary of proposed improvement of such management system in terms of qualitative and quantitative benefits, and

(G) provides such other information as the Secretary determines under regulation is necessary.

(2)(A) The Secretary shall through the separate organizational unit established pursuant to subsection (a) of this section, on a continuing basis, review, assess, and inspect the planning, design, and operation of, management information systems referred to in section 654(16) of this title, with a view to determining whether, and to what extent, such systems meet and continue to meet requirements imposed under paragraph (1) and the conditions specified under section 654(16) of this title.

(B) If the Secretary finds with respect to any statewide management information system referred to in section 654(16) of this title that there is a failure substantially to comply with criteria, requirements, and other undertakings, prescribed by the advance automated data processing planning document theretofore approved by the Secretary with respect to such system, then the Secretary shall suspend his approval of such document until there is no longer any such failure of such system to comply with such criteria, requirements, and other undertakings so prescribed.

(3) The Secretary may waive any requirement of paragraph (1) or any condition specified under section 654(16) of this title, and shall waive the single statewide system requirement under sections 654(16) and 654a of this title, with respect to a State if—

(A) the State demonstrates to the satisfaction of the Secretary that the State has or can develop an alternative system or systems that enable the State—

(i) for purposes of section 609(a)(8) of this title, to achieve the paternity establishment percentages (as defined in subsection (g)(2) of this section) and other performance measures that may be established by the Secretary;

(ii) to submit data under section 654(15)(B) of this title that is complete and reliable;

(iii) to substantially comply with the requirements of this part; and

(iv) in the case of a request to waive the single statewide system requirement, to—

(I) meet all functional requirements of sections 654(16) and 654a of this title;

(II) ensure that calculation of distributions meets the requirements of section 657 of this title and accounts for distributions to children in different families or in different States or sub-State jurisdictions, and for distributions to other States;

(III) ensure that there is only one point of contact in the State which provides seamless case processing for all interstate case processing and coordinated, automated intrastate case management;

(IV) ensure that standardized data elements, forms, and definitions are used throughout the State;

(V) complete the alternative system in no more time than it would take to complete a single statewide system that meets such requirement; and

(VI) process child support cases as quickly, efficiently, and effectively as such cases would be processed through a single statewide system that meets such requirement;

(B)(i) the waiver meets the criteria of paragraphs (1), (2), and (3) of section 1315(c) of this title; or

(ii) the State provides assurances to the Secretary that steps will be taken to otherwise improve the State’s child support enforcement program; and

(C) in the case of a request to waive the single statewide system requirement, the State has submitted to the Secretary separate estimates of the total cost of a single statewide system that meets such requirement, and of any such alternative system or systems, which shall include estimates of the cost of developing and completing the system and of operating and maintaining the system for 5 years, and the Secretary has agreed with the estimates.

(e) Technical assistance to States

The Secretary shall provide such technical assistance to States as he determines necessary to assist States to plan, design, develop, or install and provide for the security of, the management information systems referred to in section 654(16) of this title.

(f) Regulations

The Secretary shall issue regulations to require that State agencies administering the child support enforcement program under this part enforce medical support included as part of
a child support order whenever health care coverage is available to the noncustodial parent at a reasonable cost. A State agency administering the program under this part may enforce medical support against a custodial parent if health care coverage is available to the custodial parent at a reasonable cost, notwithstanding any other provision of this part. Such regulation shall also provide for improved information exchange between such State agencies and the State agencies administering the State medical programs under subchapter XIX of this chapter with respect to the availability of health insurance coverage. For purposes of this part, the term “medical support” may include health care coverage, such as coverage under a health insurance plan (including payment of costs of premiums, co-payments, and deductibles) and payment for medical expenses incurred on behalf of a child.

(g) Performance standards for State paternity establishment programs

(1) A State’s program under this part shall be found, for purposes of section 609(a)(8) of this title, not to have complied substantially with the requirements of this part unless, for any fiscal year beginning on or after October 1, 1994, its paternity establishment percentage for such fiscal year is based on reliable data and (rounded to the nearest whole percentage point) equals or exceeds—

(A) 90 percent;

(B) for a State with a paternity establishment percentage of not less than 75 percent but less than 90 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 2 percentage points;

(C) for a State with a paternity establishment percentage of not less than 50 percent but less than 75 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 3 percentage points;

(D) for a State with a paternity establishment percentage of not less than 45 percent but less than 50 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 4 percentage points;

(E) for a State with a paternity establishment percentage of not less than 40 percent but less than 45 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 5 percentage points; or

(F) for a State with a paternity establishment percentage of less than 40 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 6 percentage points.

In determining compliance under this section, a State may use as its paternity establishment percentage either the State’s IV-D paternity establishment percentage (as defined in paragraph (2)(A)) or the State’s statewide paternity establishment percentage (as defined in paragraph (2)(B)).

(2) For purposes of this section—

(A) the term “IV-D paternity establishment percentage” means, with respect to a State for a fiscal year, the ratio (expressed as a percentage) that the total number of children—

(i) who have been born out of wedlock,

(ii) (I) except as provided in the last sentence of this paragraph, with respect to whom assistance is being provided under the State program funded under part A of this subchapter in the fiscal year or, at the option of the State, as of the end of such year, or (II) with respect to whom services are being provided under the State’s plan approved under this part in the fiscal year or, at the option of the State, as of the end of such year pursuant to an application submitted under section 654(4)(A)(ii) of this title, and

(iii) the paternity of whom has been established or acknowledged,

bears to the total number of children born out of wedlock and (except as provided in such last sentence) with respect to whom assistance was being provided under the State program funded under part A of this subchapter as of the end of the preceding fiscal year or with respect to whom services were being provided under the State’s plan approved under this part as of the end of the preceding fiscal year pursuant to an application submitted under section 654(4)(A)(ii) of this title;

(B) the term “statewide paternity establishment percentage” means, with respect to a State for a fiscal year, the ratio (expressed as a percentage) that the total number of minor children—

(i) who have been born out of wedlock, and

(ii) the paternity of whom has been established or acknowledged during the fiscal year,

bears to the total number of children born out of wedlock during the preceding fiscal year; and

(C) the term “reliable data” means the most recent data available which are found by the Secretary to be reliable for purposes of this section.

For purposes of subparagraphs (A) and (B), the total number of children shall not include any child with respect to whom assistance is being provided under the State program funded under part A of this subchapter by reason of the death of a parent unless paternity is established for such child or any child with respect to whom an applicant or recipient is found by the State to qualify for a good cause or other exception to cooperation pursuant to section 654(29) of this title.

(3)(A) The Secretary may modify the requirements of this subsection to take into account such additional variables as the Secretary identifies (including the percentage of children in a State who are born out of wedlock or for whom support has not been established) that affect the ability of a State to meet the requirements of this subsection.

(B) The Secretary shall submit an annual report to the Congress that sets forth the data upon which the paternity establishment percentages for States for a fiscal year are based, lists any additional variables the Secretary has identified under subparagraph (A), and describes State performance in establishing paternity.
(h) Prompt State response to requests for child support assistance

The standards required by subsection (a)(1) of this section shall include standards establishing time limits governing the period or periods within which a State must accept and respond to requests (from States, jurisdictions thereof, or individuals who apply for services furnished by the State agency under this part or with respect to whom an assignment pursuant to section 608(a)(3) of this title is in effect) for assistance in establishing and enforcing support orders, including requests to locate noncustodial parents, establish paternity, and initiate proceedings to establish and collect child support awards.

(i) Prompt State distribution of amounts collected as child support

The standards required by subsection (a)(1) of this section shall include standards establishing time limits governing the period or periods within which a State must distribute, in accordance with section 657 of this title, amounts collected as child support pursuant to the State’s plan approved under this part.

(j) Training of Federal and State staff, research and demonstration programs, and special projects of regional or national significance

Out of any money in the Treasury of the United States not otherwise appropriated, there is hereby appropriated to the Secretary for each fiscal year an amount equal to 1 percent of the total amount paid to the Federal Government pursuant to a plan approved under this part during the immediately preceding fiscal year (as determined on the basis of the most recent reliable data available to the Secretary as of the end of the third calendar quarter following the end of such preceding fiscal year) or the amount appropriated under this paragraph for fiscal year 2002, whichever is greater, which shall be available for use by the Secretary, either directly or through grants, contracts, or interagency agreements, for—

(1) information dissemination and technical assistance to States, training of State and Federal staff, staffing studies, and related activities needed to improve programs under this part (including technical assistance concerning State automated systems required by this part); and

(2) research, demonstration, and special projects of regional or national significance relating to the operation of State programs under this part.

The amount appropriated under this subsection shall remain available until expended.

(k) Denial of passports for nonpayment of child support

(1) If the Secretary receives a certification by a State agency in accordance with the requirements of section 654(3)(i) of this title that an individual owes arrearages of child support in an amount exceeding $2,500, the Secretary shall transmit such certification to the Secretary of State for action (with respect to denial, revocation, or limitation of passports) pursuant to paragraph (2).

(2) The Secretary of State shall, upon certification by the Secretary transmitted under paragraph (1), refuse to issue a passport to such individual, and may revoke, restrict, or limit a passport issued previously to such individual.

(3) The Secretary and the Secretary of State shall not be liable to an individual for any action with respect to a certification by a State agency under this section.

(l) 2 Facilitation of agreements between State agencies and financial institutions

The Secretary, through the Federal Parent Locator Service, may aid State agencies providing services under State programs operated pursuant to this part and financial institutions doing business in two or more States in reaching agreements regarding the receipt from such institutions, and the transfer to the State agencies, of information that may be provided pursuant to section 666(a)(17)(A)(i) of this title, except that any State that, as of July 16, 1998, is conducting data matches pursuant to section 666(a)(17)(A)(i) of this title shall have until January 1, 2000, to allow the Secretary to obtain such information from such institutions that are operating in the State. For purposes of section 3413(d) of title 12, a disclosure pursuant to this subsection shall be considered a disclosure pursuant to a Federal statute.

(m) 2 Comparisons with insurance information

(1) In general

The Secretary, through the Federal Parent Locator Service, may—

(A) compare information concerning individuals owing past-due support with information maintained by insurers (or their agents) concerning insurance claims, settlements, awards, and payments; and

(B) furnish information resulting from the data matches to the State agencies responsible for collecting child support from the individuals.

(2) Liability

An insurer (including any agent of an insurer) shall not be liable under any Federal or State law to any person for any disclosure provided for under this subsection, or for any other action taken in good faith in accordance with this subsection.

Footnotes:

1So in original. Probably should be “subsection”.

2So in original. Two subsecs. (l) have been enacted.

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

AMENDMENTS
2006—Subsec. (f). Pub. L. 109–171, §7309(a)(2)(A)(i), (b), (c), substituted “enforce medical support included as part of a child support order” for “include medical support as part of any child support order and enforce medical support”, inserted after first sentence “A State agency administering the program under this part may enforce medical support against a custodial parent if health care coverage is available to the custodial parent at a reasonable cost, notwithstanding any other provision of this part,”, and inserted at end “For purposes of this part, the term ‘medical support’ may include health care coverage, such as coverage under a health insurance plan (including payment of costs of premiums, co-payments, and deductibles) and payment for medical expenses incurred on behalf of a child."

Subsec. (h)(1). Pub. L. 109–171, §7309(a), substituted “the amount appropriated under this paragraph for fiscal year 2002, whichever is greater” before “, which shall be available” in introductory provisions.

Subsec. (k)(1). Pub. L. 109–171, §7309(a), substituted “$2,500” for “$5,000”.


“...(B)(i) the waiver meets the criteria of paragraphs (1), (2), and (3) of section 603(b) of this title, or
...(ii) the State provides assurances to the Secretary that steps will be taken to otherwise improve the State’s child support enforcement program...”


Subsec. (h)(1). Pub. L. 105–200, §201(e)(1)(A), inserted ‘‘include for “petition for the inclusion of” and inserted “and enforce medical support” before “whenever”.


Pub. L. 105–33, §5406, substituted “subparagraphs (A) and (B)” for “subparagraph (A)” in concluding provisions.


Pub. L. 105–33, §5540(a), substituted “shall be available for use by the Secretary, either directly or through grants, contracts, or interagency agreements,” for “to cover costs incurred by the Secretary” in introductory provisions.


Subsec. (a)(4). Pub. L. 104–193, §342(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “evaluate the implementation of State programs established pursuant to such plan, conduct such audits of State programs established under the plan approved under this part as may be necessary to assure their conformity with the requirements of this part, and, not less often than once every three years (or not less often than annually in the case of any State to which a reduction is being applied under section 603(b)(1) of this title, or which is operating under a corrective action plan in accordance with section 603(h)(2) of this title), conduct a complete audit of the programs established under this part in each State and determine for purposes of the penalty provision of section 603(b) of this title whether the actual operation of such programs in each State conforms to the requirements of this part;”.

Subsec. (a)(5). Pub. L. 104–193, §343(a), inserted before semicolon at end “, and establish procedures to be followed by States for collecting and reporting information required to be provided under this part, and establish uniform definitions (including those necessary to enable the measurement of State compliance with the requirements of this part relating to expedited processes) to be applied in following such procedures”.

Subsec. (a)(7). Pub. L. 104–193, §331(b), inserted before semicolon at end “, and specify the minimum requirements of an affidavit to be used for the voluntary acknowledgment of paternity which shall include the Social Security number of each parent and, after consultation with the States, other common elements as determined by such designees”.


Subsec. (a)(10). Pub. L. 104–193, §346(a)(6), struck out closing provisions which read as follows: “The information contained in any such report under subparagraph...”
the States for distribution in accordance with the provisions of section 657 of this title such amounts as may be collected and paid (subject to paragraph (2)) into such fund under section 655 of the Internal Revenue Code of 1986.

“(2) There is hereby appropriated to the fund, out of any moneys in the Treasury not otherwise appropriated, amounts equal to the difference between the amounts appropriated by the preceding sentence shall be transferred at least quarterly from the general fund of the Treasury to the fund on the basis of estimates made by the Secretary of the Treasury. Proper fiscal year (as shall be the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.”


Subsec. (a)(4). Pub. L. 98–378, §96(a)(1), substituted “not less than once every three years (or not less often than annually in the case of any State to which a reduction is being applied under section 603(h)(1) of this title, or which is operating under a corrective action plan in accordance with section 603(h)(2) of this title)” for “not less often than annually”.

Subsec. (a)(10)(C). Pub. L. 98–378, §96(a)(3), amended subpar. (C) generally to include the reporting of additional aspects of child support enforcement. Prior to amendment, subpar. (C) read as follows: “the number of child support cases (with separate identification of the number in which collection of spousal support was involved) in each State during each quarter of the fiscal year last ending before the report is submitted and during each of the two preceding fiscal years.”

1982—Subsec. (b). Pub. L. 97–248 substituted provisions that the Secretary shall, upon the request of a State having in effect a State plan approved under this part, certify to the Secretary of the Treasury for collection pursuant to the provisions of section 6303 of the Internal Revenue Code of 1986 the amount of any child support obligation (including any support obligation with respect to the parent who is living with the child and receiving aid under the State plan approved under such State plan approved for the fiscal year in which collection of spousal support was involved) in each State during each quarter of the fiscal year last ending before the report is submitted and during each of the two preceding fiscal years.”


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‘‘automated data’’ for ‘‘automatic data’’.


Subsec. (g)(2)(A)(ii). Pub. L. 103–432, §213(2), substituted ‘‘in the fiscal year or, at the option of the State, as of the end of such fiscal year’’ for ‘‘or E as of the end of the fiscal year’’.


Subsec. (g)(1). Pub. L. 103–432, §13721(a)(1)(A), (C), substituted ‘‘1991’’ for ‘‘1994’’ and inserted ‘‘is based on reliable and rounded to the nearest whole percentage point’’ before ‘‘equals’’.

Subsec. (g)(3)(A) to (E). Pub. L. 103–66, §13721(a)(1)(D), added subpars. (A) to (E) and struck out former subpars. (A) to (C) which read as follows:

(A) 30 percent;

(B) the paternity establishment percentage determined with respect to all States for such fiscal year; and

(C) the paternity establishment percentage determined with respect to all States for such fiscal year.

1993—Subsec. (g)(2). Pub. L. 103–66, §13721(a)(2)(C), (D), in concluding provisions, inserted ‘‘unless paternity is established for such child’’ after ‘‘the death of a parent’’ and ‘‘the State agency administering the plan under part E of this subchapter determines (as provided in section 654(d)(B) of this title) that it is against the best interests of such child to do so’’ after ‘‘operate under section 652(a)(20) of this title’’.

Subsec. (g)(2)(A). Pub. L. 103–66, §13721(a)(2)(A), in cl. (i), inserted before comma ‘‘during the fiscal year’’, in cl. (ii)(I), substituted ‘‘part A or E of this subchapter as of the end of the year’’ for ‘‘part A of this subchapter (or under all such plans) for such fiscal year’’;

Subsec. (g)(2)(A)(ii). Pub. L. 103–66, §13721(a)(2)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: ‘‘the applicable number of percentage points means, with respect to a fiscal year (beginning October 1, 1989 and before the beginning of such fiscal year), the amount of any child support obligation (including any support obligation with respect to the absent parent’s child who is living with the absent parent, and support for the spouse (or former spouse) with whom the absent parent’s child is living)’’.

Subsec. (g)(2)(B). Pub. L. 103–66, §13721(a)(2)(C), added subpar. (B) and struck out former subpar. (B) which read as follows: ‘‘the number of child support cases for ‘‘this part’’ for ‘‘this part or E as of the end of such fiscal year’’; and

in concluding provisions, substituted ‘‘children who were born out of wedlock during the immediately preceding fiscal year and ‘‘children who have been born out of wedlock and ‘‘aid was being paid’’ for ‘‘aid is being paid’’; ‘‘part A or E of this subchapter as of the end of such preceding fiscal year’’ for ‘‘part A or E of this subchapter (or under all such plans) for such fiscal year’’; ‘‘services were being’’ for ‘‘services are being’’, and ‘‘this part or E as of the end of such fiscal year’’ for ‘‘this part (or under all such plans) for the fiscal year’’.

Subsec. (g)(2)(B). Pub. L. 103–66, §13721(a)(2)(C), added subpar. (B) and struck out former subpar. (B) which read as follows: ‘‘the applicable number of percentage points means, with respect to a fiscal year (beginning the fiscal year 1991), the number of child support cases for ‘‘this part’’ for ‘‘this part or E as of the end of such fiscal year’’.’’


1988—Subsec. (d)(1). Pub. L. 100–485, §123(b)(1), substituted ‘‘Except as provided in paragraph (3), the’’ for ‘‘The’’.

Pub. L. 100–485, §123(d), substituted ‘‘automated’’ for ‘‘automatic’’.


Subsec. (g). Pub. L. 100–485, §111(a), added subsec. (g).


Subsec. (i). Pub. L. 100–485, §122(a), added subsec. (i).

1987—Subsec. (c). Pub. L. 100–203 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

“(1) There is hereby established in the Treasury a revolving fund which shall be available to the Secretary without fiscal year limitation, to enable him to pay to
Subsec. (a)(10)(C). Pub. L. 97–35, §2332(b)(1)(C), inserted "(with separate identification of the number in which collection of spousal support was involved)".

Subsec. (b), Pub. L. 95–555, §2332(b)(2), inserted "including any support obligation with respect to the parent who is living with the child and receiving aid under the State plan approved under part A of this subchapter, and provision that all reimbursements be credited to the appropriation accounts which bore all or part of the costs involved in making the collections and substituting "court or administrative order" for "court order" and "reimburse the Secretary of the Treasury" for "reimburse the United States")."


Subsec. (b). Pub. L. 96–265, §402(a), inserted "(or undertaken to be collected by such State pursuant to section 654(h)(2) of this title)" after "assigned to such State".

Subsecs. (d), (e). Pub. L. 96–265, §405(c), (d), added subsecs. (d) and (e).

1977—Subsec. (a)(10). Pub. L. 95–30 substituted "not later than three months after the end of each fiscal year, beginning with the year 1977, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part, which report shall include, but not be limited to, the following" for "not later than June 30 of each year beginning after December 31, 1975, submit to the Congress a report on all activities undertaken pursuant to the provisions of this part", substituted a colon for a period at end of provisions thus substituted, and added subpars. (A) to (H).

**Effective Date of 2006 Amendment**

Pub. L. 109–171, title VII, §7303(c), Feb. 8, 2006, 120 Stat. 145, provided that: "The amendments made by this section [amending this section and section 654 of this title] shall take effect on October 1, 2006."

Amendment by sections 7304, 7306(a) and 7307(a)(2)(A)(i), (b), (c), of Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 693 of this title.

**Effective Date of 1999 Amendment**


**Effective Date of 1998 Amendment**


(A) October 1, 2001; or

(B) the effective date of laws enacted by the legislature of such State implementing such amendments, but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date specified in subparagraph (A). For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature." [Pub. L. 105–306, §6(b)(2), Oct. 28, 1998, 112 Stat. 2927, provided that: "The amendment made by paragraph (1) of this subsection [amending section 401(c)(3) of Pub. L. 105–200, set out above] shall take effect as if included in the enactment of section 341 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193]."]

Pub. L. 105–200, title IV, §407(c), July 16, 1998, 112 Stat. 672, provided that: "The amendments made by this section [amending this section and section 669 of this title] shall apply to information maintained with respect to fiscal year 1998 or any succeeding fiscal year."

**Effective Date of 1997 Amendment**

Section 5518(b) of Pub. L. 105–33 provided that: "The amendments made by section 5513 of this Act [amending this section and sections 656, 664, 672, and 673 of this title] shall take effect as if the amendments had been included in section 108 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104–193] at the time such section 108 became law."

Amendment by sections 5540, 5541(a), and 5556(c) of Pub. L. 105–200—effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

**Effective Date of 1996 Amendments**

Section 101(e) [title II, §215] of div. A of Pub. L. 104–208, as amended by Pub. L. 105–33, title V, §5556(c), Aug. 5, 1997, 111 Stat. 637, provided in part that: "Amounts available under such sections 452(j) [subsec. (j) of this section] and 453(o) [section 653(o) of this title] shall be calculated as though the amendments made by this section were effective October 1, 1995."

Amendment by section 108(c)(2)–(9) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to implementation under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.


Section 342(c) of Pub. L. 104–193 provided that: "The amendments made by this section [amending this section and section 654 of this title] shall be effective with respect to calendar quarters beginning 12 months or more after the date of the enactment of this Act [Aug. 22, 1996]."

Section 346(b) of Pub. L. 104–193 provided that: "The amendments made by subsection (a) [amending this section] shall be effective with respect to fiscal year 1997 and succeeding fiscal years."

Section 350(b) of Pub. L. 104–193—provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

**Effective Date of 1995 Amendment**

Section 13721(c) of Pub. L. 103–66 provided that: "The amendments made by this section [amending this sec-
tion and section 666 of this title] shall become effective with respect to a State on the later of—

"(1) October 1, 1993 or—

"(2) the date of enactment by the legislature of such State of all laws required by such amendments, but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Aug. 10, 1993]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

**Effective Date of 1989 Amendment**

Section 10403(a)(3)(I)(ii) of Pub. L. 101-239 provided that: "The amendments made by clause (i) [amending this section and section 602 of this title] shall take effect as if such amendments had been included in section 129(d) of the Family Support Act of 1988 [Pub. L. 100–485] on the date of the enactment of such Act [Oct. 13, 1988]."

**Effective Date of 1988 Amendment**

Section 111(f)(1) of Pub. L. 100–485 provided that: "The amendments made by subsections (a), (d), and (e) [enacting section 668 of this title and amending this section and section 666 of this title] shall become effective on the date of the enactment of this Act [Oct. 13, 1988]."

**Effective Date of 1987 Amendment**

Section 913(b) of Pub. L. 100–203 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to amounts collected after the date of the enactment of this Act [Dec. 22, 1987]."

**Effective Date of 1986 Amendments**

Section 4(c) of Pub. L. 98–378 provided that: "The amendments made by this section [amending this section and section 655 of this title] shall apply to fiscal years after fiscal year 1983."

Section 9(c) of Pub. L. 98–378 provided that: "The amendments made by this section [amending this section and sections 602 and 603 of this title] shall be effective on and after October 1, 1983."

Section 13(c) of Pub. L. 98–378 provided that: "The amendments made by this section [amending this section] shall be effective for reports for fiscal year 1986 and each fiscal year thereafter.

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

**Effective Date of 1982 Amendment**


**Effective Date of 1981 Amendment**


**Effective Date of 1980 Amendment**

Section 402(b) of Pub. L. 96–265 provided that: "The amendment made by subsection (a) [amending this section] shall take effect July 1, 1980."

Section 405(e) of Pub. L. 96–265 provided that: "The amendments made by this section [amending this section and sections 654 and 655 of this title] shall take effect on July 1, 1981, and shall be effective only with respect to expenditures, referred to in section 655(a)(3) of the Social Security Act [section 655(a)(3) of this title] (as amended by this Act), made on or after such date."

### Effective Date of 1977 Amendment

Section 504(b) of Pub. L. 95–30 provided that: "The amendment made by subsection (a) [amending this section] shall be in the case of reports, submitted by the Secretary of Health, Education, and Welfare [now Health and Human Services] after 1976.

**Regulations**

Section 122(b) of Pub. L. 100–485 provided that: "Not later than 180 days after the date of the enactment of this Act [Oct. 13, 1988], the Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to the standards required by the amendment made by subsection (a) [amending this section], and, after allowing not less than 30 days for public comment, shall issue final regulations not later than the first day of the 10th month to begin after such date of enactment."

**Implementation of Performance Standards for State Paternity Establishment Programs**

Section 111(f)(3) of Pub. L. 100–485 provided that: "The Secretary of Health and Human Services shall collect the data necessary to implement the requirements of section 452(a) of the Social Security Act [subsec. (a) of this section] (as added by subsection (a) of this section) and may, in carrying out the requirement of determining a State's paternity establishment percentage for the fiscal year 1988, compute such percentage on the basis of data collected with respect to the last quarter of such fiscal year (or, if such data are not available, the first quarter of the fiscal year 1989) if the Secretary determines that data for the full year are not available.

**Requests for Child Support Assistance; Advisory Committee; Promulgation of Regulations**

Section 121(b) of Pub. L. 100–485 provided that:

"(1) Not later than 60 days after the date of the enactment of this Act [Oct. 13, 1988], the Secretary of Health and Human Services shall establish an advisory committee. The committee shall include representatives of organizations representing State governors, State welfare administrators, and State directors of programs under part D of title IV of the Social Security Act [this part]. The Secretary shall consult with the advisory committee before issuing any regulations with respect to the standards required by the amendment made by subsection (a) [amending this section] (including regulations regarding what constitutes an adequate response on the part of a State to the request of an individual, State, or jurisdiction).

"(2) Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to the standards required by the amendment made by subsection (a), and, after allowing not less than 60 days for public comment, shall issue final regulations not later than the first day of the 10th month beginning after such date of enactment."

**Supplemental Report to Be Submitted to Congress Not Later Than June 30, 1977**

Section 504(c) of Pub. L. 95–30 directed Secretary of Health, Education, and Welfare to submit to Congress, not later than June 30, 1977, a special supplementary report with respect to activities undertaken pursuant to this part.

§ 653. Federal Parent Locator Service

**(a) Establishment; purpose**

(1) The Secretary shall establish and conduct a Federal Parent Locator Service, under the direction of the designee of the Secretary referred to in section 652(a) of this title, which shall be used for the purposes specified in paragraphs (2) and (3).
(2) For the purpose of establishing parentage or establishing, setting the amount of, modifying, or enforcing child support obligations, the Federal Parent Locator Service shall obtain and transmit to any authorized person specified in subsection (c) of this section—
(A) information on, or facilitating the discovery of, the location of any individual—
(1) who is under an obligation to pay child support;
(2) against whom such an obligation is sought;
(3) to whom such an obligation is owed;
or
(4) who has or may have parental rights with respect to a child,
including the individual’s social security number (or numbers), most recent address, and the name, address, and employer identification number of the individual’s employer;
(B) information on the individual’s wages (or other income) from, and benefits of, employment (including rights to or enrollment in group health care coverage); and
(C) information on the type, status, location, and amount of any assets of, or debts owed by or to, any such individual;
(3) For the purpose of enforcing any Federal or State law with respect to the unlawful taking or restraint of a child, or making or enforcing a child custody or visitation determination, as defined in section 663(d)(1) of this title, the Federal Parent Locator Service shall be used to obtain and transmit the information specified in section 663(c) of this title to the authorized persons specified in section 663(d)(2) of this title.
(b) Disclosure of information to authorized persons
(1) Upon request, filed in accordance with subsection (d) of this section, of any authorized person, as defined in subsection (c) of this section for the information described in subsection (a)(2) of this section, or of any authorized person, as defined in section 663(d)(2) of this title, for the information described in section 663(c) of this title, the Secretary shall, notwithstanding any other provision of law, provide through the Federal Parent Locator Service such information to such person, if such information—
(A) is contained in any files or records maintained by the Secretary or by the Department of Health and Human Services; or
(B) is not contained in such files or records, but can be obtained by the Secretary, under the authority conferred by subsection (e) of this section, from any other department, agency, or instrumentality of the United States or of any State,
and is not prohibited from disclosure under paragraph (2).
(2) No information shall be disclosed to any person if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. The Secretary shall give priority to requests made by any authorized person described in subsection (c)(1) of this section. No information shall be disclosed to any person if the State has notified the Secretary that the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the custodial parent or the child of such parent, provided that—
(A) in response to a request from an authorized person (as defined in subsection (c) of this section and section 663(d)(2) of this title), the Secretary shall advise the authorized person that the Secretary has been notified that there is reasonable evidence of domestic violence or child abuse and that information can only be disclosed to a court or an agent of a court pursuant to subparagraph (B); and
(B) information may be disclosed to a court or an agent of a court described in subsection (c)(2) of this section or section 663(d)(2)(B) of this title, if—
(i) upon receipt of information from the Secretary, the court determines whether disclosure to any other person of that information could be harmful to the parent or the child; and
(ii) if the court determines that disclosure of such information to any other person could be harmful, the court and its agents shall not make any such disclosure.
(3) Information received or transmitted pursuant to this section shall be subject to the safeguard provisions contained in section 654(26) of this title.
(c) “Authorized person” defined
As used in subsection (a) of this section, the term “authorized person” means—
(1) any agent or attorney of any State having in effect a plan approved under this part, who has the duty or authority under such plans to seek to recover any amounts owed as child and spousal support (including, when authorized under the State plan, any official of a political subdivision);
(2) the court which has authority to issue an order or to serve as the initiating court in an action to seek an order against a noncustodial parent for the support and maintenance of a child, or any agent of such court;
(3) the resident parent, legal guardian, attorney, or agent of a child (other than a child receiving assistance under a State program funded under part A of this subchapter) (as determined by regulations prescribed by the Secretary) without regard to the existence of a court order against a noncustodial parent who has a duty to support and maintain any such child; and
(4) a State agency that is administering a program operated under a State plan under subpart 1 of part B of this subchapter, or a State plan approved under subpart 2 of part B of this subchapter or under part E of this subchapter.
(d) Form and manner of request for information
A request for information under this section shall be filed in such manner and form as the Secretary shall by regulation prescribe and shall be accompanied or supported by such documents as the Secretary may determine to be necessary.
(e) Compliance with request; search of files and records by head of any department, etc., of United States; transmittal of information to Secretary; reimbursement for cost of search; fees

(1) Whenever the Secretary receives a request submitted under subsection (b) of this section which he is reasonably satisfied meets the criteria established by subsections (a), (b), and (c) of this section, he shall promptly undertake to provide the information requested from the files and records maintained by any of the departments, agencies, or instrumentalities of the United States or of any State.

(2) Notwithstanding any other provision of law, whenever the individual who is the head of any department, agency, or instrumentality of the United States receives a request from the Secretary for information authorized to be provided by the Secretary under this section, such individual shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality with a view to determining whether the information requested is contained in any such files or records. If such search discloses the information requested, such individual shall immediately transmit such information to the Secretary, except that if any information is obtained the disclosure of which would contravene national policy or security interests of the United States or the confidentiality of census data, such information shall not be transmitted and such individual shall immediately notify the Secretary. If such search fails to disclose the information requested, such individual shall immediately notify the Secretary. The costs incurred by any such department, agency, or instrumentality of the United States or of any State in providing such information to the Secretary shall be reimbursed by him in an amount which the Secretary determines to be reasonable payment for the information exchange (which amount shall not include payment for the costs of obtaining, compiling, or maintaining the information). Whenever such services are furnished to an individual specified in subsection (c)(3) of this section, a fee shall be charged such individual. The fee so charged shall be used to reimburse the Secretary or his delegate for the expense of providing such services.

(f) Arrangements and cooperation with State agencies

The Secretary, in carrying out his duties and functions under this section, shall enter into arrangements with State agencies administering State plans approved under this part for such State agencies to accept from resident parents, legal guardians, or agents of a child described in subsection (c)(3) of this section and to transmit the information described in paragraph (1) to the Secretary requesting information with regard to the whereabouts of noncustodial parents and otherwise to cooperate with the Secretary in carrying out the purposes of this section.

(g) Reimbursement for reports by State agencies

The Secretary may reimburse Federal and State agencies for the costs incurred by such entities in furnishing information requested by the Secretary under this section in an amount which the Secretary determines to be reasonable payment for the information exchange (which amount shall not include payment for the costs of obtaining, compiling, or maintaining the information).

(h) Federal Case Registry of Child Support Orders

(1) In general

Not later than October 1, 1998, in order to assist States in administering programs under State plans approved under this part and programs funded under part A of this subchapter, and for the other purposes specified in this section, the Secretary shall establish and maintain in the Federal Parent Locator Service an automated directory to be known as the "Federal Case Registry of Child Support Orders", which shall contain the names, social security numbers, and State case identification numbers or other uniform identification numbers of the children of the individuals who owe or are owed support (or with respect to or on behalf of whom support obligations are sought to be established), and the State or States which have the case or order. Beginning not later than October 1, 1999, the information referred to in paragraph (1) shall include the names and social security numbers of the children of such individuals.

(2) Case and order information

The information referred to in paragraph (1) with respect to a case or an order shall be such information as the Secretary may specify in regulations (including the names, social security numbers or other uniform identification numbers, and State case identification numbers) to identify the individuals who owe or are owed support (or with respect to or on behalf of whom support obligations are sought to be established), and the State or States which have the case or order. Beginning not later than October 1, 1998, the information referred to in paragraph (1) shall include the names and social security numbers of the children of such individuals.

(3) Administration of Federal tax laws

The Secretary of the Treasury shall have access to the information described in paragraph (2) for the purpose of administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on support or residence of children.

(i) National Directory of New Hires

(1) In general

In order to assist States in administering programs under State plans approved under this part and programs funded under part A of this subchapter, and for the other purposes specified in this section, the Secretary shall, not later than October 1, 1997, establish and maintain in the Federal Parent Locator Service an automated directory to be known as the National Directory of New Hires, which shall
contain the information supplied pursuant to section 653a(g)(2) of this title.

(2) Data entry and deletion requirements

(A) In general
Information provided pursuant to section 653a(g)(2) of this title shall be entered into the data base maintained by the National Directory of New Hires within two business days after receipt, and shall be deleted from the data base 24 months after the date of entry.

(B) 12-month limit on access to wage and unemployment compensation information
The Secretary shall not have access for child support enforcement purposes to information in the National Directory of New Hires that is provided pursuant to section 653a(g)(2)(B) of this title, if 12 months has elapsed since the date the information is so provided and has not been a match resulting from the use of such information in any information comparison under this subsection.

(C) Retention of data for research purposes
Notwithstanding subparagraphs (A) and (B), the Secretary may retain such samples of data entered in the National Directory of New Hires as the Secretary may find necessary to assist in carrying out subsection (j)(5) of this section.

(3) Administration of Federal tax laws
The Secretary of the Treasury shall have access to the information in the National Directory of New Hires for purposes of administering section 32 of the Internal Revenue Code of 1986, or the advance payment of the earned income tax credit under section 3507 of such Code, and verifying a claim with respect to employment in a tax return.

(4) List of multistate employers
The Secretary shall maintain within the National Directory of New Hires a list of multistate employers that report information regarding newly hired employees pursuant to section 653a(b)(1)(B) of this title, and the State which each such employer has designated to receive such information.

(j) Information comparisons and other disclosures

(1) Verification by Social Security Administration

(A) In general
The Secretary shall transmit information on individuals and employers maintained under this section to the Social Security Administration to the extent necessary for verification in accordance with subparagraph (B).

(B) Verification by SSA
The Social Security Administration shall verify the accuracy of, correct, or supply to the extent possible, and report to the Secretary, the following information supplied by the Secretary pursuant to subparagraph (A):

(i) The name, social security number, and birth date of each such individual.

(ii) The employer identification number of each such employer.

(2) Information comparisons
For the purpose of locating individuals in a paternity establishment case or a case involving the establishment, modification, or enforcement of a support order, the Secretary shall—

(A) compare information in the National Directory of New Hires against information in the support case abstracts in the Federal Case Registry of Child Support Orders not less often than every 2 business days; and

(B) within 2 business days after such a comparison reveals a match with respect to an individual, report the information to the State agency responsible for the case.

(3) Information comparisons and disclosures of information in all registries for subchapter IV program purposes
To the extent and with the frequency that the Secretary determines to be effective in assisting States to carry out their responsibilities under programs operated under this part, part B, or part E and programs funded under part A of this subchapter, the Secretary shall—

(A) compare the information in each component of the Federal Parent Locator Service maintained under this section against the information in each other such component (other than the comparison required by paragraph (2)), and report instances in which such a comparison reveals a match with respect to an individual to State agencies operating such programs; and

(B) disclose information in such components to such State agencies.

(4) Provision of new hire information to the Social Security Administration
The National Directory of New Hires shall provide the Commissioner of Social Security with all information in the National Directory.

(5) Research
The Secretary may provide access to data in each component of the Federal Parent Locator Service maintained under this section and to information reported by employers pursuant to section 653a(b) of this title for research purposes found by the Secretary to be likely to contribute to achieving the purposes of part A of this subchapter or this part, but without personal identifiers.

(6) Information comparisons and disclosure for enforcement of obligations on Higher Education Act loans and grants

(A) Furnishing of information by the Secretary of Education
The Secretary of Education shall furnish to the Secretary, on a quarterly basis or at such less frequent intervals as may be determined by the Secretary of Education, information in the custody of the Secretary of Education for comparison with information
in the National Directory of New Hires, in order to obtain the information in such directory with respect to individuals who—

(i) are borrowers of loans made under title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.] that are in default; or

(ii) owe an obligation to refund an overpayment of a grant awarded under such title.

(B) Requirement to seek minimum information necessary

The Secretary of Education shall seek information pursuant to this section only to the extent essential to improving collection of the debt described in subparagraph (A).

(C) Duties of the Secretary

(i) Information comparison; disclosure to the Secretary of Education

The Secretary, in cooperation with the Secretary of Education, shall compare information in the National Directory of New Hires with information in the custody of the Secretary of Education, and disclose information in that Directory to the Secretary of Education, in accordance with this paragraph, for the purposes specified in this paragraph.

(ii) Condition on disclosure

The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part. Support collection under section 666(b) of this title shall be given priority over collection of any defaulted student loan or grant overpayment against the same income.

(D) Use of information by the Secretary of Education

The Secretary of Education may use information resulting from a data match pursuant to this paragraph only—

(i) for the purpose of collection of the debt described in subparagraph (A) owed by an individual whose annualized wage level (determined by taking into consideration information from the National Directory of New Hires) exceeds $16,000; and

(ii) after removal of personal identifiers, to conduct analyses of student loan defaults.

(E) Disclosure of information by the Secretary of Education

(i) Disclosures permitted

The Secretary of Education may disclose information resulting from a data match pursuant to this paragraph only to—

(I) a guaranty agency holding a loan made under part B of title IV of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq.] on which the individual is obligated;

(II) a contractor or agent of the guaranty agency described in subclause (I);

(III) a contractor or agent of the Secretary; and

(IV) the Attorney General.

(ii) Purpose of disclosure

The Secretary of Education may make a disclosure under clause (i) only for the purpose of collection of the debts owed on defaulted student loans, or overpayments of grants, made under title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq., 42 U.S.C. 2751 et seq.].

(iii) Restriction on redisclosure

An entity to which information is disclosed under clause (i) may use or disclose such information only as needed for the purpose of collecting on defaulted student loans, or overpayments of grants, made under title IV of the Higher Education Act of 1965.

(F) Reimbursement of HHS costs

The Secretary of Education shall reimburse the Secretary, in accordance with subsection (k)(3) of this section, for the additional costs incurred by the Secretary in furnishing the information requested under this subparagraph.

(7) Information comparisons for housing assistance programs

(A) Furnishing of information by HUD

Subject to subparagraph (G), the Secretary of Housing and Urban Development shall furnish to the Secretary, on such periodic basis as determined by the Secretary of Housing and Urban Development in consultation with the Secretary, information in the custody of the Secretary of Housing and Urban Development for comparison with information in the National Directory of New Hires, in order to obtain information in such Directory with respect to individuals who are participating in any program under—

(i) the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.);

(ii) section 1701q of title 12;

(iii) section 1715(d)(3), 1715(d)(5), or 1715z–1 of title 12;

(iv) section 8013 of this title; or

(v) section 1701s of title 12.

(B) Requirement to seek minimum information

The Secretary of Housing and Urban Development shall seek information pursuant to this section only to the extent necessary to verify the employment and income of individuals described in subparagraph (A).

(C) Duties of the Secretary

(i) Information disclosure

The Secretary, in cooperation with the Secretary of Housing and Urban Development, shall compare information in the National Directory of New Hires with information provided by the Secretary of Housing and Urban Development with respect to individuals described in subparagraph (A), and shall disclose information in such Directory regarding such individuals to the Secretary of Housing and Urban Development, in accordance with
this paragraph, for the purposes specified in this paragraph.

(ii) Condition on disclosure

The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part.

(D) Use of information by HUD

The Secretary of Housing and Urban Development may use information resulting from a data match pursuant to this paragraph only—

(i) for the purpose of verifying the employment and income of individuals described in subparagraph (A); and

(ii) after removal of personal identifiers, to conduct analyses of the employment and income reporting of individuals described in subparagraph (A).

(E) Disclosure of information by HUD

(i) Purpose of disclosure

The Secretary of Housing and Urban Development may make a disclosure under this subparagraph only for the purpose of verifying the employment and income of individuals described in subparagraph (A).

(ii) Disclosures permitted

Subject to clause (iii), the Secretary of Housing and Urban Development may disclose information resulting from a data match pursuant to this paragraph only to a public housing agency, the Inspector General of the Department of Housing and Urban Development, and the Attorney General in connection with the administration of a program described in subparagraph (A). Information obtained by the Secretary of Housing and Urban Development pursuant to this paragraph shall not be made available under section 552 of title 5.

(iii) Conditions on disclosure

Disclosures under this paragraph shall be—

(I) made in accordance with data security and control policies established by the Secretary of Housing and Urban Development and approved by the Secretary;

(II) subject to audit in a manner satisfactory to the Secretary; and

(III) subject to the sanctions under subsection (l)(2) of this section.

(iv) Additional disclosures

(I) Determination by Secretaries

The Secretary of Housing and Urban Development and the Secretary shall determine whether to permit disclosure of information under this paragraph to persons or entities described in subclause (II), based on an evaluation made by the Secretary of Housing and Urban Development (in consultation with and approved by the Secretary), of the costs and benefits of disclosures made under clause (ii) and the adequacy of measures used to safeguard the security and confidentiality of information so disclosed.

(II) Permitted persons or entities

If the Secretary of Housing and Urban Development and the Secretary determine pursuant to subclause (I) that disclosures to additional persons or entities shall be permitted, information under this paragraph may be disclosed by the Secretary of Housing and Urban Development to a private owner, a management agent, and a contract administrator in connection with the administration of a program described in subparagraph (A), subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

(v) Restrictions on redisclosure

A person or entity to which information is disclosed under this subparagraph may use or disclose such information only as needed for verifying the employment and income of individuals described in subparagraph (A), subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

(F) Reimbursement of HHS costs

The Secretary of Housing and Urban Development shall reimburse the Secretary, in accordance with subsection (k)(3) of this section, for the costs incurred by the Secretary in furnishing the information requested under this paragraph.

(G) Consent

The Secretary of Housing and Urban Development shall not seek, use, or disclose information under this paragraph relating to an individual without the prior written consent of such individual (or of a person legally authorized to consent on behalf of such individual).

(8) Information comparisons and disclosure to assist in administration of unemployment compensation programs

(A) In general

If, for purposes of administering an unemployment compensation program under Federal or State law, a State agency responsible for the administration of such program transmits to the Secretary the names and social security account numbers of individuals, the Secretary shall disclose to such State agency information on such individuals and their employers maintained in the National Directory of New Hires, subject to this paragraph.

(B) Condition on disclosure by the Secretary

The Secretary shall make a disclosure under subparagraph (A) only to the extent that the Secretary determines that the disclosure would not interfere with the effective operation of the program under this part.
(C) Use and disclosure of information by State agencies
   (i) In general
      A State agency may not use or disclose information provided under this paragraph except for purposes of administering a program referred to in subparagraph (A).
   (ii) Information security
      The State agency shall have in effect data security and control policies that the Secretary finds adequate to ensure the security of information obtained under this paragraph and to ensure that access to such information is restricted to authorized persons for purposes of authorized uses and disclosures.
   (iii) Penalty for misuse of information
      An officer or employee of the State agency who fails to comply with this subparagraph shall be subject to the sanctions under subsection (j)(2) of this section to the same extent as if such officer or employee was an officer or employee of the United States.
   (D) Procedural requirements
      State agencies requesting information under this paragraph shall adhere to uniform procedures established by the Secretary governing information requests and data matching under this paragraph.
   (E) Reimbursement of costs
      The State agency shall reimburse the Secretary, in accordance with subsection (k)(3) of this section, for the costs incurred by the Secretary in furnishing the information requested under this paragraph.

(9) Information comparisons and disclosure to assist in Federal debt collection

(A) Furnishing of information by the Secretary of the Treasury
      The Secretary of the Treasury shall furnish to the Secretary, on such periodic basis as determined by the Secretary of the Treasury in consultation with the Secretary, information in the custody of the Secretary of the Treasury for comparison with information in the National Directory of New Hires, in order to obtain information in such Directory with respect to persons—
         (i) who owe delinquent nontax debt to the United States; and
         (ii) whose debt has been referred to the Secretary of the Treasury in accordance with section 3711(g) of title 31.
   (B) Requirement to seek minimum information
      The Secretary of the Treasury shall seek information pursuant to this section only to the extent necessary to improve collection of the debt described in subparagraph (A).
   (C) Duties of the Secretary
      (i) Information disclosure
         The Secretary, in cooperation with the Secretary of the Treasury, shall compare information in the National Directory of New Hires with information provided by the Secretary of the Treasury with respect to persons described in subparagraph (A) and shall disclose information in such Directory regarding such persons to the Secretary of the Treasury in accordance with this paragraph, for the purposes specified in this paragraph. Such comparison of information shall not be considered a matching program as defined in section 552a of title 5.
   (ii) Condition on disclosure
      The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part. Support collection under section 666(b) of this title shall be given priority over collection of any delinquent Federal nontax debt against the same income.
   (D) Use of information by the Secretary of the Treasury
      The Secretary of the Treasury may use information provided under this paragraph only for purposes of collecting the debt described in subparagraph (A).
   (E) Disclosure of information by the Secretary of the Treasury
      (i) Purpose of disclosure
         The Secretary of the Treasury may make a disclosure under this subparagraph only for purposes of collecting the debt described in subparagraph (A).
      (ii) Disclosures permitted
         Subject to clauses (iii) and (iv), the Secretary of the Treasury may disclose information resulting from a data match pursuant to this paragraph only to the Attorney General in connection with collecting the debt described in subparagraph (A).
      (iii) Conditions on disclosure
         Disclosures under this subparagraph shall be—
            (I) made in accordance with data security and control policies established by the Secretary of the Treasury and approved by the Secretary;
            (II) subject to audit in a manner satisfactory to the Secretary; and
            (III) subject to the sanctions under subsection (j)(2) of this section.
      (iv) Additional disclosures
         (I) Determination by Secretaries
            The Secretary of the Treasury and the Secretary shall determine whether to permit disclosure of information under this paragraph to persons or entities described in subclause (II), based on an evaluation made by the Secretary of the Treasury (in consultation with and approved by the Secretary), of the costs and benefits of such disclosures and the adequacy of measures used to safeguard the security and confidentiality of information so disclosed.
(II) Permitted persons or entities

If the Secretary of the Treasury and the Secretary determine pursuant to subclause (I) that disclosures to additional persons or entities shall be permitted, information under this paragraph may be disclosed by the Secretary of the Treasury, in connection with collecting the debt described in subparagraph (A), to a contractor or agent of either Secretary and to the Federal agency that referred such debt to the Secretary of the Treasury for collection, subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

(v) Restrictions on redisclosure

A person or entity to which information is disclosed under this subparagraph may use or disclose such information only as needed for collecting the debt described in subparagraph (A), subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

(F) Reimbursement of HHS costs

The Secretary of the Treasury shall reimburse the Secretary, in accordance with subsection (k)(3) of this section, for the costs incurred by the Secretary in furnishing the information requested under this paragraph. Any such costs paid by the Secretary of the Treasury shall be considered costs of implementing section 3711(g) of title 31 and may be paid from the account established pursuant to section 3711(g)(7) of title 31.

(10) Information comparisons and disclosure to assist in administration of food stamp programs

(A) In general

If, for purposes of administering a supplemental nutrition assistance program under the Food and Nutrition Act of 2008 [7 U.S.C. 2011 et seq.], a State agency responsible for the administration of the program transmits to the Secretary the names and social security account numbers of individuals, the Secretary shall disclose to the State agency information on the individuals and their employers maintained in the National Directory of New Hires, subject to this paragraph.

(B) Condition on disclosure by the Secretary

The Secretary shall make a disclosure under subparagraph (A) only to the extent that the Secretary determines that the disclosure would not interfere with the effective operation of the program under this part.

(C) Use and disclosure of information by State agencies

(i) In general

A State agency may not use or disclose information provided under this paragraph except for purposes of administering a program referred to in subparagraph (A).

(ii) Information security

The State agency shall have in effect data security and control policies that the Secretary finds adequate to ensure the security of information obtained under this paragraph and to ensure that access to such information is restricted to authorized persons for purposes of authorized uses and disclosures.

(iii) Penalty for misuse of information

An officer or employee of the State agency who fails to comply with this subparagraph shall be subject to the sanctions under subsection (j)(2) to the same extent as if the officer or employee were an officer or employee of the United States.

(D) Procedural requirements

State agencies requesting information under this paragraph shall adhere to uniform procedures established by the Secretary governing information requests and data matching under this paragraph.

(E) Reimbursement of costs

The State agency shall reimburse the Secretary, in accordance with subsection (k)(3), for the costs incurred by the Secretary in furnishing the information requested under this paragraph.

(11) Information comparisons and disclosures to assist in administration of certain veterans benefits

(A) Furnishing of information by Secretary of Veterans Affairs

Subject to the provisions of this paragraph, the Secretary of Veterans Affairs shall furnish to the Secretary, on such periodic basis as determined by the Secretary of Veterans Affairs in consultation with the Secretary, information in the custody of the Secretary of Veterans Affairs for comparison with information in the National Directory of New Hires, in order to obtain information in such Directory with respect to individuals who are applying for or receiving—

(i) needs-based pension benefits provided under chapter 15 of title 38; or

(ii) compensation paid under chapter 11 of title 38; or

(iii) health care services furnished under section 1710 of title 38; or

(iv) compensation paid under chapter 11 of title 38 at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule.

(B) Requirement to seek minimum information

The Secretary of Veterans Affairs shall seek information pursuant to this paragraph only to the extent necessary to verify the employment and income of individuals described in subparagraph (A).
(C) Duties of the Secretary

(i) Information disclosure

The Secretary, in cooperation with the Secretary of Veterans Affairs, shall compare information in the National Directory of New Hires with information provided by the Secretary of Veterans Affairs with respect to individuals described in subparagraph (A), and shall disclose information in such Directory regarding such individuals to the Secretary of Veterans Affairs, in accordance with this paragraph, for the purposes specified in this paragraph.

(ii) Condition on disclosure

The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part.

(D) Use of information by Secretary of Veterans Affairs

The Secretary of Veterans Affairs may use information resulting from a data match pursuant to this paragraph only—

(i) for the purposes specified in subparagraph (B); and

(ii) after removal of personal identifiers, to conduct analyses of the employment and income reporting of individuals described in subparagraph (A).

(E) Reimbursement of HHS costs

The Secretary of Veterans Affairs shall reimburse the Secretary, in accordance with subsection (k)(3), for the costs incurred by the Secretary in furnishing the information requested under this paragraph.

(F) Consent

The Secretary of Veterans Affairs shall not seek, use, or disclose information under this paragraph relating to an individual without the prior written consent of such individual (or of a person legally authorized to consent on behalf of such individual).

(G) Expiration of authority

The authority under this paragraph shall expire on November 18, 2011.

(k) Fees

(1) For SSA verification

The Secretary shall reimburse the Commissioner of Social Security, at a rate negotiated between the Secretary and the Commissioner, for the costs incurred by the Commissioner in performing the verification services described in subsection (j) of this section.

(2) For information from State directories of new hires

The Secretary shall reimburse costs incurred by State directories of new hires in furnishing information as required by section 653ag(g)(2) of this title, at rates which the Secretary determines to be reasonable (which rates shall not include payment for the costs of obtaining, compiling, or maintaining such information).

(3) For information furnished to State and Federal agencies

A State or Federal agency that receives information from the Secretary pursuant to this section or section 652(l) of this title shall reimburse the Secretary for costs incurred by the Secretary in furnishing the information, at rates which the Secretary determines to be reasonable (which rates shall include payment for the costs of obtaining, verifying, maintaining, and comparing the information).

(l) Restriction on disclosure and use

(1) In general

Information in the Federal Parent Locator Service, and information resulting from comparisons using such information, shall not be used or disclosed except as expressly provided in this section, subject to section 6103 of the Internal Revenue Code of 1986.

(2) Penalty for misuse of information in the National Directory of New Hires

The Secretary shall require the imposition of an administrative penalty (up to and including dismissal from employment), and a fine of $1,000, for each act of unauthorized access to, disclosure of, or use of, information in the National Directory of New Hires established under subsection (i) of this section by any officer or employee of the United States or any other person who knowingly and willfully violates this paragraph.

(m) Information integrity and security

The Secretary shall establish and implement safeguards with respect to the entities established under this section designed to—

(1) ensure the accuracy and completeness of information in the Federal Parent Locator Service; and

(2) restrict access to confidential information in the Federal Parent Locator Service to authorized persons, and restrict use of such information to authorized purposes.

(n) Federal Government reporting

Each department, agency, and instrumentality of the United States shall on a quarterly basis report to the Federal Parent Locator Service the name and social security number of each employee and the wages paid to the employee during the previous quarter, except that such a report shall not be filed with respect to an employee of a department, agency, or instrumentality performing intelligence or counterintelligence functions, if the head of such department, agency, or instrumentality has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(o) Use of set-aside funds

Out of any money in the Treasury of the United States not otherwise appropriated, there is hereby appropriated to the Secretary for each fiscal year an amount equal to 2 percent of the total amount paid to the Federal Government pursuant to a plan approved under this part during the immediately preceding fiscal year (as de-


Section 652(f) of this title, referred to in subsec. (k)(3), probably means the subsec. (l) of section 652 of this title which relates to comparisons with insurance information and was added by Pub. L. 109–171, title VII, §7306(a), Feb. 8, 2006, 120 Stat. 145.

CODIFICATION

AMENDMENTS


Subsec. (k)(3). Pub. L. 109–171, §7306(b), inserted “or section 652(f) of this title” after “appropria- tion” in section reference.

Subsec. (o). Pub. L. 109–171, §7305, inserted “or the amount appropriated under this paragraph for fiscal year 2002, whichever is greater” before “shall remain available” in last sentence.


Pub. L. 108–190 added par. (3) relating to information comparisons for housing assistance programs.


Subsec. (i)(2). Pub. L. 106–200, §402(b), amended heading and text of par. (2) generally. Prior to amendment,
text read as follows: “Information shall be entered into the data base maintained by the National Directory of New Hires within 2 business days of receipt pursuant to section 653A(a)(2) of this title.”


1997—Subsec. (a). Pub. L. 105–33, §5534(a)(1), designated existing provisions as par. (1), substituted “for the purposes specified in paragraphs (2) and (3),” for “to offer, and transmit to any authorized person (as defined in subsection (c) of this section), for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or enforcing child custody or visitation orders—”, added pars. (2) and (3), and struck out former pars. (1) to (3) which read as follows: “(1) information on, or facilitating the discovery of, the location of any individual—

(A) who is under an obligation to pay child support or provide child custody or visitation rights;

(B) against whom such an obligation is sought;

(C) to whom such an obligation is owed, including the individual’s social security number (or numbers), most recent address, and the name, address, and employer identification number of the individual’s employer;

(2) information on the individual’s wages (or income) from, and benefits of, employment (including rights to or enrollment in group health care coverage); and

(3) information on the type, status, location, and amount of any assets of, or debts owed by, or to, any such individual.”

Subsec. (a)(2). Pub. L. 105–89, §105(a)(1), inserted “or making or enforcing child custody or visitation orders, or to seek to enforce orders providing child custody or visitation rights;” after “authorizing or allowing . . .” in introductory provisions.

Subsec. (a)(2)(A)(ix). Pub. L. 105–89, §105(a)(1)(B), inserted “or to seek to enforce orders providing child custody or visitation rights;” for “or to issue an order against a resident parent for child custody or visitation rights, or any agent of such court;” after “, or any agent of such court;” and

Subsec. (c)(3). Pub. L. 104–193, §318(b)(2)(A), substituted a “noncustodial parent” for “an absent parent” and “or to issue an order against a resident parent for child custody or visitation rights, or any agent of such court;” for “, or any agent of such court; and”.

Subsec. (h)(1). Pub. L. 105–33, §5534(a)(3)(B), struck out “or to seek to enforce orders providing child custody or visitation rights;” after “apousal support”.

Subsec. (h)(2). Pub. L. 105–33, §5534(a)(3)(B), inserted “or order after the initiating court in an action to seek an order” after “authority to issue an order” and struck out “or to issue an order against a resident parent for child custody or visitation rights” after “maintenance of a child”.


Subsec. (i)(1). Pub. L. 105–33, §5534(a)(3)(B), substituted “support or to seek to enforce orders providing child custody or visitation rights;” for “support or to seek to enforce orders providing child custody or visitation rights;”.

Subsec. (i)(2). Pub. L. 105–194, §§318(b)(2), 395(d)(2)(A), substituted “a noncustodial parent” for “an absent parent” and “or to issue an order against a resident parent for child custody or visitation rights, or any agent of such court;” for “, or any agent of such court; and”.


Subsec. (k)(5). Pub. L. 105–33, §5535(a), inserted “data in section 653A(a)(2) of this title” for “data maintained under this section.”

Subsec. (l)(2). Pub. L. 105–33, §5535(b)(2), substituted “section 653A(a)(2) of this title” for “subsection (j)(3) of this section”.


Pub. L. 105–34, §5541(b), in heading substituted “Use of set-aside funds” for “Recovery of costs” and in text substituted “which shall be available for use by the Secretary, either directly or through grants, contracts, or interagency agreements,” for “to cover costs incurred by the Secretary” and added at end “Amounts appropriated under this subsection for each of fiscal years 1997 through 2001 shall remain available until expended.”

Subsec. (p). Pub. L. 105–33, §5543, substituted “of the parent” for “and the parent”.


Subsec. (a). Pub. L. 104–193, §318(a)(1), (c)(1), inserted “Federal” before “Parent Locator Service”, substituted “, for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or enforcing child custody or visitation orders—” for “information as to the whereabouts of any absent parent when such information is to be used to locate such parent for the purpose of enforcing support obligations against such parent,” and added pars. (1) to (3).

Subsec. (b). Pub. L. 104–193, §318(a)(2), (e)(1), substituted “information described in subsection (a) of this section” for “social security account number (or numbers, if the individual involved has more than one such number) and the most recent address and place of employment of any absent parent”, inserted “Federal” before “Parent Locator Service”, and inserted at end of closing provisions “No information shall be disclosed to any person if the State has notified the Secretary that the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the custodial parent or the child of such parent. Information received or transmitted pursuant to this section shall be subject to the safeguards contained in section 654(b) of this title.”

Subsec. (c)(1). Pub. L. 104–193, §318(b)(1), substituted “support or to seek to enforce orders providing child custody or visitation rights;” for “support or to seek to enforce orders providing child custody or visitation rights;”.

Subsec. (c)(2). Pub. L. 104–193, §§318(b)(2), 395(d)(2)(A), substituted “a noncustodial parent” for “an absent parent” and “or to issue an order against a resident parent for child custody or visitation rights, or any agent of such court;” for “, or any agent of such court; and”.

Subsec. (d). Pub. L. 104–193, §318(c), substituted “assistance under a State program funded under part A of this subchapter” for “aid under part A of this subchapter”.

Subsec. (e)(2). Pub. L. 104–193, §318(c)(2), inserted “in an amount which the Secretary determines to be reasonable payment for the information exchange (which amount shall not include payment for the costs of obtaining, compiling, or maintaining the information)” after “Secretary shall be reimbursed by him”.


Subsec. (g). Pub. L. 104–193, §318(d), added subsec. (g).

Subsecs. (h) to (n). Pub. L. 104–193, §316(d), added subsecs. (h) to (n).

Subsec. (o). Pub. L. 104–208, title I, §101(e) (title II, §215), as amended by Pub. L. 105–33, §5556(c), substituted “a plan approved under this part” for “section 657(a) of this title”.


1984—Subsec. (b)(1), Pub. L. 98–378, §101(a), inserted “the social security account number (or numbers, if the individual involved has more than one such number)” and


Subsec. (b)(2). Pub. L. 98–369, §2063(b)(13), substituted “of the United States” for “, or the United States”.

Subsec. (f). Pub. L. 98–378, §17, struck out “, after determining that the absent parent cannot be located
through the procedures under the control of such State agencies," before "to transmit to the Secretary".

1961—Subsec. (c)(1). Pub. L. 97–35 substituted "child and spousal support" for "child support".

EFFECTIVE DATE OF 2008 AMENDMENT


EFFECTIVE DATE OF 2006 AMENDMENT
Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

"The amendments made by this section [amending this section] shall become effective October 1, 1999."

EFFECTIVE DATE OF 1998 AMENDMENT

EFFECTIVE DATE OF 1997 AMENDMENTS
Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 901 of Pub. L. 105–89, set out as a note under section 622 of this title.

Section 1090(a)(4) of Pub. L. 105–34 provided that:

"The amendments made by this subsection [amending this section and section 654 of this title] shall take effect on October 1, 1996."


EFFECTIVE DATE OF 1996 AMENDMENT
Amendment of this section to be calculated as though amendments made by section 101(e) (title II, §215) of Pub. L. 104–208 were effective October 1, 1996, see section 101(e) (title II, §215) of Pub. L. 104–208, as amended, set out as a note under section 652 of this title.

Amendment by section 108(c)(10) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT
Section 124(c) of Pub. L. 100–485 provided that:

"(1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) [amending this section and sections 503 and 504 of this title] shall become effective on the first day of the first calendar quarter which begins one year or more after the date of the enactment of this Act (Oct. 13, 1988).

"(2) The Secretary of Health and Human Services and the Secretary of Labor shall enter into the agreement required by the amendment made by subsection (a) [amending this section] not later than 90 days after the date of the enactment of this Act."

EFFECTIVE DATE OF 1984 AMENDMENT
Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2564(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

NOTICE OF PURPOSES FOR WHICH WAGE AND SALARY DATA ARE TO BE USED
Pub. L. 105–200, title IV, §402(c), July 16, 1998, 112 Stat. 669, provided that: "Within 90 days after the date of the enactment of this Act [July 16, 1998], the Secretary of Health and Human Services shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of the specific purposes for which the new hire and the wage and unemployment compensation information in the National Directory of New Hires is to be used. At least 30 days before such information is to be used for a purpose not specified in the notice provided pursuant to the preceding sentence, the Secretary shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of such purpose."

REPORT ON DATA MAINTAINED BY NATIONAL DIRECTORY OF NEW HIRES
Pub. L. 105–200, title IV, §402(d), July 16, 1998, 112 Stat. 669, provided that: "Within 3 years after the date of the enactment of this Act [July 16, 1998], the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the accuracy of the data maintained by the National Directory of New Hires pursuant to section 453(i) of the Social Security Act [subsec. (i) of this section], and the effectiveness of the procedures designed to provide for the security of such data."

COORDINATION BETWEEN SECRETARIES RELATING TO AMENDMENTS BY PUB. L. 105–34
Section 1090(a)(3) of Pub. L. 105–34 provided that:

"The Secretary of the Treasury and the Secretary of Health and Human Services shall consult regarding the implementation issues resulting from the amendments made by this subsection [amending this section and section 654 of this title], including interim deadlines for States that may be able before October 1, 1999, to provide the data required by such amendments. The Secretaries shall report to Congress on the results of such consultation."

REQUIREMENT FOR COOPERATION
Section 316(h) of title III of Pub. L. 104–193 provided that: "The Secretary of Labor and the Secretary of Health and Human Services shall consult regarding the information in the various State directories of new hires and the National Directory of New Hires as established pursuant to the amendments made by this subtitle [subtitle B (§§311–317) of title III of Pub. L. 104–193, enacting sections 653a and 654b of this title and amending this section, sections 503, 654, 654a, 666, 1320b–7 of
this title, and sections 3304 and 6103 of Title 26, Internal Revenue Code). In developing these methods the Secretaries shall take into account the impact, including costs, on the States, and shall also consider the need to insure the proper and authorized use of wage record information."

EXECUTIVE AGENCIES TO FACILITATE PAYMENT OF CHILD SUPPORT


§ 653a. State Directory of New Hires

(a) Establishment

(1) In general

(A) Requirement for States that have no directory

Except as provided in subparagraph (B), not later than October 1, 1997, each State shall establish an automated directory (to be known as the "State Directory of New Hires") which shall contain information supplied in accordance with subsection (b) of this section by employers on each newly hired employee.

(B) States with new hire reporting law in existence

A State which has a new hire reporting law in existence on August 22, 1996, may continue to operate under the State law, but the State must meet the requirements of subsection (g)(2) of this section not later than October 1, 1997, and the requirements of this section (other than subsection (g)(2) of this section) not later than October 1, 1998.

(2) Definitions

As used in this section:

(A) Employee

The term "employee"—

(i) means an individual who is an employee within the meaning of chapter 24 of the Internal Revenue Code of 1986; and

(ii) does not include an employee of a Federal or State agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting pursuant to paragraph (1) with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(B) Employer

(i) in general

The term "employer" has the meaning given such term in section 3401(d) of the Internal Revenue Code of 1986 and includes any governmental entity and any labor organization.

(ii) Labor organization

The term "labor organization" shall have the meaning given such term in section 152(5) of title 29, and includes any entity (also known as a "hiring hall") which is used by the organization and an employer to carry out requirements described in section 158(f)(3) of title 29 of an agreement between the organization and the employer.

(C) Newly hired employee

The term "newly hired employee" means an employee who—

(i) has not previously been employed by the employer; or

(ii) was previously employed by the employer but has been separated from such prior employment for at least 60 consecutive days.

(b) Employer information

(1) Reporting requirement

(A) In general

Except as provided in subparagraphs (B) and (C), each employer shall furnish to the Secretary the Directory of New Hires of the State in which a newly hired employee works, a report that contains the name, address, and social security number of the employee, the date services for remuneration were first performed by the employee, and the name and address of, and identifying number assigned under section 6109 of the Internal Revenue Code of 1966 to, the employer.

(B) Multistate employers

An employer that has employees who are employed in 2 or more States and that transmits reports magnetically or electronically may comply with subparagraph (A) by designating 1 State in which such employer has employees to which the employer will transmit the report described in subparagraph (A), and transmitting such report to such State. Any employer that transmits reports pursuant to this subparagraph shall notify the Secretary in writing as to which State such employer designates for the purpose of sending reports.

(C) Federal Government employers

Any department, agency, or instrumentality of the United States shall comply with subparagraph (A) by transmitting the report described in subparagraph (A) to the National Directory of New Hires established pursuant to section 653 of this title.

(2) Timing of report

Each State may provide the time within which the report required by paragraph (1) shall be made with respect to an employee, but such report shall be made—

(A) not later than 20 days after the date the employer hires the employee; or

(B) in the case of an employer transmitting reports magnetically or electronically, by 2 monthly transmissions (if necessary) not less than 12 days nor more than 16 days apart.

(c) Reporting format and method

Each report required by subsection (b) of this section shall, to the extent practicable, be made on a W–4 form or, at the option of the employer, an equivalent form, and may be transmitted by 1st class mail, magnetically, or electronically.
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(d) Civil money penalties on noncomplying employers

The State shall have the option to set a State civil money penalty which shall not exceed—

(1) $25 per failure to meet the requirements of this section with respect to a newly hired employee; or

(2) $500 if, under State law, the failure is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report.

(e) Entry of employer information

Information shall be entered into the data base maintained by the State Directory of New Hires within 5 business days of receipt from an employer pursuant to subsection (b) of this section.

(f) Information comparisons

(1) In general

Not later than May 1, 1998, an agency designated by the State shall, directly or by contract, conduct automated comparisons of the social security numbers reported by employers pursuant to subsection (b) of this section and the social security numbers appearing in the records of the State case registry for cases being enforced under the State plan.

(2) Notice of match

When an information comparison conducted under paragraph (1) reveals a match with respect to the social security number of an individual required to provide support under a support order, the State Directory of New Hires shall provide the agency administering the State plan approved under this part of the approved State with the name, address, and social security number of the employee to whom the social security number is assigned, and the name and address of, and identifying number assigned under section 6109 of the Internal Revenue Code of 1986, to the employer.

(g) Transmission of information

(1) Transmission of wage withholding notices to employers

Within 2 business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires, the State agency enforcing the employer’s child support obligation shall transmit a notice to the employer of the employee directing the employer to withhold from the income of the employee an amount equal to the monthly (or other periodic) child support obligation (including any past due support obligation) of the employee, unless the employee’s income is not subject to withholding pursuant to section 666(b)(3) of this title.

(2) Transmissions to the National Directory of New Hires

(A) New hire information

Within 3 business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires, the State Directory of New Hires shall furnish the information to the National Directory of New Hires.

(B) Wage and unemployment compensation information

The State Directory of New Hires shall, on a quarterly basis, furnish to the National Directory of New Hires information concerning the wages and unemployment compensation paid to individuals, by such dates, in such format, and containing such information as the Secretary of Health and Human Services shall specify in regulations.

(3) “Business day” defined

As used in this subsection, the term “business day” means a day on which State offices are open for regular business.

(h) Other uses of new hire information

(1) Location of child support obligors

The agency administering the State plan approved under this part shall use information received pursuant to subsection (f)(2) of this section to locate individuals for purposes of establishing and establishing, modifying, and enforcing child support obligations, and may disclose such information to any agent of the agency that is under contract with the agency to carry out such purposes.

(2) Verification of eligibility for certain programs

A State agency responsible for administering a program specified in section 1320b–7(b) of this title shall have access to information reported by employers pursuant to subsection (b) of this section for purposes of verifying eligibility for the program.

(3) Administration of employment security and workers’ compensation

State agencies operating employment security and workers’ compensation programs shall have access to information reported by employers pursuant to subsection (b) of this section for the purposes of administering such programs.


REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a)(2), (b)(1)(A), and (h)(2), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS


2010—Subsec. (b)(1)(A). Pub. L. 111–291, § 802(a), inserted “the date services for remuneration were first performed by the employee,” after “of the employee,”.

Subsec. (c). Pub. L. 111–291, § 802(b), inserted “to the extent practicable,“ after “Each report required by subsection (b) of this section shall”.

1997—Subsec. (d). Pub. L. 105–33, § 5533(1), substituted “shall not exceed” for “shall be less than” in introductory provisions and “$25 per failure to meet the requirements of this section with respect to a newly hired employee” for “$25” in par. (1).

Subsec. (g)(2)(B). Pub. L. 105–33, § 5533(2), substituted “information” for “extracts of the reports required
under section 503(a)(6) of this title to be made to the Secretary of Labor”.

**Effective Date of 2011 Amendment**

Pub. L. 112–40, title II, §253(b), Oct. 21, 2011, 125 Stat. 422, provided that:

“(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this section [amending this section] shall take effect 6 months after the date of the enactment of this Act [Oct. 21, 2011].

“(2) COMPLIANCE TRANSITION PERIOD.—If the Secretary of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required in order for a State plan under part D of title IV of the Social Security Act [42 U.S.C. 651 et seq.] to meet the additional requirement imposed by the amendment made by subsection (a) [amending this section], the plan shall not be regarded as failing to meet such requirement before the first day of the second calendar quarter beginning after the close of the first regular session of the State legislature that begins after the effective date of such amendment. If the State has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.”

**Effective Date of 2010 Amendment**

Pub. L. 111–291, title VIII, §802(c), Dec. 8, 2010, 124 Stat. 3157, provided that:

“(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this section [amending this section] shall take effect 6 months after the date of the enactment of this Act [Dec. 8, 2010].

“(2) COMPLIANCE TRANSITION PERIOD.—If the Secretary of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required in order for a State plan under part D of title IV of the Social Security Act [42 U.S.C. 651 et seq.] to meet the additional requirements imposed by the amendment made by subsection (a), the plan shall not be regarded as failing to meet such requirements before the first day of the second calendar quarter beginning after the close of the first regular session of the State legislature that begins after the effective date of such amendment. If the State has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.”

**Effective Date of 1997 Amendment**


**Effective Date**

For effective date of section, see section 395(a)–(c) of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 654 of this title.

**§ 654. State plan for child and spousal support**

A State plan for child and spousal support must—

(1) provide that it shall be in effect in all political subdivisions of the State;

(2) provide for financial participation by the State;

(3) provide for the establishment or designation of a single and separate organizational unit, which meets such staffing and organizational requirements as the Secretary may by regulation prescribe, within the State to administer the plan;

(4) provide that the State will—

(A) provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations, as appropriate, under the plan with respect to—

(i) each child for whom (I) assistance is provided under the State program funded under part A of this subchapter; (II) benefits or services for foster care maintenance are provided under the State program funded under part E of this subchapter, (III) medical assistance is provided under the State plan approved under subchapter XIX of this chapter, or (IV) cooperation is required pursuant to section 1905(j)(1) of title 7, unless, in accordance with paragraph (29), good cause or other exceptions exist;

(ii) any other child, if an individual applies for such services with respect to the child; and

(B) enforce any support obligation established with respect to—

(i) a child with respect to whom the State provides services under the plan; or

(ii) the custodial parent of such a child;

(5) provide that (A) in any case in which support payments are collected for an individual with respect to whom an assignment pursuant to section 606(a)(3) of this title is effective, such payments shall be made to the State for distribution pursuant to section 657 of this title and shall not be paid directly to the family, and the individual will be notified on a monthly basis (or on a quarterly basis for so long as the Secretary determines with respect to a State that requiring such notice on a monthly basis would impose an unreasonable administrative burden) of the amount of the support payments collected, and (B) in any case in which support payments are collected for an individual pursuant to the assignment made under section 1396k of this title, such payments shall be made to the State for distribution pursuant to section 1396k of this title, except that this clause shall not apply to such payments for any month after the month in which the individual ceases to be eligible for medical assistance;

(6) provide that—

(A) services under the plan shall be made available to residents of other States on the same terms as to residents of the State submitting the plan;

(B)(i) an application fee for furnishing such services shall be imposed on an individual, other than an individual receiving assistance under a State program funded under part A or E of this subchapter, or under a State plan approved under subchapter XIX of this chapter, who is required by the State to cooperate with the State agency administering the program under this part pursuant to subsection (l) or (m) of section 1905 of title 7, and shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which
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(I) will not exceed $25 (or such higher or lower amount which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs; and (II) may vary among such individuals on the basis of ability to pay (as determined by the State); and

(ii) in the case of an individual who has never received assistance under a State program funded under part A and for whom the State has collected at least $500 of support, the State shall impose an annual fee of $25 for each case in which services are furnished, which shall be retained by the State from support collected on behalf of the individual (but not from the first $500 so collected), paid by the individual applying for the services, recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and the fees shall be considered income to the program);

(C) a fee of not more than $25 may be imposed in any case where the State requests the Secretary of the Treasury to withhold past-due support owed to or on behalf of such individual from a tax refund pursuant to section 664(a)(2) of this title;

(D) a fee (in accordance with regulations of the Secretary) for performing genetic tests may be imposed on any individual who is not a recipient of assistance under a State program funded under part A of this subchapter; and

(E) any costs in excess of the fees so imposed may be collected—

(i) from the parent who owes the child or spousal support obligation involved; or

(ii) at the option of the State, from the individual to whom such services were made available, but only if such State has in effect a procedure whereby all persons in such State having authority to order child or spousal support are informed that such costs are to be collected from the individual to whom such services were made available;

(7) provide for entering into cooperative arrangements with appropriate courts and law enforcement officials and Indian tribes or tribal organizations (as defined in subsections (e) and (l) of section 450b of title 25) (A) to assist the agency administering the plan, including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the agency administering the plan;

(8) provide that, for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or making or enforcing a child custody or visitation determination, as defined in section 663(d)(1) of this title the agency administering the plan will establish a service to locate parents utilizing—

(A) all sources of information and available records; and

(B) the Federal Parent Locator Service established under section 653 of this title, and shall, subject to the privacy safeguards required under paragraph (26), disclose only the information described in sections 653 and 663 of this title to the authorized persons specified in such sections for the purposes specified in such sections;

(9) provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State—

(A) in establishing paternity, if necessary;

(B) in locating a noncustodial parent residing in the State (whether or not permanently) against whom any action is being taken under a program established under a plan approved under this part in another State;

(C) in securing compliance by a noncustodial parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of the child or children or the parent of such child or children with respect to whom aid is being provided under the plan of such other State;

(D) in carrying out other functions required under a plan approved under this part; and

(E) not later than March 1, 1997, in using the forms promulgated pursuant to section 652(a)(11) of this title for income withholding, imposition of liens, and issuance of administrative subpoenas in interstate child support cases;

(10) provide that the State will maintain a full record of collections and disbursements made under the plan and have an adequate reporting system;

(11)(A) provide that amounts collected as support shall be distributed as provided in section 657 of this title; and

(B) provide that any payment required to be made under section 656 or 657 of this title to a family shall be made to the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children;

(12) provide for the establishment of procedures to require the State to provide individuals who are applying for or receiving services under the State plan, or who are parties to cases in which services are being provided under the State plan—

(A) with notice of all proceedings in which support obligations might be established or modified; and

(B) with a copy of any order establishing or modifying a child support obligation, or (in the case of a petition for modification) a notice of determination that there should be no change in the amount of the child support award, within 14 days after issuance of such order or determination;

(13) provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating noncustodial parents, establishing pa-
ternity, obtaining support orders, and collecting support payments and provide that information requests by parents who are residents of other States be treated with the same priority as requests by parents who are residents of the State submitting the plan.

(14)(A) comply with such bonding requirements, for employees who receive, disburse, handle, or have access to, cash, as the Secretary shall by regulations prescribe;

(B) maintain methods of administration which are designed to assure that persons responsible for handling cash receipts shall not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts (except that the Secretary shall by regulations provide for exceptions to this requirement in the case of sparsely populated areas where the hiring of unreasonable additional staff would otherwise be necessary);

(15) provide for—

(A) a process for annual reviews of and reports to the Secretary on the State program operated under the State plan approved under this part, including such information as may be necessary to measure State compliance with Federal requirements for expedited procedures, using such standards and procedures as are required by the Secretary, under which the State agency will determine the extent to which the program is operated in compliance with this part; and

(B) a process of extracting from the automated data processing system required by paragraph (16) and transmitting to the Secretary data and calculations concerning the levels of accomplishment (and rates of improvement) with respect to applicable performance indicators (including paternity establishment percentages) to the extent necessary for purposes of sections 652(g) and 658a of this title;

(16) provide for the establishment and operation by the State agency, in accordance with an (initial and annually updated) advance automated data processing planning document approved under section 652(d) of this title, of a statewide automated data processing and information retrieval system meeting the requirements of section 654a of this title designed effectively and efficiently to assist management in the administration of the State plan, so as to control, account for, and monitor all the factors in the support enforcement collection and paternity determination process under such plan;

(17) provide that the State will have in effect an agreement with the Secretary entered into pursuant to section 653 of this title for the use of the Parent Locator Service established under section 653 of this title, and provide that the State will accept and transmit to the Secretary requests for information authorized under the provisions of the agreement to be furnished by such Service to authorized persons, will impound and collect (in accordance with regulations of the Secretary) a fee sufficient to cover the costs to the State and to the Secretary incurred by reason of such requests, will transmit to the Secretary from time to time (in accordance with such regulations) so much of the fees collected as are attributable to such costs to the Secretary so incurred, and during the period that such agreement is in effect will otherwise comply with such agreement and regulations of the Secretary with respect thereto;

(18) provide that the State has in effect procedures necessary to obtain payment of past-due support from overpayments made to the Secretary of the Treasury as set forth in section 664 of this title, and take all steps necessary to implement and utilize such procedures;

(19) provide that the agency administering the plan—

(A) shall determine on a periodic basis, from information supplied pursuant to section 508 of the Unemployment Compensation Amendments of 1976, whether any individuals receiving compensation under the State’s unemployment compensation law (including amounts payable pursuant to any agreement under any Federal unemployment compensation law) owe child support obligations which are being enforced by such agency; and

(B) shall enforce any such child support obligations which are owed by such an individual but are not being met—

(i) through an agreement with such individual to have specified amounts withheld from compensation otherwise payable to such individual and by submitting a copy of any such agreement to the State agency administering the unemployment compensation law; or

(ii) in the absence of such an agreement, by bringing legal process (as defined in section 659(1)(5) of this title) to require the withholding of amounts from such compensation;

(20) provide, to the extent required by section 666 of this title, that the State (A) shall have in effect all of the laws to improve child support enforcement effectiveness which are referred to in that section, and (B) shall implement the procedures which are prescribed in or pursuant to such laws;

(21)(A) at the option of the State, impose a late payment fee on all overdue support (as defined in section 666(e) of this title) under any obligation being enforced under this part, in an amount equal to a uniform percentage determined by the State (not less than 3 percent nor more than 6 percent) of the overdue support, which shall be payable by the noncustodial parent owing the overdue support; and

(B) assure that the fee will be collected in addition to, and only after full payment of, the overdue support, and that the imposition of the late payment fee shall not directly or indirectly result in a decrease in the amount of the support which is paid to the child (or spouse) to whom, or on whose behalf, it is owed;

(22) in order for the State to be eligible to receive any incentive payments under section 658a of this title, provide that, if one or more political subdivisions of the State participate in the costs of carrying out activities under
the State plan during any period, each such subdivision shall be entitled to receive an appropriate share (as determined by the State) of any such incentive payments made to the State for such period, taking into account the efficiency and effectiveness of the activities carried out under the State plan by such political subdivision;

(23) provide that the State will regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the plan and otherwise, including information as to any application fees for such services and a telephone number or postal address at which further information may be obtained and will publicize the availability and encourage the use of procedures for voluntary establishment of paternity and child support by means the State deems appropriate;

(24) provide that the State will have in effect an automated data processing and information retrieval system—

(A) by October 1, 1997, which meets all requirements of this part which were enacted on or before October 13, 1988; and

(B) by October 1, 2000, which meets all requirements of this part enacted on or before August 22, 1996, except that such deadline shall be extended by 1 day for each day (if any) by which the Secretary fails to meet the deadline imposed by section 344(a)(3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

(25) provide that if a family with respect to which services are provided under the plan ceases to receive assistance under the State program funded under part A of this subchapter, the State shall provide appropriate notice to the family and continue to provide such services, subject to the same conditions and on the same basis as in the case of other individuals to whom services are furnished under the plan, except that an application or other request to continue services shall not be required of such a family and paragraph (6)(B) shall not apply to the family;

(26) have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties, including—

(A) safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish, modify, or enforce support, or to make or enforce a child custody determination;

(B) prohibitions against the release of information on the whereabouts of 1 party or the child to another party against whom a protective order with respect to the former party or the child has been entered;

(C) prohibitions against the release of information on the whereabouts of 1 party or the child to another person if the State has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or the child;

(D) in cases in which the prohibitions under subparagraphs (B) and (C) apply, the requirement to notify the Secretary, for purposes of section 653(b)(2) of this title, that the State has reasonable evidence of domestic violence or child abuse against a party or the child and that the disclosure of such information could be harmful to the party or the child; and

(E) procedures providing that when the Secretary discloses information about a parent or child to a State court or an agent of a State court described in section 653(c)(2) or 653d)(2)(B) of this title, and advises that court or agent that the Secretary has been notified that there is reasonable evidence of domestic violence or child abuse pursuant to section 653(b)(2) of this title, the court shall determine whether disclosure to any other person of information received from the Secretary could be harmful to the parent or child and, if the court determines that disclosure to any other person could be harmful, the court and its agents shall not make such disclosure;

(27) provide that, on and after October 1, 1998, the State agency will—

(A) operate a State disbursement unit in accordance with section 654b of this title; and

(B) have sufficient State staff (consisting of State employees) and (at State option) contractors reporting directly to the State agency to—

(i) monitor and enforce support collections through the unit in cases being enforced by the State pursuant to paragraph (4) (including carrying out the automated data processing responsibilities described in section 654a(g) of this title); and

(ii) take the actions described in section 666(c)(1) of this title in appropriate cases;

(28) provide that, on and after October 1, 1997, the State will operate a State Directory of New Hires in accordance with section 653a of this title;

(29) provide that the State agency responsible for administering the State plan—

(A) shall make the determination (and redetermination at appropriate intervals) as to whether an individual who has applied for or is receiving assistance under the State program funded under part A of this subchapter, the State program under part E of this subchapter, the State program under subchapter XIX of this chapter, or the supplemental nutrition assistance program, as defined under section 2012(l) of title 7, is cooperating in good faith with the State in establishing the paternity of, or in establishing, modifying, or enforcing a support order for, any child of the individual by providing the State agency with the name of, and such other information as the State agency may require with respect to, the noncustodial parent of the child, subject to good cause and other exceptions which—

(i) in the case of the State program funded under part A of this subchapter, the State program under part E of this subchapter, or the State program under subchapter XIX of this chapter shall, at the
option of the State, be defined, taking into account the best interests of the child, and applied in each case, by the State agency administering such program; and
(31) in the case of the supplemental nutrition assistance program, as defined under section 2012(l) of title 7, shall be defined and applied in each case under that program in accordance with section 2015(h)(2) of title 7;
(B) shall require the individual to supply additional necessary information and appear at interviews, hearings, and legal proceedings;
(C) shall require the individual and the child to submit to genetic tests pursuant to judicial or administrative order;
(D) may request that the individual sign a voluntary acknowledgment of paternity, after notice of the rights and consequences of such an acknowledgment, but may not require the individual to sign an acknowledgment or otherwise relinquish the right to genetic tests as a condition of cooperation and eligibility for assistance under the State program funded under part A of this subchapter, the State program under part E of this subchapter, the State program under subchapter XIX of this chapter, or the supplemental nutrition assistance program, as defined under section 2012(l) of title 7; and
(E) shall promptly notify the individual and the State agency administering the State program funded under part A of this subchapter, the State program under part E of this subchapter, the State agency administering the State program under subchapter XIX of this chapter, or the State agency administering the supplemental nutrition assistance program, as defined under section 2012(l) of title 7, of each such determination, and if non-cooperation is determined, the basis therefor;
(30) provide that the State shall use the definitions established under section 652(a)(5) of this title in collecting and reporting information as required under this part;
(31) provide that the State agency will have in effect a procedure for certifying to the Secretary, for purposes of the procedure under section 652(k) of this title, determinations that individuals owe arrearages of child support in an amount exceeding $2,500, under which procedure—
(A) each individual concerned is afforded notice of such determination and the consequences thereof, and an opportunity to contest the determination; and
(B) the certification by the State agency is furnished to the Secretary in such format, and accompanied by such supporting documentation, as the Secretary may require;
(32)(A) provide that any request for services under this part by a foreign reciprocating country or a foreign country with which the State has an arrangement described in section 658a(d) of this title shall be treated as a request by a State;
(B) provide, at State option, notwithstanding paragraph (4) or any other provision of this part, for services under the plan for enforcement of a spousal support order not described in paragraph (4)(B) entered by such a country (or subdivision); and
(C) provide that no applications will be required from, and no costs will be assessed for such services against, the foreign reciprocating country or foreign obligee (but costs may at State option be assessed against the obligor);
(33) provide that a State that receives funding pursuant to section 628 of this title and that has within its borders child support enforcement services in Indian country (as defined in section 1151 of title 18) may enter into cooperative agreements with an Indian tribe or tribal organization (as defined in subsections (e) and (l) of section 450b of title 25), if the Indian tribe or tribal organization demonstrates that such tribe or organization has an established tribal court system or a Court of Indian Offenses with the authority to establish paternity, establish, modify, or enforce support orders, or to enter support orders in accordance with child support guidelines, agreements, or decrees established or adopted by such tribe or organization, under which the State and tribe or organization shall provide for the cooperative delivery of child support enforcement services in Indian country and for the forwarding of all collections pursuant to the functions performed by the tribe or organization to the State agency, or conversely, by the State agency to the tribe or organization, which shall distribute such collections in accordance with such agreement; and
(34) include an election by the State to apply section 657(a)(2)(B) of this title or former section 657(a)(2)(B) of this title (as in effect for the State immediately before the date this paragraph first applies to the State) to the distribution of the amounts which are the subject of such sections and, for so long as the State elects to so apply such former section, the amendments made by subsection (b)(1) of section 7301 of the Deficit Reduction Act of 2005 shall not apply with respect to the State, notwithstanding subsection (e) of such section 7301.

The State may allow the jurisdiction which makes the collection involved to retain any application fee under paragraph (6)(B) or any late payment fee under paragraph (21). Nothing in paragraph (33) shall void any provision of any cooperative agreement entered into before August 22, 1996, nor shall such paragraph deprive any State of jurisdiction over Indian country (as so defined) that is lawfully exercised under section 1322 of title 25.

§ 4002(b)(1)(B), (2)(V), made technical amendment to references in original act which appear in text as references to sections 2015('"
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the State program under subchapter XIX of this chapter, or the food stamp program, as defined under section 2012(b) of this title; “for the State program under subchapter XIX of this chapter”.

Par. (28)(E). Pub. L. 105–33, §5548(b)(x), substituted “‘individual and the State agency administering the State program under part A of this subchapter, the State agency administering the State program under part E of this subchapter, the State agency administering the State program under subchapter XIX of this chapter, or the State agency administering the food stamp program, as defined under section 2012(b) of this title,” for “‘individual, the State agency administering the State program under part A of this subchapter, and the State agency administering the State program under subchapter XIX of this chapter’.”


Par. (33). Pub. L. 105–33, §5546(a), substituted “or” for “and enforce support orders, or” for “and enforce support orders, and”, “guidelines established or adopted by such tribe or organization” for “guidelines established by such tribe or organization”, “all collections” for “all funding collected”, and “such collections” for “such funding”.

1996—Pub. L. 104–193, §375(a)(4), inserted at end of closing provisions “Nothing in paragraph (c) shall void any provision of any cooperative agreement entered into before August 22, 1996, nor shall such paragraph deprive any State of jurisdiction over Indian country (as so defined) that is lawfully exercised under section 1322 of title 25.”

Par. (4). Pub. L. 104–193, §301(a)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “provide (a) that such State will undertake—

“(A) in the case of a child born out of wedlock with respect to whom an assignment under section 1396k of this title or section 1396k of this title is effective, to establish the paternity of such child, unless the agency administering the plan of the State under part A of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26) of this title that it is against the best interests of the child to do so, or, in the case of such a child with respect to whom an assignment under section 1396k of this title is in effect, the State agency administering the plan approved under subchapter XIX of this chapter determines pursuant to section 1396k(a)(1)(B) of this title that it is against the best interests of the child to do so, and

“(B) in the case of any child with respect to whom such assignment is effective, including an assignment with respect to a child on whose behalf a State agency is making foster care payments under part E of this subchapter, to secure support for such child from his parent (or from any other person legally liable for such support), and from such parent for his spouse (or former spouse) receiving aid to families with dependent children or medical assistance under a State plan approved under subchapter XIX of this chapter (but only if a support obligation has been established with respect to such spouse, and only if the support obligation established with respect to the child is being enforced under the plan).”

Par. (5). Pub. L. 104–193, §301(a)(2)(A), substituted “provide that—” for “provide that” in introductory provisions.

Par. (6)(A). Pub. L. 104–193, §301(a)(2)(B), added subpar. (A) as struck out former subpar. (A), which read as follows: “the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the State, including support collection services for the spouse (or former spouse) with whom the absent parent’s child is living (but only if a support obligation has been established with respect to such spouse, and only if the support obligation established with respect to the child is being enforced under the plan).”

Par. (6)(B). Pub. L. 104–193, §301(a)(2)(C), (D), inserted “on individuals not receiving assistance under any State program funded under part A of this subchapter” after “such services shall be imposed”, realigned margins, and substituted semicolon for the final comma.


Par. (6)(D). Pub. L. 104–193, §301(a)(2)(D), realigned margins and substituted semicolon for comma before “and” at end.

Pub. L. 104–193, §108(c)(12), substituted “assistance under a State program funded” for “aid under a State plan approved”.


§ 654 of this title" after "information retrieval system", substituted "so as to control" for "in the State and localities thereof, so as (A) to control", struck out "(i) before "all the factors in the support enforcement collection", and struck out before semicolon at end "including, but not limited to, (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal ZIP codes) of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are assigned under subsection (a) of section 602(a)(26) of this title), which causes a change affecting eligibility for or the amount of aid under such program, (C) to provide for security against unauthorized access to, or use of, the data in such system, (D) to facilitate the development and improvement of the income withholding and other procedures required under section 666(a) of this title through the monitoring of support payments, the maintenance of accurate records regarding the payment of support, and the prompt provision of notice to appropriate officials with respect to any arrearages in support payments which may occur, and (E) to provide management information on all cases under the State plan from initial referral or application through collection and enforcement".


Par. (23). Pub. L. 104–193, § 332, inserted "and will publicize the availability and encourage the use of procedures for voluntary establishment of paternity and child support by means the State deems appropriate" before semicolon.

Par. (24). Pub. L. 104–193, § 344(a)(4), amended par. (24) generally. Prior to amendment, par. (24) read as follows: "provide that if the State, as of October 13, 1988, does not have in effect an automated data processing and information retrieval system meeting all of the requirements of paragraph (16), the State—

(A) will submit to the Secretary on or before the first day of the fiscal year following October 13, 1988, a report to the Secretary, which is required, of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the plan, the amount of which (i) will not exceed $20 (or such higher or lower amount which shall be uniform for all States) as the Secretary determines with respect to a State that requires such notice on a monthly basis would impose an unreasonable administrative burden for "at least annually";

(B) will have in effect on October 1, 1997, an operational automated data processing and information retrieval system, meeting all the requirements of that paragraph, which has been approved by the Secretary;"


Par. (33). Pub. L. 104–193, § 375(a)(1)(D), added par. (33). 1995—Par. (24)(B). Pub. L. 104–35 substituted "1997 fee" for "1988—Par. (5)(A). Pub. L. 100–485, § 110(a), substituted "on a monthly basis (or on a quarterly basis for so long as the Secretary determines with respect to a State that requiring such notice on a monthly basis would impose an unreasonable administrative burden") for "at least annually".

Par. (6)(D), (E). Pub. L. 100–485, § 111(c), added cl. (D) and redesignated former cl. (D) as (E).


Pub. L. 100–485, § 123(a)(2), substituted "a statewide automated" for "an automatic".


1987—Par. (4)(A). Pub. L. 100–203, § 9142(a)(1)(A), (B), substituted "an assignment under section 602(a)(26) of this title or section 1396k of this title" for "an assignment under section 602(a)(26) of this title" and "or, in the case of such a child with respect to whom an assignment under section 1396k of this title is in effect, the State agency administering the plan approved under subchapter XIX of this chapter determines pursuant to section 1396k(a)(1)(B) of this title that it is against the best interests of the child to do so, and" for "and".

Par. (4)(B). Pub. L. 100–203, § 9142(a)(1)(C), inserted "or medical assistance under a State plan approved under subchapter XIX of this chapter after "(children"

Par. (5). Pub. L. 100–203, § 9142(b), substituted "provide that (A)" for "provide that," and added cl. (B).

1984—Par. (4)(B). Pub. L. 98–378, § 111(b)(1), inserted "including an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E of this subchapter, after "such assignment is effective," and inserted "or E" after "part A".

Par. (4)(B). Pub. L. 98–378, § 12(a), substituted "and" for "and, at the option of the State," before "from such parent" and inserted ", and only if the support obligation established with respect to the child is being enforced under the plan;".

Par. (5). Pub. L. 98–378, § 3(e), inserted ", and the individual will be notified at least annually of the amount of the support payments collected;".

Par. (6)(A). Pub. L. 98–378, § 12(b), struck out ", at the option of the State," before "support collection services" and inserted ", and only if the support obligation established with respect to the child is being enforced under the plan;"

Par. (6)(B). Pub. L. 98–378, § 3(c), substituted "shall be imposed, which shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the plan, the amount of which (i) will not exceed $20 (or such higher or lower amount which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs), and (ii) may vary among such individuals on the basis of ability to pay (as determined by the State), and" for "may be imposed, except that the amount of any such application fee shall be reasonable, as determined under regulations of the Secretary;".


Par. (6)(D). Pub. L. 98–378, § 21(d)(1), (2), redesignated former cl. (C) as (D) and substituted "fees" for "fee" before "so imposed".


Par. (9)(C). Pub. L. 98–369, § 2663(k)(14)(A), substituted "of such parent" before "with respect to whom aid".

Par. (16)(D), (E). Pub. L. 98–378, § 6(a), added cl. (D) and redesignated former cl. (D) as (E).


Par. (24). Pub. L. 98–378, § 3(c), inserted after numbered paragraphs provision that the State may allow the jurisdiction which makes the collection involved to retain any application fee under par. (6)(B) or any late payment fee under par. (24).

1982—Par. (5). Pub. L. 97–248, § 173(a), inserted “following the first month” after “for any month”.

Par. (6). Pub. L. 97–248, § 173(a), in cl. (A) inserted provisions relating to inclusion of, at the option of the State, support collection services for the spouse or former spouse, in cl. (B) substituted “such services” for “services under the State plan (other than collection of support)”, and in cl. (C) substituted provisions relating to collection of any costs in excess of the fee imposed, for provisions relating to the State retaining any fee imposed under State law as required under former par. (19).

Par. (18) to (20). Pub. L. 97–248, § 173(b)(1), inserted “and” at end of par. (18), struck out par. (19) relating to imposition of a fee on an individual who owes child or spousal support obligation, and redesignated par. (20) as (19).


Par. (4)(B). Pub. L. 97–35, § 2332(d)(3), substituted “such support” and, at the option of the State, from such parent for his spouse (or former spouse) receiving aid to families with dependent children (but only if a support obligation has been established with respect to such spouse), utilizing “for such support”, utilizing “services under the State plan (other than collection of support)” for “such services”.

Par. (6)(C). Pub. L. 97–35, § 2332(a)(2), substituted “the State will retain, but only if it is the State which makes the collection, the fee imposed under State law as required under paragraph (19)” for “any costs in excess of the fee so imposed may be collected from such individual by deducting such costs from the amount of any recovery made”.

Par. (9)(C). Pub. L. 97–35, § 2332(d)(5), substituted “of the child or children or the parent of such child or children” for “of a child or children”.

Par. (11). Pub. L. 97–35, § 2332(d)(6), substituted “collected as support” for “collected as child support”.

Par. (16). Pub. L. 97–35, § 2332(d)(7), substituted “support enforcement” for “child support enforcement”, “whom support obligations” for “whom child support obligations”, and “obligated to pay support” for “obligated to pay child support”.


1975—Par. (4)(A). Pub. L. 94–88, § 208(c), substituted “to establish the paternity of such child, unless the agency administering the plan of the State under part A of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 301(1) of this title that it is against the best interests of the child to do so” for “to establish the paternity of such child”.

Par. (4)(B). Pub. L. 94–88, § 208(c), substituted “reciprocal arrangements adopted with other States (unless the agency administering the plan of the State under part A of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so)” for “reciprocal arrangements adopted with other States”.

**Effective Date of 2008 Amendment**


**Effective Date of 2006 Amendment**


Amendment by section 7303(b) of Pub. L. 109–171 effective Oct. 1, 2006, see section 7303(c) of Pub. L. 109–171, set out as a note under section 632 of this title.


**Effective Date of 1999 Amendment**


**Effective Date of 1997 Amendment**


**Effective Date of 1996 Amendment**

Amendment by section 108(c)(11), (12) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.


Section 302(b) of Pub. L. 104–193 provided that: “The amendment made by subsection (a) [amending this section] shall become effective on October 1, 1997.”

Amendment by section 341(b) of Pub. L. 104–193 provided that: “The amendment made by subsection (a) [amending this section] shall become effective on October 1, 1997.”

Amendment by section 321(a) of Pub. L. 104–193 effective Oct. 1, 1996, with limited exception for States which, as of Aug. 22, 1996, were processing the receipt of child support payments through local courts, see section 321(d) of Pub. L. 104–193, set out as an Effective Date note under section 601 of this title.

Amendment by section 342(a) of Pub. L. 104–193 effective with respect to calendar quarters beginning 12
months or more after Aug. 22, 1996, see section 342(c) of Pub. L. 104–193, set out as a note under section 652 of this title.


Section 393(a)–(c) of title III of Pub. L. 104–193 provided that—

‘‘(a) IN GENERAL.—Except as otherwise specifically provided (but subject to subsections (b) and (c))—

‘‘(1) the provisions of this title [see Tables for classification] requiring the enactment or amendment of State laws under section 466 of the Social Security Act [section 666 of this title], or revision of State plans under section 454 of such Act [this section], shall be effective with respect to periods beginning on and after October 1, 1996; and

‘‘(2) all other provisions of this title shall become effective upon the date of the enactment of this Act [Aug. 22, 1996].’’

‘‘(b) GRACE PERIOD FOR STATE LAW CHANGES.—The provisions of this title shall become effective with respect to a State on the later of—

‘‘(1) the date specified in this title, or

‘‘(2) the effective date of laws enacted by the legislature of such State implementing such provisions, but in no event later than the 1st day of the 1st calendar quarter beginning after the close of the 1st regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 22, 1996]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

‘‘(c) GRACE PERIOD FOR STATE CONSTITUTIONAL AMENDMENT.—A State shall not be found out of compliance with any requirement enacted by this title if the State is unable to so comply without amending the State constitution until the earlier of—

‘‘(1) 1 year after the effective date of the necessary State constitutional amendment; or

‘‘(2) 5 years after the date of the enactment of this Act [Aug. 22, 1996].’’

EFFECTIVE DATE OF 1988 AMENDMENT

Section 104(b) of Pub. L. 100–485 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall become effective on the first day of the first calendar quarter which begins 4 or more years after the date of the enactment of this Act [Oct. 13, 1988].’’

Section 111(h)(2) of Pub. L. 100–485 provided that: ‘‘The amendments made by subsections (b) and (c) [amending this section and section 666 of this title] shall become effective on the first day of the first month beginning one year or more after the date of the enactment of this Act [Oct. 13, 1988].’’

EFFECTIVE DATE OF 1987 AMENDMENT

Section 914(b) of Pub. L. 100–203 provided that: ‘‘The amendments made by subsection (a) [amending this section and section 657 of this title] shall become effective on the first day of the first quarter ending October 1, 1987.’’

Section 914(b) of Pub. L. 100–203 provided that: ‘‘The amendments made by subsection (a) [amending this section] shall become effective on July 1, 1988.’’

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 3(g) of Pub. L. 98–378 provided that:

‘‘(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [enacting section 666 of this title and amending this section] shall become effective on October 1, 1984.

‘‘(2) Section 454(21) of the Social Security Act [par. 21 of this section] (as added by subsection (d) of this section), and section 466(e) of such Act [section 666(e) of this title] (as added by subsection (b) of this section), shall be effective with respect to refunds payable under section 401 of this title.

‘‘(3) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act (this part) to the requirements imposed by any amendment made by this section, the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after October 1, 1985. For purposes of the preceding sentence, the term ‘session’ means a regular, special, budget, or other session of a State legislature.’’

Section 6(c) of Pub. L. 98–378 provided that: ‘‘The amendments made by the preceding provisions of this section [amending this section and section 658 of this title] shall become effective on October 1, 1985.’’

Section 8(c) of Pub. L. 98–378 provided that: ‘‘The amendments made by this section [amending this section and section 655 of this title] shall apply with respect to the fiscal years of such State which begin after the date of the enactment of this Act [Aug. 16, 1984].’’

Section 11(e) of Pub. L. 98–378 provided that: ‘‘The amendments made by this section [amending this section and sections 656, 657, 664, and 671 of this title] shall become effective October 1, 1984, and shall apply to collections made on or after that date.’’

Section 12(c) of Pub. L. 98–378 provided that: ‘‘The amendments made by subsection (a) [amending this section] shall become effective October 1, 1985.’’

Amendment by section 241(d) of Pub. L. 98–378 applicable with respect to refunds payable under section 6402 of Title 26, Internal Revenue Code, as Dec. 31, 1985, see section 241(g) of Pub. L. 98–378, set out as a note under section 6103 of Title 26.

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

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 171(a), (b)(1) of Pub. L. 97–248 effective on and after Aug. 13, 1981, see section 171(c) of Pub. L. 97–248, set out as a note under section 603 of this title.

Section 173(b) of Pub. L. 97–248 provided that: ‘‘The amendment made by this section [amending this section] shall become effective on October 1, 1982.’’

EFFECTIVE DATE OF 1981 AMENDMENT

Amendments by sections 2331(b), 2332(h)(2)(7), and 2335(a), (b) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97–35, set out as a note under section 651 of this title.

Amendment by section 2335(a) of Pub. L. 97–35 effective Aug. 13, 1981, except that such amendment shall not be requirements under this section or section 603 of this title before Oct. 1, 1982, see section 2335(c) of Pub. L. 97–35, set out as a note under section 503 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–265 effective July 1, 1981, and to be effective only with respect to expenditures, referred to in section 655(a)(3) of this title, made on or after such date, see section 656(e) of Pub. L. 96–265, set out as a note under section 652 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 502(b) of Pub. L. 95–10 provided that: ‘‘The amendments made by this section [amending this section] shall become effective on the first day of the first calendar month which begins after the date of enactment of this Act [May 23, 1977].’’
The amendments made by this title [amending this section and sections 602, 603, and 655 of this title and enacting provisions set out as notes under sections 602 and 655 of this title] shall, unless otherwise specified therein, become effective August 1, 1975.

Section 210 of title II of Pub. L. 94–88 provided that: "The amendments made by this title [amending this section and sections 602, 603, and 655 of this title and enacting provisions set out as notes under sections 602 and 655 of this title] shall, unless otherwise specified therein, become effective August 1, 1975."

Exception to General Effective Date for State Plans Requiring State Law Amendments

Pub. L. 109–171, title VII, §7311, Feb. 3, 2006, 120 Stat. 148, provided that: "In the case of a State plan under part D of title IV of the Social Security Act [this part] which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this subtitle [subtitle C (§7301–7311) of title VII of Pub. L. 109–171, amending this section, sections 608, 652, 653, 655, 657, 664, and 666 of this title, section 6402 of Title 26, Internal Revenue Code, and provisions set out as notes under section 1169 of Title 29, Labor], the effective date of the amendments imposing the additional requirements shall be 3 months after the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Feb. 8, 2006]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature."

State Commissions on Child Support

Section 15 of Pub. L. 98–378 provided that:

"(a) As a condition of the State's eligibility for Federal payments under part A or D of title IV of the Social Security Act [part A of this subchapter or this part] for quarters beginning more than 30 days after the date of the enactment of this Act [Aug. 16, 1984] and ending prior to October 1, 1985, the Governor of each State, on or before December 1, 1984, shall subject to subsection (b) appoint a State Commission on Child Support.

"(b) Each State Commission appointed under subsection (a) shall be composed of members appropriately representing all aspects of the child support system, including custodial and non-custodial parents, the agency or organizational unit administering the State's plan under part D of such title IV [this part], the State judiciary, the executive and legislative branches of the State government, child welfare and social services agencies, and others.

"(c) It shall be the function of each State Commission to examine, investigate, and study the operation of the State's child support system for the primary purpose of determining the extent to which such system has been successful in securing support and parental involvement both for children who are eligible for aid under a State plan approved under part A of title IV of such Act [part A of this subchapter] and for children who are not eligible for such aid, giving particular attention to such specific problems (among others) as visitation, the establishment of appropriate objective standards for support, the enforcement of interstate obligations, the availability, cost, and effectiveness of services both to children who are eligible for such aid and to children who are not, and the need for additional State or Federal legislation to obtain support for all children.

"(d) Each State Commission shall submit to the Governor of the State and make available to the public, no later than October 1, 1985, a full and complete report of its findings and recommendations resulting from the examination, investigation, and study under this section. The Governor shall transmit such report to the Secretary of Health and Human Services along with the Governor's comments thereon.

"(e) None of the costs incurred in the establishment and operation of a State Commission under this section, or incurred by such a Commission in carrying out its functions under subsections (c) and (d), shall be considered as expenditures qualifying for Federal payments under part A or D of title IV of the Social Security Act [part A of this subchapter or this part] or be otherwise payable or reimbursable by the United States or any agency thereof.

"(f) If the Secretary determines, at the request of any State on the basis of information submitted by the State and such other information as may be available to the Secretary, that such State—

"(1) has placed in effect and is implementing objective standards for the determination and enforcement of child support obligations, (2) has established within the five years prior to the enactment of this Act [Aug. 16, 1984] a commission or council with substantially the same functions as the State Commissions provided for under this section, or

"(3) is making satisfactory progress toward fully effective child support enforcement and will continue to do so, then such State shall not be required to establish a State Commission under this section and the preceding provisions of this section shall not apply."

Delayed Effective Date in Cases Requiring State Legislation

Section 176 of Pub. L. 97–248 provided that: "In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act [this part] to the requirements imposed by any amendment made by this subtitle [subtitle E (§417–418) of title I of Pub. L. 97–248, see Tables for classification], the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the end of the first session of the State legislature which begins after October 1, 1982, or which began prior to October 1, 1982, and remained in session for at least twenty-five calendar days after such date. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature."

§ 654a. Automated data processing

(a) In general

In order for a State to meet the requirements of this section, the State agency administering the State program under this part shall have in operation a single statewide automated data processing and information retrieval system which has the capability to perform the tasks specified in this section with the frequency and in the manner required by or under this part.

(b) Program management

The automated system required by this section shall perform such functions as the Secretary may specify relating to management of the State program under this part, including—

(1) controlling and accounting for use of Federal, State, and local funds in carrying out the program; and

(2) maintaining the data necessary to meet Federal reporting requirements under this part on a timely basis.

(c) Calculation of performance indicators

In order to enable the Secretary to determine the incentive payments and penalty adjustments required by sections 652(g) and 658a of this title, the State agency shall—

(1) use the automated system—

(A) to maintain the requisite data on State performance with respect to paternity estab-
lishment and child support enforcement in the State; and
(B) to calculate the paternity establishment percentage for the State for each fiscal year; and
(2) have in place systems controls to ensure the completeness and reliability of, and ready access to, the data described in paragraph (1)(A), and the accuracy of the calculations described in paragraph (1)(B).

(d) Information integrity and security
The State agency shall have in effect safeguards on the integrity, accuracy, and completeness of, access to, and use of data in the automated system required by this section, which shall include the following (in addition to such other safeguards as the Secretary may specify in regulations):

(1) Policies restricting access
Written policies concerning access to data by State agency personnel, and sharing of data with other persons, which—
(A) permit access to and use of data only to the extent necessary to carry out the State program under this part; and
(B) specify the data which may be used for particular program purposes, and the personnel permitted access to such data.

(2) Systems controls
Systems controls (such as passwords or blocking of fields) to ensure strict adherence to the policies described in paragraph (1).

(3) Monitoring of access
Routine monitoring of access to and use of the automated system, through methods such as audit trails and feedback mechanisms, to guard against and promptly identify unauthorized access or use.

(4) Training and information
Procedures to ensure that all personnel (including State and local agency staff and contractors) who may have access to or be required to use confidential program data are informed of applicable requirements and penalties (including those in section 6103 of the Internal Revenue Code of 1986), and are adequately trained in security procedures.

(5) Penalties
Administrative penalties (up to and including dismissal from employment) for unauthorized access to, or disclosure or use of, confidential data.

(e) State case registry
(1) Contents
The automated system required by this section shall include a registry (which shall be known as the “State case registry”) that contains records with respect to—
(A) each case in which services are being provided by the State agency under the State plan approved under this part; and
(B) each support order established or modified in the State on or after October 1, 1998.

(2) Linking of local registries
The State case registry may be established by linking local case registries of support orders through an automated information network, subject to this section.

(3) Use of standardized data elements
Such records shall use standardized data elements for both parents (such as names, social security numbers and other uniform identification numbers, dates of birth, and case identification numbers), and contain such other information (such as on case status) as the Secretary may require.

(4) Payment records
Each case record in the State case registry with respect to which services are being provided under the State plan approved under this part and with respect to which a support order has been established shall include a record of—
(A) the amount of monthly (or other periodic) support owed under the order, and other amounts (including arrearages, interest or late payment penalties, and fees) due or overdue under the order;
(B) any amount described in subparagraph (A) that has been collected;
(C) the distribution of such collected amounts;
(D) the birth date and, beginning not later than October 1, 1999, the social security number, of any child for whom the order requires the provision of support; and
(E) the amount of any lien imposed with respect to the order pursuant to section 666(a)(4) of this title.

(5) Updating and monitoring
The State agency operating the automated system required by this section shall promptly establish and update, maintain, and regularly monitor, case records in the State case registry with respect to which services are being provided under the State plan approved under this part, on the basis of—
(A) information on administrative actions and administrative and judicial proceedings and orders relating to paternity and support;
(B) information obtained from comparison with Federal, State, or local sources of information;
(C) information on support collections and distributions; and
(D) any other relevant information.

(f) Information comparisons and other disclosures of information
The State shall use the automated system required by this section to extract information from (at such times, and in such standardized format or formats, as may be required by the Secretary), to share and compare information with, and to receive information from, other data bases and information comparison services, in order to obtain (or provide) information necessary to enable the State agency (or the Secretary or other State or Federal agencies) to carry out this part, subject to section 6103 of the Internal Revenue Code of 1986. Such information comparison activities shall include the following:

(1) Federal Case Registry of Child Support Orders
Furnishing to the Federal Case Registry of Child Support Orders established under sec-
tion 653(h) of this title (and update as necessary, with information including notice of expiration of orders) the minimum amount of information on child support cases recorded in the State case registry that is necessary to operate the registry (as specified by the Secretary in regulations).

(2) **Federal Parent Locator Service**

Exchanging information with the Federal Parent Locator Service for the purposes specified in section 653 of this title.

(3) **Temporary family assistance and medicaid agencies**

Exchanging information with State agencies (of the State and of other States) administering programs under part A of this subchapter, programs operated under a State plan approved under subchapter XIX of this chapter, and other programs designated by the Secretary, as necessary to perform State agency responsibilities under this part and under such programs.

(4) **Intrastate and interstate information comparisons**

Exchanging information with other agencies of the State, agencies of other States, and interstate information networks, as necessary and appropriate to carry out (or assist other States to carry out) the purposes of this part.

(5) **Private industry councils receiving welfare-to-work grants**

Disclosing to a private industry council (as defined in section 603(a)(5)(D)(ii) of this title) to which funds are provided under section 603(a)(5) of this title the names, addresses, telephone numbers, and identifying case number information in the State program funded under part A of this subchapter, of noncustodial parents residing in the service delivery area of the private industry council, for the purpose of identifying and contacting noncustodial parents regarding participation in the program under section 603(a)(5) of this title.

(g) **Collection and distribution of support payments**

(1) In general

The State shall use the automated system required by this section, to the maximum extent feasible, to assist and facilitate the collection and disbursement of support payments through the State disbursement unit operated under section 653b of this title, through the performance of functions, including, at a minimum—

(A) transmission of orders and notices to employers (and other debtors) for the withholding of income—

(i) within 2 business days after receipt of notice of, and the income source subject to, such withholding from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State; and

(ii) using uniform formats prescribed by the Secretary;

(B) ongoing monitoring to promptly identify failures to make timely payment of support; and

(C) automatic use of enforcement procedures (including procedures authorized pursuant to section 666(c) of this title) if payments are not timely made.

(2) **“Business day” defined**

As used in paragraph (1), the term “business day” means a day on which State offices are open for regular business.

(h) **Expedited administrative procedures**

The automated system required by this section shall be used, to the maximum extent feasible, to implement the expedited administrative procedures required by section 666(c) of this title.


**REFERENCES IN TEXT**

The Internal Revenue Code of 1986, referred to in subsecs. (d)(4)(A) and (f), is classified generally to Title 26, Internal Revenue Code.

**AMENDMENTS**


1997—Subsec. (e)(4)(D). Pub. L. 105–34 substituted “the birth date and, beginning not later than October 1, 1999, the social security number, of any child” for “the birth date of any child”.

1996—Subsecs. (e), (f). Pub. L. 104–193, §311, added subsecs. (e) and (f).

Subsec. (g). Pub. L. 104–193, §312(c), added subsec. (g).


**EFFECTIVE DATE OF 1997 AMENDMENT**


**EFFECTIVE DATE OF 1996 AMENDMENT**

Amendment by section 312(c) of Pub. L. 104–193 effective Oct. 1, 1998, with limited exception for States which, as of Aug. 22, 1996, were processing the receipt of child support payments through local courts, see section 312(d) of Pub. L. 104–193, set out as an Effective Date note under section 654b of this title.

**EFFECTIVE DATE**

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 654 of this title.

**REGULATIONS**

Section 344(a)(3) of Pub. L. 104–193 provided that: “The Secretary of Health and Human Services shall prescribe final regulations for implementation of section 454A of the Social Security Act [this section] not later than 2 years after the date of the enactment of this Act [Aug. 22, 1996].”

§ 654b. Collection and disbursement of support payments

(a) **State disbursement unit**

(1) In general

In order for a State to meet the requirements of this section, the State agency must establish and operate a unit (which shall be
known as the "State disbursement unit") for the collection and disbursement of payments under support orders—

(A) in all cases being enforced by the State pursuant to section 654(a) of this title; and

(B) in all cases not being enforced by the State under this part in which the support order is initially issued in the State on or after January 1, 1994, and in which the income of the noncustodial parent is subject to withholding pursuant to section 666(a)(8)(B) of this title.

(2) Operation

The State disbursement unit shall be operated

(A) directly by the State agency (or 2 or more State agencies under a regional cooperative agreement), or (to the extent appropriate) by a contractor responsible directly to the State agency; and

(B) except in cases described in paragraph (1)(B), in coordination with the automated system established by the State pursuant to section 654(a) of this title.

(3) Linking of local disbursement units

The State disbursement unit may be established by linking local disbursement units through an automated information network, subject to this section, if the Secretary agrees that the system will not cost more nor take more time to establish or operate than a centralized system. In addition, employers shall be given 1 location to which income withholding is sent.

(b) Required procedures

The State disbursement unit shall use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical, for the collection and disbursement of support payments, including procedures—

(1) for receipt of payments from parents, employers, and other States, and for disbursements to custodial parents and other obligees, the State agency, and the agencies of other States;

(2) for accurate identification of payments;

(3) to ensure prompt disbursement of the custodial parent's share of any payment; and

(4) to furnish to any parent, upon request, timely information on the current status of support payments under an order requiring payments to be made by or to the parent, except that in cases described in subsection (a)(1)(B) of this section, the State disbursement unit shall not be required to convert and maintain in automated form records of payments kept pursuant to section 666(a)(8)(B)(iii) of this title before the effective date of this section.

(c) Timing of disbursements

(1) In general

Except as provided in paragraph (2), the State disbursement unit shall distribute all amounts payable under section 657(a) of this title within 2 business days after receipt from the employer or other source of periodic income, if sufficient information identifying the payee is provided. The date of collection for amounts collected and distributed under this part is the date of receipt by the State disbursement unit, except that if current support is withheld by an employer in the month when due and is received by the State disbursement unit in a month other than the month when due, the date of withholding may be deemed to be the date of collection.

(2) Permissive retention of arrearages

The State disbursement unit may delay the distribution of collections toward arrearages until the resolution of any timely appeal with respect to such arrearages.

(d) "Business day" defined

As used in this section, the term "business day" means a day on which State offices are open for regular business.


References in Text

For effective date of this section, referred to in subsec. (b)(4), see Effective Date note below.

Amendments

1997—Subsec. (c)(1). Pub. L. 105–33 inserted at end "The date of collection for amounts collected and distributed under this part is the date of receipt by the State disbursement unit, except that if current support is withheld by an employer in the month when due and is received by the State disbursement unit in a month other than the month when due, the date of withholding may be deemed to be the date of collection."

Effective Date of 1997 Amendment


Effective Date

Section 312(d) of Pub. L. 104–193 provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending sections 654 and 654a of this title] shall become effective on October 1, 1998.

"(2) LIMITED EXCEPTION TO UNIT HANDLING PAYMENTS.—Notwithstanding section 44B(b)(1) of the Social Security Act [subsec. (b)(1) of this section], as added by this section, any State which, as of the date of the enactment of this Act [Aug. 22, 1996], processes the receipt of child support payments through local courts may, at the option of the State, continue to process through September 30, 1999, such payments through such courts as processed such payments on or before such date of enactment."

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 654 of this title.

§ 655. Payments to States

(a) Amounts payable each quarter

(1) From the sums appropriated therefor, the Secretary shall pay to each State for each quarter an amount—

(A) equal to the percent specified in paragraph (2) of the total amounts expended by
such State during such quarter for the operation of the plan approved under section 654 of this title,

(B) equal to the percent specified in paragraph (3) of the sums expended during such quarter that are attributable to the planning, design, development, installation or enhancement of an automatic data processing and information retrieval system (including in such sums the full cost of the hardware components of such system); and

(C) equal to 66 percent of so much of the sums expended during such quarter as are attributable to laboratory costs incurred in determining paternity, and

(D) equal to 66 percent of the sums expended by the State during the quarter for an alternative statewide system for which a waiver has been granted under section 652(d)(3) of this title, but only to the extent that the total of the sums so expended by the State on or after July 16, 1998, does not exceed the least total cost estimate submitted by the State pursuant to section 652(d)(3)(C) of this title in the request for the waiver

except that no amount shall be paid to any State on account of amounts expended from amounts paid to the State under section 658a of this title or to carry out an agreement which it has entered into pursuant to section 663 of this title. In determining the total amounts expended by any State during a quarter, for purposes of this subsection, there shall be excluded an amount equal to the total of any fees collected or other income resulting from services provided under the plan approved under this part.

(2) The percent applicable to quarters in a fiscal year for purposes of paragraph (1)(A) is:

(A) 70 percent for fiscal years 1984, 1985, 1986, and 1987,

(B) 68 percent for fiscal years 1988 and 1989, and

(C) 66 percent for fiscal year 1990 and each fiscal year thereafter.

(3)(A) The Secretary shall pay to each State, for each quarter in fiscal years 1996 and 1997, 90 percent of so much of the State expenditures described in paragraph (1)(B) as the Secretary finds are for a system meeting the requirements specified in section 654(16) of this title (as in effect on September 30, 1995) but limited to the amount approved for States in the advance planning documents of such States submitted on or before September 30, 1995.

(B)(i) The Secretary shall pay to each State or system described in clause (iii), for each quarter in fiscal years 1996 through 2001, the percentage specified in clause (ii) of so much of the State or system expenditures described in paragraph (1)(B) as the Secretary finds are for a system meeting the requirements of sections 654(16) and 654a of this title.

(ii) The percentage specified in this clause is 80 percent.

(iii) For purposes of clause (i), a system described in this clause is a system that has been approved by the Secretary to receive enhanced funding pursuant to the Family Support Act of 1988 (Public Law 100–485; 102 Stat. 2343) for the purpose of developing a system that meets the requirements of sections 654(16) of this title (as in effect on and after September 30, 1995) and 654a of this title, including systems that have received funding for such purpose pursuant to a waiver under section 1315(a) of this title.

(4)(A)(i) If—

(I) the Secretary determines that a State plan under section 654 of this title would (in the absence of this paragraph) be disapproved for the failure of the State to comply with a particular subparagraph of section 654(24) of this title, and that the State has made and is continuing to make a good faith effort to so comply; and

(II) the State has submitted to the Secretary a corrective compliance plan that describes how, when, and at what cost the State will achieve such compliance, which has been approved by the Secretary,

then the Secretary shall not disapprove the State plan under section 654 of this title, and the Secretary shall reduce the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the fiscal year by the penalty amount.

(ii) All failures of a State during a fiscal year to comply with any of the requirements referred to in the same subparagraph of section 654(24) of this title shall be considered a single failure of the State to comply with that subparagraph during the fiscal year for purposes of this paragraph.

(B) In this paragraph:

(i) The term "penalty amount" means, with respect to a failure of a State to comply with a subparagraph of section 654(24) of this title—

(I) 4 percent of the penalty base, in the case of the first fiscal year in which such a failure by the State occurs (regardless of whether a penalty is imposed under this paragraph with respect to the failure);

(II) 8 percent of the penalty base, in the case of the second such fiscal year;

(III) 16 percent of the penalty base, in the case of the third such fiscal year;

(IV) 25 percent of the penalty base, in the case of the fourth such fiscal year; or

(V) 30 percent of the penalty base, in the case of the fifth or any subsequent such fiscal year.

(ii) The term "penalty base" means, with respect to a failure of a State to comply with a subparagraph of section 654(24) of this title during a fiscal year, the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the preceding fiscal year.

(C)(i) The Secretary shall waive a penalty under this paragraph for any failure of a State to comply with section 654(24)(A) of this title during fiscal year 1998 if—

(I) on or before August 1, 1998, the State has submitted to the Secretary a request that the Secretary certify the State as having met the requirements of such section;

(II) the Secretary subsequently provides the certification as a result of a timely review conducted pursuant to the request; and
(III) the State has not failed such a review.

(ii) If a State with respect to which a reduction is made under this paragraph for a fiscal year with respect to a failure to comply with a subparagraph of section 654(24) of this title achieves compliance with such subparagraph by the beginning of the succeeding fiscal year, the Secretary shall increase the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the succeeding fiscal year by an amount equal to 90 percent of the reduction for the fiscal year.

(iii) The Secretary shall reduce the amount of any reduction that, in the absence of this clause, would be required to be made under this paragraph by reason of the failure of a State to achieve compliance with section 654(24)(B) of this title during the fiscal year, by an amount equal to 20 percent of the amount of the otherwise required reduction, for each State performance measure described in section 658a(b)(4)(A) of this title with respect to which the applicable percentage under section 658a(b)(6) of this title for the fiscal year is 100 percent, if the Secretary has made the determination described in section 658a(b)(5)(B) of this title with respect to the State for the fiscal year.

(D) The Secretary may not impose a penalty under this paragraph against a State with respect to a failure to comply with section 654(24)(B) of this title for a fiscal year if the Secretary is required to impose a penalty under this paragraph against the State with respect to a failure to comply with section 654(24)(A) of this title for the fiscal year.

(5)(A)(i) If—

(I) the Secretary determines that a State plan under section 654 of this title would (in the absence of this paragraph) be disapproved in the 1st fiscal year in which such a failure occurs (regardless of whether a penalty is imposed in that fiscal year under this paragraph with respect to the failure), except as provided in subparagraph (C)(i) of this paragraph;

(II) 8 percent of the penalty base, in the case of the 2nd such fiscal year;

(III) 16 percent of the penalty base, in the case of the 3rd such fiscal year;

(IV) 25 percent of the penalty base, in the case of the 4th such fiscal year; or

(V) 30 percent of the penalty base, in the case of the 5th or any subsequent such fiscal year.

(iii) the term “penalty base” means, with respect to a failure of a State to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title during a fiscal year, the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the preceding fiscal year.

(C)(i) The Secretary shall waive all penalties imposed against a State under this paragraph for any failure of the State to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title if the Secretary determines that, before April 1, 2000, the State has achieved such compliance.

(ii) If a State with respect to which a reduction is required to be made under this paragraph with respect to a failure to comply with subparagraphs (A) and (B)(i) of section 654(27) of this title achieves such compliance on or after April 1, 2000, and on or before September 30, 2000, then the penalty amount applicable to the State shall be 1 percent of the penalty base with respect to the failure involved.

(D) The Secretary may not impose a penalty under this paragraph against a State for a fiscal year for which the amount otherwise payable to the State under paragraph (1)(A) of this subsection is reduced under paragraph (4) of this subsection for failure to comply with section 654(24)(A) of this title.

(b) Estimate of amounts payable; installment payments

(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State’s proportionate share of the estimated total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) Subject to subsection (d) of this section, the Secretary shall then pay, in such installments as he may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter
and with respect to which adjustment has not already been made under this subsection.

(3) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.


(d) State reports

Notwithstanding any other provision of law, no amount shall be paid to any State under this section for any quarter, prior to the close of such quarter, unless for the period consisting of all prior quarters for which payment is authorized to be made to such State under subsection (a) of this section, there shall have been submitted by the State to the Secretary, with respect to each quarter in such period (other than the last two quarters in such period), a full and complete report (in such form and manner and containing such information as the Secretary shall prescribe or require) as to the amount of child support collected and disbursed and all expenditures with respect to which payment is authorized under subsection (a) of this section.

(e) Special project grants for interstate enforcement; appropriations

(1) In order to encourage and promote the development and use of more effective methods of enforcing support obligations under this part in cases where either the children or the support is sought or their noncustodial parents do not reside in the State where such cases are filed, the Secretary is authorized to make grants, in such amounts and on such terms and conditions as the Secretary determines to be appropriate, to States which propose to undertake new or innovative methods of support collection in such cases and which will use the proceeds of such grants to carry out special projects designed to demonstrate and test such methods.

(2) A grant under this subsection shall be made only upon a finding by the Secretary that the project involved is likely to be of significant assistance in carrying out the purpose of this subsection; and with respect to such project the Secretary may waive any of the requirements of this part which would otherwise be applicable, to such extent and for such period as the Secretary determines is necessary or desirable in order to enable the State to carry out the project.

(3) At the time of its application for a grant under this subsection the State shall submit to the Secretary a statement describing in reasonable detail the project for which the proceeds of the grant are to be used, and the State shall from time to time thereafter submit to the Secretary such reports with respect to the project as the Secretary may specify.

(4) Amounts expended by a State in carrying out a special project assisted under this section shall be considered, for purposes of section 658(b) of this title (as amended by section 5(a) of the Child Support Enforcement Amendments of 1984), to have been expended for the operation of the State’s plan approved under section 654 of this title.

(f) Direct Federal funding to Indian tribes and tribal organizations

The Secretary may make direct payments under this part to an Indian tribe or tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian tribe or tribal organization to be eligible for a grant under this subsection.


REFERENCES IN TEXT


Section 658(b) of this title (as amended by section 5(a) of the Child Support Enforcement Amendments of 1984), referred to in subsec. (e)(4), was in the original a reference to “section 458(b)”, meaning section 458(b) of act of Aug. 14, 1935, as amended by section 5(a) of Pub. L. 98–378, which was classified to section 658(b) of this title, Pub. L. 100–202, title II, §201(f)(1), (2)(A), July 16, 1998, 112 Stat. 657, 658; repealed section 458 and renumbered section 458A of the act of Aug. 14, 1935, as section 458, which is classified to section 658a of this title.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–171, §7309(a), inserted “from amounts paid to the State under section 658a of this title or” before “to carry out an agreement” in concluding provisions.

See References in Text note below.
Subsec. (a)(1)(C). Pub. L. 109–171, §7308(a), substituted ‘‘66 percent’’ for ‘‘90 percent (rather than the percentage specified in subparagraph (A))’’.


Subsec. (a)(4). Pub. L. 100–485, §123(c), substituted subpar. (A) for former par. (1) which provided for an amount equal to 70 percent of the total amounts expended by the State during the quarter for the operation of the plan approved under section 654 of this title, struck out former par. (2) which provided for an amount equal to 50 percent of the total amounts expended by the Secretary which was granted pursuant to specific authority set forth in the law, redesignated former par. (3) as subpar. (B) of par. (1), and in subpar. (B) as so redesignated, substituted subparagraph (A) for ‘‘old clause (D)’’ and inserted ‘‘(including in such sums the full cost of the hardware components of such system)’’ and ‘‘, or meets such requirements without regard to clause (D) thereof’’.


Former par. (2) was struck out.


1982—Subsec. (a)(1). Pub. L. 97–248, §174(a), substituted ‘‘70 percent’’ for ‘‘75 percent’’.

Subsec. (c). Pub. L. 97–248, §174(b), struck out subsec. (c) which had provided that expenditures of courts of a State or its political subdivisions in connection with the performance of services related to the operation of the plan approved under section 654 of this title, would be included in determining the amounts expended by a State during any quarter for the operation of such plan, that the aggregate amount of such expenditures would be reduced by the total amount of those expenditures made by a State for the 12-month period beginning on Jan. 1, 1978, and that a State agency could, under State law, pay the courts of the State from amounts received under subsec. (a) of this section.

1981—Subsec. (a). Pub. L. 97–35, as amended by Pub. L. 97–248, §171(b)(2), inserted provision that in determining the total amounts expended by any State during a quarter, for purposes of this subsection, there be excluded an amount equal to the total of any fees collected or other income resulting from services provided under the plan approved under this part.

1980—Subsec. (a). Pub. L. 96–611, §9(c), inserted provision following par. (3) that no amount shall be paid to any State on account of amounts expended to carry out an agreement which it has entered into pursuant to section 663 of this title.

Pub. L. 96–611, §11(c), which was intended to make a technical correction in par. (3) by substituting a period for the semicolon at the end thereof, was not executed in view of the amendment by section 9(c) of Pub. L. 96–611 inserting provision following par. (3).

Pub. L. 96–265, §405(a), added par. (3).

Pub. L. 96–178 struck out provisions following par. (2) prohibiting payment to any State on account of furnishing child support collection or paternity determination services (other than the parent locator services) to individuals under section 654(4) of this title during any period beginning after Sept. 30, 1978.

Subsec. (b). Pub. L. 96–265, §407(a), substituted ‘‘Subject to subsection (d) of this section, the Secretary’’ for ‘‘The Secretary’’.

Subsecs. (c), (d), Pub. L. 96–265, §§404(a), 407(b), added subsecs. (c) and (d).


1975—Subsec. (a). Pub. L. 94–88, §§201(c), 205, designated existing provisions as subsec. (a), and inserted provisions authorizing Secretary to pay to each State for each quarter beginning with the quarter commencing July 1, 1975, an amount equal to 50 percent of the total amounts expended by such State during such quarter for the operation of a plan which meets the conditions of section 654 of this title except as is provided by a waiver by the Secretary which is granted pursuant to specific authority set forth in the law.
Subsec. (b), Pub. L. 94–88, §205, added subsec. (b).

**Effective Date of 2006 Amendment**

Pub. L. 109–171, title VII, §730(b), Feb. 8, 2006, 120 Stat. 147, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2006, and shall apply to costs incurred on or after that date.”

Pub. L. 109–171, title VII, §730(b), Feb. 8, 2006, 120 Stat. 147, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2007.”

**Effective Date of 1999 Amendments**


**Effective Date of 1998 Amendments**

Pub. L. 105–306, §4(a)(2), Oct. 28, 1998, 112 Stat. 2927, provided that: “The amendment made by paragraph (1) of this subsection [amending this section] shall take effect as if included in the enactment of section 101(a) of the Child Support Performance and Incentive Act of 1998 [Pub. L. 105–200, amending this section], and the amendment shall be considered to have been included by section 101(a) of such Act for purposes of section 201(c)(2)(B) of such Act [amending this section].”


**Effective Date of 1997 Amendment**


Amendment by Pub. L. 104–193, title III, §344(c), Aug. 22, 1996, 110 Stat. 2237, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to laboratory costs incurred on or after October 1, 1996, and the amendment made by subsection (c) [amending section 658 of this title] shall apply with respect to amounts collected on or after October 1, 1993.”

**Effective Date of 1991 Amendment**


**Effective Date of 1980 Amendments**

Section 404(b) of Pub. L. 96–265 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to expenditures made by States on or after July 1, 1980.”

Amendment by section 495(a) of Pub. L. 96–265 effective July 1, 1981, and to be effective only with respect to expenditures, referred to in subsec. (a)(3) of this section, made on or after such date, see section 495(e) of Pub. L. 96–265, set out as a note under section 652 of this title.

**Effective Date of 1975 Amendment**

Amendment by Pub. L. 94–88 effective Aug. 1, 1975, unless otherwise provided, see section 210 of Pub. L. 94–88, set out as a note under section 654 of this title.

**Temporary Resumption of Prior Child Support Law**

Pub. L. 111–5, div. B, title II, §2104, Feb. 17, 2009, 123 Stat. 449, provided that: “During the period that begins on October 1, 2008, and ends on September 30, 2010, section 455(a)(1) of the Social Security Act (42 U.S.C. 655(a)(1)) shall be applied and administered as if the phrase ‘from amounts paid to the State under section 458’ [section 658a of this title] or ‘does not appear in such section.’”

**Temporary Limitation on Payments Under Special Federal Matching Rate**


(B) ALLOCATION OF LIMITATION AMONG STATES.—The total amount payable to a State or a system described in subparagraph (C) under section 455(a)(3)(B) of such Act for fiscal years 1996 through 2001 shall not exceed the limitation determined for the State or system by the Secretary of Health and Human Services in regulations.

(C) ALLOCATION FORMULA.—The regulations referred to in subparagraph (B) shall prescribe a formula for allocating the amount specified in subparagraph (A) among States with plans approved under part D of title IV of the Social Security Act [this part], and among systems that have been approved by the Secretary to receive enhanced funding pursuant to the Family Support Act of 1988 (Public Law 100–485; 102 Stat. 2343) for the purpose of developing a system that meets the re-
requirements of sections 454(16) (as in effect on and after September 30, 1995) and 454A (probably means sections 454(16) and 454A of the Social Security Act which are classified to sections 654(16) and 654a, respectively, of this title), including systems that have received funding for such purpose pursuant to a waiver under section 1115(a) (probably means section 1115(a) of the Social Security Act which is classified to section 1315(a) of this title), which shall take into account —

(i) the relative size of such State and system case-loads under part D of title IV of the Social Security Act [this part]; and

(ii) the level of automation needed to meet the automated data processing requirements of such part.

PAYMENTS TO STATES FOR CERTAIN EXPENSES INCURRED DURING JULY 1975

Section 206 of Pub. L. 94–88 provided that amounts expended in good faith by any State during July 1975 in certain ways in preparation for or implementation of the child support program under this part were to be considered for purposes of this section, to the extent that payment for the expenses incurred would have been made under the terms of this section, had the amendment by section 101 of Pub. L. 93–647 been effective on July 1, 1975, to have been expended by the State for the operation of the State plan or for the conduct of activities specified in this section.

§ 655a. Provision for reimbursement of expenses

For purposes of section 655 of this title, expenses incurred to reimburse State employment offices for furnishing information requested of such offices—

(1) pursuant to section 49b(b) of title 29, or

(2) by a State or local agency charged with the duty of carrying a State plan for child support approved under this part,

shall be considered to constitute expenses incurred in the administration of such State plan.


CODIFICATION

Section was formerly classified to section 603a of this title.

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

AMENDMENTS

1998—Par. (1). Pub. L. 105–220 substituted “section 49b(b) of title 29” for “the third sentence of section 49b(a) of title 29.”

1996—Pub. L. 104–193 amended section catchline and text generally. Prior to amendment, text read as follows: “For purposes of section 603 of this title, expenses incurred to reimburse State employment offices for furnishing information requested of such offices pursuant to the third sentence of section 49b(a) of title 29, by a State or local agency administering a State plan approved under part A of this subchapter shall be considered to constitute expenses incurred in the administration of such State plan; and for purposes of section 655 of this title, expenses incurred to reimburse State employment offices for furnishing information so requested by a State or local agency charged with the duty of carrying out a State plan for child support approved under part D of this subchapter shall be considered to constitute expenses incurred in the administration of such State plan.”

EFFECTIVE DATE OF 1998 AMENDMENT


§ 656. Support obligation as obligation to State; amount; discharge in bankruptcy

(a) Collection processes

(1) The support rights assigned to the State pursuant to section 608(a)(3) of this title or secured on behalf of a child receiving foster care maintenance payments shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under all applicable State and local processes.

(2) The amount of such obligation shall be—

(A) the amount specified in a court order which covers the assigned support rights, or

(B) if there is no court order, an amount determined by the State in accordance with a formula approved by the Secretary.

(3) Any amounts collected from a noncustodial parent under the plan shall reduce, dollar for dollar, the amount of his obligation under subparagraphs (A) and (B) of paragraph (2).

(b) Nondischargeability

A debt (as defined in section 101 of title 11) owed under State law to a State (as defined in such section) or municipality (as defined in such section) that is in the nature of support and that is enforceable under this part is not released by a discharge in bankruptcy under title 11.


AMENDMENTS


tion assigned to a State under section 602(a)(26) of this title is not released by a discharge in bankruptcy under title 11.

1984—Subsec. (a)(1). Pub. L. 98-378, §11(b)(2), inserted “or secured on behalf of a child receiving foster care maintenance payments” after “section 602(a)(26) of this title”.

Pub. L. 98-369, §2663(c)(15)(A), designated existing unenumerated provisions as par. (1). Former par. (1) redesignated (2).

Subsec. (a)(2). Pub. L. 98-369, §2663(c)(15)(B), redesignated former par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 98-369, §2663(c)(15)(C), (D), redesignated former par. (2) as (3) and substituted “subparagraphs (A) and (B) of paragraph (2)” for “paragraphs (1)(A) and (B)”.


1978—Subsec. (b). Pub. L. 95-598 repealed provision declaring a debt which is a child support obligation assigned to a State under section 602(a)(26) of this title as not released by a discharge in bankruptcy under the Bankruptcy Act.

**Effective Date of 1997 Amendment**

Amendment by section 5513(a)(3) of Pub. L. 105-33 effective as if included in section 108 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, at the time such section 108 became law, see section 5518(b) of Pub. L. 105-33, set out as a note under section 652 of this title.

Amendment by section 556(d) of Pub. L. 105-33 effective as if included in the enactment of title II of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5557 of Pub. L. 105-33, set out as a note under section 608 of this title.

**Effective Date of 1996 Amendment**

Amendment by section 108(k)(13) of Pub. L. 104-193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104-193, as amended, set out as an Effective Date note under section 601 of this title.

Amendment by section 374(b) of Pub. L. 104-193 applicable only with respect to cases commenced under Title II, Bankruptcy, after Aug. 22, 1996, see section 374(c) of Pub. L. 104-193, set out as a note under section 523 of Title II.

For provisions relating to effective date of title III of Pub. L. 104-193, see section 395(a)–(c) of Pub. L. 104-193, set out as a note under section 654 of this title.

**Effective Date of 1984 Amendments**

Amendment by Pub. L. 98-378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98-378, set out as a note under section 654 of this title.

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

**Effective Date of 1981 Amendment**

Section 233(h) of Pub. L. 97-35 provided that: “The amendments made by this section [amending this section and section 523 of Title II, Bankruptcy] shall become effective on the date of the enactment of this Act [Aug. 13, 1981].”

**Effective Date of 1978 Amendment**

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 657. Distribution of collected support

(a) In general

Subject to subsections (d) and (e), the amounts collected on behalf of a family as support by a State pursuant to a plan approved under this part shall be distributed as follows:

(1) **Families receiving assistance**

In the case of a family receiving assistance from the State, the State shall—

(A) pay to the Federal Government the Federal share of the amount collected, subject to paragraph (3)(A);

(B) retain, or pay to the family, the State share of the amount collected, subject to paragraph (3)(B); and

(C) pay to the family any remaining amount.

(2) **Families that formerly received assistance**

In the case of a family that formerly received assistance from the State:

(A) **Current support**

To the extent that the amount collected does not exceed the current support amount, the State shall pay the amount to the family.

(B) **Arrearages**

Except as otherwise provided in an election made under section 654(34) of this title, to the extent that the amount collected exceeds the current support amount, the State—

(i) shall first pay to the family the excess amount, to the extent necessary to satisfy support arrearages not assigned pursuant to section 608(a)(3) of this title;

(ii) if the amount collected exceeds the amount required to be paid to the family under clause (i), shall—

(I) pay to the Federal Government the Federal share of the excess amount described in this clause, subject to paragraph (3)(A); and

(II) retain, or pay to the family, the State share of the excess amount described in this clause, subject to paragraph (3)(B); and

(iii) shall pay to the family any remaining amount.

(3) **Limitations**

(A) **Federal reimbursements**

The total of the amounts paid by the State to the Federal Government under paragraphs (1) and (2) of this subsection with respect to a family shall not exceed the Federal share of the amount assigned with respect to the family pursuant to section 608(a)(3) of this title.

(B) **State reimbursements**

The total of the amounts retained by the State under paragraphs (1) and (2) of this subsection with respect to a family shall not exceed the State share of the amount assigned with respect to the family pursuant to section 608(a)(3) of this title.
(4) Families that never received assistance

In the case of any other family, the State shall distribute to the family the portion of the amount so collected that remains after withholding any fee pursuant to section 654(b)(11) of this title.

(5) Families under certain agreements

Notwithstanding paragraphs (1) through (3), in the case of an amount collected for a family in accordance with a cooperative agreement under section 654(33) of this title, the State shall distribute the amount collected pursuant to the terms of the agreement.

(6) State option to pass through additional support with Federal financial participation

(A) Families that formerly received assistance

Notwithstanding paragraph (2), a State shall not be required to pay to the Federal Government the Federal share of an amount collected on behalf of a family that formerly received assistance from the State to the extent that the State pays the amount to the family.

(B) Families that currently receive assistance

(i) In general

Notwithstanding paragraph (1), in the case of a family that receives assistance from the State, a State shall not be required to pay to the Federal Government the Federal share of any amount collected on behalf of such family during a month to the extent that—

(I) the State pays the excepted portion to the family; and

(II) the excepted portion is disregarded in determining the amount and type of assistance provided to the family under such program.

(ii) Excepted portion defined

For purposes of this subparagraph, the term “excepted portion” means that portion of the amount collected on behalf of a family during a month that does not exceed $100 per month, or in the case of a family that includes 2 or more children, that does not exceed an amount established by the State that is not more than $200 per month.

(b) Continuation of assignments

(1) State option to discontinue pre-1997 support assignments

(A) In general

Any rights to support obligations assigned to a State as a condition of receiving assistance from the State under part A and in effect on September 30, 1997 (or such earlier date on or after August 22, 1996, as the State may choose), may remain assigned after such date.

(B) Distribution of amounts after assignment discontinuation

If a State chooses to discontinue the assignment of a support obligation described in subparagraph (A), the State may treat amounts collected pursuant to the assignment as if the amounts had never been assigned and may distribute the amounts to the family in accordance with subsection (a)(4).

(2) State option to discontinue post-1997 assignments

(A) In general

Any rights to support obligations accruing before the date on which a family first receives assistance under part A that are assigned to a State under that part and in effect before the implementation date of this section may remain assigned after such date.

(B) Distribution of amounts after assignment discontinuation

If a State chooses to discontinue the assignment of a support obligation described in subparagraph (A), the State may treat amounts collected pursuant to the assignment as if the amounts had never been assigned and may distribute the amounts to the family in accordance with subsection (a)(4).

(c) Definitions

As used in subsection (a) of this section:

(1) Assistance

The term “assistance from the State” means—

(A) assistance under the State program funded under part A of this subchapter or under the State plan approved under part A of this subchapter (as in effect on the day before August 22, 1996); and

(B) foster care maintenance payments under the State plan approved under part E of this subchapter.

(2) Federal share

The term “Federal share” means that portion of the amount collected resulting from the application of the Federal medical assistance percentage in effect for the fiscal year in which the amount is distributed.

(3) Federal medical assistance percentage

The term “Federal medical assistance percentage” means—

(A) 75 percent, in the case of Puerto Rico, the Virgin Islands, Guam, and American Samoa; or

(B) the Federal medical assistance percentage (as defined in section 1396d(b) of this title, as such section was in effect on September 30, 1995) in the case of any other State.

(4) State share

The term “State share” means 100 percent minus the Federal share.

(5) Current support amount

The term “current support amount” means, with respect to amounts collected as support on behalf of a family, the amount designated as the monthly support obligation of the non-custodial parent in the order requiring the
support or calculated by the State based on the order.

(d) Gap payments not subject to distribution under this section

At State option, this section shall not apply to any amount collected on behalf of a family as support by the State (and paid to the family in addition to the amount of assistance otherwise payable to the family) pursuant to a plan approved under this part if such amount would have been paid to the family by the State under section 602(a)(28) of this title, as in effect and applied on the day before August 22, 1996.

(e) Amounts collected for child for whom foster care maintenance payments are made

Notwithstanding the preceding provisions of this section, amounts collected by a State as child support for months in any period on behalf of a child for whom a public agency is making foster care maintenance payments under part E of this subchapter—

(1) shall be retained by the State to the extent necessary to reimburse it for the foster care maintenance payments made with respect to the child during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(2) shall be paid to the public agency responsible for supervising the placement of the child to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but not the amounts required by a court or administrative order to be paid as support on behalf of the child during such period; and the responsible agency may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child's future needs or making all or a part thereof available to the person responsible for meeting the child's day-to-day needs; and

(3) shall be retained by the State, if any portion of the amounts collected remains after making the payments required under paragraphs (1) and (2), to the extent that such portion is necessary to reimburse the State (with appropriate reimbursement to the Federal Government to the extent of its participation in the financing) for any past foster care maintenance payments (or payments of assistance under the State program funded under part A of this subchapter) which were made with respect to the child (and with respect to which past collections have not previously been retained);

and any balance shall be paid to the State agency responsible for supervising the placement of the child, for use by such agency in accordance with paragraph (2).


**AMENDMENTS**

2006—Subsec. (a). Pub. L. 109–171, §7301(b)(1)(A), which directed general amendment of subsec. (a), was executed by adding pars. (1) to (5) and striking out former pars. (1) to (6), to reflect the probable intent of Congress and the amendment by Pub. L. 109–171, §7301(b)(1)(B)(iii). See below. Prior to amendment, pars. (1) to (6) related to families receiving assistance, families that never received assistance, families under certain agreements, the Secretary's report to Congress, and a State option for applicability, respectively.

Subsec. (a)(3). Pub. L. 109–171, §7310(b), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "In the case of any other family, the State shall distribute the amount so collected to the family."


Subsec. (b). Pub. L. 109–171, §7301(c), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: "Any rights to support obligations, assigned to a State as a condition of receiving assistance from the State under part A of this subchapter and in effect on September 30, 1997 (or such earlier date, on or after August 22, 1996, as the State may choose), shall remain assigned after such date."


1999—Subsec. (a). Pub. L. 106–169, §301(c)(1), substituted "subsections (d) and (e)" for "subsections (e) and (f)" in introductory provisions.


Subsec. (d). Pub. L. 106–169, §301(c)(2), (4), redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: "If—"

"(2)(A) the State has distributed to families that include an adult receiving assistance under the program under part A of this subchapter at least 80 percent of the current support payments collected during the preceding fiscal year on behalf of such families, and the amounts distributed were disregarded in determining the amount or type of assistance provided under the program under part A of this subchapter; or"

"(B) the State has distributed to families that formerly received assistance under the program under part A of this subchapter the State share of the
amounts collected pursuant to section 606 of this title that could have been retained as reimbursement for assistance paid to such families.

The State share otherwise determined for the fiscal year shall be increased by an amount equal to one-half of the amount (if any) by which the State share for the fiscal year 1995 exceeds the State share for the fiscal year determined without regard to this subsection.

Pub. L. 106–169, §301(a), amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: "If the amounts collected which could be retained by the State in the fiscal year (to the extent necessary to reimburse the State for amounts paid to families as assistance by the State) are less than the State share of the amounts collected in fiscal year 1995 (determined in accordance with this section as in effect on the day before August 22, 1996), the State share for the fiscal year shall be an amount equal to the State share in fiscal year 1996.

Pub. L. 106–169, §401(k), made technical amendment to reference in original act which appears in text as reference to August 22, 1996.

Subsec. (e). Pub. L. 106–169, §301(c)(4), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Pub. L. 106–169, §301(c)(3), struck out at end "For purposes of subsection (d) of this section, the State share of such amount paid to the family shall be considered amounts which could be retained by the State if such payments were reported by the State as part of the State share of amounts collected in fiscal year 1996."

Pub. L. 106–169, §301(c)(4), redesignated subsec. (f) as (e).


Subsec. (a)(2)(B)(i)(I), (ii)(I). Pub. L. 105–33, §5532(f)(1), in introductory provisions, struck out "other than subsection (b)(1)" after "provisions of this section" and inserted "other than subsection (b)(1) (as so in effect)" after "1996".


Subsec. (a)(4). Pub. L. 105–33, §5532(d), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: "In the case of a family receiving assistance from an Indian tribe, distribute the amount so collected pursuant to an agreement entered into pursuant to a State plan under section 659(3) of this title."


Subsec. (b). Pub. L. 105–33, §5532(a), substituted "as assigned" for "which were assigned" and "and in effect on September 30, 1995" (as of August 22, 1996, as the State may choose), shall remain assigned after such date," for "and which were in effect on the day before August 22, 1996, shall remain assigned after August 22, 1996."
made by clause (i) [amending this section] shall take effect on October 1, 2008."


Amendment by section 7310(b) of Pub. L. 109–171 effective Oct. 1, 2006, see section 7310(c) of Pub. L. 109–171, set out as a note under section 654 of this title.

Effective Date of 1999 Amendment

Pub. L. 106–169, title III, § 301(c), Dec. 14, 1999, 113 Stat. 1857, provided that: "The amendment made by subsection (a) [amending this section] shall be effective with respect to calendar quarters occurring during the period that begins on October 1, 1999, and ends on September 30, 2001."


Effective Date of 1997 Amendment


Effective Date of 1996 Amendment

Section 392(c) of Pub. L. 104–193 provided that:
"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 654 and 664 of this title] shall be effective on October 1, 1996, or earlier at the State's option.

"(2) CONFORMING AMENDMENTS.—The amendments made by subsection (b)(2) [amending section 654 of this title] shall become effective on the date of the enactment of this Act [Aug. 22, 1996]."

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 602 of this title.

Effective Date of 1988 Amendment

Section 162(c) of Pub. L. 100–485 provided that: "The amendments made by this section [amending this section and section 602 of this title] shall become effective on the first day of the first calendar quarter which begins after the date of the enactment of this Act [Oct. 13, 1988]."

Effective Date of 1986 Amendment


Section 1899(b) of Pub. L. 99–514 provided that: "The amendment made by this section [amending this section] shall become effective on the date of the enactment of this Act [Oct. 22, 1986]."

Effective Date of 1984 Amendment

Section 7(b) of Pub. L. 98–378 provided that: "The amendments made by subsection (a) [amending this section] shall become effective October 1, 1984."

Amendment by section 11(a) of Pub. L. 98–378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(c) of Pub. L. 98–378, set out as a note under section 654 of this title.

Section 2646 of Pub. L. 98–369 provided that: "Except as otherwise specifically provided in this subtitle [subtitle B (§§ 2611–2646) of Pub. L. 98–369], the provisions of parts 1 and 2 [sections 2611 to 2692 of Pub. L. 98–369, enacting section 1320–6 of this title, amending this section and sections 602, 609, 614, 615, 1320a–6, 1382 to 1382j, 1382k, 1382l, and 1383 of this title and section 51 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 602, 609, 614, 1320a–6, 1382a, and 1383 of this title and section 51 of Title 26] and the amendments made thereby shall take effect on October 1, 1984."

Effective Date of 1981 Amendment


§ 658a. Incentive payments to States

(a) In general

In addition to any other payment under this part, the Secretary shall, subject to subsection (f) of this section, make an incentive payment to each State for each fiscal year in an amount determined under subsection (b) of this section.

(b) Amount of incentive payment

(1) In general

The incentive payment for a State for a fiscal year is equal to the incentive payment pool for the fiscal year, multiplied by the State incentive payment share for the fiscal year.

(2) Incentive payment pool

(A) In general

In paragraph (1), the term "incentive payment pool" means—

(i) $422,000,000 for fiscal year 2000;

(ii) $429,000,000 for fiscal year 2001;

(iii) $450,000,000 for fiscal year 2002;

(iv) $461,000,000 for fiscal year 2003;

(v) $454,000,000 for fiscal year 2004;

(vi) $446,000,000 for fiscal year 2005;

(vii) $439,000,000 for fiscal year 2006;

(viii) $471,000,000 for fiscal year 2007;

(ix) $483,000,000 for fiscal year 2008; and

(x) for any succeeding fiscal year, the amount of the incentive payment pool for the fiscal year that precedes such succeeding fiscal year, multiplied by the percentage (if any) by which the CPI for such preceding fiscal year exceeds the CPI for the second preceding fiscal year.

(B) CPI

For purposes of subparagraph (A), the CPI for a fiscal year is the average of the Consumer Price Index for the 12-month period ending on September 30 of the fiscal year. As
used in the preceding sentence, the term “Consumer Price Index” means the last Consumer Price Index for all urban consumers published by the Department of Labor.

(3) State incentive payment share

In paragraph (1), the term “State incentive payment share” means, with respect to a fiscal year—

(A) the incentive base amount for the State for the fiscal year; divided by

(B) the sum of the incentive base amounts for all of the States for the fiscal year.

(4) Incentive base amount

In paragraph (3), the term “incentive base amount” means, with respect to a State and a fiscal year—

(A) the incentive base amount for the State for the fiscal year, with respect to each of the following measures of State performance for the fiscal year:

(B) the support order performance level.

(C) The current payment performance level.

(D) The arrearage payment performance level.

(E) The cost-effectiveness performance level.

(5) Maximum incentive base amount

(A) In general

For purposes of paragraph (4), the maximum incentive base amount for a State for a fiscal year is—

(i) with respect to the performance measures described in subparagraphs (A), (B), and (C) of paragraph (4), the State collections base for the fiscal year; and

(ii) with respect to the performance measures described in subparagraphs (D) and (E) of paragraph (4), 75 percent of the State collections base for the fiscal year.

(B) Data required to be complete and reliable

Notwithstanding subparagraph (A), the maximum incentive base amount for a State for a fiscal year with respect to a performance measure described in paragraph (4) is zero, unless the Secretary determines, on the basis of an audit performed under section 652(a)(4)(C) of this title, that the data which the State submitted pursuant to section 654(15)(B) of this title for the fiscal year and which is used to determine the performance level involved is complete and reliable.

(C) State collections base

For purposes of subparagraph (A), the State collections base for a fiscal year is equal to the sum of—

(I) 2 times the sum of—

(i) the total amount of support collected during the fiscal year under the State plan approved under this part, in cases in which the support obligation involved is required to be assigned to the State pursuant to part A or E of this subchapter or subchapter XIX of this chapter; and

(ii) the total amount of support collected during the fiscal year under the State plan approved under this part in cases in which the support obligation involved was so assigned but, at the time of collection, is not required to be so assigned; and

(6) Determination of applicable percentages based on performance levels

(A) Paternity establishment

(i) Determination of paternity establishment performance level

The paternity establishment performance level for a State for a fiscal year is, at the option of the State, the IV-D paternity establishment percentage determined under section 652(g)(2)(A) of this title or the statewide paternity establishment percentage determined under section 652(g)(2)(B) of this title.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State’s paternity establishment performance level is as follows:

<table>
<thead>
<tr>
<th>If the paternity establishment performance level is:</th>
<th>The applicable percentage is:</th>
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<tr>
<td>At least:</td>
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Notwithstanding the preceding sentence, if the paternity establishment performance level of a State for a fiscal year is less than 50 percent but exceeds by at least 10 percentage points the paternity establish-
ment performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State’s paternity establishment performance level is 50 percent.

(B) Establishment of child support orders

(i) Determination of support order performance level

The support order performance level for a State for a fiscal year is the percentage of the total number of cases under the State plan approved during this part in which there is a support order during the fiscal year.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State’s support order performance level is as follows:

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<tr>
<th>If the support order performance level is:</th>
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Notwithstanding the preceding sentence, if the support order performance level of a State for a fiscal year is less than 50 percent but exceeds by at least 5 percentage points the support order performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State’s support order performance level is 50 percent.

(C) Collections on current child support due

(i) Determination of current payment performance level

The current payment performance level for a State for a fiscal year is equal to the total amount of current support collected during the fiscal year under the State plan approved under this part divided by the total amount of current support owed during the fiscal year in all cases under the State plan, expressed as a percentage.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State’s current payment performance level is as follows:

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<tr>
<th>If the current payment performance level is:</th>
<th>The applicable percentage is:</th>
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Notwithstanding the preceding sentence, if the current payment performance level of a State for a fiscal year is less than 40 percent but exceeds by at least 5 percentage points the current payment performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State’s current payment performance level is 50 percent.

(D) Collections on child support arrearages

(i) Determination of arrearage payment performance level

The arrearage payment performance level for a State for a fiscal year is equal to the total number of cases under the State plan approved under this part in which payments of past-due child support were received during the fiscal year and
part or all of the payments were distributed to the family to whom the past-due child support was owed (or, if all past-due child support owed to the family was, at the time of receipt, subject to an assignment to the State, part or all of the payments were retained by the (State) divided by the total number of cases under the State plan in which there is past-due child support, expressed as a percentage.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State’s arrearage payment performance level is as follows:

<table>
<thead>
<tr>
<th>If the arrearage payment performance level is:</th>
<th>The applicable percentage is:</th>
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<tbody>
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<td>At least: 100%</td>
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Notwithstanding the preceding sentence, if the arrearage payment performance level of a State for a fiscal year is less than 40 percent but exceeds by at least 5 percentage points the arrearage payment performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State’s arrearage payment performance level is 50 percent.

(E) Cost-effectiveness

(i) Determination of cost-effectiveness performance level

The cost-effectiveness performance level for a State for a fiscal year is equal to the total amount collected during the fiscal year under the State plan approved under this part divided by the total amount expended during the fiscal year under the State plan, expressed as a ratio.

(ii) Determination of applicable percentage

The applicable percentage with respect to a State’s cost-effectiveness performance level is as follows:

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<thead>
<tr>
<th>If the cost-effectiveness performance level is:</th>
<th>The applicable percentage is:</th>
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<tbody>
<tr>
<td>At least: 100%</td>
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<tr>
<td>5.00</td>
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(c) Treatment of interstate collections

In computing incentive payments under this section, support which is collected by a State at the request of another State shall be treated as having been collected in full by both States, and any amounts expended by a State in carrying out a special project assisted under section 655(e) of this title shall be excluded.

(d) Administrative provisions

The amounts of the incentive payments to be made to the States under this section for a fiscal year shall be estimated by the Secretary at or before the beginning of the fiscal year on the basis of the best information available. The Secretary shall make the payments for the fiscal year, on a quarterly basis (with each quarterly payment being made no later than the beginning of the quarter involved), in the amounts so estimated, reduced or increased to the extent of any overpayments or underpayments which the Secretary determines were made under this section to the States involved for prior periods and with respect to which adjustment has not already been made under this subsection. Upon the making of any estimate by the Secretary under the preceding sentence, any appropriations available for payments under this section are deemed obligated.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary governing the calculation of incentive payments under this section, including directions for excluding from the calculations certain closed cases and cases over which the States do not have jurisdiction.

(f) Reinvestment

A State to which a payment is made under this section shall expend the full amount of the payment to supplement, and not supplant, other funds used by the State—
(1) to carry out the State plan approved under this part; or
(2) for any activity (including cost-effective contracts with local agencies) approved by the Secretary, whether or not the expenditures for the activity are eligible for reimbursement under this part, which may contribute to improving the effectiveness or efficiency of the State program operated under this part.


**Effective Date**

Pub. L. 105–200, title II, § 201(g), July 16, 1998, 112 Stat. 658, provided that: "Except as otherwise provided in this section [enacting this section, amending this section and sections 652, 655, and 658 of this title, and repealing provisions set out as notes under this section and sections 652 and 658 of this title, amending provisions set out as notes under this section and sections 652 and 658 of this title, and repealing provisions set out as a note under section 658 of this title], the amendments made by this section shall take effect on October 1, 1999.''

**Regulations**

Pub. L. 105–200, title II, § 201(c), July 16, 1998, 112 Stat. 656, provided that: "Within 9 months after the date of the enactment of this section [July 16, 1998], the Secretary of Health and Human Services shall prescribe regulations governing the implementation of section 458A (now 458) of the Social Security Act [this section] when such section takes effect and the implementation of subsection (b) of this section [formerly set out as a note below]."

**Transition Rule**


**Studies**


"(1) General review of new incentive payment system.—

"(A) In general.—The Secretary of Health and Human Services shall conduct a study of the implementation of the incentive payment system established by section 458 of the Social Security Act [this section], in order to identify the problems and successes of the system.

"(B) Reports to the Congress.—

"(i) Report on variations in state performance attributable to demographic variables.—Not later than October 1, 2000, the Secretary shall submit to the Congress a report that identifies any demographic or economic variables that account for differences in the performance levels achieved by the States with respect to the performance measures used in the system, and contains the recommendations of the Secretary for such adjustments to the system as may be necessary to ensure that the relative performance of States is measured from a baseline that takes account of any such variables.

"(ii) Interim report.—Not later than March 1, 2001, the Secretary shall submit to the Congress an interim report that contains the findings of the study required by subparagraph (A).

"(iii) Final report.—Not later than October 1, 2003, the Secretary shall submit to the Congress a final report that contains the final findings of the study required by subparagraph (A). The report shall include any recommendations for changes in the system that the Secretary determines would improve the operation of the child support enforcement program.

"(2) Development of medical support incentive.—

"(A) In general.—The Secretary of Health and Human Services, in consultation with State directors of programs operated under part D of title IV of the Social Security Act [this part] and representatives of children potentially eligible for medical support, shall develop a performance measure based on the effectiveness of States in establishing and enforcing medical support obligations, and shall make recommendations for the incorporation of the measure, in a revenue neutral manner, into the incentive payment system established by section 458A (now 458) of the Social Security Act [this section].

"(B) Report.—Not later than October 1, 1999, the Secretary shall submit to the Congress a report that describes the performance measure and contains the recommendations required by subparagraph (A)."

§659. Consent by United States to income withholding, garnishment, and similar proceedings for enforcement of child support and alimony obligations

(a) Consent to support enforcement

Notwithstanding any other provision of law (including section 407 of this title and section 5301 of title 38), effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the Armed Forces of the United States, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to withholding in accordance with State law enacted pursuant to subsections (a)(1) and (b) of section 666 of this title and regulations of the Secretary under such subsections, and to any other legal process brought, by a State agency administering a program under a State plan approved under this part or by an individual obligee, to enforce the legal obligation of the individual to provide child support or alimony.

(b) Consent to requirements applicable to private person

With respect to notice to withhold income pursuant to subsection (a)(1) or (b) of section 666 of this title, or any other order or process to enforce support obligations against an individual (if the order or process contains or is accompanied by sufficient data to permit prompt identification of the individual and the moneys involved), each governmental entity specified in subsection (a) of this section shall be subject to the same requirements as would apply if the entity were a private person, except as otherwise provided in this section.

(c) Designation of agent; response to notice or process

(1) Designation of agent

The head of each agency subject to this section shall—

(A) designate an agent or agents to receive orders and accept service of process in matters relating to child support or alimony; and
(B) annually publish in the Federal Register the designation of the agent or agents, identified by title or position, mailing address, and telephone number.

(2) Response to notice or process

If an agent designated pursuant to paragraph (1) of this subsection receives notice pursuant to State procedures in effect pursuant to subsection (a)(1) or (b) of section 666 of this title, or is effectively served with any order, process, or interrogatory, with respect to an individual’s child support or alimony payment obligations, the agent shall—

(A) as soon as possible (but not later than 15 days) thereafter, send written notice of the notice or service (together with a copy of the notice or service) to the individual at the duty station or last-known home address of the individual;

(B) within 30 days (or such longer period as may be prescribed by applicable State law) after receipt of a notice pursuant to such State procedures, comply with all applicable provisions of section 666 of this title; and

(C) within 30 days (or such longer period as may be prescribed by applicable State law) after effective service of any other such order, process, or interrogatory, withhold available sums in response to the order or process, or answer the interrogatory.

(d) Priority of claims

If a governmental entity specified in subsection (a) of this section receives notice or is served with process, as provided in this section, concerning amounts owed by an individual to more than 1 person—

(1) support collection under section 666(b) of this title must be given priority over any other process, as provided in section 666(b)(7) of this title;

(2) allocation of moneys due or payable to an individual among claimants under section 666(b) of this title shall be governed by section 666(b)(1) of this title; and

(3) such moneys as remain after compliance with paragraphs (1) and (2), of any other such processes on a first-come, first-served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served.

(e) No requirement to vary pay cycles

A governmental entity that is affected by legal process served for the enforcement of an individual’s child support or alimony payment obligations shall not be required to vary its normal pay and disbursement cycle in order to comply with the legal process.

(f) Relief from liability

(1) Neither the United States, nor the government of the District of Columbia, nor any disbursing officer shall be liable with respect to any payment made from moneys due or payable from the United States to any individual pursuant to legal process regular on its face, if the payment is made in accordance with this section and the regulations issued to carry out this section.

(2) No Federal employee whose duties include taking actions necessary to comply with the requirements of subsection (a) of this section with regard to any individual shall be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or on account of, any disclosure of information made by the employee in connection with the carrying out of such actions.

(g) Regulations

Authority to promulgate regulations for the implementation of this section shall, insofar as this section applies to moneys due from (or payable by)—

(1) the United States (other than the legislative or judicial branches of the Federal Government) or the government of the District of Columbia, be vested in the President (or the designee of the President);

(2) the legislative branch of the Federal Government, be vested jointly in the President pro tempore of the Senate and the Speaker of the House of Representatives (or their designees), and

(3) the judicial branch of the Federal Government, be vested in the Chief Justice of the United States (or the designee of the Chief Justice).

(h) Moneys subject to process

(1) In general

Subject to paragraph (2), moneys payable to an individual which are considered to be based upon remuneration for employment, for purposes of this section—

(A) consist of—

(i) compensation payable for personal services of the individual, whether the compensation is denominated as wages, salary, commission, bonus, pay, allowances, or otherwise (including severance pay, sick pay, and incentive pay);

(ii) periodic benefits (including a periodic benefit as defined in section 428(h)(3) of this title) or other payments—

(I) under the insurance system established by subchapter II of this chapter;

(II) under any other system or fund established by the United States which provides for the payment of pensions, retirement or retired pay, annuities, dependents’ or survivors’ benefits, or similar amounts payable on account of personal services performed by the individual or any other individual;

(III) as compensation for death under any Federal program;

(IV) under any Federal program established to provide “black lung” benefits; or

(V) by the Secretary of Veterans Affairs as compensation for a service-connected disability paid by the Secretary to a former member of the Armed Forces who is in receipt of retired or retainer pay if the former member has waived a portion of the retired or retainer pay in order to receive such compensation;

1 So in original. The comma probably should be a semicolon.
(iii) worker’s compensation benefits paid or payable under Federal or State law;
(iv) benefits paid or payable under the Railroad Retirement System, and
(v) special benefits for certain World War II veterans payable under subchapter VIII of this chapter; but
(B) do not include any payment—
(i) by way of reimbursement or otherwise, to defray expenses incurred by the individual in carrying out duties associated with the employment of the individual;
(ii) as allowances for members of the uniformed services payable pursuant to chapter 7 of title 37, as prescribed by the Secretaries concerned (defined by section 101(5) of title 37) as necessary for the efficient performance of duty; or
(iii) of periodic benefits under title 38, except as provided in subparagraph (A)(ii)(V).
(2) Certain amounts excluded
In determining the amount of any moneys due from, or payable by, the United States to any individual, there shall be excluded amounts which—
(A) are owed by the individual to the United States;
(B) are required by law to be, and are, deducted from the remuneration or other payment involved, including Federal employment taxes, and fines and forfeitures ordered by court-martial;
(C) are properly withheld for Federal, State, or local income tax purposes, if the withholding of the amounts is authorized or required by law and if amounts withheld are not greater than would be the case if the individual claimed all dependents to which he was entitled (the withholding of additional amounts pursuant to section 3402(i) of the Internal Revenue Code of 1986 may be permitted only when the individual presents evidence of a tax obligation which supports the additional withholding);
(D) are deducted as health insurance premiums;
(E) are deducted as normal retirement contributions (not including amounts deducted for supplementary coverage); or
(F) are deducted as normal life insurance premiums from salary or other remuneration for employment (not including amounts deducted for supplementary coverage).

(i) Definitions
For purposes of this section—
(1) United States
The term “United States” includes any department, agency, or instrumentality of the legislative, judicial, or executive branch of the Federal Government, the United States Postal Service, the Postal Regulatory Commission, any Federal corporation created by an Act of Congress that is wholly owned by the Federal Government, and the governments of the territories and possessions of the United States.
(2) Child support
The term “child support”, when used in reference to the legal obligations of an individual to provide such support, means amounts required to be paid under a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing State, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages or reimbursement, and which may include other related costs and fees, interest and penalties, income withholding, attorney’s fees, and other relief.
(3) Alimony
(A) In general
The term “alimony”, when used in reference to the legal obligations of an individual to provide the same, means periodic payments of funds for the support and maintenance of the spouse (or former spouse) of the individual, and (subject to and in accordance with State law) includes separate maintenance, alimony pendente lite, maintenance, and spousal support, and includes attorney’s fees, interest, and court costs when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with State law by a court of competent jurisdiction.
(B) Exceptions
Such term does not include—
(i) any child support; or
(ii) any payment or transfer of property or its value by an individual to the spouse or a former spouse of the individual in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.
(4) Private person
The term “private person” means a person who does not have sovereign or other special immunity or privilege which causes the person not to be subject to legal process.
(5) Legal process
The term “legal process” means any writ, order, summons, or other similar process in the nature of garnishment—
(A) which is issued by—
(i) a court or an administrative agency of competent jurisdiction in any State, territory, or possession of the United States; and
(ii) a court or an administrative agency of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor the process; or
(iii) an authorized official pursuant to an order of such a court or an administrative agency of competent jurisdiction or pursuant to State or local law; and
(B) which is directed to, and the purpose of which is to compel, a governmental entity which holds moneys which are otherwise payable to an individual to make a payment.
from the moneys to another party in order to satisfy a legal obligation of the individual to provide child support or make alimony payments.


REFERENCES IN TEXT

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

AMENDMENTS

2006—Subsec. (c)(1)(P). Pub. L. 109–435 substituted “Post- 

al Regulatory Commission” for “Postal Rate Commis-

sion”.


1997—Subsec. (c)(2)(C), Pub. L. 105–33, §5542(a), substi-

tuted “withhold available sums in response to the or-

er order or process, or answer the interrogatory” for “re-

pond to the order, process, or interrogatory”.

Subsec. (h)(1), Pub. L. 105–33, §5542(b)(1), struck out

“paid or” after “moneys” in introductory provisions.

Subsec. (h)(1)(A)(i), Pub. L. 105–33, §5542(b)(1), struck out

“paid or” before “payable”.


inserted “or payable” after “paid”.


(B)(ii), (C), added cl. (iv).


1996—Pub. L. 104–193 amended section catchline and
text generally. Prior to amendment, text consisted of subsec. (a) to (f) relating to use of legal process to collect money payable to an individual as remuneration for employment by the United States or the District of Columbia for purpose of enforcing individual’s legal obligation to provide child support or make alimony payments.


1977—Subsec. (a), Pub. L. 95–30, §501(a), (b)(1), desig-
nated existing provisions as subsec. (a) and substi-
tuted “or the District of Columbia (including any agency,

subdivision, or instrumentality thereof)” for “(including any agency or instrumentality thereof and any wholly owned Federal Corporation)” and “as if the United States or the District of Columbia were a pri-

cate person” for “as if the United States were a private

person”.

Subsecs. (b) to (f), Pub. L. 95–30, §501(b)(2), added sub-
sec. (b) to (f).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsi-

EFFECTIVE DATE OF 1996 AMENDMENT

Section 362(d) of Pub. L. 104–193 provided that: “The amendments made by this section [amending this sec-

tion, section 5520a of Title 5, Government Organization and Employees, and section 1408 of Title 10, Armed Forces, and repealing sections 661 and 662 of this title] shall become effective 6 months after the date of the enactment of this Act [Aug. 22, 1996].”

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EXECUTIVE ORDER No. 11881

Ex. Ord. No. 11881, Oct. 3, 1975, 40 F.R. 46291, which related to the delegation of authority to issue regulations for the implementation of the provisions of this section, was revoked by Ex. Ord. No. 12105, Dec. 19, 1978, 43 F.R. 59465, set out as a note below.

EX. ORD. No. 12105. DELEGATION OF AUTHORITY TO

PROMULGATE REGULATIONS


By virtue of the authority vested in me by Section 461(a)(1) of the Social Security Act, as added by Section 501(c) of the Tax Reduction and Simplification Act of 1977 (Public Law 95–30, 91 Stat. 158, 42 U.S.C. 661(a)(1)), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, in order to provide for the enforcement of legal obliga-
tions to provide child support or make alimony payments incurred by employees of the Executive branch, it is hereby ordered as follows:

1–1. DELEGATION OF AUTHORITY

1–101. The Office of Personnel Management, in con-

sultation with the Attorney General, the Secretary of Defense with respect to members of the armed forces, and the Mayor of the District of Columbia with respect to employees of the Government thereof, is hereby authorized to promulgate regulations for the uniform implementa-
tion of Section 459 of the Social Security Act, as amended (42 U.S.C. 659), hereinafter referred to as the Act.

1–102. The regulations promulgated by the Office of Personnel Management pursuant to this Order shall:

(a) Be applicable to the Executive branch of the Gov-

ernment as defined in Section 461(a)(1) of the Act (42 U.S.C. 661(a)(1)).

(b) Require the appropriate officials of the Executive branch of the Government to take the actions pre-

scribed by Sections 661(b)(1), 661(b)(3)(A) and 661(c) of the Act (42 U.S.C. 661(b)(1), 661(b)(3)(A) and 661(c)).

(c) Require the appropriate officials of the Executive branch of the Government to issue such rules, regula-
tions and directives as are necessary to implement the regulations of the Office of Personnel Management.

1–2. REVOCATIONS

1–201. Executive Order No. 11881 of October 3, 1975 is revoked.

1–202. All regulations, directives, or actions taken by the Office of Personnel Management pursuant to Ex-

ecutive Order No. 11881 of October 3, 1975 shall remain in effect until modified, superseded or revoked by the Of-

fice of Personnel Management pursuant to this Order.

JIMMY CARTER.

EX. ORD. No. 12953. ACTIONS REQUIRED OF ALL EXECUTIVE AGENCIES TO FACILITATE PAYMENT OF CHILD SUPPORT

Ex. Ord. No. 12953, Feb. 27, 1995, 60 F.R. 11013, pro-

vided:

Children need and deserve the emotional and financial sup-

port of both their parents.

The Federal Government requires State and, through them, public and private employers to take ac-

tions necessary to ensure that monies in payment of chil-
d support obligations are withheld and transferred to the child’s caretaker in an efficient and expeditious manner.

The Federal Government, through its civilian em-

ployees and Uniformed Services members, is the Na-

tion’s largest single employer and as such should set an

example of leadership and encouragement in ensuring that all children are properly supported.
NOW, THEREFORE, by the authority vested in me as President of the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

PART 1—PURPOSE

Section 101. This executive order: (a) Establishes the executive branch of the Federal Government, through its civilian employees and Uniformed Services members, as a model employer in promoting and facilitating the establishment and enforcement of child support. (b) Requires all Federal agencies, including the Uniformed Services, to cooperate fully in efforts to establish paternity and child support orders and to enforce the collection of child and medical support in all situations where such actions may be required. (c) Requires each Federal agency, including the Uniformed Services, to provide information to its employees and members about actions that they should take and services that are available to ensure that their children are provided the support to which they are legally entitled.

PART 2—DEFINITIONS

For purposes of this order: S 201. "Federal agency" means any agency as defined at 5 U.S.C. 105, including the Uniformed Services, as defined in section 202 of this order. S 202. "Uniformed Services" means the Army, Navy, Marine Corps, Air Force, Coast Guard, and the Commissioned Corps of the National Oceanic and Atmospheric Administration, and the Public Health Service. S 203. "Child support enforcement" means any administrative or judicial action by a court or administrative entity of a State necessary to establish paternity or establish a child support order, including a medical support order, and any actions necessary to enforce a child support or medical support order. Child support actions may be brought under the civil or criminal laws of a State and are not limited to actions brought on behalf of the State or individual by State agencies providing services under title IV-D of the Social Security Act, 42 U.S.C. 651 et seq., and shall be forwarded to the appropriate State child support enforcement agency to determine if there are any Federal employees with child support delinquencies. The list of matches shall be reviewed annually with the appropriate State child support enforcement agency to determine, in each instance, whether wage withholding or other enforcement actions should be commenced. All matches will be performed in accordance with 42 U.S.C. 659. (b) All Federal agencies shall inform current and prospective employees that crossmatches are routinely made between Federal personnel records and State records on individuals who owe child support, and inform employees how to initiate voluntary wage withholding requests.

S 204. "State" means any of the fifty States, the District of Columbia, the territories, the possessions, and the Commonwealths of Puerto Rico and of the Mariana Islands.

PART 3—IMMEDIATE ACTIONS TO ENSURE CHILDREN ARE SUPPORTED BY THEIR PARENTS

Section 301. Wage Withholding. (a) Within 60 days from the date of this order, every Federal agency shall review its procedures for wage withholding under 42 U.S.C. 659 and implementing regulations to ensure that it is in full compliance with the requirements of that section, and shall endeavor, to the extent feasible, to provide immediate withholding actions consistent with the requirements of 42 U.S.C. 666(b). (b) Beginning no later than July 1, 1995, the Director of the Office of Personnel Management (OPM) shall publish annually in the Federal Register the list of agents (and their addresses) designated to receive service of withholding notices for Federal employees. Section 302. Service of Legal Process. Every Federal agency shall assist in the service of legal process in civil actions pursuant to orders of courts of States to establish paternity and establish or enforce a support obligation by making Federal employees and members of the Uniformed Services stationed outside the United States available for the service of process. Each agency shall designate an official who shall be responsible for facilitating a Federal employee’s or member’s availability for service of process, regardless of the location of the employee’s workplace or member’s duty station. The OPM shall publish a list of these officials annually in the Federal Register, beginning no later than July 1, 1995.

Section 303. Federal Parent Locator. Every Federal agency shall cooperate with the Federal Parent Locator Service, established under 42 U.S.C. 653, by providing complete, timely and accurate information that will assist in locating noncustodial parents and their employers.

Section 304. Crossmatch for Delinquent Obligors. (a) The master file of delinquent obligors that each State child support enforcement agency submits to the Internal Revenue Service for Federal income tax refund offset purposes shall be matched at least annually with the payroll or personnel files of Federal agencies in order to determine if there are any Federal employees with child support delinquencies. The list of matches shall be reviewed annually with the appropriate State child support enforcement agency to determine, in each instance, whether wage withholding or other enforcement actions should be commenced. All matches will be performed in accordance with 42 U.S.C. 659. (b) All Federal agencies shall inform current and prospective employees that crossmatches are routinely made between Federal personnel records and State records on individuals who owe child support, and inform employees how to initiate voluntary wage withholding requests.

S 305. Availability of Service. All Federal agencies shall advise current and prospective employees of services authorized under title IV-D of the Social Security Act (42 U.S.C. 651 et seq.) that are available through the Uniformed Services, as defined at 5 U.S.C. 105, including the Uniformed Services of the National Oceanic and Atmospheric Administration, and the Public Health Service. (a) The Secretary of the Department of Defense (DOD) shall chair a task force, with participation by the Department of Health and Human Services (HHS), the Department of Commerce, and the Department of Transportation, that shall conduct a full review of current policies and practices within the Uniformed Services to ensure that children of Uniformed Services personnel are provided financial and medical support in the same manner and within the same time frames as is mandated for all other children due such support. This review shall include, but not be limited to, issues related to withholding non-custodial parents' wages, service of legal process, activities to locate parents and non-custodial parents’ income and assets, release time to attend civil paternity and support proceedings, and health insurance coverage under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). All relevant existing statutes, including the Soldiers’ and Sailors’ Civil Relief Act of 1940 [now Servicemembers Civil Relief Act] [50 U.S.C. App. 501 et seq.], the Uniformed Services Former Spouses’ Protection Act [see Short Title of 1982 Amendment note set out under section 1401 of Title 10, Armed Forces] and the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–246, see Tables for classification], shall be reviewed and appropriate legislative modifications shall be identified. (b) Within 180 days of the date of this order, DOD shall submit to OMB a report based on this review. The report shall recommend additional policy, regulatory, and administrative modifications that would improve and enhance the Federal Government’s commitment to ensuring parental support for all children.

Section 306. Report on Actions Taken. (a) OPM and HHS shall jointly study and prepare recommendations concerning additional administrative, regulatory, and legislative improvements in the policies and procedures affecting child support enforcement. Other agencies shall be included in the development of recommendations for specific items as ap-
§ 659a. International support enforcement

(a) Authority for declarations

(1) Declaration

The Secretary of State, with the concurrence of the Secretary of Health and Human Services, is authorized to declare any foreign country (or a political subdivision thereof) to be a foreign reciprocating country if the foreign country has established, or undertakes to establish, procedures for the establishment and enforcement of duties of support owed to obligors who are residents of the United States, and such procedures are substantially in conformity with the standards prescribed under subsection (b) of this section.

(2) Revocation

A declaration with respect to a foreign country made pursuant to paragraph (1) may be revoked if the Secretaries of State and Health and Human Services determine that—

(A) the procedures established by the foreign country regarding the establishment and enforcement of duties of support have been so changed, or the foreign country's implementation of such procedures is so unsatisfactory, that such procedures do not meet the criteria for such a declaration; or

(B) continued operation of the declaration is not consistent with the purposes of this part.

(3) Form of declaration

A declaration under paragraph (1) may be made in the form of an international agreement, in connection with an international agreement or corresponding foreign declaration, or on a unilateral basis.

(b) Standards for foreign support enforcement procedures

(1) Mandatory elements

Support enforcement procedures of a foreign country which may be the subject of a declaration pursuant to subsection (a)(1) of this section shall include the following elements:

(A) The foreign country (or political subdivision thereof) has in effect procedures, available to residents of the United States—

(i) for establishment of paternity, and

(ii) for enforcement of orders to provide support to children and custodial parents; and

(B) The procedures described in subparagraph (A) include the following elements:

(i) facilitating support enforcement in cases involving residents of the foreign country and residents of the United States; and

(ii) ensuring compliance with the standards established pursuant to this subsection.

(2) Additional elements

The Secretary of Health and Human Services and the Secretary of State, in consultation with the States, may establish such additional standards as may be considered necessary to further the purposes of this section.

(c) Designation of United States Central Authority

It shall be the responsibility of the Secretary of Health and Human Services to facilitate support enforcement in cases involving residents of the United States and residents of foreign countries that are the subject of a declaration under this section, by activities including—

(1) development of uniform forms and procedures for use in such cases;

(2) notification of foreign reciprocating countries of the State of residence of individ-
uals sought for support enforcement purposes, on the basis of information provided by the Federal Parent Locator Service; and
(3) such other oversight, assistance, and coordination activities as the Secretary may find necessary and appropriate.

(d) Effect on other laws

States may enter into reciprocal arrangements for the establishment and enforcement of support obligations with foreign countries that are not the subject of a declaration pursuant to subsection (a) of this section, to the extent consistent with Federal law.


§ 663. Use of Federal Parent Locator Service in connection with enforcement or determination of child custody in cases of parental kidnaping of child

(a) Agreements with States for use of Federal Parent Locator Service

The Secretary shall enter into an agreement with every State under which the services of the Federal Parent Locator Service established under section 653 of this title shall be made available to each State for the purpose of determining the whereabouts of any parent or child when such information is to be used to locate such parent or child for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) making or enforcing a child custody or visitation determination.

(b) Requests from authorized persons for information

An agreement entered into under subsection (a) of this section shall provide that the State agency described in section 654 of this title will, under procedures prescribed by the Secretary in regulations, receive and transmit to the Secretary requests from authorized persons for information as to (or useful in determining) the whereabouts of any parent or child when such information is to be used to locate such parent or child for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) making or enforcing a child custody or visitation determination.

(c) Information which may be disclosed

Information authorized to be provided by the Secretary under subsection (a), (b), (e), or (f) of this section shall be subject to the same conditions with respect to disclosure as information authorized to be provided under section 653 of this title, and a request for information by the Secretary under this section shall be considered to be a request for information under section 653 of this title which is authorized to be provided under such section. Only information as to the most recent address and place of employment of any parent or child shall be provided under this section.

(d) “Custody or visitation determination” and “authorized person” defined

For purposes of this section—

(1) the term “custody or visitation determination” means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modification;

(2) the term “authorized person” means—

(A) any agent or attorney of any State having an agreement under this section, who has the duty or authority under the law of such State to enforce a child custody or visitation determination;

(B) any court having jurisdiction to make or enforce such a child custody or visitation determination, or any agent of such court; and
(C) any agent or attorney of the United States, or of a State having an agreement under this section, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.

(e) Agreement on use of Federal Parent Locator Service with United States Central Authority under Convention on the Civil Aspects of International Child Abduction

The Secretary shall enter into an agreement with the Central Authority designated by the President in accordance with section 11606 of this title, under which the services of the Federal Parent Locator Service established under section 653 of this title shall be made available to such Central Authority upon its request for the purpose of locating any parent or child on behalf of an applicant to such Central Authority within the meaning of section 11602(1) of this title. The Federal Parent Locator Service shall charge no fees for services requested pursuant to this subsection.

(f) Agreement to assist in locating missing children under Federal Parent Locator Service

The Secretary shall enter into an agreement with the Attorney General of the United States, under which the services of the Federal Parent Locator Service established under section 653 of this title shall be made available to the Office of Juvenile Justice and Delinquency Prevention upon its request to locate any parent or child on behalf of such Office for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child, or

(2) making or enforcing a child custody or visitation determination.

The Federal Parent Locator Service shall charge no fees for services requested pursuant to this subsection.


AMENDMENTS

1997—Subsec. (a). Pub. L. 104–33, § 316(e)(1), substituted “Federal” before “Parent Locator Service” and substituted “noncustodial parent” for “absent parent”.


1994—Subsec. (c). Pub. L. 103–432, § 214(a), substituted “subsection (a), (b), (e), or (f) of this section” for “subsection (a), (b), or (e) of this section”.


1988—Subsec. (b). Pub. L. 100–300, § 11(2), substituted “under subsection (a) of this section” for “under this section”.

Subsec. (c). Pub. L. 100–300, § 11(2), substituted “under subsection (a), (b), or (e) of this section” for “under this section”.


 EFFECTIVE DATE OF 1997 AMENDMENT


 EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendment by Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

 EFFECTIVE DATE OF 1994 AMENDMENT

Section 214(c) of Pub. L. 103–432 provided that: “The amendments made by this section [amending this section] shall take effect on October 1, 1995.”

 EFFECTIVE DATE

Section 9(d) of Pub. L. 96–611 provided that: “No agreement entered into under section 663 of the Social Security Act [this section] shall become effective before the date on which section 1738A of title 28, United States Code (as added by this title [probably should be as added by section 8(a) of this Act]) becomes effective.”

§ 664. Collection of past-due support from Federal tax refunds

(a) Procedures applicable; distribution

(1) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support which has been assigned to such State pursuant to section 608(a)(3) or section 671(a)(17) of this title, the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to the past-due support, shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay such amount to the State agency (together with notice of the individual’s home address) for distribution in accordance with section 657 of this title. This subsection may be executed by the disbursing official of the Department of the Treasury.
(2)(A) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support which such State has agreed to collect under section 654(4)(A)(ii) of this title, and that the State agency has sent notice to such individual in accordance with paragraph (3)(A), the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to such past-due support, and shall concurrently send notice to such individual that the withholding has been made, including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund. The Secretary of the Treasury shall pay the amount withheld to the State agency, and the State shall pay to the Secretary of the Treasury any fee imposed by the Secretary of the Treasury to cover the costs of the withholding and any required notification. The State agency shall, subject to paragraph (3)(B), distribute such amount to or on behalf of the child to whom the support was owed in accordance with section 657 of this title. This subsection may be executed by the Secretary of the Department of the Treasury or his designee.

(B) This paragraph shall apply only with respect to refunds payable under section 6402 of the Internal Revenue Code of 1986 after December 31, 1985.

(3)(A) Prior to notifying the Secretary of the Treasury under paragraph (1) or (2) that an individual owes past-due support, the State shall send notice to such individual that a withholding will be made from any refund otherwise payable to such individual. The notice shall also (i) instruct the individual owing the past-due support of the steps which may be taken to contest the State’s determination that past-due support is owed or the amount of the past-due support, and (ii) provide information, as may be prescribed by the Secretary of Health and Human Services by regulation in consultation with the Secretary of the Treasury, with respect to procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(B) If the Secretary of the Treasury determines that an amount should be withheld under paragraph (1) or (2), and that the refund from which it should be withheld is based upon a joint return, the Secretary of the Treasury shall notify the State that the withholding is being made from a refund based upon a joint return, and shall furnish to the State the names and addresses of each taxpayer filing such joint return. In the case of a withholding under paragraph (2), the State may delay distribution of the amount withheld until the State has been notified by the Secretary of the Treasury that the other person filing the joint return has received his or her proper share of the refund, but such delay may not exceed six months.

(C) If the other person filing the joint return with the named individual owing the past-due support takes appropriate action to secure his or her proper share of a refund from which a withholding was made under paragraph (1) or (2), the Secretary of the Treasury shall pay such amount to such other person. The Secretary of the Treasury shall deduct the amount of such payment from amounts subsequently payable to the State agency to which the amount originally withheld from such refund was paid.

(D) In any case in which an amount was withheld under paragraph (1) or (2) and paid to a State, and the State subsequently determines that the amount certified as past-due support was in excess of the amount actually owed at the time the amount withheld is to be distributed to or on behalf of the child, the State shall pay the excess amount withheld to the named individual thought to have owed the past-due support (or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing such return).

(b) Regulations; contents, etc.

(1) The Secretary of the Treasury shall issue regulations, approved by the Secretary of Health and Human Services, prescribing the time or times at which States must submit notices of past-due support, the manner in which such notices must be submitted, and the necessary information that must be contained in or accompany the notices. The regulations shall be consistent with the provisions of subsection (a)(3) of this section, shall specify the minimum amount of past-due support to which the offset procedure established by subsection (a) of this section may be applied, and the fee that a State must pay to reimburse the Secretary of the Treasury for the full cost of applying the offset procedure, and shall provide that the Secretary of the Treasury will advise the Secretary of Health and Human Services, not less frequently than annually, of the States which have furnished notices of past-due support under subsection (a) of this section, the number of cases in each State with respect to which such notices have been furnished, the amount of the support sought to be collected under this subsection by each State, and the amount of such collections actually made in the case of each State. Any fee paid to the Secretary of the Treasury pursuant to this subsection may be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

(2) In the case of withholdings made under subsection (a)(2) of this section, the regulations promulgated pursuant to this subsection shall include the following requirements:

(A) The withholding shall apply only in the case where the State determines that the amount of the past-due support which will be owed at the time the withholding is to be made, based upon the pattern of payment of support and other enforcement actions being pursued to collect the past-due support, is equal to or greater than $500. The State may limit the $500 threshold amount to amounts of past-due support accrued since the time that the State first began to enforce the child support order involved under the State plan, and
may limit the application of the withholding to past-due support accrued since such time.

(B) The fee which the Secretary of the Treasury may impose to cover the costs of the withholding and notification may not exceed $25 per case submitted.

c) “Past-due support” defined

In this part the term “past-due support” means the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child (whether or not a minor), or of a child (whether or not a minor) and the parent with whom the child is living.


REFERENCES IN TEXT

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

AMENDMENTS

2006—Subsec. (a)(2)(A). Pub. L. 109–171, § 7301(f)(1)(A), struck out “as that term is defined for purposes of this paragraph under subsection (c) of this section” after “‘owes past-due support’”.

Subsec. (c), Pub. L. 109–171, § 7301(f)(1)(B), substituted “‘past-due support’” for “‘past-due support’”.


Pub. L. 105–33, § 5532(i)(1), inserted “in accordance with section 657 of this title” after “owed” in penultimate sentence.

1996—Subsec. (a)(1). Pub. L. 104–134, § 31001(v)(2)(1), inserted at end “This subsection may be executed by the disbursing official of the Department of the Treasury”.

Pub. L. 104–193 substituted “section 657” for “section 675(b)(4)” or “(d)(3)”.

Subsec. (a)(2)(A). Pub. L. 104–134, § 31001(v)(2)(2), inserted at end “This subsection may be executed by the Secretary of the Department of the Treasury or his designee”.


Subsec. (c)(2), Pub. L. 101–508, § 5011(b)(1), substituted “qualified child (or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent)” for “minor child”.


1985—Subsec. (a)(1). Pub. L. 98–378, § 21(a), (b)(1), designated existing provisions as par. (1), substituted “shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay” for “and pay”, and added pars. (2) and (3).

Pub. L. 98–378, § 11(d), inserted “or section 671(a)(7)” and substituted “section 657(b)(4) or (d)(3)” for “section 657(b)(3)”.

Subsec. (b)(1). Pub. L. 98–378, § 21(b)(2), designated existing provisions as par. (1), substituted “The regulations shall be consistent with the provisions of subsection (a)(3) of this section, shall specify” for “The regulations shall specify”, and added proviso for “and provide”, inserted provision that any fee paid to the Secretary of the Treasury pursuant to subsec. (b) may be used to reimburse appropriations which become all or part of the cost of applying such procedure, and added par. (2).

Subsec. (c)(1). Pub. L. 98–378, § 21(c), designated existing provisions as par. (1), inserted reference to par. (2), and added par. (2).

EFFECTIVE DATE OF 2006 AMENDMENT


EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5513(a)(4) of Pub. L. 105–33 effective as if included in section 108 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 108 became law, see section 5518(b) of Pub. L. 105–33, set out as a note under section 652 of this title.

Amendment by sections 5531(b) and 5532(i)(1) of Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5557 of Pub. L. 105–33, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, or earlier at the State’s option, see section 302(c) of Pub. L. 104–193, set out as a note under section 657 of this title.

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5011(c) of Pub. L. 101–508 provided that: ‘The amendments made by subsection (b) [amending this section] shall take effect on January 1, 1991.’”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 11(d) of Pub. L. 98–378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98–378, set out as a note under section 654 of this title.

Amendment by section 21(a)–(c) of Pub. L. 98–378 applicable with respect to refunds payable under section 662 of Title 26, Internal Revenue Code, after Dec. 31, 1985, see section 21(g) of Pub. L. 98–378, set out as a note under section 6103 of Title 26.

EFFECTIVE DATE

§ 665. Allotments from pay for child and spousal support owed by members of uniformed services on active duty

(a) Mandatory allotment; notice upon failure to make; amount of allotment; adjustment or discontinuance; consultation

(1) In any case in which child support payments or child and spousal support payments are owed by a member of one of the uniformed services (as defined in section 101(3) of title 37) on active duty, such member shall be required to make allotments from his pay and allowances (under chapter 13 of title 37) as payment of such support, when he has failed to make periodic payments under a support order that meets the criteria specified in section 1673(b)(1)(A) of title 15 and the resulting delinquency in such payments is in a total amount equal to the support payable for two months or longer. Failure to make such payments shall be established by notice from an authorized person (as defined in subsection (b) of this section) to the designated official in the appropriate uniformed service. Such notice (which shall in turn be given to the affected member) shall also specify the person to whom the allotment is to be payable. The amount of the allotment shall be the amount necessary to comply with the order (which, if the order so provides, may include arrearages as well as amounts for current support), except that the amount of the allotment, together with any other amounts withheld for support from the wages of the member, as a percentage of his pay from the uniformed service, shall not exceed the limits prescribed in sections 1673(b) and (c) of title 15. An allotment under this subsection shall be adjusted or discontinued upon notice from the authorized person.

(2) Notwithstanding the preceding provisions of this subsection, no action shall be taken to require an allotment from the pay and allowances of any member of one of the uniformed services under such provisions (A) until such member has had a consultation with a judge advocate of the service involved (as defined in section 801(13) of title 10), or with a judge advocate (as defined in section 801(11) of such title) in the case of the Coast Guard, or with a legal officer designated by the Secretary concerned (as defined in section 101(5) of title 37) in any other case, in person, to discuss the legal and other factors involved with respect to the member’s support obligation and his failure to make payments thereon, or (B) until 30 days have elapsed after the notice described in the second sentence of paragraph (1) is given to the affected member in any case where it has not been possible, despite continuing good faith efforts, to arrange such a consultation.

(b) “Authorized person” defined

For purposes of this section the term “authorized person” with respect to any member of the uniformed services means—

(1) any agent or attorney of a State having in effect a plan approved under this part who has the duty or authority under such plan to seek to recover any amounts owed by such member as child or child and spousal support (including, when authorized under the State plan, any official of a political subdivision); and

(2) the court which has authority to issue an order against such member for the support and maintenance of a child, or any agent of such court.

(c) Regulations

The Secretary of Defense, in the case of the Army, Navy, Air Force, and Marine Corps, and the Secretary concerned (as defined in section 101(5) of title 37) in the case of each of the other uniformed services, shall each issue regulations applicable to allotments to be made under this section, designating the officials to whom notice of failure to make support payments, or notice to discontinue or adjust an allotment, should be given, prescribing the form and content of the notice and specifying any other rules necessary for such Secretary to implement this section.


REFERENCES IN TEXT


AMENDMENTS


EFFECTIVE DATE

Section 172(b) of Pub. L. 97–248 provided that: “The amendment made by subsection (a) [enacting this section] shall become effective on October 1, 1982.”

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement

(a) Types of procedures required

In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

(1)(A) Procedures described in subsection (b) of this section for the withholding from income of amounts payable as support in cases subject to enforcement under the State plan.

(B) Procedures under which the income of a person with a support obligation imposed by a support order issued (or modified) in the State
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ing paternity and for establishing, modifying, to withholding under subsection (b) of this section, shall become subject to withholding as provided in subsection (b) of this section if arrearages occur, without the need for a judicial or administrative hearing.

(2) Expedited administrative and judicial procedures (including the procedures specified in subsection (c) of this section) for establishing paternity and for establishing, modifying, and enforcing support obligations. The Secretary may waive the provisions of this paragraph with respect to one or more political subdivisions within the State on the basis of the effectiveness and timeliness of support order issuance and enforcement or paternity establishment within the political subdivision (in accordance with the general rule for exceptions under subsection (d) of this section).

(3) Procedures under which the State child support enforcement agency shall request, and the State shall provide, that for the purpose of enforcing a support order under any State plan approved under this part—

(A) any refund of State income tax which would otherwise be payable to a noncustodial parent will be reduced, after notice has been sent to that noncustodial parent of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any overdue support owed by such noncustodial parent;

(B) the amount by which such refund is reduced shall be distributed in accordance with section 657 of this title in the case of overdue support assigned to a State pursuant to section 608(a)(3) or 671(a)(17) of this title, or, in any other case, shall be distributed, after deduction of any fees imposed by the State to cover the costs of collection, to the child or parent to whom such support is owed; and

(C) notice of the noncustodial parent’s social security account number (or numbers, if he has more than one such number) and home address shall be furnished to the State agency requesting the refund offset, and to the State agency enforcing the order.

(4) LIENS.—Procedures under which—

(A) liens arise by operation of law against real and personal property for amounts of overdue support owed by a noncustodial parent who resides or owns property in the State; and

(B) the State accords full faith and credit to liens described in subparagraph (A) arising in another State, when the State agency, party, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within the State, except that such rules may not require judicial notice or hearing prior to the enforcement of such a lien.

(5) PROCEDURES CONCERNING PATERNITY ESTABLISHMENT.—

(A) ESTABLISHMENT PROCESS AVAILABLE FROM BIRTH UNTIL AGE 18.—

(i) Procedures which permit the establishment of the paternity of a child at any time before the child attains 18 years of age.

(ii) As of August 16, 1984, clause (i) shall also apply to a child for whom paternity has not been established or for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

(B) PROCEDURES CONCERNING GENETIC TESTING.—

(i) GENETIC TESTING REQUIRED IN CERTAIN CONTESTED CASES.—Procedures under which the State is required, in a contested paternity case (unless otherwise barred by State law) to require the child and all other parties (other than individuals found under section 654(29) of this title to have good cause and other exceptions for refusing to cooperate) to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement by the party—

(I) alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or

(II) denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

(ii) OTHER REQUIREMENTS.—Procedures which require the State agency, in any case in which the agency orders genetic testing—

(I) to pay costs of such tests, subject to recoupment (if the State so elects) from the alleged father if paternity is established; and

(II) to obtain additional testing in any case if an original test result is contested, upon request and advance payment by the contestant.

(C) VOLUNTARY PATERNITY ACKNOWLEDGMENT.—

(i) SIMPLE CIVIL PROCESS.—Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that, before a mother and a putative father can sign an acknowledgment of paternity, the mother and the putative father must be given notice, orally, or through the use of video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights (including, if 1 parent is a minor, any rights afforded due to minority status) and responsibilities that arise from, signing the acknowledgment.

(ii) HOSPITAL-BASED PROGRAM.—Such procedures must include a hospital-based program for the voluntary acknowledgment of paternity focusing on the period immediately before or after the birth of a child.

(iii) PATERNITY ESTABLISHMENT SERVICES.—

(I) STATE-OFFERED SERVICES.—Such procedures must require the State agen-
cy responsible for maintaining birth records to offer voluntary paternity establishment services.

(II) REGULATIONS.—

(aa) SERVICES OFFERED BY HOSPITALS AND BIRTH RECORD AGENCIES.—The Secretary shall prescribe regulations governing voluntary paternity establishment services offered by hospitals and birth record agencies.

(bb) SERVICES OFFERED BY OTHER ENTITIES.—The Secretary shall prescribe regulations specifying the types of other entities that may offer voluntary paternity establishment services, and governing the provision of such services, which shall include a requirement that such an entity must use the same notice provisions used by, use the same materials used by, provide the personnel providing such services with the same training provided by, and evaluate the provision of such services in the same manner as the provision of such services is evaluated by voluntary paternity establishment programs of hospitals and birth record agencies.

(iv) USE OF PATERNITY ACKNOWLEDGMENT AFFIDAVIT.—Such procedures must require the State to develop and use an affidavit for the voluntary acknowledgment of paternity which includes the minimum requirements of the affidavit specified by the Secretary under section 652(a)(7) of this title for the voluntary acknowledgment of paternity, and to give full faith and credit to such an affidavit signed in any other State according to its procedures.

(D) STATUS OF SIGNED PATERNITY ACKNOWLEDGMENT.—

(i) INCLUSION IN BIRTH RECORDS.—Procedures under which the name of the father shall be included on the record of birth of the child of unmarried parents only if—

(I) the father and mother have signed a voluntary acknowledgment of paternity; or

(II) a court or an administrative agency of competent jurisdiction has issued an adjudication of paternity.

Nothing in this clause shall preclude a State agency from obtaining an admission of paternity from the father for submission in a judicial or administrative proceeding, or prohibit the issuance of an order in a judicial or administrative proceeding which bases a legal finding of paternity on an admission of paternity by the father and any other additional showing required by State law.

(ii) LEGAL FINDING OF PATERNITY.—Procedures under which a signed voluntary acknowledgment of paternity is considered a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of—

(I) 60 days; or

(II) the date of an administrative or judicial proceeding relating to the child (including a proceeding to establish a support order in which the signatory is a party).

(iii) CONTEST.—Procedures under which, after the 60-day period referred to in clause (ii), a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger, and under which the legal responsibilities (including child support obligations) of any signatory arising from the acknowledgment may not be suspended during the challenge, except for good cause shown.

(E) BAR ON ACKNOWLEDGMENT RATIFICATION PROCEEDINGS.—Procedures under which judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity.

(F) ADMISSIBILITY OF GENETIC TESTING RESULTS.—Procedures—

(i) requiring the admission into evidence, for purposes of establishing paternity, of the results of any genetic test that is—

(I) of a type generally acknowledged as reliable by accreditation bodies designated by the Secretary; and

(II) performed by a laboratory approved by such an accreditation body;

(ii) requiring an objection to genetic testing results to be made in writing not later than a specified number of days before any hearing at which the results may be introduced into evidence (or, at State option, not later than a specified number of days after receipt of the results); and

(iii) making the test results admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy, unless objection is made.

(G) PRESUMPTION OF PATERNITY IN CERTAIN CASES.—Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child.

(H) DEFAULT ORDERS.—Procedures requiring a default order to be entered in a paternity case upon a showing of service of process on the defendant and any additional showing required by State law.

(I) NO RIGHT TO JURY TRIAL.—Procedures providing that the parties to an action to establish paternity are not entitled to a trial by jury.

(J) TEMPORARY SUPPORT ORDER BASED ON PROBABLE PATERNITY IN CONTESTED CASES.—Procedures which require that a temporary order be issued, upon motion by a party, requiring the provision of child support pending an administrative or judicial determination of parentage, if there is clear and convincing evidence of paternity (on the basis of genetic tests or other evidence).

(K) PROOF OF CERTAIN SUPPORT AND PATERNITY ESTABLISHMENT COSTS.—Procedures
under which bills for pregnancy, childbirth, and genetic testing are admissible as evidence without requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child.

(L) STANDING OF PUTATIVE FATHERS.—Procedures ensuring that the putative father has a reasonable opportunity to initiate a paternity action.

(M) FILING OF ACKNOWLEDGMENTS AND ADJUDICATIONS IN STATE REGISTRY OF BIRTH RECORDS.—Procedures under which voluntary acknowledgments and adjudications of paternity by judicial or administrative processes are filed with the State registry of birth records for comparison with information in the State case registry.

(6) Procedures which require that a noncustodial parent give security, post a bond, or give some other guarantee to secure payment of overdue support, after notice has been sent to such noncustodial parent of the proposed action and of the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State).

(7) REPORTING ARREARAGES TO CREDIT BUREAUS.—

(A) IN GENERAL.—Procedures (subject to safeguards pursuant to subparagraph (B)) requiring the State to report periodically to consumer reporting agencies (as defined in section 1681a(f) of title 15) the name of any noncustodial parent who is delinquent in the payment of support, and the amount of overdue support owed by such parent.

(B) SAFEGUARDS.—Procedures ensuring that, in carrying out subparagraph (A), information with respect to a noncustodial parent is reported—

(i) only after such parent has been afforded all due process required under State law, including notice and a reasonable opportunity to contest the accuracy of such information; and

(ii) only to an entity that has furnished evidence satisfactory to the State that the entity is a consumer reporting agency (as so defined).

(8)(A) Procedures under which all child support orders not described in subparagraph (B) will include provision for withholding from income, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part.

(B) Procedures under which all child support orders which are initially issued in the State on or after January 1, 1984, and are not being enforced under this part will include the following requirements:

(i) The income of a noncustodial parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears on the effective date of the order; except that such income shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement.

(ii) The requirements of subsection (b)(1) of this section (which shall apply in the case of each noncustodial parent against whom a support order is or has been issued or modified in the State, without regard to whether the order is being enforced under the State plan).

(iii) The requirements of paragraphs (2), (5), (6), (7), (8), (9), and (10) of subsection (b) of this section, where applicable.

(iv) Withholding from income of amounts payable as support must be carried out in full compliance with all procedural due process requirements of the State.

(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due)—

(A) a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced,

(B) entitled as a judgment to full faith and credit in such State and in any other State, and

(C) not subject to retroactive modification by such State or by any other State;

except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

(10) REVIEW AND ADJUSTMENT OF SUPPORT ORDERS UPON REQUEST.—

(A) 3-YEAR CYCLE.—

(i) IN GENERAL.—Procedures under which every 3 years (or such shorter cycle as the State may determine), upon the request of either parent or if there is an assignment under part A of this subchapter, the State shall with respect to a support order being enforced under this part, taking into account the best interests of the child involved—

(I) review and, if appropriate, adjust the order in accordance with the guidelines established pursuant to section 667(a) of this title if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines;

(II) apply a cost-of-living adjustment to the order in accordance with a formula developed by the State; or

(III) use automated methods (including automated comparisons with wage or State income tax data) to identify orders eligible for review, conduct the review, identify orders eligible for adjustment,
and apply the appropriate adjustment to the orders eligible for adjustment under any threshold that may be established by the State.

(ii) OPPORTUNITY TO REQUEST REVIEW OF ADJUSTMENT.—If the State elects to conduct the review under subclause (II) or (III) of clause (i), procedures which permit either party to contest the adjustment, within 30 days after the date of the notice of the adjustment, by making a request for review and, if appropriate, adjustment of the order in accordance with the child support guidelines established pursuant to section 667(a) of this title.

(iii) NO PROOF OF CHANGE IN CIRCUMSTANCES NECESSARY IN 3-YEAR CYCLE REVIEW.—Procedures which provide that any adjustment under clause (i) shall be made without a requirement for proof or showing of a change in circumstances.

(B) PROOF OF SUBSTANTIAL CHANGE IN CIRCUMSTANCES NECESSARY IN REQUEST FOR REVIEW OUTSIDE 3-YEAR CYCLE.—Procedures under which, in the case of a request for a review, and if appropriate, an adjustment outside the 3-year cycle (or such shorter cycle as the State may determine) under clause (i), the State shall review and, if the requesting party demonstrates a substantial change in circumstances, adjust the order in accordance with the guidelines established pursuant to section 667(a) of this title.

(C) NOTICE OF RIGHT TO REVIEW.—Procedures which require the State to provide notice not less than once every 3 years to the parents subject to the order informing the parents of their right to request the State to review and, if appropriate, adjust the order pursuant to this paragraph. The notice may be included in the order.

(11) Procedures under which a State must give full faith and credit to a determination of paternity made by any other State, whether established through voluntary acknowledgment or through administrative or judicial processes.

(12) LOCATOR INFORMATION FROM INTERSTATE NETWORKS.—Procedures to ensure that all Federal and State agencies conducting activities under this part have access to any system used by the State to locate an individual for purposes relating to motor vehicles or law enforcement.

(13) RECORDING OF SOCIAL SECURITY NUMBERS IN CERTAIN FAMILY MATTERS.—Procedures requiring that the social security number of—

(A) any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded on the application;

(B) any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgment be placed in the records relating to the matter; and

(C) any individual who has died be placed in the records relating to the death and be recorded on the death certificate.

For purposes of subparagraph (A), if a State allows the use of a number other than the social security number to be used on the face of the document while the social security number is kept on file at the agency, the State shall so advise any applicants.

(14) HIGH-VOLUME, AUTOMATED ADMINISTRATIVE ENFORCEMENT IN INTERSTATE CASES.—

(A) IN GENERAL.—Procedures under which—

(i) the State shall use high-volume automated administrative enforcement, to the same extent as used for intrastate cases, in response to a request made by another State to enforce support orders, and shall promptly report the results of such enforcement procedure to the requesting State;

(ii) the State may, by electronic or other means, transmit to another State a request for assistance in enforcing support orders through high-volume, automated administrative enforcement, which request—

(I) shall include such information as will enable the State to which the request is transmitted to compare the information about the cases to the information in the data bases of the State; and

(II) shall constitute a certification by the requesting State—

(aa) that the requesting State has complied with all procedural due process requirements applicable to each case;

(bb) that the requesting State has complied with all procedural due process requirements applicable to each case;

(iii) if the State provides assistance to another State pursuant to this paragraph with respect to a case, neither State shall consider the case to be transferred to the caseload of such other State (but the assisting State may establish a corresponding case based on such other State's request for assistance); and

(iv) the State shall maintain records of—

(I) the number of such requests for assistance received by the State;

(II) the number of cases for which the State collected support in response to such a request; and

(III) the amount of such collected support.

(B) HIGH-VOLUME AUTOMATED ADMINISTRATIVE ENFORCEMENT.—In this part, the term “high-volume automated administrative enforcement”, in interstate cases, means, on request of another State, the identification by a State, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other States, and the seizure of such assets by the State, through levy or other appropriate processes.

(15) PROCEDURES TO ENSURE THAT PERSONS OWING OVERTUE SUPPORT WORK OR HAVE A PLAN FOR PAYMENT OF SUCH SUPPORT.—Procedures under which the State has the authority, in any case in which an individual owes overdue
support with respect to a child receiving assistance under a State program funded under part A of this subchapter, to issue an order or to request that a court or an administrative process established pursuant to State law issue an order that requires the individual to—
(A) pay such support in accordance with a plan approved by the court, or, at the option of the State, a plan approved by the State agency administering the State program under this part; or
(B) if the individual is subject to such a plan and is not incapacitated, participate in such work activities (as defined in section 607(d) of this title) as the court, or, at the option of the State, the State agency administering the State program under this part, deems appropriate.

(16) AUTHORITY TO WITHHOLD OR SUSPEND LICENSES.—Procedures under which the State has (and uses in appropriate cases) authority to withhold or suspend, or to restrict the use of driver’s licenses, professional and occupational licenses, and recreational and sporting licenses of individuals owing overdue support or failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.

(17) FINANCIAL INSTITUTION DATA MATCHES.—(A) IN GENERAL.—Procedures under which the State agency shall enter into agreements with financial institutions doing business in the State—
(i) to develop and operate, in coordination with such financial institutions, and the Federal Parent Locator Service in the case of financial institutions doing business in two or more States, a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past-due support, as identified by the State by name and social security number or other taxpayer identification number; and
(ii) in response to a notice of lien or levy, encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a child support lien pursuant to paragraph (4).

(B) REASONABLE FEES.—The State agency may pay a reasonable fee to a financial institution for conducting the data match provided for in subparagraph (A)(i), not to exceed the actual costs incurred by such financial institution.

(C) LIABILITY.—A financial institution shall not be liable under any Federal or State law to any person—
(i) for any disclosure of information to the State agency under subparagraph (A)(i);
(ii) for encumbering or surrendering any assets held by such financial institution in response to a notice of lien or levy issued by the State agency as provided for in subparagraph (A)(ii); or
(iii) for any other action taken in good faith to comply with the requirements of subparagraph (A).

(D) DEFINITIONS.—For purposes of this paragraph—
(i) FINANCIAL INSTITUTION.—The term “financial institution” has the meaning given to such term by section 699A(d)(1) of this title.
(ii) ACCOUNT.—The term “account” means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.

(18) ENFORCEMENT OF ORDERS AGAINST PATERNAL OR MATERNAL GRANDPARENTS.—Procedures under which, at the State’s option, any child support order enforced under this part with respect to a child of minor parents, if the custodial parent of such child is receiving assistance under the State program under part A of this subchapter, shall be enforceable, jointly and severally, against the parents of the non-custodial parent of such child.

(19) HEALTH CARE COVERAGE.—Procedures under which—
(A) effective as provided in section 401(c)(3) of the Child Support Performance and Incentive Act of 1998, all child support orders enforced pursuant to this part shall include a provision for medical support for the child to be provided by either or both parents, and shall be enforced, where appropriate, through the use of the National Medical Support Notice promulgated pursuant to section 401(b) of the Child Support Performance and Incentive Act of 1998 (and referred to in section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1169(a)(5)(C)] in connection with group health plans covered under title I of such Act [29 U.S.C. 1001 et seq.], in section 401(e) of the Child Support Performance and Incentive Act of 1998 in connection with State or local group health plans, and in section 401(f) of such Act in connection with church group health plans);
(B) unless alternative coverage is allowed for in any order of the court (or other entity issuing the child support order), in any case in which a parent is required under the child support order to provide such health care coverage and the employer of such parent is known to the State agency—
(i) the State agency uses the National Medical Support Notice to transfer notice of the provision for the health care coverage of the child to the employer;
(ii) within 20 business days after the date of the National Medical Support Notice, the employer is required to transfer the Notice, excluding the severable employer withholding notice described in section 401(b)(2)(C) of the Child Support Performance and Incentive Act of 1998, to the appropriate plan providing any such health care coverage for which the child is eligible;
(iii) in any case in which the parent is a newly hired employee entered in the State Directory of New Hires pursuant to section 633a(e) of this title, the State agency provides, where appropriate, the National Medical Support Notice, together with an income withholding notice issued pursuant to subsection (b), within two days after the date of the entry of such employee in such Directory; and

(iv) in any case in which the employer of the parent with any employer who has received a National Medical Support Notice is terminated, such employer is required to notify the State agency of such termination; and

(C) any liability of the obligated parent to such plan for employee contributions which are required under such plan for enrollment of the child is effectively subject to appropriate enforcement, unless the obligated parent contests such enforcement based on a mistake of fact.

Notwithstanding section 654(20)(B) of this title, the procedures which are required under paragraphs (3), (4), (6), (7), and (15) need not be used or applied in cases where the State determines (using guidelines which are generally available within the State and which take into account the payment record of the noncustodial parent, the availability of other remedies, and other relevant considerations) that such use or application would not carry out the purposes of this part or would be otherwise inappropriate in the circumstances.

(b) Withholding from income of amounts payable as support

The procedures referred to in subsection (a)(1)(A) of this section (relating to the withholding from income of amounts payable as support) must provide for the following:

(1) In the case of each noncustodial parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of such parent's income must be withheld, in accordance with the succeeding provisions of this subsection, as is necessary to comply with the order and provide for the payment of any fee to the employer which may be required under paragraph (6)(A), up to the maximum amount permitted under section 1673(b) of title 15. If there are arrearages to be collected, amounts withheld to satisfy such arrearages, when added to the amounts withheld to pay current support and provide for the fee, may not exceed the limit permitted under such section 1673(b), but the State need not withhold up to the maximum amount permitted under such section in order to satisfy arrearages.

(2) Such withholding must be provided without the necessity of any application therefor in the case of a child (whether or not eligible for assistance under a State program funded under part A of this subchapter) with respect to whom services are already being provided under the State plan under this part, and must be provided in accordance with this subsection on the basis of an application for services under the State plan in the case of any other child in whose behalf a support order has been issued or modified in the State. In either case such withholding must occur without the need for any amendment to the support order involved or for any further action (other than those actions required under this part) by the court or other entity which issued such order.

(3)(A) The income of a noncustodial parent shall be subject to such withholding, regardless of whether support payments by such parent are in arrears, in the case of a support order being enforced under this part that is issued or modified on or after the first day of the 25th month beginning after October 13, 1988, on the effective date of the order; except that such income shall not be subject to such withholding under this subparagraph in any case where (i) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (ii) a written agreement is reached between both parties which provides for an alternative arrangement.

(B) The income of a noncustodial parent shall become subject to such withholding, in the case of income not subject to withholding under subparagraph (A), on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of—

(i) the date as of which the noncustodial parent requests that such withholding begin,

(ii) the date as of which the custodial parent requests that such withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved, or

(iii) such earlier date as the State may select.

(4)(A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and the State must send notice to each noncustodial parent to whom paragraph (1) applies—

(i) that the withholding has commenced; and

(ii) of the procedures to follow if the noncustodial parent desires to contest such withholding on the grounds that the withholding or the amount withheld is improper due to a mistake of fact.

(B) The notice under subparagraph (A) of this paragraph shall include the information provided to the employer under paragraph (6)(A).

(5) Such withholding must be administered by the State through the State disbursement unit established pursuant to section 654b of this title, in accordance with the requirements of section 654b of this title.

(6)(A)(i) The employer of any noncustodial parent to whom paragraph (1) applies, upon being given notice as described in clause (ii), must be required to withhold from such noncustodial parent’s income the amount speci-
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following receipt by such employer of proper State for any amount which such employer shall not be required to vary the nor-
notice under subparagraph (A), but such em-

mal pay and disbursement cycles in order to comply with this paragraph.

including permitting any employer to combine employers to the greatest extent possible, in -
all withheld amounts into a single payment to each appropriate agency or entity (with the
ignated).

individual employee being separately des -
portion thereof which is attributable to each

An employer who complies with an income withholding notice that is regular on its face shall not be subject to civil liability to any individual or agency for conduct in compliance with the notice.

(ii) The notice given to the employer shall be in a standard format prescribed by the Sec-
retary, and contain only such information as may be necessary for the employer to comply with the withholding order.

(iii) As used in this subparagraph, the term “business day” means a day on which State of-
ces are open for regular business.

(B) Methods must be established by the State to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to each appropriate agency or entity (with the portion thereof which is attributable to each individual employee being separately designated).

(C) The employer must be held liable to the State for any amount which such employer fails to withhold from income due an employee following receipt by such employer of proper notice under subparagraph (A), but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph.

(D) Provision must be made for the imposition of a fine against any employer who—

(i) discharges from employment, refuses to employ, or takes disciplinary action against any noncustodial parent subject to income withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer; or

(ii) fails to withhold support from income or to pay such amounts to the State dis-
bursement unit in accordance with this sub-

(7) Support collection under this subsection must be given priority over any other legal process under State law against the same in-

(8) For purposes of subsection (a) of this section and this subsection, the term “income” means any periodic form of payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, worker’s compensation, disability, payments pursuant to a pension or retirement program, and interest.

(9) The State must extend its withholding system under this subsection so that such sys-
tem will include withholding from income de-

(10) Provision must be made for terminating withholding.

(11) Procedures under which the agency admin-
istering the State plan approved under this part may execute a withholding order without advance notice to the obligor, including issuing the withholding order through electronic means.

(c) Expedited procedures

The procedures specified in this subsection are the following:

(1) Administrative action by State agency

Procedures which give the State agency the authority to take the following actions relating to establishment of paternity or to establish-

(2) Financial or other information

To subpoena any financial or other information needed to establish, modify, or enforce a support order, and to impose pen-
alties for failure to respond to such a sub-

(3) Response to State agency request

To require all entities in the State (including for-profit, nonprofit, and governmental employers) to provide promptly, in response to a request by the State agency of that or any other State administering a program under this part, information on the employ-

means any periodic form of payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, worker’s compensation, disability, payments pursuant to a pension or retirement program, and interest.
(D) Access to information contained in certain records

To obtain access, subject to safeguards on privacy and information security, and subject to the nonliability of entities that afford such access under this subparagraph, to information contained in the following records (including automated access, in the case of records maintained in automated data bases):

(i) Records of other State and local government agencies, including—
   (I) vital statistics (including records of marriage, birth, and divorce);
   (II) State and local tax and revenue records (including information on residence address, employer, income and assets);
   (III) records concerning real and titled personal property;
   (IV) records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnerships, and other business entities;
   (V) employment security records;
   (VI) records of agencies administering public assistance programs;
   (VII) records of the motor vehicle department; and
   (VIII) corrections records.

(ii) Certain records held by private entities with respect to individuals who owe or are owed support (or against or with respect to whom a support obligation is sought), consisting of—
   (I) the names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities and cable television companies, pursuant to an administrative subpoena authorized by subparagraph (B); and
   (II) information (including information on assets and liabilities) on such individuals held by financial institutions.

(E) Change in payee

In cases in which support is subject to an assignment in order to comply with a requirement imposed pursuant to part A of this subchapter, part E of this subchapter, or section 1396k of this title, or to a requirement to pay through the State disbursement unit established pursuant to section 654b of this title, upon providing notice to obligor and obligee, to direct the obligor or other payor to change the payee to the appropriate government entity.

(F) Income withholding

To order income withholding in accordance with subsections (a)(1)(A) and (b) of this section.

(G) Securing assets

In cases in which there is a support arrearage, to secure assets to satisfy any current support obligation and the arrearage by—

(i) intercepting or seizing periodic or lump-sum payments from—

(I) a State or local agency, including unemployment compensation, workers’ compensation, and other benefits; and
   (II) judgments, settlements, and lotteries;
   (ii) in any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the court or administrative agency of competent jurisdiction shall deem State due process requirements for notice and service of process to be met with respect to the party, upon delivery of written notice to the most recent residential or employer address filed with the State case registry pursuant to clause (i).

(B) Statewide jurisdiction

Procedures under which—

(i) the State agency and any administrative or judicial tribunal with authority to hear child support and paternity cases exercises statewide jurisdiction over the parties; and
   (ii) in a State in which orders are issued by courts or administrative tribunals, a case may be transferred between local ju-
processing times, administrative costs, and av-
Secretary of such data pertaining to caseloads,
the Secretary, through the presentation to the
estimates as the Secretary may specify, that the
average support collections, and such other data or
(e) “Overdue support” defined
"Overdue support" means the amount of a delin-
vanced in order to satisfy section 654(20)(A) of this
t, each State must have in effect—
(1)(A) the Uniform Fraudulent Conveyance Act of 1981;
(B) the Uniform Fraudulent Transfer Act of 1984; or
(C) another law, specifying indicia of fraud which create a prima facie case that a debtor transferred income or property to avoid pay-
ment to a child support creditor, which the
Secretary finds affords comparable rights to child support creditors; and
(2) procedures under which, in any case in
which the State knows of a transfer by a child support debtor with respect to which such a
prima facie case is established, the State must—
(A) seek to void such transfer; or
(B) obtain a settlement in the best
interests of the child support creditor.
(d) Exemption of States
If a State demonstrates to the satisfaction of the Secretary, through the presentation to the
Secretary of such data pertaining to caseloads, processing times, administrative costs, and average
support collections, and such other data or estimates as the Secretary may specify, that the
enactment of any law or the use of any procedure or procedures required by or pursuant to this
section will not increase the effectiveness and efficiency of the State child support en-
forcement program, the Secretary may exempt the State, subject to the Secretary’s continuing
review and to termination of the exemption should circumstances change, from the require-
(e) "Overdue support" defined
For purposes of this section, the term “over-
due support” means the amount of a delin-
quency pursuant to an obligation determined under a court order, or an order of an adminis-
trative process established under State law, for
support and maintenance of a minor child which
is owed to or on behalf of such child, or for support and maintenance of the noncustodial par-
ent’s spouse (or former spouse) with whom the
child is living if and to the extent that spousal
support (with respect to such spouse or former
spouse) would be included for purposes of section
654(20)(A) of this title. At the option of the State, overdue support may include amounts which other-
wise meet the definition in the first sen-
tence of this subsection but which are owed to
or on behalf of a child who is not a minor child.
The option to include support owed to children
who are not minors shall apply independently to
each procedure specified under this section.
(f) Uniform Interstate Family Support Act
In order to satisfy section 654(20)(A) of this
title, on and after January 1, 1998, each State
must have in effect the Uniform Interstate Fam-
ily Support Act, as approved by the American
Bar Association on February 9, 1993, and as in ef-
fect on August 22, 1996, including any amend-
ments officially adopted as of such date by the
National Conference of Commissioners on Uni-
form State Laws.
(g) Laws voiding fraudulent transfers
In order to satisfy section 654(20)(A) of this
title, each State must have in effect—
(1)(A) the Uniform Fraudulent Conveyance Act of 1981;
(b) the Uniform Fraudulent Transfer Act of 1984; or
(C) another law, specifying indicia of fraud which create a prima facie case that a debtor transferred income or property to avoid pay-
ment to a child support creditor, which the
Secretary finds affords comparable rights to child support creditors; and
(2) procedures under which, in any case in
which the State knows of a transfer by a child support debtor with respect to which such a
prima facie case is established, the State must—
(A) seek to void such transfer; or
(B) obtain a settlement in the best
interests of the child support creditor.

REFERENCES IN TEXT
Sections 401(b) and 401(c)(3) of the Child Support Per-
formance and Incentive Act of 1998, Pub. L. 105–200, re-
ferred to in subsec. (a)(19)(A), (B)(ii), are set out as
notes under sections 651 and 652 of this title, respec-
tively. Sections 401(e) and 401(f) of the Act, referred to
in subsec. (a)(19)(A), are set out in a note under section
1169 of Title 29, Labor.

The Employee Retirement Income Security Act of
classified generally to subchapter I (§ 1001 et seq.) of chapter 18 of Title 29, Labor. For complete classification
of this Act to the Code, see Short Title note set
out under section 1001 of Title 29 and Tables.

CODIFICATION
October 13, 1988, referred to in subsec. (b)(3)(A), was in
the original “the date of enactment of this paragraph”,
which was translated as meaning the date of enactment
of Pub. L. 100–485, which amended par. (3) of this section generally, to reflect the probable intent of Congress.

**AMENDMENTS**

2006—Subsec. (a)(10)(A)(i). Pub. L. 109–171, § 7302(a), in introductory provisions, substituted “parent or” for “parents,” and struck out “upon the request of the State agency under the State plan or of either parent,” after “under part A of this subchapter,”.

Subsec. (a)(14)(A)(ii). Pub. L. 109–171, § 7301(g), inserted “(but the assisting State may establish a corresponding case based on such other State’s request for assistance)” before semicolon.

Subsec. (a)(19)(A). Pub. L. 109–171, § 7307(a)(1), (2)(A)(ii)(I), substituted “shall include a provision for medical support for the child to be provided by either or both parents, and shall be enforced” for “which includes a provision for the health care coverage of the child which are enforced,” before semicolon.


1998—Subsec. (a)(14)(B). Pub. L. 105–200, § 404(a), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: “In this part, the term ‘high-volume automated administrative enforcement’ means the use of automatic data processing to search various State data bases, including license record, employment service data, and any new data registries, to determine whether information is available regarding a parent who owes a child support obligation.”


Subsec. (a)(19). Pub. L. 105–200, § 401(c)(1), amended heading and text of par. (19) generally. Prior to amendment, text read as follows: “Procedures under which all child support orders enforced pursuant to this part shall include a provision for the health care coverage of the child, and in the case in which a noncustodial parent provides such coverage and changes employment, and the new employer provides health care coverage, the State agency shall transfer notice of the provision to the employer, which notice shall operate to enroll the child in the noncustodial parent’s health plan, unless the noncustodial parent contests the notice.”


Subsec. (a)(5)(C)(i). Pub. L. 105–33, § 5539, inserted “or through the use of video or audio equipment,” after “oral.”

Subsec. (a)(13). Pub. L. 105–33, § 5562(2), inserted “to be used on the face of the document while the social security number is kept on file at the agency” after “other than the social security number” in concluding provisions.


Pub. L. 105–33, § 5536(1)(A), struck out “commercial” before “driver’s license”.

Subsec. (a)(14). Pub. L. 105–33, § 5560(a), amended heading and text of par. (14) generally. Prior to amendment, text constituted of subpars. (A) to (D) relating to administrative enforcement in interstate cases.

Subsec. (a)(15). Pub. L. 105–33, § 5551, amended heading and text of par. (15) generally. Prior to amendment, text related to procedures to ensure that persons owning past-due support work or have a plan for payment of such support.


Subsec. (c)(1)(E). Pub. L. 105–33, § 5538(1)(A), inserted “part E of this subchapter,” after “part A of this subchapter”.

Subsec. (c)(1)(F). Pub. L. 105–33, § 5558(a), made technical amendment to reference in original act which appears in text as reference to subsections (a)(1) and (b) of this section.


Pub. L. 105–33, § 5528(2)(A), struck out “out the tribunal and” after “to file with.”

Subsec. (c)(2)(A)(ii). Pub. L. 105–33, § 5528(2)(B), substituted “court or administrative agency of competent jurisdiction shall” for “tribunal may” and “filed with the State case registry” for “filed with the tribunal.”

Subsec. (f). Pub. L. 105–33, § 5557, substituted “and as in effect on August 22, 1996, including any amendments officially adopted as of such date by the National Conference of Commissioners on Uniform State Laws,” for “together with any amendments officially adopted before January 1, 1998 by the National Conference of Commissioners on Uniform State Laws.”


Subsec. (a)(1). Pub. L. 104–193, § 314(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Procedures described in subsection (b) of this section for the withholding from income of amounts payable as support.”

Subsec. (a)(2). Pub. L. 104–193, § 325(a)(1), substituted “Expedited administrative and judicial procedures (including the procedures specified in subsection (c) of this section) for establishing paternity and for establishing, modifying, and enforcing support obligations” for “Procedures under which expedited processes (determined in accordance with regulations of the Secretary) are in effect under the State judicial system or State administrative processes (A) for obtaining and enforcing support orders, and (B) for establishing paternity.”


Subsec. (a)(3)(B). Pub. L. 104–193, § 301(c)(3), substituted “in any other case” for “in the case of overdue support which a State has agreed to collect under section 654(6) of this title”.

Pub. L. 104–193, § 108(c)(14), substituted “section 602(a)(3)” for “section 656(a)(3)”.


Subsec. (a)(4). Pub. L. 104–193, § 360, inserted heading and amended text of par. (4) generally. Prior to amendment, text read as follows: “Procedures under which liens are imposed against real and personal property for amounts of overdue support owed by an absent parent who resides or owns property in the State.”

Subsec. (a)(5). Pub. L. 104–193, § 331(a), inserted heading and amended text of par. (5) generally. Prior to amendment, text constituted of subpars. (A) and (B) relating to the enforcing of support orders in interstate cases.
amendment, text related to establishment of child's paternity prior to child's eighteenth birthday. Subsec. (a)(6), Pub. L. 104–193, §395(d)(1)(H), (2)(D), substituted “a noncustodial parent give security” for “an absent parent give security” and “noncustodial parent of the proposed action” for “absent parent of the proposed action”.

Subsec. (a)(7), Pub. L. 104–193, §397, inserted heading and amended text of par. (7) generally. Prior to amendment, text read as follows: “Procedures which require the State to periodically report to consumer reporting agencies, as defined in section 1681a(f) of title 15 the name of any parent who owes overdue support and is at least 2 months delinquent in the payment of such support and the amount of such delinquency; except that (A) if the amount of the overdue support involved in any case is less than $1,000, information regarding such amount shall be made available only at the option of the State, (B) any information with respect to an absent parent shall be made available under such procedures only after notice has been sent to such absent parent of the proposed action, and such absent parent has been given a reasonable opportunity to contest the accuracy of such information with all procedural due process requirements of the State, and (C) such information shall not be made available to (i) a consumer reporting agency which the State determines does not have sufficient capability to systematically and timely make accurate use of such information, or (ii) an entity which has not furnished evidence satisfactory to the State that the entity is a consumer reporting agency.”


Subsec. (a)(8)(B)(ii), Pub. L. 104–193, §395(d)(1)(H), substituted “noncustodial parent” for “absent parent”. Subsec. (a)(10), Pub. L. 104–193, §381, inserted heading and amended text of par. (10) generally. Prior to amendment, text consisted of subpars. (A) to (C) relating to procedures to ensure review of child support orders and to ensure that States implement a process for periodic review and adjustment of child support orders and provide certain notices to parents subject to child support order of matters relating to the review and adjustment of those orders.


Subsec. (b)(1), Pub. L. 104–193, §§314(b)(2)(B), 395(d)(1)(H), substituted “noncustodial parent” for “absent parent” and “income” for “wages (as defined by the State for purposes of this section)”.

Subsec. (b)(2), Pub. L. 104–193, §108(c)(15), substituted “assistance under a State program funded under part A” for “aid under part A”. Subsec. (b)(3)(A), Pub. L. 104–193, §§314(b)(2)(A), 395(d)(2)(D), substituted “income” for “wages” in two places and “a noncustodial parent” for “an absent parent”.


“(A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and (subject to subparagraph (B)) the State must send advance notice to each absent parent to whom paragraph (1) applies regarding the proposed withholding and the procedures such absent parent should follow if he or she desires to contest such withholding on the grounds that withholding is not proper in the case involved because of mistakes of fact. If the absent parent contests such withholding on those grounds, the State shall determine whether such withholding will actually occur, shall (within no more than 45 days after the provision of such advance notice) inform such parent of whether or not withholding will occur and (if so) of the date on which it is to begin, and shall furnish such parent with the information contained in any notice given to the employer under paragraph (6)(A) with respect to such withholding.

“(B) The requirement of advance notice set forth in the first sentence of subparagraph (A) shall not apply in the case of any State which has a system of income withholding for child support purposes in effect on August 16, 1984, if such system provides on that date, and continues to provide, such procedures as may be necessary to meet the procedural due process requirements of State law.”

Subsec. (b)(5), Pub. L. 104–193, §314(a)(2)(C), substituted the “State through the State disbursement unit established pursuant to section 657 of this title, in accordance with the requirements of section 654b of this title.” for “a public agency designated by the State, and the amounts withheld must be expeditiously distributed by the State or such agency in accordance with section 657 of this title under procedures (specified by the State) adequate to document payments of support and to track and monitor such payments, except that the State may establish or permit the establishment of alternative procedures for the collection and distribution of such amounts (under the supervision of such public agency) otherwise than through such public agency so long as the entity making such collection and distribution is publicly accountable for its actions taken in carrying out such procedures, and so long as such procedures will assure prompt distribution, provide for the keeping of adequate records to document payments of support, and permit the tracking and monitoring of such payments.”

Subsec. (b)(6)(A)(I), Pub. L. 104–193, §§314(a)(2)(D)(i), (b)(2)(A), 395(d)(1)(H), substituted “The employer of any noncustodial parent” for “The employer of any absent parent”, “withhold from such noncustodial parent’s income” for “withhold from such absent parent’s wages”, and “to the State disbursement unit within 7 business days after the date the amount with respect to which such withholding has been given a reasonable opportunity to contest the amount to be withheld) is not proper in the case involving such advance notice) inform such parent of whether or not withholding will occur, shall (within no more than 45 days after the provision of such notice given to such parent of the proposed action)”.


Subsec. (b)(6)(C), Pub. L. 104–193, §314(b)(2)(A), substituted “income” for “wages”. Subsec. (b)(6)(D), Pub. L. 104–193, §314(a)(2)(D), substituted “any employer who—” for “any employer who discharges from employment, refuses to employ, or takes disciplinary action against any absent parent subject to wage withholding required by this subsection because of the existence of such withholding and the
obligations or additional obligations which it imposes upon the employer.’’ and added cl. (i) and (ii).

Subsec. (b)(7). Pub. L. 104–193, §314(b)(2)(A), added subpar. (8) generally. Prior to amendment, par. (8) read as follows: ‘‘The State may take such actions as may be necessary to extend its system of withholding under this subsection so that such system will include withholding from forms of income other than wages, in order to assure that child support owed by absent parents in the State will be collected without regard to the types of such absent parents’ income or the nature of their income-producing activities.’’


Pub. L. 104–193, §314(c), struck out subsec. (c) which read as follows: ‘‘Any State may at its option, under its plan approved under section 654 of this title, establish procedures under which support payments under this part will be made through the State agency or other entity which administers the State’s income withholding system in any case when either the absent parent or the custodial parent requests it, even though no arrearages in child support payments are involved and no income withholding procedures have been instituted; but in any such case an annual fee for handling and processing such payments, in an amount not exceeding the actual costs incurred by the State in connection therewith or $25, whichever is less, shall be imposed on the requesting parent by the State.’’

Subsec. (e). Pub. L. 104–193, §§301(c)(4), 395(d)(1)(H), substituted ‘‘noncustodial parent’s spouse’’ for ‘‘absent parent’s spouse’’ and ‘‘section 654(4)’’ for ‘‘paragraph (4) or (6) of section 654.’’


1994—Subsec. (a)(7). Pub. L. 104–102, §222(a)(1), substituted ‘‘Procedures which require the State to periodically report to consumer reporting agencies (as defined in section 1681a(f) or title 15) the name of any parent who owes overdue support and is at least 2 months delinquent in the payment of such support and the amount of such delinquency’’ for ‘‘Procedures by which information regarding the amount of overdue support owed by an absent parent residing in the State will be made available to any consumer reporting agency (as defined in section 1681a(f) of title 15) upon the request of such agency’’.

Subsec. (a)(7)(C). Pub. L. 105–422, §212(a)(2), substituted ‘‘(C) such information shall not be made available to (i) a consumer reporting agency which the State determines does not have sufficient capability to systematically and timely make accurate use of such information, or (ii) an entity which has not furnished evidence satisfactory to the State that the entity is a consumer reporting agency’’ for ‘‘(C) a fee for furnishing such information, in an amount not exceeding the actual cost thereof, may be imposed on the requesting agency by the State’’.

1993—Subsec. (a)(2). Pub. L. 103–66, §13721(b)(1), struck out ‘‘(B)’’ after ‘‘at the option of the State,’’ and inserted ‘‘or paternity establishment’’ after ‘‘support order issuance and enforcement’’.

Subsec. (a)(5)(C) to (H). Pub. L. 103–66, §13721(b)(2), added subpars. (C) to (H).


1988—Subsec. (a)(5). Pub. L. 100–485, §111(b), designated existing provisions as subpar. (A) and added subpar. (B).


Subsec. (a)(8). Pub. L. 100–485, §101(b), designated existing provisions as subpar. (A), substituted ‘‘not described in subparagraph (B)’’ for ‘‘which are issued or modified in the State’’, and added subpar. (B).


Subsec. (b)(3). Pub. L. 100–485, §101(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ‘‘(A) the date on which the payments which the absent parent has failed to make under such order are at least equal to the support payable for one month, and

[B] the date as of which the absent parent requests that such withholding begin, or

‘‘(C) such earlier date as the State may select.’’


Effective Date of 2006 Amendment
Amendment by sections 7301(g) and 7307(a)(1), (2)(A)(ii) of Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

Pub. L. 109–171, title VII, §7302(b), Feb. 8, 2006, 120 Stat. 145, provided that: ‘‘The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2007.’’

Effective Date of 1999 Amendment

Effective Date of 1998 Amendment
Amendment by section 401(c)(1) of Pub. L. 105–200 effective with respect to periods beginning on or after the later of Oct. 1, 2001, or the effective date of laws enacted by the legislature of such State implementing such amendment, but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after Oct. 1, 2001, see section 401(c)(3) of Pub. L. 105–200, as amended, set out as a note under section 652 of this title.


Effective Date of 1997 Amendment
Amendment by Pub. L. 105–33 effective as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, except that amendment made by section 5556(1)(A) of Pub. L. 105–33 not effective with respect to a State until Oct. 1, 2000, or such earlier date as the State may elect, see section 5557 of Pub. L. 105–33, as amended, set out as a note under section 608 of this title.

Effective Date of 1996 Amendment
Amendment by section 108(c)(14), (15) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

For effective date of amendments by title III of Pub. L. 104–193, see section 395a(c) of Pub. L. 104–193, set out as a note under section 654 of this title.
effective date of 1994 amendment

Section 212(b) of Pub. L. 103–432 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1995."

effective date of 1993 amendment

Amendment by Pub. L. 103–66 effective with respect to a State on later of Oct. 1, 1993, or date of enactment by legislature of such State of all laws required by such amendments made by section 13721 of Pub. L. 103–66, but in no event later than first day of first calendar quarter beginning after close of first regular session of State legislature that begins after Aug. 10, 1993, and, in case of State that has 2-year legislative session, each State legislature that begins after Aug. 10, 1993, and, in year of such session deemed to be separate regular session of State legislature, see section 13721(c) of Pub. L. 103–66, set out as a note under section 652 of this title.

effective date of 1988 amendments

Section 8105 of Pub. L. 100–647 provided that amendments made by that section, amending sections 607 and 609 of this title and amending provisions of Pub. L. 100–485 which are classified to this section and section 607 of this title, are effective on date of enactment of Family Support Act of 1988, Pub. L. 100–485, which was approved Oct. 13, 1988.

Section 101(d) of Pub. L. 100–485 provided that: "(1) The amendment made by subsection (a) [amending this section] shall become effective on the first day of the 25th month beginning after the date of the enactment of this Act (Oct. 13, 1988);

(2) The amendments made by subsection (b) [amending this section] shall become effective on January 1, 1984;

(3) Subsection (c) [set out below] shall become effective on the date of the enactment of this Act."

Section 103(f) of Pub. L. 100–485 provided that: "The amendments made by subsections (a), (b), and (c) [amending this section and section 607 of this title] shall become effective one year after the date of the enactment of this Act (Oct. 13, 1988)."

Amendment by section 111(b) of Pub. L. 100–485 effective on first day of first month beginning one year or more after Oct. 13, 1988, see section 111(f)(2) of Pub. L. 100–485, set out as a note under section 654 of this title.


effective date of 1986 amendment

Section 9010(b) of Pub. L. 98–509 provided that:

"(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act (Oct. 21, 1986);

(2) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act (this part) to the requirements imposed by the amendment made by subsection (a) [amending this section], the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after the date of the enactment of this Act (Oct. 21, 1986). For purposes of the preceding sentence, the term `session' means a regular, special, budget, or other session of a State legislature."

effective date

Section effective Oct. 1, 1983, except that subsec. (e) effective with respect to support owed for any month beginning after Aug. 16, 1981, see section 3(g) of Pub. L. 98–378, set out as an Effective Date of 1984 Amendment note under section 654 of this title.

study on making immediate income withholding mandatory in all cases

Section 101(c) of Pub. L. 100–485 directed Secretary of Health and Human Services to conduct a study of administrative feasibility, cost implications, and other effects of requiring immediate income withholding with respect to all child support awards in a State and report on results of such study not later than 3 years after Oct. 13, 1988.

study of impact of extending periodic review requirements to all other cases

Section 103(d) of Pub. L. 100–485 directed Secretary of Health and Human Resources, within 2 years after Oct. 13, 1988, to conduct and complete a study to determine impact on child support awards and the courts of requiring each State to periodically review all child support orders in effect in the State.

demonstration projects for evaluating model procedures for reviewing child support awards

Section 103(e) of Pub. L. 100–485 authorized an agreement between Secretary of Health and Human Services and each State submitting an application for purpose of conducting a demonstration project to test and evaluate model procedures for reviewing child support award amounts, directed such projects be commenced not later than Sept. 30, 1989, and be conducted for a 2-year period, and directed Secretary to report results of such projects to Congress not later than 6 months after all projects are completed.

commission on interstate child support


§ 667. State guidelines for child support awards

(a) Establishment of guidelines; method

Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support award amounts within the State. The guidelines may be established by law or by judicial or administrative action, and shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts.

(b) Availability of guidelines; rebuttable presumption

(1) The guidelines established pursuant to subsection (a) of this section shall be made available to all judges and other officials who have the power to determine child support awards within such State.

(2) There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding of or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case.
(c) Technical assistance to States; State to furnish Secretary with copies

The Secretary shall furnish technical assistance to the States for establishing the guidelines, and each State shall furnish the Secretary with copies of its guidelines.


AMENDMENTS

1988—Subsec. (a). Pub. L. 100–485, § 103(b), inserted ".', and shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts" before period at end.

Subsec. (b). Pub. L. 100–485, § 103(a), designated existing provisions as par. (1), struck out "., but need not be binding upon such judges or other officials" after "within such State", and added par. (2).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective one year after Oct. 13, 1988, see section 666 of this title.

§ 668. Encouragement of States to adopt civil procedure for establishing paternity in contested cases

In the administration of the child support enforcement program under this part, each State is encouraged to establish and implement a civil procedure for establishing paternity in contested cases.


AMENDMENTS

1996—Pub. L. 104–193 struck out "a simple civil process for voluntarily acknowledging paternity and" after "implement".

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendment by Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

§ 669. Collection and reporting of child support enforcement data

(a) In general

With respect to each type of service described in subsection (b) of this section, the Secretary shall collect and maintain up-to-date statistics, by State, and on a fiscal year basis, on—

(1) the number of cases in the caseload of the State agency administering the plan approved under this part in which the service is needed; and

(2) the number of such cases in which the service has actually been provided.

(b) Types of services

The statistics required by subsection (a) of this section shall be separately stated with respect to paternity establishment services and child support obligation establishment services.

(c) Types of service recipients

The statistics required by subsection (a) of this section shall be separately stated with respect to—

(1) recipients of assistance under a State program funded under part A of this subchapter or of payments or services under a State plan approved under part E of this subchapter; and

(2) individuals who are not such recipients.

(d) Rule of interpretation

For purposes of subsection (a)(2) of this section, a service has actually been provided when the task described by the service has been accomplished.


AMENDMENTS

1998—Pub. L. 105–200 reenacted section catchline without change, added subsec. (a) to (c), redesignated former subsec. (c) as (d) and inserted heading, and struck out former subsec. (a) relating to statistics on need for and actual provision of services and subsec. (b) relating to types of services.

1996—Subsec. (a). Pub. L. 104–193, § 108(c)(16), substituted "assistance under State programs funded under part A of this subchapter and for families not receiving such assistance)" for "aid under plans approved under part A of this subchapter and for families not receiving such aid)".


1988—Subsec. (a). Pub. L. 100–485 made technical amendment to references to part A of this subchapter and to this part involving underlying provisions of original act and requiring no change in text.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–200 applicable to information maintained with respect to fiscal year 1995 or any succeeding fiscal year, see section 407(c) of Pub. L. 105–200, set out as a note under section 652 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 108(c)(16) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of enti-
eral or State law, a financial institution shall
an individual to a State child support enforce-
any person for disclosing any financial record of
ment agency attempting to establish, modify, or
vidual, or for disclosing any such record to the
enforce a child support obligation of such indi-
section 666(a)(17)(A) of this title.
Federal Parent Locator Service pursuant to sec-
(b) Prohibition of disclosure of financial record
(a) In general
Notwithstanding any other provision of Fed-
eral or State law, a financial institution shall
not be liable under any Federal or State law to
any person for disclosing any financial record of
an individual to a State child support enforce-
ment agency attempting to establish, modify, or
enforce a child support obligation of such indi-
vidual, or for disclosing any such record to the
Federal Parent Locator Service pursuant to sec-
(b) Prohibition of disclosure of financial record
obtained by State child support enforcement
age
A State child support enforcement agency
which obtains a financial record of an individ-
from a financial institution pursuant to sub-
section (a) of this section may disclose such fi-
nancial record only for the purpose of, and to
the extent necessary in, establishing, modifying,
or enforcing a child support obligation of such
individual.
(c) Civil damages for unauthorized disclosure
(1) Disclosure by State officer or employee
If any person knowingly, or by reason of
negligence, discloses a financial record of an
individual in violation of subsection (b) of this
section, such individual may bring a civil ac-
tion for damages against such person in a dis-
trict court of the United States.
(2) No liability for good faith but erroneous in-
terpretation
No liability shall arise under this subsection
with respect to any disclosure which results
from a good faith, but erroneous, interpreta-
tion of subsection (b) of this section.
(3) Damages
In any action brought under paragraph (1),
upon a finding of liability on the part of
the defendant, the defendant shall be liable to the
plaintiff in an amount equal to the sum of—
(A) the greater of—
(1) $1,000 for each act of unauthorized dis-
losure of a financial record with respect to
which such defendant is found liable; or
(ii) the sum of—
(I) the actual damages sustained by the
plaintiff as a result of such unauthorized
disclosure; plus
(II) in the case of a willful disclosure
or a disclosure which is the result of
gross negligence, punitive damages; plus
(B) the costs (including attorney’s fees) of
the action.
(d) Definitions
For purposes of this section—
(1) Financial institution
The term “financial institution” means—
(A) a depository institution, as defined in
section 1813(c) of title 12;
(B) an institution-affiliated party, as de-
finied in section 1813(u) of title 12;
(C) any Federal credit union or State cred-
it union, as defined in section 1752 of title 12,
including an institution-affiliated party of
such a credit union, as defined in section
1786(r) of title 12; and
(D) any benefit association, insurance
company, safe deposit company, money-mar-
et mutual fund, or similar entity author-
dized to do business in the State.
(2) Financial record
The term “financial record” has the mean-
ging given such term in section 3401 of title 12.
(Aug. 14, 1935, ch. 531, title IV, § 469A, as added
Stat. 2290; amended Pub. L. 105–200, title IV,
§ 406(c), July 16, 1998, 112 Stat. 672.)

AMENDMENTS
disclosing any such record to the Federal Parent Loca-
tor Service pursuant to section 666(a)(17)(A) of this title.” before period at end.

Effective Date
For effective date of section, see section 395(a)–(c) of
Pub. L. 104–193, set out as an Effective Date of 1996
Amendment note under section 654 of this title.

§ 669b. Grants to States for access and visitation
programs
(a) In general
The Administration for Children and Families
shall make grants under this section to enable
States to establish and administer programs to
support and facilitate noncustodial parents’ ac-
to and visitation of their children, by
means of activities including mediation (both
voluntary and mandatory), counseling, edu-
cation, development of parenting plans, visita-
tion enforcement (including monitoring, super-
vision and neutral drop-off and pickup), and
development of guidelines for visitation and alter-
native custody arrangements.
(b) Amount of grant
The amount of the grant to be made to a State
under this section for a fiscal year shall be an
amount equal to the lesser of—
(1) 90 percent of State expenditures during
the fiscal year for activities described in sub-
section (a) of this section; or
(2) the allotment of the State under sub-
section (c) of this section for the fiscal year.
(c) Allotments to States
(1) In general
The allotment of a State for a fiscal year is
the amount that bears the same ratio to
$10,000,000 for grants under this section for the
fiscal year as the number of children in the State living with only 1 biological parent bears to the total number of such children in all States.

(2) Minimum allotment

The Administration for Children and Families shall adjust allotments to States under paragraph (1) as necessary to ensure that no State is allotted less than—

(A) $50,000 for fiscal year 1997 or 1998; or

(B) $100,000 for any succeeding fiscal year.

(d) No supplantation of State expenditures for similar activities

A State to which a grant is made under this section may not use the grant to supplant expenditures by the State for activities specified in subsection (a) of this section, but shall use the grant to supplement such expenditures at a level at least equal to the level of such expenditures for fiscal year 1995.

(e) State administration

Each State to which a grant is made under this section—

(1) may administer State programs funded with the grant, directly or through grants to or contracts with courts, local public agencies, or nonprofit private entities;

(2) shall not be required to operate such programs on a statewide basis; and

(3) shall monitor, evaluate, and report on such programs in accordance with regulations prescribed by the Secretary.


Effective Date

For effective date of section, see section 395(a)–(c) of Pub. L. 104–193, set out as an Effective Date of 1996 Amendment note under section 654 of this title.

PART E—FEDERAL PAYMENTS FOR FOSTER CARE AND ADOPTION ASSISTANCE

§ 670. Congressional declaration of purpose; authorization of appropriations

For the purpose of enabling each State to provide, in appropriate cases, foster care and transitional independent living programs for children who otherwise would have been eligible for assistance under the State's plan approved under part A of this subchapter and adoption assistance for children with special needs for "foster care, adoption assistance, and transitional independent living programs for children who otherwise would be eligible for assistance under the State's plan approved under part A of this subchapter", Pub. L. 99–272 substituted "foster care, adoption assistance, and transitional independent living programs for children who otherwise would be eligible for assistance under the State's plan approved under part A of this subchapter (or, in the case of adoption assistance, would be eligible for benefits under subchapter XVI of this chapter)".

Effective Date of 1996 Amendment

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Effective Date of 1996 Amendment

Section 1711(d) of Pub. L. 99–514 provided that: "The amendments made by this section [amending this section and sections 671, 673, and 675 of this title] shall apply only with respect to expenditures made after December 31, 1986."

STRENGTHENING ABUSE AND NEGLECT COURTS

Pub. L. 106–314, Oct. 17, 2000, 114 Stat. 1266, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Strengthening Abuse and Neglect Courts Act of 2000'."

"SEC. 2. FINDINGS.

"Congress finds the following:

"(1) Under both Federal and State law, the courts play a crucial and essential role in the Nation's child welfare system and in ensuring safety, stability, and permanence for abused and neglected children under the supervision of that system.

"(2) The Adoption and Safe Families Act of 1997 (Public Law 105–89; 111 Stat. 2115) [see Short Title of 1997 Amendment note set out under section 1305 of this title] establishes explicitly for the first time in Federal law that a child's health and safety must be the paramount consideration when any decision is made regarding a child in the Nation's child welfare system.

"(3) The Adoption and Safe Families Act of 1997 promotes stability and permanence for abused and neglected children by requiring timely decision-making in proceedings to determine whether children can safely return to their families or whether they should be moved into safe and stable adoptive homes or other permanent family arrangements outside the foster care system.

"(4) To avoid unnecessary and lengthy stays in the foster care system, the Adoption and Safe Families Act of 1997 specifically requires, among other things, that States move to terminate the parental rights of the parents of those children who have been in foster care for 15 of the last 22 months.

"(5) While essential to protect children and to carry out the general purposes of the Adoption and Safe
Families Act of 1997, the accelerated timelines for the termination of parental rights and the other requirements imposed under that Act increase the pressure on the Nation's already overburdened abuse and neglect courts.

“(6) The administrative efficiency and effectiveness of the Nation’s abuse and neglect courts would be substantially improved by the acquisition and implementation of computerized case-tracking systems to identify and eliminate existing backlogs, to move abuse and neglect caseloads forward in a timely manner, and to move children into safe and stable families. Such systems could also be used to evaluate the effectiveness of such courts in meeting the purposes of the amendments made by, and provisions of, the Adoption and Safe Families Act of 1997.

“(7) The administrative efficiency and effectiveness of the Nation’s abuse and neglect courts would also be improved by the identification and implementation of projects designed to reduce the backlog of abuse and neglect cases, including the temporary hiring of additional judges, extension of court hours, and other projects designed to reduce existing caseloads.

“(8) The administrative efficiency and effectiveness of the Nation’s abuse and neglect courts would be further strengthened by improving the quality and availability of training for judges, court personnel, agency attorneys, guardians ad litem, volunteers who participate in court-appointed special advocate (CASA) programs, and attorneys who represent the children and the parents of children in abuse and neglect proceedings.

“(9) While recognizing that abuse and neglect courts in this country are already committed to the quality administration of justice, the performance of such courts would be even further enhanced by the development of models and educational opportunities that reinforce court projects that have already been developed, including models for case-flow procedures, case management, representation of children, automated interagency interfaces, and ‘best practices’ standards.

“(10) Judges, magistrates, commissioners, and other judicial officers play a central and vital role in ensuring that proceedings in our Nation’s abuse and neglect courts are run efficiently and effectively. The performance of those individuals in such courts can only be further enhanced by training, seminars, and an ongoing opportunity to exchange ideas with their peers.

“(11) Volunteers who participate in court-appointed special advocate (CASA) programs play a vital role as the eyes and ears of abuse and neglect courts in proceedings conducted by, or under the supervision of, such courts and also bring increased public scrutiny of the abuse and neglect court system. The Nation’s abuse and neglect courts would benefit from an expansion of this program to currently underserved communities.

“(12) Improved computerized case-tracking systems, comprehensive training, and development of, and education on, model abuse and neglect court systems, particularly with respect to underserved areas, would significantly further the purposes of the Adoption and Safe Families Act of 1997 by reducing the average length of an abused and neglected child’s stay in foster care, improving the quality of decision-making and court services provided to children and families, and increasing the number of adoptions.

SEC. 3. DEFINITIONS.

“In this Act:

“(1) ABUSE AND NEGLECT COURTS.—The term ‘abuse and neglect courts’ means the State and local courts that carry out State or local laws requiring proceedings (conducted by or under the supervision of the courts)—

“(A) that implement part B and part E of title IV of the Social Security Act (42 U.S.C. 620 et seq.; 670 et seq.) (including preliminary disposition of such proceedings);

“(B) that determine whether a child was abused or neglected;

“(C) that determine the advisability or appropriateness of placement in a family foster home, group home, or a special residential care facility; or

“(D) that determine any other legal disposition of a child in the abuse and neglect court system.

“(2) AGENCY ATTORNEY.—The term ‘agency attorney’ means an attorney or other individual, including any government attorney, district attorney, attorney general, State attorney, county attorney, city solicitor or attorney, corporation counsel, or privately retained special prosecutor, who represents the State or local agency administering the programs under parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq.; 670 et seq.) in a proceeding conducted by, or under the supervision of, an abuse and neglect court, including a proceeding for termination of parental rights.

SEC. 4. GRANTS TO STATE COURTS AND LOCAL COURTS TO AUTOMATE THE DATA COLLECTION AND TRACKING OF PROCEEDINGS IN ABUSE AND NEGLECT COURTS.

“(a) AUTHORITY TO AWARD GRANTS.

“(1) IN GENERAL.—Subject to paragraph (2), the Attorney General, acting through the Office of Juvenile Justice and Delinquency Prevention of the Office of Justice Programs, shall award grants in accordance with this section to State courts and local courts for the purposes of—

“(A) enabling such courts to develop and implement automated data collection and case-tracking systems for proceedings conducted by, or under the supervision of, an abuse and neglect court;

“(B) encouraging the replication of such systems in abuse and neglect courts in other jurisdictions;

“(C) requiring the use of such systems to evaluate a court’s performance in implementing the requirements of parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq.; 670 et seq.).

“(2) LIMITATIONS.—

“(A) NUMBER OF GRANTS.—Not less than 20 nor more than 50 grants may be awarded under this section.

“(B) PER STATE LIMITATION.—Not more than 2 grants authorized under this section may be awarded per State.

“(C) USE OF GRANTS.—Funds provided under a grant made under this section may only be used for the purpose of developing, implementing, or enhancing automated data collection and case-tracking systems for proceedings conducted by, or under the supervision of, an abuse and neglect court.

“(b) APPLICATION.

“(1) IN GENERAL.—A State court or local court may submit an application for a grant authorized under this section at such time and in such manner as the Attorney General may determine.

“(2) INFORMATION REQUIRED.—An application for a grant authorized under this section shall contain the following:

“(A) A description of a proposed plan for the development, implementation, and maintenance of an automated data collection and case-tracking system for proceedings conducted by, or under the supervision of, an abuse and neglect court, including a proposed budget for the plan and a request for a specific funding amount.

“(B) A description of the extent to which such plan and system are able to be replicated in abuse and neglect courts of other jurisdictions that specify the common case-tracking data elements of the proposed system, including, at a minimum—

“(i) identification of relevant judges, court, and agency personnel;

“(ii) records of all court proceedings with regard to the abuse and neglect case, including all court findings and orders (oral and written); and
“(iii) relevant information about the subject child, including family information and the reason for court supervision.

(C) In the case of an application submitted by a local court, a description of how the plan to implement the proposed system was developed in consultation with related State courts, particularly with regard to a State court improvement plan funded under section 13712 of the Omnibus Budget Reconciliation Act of 1993 (42 U.S.C. 670 note) [now 42 U.S.C. 628b] if there is such a plan in the State.

“(D) In the case of an application that is submitted by a State court, a description of how the proposed system will integrate with a State court improvement plan funded under section 13712 of such Act if there is such a plan in the State.

“(E) After consultation with the State agency responsible for the administration of parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq.; 670 et seq.),—

“(i) a description of the coordination of the proposed system with other child welfare data collection systems, including the statewide automated child welfare information system (SACWIS) and the adoption and foster care analysis and reporting system (AFCARS) established pursuant to section 497 of the Social Security Act (42 U.S.C. 679); and

“(ii) an assurance that such coordination will be implemented and maintained.

“(F) Identification of an independent third party that will conduct ongoing evaluations of the feasibility and implementation of the plan and system and a description of the plan for conducting such evaluations.

“(G) A description or identification of a proposed funding source for completion of the plan (if applicable) and maintenance of the system after the conclusion of the period for which the grant is to be awarded.

“(H) An assurance that any contract entered into between the State court or local court and any other entity that is to provide services for the development, implementation, or maintenance of the system under the proposed plan will require the entity to agree to allow for replication of the services provided, the plan, and the system, and to refrain from asserting any proprietary interest in such services for purposes of allowing the plan and system to be replicated in another jurisdiction.

“(I) An assurance that the system established under the plan will provide data that allows for evaluation (at least on an annual basis) of the following information:

“(i) The total number of cases that are filed in the abuse and neglect court.

“(ii) The number of cases assigned to each judge who presides over the abuse and neglect court.

“(iii) The average length of stay of children in foster care.

“(iv) With respect to each child under the jurisdiction of the court—

“(I) the number of episodes of placement in foster care;

“(II) the number of days placed in foster care and the type of placement (foster family home, group home, or special residential care facility);

“(III) the number of days of in-home supervision; and

“(IV) the number of separate foster care placements.

“(v) The number of adoptions, guardianships, or other permanent dispositions finalized.

“(vi) The number of terminations of parental rights.

“(vii) The number of child abuse and neglect proceedings closed that had been pending for 2 or more years.

“(V) With respect to each proceeding conducted by, or under the supervision of, an abuse and neglect court—

“(I) the timeliness of each stage of the proceeding from initial filing through legal finalization of a permanency plan (for both contested and uncontested hearings);

“(II) the number of adjournments, delays, and continuances occurring during the proceeding, including identification of the party requesting each adjournment, delay or continuance and the reasons for the request;

“(III) the number of courts that conduct or supervise the proceeding for the duration of the abuse and neglect case;

“(IV) the number of judges assigned to the proceeding for the duration of the abuse and neglect case.

“(J) A description of how the proposed system will reduce the need for paper files and ensure prompt action so that cases are appropriately listed with national and regional adoption exchanges, and public and private adoption services.

“(K) An assurance that the data collected in accordance with subparagraph (I) will be made available to relevant Federal, State, and local government agencies and to the public.

“(L) An assurance that the proposed system is consistent with other civil and criminal information requirements of the Federal Government.

“(M) An assurance that the proposed system will provide notice of timeframes required under the Adoption and Safe Families Act of 1997 (Public Law 105–89; 111 Stat. 2115) for individual cases to ensure prompt attention and compliance with such requirements.

“(C) CONDITIONS FOR APPROVAL OF APPLICATIONS.—

“(1) MATCHING REQUIREMENT.—

“(A) IN GENERAL.—A State court or local court awarded a grant under this section shall expend $1 for every $3 awarded under the grant to carry out the development, implementation, and maintenance of the automated data collection and case-tracking system under the proposed plan.

“(B) WAIVER FOR HARDSHIP.—The Attorney General may waive or modify the matching requirement described in subparagraph (A) in the case of any State court or local court that the Attorney General determines would suffer undue hardship as a result of being subject to the requirement.

“(C) NON-FEDERAL EXPENDITURES.—

“(i) CASH OR IN KIND.—State court or local court expenditures required under subparagraph (A) may be in cash or in kind, fairly evaluated, in accordance with national and regional adoption exchanges, and public and private adoption services.

“(ii) NO CREDIT FOR PRE-AWARD EXPENDITURES.—Only State court or local court expenditures made after a grant has been awarded under this section may be counted for purposes of determining whether the State court or local court has satisfied the matching expenditure requirement under subparagraph (A).

“(2) NOTIFICATION TO STATE OR APPROPRIATE CHILD WELFARE AGENCY.—No application for a grant authorized under this section may be approved unless the State court or local court submitting the application demonstrates to the satisfaction of the Attorney General that the court has provided the State, in the case of a State court, or the appropriate child welfare agency, in the case of a local court, with notice of the contents and submission of the application.

“(3) CONSIDERATIONS.—In evaluating an application for a grant under this section the Attorney General shall consider the following:

“(A) The extent to which the system proposed in the application may be replicated in other jurisdictions.
“(B) The extent to which the proposed system is consistent with the provisions of, and amendments made by, the Adoption and Safe Families Act of 1997 (Public Law 105–89; 111 Stat. 2115), and parts D and E of title IV of the Social Security Act (42 U.S.C. 620 et seq.; 670 et seq.).

“(C) The extent to which the proposed system is feasible and likely to achieve the purposes described in subsection (a)(1).

“(4) DIVERSITY OF AWARDS.—The Attorney General shall award grants under this section in a manner that results in a reasonable balance among grants awarded to State courts and grants awarded to local courts, grants awarded to courts located in urban areas and courts located in rural areas, and grants awarded in diverse geographical locations.

“(d) LENGTH OF AWARDS.—No grant may be awarded under this section for a period of more than 5 years.

“(e) AVAILABILITY OF FUNDS.—Funds provided to a State court or local court under a grant awarded under this section shall remain available until expended without fiscal year limitation.

“(1) REPORTS.—

“(A) ANNUAL REPORT FROM GRANTEES.—Each State court or local court that is awarded a grant under this section shall submit an annual report to the Attorney General that contains—

“(i) a description of the ongoing results of the independent evaluation of the plan for, and implementation of, the automated data collection and case-tracking system funded under the grant; and

“(ii) the information described in subsection (b)(2)(I).

“(B) INTERIM AND FINAL REPORTS FROM ATTORNEY GENERAL.—

“(1) INTERIM REPORTS.—Beginning 2 years after the date of enactment of this Act (Oct. 17, 2000), and biannually thereafter until a final report is submitted in accordance with subparagraph (B), the Attorney General shall submit to Congress interim reports on the grants made under this section.

“(2) FINAL REPORT.—Not later than 90 days after the termination of all grants awarded under this section, the Attorney General shall submit to Congress a final report evaluating the automated data collection and case-tracking systems funded under such grants and identifying successful models of such systems that are suitable for replication in other jurisdictions. The Attorney General shall ensure that a copy of such final report is transmitted to the highest State court in each State.

“(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $10,000,000 for the period of fiscal years 2001 through 2003.

“SEC. 5. GRANTS TO REDUCE PENDING BACKLOGS OF ABUSE AND NEGLECT CASES TO PROMOTE PERMANENCY FOR ABUSED AND NEGLECTED CHILDREN.

“(a) AUTHORITY TO AWARD GRANTS.—The Attorney General, acting through the Office of Juvenile Justice and Delinquency Prevention of the Office of Justice Programs and in collaboration with the Secretary of Health and Human Services, shall award grants in accordance with this section to State courts and local courts for the purposes of—

“(1) promoting the permanency goals established in the Adoption and Safe Families Act of 1997 (Public Law 105–89; 111 Stat. 2115); and

“(2) enabling such courts to reduce existing backlogs of cases pending in abuse and neglect courts, especially with respect to cases to terminate parental rights and cases in which parental rights to a child have been terminated but an adoption of the child has not yet been finalized.

“(b) APPLICATION.—A State court or local court shall submit an application for a grant under this section, in such form and manner as the Attorney General shall require, that contains a description of the following:

“(1) The barriers to achieving the permanency goals established in the Adoption and Safe Families Act of 1997 that have been identified;

“(2) The size and nature of the backlogs of children awaiting termination of parental rights or finalization of adoption.

“(3) The strategies the State court or local court proposes to use to reduce such backlogs and the plan and timetable for doing so.

“(4) How the grant funds requested will be used to assist the implementation of the strategies described in paragraph (3).

“(c) USE OF FUNDS.—Funds provided under a grant awarded under this section may be used for any purpose that the Attorney General determines is likely to successfully achieve the purposes described in subsection (a), including temporarily—

“(1) establishing night court sessions for abuse and neglect courts;

“(2) hiring additional judges, magistrates, commissioners, hearing officers, referees, special masters, and other judicial personnel for such courts;

“(3) hiring personnel such as clerks, administrative support staff, case managers, mediators, and attorneys for such courts; or

“(4) extending the operating hours of such courts.

“(d) NUMBER OF GRANTS.—Not less than 15 nor more than 20 grants shall be awarded under this section.

“(e) AVAILABILITY OF FUNDS.—Funds awarded under a grant made under this section shall remain available for expenditure by a grantee for a period not to exceed 3 years from the date of the grant award.

“(f) REPORT ON USE OF FUNDS.—Not later than the date that is halfway through the period for which a grant is awarded under this section, and 90 days after the end of such period, a State court or local court awarded a grant under this section shall submit a report to the Attorney General that includes the following:

“(1) The barriers to the permanency goals established in the Adoption and Safe Families Act of 1997 that are or have been addressed with grant funds.

“(2) The nature of the backlogs of children that were pursued with grant funds.

“(3) The specific strategies used to reduce such backlogs.

“(4) The progress that has been made in reducing such backlogs, including the number of children in such backlogs—

“(A) whose parental rights have been terminated; and

“(B) whose adoptions have been finalized.

“(5) Any additional information that the Attorney General determines would assist jurisdictions in achieving the permanency goals established in the Adoption and Safe Families Act of 1997.

“(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the period of fiscal years 2001 and 2002 $10,000,000 for the purpose of making grants under this section.

“SEC. 6. GRANTS TO EXPAND THE COURT-APPOINTED SPECIAL ADVOCATE PROGRAM IN UNDERSERVED AREAS.

“(a) GRANTS TO EXPAND CASA PROGRAMS IN UNDERSERVED AREAS.—The Administrator of the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice shall make a grant to the National Court-Appointed Special Advocate Association for the purposes of—

“(1) expanding the recruitment of, and building the capacity of, court-appointed special advocate programs located in the 15 largest urban areas;

“(2) developing regional, multi-jurisdictional court-appointed special advocate programs serving rural areas; and

“(3) providing training and supervision of volunteers in court-appointed special advocate programs.

“(b) LIMITATION ON ADMINISTRATIVE EXPENDITURES.—Not more than 5 percent of the grant made under this...
subsection may be used for administrative expenditures.

“(c) Determination of Urban and Rural Areas.—
For purposes of administering the grant authorized under this subsection, the Administrator of the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice shall determine whether an area is one of the 15 largest urban areas or a rural area in accordance with the practices of, and statistical information compiled by, the Bureau of the Census.

“(d) Authorization of Appropriations.—There is authorized to be appropriated to make the grant authorized under this section, $5,000,000 for the period of fiscal years 2001 and 2002.”

Entitlement Funding for State Courts to Assess and Improve Handling of Proceedings Relating to Foster Care and Adoption


Abandoned Infants Assistance


Study of Foster Care and Adoption Assistance Programs; Report to Congress Not Later Than October 1, 1983

Section 101(b) of Pub. L. 96–272 directed Secretary of Health, Education, and Welfare to conduct a study of programs of foster care and adoption assistance established under part IV–E of the Social Security Act (this part) and submit to Congress, not later than Oct. 1, 1983, a full and complete report thereon, together with his recommendations as to (A) whether such part IV–E should be continued, and if so, (B) the changes (if any) which should be made in such part IV–E.

§ 671. State plan for foster care and adoption assistance

(a) Requisite features of State plan

In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

(1) provides for foster care maintenance payments in accordance with section 672 of this title and for adoption assistance in accordance with section 673 of this title;

(2) provides that the State agency responsible for administering the program authorized by this part shall administer, or supervise the administration of, the program authorized by this part;

(3) provides that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(4) provides that the State shall assure that the programs at the local level assisted under this part will be coordinated with the programs at the State or local level assisted under parts A and B of this subchapter, under division A of subchapter XX of this chapter, and under any other appropriate provision of Federal law;

(5) provides that the State will, in the administration of its programs under this part, use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the programs, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods;

(6) provides that the State agency referred to in paragraph (2) (hereinafter in this part referred to as the “State agency’) will make such reports, in such form and containing such information as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provides that the State agency will monitor and conduct periodic evaluations of activities carried out under this part;

(8) subject to subsection (c), provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, or D of this subchapter or under subchapter I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX of this chapter, or the supplemental security income program established by subchapter XVI of this chapter, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity, and (E) reporting and providing information pursuant to paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosures

1 See References in Text note below.
to purposes more limited than those specified herein, or which, in the case of adoptions, pre-
vent disclosure entirely;

(9) provides that the State agency will—

(A) report to an appropriate agency or offi-
cial, known or suspected instances of phys-
ical or mental injury, sexual abuse or exploi-
tation, or negligent treatment or maltreat-
ment of a child receiving aid under part B of
this subchapter or this part under circum-
cumstances which indicate that the child’s
health or welfare is threatened thereby; and

(B) provide such information with respect
to a situation described in subparagraph (A)
as the State agency may have;

(10) provides for the establishment or des-
ignation of a State authority or authorities
which shall be responsible for establishing and
maintaining standards for foster family homes
and child care institutions which are reason-
ably in accord with recommended standards of
national organizations concerned with stand-
ards for such institutions or homes, including
standards related to admission policies, safe-
ty, sanitation, and protection of civil rights,
provides that the standards so established
shall be applied by the State to any foster
family home or child care institution receiv-
ing funds under this part or part B of this sub-
chapter, and provides that a waiver of any
such standard may be made only on a case-by-
case basis for non-safety standards (as deter-
mined by the State) in relative foster family
homes for specific children in care;

(11) provides for periodic review of the stand-
ards referred to in the preceding paragraph
and amounts paid as foster care maintenance
payments and adoption assistance to assure
their continuing appropriateness;

(12) provides for granting an opportunity for
a fair hearing before the State agency to any
individual whose claim for benefits available
pursuant to this part is denied or is not acted
upon with reasonable promptness;

(13) provides that the State shall arrange for
a periodic and independently conducted audit
of the programs assisted under this part and
part B of this subchapter, which shall be con-
ducted no less frequently than once every
three years;

(14) provides (A) specific goals (which shall
be established by State law on or before Octo-
ber 1, 1982) for each fiscal year (commencing
with the fiscal year which begins on October 1,
1983) as to the maximum number of children
(in absolute numbers or as a percentage of all
children in foster care with respect to whom
assistance under the plan is provided during
such year) who, at any time during such year,
will remain in foster care after having been in
such care for a period in excess of twenty-four
months, and (B) a description of the steps
which will be taken by the State to achieve
such goals;

(15) provides that—

(A) in determining reasonable efforts to be
made with respect to a child, as described in
this paragraph, and in making such reason-
able efforts, the child’s health and safety
shall be the paramount concern;

(B) except as provided in subparagraph (D),
reasonable efforts shall be made to preserve
and reunify families—

(i) prior to the placement of a child in
foster care, to prevent or eliminate the
need for removing the child from the
child’s home; and

(ii) to make it possible for a child to
safely return to the child’s home;

(C) if continuation of reasonable efforts of
the type described in subparagraph (B) is de-
termined to be inconsistent with the perma-
nency plan for the child, reasonable efforts
shall be made to place the child in a timely
manner in accordance with the permanency
plan (including, if appropriate, through an
interstate placement), and to complete
whatever steps are necessary to finalize the
permanent placement of the child;

(D) reasonable efforts of the type described
in subparagraph (B) shall not be required to
be made with respect to a parent of a child
if a court of competent jurisdiction has de-
termined that—

(i) the parent has subjected the child to
aggravated circumstances (as defined in
State law, which definition may include
but need not be limited to abandonment,
torture, chronic abuse, and sexual abuse);

(ii) the parent has—

(I) committed murder (which would
have been an offense under section
1111(a) of title 18, if the offense had oc-
curred in the special maritime or terri-
 torial jurisdiction of the United States)
of another child of the parent;

(II) committed voluntary man-
slaughter (which would have been an of-
 fense under section 1112(a) of title 18, if
the offense had occurred in the special
maritime or territorial jurisdiction of
the United States) of another child of
the parent;

(III) aided or abetted, attempted, con-
spired, or solicited to commit such a
murder or such a voluntary man-
slaughter; or

(IV) committed a felony assault that
results in serious bodily injury to the
child or another child of the parent; or

(iii) the parental rights of the parent to
a sibling have been terminated involun-
tarily;

(E) if reasonable efforts of the type de-
scribed in subparagraph (B) are not made
with respect to a child as a result of a deter-
mination made by a court of competent ju-
risdiction in accordance with subparagraph
(D)—

(i) a permanency hearing (as described in
section 675(5)(C) of this title), which con-
siders in-State and out-of-State permanent
placement options for the child, shall be
held for the child within 30 days after the
determination; and

(ii) reasonable efforts shall be made to
place the child in a timely manner in ac-
cordance with the permanency plan, and to
complete whatever steps are necessary to
finalize the permanent placement of the
child; and

(ii) the parent has—

(I) committed murder (which would
have been an offense under section
1111(a) of title 18, if the offense had oc-
curred in the special maritime or terri-
torial jurisdiction of the United States)
of another child of the parent;

(II) committed voluntary man-
slaughter (which would have been an of-
 fense under section 1112(a) of title 18, if
the offense had occurred in the special
maritime or territorial jurisdiction of
the United States) of another child of
the parent;

(III) aided or abetted, attempted, con-
spired, or solicited to commit such a
murder or such a voluntary man-
slaughter; or

(IV) committed a felony assault that
results in serious bodily injury to the
child or another child of the parent; or

(iii) the parental rights of the parent to
a sibling have been terminated involun-
tarily;

(E) if reasonable efforts of the type de-
scribed in subparagraph (B) are not made
with respect to a child as a result of a deter-
mination made by a court of competent ju-
risdiction in accordance with subparagraph
(D)—

(i) a permanency hearing (as described in
section 675(5)(C) of this title), which con-
siders in-State and out-of-State permanent
placement options for the child, shall be
held for the child within 30 days after the
determination; and

(ii) reasonable efforts shall be made to
place the child in a timely manner in ac-
cordance with the permanency plan, and to
complete whatever steps are necessary to
finalize the permanent placement of the
child; and

(ii) the parent has—

(I) committed murder (which would
have been an offense under section
1111(a) of title 18, if the offense had oc-
curred in the special maritime or terri-
torial jurisdiction of the United States)
of another child of the parent;

(II) committed voluntary man-
slaughter (which would have been an of-
 fense under section 1112(a) of title 18, if
the offense had occurred in the special
maritime or territorial jurisdiction of
the United States) of another child of
the parent;

(III) aided or abetted, attempted, con-
spired, or solicited to commit such a
murder or such a voluntary man-
slaughter; or

(IV) committed a felony assault that
results in serious bodily injury to the
child or another child of the parent; or

(iii) the parental rights of the parent to
a sibling have been terminated involun-
tarily;
(F) reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-State and out-of-State placements\(^2\) may be made concurrently with reasonable efforts of the type described in subparagraph (B);

(16) provides for the development of a case plan (as defined in section 670(1) of this title) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section 675(5)(B) of this title with respect to each such child;

(17) provides that, where appropriate, all steps will be taken, including cooperative efforts with the State agencies administering the program funded under part A of this subchapter and plan approved under part D of this subchapter, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part;

(18) not later than January 1, 1997, provides that neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may—

(A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved;

(19) provides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards;

(20)(A) provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) of title 28), for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part, including procedures requiring that—

(i) in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and

(ii) in any case involving a child on whose behalf such payments are to be so made in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and\(^3\)

(B) provides that the State shall—

(i) check any child abuse and neglect registry maintained by the State for information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent, and request any other State in which any such prospective parent or other adult has resided in the preceding 5 years, to enable the State to check any child abuse and neglect registry maintained by such other State for such information, before the prospective foster or adoptive parent may be finally approved for placement of a child, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the State plan under this part;

(ii) comply with any request described in clause (i) that is received from another State; and

(iii) have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the State, and to prevent any such information obtained pursuant to this subparagraph from being used for a purpose other than the conducting of background checks in foster or adopts placement cases; and

(C) provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) of title 28), on any relative guardian, and for checks described in subparagraph (B) of this paragraph on any relative guardian and any other adult living in the home of any relative guardian, before the relative guardian or other adult has resided in the home of any relative guardian, in any case involving a child on whose behalf such payments are to be made on behalf of the child under the State plan under this part;

(21) provides for health insurance coverage (including, at State option, through the program under the State plan approved under subchapter XIX of this chapter) for any child who has been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement (other than an agreement under this part) between the State and an adoptive or foster parent, and who the State has determined cannot be placed with an adoptive or foster parent without medical assistance because such child has special needs for medical, mental health, or rehabilitative care, and that with respect to the provision of such health insurance coverage—

(A) such coverage may be provided through 1 or more State medical assistance programs;

\(^2\)So in original. Probably should be followed by a comma.

\(^3\)So in original. The word "and" probably should not appear.
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(B) the State, in providing such coverage, shall ensure that the medical benefits, including mental health benefits, provided are of the same type and kind as those that would be provided for children by the State under subchapter XIX of this chapter;

(C) in the event that the State provides such coverage through a State medical assistance program other than the program under subchapter XIX of this chapter, and the State exceeds its funding for services under such other program, any such child shall be deemed to be receiving aid or assistance under the State plan under this part for purposes of section 1396a(a)(10)(A)(i)(I) of this title; and

(D) in determining cost-sharing requirements, the State shall take into consideration the circumstances of the adopting parent or parents and the needs of the child being adopted consistent, to the extent coverage is provided through a State medical assistance program, with the rules under such program;

(22) provides that, not later than January 1, 1999, the State shall develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children;

(23) provides that the State shall not—

(A) deny or delay the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child; or

(B) fail to grant an opportunity for a fair hearing, as described in paragraph (12), to an individual whose allegation of a violation of subparagraph (A) of this paragraph is denied by the State or not acted upon by the State with reasonable promptness;

(24) include a certification that, before a child in foster care under the responsibility of the State is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child;

(25) provide that the State shall have in effect procedures for the orderly and timely interstate placement of children; and procedures implemented in accordance with an interstate compact, if incorporating with the procedures prescribed by paragraph (26), shall be considered to satisfy the requirement of this paragraph;

(26) provides that—

(A)(i) within 60 days after the State receives from another State a request to conduct a study of a home environment for purposes of assessing the safety and suitability of placing a child in the home, the State shall, directly or by contract—

(I) conduct and complete the study; and

(II) return to the other State a report on the results of the study, which shall address the extent to which placement in the home would meet the needs of the child; and

(ii) in the case of a home study begun on or before September 30, 2008, if the State fails to comply with clause (i) within the 60-day period as a result of circumstances beyond the control of the State (such as a failure by a Federal agency to provide the results of a background check, or the failure by any entity to provide completed medical forms, requested by the State at least 45 days before the end of the 60-day period), the State shall have 75 days to comply with clause (i) if the State documents the circumstances involved and certifies that completing the home study is in the best interests of the child; except that

(iii) this subparagraph shall not be construed to require the State to have completed, within the applicable period, the parts of the home study involving the education and training of the prospective foster or adoptive parents;

(B) the State shall treat any report described in subparagraph (A) that is received from another State or an Indian tribe (or from a private agency under contract with another State) as meeting any requirements imposed by the State for the completion of a home study before placing a child in the home, unless, within 14 days after receipt of the report, the State determines, based on grounds that are specific to the content of the report, that making a decision in reliance on the report would be contrary to the welfare of the child; and

(C) the State shall not impose any restriction on the ability of a State agency administering, or supervising the administration of, a State program operated under a State plan approved under this part to contract with a private agency for the conduct of a home study described in subparagraph (A);

(27) provides that, with respect to any child in foster care under the responsibility of the State under this part or part B and without regard to whether foster care maintenance payments are made under section 672 of this title on behalf of the child, the State has in effect procedures for verifying the citizenship or immigration status of the child;

(28) at the option of the State, provides for the State to enter into kinship guardianship assistance agreements to provide kinship guardianship assistance payments on behalf of children to grandparents and other relatives who have assumed legal guardianship of the children for whom they have cared as foster parents and for whom they have committed to care on a permanent basis, as provided in section 673(d) of this title;

(29) provides that, within 30 days after the removal of a child from the custody of the parent or parents of the child, the State shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other...
adult to exceptions due to family or domestic violence, that—

(A) specifies that the child has been or is being removed from the custody of the parent or parents of the child;

(B) explains the options the relative has under Federal, State, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;

(C) describes the requirements under paragraph (10) of this subsection to become a foster family home and the additional services and supports that are available for children placed in such a home; and

(D) if the State has elected the option to make kinship guardianship assistance payments under paragraph (28) of this subsection, describes how the relative guardian of the child may subsequently enter into an agreement with the State under section 673(d) of this title to receive the payments;

(30) provides assurances that each child who has attained the minimum age for compulsory school attendance under State law and with respect to whom there is eligibility for a payment under the State plan is a full-time elementary or secondary school student or has completed secondary school, and for purposes of this paragraph, the term “elementary or secondary school student” means, with respect to a child, that the child is—

(A) enrolled (or in the process of enrolling) in an institution which provides elementary or secondary education, as determined under the law of the State or other jurisdiction in which the institution is located;

(B) instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which the home is located;

(C) in an independent study elementary or secondary education program in accordance with the law of the State or other jurisdiction in which the program is located, which is administered by the local school or school district; or

(D) incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by regularly updated information in the case plan of the child;

(31) provides that reasonable efforts shall be made—

(A) to place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the State documents that such a joint placement would be contrary to the safety or well-being of any of the siblings; and

(B) in the case of siblings removed from their home who are not so jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless that State documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings;

(32) provides that the State will negotiate in good faith with any Indian tribe, tribal organization or tribal consortium in the State that requests to develop an agreement with the State to administer all or part of the program under this part on behalf of Indian children who are under the authority of the tribe, organization, or consortium, including foster care maintenance payments on behalf of children who are placed in State or tribally licensed foster family homes, adoption assistance payments, and, if the State has elected to provide such payments, kinship guardianship assistance payments under section 673(d) of this title, and tribal access to resources for administration, training, and data collection under this part; and

(33) provides that the State will inform any individual who is adopting, or whom the State is made aware is considering adopting, a child who is in foster care under the responsibility of the State of the potential eligibility of the individual for a Federal tax credit under section 23 of the Internal Revenue Code of 1986.

(b) Approval of plan by Secretary

The Secretary shall approve any plan which complies with the provisions of subsection (a) of this section.

(c) Use of child welfare records in State court proceedings

Subsection (a)(8) shall not be construed to limit the flexibility of a State in determining State policies relating to public access to court proceedings to determine child abuse and neglect or other court hearings held pursuant to part B or this part, except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents, and family.

REFERENCES IN TEXT
Division A of subchapter XX, referred to in subsec. (a)(4), was in the original a reference to subtitle 1 of title XX, which was translated as if referring to subtitle A of title XX of the Social Security Act, to reflect the probable intent of Congress. Title XX of the Act, enacting subchapter XX of this chapter, does not contain a subtitle 1.


The Internal Revenue Code of 1866, referred to in subsec. (a)(33), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

AMENDMENTS

2008—Subsec. (a)(10). Pub. L. 110–351, § 10(a), substituted “subject to” for “subject to prohibiting” for “civil rights, provides” and inserted “, and provides that a waiver of any such standard may be made only on a case-by-case basis for non-safety standards (as determined by the State) in relative foster family homes for children in care” before semicolon at end.


2005—Subsec. (a)(15). Pub. L. 110–89, § 101(a), amended par. (15) generally. Prior to amendment, par. (15) read as follows: “effective October 1, 1983, provides that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home.”


Subsec. (a)(18). Pub. L. 105–33, § 559(b)(3), redesignated par. (18), relating to preference to adult relatives, as (19).

Pub. L. 105–33, § 559(b)(2), substituted “; and” for period at end of par. (18) relating to denial or delay of adoption or foster care on basis of race, color, or national origin.

Subsec. (a)(19). Pub. L. 105–33, § 559(b)(3), redesignated par. (18), relating to preference to adult relatives, as (19).


1996—Subsec. (a)(17). Pub. L. 104–193, § 108(d)(2), substituted “program funded under part A of this subchapter and plan approved under part D of this subchapter” for “plans approved under parts A and D of this subchapter”.


Pub. L. 104–188, § 1808(a)(3), added par. (18) relating to denial or delay of adoption or foster care on basis of race, color, or national origin.

1994—Subsec. (b). Pub. L. 103–432 struck out after first sentence “However, in any case in which the Secretary finds, after reasonable notice and opportunity for a hearing, that a State plan which has been approved by the Secretary no longer complies with the provisions of subsection (a) of this section, or that in the administration of the plan there is a substantial failure to comply with the provisions of this subchapter, the Secretary shall notify the State that further payments will not be made to the State under this part, or that such payments
will be made to the State but reduced by an amount which the Secretary determines appropriate, until the Secretary is satisfied that there is no longer any such failure to comply, and until he is so satisfied he shall make no further payments to the State, or shall reduce such payments by the amount specified in his notification to the State."

Subsec. (a)(2). Pub. L. 103–66 substituted "subpart 1 of part B" for "part B".


Subsec. (a)(9). Pub. L. 101–508, §505(b)(1), amended par. (9) generally. Prior to amendment, par. (9) read as follows: "provides that where any agency of the State has reason to believe that the home or institution in which a child resides whose care is being paid for in whole or in part with funds provided under this part or part B of this subchapter is unsuitable for the child because of the neglect, abuse, or exploitation of such child, it shall bring such condition to the attention of the appropriate court or law enforcement agency.".

1986—Subsec. (a)(8)(A). Pub. L. 100–485 substituted "part A, B, or D of this subchapter (including activities under part F of this subchapter)" for "part A, B, C, or D of this subchapter".

Subsec. (a)(11). Pub. L. 99–514 substituted "adoption assistance" for "adoption assistance payments".


1981—Subsec. (a)(10). Pub. L. 97–35, §2353(r), as amended by Pub. L. 97–248, §196(d), substituted provisions that in order for a State to be eligible for payments under this part a State plan must provide for establishment or designation of a State authority or authorities responsible for standards for foster family homes and child care institutions, such standards to be reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, for provisions that such State plan provide for the application of standards referred to in section 1397d(d)(1) of this title.

**Effective Date of 2008 Amendment**


Pub. L. 110–351, title III, §301(f), Oct. 7, 2008, 122 Stat. 3971, provided that: "The amendments made by subsections (a), (b), and (c) [enacting section 679c of this title and amending this section and sections 672, 674, and 677 of this title] shall take effect on October 1, 2009, without regard to whether the regulations required under subsection (e)(1) [set out as a Regulations note below] have been promulgated by such date."


1. In general.—Except as otherwise provided in this Act [see Short Title of 2008 Amendment note set out under section 1305 of this title], each amendment made by this Act to part B or E of title IV of the Social Security Act [part B of this subchapter and this part] shall take effect on the date of the enactment of this Act [Oct. 7, 2008], and shall apply to payments under the part amended for quarters beginning on or after the effective date of the amendment.

2. Delay permitted by State legislation required.—In the case of a State plan approved under part B or E of title IV of the Social Security Act [part B of this subchapter and this part] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by this Act, the State plan shall not be regarded as failing to comply with the requirements of such part solely on the basis of the failure of the plan to meet such additional requirements before the 1st day of the 1st calendar quarter beginning after the close of the 1st regular session of the State legislature that ends after the 1-year period beginning with the date of the enactment of this Act [Oct. 7, 2008]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature."

**Effective Date of 2006 Amendment**

Pub. L. 109–432, div. B, title IV, §405(c)(1)(B)(ii), Dec. 20, 2006, 120 Stat. 609, provided that: "The amendments made by this subparagraph [amending this section and section 1332a–2 of this title] shall take effect on the date that is 6 months after the date of the enactment of this Act [Dec. 20, 2006]."

Pub. L. 109–248, title I, §152(c), July 27, 2006, 120 Stat. 609, provided that:

1. General.—The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2006, and shall apply with respect to payments under part E of title IV of the Social Security Act [this part] for calendar quarters beginning on or after such date, without regard to whether regulations to implement the amendments are promulgated by such date.

2. Elimination of opt-out.—The amendments made by subsection (b) [amending this section] shall take effect on October 1, 2006, and shall apply with respect to payments under part E of title IV of the Social Security Act for calendar quarters beginning on or after such date, without regard to whether regulations to implement the amendments are promulgated by such date.

3. Delay permitted if State legislation required.—If the Secretary of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required in order for a State plan under section 471 of the Social Security Act [this section] to meet the additional requirements imposed by the amendments made by a subsection of this section, the plan shall not be regarded as failing to meet any of the additional requirements before the first day of the first calendar quarter beginning after the first regular session of the State legislature that begins after the otherwise applicable effective date of the amendments. If the State has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature."

Amendment by Pub. L. 110–351 effective Oct. 1, 2006, except as otherwise provided, and applicable to payments under this part and part B of this subchapter for calendar quarters beginning on or after Oct. 1, 2006, without regard to whether regulations have been promulgated by Oct. 1, 2006, and with delay permitted if State legislation is required, see section 14 of Pub. L. 109–248, set out as a note under section 602 of this title.


**Effective Date of 1999 Amendment**

Pub. L. 106–169, title I, §112(b), Dec. 14, 1999, 113 Stat. 1829, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1999."

Amendment by section 401(c) of Pub. L. 106–189 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–189, set out as a note under section 602 of this title.

**Effective Date of 1998 Amendment**

this section [amending this section and section 674 of this title] shall take effect as if included in the enactment of section 262 of the Adoption and Safe Families Act of 1997 (Public Law 105–89; 111 Stat. 2125) [see Effective Date of 1997 Amendments note below]."

**Effective Date of 1997 Amendments**

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.


**Effective Date of 1996 Amendment**

Amendment by section 108(d)(2) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuation in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

**Effective Date of 1994 Amendment**

Section 208(c)(2) of Pub. L. 103–432 provided that: "The amendment made by subsection (b) [amending this section] shall take effect on October 1, 1994."

**Effective Date of 1993 Amendment**

Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Oct. 1, 1993, see section 13711(c) of Pub. L. 103–66, set out as a note under section 601 of this title.

**Effective Date of 1990 Amendment**

Section 5054(c) of Pub. L. 101–508 provided that: "The amendments made by this section [amending this section and section 602 of this title] shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted [November 1990]."

**Effective Date of 1988 Amendment**

Section 204 of title II of Pub. L. 100–485 provided that:

"(a) EXCEPTED EXPENDITURES.—Except as provided in subsection (b), the amendments made by this title [enacting sections 681 to 687 of this title, amending this section, sections 683, 685, 707, 1308, 1396a, and 1396e of this title, and section 51 of Title 26, Internal Revenue Code, repealing sections 609, 614, 630 to 632, and 633 to 645 of this title, and enacting provisions set out as notes under section 681 of this title] shall become effective on October 1, 1990."

"(b) SPECIFIC RULES.—(1)(A) If any State makes the changes in its State plan approved under section 402 of the Social Security Act [section 602 of this title] that are required in order to carry out the amendments made by this title and formally notifies the Secretary of Health and Human Services of its desire to become subject to such amendments as of the first day of any calendar quarter beginning on or after the date on which such regulations are required to be published (under such section) and before October 1, 1990, such amendments shall become effective with respect to that State as of such first day.

"(B) In the case of any State in which the amendments made by this title become effective (in accordance with subparagraph (A)) with respect to any quarter of a fiscal year beginning before October 1, 1990, the limitation applicable to the State for the fiscal year under section 403(c)(2) of the Social Security Act [section 603(c) of this title] shall be an amount that bears the same ratio to such limitation (as otherwise determined with respect to the State for the fiscal year) as the number of quarters in the fiscal year throughout which such amendments apply to the State bears to 4.

"(2) Section 403(h)(3) of the Social Security Act [section 603(h)(3) of this title] (as added by section 201(c)(2) of this Act) is repealed effective October 1, 1995 (except that subparagraph (A) of such section 403(h)(3) shall remain in effect for purposes of applying any reduction in payment rates required by such subparagraph for any of the fiscal years specified therein); and section 403(h)(4) of such Act (as so added) is repealed effective October 1, 1998.

"(3) Subsections (a), (c), and (d) of section 203 of this Act [42 U.S.C. 671 to 671g] (as added by section 201(c) (of this Act) is repealed effective section 203(c)(2) of this Act in accordance with section 479B of such Act [42 U.S.C. 679B] (as added by section 202(b) of this Act), shall become effective on the date of the enactment of this Act [Oct. 13, 1988]."

**Effective Date of 1986 Amendment**

Amendment by Pub. L. 99–514 applicable only with respect to expenditures made after Dec. 31, 1986, see section 1711(d) of Pub. L. 99–514, set out as a note under section 670 of this title.

**Effective Date of 1984 Amendment**

Amendment by Pub. L. 98–378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98–378, set out as a note under section 654 of this title.

**Effective Date of 1982 Amendment**


**Effective Date of 1981 Amendment**


**Regulations**

Pub. L. 110–351, title III, § 301(e), Oct. 7, 2008, 122 Stat. 3970, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2) of this subsection, not later than 1 year after the date of enactment of this Act [Oct. 7, 2008], the Secretary of Health and Human Services, in consultation with Indian tribes, tribal organizations, tribal consortia, and affected States, shall promulgate interim final regulations to carry out this section (enacting section 679c of this title and amending this section and sections 672, 674, and 677 of this title) and the amendments made by this section. Such regulations shall include procedures to ensure that a transfer of responsibility for the placement and care of a child under a State plan approved under section 471 of the Social Security Act [42 U.S.C. 671] to a tribal plan approved under section 471 of such Act in accordance with section 479B of such Act [42 U.S.C. 679B] (as added by subsection (a)(1) of this section) or to an Indian tribe, a tribal organization, or a tribal consortium that has entered into a cooperative agreement or contract with a State for the administration or payment of funds under part E of title IV of such Act [this part] does not affect the eligibility of, provision of services for, or the making of payments on behalf of, such children under part E of title IV of such Act, or the eligibility of such children for medical assistance under title XIX of such Act [subchapter XIX of this chapter].

"(2) IN-KIND EXPENDITURES FROM THIRD-PARTY SOURCES FOR PURPOSES OF DETERMINING NON-FEDERAL SHARE OF ADMINISTRATIVE AND TRAINING EXPENDITURES.—
“(A) IN GENERAL.—Subject to subparagraph (B) of this paragraph, not later than September 30, 2011, the Secretary of Health and Human Services, in consultation with Indian tribes, tribal organizations, and tribal consortia, shall promulgate interim final regulations specifying the types of in-kind expenditures, including plants, equipment, administration, and services and the third-party sources for such in-kind expenditures which may be claimed by tribes, organizations, and consortia with plans approved under section 471 of the Social Security Act (42 U.S.C. 671) in accordance with section 479B of such Act (42 U.S.C. 679c), up to such percentages as the Secretary, in such consultation shall specify in such regulations, for purposes of determining the non-Federal share of administrative and training expenditures for which the tribes, organizations, and consortia may receive payments for [sic] under any subparagraph of section 479(a)(3) of such Act (42 U.S.C. 679(a)(3)).

(B) EFFECTIVE DATE.—In no event shall the regulations required to be promulgated under subparagraph (A) take effect prior to October 1, 2011.

(C) SENSE OF THE CONGRESS.—It is the sense of the Congress that if the Secretary of Health and Human Services fails to publish in the Federal Register the regulations required under subparagraph (A) of this paragraph, the Congress should enact legislation specifying the types of in-kind expenditures and the third-party sources for such in-kind expenditures which may be claimed by tribes, organizations, and consortia with plans approved under section 471 of the Social Security Act (42 U.S.C. 671) in accordance with section 479B of such Act (42 U.S.C. 679c), up to specific percentages, for purposes of determining the non-Federal share of administrative and training expenditures for which the tribes, organizations, and consortia may receive payments for [sic] under any subparagraph of section 479(a)(3) of such Act (42 U.S.C. 679(a)(3))."

Section 2303(a) of title II of Pub. L. 100–485 provided: “Not later than 6 months after the date of the enactment of this Act (Oct. 13, 1988), the Secretary of Health and Human Services (in this section referred to as the ‘Secretary’) shall issue proposed regulations for the purpose of implementing the amendments made by this title [see Effective Date of 1988 Amendment note above], including regulations establishing uniform data collection requirements. The Secretary shall publish final regulations for such purpose not later than one year after the date of the enactment of this Act. Regulations issued under this subsection shall be developed by the Secretary in consultation with the Secretary of Labor and with the responsible State agencies described in section 462(a)(2) of the Social Security Act [section 677(b)(2) of this title]."

CONSTRUCTION OF 2008 AMENDMENT

PRESERVATION OF REASONABLE PARENTING
Section 401 of Pub. L. 105–89 provided that: “Nothing in this Act [see Short Title of 1997 Amendment note set out under section 1305 of this title] is intended to disrupt the family unnecessarily or to intrude inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting.”

REPORTING REQUIREMENTS
Section 402 of Pub. L. 105–89 provided that: “Any information required to be reported under this Act [see Short Title of 1997 Amendment note set out under section 1305 of this title] should be furnished only to such extent as is necessary to administer the Adoption and Foster Care Analysis and Reporting System and is intended to be used for purposes of improving the system, not to alter the definition of Federal payments to individuals who are unlawfully present in the United States.”

PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS
Section 406 of Pub. L. 105–89 provided that:

“(a) IN GENERAL.—It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Act [see Short Title of 1997 Amendment note set out under section 1305 of this title] should be American-made.

“(B) NOTICE REQUIREMENT.—In providing financial assistance to, or entering into any contract with, any entity using funds made available under this Act, the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by the Congress.”
§ 672. Foster care maintenance payments program

(a) In general

(1) Eligibility

Each State with a plan approved under this part shall make foster care maintenance payments on behalf of each child who has been removed from the home of a relative specified in section 606(a) of this title (as in effect on July 16, 1996) into foster care if—

(A) the removal and foster care placement met, and the placement continues to meet, the requirements of paragraph (2); and

(B) the child, while in the home, would have met the AFDC eligibility requirement of paragraph (3).

(2) Removal and foster care placement requirements

The removal and foster care placement of a child meet the requirements of this paragraph if—

(A) the removal and foster care placement are in accordance with—

(i) a voluntary placement agreement entered into by a parent or legal guardian of the child who is the relative referred to in paragraph (1); or

(ii) a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child and that reasonable efforts of the type described in section 671(a)(15) of this title for a child have been made;

(B) the child's placement and care are the responsibility of—

(i) the State agency administering the State plan approved under section 671 of this title;

(ii) any other public agency with which the State agency administering or supervising the administration of the State plan has made an agreement which is in effect; or

(iii) an Indian tribe or a tribal organization (as defined in section 679c(a) of this title) or a tribal consortium that has a plan approved under section 671 of this title in accordance with section 679c of this title; and

(C) the child has been placed in a foster family home or child-care institution.

(3) AFDC eligibility requirement

(A) In general

A child in the home referred to in paragraph (1) would have met the AFDC eligibility requirement of this paragraph if the child—

(i) would have received aid under the State plan approved under section 602 of this title (as in effect on July 16, 1996) in the home, in or for the month in which the agreement was entered into or court proceedings leading to the determination described in paragraph (2)(A)(i) were initiated; or

(ii)(I) would have received the aid in the home, in or for the month referred to in clause (i), if application had been made therefor; or

(II) had been living in the home within 6 months before the month in which the agreement was entered into or the proceedings were initiated, and would have received the aid in or for such month, if, in such month, the child had been living in the home with the relative referred to in paragraph (1) and application for the aid had been made.

(B) Resources determination

For purposes of subparagraph (A), in determining whether a child would have received aid under a State plan approved under section 602 of this title (as in effect on July 16, 1996), a child whose resources (determined pursuant to section 602(a)(7)(B) of this title, as so in effect) have a combined value of not more than $10,000 shall be considered a child whose resources have a combined value of not more than $1,000 (or such lower amount as the State may determine for purposes of section 602(a)(7)(B) of this title).

(4) Eligibility of certain alien children

Subject to title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [8 U.S.C. 1601 et seq.], if the child is an alien disqualified under section 1255a(h) or 1160(f) of title 8 from receiving aid under the State plan approved under section 602 of this title in or for the month in which the agreement described in paragraph (2)(A)(i) was entered into or court proceedings leading to the determination described in paragraph (2)(A)(ii) were initiated, the child shall be considered to satisfy the requirements of paragraph (3), with respect to the month, if the child would have satisfied the requirements but for the disqualification.

(b) Additional qualifications

Foster care maintenance payments may be made under this part only on behalf of a child described in subsection (a) of this section who is—

(1) in the foster family home of an individual, whether the payments therefor are made to such individual or to a public or private child-placement or child-care agency, or

(2) in a child-care institution, whether the payments therefor are made to such institution or to a public or private child-placement or child-care agency, which payments shall be limited so as to include in such payments only those items which are included in the term "foster care maintenance payments" (as defined in section 675(4) of this title).

(c) "Foster family home" and "child-care institution" defined

For the purposes of this part, (1) the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing; and (2) the term "child-care institution" means a private child-care institution, or a public child-
care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, except, in the case of a child who has attained 18 years of age, the term shall include a supervised setting in which the individual is living independently, in accordance with such conditions as the Secretary shall establish in regulations, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

(d) Children removed from their homes pursuant to voluntary placement agreements

Notwithstanding any other provision of this subchapter, Federal payments may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of children removed from their homes pursuant to voluntary placement agreements as described in subsection (a) of this section, only if (at the time such amounts were expended) the State has fulfilled all of the requirements of section 622(b)(8) of this title.

(e) Placements in best interest of child

No Federal payment may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of any child who was removed from his or her home pursuant to a voluntary placement agreement as described in subsection (a) of this section and has remained in voluntary placement for a period in excess of 180 days, unless there has been a judicial determination by a court of competent jurisdiction (within the first 180 days of such placement) to the effect that such placement is in the best interests of the child.

(f) “Voluntary placement” and “voluntary placement agreement” defined

For the purposes of this part and part B of this subchapter, (1) the term “voluntary placement” means an out-of-home placement of a minor, by or with participation of a State agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement; and (2) the term “voluntary placement agreement” means a written agreement, binding on the parties to the agreement, between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.

(g) Revocation of voluntary placement agreement

In any case where—

(1) the placement of a minor child in foster care occurred pursuant to a voluntary placement agreement entered into by the parents or guardians of such child as provided in subsection (a) of this section, and

(2) such parents or guardians request (in such manner and form as the Secretary may prescribe) that the child be returned to their home or to the home of a relative, the voluntary placement agreement shall be deemed to be revoked unless the State agency opposes such request and obtains a judicial determination, by a court of competent jurisdiction, that the return of the child to such home would be contrary to the child’s best interests.

(h) Aid for dependent children; assistance for minor children in needy families

(1) For purposes of subchapter XIX of this chapter, any child with respect to whom foster care maintenance payments are made under this section is deemed to be a dependent child as defined in section 606 of this title (as in effect as of July 16, 1996) and deemed to be a recipient of aid to families with dependent children under part A of this subchapter (as so in effect). For purposes of division A 1 of subchapter XX of this chapter, any child with respect to whom foster care maintenance payments are made under this section is deemed to be a minor child in a needy family under a State program funded under part A of this subchapter and is deemed to be a recipient of assistance under such part.

(2) For purposes of paragraph (1), a child whose costs in a foster family home or child care institution are covered by the foster care maintenance payments being made with respect to the child’s minor parent, as provided in section 675(4)(B) of this title, shall be considered a child with respect to whom foster care maintenance payments are made under this section.

(i) Administrative costs associated with otherwise eligible children not in licensed foster care settings

Expenditures by a State that would be considered administrative expenditures for purposes of section 674(a)(2) of this title if made with respect to a child who was residing in a foster family home or child-care institution shall be so considered with respect to a child not residing in such a home or institution—

(1) in the case of a child who has been removed in accordance with subsection (a) of this section from the home of a relative specified in section 606(a) of this title (as in effect on July 16, 1996), only for expenditures—

(A) with respect to a period of not more than the lesser of 12 months or the average length of time it takes for the State to license or approve a home as a foster home, in which the child is in the home of a relative and an application is pending for licensing or approval of the home as a foster family home; or

(B) with respect to a period of not more than 1 calendar month when a child moves from a facility not eligible for payments under this part into a foster family home or child care institution licensed or approved by the State; and

(2) in the case of any other child who is potentially eligible for benefits under a State plan approved under this part and at imminent risk of removal from the home, only if—

1 See References in Text note below.
(A) reasonable efforts are being made in accordance with section 671(a)(15) of this title to prevent the need for, or if necessary to pursue, removal of the child from the home; and
(B) the State agency has made, not less often than every 6 months, a determination (or redetermination) as to whether the child remains at imminent risk of removal from the home.

(Aug. 14, 1955, ch. 531, title IV, § 622(b)(10), as amended)

References in Text


Division A of subchapter XX, referred to in subsec. (h)(1), was in the original a reference to subtit. 1 of title XX, which was translated as if referring to subtit. A of title XX of the Social Security Act, to reflect the probable intent of Congress. Title XX of the Act, enacting subchapter XX of this chapter, does not contain a subtit. 1.

Amendments


Effective Date of 2008 Amendment

section [amending this section and sections 673 and 675 of this title] shall take effect on October 1, 2010.""

Amendment by section 301(a)(2) of Pub. L. 110–351 effective Oct. 1, 2009, with regard to whether implementing regulations have been promulgated, see section 301(f) of Pub. L. 110–351, set out as a note under section 671 of this title.

Amendment by Pub. L. 110–351 effective Oct. 7, 2008, except as otherwise provided, and applicable to payments under this part and part B of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 601 of Pub. L. 110–351, set out as a note under section 671 of this title.

**Effective Date of 2006 Amendment**

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part B of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2006, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

**Effective Date of 1997 Amendments**


Amendment by section 5513(b)(1), (2) of Pub. L. 105–33 effective as if included in section 108 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, at the time such section 108 became law, see section 5518(b) of Pub. L. 105–33, set out as a note under section 622 of this title.


**Effective Date of 1996 Amendment**

Amendment by section 108(d)(3), (4) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 115 of Pub. L. 104–193, set out as an Effective Date note under section 601 of this title.

**Effective Date of 1994 Amendment**

Amendment by Pub. L. 103–432 effective with respect to fiscal years beginning on or after Apr. 1, 1996, see section 202(e) of Pub. L. 103–432, set out as a note under section 622 of this title.

**Effective Date of 1987 Amendment**

Section 913(c) of Pub. L. 100–203 provided that: "The amendments made by this section [amending this section and sections 602, 673, and 675 of this title] shall become effective April 1, 1987.""

**Effective Date of 1980 Amendment**


(Section 9131(b) of Pub. L. 100–203 provided that: "The amendments made by subsection (a) [amending section 102(a)(1), (c), and (e) of Pub. L. 90–248, set out as a note under this section] shall become effective October 1, 1987.""

**Construction of 2008 Amendment**

For construction of amendment by section 301(a)(2) of Pub. L. 110–351, see section 301(d) of Pub. L. 110–351, set out as a note under section 671 of this title.

**Children Voluntarily Removed From Home of Relative**

Section 102(d)(1) of Pub. L. 96–272 provided that: "For purposes of section 472 of the Social Security Act [this section], a child who was voluntarily removed from the home of a relative and who had a judicial determination prior to October 1, 1978, to the effect that continuation therein would be contrary to the welfare of such child, shall be deemed to be in need of foster care as a result of such judicial determination if, and from the date that, a case plan and a review meeting the requirements of section 471(a)(16) of such Act [section 671(a)(16) of this title] have been made with respect to such child and such child is determined to be in need of foster care as a result of such review. In the case of any child described in the preceding sentence, for purposes of section 472(a)(4) of such Act [subsec. (a)(4) of this section] the date of the voluntary removal shall be deemed to be the date on which court proceedings are initiated which led to such removal."

**Annual Report to Congress of Number of Children Placed in Foster Care Pursuant to Voluntary Placement Agreements**


§673. Adoption and guardianship assistance program

(a) Agreements with adoptive parents of children with special needs; State payments; qualifying children; amount of payments; changes in circumstances; placement period prior to adoption; nonrecurring adoption expenses

(1)(A) Each State having a plan approved under this part shall enter into adoption assistance agreements (as defined in section 675(a) of this title) with the adoptive parents of children with special needs.

(B) Under any adoption assistance agreement entered into by a State with parents who adopt a child with special needs, the State—
(i) shall make payments of nonrecurring adoption expenses incurred by or on behalf of such parents in connection with the adoption of such child, directly through the State agency or through another public or nonprofit private agency, in amounts determined under paragraph (3), and
(ii) in any case where the child meets the requirements of paragraph (2), may make adoption assistance payments to such parents, directly through the State agency or through another public or nonprofit private agency, in amounts so determined.

(2)(A) For purposes of paragraph (1)(B)(i), a child meets the requirements of this paragraph if—

(i) in the case of a child who is not an applicable child for the fiscal year (as defined in subsection (e)), the child—

(aa) was removed from the home of a relative specified in section 606(a) of this title (as in effect on July 16, 1996) and placed in foster care in accordance with a voluntary placement agreement with respect to which Federal payments are provided under section 674 of this title (or section 608 of this title, as such section was in effect on July 16, 1996), or in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and

(bb) meets all of the requirements of subchapter XVI with respect to eligibility for supplemental security income benefits; or

(cc) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to the minor parent of the child as provided in section 672(a)(3) of this title; and

(II) has been determined by the State, pursuant to subsection (c)(1) of this section, to be a child with special needs.

(ii) in the case of a child who is an applicable child for the fiscal year (as defined in subsection (e)), the child—

(aa) the prior adoption has been dissolved, and the parental rights of the adoptive parents have been terminated; or

(bb) the child’s adoptive parents have died; and

(IV) fails to meet the requirements of subparagraph (A)(ii) if—

(aa) the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part; and

(bb) the prior adoption were treated as never having occurred; or

(ii) in the case of a child who is an applicable child for the fiscal year (as so defined), the child—

(aa) the prior adoption has been dissolved, and the parental rights of the adoptive parents have been terminated or because the child’s adoptive parents have died.

(D) In determining the eligibility for adoption assistance payments of a child in a legal guardianship arrangement described in section 671(a)(28) of this title, the placement of the child with the relative guardian involved and any kinship guardianship assistance payments made on behalf of the child shall be considered never to have been made.

(3) The amount of the payments to be made in any case under clauses (i) and (ii) of paragraph (1)(B) shall be determined through agreement between the adoptive parents and the State or local agency administering the program under
this section, which shall take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents (which may be specified in the adoption assistance agreement), depending upon changes in such circumstances. However, in no case may the amount of the adoption assistance payment made under clause (ii) of paragraph (1)(B) exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.

(4)(A) Notwithstanding any other provision of this section, a payment may not be made pursuant to this section to parents or relative guardians with respect to a child—

(i) who has attained—

(I) 18 years of age, or such greater age as the State may elect under section 675(b)(B)(iii) of this title; or

(II) 21 years of age, if the State determines that the child has a mental or physical handicap which warrants the continuation of assistance;

(ii) who has not attained 18 years of age, if the State determines that the parents or relative guardians, as the case may be, are no longer legally responsible for the support of the child; or

(iii) if the State determines that the child is no longer receiving any support from the parents or relative guardians, as the case may be.

(B) Parents or relative guardians who have been receiving adoption assistance payments or kinship guardianship assistance payments under this section shall keep the State or local agency administering the program under this section informed of circumstances which would, pursuant to this subsection, make them ineligible for the payments, or eligible for the payments in a different amount.

(5) For purposes of this part, individuals with whom a child (who has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs) is placed for adoption in accordance with applicable State and local law shall be eligible for such payments, during the period of the placement, on the same terms and subject to the same conditions as if such individuals had adopted such child.

(6)(A) For purposes of paragraph (1)(B)(i), the term “nonrecurring adoption expenses” means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of State or Federal law.

(B) A State’s payment of nonrecurring adoption expenses under an adoption assistance agreement shall be treated as an expenditure made for the proper and efficient administration of the State plan for purposes of section 674(a)(3)(E) of this title.

(7)(A) Notwithstanding any other provision of this subsection, no payment may be made to parents with respect to any applicable child for a fiscal year that—

(i) would be considered a child with special needs under subsection (c)(2);

(ii) is not a citizen or resident of the United States; and

(iii) was adopted outside of the United States or was brought into the United States for the purpose of being adopted.

(B) Subparagraph (A) shall not be construed as prohibiting payments under this part for an applicable child described in subparagraph (A) of paragraph (2) or paragraph (3) of this section, in the amount of savings (if any) in State expenditures under this part resulting from the application of paragraph (2)(A) to all applicable children for a fiscal year that—

(i) would be considered a child with special needs under subsection (c)(2); and

(ii) was adopted outside of the United States or was brought into the United States for the purpose of being adopted.

(b) Aid for dependent children; assistance for minor children in needy families

(1) For purposes of subchapter XIX of this chapter, any child who is described in paragraph (3) is deemed to be a dependent child as defined in section 606 of this title (as in effect as of July 16, 1996) and deemed to be a recipient of aid to families with dependent children under part A of this subchapter (as so in effect) in the State where such child resides.

(2) For purposes of division A of subchapter XX of this chapter, any child who is described in paragraph (3) is deemed to be a minor child in a needy family under a State program funded under part A of this subchapter and deemed to be a recipient of assistance under such part.

(3) A child described in this paragraph is any child—

(A)(i) who is a child described in subsection (a)(2) of this section,

(ii) with respect to whom an adoption assistance agreement is in effect under this section (whether or not adoption assistance payments are provided under the agreement or are being made under this section), including any such child who has been placed for adoption in accordance with applicable State and local law (whether or not an interlocutory or other judicial decree of adoption has been issued),

(B) with respect to whom foster care maintenance payments are being made under section 672 of this title, or

(C) with respect to whom kinship guardianship assistance payments are being made pursuant to subsection (d).

(4) For purposes of paragraphs (1) and (2), a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to the child’s minor parent, as provided in section 674(b)(B) of this title, shall be considered a child with respect to whom foster care maintenance payments are being made under section 672 of this title.

1 See References in Text note below.
(c) Children with special needs

For purposes of this section—

(1) in the case of a child who is not an applicable child for a fiscal year, the child shall not be considered a child with special needs unless—

(A) the State has determined that the child cannot or should not be returned to the home of his parents; and

(B) the State had first determined (A) that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter, and (B) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter; or

(2) in the case of a child who is an applicable child for a fiscal year, the child shall not be considered a child with special needs unless—

(A) the State has determined, pursuant to a criterion or criteria established by the State, that the child cannot or should not be returned to the home of his parents;

(B)(i) the State has determined that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance under this section or medical assistance under subchapter XIX; or

(ii) the child meets all medical or disability requirements of subchapter XVI with respect to eligibility for supplemental security income benefits; and

(C) the State has determined that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of the parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under subchapter XIX.

(d) Kinship guardianship assistance payments for children

(1) Kinship guardianship assistance agreement

(A) In general

In order to receive payments under section 674(a)(5) of this title, a State shall—

(i) negotiate and enter into a written, binding kinship guardianship assistance agreement with the prospective relative guardian of a child who meets the requirements of this paragraph; and

(ii) provide the prospective relative guardian with a copy of the agreement.

(B) Minimum requirements

The agreement shall specify, at a minimum—

(i) the amount of, and manner in which, each kinship guardianship assistance payment will be provided under the agreement, and the manner in which the payment may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child;

(ii) the additional services and assistance that the child and relative guardian will be eligible for under the agreement;

(iii) the procedure by which the relative guardian may apply for additional services as needed; and

(iv) subject to subparagraph (D), that the State will pay the total cost of non-recurring expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed $2,000.

(C) Interstate applicability

The agreement shall provide that the agreement shall remain in effect without regard to the State residency of the relative guardian.

(D) No effect on Federal reimbursement

Nothing in subparagraph (B)(iv) shall be construed as affecting the ability of the State to obtain reimbursement from the Federal Government for costs described in that subparagraph.

(2) Limitations on amount of kinship guardianship assistance payment

A kinship guardianship assistance payment on behalf of a child shall not exceed the foster care maintenance payment which would have been paid on behalf of the child if the child had remained in a foster family home.

(3) Child's eligibility for a kinship guardianship assistance payment

(A) In general

A child is eligible for a kinship guardianship assistance payment under this subsection if the State agency determines the following:

(i) The child has been—

(I) removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination to the effect that continuation
in the home would be contrary to the welfare of the child; and
(II) eligible for foster care maintenance payments under section 672 of this title while residing for at least 6 consecutive months in the home of the prospective relative guardian.

(ii) Being returned home or adopted are not appropriate permanency options for the child.

(iii) The child demonstrates a strong attachment to the prospective relative guardian and the guardian has a strong commitment to caring permanently for the child.

(iv) With respect to a child who has attained 14 years of age, the child has been consulted regarding the kinship guardianship arrangement.

(B) Treatment of siblings

With respect to a child described in subparagraph (A) whose sibling or siblings are not so described—

(i) the child and any sibling of the child may be placed in the same kinship guardianship arrangement, in accordance with section 671(a)(31) of this title, if the State agency and the relative agree on the appropriateness of the arrangement for the siblings; and

(ii) kinship guardianship assistance payments may be paid on behalf of each sibling so placed.

(e) Applicable child defined

(1) On the basis of age

(A) In general

Subject to paragraphs (2) and (3), in this section, the term “applicable age” means a child for whom an adoption assistance agreement is entered into under this section during any fiscal year described in subparagraph (B) if the child attained the applicable age for that fiscal year before the end of that fiscal year.

(B) Applicable age

For purposes of subparagraph (A), the applicable age for a fiscal year is as follows:

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<th>The applicable age is:</th>
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(2) Exception for duration in care

Notwithstanding paragraph (1) of this subsection, beginning with fiscal year 2010, such term shall include a child of any age on the date on which an adoption assistance agreement is entered into on behalf of the child under this section if the child—

(A) has been in foster care under the responsibility of the State for at least 6 consecutive months; and

(B) meets the requirements of subsection (a)(2)(A)(ii).

(3) Exception for member of a sibling group

Notwithstanding paragraphs (1) and (2) of this subsection, beginning with fiscal year 2010, such term shall include a child of any age on the date on which an adoption assistance agreement is entered into on behalf of the child under this section without regard to whether the child is described in paragraph (2)(A) of this subsection if the child—

(A) is a sibling of a child who is an applicable child for the fiscal year under paragraph (1) or (2) of this subsection;

(B) is to be placed in the same adoption placement as an applicable child for the fiscal year who is their sibling; and

(C) meets the requirements of subsection (a)(2)(A)(ii).


References in Text


Division A of subchapter XX, referred to in subsec. (b)(2), was in the original a reference to subtitle 1 of title XX of the Social Security Act, to reflect the probable intent of Congress. Title XX of the Act, enacting subchapter XX of this chapter, does not contain a subtitle 1.

AMENDMENTS

2011—Subsec. (a)(8). Pub. L. 112–34 inserted “, and shall document how such amounts are spent, including on post-adoption services” before the period. 2010—Subsec. (b)(2). Pub. L. 111–148 inserted “division A of” before “subchapter XX”. 2008—Pub. L. 110–351, §101(c)(5), inserted “and guardianship” after “Adoption” in section catchline. Subsec. (a)(2)(A). Pub. L. 110–351, §4021(a)(A)(i), substituted “if—” for “if the child—” in introductory provisions, inserted cl. (i) designation and introductory provisions, redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, of cl. (i) and substituted “subsection (c)(1)” for “subsection (c)” in subcl. (II), redesignated former subcls. (I) to (III) of cl. (i) as items (aa) to (cc), respectively, of cl. (i)(I), redesignated former items (aa) and (bb) of cl. (i)(I) as...
subitems (AA) and (BB), respectively, of cl. (i)(I)(aa) and substituted “subitem (AA) of this item” for “item (aa) of this subclause” in subitem (BB), realigned margins, and added cl. (ii).

Subsec. (a)(2)(C). Pub. L. 110–351, § 402(1)(A)(ii), substituted “if—” for “for the child—” in introductory provisions, inserted cl. (i) designation and introductory provisions, redesignated former subcls. (i) to (iv) as subcls. (I) to (IV), respectively, of cl. (i) and substituted “subparagraph (A)(i)(II)’’ for “subparagraph (A)(ii)’’ in subcl. (I) and “subparagraph (A)(ii)’’ for “subparagraph (A)(i)(II)’’ in subcl. (IV), redesignated former subcls. (I) and (II) of cl. (iii) as items (aa) and (bb), respectively, of cl. (i)(III), redesignated former subcls. (I) and (II) of cl. (iv) as items (aa) and (bb), respectively, of cl. (i)(IV), realigned margins, and added cl. (ii).


Subsec. (a)(4). Pub. L. 110–351, § 283(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “Notwithstanding the preceding paragraph, (A) no payment may be made to parents with respect to any child who has attained the age of eighteen (or, where the State determines that the child has a mental or physical handicap which warrants the continuation of assistance, the age of twenty-one), and (B) no payments may be made to parents with respect to any child if the State determines that the parents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving assistance from such parents. Parents who have been receiving adoption assistance payments under this section shall keep the State or local agency administering the program under this section informed of circumstances which would, pursuant to this subsection, make them ineligible for such assistance payments, or eligible for assistance payments in a different amount.”

Subsec. (a)(7), (8). Pub. L. 110–351, § 402(1)(B), added pars. (7) and (8).


Subsec. (c). Pub. L. 110–351, § 402(2), substituted “this section—” for “for this section, a child shall not be considered a child with special needs unless—” in introductory provisions, inserted par. (1) designation and introductory provisions, redesignated former pars. (1) and (2) as subspar. (A) and (B), respectively, of par. (1), realigned margins, and added par. (2).


2006—Subsec. (a)(2). Pub. L. 109–171 amended par. (2) generally. Prior to amendment, par. (2) contained provisions relating to criteria used for determining whether a child met the requirements of par. (2) for purposes of par. (1)(B)(ii).

1997—Subsec. (a)(2). Pub. L. 105–89 inserted at end “Any child who meets the requirements of subparagraph (C), who was determined to be eligible for adoption assistance payments under this part with respect to a prior adoption, who is available for adoption because the prior adoption has been dissolved and the parental rights of the adoptive parents have been terminated or because the child’s adoptive parents have died, and who fails to meet the requirements of subparagraphs (A) and (B) but would meet such requirements if the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part and the prior adoption were treated as never having occurred, shall be treated as meeting the requirements of this paragraph for purposes of paragraph (1)(B)(ii).”


Subsec. (a)(2)(B)(ii). Pub. L. 100–203, § 9133(b)(3)(B), inserted “(B) with respect to whom foster care maintenance payments are being made under section 672 of this title, shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of this subchapter in the State where such child resides, for purposes of any requirement of this subchapter, a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to such child, and may be adopted by a child in accordance with applicable State and local law, including any such child who has been placed for adoption in accordance with applicable State and other public or nonprofit private agencies and institutions, or (ii) if the State or local agency administering the program under this section is a public or nonprofit private agency, make adoption assistance payments to the child’s adoptive parents in accordance with applicable State and local law (whether or not an interlocutory or other judicial decree of adoption has been issued), or (iii) with respect to whom foster care maintenance payments are being made under section 672 of this title.”


1986—Subsec. (a)(3). Pub. L. 99–514, § 1711(a)(1), (c)(3), redesignated par. (2) as (3), substituted “certainties determined under paragraph (2) of this subsection to parents who, after June 17, 1980, adopt a child who—” for “section 672(a)(3)(C) of this title”, inserted “or (A)(iii)” after “(A)(ii)”.


1982—Subsec. (a)(2). Pub. L. 97–35, § 171(a)(1), (c)(3), redesignated par. (2) as (3), substituted “payments to be made under any clause (i) and (ii) of paragraph (1)(B)” for “adoption assistance payments”, and inserted “made under clause (ii) of paragraph (1)(B)” for “adoption assistance payments”.

cree, shall be eligible for adoption assistance payments under this subsection".

Subsec. (a)(6), Pub. L. 99–514, § 1711(b), added par. (6).

Subsec. (b), Pub. L. 99–272, §12306(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "For purposes of subchapters XIX and XX of this chapter, any child with respect to whom adoption assistance payments are made under this section shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of this subchapter."


Subsec. (c)(2), Pub. L. 99–514, §12305(b)(1), substituted "medical assistance under subchapter XIX of this chapter" for "without providing adoption assistance", and inserted "or medical assistance under subchapter XIX of this chapter" after "appropriate adoptive parents without providing adoption assistance under this section".


EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–34 effective Oct. 1, 2011, and applicable to payments under this part and part B of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 107 of Pub. L. 112–34, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 201(c) of Pub. L. 110–351 effective Oct. 1, 2010, see section 201(d) of Pub. L. 110–351, set out as a note under section 672 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Section 307(b) of Pub. L. 105–89 provided that: "The amendment made by subsection (a) [amending this section] shall only apply to children who are adopted on or after October 1, 1997."


EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 266(d) of Pub. L. 103–322 provided that: "Each amendment made by this section [amending this section and sections 608 and 675 of this title] shall take effect as if the amendment had been included in the provision of OBRA–1993 [Pub. L. 103–295] to which the amendment relates, at the time the provision became law.

Section 266(b) of Pub. L. 103–322 provided that: "The amendment made by this section [amending this section] shall take effect as if the amendment had been included in the provision of OBRA–1993 [Pub. L. 103–68] to which the amendment relates, at the time the provision became law."

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 201(d) of Pub. L. 110–351 effective Apr. 1, 1998, see section 201(c) of Pub. L. 110–203, set out as a note under section 672 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 applicable only with respect to expenditures made after Dec. 31, 1986, see section 1711(d) of Pub. L. 99–514, set out as a note under section 670 of this title.

Section 12305(c) of Pub. L. 99–514 provided that: "The amendments made by this section [amending this section and sections 675 and 1396a of this title] shall apply to medical assistance furnished in or after the first calendar quarter beginning more than 90 days after the date of the enactment of this Act [Apr. 7, 1986]."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 102(a)(3) of Pub. L. 96–272 effective only with respect to expenditures made after Sept. 30, 1979, see section 102(c) of Pub. L. 96–272, set out as a note under section 672 of this title.

§ 673a. Interstate compacts

The Secretary of Health and Human Services shall take all possible steps to encourage and assist the various States to enter into interstate compacts (which are hereby approved by the Congress) under which the interests of any adopted child with respect to whom an adoption assistance agreement has been entered into by a State under section 673 of this title will be adequately protected, on a reasonable and equitable basis which is approved by the Secretary, if and when the child and his or her adoptive parent (or parents) move to another State. (Pub. L. 96–272, title I, §101(a)(4)(B), June 17, 1980, 94 Stat. 512.)

§ 673b. Adoption incentive payments

(a) Grant authority

Subject to the availability of such amounts as may be provided in advance in appropriations Acts for this purpose, the Secretary shall make a grant to each State that is an incentive-eligible State for a fiscal year in an amount equal to
the adoption incentive payment payable to the State under this section for the fiscal year, which shall be payable in the immediately succeeding fiscal year.

(b) Incentive-eligible State

A State is an incentive-eligible State for a fiscal year if—

(1) the State has a plan approved under this part for the fiscal year;

(2)(A) the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year;

(B) the number of older child adoptions in the State during the fiscal year exceeds the base number of older child adoptions for the State for the fiscal year; or

(C) the State’s foster child adoption rate for the fiscal year exceeds the highest ever foster child adoption rate determined for the State; (3) the State is in compliance with subsection (c) of this section for the fiscal year;

(4) the State provides health insurance coverage to any child with special needs (as determined under section 673(c) of this title) for whom there is in effect an adoption assistance agreement between a State and an adoptive parent or parents; and

(5) the fiscal year is any of fiscal years 2008 through 2012.

c) Data requirements

(1) In general

A State is in compliance with this subsection for a fiscal year if the State has provided to the Secretary the data described in paragraph (2)—

(A) for fiscal years 1995 through 1997 (or, if the first fiscal year for which the State seeks a grant under this section is after fiscal year 1998, the fiscal year that precedes such first fiscal year); and

(B) for each succeeding fiscal year that precedes the fiscal year.

(2) Determination of numbers of adoptions based on AFCARS data

The Secretary shall determine the numbers of foster child adoptions, of special needs adoptions that are not older child adoptions, and of older child adoptions in a State during a fiscal year, and the foster child adoption rate for the State for the fiscal year, for purposes of this section, on the basis of data meeting the requirements of the system established pursuant to section 679 of this title, as reported by the State and approved by the Secretary by August 1 of the succeeding fiscal year.

(3) No waiver of AFCARS requirements

This section shall not be construed to alter or affect any requirement of section 679 of this title or of any regulation prescribed under such section with respect to reporting of data by States, or to waive any penalty for failure to comply with such a requirement.

d) Adoption incentive payment

(1) In general

Except as provided in paragraphs (2) and (3), the adoption incentive payment payable to a State for a fiscal year under this section shall be equal to the sum of—

(A) $4,000, multiplied by the amount (if any) by which the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year;

(B) $4,000, multiplied by the amount (if any) by which the number of special needs adoptions that are not older child adoptions in the State during the fiscal year exceeds the base number of special needs adoptions that are not older child adoptions for the State for the fiscal year; and

(C) $8,000, multiplied by the amount (if any) by which the number of older child adoptions in the State during the fiscal year exceeds the base number of older child adoptions for the State for the fiscal year.

(2) Pro rata adjustment if insufficient funds available

For any fiscal year, if the total amount of adoption incentive payments otherwise payable under paragraph (1) for a fiscal year exceeds the amount appropriated pursuant to subsection (h) for the fiscal year, the amount of the adoption incentive payment payable to each State under paragraph (1) for the fiscal year shall be—

(A) the amount of the adoption incentive payment that would otherwise be payable to the State under paragraph (1) for the fiscal year; multiplied by

(B) the percentage represented by the amount so appropriated for the fiscal year, divided by the total amount of adoption incentive payments otherwise payable under paragraph (1) for the fiscal year.

(3) Increased incentive payment for exceeding the highest ever foster child adoption rate

(A) In general

If—

(i) for fiscal year 2009 or any fiscal year thereafter the total amount of adoption incentive payments payable under paragraph (1) of this subsection are less than the amount appropriated under subsection (h) for the fiscal year; and

(ii) a State’s foster child adoption rate for that fiscal year exceeds the highest ever foster child adoption rate determined for the State,

then the adoption incentive payment otherwise determined under paragraph (1) of this subsection for the State shall be increased, subject to subparagraph (C) of this paragraph, by the amount determined for the State under subparagraph (B) of this paragraph.

(B) Amount of increase

For purposes of subparagraph (A), the amount determined under this subparagraph with respect to a State and a fiscal year is the amount equal to the product of—

(i) $1,000; and

(ii) the excess of—

(I) the number of foster child adoptions in the State in the fiscal year; over
(II) the product (rounded to the nearest whole number) of—
   (aa) the highest ever foster child adoption rate determined for the State; and
   (bb) the number of children in foster care under the supervision of the State on the last day of the preceding fiscal year.

(C) Pro rata adjustment if insufficient funds available
For any fiscal year, if the total amount of increases in adoption incentive payments otherwise payable under this paragraph for a fiscal year exceeds the amount available for such increases for the fiscal year, the amount of the increase payable to each State under this paragraph for the fiscal year shall be—
   (i) the amount of the increase that would otherwise be payable to the State under this paragraph for the fiscal year; multiplied by
   (ii) the percentage represented by the amount so available for the fiscal year, divided by the total amount of increases otherwise payable under this paragraph for the fiscal year.

(e) 24-month availability of incentive payments
Payments to a State under this section in a fiscal year shall remain available for use by the State for the 24-month period beginning with the month in which the payments are made.

(f) Limitations on use of incentive payments
A State shall not expend an amount paid to the State under this section except to provide to children or families any service (including post-adoption services) that may be provided under part B of this subchapter or this part. Amounts expended by a State in accordance with the preceding sentence shall be disregarded in determining State expenditures for purposes of Federal matching payments under sections 624, 629d, and 674 of this title.

(g) Definitions
As used in this section:
(1) Foster child adoption
The term “foster child adoption” means the final adoption of a child who, at the time of adoptive placement, was in foster care under the supervision of the State.
(2) Special needs adoption
The term “special needs adoption” means the final adoption of a child for whom an adoption assistance agreement is in effect under section 673 of this title.
(3) Base number of foster child adoptions
The term “base number of foster child adoptions for a State” means, with respect to any fiscal year, the number of foster child adoptions in the State in fiscal year 2007.
(4) Base number of special needs adoptions that are not older child adoptions
The term “base number of special needs adoptions that are not older child adoptions for a State” means, with respect to any fiscal year, the number of special needs adoptions that are not older child adoptions in the State in fiscal year 2007.

(5) Base number of older child adoptions
The term “base number of older child adoptions for a State” means, with respect to any fiscal year, the number of older child adoptions in the State in fiscal year 2007.

(6) Older child adoptions
The term “older child adoptions” means the final adoption of a child who has attained 9 years of age if—
   (A) at the time of the adoptive placement, the child was in foster care under the supervision of the State; or
   (B) an adoption assistance agreement was in effect under section 673 of this title with respect to the child.

(7) Highest ever foster child adoption rate
The term “highest ever foster child adoption rate” means, with respect to any fiscal year, the highest foster child adoption rate determined for any fiscal year in the period that begins with fiscal year 2002 and ends with the preceding fiscal year.

(8) Foster child adoption rate
The term “foster child adoption rate” means, with respect to a State and a fiscal year, the percentage determined by dividing—
   (A) the number of foster child adoptions finalized in the State during the fiscal year; by
   (B) the number of children in foster care under the supervision of the State on the last day of the preceding fiscal year.

(h) Limitations on authorization of appropriations
(1) In general
For grants under subsection (a) of this section, there are authorized to be appropriated to the Secretary—
   (A) $20,000,000 for fiscal year 1999;
   (B) $43,000,000 for fiscal year 2000;
   (C) $20,000,000 for each of fiscal years 2001 through 2003; and
   (D) $43,000,000 for each of fiscal years 2004 through 2013.

(2) Availability
Amounts appropriated under paragraph (1), or under any other law for grants under subsection (a) of this section, are authorized to remain available until expended, but not after fiscal year 2013.

(i) Technical assistance
(1) In general
The Secretary may, directly or through grants or contracts, provide technical assistance to assist States and local communities to reach their targets for increased numbers of adoptions and, to the extent that adoption is not possible, alternative permanent placements, for children in foster care.

(2) Description of the character of the technical assistance
The technical assistance provided under paragraph (1) may support the goal of encour-
aging more adoptions out of the foster care system, when adoptions promote the best interests of children, and may include the following:

(A) The development of best practice guidelines for expediting termination of parental rights.

(B) Models to encourage the use of concurrent planning.

(C) The development of specialized units and expertise in moving children toward adoption as a permanency goal.

(D) The development of risk assessment tools to facilitate early identification of the children who will be at risk of harm if returned home.

(E) Models to encourage the fast tracking of children who have not attained 1 year of age into pre-adoptive placements.

(F) Development of programs that place children into pre-adoptive families without waiting for termination of parental rights.

(3) Targeting of technical assistance to the courts

Not less than 50 percent of any amount appropriated pursuant to paragraph (4) shall be used to provide technical assistance to the courts.

(4) Limitations on authorization of appropriations

To carry out this subsection, there are authorized to be appropriated to the Secretary of Health and Human Services not to exceed $10,000,000 for each of fiscal years 2004 through 2006.


AMENDMENTS


Subsec. (c)(2). Pub. L. 110–351, §401(a)(3), substituted "as provided in subparagraph (B), the Secretary shall substituted "during a fiscal year," for "of any fiscal year," wherever appearing.


Subsec. (e). Pub. L. 110–351, §401(d), substituted "24-month" for "2-year" in heading and "for the 24-month period beginning with the month in which the payments are made" for "through the end of the succeeding fiscal year" in text.

Subsec. (g)(3). Pub. L. 110–351, §401(b)(1), substituted "means, with respect to any fiscal year, the number of foster child adoptions in the State in fiscal year 2007," for "means—"

"(A) with respect to fiscal year 2003, the number of foster child adoptions in the State in fiscal year 2002; and

"(B) with respect to any subsequent fiscal year, the number of foster child adoptions in the State in fiscal year for which the number is the greatest in the period that begins with fiscal year 2002 and ends with the fiscal year preceding that subsequent fiscal year."

Subsec. (g)(4). Pub. L. 110–351, §401(b)(2), inserted "that are not older child adoptions" before "for a State" and substituted "means, with respect to any fiscal year, the number of special needs adoptions that are not older child adoptions in the State in fiscal year 2007." for "means—"

"(A) with respect to fiscal year 2003, the number of special needs adoptions that are not older child adoptions in the State in fiscal year 2002; and

"(B) with respect to any subsequent fiscal year, the number of special needs adoptions that are not older child adoptions in the State for the fiscal year for which the number is the greatest in the period that begins with fiscal year 2002 and ends with the fiscal year preceding that subsequent fiscal year."


2003—Subsec. (b)(2). Pub. L. 108–145, §3(a)(1)(A), added par. (2) and struck out former par. (2) which read as follows: "the number of foster child adoptions in the State during the fiscal year exceed the base number of foster child adoptions for the State for the fiscal year."


Subsec. (c)(2). Pub. L. 108–145, §3(a)(2), added par. (2) and struck out heading and text of former par. (2). Text read as follows: "(A) Determinations based on AFCARS data.—Except as provided in subparagraph (B), the Secretary shall determine the number of foster child adoptions and of special needs adoptions in a State during each of fiscal years 1995 through 2002, for purposes of this section, on the basis of data meeting the requirements of the system established pursuant to section 679 of this title, as reported by the State and approved by the Secretary by August 1 of the succeeding fiscal year.

"(B) Alternative data sources permitted for fiscal years 1995 through 1997.—For purposes of the determination described in subparagraph (A) for fiscal years 1995 through 1997, the Secretary may use data from a source or sources other than that specified in subparagraph (A) that the Secretary finds to be of equivalent completeness and reliability, as reported by a State by April 30, 1998, and approved by the Secretary by July 1, 1998."
Subsec. (d)(1). Pub. L. 108–145, §3(a)(3), inserted ‘‘that are not older child adoptions’’ after ‘‘adoptions’’ in two places in subpar. (B). and added subpar. (C). 2006—Subsec. (g)(3)(A). (B). Pub. L. 108–145, §3(a)(4)(A), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

‘‘(A) with respect to fiscal year 1998, the average number of foster child adoptions in the State in fiscal years 1995, 1996, and 1997; and

‘‘(B) with respect to any subsequent fiscal year, the number of foster child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 1997 and ends with the fiscal year preceding such subsequent fiscal year.’’

Subsec. (g)(4). Pub. L. 108–145, §3(a)(4)(B), inserted ‘‘that are not older child adoptions’’ after ‘‘adoptions’’ in heading, added subpars. (A) and (B), and struck out former subpars. (A) and (B) which read as follows:

‘‘(A) with respect to fiscal year 1998, the average number of special needs adoptions in the State in fiscal years 1995, 1996, and 1997; and

‘‘(B) with respect to any subsequent fiscal year, the number of foster child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 1997 and ends with the fiscal year preceding such subsequent fiscal year.’’


Subsec. (h)(2). Pub. L. 108–145, §3(a)(5)(B), inserted ‘‘, or under any other law for grants under subsection (a) of this section,’’ after ‘‘(1)’’ and substituted ‘‘2008’’ for ‘‘2002’’.


Subsec. (j). Pub. L. 108–145, §3(a)(7), struck out subsec. (j) which related to supplemental grants. 1999—Subsec. (h)(1). Pub. L. 106–169, §131(b), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ‘‘For grants under subsection (a) of this section, there are authorized to be appropriated to the Secretary $20,000,000 for each of fiscal years 1999 through 2003.’’


Effective Date of 2008 Amendment
Amendment by Pub. L. 110–351 effective Oct. 7, 2008, and applicable to payments under this part and part B of this subchapter for calendar quarters beginning on or after such date, see section 801 of Pub. L. 110–351, set out as a note under section 671 of this title.

Effective Date of 2006 Amendment
Amendment by Pub. L. 109–239 effective Oct. 1, 2006, and applicable to payments under this part and part B of this subchapter for quarters beginning on or after such date, see section 801 of Pub. L. 110–239, set out as a note under section 671 of this title.

Effective Date of 2003 Amendment

Effective Date
Section effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as an Effective Date of 1997 Amendment note under section 622 of this title.
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(2) an amount equal to the Federal medical assistance percentage (which shall be as defined in section 1396d(b) of this title, in the case of a State other than the District of Columbia, or 70 percent, in the case of the District of Columbia) of the total amount expended during such quarter as adoption assistance payments under section 673 of this title pursuant to adoption assistance agreements (or, with respect to such payments made during such quarter under a cooperative agreement or contract entered into by the State and an Indian tribe, tribal organization, or tribal consortium for the administration or payment of funds under this part, an amount equal to the Federal medical assistance percentage that would apply under section 679c(d) of this title (in this paragraph referred to as the “tribal FMAP”) if such Indian tribe, tribal organization, or tribal consortium made such payments under a program operated under that section, unless the tribal FMAP is less than the Federal medical assistance percentage that applies to the State); plus

(3) subject to section 672(i) of this title an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary for the provision of child placement services and for the proper and efficient administration of the State plan—

(A) 75 percent of so much of such expenditures as are the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision,

(B) 75 percent of so much of such expenditures (including travel and per diem expenses) as are for the short-term training of current or prospective foster or adoptive parents or relative guardians, the members of the staff of State-licensed or State-approved child care institutions providing care, or State-licensed or State-approved child welfare agencies providing services, to children receiving assistance under this part, and members of the staff of abuse and neglect courts, agency attorneys, attorneys representing children or parents, guardians ad litem, or other court-appointed special advocates representing children in proceedings of such courts, in ways that increase the ability of such current or prospective parents, guardians, staff members, institutions, attorneys, and advocates to provide support and assistance to foster and adopted children and children living with relative guardians, whether incurred directly by the State or by contract,

(C) 50 percent of so much of such expenditures as are for the planning, design, development, or installation of statewide mechanism data collection and information retrieval systems (including 50 percent of the full amount of expenditures for hardware components for such systems) but only to the extent that such systems—

(i) meet the requirements imposed by regulations promulgated pursuant to section 679(b)(2) of this title;

(ii) to the extent practicable, are capable of interfacing with the State data collection system that collects information relating to child abuse and neglect;

(iii) to the extent practicable, have the capability of interfacing with, and retrieving information from, the State data collection system that collects information relating to the eligibility of individuals under part A of this subchapter (for the purposes of facilitating verification of eligibility of foster children); and

(iv) are determined by the Secretary to be likely to provide more efficient, economical, and effective administration of the programs carried out under a State plan approved under part B of this subchapter or this part; and

(D) 50 percent of so much of such expenditures as are for the operation of the statewide mechanism data collection and information retrieval systems referred to in sub-paragraph (C); and

(E) one-half of the remainder of such expenditures; plus

(4) an amount equal to the amount (if any) by which—

(A) the lesser of—

(i) 80 percent of the amounts expended by the State during the fiscal year in which the quarter occurs to carry out programs in accordance with the State application approved under section 677(b) of this title for the period in which the quarter occurs (including any amendment that meets the requirements of section 677(b)(5) of this title); or

(ii) the amount allotted to the State under section 677(c)(1) of this title for the fiscal year in which the quarter occurs, reduced by the total of the amounts payable to the State under this paragraph for all prior quarters in the fiscal year; exceeds

(B) the total amount of any penalties assessed against the State under section 677(d) of this title during the fiscal year in which the quarter occurs; plus

(5) an amount equal to the percentage by which the expenditures referred to in paragraph (2) of this subsection are reimbursed of the total amount expended during such quarter as kinship guardianship assistance payments under section 673(d) of this title pursuant to kinship guardianship assistance agreements.

(b) Quarterly estimates of State’s entitlement for next quarter; payments; United States’ pro rata share of amounts recovered as overpayment; allowance, disallowance, or deferral of claim

(1) The Secretary shall, prior to the beginning of each quarter, estimate the amount to which a State will be entitled under subsection (a) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be ex-
pended in such quarter in accordance with subsection (a) of this section, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State’s proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of children in the State receiving assistance under this part, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amounts so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to foster care and adoption assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

(4) (A) Within 60 days after receipt of a State claim for expenditures pursuant to subsection (a) of this section, the Secretary shall allow, disallow, or defer such claim.

(B) Within 15 days after a decision to defer such a State claim, the Secretary shall notify the State of the reasons for the deferral and of the additional information necessary to determine the allowability of the claim.

(C) Within 90 days after receiving such necessary information (in readily reviewable form), the Secretary shall—

(i) disallow the claim, if able to complete the review and determine that the claim is not allowable; or

(ii) in any other case, allow the claim, subject to disallowance (as necessary)—

(I) upon completion of the review, if it is determined that the claim is not allowable; or

(II) on the basis of findings of an audit or financial management review.

(c) Automated data collection expenditures

The Secretary shall treat as necessary for the proper and efficient administration of the State plan all expenditures of a State necessary in order for the State to plan, design, develop, install, and operate data collection and information retrieval systems described in subsection (a)(3)(C) of this section, without regard to whether the systems may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under this part.

(d) Reduction for violation of plan requirement

(1) If, during any quarter of a fiscal year, a State’s program operated under this part is found, as a result of a review conducted under section 1320a-2a of this title, or otherwise, to have violated paragraph (18) or (23) of section 671(a) of this title with respect to a person or to have failed to implement a corrective action plan within a period of time not to exceed 6 months with respect to such violation, then, notwithstanding subsection (a) of this section and any regulations promulgated under section 1320a-2a(b)(3) of this title, the Secretary shall reduce the amount otherwise payable to the State under this part, for that fiscal year quarter and for any subsequent quarter of such fiscal year, until the State program is found, as a result of a subsequent review under section 1320a-2a of this title, to have implemented a corrective action plan with respect to such violation, by—

(A) 2 percent of such otherwise payable amount, in the case of the 1st such finding for the fiscal year with respect to the State;

(B) 3 percent of such otherwise payable amount, in the case of the 2nd such finding for the fiscal year with respect to the State; or

(C) 5 percent of such otherwise payable amount, in the case of the 3rd or subsequent such finding for the fiscal year with respect to the State.

In imposing the penalties described in this paragraph, the Secretary shall not reduce any fiscal year payment to a State by more than 5 percent.

(2) Any other entity which is in a State that receives funds under this part and which violates paragraph (18) or (23) of section 671(a) of this title during a fiscal year quarter with respect to any person shall remit to the Secretary all funds that were paid by the State to the entity during the quarter from such funds.

(3) (A) Any individual who is aggrieved by a violation of section 671(a)(18) of this title by a State or other entity may bring an action seeking relief from the State or other entity in any United States district court.

(B) An action under this paragraph may not be brought more than 2 years after the date the alleged violation occurred.

(4) This subsection shall not be construed to affect the application of the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.).

(e) Discretionary grants for educational and training vouchers for youths aging out of foster care

From amounts appropriated pursuant to section 677(h)(2) of this title, the Secretary may make a grant to a State with a plan approved under this part, for a calendar quarter, in an amount equal to the lesser of—

(1) 80 percent of the amounts expended by the State during the quarter to carry out programs for the purposes described in section 677(a)(6) of this title; or

(2) the amount, if any, allotted to the State under section 677(c)(3) of this title for the fiscal year in which the quarter occurs, reduced by the total of the amounts payable to the State under this subsection for such purposes for all prior quarters in the fiscal year.

(f) Reduction for failure to submit required data

(1) If the Secretary finds that a State has failed to submit to the Secretary data, as required by regulation, for the data collection system implemented under section 679 of this title, the Secretary shall, within 30 days after the
Continued services under waiver

(1) If the Secretary finds that the State has failed to submit the data, as so required, by the end of the 6-month period referred to in paragraph (1) of this subsection, then, notwithstanding subsection (a) of this section and any regulations promulgated under section 1320a–2(a)(3) of this title, the Secretary shall reduce the amounts otherwise payable to the State under this part, for each quarter ending in the 6-month period (and each quarter ending in each subsequent consecutively occurring 6-month period until the Secretary finds that the State has submitted the data, as so required), by—

(A) ¼ of 1 percent of the total amount expended by the State for administration of foster care activities under the State plan approved under this part in the quarter so ending; or

(B) ¼ of 1 percent of the total amount so expended, in the case of the 2nd or any subsequent such 6-month period.

(g) Continued services under waiver

For purposes of this part, after the termination of a demonstration project relating to guardianship conducted by a State under section 1320a–9 of this title, the expenditures of the State for the provision, to children who, as of September 30, 2008, were receiving assistance or services under the State plan approved under this part.


References in Text


Amendments

2008—Subsec. (a)(1), (2). Pub. L. 110–351, § 301(c)(2), inserted "(or, with respect to such payments made during such quarter under a cooperative agreement or contract entered into by the State and an Indian tribe, tribal organization, or tribal consortium for the administration or payment of funds under this part, an amount equal to the Federal medical assistance percentage that would apply under section 678d(d) of this title (in this paragraph referred to as the ‘tribal FMAP’) if such Indian tribe, tribal organization, or tribal consortium made such payments under a program operated under that section, unless the tribal FMAP is less than the Federal medical assistance percentage that applies to the State)" before semicolon.

Pub. L. 110–351 substituted "which shall be as defined in section 1396d(b) of this title, in the case of a State other than the District of Columbia, or 70 percent, in the case of the District of Columbia" for "(as defined in section 1396d(b) of this title)".

Subsec. (g)(3)(B), Pub. L. 110–351, § 203(a), inserted "relative guardians after "adoptive parents", substituted "the members" for "and the members", inserted "or State-licensed or State-approved child welfare agencies providing services;", after "providing care", struck out "and adopted" before "children receiving assistance", inserted "and members of the staff of abuse and neglect courts, agency attorneys, attorneys representing children or parents, guardians ad litem, or other court-appointed special advocates representing children in proceedings of such courts," after "part", inserted "guardians," before "staff members," substituted "‘institutions, attorneys, and advocates’ for ‘and institutions’, and inserted ‘and children living with relative guardians’ before ‘‘, whether incurred directly’."

Subsec. (g)(3)(B), Pub. L. 110–351, § 203(a), added par. (5).

Subsec. (g). Pub. L. 110–351, § 101(d), added subsec. (g).

2006—Subsec. (g)(3). Pub. L. 109–171 inserted "subject to section 672(i) of this title" before "an amount equal to" in introductory provisions.


2002—Subsec. (a)(4). Pub. L. 107–133, § 201(f)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "the lesser of—\(\frac{1}{8}\) of 1 percent of the total amount expended by the State during the fiscal year in which the quarter occurs to carry out programs in accordance with the State application approved under section 677(b) of this title for the period in which the quarter occurs (including any amendment that meets the requirements of this section 677(b)(5) of this title); exceeds (ii) the total amount of any penalties assessed against the State under section 677(e) of this title during the fiscal year in which the quarter occurs; or (B) the amount allotted to the State under section 677 of this title for the fiscal year in which the quarter occurs, reduced by the total of the amounts payable to the State under this paragraph for all prior quarters in the fiscal year."


(ii) the maximum additional amount for such State under such section 677(e)(1) of this title.’’

1998—Subsec. (a). Pub. L. 105–200, § 414(g), struck out ‘‘subject to the limitations imposed by subsection (b) of this section’’ after ‘‘this part’’ in introductory provisions.

Subsec. (d)(1), (2). Pub. L. 105–200, § 301(a), substituted ‘‘paragraph (18) or (23) of section 671(a) of this title’’ for ‘‘subsection (a) of this section for such quarter’’ and ‘‘subsection (a) of this section’’ for ‘‘the previous provision’’ as do not exceed the basic amount for such State under such section 677(e)(1) of this title.’’

1967—Subsec. (e). Pub. L. 110–3432, § 207(a), (b)(2), redesignated subsec. (d) as (b) and struck out former subsec. (b) which related to maximum aggregate sums payable to any State and State allotments for fiscal years 1961 to 1992.


Subsec. (c). Pub. L. 103–432, § 207(a), (b)(2), redesignated subsec. (e) as (c) and struck out former subsec. (c) which related to reimbursement for expenditures.

Subsec. (d). Pub. L. 103–432, § 207(b)(2), redesignated subsec. (d) as (b).

Subsec. (d)(1). Pub. L. 103–432, § 207(b)(1), substituted ‘‘subsection (a) of this section for such quarter’’ for ‘‘subsections (a), (b), and (c) of this section for such quarter’’ and ‘‘subsection (a) of this section’’ for ‘‘the provisions of such subsections’’.

Subsec. (e). Pub. L. 103–432, § 207(b)(2), redesignated subsec. (e) as (d).


Subsec. (a)(4). Pub. L. 103–66, § 13713(a)(1)(B), added par. (4) generally. Prior to amendment, par. (4) read as follows: ‘‘an amount for transitional independent living programs as provided in section 677 of this title.’’


Subsec. (c)(1), (2). Pub. L. 101–239, § 8001(a), substituted ‘‘through 1992’’ for ‘‘through 1989’’.

Subsec. (c)(4)(B). Pub. L. 101–239, § 10401(a), substituted ‘‘$325,000,000’’ for ‘‘$266,000,000’’.


Subsec. (b)(2)(A). Pub. L. 99–272, § 12306(a)(2), substituted in cl. (ii) ‘‘each of the fiscal years 1983 through 1987’’ for ‘‘fiscal year 1983’’, and struck out cls. (iv) and (v) relating to limitations with respect to fiscal years 1984 and 1985, respectively. If the appropriation for each of those years equal is $266,000,000.


Subsec. (b)(4)(A). Pub. L. 98–369, § 2663(c)(18)(A), substituted ‘‘subsection (c)’’ for ‘‘subsection (a)’’.


Subsec. (b)(4)(B). Pub. L. 98–369, § 2663(c)(18)(A), substituted ‘‘paragraph (C)’’ for ‘‘paragraph (b)’’.


Subsec. (c)(1). Pub. L. 98–369, § 2663(c)(18)(B), substituted ‘‘relevant’’ for ‘‘relevant’’.

Subsec. (d). Pub. L. 98–369, § 2663(c)(18)(C), substituted ‘‘and (c) such’’ and ‘‘Secretary may find’’ for ‘‘secretary may find’’.


Effective Date of 2008 Amendment

Amendment by section 301(c)(2) of Pub. L. 110–351 effective Oct. 1, 2009, without regard to whether imple-
menting regulations have been promulgated, see section 301(f) of Pub. L. 110–351, set out as a note under section 671 of this title.

Amendment by Pub. L. 110–351 effective Oct. 7, 2008, except as otherwise provided, and applicable to payments under this part and part B of this subchapter for quarters beginning on or after effective date of amendment, with delay permitted if State legislation is required to meet additional requirements, see section 601 of Pub. L. 110–351, set out as a note under section 671 of this title.

Pub. L. 110–275, title III, §302(b), July 15, 2008, 122 Stat. 2594, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2008, and shall apply to calendar quarters beginning on or after that date."

**Effective Date of 2006 Amendment**

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2006, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

**Effective Date of 2003 Amendment**


**Effective Date of 2002 Amendment**


**Effective Date of 1998 Amendment**

Amendment by section 301(b), (c) of Pub. L. 105–200 effective as if included in the enactment of section 292 of the Adoption and Safe Families Act of 1997, Pub. L. 105–89, see section 301(d) of Pub. L. 105–200, set out as a note under section 671 of this title.

**Effective Date of 1997 Amendment**

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

**Effective Date of 1994 Amendment**

Section 207(c) of Pub. L. 103–432 provided that: "The amendments and repeal made by this section [amending this section] shall apply to payments for calendar quarters beginning on or after October 1, 1993."

**Effective Date of 1993 Amendment**


**Effective Date of 1990 Amendment**

Section 5071(b) of Pub. L. 101–366, as amended by Pub. L. 103–66, title XIII, §13715, Aug. 10, 1993, 107 Stat. 657, provided that: "The amendments made by subsection (a) [amending this section] shall apply to expenditures made on or after October 1, 1989, and before October 1, 1992, and to expenditures made on or after October 1, 1993."

**Section 10401(b) of Pub. L. 101–239** provided that: "The amendments made by subsection (a) [amending this section and former sections 620 and 627 of this title] shall take effect on October 1, 1989."

**Section 10403(c)(2) of Pub. L. 101–239** provided that: "The amendment made by paragraph (1) of this subsection [amending this section] shall take effect as if included in section 4 of Public Law 98–617 at the time such section became law [enacted Nov. 8, 1974]."

**Effective Date of 1987 Amendment**

Section 9132(b) of Pub. L. 100–203 provided that: "The amendments made by subsection (a) [amending this section] shall become effective October 1, 1987."

**Effective Date of 1984 Amendment**

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

**Construction of 2008 Amendment**

For construction of amendment by section 301(c)(2) of Pub. L. 110–351, see section 301(d) of Pub. L. 110–351, set out as a note under section 671 of this title.

**Phase-In**

Pub. L. 110–351, title II, §203(b), Oct. 7, 2008, 122 Stat. 3959, provided that: "With respect to an expenditure described in section 474(a)(3)(B) of the Social Security Act (42 U.S.C. 674(a)(3)(B)) by reason of an amendment made by subsection (a) of this section [amending this section], in lieu of the percentage set forth in such section 474(a)(3)(B), the percentage that shall apply is—"

"(1) 55 percent, if the expenditure is made in fiscal year 2009;

"(2) 60 percent, if the expenditure is made in fiscal year 2010;

"(3) 65 percent, if the expenditure is made in fiscal year 2011; or

"(4) 70 percent, if the expenditure is made in fiscal year 2012."

**§ 675. Definitions**

As used in this part or part B of this subchapter:

(1) The term "case plan" means a written document which includes at least the following:

(A) A description of the type of home or institution in which a child is to be placed, including a discussion of the safety and appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 672(a)(1) of this title.

*See References in Text note below.*
(B) A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents’ home, facilitate return of the child to his own safe home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

(C) The health and education records of the child, including the most recent information available regarding—

(i) the names and addresses of the child’s health and educational providers;
(ii) the child’s grade level performance;
(iii) the school record;
(iv) a record of the child’s immunizations;
(v) the child’s known medical problems;
(vi) the child’s medications; and
(vii) any other relevant health and education information concerning the child determined to be appropriate by the State agency.

(D) Where appropriate, for a child age 16 or over, a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.

(E) In the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems to facilitate orderly and timely in-State and interstate placements.

(F) In the case of a child with respect to whom the permanency plan is placement with a relative and receipt of kinship guardianship assistance payments under section 673(d) of this title, a description of—

(i) the steps that the agency has taken to determine that it is not appropriate for the child to be returned home or adopted;
(ii) the reasons for any separation of siblings during placement;
(iii) the reasons why a permanent placement with a fit and willing relative through a kinship guardianship assistance arrangement is in the child’s best interests;
(iv) the ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment;
(v) the efforts the agency has made to discuss adoption by the child’s relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons therefor; and
(vi) the efforts made by the State agency to discuss with the child’s parent or parents the kinship guardianship assistance arrangement, or the reasons why the efforts were not made.

(G) A plan for ensuring the educational stability of the child while in foster care, including—

(i) assurances that each placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; and
(ii) an assurance that the State agency has coordinated with appropriate local educational agencies (as defined under section 7801 of title 20) to ensure that the child remains in the school in which the child is enrolled at the time of each placement; or

(II) if remaining in such school is not in the best interests of the child, assurances by the State agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school.

(2) The term “parents” means biological or adoptive parents or legal guardians, as determined by applicable State law.

(3) The term “adoption assistance agreement” means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum (A) specifies the nature and amount of any payments, services, and assistance to be provided under such agreement, and (B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

(4)(A) The term “foster care maintenance payments” means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, reasonable travel to the child’s home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

(B) In cases where—

(i) a child placed in a foster family home or child-care institution is the parent of a son or daughter who is in the same home or institution, and
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(coinntinuation of foster care), which hearing shall determine the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement, in the case of a child who will not be returned to the parent, the hearing shall consider in-State and out-of-State placement options, and, in the case of a child described in subparagraph (A)(ii), the hearing shall determine whether the out-of-State placement continues to be appropriate and in the best interests of the child, and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; (ii) procedural safeguards shall be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child’s placement, and to any determination affecting visitation privileges of parents; and (iii) procedural safeguards shall be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child; 2

(D) a child’s health and education record (as described in paragraph (1)(A)) is reviewed and updated, and a copy of the record is supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care, and is supplied to the child at no cost at the time the child leaves foster care if the child is leaving foster care by reason of having attained the age of majority under State law; 2

(E) in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate

2So in original. The semicolon probably should be a comma.
the parental rights of the child’s parents (or, if such a petition has been filed by another
party, seek to be joined as a party to the pe-
tition), and, concurrently, to identify, re-
cruit, process, and approve a qualified fam-
ily for an adoption unless:
   (i) at the option of the State, the child is
being cared for by a relative;
   (ii) a State agency has documented in the
case plan (which shall be available for
court review) a compelling reason for de-
determining that filing such a petition would
not be in the best interests of the child; or
   (iii) the State has not provided to the
family of the child, consistent with the
time period in the State case plan, such
services as the State deems necessary for
the safe return of the child to the child’s
home, if reasonable efforts of the type de-
scribed in section 671(a)(15)(B)(ii) of this
title are required to be made with respect
to the child;2
(F) a child shall be considered to have en-
tered foster care on the earlier of—
   (i) the date of the first judicial finding
that the child has been subjected to child
abuse or neglect; or
   (ii) the date that is 60 days after the date
on which the child is removed from the
home;2
(G) the foster parents (if any) of a child
and any preadoptive parent or relative pro-
viding care for the child are provided with
notice of, and a right to be heard in, any pro-
ceeding solely on the basis of such notice
and right to be heard;
(H) during the 90-day period immediately
prior to the date on which the child will at-
tain 18 years of age, or such greater age as
the State may elect under paragraph
(8)(B)(iii), whether during that period foster
care maintenance payments are being made
on the child’s behalf or the child is receiving
benefits or services under section 677 of this
title, a caseworker on the staff of the State
agency, and, as appropriate, other repre-
sentatives of the child provide the child with as-
sistance and support in developing a transi-
tion plan that is personalized at the direc-
tion of the child, includes specific options on
housing, health insurance, education, local
opportunities for mentors and continuing
support services, and work force supports
and employment services, includes informa-
tion about the importance of designating an-
other individual to make health care treat-
ment decisions on behalf of the child if the
child becomes unable to participate in such
decisions and the child does not have, or
does not want, a relative who would other-
wise be authorized under State law to make
such decisions, and provides the child with
the option to execute a health care power of
attorney, health care proxy, or other similar
document recognized under State law, and is
detailed as the child may elect;2 and
(I) each child in foster care under the re-
ponsibility of the State who has attained 16
years of age receives without cost a copy of
any consumer report (as defined in section
1681a(d) of title 15) pertaining to the child
each year until the child is discharged from
care, and receives assistance (including, when feasible, from any court-appointed ad-
vocate for the child) in interpreting and re-
solving any inaccuracies in the report.
(6) The term “administrative review” means
a review open to the participation of the par-
ents of the child, conducted by a panel of ap-
propriate persons at least one of whom is not
responsible for the case management of, or the
delivery of services to, either the child or the
parents who are the subject of the review.
(7) The term “legal guardianship” means a
judicially created relationship between child
and caretaker which is intended to be perma-
nent and self-sustaining as evidenced by the
transfer to the caretaker of the following pa-
rental rights with respect to the child: protec-
tion, education, care and control of the person,
custody of the person, and decisionmaking.
The term “legal guardian” means the care-
taker in such a relationship.
(8)(A) Subject to subparagraph (B), the term
“child” means an individual who has not at-
tained 18 years of age.
(B) At the option of a State, the term shall
include an individual—
   (i) who is in foster care under the re-
sponsibility of the State;
   (II) with respect to whom an adoption as-
sistance agreement is in effect under section
673 of this title if the child had attained 16
years of age before the agreement became ef-
fective; or
   (III) due to a medical condition, which in-
volves the child, includes specific options on
housing, health insurance, education, local
opportunities for mentors and continuing
support services, and work force supports
and employment services, includes informa-
tion about the importance of designating an-
other individual to make health care treat-
ment decisions on behalf of the child if the
child becomes unable to participate in such
decisions and the child does not have, or
does not want, a relative who would other-
wise be authorized under State law to make
such decisions, and provides the child with
the option to execute a health care power of
attorney, health care proxy, or other similar
document recognized under State law, and is
detailed as the child may elect;2 and

(Aug. 14, 1935, ch. 531, title IV, § 475, as added and
amended Pub. L. 96–272, title I, §§101(a)(1),
102(a)(4), June 17, 1980, 94 Stat. 510, 514; Pub. L.
99–272, title XII, §§12305(b)(2), 12307(b), Apr. 7,
1986, 100 Stat. 293, 296; Pub. L. 99–514, title XVII,

REFERENCES IN TEXT

Section 672(a) of this title, referred to in par. (1)(A), was amended generally by Pub. L. 103–171, title VII, §7404(a), Feb. 8, 2002, 115 Stat. 151, and, as so amended, provisions relating to a voluntary placement agreement or judicial determination made with respect to a child, which formerly appeared in subsec. (a)(1), are contained in subsec. (a)(2)(A).

AMENDMENTS


2006—Par. (1)(C). Pub. L. 109–288 inserted “‘(i)” after “with respect to each such child,” substituted “‘(ii)” for “and procedural safeguards shall,” and added cls. (iii) and (iv) at end.

Pub. L. 109–239, §12, inserted “‘, in the case of a child who will not be returned to the parent, the hearing shall consider in-State and out-of-State placement options,” after “living arrangement,” and inserted “‘shall determine’ after “described in subparagraph (A)(ii))’.”

Par. (5)(D). Pub. L. 109–239, §12(2), inserted “‘a copy of the record is” before “supplied to the foster parent” and “, and is supplied to the child at no cost at the time the child leaves foster care if the child is leaving foster care by reason of having attained the age of majority under State law” before semicolon at end.

Par. (5)(G). Pub. L. 109–239, §8(a), substituted “‘right” for “‘an opportunity,” “‘proceeding’ for “‘review or hearing” in two places, and “‘and right” for “‘and opportunity’.”

1997—Par. (1). Pub. L. 105–89, §107(1)(A), (B), struck out “‘the case plan must also include” before “‘a written description” in concluding provisions and redesignated those provisions as subpar. (D) of par. (1).

Par. (1)(A). Pub. L. 105–89, §102(2)(A)(i), inserted “‘safety and” and before “‘appropriateness of the placement’.”


Par. (1)(D). Pub. L. 105–89, §107(1)(B), redesignated concluding provisions of par. (1) as subpar. (D) of par. (1) and realigned margins.


Par. (5)(B). Pub. L. 105–89, §102(2)(B)(ii), inserted “‘the safety of the child,” after “determine,” “‘and safely maintained in” before “‘the home or placed for adoption’.”

Par. (5)(C). Pub. L. 105–89, §302, substituted “‘permanency hearing” for “‘dispositional hearing” and “no later than 12 months after the date the child is considered to have entered foster care (as determined under subparagraph (F))” for “‘no later than eighteen months after the original placement”, and which directed the substitution of “‘permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement” for “‘future status of the child (including, but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child’s special needs or circumstances) be continued in foster care on a permanent or long term basis)’, was executed by making the substitution for text which contained the words “‘long-term” rather than “long term” to reflect the probable intent of Congress.


1994—Par. (5)(A). Pub. L. 103–432, §206(a), inserted “‘which” after “‘needs of the child,” and added cls. (i) and (ii).

Pub. L. 103–432, §206(a), inserted “‘and most appropriate” after “‘most family like)”.

Par. (5)(C). Pub. L. 103–432, §206(b), inserted “‘and, in the case of a child described in subparagraph (A)(ii)), whether the out-of-State placement continues to be ap-
appropriate and in the best interests of the child." after
"permanent or long-term basis.");
Pub. L. 103–432, §266(b), substituted "(and not less fre-
quently than every 12 months" for "(and periodically)".
before "A description", substituted "section 672(a)(1) of
this title. (B) A plan" for "section 672(a)(1) of this title;
and a plan", realigned margins of subpars. (A) and (B),
added subpar. (C), and set the last sentence flush with
the left margin of par. (1).
(D).
1988—Par. (5)(C). Pub. L. 100–647 inserted "and, in
the case of a child who has attained age 16, the services
needed to assist the child to make the transition from
foster care to independent living" after "long-term
basis.");
1987—Par. (4). Pub. L. 100–233 designated existing pro-
visions as subpar. (A) and added subpar. (B).
1986—Par. (1). Pub. L. 99–272, §12307(b), inserted at end
"Where appropriate, for a child age 16 or over, the
case plan must also include a written description of the pro-
grams and services which will help such child prepare
for the transition from foster care to independent liv-
ing."
Par. (3). Pub. L. 99–514 added cl. (A) and struck out former
cl. (A) which read as follows: "specifies the
amounts of any adoption assistance payments and any
other services and assistance which are to be provided
as part of such agreement, and".
Pub. L. 99–272, §12305(b)(2), substituted in cl. (A) "any
adoption assistance payments and any other services
and assistance" for "the adoption assistance payments
and any additional services and assistance"
1985—Par. (1). Pub. L. 99–272, §102(a)(4), inserted ref-
ERENCE TO voluntary placement agreements.

Effective Date of 2011 Amendment
Amendment by Pub. L. 112–34 effective Oct. 1, 2011,
and applicable to payments under this part and part B
of this subchapter for calendar quarters beginning on
or after such date, without regard to whether imple-
menting regulations have been promulgated, and with
delay permitted if State legislation is required to meet
additional requirements, see section 14 of Pub. L.
109–239, set out as a note under section 622 of this title.

Effective Date of 1997 Amendment
Amendment by Pub. L. 105–89 effective Nov. 19, 1997,
except as otherwise provided, with delay permitted if
State legislation is required, see section 503 of Pub. L.
105–89, set out as a note under section 622 of this title.

Effective Date of 1994 Amendment
Section 206(c) of Pub. L. 103–432 provided that: "The
amendments made by this section [amending this sec-
tion] shall take effect on October 1, 1995.
Section 209(d) of Pub. L. 103–432 provided that: "The
amendments made by this section [amending this sec-
tion and section 679 of this title] shall be effective with
respect to fiscal years beginning on or after October 1,
1995.
Amendment by section 265(c) of Pub. L. 103–432 effective
as if included in the provision of Pub. L. 101–239 to
which the amendment relates, at the time the provi-
sion became law, see section 265(d) of Pub. L. 103–432,
set out as a note under section 673 of this title.

Effective Date of 1989 Amendment
Section 8007(c) of Pub. L. 101–239 provided that: "The
amendments made by subsections (a) and (b) [amending
this section] shall take effect on April 1, 1990.

Effective Date of 1988 Amendment
Amendment by Pub. L. 100–647 effective Oct. 1, 1988,
see section 8104(g)(1) of Pub. L. 100–647, set out as a note
under section 677 of this title.

Effective Date of 1987 Amendment
Amendment by Pub. L. 100–203 effective Apr. 1, 1988,
see section 913(c) of Pub. L. 100–203, set out as a note
under section 672 of this title.

Effective Date of 1986 Amendments
Amendment by Pub. L. 99–514 applicable only with re-
spect to expenditures made after Dec. 31, 1986, see sec-
section 1711(d) of Pub. L. 99–514, set out as a note under
section 670 of this title.
Amendment by section 12205(b)(2) of Pub. L. 99–272 ap-
plicable to medical assistance furnished in or after the
first calendar quarter beginning more than 90 days
after Apr. 7, 1986, see section 12205(c) of Pub. L. 99–272,
set out as a note under section 673 of this title.

Effective Date of 1980 Amendment
Section 101(a)(4)(A) of Pub. L. 96–272 provided that:
"Clause (B) of the first sentence of section 475(3) of the
Social Security Act [par. (3)(B) of this section] as
added by subsection (a) of this section] shall be effective
with respect to adoption assistance agreements en-
tered into on or after October 1, 1983.
Amendment by section 102(a)(4) of Pub. L. 96–272 effec-
tive only with respect to expenditures made after
Sept. 30, 1979, see section 102(c) of Pub. L. 96–272, as
amended, set out as a note under section 672 of this title.

Construction
Section 103(d) of Pub. L. 105–89 provided that: "Nothing
in this section [amending this section and enacting
provisions set out as a note below] or in part E of title
IV of the Social Security Act (42 U.S.C. 670 et seq.), as
amended by this Act, shall be construed as precluding
State courts or State agencies from initiating the ter-
minal of parental rights for reasons other than, or
for timelines earlier than, those specified in part E of
title IV of such Act, when such actions are determined
to be in the best interests of the child, including cases
where the child has experienced multiple foster care
placements of varying durations."
§ 676. Administration

(a) Technical assistance to States

The Secretary may provide technical assistance to the States to assist them to develop the programs authorized under this part and shall periodically (1) evaluate the programs authorized under this part and part B of this subchapter and (2) collect and publish data pertaining to the incidence and characteristics of foster care and adoptions in this country.

(b) Data collection and evaluation

Each State shall submit statistical reports as the Secretary may require with respect to children for whom payments are made under this part containing information with respect to such children including legal status, demographic characteristics, location, and length of any stay in foster care.

(c) Technical assistance and implementation services for tribal programs

(1) Authority

The Secretary shall provide technical assistance and implementation services that are dedicated to improving services and permanency outcomes for Indian children and their families through the provision of assistance described in paragraph (2).

(2) Assistance provided

(A) In general

The technical assistance and implementation services shall be to—

(i) provide information, advice, educational materials, and technical assistance to Indian tribes and tribal organizations with respect to the types of services, administrative functions, data collection, program management, and reporting that are required under State plans under part B and this part;

(ii) assist and provide technical assistance to—

(I) Indian tribes, tribal organizations, and tribal consortia seeking to develop cooperative agreements to provide for payments under this part or satisfy the requirements of section 622(b)(9), 671(a)(32), or 677(b)(3)(G) of this title; and

(II) subject to subparagraph (B), make one-time grants, to tribes, tribal organizations, or tribal consortia that are seeking to develop, and intend, not later than 24 months after receiving such a grant to submit to the Secretary a plan under section 671 of this title to implement a program under this part as authorized by section 679c of this title, that shall—

(I) not exceed $300,000; and

(II) be used for the cost of developing a plan under section 671 of this title to carry out a program under section 679c of this title, including costs related to development of necessary data collection systems, a cost allocation plan, agency and tribal court procedures necessary to meet the case review system requirements under section 675(5) of this title, or any other costs attributable to meeting any other requirement necessary for approval of such a plan under this part.

(B) Grant condition

(i) In general

As a condition of being paid a grant under subparagraph (A)(iii), a tribe, tribal organization, or tribal consortium shall agree to repay the total amount of the grant awarded if the tribe, tribal organization, or tribal consortium fails to submit to the Secretary a plan under section 671 of this title to carry out a program under section 679c of this title by the end of the
24-month period described in that subparagraph.

(ii) Exception

The Secretary shall waive the requirement to repay a grant imposed by clause (i) if the Secretary determines that a tribe’s, tribal organization’s, or tribal consortium’s failure to submit a plan within such period was the result of circumstances beyond the control of the tribe, tribal organization, or tribal consortium.

(C) Implementation authority

The Secretary may provide the technical assistance and implementation services described in subparagraph (A) either directly or through a grant or contract with public or private organizations knowledgeable and experienced in the field of Indian tribal affairs and child welfare.

(3) Appropriation

There is appropriated to the Secretary, out of any money in the Treasury of the United States not otherwise appropriated, $3,000,000 for fiscal year 2009 and each fiscal year thereafter to carry out this subsection.


§677. John H. Chafee Foster Care Independence Program

(a) Purpose

The purpose of this section is to provide States with flexible funding that will enable programs to be designed and conducted—

(1) to identify children who are likely to remain in foster care until 18 years of age and to help these children make the transition to self-sufficiency by providing services such as assistance in obtaining a high school diploma, career exploration, vocational training, job placement and retention, training in daily living skills, training in budgeting and financial management skills, substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention);

(2) to help children who are likely to remain in foster care until 18 years of age receive the education, training, and services necessary to obtain employment;

(3) to help children who are likely to remain in foster care until 18 years of age prepare for and enter postsecondary training and education institutions;

(4) to provide personal and emotional support to children aging out of foster care, through mentors and the promotion of interactions with dedicated adults;

(5) to provide financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients between 18 and 21 years of age to complement their own efforts to achieve self-sufficiency and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood;

(6) to make available vouchers for education and training, including postsecondary training and education, to youths who have aged out of foster care; and

(7) to provide the services referred to in this subsection to children who, after attaining 16 years of age, have left foster care for kinship guardianship or adoption.

(b) Applications

(1) In general

A State may apply for funds from its allotment under subsection (c) of this section for a period of five consecutive fiscal years by submitting to the Secretary, in writing, a plan that meets the requirements of paragraph (2) and the certifications required by paragraph (3) with respect to the plan.

(2) State plan

A plan meets the requirements of this paragraph if the plan specifies which State agency or agencies will administer, supervise, or oversee the programs carried out under the plan, and describes how the State intends to do the following:

(A) Design and deliver programs to achieve the purposes of this section.

(B) Ensure that all political subdivisions in the State are served by the program, though not necessarily in a uniform manner.

(C) Ensure that the programs serve children of various ages and at various stages of achieving independence.

(D) Involve the public and private sectors in helping adolescents in foster care achieve independence.

(E) Use objective criteria for determining eligibility for benefits and services under the programs, and for ensuring fair and equitable treatment of benefit recipients.

(F) Cooperate in national evaluations of the effects of the programs in achieving the purposes of this section.

(3) Certifications

The certifications required by this paragraph with respect to a plan are the following:

(A) A certification by the chief executive officer of the State that the State will provide assistance and services to children who have left foster care because they have attained 18 years of age, and who have not attained 21 years of age.

(B) A certification by the chief executive officer of the State that not more than 30 percent of the amounts paid to the State from its allotment under subsection (c) of this section for a fiscal year will be expended for room or board for children who have left foster care because they have attained 18
years of age, and who have not attained 21 years of age.

(C) A certification by the chief executive officer of the State that none of the amounts paid to the State from its allotment under subsection (c) of this section will be expended for room or board for any child who has not attained 18 years of age.

(D) A certification by the chief executive officer of the State that the State will use training funds provided under the program of Federal payments for foster care and adoption assistance to provide training to help foster parents, adoptive parents, workers in group homes, and case managers understand and address the issues confronting adolescents preparing for independent living, and will, to the extent possible, coordinate such training with the independent living program conducted for adolescents.

(E) A certification by the chief executive officer of the State that the State has consulted widely with public and private organizations in developing the plan and that the State has given all interested members of the public at least 30 days to submit comments on the plan.

(F) A certification by the chief executive officer of the State that the State will make every effort to coordinate the State programs receiving funds provided from an allotment made to the State under subsection (c) of this section with other Federal and State programs for youth (especially transitional living youth projects funded under part B of title III of the Juvenile Justice and Delinquency Prevention Act of 1974 [42 U.S.C. 5714–1 et seq.]), abstinence education programs, local housing programs, programs for disabled youth (especially sheltered workshops), and school-to-work programs offered by high schools or local workforce agencies.

(G) A certification by the chief executive officer of the State that each Indian tribe in the State has been consulted about the programs to be carried out under the plan; that there have been efforts to coordinate the programs with such tribes; that benefits and services under the programs will be made available to Indian children in the State on the same basis as to other children in the State; and that the State will negotiate in good faith with any Indian tribe, tribal organization, or tribal consortium in the State that does not receive an allotment under subsection (j)(4) for a fiscal year and that requests to develop an agreement with the State to administer, supervise, or oversee the programs to be carried out under the plan will be made available to the Indian tribe, tribal organization, or tribal consortium in the State that does not receive an allotment under subsection (c) for the cost of such administration, supervision, or oversight.

(H) A certification by the chief executive officer of the State that the State will ensure that adolescents participating in the program under this section participate directly in designing their own program activities that prepare them for independent living and that the adolescents accept personal responsibility for living up to their part of the program.

(I) A certification by the chief executive officer of the State that the State has established and will enforce standards and procedures to prevent fraud and abuse in the programs carried out under the plan.

(J) A certification by the chief executive officer of the State that the State educational and training voucher program under this section is in compliance with the conditions specified in subsection (i) of this section, including a statement describing methods the State will use—

(i) to ensure that the total amount of educational assistance to a youth under this section and under other Federal and Federally supported programs does not exceed the limitation specified in subsection (i)(5) of this section and

(ii) to avoid duplication of benefits under this and any other Federal or Federally assisted benefit program.

(K) A certification by the chief executive officer of the State that the State will ensure that an adolescent participating in the program under this section are provided with education about the importance of designating another individual to make health care treatment decisions on behalf of the adolescent if the adolescent becomes unable to participate in such decisions and the adolescent does not have, or does not want, a relative who would otherwise be authorized under State law to make such decisions, whether a health care power of attorney, health care proxy, or other similar document is recognized under State law, and how to execute such a document if the adolescent wants to do so.

(4) Approval

The Secretary shall approve an application submitted by a State pursuant to paragraph (1) for a period if—

(A) the application is submitted on or before June 30 of the calendar year in which such period begins; and

(B) the Secretary finds that the application contains the material required by paragraph (1).

(5) Authority to implement certain amendments; notification

A State with an application approved under paragraph (4) may implement any amendment to the plan contained in the application if the application, incorporating the amendment, would be approvable under paragraph (4).

Within 30 days after a State implements any such amendment, the State shall notify the Secretary of the amendment.

(6) Availability

The State shall make available to the public any application submitted by the State pursu-

1 So in original. Probably should be “is”.
ant to paragraph (1), and a brief summary of the plan contained in the application.

(c) Allotments to States

(1) General program allotment

From the amount specified in subsection (h)(4) of this section that remains after applying subsection (g)(2) of this section for a fiscal year, the Secretary shall allot to each State with an application approved under subsection (b) of this section for the fiscal year the amount which bears the ratio to such remaining amount equal to the State foster care ratio, as adjusted in accordance with paragraph (2).

(2) Hold harmless provision

(A) In general

The Secretary shall allot to each State whose allotment for a fiscal year under paragraph (1) is less than the greater of $500,000 or the amount payable to the State under this section for fiscal year 1996, an additional amount equal to the difference between such allotment and such greater amount.

(B) Ratable reduction of certain allotments

In the case of a State not described in subparagraph (A) of this paragraph for a fiscal year under paragraph (1) by the amount that bears the same ratio to the sum of the differences determined under subparagraph (A) of this paragraph for the fiscal year as the excess of the amount so allotted over the greater of $500,000 or the amount payable to the State under this section for fiscal year 1996 bears to the sum of such excess amounts determined for all such States.

(3) Voucher program allotment

From the amount, if any, appropriated pursuant to subsection (h)(2) of this section for a fiscal year, the Secretary may allot to each State with an application approved under subsection (b) of this section for the fiscal year an amount equal to the State foster care ratio multiplied by the amount so specified.

(4) State foster care ratio

In this subsection, the term "State foster care ratio" means the ratio of the number of children in foster care under a program of the State in the most recent fiscal year for which the information is available to the total number of children in foster care in all States for the most recent fiscal year.

(d) Use of funds

(1) In general

A State to which an amount is paid from its allotment under subsection (c) of this section may use the amount in any manner that is reasonably calculated to accomplish the purposes of this section.

(2) No supplantation of other funds available for same general purposes

The amounts paid to a State from its allotment under subsection (c) of this section shall be used to supplement and not supplant any other funds which are available for the same general purposes in the State.

(3) Two-year availability of funds

Payments made to a State under this section for a fiscal year shall be expended by the State in the fiscal year or in the succeeding fiscal year.

(4) Reallocation of unused funds

If a State does not apply for funds under this section for a fiscal year within such time as may be provided by the Secretary, the funds to which the State would be entitled for the fiscal year shall be reallocated to 1 or more other States on the basis of their relative need for additional payments under this section, as determined by the Secretary.

(e) Penalties

(1) Use of grant in violation of this part

If the Secretary is made aware, by an audit conducted under chapter 75 of title 31 or by any other means, that a program receiving funds from an allotment made to a State under subsection (c) of this section has been operated in a manner that is inconsistent with, or not disclosed in the State application approved under subsection (b) of this section, the Secretary shall assess a penalty against the State in an amount equal to not less than 1 percent and not more than 5 percent of the amount of the allotment.

(2) Failure to comply with data reporting requirement

The Secretary shall assess a penalty against a State that fails during a fiscal year to comply with an information collection plan implemented under subsection (f) of this section in an amount equal to not less than 1 percent and not more than 5 percent of the amount allotted to the State for the fiscal year.

(3) Penalties based on degree of noncompliance

The Secretary shall assess penalties under this subsection based on the degree of noncompliance.

(f) Data collection and performance measurement

(1) In general

The Secretary, in consultation with State and local public officials responsible for administering independent living and other child welfare programs, child welfare advocates, Members of Congress, youth service providers, and researchers, shall—

(A) develop outcome measures (including measures of educational attainment, high school diploma, employment, avoidance of dependency, homelessness, nonmarital childbirth, incarceration, and high-risk behaviors) that can be used to assess the performance of States in operating independent living programs;

(B) identify data elements needed to track—

(i) the number and characteristics of children receiving services under this section;
(ii) the type and quantity of services being provided; and
(iii) State performance on the outcome measures; and

(C) develop and implement a plan to collect the needed information beginning with the second fiscal year beginning after December 14, 1999.

(2) Report to the Congress

Within 12 months after December 14, 1999, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report detailing the plans and timetable for collecting from the States the information described in paragraph (1) and a proposal to impose penalties consistent with paragraph (e)(2) on States that do not report data.

(g) Evaluations

(1) In general

The Secretary shall conduct evaluations of such State programs funded under this section as the Secretary deems to be innovative or of potential national significance. The evaluation of any such program shall include information on the effects of the program on education, employment, and personal development. To the maximum extent practicable, the evaluations shall be based on rigorous scientific standards including random assignment to treatment and control groups. The Secretary is encouraged to work directly with State and local governments to design methods for conducting the evaluations, directly or by grant, contract, or cooperative agreement.

(2) Funding of evaluations

The Secretary shall reserve 1.5 percent of the amount specified in subsection (h) of this section for a fiscal year to carry out, during the fiscal year, evaluation, technical assistance, performance measurement, and data collection activities related to this section, directly or through grants, contracts, or cooperative agreements with appropriate entities.

(h) Limitations on authorization of appropriations

To carry out this section and for payments to States under section 674(a)(4) of this title, there are authorized to be appropriated to the Secretary for each fiscal year—

(1) $140,000,000, which shall be available for all purposes under this section; and
(2) an additional $60,000,000, which are authorized to be available for payments to States for education and training vouchers for youths who, after attaining 16 years of age, are adopted from, or enter kinship guardianship from, foster care may be considered to be youths otherwise eligible for services under the State program under this section.

(3) The State may allow youths participating in the voucher program on the date they attain 21 years of age to remain eligible until they attain 23 years of age, as long as they are enrolled in a postsecondary education or training program and are making satisfactory progress toward completion of that program.

(4) The voucher or vouchers provided for an individual under this section—

(A) may be available for the cost of attendance at an institution of higher education, as defined in section 1002 of title 20; and
(B) shall not exceed the lesser of $5,000 per year or the total cost of attendance, as defined in section 1087f of title 20.

(5) The amount of a voucher under this section may be disregarded for purposes of determining the recipient’s eligibility for, or the amount of, any other Federal or Federally supported assistance, except that the total amount of educational assistance to a youth under this section and under other Federal and Federally supported programs shall not exceed the total cost of attendance, as defined in section 1087f of title 20, and except that the State agency shall take appropriate steps to prevent duplication of benefits under this and other Federal or Federally supported programs.

(6) The program is coordinated with other appropriate education and training programs.

(j) Authority for an Indian tribe, tribal organization, or tribal consortium to receive an allotment

(1) In general

An Indian tribe, tribal organization, or tribal consortium with a plan approved under section 679c of this title, or which is receiving funding to provide foster care under this part pursuant to a cooperative agreement or contract with a State, may apply for an allotment out of any funds authorized by paragraph (1) or (2) (or both) of subsection (h) of this section.

(2) Application

A tribe, organization, or consortium desiring an allotment under paragraph (1) of this subsection shall submit an application to the Secretary to directly receive such allotment that includes a plan which—

(A) satisfies such requirements of paragraphs (2) and (3) of subsection (b) as the Secretary determines are appropriate;
(B) contains a description of the tribe’s, organization’s, or consortium’s consultation process regarding the programs to be carried out under the plan with each State for which a portion of an allotment under subsection (c) would be redirected to the tribe, organization, or consortium; and
(C) contains an explanation of the results of such consultation, particularly with respect to—

(i) determining the eligibility for benefits and services of Indian children to be...
served under the programs to be carried out under the plan; and
(ii) the process for consulting with the State in order to ensure the continuity of benefits and services for such children who will transition from receiving benefits and services under programs carried out under a State plan under subsection (b)(2) to receiving benefits and services under programs carried out under a plan under this subsection.

(3) Payments
The Secretary shall pay an Indian tribe, tribal organization, or tribal consortium with an application and plan approved under this subsection from the allotment determined for the tribe, organization, or consortium under paragraph (4) of this subsection in the most recent fiscal year for any fiscal year for which the information is available; to the tribe, organization, or consortium with respect to a State, or in such other manner as is determined appropriate by the Secretary, except that in no case shall an Indian tribe, tribal organization, or tribal consortium receive a lesser proportion of such funds than a State is authorized to receive under those sections.

(4) Allotment
From the amounts allotted to a State under section (c) of this section for a fiscal year, the Secretary shall allot to each Indian tribe, tribal organization, or tribal consortium with an application and plan approved under this subsection for that fiscal year an amount equal to the tribal foster care ratio determined under paragraph (5) of this subsection for the tribe, organization, or consortium multiplied by the allotment amount of the State within which the tribe, organization, or consortium is located. The allotment determined under this paragraph is deemed to be a part of the allotment under subsection (j)(4) for a fiscal year and that requests to develop an agreement with the State to administer, supervise, or oversee the programs to be carried out under the plan with respect to the Indian children who are eligible for such programs and who are under the authority of the tribe, organization, or consortium and to receive from the State an appropriate portion of the State allotment under subsection (j)(4) for a fiscal year and oversight “before period at end.

(5) Tribal foster care ratio
For purposes of paragraph (4), the tribal foster care ratio means, with respect to an Indian tribe, tribal organization, or tribal consortium, the ratio of—

(A) the number of children in foster care under the responsibility of the Indian tribe, tribal organization, or tribal consortium (either directly or under supervision of the State), in the most recent fiscal year for which the information is available; to

(B) the sum of—

(i) the total number of children in foster care under the responsibility of the State within which the Indian tribe, tribal organization, or tribal consortium is located; and

(ii) the total number of children in foster care under the responsibility of all Indian tribes, tribal organizations, or tribal consortia in the State (either directly or under supervision of the State) that have a plan approved under this subsection.

References to Indian tribes, tribal organizations, and tribal consortia are adjusted in accordance with paragraph (2).

Payments from the amounts allotted to a State under subsection (b)(3) of this section for a fiscal year, for the cost of such administration, supervision, or oversight with respect to a State, or in such other manner as is determined appropriate by the Secretary, except that in no case shall an Indian tribe, tribal organization, or tribal consortium receive a lesser proportion of such funds than a State is authorized to receive under those sections.

Amendments
Subsec. (b)(3)(G). Pub. L. 110–351, § 301(c)(1)(B), substituted “tribes” that for “tribes; and that” and inserted “; and that the State will negotiate in good faith with any Indian tribe, tribal organization, or tribal consortium in the State that does not receive an allotment under subsection (j)(4) for a fiscal year and that requests to develop an agreement with the State to administer, supervise, or oversee the programs to be carried out under the plan with respect to the Indian children who are eligible for such programs and who are under the authority of the tribe, organization, or consortium and to receive from the State an appropriate portion of the State allotment under subsection (c) for the cost of such administration, supervision, or oversight” before period at end.
Subsec. (j)(2). Pub. L. 110–351, § 301(e)(2), substituted “who, after attaining 16 years of age, are adopted from, or enter kinship guardianship from, foster care” for “adopted from foster care after attaining age 16.”
Subsec. (c)(1). Pub. L. 107–133, § 201(e)(1), in heading substituted “General program allotment’’ for “In general’’ and in text substituted “From the amount specified in subsection (h)(1)” for “From the amount specified in subsection (b)(1)” “which bears the ratio” for “which bears the same ratio”, and “equal to the State foster care ratio, as adjusted in accordance with paragraph (2)” for “as the number of children in foster care under a program of the State in the most recent fiscal year for which such information is available bears to the total number of children in foster care in all States for such most recent fiscal year, as adjusted in accordance with paragraph (2).”
Subsec. (c)(3). (4). Pub. L. 107–133, § 201(e)(2), added pars. (3) and (4).
Subsec. (h). Pub. L. 107–133, § 201(d), substituted “are authorized to be appropriated to the Sec-
retary for each fiscal year—" and pars. (1) and (2) for "there are authorized to be appropriated to the Secretary $140,000,000,000 for each fiscal year.""

Subsec. (i). Pub. L. 103–133, § 201(b), added subsec. (i). 1999—Pub. L. 106–169 amended section generally, substituting present provisions for provisions which had authorized payments to States and localities for establishment of programs designed to assist children who have attained age 16 in making transition from foster care to independent living, and set forth provisions relating to administration of programs, assurances, types of programs, amounts of entitlement, and provisions requiring annual report and promulgation of regulations.

1997—Subsec. (a)(2)(A). Pub. L. 105–89 inserted before comma at end "(including children with respect to whom such payments are no longer being made because the child has accumulated assets, not to exceed $5,000, which are thereafter regarded as resources for purposes of determining eligibility for benefits under this part)".


1990—Subsec. (a)(2)(C). Pub. L. 101–508 inserted “who has not attained age 21” after "also include any child" and struck out before semicolon "but such child may not be so included after the end of the 6-month period beginning on the date of discontinuance of such payments or care”.


Subsec. (e)(1). Pub. L. 101–239, § 8002(a)(2), substituted “the basic ceiling for such fiscal year” for “$45,000,000”, and added subpars. (B) and (C).


1988—Subsec. (a)(1). Pub. L. 101–239, § 8002(a)(1), substituted “through 1992” for “1987 and 1988”. Subsec. (a)(2)(C). Pub. L. 100–647, § 8104(a)(1), designated existing provisions as subpar. (C), substituted “children described in paragraph (2) who have attained age 16” for “children, with respect to whom foster care maintenance payments are being made by the State under this part and who have attained age 16,” and added par. (2).


Subsec. (e)(3). Pub. L. 100–647, § 8104(f), inserted at end “Amounts payable under this section may not be used for the provision of room or board.”

Subsec. (f). Pub. L. 100–647, § 8104(b), inserted at end “Notwithstanding paragraph (3), payments made to a State under this section for the fiscal year 1987 and unobligated may be expended by such State in the fiscal year 1988.”

Subsec. (g)(1). Pub. L. 100–647, § 8104(a)(3), (4), substituted “Not later than the first January 1 following the end of each fiscal year, each State shall submit to the Secretary a report on the programs carried out during such fiscal year” for “Not later than March 1, 1988, each State shall submit to the Secretary a report on the programs carried out”.

Subsec. (g)(2). Pub. L. 100–647, § 8104(a)(5), (6), substituted “(A) Not later than July 1, 1988, the Secretary shall submit an interim report on the activities carried out under this section.”


**Effective Date of 2010 Amendment**


**Effective Date of 2008 Amendment**

Amendment by section 301(b), (c)(1)(B) of Pub. L. 110–351 effective Oct. 7, 2008, except as otherwise provided, and applicable to payments under this part and part B of this subchapter for quarters beginning on or after effective date of amendment, with delay permitted if State legislation is required to meet additional requirements, see section 601 of Pub. L. 110–351, set out as a note under section 671 of this title.

**Effective Date of 2002 Amendment**


**Effective Date of 1997 Amendment**


**Effective Date of 1993 Amendment**

Section 13714(b) of Pub. L. 103–66 provided that: “The amendments made by subsection (a) [amending this section] shall apply to activities engaged in, on, or after October 1, 1992.”

**Effective Date of 1990 Amendment**

Amendment by Pub. L. 101–239 effective Oct. 1, 1989, except as otherwise provided, and applicable to payments made under part E of title IV of the Social Security Act [part E of this subchapter] for fiscal years beginning in or after fiscal year 1991.”

**Effective Date of 1988 Amendment**


**Effective Date of 1986 Amendment**

REGULATIONS

Pub. L. 106–169, title I, §101(d), Dec. 14, 1999, 113 Stat. 1823, provided that: “Not later than 12 months after the date of the enactment of this Act [Dec. 14, 1999], the Secretary of Health and Human Services shall issue such regulations as may be necessary to carry out the amendments made by this section [amending this section and section 674 of this title].”

CONSTRUCTION OF 2008 AMENDMENT

For construction of amendment by section 301(b), (c)(1)(B) of Pub. L. 110–351, see section 301(d) of Pub. L. 110–351, set out as a note under section 671 of this title.

TEMPORARY EXTENSION OF AVAILABILITY OF FUNDING FOR INDEPENDENT LIVING


FINDINGS


“(1) States are required to make reasonable efforts to find adoptive families for all children, including older children, for whom reunification with their biological family is not in the best interests of the child. However, some older children will continue to live in foster care. These children should be enrolled in an Independent Living program designed and conducted by State and local government to help prepare them for employment, postsecondary education, and successful management of adult responsibilities.

“(2) Older children who continue to be in foster care as adolescents may become eligible for Independent Living programs. These Independent Living programs are not an alternative to adoption for these children. Enrollment in Independent Living programs can occur concurrent with continued efforts to locate and achieve placement in adoptive families for older children in foster care.

“(3) About 20,000 adolescents leave the Nation’s foster care system each year because they have reached 18 years of age and are expected to support themselves.

“(4) Congress has received extensive information that adolescents leaving foster care have significant difficulty making a successful transition to adulthood; this information shows that children aging out of foster care show high rates of homelessness, non-marital childbearing, poverty, and delinquent or criminal behavior; they are also frequently the target of crime and physical assaults.

“(5) The Nation’s State and local governments, with financial support from the Federal Government, should offer an extensive program of education, training, employment, and financial support for young adults leaving foster care, with participation in such program beginning several years before high school graduation and continuing, as needed, until the young adults emancipated from foster care establish independence or reach 21 years of age.”

STUDY AND REPORT EVALUATING EFFECTIVENESS OF PROGRAMS

Section 8002(d) of Pub. L. 101–239 provided that:

“(1) STUDY.—The Secretary of Health and Human Services shall study the programs authorized under section 477 of the Social Security Act [this section] for the purposes of evaluating the effectiveness of the programs. The study shall include a comparison of outcomes of children who participated in the programs and a comparable group of children who did not participate in the programs.

“(2) REPORT.—Upon completion of the study, the Secretary shall issue a report to the Committee on Func-

§678. Rule of construction

Nothing in this part shall be construed as precluding State courts from exercising their discretion to protect the health and safety of children in individual cases, including cases other than those described in section 671(a)(15)(D) of this title.


PRIOR PROVISIONS


EFFECTIVE DATE

Section effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as an Effective Date of 1997 Amendments note under section 622 of this title.

§679. Collection of data relating to adoption and foster care

(a) Advisory Committee on Adoption and Foster Care Information

(1) Not later than 90 days after October 21, 1986, the Secretary shall establish an Advisory Committee on Adoption and Foster Care Information (in this section referred to as the “Advisory Committee”) to study the various methods of establishing, administering, and financing a system for the collection of data with respect to adoption and foster care in the United States.

(2) The study required by paragraph (1) shall—

(A) identify the types of data necessary to—

(i) assess (on a continuing basis) the incidence, characteristics, and status of adoption and foster care in the United States, and

(ii) develop appropriate national policies with respect to adoption and foster care;

(B) evaluate the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies;

(C) assess the validity of various methods of collecting data with respect to adoption and foster care; and

(D) evaluate the financial and administrative impact of implementing each such method.

(3) Not later than October 1, 1987, the Advisory Committee shall submit to the Secretary and the Congress a report setting forth the results of the study required by paragraph (1) and evaluating and making recommendations with respect to the various methods of establishing, administering, and financing a system for the collec-
tion of data with respect to adoption and foster care in the United States.

(4)(A) Subject to subparagraph (B), the membership and organization of the Advisory Committee shall be determined by the Secretary.

(B) The membership of the Advisory Committee shall include representatives of—

(i) private, nonprofit organizations with an interest in child welfare (including organizations that provide foster care and adoption services),

(ii) organizations representing State and local governmental agencies with responsibility for foster care and adoption services,

(iii) organizations representing State and local governmental agencies with responsibility for the collection of health and social statistics,

(iv) organizations representing State and local judicial bodies with jurisdiction over family law,

(v) Federal agencies responsible for the collection of health and social statistics, and

(vi) organizations and agencies involved with privately arranged or international adoptions.

(5) After the date of the submission of the report required by paragraph (3), the Advisory Committee shall cease to exist.

(b) Report to Congress; regulations

(1)(A) Not later than July 1, 1988, the Secretary shall submit to the Congress a report that—

(i) proposes a method of establishing, administering, and financing a system for the collection of data relating to adoption and foster care in the United States,

(ii) evaluates the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies, and

(iii) evaluates the impact of the system proposed under clause (i) on the agencies with responsibility for implementing it.

(B) The report required by subparagraph (A) shall—

(i) specify any changes in law that will be necessary to implement the system proposed under subparagraph (A)(i), and

(ii) describe the type of system that will be implemented under paragraph (2) in the absence of such changes.

(2) Not later than December 31, 1988, the Secretary shall promulgate final regulations providing for the implementation of—

(A) the system proposed under paragraph (1)(A)(i), or

(B) if the changes in law specified pursuant to paragraph (1)(B)(i) have not been enacted, the system described in paragraph (1)(B)(ii).

Such regulations shall provide for the full implementation of the system not later than October 1, 1991.

(c) Data collection system

Any data collection system developed and implemented under this section shall—

(1) avoid unnecessary diversion of resources from agencies responsible for adoption and foster care;

(2) assure that any data that is collected is reliable and consistent over time and among jurisdictions through the use of uniform definitions and methodologies;

(3) provide comprehensive national information with respect to—

(A) the demographic characteristics of adoptive and foster children and their biological and adoptive or foster parents,

(B) the status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care),

(C) the number and characteristics of—

(i) children placed in or removed from foster care,

(ii) children adopted or with respect to whom adoptions have been terminated, and

(iii) children placed in foster care outside the State which has placement and care responsibility, and

(D) the extent and nature of assistance provided by Federal, State, and local adoption and foster care programs and the characteristics of the children with respect to whom such assistance is provided; and

(4) utilize appropriate requirements and incentives to ensure that the system functions reliably throughout the United States.


AMENDMENTS


Effective Date of 1994 Amendment
Amendment by Pub. L. 103–432 effective with respect to fiscal years beginning on or after Oct. 1, 1995, see section 209(d) of Pub. L. 103–432, set out as a note under section 675 of this title.

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

§ 679a. National Adoption Information Clearinghouse

The Secretary of Health and Human Services shall establish, either directly or by grant or contract, a National Adoption Information Clearinghouse. The Clearinghouse shall—

(1) collect, compile, and maintain information obtained from available research, studies, and reports by public and private agencies, in-
stitions, or individuals concerning all aspects of infant adoption and adoption of children with special needs;
(2) compile, maintain, and periodically revise directories of information concerning—
(A) crisis pregnancy centers;
(B) shelters and residences for pregnant women,
(C) training programs on adoption,
(D) educational programs on adoption,
(E) licensed adoption agencies,
(F) State laws relating to adoption,
(G) intercountry adoption, and
(H) any other information relating to adoption for pregnant women, infertile couples, adoptive parents, unmarried individuals who want to adopt children, individuals who have been adopted, birth parents who have placed a child for adoption, adoption agencies, social workers, counselors, or other individuals who work in the adoption field;
(3) disseminate the information compiled and maintained pursuant to paragraph (1) and the directories compiled and maintained pursuant to paragraph (2); and
(4) upon the establishment of an adoption and foster care data collection system pursuant to section 679 of this title, disseminate the data and information made available through that system.

CODIFICATION
Section was enacted as part of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 and also as part of the Omnibus Budget Reconciliation Act of 1986, and not as part of the Social Security Act which comprises this chapter.

§679b. Annual report
The Secretary, in consultation with Governors, State legislatures, State and local public officials responsible for administering child welfare programs, and child welfare advocates, shall—
(1) develop a set of outcome measures (including length of stay in foster care, number of foster care placements, and number of adoptions) that can be used to assess the performance of States in operating child protection and child welfare programs pursuant to part B of this subchapter and this part to ensure the safety of children;
(2) to the maximum extent possible, the outcome measures should be developed from data available from the Adoption and Foster Care Analysis and Reporting System;
(3) develop a system for rating the performance of States with respect to the outcome measures, and provide to the States an explanation of the rating system and how scores are determined under the rating system;
(4) prescribe such regulations as may be necessary to ensure that States provide to the Secretary the data necessary to determine State performance with respect to each outcome measure, as a condition of the State receiving funds under this part;
(5) on May 1, 1999, and annually thereafter, prepare and submit to the Congress a report on the performance of each State on each outcome measure, which shall examine the reasons for high performance and low performance and, where possible, make recommendations as to how State performance could be improved; and
(6) include in the report submitted pursuant to paragraph (5) for fiscal year 2007 or any succeeding fiscal year, State-by-State data on—
(A) the percentage of children in foster care under the responsibility of the State who were visited on a monthly basis by the caseworker handling the case of the child;
(B) the total number of visits made by caseworkers on a monthly basis to children in foster care under the responsibility of the State during a fiscal year as a percentage of the total number of the visits that would occur during the fiscal year if each child were so visited once every month while in such care; and
(C) the percentage of the visits that occurred in the residence of the child.

AMENDMENTS
2011—Par. (6)(B), (C). Pub. L. 112–34 added subpar. (B) and redesignated former subpar. (B) as (C).

EFFECTIVE DATE OF 2011 AMENDMENT
Amendment by Pub. L. 112–34 effective Oct. 1, 2011, and applicable to payments under this part and part B of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 107 of Pub. L. 112–34, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT
Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under this part and part B of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE
Section effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as an Effective Date of 1997 Amendments note under section 622 of this title.

DEVELOPMENT OF PERFORMANCE-BASED INCENTIVE SYSTEM
Section 203(b) of Pub. L. 105–89 provided that: ‘‘The Secretary of Health and Human Services, in consultation with State and local public officials responsible for administering child welfare programs and child welfare advocates, shall study, develop, and recommend to Congress an incentive system to provide payments under parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq., 670 et seq.) to any State based on the State’s performance under such a system. Such a sys-
§ 679c. Programs operated by Indian tribal organizations

(a) Definitions of Indian tribe; tribal organizations
In this section, the terms “Indian tribe” and “tribal organization” have the meanings given those terms in section 450b of title 25.

(b) Authority
Except as otherwise provided in this section, this part applies to a State to an Indian tribe, tribal organization, or tribal consortium that elects to operate a program under this part and has a plan approved under section 671 of this title in accordance with this section.

(c) Plan requirements

(1) In general
An Indian tribe, tribal organization, or tribal consortium that elects to operate a program under this part shall include with its plan submitted under section 671 of this title the following:

(A) Financial management
Evidence demonstrating that the tribe, organization, or consortium has not had any uncorrected significant or material audit exceptions under Federal grants or contracts that directly relate to the administration of social services for the 3-year period prior to the date on which the plan is submitted.

(B) Service areas and populations
For purposes of complying with section 671(a)(3) of this title, a description of the service area or areas and populations to be served under the plan and an assurance that the plan shall be in effect in all service area or areas and for all populations served by the tribe, organization, or consortium.

(C) Eligibility

(i) In general
Subject to clause (ii) of this subparagraph, an assurance that the plan will provide—

(I) foster care maintenance payments under section 672 of this title only on behalf of children who satisfy the eligibility requirements of section 672(a) of this title;

(II) adoption assistance payments under section 673 of this title pursuant to adoption assistance agreements only on behalf of children who satisfy the eligibility requirements for such payments under that section; and

(iii) at the option of the tribe, organization, or consortium, kinship guardianship assistance payments in accordance with section 673(d) of this title only on behalf of children who meet the requirements of section 673(d)(3) of this title.

(ii) Satisfaction of foster care eligibility requirements
For purposes of determining whether a child whose placement and care are the responsibility of an Indian tribe, tribal organization, or tribal consortium with a plan approved under section 671 of this title in accordance with this section satisfies the requirements of section 672(a) of this title, the following shall apply:

(I) Use of affidavits, etc.
Only with respect to the first 12 months for which such plan is in effect, the requirement in paragraph (1) of section 672(a) of this title shall not be interpreted so as to prohibit the use of affidavits or nunc pro tunc orders as verification documents in support of the reasonable efforts and contrary to the welfare of the child judicial determinations required under that paragraph.

(II) AFDC eligibility requirement
The State plan approved under section 602 of this title (as in effect on July 16, 1996) of the State in which the child resides at the time of removal from the home shall apply to the determination of whether the child satisfies section 672(a)(3) of this title.

(D) Option to claim in-kind expenditures from third-party sources for non-Federal share of administrative and training costs during initial implementation period

Only for fiscal year quarters beginning after September 30, 2009, and before October 1, 2014, a list of the in-kind expenditures (which shall be fairly evaluated, and may include plants, equipment, administration, or services) and the third-party sources of such expenditures that the tribe, organization, or consortium may claim as part of the non-Federal share of administrative or training expenditures attributable to such quarters for purposes of receiving payments under section 674(a)(3) of this title. The Secretary shall permit a tribe, organization, or consortium to claim in-kind expenditures from third party sources for such purposes during such quarters subject to the following:

(i) No effect on authority for tribes, organizations, or consortia to claim expenditures or indirect costs to the same extent as States
Nothing in this subparagraph shall be construed as preventing a tribe, organiza-
tion, or consortium from claiming any expenditures or indirect costs for purposes of receiving payments under section 674(a) of this title that a State with a plan approved under section 671(a) of this title could claim for such purposes.

(ii) Fiscal year 2010 or 2011

(I) Expenditures other than for training

With respect to amounts expended during a fiscal year quarter beginning after September 30, 2009, and before October 1, 2011, for which the tribe, organization, or consortium is eligible for payments under subparagraph (C), (D), or (E) of section 674(a)(3) of this title, not more than 25 percent of such amounts may consist of in-kind expenditures from third-party sources specified in the list required under this subparagraph to be submitted with the plan.

(II) Training expenditures

With respect to amounts expended during a fiscal year quarter beginning after September 30, 2009, and before October 1, 2011, for which the tribe, organization, or consortium is eligible for payments under subparagraph (A) or (B) of section 674(a)(3) of this title, not more than 12 percent of such amounts may consist of in-kind expenditures from third-party sources that are specified in such list and described in subclause (III).

(III) Sources described

For purposes of subclause (II), the sources described in this subclause are the following:

(aa) A State or local government.
(bb) An Indian tribe, tribal organization, or tribal consortium other than the tribe, organization, or consortium submitting the plan.
(cc) A public institution of higher education.
(dd) A Tribal College or University (as defined in section 1609c of title 20).
(ee) A private charitable organization.

(iii) Fiscal year 2012, 2013, or 2014

(I) In general

Except as provided in subclause (II) of this clause and clause (v) of this subparagraph, with respect to amounts expended during any fiscal year quarter beginning after September 30, 2011, and before October 1, 2014, for which the tribe, organization, or consortium is eligible for payments under any subparagraph of section 674(a)(3) of this title, the only in-kind expenditures from third-party sources that may be claimed by the tribe, organization, or consortium for purposes of determining the non-Federal share of such expenditures (without regard to whether the expenditures are specified on the list required under this subparagraph to be submitted with the plan) are in-kind expenditures that are specified in regulations promulgated by the Secretary under section 301(e)(2) of the Fostering Connections to Success and Increasing Adoptions Act of 2008 and are from an applicable third-party source specified in such regulations, and do not exceed the applicable percentage for claiming such in-kind expenditures specified in the regulations.

(II) Transition period for early approved tribes, organizations, or consortia

Subject to clause (v), if the tribe, organization, or consortium is an early approved tribe, organization, or consortium (as defined in subclause (II) of this clause), the Secretary shall not require the tribe, organization, or consortium to comply with such regulations before October 1, 2013. Until the earlier of the date such tribe, organization, or consortium comes into compliance with such regulations or October 1, 2013, the limitations on the claiming of in-kind expenditures from third-party sources under clause (ii) shall continue to apply to such tribe, organization, or consortium (without regard to fiscal limitation) for purposes of determining the non-Federal share of amounts expended by the tribe, organization, or consortium during any fiscal year quarter that begins after September 30, 2011, and before such date of compliance or October 1, 2013, whichever is earlier.

(III) Definition of early approved tribe, organization, or consortium

For purposes of subclause (II) of this clause, the term “early approved tribe, organization, or consortium” means an Indian tribe, tribal organization, or tribal consortium that had a plan approved under section 671 of this title in accordance with this section for any quarter of fiscal year 2010 or 2011.

(iv) Fiscal year 2015 and thereafter

Subject to clause (v) of this subparagraph, with respect to amounts expended during any fiscal year quarter beginning after September 30, 2014, for which the tribe, organization, or consortium is eligible for payments under any subparagraph of section 674(a)(3) of this title, in-kind expenditures from third-party sources may be claimed for purposes of determining the non-Federal share of expenditures under any subparagraph of such section 674(a)(3) only in accordance with the regulations promulgated by the Secretary under section 301(e)(2) of the Fostering Connections to Success and Increasing Adoptions Act of 2008.

(v) Contingency rule

If, at the time expenditures are made for a fiscal year quarter beginning after September 30, 2011, and before October 1, 2014, for which a tribe, organization, or consortium may receive payments for 1 under sec-

1 So in original.
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tion 674(a)(3) of this title, no regulations required to be promulgated under section 301(e)(2) of the Fostering Connections to Success and Increasing Adoptions Act of 2008 are in effect, and no legislation has been enacted specifying otherwise—

(I) in the case of any quarter of fiscal year 2012, 2013, or 2014, the limitations on claiming in-kind expenditures from third-party sources under clause (ii) of this subparagraph shall apply (without regard to fiscal limitation) for purposes of determining the non-Federal share of such expenditures; and

(II) in the case of any quarter of fiscal year 2015 or any fiscal year thereafter, no tribe, organization, or consortium may claim in-kind expenditures from third-party sources for purposes of determining the non-Federal share of such expenditures if a State with a plan approved under section 671(a) of this title could not claim in-kind expenditures from third-party sources for such purposes.

(2) Clarification of tribal authority to establish standards for tribal foster family homes and tribal child care institutions

For purposes of complying with section 671(a)(10) of this title, an Indian tribe, tribal organization, or tribal consortium shall establish and maintain a tribal authority or authorities which shall be responsible for establishing and maintaining tribal standards for tribal foster family homes and tribal child care institutions.

(3) Consortium

The participating Indian tribes or tribal organizations of a tribal consortium may develop and submit a single plan under section 671 of this title that meets the requirements of this section.

(d) Determination of Federal medical assistance percentage for foster care maintenance and adoption assistance payments

(1) Per capita income

For purposes of determining the Federal medical assistance percentage applicable to an Indian tribe, a tribal organization, or a tribal consortium under paragraphs (1), (2), and (5) of section 674(a) of this title, the calculation of the per capita income of the Indian tribe, tribal organization, or tribal consortium shall be based upon the service population of the Indian tribe, tribal organization, or tribal consortium, except that in no case shall an Indian tribe, a tribal organization, or a tribal consortium receive less than the Federal medical assistance percentage for any State in which the tribe, organization, or consortium is located.

(2) Consideration of other information

Before making a calculation under paragraph (1), the Secretary shall consider any information submitted by an Indian tribe, a tribal organization, or a tribal consortium that the Indian tribe, tribal organization, or tribal consortium considers relevant to making the calculation of the per capita income of the Indian tribe, tribal organization, or tribal consortium.

(e) Nonapplication to cooperative agreements and contracts

Any cooperative agreement or contract entered into between an Indian tribe, a tribal organization, or a tribal consortium and a State for the administration or payment of funds under this part that is in effect as of October 7, 2008, shall remain in full force and effect, subject to the right of either party to the agreement or contract to revoke or modify the agreement or contract pursuant to the terms of the agreement or contract. Nothing in this section shall be construed as affecting the authority for an Indian tribe, a tribal organization, or a tribal consortium and a State to enter into a cooperative agreement or contract for the administration or payment of funds under this part.

(f) John H. Chafee Foster Care Independence Program

Except as provided in section 677(j) of this title, subsection (b) of this section shall not apply with respect to the John H. Chafee Foster Care Independence Program established under section 677 of this title (or with respect to payments made under section 674(a)(4) of this title or grants made under section 674(e) of this title).

(g) Rule of construction

Nothing in this section shall be construed as affecting the application of section 672(h) of this title to a child on whose behalf payments are paid under section 672 of this title, or the application of section 673(b) of this title to a child on whose behalf payments are made under section 673 of this title pursuant to an adoption assistance agreement or a kinship guardianship assistance agreement, by an Indian tribe, tribal organization, or tribal consortium that elects to operate a foster care and adoption assistance program in accordance with this section.


REFERENCES IN TEXT

Section 301(e)(2) of the Fostering Connections to Success and Increasing Adoptions Act of 2008, referred to in subsec. (c)(1)(D)(iii)(I), (iv), (v), is section 301(e)(2) of Pub. L. 110–351, which is set out as a note under section 671 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 2009, without regard to whether implementing regulations have been promulgated, see section 301(d) of Pub. L. 110–351, set out as an Effective Date of 2008 Amendment note under section 671 of this title.

Enactment of this section effective Oct. 7, 2008, except as otherwise provided, and applicable to payments under this part and part B of this subchapter for quarters beginning on or after effective date of enactment, with delay permitted if State legislation is required to meet additional requirements, see section 601 of Pub. L. 110–351, set out as an Effective Date of 2008 Amendment note under section 671 of this title.

CONSTRUCTION

For construction of section, see section 301(d) of Pub. L. 110–351, set out as a Construction of 2008 Amendment note under section 671 of this title.
PART F—JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM


Effective Date of Repeal

Repeal effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

SUBCHAPTER V—MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT

AMENDMENTS


§ 701. Authorization of appropriations; purposes; definitions

(a) To improve the health of all mothers and children consistent with the applicable health status goals and national health objectives established by the Secretary under the Public Health Service Act [42 U.S.C. 201 et seq.] for the year 2000, there are authorized to be appropriated $850,000,000 for fiscal year 2001 and each fiscal year thereafter—

(1) for the purpose of enabling each State—

(A) to provide and to assure mothers and children (in particular those with low income or with limited availability of health services) access to quality maternal and child health services;

(B) to reduce infant mortality and the incidence of preventable diseases and handicapping conditions among children, to reduce the need for inpatient and long-term care services, to increase the number of children (especially preschool children) appropriately immunized against disease and the number of low income children receiving health assessments and follow-up diagnostic and treatment services, and otherwise to promote the health of mothers and infants by providing prenatal, delivery, and postpartum care for low income, at-risk pregnant women, and to promote the health of children by providing preventive and primary care services for low income children;

(C) to provide rehabilitation services for blind and disabled individuals under the age of 18 receiving benefits under subchapter XVI of this chapter, to the extent medical assistance for such services is not provided under subchapter XIX of this chapter; and

(D) to provide and to promote family-centered, community-based, coordinated care (including care coordination services, as defined in subsection (b)(3) of this section) for children with special health care needs and to facilitate the development of community-based systems of services for such children and their families;

(2) for the purpose of enabling the Secretary (through grants, contracts, or otherwise) to provide for special projects of regional and national significance, research, and training with respect to maternal and child health and children with special health care needs (including early intervention training and services development), for genetic disease testing, counseling, and information development and dissemination programs, for grants (including funding for comprehensive hemophilia diagnostic treatment centers) relating to hemophilia without regard to age, and for the screening of newborns for sickle cell anemia, and other genetic disorders and follow-up services; and

(3) subject to section 702(b) of this title for the purpose of enabling the Secretary (through grants, contracts, or otherwise) to provide for developing and expanding the following:

(A) maternal and infant health home visiting programs in which case management services as defined in subparagraphs (A) and (B) of subsection (b)(4) of this section, health education services, and related social support services are provided in the home to pregnant women or families with an infant up to the age one by an appropriate health professional or by a qualified nonprofessional acting under the supervision of a health care professional.

(B) projects designed to increase the participation of obstetricians and pediatricians under the program under this subchapter and under state plans approved under subchapter XIX of this chapter.

(C) integrated maternal and child health service delivery systems (of the type described in section 1320b–6 of this title and

1 So in original. Probably should be capitalized.

2 See References in Text note below.
using, once developed, the model application form developed under section 6506(a) of the Omnibus Budget Reconciliation Act of 1989),
(D) maternal and child health centers which (i) provide prenatal, delivery, and postpartum care for pregnant women and preventive and primary care services for infants up to age one, and (ii) operate under the direction of a not-for-profit hospital,
(E) maternal and child health projects to serve rural populations, and
(F) outpatient and community based services programs (including day care services) for children with special health care needs whose medical services are provided primarily through inpatient institutional care.
Funds appropriated under this section may only be used in a manner consistent with the Assisted Suicide Funding Restriction Act of 1997 [42 U.S.C. 14401 et seq.].
(b) For purposes of this subchapter:
(1) The term “consolidated health programs” means the programs administered under the provisions of—
(A) this subchapter (relating to maternal and child health and services for children with special health care needs),
(B) section 1382d(c) of this title (relating to supplemental security income for disabled children),
(C) sections 247a of this title (relating to lead-based paint poisoning prevention programs), 300b of this title (relating to genetic disease programs), 300c–11 of this title (relating to sudden infant death syndrome programs) and 300c–21 of this title (relating to hemophilia treatment centers), and
(D) title VI of the Health Services and Centers Amendments of 1978 (Public Law 95-626; relating to adolescent pregnancy grants),
as such provisions were in effect before August 13, 1981.
(2) The term “low income” means, with respect to an individual or family, such an individual or family with an income determined to be below the income official poverty line defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of this title.
(3) The term “care coordination services” means services to promote the effective and efficient organization and utilization of resources to assure access to necessary comprehensive services for children with special health care needs and their families.
(4) The term “case management services” means—
(A) with respect to pregnant women, services to assure access to quality prenatal, delivery, and postpartum care; and
(B) with respect to infants up to age one, services to assure access to quality preventive and primary care services.
(c)(1)(A) For the purpose of enabling the Secretary (through grants, contracts, or otherwise) to provide for special projects of regional and national significance for the development and support of family-to-family health information centers described in paragraph (2), there is appropriated to the Secretary, out of any money in the Treasury not otherwise appropriated—
(i) $3,000,000 for fiscal year 2007;
(ii) $4,000,000 for fiscal year 2008; and
(iii) $5,000,000 for each of fiscal years 2009 through 2012.
(B) Funds appropriated or authorized to be appropriated under subparagraph (A) shall—
(i) be in addition to amounts appropriated under subsection (a) and retained under section 702(a)(1) of this title for the purpose of carrying out activities described in subsection (a)(2); and
(ii) remain available until expended.
(2) The family-to-family health information centers described in this paragraph are centers that—
(A) assist families of children with disabilities or special health care needs to make informed choices about health care in order to promote good treatment decisions, cost-effectiveness, and improved health outcomes for such children;
(B) provide information regarding the health care needs of, and resources available for, such children;
(C) identify successful health delivery models for such children;
(D) develop with representatives of health care providers, managed care organizations, health care purchasers, and appropriate State agencies, a model for collaboration between families of such children and health professionals;
(E) provide training and guidance regarding caring for such children;
(F) conduct outreach activities to the families of such children, health professionals, schools, and other appropriate entities and individuals; and
(G) are staffed—
(i) by such families who have expertise in Federal and State public and private health care systems; and
(ii) by health professionals.
(3) The Secretary shall develop family-to-family health information centers described in paragraph (2) in accordance with the following:
(A) With respect to fiscal year 2007, such centers shall be developed in not less than 25 States.
(B) With respect to fiscal year 2008, such centers shall be developed in not less than 40 States.
(C) With respect to fiscal year 2009 and each fiscal year thereafter, such centers shall be developed in all States.
(4) The provisions of this subchapter that are applicable to the funds made available to the Secretary under section 702(a)(1) of this title apply in the same manner to funds made available to the Secretary under paragraph (1)(A).
(5) For purposes of this subsection, the term “State” means each of the 50 States and the District of Columbia.
The Public Health Service Act, referred to in this section, was enacted by Pub. L. 90–248, § 301, and authorized appropriations, for amendment of title V of the Social Security Act by Pub. L. 90–248, § 301.

Amendments


1989—Subsec. (a). Pub. L. 101–239, § 6501(a)(1), amended subsec. (a) generally, substituting pars. (1) to (3) for former pars. (1) to (4) and concluding provisions.


1987—Subsec. (b)(2). Pub. L. 100–203 struck out “nonform” after “below the”.

1986—Subsec. (a). Pub. L. 99–509 substituted “$555,000,000 for fiscal year 1987, $557,000,000 for fiscal year 1988, and $561,000,000 for fiscal year 1989” for “$475,000,000 for fiscal year 1984” in concluding provisions.

1984—Subsec. (a). Pub. L. 98–369 substituted “$475,000,000 for fiscal year 1984 and each fiscal year thereafter” for “$373,000,000 for fiscal year 1982 and for each fiscal year thereafter”.


Effective Date of 2000 Amendment

Pub. L. 106–554, § 137(b)(1), Dec. 21, 2000, 114 Stat. 2763, 2763A–585, provided that: “The amendment made by subsection (a) [amending this section] takes effect on October 1, 2000.”

Effective Date of 1997 Amendment

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

Effective Date of 1989 Amendment

Section 6519 of Pub. L. 101–239 provided that: “(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle C
(§§6501–6510) of title VI of Pub. L. 101–239, amending this section and sections 702 to 706, 708, and 709 of this title] shall apply to appropriations for fiscal years beginning with fiscal year 1982.

(b) Application and Report.—The amendments made—

(1) by subsections (b) and (c) of section 6503 [amending section 706, and 709 of this title] shall apply to payments for allotments for fiscal years beginning with fiscal year 1991, and

(2) by section 6504 [amending section 706 of this title] shall apply to annual reports for fiscal years beginning with fiscal year 1991.

Effective Date of 1984 Amendment

Section 2372(b) of Pub. L. 98–369 provided that: "The amendment made by subsection (a) [amending this section] shall be effective for fiscal years beginning on or after October 1, 1983.''

Effective Date of 1982 Amendment

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

Effective Date, Savings, and Transitional Provisions

Section 2194 of Pub. L. 97–35 provided that:

"(a) Except as otherwise provided in this section, the amendments made by sections 2192 [enacting this subchapter and enacting provisions set out as a note under section 706 of this title] and 2193 [amending this section and sections 247a, 300a–27, 300b, 300c–11, and 300c–21 of this title with respect to fiscal year ending Sept. 30, 1982, amending sections 300b–3, 300b–6, 1301, 1308, 1320a–1, 1320a–8, 1320b–2, 1320b–4, 1320c–21, 1320d, 1320e–1, 1395x, and 1396a of this title, repealing sections 236, 247a, 300a–21 to 300c–28, 300c–41, 300b, 300b–5, 300c–11, and 300c–21 of this title, enacting provisions set out as a note under section 1382d of this title, and amending provisions set out as notes under sections 1320a–8 and 1385b of this title] do not apply to any grant made, or contract entered into, or amounts payable to States under State plans before the earlier of—

"(1) October 1, 1982, or

"(2) (A) in the case of such grants, contracts, or payments under consolidated State programs (as defined in subsection (c)(2)(C)) to a State (or an entity in the State) after the State becomes entitled to an allotment of funds under title V of the Social Security Act [this subchapter] (as amended by this subtitle); and

"(B) in the case of grants and contracts under consolidated Federal programs (as defined in subsection (c)(2)(B)) from a State (or entities in the State) under the consolidated State programs for fiscal year 1982 and thereafter.

"(b) The term "consolidated health programs" means the consolidated health programs—

"(1) for expenditures by the Secretary under section 502(a) of the Social Security Act [section 702(a) of this title] (as amended by this subtitle) (as so amended) and any other provision of law) be available for use under title V of the Social Security Act (as amended by this subtitle) [this subchapter], subject to subparagraphs (B) and (C).

"(2)(A) in the case of funds appropriated for fiscal year 1982 for consolidated health programs (as defined in subsection (c)(2)(A)), such funds shall (notwithstanding any other provision of law—

"(i) be available for expenditures for the consolidated Federal programs for fiscal year 1982 and for projects and programs under section 502(a) of the Social Security Act [section 702(a) of this title] (as amended by this subtitle) may not exceed the amount provided for projects and programs under such section 502(a) for that fiscal year; and

"(ii) the amount that may be made available to a State (or entities in the State) for carrying out the consolidated State programs for fiscal year 1982 and for allotments to the State under section 502(b) of the Social Security Act [section 702(b) of this title] (as amended by this subtitle) may not exceed the amount which is allotted to the State for that fiscal year under such section (without regard to paragraphs (3) and (4) thereof).

"(C) For fiscal year 1982, the Secretary shall reduce the amount which would otherwise be available—

"(i) for expenditures by the Secretary under section 502(a) of the Social Security Act [section 702(a) of this title] (as amended by this subtitle) by the amounts which the Secretary determines or estimates are payable to consolidated Federal programs (as defined in subsection (c)(2)(B)) from funds for fiscal year 1982, and

"(ii) for allotment to each of the States under section 502(b) of such Act [section 702(b) of this title] (as so amended) by the amounts which the Secretary determines or estimates are payable to that State (or entities in the State) under the consolidated State programs (as defined in subsection (c)(2)(C)) from funds for fiscal year 1982.

"(C) For purposes of this section:

"(1) the term 'State' has the meaning given such term for purposes of title V of the Social Security Act [this subchapter].

"(2) The term 'consolidated health programs' means the consolidated health programs—

"(1) of special projects grants under sections 503 and 504 [sections 702 and 704 of this title], and

"(2) of grants under section 111(b) [section 711 of this title], of the Social Security Act.

"(ii) of grants and contracts for genetic disease programs and projects under section 1101 of the Public Health Service Act [section 300b of this title], and

"(iii) of grants or contracts for comprehensive hemophila diagnostic and treatment centers under section 1131 of the Public Health Service Act [section 300c–21 of this title], as such sections are in effect before the date of the enactment of this subtitle [Aug. 13, 1981].

"(D) The term 'consolidated Federal programs means the consolidated health programs, other than the consolidated Federal programs.

"(4) The provisions of chapter 2 of subtitle C of title XVII of this Act [sections 1741–1746 of Pub. L. 97–35, which were repealed and reenacted as section 7301–7305 of Title 31, Money and Finance, by Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 677] shall not apply to this subtitle (or the programs under the amendments made by this title (probably should be subtitle)) and, specifically, section 1745 of this Act (set out as a note under section 1243 of
Title 31] shall not apply to financial and compliance audits conducted under section 506(b) of the Social Security Act [section 706(b) of this title] (as amended by this subtitle).

Development of Model Applications for Maternal and Child Assistance Programs

Section 6506(a) of Pub. L. 101–239 directed Secretary of Health and Human Services to develop, not later than one year after Dec. 19, 1989, a model application form for use in applying for assistance for pregnant women and for children less than 6 years old under maternal and child assistance programs and required publication of model form in Federal Register and dissemination of form to State agencies.

Research on Infant Mortality and Medicaid Services

Section 6507 of Pub. L. 101–239 provided that: "The Secretary of Health and Human Services shall develop a national data system for linking, for any infant up to age one—

"(1) the infant’s birth record,

"(2) any death record for the infant, and

"(3) information on any claims submitted under title XIX of the Social Security Act [subchapter XIX of this chapter] for health care furnished to the infant or with respect to the birth of the infant."

Demonstration Project on Health Insurance for Medically Uninsured Children

Section 6508 of Pub. L. 101–239 authorized Secretary of Health and Human Services to conduct not more than 4 demonstration projects to provide health insurance coverage through eligible plans to medically uninsured children under 19 years of age, further provided for definition of eligible plan, requirements for demonstration projects, including guarantee of insurance coverage for at least two years, provision of non-Federal funds, as well as further restrictions on insurance plans, and further provided for applications for projects, evaluation of projects by Secretary and report to Congress, and authorization of appropriations for each of fiscal years 1991, 1992, and 1993.

Maternal and Child Health Handbook

Section 6509 of Pub. L. 101–239 provided that:

"(a) in general.—

"(1) DEVELOPMENT.—The Secretary of Health and Human Services shall develop a maternal and child health handbook in consultation with the National Commission to Prevent Infant Mortality and public and private organizations interested in the health and welfare of mothers and children.

"(2) FIELD TESTING AND EVALUATION.—The Secretary shall complete publication of the handbook for field testing by July 1, 1991, and shall complete field testing and evaluation by June 1, 1991.

"(3) AVAILABILITY AND DISTRIBUTION.—The Secretary shall make the handbook available to pregnant women and families with young children, and shall provide copies of the handbook to maternal and child health programs (including maternal and child health clinics supported through either title V of the Public Health Service Act [this subchapter], community and migrant health centers under sections 329 and 330 of the Public Health Service Act [former sections 254(b) and 254c of this title], the grant program for the homeless under section 340 of the Public Health Service Act [former section 256 of this title], the ‘WIC’ program under section 17 of the Child Nutrition Act of 1966 [section 1786 of this title], and the head start program under the Head Start Act [section 9831 et seq. of this title]) that serve high-risk women. The Secretary shall coordinate the distribution of the handbook with State maternal and child health departments, State and local public health clinics, private providers of obstetric and pediatric care, and community groups where applicable. The Secretary shall make efforts to involve private entities in the distribution of the handbook under this paragraph.

"(b) APPROPRIATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,000,000 for each of fiscal years 1991, 1992, and 1993, for carrying out the purposes of this section."

[Reference to community health center, migrant health center, public housing health center, or homeless health center considered reference to health center, see section 4(c) of Pub. L. 104–299, set out as a note under section 294b of this title.]

§ 702. Allotments to States and Federal set-aside

(a) Special projects

(1) Of the amounts appropriated under section 701(a) of this title for a fiscal year that are not in excess of $600,000,000, the Secretary shall retain an amount equal to 15 percent for the purpose of carrying out activities described in section 701(a)(2) of this title. The authority of the Secretary to enter into any contracts under this subchapter is effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

(2) For purposes of paragraph (1)—

(A) amounts retained by the Secretary for training shall be used to make grants to public or nonprofit private institutions of higher learning for training personnel for health care and related services for mothers and children; and

(B) amounts retained by the Secretary for research shall be used to make grants to contracts with, or jointly financed cooperative agreements with, public or nonprofit institutions of higher learning and public or nonprofit private agencies and organizations engaged in research or in maternal and child health or programs for children with special health care needs for research projects relating to maternal and child health services or services for children with special health care needs which show promise of substantial contribution to the advancement thereof.

(3) No funds may be made available by the Secretary under this subsection or subsection (b) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, be submitted in such manner, and contain and be accompanied by such information as the Secretary may require. No such application may be approved unless it contains assurances that the applicant will use the funds provided only for the purposes specified in the approved application and will establish such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting of Federal funds paid to the applicant under this subchapter.

(b) Excess funds; preference

(1)(A) Of the amounts appropriated under section 701(a) of this title for a fiscal year in excess of $600,000,000 the Secretary shall retain an amount equal to 12 1/2 percent thereof for the projects described in subparagraphs (A) through (F) of section 701(a)(3) of this title.

(B) Any amount appropriated under section 701(a) of this title for a fiscal year in excess of $600,000,000 that remains after the Secretary has
subparagraph (A) shall be retained by the Secretary in accordance with subsection (a) of this section and allocated to the States in accordance with subsection (c) of this section. (2A) Of the amounts retained for the purpose of carrying out activities described in section 701(a)(3)(A), (B), (C), (D) and (E) of this title, the Secretary shall provide preference to qualified applicants which demonstrate that the activities to be carried out with such amounts shall be in areas with a high infant mortality rate relative to the average infant mortality rate in the United States or in the State in which the area is located. (B) In carrying out activities described in section 701(a)(3)(D) of this title, the Secretary shall not provide for developing or expanding a maternal and child health center unless the Secretary has received satisfactory assurances that there will be applied, towards the costs of such development or expansion, non-Federal funds in an amount at least equal to the amount of funds provided under this subchapter toward such development or expansion. (c) Allotments to States

From the remaining amounts appropriated under section 701(a) of this title for any fiscal year that are not in excess of $600,000,000, the Secretary shall allot to each State which has transmitted an application for the fiscal year under section 705(a) of this title, an amount determined as follows:

(1) The Secretary shall determine, for each State—

(A)(i) the amount provided or allotted by the Secretary to the State and to entities in the State under the provisions of the consolidated health programs (as defined in section 701(b)(1) of this title), other than for any of the projects or programs described in subsection (a) of this section, from appropriations for fiscal year 1981,

(ii) the proportion that such number of children for that State bears to the total of such numbers for all the States, and

(B)(i) the number of low income children in the State, and

(ii) the proportion that such number of children for that State bears to the total of such numbers for all the States.

(2) Each such State shall be allotted for each fiscal year an amount equal to the sum of—

(A) the amount of the allotment to the State under this subsection in fiscal year 1983, and

(B) the State’s proportion (determined under paragraph (1)(B)(ii)) of the amount by which the allotment available under this subsection for all the States for that fiscal year exceeds the amount that was available under this subsection for allotment for all the States for fiscal year 1983.

(d) Re-allotment of unallotted funds

(1) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States either because all the States have not qualified for such allotments under section 705(a) of this title for the fiscal year or because some States have indicated in their descriptions of activities under section 705(a) of this title that they do not intend to use the full amount of such allotments, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.

(2) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States because some State allotments are offset under section 706(b)(2) of this title, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.

(Prior Provisions)

Pub. L. 101–239, §6503(c)(1), substituted “an application” for “a description of intended activities and statement of assurances” in introductory provisions.

Pub. L. 101–239, §6502(a)(4)(A), substituted “$600,000,000” for “$478,000,000” in introductory provisions.

Pub. L. 101–239, §6502(a)(3), redesignated subsec. (b) as (c) and struck out former subsec. (c) which related to special projects for children.

Subsec. (c)(2), Pub. L. 101–239, §6502(a)(4)(B), amended par. (2) generally, substituting provisions basing each State’s allotment for each fiscal year upon 1983 amounts for former provisions setting forth formulas for allotments for fiscal years 1982 and 1983 and for each year beginning with fiscal year 1984.


1986—Subsec. (a)(1). Pub. L. 99–509, §9441(b)(1), substituted “amounts appropriated under section 701(a) of this title for a fiscal year that are not in excess of $478,000,000” for “amount appropriated under section 701(a) of this title”.

Subsec. (a)(2)(B), Pub. L. 99–272 substituted “programs for children with special health care needs” for “crippled children’s programs” and “services for children with special health care needs” for “crippled children’s services”.

Subsec. (b), Pub. L. 99–509, §9441(b)(2), inserted “that are not in excess of $478,000,000” in introductory provisions and struck out par. (3) which read as follows:

“(A) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States either because all the States have not qualified for such allotments under section 705 of this title for the fiscal year or because some States have indicated in their descriptions of activities under section 705 of this title that they do not intend to use the full amount of such allotments, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subparagraph.

“(B) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States because some State allotments are offset under section 706(b)(2) of this title, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subparagraph.”

Subsecs. (c), (d). Pub. L. 99–509, §9441(b)(3), added subsecs. (c) and (d).

Effective Date of 1989 Amendment

Amendment by section 6502(a) of Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, and amendment by section 6503(c)(1), (4) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, see section 6510(a), (b)(1) of Pub. L. 101–239, set out as a note under section 701 of this title.

§703. Payments to States

(a) Statutory provisions applicable

From the sums appropriated therefor and the allotments available under section 702(c) of this title, the Secretary shall make payments as provided by section 6503(a) of title 31 to each State for such fiscal year, and amendment by section 6503(c)(1), (4) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, see section 6510(a), (b)(1) of Pub. L. 101–239, set out as a note under section 701 of this title.

(b) Unobligated allotments

Any amount payable to a State under this subchapter from allotments for a fiscal year which remains unobligated at the end of such year shall remain available to such State for obligation during the next fiscal year. No payment may be made to a State under this subchapter from allotments for a fiscal year for expenditures made after the following fiscal year.

(c) Reduction of payments; fair market value of supplies or equipment, value of salaries, travel expenses, etc.

The Secretary, at the request of a State, may reduce the amount of payments under subsection (a) of this section by—

(1) the fair market value of any supplies or equipment furnished the State, and

(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the State and the amount of any other costs incurred in connection with the detail of such officer or employee.

when the furnishing of supplies or equipment or the detail of an officer or employee is for the convenience of and at the request of the State and for the purpose of conducting activities described in section 705(a) of this title on a temporary basis. The amount by which any payment is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment or in detailing the personnel, on which the reduction of the payment is based, and the amount shall be deemed to be part of the payment and shall be deemed to have been paid to the State.


Prior Provisions


Amendments


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§ 703a. Omitted

Codification
Section, Pub. L. 90–332, title II, Nov. 8, 1967, 81 Stat. 401, which provided for approval by Secretary of any State plan which provided standards for professional obstetrical services in accordance with the laws of the State, was not repeated in the Department of Health, Education, and Welfare Appropriation Act, 1969. Similar provisions were contained in the following prior appropriation acts:


The Secretary may waive the limitation contained in paragraph (3) upon the request of a State if the Secretary finds that there are extraordinary circumstances to justify the waiver and that granting the waiver will assist in carrying out this subchapter.

(c) Use of portion of funds

A State may use a portion of the amounts described in subsection (a) of this section for the purpose of purchasing technical assistance from public or private entities if the State determines that such assistance is required in developing, implementing, and administering programs funded under this subchapter.

(d) Limitation on use of funds for administrative costs

Of the amounts paid to a State under section 703 of this title from an allotment for a fiscal year under section 702(c) of this title, not more than 10 percent may be used for administering the funds paid under such section.


Prior Provisions

computed of amounts, and prescribed general availability of services by July 1, 1975, as requisite for payments for any period after June 30, 1966, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301, and was covered by former section 706 of this title.


AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239, § 6503(c)(2), (4), substituted “its application” for “its description of intended expenditures and statement of assurances” and “’705(a)’” for “’705’”.

Pub. L. 101–239, § 6503(a)(1), inserted “and including payment of salaries and other related expenses of National Health Service Corps personnel” after “education, and evaluation”.


1986—Subsec. (b)(6). Pub. L. 100–203, § 4118(e)(12), as added by Pub. L. 100–360 and amended by Pub. L. 100–485, substituted “under this subchapter or subchapter XVIII, XIX, or XX of this chapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title” for “pursuant to section 1320a–7 of this title or section 1320a–7a of this title from participation in the program under this subchapter” in subpara. (A) and (B).


AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239—applicable to appropriations for fiscal years beginning with fiscal year 1990, and amendment by section 6503(c)(2), (4) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, see section 6503(a)(1), substituted “as if included in the end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

§ 704a. Omitted

CODIFICATION

Section, Pub. L. 92–60, title II, Aug. 10, 1971, 85 Stat. 290, which provided that certain allotments to States were not to be included in computing amounts expended or estimated to be expended by the State under subsec. (a) and (b) of section 706 of this title, was not repeated in the Department of Health, Education, and Welfare Appropriation Act, 1972. Similar provisions were contained in the following prior appropriation acts:

June 29, 1949, ch. 275, title II, 63 Stat. 264.
July 12, 1943, ch. 221, title I, 57 Stat. 497.
July 1, 1941, ch. 269, title I, 55 Stat. 499.
June 29, 1939, ch. 249, 53 Stat. 924.
June 16, 1937, ch. 359, title IV, 50 Stat. 301.

§ 704b. Nonavailability of allotments after close of fiscal year

No allotment for this or any succeeding fiscal year under this subchapter shall be available after the close of such fiscal year except as may be necessary to liquidate obligations incurred during such year.

(July 5, 1952, ch. 575, title II, § 201, 66 Stat. 368.)

CODIFICATION

Section is from act July 5, 1952, popularly known as the Federal Security Agency Appropriation Act, 1953, and is not a part of the Social Security Act which comprises this chapter.

§ 705. Application for block grant funds

(a) In order to be entitled to payments for allotments under section 702 of this title for a fis-
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cal year, a State must prepare and transmit to the Secretary an application (in a standardized form specified by the Secretary) that—

(1) contains a statewide needs assessment (to be conducted every 5 years) that shall identify (consistent with the health status goals and national health objectives referred to in section 701(a) of this title) the need for—

(A) preventive and primary care services for pregnant women, mothers, and infants up to age one;
(B) preventive and primary care services for children; and
(C) services for children with special health care needs (as specified in section 701(a)(1)(D) of this title);

(2) includes for each fiscal year—

(A) a plan for meeting the needs identified by the statewide needs assessment under paragraph (1); and
(B) a description of how the funds allotted to the State under section 702(c) of this title will be used for the provision and coordination of services to carry out such plan that shall include—

(i) subject to paragraph (3), a statement of the goals and objectives consistent with the health status goals and national health objectives referred to in section 701(a) of this title for meeting the needs specified in the State plan described in subparagraph (A);
(ii) an identification of the areas and localities in the State in which services are to be provided and coordinated;
(iii) an identification of the types of services to be provided and the categories or characteristics of individuals to be served; and
(iv) information the State will collect in order to prepare reports required under section 706(b) of this title;

(3) except as provided under subsection (b) of this section, provides that the State will use—

(A) at least 30 percent of such payment amounts for preventive and primary care services for children, and
(B) at least 30 percent of such payment amounts for services for children with special health care needs (as specified in section 701(a)(1)(D) of this title);

(4) provides that a State receiving funds for maternal and child health services under this subchapter shall maintain the level of funds being provided solely by such State for maternal and child health programs at a level at least equal to the level that such State provided for such programs in fiscal year 1989; and

(5) provides that—

(A) the State will establish a fair method (as determined by the State) for allocating funds allotted to the State under this subchapter among such individuals, areas, and localities identified under paragraph (1)(A) as needing maternal and child health services, and the State will identify and apply guidelines for the appropriate frequency and content of, and appropriate referral and followup with respect to, health care assessments and services financially assisted by the State under this subchapter and methods for assuring quality assessments and services;

(B) funds allotted to the State under this subchapter will only be used, consistent with section 708 of this title, to carry out the purposes of this subchapter or to continue activities previously conducted under the consolidated health programs (described in section 701(b)(1) of this title);

(C) the State will use—

(i) special consideration (where appropriate) for the continuation of the funding of special projects in the State previously funded under this subchapter (as in effect before August 31, 1981), and
(ii) a reasonable proportion (based upon the State’s previous use of funds under this subchapter) of such sums to carry out the purposes described in subparagraphs (A) through (D) of section 701(a)(1) of this title;

(D) if any charges are imposed for the provision of health services assisted by the State under this subchapter, such charges (i) will be pursuant to a public schedule of charges, (ii) will not be imposed with respect to services provided to low income mothers or children, and (iii) will be adjusted to reflect the income, resources, and family size of the individual provided the services;

(E) the State agency (or agencies) administering the State’s program under this subchapter will provide for a toll-free telephone number (and other appropriate methods) for the use of parents to access information about health care providers and practitioners who provide health care services under this subchapter and subchapter XIX of this chapter and about other relevant health and health-related providers and practitioners; and

(F) the State agency (or agencies) administering the State’s program under this subchapter will—

(i) participate in the coordination of activities between such program and the early and periodic screening, diagnostic, and treatment program under section 1396d(a)(4)(B) of this title (including the establishment of periodicity and content standards for early and periodic screening, diagnostic, and treatment services), to ensure that such programs are carried out without duplication of effort,

(ii) participate in the arrangement and carrying out of coordination agreements described in section 1396a(a)(11) of this title (relating to coordination of care and services available under this subchapter and subchapter XIX of this chapter),

(iii) participate in the coordination of activities within the State with programs carried out under this subchapter and related Federal grant programs (including supplemental food programs for mothers, infants, and children, related education programs, and other health, developmental disability, and family planning programs), and

(iv) provide, directly and through their providers and institutional contractors,
for services to identify pregnant women and infants who are eligible for medical assistance under subparagraph (A) or (B) of section 1396a(a)(1) of this title and, once identified, to assist them in applying for such assistance.

The application shall be developed by, or in consultation with, the State maternal and child health agency and shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during its development and after its transmittal.

(b) The Secretary may waive the requirements under subsection (a)(3) of this section that a State’s application for a fiscal year provide for the use of funds for specific activities if that fiscal year—

(1) the Secretary determines—

(A) on the basis of information provided in the State’s most recent annual report submitted under section 706(a)(1) of this title, that the State has demonstrated an extraordinary unmet need for one of the activities described in subsection (a)(3) of this section, and

(B) that the granting of the waiver is justified and will assist in carrying out the purposes of this subchapter; and

(2) the State provides assurances to the Secretary that the State will provide for the use of some amounts paid to it under section 703 of this title for the activities described in subparagraphs (A) and (B) of subsection (a)(3) of this section and specifies the percentages to be substituted in each of such subparagraphs.


PRIORITY PROVISIONS


AMENDMENTS


Subsec. (a). Pub. L. 101–239, § 6603(b)(2), (3), inserted “(a)” before “In order to be entitled” and “an application” (in a standardized form specified by the Secretary) that after “must prepare and transmit to the Secretary”.

Subsec. (a)(1). Pub. L. 101–239, § 6603(b)(4), added par. (1) and struck out former par. (1) which read as follows: “a report describing the intended use of payments the State is to receive under this subchapter for the fiscal year, including (A) a description of those populations, areas, and localities in the State which the State has identified as needing maternal and child health services, (B) a statement of goals and objectives for meeting those needs, (C) information on the types of services to be provided and the categories or characteristics of individuals to be served, and (D) data the State intends to collect respecting activities conducted with such payments; and”,

Subsec. (a)(2) to (4). Pub. L. 101–239, § 6603(b)(4), added paras. (2) to (4) and redesignated former par. (2) as (5).

Subsec. (a)(5). Pub. L. 101–239, § 6603(b)(5)(A), (6), in introductory provisions, substituted “provides” for “a statement of assurances that represents to the Secretary”, and in concluding provisions, substituted “The application shall be developed by, or in consultation with, the State maternal and child health agency and shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during its development and after its transmittal.” for “The description and statement shall be revised (consistent with this section) throughout the year as may be necessary to reflect substantial changes in any element of such description or statement, and any revision shall be subject to the requirements of the preceding sentence.”

Pub. L. 101–239, § 6603(b)(4), redesignated former par. (2) as (5).

Subsec. (a)(5)(A). Pub. L. 101–239, § 6603(b)(5)(B), substituted “will establish” for “will provide”.

Subsec. (a)(5)(C)(1). Pub. L. 101–239, § 6603(b)(5)(C), amended cl. (1) generally. Prior to amendment, cl. (1) read as follows: “a substantial proportion of the sums expended by the State for carrying out this subchapter for the provision of health services to mothers and children, with special consideration given (where appropriate) to the continuation of the funding of special projects in the State previously funded under this subchapter (as in effect before August 13, 1981),”.

Subsec. (a)(5)(C)(ii). Pub. L. 101–239, § 6603(b)(5), substituted “paragraphs (1) through (3) of section 701(a) of this title” for “paragraphs (1) through (3) of section 701(a) of this title”.


Pub. L. 101–239, § 6603(b)(5)(E), redesignated subpar. (E) as (F).

Subsec. (a)(5)(G). Pub. L. 101–239, § 6603(b)(4)(F)(iv), inserted “participate” before “in the coordination” and substituted “diagnosis” for “diagnosis and” and “section 1396d(a)(4)(B) of this title (in-
including the establishment of periodicity and content standards for early and periodic screening, diagnostic, and treatment services) for "subchapter XIX of this chapter".

Subsec. (a)(5)(F)(ii), Pub. L. 101–239, § 6503(b)(5)(F)(iv), inserted "participate" before "in the arrangement".

Subsec. (a)(5)(F)(iii), Pub. L. 101–239, § 6503(b)(5)(F)(iv), inserted "participate" before "in the coordination".


Subsec. (2)(D). Pub. L. 97–248, § 137(b)(4), substituted "section 701(b)(1)" for "section 702(b)(1)".

Subsec. (a)(5)(F)(v)–(vii), added cl. (iv).

Subsec. (b), Pub. L. 101–239, § 6503(b)(7), added subsec. (b).

§ 706. Administrative and fiscal accountability

(a) Annual reporting requirements; form, etc.

(1) Each State shall prepare and submit to the Secretary annual reports on its activities under this subchapter. Each such report shall be prepared by, or in consultation with, the State maternal and child health agency. In order properly to evaluate and to compare the performance of different States assisted under this subchapter and to assure the proper expenditure of funds under this subchapter, such reports shall be in such standardized form and contain such information (including information described in paragraph (2)) as the Secretary determines (after consultation with the States) to be necessary (A) to secure an accurate description of those activities, (B) to secure a complete record of the purposes for which funds were spent, (C) to describe the extent to which the State has met the goals and objectives it set forth under section 705(a)(2)(B)(i) of this title and the national health objectives referred to in section 701(a) of this title, and (D) to determine the extent to which funds were expended consistent with the State's application transmitted under section 705(a) of this title. Copies of the report shall be provided upon request, to any interested public agency, and each such agency may provide its views on these reports to the Congress.

(2) Each annual report under paragraph (1) shall include the following information:

(A)(i) The number of individuals served by the State under this subchapter (by class of individuals).

(ii) The proportion of each class of such individuals which has health coverage.

(iii) The types (as defined by the Secretary) of services provided under this subchapter to individuals within each such class.

(iv) The amounts spent under this subchapter on each type of services, by class of individuals served.

(B) Information on the status of maternal and child health in the State, including—

(i) information (by county and by racial and ethnic group) on—

(I) the rate of infant mortality, and

(II) the rate of low-birth-weight births;

(ii) information (on a State-wide basis) on—

(I) the rate of maternal mortality,

(II) the rate of neonatal death,

(III) the rate of perinatal death,

(IV) the number of children with chronic illness and the type of illness,

(V) the proportion of infants born with fetal alcohol syndrome,

(VI) the proportion of infants born with drug dependency,

(VII) the proportion of women who deliver who do not receive prenatal care during the first trimester of pregnancy, and

(VIII) the proportion of children, who at their second birthday, have been vaccinated against each of measles, mumps, rubella, polio, diphtheria, tetanus, pertussis, Hib meningitis, and hepatitis B; and

(iii) information on such other indicators of maternal, infant, and child health care status as the Secretary may specify.

(C) Information (by racial and ethnic group) on—

(i) the number of deliveries in the State in the year, and

(ii) the number of such deliveries to pregnant women who were provided prenatal, delivery, or postpartum care under this subchapter or were entitled to benefits with respect to such deliveries under the State plan under subchapter XIX of this chapter in the year.

(D) Information (by racial and ethnic group) on—

(i) the number of infants under one year of age who were in the State in the year, and

(ii) the number of such infants who were entitled to benefits under the State plan under subchapter XIX of this chapter at any time during the year.

(E) Information on the number of—

(i) obstetricians,

(ii) family practitioners,

(iii) certified family nurse practitioners,

(iv) certified nurse midwives,

(v) pediatricians, and

(vi) certified pediatric nurse practitioners, who were licensed in the State in the year.

For purposes of subparagraph (A), each of the following shall be considered to be a separate class of individuals: pregnant women, infants up to age one, children with special health care needs, other children under age 22, and other individuals.
(3) The Secretary shall annually transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate a report that includes—

(A) a description of each project receiving funding under paragraph (2) or (3) of section 702(a) of this title, including the amount of Federal funds provided, the number of individuals served or trained, as appropriate, under the project, and a summary of any formal evaluation conducted with respect to the project;

(B) a summary of the information described in paragraph (2)(A) reported by States;

(C) based on information described in paragraph (2)(B) supplied by the States under paragraph (1), a compilation of the following measures of maternal and child health in the United States and in each State:

(i) Information on—
(A) the rate of infant mortality, and
(B) the rate of low-birth-weight births.

Information under this clause shall also be compiled by racial and ethnic group.

(ii) Information on—
(A) the rate of maternal mortality,
(B) the rate of neonatal death,
(C) the rate of perinatal death,
(D) the proportion of infants born with drug dependency,
(E) the proportion of women who deliver who do not receive prenatal care during the first trimester of pregnancy, and
(F) the proportion of children, who at their second birthday, have been vaccinated against each of measles, mumps, rubella, polio, diphtheria, tetanus, pertussis, Hib meningitis, and hepatitis B.

(iii) Information on such other indicators of maternal, infant, and child health care status as the Secretary has specified under paragraph (2)(B)(iii).

(iv) Information (by racial and ethnic group) on—
(A) the number of deliveries in the year, and
(B) the number of such deliveries to pregnant women who were provided prenatal, delivery, or postpartum care under this subchapter or were entitled to benefits with respect to such deliveries under the State plan under subchapter XIX of this chapter in the year;

(D) based on information described in subparagraphs (C), (D), and (E) of paragraph (2) supplied by the States under paragraph (1), a compilation of the following information in the United States and in each State:

(i) Information on—
(A) the number of deliveries in the year, and
(B) the number of such deliveries to pregnant women who were provided prenatal, delivery, or postpartum care under this subchapter or were entitled to benefits with respect to such deliveries under a State plan under subchapter XIX of this chapter in the year.

Information under this clause shall also be compiled by racial and ethnic group.

(ii) Information on—
(A) obstetricians,
(B) family practitioners,
(C) certified family nurse practitioners,
(D) certified nurse midwives,
(E) pediatricians, and
(F) certified pediatric nurse practitioners,

who were licensed in a State in the year; and

(E) an assessment of the progress being made to meet the health status goals and national health objectives referred to in section 701(a) of this title.

(b) Audits; implementation, standards, etc.

(1) Each State shall, not less often than once every two years, audit its expenditures from amounts received under this subchapter. Such State audits shall be conducted by an entity independent of the State agency administering a program funded under this subchapter in accordance with the Comptroller General’s standards for auditing governmental organizations, programs, activities, and functions and generally accepted auditing standards. Within 30 days following the completion of each audit report, the State shall submit a copy of that audit report to the Secretary.

(2) Each State shall repay to the United States amounts found by the Secretary, after notice and opportunity for a hearing, with respect to such deliveries under this subchapter in accordance with this subchapter and, if such repayment is not made, the Secretary may offset such amounts against the amount of any allotment to which the State is or may become entitled under this subchapter or may otherwise recover such amounts.

(3) The Secretary may, after notice and opportunity for a hearing, with respect to such deliveries under this subchapter in accordance with this subchapter. The Secretary may withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

(c) Public inspection of reports and audits

The State shall make copies of the reports and audits required by this section available for public inspection within the State.

(d) Access to books, records, etc.; creation of new records

(1) For the purpose of evaluating and reviewing the block grant established under this subchapter, the Secretary and the Comptroller General shall have access to any books, accounts, records, correspondence, or other documents
that are related to such block grant, and that are in the possession, custody, or control of States, political subdivisions thereof, or any of their grantees.

(2) In conjunction with an evaluation or review under paragraph (1), no State or political subdivision thereof (or grantee of either) shall be required to create or prepare new records to comply with paragraph (1).

(3) For other provisions relating to deposit, accounting, reports, and auditing with respect to Federal grants to States, see section 6509(b)\(^2\) of title 31.


REFERENCES IN TEXT


PRIOR PROVISIONS


Provisions similar to those comprising former section 706 were contained in sections 504 and 514 of act Aug. 14, 1935, ch. 531, title V, §§504 and 514, as amended (formerly classified to sections 704 and 714 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, §301.

AMENDMENTS

1999—Subsec. (a)(2)(D) inserted “or the State plan under subchapter XXI of this chapter” after “subchapter XIX of this chapter”.

1989—Subsec. (a)(1), (3), (4) stricken out “and the Comptroller General” after “with the States”.


1970—Subsec. (a)(1). Pub. L. 91–239, §6503(c)(3), (4), substituted “application transmitted under section 705(a) of this title” for “description and statement transmitted under section 705(b) of this title” in subpar. (C).


2See References in Text note below.

Subsec. (a)(3). Pub. L. 101–239, §6504(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “The Secretary shall annually report to the Congress on activities funded under section 702(a) of this title and shall provide for transmittal of a copy of such report to each State.”

Pub. L. 101–239, §6504(a)(2), redesignated former par. (2) as (3).


CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 4, 2001.

EFFECTIVE DATE OF 1999 AMENDMENT


EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6503(c)(3), (4) of Pub. L. 100–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, and amendment by section 6504 of Pub. L. 101–239 applicable to annual reports for fiscal years beginning after the date of the enactment of this Act [Nov. 29, 1999].”

REPORTS TO CONGRESS; ACTIVITIES OF STATES RECEIVING ALLOTMENTS AND STUDY OF ALTERNATIVE FORMULAS FOR ALLOTMENT

Section 2192(b) of Pub. L. 97–35 provided that:

“(1) The Secretary of Health and Human Services shall, no later than October 1, 1984, report to the Congress on the activities of States receiving allotments under title V of the Social Security Act (this subchapter) (as amended by this section) and include in such report any recommendations for appropriate changes in legislation.

“(2) The Secretary of Health and Human Services, in consultation with the Comptroller General, shall examine alternative formulas for the allotment of funds to States under section 502(b) of the Social Security Act (section 702(b) of this title) (as amended by this section) which might be used as a substitute for the method of allotting funds described in such section, which provide for the equitable distribution of such funds to States (as defined for purposes of such section), and which take into account:

“(A) the populations of the States,

“(B) the number of live births in the States,

“(C) the number of crippled children in the States,

“(D) the number of low income mothers and children in the States,

“(E) the financial resources of the various States, and

“(F) such other factors as the Secretary deems appropriate, and shall report to the Congress thereon not later than June 30, 1982.”

§ 707. Criminal penalty for false statements

(a) Whoever—
(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payment may be made by a State from funds allotted to the State under this subchapter, or

(2) having knowledge of the occurrence of any event affecting his initial or continued right to any such payment conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such payment is authorized,

shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(b) For civil monetary penalties for certain submissions of false claims, see section 1320a-7a of this title.


PRIOR PROVISIONS


Provisions similar to those comprising former section 707 were contained in sections 505 and 515 of act Aug. 14, 1935, ch. 531, title V, § 507, as amended (formerly classified to sections 705 and 715 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

§ 708. Nondiscrimination provisions

(a) Federally funded activities

(1) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, national origin, or age under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under this subchapter are considered to be programs and activities receiving Federal financial assistance.

(2) No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this subchapter.

(b) Compliance

Whenever the Secretary finds that a State, or an entity that has received a payment from an allotment to a State under section 702(c) of this title, has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed sixty days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted,

(2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], or section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], as may be applicable, or

(3) take such other action as may be provided by law.

(c) Authority of Attorney General; civil actions

When a matter is referred to the Attorney General pursuant to subsection (b)(1) of this section, or whenever he has reason to believe that the entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of subsection (a)(2) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.


REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsections (a)(1) and (b)(2), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title.

The Education Amendments of 1972, referred to in subsection (a)(1), is Pub. L. 92–315, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.


PRIOR PROVISIONS


Provisions similar to those comprising former section 708 were contained in section 531 of act Aug. 14, 1935, ch. 531, title V, as added Oct. 24, 1966, Pub. L. 88–156, § 4, 78 Stat. 374 (formerly classified to section 729 of this title), prior to the general amendment and re-
§ 709  Administration of Federal and State programs

(a) The Secretary shall designate an identifiable administrative unit with expertise in maternal and child health within the Department of Health and Human Services, which unit shall be responsible for—

(1) the Federal program described in section 702(a) of this title;

(2) promoting coordination at the Federal level of the activities authorized under this subchapter and under subchapter XIX of this chapter, especially early and periodic screening, diagnosis and treatment, related activities funded by the Departments of Agriculture and Education, and under health block grants and categorical health programs, such as immunizations, administered by the Secretary;

(3) disseminating information to the States in such areas as preventive health services and advances in the care and treatment of mothers and children;

(4) providing technical assistance, upon request, to the States in such areas as program planning, establishment of goals and objectives, standards of care, and evaluation and in developing consistent and accurate data collection mechanisms in order to report the information required under section 706(a)(2) of this title;

(5) in cooperation with the National Center for Health Statistics and in a manner that avoids duplication of data collection, collection, maintenance, and dissemination of information relating to the health status and health service needs of mothers and children in the United States;

(6) assisting in the preparation of reports to the Congress on the activities funded and accomplishments achieved under this subchapter from the information required to be reported by the States under sections 708(a) and 706 of this title; and

(7) assisting States in the development of care coordination services (as defined in section 701(b)(3) of this title); and

(b) The State health agency of each State shall be responsible for the administration (or supervision of the administration) of programs carried out with allotments made to the State under this subchapter, except that, in the case of a State which on July 1, 1967, provided for administration (or supervision thereof) of the State plan under this subchapter (as in effect on such date) by a State agency other than the State health agency, that State shall be considered to comply with the requirement of this subsection if it would otherwise comply but for the fact that such other State agency administers (or supervises the administration of) any such program providing services for children with special health care needs.

Prior Provisions


AMENDMENTS

1989—Subsec. (b). Pub. L. 101–239 substituted “702(c) of this title” for “702(b) of this title” in introductory provisions.

Effective Date of 1989 Amendment

Amendment by Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, see section 6510(a) of Pub. L. 101–239, set out as a note under section 701 of this title.

§ 709. Administration of Federal and State programs

(a) The Secretary shall designate an identifiable administrative unit with expertise in maternal and child health within the Department of Health and Human Services, which unit shall be responsible for—

(1) the Federal program described in section 702(a) of this title;

(2) promoting coordination at the Federal level of the activities authorized under this subchapter and under subchapter XIX of this chapter, especially early and periodic screening, diagnosis and treatment, related activities funded by the Departments of Agriculture and Education, and under health block grants and categorical health programs, such as immunizations, administered by the Secretary;

(3) disseminating information to the States in such areas as preventive health services and advances in the care and treatment of mothers and children;

(4) providing technical assistance, upon request, to the States in such areas as program planning, establishment of goals and objectives, standards of care, and evaluation and in developing consistent and accurate data collection mechanisms in order to report the information required under section 706(a)(2) of this title;

(5) in cooperation with the National Center for Health Statistics and in a manner that avoids duplication of data collection, collection, maintenance, and dissemination of information relating to the health status and health service needs of mothers and children in the United States;

(6) assisting in the preparation of reports to the Congress on the activities funded and accomplishments achieved under this subchapter from the information required to be reported by the States under sections 708(a) and 706 of this title; and

(7) assisting States in the development of care coordination services (as defined in section 701(b)(3) of this title); and

(b) The State health agency of each State shall be responsible for the administration (or supervision of the administration) of programs carried out with allotments made to the State under this subchapter, except that, in the case of a State which on July 1, 1967, provided for administration (or supervision thereof) of the State plan under this subchapter (as in effect on such date) by a State agency other than the State health agency, that State shall be considered to comply with the requirement of this subsection if it would otherwise comply but for the fact that such other State agency administers (or supervises the administration of) any such program providing services for children with special health care needs.

Prior Provisions


AMENDMENTS

1989—Subsec. (a)(4), Pub. L. 101-239, § 6506(c), inserted before semicolon at end “and in developing consistent and accurate data collection mechanisms in order to report the information required under section 706(a)(2) of this title”.

Subsec. (a)(5), Pub. L. 101-239, § 6503(c)(4), substituted “705(a)” for “705”.

Subsec. (a)(7), (8). Pub. L. 101-239, § 6505(2)-(4), added pars. (7) and (8).


Effective Date of 1989 Amendment

Amendment by section 6506(c)(4) of Pub. L. 101-239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, and amendment by section 6505 of Pub. L. 101-239 applicable to appropriations for fiscal years beginning with fiscal year 1990, see section 6510(a), (b)(1) of Pub. L. 101-239, set out as a note under section 701 of this title.

Report to Congress; Evaluation of Program

Pub. L. 89-97, title II, § 206, July 30, 1965, 79 Stat. 354, authorized Secretary to submit to President for transmission to Congress before July 1, 1966, a full report of administration of provisions of section 729-1 of this title, which was covered by former sections 701, 702(1)(B), and 709 of this title, together with an evaluation of program established thereby and his recommendations as to continuation of and modifications in that program.
§ 710. Separate program for abstinence education
(a) In general
For the purpose described in subsection (b) of this section, the Secretary shall, for each of fiscal years 2010 through 2014, allot to each State which has transmitted an application for the fiscal year under section 705(a) of this title an amount equal to the product of—
(1) the amount appropriated in subsection (d) of this section for the fiscal year; and
(2) the percentage determined for the State under section 702(c)(1)(B)(ii) of this title.

(b) Purpose of allotment
(1) The purpose of an allotment under subsection (a) of this section to a State is to enable the State to provide abstinence education, and at the option of the State, where appropriate, mentoring, counseling, and adult supervision to promote abstinence from sexual activity, with a focus on those groups which are most likely to bear children out-of-wedlock.
(2) For purposes of this section, the term “abstinence education” means an educational or motivational program which—
(A) has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;
(B) teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;
(C) teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;
(D) teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;
(E) teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;
(F) teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child’s parents, and society;
(G) teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and
(H) teaches the importance of attaining self-sufficiency before engaging in sexual activity.

(c) Applicability of sections 703, 707, and 708
(1) Sections 703, 707, and 708 of this title apply to allotments under subsection (a) of this section to the same extent and in the same manner as such sections apply to allotments under section 702(c) of this title.
(2) Sections 705 and 706 of this title apply to allotments under subsection (a) of this section to the extent determined by the Secretary to be appropriate.

(d) Appropriations
For the purpose of allotments under subsection (a) of this section, there is appropriated, out of any money in the Treasury not otherwise appropriated, an additional $50,000,000 for each of the fiscal years 2010 through 2014. The appropriation under the preceding sentence for a fiscal year is made on October 1 of the fiscal year (except that such appropriation shall be made on March 23, 2010, in the case of fiscal year 2010).
§ 711
(1) Authority to make grants
such form and manner as the Secretary shall require—
grams and activities to prevent child abuse
and neglect, and other family resource serv-
munity-based and prevention-focused pro-
tion 9835(g)(1)(C) of this title, and the inven-
tions conducted in accordance with sec-
communitywide strategic planning and needs as-
tory of current unmet needs and current com-
ment required under paragraph (1), the State
shall coordinate with, and take into account,
other appropriate needs assessments con-
ducted by the State, as determined by the Sec-
including—
(i) the number and types of individuals
and families who are receiving services
under such programs or initiatives;
(ii) the gaps in early childhood home vis-
itation in the State; and
(iii) the extent to which such programs
or initiatives are meeting the needs of eli-
gible families described in subsection
(1)(A); and
(C) the State’s capacity for providing sub-
stance abuse treatment and counseling serv-
ices to individuals and families in need of
such treatment or services.
(2) Coordination with other assessments
In conducting the statewide needs assess-
ments required under paragraph (1), the State
shall coordinate with, and take into account,
other appropriate needs assessments con-
ducted by the State, as determined by the Sec-
ency that receives a grant under paragraph (1)
with technical assistance in administering
programs or activities conducted in whole or
in part with grant funds.
(d) Requirements
The requirements of this subsection for an
early childhood home visitation program con-
ducted with a grant made under this section are
as follows:
(1) Quantifiable, measurable improvement in
benchmark areas
(A) In general
The eligible entity establishes, subject to
the approval of the Secretary, quantifiable,
measurable 3- and 5-year benchmarks for
demonstrating that the program results in
improvements for the eligible families par-
ticipating in the program in each of the fol-
lowing areas:
(i) Improved maternal and newborn
health.
(ii) Prevention of child injuries, child
abuse, neglect, or maltreatment, and re-
duction of emergency department visits.
(iii) Improvement in school readiness
and achievement.
(iv) Reduction in crime or domestic vio-
ence.
(v) Improvements in family economic
self-sufficiency.
(vi) Improvements in the coordination
and referrals for other community re-
sources and supports.
(B) Demonstration of improvements after 3
years
(i) Report to the Secretary
Not later than 30 days after the end of
the 3rd year in which the eligible entity
conducts the program, the entity submits
to the Secretary a report demonstrating improvement in at least 4 of the areas specified in subparagraph (A).

(ii) Corrective action plan

If the report submitted by the eligible entity under clause (i) fails to demonstrate improvement in at least 4 of the areas specified in subparagraph (A), the entity shall develop and implement a plan to improve outcomes in each of the areas specified in subparagraph (A), subject to approval by the Secretary. The plan shall include provisions for the Secretary to monitor implementation of the plan and conduct continued oversight of the program, including through submission by the entity of regular reports to the Secretary.

(iii) Technical assistance

(I) In general

The Secretary shall provide an eligible entity required to develop and implement an improvement plan under clause (ii) with technical assistance to develop and implement the plan. The Secretary may provide the technical assistance directly or through grants, contracts, or cooperative agreements.

(II) Advisory panel

The Secretary shall establish an advisory panel for purposes of obtaining recommendations regarding the technical assistance provided to entities in accordance with subclause (I).

(iv) No improvement or failure to submit report

If the Secretary determines after a period of time specified by the Secretary that an eligible entity implementing an improvement plan under clause (ii) has failed to demonstrate any improvement in the areas specified in subparagraph (A), or if the Secretary determines that an eligible entity has failed to submit the report required under clause (i), the Secretary shall terminate the entity’s grant and may include any unexpended grant funds in grants made to nonprofit organizations under subsection (b)(5)(B).

(C) Final report

Not later than December 31, 2015, the eligible entity shall submit a report to the Secretary demonstrating improvements (if any) in each of the areas specified in subparagraph (A).

(2) Improvements in outcomes for individual families

(A) In general

The program is designed, with respect to an eligible family participating in the program, to result in the participant outcomes described in subparagraph (B) that the eligible entity identifies on the basis of an individualized assessment of the family, are relevant for that family.

(B) Participant outcomes

The participant outcomes described in this subparagraph are the following:

(i) Improvements in prenatal, maternal, and newborn health, including improved pregnancy outcomes

(ii) Improvements in child health and development, including the prevention of child injuries and maltreatment and improvements in cognitive, language, social-emotional, and physical developmental indicators.

(iii) Improvements in parenting skills.

(iv) Improvements in school readiness and child academic achievement.

(v) Reductions in crime or domestic violence.

(vi) Improvements in family economic self-sufficiency.

(vii) Improvements in the coordination of referrals for, and the provision of, other community resources and supports for eligible families, consistent with State child welfare agency training.

(3) Core components

The program includes the following core components:

(A) Service delivery model or models

(i) In general

Subject to clause (ii), the program is conducted using 1 or more of the service delivery models described in item (aa) or (bb) of subclause (I) or in subclause (II) selected by the eligible entity:

(I) The model conforms to a clear consistent home visitation model that has been in existence for at least 3 years and is research-based, grounded in relevant empirically-based knowledge, linked to program determined outcomes, associated with a national organization or institution of higher education that has comprehensive home visitation program standards that ensure high quality service delivery and continuous program quality improvement, and has demonstrated significant, and in the case of the service delivery model described in item (aa), sustained) positive outcomes, as described in the benchmark areas specified in paragraph (1)(A) and the participant outcomes described in paragraph (2)(B), when evaluated using well-designed and rigorous—

(aa) randomized controlled research designs, and the evaluation results have been published in a peer-reviewed journal; or

(bb) quasi-experimental research designs.

(II) The model conforms to a promising and new approach to achieving the benchmark areas specified in paragraph (1)(A) and the participant outcomes described in paragraph (2)(B), has been developed or identified by a national organization or institution of higher education, and will be evaluated through well-designed and rigorous process.

1 So in original. Probably should be followed by a period.

2 So in original. The comma probably should not appear.
(ii) Majority of grant funds used for evidence-based models

An eligible entity shall use not more than 25 percent of the amount of the grant paid to the entity for a fiscal year for purposes of conducting a program using the service delivery model described in clause (1)(II).

(iii) Criteria for evidence of effectiveness of models

The Secretary shall establish criteria for evidence of effectiveness of the service delivery models and shall ensure that the process for establishing the criteria is transparent and provides the opportunity for public comment.

(B) Additional requirements

(i) The program adheres to a clear, consistent model that satisfies the requirements of being grounded in empirically-based knowledge related to home visiting and linked to the benchmark areas specified in paragraph (1)(A) and the participant outcomes described in paragraph (2)(B) related to the purposes of the program.

(ii) The program employs well-trained and competent staff, as demonstrated by education or training, such as nurses, social workers, educators, child development specialists, or other well-trained and competent staff, and provides ongoing and specific training on the model being delivered.

(iii) The program maintains high quality supervision to establish home visitor competencies.

(iv) The program demonstrates strong organizational capacity to implement the activities involved.

(v) The program establishes appropriate linkages and referral networks to other community resources and supports for eligible families.

(vi) The program monitors the fidelity of program implementation to ensure that services are delivered pursuant to the specified model.

(4) Priority for serving high-risk populations

The eligible entity gives priority to providing services under the program to the following:

(A) Eligible families who reside in communities in need of such services, as identified in the statewide needs assessment required under subsection (b)(1)(A).

(B) Low-income eligible families.

(C) Eligible families who are pregnant women who have not attained age 21.

(D) Eligible families that have a history of child abuse or neglect or have had interactions with child welfare services.

(E) Eligible families that have a history of substance abuse or need substance abuse treatment.

(F) Eligible families that have users of tobacco products in the home.

(G) Eligible families that are or have children with low student achievement.

(H) Eligible families with children with developmental delays or disabilities.

(I) Eligible families who, or that include individuals who, are serving or formerly served in the Armed Forces, including such families that have members of the Armed Forces who have had multiple deployments outside of the United States.

(e) Application requirements

An eligible entity desiring a grant under this section shall submit an application to the Secretary for approval, in such manner as the Secretary may require, that includes the following:

(1) A description of the populations to be served by the entity, including specific information regarding how the entity will serve high risk populations described in subsection (d)(4).

(2) An assurance that the entity will give priority to serving low-income eligible families and eligible families who reside in at risk communities identified in the statewide needs assessment required under subsection (b)(1)(A).

(3) The service delivery model or models described in subsection (d)(3)(A) that the entity will use under the program and the basis for the selection of the model or models.

(4) A statement identifying how the selection of the populations to be served and the service delivery model or models that the entity will use under the program for such populations is consistent with the results of the statewide needs assessment conducted under subsection (b).

(5) The quantifiable, measurable benchmarks established by the State to demonstrate that the program contributes to improvements in the areas specified in subsection (d)(1)(A).

(6) An assurance that the entity will obtain and submit documentation or other appropriate evidence from the organization or entity that developed the service delivery model or models used under the program to verify that the program is implemented and services are delivered according to the model specifications.

(7) Assurances that the entity will establish procedures to ensure that—

(A) the participation of each eligible family in the program is voluntary; and

(B) services are provided to an eligible family in accordance with the individual assessment for that family.

(8) Assurances that the entity will—

(A) submit annual reports to the Secretary regarding the program and activities carried out under the program that include such information and data as the Secretary shall require; and

(B) participate in, and cooperate with, data and information collection necessary for the evaluation required under subsection (g)(2) and other research and evaluation activities carried out under subsection (b)(3).

(9) A description of other State programs that include home visitation services, including, if applicable to the State, other programs carried out under this subchapter with funds made available from allotments under section 702(c) of this title, programs funded under sub-
chapter IV, title II of the Child Abuse Prevention and Treatment Act [42 U.S.C. 5116 et seq.] (relating to community-based grants for the prevention of child abuse and neglect), and section 9640a of this title (relating to Early Head Start programs).

(10) Other information as required by the Secretary.

(f) Maintenance of effort

Funds provided to an eligible entity receiving a grant under this section shall supplement, and not supplant, funds from other sources for early childhood home visitation programs or initiatives.

(g) Evaluation

(1) Independent, expert advisory panel

The Secretary, in accordance with subsection (h)(1)(A), shall appoint an independent advisory panel consisting of experts in program evaluation and research, education, and early childhood development—at

(A) to review, and make recommendations on, the design and plan for the evaluation required under paragraph (2) within 1 year after March 23, 2010;

(B) to maintain and advise the Secretary regarding the progress of the evaluation; and

(C) to comment, if the panel so desires, on the report submitted under paragraph (3).

(2) Authority to conduct evaluation

On the basis of the recommendations of the advisory panel under paragraph (1), the Secretary shall, by grant, contract, or inter-agency agreement, conduct an evaluation of the statewide needs assessments submitted under subsection (b) and the grants made under subsections (c) and (h)(3)(B). The evaluation shall include—at

(A) an analysis, on a State-by-State basis, of the results of such assessments, including indicators of maternal and prenatal health and infant health and mortality, and State actions in response to the assessments; and

(B) an assessment of—

(i) the effect of early childhood home visitation programs on child and parent outcomes, including with respect to each of the benchmark areas specified in subsection (d)(1)(A) and the participant outcomes described in subsection (d)(2)(B);

(ii) the effectiveness of such programs on different populations, including the extent to which the ability of programs to improve participant outcomes varies across programs and populations; and

(iii) the potential for the activities conducted under such programs, if scaled broadly, to improve health care practices, eliminate health disparities, and improve health care system quality, efficiencies, and reduce costs.

(3) Report

Not later than March 31, 2015, the Secretary shall submit a report to Congress on the results of the evaluation conducted under paragraph (2) and shall make the report publicly available.

(h) Other provisions

(1) Intra-agency collaboration

The Secretary shall ensure that the Maternal and Child Health Bureau and the Administration for Children and Families collaborate with respect to carrying out this section, including with respect to—

(A) reviewing and analyzing the statewide needs assessments required under subsection (b), the awarding and oversight of grants awarded under this section, the establishment of the advisory panels required under subsections (d)(1)(B)(iii)(II) and (g)(1), and the evaluation and report required under subsection (g); and

(B) consulting with other Federal agencies with responsibility for administering or evaluating programs that serve eligible families to coordinate and collaborate with respect to research related to such programs and families, including the Office of the Assistant Secretary for Planning and Evaluation of the Department of Health and Human Services, the Centers for Disease Control and Prevention, the National Institute of Child Health and Human Development of the National Institutes of Health, the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice, and the Institute of Education Sciences of the Department of Education.

(2) Grants to eligible entities that are not States

(A) Indian tribes, tribal organizations, or Urban Indian Organizations

The Secretary shall specify requirements for eligible entities that are Indian Tribes (or a consortium of Indian Tribes), Tribal Organizations, or Urban Indian Organizations to apply for and conduct an early childhood home visitation program with a grant under this section. Such requirements shall, to the greatest extent practicable, be consistent with the requirements applicable to eligible entities that are States and shall require an Indian Tribe (or consortium), Tribal Organization, or Urban Indian Organization to—

(i) conduct a needs assessment similar to the assessment required for all States under subsection (b); and

(ii) establish quantifiable, measurable 3- and 5-year benchmarks consistent with subsection (d)(1)(A).

(B) Nonprofit organizations

If, as of the beginning of fiscal year 2012, a State has not applied or been approved for a grant under this section, the Secretary may use amounts appropriated under paragraph (1) of subsection (j) that are available for expenditure under paragraph (3) of that subsection to make a grant to an eligible entity that is a nonprofit organization described in subsection (k)(1)(B) to conduct an early childhood home visitation program in the State. The Secretary shall specify the requirements for such an organization to apply for and conduct the program which shall, to the greatest extent practicable, be consist-
ent with the requirements applicable to eligible entities that are States and shall require the organization to—

(i) carry out the program based on the needs assessment conducted by the State under subsection (b); and

(ii) establish quantifiable, measurable 2- and 5-year benchmarks consistent with subsection (d)(1)(A).

(3) Research and other evaluation activities

(A) In general
The Secretary shall carry out a continuous program of research and evaluation activities in order to increase knowledge about the implementation and effectiveness of home visiting programs, using random assignment designs to the maximum extent feasible. The Secretary may carry out such activities directly, or through grants, cooperative agreements, or contracts.

(B) Requirements
The Secretary shall ensure that—

(i) evaluation of a specific program or project is conducted by persons or individuals not directly involved in the operation of such program or project; and

(ii) the conduct of research and evaluation activities includes consultation with independent researchers, State officials, and developers and providers of home visiting programs on topics including research design and administrative data matching.

(4) Report and recommendation
Not later than December 31, 2015, the Secretary shall submit a report to Congress regarding the programs conducted with grants under this section. The report required under this paragraph shall include—

(A) information regarding the extent to which eligible entities receiving grants under this section demonstrated improvements in each of the areas specified in subsection (d)(1)(A);

(B) information regarding any technical assistance provided under subsection (d)(1)(B)(iii)(I), including the type of any such assistance provided; and

(C) recommendations for such legislative or administrative action as the Secretary determines appropriate.

(i) Application of other provisions of subchapter

(1) In general
Except as provided in paragraph (2), the other provisions of this subchapter shall not apply to a grant made under this section.

(2) Exceptions
The following provisions of this subchapter shall apply to a grant made under this section to the same extent and in the same manner as such provisions apply to allotments made under section 702(c) of this title:

(A) Section 704(b)(6) of this title (relating to prohibition on payments to excluded individuals and entities).

(B) Section 704(c) of this title (relating to the use of funds for the purchase of technical assistance).

(C) Section 704(d) of this title (relating to a limitation on administrative expenditures).

(D) Section 706 of this title (relating to reports and audits), but only to the extent determined by the Secretary to be appropriate for grants made under this section.

(E) Section 707 of this title (relating to penalties for false statements).

(F) Section 708 of this title (relating to nondiscrimination).

(G) Section 709(a) of this title (relating to the administration of the grant program).

(j) Appropriations

(1) In general
Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary to carry out this section—

(A) $100,000,000 for fiscal year 2010;

(B) $250,000,000 for fiscal year 2011;

(C) $350,000,000 for fiscal year 2012;

(D) $400,000,000 for fiscal year 2013; and

(E) $400,000,000 for fiscal year 2014.

(2) Reservations
Of the amount appropriated under this subsection for a fiscal year, the Secretary shall reserve—

(A) 3 percent of such amount for purposes of making grants to eligible entities that are Indian Tribes (or a consortium of Indian Tribes), Tribal Organizations, or Urban Indian Organizations; and

(B) 3 percent of such amount for purposes of carrying out subsections (d)(1)(B)(iii), (g), and (h)(3).

(3) Availability
Funds made available to an eligible entity under this section for a fiscal year shall remain available for expenditure by the eligible entity through the end of the second succeeding fiscal year after award. Any funds that are not expended by the eligible entity during the period in which the funds are available under the preceding sentence may be used for grants to nonprofit organizations under subsection (h)(2)(B).

(k) Definitions
In this section:

(1) Eligible entity

(A) In general
The term “eligible entity” means a State, an Indian Tribe, Tribal Organization, or Urban Indian Organization, Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, and American Samoa.

(B) Nonprofit organizations
Only for purposes of awarding grants under subsection (h)(2)(B), such term shall include a nonprofit organization with an established record of providing early childhood home visitation programs or initiatives in a State or several States.

(2) Eligible family
The term “eligible family” means—

(A) a woman who is pregnant, and the father of the child if the father is available; or
(B) a parent or primary caregiver of a child, including grandparents or other relatives of the child, and foster parents, who are serving as the child's primary caregiver from birth to kindergarten entry, and including a noncustodial parent who has an ongoing relationship with, and at times provides physical care for, the child.

(3) Indian Tribe; Tribal Organization

The terms "Indian Tribe" and "Tribal Organization", and "Urban Indian Organization" have the meanings given such terms in section 1603 of title 25.


REFERENCES IN TEXT


For complete classification of this Act to the Code, see Short Title note set out under section 5101 of this title and Tables.

PRIOR PROVISIONS


§712. Services to individuals with a postpartum condition and their families

(a) In general

In addition to any other payments made under this subchapter to a State, the Secretary may make grants to eligible entities for projects for the establishment, operation, and coordination of effective and cost-efficient systems for the delivery of essential services to individuals with or at risk for postpartum conditions and their families.

(b) Certain activities

To the extent practicable and appropriate, the Secretary shall ensure that projects funded under subsection (a) provide education and services with respect to the diagnosis and management of postpartum conditions for individuals with or at risk for postpartum conditions and their families. The Secretary may allow such projects to include the following:

1. Delivering or enhancing outpatient and home-based health and support services, including case management and comprehensive treatment services.

2. Delivering or enhancing inpatient care management services that ensure the well-being of the mother and family and the future development of the infant.

3. Improving the quality, availability, and organization of health care and support services (including transportation services, attendant care, homemaker services, day or respite care, and providing counseling on financial assistance and insurance).

4. Providing education about postpartum conditions to promote earlier diagnosis and treatment. Such education may include—

(A) providing complete information on postpartum conditions, symptoms, methods of coping with the illness, and treatment resources; and

(B) in the case of a grantee that is a State, hospital, or birthing facility—

(i) providing education to new mothers and fathers, and other family members as appropriate, concerning postpartum conditions before new mothers leave the health facility; and

(ii) ensuring that training programs regarding such education are carried out at the health facility.

(c) Integration with other programs

To the extent practicable and appropriate, the Secretary may integrate the grant program under this section with other grant programs carried out by the Secretary, including the program under section 254b of this title.

(d) Requirements

The Secretary shall establish requirements for grants made under this section that include a limit on the amount of grants funds that may be used for administration, accounting, reporting, or program oversight functions and a requirement for each eligible entity that receives a grant to submit, for each grant period, a report to the Secretary that describes how grant funds were used during such period.

(e) Technical assistance

The Secretary may provide technical assistance to entities seeking a grant under this section in order to assist such entities in complying with the requirements of this section.

(f) Application of other provisions of subchapter

(1) In general

 Except as provided in paragraph (2), the other provisions of this subchapter shall not apply to a grant made under this section.

(2) Exceptions

The following provisions of this subchapter shall apply to a grant made under this section to the same extent and in the same manner as
such provisions apply to allotments made under section 702(c) of this title:
(A) Section 704(b)(6) of this title (relating to prohibition on payments to excluded individuals and entities).
(B) Section 704(c) of this title (relating to the use of funds for the purchase of technical assistance).
(C) Section 704(d) of this title (relating to a limitation on administrative expenditures).
(D) Section 706 of this title (relating to reports and audits), but only to the extent determined by the Secretary to be appropriate for grants made under this section.
(E) Section 707 of this title (relating to penalties for false statements).
(F) Section 708 of this title (relating to nondiscrimination).
(G) Section 708(a) of this title (relating to the administration of the grant program).

(g) Definitions
In this section:
(1) The term “eligible entity” means—
(A) a public or nonprofit private entity; and
(B) includes a State or local government, public-private partnership, recipient of a grant under section 254c-8 of this title (relating to the Healthy Start Initiative), public or nonprofit private hospital, community-based organization, hospice, ambulatory care facility, community health center, migrant health center, public housing primary care center, or homeless health center.
(2) The term “postpartum condition” means postpartum depression or postpartum psychosis.

§713. Personal responsibility education
(a) Allotments to States
(1) Amount
(A) In general
For the purpose described in subsection (b), subject to the succeeding provisions of this section, for each of fiscal years 2010 through 2019 of the relative mental health consequences for women of resolving a pregnancy, it is the sense of Congress that the Director of the National Institute of Mental Health may conduct a nationally representative longitudinal study (during the period of fiscal years 2010 through 2019) of the relative mental health consequences for women of resolving a pregnancy (intended and unintended) in various ways, including carrying the pregnancy to term and parenting the child, carrying the pregnancy to term and placing the child for adoption, miscarriage, and having an abortion. This study may assess the incidence, timing, magnitude, and duration of the immediate and long-term mental health consequences (positive or negative) of these pregnancy outcomes.
(B) Report.—Subject to the completion of the study under subsection (a), beginning not later than 5 years after the date of the enactment of this Act [Mar. 23, 2010], and periodically thereafter for the duration of the study, such Director may prepare and submit to the Congress reports on the findings of the study.

“(a) Research on Postpartum Conditions.—
“(1) Expansion and intensification of activities.—The Secretary of Health and Human Services (in this subsection and subsection (c) referred to as the ‘Secretary’) is encouraged to continue activities on postpartum depression or postpartum psychosis (in this subsection and subsection (c) referred to as ‘postpartum conditions’), including research to expand the understanding of the causes of, and treatments for, postpartum conditions. Activities under this paragraph shall include conducting and supporting the following:
“(A) Basic research concerning the etiology and causes of the conditions.
“(B) Epidemiological studies to address the frequency and natural history of the conditions and the differences among racial and ethnic groups with respect to the conditions.
“(C) The development of improved screening and diagnostic techniques.
“(D) Clinical research for the development and evaluation of new treatments.
“(E) Information and education programs for health care professionals and the public, which may include a coordinated national campaign to increase the awareness and knowledge of postpartum conditions. Activities under such a national campaign may—
“(i) include public service announcements through television, radio, and other means; and
“(ii) focus on—
“(I) raising awareness about screening;
“(II) educating new mothers and their families about postpartum conditions to promote earlier diagnosis and treatment; and
“(III) ensuring that such education includes complete information concerning postpartum conditions, including its symptoms, methods of coping with the illness, and treatment resources.
“(2) Sense of Congress regarding longitudinal study of relative mental health consequences for women of resolving a pregnancy.—
“(A) Sense of Congress.—It is the sense of Congress that the Director of the National Institute of Mental Health may conduct a nationally representative longitudinal study (during the period of fiscal years 2010 through 2019) of the relative mental health consequences for women of resolving a pregnancy (intended and unintended) in various ways, including carrying the pregnancy to term and parenting the child, carrying the pregnancy to term and placing the child for adoption, miscarriage, and having an abortion. This study may assess the incidence, timing, magnitude, and duration of the immediate and long-term mental health consequences (positive or negative) of these pregnancy outcomes.
“(B) Report.—Subject to the completion of the study under subsection (a), beginning not later than 5 years after the date of the enactment of this Act [Mar. 23, 2010], and periodically thereafter for the duration of the study, such Director may prepare and submit to the Congress reports on the findings of the study.

§713. Personal responsibility education
(a) Allotments to States
(1) Amount
(A) In general
For the purpose described in subsection (b), subject to the succeeding provisions of this section, for each of fiscal years 2010 through 2014, the Secretary shall allot to each State an amount equal to the product of—
(i) the amount appropriated under subsection (f) for the fiscal year and available
for allotments to States after the application of subsection (c); and
(ii) the State youth population percentage determined under paragraph (2).

(B) Minimum allotment

(i) In general

Each State allotment under this paragraph for a fiscal year shall be at least $250,000.

(ii) Pro rata adjustments

The Secretary shall adjust on a pro rata basis the amount of the State allotments determined under this paragraph for a fiscal year to the extent necessary to comply with clause (i).

(C) Application required to access allotments

(i) In general

A State shall not be paid from its allotment for a fiscal year unless the State submits an application to the Secretary for the fiscal year and the Secretary approves the application (or requires changes to the application that the State satisfies) and meets such additional requirements as the Secretary may specify.

(ii) Requirements

The State application shall contain an assurance that the State has complied with the requirements of this section in preparing and submitting the application and shall include the following as well as such additional information as the Secretary may require:

(I) Based on data from the Centers for Disease Control and Prevention National Center for Health Statistics, the most recent pregnancy rates for the State for youth ages 10 to 14 and youth ages 15 to 19 for which data are available, the most recent birth rates for such youth populations in the State for which data are available, and trends in those rates for the most recently preceding 5-year period for which such data are available.

(II) State-established goals for reducing the pregnancy rates and birth rates for such youth populations.

(III) A description of the State’s plan for using the State allotments provided under this section to achieve such goals, especially among youth populations that are the most high-risk or vulnerable for pregnancies or otherwise have special circumstances, including youth in foster care, homeless youth, youth with HIV/AIDS, pregnant youth who are under 21 years of age, mothers who are under 21 years of age, and youth residing in areas with high birth rates for youth.

(2) State youth population percentage

(A) In general

For purposes of paragraph (1)(A)(ii), the State youth population percentage is, with respect to a State, the proportion (expressed as a percentage) of—

(i) the number of individuals who have attained age 10 but not attained age 20 in the State; to

(ii) the number of such individuals in all States.

(B) Determination of number of youth

The number of individuals described in clauses (i) and (ii) of subparagraph (A) in a State shall be determined on the basis of the most recent Bureau of the Census data.

(3) Availability of State allotments

Subject to paragraph (4)(A), amounts allotted to a State pursuant to this subsection for a fiscal year shall remain available for expenditure by the State through the end of the second succeeding fiscal year.

(4) Authority to award grants from State allotments to local organizations and entities in nonparticipating States

(A) Grants from unexpended allotments

If a State does not submit an application under this section for fiscal year 2010 or 2011, the State shall no longer be eligible to submit an application to receive funds from the amounts allotted for the State for each of fiscal years 2010 through 2014 and such amounts shall be used by the Secretary to award grants under this paragraph for each of fiscal years 2012 through 2014. The Secretary also shall use any amounts from the allotments of States that submit applications under this section for a fiscal year that remain unexpended as of the end of the period in which the allotments are available for expenditure under paragraph (3) for awarding grants under this paragraph.

(B) 3-year grants

(i) In general

The Secretary shall solicit applications to award 3-year grants in each of fiscal years 2012, 2013, and 2014 to local organizations and entities to conduct, consistent with subsection (b), programs and activities in States that do not submit an application for an allotment under this section for fiscal year 2010 or 2011.

(ii) Faith-based organizations or consortia

The Secretary may solicit and award grants under this paragraph to faith-based organizations or consortia.

(C) Evaluation

An organization or entity awarded a grant under this paragraph shall agree to participate in a rigorous Federal evaluation.

(5) Maintenance of effort

No payment shall be made to a State from the allotment determined for the State for fiscal year 2010 or 2011, if the expenditure of non-federal funds by the State, organization, or entity for activities, programs, or initiatives for which amounts from allotments and grants under this section may be expended is less than the amount expended by the State, organization, or entity for such programs or initiatives for fiscal year 2009.

(6) Data collection and reporting

A State or local organization or entity receiving funds under this section shall cooper-
ate with such requirements relating to the collection of data and information and reporting on outcomes regarding the programs and activities carried out with such funds, as the Secretary shall specify.

(b) Purpose

(1) In general

The purpose of an allotment under subsection (a)(1) to a State is to enable the State (or, in the case of grants made under subsection (a)(4)(B), to enable a local organization or entity) to carry out personal responsibility education programs consistent with this subsection.

(2) Personal responsibility education programs

(A) In general

In this section, the term "personal responsibility education program" means a program that is designed to educate adolescents on—

(i) both abstinence and contraception for the prevention of pregnancy and sexually transmitted infections, including HIV/AIDS, consistent with the requirements of subparagraph (B); and

(ii) at least 3 of the adulthood preparation subjects described in subparagraph (C).

(B) Requirements

The requirements of this subparagraph are the following:

(i) The program replicates evidence-based effective programs or substantially incorporates elements of effective programs that have been proven on the basis of rigorous scientific research to change behavior, which means delaying sexual activity, increasing condom or contraceptive use for sexually active youth, or reducing pregnancy among youth.

(ii) The program is medically-accurate and complete.

(iii) The program includes activities to educate youth who are sexually active regardless responsible sexual behavior with respect to both abstinence and the use of contraception.

(iv) The program places substantial emphasis on both abstinence and contraception for the prevention of pregnancy among youth and sexually transmitted infections.

(v) The program provides age-appropriate information and activities.

(vi) The information and activities carried out under the program are provided in the cultural context that is most appropriate for individuals in the particular population group to which they are directed.

(C) Adulthood preparation subjects

The adulthood preparation subjects described in this subparagraph are the following:

(i) Healthy relationships, including marriage and family interactions.

(ii) Adolescent development, such as the development of healthy attitudes and values about adolescent growth and development, body image, racial and ethnic diversity, and other related subjects.

(iii) Financial literacy.

(iv) Parent-child communication.

(v) Educational and career success, such as developing skills for employment preparation, job seeking, independent living, financial self-sufficiency, and workplace productivity.

(vi) Healthy life skills, such as goal-setting, decision making, negotiation, communication and interpersonal skills, and stress management.

(c) Reservations of funds

(1) Grants to implement innovative strategies

From the amount appropriated under subsection (f) for the fiscal year, the Secretary shall reserve $10,000,000 of such amount for purposes of awarding grants to entities to implement innovative youth pregnancy prevention strategies and target services to high-risk, vulnerable, and culturally under-represented youth populations, including youth in foster care, homeless youth, youth with HIV/AIDS, pregnant women who are under 21 years of age and their partners, mothers who are under 21 years of age and their partners, and youth residing in areas with high birth rates for youth. An entity awarded a grant under this paragraph shall agree to participate in a rigorous Federal evaluation of the activities carried out with grant funds.

(2) Other reservations

From the amount appropriated under subsection (f) for the fiscal year that remains after the application of paragraph (1), the Secretary shall reserve the following amounts:

(A) Grants for Indian tribes or tribal organizations

The Secretary shall reserve 5 percent of such remainder for purposes of awarding grants to Indian tribes and tribal organizations in such manner, and subject to such requirements, as the Secretary, in consultation with Indian tribes and tribal organizations, determines appropriate.

(B) Secretarial responsibilities

(i) Reservation of funds

The Secretary shall reserve 10 percent of such remainder for expenditures by the Secretary for the activities described in clauses (ii) and (iii).

(ii) Program support

The Secretary shall provide, directly or through a competitive grant process, research, training and technical assistance, including dissemination of research and information regarding effective and promising practices, providing consultation and resources on a broad array of teen pregnancy prevention strategies, including abstinence and contraception, and developing resources and materials to support the activities of recipients of grants and other State, tribal, and community organizations working to reduce teen pregnancy. In
carrying out such functions, the Secretary shall collaborate with a variety of entities that have expertise in the prevention of teen pregnancy, HIV and sexually transmitted infections, healthy relationships, financial literacy, and other topics addressed through the personal responsibility education programs.

(iii) Evaluation

The Secretary shall evaluate the programs and activities carried out with funds made available through allotments or grants under this section.

(d) Administration

(1) In general

The Secretary shall administer this section through the Assistant Secretary for the Administration for Children and Families within the Department of Health and Human Services.

(2) Application of other provisions of subchapter

(A) In general

Except as provided in subparagraph (B), the other provisions of this subchapter shall not apply to allotments or grants made under this section.

(B) Exceptions

The following provisions of this subchapter shall apply to allotments and grants made under this section to the same extent and in the same manner as such provisions apply to allotments made under section 702(c) of this title:

(i) Section 704(b)(6) of this title (relating to prohibition on payments to excluded individuals and entities).

(ii) Section 704(c) of this title (relating to the use of funds for the purchase of technical assistance).

(iii) Section 704(d) of this title (relating to a limitation on administrative expenditures).

(iv) Section 706 of this title (relating to reports and audits), but only to the extent determined by the Secretary to be appropriate for grants made under this section.

(v) Section 707 of this title (relating to penalties for false statements).

(vi) Section 708 of this title (relating to nondiscrimination).

(e) Definitions

In this section:

(1) Age-appropriate

The term “age-appropriate”, with respect to the information in pregnancy prevention, means topics, messages, and teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group.

(2) Medically accurate and complete

The term “medically accurate and complete” means verified or supported by the weight of research conducted in compliance with accepted scientific methods and—

(A) published in peer-reviewed journals, where applicable; or

(B) comprising information that leading professional organizations and agencies with relevant expertise in the field recognize as accurate, objective, and complete.

(3) Indian tribes; Tribal organizations

The terms “Indian tribe” and “Tribal organization” have the meanings given such terms in section 1903 of title 25.

(4) Youth

The term “youth” means an individual who has attained age 10 but has not attained age 20.

(f) Appropriation

For the purpose of carrying out this section, there is appropriated, out of any money in the Treasury not otherwise appropriated, $75,000,000 for each of fiscal years 2010 through 2014. Amounts appropriated under this subsection shall remain available until expended.


Prior Provisions


Provisions similar to those comprising former section 713 were contained in section 541 of act Aug. 14, 1935, ch. 531, title V, § 513, as added by Pub. L. 90–248, title III, § 301, and was covered by former section 705 of this title.


Amendments

2010—Subsec. (b)(2)(C)(i). Pub. L. 111–148, § 10201(h), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “Healthy relationships, such as positive self-esteem and relationship dynamics, friendships, dating, romantic involvement, marriage, and family interactions.”

§§ 714 to 716. Omitted

Codification

Sections 714 to 716 were omitted in the general revision of this subchapter by Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 818. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.


§ 729 to 729a, 731. Omitted

Codification


Section 729–1, act Aug. 14, 1935, ch. 351, title V, § 532, as added July 30, 1965, Pub. L. 89–97, title II, § 205(3), 79 Stat. 354, provided for projects for health of school and preschool children, authorized appropriations of $15,000,000; $35,000,000; $40,000,000; $45,000,000; and $50,000,000 for fiscal years ending June 30, 1964, 1965, 1966 and 1967, respectively; provided for grants to State health agencies, limitations on payments, scope of projects, health hazards, low-income families, other reasons for lack of health care; and provided for payments to States, adjustments, advances or reimbursements, installments, and conditions, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301. See sections 701 and 702 of this title. Section 531 of act Aug. 14, 1935, as originally enacted, appropriated funds for vocational rehabilitation, and was classified to section 45b of Title 29, Labor. It was omitted as superseded by section 31 of Title 29.

93–647, §§ 3(b), 7(b), Jan. 4, 1975, 88 Stat. 2349, 2351, effec -

tive to services to the aged, blind, or disabled and consisted of title.

705, 711 to 715, 721 to 729a, and 731 of this title, prior to mante -ning adequate public health services, was re -

Prior sections 801 to 805 were repealed by Pub. L. 93–647, §§ 3(b), 7(b), Jan. 4, 1975, 88 Stat. 2349, 2351, effective to payments to States by Surgeon General, was repealed by act Aug. 14, 1935, ch. 531, title VII, § 701, 49 Stat. 635; Aug. 10, 1946, ch. 951, title IV, § 509, 53 Stat. 1381, which provided appropriations for services to the aged, blind, or disabled.

Another prior section 801, acts Aug. 14, 1935, ch. 531, title VI, § 601, 49 Stat. 634; Aug. 10, 1939, ch. 666, title V, § 609, 53 Stat. 1381, which provided appropriations for the purpose of assisting States and subdivisions in maintaining adequate public health services, was re-pealed by act July 1, 1944, ch. 373, title XI, § 1113, 58 Stat. 714. See section 246 of this title.


Another prior section 802, act Aug. 14, 1935, ch. 531, title VI, § 602, 49 Stat. 634, which provided for allotments to States by Surgeon General, was repealed by act July 1, 1944, ch. 373, title XI, § 1113, 58 Stat. 714. See section 246 of this title.


Another prior section 803, act Aug. 14, 1935, ch. 531, title VI, § 603, 49 Stat. 635, which provided for allotments to States by appropriations for investigation of diseases by Public Health Service, was repealed by act July 1, 1944, ch. 373, title XI, § 1113, 58 Stat. 714. See section 246 of this title.


RENUMBERING OF REPEAL ACT


SUBCHAPTER VII—ADMINISTRATION

AMENDMENTS


§ 801. Social Security Administration

(a) There is hereby established, as an independent agency in the executive branch of the Government, a Social Security Administration (in this subchapter referred to as the "Administration").

(b) It shall be the duty of the Administration to administer the old-age, survivors, and disability insurance program under subchapter II of this chapter and the supplemental security income program under subchapter XVI of this chapter:


AMENDMENTS


EFFECTIVE DATE OF 1994 AMENDMENT


TRANSFERS TO NEW SOCIAL SECURITY ADMINISTRATION

Title 105 of title I of Pub. L. 101–236 provided that:

"(a) FUNCTIONS.—"

"(1) IN GENERAL.—There are transferred to the Social Security Administration all functions of the Secretary of Health and Human Services with respect to or in support of the programs and activities the administration of which is vested in the Social Security Administration by reason of this title [see Tables for classification] and the amendments made thereby. The Commissioner of Social Security shall allocate such functions in accordance with sections 701, 702, 703, and 704 of the Social Security Act [this section and sections 902 to 904 of this title] (as amended by this title).

"(2) FUNCTIONS OF OTHER AGENCIES.—"

"(a) In General.—Subject to subparagraph (B), the Social Security Administration shall also perform—"

"(i) the functions of the Department of Health and Human Services, including functions relating to titles XVIII and XIX of the Social Security Act [subchapters XVIII and IX of this chapter] (including adjudications, subject to final decisions by the Secretary of Health and Human Services), that the Social Security Administration in such Department performed as of immediately before the date of the enactment of this Act [Aug. 15, 1994], and

"(ii) the functions of any other agency for which administrative responsibility was vested in
§ 901

Social Security Administration—

The Secretary of the Treasury—

(a) The Secretary of the Treasury shall, before the date of the enactment of this Act, agree to alter such terms pertaining to any such function or to terminate the performance by the Social Security Administration of any such function.

(b) PERSONNEL, ASSETS, ETC.—

(1) IN GENERAL.—There are transferred from the Department of Health and Human Services to the Social Security Administration, for appropriate allocation by the Commissioner of Social Security in the Social Security Administration—

(A) the personnel employed in connection with the functions transferred by this title and the amendments made thereby; and

(B) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, or used in connection with such functions, arising from such functions, or made available, or to be made available, in connection with such functions.

(2) UNEXPENDED FUNDS.—Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally appropriated.

(3) EMPLOYMENT PROTECTIONS.—

(A) IN GENERAL.—During the 1-year period beginning March 31, 1995—

(i) the transfer pursuant to this section of any full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such personnel to be separated or reduced in grade or compensation solely as a result of such transfer, and

(ii) except as provided in subparagraph (B), any such personnel who were not employed in the Social Security Administration in the Department of Health and Human Services immediately before the date of the enactment of this Act (Aug. 15, 1994) shall not be subject to directed reassignment to a duty station outside their commuting area.

(B) SPECIAL RULES.—

(i) In the case of personnel whose duty station is in the Washington, District of Columbia, commuting area immediately before March 31, 1995, subparagraph (A)(ii) shall not apply with respect to directed reassignment to a duty station outside their commuting area.

(ii) Except as provided in subparagraph (B), any such personnel who were not employed in the Social Security Administration in the Department of Health and Human Services immediately before March 31, 1995, subparagraph (A)(ii) shall not apply with respect to directed reassignment to a duty station outside their commuting area in the Baltimore, Maryland, commuting area after September 30, 1995.

(4) OFFICE SPACE.—Notwithstanding section 7 of the Public Buildings Act of 1959 (40 U.S.C. 3305(b)(2)(B), 3307), and subject to available appropriations, the Administrator of General Services may, after consultation with the Commissioner of Social Security and under such terms and conditions as the Administrator finds to be in the interests of the United States—

(A) acquire occupiable space in the metropolitan area of Washington, District of Columbia, for housing the Social Security Administration, and

(B) renovate such space as necessary.

(c) INTER-AGENCY TRANSFER ARRANGEMENT.—The Secretary of Health and Human Services and the Commissioner of Social Security shall enter into an inter-agency transfer arrangement (in this subsection referred to as the “arrangement”), which shall be effective March 31, 1995. Transfers made pursuant to this section shall be in accordance with the arrangement, which shall specify the personnel and resources to be transferred as provided under this section. The terms of such arrangement shall be transmitted not later than January 1, 1995, to the Committee on Ways and Means of the House of Representatives, to the Committee on Finance of the Senate, and to the Comptroller General of the United States. Not later than February 15, 1995, the Comptroller General shall submit a report to each such Committee setting forth an evaluation of such arrangement.

(Section 105(a)(b)(3) of Pub. L. 103–296, set out above, effective Mar. 31, 1995, and section 105(b)(4), (c) of Pub. L. 103–296, set out above, effective Aug. 15, 1994, see section 119(a), (c) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.)

TRANSECTION RULES

Section 106 of title I of Pub. L. 103–296 provided that:

(a) TRANSITION RULES RELATING TO OFFICERS OF THE SOCIAL SECURITY ADMINISTRATION.—

(1) APPOINTMENT OF INITIAL COMMISSIONER OF SOCIAL SECURITY.—The President shall nominate for appointment the initial Commissioner of Social Security to serve as head of the Social Security Administration established under section 701 of the Social Security Act (as amended by this Act) not later than 60 days after the date of the enactment of this Act [Aug. 15, 1994].

(2) ASSUMPTION OF OFFICE OF INITIAL COMMISSIONER BEFORE EFFECTIVE DATE OF NEW AGENCY.—If the appointment of the initial Commissioner of Social Security pursuant to section 702 of the Social Security Act [section 902 of this title] (as amended by this Act) is confirmed by the Senate pursuant to such section 702 before March 31, 1995, the individual shall take office as Commissioner immediately upon confirmation, and, until March 31, 1995, such Commissioner shall perform the functions of the Commissioner of Social Security in the Department of Health and Human Services.

(3) TREATMENT OF INSPECTOR GENERAL AND OTHER APPOINTMENTS.—At any time on or after the date of the enactment of this Act [Aug. 15, 1994], any of the officers provided for in section 702 of the Social Security Act (as amended by this Act) and any of the members of the Social Security Advisory Board provided for in section 703 of such Act [section 903 of this title] (as so amended) may be nominated and take office, under the terms and conditions set out in such sections.

(4) COMPENSATION FOR INITIAL OFFICERS AND BOARD MEMBERS BEFORE EFFECTIVE DATE OF NEW AGENCY.—Funds available to any official or component of the Department of Health and Human Services, functions of which are transferred to the Commissioner of Social Security or the Social Security Administration by this title [see Tables for classification], may, with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer or employee of the new Social Security Administration and of any member or staff of the Social Security Advisory Board who takes office pursuant to this subsection before March 31, 1995, until such time as funds for that purpose are otherwise available.

(5) INTERIM ROLE OF CURRENT COMMISSIONER AFTER EFFECTIVE DATE OF NEW AGENCY.—In the event that, as of March 31, 1995, an individual appointed to serve as the initial Commissioner of Social Security has not taken office, until such initial Commissioner has taken office, the officer serving on March 31, 1995, as
Continuation of Orders, Determinations, Rules, Regulations, Etc.—All orders, determinations, rules, regulations, permits, contracts, collective bargaining agreements (and ongoing negotiations relating to such collective bargaining agreements), recognitions of labor organizations, certificates, licenses, and privileges

(1) which have been issued, made, promulgated, granted, or allowed to become effective, in the exercise of functions which were exercised by the Secretary of Health and Human Services (or the Secretary’s delegate), and (B) which relate to functions which, by reason of this title, the amendments made thereby, and regulations prescribed thereunder, are vested in the Commissioner of Social Security; and

(2) which are in effect immediately before March 31, 1995.
any provision of law (other than this title [see Tables for classification] or a provision of law amended by this title), regulation, rule, record, or document to the Department of Health and Human Services with respect to such Department’s functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act [subchapter II of this chapter], or the supplemental security income program under title XVI of such Act [subchapter XVI of this chapter] or other functions performed by the Social Security Administration pursuant to section 105(a)(2) of this Act (set out above), such reference shall be considered a reference to the Social Security Administration.

“(b) References to the Secretary of Health and Human Services.—Whenever any reference is made in any provision of law (other than this title or a provision of law amended by this title), regulation, rule, record, or document to the Secretary of Health and Human Services with respect to such Secretary’s functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act or the supplemental security income program under title XVI of such Act or other functions performed by the Commissioner of Social Security pursuant to section 105(a)(2) of this Act, such reference shall be considered a reference to the Commissioner of Social Security.

“(c) References to Other Officers and Employees.—Whenever any reference is made in any provision of law (other than this title or a provision of law amended by this title), regulation, rule, record, or document to any other officer or employee of the Department of Health and Human Services with respect to such officer or employee’s functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act or the supplemental security income program under title XVI of such Act or other functions performed by the officer or employee of the Social Security Administration pursuant to section 105(a)(2) of this Act, such reference shall be considered a reference to the appropriate officer or employee of the Social Security Administration.”

§ 901a. Repealed. Aug. 28, 1950, ch. 809, title IV, § 401(b), 64 Stat. 558


§ 902. Commissioner; Deputy Commissioner; other officers

(a) Commissioner of Social Security

(1) There shall be in the Administration a Commissioner of Social Security (in this subchapter referred to as the “Commissioner”) who shall be appointed by the President, by and with the advice and consent of the Senate.

(3) The Commissioner shall be compensated at the rate provided for level I of the Executive Schedule.

(4) The Commissioner shall be responsible for the exercise of all powers and the discharge of all duties of the Administration, and shall have authority and control over all personnel and activities thereof.

(5) The Commissioner may prescribe such rules and regulations as the Commissioner determines necessary or appropriate to carry out the functions of the Administration. The regulations prescribed by the Commissioner shall be subject to the rulemaking procedures established under section 553 of title 5.

(6) The Commissioner may establish, alter, consolidate, or discontinue such organizational units or components within the Administration as the Commissioner considers necessary or appropriate, except that this paragraph shall not apply with respect to any unit, component, or provision provided for by this chapter.

(7) The Commissioner may assign duties, and delegate, or authorize successive redelegations of, authority to act and to render decisions, to such officers and employees of the Administration as the Commissioner may find necessary. Within the limitations of such delegations, redelegations, or assignments, all official acts and decisions of such officers and employees shall have the same force and effect as though performed or rendered by the Commissioner.

(8) The Commissioner and the Secretary of Health and Human Services (in this subchapter referred to as the “Secretary”) shall consult, on an ongoing basis, to ensure—

(A) the coordination of the programs administered by the Commissioner, as described in section 901 of this title, with the programs administered by the Secretary under subchapters XVIII and XIX of this chapter; and

(B) that adequate information concerning benefits under such subchapters XVIII and XIX of this chapter is available to the public.

(b) Deputy Commissioner of Social Security

(1) There shall be in the Administration a Deputy Commissioner of Social Security (in this subchapter referred to as the “Deputy Commissioner”) who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Deputy Commissioner shall be appointed for a term of 6 years, except that the initial term of office for the Deputy Commissioner shall terminate January 19, 2001. In any case in which a successor does not take office at the end of a Deputy Commissioner’s term of office, such Deputy Commissioner may continue in office until the entry upon office of such a successor. A Deputy Commissioner appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term. An individual serving in the office of Commissioner may be removed from office only pursuant to a finding by the President of neglect of duty or malfeasance in office.

(4) The Deputy Commissioner shall perform such duties and exercise such powers as the Commissioner shall from time to time assign or delegate. The Deputy Commissioner shall be Acting Commissioner of the Administration during the absence or disability of the Commissioner and, unless the President designates an-
other officer of the Government as Acting Commissioner, in the event of a vacancy in the office of the Commissioner.

(c) Chief Actuary

(1) There shall be in the Administration a Chief Actuary, who shall be appointed by, and in direct line of authority to, the Commissioner. The Chief Actuary shall be appointed from individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall serve as the chief actuarial officer of the Administration, and shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5.

(d) Chief Financial Officer

There shall be in the Administration a Chief Financial Officer appointed by the Commissioner in accordance with section 901(a)(2) of title 31.

(e) Inspector General

There shall be in the Administration an Inspector General appointed by the President, by and with the advice and consent of the Senate, in accordance with section 3(a) of the Inspector General Act of 1978.

References in Text

Levels I and II of the Executive Schedule, referred to in subsecs. (a)(2) and (b)(3), are set out in sections 5312 and 5313, respectively, of Title 5, Government Organization and Employees.

The Inspector General Act of 1978, referred to in subsec. (e), is section 3(a) of Pub. L. 95–942, which is set out in the Appendix to Title 5, Government Organization and Employees.

Amendments


1996—Subsecs. (c) to (e) of Pub. L. 104–121 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1994—Pub. L. 103–296 amended section generally. Prior to amendment, section read as follows: “The Secretary shall perform the duties imposed upon him by this chapter and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.”

1993—Pub. L. 102–560 substituted “Secretary” for “Commissioner”.


Effective Date of 1994 Amendment

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

Insuring by Insurer of Social Security of Receipts To Acknowledge Submission of Reports of Changes in Work or Earnings Status of Disabled Beneficiaries

Pub. L. 108–203, title II, § 202, Mar. 2, 2004, 118 Stat. 509, provided that: “Effective as soon as possible, but not later than 1 year after the date of the enactment of this Act [Mar. 2, 2004], until such time as the Commissioner of Social Security implements a centralized computer file recording the date of the submission of information by a disabled beneficiary (or representative) regarding a change in the beneficiary’s work or earnings status, the Commissioner shall issue a receipt to the disabled beneficiary (or representative) each time he or she submits documentation, or otherwise reports to the Commissioner, on a change in such status.”

Demonstration Projects Relating to Accountability for Telephone Service Center Communications

Pub. L. 101–508, title V, § 5108, Nov. 5, 1990, 104 Stat. 1388–269, directed Secretary of Health and Human Services to develop and carry out demonstration projects designed to implement certain accountability procedures in not fewer than 3 telephone service centers operated by the Social Security Administration, provided that such projects commence not later than 180 days after Nov. 5, 1990, and remain in operation for not less than 1 year and not more than 3 years, and directed Secretary to submit to Congress a written report on the progress of the demonstration projects not later than 90 days after the termination of the projects.

Telephone Access to Social Security Administration

Section 302 of Pub. L. 103–296 directed Comptroller General of the United States to submit to Congress, not later than Jan. 31, 1996, report and study of telephone access to local offices of the Social Security Administration, based on independent assessment of Social Security Administration’s use of innovative technology (including attendant call and voice mail) to increase public telephone access to local offices of the Administration.


“(a) Required Minimum Level of Access to Local Offices.—In addition to such other access by telephone to offices of the Social Security Administration as the Secretary of Health and Human Services may consider appropriate, the Secretary shall maintain access by telephone to local offices of the Social Security Administration at the level of access generally available as of September 30, 1989.

“(b) Telephone Listings.—The Secretary shall make such requests of local telephone utilities in the United States as are necessary to ensure that the listings subsequently maintained and published by such utilities
for each locality include the address and telephone number for each local office of the Social Security Administration to which direct telephone access is maintained under subsection (a) in such locality. Such listing may also include information concerning the availability of a toll-free number which may be called for general information.

(c) REPORT BY SECRETARY.—Not later than January 1, 1993, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report which—

(1) assesses the impact of the requirements established by this section on the Social Security Administration’s allocation of resources, workload levels, and service to the public, and

(2) presents a plan for using new, innovative technologies to enhance access to the Social Security Administration, including access to local offices.

(d) GAO REPORT.—The Comptroller General of the United States shall review the level of telephone access by the public to the local offices of the Social Security Administration. The Comptroller General shall file an interim report with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate describing such level of telephone access not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990] and shall file a final report with such Committees describing such level of access not later than 210 days after such date.

(e) EFFECTIVE DATE.—The Secretary of Health and Human Services shall meet the requirements of subsections (a) and (b) as soon as possible after the date of the enactment of this Act but not later [than] 180 days after such date.

§ 903. Social Security Advisory Board
(a) Establishment of Board
There shall be established a Social Security Advisory Board (in this section referred to as the “Board”).

(b) Functions of Board
On and after the date the Commissioner takes office, the Board shall advise the Commissioner on policies related to the old-age, survivors, and disability insurance program under subchapter II of this chapter, the program of special benefits for certain World War II veterans under subchapter II of this chapter and of the supplemental security income program under subchapter XVI of this chapter. Specific functions of the Board shall include—

(1) analyzing the Nation’s retirement and disability systems and making recommendations with respect to how the old-age, survivors, and disability insurance program and the supplemental security income program, supported by other public and private systems, can most effectively assure economic security;

(2) studying and making recommendations relating to the coordination of programs that provide health security with programs described in paragraph (1);

(3) making recommendations to the President and to the Congress with respect to policies that will ensure the solvency of the old-age, survivors, and disability insurance program, both in the short-term and the long-term;

(4) making recommendations with respect to the quality of service that the Administration provides to the public;

(5) making recommendations with respect to policies and regulations regarding the old-age, survivors, and disability insurance program and the supplemental security income program;
(6) increasing public understanding of the social security system;
(7) making recommendations with respect to a long-range research and program evaluation plan for the Administration;
(8) reviewing and assessing any major studies of social security as may come to the attention of the Board; and
(9) making recommendations with respect to such other matters as the Board determines to be appropriate.

(c) Structure and membership of Board

(1) The Board shall be composed of 7 members who shall be appointed as follows:
(A) 3 members shall be appointed by the President, by and with the advice and consent of the Senate. Not more than 2 of such members shall be from the same political party.
(B) 2 members (each member from a different political party) shall be appointed by the President pro tempore of the Senate with the advice of the Chairman and the Ranking Minority Member of the Senate Committee on Finance.
(C) 2 members (each member from a different political party) shall be appointed by the Speaker of the House of Representatives, with the advice of the Chairman and the Ranking Minority Member of the House Committee on Ways and Means.

(2) The members shall be chosen on the basis of their integrity, impartiality, and good judgment, and shall be individuals who are, by reason of their education, experience, and attainments, exceptionally qualified to perform the duties of members of the Board.

(d) Terms of appointment

Each member of the Board shall serve for a term of 6 years, except that—

(i) 3 years;
(ii) 4 years; and
(iii) 6 years.

(B) The terms of service of members initially appointed by the President pro tempore of the Senate shall expire as designated by the President pro tempore of the Senate at the time of nomination, 1 each at the end of—

(i) 3 years; and
(ii) 6 years.

(C) The terms of service of members initially appointed by the Speaker of the House of Representatives shall expire as designated by the Speaker of the House of Representatives at the time of nomination, 1 each at the end of—

(i) 4 years; and
(ii) 5 years.

(e) Chairman

A member of the Board shall be designated by the President to serve as Chairman for a term of 4 years, coincident with the term of the President, or until the designation of a successor.

(f) Compensation, expenses, and per diem

A member of the Board shall, for each day (including traveltime) during which the member is attending meetings or conferences of the Board or otherwise engaged in the business of the Board, be compensated at the daily rate of basic pay for level IV of the Executive Schedule. While serving on business of the Board away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government employed intermittently.

(g) Meetings

(1) The Board shall meet at the call of the Chairman (in consultation with the other members of the Board) not less than 4 times each year to consider a specific agenda of issues, as determined by the Chairman in consultation with the other members of the Board.

(2) Four members of the Board (not more than 3 of whom may be of the same political party) shall constitute a quorum for purposes of conducting business.

(h) Federal Advisory Committee Act

The Board shall be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(i) Personnel

The Board shall, without regard to the provisions of title 5 relating to the competitive service, appoint a Staff Director who shall be paid at a rate equivalent to a rate established for the Senior Executive Service under section 5382 of title 5. The Board shall appoint such additional personnel as the Board determines to be necessary to provide adequate support for the Board, and may compensate such additional personnel without regard to the provisions of title 5 relating to the competitive service.

(j) Authorization of appropriations

There are authorized to be appropriated, out of the Federal Disability Insurance Trust Fund, the Federal Old-Age and Survivors Insurance Trust Fund, and the general fund of the Treasury, such sums as are necessary to carry out the purposes of this section.

(REF)
The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees. The provisions of title 5 relating to the competitive service, referred to in subsec. (i), are classified generally to section 3301 et seq. of Title 5.

**AMENDMENTS**


1997—Subsec. (i). Pub. L. 105–33 struck out “and three professional staff members one of whom shall be appointed from among individuals approved by the members of the Board who are not members of the political party represented by the majority of the Board,” after “Staff Director” and “clerical” after “provide adequate”.

1996—Subsec. (i). Pub. L. 104–121 inserted “and three professional staff members one of whom shall be appointed from among individuals approved by the members of the Board who are not members of the political party represented by the majority of the Board,” after “Staff Director”.

1994—Pub. L. 103–296 amended section generally. Prior to amendment, text read as follows: “(a) Personnel—The Commissioner shall authorize for the Administration a total number of personnel which is substantially greater than the number of such positions authorized in the Social Security Administration in the Department of Health and Human Services as of immediately before August 15, 1993, in accordance with the provisions of section 3109 of title 5.

(b) Budgetary matters—The Commissioner shall take such action as he considers necessary to carry out the functions of the Administration under this chapter, and attorneys and experts may be appointed without regard to the civil service laws. Except as otherwise provided in the preceding sentence or in any other provision of law, such officers and employees shall be appointed, and their compensation shall be fixed, in accordance with title 5.


**EFFECTIVE DATE OF 2004 AMENDMENT**


**EFFECTIVE DATE OF 1997 AMENDMENT**


(b) Budgetary matters—(1)(A) The Commissioner shall prepare an annual budget for the Administration, which shall be submitted by the President to the Congress without revision, together with the President’s annual budget for the Administration.

(B) The Commissioner shall include in the annual budget prepared pursuant to subparagraph (A) an itemization of the amount of funds required by the Social Security Administration for the fiscal year covered by the budget to support efforts to combat fraud committed by applicants and beneficiaries.
(2)(A) Appropriations requests for staffing and personnel of the Administration shall be based upon a comprehensive work force plan, which shall be established and revised from time to time by the Commissioner.

(B) Appropriations for administrative expenses of the Administration are authorized to be provided on a biennial basis.

(c) Employment restriction

The total number of positions in the Administration (other than positions established under section 902 of this title) which—

(1) are held by noncareer appointees (within the meaning of section 3132(a)(7) of title 5) in the Senior Executive Service, or

(2) have been determined by the President or the Office of Personnel Management to be of a confidential, policy-determining, policy-making, or policy-advocating character and have been excepted from the competitive service thereby,

may not exceed at any time the equivalent of 20 full-time positions.

(d) Seal of office

The Commissioner shall cause a seal of office to be made for the Administration of such design as the Commissioner shall approve. Judicial notice shall be taken of such seal.

(e) Data exchanges

(1) Notwithstanding any other provision of law (including subsections (b), (o), (p), (q), (r), and (u) of section 552a of title 5)—

(A) the Secretary shall disclose to the Commissioner any record or information requested in writing by the Commissioner for the purpose of administering any program administered by the Commissioner. If records or information of such type were disclosed to the Commissioner of Social Security in the Department of Health and Human Services under applicable rules, regulations, and procedures in effect before August 15, 1994; and

(B) the Commissioner shall disclose to the Secretary or to any State any record or information requested in writing by the Secretary to be so disclosed for the purpose of administering any program administered by the Secretary, if records or information of such type were so disclosed under applicable rules, regulations, and procedures in effect before August 15, 1994.

(2) The Commissioner and the Secretary shall enter into an agreement under which the Commissioner provides the Secretary data concerning the quality of the services and information provided to beneficiaries of the programs administered by the Secretary, if records or information of such type were disclosed to the Commissioner of Social Security in the Department of Health and Human Services under applicable rules, regulations, and procedures in effect before August 15, 1994.

(3) The Commissioner and the Secretary shall periodically review the need for exchanges of information not referred to in paragraph (1) or (2) and shall enter into such agreements as may be necessary and appropriate to provide information to each other or to States in order to meet the programmatic needs of the requesting agencies.

(4)(A) Any disclosure from a system of records (as defined in section 552a(a)(5) of title 5) pursuant to this subsection shall be made as a routine use under subsection (b)(3) of section 552a of such title (unless otherwise authorized under such section 552a).

(B) Any computerized comparison of records, including matching programs, between the Commissioner and the Secretary shall be conducted in accordance with subsections (o), (p), (q), (r), and (u) of section 552a of title 5.

(5) The Commissioner and the Secretary shall each ensure that timely action is taken to establish any necessary routine uses for disclosures required under paragraph (1) or agreed to pursuant to paragraph (3).

(2) The Commissioner and the Secretary shall enter into an agreement under which the Commissioner shall provide the Secretary data concerning the social security program. Such agreement shall stipulate the type of data to be provided and the terms and conditions under which the data are to be provided.

AMENDMENTS

1999—Subsec. (b)(1). Pub. L. 106–169 designated existing provisions as subpar. (A) and added subpar. (B).

1994—Pub. L. 103–296 amended section generally. Prior to amendment, section read as follows: "The Secretary shall make a full report to Congress, within one hundred and twenty days after the beginning of each regular session of the administration of the functions with which he is charged under this chapter. In addition to the number of copies of such report authorized by other law to be printed, there is hereby authorized to be printed not more than five thousand copies of such report for use by the Secretary for distribution to Members of Congress and to State and other public or private agencies or organizations participating in or concerned with the social security program.''

1984—Pub. L. 98–369 substituted "Secretary" for "Administrator".

1976—Pub. L. 94–273 substituted "within one hundred and twenty days after the beginning" for "at the beginning".


EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–169, title II, §211(b), Dec. 14, 1999, 113 Stat. 1342, provided that: "The amendments made by this section [amending this section] shall apply with respect to annual budgets prepared for fiscal years after fiscal year 1999.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 104(c) of Pub. L. 103–296 provided that:

"(1) EFFECTIVE DATE.—Section 704(e)(4) of the Social Security Act [subsec. (e)(4) of this section] (as amended by subsection (a)) shall take effect March 31, 1994.

"(2) TRANSITION RULE.—Notwithstanding any other provision of law (including subsections (b), (o), (p), (q), (r), and (u) of section 552a of title 5, United States Code), arrangements for disclosure of records or other information, and arrangements for computer matching of records, which were in effect immediately before the date of the enactment of this Act [Aug. 15, 1994] between the Social Security Administration in the Department of Health and Human Services and other components of such Department may continue between
the Social Security Administration established under section 761 of the Social Security Act [section 901 of this title] (as amended by this Act) and such Department during the period beginning on the date of the enactment of this Act and ending March 31, 1996."

Amendment by section 104(a) of Pub. L. 103–296 effective Mar. 31, 1996, except as otherwise provided, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

**Effective Date of 1984 Amendment**

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

**REPORT ON SES POSITIONS UNDER COMPREHENSIVE WORK FORCE PLAN**

Section 104(b) of Pub. L. 103–296 provided that within 60 days after establishment by Commissioner of Social Security of comprehensive work force plan required under subsec. (b)(2) of this section, Director of Office of Personnel Management was to transmit to Congress a report specifying total number of Senior Executive Services positions authorized for Social Security Administration in connection with such work force plan.

§§ 905, 905a. Transferred

**CODIFICATION**

Section 905, act July 5, 1962, ch. 575, title II, §201, 66 Stat. 369, as amended, which related to the working capital fund, was transferred to section 3513 of this title.

Section 905a, act Aug. 10, 1971, Pub. L. 92–80, title II, §200, 85 Stat. 297, which related to additional use of the working capital fund, was transferred to section 3513b of this title.

§ 906. Training grants for public welfare personnel

(a) Authorization of appropriations

In order to assist in increasing the effectiveness and efficiency of administration of public assistance programs by increasing the number of adequately trained public welfare personnel available for work in public assistance programs, there are hereby authorized to be appropriated for the fiscal year ending June 30, 1963, the sum of $3,500,000, and for each fiscal year thereafter the sum of $5,000,000.

(b) Allocation for carrying out direct grant programs

Such portion of the sums appropriated pursuant to subsection (a) of this section for any fiscal year as the Secretary may determine, but not in excess of $1,000,000 in the case of the fiscal year ending June 30, 1963, and $2,000,000 in the case of any fiscal year thereafter, shall be available for carrying out subsection (f) of this section. From the remainder of the sums so appropriated for any fiscal year, the Secretary shall make allotments to the States on the basis of (1) population, (2) relative need for trained public welfare personnel, particularly for personnel to provide self-support and self-care services, and (3) financial need.

(c) Payments to States for cost of grant programs to certain agencies and institutions

From each State’s allotment under subsection (b) of this section, the Secretary shall from time to time pay to such State its costs of carrying out the purposes of this section through (1) grants to public or other nonprofit institutions of higher learning for training personnel employed or preparing for employment in public assistance programs, (2) special courses of study or seminars of short duration conducted for such personnel by experts hired on a temporary basis for the purpose, and (3) establishing and maintaining, directly or through grants to such institutions, fellowships or traineeships for such personnel at such institutions, with such stipends and allowances as may be permitted under regulations of the Secretary.

(d) Advance payments to States

Payments pursuant to subsection (c) of this section shall be made in advance on the basis of estimates by the Secretary and adjustments may be made in future payments under this section to take account of overpayments or underpayments in amounts previously paid.

(e) Reallocation

The amount of any allotment to a State under subsection (b) of this section for any fiscal year which the State certifies to the Secretary will not be required for carrying out the purposes of this section in such State shall be available for reallocation from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines have need in carrying out such purposes for sums in excess of those previously allotted to them under this section and will be able to use such excess amounts during such fiscal year; such reallocations to be made on the basis provided in subsection (b) of this section for the initial allotments to the States. Any amount so reallocated to a State shall be deemed part of its allotment under such subsection.

(f) Direct grants to certain agencies and institutions

(1) The portion of the sums appropriated for any fiscal year which is determined by the Secretary under the first sentence of subsection (b) of this section to be available for carrying out this subsection shall be available to enable him to provide (A) directly or through grants to or contracts with public or nonprofit private institutions of higher learning, for training personnel who are employed or preparing for employment in the administration of public assistance programs, (B) directly or through grants to or contracts with public or nonprofit private agencies or institutions, for special courses of study or seminars of short duration (not in excess of one year) for training of such personnel, and (C) directly or through grants to or contracts with public or nonprofit private institutions of higher learning, for establishing and maintaining fellowships or traineeships for such personnel at such institutions, with such stipends and allowances as may be permitted by the Secretary.

(2) Payments under paragraph (1) may be made in advance on the basis of estimates by the Secretary, or may be made by way of reimbursement, and adjustments may be made in future payments under this subsection to take account of overpayments or underpayments in amounts previously paid.
(3) The Secretary may, to the extent he finds such action to be necessary, prescribe requirements to assure that any individual will repay the amount of his fellowship or traineeship received under this subsection to the extent such individual fails to serve, for the period prescribed by the Secretary, with a State or political subdivision thereof, or with the Federal Government, in connection with administration of any State or local public assistance program. The Secretary may relieve any individual of his obligation to so repay, in whole or in part, whenever and to the extent that requirement of such repayment would, in his judgment, be inequitable or would be contrary to the purposes of any of the public welfare programs established by this chapter.


AMENDMENTS

1962—Subsec. (a). Pub. L. 87–543, § 123(a), substituted "for the fiscal year ending June 30, 1963, the sum of $3,500,000, and for each fiscal year thereafter the sum of $5,000,000" for "for the fiscal year ending June 30, 1958, the sum of $5,000,000, and for each of the five succeeding fiscal years such sums as the Congress may determine".

Subsec. (b). Pub. L. 87–543, § 123(b), required appropriated moneys to be made available for carrying out subsection (f) of this section.


1961—Subsec. (a). Pub. L. 87–31, § 3(a), substituted "five" for "four".

Subsec. (c). Pub. L. 87–31, § 3(b), substituted "its costs of carrying out the purposes of this section" for "80 per centum of the total of its expenditures in carrying out the purposes of this section".

EFFECTIVE DATE OF 1962 AMENDMENT

Section 202(b) of Pub. L. 87–543 provided that: "The amendments made by sections 102(c), 123, and 132(d) [amending this section and sections 722 and 726 of this title, and repealing credits to section 1308 of this title and provisions set out as notes under section 1308 of this title] shall be applicable in the case of fiscal years beginning after June 30, 1962."

EFFECTIVE DATE OF 1961 AMENDMENT

Section 3(b) of Pub. L. 87–31 provided that the amendment made by that section is effective with respect to payments from allotments from appropriations made for fiscal years beginning after June 30, 1961.


EFFECTIVE DATE OF REPEAL

Repeal effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.
§ 907a  TITLE 42—THE PUBLIC HEALTH AND WELFARE

(b) Continuing study, investigation, and review of social security program; scope of study, etc., and public participation

(1) It shall be the duty and function of the Commission to conduct a continuing study, investigation, and review of—

(A) the Federal old-age, survivors, and disability insurance program established by subchapter II of this chapter; and

(B) the health insurance programs established by subchapter XVIII of this chapter.

(2) Such study, investigation, and review of such programs shall include (but not be limited to)—

(A) the fiscal status of the trust funds established for the financing of such programs and the adequacy of such trust funds to meet the immediate and long-range financing needs of such programs;

(B) the scope of coverage, the adequacy of benefits including the measurement of an adequate retirement income, and the conditions of qualification for benefits provided by such programs including the application of the retirement income test to unearned as well as earned income;

(C) the impact of such programs on, and their relation to, public assistance programs, nongovernmental retirement and annuity programs, medical service delivery systems, and national employment practices;

(D) any inequities (whether attributable to provisions of law relating to the establishment and operation of such programs, to rules and regulations promulgated in connection with the administration of such programs, or to administrative practices and procedures employed in the carrying out of such programs) which affect substantial numbers of individuals who are insured or otherwise eligible for benefits under such programs, including inequities and inequalities arising out of marital status, sex, or similar classifications or categories;

(E) possible alternatives to the current Federal programs or particular aspects thereof, including but not limited to (i) a phasing out of the payroll tax with the financing of such programs being accomplished in some other manner (including general revenue funding and the retirement bond), (ii) the establishment of a system providing for mandatory participation in any or all of the Federal programs, (iii) the integration of such current Federal programs with private retirement programs, and (iv) the establishment of a system permitting covered individuals a choice of public or private programs or both;

(F) the need to develop a special Consumer Price Index for the elderly, including the financial impact that such an index would have on the costs of the programs established under this chapter; and

(G) methods for effectively implementing the recommendations of the Commission.

(3) In order to provide an effective opportunity for the general public to participate fully in the study, investigation, and review under this section, the Commission, in conducting such study, investigation, and review, shall hold public hearings in as many different geographical areas of the country as possible. The residents of each area where such a hearing is to be held shall be given reasonable advance notice of the hearing and an adequate opportunity to appear and express their views on the matters under consideration.

(c) Special, annual, and final reports to President and Congress concerning implementation, etc., of study, investigation, and review responsibilities; termination of Commission

(1) No later than four months after the date on which a majority of the authorized membership of the Commission is initially appointed, the Commission shall submit to the President and the Congress a special report describing the Commission’s plans for conducting the study, investigation, and review under subsection (b) of this section, with particular reference to the scope of such study, investigation, and review and the methods proposed to be used in conducting it.

(2) At or before the close of each of the first two years after the date on which a majority of the authorized membership of the Commission is initially appointed, the Commission shall submit to the President and the Congress an annual report on the study, investigation, and review under subsection (b) of this section, together with its recommendations with respect to the programs involved. The second such report shall constitute the final report of the Commission on such study, investigation, and review, and shall include its final recommendations; and the Commission shall cease to exist on April 1, 1981.

(d) Executive Director and additional personnel; appointment and compensation

(1) The Commission shall appoint an Executive Director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule by title 5.

(2) In addition to the Executive Director, the Commission shall have the power to appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5 governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(e) Administrative procedures

In carrying out its duties under this section, the Commission, or any duly authorized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters with respect to which it has a responsibility under this section, as the Commission or such committee may deem advisable. The Chairman of the Commission or any member authorized by him may administer oaths or affirmations to witnesses appearing before the Commission or before any committee thereof.

(f) Data and information from other Federal departments and agencies

The Commission may secure directly from any department or agency of the United States such...
data and information as may be necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Commission, any such department or agency shall furnish any such data or information to the Commission.

(g) Administrative support services from General Services Administration; reimbursement

The General Services Administration shall provide to the Commission, on a reimbursable basis such administrative support services as the Commission may request.

(h) Authorization of appropriations

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


REFERENCES IN TEXT

Section 2349(c) of Pub. L. 98–369 provided that: "The section was enacted as part of the Social Security Amendments of 1977, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS


1980—Subsec. (a)(2)(F). Pub. L. 96–265, § 502(a), substituted "a term which shall end on April 1, 1981" for "a term of two years".

Subsec. (c)(2). Pub. L. 96–265, § 502(b), substituted "and upon the submission of such final report the Commission shall cease to exist" for "and upon the submission of such final report the Commission shall cease to exist".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2349(c) of Pub. L. 98–369 provided that: "The amendments made by this section [amending this section and section 233f of Title 45, Railroads, and repealing section 1395dd of this title] shall become effective on the date of the enactment of this Act [July 18, 1984]."

§ 908. Omitted

CODIFICATION


§ 909. Delivery of benefit checks

(a) Saturdays, Sundays, and holidays

If the day regularly designated for the delivery of benefit checks under subchapter II, VIII, or XVI of this chapter falls on a Saturday, Sunday, or legal public holiday (as so defined), without regard to whether the delivery of such checks would as a result have to be made before the end of the month for which such checks are issued.

(b) Recovery of overpayments

If more than the correct amount of payment under subchapter II, VIII, or XVI of this chapter is made to any individual as a result of the receipt of a benefit check pursuant to subsection (a) of this section before the end of the month for which such check is issued, no action shall be taken (under section 404 or 1383(b) of this title or otherwise) to recover such payment or the incorrect portion thereof.

(c) Early delivery

For purposes of computing the "OASDI trust fund ratio" under section 401(l) of this title, the "OASDI fund ratio" under section 415(l) of this title, and the "balance ratio" under section 910(b) of this title, benefit checks delivered before the end of the month for which they are issued by reason of subsection (a) of this section shall be deemed to have been delivered on the regularly designated delivery date.


AMENDMENTS


EFFECTIVE DATE OF 1986 AMENDMENT

Section 12111(c) of Pub. L. 99–272 provided that: "The amendments made by this section [amending this section and section 86 of Title 26, Internal Revenue Code] shall apply with respect to benefit checks issued for months ending after the date of the enactment of this Act [Apr. 7, 1986]."

EFFECTIVE DATE

Section 333(b) of Pub. L. 95–216 provided that: "The amendment made by subsection (a) of this section [enacting this section] shall apply with respect to benefit checks the regularly designated day for delivery of which occurs on or after the thirtieth day after the date of the enactment of this Act [Dec. 20, 1977]."

TIMING OF DELIVERY OF OCTOBER 1, 2000, SSI BENEFIT PAYMENTS

Pub. L. 105–33, title V, § 5527, Aug. 5, 1997, 111 Stat. 625, provided that, notwithstanding the provisions of section 908(a) of this title, the day designated for delivery of benefit payments under subchapter XVI of this chapter for October 2000 would be the second day of that month, prior to repeal by Pub. L. 106–346, div. B, title V, § 5105, July 13, 2000, 114 Stat. 582.

§ 910. Recommendations by Board of Trustees to remedy inadequate balances in Social Security trust funds

(a) Terms and conditions of recommendations

If the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Medical Insurance Trust
Fund determines at any time that the balance ratio of any such Trust Fund for any calendar year may become less than 20 percent, the Board shall promptly submit to each House of the Congress a report setting forth its recommendations for statutory adjustments affecting the receipts and disbursements of such Trust Fund necessary to maintain the balance ratio of such Trust Fund at not less than 20 percent, with due regard to the economic conditions which created such inadequacy in the balance ratio and the amount of time necessary to alleviate such inadequacy in a prudent manner. The report shall set forth specifically the extent to which benefits would have to be reduced, taxes under section 1401, 3101, or 3111 of the Internal Revenue Code of 1986 would have to be increased, or a combination thereof, in order to obtain the objectives referred to in the preceding sentence.

(b) "Balance ratio" defined

For purposes of this section, the term "balance ratio" means, with respect to any calendar year in connection with any Trust Fund referred to in subsection (a) of this section, the ratio of—

(1) the balance in such Trust Fund as of the beginning of such year, including the taxes transferred under section 401(a) of this title on the first day of such year and reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under section 401(l) or 1395i(j) of this title, to

(2) the total amount which (for amounts which will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as estimated by the Commissioner, and for amounts which will be paid from the Federal Hospital Insurance Trust and the Federal Supplementary Medical Insurance Trust Fund, as estimated by the Secretary) will be paid from such Trust Fund during such calendar year for all purposes authorized by section 401, 1395i, or 1395l of this title (as applicable), other than payments of interest on, or repayments of, loans under section 401(l) or 1395l(j) of this title, to

(b) No provision of law enacted after December 12, 1985 (other than a provision of an appropriation Act that appropriated funds authorized under this chapter as in effect on December 12, 1985) may provide for payments from the general fund of the Treasury to any Trust Fund specified in subsection (a) of this section or for payments from any such Trust Fund to the general fund of the Treasury.


REFERENCES IN TEXT

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

Amendments

1994—Subsec. (b)(2). Pub. L. 103–296 substituted "(for amounts which will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as estimated by the Commissioner, and for amounts which will be paid from the Federal Hospital Insurance Trust and the Federal Supplementary Medical Insurance Trust Fund, as estimated by the Secretary)" for "(as estimated by the Secretary)".


1984—Subsec. (b)(1). Pub. L. 99–272 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "the balance in such Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under section 401(l) or 1395l(j) of this title, as of the beginning of such year, to".

Effective Date of 1994 Amendment


Effective Date of 1986 Amendment


§ 911. Budgetary treatment of trust fund operations

(a) The receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund and the taxes imposed under sections 1401 and 3101 of the Internal Revenue Code of 1986 shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

References in Text

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

Amendments

1997—Pub. L. 105–33 amended section generally. Prior to amendment, section provided that receipts and disbursements of Federal Old-Age and Survivors Insurance Trust Fund, Federal Disability Insurance Trust Fund, and Federal Hospital Insurance Trust Fund and taxes imposed under sections 1401, 3101, and 3111 of title 26 were not to be included in totals of budget of United States Government, that no law enacted after Dec. 12, 1985, except certain appropriations Act provisions, could provide for payments from general fund of the Treasury to any Trust Fund or from any such Trust Fund to the general fund of the Treasury.
were to be treated as a separate major functional category in budget of the Government.

1965—Subsec. (a), Pub. L. 99–177, § 261(b), designated existing provisions as par. (1) and added par. (2).
Subsec. (b), Pub. L. 99–177, § 261(a)(1)(A)—(D), temporarily designated existing provisions as subsec. (b), struck out references to the Federal Old-Age and Survivors Insurance Trust Fund and to the Federal Disability Insurance Trust Fund, and substituted “sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1954” for “sections 1401, 3101, and 3111 of the Internal Revenue Code of 1954”. See Effective and Termination Dates of 1985 Amendment note below.
1983—Pub. L. 98–21, § 346(b), amended section generally, adding subsec. (a) and designating existing provisions as subsec. (b) and striking out “Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the” after “The disbursements of the” and substituting “such Trust Fund” for “such Trust Funds”, including the taxes imposed under sections 1401, 3101, and 3111 of the Internal Revenue Code of 1954,” after “receipts of such Trust Fund”. See Effective and Termination Dates of 1985 Amendment note below.

Effective and Termination Dates of 1985 Amendment

Section 261(a)(2) of Pub. L. 99–177 provided that: “The amendments made by paragraph (1) [amending this section] shall apply with respect to fiscal years beginning after September 30, 1985, and ending before October 1, 1992.”

Effective Date of 1983 Amendment

Section 346(b) of Pub. L. 98–21 provided that the amendment made by that section is effective for fiscal years beginning on or after Oct. 1, 1992.

Effective and Termination Dates

Section 346(a)(2) of Pub. L. 98–21 provided that: “The amendment made by paragraph (1) [enacting this section] shall apply with respect to fiscal years beginning on or after October 1, 1992, except that such amendment shall apply with respect to the fiscal year beginning on October 1, 1983, to the extent it relates to the congressional budget.”

§ 912. Office of Rural Health Policy

(a) There shall be established in the Department of Health and Human Services (in this section referred to as the “Department”) an Office of Rural Health Policy (in this section referred to as the “Office”). The Office shall be headed by a Director, who shall advise the Secretary on the effects of current policies and proposed statutory, regulatory, administrative, and budgetary changes in the programs established under subchapters XVIII and XIX of this chapter on the financial viability of small rural hospitals, the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, and access to (and the quality of) health care in rural areas.

(b) In addition to advising the Secretary with respect to the matters specified in subsection (a) of this section, the Director, through the Office, shall—

(1) oversee compliance with the requirements of section 1302(b) of this title and section 4403 of the Omnibus Budget Reconciliation Act of 1987 (as such section pertains to rural health issues),

(2) establish and maintain a clearinghouse for collecting and disseminating information on—

(A) rural health care issues, including rural mental health, rural infant mortality prevention, and rural occupational safety and preventive health promotion,

(B) research findings relating to rural health care, and

(C) innovative approaches to the delivery of health care in rural areas, including programs providing community-based mental health services, pre-natal and infant care services, and rural occupational safety and preventive health education and promotion,

(3) coordinate the activities within the Department that relate to rural health care,

(4) provide information to the Secretary and others in the Department with respect to the activities of other Federal departments and agencies, that relate to rural health care, including activities relating to rural mental health, rural infant mortality, and rural occupational safety and preventive health promotion, and

(5) administer grants, cooperative agreements, and contracts to provide technical assistance and other activities as necessary to support activities related to improving health care in rural areas.

(Effective Date of 1988 Amendment)

1989—Subsec. (b)(2)(A), Pub. L. 101–239, § 6213(g)(1), substituted “health care issues, including rural mental health, rural infant mortality prevention, and rural occupational safety and preventive health promotion” for “health care issues”.
Subsec. (b)(2)(C), Pub. L. 101–239, § 6213(g)(2), substituted “health care in rural areas, including programs providing community-based mental health services, pre-natal and infant care services, and rural occupational safety and preventive health education and promotion” for “health care in rural areas”.
Subsec. (b)(4), Pub. L. 101–239, § 6213(g)(3), substituted “rural health care, including activities relating to rural mental health, rural infant mortality, and rural occupational safety and preventive health promotion” for “rural health care”.
1986—Subsec. (b)(1), Pub. L. 100–360 substituted “section 4403 of the Omnibus Budget Reconciliation Act of 1987 (as such section pertains to rural health issues)” for “section 4083 of the Omnibus Budget Reconciliation Act of 1987”.

References in Text

Section 4403 of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (b)(1), is section 4403 of Pub. L. 100–203, which is set out as a note under section 1350b–1 of this title.

Amendments

1989—Subsec. (b)(2)(A), Pub. L. 101–239, § 6213(g)(1), substituted “health care issues, including rural mental health, rural infant mortality prevention, and rural occupational safety and preventive health promotion” for “health care issues”.
Subsec. (b)(2)(C), Pub. L. 101–239, § 6213(g)(2), substituted “health care in rural areas, including programs providing community-based mental health services, pre-natal and infant care services, and rural occupational safety and preventive health education and promotion” for “health care in rural areas”.
Subsec. (b)(4), Pub. L. 101–239, § 6213(g)(3), substituted “rural health care, including activities relating to rural mental health, rural infant mortality, and rural occupational safety and preventive health promotion” for “rural health care”.
1986—Subsec. (b)(1), Pub. L. 100–360 substituted “section 4403 of the Omnibus Budget Reconciliation Act of 1987 (as such section pertains to rural health issues)” for “section 4083 of the Omnibus Budget Reconciliation Act of 1987”.

Effective Date of 1988 Amendment

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates
to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

§ 913. Duties and authority of Secretary

The Secretary shall perform the duties imposed upon the Secretary by this chapter. The Secretary is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures as may be necessary for carrying out the functions of the Secretary under this chapter. The Secretary may appoint attorneys and experts without regard to the civil service laws.


§ 914. Office of Women’s Health

(a) Establishment

The Secretary shall establish within the Office of the Administrator of the Health Resources and Services Administration, an office to be known as the Office of Women’s Health. The Office shall be headed by a director who shall be appointed by the Administrator:

(b) Purpose

The Director of the Office shall—

(1) report to the Administrator on the current Administration level of activity regarding women’s health across, where appropriate, age, biological, and sociocultural contexts;

(2) establish short-range and long-range goals and objectives within the Health Resources and Services Administration for women’s health and, as relevant and appropriate, coordinate with other appropriate offices on activities within the Administration that relate to health care provider training, health service delivery, research, and demonstration projects, for issues of particular concern to women;

(3) identify projects in women’s health that should be conducted or supported by the bureaus of the Administration;

(4) consult with health professionals, non-governmental organizations, consumer organizations, women’s health professionals, and other individuals and groups, as appropriate, on Administration policy with regard to women; and

(5) serve as a member of the Department of Health and Human Services Coordinating Committee on Women’s Health (established under section 237a(b)(4) of this title).

(c) Continued administration of existing programs

The Director of the Office shall assume the authority for the development, implementation, administration, and evaluation of any projects carried out through the Health Resources and Services Administration relating to women’s health on March 23, 2010.

(d) Definitions

For purposes of this section:

(1) Administration

The term “Administration” means the Health Resources and Services Administration.

(2) Administrator

The term “Administrator” means the Administrator of the Health Resources and Services Administration.

(3) Office

The term “Office” means the Office of Women’s Health established under this section in the Administration.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2010 through 2014.


SUBCHAPTER VIII—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

Prior Provisions

A prior subchapter VIII, relating to taxes with respect to employment and consisting of sections 1001 to 1011 of this title, was omitted. See Prior Provisions note set out under section 1001 of this title.

§ 1001. Basic entitlement to benefits

Every individual who is a qualified individual under section 1002 of this title shall, in accordance with and subject to the provisions of this subchapter, be entitled to a monthly benefit paid by the Commissioner of Social Security for each month after September 2000 (or such earlier month, if the Commissioner determines is administratively feasible) the individual resides outside the United States.


Prior Provisions


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<th>Omitted sections</th>
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Section 1001 related to income tax on employees.  
Section 1002 related to deduction of tax from wages.  
Section 1003 related to deductibility from income taxes.  
Section 1004 related to excise tax on employers.  
Section 1005 related to adjustment of employers’ tax.  
Section 1006 related to refunds and deficiencies.  
Section 1007 related to collection and payment of taxes.  
Section 1008 related to rules and regulations.  
Section 1009 related to sale by postmasters of stamps or other devices for collection or payment of tax.  
Section 1010 related to definitions.

§ 1002. Qualified individuals

Except as otherwise provided in this subchapter, an individual—

(1) who has attained the age of 65 on or before December 14, 1999;
(2) who is a World War II veteran;
(3) who is eligible for a supplemental security income benefit under subchapter XVI of this chapter for—
   (A) the month in which this subchapter is enacted; and
   (B) the month in which the individual files an application for benefits under this subchapter;
(4) whose total benefit income is less than 75 percent of the Federal benefit rate under subchapter XVI of this chapter;
(5) who has filed an application for benefits under this subchapter; and
(6) who is in compliance with all requirements imposed by the Commissioner of Social Security under this subchapter,
shall be a qualified individual for purposes of this subchapter.


PRIOR PROVISIONS
For prior provisions, see note set out under section 1001 of this title.

§ 1003. Residence outside the United States

For purposes of section 1001 of this title, with respect to any month, an individual shall be regarded as residing outside the United States if, on the first day of the month, the individual so resides outside the United States.


PRIOR PROVISIONS
For prior provisions, see note set out under section 1001 of this title.

§ 1004. Disqualifications

(a) In general

Notwithstanding section 1002 of this title, an individual may not be a qualified individual for any month—

(1) that begins after the month in which the Commissioner of Social Security is notified by the Attorney General that the individual has been removed from the United States pursuant to section 1227(a) or 1182(a)(6)(A) of title 8 and before the month in which the individual is lawfully admitted to the United States for permanent residence;
(2) during any part of which the individual is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the United States or the jurisdiction within the United States from which the person has fled, for a crime, or an attempt to commit a crime, that is a felony under the laws of the place from which the individual has fled, or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed;
(3) during any part of which the individual violates a condition of probation or parole imposed under Federal or State law; or
(4) during which the individual resides in a foreign country and is not a citizen or national of the United States if payments for such month to individuals residing in such country are withheld by the Treasury Department under section 3329 of title 31.

(b) Requirement for Attorney General

For the purpose of carrying out subsection (a)(1) of this section, the Attorney General shall notify the Commissioner of Social Security as soon as practicable after the removal of any individual under section 1227(a) or 1182(a)(6)(A) of title 8.


PRIOR PROVISIONS
For prior provisions, see note set out under section 1001 of this title.

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–203 substituted “or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed” for “or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State”.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–203 effective on the first day of the first month that begins on or after the date that is 9 months after Mar. 2, 2004, see section 203(d) of Pub. L. 108–203, set out as a note under section 402 of this title.

§ 1005. Benefit amount

The benefit under this subchapter payable to a qualified individual for any month shall be in an amount equal to 75 percent of the Federal bene-
§ 1006. Applications and furnishing of information

(a) In general

The Commissioner of Social Security shall, subject to subsection (b) of this section, prescribe such requirements with respect to the filing of applications, the furnishing of information and other material, and the reporting of events and changes in circumstances, as may be necessary for the effective and efficient administration of this subchapter.

(b) Verification requirement

The requirements prescribed by the Commissioner of Social Security under subsection (a) of this section shall preclude any determination of entitlement to benefits under this subchapter solely on the basis of declarations by the individual concerning qualifications or other material facts, and shall provide for verification of material information from independent or collateral sources, and the procurement of additional information as necessary in order to ensure that the benefits are provided only to qualified individuals (or their representative payees) in correct amounts.

Prior Provisions

For prior provisions, see note set out under section 1001 of this title.

§ 1007. Representative payees

(a) In general

If the Commissioner of Social Security determines that the interest of any qualified individual under this subchapter would be served thereby, payment of the qualified individual’s benefit under this subchapter may be made, regardless of the legal competency or incompetency of the qualified individual, either directly to the qualified individual, or for his or her use and benefit, to another person (the meaning of which term, for purposes of this section, includes an organization, a representative payee, which shall be conducted in advance of the determination and shall, to the extent practicable, include a face-to-face interview with the person (or, in the case of an organization, a representative of the organization)); and

(b) Examination of fitness of prospective representative payee

(1) Any determination under subsection (a) of this section to pay the benefits of a qualified individual to a representative payee shall be made on the basis of—

(A) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of the determination and shall, to the extent practicable, include a face-to-face interview with the person (or, in the case of an organization, a representative of the organization); and

(B) adequate evidence that the arrangement is in the interest of the qualified individual.

(2) As part of the investigation referred to in paragraph (1), the Commissioner of Social Security shall—

(A) require the person being investigated to submit documented proof of the identity of the person;

(B) in the case of a person who has a social security account number issued for purposes of the program under subchapter II of this chapter or an employer identification number issued for purposes of the Internal Revenue Code of 1986, verify the number;

(C) determine whether the person has been convicted of a violation of section 408, 1011, or 1383a of this title;

(D) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

(E) obtain information concerning whether such person is a person described in section 1004(a)(2) of this title; and

(F) determine whether payment of benefits to the person in the capacity as representative payee has been revoked or terminated pursuant to this section, section 405(k) of this title, or section 1383(a)(2)(A)(i) of this title by reason of misuse of funds paid as benefits under this subchapter, subchapter II, or XVI of this chapter, respectively.

(3) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1306(c) of this title), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subsection, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

(A) such person is described in section 1004(a)(2) of this title, or

(B) such person has information that is necessary for the officer to conduct the officer’s official duties, and
(C) the location or apprehension of such person is within the officer’s official duties.

(c) Requirement for maintaining lists of undesirable payees

The Commissioner of Social Security shall establish and maintain lists which shall be updated periodically and which shall be in a form that renders such lists available to the servicing offices of the Social Security Administration. The lists shall consist of—

1. the names and (if issued) social security account numbers or employer identification numbers of all persons with respect to whom, in the capacity of representative payee, the payment of benefits has been revoked or terminated under this section, section 405(j) of this title, or section 1383(a)(2)(A)(iii) of this title by reason of misuse of funds paid as benefits under this subchapter, subchapter II, or XVI of this chapter, respectively; and

2. the names and (if issued) social security account numbers or employer identification numbers of all persons who have been convicted of a violation of section 408, 1011, or 1383a of this title.

(d) Persons ineligible to serve as representative payees

1. In general

The benefits of a qualified individual may not be paid to any other person pursuant to this section if—

A. the person has been convicted of a violation of section 408, 1011, or 1383a of this title;

B. except as provided in paragraph (2), payment of benefits to the person in the capacity of representative payee has been revoked or terminated under this section, section 405(j) of this title, or section 1383(a)(2)(A)(iii) of this title by reason of misuse of funds paid as benefits under this subchapter, subchapter II, or subchapter XVI of this chapter, respectively; and

C. except as provided in paragraph (2)(B), the person is a creditor of the qualified individual and provides the qualified individual with goods or services for consideration;

D. such person has previously been convicted as described in subsection (b)(2)(D) of this section, unless the Commissioner determines that such payment would be appropriate notwithstanding such conviction; or

E. such person is a person described in section 1004(a)(2) of this title.

2. Exemptions

A. The Commissioner of Social Security may prescribe circumstances under which the Commissioner of Social Security may grant an exemption from paragraph (1) to any person on a case-by-case basis if the exemption is in the best interest of the qualified individual whose benefits would be paid to the person pursuant to this section.

B. Paragraph (1)(C) shall not apply with respect to any person who is a creditor referred to in such paragraph if the creditor is—

i. a relative of the qualified individual and the relative resides in the same household as the qualified individual;

ii. a legal guardian or legal representative of the individual;

iii. a facility that is licensed or certified as a care facility under the law of the political jurisdiction in which the qualified individual resides;

iv. a person who is an administrator, owner, or employee of a facility referred to in clause (iii), if the qualified individual resides in the facility, and the payment to the facility or the person is made only after the Commissioner of Social Security has made a good faith effort to locate an alternative representative payee to whom payment would serve the best interests of the qualified individual; or

v. a person who is determined by the Commissioner of Social Security, on the basis of written findings and pursuant to procedures prescribed by the Commissioner of Social Security, to be acceptable to serve as a representative payee.

C. The procedures referred to in subparagraph (B)(v) shall require the person who will serve as representative payee to establish, to the satisfaction of the Commissioner of Social Security, that—

i. the person poses no risk to the qualified individual;

ii. the financial relationship of the person to the qualified individual poses no substantial conflict of interest; and

iii. no other more suitable representative payee can be found.

(e) Deferral of payment pending appointment of representative payee

1. In general

Subject to paragraph (2), if the Commissioner of Social Security makes a determination described in the first sentence of subsection (a) of this section with respect to any qualified individual’s benefit and determines that direct payment of the benefit to the qualified individual would cause substantial harm to the qualified individual, the Commissioner of Social Security may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of the benefit to the qualified individual, until such time as the selection of a representative payee is made pursuant to this section.

2. Time limitation

A. In general

Except as provided in subparagraph (B), any deferral or suspension of direct payment of a benefit pursuant to paragraph (1) shall be for a period of not more than 1 month.

B. Exception in the case of incompetency

Subparagraph (A) shall not apply in any case in which the qualified individual is, as of the date of the Commissioner of Social Security’s determination, legally incompetent under the laws of the jurisdiction in which the individual resides.

3. Payment of retroactive benefits

Payment of any benefits which are deferred or suspended pending the selection of a rep-
representative payee shall be made to the qualified individual or the representative payee as a single sum or over such period of time as the Commissioner of Social Security determines is in the best interest of the qualified individual.

(f) Hearing

Any qualified individual who is dissatisfied with a determination by the Commissioner of Social Security to make payment of the qualified individual’s benefit to a representative payee under subsection (a) of this section or with the designation of a particular person to serve as representative payee shall be entitled to a hearing by the Commissioner of Social Security to the same extent as is provided in section 1009(a) of this title, and to judicial review of the Commissioner of Social Security’s final decision as is provided in section 1009(b) of this title.

(g) Notice requirements

(1) In general

In advance, to the extent practicable, of the payment of a qualified individual’s benefit to a representative payee under subsection (a) of this section, the Commissioner of Social Security shall provide written notice of the Commissioner’s initial determination to so make the payment. The notice shall be provided to the qualified individual, except that, if the qualified individual is legally incompetent, then the notice shall be provided solely to the legal guardian or legal representative of the qualified individual.

(2) Specific requirements

Any notice required by paragraph (1) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as the qualified individual’s representative payee, and shall explain to the reader the right under subsection (f) of this section of the qualified individual or of the qualified individual’s legal guardian or legal representative—

(A) to appeal a determination that a representative payee is necessary for the qualified individual;

(B) to appeal the designation of a particular person to serve as the representative payee of the qualified individual; and

(C) to review the evidence upon which the designation is based and to submit additional evidence.

(h) Accountability monitoring

(1) In general

In any case where payment under this subchapter is made to a person other than the qualified individual entitled to the payment, the Commissioner of Social Security shall establish a system of accountability monitoring under which the person shall report not less often than annually with respect to the use of the payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for reviewing the reports in order to identify instances in which persons are not properly using the payments.

(2) Special reports

Notwithstanding paragraph (1), the Commissioner of Social Security may require a report at any time from any person receiving payments on behalf of a qualified individual, if the Commissioner of Social Security has reason to believe that the person receiving the payments is misusing the payments.

(3) Authority to redirect delivery of benefit payments when a representative payee fails to provide required accounting

In any case in which the person described in paragraph (1) or (2) receiving benefit payments on behalf of a qualified individual fails to submit a report required by the Commissioner of Social Security under paragraph (1) or (2), the Commissioner may, after furnishing notice to such person and the qualified individual, require that such person appear in person at a United States Government facility designated by the Social Security Administration as serving the area in which the qualified individual resides in order to receive such benefit payments.

(4) Maintaining lists of payees

The Commissioner of Social Security shall maintain lists which shall be updated periodically of—

(A) the name, address, and (if issued) the social security account number or employer identification number of each representative payee who is receiving benefit payments pursuant to this section, section 405(j) of this title, or section 1383a(2) of this title; and

(B) the name, address, and social security account number of each individual for whom each representative payee is reported to be providing services as representative payee pursuant to this section, section 405(j) of this title, or section 1383a(2) of this title.

(5) Maintaining lists of agencies

The Commissioner of Social Security shall maintain lists, which shall be updated periodically, of public agencies and community-based nonprofit social service agencies which are qualified to serve as representative payees pursuant to this section and which are located in the jurisdiction in which any qualified individual resides.

(i) Restitution

In any case where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall make payment to the qualified individual or the individual’s alternative representative payee of an amount equal to the misused benefits. In any case in which a representative payee that—

(A) is not an individual; or

(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this subchapter, subchapter II of this chapter, subchapter XVI of this chapter, or any combination of such subchapters;

misuses all or part of an individual’s benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary’s alternative rep-
representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of subsection (l)(2) of this section. The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(j) Misuse of benefits

For purposes of this subchapter, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this subchapter for the use and benefit of another person under this subchapter and converts such payment, or any part thereof, to a use other than for the use and benefit of such person. The Commissioner of Social Security may prescribe by regulation the meaning of the term "use and benefit" for purposes of this subsection.

(k) Periodic onsite review

(1) In general

In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner may provide for the periodic onsite review of any person or agency that receives the benefits payable under this subchapter (alone or in combination with benefits payable under subchapter II of this chapter or subchapter XVI of this chapter) to another individual pursuant to the appointment of such person or agency as a representative payee under section 406(j) of this title, or section 1383(a)(2) of this title in any case in which—

(A) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals; or

(B) the representative payee is an agency that serves in that capacity with respect to 50 or more such individuals.

(2) Limitation

Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to paragraph (1) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this subchapter. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

(A) the number of such reviews;

(B) the results of such reviews;

(C) the number of cases in which the representative payee was changed and why;

(D) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

(E) the number of cases discovered in which there was a misuse of funds;

(F) how any such cases of misuse of funds were dealt with by the Commissioner;

(G) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

(H) such other information as the Commissioner deems appropriate.

(l) Liability for misused amounts

(1) In general

If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of a qualified individual's benefit that was paid to such representative payee under this section, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this subchapter to the representative payee for all purposes of this chapter and related laws pertaining to the recovery of such overpayments. Subject to paragraph (2), upon recovering all or any part of such amount, the Commissioner shall make payment of an amount equal to the recovered amount to such qualified individual or such qualified individual's alternative representative payee.

(2) Limitation

The total of the amount paid to such individual or such individual's alternative representative payee under paragraph (1) and the amount paid under subsection (i) of this section may not exceed the total benefit amount misused by the representative payee with respect to such individual. (Aug. 14, 1935, ch. 531, title VIII, §807, as added Pub. L. 106–169, title II, §251(a), Dec. 14, 1999, 113 Stat. 1846; amended Pub. L. 108–203, title I, §§101(b), 102(b)(2), 103(b), 105(b), 106(b), Mar. 2, 2004, 118 Stat. 495, 499, 501, 504, 506.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (b)(2)(B), (3), is classified generally to Title 26, Internal Revenue Code.

PRIOR PROVISIONS

For prior provisions, see note set out under section 1001 of this title.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–203, §101(b)(3), substituted “for his or her use and benefit” for “for his or her benefit”.

Subsec. (b)(2)(D) to (F). Pub. L. 108–203, §103(b)(1), added subpars. (D) and (E) and redesignated former subpar. (D) as (F).


Subsec. (h)(3) to (5). Pub. L. 108–203, §106(b), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.


EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(b) of Pub. L. 108–203 applicable to any case of benefit misuse by a representative...
§ 1008. Overpayments and underpayments

(a) In general

Whenever the Commissioner of Social Security finds that more or less than the correct amount of payment has been made to any person under this subchapter, proper adjustment or recovery shall be made, as follows:

(1) With respect to payment to a person of more than the correct amount, the Commissioner of Social Security shall decrease any payment under this subchapter to which the overpaid person (if a qualified individual) is entitled, or shall require the overpaid person or his or her estate to refund the amount in excess of the correct amount, or, if recovery is not obtained under these two methods, shall seek or pursue recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury, as authorized under section 3720A of title 31.

(2) With respect to payment of less than the correct amount to a qualified individual who, at the time the Commissioner of Social Security is prepared to take action with respect to the underpayment—

(A) is living, the Commissioner of Social Security shall make payment to the qualified individual (or the qualified individual’s representative payee designated under section 1007 of this title) of the balance of the amount due the underpaid qualified individual; or

(B) is deceased, the balance of the amount due shall revert to the general fund of the Treasury.

(b) Waiver of recovery of overpayment

In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if the Commissioner of Social Security determines that the adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

(c) Limited immunity for disbursing officers

A disbursing officer may not be held liable for any amount paid by the officer if the adjustment or recovery of the amount is waived under subsection (b) of this section, or adjustment under subsection (a) of this section is not completed before the death of the qualified individual against whose benefits deductions are authorized.

(d) Authorized collection practices

(1) In general

With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(e), 3716, and 3718 of title 31, as in effect on October 1, 1994.

(2) Definition

For purposes of paragraph (1), the term “delinquent amount” means an amount—

(A) in excess of the correct amount of the payment under this subchapter; and

(B) determined by the Commissioner of Social Security to be otherwise unrecoverable under this section from a person who is not a qualified individual under this subchapter.

(e) Cross-program recovery of overpayments

For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1320b-17 of this title.

§ 1009. Hearings and review

(a) Hearings

(1) In general

The Commissioner of Social Security shall make findings of fact and decisions as to the
rights of any individual applying for payment under this subchapter. The Commissioner of Social Security shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be a qualified individual and is in disagreement with any determination under this subchapter with respect to entitlement to, or the amount of, benefits under this subchapter, if the individual requests a hearing on the matter in disagreement within 60 days after notice of the determination is received, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse the Commissioner of Social Security's findings of fact and the decision. The Commissioner of Social Security may, on the Commissioner of Social Security's own motion, hold such hearings and conduct such investigations and other proceedings as the Commissioner of Social Security deems necessary or proper for the administration of this subchapter. In the course of any hearing, investigation, or other proceeding, the Commissioner may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Commissioner of Social Security even though inadmissible under the rules of evidence applicable to court procedure. The Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation of the individual (including any lack of facility with the English language) in determining, with respect to the entitlement of the individual for benefits under this subchapter, whether the individual acted in good faith or was at fault, and in determining fraud, deception, or intent.

(2) **Effect of failure to timely request review**

A failure to timely request review of an initial adverse determination with respect to an application for any payment under this subchapter or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any payment under this subchapter if the applicant demonstrates that the applicant failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for payments in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration.

(3) **Notice requirements**

In any notice of an adverse determination with respect to which a review may be requested under paragraph (1), the Commissioner of Social Security shall describe in clear and specific language the effect on possible entitlement to benefits under this subchapter of choosing to reapply in lieu of requesting review of the determination.

(b) **Judicial review**

The final determination of the Commissioner of Social Security after a hearing under subsection (a)(1) of this section shall be subject to judicial review as provided in section 405(g) of this title to the same extent as the Commissioner of Social Security's final determinations under section 405 of this title.


**Prior Provisions**

For prior provisions, see note set out under section 1001 of this title.

§1010. Other administrative provisions

(a) **Regulations and administrative arrangements**

The Commissioner of Social Security may prescribe such regulations, and make such administrative and other arrangements, as may be necessary or appropriate to carry out this subchapter.

(b) **Payment of benefits**

Benefits under this subchapter shall be paid at such time or times and in such installments as the Commissioner of Social Security determines are in the interests of economy and efficiency.

(c) **Entitlement redeterminations**

An individual's entitlement to benefits under this subchapter, and the amount of the benefits, may be redetermined at such time or times as the Commissioner of Social Security determines to be appropriate.

(d) **Suspension and termination of benefits**

Regulations prescribed by the Commissioner of Social Security under subsection (a) of this section may provide for the suspension and termination of entitlement to benefits under this subchapter as the Commissioner determines is appropriate.


**Prior Provisions**

For prior provisions, see note set out under section 1001 of this title.

§1010a. Optional Federal administration of State recognition payments

(a) **In general**

The Commissioner of Social Security may enter into an agreement with any State (or political subdivision thereof) that provides cash payments on a regular basis to individuals entitled to benefits under this subchapter under which the Commissioner of Social Security shall make such payments on behalf of such State (or subdivision).

(b) **Agreement terms**

(1) **In general**

Such agreement shall include such terms as the Commissioner of Social Security finds necessary to achieve efficient and effective administration of both this subchapter and the State program.

(2) **Financial terms**

Such agreement shall provide for the State to pay the Commissioner of Social Security,
§ 1011. Penalties for fraud

(a) In general

Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in an application for benefits under this subchapter;

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining any right to the benefits;

(3) having knowledge of the occurrence of any event affecting—

(A) his or her initial or continued right to the benefits; or

(B) the initial or continued right to the benefits of any other individual in whose behalf he or she has applied for or is receiving the benefit,

conceals or fails to disclose the event with an intent fraudulently to secure the benefit either in a greater amount or quantity than is due or when no such benefit is authorized; or

(4) having made application to receive any such benefit for the use and benefit of another and having received it, knowingly and willfully converts the benefit or any part thereof to a use other than for the use and benefit of the other individual,

shall be fined under title 18, imprisoned not more than 5 years, or both.

(b) Court order for restitution

(1) In general

Any Federal court, when sentencing a defendant convicted of an offense under subsection (a) of this section, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Commissioner of Social Security, in any case in which such offense results in—

(A) the Commissioner of Social Security making a benefit payment that should not have been made, or

(B) an individual suffering a financial loss due to the defendant’s violation of subsection (a) of this section in his or her capacity as the individual’s representative payee appointed pursuant to section 1007(i) of this title.

(2) Related provisions

Sections 3612, 3663, and 3664 of title 18 shall apply with respect to the issuance and enforcement of orders of restitution under this subsection. In so applying such sections, the Commissioner of Social Security shall be considered the victim.

(3) Stated reasons for not ordering restitution

If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

(4) Receipt of restitution payments

(A) In general

Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited as miscellaneous receipts in the general fund of the Treasury.

(B) Payment to the individual

In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (1)(B), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual’s outstanding financial loss as described in such paragraph, except that such amount may be reduced by any overpayment of benefits owed under this subchapter, subchapter II of this chapter, or subchapter XVI of this chapter by the individual.
(A) served during World War II—
   (i) in the active military, naval, or air
   service of the United States during World
   War II; or
   (ii) in the organized military forces of
   the Government of the Commonwealth of
   the Philippines, while the forces were in
   the service of the Armed Forces of the
   United States pursuant to the military
   order of the President dated July 26, 1941,
   including among the military forces orga-
   nized guerrilla forces under commanders
   appointed, designated, or subsequently
   recognized by the Commander in Chief,
   Southwest Pacific Area, or other com-
   petent authority in the Army of the
   United States, in any case in which the
   service was rendered before December 31,
   1946; and
   (B) was discharged or released therefrom
   under conditions other than dishonorable—
   (i) after service of 90 days or more; or
   (ii) because of a disability or injury
   incurred or aggravated in the line of active
   duty.

(2) World War II
The term “World War II” means the period
beginning on September 16, 1940, and ending on
July 24, 1947.

(3) Supplemental security income benefit
under subchapter XVI
The term “supplemental security income
benefit under subchapter XVI”, except as
otherwise provided, includes State supple-
mental payments which are paid by the Com-
mmissioner of Social Security pursuant to an
agreement under section 1382e(a) of this title
except as those under subchapter XVI’, except as
provided in subchapter XVI of this chapter
for the month to an eligi-
bility insurance benefit, railroad retirement
annuity or pension, and unemployment insur-
ance benefit (including any veterans'
annuity or pension, and unemployment insur-
ance payments which are paid by the Com-
mmissioner of Social Security pursuant to an
agreement under section 1382e(a) of this title,
only if the individual files an application for benefits under this
subchapter.

(Aug. 14, 1935, ch. 531, title VIII, §812, as added
Stat. 1853.)

REFERENCES IN TEXT
Section 212(b) of Public Law 93–66, referred to in pars.
(3) and (4), is section 212(b) of Pub. L. 93–66, title II,
July 9, 1973, 87 Stat. 155, as amended, which is set out
as a note under section 1382 of this title.

§ 1013. Appropriations
There are hereby appropriated for fiscal year
2000 and subsequent fiscal years, out of any
funds in the Treasury not otherwise appro-
priated, such sums as may be necessary to carry
out this subchapter.

(Aug. 14, 1935, ch. 531, title VIII, §813, as added
Stat. 1854.)

SUBCHAPTER IX—EMPLOYMENT SECURITY
ADMINISTRATIVE FINANCING

AMENDMENTS
amending subchapter generally substituted subchapter
heading “EMPLOYMENT SECURITY ADMINISTRA-
TIVE FINANCING” for “TAX ON EMPLOYMENT OF
EIGHT OR MORE”.

PRIOR LAW: TAX ON EMPLOYERS OF EIGHT OR MORE
Former subchapter IX, sections 1101–1103, 1105–1110,
Stat. 639–644, related to taxes on employers of eight or
more. Section 4 of act Feb. 10, 1939, ch. 2, 53 Stat. 1,
which act enacted Title 26, Internal Revenue Code of
1939, provided that all laws and parts of laws codified
into the I.R.C. 1939, to the extent that they related
exclusively to internal revenue laws, were repealed. Pro-
visions of I.R.C. 1939 were generally repealed by section
7851 of Title 26, Internal Revenue Code of 1954 (act Aug.
16, 1954, ch. 736, 68A Stat. 3). See, also, section 7807 of
said Title 26, I.R.C. 1954, respecting rules in effect upon
enactment of I.R.C. 1954. The I.R.C. 1954 was redesign-
Stat. 2955. Said prior law sections were formerly and
are now covered by certain sections in Title 26, I.R.C.
1939 and I.R.C. 1986, respectively, as follows:

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REPAIR OF 1938 HURRICANE DAMAGE
Act Aug. 11, 1939, ch. 719, §1, 53 Stat. 1240, provided
that no special security taxes should be collected for
work done prior to Jan. 1, 1940, in cleaning up debris
and damage caused by the 1938 hurricane.
§ 1101. Employment security administration account

(a) Establishment

There is hereby established in the Unemployment Trust Fund an employment security administration account.

(b) Amount credited to Account; transfer of funds; adjustments; repayment of internal revenue refunds

(1) There is hereby appropriated to the Employment Trust Fund for credit to the employment security administration account, out of any moneys in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1961, and for each fiscal year thereafter, an amount equal to 100 per centum of the tax (including interest, penalties, and additions to the tax) received during the fiscal year under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.] and covered into the Treasury.

(2) The amount appropriated by paragraph (1) shall be transferred at least monthly from the general fund of the Treasury to the Employment Trust Fund and credited to the employment security administration account. Each such transfer shall be based on estimates made by the Secretary of the Treasury of the amounts received in the Treasury. Proper adjustments shall be made in the amounts subsequently transferred, to the extent prior estimates (including estimates for the fiscal year ending June 30, 1960) were in excess of or were less than the amounts required to be transferred.

(3) The Secretary of the Treasury is directed to pay from time to time from the employment security administration account into the Treasury, as repayments to the account for refunding internal revenue collections, amounts equal to all refunds made after June 30, 1960, of amounts received as tax under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.] (including interest on such refunds).

(c) Administrative expenditures; necessary expenses; quarterly transfer of funds; adjustments; estimate of net receipts

(1) There are hereby authorized to be made available for expenditure out of the employment security administration account for the fiscal year ending June 30, 1971, and for each fiscal year thereafter—

(A) such amounts (not in excess of the applicable limit provided by paragraph (2)) and, with respect to clause (ii), not in excess of the limit provided by paragraph (4)) as the Congress may deem appropriate for the purpose of—

(i) assisting the States in the administration of their unemployment compensation

laws as provided in subchapter III of this chapter (including administration pursuant to agreements under any Federal unemployment compensation law),

(ii) the establishment and maintenance of systems of public employment offices in accordance with the Act of June 6, 1933, as amended [29 U.S.C., secs. 49–49n], and

(iii) carrying into effect section 4103 of title 38;

(B) such amounts (not in excess of the limit provided by paragraph (4) with respect to clause (iii)) as the Congress may deem appropriate for the necessary expenses of the Department of Labor for the performance of its functions under—

(i) this subchapter and subchapters III and XII of this chapter;

(ii) the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.],

(iii) the provisions of the Act of June 6, 1933, as amended [29 U.S.C. 49 et seq.],

(iv) chapter 41 (except section 4103) of title 38, and

(v) any Federal unemployment compensation law.

The term “necessary expenses” as used in this subparagraph (B) shall include the expense of reimbursing a State for salaries and other expenses of employees of such State temporarily assigned or detailed to duty with the Department of Labor and of paying such employees for travel expenses, transportation of household goods, and per diem in lieu of subsistence while away from their regular duty stations in the State, at rates authorized by law for civilian employees of the Federal Government.

(2) The Secretary of the Treasury is directed to pay from the employment security administration account into the Treasury as miscellaneous receipts the amount estimated by him which will be expended during a three-month period by the Treasury Department for the performance of its functions under—

(A) this subchapter and subchapters III and XII of this chapter, including the expenses of banks for servicing unemployment benefit payment and clearing accounts which are offset by the maintenance of balances of Treasury funds with such banks,

(B) the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.], and

(C) any Federal unemployment compensation law with respect to which responsibility for administration is vested in the Secretary of Labor.

If it subsequently appears that the estimates under this paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Secretary of the Treasury in future payments.

(3)(A) For purposes of paragraph (1)(A), the limitation on the amount authorized to be made available for any fiscal year after June 30, 1970, is, except as provided in subparagraph (B) and in the second sentence of subsection (f)(3)(A) of this section, an amount equal to 95 percent of the amount estimated and set forth in the budget of the United States Government for such fiscal year as the amount by which the net receipts
during such year under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.] will exceed the amount transferred under section 1105(b) of this title during such year to the extended unemployment compensation account. 

(B) The limitation established by subparagraph (A) is increased by any unexpended amount retained in the employment security administration account in accordance with subsection (f)(2)(B) of this section. 

(C) Each estimate of net receipts under this paragraph shall be based upon a tax rate of 0.6 percent.

(4) For purposes of paragraphs (1)(A)(ii) and (1)(B)(iii) the amount authorized to be made available out of the employment security administration account for any fiscal year after June 30, 1972, shall reflect the proportion of the total cost of administering the system of public employment offices in accordance with the Act of June 6, 1933, as amended [29 U.S.C. 49 et seq.], and of the necessary expenses of the Department of Labor for the performance of its functions under the provisions of such Act, as the President determines is an appropriate charge to the employment security administration account, and reflects in his annual budget for such year. The President’s determination, after consultation with the Secretary, shall take into account such factors as the relationship between employment subject to State laws and the total labor force in the United States, the number of claimants and the number of job applicants, and such other factors as he finds relevant.

(5)(A) There are authorized to be appropriated out of the employment security administration account to carry out program integrity activities, in addition to any amounts available under paragraph (1)(A)(i)—

(i) $89,000,000 for fiscal year 1998; 
(ii) $91,000,000 for fiscal year 1999; 
(iii) $93,000,000 for fiscal year 1998; 
(iv) $96,000,000 for fiscal year 2001; and  
(v) $98,000,000 for fiscal year 2002.

(B) In any fiscal year in which a State receives funds appropriated pursuant to this paragraph, the State shall expend a proportion of the funds appropriated pursuant to paragraph (1)(A)(i) to carry out program integrity activities that is not less than the proportion of the funds appropriated under such paragraph that was expended by the State to carry out program integrity activities in fiscal year 1997. 

(C) For purposes of this paragraph, the term “program integrity activities” means initial claims review activities, eligibility review activities, benefit payments control activities, and employer liability auditing activities.

(d) Additional tax attributable to reduced credits; transfer of funds 

(1) The Secretary of the Treasury is directed to transfer from the employment security administration account—

(A) To the Federal unemployment account, an amount equal to the amount by which—

(i) 100 per centum of the additional tax received under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.] with respect to any State by reason of the reduced credits provisions of section 3302(c)(3) of such Act [26 U.S.C. 3302(c)(3)] and covered into the Treasury for the repayment of advances made to the State under section 1321 of this title, exceeds 

(ii) the amount transferred to the account of such State pursuant to subparagraph (B) of this paragraph.

Any amount transferred pursuant to this subparagraph shall be credited against, and shall operate to reduce, that balance of advances, made under section 1321 of this title to the State, with respect to which employers paid such additional tax.

(B) To the account (in the Unemployment Trust Fund) of the State with respect to which employers paid such additional tax, an amount equal to the amount by which such additional tax received and covered into the Treasury exceeds that balance of advances, made under section 1321 of this title to the State, with respect to which employers paid such additional tax.

(2) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b)(2) of this section.

(e) Revolving fund; appropriations; advances to Account; repayment; interest 

(1) There is hereby established in the Treasury a revolving fund which shall be available to make the advances authorized by this subsection. There are hereby authorized to be appropriated, without fiscal year limitation, to such revolving fund such amounts as may be necessary for the purposes of this section.

(2) The Secretary of the Treasury is directed to advance from time to time from the revolving fund to the employment security administration account such amounts as may be necessary for the purposes of this section. If the net balance in the employment security administration account as of the beginning of any fiscal year equals 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account for the preceding fiscal year, no advance may be made under this subsection during such fiscal year.

(3) Advances to the employment security administration account made under this subsection shall bear interest until repaid at a rate equal to the average rate of interest (computed as of the end of the calendar month next preceding the date of such advance) borne by all interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest shall be the multiple of one-eighth of 1 per centum next lower than such average rate.

(4) Advances to the employment security administration account made under this subsection, plus interest accrued thereon, shall be repaid by the transfer from time to time, from the employment security administration account to the revolving fund, of such amounts as the Secretary of the Treasury, in consultation

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1 So in original. Probably should be followed by “for”. 
with the Secretary of Labor, determines to be available in the employment security administration account for such repayment. Any amount transferred as a repayment under this paragraph shall be credited against, and shall operate to reduce, any balance of advances (plus accrued interest thereon) repayable under this sub-section.

(f) Determination of excess in Account; limitation on amount to be retained; use of balance in Account during certain fiscal years; net balance

(1) The Secretary of the Treasury shall determine as of the close of each fiscal year (beginning with the fiscal year ending June 30, 1961) the excess in the employment security administration account.

(2) The excess in the employment security administration account as of the close of any fiscal year is the amount by which the net balance in such account as of such time (after the application of section 1102(b) of this title and paragraph (3)(C) of this subsection) exceeds the net balance in the employment security administration account as of the beginning of that fiscal year (including the fiscal year for which the excess is being computed) for which the net balance was higher than as of the beginning of any other such fiscal year.

(3)(A) The excess determined as provided in paragraph (2) as of the close of any fiscal year after June 30, 1972, shall be retained (as of the beginning of the succeeding fiscal year) in the employment security administration account until the amount in such account is equal to 40 percent of the amount of the total appropriation by reason of outlays out of the employment security administration account for the fiscal year for which the excess is determined. Three-eighths of the amount in the employment security administration account as of the beginning of any fiscal year after June 30, 1972, or $150 million, whichever is the lesser, is authorized to be made available for such fiscal year pursuant to subsection (c)(1) of this section for additional costs of administration due to an increase in the rate of uninsured unemployment for a calendar quarter of at least 15 percent over the rate of insured unemployment for the corresponding calendar quarter in the immediately preceding year.

(B) If the entire amount of the excess determined as provided in paragraph (2) as of the close of any fiscal year after June 30, 1972, is not retained in the employment security administration account, there shall be transferred (as of the beginning of the succeeding fiscal year) to the extended unemployment compensation account the balance of such excess or so much thereof as is required to increase the amount in the extended unemployment compensation account to the limit provided in section 1105(b)(2) of this title.

(C) If as of the close of any fiscal year after June 30, 1972, the amount in the extended unemployment compensation account exceeds the limit provided in section 1105(b)(2) of this title, such excess shall be transferred to the employment security administration account as of the close of such fiscal year.

(4) For the purposes of this section, the net balance in the employment security administration account as of any time is the amount in such account as of such time reduced by the sum of—

(A) the amounts then subject to transfer pursuant to subsection (d) of this section, and

(B) the balance of advances (plus accrued interest thereon) then repayable to the revolving fund established by subsection (e) of this section.

The net balance in the employment security administration account as of the beginning of any fiscal year shall be determined after the disposition of the excess in such account as of the close of the preceding fiscal year.


REFERENCES IN TEXT

The Federal Unemployment Tax Act, referred to in subsecs. (b)(1), (3), (c)(1)(B)(ii), (2)(B), (3)(A), and (d)(1)(A)(i), is act Aug. 14, 1954, ch. 736, §§3301 to 3311, 68A Stat. 439, as amended, which is classified generally to chapter 4B (§ 49 et seq.) of Title 29, Labor. Sections 49m and 49n were not part of act of June 6, 1933. For complete classification of this Act to the Code, see Short Title note set out under section 49 of Title 29 and Tables.

Prior Provisions

A prior section 1101, act Aug. 14, 1935, ch. 531, title IX, §901, 49 Stat. 638, related to imposition of tax. For further details, see Prior Law note set out preceding this section.

Amendments


1992—Subsec. (f)(2). Pub. L. 102–313, §531(d)(1), struck out designation for subpar. (A), substituted “the” for “Except as provided in subparagraph (B), the”, and struck out subpar. (B) which read as follows: “With respect to the fiscal years ending June 30, 1970, June 30, 1971, and June 30, 1972, the balance in the employment security administration account at the close of each such fiscal year shall not be considered excess but shall be retained in the account for use as provided in paragraph (1) of subsection (c) of this section.”

Subsec. (g). Pub. L. 102–313, §531(d)(2), struck out subsec. (g) which read as follows: “(1) With respect to calendar years 1988, 1989, and 1990, the Secretary of the Treasury shall transfer from the employment security administration account—
“(A) to the Federal unemployment account an amount equal to 50 percent of the amount of tax received under section 3301(i) of the Federal Unemployment Tax Act which is attributable to the difference in the tax rates between paragraphs (1) and (2) of such section; and

(B) to the extended unemployment compensation account an amount equal to 50 percent of such amount of tax received.

“(2) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the monies were credited to the employment security administration account pursuant to subsection (b)(2) of this section with respect to wages paid during such calendar year.”


1967—Subsec. (c)(5)(C). Pub. L. 100–203, § 9154(c)(2), substituted “(i) a tax rate of 0.6 percent in the case of any calendar year for which the rate of tax under section 3301 of the Federal Unemployment Tax Act is 6.0 percent, and (ii) a tax rate of 0.8 percent in the case of any calendar year for which the rate of tax under section 3301 is 6.2 percent”.

Subsec. (g). Pub. L. 100–203, § 9154(a), added subsec. (g).


1982—Subsec. (c)(3)(C). Pub. L. 97–248, § 271(c)(3)(D), substituted “0.6” for “0.5”, “6.0” for “3.2”, and “6.2” for “3.5”.

Subsec. (c)(3)(C)(i). Pub. L. 97–248, § 271(b)(2)(A), substituted “0.8” for “0.7”, struck out “3301” after “tax under such section”, and substituted “3.5” for “3.4”.

1976—Subsec. (c)(3)(C). Pub. L. 94–566 limited existing provisions by making them applicable only in the case of calendar years for which the rate of tax under section 3301 of the Federal Unemployment Tax Act is 3.2 percent, designated the existing provisions as so amended as cl. (i) and added cl. (ii).


Subsec. (c)(3). Pub. L. 91–373, § 303(a)(3), changed the ceiling on the amount in the employment security administration account authorized for appropriation for State grants by making it 95 percent of the amount set forth in the budget of the United States Government as the amount by which the net receipts during the fiscal year are estimated to exceed the amount transferred to the extended unemployment compensation account under section 1105(b) of this title.


Subsec. (d). Pub. L. 91–373, § 303(b), struck out reference to section 3302(c)(2) of the Federal Unemployment Tax Act in par. (1)(A)(i), struck out provision for separate application of par. (1) in years in which there was both a balance described in sections 3302(c)(2) and 3302(c)(3) of the Federal Unemployment Tax Act, redesignated par. (3) as par. (2), and struck out former par. (2) covering the transfer of funds from the employment security administration account to the general fund of the Treasury and to the State account, with respect to which employers paid additional tax, received by reason of the reduced credit provisions of section 1400c of the internal revenue code.

Subsec. (e)(2). Pub. L. 91–373, § 303(c), substituted “equals 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account of the preceding fiscal year” for “is $250,000,000”.

Subsec. (f)(2). Pub. L. 91–373, § 303(d)(1), inserted reference to par. (3)(C) of this subsection.

Subsec. (f)(3). Pub. L. 91–373, § 303(d)(2), struck out subpar. (A) provisions limiting expenditures for fiscal year ending June 30, 1964, to 95 percent of amount estimated by the Secretary of Treasury as the net receipts during such fiscal year under the Federal Unemployment Tax Act, redesignated subpar. (B) provisions as par. (3) without restricting their application to fiscal years ending after June 30, 1964, increased expenditure limitation by unexpended amount retained in the employment security administration account in accordance with subsec. (f)(2)(B) of this section, reenacted provision for estimate of net receipts, and struck out dated provisions requiring the Secretary of Treasury to report to Congress his estimate under subpar. (A) within thirty days after May 29, 1963, the date of enactment of Pub. L. 88–31, and providing for its printing as a House document.

Subsec. (f)(5). Pub. L. 91–53, § 3(b), designated existing provisions as subpar. (A), inserted introductory clause “Except as provided in subparagraph (B)”, and added subpar. (B).


1960—Subsec. (b). Pub. L. 86–778 substituted provision establishing the employment security administration account for former provision making an appropriation to the Unemployment Trust Fund for fiscal year ending June 30, 1964, and for each fiscal year thereafter, providing for transfer of funds from the general fund in the Treasury to the Unemployment Trust Fund at the close of the fiscal year, and adjustments in the transfers, and requiring the Secretary of the Treasury to consult with the Secretary of Labor with respect to estimates of employment security administrative expenditures.

Subsec. (b). Pub. L. 86–778 substituted provisions crediting the employment security administration with funds, and requiring transfer of funds, adjustments and repayment of internal revenue refunds for former provisions defining “employment security administrative expenditures”, now incorporated in subsec. (c)(1)(A), (B), (2)(A) of this section.

Subsecs. (c) to (f). Pub. L. 86–778 added subsecs. (c) to (f).

**EFFECTIVE DATE OF 1987 AMENDMENT**

Section 9154(d) of Pub. L. 100–203 provided that: “The amendments made by this section [amending this section and sections 1102 and 1105 of this title] shall become effective on the date of the enactment of this Act [Dec. 22, 1987].”

**EFFECTIVE DATE OF 1984 AMENDMENT**

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

**EFFECTIVE DATE OF 1982 AMENDMENT**

out as a note under section 3301 of Title 26, Internal Revenue Code.

**Effective Date of 1976 Amendment**

Section 211(d)(3) of Pub. L. 94–566 provided that: "The amendments made by subsection (c) [amending this section, section 1105 of this title, and section 6157 of Title 26, Internal Revenue Code] shall take effect on the date of enactment of this Act [Oct. 20, 1976]."

**Effective Date of 1970 Amendment**

Section 303(a) of Pub. L. 91–373 provided that the amendment made by that section is effective with respect to fiscal years after June 30, 1970.

Section 303(c) of Pub. L. 91–373 provided that the amendment made by that section is effective July 1, 1972.

Section 303(d) of Pub. L. 91–373 provided that the amendment made by that section is effective with respect to fiscal years after June 30, 1972.

**Effective Date of 1969 Amendment**

Section 4(b) of Pub. L. 91–53 provided that: "The amendments made by section 3 [amending this section] shall take effect upon enactment of this Act [Aug. 7, 1969]."

**Increase in Administrative Expenditures Limitation for Fiscal Year 1963**

Section 4 of Pub. L. 88–31 provided that notwithstanding subsec. (c)(1)(A) of this section, the limitation on the amount authorized to be available for the fiscal year ending June 30, 1963, for the purposes specified in subsec. (c)(1)(A), was increased to $407,148,000.

Pub. L. 87–582, title I, § 101, Aug. 14, 1962, 76 Stat. 363, provided that notwithstanding subsec. (c)(1)(A) of this section, the limitation on the amount authorized to be available for the fiscal year ending June 30, 1963, for the purposes specified in subsec. (c)(1)(A), was increased to $400,000,000.

**Increase in Administrative Expenditures Limitation for Fiscal Years 1961 and 1962**

Pub. L. 87–6, § 15, Mar. 24, 1961, 75 Stat. 16, provided that notwithstanding subsec. (c)(1)(A) of this section, the limitation on the amount authorized to be available for the fiscal years ending June 30, 1961 and June 30, 1962, for the purposes specified in subsec. (c)(1)(A), was increased to $385,000,000 and $415,000,000, respectively.

**§ 1102. Transfers between Federal unemployment account and employment security administration account**

**(a) Determination of excess; amount transferred**

Whenever the Secretary of the Treasury determines pursuant to section 1101(f) of this title that there is an excess in the employment security administration account as of the close of any fiscal year and the entire amount of such excess is not retained in the employment security administration account or transferred to the extended unemployment compensation account as provided in section 1101(f)(3) of this title, there shall be transferred (as of the beginning of the succeeding fiscal year) to the Federal unemployment account the balance of such excess or so much thereof as is required to increase the amount in the Federal unemployment account to whichever of the following is the greater:

1. $550 million, or
2. the amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to 0.5 percent of the total wages subject (determined without any limitation on amount) to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined.

**(b) Unemployment account excesses**

The amount, if any, by which the amount in the Federal unemployment account as of the close of any fiscal year exceeds the greater of the amounts specified in paragraphs (1) and (2) of subsection (a) of this section shall be transferred to the employment security administration account as of the close of such fiscal year.

**(c) Report to Congress**

Whenever the Secretary of Labor has reason to believe that in the next fiscal year the employment security administration account will reach the limit provided for such account in section 1101(f)(3)(A) of this title, and the Federal unemployment account will reach the limit provided for such account in subsection (a) of this section, and the extended unemployment compensation account will reach the limit provided for such account in section 1105(b)(2) of this title, he shall, after consultation with the Secretary of the Treasury, so report to Congress with a recommendation for appropriate action by the Congress.


**Prior Provisions**

A prior section 1102, act Aug. 14, 1935, ch. 531, title IX, § 902, 49 Stat. 639, related to credit against tax. For further details, see Prior Law note set out preceding section 1101 of this title.

**Amendments**

1997—Subsec. (a)(2). Pub. L. 105–33 substituted “0.5 percent” for “0.25 percent”.

1992—Subsec. (a)(2). Pub. L. 102–318 substituted “0.25 percent” for “five-eighths of 1 percent”.


1970—Subsec. (a). Pub. L. 91–373, § 304(a), inserted, in provisions preceding par. (1), reference to the retention of the entire amount of the excess in the employment security administration account or the transfer to the extended unemployment compensation account as provided in section 1101(f)(3) of this title and, in par. (2), substituted “one-eighth of 1 percent” for “four-tenths of 1 per cent.”

Subsec. (c), Pub. L. 91–373, § 304(b), added subsec. (c).

1960—Pub. L. 86–778 substituted provisions for transfers between Federal unemployment account and employment security administration account for former provisions crediting the Federal unemployment account with funds and defining “adjusted balance”.

**Effective Date of 1997 Amendment**

Section 5402(b) of Pub. L. 105–33 provided that: “This section [amending this section] and the amendment made by this section—

1. shall take effect on October 1, 2001, and

2. shall apply to fiscal years beginning on or after that date.”
§ 1103. Amounts transferred to State accounts

(a) Determination and certification by Secretary of Labor

(1) If as of the close of any fiscal year after the fiscal year ending June 30, 1972, the amount in the extended unemployment compensation account has reached the limit provided in section 1105(b)(2) of this title and the amount in the Federal unemployment account has reached the limit provided in section 1105(b)(2) of this title and section 1323 of this title have been repaid, and there remains in the employment security administration account any amount over the amount provided in section 1101(f)(3)(A) of this title, such excess amount, except as provided in subsection (b) of this section, shall be transferred (as of the beginning of the succeeding fiscal year) to the accounts of the States in the Unemployment Trust Fund.

(2) Each State’s share of the funds to be transferred under this subsection as of any October 1—

(A) shall be determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury before such date, and

(B) shall bear the same ratio to the total amount to be so transferred as—

(i) the amount of wages subject to tax under section 3301 of the Internal Revenue Code of 1986 during the preceding calendar year which are determined by the Secretary of Labor to be attributable to the State, bears to

(ii) the total amount of wages subject to such tax during such year.

(b) Transfer of funds where State is ineligible

(1) If the Secretary of Labor finds that on October 1 of any fiscal year—

(A) a State is not eligible for certification under section 503 of this title, or

(B) the law of a State is not approvable under section 3304 of the Federal Unemployment Tax Act [26 U.S.C. 3304], then the amount available for transfer to such State’s account shall, in lieu of being so transferred, be transferred to the Federal unemployment account as of the beginning of such October 1. If, during the fiscal year beginning on such October 1, the Secretary of Labor finds and certifies to the Secretary of the Treasury that such State is eligible for certification under section 503 of this title, that the law of such State is approvable under such section 3304, or both, the Secretary of the Treasury shall transfer such amount from the Federal unemployment account to the account of such State. If the Secretary of Labor does not so find and certify to the Secretary of the Treasury before the close of such fiscal year then the amount which was available for transfer to such State’s account as of October 1 of such fiscal year shall (as of the close of such fiscal year) become unrestricted as to use as part of the Federal unemployment account.

(2) The amount which, but for this paragraph, would be transferred to the account of a State under subsection (a) of this section or paragraph (1) of this subsection shall be reduced (but not below zero) by the balance of advances made to the State under section 1321 of this title. The sum by which such amount is reduced shall—

(A) be transferred to or retained in (as the case may be) the Federal unemployment account, and

(B) be credited against, and operate to reduce—

(i) first, any balance of advances made before September 13, 1960, to the State under section 1321 of this title, and

(ii) second, any balance of advances made on or after September 13, 1960, to the State under section 1321 of this title.

(c) Use of funds

(1) Except as provided in paragraph (2), amounts transferred to the account of a State pursuant to subsections (a) and (b) of this section shall be used only in the payment of cash benefits to individuals with respect to their unemployment, exclusive of expenses of administration.

(2) A State may, pursuant to a specific appropriation made by the legislative body of the State, use money withdrawn from its account in the payment of expenses incurred by it for the administration of its unemployment compensation law and public employment offices if and only if—

(A) the purposes and amounts were specified in the law making the appropriation,

(B) the appropriation law did not authorize the obligation of such money after the close of the two-year period which began on the date of enactment of the appropriation law,

(C) the money is withdrawn and the expenses are incurred after such date of enactment,

(D)(i) the appropriation law limits the total amount which may be obligated under such appropriation at any time to an amount which does not exceed, at any such time, the amount by which—

(I) the aggregate of the amounts transferred to the account of such State pursuant to subsections (a) and (b), exceeds

(II) the aggregate of the amounts used by the State pursuant to this subsection and charged against the amounts transferred to the account of such State, and

(ii) for purposes of clause (i), amounts used by a State for administration shall be chargeable against transferred amounts at the exact time the obligation is entered into, and

(E) the use of the money is accounted for in accordance with standards established by the Secretary of Labor.

(3) If—
(i) amounts transferred to the account of a State pursuant to subsections (a) and (b) of this section were used in payment of unemployment benefits to individuals; and

(ii) the Governor of such State submits a request to the Secretary of Labor that such amounts be restored under this paragraph.

Then the amounts described in clause (i) shall be restored to the status of funds transferred under subsections (a) and (b) of this section which have not been used by eliminating any charge against amounts so transferred for the use of such amounts in the payment of unemployment benefits.

(B) Subparagraph (A) shall apply only to the extent that the amounts described in clause (i) of such subparagraph do not exceed the amount then in the State’s account.

(C) Subparagraph (A) shall not apply if the State has a balance of advances made to its account under subchapter XII of this chapter.

(D) If the Secretary of Labor determines that the requirements of this paragraph are met with respect to any request, the Secretary shall notify the Governor of the State that such requirements are met with respect to such request and the amount restored under this paragraph. Such restoration shall be as of the first day of the first month following the month in which the notification is made.

(d) Special transfer in fiscal year 2002

(1) The Secretary of the Treasury shall transfer (as of the date determined under paragraph (5)) from the Federal unemployment account to the account of each State in the Unemployment Trust Fund the amount determined with respect to such State under paragraph (2).

(2)(A) The amount to be transferred under this subsection to a State account shall be equal to—

(i) the amount which would have been required to have been transferred under this section to such account at the beginning of fiscal year 2002 minus (ii) the amount which was in fact transferred under this section to such account at the beginning of fiscal year 2002.

(B) Notwithstanding the provisions of subparagraph (A)—

(i) the aggregate amount transferred to the States under this subsection may not exceed a total of $8,000,000,000; and (ii) all amounts determined under subparagraph (A) shall be reduced ratably, if and to the extent necessary in order to comply with the limitation under clause (i).

(3)(A) Except as provided in paragraph (4), amounts transferred to a State account pursuant to this subsection may be used only in the payment of cash benefits—

(i) to individuals with respect to their unemployment, and (ii) which are allowable under subparagraph (B) or (C).

(B)(i) At the option of the State, cash benefits under this paragraph may include amounts which shall be payable as—

(I) regular compensation, or (II) additional compensation, upon the exhaustion of any temporary extended unemployment compensation (if such State has entered into an agreement under the Temporary Extended Unemployment Compensation Act of 2002), for individuals eligible for regular compensation under the unemployment compensation law of such State.

(ii) Any additional compensation under clause (i) may not be taken into account for purposes of any determination relating to the amount of any extended compensation for which an individual might be eligible.

(C)(i) At the option of the State, cash benefits under this paragraph may include amounts which shall be payable to 1 or more categories of individuals not otherwise eligible for regular compensation under the unemployment compensation law of such State, including those described in clause (iii).

(ii) The benefits paid under this subparagraph to any individual may not, for any period of unemployment, exceed the maximum amount of regular compensation authorized under the unemployment compensation law of such State for that same period, plus any additional compensation (described in subparagraph (B)(i)) which could have been paid with respect to that amount.

(iii) The categories of individuals described in this clause include the following:

(I) Individuals who are seeking, or available for, only part-time (and not full-time) work. (II) Individuals who would be eligible for regular compensation under the unemployment compensation law of such State under an alternative base period.

(D) Amounts transferred to a State account under this subsection may be used in the payment of cash benefits to individuals only for weeks of unemployment beginning after March 9, 2002.

(4) Amounts transferred to a State account under this subsection may be used for the administration of its unemployment compensation law and public employment offices (including in connection with benefits described in paragraph (3) and any recipients thereof), subject to the same conditions as set forth in subsection (c)(2) of this section (excluding subparagraph (B) thereof, and deeming the reference to “subsections (a) and (b)” in subparagraph (D) thereof to include this subsection).

(5) Transfers under this subsection shall be made within 10 days after March 9, 2002.

(e) Special transfer in fiscal year 2006

Not later than 10 days after October 20, 2005, the Secretary of the Treasury shall transfer from the Federal unemployment account—

(1) $15,000,000 to the account of Alabama in the Unemployment Trust Fund;
(2) $400,000,000 to the account of Louisiana in the Unemployment Trust Fund; and
(3) $85,000,000 to the account of Mississippi in the Unemployment Trust Fund.

(f) Special transfers in fiscal years 2009, 2010, and 2011 for modernization

(1)(A) In addition to any other amounts, the Secretary of Labor shall provide for the making of unemployment compensation modernization incentive payments (hereinafter "incentive payments") to the accounts of the States in the Unemployment Trust Fund, by transfer from amounts reserved for that purpose in the Federal unemployment account, in accordance with succeeding provisions of this subsection.

(B) The maximum incentive payment allowable under this subsection with respect to any State shall, as determined by the Secretary of Labor, be equal to the amount obtained by multiplying $7,000,000,000 by the same ratio as would apply under subsection (a)(2)(B) for purposes of determining such State’s share of any excess amount (as described in subsection (a)(1)) that would have been subject to transfer to State accounts, as of October 1, 2008, under the provisions of subsection (a).

(C) Of the maximum incentive payment determined under subparagraph (B) with respect to a State—

(i) one-third shall be transferred to the account of such State upon a certification under paragraph (4)(B) that the State law of such State meets the requirements of paragraph (2); and

(ii) the remainder shall be transferred to the account of such State upon a certification under paragraph (4)(B) that the State law of such State meets the requirements of paragraph (3).

(2) The State law of a State meets the requirements of this paragraph if such State law—

(A) uses a base period that includes the most recently completed calendar quarter before the start of the benefit year for purposes of determining eligibility for unemployment compensation; or

(B) provides that, in the case of an individual who would not otherwise be eligible for unemployment compensation under the State law because of the use of a base period that does not include the most recently completed calendar quarter before the start of the benefit year, eligibility shall be determined using a base period that includes such calendar quarter.

(3) The State law of a State meets the requirements of this paragraph if such State law includes provisions to carry out at least 2 of the following subparagraphs:

(A) An individual shall not be denied regular unemployment compensation under any State law provisions relating to availability for work, active search for work, or refusal to accept work, solely because such individual is seeking only part-time work (as defined by the Secretary of Labor), except that the State law provisions carrying out this subparagraph may exclude an individual if a majority of the weeks of work in such individual’s base period do not include part-time work (as so defined).

(B) An individual shall not be disqualified from regular unemployment compensation for separating from employment if that separation is for any compelling family reason. For purposes of this subparagraph, the term ‘compelling family reason’ means the following:

(i) One or both of the following offenses as selected by the State, but in making such selection, the resulting change in the State law shall not supersede any other provision of law relating to unemployment insurance to the extent that such other provision provides broader access to unemployment benefits for victims of such selected offense or offenses:

(I) Domestic violence, verified by such reasonable and confidential documentation as the State law may require, which causes the individual reasonably to believe that such individual’s continued employment would jeopardize the safety of the individual or of any member of the individual’s immediate family (as defined by the Secretary of Labor); and

(II) Sexual assault, verified by such reasonable and confidential documentation as the State law may require, which causes the individual reasonably to believe that such individual’s continued employment would jeopardize the safety of the individual or of any member of the individual’s immediate family (as defined by the Secretary of Labor).

(ii) The illness or disability of a member of the individual’s immediate family (as those terms are defined by the Secretary of Labor).

(iii) The need for the individual to accompany such individual’s spouse—

(I) to a place from which it is impractical for such individual to commute; and

(II) due to a change in location of the spouse’s employment.

(C)(i) Weekly unemployment compensation is payable under this subparagraph to any individual who is unemployed (as determined under the State unemployment compensation law), has exhausted all rights to regular unemployment compensation under the State law, and is enrolled and making satisfactory progress in a State-approved training program or in a job training program authorized under the Workforce Investment Act of 1998, except that such compensation is not required to be paid to an individual who is receiving similar stipends or other training allowances for non-training costs.

(ii) Each State-approved training program or job training program referred to in clause (i) shall prepare individuals who have been separated from a declining occupation, or who have been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual’s place of employment, for entry into a high-demand occupation.

(iii) The amount of unemployment compensation payable under this subparagraph to an individual for a week of unemployment shall be equal to—
(1) the individual’s average weekly benefit amount (including dependents’ allowances) for the most recent benefit year, less
(ii) any deductible income, as determined under State law.

The total amount of unemployment compensation payable under this subparagraph to any individual shall be equal to at least 26 times the individual’s average weekly benefit amount (including dependents’ allowances) for the most recent benefit year.

(D) Dependents’ allowances are provided, in the case of any individual who is entitled to receive regular unemployment compensation and who has any dependents (as defined by State law), in an amount equal to at least $15 per dependent per week, subject to any aggregate limitation on such allowances which the State law may establish (but which aggregate limitation on the total allowance for dependents paid to an individual may not be less than $50 for each week of unemployment or 50 percent of the individual’s weekly benefit amount for the benefit year, whichever is less), except that a State law may provide for a reasonable reduction in the amount of any such allowance for a week of less than total unemployment.

(4)(A) Any State seeking an incentive payment under this subsection shall submit an application therefor at such time, in such manner, and complete with such information as the Secretary of Labor may within 60 days after February 17, 2009, prescribe (whether by regulation or otherwise), including information relating to compliance with the requirements of paragraph (2) or (3), as well as how the State intends to use the incentive payment to improve or strengthen the State’s unemployment compensation program. The Secretary of Labor shall, within 30 days after receiving a complete application, notify the State agency of the State of the Secretary’s findings with respect to the requirements of paragraph (2) or (3) (or both).

(B) If the Secretary of Labor finds that the State law provisions (disregarding any State law provisions which are not then currently in effect as permanent law or which are subject to discontinuation) meet the requirements of paragraph (2) or (3), as the case may be, the Secretary of Labor shall thereupon make a certification to that effect to the Secretary of the Treasury, together with a certification as to the amount of the incentive payment to be transferred to the State account pursuant to that finding. The Secretary of the Treasury shall make the appropriate transfer within 7 days after receiving such certification.

(ii) For purposes of clause (i), State law provisions which are to take effect within 12 months after the date of their certification under this subparagraph shall be considered to be in effect as of the date of such certification.

(C)(i) No certification of compliance with the requirements of paragraph (2) or (3) may be made with respect to any State whose State law is not in compliance with the requirements of paragraph (2).

(ii) No application under subparagraph (A) may be considered if submitted before February 17, 2009, or after the latest date necessary (as specified by the Secretary of Labor) to ensure that all incentive payments under this subsection are made before October 1, 2011.

(5)(A) Except as provided in subparagraph (B), any amount transferred to the account of a State under this subsection may be used by such State only in the payment of cash benefits to individuals with respect to their unemployment (including for dependents’ allowances and for unemployment compensation under paragraph (3)(C)), exclusive of expenses of administration.

(B) A State may, subject to the same conditions as set forth in subsection (c)(2) (excluding subparagraph (B) thereof, and deeming the reference to “subsections (a) and (b)” in subparagraph (D) thereof to include this subsection), use any amount transferred to the account of such State under this subsection for the administration of its unemployment compensation law and public employment offices.

Out of any money in the Federal unemployment account not otherwise appropriated, the Secretary of the Treasury shall reserve $7,000,000,000 for incentive payments under this subsection. Any amount so reserved shall not be taken into account for purposes of any determination under section 1102, 1110, or 1323 of this title or approvable under section 503 of this title or approvable under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).
section (f)(2) or any subparagraph of sub-
section (f)(3);

(B) improved outreach to individuals who
might be eligible for regular unemployment
compensation by virtue of any provisions of
the State law which are described in subpara-
graph (A);

(C) the improvement of unemployment bene-
fit and unemployment tax operations, includ-
ing responding to increased demand for unem-
ployment compensation; and

(D) staff-assisted reemployment services for
unemployment compensation claimants.

(Aug. 14, 1935, ch. 531, title IX, § 903, as added
717; Pub. L. 92–224, § 1, title II, § 204(c), Dec. 29,
1971, 85 Stat. 810, 811; Pub. L. 92–329, § 2(d), June
30, 1972, 86 Stat. 368; Pub. L. 93–368, § 4(b), Aug. 7,
1974, 88 Stat. 420; Pub. L. 94–273, §§ 2(20), 3(23), 23,
41, 21, 1976, 90 Stat. 375, 377, 379, 381; Pub. L. 97–248,
L. 100–203, title IX, § 9155(c), Dec. 22, 1987,
101 Stat. 1330–227; Pub. L. 101–505, title V, § 5021(a),
(b), Nov. 5, 1990, 104 Stat. 1388–222; Pub.
Pub. L. 107–147, title II, § 206(a)(1), (b), Mar. 9,
2002, 116 Stat. 31; Pub. L. 109–91, title II, § 201,
L. 111–92, § 7(a), Nov. 6, 2009, 123 Stat. 2987.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in sub-
sec. (a)(2)(B)(ii), is classified generally to Title 26, Inter-
nal Revenue Code.

The Temporary Extended Unemployment Compensa-
Stat. 28, which is set out as a note under section 3904
of Title 26, Internal Revenue Code. Section 209(a)(1)
of the Act amended this section. For complete classi-
fication of this Act to the Code, see Title 26.

Section 5402 of Public Law 105–33, referred to in sub-
sec. (d)(2)(A)(1)(II), is section 5402 of Pub. L. 105–33, title
V, § 5403, Aug. 5, 1997, 111 Stat. 603, which amended
section 1102 of this title and enacted provisions set out as a
note under section 1102 of this title.

The Workforce Investment Act of 1998, referred to in sub-
Stat. 936. For complete classification of this Act to the
Code, see Short Title note set out under section 9201
of Title 20, Education, and Tables.

Section 205 of the Federal-State Extended Unemploy-
(f)(7), is section 205 of Pub. L. 91–373, which is set out
as a note under section 3304 of Title 26, Internal Re-
venue Code.

PRIOR PROVISIONS

A prior section 1103, act Aug. 14, 1935, ch. 531, title IX,
§ 903, 49 Stat. 640, related to approval and certification
of State laws. For further details, see Prior Law note
set out preceding section 1101 of this title.

AMENDMENTS


erally. Prior to amendment, cl. (i) read as follows: “Do-
mestic violence, verified by such reasonable and con-
fidential documentation as the State law may require,
which causes the individual reasonably to believe that
such individual’s continued employment would jeopard-
ize the safety of the individual or of any member of the
individual’s immediate family (as defined by the Sec-
retary of Labor).”

Subsec. (g), Pub. L. 111–5 added subsec. (g).


struck out par. (3) which related to disposition of ex-
cess amounts remaining in the employment security
administration account as of the close of fiscal years

Subsec. (c)(2), Pub. L. 107–147, § 209(a)(1)(B), struck out
concluding provisions which read as follows: “Any
amount allocated to a State under this section for fis-
cal year 2000, 2001, or 2002 may be used by such State
only to pay expenses incurred by it for the administra-
tion of its unemployment compensation law, and may
be so used by it without regard to any of the conditions
prescribed in any of the preceding provisions of this
paragraph.”

Subsec. (d), Pub. L. 107–147, § 208(b), added subsec. (d).

1997—Subsec. (a)(3), Pub. L. 105–33, § 4905(a), added
par. (3).

Subsec. (c)(2), Pub. L. 105–33, § 5403(b), inserted con-
cluding provisions.

1990—Subsec. (a)(2), Pub. L. 101–508, § 5021(a), amended
par. (2) generally. Prior to amendment, par. (2) read as
follows: “Each State’s share of the funds to be trans-
fused under this subsection as of any October 1—

“A shall be determined by the Secretary of Labor and
certified by him to the Secretary of the Treasury
before that date on the basis of reports furnished by
the States to the Secretary of Labor before Septem-
ber 1, and

“(B) shall bear the same ratio to the total amount to
be so transferred as the amount of wages subject to
contributions under such State’s unemployment
compensation law during the preceding calendar year
which have been reported to the State before August
1 bears to the total wages subject to contributions
under all State unemployment compensation laws
which have been reported to the States before August
1.”

Subsec. (c)(2), Pub. L. 101–508, § 5021(b), added subpars.
(D) and (E) and struck out former subpar. (D) and last
sentence which required a State’s appropriation law to
limit the total amount which may be obligated during
a twelve-month or transitional period from its account.

interest” after “all advances.”

1992—Subsec. (c)(2). Pub. L. 107–147, § 209(a), substi-
tuted “thirty-four” for “twenty-four” wherever ap-
pearing, and “thirty-four” for “twenty-four” in
provisions following subpar. (D).


“October” for “July.”

“September” for “June.”

Subsec. (b)(1). Pub. L. 94–273, § 3(23), substituted “Oc-
tober” for “July.”

Subsec. (c)(2). Pub. L. 94–273, § 41, in subpar. (D) and
provisions following subpar. (D) substituted provisions
relating to determination based on a twelve-month pe-
riod (as prescribed in the law of the State), or during a
transitional period of less than twelve months caused
by a change in the twelve-month period (as prescribed
in the law of the State), for provisions relating to de-
termination based on a fiscal year period.

which related to reductions in the amount transferable
to the account of any State by reason of emergency com-

§ 1104. Unemployment Trust Fund

(a) Establishment

There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund", hereinafter in this subchapter called the "Fund". The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund, or by the Railroad Retirement Board to the extent of any unemployment insurance account or the railroad unemployment insurance administration fund, or otherwise deposited in or credited to the Fund or any account therein. Such deposit may be made directly with the Secretary of the Treasury, with any depositary designated by him for such purpose, or with any Federal Reserve Bank.

(b) Investments

It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States that form part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per cent, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per cent next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition. Advances made to the Federal unemployment account pursuant to section 1323 of this title shall not be invested.

(c) Sale or redemption of obligations

Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) Treatment of interest and proceeds

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.
(e) Separate book accounts

The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency, the employment security administration account, the Federal unemployment account, the railroad unemployment insurance account, and the railroad unemployment insurance administration fund and shall credit quarterly (on March 31, June 30, September 30, and December 31, of each year) to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date. For the purpose of this subsection, the average daily balance shall be computed—

1. In the case of any State account, by reducing (but not below zero) the amount in the account by the balance of advances made to the State under section 1321 of this title, and
2. In the case of the Federal unemployment account—
   a. by adding to the amount in the account the aggregate of the reductions under paragraph (1), and
   b. by subtracting from the sum so obtained the balance of advances made under section 1323 of this title to the account.

(f) Payment to State agencies and Railroad Retirement Board

The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the credit of such account at the time of such payment. The Secretary of the Treasury is authorized and directed to make such payments out of the railroad unemployment insurance account for the payment of benefits, and out of the railroad unemployment insurance administration fund for the payment of administrative expenses, as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the credit of such account or such fund, as the case may be, at the time of such payment.

(g) Federal unemployment account; establishment

There is hereby established in the Unemployment Trust Fund a Federal unemployment account.


AMENDMENTS

1992—Subsec. (g). Pub. L. 102–318 struck out after the first sentence the following: "There is hereby authorized to be appropriated to such Federal unemployment account a sum equal to (1) the excess of taxes collected prior to July 1, 1946, under title IX of this Act or under the Federal Unemployment Tax Act, over the total unemployment administrative expenditures made prior to July 1, 1946, plus (2) the excess of taxes collected under the Federal Unemployment Tax Act after June 30, 1946, and prior to July 1, 1953, over the unemployment administrative expenditures made after June 30, 1946, and prior to July 1, 1953. As used in this subsection, the term 'unemployment administrative expenditures' means expenditures for grants under subchapter III of this chapter, expenditures for the administration of that subchapter by the Secretary of Health and Human Services, or the Secretary of Labor, and expenditures for the administration of title IX of this Act, or of the Federal Unemployment Tax Act, by the Department of the Treasury, the Secretary of Health and Human Services, or the Secretary of Labor. For the purposes of this subsection, there shall be deducted from the total amount of taxes collected prior to July 1, 1943, under title IX of this Act, the sum of $40,561,886.43 which was authorized to be appropriated by the Act of August 24, 1937 (56 Stat. 754), and the sum of $18,451,846 which was authorized to be appropriated by section 361(b) of title 45;"


1960—Subsec. (a). Pub. L. 86–778 substituted "with any depository designated by him for such purpose, or with any Federal Reserve Bank" for "with any Federal Reserve Bank or member bank of the Federal Reserve System designated by him for such purpose".

Subsec. (b). Pub. L. 86–778 substituted "Second Liberty Bond Act, as amended" and "section 1323" for "section 732 of title 31" and "section 1322(c)", respectively, and inserted "made" after "Advances".

Subsec. (c). Pub. L. 86–778 provided for the maintenance of a separate book account for the employment security administration account and substituted "balance of advances made to the State under section 1321 of this title" for "aggregate of the outstanding advances under section 1321 of this title from the Federal unemployment account" in par. (1) and "balance of advances made under section 1323 of this title to the account" for "aggregate of the outstanding advances from the Treasury to the account pursuant to section 1322(c) of this title".

Subsec. (d). Pub. L. 86–778 redesignated former subsec. (d) as (g).

1959—Subsec. (b). Pub. L. 86–346 substituted "on original issue at the issue price" for "on original issue at par".

1958—Subsec. (a). Pub. L. 85–927, §304(a), inserted "or the railroad unemployment insurance administration fund".

Subsec. (e). Pub. L. 85–927, §204(b), substituted "the railroad unemployment insurance account, and the railroad unemployment insurance administration fund" for "and the railroad unemployment insurance account".

Subsec. (f). Pub. L. 85–927, §204(c), substituted "railroad unemployment insurance account for the payment of benefits, and out of the railroad unemployment insurance administration fund for the payment of administrative expenses, as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the credit of such account or such fund, as the case may be, at the time of such payment" for "as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the credit of such account or such fund, as the case may be, at the time of such payment" for "as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the credit of such account or such fund, as the case may be, at the time of such payment for "as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the credit of such account or such fund, as the case may be, at the time of such payment".

1954—Subsec. (a). Act Aug. 5, 1954, §5(d), inserted provision that advances to the Federal unemployment account pursuant to section 1323 of this title shall not be invested.

Subsec. (e). Act Aug. 5, 1954, §5(d), inserted provision that advances to the Federal unemployment account pursuant to section 1323 of this title shall not be invested.
“(1) in the case of any State account, by reducing (but not below zero) the amount in the account by the aggregate of the outstanding advances under section 1201 from the Federal unemployment account, and
“(2) in the case of the Federal unemployment account, (A) by adding to the amount in the account the aggregate of the reductions under paragraph (1), and (B) by subtracting from the sum so obtained the aggregate of the outstanding advances from the Treasury to the account pursuant to section 1202(c).
Subsec. (g) Act Aug. 5, 1954, §5(e), repealed subsec. (g) which authorized Secretary of Treasury to make transfers from Federal unemployment account to account of any State in Unemployment Trust Fund.
Subsec. (h) Act Aug. 5, 1954, §5(f), substituted a new cl. (2) in second sentence and repealed the third sentence: “Any amounts in the Federal unemployment account on April 1952, and any amounts repaid to such account after such date, shall be covered into the general fund of the Treasury.”
1950—Subsec. (h) Act Aug. 28, 1950, substituted “prior to July 1, 1951” for “prior to July 1, 1949”, “on July 1, 1951, and ending on December 31, 1951” for “on July 1, 1949, and ending on December 31, 1949” in cl. (2) of second sentence, and “April 1, 1952” for “April 1, 1950” in third sentence.
1947—Subsec. (h) Act Aug. 6, 1947, amended subsec. (h) generally, and, among other changes, changed the periods for which excess of tax collections over administrative expenditures could be appropriated to the unemployment account, limited authorized appropriations for the unemployment account to the excess collections for the period ending Dec. 31, 1949, provided for amounts in such account on Apr. 1, 1950, and any repayments to the account after such date be covered into the general fund of the Treasury, and provided for an additional deduction of $18,451,846 from the total amount of taxes collected prior to July 1, 1943.
1944—Subsec. (h) Act Oct. 3, 1944, §401(c), inserted “or, deposited pursuant to appropriations to the Federal unemployment account” after “unemployment insurance account” in second sentence.
Subsec. (e) Act Oct. 3, 1944, §401(b), inserted “the Federal unemployment account” after “a separate book account for each State agency”.
Subsecs. (g), (h) Act Oct. 3, 1944, §401(c), added subsecs. (g) and (h).
1938—Subsec. (a) Act June 25, 1938, §10(e), inserted “or by the Railroad Retirement Board to the credit of the railroad unemployment insurance account”.
Subsec. (e) Act June 25, 1938, §10(d), inserted “and the railroad unemployment insurance account”.
Subsec. (f) Act June 25, 1938, §10(g), inserted second sentence.

Effective Date of 1984 Amendment
Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, statute, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(a) of Pub. L. 98–369, set out as a note under section 1321 of this title.

Effective Date of 1958 Amendment
Amendment by Pub. L. 85–227 effective Sept. 6, 1958, except as otherwise indicated, see section 207(c) of Pub. L. 85–227, set out as a note under section 351 of Title 45, Railroads.

Effective Date of 1950 Amendment
Section 404(c) of act Aug. 28, 1950, provided that: “The amendments made by subsections (a) and (b) of this section [amending this section and section 1321 of this title] shall be effective January 1, 1950.”

Termination Date
Section 4 of act Aug. 6, 1947, provided: “Section 603 of the War Mobilization and Reconversion Act of 1944 (formerly set out as a note under section 1651 of Appendix to Title 50, War and National Defense) terminating the provisions of such Act [sections 1661 to 1676 of Appendix to title 50 on June 30, 1947] shall not be applicable in the case of the amendments made by title IV of such Act [amending sections 1666 and 1667 of Appendix to Title 50 to the Social Security Act (this section and section 1321 of this title)].”

Payments to States

§1105. Extended unemployment compensation account
(a) Establishment
There is hereby established in the Unemployment Trust Fund an extended unemployment compensation account. For the purposes provided for in section 1104(e) of this title, such account shall be maintained as a separate book account.
(b) Transfers to account

(1) Except as provided in paragraph (3), the Secretary of the Treasury shall transfer (as of the close of each month) from the employment security administration account to the extended unemployment compensation account established by subsection (a) of this section, an amount (determined by such Secretary) equal to 20 percent of the amount by which—

(A) the transfers to the employment security administration account pursuant to section 1101(b)(2) of this title during such month, exceed

(B) the payments during such month from the employment security administration account pursuant to section 1101(b)(3) and (d) of this title.

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (A), proper adjustments shall be made in the amounts subsequently transferred.

(2) Whenever the Secretary of the Treasury determines pursuant to section 1101(f) of this title that there is an excess in the employment security administration account as of the close of any fiscal year beginning after June 30, 1972, there shall be transferred (as of the beginning of the succeeding fiscal year) to the extended unemployment compensation account the total amount of such excess or so much thereof as is required to increase the amount in the extended unemployment compensation account to whichever of the following is the greater:

(A) $750,000,000, or

(B) the amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to 0.5 percent of the total wages subject (determined without any limitation on amount) to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined.

(3) The Secretary of the Treasury shall make no transfer pursuant to paragraph (1) as of the
close of any month if he determines that the amount in the extended unemployment compensation account is equal to (or in excess of) the limitation provided in paragraph (2).

(c) Transfers to State accounts

Amounts in the extended unemployment compensation account shall be available for transfer to the accounts of the States in the Unemployment Trust Fund as provided in section 204(e) of the Federal-State Extended Unemployment Compensation Act of 1970. Amounts appropriated as repayable advances shall be repaid by transfers from the extended unemployment compensation account to the general fund of the Treasury at such times as the amount in the extended unemployment compensation account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose. Repayments under the preceding sentence shall be made whenever the Secretary of the Treasury (after consultation with the Secretary of Labor) determines that the amount then in the account exceeds the amount necessary to meet the anticipated payments from the account during the next 3 months. Any amount transferred as a repayment under this subsection shall be credited against, and shall operate to reduce, any balance of advances repayable under this subsection. Amounts appropriated as repayable advances for purposes of this subsection shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such advance, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that in cases in which such average rate is not a multiple of one-eighth of 1 percent, the rate of interest shall be the multiple of one-eighth of 1 percent next lower than such average rate.


(A) 100 percent of the transfers to the employment security administration account pursuant to section 1101(b)(2) of this title during such month on account of liabilities referred to in section 1101(b)(1)(B) of this title, plus

(B) 20 percent of the excess of the transfers to such account pursuant to section 1101(b)(2) of this title during such month on account of amounts referred to in section 1101(b)(1)(A) of this title over the payments during such month from the employment security administration account pursuant to section 1101(b)(3) and (d) of this title.

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (A), proper adjustments shall be made in the amounts subsequently transferred.”

1992—Subsec. (b)(1). Pub. L. 102–318, §531(a)(1), amend. par. (1) generally. Prior to amendment, par. (1) read as follows: “Except as provided in paragraph (3), the Secretary of the Treasury shall transfer (as of the close of July 1970, and each month thereafter), from the employment security administration account to the extended unemployment compensation account established by subsection (a) of this section, an amount determined by him to be equal, in the case of any month before April 1972, to one-fifth, and in the case of any month after March 1972, to one-tenth, of the amount by which—

(A) transfers to the employment security administration account pursuant to section 1101(b)(2) of this title during such month, exceed

(B) payments during such month from the employment security administration account pursuant to section 1101(b)(3) and (d) of this title.

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in paragraph (A), proper adjustments shall be made in the amounts subsequently transferred.”


1987—Subsec. (b)(1). Pub. L. 100–203, §9154(c)(1), struck out at end “in the case of any month after March 1983 and before April 1 of the first calendar year to which paragraph (2) of section 330 of the Federal Unemployment Tax Act applies, the first sentence of this paragraph shall be applied by subtracting ‘40 percent’ for ‘one-tenth’.”


Subsec. (d). Pub. L. 100–203, §9155(a), struck out “(without interest)” after “account, as repayable advances” and “‘without interest,’ after ‘shall be repaid’” and inserted sentence at end providing that amounts appropriated as repayable advances for purposes of this subsection shall bear interest.


Subsec. (d). Pub. L. 97–248, §275, inserted provision that repayment shall be made whenever the Secretary of the Treasury determines that the amount then in the account exceeds the amount necessary to meet the anticipated payments from the account during the next 3 months.

Prior provisions


Amendments

1993—Subsec. (b)(1). Pub. L. 108–182 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Except as provided in paragraph (3), the Secretary of the Treasury shall transfer (as of the close of each month, from the employment and social security administration account to the extended unemployment compensation account established by subsection (a) of this section, an amount determined by him to be equal to the sum of—

(A) 100 percent of the transfers to the employment and social security administration account pursuant to section 1101(b)(2) of this title during such month on account of liabilities referred to in section 1101(b)(1)(B) of this title, plus

(B) 20 percent of the excess of the transfers to such account pursuant to section 1101(b)(2) of this title during such month on account of amounts referred to in section 1101(b)(1)(A) of this title over the payments during such month from the employment and social security administration account pursuant to section 1101(b)(3) and (d) of this title.

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (A), proper adjustments shall be made in the amounts subsequently transferred.”

1992—Subsec. (b)(1). Pub. L. 102–318, §531(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Except as provided in paragraph (3), the Secretary of the Treasury shall transfer (as of the close of July 1970, and each month thereafter), from the employment security administration account to the extended unemployment compensation account established by subsection (a) of this section, an amount determined by him to be equal, in the case of any month before April 1972, to one-fifth, and in the case of any month after March 1972, to one-tenth, of the amount by which—

(A) transfers to the employment security administration account pursuant to section 1101(b)(2) of this title during such month, exceed

(B) payments during such month from the employment security administration account pursuant to section 1101(b)(3) and (d) of this title.

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in paragraph (A), proper adjustments shall be made in the amounts subsequently transferred.”


1987—Subsec. (b)(1). Pub. L. 100–203, §9154(c)(1), struck out at end “In the case of any month after March 1983 and before April 1 of the first calendar year to which paragraph (2) of section 330 of the Federal Unemployment Tax Act applies, the first sentence of this paragraph shall be applied by substituting ‘40 percent’ for ‘one-tenth’.”


Subsec. (d). Pub. L. 100–203, §9155(a), struck out “(without interest)” after “account, as repayable advances” and “‘without interest,’ after ‘shall be repaid’” and inserted sentence at end providing that amounts appropriated as repayable advances for purposes of this subsection shall bear interest.


Subsec. (d). Pub. L. 97–248, §275, inserted provision that repayment shall be made whenever the Secretary of the Treasury determines that the amount then in the account exceeds the amount necessary to meet the anticipated payments from the account during the next 3 months.

References in text

The Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsecs. (c) and (d), is Pub. L. 91–373, title II, Aug. 10, 1970, 84 Stat. 708, as amended, which is set out as a note under section 3304 of Title 26, Internal Revenue Code. Section 206(e) of that Act is part of that note. For complete classification of this Act to the Code, see Tables.

**Effective Date of 1992 Amendment**

**Effective Date of 1987 Amendment**
Amendment by section 9155(a) of Pub. L. 100–203 applicable to advances made on or after Dec. 22, 1987, see section 9155(d) of Pub. L. 100–203, set out as a note under section 1102 of this title.

**Effective Date of 1982 Amendment**

**Effective Date of 1976 Amendment**

§ 1106. Unemployment compensation research program
(a) The Secretary of Labor shall—
(1) establish a continuing and comprehensive program of research to evaluate the unemployment compensation system. Such research shall include, but not be limited to, a program of factual studies covering the role of unemployment compensation under varying patterns of unemployment including those in seasonal industries, the relationship between the unemployment compensation and other social insurance programs, the effect of State eligibility and disqualification provisions, the personal characteristics, family situations, employment background and experience of claimants, with the results of such studies to be published; and
(2) establish a program of research to develop information (which shall be made public) as to the effect and impact of extending coverage to excluded groups with first attention to agricultural labor.
(b) To assist in the establishment and provide for the continuation of the comprehensive research program relating to the unemployment compensation system, there are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, and for each fiscal year thereafter, such sums, not to exceed $8,000,000, as may be necessary to carry out the purposes of this section. From the sums authorized to be appropriated by this subsection the Secretary may provide for the conduct of such research through grants or contracts.


**Prior Provisions**
A prior section 1106, act Aug. 14, 1935, ch. 531, title IX, § 906, 49 Stat. 642, related to excusing payment of tax by engaging in interstate commerce. For further details, see Prior Law note set out preceding section 1101 of this title.

§ 1107. Personnel training
(a) Creation of program
In order to assist in increasing the effectiveness and efficiency of administration of the unemployment compensation program by increasing the number of adequately trained personnel, the Secretary of Labor shall—
(1) provide directly, through State agencies, or through contracts with institutions of higher education or other qualified agencies, organizations, or institutions, programs and courses designed to train individuals to prepare them, or improve their qualifications, for service in the administration of the unemployment compensation program, including claims determinations and adjudication, with such stipends and allowances as may be permitted under regulations of the Secretary;
(2) develop training materials for and provide technical assistance to the State agencies in the operation of their training programs;
(3) under such regulations as he may prescribe, award fellowships and traineeships to persons in the Federal-State employment security agencies, in order to prepare them or improve their qualifications for service in the administration of the unemployment compensation program.
(b) Repayment of costs
The Secretary may, to the extent that he finds such action to be necessary, prescribe requirements to assure that any person receiving a fellowship, traineeship, stipend or allowance shall repay the costs thereof to the extent that such person fails to serve in the Federal-State employment security program for the period prescribed by the Secretary. The Secretary may relieve any individual of his obligation to so repay, in whole or in part, whenever and to the extent that such repayment would, in his judgment, be inequitable or would be contrary to the purposes of any of the programs established by this section.
(c) Detail of Federal and State employees
The Secretary, with the concurrence of the State, may detail Federal employees to State unemployment compensation administration and the Secretary may concur in the detailing of State employees to the United States Department of Labor for temporary periods for training or for purposes of unemployment compensation administration, and the provisions of sec-
tion 869b of title 20 or any more general program of interchange enacted by a law amending, supplementing, or replacing section 869b of title 20 shall apply to any such assignment.

(d) Authorization of appropriations

There are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, and for each fiscal year thereafter such sums, not to exceed $5,000,000, as may be necessary to carry out the purposes of this section.


§ 1108. Advisory Council on Unemployment Compensation

(a) Establishment

Not later than February 1, 1992, and every 4th year thereafter, the Secretary of Labor shall establish an advisory council to be known as the Advisory Council on Unemployment Compensation (referred to in this section as the "Council").

(b) Function

It shall be the function of each Council to evaluate the unemployment compensation program, including the purpose, goals, countercyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and any other aspects of the program and to make recommendations for improvement.

(c) Members

(1) In general

Each Council shall consist of 11 members as follows:

(A) 5 members appointed by the President, to include representatives of business, labor, State government, and the public;

(B) 3 members appointed by the President pro tempore of the Senate, in consultation with the Chairman and ranking member of the Committee on Finance of the Senate;

(C) 3 members appointed by the Speaker of the House of Representatives, in consultation with the Chairman and ranking member of the Committee on Ways and Means of the House of Representatives.

(2) Qualifications

In appointing members under subparagraphs (B) and (C) of paragraph (1), the President pro tempore of the Senate and the Speaker of the House of Representatives shall each appoint—

(A) 1 representative of the interests of business,

(B) 1 representative of the interests of labor, and

(C) 1 representative of the interests of State governments.

(3) Vacancies

A vacancy in any Council shall be filled in the manner in which the original appointment was made.

(4) Chairman

The President shall appoint the Chairman of the Council from among its members.

(d) Staff and other assistance

(1) In general

Each Council may engage any technical assistance (including actuarial services) required by the Council to carry out its functions under this section.

(2) Assistance from Secretary of Labor

The Secretary of Labor shall provide each Council with any staff, office facilities, and other assistance, and any data prepared by the Department of Labor, required by the Council to carry out its functions under this section.

(e) Compensation

Each member of any Council—

(1) shall be entitled to receive compensation at the rate of pay for level V of the Executive Schedule under section 5316 of title 5 for each day (including travel time) during which such member is engaged in the actual performance of duties vested in the Council, and

(2) while engaged in the performance of such duties away from such member's home or regular place of business, shall be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5 for persons in the Government employed intermittently.

(f) Report

(1) In general

Not later than February 1 of the third year following the year in which any Council is required to be established under subsection (a) of this section, the Council shall submit to the President and the Congress a report setting forth the findings and recommendations of the Council as a result of its evaluation of the unemployment compensation program under this section.

(2) Report of first Council

The Council shall include in its report required to be submitted by February 1, 1995, the Council's findings and recommendations with respect to determining eligibility for extended unemployment benefits on the basis of unemployment statistics for regions, States, or subdivisions of States.

§ 1109. Federal Employees Compensation Account

There is hereby established in the Unemployment Trust Fund a Federal Employees Compensation Account which shall be used for the purposes specified in section 8509 of title 5. For the purposes provided for in section 1104(e) of this title, such account shall be maintained as a separate book account.


§ 1110. Borrowing between Federal accounts

(a) In general

Whenever the Secretary of the Treasury (after consultation with the Secretary of Labor) determines that—

(1) the amount in the employment security administration account, Federal unemployment account, or extended unemployment compensation account, is insufficient to meet the anticipated payments from the account,

(2) such insufficiency may cause such account to borrow from the general fund of the Treasury, and

(3) the amount in any other such account exceeds the amount necessary to meet the anticipated payments from such other account, the Secretary shall transfer to the account referred to in paragraph (1) from the account referred to in paragraph (3) an amount equal to the excess determined under paragraph (1) (or, if less, the excess determined under paragraph (3)).

(b) Treatment of advance

Any amount transferred under subsection (a) of this section—

(1) shall be treated as a noninterest-bearing repayable advance, and

(2) shall not be considered in computing the amount in any account for purposes of the application of sections 1101(f)(2), 1102(b), and 1105(b) of this title.

(c) Repayment

Whenever the Secretary of the Treasury (after consultation with the Secretary of Labor) determines that the amount in the account to which an advance is made under subsection (a) of this section exceeds the amount necessary to meet the anticipated payments from the account, the Secretary shall transfer from the account to the account from which the advance was made an amount equal to the lesser of the amount so advanced or such excess.


SUBCHAPTER X—GRANTS TO STATES FOR AID TO BLIND

REPEAL OF SUBCHAPTER X OF THIS CHAPTER; INAPPLICABILITY OF REPEAL TO PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Pub. L. 92–603, title II, § 202(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this subchapter is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.


CODIFICATION

Section 9 of Pub. L. 102–107, Aug. 17, 1991, 105 Stat. 547, which contained provisions substantially identical to those of section 303 of Pub. L. 102–164, amending this section, did not become effective pursuant to section 10(b) of Pub. L. 102–107, because the President did not take the action required by that section by Aug. 17, 1991.

PRIOR PROVISIONS

A prior section 1108, act Aug. 14, 1935, ch. 531, title IX, §908, 49 Stat. 643, related to an additional credit against tax. For further details, see Prior Law note set out preceding section 1101 of this title.

A prior section 1109, act Aug. 14, 1935, ch. 531, title IX, §909, 49 Stat. 643, related to conditions of additional credit allowance. For further details, see Prior Law note set out preceding section 1101 of this title.

AMENDMENTS


1981—Pub. L. 102–164 amended section generally, substituting present provisions for provisions which in subsec. (a) established the Federal Advisory Council and its membership, in subsec. (b) prescribed the appointment of its members, in subsec. (c) required that secretarial, clerical, and other assistance be made available to the Council, in subsec. (d) provided for compensation of members, in subsec. (e) encouraged the organization of State advisory councils, and in subsec. (f) authorized certain appropriations for the work of the Council.

1984—Subsec. (d). Pub. L. 98–369 substituted “‘5703’” for “‘5703(b)’”.

EFFECTIVE DATE OF 1984 AMENDMENT

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

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 32(3) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

REPORT ON AGRICULTURAL LABOR PERFORMED BY ALIENS


§ 1109. Federal Employees Compensation Account

There is hereby established in the Unemployment Trust Fund a Federal Employees Compensation Account which shall be used for the purposes specified in section 8509 of title 5. For the purposes provided for in section 1104(e) of this title, such account shall be maintained as a separate book account.

§ 1201. Authorization of appropriations

For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals who are blind, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health and Human Services, State plans for aid to the blind.


Repeal of Section

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

Amendments

1981—Pub. L. 97–35 struck out “and” of encouraging each State, as far as practicable under such conditions, to furnish rehabilitation and other services to help such individuals attain or retain capability for self-support and self-care’’ after “who are blind”.

1962—Pub. L. 87–543 inserted “to furnish rehabilitation and other services” before “to help such individuals” and “or retain capability for” after “attain”.

1956—Act Aug. 1, 1956, restated purpose to include assistance to individuals to attain self-support or self-care.


Transfer of Functions

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3001 of this title, Federal Security Agency abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 92–603 which is classified to section 3508(b) of Title 20, Education.

§ 1202. State plans for aid to blind

(a) A State plan for aid to the blind must (1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the blind is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing; (5) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low-income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; and (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title or assistance under a State program funded under part A of subchapter IV of this chapter; (B) provide that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind, as well as any expenses reasonably attributable to the earning of any such income, except that, in making such determination, the State agency (A) shall disregard the first $85 per month of earned income, plus one-half of earned income in excess of $85 per month, (B) shall, for a period not in excess of twelve months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, and (C) may, before disregarding the amounts referred to in clauses (A) and (B), disregard not more than $7.50 of any income; (9) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan; (10) provide that, in determining whether an individual is blind, there shall be an exam-

1 So in original. The word “and” probably should not appear.
ination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (11) effective July 1, 1951, provide that all individuals wishing to make application for aid to the blind shall have opportunity to do so, and that aid to the blind shall be furnished with reasonable promptness to all eligible individuals; (12) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; (13) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of aid to the blind to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and (14) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b-7 of this title.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the blind under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application; or

(2) Any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this subchapter. In the case of any State (other than Puerto Rico and the Virgin Islands) which did not have on January 1, 1949, a State plan for aid to the blind approved under this subchapter, in the case of any State (other than Puerto Rico and the Virgin Islands) which fulfilled the conditions specified in subparagraph (A) of clause (8) of subsection (a) of this chapter, even though it does not meet the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this section (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the blind under the plan—

(a) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application; or

(b) Any citizenship requirement which excludes any citizen of the United States.

Repeal of Section

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1404, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

Amendments

1996—Subsec. (a)(7). Pub. L. 104–193 substituted “assistance under a State program funded under part A of subchapter IV of this chapter” for “aid to families with dependent children under the State plan approved under section 602 of this title”.


1972—Subsec. (a)(1). Pub. L. 92–603, § 406(b), inserted “except to the extent permitted by the Secretary with respect to services,” before “provide.”

Subsec. (a)(4). Pub. L. 92–603, § 407(b), designated existing provisions as subcl. (A) and added subcl. (B).

Subsec. (a)(9). Pub. L. 92–603, § 413(b), substituted provisions permitting the use or disclosure of information concerning applicants or recipients to public officials requiring such information in connection with their official duties and to other persons for purposes directly connected with the administration of the State plan, for provisions restricting the use or disclosure of such information to purposes directly connected with the administration of aid to the blind.

Subsec. (a)(13). Pub. L. 92–603, § 406(b), inserted provision relating to the use of whatever internal organizational arrangement found appropriate.


Subsec. (a)(9)(C). Pub. L. 90–248, § 213(a)(2), increased from $5 to $7.50 limitation on amount of any income which the State may disregard in making its determination of need.


1964—Subsec. (a)(8). Pub. L. 88–650 permitted the State agency, for a period not in excess of thirty-six months to disregard such additional amounts of other income and resources.

alternatively, the first $50 per month of earned income in
considering claimant's income and resources in
determining need.

Pub. L. 98–778, §710(a), inserted provision that
required the State agency to disregard, alternatively, the
first $85 per month of earned income plus one-half of
earned income in excess of $85 per month in considering
claimant's income and resources in determining need.


1950—Subsec. (a)(4). Act Aug. 28, 1950, §341(a), sub-
stituted “provide for granting an opportunity for a fair
hearing before the State agency to any individual
whose claim for aid to the blind is denied or is not
acted upon with reasonable promptness” for “provide
for granting to any individual, whose claim for aid is
denied, an opportunity for a fair hearing before such
State agency”.

Subsec. (a)(7). Act Aug. 28, 1950, §341(b), inserted “or
aid to dependent children under the State plan
approved under section 302 of this title”.

Subsec. (a)(8). Act Aug. 28, 1950, §341(c)(2), (d), amend-
ed cl. (8) generally, effective July 1, 1952, and struck
out “and” preceding cl. (9).

Act Aug. 28, 1950, §341(c)(1), amended cl. (8) generally
for period beginning Oct. 1, 1950, and ending June 30,
1952.

Subsec. (a)(9). Act Aug. 28, 1950, §341(d), substituted
comma for period at end.

(10) generally. Prior to amendment, cl. (10) read as fol-
ows: “provide that, in determining whether an individu-
al is blind, there shall be an examination by a physi-
cian skilled in diseases of the eye or by an optom-

The amendment made by that section is effective for the
period beginning with first day of calendar quarter
which begins after Sept. 13, 1960, and ending with close

Section 710(b) of Pub. L. 98–778 provided that the
amendment made by that section is effective July 1, 1962.

Effective Date of 1956 Amendment

Amendment by act Aug. 1, 1956, effective July 1, 1957,
see section 314 [315] of act Aug. 1, 1956, set out as a note
under section 302 of this title.

Effective and Termination Dates of 1960

Amendment

Section 341(c)(1) of act Aug. 28, 1960, provided that the
amendment made by that section is effective for the

Section 341(c)(2) of act Aug. 28, 1960, provided that the
amendment made by that section is effective July 1,
1962.

Section 341(e) of act Aug. 28, 1950, provided that the
amendment made by that section is effective July 1,
1952.

Section 341(f) of act Aug. 28, 1950, provided that: “The
amendments made by subsections (b) and (d) [amending
this section] shall take effect October 1, 1950; and the
amendment made by subsection (a) [amending this
section] shall take effect July 1, 1951.”

Effective Date of 1939 Amendment

Section 701(b) of act Aug. 10, 1939, provided that the
amendment made by that section is effective July 1,
1941.

Transfer of Functions

Functions, powers, and duties of Secretary under sub-
sec. (a)(5)(C) of this section, insofar as relates to the
prescription of personnel standards on a merit basis,
transferred to Office of Personnel Management, see sec-
tion 4728(a)(3)(D) of this title.

Functions of Federal Security Administrator trans-
ferred to Secretary of Health, Education, and Welfare
and agencies of Federal Security Agency transferred to
Department of Health, Education, and Welfare by sec-
tion 5 of Reorg. Plan No. 1 of 1953, set out as a note
under section 3501 of this title. Federal Security Agen-
cy and office of Administrator abolished by section 8
of Reorg. Plan No. 1 of 1953. Secretary and Department of
Health, Education, and Welfare redesignated Secretary
and Department of Health and Human Services by sec-
tion 509(b) of Pub. L. 98–48 which is classified to section
3506(b) of Title 20, Education.

Public Access to State Disbursement Records

Public access to State records of disbursements of funds and payments under this subchapter, see note set
out under section 302 of this title.

July 25, 1962, 76 Stat. 197

Section 136(a) of Pub. L. 87–543, effective July 1, 1963, see
section 201(a) of Pub. L. 97–163, as amended, set out as a note
under section 302 of this title.

Section 154 of Pub. L. 87–543 provided that the amendment
made by that section is effective July 1, 1963.

Effective Date of 1960 Amendment

Section 710(a) of Pub. L. 98–778 provided that the
amendment made by that section is effective for the
period beginning with first day of calendar quarter
which begins after Sept. 13, 1960, and ending with close

Section 710(b) of Pub. L. 98–778 provided that the
amendment made by that section is effective July 1,
1962.

Effective Date of 1956 Amendment

Amendment by act Aug. 1, 1956, effective July 1, 1957,
see section 314 [315] of act Aug. 1, 1956, set out as a note
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Section 341(c)(2) of act Aug. 28, 1960, provided that the
amendment made by that section is effective July 1,
1962.

Section 341(e) of act Aug. 28, 1950, provided that the
amendment made by that section is effective July 1,
1952.

Section 341(f) of act Aug. 28, 1950, provided that: “The
amendments made by subsections (b) and (d) [amending
this section] shall take effect October 1, 1950; and the
amendment made by subsection (a) [amending this
section] shall take effect July 1, 1951.”

Effective Date of 1939 Amendment

Section 701(b) of act Aug. 10, 1939, provided that the
amendment made by that section is effective July 1,
1941.

Transfer of Functions

Functions, powers, and duties of Secretary under sub-
sec. (a)(5)(C) of this section, insofar as relates to the
prescription of personnel standards on a merit basis,
transferred to Office of Personnel Management, see sec-
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Functions of Federal Security Administrator trans-
ferred to Secretary of Health, Education, and Welfare
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Health, Education, and Welfare redesignated Secretary
and Department of Health and Human Services by sec-
tion 509(b) of Pub. L. 98–48 which is classified to section
3506(b) of Title 20, Education.

Public Access to State Disbursement Records

Public access to State records of disbursements of funds and payments under this subchapter, see note set
out under section 302 of this title.
§ 1203. Payment to States

(a) Authorization of payments

From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the blind, for each quarter, beginning with the quarter commencing October 1, 1950—


(2) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health and Human Services shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of blind individuals in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health and Human Services shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health and Human Services, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) of this section for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health and Human Services, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the

blind furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health and Human Services for such prior quarter. Provided, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department, and prior to audit or settlement by the Government Accountability Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.
through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision, plus

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(1) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1320b-7(d) of this title; plus

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(2) one-half of the remainder of such expenditures.

1986—Subsec. (a)(3)(B). Pub. L. 97–63 inserted premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof) after “under the State plan”.


1986—Subsec. (a)(2). Pub. L. 97–35, § 2184(c)(2)(A), struck out “(including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)” after “under the State plan”.

1986—Subsec. (a)(3). Pub. L. 97–35, § 2253(c)(1)(A), redesignated subpar. (A)(iv) as subpar. (A), struck out former subpars. (A)(i), (ii), and (iii), which included services prescribed pursuant to subsection (a)(1) of this section, and provided for or recipients of aid to the blind to help them attain self-support, (A)(ii), which included other services provided by the Secretary as likely to prevent or reduce dependency, and (A)(iii), which included any of the services in subpars. (A)(i) and (ii) deemed appropriate for individuals likely to become applicants for or recipients of aid to the blind, redesignated former subpar. (C) as (B), and struck out former subpar. (B), which included one-half of so much of the expenditures not included in subpar. (A), as are for services for applicants for or recipients of aid to the blind or individuals likely to become such applicants or recipients, and subpars. (D) and (E) and provision following subpar. (E), which specified what services were includable.

1986—Subsec. (a)(4). Pub. L. 97–35, § 2253(c)(1)(B), struck out par. (4) which provided payment, in the case of any State whose plan approved under section 1202 of this title did not meet the requirements of subsection (c)(1) of this section, of an amount equal to one-half of the total of the sums expended during the quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

1975—Subsec. (a). Pub. L. 93–647, § 6(e), struck out “subject to section 1200b of this title)” after “the Secretary of the Treasury shall”.

1975—Subsec. (a)(3)(A)(iv). Pub. L. 93–647, § 6(c), inserted “including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions)” after “training”.

1972—Subsec. (a). Pub. L. 92–512, § 301(d), substituted “shall (subject to section 1200b of this title) pay” for “shall pay” in provisions preceding par. (1).

1968—Subsec. (a)(3)(E). Pub. L. 92–512, § 301(b), substituted “under conditions which shall be” for “subject to limitations”.

1968—Subsec. (a)(3)(D). Pub. L. 90–248 inserted “except to the extent specified by the Secretary” after “under the plan of the State agency” in introductory text to subpar. (D).

1965—Subsec. (a)(1). Pub. L. 89–97, § 122, 401(d), inserted “premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other administrative expenses for the costs of the implementation and operation of the immigration status verification system described in section 1320b-7(d) of this title; plus”.

1965—Subsec. (a)(1). Pub. L. 89–97, § 122, 401(d), inserted “premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other administrative expenses for the costs of the implementation and operation of the immigration status verification system described in section 1320b-7(d) of this title; plus”. 

1962—Subsec. (a)(1). Pub. L. 87–543, § 122(b), substituted “$50” for “$45” for “four-fifths” and “$31”, respectively, in subpar. (A) and “$70” for “$66” in subpar. (B).

1962—Subsec. (a)(2). Pub. L. 87–543, § 132(b), substituted “$35.50” for “$35.50”.

1961—Subsec. (a). Pub. L. 87–64 substituted “$31” for “$29” for “four-fifths” and “$31”, respectively, in subpar. (A) and “$70” for “$66” in subpar. (B).

1961—Subsec. (a)(3). Pub. L. 87–543, § 101(a)(3), (b)(3)(A), inserted in opening provisions “whose State plan approved under section 1202 of this title meets the requirements of subsection (c)(1) of this section” after “any State”, and substituted provisions which increased the Federal share of expenses of administration of State public assistance plans by providing quarterly payments of the sum of 75 per cent of the quarterly expenses for certain prescribed services to help attain and retain capability for self-support or self-care, services likely to prevent or reduce dependency, and services appropriate for individuals who were or are likely to become applicants for or recipients of aid to the blind and request such services, and training of State or local public assistance personnel administering such plans and one-half of other administrative expenses for other services, permitted State health or vocational rehabilitation or other appropriate State agencies to furnish such services, except vocational rehabilitation services, and required the determination of the portion of expenses covered by the 75 and 50 per centum provisions in accordance with methods and procedures permitted by the Secretary for former provisions requiring quarterly payments of one-half of quarterly expenses of administration of State plans, including staff service of State or local public assistance agencies to applicants for and recipients of aid to the blind to help them attain self-support or self-care.


1961—Subsec. (a). Pub. L. 87–64 substituted “$31” for “$30” and “$66” for “$65” in cl. (1), and “$35.50” for “$35” in cl. (2).

1958—Subsec. (a). Pub. L. 85–840 increased the payments to the States to four-fifths of the first $30 of the average monthly payment per recipient including assistance in the form of money payments and in the form of medical or any other type of remedial care, plus the Federal percentage of the amount by which the expenditures exceed the maximum which may be counted under cl. (A), but excluding that part of the average monthly payment per recipient in excess of $65, computed the average monthly payment to Puerto Rico, Guam, and the Virgin Islands from $30 to $35, excluded Guam from the provisions which authorize an average monthly payment of $65 and included Guam within the provisions which authorize an average monthly payment of $35, and permitted the counting of individuals with respect to whom expenditures were made as old-age assistance in the form of medical or any other type of remedial care in determining the total number of recipients.

1958—Subsec. (a). Pub. L. 85–840 increased the payments to the States to four-fifths of the first $30 of the average monthly payment per recipient including assistance in the form of money payments and in the form of medical or any other type of remedial care, plus the Federal percentage of the amount by which the expenditures exceed the maximum which may be counted under cl. (A), but excluding that part of the average monthly payment per recipient in excess of $65, computed the average monthly payment to Puerto Rico, Guam, and the Virgin Islands from $30 to $35, excluded Guam from the provisions which authorize an average monthly payment of $65 and included Guam within the provisions which authorize an average monthly payment of $35, and permitted the counting of individuals with respect to whom expenditures were made as old-age assistance in the form of medical or any other type of remedial care in determining the total number of recipients.

1956—Subsec. (a). Act Aug. 1, 1956, § 303, substituted “during such quarter as aid to the blind in the form of money payments under the State plan” for “during such quarter as aid to the blind under the State plan” in cls. (1) and (2), “who received aid to the blind in the form of money payments for such month” for “who received aid to the blind for such month” in par. (a) of cl. (1), and inserted cl. (4).

1956—Subsec. (a). Act Aug. 1, 1956, § 303, substituted “during such quarter as aid to the blind in the form of money payments under the State plan” for “during such quarter as aid to the blind under the State plan” in cls. (1) and (2), “who received aid to the blind in the form of money payments for such month” for “who received aid to the blind for such month” in par. (a) of cl. (1), and inserted cl. (4).

1956—Subsec. (a). Act Aug. 1, 1956, § 303, substituted “during such quarter as aid to the blind in the form of money payments under the State plan” for “during such quarter as aid to the blind under the State plan” in cls. (1) and (2), “who received aid to the blind in the form of money payments for such month” for “who received aid to the blind for such month” in par. (a) of cl. (1), and inserted cl. (4).
State plan or for aid to the blind, or both, and for no other purpose' in cl. (3).

Act Aug. 1, 1956, §343, substituted "October 1, 1956" for "October 1, 1952" struck out", which shall be used exclusively as aid to the blind", after "the Virgin Islands, an amount", in clns. (1) and (2), substituted "$60" for "$55", "the product of $30" for the product of $25", "Secretary of Health, Education, and Welfare" for "Secretary", and "including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of aid to the blind to help them attain self-support or self-care" for "which amount shall be used for paying the costs of administering the State plan or for aid to the blind, or both, and for no other purpose'.

1954—Subsec. (b)(1). Act Sept. 1, 1954, substituted "the State's proportionate share" for "one-half".

1952—Subsec. (a). Act July 18, 1952, increased the Federal share of the State's average monthly payment to four-fifths of the first $25 plus one-half of the remainder within individual maximums of $55, and changed formulas for computing the Federal share of public assistance for Puerto Rico and the Virgin Islands.


1948—Subsec. (a). Act June 14, 1948, substituted "$50" for "$45" and "$20" for "$15".

1946—Subsec. (a). Act Aug. 10, 1946, §503(a), temporarily increased the maximum monthly State expenditure to which the Federal government will contribute from $40 to $45 and increased the Federal contribution for aid to the blind from one-half the State's expenditure to two-thirds such expenditure up to $15 monthly per individual plus one-half the State's expenditure over $15. See Effective and Termination Date of 1946 Amendment note below.

Subsec. (b). Act Aug. 10, 1946, §503(b), temporarily substituted "the State's proportionate share" for "one-half" in par. (1). See Effective and Termination Date of 1946 Amendment note below.


**Effective Date of 1993 Amendment**

Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Apr. 1, 1994, with special rule for States whose legislature meets biennially, and does not have regular session scheduled in calendar year 1994, see section 1774(a) of Pub. L. 103–66, set out as a note under section 303 of this title.

**Effective Date of 1986 Amendment**


**Effective Date of 1981 Amendment**


**Effective Date of 1975 Amendment**

Amendment by section 3(e)(2) of Pub. L. 93–647 effective with respect to payments under sections 303 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as a note under section 385 of this title.

Amendment by section 8(e) of Pub. L. 93–647 effective with respect to quarters commencing after Sept. 30, 1975, see section 7(a) of Pub. L. 93–647, set out as a note under section 303 of this title.

**Effective Date of 1972 Amendment**

Amendment by section 301(b) of Pub. L. 92–512 effective Jan. 1, 1973, and amendment by section 301(d) of Pub. L. 92–512 effective July 1, 1972, see section 301(e) of Pub. L. 92–512, set out as a note under section 303 of this title.

**Effective Date of 1968 Amendment**

Amendment by Pub. L. 90–248 effective Jan. 1, 1968, see section 212(e) of Pub. L. 90–248, set out as a note under section 303 of this title.

**Effective Date of 1965 Amendment**

Amendment by section 401(d) of Pub. L. 89–97 applicable in the case of expenditures made after December 31, 1965, under a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter, see section 401(f) of Pub. L. 89–97, set out as a note under section 303 of this title.

**Effective Date of 1962 Amendment**

Amendment by section 101(a)(3) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be made after Aug. 31, 1962, and amendment by section 101(b)(3) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after June 30, 1963, see section 202(f) of Pub. L. 87–543, set out as a note under section 303 of this title.

Amendment by section 132(b) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Sept. 30, 1962, see section 202(d) of Pub. L. 87–543, set out as a note under section 303 of this title.

**Effective Date of 1961 Amendment**

Amendment by Pub. L. 87–64 applicable only in the case of expenditures made after Sept. 30, 1961, and before July 1, 1962, under a State plan approved under subchapters I, X, or XIV of this chapter, see section 303(e) of Pub. L. 87–64, set out as a note under section 303 of this title.

**Effective Date of 1958 Amendment**

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

**Effective and Termination Date of 1956 Amendment**

Amendment by section 303 of act Aug. 1, 1956, effective July 1, 1956, see section 305 of act Aug. 1, 1956, set out as a note under section 303 of this title.

Amendment by section 343 of act Aug. 1, 1956, effective only for period beginning Oct. 1, 1956, and ending with close of June 30, 1959, see section 34(e) of act Aug. 1, 1956, set out as a note under section 303 of this title.

**Effective and Termination Date of 1952 Amendment**

Amendment by act July 18, 1952, effective for the period beginning Oct. 1, 1952, and ending Sept. 30, 1956, see section 8(e) of act July 18, 1952, set out as a note under section 303 of this title.

**Effective Date of 1950 Amendment**

Section 342(b) of act Aug. 28, 1950, provided that: "The amendment made by subsection (a) (amending this section) shall take effect October 1, 1950.''

**Effective Date of 1948 Amendment**

Amendment by act June 14, 1948, effective Oct. 1, 1948, see section 3(d) of act June 14, 1948, set out as a note under section 303 of this title.

**Effective and Termination Date of 1946 Amendment**

Amendment by section 503 of act Aug. 10, 1946, effective only for period beginning Oct. 1, 1946, and ending
with close of June 30, 1950, see section 504 of act Aug. 10, 1946, as amended, set out as a note under section 303 of this title.

Effective Date of 1939 Amendment

Section 702 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

Transfer of Functions

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3001 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 509(b) of Title 20, Education.


Nonduplication of Payments to States, Prohibition of Payments After December 31, 1969

Prohibition of payments under this subchapter to States with respect to aid or assistance in form of medical or other type of remedial care for any period for which States received payments under subchapter XIX of this chapter or for any period after Dec. 31, 1969, see section 121(b) of Pub. L. 89–97, set out as a note under section 1396 of this title.

Election of Payments Under Combined State Plan Rather Than Separate Plans

Payments to States under combined State plan under subchapter XVI of this chapter as precluding payment under State plan conforming to this subchapter, see section 141(b) of Pub. L. 87–543.

§ 1204. Operation of State plans

In the case of any State plan for aid to the blind which has been approved by the Secretary of Health and Human Services, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1202(b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1202(a) of this title to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply.

Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).


Repeal of Section

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

Amendments

1968—Pub. L. 90–248 inserted “(or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure)” after “further payments will not be made to the State” and substituted in last sentence “further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure)” for “further certification to the Secretary of the Treasury with respect to such State”.

1950—Act Aug. 28, 1950, substituted “Administrator” for “Board” and “his” for “its”.

Transfer of Functions

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 509(b) of Pub. L. 96–88 which is classified to section 509(b) of Title 20, Education.

§ 1205. Omitted

Codification


Repeals

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

§ 1206. “Aid to the blind” defined

For the purposes of this subchapter, the term “aid to the blind”, means money payments to blind individuals who are needy, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases. Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual...
who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1202 of this title includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

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

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

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

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

At the option of a State (if its plan approved under this subchapter so provides), such term (1) need not include money payments to an individual who has been absent from such State for a period in excess of 90 consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for 30 consecutive days in the case of such an individual who has maintained his residence in such State during such period) until he has been present in such State for 30 consecutive days in the case of such an individual who has maintained his residence in such State during such period or 90 consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan.


**AMENDMENTS**

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

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

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

1962—Pub. L. 87–543 inserted “(if provided in or after the third month before the month in which the recipient makes application for aid)” before “medical care”, “Act Aug. 28, 1950, redefined ‘aid to the blind’”, “Act Aug. 10, 1939, redefined ‘aid to the blind’ to include those individuals who are needy.

**EFFECTIVE DATE OF 1965 AMENDMENT**

Amendment by section 221(b) of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub. L. 89–97, set out as a note under section 352 of this title.

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

**EFFECTIVE DATE OF 1962 AMENDMENT**

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

**EFFECTIVE DATE OF 1950 AMENDMENT**

Section 343(b) of act Aug. 28, 1950, provided that: “The amendment made by subsection (a) [amending this section] shall take effect October 1, 1950, except that the exclusion of money payments to needy individuals described in clause (a) or (b) of section 1906 of the Social Security Act [this section] as so amended shall, in the case of any of such individuals who are not patients in a public institution, be effective July 1, 1952.”

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

**PART A—GENERAL PROVISIONS**

§1301. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) who makes available to such practitioners the services of supporting staff who are not employees of such practitioners and who is compensated in whole or in part, for the use of such common physical location or support services pertaining thereto, on a basis related to amounts charged or collected for the services rendered or ordered at such location or on any basis clearly unrelated to the value of the services provided by the person; and

(D) at least one of such practitioners received payments on a fee-for-service basis under subchapters XVIII and XIX of this chapter in an amount exceeding $5,000 for any one month during the preceding 12 months or in an aggregate amount exceeding $49,000 during the preceding 12 months; except that such term does not include a provider of services (as defined in section 1395x(u) of this title), a health maintenance organization (as defined in section 300e(a) of this title), a hospital cooperative shared services organization meeting the requirements of section
501(e) of the Internal Revenue Code of 1986, or any public entity.

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

(b) The terms “includes” and “including” when used in a definition contained in this chapter shall not be deemed to exclude other things otherwise within the meaning of the term defined.

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

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


REFERENCES IN TEXT


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


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

1946—Subsec. (a)(1). Act Aug. 10, 1946, substituted "per capita income of the continental United States (including Alaska)" for "per capita income of the continental United States (including Alaska)"; and struck out provisions which prescribed the Federal percentage for Hawaii as 50 per centum.

1945—Subsec. (a)(7). Act Aug. 28, 1945, substituted "continental United States (including Alaska)" for "continental United States (including Alaska)".

1943—Subsec. (a)(3). Act Aug. 28, 1943, added subpars. (C) and (D).


1939—Subsec. (a)(1). Act Aug. 10, 1939, redefined the term ‘State’, except where otherwise provided, includes the Virgin Islands and Guam; and struck out "District of Columbia, and the Commonwealth of Puerto Rico" for "includes the Virgin Islands and Guam"; and "includes the District of Columbia", and "includes the Virgin Islands and Guam" for "includes Puerto Rico, the Virgin Islands, and Guam".


1933—Subsec. (a)(1). Act Aug. 10, 1933, inserted reference to subchapter VII of this chapter.


1924—Subsec. (a)(1). Pub. L. 68–70, § 32(a), substituted "(excluding Alaska)" for "(excluding Alaska)" in two places, and "50 per centum for Hawaii" for "50 per centum for Alaska and Hawaii".


1920—Subsec. (a)(1). Act Aug. 28, 1920, substituted "‘State’ for "‘State’; except where otherwise provided, includes Alaska; and struck out "for ‘Alaska, Hawaii, and’.

1919—Subsec. (a)(1). Act Aug. 28, 1919, substituted "per capita income of the United States" for "per capita income of the continental United States (including Alaska)"; and struck out provisions which prescribed the Federal percentage for Hawaii as 50 per centum.

1918—Subsec. (a)(1). Act Aug. 10, 1918, substituted "per capita income of the United States (including Alaska)" for "per capita income of the continental United States (including Alaska)"; and struck out provisions which prescribed the Federal percentage for Hawaii as 50 per centum.

1917—Subsec. (a)(1). Act Aug. 28, 1917, substituted "‘United States’ for ‘United States’; except where otherwise provided, includes Alaska; and struck out "for ‘Alaska, Hawaii, and’.

1916—Subsec. (a)(1). Act Aug. 10, 1916, substituted "per capita income of the United States (including Alaska)" for "per capita income of the continental United States (including Alaska)"; and struck out provisions which prescribed the Federal percentage for Hawaii as 50 per centum.


1914—Subsec. (a)(1). Act Aug. 10, 1914, substituted "‘United States’ for ‘United States’; except where otherwise provided, includes Alaska; and struck out "for ‘Alaska, Hawaii, and’.

1913—Subsec. (a)(1). Act Aug. 10, 1913, substituted "‘United States’ for ‘United States’; except where otherwise provided, includes Alaska; and struck out "for ‘Alaska, Hawaii, and’.

1912—Subsec. (a)(1). Act Aug. 10, 1912, substituted "‘United States’ for ‘United States’; except where otherwise provided, includes Alaska; and struck out "for ‘Alaska, Hawaii, and’.

1911—Subsec. (a)(1). Act Aug. 10, 1911, substituted "‘United States’ for ‘United States’; except where otherwise provided, includes Alaska; and struck out "for ‘Alaska, Hawaii, and’.

1910—Subsec. (a)(1). Act Aug. 10, 1910, substituted "‘United States’ for ‘United States’; except where otherwise provided, includes Alaska; and struck out "for ‘Alaska, Hawaii, and’.

1909—Subsec. (a)(1). Act Aug. 10, 1909, substituted "‘United States’ for ‘United States’; except where otherwise provided, includes Alaska; and struck out "for ‘Alaska, Hawaii, and’.

1908—Subsec. (a)(1). Act Aug. 10, 1908, substituted "‘United States’ for ‘United States’; except where otherwise provided, includes Alaska; and struck out "for ‘Alaska, Hawaii, and’.

1907—Subsec. (a)(1). Act Aug. 10, 1907, substituted "‘United States’ for ‘United States’; except where otherwise provided, includes Alaska; and struck out "for ‘Alaska, Hawaii, and’.
this section and sections 1315 and 1316 of this title] shall be effective on and after January 1, 1974.'"

**Effective Date of 1972 Amendment**

Section 272(c) of Pub. L. 92-693 provided that: "The amendments made by this section [amending this section and section 1308 of this title] shall apply with respect to fiscal years beginning after June 30, 1971.'"

**Effective Date of 1965 Amendment**

Section 121(c)(1) of Pub. L. 89-97 provided that the amendment made by that section is effective Jan. 1, 1966.

**Effective Date of 1960 Amendments**

Section 511 of Pub. L. 86-778 provided that the amendment made by that section is effective on and after Jan. 1, 1961.

Amendment by section 30(d) of Pub. L. 86-624 applicable in the case of promulgations or computations of Federal shares, allotment percentages, allotment ratios, and Federal percentages, as the case may be, made after Aug. 21, 1959, see section 47(f) of Pub. L. 86-624, set out as a note under section 201 of this title.

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

**Effective Date of 1959 Amendment**

Amendment by section 23(a) of Pub. L. 86-70 applicable in the case of promulgations of Federal shares, allotment percentages, allotment ratios, and Federal percentages, as the case may be, made after satisfactory data are available from the Department of Commerce for a full year on the per capita income of Alaska, and amendment by section 32(d) of Pub. L. 86-70 effective Jan. 3, 1959, see section 47(a), (d) of Pub. L. 86-70.

**Effective Date of 1958 Amendment**

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

**Effective Date of 1950 Amendment**

Section 493(a)(3) of act Aug. 28, 1950, provided that: "The amendment made by paragraph (1) of this subsection [amending this section] shall take effect Oct. 1, 1950, and the amendment made by paragraph (2) of this subsection [amending this section], insofar as it repeals the definition of 'employee', shall be effective only with respect to services performed after 1950.'"

Section 493(b) of act Aug. 28, 1950, provided that the amendment made by that section is effective Oct. 1, 1950.

**Effective Date of 1948 Amendment**

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

**Effective Date of 1946 Amendment**

Section 401(a) of act Aug. 10, 1946, provided that the amendment made by that section is effective Jan. 1, 1947.

**Effective Date of 1939 Amendment**

Section 801 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1941.

**Repeals**

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


**Transfer of Functions**


**Provisions Relating to Federal Security Administrator**

Section 2663(j) of Pub. L. 98-369 provided that: "Any reference to the Federal Security Administrator which may remain in the provisions of title II, IV, VII, or XI of the Social Security Act [subchapter II, IV, VII, or XI of this chapter] (other than section 1101(a)(6) of such Act [subsec. (a)(6) of this section]) is amended—

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

(2) by substituting 'Secretary of Health, Education, and Welfare' for the term 'Federal Security Administrator', where the reference is to that term, if the provision containing such reference is amended by paragraph (2) or (3) of subsection (j) [Pub. L. 98-369, § 2663(j)(2), (3), set out as a note under this section], and which case the amendment of such provision under this paragraph shall be deemed to have taken effect...
Section 702 of Pub. L. 85–840, as amended by Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695, provided that: “As used in the provisions of the Social Security Act amended by this Act [see Short Title of 1968 Amendment note set out under section 1305 of this title], the term ‘Secretary’, unless the context otherwise requires, means the Secretary of Health and Human Services.”

Section 110 of act Aug. 1, 1956, ch. 836, as amended Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695, provided that: “As used in this Act and in the provisions of the Social Security Act set forth in this Act [see Short Title of 1956 Amendment note set out under section 1305 of this title], the term ‘Secretary’ means the Secretary of Health and Human Services.”

§1301–1. Omitted

CODIFICATION

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

§1301a. Omitted

CODIFICATION

Section, act June 26, 1940, ch. 428, title II, 54 Stat. 586, provided for reimbursement for official travel performed by employees of the Bureau of Old-Age Insurance, was from the Federal Security Agency Appropriation Act, 1941, and was not repeated in subsequent appropriations acts.

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

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

(b)(1) Whenever the Secretary publishes a general notice of proposed rulemaking for any rule or regulation proposed under this chapter, subsections (a) and (b) of section 553 of title 5, and each of the remaining sections of this chapter, shall apply with respect to such rule or regulation.

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

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


AMENDMENTS

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


EFFECTIVE DATE OF 1987 AMENDMENT

Section 402(b) of Pub. L. 100–203 provided that: “The amendments made by paragraph (1) [probably means subsec. (a), amending this section] shall apply to regulations proposed more than 30 days after the date of the enactment of this Act [Dec. 22, 1987].”

EFFECTIVE DATE OF 1984 AMENDMENT

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

REPEALS

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

ABORTION SERVICES; PROHIBITION ON CERTAIN POLICY CHANGES

Pub. L. 100–517, § 9, Oct. 24, 1988, 102 Stat. 2583, provided that: “With respect to abortion services, the Secretary of Health and Human Services shall not promulgate or issue any regulations, policy statements, or interpretations or develop any practices concerning the performance of medically necessary procedures if such regulations, policy statements, interpretations, or practices would be inconsistent with regulations, policies, statements, or practices in effect on the date of the enactment of this Act [Sept. 30, 1990].”

Notice on Social Security Checks

Pub. L. 98–460, §18, Oct. 9, 1984, 98 Stat. 1813, provided that: “If any provision of this Act [amending sections 405, 408, 416, 421 to 423, 1302c, 1302d, 1302h, and 1303 to 1303h of this title, enacting provisions set out as notes under sections 405, 421 to 423, 907, and 1305 of this title, and amending provisions set out as a note under section 1302h of this title], or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby.


Separability

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


§1304. Reservation of right to amend or repeal

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


§1305. Short title of chapter

This chapter may be cited as the “Social Security Act”.


Short Title of 2011 Amendment


Pub. L. 112–34, §1, Sept. 30, 2011, 125 Stat. 399, provided that: “This Act [enacting section 629m of this title, amending sections 622 to 625, 629a to 629c, 629f to 629h, 673, 675, 679b, and 132ba–9 of this title, and enacting provisions set out as notes under sections 622, 629h, and 629m of this title] may be cited as the ‘Child and Family Services Improvement and Innovation Act’.”

Short Title of 2010 Amendment

Pub. L. 111–318, §1, Dec. 18, 2010, 124 Stat. 3455, provided that: “This Act [amending section 405 of this title and enacting provisions set out as notes under section
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1396a-3 of this title, enacting provisions set out as notes under sections 1396a and 1396b of this title, and amending provisions set out as a note under section 1396a of this title, may be cited as the ‘TANF, Abstinence Education, and QI Programs Extension Act of 2007.’

**SHORT TITLE OF 2006 AMENDMENT**

Pub. L. 109–19, § 1, July 1, 2005, 119 Stat. 344, provided that: ‘‘This Act [amending sections 603 and 605 of this title and enacting provisions set out as a note under section 603 of this title] may be cited as the ‘SUTA Dumping Prevention Act of 2004.’


Pub. L. 108–203, § 1(a), Mar. 2, 2004, 118 Stat. 493, provided that: ‘‘This Act [enacting section 1320a-8b of this title, amending sections 401, 402, 404, 405, 406, 408, 409 to 411, 414, 418, 422, 423, 426, 429, 434, 903, 1004, 1007, 1008, 1101, 1110, 1320a-8, 1320a-10, 1320b-15, 1320b-17, 1320b-19 to 1320b-21, 1332 to 1332c, 1383, and 1383a of this title, sections 1401, 1402, 3101, 3102, 3111, and 3121 of Title 26, Internal Revenue Code, and sections 231n-1 to 231n-5 of Title 45, Railroads, repealing section 1320b-18 of this title, enacting provisions set out as notes under sections 402, 404, 406, 408, 410, 411, 414, 416, 418, 422, 423, 426, 429, 434, 903, 1003, 1004, 1320a-4, 1320b-10, 1320b-13, 1320b-15 to 1320b-21, 1332 to 1332c, and 1383 of this title and section 1113 of Title 31, Money and Finance, and amending provisions set out as a note under section 495 of this title] may be cited as the ‘Social Security Protection Act of 2004.’

**SHORT TITLE OF 2003 AMENDMENTS**


**SHORT TITLE OF 2002 AMENDMENTS**

Pub. L. 107–133, § 1, Jan. 17, 2002, 115 Stat. 2413, provided that: ‘‘This Act [amending sections 629b to 629i of this title, amending sections 629, 629a, 629c, 629d, 629e, 629f, and 677 of this title, and enacting provisions set out as notes under sections 629, 629a, 629d, 629e, 629f, and 677 of this title] may be cited as the ‘Adoption and Safe Families Act’.


**SHORT TITLE OF 2001 AMENDMENTS**


**SHORT TITLE OF 2000 AMENDMENTS**


Pub. L. 106–554, § 1(a)(6) [§ 1(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–463, provided that: ‘‘This Act [H.R. 5661, as
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enacted by section 1(a)(6) of Pub. L. 106–554, see Tables
for classification] may be cited as the ‘Medicare, Medicaid, and SCHIP Benefits Improvement and Protection
Act of 2000’.’’
Pub. L. 106–553, § 1(a)(2) [title VI, § 635(a)], Dec. 21,
section 1320b–23 of this title, amending section 408 of
this title, and enacting provisions set out as notes
under sections 408 and 1320b–23 of this title, could be
cited as ‘‘Amy Boyer’s Law’’, was repealed by Pub. L.
106–554, § 1(a)(4) [div. A, § 213(a)(6), (b)], Dec. 21, 2000, 114
Stat. 2763, 2763A–180, effective as if included in Pub. L.
Pub. L. 106–354, § 1, Oct. 24, 2000, 114 Stat. 1381, provided that: ‘‘This Act [enacting section 1396r–1b of this
title, amending sections 1396a, 1396b, and 1396d of this
title, and enacting provisions set out as a note under
section 1396a of this title] may be cited as the ‘Breast
and Cervical Cancer Prevention and Treatment Act of
2000’.’’
Pub. L. 106–182, § 1, Apr. 7, 2000, 114 Stat. 198, provided
that: ‘‘This Act [amending sections 402 and 403 of this
title and enacting provisions set out as a note under
section 402 of this title] may be cited as the ‘Senior
Citizens’ Freedom to Work Act of 2000’.’’
SHORT TITLE OF 1999 AMENDMENTS
may be cited as the ‘Ticket to Work and Work Incentives Improvement Act of 1999’.’’
chapter and sections 1306b, 1320a–8a, 1320b–6, and
1320b–18 of this title, amending sections 401, 402, 404,
405, 602, 604, 609, 613, 616, 629a, 652, 654, 655, 657, 659, 666,
671, 672, 673b, 674, 677, 903, 904, 909, 1320a–8, 1320b–7,
1320b–17, 1382, 1382a, 1382b, 1383, 1396a, and 1396d of this
title and sections 3701 and 3716 of Title 31, Money and
Finance, and enacting provisions set out as notes under
sections 402, 404, 602, 604, 657, 671, 677, 904, 1320a–8,
1320a–8a, 1320b–6, 1382, 1382a, 1382b, 1383, and 1396a of
this title and section 3701 of Title 31] may be cited as
the ‘Foster Care Independence Act of 1999’.’’
Pub. L. 106–113, div. B, § 1000(a)(6) [§ 1(a)], Nov. 29, 1999,
113 Stat. 1536, 1501A–321, provided that: ‘‘This Act [H.R.
3426, as enacted by section 1000(a)(6) of Pub. L. 106–113,
see Tables for classification] may be cited as the ‘Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999’.’’
Pub. L. 106–4, § 1, Mar. 25, 1999, 113 Stat. 7, provided
that: ‘‘This Act [amending section 1396r of this title
and enacting provisions set out as a note under section
1396r of this title] may be cited as the ‘Nursing Home
Resident Protection Amendments of 1999’.’’
SHORT TITLE OF 1998 AMENDMENTS
title, amending sections 404, 603, 655, 1382a, 1382b, and
1383 of this title and sections 1611 and 1621 of Title 8,
Aliens and Nationality, enacting provisions set out as
notes under sections 404, 603, 652, 655, and 1382a of this
title, and amending provisions set out as notes under
section 652 of this title and section 3306 of Title 26, Internal Revenue Code] may be cited as the ‘Noncitizen
Benefit Clarification and Other Technical Amendments
Act of 1998’.’’
title, amending sections 603, 604, 609, 613, 622, 629b, 652,
653, 655, 658, 658a, 666, 669, 669a, 671, 673b, 674, and 1314a
of this title and sections 1021, 1144, and 1169 of Title 29,
Labor, repealing section 658 of this title, enacting provisions set out as notes under sections 608, 651 to 653,
655, 658a, 666, and 671 of this title, sections 1021, 1144,
and 1169 of Title 29, and section 5309 of Title 49, Transportation, amending provisions set out as notes under

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sections 608, 652, 658, and 658a of this title, and repealing provisions set out as a note under section 658 of this
title] may be cited as the ‘Child Support Performance
and Incentive Act of 1998’.’’
SHORT TITLE OF 1997 AMENDMENT
Pub. L. 105–89, § 1(a), Nov. 19, 1997, 111 Stat. 2115, provided that: ‘‘This Act [enacting sections 673b, 678, and
679b of this title, amending sections 603, 622, 629 to 629b,
653, 671 to 673, 674, 675, 677, and 1320a–9 of this title and
sections 645 and 901 of Title 2, The Congress, enacting
provisions set out as notes under sections 613, 622, 629a,
671, 673, 675, 679b, 1320a–9, 5111, and 5113 of this title, and
amending provisions set out as a note under section 670
of this title] may be cited as the ‘Adoption and Safe
Families Act of 1997’.’’
SHORT TITLE OF 1996 AMENDMENTS
Pub. L. 104–193, § 1, Aug. 22, 1996, 110 Stat. 2105, provided that: ‘‘This Act [see Tables for classification]
may be cited as the ‘Personal Responsibility and Work
Opportunity Reconciliation Act of 1996’.’’
847, provided that: ‘‘This title [enacting sections
1320b–15 and 1383e of this title, amending sections 401 to
403, 405, 422, 423, 425, 902, 903, 1382, 1382c, 1383, and 1383c
of this title and sections 665e and 901 of Title 2, The
Congress, enacting provisions set out as notes under
sections 401 to 403, 405, 902, 1320b–15, and 1382 of this
title, and repealing provisions set out as a note under
section 425 of this title] may be cited as the ‘Senior
Citizens’ Right to Work Act of 1996’.’’
SHORT TITLE OF 1994 AMENDMENTS
may be cited as the ‘Social Security Act Amendments
of 1994’.’’
4056, provided that: ‘‘This subpart [subpart 1 (§§ 551–554)
of part E of title V of Pub. L. 103–382 enacting section
5115a of this title, amending section 622 of this title,
and enacting provisions set out as a note under section
622 of this title] may be cited as the ‘Howard M.
Metzenbaum Multiethnic Placement Act of 1994’.’’
Pub. L. 103–296, § 1(a), Aug. 15, 1994, 108 Stat. 1464, provided that: ‘‘This Act [see Tables for classification]
may be cited as the ‘Social Security Independence and
Program Improvements Act of 1994’.’’
SHORT TITLE OF 1991 AMENDMENT
Pub. L. 102–234, § 1, Dec. 12, 1991, 105 Stat. 1793, provided that: ‘‘This Act [amending sections 1396a, 1396b,
and 1396r–4 of this title and enacting provisions set out
as notes under sections 1396a, 1396b, and 1396r–4 of this
title] may be cited as the ‘Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of
1991’.’’
SHORT TITLE OF 1989 AMENDMENTS
2470, provided that: ‘‘This title [see Tables for classification] may be cited as the ‘Miscellaneous and Technical Social Security Act Amendments of 1989’.’’
may be cited as the ‘Medicare Catastrophic Coverage
Repeal Act of 1989’.’’
SHORT TITLE OF 1988 AMENDMENTS
Pub. L. 100–485, § 1(a), Oct. 13, 1988, 102 Stat. 2343, provided that: ‘‘This Act [enacting sections 617, 668, 669, 681
to 687, and 1396r–6 of this title, amending sections 405,
426, 503, 504, 602, 603, 607, 652 to 655, 657, 658, 666, 667, 671,
704, 1301, 1308, 1315, 1318, 1320a–7, 1320a–7a, 1320b–10,
1320c–3, 1395i–2, 1395i–3, 1395l, 1395m, 1395r, 1395s, 1395t–1,
1395t–2, 1395u, 1395v, 1395w–2, 1395w–3, 1395x, 1395y,
1395aa to 1395dd, 1395mm, 1395tt, 1395ww, 1395aaa to


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TITLE 42—THE PUBLIC HEALTH AND WELFARE

Title 26, Internal Revenue Code, amending sections 303,
602, 603, 604, 606, 622, 1203, 1306, 1308, 1315, 1316, 1353, and
1383 note of this title, repealing sections 610, 801 to 805,
and 1320b of this title, and enacting provisions set out
as notes under sections 602, 651, 1320b, 1397, and 1397a of
this title] may be cited as the ‘Social Services Amendments of 1974’.’’
SHORT TITLE OF 1972 AMENDMENT
in part that Pub. L. 92–603 [enacting sections 431, 801 to
805, 1320a–1, 1320a–2, 1320c to 1320c–19, 1381a, 1382a to
1382e, 1383a to 1383c, 1395i–2, 1395mm, 1395nn, 1395oo,
1395pp, 1396h, 1396i, and 3502a of this title, and section
228s–3 of Title 45, Railroads, amending sections 302, 306,
401, 402, 403, 405, 408, 409, 410, 410 note, 411, 414, 415, 416,
418, 422, 423, 424a, 425, 426, 427, 429, 430, 602, 603, 620, 705,
706, 709, 1202, 1206, 1301, 1306, 1308, 1352, 1355, 1381, 1382,
1383, 1385, 1395b–1, 1395c, 1395f, 1395h, 1395i, 1395j, 1395k,
1395l, 1395n, 1395o, 1395p, 1395q, 1395r, 1395s, 1395t, 1395u,
1395w, 1395x, 1395y, 1395z, 1395aa, 1395bb, 1395cc, 1395dd,
1395ff, 1395gg, 1395ii, 1395kk, 1395ll, 1395mm, 1395nn,
1396a, 1396b, 1396b–1, 1396d, 1396g, 1396h, and 1396i of this
title, sections 5315 and 5316 of Title 5, Government Organization and Employees, sections 1431, 2012, 2019, and
2023 of Title 7, Agriculture, and sections 1401, 1402, 3101,
3111, 3121, 6051, and 6413 of Title 26, Internal Revenue
Code, repealing sections 301 to 306, 1201 to 1206, 1351,
1352, 1353, 1354, 1355, and 1396e of this title and section
639 of Title 25, Indians, and enacting provisions set out
as notes under sections 301, 302, 401, 402, 403, 408, 409, 410,
411, 414, 415, 416, 418, 423, 424a, 426, 429, 602, 620, 705, 801,
1301, 1306, 1308, 1320a–1, 1320b, 1381, 1382e, 1395f, 1395l,
1395n, 1395p, 1395q, 1395s, 1395u, 1395w, 1395x, 1395aa,
1395cc, 1395ff, 1395gg, 1395mm, 1395nn, 1395oo, 1395pp,
1396a, 1396b, 2396d, and 1396e of this title, section 5315 of
Title 5, sections 1431 and 2012 of Title 7, section 639 of
Title 25, and sections 1401, 6051, and 6413 of Title 26,]
may be cited as the ‘‘Social Security Amendments of
1972’’.
SHORT TITLE OF 1969 AMENDMENT
provided that: ‘‘This title [amending sections 401 to 403,
415, 427, and 428 of this title, and enacting provisions set
out as notes under sections 401 to 403, 415 and 427 of this
title] may be cited as the ‘Social Security Amendments
of 1969’.’’
SHORT TITLE OF 1968 AMENDMENT
that this Act [enacting sections 429, 610, 620 to 626, 630
to 644, 908, 1319–1320a, 1395b–1, and 1396e to 1396g of this
title, amending sections 302 to 304, 401 to 406, 409 to 411,
413, 415 to 418, 421 to 423, 424a, 425, 426, 426a, 427, 428, 601
to 604, 606 to 608, 622, 701 to 715, 729, 907, 1202 to 1204,
1306, 1308 to 1311, 1313 to 1318, 1352 to 1354, 1361, 1382,
1383, 1395d to 1395f, 1395i, 1395k, 1395l, 1395n, 1395p to
1395y, 1395aa, 1395cc, 1395dd, 1395gg, 1395ll, 1396a, 1396b,
and 1396d of this title, sections 1401, 1402, 3101, 3111, 3121,
3122, 3125, 3306, 6051, and 6413 of Title 26, Internal Revenue Code, and sections 228e and 228s–2 of Title 45, Railroads, repealing sections 721 to 728, 1317, and 1395ee of
this title, enacting provisions set out as notes under
sections 242b, 302, 303, 402 to 405, 409, 410, 413, 415, 416,
418, 423, 424a, 427, 601 to 603, 607, 609, 620, 622, 626, 633, 701,
705, 1301, 1308, 1319, 1395c to 1395f, 1395j to 1395l, 1395n,
1395p, 1395u, 1395x, 1395aa, 1395dd, 1396a, 1396b, 1396d, and
1396g of this title, and amending provisions set out as
notes under sections 603 and 608 of this title and sections 1401, 1402, 3121, and 6051 of Title 26] may be cited
as the ‘‘Social Security Amendments of 1967.’’
provided that: ‘‘This title [enacting subchapter V of
this chapter, amending sections 705, 729, 1396a, and
1396d of this title, enacting provisions set out as notes
under section 705 of this title, and amending provisions
set out as notes under section 242b of this title] may be
cited as the ‘Child Health Act of 1967’.’’

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SHORT TITLE OF 1965 AMENDMENT
that this Act [enacting sections 424a, 426, 427, 716, 729–1,
907, 1316, 1317, 1318, 1395 to 1395dd, 1395ee, 1395gg to 1395ll
and 1396 to 1396d of this title, section 6053 of Title 26,
Internal Revenue Code, and section 228s–2 of Title 45,
Railroads; amending sections 302, 303, 306, 401 to 406, 409
to 411, 413, 415 to 418, 422, 423, 425, 602, 603, 606, 701, 703,
704, 711, 713, 714, 721 to 723, 1202, 1203, 1206, 1301, 1306,
1308, 1309, 1312, 1315, 1352, 1353, 1355, 1382, 1383, 1385, 1391,
1392, and 1395kk of this title, sections 72, 79, 213, 401, 451,
1401, 1402, 3101, 3102, 3111, 3121, 3122, 3125, 3201, 3211, 3221,
3401, 3402, 6051, 6205, 6413, 6652, and 6674 of Title 26, and
sections 228a, 228e, and 228s–2 of title 45, repealing section 727 of this title, enacting provisions set out as
notes under sections 242b, 302, 303, 306, 402, 403, 405, 410,
411, 415, 416, 418, 423, 424a, 426, 427, 602, 722, 729–1, 1202,
1301, 1308, 1309, 1315, 1316, 1352, 1382, 1395l, 1395o, 1395p,
1396b, and 2981 of this title, sections 213, 1401, 1402, 3121,
3201, and 6053 of Title 26, and section 228s–2 of Title 45,
and amending provisions set out as notes under sections 415 and 418 of this title and section 3121 of Title
26] may be cited as the ‘‘Social Security Amendments
of 1965’’.
Pub. L. 89–97, title I, July 30, 1965, 79 Stat. 290, provided that: ‘‘This title [enacting subchapter XVIII of
this chapter, sections 426, 907, and 1396 to 1396d of this
title, and section 228s–2 of Title 45, Railroads, amending
sections 303, 401, 401a, 402, 418, 603, 1203, 1301, 1306, 1309,
1315, 1353, 1383, and 1395kk of this title, sections 72, 79,
213, 401, 405, 1401, 3101, 3111, 3201, 3211, 3221, and 6051 of
Title 26, Internal Revenue Code, and sections 228e and
228s–2 of Title 45, and enacting provisions set out as
notes under sections 426, 1301, 1309, 1315, 1395l, 1395o,
1395p, and 1396b of this title, sections 213 and 3201 of
Title 26, and section 228s–2 of Title 45] may be cited as
the ‘Health Insurance for the Aged Act’.’’
Pub. L. 89–97, title III, July 30, 1965, 79 Stat. 361, provided that: ‘‘This title [enacting sections 424a and 427 of
this title and section 6053 of Title 26, Internal Revenue
Code, amending sections 401 to 406, 409 to 411, 413, 415 to
418, 422, 423, 425, and 1306 of this title, sections 451, 1401,
1402, 3101, 3102, 3111, 3121, 3122, 3125, 3401, 3402, 6051, 6205,
6413, 6652, and 6674 of Title 26, and sections 228a and 228e
of Title 45, Railroads, enacting provisions set out as
notes under sections 402, 403, 405, 410, 411, 415, 416, 418,
424, 424a, and 427 of this title and sections 1401, 1402,
3121, and 6053 of Title 26, and amending provisions set
out as notes under sections 415 and 418 of this title and
section 3121 of Title 26] may be cited as the ‘Old-Age,
Survivors, and Disability Insurance Amendments of
1965’.’’
SHORT TITLE OF 1963 AMENDMENT
‘‘That this Act [enacting subchapter XVII of this chapter and sections 729 and 729a of this title, amending sections 701, 702, 711, and 712 of this title, and enacting provisions set out as a note under section 1301 of this title]
may be cited as the ‘Maternal and Child Health and
Mental Retardation Planning Amendments of 1963’.’’
SHORT TITLE OF 1962 AMENDMENT
Pub. L. 87–543, § 1, July 25, 1962, 76 Stat. 172, provided
in part that this Act [enacting sections 609, 727, 728,
1314, 1315, and 1381 to 1385 of this title, amending sections 301 to 303, 306, 601 to 609, 721 to 723, 726, 906, 1201
to 1203, 1206, 1301, 1308, 1309, 1311, 1313, 1351 to 1353, and
1355 of this title, repealing section 1202a of this title
and provisions set out as notes under sections 1202a and
1308 of this title, and enacting provisions set out as
notes under sections 302, 303, 306, 601, 603, 606, 608, 609,
722, 1202, 1301, 1308, and 1383 of this title], may be cited
as the ‘‘Public Welfare Amendments of 1962.’’
SHORT TITLE OF 1961 AMENDMENT
Pub. L. 87–64, § 1, June 30, 1961, 75 Stat. 131, provided:
‘‘That this Act [enacting section 1313 of this title,
amending sections 303, 402, 403, 409, 413, 414, 415, 416, 418,


423, 1203, 1308, and 1353 of this title, sections 1401, 1402, 3101 and 3111 of Title 26, Internal Revenue Code, and section 228a of Title 45, Railroads, and enacting provisions set out as notes under sections 303, 402, 403, 414, 415, 416, 1301, and 1306 of this title and under sections 1401 and 1402 of Title 26 may be cited as the ‘Social Security Amendments of 1961.’”

**Short Title of 1960 Amendment**

Pub. L. 86–778, § 1, Sept. 13, 1960, 74 Stat. 924, provided that this Act (enacting sections 726 and 1312 of this title and sections 3125 and 3308 of Title 26, Internal Revenue Code, amending sections 301 to 304, 401, 401a, 402, 403, 405, 408 to 411, 413 to 416, 418, 422, 423, 501, 701, 702, 704, 711, 712, 714, 721, 722, 1101 to 1104, 1202, 1301, 1308, 1321 to 1324, 1361, 1363, 1364, 1367, 1371, and 1400c of this title, sections 1402, 1403, 3121, 3301, 3302, 3305, 3306, 6205, 6413, 7213, and 7701 of Title 26, section 49d of Title 29, the ‘Employment Security Act of 1960.’”

**SHORT TITLE OF 1950 AMENDMENT**

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

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

(a) Disclosure prohibited; exceptions

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

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

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

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

(b) Requests for information and services

Requests for information, disclosure of which is authorized by regulations prescribed pursuant to subsection (a) of this section, and requests for services, may, subject to such limitations as may be prescribed by the head of the applicable agency to avoid undue interference with his functions under this chapter, be complied with if the agency, person, or organization making the request agrees to pay for the information or services requested in such amount, if any (not exceeding the cost of furnishing the information or services), as may be determined by the head of the applicable agency. Payments for information or services furnished pursuant to this sec-
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such information.

such Commissioner or Secretary, of providing information as may be specified by the Commissioner for providing such information shall be paid for as provided in such part D of subchapter IV of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Opportunity for review

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

Effective Date of 1984 Amendment
Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed before that date, see section 2664(b) of Pub. L. 103–296, set out as a note under section 401 of this title.

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

Public access to State disbursement records
No State or any agency or political subdivision thereof shall be deprived of any grant-in-aid or other payment to which it otherwise is or has become entitled pursuant to subsection (a) (amending this section) shall apply with respect to reports which are completed by the Secretary after the third calendar month following the enactment of this Act (Oct. 30, 1972).
of any such funds or payments within such State, if such legislation prohibits the use of any list or names obtained through such access to such records for commercial or political purposes.


REFERENCES IN TEXT

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

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

AMENDMENTS
1962—Pub. L. 87–543 substituted “XIV, or XVI (other than section 1383(a)(3) thereof)” for “or XIV”: 1960—Pub. L. 86–778 inserted “(other than section 303(a)(3) thereof)” after “pursuant to subchapter I”.

EFFECTIVE DATE OF 1960 AMENDMENT
Section 603(b) of Pub. L. 86–778 provided that: “The amendment made by subsection (a) [amending this section] shall take effect October 1, 1960.”

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


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

§ 1307. Penalty for fraud
(a) Whoever, with the intent to defraud any person, shall make or cause to be made any false representation concerning the requirements of this chapter, of chapter 2, 21, or 23 of the Internal Revenue Code of 1986, or of any provision of subtitle F of such Code which corresponds (within the meaning of section 7852(b) of such Code) to a provision contained in subchapter E of chapter 9 of the Internal Revenue Code of 1939, or of any rules or regulations issued thereunder, knowing such representations to be false, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

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


REFERENCES IN TEXT

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

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

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


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

(a) Limitation on total payments to each territory

(1) In general

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

(2) Certain payments disregarded

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

(b) Entitlement to matching grant

(1) In general

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

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

(B) the sum of—

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

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

(2) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1997 through 2003, such sums as are necessary for grants under this paragraph.

(c) Definitions

As used in this section:

(1) Territory

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

(2) Ceiling amount

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

(3) Family assistance grant

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

(4) Mandatory ceiling amount

The term “mandatory ceiling amount” means—

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

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

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

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

(5) Total amount expended by the territory

The term “total amount expended by the territory”—

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

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

1See References in Text note below.
(i) expenditures during fiscal year 1995 under subsection (g) or (i) of section 602 of this title (as in effect on September 30, 1995); or

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

(d) Authority to transfer funds to certain programs

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


(f) Total amount certified under subchapter XIX

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

(1) Puerto Rico shall not exceed (A) $116,500,000 for fiscal year 1994 and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase in the medical care component of the consumer price index for all urban consumers (as published by the Bureau of Labor Statistics) for the 12-month period ending in March preceding the beginning of the fiscal year, rounded to the nearest $100,000;

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

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

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

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

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

(1) Fiscal year 1998

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

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

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

(C) For Guam, $750,000.

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

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

(2) Fiscal year 1999 and thereafter

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

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

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

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

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

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

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

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

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

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

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

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

*So in original. Probably should be "Notwithstanding subsection (f) of this section and subject to paragraphs (3) and (5) and section 18043(a)(2) of this title, ".*
(E) For American Samoa, $2,000,000 for fiscal year 2006 and $4,000,000 for fiscal year 2007.

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

(4) Exclusion of certain expenditures from payment limits

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

(5) Additional increase

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


References in Text

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

Amendments


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

Subsec. (g)(4). Pub. L. 111–148, §2005(b), which directed substitution of “to”—“to” and insertion of subpar. (A) designation before “fiscal years beginning” and “(b) fiscal years beginning with fiscal year 2014, payments made to Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, or American Samoa with respect to amounts expended for medical assistance for newly eligible (as defined in section 1396a(a)(3)(H) of this title) nonpregnant childless adults who are eligible under subclause (VIII) of section 1396a(a)(10)(A)(i) of this title and whose income (as determined under section 1396a(a)(14) of this title) does not exceed (in the case of each such commonwealth and territory respectively) the income eligibility level in effect for that population under subchapter XIX or under a waiver on March 25, 2010, shall not be taken into account in applying subsection (f) (as increased in accordance with paragraphs (1), (2), (3), and (5) of this subsection) to such commonwealth or territory for such fiscal year.” at the end, was repealed by Pub. L. 111–152, §1204(b)(2)(A). See Construction of 2010 Amendment note below.

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


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


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


2006—Subsec. (g)(2). Pub. L. 109–171, §605(d), inserted “and subject to paragraph (3)” after “subsection (f)” of this section in introductory provisions.
Subsec. (f). Pub. L. 108–173 inserted “and section 1396a–5(e)(1)(B) of this title” after “Subject to subsection (g) of this section” in introductory provisions.
1997—Subsec. (a). Pub. L. 105–33, §5512(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “Notwithstanding any other provision of this chapter, the total amount certified by the Secretary of Health and Human Services under subchapters I, X, XIV, and XVI of this chapter, under parts A and E of subchapter IV of this chapter, and under subsection (b) of this section, for payment to any territory for a fiscal year shall not exceed the ceiling amount for the territory for the fiscal year.”
Subsec. (b)(1)(A). Pub. L. 105–33, §5512(b), inserted “, including any amount paid to the State under part A of subchapter IV of this chapter that is transferred in accordance with section 604(d) of this title and expended under the program to which transferred” before semicolon.
Subsec. (e). Pub. L. 105–33, §5512(c), struck out heading and text of subsec. (e) and substituted “The ceiling amount with respect to a territory shall be reduced for a fiscal year by an amount equal to the amount (if any) by which—
(1) the total amount expended by the territory under all programs of the territory operated pursuant to the provisions of law specified in subsection (a) of this section (as such provisions were in effect for fiscal year 1995) for fiscal year 1996; and
(2) the total amount expended by the territory under all programs of the territory that are funded under the provisions of law specified in subsection (a) of this section for the fiscal year that immediately precedes the fiscal year referred to in the matter preceding paragraph (1).”
Subsec. (g). Pub. L. 105–33, §6726(2), added subsec. (g).
Subsecs. (a), (b), Pub. L. 104–193, §103(b)(3), added subsecs. (a) and (b) and struck out former subsec. (a) which limited total amount certified under subchapters I, X, XIV, and XVI of this chapter and parts A and E of subchapter IV of this chapter for payment to Puerto Rico, the Virgin Islands, and Guam and former subsec. (b) which limited total amount certified under this section for family planning services for Puerto Rico, the Virgin Islands, and Guam.
Subsec. (c). Pub. L. 104–193, §103(b)(3), added subsec. (c) which limited payments to American Samoa and former subsec. (e) which related to allotment of smaller amounts.
Subsec. (f). Pub. L. 104–193, §103(b)(2), redesignated subsec. (c) as (f).
1993—Subsec. (c)(1) to (5). Pub. L. 103–66 amended pars. (1) to (5) generally. Prior to amendment, pars. (1) to (5) read as follows:
(1) Puerto Rico shall not exceed (A) $73,600,000 for fiscal year 1988, (B) $75,200,000 for fiscal year 1989, and (C) $79,000,000 for fiscal year 1990 and each succeeding fiscal year;
(2) the Virgin Islands shall not exceed (A) $2,430,000 for fiscal year 1988, (B) $2,515,000 for fiscal year 1989, and (C) $2,600,000 for fiscal year 1990 and each succeeding fiscal year;
(3) Guam shall not exceed (A) $2,320,000 for fiscal year 1993, (B) $2,410,000 for fiscal year 1989, and (C) $2,500,000 for fiscal year 1990 and each succeeding fiscal year;
(4) the Northern Mariana Islands shall not exceed (A) $360,700 for fiscal year 1988, (B) $363,350 for fiscal year 1989, and (C) $375,000 for fiscal year 1990 (and each succeeding fiscal year); and
(5) American Samoa shall not exceed (A) $1,330,000 for fiscal year 1988, (B) $1,390,000 for fiscal year 1989, and (C) $1,450,000 for fiscal year 1990 (and each succeeding fiscal year).
Subsec. (a). Pub. L. 100–845, §203(a)(2), inserted “or in the case of part A of subchapter IV of this chapter, section 603(k) of this title” before “applies” in introductory provisions.
Subsec. (a)(1)(F), (G). Pub. L. 100–845, §602(a)(1), added subpars. (F) and (G) and struck out former subpar. (F) which read as follows: “$72,000,000 with respect to the fiscal year 1979 and each fiscal year thereafter.”
Subsec. (a)(2)(F), (G). Pub. L. 100–845, §602(a)(2), added subpars. (F) and (G) and struck out former subpar. (F) which read as follows: “$2,400,000 with respect to the fiscal year 1979 and each fiscal year thereafter.”
Subsec. (a)(3)(F), (G). Pub. L. 100–845, §602(a)(3), added subpars. (F) and (G) and struck out former subpar. (F) which read as follows: “$3,300,000 with respect to the fiscal year 1979 and each fiscal year thereafter.”
Subsec. (b). Pub. L. 100–845, §602(c)(1), struck out “and services provided under section 602(a)(19) of this title” after “family planning services” in introductory provisions.
Subsecs. (d), (e). Pub. L. 100–845, §601(b), added subsec. (d) and redesignated former subsec. (d) as (e).
1987—Subsec. (c). Pub. L. 100–203 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The total amount certified by the Secretary under subchapter XIX of this chapter with respect to a fiscal year for payment to—
(1) Puerto Rico shall not exceed $65,400,000; 
(2) the Virgin Islands shall not exceed $2,100,000; 
(3) Guam shall not exceed $2,000,000; 
(4) the Northern Mariana Islands shall not exceed $550,000; and 
(5) American Samoa shall not exceed $1,150,000.”
1984—Subsec. (c). Pub. L. 98–369 substituted “$65,400,000 for “$45,000,000” in par. (1), “$2,100,000” for “$1,500,000” in par. (2), “$2,000,000” for “$1,400,000” in par. (3), “$550,000” for “$350,000” in par. (4), and “$1,150,000” for “$750,000” in par. (5).
1982—Subsec. (a). Pub. L. 97–248, §160(a), inserted provisions following par. (3)(F) that each jurisdiction specified in this subsection may use in its program under subchapter XX of this chapter any sums available to it under this subsection which are not needed to carry out the programs specified in this subsection.
1981—Subsec. (a). Pub. L. 97–35, §1223(f), substituted in provision preceding par. (1) “The total amount certified by the Secretary of Health and Human Services” for “Except as provided in section 1397a(a)(2)(C) of this title, the total amount certified by the Secretary of Health, Education, and Welfare”.
Subsec. (c). Pub. L. 97–35, §2162(b)(1), in par. (1) increased the amount from not to exceed $2,000,000 to not exceed $4,500,000, in par. (2) increased the amount from not to exceed $65,000 to not exceed $1,500,000, in par. (3) increased the amount from not to exceed $30,000 to not to exceed $1,400,000, and added par. (4).
Subsec. (d). Pub. L. 97–35, §2193(c)(1), substituted “section 621 of this title” for “sections 702(a) and 712(a) of this title, and the provisions of sections 621, 703(1), and 704(1) of this title as amended by the Social Security Amendments of 1967.”
1980—Subsec. (a). Pub. L. 96–272 substituted “section 1397a(a)(2)(C) of this title” for “section 1397a(a)(2)(D) of this title” and “under parts A and E” for “under part A” in provisions preceding par. (1), substituted “with respect to each of the fiscal years 1972 through 1977” for “with respect to the fiscal years 1972 and each succeeding fiscal year thereafter other than the fiscal year 1979” in pars. (1)(E), (2)(E), and (3)(E), and substituted “with respect to each of the fiscal years 1972 through 1977” for “with respect to each of the fiscal years 1972 and each succeeding fiscal year thereafter other than the fiscal year 1979” in pars. (1)(E), (2)(E), and (3)(E).
to the fiscal year 1979 and each fiscal year thereafter" for "with respect to the fiscal year 1979" in pars. (1)(F), (2)(F), and (3)(F).

1978—Subsec. (a)(1)(E). Pub. L. 95–660, §802(b)(1)(C), inserted "other than the fiscal year 1979, or" for "and".


Subsec. (a)(3)(E). Pub. L. 95–660, §802(b)(3)(B), inserted "other than the fiscal year 1979, or".


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

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

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

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

1968—Pub. L. 90–248 amended section generally and, among other changes, raised the present $9.8 million limit for Federal financial participation in the public assistance programs of Puerto Rico to $12.5 million for fiscal 1968 with further increases in succeeding fiscal years to a maximum of $24 million for fiscal 1972 and each fiscal year thereafter, increased the dollar maximums for the Virgin Islands from $330,000 to $800,000 for fiscal 1972 and thereafter and for Guam from $450,000 to $1.1 million for fiscal 1972 and thereafter, authorized payments for family planning services and services referred to in section 602(a)(19) of this title, with respect to any fiscal year, of not more than $2 million for Puerto Rico, $65,000 for the Virgin Islands, and $90,000 for Guam, imposed a maximum on Federal payments for the medical assistance program under subchapter XIX of this chapter, with respect to any fiscal year, of $20 million for Puerto Rico, $650,000 for the Virgin Islands, and $300,000 for Guam, and provided that notwithstanding sections 702(a) and 712(a) of this title and sections 621, 703(1), and 704(1) of this title, as amended by the Social Security Amendments of 1967, and until Congress otherwise provides, the Secretary shall, in lieu of the initial allotments specified in such sections, allot smaller amounts to Guam as he deems appropriate.

1965—Pub. L. 89–97 substituted "$9,000,000" for "$8,500,000" and struck out "or, in the case of section 727(a) of this title" after "in lieu of the initial", and removed the litigation requiring that, with respect to any fiscal year, $625,000 of the $9,800,000 certified for payment to Puerto Rico, $175,000 of the $300,000 certified for payments to the Virgin Islands, and $25,000 of the $450,000 certified for payments to Guam, be used only for payments with respect to section 303(a)(2)(B) or 1383(a)(2)(B) of this title.

1962—Pub. L. 87–543 substituted "$9,800,000" , "$300,000", "$450,000", and "initial (or, in the case of section 729(a) of this title, the minimum) allotment for "$5,500,000", "$300,000", "$450,000", "$60,000 $60,000, respectively," and inserted references to subchapter "XVI (other than section 1383(a)(3) thereof)" of this chapter, section 1383(a)(2) in three places and section 727(a) after section 729(a).

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

Pub. L. 87–31 increased the grant to Puerto Rico for fiscal year ending June 30, 1961, from $9,000,000 to $9,075,000 and for fiscal year ending June 30, 1962, to $9,425,000; the grants to Virgin Islands and Guam from $315,000 and $200,000 to $318,750 and $225,000, respectively; and payments under section 303(a)(2)(B) of this title to Puerto Rico, Virgin Islands and Guam from $500,000, $15,000 and $20,000 to $625,000, $18,750 and $25,000, respectively. See also Limitation on Payments note below.

1960—Pub. L. 96–778 substituted "$9,000,000", of which $500,000 may be used only for payments certified with respect to section 303(a)(2)(B) of this title" for "$5,500,000", "$315,000, of which $15,000 may be used only for payments certified in respect to section 303(a)(2)(B) of this title" for "$300,000", "$20,000, of which $20,000 may be used only for payments certified in respect to section 303(a)(2)(B) of this title" for "$300,000", and "$300,000" for "$200,000", and limited the total amount certified for payment to Guam with respect to any fiscal year to not more than $400,000. Section 507(b) amended catchline to include Guam. Section 508 inserted provisions requiring the Secretary, in lieu of the allotments specified in sections 702(a)(2), 712(a)(2) and 722(a) of this title, to allot such smaller amounts as he may deem appropriate to Guam, notwithstanding provisions of such sections and until such time as the Congress may by appropriation or other law otherwise provide.

1958—Pub. L. 85–840, §§507, 508, amended section. Section 507(a) substituted "$8,500,000" for "$3,312,500" and "$300,000" for "$200,000", and limited the total amount certified for payment to Guam with respect to any fiscal year to not more than $400,000. Section 507(b) amended catchline to include Guam.

1956—Act Aug. 1, 1956, substituted "$3,312,500" for "$4,250,000", and "$200,000" for "$160,000".

**Effective Date of 2009 Amendment**


**Effective Date of 2003 Amendment**


**Effective Date of 1996 Amendment**


**Effective Date of 1993 Amendment**

Section 1361(b) of Pub. L. 103–66 provided that: "The amendment made by subsection (a) [amending this section] shall apply beginning with fiscal year 1994."

**Effective Date of 1988 Amendment**

Amendment by section 202(c)(2), (3) of Pub. L. 100–485 effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates, see section 204 of Pub. L. 100–485, set out as an Effective and Termination Dates of 1988 Amendment note under section 1301 of this title.

Section 602(b) of Pub. L. 100–485 provided that: "The amendments made by subsection (a) [amending this section] shall become effective on October 1, 1988."

**Effective Date of 1987 Amendment**

Section 411(b) of Pub. L. 100–203 provided that: "The amendment made by subsection (a) [amending this section] shall apply to payments for fiscal years beginning with fiscal year 1988."

**Effective Date of 1984 Amendment**

Section 2365(b) of Pub. L. 98–369 provided that: "The amendment made by subsection (a) [amending this sec-
tion] shall be effective for fiscal years beginning on or after October 1, 1983."

**Effective Date of 1982 Amendment**


**Effective Date of 1981 Amendment**

Section 2163(b)(2) of Pub. L. 97–35 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to fiscal years beginning with fiscal year 1982."

For effective date, savings, and transitional provisions relating to amendment by section 2163(c)(1) of Pub. L. 97–35, see section 2164 of Pub. L. 97–35, set out as a note under section 701 of this title.

**Amendment by section 2583(i) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2584 of Pub. L. 97–35, set out as an Effective Date note under section 1307 of this title.**

**Effective Date of 1975 Amendment**

Amendment by Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for fiscal years ending after June 30, 1961, and all succeeding fiscal years. Such repeal applicable as if such amendments had never been enacted.

**Effective Date of 1972 Amendment**

Section 271(c) of Pub. L. 92–663 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to fiscal years beginning after June 30, 1971."

Amendment by section 272(b) of Pub. L. 92–663 applicable with respect to fiscal years beginning after June 30, 1971, see section 272(c) of Pub. L. 92–663, set out as a note under section 1601 of this title.

**Effective Date of 1968 Amendment**

Section 248(a)(2) of Pub. L. 90–248 provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to fiscal years beginning after June 30, 1967."

**Effective Date of 1965 Amendment**


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

**Effective Date of 1962 Amendment**

Section 151 of Pub. L. 87–543 provided that the amendment made by that section is effective for fiscal years ending after June 30, 1962.

**Effective and Termination Dates of 1961 Amendments**

Section 132(d) of Pub. L. 87–543 repealed section 303(d) of Pub. L. 87–64, which had provided that the amendment by section 303(d) of Pub. L. 87–64 shall be effective only for fiscal year ending June 30, 1962, and section 6 of Pub. L. 87–31, which had provided that the amendment by section 6(b) of Pub. L. 87–31 shall be effective for fiscal years ending after June 30, 1961. Such repeal applicable in the case of fiscal years beginning after June 30, 1962, see section 202(b) of Pub. L. 87–543, set out as an Effective Date of 1962 Amendment note under section 1309 of this title.

**Effective Date of 1960 Amendment**

Amendment by Pub. L. 86–778 effective with respect to fiscal years ending after 1960, see section 604 of Pub. L. 86–778.
AMENDMENTS

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

1995—Pub. L. 99–38 struck out “IV,” after “I,” and inserted “, or part A of subchapter IV of this chapter,” after “XIX of this chapter”.

1965—Pub. L. 89–97 substituted requirement that amounts disregarded be not taken into account in determining eligibility of other individuals, for former provisions which had provided that: “Notwithstanding the provisions of sections 302(a)(10)(A), 602(a)(7), 1325(a)(6), 1325(a)(8), and 1382(a)(14) of this title, a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter may until June 30, 1964, and thereafter shall provide that where earned income has been disregarded in determining the need of an individual receiving aid to the blind under a State plan approved under subchapter X of this chapter, the earned income so disregarded (but not in excess of the amount specified in section 1325(a)(8) of this title) shall not be taken into consideration in determining the need of any other individual for assistance under a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter”.

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

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

§ 1310. Cooperative research or demonstration projects

(a) In general

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

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

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

(b) Limitations and costs

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

(2) With respect to the participation of recipients of supplemental security income benefits in experimental, pilot, or demonstration projects under this subsection—
   (A) the Commissioner is not authorized to carry out any project that would result in a substantial reduction in any individual’s total income and resources as a result of his or her participation in the project;
   (B) the Commissioner may not require any individual to participate in a project, and the Commissioner shall assure (i) that the voluntary participation of individuals in any project is obtained through informed written consent which satisfies the requirements for informed consent established by the Commissioner for use in any experimental, pilot, or demonstration project in which human subjects are at risk, and (ii) that any individual’s voluntary agreement to participate in any project may be revoked by such individual at any time;
   (C) the Commissioner shall, to the extent feasible and appropriate, include recipients who are under age 18 as well as adult recipients; and
   (D) the Commissioner shall include in the projects carried out under this section such experimental, pilot, or demonstration projects as may be necessary to ascertain the feasibility of treating alcoholics and drug addicts to prevent the onset of irreversible medical conditions which may result in permanent disability, including programs in residential care treatment centers.

(c) Survey of use of payments

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

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


AMENDMENTS


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

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

Subsec. (b)(1). Pub. L. 103–296, §108(b)(7)(A), (C), in first sentence substituted “The Commissioner” for “The Secretary”, “as the Commissioner” for “as he”, and “in the Commissioner’s judgment” for “in his judgment”, in second sentence substituted “by the Commissioner” for “by the Secretary” and “available to the Commissioner” for “available to him”, in third sentence substituted “determined by the Commissioner with respect to the old-age, survivors, and disability insurance programs under subchapter II of this chapter and the supplemental security income program under subchapter XVI of this chapter,” for “determined by the Secretary,”, and substituted fourth and fifth sentences for former fourth sentence which read as follows: “If, in order to carry out a project under this subsection, the Secretary requests a State to make supplementary payments (or makes them himself pursuant to an agreement under section 1392e of this title), or to provide medical assistance under its plan approved under subchapter XIX of this chapter, to individuals who are not eligible therefor, or in amounts or under circumstances in which the State does not make such payments or provide such medical assistance, the Secretary shall reimburse such State for the non-Federal share of such payments or assistance from amounts appropriated to carry out subchapter XVI of this chapter.”

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

Subsec. (b)(3). Pub. L. 103–296, §108(b)(7)(E), struck out par. (3) which read as follows: “All reports of the Secretary with respect to projects carried out under this subsection shall be incorporated into the Secretary’s annual report to the Congress required by section 901 of this title.”


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


EFFECTIVE DATE OF 1999 AMENDMENT

Effective Date of 1997 Amendment

Effective Date of 1994 Amendment

Effective Date of 1986 Amendment

Effective Date of 1984 Amendment
Section 2331(c) of Pub. L. 98–369 provided that: "The amendments made by this section [amending this section and section 1395b–1 of this title] shall become effective on the date of the enactment of this Act [July 18, 1984]."

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

Final Report Covering All Experiments and Demonstration Projects

Authority for Demonstration Projects; Report to Congress

§1311. Public assistance payments to legal representatives
For purposes of subchapters I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter, payments on behalf of an individual, made to another person who has been judicially appointed, under the law of the State in which such individual resides, as legal representative of such individual for the purpose of receiving and managing such payments (whether or not he is such individual’s legal representative for other purposes), shall be regarded as money payments to such individual.


Amendments
1968—Pub. L. 90–248 struck out “IV,” after “I,” and inserted “and part A of subchapter IV of this chapter,” after “XVI of this chapter.”
1962—Pub. L. 87–543 inserted reference to subchapter XVI.

Effective Date
Section 511(b) of Pub. L. 85–840 provided that: ‘‘The amendment made by subsection (a) [enacting this section] shall be applicable in the case of payments to legal representatives by any State made after June 30, 1958, and to such payments by any State made after December 31, 1955, and prior to July 1, 1958, if certifications for payment to such State have been made by the Secretary of Health, Education, and Welfare with respect thereto, or such certification has been presented to the Secretary a claim (and such other data as the Secretary may require) with respect thereto, prior to July 1, 1959.”

§1312. Medical care guides and reports for public assistance and medical assistance
In order to assist the States to extend the scope and content, and improve the quality, of medical care and medical services for which payments are made to or on behalf of needy and low-income individuals under this chapter and in order to promote better public understanding about medical care and medical assistance for needy and low-income individuals, the Secretary shall develop and revise from time to time guides or recommended standards as to the level, content, and quality of medical care and medical services for the use of the States in evaluating and improving their public assistance medical care programs and their programs of medical assistance; shall secure periodic reports from the States on items included in, and the quantity of, medical care and medical serv-
§ 408(c), July 30, 1965, 79 Stat. 422.)


AMENDMENTS

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

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

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

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

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

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

(b) Plans and arrangements for assistance; consultations

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

(c) “Temporary assistance” defined

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

(d) Maximum total amount of temporary assistance

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

(e) Authority of Secretary to accept gifts

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

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


AMENDMENTS

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

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


Pub. L. 101–382 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “The total amount of temporary assistance provided under this section shall not exceed—
“(1) $8,000,000 during the fiscal years ending June 30, 1975, and June 30, 1976, and the succeeding calendar quarter, or
“(2) $300,000 during any fiscal year beginning on or after October 1, 1976.”

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

Subsec. (d). Pub. L. 94–44, §1, substituted provisions setting the maximum total amount of temporary assistance provided under this section for provisions prohibiting temporary assistance after June 30, 1973.

Effective Date of 1990 Amendment
Section 5056(b) of Pub. L. 101–506 provided that: “The amendments made by subsection (a) (amending this section) shall be effective for fiscal years beginning after September 30, 1989.”

§ 1314. Public advisory groups

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

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

(b) Membership and representation of interests on initial Council

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

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

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

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

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

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

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

(f) Advisory committees; functions; reports by Secretary

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

(g) Compensation and travel expenses

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

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

(1) Any member of the Council or any advisory committee appointed under this chapter, who is not a regular full-time employee of the United States, is hereby exempted, with respect to such appointment, from the operation of sections 203,
right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2864(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

**Termination of Advisory Committees**

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

**§1314a. Measurement and reporting of welfare receipt**

(a) **Congressional policy**

The Congress hereby declares that—

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

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

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

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

(b) **Development of welfare indicators and predictors**

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

1. Develop—

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

2. Predictors of welfare receipt;
(2) assess the data needed to report annually on the indicators and predictors, including the ability of existing data collection efforts to provide such data and any additional data collection needs; and
(3) not later than 2 years after October 31, 1994, provide an interim report containing conclusions resulting from the development and assessment described in paragraphs (1) and (2), to—
   (A) the Committee on Ways and Means of the House of Representatives;
   (B) the Committee on Education and Labor of the House of Representatives;
   (C) the Committee on Agriculture of the House of Representatives;
   (D) the Committee on Commerce of the House of Representatives;
   (E) the Committee on Finance of the Senate;
   (F) the Committee on Labor and Human Resources of the Senate; and
   (G) the Committee on Agriculture, Nutrition, and Forestry of the Senate.
(c) Advisory Board on Welfare Indicators
(1) Establishment
There is established an Advisory Board on Welfare Indicators (in this subsection referred to as the “Board”).
(2) Composition
The Board shall be composed of 12 members with equal numbers to be appointed by the House of Representatives, the Senate, and the President. The Board shall be composed of experts in the fields of welfare research and welfare statistical methodology, representatives of State and local welfare agencies, and organizations concerned with welfare issues.
(3) Vacancies
Any vacancy occurring in the membership of the Board shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Board.
(4) Duties
Duties of the Board shall include—
   (A) providing advice and recommendations to the Secretary on the development of indicators of the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of welfare receipt; and
   (B) providing advice on the development and presentation of annual reports required under subsection (d) of this section.
(5) Travel expenses
Members of the Board shall not be compensated, but shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.
(6) Detail of Federal employees
The Secretary shall detail, without reimbursement, any of the personnel of the Department of Health and Human Services to the Board to assist the Board in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.
(7) Voluntary service
Notwithstanding section 1342 of title 31, the Board may accept the voluntary services provided by a member of the Board.
(8) Termination of Board
The Board shall be terminated at such time as the Secretary determines the duties described in paragraph (4) have been completed, but in any case prior to the submission of the first report required under subsection (d) of this section.
(d) Annual welfare indicators report
(1) Preparation
The Secretary shall prepare annual reports on welfare receipt in the United States.
(2) Coverage
The report shall include analysis of families and individuals receiving assistance under means-tested benefit programs, including the program of aid to families with dependent children under part A of subchapter IV of this chapter, the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.), and the Supplemental Security Income program under subchapter XVI of this chapter, or as general assistance under programs administered by State and local governments.
(3) Contents
Each report shall set forth for each of the means-tested benefit programs described in paragraph (2)—
   (A) indicators of—
      (i) the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs, and
      (ii) the duration of welfare receipt;
   (B) trends in indicators;
   (C) predictors of welfare receipt;
   (D) the causes of welfare receipt;
   (E) patterns of multiple program receipt;
   (F) such other information as the Secretary deems relevant; and
   (G) such recommendations for legislation, which shall not include proposals to reduce eligibility levels or impose barriers to program access, as the Secretary may determine to be necessary or desirable to reduce—
      (i) the rate at which and the degree to which families depend on income from welfare programs, and
      (ii) the duration of welfare receipt.
(4) Submission
The Secretary shall submit such a report not later than 3 years after October 31, 1994, and annually thereafter, to the committees specified in subsection (b)(3) of this section. Each such report shall be transmitted during the first 60 days of each regular session of Congress.
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(e) Short title
This section may be cited as the “Welfare Indicators Act of 1994”.


REFERENCES IN TEXT

CODIFICATION
Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 9(a) of Pub. L. 110-246.

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

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


CHANGE OF NAME

Amendment of this section and repeal of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.


§ 1315. Demonstration projects
(a) Waiver of State plan requirements; costs regarded as State plan expenditures; availability of appropriations
In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of subchapter I, X, XIV, XVI, or XIX of this chapter, or part A or D of subchapter IV of this chapter, in a State or States—

(1) the Secretary may waive compliance with any of the requirements of section 302, 602, 654, 1202, 1392, 1393, or 1396(d) of this title, as the case may be, to the extent and for the period he finds necessary to enable such State or States to carry out such project, and

(2)(A) costs of such project which would not otherwise be included as expenditures under section 302, 605, 1202, 1393, or 1396(d) of this title, as the case may be, and which are not included as part of the costs of projects under section 1310 of this title, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under the State plan or plans approved under such subchapter, or for administration of such State plan or plans, as may be appropriate, and

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

In addition, not to exceed $1,000,000 of the aggregate amount appropriated for payments to States under such subchapters for any fiscal year beginning after June 30, 1967, shall be available, under such terms and conditions as the Secretary may establish, for payments to States to cover so much of the cost of such projects as is not covered by payments under such subchapters and is not included as part of the cost of projects for purposes of section 1310 of this title.

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

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

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

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

(c) Demonstration projects to test alternative definitions of unemployment
(1)(A) The Secretary shall enter into agreements with up to 8 States submitting applications under this subsection for the purpose of conducting demonstration projects in such States to test and evaluate the use, with respect to individuals who received aid under part A of subchapter IV of this chapter in the preceding month (on the basis of the unemployment of the parent who is the principal earner), of a number greater than 100 for the number of hours per month that such individuals may work and still be considered to be unemployed for purposes of
section 607 of this title. If any State submits an application under this subsection for the purpose of conducting a demonstration project to test and evaluate the total elimination of the 100-hour rule, the Secretary shall approve at least such application.

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

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

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

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

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

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

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

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

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

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

(B) requirements relating to—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) disapprove the application.

(B) A failure by the Secretary to approve or disapprove an application submitted under this subsection in accordance with the requirements of subparagraph (A) shall be deemed to be an approval of the application subject to such modifications in the terms and conditions as have been agreed to (if any) by the Secretary and the State.

(6) An approval of an application for an extension of a waiver project under this subsection shall be for a period not to exceed 3 years (5 years, in the case of a waiver described in section 1396n(h)(2) of this title).

(7) An extension of a waiver project under this subsection shall be subject to the final reporting and evaluation requirements of paragraphs (4) and (5) of subsection (e) of this section (taking into account the extension under this subsection with respect to any timing requirements imposed under those paragraphs).
payments to States under chapter 67 of title 31 to cover costs of salaries for individuals in public service employment.

1964—Subsec. (a), Pub. L. 89–378, § 10(a)(1), substituted “part A or D of subchapter IV” for “part A of subchapter IV” in provisions preceding par. (1).


Pub. L. 90–369, § 2663(e)(5), struck out “802.” after “542.”.


Pub. L. 90–369, § 2663(e)(5), struck out “803,” after “547.”.

Subsec. (c). Pub. L. 90–378, § 10(b), added subsec. (c).

1981—Subsec. (a). Pub. L. 97–35 substituted in provision preceding par. (1) “or XIX of this chapter” for “or XIX, or XX of this chapter”, in par. (1) “or 1396a of this title” for “or 1396a, 1397a, 1397b, or 1397c of this title”, and in par. (2) “or 1396b of this title” for “or 1396b, 1397a or 1397b of this title” and in par. (2) struck out “or expenditures with respect to which payment shall be made under section 1397a of this title,” before “as may be appropriate”.

1977—Pub. L. 95–216 designated existing provisions as sections 1396a, 1396b, and 1396c of this title.

Pub. L. 93–647, § 3(c)(1), substituted “XIX, or XX for “or XIX”.

Subsec. (a). Pub. L. 93–647, § 3(c)(2), inserted references in section 1397a, 1397b, and 1397c.

Subsec. (b). Pub. L. 93–647, § 3(c)(3), (4), substituted “1396b, or 1397a” for “1396b, or 1397a of this title” and inserted “or expenditures with respect to which payment shall be made under section 1397a of this title,” after “administration of such State plan or plans,”.

1973—Pub. L. 92–233 inserted references in text preceding subsec. (a) to subchapter VI of this chapter, in subsec. (a) to section 802 of this title, and in subsec. (b) to section 803 of this title.

1969—Pub. L. 90–248, § 241(c)(4), in opening phrase struck out “IV,” after “I,” and inserted “or part A of subchapter IV of this chapter,” after “XIX of this chapter”.

Pub. L. 90–248, § 247, substituted in second sentence “$4,000,000” for “$3,000,000” and “beginning after June 30, 1967” for “ending prior to July 1, 1968”.


1965—Pub. L. 89–97 included in enumeration in opening phrase, and cls. (a) and (b), subchapter XIX of this chapter, and sections 1396a and 1396b of this title, respectively.

Effective Date of 2000 Amendment

Pub. L. 106–554, § 1(a)(6) (title VII, § 703(b), Dec. 21, 2000, 114 Stat. 2763, 2783A–575, provided that: “The amendment made by subsection (a) [amending this section] shall apply to requests for extensions of demonstration projects pending or submitted on or after the date of the enactment of this Act [Dec. 21, 2000].”

Effective Date of 1997 Amendment

Section 4757(b) of Pub. L. 105–33 provided that: “The amendment made by subsection (a) [amending this section] shall apply to demonstration projects initially approved before, on, or after the date of the enactment of this Act [Aug. 5, 1997].”

Effective Date of 1996 Amendment

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and discontinuance of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Effective Date of 1986 Amendment


Effective Date of 1984 Amendment

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

Effective Date of 1981 Amendment


Effective Date of 1975 Amendment

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

Effective Date of 1973 Amendment


Effective Date of 1965 Amendment

Section 121(c)(3) of Pub. L. 89–97 provided that the amendment made by that section is effective Jan. 1, 1966.

Family Support Demonstration Projects


“(a) Demonstration Projects To Test the Effect of Early Childhood Development Programs.—(1) In order to test the effect of in-home early childhood development programs and pre-school center-based development programs (emphasizing the use of volunteers and including academic credit for student volunteers) on families receiving aid under State plans approved under section 402 of the Social Security Act [section 602 of this title] and participating in the job opportunities and basic skills training program under part F of this title of such Act [part F of subchapter IV of this chapter], up to 10 States may undertake and carry out demonstration projects utilizing such development programs to enhance the cognitive skills and linguistic ability of children under the age of 5, to improve the communications skills of such children, and to develop their ability to read, write, and speak the English language effectively. Such projects may include parents along with their eligible children in family-centered education programs that assist children directly in achieving the goals stated in the preceding sentence and also help parents contribute to the proper development and education of their young children. Demonstration projects under this subsection shall meet such conditions and requirements as the Secretary of Health and Human Services in this subsection referred to as the ‘Secretary’ shall prescribe, and no such project shall be conducted for a period of more than 3 years.

“(2) The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this subsection, shall approve up to 10 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this subsection, and shall make grants to the
States whose applications are approved to assist them in carrying out such projects.

"(3) The Secretary shall submit to the Congress with respect to each project undertaken by a State under this subsection, after such project has been carried out for one year and again when such project is completed, a detailed evaluation of the project and of its contribution to the achievement of the purpose of this subsection.

"(4) For grants to States to conduct demonstration projects under this subsection, there are authorized to be appropriated not to exceed $3,000,000 for each of the fiscal years 1995 through 1999.

"(b) STATE DEMONSTRATION PROJECTS TO ENCOURAGE INNOVATIVE EDUCATION AND TRAINING PROGRAMS FOR CHILDREN.—In order to encourage States to develop innovative education and training programs for children receiving aid under State plans approved under section 402 of the Social Security Act [section 602 of this title], any State may establish and conduct one or more demonstration projects, targeted to such children, designed to test financial incentives and interdisciplinary approaches to reducing school dropout, encouraging skill development, and avoiding welfare dependence; and the Secretary may make grants to States to assist in financing such projects. Demonstration projects under this subsection shall meet such conditions and requirements as the Secretary shall prescribe, and no such project shall be conducted for a period of less than one year or more than 5 years.

"(c) DEMONSTRATIONS TO ENSURE LONG-TERM FAMILY SELF-SUFFICIENCY THROUGH COMMUNITY-BASED SERVICES.—Any State, using funds made available to it from appropriations made pursuant to subsection (d) in conjunction with its other resources, may conduct demonstrations to test more effective methods of providing coordination and services to ensure long-term family self-sufficiency through community-based comprehensive family support services involving a partnership between the State agency administering or supervising the administering of the State's plan under section 402 of the Social Security Act [section 602 of this title] and community-based organizations having experience and demonstrated effectiveness in providing services.

"(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants to States to conduct demonstration projects under this subsection, there is authorized to be appropriated not to exceed $5,000,000 for each of the fiscal years 1990, 1991, and 1992.

DEMONSTRATION PROJECTS TO ENCOURAGE STATES TO EMPLOY PARENTS RECEIVING AFDC AS PAID CHILD CARE PROVIDERS

Section 502 of Pub. L. 100–485 authorized Secretary of Health and Human Services to permit up to 5 States to undertake and carry out demonstrations designed to test whether employment of parents of dependent children receiving AFDC as providers of child care for other children receiving AFDC would effectively facilitate the conduct of the job opportunities and basic skills training programs under part F of title IV of this chapter by making additional child care services available to meet the requirements of section 602(g)(1)(A) of this title while affording significant numbers of families receiving such aid a realistic opportunity to avoid welfare dependence through employment as a child care provider, and authorized to be appropriated not to exceed $1,000,000 for each of the fiscal years 1990, 1991, and 1992 for grants to States to carry out such demonstration projects.

DEMONSTRATION PROJECTS TO ADDRESS CHILD ACCESS PROBLEMS

Section 504 of Pub. L. 100–485 provided that any State could establish and conduct one or more demonstration projects (in accordance with such terms, conditions, and requirements prescribed by the Secretary of Health and Human Services, except that no such project could include the withholding of aid to families with dependent children pending visitation) to develop, improve, or expand activities designed to increase compliance with child access provisions of court orders, specified activities authorized to a grant under this section, authorized to be appropriated not to exceed $4,000,000 for each of the fiscal years 1990 and 1991, and directed Secretary of Health and Human Services, not later than July 1, 1992, to submit to Congress a report on the effectiveness of the demonstration projects established under this section.

DEMONSTRATION PROJECTS TO PROVIDE COUNSELING AND SERVICES TO HIGH-RISK YOUTH

Section 506 of Pub. L. 100–485 provided that:

"(a) FINDINGS AND PURPOSE.—(1) The Congress finds that—

"(A) the incidences of teenage pregnancy, suicide, substance abuse, and school dropout are increasing;

"(B) research to date has established a link between low self-esteem, limited life options and the risk of teenage pregnancy, suicide, substance abuse, and school dropout;

"(C) little data currently exists on how to improve the self-image of and expand the life options available to high-risk teenagers; and

"(D) there currently is no Federal program in place to address the unique and significant problems faced by today's teenagers.

"(2) It is the purpose of the demonstration projects conducted under this section to provide programs in which a range of non-academic activities (sports, recreation, the arts) and self-image counseling are provided to high-risk teenagers in order to reduce the rates of pregnancy, suicide, substance abuse, and school dropout among such teenagers.

"(b) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall enter into an agreement with each of 4 States submitting applications under this section for the purpose of conducting demonstration projects in accordance with this section to provide counseling and services to certain high-risk teenagers.

"(c) NATURE OF PROJECT.—Under each demonstration project conducted under this section—

"(1) The State shall establish a 'Teen Care Plan' that shall consist of the following:

"(A) A clearing house where high-risk teenagers will be referred to and encouraged to participate in non-academic activities (arts, recreation, sports) which are already in place in the community;

"(B) A survey of the area to be targeted by the project to determine the need to fund and create new non-academic activities in the area;

"(C) Counseling services utilizing qualified, locally licensed psychologists, social psychologists, or other mental health professionals or related experts to provide individual and group counseling to participating high-risk teenagers;

"(D) A program to provide participants in the project (to the extent practicable) with such transportation, child care, and equipment as is necessary to carry out the purposes of the project.

"(2) The State shall designate two geographical areas within the State to be targeted by the project. One area will serve as the 'home base' for the project, where services will be concentrated and in which a local school system will be selected to receive services and provide facilities for resource referral and counseling. The second geographical area will serve as a 'peripheral' participant, receiving assistance and services from the home base.

"(3) A high-risk teenager is any male or female who has reached the age of 10 years and whose age does not exceed 20 years, and who—

"(A) has a history of academic problems;

"(B) has a history of behavioral problems both in and out of school;

"(C) comes from a one-parent household; or

"(D) is pregnant or is a mother of a child.

"(d) APPLICATIONS; SELECTION CRITERIA.—(1) In selecting States to conduct demonstration projects under this section, the Secretary—

"(2) The applications submitted by States under this section shall consist of the following:

"(A) A history and description of the organization and the experience, qualifications and background of the members of the organization;

"(B) A statement of the program designed for participating teenagers;

"(C) A statement of the methods and techniques to be used in implementing the program;

"(D) A statement of the methods and techniques to be used in evaluating the success of the program.

"(3) In selecting States to conduct demonstration projects under this section, the Secretary—

"(A) shall give preference to applications submitted by States that have previously participated in demonstration projects designed to address high-risk youth;

"(B) shall give due consideration to the diversity of the States whose applications are approved to assist them to carry out such projects;

"(C) shall give due consideration to the diversity of the projects within the States whose applications are approved to assist them to carry out such projects;

"(D) shall give due consideration to the diversity of the projects within the States whose applications are approved to assist them to carry out such projects.

"(4) To the extent practicable, the Secretary shall make grants under this section in amounts according to the number of high-risk teenagers in the States selected for the demonstration projects.
“(A) shall consult with the Consortium on Adolescent Pregnancy;

“(B) shall consider—

“(i) the rate of teenage pregnancy in each State,

“(ii) the teenage school dropout rate in each State,

“(iii) the incidence of teenage substance abuse in each State, and

“(iv) the incidence of teenage suicide in each State; and

“(C) shall give priority to States whose applications—

“(i) demonstrate a current strong State commitment aimed at reducing teenage pregnancy, suicide, drug abuse, and school dropout;

“(ii) contain a ‘State support agreement’ signed by the Governor, the State School Commissioner, the State Department of Human Services, and the State Department of Education, pledging their commitment to the project;

“(iii) describe facilities and services to be made available by the State to assist in carrying out the project; and

“(iv) indicate a demonstrably high rate of alcoholism among its residents.

(2) Of the States selected to participate in the demonstration projects conducted under this section—

“(A) one shall be a geographically small State with a population of less than 1,250,000;

“(B) one shall be a State with a population of over 20,000,000; and

“(C) two shall be States with populations of more than 1,000,000 but less than 20,000,000.

“(e) EVALUATION AND REPORT.—(1) Each State conducting a demonstration project under this section shall submit to the Secretary for his approval an evaluation plan that provides for examining the effectiveness of the project in both the home base and peripheral area of the State.

“(2) Not later than October 1, 1992, the Secretary shall submit to the Congress a report containing a summary of the evaluations conducted by States pursuant to the plans described in paragraph (1).

“(f) FUNDING.—(1) Three-fifths of the total amount appropriated pursuant to this section for any fiscal year for each State conducting a demonstration project shall be expended by such State for the provision of services and facilities within the State’s designated peripheral area, and 5 percent of such three-fifths shall be set aside for the conduct of the State’s evaluation as provided for in subsection (e).

“(2) Two-fifths of the total amounts appropriated pursuant to this section for any fiscal year for each State conducting a demonstration project shall be expended by such State for the provision of services and facilities within the State’s designated peripheral area, and 5 percent of such two-fifths shall be set aside for the conduct of the State’s evaluation as provided for in subsection (e).

“(g) DURATION.—A demonstration project conducted under this section shall be commenced not later than September 30, 1989, and shall be conducted for a 3-year period; except that the Secretary may terminate a project before the end of such period if he determines that the State conducting the project is not in substantial compliance with the terms of the agreement entered into with the Secretary under this section.

“(h) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of funding in equal amounts each State demonstration project conducted under this section, there is authorized to be appropriated not to exceed $1,500,000 for each of the fiscal years 1990, 1991, and 1992.”

CONTINUATION OF FEDERAL FINANCIAL PARTICIPATION IN EXPERIMENTAL, PILOT, OR DEMONSTRATION PROJECTS APPROVED BEFORE OCTOBER 1, 1973, FOR PERIOD ON AND AFTER DECEMBER 31, 1973. WITHOUT DENIAL OR REDUCTION ON ACCOUNT OF SUBCHAPTER XVI PROVISIONS FOR SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED; WAIVER OF SUBCHAPTER XVI RESTRICTIONS FOR INDIVIDUALS; FEDERAL PAYMENTS OF NON-FEDERAL SHARE AS SUPPLEMENTARY PAYMENTS

Section 11 of Pub. L. 93–233 provided that:

“(a) If any State (other than the Commonwealth of Puerto Rico, the Virgin Islands, or Guam) has any experimental, pilot, or demonstration project (referred to in section 1115 of the Social Security Act [this section])—

“(1) which (prior to October 1, 1973) has been approved by the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereinafter in this section referred to as the ‘Secretary’), for a period which ends on or after December 31, 1973, as being a project with respect to which the authority conferred upon him by subsection (a) or (b) of such section 1115 [subsec. (a) or (b) of this section] will be exercised, and

“(2) with respect to the costs of which Federal financial participation would (except for the provisions of this section) be denied on account of the enactment of section 301 of the Social Security Amendments of 1972 [enacting subchapter XVI of this chapter],

then, for any period (after December 31, 1973) with respect to which such project is approved by the Secretary, Federal financial participation in the costs of such project shall be continued in like manner as if—

“(3) such section 301 (enacting subchapter XVI of this chapter) had not been enacted, and

“(4) such State (for the month of January 1974 and any month thereafter) continued to have in effect the State plan (approved under title XVI [subchapter XVI of this chapter]) which was in effect for the month of October 1973, or the State plans approved under titles I, X, and XIV of the Social Security Act [subchapters I, X, and XIV of this chapter] which were in effect for such month, as the case may be.

“(b) With respect to individuals—

“(1) who are participants in any project to which the provisions of subsection (a) are applicable, and

“(2) with respect to whom supplemental security income benefits are (or would, except for their participation in such project, be payable under title XVI of the Social Security Act, or who meet the requirements for aid or assistance under a State plan approved under title I, X, or XIV of the Social Security Act in which such project is conducted (as such State plan was in effect for July 1973), the Secretary may waive such requirements of title XVI of such Act (as enacted by section 301 of the Social Security Amendments of 1972) to such extent as he determines to be necessary to the successful operation of such project.

“(c) In the case of any State which has entered into an agreement with the Secretary under section 1616 of the Social Security Act [section 1382e of this title] (or which is deemed, under section 212(d) of Public Law 95–66 [set out as a note under section 1382 of this title], to have entered into such an agreement), then, of the costs of any project of such State with respect to which there is (solely by reason of the provisions of subsection (a)) Federal financial participation, the non-Federal share thereof shall—

“(1) be paid, from time to time, to such State by the Secretary, and

“(2) shall, for purposes of section 1616(d) of the Social Security Act [section 1382e(d) of this title] and section 401 of the Social Security Amendments of 1972 [set out as a note under section 1382e of this title] be
§ 1315a. Center for Medicare and Medicaid Innovation

(a) Center for Medicare and Medicaid Innovation established

(1) In general

There is created within the Centers for Medicare & Medicaid Services a Center for Medicare and Medicaid Innovation (in this section referred to as the “CMI”) to carry out the duties described in this section. The purpose of the CMI is to test innovative payment and service delivery models to reduce program expenditures under the applicable subchapters while preserving or enhancing the quality of care furnished to individuals under such subchapters. In selecting such models, the Secretary shall give preference to models that also improve the coordination, quality, and efficiency of health care services furnished to applicable individuals defined in paragraph (4)(A).

(2) Deadline

The Secretary shall ensure that the CMI is carrying out the duties described in this section by not later than January 1, 2011.

(3) Consultation

In carrying out the duties under this section, the CMI shall consult representatives of relevant Federal agencies, and clinical and analytical experts with expertise in medicine and health care management. The CMI shall use open door forums or other mechanisms to seek input from interested parties.

(4) Definitions

In this section:

(A) Applicable individual

The term “applicable individual” means—

(i) an individual who is entitled to, or enrolled for, benefits under part A of subchapter XVIII or enrolled for benefits under part B of such subchapter;

(ii) an individual who is eligible for medical assistance under subchapter XIX, under a State plan or waiver; or

(iii) an individual who meets the criteria of both clauses (i) and (ii).

(B) Applicable subchapter

The term “applicable subchapter” means subchapter XVIII, subchapter XIX, or both.

(5) Testing within certain geographic areas

For purposes of testing payment and service delivery models under this section, the Secretary may elect to limit testing of a model to certain geographic areas.

(b) Testing of models (phase I)

(1) In general

The CMI shall test payment and service delivery models in accordance with selection criteria under paragraph (2) to determine the effect of applying such models under the applicable subchapter (as defined in subsection (a)(4)(B)) on program expenditures under such subchapters and the quality of care received by individuals receiving benefits under such subchapter.

(2) Selection of models to be tested

(A) In general

The Secretary shall select models to be tested from models where the Secretary determines that there is evidence that the model addresses a defined population for which there are deficits in care leading to poor clinical outcomes or potentially avoidable expenditures. The Secretary shall focus on models expected to reduce program costs under the applicable subchapter while preserving or enhancing the quality of care received by individuals receiving benefits under such subchapter. The models selected under this subparagraph may include, but are not limited to, the models described in subparagraph (B).

(B) Opportunities

The models described in this subparagraph are the following models:

(i) Promoting broad payment and practice reform in primary care, including patient-centered medical home models for high-need applicable individuals, medical homes that address women’s unique health care needs, and models that transition primary care practices away from fee-for-service based reimbursement and toward comprehensive payment or salary-based payment.

(ii) Contracting directly with groups of providers of services and suppliers to promote innovative care delivery models, such as through risk-based comprehensive payment or salary-based payment.

(iii) Utilizing geriatric assessments and comprehensive care plans to coordinate the care (including through interdisciplinary teams) of applicable individuals with multiple chronic conditions and at least one of the following:

(I) An inability to perform 2 or more activities of daily living.

(II) Cognitive impairment, including dementia.

(iv) Promote\(^1\) care coordination between providers of services and suppliers that transition health care providers away from fee-for-service based reimbursement and toward salary-based payment.

(v) Supporting care coordination for chronically-ill applicable individuals at high risk of hospitalization through a health information technology-enabled provider network that includes care coordinators, a chronic disease registry, and home tele-health technology.

(vi) Varying payment to physicians who order advanced diagnostic imaging services (as defined in section 1395m(e)(1)(B) of this title) according to the physician’s adherence to appropriateness criteria for the ordering of such services, as determined in

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\(^1\)So in original. Probably should be “Promoting”.
consultation with physician specialty groups and other relevant stakeholders.

(vii) Utilizing medication therapy management services, such as those described in section 2990-35 of this title.

(viii) Establishing community-based health teams to support small-practice medical homes by assisting the primary care practitioner in chronic care management, including patient self-management, activities.

(ix) Assisting applicable individuals in making informed health care choices by paying providers of services and suppliers for using patient decision-support tools, including tools that meet the standards developed and identified under section 299b-36(c)(2)(A) of this title, that improve applicable individual and caregiver understanding of medical treatment options.

(x) Allowing States to test and evaluate fully integrating care for dual eligible individuals in the State, including the management and oversight of all funds under the applicable subchapters with respect to such individuals.

(xi) Allowing States to test and evaluate systems of all-payer payment reform for the medical care of residents of the State, including dual eligible individuals.

(xii) Aligning nationally recognized, evidence-based guidelines of cancer care with payment incentives under subchapter XVIII in the areas of treatment planning and follow-up care planning for applicable individuals described in clause (i) or (iii) of subsection (a)(4)(A) with cancer, including the identification of gaps in applicable quality measures.

(xiii) Improving post-acute care through coordinating care in hospitals that offer inpatient rehabilitation, long-term care hospitals, and home health or skilled nursing care during an inpatient stay and the 30 days immediately following discharge.

(xiv) Funding home health providers who offer chronic care management services to applicable individuals in cooperation with interdisciplinary teams.

(xv) Promoting improved quality and reduced cost by developing a collaborative of high-quality, low-cost health care institutions that is responsible for—

(I) developing, documenting, and disseminating best practices and proven care methods;

(II) implementing such best practices and proven care methods within such institutions to demonstrate further improvements in quality and efficiency; and

(III) providing assistance to other health care institutions on how best to employ such best practices and proven care methods to improve health care quality and lower costs.

(xvi) Facilitate inpatient care, including intensive care, of hospitalized applicable individuals at their local hospital through the use of electronic monitoring by specialists, including intensivists and critical care specialists, based at integrated health systems.

(xvii) Promoting greater efficiencies and timely access to outpatient services (such as outpatient physical therapy services) through models that do not require physician or other health professional to refer the service or be involved in establishing the plan of care for the service, when such service is furnished by a health professional who has the authority to furnish the service under existing State law.

(xviii) Establishing comprehensive payments to Healthcare Innovation Zones, consisting of groups of providers that include a teaching hospital, physicians, and other clinical entities, that, through their structure, operations, and joint-activity deliver a full spectrum of integrated and comprehensive health care services to applicable individuals while also incorporating innovative methods for the clinical training of future health care professionals.

(xix) Utilizing, in particular in entities located in medically underserved areas and facilities of the Indian Health Service (whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 1603 of title 25)), telehealth services—

(I) in treating behavioral health issues (such as post-traumatic stress disorder) and stroke; and

(II) to improve the capacity of non-medical providers and non-specialized medical providers to provide health services for patients with chronic complex conditions.

(xx) Utilizing a diverse network of providers of services and suppliers to improve care coordination for applicable individuals described in subsection (a)(4)(A)(i) with 2 or more chronic conditions and a history of prior-year hospitalization through interventions developed under the Medicare Coordinated Care Demonstration Project under section 4016 of the Balanced Budget Act of 1997 (42 U.S.C. 1395b–1 note).

(C) Additional factors for consideration

In selecting models for testing under subparagraph (A), the CMI may consider the following additional factors:

(i) Whether the model includes a regular process for monitoring and updating patient care plans in a manner that is consistent with the needs and preferences of applicable individuals.

(ii) Whether the model places the applicable individual, including family members and other informal caregivers of the applicable individual, at the center of the care team of the applicable individual.

(iii) Whether the model provides for in-person contact with applicable individuals.

(iv) Whether the model utilizes technology, such as electronic health records and patient-based remote monitoring systems, to coordinate care over time and across settings.
(v) Whether the model provides for the maintenance of a close relationship between care coordinators, primary care practitioners, specialist physicians, community-based organizations, and other providers of services and suppliers.

(vi) Whether the model relies on a team-based approach to interventions, such as comprehensive care assessments, care planning, and self-management coaching.

(vii) Whether, under the model, providers of services and suppliers are able to share information with patients, caregivers, and other providers of services and suppliers on a real-time basis.

(viii) Whether the model demonstrates effective linkage with other public sector or private sector payers.

(3) Budget neutrality

(A) Initial period

The Secretary shall not require, as a condition for testing a model under paragraph (1), that the design of such model ensure that such model is budget neutral initially with respect to expenditures under the applicable subchapter.

(B) Termination or modification

The Secretary shall terminate or modify the design and implementation of a model unless the Secretary determines (and the Chief Actuary of the Centers for Medicare & Medicaid Services, with respect to program spending under the applicable subchapter, certifies), after testing has begun, that the model is expected to—

(i) reduce spending under applicable subchapter without reducing the quality of care; or

(ii) reduce spending under the applicable subchapter without reducing the quality of care; or

(iii) improve the quality of care and reduce spending.

Such termination may occur at any time after such testing has begun and before completion of the testing.

(4) Evaluation

(A) In general

The Secretary shall conduct an evaluation of each model tested under this subsection. Such evaluation shall include an analysis of—

(i) the quality of care furnished under the model, including the measurement of patient-level outcomes and patient-centeredness criteria determined appropriate by the Secretary; and

(ii) the changes in spending under the applicable subchapters by reason of the model.

(B) Information

The Secretary shall make the results of each evaluation under this paragraph available to the public in a timely fashion and may establish requirements for States and other entities participating in the testing of models under this section to collect and report information that the Secretary determines is necessary to monitor and evaluate such models.

(C) Measure selection

To the extent feasible, the Secretary shall select measures under this paragraph that reflect national priorities for quality improvement and patient-centered care consistent with the measures described in §1395aaa(b)(7)(B) of this title.

(c) Expansion of models (phase II)

Taking into account the evaluation under subsection (b)(4), the Secretary may, through rulemaking, expand (including implementation on a nationwide basis) the duration and the scope of a model that is being tested under subsection (b) or a demonstration project under section 1395ccc-3 of this title, to the extent determined appropriate by the Secretary, if—

(1) the Secretary determines that such expansion is expected to—

(A) reduce spending under applicable subchapter without reducing the quality of care; or

(B) improve the quality of patient care without increasing spending;

(2) the Chief Actuary of the Centers for Medicare & Medicaid Services certifies that such expansion would reduce (or would not result in any increase in) net program spending under applicable subchapters; and

(3) the Secretary determines that such expansion would not deny or limit the coverage or provision of benefits under the applicable subchapter for applicable individuals.

In determining which models or demonstration projects to expand under the preceding sentence, the Secretary shall focus on models and demonstration projects that improve the quality of patient care and reduce spending.

(d) Implementation

(1) Waiver authority

The Secretary may waive such requirements of subchapters XI and XVIII and of sections 1396(a)(1), 1396a(a)(13), and 1396b(m)(2)(A)(iii) of this title as may be necessary solely for purposes of carrying out this section with respect to testing models described in subsection (b).

(2) Limitations on review

There shall be no administrative or judicial review under section 1395f of this title, section 1395oo of this title, or otherwise of—

(A) the selection of models for testing or expansion under this section;

(B) the selection of organizations, sites, or participants to test those models selected;

(C) the elements, parameters, scope, and duration of such models for testing or dissemination;

(D) determinations regarding budget neutrality under subsection (b)(3);
(E) the termination or modification of the design and implementation of a model under subsection (b)(3)(B); and

(F) determinations about expansion of the duration and scope of a model under subsection (c), including the determination that a model is not expected to meet criteria described in paragraph (1) or (2) of such subsection.

(3) Administration

Chapter 35 of title 44 shall not apply to the testing and evaluation of models or expansion of such models under this section.

(e) Application to CHIP

The Center may carry out activities under this section with respect to subchapter XXI in the same manner as provided under this section with respect to the program under the applicable subchapters.

(f) Funding

(1) In general

There are appropriated, from amounts in the Treasury not otherwise appropriated—

(A) $5,000,000 for the design, implementation, and evaluation of models under subsection (b) for fiscal year 2010;

(B) $10,000,000,000 for the activities initiated under this section for the period of fiscal years 2011 through 2019; and

(C) the amount described in subparagraph (B) for the activities initiated under this section for each subsequent 10-year fiscal period (beginning with the 10-year fiscal period beginning with fiscal year 2020).

Amounts appropriated under the preceding sentence shall remain available until expended.

(2) Use of certain funds

Out of amounts appropriated under subparagraphs (B) and (C) of paragraph (1), not less than $25,000,000 shall be made available each fiscal year to design, implement, and evaluate models under subsection (b).

(g) Report to Congress

Beginning in 2012, and not less than once every other year thereafter, the Secretary shall submit to Congress a report on activities under this section. Each such report shall describe the models tested under subsection (b), including the number of individuals described in subsection (a)(4)(A)(i) and of individuals described in subsection (a)(4)(A)(ii) participating in such models and payments made under applicable subchapters for services on behalf of such individuals, any models chosen for expansion under subsection (c), and the results from evaluations under subsection (b)(4). In addition, each such report shall provide such recommendations as the Secretary determines are appropriate for legislative action to facilitate the development and expansion of successful payment models.


REFERENCES IN TEXT


AMENDMENTS


Subsec. (b)(2)(A). Pub. L. 111–148, §10306(2)(A), inserted “The Secretary shall focus on models expected to reduce program costs under the applicable subchapter while preserving or enhancing the quality of care received by individuals receiving benefits under such subchapter,” after the first sentence and substituted “this subparagraph may include,” after the preceding sentence and substituted “the preceding sentence may include”.


Subsec. (c)(2). Pub. L. 111–148, §10306(4)(B), substituted “reduce (or would not result in any increase in) net program spending under applicable subchapters;” and “reduce program spending under applicable subchapters.”


MEDICAID GLOBAL PAYMENT SYSTEM DEMONSTRATION PROJECT


“(a) In General.—The Secretary of Health and Human Services (referred to in this section as the ‘Secretary’) shall, in coordination with the Center for Medicare and Medicaid Innovation (as established under section 1115A of the Social Security Act [42 U.S.C. 1315a], as added by section 3021 of this Act), establish the Medicaid Global Payment System Demonstration Project under which a participating State shall adjust the payments made to an eligible safety net hospital system or network from a fee-for-service payment structure to a global capitated payment model.

“(b) Duration and Scope.—The demonstration project conducted under this section shall operate during a period of fiscal years 2010 through 2012. The Secretary shall select not more than 5 States to participate in the demonstration project.

“(c) Eligible Safety Net Hospital System or Network.—For purposes of this section, the term ‘eligible safety net hospital system or network’ means a large, safety net hospital system or network (as defined by the Secretary) that operates within a State selected by the Secretary under subsection (b).

“(d) Evaluation.—

“(1) Testing.—The Innovation Center shall test and evaluate the demonstration project conducted under this section to examine any changes in health care quality outcomes and spending by the eligible safety net hospital systems or networks.

“(2) Budget Neutrality.—During the testing period under paragraph (1), any budget neutrality requirements under section 1115A(b)(3) of the Social Security Act [42 U.S.C. 1315a(b)(3)] (as so added) shall not be applicable.

“(3) Modification.—During the testing period under paragraph (1), the Secretary may, in the Secretary’s discretion, modify or terminate the demonstration project conducted under this section.

“(e) Report.—Not later than 12 months after the date of completion of the demonstration project under this section, the Secretary shall submit to Congress a report containing the results of the evaluation and testing conducted under subsection (d), together with rec-
§ 1315b. Providing Federal coverage and payment coordination for dual eligible beneficiaries

(a) Establishment of Federal Coordinated Health Care Office

(1) In general

Not later than March 1, 2010, the Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall establish a Federal Coordinated Health Care Office.

(2) Establishment and reporting to CMS administrator

The Federal Coordinated Health Care Office—

(A) shall be established within the Centers for Medicare & Medicaid Services; and

(B) have as the Office 1 a Director who shall be appointed by, and be in direct line of authority to, the Administrator of the Centers for Medicare & Medicaid Services.

(b) Purpose

The purpose of the Federal Coordinated Health Care Office is to bring together officers and employees of the Medicare and Medicaid programs at the Centers for Medicare & Medicaid Services in order to—

(1) more effectively integrate benefits under the Medicare program under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] and the Medicaid program under title XIX of such Act [42 U.S.C. 1396 et seq.]; and

(2) improve the coordination between the Federal Government and States for individuals eligible for benefits under both such programs in order to ensure that such individuals get full access to the items and services to which they are entitled under titles XVIII and XIX of the Social Security Act.

(c) Goals

The goals of the Federal Coordinated Health Care Office are as follows:

(1) Providing dual eligible individuals full access to the benefits to which such individuals are entitled under the Medicare and Medicaid programs.

(2) Simplifying the processes for dual eligible individuals to access the items and services they are entitled to under the Medicare and Medicaid programs.

(3) Improving the quality of health care and long-term services for dual eligible individuals.

(4) Increasing dual eligible individuals’ understanding of and satisfaction with coverage under the Medicare and Medicaid programs.

(5) Eliminating regulatory conflicts between rules under the Medicare and Medicaid programs.

(6) Improving care continuity and ensuring safe and effective care transitions for dual eligible individuals.

(7) Eliminating cost-shifting between the Medicare and Medicaid program and among related health care providers.

(8) Improving the quality of performance of providers of services and suppliers under the Medicare and Medicaid programs.

(d) Specific responsibilities

The specific responsibilities of the Federal Coordinated Health Care Office are as follows:

(1) Providing States, specialized MA plans for special needs individuals (as defined in section 1859(b)(6) of the Social Security Act [42 U.S.C. 1395w–28(b)(6)]), physicians and other relevant entities or individuals with the education and tools necessary for developing programs that align benefits under the Medicare and Medicaid programs for dual eligible individuals.

(2) Supporting State efforts to coordinate and align acute care and long-term care services for dual eligible individuals with other items and services furnished under the Medicare program.

(3) Providing support for coordination of contracting and oversight by States and the Centers for Medicare & Medicaid Services with respect to the integration of the Medicare and Medicaid programs in a manner that is supportive of the goals described in paragraph (3). 2


(5) To study the provision of drug coverage for new full-benefit dual eligible individuals (as defined in section 1855(c)(6) of the Social Security Act [42 U.S.C. 1395w–28(c)(6)], as well as to monitor and report annual total expenditures, health outcomes, and access to benefits for all dual eligible individuals.

(e) Report

The Secretary shall, as part of the budget transmitted under section 1105(a) of title 31, submit to Congress an annual report containing recommendations for legislation that would improve care coordination and benefits for dual eligible individuals.

(f) Dual eligible individual defined

In this section, the term “dual eligible individual” means an individual who is entitled to, or enrolled for, benefits under part A of title XVIII of the Social Security Act [42 U.S.C. 1395b et seq.], or enrolled for benefits under part B of title XVIII of such Act [42 U.S.C. 1395a et seq.], and is eligible for medical assistance under a

1 So in original.
2 So in original.
State plan under title XIX of such Act or under a waiver of such plan.


REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b), (d)(4), and (f), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.), respectively, of this chapter. Parts A and B of title XVIII of the Act are classified generally to parts A (§1395c et seq.) and B (§1395x et seq.), respectively, of subchapter XVIII of this chapter. For complete classification of this Act to the Code, see section 1365 of this title and Tables.

CODIFICATION

Section was enacted as part of the Patient Protection and Affordable Care Act, and not as part of the Social Security Act which comprises this chapter.

§ 1316. Administrative and judicial review of public assistance determinations

(a) Determination of conformity with requirements for approval; petition for reconsideration; hearing; time limitations; review by court of appeals

(1) Whenever a State plan is submitted to the Secretary by a State for approval under subchapter I, X, XIV, XVI, or XIX of this chapter, he shall, not later than 90 days after the date the plan is submitted to him, make a determination as to whether it conforms to the requirements for approval under such subchapter. The 90-day period provided herein may be extended by written agreement of the Secretary and the affected State.

(2) Any State dissatisfied with a determination of the Secretary under paragraph (1) of this subsection with respect to any plan may, within 60 days after it has been notified of such determination, file a petition with the Secretary for reconsideration of the issue of whether such plan conforms to the requirements for approval under such subchapter. Within 30 days after receipt of such a petition, the Secretary shall notify the State of the time and place at which a hearing will be held for the purpose of reconsidering such issue. Such hearing shall be held not less than 20 days nor more than 60 days after the date notice of such hearing is furnished to such State, unless the Secretary and such State agree in writing to holding the hearing at another time. The Secretary shall affirm, modify, or reverse his original determination within 60 days of the conclusion of the hearing.

(3) Any State which is dissatisfied with a final determination made by the Secretary on such a reconsideration or a final determination of the Secretary under section 304, 1204, 1354, 1394, or 1396c of this title may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which such State is located a petition for review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination as provided in section 2112 of title 28.

(4) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the transcript and record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(5) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) Amendment of plans

For the purposes of subsection (a) of this section, any amendment of a State plan approved under subchapter I, X, XIV, XVI, or XIX of this chapter, may, at the option of the State, be treated as the submission of a new State plan.

(c) Restitution when Secretary reverses his determination

Action pursuant to an initial determination of the Secretary described in subsection (a) of this section shall not be stayed pending reconsideration, but in the event that the Secretary subsequently determines that his initial determination was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

(d) Disallowance of items covered under other subchapters

Whenever the Secretary determines that any item or class of items on account of which Federal financial participation is claimed under subchapter I, X, XIV, XVI, or XIX is disallowed for such participation, the State shall be entitled to and upon request shall receive a reconsideration of the disallowance.

(e) Disallowance of items covered under subchapter XIX

(1) Whenever the Secretary determines that any item or class of items on account of which Federal financial participation is claimed under subchapter XIX shall be disallowed for such participation, the State shall be entitled to and upon request shall receive a reconsideration of the disallowance, provided that such request is made during the 60-day period that begins on the date the State receives notice of the disallowance.

(2)(A) A State may appeal a disallowance of a claim for federal financial participation under subchapter XIX by the Secretary, or an unfavorable reconsideration of a disallowance, during the 60-day period that begins on the date the State receives notice of the disallowance or of the unfavorable reconsideration, in whole or in part, to the Departmental Appeals Board, established in the Department of Health and Human Services (in this paragraph referred to as the

1 So in original. Probably should be capitalized.
2 So in original. Probably should be followed by 'or'.
“Board”), by filing a notice of appeal with the Board.

(B) The Board shall consider a State’s appeal of a disallowance of such a claim (or of an unfavorable reconsideration of a disallowance) on the basis of such documentation as the State may submit and as the Board may require to support the final decision of the Board. In deciding whether to uphold a disallowance of such a claim or any portion thereof, the Board shall be bound by all applicable laws and regulations and shall conduct a thorough review of the issues, taking into account all relevant evidence. The Board’s decision of an appeal under subparagraph (A) shall be the final decision of the Secretary and shall be subject to reconsideration by the Board only upon motion of either party filed during the 60-day period that begins on the date of the Board’s decision or to judicial review in accordance with subparagraph (C).

(C) A State may obtain judicial review of a decision of the Board by filing an action in any United States District Court located within the appealing State (or, if several States jointly appeal the disallowance of claims for Federal financial participation under section 1396b of this title, in any United States District Court that is located within any State that is a party to the appeal) or the United States District Court for the District of Columbia. Such an action may only be filed—

(i) if no motion for reconsideration was filed within the 60-day period specified in subparagraph (B), during such 60-day period; or

(ii) if such a motion was filed within such period, during the 60-day period that begins on the date of the Board’s decision on such motion.


Subsec. (a)(3). Pub. L. 97–35, §2353(h)(1), as amended by Pub. L. 98–369, §2354(c)(2), substituted “or XIX of this chapter” for “XIX or XX of this chapter”.

Subsec. (b). Pub. L. 97–35, §2353(h)(1), as amended by Pub. L. 98–369, §2354(c)(2), substituted “or XIX of this chapter” for “XIX or XX of this chapter”.

Subsec. (d). Pub. L. 97–35, §2353(h)(3), substituted “or XIX of this chapter” for “XIX or XX of this chapter”.

1975—Subsec. (a)(1). Pub. L. 93–647, §3(d)(1), substituted “XIX or XX” for “or XIX”.

Subsec. (a)(4). Pub. L. 93–647, §3(d)(2), inserted “or XX” after “XIX.”

1973—Subsec. (a). Pub. L. 93–233, §18(z–2)(1)(C)(i), inserted references in par. (1) to subchapter VI of this chapter and in par. (3) to section 804 of this title.


Subsecs. (b), (d). Pub. L. 90–248, §241(c)(5)(B), struck out “IV,” after “I,” and inserted “or part A of subchapter IV of this chapter,” after “XIX of this chapter.”

Effective Date of 2008 Amendment

Pub. L. 110–275, title II, §204(c), July 15, 2008, 122 Stat. 2593, provided that: “The amendments made by this section (amending this section) take effect on the date of the enactment of this Act [July 15, 2008] and apply to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.”

Effective Date of 1996 Amendment

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Effective Date of 1984 Amendment

Amendment by section 2354(c)(2) of Pub. L. 98–369 effective as if originally included in Pub. L. 97–35, see section 2354(c)(2) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2663(e)(6) of Pub. L. 98–369 effective July 15, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law-
volved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

**Effective Date of 1961 Amendment**

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2332(c) of Pub. L. 97-35, set out as an Effective Date note under section 3321 of this title.

**Effective Date of 1975 Amendment**

Amendment by Pub. L. 93-647 effective with respect to payments under sections 650 and 653 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93-647, set out as a note under section 303 of this title.

**Effective Date of 1973 Amendment**


**Effective Date**

Section 404(b) of Pub. L. 89-97 provided that: ‘‘The amendment made by subsection (a) [enacting this section] shall apply only with respect to determinations made after December 31, 1965.’’

§1317. Appointment of the Administrator and Chief Actuary of the Centers for Medicare & Medicaid Services

(a) The Administrator of the Centers for Medicare & Medicaid Services shall be appointed by the President by and with the advice and consent of the Senate.

(b)(1) There is established in the Centers for Medicare & Medicaid Services the position of Chief Actuary. The Chief Actuary shall be appointed by, and in direct line of authority to, the Administrator of such Centers. The Chief Actuary shall be appointed from among individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 3321(b) of title 5.

(3) In the office of the Chief Actuary there shall be an actuary whose duties relate exclusively to the programs under parts C and D of subchapter XVIII of this chapter and related provisions of such subchapter.


**Prior Provisions**


**Amendments**


Subsec. (b)(1). Pub. L. 108-173, §900(e)(1)(A)(iii), substituted ‘‘Centers for Medicare & Medicaid Services’’ for ‘‘Health Care Financing Administration’’ and ‘‘such Centers’’ for ‘‘such Administration’’.


**Effective Date**

Section 2332(c) of Pub. L. 98-369 provided that: ‘‘The amendments made by this section [enacting this section and amending section 5315 of Title 5, Government Organization and Employees] shall apply to appointments made after the date of the enactment of this Act (July 18, 1984).’’

§1318. Alternative Federal payment with respect to public assistance expenditures

In the case of any State which has in effect a plan approved under subchapter XIX of this chapter for any calendar quarter, the total of the payments to which such State is entitled for such quarter, and for each succeeding quarter in the same fiscal year (which for purposes of this section means the 4 calendar quarters ending with September 30), under paragraphs (1) and (2) of sections 303(a), 1203(a), 1353(a), and 1383(a) of this title shall, at the option of the State, be determined by application of the Federal medical assistance percentage (as defined in section 1396d of this title), instead of the percentages provided under each such section, to the expenditures under its State plans approved under subchapters I, X, XIV, and XVI of this chapter, which would be included in determining the amounts of the Federal payments to which such State is entitled under such sections, but without regard to any maximum on the dollar amounts per recipient which may be counted under such sections. For purposes of the preceding sentence, the term ‘‘Federal medical assistance percentage’’ shall, in the case of Puerto Rico, the Virgin Islands, and Guam, mean 75 per centum.


**References in Text**

Paragraph (1) of sections 303(a), 1203(a), and 1353(a) of this title, referred to in text, were repealed by Pub. L. 97-35, title XXI, §2184(a)(4)(A), (c)(2)(A), Aug. 13, 1981, 95 Stat. 816, 817.

Section 1383(a) of this title, referred to in text, is a reference to section 1383(a) of this title as it existed prior to the general revision of subchapter XVI of this

1 See References in Text note below.

**AMENDMENTS**

1996—Pub. L. 104–193 struck out “‘603(a),’” before “‘1203(a),’ “‘1303(a),’ “‘part A of subchapter IV of this chapter,’” after “‘XVI of this chapter,’,” and “‘and shall, in the case of American Samoa, mean 75 per centum with respect to part A of subchapter IV of this chapter,” after “‘the Virgin Islands, and Guam, mean 75 per centum’ “‘June’ “‘1203(a),’ in closing provisions.

1988—Pub. L. 100–485 inserted before period at end “‘and shall, in the case of American Samoa, mean 75 per centum with respect to part A of subchapter IV of this chapter’ “‘June’ “‘1203(a),’” after “‘L,’” and inserted “‘and part A of subchapter IV of this chapter,’ “‘after ‘XVI of this chapter,’ ” in closing provisions.

**EFFECTIVE DATE OF 1996 AMENDMENT**

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, set out as an Effective Date note under section 601 of this title.

**EFFECTIVE DATE OF 1988 AMENDMENT**


§ 1319. Federal participation in payments for repairs to home owned by recipient of aid or assistance

In the case of an expenditure for repairing the home owned by an individual who is receiving aid or assistance, other than medical assistance to the aged, under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, if—

(1) the State agency or local agency administering the plan approved under such subchapter has made a finding (prior to making such expenditure) that (A) such home is so defective that continued occupancy is unwarranted, (B) unless repairs are made to such home, rental quarters will be necessary for such individual, and (C) the cost of rental quarters to take care of the needs of such individual (including his spouse living with him in such home and any other individual whose needs were taken into account in determining the need of such individual) would exceed (over such time as the Secretary may specify) the cost of repairs needed to make such home habitable together with other costs attributable to continued occupancy of such home, and

(2) no such expenditures were made for repairing such home pursuant to any prior finding under this section,

the amount paid to any such State for any quarter under section 303(a), 1203(a), 1353(a), or 1383(a) of this title shall be increased by 50 per centum of such expenditures, except that the excess above $500 expended with respect to any one home shall not be included in determining such expenditures.


**REFERENCES IN TEXT**

Section 1383(a) of this title, referred to in text, is a reference to section 1383(a) of this title as it existed prior to the general revision of this subchapter by Pub. L. 92–603, title III, §301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior section (which is set out as a note under section 1383 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

**AMENDMENTS**

1996—Pub. L. 104–193 substituted “subchapter I, X, XIV, or XVI of this chapter,” for “subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter” in introductory provisions and struck out “‘603(a),’ ” before “‘1203(a),’ ” in closing provisions.

**EFFECTIVE DATE OF 1996 AMENDMENT**

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

**EFFECTIVE DATE**

Section 209(b) of Pub. L. 90–248 provided that: “The amendment made by subsection (a) [enacting this section] shall apply with respect to expenditures made after December 31, 1967.”

§ 1320. Approval of certain projects

No payment shall be made under this chapter with respect to any experimental, pilot, demonstration, or other project all or any part of which is wholly financed with Federal funds made available under this chapter (without any State, local, or other non-Federal financial participation) unless such project shall have been personally approved by the Secretary or Deputy Secretary of Health and Human Services.


**AMENDMENTS**

1990—Pub. L. 101–509 substituted “Deputy Secretary of Health and Human Services” for “Under Secretary of Health and Human Services”.


**AMENDMENTS**

1990—Pub. L. 101–509 substituted “Deputy Secretary of Health and Human Services” for “Under Secretary of Health and Human Services”.
§ 1320a. Uniform reporting systems for health services facilities and organizations

(a) Establishment; criteria for regulations; requirements for hospitals

For the purposes of reporting the cost of services provided by, of planning, and of measuring and comparing the efficiency of and effective use of services in, hospitals, skilled nursing facilities, intermediate care facilities, home health agencies, health maintenance organizations, and other types of health services facilities and organizations to which payment may be made under this chapter, the Secretary shall establish by regulation, for each such type of health services facility or organization, a uniform system for the reporting by a facility or organization of that type of the following information:

1. The aggregate cost of operation and the aggregate volume of services.
2. The costs and volume of services for various functional accounts and subaccounts.
3. Rates, by category of patient and class of purchaser.
4. Capital assets, as defined by the Secretary, including (as appropriate) capital funds, debt service, lease agreements used in lieu of capital funds, and the value of land, facilities, and equipment.
5. Discharge and bill data.

The uniform reporting system for a type of health services facility or organization shall provide for appropriate variation in the application of the system to different classes of facilities or organizations within that type and shall be established, to the extent practicable, consistent with the cooperative system for producing comparable and uniform health information and statistics described in section 242k(e)(1) of this title. In reporting under such a system, hospitals shall employ such chart of accounts, definitions, principles, and statistics as the Secretary may prescribe in order to reach a uniform reconciliation of financial and statistical data for specified uniform reports to be provided to the Secretary.

(b) Monitoring, etc., of systems by Secretary

The Secretary shall—

1. monitor the operation of the systems established under subsection (a) of this section;
2. assist with and support demonstrations and evaluations of the effectiveness and cost of the operation of such systems and encourage State adoption of such systems; and
3. periodically revise such systems to improve their effectiveness and diminish their cost.

(c) Availability of information to appropriate agencies and organizations

The Secretary shall provide information obtained through use of the uniform reporting systems described in subsection (a) of this section in a useful manner and format to appropriate agencies and organizations, including health systems agencies (designated under section 300m of this title) and State health planning and development agencies (designated under section 300m of this title), as may be necessary to carry out such agencies' and organizations' functions.


REFERENCES IN TEXT

Section 300m of this title, referred to in subsec. (c), was in the original a reference to section 1503 of act July 1, 1944, which was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799.


PRIOR PROVISIONS

A prior section 1320a, act Aug. 14, 1935, ch. 531, title XI, §1121, as added Jan. 2, 1968, Pub. L. 90–248, title II, §250(a), 81 Stat. 920, provided for assistance in the form of institutional services in intermediate care facilities, the subsecs. providing as follows: subsec. (a), modification of certain plans to include such benefit; subsec. (b), eligible individuals; subsec. (c), payments and Federal medical assistance percentage; subsec. (d), conditions, limitations, rights, and obligations applicable to modified plans; and subsec. (e), definition of “intermediate care facility”, which is covered in section 1902(b) of this title, prior to repeal by Pub. L. 92–223, §4(c), Dec. 28, 1971, 85 Stat. 810.


TIME PERIODS FOR ESTABLISHMENT OF UNIFORM REPORTING SYSTEMS; CONSULTATIONS WITH INTERESTED PARTIES

Section 19(c)(1) of Pub. L. 95–142 directed Secretary of Health, Education, and Welfare to establish the systems described in subsec. (a) of this section only after consultation with interested parties and for hospitals, skilled nursing facilities, and intermediate care facili-

1 See References in Text note below.
§ 1320a–1

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ties, not later than the end of the one year period beginning on Oct. 25, 1977, and for other types of health services facilities and organizations, not later than the end of the two-year period beginning on Oct. 25, 1977.

§ 1320a–1. Limitation on use of Federal funds for capital expenditures

(a) Use of reimbursement for planning activities for health services and facilities

The purpose of this section is to assure that Federal funds appropriated under subchapters XVIII and XIX of this chapter are not used to support unnecessary capital expenditures made by or on behalf of health care facilities which are reimbursed under any of such subchapters and that, to the extent possible, reimbursement under such subchapters shall support planning activities with respect to health services and facilities in the various States.

(b) Agreement between Secretary and State for submission of proposed capital expenditures related to health care facilities and procedures for appeal from recommendations

The Secretary, after consultation with the Governor (or other chief executive officer) and with appropriate local public officials, shall make an agreement with any State which is able and willing to do so under which a designated planning agency (which shall be an agency described in clause (ii) of subsection (d)(1)(B) of this section that has a governing body or advisory board at least half of whose members represent consumer interests) will—

(1) make, and submit to the Secretary together with such supporting materials as he may find necessary, findings and recommendations with respect to capital expenditures proposed by or on behalf of any health care facility in such State within the field of its responsibilities,

(2) receive from other agencies described in clause (ii) of subsection (d)(1)(B) of this section, and submit to the Secretary together with such supporting material as he may find necessary, the findings and recommendations of such other agencies with respect to capital expenditures proposed by or on behalf of health care facilities in such State within the fields of their respective responsibilities, and

(3) establish and maintain procedures pursuant to which a person proposing any such capital expenditure may appeal a recommendation by the designated agency and will be granted an opportunity for a fair hearing by such agency or person other than the designated agency as the Governor (or other chief executive officer) may designate to hold such hearings,

whenever and to the extent that the findings of such designated agency or any such other agency indicate that any such expenditure is not consistent with the standards, criteria, or plans developed pursuant to the Public Health Service Act [42 U.S.C. 201 et seq.] to meet the need for adequate health care facilities in the area covered by the plan or plans so developed.

(c) Manner of payment to States for carrying out agreement

The Secretary shall pay any such State from the general fund in the Treasury, in advance or by way of reimbursement as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), for the reasonable cost of performing the functions specified in subsection (b) of this section.

(d) Determination of amount of exclusions from Federal payments

(1) Except as provided in paragraph (2), if the Secretary determines that—

(A) neither the planning agency designated in the agreement described in subsection (b) of this section nor an agency described in clause (ii) of subparagraph (B) of this paragraph had been given notice of any proposed capital expenditure (in accordance with such procedure or in such detail as may be required by such agency) at least 60 days prior to obligation for such expenditure; or

(B)(i) the planning agency so designated or an agency so described had received such timely notice of the intention to make such capital expenditure and had, within a reasonable period after receiving such notice and prior to obligation for such expenditure, notified the person proposing such expenditure that the expenditure would not be in conformity with the standards, criteria, or plans developed by such agency or any other agency described in clause (ii) for adequate health care facilities in such State or in the area for which such other agency has responsibility, and

(ii) the planning agency so designated had, prior to submitting to the Secretary the findings referred to in subsection (b) of this section—

(I) consulted with, and taken into consideration the findings and recommendations of, the State planning agencies established pursuant to sections 314(a) and 604(a) of the Public Health Service Act [42 U.S.C. 246(a), 291d(a)] (to the extent that either such agency is not the agency so designated) as well as the public or nonprofit private agency or organization responsible for the comprehensive regional, metropolitan area, or other local area plan or plans referred to in section 314(b) of the Public Health Service Act [42 U.S.C. 246(b)] and covering the area in which the health care facility proposing such capital expenditure is located (where such agency is not the agency designated in the agreement), or, if there is no such agency, such other public or nonprofit private agency or organization (if any) as performs, as determined in accordance with criteria included in regulations, similar functions, and

(II) granted to the person proposing such capital expenditure an opportunity for a fair hearing with respect to such findings;

then, for such period as he finds necessary in any case to effectuate the purpose of this section, he shall, in determining the Federal payments to be made under subchapters XVIII and XIX of this chapter with respect to services furnished in the health care facility for which such capital expenditure is made, not include any amount which is attributable to depreciation, interest on borrowed funds, a return on equity...
capital (in the case of proprietary facilities), or other expenses related to such capital expenditure. With respect to any organization which is reimbursed on a per capita or a fixed fee or negotiated rate basis, in determining the Federal payments to be made under subchapters XVIII and XIX of this chapter, the Secretary shall exclude an amount which in his judgment is a reasonable equivalent to the amount which would otherwise be excluded under this subsection if payment were to be made on other than a per capita or a fixed fee or negotiated rate basis.

(2) If the Secretary, after submitting the matters involved to the advisory council established or designated under subsection (i) of this section, determines that an exclusion of expenses related to any capital expenditure of any health care facility would discourage the operation or expansion of such facility which has demonstrated to his satisfaction proof of capability to provide comprehensive health care services (including institutional services) efficiently, effectively, and economically, or would otherwise be inconsistent with the effective organization and delivery of health services or the effective administration of subchapter XVIII or XIX of this chapter, he shall not exclude such expenses pursuant to paragraph (1).

(e) Treatment of lease or comparable arrangement of any facility or equipment for a facility in determining amount of exclusions from Federal payments

Where a person obtains under lease or comparable arrangement any facility or part thereof, or equipment for a facility, which would have been subject to an exclusion under subsection (d) of this section if the person had acquired it by purchase, the Secretary shall (1) in computing such person's rental expense in determining the Federal payments to be made under subchapters XVIII and XIX of this chapter with respect to services furnished in such facility, deduct the amount which in his judgment is a reasonable equivalent of the amount that would have been excluded if the person had acquired such facility or such equipment by purchase, and (2) in computing such person's rental expense in determining the Federal payments to be made under subchapters XVIII and XIX of this chapter with respect to services furnished in such facility, deduct the amount which in his judgment is a reasonable equivalent of the amount that would have been excluded if the person had acquired such facility or such equipment by purchase.

(f) Reconsideration by Secretary of determinations

Any person dissatisfied with a determination by the Secretary under this section may within six months following notification of such determination request the Secretary to reconsider such determination. A determination by the Secretary under this section shall not be subject to administrative or judicial review.

(g) "Capital expenditure" defined

For the purposes of this section, a "capital expenditure" is an expenditure which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance and which (1) exceeds $600,000 (or such lesser amount as the State may establish), (2) changes the bed capacity of the facility with respect to which such expenditure is made, or (3) substantially changes the services of the facility with respect to which such expenditure is made. For purposes of clause (1) of the preceding sentence, the cost of the studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of the plant and equipment with respect to which such expenditure is made shall be included in determining whether such expenditure exceeds the dollar amount specified in clause (1).

(h) Applicability to Christian Science sanatoriums

The provisions of this section shall not apply to a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).

(i) National advisory council; establishment or designation of existing council; functions; consultations with other appropriate national advisory councils; composition; compensation and travel expenses

(1) The Secretary shall establish a national advisory council, or designate an appropriate existing national advisory council, to advise and assist him in the preparation of general regulations to carry out the purposes of this section and on policy matters arising in the administration of this section, including the coordination of activities under this section with those under other parts of this chapter or under other Federal or federally assisted health programs.

(2) The Secretary shall make appropriate provision for consultation between and coordination of the work of the advisory council established or designated under paragraph (1) and the Federal Hospital Council, the National Advisory Health Council, the Health Insurance Benefits Advisory Council, and other appropriate national advisory councils with respect to matters bearing on the purposes and administration of this section and the coordination of activities under this section with related Federal health programs.

(3) If an advisory council is established by the Secretary under paragraph (1), it shall be composed of members who are not otherwise in the regular full-time employ of the United States, and who shall be appointed by the Secretary without regard to the civil service laws from among leaders in the fields of the fundamental sciences, the medical sciences, and the organization, delivery, and financing of health care, and persons who are State or local officials or are active in community affairs or public or civic affairs or who are representative of minority groups. Members of such advisory council, while attending meetings of the council or otherwise serving on business of the council, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the maximum rate specified at the time of such service for grade GS–18 in section 5332 of title 5, including traveltime, and while away from their homes or regular places of business they may also be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of such title 5 for persons in the Government service employed intermittently.
(j) Capital expenditure review exception for eligible organization health care facilities

A capital expenditure made by or on behalf of a health care facility shall not be subject to review pursuant to this section if 75 percent of the patients who can reasonably be expected to use the service with respect to which the capital expenditure is made will be individuals enrolled in an eligible organization as defined in section 1395mm(b) of this title, and if the Secretary determines that such capital expenditure is for services and facilities which are needed by such organization in order to operate efficiently and economically. A health care facility shall not be subject to review pursuant to this section if 75 percent of the patients who can reasonably be expected to use the service with respect to which the capital expenditure is made will be individuals enrolled in an eligible organization as defined in section 1395mm(b) of this title, and if the Secretary determines that such capital expenditure is for services and facilities which are needed by such organization in order to operate efficiently and economically.

(1) the facilities do not provide common services at the same site (as usually provided by the organization),

(2) the facilities are not available under a contract of reasonable duration,

(3) full and equal medical staff privileges in the facilities are not available,

(4) arrangements with such facilities are not administratively feasible, or

(5) the purchase of such services is more costly than if the organization provided the services directly.


REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (b), is act July 1, 1944, ch. 373, 58 Stat. 682, which is classified generally to chapter 6A (201 et seq.) of this title.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105-33 substituted “a religious nonmedical health care institution (as defined in section 1395(ss)(1) of this title)” for “Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.”

1984—Subsec. (b). Pub. L. 98-369, §2354(a)(1), substituted a comma for the period at end of par. (1), and struck out “or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963” before “to meet the need” in provisions following par. (3).

Subsec. (c). Pub. L. 98-369, §2354(a)(2), substituted “‘5703’ for ‘5703(b)’.”

1983—Subsec. (c). Pub. L. 98-21, §607(a), substituted “the general fund in the Treasury” for “the Federal Hospital Insurance Trust Fund”.

Subsec. (g). Pub. L. 98-21, §607(b)(1), substituted “$600,000 (or such lesser amount as the State may establish)” for “$100,000” and Pub. L. 98-21, §607(b)(1)(B), substituted “the dollar amount specified in clause (1)” for “$100,000” the second time it appeared.


1981—Subsec. (a). Pub. L. 97-35, §2193(c)(3)(A), substituted “subchapters XVIII and XIX of this chapter” for “subchapters V, XVIII, and XIX of this chapter”.

Subsec. (d)(1). Pub. L. 97-35, §2193(c)(3)(B), as amended by Pub. L. 97-248, §137(a)(5), substituted “subchapter XVIII or XIX of this chapter” for “subchapter V, XVIII, or XIX of this chapter”.

Subsec. (e). Pub. L. 97-35, §2193(c)(3)(A), substituted “subchapters XVIII and XIX of this chapter” for “subchapters V, XVIII, and XIX of this chapter”.


1978—Subsecs. (a), (b). Pub. L. 95-559, §14(b)(1), (2), as amended by Pub. L. 96-32, struck out references to health maintenance organizations wherever appearing in par. (2) “or organization, or of any facility of such organization,” after “expansion of such facility.”

1973—Subsec. (d)(1). Pub. L. 93-233, §18(2), inserted “or a fixed fee or negotiated rate” after “per capita” wherever appearing in last sentence.

Subsec. (d)(2). Pub. L. 93-233, §18(2)(1), substituted “exclude” for “include” where last appearing.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective Aug. 5, 1997, and applicable to items and services furnished on or after such date, with provision that Secretary of Health and Human Services issue regulations to carry out such amendment by not later than July 1, 1998, see section 4554(d) of Pub. L. 105-33, set out as an Effective Date note under section 1395I-5 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2354(e) of Pub. L. 98-369 provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section (amending this section and sections 1316, 1320a-7a, 1320a-8, 1395f, 1395i, 1395i-1, 1395x, 1395s to 1395z, 1395aa, 1395cc, 1395f, 1395s, 1395z to 1395zu, 1395zaa, 1395ccc, 1395ff, 1395sii, 1395smm, 1395xoo, 1395fr, and 1388w and amending provisions set out as notes under sections 1320c, 1395x, and 1395mm of this title) shall be effective on the date of the enactment of this Act (July 18, 1984); but none of such amendments shall be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date.

“(2) The amendments made by paragraphs (1) (amending section 1395f of this title and provisions set out as a note under section 1396x of this title), (2) (amending section 1316 of this title), and (3) (amending provisions set out as notes under sections 1320c and 1395mm of this title) of subsection (c) shall be effective as if they had been originally included in Public Laws 96-499, 97-35, and 97-248, respectively.”

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, see section 137(d)(2) of Pub. L. 97-248, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97-35, see sec-

**Effective Date**

Section 221(b) of Pub. L. 92–603 provided that: "The amendment made by subsection (a) [enacting this section] shall apply only with respect to a capital expenditure which is incurred by or on behalf of a health care facility or health maintenance organization subsequent to whichever of the following is earlier: (A) December 31, 1972, or (B) with respect to any State or any part thereof specified by such State, the last day of the calendar quarter in which the State requests that the amendment made by subsection (a) of this section [enacting this section] apply in such State or such part thereof."

**Termination of Advisory Councils**

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 777, set out in the Appendix to Title 5, Government Organization and Employees.

**References in Other Laws to GS–16, 17, or 18 Pay Rates**

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 5329 [title I, §162(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

**Expenditures or Obligations of Health Care Facilities Providing Health Care Services Prior to December 18, 1970; Limitations on Federal Participation**

Section 221(d) of Pub. L. 92–603 provided that: "In the case of a health care facility providing health care services as of December 18, 1970, which on such date is committed to a formal plan of expansion or replacement, the amendments made by the preceding provisions of this section [enacting this section and amending sections 705, 706, 709, 1395x, 1396a, and 1396b of this title] shall not apply with respect to such expenditures as may be made or obligations incurred for capital items included in such plan where preliminary expenditures toward the plan of expansion or replacement (including payments for studies, surveys, designs, plans, working drawings, specifications, and site acquisition, essential to the acquisition, improvement, expansion, or replacement of the health care facility or equipment concerned) of $100,000 or more, had been made during the three-year period ended December 17, 1970."

§ 1320a–2. Effect of failure to carry out State plan

In an action brought to enforce a provision of this chapter, such provision is not to be deemed unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in Suter v. Artist M. that section 671(a)(15) of this title is not enforceable in a private right of action.


**Prior Provisions**


Another section 1123 of act Aug. 14, 1935, was renumbered section 1123A, and is classified to section 1320a–2a of this title.

**Effective Date**

Section 555(b) of Pub. L. 103–382 provided that: "The amendment made by subsection (a) [enacting this section] shall apply to actions pending on the date of the enactment of this Act (Oct. 20, 1994) and to actions brought on or after such date of enactment."

§ 1320a–2a. Reviews of child and family services programs, and of foster care and adoption assistance programs, for conformity with State plan requirements

(a) In general

The Secretary, in consultation with the State agencies administering the State programs under parts B and E of subchapter IV of this chapter, shall promulgate regulations for the review of such programs to determine whether such programs are in substantial conformity with—

(1) State plan requirements under such parts B and E,
(2) implementing regulations promulgated by the Secretary, and
(3) the relevant approved State plans.

(b) Elements of review system

The regulations referred to in subsection (a) of this section shall—

(1) specify the timetable for conformity reviews of State programs, including—

(A) an initial review of each State program;
(B) a timely review of a State program following a review in which such program was found not to be in substantial conformity; and

(C) less frequent reviews of State programs which have been found to be in substantial conformity, but such regulations shall permit the Secretary to reinstate more frequent reviews based on information which indicates that a State program may not be in conformity;

(2) specify the requirements subject to review (which shall include determining whether the State program is in conformity with the requirement of section 671(a)(27) of this title), and the criteria to be used to measure conformity with such requirements and to determine whether there is a substantial failure to so conform;

(3) specify the method to be used to determine the amount of any Federal matching funds to be withheld (subject to paragraph (4)) due to the State program’s failure to so conform, which ensures that—

(A) such funds will not be withheld with respect to a program, unless it is determined that the program fails substantially to so conform;

(B) such funds will not be withheld for a failure to so conform resulting from the State’s reliance upon and correct use of formal written statements of Federal law or policy provided to the State by the Secretary; and

(C) the amount of such funds withheld is related to the extent of the failure to so conform; and

(4) require the Secretary, with respect to any State program found to have failed substantially to so conform—

(A) to afford the State an opportunity to adopt and implement a corrective action plan, approved by the Secretary, designed to end the failure to so conform;

(B) to make technical assistance available to the State to the extent feasible to enable the State to develop and implement such a corrective action plan;

(C) to suspend the withholding of any Federal matching funds under this section while such a corrective action plan is in effect; and

(D) to rescind any such withholding if the failure to so conform is ended by successful completion of such a corrective action plan.

(c) Provisions for administrative and judicial review

The regulations referred to in subsection (a) of this section shall—

(1) require the Secretary, not later than 10 days after a final determination that a program of the State is not in conformity, to notify the State of—

(A) the basis for the determination; and

(B) the amount of the Federal matching funds (if any) to be withheld from the State;

(2) afford the State an opportunity to appeal the determination to the Departmental Appeals Board within 60 days after receipt of the notice described in paragraph (1) (or, if later, after failure to continue or to complete a corrective action plan); and

(3) afford the State an opportunity to obtain judicial review of an adverse decision of the Board, within 60 days after the State receives notice of the decision of the Board, by appeal to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.


Codification

Section was formerly classified to section 1320a–1a of this title prior to renumbering by Pub. L. 104–193.

Amendments

2006—Subsec. (b)(2). Pub. L. 109–432 inserted “(which shall include determining whether the State program is in conformity with the requirement of section 671(a)(27) of this title)” after “review”.

Effective Date of 2006 Amendment

Amendment by Pub. L. 109–432 effective on the date that is 6 months after Dec. 20, 2006, see section 405(c)(1)(B)(ii) of Pub. L. 109–432, set out as a note under section 671 of this title.

Effective Date

Section 203(c)(1) of Pub. L. 103–322 provided that: “The amendment made by subsection (a) [enacting this section] shall take effect on the date of the enactment of this Act [Oct. 31, 1994].”

Regulations

Section 203(c)(3) of Pub. L. 103–322 provided that: “The Secretary shall promulgate the regulations referred to in section 1123(a) [now 1123A(a)] of the Social Security Act [subsec. (a) of this section] (as added by this section) not later than July 1, 1996, to take effect on April 1, 1996.”

§ 1320a–3. Disclosure of ownership and related information; procedure; definitions; scope of requirements

(a) In general

(1) The Secretary shall by regulation or by contract provision provide that each disclosing entity (as defined in paragraph (2)) shall—

(A) as a condition of the disclosing entity’s participation in, or certification or recertification under, any of the programs established by subchapters V, XVIII, and XIX of this chapter, or

(B) as a condition for the approval or renewal of a contract or agreement between the disclosing entity and the Secretary or the appropriate State agency under any of the programs established under subchapters V, XVIII, and XIX of this chapter,

supply the Secretary or the appropriate State agency with full and complete information as to the identity of each person with an ownership or control interest (as defined in paragraph (3)) in the entity or in any subcontractor (as defined by the Secretary in regulations) in which the entity directly or indirectly has a 5 per centum or...
more ownership interest and supply the Secretary with the 1 both the employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986) and social security account number (assigned under section 405(c)(2)(B) of this title) of the disclosing entity, each person with an ownership or control interest (as defined in subsection (a)(3) of this section), and any subcontractor in which the entity directly or indirectly has a 5 percent or more ownership interest.

(2) As used in this section, the term “disclosing entity” means an entity which is—

(A) a provider of services (as defined in section 1395x(u) of this title, other than a fund), an independent clinical laboratory, a renal disease facility, a managed care entity, as defined in section 1396u–2(a)(1)(B) of this title, or a health maintenance organization (as defined in section 300e(a) of this title);

(B) an entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, items or services with respect to which payment may be claimed by the entity under any plan or program established pursuant to subchapter V of this chapter or under a State plan approved under subchapter XIX of this chapter; or

(C) a carrier or other agency or organization that is acting as a fiscal intermediary or agent with respect to one or more providers of services (for purposes of part A or part B of subchapter XVIII of this chapter, or both, or for purposes of a State plan approved under subchapter XIX of this chapter) pursuant to (i) an agreement under section 1395h of this title, (ii) a contract under section 1395u of this title, or (iii) an agreement with a single State agency administering or supervising the administration of a State plan approved under subchapter XIX of this chapter.

(3) As used in this section, the term “person with an ownership or control interest” means, with respect to an entity, a person who—

(A)(i) has directly or indirectly (as determined by the Secretary in regulations) an ownership interest of 5 percent or more in the entity; or

(ii) is the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the entity or any of the property or assets thereof, which whole or part interest is equal to or exceeds 5 percent of the total property and assets of the entity; or

(B) is an officer or director of the entity, if the entity is organized as a corporation; or

(C) is a partner in the entity, if the entity is organized as a partnership.

(b) Other disclosing entities

To the extent determined to be feasible under regulations of the Secretary, a disclosing entity shall also include in the information supplied under subsection (a)(1) of this section, with respect to each person with an ownership or control interest in the entity, the name of any other disclosing entity with respect to which the person is a person with an ownership or control interest.

(c) Required disclosure of ownership and additional disclosable parties information

(1) Disclosure

A facility shall have the information described in paragraph (2) available—

(A) during the period beginning on March 23, 2010, and ending on the date such information is made available to the public under section 6101(b) of the Patient Protection and Affordable Care Act for submission to the Secretary, the Inspector General of the Department of Health and Human Services, the State in which the facility is located, and the State long-term care ombudsman in the case where the Secretary, the Inspector General, the State, or the State long-term care ombudsman requests such information; and

(B) beginning on the effective date of the final regulations promulgated under paragraph (3)(A), for reporting such information in accordance with such final regulations.

Nothing in subparagraph (A) shall be construed as authorizing a facility to dispose of or delete information described in such subparagraph after the effective date of the final regulations promulgated under paragraph (3)(A).

(2) Information described

(A) In general

The following information is described in this paragraph:

(i) The information described in subsections (a) and (b), subject to subparagraph (C).

(ii) The identity of and information on—

(I) each member of the governing body of the facility, including the name, title, and period of service of each such member;

(II) each person or entity who is an officer, director, member, partner, trustee, or managing employee of the facility, including the name, title, and period of service of each such person or entity; and

(III) each person or entity who is an additional disclosable party of the facility.

(iii) The organizational structure of each additional disclosable party of the facility and a description of the relationship of such additional disclosable party to the facility and to one another.

(B) Special rule where information is already reported or submitted

To the extent that information reported by a facility to the Internal Revenue Service on Form 990, information submitted by a facility to the Securities and Exchange Commission, or information otherwise submitted to the Secretary or any other Federal agency contains the information described in clauses (i), (ii), or (iii) of subparagraph (A), the facility may provide such Form or such information submitted to meet the requirements of paragraph (1).

1 So in original. The word “the” probably should not appear.
(C) Special rule
In applying subparagraph (A)(i)—
(i) with respect to subsections (a) and (b), “ownership or control interest” shall include direct or indirect interests, including such interests in intermediate entities; and
(ii) subsection (a)(3)(A)(ii) shall include the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured, in whole or in part, by the entity or any of the property or assets thereof, if the interest is equal to or exceeds 5 percent of the total property or assets of the entirety.

(3) Reporting
(A) In general
Not later than the date that is 2 years after March 23, 2010, the Secretary shall promulgate final regulations requiring, effective on the date that is 90 days after the date on which such final regulations are published in the Federal Register, a facility to report the information described in paragraph (2) to the Secretary in a standardized format, and such other regulations as are necessary to carry out this subsection. Such final regulations shall ensure that the facility certifies, as a condition of participation and payment under the program under subchapter XVIII or XIX, that the information reported by the facility in accordance with such final regulations is, to the best of the facility’s knowledge, accurate and current.

(B) Guidance
The Secretary shall provide guidance and technical assistance to States on how to adopt the standardized format under subparagraph (A).

(4) No effect on existing reporting requirements
Nothing in this subsection shall reduce, diminish, or alter any reporting requirement for a facility that is in effect as of March 23, 2010.

(5) Definitions
In this subsection:
(A) Additional disclosable party
The term “additional disclosable party” means, with respect to a facility, any person or entity who—
(i) exercises operational, financial, or managerial control over the facility or a part thereof, or provides policies or procedures for any of the operations of the facility, or provides financial or cash management services to the facility;
(ii) leases or subleases real property to the facility, or owns a whole or part interest equal to or exceeding 5 percent of the total value of such real property; or
(iii) provides management or administrative services, management or clinical consulting services, or accounting or financial services to the facility.

(B) Facility
The term “facility” means a disclosing entity which is—
(i) a skilled nursing facility (as defined in section 1395i–3(a) of this title); or
(ii) a nursing facility (as defined in section 1396r(a) of this title).

(C) Managing employee
The term “managing employee” means, with respect to a facility, an individual (including a general manager, business manager, administrator, director, or consultant) who directly or indirectly manages, advises, or supervises any element of the practices, finances, or operations of the facility.

(D) Organizational structure
The term “organizational structure” means, in the case of—
(i) a corporation, the officers, directors, and shareholders of the corporation who have an ownership interest in the corporation which is equal to or exceeds 5 percent;
(ii) a limited liability company, the members and managers of the limited liability company (including, as applicable, what percentage each member and manager has of the ownership interest in the limited liability company);
(iii) a general partnership, the partners of the general partnership;
(iv) a limited partnership, the general partners and any limited partners of the limited partnership who have an ownership interest in the limited partnership which is equal to or exceeds 10 percent;
(v) a trust, the trustees of the trust;
(vi) an individual, contact information for the individual; and
(vii) any other person or entity, such information as the Secretary determines appropriate.
closing quotations designating the provisions to be inserted.
Subsec. (a)(2)(A). Pub. L. 105–33, § 4707(c), inserted “a managed care entity, as defined in section 1396a–2(a)(1)(B) of this title,” after “renal disease facility.”
1981—Subsec. (a)(1). Pub. L. 97–35, § 2353(i)(1), substituted in subpars. (A) and (B) “and XIX of this chapter” for “XIX, and XX of this chapter”.
Subsec. (a)(2)(D). Pub. L. 97–35, § 2353(i)(2)(C), struck out subpar. (D) which included within term “disclosing entity” an entity, other than an individual practitioner or group of practitioners, that furnishes, or arranges for the furnishing of, health related services with respect to which payment may be claimed by the entity under a single plan or program approved under subchapter XX of this chapter.
1980—Subsec. (a)(3)(A)(ii). Pub. L. 96–499 substituted “of a whole or part interest” for “(in whole or in part)” of an interest of 5 per centum or more” and inserted “, which whole or part interest is equal to or exceeds $25,000 or 5 per centum of the total property and assets of the entity”.

**Effective Date of 1997 Amendment**
Section 4313(e) of Pub. L. 105–33 provided that:

(1) **Disclosure requirements.**—The amendment made by subsection (a) [amending this section] shall apply to the application of conditions of participation, and entering into and renewal of contracts and agreements, occurring more than 90 days after the date of submission of the report under subsection (d) [set out as a note below].

(2) **Other providers.**—The amendments made by subsection (b) [amending section 1320a–3a of this title] shall apply to payment for items and services furnished more than 90 days after the date of submission of such report.

Amendment by section 4707(c) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, see section 4710 of Pub. L. 105–33, set out as a note under section 1396b of this title.

**Effective Date of 1987 Amendment**
Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1396a–7 of this title.

**Effective Date of 1981 Amendment**

**Effective Date**
Section 3(e) of Pub. L. 95–142 provided that: “The amendment made by subsection (a)(1) [enacting this section] shall apply with respect to certifications and recertifications made (and participation in the programs established by titles V, XVIII, XIX, and XX of the Social Security Act [subchapters V, XVIII, XIX, and XX of this chapter] pursuant to certifications and recertifications made), and fiscal intermediary or agent agreements or contracts entered into or renewed, and on and after the date of the enactment of this Act [Oct. 25, 1977].”

The remaining amendments made by this section [amending sections 1395s and 1395cc of this title] shall take effect on the date of the enactment of this Act [Oct. 25, 1977]; except that the amendments made by subsections (c) and (d) [amending sections 1396a, 1396b, 1397a, and 1397b of this title] shall become effective January 1, 1978.

**Public Availability of Information**
Pub. L. 111–148, title V, § 6101(b), Mar. 23, 2010, 124 Stat. 702, provided that: “Not later than the date that is 1 year after the date on which the final regulations promulgated under section 1124(c)(3)(A) of the Social Security Act (42 U.S.C. 1320a–3(c)(3)(A)), as added by subsection (a), are published in the Federal Register, the Secretary of Health and Human Services shall make the information reported in accordance with such final regulations available to the public in accordance with procedures established by the Secretary.”

**Report on Confidentiality of Social Security Account Numbers**
Section 4313(d) of Pub. L. 105–33 provided that: “Before the amendments made by this section [amending this section and section 1320a–3a of this title] may become effective, the Secretary of Health and Human Services shall submit to Congress a report on steps the Secretary has taken to assure the confidentiality of social security account numbers that will be provided to the Secretary under such amendments.”

§1320a–3a. Disclosure requirements for other providers under part B of Medicare

(a) **Disclosure required to receive payment**

No payment may be made under part B of subchapter XVIII of this chapter for items or services furnished by any disclosing part B provider unless such provider has provided the Secretary with full and complete information—

(1) on the identity of each person with an ownership or control interest in the provider or in any subcontractor (as defined by the Secretary in regulations) in which the provider directly or indirectly has a 5 percent or more ownership interest;

(2) with respect to any person identified under paragraph (1) or any managing employee of the provider—

(A) on the identity of any other entities providing items or services for which payment may be made under subchapter XVIII of this chapter with respect to which such person or managing employee is a person with an ownership or control interest at the time such information is supplied or at any time during the 3-year period ending on the date such information is supplied, and

(B) as to whether any penalties, assessments, or exclusions have been assessed against such person or managing employee under section 1320a–7, 1320a–7a, or 1320a–7b of this title; and

(3) including the employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986) and social security account number (assigned under section 405(c)(2)(B) of this title) of the disclosing part B provider and any person, managing employee, or other entity identified or described under paragraph (1) or (2).

(b) **Updates to information supplied**

A disclosing part B provider shall notify the Secretary of any changes or updates to the information supplied under subsection (a) of this section not later than 180 days after such changes or updates take effect.

(c) **Verification**

(1) **Transmittal by HHS**

The Secretary shall transmit—

(A) to the Commissioner of Social Security information concerning each social security account number and Social Security account number that has been provided under section 1320a–7 of the Social Security Act [42 U.S.C. 1320a–7] or section 1320a–7 of this title.
account number (assigned under section 405(c)(2)(B) of this title), and
(B) to the Secretary of the Treasury information concerning each employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986), supplied to the Secretary pursuant to subsection (a)(3) of this section or section 1320a–3(c) of this title to the extent necessary for verification of such information in accordance with paragraph (2).

(2) Verification
The Commissioner of Social Security and the Secretary of the Treasury shall verify the accuracy of, or correct, the information supplied by the Secretary to such official pursuant to paragraph (1), and shall report such verifications or corrections to the Secretary.

(3) Fees for verification
The Secretary shall reimburse the Commissioner and Secretary of the Treasury, at a rate negotiated between the Secretary and such official, for the costs incurred by such official in performing the verification and correction services described in this subsection.

(d) Definitions
For purposes of this section—
(1) the term "disclosing part B provider" means any entity receiving payment on an assignment-related basis (or, for purposes of subsection (a)(3) of this section, any entity receiving payment) for furnishing items or services for which payment may be made under part B of subchapter XVIII of this chapter, except that such term does not include an entity described in section 1320a–3(a)(2) of this title;
(2) the term "managing employee" means, with respect to a provider, a person described in section 1320a–5(b) of this title; and
(3) the term "person with an ownership or control interest" means, with respect to a provider—
(A) a person described in section 1320a–3(a)(3) of this title, or
(B) a person who has one of the 5 largest direct or indirect ownership or control interests in the provider.


REFERENCES IN TEXT
The Internal Revenue Code of 1986, referred to in subsec. (a)(3) and (c)(1)(B), is classified generally to Title 26, Internal Revenue Code.

Section 1320a–3 of this title, referred to in subsec. (c)(1), does not contain a subsec. (c).

AMENDMENTS
Subsec. (c)(1). Pub. L. 105–33, §4313(c)(2), inserted "or, for purposes of subsection (a)(3) of this section, any entity receiving payment)" after "on an assignment-related basis".

SUBS. (d). Pub. L. 105–33, §4313(c)(1), redesignated subsec. (c) as (d).

EFFECTIVE DATE OF 1997 AMENDMENT
Amendment by section 4313(b) of Pub. L. 105–33 applicable to payment for items and services furnished more than 90 days after date of submission of report under section 4313(d) of Pub. L. 105–33, set out as a note under section 1320a–3 of this title, see section 4313(e) of Pub. L. 106–33, set out as a note under section 1320a–3 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT
Section 147(g) of Pub. L. 103–432 provided that: "Except as otherwise provided in this section (amending this section and sections 1320b–5, 1395f, 1395p, 1395q, 1396c, and 1396t of this title, amending provisions set out as notes under sections 1385f, 1395p, and 1395q of this title, adding provisions set out as notes under this section and sections 1395f, 1385c of this title, and repealing provisions set out as a note under section 1385f of this title), the amendments made by this section shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508]."

EFFECTIVE DATE
Section 4164(b)(4) of Pub. L. 101–508, as amended by Pub. L. 105–33, title I, §147(f)(7)(A)(ii), Oct. 31, 1994, 108 Stat. 4432, provided that: "The amendments made by paragraphs (1), (2), and (3) [enacting this section and amending sections 1320a–7 and 1320a–7b of this title] shall apply with respect to items or services furnished on or after—
"(A) January 1, 1993, in the case of items or services furnished by a provider who, on or before the date of the enactment of this Act [Nov. 5, 1990], has furnished items or services for which payment may be made under part B of title XVIII of the Social Security Act [part B of subchapter XVIII of this chapter]; or
"(B) January 1, 1992, in the case of items or services furnished by any other provider."

REPORT ON CONFIDENTIALITY OF SOCIAL SECURITY ACCOUNT NUMBERS
Before amendment by Pub. L. 105–33 may become effective, Secretary of Health and Human Services is required to submit to Congress a report on steps Secretary has taken to assure the confidentiality of social security account numbers that will be provided to Secretary, see section 4313(d) of Pub. L. 105–33, set out as a note under section 1320a–3 of this title.

§ 1320a–4. Issuance of subpoenas by Comptroller General

(a) Authorization; scope; service and proof of service
For the purpose of any audit, investigation, examination, analysis, review, evaluation, or other function authorized by law with respect to any program authorized under this chapter, the Comptroller General of the United States shall have power to sign and issue subpoenas to any person requiring the production of any pertinent books, records, documents, or other information. Subpoenas so issued by the Comptroller General shall be served by anyone authorized by him (1) by delivering a copy thereof to the person named therein, or (2) by registered mail or by certified mail addressed to such person at his last dwelling place or principal place of busi-
ness. A verified return by the person so serving the subpoena setting forth the manner of service, or, in the case of service by registered mail or by certified mail, the return post office receipt therefor signed by the person so served, shall be proof of service.

(b) Contumacy or refusal to obey subpoena; contempt proceedings

In case of contumacy by, or refusal to obey a subpoena issued pursuant to subsection (a) of this section and duly served upon, any person, any district court of the United States for the judicial district in which such person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Comptroller General, shall have jurisdiction to issue an order requiring such person to produce the books, records, documents, or other information sought by the subpoena; and any failure to obey such order of the court may be punished by the court as a contempt thereof. In proceedings brought under this subsection, the Comptroller General shall be represented by attorneys employed in the Government Accountability Office or by counsel whom he may employ without regard to the provisions of title 5 governing appointments in the competitive service, and the provisions of chapter 51 and subchapters III and VI of chapter 53 of such title, relating to classification and General Schedule pay rates.

(c) Nondisclosure of personal medical records by Government Accountability Office

No personal medical record in the possession of the Government Accountability Office shall be subject to subpoena or discovery proceedings in a civil action.


AMENDMENTS

1987—Subsec. (a). Pub. L. 100–93, §8(b)(1), in first sentence substituted “other entity” for “other entity (other than an individual practitioner or group of practitioners)” and in second sentence substituted “institution, organization, or agency” for “institution, organization, or agency”.


§1320a–5. Disclosure by institutions, organizations, and agencies of owners, officers, etc., convicted of offenses related to programs; notification requirements; “managing employee” defined

(a) As a condition of participation in or certification or recertification under the programs established by subchapters XVIII, and XIX of this chapter, any hospital, nursing facility, or other entity (other than an individual practitioner or group of practitioners) shall be required to disclose to the Secretary or to the appropriate State agency the name of any person that is a person described in subparagraphs (A) and (B) of section 1320a–7(b)(8) of this title. The Secretary or the appropriate State agency shall promptly notify the Inspector General in the Department of Health and Human Services of the receipt from any entity of any application or request for such participation, certification, or recertification which discloses the name of any such person, and shall notify the Inspector General of the action taken with respect to such application or request.

(b) For the purposes of this section, the term “managing employee” means, with respect to an entity, an individual, including a general manager, business manager, administrator, and director, who exercises operational or managerial control over the entity, or who directly or indirectly directs the day-to-day operations of the entity.


AMENDMENTS

1987—Subsec. (a). Pub. L. 100–93, §8(b)(1), in first sentence substituted “or other entity” for “other entity (other than an individual practitioner or group of practitioners) shall be required to disclose to the Secretary or to the appropriate State agency the name of any person that is a person described in subparagraphs (A) and (B) of section 1320a–7(b)(8) of this title.” for “or other institution, organization, or agency shall be required to disclose to the Secretary or to the appropriate State agency the name of any person who—

“(1) has a direct or indirect ownership or control interest of 5 percent or more in such institution, organization, or agency, and

“(2) has been convicted (on or after October 25, 1977, or within such period prior to that date as the Secretary shall specify in regulations) of a criminal offense related to the involvement of such person in any of such programs.”;

and in second sentence substituted “entity” for “institution, organization, or agency”.

Subsec. (b). Pub. L. 100–93, §8(b)(2), substituted “entity” for “institution, organization, or agency” in three places.


1981—Subsec. (a). Pub. L. 97–35 substituted in provision preceding par. (1) “and XIX of this chapter” for “XIX, and XX of this chapter”.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as an Effective Date note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1981 AMENDMENT


EFFECTIVE DATE

Section 8(e) of Pub. L. 95–142 provided that: “The amendments made by this section [enacting this sec-
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tion and amending sections 1395c, 1396b, and 1397a of this title] shall apply with respect to contracts, agreements, and arrangements entered into and approvals given pursuant to applications or requests made on or after the first day of the fourth month beginning after the date of the enactment of this Act [Oct. 25, 1977]."

§ 1320a–6. Adjustments in SSI benefits on account of retroactive benefits under subchapter II

(a) Reduction in benefits

Notwithstanding any other provision of this chapter, in any case where an individual—

(1) is entitled to benefits under subchapter II of this chapter that were not paid in the months in which they were regularly due; and

(2) is an individual or eligible spouse eligible for supplemental security income benefits for one or more months in which the benefits referred to in clause (1) were regularly due.

then any benefits under subchapter II of this chapter that were regularly due in such month or months, or supplemental security income benefits for such month or months, which are due but have not been paid to such individual or eligible spouse shall be reduced by an amount equal to so much of the supplemental security income benefits, whether or not paid retroactively, as would not have been paid or would not be paid with respect to such individual or spouse if he had received such benefits under subchapter II of this chapter in the month or months in which they were regularly due. A benefit under subchapter II of this chapter shall not be reduced pursuant to the preceding sentence to the extent that any amount of such benefit would not otherwise be available for payment in full of the maximum fee which may be recovered from such benefit by an attorney pursuant to section 406(a)(4) of this title.

1984—Pub. L. 98–369 substituted provisions relating to adjustment in supplemental security income benefits on account of retroactive benefits under subchapter II of this chapter for provisions which related to adjustment of retroactive benefits under subchapter II of this chapter on account of supplemental security income benefits.

EFFECTIVE DATE OF 1994 AMENDMENT


EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after Apr. 1, 1991, see section 108(b)(8), Pub. L. 101–508, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2615(b) of Pub. L. 98–369 provided that: ‘‘The amendment made by this section [amending this section] shall apply for purposes of reducing retroactive benefits under title II of the Social Security Act [subchapter II of this chapter] or retroactive supplemental security income benefits payable beginning with the seventh month following the month in which this Act is enacted [July 1984]; except that in the case of retroactive title II benefits other than those which result from a determination of entitlement following an application for benefits under title II or from a reinstatement of benefits under title II following a period of suspension or termination of such benefits, it shall apply when the Secretary of Health and Human Services determines that it is administratively feasible.’’

EFFECTIVE DATE

Section 501(d) of Pub. L. 96–265 provided that: ‘‘The amendments made by this section [enacting this section and amending sections 401 and 1383 of this title] shall be applicable in the case of payments of monthly insurance benefits under title II of the Social Security Act [subchapter II of this chapter] entitlement for which is determined on or after the first day of the
Permissive exclusion

Federal health care program (as defined in section 1320a–7b(f) of this title):

(a) Mandatory exclusion

The Secretary shall exclude the following individuals and entities from participation in any Federal health care program (as defined in section 1320a–7b(f) of this title):

(1) Conviction of program-related crimes

Any individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under subchapter XVIII of this chapter or under any State health care program.

(2) Conviction relating to patient abuse

Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.

(3) Felony conviction relating to health care fraud

Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program (other than those specifically described in paragraph (1)) operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.

(4) Felony conviction relating to controlled substance

Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

(b) Permissive exclusion

The Secretary may exclude the following individuals and entities from participation in any Federal health care program (as defined in section 1320a–7b(f) of this title):

(1) Conviction relating to fraud

Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law—

(A) of a criminal offense consisting of a misdemeanor relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct—

(i) in connection with the delivery of a health care item or service, or

(ii) with respect to any act or omission in a health care program (other than those specifically described in subsection (a)(1) of this section) operated by or financed in whole or in part by any Federal, State, or local government agency; or

(B) of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct with respect to any act or omission in a program (other than a health care program) operated by or financed in whole or in part by any Federal, State, or local government agency.

(2) Conviction relating to obstruction of an investigation or audit

Any individual or entity that has been convicted, under Federal or State law, in connection with the interference with or obstruction of any investigation or audit related to—

(i) any offense described in paragraph (1) or in subsection (a); or

(ii) the use of funds received, directly or indirectly, from any Federal health care program (as defined in section 1320a–7b(f) of this title).

(3) Misdemeanor conviction relating to controlled substance

Any individual or entity that has been convicted, under Federal or State law, of a criminal offense consisting of a misdemeanor relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

(4) License revocation or suspension

Any individual or entity—

(A) whose license to provide health care has been revoked or suspended by any State licensing authority, or who otherwise lost such a license or the right to apply for or renew such a license, for reasons bearing on the individual’s or entity’s professional competence, professional performance, or financial integrity, or

(B) who surrendered such a license while a formal disciplinary proceeding was pending before such an authority and the proceeding concerned the individual’s or entity’s professional competence, professional performance, or financial integrity.

(5) Exclusion or suspension under Federal or State health care program

Any individual or entity which has been suspended or excluded from participation, or otherwise sanctioned, under—

(A) any Federal program, including programs of the Department of Defense or the Department of Veterans Affairs, involving the provision of health care, or

(B) a State health care program,

for reasons bearing on the individual’s or entity’s professional competence, professional performance, or financial integrity.

(6) Claims for excessive charges or unnecessary services and failure of certain organizations to furnish medically necessary services

Any individual or entity that the Secretary determines—

(A) has submitted or caused to be submitted bills or requests for payment (where such bills or requests are based on charges or cost) under subchapter XVIII of this chapter
or a State health care program containing charges (or, in applicable cases, requests for payment of costs) for items or services furnished substantially in excess of such individual's or entity's usual charges (or, in applicable cases, substantially in excess of such individual's or entity's costs) for such items or services, unless the Secretary finds there is good cause for such bills or requests containing such charges or costs;

(B) has furnished or caused to be furnished items or services to patients (whether or not eligible for benefits under subchapter XVIII of this chapter or under a State health care program) substantially in excess of the needs of such patients or of a quality which fails to meet professionally recognized standards of health care;

(C) is—

(i) a health maintenance organization (as defined in section 1396b(m) of this title) providing items and services under a State plan approved under subchapter XIX of this chapter, or

(ii) an entity furnishing services under a waiver approved under section 1396m(b)(1) of this title,

and has failed substantially to provide medically necessary items and services that are required (under law or the contract with the State under subchapter XIX of this chapter) to be provided to individuals covered under that plan or waiver, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals; or

(D) is an entity providing items and services as an eligible organization under a risk-sharing contract under section 1395mm of this title and has failed substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under the risk-sharing contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals.

(7) Fraud, kickbacks, and other prohibited activities

Any individual or entity that the Secretary determines has committed an act which is described in section 1320a–7a, 1320a–7b, or 1320a–8 of this title.

(8) Entities controlled by a sanctioned individual

Any entity with respect to which the Secretary determines that a person—

(A)(i) who has a direct or indirect ownership or control interest of 5 percent or more in the entity or with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in that entity,

(ii) who is an officer, director, agent, or managing employee (as defined in section 1320a–5(b) of this title) of that entity; or

(iii) who was described in clause (i) but is no longer so described because of a transfer of ownership or control interest, in anticipation of (or following) a conviction, assessment, or exclusion described in subparagraph (B) against the person, to an immediate family member (as defined in subsection (j)(1) of this section) or a member of the household of the person (as defined in subsection (j)(2) of this section) who continues to maintain an interest described in such clause—

is a person—

(B)(i) who has been convicted of any offense described in subsection (a) of this section or in paragraph (1), (2), or (3) of this subsection;

(ii) against whom a civil monetary penalty has been assessed under section 1320a–7a or 1320a–8 of this title; or

(iii) who has been excluded from participation under a program under subchapter XVIII of this chapter or under a State health care program.

(9) Failure to disclose required information

Any entity that did not fully and accurately make any disclosure required by section 1320a–3 of this title, section 1320a–3a of this title, or section 1320a–5 of this title.

(10) Failure to supply requested information on subcontractors and suppliers

Any disclosing entity (as defined in section 1320a–3(a)(2) of this title) that fails to supply (within such period as may be specified by the Secretary in regulations) upon request specifically addressed to the entity by the Secretary or by the State agency administering or supervising the administration of a State health care program—

(A) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom the entity has had, during the previous 12 months, business transactions in an aggregate amount in excess of $25,000, or

(B) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between the entity and any wholly owned supplier or between the entity and any subcontractor.

(11) Failure to supply payment information

Any individual or entity furnishing, ordering, referring for furnishing, or certifying the need for items or services for which payment may be made under subchapter XVIII of this chapter or a State health care program that fails to provide such information as the Secretary or the appropriate State agency finds necessary to determine whether such payments are or were due and the amounts thereof, or has refused to permit such examination of its records by or on behalf of the Secretary or that agency as may be necessary to verify such information.

(12) Failure to grant immediate access

Any individual or entity that fails to grant immediate access, upon reasonable request (as defined by the Secretary in regulations) to any of the following:

(A) To the Secretary, or to the agency used by the Secretary, for the purpose speci-
(14) Default on health education loan or scholarship obligations

Any individual who the Secretary determines is in default on repayments of scholarship obligations or loans in connection with health professions education made or secured, in whole or in part, by the Secretary and with respect to whom the Secretary has taken all reasonable steps available to the Secretary to secure repayment of such obligations or loans, except that (A) the Secretary shall not exclude pursuant to this paragraph a physician who is the sole community physician or sole source of essential specialized services in a community if a State requests that the physician not be excluded, and (B) the Secretary shall take into account, in determining whether to exclude any other physician pursuant to this paragraph, access of beneficiaries to physician services for which payment may be made under subchapter XVIII or XIX of this chapter.

(15) Individuals controlling a sanctioned entity

(A) Any individual—

(i) who has a direct or indirect ownership or control interest in a sanctioned entity and who knows or should know (as defined in section 1320a–7a(i)(6) of this title) of the action constituting the basis for the conviction or exclusion described in subparagraph (B); or

(ii) who is an officer or managing employee (as defined in section 1320a–5(b) of this title) of such an entity.

(B) For purposes of subparagraph (A), the term “sanctioned entity” means an entity—

(i) that has been convicted of any offense described in subsection (a) of this section or in paragraph (1), (2), or (3) of this subsection; or

(ii) that has been excluded from participation under a program under subchapter XVIII of this chapter or under a State health care program.

(16) Making false statements or misrepresentation of material facts

Any individual or entity that knowingly makes or causes to be made any false statement, omission, or misrepresentation of a material fact in any application, agreement, bid, or contract to participate or enroll as a provider of services or supplier under a Federal health care program (as defined in section 1320a–7b(f) of this title), including Medicare Advantage organizations under part C of subchapter XVIII, prescription drug plan sponsors under part D of subchapter XVIII, Medicaid managed care organizations under subchapter XIX, and entities that apply to participate as providers of services or suppliers in such managed care organizations and such plans.

(c) Notice, effective date, and period of exclusion

(1) An exclusion under this section or under section 1320a–7a of this title shall be effective at such time and upon such reasonable notice to the public and to the individual or entity excluded as may be specified in regulations consistent with paragraph (2).

(2)(A) Except as provided in subparagraph (B), such an exclusion shall be effective with respect to services furnished to an individual on or after the effective date of the exclusion.

(B) Unless the Secretary determines that the health and safety of individuals receiving services warrants the exclusion taking effect earlier, an exclusion shall not apply to payments made under subchapter XVIII of this chapter or under a State health care program for—

(i) inpatient institutional services furnished to an individual who was admitted to such institution before the date of the exclusion, or

(ii) home health services and hospice care furnished to an individual under a plan of care established before the date of the exclusion, until the passage of 30 days after the effective date of the exclusion.

(3)(A) The Secretary shall specify, in the notice of exclusion under paragraph (1) and the written notice under section 1320a–7a of this title, the minimum period (or, in the case of an individual or entity that has been excluded under subsection (b)(12) of this section or in the case described in subparagraph (G), the period) of the exclusion.

(B) Subject to subparagraph (G), in the case of an exclusion under subsection (a) of this section, the minimum period of exclusion shall be not less than five years, except that, upon the request of the administrator of a Federal health care program (as defined in section 1320a–7b(f) of this title) who determines that the exclusion would impose a hardship on beneficiaries (as defined in section 1320a–7a(i)(5) of this title) of that program, the Secretary may, after consulting with the Inspector General of the Department of Health and Human Services, waive the exclusion under subsection (a)(1), (a)(3), or (a)(4) of this section with respect to that program in the case of an individual or entity that is the sole community physician or sole source of essential specialized services in a community. The Secretary’s decision whether to waive the exclusion shall not be reviewable.

(C) In the case of an exclusion of an individual under subsection (b)(12) of this section, the pe-
period of the exclusion shall be equal to the sum of—

(i) the length of the period in which the individual failed to grant the immediate access described in that subsection, and

(ii) an additional period, not to exceed 90 days, set by the Secretary.

(D) Subject to subparagraph (G), in the case of an exclusion of an individual or entity under paragraph (1), (2), or (3) of subsection (b) of this section, the period of the exclusion shall be 3 years, unless the Secretary determines in accordance with published regulations that a shorter period is appropriate because of mitigating circumstances or that a longer period is appropriate because of aggravating circumstances.

(E) In the case of an exclusion of an individual or entity under subsection (b)(4) or (b)(5) of this section, the period of the exclusion shall not be less than the period during which the individual's or entity's license to provide health care is revoked, suspended, or surrendered, or the individual or the entity is excluded or suspended from a Federal or State health care program.

(F) In the case of an exclusion of an individual or entity under subsection (b)(6)(B) of this section, the period of the exclusion shall be not less than 1 year.

(G) In the case of an exclusion of an individual under subsection (a) of this section based on a conviction occurring on or after August 5, 1997, if the individual has (before, on, or after August 5, 1997) been convicted—

(i) on one previous occasion of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be not less than 10 years, or

(ii) on 2 or more previous occasions of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be permanent.

(d) Notice to State agencies and exclusion under State health care programs

(1) Subject to paragraph (3), the Secretary shall exercise the authority under this section and section 1320a–7a of this title in a manner that results in an individual's or entity's exclusion from all the programs under subchapter XVIII of this chapter and all the State health care programs in which the individual or entity may otherwise participate.

(2) The Secretary shall promptly notify each appropriate State agency administering or supervising the administration of each State health care program (and in the case of an exclusion effected pursuant to subsection (a) of this section and to which section 824(a)(5) of title 21 may apply, the Attorney General)—

(A) of the fact and circumstances of each exclusion effected against an individual or entity under this section or section 1320a–7a of this title, and

(B) of the period (described in paragraph (3)) for which the State agency is directed to exclude the individual or entity from participation in the State health care program.

(3) (A) Except as provided in subparagraph (B), the period of the exclusion under a State health care program under paragraph (2) shall be the same as any period of exclusion under subchapter XVIII of this chapter.

(B)(i) The Secretary may waive an individual's or entity's exclusion under a State health care program under paragraph (2) if the Secretary receives and approves a request for the waiver with respect to the individual or entity from the State agency administering or supervising the administration of the program.

(ii) A State health care program may provide for a period of exclusion which is longer than the period of exclusion under subchapter XVIII of this chapter.

(e) Notice to State licensing agencies

The Secretary shall—

(1) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of an individual or entity excluded (or directed to be excluded) from participation under this section or section 1320a–7a of this title, of the fact and circumstances of the exclusion,

(2) request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy, and

(3) request that the State or local agency or authority keep the Secretary and the Inspector General of the Department of Health and Human Services fully and currently informed with respect to any actions taken in response to the request.

(f) Notice, hearing, and judicial review

(1) Subject to paragraph (2), any individual or entity that is excluded (or directed to be excluded) from participation under this section is entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title, except that, in so applying such sections and section 405(l) of this title, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(2) Unless the Secretary determines that the health or safety of individuals receiving services warrants the exclusion taking effect earlier, any individual or entity that is the subject of an adverse determination under subsection (b)(7) of this section shall be entitled to a hearing by an administrative law judge (as provided under section 405(b) of this title) on the determination under subsection (b)(7) of this section before any exclusion based upon the determination takes effect.

(3) The provisions of section 405(b) of this title shall apply with respect to this section and sections 1320a–7a, 1320a–8, and 1320c–5 of this title to the same extent as it is applicable with respect to subchapter II of this chapter, except that, in so applying such section and section 405(l) of this title, any reference therein to the Commissioner of Social Security shall be considered a reference to the Secretary.

(4) The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this section to the same extent as they are applicable with respect to subchapter II of this chapter.
applicable with respect to subchapter II. The Secretary may delegate the authority granted by section 405(d) of this title (as made applicable to this section) to the Inspector General of the Department of Health and Human Services for purposes of any investigation under this section.

(g) Application for termination of exclusion

(1) An individual or entity excluded (or directed to be excluded) from participation under this section or section 1320a–7a of this title may apply to the Secretary, in the manner specified by the Secretary in regulations and at the end of the minimum period of exclusion provided under subsection (c)(3) of this section and at such other times as the Secretary may provide, for termination of the exclusion effected under this section or section 1320a–7a of this title.

(2) The Secretary may terminate the exclusion if the Secretary determines, on the basis of the conduct of the applicant which occurred after the date of the notice of exclusion or which was unknown to the Secretary at the time of the exclusion, that—

(A) there is no basis under subsection (a) or (b) of this section or section 1320a–7a(a) of this title for a continuation of the exclusion, and

(B) there are reasonable assurances that the types of actions which formed the basis for the original exclusion have not recurred and will not recur.

(3) The Secretary shall promptly notify each appropriate State agency administering or supervising the administration of each State health care program (and, in the case of an exclusion effected pursuant to subsection (a) of this section and to which section 824(a)(5) of title 21 may apply, the Attorney General) of the fact and circumstances of each termination of exclusion made under this subsection.

(h) "State health care program" defined

For purposes of this section and sections 1320a–7a and 1320a–7b of this title, the term "State health care program" means

(1) a State plan approved under subchapter XIX of this chapter,

(2) any program receiving funds under subchapter V of this chapter and from an allotment to a State under such subchapter,

(3) any program receiving funds under division A of subchapter XX of this chapter or from an allotment to a State under such division, or

(4) a State child health plan approved under subchapter XXI of this chapter.

(i) "Convicted" defined

For purposes of subsections (a) and (b) of this section, an individual or entity is considered to have been "convicted" of a criminal offense—

(1) when a judgment of conviction has been entered against the individual or entity by a Federal, State, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged; and

(2) when there has been a finding of guilt against the individual or entity by a Federal, State, or local court;

(3) when a plea of guilty or nolo contendere by the individual or entity has been accepted by a Federal, State, or local court; or

(4) when the individual or entity has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

(j) Definition of immediate family member and member of household

For purposes of subsection (b)(8)(A)(iii) of this section:

(1) The term "immediate family member" means—

(A) the husband or wife of the person;

(B) the natural or adoptive parent, child, or sibling of the person;

(C) the stepparent, stepchild, stepbrother, or stepsister of the person;

(D) the father-, mother-, daughter-, son-, brother-, or sister-in-law of the person;

(E) the grandparent or grandchild of the person; and

(F) the spouse of a grandparent or grandchild of the person.

(2) The term "member of the household" means, with respect to any person, any individual sharing a common abode as part of a single family unit with the person, including domestic employees and others who live together as a family unit, but not including a roofer or boarder.


REFERENCES IN TEXT

Division A of subchapter XX, referred to in subsec. (b)(3), was in the original a reference to subtitle 1 of title XX, which was translated as if referring to subtitle A of title XX of the Social Security Act, to reflect the probable intent of Congress. Title XX of the Act, enacting subchapter XX of this chapter, does not contain a subtitle 1.

AMENDMENTS

2010—Subsec. (b)(2). Pub. L. 111–148, § 6408(c), inserted "or audit" after "investigation" in the heading, sub-

See References in Text note below.
stututed “investigation or audit related to—” for “investigation into any criminal offense described in paragraph (1) or in subsection (a) of this section,” and added cls. (i) and (j).


Subsec. (c)(3)(B), Pub. L. 111–148, § 4602(k), substituted “beneficiaries (as defined in section 1320a–7a(i)(5) of this title) of that program” for “individuals entitled to benefits under part A of subchapter XVIII of this chapter or enrolled under part B of such subchapter, or both”.


2003—Subsec. (c)(3)(B). Pub. L. 108–173 amended first sentence generally. Prior to amendment, first sentence read as follows: “Subject to subparagraph (G), in the case of an exclusion under subsection (a) of this section, the minimum period of exclusion shall be not less than five years, except that, upon the request of a State, the Secretary may waive the exclusion under subsection (a)(1) of this section in the case of an individual or entity that is the sole community physician or sole source of essential specialized services in a community.”

1997—Subsec. (a). Pub. L. 105–33, § 4331(c)(1), substituted “any Federal health care program (as defined in section 1320a–7a(h)(1) of this title)” for “any program under subchapter XVIII of this chapter and shall direct that the following individual or entities be excluded from participation in any State health care program (as defined in subsection (b) of this section)” in introductory provisions.

Subsec. (b). Pub. L. 105–33, § 4331(c)(2), substituted “any Federal health care program (as defined in section 1320a–7a(h)(1) of this title)” for “any program under subchapter XVIII of this chapter and may direct that the following individual or entities be excluded from participation in any State health care program” in introductory provisions.


Subsec. (c)(3)(A). Pub. L. 105–33, § 4301(1), inserted “or in the case described in subparagraph (G)” after “subsection (b)(12) of this section”.

Subsec. (c)(3)(B), (D). Pub. L. 105–33, § 4301(2), substituted “Subject to subparagraph (G), in the case” for “In the case”.


Subsec. (b)(1). Pub. L. 104–191, § 221(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Any individual or entity that has been convicted, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a program operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.”

Subsec. (b)(2). Pub. L. 104–191, § 221(b)(2), substituted “Misdemeanor conviction” for “conviction” in heading and “and criminal offense consisting of a misdemeanor” for “criminal offense” in text.


Subsec. (c)(3)(D) to (F). Pub. L. 104–191, § 212, added subpars. (D) to (F).

1994—Subsec. (b)(7). Pub. L. 103–296, § 206(b)(2)(A), substituted “section 1320a–7a, 1320a–7b, or 1320a–8 of this title” for “section 1320a–7a of this title or section 1320a–7b of this title”.

Subsec. (b)(8)(B)(ii). Pub. L. 103–296, § 206(b)(2)(B), inserted “or 1320a–8” after “section 1320a–7a”.

Subsec. (f)(1). Pub. L. 103–296, § 108(b)(8)(A), inserted before period at end “, except that, in so applying such sections and section 405(l) of this title, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively”.


Pub. L. 101–209 inserted “the right to apply for or renew such a license” after “lost such a license”.


Subsec. (d)(5)(B)(ii). Pub. L. 100–360, § 411(k)(10)(C), struck out “under a program after “longer than the period of exclusion”.

1987—Pub. L. 100–93 amended section generally, substituting subsecs. (a) to (i) for former subsecs. (a) to (f).

Subsec. (b)(6)(A)(ii). Pub. L. 100–203, § 4118(e)(5), as added by Pub. L. 100–360, § 411(k)(10)(D), inserted at beginning “who has a direct or indirect ownership or control interest of 5 percent or more in the entity or”.

Subsec. (d)(1). Pub. L. 100–203, § 4118(e)(4)(A), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted “this section and section 1320a–7a of this title” for “subsection (b) of this section”.


Subsec. (i). Pub. L. 100–203, § 4118(e)(5)(A), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted “an individual or entity” for “a physician or other individual” in introductory provisions.

Pub. L. 100–203, § 4118(e)(5)(B), as added by Pub. L. 100–360, § 411(k)(10)(D), which directed amendment of pars. (1) to (4) by substituting “individual or entity” for “physician or other individual” each place it appears, was executed by substituting “individual or entity” for “physician or individual” in pars. (1) to (4) as the probable intent of Congress.

Subsec. (i)(4). Pub. L. 100–203, § 4118(e)(5)(C), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted “first offender, deferred adjudication, or other arrangement or program” for “first offender or other program”.


1984—Subsecs. (b) to (e). Pub. L. 98–369 added subsec. (b), redesignated former subsecs. (b) to (d) as (c) to (e), respectively, and in subsec. (e) substituted “Any person and “(a), (b), or (c)” for “(a) or (b)”.

1981—Subsec. (a)(1). Pub. L. 97–35, § 2105(b)(1), struck out “, for such period as he may deem appropriate,” after “subchapter XVIII of this chapter”.

Subsec. (a)(2). Pub. L. 97–35, § 2533(k), substituted in subpar. (A) “subchapter XIX of this chapter” for “subchapter XIX or subchapter XX of this chapter”, and in subpar. (B) “subchapter XIX of this chapter” for “subchapter XIX or subchapter XX of this chapter”. **Page 2122**
Subsec. (b) to (d). Pub. L. 97-35, §2105(b)(2)–(4), added subsec. (b), redesignated former subsec. (b) and (c) as (c) and (d), respectively, and in subsec. (d) as so redesignated substituted "subsection (a) or (b)" for "subsection (a)".

**Effective Date of 2010 Amendment**

Pub. L. 111-148, title VI, §6408(d), Mar. 23, 2010, 124 Stat. 769, provided that: "The amendments made by this section [amending this section and sections 1395u and 1395cc of this title] shall apply to orders, certifications, and referrals made on or after January 1, 2010.

(2) Exception.—The amendments made by subsection (b)(1) [amending section 1395w-27 of this title] take effect on the date of enactment of this Act [Mar. 23, 2010]."

**Effective Date of 1997 Amendment**

Section 4331(b) of Pub. L. 105-33 provided that: "The amendments made by this section [amending this section and sections 1320a-7a and 1395w-27 of this title] shall apply to acts committed on or after January 1, 2010.

(2) Exception.—The amendments made by subsection (b)(1) [amending section 1395w-27 of this title] take effect on the date of enactment of this Act [Aug. 5, 1997]."

**Effective Date of 1996 Amendment**

Section 218 of Pub. L. 104-191 provided that: "Except as otherwise provided, the amendments made by this subtitle [subtitle B, §§211-218, of title II of Pub. L. 104-191, amending this section and sections 1320a-7b, 1320c-5, and 1395mm of this title] shall take effect January 1, 1997.

**Effective Date of 1994 Amendment**

Amendment by section 108(b)(9) of Pub. L. 103-296 effective Mar. 31, 1994, see section 110(a) of Pub. L. 103-296, set out as an effective date under section 401 of this title.

**Effective Date of 1990 Amendment**

Amendment by Pub. L. 101-508 applicable with respect to items or services furnished on or after Jan. 1, 1993, in the case of items or services furnished by a provider who, on or before Nov. 5, 1990, has furnished items or services for which payment may be made under part B of subchapter XVIII of this chapter, or Jan. 1, 1992, in the case of items or services furnished by any other provider, see section 4164(b)(4) of Pub. L. 101-508, set out as an Effective Date note under section 1320a-3 of this title.

**Effective Date of 1989 Amendment**

Section 6411(d)(4)(A) of Pub. L. 101-239 provided that: "The amendments made by paragraphs (1) and (2) [amending this section and sections 1395u and 1396b of this title] shall take effect on the date of the enactment of this Act [Dec. 19, 1989]."

**Effective Date of 1988 Amendment**

Except as specifically provided in section 411 of Pub. L. 100-360, amendment by Pub. L. 100-360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, effective as if included in the enactment of that provision in Pub. L. 100-203, see section 706(a)(3) of Pub. L. 100-203 (as redesignated by subsection (a) of OBRA; Effective Date note under section 106 of Title 1, General Provisions.

**Effective Date of 1987 Amendment**

Section 15 of Pub. L. 100-93 provided that: "(a) In General.—Except as provided in subsections (b), (c), (d), and (e), the amendments made by this Act (enacting sections 1395u and 1396b of this title) shall apply to claims presented for services performed on or after the effective date specified in subsection (a), without regard to the date the misrepresentation of fact was made.

(1) Treatment of Certain Denials of Payment.—For purposes of section 1122(b)(8)(B)(iii) of the Social Security Act [subsec. (b)(8)(B)(ii) of this section] (as added by section 2 of this Act), a person shall be considered to have been excluded from participation under a program under title XVIII [subchapter XVIII of this chapter] if payment to the person has been denied under section 1820(d) of the Social Security Act [section 1395(d) of this title], as in effect before the effective date specified in subsection (a)."

"(2) Clarification of Medicaid Moratorium.—The amendments made by section 9 of this Act (enacting provisions set out as a note under section 1396a of this title) shall apply as though they were originally included in the enactment of section 2373(c) of the Deficit Reduction Act of 1984 [set out as a note under section 1396a of this title]."

"(a) in General.—Except as provided in subsections (b), (c), (d), and (e), the amendments made by this Act (enacting sections 1395u and 1396b of this title) shall apply to claims presented for services performed on or after the effective date specified in subsection (a), without regard to the date the misrepresentation of fact was made.

"(2) Clarification of Medicaid Moratorium.—The amendments made by section 9 of this Act (enacting provisions set out as a note under section 1396a of this title) shall apply as though they were originally included in the enactment of section 2373(c) of the Deficit Reduction Act of 1984 [set out as a note under section 1396a of this title]."

"(a) in General.—Except as provided in subsections (b), (c), (d), and (e), the amendments made by this Act (enacting sections 1395u and 1396b of this title) shall apply to claims presented for services performed on or after the effective date specified in subsection (a), without regard to the date the misrepresentation of fact was made.

"(2) Clarification of Medicaid Moratorium.—The amendments made by section 9 of this Act (enacting provisions set out as a note under section 1396a of this title) shall apply as though they were originally included in the enactment of section 2373(c) of the Deficit Reduction Act of 1984 [set out as a note under section 1396a of this title].

(b) Mandatory Minimum Exclusions Apply Prospectively.—Section 1122(c)(3)(B) of the Social Security Act [subsec. (c)(3)(B) of this section] (as added by this Act), which requires an exclusion of not less than five years in the case of certain exclusions, shall not apply to exclusions based on convictions occurring before the date of the enactment of this Act [Aug. 18, 1987].

(c) Effective Date for Changes in Medicaid Law.—(1) The amendments made by section 5 and 8(f) of this Act [amending section 1396f-2 of this title and amending sections 1396a and 1396b of this title] apply as provided under paragraph (2) to payments under title XIX of the Social Security Act [subchapter XIX of this chapter] for calendar quarters beginning more than thirty days after the date of the enactment of this Act [Aug. 18, 1987], without regard to whether or not final regulations to carry out such amendments have been published by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this Act, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(3) Subsection (i) of section 1128A of the Social Security Act [section 1128A(a)(1)(A) of this Act] (as amended by section 3(f) of this Act) takes effect on the date of the enactment of this Act.

(d) Physician Misrepresentations.—Clauses (ii) and (iii) of section 1128A(a)(1)(C) of the Social Security Act [section 1320a-7a(a)(1)(C)(ii), (iii) of this title], as amended by section 3(a)(1) of this Act, apply to claims presented for services performed on or after the effective date specified in subsection (a), without regard to the date the misrepresentation of fact was made.

"(e) Clarification of Medicaid Moratorium.—The amendments made by section 9 of this Act (enacting provisions set out as a note under section 1396a of this title) shall apply as though they were originally included in the enactment of section 2373(c) of the Deficit Reduction Act of 1984 [set out as a note under section 1396a of this title].

"(f) Treatment of Certain Denials of Payment.—For purposes of section 1122(b)(8)(B)(iii) of the Social Security Act [subsec. (b)(8)(B)(ii) of this section] (as added by section 2 of this Act), a person shall be considered to have been excluded from participation under a program under title XVIII [subchapter XVIII of this chapter] if payment to the person has been denied under section 1820(d) of the Social Security Act [section 1395(d) of this title], as in effect before the effective date specified in subsection (a)."
§ 1320a-7a

CIVIL MONETARY PENALTIES

(a) Improperly filed claims

Any person (including an organization, agency, or other entity, but excluding a beneficiary, as defined in subsection (1)(5) of this section) that—

(1) knowingly presents or causes to be presented to an officer, employee, or agent of the United States, or of any department or agency thereof, or of any State agency (as defined in subsection (1)(1) of this section), a claim (as defined in subsection (1)(2) of this section) that the Secretary determines—

(A) is for a medical or other item or service that the person knows or should know was not provided as claimed, including any person who engages in a pattern or practice of presenting or causing to be presented a claim for an item or service that is based on a code that the person knows or should know will result in a greater payment to the person than the code the person knows or should know is applicable to the item or service actually provided,

(B) is for a medical or other item or service and the person knows or should know the claim is false or fraudulent,

(C) is presented for a physician’s service (or an item or service incident to a physician’s service) by a person who knows or should know that the individual who furnished (or supervised the furnishing of) the service—

(i) was not licensed as a physician,

(ii) was licensed as a physician, but such license had been obtained through a misrepresentation of material fact (including cheating on an examination required for licensing), or

(iii) represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board when the individual was not so certified,

(D) is for a medical or other item or service furnished during a period in which the person was excluded from the Federal health care program (as defined in section 1320a-7b(f) of this title) under which the claim was made pursuant to Federal law,

(E) is for a pattern of medical or other items or services that a person knows or should know are not medically necessary;

(2) knowingly presents or causes to be presented to any person a request for payment which is in violation of the terms of (A) an assignment under section 1395u(b)(3)(B)(ii) of this title, or (B) an agreement with a State agency (or other requirement of a State plan under subchapter XIX of this chapter) not to charge a person for an item or service in excess of the amount permitted to be charged, or

(C) an agreement to be a participating physician or supplier under section 1395u(b)(1) of this title, or (D) an agreement pursuant to section 1395w(a)(1)(G) of this title;

(3) knowingly gives or causes to be given to any person, with respect to coverage under subchapter XVIII of this chapter of inpatient hospital services subject to the provisions of section 1395ww of this title, information that he knows or should know is false or misleading, and that could reasonably be expected to influence the decision when to discharge such person or another individual from the hospital;

(4) in the case of a person who is not an organization, agency, or other entity, is excluded from participating in a program under subchapter XVIII of this chapter or a State health care program in accordance with this subchapter or under section 1320a-7 of this title and who, at the time of a violation of this subchapter—

(A) retains a direct or indirect ownership or control interest in an entity that is participating in a program under subchapter XVIII of this chapter or a State health care program, and who knows or should know of the action constituting the basis for the exclusion; or

(B) is an officer or managing employee (as defined in section 1320a-5(b) of this title) of such an entity;

(5) offers to or transfers remuneration to any individual eligible for benefits under subchapter XVIII of this chapter, or under a State health care program (as defined in section 1320a-7(h) of this title) that such person knows or should know is likely to influence such individual to order or receive from a particular provider, practitioner, or supplier any item or service for which payment may be made, in whole or in part, under subchapter XVIII of this chapter, or a State health care program (as so defined);

(6) arranges or contracts (by employment or otherwise) with an individual or entity that the person knows or should know is excluded from participation in a Federal health care program (as defined in section 1320a-7b(f) of this title), for the provision of items or services for which payment may be made under such a program;
(7) commits an act described in paragraph (1) or (2) of section 1320a–7b(b) of this title;

(8) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim for payment for items and services furnished under a Federal health care program; or

(9) fails to grant timely access, upon reasonable request (as defined by the Secretary in regulations), to the Inspector General of the Department of Health and Human Services, for the purpose of audits, investigations, evaluations, or other statutory functions of the Inspector General of the Department of Health and Human Services;

(8) orders or prescribes a medical or other item or service during a period in which the person was excluded from a Federal health care program (as so defined), in the case where the person knows or should know that a claim for such medical or other item or service will be made under such a program;

(9) knowingly makes or causes to be made any false statement, omission, or misrepresentation of a material fact in any application, bid, or contract to participate or enroll as a provider of services or a supplier under a Federal health care program (as so defined), including Medicare Advantage organizations under part C of subchapter XVIII, prescription drug plan sponsors under part D of subchapter XVIII, medicaid managed care organizations under subchapter XIX, and entities that apply to participate as providers of services or suppliers in such managed care organizations and such plans;

(10) knows of an overpayment (as defined in paragraph (4) of section 1320a–7k(d) of this title) and does not report and return the overpayment in accordance with such section;

shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $10,000 for each item or service (or, in cases under paragraph (3), $15,000 for each individual with respect to whom false or misleading information was given; in cases under paragraph (4), $10,000 for each day the prohibited relationship occurs; in cases under paragraph (7), $50,000 for each such act, in cases under paragraph (8), $50,000 for each false record or statement, or in cases under paragraph (9), $15,000 for each day of the failure described in such paragraph; or in cases under paragraph (9), $50,000 for each false statement or misrepresentation of a material fact). In addition, such a person shall be subject to an assessment of not more than 3 times the amount claimed for each such item or service in lieu of damages sustained by the United States or a State agency because of such claim (or, in cases under paragraph (7), damages of not more than 3 times the total amount of remuneration offered, paid, solicited, or received, without regard to whether a portion of such remuneration was offered, paid, solicited, or received for a lawful purpose; or in cases under paragraph (9), an assessment of not more than 3 times the total amount claimed for each item or service for which payment was made based upon the application containing the false statement or misrepresentation of a material fact). In addition the Secretary may make a determination in the same proceeding to exclude the person from participation in the Federal health care programs (as defined in section 1320a–7b(f)(1) of this title) and to direct the appropriate State agency to exclude the person from participation in any State health care program.

(b) Payments to induce reduction or limitation of services

(1) If a hospital or a critical access hospital knowingly makes a payment, directly or indirectly, to a physician as an inducement to reduce or limit services provided with respect to individuals who—

(A) are entitled to benefits under part A or part B of subchapter XVIII of this chapter or to medical assistance under a State plan approved under subchapter XIX of this chapter, and

(B) are under the direct care of the physician,

the hospital or a critical access hospital shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each such individual with respect to whom the payment is made.

(2) Any physician who knowingly accepts receipt of a payment described in paragraph (1) shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each individual described in such paragraph with respect to whom the payment is made.

(3)(A) Any physician who executes a document described in subparagraph (B) with respect to an individual knowing that all of the requirements referred to in such subparagraph are not met with respect to the individual shall be subject to a civil monetary penalty of not more than the greater of—

(i) $5,000, or

(ii) three times the amount of the payments under subchapter XVIII of this chapter for home health services which are made pursuant to such certification.

(B) A document described in this subparagraph is any document that certifies, for purposes of subchapter XVIII of this chapter, that an individual meets the requirements of section 1395f(a)(2)(C) or 1395n(a)(2)(A) of this title in the case of home health services furnished to the individual.
(c) Initiation of proceeding; authorization by Attorney General, notice, etc., estoppel, failure to comply with order or procedure

(1) The Secretary may initiate a proceeding to determine whether to impose a civil money penalty, assessment, or exclusion under subsection (a) or subsection (b) of this section only as authorized by the Attorney General pursuant to procedures agreed upon by them. The Secretary may not initiate an action under this section with respect to any claim, request for payment, or other occurrence described in this section later than six years after the date the claim was presented, the request for payment was made, or the occurrence took place. The Secretary may initiate an action under this section by serving notice of the action in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

(2) The Secretary shall not make a determination adverse to any person under subsection (a) or (b) of this section until the person has been given written notice and an opportunity for the determination to be made on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person.

(3) In a proceeding under subsection (a) or (b) of this section which—

(A) is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statements, and

(B) involves the same transaction as in the criminal action,

the person is estopped from denying the essential elements of the criminal offense.

(4) The official conducting a hearing under this section may sanction a person, including any party or attorney, for failing to comply with an order or procedure, failing to defend an action, or other misconduct as would interfere with the speedy, orderly, or fair conduct of the hearing. Such sanction shall reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

(A) in the case of refusal to provide or permit discovery, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established,

(B) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense,

(C) striking pleadings, in whole or in part,

(D) staying the proceedings,

(E) dismissal of the action,

(F) entering a default judgment,

(G) ordering the party or attorney to pay attorneys’ fees and other costs caused by the failure or misconduct, and

(H) refusing to consider any motion or other action which is not filed in a timely manner.

(d) Amount or scope of penalty, assessment, or exclusion

In determining the amount or scope of any penalty, assessment, or exclusion imposed pursuant to subsection (a) or (b) of this section, the Secretary shall take into account—

(1) the nature of claims and the circumstances under which they were presented,

(2) the degree of culpability, history of prior offenses, and financial condition of the person presenting the claims, and

(3) such other matters as justice may require.

(e) Review by courts of appeals

Any person adversely affected by a determination of the Secretary under this section may obtain a review of such determination in the United States Court of Appeals for the circuit in which the person resides, or in which the claim was presented, by filing in such court (within sixty days following the date the person is notified of the Secretary’s determination) a written petition requesting that the determination be modified or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the Court the record in the proceeding as provided in section 2112 of title 28. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, remanding for further consideration, or setting aside, in whole or in part, the determination of the Secretary and enforcing the same to the extent that such order is affirmed or modified. No objection that has not been urged before the Secretary shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

The findings of the Secretary with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be made a part of the record. The Secretary may modify his findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and he shall file with the court such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and his recommendations, if any, for the modification or setting aside of his original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28.

(f) Compromise of penalties and assessments; recovery; use of funds recovered

Civil money penalties and assessments imposed under this section may be compromised by the Secretary and may be recovered in a civil

12So in original. Probably should not be capitalized.
action in the name of the United States brought in United States district court for the district where the claim was presented, or where the claimant resides, as determined by the Secretary. Amounts recovered under this section shall be paid to the Secretary and disposed of as follows:

(1) (A) In the case of amounts recovered arising out of a claim under subchapter XIX of this chapter, there shall be paid to the State agency an amount bearing the same proportion to the total amount recovered as the State’s share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(B) In the case of amounts recovered arising out of a claim under an allotment to a State under subchapter V of this chapter, there shall be paid to the State agency an amount equal to three-sevenths of the amount recovered.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under sections 1395d and 1395f of this title shall be repaid to such trust funds.

(3) With respect to amounts recovered arising out of a claim under a Federal health care program (as defined in section 1320a–7(b)(4) of this title), the portion of such amounts as is determined to have been paid by the program shall be repaid to the program, and the portion of such amounts attributable to the amounts recovered under this section by reason of the amendments made by the Health Insurance Portability and Accountability Act of 1996 (as estimated by the Secretary) shall be deposited into the Federal Hospital Insurance Trust Fund pursuant to section 1395h(k)(2)(C) of this title.

(4) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

The amount of such penalty or assessment, when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States or a State agency to the person against whom the penalty or assessment has been assessed.

(g) Finality of determination respecting penalty, assessment, or exclusion

A determination by the Secretary to impose a penalty, assessment, or exclusion under subsection (a) or (b) of this section shall be final upon the expiration of the sixty-day period referred to in subsection (e) of this section. Matters that were raised or that could have been raised in a hearing before the Secretary or in an appeal pursuant to subsection (e) of this section may not be raised as a defense to a civil action by the United States to collect a penalty, assessment, or exclusion assessed under this section.

(h) Notification of appropriate entities of finality of determination

Whenever the Secretary’s determination to impose a penalty, assessment, or exclusion under subsection (a) or (b) of this section becomes final, he shall notify the appropriate State or local medical or professional organization, the appropriate State agency or agencies administering or supervising the administration of State health care programs (as defined in section 1320a–7(h) of this title), and the appropriate utilization and quality control peer review organization, and the appropriate State or local licensing agency or organization (including the agency specified in section 1395aa(a) and 1396a(a)(33) of this title) that such a penalty, assessment, or exclusion has become final and the reasons therefor.

(i) Definitions

For the purposes of this section:

(1) The term “State agency” means the agency established or designated to administer or supervise the administration of the State plan under subchapter XIX of this chapter or designated to administer the State’s program under subchapter V of this chapter or division A of subchapter XX of this chapter.

(2) The term “claim” means an application for payments for items and services under a Federal health care program (as defined in section 1320a–7(b)(1) of this title).

(3) The term “item or service” includes (A) any particular item, device, medical supply, or service claimed to have been provided to a patient and listed in an itemized claim for payment, and (B) in the case of a claim based on costs, any entry in the cost report, books of account or other documents supporting such claim.

(4) The term “agency of the United States” includes any contractor acting as a fiscal intermediary, carrier, or fiscal agent or any other claims processing agent for a Federal health care program (as so defined).

(5) The term “beneficiary” means an individual who is eligible to receive items or services for which payment may be made under a Federal health care program (as so defined) but does not include a provider, supplier, or practitioner.

(6) The term “remuneration” includes the waiver of coinsurance and deductible amounts (or any part thereof), and transfers of items or services for free or for other than fair market value. The term “remuneration” does not include—

(A) the waiver of coinsurance and deductible amounts by a person, if—

(i) the waiver is not offered as part of any advertisement or solicitation;

(ii) the person does not routinely waive coinsurance or deductible amounts; and

(iii) the person—

(I) waives the coinsurance and deductible amounts after determining in good faith that the individual is in financial need; or

(II) fails to collect coinsurance or deductible amounts after making reasonable collection efforts;

(B) subject to subsection (n) of this section, any permissible practice described in any subparagraph of section 1320a–7(b)(3) of this title or in regulations issued by the Secretary;

(C) differentials in coinsurance and deductible amounts as part of a benefit plan design

See References in Text note below.
as long as the differentials have been disclosed in writing to all beneficiaries, third party payers, and providers, to whom claims are presented and as long as the differentials meet the standards as defined in regulations promulgated by the Secretary not later than 180 days after August 21, 1996;

(D) incentives given to individuals to promote the delivery of preventive care as determined by the Secretary in regulations so promulgated;

(E) a reduction in the copayment amount for covered OPD services under section 1395f(t)(5)(B) of this title; or

(F) any other remuneration which promotes access to care and poses a low risk of harm to patients and Federal health care programs (as defined in section 1320a–7(f) of this title and designated by the Secretary under regulations);

(G) the offer or transfer of items or services for free or less than fair market value by a person, if—

(i) the items or services consist of coupons, rebates, or other rewards from a retailer;

(ii) the items or services are offered or transferred on equal terms available to the general public, regardless of health insurance status; and

(iii) the offer or transfer of the items or services is not tied to the provision of other items or services reimbursed in whole or in part by the program under subchapter XVIII or a State health care program (as defined in section 1320a–7(h) of this title);

(H) the offer or transfer of items or services for free or less than fair market value by a person, if—

(i) the items or services are not offered as part of any advertisement or solicitation;

(ii) the items or services are not tied to the provision of other services reimbursed in whole or in part by the program under subchapter XVIII or a State health care program (as so defined);

(iii) there is a reasonable connection between the items or services and the medical care of the individual; and

(iv) the person provides the items or services after determining in good faith that the individual is in financial need; or

(I) effective on a date specified by the Secretary (but not earlier than January 1, 2011), the waiver by a PDP sponsor of a prescription drug plan under part D of subchapter XVIII or an MA–PD plan under part C of such subchapter of any copayment for the first fill of a covered part D drug (as defined in section 1395w–102(e) of this title) that is a generic drug for individuals enrolled in the prescription drug plan or MA–PD plan, respectively.

(7) The term “should know” means that a person, with respect to information—

(A) acts in deliberate ignorance of the truth or falsity of the information; or

(B) acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required.

(j) Subpoenas

(1) The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this section to the same extent as they are applicable with respect to subchapter II of this chapter. The Secretary may delegate the authority granted by section 405(d) of this title (as made applicable to this section) to the Inspector General of the Department of Health and Human Services for purposes of any investigation under this section.

(2) The Secretary may delegate authority granted under this section and under section 1320a–7 of this title to the Inspector General of the Department of Health and Human Services.

(k) Injunctions

Whenever the Secretary has reason to believe that any person has engaged, is engaging, or is about to engage in any activity which makes the person subject to a civil monetary penalty under this section, the Secretary may bring an action in an appropriate district court of the United States (or, if applicable, a United States court of any territory) to enjoin such activity, or to enjoin the person from concealing, removing, encumbering, or disposing of assets which may be required in order to pay a civil monetary penalty if any such penalty were to be imposed or to seek other appropriate relief.

(l) Liability of principal for acts of agent

A principal is liable for penalties, assessments, and an exclusion under this section for the actions of the principal’s agent acting within the scope of the agency.

(m) Claims within jurisdiction of other departments or agencies

(1) For purposes of this section, with respect to a Federal health care program not contained in this chapter, references to the Secretary in this section shall be deemed to be references to the Secretary or Administrator of the department or agency with jurisdiction over such program and references to the Inspector General of the Department of Health and Human Services in this section shall be deemed to be references to the Inspector General of the applicable department or agency.

(2)(A) The Secretary and Administrator of the departments and agencies referred to in paragraph (1) may include in any action pursuant to this section, claims within the jurisdiction of other Federal departments or agencies as long as the following conditions are satisfied:

(i) the case involves primarily claims submitted to the Federal health care programs of the department or agency initiating the action.

(ii) The Secretary or Administrator of the department or agency initiating the action gives notice and an opportunity to participate in the investigation to the Inspector General of the department or agency with primary jurisdiction over the Federal health care programs to which the claims were submitted.

(B) If the conditions specified in subparagraph (A) are fulfilled, the Inspector General of the de-
department or agency initiating the action is authorized to exercise all powers granted under the Inspector General Act of 1978 (5 U.S.C. App.) with respect to the claims submitted to the other departments or agencies to the same manner and extent as provided in that Act with respect to claims submitted to such departments or agencies.

(n) Safe harbor for payment of medigap premiums

(1) Subparagraph (B) of subsection (i)(6) of this section shall not apply to a practice described in paragraph (2) unless—

(A) the Secretary, through the Inspector General of the Department of Health and Human Services, promulgates a rule authorizing such a practice as an exception to remuneration; and

(B) the remuneration is offered or transferred by a person under such rule during the 2-year period beginning on the date the rule is first promulgated.

(2) A practice described in this paragraph is a practice under which a health care provider or facility pays, in whole or in part, premiums for Medicare supplemental policies for individuals entitled to benefits under part A of subchapter XVIII of this title pursuant to section 426-1 of this title.


AMENDMENTS

2010—Subsec. (a). Pub. L. 111–148, § 6408(a)(3)(B), which directed substitution of “act,” in cases under paragraph (8), $50,000 for each false record or statement, or in cases under paragraph (9), $5,000 for each day of the failure described in such paragraph” for “act”)” in first sentence, was executed by making the substitution for “act”)” to reflect the probable intent of Congress. See amendment by Pub. L. 111–148, § 6402(d)(2)(A)(iv) below.

Pub. L. 111–148, § 6408(a)(3)(A), which directed substitution of “in cases under paragraph (7)” for “in cases under paragraph (7)” in first sentence, was executed by making the substitution for “in cases under paragraph (7)” result in no change in text and to reflect the probable intent of Congress. See amendment by Pub. L. 111–148, § 6402(d)(2)(A)(iv) below.

Pub. L. 111–148, § 6402(d)(2)(A)(v), (v), in concluding provisions, struck out “or” after “prohibited relationship occurs;” and substituted “act; or in cases under paragraph (9), $50,000 for each false statement or misrepresentation of a material fact)” for “act)” and “purpose; or in cases under paragraph (9), an assessment of not more than 3 times the total amount claimed for each item or service for which payment was made based upon the application containing the false statement or misrepresentation of a material fact)” for “purpose)”.

Subsec. (a)(1)(D). Pub. L. 111–148, § 6402(d)(2)(A)(i), which directed substitution of “was excluded from the Federal health care program (as defined in section 1320a–7b(f) of this title) under which the claim was made pursuant to Federal law,” for “was excluded” and all that follows through the period at the end”, was executed by making the substitution for “was excluded” from the program under which the claim was made pursuant to a determination by the Secretary under this section or under section 1320a–7, 1320c–5, 1320c–9(b) (as in effect on September 2, 1982), 1395y(d) (as in effect on August 18, 1987), or 1395cc(b) of this title or as a result of the application of the provisions of section 1395cc(b) of this title, or”, to reflect the probable intent of Congress, because there was no period at the end.


Subsec. (a)(8), (9). Pub. L. 111–148, § 6408(a)(2), added paras. (8) and (9) relating to false or fraudulent claims for payment for items and services furnished under a Federal health care program and failure to grant timely access to the Inspector General of the Department of Health and Human Services, respectively.

Pub. L. 111–148, § 6402(d)(2)(A)(ii), added paras. (8) and (9) relating to orders or prescriptions for persons excluded from a Federal health care program; and false statements, omissions, or misrepresentations in applications, bids, or contracts to participate or enroll as a provider of services or a supplier under a Federal health care program, respectively.


Subsec. (i)(1). Pub. L. 111–148, § 6703(d)(3)(B), inserted “division A” of after “subchapter V of this chapter or”.

Subsec. (i)(6)(D). Pub. L. 111–148, §6402(d)(2)(B)(ii), in subpar. (D) relating to incentives given to individuals to promote delivery, substituted a semicolon for the period.

Subsec. (i)(6)(E). Pub. L. 111–148, §6402(d)(2)(B)(iii), redesignated subpar. (D) relating to a reduction in copayment amount for covered OPD services as (E) and substituted "or" for the period.


1998—Subsec. (i)(6)(B). Pub. L. 105–277, §5201(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "any permissible waiver as specified in section 1320a–7b(b)(3) of this title or in regulations issued by the Secretary;".


1997—Subsec. (a). Pub. L. 105–33, §4304(b)(2), in concluding provisions, substituted "occurs; or in cases under paragraph (7), $50,000 for each such act," for "(for "occurs")", and inserted ""or, in cases under paragraph (7), damages of not more than 3 times the total amount of remuneration offered, paid, solicited, or received, with regard to whether a portion of such remuneration was offered, paid, solicited, or received for a lawful purpose"" after "of such claim".


Subsec. (i)(6)(A)(i)(I). Pub. L. 105–33, §4331(e)(1), inserted "or" at end of subcl. (I), struck out "or" at end of subcl. (II), and struck out subcl. (III) which read as follows: "provides for any permissible waiver as specified in section 1320a–7b(b)(3) of this title or in regulations issued by the Secretary;".

Subsec. (i)(6)(B). Pub. L. 105–33, §4323(c)(1), which directed amendment of par. (6) by striking "or" at end of subpar. (B), could not be executed because the word "or" did not appear at end of subpar. (B) subsequent to amendment by Pub. L. 105–277, §5311(e)(2), (3), and struck out former subpar. (B) which read as follows: "in the case of an eligible organization or entity, and".

Subsec. (i)(6)(C). Pub. L. 105–33, §4323(c)(2), which directed amendment of par. (6) by substituting "; or" for the period at end of subpar. (C), could not be executed because there was not a period at the end of subpar. (C) subsequent to amendment by Pub. L. 105–33, §4321(e)(2). See below.

Pub. L. 105–33, §4331(e)(2), redesignated subpar. (B) as (C), Former subpar. (C) redesignated (D).

Subsec. (i)(6)(D). Pub. L. 105–33, §4523(c), added subpar. (D) relating to a reduction in copayment amount for covered OPD services.

Pub. L. 105–33, §4331(e)(2), redesignated subpar. (C), relating to incentives given to individuals to promote delivery, as (D).

1996—Subsec. (a). Pub. L. 104–191, §231(a), in concluding provisions, substituted "$10,000 for each day the prohibited relationship occurs" after "false or misleading information was given", and substituted "3 times the amount" for "twice the amount".

Pub. L. 104–191, §231(a)(1), in concluding provisions, substituted "Federal health care programs (as defined in section 1320a–7b(f) of this title)" for "subchapter XVIII, XIX, or XX of this chapter".


Subsec. (a)(3). Pub. L. 104–191, §231(d)(1)(B), substituted "gives or causes to be given" for "gives".


Subsec. (i)(2). Pub. L. 104–191, §231a(3)(A), substituted "a Federal health care program (as so defined)" for "a health insurance or medical services program under subchapter XVIII or XIX of this chapter".

Subsec. (i)(4). Pub. L. 104–191, §231a(3)(B), substituted "a Federal health care program (as so defined)" for "subchapter V, XVIII, XIX, or XX of this chapter".


1990—Subsec. (b)(1). Pub. L. 101–508, §4731(b)(1), struck out "or an entity with a contract under section 1396m(m) of this title" before "knowingly makes a payment" in introductory provisions.

Pub. L. 101–508, §4732(a)(3), struck out ". . . an eligible organization with a risk-sharing contract under section 1395mm of this title," after "primary care hospital" in introductory provisions, struck out "or organization" after "primary care hospital" in concluding provisions, redesignated subpar. (A) as (B), and redesignated former subpar. (B) which read as follows: "in the case of an eligible organization or an entity, are enrolled with the organization or entity, and".


Pub. L. 101–508, §4207(h), formerly §4207(b), as renumbered by Pub. L. 103–422, designated existing provisions as par. (1) and added par. (2).

1989—Subsec. (a)(1)(D), (2)(C). Pub. L. 101–234 repealed Pub. L. 100–360, §202(c), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.


Pub. L. 100–360, §202(c)(2)(A), struck out "or" after semicolon.

Subsec. (a)(2)(C). Pub. L. 100–360, §202(c)(2)(B), inserted "or to be a participating pharmacy under section 1395a(e) of this title" after "section 1395u(h)(1) of this title".


Subsec. (a)(4). Pub. L. 100–360, §202(c)(2)(C), (E), added par. (4) relating to participating or nonparticipating pharmacies.


Subsec. (c)(1). Pub. L. 100–203, § 411(e)(7), as added by Pub. L. 100–360, § 411(k)(10)(D), inserted “request for payment, or other occurrence described in this section” and “the request for payment was made, or the occurrence took place”. Pub. L. 100–93, § 3(b), (c), substituted “penalty, assessment, or exclusion” for “penalty or assessment” and inserted provision that the Secretary not initiate an action under this section with respect to a claim later than six years after the claim was presented and that the Secretary initiate an action in the manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

Subsec. (d). Pub. L. 100–93, § 3(c), substituted “penalty, assessment, or exclusion” for “penalty or assessment” in introductory provisions.

Subsec. (f)(1)(A). Pub. L. 100–93, § 3(d), substituted “bearing the same proportion to the total amount recovered as the State’s share of the amount paid by the State agency for such claim bears to the total amount paid” for “equal to the State’s share of the amount paid by the State agency”.

Subsec. (g). Pub. L. 100–93, § 3(c), substituted “penalty, assessment, or exclusion” for “penalty or assessment” in two places.

Subsec. (h). Pub. L. 100–93, § 3(c), (e), substituted “penalty, assessment, or exclusion” for “penalty or assessment” in two places and inserted “the applicable State agency or agencies administering or supervising the administration of State health care programs (as defined in section 1320a–7(h) of this title),” after “professional organization”.

Subsec. (i). Pub. L. 100–203, § 411(e)(8), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted “this section” for “this subsection” in introductory provisions.

Subsec. (i)(1). Pub. L. 100–203, § 411(e)(9), as added by Pub. L. 100–360, § 411(k)(10)(D), inserted “or subchapter XX of this chapter”.

Subsec. (j)(1)(B). Pub. L. 100–203, § 411(e)(10)(B), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted “for items and services under subchapter V” for “for items and services under subchapter V or from an allotment to a State under such subchapter, or for any item or service for which payment is made under subchapter V of this chapter or from an allotment to a State under such subchapter”.

Subsec. (k). Pub. L. 100–203, § 411(e)(10)(C), inserted “or subchapter XX of this chapter”.

Subsec. (k)(1). Pub. L. 100–360, § 411(k)(10)(D), inserted “or subchapter XX of this chapter”.

Subsec. (k)(2). Pub. L. 100–203, § 411(e)(10)(B), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted “for items and services under subchapter V” for “for items and services under subchapter V or from an allotment to a State under such subchapter, or for any item or service for which payment is made under subchapter V of this chapter or from an allotment to a State under such subchapter”.


Subsecs. (j), (k). Pub. L. 100–93, § 3(f), added subsecs. (j) and (k).


Subsec. (c). Pub. L. 99–509, § 813(c)(1)(A), (D), redesignated subsec. (b) as (c) and substituted “subsection (a)” and “subsection (b)” for “subsection (a)” and “subsection (b)” as inserted in pars. (1) and (2). Former subsec. (c) redesignated (d).


Subsec. (d). Pub. L. 99–509, § 813(c)(1)(A), (D), redesignated subsec. (c) as (d) and substituted subsection (a) and (b) for “subsection (a)” in introductory provisions. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 99–509, § 813(c)(1)(D), redesignated subsecs. (d) and (e) as (e) and (f), respectively. Former subsec. (f) redesignated (g).
Subsec. (g). Pub. L. 99–509, § 6313(c)(1)(A), (C), (D), redesignated subsec. (f) as (g) and substituted “subsection (a) or (b)” for “subsection (a)” and “subsection (e)” for “subsection (d)”. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 99–509, § 6313(c)(1)(A), (D), redesignated subsec. (g) as (h) and substituted “subsection (a) or (b)” for “subsection (a)”. Former subsec. (h) redesignated (i).


Subsec. (a). Pub. L. 97–248 redesignated part of par. (1) preceding subpar. (A) provisions formerly preceding par. (1), in subpar. (B) substituted “or pursuant to a determination by the Secretary under section 1395cc(b)(2)” for “or 1395cc(b)(2) of this title” and, in par. (2) substituted “presents or causes to be presented to any person a request for payment which is in violation of the terms of (A) an assignment under section 1842(b)(3)(B)(ii), or (B) an agreement with a State agency not to charge a person for an item or service in excess of the amount permitted to be charged” for “is submitted in violation of an agreement between the person and the United States or a State agency”.

Effective Date of 2010 Amendment
Amendment by section 6408(a) of Pub. L. 111–148 applicable to acts committed on or after Jan. 1, 2010, see section 6408(d)(1) of Pub. L. 111–148, set out as a note under section 1320a–7 of this title.

Effective Date of 1998 Amendment

Effective Date of 1997 Amendment
Amendment by section 4201(c)(1) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1320a–7 of this title.

Section 4301(c) of Pub. L. 105–33 provided that: “(1) CONTRACTS WITH EXCLUDED PERSONS.—The amendments made by subsection (a) [amending this section] shall apply to arrangements and contracts entered into after the date of the enactment of this Act [Aug. 5, 1997].”

(2) KICKBACKS.—The amendments made by subsection (b) [amending this section] shall apply to acts committed after the date of the enactment of this Act.”


Effective Date of 1996 Amendment
Section 231(i) of Pub. L. 104–191 provided that: “The amendments made by this section [amending this section and section 1395cc(b)(2) of this title] shall be applied to acts committed after the date of the enactment of this Act [Aug. 21, 1996].”

Effective Date of 1998 Amendment
Amendment by section 6408(a) of Pub. L. 105–33 applicable to items dispensed on or after Oct. 1, 1997, see section 6408(d)(1) of Pub. L. 105–33, set out as a note under section 1395a of this title.

Amendment by section 202(c)(2) of Pub. L. 100–360 applicable to years beginning after the date of the enactment of this Act [Oct. 21, 1986], and

Effective Date of 1987 Amendment
Section 4118(e)(14), formerly section 4118(e)(3), of Pub. L. 100–203, as renumbered and amended by Pub. L. 100–360, title IV, § 411(k)(10)(B) of Pub. L. 100–203, (D) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, as effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a note under section 1395a of this title.

Amendment by section 4118(e)(14), formerly section 4118(e)(3), of Pub. L. 100–203, as renumbered and amended by Pub. L. 100–360, title IV, § 411(k)(10)(B), provided that: “The amendments made by paragraph (1) [amending this section] shall apply to activities occurring before, on, or after the date of the enactment of this Act [Dec. 22, 1987].”

Amendment by Pub. L. 100–203 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, except that amendment by section 3(a)(1) of Pub. L. 100–93 applicable to claims presented for services performed on or after date at end of fourteen-day period beginning Aug. 18, 1987, with regard to the date the physician’s misrepresentation of fact was made, and amendment by section 3(f) of Pub. L. 100–93 effective Aug. 18, 1987, see section 15(a), (c)(3), and (d) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

Effective Date of 1986 Amendment
Section 9313(c)(2) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4016, Dec. 22, 1987, 101 Stat. 1203–64, Pub. L. 100–126, title VI, § 6207(a), title VII, § 7241, Dec. 21, 1989, 103 Stat. 2245, provided that: “The amendments made by paragraph (1) [amending this section] shall apply to—“(A) payments by hospitals occurring more than 6 months after the date of the enactment of this Act [Oct. 21, 1986], and “(B) payments by eligible organizations or entities occurring on or after April 1, 1991.”

Section 9317(d)(1), (2) of Pub. L. 99–509 provided that: “(1) The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 21, 1986], without regard to when the criminal conviction was obtained, but shall only apply to a conviction upon a plea of nolo contendere tendered after the date of the enactment of this Act.”

(2) The amendment made by subsection (b) [amending this section] shall apply to failures or misconduct occurring on or after the date of the enactment of this Act.”

Effective Date of 1984 Amendment
Amendment by section 2354(a)(3) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369.
98-369, set out as a note under section 1320a–1 of this title.

**Effective Date of 1982 Amendment**

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 1371(d)(2) of Pub. L. 97–248, set out as a note under section 1396u of this title.

**Regulations**

Pub. L. 105–277, div. J, title V, § 5201(e), Oct. 21, 1998, 112 Stat. 2681–917, provided that: “The Secretary of Health and Human Services may promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment, in order to implement requirements made by this section [amending this section and section 1320a–7d of this title] in a timely manner.”

**GAO Study and Report on Impact of Safe Harbor on Medigap Policies**

Pub. L. 105–277, div. J, title V, § 5201(b)(2), Oct. 21, 1998, 112 Stat. 2681–917, which provided that, if a permissible practice was promulgated under subsec. (n)(1)(A) of this section, the Comptroller General was to conduct a study comparing any disproportionate impact on adverse selection in enrolling Medicare ESRD beneficiaries before Aug. 21, 1996, and 1 year after the date of promulgation of such permissible practice under subsec. (n)(1)(A) of this section and was to submit a report to Congress on such study with recommendations concerning extension of the time limitation under subsec. (n)(1)(A) of this section, was repealed by Pub. L. 111–8, div. G, title I, § 1303(c), Mar. 11, 2009, 123 Stat. 629.

**Repeal of 1988 Expansion of Medicare Part B Benefits**

Section 201(a) of Pub. L. 101–234 provided that:

“(1) GENERAL RULE.—Except as provided in paragraph (2) through (5) of section 1502 of MCCA [sections 201 to 208 of Pub. L. 100–306, enacting section 1395w–3 of this title, amending this section and sections 1320c–3, 1355b, 1356x, 1356y, 1356z, 1356z–2, 1356y, 1356z, 1356aa, 1356bb, 1356cc, 1356mm, 1356aa, 1356bb, and 1356nn of this title, and enacting provisions set out as notes under sections 1356z–3, 1356y–1, 1356z–2, 1356y, 1356z, 1356x, 1356y, 1356z, 1356y, and 1356w of this title] repealed and the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted.

“(2) EXCEPTION.—Paragraph (1) shall not apply to subsection (a) and subsection (i) of section 250 of MCCA (amending section 1395u of this title and enacting provisions set out as a note under section 1396i of this title).”

**Study and Report on Incentive Arrangements Offered to Physicians**

Section 9313(c)(3) of Pub. L. 99–509 directed Secretary of Health and Human Services to report to Congress, not later than Jan. 1, 1988, concerning incentive arrangements offered by health maintenance organizations and competitive medical plans to physicians.

§ 1320a–7b. Criminal penalties for acts involving Federal health care programs

(a) Making or causing to be made false statements or representations

Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a Federal health care program (as defined in subsection (f) of this section),

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized,

(4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person,

(5) presents or causes to be presented a claim for a physician’s service for which payment may be made under a Federal health care program and knows that the individual who furnished the service was not licensed as a physician,

(6) for a fee knowingly and willfully counsels or assists an individual to dispose of assets (including by any transfer in trust) in order for the individual to become eligible for medical assistance under a State plan under subchapter XIX of this chapter, if disposing of the assets results in the imposition of a period of ineligibility for such assistance under section 1396p(c) of this title,

shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing (by that person) of items or services for which payment is or may be made under the program, be guilty of a felony and upon conviction thereof fined not more than $25,000 or imprisoned for not more than five years or both, and (ii) in the case of such a statement, representation, concealment, failure, conversion, or provision of counsel or assistance by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than $10,000 or imprisoned for not more than one year, or both. In addition, in any case where an individual who is otherwise eligible for assistance under a Federal health care program is convicted of an offense under the preceding provisions of this subsection, the administrator of such program may at its option (notwithstanding any other provision of such program) limit, restrict, or suspend the eligibility of that individual for such period (not exceeding one year) as it deems appropriate; but the imposition of a limitation, restriction, or suspension with respect to the eligibility of any individual under this sentence shall not affect the eligibility of any other person for assistance under the plan, regardless of the relationship between that individual and such other person.

(b) Illegal remunerations

(1) Whoever knowingly and willfully solicits or receives any remuneration (including any kick-
shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(2) Whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—

(A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(3) Paragraphs (1) and (2) shall not apply to—

(A) a discount or other reduction in price obtained by a provider of services or other entity under a Federal health care program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under a Federal health care program;

(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services;

(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed under a Federal health care program if—

(i) the person has a written contract, with each such individual or entity, which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each such individual or entity under the contract, and

(ii) in the case of an entity that is a provider of services (as defined in section 1396x(u) of this title), the person discloses (in such form and manner as the Secretary requires) to the entity and, upon request, to the Secretary the amount received from each such vendor with respect to purchases made by or on behalf of the entity;

(D) a waiver of any coinsurance under part B of subchapter XVIII of this chapter by a Federally qualified health care center with respect to an individual who qualifies for subsidized services under a provision of the Public Health Service Act [42 U.S.C. 201 et seq.];

(E) any payment practice specified by the Secretary in regulations promulgated pursuant to section 114(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987 or in regulations under section 1395w–104(e)(6) of this title;

(F) any remuneration between an organization and an individual or entity providing items or services, or a combination thereof, pursuant to a written agreement between the organization and the individual or entity if the organization is an eligible organization under section 1395mm of this title or if the written agreement, through a risk-sharing arrangement, places the individual or entity at substantial financial risk for the cost or utilization of the items or services, or a combination thereof, which the individual or entity is obligated to provide;

(G) the waiver or reduction by pharmacies (including pharmacies of the Indian Health Service, Indian tribes, tribal organizations, and urban Indian organizations) of any cost-sharing imposed under part D of subchapter XVIII of this chapter, if the conditions described in clauses (i) through (iii) of section 1320a–7a(i)(6)(A) of this title are met with respect to the waiver or reduction (except that, in the case of such a waiver or reduction on behalf of a subsidy eligible individual (as defined in section 1395w–114(a)(3) of this title), section 1320a–7a(i)(6)(A) of this title shall be applied without regard to clauses (ii) and (iii) of that section);

(H) any remuneration between a federally qualified health center (or an entity controlled by such a health center) and an MA organization pursuant to a written agreement described in section 1395w–23(a)(4) of this title;

(I) any remuneration between a health center entity described under clause (i) or (ii) of section 1396d(l)(2)(B) of this title and any individual or entity providing goods, items, services, donations, loans, or a combination thereof, to such health center entity pursuant to a contract, lease, grant, loan, or other agreement, if such agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center entity; and

(J) a discount in the price of an applicable drug (as defined in paragraph (2) of section 1395w–114a(g) of this title) of a manufacturer that is furnished to an applicable beneficiary (as defined in paragraph (1) of such section) under the Medicare coverage gap discount program under section 1395w–114a of this title.

(c) False statements or representations with respect to condition or operation of institutions

Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce

1 See References in Text note below.
the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution, facility, or entity in order that such institution, facility, or entity may qualify (either upon initial certification or upon recertification) as a hospital, critical access hospital, skilled nursing facility, nursing facility, intermediate care facility for the mentally retarded, home health agency, or any other entity (including an eligible organization under section 1395mm(b) of this title) for which certification is required under subchapter XVIII of this chapter or a State health care program (as defined in section 1320a–7(h) of this title), or with respect to information required to be provided under section 1320a–3a of this title, shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(d) Illegal patient admittance and retention practices

Whoever knowingly and willfully—

(1) charges, for any service provided to a patient under a State plan approved under subchapter XIX of this chapter, money or other consideration at a rate in excess of the rates established by the State (or, in the case of services provided to an individual enrolled with a Medicaid managed care organization under subchapter XIX of this chapter under a contract under section 1396b(m) of this title or under a contractual, referral, or other arrangement under such contract, at a rate in excess of the rate permitted under such contract), or

(2) charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under a State plan approved under subchapter XIX of this chapter, any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient)—

(A) as a precondition of admitting a patient to a hospital, nursing facility, or intermediate care facility for the mentally retarded, or

(B) as a requirement for the patient’s continued stay in such a facility,

when the cost of the services provided therein to the patient is paid for (in whole or in part) under the State plan shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(e) Violation of assignment terms

Whoever accepts assignments described in section 1395w–103 of this title, does not contain a sub./(d) of this section were subsecs. (a) to (d) of section 1395w–103 of this title, for complete classification of this Act to the Code, see Short Title note set out under Sec. (b)(3)(D), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

Section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987, referred to in subsec. (b)(3)(E), is section 14(a) of Pub. L. 100–93, which is set out below.

Section 1395w–104(e)(6) of this title, referred to in subsec. (b)(3)(E), was in the original “section 1860D–3(e)(6)”, and was translated as reading “section 1860D–4(e)(6)” to reflect the probable intent of Congress, because section 1860D–3, which is classified to section 1395w–103 of this title, does not contain a subsec. (e), and section 1395w–104(e)(6) relates to regulations.

Codification

Prior to redesignation by Pub. L. 100–93, subsecs. (a) to (d) of this section were subsections (a) to (d) of section...
1909 of act Aug. 14, 1935, which was classified to section 1396b of this title, and subsec. (e) of this section was subsec. (d) of section 1877 of act Aug. 14, 1935, which was classified to section 1395nn of this title.

**AMENDMENTS**


Subsec. (b)(3)(H). Pub. L. 111–148, § 3301(d)(1)(B), amended subpar. (H) relating to remuneration between a federally qualified health center and an MA organization by substituting a semicolon for the period at the end and realigning margins.

Subsec. (b)(3)(I). Pub. L. 111–148, § 3301(d)(1)(C)(i), (ii), redesignated subpar. (H) relating to remuneration between a health center entity and any individual or entity providing goods, items, services, donations, loans, or a combination thereof, to such health center entity as (I) and realigned margins.


Subsecs. (g), (h). Pub. L. 111–148, § 4602(1), added subsecs. (g) and (h).

2003—Subsec. (b)(3)(E). Pub. L. 108–173, § 101(e)(8)(A), which directed the amendment of subpar. (C) by inserting “or in regulations under section 1395w–104(e)(6) of this title” after “1987”, was executed by making the insertion in subpar. (E) to reflect the probable intent of Congress because “1987” does not appear in subpar. (C).


Subsec. (b)(3)(H). Pub. L. 108–173, § 431(a), added subpar. (H) relating to remuneration between a health center entity and any individual or entity providing goods, items, services, donations, loans, or a combination thereof, to such health center entity.

Pub. L. 108–173, § 237(d), added subpar. (H) relating to remuneration between a federally qualified health center and an MA organization.

1997—Subsec. (a). Pub. L. 105–33, §§ 4(a)(5), (6), 14(b), substituted “‘nursing facility, or intermediate care facility’” for “‘skilled nursing facility, or intermediate care facility’”.

Subsec. (a)(6). Pub. L. 105–33, § 4734(2), substituted “‘critical access’ for ‘rural primary care’.”

Subsec. (d)(1). Pub. L. 105–33, § 4704(b), inserted “‘or in the case of services provided to an individual enrolled with a medicaid managed care organization under subchapter XIX of this chapter under a contract under section 1396b(m) of this title or under a contractual, referral, or other arrangement under such contract, at a rate in excess of the rate permitted under such contract” after “by the State”.


Subsec. (a). Pub. L. 104–191, § 204(a)(4), in concluding provisions, substituted “a Federal health care program” for “a State plan approved under subchapter XIX of this chapter” and “the administrator of such program may at its option (notwithstanding any other provision of such program)” for “the State may at its option (notwithstanding any other provision of that subchapter or of such plan)”.

Subsec. (a)(1). Pub. L. 104–191, § 204(a)(2), substituted “a Federal health care program (as defined in subsection (f) of this section)” for “a program under subchapter XVIII of this chapter or a State health care program (as defined in section 1320a–7(b) of this title)”.

Subsec. (a)(5). Pub. L. 104–191, § 204(a)(3), substituted “a Federal” for “a program under subchapter XVIII of this chapter or a State”.


Subsec. (b). Pub. L. 104–191, § 204(a)(5), substituted “a Federal health care program” for “subchapter XVIII of this chapter or a State health care program” wherever appearing.


Subsec. (c). Pub. L. 104–191, § 204(a)(6), inserted “(as defined in section 1320a–7(h) of this title)” after “a State health care program”.


1994—Subsec. (b)(3)(B). Pub. L. 103–432, which directed substitution of “1395m(j)(5)” for “1395m(j)(4)” in subpar. (B) as amended by section 134(a) of Pub. L. 103–432, could not be executed because “1395m(j)(4)” does not appear in subpar. (B) and section 134(a) of Pub. L. 103–432 did not amend this section.


Subsec. (c). Pub. L. 101–508, § 4161(b)(2), substituted “health care program, or with respect to information required to be provided under section 1320a–3a of this title,” for “health care program”.


Pub. L. 100–203, § 6211(b)(7)(A), substituted “nursing facility, intermediate care facility for the mentally retarded” for “‘integrated care facility’”.

Subsec. (d)(2)(A). Pub. L. 100–203, § 6211(b)(7)(B), substituted “nursing facility, or intermediate care facility for the mentally retarded” for “‘skilled nursing facility, or intermediate care facility’”.

1987—Pub. L. 100–95, § 4(a)(1), substituted “Criminal penalties for acts involving Medicare or State health care programs” for “‘Offenses and penalties’ in section catchline.

Subsec. (a). Pub. L. 100–93, § 4(a)(3), (4), in concluding provisions, substituted “made under the program” for “made under this subchapter”, “approved under subchapter XIX of this chapter” for “approved under this subchapter”, and “provision of that subchapter” for “provision of this subchapter”.

Subsec. (a)(1). Pub. L. 100–93, § 4(a)(2), substituted “approved under subchapter XVII of this chapter or a State health care program (as defined in section 1320a–7(h) of this title)” for “a State plan approved under this subchapter”.


Subsec. (b)(1)(A), (B), (2)(A), (B). Pub. L. 100–93, § 4(a)(5), substituted “subchapter XVIII of this chapter or a State health care program” for “this subchapter”.

Subsec. (b)(3). Pub. L. 100–93, §§ 4(a)(6), (6), 14(b), substituted “subchapter XVIII of this chapter or a State health care program” for “this subchapter” in two places in subpar. (A) and added subpars. (C) and (D).

Subsec. (c). Pub. L. 100–203, § 609(a), as amended by Pub. L. 100–360, substituted “institution, facility, or entity” for “institution or facility” wherever appearing and inserted “(including an eligible organization under section 1395mm(b) of this title)” after “other entity”.

Pub. L. 100–93, § 4(a)(7), substituted “‘home health agency, or other entity for which certification is required under subchapter XVIII of this chapter or a State health care program’ or ‘home health agency (as those terms are employed in this subchapter)”.

Subsec. (d)(1), (2). Pub. L. 100–93, §§ 4(a)(8), 14(b), substituted “subchapter XIX of this chapter” for “this subchapter”.

Subsec. (e). Pub. L. 100–93, § 4(c), redesignated subsec. (d) of section 1395nn of this title as subsec. (e) of this section.

1984—Subsec. (e). Pub. L. 98–369 inserted “‘or agrees to be a participating physician or supplier under section 1395k(h)(1) of this title’” after “section 1395b(b)(3)(B) of this title”, and substituted “or agreement” for “specified in subclause (I) of such section”.

1396m(j)(5)
1980—Subsec. (b)(1), (2). Pub. L. 96–499 inserted "knowingly and willfully" after "Whoever".

1977—Subsec. (a). Pub. L. 95–142, § 4(b), designated existing provisions following par. (4) as cl. (i) and, as so designated, inserted provisions relating to activities of other persons, and inserted provisions authorizing the State to limit, restrict, or suspend, the eligibility of any convicted persons for benefits, and added cl. (1). See Codification note above.

Subsec. (b). Pub. L. 95–142, § 4(b), redesignated existing provisions as par. (1), substituted provisions relating to solicitation or receiving of any remuneration for return for referring an individual to a person for the furnishing or arranging for or recommending purchasing, etc., as constituting a felony punishable by a fine of not more than $25,000 and/or imprisonment for not more than five years, or for provisions relating to furnishing items or services and soliciting, offering or receiving any kickback, bribe, or rebate in connection with furnishing, etc., items or services as constituting a misdemeanor punishable by a fine of not more than $10,000 and/or imprisonment for not more than one year, and added pars. (2) and (3). See Codification note above.

Subsec. (c). Pub. L. 95–142, § 4(b), substituted provisions setting forth felony nature of criminal activities with a fine of not more than $25,000, or imprisonment for not more than five years, or both, for provisions setting forth misdemeanor nature of criminal activities with a fine of not more than $2,000, or imprisonment for not more than six months, or both. See Codification note above.


1972—Subsec. (c). Pub. L. 92–603, § 278(b)(9), substituted "skilled nursing facility" for "skilled nursing home".

EFFECTIVE DATE OF 2010 AMENDMENT
Pub. L. 111–146, title III, § 3301(d)(3), Mar. 23, 2010, 124 Stat. 468, provided that: "The amendments made by this subsection [amending this section and 1396r–8 of this title] shall apply to drugs dispensed on or after July 1, 2010."

EFFECTIVE DATE OF 2003 AMENDMENT
Pub. L. 108–173, title II, § 237(e), Dec. 8, 2003, 117 Stat. 2213, provided that: "The amendments made by this section [amending this section and sections 1395f, 1395w–21, 1395w–23, and 1395w–27 of this title] shall apply to services provided on or after January 1, 2006, and contract years beginning on or after such date."

EFFECTIVE DATE OF 1997 AMENDMENT
Amendment by section 4201(c)(1) of Pub. L. 100–360 applicable to services furnished on or after Oct. 1, 1997, section 4201(d) of Pub. L. 100–360, set out as a note under section 1395f of this title.

Amendment by section 4704(b) of Pub. L. 100–360 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, see section 4710 of Pub. L. 100–360, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 1996 AMENDMENT
Section 204(b) of Pub. L. 104–191 provided that: "The amendments made by this section [amending this section] shall take effect on January 1, 1997."

Section 216(c) of Pub. L. 104–191 provided that: "The amendments made by subsection (a) [amending this section] shall apply to written agreements entered into on or after January 1, 1997, without regard to whether regulations have been issued to implement such amendments."


EFFECTIVE DATE OF 1994 AMENDMENT
Amendment by section 133(a)(2) of Pub. L. 103–432 applicable to items or services furnished on or after Jan. 1, 1995, see section 133(c) of Pub. L. 103–432, set out as a note under section 1396m of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 416(b)(2) of Pub. L. 101–508 applicable with respect to items or services furnished on or after Jan. 1, 1993, in the case of items or services furnished by a provider who, on or before Nov. 5, 1990, has furnished items or services for which payment may be made under part B of subchapter XVIII of this chapter or Jan. 1, 1992, in the case of items or services furnished by any other provider, see section 416(a)(4) of Pub. L. 101–508, set out as an Effective Date note under section 1320a–3a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT
Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title I, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS
Amendment by section 4211(h)(7) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4211(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT
Section 4(d) of Pub. L. 95–142 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to acts occurring and statements or representations made on or after the date of the enactment of this Act [Oct. 25, 1977]."

EFFECTIVE DATE
Section 342(d) of Pub. L. 92–603 provided that: "The provisions of amendments made by this section [enacting this section and section 1396i(b) of this title and amending section 1396i of this title] shall not be applicable to any acts, statements, or representations made on or after the date of the enactment of this Act [Oct. 30, 1972]."

RULEMAKING FOR EXCEPTION FOR HEALTH CENTER ENTITY ARRANGEMENTS

"(1) ESTABLISHMENT.—

"(A) IN GENERAL.—The Secretary [of Health and Human Services] shall establish, on an expedited basis, standards relating to the exception described in section 1228(b)(4) of [now section 1128(b)(4) of the Social Security Act [42 U.S.C. 1395w–21(b)(4)]], as added by subsection (a), for health center entity arrangements to the antikickback penalties."
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“(B) FACTORS TO CONSIDER.—The Secretary shall consider the following factors, among others, in establishing standards relating to the exception for health center entity arrangements under subparagraph (A):

“(i) Whether the arrangement between the health center entity and the other party results in savings of Federal grant funds or increased revenues to the health center entity.

“(ii) Whether the arrangement between the health center entity and the other party restricts or limits an individual’s freedom of choice.

“(iii) Whether the arrangement between the health center entity and the other party protects a health care professional’s independent medical judgment regarding medically appropriate treatment.

The Secretary may also include other standards and criteria that are consistent with the intent of Congress in enacting the exception established under this section.

“(2) DEADLINE.—Not later than 1 year after the date of the enactment of this Act [Aug. 21, 1996], the Secretary shall publish final regulations establishing the standards described in paragraph (1).”

NEGOTIATED RULEMAKING FOR RISK-SHARING EXCEPTION

Section 216(b) of Pub. L. 104–191 provided that:

“(1) ESTABLISHMENT.—

“(A) IN GENERAL.—The Secretary of Health and Human Services (in this subsection referred to as the ‘Secretary’) shall establish, on an expedited basis and using a negotiated rulemaking process under subchapter 3 (III) of chapter 5 of title 5, United States Code, standards relating to the exception for risk-sharing arrangements to the anti-kickback penalties described in section 1123(b)(3)(F) of the Social Security Act [subsec. (b)(3)(F) of this section], as added by subsection (a).

“(B) FACTORS TO CONSIDER.—In establishing standards relating to the exception for risk-sharing arrangements to the anti-kickback penalties under subparagraph (A), the Secretary—

“(i) shall consult with the Attorney General and representatives of the hospital, physician, other health practitioner, and health plan communities, and other interested parties; and

“(ii) shall take into account—

“(I) the level of risk appropriate to the size and type of arrangement;

“(II) the frequency of assessment and distribution of incentives;

“(III) the level of capital contribution; and

“(IV) the extent to which the risk-sharing arrangement provides incentives to control the cost and quality of health care services.

“(C) PUBLICATION OF NOTICE.—In carrying out the rulemaking process under this subsection, the Secretary shall publish the notice provided for under section 566(a) of title 5, United States Code, by not later than 45 days after the date of the enactment of this Act [Aug. 21, 1996].

“(3) TARGET DATE FOR PUBLICATION OF RULE.—As part of the notice under paragraph (2), and for purposes of this subsection, the ‘target date for publication’ (referred to in section 566(a)(5) of such title) shall be January 1, 1997.

“(4) ABBREVIATED PERIOD FOR SUBMISSION OF COMMENTS.—In applying section 566(c) of such title under this subsection, ‘15 days’ shall be substituted for ‘30 days’.

“(5) APPOINTMENT OF NEGOTIATED RULEMAKING COMMITTEE AND FACILITATOR.—The Secretary shall provide for—

“(A) the appointment of a negotiated rulemaking committee under section 566(a) of such title by not later than 30 days after the end of the comment period provided for under section 566(c) of such title (as shortened under paragraph (4)), and

“(B) the nomination of a facilitator under section 566(c) of such title by not later than 10 days after the date of appointment of the committee.

“(6) PRELIMINARY COMMITTEE REPORT.—The negotiated rulemaking committee appointed under paragraph (5) shall report to the Secretary, by not later than October 1, 1996, regarding the committee’s progress on achieving a consensus with regard to the rulemaking proceeding and whether such consensus is likely to occur before one month before the target date for publication of the rule. If the committee reports that such consensus is likely to occur before one month before the target date, the Secretary may terminate such process and provide for the publication of a rule under this subsection through such other methods as the Secretary may provide.

“(7) FINAL COMMITTEE REPORT.—If the committee is not terminated under paragraph (6), the rulemaking committee shall submit a report containing a proposed rule by not later than one month before the target publication date.

“(8) INTERIM, FINAL EFFECT.—The Secretary shall publish a rule under this subsection in the Federal Register by not later than the target publication date. Such rule shall be effective and final immediately on an interim basis, but is subject to change and revision after public notice and opportunity for a period (of not less than 60 days) for public comment. In connection with such rule, the Secretary shall specify the process for the timely review and approval of applications of entities to be certified as provider-sponsored organizations pursuant to such rules and consistent with this subsection.

“(9) PUBLICATION OF RULE AFTER PUBLIC COMMENT.—The Secretary shall provide for consideration of such comments and republication of such rule by not later than 1 year after the target publication date.

ANTI-KICKBACK REGULATIONS

Section 14(a) of Pub. L. 100–93 provided that: “The Secretary of Health and Human Services, in consultation with the Attorney General, not later than 1 year after the date of the enactment of this Act [Aug. 18, 1987] shall publish proposed regulations, and not later than 2 years after the date of the enactment of this Act shall promulgate final regulations, specifying payment practices that shall not be treated as a criminal offense under section 1123(b) of the Social Security Act [subsec. (b) of this section] and shall not serve as the basis for an exclusion under section 1123(b)(7) of such Act. Any practices specified in regulations pursuant to the preceding sentence shall be in addition to the practices described in subparagraphs (A) through (C) of section 1123(b)(3).”

§ 1320a–7c. Fraud and abuse control program

(a) Establishment of program

(1) In general

Not later than January 1, 1997, the Secretary, acting through the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General shall establish a program—

(A) to coordinate Federal, State, and local law enforcement programs to control fraud and abuse with respect to health plans,

(B) to conduct health plan surveys, audits, evaluations, and inspections relating to the delivery of and payment for health care in the United States,

(C) to facilitate the enforcement of the provisions of sections 1320a–7, 1320a–7a, and 1320a–7b of this title and other statutes applicable to health care fraud and abuse, and

(D) to provide for the modification and establishment of safe harbors and to issue ad-
visory opinions and special fraud alerts pursuant to section 1320a–7d of this title.

(2) Coordination with health plans

In carrying out the program established under paragraph (1), the Secretary and the Attorney General shall consult with, and arrange for the sharing of data with representatives of health plans.

(3) Guidelines

(A) In general

The Secretary and the Attorney General shall issue guidelines to carry out the program under paragraph (1). The provisions of sections 553, 556, and 557 of title 5 shall not apply in the issuance of such guidelines.

(B) Information guidelines

(i) In general

Such guidelines shall include guidelines relating to the furnishing of information by health plans, providers, and others to enable the Secretary and the Attorney General to carry out the program (including coordination with health plans under paragraph (2)).

(ii) Confidentiality

Such guidelines shall include procedures to assure that such information is provided and utilized in a manner that appropriately protects the confidentiality of the information and the privacy of individuals receiving health care services and items.

(iii) Qualified immunity for providing information

The provisions of section 1320c–6(a) of this title (relating to limitation on liability) shall apply to a person providing information to the Secretary or the Attorney General in conjunction with their performance of duties under this section.

(4) Ensuring access to documentation

The Inspector General of the Department of Health and Human Services is authorized to exercise such authority described in paragraphs (3) through (9) of section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) as necessary with respect to the activities under the fraud and abuse control program established under this subsection.

(5) Authority of Inspector General

Nothing in this chapter shall be construed to diminish the authority of any Inspector General, including such authority as provided in the Inspector General Act of 1978 (5 U.S.C. App.).

(b) Additional use of funds by Inspector General

(1) Reimbursements for investigations

The Inspector General of the Department of Health and Human Services is authorized to receive and retain for current use reimbursement for the costs of conducting investigations and audits and for monitoring compliance plans when such costs are ordered by a court, voluntarily agreed to by the payor, or otherwise.

(2) Crediting

Funds received by the Inspector General under paragraph (1) as reimbursement for costs of conducting investigations shall be deposited to the credit of the appropriation from which initially paid, or to appropriations for similar purposes currently available at the time of deposit, and shall remain available for obligation for 1 year from the date of the deposit of such funds.

(c) “Health plan” defined

For purposes of this section, the term “health plan” means a plan or program that provides health benefits, whether directly, through insurance, or otherwise, and includes—

(1) a policy of health insurance;

(2) a contract of a service benefit organization; and

(3) a membership agreement with a health maintenance organization or other prepaid health plan.

(E) which read as follows: “to provide for the reporting and disclosure of certain final adverse actions against health care providers, suppliers, or practitioners pursuant to the data collection system established under section 1320a–7e of this title.”

AMENDMENTS

2010—Subsec. (a)(1)(C) to (E). Pub. L. 111–148 inserted “and” at end of subpar. (C), substituted period for “, and” at end of subpar. (D), and struck out subpar. (E) which read as follows: “to provide for the reporting and disclosure of certain final adverse actions against health care providers, suppliers, or practitioners pursuant to the data collection system established under section 1320a–7e of this title.”

REFERENCES IN TEXT


Solicitation and publication of modifications to existing safe harbors and new safe harbors

(1) In general

(A) Solicitation of proposals for safe harbors

Not later than January 1, 1997, and not less than annually thereafter, the Secretary shall publish a notice in the Federal Register soliciting proposals, which will be accepted during a 60-day period, for—

(i) modifications to existing safe harbors issued pursuant to section 1128C of the Medicare and Medicaid Patient and Program Protection Act of 1987 (42 U.S.C. 1320a–7b note);

(ii) additional safe harbors specifying payment practices that shall not be treated as a criminal offense under section 1320a–7(b)(7) of this title; and

(iii) advisory opinions to be issued pursuant to subsection (b) of this section; and

(E) which read as follows: “to provide for the reporting and disclosure of certain final adverse actions against health care providers, suppliers, or practitioners pursuant to the data collection system established under section 1320a–7e of this title.”

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–148 effective on the first day after the final day of the transition period defined in section 6403(d)(5) of Pub. L. 111–148, see section 6403(d)(6) of Pub. L. 111–148, set out as a Transition Process; Regulations; Effective Date of 2010 Amendment note under section 1320a–7e of this title.

§ 1320a–7d. Guidance regarding application of health care fraud and abuse sanctions

(a) Solicitation and publication of modifications to existing safe harbors and new safe harbors

(1) In general

(A) Solicitation of proposals for safe harbors
(iv) special fraud alerts to be issued pursuant to subsection (c) of this section.

(B) Publication of proposed modifications and proposed additional safe harbors

After considering the proposals described in clauses (i) and (ii) of subparagraph (A), the Secretary, in consultation with the Attorney General, shall publish in the Federal Register proposed modifications to existing safe harbors and proposed additional safe harbors, if appropriate, with a 60-day comment period. After considering any public comments received during this period, the Secretary shall issue final rules modifying the existing safe harbors and establishing new safe harbors, as appropriate.

(C) Report

The Inspector General of the Department of Health and Human Services (in this section referred to as the “Inspector General”) shall, in an annual report to Congress or as part of the year-end semiannual report required by section 5 of the Inspector General Act of 1978 (5 U.S.C. App.), describe the proposals received under clauses (i) and (ii) of subparagraph (A) and explain which proposals were included in the publication described in subparagraph (B), which proposals were not included in that publication, and the reasons for the rejection of the proposals that were not included.

(2) Criteria for modifying and establishing safe harbors

In modifying and establishing safe harbors under paragraph (1)(B), the Secretary may consider the extent to which providing a safe harbor for the specified payment practice may result in any of the following:

(A) An increase or decrease in access to health care services.

(B) An increase or decrease in the quality of health care services.

(C) An increase or decrease in patient freedom of choice among health care providers.

(D) An increase or decrease in competition among health care providers.

(E) An increase or decrease in the ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

(F) An increase or decrease in the cost to Federal health care programs (as defined in section 1320a–7b(f) of this title).

(G) An increase or decrease in the potential overutilization of health care services.

(H) The existence or nonexistence of any potential financial benefit to a health care professional or provider which may vary based on their decisions of—

(i) whether to order a health care item or service; or

(ii) whether to arrange for a referral of health care items or services to a particular practitioner or provider.

(I) Any other factors the Secretary deems appropriate in the interest of preventing fraud and abuse in Federal health care programs (as so defined).

(b) Advisory opinions

(1) Issuance of advisory opinions

The Secretary, in consultation with the Attorney General, shall issue written advisory opinions as provided in this subsection.

(2) Matters subject to advisory opinions

The Secretary shall issue advisory opinions as to the following matters:

(A) What constitutes prohibited remuneration within the meaning of section 1320a–7b(b) of this title or section 1320a–7a(1)(6) of this title.

(B) Whether an arrangement or proposed arrangement satisfies the criteria set forth in section 1320a–7b(3) of this title for activities which do not result in prohibited remuneration.

(C) Whether an arrangement or proposed arrangement satisfies the criteria which the Secretary has established, or shall establish by regulation for activities which do not result in prohibited remuneration.

(D) What constitutes an inducement to reduce or limit services to individuals entitled to benefits under subchapter XVIII of this chapter or subchapter XIX of this chapter within the meaning of section 1320a–7a(b) of this title.

(E) Whether any activity or proposed activity constitutes grounds for the imposition of a sanction under section 1320a–7, 1320a–7a, or 1320a–7b of this title.

(3) Matters not subject to advisory opinions

Such advisory opinions shall not address the following matters:

(A) Whether the fair market value shall be, or was paid or received for any goods, services or property.

(B) Whether an individual is a bona fide employee within the requirements of section 3121(d)(2) of the Internal Revenue Code of 1986.

(4) Effect of advisory opinions

(A) Binding as to Secretary and parties involved

Each advisory opinion issued by the Secretary shall be binding as to the Secretary and the party or parties requesting the opinion.

(B) Failure to seek opinion

The failure of a party to seek an advisory opinion may not be introduced into evidence to prove that the party intended to violate the provisions of sections 1320a–7, 1320a–7a, or 1320a–7b of this title.

(5) Regulations

(A) In general

Not later than 180 days after August 21, 1996, the Secretary shall issue regulations to carry out this section. Such regulations shall provide for—

(i) the procedure to be followed by a party applying for an advisory opinion; and

(ii) the procedure to be followed by the Secretary in responding to a request for an advisory opinion.

1 So in original. Probably should be “section”.

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Not later than 180 days after August 21, 1996, the Secretary shall issue regulations to carry out this section. Such regulations shall provide for—

(i) the procedure to be followed by a party applying for an advisory opinion; and

(ii) the procedure to be followed by the Secretary in responding to a request for an advisory opinion.
(iii) the interval in which the Secretary shall respond;
(iv) the reasonable fee to be charged to the party requesting an advisory opinion; and
(v) the manner in which advisory opinions will be made available to the public.

(B) Specific contents
Under the regulations promulgated pursuant to subparagraph (A)—

(1) the Secretary shall be required to issue to a party requesting an advisory opinion by not later than 60 days after the request is received; and

(2) the fee charged to the party requesting an advisory opinion shall be equal to the costs incurred by the Secretary in responding to the request.

(6) Application of subsection
This subsection shall apply to requests for advisory opinions made on or after the date which is 6 months after August 21, 1996.

(c) Special fraud alerts

(1) In general
(A) Request for special fraud alerts
Any person may present, at any time, a request to the Inspector General for a notice which informs the public of practices which the Inspector General considers to be suspect or of particular concern under the Medicare program under subchapter XVIII of this chapter or a State health care program, as defined in section 1320a–7a(b) of this title (in this subsection referred to as a “special fraud alert”).

(B) Issuance and publication of special fraud alerts
Upon receipt of a request described in subparagraph (A), the Inspector General shall investigate the subject matter of the request to determine whether a special fraud alert should be issued. If appropriate, the Inspector General shall issue a special fraud alert in response to the request. All special fraud alerts issued pursuant to this subparagraph shall be published in the Federal Register.

(2) Criteria for special fraud alerts
In determining whether to issue a special fraud alert upon a request described in paragraph (1), the Inspector General may consider—

(A) whether and to what extent the practices that would be identified in the special fraud alert may result in any of the consequences described in subsection (a)(2) of this section; and

(B) the manner and frequency of the conduct that would be identified in the special fraud alert.

(b) Issuance and publication of special fraud alerts

Upon receipt of a request described in subparagraph (A), the Inspector General shall investigate the subject matter of the request to determine whether a special fraud alert should be issued. If appropriate, the Inspector General shall issue a special fraud alert in response to the request. All special fraud alerts issued pursuant to this subparagraph shall be published in the Federal Register.

(2) Criteria for special fraud alerts
In determining whether to issue a special fraud alert upon a request described in paragraph (1), the Inspector General may consider—

(A) whether and to what extent the practices that would be identified in the special fraud alert may result in any of the consequences described in subsection (a)(2) of this section; and

(B) the volume and frequency of the conduct that would be identified in the special fraud alert.

(1997 A.MENDMENTS)

(a) In general
The Secretary shall maintain a national health care fraud and abuse data collection program under this section for the reporting of certain final adverse actions (not including settlements in which no findings of liability have been made) against health care providers, suppliers, or practitioners as required by subsection (b), with access as set forth in subsection (d), and shall furnish the information collected under this section to the National Practitioner Data Bank established pursuant to the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.).

(b) Reporting of information

(1) In general
Each Government agency and health plan shall report any final adverse action (not including settlements in which no findings of liability have been made) taken against a health care provider, supplier, or practitioner, who is the subject of a final adverse action, is affiliated or associated.

(2) Information to be reported

The information to be reported under paragraph (1) includes:

(A) The name and TIN (as defined in section 7701(a)(41) of the Internal Revenue Code of 1986) of any health care provider, supplier, or practitioner who is the subject of a final adverse action.

(B) The name (if known) of any health care entity with which a health care provider, supplier, or practitioner, who is the subject of a final adverse action, is affiliated or associated.

(C) The nature of the final adverse action and whether such action is on appeal.

(D) A description of the acts or omissions and injuries upon which the final adverse action was based, and such other information
as the Secretary determines by regulation is required for appropriate interpretation of information reported under this section.

(3) Confidentiality

In determining what information is required, the Secretary shall include procedures to assure that the privacy of individuals receiving health care services is appropriately protected.

(4) Timing and form of reporting

The information required to be reported under this subsection shall be reported regularly (but not less often than monthly) and in such form and manner as the Secretary prescribes. Such information shall first be required to be reported on a date specified by the Secretary.

(5) To whom reported

The information required to be reported under this subsection shall be reported to the Secretary.

(6) Sanctions for failure to report

(A) Health plans

Any health plan that fails to report information on an adverse action required to be reported under this subsection shall be subject to a civil money penalty of not more than $25,000 for each such adverse action not reported. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title and collected under that section.

(B) Governmental agencies

The Secretary shall provide for a publication of a public report that identifies those Government agencies that have failed to report information on adverse actions as required to be reported under this subsection.

c) Disclosure and correction of information

(1) Disclosure

With respect to the information about final adverse actions (not including settlements in which no findings of liability have been made) reported to the Secretary under this section with respect to a health care provider, supplier, or practitioner, the Secretary shall, by regulation, provide for—

(A) disclosure of the information, upon request, to the health care provider, supplier, or licensed practitioner, and

(B) procedures in the case of disputed accuracy of the information.

(2) Corrections

Each Government agency and health plan shall report corrections of information already reported about any final adverse action taken against a health care provider, supplier, or practitioner, in such form and manner that the Secretary prescribes by regulation.

d) Access to reported information

(1) Availability

The information collected under this section shall be available from the National Practitioner Data Bank to the agencies, authorities, and officials which are provided under section 1396r–2(b) of this title information reported under section 1396r–2(a) of this title.

(2) Fees for disclosure

The Secretary may establish or approve reasonable fees for the disclosure of information under this section. The amount of such a fee may not exceed the costs of processing the requests for disclosure and of providing such information. Such fees shall be available to the Secretary to cover such costs.

e) Protection from liability for reporting

No person or entity, including the agency designated by the Secretary in subsection (b)(5) of this section shall be held liable in any civil action with respect to any report made as required by this section, without knowledge of the falsity of the information contained in the report.

f) Appropriate coordination

In implementing this section, the Secretary shall provide for the maximum appropriate coordination with part B of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11131 et seq.) and section 1396r–2 of this title.

g) Definitions and special rules

For purposes of this section:

(1) Final adverse action

(A) In general

The term “final adverse action” includes:

(i) Civil judgments against a health care provider, supplier, or practitioner in Federal or State court related to the delivery of a health care item or service.

(ii) Federal or State criminal convictions related to the delivery of a health care item or service.

(iii) Actions by Federal agencies responsible for the licensing and certification of health care providers, suppliers, and licensed health care practitioners, including—

(I) formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation,

(II) any dismissal or closure of the proceedings by reason of the provider, supplier, or practitioner surrendering their license or leaving the State or jurisdiction

(III) any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or

(IV) any other negative action or finding by such Federal agency that is publicly available information.

(iv) Exclusion from participation in a Federal health care program (as defined in section 1320a–7(b)(5) of this title).

(v) Any other adjudicated actions or decisions that the Secretary shall establish by regulation.

1 So in original. Probably should be followed by a comma.
(B) Exception

The term does not include any action with respect to a malpractice claim.

(2) Practitioner

The terms “licensed health care practitioner”, “licensed practitioner”, and “practitioner” mean, with respect to a State, an individual who is licensed or otherwise authorized by the State to provide health care services (or any individual who, without authority holds himself or herself out to be so licensed or authorized).

(3) Government agency

The term “Government agency” shall include:
(A) The Department of Justice.
(B) The Department of Health and Human Services.
(C) Any other Federal agency that either administers or provides payment for the delivery of health care services, including, but not limited to the Department of Defense and the Department of Veterans Affairs.
(D) Federal agencies responsible for the licensing and certification of health care providers and licensed health care practitioners.

(4) Health plan

The term “health plan” has the meaning given such term by section 1320a–7(c) of this title.

(5) Determination of conviction

For purposes of paragraph (1), the existence of a conviction shall be determined under paragraphs (1) through (4) of section 1320a–7(i) of this title.


“(1) Availability.—The information in the database maintained under this section shall be available to Federal and State government agencies and health plans pursuant to procedures that the Secretary shall provide by regulation.

“(2) Fees for disclosure.—The Secretary may establish or approve reasonable fees for the disclosure of information in such database (other than with respect to requests by Federal agencies). The amount of such a fee shall be sufficient to recover the full costs of operating the database. Such fees shall be available to the Secretary or, in the Secretary’s discretion to the agency designated under this section to cover such costs.”

Subsec. (f), Pub. L. 111–148, §6403(a)(3), added subsec. (f) and struck out former subsec. (f). Prior to amendment, text read as follows: “The Secretary shall implement this section in such a manner as to avoid duplication with the reporting requirements established for the National Practitioner Data Bank under the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.).”


Subsec. (g)(1)(A)(i)(IV). Pub. L. 111–148, §6403(a)(4)(A)(i)(IV), added cl. (iv) and struck out former cl. (iv) which read as follows: “Exclusion from participation in Federal or State health care programs (as defined in sections 1320a–7(f) and 1320a–7(h) of this title, respectively).”

Subsec. (g)(3)(D). Pub. L. 111–148, §6403(a)(4)(C), which directed amendment of subpar. (D) of subsec. (g) by striking out “or State” after “Federal” in subpar. (D) of subsec. (g)(3) to reflect the probable intent of Congress.

Pub. L. 111–148, §6403(a)(4)(B), redesignated subpar. (F) as (D) and struck out former subpar. (D) which read as follows: “State law enforcement agencies.”


Subsec. (g)(3)(C). Pub. L. 105–33, §4331(a)(2), substituted “Department of Veterans Affairs” for “Veterans’ Administration”.

Subsec. (g)(5). Pub. L. 105–33, §4331(b), substituted “paragraphs (1) through (4)” for “paragraph (4)”.

Effective Date of 1997 Amendment

Section 4331(f) of Pub. L. 105–33 provided that:

“(1) In general.—Except as provided in this sub-section, the amendments made by this section [amending this section and sections 1320a–7, 1320a–7a, and 1320a–7d of this title] shall be effective as if included in the enactment of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191].

“(2) Federal health program.—The amendments made by subsection (c) [amending section 1320a–7 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].

“(3) Sanction for failure to report.—The amendment made by subsection (d) [amending this section] shall apply to failures occurring on or after the date of the enactment of this Act.”
§ 1320a–7f. Coordination of medicare and medicaid surety bond provisions

In the case of a home health agency that is subject to a surety bond requirement under subchapter XVIII of this chapter and subchapter XIX of this chapter, the surety bond provided to satisfy the requirement under one such subchapter shall satisfy the requirement under the other such subchapter so long as the bond applies to guarantee return of overpayments under both such subchapters.


§ 1320a–7g. Funds to reduce medicare fraud and abuse

(1) In general

For purposes of reducing fraud and abuse in the Medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.],—

(A) there is appropriated to the Office of the Inspector General of the Department of Health and Human Services, out of any money in the Treasury not otherwise appropriated, $25,000,000, for fiscal year 2009; and

(B) there is authorized to be appropriated to such Office $25,000,000 for fiscal year 2010 and each subsequent fiscal year.

Amounts appropriated under this section shall remain available for expenditure until expended and shall be in addition to any other amounts appropriated or made available to such Office for such purposes with respect to the Medicaid program.

(2) Annual report

Not later than September 30 of 2009 and of each subsequent year, the Inspector General of the Department of Health and Human Services shall submit to the Committees on Energy and Commerce and Appropriations of the House of Representatives and the Committees on Finance and Appropriations of the Senate a report on the activities (and the results of such activities) funded under paragraph (1) to reduce waste, fraud, and abuse in the Medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] during the previous 12 month period, including the amount of funds appropriated under such paragraph for such each such activity and an estimate of the savings to the Medicaid program resulting from each such activity.


REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XIX of the Act is classified generally to subchapter XIX (§1396 et seq.) of this chapter. For complete classification of this Act to the Code, see section 1396 of this title and Tables.

This section, referred to in par. (1), means section 7001 of Pub. L. 110–252, which enacted this section and
section 1395nn(c) of this title, held by a physician (or an immediate family member of such physician) in the applicable manufacturer that provides a payment or other transfer of value to a covered recipient (or to an entity or individual at the request of or designated on behalf of a covered recipient), shall submit to the Secretary, in such electronic form as the Secretary shall require, the following information with respect to the preceding calendar year:

(i) The name of the covered recipient.
(ii) The business address of the covered recipient and, in the case of a covered recipient who is a physician, the specialty and National Provider Identifier of the covered recipient.
(iii) The amount of the payment or other transfer of value.
(iv) The dates on which the payment or other transfer of value was provided to the covered recipient.
(v) A description of the form of the payment or other transfer of value, indicated (as appropriate for all that apply) as—
   (I) cash or a cash equivalent;
   (II) in-kind items or services;
   (III) stock, a stock option, or any other ownership interest, dividend, profit, or other return on investment; or
   (IV) any other form of payment or other transfer of value (as defined by the Secretary).
(vi) A description of the nature of the payment or other transfer of value, indicated (as appropriate for all that apply) as—
   (I) consulting fees;
   (II) compensation for services other than consulting;
   (III) honoraria;
   (IV) gift;
   (V) entertainment;
   (VI) food;
   (VII) travel (including the specified destinations);
   (VIII) education;
   (IX) research;
   (X) charitable contribution;
   (XI) royalty or license;
   (XII) current or prospective ownership or investment interest;
   (XIII) direct compensation for serving as faculty or as a speaker for a medical education program;

(XIV) grant; or
(XV) any other nature of the payment or other transfer of value (as defined by the Secretary).

(vii) If the payment or other transfer of value is related to marketing, education, or research specific to a covered drug, device, biological, or medical supply, the name of that covered drug, device, biological, or medical supply.

(viii) Any other categories of information regarding the payment or other transfer of value the Secretary determines appropriate.

(b) Penalties for noncompliance

(1) Failure to report

(A) In general

Subject to subparagraph (B) except as provided in paragraph (2), any applicable manufacturer or applicable group purchasing organization that fails to submit information
required under subsection (a) in a timely manner in accordance with rules or regulations promulgated to carry out such subsection, shall be subject to a civil money penalty of not less than $1,000, but not more than $10,000, for each payment or other transfer of value or ownership or investment interest not reported as required under such subsection. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected under that section.

(B) Limitation

The total amount of civil money penalties imposed under subparagraph (A) with respect to each annual submission of information under subsection (a) by an applicable manufacturer or applicable group purchasing organization shall not exceed $150,000.

(2) Knowing failure to report

(A) In general

Subject to subparagraph (B), any applicable manufacturer or applicable group purchasing organization that knowingly fails to submit information required under subsection (a) in a timely manner in accordance with rules or regulations promulgated to carry out such subsection, shall be subject to a civil money penalty of not less than $10,000, but not more than $100,000, for each payment or other transfer of value or ownership or investment interest not reported as required under such subsection. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected under that section.

(B) Limitation

The total amount of civil money penalties imposed under subparagraph (A) with respect to each annual submission of information required under subsection (a) by an applicable manufacturer or applicable group purchasing organization shall not exceed $1,000,000.

(3) Use of funds

Funds collected by the Secretary as a result of the imposition of a civil money penalty under this subsection shall be used to carry out this section.

(c) Procedures for submission of information and public availability

(1) In general

(A) Establishment

Not later than October 1, 2011, the Secretary shall establish procedures—

(i) for applicable manufacturers and applicable group purchasing organizations to submit information to the Secretary under subsection (a); and

(ii) for the Secretary to make such information submitted available to the public.

(B) Definition of terms

The procedures established under subparagraph (A) shall provide for the definition of terms (other than those terms defined in subsection (e)), as appropriate, for purposes of this section.

(C) Public availability

Except as provided in subparagraph (E), the procedures established under subparagraph (A)(ii) shall ensure that, not later than September 30, 2013, and on June 30 of each calendar year beginning thereafter, the information submitted under subsection (a) with respect to the preceding calendar year is made available through an Internet website that—

(i) is searchable and is in a format that is clear and understandable;

(ii) contains information that is presented by the name of the applicable manufacturer or applicable group purchasing organization, the name of the covered recipient, the business address of the covered recipient, the specialty of the covered recipient, the value of the payment or other transfer of value, the date on which the payment or other transfer of value was provided to the covered recipient, the form of the payment or other transfer of value, indicated (as appropriate) under subsection (a)(1)(A)(v), the nature of the payment or other transfer of value, indicated (as appropriate) under subsection (a)(1)(A)(vi), and the name of the covered drug, device, biological, or medical supply, as applicable;

(iii) contains information that is able to be easily aggregated and downloaded;

(iv) contains a description of any enforcement actions taken to carry out this section, including any penalties imposed under subsection (b), during the preceding year;

(v) contains background information on industry-physician relationships;

(vi) in the case of information submitted with respect to a payment or other transfer of value described in subparagraph (E)(i), lists such information separately from the other information submitted under subsection (a) and designates such separately listed information as funding for clinical research;

(vii) contains any other information the Secretary determines would be helpful to the average consumer;

(viii) does not contain the National Provider Identifier of the covered recipient, and

(ix) subject to subparagraph (D), provides the applicable manufacturer, applicable group purchasing organization, or covered recipient an opportunity to review and submit corrections to the information submitted with respect to the applicable manufacturer, applicable group purchasing organization, or covered recipient, respectively, for a period of not less than 45 days prior to such information being made available to the public.

(D) Clarification of time period for review and corrections

In no case may the 45-day period for review and submission of corrections to informa-
tion under subparagraph (C)(ix) prevent such information from being made available to the public in accordance with the dates described in the matter preceding clause (i) in subparagraph (C).

(E) Delayed publication for payments made pursuant to product research or development agreements and clinical investigations

(i) In general

In the case of information submitted under subsection (a) with respect to a payment or other transfer of value made to a covered recipient by an applicable manufacturer pursuant to a product research or development agreement for services furnished in connection with research on a potential new medical technology or a new application of an existing medical technology or the development of a new drug, device, biological, or medical supply, or by an applicable manufacturer in connection with a clinical investigation regarding a new drug, device, biological, or medical supply, the procedures established under subparagraph (A)(ii) shall provide that such information is made available to the public on the first date described in the matter preceding clause (i) in subparagraph (C) after the earlier of the following:

(I) The date of the approval or clearance of the covered drug, device, biological, or medical supply by the Food and Drug Administration.

(II) Four calendar years after the date such payment or other transfer of value was made.

(ii) Confidentiality of information prior to publication

Information described in clause (i) shall be considered confidential and shall not be subject to disclosure under section 552 of title 5 or any other similar Federal, State, or local law until on or after the date on which the information is made available to the public under such clause.

(2) Consultation

In establishing the procedures under paragraph (1), the Secretary shall consult with the Inspector General of the Department of Health and Human Services, affected industry, consumers, consumer advocates, and other interested parties in order to ensure that the information made available to the public under such paragraph is presented in the appropriate overall context.

(d) Annual reports and relation to State laws

(1) Annual report to Congress

Not later than April 1 of each year beginning with 2013, the Secretary shall submit to Congress a report that includes the following:

(A) The information submitted under subsection (a) during the preceding year, aggregated for each applicable manufacturer and applicable group purchasing organization that submitted such information during such year (except, in the case of information submitted with respect to a payment or other transfer of value described in subsection (c)(1)(E)(i), such information shall be included in the first report submitted to Congress after the date on which such information is made available to the public under such subsection).

(B) A description of any enforcement actions taken to carry out this section, including any penalties imposed under subsection (b), during the preceding year.

(2) Annual reports to States

Not later than September 30, 2013 and on June 30 of each calendar year thereafter, the Secretary shall submit to States a report that includes a summary of the information submitted under subsection (a) during the preceding year with respect to covered recipients in the State (except, in the case of information submitted with respect to a payment or other transfer of value described in subsection (c)(1)(E)(i), such information shall be included in the first report submitted to States after the date on which such information is made available to the public under such subsection).

(3) Relation to State laws

(A) In general.—In the case of a payment or other transfer of value provided by an applicable manufacturer that is received by a covered recipient (as defined in subsection (e)) on or after January 1, 2012, subject to subparagraph (B), the provisions of this section shall preempt any statute or regulation of a State or of a political subdivision of a State that requires an applicable manufacturer (as so defined) to disclose or report, in any format, the type of information (as described in subsection (a)) regarding such payment or other transfer of value.

(B) No preemption of additional requirements.—Subparagraph (A) shall not preempt any statute or regulation of a State or of a political subdivision of a State that requires the disclosure or reporting of information—

(i) not of the type required to be disclosed or reported under this section;

(ii) described in subsection (e)(10)(B), except in the case of information described in clause (i) of such subsection;

(iii) by any person or entity other than an applicable manufacturer (as so defined) or a covered recipient (as defined in subsection (e)); or

(iv) to a Federal, State, or local government agency for public health surveillance, investigation, or other public health purposes or health oversight purposes.

(C) Nothing in subparagraph (A) shall be construed to limit the discovery or admissibility of information described in such subparagraph in a criminal, civil, or administrative proceeding.

(4) Consultation

The Secretary shall consult with the Inspector General of the Department of Health and Human Services on the implementation of this section.

(e) Definitions

In this section:
§ 1320a–7h

(1) Applicable group purchasing organization

The term “applicable group purchasing organization” means a group purchasing organization (as defined by the Secretary) that purchases, arranges for, or negotiates the purchase of a covered drug, device, biological, or medical supply which is operating in the United States, or in a territory, possession, or commonwealth of the United States.

(2) Applicable manufacturer

The term “applicable manufacturer” means a manufacturer of a covered drug, device, biological, or medical supply which is operating in the United States, or in a territory, possession, or commonwealth of the United States.

(3) Clinical investigation

The term “clinical investigation” means any experiment involving 1 or more human subjects, or materials derived from human subjects, in which a drug or device is administered, dispensed, or used.

(4) Covered device

The term “covered device” means any device for which payment is available under subchapter XIX or a State plan under subchapter XXI (or a waiver of such a plan).

(5) Covered drug, device, biological, or medical supply

The term “covered drug, device, biological, or medical supply” means any drug, biological product, device, or medical supply for which payment is available under subchapter XVIII or a State plan under subchapter XIX or XXI (or a waiver of such a plan).

(6) Covered recipient

(A) In general

Except as provided in subparagraph (B), the term “covered recipient” means the following:

(i) A physician.

(ii) A teaching hospital.

(B) Exclusion

Such term does not include a physician who is an employee of the applicable manufacturer that is required to submit information under subsection (a).

(7) Employee

The term “employee” has the meaning given such term in section 1396m(h)(2) of this title.

(8) Knowingly

The term “knowingly” has the meaning given such term in section 3729(b) of title 31.

(9) Manufacturer of a covered drug, device, biological, or medical supply

The term “manufacturer of a covered drug, device, biological, or medical supply” means any entity which is engaged in the production, preparation, propagation, compounding, conversion, marketing, promotion, sale, or distribution of a covered drug, device, biological, or medical supply.

(10) Payment or other transfer of value

(A) In general

The term “payment or other transfer of value” means a transfer of anything of value. Such term does not include a transfer of anything of value that is made indirectly to a covered recipient through a third party in connection with an activity or service in the case where the applicable manufacturer is unaware of the identity of the covered recipient.

(B) Exclusions

An applicable manufacturer shall not be required to submit information under subsection (a) with respect to the following:

(i) A transfer of anything the value of which is less than $10, unless the aggregate amount transferred to, requested by, or designated on behalf of the covered recipient by the applicable manufacturer during the calendar year exceeds $100. For calendar years after 2012, the dollar amounts specified in the preceding sentence shall be increased by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) for the 12-month period ending with June of the previous year.

(ii) Product samples that are not intended to be sold and are intended for patient use.

(iii) Educational materials that directly benefit patients or are intended for patient use.

(iv) The loan of a covered device for a short-term trial period, not to exceed 90 days, to permit evaluation of the covered device by the covered recipient.

(v) Items or services provided under a contractual warranty, including the replacement of a covered device, where the terms of the warranty are set forth in the purchase or lease agreement for the covered device.

(vi) A transfer of anything of value to a covered recipient when the covered recipient is a patient and not acting in the professional capacity of a covered recipient.

(vii) Discounts (including rebates).

(viii) In-kind items used for the provision of charity care.

(ix) A dividend or other profit distribution from, or ownership or investment interest in, a publicly traded security and mutual fund (as described in section 1396nn(c) of this title).

(x) In the case of an applicable manufacturer who offers a self-insured plan, payments for the provision of health care to employees under the plan.

(xi) In the case of a covered recipient who is a licensed non-medical professional, a transfer of anything of value to the covered recipient if the transfer is payment solely for the non-medical professional...
services of such licensed non-medical professional.

(xii) In the case of a covered recipient who is a physician, a transfer of anything of value to the covered recipient if the transfer is payment solely for the services of the covered recipient with respect to a civil or criminal action or an administrative proceeding.

(11) Physician

The term “physician” has the meaning given that term in section 1395x(r) of this title.


§ 1320a–7i. Reporting of information relating to drug samples

(a) In general

Not later than April 1 of each year (beginning with 2012), each manufacturer and authorized distributor of record of an applicable drug shall submit to the Secretary (in a form and manner specified by the Secretary) the following information with respect to the preceding year:

(1) In the case of a manufacturer or authorized distributor of record which makes distributions by mail or common carrier under subsection (d)(2) of section 353 of title 21, the identity and quantity of drug samples requested and the identity and quantity of drug samples distributed under such subsection during that year, aggregated by—

(A) the name, address, professional designation, and signature of the practitioner making the request under subparagraph (A)(i) of such subsection, or of any individual who makes or signs for the request on behalf of the practitioner; and

(B) any other category of information determined appropriate by the Secretary.

(2) In the case of a manufacturer or authorized distributor of record which makes distributions by means other than mail or common carrier under subsection (d)(3) of such section 353 of title 21, the identity and quantity of drug samples requested and the identity and quantity of drug samples distributed under such subsection during that year, aggregated by—

(A) the name, address, professional designation, and signature of the practitioner making the request under subparagraph (A)(i) of such subsection, or of any individual who makes or signs for the request on behalf of the practitioner; and

(B) any other category of information determined appropriate by the Secretary.

(b) Definitions

In this section:

(1) Applicable drug

The term “applicable drug” means a drug—

(A) which is subject to subsection (b) of such section 353 of title 21; and

(B) for which payment is available under subchapter XVIII or a State plan under subchapter XIX or XXI (or a waiver of such a plan).

(2) Authorized distributor of record

The term “authorized distributor of record” has the meaning given that term in subsection (e)(3)(A) of such section.

(3) Manufacturer

The term “manufacturer” has the meaning given that term for purposes of subsection (d) of such section.


§ 1320a–7j. Accountability requirements for facilities

(a) Definition of facility

In this section, the term “facility” means—

(1) a skilled nursing facility (as defined in section 1395i–3(a) of this title); or

(2) a nursing facility (as defined in section 1396c(a) of this title).

(b) Effective compliance and ethics programs

(1) Requirement

On or after the date that is 36 months after March 23, 2010, a facility shall, with respect to the entity that operates the facility (in this subparagraph referred to as the “operating organization” or “organization”), have in operation a compliance and ethics program that is effective in preventing and detecting criminal, civil, and administrative violations under this chapter and in promoting quality of care consistent with regulations developed under paragraph (2).

(2) Development of regulations

(A) In general

Not later than the date that is 2 years after March 23, 2010, the Secretary, working jointly with the Inspector General of the Department of Health and Human Services, shall promulgate regulations for an effective compliance and ethics program for operating organizations, which may include a model compliance program.

(B) Design of regulations

Such regulations with respect to specific elements or formality of a program shall, in the case of an organization that operates 5 or more facilities, vary with the size of the organization, such that larger organizations should have a more formal program and include established written policies defining the standards and procedures to be followed by its employees. Such requirements may specifically apply to the corporate level management of multi unit nursing home chains.

(C) Evaluation

Not later than 3 years after the date of the promulgation of regulations under this paragraph, the Secretary shall complete an evaluation of the compliance and ethics pro—

1 So in original. Probably should be “subsection”.

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Note: The text above is a continuation of the content from the previous page, possibly discussing regulations, compliance, and ethics programs related to the reporting of drug samples and accountability requirements for facilities. The references are to specific sections and dates, indicating a legislative context focused on public health and welfare.
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programs required to be established under this subsection. Such evaluation shall determine if such programs led to changes in deficiency citations, changes in quality performance, or changes in other metrics of patient quality of care. The Secretary shall submit to Congress a report on such evaluation and shall include in such report such recommendations regarding changes in the requirements for such programs as the Secretary determines appropriate.

(3) Requirements for compliance and ethics programs

In this subsection, the term “compliance and ethics program” means, with respect to a facility, a program of the operating organization that—

(A) has been reasonably designed, implemented, and enforced so that it generally will be effective in preventing and detecting criminal, civil, and administrative violations under this chapter and in promoting quality of care; and

(B) includes at least the required components specified in paragraph (4).

(4) Required components of program

The required components of a compliance and ethics program of an operating organization are the following:

(A) The organization must have established compliance standards and procedures to be followed by its employees and other agents that are reasonably capable of reducing the prospect of criminal, civil, and administrative violations under this chapter.

(B) Specific individuals within high-level personnel of the organization must have been assigned overall responsibility to oversee compliance with such standards and procedures and have sufficient resources and authority to assure such compliance.

(C) The organization must have used due care not to delegate substantial discretionary authority to individuals whom the organization knew, or should have known through the exercise of due diligence, had a propensity to engage in criminal, civil, and administrative violations under this chapter.

(D) The organization must have taken steps to communicate effectively its standards and procedures to all employees and other agents, such as by requiring participation in training programs or by disseminating publications that explain in a practical manner what is required.

(E) The organization must have taken reasonable steps to achieve compliance with its standards, such as by utilizing monitoring and auditing systems reasonably designed to detect criminal, civil, and administrative violations under this chapter by its employees and other agents and by having in place and publicizing a reporting system whereby employees and other agents could report violations by others within the organization without fear of retribution.

(F) The standards must have been consistently enforced through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect an offense.

(G) After an offense has been detected, the organization must have taken all reasonable steps to respond appropriately to the offense and to prevent further similar offenses, including any necessary modification to its program to prevent and detect criminal, civil, and administrative violations under this chapter.

(H) The organization must periodically undertake reassessment of its compliance program to identify changes necessary to reflect changes within the organization and its facilities.

(c) Quality assurance and performance improvement program

(1) In general

Not later than December 31, 2011, the Secretary shall establish and implement a quality assurance and performance improvement program (in this subparagraph referred to as the “QAPI program”) for facilities, including multi unit chains of facilities. Under the QAPI program, the Secretary shall establish standards relating to quality assurance and performance improvement with respect to facilities and provide technical assistance to facilities on the development of best practices in order to meet such standards. Not later than 1 year after the date on which the regulations are promulgated under paragraph (2), a facility must submit to the Secretary a plan for the facility to meet such standards and implement such best practices, including how to coordinate the implementation of such plan with quality assessment and assurance activities conducted under sections 1395i–3(b)(1)(B) and 1396r(b)(1)(B) of this title, as applicable.

(2) Regulations

The Secretary shall promulgate regulations to carry out this subsection.

(f) 2 Standardized complaint form

(1) Development by the Secretary

The Secretary shall develop a standardized complaint form for use by a resident (or a person acting on the resident’s behalf) in filing a complaint with a State survey and certification agency and a State long-term care ombudsman program with respect to a facility.

(2) Complaint forms and resolution processes

(A) Complaint forms

The State must make the standardized complaint form developed under paragraph (1) available upon request to—

(i) a resident of a facility; and

(ii) any person acting on the resident’s behalf.

(B) Complaint resolution process

The State must establish a complaint resolution process in order to ensure that the legal representative of a resident of a facility or other responsible party is not denied access to such resident or otherwise retaliated against if they have complained about

2So in original. No subsces. (d) and (e) have been enacted.
the quality of care provided by the facility or other issues relating to the facility. Such complaint resolution process shall include—

(i) procedures to assure accurate tracking of complaints received, including notification to the complainant that a complaint has been received;

(ii) procedures to determine the likely severity of a complaint and for the investigation of the complaint; and

(iii) deadlines for responding to a complaint and for notifying the complainant of the outcome of the investigation.

(3) Rule of construction

Nothing in this subsection shall be construed as preventing a resident of a facility (or a person acting on the resident’s behalf) from submitting a complaint in a manner or format other than by using the standardized complaint form developed under paragraph (1) (including submitting a complaint orally).

(g) Submission of staffing information based on payroll data in a uniform format

Beginning not later than 2 years after March 23, 2010, and after consulting with State long-term care ombudsman programs, consumer advocacy groups, provider stakeholder groups, employees and their representatives, and other parties the Secretary deems appropriate, the Secretary shall require a facility to electronically submit to the Secretary direct care staffing information (including information with respect to agency and contract staff) based on payroll and other verifiable and auditable data in a uniform format (according to specifications established by the Secretary in consultation with such programs, groups, and parties). Such specifications shall require that the information submitted under the preceding sentence—

(1) specify the category of work a certified employee performs (such as whether the employee is a registered nurse, licensed practical nurse, licensed vocational nurse, certified nursing assistant, therapist, or other medical personnel);

(2) include resident census data and information on resident case mix;

(3) include a regular reporting schedule; and

(4) include information on employee turnover and tenure and on the hours of care provided by each category of certified employees referenced in paragraph (1) per resident per day.

Nothing in this subsection shall be construed as preventing the Secretary from requiring submission of such information with respect to specific categories, such as nursing staff, before other categories of certified employees. Information under this subsection with respect to agency and contract staff shall be kept separate from information on employee staffing.

(h) Notification of facility closure

(1) In general

Any individual who is the administrator of a facility must—

(A) submit to the Secretary, the State long-term care ombudsman, residents of the facility, and the legal representatives of such residents or other responsible parties, written notification of an impending closure—

(i) subject to clause (ii), not later than the date that is 60 days prior to the date of such closure; and

(ii) in the case of a facility where the Secretary terminates the facility’s participation under this subchapter, not later than the date that the Secretary determines appropriate;

(B) ensure that the facility does not admit any new residents on or after the date on which such written notification is submitted; and

(C) include in the notice a plan for the transfer and adequate relocation of the residents of the facility by a specified date prior to closure that has been approved by the State, including assurances that the residents will be transferred to the most appropriate facility or other setting in terms of quality, services, and location, taking into consideration the needs, choice, and best interests of each resident.

(2) Relocation

(A) In general

The State shall ensure that, before a facility closes, all residents of the facility have been successfully relocated to another facility or an alternative home and community-based setting.

(B) Continuation of payments until residents relocated

The Secretary may, as the Secretary determines appropriate, continue to make payments under this subchapter with respect to residents of a facility that has submitted a notification under paragraph (1) during the period beginning on the date such notification is submitted and ending on the date on which the resident is successfully relocated.

(3) Sanctions

Any individual who is the administrator of a facility that fails to comply with the requirements of paragraph (1)—

(A) shall be subject to a civil monetary penalty of up to $100,000;

(B) may be subject to exclusion from participation in any Federal health care program (as defined in section 1320a–7b(f) of this title); and

(C) shall be subject to any other penalties that may be prescribed by law.

(4) Procedure

The provisions of section 1320a–7a of this title (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to a civil money penalty or exclusion under paragraph (3) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.


AMENDMENTS

Subsec. (g), Pub. L. 111–148, §6106, added subsec. (g).

**Effective Date of 2010 Amendment**

Pub. L. 111–148, title VI, §6105(b), Mar. 23, 2010, 124 Stat. 720, provided that: "The amendments made by this section [amending this section and section 1395–3 of this title] shall take effect 1 year after the date of the enactment of this Act [Mar. 23, 2010]."

Pub. L. 111–148, title VI, §6113(c), Mar. 23, 2010, 124 Stat. 720, provided that: "The amendments made by this section [amending this section and section 1395–3 of this title] shall take effect 1 year after the date of the enactment of this Act [Mar. 23, 2010]."

**National Independent Monitor Demonstration Project**


"(a) Establishment.—

"(1) In General.—The Secretary [of Health and Human Services], in consultation with the Inspector General of the Department of Health and Human Services, shall conduct a demonstration project to develop, test, and implement an independent monitor program to oversee interstate and large intrastate chains of skilled nursing facilities and nursing facilities.

"(2) Selection.—The Secretary shall select chains of skilled nursing facilities and nursing facilities described in paragraph (1) to participate in the demonstration project under this section from among those chains that submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(3) Duration.—The Secretary shall conduct the demonstration project under this section for a 2-year period.

"(4) Implementation.—The Secretary shall implement the demonstration project under this section not later than 1 year after the date of the enactment of this Act [Mar. 23, 2010].

"(b) Requirements.—The Secretary shall evaluate chains selected to participate in the demonstration project under this section based on criteria selected by the Secretary, including where evidence suggests that a number of the facilities of the chain are experiencing serious safety and quality of care problems. Such criteria may include the evaluation of a chain that includes a number of facilities participating in the ‘Special Focus Facility’ program (or a successor program) or multiple facilities with a record of repeated serious safety and quality of care deficiencies.

"(c) Responsibilities.—An independent monitor that enters into a contract with the Secretary to participate in the conduct of the demonstration project under this section shall—

"(1) conduct periodic reviews and prepare root-cause quality and deficiency analyses of a chain to assess if facilities of the chain are in compliance with State and Federal laws and regulations applicable to the facilities;

"(2) conduct sustained oversight of the efforts of the chain, whether publicly or privately held, to achieve compliance by facilities of the chain with State and Federal laws and regulations applicable to the facilities;

"(3) analyze the management structure, distribution of expenditures, and nurse staffing levels of facilities of the chain in relation to resident census, staff turnover rates, and tenure;

"(4) report findings and recommendations with respect to such reviews, analyses, and oversight to the chain and facilities of the chain, to the Secretary, and to relevant States; and

"(5) publish the results of such reviews, analyses, and oversight.

"(d) Implementation of Recommendations.—

"(1) Receipt of Finding by Chain.—Not later than 10 days after receipt of a finding of an independent monitor under subsection (c)(4), a chain participating in the demonstration project shall submit to the independent monitor a report—

"(A) outlining corrective actions the chain will take to implement the recommendations in such report; or

"(B) indicating that the chain will not implement such recommendations, and why it will not do so.

"(2) Receipt of Report by Independent Monitor.—Not later than 10 days after receipt of a report submitted by a chain under paragraph (1), an independent monitor shall finalize its recommendations and submit a report to the chain and facilities of the chain, the Secretary, and the States or States, as appropriate, containing such final recommendations.

"(e) Cost of Appointment.—A chain shall be responsible for a portion of the costs associated with the appointment of independent monitors under the demonstration project under this section. The chain shall pay such portion to the Secretary (in an amount and in accordance with procedures established by the Secretary).

"(f) Waiver Authority.—The Secretary may waive such requirements of titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq.) as are necessary for the purpose of carrying out the demonstration project under this section.

"(g) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

"(h) Definitions.—In this section:

"(1) Additional Disclosable Party.—The term ‘additional disclosable party’ has the meaning given such term in section 1124(c)(5)(A) of the Social Security Act (42 U.S.C. 1320a–3(c)(5)(A)), as added by section 4301(a) [probably should be ‘6101(a)’].

"(2) Facility.—The term ‘facility’ means a skilled nursing facility or a nursing facility.

"(3) Nursing Facility.—The term ‘nursing facility’ has the meaning given such term in section 1919(a) of the Social Security Act (42 U.S.C. 1395(a)).

"(4) Secretary.—The term ‘Secretary’ means the Secretary of Health and Human Services, acting through the Assistant Secretary for Planning and Evaluation.

"(5) Skilled Nursing Facility.—The term ‘skilled nursing facility’ has the meaning given such term in section 1395(a) of the Social Security Act (42 U.S.C. 1395(a) (1395l–3(a))).

"(i) Evaluation and Report.—

"(1) Evaluation.—The Secretary, in consultation with the Inspector General of the Department of Health and Human Services, shall evaluate the demonstration project conducted under this section.

"(2) Report.—Not later than 180 days after the completion of the demonstration project conducted under this section, the Secretary shall submit to Congress a report containing the results of the evaluation conducted under paragraph (1), together with recommendations—

"(A) as to whether the independent monitor program should be established on a permanent basis;

"(B) if the Secretary recommends that such program be so established, on appropriate procedures and mechanisms for such establishment; and

"(C) for such legislation and administrative action as the Secretary determines appropriate."

§ 1320a–7k. Medicare and Medicaid program integrity provisions

(a) Data matching

(1) Integrated data repository

(A) Inclusion of certain data

(i) In general

The Integrated Data Repository of the Centers for Medicare & Medicaid Services
shall include, at a minimum, claims and payment data from the following:

(I) The programs under subchapters XVIII and XIX (including parts A, B, C, and D of subchapter XVIII),

(II) The program under subchapter XXI,

(III) Health-related programs administered by the Secretary of Veterans Affairs.

(IV) Health-related programs administered by the Secretary of Defense.

(V) The program of old-age, survivors, and disability insurance benefits established under subchapter II.

(VI) The Indian Health Service and the Contract Health Service program.

(ii) Priority for inclusion of certain data

Inclusion of the data described in subclause (I) of such clause 1 in the Integrated Data Repository shall be a priority. Data described in subclauses (II) through (VI) of such clause 1 shall be included in the Integrated Data Repository as appropriate.

(B) Data sharing and matching

(i) In general

The Secretary shall enter into agreements with the individuals described in clause (ii) under which such individuals share and match data in the system of records of the respective agencies of such individuals with data in the system of records of the Department of Health and Human Services for the purpose of identifying potential fraud, waste, and abuse under the programs under subchapters XVIII and XIX.

(ii) Individuals described

The following individuals are described in this clause:


(II) The Secretary of Veterans Affairs.

(III) The Secretary of Defense.

(IV) The Director of the Indian Health Service.

(iii) Definition of system of records

For purposes of this paragraph, the term “system of records” has the meaning given such term in section 552a(a)(5) of title 5.

(2) Access to claims and payment databases

For purposes of conducting law enforcement and oversight activities and to the extent consistent with applicable information, privacy, security, and disclosure laws, including the regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 and section 552a of title 5, and subject to any information systems security requirements under such laws or otherwise required by the Secretary, the Inspector General of the Department of Health and Human Services and the Attorney General shall have access to claims and payment data of the Department of Health and Human Services and its contractors related to subchapters XVIII, XIX, and XXI.

(b) OIG authority to obtain information

(1) In general

Notwithstanding and in addition to any other provision of law, the Inspector General of the Department of Health and Human Services may, for purposes of protecting the integrity of the programs under subchapters XVIII and XIX, obtain information from any individual (including a beneficiary provided all applicable privacy protections are followed) or entity that—

(A) is a provider of medical or other items or services, supplier, grant recipient, contractor, or subcontractor;

(B) directly or indirectly provides, orders, manufactures, distributes, arranges for, prescribes, supplies, or receives medical or other items or services payable by any Federal health care program (as defined in section 1320a–7d(f) of this title) regardless of how the item or service is paid for, or to whom such payment is made.

(2) Inclusion of certain information

Information which the Inspector General may obtain under paragraph (1) includes any supporting documentation necessary to validate claims for payment or payments under subchapter XVIII or XIX, including a prescribing physician’s medical records for an individual who is prescribed an item or service which is covered under part B of subchapter XVIII, a covered part D drug (as defined in section 1395w–102(e) of this title) regardless of which payment is made under an MA–PD plan under part C of such subchapter, or a prescription drug plan under part D of such subchapter, and any records necessary for evaluation of the economy, efficiency, and effectiveness of the programs under subchapters XVIII and XIX.

(c) Administrative remedy for knowing participation by beneficiary in health care fraud scheme

(1) In general

In addition to any other applicable remedies, if an applicable individual has knowingly participated in a Federal health care fraud offense, the Secretary shall impose an appropriate administrative penalty commensurate with the offense or conspiracy.

(2) Applicable individual

For purposes of paragraph (1), the term “applicable individual” means an individual—

(A) entitled to, or enrolled for, benefits under part A of subchapter XVIII or enrolled under part B of such subchapter;

(B) eligible for medical assistance under a State plan under subchapter XIX or under a waiver of such plan; or

(C) eligible for child health assistance under a child health plan under subchapter XXI.

(d) Reporting and returning of overpayments

(1) In general

If a person has received an overpayment, the person shall—

1So in original. Probably should be “clause (i)”. 
(A) report and return the overpayment to the Secretary, the State, an intermediary, a carrier, or a contractor, as appropriate, at the correct address; and

(B) notify the Secretary, State, intermediary, carrier, or contractor to whom the overpayment was returned in writing of the reason for the overpayment.

(2) Deadline for reporting and returning overpayments

An overpayment must be reported and returned under paragraph (1) by the later of—

(A) the date which is 60 days after the date on which the overpayment was identified; or

(B) the date any corresponding cost report is due, if applicable.

(3) Enforcement

Any overpayment retained by a person after the deadline for reporting and returning the overpayment under paragraph (2) is an obligation (as defined in section 3729(b)(3) of title 31) for purposes of section 3729 of such title.

(4) Definitions

In this subsection:

(A) Knowing and knowingly

The terms “knowing” and “knowingly” have the meaning given those terms in section 3729(b) of title 31.

(B) Overpayment

The term “overpayment” means any funds that a person receives or retains under subchapter XVIII or XIX to which the person, after applicable reconciliation, is not entitled under such subchapter.

(C) Person

(i) In general

The term “person” means a provider of services, supplier, medicaid managed care organization (as defined in section 1396b(m)(1)(A) of this title), Medicare Advantage organization (as defined in section 1395w–28(a)(1) of this title), or PDP sponsor (as defined in section 1395w–151(a)(13) of this title).

(ii) Exclusion

Such term does not include a beneficiary.

(e) Inclusion of national provider identifier on all applications and claims

The Secretary shall promulgate a regulation that requires, not later than January 1, 2011, all providers of medical or other items or services and suppliers under the programs under subchapters XVIII and XIX that qualify for a national provider identifier to include their national provider identifier on all applications to enroll in such programs and on all claims for payment submitted under such programs.


REFERENCES IN TEXT


§ 1320a–7l. Nationwide program for national and State background checks on direct patient access employees of long-term care facilities and providers

(a) In general

The Secretary of Health and Human Services (in this section referred to as the “Secretary”), shall establish a program to identify efficient, effective, and economical procedures for long term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis (in this subsection, such program shall be referred to as the “nationwide program”). Except for the following modifications, the Secretary shall carry out the nationwide program under similar terms and conditions as the pilot program under section 307 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2257), including the prohibition on hiring abusive workers and the authorization of the imposition of penalties by a participating State under subsection (b)(3)(A) and (b)(6), respectively, of such section 307:

(1) Agreements

(A) Newly participating States

The Secretary shall enter into agreements with each State—

(1) that the Secretary has not entered into an agreement with under subsection (c)(1) of such section 307;

(2) that agrees to conduct background checks under the nationwide program on a Statewide basis; and

(3) that submits an application to the Secretary containing such information and at such time as the Secretary may specify.

(B) Certain previously participating States

The Secretary shall enter into agreements with each State—

(i) that the Secretary has entered into an agreement with under such subsection (c)(1), but only in the case where such agreement did not require the State to conduct background checks under the program established under subsection (a) of such section 307 on a Statewide basis;

(ii) that agrees to conduct background checks under the nationwide program on a Statewide basis; and

(iii) that submits an application to the Secretary containing such information and at such time as the Secretary may specify.

(2) Nonapplication of selection criteria

The selection criteria required under subsection (c)(3)(B) of such section 307 shall not apply.

(3) Required fingerprint check as part of criminal history background check

The procedures established under subsection (b)(1) of such section 307 shall—
A) require that the long-term care facility or provider (or the designated agent of the long-term care facility or provider) obtain State and national criminal history background checks on the prospective employee through such means as the Secretary determines appropriate, efficient, and effective that utilize a search of State-based abuse and neglect registries and databases, including the abuse and neglect registries of another State in the case where a prospective employee previously resided in that State, State criminal history records, the records of any proceedings in the State that may contain disqualifying information about prospective employees (such as proceedings conducted by State professional licensing and disciplinary boards and State Medicaid Fraud Control Units), and Federal criminal history records, including a fingerprint check using the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation;

(B) require States to describe and test methods that reduce duplicative fingerprinting, including providing for the development of “rap back” capability by the State such that, if a direct patient access employee of a long-term care facility or provider is convicted of a crime following the initial criminal history background check conducted with respect to such employee, and the employee’s fingerprints match the prints on file with such employee, and the employee’s fingerprints match the prints on file with the State law enforcement department, the department will immediately inform the State and the State will immediately inform the long-term care facility or provider which employs the direct patient access employee of such conviction; and

(C) require that criminal history background checks conducted under the nationwide program remain valid for a period of time specified by the Secretary.

(4) State requirements

An agreement entered into under paragraph (1) shall require that a participating State—

(A) be responsible for monitoring compliance with the requirements of the nationwide program;

(B) have procedures in place to—

(i) conduct screening and criminal history background checks under the nationwide program in accordance with the requirements of this section;

(ii) monitor compliance by long-term care facilities and providers with the procedures and requirements of the nationwide program;

(iii) as appropriate, provide for a provisional period of employment by a long-term care facility or provider of a direct patient access employee, not to exceed 60 days, pending completion of the required criminal history background check and, in the case where the employee has appealed the results of such background check, pending completion of the appeals process, during which the employee shall be subject to direct on-site supervision (in accordance with procedures established by the State to ensure that a long-term care facility or provider furnishes such direct on-site supervision);

(iv) provide an independent process by which a provisional employee or an employee may appeal or dispute the accuracy of the information obtained in a background check performed under the nationwide program, including the specification of criteria for appeals for direct patient access employees found to have disqualifying information which shall include consideration of the passage of time, extenuating circumstances, demonstration of rehabilitation, and relevancy of the particular disqualifying information with respect to the current employment of the individual;

(v) provide for the designation of a single State agency as responsible for—

(I) overseeing the coordination of any State and national criminal history background checks requested by a long-term care facility or provider (or the designated agent of the long-term care facility or provider) utilizing a search of State and Federal criminal history records, including a fingerprint check of such records;

(II) overseeing the design of appropriate privacy and security safeguards for use in the review of the results of any State or national criminal history background checks conducted regarding a prospective direct patient access employee to determine whether the employee has any conviction for a relevant crime;

(III) immediately reporting to the long-term care facility or provider that requested the criminal history background check the results of such review; and

(IV) in the case of an employee with a conviction for a relevant crime that is subject to reporting under section 1123E of the Social Security Act (42 U.S.C. 1320a–7e), reporting the existence of such conviction to the database established under that section;

(vi) determine which individuals are direct patient access employees (as defined in paragraph (6)(B)) for purposes of the nationwide program;

(vii) as appropriate, specify offenses, including convictions for violent crimes, for purposes of the nationwide program; and

(viii) describe and test methods that reduce duplicative fingerprinting, including providing for the development of “rap back” capability such that, if a direct patient access employee of a long-term care facility or provider is convicted of a crime following the initial criminal history background check conducted with respect to such employee, and the employee’s fingerprints match the prints on file with the State law enforcement department—

(I) the department will immediately inform the State agency designated under clause (v) and such agency will immediately inform the facility or provider
which employs the direct patient access employee of such conviction; and
(II) the State will provide, or will require the facility to provide, to the employee a copy of the results of the criminal history background check conducted with respect to the employee at no charge in the case where the individual requests such a copy.

(5) Payments
(A) Newly participating States
(i) In general
As part of the application submitted by a State under paragraph (1)(A)(iii), the State shall guarantee, with respect to the costs to be incurred by the State in carrying out the nationwide program, that the State will make available (directly or through donations from public or private entities) a particular amount of non-Federal contributions, as a condition of receiving the Federal match under clause (ii).
(ii) Federal match
The payment amount to each State that the Secretary enters into an agreement with under paragraph (1)(A) shall be 3 times the amount that the State guarantees to make available under clause (i), except that in no case may the payment amount exceed $3,000,000.
(B) Previously participating States
(i) In general
As part of the application submitted by a State under paragraph (1)(B)(iii), the State shall guarantee, with respect to the costs to be incurred by the State in carrying out the nationwide program, that the State will make available (directly or through donations from public or private entities) a particular amount of non-Federal contributions, as a condition of receiving the Federal match under clause (ii).
(ii) Federal match
The payment amount to each State that the Secretary enters into an agreement with under paragraph (1)(B) shall be 3 times the amount that the State guarantees to make available under clause (i), except that in no case may the payment amount exceed $1,500,000.

(6) Definitions
Under the nationwide program:
(A) Conviction for a relevant crime
The term “conviction for a relevant crime” means any Federal or State criminal conviction for—
(i) any offense described in section 1128(a) of the Social Security Act (42 U.S.C. 1320a–7(a)); or
(ii) such other types of offenses as a participating State may specify for purposes of conducting the program in such State.
(B) Disqualifying information
The term “disqualifying information” means a conviction for a relevant crime or a finding of patient or resident abuse.
(C) Finding of patient or resident abuse
The term “finding of patient or resident abuse” means any substantiated finding by a State agency under section 1919(g)(1)(C) of the Social Security Act (42 U.S.C. 1395i–3(g)(1)(C)), A nursing facility (as defined in section 1861(dd)(1) of such Act (42 U.S.C. 1395x(dd)(1)));
(iv) A provider of personal care services.
(vii) A provider of adult day care.
(viii) A residential care provider that arranges for, or directly provides, long-term care services, including an assisted living facility that provides a level of care established by the Secretary.
(ix) An intermediate care facility for the mentally retarded (as defined in section 1905(d) of such Act (42 U.S.C. 1396d(d)));
(x) Any other facility or provider of long-term care services under such titles as the participating State determines appropriate.

(7) Evaluation and report
(A) Evaluation
(i) In general
The Inspector General of the Department of Health and Human Services shall con-
duct an evaluation of the nationwide program.

(ii) Inclusion of specific topics

The evaluation conducted under clause (i) shall include the following:

(I) A review of the various procedures implemented by participating States for long-term care facilities or providers, including staffing agencies, to conduct background checks of direct patient access employees under the nationwide program and identification of the most appropriate, efficient, and effective procedures for conducting such background checks.

(II) An assessment of the costs of conducting such background checks (including start up and administrative costs).

(III) A determination of the extent to which conducting such background checks leads to any unintended consequences, including a reduction in the available workforce for long-term care facilities or providers.

(IV) An assessment of the impact of the nationwide program on reducing the number of incidents of neglect, abuse, and misappropriation of resident property to the extent practicable.

(V) An evaluation of other aspects of the nationwide program, as determined appropriate by the Secretary.

(b) Funding

(1) Notification

The Secretary of Health and Human Services shall notify the Secretary of the Treasury of the amount necessary to carry out the nationwide program under this section for the period of fiscal years 2010 through 2012, except that in no case shall such amount exceed $160,000,000.

(2) Transfer of funds

(A) In general

Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide for the transfer to the Secretary of Health and Human Services of the amount specified as necessary to carry out the nationwide program under paragraph (1). Such amount shall remain available until expended.

(B) Reservation of funds for conduct of evaluation

The Secretary may reserve not more than $3,000,000 of the amount transferred under subparagraph (A) to provide for the conduct of the evaluation under subsection (a)(7)(A).

References in Text

Section 307 of the Medicare Prescription Drug Improvement, and Modernization Act of 2003, referred to in subsec. (a), is section 307 of Pub. L. 108–173, which is set out as a note under this section.

The Social Security Act, referred to in subsec. (a)(6)(E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVII and XIX of the Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.), respectively, of this chapter. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Codification

Section was enacted as part of the Patient Protection and Affordable Care Act, and not as part of the Social Security Act which comprises this chapter.

Pilot Program


(A) Authority To Conduct Program.—The Secretary [of Health and Human Services], in consultation with the Attorney General, shall establish a pilot program to identify efficient, effective, and economical procedures for long term care facilities or providers to conduct background checks on prospective direct patient access employees.

(B) Requirements.—

(1) In general.—Under the pilot program, a long-term care facility or provider in a participating State, prior to employing a direct patient access employee that is first hired on or after the commencement date of the pilot program in the State, shall conduct a background check on the employee in accordance with such procedures as the participating State shall establish.

(2) Procedures.—

(A) In general.—The procedures established by a participating State under paragraph (1) should be designed to—

(i) give a prospective direct access patient employee notice that the long-term care facility or provider is required to perform background checks with respect to new employees;

(ii) require, as a condition of employment, that the employee—

(I) provide a written statement disclosing any disqualifying information;

(II) provide a statement signed by the employee authorizing the facility to request national and State criminal history background checks;

(III) provide the facility with a rolled set of the employee’s fingerprints; and

(IV) provide any other identification information the participating State may require;

(iii) require the facility or provider to check any available registries that would be likely to contain disqualifying information about a prospective employee of a long-term care facility or provider; and

(iv) permit the facility or provider to obtain State and national criminal history background checks on the prospective employee through a fingerprint check that utilizes State criminal records and the Integrated Automated Finger-Print Identification System of the Federal Bureau of Investigation.

(B) Elimination of unnecessary checks.—The procedures established by a participating State under paragraph (1) shall permit a long-term care facility or provider to terminate the background check at any stage at which the facility or provider obtains disqualifying information regarding a prospective direct patient access employee.

(3) Prohibition on hiring of abusive workers.—

(A) In general.—A long-term care facility or provider may not knowingly employ any direct pa-
tient access employee who has any disqualifying information.

“(B) PROVISIONAL EMPLOYMENT.—Under the pilot program, a participating State may permit a long-term care facility or provider to provide for a provisional period of employment for a direct patient access employee pending completion of a background check, subject to such supervision during the employee’s provisional period of employment as the participating State determines appropriate.

“(C) AGREEMENTS WITH EMPLOYMENT AGENCIES.—A participating State may establish procedures for facilitating the conduct of background checks on prospective direct patient access employees that are hired by a long-term care facility or provider that, in denying employment for an individual selected for hire as a direct patient access employee (including during any period of provisional employment), reasonably relies upon information obtained through a background check of the individual, shall not be liable in any action brought by the individual based on the employment determination resulting from the information.

“(D) PENALTIES.—A participating State may impose such penalties as the State determines appropriate to enforce the requirements of the pilot program conducted in that State.

“(E) PARTICIPATING STATES.—

“(1) IN GENERAL.—The Secretary shall enter into agreements with not more than 10 States to conduct the pilot program under this section in such States.

“(2) REQUIREMENTS FOR STATES.—An agreement entered into under paragraph (1) shall require that a participating State—

(a) agree to—

(i) review the results of any State or national criminal history background checks conducted regarding a prospective direct patient access employee to determine whether the employee has any conviction for a relevant crime;

(ii) immediately report to the entity that requested the criminal history background checks the results of such review; and

(iii) in the case of an employee with a conviction for a relevant crime that is subject to reporting under section 1128I of the Social Security Act (42 U.S.C. 1320e–7e), report the existence of such conviction to the database established under that section.

“(F) APPLICATION AND SELECTION CRITERIA.—

“(A) APPLICATION.—A State seeking to participate in the pilot program established under this section, shall submit an application to the Secretary containing such information and at such time as the Secretary may specify.

“(B) SELECTION CRITERIA.—

“(1) IN GENERAL.—In selecting States to participate in the pilot program, the Secretary shall establish criteria to ensure—

(i) geographic diversity;

(ii) the inclusion of a variety of long-term care facilities or providers;

(iii) the evaluation of a variety of payment mechanisms for covering the costs of conducting the background checks required under the pilot program; and

(iv) the evaluation of a variety of penalties (monetary and otherwise) used by participating States to enforce the requirements of the pilot program in such States.

“(II) ADDITIONAL CRITERIA.—The Secretary shall, to the greatest extent practicable, select States to participate in the pilot program in accordance with the following:

(I) At least one participating State should include patient abuse prevention training (including behavior training and interventions) for managers and employees of long-term care facilities and providers as part of the pilot program conducted in that State.

(II) At least one participating State should establish procedures under which employment agencies (including temporary employment agencies) may contact the State directly to conduct background checks on prospective direct patient access employees.

(iii) At least one participating State should include patient abuse prevention training (including behavior training and interventions) for managers and employees of long-term care facilities and providers as part of the pilot program conducted in that State.

(IV) The evaluation of a variety of penalties (monetary and otherwise) used by participating States to enforce the requirements of the pilot program in such States.

“(II) INCLUSION OF STATES WITH EXISTING PROGRAMS.—Nothing in this section shall be construed as prohibiting any State which, as of the date of the enactment of this Act [Dec. 8, 2003], has procedures for conducting background checks on behalf of any entity described in subsection (g)(5) from being selected to participate in the pilot program conducted under this section.

“(3) PAYMENTS.—Of the amounts made available under subsection (f) to conduct the pilot program under this section, the Secretary shall—

(a) make payments to participating States for the costs of conducting the pilot program in such States; and

(b) reserve up to 4 percent of such amounts to conduct the evaluation required under subsection (e).

“(E) EVALUATION.—The Secretary, in consultation with the Attorney General, shall conduct by grant, contract, or interagency agreement an evaluation of the pilot program conducted under this section. Such evaluation shall—

(a) review the various procedures implemented by participating States for long-term care facilities or providers to conduct background checks of direct patient access employees and identify the most efficient, effective, and economical procedures for conducting such background checks;

(b) assess the costs of conducting such background checks (including start-up and administrative costs); and

(c) consider the benefits and problems associated with requiring employees or facilities or providers to pay the costs of conducting such background checks.

“(4) CONDUCT.—The Secretary shall—

(a) determine the extent to which conducting such background checks leads to any unintended conse-


(6) review forms used by participating States in order to develop, in consultation with the Attorney General, a model form for such background checks; and

(7) determine the effectiveness of background checks conducted by employment agencies; and

(8) recommend appropriate procedures and payment mechanisms for implementing a national criminal background check program for such facilities and providers.

(4) FUNDING.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary to carry out the pilot program under this section for the period of fiscal years 2004 through 2007, $25,000,000.

"(g) DEFINITIONS.—In this section:

"(1) Conviction for a relevant crime.—The term 'conviction of a relevant crime' means any Federal or State criminal conviction for—

"(A) any offense described in section 1128(a) of the Social Security Act (42 U.S.C. 1320a-7(a)); and

"(B) such other types of offenses as a participating State may specify for purposes of conducting the pilot program in such State.

"(2) Disqualifying information.—The term 'disqualifying information' means a conviction for a relevant crime or a finding of patient or resident abuse.

"(3) Finding of patient or resident abuse.—The term 'finding of patient or resident abuse' means any substantiated finding by a State agency under section 1819(g)(1)(C) or 1919(g)(1)(C) of the Social Security Act (42 U.S.C. 1395i–3(g)(1)(C), 1396r(g)(1)(C)) or a Federal agency that a direct patient access employee has committed—

"(A) an act of patient or resident abuse or neglect or a misappropriation of patient or resident property; or

"(B) such other types of acts as a participating State may specify for purposes of conducting the pilot program in such State.

"(4) Direct patient access employee.—The term 'direct patient access employee' means any individual (other than a volunteer) that has access to a patient or resident of a long-term care facility or provider through employment or through a contract with such facility or provider, as determined by a participating State for purposes of conducting the pilot program in such State.

"(5) Long-term care facility or provider.—

"(A) In general.—The term 'long-term care facility or provider' means the following facilities or providers which receive payment for services under title XVIII or XIX of the Social Security Act (42 U.S.C. 1395w(a)) that are exclusively provided to an individual or otherwise to include such other facilities or providers of long-term care services under such titles as the participating State determines appropriate.

"(C) Exceptions.—Such term does not include—

"(i) any facility or entity that provides, or is a provider of, services described in subparagraph (A) that are exclusively provided to an individual pursuant to a self-directed arrangement that meets such requirements as the participating State may establish in accordance with guidance from the Secretary; or

"(ii) any such arrangement that is obtained by a patient or resident functioning as an employer.

"(5) ADDITIONAL FACILITIES OR PROVIDERS.—During the first year in which a pilot program under this section is conducted in a participating State, the State may expand the list of facilities or providers under subparagraph (A) (on a phased-in basis or otherwise) to include such other facilities or providers of long-term care services under such titles as the participating State determines appropriate.

§ 1320a–7m. Use of predictive modeling and other analytics technologies to identify and prevent waste, fraud, and abuse in the Medicare fee-for-service program

(a) Use in the Medicare fee-for-service program

The Secretary shall use predictive modeling and other analytics technologies (in this section referred to as “predictive analytics technologies”) to identify improper claims for reimbursement and to prevent the payment of such claims under the Medicare fee-for-service program.

(b) Predictive analytics technologies requirements

The predictive analytics technologies used by the Secretary shall—

(1) capture Medicare provider and Medicare beneficiary activities across the Medicare fee-for-service program to provide a comprehensive view across all providers, beneficiaries, and geographies within such program in order to—

(A) identify and analyze Medicare provider networks, provider billing patterns, and beneficiary utilization patterns; and

(B) identify and detect any such patterns and networks that represent a high risk of fraudulent activity;

(2) be integrated into the existing Medicare fee-for-service program claims flow with minimal effort and maximum efficiency; and

(3) be able to—

(A) analyze large data sets for unusual or suspicious patterns or anomalies or contain other factors that are linked to the occurrence of waste, fraud, or abuse;

(B) undertake such analysis before payment is made; and

(C) prioritize such identified transactions for additional review before payment is made in terms of the likelihood of potential waste, fraud, and abuse to more efficiently utilize investigatory resources;

(4) capture outcome information on adjudicated claims for reimbursement to allow for refinement and enhancement of the predictive analytics technologies on the basis of such outcome information, including post-payment information about the eventual status of a claim; and

(5) prevent the payment of claims for reimbursement that have been identified as potentially wasteful, fraudulent, or abusive until such time as the claims have been verified as valid.
(c) Implementation requirements

(1) Request for proposals

Not later than January 1, 2011, the Secretary shall issue a request for proposals to carry out this section during the first year of implementation. To the extent the Secretary determines appropriate—

(A) the initial request for proposals may include subsequent implementation years; and

(B) the Secretary may issue additional requests for proposals with respect to subsequent implementation years.

(2) First implementation year

The initial request for proposals issued under paragraph (1) shall require the contractors selected to commence using predictive analytics technologies on July 1, 2011, in the 10 States identified by the Secretary as having the highest risk of waste, fraud, or abuse in the Medicare fee-for-service program.

(3) Second implementation year

Based on the results of the report and recommendation required under subsection (e)(1), the Secretary shall expand the use of predictive analytics technologies on October 1, 2012, to apply to an additional 10 States identified by the Secretary as having the highest risk of waste, fraud, or abuse in the Medicare fee-for-service program, after the States identified under paragraph (2).

(4) Third implementation year

Based on the results of the report and recommendation required under subsection (e)(2), the Secretary shall expand the use of predictive analytics technologies on January 1, 2014, to apply to the Medicare fee-for-service program in any State not identified under paragraph (2) or (3) and the commonwealths and territories.

(5) Fourth implementation year

Based on the results of the report and recommendation required under subsection (e)(3), the Secretary shall expand the use of predictive analytics technologies, beginning April 1, 2015, to apply to Medicaid and CHIP. To the extent the Secretary determines appropriate, such expansion may be made on a phased-in basis.

(6) Option for refinement and evaluation

If, with respect to the first, second, or third implementation year, the Inspector General of the Department of Health and Human Services certifies as part of the report required under subsection (e) for that year no or only nominal actual savings to the Medicare fee-for-service program, the Secretary may impose a moratorium, not to exceed 12 months, on the expansion of the use of predictive analytics technologies under this section for the succeeding year in order to refine the use of predictive analytics technologies to achieve more than nominal savings before further expansion. If a moratorium is imposed in accordance with this paragraph, the implementation dates applicable for the succeeding year or years shall be adjusted to reflect the length of the moratorium period.

(d) Contractor selection, qualifications, and data access requirements

(1) Selection

(A) In general

The Secretary shall select contractors to carry out this section using competitive procedures as provided for in the Federal Acquisition Regulation.

(B) Number of contractors

The Secretary shall select at least 2 contractors to carry out this section with respect to any year.

(2) Qualifications

(A) In general

The Secretary shall enter into a contract under this section with an entity only if the entity—

(i) has leadership and staff who—

(I) have the appropriate clinical knowledge of, and experience with, the payment rules and regulations under the Medicare fee-for-service program; and

(II) have direct management experience and proficiency utilizing predictive analytics technologies necessary to carry out the requirements under subsection (b); or

(ii) has a contract, or will enter into a contract, with another entity that has leadership and staff meeting the criteria described in clause (i).

(B) Conflict of interest

The Secretary may only enter into a contract under this section with an entity to the extent that the entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement.

(3) Data access

The Secretary shall provide entities with a contract under this section with appropriate access to data necessary for the entity to use predictive analytics technologies in accordance with the contract.

(e) Reporting requirements

(1) First implementation year report

Not later than 3 months after the completion of the first implementation year under this section, the Secretary shall submit to the appropriate committees of Congress and make available to the public a report that includes the following:

(A) A description of the implementation of the use of predictive analytics technologies during the year.

(B) A certification of the Inspector General of the Department of Health and Human Services that—

(i) specifies the actual and projected savings to the Medicare fee-for-service program as a result of the use of predictive analytics technologies, including estimates of the amounts of such savings with respect to both improper payments recovered and improper payments avoided;

(ii) the actual and projected savings to the Medicare fee-for-service program as a
result of such use of predictive analytics technologies relative to the return on investment for the use of such technologies and in comparison to other strategies or technologies used to prevent and detect fraud, waste, and abuse in the Medicare fee-for-service program; and

(iii) includes recommendations regarding—

(I) whether the Secretary should continue to use predictive analytics technologies;

(II) whether the use of such technologies should be expanded in accordance with the requirements of subsection (c); and

(III) any modifications or refinements that should be made to increase the amount of actual or projected savings or mitigate any adverse impact on Medicare beneficiaries or providers.

(C) An analysis of the extent to which the use of predictive analytics technologies successfully prevented and detected waste, fraud, or abuse in the Medicare fee-for-service program.

(D) A review of whether the predictive analytics technologies affected access to, or the quality of, items and services furnished to Medicare beneficiaries.

(E) A review of what effect, if any, the use of predictive analytics technologies had on Medicare providers.

(F) Any other items determined appropriate by the Secretary.

(2) Second year implementation report

Not later than 3 months after the completion of the second implementation year under this section, the Secretary shall submit to the appropriate committees of Congress and make available to the public a report that includes, with respect to such year, the items required under paragraph (1) as well as any other additional items determined appropriate by the Secretary with respect to the report for such year.

(3) Third year implementation report

Not later than 3 months after the completion of the third implementation year under this section, the Secretary shall submit to the appropriate committees of Congress, and make available to the public, a report that includes:

(i) whether the Secretary should continue to use predictive analytics technologies;

(ii) whether the use of such technologies should be expanded in accordance with the requirements of subsection (c); and

(iii) any modifications or refinements that should be made to increase the amount of actual or projected savings or mitigate any adverse impact on Medicare beneficiaries or providers.

(C) Recommendations regarding the extent to which technical assistance may be necessary to expand the application of predictive analytics technologies to claims under Medicaid and CHIP, and the type of any such assistance.

(f) Independent evaluation and report

(1) Evaluation

Upon completion of the first year in which predictive analytics technologies are used with respect to claims under Medicaid and CHIP, the Secretary shall, by grant, contract, or interagency agreement, conduct an independent evaluation of the use of predictive analytics technologies under the Medicare fee-for-service program and Medicaid and CHIP. The evaluation shall include an analysis with respect to each such program of the items required for the third year implementation report under subsection (e)(3).

(2) Report

Not later than 18 months after the evaluation required under paragraph (1) is initiated, the Secretary shall submit a report to Congress on the evaluation that shall include the results of the evaluation, the Secretary’s response to such results and, to the extent the Secretary determines appropriate, recommendations for legislation or administrative actions.

(g) Waiver authority

The Secretary may waive such provisions of titles XI, XVIII, XIX, and XXI of the Social Security Act [42 U.S.C. 1301 et seq., 1395 et seq., 1396 et seq., 1397aa et seq.], including applicable prompt payment requirements under titles XVIII and XIX of such Act, as the Secretary determines to be appropriate to carry out this section.

(h) Funding

(1) Appropriation

Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary to carry out this section, $100,000,000 for the period beginning January 1, 2011, to remain available until expended.

(2) Reservations

(A) Independent evaluation

The Secretary shall reserve not more than 5 percent of the funds appropriated under paragraph (1) for purposes of conducting the independent evaluation required under subsection (f).

(B) Application to Medicaid and CHIP

The Secretary shall reserve such portion of the funds appropriated under paragraph (1) as the Secretary determines appropriate for purposes of providing assistance to States for administrative expenses in the event of the expansion of predictive analytics technologies to claims under Medicaid and CHIP.

(i) Definitions

In this section:

(1) Commonwealths and territories

The term “commonwealth and territories” includes the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands. (So in original. Probably should be followed by a comma.)

2 So in original. The comma probably should not appear.
the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States in which the Medicare fee-for-service program, Medicaid, or CHIP operates.

(2) CHIP

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

(3) Medicaid

The term “Medicaid” means the program to provide grants to States for medical assistance programs established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(4) Medicare beneficiary

The term “Medicare beneficiary” means an individual enrolled in the Medicare fee-for-service program.

(5) Medicare fee-for-service program

The term “Medicare fee-for-service program” means the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act (42 U.S.C. 1395(c) et seq.; 1395 et seq.).

(6) Medicare provider

The term “Medicare provider” means a provider of services (as defined in subsection (u) of section 1861 of the Social Security Act (42 U.S.C. 1395x)) and a supplier (as defined in subsection (d) of such section).

(7) Secretary

The term “Secretary” means the Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services.

(8) State

The term “State” means each of the 50 States and the District of Columbia.


REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (g) and (i)(2), (3), (5), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XI, XVIII, XIX, and XXI of the Act are classified generally to subchapters XI (§ 1301 et seq.), XVIII (§ 1395 et seq.), and XXI (§ 1397aa et seq.), respectively, of this chapter. Parts A and B of title XVIII of the Act are classified generally to Parts A (§1395c et seq.) and B (§1395 et seq.) of subchapter XVIII of this chapter. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CITATION

Section was enacted as part of the Small Business Jobs Act of 2010, and not as part of the Social Security Act which comprises this chapter.

§ 1320a–8. Civil monetary penalties and assessments for subchapters II, VIII and XVI

(a) False statements or representations of material fact; proceedings to exclude; wrongful conversions by representative payees

(1) Any person (including an organization, agency, or other entity) who—
(b) Initiation of proceedings; hearing; sanctions

(1) The Commissioner of Social Security may initiate a proceeding to determine whether to impose a civil money penalty or assessment, or whether to recommend exclusion under subsection (a) of this section only as authorized by the Attorney General pursuant to procedures agreed upon by the Commissioner of Social Security and the Attorney General. The Commissioner of Social Security may not initiate an action under this section with respect to any violation described in subsection (a) of this section later than 6 years after the date the violation was committed. The Commissioner of Social Security may initiate an action under this section by serving notice of the action in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

(2) The Commissioner of Social Security shall not make a determination adverse to any person under this section until the person has been given written notice and an opportunity for the determination to be made on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person.

(3) In a proceeding under this section which—

(A) is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal or State crime; and

(B) involves the same transaction as in the criminal action;

the person is estopped from denying the essential elements of the criminal offense.

(4) The official conducting a hearing under this section may sanction a person, including any party or attorney, for failing to comply with an order or procedure, for failing to defend an action, or for such other misconduct as would interfere with the speedy, orderly, or fair conduct of the hearing. Such sanction shall reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

(A) in the case of refusal to provide or permit discovery, drawing negative factual inference or treating such refusal as an admission by deeming the matter, or certain facts, to be established;

(B) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense;

(C) striking pleadings, in whole or in part;

(D) staying the proceedings;

(E) dismissal of the action;

(F) entering a default judgment;

(G) ordering the party or attorney to pay attorneys’ fees and other costs caused by the failure or misconduct; and

(H) refusing to consider any motion or other action which is not filed in a timely manner.

c) Amount or scope of penalties, assessments, or exclusions

In determining pursuant to subsection (a) of this section the amount or scope of any penalty or assessment, or whether to recommend an exclusion, the Commissioner of Social Security shall take into account—

(1) the nature of the statements, representations, or actions referred to in subsection (a) of this section and the circumstances under which they occurred;

(2) the degree of culpability, history of prior offenses, and financial condition of the person committing the offense; and

(3) such other matters as justice may require.

d) Judicial review

(1) Any person adversely affected by a determination of the Commissioner of Social Security under this section may obtain a review of such determination in the United States Court of Appeals for the circuit in which the person resides, or in which the statement or representation referred to in subsection (a) of this section was made, by filing in such court (within 60 days following the date the person is notified of the Commissioner’s determination) a written petition requesting that the determination be modified or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner of Social Security, and thereupon the Commissioner of Social Security shall file in the court the record in the proceeding as provided in section 2112 of title 28. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, remanding for further consideration, or setting aside, in whole or in part, the determination of the Commissioner of Social Security and enforcing the same to the extent that such order is affirmed or modified. No objection that has not been urged before the Commissioner of Social Security shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(2) The findings of the Commissioner of Social Security with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive in the review described in paragraph (1). If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commissioner of Social Security, the court may order such additional evidence to be taken before the Commissioner of Social Security and to be made a part of the record. The Commissioner of Social Security may modify such findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and the Commissioner of Social Security shall file with the court such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole shall be conclusive, and the Commissioner’s recommendations, if any, for the modification or setting aside of the Commissioner’s original order.

(3) Upon the filing of the record and the Commissioner’s original or modified order with the
court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28.

(e) Compromise of money penalties and assessments; recovery; use of funds recovered

(1) Civil money penalties and assessments imposed under this section may be compromised by the Commissioner of Social Security and may be recovered—
   (A) in a civil action in the name of the United States brought in United States district court for the district where the violation occurred, or where the person resides, as determined by the Commissioner of Social Security;
   (B) by means of reduction in tax refunds to which the person is entitled, based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31;
   (C)(i) by decrease of any payment of monthly insurance benefits under subchapter II of this chapter, notwithstanding section 407 of this title,
      (ii) by decrease of any payment under subchapter VIII of this chapter to which the person is entitled, or
      (iii) by decrease of any payment under subchapter XVI of this chapter for which the person is eligible, notwithstanding section 407 of this title, as made applicable to subchapter XVI of this chapter by reason of section 1383(d)(1) of this title;
   (D) by authorities provided under the Debt Collection Act of 1982, as amended, to the extent applicable to debts arising under this chapter;
   (E) by deduction of the amount of such penalty or assessment, when finally determined, or the amount agreed upon in compromise, from any sum then or later owing by the United States to the person against whom the penalty or assessment has been assessed; or
   (F) by any combination of the foregoing.

(2) Amounts recovered under this section shall be recovered by the Commissioner of Social Security and shall be disposed of as follows:
   (A) In the case of amounts recovered arising out of a determination relating to subchapter II of this chapter, the amounts shall be transferred to the Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and such amounts shall be deposited by the Managing Trustee into such Trust Fund.
   (B) In the case of any other amounts recovered under this section, the amounts shall be deposited by the Commissioner of Social Security into the general fund of the Treasury as miscellaneous receipts.

(f) Finality of determination respecting penalty, assessment, or exclusion

A determination pursuant to subsection (a) of this section by the Commissioner of Social Security to impose a penalty or assessment, or to recommend an exclusion shall be final upon the expiration of the 60-day period referred to in subsection (d) of this section. Matters that were raised or that could have been raised in a hearing before the Commissioner of Social Security or in an appeal pursuant to subsection (d) of this section may not be raised as a defense to a civil action by the United States to collect a penalty or assessment imposed under this section.

(g) Notification of appropriate entities of finality of determination

Whenever the Commissioner’s determination to impose a penalty or assessment under this section with respect to a medical provider or physician becomes final, the Commissioner shall notify the Secretary of the final determination and the reasons therefor, and the Secretary shall then notify the entities described in section 1320a–7a(h) of this title of such final determination.

(h) Injunction

Whenever the Commissioner of Social Security has reason to believe that any person has engaged, is engaging, or is about to engage in any activity which makes the person subject to a civil monetary penalty under this section, the Commissioner of Social Security may bring an action in an appropriate district court of the United States (or, if applicable, a United States court of any territory) to enjoin such activity, or to enjoin the person from concealing, removing, encumbering, or disposing of assets which may be required in order to pay a civil monetary penalty and assessment if any such penalty were to be imposed or to seek other appropriate relief.

(i) Delegation of authority

(1) The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this section to the same extent as they are applicable with respect to subchapter II of this chapter. The Commissioner of Social Security may delegate the authority granted by section 405(d) of this title (as made applicable to this section) to the Inspector General for purposes of any investigation under this section.

(2) The Commissioner of Social Security may delegate authority granted under this section to the Inspector General.

(j) “State agency” defined

For purposes of this section, the term “State agency” shall have the same meaning as in section 1320a–7a(i)(1) of this title.

(k) Liability of principal for acts of agents

A principal is liable for penalties and assessments under subsection (a) of this section, and for an exclusion under section 1320a–7 of this title based on a recommendation under subsection (a) of this section, for the actions of the principal’s agent acting within the scope of the agency.

(l) Protection of ongoing criminal investigations

As soon as the Inspector General, Social Security Administration, has reason to believe that fraud was involved in the application of an individual for monthly insurance benefits under subchapter II of this chapter or for benefits under subchapter VIII or XVI of this chapter, the In-
spector General shall make available to the Commissioner of Social Security information identifying the individual, unless a United States attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that making the information so available in a particular investigation or redetermining the eligibility of the individual for such benefits would jeopardize the criminal prosecution of any person who is a subject of the investigation from which the information is derived.


REFERENCES IN TEXT

Rule 4 of the Federal Rules of Civil Procedure, referred to in subsec. (b)(1), is set out in the Appendix to Title IV, Judiciary and Judicial Procedure.


PRIORITY PROVISIONS


AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–203, § 201(a)(1), substantially rewrote par. (1). Prior to amendment, par. (1) read as follows: “Any person (including an organization, agency, or other entity) who makes, or causes to be made, a statement or representation of a material fact for use in determining any initial or continuing right to or the amount of—

(A) monthly insurance benefits under subchapter II of this chapter;

(B) benefits or payments under subchapter VIII of this chapter, or

(C) benefits or payments under subchapter XVI of this chapter, that the person knows or should know is false or misleading or knows or should know omits a material fact or makes such a statement with knowingly disregard for the truth shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each such statement or representation. Such person also shall be subject to a penalty of not more than twice the amount of benefits or payments paid as a result of such a statement or representation. In addition, the Commissioner of Social Security may make a determination in the same proceeding to recommend that the Secretary exclude, as provided in section 1320a–7 of this title, such a person who is a medical provider or physician from participation in the programs under subchapter XVIII of this chapter.”


Subsec. (c)(1). Pub. L. 108–203, § 201(c)(2), substituted “representations, or actions” for “and representations”.

Subsec. (e)(1)(A). Pub. L. 108–203, § 201(c)(3), substituted “violation occurred” for “statement or representation referred to in subsection (a) of this section was made”.

Subsec. (e)(2)(B). Pub. L. 108–203, § 201(b), substituted “in the case of any other amounts recovered under this section,” for “in the case of amounts recovered arising out of a determination relating to subchapter VIII or XVI of this chapter.”


Subsec. (a)(1)(B), (C). Pub. L. 106–169, § 251(b)(6)(B), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (a)(2). Pub. L. 106–169, § 251(b)(6)(C), inserted “or subchapter VIII of this chapter,” after “subchapter II of this chapter”.


1994—Subsec. (a)(1). Pub. L. 103–296, § 108(b)(10)(A)(i), (ii), in closing provisions substituted “Commissioner of Social Security” for “Secretary”, inserted “recommend that the Secretary” before “exclude, as provided”, and struck out before period at end “and to direct the appropriate State agency to exclude the person from participation in any State health care program permanently or for such period as the Secretary determines”.


Pub. L. 103–296, § 108(b)(10)(A)(i), which directed that this section be amended by substituting “Commissioner of Social Security” for “Secretary” wherever appearing, was also executed by substituting “Commissioner’s” for “Secretary’s” wherever appearing in subsec. (d), to reflect the probable intent of Congress, because Pub. L. 103–296, § 108(b)(10)(A)(i), (ii)(I), substituted “Commissioner of Social Security” for “Secretary” throughout this section and in subsec. (g), substituted “Commissioner’s” for “Secretary’s”.

Subsecs. (e), (f). Pub. L. 103–296, § 108(b)(10)(A)(i), which directed amendment of this section by substituting “Commissioner of Social Security” for “Secretary” wherever appearing, each place it appears, was executed in subsecs. (e) and (f) by making the substitution wherever appearing except where appearing before “of the Treasury” in subsec. (e)(1)(B) to reflect the probable intent of Congress.

Subsec. (g). Pub. L. 103–296, § 108(b)(10)(A)(iii), substituted “Commissioner’s” for “Secretary’s” and “the Commissioner shall notify the Secretary of the final determination and the reasons therefor, and the Secretary shall then notify the entities described in section 1320a–7a(h) of this title of such final determination,” for “the provisions of section 1320a–7a(h) of this title shall apply”.


Subsec. (k). Pub. L. 103–296, § 108(b)(10)(A)(iv), inserted “based on a recommendation under subsection (a) of this section” after “section 1320a–7 of this title”.

Security Administration” for “Department of Health and Human Services” and “Commissioner of Social Security” for “Secretary”.

**Effective Date of 2004 Amendment**


Pub. L. 108–203, title II, §201(d), Mar. 2, 2004, 118 Stat. 506, provided that: “The amendments made by this section [amending this section and section 1320a–8a of this title] shall apply with respect to violations committed after the date on which the Commissioner of Social Security implements the centralized computer file described in section 202 [set out as a note under section 902 of this title].” [The centralized computer file was implemented Nov. 27, 2006, see 72 F.R. 27424.]

**Effective Date of 1994 Amendment**


**STUDY ON POSSIBLE MEASURES TO IMPROVE FRAUD PREVENTION AND ADMINISTRATIVE PROCESSING**


“(a) STUDY.—As soon as practicable after the date of the enactment of this Act [Dec. 14, 1999], the Commissioner of Social Security, in consultation with the Inspector General of the Social Security Administration and the Attorney General, shall conduct a study of possible measures to improve—

“(1) prevention of fraud on the part of individuals entitled to disability benefits under section 223 of the Social Security Act [section 423 of this title] or benefits under section 202 of such Act [section 402 of this title] based on the beneficiary’s disability, individuals eligible for supplemental security income benefits under title XVI of such Act [subchapter XVI of this chapter], and applicants for any such benefits; and

“(2) timely processing of reported income changes by individuals receiving such benefits.

“(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 14, 1999], the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report that contains the results of the Commissioner’s study under subsection (a). The report shall contain such recommendations for legislative and administrative changes as the Commissioner considers appropriate.”

§ 1320a–8a. Administrative procedure for imposing penalties for false or misleading statements

(a) In general

Any person who—

(1) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under subchapter II of this chapter or benefits or payments under subchapter XVI of this chapter that the person knows or should know is false or misleading,

(2) makes such a statement or representation for such use with knowing disregard for the truth, or

(3) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under subchapter II of this chapter or benefits or payments under subchapter XVI of this chapter, if the person knows, or should know, that the statement or representation with respect to such disclosure is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to, in addition to any other penalties that may be prescribed by law, a penalty described in subsection (b) of this section to be imposed by the Commissioner of Social Security.

(b) Penalty

The penalty described in this subsection is—

(1) nonpayment of benefits under subchapter II of this chapter that would otherwise be payable to the person; and

(2) ineligibility for cash benefits under subchapter XVI of this chapter,

for each month that begins during the applicable period described in subsection (c) of this section.

(c) Duration of penalty

The duration of the applicable period, with respect to a determination by the Commissioner under subsection (a) of this section that a person has engaged in conduct described in subsection (a) of this section, shall be—

(1) six consecutive months, in the case of the first such determination with respect to the person;

(2) twelve consecutive months, in the case of the second such determination with respect to the person; and

(3) twenty-four consecutive months, in the case of the third or subsequent such determination with respect to the person.

(d) Effect on other assistance

A person subject to a period of nonpayment of benefits under subchapter II of this chapter or ineligibility for subchapter XVI of this chapter benefits by reason of this section nevertheless shall be considered to be eligible for and receiving such benefits, to the extent that the person would be receiving or eligible for such benefits but for the imposition of the penalty, for purposes of—

(1) determination of the eligibility of the person for benefits under subchapters XVIII and XIX of this chapter; and

(2) determination of the eligibility or amount of benefits payable under subchapter II or XVI of this chapter to another person.

(e) Definition

In this section, the term “benefits under subchapter VIII or XVI of this chapter” includes State supplementary payments made by the Commissioner pursuant to an agreement under section 1010a or 1382a(a) of this title or section 212(b) of Public Law 93–66, as the case may be.
(f) Consultations

The Commissioner of Social Security shall consult with the Inspector General of the Social Security Administration regarding initiating actions under this section.


REFERENCES IN TEXT
Section 212(b) of Public Law 93–66, referred to in subsec. (e), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS
2004—Subsec. (a). Pub. L. 108–203 substantially rewrote text of subsec. (a). Prior to amendment, text read as follows: “Any person who makes, or causes to be made, a statement or representation of a material fact for use in determining any initial or continuing right to or the amount of—

(1) monthly insurance benefits under subchapter II of this chapter; or

(2) benefits or payments under subchapter XVI of this chapter.

that the person knows or should know is false or misleading or knows or should know omits a material fact or who makes such a statement with knowing disregard for the truth shall be subject to, in addition to any other penalties that may be prescribed by law, a penalty described in subsection (b) of this section to be imposed by the Commissioner of Social Security.”

2000—Subsec. (e). Pub. L. 106–554, §1(a)(1) [title V, §518(b)(2)(C)], which directed the amendment of subsec. (e) by inserting “1010A or” before “agreement under section” and “, as the case may be” before period at end, Pub. L. 106–554, §1(a)(1) [title V, §518(b)(2)(C)], which directed the amendment of subsec. (e) by inserting “1010A or” before “agreement under section” and “, as the case may be” before period at end, Pub. L. 106–554, §1(a)(1) [title V, §518(b)(2)(C)], which directed the amendment of subsec. (e) by inserting “1010A or” before “agreement under section” and “, as the case may be” before period at end, Pub. L. 106–554, §1(a)(1) [title V, §518(b)(2)(C)], which instructed the amendment of subsec. (e) by inserting “1010A or” before “agreement under section” and “, as the case may be” before period at end, Pub. L. 106–554, §1(a)(1) [title V, §518(b)(2)(C)], which instructed the amendment of subsec. (e) by inserting “1010A or” before “agreement under section” and “, as the case may be” before period at end, Pub. L. 106–554, §1(a)(1) [title V, §518(b)(2)(C)], which instructed the amendment of subsec. (e) by inserting “1010A or” before “agreement under section” and “, as the case may be” before period at end, Pub. L. 106–554, §1(a)(1) [title V, §518(b)(2)(C)], which instructed the amendment of subsec. (e) by inserting “1010A or” before “agreement under section” and “, as the case may be” before period at end.

Effective Date of 2004 Amendment
Amendment by Pub. L. 108–203 applicable with respect to violations committed after Nov. 27, 2006, see section 201(d) of Pub. L. 108–203, set out as a note under section 1320a–8 of this title.

Effective Date
Section applicable to statements and representations made on or after Dec. 14, 1999, see section 207(e) of Pub. L. 106–169, set out as an Effective Date of 1999 Amendment note under section 602 of this title.

Regulations
Pub. L. 106–169, title II, §207(d), Dec. 14, 1999, 113 Stat. 1888, provided that: “Within 6 months after the date of the enactment of this Act [Dec. 14, 1999], the Commissioner of Social Security shall develop regulations that prescribe the administrative process for making determinations under section 1129A of the Social Security Act [this section] (including when the applicable period in subsection (c) of such section shall commence), and shall provide guidance on the exercise of discretion as to whether the penalty should be imposed in particular cases.”

§1320a–8b. Attempts to interfere with administration of this chapter

Whoever corruptly or by force or threats of force (including any threatening letter or communication) attempts to intimidate or impede any officer, employee, or contractor of the Social Security Administration (including any State employee of a disability determination service or any other individual designated by the Commissioner of Social Security) acting in an official capacity to carry out a duty under this chapter, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or attempts to obstruct or impede, the due administration of this chapter, shall be fined not more than $5,000, imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person shall be fined not more than $3,000, imprisoned not more than 1 year, or both. In this subsection, the term “threats of force” means threats of harm to the officer or employee of the United States or to a contractor of the Social Security Administration, or to a member of the family of such an officer or employee or contractor.


§1320a–9. Demonstration projects

(a) Authority to approve demonstration projects

(1) In general

The Secretary may authorize States to conduct demonstration projects pursuant to this section which the Secretary finds are likely to promote the objectives of part B or E of subchapter IV of this chapter.

(2) Limitation

During fiscal years 2012 through 2014, the Secretary may authorize demonstration projects described in paragraph (1), with not more than 10 demonstration projects to be authorized in each fiscal year.

(3) Conditions for State eligibility

For purposes of a new demonstration project under this section that is initially approved in any of fiscal years 2012 through 2014, a State shall be authorized to conduct such demonstration project only if the State satisfies the following conditions:

(A) Identify 1 or more goals

(i) In general

The State shall demonstrate that the demonstration project is designed to accomplish 1 or more of the following goals: (I) Increase permanency for all infants, children, and youth by reducing the time in foster placements when possible and promoting a successful transition to adulthood for older youth. (II) Increase positive outcomes for infants, children, youth, and families in their homes and communities, including tribal communities, and improve the safety and well-being of infants, children, and youth.
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(III) Prevent child abuse and neglect and the re-entry of infants, children, and youth into foster care.

(ii) Long-term therapeutic family treatment centers; addressing domestic violence

With respect to a demonstration project that is designed to accomplish 1 or more of the goals described in clause (i), the State may elect to establish a program—

I to permit foster care maintenance payments to be made under part E of subchapter IV to a long-term therapeutic family treatment center (as described in paragraph (8)/(B)) on behalf of a child residing in the center; or

II to identify and address domestic violence that endangers children and results in the placement of children in foster care.

(B) Demonstrate readiness

The State shall demonstrate through a narrative description the State’s capacity to effectively use the authority to conduct a demonstration project under this section by identifying changes the State has made or plans to make in policies, procedures, or other elements of the State’s child welfare program that will enable the State to successfully achieve the goal or goals of the project.

(C) Demonstrate implemented or planned child welfare program improvement policies

(i) In general

The State shall demonstrate that the State has implemented, or plans to implement within 3 years of the date on which the State submits its application to conduct the demonstration project or 2 years after the date on which the Secretary approves such demonstration project (whichever is later), at least 2 of the child welfare program improvement policies described in paragraph (7).

(ii) Previous implementation

For purposes of the requirement described in clause (i), at least 1 of the child welfare program improvement policies to be implemented by the State shall be a policy that the State has not previously implemented as of the date on which the State submits an application to conduct the demonstration project.

(iii) Implementation review

The Secretary may terminate the authority of a State to conduct a demonstration project under this section if, after the 3-year period following approval of the demonstration project, the State has not made significant progress in implementing the child welfare program improvement policies proposed by the State under clause (i).

(4) Limitation on eligibility

The Secretary may not authorize a State to conduct a demonstration project under this section if the State fails to provide health insurance coverage to any child with special needs (as determined under section 673(c) of this title) for whom there is in effect an adoption assistance agreement between a State and an adoptive parent or parents.

(5) Requirement to consider effect of project on terms and conditions of certain court orders

In considering an application to conduct a demonstration project under this section that has been submitted by a State in which there is in effect a court order determining that the State’s child welfare program has failed to comply with the provisions of part B or E of subchapter IV of this chapter, or with the Constitution of the United States, the Secretary shall take into consideration the effect of approving the proposed project on the terms and conditions of the court order related to the failure to comply and the ability of the State to implement a corrective action plan approved under section 1320a–2a of this title.

(6) Inapplicability of random assignment for control groups as a factor for approval of demonstration projects

For purposes of evaluating an application to conduct a demonstration project under this section, the Secretary shall not take into consideration whether such project requires random assignment of children and families to groups served under the project and to control groups.

(7) Child welfare program improvement policies

For purposes of paragraph (3)(C), the child welfare program improvement policies described in this paragraph are the following:

(A) The establishment of a bill of rights for infants, children, and youth in foster care that is widely shared and clearly outlines protections for infants, children, and youth, such as ensuring frequent visits with parents, siblings, and caseworkers, access to attorneys, and participation in age-appropriate extracurricular activities, and procedures for ensuring the protections are provided.

(B) The development and implementation of a plan for meeting the health and mental health needs of infants, children, and youth in foster care that includes ensuring that the provision of health and mental health care is child-specific, comprehensive, appropriate, and consistent (through means such as ensuring the infant, child, or youth has a medical home, regular wellness medical visits, and addressing the issue of trauma, when appropriate).

(C) The inclusion in the State plan under section 671 of this title of an amendment implementing the option under subsection (a)(28) of that section to enter into kinship guardianship assistance agreements.

(D) The election under the State plan under section 671 of this title to define a “child” for purposes of the provision of foster care maintenance payments, adoption assistance payments, and kinship guardianship assistance payments, so as to include
individuals described in each of subsections (1), (2), and (3) of section 675(8)(B)(i) of this title who have not attained age 21.

(E) The development and implementation of a plan that ensures congregate care is used appropriately and reduces the placement of children and youth in such care.

(F) Of those infants, children, and youth in out-of-home placements, substantially increasing the number of cases of siblings who are in the same foster care, kinship guardianship, or adoptive placement, above the number of such cases in fiscal year 2008.

(G) The development and implementation of a plan to improve the recruitment and retention of high quality foster family homes trained to help assist infants, children, and youth swiftly secure permanent families. Supports for foster families under such a plan may include increasing maintenance payments to more adequately meet the needs of infants, children, and youth in foster care and expanding training, respite care, and other support services for foster parents.

(H) The establishment of procedures designed to assist youth as they prepare for their transition out of foster care, such as arranging for participation in age-appropriate extra-curricular activities, providing appropriate access to cell phones, computers, and opportunities to obtain a driver’s license, providing notification of all sibling placements if siblings are in care and sibling location if siblings are out of care, and providing counseling and financial support for post-secondary education.

(I) The inclusion in the State plan under section 671 of this title of a description of State procedures for—

(i) ensuring that youth in foster care who have attained age 16 are engaged in discussions, including during the development of the transition plans required under paragraphs (1)(D) and (5)(H) of section 675 of this title, that explore whether the youth wishes to reconnect with the youth’s biological family, including parents, grandparents, and siblings, and, if so, what skills and strategies the youth will need to successfully and safely reconnect with those family members;

(ii) providing appropriate guidance and services to youth whom 1 affirm an intent to reconnect with biological family members on how to successfully and safely manage such reconnections; and

(iii) making, when appropriate, efforts to include biological family members in such reconnection efforts.

(J) The establishment of one or more of the following programs designed to prevent infants, children, and youth from entering foster care or to provide permanency for infants, children, and youth in foster care:

(i) An intensive family finding program.

(ii) A kinship navigator program.

(iii) A family counseling program, such as a family group decision-making program, and which may include in-home peer support for families.

(iv) A comprehensive family-based substance abuse treatment program.

(v) A program under which special efforts are made to identify and address domestic violence that endangers infants, children, and youth and puts them at risk of entering foster care.

(vi) A mentoring program.

(8) Definitions

In this subsection—

(A) the term “youth” means, with respect to a State, an individual who has attained age 12 but has not attained the age at which an individual is no longer considered to be a child under the State plans under parts B and E of subchapter IV, and

(B) the term “long-term therapeutic family treatment center” means a State licensed or certified program that enables parents and their children to live together in a safe environment for a period of not less than 6 months and provides, on-site or by referral, substance abuse treatment services, children’s early intervention services, family counseling, legal services, medical care, mental health services, nursery and pre-school, parenting skills training, pediatric care, prenatal care, sexual abuse therapy, relapse prevention, transportation, and job or vocational training or classes leading to a secondary school diploma or a certificate of general equivalency.

(b) Waiver authority

The Secretary may waive compliance with any requirement of part B or E of subchapter IV of this chapter which (if applied) would prevent a State from carrying out a demonstration project under this section or prevent the State from effectively achieving the purpose of such a project, except that the Secretary may not waive—

(1) any provision of section 622(b)(8) of this title, or section 679 of this title; or

(2) any provision of such part E, to the extent that the waiver would impair the entitlement of any qualified child or family to benefits under a State plan approved under such part E.

(c) Treatment as program expenditures

For purposes of parts B and E of subchapter IV of this chapter, the Secretary shall consider the expenditures of any State to conduct a demonstration project under this section to be expenditures under subpart 1 or 2 of such part B, or under such part E, as the State may elect.

(d) Duration of demonstration

(1) In general

Subject to paragraph (2), a demonstration project under this section may be conducted for not more than 5 years, unless in the judgment of the Secretary, the demonstration project should be allowed to continue.

(2) Termination of authority

In no event shall a demonstration project under this section be conducted after September 30, 2019.

1 So in original. Probably should be “who”.
(e) Application

Any State seeking to conduct a demonstration project under this section shall submit to the Secretary an application, in such form as the Secretary may require, which includes—

1. a description of the proposed project, the geographic area in which the proposed project would be conducted, the children or families who would be served by the proposed project, and the services which would be provided by the proposed project;
2. a statement of the period during which the proposed project would be conducted;
3. a discussion of the benefits that are expected from the proposed project (compared to a continuation of activities under the approved plan or plans of the State);
4. an estimate of the costs or savings of the proposed project;
5. a statement of program requirements for which waivers would be needed to permit the proposed project to be conducted;
6. a description of the proposed evaluation design;
7. an accounting of any additional Federal, State, and local investments made, as well as any private investments made in coordination with the State, during the 2 fiscal years preceding the application to provide the services described in paragraph (1), and an assurance that the State will provide an accounting of that same spending for each year of an approved demonstration project; and
8. such additional information as the Secretary may require.

(f) Evaluations

Each State authorized to conduct a demonstration project under this section shall obtain an evaluation by an independent contractor of the effectiveness of the project, using an evaluation design approved by the Secretary which provides for—

1. comparison of methods of service delivery under the project, and such methods under a State plan or plans, with respect to efficiency, economy, and any other appropriate measures of program management;
2. comparison of outcomes for children and families (and groups of children and families) under the project, and such outcomes under a State plan or plans, for purposes of assessing the effectiveness of the project in achieving program goals; and
3. any other information that the Secretary may require.

(g) Reports

(1) State reports; public availability

Each State authorized to conduct a demonstration project under this section shall—

A. submit periodic reports to the Secretary on the specific programs, activities, and strategies used to improve outcomes for infants, children, youth, and families and the results achieved for infants, children, and youth during the conduct of the demonstration project, including with respect to those infants, children, and youth who are prevented from entering foster care, infants, children, and youth in foster care, and

fants, children, and youth who move from foster care to permanent families; and
B. post a copy of each such report on the website for the State child welfare program concurrent with the submission of the report to the Secretary.

(2) Reports to Congress

The Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

A. periodic reports based on the State reports submitted under paragraph (1); and
B. a report based on the results of the State evaluations required under subsection (f) that includes an analysis of the results of such evaluations and such recommendations for administrative or legislative changes as the Secretary determines appropriate.

(h) Cost neutrality

The Secretary may not authorize a State to conduct a demonstration project under this section unless the Secretary determines that the total amount of Federal funds that will be expended under (or by reason of) the project over its approved term (or such portion thereof or other period as the Secretary may find appropriate) will not exceed the amount of such funds that would be expended by the State under the State plans approved under parts B and E of subchapter IV of this chapter if the project were not conducted.

(i) Indian tribes operating IV-E programs considered States

An Indian tribe, tribal organization, or tribal consortium that has elected to operate a program under part E of subchapter IV in accordance with section 679c of this title shall be considered a State for purposes of this section.

Prior Provisions


Amendments

2011—Subsec. (a)(2). Pub. L. 112–34, § 201(1)(A), amended par. (2) generally. Prior to amendment, text read as follows: “The Secretary may authorize not more than 10 demonstration projects under paragraph (1) in each of fiscal years 1998 through 2003.”

Subsec. (a)(3). Pub. L. 112–34, § 201(1)(B), added par. (3) and struck out former par. (3) which related to certain types of proposals required to be considered.

Subsec. (a)(5). Pub. L. 112–34, § 201(1)(C), inserted “and the ability of the State to implement a corrective action plan approved under section 1328a–2a of this title” before the period.

Subsec. (a)(6) to (8). Pub. L. 112–34, § 201(1)(D), added pars. (6) to (8).

Subsec. (d). Pub. L. 112–34, § 201(2), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows: “A demonstration project under
this section may be conducted for not more than 5 years, unless in the judgment of the Secretary, the demonstration project should be allowed to continue.

Subsec. (e)(1). Pub. L. 112–34, §203(h)(A), struck out ‘‘(which shall provide, where appropriate, for random assignment of children and families to groups served under the project and to control groups)’’ before the semicolon.

Subsec. (e)(7), (8). Pub. L. 112–34, §201(3)(B)–(D), added par. (7) and redesignated former par. (7) as (8).

Subsecs. (f) to (h). Pub. L. 112–34, §201(4), (5), added subsec. (f) and (g), redesignated former subsec. (g) as (h), and struck out former subsec. (f) which related to evaluation of, and report on, demonstration projects.


2006—Subsec. (b)(1). Pub. L. 109–288 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ‘‘any provision of section 627 of this title (as in effect before April 1, 1996), section 622(b)(9) of this title (as in effect before such date), or section 670 of this title; or’’. 2003—Subsec. (a)(2). Pub. L. 108–140 substituted ‘‘2003’’ for ‘‘2002’’. 1997—Subsec. (a). Pub. L. 105–89, §301(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ‘‘The Secretary may authorize not more than 10 States to conduct demonstration projects pursuant to this section which the Secretary finds are likely to promote the objectives of part B or E of subchapter IV of this chapter.’’

Subsec. (d). Pub. L. 105–89, §301(c), inserted before period at end ‘‘unless in the judgment of the Secretary, the demonstration project should be allowed to continue’’.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under parts B and E of subchapter IV of this chapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of this section; or—


Amendment by Pub. L. 105–89, §301(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ‘‘The Secretary may authorize not more than 10 States to conduct demonstration projects pursuant to this section which the Secretary finds are likely to promote the objectives of part B or E of subchapter IV of this chapter.’’

Subsec. (d), Pub. L. 105–89, §301(c), inserted before period at end ‘‘unless in the judgment of the Secretary, the demonstration project should be allowed to continue’’.

EFFECTIVE DATE OF 2003 AMENDMENT


EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

CONSTRUCTION OF 1997 AMENDMENT

Section 301(b) of Pub. L. 105–89 provided that: ‘‘Nothing in the amendment made by subsection (a) (amending this section) shall be construed as affecting the terms and conditions of any demonstration project approved under section 1130 of the Social Security Act (42 U.S.C. 1320a–9) before the date of the enactment of this Act [Nov. 19, 1997].’’

§1320a–10. Effect of failure to carry out State plan

In an action brought to enforce a provision of this chapter, such provision is not to be deemed unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability: Provided, however, That this section is not intended to alter the holding in Suter v. Artist M. that section 671(a)(15) of this title is not enforceable in a private right of action.


EFFECTIVE DATE

Section 211(b) of Pub. L. 103–432 provided that: ‘‘The amendment made by subsection (a) (enacting this section) shall apply to actions pending on the date of the enactment of this Act [Oct. 31, 1994] and to actions brought on or after such date of enactment.’’


EFFECTIVE DATE OF REPEAL

Repeal effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as an Effective Date of 1975 Amendment note under section 363 of this title.

SOCIAL SERVICES REGULATIONS POSTPONED


(b)(1) The provisions of subsection (a) shall not be applicable to any regulation relating to ‘scope of programs’, if such regulation is identical (except as provided in the succeeding sentence) to the provisions of section 221.0 of the regulations (relating to social services) proposed by the Secretary and published in the Federal Register on May 1, 1973. There shall be deleted from the first sentence of subsection (b) of such section 221.0 the phrase ‘meets all the applicable requirements of this part and’.

(2) The provisions of subsection (a) shall not be applicable to any regulation relating to ‘limitations on total amount of Federal funds payable to States for services’, if such regulation is identical (except as provided in the succeeding sentence) to the provisions of section 221.55 of the regulations so proposed and published on May 1, 1973. There shall be deleted from subsection (d)(1) of such section 221.55 the phrase ‘(as defined under day care services for children)’, and, in lieu of the sentence contained in subsection (d)(5) of such section 221.55, there shall be inserted the following: ‘‘Services provided to a child who is under foster care in a foster family home (as defined in section 408 of the Social Security Act [section 608 of this title]) or in a childcare institution (as defined in such section [section 608 of this title]), or while awaiting placement in
such a home or institution, but only if such services are needed by such child because he is under foster care.

"(b) The provisions of subsection (a) shall not be applicable to any regulation relating to rates and amounts of Federal financial participation for Puerto Rico, the Virgin Islands, and Guam, if such regulation is identical to the provisions of section 221.56 of the regulations so proposed and published on May 1, 1973.

"(c) Notwithstanding the provisions of section 553(d) of title 5, United States Code, any regulation described in subsection (b) may become effective upon the date of its publication in the Federal Register.

Similar provisions were contained in the following prior act: Pub. L. 93–66, title II, §220, July 9, 1973, 87 Stat. 158.

MODIFICATION OF SOCIAL SECURITY REGULATIONS

Section 3(g) of Pub. L. 93–647 provided in part that: "Notwithstanding the provisions of section 12(a) of Public Law 89–223 [set out as a note above], the Secretary may make any modification in any regulation described in that section if the modification is necessary to implement the provisions of this part.

ADJUSTMENT OF ALLOTMENT TO STATE FOR FISCAL YEAR ENDING JUNE 30, 1973


§ 1320b–1. Notification of Social Security claim­ant with respect to deferred vested benefits

(a) Whenever—

(1) Whenever—

(A) the entitlement of any individual to monthly benefits under section 402, 423, or 428 of this title, or

(B) the entitlement of any individual to a lump-sum death payment payable under section 402(1) of this title on account of the death of any person to whom such individual is related by blood, marriage, or adoption,

(2) The Secretary makes a finding of fact and a decision as to—

(A) the entitlement of any individual to hospital insurance benefits under part A of subchapter XVIII of this chapter, or

(B) the Commissioner of Social Security is requested to do so—

(A) by any individual with respect to whom the Commissioner of Social Security holds information obtained under section 6057 of the Internal Revenue Code of 1986, or

(B) in the case of the death of the individual referred to in subparagraph (A), by the individual who would be entitled to payment under section 404(d) of this title,

the Commissioner of Social Security shall transmit to the individual referred to in paragraph (2) or (1) of such individual making the request under paragraph (3) any information, as reported by the employer, regarding any deferred vested benefit transmitted to the Commissioner of Social Security pursuant to such section 6057 with respect to the individual referred to in paragraph (1), (2), or (3)(A) or the person on whose wages and self-employment income entitlement (or claim of entitlement) is based.

(b)(1) For purposes of section 401(g)(1) of this title, expenses incurred in the administration of subsection (a) of this section shall be deemed to be expenses incurred for the administration of subchapter II of this chapter.

(2) There are hereby authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for each fiscal year (commencing with the fiscal year ending June 30, 1974) such sums as the Commissioner of Social Security deems necessary on account of additional administrative expenses resulting from the enactment of the provisions of subsection (a) of this section.


REFERENCES IN TEXT


AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, §108(b)(11)(A), (G), in closing provisions substituted "the Commissioner of Social Security shall transmit" for "he shall transmit", "paragraph (1) or (2)" for "paragraph (1)", "paragraph (3)" for "paragraph (2)", "the Commissioner of Social Security pursuant to" for "Secretary pursuant to", and "paragraph (1), (2), or (3)(A)" for "paragraph (1) or (2)(A)".

Subsec. (a)(1). Pub. L. 103–296, §108(b)(11)(A)–(D), substituted "Commissioner of Social Security" for "Secretary" in introductory provisions, inserted "or" at end of subpar. (A), struck out "or" at end of subpar. (B), and struck out subpar. (C) which read as follows: 

"the entitlement under section 426 of this title of any individual to hospital insurance benefits under part A of subchapter XVIII of this chapter, or"


Subsec. (a)(3). Pub. L. 103–296, §108(b)(11)(A), (E), redesignated par. (2) as (3) and substituted "Commissioner of Social Security" for "Secretary" in introductory provisions and in subpar. (A).


Subsec. (a)(2)(B). Pub. L. 98–369, §2663(e)(7)(A), substituted a comma for the period after "section 404(d) of this title".

EFFECTIVE DATE OF 1994 AMENDMENT


EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed
§ 1320b-2. Period within which certain claims must be filed

(a) Claims

Notwithstanding any other provision of this chapter (but subject to subsection (b) of this section), any claim by a State for payment with respect to an expenditure made during any calendar quarter by the State—

(1) in carrying out a State plan approved under subchapter I, IV, X, XIV, XVI, XIX, or XX of this chapter, or

(2) under any other provision of this chapter which provides (on an entitlement basis) for Federal financial participation in expenditures made under State plans or programs,

shall be filed (in such form and manner as the Secretary shall by regulations prescribe) within the two-year period which begins on the first day of the calendar quarter immediately following such calendar quarter; and payment shall not be made under this chapter on account of any such expenditure if claim therefor is filed (in such form and manner as the Secretary shall by regulation prescribe) prior to January 1, 1981.

(b) Waiver

The Secretary shall waive the requirement imposed under subsection (a) of this section with respect to the filing of any claim if he determines (in accordance with regulations) that there was good cause for the failure by the State to file such claim within the period prescribed under subsection (a) of this section. Any such waiver shall be for such additional period of time as may be necessary to provide the State with an opportunity to file such claim. A failure to file a claim within such time period which is attributable to neglect or administrative inadequacies shall be deemed not to be for good cause.


AMENDMENTS


EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

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

EFFECTIVE DATE

Section 306(b), (c) of Pub. L. 96–272 provided that:

“(b)(1) The amendment made by subsection (a) [enacting this section] shall be effective only in the case of claims filed on account of expenditures made in calendar quarters commencing on or after October 1, 1979.

“(2) In the case of claims filed prior to the date of enactment of this Act [June 17, 1980] on account of expenditures described in section 1132 of the Social Security Act [this section] made in calendar quarters commencing prior to October 1, 1979, there shall be no time limit for the payment of such claims.

“(3) In the case of such expenditures made in calendar quarters commencing prior to October 1, 1979, for which no claim has been filed on or before the date of enactment of this Act, payment shall not be made under this Act on account of any such expenditure unless claim therefor is filed (in such form and manner as the Secretary shall by regulation prescribe) prior to January 1, 1981.

“(4) The provisions of this subsection shall not be applied so as to deny payment with respect to any expenditures involving adjustments to prior year costs or court-ordered retroactive payments or audit exceptions. The Secretary may waive the requirements of paragraph (3) in the same manner as under section 1332(b) of the Social Security Act [subsec. (b)(3) of this section].

“(c) Notwithstanding any other provision of law, there shall be no time limit for the filing or payment of such claims except as provided in this section, unless such other provision of law, in imposing such a time limitation, specifically exempts such filing or payment from the provisions of this section.”

§ 1320b-3. Applicants or recipients under public assistance programs not to be required to make election respecting certain veterans' benefits

(a) Supplemental Security Income program

Notwithstanding any other provision of law (but subject to subsection (b) of this section), no individual who is an applicant for or recipient of aid or assistance under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, or of benefits under the Supplemental Security Income program established by subchapter XVI of this chapter shall—

(1) be required, as a condition of eligibility for (or of continuing to receive) such aid, assistance, or benefits, to make an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 with respect to pension paid by the Secretary of Veterans Affairs, or

(2) by reason of failure or refusal to make such an election, be denied (or suffer a reduction in the amount of) such aid, assistance, or benefits.

(b) Period of effectiveness

The provisions of subsection (a) of this section shall be applicable only with respect to an individual, who is an applicant for or recipient of aid, assistance, or benefits described in subsection (a) of this section, during a period with respect to which there is in effect—

(1) in case such individual is an applicant for or recipient of aid or assistance under a State plan referred to in subsection (a) of this section, in the State having such plan, or

(2) in case such individual is an applicant for or recipient of benefits under the Supplemental Security Income program established by subchapter XVI of this chapter, in the State in which the individual applies for or receives such benefits,

a State plan for medical assistance, approved under subchapter XIX of this chapter, under
which medical assistance is available to such individual only for periods for which such individual is a recipient of aid, assistance, or benefits described in subsection (a) of this section.


REFERENCES IN TEXT

AMENDMENTS
1996—Subsec. (a). Pub. L. 104–193 substituted “subchapter I, X, XIV, or XVI of this chapter,” for “subchapters I, X, XIV, or XVI, or part A of subchapter IV of this chapter.”.


EFFECTIVE DATE OF 1996 AMENDMENT
Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuing in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE
Section 310(a)(2) of Pub. L. 96–272 provided that: “The amendment made by paragraph (1) [enacting this section] shall be effective on and after January 1, 1979; except that nothing contained in such amendment shall be construed to authorize or require any payment (or increase in payment) of any aid or assistance or benefits referred to in section 1133(a) of the Social Security Act [subsec. (a) of this section] as added by paragraph (1) of any benefit period which begins prior to the date of enactment of this Act [June 17, 1980].”

CONTINUING MEDICAID ELIGIBILITY FOR CERTAIN RECIPIENTS OF VETERANS' ADMINISTRATION PENSIONS
Section 310(b)(2) of Pub. L. 96–272 provided that: “(A) The Administrator shall provide to each individual to whom section 1133 of the Social Security Act (as added by subsection (a)(1) of this section) applies and who is eligible to make or has made an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [Pub. L. 95–588, set out as a note under section 1521 of Title 38, Veterans' Benefits], a written notice, in clear and understandable language, which (i) describes the consequences to such individual (and possibly to such individual’s family), in terms of a determination or possible determination of ineligibility for medical assistance under a State plan approved under title XIX of the Social Security Act [subchapter XIX of this chapter], of making an election with respect to pension under such section 306, (ii) describes the provisions of subparagraph (B) of this paragraph and subsection (a) of this section, (iii) sets forth other relevant information that would be helpful to such individual in making an informed decision concerning such an election or the disaffirmation thereof, and (iv) in the case of any individual who has made such an election, is accompanied by a form prepared for the purpose of enabling such individual to file with the Administrator a written disaffirmation of such an election.

“(B) Notwithstanding any other provision of law—

“(i) any individual to whom section 1133 of the Social Security Act (as added by subsection (a)(1) of this section) [this section] applies may, within the 90-day period beginning with the day on which is mailed to such individual (at such individual’s last known mailing address) a notice referred to in subparagraph (A), disaffirm an election previously made by such individual under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [Pub. L. 95–588, set out as a note under section 1521 of Title 38] by completing and mailing to the Administrator the form furnished such individual for such purpose by the Administrator pursuant to subparagraph (A),

“(ii) whenever any such individual files such a disaffirmation with the Administrator, the amount of pension payable to such individual shall be adjusted, beginning with the first calendar month which commences after the receipt by the Administrator of such disaffirmation, to the amount that such pension would have been if such an election by such individual had not been made,

“(iii) any individual who has filed a disaffirmation pursuant to this subparagraph, of an election made by such individual under such section 306 may again make an election thereunder, but such subsequent election may not be disaffirmed under this subsection, and

“(iv) no indebtedness to the United States, as a result of the disaffirmation by an individual, pursuant to this subparagraph, of an election made by such individual under such section 306 shall be considered to arise from the payment of pension pursuant to such an election.

“(C) The Administrator shall promptly advise the Secretary of Health, Education, and Welfare (now Health and Human Services), and provide identification of the individuals involved and other pertinent information with respect to (i) disaffirmation of election made by individuals pursuant to subparagraph (B), (ii) individuals who, by failing to disaffirm within the 90-day period prescribed in subparagraph (B), are deemed to have reaffirmed elections previously made, and (iii) individuals who, after having disaffirmed an election under subparagraph (B), subsequently again make an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [Pub. L. 95–588, set out as a note under section 1521 of Title 38]. The Secretary, upon receipt of any such information with respect to an individual, shall promptly notify the appropriate agencies administering State plans approved under title I, X, XIV, XIX, and part A of title IV of the Social Security Act [subchapters I, X, XIV, XIX, and part A of subchapter IV of this chapter], and State agencies making supplemental payments pursuant to section 1616 of such Act [section 1382e of this title] or an agreement entered into pursuant to section 212(a) of Public Law 93–66 [set out as a note under section 1382 of this title].”

§ 1320b–4. Nonprofit hospital or critical access hospital philanthropy
For purposes of determining, under subchapters XVIII and XIX of this chapter, the reasonable costs of services provided by nonprofit hospitals or critical access hospitals, the following items shall not be deducted from the operating costs of such hospitals or critical access hospitals:

(1) A grant, gift, or endowment, or income therefrom, which is to or for such a hospital and which has not been designated by the donor for paying any specific operating costs.

(2) A grant or similar payment which is to such a hospital, which was made by a govern-
mental entity, and which is not available under the terms of the grant or payment for use as operating funds.

(3) Those types of donor designated grants and gifts (including grants and similar payments which are made by a governmental entity), and income therefrom, which the Secretary determines, in the best interests of needed health care, should be encouraged.

(4) The proceeds from the sale or mortgage of any real estate or other capital asset of such a hospital, which real estate or asset the hospital acquired through gift or grant, if such proceeds are not available for use as operating funds under the terms of the gift or grant.

Paragraph (4) shall not apply to the recovery of the appropriate share of depreciation when gains or losses are realized from the disposal of depreciable assets.


AMENDMENTS

1997—Pub. L. 105-33 substituted “critical access” for “rural primary care” in two places in introductory provisions.


EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 effective as if originally included as part of this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, set out as section 137(d)(2) of Pub. L. 97-248, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

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

EFFECTIVE DATE

Section 901(b) of Pub. L. 96-499 provided that: “The amendment made by subsection (a) [enacting this section] shall apply to grants, gifts, and endowments, and income therefrom, made or established after the date of the enactment of this Act [Dec. 5, 1980].

§ 1320b-5. Authority to waive requirements during national emergencies

(a) Purpose

The purpose of this section is to enable the Secretary to ensure to the maximum extent fea-
sible, in any emergency area and during an emergency period (as defined in subsection (g)(1) of this section)—

(1) that sufficient health care items and services are available to meet the needs of individuals in such area enrolled in the programs under subchapters XVIII, XIX, and XXI of this chapter; and

(2) that health care providers (as defined in subsection (g)(2) of this section) that furnish such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse.

(b) Secretarial authority

To the extent necessary to accomplish the purpose specified in subsection (a) of this section, the Secretary is authorized, subject to the provisions of this section, to temporarily waive or modify the application of, with respect to health care items and services furnished by a health care provider or classes of health care providers in any emergency area or portion of such an area) during any portion of an emergency period, the requirements of subchapters XVIII, XIX, or XXI of this chapter, or any regulation thereunder (and the requirements of this subchapter other than this section, and regulations thereunder, insofar as they relate to such subchapters), pertaining to—

(1)(A) conditions of participation or other certification requirements for an individual health care provider or types of providers,

(B) program participation and similar requirements for an individual health care provider or types of providers, and

(C) pre-approval requirements;

(2) requirements that physicians and other health care professionals be licensed in the State in which they provide such services, if they have equivalent licensing in another State and are not affirmatively excluded from practice in that State or in any State a part of which is included in the emergency area;

(3) actions under section 1395dd of this title (relating to examination and treatment for emergency medical conditions and women in labor) for—

(A) a transfer of an individual who has not been stabilized in violation of subsection (c) of such section if the transfer is necessitated by the circumstances of the declared emergency in the emergency area during the emergency period; or

(B) the direction or relocation of an individual to receive medical screening in an alternative location—

(i) pursuant to an appropriate State emergency preparedness plan; or

(ii) in the case of a public health emergency described in subsection (g)(1)(B) that involves a pandemic infectious disease, pursuant to a State pandemic preparedness plan or a plan referred to in clause (i), whichever is applicable in the State;

(4) sanctions under section 1395nn(g) of this title (relating to limitations on physician referral);
(5) deadlines and timetables for performance of required activities, except that such deadlines and timetables may only be modified, not waived;
(6) limitations on payments under section 1395w–21(i) of this title for health care items and services furnished to individuals enrolled in a Medicare+Choice plan by health care professionals or facilities not included under such plan; and
(7) sanctions and penalties that arise from noncompliance with the following requirements (as promulgated under the authority of section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note)—
(A) section 164.510 of title 45, Code of Federal Regulations, relating to—
(i) requirements to obtain a patient’s agreement to speak with family members or friends; and
(ii) the requirement to honor a request to opt out of the facility directory;
(B) section 164.520 of such title, relating to the requirement to distribute a notice; or
(C) section 164.522 of such title, relating to—
(i) the patient’s right to request privacy restrictions; and
(ii) the patient’s right to request confidential communications.
Insofar as the Secretary exercises authority under paragraph (6) with respect to individuals enrolled in a Medicare+Choice plan, to the extent possible given the circumstances, the Secretary shall reconcile payments made on behalf of such enrollees to ensure that the enrollees do not pay more than would be required had they received services from providers within the network of the plan and may reconcile payments to the organization offering the plan to ensure that such organization pays for services for which payment is included in the capitation payment it receives under part C of subchapter XVIII of this chapter. A waiver or modification provided for under paragraph (3) or (7) shall only be in effect if such actions are taken in a manner that does not discriminate among individuals on the basis of their source of payment or of their ability to pay, and, except in the case of a waiver or modification to which the fifth sentence of this subsection applies, shall be limited to a 72-hour period beginning upon implementation of a hospital disaster protocol. A waiver or modification under such paragraph (7) shall be withdrawn after such period and the provider shall comply with the requirements under such paragraph for any patient still under the care of the provider. If a public health emergency described in subsection (g)(1)(B) involves a pandemic infectious disease (such as pandemic influenza), the duration of a waiver or modification under paragraph (3) shall be determined in accordance with subsection (e) as such subsection applies to public health emergencies.
(e) Authority for retroactive waiver
A waiver or modification of requirements pursuant to this section may, at the Secretary’s discretion, be made retroactive to the beginning of the emergency period or any subsequent date in such period specified by the Secretary.
(d) Certification to Congress
The Secretary shall provide a certification and advance written notice to the Congress at least two days before exercising the authority under this section with respect to an emergency area. Such a certification and notice shall include—
(1) a description of—
(A) the specific provisions that will be waived or modified;
(B) the health care providers to whom the waiver or modification will apply;
(C) the geographic area in which the waiver or modification will apply; and
(D) the period of time for which the waiver or modification will be in effect; and
(2) a certification that the waiver or modification is necessary to carry out the purpose specified in subsection (a) of this section.
(e) Duration of waiver
(1) In general
A waiver or modification of requirements pursuant to this section terminates upon—
(A) the termination of the applicable declaration of emergency or disaster described in subsection (g)(1)(A) of this section;
(B) the termination of the applicable declaration of public health emergency described in subsection (g)(1)(B) of this section;
(C) subject to paragraph (2), the termination of a period of 60 days from the date the waiver or modification is first published (or, if applicable, the date of extension of the waiver or modification under paragraph (2)).
(2) Extension of 60-day periods
The Secretary may, by notice, provide for an extension of a 60-day period described in paragraph (1)(C) (or an additional period provided under this paragraph for additional period or periods (not to exceed, except as subsequently provided under this paragraph, 60 days each), but any such extension shall not affect or prevent the termination of a waiver or modification under subparagraph (A) or (B) of paragraph (1).
(f) Report to Congress
Within one year after the end of the emergency period in an emergency area in which the Secretary exercised the authority provided under this section, the Secretary shall report to the Congress regarding the approaches used to accomplish the purposes described in subsection (a) of this section, including an evaluation of such approaches and recommendations for improved approaches should the need for such emergency authority arise in the future.
(g) Definitions
For purposes of this section:
(1) Emergency area; emergency period
An “emergency area” is a geographical area in which, and an “emergency period” is the period during which, there exists—
(A) an emergency or disaster declared by the President pursuant to the National
Emergencies Act [50 U.S.C. 1601 et seq.] or the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.]; and

(B) a public health emergency declared by the Secretary pursuant to section 247d of this title.

(2) Health care provider

The term ‘‘health care provider’’ means any entity that furnishes health care items or services, and includes a hospital or other provider of services, a physician or other health care practitioner or professional, a health care facility, or a supplier of health care items or services.

(Aug. 14, 1935, ch. 531, title XI, §1135, as added


REFERENCES IN TEXT

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (b)(7), is section 264(c) of Pub. L. 104–191, which is set out as a note under section 1320b–2 of this title.


The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (g)(1)(A), is Pub. L. 94–442, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 68 (§5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under Title 50 and Tables.

PRIORITY PROVISIONS


AMENDMENTS

2006—Subsec. (b). Pub. L. 109–417, §302(b)(1)(B), (C), in concluding provisions, substituted ‘‘and, except in the case of a waiver or modification to which the fifth sentence of this subsection applies, shall be limited to’’ for ‘‘and shall be limited to’’ and inserted at end ‘‘if a public health emergency described in subsection (g)(1)(B) involves a pandemic infectious disease (such as pandemic influenza), the duration of a waiver or modification under paragraph (3) shall be determined in accordance with subsection (e) as such subsection applies to public health emergencies.’’

Subsec. (b)(3)(B). Pub. L. 109–417, §302(b)(1)(A), added subpar. (B) and struck out former subpar. (B) which read as follows: ‘‘the direction or relocation of an individual to receive medical screening in an alternate location pursuant to an appropriate State emergency preparedness plan.’’

2004—Subsec. (b). Pub. L. 108–276, §9(b), inserted at end of concluding provisions: ‘‘A waiver or modification provided for under paragraph (3) or (7) shall only be in effect if such actions are taken in a manner that does not discriminate among individuals on the basis of their source of payment or of their ability to pay, and shall be limited to a 72-hour period beginning upon implementation of a hospital disaster protocol. A waiver or modification under such paragraph (7) shall be withdrawn after such period and the provider shall comply with the requirements under such paragraph for any patient still under the care of the provider.’’

Subsec. (b)(3). Pub. L. 108–276, §9(1), added par. (3) and struck out former par. (3) which read as follows: ‘‘sanctions under section 1395dd of this title (relating to examination and treatment for emergency medical conditions and women in labor) for a transfer of an individual who has not been stabilized in violation of subsection (c) of this section of such section if the transfer arises out of the circumstances of the emergency.’’


CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1356w–21 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–417, title III, §302(b)(2), Dec. 19, 2006, 120 Stat. 2856, provided that: ‘‘The amendments made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 19, 2006] and shall apply to public health emergencies declared pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d) on or after such date.’’

EFFECTIVE DATE

Pub. L. 107–188, title I, §143(b), June 12, 2002, 116 Stat. 629, provided that: ‘‘The amendment made by subsection (a) [enacting this section] shall be effective on and after September 11, 2001.’’

§1320b–6. Exclusion of representatives and health care providers convicted of violations from participation in social security programs

(a) In general

The Commissioner of Social Security shall exclude from participation in the social security programs any representative or health care provider—

(1) who is convicted of a violation of section 1320a–8(a)(1) of this title;

(2) who is convicted of any violation under title 18 relating to an initial application for or continuing entitlement to, or amount of, benefits under subchapter II of this chapter, or an initial application for or continuing eligibility for, or amount of, benefits under subchapter XVI of this chapter; or

(3) who the Commissioner determines has committed an offense described in section 1320a–6(a)(1) of this title.

(b) Notice, effective date, and period of exclusion

(1) An exclusion under this section shall be effective at such time, for such period, and upon such reasonable notice to the public and to the individual excluded as may be specified in regulations consistent with paragraph (2).

(2) Such an exclusion shall be effective with respect to services furnished to any individual on or after the effective date of the exclusion.

Nothing in this section may be construed to pre-
include, in determining disability under sub-
chapter II of this chapter or subchapter XVI of
this chapter, consideration of any medical evi-
dence derived from services provided by a health
care provider before the effective date of the ex-
clusion of the health care provider under this

section.

(a)(3) The Commissioner shall specify, in the
notice of exclusion under paragraph (1), the pe-
riod of the exclusion.

(b) Subject to subparagraph (C), in the case of
an exclusion under subsection (a) of this section,
the minimum period of exclusion shall be 5
years, except that the Commissioner may waive
the exclusion in the case of an individual who is
the sole source of essential services in a commu-
nity. The Commissioner’s decision whether to
waive the exclusion shall not be reviewable.

(C) In the case of an exclusion of an individual
under subsection (a) of this section based on a
conviction or a determination described in sub-
section (a)(3) of this section occurring on or
after December 14, 1999, if the individual has (be-
fore, on, or after December 14, 1999) been con-
victed, or if such a determination has been made
with respect to the individual—

(i) on one previous occasion of one or more
offenses for which an exclusion may be ef-
fected under such subsection, the period of the
exclusion shall be not less than 10 years; or

(ii) on two or more previous occasions of one
or more offenses for which an exclusion may
be effected under such subsection, the period
of the exclusion shall be permanent.

(c) Notice to State agencies

The Commissioner shall promptly notify each
appropriate State agency employed for the pur-
pose of making disability determinations under
section 421 or 1383b(a) of this title—

(1) of the fact and circumstances of each ex-
clusion effected against an individual under this
section; and

(2) of the period (described in subsection
(b)(3) of this section) for which the State agen-
cy is directed to exclude the individual from
participation in the activities of the State
agency in the course of its employment.

(d) Notice to State licensing agencies

The Commissioner shall—

(1) promptly notify the appropriate State or
local agency or authority having responsibil-
ity for the licensing or certification of an indi-
vidual excluded from participation under this
section of the fact and circumstances of the
exclusion;

(2) request that appropriate investigations
be made and sanctions invoked in accordance
with applicable State law and policy; and

(3) request that the State or local agency or
authority keep the Commissioner and the In-
spector General of the Social Security Admin-
istration fully and currently informed with re-
spect to any actions taken in response to the
request.

(e) Notice, hearing, and judicial review

(1) Any individual who is excluded (or directed
to be excluded) from participation under this
section is entitled to reasonable notice and op-
portunity for a hearing thereon by the Commis-
sioner to the same extent as is provided in sec-
tion 405(b) of this title, and to judicial review of
the Commissioner’s final decision after such
hearing as is provided in section 405(g) of this


(f) Application for termination of exclusion

(1) An individual excluded from participation
under this section may apply to the Commissi-
ioner, in the manner specified by the Commissi-
ioner in regulations and at the end of the mini-
mum period of exclusion provided under sub-
section (b)(3) of this section and at such other
times as the Commissioner may provide, for ter-
mination of the exclusion effected under this
section.

(2) The Commissioner may terminate the ex-
clusion if the Commissioner determines, on the
basis of the conduct of the applicant which oc-
curred after the date of the notice of exclusion
or which was unknown to the Commissioner at
the time of the exclusion, that—

(A) there is no basis under subsection (a) of
this section for a continuation of the exclusion;
and

(B) there are reasonable assurances that the
types of actions which formed the basis for the
original exclusion have not recurred and will
not recur.

(3) The Commissioner shall promptly notify
each State agency employed for the purpose of
making disability determinations under section
421 or 1383b(a) of this title of the fact and cir-
cumstances of each termination of exclusion
made under this subsection.

(g) Availability of records of excluded repre-
sentatives and health care providers

Nothing in this section shall be construed to
have the effect of limiting access by any appli-
cant or beneficiary under subchapter II or XVI
of this chapter, any State agency acting under
section 421 or 1383b(a) of this title, or the Com-
mmissioner to records maintained by any rep-
resentative or health care provider in connec-
tion with services provided to the applicant or
beneficiary prior to the exclusion of such rep-
resentative or health care provider under this
section.

(h) Reporting requirement

Any representative or health care provider
participating in, or seeking to participate in, a
social security program shall inform the Com-
missioner, in such form and manner as the Com-
missioner shall prescribe by regulation, whether
such representative or health care provider has
been convicted of a violation described in sub-
section (a) of this section.

(i) Delegation of authority

The Commissioner may delegate authority
granted by this section to the Inspector General.

(j) Definitions

For purposes of this section:

(1) Exclude

The term “exclude” from participation means—
(A) in connection with a representative, to prohibit from engaging in representation of an applicant for, or recipient of, benefits, as a representative payee under section 405(j) or section 1383(a)(2)(A)(i)(I) of this title, or otherwise as a representative, in any hearing or other proceeding relating to entitlement to benefits; and

(B) in connection with a health care provider, to prohibit from providing items or services to an applicant for, or recipient of, benefits for the purpose of assisting such applicant or recipient in demonstrating disability.

(2) Social security program

The term “social security programs” means the program providing for monthly insurance benefits under subchapter II of this chapter, and the program providing for monthly supplemental security income benefits to individuals under subchapter XVI of this chapter (including State supplementary payments made by the Commissioner pursuant to an agreement under section 1396a(a) of this title or section 213(b) of Public Law 93–66).

(3) Convicted

An individual is considered to have been “convicted” of a violation—

(A) when a judgment of conviction has been entered against the individual by a Federal, State, or local court, except if the judgment of conviction has been set aside or expunged;

(B) when there has been a finding of guilt against the individual by a Federal, State, or local court;

(C) when a plea of guilty or nolo contendere by the individual has been accepted by a Federal, State, or local court; or

(D) when the individual has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.


References in Text

Section 212(b) of Public Law 93–66, referred to in subsec. (j)(2), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 133, as amended, which is set out as a note under section 1382 of this title.

Prior Provisions


Effective Date

Pub. L. 96–169, title II, §208(b), Dec. 14, 1999, 113 Stat. 1842, provided that: “The amendment made by this section [enacting this section] shall apply with respect to convictions of violations described in paragraphs (1) and (2) of section 1136(a) of the Social Security Act [subsec. (a) of this section] and determinations described in paragraph (3) of such section occurring on or after the date of the enactment of this Act [Dec. 14, 1999].”

§ 1320b–7. Income and eligibility verification system

(a) Requirements of State eligibility systems

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

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

(2) wage information from agencies administering State unemployment compensation laws available pursuant to section 3304(a)(16) of the Internal Revenue Code of 1986, wage information reported pursuant to paragraph (1) of this subsection, and wage, income, and other information from the Social Security Administration and the Internal Revenue Service available pursuant to section 6103(f)(7) of such Code, shall be requested and utilized to the extent that such information may be useful in verifying eligibility for, and the amount of, benefits available under any program listed in subsection (b) of this section, as determined by the Secretary of Health and Human Services (or, in the case of the unemployment compensation program, by the Secretary of Labor, or, in the case of the supplemental nutrition assistance program, by the Secretary of Agriculture);

(3) employers (as defined in section 653(a)(2)(B) of this title) (including State and local governmental entities and labor organizations) in such State are required, effective September 30, 1988, to make quarterly wage reports to a State agency (which may be the agency administering the State’s unemployment compensation law) except that the Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) may waive the provisions of this paragraph if he determines that the State has in effect an alternative system which is as effective and timely for purposes of providing employment related income and eligibility data for the purposes described in paragraph (2), and except that no report shall be filed with respect to an employee of a State or local agency performing intelligence or counterintelligence functions, if the head of such agency has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission, and except that in the case of wage reports with respect to domestic service employment, a State may per-
mit employers (as so defined) that make returns with respect to such employment on a calendar basis pursuant to section 3510 of the Internal Revenue Code of 1986 to make such reports on an annual basis;
(b) the State agencies administering the programs listed in subsection (b) of this section adhere to standardized formats and procedures established by the Secretary of Health and Human Services (in consultation with the Secretary of Agriculture) under which—
(A) the agencies will exchange with each other information in their possession which may be of use in establishing or verifying eligibility or benefit amounts under any other such program;
(B) such information shall be made available to assist in the child support program under part D of subchapter IV of this chapter, and to assist the Secretary of Health and Human Services in establishing or verifying eligibility or benefit amounts under subchapters II and XVI of this chapter, but subject to the safeguards and restrictions established by the Secretary of the Treasury with respect to information released pursuant to section 6103(l) of the Internal Revenue Code of 1986; and
(C) the use of such information shall be targeted to those uses which are most likely to be productive in identifying and preventing ineligibility and incorrect payments, and no State shall be required to use such information to verify the eligibility of all recipients;
(5) adequate safeguards are in effect so as to assure that—
(A) the information exchanged by the State agencies is made available only to the extent necessary to assist in the valid administrative needs of the program receiving such information, and the information released pursuant to section 6103(l) of the Internal Revenue Code of 1986 is only exchanged with agencies authorized to receive such information under such section 6103(l); and
(B) the information is adequately protected against unauthorized disclosure for other purposes, as provided in regulations established by the Secretary of Health and Human Services, or, in the case of the unemployment compensation program, the Secretary of Labor, or, in the case of the supplemental nutrition assistance program, the Secretary of Agriculture, or the Internal Revenue Service; denial of benefits; hearing
(6) all applicants for and recipients of benefits under any such program shall be notified at the time of application, and periodically thereafter, that information available through the system will be requested and utilized; and
(7) accounting systems are utilized which assure that programs providing data receive appropriate reimbursement from the programs utilizing the data for the costs incurred in providing the data.

(b) Applicable programs
The programs which must participate in the income and eligibility verification system are—
(1) any State program funded under part A of subchapter IV of this chapter;
(2) the medicaid program under subchapter XIX of this chapter;
(3) the unemployment compensation program under section 3304 of the Internal Revenue Code of 1986;
(4) the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 [7 U.S.C. 2011 et seq.]; and
(5) any State program under a plan approved under subchapter I, X, XIV, or XVI of this chapter.

(c) Protection of applicants from improper use of information
(1) In order to protect applicants for and recipients of benefits under the programs identified in subsection (b) of this section, or under the supplemental security income program under subchapter XVI of this chapter, from the improper use of information obtained from the Secretary of the Treasury under section 6103(l)(7)(B) of the Internal Revenue Code of 1986, no Federal, State, or local agency receiving such information may terminate, deny, suspend, or reduce any benefits of an individual until such agency has taken appropriate steps to independently verify information relating to—
(A) the amount of the asset or income involved,
(B) whether such individual actually has (or had) access to such asset or income for his own use, and
(C) the period or periods when the individual actually had such asset or income.
(2) Such individual shall be informed by the agency of the findings made by the agency on the basis of such verified information, and shall be given an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility factors under the program.

(d) Citizenship or immigration status requirements; documentation; verification by Immigration and Naturalization Service; denial of benefits; hearing
The requirements of this subsection, with respect to an income and eligibility verification system of a State, are as follows:
(1)(A) The State shall require, as a condition of an individual’s eligibility for benefits under a program listed in subsection (b) of this section, a declaration in writing, under penalty of perjury—
(i) by the individual,
(ii) in the case in which eligibility for program benefits is determined on a family or household basis, by any adult member of such individual’s family or household (as applicable), or
(iii) in the case of an individual born into a family or household receiving benefits under such program, by any adult member of such family or household no later than the next redetermination of eligibility of such family or household following the birth of such individual,
stating whether the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

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

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

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

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

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

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

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

(3) If the documentation described in paragraph (2)(A) is presented, the State shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—

(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

(B) protects the individual's privacy to the maximum degree possible.

(4) In the case of such an individual who is not a citizen or national of the United States, if, at the time of application for benefits, the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

(A) the State—

(i) shall provide a reasonable opportunity to submit to the State evidence indicating a satisfactory immigration status, and

(ii) may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

(B) if there are submitted documents which the State determines constitutes reasonable evidence indicating such status—

(i) the State shall transmit to the Immigration and Naturalization Service either photostatic or other similar copies of such documents, or information from such documents, as specified by the Immigration and Naturalization Service, for official verification,

(ii) pending such verification, the State may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status, and

(iii) the State shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

(5) If the State determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status under the applicable program—

(A) the State shall deny or terminate the individual's eligibility for benefits under the program, and

(B) the applicable fair hearing process shall be made available with respect to the individual.

(e) **Erroneous State citizenship or immigration status determinations; penalties not required**

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

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

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

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

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

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

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

References in Text
The Internal Revenue Code of 1986, referred to in subsecs. (a)(2), (3), (4)(B), (5), (b)(3), and (c)(1), is classified generally to Title 26, Internal Revenue Code. The Food and Nutrition Act of 2008, referred to in subsections (a) and (b), is classified generally to Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

Codification

Amendments
1999—Subsec. (a)(3). Pub. L. 106–170, § 405(b)(2), inserted “(as defined in section 653a(a)(2)(B) of this title)” after “employers”.
Pub. L. 106–170, § 405(b)(1), which directed striking out “(as defined in section 653a(a)(2)(B)(iii) of this title)” after “employees”, was executed by striking “(as defined in section 653a(a)(2)(B)(ii) of this title)” to reflect the probable intent of Congress and the amendment by Pub. L. 106–169.
Pub. L. 106–170, § 404(a), inserted before semicolon at end: “; and except that in the case of wage reports with respect to domestic service employment, a State may permit employers (as so defined) that make returns with respect to such employment on a calendar year basis pursuant to section 3510 of the Internal Revenue Code of 1986 to make such reports on an annual basis”.

Effective Date of 1999 Amendment
1996—Subsec. (a)(3). Pub. L. 104–193, § 313(c), inserted “(including State and local governmental entities and labor organizations (as defined in section 653a(a)(2)(B)(iii) of this title)” after “employers” and “; and except that no report shall be filed with respect to domestic service employment, a State may permit employers (as so defined) that make returns with respect to such employment on a calendar year basis pursuant to section 3510 of the Internal Revenue Code of 1986 to make such reports on an annual basis”.

Change of Name
References to the food stamp program established under the Food and Nutrition Act of 2008 [see Effective Date of 1996 Amendment note and Effective Date note below] considered to refer to the supplemental nutrition assistance program established under that Act, see section 4002(c) of Pub. L. 110–246, set out as a note under section 1201 of Title 7, Agriculture.

Effective Date of 2008 Amendment

Effective Date of 1999 Amendments

Effective Date of 1996 Amendment
Amendment by section 104(g)(8) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to considered a dependent child or to the individual’s being treated as a caretaker relative or other person whose needs are to be taken into account in making the determination under section 2012 of this title.”
Subsec. (d)(4)(B)(i). Pub. L. 104–208 amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “The State shall transmit to the Immigration and Naturalization Service photostats of other similar copies of such documents for official verification.”
1994—Subsec. (d)(1)(A). Pub. L. 103–432 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “The State shall require, as a condition of an individual’s eligibility for benefits under any program listed in subsection (b) of this section, a declaration in writing by the individual (or, in the case of an individual who is a child, by another on the individual’s behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.”
Subsec. (a)(4)(C). Pub. L. 99–509 inserted before semicolon at end “,” and no State shall be required to use such information to verify the eligibility of all recipients.
Subsec. (b). Pub. L. 99–603, § 121(a)(1)(B), substituted “income and eligibility verification system” for “income verification system” in introductory text.
Subsecs. (d), (e). Pub. L. 99–603, § 121(a)(1)(C), added subsecs. (d) and (e).
State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

For effective date of amendment by section 313(c) of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 194–193, set out as a note under section 654 of this title.

**Effective Date of 1988 Amendment**

Section 411(a)(15)(B) of Pub. L. 100–360 provided that: ‘‘The amendment made by subparagraph (A) [amending this section] shall apply as if it were included in the enactment of section 9406(c) of the Omnibus Budget Reconciliation Act of 1986 [see section 9406(c) of Pub. L. 99–509, set out as an Effective Date of 1986 Amendment note under section 1396a of this title].’’

**Effective Date of 1986 Amendment: Use of Verification System**

Pub. L. 99–603, title I, §121(c)(3), (4), Nov. 6, 1986, 100 Stat. 3391, 3392, provided that:

'(3) USE OF VERIFICATION SYSTEM REQUIRED IN FISCAL YEAR 1989.—Except as provided in paragraph (4), the amendments made by subsection (a) [amending this section, section 1486a of this title, and section 1091 of Title 26, Internal Revenue Code] shall become effective on October 1, 1988. States have until that date to begin complying with the requirements imposed by those amendments.

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

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

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

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

The amendments made by subsection (a) shall not apply with respect to a covered program described in subclause (II), (V), (VI), or (VII) of subparagraph (D)(i) until after the date of receipt of such report with respect to the program.

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

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

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

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

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

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

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

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

‘‘(iii) the labor and nonlabor costs of administration of the verification system,

the degree to which the Immigration and Naturalization Service is capable of providing timely and accurate information to the administering entity in order to permit a reliable determination of immigration status, and such other factors as such Secretary deems relevant.

'(D) DEFINITIONS.—In this paragraph:

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

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

‘‘(II) the Medicaid program under title XIX of the Social Security Act [subchapter XIX of this chapter],

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


‘‘(VI) The programs of financial assistance for housing subject to section 214 of the Housing and Community Development Act of 1980 [42 U.S.C. 1486a],


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

‘‘(I) subsections (j) through (II) of clause (i), the Secretary of Health and Human Services;

‘‘(II) clause (i)(IV), the Secretary of Labor;

‘‘(III) clause (i)(V), the Secretary of Agriculture;

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

‘‘(V) clause (i)(VII), the Secretary of Education.

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

‘‘(I) subsection (I), (II), (III), (IV), or (V) of clause (i), the State agency responsible for the administration of the program in a State;

‘‘(II) clause (i)(VI), the Secretary of Housing and Urban Development, a public housing agency, or another entity that determines the eligibility of an individual for financial assistance; and

‘‘(III) clause (i)(VII), an institution of higher education involved.’’

**Effective Date**

Section 2651(l) of Pub. L. 96–389 provided that:

'(1) The amendments made by subsections (j) and (k) [amending section 1396j of this title and section 6103 of Title 26, Internal Revenue Code] shall become effective on the date of the enactment of this Act [July 18, 1984].

'(2) Except as otherwise specifically provided, the amendments made by subsections (a) through (i) [enacting this section, amending sections 302, 503, 602, 1202, 1352, and 1396a of this title and section 2020 of Title 7, Agriculture, repealing section 611 of this title, and amending provisions set out as a note under section 2020 of this title] shall become effective on April 1, 1985. In the case of any State which submits a plan describing a good faith effort by such State to come into com-
pliance with the requirements of such subsections, the Secretary of Health and Human Services (or, in the case of the State unemployment compensation program, the Secretary of Labor, or, in the case of the food stamp program, the Secretary of Agriculture) may by waiver grant a delay in the effective date of such subsections, except that no such waiver may delay the effective date of section 1137(c) of the Social Security Act [subsec. (c) of this section] as amended by this section so that the system is available to all the States by not later than October 1, 1987. Such system shall not be used by the Immigration and Naturalization Service for administrative (non-criminal) immigration enforcement purposes and shall be implemented in a manner that provides for verification of immigration status without regard to the sex, color, race, religion, or nationality of the individual involved.''

**Construction of 1999 Amendment**

Amendment by Pub. L. 106–170 to be executed as if Pub. L. 106–169 had been enacted after the enactment of Pub. L. 106–170, set out as a note under section 1396a of this title.

**Abolition of Immigration and Naturalization Service and Transfer of Functions**

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

**Immigration and Naturalization Service To Establish Verification System on October 1, 1987**

Section 121(c)(1) of Pub. L. 99–603 provided that: "The Commissioner of Immigration and Naturalization shall implement a system for the verification of immigration status under paragraphs (3) and (4)(B)(i) of this section [as added by subsection (a) of this section], or delay the effective date of any other provision of or added by this section beyond September 30, 1986."

**General Accounting Office Reports**

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

**§ 1320h–8. Hospital protocols for organ procurement and standards for organ procurement agencies**

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

(A) the hospital or critical access hospital establishes written protocols for the identification of potential organ donors that—

(i) assure that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline,

(ii) encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of such families, and

(iii) require that such hospital's designated organ procurement agency (as defined in paragraph (3)(B)) is notified of potential organ donors;

(B) in the case of a hospital in which organ transplants are performed, the hospital is a member of, and abides by the rules and requirements of, the Organ Procurement and Transplantation Network established pursuant to section 274 of this title (in this section referred to as the ‘‘Network’’); and

(C) the hospital or critical access hospital has an agreement (as defined in paragraph (3)(A)) only with such hospital's designated organ procurement agency.

(2)(A) The Secretary shall grant a waiver of the requirements under subparagraphs (A)(iii) and (C) of paragraph (1) to a hospital or critical access hospital desiring to enter into an agreement with an organ procurement agency other than such hospital's designated organ procurement agency if the Secretary determines that—

(i) the waiver is expected to increase organ donation; and

(ii) the waiver will assure equitable treatment of patients referred for transplants within the service area served by the hospital's designated organ procurement agency and within the service area served by the organ procurement agency with which the hospital seeks to enter into an agreement under the waiver.

(B) In making a determination under subparagraph (A), the Secretary may consider factors that would include, but not be limited to—

(i) cost effectiveness;

(ii) improvements in quality;

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

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

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

(C) Any hospital or critical access hospital seeking a waiver under subparagraph (A) shall submit an application to the Secretary containing such information as the Secretary determines appropriate.

(D) The Secretary shall—

(i) publish a public notice of any waiver application received from a hospital or critical access hospital under this paragraph within 30 days of receiving such application; and

(ii) prior to making a final determination on such application under subparagraph (A), offer interested parties the opportunity to submit written comments to the Secretary during the 60-day period beginning on the date such notice is published.
(3) For purposes of this subsection—
   (A) the term "agreement" means an agreement described in section 273(b)(3)(A) of this title;
   (B) the term "designated organ procurement agency" means, with respect to a hospital or critical access hospital, the organ procurement agency designated pursuant to subsection (b) of this section for the service area in which such hospital is located; and
   (C) the term "organ" means a human kidney, liver, heart, lung, pancreas, and any other human organ or tissue specified by the Secretary for purposes of this subsection.

(b)(1) The Secretary shall provide that payment may be made under subchapter XVIII or XIX of this chapter with respect to organ procurement costs attributable to payments made to an organ procurement agency only if the agency—
   (A)(i) is a qualified organ procurement organization (as described in section 273(b) of this title) that is operating under a grant made under section 273(a) of this title, or (ii) has been certified or recertified by the Secretary within the previous 2 years (4 years if the Secretary determines appropriate for an organization on the basis of its past practices) as meeting the standards to be a qualified organ procurement organization (as so described);
   (B) meets the requirements that are applicable under such subchapter for organ procurement agencies;
   (C) meets performance-related standards prescribed by the Secretary;
   (D) is a member of, and abides by the rules and requirements of, the Network;
   (E) allocates organs, within its service area and nationally, in accordance with medical criteria and the policies of the Network; and
   (F) is designated by the Secretary as an organ procurement organization payments to which may be treated as organ procurement costs for purposes of reimbursement under such subchapter.

(2) The Secretary may not designate more than one organ procurement organization for each service area (described in section 273(b)(3)(A) of this title) under paragraph (1)(F).


1 See References in Text note below.
EXISTING AGREEMENTS WITH ORGAN PROCUREMENT AGENCIES

Section 155(a)(2) of Pub. L. 103–432 provided that: “Any hospital or rural primary care hospital which has an agreement (as defined in section 1319(a)(3)(A) of the Social Security Act [subsec. (a)(3)(A) of this section]) with an organ procurement agency other than such hospital’s designated organ procurement agency (as defined in section 1319(a)(3)(B) of such Act) on the date of the enactment of this section [Oct. 31, 1994] shall, if such hospital desires to continue such agreement on and after the effective date of the amendments made by paragraph (1) [see Effective Date of 1994 Amendment note above], submit an application to the Secretary for a waiver under section 1138(a)(2) of such Act not later than January 1, 1996, and such agreement may continue in effect pending the Secretary’s determination with respect to such application.”

§ 1320b–9. Improved access to, and delivery of, health care for Indians under subchapters XIX and XXI

(a) Agreements with States for Medicaid and CHIP outreach on or near reservations to increase the enrollment of Indians in those programs

(1) In general

In order to improve the access of Indians residing on or near a reservation to obtain benefits under the Medicaid and State children’s health insurance programs established under subchapters XIX and XXI, the Secretary shall encourage the State to take steps to provide for enrollment on or near the reservation. Such steps may include outreach efforts such as the outstationing of eligibility workers, entering into agreements with the Indian Health Service, Indian Tribes, Tribal Organizations, and Urban Indian Organizations to provide outreach, education regarding eligibility and benefits, enrollment, and translation services when such services are appropriate.

(2) Construction

Nothing in paragraph (1) shall be construed as affecting arrangements entered into between States and the Indian Health Service, Indian Tribes, Tribal Organizations, or Urban Indian Organizations for such Service, Tribes, or Organizations to conduct administrative activities under such subchapters.

(b) Requirement to facilitate cooperation

The Secretary, acting through the Centers for Medicare & Medicaid Services, shall take such steps as are necessary to facilitate cooperation with, and agreements between, States and the Indian Health Service, Indian Tribes, Tribal Organizations, or Urban Indian Organizations with respect to the provision of health care items and services to Indians under the programs established under subchapter XIX or XXI.

c) Definition of Indian; Indian Tribe; Indian Health Program; Tribal Organization; Urban Indian Organization

For purposes of this section, subchapter XIX, and subchapter XXI, the terms “Indian,” “Indian Tribe,” “Indian Health Program,” “Tribal Organization,” and “Urban Indian Organization” have the meanings given those terms in section 1603 of title 25.


AMENDMENTS

2010—Subsec. (c). Pub. L. 111–148 substituted “For purposes of this section, subchapter XIX, and subchapter XXI” for “In this section”.


See Construction of 1990 Amendment note below.


Subsec. (f). Pub. L. 101–45 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows:

“(1) The Commission shall appoint an Executive Director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule under title 5.

“(2) In addition to the Executive Director, the Commission may appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5 governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.”

§ 1320b–9a. Child health quality measures

(a) Development of an initial core set of health care quality measures for children enrolled in Medicaid or CHIP

(1) In general

Not later than January 1, 2010, the Secretary shall identify and publish for general comment an initial, recommended core set of child health quality measures for use by State programs administered under subchapters XIX and XXI, health insurance issuers and managed care entities that enter into contracts with such programs, and providers of items and services under such programs.

(2) Identification of initial core measures

In consultation with the individuals and entities described in subsection (b)(3), the Secretary shall identify existing quality of care measures for children that are in use under public and privately sponsored health care coverage arrangements, or that are part of reporting systems that measure both the presence and duration of health insurance coverage over time.

(3) Recommendations and dissemination

Based on such existing and identified measures, the Secretary shall publish an initial core set of child health quality measures that includes (but is not limited to) the following:

(A) The duration of children’s health insurance coverage over a 12-month time period.

(B) The availability and effectiveness of a full range of—

(i) preventive services, treatments, and services for acute conditions, including services to promote healthy birth, prevent and treat premature birth, and detect the presence or risk of physical or mental conditions that could adversely affect growth and development; and

(ii) treatments to correct or ameliorate the effects of physical and mental conditions, including chronic conditions and, with respect to dental care, conditions requiring the restoration of teeth, relief of pain and infection, and maintenance of dental health, in infants, young children, school-age children, and adolescents.

(C) The availability of care in a range of ambulatory and inpatient health care settings in which such care is furnished.

(D) The types of measures that, taken together, can be used to estimate the overall national quality of health care for children, including children with special needs, and to perform comparative analyses of pediatric health care quality and racial, ethnic, and socioeconomic disparities in child health and health care for children.

(4) Encourage voluntary and standardized reporting

Not later than 2 years after February 4, 2009, the Secretary, in consultation with States, shall develop a standardized format for reporting information and procedures and approaches that encourage States to use the initial core measurement set to voluntarily report information regarding the quality of pediatric health care under subchapters XIX and XXI.

(5) Adoption of best practices in implementing quality programs

The Secretary shall disseminate information to States regarding best practices among States with respect to measuring and reporting on the quality of health care for children, and shall facilitate the adoption of such best practices. In developing best practices approaches, the Secretary shall give particular attention to State measurement techniques that ensure the timeliness and accuracy of provider reporting, encourage provider reporting compliance, encourage successful quality improvement strategies, and improve efficiency in data collection using health information technology.

(6) Reports to Congress

Not later than January 1, 2011, and every 3 years thereafter, the Secretary shall report to Congress on—

(A) the status of the Secretary’s efforts to improve—

(i) quality related to the duration and stability of health insurance coverage for children under subchapters XIX and XXI;

(ii) the quality of children’s health care under such subchapters, including preventive health services, dental care, health care for acute conditions, chronic health care, and health services to ameliorate the effects of physical and mental conditions and to aid in growth and development of infants, young children, school-age children, and adolescents with special health care needs; and

(iii) the quality of children’s health care under such subchapters across the domains of quality, including clinical quality, health care safety, family experience with health care, health care in the most integrated setting, and elimination of racial, ethnic, and socioeconomic disparities in health and health care;

(B) the status of voluntary reporting by States under subchapters XIX and XXI, utilizing the initial core quality measurement set; and

(C) any recommendations for legislative changes needed to improve the quality of care provided to children under subchapters

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XIX and XXI, including recommendations for quality reporting by States.

(7) **Technical assistance**

The Secretary shall provide technical assistance to States to assist them in adopting and utilizing core child health quality measures in administering the State plans under subchapters XIX and XXI.

(8) **Definition of core set**

In this section, the term “core set” means a group of valid, reliable, and evidence-based quality measures that, taken together—

(A) provide information regarding the quality of health coverage and health care for children;

(B) address the needs of children throughout the developmental age span; and

(C) allow purchasers, families, and health care providers to understand the quality of care in relation to the preventive needs of children, treatments aimed at managing and resolving acute conditions, and diagnostic and treatment services whose purpose is to correct or ameliorate physical, mental, or developmental conditions that could, if untreated or poorly treated, become chronic.

(b) **Advancing and improving pediatric quality measures**

(1) **Establishment of pediatric quality measures program**

Not later than January 1, 2011, the Secretary shall establish a pediatric quality measures program to—

(A) improve and strengthen the initial core child health care quality measures established by the Secretary under subsection (a);

(B) expand on existing pediatric quality measures used by public and private health care purchasers and advance the development of such new and emerging quality measures; and

(C) increase the portfolio of evidence-based, consensus pediatric quality measures available to public and private purchasers of children’s health care services, providers, and consumers.

(2) **Evidence-based measures**

The measures developed under the pediatric quality measures program shall, at a minimum, be—

(A) evidence-based and, where appropriate, risk adjusted;

(B) designed to identify and eliminate racial and ethnic disparities in child health and the provision of health care;

(C) designed to ensure that the data required for such measures is collected and reported in a standard format that permits comparison of quality and data at a State, plan, and provider level;

(D) periodically updated; and

(E) responsive to the child health needs, services, and domains of health care quality described in clauses (i), (ii), and (iii) of subsection (a)(6)(A).

(3) **Process for pediatric quality measures program**

In identifying gaps in existing pediatric quality measures and establishing priorities for development and advancement of such measures, the Secretary shall consult with—

(A) States;

(B) pediatricians, children’s hospitals, and other primary and specialized pediatric health care professionals (including members of the allied health professions) who specialize in the care and treatment of children, particularly children with special physical, mental, and developmental health care needs;

(C) dental professionals, including pediatric dental professionals;

(D) health care providers that furnish primary health care to children and families who live in urban and rural medically underserved communities or who are members of distinct population sub-groups at heightened risk for poor health outcomes;

(E) national organizations representing children, including children with disabilities and children with chronic conditions;

(F) national organizations representing consumers and purchasers of children’s health care;

(G) national organizations and individuals with expertise in pediatric health quality measurement; and

(H) voluntary consensus standards setting organizations and other organizations involved in the advancement of evidence-based measures of health care.

(4) **Developing, validating, and testing a portfolio of pediatric quality measures**

As part of the program to advance pediatric quality measures, the Secretary shall—

(A) award grants and contracts for the development, testing, and validation of new, emerging, and innovative evidence-based measures for children’s health care services across the domains of quality described in clauses (i), (ii), and (iii) of subsection (a)(6)(A); and

(B) award grants and contracts for—

(i) the development of consensus on evidence-based measures for children’s health care services;

(ii) the dissemination of such measures to public and private purchasers of health care for children; and

(iii) the updating of such measures as necessary.

(5) **Revising, strengthening, and improving initial core measures**

Beginning no later than January 1, 2013, and annually thereafter, the Secretary shall publish recommended changes to the core measures described in subsection (a) that shall reflect the testing, validation, and consensus process for the development of pediatric quality measures described in subsection 1 paragraphs (1) through (4).

(6) **Definition of pediatric quality measure**

In this subsection, the term “pediatric quality measure” means a measurement of clinical care that is capable of being examined through the collection and analysis of relevant infor-
mation, that is developed in order to assess 1 or more aspects of pediatric health care quality in various institutional and ambulatory health care settings, including the structure of the clinical care system, the process of care, the outcome of care, or patient experiences in care.

(7) Construction

Nothing in this section shall be construed as supporting the restriction of coverage, under subchapter XIX or XXI or otherwise, to only those services that are evidence-based.

(c) Annual State reports regarding State-specific quality of care measures applied under Medicaid or CHIP

(1) Annual State reports

Each State with a State plan approved under subchapter XIX or a State child health plan approved under subchapter XXI shall annually report to the Secretary on the—

(A) State-specific child health quality measures applied by the States under such plans, including measures described in subparagraphs (A) and (B) of subsection (a)(6); and

(B) State-specific information on the quality of health care furnished to children under such plans, including information collected through external quality reviews of managed care organizations under section 1396u–2 of this title and benchmark plans under sections 1396u–7 and 1397cc of this title.

(2) Publication

Not later than September 30, 2010, and annually thereafter, the Secretary shall collect, analyze, and make publicly available the information reported by States under paragraph (1).

(d) Demonstration projects for improving the quality of children's health care and the use of health information technology

(1) In general

During the period of fiscal years 2009 through 2013, the Secretary shall award not more than 10 grants to States and child health care providers to conduct demonstration projects to evaluate promising ideas for improving the quality of children's health care provided under subchapter XIX or XXI, including projects to—

(A) experiment with, and evaluate the use of, new measures of the quality of children's health care under such subchapters (including testing the validity and suitability for reporting of such measures); and

(B) promote the use of health information technology in care delivery for children under such subchapters;

(C) evaluate provider-based models which improve the delivery of children's health care services under such subchapters, including care management for children with chronic conditions and the use of evidence-based approaches to improve the effectiveness, safety, and efficiency of health care services for children; or

(D) demonstrate the impact of the model electronic health record format for children developed and disseminated under subsection (f) on improving pediatric health, including the effects of chronic childhood health conditions, and pediatric health care quality as well as reducing health care costs.

(2) Requirements

In awarding grants under this subsection, the Secretary shall ensure that—

(A) only 1 demonstration project funded under a grant awarded under this subsection shall be conducted in a State; and

(B) demonstration projects funded under grants awarded under this subsection shall be conducted evenly between States with large urban areas and States with large rural areas.

(3) Authority for multistate projects

A demonstration project conducted with a grant awarded under this subsection may be conducted on a multistate basis, as needed.

(4) Funding

$20,000,000 of the amount appropriated under subsection (i) for a fiscal year shall be used to carry out this subsection.

(e) Childhood obesity demonstration project

(1) Authority to conduct demonstration

The Secretary, in consultation with the Administrator of the Centers for Medicare & Medicaid Services, shall conduct a demonstration project to develop a comprehensive and systematic model for reducing childhood obesity by awarding grants to eligible entities to carry out such project. Such model shall—

(A) identify, through self-assessment, behavioral risk factors for obesity among children;

(B) identify, through self-assessment, needed clinical preventive and screening benefits among those children identified as target individuals on the basis of such risk factors;

(C) provide ongoing support to such target individuals and their families to reduce risk factors and promote the appropriate use of preventive and screening benefits; and

(D) be designed to improve health outcomes, satisfaction, quality of life, and appropriate use of items and services for which medical assistance is available under subchapter XIX or child health assistance is available under subchapter XXI among such target individuals.

(2) Eligibility entities

For purposes of this subsection, an eligible entity is any of the following:

(A) A city, county, or Indian tribe.

(B) A local or tribal educational agency.

(C) An accredited university, college, or community college.

(D) A Federally-qualified health center.

(E) A local health department.

(F) A health care provider.

(G) A community-based organization.

(H) Any other entity determined appropriate by the Secretary, including a consor-

So in original. Probably should be “Eligible entities”.

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(3) Use of funds

An eligible entity awarded a grant under this subsection shall use the funds made available under the grant to—

(A) carry out community-based activities related to reducing childhood obesity, including by—

(i) forming partnerships with entities, including schools and other facilities providing recreational services, to establish programs for after school and weekend community activities that are designed to reduce childhood obesity;

(ii) forming partnerships with daycare facilities to establish programs that promote healthy eating behaviors and physical activity; and

(iii) developing and evaluating community educational activities targeting good nutrition and promoting healthy eating behaviors;

(B) carry out age-appropriate school-based activities that are designed to reduce childhood obesity, including by—

(i) developing and testing educational curricula and intervention programs designed to promote healthy eating behaviors and habits in youth, which may include—

(I) after hours physical activity programs; and

(II) science-based interventions with multiple components to prevent eating disorders including nutritional content, understanding and responding to hunger and satiety, positive body image development, positive self-esteem development, and learning life skills (such as stress management, communication skills, problem-solving and decision-making skills), as well as consideration of cultural and developmental issues, and the role of family, school, and community;

(ii) providing education and training to educational professionals regarding how to promote a healthy lifestyle and a healthy school environment for children;

(iii) planning and implementing a healthy lifestyle curriculum or program with an emphasis on healthy eating behaviors and physical activity; and

(iv) planning and implementing healthy lifestyle classes or programs for parents or guardians, with an emphasis on healthy eating behaviors and physical activity for children;

(C) carry out educational, counseling, promotional, and training activities through the local health care delivery systems including by—

(i) promoting healthy eating behaviors and physical activity services to treat or prevent eating disorders, being overweight, and obesity;

(ii) providing patient education and counseling to increase physical activity and promote healthy eating behaviors;

(iii) training health professionals on how to identify and treat obese and overweight individuals which may include nutrition and physical activity counseling; and

(iv) providing community education by a health professional on good nutrition and physical activity to develop a better understanding of the relationship between diet, physical activity, and eating disorders, obesity, or being overweight; and

(D) provide, through qualified health professionals, training and supervision for community health workers to—

(i) educate families regarding the relationship between nutrition, eating habits, physical activity, and obesity;

(ii) educate families about effective strategies to improve nutrition, establish healthy eating patterns, and establish appropriate levels of physical activity; and

(iii) educate and guide parents regarding the ability to model and communicate positive health behaviors.

(4) Priority

In awarding grants under paragraph (1), the Secretary shall give priority to awarding grants to eligible entities—

(A) that demonstrate that they have previously applied successfully for funds to carry out activities that seek to promote individual and community health and to prevent the incidence of chronic disease and that can cite published and peer-reviewed research demonstrating that the activities that the entities propose to carry out with funds made available under the grant are effective;

(B) that will carry out programs or activities that seek to accomplish a goal or goals set by the State in the Healthy People 2010 plan of the State;

(C) that provide non-Federal contributions, either in cash or in-kind, to the costs of funding activities under the grants;

(D) that develop comprehensive plans that include a strategy for extending program activities developed under grants in the years following the fiscal years for which they receive grants under this subsection;

(E) located in communities that are medically underserved, as determined by the Secretary;

(F) located in areas in which the average poverty rate is at least 150 percent or higher of the average poverty rate in the State involved, as determined by the Secretary; and

(G) that submit plans that exhibit multi-sectoral, cooperative conduct that includes the involvement of a broad range of stakeholders, including—

(i) community-based organizations;

(ii) local governments;

(iii) local educational agencies;

(iv) the private sector;

(v) State or local departments of health;

(vi) accredited colleges, universities, and community colleges;
(vi) health care providers;
(vii) health care providers;
(viii) State and local departments of transportation and city planning; and
(ix) other entities determined appropriate by the Secretary.

(5) Program design

(A) Initial design

Not later than 1 year after February 4, 2009, the Secretary shall design the demonstration project. The demonstration should draw upon promising, innovative models and incentives to reduce behavioral risk factors. The Administrator of the Centers for Medicare & Medicaid Services shall consult with the Director of the Centers for Disease Control and Prevention, the Director of the Office of Minority Health, the heads of other agencies in the Department of Health and Human Services, and such professional organizations, as the Secretary determines to be appropriate, on the design, conduct, and evaluation of the demonstration.

(B) Number and project areas

Not later than 2 years after February 4, 2009, the Secretary shall award 1 grant that is specifically designed to determine whether programs similar to programs to be conducted by other grantees under this subsection should be implemented with respect to the general population of children who are eligible for child health assistance under State child health plans under subchapter XXI in order to reduce the incidence of childhood obesity among such population.

(6) Report to Congress

Not later than 3 years after the date the Secretary implements the demonstration project under this subsection, the Secretary shall submit to Congress a report that describes the project, evaluates the effectiveness and cost effectiveness of the project, evaluates the beneficiary satisfaction under the project, and includes any such other information as the Secretary determines to be appropriate.

(7) Definitions

In this subsection:

(A) Federally-qualified health center

The term “Federally-qualified health center” has the meaning given that term in section 1396d(f)(2)(B) of this title.

(B) Indian tribe

The term “Indian tribe” has the meaning given that term in section 1603 of title 25.

(C) Self-assessment

The term “self-assessment” means a form that—

(i) includes questions regarding—

(II) needed preventive and screening services; and

(III) target individuals’ preferences for receiving follow-up information;

(ii) is assessed using such computer generated assessment programs; and

(iii) allows for the provision of such ongoing support to the individual as the Secretary determines appropriate.

(D) Ongoing support

The term “ongoing support” means—

(i) to provide any target individual with information, feedback, health coaching, and recommendations regarding—

(I) the results of a self-assessment given to the individual;

(II) behavior modification based on the self-assessment; and

(III) any need for clinical preventive and screening services or treatment including medical nutrition therapy;

(ii) to provide any target individual with referrals to community resources and programs available to assist the target individual in reducing health risks; and

(iii) to provide the information described in clause (i) to a health care provider, if designated by the target individual to receive such information.

(8) Appropriation

Out of any funds in the Treasury not otherwise appropriated, there is appropriated to carry out this subsection, $25,000,000 for the period of fiscal years 2010 through 2014.

(f) Development of model electronic health record format for children enrolled in Medicaid or CHIP

(1) In general

Not later than January 1, 2010, the Secretary shall establish a program to encourage the development and dissemination of a model electronic health record format for children enrolled in the State plan under subchapter XIX or the State child health plan under subchapter XXI that is—

(A) subject to State laws, accessible to parents, caregivers, and other consumers for the sole purpose of demonstrating compliance with school or leisure activity requirements, such as appropriate immunizations or physicals;

(B) designed to allow interoperable exchanges that conform with Federal and State privacy and security requirements;

(C) structured in a manner that permits parents and caregivers to view and understand the extent to which the care their children receive is clinically appropriate and of high quality; and

(D) capable of being incorporated into, and otherwise compatible with, other standards developed for electronic health records.

(2) Funding

$5,000,000 of the amount appropriated under subsection (i) for a fiscal year shall be used to carry out this subsection.

(g) Study of pediatric health and health care quality measures

(1) In general

Not later than July 1, 2010, the Institute of Medicine shall study and report to Congress on the extent and quality of efforts to measure child health status and the quality of health care for children across the age span and in relation to preventive care, treatments for acute conditions, and treatments aimed at amelio-
rati
ing or correcting physical, mental, and de-
velopmental conditions in children. In con-
ducting such study and preparing such report,
the Institute of Medicine shall—

(A) consider all of the major national popu-
lation-based reporting systems sponsored
by the Federal Government that are cur-
rently in place, including reporting re-
quirements under Federal grant programs and na-
tional population surveys and estimates con-
ducted directly by the Federal Government;

(B) identify the information regarding
child health and health care quality that each
system is designed to capture and gen-
erate, the study and reporting periods cov-
ered by each system, and the extent to
which the information so generated is made
widely available through publication;

(C) identify gaps in knowledge related to
children’s health status, health disparities
among subgroups of children, the effects of
social conditions on children’s health status
and use and effectiveness of health care, and
the relationship between child health status
and family income, family stability and
preservation, and children’s school readiness
and educational achievement and attain-
ment; and

(D) make recommendations regarding im-
proving and strengthening the timeliness,
quality, and public transparency and acces-
sibility of information about child health
and health care quality.

(2) Funding
Up to $1,000,000 of the amount appropriated
under subsection (i) for a fiscal year shall be
used to carry out this subsection.

(h) Rule of construction
Notwithstanding any other provision in this
section, no evidence based quality measure de-
veloped, published, or used as a basis of meas-
urement or reporting under this section may be
used to establish an irrebuttable presumption
regarding either the medical necessity of care or
the maximum permissible coverage for any indi-
vidual child who is eligible for and receiving
medical assistance under subchapter XIX or
child health assistance under subchapter XXI.

(i) Appropriation
Out of any funds in the Treasury not other-
wise appropriated, there is appropriated for each
of fiscal years 2009 through 2013, $45,000,000 for
the purpose of carrying out this section (other
than subsection (e)). Funds appropriated under
this subsection shall remain available until ex-
pended.


AMENDMENTS
generally. Prior to amendment, text read as follows:
‘‘There is authorized to be appropriated to carry out
this subsection, $25,000,000 for the period of fiscal
years 2009 through 2013.’’

serted ‘‘and, with respect to dental care, conditions re-
quiring the restoration of teeth, relief of pain and in-
fection, and maintenance of dental health’’ after
‘‘chronic conditions’’.

‘‘dental care,’’ after ‘‘preventive health services,’’.

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

§ 1320b–9b. Adult health quality measures
(a) Development of core set of health care
quality measures for adults eligible for benefits
under Medicaid
The Secretary shall identify and publish a recom-
manded core set of adult health quality measures for Medicaid eligible adults in the
same manner as the Secretary identifies and
publishes a core set of child health quality measures under section 1320b–9a of this title, in-
cluding with respect to identifying and publishing
existing adult health quality measures that are
in use under public and privately sponsored
health care coverage arrangements, or that are
part of reporting systems that measure both the
presence and duration of health insurance cov-
erage over time, that may be applicable to Med-
icaid eligible adults.

(b) Deadlines
(1) Recommended measures
Not later than January 1, 2011, the Secretary
shall identify and publish for comment a re-
commended core set of adult health quality measures for Medicaid eligible adults.

(2) Dissemination
Not later than January 1, 2012, the Secretary
shall publish an initial core set of adult health
quality measures that are applicable to Medic-
aid eligible adults.

(3) Standardized reporting
Not later than January 1, 2013, the Sec-
retary, in consultation with States, shall de-
velop a standardized format for reporting in-
formation based on the initial core set of adult
health quality measures and create procedures
to encourage States to use such measures to
voluntarily report information regarding the
quality of health care for Medicaid eligible
adults.

(4) Reports to Congress
Not later than January 1, 2014, and every 3
years thereafter, the Secretary shall includ-
in the report to Congress required under sec-
tion 1320b–9a(a)(6) of this title information
similar to the information required under that
section with respect to the measures estab-
lished under this section.

(5) Establishment of Medicaid quality mea-
urement program
(A) In general
Not later than 12 months after the release
of the recommended core set of adult health
quality measures under paragraph (1))\(^1\), the
Secretary shall establish a Medicaid Quality Measurement Program in the same manner as the Secretary establishes the pediatric quality measures program under section 1320b-9a(b) of this title. The aggregate amount awarded by the Secretary for grants and contracts for the development, testing, and validation of emerging and innovative evidence-based measures under such program shall equal the aggregate amount awarded by the Secretary for grants under section 1320b-9a(b)(4)(A) of this title.2

(B) Revising, strengthening, and improving initial core measures

Beginning not later than 24 months after the establishment of the Medicaid Quality Measurement Program, and annually thereafter, the Secretary shall publish recommendations changes to the initial core set of adult health quality measures that shall reflect the results of the testing, validation, and consensus process for the development of adult health quality measures.

(c) Construction

Nothing in this section shall be construed as supporting the restriction of coverage, under subchapter XIX or XXI or otherwise, to only those services that are evidence-based, or in anyway limiting available services.

(d) Annual State reports regarding State-specific quality of care measures applied under Medicaid

(1) Annual State reports

Each State with a State plan or waiver approved under subchapter XIX shall annually report (separately or as part of the annual report required under section 1320b-9a(c) of this title), to the Secretary on the—

(A) State-specific adult health quality measures applied by the State under the such plan, including measures described in subsection (a)(5); and

(B) State-specific information on the quality of health care furnished to Medicaid eligible adults under such plan, including information collected through external quality reviews of managed care organizations under section 1396u–2 of this title and benchmark plans under section 1396u–7 of this title.

(2) Publication

Not later than September 30, 2014, and annually thereafter, the Secretary shall publish, analyze, and make publicly available the information reported by States under paragraph (1).

(e) Appropriation

Out of any funds in the Treasury not otherwise appropriated, there is appropriated for each of fiscal years 2010 through 2014, $60,000,000 for the purpose of carrying out this section. Funds appropriated under this subsection shall remain available until expended.

(A) Appropriation

Out of any funds in the Treasury not otherwise appropriated, there is appropriated under this subsection shall remain available until expended.2

(F) Appropriation

Out of any funds in the Treasury not otherwise appropriated, there is appropriated for each of fiscal years 2010 through 2014, $60,000,000 for the purpose of carrying out this section. Funds appropriated under this subsection shall remain available until expended.2

§ 1320b–10. Prohibitions relating to references to Social Security or Medicare

(a) Prohibited acts

(1) No person may use, in connection with any item constituting an advertisement, solicitation, circular, book, pamphlet, or other communication, or a play, motion picture, broadcast, telecast, or other production, alone or with other words, letters, symbols, or emblems—


(B) a symbol or emblem of the Social Security Administration, Centers for Medicare & Medicaid Services, or Department of Health and Human Services (including the design of, or a reasonable facsimile of the design of, the social security card issued pursuant to section 405(c)(2)(F) of this title or the Medicare card, the check used for payment of benefits under subchapter II of this chapter, or envelopes or other stationery used by the Social Security Administration, Centers for Medicare & Medicaid Services, or Department of Health and Human Services), or any other combination or variation of such symbols or emblems, in a manner which such person knows or should know would convey, or in a manner which reasonably could be interpreted or construed as conveying, the false impression that such item is approved, endorsed, or authorized by the Social Security Administration, the Centers for Medicare & Medicaid Services, or the Department of Health and Human Services or that such person has some connection with, or authorization from, the Social Security Administration, the Centers for Medicare & Medicaid Services, or the Department of Health and Human Services. The preceding provisions of this subsection shall not apply with respect to the use by any agency or instrumentality of a State or political subdivision of a State of any words or letters which identify an agency or instrumentality of such State or of a political subdivision of such State or the use by any such agency or instrumentality of any symbol or emblem of an agency or instrumentality of such State or a political subdivision of such State.

(2)(A) No person may, for a fee, reproduce, reprint, or distribute any item consisting of a form, application, or other publication of the Social Security Administration unless such person has obtained specific, written authorization for such activity in accordance with regulations which the Commissioner of Social Security shall prescribe.

(B) No person may, for a fee, reproduce, reprint, or distribute any item consisting of a

§ 1320b–10. Prohibitions relating to references to Social Security or Medicare

(a) Prohibited acts

(1) No person may use, in connection with any item constituting an advertisement, solicitation, circular, book, pamphlet, or other communication, or a play, motion picture, broadcast, telecast, or other production, alone or with other words, letters, symbols, or emblems—


(B) a symbol or emblem of the Social Security Administration, Centers for Medicare & Medicaid Services, or Department of Health and Human Services (including the design of, or a reasonable facsimile of the design of, the social security card issued pursuant to section 405(c)(2)(F) of this title or the Medicare card, the check used for payment of benefits under subchapter II of this chapter, or envelopes or other stationery used by the Social Security Administration, Centers for Medicare & Medicaid Services, or Department of Health and Human Services), or any other combination or variation of such symbols or emblems, in a manner which such person knows or should know would convey, or in a manner which reasonably could be interpreted or construed as conveying, the false impression that such item is approved, endorsed, or authorized by the Social Security Administration, the Centers for Medicare & Medicaid Services, or the Department of Health and Human Services or that such person has some connection with, or authorization from, the Social Security Administration, the Centers for Medicare & Medicaid Services, or the Department of Health and Human Services. The preceding provisions of this subsection shall not apply with respect to the use by any agency or instrumentality of a State or political subdivision of a State of any words or letters which identify an agency or instrumentality of such State or of a political subdivision of such State or the use by any such agency or instrumentality of any symbol or emblem of an agency or instrumentality of such State or a political subdivision of such State.

(2)(A) No person may, for a fee, reproduce, reprint, or distribute any item consisting of a form, application, or other publication of the Social Security Administration unless such person has obtained specific, written authorization for such activity in accordance with regulations which the Commissioner of Social Security shall prescribe.

(B) No person may, for a fee, reproduce, reprint, or distribute any item consisting of a
form, application, or other publication of the Department of Health and Human Services unless such person has obtained specific, written authorization for such activity in accordance with regulations which the Secretary shall prescribe.

(3) Any determination of whether the use of one or more words, letters, symbols, or emblems (or any combination or variation thereof) in connection with an item described in paragraph (1) or the reproduction, reprinting, or distribution of an item described in paragraph (2) is a violation of this subsection shall be made without regard to any inclusion in such item (or any so reproduced, reprinted, or distributed copy thereof) of a disclaimer of affiliation with the United States Government or any particular agency or instrumentality thereof.

(4)(A) No person shall offer, for a fee, to assist an individual to obtain a product or service that the person knows or should know is provided free of charge by the Social Security Administration unless, at the time the offer is made, the person provides to the individual to whom the offer is rendered a notice that:

(i) explains that the product or service is available free of charge from the Social Security Administration, and

(ii) complies with standards prescribed by the Commissioner of Social Security respecting the content of such notice and its placement, visibility, and legibility.

(B) Subparagraph (A) shall not apply to any offer—

(i) to serve as a claimant representative in connection with a claim arising under subchapter II of this chapter, subchapter VIII of this chapter, or subchapter XVI of this chapter; or

(ii) to prepare, or assist in the preparation of, an individual’s plan for achieving self-support under subchapter XVI of this chapter.

(b) Civil penalties

The Commissioner or the Secretary (as applicable) may, pursuant to regulations, impose a civil money penalty not to exceed—

(1) except as provided in paragraph (2), $5,000, or

(2) in the case of a violation consisting of a broadcast or telecast, $25,000, against any person for each violation by such person of subsection (a) of this section. In the case of any items referred to in subsection (a)(1) of this section consisting of pieces of mail, each such piece of mail which contains one or more words, letters, symbols, or emblems in violation of subsection (a) of this section shall represent a separate violation. In the case of any item referred to in subsection (a)(2) of this section, the reproduction, reprinting, or distribution of such item shall be treated as a separate violation with respect to each copy thereof so reproduced, reprinted, or distributed.

(c) Application of other law; compromise, recovery, and deposit into Treasury of civil money penalties

(1) The provisions of section 1320a–7a of this title (other than subsections (a), (b), (f), (h), and (l) and the first sentence of subsection (c)) shall apply to civil money penalties under subsection (b) of this section in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(2) Penalties imposed against a person under subsection (b) of this section may be compromised by the Commissioner or the Secretary (as applicable) and may be recovered in a civil action in the name of the United States brought in the district court of the United States for the district in which the violation occurred or where the person resides, has its principal office, or may be found, as determined by the Commissioner or the Secretary (as applicable). Amounts recovered under this section shall be paid to the Commissioner or the Secretary (as applicable) and shall be deposited as miscellaneous receipts of the Treasury of the United States, except that (A) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Social Security Administration, such amounts shall be deposited into the Federal Old-Age and Survivors Insurance Trust Fund, and (B) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Department of Health and Human Services, such amounts shall be deposited into the Federal Hospital Insurance Trust Fund or the Federal Supplementary Medical Insurance Trust Fund, as appropriate. The amount of such penalty when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States to the person against whom the penalty has been imposed.

(d) Enforcement

The preceding provisions of this section may be enforced through the Office of the Inspector General of the Social Security Administration or the Office of the Inspector General of the Department of Health and Human Services (as applicable).


Subsec. (a)(1)(C). Pub. L. 103-296, §312(a), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).
Subsec. (a)(2). Pub. L. 103-296, §312(c), (d), in closing provisions substituted “convey”, or in a manner which reasonably could be interpreted or construed as conveying,” for “convey” and inserted at end “The preceding provision of this subsection shall not apply with respect to the use by any agency or instrumentality of a State or political subdivision of a State of any words or letters which identify an agency or instrumentality of such State or of a political subdivision of such State or the use by any such agency or instrumentality of any symbol or emblem of an agency or instrumentality of such State or a political subdivision of such State.”
Subsec. (a)(1)(B). Pub. L. 103-296, §312(b)(2), substituted “Social Security Administration, Health Care Financing Administration, or Department of Health and Human Services” for “Social Security Administration” in two places, struck out “or of the Health Care Financing Administration” before “, or any other”, and inserted “or the Medicare card,” after “section 405(c)(2)(F)” of this title.
Subsec. (a)(2). Pub. L. 103-296, §304(b), substituted “‘405(c)(2)(E)’ for “405(c)(2)(F)”.
Subsec. (a)(3). Pub. L. 103-296, §312(e), added par. (3).
Subsec. (b). Pub. L. 103-296, §312(g), substituted “The following penalty shall be imposed under section 1320a–7a of this title” for “The following penalty shall be imposed under section 1320a–7a of this title”.
Subsec. (b)(1). Pub. L. 103-296, §312(f) inserted at end “In the case of any items referred to in subsection
(a)(1) of this section consisting of pieces of mail, each such piece of mail which contains one or more words, letters, symbols, or emblems in violation of subsection
(a)(1) of this section shall represent a separate violation. In the case of any item referred to in subsection (a)(2) of this section, the reproduction, reprinting, or distribution of such item shall be treated as a separate violation with respect to each copy thereof so reproduced, reprinted, or distributed.”
Subsec. (a)(2). Pub. L. 103-296, §108(b)(12)(B), substituted “the Commissioner or the Secretary (as applicable)” for “the Secretary” in introductory provisions.
Subsec. (c)(1). Pub. L. 103-296, §312(h), inserted “and the first sentence of subsection (c)” after “and (i)”.
Subsec. (c)(2). Pub. L. 103-296, §312(i), at end of second sentence substituted comma for period and inserted “except that (A) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Social Security Administration, such amounts shall be deposited into the Federal Old-Age and Survivors Insurance Trust Fund, and (B) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Department of Health and Human Services, such amounts shall be deposited into the Federal Hospital Insurance Trust Fund or the Federal Supplementary Medical Insurance Trust Fund, as appropriate.”
Subsec. (a)(1). Pub. L. 108-203, §108(b)(12)(C), substituted “the Commissioner or the Secretary (as applicable)” for “the Secretary” wherever appearing.
Subsec. (d). Pub. L. 103-296, §108(b)(12)(D), which in subsec. (d) as added by Pub. L. 103-296, §312(j), directed the substitution of “the Office of the Inspector General of the Social Security Administration or the Office of the Inspector General of the Department of Health and Human Services” for “the Office of Inspector General of the Department of Health and Human Services”, was executed by making the substitution for “the Office of the Inspector General of the Department of Health and Human Services” to reflect the probable intent of Congress.
Subsec. (c)(1). Pub. L. 100-485 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Subsections (c), (d), (e), (g), (j), and (k) of section 1320a–7a of this title shall apply with respect to violations under subsection (a) of this section and penalties imposed under subsection (b) of this section in the same manner and to the same extent as such subsections apply with respect to violations under section 1320a–7a of this title and penalties imposed under section 1320a–7a(a) of this title.”
SUBTITLE D—DEPARTMENT OF HEALTH AND HUMAN SERVICES

EFFECTIVE DATE OF 2004 AMENDMENT
Pub. L. 108-203, title II, §204(b), Mar. 2, 2004, 118 Stat. 511, provided that: “The amendments made by this section [amending this section] shall apply to offers of assistance made after the sixth month ending after the date of the enactment of this Act [Mar. 2, 2004].”

EFFECTIVE DATE OF 1994 AMENDMENT
Amendment by section 108(b)(12) of Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of this title.
Amendment by section 312(a)–(j) of Pub. L. 103-296 is applicable with respect to violations occurring after Mar. 31, 1995, see section 312(m)(1) of Pub. L. 103-296, set out
as an Effective Date note under section 333 of Title 31, Money and Finance.

**Effective Date of 1988 Amendment**

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 6608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

**Effective Date**

Section 428(c) of Pub. L. 100–360 provided that: "The amendments made by this section [enacting this section and amending section 1395ss of this title] shall take effect on the date of the enactment of this Act [July 1, 1988] and shall apply only with respect to violations occurring on or after such date.''

**Reports on Operation of This Section**

Section 322(k) of Pub. L. 100–203 provided that:

"(1) IN GENERAL.—The Secretary of Health and Human Services and the Commissioner of Social Security shall each submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate 3 reports on the operation of section 1140 of the Social Security Act [this section] with respect to the Social Security Administration or the Department of Health and Human Services during the period covered by the report, which shall specify—

"(A) the number of complaints of violations of such section received by the Social Security Administration or the Department of Health and Human Services during the period,

"(B) the number of cases in which the Social Security Administration or the Department, during the period, sent a notice of violation of such section requesting that an individual cease activities in violation of such section,

"(C) the number of cases in which the Social Security Administration or the Department formally proposed a civil money penalty in a demand letter during the period,

"(D) the total amount of civil money penalties assessed by the Social Security Administration or the Department under this section during the period,

"(E) the number of requests for hearings filed during the period by the Social Security Administration or the Department pursuant to sections 1148(c)(1) [subsec. (c)(1) of this section] and 1128A(c)(2) [section 1320a–7a(c)(2) of this title] of the Social Security Act,

"(F) the disposition during the period of hearings filed pursuant to sections 1140(c)(1) and 1128A(c)(2) of the Social Security Act, and

"(G) the total amount of civil money penalties collected under this section and deposited into the Federal Old-Age and Survivors Insurance Trust Fund or the Health Insurance and Supplementary Medical Insurance Trust Funds, as applicable, during the period.

"(2) WHEN DUE.—The reports required by paragraph (1) shall be submitted not later than December 1, 1995, not later than December 1, 1997, and not later than December 1, 1999, respectively.''

**Consultation by United States Postal Service Regarding Prevention of Deceptive Mailings**

United States Postal Service to consult and coordinate functions of Department of Health and Human Services in administration of this section, see section 4 of Pub. L. 100–203, set out as a Coordination of Functions With Department of Health and Human Services note under section 3001 of Title 39, Postal Service.

§ 1320b–11. Blood donor locator service

(a) In general

The Commissioner of Social Security shall establish and conduct a Blood Donor Locator Service, which shall be used to obtain and transmit to any authorized person (as defined in subsection (h)(1) of this section) the most recent mailing address of any blood donor who, as indicated by the donated blood or products derived therefrom or by the history of the subsequent use of such blood or blood products, has or may have the virus for acquired immune deficiency syndrome, in order to inform such donor of the possible need for medical care and treatment.

(b) Provision of address information

Whenever the Commissioner of Social Security receives a request, filed by an authorized person (as defined in subsection (h)(1) of this section), for the mailing address of a donor described in subsection (a) of this section and the Commissioner of Social Security is reasonably satisfied that the requirements of this section have been met with respect to such request, the Commissioner of Social Security shall promptly undertake to provide the requested address information from—

(1) the files and records maintained by the Social Security Administration, and

(2) such files and records obtained pursuant to section 6103(m)(6) of the Internal Revenue Code of 1986 as the Commissioner of Social Security considers necessary to comply with such request.

(c) Manner and form of requests

A request for address information under this section shall be filed in such manner and form as the Commissioner of Social Security shall by regulation prescribe, shall include the blood donor's social security account number, and shall be accompanied or supported by such documents as the Commissioner of Social Security may determine to be necessary.

(d) Procedures and safeguards

Any authorized person shall, as a condition for receiving address information from the Blood Donor Locator Service—

(1) establish and maintain, to the satisfaction of the Commissioner of Social Security, a system for standardizing records with respect to any request, the reason for such request, and the date of such request made by or to it and any disclosure of address information made by or to it,

(2) establish and maintain, to the satisfaction of the Commissioner of Social Security, a secure area or place in which such address information and all related blood donor records shall be stored,

(3) restrict, to the satisfaction of the Commissioner of Social Security, access to the address information and related blood donor records only to persons whose duties or responsibilities require access and to whom disclosure may be made under the provisions of this section,

(4) provide such other safeguards which the Commissioner of Social Security determines (and which the Commissioner of Social Security prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the address information and related blood donor records,

(5) furnish a report to the Commissioner of Social Security, at such time and containing
such information as the Commissioner of Social Security may prescribe, which describes the procedures established and utilized by the authorized person for ensuring the confidentiality of address information and related blood donor records required under this subsection, and

(6) destroy such address information and related blood donor records, upon completion of their use in providing the notification for which the information was obtained, so as to make such information and records undisclosable.

If the Commissioner of Social Security determines that any authorized person has failed to, or does not, meet the requirements of this subsection, the Commissioner of Social Security may, after any proceedings for review established under subsection (f) of this section, take such actions as are necessary to ensure such requirements are met, including refusing to disclose address information to such authorized person until the Commissioner of Social Security determines that such requirements have been or will be met. In the case of any authorized person who discloses any address information received pursuant to this section or any related blood donor records to any agent, this subsection shall apply to such authorized person and each such agent (except that, in the case of an agent, any report to the Commissioner of Social Security or other action with respect to the Commissioner of Social Security shall be made or taken through such authorized person). The Commissioner of Social Security shall destroy all related blood donor records in the possession of the Social Security Administration upon completion of their use in transmitting mailing addresses as required under subsection (a) of this section, so as to make such records undisclosable.

(e) Arrangements with State agencies and authorized persons

The Commissioner of Social Security, in carrying out the Commissioner’s duties and functions under this section, shall enter into arrangements—

(1) with State agencies to accept and to transmit to the Commissioner of Social Security requests for address information under this section and to accept and to transmit such information to authorized persons, and

(2) with State agencies and authorized persons otherwise to cooperate with the Commissioner of Social Security in carrying out the purposes of this section.

(f) Procedures for administrative review

The Commissioner of Social Security shall by regulation prescribe procedures which provide for administrative review of any determination that any authorized person has failed to meet the requirements of this section.

(g) Unauthorized disclosure of information

Paragraphs (1), (2), and (3) of section 7213(a) of the Internal Revenue Code of 1986 shall apply with respect to the unauthorized willful disclosure to any person of address information or related blood donor records acquired or maintained by or under the Commissioner of Social Security, or pursuant to this section by any authorized person, or of information derived from any such address information or related blood donor records, in the same manner and to the same extent as such paragraphs apply with respect to unauthorized disclosures of return and return information described in such paragraphs. Paragraph (4) of section 7213(a) of such Code shall apply with respect to the willful offer of any item of material value in exchange for any such address information or related blood donor record in the same manner and to the same extent as such paragraph applies with respect to offers (in exchange for any return or return information) described in such paragraph.

(h) Definitions

For purposes of this section—

(1) Authorized person

The term “authorized person” means—

(A) any agency of a State (or of a political subdivision of a State) which has duties or authority under State law relating to the public health or otherwise has the duty or authority under State law to regulate blood donations, and

(B) any entity engaged in the acceptance of blood donations which is licensed or registered by the Food and Drug Administration in connection with the acceptance of such blood donations, and which, in accordance with such regulations as may be prescribed by the Commissioner of Social Security, provides for—

(i) the confidentiality of any address information received pursuant to this section and related blood donor records,

(ii) blood donor notification procedures for individuals with respect to whom such information is requested and a finding has been made that they have or may have the virus for acquired immune deficiency syndrome, and

(iii) counseling services for such individuals who have been found to have such virus.

(2) Related blood donor record

The term “related blood donor record” means any record, list, or compilation which indicates, directly or indirectly, the identity of any individual with respect to whom a request for address information has been made pursuant to this section.

(3) State

The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.


REFERENCES IN TEXT

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

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§ 1320b–12

Research on outcomes of health care services and procedures

(a) Establishment of program

(1) In general

The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, shall—

(A) conduct and support research with respect to the outcomes, effectiveness, and appropriateness of health care services and procedures in order to identify the manner in which diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically; and

(B) assure that the needs and priorities of the program under subchapter XVIII of this chapter are appropriately reflected in the development and periodic review and updating (through the process set forth in section 299b–2 of this title) of treatment-specific or condition-specific practice guidelines for clinical treatments and conditions in forms appropriate for use in clinical practice, for use in educational programs, and for use in reviewing quality and appropriateness of medical care.

(2) Evaluations of alternative services and procedures

In carrying out paragraph (1), the Secretary shall conduct or support evaluations of the comparative effects, on health and functional capacity, of alternative services and procedures utilized in preventing, diagnosing, treating, and clinically managing diseases, disorders, and other health conditions.

(3) Initial guidelines

(A) In carrying out paragraph (1)(B) of this subsection, and section 299b–1(d) of this title, the Secretary shall, by not later than January 1, 1991, assure the development of an initial set of the guidelines specified in paragraph (1)(B) that shall include not less than 3 clinical treatments or conditions that—

(i) account for a significant portion of expenditures under subchapter XVIII of this chapter; and

(ii) otherwise meet the needs and priorities of the program under subchapter XVIII of this chapter, as set forth under subsection (b)(3) of this section.

(B)(i) The Secretary shall provide for the use of guidelines developed under subparagraph (A) to improve the quality, effectiveness, and appropriateness of care provided under subchapter XVIII of this chapter. The Secretary shall determine the impact of such use on the quality, appropriateness, effectiveness, and cost of medical care provided under such subchapter and shall report to the Congress on such determination by not later than January 1, 1993.

(ii) For the purpose of carrying out clause (i), the Secretary shall expend, from the amounts specified in clause (iii), $1,000,000 for fiscal year 1990 and $1,500,000 for each of the fiscal years 1991 and 1992.

(iii) For each fiscal year, for purposes of expenditures required in clause (ii)—

(I) 60 percent of an amount equal to the expenditure involved is appropriated from the Federal Hospital Insurance Trust Fund (established under section 1395i of this title); and

(II) 40 percent of an amount equal to the expenditure involved is appropriated from the Federal Supplementary Medical Insurance Trust Fund (established under section 1395t of this title).

(b) Priorities

(1) In general

The Secretary shall establish priorities with respect to the diseases, disorders, and other health conditions for which research and evaluations are to be conducted or supported under subsection (a) of this section. In establishing such priorities, the Secretary shall, with respect to a disease, disorder, or other health condition, consider the extent to which—

(A) improved methods of prevention, diagnosis, treatment, and clinical management...
can benefit a significant number of individuals;
(B) there is significant variation among physicians in the particular services and procedures utilized in making diagnoses and providing treatments or there is significant variation in the outcomes of health care services or procedures due to different patterns of diagnosis or treatment;
(C) the services and procedures utilized for diagnosis and treatment result in relatively substantial expenditures; and
(D) the data necessary for such evaluations are readily available or can readily be developed.
(2) Preliminary assessments
For the purpose of establishing priorities under paragraph (1), the Secretary may, with respect to services and procedures utilized in preventing, diagnosing, treating, and clinically managing diseases, disorders, and other health conditions, conduct or support assessments of the extent to which—
(A) rates of utilization vary among similar populations for particular diseases, disorders, and other health conditions;
(B) uncertainties exist on the effect of utilizing a particular service or procedure; or
(C) inappropriate services and procedures are provided.
(3) Relationship with medicare program
In establishing priorities under paragraph (1) for research and evaluation, and under section 299b–3(a) of this title for the agenda under such section, the Secretary shall assure that such priorities appropriately reflect the needs and priorities of the program under subchapter XVIII of this chapter, as set forth by the Administrator of the Centers for Medicare & Medicaid Services.
(c) Methodologies and criteria for evaluations
For the purpose of facilitating research under subsection (a) of this section, the Secretary shall—
(1) conduct and support research with respect to the improvement of methodologies and criteria utilized in conducting research with respect to outcomes of health care services and procedures;
(2) conduct and support reviews and evaluations of existing methodologies that use large data bases in conducting such research and shall develop new research methodologies, including data-based methods of advancing knowledge and methodologies that measure clinical and functional status of patients, with respect to such research;
(4) provide grants and contracts to research centers, and contracts to other entities, to conduct such research on such treatment or conditions, including research on the appropriate use of prescription drugs;
(5) conduct and support research and demonstrations on the use of claims data and data on clinical and functional status of patients in determining the outcomes, effectiveness, and appropriateness of such treatment; and
(6) conduct and support supplementation of existing data bases, including the collection of new information, to enhance data bases for research purposes, and the design and development of new data bases that would be used in outcomes and effectiveness research.
(d) Standards for data bases
In carrying out this section, the Secretary shall develop—
(1) uniform definitions of data to be collected and used in describing a patient’s clinical and functional status;
(2) common reporting formats and linkages for such data; and
(3) standards to assure the security, confidentiality, accuracy, and appropriate maintenance of such data.
(e) Dissemination of research findings and guidelines
(1) In general
The Secretary shall provide for the dissemination of the findings of research and the guidelines described in subsection (a) of this section, and for the education of providers and others in the application of such research findings and guidelines.
(2) Cooperative educational activities
In disseminating findings and guidelines under paragraph (1), and in providing for education under such paragraph, the Secretary shall work with professional associations, medical specialty and subspecialty organizations, and other relevant groups to identify and implement effective means to educate physicians, other providers, consumers, and others in using such findings and guidelines, including training for physician managers within provider organizations.
(f) Evaluations
The Secretary shall conduct and support evaluations of the activities carried out under this section to determine the extent to which such activities have had an effect on the practices of physicians in providing medical treatment, the delivery of health care, and the outcomes of health care services and procedures.
(g) Research with respect to dissemination
The Secretary may conduct or support research with respect to improving methods of disseminating information on the effectiveness and appropriateness of health care services and procedures.
(h) Omitted
(i) Authorization of appropriations
(1) In general
There are authorized to be appropriated to carry out this section—
(A) $50,000,000 for fiscal year 1990;
(B) $75,000,000 for fiscal year 1991;
(C) $110,000,000 for fiscal year 1992;
(D) $148,000,000 for fiscal year 1993; and
(E) $185,000,000 for fiscal year 1994.
(2) Specifications
For the purpose of carrying out this section, for each of the fiscal years 1990 through 1992 an
amount equal to two-thirds of the amounts authorized to be appropriated under paragraph (1), and for each of the fiscal years 1993 and 1994 an amount equal to 70 percent of such amounts, are to be appropriated in the following proportions from the following trust funds:

(A) 60 percent from the Federal Hospital Insurance Trust Fund (established under section 1395i of this title).

(B) 40 percent from the Federal Supplementary Medical Insurance Trust Fund (established under section 1395i of this title).

(3) Allocations

(A) For each fiscal year, of the amounts transferred or otherwise appropriated to carry out this section, the Secretary shall reserve appropriate amounts for each of the purposes specified in clauses (i) through (iv) of subparagraph (B).

(B) The purposes referred to in subparagraph (A) are—

(i) the development of guidelines, standards, performance measures, and review criteria;

(ii) research and evaluation;

(iii) data-base standards and development; and

(iv) education and information dissemination.

See also item 10 on page 94 of House Document No. 103–7.

Section 1320b–13 of this title, referred to in clauses (i) through (iv) of subparagraph (A), are—

(A) are—

(i) the development of guidelines, standards, performance measures, and review criteria;

(ii) research and evaluation;

(iii) data-base standards and development; and

(iv) education and information dissemination.

References in Text

Sections 299b–1 to 299b–3 of this title, referred to in subsecs. (a) and (b), were in the original references to sections 912 to 914 of act July 1, 1944, which were omitted in the general amendment of subchapter VII of chapter 6A of this title by Pub. L. 106–129, § 2(a), Dec. 6, 1999, 113 Stat. 1670; Pub. L. 106–173, title II, § 229(b), Nov. 29, 1999, 113 Stat. 1586, 1591–1597, provided that:

“(1) STUDY.—The Administrator for Health Care Policy and Research shall conduct a study that, with respect to the provision of ultrasound under the Medicare and Medicaid programs under titles XVIII and XIX of the Social Security Act [subchapters XVIII and XIX of this chapter], compares differences in quality between ultrasound furnished by individuals who are credentialed by private entities or organizations and ultrasound furnished by those who are not so credentialed. Such study shall examine and evaluate differences in error rates, resulting complications, and patient outcomes as a result of the differences in credentialing. In designing the study, the Administrator shall consult with organizations nationally recognized for their expertise in ultrasound.

“(2) REPORT.—Not later than two years after the date of the enactment of this Act (Nov. 29, 1999), the Administrator shall submit a report to Congress on the study conducted under paragraph (1).”

Section 6103(b)(2) of Pub. L. 101–239 provided that: “Not later than 1 year after the date of the enactment of this Act [Dec. 19, 1989], the Secretary of Health and Human Services shall report to the Congress on the feasibility of linking research-related data described in section 1142(d) of the Social Security Act [subsec. (d) of this section] with similar data collected or maintained by non-Federal entities and by Federal agencies other than the Department of Health and Human Services (including the Departments of Defense and Veterans Affairs and the Office of Personnel Management).”

References in Section

Section 1320b–13. Social security account statements

(a) Provision upon request

(1) Beginning not later than October 1, 1990, the Commissioner of Social Security shall provide, upon the request of an eligible individual, a social security account statement (hereinafter referred to as the “statement”).

(2) Each statement shall contain—

(A) the amount of wages paid to and self-employment income derived by the eligible individual as shown by the records of the Commissioner at the date of the request;

(B) an estimate of the aggregate of the employer, employee, and self-employment contributions of the eligible individual for old-age, survivors, and disability insurance as shown by the records of the Commissioner on the date of the request;

(C) a separate estimate of the aggregate of the employer, employee, and self-employment contributions of the eligible individual for hospital insurance as shown by the records of the Commissioner on the date of the request;

(D) an estimate of the potential monthly retirement, disability, survivor, and auxiliary benefits payable on the eligible individual’s account together with a description of the benefits payable under the medicare program of subchapter XVIII of this chapter; and

(E) in the case of an eligible individual described in paragraph (3)(C)(ii), an explanation, in language calculated to be understood by the

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average eligible individual, of the operation of the provisions under sections 402(k)(5) and 415(a)(7) of this title and an explanation of the maximum potential effects of such provisions on the eligible individual’s monthly retirement, survivor, and auxiliary benefits.

(3) For purposes of this section, the term “eligible individual” means an individual—

(A) who has a social security account number,

(B) who has attained age 25 or over, and

(C)(i) who has wages or net earnings from self-employment, or (ii) with respect to whom the Commissioner has information that the pattern of wages or self-employment income indicate a likelihood of noncovered employment.

(b) Notice to eligible individuals

The Commissioner shall, to the maximum extent practicable, take such steps as are necessary to assure that eligible individuals are informed of the availability of the statement described in subsection (a) of this section.

(c) Mandatory provision of statements

(1) By not later than September 30, 1995, the Commissioner shall provide a statement to each eligible individual who has attained age 60 by October 1, 1994, and who is not receiving benefits under subchapter II of this chapter and for whom a current mailing address can be determined through such methods as the Commissioner determines to be appropriate. In fiscal years 1995 through 1999 the Commissioner shall provide a statement to each eligible individual who attains age 60 in such fiscal years and who is not receiving benefits under subchapter II of this chapter and for whom a current mailing address can be determined through such methods as the Commissioner determines to be appropriate. The Commissioner shall provide with each statement to an eligible individual notice that such statement is updated annually and is available upon request.

(2) Beginning not later than October 1, 1999, the Commissioner shall provide a statement on an annual basis to each eligible individual who is not receiving benefits under subchapter II of this chapter and for whom a mailing address can be determined through such methods as the Commissioner determines to be appropriate. With respect to statements provided to eligible individuals who have not attained age 50, such statements need not include estimates of monthly retirement benefits. However, if such statements provided to eligible individuals who have not attained age 50 do not include estimates of retirement benefit amounts, such statements shall include a description of the benefits (including auxiliary benefits) that are available upon retirement.

(d) Disclosure to governmental employees of effect of noncovered employment

(1) In the case of any individual commencing employment on or after January 1, 2006, in any agency or instrumentality of any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) in a position in which service performed by the individual does not constitute “employment” as defined in section 410 of this title, the head of the agency or instrumentality shall ensure that, prior to the date of the commencement of the individual’s employment in the position, the individual is provided a written notice setting forth an explanation, in language calculated to be understood by the average individual, of the maximum effect on computations of primary insurance amounts (under section 415(a)(7) of this title) and the effect on benefit amounts (under section 402(k)(5) of this title) of monthly periodic payments or benefits payable based on earnings derived in such service. Such notice shall be in a form that shall be prescribed by the Commissioner of Social Security.

(2) The written notice provided to an individual pursuant to paragraph (1) shall include a form which, upon completion and signature by the individual, would constitute certification by the individual of receipt of the notice. The agency or instrumentality providing the notice to the individual shall require that the form be completed and signed by the individual and submitted to the agency or instrumentality and to the pension, annuity, retirement, or similar fund or system established by the governmental entity involved responsible for paying the monthly periodic payments or benefits, before commencement of service with the agency or instrumentality.


AMENDMENTS


Subsec. (a)(2)(A) to (C). Pub. L. 108–203, §421(2), substituted “Commissioner” for “Secretary”.


Subsec. (a)(3)(C). Pub. L. 108–203, §419(a)(2), (3), designated existing provisions as cl. (i), inserted “who” before “has wages”, and inserted “, or” and cl. (ii) before period.

Subsecs. (b), (c). Pub. L. 108–203, §421(2), substituted “Commissioner” for “Secretary” wherever appearing.


EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, §419(d), Mar. 2, 2004, 118 Stat. 594, provided that: “The amendments made by subsections (a) and (b) of this section (amending this section) shall apply with respect to social security account statements issued on or after January 1, 2007.”

Referred to in this section:

418(b)(2) of this title
§ 1320b–14. Outreach efforts to increase awareness of the availability of medicare cost-sharing and subsidies for low-income individuals under subchapter XVIII

(a) Outreach

(1) In general

The Commissioner of Social Security (in this section referred to as the “Commissioner”) shall conduct outreach efforts to—

(A) identify individuals entitled to benefits under the medicare program under subchapter XVIII of this chapter who may be eligible for medical assistance for payment of the cost of medicare cost-sharing under the medicaid program pursuant to sections 1396a(a)(10)(E) and 1396u-3 of this title for the transitional assistance under section 1395w–141(f) of this title, or for premium and cost-sharing subsidies under section 1395w–114 of this title; and

(B) notify such individuals of the availability of such medical assistance, program, and subsidies under such sections.

(2) Content of notice

Any notice furnished under paragraph (1) shall state that eligibility for medicare cost-sharing assistance, the transitional assistance under section 1395w–141(f) of this title, or premium and cost-sharing subsidies under section 1395w–114 of this title under such sections is conditioned upon—

(A) the individual providing to the State information about income and resources (in the case of an individual residing in a State that imposes an assets test for eligibility for medicare cost-sharing under the medicaid program); and

(B) meeting the applicable eligibility criteria.

(b) Coordination with States

(1) In general

In conducting the outreach efforts under this section, the Commissioner shall—

(A) furnish the agency of each State responsible for the administration of the medicaid program and any other appropriate State agency with information consisting of the name and address of individuals residing in the State that the Commissioner determines may be eligible for medical assistance for payment of the cost of medicare cost-sharing under the medicaid program pursuant to sections 1396a(a)(10)(E) and 1396u-3 of this title, for transitional assistance under section 1395w–141(f) of this title, or for premium and cost-sharing subsidies for low-income individuals under section 1395w–114 of this title; and

(B) update any such information not less frequently than once per year.

(2) Information in periodic updates

The periodic updates described in paragraph (1)(B) shall include information on individuals who are or may be eligible for the medical assistance, program, and subsidies described in paragraph (1)(A) because such individuals have experienced reductions in benefits under subchapter II of this chapter.

(c) Assistance with Medicare Savings Program and low-income subsidy program applications

(1) Distribution of applications and information to individuals who are potentially eligible for low-income subsidy program

For each individual who submits an application for low-income subsidies under section 1395w–114 of this title, requests an application for such subsidies, or is otherwise identified as an individual who is potentially eligible for such subsidies, the Commissioner shall do the following:

(A) Provide information describing the low-income subsidy program under section 1395w–114 of this title and the Medicare Savings Program (as defined in paragraph (7)).

(B) Provide an application for enrollment under such low-income subsidy program (if not already received by the Commissioner).

(C) In accordance with paragraph (3), transmit data from such an application for purposes of initiating an application for benefits under the Medicare Savings Program.

(D) Provide information on how the individual may obtain assistance in completing such application and an application under the Medicare Savings Program, including information on how the individual may contact the State health insurance assistance program (SHIP).

(E) Make the application described in subparagraph (B) and the information described in subparagraphs (A) and (D) available at local offices of the Social Security Administration.

(2) Training personnel in explaining benefit programs and assisting in completing LIS application

The Commissioner shall provide training to those employees of the Social Security Administration who are involved in receiving applications for benefits described in paragraph (1)(B) in order that they may promote beneficiary understanding of the low-income subsidy program and the Medicare Savings Program in order to increase participation in these programs. Such employees shall provide assistance in completing an application described in paragraph (1)(B) upon request.

(3) Transmittal of data to States

Beginning on January 1, 2010, with the consent of an individual completing an application for benefits described in paragraph (1)(B) in order that they may promote beneficiary understanding of the low-income subsidy program and the Medicare Savings Program in order to increase participation in these programs. Such employees shall provide assistance in completing an application described in paragraph (1)(B) upon request.

(E) Make the application described in subparagraph (B) and the information described in subparagraphs (A) and (D) available at local offices of the Social Security Administration.

(F) The Commissioner shall consult with the Secretary, after the

1So in original. Probably should be followed by a comma.
Secretary has consulted with the States, regarding the content, form, frequency, and manner in which data (on a uniform basis for all States) shall be transmitted under this subparagraph.

(4) Coordination with outreach
The Commissioner shall coordinate outreach activities under this subsection in connection with the low-income subsidy program and the Medicare Savings Program.

(5) Reimbursement of Social Security Administration administrative costs
(A) Initial Medicare Savings Program costs; additional low-income subsidy costs
(i) Initial Medicare Savings Program costs
There are hereby appropriated to the Commissioner to carry out this subsection, out of any funds in the Treasury not otherwise appropriated, $24,800,000 for fiscal year 2009 to carry out low-income subsidy activities under section 1395w–141 of this title and the Medicare Savings Program (in accordance with this subsection), to remain available until expended.

(ii) Additional amount for low-income subsidy activities
There are hereby appropriated to the Commissioner, out of any funds in the Treasury not otherwise appropriated, $24,800,000 for fiscal year 2009 to carry out low-income subsidy activities under section 1395w–114 of this title and the Medicare Savings Program required under this subsection. Such funds shall be in addition to the Social Security Administration’s Limitation on Administrative Expenditures appropriations for such fiscal year.

(B) Subsequent funding under agreements
(i) In general
Effective for fiscal years beginning on or after October 1, 2010, the Commissioner and the Secretary shall enter into an agreement which shall provide funding (subject to the amount appropriated under clause (ii)) to cover the administrative costs of the Commissioner’s activities under this subsection. Such agreement shall—
(I) provide funds to the Commissioner for the full cost of the Social Security Administration’s work related to the Medicare Savings Program required under this section;
(II) provide such funding quarterly in advance of the applicable quarter based on estimating methodology agreed to by the Commissioner and the Secretary; and
(III) require an annual accounting and reconciliation of the actual costs incurred and funds provided under this subsection.

(ii) Appropriation
There are hereby appropriated to the Secretary solely for the purpose of providing payments to the Commissioner pursuant to an agreement specified in clause (i) that is in effect, out of any funds in the Treasury not otherwise appropriated, not more than $3,000,000 for fiscal year 2011 and each fiscal year thereafter.

(C) Limitation
In no case shall funds from the Social Security Administration’s Limitation on Administrative Expenses be used to carry out activities related to the Medicare Savings Program. For fiscal years beginning on or after October 1, 2010, no such activities shall be undertaken by the Social Security Administration unless the agreement specified in subparagraph (B) is in effect and full funding has been provided to the Commissioner as specified in such subparagraph.

(6) GAO analysis and report
(A) Analysis
The Comptroller General of the United States shall prepare an analysis of the impact of this subsection—
(i) in increasing participation in the Medicare Savings Program, and
(ii) on States and the Social Security Administration.

(B) Report
Not later than January 1, 2012, the Comptroller General shall submit to Congress, the Secretary, and the Secretary a report on the analysis conducted under subparagraph (A).

(7) Medicare Savings Program defined
For purposes of this subsection, the term “Medicare Savings Program” means the program of medical assistance for payment of the cost of medicare cost-sharing under the Medicaid program pursuant to sections 1396a(a)(10)(E) and 1396u–3 of this title.

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§ 1320b–14
under section 1395w–114 of this title' after "assistance" in introductory provisions.


Subsec. (b)(2). Pub. L. 108–173, § 103(g)(3)(B), inserted "program, and subsidies" after "medical assistance".

**Effective Date of 2008 Amendment**

Pub. L. 110–275, title I, § 113(c), July 15, 2008, 122 Stat. 2586, provided that: "Except as otherwise provided, the amendments made by this section (amending this section and section 1396a–5 of this title) shall take effect on January 1, 2010."

**Effective Date**

Pub. L. 106–554, § 1(a)(6), Dec. 21, 2000, 114 Stat. 2763, 2763A–584, provided that: "The amendments made by subsection (a) [enacting this section and amending section 1396d of this title] shall take effect on the date of the enactment of this Act [Dec. 21, 2000]."

**GAO Report**

Pub. L. 106–554, § 1(a)(6), Dec. 21, 2000, 114 Stat. 2763, 2763A–584, provided that: "The Comptroller General of the United States shall conduct a study of the impact of section 1144 of the Social Security Act [this section] (as added by subsection (a)(1)) on the enrollment of individuals for medicare cost-sharing under the medicaid program. Not later than 18 months after the date that the Commissioner of Social Security first conducts outreach under section 1144 of such Act, the Comptroller General shall submit to Congress a report on such study. The report shall include such recommendations for legislative changes as the Comptroller General deems appropriate."

§ 1320b–15. Protection of social security and medicare trust funds

(a) In general

No officer or employee of the United States shall—

(1) delay the deposit of any amount into (or delay the credit of any amount to) any Federal fund or otherwise vary from the normal terms, procedures, or timing for making such deposits or credits,

(2) refrain from the investment in public debt obligations of amounts in any Federal fund, or

(3) redeem prior to maturity amounts in any Federal fund which are invested in public debt obligations for any purpose other than the payment of benefits or administrative expenses from such Federal fund.

(b) "Public debt obligation" defined

For purposes of this section, the term "public debt obligation" means any obligation subject to the public debt limit established under section 3101 of title 31.

(c) "Federal fund" defined

For purposes of this section, the term "Federal fund" means—

(1) the Federal Old-Age and Survivors Insurance Trust Fund;

(2) the Federal Disability Insurance Trust Fund;

(3) the Federal Hospital Insurance Trust Fund; and

(4) the Federal Supplementary Medical Insurance Trust Fund.


**Effective Date**

Section 107(b) of Pub. L. 104–121 provided that: "The amendment made by this section [enacting this section] shall take effect on the date of the enactment of this Act [Mar. 29, 1996]."

§ 1320b–16. Public disclosure of certain information on hospital financial interest and referral patterns

The Secretary shall make available to the public, in a form and manner specified by the Secretary, information disclosed to the Secretary pursuant to section 1395cc(a)(1)(B) of this title.


**Effective Date**

Section 4321(d)(2) of Pub. L. 105–33 provided that: "The Secretary of Health and Human Services shall issue regulations by not later than the date which is 1 year after the date of the enactment of this Act [Aug. 5, 1997] to carry out the amendments made by subsections (b) and (c) [enacting this section and amending section 1395cc of this title] and such amendments shall take effect as of such date (on or after the issuance of such regulations) as the Secretary specifies in such regulations."

§ 1320b–17. Cross-program recovery of overpayments from benefits

(a) In general

Subject to subsection (b) of this section, whenever the Commissioner of Social Security determines that more than the correct amount of any payment has been made to a person under a program described in subsection (e) of this section, the Commissioner of Social Security may recover the amount incorrectly paid by decreasing any amount which is payable to such person under any other program specified in that subsection.

(b) Limitation applicable to current benefits

(1) In general

In carrying out subsection (a) of this section, the Commissioner of Social Security may not decrease the monthly amount payable to an individual under a program described in subsection (e) of this section that is paid when regularly due—

(A) in the case of benefits under subchapter II or VIII of this chapter, by more than 10 percent of the amount of the benefit payable to the person for that month under such subchapter; and

(B) in the case of benefits under subchapter XVI of this chapter, by an amount greater than the lesser of—

(i) the amount of the benefit payable to the person for that month; or

(ii) an amount equal to 10 percent of the person’s income for that month (including
such monthly benefit but excluding payments under subchapter II of this chapter when recovery is also made from subchapter II payments and excluding income excluded pursuant to section 1382a(b) of this title.

(2) Exception
Paragraph (1) shall not apply if—
(A) the person or the spouse of the person was involved in willful misrepresentation or concealment of material information in connection with the amount incorrectly paid; or
(B) the person so requests.

(c) No effect on eligibility or benefit amount under subchapter VIII or XVI
In any case in which the Commissioner of Social Security takes action in accordance with subsection (a) of this section to recover an amount incorrectly paid to any person, neither that person, nor (with respect to the program described in subsection (e)(3) of this section) any individual whose eligibility for benefits under such program or whose amount of such benefits, is determined by considering any part of that person’s income, shall, as a result of such action—

(1) become eligible for benefits under the program described in paragraph (2) or (3) of subsection (e) of this section; or
(2) if such person or individual is otherwise so eligible, become eligible for increased benefits under such program.

(d) Inapplicability of prohibition against assessment and legal process
Section 407 of this title shall not apply to actions taken under the provisions of this section to decrease amounts payable under subchapters II and XVI of this chapter.

(e) Programs described
The programs described in this subsection are the following:
(1) The old-age, survivors, and disability insurance benefits program under subchapter II of this chapter.
(2) The special benefits for certain World War II veterans program under subchapter VIII of this chapter.
(3) The supplemental security income benefits program under subchapter XVI of this chapter (including, for purposes of this section, State supplementary payments paid by the Commissioner pursuant to an agreement under section 1382a of this title or section 212(b) of Public Law 93–66).


REFERENCES IN TEXT
Section 212(b) of Public Law 93–66, referred to in subsec. (e)(3), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 156, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS
2004—Pub. L. 108–203 added section catchline and text generally, substituting provisions relating to recovery of overpayments from benefits under subchapters II, VIII, and XVI of this chapter, consisting of subsecs. (a) to (e), for provisions relating to recovery of overpayments from benefits under subchapter XVI of this chapter, consisting of subsecs. (a) and (b).

1999—Pub. L. 106–169, § 251(b)(7)(B), substituted “other” for “social security” in section catchline. Subsec. (a)(1). Pub. L. 106–169, § 251(b)(7)(A), inserted “or VIII” after “person under subchapter II” and substituted “payable under such subchapter” for “payable under subchapter II of this chapter”.

EFFECTIVE DATE OF 2004 AMENDMENT
Amendment by Pub. L. 108–203 effective Mar. 2, 2004, and effective with respect to overpayments under subchapters II, VIII, and XVI of this chapter that are outstanding on or after such date, see section 210(c) of Pub. L. 108–203, set out as a note under section 404 of this title.

EFFECTIVE DATE
Section effective Oct. 28, 1998, and applicable to amounts incorrectly paid which remain outstanding on or after such date, see section 8(c) of Pub. L. 105–306, set out as an Effective Date of 1998 Amendment note under section 404 of this title.


EFFECTIVE DATE OF REPEAL
Repeal effective Mar. 2, 2004, and effective with respect to overpayments under subchapters II, VIII, and XVI of this chapter that are outstanding on or after such date, see section 210(c) of Pub. L. 108–203, set out as an Effective Date of 2004 Amendment note under section 404 of this title.

§ 1320b–19. The Ticket to Work and Self-Sufficiency Program

(a) In general
The Commissioner shall establish a Ticket to Work and Self-Sufficiency Program, under which a disabled beneficiary may use a ticket to work and self-sufficiency issued by the Commissioner in accordance with this section to obtain employment services, vocational rehabilitation services, or other support services from an employment network which is of the beneficiary’s choice and which is willing to provide such services to such beneficiary.

(b) Ticket system
(1) Distribution of tickets
The Commissioner may issue a ticket to work and self-sufficiency to disabled beneficiaries for participation in the Program.

(2) Assignment of tickets
A disabled beneficiary holding a ticket to work and self-sufficiency may assign the ticket to any employment network of the beneficiary’s choice which is serving under the Program and is willing to accept the assignment.

(3) Ticket terms
A ticket issued under paragraph (1) shall consist of a document which evidences the
(c) State participation

(1) In general

Each State agency administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) may elect to participate in the Program as an employment network with respect to a disabled beneficiary. If the State agency does elect to participate in the Program, the State agency also shall elect to be paid under the outcome-payment system or the outcome-milestone-payment system in accordance with subsection (h)(2) of this section. With respect to a disabled beneficiary that the State agency does not elect to have participate in the Program, the State agency shall be paid for services provided to that beneficiary under the system for payment applicable under section 422(d) of this title and subsections (d) and (e) of section 1382d of this title. The Commissioner shall provide for periodic opportunities for exercising such elections.

(2) Effect of participation by State agency

(A) State agencies participating

In any case in which a State agency described in paragraph (1) elects under that paragraph to participate in the Program, the employment services, vocational rehabilitation services, and other support services which, upon assignment of tickets to work and self-sufficiency, are provided to disabled beneficiaries by the State agency acting as an employment network shall be governed by plans for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.).

(B) State agencies administering maternal and child health services programs

Subparagraph (A) shall not apply with respect to any State agency administering a program under subchapter V of this chapter.

(3) Agreements between State agencies and employment networks

State agencies and employment networks shall enter into agreements regarding the conditions under which services will be provided when an individual is referred by an employment network to a State agency for services. The Commissioner shall establish by regulations the timeframe within which such agreements must be entered into and the mechanisms for dispute resolution between State agencies and employment networks with respect to such agreements.

(d) Responsibilities of the Commissioner

(1) Selection and qualifications of program managers

The Commissioner shall enter into agreements with 1 or more organizations in the private or public sector for service as a program manager to assist the Commissioner in administering the Program. Any such program manager shall be selected by means of a competitive bidding process, from among organizations in the private or public sector with available expertise and experience in the field of vocational rehabilitation or employment services.

(2) Tenure, renewal, and early termination

Each agreement entered into under paragraph (1) shall provide for early termination upon failure to meet performance standards which shall be specified in the agreement and which shall be weighted to take into account any performance in prior terms. Such performance standards shall include—

(A) measures for ease of access by beneficiaries to services; and

(B) measures for determining the extent to which failures in obtaining services for beneficiaries fall within acceptable parameters, as determined by the Commissioner.

(3) Preclusion from direct participation in delivery of services in own service area

Agreements under paragraph (1) shall preclude—

(A) direct participation by a program manager in the delivery of employment services, vocational rehabilitation services, or other support services to beneficiaries in the service area covered by the program manager’s agreement; and

(B) the holding by a program manager of a financial interest in an employment network or service provider which provides services in a geographic area covered under the program manager’s agreement.

(4) Selection of employment networks

(A) In general

The Commissioner shall select and enter into agreements with employment networks for service under the Program. Such employment networks shall be in addition to State agencies serving as employment networks pursuant to elections under subsection (c) of this section.

(B) Alternate participants

In any State where the Program is being implemented, the Commissioner shall enter into an agreement with any alternate participant that is operating under the authority of section 422(d)(2) of this title in the State as of December 17, 1999, and chooses to serve as an employment network under the Program.
(5) Termination of agreements with employment networks

The Commissioner shall terminate agreements with employment networks for inadequate performance, as determined by the Commissioner.

(6) Quality assurance

The Commissioner shall provide for periodic reviews as are necessary to provide for effective quality assurance in the provision of services by employment networks. The Commissioner shall solicit and consider the views of consumers and the program manager under which the employment networks serve and shall consult with providers of services to develop performance measurements. The Commissioner shall ensure that the results of the periodic reviews are made available to beneficiaries who are prospective service recipients as they select employment networks. The Commissioner shall ensure that the periodic surveys of beneficiaries receiving services under the Program are designed to measure customer service satisfaction.

(7) Dispute resolution

The Commissioner shall provide for a mechanism for resolving disputes between beneficiaries and employment networks, between program managers and employment networks, and between program managers and providers of services. The Commissioner shall afford a party to such a dispute a reasonable opportunity for a full and fair review of the matter in dispute.

(e) Program managers

(1) In general

A program manager shall conduct tasks appropriate to assist the Commissioner in carrying out the Commissioner’s duties in administering the Program.

(2) Recruitment of employment networks

A program manager shall recruit, and recommend for selection by the Commissioner, employment networks for service under the Program. The program manager shall carry out such recruitment and provide such recommendations, and shall monitor all employment networks serving in the Program in the geographic area covered under the program manager’s agreement, to the extent necessary and appropriate to ensure that adequate choices of services are made available to beneficiaries. Employment networks may serve under the Program only pursuant to an agreement entered into with the Commissioner under the Program incorporating the applicable provisions of this section and regulations thereunder, and the program manager shall provide and maintain assurances to the Commissioner that payment by the Commissioner to employment networks pursuant to this section is warranted based on compliance by such employment networks with the terms of such agreement and this section. The program manager shall not impose numerical limits on the number of employment networks to be recommended pursuant to this paragraph.

(3) Facilitation of access by beneficiaries to employment networks

A program manager shall facilitate access by beneficiaries to employment networks. The program manager shall ensure that each beneficiary is allowed changes in employment networks without being deemed to have rejected services under the Program. When such a change occurs, the program manager shall reassign the ticket based on the choice of the beneficiary. Upon the request of the employment network, the program manager shall make a determination of the allocation of the outcome or milestone-outcome payments based on the services provided by each employment network. The program manager shall establish and maintain lists of employment networks available to beneficiaries and shall make such lists generally available to the public. The program manager shall ensure that all information provided to disabled beneficiaries pursuant to this paragraph is provided in accessible formats.

(4) Ensuring availability of adequate services

The program manager shall ensure that employment services, vocational rehabilitation services, and other support services are provided to beneficiaries throughout the geographic area covered under the program manager’s agreement, including rural areas.

(5) Reasonable access to services

The program manager shall take such measures as are necessary to ensure that sufficient employment networks are available and that each beneficiary receiving services under the Program has reasonable access to employment services, vocational rehabilitation services, and other support services. Services provided under the Program may include case management, work incentives planning, supported employment, career planning, career plan development, vocational assessment, job training, placement, follow-up services, and such other services as may be specified by the Commissioner under the Program. The program manager shall ensure that such services are available in each service area.

(f) Employment networks

(1) Qualifications for employment networks

(A) In general

Each employment network serving under the Program shall consist of an agency or instrumentality of a State (or a political subdivision thereof) or a private entity, that assumes responsibility for the coordination and delivery of services under the Program to individuals assigning to the employment network tickets to work and self-sufficiency issued under subsection (b) of this section.

(B) One-stop delivery systems

An employment network serving under the Program may consist of a one-stop delivery system established under subsection (b) of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2811 et seq.).

(C) Compliance with selection criteria

No employment network may serve under the Program unless it meets and maintains
compliance with both general selection criteria (such as professional and educational qualifications, where applicable) and specific selection criteria (such as substantial expertise and experience in providing relevant employment services and supports).

(D) Single or associated providers allowed

An employment network shall consist of either a single provider of such services or of an association of such providers organized so as to combine their resources into a single entity. An employment network may meet the requirements of subsection (e)(4) of this section by providing services directly, or by entering into agreements with other individuals or entities providing appropriate employment services, vocational rehabilitation services, or other support services.

(2) Requirements relating to provision of services

Each employment network serving under the Program shall be required under the terms of its agreement with the Commissioner to—

(A) serve prescribed service areas; and

(B) take such measures as are necessary to ensure that employment services, vocational rehabilitation services, and other support services provided under the Program by, or under agreements entered into with, the employment network are provided under appropriate individual work plans that meet the requirements of subsection (g) of this section.

(3) Annual financial reporting

Each employment network shall meet financial reporting requirements as prescribed by the Commissioner.

(4) Periodic outcomes reporting

Each employment network shall prepare periodic reports, on at least an annual basis, itemizing for the covered period specific outcomes achieved with respect to specific services provided by the employment network. Such reports shall conform to a national model prescribed under this section. Each employment network shall provide a copy of the latest report issued by the employment network pursuant to this paragraph to each beneficiary upon enrollment under the Program for services to be received through such employment network. Upon issuance of each report to each beneficiary, a copy of the report shall be maintained in the files of the employment network. The program manager shall ensure that copies of all such reports issued under this paragraph are made available to the public under reasonable terms.

(g) Individual work plans

(1) Requirements

Each employment network shall—

(A) take such measures as are necessary to ensure that employment services, vocational rehabilitation services, and other support services provided under the Program by, or under agreements entered into with, the employment network are provided under appropriate individual work plans that meet the requirements of subparagraph (C); and

(B) develop and implement each such individual work plan, in partnership with each beneficiary receiving such services, in a manner that affords such beneficiary the opportunity to exercise informed choice in selecting an employment goal and specific services needed to achieve that employment goal;

(C) ensure that each individual work plan includes at least—

(i) a statement of the vocational goal developed with the beneficiary, including, as appropriate, goals for earnings and job advancement;

(ii) a statement of the services and supports that have been deemed necessary for the beneficiary to accomplish that goal;

(iii) a statement of any terms and conditions related to the provision of such services and supports; and

(iv) a statement of understanding regarding the beneficiary’s rights under the Program (such as the right to retrieve the ticket to work and self-sufficiency if the beneficiary is dissatisfied with the services being provided by the employment network) and remedies available to the individual, including information on the availability of advocacy services and assistance in resolving disputes through the State grant program authorized under section 1320b–21 of this title;

(D) provide a beneficiary the opportunity to amend the individual work plan if a change in circumstances necessitates a change in the plan; and

(E) make each beneficiary’s individual work plan available to the beneficiary in, as appropriate, an accessible format chosen by the beneficiary.

An individual work plan established pursuant to this subsection shall be treated, for purposes of section 51(d)(4)(B)(i) of the Internal Revenue Code of 1986, as an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.].

(2) Effective upon written approval

A beneficiary’s individual work plan shall take effect upon written approval by the beneficiary or a representative of the beneficiary and, where applicable, an accessible format chosen by the beneficiary.

(h) Employment network payment systems

(1) Election of payment system by employment networks

(A) In general

The Program shall provide for payment authorized by the Commissioner to employment networks under either an outcome-payment system or an outcome-milestone payment system. Each employment network shall elect which payment system will be utilized by the employment network, and, for such period of time as such election re-
mains in effect, the payment system so elected shall be utilized exclusively in con-
nection with such employment network (ex-
cept as provided in subparagraph (B)).

(B) No change in method of payment for
beneficiaries with tickets already as-
signed to the employment networks

Any election of a payment system by an
employment network that would result in a
change in the method of payment to the em-
ployment network for services provided to a
beneficiary who is receiving services from
the employment network at the time of the
election shall not be effective with respect
to payment for services provided to that
beneficiary and the method of payment pre-
viously selected shall continue to apply with
respect to such services.

(2) Outcome payment system

(A) In general

The outcome payment system shall con-
sist of a payment structure governing em-
ployment networks electing such system
under paragraph (1)(A) which meets the re-
quirements of this paragraph.

(B) Payments made during outcome payment
period

The outcome payment system shall pro-
vide for a schedule of payments to an em-
ployment network, in connection with each
individual who is a beneficiary, for each
month, during the individual’s outcome pay-
ment period, for which benefits (described in
paragraphs (3) and (4) of subsection (k) of
this section) are not payable to such individ-
ual because of work or earnings.

(C) Computation of payments to employment
network

The payment schedule of the outcome pay-
ment system shall be designed so that—
(i) the payment for each month during
the outcome payment period for which
benefits (described in paragraphs (3) and
(4) of subsection (k) of this section) are not payable is equal to a fixed percentage
of the payment calculation base for the cal-
endar year in which such month occurs; and
(ii) such fixed percentage is set at a per-
centage which does not exceed 40 percent.

(3) Outcome-milestone payment system

(A) In general

The outcome-milestone payment system
shall consist of a payment structure govern-
ing employment networks electing such sys-
tem under paragraph (1)(A) which meets the
requirements of this paragraph.

(B) Early payments upon attainment of mile-
stones in advance of outcome payment
periods

The outcome-milestone payment system
shall provide for 1 or more milestones, with
respect to beneficiaries receiving services
from an employment network under the Pro-
gram, that are directed toward the goal of
permanent employment. Such milestones
shall form a part of a payment structure
that provides, in addition to payments made
during outcome payment periods, payments
made prior to outcome payment periods in
amounts based on the attainment of such
milestones.

(C) Limitation on total payments to employ-
ment network

The payment schedule of the outcome
milestone payment system shall be designed
so that the total of the payments to the em-
ployment network with respect to each ben-
eficiary is less than, on a net present value
basis (using an interest rate determined by
the Commissioner that appropriately re-
ffects the cost of funds faced by providers),
the total amount to which payments to the
employment network with respect to the
beneficiary would be limited if the employ-
mament network were paid under the outcome
payment system.

(4) Definitions

In this subsection:

(A) Payment calculation base

The term “payment calculation base”
means, for any calendar year—
(i) in connection with a title II disability
beneficiary, the average disability insur-
ance benefit payable under section 423 of
this title for all beneficiaries for months
during the preceding calendar year; and
(ii) in connection with a title XVI dis-
ability beneficiary (who is not concur-
rently a title II disability beneficiary), the
average payment of supplemental security
income benefits based on disability pay-
able under subchapter XVI of this chapter
(excluding State supplementation) for
months during the preceding calendar year
to all beneficiaries who have attained 18
years of age but have not attained 65 years
of age.

(B) Outcome payment period

The term “outcome payment period”
means, in connection with any individual
who had assigned a ticket to work and self-
sufficiency to an employment network under
the Program, a period—
(i) beginning with the first month, end-
ing after the date on which such ticket
was assigned to the employment network,
for which benefits (described in paragraphs
(3) and (4) of subsection (k) of this section)
are not payable to such individual by rea-
son of engagement in substantial gainful
activity or by reason of earnings from
work activity; and
(ii) ending with the 60th month (consecu-
tive or otherwise), ending after such date,
for which such benefits are not payable to
such individual by reason of engagement
in substantial gainful activity or by reason
of earnings from work activity.

(5) Periodic review and alterations of pre-
scribed schedules

(A) Percentages and periods

The Commissioner shall periodically re-
view the percentage specified in paragraph
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paragraph (3)(C), the total payments permissible under paragraph (3)(C), and the period of time specified in paragraph (4)(B) to determine whether such percentages, such permissible payments, and such period provide an adequate incentive for employment networks to assist beneficiaries to enter the workforce, while providing for appropriate economies. The Commissioner may alter such percentage, such total permissible payments, or such period of time to the extent that the Commissioner determines, on the basis of the Commissioner’s review under this paragraph, that such an alteration would better provide the incentive and economies described in the preceding sentence.

(B) Number and amounts of milestone payments

The Commissioner shall periodically review the number and amounts of milestone payments established by the Commissioner pursuant to this section to determine whether they provide an adequate incentive for employment networks to assist beneficiaries to enter the workforce, taking into account information provided to the Commissioner by program managers, the Ticket to Work and Work Incentives Advisory Panel established by section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, and other reliable sources. The Commissioner may from time to time alter the number and amounts of milestone payments initially established by the Commissioner pursuant to this section to the extent that the Commissioner determines that such an alteration would allow an adequate incentive for employment networks to assist beneficiaries to enter the workforce. Such alteration shall be based on information provided to the Commissioner by program managers, the Ticket to Work and Work Incentives Advisory Panel established by section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, or other reliable sources.

(C) Report on the adequacy of incentives

The Commissioner shall submit to the Congress not later than 36 months after December 17, 1999, a report with recommendations for a method or methods to adjust payment rates under subparagraphs (A) and (B), that would ensure adequate incentives for the provision of services by employment networks of—

(i) individuals with a need for ongoing support and services;
(ii) individuals with a need for high-cost accommodations;
(iii) individuals who earn a subminimum wage; and
(iv) individuals who work and receive partial cash benefits.

The Commissioner shall consult with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 during the development and evaluation of the study. The Commissioner shall implement the necessary adjusted payment rates prior to full implementation of the Ticket to Work and Self-Sufficiency Program.

(i) Suspension of disability reviews

During any period for which an individual is using, as defined by the Commissioner, a ticket to work and self-sufficiency issued under this section, the Commissioner (and any applicable State agency) may not initiate a continuing disability review or other review under section 421 of this title of whether the individual is or is not under a disability or a review under subchapter XVI of this chapter similar to any such review under section 421 of this title.

(j) Authorizations

(1) Payments to employment networks

(A) Title II disability beneficiaries

There are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund each fiscal year, such sums as may be necessary to make payments to employment networks under this section. Money paid from the Trust Funds under this section with respect to title II disability beneficiaries who are entitled to benefits under section 423 of this title or who are entitled to benefits under section 402(d) of this title on the basis of the wages and self-employment income of such beneficiaries, shall be charged to the Federal Disability Insurance Trust Fund, and all other money paid from the Trust Funds under this section shall be charged to the Federal Old-Age and Survivors Insurance Trust Fund.

(B) Title XVI disability beneficiaries

Amounts authorized to be appropriated to the Social Security Administration under section 1381 of this title shall include amounts necessary to carry out the provisions of this section with respect to title XVI disability beneficiaries.

(2) Administrative expenses

The costs of administering this section (other than payments to employment networks) shall be paid from amounts made available for the administration of subchapter II of this chapter and amounts made available for the administration of subchapter XVI of this chapter, and shall be allocated among such amounts as appropriate.

(k) Definitions

In this section:

(1) Commissioner

The term “Commissioner” means the Commissioner of Social Security.

(2) Disabled beneficiary

The term “disabled beneficiary” means a title II disability beneficiary or a title XVI disability beneficiary.

(3) Title II disability beneficiary

The term “title II disability beneficiary” means an individual entitled to disability insurance benefits under section 423 of this title.
or to monthly insurance benefits under section 402 of this title based on such individual’s disability (as defined in section 423(d) of this title). An individual is a title II disability beneficiary for each month for which such individual is entitled to such benefits.

(4) Title XVI disability beneficiary

The term “title XVI disability beneficiary” means an individual eligible for supplemental security income benefits under subchapter XVI of this chapter on the basis of blindness (within the meaning of section 1382c(a)(2) of this title) or disability (within the meaning of section 1382c(a)(3) of this title). An individual is a title XVI disability beneficiary for each month for which such individual is eligible for such benefits.

(5) Supplemental security income benefit

The term “supplemental security income benefit under subchapter XVI of this chapter” means a cash benefit under section 1382 or 1382a(a) of this title, and does not include a State supplementary payment, administered federally or otherwise.

(f) Regulations

Not later than 1 year after December 17, 1999, the Commissioner shall prescribe such regulations as are necessary to carry out the provisions of this section.


REFERENCES IN TEXT


AMENDMENTS


Effective Date of 2004 Amendment


Effective Date

Pub. L. 106–170, title I, §101(c), 113 Stat. 1874, provided that: “Subject to subsection (d) [set out as a note below], the amendments made by subsections (a) and (b) [enacting this section and amending sections 421, 422, 425, 1382d, 1383, and 1383b of this title] shall take effect on the first day following 1 year after the date of the enactment of this Act [Dec. 17, 1999].”

REGULATIONS

Pub. L. 106–170, title I, §101(e), Dec. 17, 1999, 113 Stat. 1877, provided that:

“(1) IN GENERAL.—The Commissioner of Social Security shall prescribe such regulations as are necessary to implement the amendments made by this section (enacting this section and amending sections 421, 422, 425, 1382d, 1383, and 1383b of this title).

“(2) SPECIFIC MATTERS TO BE INCLUDED IN REGULATIONS.—The matters which shall be addressed in such regulations shall include—

“(A) the form and manner in which tickets to work and self-sufficiency may be distributed to beneficiaries pursuant to section 1148(b)(1) of the Social Security Act [subsec. (b)(1) of this section];

“(B) the format and wording of such tickets, which shall incorporate by reference any contractual terms governing service by employment networks under the Program;

“(C) the form and manner in which State agencies may elect participation in the Ticket to Work and Self-Sufficiency Program pursuant to section 1148(c)(1) of such Act and provision for periodic opportunities for exercising such elections;

“(D) State agencies under section 1148(c)(1) of such Act at the time that State agencies exercise elections under such section;

“(E) the terms of agreements to be entered into with program managers pursuant to section 1148(d) of such Act, including—

“(i) the terms by which program managers are precluded from direct participation in the delivery of services pursuant to section 1148(d)(3) of such Act;

“(ii) standards which must be met by quality assurance measures referred to in paragraph (6) of section 1148(d) of such Act and methods of recruitment of employment networks utilized pursuant to paragraph (2) of section 1148(e) of such Act; and

“(iii) the format under which dispute resolution will operate under section 1148(d)(7) of such Act;

“(F) the terms of agreements to be entered into with employment networks pursuant to section 1148(d)(4) of such Act, including—

“(i) the manner in which service areas are specified pursuant to section 1148(f)(2)(A) of such Act;

“(ii) the general selection criteria and the specific selection criteria which are applicable to employment networks under section 1148(f)(1)(C) of such Act in selecting service providers;

“(iii) specific requirements relating to annual financial reporting by employment networks pursuant to section 1148(f)(3) of such Act; and

“(iv) the national model to which periodic outcomes reporting by employment networks must conform under section 1148(f)(4) of such Act;

“(G) standards which must be met by individual work plans pursuant to section 1148(g) of such Act;

“(H) standards which must be met by payment systems required under section 1148(h) of such Act, including—

“(i) the form and manner in which elections by employment networks of payment systems are to be exercised pursuant to section 1148(h)(1)(A) of such Act;

“(ii) the terms which must be met by an outcome-milestone payment system under section 1148(h)(2) of such Act;

“(iii) the terms which must be met by an outcome-milestone payment system under section 1148(h)(3) of such Act;

“(iv) any revision of the percentage specified in paragraph (2)(C) of section 1148(h) of such Act or the period of time specified in paragraph (4)(B) of such section 1148(h) of such Act; and
“(v) annual oversight procedures for such systems; and
“(I) procedures for effective oversight of the Program by the Commissioner of Social Security, including periodic reviews and reporting requirements.”

GAO STUDY REGARDING THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM
“(a) [sic] GAO REPORT.—Not later than 12 months after the date of enactment of this Act [Mar. 2, 2004], the Comptroller General of the United States shall submit a report to Congress regarding the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b-19) that—
“(1) examines the annual and interim reports issued by States, the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 [Pub. L. 106-170] (42 U.S.C. 1320b-19 note), and the Commissioner of Social Security regarding such program;
“(2) assesses the effectiveness of the activities carried out under such program; and
“(3) recommends such legislative or administrative changes as the Comptroller General determines are appropriate to improve the effectiveness of such program.”

FINDINGS AND PURPOSES
Pub. L. 106-170, § 2, Dec. 17, 1999, 113 Stat. 1862, provided that:
“(a) FINDINGS.—The Congress makes the following findings:
“(1) It is the policy of the United States to provide assistance to individuals with disabilities to lead productive work lives.
“(2) Health care is important to all Americans.
“(3) Health care is particularly important to individuals with disabilities and special health care needs who often cannot afford the insurance available to them through the private market, are uninsurable by the plans available in the private sector, and are at great risk of incurring very high and economically devastating health care costs.
“(4) Americans with significant disabilities often are unable to obtain health care insurance that provides coverage of the services and supports that enable them to live independently and enter or rejoin the workforce. Personal assistance services (such as personal attendants, personal assistance with transportation to and from work, reader services, job coaches, and related assistance) remove many of the barriers between significant disability and work. Coverage for such services, as well as for prescription drugs, durable medical equipment, and basic health care are powerful and proven tools for individuals with significant disabilities to obtain and retain employment.
“(5) For individuals with disabilities, the fear of losing health care and related services is one of the greatest barriers keeping the individuals from maximizing their employment, earning potential, and independence.
“(6) Social Security Disability Insurance and Supplemental Security Income beneficiaries risk losing Medicare or Medicaid coverage that is linked to their cash benefits, a risk that is an equal, or greater, work disincentive than the loss of cash benefits associated with working.
“(7) Individuals with disabilities have greater opportunities for employment than ever before, aided by important public policy initiatives such as the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), advancements in public understanding of disability, and innovations in assistive technology, medical treatment, and rehabilitation.
“(8) Despite such historic opportunities and the desire of millions of disability recipients to work and support themselves, fewer than one-half of one percent of Social Security Disability Insurance and Supplemental Security Income beneficiaries leave the disability rolls and return to work.
“(9) In addition to the fear of loss of health care coverage, beneficiaries cite financial disincentives to work and earn income and lack of adequate employment training and placement services as barriers to employment.
“(10) Eliminating such barriers to work by creating financial incentives to work and by providing individuals with disabilities real choice in obtaining the services and technology they need to find, enter, and maintain employment can greatly improve their short and long-term financial independence and personal well-being.
“(11) In addition to the enormous advantages such changes promise for individuals with disabilities, redesigning government programs to help individuals with disabilities return to work may result in significant savings and extend the life of the Social Security Disability Insurance Trust Fund.
“(12) If only an additional one-half of one percent of the current Social Security Disability Insurance and Supplemental Security Income recipients were to cease receiving benefits as a result of employment, the savings to the Social Security Trust Funds and to the Treasury in cash assistance would total $5,500,000,000 over the worklife of such individuals, far exceeding the cost of providing incentives and services needed to assist them in entering work and achieving financial independence to the best of their abilities.
“(b) PURPOSES.—The purposes of this Act [see Tables for classification] are as follows:
“(1) To provide health care and employment preparation and placement services to individuals with disabilities that will enable those individuals to reduce their dependency on cash benefit programs.
“(2) To encourage States to adopt the option of allowing individuals with disabilities to purchase Medicaid coverage that is necessary to enable such individuals to maintain employment.
“(3) To provide individuals with disabilities the option of maintaining Medicare coverage while working.
“(4) To establish a return to work ticket program that will allow individuals with disabilities to seek the services necessary to obtain and retain employment and reduce their dependency on cash benefit programs.”

GRADUATED IMPLEMENTATION OF PROGRAM
Pub. L. 106-170, title I, § 101(d), Dec. 17, 1999, 113 Stat. 1874, provided that:
“(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Dec. 17, 1999], the Commissioner of Social Security shall commence implementation of the amendments made by this section [enacting this section and amending sections 421, 422, 425, 1382d, 1383, and 1383b of this title] (other than paragraphs (1)(C) and (2)(B) of subsection (b) [amending sections 422 and 1382d of this title]) in graduated phases at phase-in sites selected by the Commissioner. Such phase-in sites shall be selected so as to ensure, prior to full implementation of the Ticket to Work and Self-Sufficiency Program, the development and refinement of referral processes, payment systems, computer linkages, management information systems, and administrative processes necessary to provide for full implementation of such amendments. Subsection (c) [set out as a note above] shall apply with respect to paragraphs (1)(C) and (2)(B) of subsection (b) without regard to this subsection.
“(2) REQUIREMENTS.—Implementation of the Program at each phase-in site shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods under consideration, so as to ensure
that the most efficacious methods are determined and in place for full implementation of the Program on a timely basis.

20. ONGOING EVALUATION OF PROGRAM.—

(A) In General.—The Commissioner shall provide for independent evaluations to assess the effectiveness of the activities carried out under this section (enacting this section, amending sections 421, 422, 425, 1362d, 1363, and 1363b of this title, and enacting provisions set out as notes under this section) and the amendments made thereby. Such evaluations shall address the cost-effectiveness of such activities, as well as the effects of this section and the amendments made thereby on work outcomes for beneficiaries receiving tickets to work and self-sufficiency under the Program.

(B) Consultation.—Evaluations shall be conducted under this paragraph after receiving relevant advice from experts in the fields of disability, vocational rehabilitation, and program evaluation and individuals using tickets to work and self-sufficiency under the Program and in consultation with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of this Act (set out as a note below), the Comptroller General of the United States, other agencies of the Federal Government, and private organizations with appropriate expertise.

(C) Methodology.—

(i) Implementation.—The Commissioner, in consultation with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of this Act, shall ensure that plans for evaluations and data collection methods under the Program are appropriately designed to obtain detailed employment information.

(ii) Specific Matters To Be Addressed.—Each such evaluation shall address (but is not limited to)—

(I) the annual cost (including net cost) of the Program and the annual cost (including net cost) that would have been incurred in the absence of the Program;

(II) the determinants of return to work, including the characteristics of beneficiaries in receipt of tickets under the Program;

(III) the types of employment services, vocational rehabilitation services, and other support services furnished to beneficiaries in receipt of tickets under the Program who return to work and those who do not return to work;

(IV) the duration of employment services, vocational rehabilitation services, and other support services furnished to beneficiaries in receipt of tickets under the Program who return to work and the duration of such services furnished to those who do not return to work and the cost to employment networks of furnishing such services;

(V) the employment outcomes, including wages, occupations, benefits, and hours worked, of beneficiaries who return to work after receiving tickets under the Program and those who return to work without receiving such tickets;

(VI) the characteristics of individuals in possession of tickets under the Program who are not accepted for services and, to the extent reasonably determinable, the reasons for which such beneficiaries were not accepted for services;

(VII) the characteristics of providers whose services are provided within an employment network under the Program;

(VIII) the extent (if any) to which employment networks display a greater willingness to provide services to beneficiaries with a range of disabilities;

(IX) the characteristics (including employment outcomes) of those beneficiaries who receive services under the outcome payment system and of those beneficiaries who receive services under the outcome-milestone payment system;

(X) measures of satisfaction among beneficiaries in receipt of tickets under the Program; and

(XI) reasons for (including comments solicited from beneficiaries regarding) their choice not to use their tickets or their inability to return to work despite the use of their tickets.

(D) Periodic Evaluation Reports.—Following the close of the third and fifth fiscal years ending after the effective date under subsection (c), and prior to the close of the seventh fiscal year ending after such date, the Commissioner shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report containing the Commissioner’s evaluation of the progress of activities conducted under the provisions of this section and the amendments made thereby. Each such report shall set forth the Commissioner’s evaluation of the extent to which the Program has been successful and the Commissioner’s conclusions on whether or how the Program should be modified. Each such report shall include such data, findings, materials, and recommendations as the Commissioner may consider appropriate.

(E) Extent of State’s Right of First Refusal in Advance of Full Implementation of Amendments in Such State.—

(A) In General.—In the case of any State in which the amendments made by subsection (a) (enacting this section) have not been fully implemented pursuant to this subsection, the Commissioner shall determine by regulation the extent to which—

(i) the requirement under section 222(a) of the Social Security Act (42 U.S.C. 422(a)) for prompt referrals to a State agency; and

(ii) the authority of the Commissioner under section 222(d)(2) of such Act (42 U.S.C. 422(d)(2)) to provide vocational rehabilitation services in such State by agreement or contract with other public or private agencies, organizations, institutions, or individuals, shall apply in such State.

(B) Existing Agreements.—Nothing in subparagraph (A) or the amendments made by subsection (a) (enacting this section) shall be construed to limit, impede, or otherwise affect any agreement entered into pursuant to section 222(d)(2) of the Social Security Act (42 U.S.C. 422(d)(2)) before the date of enactment of this Act (Oct. 17, 1984) with respect to services provided pursuant to such agreement to beneficiaries receiving services under such agreement as of such date, except with respect to services (if any) to be provided after 3 years after the effective date provided in subsection (c).

Ticket to Work and Work Incentives Advisory Panel


(1) Establishment.—There is established within the Social Security Administration a panel to be known as the ‘‘Ticket to Work and Work Incentives Advisory Panel’’ (in this subsection referred to as the ‘‘Panel’’).

(2) Duties of Panel.—It shall be the duty of the Panel to—

(A) advise the President, the Congress, and the Commissioner of Social Security on issues related to work incentives programs, planning, and assistance for individuals with disabilities, including work incentive provisions under titles II, X, XVI, XVIII, and XIX of the Social Security Act (42 U.S.C. 401 et seq., 1301 et seq., 1381 et seq., 1395 et seq., 1396 et seq.); and

(B) with respect to the ‘‘Ticket to Work and Self-Sufficiency Program established under section 1148 of such Act (this section)—
“(i) advise the Commissioner of Social Security with respect to establishing phase-in sites for such Program and fully implementing the Program thereafter, the refinement of access of disabled beneficiaries to employment networks, payment systems, and management information systems, and advise the Commissioner whether such measures are being taken to the extent necessary to ensure the success of the Program; “

“(ii) advise the Commissioner regarding the most effective designs for research and demonstration projects associated with the Program or conducted pursuant to section 322 of this Act [set out as a note under section 494 of this title]; “

“(iii) advise the Commissioner on the development of performance measurements relating to quality assurance under section 1148(d)(6) of the Social Security Act [subsec. (d)(6) of this section]; and “

“(iv) furnish progress reports on the Program to the Chairperson of the Senate, in consultation with the ranking member of the Committee on Ways and Means of the Senate; “

“(v) furnish progress reports on the Program to the Chairman of the Committee on Finance of the House of Representatives; “

“(vi) advise the Commissioner on the refinement of access of disabled beneficiaries to employment networks, payment systems, and management information systems, and advise the Commissioner whether such measures are being taken to the extent necessary to ensure the success of the Program; “

“(ii) advise the Chairman of the Committee on Ways and Means of the House of Representatives; “

“(iii) two members appointed by the minority leader of the House of Representatives, in consultation with the ranking member of the Committee on Ways and Means of the House of Representatives; “

“(iv) two members appointed by the majority leader of the Senate, in consultation with the Chairman of the Committee on Finance of the Senate; and “

“(v) two members appointed by the minority leader of the Senate, in consultation with the ranking member of the Committee on Finance of the Senate.

“(B) REPRESENTATION.—

“(1) In general.—The members appointed under subparagraph (A) shall have experience or expert knowledge as a recipient, provider, employer, or employee in the fields of, or related to, employment services, vocational rehabilitation services, and other support services.

“(2) Requirement.—At least one-half of the members appointed under subparagraph (A) shall be individuals with disabilities, or representatives of individuals with disabilities, with consideration given to current or former title II [subchapter II of this chapter] disability beneficiaries or title XVI [subchapter XVI of this chapter] disability beneficiaries (as such terms are defined in section 1395p(e) of the Social Security Act [subsec. (k) of this section] (as added by subsection (a)).

“(C) TERMS.—

“(1) In general.—Each member shall be appointed for a term of 4 years (or, if less, for the remaining life of the Panel), except as provided in clauses (ii) and (iii). The initial members shall be appointed not later than 90 days after the date of the enactment of this Act [Dec. 17, 1999].

“(2) TERMS OF INITIAL APPOINTEES.—Of the members first appointed under each clause of subparagraph (A), as designated by the appointing authority for each such clause—

“(I) one-half of such members shall be appointed for a term of 2 years; and

“(II) the remaining members shall be appointed for a term of 4 years. “

“(3) VACANCIES.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member’s term until a successor has taken of-
§ 1320b–20. Work incentives outreach program

(a) Establishment

(1) In general

The Commissioner, in consultation with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, shall establish a community-based work incentives planning and assistance program for the purpose of disseminating accurate information to disabled beneficiaries on work incentives programs and issues related to such programs.

(2) Grants, cooperative agreements, contracts, and outreach

Under the program established under this section, the Commissioner shall—

(A) establish a competitive program of grants, cooperative agreements, or contracts to provide benefits planning and assistance, including information on the availability of protection and advocacy services, to disabled beneficiaries, including individuals participating in the Ticket to Work and Self-Sufficiency Program established under section 1320b–19 of this title, the program established under section 1382h of this title, and other programs that are designed to encourage disabled beneficiaries to work;

(B) conduct directly, or through grants, cooperative agreements, or contracts, ongoing outreach efforts to disabled beneficiaries (and to the families of such beneficiaries) who are potentially eligible to participate in Federal or State work incentive programs that are designed to assist disabled beneficiaries to work, including—

(i) preparing and disseminating information explaining such programs; and

(ii) working in cooperation with other Federal, State, and private agencies and nonprofit organizations that serve disabled beneficiaries, and with agencies and organizations that focus on vocational rehabilitation and work-related training and counseling;

(C) establish a corps of trained, accessible, and responsive work incentives specialists within the Social Security Administration who will specialize in disability work incentives under subchapters II and XVI of this chapter for the purpose of disseminating accurate information with respect to inquiries and issues relating to work incentives to—

(i) disabled beneficiaries;

(ii) benefit applicants under subchapters II and XVI of this chapter; and

(iii) individuals or entities awarded grants under subparagraphs (A) or (B); and

(D) provide—

(i) training for work incentives specialists and individuals providing planning assistance described in subparagraph (C); and

(ii) technical assistance to organizations and entities that are designed to encourage disabled beneficiaries to return to work.

(3) Coordination with other programs

The responsibilities of the Commissioner established under this section shall be coordinated with other public and private programs that provide information and assistance regarding rehabilitation services and independent living supports and benefits planning for disabled beneficiaries including the program under section 1382h of this title, the plans for achieving self-support program (PASSB), and any other Federal or State work incentives programs that are designed to assist disabled beneficiaries, including educational agencies that provide information and assistance regarding rehabilitation, school-to-work programs, transition services (as defined in, and provided in accordance with, the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), a one-stop delivery system established under subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2811 et seq.), and other services.

(b) Conditions

(1) Selection of entities

(A) Application

An entity shall submit an application for a grant, cooperative agreement, or contract to provide benefits planning and assistance to the Commissioner at such time, in such manner, and containing such information as the Commissioner may determine is necessary to meet the requirements of this section.

(B) Statewideness

The Commissioner shall ensure that the planning, assistance, and information described in paragraph (2) shall be available on a statewide basis.

(C) Eligibility of States and private organizations

(i) In general

The Commissioner may award a grant, cooperative agreement, or contract under this section to a State or a private agency or organization (other than Social Security Administration Field Offices and the State agency administering the State Medicaid program under subchapter XIX of this chapter, including any agency or entity described in clause (ii), that the Commissioner determines is qualified to provide the planning, assistance, and information described in paragraph (2)).

(ii) Agencies and entities described

The agencies and entities described in this clause are the following:

(I) Any public or private agency or organization (including Centers for Independent Living established under title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796 et seq.), protection and advocacy organizations, client assistance programs established in accordance with section 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732), and State Develop—
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mental Disabilities Councils established in accordance with section 6024 of this title) that the Commissioner determines satisfies the requirements of this section.

(II) The State agency administering the State program funded under part A of subchapter IV of this chapter.

(D) Exclusion for conflict of interest

The Commissioner may not award a grant, cooperative agreement, or contract under this section to any entity that the Commissioner determines would have a conflict of interest if the entity were to receive a grant, cooperative agreement, or contract under this section.

(2) Services provided

A recipient of a grant, cooperative agreement, or contract to provide benefits planning and assistance shall select individuals who will act as planners and provide information, guidance, and planning to disabled beneficiaries on the—

(A) availability and interrelation of any Federal or State work incentives programs designed to assist disabled beneficiaries that the individual may be eligible to participate in;

(B) adequacy of any health benefits coverage that may be offered by an employer of the individual and the extent to which other health benefits coverage may be available to the individual; and

(C) availability of protection and advocacy services for disabled beneficiaries and how to access such services.

(3) Amount of grants, cooperative agreements, or contracts

(A) Based on population of disabled beneficiaries

Subject to subparagraph (B), the Commissioner shall award a grant, cooperative agreement, or contract under this section to an entity based on the percentage of the population of the State where the entity is located who are disabled beneficiaries.

(B) Limitations

(i) Per grant

No entity shall receive a grant, cooperative agreement, or contract under this section for a fiscal year that is less than $50,000 or more than $300,000.

(ii) Total amount for all grants, cooperative agreements, and contracts

The total amount of all grants, cooperative agreements, and contracts awarded under this section for a fiscal year may not exceed $23,000,000.

(4) Funding

(A) Allocation of costs

The costs of carrying out this section shall be paid from amounts made available for the administration of subchapter II of this chapter and amounts made available for the administration of subchapter XVI of this chapter, and shall be allocated among those amounts as appropriate.

(B) Carryover

An amount not in excess of 10 percent of the total amount obligated through a grant, cooperative agreement, or contract awarded under this section for a fiscal year to a State or a private agency or organization shall remain available for obligation to such State or private agency or organization until the end of the succeeding fiscal year. Any such amount remaining available for obligation during such succeeding fiscal year shall be available for providing benefits planning and assistance only for individuals who are within the caseload of the recipient of the grant, agreement, or contract as of immediately before the beginning of such fiscal year.

(c) Annual report

Each entity awarded a grant, cooperative agreement, or contract under this section shall submit an annual report to the Commissioner on the benefits planning and assistance provided to individuals under such grant, agreement, or contract.

(d) Definitions

In this section:

(1) Commissioner

The term “Commissioner” means the Commissioner of Social Security.

(2) Disabled beneficiary

The term “disabled beneficiary” means an individual—

(A) who is a disabled beneficiary as defined in section 1320b–19(k)(2) of this title;

(B) who is receiving a cash payment described in section 1392e(a) of this title or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1392e(a) of this title or under section 212(b) of Public Law 93–66);

(C) who, pursuant to section 1382b(b) of this title, is considered to be receiving benefits under subchapter XVI of this chapter; or

(D) who is entitled to benefits under part A of subchapter XVIII of this chapter by reason of the penultimate sentence of section 426(b) of this title.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $23,000,000 for each of the fiscal years 2000 through 2011.


REFERENCES IN TEXT

Section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, referred to in subsec. (a)(1), is section 101(f) of Pub. L. 106–170, which is set out as a note under section 1320b–19 of this title.
The Individuals with Disabilities Education Act, referred to in subsec. (a)(3), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, which is classified generally to chapter 33 (§1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.


In order to receive payments under this section, a protection and advocacy system shall submit an application to the Commissioner, at such time, in such form and manner, and accompanied by such information and assurances as the Commissioner may require.

(d) Amount of payments

(1) In general

Subject to the amount appropriated for a fiscal year for making payments under this section, a protection and advocacy system shall not be paid an amount that is less than—

(A) in the case of a protection and advocacy system located in a State (including the District of Columbia and Puerto Rico) other than Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, the greater of—

(i) $100,000; or

(ii) ½ of 1 percent of the amount available for payments under this section; and

(B) in the case of a protection and advocacy system located in Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, $50,000.

(2) Inflation adjustment

For each fiscal year in which the total amount appropriated to carry out this section exceeds the total amount appropriated to carry out this section in the preceding fiscal year, the Commissioner shall increase each minimum payment under subparagraphs (A) and (B) of paragraph (1) by a percentage equal to the percentage increase in the total amount so appropriated to carry out this section.

(e) Annual report

Each protection and advocacy system that receives a payment under this section shall submit an annual report to the Commissioner and the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 on the services provided to disabled beneficiaries.

(f) Funding

(1) Allocation of payments

Payments under this section shall be made from amounts made available for the administration of subchapter II of this chapter and amounts made available for the administration of subchapter XVI of this chapter, and pose of providing services to disabled beneficiaries.
shall be allocated among those amounts as appropriate.

(2) Carryover

Any amounts allotted for payment to a protection and advocacy system under this section for a fiscal year shall remain available for payment to or on behalf of the protection and advocacy system until the end of the succeeding fiscal year.

(g) Definitions

In this section:

(1) Commissioner

The term ‘Commissioner’ means the Commissioner of Social Security.

(2) Disabled beneficiary

The term ‘disabled beneficiary’ means an individual—

(A) who is a disabled beneficiary as defined in section 1320b–19(k)(2) of this title;

(B) who is receiving a cash payment described in section 1332(a) of this title or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1332(a) of this title or under section 212(b) of Public Law 93–66);

(C) who, pursuant to section 1382h(b) of this title, is considered to be receiving benefits under subchapter XVI of this chapter; or

(D) who is entitled to benefits under part A of subchapter XVIII of this chapter by reason of the penultimate sentence of section 426(b) of this title.

(3) Protection and advocacy system

The term ‘protection and advocacy system’ means a protection and advocacy system established pursuant to part C of title I of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.).

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section $7,000,000 for each of the fiscal years 2000 through 2011.

(1) In general

The Secretary of Health and Human Services shall award grants in accordance with this section to States to support the design, establishment, and operation of State infrastructures that provide items and services to support working individuals with disabilities.

(b) Grants for infrastructure and outreach

(1) In general

Out of the funds appropriated under this subsection (e) of this section, the Secretary shall award grants to States to—

(A) support the establishment, implementation, and operation of the State infrastructures described in subsection (a) of this section; and

(B) conduct outreach campaigns regarding the existence of such infrastructures.

(2) Eligibility for grants

(A) In general

No State may receive a grant under this subsection unless the State demonstrates to the satisfaction of the Secretary that the State makes personal assistance services available under the State plan under subchapter XIX of this chapter to the extent necessary to enable individuals with disabi-
ties to remain employed, including individuals described in section 1396a(a)(10)(A)(ii)(XIII) of this title if the State has elected to provide medical assistance under such plan to such individuals.

(B) Definitions

In this section:

(1) Employed

The term “employed” means—

(I) earning at least the applicable minimum wage requirement under section 206 of title 29 and working at least 40 hours per month; or

(II) being engaged in a work effort that meets substantial and reasonable threshold criteria for hours of work, wages, or other measures, as defined and approved by the Secretary.

(ii) Personal assistance services

The term “personal assistance services” means a range of services, provided by 1 or more persons, designed to assist an individual with a disability to perform daily activities on and off the job that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual’s control in life and ability to perform everyday activities on or off the job.

(3) Determination of awards

(A) In general

Subject to subparagraph (B), the Secretary shall develop a methodology for awarding grants to States under this section for a fiscal year in a manner that—

(I) rewards States for their efforts in encouraging individuals described in paragraph (2)(A) to be employed; and

(ii) does not provide a State that has not elected to provide medical assistance under subchapter XIX of this chapter to individuals described in section 1396a(a)(10)(A)(ii)(XIII) of this title with proportionally more funds for a fiscal year than a State that has exercised such election.

(B) Award limits

(i) Minimum awards

(I) In general

Subject to subclause (II), no State with an approved application under this section shall receive a grant for a fiscal year that is less than $500,000.

(II) Pro rata reductions

If the funds appropriated under subsection (e) of this section for a fiscal year are not sufficient to pay each State with an application approved under this section the minimum amount described in subclause (I), the Secretary shall pay each such State an amount equal to the pro rata share of the amount made available.

(ii) Maximum awards

(I) States that elected optional medicaid eligibility

No State that has an application that has been approved under this section and that has elected to provide medical assistance under subchapter XIX of this chapter to individuals described in section 1396a(a)(10)(A)(ii)(XIII) of this title shall receive a grant for a fiscal year that exceeds 10 percent of the total expenditures by the State (including the reimbursed Federal share of such expenditures) for medical assistance provided under such subchapter for such individuals, as estimated by the State and approved by the Secretary.

(II) Other States

The Secretary shall determine, consistent with the limit described in subclause (I), a maximum award limit for a grant for a fiscal year for a State that has an application that has been approved under this section but that has not elected to provide medical assistance under subchapter XIX of this chapter to individuals described in section 1396a(a)(10)(A)(ii)(XIII) of this title.

(c) Availability of funds

(1) Funds awarded to States

Funds awarded to a State under a grant made under this section for a fiscal year shall remain available until expended.

(2) Funds not awarded to States

Funds not awarded to States in the fiscal year for which they are appropriated shall remain available in succeeding fiscal years for awarding by the Secretary.

(d) Annual report

A State that is awarded a grant under this section shall submit an annual report to the Secretary on the use of funds provided under the grant. Each report shall include the percentage increase in the number of title II disability beneficiaries, as defined in section 1320b-19(k)(3) of this title in the State, and title XVI disability beneficiaries, as defined in section 1920b-19(k)(4) of this title in the State who return to work.

(e) Appropriation

(1) In general

Out of any funds in the Treasury not otherwise appropriated, there is appropriated to make grants under this section—

(A) for fiscal year 2001, $20,000,000;

(B) for fiscal year 2002, $25,000,000;

(C) for fiscal year 2003, $30,000,000;

(D) for fiscal year 2004, $35,000,000;

(E) for fiscal year 2005, $40,000,000; and

(F) for each of fiscal years 2006 through 2011, the amount appropriated for the preceding fiscal year increased by the percentage increase (if any) in the Consumer Price Index for All Urban Consumers (United States city average) for the preceding fiscal year.

(2) Budget authority

This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment of the amounts appropriated under paragraph (1).
(f) Recommendation
Not later than October 1, 2010, the Secretary, in consultation with the Ticket to Work and Work Incentives Advisory Panel established by section 101(f) of this Act, shall submit a recommendation to the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate regarding whether the grant program established under this section should be continued after fiscal year 2011.


REFERENCES IN TEXT
Section 101(f) of this Act, referred to in subsec. (f), is section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106–170, which is set out as a note under section 1320b–19 of this title.

CODIFICATION
Section was enacted as part of the Ticket to Work and Work Incentives Improvement Act of 1999, and not as part of the Social Security Act which comprises this chapter.

CHANGE OF NAME
Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges, insurance general, transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 1320b–23. Pharmacy benefit managers transparency requirements

(a) Provision of information

A health benefits plan or any entity that provides pharmacy benefits management services on behalf of a health benefits plan (in this section referred to as a "PBM") that manages prescription drug coverage under a contract with—

(1) a PDP sponsor of a prescription drug plan or an MA organization offering an MA–PD plan under part D of subchapter XVIII; or

(2) a qualified health benefits plan offered through an exchange established by a State under section 18031 of this title,

shall provide the information described in subsection (b) to the Secretary and, in the case of a PBM, to the plan with which the PBM is under contract with, at such times, and in such form and manner, as the Secretary shall specify.

(b) Information described

The information described in this subsection is the following with respect to services provided by a health benefits plan or PBM for a contract year:

(1) The percentage of all prescriptions that were provided through retail pharmacies, mail order pharmacies, and the total number of prescriptions for which a generic drug was available and dispensed (generic dispensing rate), by pharmacy type (which includes an independent pharmacy, chain pharmacy, supermarket pharmacy, or mass merchandiser pharmacy that is licensed as a pharmacy by the State and that dispenses medication to the general public), that is paid by the health benefits plan or PBM under the contract.

(2) The aggregate amount, and the type of rebates, discounts, or price concessions (excluding bona fide service fees, which include but are not limited to distribution service fees, inventory management fees, product stocking allowances, and fees associated with administrative services agreements and patient care programs (such as medication compliance programs and patient education programs)) that the PBM negotiates that are attributable to patient utilization under the plan, and the aggregate amount of the rebates, discounts, or price concessions that are passed through to the plan sponsor, and the total number of prescriptions that were dispensed.

(3) The aggregate amount of the difference between the amount the health benefits plan pays the PBM and the amount that the PBM pays retail pharmacies, mail order pharmacies, and the total number of prescriptions that were dispensed.

(c) Confidentiality

Information disclosed by a health benefits plan or PBM under this section is confidential and shall not be disclosed by the Secretary or by a plan receiving the information, except that the Secretary may disclose the information in a form which does not disclose the identity of a specific PBM, plan, or prices charged for drugs, for the following purposes:

(1) As the Secretary determines to be necessary to carry out this section or part D of subchapter XVIII.

(2) To permit the Comptroller General to review the information provided.

(3) To permit the Director of the Congressional Budget Office to review the information provided.

(4) To States to carry out section 18031 of this title.

(d) Penalties

The provisions of subsection (b)(3)(C) of section 1396r–8 of this title shall apply to a health benefits plan or PBM that fails to provide information required under subsection (a) on a timely basis or that knowingly provides false information in the same manner as such provisions apply to a manufacturer with an agreement under that section.


Prior Provisions


§ 1320b–24. Consultation with Tribal Technical Advisory Group

The Secretary of Health and Human Services shall maintain within the Centers for Medicaid & Medicare Services 1 a Tribal Technical

1 So in original. Probably should be “Centers for Medicare & Medicaid Services”.
Advisory Group (TTAG), which was first established in accordance with requirements of the charter dated September 30, 2003, and the Secretary of Health and Human Services shall include in such Group a representative of a national urban Indian health organization and a representative of the Indian Health Service. The inclusion of a representative of a national urban Indian health organization in such Group shall not affect the nonapplication of the Federal Advisory Committee Act (5 U.S.C. App.) to such Group.


REFERENCES IN TEXT
The Federal Advisory Committee Act, referred to in text, is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION
Section was enacted as part of the American Recovery and Reinvestment Act of 2009, and not as part of the Social Security Act which comprises this chapter.

§ 1320b–25. Reporting to law enforcement of crimes occurring in federally funded long-term care facilities
(a) Determination and notification
(1) Determination
The owner or operator of each long-term care facility that receives Federal funds under this chapter shall annually determine whether the facility received at least $10,000 in such Federal funds during the preceding year.

(2) Notification
If the owner or operator determines under paragraph (1) that the facility received at least $10,000 in such Federal funds during the preceding year, such owner or operator shall annually notify each covered individual (as defined in paragraph (3)) of that individual’s obligation to comply with the reporting requirements described in subsection (b).

(b) Covered individual defined
In this section, the term “covered individual” means each individual who is an owner, operator, employee, manager, agent, or contractor of a long-term care facility that is the subject of a determination described in paragraph (1).

(c) Reporting requirements
(1) In general
Each covered individual shall report to the Secretary and 1 or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime (as defined by the law of the applicable political subdivision) against any individual who is a resident of, or is receiving care from, the facility.

(2) Timing
If the events that cause the suspicion—
(A) result in serious bodily injury, the individual shall report the suspicion immediately, but not later than 2 hours after forming the suspicion; and
(B) do not result in serious bodily injury, the individual shall report the suspicion not later than 24 hours after forming the suspicion.

(c) Penalties
(1) In general
If a covered individual violates subsection (b)—
(A) the covered individual shall be subject to a civil money penalty of not more than $200,000; and
(B) the Secretary may make a determination in the same proceeding to exclude the covered individual from participation in any Federal health care program (as defined in section 1320a–7b(f) of this title).

(2) Increased harm
If a covered individual violates subsection (b) and the violation exacerbates the harm to the victim of the crime or results in harm to another individual—
(A) the covered individual shall be subject to a civil money penalty of not more than $300,000, and
(B) the Secretary may make a determination in the same proceeding to exclude the covered individual from participation in any Federal health care program (as defined in section 1320a–7b(f) of this title).

(3) Excluded individual
During any period for which a covered individual is classified as an excluded individual under paragraph (1)(B) or (2)(B), a long-term care facility that employs such individual shall be ineligible to receive Federal funds under this chapter.

(4) Extenuating circumstances
(A) In general
The Secretary may take into account the financial burden on providers with underserved populations in determining any penalty to be imposed under this subsection.

(B) Underserved population defined
In this paragraph, the term “underserved population” means the population of an area designated by the Secretary as an area with a shortage of elder justice programs or a population group designated by the Secretary as having a shortage of such programs. Such areas or groups designated by the Secretary may include—
(i) areas or groups that are geographically isolated (such as isolated in a rural area);
(ii) racial and ethnic minority populations; and
(iii) populations underserved because of special needs (such as language barriers, disabilities, alien status, or age).

(d) Additional penalties for retaliation
(1) In general
A long-term care facility may not—
(A) discharge, demote, suspend, threaten, harass, or deny a promotion or other employment-related benefit to an employee, or in any other manner discriminate against an
employee in the terms and conditions of employment because of lawful acts done by the employee; or

(B) file a complaint or a report against a nurse or other employee with the appropriate State professional disciplinary agency because of lawful acts done by the nurse or employee,

for making a report, causing a report to be made, or for taking steps in furtherance of making a report pursuant to subsection (b)(1).

(2) Penalties for retaliation

If a long-term care facility violates subparagraph (A) or (B) of paragraph (1) the facility shall be subject to a civil money penalty of not more than $200,000 or the Secretary may classify the entity as an excluded entity for a period of 2 years pursuant to section 1320a–7(b) of this title, or both.

(3) Requirement to post notice

Each long-term care facility shall post conspicuously in an appropriate location a sign (in a form specified by the Secretary) specifying the rights of employees under this section. Such sign shall include a statement that an employee may file a complaint with the Secretary against a long-term care facility that violates the provisions of this subsection and information with respect to the manner of filing such a complaint.

(e) Procedure

The provisions of section 1320a–7a of this title (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to a civil money penalty or exclusion under this section in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(f) Definitions

In this section, the terms "elder justice", "long-term care facility", and "law enforcement" have the meanings given those terms in section 1397j of this title.

“(1) DEVELOPMENT AND IMPLEMENTATION OF PLAN.—The Secretary of Health and Human Services shall develop and implement a plan to coordinate the physician review activities of peer review organizations and carriers. Such plan shall include—

“(A) the development of common utilization and medical review criteria;

“(B) criteria for the targeting of reviews by peer review organizations and carriers; and

“(C) improved methods for exchange of information among peer review organizations and carriers.

“(2) REPORT.—Not later than January 1, 1992, the Secretary shall submit to Congress a report on the development of the plan described under paragraph (1) and shall include in the report such recommendations for changes in legislation as may be appropriate.”

EVALUATION OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

Pub. L. 97–448, title III, § 309(d), Jan. 12, 1983, 96 Stat. 2410, provided that: “In order to avoid unfairly discriminating against professional standards review organizations whose performance was evaluated during the first and second calendar quarters of 1982, the Secretary of Health and Human Services shall disregard the results of such evaluations and shall carry out such new evaluations of such organizations as may be necessary to select utilization and quality control peer review organizations in accordance with subtitle C of title I of the Tax Equity and Fiscal Responsibility Act of 1982 (sections 141–150 of Pub. L. 97–248) and part B of title XI of the Social Security Act [this part] as amended by such subtitle.”

MAINTENANCE OF CURRENT PROFESSIONAL STANDARDS REVIEW ORGANIZATION AGREEMENTS


“(a) The Secretary of Health and Human Services shall not terminate or fail to renew any agreement in effect with a professional standards review organization under part B of title XI of the Social Security Act [this part] on the earlier of the date of the enactment of this Act [Sept. 3, 1982] or September 30, 1982 until such time as he enters into a contract with a utilization and quality control peer review organization under such part, as amended by this subtitle [subtitle C (§§ 141–150) of title I of Pub. L. 97–248], for the area served by such professional standards review organization. In complying with this subsection, the Secretary may renew any such agreement with a professional standards review organization for a period of less than 12 months.

“(b) The provisions of part B of title XI of the Social Security Act [this part] as in effect prior to the amendments made by this subtitle [subtitle C (§§ 141–150) of title I of Pub. L. 97–248] shall remain in effect with respect to agreements with professional standards review organizations in effect on the earlier of the date of the enactment of this Act [Sept. 3, 1982] or September 30, 1982, until such time as such agreement is terminated or is not renewed, in accordance with subsection (a).

Any matters awaiting a determination by a Statewide Professional Standards Review Council on the date of the enactment of this Act shall be transferred to the Secretary of Health and Human Services for a determination unless such determination is made by such Council within 30 days after the date of the enactment of this Act. No payments shall be made under part B of title XI of the Social Security Act to Statewide Professional Standards Review Councils for services performed under section 1162 of such Act [section 1320c–11 of this title] after the end of such 30-day period.”

§ 1320c–1. Definition of quality improvement organization

The term ‘‘quality improvement organization’’ means an entity which—

(1) is able, as determined by the Secretary, to perform its functions under this part in a manner consistent with the efficient and effective administration of this part and subchapter XVIII;

(2) has at least one individual who is a representative of health care providers on its governing body; and

(3) has at least one individual who is a representative of consumers on its governing body.


PRIOR PROVISIONS


AMENDMENTS


Pars. (1), (2). Pub. L. 112–40, §261(a)(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

“(1)(A) is composed of a substantial number of the licensed doctors of medicine and osteopathy engaged in the practice of medicine or surgery in the area and who are representative of the practicing physicians in the area, designated by the Secretary under section 1320c–2 of this title, with respect to which the entity shall perform services under this part, or (B) has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy engaged in the practice of medicine or surgery in such area to assure that adequate peer review of the services provided by the various medical specialties and subspecialties can be assured;

“(2) is able, in the judgment of the Secretary, to perform review functions required under section 1320c–3 of this title in a manner consistent with the efficient and effective administration of this part and to perform reviews of the pattern of quality of care in an area of medical practice where actual performance is measured against objective criteria which define acceptable and adequate practice; and’’.


EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–40, set out as a note under section 1320c of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9353(b)(3) of Pub. L. 99–509 provided that: ‘‘The amendment made by paragraph (1) [amending this section] shall apply to contracts entered into or renewed on or after January 1, 1987.’’
§ 1320c–2. Contracts with quality improvement organizations

(a) Establishment of geographic areas

The Secretary shall establish throughout the United States such local, State, regional, national, or other geographic areas as the Secretary determines appropriate with respect to which contracts under this part will be made.

(b) Organizations entitled to contract with Secretary

(1) The Secretary shall enter into contracts with one or more quality improvement organizations for each area established under subsection (a) of this section if a qualified organization is available in such area and such organization and the Secretary have negotiated a proposed contract which the Secretary determines will be carried out by such organization in a manner consistent with the efficient and effective administration of this part. In entering into contracts with such qualified organizations, the Secretary shall, to the extent appropriate, seek to ensure that each of the functions described in section 1320c–3(a) of this title are carried out within an area established under subsection (a).

(2)(A) Prior to November 15, 1984, the Secretary shall not enter into a contract under this part with any entity which is, or is affiliated with (through management, ownership, or common control), an entity (other than a self-insured employer) which directly or indirectly makes payments to any practitioner or provider whose health care services are reviewed by such entity or would be reviewed by such entity if it entered into a contract with the Secretary under this part. For purposes of this paragraph, an entity shall not be considered to be affiliated with another entity which makes payments (directly or indirectly) to any practitioner or provider whose health care services are reviewed by such entity or would be reviewed by such entity if it entered into a contract with the Secretary under this part. For purposes of this paragraph, an entity shall not be considered to be affiliated with another entity which makes payments (directly or indirectly) to any practitioner or provider, by reason of management, ownership, or common control, if the management, ownership, or common control consists only of members of the governing board being affiliated (through management, ownership, or common control) with one or more of such facilities.

(B) If, after November 14, 1984, the Secretary determines that there is no other entity available for an area with which the Secretary can enter into a contract under this part or the Secretary determines that there is a more qualified entity to perform one or more of the functions in section 1320c–3(a) of this title, the Secretary may then enter into a contract under this part with an entity described in subparagraph (A) for such area if such entity otherwise meets the requirements of this part.

(3)(A) The Secretary shall not enter into a contract under this part with any entity which is, or is affiliated with (through management, ownership, or common control), a health care facility within the area served by such entity or which would be served by such entity if it entered into a contract with the Secretary under this part.

(B) For purposes of subparagraph (A), an entity shall not be considered to be affiliated with a health care facility by reason of management, ownership, or common control if the management, ownership, or common control consists only of not more than 20 percent of the members of the governing board of the entity being affiliated (through management, ownership, or common control) with one or more of such facilities.

(4) The Secretary may consider a variety of factors in selecting the contractors that the Secretary determines would provide for the most efficient and effective administration of this part, such as geographic location, size, and prior experience in health care quality improvement.

(c) Terms of contract

Each contract with an organization under this section shall provide that—

(1) the organization shall perform a function or functions under section 1320c–3 of this title directly or may subcontract for the performance of all or some of such function or functions (and for purposes of paragraphs (2) and (3) of subsection (b) of this section, a subcontract under this paragraph shall not constitute an affiliation with the subcontractor);

(2) the Secretary shall have the right to evaluate the quality and effectiveness of the organization in carrying out the functions specified in the contract;

(3) the contract shall be for an initial term of five years and shall be renewable for terms of five years thereafter;

(4) the Secretary shall include in the contract negotiated objectives against which the organization’s performance will be judged, and negotiated specifications for use of regional norms, or modifications thereof based on national norms, for performing review functions under the contract; and

(5) reimbursement shall be made to the organization on a monthly basis, with payments for any month being made consistent with the Federal Acquisition Regulation.

In evaluating the performance of quality improvement organizations under contracts under this part, the Secretary shall place emphasis on the performance of such organizations in educating providers and practitioners (particularly those in rural areas) concerning the review process and criteria being applied by the organization.


(e) Authority of Secretary

(1) Except as provided in paragraph (2), contracting authority of the Secretary under this section may be carried out without regard to
any provision of law relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the purposes of this part. The Secretary may use different contracting methods with respect to different geographical areas.

(2) If a quality improvement organization with a contract under this section is required to carry out a review function in addition to any function required to be carried out at the time the contract entered into or renewed the contract with the organization, the Secretary shall, before requiring such organization to carry out such additional function, negotiate the necessary contractual modifications, including modifications that provide for an appropriate adjustment (in light of the cost of such additional function) to the amount of reimbursement made to the organization.

(f) Termination not subject to judicial review

Any determination by the Secretary to terminate or not to renew a contract under this section shall not be subject to judicial review.

(g) Timely provision of hospital data to quality improvement organizations

The Secretary shall provide that fiscal intermediaries furnish to quality improvement organizations, each month on a timely basis, data necessary to initiate the review process under section 1320c–3(a) of this title on a timely basis. If the Secretary determines that a fiscal intermediary is unable to furnish such data on a timely basis, the Secretary shall require the hospital to do so.

(h) Establishment of new policy or procedure and general criteria and standards for evaluation; performance comparison report

(1) The Secretary shall publish in the Federal Register any new policy or procedure adopted by the Secretary that affects substantially the performance of contract obligations under this section not less than 30 days before the date on which such policy or procedure is to take effect. This paragraph shall not apply to the extent it is inconsistent with a statutory deadline.

(2) The Secretary shall publish in the Federal Register the general criteria and standards used for evaluating the efficient and effective performance of contract obligations under this section and shall provide opportunity for public comment with respect to such criteria and standards.

(3) The Secretary shall regularly furnish each quality improvement organization with a contract under this section with a report that documents the performance of the organization in relation to the performance of other such organizations.


P R I O R V I S I O N S


A M E N D M E N T S


Subsec. (a). Pub. L. 112–40, §261(b)(1)(A), added subsec. (a) and struck out former subsec. (a) which related to establishment and consolidation of geographic areas.

Subsec. (b)(1). Pub. L. 112–40, §261(c)(1)(A), after first sentence, inserted “In entering into contracts with such qualified organizations, the Secretary shall, to the extent appropriate, seek to ensure that each of the functions described in section 1320c–3(a) of this title are carried out within an area established under subsection (a).”

Pub. L. 112–40, §261(b)(1)(B), substituted “contracts with one or more quality improvement organizations” for “a contract with a quality improvement organization” and “will be operating in an area, the Secretary shall ensure that there is no duplication of the functions carried out by such organizations within the area” for “meets the requirements of the preceding sentence, priority shall be given to any such organization which is described in section 1320c–1(1)(A) of this title”.

Pub. L. 112–40, §261(a)(2)(C), substituted “quality improvement organization” for “utilization and quality control peer review organization”.

Subsec. (b)(2)(B). Pub. L. 112–40, §261(b)(1)(C), which directed insertion of “or the Secretary determines that there is a more qualified entity to perform one or more of the functions in section 1320c–3(a) of this title” after “under this part”, was executed by making the insertion after “under this part” the first place appearing, to reflect the probable intent of Congress.


Subsec. (b)(3)(B). Pub. L. 112–40, §261(b)(1)(D)(ii), struck out “or associations” after “one or more of such facilities”.

Pub. L. 112–40, §261(b)(1)(D)(ii)(I), which directed striking out “or association of such facilities”, was executed by striking out “or association of facilities” after “facility”, to reflect the probable intent of Congress.


Subsec. (c)(1). Pub. L. 112–40, §261(c)(1)(B), substituted “a function or functions under section 1320c–3 of this title directly or may subcontract for the performance of all or some of such function or functions” for “the functions set forth in section 1320c–3(a) of this title, or may subcontract for the performance of all or some of such functions”.

Subsec. (c)(3). Pub. L. 112–40, §261(b)(2), substituted “five years and shall be renewable for terms of five years” for “three years and shall be renewable on a triennial basis”.

Subsec. (c)(4). Pub. L. 112–40, §261(b)(3)(B), redesignated par. (7) as (4) and struck out former par. (4) which read as follows: “if the Secretary intends not to renew a contract, he shall notify the organization of his decision at least 90 days prior to the expiration of the con-
§ 1320c–3. Functions of quality improvement organizations

(a) Review of professional activities; determination of payment; determination of review authority; consultation with professional health care practitioners; standards of health care; other duties

Subject to subsection (b), any quality improvement organization entering into a contract with the Secretary under this part must perform one or more of the following functions:

(1) The organization shall review some or all of the professional activities in the area, subject to the terms of the contract and subject to the requirements of subsection (d) of this section, of physicians and other health care practitioners and institutional and noninstitutional providers of health care services in the provision of health care services and items for which payment may be made (in whole or in part) under subchapter XVIII of this chapter (including where payment is made for such services to eligible organizations pursuant to contracts under section 1395nnm of this title, to Medicare Advantage organizations pursuant to contracts under part C, and to prescription drug sponsors pursuant to contracts under part D) for the purpose of determining whether—

(A) such services and items are or were reasonable and medically necessary and whether such services and items are not allowable under subsection (a)(1) or (a)(9) of section 1395y of this title;

(B) the quality of such services meets professionally recognized standards of health care; and

(C) in case such services and items are proposed to be provided in a hospital or other health care facility on an inpatient basis, such services and items could, consistent with the provision of appropriate medical care, be effectively provided more economically on an outpatient basis or in an inpatient health care facility of a different type.

If the organization performs such reviews with respect to a type of health care practitioner other than medical doctors, the organization shall establish procedures for the involvement of health care practitioners of that type in such reviews.

(2) The organization shall determine, on the basis of the review carried out under subparagraphs (A), (B), and (C) of paragraph (1), whether payment shall be made for services under subchapter XVIII of this chapter. Such determination shall constitute the conclusive determination on those issues for purposes of payment under subchapter XVIII of this chapter, except that payment may be made if—

(A) such payment is allowed by reason of section 1395pp of this title;

(B) in the case of inpatient hospital services or extended care services, the quality improvement organization determines that additional time is required in order to arrange for postdischarge care, but payment may be continued under this subparagraph for not more than two days, but only in the case where the provider of such services did not know and could not reasonably have been expected to know (as determined under section 1395pp of this title) that payment would not otherwise be made for such services under subchapter XVIII of this chapter prior to notification by the organization under paragraph (3);

(C) such determination is changed as the result of any hearing or review of the determination under section 1320c–4 of this title; or

(D) such payment is authorized under section 1395x(v)(1)(G) of this title.

The organization shall identify cases for which payment should not be made by reason of paragraph (1)(B) only through the use of criteria developed pursuant to guidelines established by the Secretary.

(3)(A) Subject to subparagraphs (B) and (D), whenever the organization makes a determination that any health care services or items furnished or to be furnished to a patient by any practitioner or provider are disapproved, the organization shall promptly notify such patient and the agency or organization responsible for the payment of claims under subchapter XVIII of this chapter of such determination.

(B) The notification under subparagraph (A) with respect to services or items disapproved by reason of subparagraph (A) or (C) of paragraph (1) shall not occur until 20 days after the date that the organization has—

1 See References in Text note below.
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(i) made a preliminary notification to such practitioner or provider of such proposed determination, and

(ii) provided such practitioner or provider an opportunity for discussion and review of the proposed determination.

(C) The discussion and review conducted under subparagraph (B)(ii) shall not affect the rights of a practitioner or provider to a formal reconsideration of a determination under this part (as provided under section 1320c–4 of this title).

(D) The notification under subparagraph (A) with respect to services or items disapproved by reason of paragraph (1)(B) shall not occur until after—

(i) the organization has notified the practitioner or provider involved of the determination and of the practitioner's or provider's right to a formal reconsideration of the determination under section 1320c–4 of this title, and

(ii) if the provider or practitioner requests such a reconsideration, the organization has made such a reconsideration.

If a provider or practitioner is provided a reconsideration, such reconsideration shall be in lieu of any subsequent reconsideration to which the provider or practitioner may be otherwise entitled under section 1320c–4 of this title, but shall not affect the right of a beneficiary from seeking reconsideration under such section of the organization's determination (after any reconsideration requested by the provider or physician under clause (ii)).

(E)(i) In the case of services and items provided by a physician that were disapproved by reason of paragraph (1)(B), the notice to the patient shall state the following: "In the judgment of the quality improvement organization, the medical care received was not acceptable under the medicare program. The reasons for the denial have been discussed with your physician."

(ii) In the case of services or items provided by an entity or practitioner other than a physician, the Secretary may substitute the entity or practitioner which provided the services or items for the term "physician" in the notice described in clause (i).

(4)(A) The organization shall, after consultation with the Secretary, determine the types and kinds of cases (whether by type of health care, diagnosis, and treatment based upon typical patterns of practice within the geographic area served by the organization as principal points of evaluation and review, taking into consideration national norms where appropriate. Such norms with respect to treatment for particular illnesses or health conditions shall include—

such allocation, the organization shall consider (i) whether there is reason to believe that there is a particular need for reviews of particular cases or settings because of previous problems regarding quality of care, (ii) the cost of such reviews and the likely yield of such reviews in terms of number and seriousness of quality of care problems likely to be discovered as a result of such reviews, and (iii) the availability and adequacy of alternative quality review and assurance mechanisms.

(B) The contract of each organization shall provide for the review of services (including both inpatient and outpatient services) provided by eligible organizations pursuant to a risk-sharing contract under section 1395mm of this title (or that is subject to review under section 1395ee(t)(3) of this title) for the purpose of determining whether the quality of such services meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings and whether individuals enrolled with an eligible organization have adequate access to health care services provided by or through such organization (as determined, in part, by a survey of individuals enrolled with the organization who have not yet used the organization to receive such services). The contract of each organization shall also provide that with respect to health care provided by a health maintenance organization or competitive medical plan under section 1395mm of this title, the organization shall maintain a beneficiary outreach program designed to apprise individuals receiving care under such section of the role of the peer review system, of the rights of the individual under such system, and of the method and purposes for contacting the organization.

The previous two sentences shall not apply with respect to a contract year if another entity has been awarded a contract under subparagraph (C). Under the contract the level of effort expended by the organization on reviews under this subparagraph shall be equivalent, on a per enrollee basis, to the level of effort expended by the organization on utilization and quality reviews performed with respect to individuals not enrolled with an eligible organization.

(5) The organization shall consult with nurses and other professional health care practitioners (other than physicians described in section 1395rr(r)(1) of this title) and with representatives of institutional and noninstitutional providers of health care services, with respect to the organization's responsibility for the review under paragraph (1) of the professional activities of such practitioners and providers.

(6)(A) The organization shall, consistent with the provisions of its contract under this part, apply professionally developed norms of care, diagnosis, and treatment based upon typical patterns of practice within the geographic area served by the organization as principal points of evaluation and review, taking into consideration national norms where appropriate. Such norms with respect to treatment for particular illnesses or health conditions shall include—
(i) the types and extent of the health care services which, taking into account differing, but acceptable, modes of treatment and methods of organizing and delivering care, are considered within the range of appropriate diagnosis and treatment of such illness or health condition, consistent with professionally recognized and accepted patterns of care; and

(ii) the type of health care facility which is considered, consistent with such standards, to be the type in which health care services which are medically appropriate for such illness or condition can most economically be provided.

As a component of the norms described in clause (i) or (ii), the organization shall take into account the special problems associated with delivering care in remote rural areas, the availability of service alternatives to inpatient hospitalization, and other appropriate factors (such as the distance from a patient's residence to the site of care, family support, availability of proximate alternative sites of care, and the patient's ability to carry out necessary or prescribed self-care regimens) that could adversely affect the safety or effectiveness of treatment provided on an outpatient basis.

(B) The organization shall—

(i) offer to provide, several times each year, for a physician representing the organization to meet (at a hospital or at a regional meeting) with medical and administrative staff of each hospital (the services of which are reviewed by the organization) respecting the organization's review of the hospital's services for which payment may be made under subchapter XVIII of this chapter, and

(ii) publish (not less often than annually) and distribute to providers and practitioners whose services are subject to review a report that describes the organization's findings with respect to the types of cases in which the organization has frequently determined that (I) inappropriate or unnecessary care has been provided, (II) services were rendered in an inappropriate setting, or (III) services did not meet professionally recognized standards of health care.

(7) The organization, to the extent necessary and appropriate to the performance of the contract, shall—

(A)(i) make arrangements to utilize the services of persons who are practitioners of, or specialists in, the various areas of medicine (including dentistry, optometry, and podiatry), or other types of health care, which persons shall, to the maximum extent practicable, be individuals engaged in the practice of their profession within the area served by such organization; and

(ii) in the case of psychiatric and physical rehabilitation services, make arrangements to ensure that (to the extent possible) initial review of such services be made by a physician who is trained in psychiatry or physical rehabilitation (as appropriate). 2

(B) undertake such professional inquiries either before or after, or both before and after, the provision of services with respect to which such organization has a responsibility for review which in the judgment of such organization will facilitate its activities; and

(C) examine the pertinent records of any practitioner or provider of health care services providing services with respect to which such organization has a responsibility for review under paragraph (1); and

(D) inspect the facilities in which care is rendered or services are provided (which are located in such area) of any practitioner or provider of health care services providing services with respect to which such organization has a responsibility for review under paragraph (1).

(8) The organization shall perform such duties and functions and assume such responsibilities and comply with such other requirements as may be required by this part or under regulations of the Secretary promulgated to carry out the provisions of this part or as may be required to carry out section 1395y(a)(15) of this title.

(9)(A) The organization shall collect such information relevant to its functions, and keep and maintain such records, in such form as the Secretary may require to carry out the purposes of this part, and shall permit access to and use of any such information and records as the Secretary may require for such purposes, subject to the provisions of section 1320c-9 of this title.

(B) If the organization finds, after reasonable notice to and opportunity for discussion with the physician or practitioner concerned, that the physician or practitioner has furnished services in violation of section 1320c-5(a) of this title and the organization determines that the physician or practitioner should enter into a corrective action plan under section 1320c-5(b)(1) of this title, the organization shall notify the State board or boards responsible for the licensing or disciplining of the physician or practitioner of its finding and of any action taken as a result of the finding.

(10) The organization shall coordinate activities, including information exchanges, which are consistent with economical and efficient operation of programs among appropriate public and private agencies or organizations including—

(A) agencies under contract pursuant to sections 1395h and 1395i of this title;

(B) other quality improvement organizations having contracts under this part; and

(C) other public or private review organizations as may be appropriate.

(11) The organization shall make available its facilities and resources for contracting with private and public entities paying for health care in its area for review, as feasible and appropriate, of services reimbursed by such entities.

(12) As part of the organization’s review responsibility under paragraph (1), the organization shall review all ambulatory surgical pro-

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2So in original. The period probably should be a semicolon.
cedures specified pursuant to section 1395f(i)(1)(A) of this title which are performed in the area, or, at the discretion of the Secretary, a sample of such procedures.

(13) Notwithstanding paragraph (4), the organization shall perform the review described in paragraph (1) with respect to early readmission cases to determine if the previous inpatient hospital services and the post-hospital services met professionally recognized standards of health care. Such reviews may be performed on a sample basis if the organization and the Secretary determine it to be appropriate. In this paragraph, an “early readmission case” is a case in which an individual, after discharge from a hospital, is readmitted to a hospital less than 31 days after the date of the most recent previous discharge.

(14) The organization shall conduct an appropriate review of all written complaints about the quality of services (for which payment may otherwise be made under subchapter XVIII of this chapter) not meeting professionally recognized standards of health care, if the complaint is filed with the organization by an individual entitled to benefits for such services under such subchapter (or a person acting on the individual’s behalf). The organization shall inform the individual (or representative) of the organization’s final disposition of the complaint. Before the organization concludes that the quality of services does not meet professionally recognized standards of health care, the organization must provide the practitioner or person concerned with reasonable notice and opportunity for discussion.

(15) During each year of the contract entered into under section 1320c–2(b) of this title, the organization shall perform on-site review activities as the Secretary determines appropriate.

(16) The organization shall provide for a review and report to the Secretary when requested by the Secretary under section 1395dd(d)(3) of this title. The organization shall provide reasonable notice of the review to the physician and hospital involved. Within the time period permitted by the Secretary, the organization shall provide a reasonable opportunity for discussion with the physician and hospital involved, and an opportunity for the physician and hospital to submit additional information, before issuing its report to the Secretary under such section.

(17) The organization shall execute its responsibilities under subparagraphs (A) and (B) of paragraph (1) by offering to providers, practitioners, Medicare Advantage organizations offering Medicare Advantage plans under part C, and prescription drug sponsors offering prescription drug plans under part D, quality improvement assistance pertaining to prescription drug therapy. For purposes of this part and subchapter XVIII of this chapter, the functions described in this paragraph shall be treated as a review function.

(18) The organization shall perform, subject to the terms of the contract, such other activities as the Secretary determines may be necessary for the purposes of improving the quality of care furnished to individuals with respect to items and services for which payment may be made under subchapter XVIII.

(b) Performance; exceptions

A quality improvement organization entering into a contract with the Secretary to perform a function described in a paragraph under subsection (a) must perform all of the activities described in such paragraph, except to the extent otherwise negotiated with the Secretary pursuant to the contract or except for a function for which the Secretary determines it is not appropriate for the organization to perform, such as a function that could cause a conflict of interest with another function.

(c) Review by physicians; physician’s family defined

(1) No physician shall be permitted to review—
   (A) health care services provided to a patient if he was directly responsible for providing such services; or
   (B) health care services provided in or by an institution, organization, or agency, if he or any member of his family has, directly or indirectly, a significant financial interest in such institution, organization, or agency.

(2) For purposes of this subsection, a physician’s family includes only his spouse (other than a spouse who is legally separated from him under a decree of divorce or separate maintenance), children (including legally adopted children), grandchildren, parents, and grandparents.

(d) Utilization of services of physicians to make final determinations of denial decisions with respect to professional conduct of other physicians

No quality improvement organization shall utilize the services of any individual who is not a duly licensed doctor of medicine, osteopathy, dentistry, optometry, or podiatry to make final determinations of denial decisions in accordance with its duties and functions under this part with respect to the professional conduct of any other duly licensed doctor of medicine, osteopathy, dentistry, optometry, or podiatry, or any act performed by any duly licensed doctor of medicine, osteopathy, dentistry, optometry, or podiatry in the exercise of his profession.

(e) Review of hospital denial notices

(1) If—
   (A) a hospital has determined that a patient no longer requires inpatient hospital care, and
   (B) the attending physician has agreed with the hospital’s determination,

the hospital may provide the patient (or the patient’s representative) with a notice (meeting conditions prescribed by the Secretary under section 1395pp of this title) of the determination.


(f) Identification of methods for identifying cases of substandard care

The Secretary, in consultation with appropriate experts, shall identify methods that would be available to assist quality improve-
ment organizations (under subsection (a)(4) of this section) in identifying those cases which are more likely than others to be associated with a quality of services which does not meet professionally recognized standards of health care.


Prior Provisions

Subsec. (b). Pub. L. 112–40, §261(c)(2)(C), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 112–40, §261(c)(2)(B), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Pub. L. 112–40, §261(a)(2)(C), substituted “quality improvement” for “utilization and quality control peer review”.

Subsec. (d). Pub. L. 112–40, §261(c)(2)(B), redesignated subsec. (c) as (d) and struck out former subsec. (d). Prior to amendment, text read as follows: “Each contract under this part shall require that the utilization and quality control peer review organization’s review responsibility pursuant to subsection (a)(4) of this section will include review of all ambulatory surgical procedures specified pursuant to section 1395l(c)(1)(A) of this title which are performed in the area, or, at the discretion of the Secretary a sample of such procedures.”

Subsec. (e). Pub. L. 112–40, §261(a)(2)(B), substituted “quality improvement” for “peer review”.

2003—Subsec. (a)(1). Pub. L. 108–173, §109(a), inserted “... to Medicare Advantage organizations pursuant to contracts under part C, and to prescription drug sponsors pursuant to contracts under part D” after “under section 1395mm of this title”.


Subsec. (a)(9). Pub. L. 108–173, §948(d), struck out par. (5) which read as follows: “In any review conducted under paragraph (2) or (3), the organization shall solicit the views of the patient involved (or the patient’s representative).”

2000—Subsec. (e)(2) to (4). Pub. L. 106–554 struck out paras. (2) to (4), which had: in par. (2), authorized peer review organization review of validity of hospital’s determination that a patient no longer required inpatient hospital care but attending physician had not agreed with the hospital’s determination; in par. (3), authorized review of the determination where patient or patient’s representative had received a notice under par. (1) and requested the review; and in par. (4), directed that hospital could not charge patient for inpatient services furnished before noon of the day after the date the patient or representative received notice of the decision where request for review had been made not later than noon of the first working day after notice under par. (1) had been received and section 1385a(p)(2) conditions had been met.

1994—Subsec. (a)(4)(B). Pub. L. 103–432, §171(h)(2), substituted “(or that is subject to review under section 1395d(t)(3) of this title)” for “(or subject to review under section 1395d(t) of this title)”.

Subsec. (a)(9)(B). Pub. L. 103–432, §156(b)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “If the organization finds, after notice and hearing, that a physician has furnished services in violation of this subsection, the organization shall notify the State board or boards responsible for the licensing or disciplining of the physician of its finding and decision.”


Subsec. (d). Pub. L. 103–432, §156(a)(2)(A)(ii), struck out “(and except as provided in section 1320c–13 of this title)” after “discretion of the Secretary a sample of such procedures.”

1990—Subsec. (a)(2). Pub. L. 101–508, §4206(c)(2)(A), inserted third sentence and struck out former third sentence which read as follows: “Determinations that payment should not be made by reason of subparagraph (B) of paragraph (1) shall be made only on the basis of criteria which are consistent with guidelines established by the Secretary.”

Subsec. (a)(3)(E). Pub. L. 101–508, §4205(x)(1)(A), designated existing provisions as cl. (1), inserted “provided by a physician that were” after “items”, substituted...
Subsec. (a)(4). Pub. L. 101–203, § 4368(h)(3), as added by Pub. L. 100–360, § 411(e)(3), realigned margins for subpars. (B) and (C) and cl. (i) to (iii) of subpar. (A).

Subsec. (a)(4)(B). Pub. L. 99–509, § 9353(a)(2)(C), inseret at end "(a) Under the contract the level of effort expended by the organization on reviews under this sub- paragraph shall be equivalent, on a per enrollee basis, to the level of effort expended by the organization on utilization and quality reviews performed with respect to individuals not enrolled with an eligible organization.


1983—Subsec. (a)(1)(A). Pub. L. 97–448, § 309(b)(3), substituted "and whether such services and items are not allowable under subsection (a)(1) or (a)(9) of section 1395y of this title" for "or otherwise allowable under section 1395y(a)(1) of this title".


EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–40, set out as a note under section 1320c of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 106–554, title I, § 1(a)(6), Dec. 21, 2000, 114 Stat. 2703, provided that: "The amendments made by this section and sections 1395m, 1395y, and 1395cc of this title shall apply to notices of proposed sanctions issued more than 60 days after the date of the enactment of this Act [Nov. 5, 1990]."

Section 4205(d)(1)(C) of Pub. L. 101–508 provided that: "The amendments made by this paragraph [amending this section and section 1320c–9 of this title] shall apply to notices of proposed sanctions issued more than 60 days after the date of the enactment of this Act [Nov. 5, 1990]."

Section 4205(g)(1)(B) of Pub. L. 101–508 provided that: "The amendments made by subparagraph (A) (amending this section) shall take effect as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272]."

Section 4207(a)(1)(C), formerly 4207(a)(1)(C), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, § 180(h)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: "The amendments made by subparagraph (A) (amending section 1395dd of this title) shall take effect on the first day of the first month beginning more than 60 days after the date of the enactment of this Act [Nov. 5, 1990]. The amendment made by subparagraph (B) (amending this section) shall apply to contracts under part B of title XI of the Social Security Act [this part] as of the first day of the first month beginning more than 60 days after the date of the enactment of this Act."


"(1) The amendments made by this section [amending this section and section 1395ss of this title] shall only apply—

"(A) in 15 States (as determined by the Secretary of Health and Human Services) and such other States as the Secretary elect such amendments to apply to them, and

"(B) subject to paragraph (2), during the 6%-year period beginning with 1992.

For purposes of this paragraph, the term 'State' has the meaning given such term by section 210(h) of the Social Security Act (42 U.S.C. 410(h)).

"(2)(A) The Secretary of Health and Human Services shall conduct a study that compares the savings in healthcare costs, quality of care, and access to services under medicare select policies with that under other medicare supplemental policies. The study shall be based on surveys of appropriate age-adjusted sample populations. The study shall be completed by June 30, 1994.

"(B) Not later than December 31, 1997, the Secretary shall determine, based on the results of the study under subparagraph (A), if any of the following findings are true:

"(i) The amendments made by this section have not resulted in savings of premium costs to those enrolled in medicare select policies (in comparison to their enrollment in medicare supplemental policies that are not medicare select policies and that provide comparable coverage).

"(ii) There have been significant additional expenditures under the medicare program as a result of such amendments.

"(iii) Access to and quality of care has been significantly diminished as a result of such amendments.

"(C) The amendments made by this section shall remain in effect beyond the 6%-year period described in paragraph (1)(B) unless the Secretary determines that any of the findings described in clause (1), (ii), or (iii) of subparagraph (B) are true.

"(3) The Comptroller General shall conduct a study to determine the extent to which individuals who are continuously covered under a medicare supplemental policy are subject to medical underwriting if they change the policy under which they are covered, and to identify options, if necessary, for modifying the medicare supplemental insurance market to make sure that continuously insured beneficiaries are able to switch plans without medical underwriting. By not later than
June 30, 1996, the Comptroller General shall submit to the Congress a report on the study. The report shall include a description of the potential impact on the cost and availability of Medicare supplemental policies of each option identified in the study.

(Section 172(b) of Pub. L. 101-432 provided that: "The amendment made by subsection (a) [amending this section] shall apply to contracts entered into after the date of enactment of this Act [Dec. 19, 1989]."

Section 6224(a)(2) of Pub. L. 101–239 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to contracts entered into after the date of enactment of this Act [Dec. 19, 1989]."

Section 6224(b)(3) of Pub. L. 101–239 provided that: "The amendments made by this subsection [amending this section and section 1323c–1 of this title] shall apply to determinations by utilization and quality control peer review organizations with respect to which preliminary notifications were made under section 1154(a)(3)(B) of the Social Security Act [subsec. (a)(3)(B) of this section] more than 30 days after the date of the enactment of this Act [Dec. 19, 1988]."

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1332a–7a of this title.

Effective Date of 1989 Amendments
Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 908(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Section 203(g) of Pub. L. 100–360, which had provided that the amendments made by section 203 of Pub. L. 100–360 (amending this section and sections 1395h, 1395k to 1395n, 1395w–2, 1395x, 1395z, and 1395aa of this title) were to apply to items and services furnished on or after January 1, 1990, was repealed by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 181.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(e)(3), (j)(2), (3), (4)(C) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to ORRA; Effective Date note under section 106 of Title I, General Provisions.

Effective Date of 1987 Amendment
Section 4093(b) of Pub. L. 100–203 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to determinations made or entered into after April 1, 1987."

Section 4094(c)(1)(B) of Pub. L. 100–203 provided that: "The amendments made by subparagraph (A) [amending this section] shall apply to contracts under part B of title XI of the Social Security Act (42 U.S.C. 1320c et seq.) entered into or renewed more than 6 months after the date of the enactment of this Act [Dec. 22, 1987]."

Section 4094(c)(2)(C) of Pub. L. 100–203 provided that: "The amendments made by this paragraph [amending this section] shall apply with respect to contracts entered into or renewed on or after the date of enactment of this Act [Dec. 22, 1987]."

Section 4096(d) of Pub. L. 100–203 provided that: "The amendments made by this section [amending this section and sections 1395w, 1395gg, and 1395pp of this title] shall apply to services furnished on or after January 1, 1988."

Effective Date of 1986 Amendments
Amendment by section 9353(d) of Pub. L. 99–509 applicable to contracts entered into or renewed after Jan. 1, 1987, see section 9353(b)(4) of Pub. L. 99–509, as amended, set out as a note under section 1395f of this title.

Section 9351(b) of Pub. L. 99–509 provided that:

"(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to denial notices furnished by hospitals to individuals on or after the first day of the first month that begins more than 30 days after the date of the enactment of this Act [Oct. 21, 1986]."

"(2) Section 1154(e)(4) of the Social Security Act [subsection (a)(4) of this section] as amended by the amendment made by subsection (a) shall take effect on the date of the enactment of this Act [Oct. 21, 1986]."

Section 9352(c)(2) of Pub. L. 99–509 provided that: "The amendment made by subsection (b) [amending this section] shall apply to contracts entered into or renewed on or after January 1, 1987, except that in applying such amendment before January 1, 1989, the term 'post-hospital services' does not include physicians' services, other than physicians' services furnished in a hospital, other inpatient facility, ambulatory surgical center, or rural health clinic."

Section 9353(a)(6) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, §4093(h)(9)(A), (B), as added Pub. L. 100–360, title IV, §411(e)(3), July 1, 1988, 102 Stat. 776, provided that:

"(A)(i) Except as provided in clause (ii), the amendments made by paragraph (1) [amending this section] shall apply to contracts entered into or renewed on or after January 1, 1987.

"(ii) The amendment made by paragraph (1) shall not be construed as requiring, before January 1, 1989, the review of physicians' services, other than physicians' services furnished in a hospital, other inpatient facility, ambulatory surgical center, or rural health clinic."

"(B) The amendments made by paragraphs (2)(B) and (2)(D) [amending this section] shall apply to contracts as of April 1, 1987.

"(C) The amendment made by paragraph (2)(C) [amending this section] shall apply to review activities conducted by organizations on or after January 1, 1988.

"(D) The amendment made by paragraph (3) [amending this section] becomes effective on the date of the enactment of this Act [Oct. 21, 1986]."

Section 9353(c)(2) of Pub. L. 99–509 provided that:

"The amendment made by paragraph (1) [amending this section] shall apply to services performed on or after April 1, 1988.

Section 9401(d) of Pub. L. 99–272 provided that: "The amendments made by subsection (a) [amending this section] shall apply to items and services furnished on or after January 1, 1987. The Secretary of Health and Human Services shall provide for such modification of contracts under part B of title XI of the Social Security Act [this part] that are in effect on that date as may be necessary to effect these amendments on a timely basis."

Section 9403(c) of Pub. L. 99–272 provided that:

"The amendments made by this section [amending this section and section 1395cc of this title] shall become effective on the date of the enactment of this Act [Apr. 7, 1986]."

Section 9405(b) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §9353(a)(5), Oct. 21, 1986, 100 Stat. 246, provided that: "The amendment made by this section [amending this section] shall apply to items and services furnished on or after April 1, 1987."

Effective Date of 1985 Amendment
Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 4261 of this title.

State Regulatory Programs
For provisions relating to changes required to conform State regulatory programs to amendments by sec-
tion 171 of Pub. L. 103–432, see section 171(m) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

Review and Analysis of Variations in Utilization of Hospital and Other Health Care Services

Section 935(a)(4) of Pub. L. 99–509 provided that: "...Secretary of Health and Human Services shall provide, to at least 12 utilization and quality control peer review organizations with contracts under part B of title XI of the Social Security Act [this part], data and processing assistance to allow each of the organizations to review and analyze small-area variations, in the service area of the organization, in the utilization of hospital and other health care services for which payment is made under title XVIII of such Act [subchapter XVIII of this chapter]."

§ 1320c–4. Right to hearing and judicial review

Any beneficiary who is entitled to benefits under subchapter XVIII of this chapter, and, subject to section 1320c–3(a)(3)(D) of this title, any practitioner or provider, who is dissatisfied with a determination made by a contracting quality improvement organization in conducting its review responsibilities under this part, shall be entitled to a hearing by the Secretary [to the same extent as beneficiaries under subchapter II of this chapter are entitled to a hearing by the Commissioner of Social Security under section 405(b) of this title]. For purposes of the preceding sentence, subsection (l) of section 405 of this title shall apply, except that any reference in such subsection to the Commissioner of Social Security or the Social Security Administration shall be deemed a reference to the Secretary or the Department of Health and Human Services, respectively.

For purposes of the preceding sentence, subsection (l) of section 405 of this title shall apply, except that any reference in such subsection to the Commissioner of Social Security or the Social Security Administration shall be deemed a reference to the Secretary or the Department of Health and Human Services, respectively. Where the amount in controversy is $2,000 or more, such beneficiary shall be entitled to a hearing by the Secretary (to the same extent as beneficiaries under subchapter II of this chapter are entitled to a hearing by the Commissioner of Social Security under section 405(b) of this title). For purposes of the preceding sentence, subsection (l) of section 405 of this title shall apply, except that any reference in such subsection to the Commissioner of Social Security or the Social Security Administration shall be deemed a reference to the Secretary or the Department of Health and Human Services, respectively. Where the amount in controversy is $2,000 or more, such beneficiary shall be entitled to a hearing by the Secretary (to the same extent as beneficiaries under subchapter II of this chapter are entitled to a hearing by the Commissioner of Social Security under section 405(b) of this title). For purposes of the preceding sentence, subsection (l) of section 405 of this title shall apply, except that any reference in such subsection to the Commissioner of Social Security or the Social Security Administration shall be deemed a reference to the Secretary or the Department of Health and Human Services, respectively. Where the amount in controversy is $2,000 or more, such beneficiary shall be entitled to a hearing by the Secretary (to the same extent as beneficiaries under subchapter II of this chapter are entitled to a hearing by the Commissioner of Social Security under section 405(b) of this title).

Effective Date of 2011 Amendment

Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–40, set out as a note under section 1320c of this title.

Effective Date of 1994 Amendment


Effective Date of 1989 Amendment

Amendment by Pub. L. 101–239 applicable to determinations by utilization and quality control peer review organizations with respect to which preliminary notifications were made under section 1320c–3(a)(3)(B) of this title more than 30 days after Dec. 19, 1989, see section 6224(b)(3) of Pub. L. 101–239, set out as a note under section 1320c–3 of this title.

§ 1320c–5. Obligations of health care practitioners and providers of health care services; sanctions and penalties; hearings and review

(a) Assurances regarding services and items ordered or provided by practitioner or provider

It shall be the obligation of any health care practitioner and any other person (including a hospital or other health care facility, organization, or agency) who provides health care services for which payment may be made (in whole or in part) under this chapter, to assure, to the extent of his authority that services or items ordered or provided by such practitioner or person to beneficiaries and recipients under this chapter—

1. will be provided economically and only when, and to the extent, medically necessary;
2. will be of a quality which meets professionally recognized standards of health care; and
3. will be supported by evidence of medical necessity and quality in such form and fashion and at such time as may reasonably be required by a reviewing quality improvement organization in the exercise of its duties and responsibilities.

(b) Sanctions and penalties; hearings and review

1. If after reasonable notice and opportunity for discussion with the practitioner or person concerned, and, if appropriate, after the practitioner or person has been given a reasonable opportunity to enter into and complete a corrective action plan (which may include remedial education) agreed to by the organization, and has failed successfully to complete such plan,
(A) failed in a substantial number of cases substantially to comply with any obligation imposed on him under subsection (a) of this section, or

(B) grossly and flagrantly violated any such obligation in one or more instances,

such organization shall submit a report and recommendations to the Secretary. If the Secretary agrees with such determination, the Secretary (in addition to any other sanction provided under law) may exclude (permanently or for such period as the Secretary may prescribe, except that such period may not be less than 1 year) such practitioner or person from eligibility to provide services under this chapter on a reimbursable basis. If the Secretary fails to act upon the recommendations submitted to him by such organization within 120 days after such submission, such practitioner or person shall be excluded from eligibility to provide services on a reimbursable basis until such time as the Secretary determines otherwise.

(2) A determination made by the Secretary under this subsection to exclude a practitioner or person shall be effective on the same date and in the same manner as an exclusion from participation under the programs under which such organization becomes effective under section 1320a–7(c) of this title, and shall (subject to the minimum period specified in the second sentence of paragraph (1)) remain in effect until the Secretary finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

(3) In lieu of the sanction authorized by paragraph (1), the Secretary may require that (as a condition to the continued eligibility of such practitioner or person to provide such health care services on a reimbursable basis) such practitioner or person pays to the United States, in case such acts or conduct involved the provision or ordering by such practitioner or person of health care services which were medically improper or unnecessary, an amount not in excess of up to $10,000 for each instance of the medically improper or unnecessary services so provided. Such amount may be deducted from any sums owing by the United States (or any instrumentality thereof) to the practitioner or person from whom such amount is claimed.

(4) Any practitioner or person furnishing services described in paragraph (1) who is dissatisfied with a determination made by the Secretary under this subsection to exclude a practitioner or person from eligibility to provide services on a reimbursable basis shall be entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary’s final decision after such hearing as is provided in section 405(g) of this title.

(5) Before the Secretary may effect an exclusion under paragraph (2) in the case of a provider or practitioner located in a rural health professional shortage area or in a county with a population of less than 70,000, the provider or practitioner adversely affected by the determination is entitled to a hearing before an administrative law judge (described in section 405(b) of this title) respecting whether the provider or practitioner should be able to continue furnishing services to individuals entitled to benefits under this chapter, pending completion of the administrative review procedure under paragraph (4). If the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to such individuals if permitted to continue furnishing such services, the Secretary shall not effect the exclusion under paragraph (2) until the provider or practitioner has been provided reasonable notice and opportunity for an administrative hearing thereon under paragraph (4).

(6) When the Secretary effects an exclusion of a physician under paragraph (2), the Secretary shall notify the State board responsible for the licensing of the physician of the exclusion.

(c) Enlistment of support of other organizations to assure practitioner's or provider's compliance with obligations

It shall be the duty of each quality improvement organization to use such authority or influence it may possess as a professional organization, and to enlist the support of any other professional or governmental organization having influence or authority over health care practitioners and any other person (including a hospital or other health care facility, organization, or agency) providing health care services in the area served by such review organization, in assuring that each practitioner or person (referred to in subsection (a) of this section) providing health care services in such area shall comply with all obligations imposed on him under subsection (a) of this section.


Prior Provisions


Amendments


practitioner or person has demonstrated an unwillingness or lack of ability substantially to comply with such obligations, the Secretary shall consider the practitioner or person’s unwillingness or lack of ability, during the period before the organization submits its report and recommendations, to enter into and successfully complete a corrective action plan.

Pub. L. 104–191, §214(b)(1), struck out in concluding provisions “and determines that such practitioner or person, in providing health care services over which such organization has review responsibility and for which payment (in whole or in part) may be made under this chapter, has demonstrated an unwillingness or a lack of ability substantially to comply with such obligations,” after “agrees with such determination.”

Pub. L. 104–191, §214a(a)(1), substituted “may prescribe, except that such period may not be less than 1 year” for “may prescribe”) in concluding provisions.

Subsec. (b)(2). Pub. L. 104–191, §214a(a)(2), substituted “shall (subject to the minimum period specified in the second sentence of paragraph (1)) remain” for “shall remain.”

Subsec. (b)(3). Pub. L. 104–191, §213(f), substituted “up to $10,000 for each instance” for “the actual or estimated cost.”


1990—Subsec. (b)(1). Pub. L. 101–508, §4205(a)(1), inserted “and, if appropriate, after the practitioner or person has been given a reasonable opportunity to enter into and complete a corrective action plan (which may include remedial education) agreed to by the organization, and has failed successfully to complete such plan,” after “concerned,” in introductory provisions and inserted after second sentence “In determining whether [sic] a practitioner or person has demonstrated an unwillingness or lack of ability substantially to comply with such obligations, the Secretary shall consider the practitioner’s or person’s willingness or lack of ability, during the period before the organization submits its report and recommendations, to enter into and successfully complete a corrective action plan.”

Subsec. (b)(5). Pub. L. 101–508 substituted “health professional shortage area” for “health manpower shortage area (HMSA)”.


1987—Subsec. (a). Pub. L. 100–93, §6(1), substituted “this chapter” for “subchapter XVIII of this chapter” and “this subchapter”.

Subsec. (b)(1). Pub. L. 100–203, §4039(h)(5)(A), as added by Pub. L. 100–360, substituted “services under this chapter” for “such services”.

Pub. L. 100–93, §6(2), substituted “this chapter” for “subchapter XVIII of this chapter”.

Subsec. (b)(2). Pub. L. 100–203, §4039(h)(5)(B), as added by Pub. L. 100–360, substituted “on the same date” and in the same manner as an exclusion from participation under the programs under this chapter becomes effective under section 1320a–7(c) of this title for “at such time and upon such reasonable notice to the public and to the practitioner or person furnishing the services involved as may be specified in regulations.” Such determination shall be effective with respect to services furnished to an individual on or after the effective date of such determination (except that in the case of institutional health care services such determination shall be effective in the manner provided in this chapter with respect to terminations of provider agreements).

Pub. L. 100–93, §6(2), substituted “this chapter” for “subchapter XVIII of this chapter”.


EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–40, set out as a note under section 1320c of this title.

EFFECTIVE DATE OF 1996 AMENDMENT


Amendment by section 231(f) of Pub. L. 104–191 applicable to acts or omissions occurring on or after Jan. 1, 1997, see section 231(i) of Pub. L. 104–191, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 156(b)(6)(A) of Pub. L. 103–432, set out as a note under section 1320c–9 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4205(a)(2) of Pub. L. 101–508 provided that: “The amendments made by paragraph (1) [amending this section] shall apply to initial determinations made by organizations on or after the date of the enactment of this Act [Nov. 5, 1990].”

Section 4205(d)(2)(B) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §156(b)(3), Oct. 31, 1994, 108 Stat. 4411, provided that: “The amendment made by this paragraph [amending this section] shall apply to sanctions effected more than 60 days after the date of the enactment of this Act [Nov. 5, 1990].”

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4095(b) of Pub. L. 100–203 provided that: “The amendment made by subsection (a) [amending this section] shall apply to determinations made by the Secretary of Health and Human Services under section 1156(b) of the Social Security Act [subsec. (b) of this section] on or after the date of the enactment of this Act [Dec. 22, 1987].”

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

TELECOMMUNICATIONS DEMONSTRATION PROJECTS

Section 9094(e) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(j)(3)(C), as added by Pub. L. 100–360, title VI, §4039(d)(2)(A), Oct. 31, 1986, 102 Stat. 2421, provided that: “The Secretary of Health and Human Services shall enter into agreements with entities submitting applications under this subsection (in such form as the Secretary may provide) to establish demonstration projects to examine the feasibility of requiring institution and oversight of rural physicians, in lieu of imposing sanctions, through use of video communication between rural hospitals and teaching hospitals under this title [probably means title XI of the Social Security Act which is classified to this subchapter]. Under such demonstration projects, the Secretary may provide for payments to physicians constituted via video communication systems. No funds may be expended under the demonstration projects for the acquisition of capital items including computer hardware.”

PREEXISTING HURDLES; TRANSITION FOR CURRENT CASES AND REDETERMINATION IN CERTAIN CASES

Section 4095(c), (d) of Pub. L. 100–203 provided that: “(c) TRANSITION FOR CURRENT CASES.—In the case of a practitioner or person—
§ 1320c–6. Limitation on liability

(a) Providers of information to organizations having a contract with Secretary

Notwithstanding any other provision of law, no person providing information to any organization having a contract with the Secretary under this part shall be held, by reason of having provided such information, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) unless—

(1) such information is unrelated to the performance of the contract of such organization; or

(2) such information is false and the person providing it knew, or had reason to believe, that such information was false.

(b) Employees and fiduciaries of organizations having contracts with Secretary

No organization having a contract with the Secretary under this part and no person who is employed by, or who has a fiduciary relationship with, any such organization or who furnishes professional services to such organization, shall be held by reason of the performance of any duty, function, or activity required or authorized pursuant to this part or to a valid contract entered into under this part, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) provided due care was exercised in the performance of such duty, function, or activity.

(c) Physicians and providers

No doctor of medicine or osteopathy and no provider (including directors, trustees, employees, or officials thereof) of health care services shall be civilly liable to any person under any law of the United States or of any State (or political subdivision thereof) on account of any action taken by him in compliance with or reliance upon professionally developed norms of care and treatment applied by an organization under contract pursuant to section 1320c–2 of this title operating in the area where such doctor of medicine or osteopathy or provider took such action; but only if—

(1) he takes such action in the exercise of his profession as a doctor of medicine or osteopathy or in the exercise of his functions as a provider of health care services; and

(2) he exercised due care in all professional conduct taken or directed by him and reasonably related to, and resulting from, the actions taken in compliance with or reliance upon such professionally accepted norms of care and treatment.

(d) Reimbursement by Secretary for expenses incurred in defense of legal proceedings

The Secretary shall make payment to an organization under contract with him pursuant to this part, or to any member or employee thereof, or to any person who furnishes legal counsel or services to such organization, in an amount equal to the reasonable amount of the expenses incurred, as determined by the Secretary, in connection with the defense of any suit, action, or proceeding brought against such organization, member, or employee related to the performance of any duty or function under such contract by such organization, member, or employee.

§ 1320c–7. Application of this part to certain State programs receiving Federal financial assistance

(a) State plan provision that functions of quality improvement organizations may be performed by contract with such organization

A State plan approved under subchapter XIX of this chapter may provide that the functions specified in section 1320c–3 of this title may be performed in an area by contract with a quality improvement organization that has entered into a contract with the Secretary in accordance with the provisions of section 1395y(g) of this title.

(b) Federal share of expenditures

In the event a State enters into a contract in accordance with subsection (a) of this section, the Federal share of the expenditures made to
the contracting organization for its costs in the performance of its functions under the State plan shall be 75 percent (as provided in section 1396b(a)(3)(C) of this title).


PRIOR PROVISIONS


AMENDMENTS


EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 1395y(g) of this title.

§1320c–8. Authorization for use of certain funds to administer provisions of this part

Expenses incurred in the administration of the contracts described in section 1395y(g) of this title shall be payable from—

(1) funds in the Federal Hospital Insurance Trust Fund; and

(2) funds in the Federal Supplementary Medical Insurance Trust Fund,

in such amounts from each of such Trust Funds as the Secretary shall deem to be fair and equitable after taking into consideration the expenses attributable to the administration of this part with respect to each of such programs. The Secretary shall make such transfers of moneys between such Trust Funds as may be appropriate to settle accounts between them in cases where expenses properly payable from one such Trust Fund have been paid from the other such Trust Fund.


PRIOR PROVISIONS


§1320c–9. Prohibition against disclosure of information

(a) Freedom of Information Act inapplicable; exceptions to nondisclosure

An organization, in carrying out its functions under a contract entered into under this part, shall not be a Federal agency for purposes of the provisions of section 552 of title 5 (commonly referred to as the Freedom of Information Act). Any data or information acquired by any such organization in the exercise of its duties and functions shall be held in confidence and shall not be disclosed to any person except—

(1) to the extent that may be necessary to carry out the purposes of this part,

(2) in such cases and under such circumstances as the Secretary shall by regulations provide to assure adequate protection of the rights and interests of patients, health care practitioners, or providers of health care, or

(3) in accordance with subsection (b) of this section.

(b) Disclosure of information permitted

An organization having a contract with the Secretary under this part shall provide in accordance with procedures and safeguards established by the Secretary, data and information—

(1) which may identify specific providers or practitioners as may be necessary—

(A) to assist Federal and State agencies recognized by the Secretary as having responsibility for identifying cases or patterns involving risks to the public health, which data and information shall be provided by the quality improvement organization to any such agency,

(B) to assist appropriate Federal and State agencies recognized by the Secretary as having responsibility for identifying cases or patterns involving risks to the public health, which data and information shall be provided by the quality improvement organization to any such agency,

(ii) upon a finding by, or the reasonable belief of, the quality improvement organization, at the request of such agency relating to a specific case or pattern;

(C) to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners or to assist national accreditation bodies acting pursuant to section 1395bb of this title in accrediting providers for purposes of meeting the conditions described in subchapter XVIII of this chapter, which data and information shall be provided by the quality improvement organization to any such agency or body at the request of such agency or body relating to a specific case or to a possible pattern of substandard care, but only to the extent that such data and information are required by the agency or body to carry out its respective function which is within the jurisdiction of the agency or body under State law or under section 1395bb of this title; and

(D) to provide notice in accordance with section 1320c–3(a)(9)(B) of this title;

(2) to assist the Secretary, and such Federal and State agencies recognized by the Sec-
The Secretary as having health planning or related responsibilities under Federal or State law (including health systems agencies and State health planning and development agencies), in carrying out appropriate health care planning and related activities, which data and information shall be provided in such format and manner as may be prescribed by the Secretary or agreed upon by the responsible Federal and State agencies and such organization, and shall be in the form of aggregate statistical data (without explicitly identifying any individual) on a geographic, institutional, or other basis reflecting the volume and frequency of services furnished, as well as the demographic characteristics of the population subject to review by such organization.

The penalty provided in subsection (c) of this section shall not apply to the disclosure of any information received under this subsection, except that such penalty shall apply to the disclosure (by the agency receiving such information) of any such information described in paragraph (1) unless such disclosure is made in a judicial, administrative, or other formal legal proceeding resulting from an investigation conducted by the agency receiving the information. An organization may require payment of a reasonable fee for providing information under this subsection in response to a request for such information.

### (c) Penalties

It shall be unlawful for any person to disclose any such information described in subsection (a) of this section other than for the purposes provided in subsections (a) and (b) of this section, and any person violating the provisions of this section shall, upon conviction, be fined not more than $1,000, and imprisoned for not more than 6 months, or both, and shall be required to pay the costs of prosecution.

### (d) Subpoena and discovery proceedings regarding patient records

No patient record in the possession of an organization having a contract with the Secretary under this part shall be subject to subpoena or discovery proceedings in a civil action. No document or other information produced by such an organization in connection with its deliberations in making determinations under section 1320c–3(a)(1)(B) or 1320c–5(a)(2) of this title shall be subject to subpoena or discovery in any administrative or civil proceeding; except that such an organization shall provide, upon request of a practitioner or other person adversely affected by such a determination, a summary of the organization’s findings and conclusions in making the determination.

### (e) Organizations with contracts

For purposes of this section and section 1320c–6 of this title, the term “organization with a contract with the Secretary under this part” includes an entity with a contract with the Secretary under section 1320c–3(a)(4)(C)


### REFERENCES IN TEXT


### AMENDMENTS


1994—Subsec. (b)(1)(D). Pub. L. 103–432, § 156(b)(2)(B), added subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “to provide notice to the State medical board in accordance with section 1320c–3(a)(9)(B) of this title when the organization submits a report and recommendations to the Secretary under section 1320c–5(b)(1) of this title with respect to a physician whom the board is responsible for licensing.”.

Subsec. (d). Pub. L. 103–432, § 156(b)(4), which directed amendment of subsec. (d) by substituting “subpoena” for “subpena”, was executed by making the substitution in two places to reflect the probable intent of Congress.


Subsec. (d). Pub. L. 101–508, § 4205(e)(1), inserted at end “No document or other information produced by such an organization in connection with its deliberations in making determinations under section 1320c–3(a)(1)(B) or 1320c–5(a)(2) of this title shall be subject to subpoena or discovery in any administrative or civil proceeding; except that such an organization shall provide, upon request of a practitioner or other person adversely affected by such a determination, a summary of the organization’s findings and conclusions in making the determination.”.


1986—Subsec. (b)(1)(C). Pub. L. 99–509 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners, which data and information shall be provided by the peer review organization to any such agency at the request of such agency relating to a specific case, but only to the extent that such data and information is required by the agency in carrying out a function which is within the jurisdiction of such agency under State law.”.

### EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–40, set out as a note under section 1320c of this title.
§ 1320c–11. Exemptions for religious nonmedical health care institutions

The provisions of this part shall not apply with respect to a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title),


PRIOR PROVISIONS

AMENDMENTS
2011—Par. (1). Pub. L. 112–40 substituted “quality improvement” for “utilization and quality control peer review”.

§ 1320c–10. Annual reports

The Secretary shall submit to the Congress not later than April 1 of each year, a full and complete report on the administration, impact, and cost of the program under this part during the preceding fiscal year, including data and information on—

(1) the number, status, and service areas of all quality improvement organizations participating in the program;

(2) the number of health care institutions and practitioners whose services are subject to review by such organizations, and the number of participating providers who received services subject to such review during such year;

(3) the various methods of reimbursement utilized in contracts under this part, and the relative efficiency of each such method of reimbursement;

(4) the imposition of penalties and sanctions under this title for violations of law and for failure to comply with the obligations imposed by this part;

(5) the total costs incurred under subchapters XVIII and XIX of this chapter in the implementation and operation of all procedures required by such subchapters for the review of services to determine their medical necessity, appropriateness of use, and quality; and

(6) descriptions of the criteria upon which decisions are made, and the selection and relative weights of such criteria.

AMENDMENTS
1997—Pub. L. 105–33 substituted “Exemptions for religious nonmedical health care institutions” for “Exemptions of Christian Science sanatoriums” in section catchline and substituted “religious nonmedical health care institution (as defined in section 1395xx(a)(1) of this title)” for “Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts” in text.

EFFECTIVE DATE OF 1997 AMENDMENT
Amendment by Pub. L. 105–33 effective Aug. 5, 1997, and shall be implemented, and services furnished on or after such date, with provision that Secretary of Health and Human Services issue regulations to carry out such amendment by not later than July 1, 1998, see section 114(a) of Pub. L. 105–33, set out as an Effective Date note under section 1395l–5 of this title.

§ 1320c–12. Medical officers in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands to be included in the quality improvement program

For purposes of applying this part to American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, individuals licensed to practice medicine in those places shall be considered to be physicians and doctors of medicine.


PRIOR PROVISIONS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS
For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.


EFFECTIVE DATE OF REPEAL
Repeal applicable to services provided on or after Oct. 1, 1981, see section 114(a) of Pub. L. 97–248, set out as an Effective Date of 1994 Amendment note under section 1395l–5 of this title.

§§ 1320c–14 to 1320c–19. Omitted

CODIFICATION


EFFECTIVE DATE OF REPEAL
Repeal applicable to agreements with Professional Standards Review Organizations entered into on or after Oct. 1, 1981, see section 2113(o) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 1395a of this title.

§§ 1320c–21, 1320c–22. Omitted

CODIFICATION
Sections 1320c–21 and 1320c–22 were omitted in the general revision of this part by Pub. L. 97–248, title I, §143, Sept. 3, 1982, 96 Stat. 382.


PART C—ADMINISTRATIVE SIMPLIFICATION

§ 1320d. Definitions

For purposes of this part:

(1) Code set

The term “code set” means any set of codes used for encoding data elements, such as
tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes.

(2) Health care clearinghouse

The term “health care clearinghouse” means a public or private entity that processes or facilitates the processing of non-standard data elements of health information into standard data elements.

(3) Health care provider

The term “health care provider” includes a provider of services (as defined in section 1395x(u) of this title), a provider of medical or other health services (as defined in section 1395x(s) of this title), and any other person furnishing health care services or supplies.

(4) Health information

The term “health information” means any information, whether oral or recorded in any form or medium, that—

(A) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

(B) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

(5) Health plan

The term “health plan” means an individual or group plan that provides, or pays the cost of, medical care (as such term is defined in section 1395g–91 of this title). Such term includes the following, and any combination thereof:

(A) A group health plan (as defined in section 1395g–91(a) of this title), but only if the plan—

(i) has 50 or more participants (as defined in section 1001(7) of title 29); or

(ii) is administered by an entity other than the employer who established and maintains the plan.

(B) A health insurance issuer (as defined in section 1395g–91(b) of this title).

(C) A health maintenance organization (as defined in section 1395g–91(b) of this title).

(D) Parts A, B, C, or D of the Medicare program under subchapter XVIII of this chapter.

(E) The medicaid program under subchapter XIX of this chapter.

(F) A Medicare supplemental policy (as defined in section 1395a(g)(1) of this title).

(G) A long-term care policy, including a nursing home fixed indemnity policy (unless the Secretary determines that such a policy does not provide sufficiently comprehensive coverage of a benefit so that the policy should be treated as a health plan).

(H) An employee welfare benefit plan or any other arrangement which is established or maintained for the purpose of offering or providing health benefits to the employees of 2 or more employers.

(1) The health care program for active military personnel under title 10.

(2) The veterans health care program under chapter 17 of title 38.

(3) The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as defined in section 1072(4) of title 10.

(L) The Indian health service program under the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.)

(M) The Federal Employees Health Benefit Plan under chapter 89 of title 5.

(6) Individually identifiable health information

The term “individually identifiable health information” means any information, including demographic information collected from an individual, that—

(A) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(B) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and—

(i) identifies the individual; or

(ii) with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

(7) Standard

The term “standard”, when used with reference to a data element of health information or a transaction referred to in section 1320d–2(a)(1) of this title, means any such data element or transaction that meets each of the standards and implementation specifications adopted or established by the Secretary with respect to the data element or transaction under sections 1320d–1 through 1320d–3 of this title.

(8) Standard setting organization

The term “standard setting organization” means a standard setting organization accredited by the American National Standards Institute, including the National Council for Prescription Drug Programs, that develops standards for information transactions, data elements, or any other standard that is necessary to, or will facilitate, the implementation of this part.

(9) Operating rules

The term “operating rules” means the necessary business rules and guidelines for the electronic exchange of information that are not defined by a standard or its implementation specifications as adopted for purposes of this part.

References in Text

§ 1320d–1. General requirements for adoption of standards

(a) Applicability

Any standard adopted under this part shall apply, in whole or in part, to the following persons:

(1) A health plan.
(2) A health care clearinghouse.
(3) A health care provider who transmits any health information in electronic form in connection with a transaction referred to in section 1320d–2(a)(1) of this title.

(b) Reduction of costs

Any standard adopted under this part shall be consistent with the objective of reducing the administrative costs of providing and paying for health care.

(c) Role of standard setting organizations

(1) In general

Except as provided in paragraph (2), any standard adopted under this part shall be a standard that has been developed, adopted, or modified by a standard setting organization.

(2) Special rules

(A) Different standards

The Secretary may adopt a standard that is different from any standard developed, adopted, or modified by a standard setting organization, if—

(i) the different standard will substantially reduce administrative costs to health care providers and health plans compared to the alternatives; and

(ii) the standard is promulgated in accordance with the rulemaking procedures of subchapter III of chapter 5 of title 5.

(b) No standard by standard setting organization

If no standard setting organization has developed, adopted, or modified any standard relating to a standard that the Secretary is authorized or required to adopt under this part—

(i) paragraph (1) shall not apply; and

(ii) subsection (f) of this section shall apply.

(3) Consultation requirement

(A) In general

A standard may not be adopted under this part unless—

(i) in the case of a standard that has been developed, adopted, or modified by a standard setting organization, the organization consulted with each of the organizations described in subparagraph (B) in the course of such development, adoption, or modification; and

(ii) in the case of any other standard, the Secretary, in complying with the requirements of subsection (f) of this section, consulted with each of the organizations described in subparagraph (B) before adopting the standard.

(B) Organizations described

The organizations referred to in subparagraph (A) are the following:

(i) The National Uniform Billing Committee.
(ii) The National Uniform Claim Committee.
(iii) The Workgroup for Electronic Data Interchange.
(iv) The American Dental Association.

(d) Implementation specifications

The Secretary shall establish specifications for implementing each of the standards adopted under this part.

(e) Protection of trade secrets

Except as otherwise required by law, a standard adopted under this part shall not require disclosure of trade secrets or confidential commercial information by a person required to comply with this part.

(f) Assistance to Secretary

In complying with the requirements of this part, the Secretary shall rely on the recommendations of the National Committee on Vital and Health Statistics established under section 242(k) of this title, and shall consult with appropriate Federal and State agencies and private organizations. The Secretary shall publish in the Federal Register any recommendation of the National Committee on Vital and Health Statistics regarding the adoption of a standard under this part.
(g) Application to modifications of standards

This section shall apply to a modification to a standard (including an addition to a standard) adopted under section 1320d–3(b) of this title in the same manner as it applies to an initial standard adopted under section 1320d–3(a) of this title.


Prior Provisions

A prior section 1172 of act Aug. 14, 1935, was classified to section 1320c–21 of this title prior to the general amendment of part B of this subchapter by Pub. L. 97–248.

§ 1320d–2. Standards for information transactions and data elements

(a) Standards to enable electronic exchange

(1) In general

The Secretary shall adopt standards for transactions, and data elements for such transactions, to enable health information to be exchanged electronically, that are appropriate for—

(A) the financial and administrative transactions described in paragraph (2); and

(B) other financial and administrative transactions determined appropriate by the Secretary, consistent with the goals of improving the operation of the health care system and reducing administrative costs, and subject to the requirements under paragraph (5).

(2) Transactions

The transactions referred to in paragraph (1)(A) are transactions with respect to the following:

(A) Health claims or equivalent encounter information.

(B) Health claims attachments.

(C) Enrollment and disenrollment in a health plan.

(D) Eligibility for a health plan.

(E) Health care payment and remittance advice.

(F) Health plan premium payments.

(G) First report of injury.

(H) Health claim status.

(I) Referral certification and authorization.

(J) Electronic funds transfers.

(3) Accommodation of specific providers

The standards adopted by the Secretary under paragraph (1) shall accommodate the needs of different types of health care providers.

(4) Requirements for financial and administrative transactions

(A) In general

The standards and associated operating rules adopted by the Secretary shall—

(i) to the extent feasible and appropriate, enable determination of an individual’s eligibility and financial responsibility for specific services prior to or at the point of care;

(ii) be comprehensive, requiring minimal augmentation by paper or other communications;

(iii) provide for timely acknowledgment, response, and status reporting that supports a transparent claims and denial management process (including adjudication and appeals); and

(iv) describe all data elements (including reason and remark codes) in unambiguous terms, require that such data elements be required or conditioned upon set values in other fields, and prohibit additional conditions (except where necessary to implement State or Federal law, or to protect against fraud and abuse).

(B) Reduction of clerical burden

In adopting standards and operating rules for the transactions referred to under paragraph (1), the Secretary shall seek to reduce the number and complexity of forms (including paper and electronic forms) and data entry required by patients and providers.

(5) Consideration of standardization of activities and items

(A) In general

For purposes of carrying out paragraph (1)(B), the Secretary shall solicit, not later than January 1, 2012, and not less than every 3 years thereafter, input from entities described in subparagraph (B) on—

(i) whether there could be greater uniformity in financial and administrative activities and items, as determined appropriate by the Secretary; and

(ii) whether such activities should be considered financial and administrative transactions (as described in paragraph (1)(B)) for which the adoption of standards and operating rules would improve the operation of the health care system and reduce administrative costs.

(B) Solicitation of input

For purposes of subparagraph (A), the Secretary shall seek input from—

(i) the National Committee on Vital and Health Statistics, the Health Information Technology Policy Committee, and the Health Information Technology Standards Committee; and

(ii) standard setting organizations and stakeholders, as determined appropriate by the Secretary.

(b) Unique health identifiers

(1) In general

The Secretary shall adopt standards providing for a standard unique health identifier for each individual, employer, health plan, and health care provider for use in the health care system. In carrying out the preceding sentence for each health plan and health care provider, the Secretary shall take into account multiple uses for identifiers and multiple locations and specialty classifications for health care providers.

(2) Use of identifiers

The standards adopted under paragraph (1) shall specify the purposes for which a unique health identifier may be used.
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TITLE 42—THE PUBLIC HEALTH AND WELFARE

(c) Code sets

(1) In general

The Secretary shall adopt standards that—

(A) select code sets for appropriate data elements for the transactions referred to in subsection (a)(1) of this section from among the code sets that have been developed by private and public entities; or

(B) establish code sets for such data elements if no code sets for the data elements have been developed.

(2) Distribution

The Secretary shall establish efficient and low-cost procedures for distribution (including electronic distribution) of code sets and modifications made to such code sets under section 1320d–3(b) of this title.

(d) Security standards for health information

(1) Security standards

The Secretary shall adopt security standards that—

(A) take into account—

(i) the technical capabilities of record systems used to maintain health information;

(ii) the costs of security measures;

(iii) the need for training persons who have access to health information;

(iv) the value of audit trails in computerized record systems; and

(v) the needs and capabilities of small health care providers and rural health care providers (as such providers are defined by the Secretary); and

(B) ensure that a health care clearinghouse, if it is part of a larger organization, has policies and security procedures which isolate the activities of the health care clearinghouse with respect to processing information in a manner that prevents unauthorized access to such information by such larger organization.

(2) Safeguards

Each person described in section 1320d–1(a) of this title who maintains or transmits health information shall maintain reasonable and appropriate administrative, technical, and physical safeguards—

(A) to ensure the integrity and confidentiality of the information;

(B) to protect against any reasonably anticipated—

(i) threats or hazards to the security or integrity of the information; and

(ii) unauthorized uses or disclosures of the information; and

(C) otherwise to ensure compliance with this part by the officers and employees of such person.

(e) Electronic signature

(1) Standards

The Secretary, in coordination with the Secretary of Commerce, shall adopt standards specifying procedures for the electronic transmission and authentication of signatures with respect to the transactions referred to in subsection (a)(1) of this section.

(2) Effect of compliance

Compliance with the standards adopted under paragraph (1) shall be deemed to satisfy Federal and State statutory requirements for written signatures with respect to the transactions referred to in subsection (a)(1) of this section.

(f) Transfer of information among health plans

The Secretary shall adopt standards for transferring among health plans appropriate standard data elements needed for the coordination of benefits, the sequential processing of claims, and other data elements for individuals who have more than one health plan.

(g) Operating rules

(1) In general

The Secretary shall adopt a single set of operating rules for each transaction referred to under subsection (a)(1) with the goal of creating as much uniformity in the implementation of the electronic standards as possible. Such operating rules shall be consensus-based and reflect the necessary business rules affecting health plans and health care providers and the manner in which they operate pursuant to standards issued under Health Insurance Portability and Accountability Act of 1996.

(2) Operating rules development

In adopting operating rules under this subsection, the Secretary shall consider recommendations for operating rules developed by a qualified nonprofit entity that meets the following requirements:

(A) The entity focuses its mission on administrative simplification.

(B) The entity demonstrates a multi-stakeholder and consensus-based process for development of operating rules, including representation by or participation from health plans, health care providers, vendors, relevant Federal agencies, and other standard development organizations.

(C) The entity has a public set of guiding principles that ensure the operating rules and process are open and transparent, and supports nondiscrimination and conflict of interest policies that demonstrate a commitment to open, fair, and nondiscriminatory practices.

(D) The entity builds on the transaction standards issued under Health Insurance Portability and Accountability Act of 1996.

(E) The entity allows for public review and updates of the operating rules.

(3) Review and recommendations

The National Committee on Vital and Health Statistics shall—

(A) advise the Secretary as to whether a nonprofit entity meets the requirements under paragraph (2);

(B) review the operating rules developed and recommended by such nonprofit entity;

(C) determine whether such operating rules represent a consensus view of the health care stakeholders and are consistent with and do not conflict with other existing standards;

(D) evaluate whether such operating rules are consistent with electronic standards.
adopted for health information technology; and

(E) submit to the Secretary a recommendation as to whether the Secretary should adopt such operating rules.

(4) Implementation

(A) In general

The Secretary shall adopt operating rules under this subsection, by regulation in accordance with subparagraph (C), following consideration of the operating rules developed by the non-profit entity described in paragraph (3)(E) and having ensured consultation with providers.

(B) Adoption requirements; effective dates

(i) Eligibility for a health plan and health claim status

The set of operating rules for eligibility for a health plan and health claim status transactions shall be adopted not later than July 1, 2013, in a manner ensuring that such operating rules are effective not later than January 1, 2013, and may allow for the use of a machine readable identification card.

(ii) Electronic funds transfers and health care payment and remittance advice

The set of operating rules for electronic funds transfers and health care payment and remittance advice transactions shall—

(1) allow for automated reconciliation of the electronic payment with the remittance advice; and

(2) be adopted not later than July 1, 2012, in a manner ensuring that such operating rules are effective not later than January 1, 2014.

(iii) Health claims or equivalent encounter information, enrollment and disenrollment in a health plan, health plan premium payments, health claims attachments, referral certification and authorization

The set of operating rules for health claims or equivalent encounter information, enrollment and disenrollment in a health plan, health plan premium payments, and referral certification and authorization transactions shall be adopted not later than July 1, 2014, in a manner ensuring that such operating rules are effective not later than January 1, 2016.

(C) Expedited rulemaking

The Secretary shall promulgate an interim final rule applying any standard or operating rule recommended by the National Committee on Vital and Health Statistics pursuant to paragraph (3). The Secretary shall accept and consider public comments on any interim final rule published under this subparagraph for 60 days after the date of such publication.

(h) Compliance

(1) Health plan certification

(A) Eligibility for a health plan, health claim status, electronic funds transfers, health care payment and remittance advice

Not later than December 31, 2013, a health plan shall file a statement with the Secretary, in such form as the Secretary may require, certifying that the data and information systems for such plan are in compliance with any applicable standards (as described under paragraph (7) of section 1320d of this title) and associated operating rules (as described under paragraph (9) of such section) for electronic funds transfers, eligibility for a health plan, health claim status, and health care payment and remittance advice, respectively.

(B) Health claims or equivalent encounter information, enrollment and disenrollment in a health plan, health plan premium payments, health claims attachments, referral certification and authorization

Not later than December 31, 2015, a health plan shall file a statement with the Secretary, in such form as the Secretary may require, certifying that the data and information systems for such plan are in compliance with any applicable standards and associated operating rules for health claims or equivalent encounter information, enrollment and disenrollment in a health plan, health plan premium payments, health claims attachments, and referral certification and authorization, respectively. A health plan shall provide the same level of documentation to certify compliance with such transactions as is required to certify compliance with the transactions specified in subparagraph (A).

(2) Documentation of compliance

A health plan shall provide the Secretary, in such form as the Secretary may require, with adequate documentation of compliance with the standards and operating rules described under paragraph (1). A health plan shall not be considered to have provided adequate documentation and shall not be certified as being in compliance with such standards, unless the health plan—

(A) demonstrates to the Secretary that the plan conducts the electronic transactions specified in paragraph (1) in a manner that fully complies with the regulations of the Secretary; and

(B) provides documentation showing that the plan has completed end-to-end testing for such transactions with their partners, such as hospitals and physicians.

(3) Service contracts

A health plan shall be required to ensure that any entities that provide services pursuant to a contract with such health plan shall comply with any applicable certification and compliance requirements (and provide the Secretary with adequate documentation of such compliance) under this subsection.
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(4) Certification by outside entity

The Secretary may designate independent, outside entities to certify that a health plan has complied with the requirements under this subsection, provided that the certification standards employed by such entities are in accordance with any standards or operating rules issued by the Secretary.

(5) Compliance with revised standards and operating rules

(A) In general

A health plan (including entities described under paragraph (3)) shall file a statement with the Secretary, in such form as the Secretary may require, certifying that the data and information systems for such plan are in compliance with any applicable revised standards and associated operating rules under this subsection for any interim final rule promulgated by the Secretary under subsection (i) that—

(i) amends any standard or operating rule described under paragraph (1) of this subsection; or

(ii) establishes a standard (as described under subsection (i)(5)) for any other financial and administrative transactions.

(B) Date of compliance

A health plan shall comply with such requirements not later than the effective date of the applicable standard or operating rule.

(6) Audits of health plans

The Secretary shall conduct periodic audits to ensure that health plans (including entities described under paragraph (3)) are in compliance with any standards and operating rules that are described under paragraph (1) or subsection (1)(5).

(i) Review and amendment of standards and operating rules

(1) Establishment

Not later than January 1, 2014, the Secretary shall establish a review committee (as described under paragraph (4)).

(2) Evaluations and reports

(A) Hearings

Not later than April 1, 2014, and not less than biennially thereafter, the Secretary, acting through the review committee, shall conduct hearings to evaluate and review the adopted standards and operating rules established under this section.

(B) Report

Not later than July 1, 2014, and not less than biennially thereafter, the review committee shall provide recommendations for updating and improving such standards and operating rules. The review committee shall recommend a single set of operating rules per transaction standard and maintain the goal of creating as much uniformity as possible in the implementation of the electronic standards.

(3) Interim final rulemaking

(A) In general

Any recommendations to amend adopted standards and operating rules that have been approved by the review committee and reported to the Secretary under paragraph (2)(B) shall be adopted by the Secretary through promulgation of an interim final rule not later than 90 days after receipt of the committee’s report.

(B) Public comment

(i) Public comment period

The Secretary shall accept and consider public comments on any interim final rule published under this paragraph for 60 days after the date of such publication.

(ii) Effective date

The effective date of any amendment to existing standards or operating rules that is adopted through an interim final rule published under this paragraph shall be 25 months following the close of such public comment period.

(4) Review committee

(A) Definition

For the purposes of this subsection, the term “review committee” means a committee chartered by or within the Department of Health and Human Services that has been designated by the Secretary to carry out this subsection, including—

(i) the National Committee on Vital and Health Statistics; or

(ii) any appropriate committee as determined by the Secretary.

(B) Coordination of HIT standards

In developing recommendations under this subsection, the review committee shall ensure coordination, as appropriate, with the standards that support the certified electronic health record technology approved by the Office of the National Coordinator for Health Information Technology.

(5) Operating rules for other standards adopted by the Secretary

The Secretary shall adopt a single set of operating rules (pursuant to the process described under subsection (g)) for any transaction for which a standard had been adopted pursuant to subsection (a)(1)(B).

(j) Penalties

(1) Penalty fee

(A) In general

Not later than April 1, 2014, and annually thereafter, the Secretary shall assess a penalty fee (as determined under subparagraph (B)) against a health plan that has failed to meet the requirements under subsection (h) with respect to certification and documentation of compliance with—

(i) the standards and associated operating rules described under paragraph (1) of such subsection; and

(ii) a standard (as described under subsection (a)(1)(B)) and associated operating...
rules (as described under subsection (i)(5)) for any other financial and administrative transactions.

(B) Fee amount

Subject to subparagraphs (C), (D), and (E), the Secretary shall assess a penalty fee against a health plan in the amount of $1 per covered life until certification is complete. The penalty shall be assessed per person covered by the plan for which its data systems for major medical policies are not in compliance and shall be imposed against the health plan for each day that the plan is not in compliance with the requirements under subsection (h).

(C) Additional penalty for misrepresentation

A health plan that knowingly provides inaccurate or incomplete information in a statement of certification or documentation of compliance under subsection (h) shall be subject to a penalty fee that is double the amount that would otherwise be imposed under this subsection.

(D) Annual fee increase

The amount of the penalty fee imposed under this subsection shall be increased on an annual basis by the annual percentage increase in total national health care expenditures, as determined by the Secretary.

(E) Penalty limit

A penalty fee assessed against a health plan under this subsection shall not exceed, on an annual basis—

(i) an amount equal to $20 per covered life under such plan; or
(ii) an amount equal to $40 per covered life under the plan if such plan has knowingly provided inaccurate or incomplete information (as described under subparagraph (C)).

(F) Determination of covered individuals

The Secretary shall determine the number of covered lives under a health plan based upon the most recent statements and filings that have been submitted by such plan to the Securities and Exchange Commission.

(2) Notice and dispute procedure

The Secretary shall establish a procedure for assessment of penalty fees under this subsection that provides a health plan with reasonable notice and a dispute resolution procedure prior to provision of a notice of assessment by the Secretary of the Treasury (as described under paragraph (4)(B)).

(3) Penalty fee report

Not later than May 1, 2014, and annually thereafter, the Secretary shall provide the Secretary of the Treasury with a report identifying those health plans that have been assessed a penalty fee under this subsection.

(4) Collection of penalty fee

(A) In general

The Secretary of the Treasury, acting through the Financial Management Service, shall administer the collection of penalty fees from health plans that have been identified by the Secretary in the penalty fee report provided under paragraph (3).

(B) Notice

Not later than August 1, 2014, and annually thereafter, the Secretary of the Treasury shall provide notice to each health plan that has been assessed a penalty fee by the Secretary under this subsection. Such notice shall include the amount of the penalty fee assessed by the Secretary and the due date for payment of such fee to the Secretary of the Treasury (as described in subparagraph (C)).

(C) Payment due date

Payment by a health plan for a penalty fee assessed under this subsection shall be made to the Secretary of the Treasury not later than November 1, 2014, and annually thereafter.

(D) Unpaid penalty fees

Any amount of a penalty fee assessed against a health plan under this subsection for which payment has not been made by the due date provided under subparagraph (C) shall be—

(i) increased by the interest accrued on such amount, as determined pursuant to the underpayment rate established under section 6621 of the Internal Revenue Code of 1986; and
(ii) treated as a past-due, legally enforceable debt owed to a Federal agency for purposes of section 6402(d) of the Internal Revenue Code of 1986.

(E) Administrative fees

Any fee charged or allocated for collection activities conducted by the Financial Management Service will be passed on to a health plan on a pro-rata basis and added to any penalty fee collected from the plan.


References in Text


The Internal Revenue Code of 1986, referred to in subsec. (j)(4)(D)(i), (ii), is classified generally to Title 26, Internal Revenue Code.

Prior Provisions

A prior section 1173 of act Aug. 14, 1935, was classified to section 1320c-22 of this title prior to the general amendment of part B of this subchapter by Pub. L. 97-248.

Amendments

2010—Subsec. (a)(1)(B). Pub. L. 111-148, §1109(a)(1)(A), inserted before period at end "; and subject to the requirements under paragraph (5)';


Subsecs. (g) to (j). Pub. L. 111–148, §1106(b)(2)(C), added subssecs. (g) to (j).

**PROMULGATION OF RULES**

Pub. L. 111–148, title I, §1104(c), Mar. 23, 2010, 124 Stat. 153, provided that:

"(1) UNIQUE HEALTH PLAN IDENTIFIER.—The Secretary [of Health and Human Services] shall promulgate a final rule to establish a unique health plan identifier (as described in section 1173(b) of the Social Security Act (42 U.S.C. 1320d–2(b))) based on the input of the National Committee on Vital and Health Statistics. The Secretary may do so on an interim final basis and such rule shall be effective not later than October 1, 2012.

"(2) ELECTRONIC FUNDS TRANSFER.—The Secretary shall promulgate a final rule to establish a standard for electronic funds transfers (as described in section 1173(a)(2)(J) of the Social Security Act, as added by subsection (b)(2)(A)). The Secretary may so do on an interim final basis and shall adopt such standard not later than January 1, 2012, and such standard is effective not later than January 1, 2014.

"(3) HEALTH CLAIMS ATTACHMENTS.—The Secretary shall promulgate a final rule to establish a transaction standard and a single set of associated operating rules for health claims attachments (as described in section 1173(a)(2)(B) of the Social Security Act (42 U.S.C. 1320d–2(a)(2)(B)) that is consistent with the X12 Version 5010 transaction standards. The Secretary may so do on an interim final basis and shall adopt a transaction standard and a single set of associated operating rules not later than January 1, 2014, in a manner ensuring that such standard is effective not later than January 1, 2016."

**ACTIVITIES AND ITEMS FOR INITIAL CONSIDERATION; ICD CODING CROSSWALKS**

Pub. L. 111–148, title X, §1010(b), (c), Mar. 23, 2010, 124 Stat. §16, provided that:

"(a) ACTIVITIES AND ITEMS FOR INITIAL CONSIDERATION.—For purposes of section 1173(a)(5) of the Social Security Act (42 U.S.C. 1320d–2(a)(5)), as added by subsection (a), the Secretary of Health and Human Services shall, not later than January 1, 2012, seek input on activities and items relating to the following areas:

"(1) Whether the application process, including the use of a uniform application form, for enrollment of health care providers by health plans could be made electronic and standardized.

"(2) Whether standards and operating rules described in section 1173(a)(2)(B) of the Social Security Act should apply to the health care transactions of automobile insurance, worker’s compensation, and other programs or persons not described in section 1173(a) of such Act (42 U.S.C. 1320d–2(a)(2)).

"(3) Whether standardized forms could apply to financial audits required by health plans, Federal and State agencies (including State auditors, the Office of the Inspector General of the Department of Health and Human Services, and the Centers for Medicare & Medicaid Services), and other relevant entities as determined appropriate by the Secretary.

"(4) Whether there could be greater transparency and consistency of methodologies and processes used to establish claim edits used by health plans (as described in section 1173(5) of the Social Security Act (42 U.S.C. 1320d–5)).

"(5) Whether health plans should be required to publish their timeliness of payment rules.

"(b) ICD CODING CROSSWALKS.—

"(1) ICD-9 TO ICD-10 CROSSWALK.—The Secretary shall task the ICD-9–CM Coordination and Maintenance Committee to convene a meeting, not later than January 1, 2011, to receive input from appropriate stakeholders (including health plans, health care providers, observance). The crosswalk between the Ninth and Tenth Revisions of the International Classification of Diseases (ICD–9 and ICD–10, respectively) that is posted on the website of the Centers for Medicare & Medicaid Services, and make recommendations about appropriate revisions to such crosswalk.

"(2) REVISION OF CROSSWALK.—For purposes of the crosswalk described in paragraph (1), the Secretary shall make appropriate revisions and post any such revised crosswalk on the website of the Centers for Medicare & Medicaid Services.

"(3) USE OF REVISED CROSSWALK.—For purposes of paragraph (2), any revised crosswalk shall be treated as a code set for which a standard has been adopted by the Secretary for purposes of section 1173(c)(1)(B) of the Social Security Act (42 U.S.C. 1320d–2(c)(1)(B)).

"(4) SUBSEQUENT CROSSWALKS.—For subsequent revisions of the International Classification of Diseases that are adopted by the Secretary as a standard code set under section 1173(c) of the Social Security Act (42 U.S.C. 1320d–2(c)), the Secretary shall, after consultation with the appropriate stakeholders, post on the website of the Centers for Medicare & Medicaid Services a crosswalk between the previous and subsequent version of the International Classification of Diseases not later than the date of implementation of such subsequent revision.”

**RECOMMENDATIONS WITH RESPECT TO PRIVACY OF CERTAIN HEALTH INFORMATION**

Pub. L. 104–191, title II, §264, Aug. 21, 1996, 110 Stat. 2033, provided that:

"(a) IN GENERAL.—Not later than the date that is 12 months after the date of the enactment of this Act [Aug. 21, 1996], the Secretary of Health and Human Services shall submit to the Committee on Labor and Human Resources and the Committee on Finance of the Senate and the Committee on Commerce and the Committee on Ways and Means of the House of Representatives detailed recommendations on standards with respect to the privacy of individually identifiable health information.

"(b) SUBJECTS FOR RECOMMENDATIONS.—The recommendations under subsection (a) shall address at least the following:

"(1) The rights that an individual who is a subject of individually identifiable health information should have.

"(2) The procedures that should be established for the exercise of such rights.

"(3) The uses and disclosures of such information that should be authorized or required.

"(c) REGULATIONS.—

"(1) IN GENERAL.—If legislation governing standards with respect to the privacy of individually identifiable health information transmitted in connection with the transactions described in section 1173(a) of the Social Security Act [subsec. (a) of this section] (as added by section 262) is not enacted by the date that is 36 months after the date of the enactment of this Act [Aug. 21, 1996], the Secretary of Health and Human Services shall promulgate final regulations containing such standards not later than the date that is 42 months after the date of the enactment of this Act. Such regulations shall address at least the subjects described in subsection (b).“

"(2) PREEMPTION.—A regulation promulgated under paragraph (1) shall not supercede a contrary provision of State law, if the provision of State law imposes requirements, standards, or implementation specifications that are more stringent than the requirements, standards, or implementation specifications imposed under the regulation.

"(d) CONSULTATION.—In carrying out this section, the Secretary of Health and Human Services shall consult with:

"(1) the National Committee on Vital and Health Statistics established under section 306(k) of the Public Health Service Act (42 U.S.C. 242k(k); and
“(2) the Attorney General.”

EX. ORD. NO. 13181. TO PROTECT THE PRIVACY OF PROTECTED HEALTH INFORMATION IN OVERSIGHT INVESTIGATIONS

EX. ORD. NO. 13181, Dec. 20, 2000, 65 F.R. 83281, provides:

Working within the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, it is ordered as follows:

SICRON 1. Policy.

It shall be the policy of the Government of the United States that law enforcement may not use protected health information concerning an individual that is discovered during the course of health oversight activities for unrelated civil, administrative, or criminal investigations of a non-health oversight matter, except when the balance of relevant factors weighs clearly in favor of its use. That is, protected health information may not be so used unless the public interest and the need for disclosure clearly outweigh the potential for injury to the patient, to the physician-patient relationship, and to the treatment services. Protecting the privacy of patients’ protected health information promotes trust in the health care system. It improves the quality of health care by fostering an environment in which patients can feel more comfortable in providing health care professionals with accurate and detailed information about their personal health. In order to provide greater protections to patients’ privacy, the Department of Health and Human Services is issuing final regulations concerning the confidentiality of individually identifiable health information under the Health Insurance Portability and Accountability Act of 1996 as amended [Pub. L. 104–191, see Tables for classification].

HIPAA applies only to “covered entities,” such as health care plans, providers, and clearinghouses. HIPAA regulations therefore do not apply to other organizations and individuals that gain access to protected health information, including Federal officials who gain access to health records during health oversight activities. Under the new HIPAA regulations, health oversight investigators will appropriately have ready access to medical records for oversight purposes. Health oversight investigators generally do not seek access to the medical records of a particular patient, but instead review large numbers of records to determine whether a health care provider or organization is violating the law, such as through fraud against the Medicare system. Access to many health records is often necessary in order to gain enough evidence to detect and bring enforcement actions against fraud in the health care system. Stricter rules apply under the HIPAA regulations, however, when law enforcement officials seek protected health information in order to investigate criminal activity outside of the health oversight realm. In the course of their efforts to protect the health care system, health oversight investigators may also uncover evidence of wrongdoing unrelated to the health care system, such as evidence of criminal conduct by an individual who has sought health care. For records containing that evidence, the issue thus arises whether the information should be available for law enforcement purposes under the less restrictive oversight rules or the more restrictive rules that apply to non-overight criminal investigations.

A similar issue has arisen in other circumstances. Under 18 U.S.C. 3486, an individual’s health records obtained for health oversight purposes pursuant to an administrative subpoena may not be used against that individual patient in an unrelated investigation. Under that statute, a judicial officer determines whether there is good cause by weighing the public interest and the need for disclosure against the potential for injury to the patient, to the physician-patient relationship, and to the treatment services. In determining the extent to which this information should be used, shall impose appropriate safeguards against unauthorized use.

(b) In assessing whether protected health information should be used under subparagraph (a) of this section, the Deputy Attorney General shall permit such use upon concluding that the balance of relevant factors weighs clearly in favor of its use. That is, the Deputy Attorney General shall permit disclosure if the public interest and the need for disclosure clearly outweigh the potential for injury to the patient, to the physician-patient relationship, and to the treatment services.

(c) “Injury to the patient” includes injury to the privacy interests of the patient.

SICRON 3. Implementation.

(a) Protected health information concerning an individual patient discovered during the course of health oversight activities shall not be used against that individual patient in an unrelated civil, administrative, or criminal investigation of a non-health oversight matter unless the Deputy Attorney General of the U.S. Department of Justice, or insofar as the protected health information involves members of the Armed Forces, the General Counsel of the U.S. Department of Defense, has authorized such use.

(b) In assessing whether protected health information should be used under subparagraph (a) of this section, the Deputy Attorney General shall permit such use upon concluding that the balance of relevant factors weighs clearly in favor of its use. That is, the Deputy Attorney General shall permit disclosure if the public interest and the need for disclosure clearly outweigh the potential for injury to the patient, to the physician-patient relationship, and to the treatment services.

(c) Upon the decision to use protected health information under subparagraph (a) of this section, the Deputy Attorney General, in determining the extent to which this information should be used, shall impose appropriate safeguards against unauthorized use.

(d) On an annual basis, the Department of Justice, in consultation with the Department of Health and Human Services, shall provide to the President of the United States a report that includes the following information:

(i) the number of requests made to the Deputy Attorney General for authorization to use protected health information discovered during health oversight activities in a non-health oversight, unrelated investigation;

(ii) the number of requests that were granted as applied for, granted as modified, or denied;

(iii) the agencies that made the applications, and the number of requests made by each agency; and

(iv) the uses for which the protected health information was authorized.

(e) The General Counsel of the U.S. Department of Defense shall ensure that the Department of Defense will comply with the requirements of subparagraphs (b), (c), and (d), above. It is appropriate, however, to extend limitations on the use of health information to all situations in which the government obtains medical records for a health oversight purpose. In recognition of the increasing importance of protecting health information as shown in the medical privacy rule, a higher standard than exists in 18 U.S.C. 3486 is necessary. In fact, therefore, the policy of the Government of the United States that law enforcement may not use protected health information concerning an individual, discovered during the course of health oversight activities for unrelated civil, administrative, or criminal investigations, against that individual except when the balance of relevant factors weighs clearly in favor of its use. That is, protected health information may not be so used unless the public interest and the need for disclosure clearly outweigh the potential for injury to the patient, to the physician-patient relationship, and to the treatment services.
§ 1320d–3. Timetables for adoption of standards
(a) Initial standards
The Secretary shall carry out section 1320d–2 of this title not later than 18 months after August 21, 1996, except that standards relating to claims attachments shall be adopted not later than 30 months after August 21, 1996.

(b) Additions and modifications to standards
(1) In general
Except as provided in paragraph (2), the Secretary shall review the standards adopted under section 1320d–2 of this title, and shall adopt modifications to the standards (including additions to the standards), as determined appropriate, but not more frequently than once every 12 months. Any addition or modification to a standard shall be completed in a manner which minimizes the disruption and cost of compliance.

(2) Special rules
(A) First 12-month period
Except with respect to additions and modifications to code sets under subparagraph (B), the Secretary may not adopt any modification to a standard adopted under this part during the 12-month period beginning on the date the standard is initially adopted, unless the Secretary determines that the modification is necessary in order to permit compliance with the standard.

(B) Additions and modifications to code sets
(i) In general
The Secretary shall ensure that procedures exist for the routine maintenance, testing, enhancement, and expansion of code sets.

(ii) Additional rules
If a code set is modified under this subsection, the modified code set shall include instructions on how data elements of health information that were encoded prior to the modification may be converted or translated so as to preserve the informational value of the data elements that existed before the modification. Any modification to a code set under this subsection shall be implemented in a manner that minimizes the disruption and cost of complying with such modification.

§ 1320d–4. Requirements
(a) Conduct of transactions by plans
(1) In general
If a person desires to conduct a transaction referred to in section 1320d–2(a)(1) of this title with a health plan as a standard transaction—
(A) the health plan may not refuse to conduct such transaction as a standard transaction;
(B) the insurance plan may not delay such transaction, or otherwise adversely affect, or attempt to adversely affect, the person or the transaction on the ground that the transaction is a standard transaction; and
(C) the information transmitted and received in connection with the transaction shall be in the form of standard data elements of health information.

(2) Satisfaction of requirements
A health plan may satisfy the requirements under paragraph (1) by—
(A) directly transmitting and receiving standard data elements of health information; or
(B) submitting nonstandard data elements to a health care clearinghouse for processing into standard data elements and transmission by the health care clearinghouse, and receiving standard data elements through the health care clearinghouse.

(3) Timetable for compliance
Paragraph (1) shall not be construed to require a health plan to comply with any standard, implementation specification, or modification to a standard or specification adopted or established by the Secretary under sections 1320d–1 through 1320d–3 of this title at any time prior to the date on which the plan is required to comply with the standard or specification under subsection (b) of this section.

(b) Compliance with standards
(1) Initial compliance
(A) In general
Not later than 24 months after the date on which an initial standard or implementation specification is adopted or established under sections 1320d–1 and 1320d–2 of this title, each person to whom the standard or implementation specification applies shall comply with the standard or specification.

(B) Special rule for small health plans
In the case of a small health plan, paragraph (1) shall be applied by substituting “36 months” for “24 months”. For purposes of this subsection, the Secretary shall determine the plans that qualify as small health plans.

(2) Compliance with modified standards
If the Secretary adopts a modification to a standard or implementation specification under this part, each person to whom the standard or implementation specification ap-
plies shall comply with the modified standard or implementation specification at such time as the Secretary determines appropriate, taking into account the time needed to comply due to the nature and extent of the modification. The time determined appropriate under the preceding sentence may not be earlier than the last day of the 180-day period beginning on the date such modification is adopted. The Secretary may extend the time for compliance for small health plans, if the Secretary determines that such extension is appropriate.

(3) **Construction**

Nothing in this subsection shall be construed to prohibit any person from complying with a standard or specification by—

(A) submitting nonstandard data elements to a health care clearinghouse for processing into standard data elements and transmission through the health care clearinghouse; or

(B) receiving standard data elements through a health care clearinghouse.


**Extension of Deadline for Covered Entities Submitting Compliance Plans**


“(a) **In General.**—

“(1) **Extension.**—Subject to paragraph (2), notwithstanding section 1175(b)(1)(A) of the Social Security Act (42 U.S.C. 1320d–4(b)(1)(A)) and section 162.900 of title 45, Code of Federal Regulations, a health care provider, health plan (other than a small health plan), or a health care clearinghouse shall not be considered to be in noncompliance with the applicable requirements of subparts I through R of part 162 of title 45, Code of Federal Regulations, before October 16, 2002.

“(2) **Condition.**—Paragraph (1) shall apply to a person described in such paragraph only if, before October 16, 2002, the person submits to the Secretary of Health and Human Services a plan of how the person will come into compliance with the requirements described in such paragraph not later than October 16, 2003. Such plan shall be a summary of the following:

“(A) An analysis reflecting the extent to which, and the reasons why, the person is not in compliance.

“(B) A budget, schedule, work plan, and implementation strategy for achieving compliance.

“(C) Whether the person plans to use or might use a contractor or other vendor to assist the person in achieving compliance.

“(D) A timeframe for testing that begins not later than April 16, 2003.

“(3) **Electronic Submission.**—Plans described in paragraph (2) may be submitted electronically.

“(4) **Model Form.**—Not later than March 31, 2002, the Secretary of Health and Human Services shall promulgate a model form that persons may use in drafting a plan described in paragraph (2). The promulgation of such form shall be made without regard to chapter 35 of title 44, United States Code (commonly known as the ‘Paperwork Reduction Act’).

“(5) **Analysis of Plans; Reports on Solutions.**—

“(i) **Furnishing of Plans.**—Subject to subparagraph (D), the Secretary of Health and Human Services shall furnish the National Committee on Vital and Health Statistics the plans submitted under paragraph (2) for analysis by such Committee.

“(ii) **Analysis.**—The National Committee on Vital and Health Statistics shall analyze the sample of the plans furnished under clause (i).

“(B) **Reports on Solutions.**—The National Committee on Vital and Health Statistics shall regularly publish, and widely disseminate to the public, reports containing effective solutions to compliance problems identified in the plans analyzed under subparagraph (A). Such reports shall not relate specifically to any one plan but shall be written for the purpose of assisting the maximum number of persons to come into compliance by addressing the most common or challenging problems encountered by persons submitting such plans.

“(C) **Consultation.**—In carrying out this paragraph, the National Committee on Vital and Health Statistics shall consult with each organization—

“(i) described in section 1172(o)(3)(B) of the Social Security Act (42 U.S.C. 1320d–4(c)(3)(B)); or

“(ii) designated by the Secretary of Health and Human Services under section 162.910(a) of title 45, Code of Federal Regulations.

“(D) **Protection of Confidential Information.**—

“(i) **In General.**—The Secretary of Health and Human Services shall ensure that any material provided under subparagraph (A) to the National Committee on Vital and Health Statistics or any organization described in subparagraph (C) is redacted so as to prevent the disclosure of any—

“(I) trade secrets;

“(II) commercial or financial information that is privileged or confidential; and

“(III) other information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

“(ii) **Construction.**—Nothing in clause (i) shall be construed to affect the application of section 552 of title 5, United States Code (commonly known as the ‘Freedom of Information Act’), including the exceptions from disclosure provided under subsection (b) of such section.

“(6) **Enforcement Through Exclusion from Participation in Medicare.**—

“(A) **In General.**—In the case of a person described in paragraph (1) who fails to submit a plan in accordance with paragraph (2), and who is not in compliance with the applicable requirements of subparts I through R of part 162 of title 45, Code of Federal Regulations, on or after October 16, 2002, the person may be excluded at the discretion of the Secretary of Health and Human Services from participation in Medicare.

“(B) **Procedure.**—The provisions of section 1128A of the Social Security Act (42 U.S.C. 1320a–7a) (other than the first and second sentences of subsection (a) and subsection (b)) shall apply to an exclusion under this paragraph in the same manner as such provisions apply with respect to an exclusion or proceeding under section 1128A(a) of such Act.

“(C) **Construction.**—The availability of an exclusion under this paragraph shall not be construed to affect the imposition of penalties under section 1176 of the Social Security Act (42 U.S.C. 1320d–5).

“(D) **Nonapplicability to Complying Persons.**—The exclusion under subparagraph (A) shall not apply to a person who—

“(i) submits a plan in accordance with paragraph (2); or

“(ii) who is in compliance with the applicable requirements of subparts I through R of part 162 of title 45, Code of Federal Regulations, on or before October 16, 2002.

“(b) **Special Rules.**—

“(1) **Rules of Construction.**—Nothing in this section shall be construed to—

“(A) as modifying the October 16, 2003, deadline for a small health plan to comply with the require-
mendations of subparts I through R of part 162 of title 45, Code of Federal Regulations; or

"(B) as modifying—

"(i) the April 14, 2003, deadline for a health care provider, a health plan (other than a small health plan), or a health care clearinghouse to comply with the requirements of subpart E of part 164 of title 45, Code of Federal Regulations; or

"(ii) the April 14, 2004, deadline for a small health plan to comply with the requirements of such subpart.

"(2) APPLICABILITY OF PRIVACY STANDARDS BEFORE COMPLIANCE DEADLINE FOR INFORMATION TRANSACTION STANDARDS.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, during the period that begins on April 14, 2003, and ends on October 16, 2003, a health care provider or, subject to subparagraph (B), a health care clearinghouse, that transmits any health information in electronic form in connection with a transaction described in subparagraph (C) shall comply with the requirements of subpart E of part 164 of title 45, Code of Federal Regulations, without regard to whether the transmission meets the standards required by part 162 of such title.

"(B) APPLICATION TO HEALTH CARE CLEARINGHOUSES.—For purposes of this paragraph, during the period described in subparagraph (A), an entity that processes or facilitates the processing of information in connection with a transaction described in subparagraph (C) and that otherwise would be treated as a health care clearinghouse shall be treated as a health care clearinghouse without regard to whether the processing or facilitation produces (or is required to produce) standard data elements or a standard transaction as required by part 162 of such title.

"(C) TRANSACTIONS DESCRIBED.—The transactions described in this subparagraph are the following:

"(i) A health care claims or equivalent encounter information transaction.

"(ii) A health care payment and remittance advice transaction.

"(iii) A coordination of benefits transaction.

"(iv) A health care claim status transaction.

"(v) An enrollment and disenrollment in a health plan transaction.

"(vi) An eligibility for a health plan transaction.

"(vii) A health plan premium payments transaction.

"(c) DEFINITIONS.—In this section—

"(1) the terms ‘health care provider’, ‘health plan’, and ‘health care clearinghouse’ have the meaning given those terms in section 1171 of the Social Security Act (42 U.S.C. 1320d) and section 160.103 of title 45, Code of Federal Regulations;

"(2) the terms ‘small health plan’ and ‘transaction’ have the meaning given those terms in section 160.103 of title 45, Code of Federal Regulations; and

"(3) the terms ‘health care claims or equivalent encounter information transaction’, ‘health care payment and remittance advice transaction’, ‘coordinated benefits transaction’, ‘health care claim status transaction’, ‘enrollment and disenrollment in a health plan transaction’, ‘eligibility for a health plan transaction’, ‘health plan premium payments transaction’, and ‘referral certification and authorization transaction’ have the meanings given those terms in sections 162.1101, 162.1201, 162.1301, 162.1401, 162.1501, 162.1601, 162.1701, and 162.1801 of title 45, Code of Federal Regulations, respectively.

§ 1320d–5. General penalty for failure to comply with requirements and standards

(a) General penalty

(1) In general

Except as provided in subsection (b) of this section, the Secretary shall impose on any person who violates a provision of this part—

(A) in the case of a violation of such provision in which it is established that the person did not know (and by exercising reasonable diligence would not have known) that such person violated such provision, a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(A) but not to exceed the amount described in paragraph (3)(D);

(B) in the case of a violation of such provision in which it is established that the violation was due to reasonable cause and not to willful neglect, a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(B) but not to exceed the amount described in paragraph (3)(D); and

(C) in the case of a violation of such provision in which it is established that the violation was due to willful neglect—

(i) if the violation is corrected as described in subsection (b)(3)(A), a penalty in an amount that is at least the amount described in paragraph (3)(C) but not to exceed the amount described in paragraph (3)(D); and

(ii) if the violation is not corrected as described in such subsection, a penalty in an amount that is at least the amount described in paragraph (3)(D).

In determining the amount of a penalty under this section for a violation, the Secretary shall base such determination on the nature and extent of the violation and the nature and extent of the harm resulting from such violation.

(2) Procedures

The provisions of section 1320a–7a of this title (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to the imposition of a civil money penalty under this subsection in the same manner as such provisions apply to the imposition of a penalty under such section 1320a–7a of this title.

(3) Tiers of penalties described

For purposes of paragraph (1), with respect to a violation by a person of a provision of this part—

(A) the amount described in this subparagraph is $100 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $25,000;

(B) the amount described in this subparagraph is $1,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical

1 So in original. Probably should be “(b)(2)(A).”.
requirement or prohibition during a calendar year may not exceed $100,000;
(C) the amount described in this subparagraph is $10,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $250,000; and
(D) the amount described in this subparagraph is $50,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $1,500,000.

(b) Limitations
(1) Offenses otherwise punishable
No penalty may be imposed under subsection (a) and no damages obtained under subsection (d) with respect to an act if a penalty has been imposed under section 1320d–6 of this title with respect to such act.

(2) Failures due to reasonable cause
(A) In general
Except as provided in subparagraph (B) or subsection (a)(1)(C), no penalty may be imposed under subsection (a) and no damages obtained under subsection (d) if the failure to comply is corrected during the 30-day period beginning on the first date the person liable for the penalty or damages knew, or by exercising reasonable diligence would have known, that the failure to comply occurred.

(B) Extension of period
(i) No penalty
With respect to the imposition of a penalty by the Secretary under subsection (a), the period referred to in subparagraph (A) may be extended as determined appropriate by the Secretary based on the nature and extent of the failure to comply.

(ii) Assistance
If the Secretary determines that a person failed to comply because the person was unable to comply, the Secretary may provide technical assistance to the person during the period described in subparagraph (A). Such assistance shall be provided in any manner determined appropriate by the Secretary.

(3) Reduction
In the case of a failure to comply which is due to reasonable cause and not to willful neglect, any penalty under subsection (a) and any damages under subsection (d) that is not entirely waived under paragraph (3) may be waived to the extent that the payment of such penalty would be excessive relative to the compliance failure involved.

(c) Noncompliance due to willful neglect
(1) In general
A violation of a provision of this part due to willful neglect is a violation for which the Secretary is required to impose a penalty under subsection (a)(1).

(2) Required investigation
For purposes of paragraph (1), the Secretary shall formally investigate any complaint of a violation of a provision of this part if a preliminary investigation of the facts of the complaint indicate such a possible violation due to willful neglect.

(d) Enforcement by State attorneys general
(1) Civil action
Except as provided in subsection (b), in any case in which the attorney general of a State has reason to believe that an interest of one or more of the residents of that State has been or is threatened or adversely affected by any person who violates a provision of this part, the attorney general of the State, as parens patriae, may bring a civil action on behalf of such residents of the State in a district court of the United States of appropriate jurisdiction—
(A) to enjoin further such violation by the defendant; or
(B) to obtain damages on behalf of such residents of the State, in an amount equal to the amount determined under paragraph (2).

(2) Statutory damages
(A) In general
For purposes of paragraph (1)(B), the amount determined under this paragraph is the amount calculated by multiplying the number of violations by up to $100. For purposes of the preceding sentence, in the case of a continuing violation, the number of violations shall be determined consistent with the HIPAA privacy regulations (as defined in section 1320d–9(b)(3) of this title) for violations of subsection (a).

(B) Limitation
The total amount of damages imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed $25,000.

(C) Reduction of damages
In assessing damages under subparagraph (A), the court may consider the factors the Secretary may consider in determining the amount of a civil money penalty under subsection (a) under the HIPAA privacy regulations.

(3) Attorney fees
In the case of any successful action under paragraph (1), the court, in its discretion, may award the costs of the action and reasonable attorney fees to the State.

(4) Notice to Secretary
The State shall serve prior written notice of any action under paragraph (1) upon the Secretary and provide the Secretary with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Secretary shall have the right—
(A) to intervene in the action;
(B) upon so intervening, to be heard on all matters arising therein; and
(C) to file petitions for appeal.

(5) Construction

For purposes of bringing any civil action under paragraph (1), nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State.

(6) Venue; service of process

(A) Venue

Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28.

(B) Service of process

In an action brought under paragraph (1), process may be served in any district in which the defendant—
(1) is an inhabitant; or
(2) maintains a physical place of business.

(7) Limitation on State action while Federal action is pending

If the Secretary has instituted an action against a person under subsection (a) with respect to a specific violation of this part, no State attorney general may bring an action under this subsection against the person with respect to such violation during the pendency of that action.

(8) Application of CMP statute of limitation

A civil action may not be instituted with respect to a violation of this part unless an action to impose a civil money penalty may be instituted under subsection (a) with respect to such violation consistent with the second sentence of section 1320a–7a(c)(1) of this title.

(e) Allowing continued use of corrective action

Nothing in this section shall be construed as preventing the Office for Civil Rights of the Department of Health and Human Services from continuing, in its discretion, to use corrective action without a penalty in cases where the person did not know (and by exercising reasonable diligence would not have known) of the violation involved.

(Aug. 14, 1935, ch. 531, title XI, §1176, as added Pub. L. 104–191, title II, §262(a), Aug. 21, 1996, 110 Stat. 2028; amended Pub. L. 111–5, §13410(d)(3)(A), redesignated par. (3) as (2) and struck out former par. (2). Prior to amendment, text of par. (2) read as follows: “A penalty may not be imposed under subsection (a) of this section with respect to a provision of this part if it is established to the satisfaction of the Secretary that the person liable for the penalty did not know, and by exercising reasonable diligence would not have known, that such person violated the provision.”

Subsec. (b)(2)(A). Pub. L. 111–5, §13410(e)(2)(B)(ii), which directed amendment of cl. (ii) of subpar. (A) by inserting “or damages” after “the penalty”, was struck out the cl. (ii) designation. See below.

Subsec. (b)(2)(B). Pub. L. 111–5, §13410(d)(3)(B)(ii), substituted “in subparagraph (B) or subsection (a)(1)(C), a penalty may not be imposed under subsection (a) if the failure to comply is corrected” for “any penalty under subsection (a) if the failure to comply is corrected”.

Subsec. (b)(3). Pub. L. 111–5, §13410(e)(2)(D), inserted “and any damages under subsection (d)” after “any penalty under subsection (a)”.

Subsec. (c). Pub. L. 111–5, §13410(e)(2)(C), substituted “With respect to the imposition of a penalty by the Secretary under subsection (a),” for “With respect to an order of the Secretary under subsection (a),”.


Effective Date of 2009 Amendment

Amendment by Pub. L. 111–5 effective 12 months after Feb. 17, 2009, except as otherwise specifically provided, see section 13423 of Pub. L. 111–5, set out as an Effective Date note under section 17931 of this title.

Amendment by section 13410(a)(1) of Pub. L. 111–5 applicable to penalties imposed on or after the date that is 24 months after Feb. 17, 2009, see section 17939(b)(1) of this title.

Amendment by section 13410(d)(1)–(3) of Pub. L. 111–5 applicable to violations occurring after Feb. 17, 2009, see section 17939(d)(4) of this title.

Amendment by section 13410(e)(1), (2) of Pub. L. 111–5 applicable to violations occurring after Feb. 17, 2009, see section 17939(e)(3) of this title.

§1320d–6. Wrongful disclosure of individually identifiable health information

(a) Offense

A person who knowingly and in violation of this part—
(1) uses or causes to be used a unique health identifier;
(2) obtains individually identifiable health information relating to an individual; or
(3) discloses individually identifiable health information to another person, shall be punished as provided in subsection (b) of this section. For purposes of the previous sentence, a person (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section 1320d–9(b)(3) of this title) and the individual obtained or disclosed such information without authorization.

(b) Penalties

A person described in subsection (a) of this section shall—

(1) be fined not more than $50,000, imprisoned not more than 1 year, or both; and
(2) if the offense is committed under false pretenses, be fined not more than $100,000, imprisoned not more than 5 years, or both; and
(3) if the offense is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, be fined not more than $250,000, imprisoned not more than 10 years, or both.


AMENDMENTS

2009—Subsec. (a). Pub. L. 111–5 inserted at end “For purposes of the previous sentence, a person (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section 1320d–9(b)(3) of this title) and the individual obtained or disclosed such information without authorization.”

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 effective 12 months after Feb. 17, 2009, see section 13423 of Pub. L. 111–5, set out as an Effective Date note under section 17931 of this title.

§ 1320d–8. Processing payment transactions by financial institutions

(a) General effect

(1) General rule

Except as provided in paragraph (2), a provision or requirement under this part, or a standard or implementation specification adopted or established under sections 1320d–1 through 1320d–3 of this title, shall supersede any contrary provision of State law, including a provision of State law that requires medical or health plan records (including billing information) to be maintained or transmitted in written rather than electronic form.

(2) Exceptions

A provision or requirement under this part, or a standard or implementation specification adopted or established under sections 1320d–1 through 1320d–3 of this title, shall not supersede a contrary provision of State law, if the provision of State law—

(A) is a provision the Secretary determines—

(i) is necessary—

(I) to prevent fraud and abuse;
(II) to ensure appropriate State regulation of insurance and health plans;
(III) for State reporting on health care delivery or costs; or
(IV) for other purposes; or

(ii) addresses controlled substances; or

(B) subject to section 264(c)(2) of the Health Insurance Portability and Accountability Act of 1996, relates to the privacy of individually identifiable health information.

(b) Public health

Nothing in this part shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth, or death, public health surveillance, or public health investigation or intervention.

(c) State regulatory reporting

Nothing in this part shall limit the ability of a State to require a health plan to report, or to provide access to, information for management audits, financial audits, program monitoring and evaluation, facility licensure or certification, or individual licensure or certification.


REFERENCES IN TEXT

Section 264(c)(2) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (a)(2)(B), is section 264(c)(2) of Pub. L. 104–191, which is set out as a note under section 1320d–2 of this title.

§ 1320d–7. Effect on State law

(a) General effect

(1) General rule

Except as provided in paragraph (2), a provision or requirement under this part, or a standard or implementation specification adopted or established under sections 1320d–1 through 1320d–3 of this title, shall supersede any contrary provision of State law, including a provision of State law that requires medical or health plan records (including billing information) to be maintained or transmitted in written rather than electronic form.

(2) Exceptions

A provision or requirement under this part, or a standard or implementation specification adopted or established under sections 1320d–1 through 1320d–3 of this title, shall not supersede a contrary provision of State law, if the provision of State law—

(A) is a provision the Secretary determines—

(i) is necessary—

(I) to prevent fraud and abuse;
(II) to ensure appropriate State regulation of insurance and health plans;
(III) for State reporting on health care delivery or costs; or
(IV) for other purposes; or

(ii) addresses controlled substances; or

(B) subject to section 264(c)(2) of the Health Insurance Portability and Accountability Act of 1996, relates to the privacy of individually identifiable health information.
(E) for reporting to consumer reporting agencies; or
(F) for complying with—
(i) a civil or criminal subpoena; or
(ii) a Federal or State law regulating the entity.

§ 1320d–9. Application of HIPAA regulations to genetic information

(a) In general
The Secretary shall revise the HIPAA privacy regulation (as defined in subsection (b)) so it is consistent with the following:
(1) Genetic information shall be treated as health information described in section 1320d(4)(B) of this title.
(2) The use or disclosure by a covered entity that is a group health plan, health insurance issuer that issues health insurance coverage, or issuer of a medicare supplemental policy of protected health information that is genetic information about an individual for underwriting purposes under the group health plan, health insurance coverage, or medicare supplemental policy shall not be a permitted use or disclosure.

(b) Definitions
For purposes of this section:
(1) Genetic information; genetic test; family member
The terms “genetic information”, “genetic test”, and “family member” have the meanings given such terms in section 300gg–91 of this title, as amended by the Genetic Information Nondiscrimination Act of 2007.
(2) Group health plan; health insurance coverage; medicare supplemental policy
The terms “group health plan” and “health insurance coverage” have the meanings given such terms under section 300gg–91 of this title, and the term “medicare supplemental policy” has the meaning given such term in section 1395ss(b)(p) of this title.
(3) HIPAA privacy regulation
The term “HIPAA privacy regulation” means the regulations promulgated by the Secretary under this part and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).
(4) Underwriting purposes
The term “underwriting purposes” means, with respect to a group health plan, health insurance coverage, or a medicare supplemental policy—
(A) rules for, or determination of, eligibility (including enrollment and continued eligibility) for, or determination of, benefits under the plan, coverage, or policy;
(B) the computation of premium or contribution amounts under the plan, coverage, or policy;
(C) the application of any pre-existing condition exclusion under the plan, coverage, or policy; and
(D) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

(c) Procedure
The revisions under subsection (a) shall be made by notice in the Federal Register published not later than 60 days after May 21, 2008, and shall be effective upon publication, without opportunity for any prior public comment, but may be revised, consistent with this section, after opportunity for public comment.

(d) Enforcement
In addition to any other sanctions or remedies that may be available under law, a covered entity that is a group health plan, health insurance issuer, or issuer of a medicare supplemental policy and that violates the HIPAA privacy regulation (as revised under subsection (a) or otherwise) with respect to the use or disclosure of genetic information shall be subject to the penalties described in sections 1320d–5 and 1320d–6 of this title in the same manner and to the same extent that such penalties apply to violations of this part.


REFERENCES IN TEXT


EFFECTIVE DATE

Pub. L. 110–233, title I, §105(b)(2), May 21, 2008, 122 Stat. 905, provided that: “The amendment made by subsection (a) [enacting this section] shall take effect on the date that is 1 year after the date of the enactment of this Act [May 21, 2008].”

Regulations
Pub. L. 110–233, title I, §105(b)(1), May 21, 2008, 122 Stat. 905, provided that: “Not later than 12 months after the date of the enactment of this Act [May 21, 2008], the Secretary of Health and Human Services shall issue final regulations to carry out the revision required by section 1180(a) of the Social Security Act [42 U.S.C. 1320d–9(a)], as added by subsection (a). The Secretary has the sole authority to promulgate such regulations, but shall promulgate such regulations in consultation with the Secretaries of Labor and the Treasury.”

PART D—COMPARATIVE CLINICAL EFFECTIVENESS RESEARCH

§ 1320e. Comparative clinical effectiveness research

(a) Definitions
In this section:
(1) Board
The term “Board” means the Board of Governors established under subsection (f).
(2) Comparative clinical effectiveness research; research
(A) In general
The terms “comparative clinical effectiveness research” and “research” mean research evaluating and comparing health outcomes and the clinical effectiveness, risks, and benefits of 2 or more medical treatments, services, and items described in subparagraph (B).
(B) Medical treatments, services, and items described
The medical treatments, services, and items described in this subparagraph are health care interventions, protocols for treatment, care management, and delivery, procedures, medical devices, diagnostic tools, pharmaceuticals (including drugs and biologicals), integrative health practices, and any other strategies or items being used in the treatment, management, and diagnosis of, or prevention of illness or injury in, individuals.
(3) Conflict of interest
The term “conflict of interest” means an association, including a financial or personal association, that have the potential to bias or have the appearance of biasing an individual’s decisions in matters related to the Institute or the conduct of activities under this section.
(4) Real conflict of interest
The term “real conflict of interest” means any instance where a member of the Board, the methodology committee established under subsection (d)(6), or an advisory panel appointed under subsection (d)(4), or a close relative of such member, has received or could receive either of the following:
(A) A direct financial benefit of any amount deriving from the result or findings of a study conducted under this section.
(B) A financial benefit from individuals or companies that own or manufacture medical treatments, services, or items to be studied under this section that in the aggregate exceeds $10,000 per year. For purposes of the preceding sentence, a financial benefit includes honoraria, fees, stock, or other financial benefit and the current value of the member or close relative’s already existing stock holdings, in addition to any direct financial benefit deriving from the results or findings of a study conducted under this section.
(b) Patient-Centered Outcomes Research Institute
(1) Establishment
There is authorized to be established a non-profit corporation, to be known as the “Patient-Centered Outcomes Research Institute” (referred to in this section as the “Institute”) which is neither an agency nor establishment of the United States Government.
(2) Application of provisions
The Institute shall be subject to the provisions of this section, and, to the extent consistent with this section, to the District of Columbia Nonprofit Corporation Act.
(3) Funding of comparative clinical effectiveness research
For fiscal year 2010 and each subsequent fiscal year, amounts in the Patient-Centered Outcomes Research Trust Fund (referred to in this section as the “PCORTF”) under section 9511 of the Internal Revenue Code of 1986 shall be available, without further appropriation, to the Institute to carry out this section.
(c) Purpose
The purpose of the Institute is to assist patients, clinicians, purchasers, and policy-makers in making informed health decisions by advancing the quality and relevance of evidence concerning the manner in which diseases, disorders, and other health conditions can effectively and appropriately be prevented, diagnosed, treated, monitored, and managed through research and evidence synthesis that considers variations in patient subpopulations, and the dissemination of research findings with respect to the relative health outcomes, clinical effectiveness, and appropriateness of the medical treatments, services, and items described in subsection (a)(2)(B).
(d) Duties
(1) Identifying research priorities and establishing research project agenda
(A) Identifying research priorities
The Institute shall identify national priorities for research, taking into account factors of disease incidence, prevalence, and burden in the United States (with emphasis on chronic conditions), gaps in evidence in terms of clinical outcomes, practice variations and health disparities in terms of delivery and outcomes of care, the potential for new evidence to improve patient health, well-being, and the quality of care, the effect on national expenditures associated with a health care treatment, strategy, or health conditions, as well as patient needs, outcomes, and preferences, the relevance to patients and clinicians in making informed health decisions, and priorities in the National Strategy for Quality care established under section 399H of the Public Health Service Act that are consistent with this section.
(B) Establishing research project agenda
The Institute shall establish and update a research project agenda for research to address the priorities identified under subparagraph (A), taking into consideration the types of research that might address each priority and the relative value (determined based on the cost of conducting research compared to the potential usefulness of the information produced by research) associated with the different types of research, and such other factors as the Institute determines appropriate.
(2) Carrying out research project agenda
(A) Research
The Institute shall carry out the research project agenda established under paragraph

1So in original. Probably should be “has”.

2See References in Text note below.
§ 1320e

(1)(B) in accordance with the methodological standards adopted under paragraph (9) using methods, including the following:

(i) Systematic reviews and assessments of existing and future research and evidence including original research conducted subsequent to March 23, 2010.

(ii) Primary research, such as randomized clinical trials, molecularly informed trials, and observational studies.

(iii) Any other methodologies recommended by the methodology committee established under paragraph (6) that are adopted by the Board under paragraph (9).

(B) Contracts for the management of funding and conduct of research

(i) Contracts

(I) In general

In accordance with the research project agenda established under paragraph (1)(B), the Institute shall enter into contracts for the management of funding and conduct of research in accordance with the following:

(aa) Appropriate agencies and instrumentalities of the Federal Government.

(bb) Appropriate academic research, private sector research, or study-conducting entities.

(II) Preference

In entering into contracts under subclause (I), the Institute shall give preference to the Agency for Healthcare Research and Quality and the National Institutes of Health, but only if the research to be conducted or managed under such contract is authorized by the governing statutes of such Agency or Institutes.

(ii) Conditions for contracts

A contract entered into under this subparagraph shall require that the agency, instrumentality, or other entity—

(I) abide by the transparency and conflicts of interest requirements under subsection (h) that apply to the Institute with respect to the research managed or conducted under such contract;

(II) comply with the methodological standards adopted under paragraph (9) with respect to such research;

(III) consult with the expert advisory panels for clinical trials and rare disease appointed under clauses (ii) and (iii), respectively, of paragraph (4)(A);

(IV) subject to clause (iv), permit a researcher who conducts original research, as described in subparagraph (A)(ii), under the contract for the agency, instrumentality, or other entity to have such research published in a peer-reviewed journal or other publication, as long as the researcher enters into a data use agreement with the Institute for use of the data from the original research, as appropriate;

(V) have appropriate processes in place to manage data privacy and meet ethical standards for the research;

(VI) comply with the requirements of the Institute for making the information available to the public under paragraph (8); and

(VII) comply with other terms and conditions determined necessary by the Institute to carry out the research agenda adopted under paragraph (2).

(iii) Coverage of copayments or coinsurance

A contract entered into under this subparagraph may allow for the coverage of copayments or coinsurance, or allow for other appropriate measures, to the extent that such coverage or other measures are necessary to preserve the validity of a research project, such as in the case where the research project must be blinded.

(iv) Subsequent use of the data

The Institute shall not allow the subsequent use of data from original research in work-for-hire contracts with individuals, entities, or instrumentalities that have a financial interest in the results, unless approved under a data use agreement with the Institute.

(C) Review and update of evidence

The Institute shall review and update evidence on a periodic basis as appropriate.

(D) Taking into account potential differences

Research shall be designed, as appropriate, to take into account the potential for differences in the effectiveness of health care treatments, services, and items as used with various subpopulations, such as racial and ethnic minorities, women, age, and groups of individuals with different comorbidities, genetic and molecular sub-types, or quality of life preferences and include members of such subpopulations as subjects in the research as feasible and appropriate.

(E) Differences in treatment modalities

Research shall be designed, as appropriate, to take into account different characteristics of treatment modalities that may affect research outcomes, such as the phase of the treatment modality in the innovation cycle and the impact of the skill of the operator of the treatment modality.

(3) Data collection

(A) In general

The Secretary shall, with appropriate safeguards for privacy, make available to the Institute such data collected by the Centers for Medicare & Medicaid Services under the programs under subchapters XVIII, XIX, and XXI, as well as provide access to the data networks developed under section 937(f) of the Public Health Service Act [42 U.S.C. 299b–37(f)], as the Institute and its contractors may require to carry out this section. The Institute may also request and obtain data from Federal, State, or private entities, including data from clinical databases and registries.

(B) Use of data

The Institute shall only use data provided to the Institute under subparagraph (A) in
accordance with laws and regulations governing the release and use of such data, including applicable confidentiality and privacy standards.

(4) Appointing expert advisory panels

(A) Appointment

(i) In general

The Institute may appoint permanent or ad hoc expert advisory panels as determined appropriate to assist in identifying research priorities and establishing the research project agenda under paragraph (1) and for other purposes.

(ii) Expert advisory panels for clinical trials

The Institute shall appoint expert advisory panels in carrying out randomized clinical trials under the research project agenda under paragraph (2)(A)(ii). Such expert advisory panels shall advise the Institute and the agency, instrumentality, or entity conducting the research on the research question involved and the research design or protocol, including important patient subgroups and other parameters of the research. Such panels shall be available as a resource for technical questions that may arise during the conduct of such research.

(iii) Expert advisory panel for rare disease

In the case of a research study for rare disease, the Institute shall appoint an expert advisory panel for purposes of assisting in the design of the research study and determining the relative value and feasibility of conducting the research study.

(B) Composition

An expert advisory panel appointed under subparagraph (A) shall include representatives of practicing and research clinicians, patients, and experts in scientific and health services research, health services delivery, and evidence-based medicine who have experience in the relevant topic, and as appropriate, experts in integrative health and primary prevention strategies. The Institute may include a technical expert of each manufacturer or each medical technology that is included under the relevant topic, project, or category for which the panel is established.

(5) Supporting patient and consumer representatives

The Institute shall provide support and resources to help patient and consumer representatives effectively participate on the Board and expert advisory panels appointed by the Institute under paragraph (4).

(6) Establishing methodology committee

(A) In general

The Institute shall establish a standing methodology committee to carry out the functions described in subparagraph (C).

(B) Appointment and composition

The methodology committee established under subparagraph (A) shall be composed of not more than 15 members appointed by the Comptroller General of the United States. Members appointed to the methodology committee shall be experts in their scientific field, such as health services research, clinical research, comparative clinical effectiveness research, biostatistics, genomics, and research methodologies. Stakeholders with such expertise may be appointed to the methodology committee. In addition to the members appointed under the first sentence, the Directors of the National Institutes of Health and the Agency for Healthcare Research and Quality (or their designees) shall each be included as members of the methodology committee.

(C) Functions

Subject to subparagraph (D), the methodology committee shall work to develop and improve the science and methods of comparative clinical effectiveness research by, not later than 18 months after the establishment of the Institute, directly or through subcontract, developing and periodically updating the following:

(i) Methodological standards for research. Such methodological standards shall provide specific criteria for internal validity, generalizability, feasibility, and timeliness of research and for health outcomes measures, risk adjustment, and other relevant aspects of research and assessment with respect to the design of research. Any methodological standards developed and updated under this subclause shall be scientifically based and include methods by which new information, data, or advances in technology are considered and incorporated into ongoing research projects by the Institute, as appropriate. The process for developing and updating such standards shall include input from relevant experts, stakeholders, and decisionmakers, and shall provide opportunities for public comment. Such standards shall also include methods by which patient subpopulations can be accounted for and evaluated in different types of research. As appropriate, such standards shall build on existing work on methodological standards for defined categories of health interventions and for each of the major categories of comparative clinical effectiveness research methods (determined as of March 23, 2010).

(ii) A translation table that is designed to provide guidance and act as a reference for the Board to determine research methods that are most likely to address each specific research question.

(D) Consultation and conduct of examinations

The methodology committee may consult and contract with the Institute of Medicine of the National Academies and academic, nonprofit, or other private and governmental entities with relevant expertise to carry out activities described in subpara-

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3So in original. Probably should be “clause”.
graph (C) and may consult with relevant stakeholders to carry out such activities.

(E) Reports

The methodology committee shall submit reports to the Board on the committee’s performance of the functions described in subparagraph (C). Reports shall contain recommendations for the Institute to adopt methodological standards developed and updated by the methodology committee as well as other actions deemed necessary to comply with such methodological standards.

(7) Providing for a peer-review process for primary research

(A) In general

The Institute shall ensure that there is a process for peer review of primary research described in subparagraph (A)(ii) of paragraph (2) that is conducted under such paragraph. Under such process—

(i) evidence from such primary research shall be reviewed to assess scientific integrity and adherence to methodological standards adopted under paragraph (9); and

(ii) a list of the names of individuals contributing to any peer-review process during the preceding year or years shall be made public and included in annual reports in accordance with paragraph (10)(D).

(B) Composition

Such peer-review process shall be designed in a manner so as to avoid bias and conflicts of interest on the part of the reviewers and shall be composed of experts in the scientific field relevant to the research under review.

(C) Use of existing processes

(i) Processes of another entity

In the case where the Institute enters into a contract or other agreement with another entity for the conduct or management of research under this section, the Institute may utilize the peer-review process of such entity if such process meets the requirements under subparagraphs (A) and (B).

(ii) Processes of appropriate medical journals

The Institute may utilize the peer-review process of appropriate medical journals if such process meets the requirements under subparagraphs (A) and (B).

(8) Release of research findings

(A) In general

The Institute shall, not later than 90 days after the conduct or receipt of research findings under this part, make such research findings available to clinicians, patients, and the general public. The Institute shall ensure that the research findings—

(i) convey the findings of research in a manner that is comprehensible and useful to patients and providers in making health care decisions;

(ii) fully convey findings and discuss considerations specific to certain subpopulations, risk factors, and comorbidities, as appropriate;

(iii) include limitations of the research and what further research may be needed as appropriate;

(iv) do not include practice guidelines, coverage recommendations, payment, or policy recommendations; and

(v) not include any data which would violate the privacy of research participants or any confidentiality agreements made with respect to the use of data under this section.

(B) Definition of research findings

In this paragraph, the term “research findings” means the results of a study or assessment.

(9) Adoption

Subject to subsection (h)(1), the Institute shall adopt the national priorities identified under paragraph (1)(A), the research project agenda established under paragraph (1)(B), the methodological standards developed and updated by the methodology committee under paragraph (9)(C)(i), and any peer-review process provided under paragraph (7) by majority vote. In the case where the Institute does not adopt such processes in accordance with the preceding sentence, the processes shall be referred to the appropriate staff or entity within the Institute (or, in the case of the methodological standards, the methodology committee) for further review.

(10) Annual reports

The Institute shall submit an annual report to Congress and the President, and shall make the annual report available to the public. Such report shall contain—

(A) a description of the activities conducted under this section, research priorities identified under paragraph (1)(A) and methodological standards developed and updated by the methodology committee under paragraph (6)(C)(i), and any peer-review process provided under paragraph (7) during the preceding year;

(B) the research project agenda and budget of the Institute for the following year;

(C) any administrative activities conducted by the Institute during the preceding year;

(D) the names of individuals contributing to any peer-review process under paragraph (7), without identifying them with a particular research project; and

(E) any other relevant information (including information on the membership of the Board, expert advisory panels, methodology committee, and the executive staff of the Institute, any conflicts of interest with respect to these individuals, and any bylaws adopted by the Board during the preceding year).

(e) Administration

(1) In general

Subject to paragraph (2), the Board shall carry out the duties of the Institute.

(2) Nondelegable duties

The activities described in subsections (d)(1) and (d)(9) are nondelegable.
(f) Board of Governors

(1) In general

The Institute shall have a Board of Governors, which shall consist of the following members:

(A) The Director of Agency for Health-care Research and Quality (or the Director’s designee).

(B) The Director of the National Institutes of Health (or the Director’s designee).

(C) Seventeen members appointed, not later than 6 months after March 23, 2010, by the Comptroller General of the United States as follows:

(i) 3 members representing patients and health care consumers.

(ii) 7 members representing physicians and providers, including 4 members representing physicians (at least 1 of whom is a surgeon), 1 nurse, 1 State-licensed integrative health care practitioner, and 1 representative of a hospital.

(iii) 3 members representing private payers, of whom at least 1 member shall represent health insurance issuers and at least 1 member shall represent employers who self-insure employee benefits.

(iv) 3 members representing pharmaceutical, device, and diagnostic manufacturers or developers.

(v) 1 member representing quality improvement or independent health service researchers.

(vi) 2 members representing the Federal Government or the States, including at least 1 member representing a Federal health program or agency.

(2) Qualifications

The Board shall represent a broad range of perspectives and collectively have scientific expertise in clinical health sciences research, including epidemiology, decisions sciences, health economics, and statistics. In appointing the Board, the Comptroller General of the United States shall consider and disclose any conflicts of interest in accordance with subsection (h)(4)(B). Members of the Board shall be recused from relevant Institute activities in the case where the member (or an immediate family member of such member) has a real conflict of interest directly related to the research project or the matter that could affect or be affected by such participation.

(3) Terms; vacancies

A member of the Board shall be appointed for a term of 6 years, except with respect to the members first appointed, whose terms of appointment shall be staggered evenly over 2-year increments. No individual shall be appointed to the Board for more than 2 terms. Vacancies shall be filled in the same manner as the original appointment was made.

(4) Chairperson and Vice-Chairperson

The Comptroller General of the United States shall designate a Chairperson and Vice Chairperson of the Board from among the members of the Board. Such members shall serve as Chairperson or Vice Chairperson for a period of 3 years.

(5) Compensation

Each member of the Board who is not an officer or employee of the Federal Government shall be entitled to compensation (equivalent to the rate provided for level IV of the Executive Schedule under section 5315 of title 5) and expenses incurred while performing the duties of the Board. An officer or employee of the Federal government who is a member of the Board shall be exempt from compensation.

(6) Director and staff; experts and consultants

The Board may employ and fix the compensation of an Executive Director and such other personnel as may be necessary to carry out the duties of the Institute and may seek such assistance and support of, or contract with, experts and consultants that may be necessary for the performance of the duties of the Institute.

(7) Meetings and hearings

The Board shall meet and hold hearings at the call of the Chairperson or a majority of its members. Meetings not solely concerning matters of personnel shall be advertised at least 7 days in advance and open to the public. A majority of the Board members shall constitute a quorum, but a lesser number of members may meet and hold hearings.

(g) Financial and governmental oversight

(1) Contract for audit

The Institute shall provide for the conduct of financial audits of the Institute on an annual basis by a private entity with expertise in conducting financial audits.

(2) Review and annual reports

(A) Review

The Comptroller General of the United States shall review the following:

(i) Not less frequently than on an annual basis, the financial audits conducted under paragraph (1).

(ii) Not less frequently than every 5 years, the processes established by the Institute, including the research priorities and the conduct of research projects, in order to determine whether information produced by such research projects is objective and credible, is produced in a manner consistent with the requirements under this section, and is developed through a transparent process.

(iii) Not less frequently than every 5 years, the dissemination and training activities and data networks established under section 937 of the Public Health Service Act [42 U.S.C. 299b–37], including the methods and products used to disseminate research, the types of training conducted and supported, and the types and functions of the data networks established, in order to determine whether the activities and data are produced in a manner consistent with the requirements under such section.

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5 So in original. Probably should be “Nineteen”.
(iv) Not less frequently than every 5 years, the overall effectiveness of activities conducted under this section and the dissemination, training, and capacity building activities conducted under section 937 of the Public Health Service Act. Such review shall include an analysis of the extent to which research findings are used by health care decision-makers, the effect of the dissemination of such findings on reducing practice variation and disparities in health care, and the extent to which the research conducted and disseminated on innovation and the health care economy of the United States.

(v) Not later than 8 years after March 23, 2010, the adequacy and use of the funding for the Institute and the activities conducted under section 937 of the Public Health Service Act, including a determination as to whether, based on the utilization of research findings by public and private payers, funding sources for the Patient-Centered Outcomes Research Trust Fund under section 9511 of the Internal Revenue Code of 1986 are appropriate and whether such sources of funding should be continued or adjusted.

(B) Annual reports

Not later than April 1 of each year, the Comptroller General of the United States shall submit to Congress a report containing the results of the review conducted under subparagraph (A) with respect to the preceding year (or years, if applicable), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

(h) Ensuring transparency, credibility, and access

The Institute shall establish procedures to ensure that the following requirements for ensuring transparency, credibility, and access are met:

(1) Public comment periods

The Institute shall provide for a public comment period of not less than 45 days and not more than 60 days prior to the adoption under subsection (d)(1)(A) of the research project agenda established under section (d)(1)(B), the methodological standards developed and updated by the methodology committee under subsection (d)(6)(C)(i), and the peer-review process provided under paragraph (7), and after the release of draft findings with respect to systematic reviews of existing research and evidence.

(2) Additional forums

The Institute shall support forums to increase public awareness and obtain and incorporate public input and feedback through media (such as an Internet website) on research priorities, research findings, and other duties, activities, or processes the Institute determines appropriate.

(3) Public availability

The Institute shall make available to the public and disclose through the official public Internet website of the Institute the following:

(A) Information contained in research findings as specified in subsection (d)(9).

(B) The process and methods for the conduct of research, including the identity of the entity and the investigators conducting such research and any conflicts of interests of such parties, any direct or indirect links the entity has to industry, and research protocols, including measures taken, methods of research and analysis, research results, and such other information the Institute determines appropriate) concurrent with the release of research findings.

(C) Notice of public comment periods under paragraph (1), including deadlines for public comments.

(D) Subsequent comments received during each of the public comment periods.

(E) In accordance with applicable laws and processes and as the Institute determines appropriate, proceedings of the Institute.

(4) Disclosure of conflicts of interest

(A) In general

A conflict of interest shall be disclosed in the following manner:

(i) By the Institute in appointing members to an expert advisory panel under subsection (d)(4), in selecting individuals to contribute to any peer-review process under subsection (d)(7), and for employment as executive staff of the Institute.

(ii) By the Comptroller General in appointing members of the methodology committee under subsection (d)(6);

(iii) By the Institute in the annual report under subsection (d)(10), except that, in the case of individuals contributing to any such peer review process, such description shall be in a manner such that those individuals cannot be identified with a particular research project.

(B) Manner of disclosure

Conflicts of interest shall be disclosed as described in subparagraph (A) as soon as practicable on the Internet website of the Institute and of the Government Accountability Office. The information disclosed under the preceding sentence shall include the type, nature, and magnitude of the interests of the individual involved, except to the extent that the individual recuses himself or herself from participating in the consideration of or any other activity with respect to the study as to which the potential conflict exists.

(i) Rules

The Institute, its Board or staff, shall be prohibited from accepting gifts, bequests, or donations of services or property. In addition, the Institute shall be prohibited from establishing a...
corporation or generating revenues from activities other than as provided under this section.

(j) Rules of construction

(1) 9 Coverage

Nothing in this section shall be construed—

(A) to permit the Institute to mandate coverage, reimbursement, or other policies for any public or private payer; or

(B) as preventing the Secretary from covering the routine costs of clinical care received by an individual entitled to, or enrolled for, benefits under subchapter XVIII, XIX, or XXI in the case where such individual is participating in a clinical trial and such costs would otherwise be covered under such subchapter with respect to the beneficiary.


REFERENCES IN TEXT


The Internal Revenue Code of 1986, referred to in subsecs. (b)(3) and (g)(2)(A)(v), is classified generally to Title 26, Internal Revenue Code.

Section 399H of the Public Health Service Act, referred to in subsec. (d)(1)(A), probably means section 399HH of act July 1, 1944, which is classified to section 280j of this title.

AMENDMENTS

2010—Subsec. (d)(2)(B)(i)(IV). Pub. L. 111–148, § 10602(1)(A), inserted ‘‘, as described in subparagraph (A)(i),’’ after ‘‘original research’’ and ‘‘, as long as the researcher enters into a data use agreement with the Institute for use of the data from the original research, as appropriate’’ after ‘‘publication’’.

Subsec. (d)(2)(B)(iv). Pub. L. 111–148, § 10602(1)(B), amended cl. (iv) generally. Prior to amendment, text read as follows: ‘‘Any research published under clause (i)(IV) shall be within the bounds of and entirely consistent with the evidence and findings produced under the contract with the Institute under this subparagraph. If the Institute determines that those requirements are not met, the Institute shall not enter into another contract with the agency, instrumentality, or entity which managed or conducted such research for a period determined appropriate by the Institute (but not less than 5 years).’’

Subsec. (f)(1)(A)(iv). Pub. L. 111–148, § 10602(2), substituted ‘‘do not include’’ for ‘‘not be construed as mandates for’’.


§ 1320e–1. Limitations on certain uses of comparative clinical effectiveness research

(a) The Secretary may only use evidence and findings from research conducted under section 1320e of this title to make a determination regarding coverage under subchapter XVIII if such use is through an iterative and transparent process which includes public comment and considers the effect on subpopulations.

(b) Nothing in section 1320e of this title shall be construed as—

(1) superceding or modifying the coverage of items or services under subchapter XVIII that the Secretary determines are reasonable and necessary under section 1395y(l)(1) of this title; or

(2) authorizing the Secretary to deny coverage of items or services under such subchapter solely on the basis of comparative clinical effectiveness research.

(2) Paragraph (1) shall not be construed as preventing the Secretary from using evidence or findings from such comparative clinical effectiveness research conducted under section 1320e of this title in determining coverage, reimbursement, or incentive programs under subchapter XVIII in a manner that treats extending the life of an elderly, disabled, or terminally ill individual as of lower value than extending the life of an individual who is younger, nondisabled, or not terminally ill.

(c)(1) The Secretary shall not use evidence or findings from comparative clinical effectiveness research conducted under section 1320e of this title in determining coverage, reimbursement, or incentive programs under subchapter XVIII based upon a comparison of the difference in the effectiveness of alternative treatments in extending an individual’s life due to the individual’s age, disability, or terminal illness.

(2) Paragraph (1) shall not be construed to—

(i) limit the application of differential copayments under subchapter XVIII based on factors such as cost or type of service; or

(ii) prevent the Secretary from using evidence or findings from such comparative clinical effectiveness research in determining coverage, reimbursement, or incentive programs under such subchapter based upon a comparison of the difference in the effectiveness of alternative health care treatments in extending an individual’s life due to that individual’s age, disability, or terminal illness.

(3) Nothing in the provisions of, or amendments made by the Patient Protection and Affordable Care Act, shall be construed to limit comparative clinical effectiveness research or any other research, evaluation, or dissemination of information concerning the likelihood that a health care treatment will result in disability.

(e) The Patient-Centered Outcomes Research Institute established under section 1320e(b)(1) of this title shall not develop or employ a dollars-per-quality adjusted life year (or similar measure that discounts the value of a life because of an individual’s disability) as a threshold to es-

9 So in original. No par. (2) has been enacted.

1 So in original. No subpar. (b) has been enacted.
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establish what type of health care is cost effective or recommended. The Secretary shall not utilize such an adjusted life year (or such a similar measure) as a threshold to determine coverage, reimbursement, or incentive programs under subchapter XVIII.


REFERENCES IN TEXT

§ 1320e–2. Trust Fund transfers to Patient-Centered Outcomes Research Trust Fund

(a) In general
The Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1395t of this title and the Federal Supplementary Medical Insurance Trust Fund under section 1395i of this title, in proportion (as estimated by the Secretary) to the total expenditures during such fiscal year that are made under subchapter XVIII from the respective trust fund, to the Patient-Centered Outcomes Research Trust Fund (referred to in this section as the “PCORTF”) under section 5611 of the Internal Revenue Code of 1986, of the following:

(1) For fiscal year 2013, an amount equal to $1 multiplied by the average number of individuals entitled to benefits under part A, or enrolled under part B, of subchapter XVIII during such fiscal year.

(2) For each of fiscal years 2014, 2015, 2016, 2017, 2018, and 2019, an amount equal to $2 multiplied by the average number of individuals entitled to benefits under part A, or enrolled under part B, of subchapter XVIII during such fiscal year.

(b) Adjustments for increases in health care spending
In the case of any fiscal year beginning after September 30, 2014, the dollar amount in effect under subsection (a)(2) for such fiscal year shall be equal to the sum of such dollar amount for the previous fiscal year (determined after the application of this subsection), plus an amount equal to the product of—

(1) the previous fiscal year (determined after the application of this subsection), plus an amount equal to the product of—

(2) the percentage increase in the projected per capita amount of National Health Expenditures, as most recently published by the Secretary before the beginning of the fiscal year.


REFERENCES IN TEXT
The Internal Revenue Code of 1986, referred to in subsec. (a), is classified generally to Title 26, Internal Revenue Code.
Labor (but not exceeding that portion of the balance in the Federal unemployment account at the time of the transfer which is not restricted as to use pursuant to section 1103(b)(1) of this title). The amount of any monthly installment so transferred shall not exceed the amount estimated by the State to be required for the payment of compensation for the month with respect to which such installment is made.


AMENDMENTS


1976—Subsec. (a)(1). Pub. L. 94-566 substituted “without interest to the extent provided in section 122(b) of this title” for “without interest.”

1981—Subsec. (a)(1). Pub. L. 94-566, §213(a), substituted “any 3-month period” for “any month” in provisions preceding subpar. (A), “the month preceding the first month of such 3-month period” for “the preceding month” in subpar. (A), and “each month of such 3-month period” for “such month” in subpar. (B). Subsec. (a)(2). Pub. L. 94-566, §213(b), substituted “any 3-month period” for “any month” in provisions preceding subpar. (A) and following subpar. (B), and “each month of such 3-month period” for “such month” in subpar. (A) and provisions following subpar. (B).

Subsec. (b). Pub. L. 94-566, §213(c), provided that the transfer of amounts by the Secretary of the Treasury from the Federal unemployment account to the account of the States in the Unemployment Trust Fund be made in monthly installments and that the amount of any monthly installment so transferred not exceed the amount estimated by the State to be required for the payment of compensation for the month with respect to which the installment is made.

1985—Subsec. (a). Pub. L. 96-778 amended subsec. (a) generally, substituting provisions relating to advances on a monthly basis upon application of the Governor and the furnishing of an estimate of amount of required advance and determination and certification by the Secretary of the Treasury of the amount so certified to the Federal unemployment account for advances for the month for former provisions relating to advances on a quarterly basis upon application of the Governor for a specified amount not to exceed the highest total compensation paid out under the unemployment compensation law of the State during any one of the four calendar quarters preceding the quarter in which the application is made, where the balance in the unemployment fund of the State in the Unemployment Trust Fund at the close of any one of the four calendar quarters preceding the quarter in which the application is made, is less than the total compensation paid out under the unemployment compensation law of the State during the twelve-month period at the close of such day; incorporating former provisions of subsec. (b), relating to repayment of advances, in par. (1), inserting provision for repayment under section 1103(b)(2) of this title, and provisions formerly designated as cl. (A) and (B) in par. (3)(A) and (3)(B).

Subsec. (b). Pub. L. 96-778 amended subsec. (b) generally, striking out provision for repayment of advances which is now incorporated in subsec. (a)(1) in the reference to repayment under sections 1101(d)(1) and 1322 of this title.

1994—Act Aug. 5, 1954, amended section generally to provide that: (1) the first condition of eligibility for an advance is that the balance in the State unemployment fund at the close of a calendar quarter be less than the total of cash payments made by the State to individuals during the 12-month period which ends with such quarter; (2) the Governor of the State must apply for an advance during the quarter following the quarter specified in paragraph (1) of this section; and (3) the total amount certified for any one application may not exceed the amount paid out by the State for cash benefits in that particular quarter.


EFFECTIVE DATE OF 1976 AMENDMENT

Section 213(d) of Pub. L. 94-566 provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 20, 1976].”

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment by act Aug. 28, 1950, effective Jan. 1, 1950, see section 406(c) of act Aug. 28, 1950, set out as a note under section 1104 of this title.

TERMINATION DATE

Section 4 of act Aug. 6, 1947, provided that: “Section 601 of the War Mobilization and Reconversion Act of 1944 [section 1651 note of Appendix to Title 50, War and National Defense] (terminating the provisions of such Act [sections 1651 to 1678 of Appendix to Title 50] on June 30, 1947) shall not be applicable in the case of the amendments made by title IV of such Act [sections 1666 and 1667 of Appendix to Title 50] to the Social Security Act (this section and section 1104 of this title).”

APPLICATIONS FOR TRANSFER OF FUNDS UNDER FORMER PROVISIONS OF SECTION 122(a); LIMITATIONS

Pub. L. 86-778, title V, §522(b), Sept. 13, 1960, 74 Stat. 979, provided that:

“(1) No amount shall be transferred on or after the date of the enactment of this Act [Sept. 13, 1960] from the Federal unemployment account to the account of any State in the Unemployment Trust Fund pursuant to any application made under section 1201(a) of the Social Security Act [subsec. (a) of this section] as in effect before such date, except that, if—

“(A) some but not all of an amount certified by the Secretary of Labor to the Secretary of the Treasury for transfer to the account of any State was transferred to such account before such date, and

“(B) the Governor of such State, after the date of the enactment of this Act [Sept. 13, 1960], requests the Secretary of the Treasury to transfer all or any part of the remainder to such account, the Secretary of the Treasury shall, prior to audit or settlement by the General Accounting Office [now Government Accountability Office], transfer from the Federal unemployment account to the account of such State in the Unemployment Trust Fund the amount so requested or (if smaller) the amount available in the Federal unemployment account at the time of the transfer. No such amount shall be transferred under this paragraph after the one-year period beginning on the date of the enactment of this Act [Sept. 13, 1960].”

“(2) For purposes of section 3302(c) of the Federal Unemployment Tax Act [section 3302(c) of Title 26, Internal Revenue Code] and titles IX and XII of the Social Security Act [chapter IX and XII of this chapter], if any amount is transferred pursuant to paragraph (1) to the account of any State, such amount shall be treated as an advance made before the date of the enactment of this Act [Sept. 13, 1960].”
§ 1322. Repayment by State; certification; transfer; interest on loan; credit of interest on loan

(a) Repayment by State; certification; transfer

The Governor of any State may at any time request that funds be transferred from the account of such State to the Federal unemployment account in repayment of part or all of that balance of advances, made to such State under section 1321 of this title, specified in the request. The Secretary of Labor shall certify to the Secretary of the Treasury the amount and balance specified in the request; and the Secretary of the Treasury shall promptly transfer such amount in reduction of such balance.

(b) Interest on loan

(1) Except as otherwise provided in this subsection, each State shall pay interest on any advance made to such State under section 1321 of this title. Interest so payable with respect to periods during any calendar year shall be at the rate determined under paragraph (4) for such calendar year.

(2) No interest shall be required to be paid under paragraph (1) with respect to any advance or advances made during any calendar year if—

(A) such advances are repaid in full before the close of September 30 of the calendar year in which the advances were made,

(B) no other advance was made to such State under section 1321 of this title during such calendar year and after the date on which the repayment of the advances was completed, and

(C) such State meets funding goals, established under regulations issued by the Secretary of Labor, relating to the accounts of the States in the Unemployment Trust Fund.

(3)(A) Interest payable under paragraph (1) which was attributable to periods during any fiscal year shall be paid by the State to the Secretary of the Treasury prior to the first day of the following fiscal year. If interest is payable under paragraph (1) on any advance (hereinafter in this subparagraph referred to as the “first advance”) by reason of another advance made to such State after September 30 of the calendar year in which the first advance was made, interest on such first advance attributable to periods before such September 30 shall be paid not later than the day after the date on which the other advance was made.

(B) Notwithstanding subparagraph (A), in the case of any advance made during the last 5 months of any fiscal year, interest on such advance attributable to periods during such fiscal year shall not be required to be paid before the last day of the succeeding taxable year. Any interest the time for payment of which is deferred by the preceding sentence shall bear interest in the same manner as if it were an advance made on the day on which it would have been required to be paid but for this subparagraph.

(C)(i) In the case of any State which meets the requirements of clause (ii) for any calendar year, any interest otherwise required to be paid under this subsection during such calendar year shall be paid as follows—

(I) 25 percent of the amount otherwise required to be paid on or before any day during such calendar year shall be paid on or before such day; and

(II) 25 percent of the amount otherwise required to be paid on or before such day shall be paid on or before the corresponding day in each of the 3 succeeding calendar years.

No interest shall accrue on such deferred interest.

(ii) A State meets the requirements of this clause for any calendar year if the rate of insured unemployment (as determined for purposes of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970) under the State law of the period consisting of the first 6 months of the preceding calendar year equaled or exceeded 7.5 percent.

(4) The interest rate determined under this paragraph with respect to any calendar year is a percentage (but not in excess of 10 percent) determined by dividing—

(A) the aggregate amount credited under section 1104(e) of this title to State accounts on the last day of the last calendar quarter of the immediately preceding calendar year, by

(B) the aggregate of the average daily balances of the State accounts for such quarter as determined under section 1104(e) of this title.

(5) Interest required to be paid under paragraph (1) shall not be paid (directly or indirectly) by a State from amounts in its unemployment fund. If the Secretary of Labor determines that any State action results in the paying of such interest directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) from such unemployment fund, the Secretary of Labor shall not certify such State’s unemployment compensation law under section 3304 of the Internal Revenue Code of 1986. Such noncertification shall be made in accordance with section 3304(c) of such Code.

(b)(A) For purposes of paragraph (2), any voluntary repayment shall be applied against advances made under section 1321 of this title on the last made first repaid basis. Any other repayment of such an advance shall be applied against advances on a first made first repaid basis.

(B) For purposes of this paragraph, the term “voluntary repayment” means any repayment made under subsection (a) of this section.

(7) This subsection shall only apply to advances made on or after April 1, 1982.
least 20 percent beginning with the year after the year in which it is otherwise due, if such State meets the criteria of subparagraph (B). No interest shall accrue on such deferred interest.

(B) To meet the criteria of this subparagraph a State must—

(i) have taken no action since October 1, 1982, which would reduce its net unemployment tax effort or the net solvency of its unemployment system (as determined for purposes of section 3302(f) of the Internal Revenue Code of 1986); and

(ii) have taken an action (as certified by the Secretary of Labor) after March 31, 1982, which would have increased revenue liabilities and decreased benefits under the State's unemployment compensation system (herein-after referred to as a “solvency effort”) by a combined total of the applicable percentage (as compared to such revenues and benefits as would have been in effect without such State action) for the calendar year for which the deferral is requested; or

(ii) have had, for taxable year 1982, an average unemployment tax rate which was equal to or greater than 2.0 percent of the total of the wages (as determined without any limitation on amount) attributable to such State subject to contribution under the State unemployment compensation law with respect to such taxable year.

In the case of the first year for which there is a deferral (over a 4-year period) of the interest otherwise payable for such year, the applicable percentage shall be 25 percent. In the case of the second such year, the applicable percentage shall be 35 percent. In the case of the third such year, the applicable percentage shall be 50 percent.

(C) (i) The base year is the first year for which a deferral under this provision is requested and subsequently granted. The Secretary of Labor shall estimate the unemployment rate for the base year. To determine whether a State meets the requirements of subparagraph (B)(ii)(I), the Secretary of Labor shall determine the percentage by which the benefits and taxes in the base year with the application of the action referred to in subparagraph (B)(ii)(I) are lower or greater, as the case may be, than such benefits and taxes would have been without the application of such action. In making this determination, the Secretary shall deem the application of the action referred to in subparagraph (B)(ii)(I) to have been effective for the base year to the same extent as such action is effective for the year following the year for which the deferral is sought. Once a deferral is approved under clause (ii)(I) of subparagraph (B) a State must continue to maintain its solvency effort. Failure to do so shall result in the State being required to make immediate payment of all deferred interest.

(ii) Increases in the taxable wage base from $6,000 to $7,000 or increases after 1984 in the maximum tax rate to 5.4 percent shall not be counted for purposes of meeting the requirement of subparagraph (B).

(D) In the case of a State which produces a solvency effort of 50 percent, 80 percent, and 90 percent rather than the 25 percent, 35 percent, and 50 percent required under subparagraph (B), the interest shall be computed at an interest rate which is 1 percentage point less than the otherwise applicable interest rate.

(9) Any interest otherwise due from a State on September 30 of a calendar year after 1982 may be deferred (and no interest shall accrue on such deferred interest) for a grace period of not to exceed 9 months if, for the most recent 12-month period for which data are available before the date such interest is otherwise due, the State had an average total unemployment rate of 13.5 percent or greater.

(10)(A) With respect to the period beginning on February 17, 2009, and ending on December 31, 2010—

(i) any interest payment otherwise due from a State under this subsection during such period shall be deemed to have been made by the State; and

(ii) no interest shall accrue during such period on any advance or advances made under section 1321 of this title to a State.

(B) The provisions of subparagraph (A) shall have no effect on the requirement for interest payments under this subsection after the period described in such subparagraph or on the accrual of interest under this subsection after such period.

(c) Credit of interest on loan

Interest paid by States in accordance with this section shall be credited to the Federal unemployment account established by section 1104(y) of this title in the Unemployment Trust Fund.


REFERENCES IN TEXT


AMENDMENTS


1983—Subsec. (b)(2). Pub. L. 98–118, §5(a)(1), substituted “advance or advances” for “advance” in provisions preceding subpar. (A). Subsec. (b)(2)(A). Pub. L. 98–118, §5(a)(2), (3), substituted “advances are” for “advance is” and “advances were” for “advance was”. Subsec. (b)(2)(B). Pub. L. 98–118, §5(a)(4), substituted “advances was completed” for “advance was completed”.

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Subsec. (b)(3)(A). Pub. L. 98–21, § 514, which directed substitution of “prior to” for “not later than” was executed, as the probable intent of Congress, by making that substitution the first time the phrase appeared following “Secretary of Treasury” and not the second time that phrase appeared.

Subsec. (b)(3)(C)(i). Pub. L. 98–21, § 511(c), substituted, after subcl. II, provision that no interest shall accrue on such deferred interest for provision that any interest the time for payment of which was deferred under this subparagraph would bear interest in the same manner as if it had been an advance made on the day on which it would have been required to be paid but for this subparagraph.

Subsec. (b)(7). Pub. L. 98–21, § 511(b), struck out “, and before January 1, 1980” after “April 1, 1982”.

Subsec. (b)(8), (9). Pub. L. 98–21, § 511(a), added pars. (8) and (9).


Subsec. (b), Pub. L. 97–35, § 2407(a), added subsec. (b).

1960—Pub. L. 86–778 amended section generally, designating provisions constituting subsec. (a) as entire section, substituting “that balance of advances, made to such State under section 1321 of this title, specified in the request” for “any remaining balance of advances made to such State under section 1321 of this title” and inserting “in reduction of such balance” and omitting subsecs. (b) and (c) pertaining to appropriations and repayable advances which were incorporated in sections 1101(d)(1) and 1323 of this title.

Effective Date of 1987 Amendment

Section 5404(b) of Pub. L. 105–33 provided that: “The amendments made by this section [amending this section] shall apply to calendar years beginning after the date of the enactment of this Act (Aug. 5, 1997).”

Effective Date of 1987 Amendment

Section 9156(b) of Pub. L. 100–203 provided that: “The amendment made by subsection (a) [amending this section] shall apply to interest paid on advances made on or after the date of the enactment of this Act (Dec. 22, 1987).”

Effective Date of 1983 Amendment

Section 5(b) of Pub. L. 98–118 provided that: “The amendments made by this section [amending this section] shall apply to advances made on or after April 1, 1982.”

Effective Date of 1982 Amendment

Section 274(b) of Pub. L. 97–248 provided that: “The amendment made by subsection (a) [amending this section] shall apply to interest required to be paid after December 31, 1982.”

§ 1323. Repayable advances to Federal unemployment account

There are hereby authorized to be appropriated to the Federal unemployment account, as repayable advances, such sums as may be necessary to carry out the purposes of this subchapter. Amounts appropriated as repayable advances shall be repaid by transfers from the Federal unemployment account to the general fund of the Treasury, at such times as the amount in the Federal unemployment account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose. Any amount transferred as a repayment under this section shall be credited against, and shall operate to reduce, any balance of advances repayable under this section. Whenever, after the application of sections 1101(f)(3) and 1102(a) of this title with respect to the excess in the employment security administration account as of the close of any fiscal year, there remains any portion of such excess, so much of such remainder as does not exceed the balance of advances made pursuant to this section shall be transferred to the general fund of the Treasury and shall be credited against, and shall operate to reduce, such balance of advances. Amounts appropriated as repayable advances for purposes of this subsection shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such advance, borne by all interest bearing obligations of the United States then forming part of the public debt; except that in cases in which such average rate is not a multiple of one-eighth of 1 percent, the rate of interest shall be the multiple of one-eighth of 1 percent next lower than such average rate.


Prior Provisions

Provisions similar to those comprising the first sentence of this section were contained in section 1322(c), act Aug. 14, 1935, ch. 531, title XII, § 1202(c), as added Aug. 5, 1954, ch. 657, § 3, 68 Stat. 672, prior to amendment by Pub. L. 86–778.

Amendments

1987—Pub. L. 100–203 struck out “(without interest)” after “account, as repayable advances” and “; without interest,” after “shall be repaid”, and inserted sentence at end relating to amounts appropriated as repayable advances for purposes of this subsection.

1983—Pub. L. 98–135 inserted proviso requiring that amounts appropriated as repayable advances be repaid, without interest, by transfers from the Federal unemployment account to the general fund of the Treasury, at such times as the amount in the Federal unemployment account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose, and that any amount transferred as a repayment under this section shall be credited against, and operate to reduce, any balance of advances repayable under this section.


1960—Pub. L. 86–778 amended section generally, substituting provisions relating to repayable advances to the Federal unemployment account for former provision defining “Governor” and now incorporated in section 1324 of this title.

Effective Date of 1987 Amendment

Amendment by Pub. L. 100–203 applicable to advances made on or after Dec. 22, 1987, see section 9155(d) of Pub. L. 100–203, set out as a note under section 1103 of this title.

Retransfer of Amounts Transferred from Federal Unemployment Account to Employment Security Administration Account as of September 30, 1983

Section 205(b) of Pub. L. 98–135 provided that: “Any amounts transferred from the Federal unemployment account to the employment security administration ac-
count as of September 30, 1983, shall be transferred back to the Federal unemployment account.’’

§ 1324. “Governor” defined

When used in this subchapter, the term “Governor” includes the Mayor of the District of Columbia.


Prior Provisions

Provisions similar to those comprising this section were contained in section 1323, act Aug. 14, 1935, ch. 531, title XII, §1206, as added Aug. 5, 1964, ch. 657, §3, 68 Stat. 672, prior to amendment by Pub. L. 86–778.

Transfer of Functions


Subchapter XIII—Reconversion Unemployment Benefits for Seamen


Effective Date of Repeal

Repeal effective July 18, 1984, but such repeal shall not be construed as changing or affecting any right, li-

ability, status, or interpretation which existed before that date, see section 2664(b) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 401 of this title.

Subchapter XIV—Grants to States for Aid to Permanently and Totally Disabled

Repeal of Subchapter; Inapplicability of Repeal to Puerto Rico, Guam, and Virgin Islands

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

§ 1351. Authorization of appropriations

For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals eighteen years of age and older who are permanently and totally disabled, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid to the permanently and totally disabled.


Repeal of Section

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

Amendments

1981—Pub. L. 97–35 struck out “and of encouraging each State, as far as practicable under such conditions, to furnish rehabilitation and other services to help such individuals attain and retain capability for self-support or self-care” after “and totally disabled”.

1966—Pub. L. 89–685 inserted “to furnish rehabilitation and other services” before “to help such individuals” and “or retain capability for” after “attain”.

1946—Act Aug. 1, 1946, restated purpose to include assistance to individuals to attain self-support of self-care.

Transfer of Functions

§ 1352. State plans for aid to permanently and totally disabled

(a) A State plan for aid to the permanently and totally disabled must (1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the permanently and totally disabled is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing; (5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title, assistance under a State program funded under part A of subchapter IV of this chapter, or aid to the blind under the State plan approved under section 1202 of this title; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of an individual claiming aid to the permanently and totally disabled, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (A) the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and (C) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation; (9) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan; (10) provide that all individuals wishing to make application for aid to the permanently and totally disabled shall have opportunity to do so, and that aid to the permanently and totally disabled shall be furnished with reasonable promptness to all eligible individuals; (11) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; (12) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of aid to the permanently and totally disabled to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and (13) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for aid for the permanently and totally disabled under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid to the permanently and totally disabled and has resided therein continuously for one year immediately preceding the application; and

(2) Any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this subchapter.


REPEAL OF SECTION

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

AMENDMENTS

1996—Subsec. (a)(7). Pub. L. 104–193 substituted “assistance under a State program funded under part A of subchapter IV of this chapter” for “aid to families with dependent children under the State plan approved under section 602 of this title”.


1972—Subsec. (a)(1). Pub. L. 92–603, §410(c), inserted “except to the extent permitted by the Secretary with respect to services” before “provide”.

Subsec. (a)(4). Pub. L. 92–603, §407(c), redesignated existing provisions as subcl. (A) and added subcl. (B).

Subsec. (a)(9). Pub. L. 92–603, §413(c), substituted provisions permitting the use or disclosure of information concerning applicants or recipients to public officials requiring such information in connection with their official duties and to other persons for purposes directly connected with the administration of the State plan, for provisions restricting the use or disclosure of such information to purposes directly connected with the administration of aid to the permanently and totally disabled.

Subsec. (a)(12). Pub. L. 92–603, §405(c), inserted provision relating to the use of whatever internal organizational arrangement found appropriate.

Subsec. (b). Pub. L. 92–603, §406(c), inserted provision relating to the furnishing of manuals and other policy issuances to persons without charge and at the option of the State.

1968—Subsec. (a)(5). Pub. L. 90–248, §210(a)(4), redesignated existing provisions as subcl. (A) and added subcl. (B). Pub. L. 92–603, §413(c), redesignated existing provisions as subcl. (A) and added subcl. (B). Pub. L. 92–603, §415(c), added subcl. (C). Pub. L. 92–603, §410(c), inserted “except to the extent permitted by the Secretary with respect to services” before “provide”.

Subsec. (a)(8)(A). Pub. L. 90–248 §213(a)(3), increased from $5 to $7.50 limitation on amount of any income which the State may disregard in making its determination of need.

1965—Subsec. (a)(8). Pub. L. 89–97 inserted exception prohibiting disregard by State in making its determination of need of more than $5 of any income or of more than the first $30 of the first $80 per month of additional income which is earned and allowing disregard, for a period not in excess of 36 months, of such additional amounts of other income and resources as may be necessary to the fulfillment of approved plan for achieving self-support but only as to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation.


Subsec. (a)(8). Pub. L. 87–543, §106(a)(3), inserted “, as well as any expenses reasonably attributable to the earning of any such income”.


EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(b)(2) of Pub. L. 98–369, set out as an Effective Date note under section 13220–7 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 210(a)(4) of Pub. L. 90–248 effective July 1, 1969, or, if earlier (with respect to a State’s plan approved under this subchapter) on the date as of which the modification of the State plan to comply with such amendment is approved, see section 210(b) of Pub. L. 90–248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 403(d) of Pub. L. 89–97 provided that the amendment made by that section is effective Oct. 1, 1965.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 106(a)(3) of Pub. L. 87–543 effective July 1, 1963, see section 202(a) of Pub. L. 87–543, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT


TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary under subsec. (a)(5)(A) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(D) of this title.


Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953, Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

PUBLIC ACCESS TO STATE DISBURSEMENT RECORDS

Public access to State records of disbursements of funds and payments under this subchapter, see note set out under section 302 of this title.

§1353. Payments to States

(a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the permanently and totally disabled, for each quarter, beginning with the quarter commencing October 1, 1958—


(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the permanently and totally
disabled under the State plan, not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the permanently and totally disabled for such month; and

(3) in the case of any State, an amount equal to 50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health and Human Services shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of subsection (a) of this section, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of permanently and totally disabled individuals in the State, and (C) such other investigation as the Secretary of Health and Human Services may find necessary.

(2) The Secretary of Health and Human Services shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary for the proper and efficient administration of the State plan, except that such increases or decreases shall be based on (A) a report filed by the State containing its estimate of the total sum to be expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan; (B) records showing the number of permanently and totally disabled individuals in the State, and (C) such other investigation as the Secretary of Health and Human Services may find necessary.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department, and prior to audit or settlement by the Government Accountability Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.


REPEAL OF SECTION

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

AMENDMENTS


1993—Subsec. (a)(3). Pub. L. 103–66 substituted “50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.” for “the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and official administration of the State plan—

“(A) 75 percent of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

“(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1320b–7(d) of this title; plus

“(C) one-half of the remainder of such expenditures.”

1986—Subsec. (a)(3)(B), (C). Pub. L. 99–603 added subpar. (B) and redesignated former subpar. (B) as (C).

1981—Subsec. (a)(1). Pub. L. 97–35, §2184(c)(2)(B), struck out par. (1) which provided for computation of the amount of payments in the case of any State other than Puerto Rico, the Virgin Islands, and Guam.

Subsec. (a)(2). Pub. L. 97–35, §2184(c)(3)(B), struck out “includ[ing] expendit[ures] for premiums under part B of chapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof”.

Subsec. (a)(3). Pub. L. 97–35, §2353(k)(1)(A), redesignated subpar. (A)(iv) as subpar. (A), struck out former subparas. (A)(ii), which included services prescribed pursuant to subsec. (d)(1) of this section and provided to applicants for or recipients of aid to the permanently and totally disabled to help them attain self-support,
A(H), which included other services, specified by the Secretary as likely to prevent or reduce dependency, and (A)(III), which included any of the services in subpars. (A) and (II) deemed appropriate for individuals likely to become applicants for or recipients of aid to the permanently and totally disabled, redesignated former subpar. (C) as (B), and struck out former subpar. (B).

(A)(iii), which included any of the services in subpars. (A)(ii) and (II) deemed appropriate for individuals likely to become applicants for or recipients of aid to the permanently and totally disabled or individuals likely to become applicants or recipients, and subpars. (D) and (E) and provision following subpar. (E), which specified what services were includible.

Subsec. (a)(4). Pub. L. 97–35, § 2335(b)(1)(B), struck out subpar. (4), which provided payment, in the case of any State whose plan approved under section 1352 of this title did not meet the requirements of subsec. (c)(1) of this section, of an amount equal to one-half of the total of all payments made by such State "under conditions which shall be for subject to limitations".

1975—Subsec. (a)(2). Pub. L. 93–647, § 2336, substituted "under conditions which shall be for subject to limitations" for "subject to limitations".

1961—Subsec. (a). Pub. L. 87–64 substituted "$31" for "$30" and "$66" for "$55" in cl. (1), and "$35.50" for "$35" in cl. (2).

1958—Subsec. (a). Pub. L. 85–840 increased the payments to the States to four-fifths of the first $30 of the average monthly payment per recipient, including assistance in the form of money payments and in the form of medical or any other type of remedial care, plus the Federal percentage of the amount by which the expenditures exceed the maximum which may be counted under cl. (A), but excluding that part of the average monthly payment per recipient in excess of $65, increased the average monthly payment to Puerto Rico and the Virgin Islands from $30 to $35, excluded Guam from the provisions which authorize an average monthly payment of $65 and included Guam within the provisions which authorize an average monthly payment of $65, and permitted the counting of individuals with respect to whom expenditures were made as assistance in the form of medical or any other type of remedial care in determining the total number of recipients.

1956—Subsec. (a). Act Aug. 1, 1956, § 304, substituted "during such quarter as aid to the permanently and totally disabled in the form of money payments under the State plan" for "during such quarter as aid to the permanently and totally disabled in the form of money payments under the State plan" in cls. (1) and (2), "who received aid to the permanently and totally disabled in the form of money payments for each month" for "who received aid to the permanently and totally disabled for such month" in par. (a) of cl. (1), and inserted cl. (4).

1952—Subsec. (a). Act July 18, 1952, increased the Federal share of the State's average monthly payment to four-fifths of the first $25 plus one-half of the remainder within individual maximums of $55, and changed formulas for computing the Federal share of public assistance for Puerto Rico and the Virgin Islands.
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Effective Date of 1993 Amendment
Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Apr. 1, 1994, with special rule for States whose legislature meets biennially, and does not have regular session scheduled in calendar year 1994, see section 1371(c) of Pub. L. 103–66, set out as a note under section 303 of this title.

Effective Date of 1986 Amendment

Effective Date of 1981 Amendment

Effective Date of 1975 Amendment
Amendment by section 3(e)(2) of Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, and amendment by section 5(d) of Pub. L. 93–647 effective with respect to payments for quarters commencing after Sept. 30, 1975, see section 7(a), (b) of Pub. L. 93–647, set out as a note under section 303 of this title.

Effective Date of 1972 Amendment
Amendments by Pub. L. 92–512 effective July 1, 1972, and Jan. 1, 1973, respectively, see section 301(e) of Pub. L. 92–512, set out as a note under section 303 of this title.

Effective Date of 1968 Amendment
Amendment by Pub. L. 90–248 effective Jan. 1, 1968, see section 212(e) of Pub. L. 90–248, set out as a note under section 303 of this title.

Effective Date of 1965 Amendment
Amendment by section 401(e) of Pub. L. 89–97 applicable in the case of expenditures made after December 31, 1965, under a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter, see section 401(f) of Pub. L. 89–97, set out as a note under section 303 of this title.

Effective Date of 1962 Amendment
Amendment by section 101(a)(4) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Aug. 31, 1962, amendment by section 101(b)(4) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Aug. 31, 1962, and amendment by section 132(c) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Sept. 30, 1962, see section 202(d), (f) of Pub. L. 87–543, set out as a note under section 303 of this title.

Effective Date of 1961 Amendment
Amendment by Pub. L. 87–64 applicable only in the case of expenditures made after Sept. 30, 1961, and before July 1, 1962, under a State plan approved under subchapters I, X, or XIV of this chapter, see section 303(e) of Pub. L. 87–64, set out as a note under section 303 of this title.

Effective Date of 1958 Amendment
For effective date of amendment by Pub. L. 85–840, see section 512 of Pub. L. 85–840, set out as a note under section 303 of this title.

Effective and Termination Date of 1956 Amendment
Amendment by section 304 of act Aug. 1, 1956, effective July 1, 1957, see section 305 of act Aug. 1, 1956, set out as a note under section 303 of this title.

Amendment by section 344 of act Aug. 1, 1956, effective only for period beginning Oct. 1, 1956, and ending with close of June 30, 1959, see section 345 of such act Aug. 1, 1956, set out as a note under section 303 of this title.

Effective and Termination Date of 1952 Amendment

Transfer of Functions
Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 301 of this title. Federal Security Agency and Office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 508(b) of Pub. L. 98–44 which is classified to section 3508(b) of Title 20, Education.

Nonduplication of Payments to States: Prohibition of Payments After December 31, 1969
Prohibition of payments under this subchapter to States with respect to aid or assistance in form of medical or other type of remedial care for any period for which States received payments under subchapter XIX of this chapter or for any period after Dec. 31, 1969, see section 121(b) of Pub. L. 89–97, set out as a note under section 1396b of this title.

Election of Payments Under Combined State Plan Rather Than Separate Plans
Payments to States under combined State plan under subchapter XVI or this chapter as precluding payment under State plan conforming to this subchapter, see section 141(b) of Pub. L. 87–543, set out as a note under section 1382c of this title.

§ 1354. Operation of State plans
In the case of any State plan for aid to the permanently and totally disabled which has been approved by the Secretary of Health and Human Services, if the Secretary after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1352(b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1352(a) of this title to be included in the plan,

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until he
is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).


REPEAL OF SECTION

Pub. L. 92–603, title III, §303(a), (b), Oct. 30, 1972, 86 Stat. 1464, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1968—Pub. L. 90–248 inserted “(or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure)” after “further payments will not be made to the State” and substituted in last sentence “further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure)” for “further certification to the Secretary of the Treasury with respect to such State”.

TRANSFER OF FUNCTIONS

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

§ 1355. Definitions

For the purposes of this subchapter, the term “aid to the permanently and totally disabled” means money payments to needy individuals eighteen years of age or older who are permanently and totally disabled, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases. Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1332 of this title includes provision for—

1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

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

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

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

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

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


REPEAL OF SECTION

Pub. L. 92–603, title III, §303(a), (b), Oct. 30, 1972, 86 Stat. 1464, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

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

1 So in original. Probably should be “needs”.
Title 42—The Public Health and Welfare

§1361 to 1364

1972—Pub. L. 92–693 authorized the State, at its option, to include within “aid to the permanently and totally disabled” provisions relating to money payments to an individual absent from such State for more than 90 consecutive days, and provisions relating to rent payments made directly to a public housing agency.

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

Effective Date of 1965 Amendment
Amendment by section 221(c) of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub. L. 89–97, set out as a note under section 303 of this title.

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

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

Subchapter XV—Unemployment Compensation for Federal Employees


Subchapter XVI—Supplemental Security Income for Aged, Blind, and Disabled

§1381. Statement of purpose; authorization of appropriations

For the purpose of establishing a national program to provide supplemental security income to individuals who have attained age 65 or are blind or disabled, there are authorized to be appropriated sums sufficient to carry out this subchapter.

Effective Date

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

Continuation of Federal Financial Participation in Experimental, Pilot, or Demonstration Projects Approved Before October 1973, for Period on-and-after December 31, 1973, Without Declaratory or Reversionary Action on Account of Subchapter XVI Provisions; Waiver of Subchapter XVI Restrictions for Individuals; Federal Payments of Non-Federal Share as Supplementary Payments


Application to Northern Mariana Islands

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

Puerto Rico, Guam, and Virgin Islands

Enactment of section 1601 of the Social Security Act [this section] by Pub. L. 92–603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92–603, set out as a note under section 1601 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1601 of the Social Security Act [this section] as it existed prior to reenactment by Pub. L. 92–603, and as amended, continues to apply and reads as follows:

§ 1381. Authorization of appropriations

For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish financial assistance to needy individuals who are 65 years of age or over, are blind, or are 18 years of age or over and permanently and totally disabled, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which, in accordance with and subject to the provisions of this subchapter, be paid benefits by the Commissioner of Social Security.


Prior Provisions


Amendments

1994—Pub. L. 103–296 substituted “Commissioner of Social Security” for “Secretary of Health and Human Services”.


Effective Date of 1994 Amendment


Effective Date of 1984 Amendment

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

Effective Date

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

Application to Northern Mariana Islands

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

Puerto Rico, Guam, and Virgin Islands

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.
§ 1382. Eligibility for benefits

(a) "Eligible individual" defined

(1) Each aged, blind, or disabled individual who does not have an eligible spouse and—

(A) whose income, other than income excluded pursuant to section 1382a(b) of this title, is at a rate of not more than $1,752 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974 or any calendar year thereafter, and

(B) whose resources, other than resources excluded pursuant to section 1382a(b) of this title, are not more than (i) in case such individual has a spouse with whom he is living, the applicable amount determined under paragraph (3)(A), or (ii) in case such individual has no spouse with whom he is living, the applicable amount determined under paragraph (3)(B), shall be an eligible individual for purposes of this subchapter.

(2) Each aged, blind, or disabled individual who has an eligible spouse and—

(A) whose income (together with the income of such spouse), other than income excluded pursuant to section 1382a(b) of this title, is at a rate of not more than $2,628 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974, or any calendar year thereafter, and

(B) whose resources (together with the resources of such spouse), other than resources excluded pursuant to section 1382a(b) of this title, are not more than the applicable amount determined under paragraph (3)(A), shall be an eligible individual for purposes of this subchapter.

(3)(A) The dollar amount referred to in clause (i) of paragraph (1)(B), and in paragraph (2)(B), shall be $2,250 prior to January 1, 1985, and shall be increased to $2,400 on January 1, 1985, to $2,500 on January 1, 1986, to $2,625 on January 1, 1987, to $2,800 on January 1, 1988, and to $3,000 on January 1, 1989.

(B) The dollar amount referred to in clause (ii) of paragraph (1)(B), shall be $1,500 prior to January 1, 1985, and shall be increased to $1,600 on January 1, 1985, to $1,700 on January 1, 1986, to $1,800 on January 1, 1987, to $2,000 on January 1, 1988, and to $2,000 on January 1, 1989.

(b) Amount of benefits

(1) The benefit under this subchapter for an individual who does not have an eligible spouse shall be payable at the rate of $1,752 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974 and any calendar year thereafter, reduced by the amount of income, not excluded pursuant to section 1382a(b) of this title, of such individual and spouse.

(c) Period for determination of benefits

(1) An individual’s eligibility for a benefit under this subchapter for a month shall be determined on the basis of the individual’s (and eligible spouse’s, if any) income, resources, and other relevant characteristics in such month, and, except as provided in paragraphs (2), (3), (4), (5), and (6), the amount of such benefit shall be determined for such month on the basis of income and other characteristics in the first or, if the Commissioner of Social Security so determines, second month preceding such month. Eligibility for and the amount of such benefits shall be reetermined at such time or times as may be provided by the Commissioner of Social Security.

(2) The amount of such benefit for the month in which an application for benefits becomes effective (or, if the Commissioner of Social Security so determines, for such month and the following month) and for any month immediately following a month of ineligibility for such benefits (or, if the Commissioner of Social Security so determines, for such month and the following month) shall—

(A) be determined on the basis of the income of the individual and the eligible spouse, if any, of such individual and other relevant circumstances in such month; and

(B) in the case of the first month following a period of ineligibility in which eligibility is restored after the first day of such month, bear the same ratio to the amount of the benefit which would have been payable to such individual if eligibility had been restored on the first day of such month as the number of days in such month including and following the date of restoration of eligibility bears to the total number of days in such month.

(3) For purposes of this subsection, an increase in the benefit amount payable under subchapter II of this chapter (over the amount payable in the preceding month, or, at the election of the Commissioner of Social Security, the second preceding month) to an individual receiving benefits under this subchapter shall be included in the income used to determine the benefit under this subchapter of such individual for any month which is—

(A) the first month in which the benefit amount payable to such individual under this title is increased pursuant to section 1382f of this title, or

(B) at the election of the Commissioner of Social Security, the month immediately following such month.

(4)(A) Notwithstanding paragraph (3), if the Commissioner of Social Security determines that reliable information is currently available with respect to the income and other circumstances of an individual for a month (including information with respect to a class of which such individual is a member and information with respect to scheduled cost-of-living adjustments under other benefit programs), the benefit amount of such individual under this subchapter for such month may be determined on the basis of such information.

(B) The Commissioner of Social Security shall prescribe by regulation the circumstances in
which information with respect to an event may be taken into account pursuant to subparagraph (A) in determining benefit amounts under this subchapter.

(5) Notwithstanding paragraphs (1) and (2), any income which is paid to or on behalf of an individual in any month pursuant to (A) a State program funded under part A of subchapter IV of this chapter, (B) section 672 of this title (relating to foster care assistance), (C) section 1532(e) of title 9 (relating to assistance for refugees), (D) section 501(a) of Public Law 96-422 (relating to assistance for Cuban and Haitian entrants), or (E) section 13 of title 25 (relating to assistance furnished by the Bureau of Indian Affairs), shall be taken into account in determining the amount of the benefit under this subchapter of such individual (and his eligible spouse, if any) only for that month, and shall not be taken into account in determining the amount of the benefit for any other month.

(6) The dollar amount in effect under subsection (b) of this section as a result of any increase in benefits under this subchapter by reason of section 1382f of this title shall be used to determine the value of any in-kind support and maintenance required to be taken into account in determining the benefit payable under this subchapter to an individual (and the eligible spouse, if any) of the individual for the 2 months preceding the individual’s removal from such institution or facility.

(7) For purposes of this subsection, an application of an individual for benefits under this subchapter shall be effective on the later of—

(A) the first day of the month following the date such application is filed, or

(B) the first day of the month following the date such individual becomes eligible for such benefits with respect to such application.

(8) The Commissioner of Social Security may waive the limitations specified in subparagraphs (A) and (B) of subsection (e)(1) of this section on an individual’s eligibility and benefit amount for a month (to the extent such limitation is applicable by reason of such individual’s presence throughout such month in a hospital, extended care facility, nursing home, or intermediate care facility) if such waiver would promote the economical and efficient administration of the program authorized by this subchapter.

(d) Limitation on amount of gross income earned; “gross income” defined

The Commissioner of Social Security may prescribe the circumstances under which, consistently with the purposes of this subchapter, the gross income from a trade or business (including farming) will be considered sufficiently large to make an individual ineligible for benefits under this subchapter. For purposes of this subsection, the term “gross income” has the same meaning as when used in chapter 1 of the Internal Revenue Code of 1986.

(e) Limitation on eligibility of certain individuals

(1)(A) Except as provided in subparagraphs (B), (C), (D), (E), and (G), no person shall be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if throughout such month he is an inmate of a public institution.

(B) In any case where an eligible individual or his eligible spouse (if any) is, throughout any month (subject to subparagraph (G)), in a medical treatment facility receiving payments (with respect to such individual or spouse) under a State plan approved under subchapter XIX of this chapter, or an eligible individual is a child described in section 1382c(f)(2)(B) of this title, or, in the case of an eligible individual who is a child under the age of 18, receiving payments (with respect to such individual) under any health insurance policy issued by a private provider of such insurance the benefit under this subchapter for such individual for such month shall be payable (subject to subparagraph (E))—

(i) at a rate not in excess of $360 per year (reduced by the amount of any income not excluded pursuant to section 1382a(b) of this title) in the case of an individual who does not have an eligible spouse;

(ii) in the case of an individual who has an eligible spouse, if only one of them is in such a facility throughout such month, at a rate not in excess of the sum of—

(I) the rate of $360 per year (reduced by the amount of any income, not excluded pursuant to section 1382a(b) of this title, of the one who is in such facility), and

(II) the applicable rate specified in subsection (b)(1) of this section (reduced by the amount of any income, not excluded pursuant to section 1382a(b) of this title, of the other); and

(iii) at a rate not in excess of $720 per year (reduced by the amount of any income not excluded pursuant to section 1382a(b) of this title) in the case of an individual who has an eligible spouse, if both of them are in such a facility throughout such month.

For purposes of this subsection, a medical treatment facility that provides services described in
section 1396p(c)(1)(C) of this title shall be considered to be receiving payments with respect to an individual under a State plan approved under subchapter XIX of this chapter during any period of ineligibility of such individual for purposes of the month preceding the first month following the month involved, provided such individual is a resident of a public emergency shelter for the homeless (as defined in regulations which shall be prescribed by the Commissioner of Social Security), except that no person shall be an eligible individual or eligible spouse by reason of this subparagraph more than 6 months in any 9-month period.

(B) A person may be an eligible individual or eligible spouse for purposes of this subchapter while in the State in which he is a resident of a public emergency shelter for the homeless (as defined in regulations which shall be prescribed by the Commissioner of Social Security); except that no person shall be an eligible individual or eligible spouse by reason of this subparagraph more than 6 months in any 9-month period.

(C) As used in subparagraph (A), the term “public institution” does not include a publicly operated community residence which serves no more than 16 residents.

(D) A person may be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month throughout which he is a resident of a public emergency shelter for the homeless (as defined in regulations which shall be prescribed by the Commissioner of Social Security); except that no person shall be an eligible individual or eligible spouse by reason of this subparagraph more than 6 months in any 9-month period.

(E) Notwithstanding subparagraphs (A) and (B), any individual who—

(i) is an inmate of a public institution, the primary purpose of which is the provision of medical or psychiatric care, throughout any month as described in subparagraph (A), or

(ii) in a medical treatment facility throughout any month as described in subparagraph (B),

(iii) under an agreement of the public institution or the medical treatment facility is permitted to retain any benefit payable by reason of this subparagraph,

may be an eligible individual or eligible spouse for purposes of this subchapter (and entitled to the benefit determined on the basis of the rate applicable under subsection (b) of this section) for the month referred to in subclause (I) or (II) of clause (i) and, if such subclause still applies, for the succeeding month.

(F) An individual who is an eligible individual or an eligible spouse for a month by reason of subparagraph (E) shall not be treated as being eligible under section 1382h(a) or (b) of this title for the month preceding such month, and

(G) A person may be an eligible individual or eligible spouse for purposes of this subchapter, and subparagraphs (A) and (B) shall not apply, with respect to any particular month throughout which he or she is an inmate of a public institution the primary purpose of which is the provision of medical or psychiatric care, or is in a medical treatment facility receiving payments (with respect to such individual or spouse) under a State plan approved under subchapter XIX of this chapter or, in the case of an individual who is a child under the age of 18, under any health insurance policy issued by a private provider of such insurance, if it is determined in accordance with subparagraph (H) or (J) that—

(i) such person’s stay in that institution or facility is required by law and is not for the purpose of an institutionalization; and

(ii) such person is likely to be enrolled in medical or psychiatric care, or is in a medical treatment facility as a patient due to a mental or physical condition, are limited in their ability to provide information or assistance in connection with the making of determinations with respect to such person.

(H) The Commissioner of Social Security shall establish procedures for the determinations required by clauses (i) and (ii) of subparagraph (G), and may enter into agreements for making such determinations (or for providing information or assistance in connection with the making of such determinations) with appropriate State and local public and private agencies or organizations. Such procedures and agreements shall include the provision of appropriate assistance to individuals who, because of their physical or mental condition, are limited in their ability to furnish the information needed in connection with the making of such determinations.

(I) The Commissioner shall enter into an agreement, with any interested State or local institution comprising a jail, prison, penal institution, or correctional facility, or with any other interested State or local institution a purpose of which is to confine individuals as described in section 402(x)(1)(A)(ii) of this title, under which—

(1) the institution shall provide to the Commissioner, on a monthly basis and in a manner specified by the Commissioner, the names, social security account numbers, dates of birth, confinement commencement dates, and, to the extent available to the institution, such other information concerning the inmates of the institution as the Commissioner may require for the purpose of carrying out this paragraph and the other provisions of this subchapter; and

(2) the Commissioner shall pay to any such institution, with respect to each individual who receives in the month preceding the first month throughout which such individual is an inmate of the jail, prison, penal institution, or correctional facility that furnishes information respecting such individual pursuant to clause (I), or is confined in the institution (that so furnishes such information) as described in section 402(x)(1)(A)(ii) of this title, a benefit under this subchapter for such preceding month, and who is determined by the Commissioner to be ineligible for benefits under this subchapter by reason of confinement based on the information provided by such institution, $200 (subject to reduction under clause (ii)) if the institution furnishes the information described in subparagraph (H) of this title to the Commissioner within 30 days after the date such individual becomes an inmate of such institution.
clause (ii)) if the institution furnishes such information after 30 days after such date but within 90 days after such date.

(ii) The dollar amounts specified in clause (i)(II) shall be reduced by 50 percent if the Commissioner is also required to make a payment to the institution with respect to the same individual under an agreement entered into under section 402(x)(9)(B) of this title.

(iii) The Commissioner shall maintain, and shall provide on a reimbursable basis, information obtained pursuant to agreements entered into under clause (i) to any Federal or federally-assisted cash, food, or medical assistance program for eligibility and other administrative purposes under such program.

(iv) Payments to institutions required by clause (i)(II) shall be made from funds otherwise available for the payment of benefits under this subchapter and shall be treated as direct spending for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 900 et seq.].

(G) For the purpose of carrying out this paragraph, the Commissioner of Social Security shall conduct periodic computer matches with data maintained by the Secretary of Health and Human Services under subchapter XVIII or XIX of this chapter. The Secretary shall furnish to the Commissioner, in such form and manner and under such terms as the Commissioner and the Secretary shall mutually agree, such information as the Commissioner may request for this purpose. Information obtained pursuant to such a match may be substituted for the physician’s certification otherwise required under subparagraph (G)(i).

(2) No person shall be an eligible individual or eligible spouse for purposes of this subchapter if, after notice to such person by the Commissioner of Social Security that it is likely that such person is eligible for any payments of the type enumerated in section 1382a(a)(2)(B) of this title, such person fails within 30 days to take all appropriate steps to apply for and (if eligible) obtain any such payments.

(3) Notwithstanding anything to the contrary in the criteria being used by the Commissioner of Social Security in determining when a husband and wife are to be considered two eligible individuals for purposes of this subchapter and when they are to be considered an eligible individual with an eligible spouse, the State agency administering or supervising the administration of a State plan under any other program under this chapter may (in the administration of such plan) treat a husband and wife living in the same medical treatment facility described in paragraph (1)(B) as though they were an eligible individual with his or her eligible spouse for purposes of this subchapter (rather than two eligible individuals), after they have continuously lived in the same such facility for 6 months, if treating such husband and wife as two eligible individuals would prevent either of them from receiving benefits or assistance under such plan or reduce the amount thereof.

(4)(A) No person shall be considered an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if during such month the person is—

(i) fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed; or

(ii) violating a condition of probation or parole imposed under Federal or State law.

(B) Notwithstanding subparagraph (A), the Commissioner shall, for good cause shown, treat the person referred to in subparagraph (A) as an eligible individual or eligible spouse if the Commissioner determines that—

(i) a court of competent jurisdiction has found the person not guilty of the criminal offense, dismissed the charges relating to the criminal offense, vacated the warrant for arrest of the person for the criminal offense, or issued any similar exonerating order (or taken similar exonerating action), or

(ii) the person was erroneously implicated in connection with the criminal offense by reason of identity fraud.

(C) Notwithstanding subparagraph (A), the Commissioner may, for good cause shown based on mitigating circumstances, treat the person referred to in subparagraph (A) as an eligible individual or eligible spouse if the Commissioner determines that—

(i) the offense described in subparagraph (A)(i) or underlying the imposition of the probation or parole described in subparagraph (A)(ii) was nonviolent and not drug-related, and

(ii) in the case of a person who is not considered an eligible individual or eligible spouse pursuant to subparagraph (A)(ii), the action that resulted in the violation of a condition of probation or parole was nonviolent and not drug-related.

(5) Notwithstanding any other provision of law (other than section 6103 of the Internal Revenue Code of 1986 and section 1306(c) of this title), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of any recipient of benefits under this subchapter, if the officer furnishes the Commissioner with the name of the recipient, and other identifying information as reasonably required by the Commissioner to establish the unique identity of the recipient, and notifies the Commissioner that—

(A) the recipient is described in clause (i) or (ii) of paragraph (4)(A); and

(B) the location or apprehension of the recipient is within the officer’s official duties.

(f) Individuals outside United States; determination of status

(1) Notwithstanding any other provision of this subchapter, no individual (other than a child described in section 1382c(a)(1)(B)(ii) of this title) shall be considered an eligible individual for purposes of this subchapter for any
(g) Individuals deemed to meet resources test

In the case of any individual or any individual and his spouse (as the case may be) who—

(1) received aid or assistance for December 1973 under a plan of a State approved under subchapter I, X, XIV, or XVI of this chapter,

(2) has, since December 31, 1973, continuously resided in the State under the plan of which he or they received such aid or assistance for December 1973, and

(3) has, since December 31, 1973, continuously been (except for periods not in excess of six consecutive months) an eligible individual or eligible spouse with respect to whom supplemental security income benefits are payable,

the resources of such individual or such individual and his spouse (as the case may be) shall be deemed not to exceed the amount specified in subsections (a)(1)(B) and (a)(2)(B) of this section during any period that the resources of such individual or such individual and his spouse (as the case may be) do not exceed the maximum amount of resources specified in the State plan as in effect for October 1972, under which he or they received such aid or assistance for December 1973.

(h) Individuals deemed to meet income test

In determining eligibility for, and the amount of, benefits payable under this section in the case of any individual or any individual and his spouse (as the case may be) who—

(1) received aid or assistance for December 1973 under a plan of a State approved under subchapter X or XVI of this chapter, and

(2) is blind under the definition of that term in the plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973,

(3) has, since December 31, 1973, continuously resided in the State under the plan of which he or they received such aid or assistance for December 1973, and

(4) has, since December 31, 1973, continuously been (except for periods not in excess of six consecutive months) an eligible individual or an eligible spouse with respect to whom supplemental security income benefits are payable,

there shall be disregarded an amount equal to the greater of (A) the maximum amount of any earned or unearned income which could have been disregarded under the State plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973, and (B) the amount which would be required to be disregarded under section 1382a of this title without application of this subsection.

(i) Application and review requirements for certain individuals

For application and review requirements affecting the eligibility of certain individuals, see section 1333(j) of this title.
The Internal Revenue Code of 1986, referred to in subsecs. (d) and (e)(5), is classified generally to Title 26, Internal Revenue Code.

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (e)(1)(iv), is title II of Pub. L. 99–177, Dec. 12, 1985, 99 Stat. 1308, as amended, which enacted chapter 20 (§900 et seq.) and sections 654 to 656 of Title 2. The Congress, amended sections 622, 623, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of title 9, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of this title, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

PRIOR PROVISIONS


AMENDMENTS

2004—Subsec. (c)(2)(B). Pub. L. 108–203, §433(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “in the case of the month in which an application becomes effective or the first month following a period of ineligibility, if such application becomes effective, or eligibility is restored, after the first day of such month, bear the same ratio to the amount of the benefit which would have been payable to such individual if such application had become effective, or eligibility had been restored, on the first day of such month as the number of days in such month including and following the effective date of such application or restoration of eligibility bears to the total number of days in such month.”


Subsec. (e)(4). Pub. L. 108–203, §303(b)(1), designated existing provisions as subpars. (A), redesignated former subpars. (A) and (B) as clis. (i) and (ii), respectively, of subpar. (A), in cl. (i), substituted “or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed” for “or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State”, and added subpars. (B) and (C).

Subsec. (e)(5)(A). Pub. L. 108–203, §303(b)(2), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

“(A) the recipient—

‘‘(i) is described in subparagraph (A) or (B) of paragraph (4); and

‘‘(ii) has information that is necessary for the officer to conduct the officer’s official duties; and

‘‘(B) the location or apprehension of the recipient is within the officer’s official duties.”


Subsec. (e)(1)(I). Pub. L. 106–170, §402(c)(2), substituted “institution comprising a jail, prison, penal institution, or correctional facility, or with any other interested State or local institution a purpose of which is to confine individuals as described in section 402(x)(1)(A)(i) of this title,” for “institution described in clause (i) or (ii) of section 402(x)(1)(A) of this title that provides services described in section 402(x)(1)(A) of this title.”

Subsec. (e)(1)(I)(i). Pub. L. 106–170, §402(a)(3)(A), substituted “and the other provisions of this subchapter; and” for “; and”.

Subsec. (e)(1)(I)(ii). Pub. L. 106–170, §402(c)(1)(A), inserted “subject to reduction under clause (ii)” after “$400” and “$200”.


Subsec. (e)(1)(I)(II). Pub. L. 106–170, §402(a)(3)(B), substituted “shall maintain, and shall provide on a reimbursable basis,” for “is authorized to provide, on a reimbursable basis,”.

Pub. L. 106–169, §204, which directed substitution of “shall” for “is authorized to” in cl. (i)(II), could not be executed in view of the redesignation of cl. (ii) as (iii) by Pub. L. 106–170, §402(c)(1)(B). See note above and Effective Date of 1999 Amendment note below.

Subsec. (e)(1)(J)(iii). Pub. L. 106–170, §402(c)(3)(B), substituted “eligibility and other administrative purposes under such program” for “eligibility purposes”.

Pub. L. 106–170, §402(c)(3)(A), struck out “(II)” before “The Commissioner” and struck out subcl. (I) which read as follows: “The provisions of section 552a of title 5 shall not apply to any agreement entered into under clause (i) or to information exchanged pursuant to such agreement.”


Subsec. (e)(4). Pub. L. 106–169, §207(c)(1), (3), redesignated par. (5) as (4) and struck out former par. (4) which read as follows:

“(4)(A) No person shall be considered an eligible individual or eligible spouse for purposes of this subchapter during the 10-year period that begins on the date the person is convicted in Federal or State court of having made a fraudulent statement or representation with respect to the place of residence of the person in order to receive assistance simultaneously from 2 or more States under programs that are funded under subchapter IV of this chapter, subchapter XIX of this chapter, or the Food Stamp Act of 1977, or benefits in 2 or more States under the supplemental security income program under this subchapter.

“(B) As soon as practicable after the conviction of a person in a Federal or State court as described in subparagraph (A), an official of such court shall notify the Commissioner of such conviction.”


Subsec. (e)(6). Pub. L. 106–169, §207(c)(2), (3), redesignated par. (6) as (5) and substituted “(4)” for “(5)”.

1997—Subsec. (e)(1)(B). Pub. L. 105–55, §5522(c)(1)(A), (D), in introductory provisions, substituted “medical treatment facility” for “hospital, extended care facility, nursing home, or intermediate care facility” and in closing provisions, substituted “medical treatment facility that provides services described in section 1396p(c)(1)(C) of this title” for “hospital, extended care facility, nursing home, or intermediate care facility which is a ‘medical institution or nursing facility’ within the meaning of section 1396p(c) of this title”.


Subsec. (e)(1)(G), Pub. L. 105–33, §5522(c)(3), substituted “or is in a medical treatment” for “or which is a hospital, extended care facility, nursing home, or intermediate care” and inserted “or, in the case of an individual who is a child under the age of 18, under any health insurance policy issued by a private provider of such insurance” after “subchapter XIX of this chapter.”

Subsec. (e)(1)(I), Pub. L. 105–33, §5521(c), substituted “this paragraph” for “paragraph (1)”.

Subsec. (e)(1)(l), (II), Pub. L. 105–33, §5521(b), substituted “or an individual who resides in the month preceding the first month throughout which such individual is an inmate of the jail, prison, penal institution, or correctional facility that furnishes information respecting such individual pursuant to subclause (I), or is confined in the institution (so that furnishes such information)” as described in section 402(x)(1)(A)(ii) of this title, a benefit under this subchapter for such preceding month, and who is determined by the Commissioner to be ineligible for benefits under this subchapter by reason of confinement based on the information provided by such institution” for “inmate of the institution who is eligible for a benefit under this subchapter for the month preceding the first month throughout which such inmate is in such institution and becomes ineligible for such benefit as a result of the application of this subparagraph.”

Subsec. (e)(3), Pub. L. 105–33, §5522(c)(4), substituted “same medical treatment facility” for “same hospital, home, or facility.”

Subsec. (e)(6), Pub. L. 105–33, §5521(a), inserted “and section 1396c(c) of this title” after “of 1966.”

Subsec. (e)(5)(A), Pub. L. 104–193, §108(j), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “A State plan approved under part A of subchapter IV of this chapter (relating to aid to families with dependent children).”

Subsec. (c)(7)(A), (B), Pub. L. 104–193, §204(a), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows: “(A) the date such application is filed, or “(B) the date such individual first becomes eligible for such benefits with respect to such application.”

Subsec. (e)(1)(B), Pub. L. 1993–105, §214(a), inserted “or, in the case of a child under the age of 18, receiving payments (with respect to such individual under a State plan approved under subchapter XIX of this chapter for the month preceding the first month throughout which such individual resides in such institution and becomes ineligible for such benefit as a result of the application of this subparagraph)” after “subchapter XIX of this chapter.”

Subsec. (e)(1)(I), Pub. L. 104–193, §204(a), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows: “(A) the date such application is filed, or “(B) the date such individual first becomes eligible for such benefits with respect to such application.”


Subsec. (e)(3), Pub. L. 104–193, §204(a), redesignated subpar. (5) as (3).

Pub. L. 104–121 struck out par. (3) which related to limitation on eligibility for benefits by reason of disability based on alcoholism or drug addiction.

Subsec. (e)(4), Pub. L. 104–193, §201(a), added par. (4).

Subsec. (e)(5), Pub. L. 104–193, §§201(a), 202(a), added par. (5) and redesignated former par. (5) as (3).


1994—Subsecs. (c), (d), (e)(1)(D), (H), (2). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing.

Subsec. (e)(7)(A), Pub. L. 104–193, §201(b)(3)(B)(ii), substituted “Commissioner of Social Security” for “Secretary” wherever appearing and “Commissioner’s” for “Secretary’s” in cls. (iii) and (iv).

Subsec. (e)(3)(B), Pub. L. 103–296, §201(b)(3)(B)(i), substituted “Commissioner of Social Security” for “Secretary” wherever appearing and “Commissioner’s” for “Secretary’s” in cls. (iii) and (iv).

Subsec. (e)(5), Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary”.

Subsec. (f), Pub. L. 103–296, §204(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (f)(2)(B), Pub. L. 103–296, §107(a)(4), in subpar. (B) as added by Pub. L. 103–296, §204(a), substituted “Commissioner of Social Security” for “Secretary”.

1993—Subsec. (c)(1). Pub. L. 103–66, §13735(a)(1), substituted “(5)” for “(4)” and added par. (6) and redesignated former pars. (6) and (7) as (7) and (8), respectively.

1989—Subsec. (e)(1)(B), Pub. L. 101–238, §8009(a), inserted “other than a child described in section 1382a(a)(1)(B)(ii) of this title” after “no individual”.

1988—Subsec. (e)(1)(B), Pub. L. 100–360 inserted at end “For purposes of this subsection, a hospital, extended care facility, nursing home, or intermediate care facility which is a ‘medical institution or nursing facility’ within the meaning of section 1396p(c) of this title shall be considered to be receiving payments with respect to an individual under a State plan approved under subchapter XIX of this chapter during any period of ineligibility of such individual provided for under the State plan pursuant to section 1396p(c) of this title.”

1987—Subsec. (c)(1). Pub. L. 100–203, §9106(a)(1), substituted “paragraphs (2), (3), (4), and (5)” for “paragraphs (2), (3), and (4)”.

Subsec. (c)(5) to (7). Pub. L. 100–203, §9106(a)(2), (3), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

Subsec. (e)(1)(A), Pub. L. 100–203, §9115(a)(1), substituted “(E), and (G)” for “(E)”.

Subsec. (e)(1)(B), Pub. L. 100–203, §9115(a)(2), inserted “subject to subparagraph (G)” after “throughout any month”.

Subsec. (e)(1)(B)(1) to (iii). Pub. L. 100–203, §9119(a), in cls. (i) and (ii)(1) substituted “$360 per year” for “$300 per year” and in cl. (iii) substituted “$720 per year” for “$540 per year”.

Subsec. (e)(1)(D). Pub. L. 100–203, §9110(a), substituted “6 months in any 9-month period” for “3 months in any 12-month period”.

Subsec. (e)(1)(G), (H), Pub. L. 100–203, §9115(a)(3), added subpars. (G) and (H).

Subsec. (e)(5), Pub. L. 100–203, §9107, substituted “living in the same hospital, home, or facility” for “sharing a room or comparable accommodation in a hospital, home, or facility” and “lived in the same hospital, home, or facility” for “shared such a room or comparable accommodation”.


Subsec. (e)(1). Pub. L. 99–433, §3(a), in subpar. (A) substituted “(D) and (E)” for “(and (D))” in subpar. (B) inserted “(subject to subparagraph (B))” after “shall be payable”, and added subpar. (C) as such treatment is available and demonstrates that he is complying with the terms, conditions, and requirements of such treat-ment and with requirements imposed by the Secretary under subparagraph (B).”

Pub. L. 103–296, §107(a)(4), in subpar. (A) as amended by Pub. L. 103–296, §204(a), substituted “Commissioner of Social Security” for “Secretary” and “Commissioner’s” for “Secretary’s” wherever appearing.

Subsec. (e)(3)(B), Pub. L. 103–296, §201(b)(3)(B)(i), designated existing provisions as cl. (i), struck out “The Secretary shall annually submit to the Congress a full and complete report on his activities under this paragraph,” after first sentence, and added cls. (ii) and (iii).

Subsec. (e)(4), Pub. L. 99–433, §4(d)(1), struck out par. (4) which read as follows: “No benefit shall be payable
under this subchapter, except as provided in section 1382c(a)(3) of this title, with respect to an eligible individual or his eligible spouse, who is an aged, blind, or disabled individual solely by application of section 1382c(a)(3)(F) of this title for any month, after the third month, in which he engages in substantial gainful activity during the fifteen-month period following the end of his trial work period determined by application of section 1382c(a)(4)(D)(I) of this title."

1984—Subsec. (a)(1)(B). Pub. L. 98–369, § 2611(a), substituted "the applicable amount determined under paragraph (3)(A)' for "$2,250" and "the applicable amount determined under paragraph (3)(B)' for "$1,500".  
Subsec. (a)(2)(B). Pub. L. 98–369, § 2611(c), substituted "the applicable amount determined under paragraph (3)(A)' for "$2,250".  
Subsec. (g). Pub. L. 98–369, § 2663(g)(2), substituted "or such individual" for "or individuals" in provisions following par. (3).  
Subsec. (c)(2). Pub. L. 97–248, § 181(a), in par. (2) redesignated existing provisions as provisions preceding subpar. (A) and subpar. (A), and added subpar. (B).  
Subsec. (c)(3) to (6). Pub. L. 97–248, §§ 181(a), 183(a)(2)(3), struck out par. (3) providing that an application shall be effective as of the first day of the month in which it is filed, added par. (3) providing that an application shall be effective on the later of the date it is filed or the date such individual first becomes eligible for such benefits with respect to such application and redesignated such par. (3) as (5), redesignated par. (4) as (6), and added pars. (3) and (4).  
1981—Subsec. (c). Pub. L. 97–35 substituted provision that eligibility and benefit amount generally be determined on a one-month retrospective basis, with for the first month of eligibility, the month in which the application is filed, eligibility and benefit amount both determined on a prospective basis for provision that eligibility and benefit amount be determined on a prospective basis and inserted provision authorizing the Secretary to grant waivers.  
Subsec. (e)(1)(B)(ii). Pub. L. 94–566, § 502, inserted "of the individual in such hospital, home, or facility" after "aged, blind, or disabled individual" in parenthetical provisions that follow the "rate of $300 per year" and inserted "(reduced by the amount of any income, not excluded pursuant to section 1382a(b) of this title, of the other)" after "the applicable rate specified in subsection (b)(1) of this section".  
1974—Pub. L. 93–368 inserted "(or, if greater, the amount determined under section 1382b of this title)" after "$1,752" in subsecs. (a)(1)(A) and (b)(1) and "$2,628" in subsecs. (a)(2)(A) and (b)(2).  
Pub. L. 93–66, § 210(a), substituted "$1,680" for "$1,560".  
Pub. L. 92–623, § 4(b)(2), substituted "$2,628" for "$2,520".  
Pub. L. 93–66, § 210(b), substituted "$2,520" for "$2,340".  
Subsec. (b)(1). Pub. L. 93–233, § 4(b)(1), substituted "$1,752" for "$1,680".  
Subsec. (b)(2). Pub. L. 93–233, § 4(b)(2), substituted "$2,628" for "$2,520".  
Pub. L. 93–66, § 210(b), substituted "$2,520" for "$2,340".  
Subsec. (g). Pub. L. 93–233, § 18(d), incorporated existing provisions in text designated as cl. (1), added clss. (2) and (3), and substituted final December "1973" for "1972".  
Subsec. (b). Pub. L. 93–233, § 18(e), incorporated existing text in provisions designated as cls. (1) and (2), added clss. (3) and (4), redesignated former clss. (1) and (2) as items (A) and (B), and in item (A) inserted "under which he or they received such aid or assistance for December 1973".  

**Effective Date of 2004 Amendment**  
Amendment by section 203(b) of Pub. L. 108–203 effective on the first day of the first month that begins on or after the date that is 9 months after Mar. 2, 2004, see section 203(d) of Pub. L. 108–203, set out as a note under section 402 of this title.  
Pub. L. 108–203, title IV, § 433(c), Mar. 2, 2004, 118 Stat. 540, provided that: "The amendments made by this section [amending this section] shall be effective with respect to benefits payable for months that begin on or after 1 year after the date of enactment of this Act [Mar. 2, 2004]."  
Pub. L. 108–203, title IV, § 436(b), Mar. 2, 2004, 118 Stat. 541, provided that: "The amendments made by this section [amending this section] shall apply to benefits payable for months that begin more than 90 days after the date of enactment of this Act [Mar. 2, 2004]."  

**Effective Date of 1999 Amendments**  
Amendment by section 402(a)(3) of Pub. L. 106–170 applicable to individuals whose period of confinement in an institution commences on or after the first day of the fourth month beginning after December 1999, see section 402(a)(4) of Pub. L. 106–170, set out as a note under section 402 of Title 42, The Public Health and Welfare.  
Amendment by section 207(c) of Pub. L. 106–169 applicable to statements and representations made on or after Dec. 14, 1999, see section 207(e) of Pub. L. 106–169, set out as a note under section 402 of this title.  

**Effective Date of 1997 Amendment**  
Amendment by Pub. L. 105–33 effective as if included in the enactment of title II of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, see section 5528(a) of Pub. L. 105–33, set out as a note under section 903 of this title.  

**Effective Date of 1996 Amendments**  
Amendment by section 108(j) of Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.
Section 201(b) of Pub. L. 104–193 provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 22, 1996]."

Section 202(c) of Pub. L. 104–193 provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 22, 1996]."

Section 202(a)(2) of Pub. L. 104–193 provided that: "The amendment made by this subsection [amending this section] shall apply to individuals whose period of confinement in an institution commences on or after the first day of the seventh month beginning after the month in which this Act is enacted [August 1996]."

Section 204(d) of Pub. L. 104–193 provided that:

'(1) In general.—The amendments made by this section [amending this section and sections 1383c and 1383l of this title] shall apply to applications for benefits under title XVI of the Social Security Act [this subchapter] filed on or after the date of the enactment of this Act [Aug. 22, 1996], without regard to whether regulations have been issued to implement such amendments.

'(2) Benefits under title XVI.—For purposes of this subsection, the term 'benefits under title XVI of the Social Security Act' includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act [section 1382e(a) of this title] and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66 [set out below].'

Section 214(b) of Pub. L. 104–193 provided that: "The amendment made by this section [amending this section] shall apply to benefits for months beginning 90 or more days after the date of the enactment of this Act [Aug. 22, 1996], without regard to whether regulations have been issued to implement such amendments."

Section 105(b)(5) of Pub. L. 104–121, as amended by Pub. L. 105–33, title V, § 5525(a), (b), Aug. 5, 1997, 111 Stat. 624, provided that:

'(A) The amendments made by paragraphs (1) and (4) [amending this section and sections 1382c and 1383c of this title] shall apply to any individual who applies for, or who is finally adjudicated with respect to, supplemental security income benefits under title XVI of the Social Security Act [this subchapter] based on disability on or after the date of the enactment of this Act [Mar. 29, 1996], and, in the case of any individual who has applied for, and whose claim has been finally adjudicated with respect to, such benefits before such date of enactment, such amendments shall apply only with respect to such benefits for months beginning on or after January 1, 1997.

'(B) The amendments made by paragraphs (2) and (3) [amending section 1383e of this title and amending section 1383l of this title] shall take effect on July 1, 1996, with respect to any individual—

'(i) whose claim for benefits is finally adjudicated on or after the date of the enactment of this Act [Mar. 29, 1996]; or

'(ii) whose eligibility for benefits is based upon an eligibility redetermination made pursuant to subparagraph (C).'

'(C) Within 90 days after the date of the enactment of this Act [Mar. 29, 1996], the Commissioner of Social Security shall notify each individual who is eligible for supplemental security income benefits under title XVI of the Social Security Act [this subchapter] for the month in which this Act is enacted and whose eligibility for such benefits would terminate by reason of the amendments made by this subsection [amending section 1383e of this title and amending section 1383l of this title] not later than January 1, 1997, complete the eligibility determination (including a new medical determination) with respect to such individual pursuant to the procedures of such title.

'(D) For purposes of this paragraph, an individual's claim, with respect to supplemental security income benefits under title XVI of the Social Security Act [this subchapter] based on disability, which has been denied in whole before the date of the enactment of this Act [Mar. 29, 1996], may not be considered to be finally adjudicated before such date if, on or after such date—

'(i) there is pending a request for either administrative or judicial review with respect to such claim, or

'(ii) there is pending, with respect to such claim, a readjudication by the Commissioner of Social Security pursuant to a class action or implementation by the Commissioner of a court remand order.

'(E) Notwithstanding the provisions of this paragraph, with respect to any individual for whom the Commissioner does not perform the eligibility redetermination before the date prescribed in subparagraph (C), the Commissioner shall perform such eligibility redetermination in lieu of a continuing disability review whenever the Commissioner determines that the individual's eligibility is subject to redetermination based on the preceding provisions of this paragraph, and the provisions of section 1616(a) of the Social Security Act [section 1382e(a)(4) of this title] shall not apply to such redetermination.

'(F) For purposes of this paragraph, the phrase 'supplemental security income benefits under title XVI of the Social Security Act' includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act [section 1382e(a) of this title] and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66 [set out below].'

[Amendment by Pub. L. 105–33 to section 105(b)(5) of Pub. L. 104–121, set out above, effective as if included in the enactment of section 105 of Pub. L. 104–121, see see section 5528(e)(1) of Pub. L. 105–33, set out as an Effective Date of 1997 Amendment note under section 903 of this title.]

Effective Date of 1994 Amendment: Sunset Provision

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 901 of this title.

Section 201(b)(3)(C), (E), of Pub. L. 103–296 provided that:

'(C) SUNSET OF 6-MONTH RULE.—Section 1611(e)(3)(A)(v) of the Social Security Act [section 1382e(a)(1)(A) of this section] (added by subparagraph (A) of this paragraph) shall cease to be effective with respect to benefits for months after September 2004.

'(E) EFFECTIVE DATE.—

'(i) In general.—Except as otherwise provided in this paragraph [amending this section and section 1383c of this title and enacting provisions set out as notes below], the amendments made by this paragraph shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act [this subchapter] by reason of disability which are otherwise payable in months beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994]. The Secretary of Health and Human Services shall issue regulations necessary to carry out the amendments made by this paragraph not later than 180 days after such date of enactment.

'(ii) Referral and Monitoring Agencies.—The amendments made by subparagraph (B) [amending this section] shall take effect 180 days after the date of the enactment of this Act [Aug. 15, 1994].

'(iii) Termination after 36 Months.—Clause (v) of section 1611(e)(3)(A) of the Social Security Act [subsection (C) of this section] added by the amendment made by subparagraph (A) of this paragraph shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act [this subchapter] for any individual determined by the Commissioner to be in substantially similar circumstances to an individual whose eligibility was determined under this section [amending this section and sections 1382c and 1383c of this title] to be entitled to benefits for 36 or more months after the date of the enactment of this Act [Aug. 15, 1994]."
Section 204(b) of Pub. L. 103–296 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1996.”

**Effective Date of 1993 Amendment**

Section 13737(b) of Pub. L. 103–66 provided that: “The amendments made by subsection (a) [amending this section] shall apply to benefits paid for months after the calendar year 1994.”

**Effective Date of 1989 Amendment**

Section 8009(c) of Pub. L. 101–239 provided that: “The amendments made by subsections (a) and (b) [amending this section and section 1382c of this title] shall apply with respect to benefits for months after March 1990.”

**Effective Date of 1988 Amendment**

Amendment by Pub. L. 100–360 applicable to transfers occurring on or after July 1, 1988, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date, see section 3898(d)(1) of Pub. L. 100–360, set out as a note under section 1396r–5 of this title.

**Effective Date of 1987 Amendment**

Section 9106(b) of Pub. L. 100–203 provided that: “The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988.”

Section 9107 of Pub. L. 100–203 provided that the amendment made by that section is effective Nov. 10, 1986.

Section 9113(b) of Pub. L. 100–203 provided that: “(1) The amendment made by subsection (a) [amending this section] shall become effective January 1, 1988.

(2) In the application of section 1611(e)(1)(D) of the Social Security Act [subsec. (e)(1)(D) of this section] on and after the effective date of such amendment, months before January 1988 in which a person was an eligible individual or eligible spouse by reason of such section shall not be taken into account.”

Section 9118(c) of Pub. L. 100–203 provided that: “The amendments made by this section [amending this section and section 1396a of this title] shall become effective July 1, 1988.”

Section 9119(b) of Pub. L. 100–203 provided that: “The amendments made by subsections (a) and (b) [amending this section and section 1396c of this title] shall become effective July 1, 1988.”

**Effective Date of 1986 Amendment**

Amendment by sections 3(a) and 4(c)(3), (d)(1) of Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

Section 9(b) of Pub. L. 99–643 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1986].”

**Effective Date of 1984 Amendment**

Amendment by section 2611(a)–(c) of Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98–369, set out as a note under section 657 of this title.

Amendment by section 2663(g)(1), (2) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

**Effective Date of 1983 Amendment**

Section 403(b) of Pub. L. 98–21 provided that: “The amendments made by subsection (a) [amending this section] shall be effective with respect to months after the month in which this Act is enacted [April 1983].”

**Effective Date of 1982 Amendment**

Section 181(b) of Pub. L. 97–248 provided that: “The amendment made by this section [amending this section] shall become effective on October 1, 1982.”

Section 183(b) of Pub. L. 97–248 provided that: “The amendment made by subsection (a) [amending this section] shall become effective October 1, 1982.”

**Effective Date of 1981 Amendment and Transitional Provisions**

Section 2341(c) of Pub. L. 97–55 provided that: “(1) The amendments made by subsection (a) of such section [amending this section and section 1382a of this title] shall be effective with respect to months after the first calendar quarter which ends more than five months after the month in which this Act is enacted [August 1981].

(2) The Secretary of Health and Human Services may, under conditions determined by him to be necessary and appropriate, make a transitional payment or payments during the first two months for which the amendments made by this section are effective. A transitional payment made under this section shall be deemed to be a payment of supplemental security income benefits.”

**Effective Date of 1980 Amendment**

Amendment by Pub. L. 96–265 effective on first day of sixth month which begins after June 9, 1980, and applicable with respect to any individual whose disability has not been determined to have ceased prior to such first day, see section 303(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

**Effective Date of 1976 Amendment**

Section 555(e) of Pub. L. 94–566 provided that: “The amendments [amending this section and section 1382a of this title] and repeals [repealing section 1382e(e) of this title] made by this section and section 1382b of this title, and provisions set out as a note under section 1396a of this title, shall take effect on October 1, 1976.”

**Effective Date of 1973 Amendments**

Section 4(b) of Pub. L. 93–233 provided that the amendments made by section 4(b)(1), (2) of Pub. L. 93–233 are effective with respect to payments for months after June 1974.


**Effective Date**

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

**Regulations**

Section 215 of title II of Pub. L. 104–193 provided that: “Within 3 months after the date of the enactment of this Act [Aug. 22, 1996], the Commissioner of Social Security shall prescribe such regulations as may be necessary to implement the amendments made by this subtitle [subtitle B (§§ 211–215) of title II of Pub. L. 104–193], amending this section, sections 1382a to 1382c and 1383 of this title, sections 656 and 901 of Title 2, the Congress, and provisions set out as a note under section 401 of this title, and repealing provisions set out as a note below].”

**Construction of 1999 Amendment**

Amendment by Pub. L. 106–170 to be executed as if Pub. L. 106–169 had been enacted before the enactment of Pub. L. 106–170, see section 121(c)(1) of Pub. L. 106–169, set out as a note under section 1396a of this title.

**Study of Denial of SSI Benefits for Family Farmers**

“(a) IN GENERAL.—The Commissioner of Social Security shall conduct a study of the reasons why family farmers with resources of less than $100,000 are denied supplemental security income benefits under title XVI of the Social Security Act [this subchapter], including whether the deeming process unduly burdents and discriminates against family farmers who do not institutionally or bureaucratically determine such disability and shall determine the number of such farmers who have been denied such benefits during each of the preceding 10 years.

“(b) REPORT TO THE CONGRESS.—Within 1 year after the date of the enactment of this Act [Dec. 14, 1996], the Commissioner of Social Security shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report that contains the results of the study, and the determination, required by subsection (a).”

STUDY OF OTHER POTENTIAL IMPROVEMENTS IN COLLECTION OF INFORMATION RESPECTING PUBLIC INMATES

Section 203(b) of Pub. L. 104–193 provided that:

“(1) STUDY.—The Commissioner of Social Security shall conduct a study of the desirability of providing, and the cost of—

“(A) establishing a system under which Federal, State, and local courts would furnish to the Commissioner such information respecting court orders by which individuals are confined in jails, prisons, or return public, correctional, or medical facilities as the Commissioner may require for the purpose of carrying out section 1611(e)(1) of the Social Security Act [subsec. (e)(1) of this section]; and

“(B) requiring that State and local jails, prisons, and other institutions that enter into agreements with the Commissioner under section 1611(e)(1) of the Social Security Act [subsec. (e)(1) of this section] furnish the information required by such agreements to the Commissioner by means of an electronic or other sophisticated data exchange system.

“(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Aug. 22, 1996], the Commissioner of Social Security shall submit a report on the results of the study conducted pursuant to subsection (a) to the Committee on Ways and Means of the House of Representatives.”

ADDITIONAL REPORT TO CONGRESS

Section 203(c) of Pub. L. 104–193 provided that: “Not later than October 1, 1998, the Commissioner of Social Security shall provide to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a list of the institutions that are and are not providing information to the Commissioner under section 1611(e)(1)(I) of the Social Security Act (as added by this section) [subsec. (e)(1)(I) of this section].”

STUDY BY GENERAL ACCOUNTING OFFICE

Pub. L. 104–193, title II, § 232, Aug. 22, 1996, 110 Stat. 2198, provided that, not later than Jan. 1, 1999, the Comptroller General was to study and report on the feasibility of requiring that State and local jails, prisons, or other institutions that enter into agreements with the Commissioner under section 1611(e)(1) of the Social Security Act [subsec. (e)(1) of this section] furnish the information required by such agreements to the Commissioner by means of an electronic or other sophisticated data exchange system.

CONTINUING DISABILITY REVIEWS

Section 208 of Pub. L. 103–296 provided that:

“(a) TEMPORARY ANNUAL MINIMUM NUMBER OF REVIEWS.—During each year of the 3-year period that begins on October 1, 1995, the Secretary of Health and Human Services shall apply section 221(i) of the Social Security Act [section 421(i) of this title] in making disability determinations under title XVI of such Act [this subchapter] with respect to at least 100,000 recipients of supplemental security income benefits under such title.

“(b) REPORT TO THE CONGRESS.—Not later than October 1, 1996, the Secretary of Health and Human Services.

TRANSITION RULES FOR CURRENT BENEFICIARIES

Section 201(b)(3)(F) of Pub. L. 103–296 provided that:

“In any case in which an individual is eligible for supplemental security income benefits under title XVI of the Social Security Act [this subchapter] by reason of disability, the determination of disability was made by the Secretary of Health and Human Services during or before the 180-day period following the date of the enactment of this Act [Aug. 15, 1994], and alcoholism or drug addiction is a contributing factor material to the Secretary’s determination that the individual is disabled, for purposes of section 1611(e)(3)(A)(V) of the Social Security Act [subsec. (e)(3)(A)(V) of this section] (added by the amendment made by subparagraph (A) of this paragraph)—

“(i) the first month of such eligibility beginning after 180 days after the date of the enactment of this Act shall be treated as the individual’s first month of such eligibility; and

“(ii) the Secretary shall notify the individual of the requirements of the amendments made by this paragraph [amending this section and section 1383c of this title] no later than 180 days after the date of the enactment of this Act.”

COMMISSION ON CHILDHOOD DISABILITY

Section 202 of Pub. L. 103–296 provided for establishment of a Commission on the Evaluation of Disability Eligibility to conduct a study, in consultation with the National Academy of Sciences, of effects of definition of “disability” under this subchapter in effect on Aug. 15, 1994, as such definition applied to determining whether a child under age of 18 was eligible to receive benefits under this subchapter, the appropriateness of such definition, and the advantages and disadvantages of using any alternative definition of disability in determining whether a child under age 18 was eligible to receive benefits under this subchapter, and further provided for contents of study, appointment of Commission members, administrative provisions, assistance of experts, and for submission of report to Congress not later than Nov. 30, 1995.

DISABILITY REVIEW REQUIRED FOR SSI RECIPIENTS WHO ARE 18 YEARS OF AGE

Section 207 of Pub. L. 103–296, which required applicable State agency or Secretary of Health and Human Services to redetermine eligibility of qualified individual for supplemental security income benefits under this subchapter by reason of disability, by applying criteria used in determining eligibility for such benefits of applicants who have attained 18 years of age during 1-year period beginning on date qualified individual attains 18 years of age, and Secretary to conduct such redeterminations with respect to not less than ½ of qualified individuals in each of fiscal years 1996 through 1998, defined term “qualified individual”, and provided that such redetermination was to be considered substitute for review required under section 1382(a)(3)(G) of this title, that redetermination requirement was to have no force or effect after Oct. 1, 1996, and that not later than Oct. 1, 1998, Secretary was to submit to House Ways and Means and Senate Finance Committees report on such activities, was repealed by Pub. L. 104–193, title II, §212(b)(2), Aug. 22, 1996, 110 Stat. 2193.

ADDITIONAL STUDY REQUIRED FOR SSI RECIPIENTS WHO ARE 18 YEARS OF AGE

Section 201(b)(3)(F) of Pub. L. 103–296 provided that:

“In any case in which an individual is eligible for supplemental security income benefits under title XVI of the Social Security Act [this subchapter] by reason of disability, the determination of disability was made by the Secretary of Health and Human Services during or before the 180-day period following the date of the enactment of this Act [Aug. 15, 1994], and alcoholism or drug addiction is a contributing factor material to the Secretary’s determination that the individual is disabled, for purposes of section 1611(e)(3)(A)(V) of the Social Security Act [subsec. (e)(3)(A)(V) of this section] (added by the amendment made by subparagraph (A) of this paragraph)—

“(i) the first month of such eligibility beginning after 180 days after the date of the enactment of this Act shall be treated as the individual’s first month of such eligibility; and

“(ii) the Secretary shall notify the individual of the requirements of the amendments made by this paragraph [amending this section and section 1383c of this title] no later than 180 days after the date of the enactment of this Act.”

COMMISSION ON CHILDHOOD DISABILITY

Section 202 of Pub. L. 103–296 provided for establishment of a Commission on the Evaluation of Disability Eligibility to conduct a study, in consultation with the National Academy of Sciences, of effects of definition of “disability” under this subchapter in effect on Aug. 15, 1994, as such definition applied to determining whether a child under age of 18 was eligible to receive benefits under this subchapter, the appropriateness of such definition, and the advantages and disadvantages of using any alternative definition of disability in determining whether a child under age 18 was eligible to receive benefits under this subchapter, and further provided for contents of study, appointment of Commission members, administrative provisions, assistance of experts, and for submission of report to Congress not later than Nov. 30, 1995.

DISABILITY REVIEW REQUIRED FOR SSI RECIPIENTS WHO ARE 18 YEARS OF AGE

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CONTINUING DISABILITY REVIEWS

Section 208 of Pub. L. 103–296 provided that:

“(a) TEMPORARY ANNUAL MINIMUM NUMBER OF REVIEWS.—During each year of the 3-year period that begins on October 1, 1995, the Secretary of Health and Human Services shall apply section 221(i) of the Social Security Act [section 421(i) of this title] in making disability determinations under title XVI of such Act [this subchapter] with respect to at least 100,000 recipients of supplemental security income benefits under such title.

“(b) REPORT TO THE CONGRESS.—Not later than October 1, 1996, the Secretary of Health and Human Services...
shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the activities conducted under subsection (a)."

**Notification of Possible Benefit Availability to Potential Supplemental Security Income Recipients**

Section 405 of Pub. L. 98–21 provided that: "Prior to July 1, 1984, the Secretary of Health and Human Services shall notify all elderly recipients of benefits under title II of the Social Security Act [subchapter II of this chapter] who may be eligible for supplemental security income benefits under title XVI of such Act [this subchapter] of the availability of the supplemental security income program, and shall encourage such recipients to contact the Social Security district office. Such notification shall also be made to all recipients prior to attainment of age 65, with the notification made with respect to eligibility for supplementary medical insurance."

**Assistance Paid Under Certain Housing Acts Not Considered in Determining Eligibility for Benefits Under This Subchapter; Effective Date**

Pub. L. 94–375, § 2(b), Aug. 3, 1976, 90 Stat. 1068, provided that: "Notwithstanding any other provision of law, the value of any assistance paid with respect to a dwelling unit under the United States Housing Act of 1937 [section 1437 et seq. of this title], the National Housing Act [section 1701 et seq. of Title 12, Banks and Banking], section 101 of the Housing and Urban Development Act of 1965 [section 1701s of Title 12 and sections 1431 and 1465 of this title], or title V of the Housing Act of 1949 [section 1701 et seq. of this title] may not be considered as income or a resource for the purpose of determining the eligibility of, or the amount of the benefits payable to, any person living in such unit for assistance under title XVI of the Social Security Act [this subchapter]. This subsection shall become effective on October 1, 1976."

**Special $50 Payment Under Tax Reduction Act of 1975**

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March, 1975, was entitled to a benefit under the supplemental security income benefits program established by this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of this title.

**Adjustment of Individual’s Monthly Supplemental Security Income Payments; Regulations; Limitations**

Pub. L. 93–335, § 2(b)(2), July 8, 1974, 88 Stat. 291, authorized the Secretary of Health, Education, and Welfare to prescribe regulations for the adjustment of an individual’s monthly supplemental security income payment in accordance with any increase to which such individual might be entitled under the adjustment made by subsection (a) of this section [amending section 212(a)(3)(B)(i) of Pub. L. 93–66, set out below]; provided that such adjustment in monthly payment, together with the remittance of any prior unpaid increments to which such individual might be entitled under such amendment, was to be made no later than the first day of the first month beginning more than sixty days after July 8, 1974.

**Medicaid Eligibility for Individuals Receiving Mandatory State Supplementary Payments; Effective Date**

Additional requirement for approval of subchapter XIX State plan for medical assistance respecting medicaid eligibility for individuals receiving mandatory State supplementary payments, see section 13(c) of Pub. L. 93–233, set out as a note under section 1396a of this title.

**Federal Program of Supplemental Security Income; Supplemental Security Income Benefits for Essential Persons; Definitions of Qualified Individual and Essential Person**


"(a)(1) In determining (for purposes of title XVI of the Social Security Act [this subchapter], as in effect after December 1973) the eligibility for and the amount of the supplemental security income benefit payable to any qualified individual (as defined in subsection (b)), with respect to any person who has in his home an essential person (as defined in subsection (c))—

"(A) the dollar amounts specified in subsection (a)(1)(A) and (2)(A), and subsection (b)(1) and (2), of section 1611 of such Act [this section], shall each be increased by $876 for each such essential person, and

"(B) the income and resources of such individual shall (for purposes of such title XVI [this subchapter]) be deemed to include the income and resources of such essential person, except that the provisions of this subsection shall not, in the case of any individual, be applicable for any period which begins in or after the first month that such individual—

"(C) does not but would (except for the provisions of subparagraph (B)) meet—

"(i) the criteria established with respect to income in section 1611(a) of such Act [subsection (a) of this section], or

"(ii) the criteria established with respect to resources by such section 1611(a) [subsection (a) of this section] (or, if applicable, by section 1611(g) of such Act [subsection (g) of this section]),

"(2) The provisions of section 1611(g) of the Social Security Act [subsection (g) of this section] (as in effect after December 1973) shall, in the case of any qualified individual (as defined in subsection (b)), be applied so as to include, in the resources of such individual, the resources of any person (described in subsection (b)(2)) whose needs were taken into account in determining the need of such individual for the aid or assistance referred to in subsection (b)(1).

"(b) For purposes of this section, an individual shall be a ‘qualified individual’ only if—

"(1) for the month of December 1973 such individual was a recipient of aid or assistance under a State plan approved under title I, X, XIV, or XVI of the Social Security Act [subsection I, X, XIV, or XVI of this chapter], and

"(2) in determining the needs of such individual for such aid or assistance for such month under such State plan, there were taken into account the needs of a person (other than such individual) who—

"(A) was living in the home of such individual, and

"(B) was not eligible (in his or her own right) for aid or assistance under such State plan for such month.

"(c) The term ‘essential person’, when used in connection with any qualified individual, means a person who—

"(1) for the month of December 1973 was a person (described in subsection (b)(2)) whose needs were taken into account in determining the need of such individual for aid or assistance under a State plan referred to in subsection (b)(1) as such State plan was in effect for June 1973,

"(2) lives in the home of such individual,

"(3) is not eligible (in his or her own right) for supplemental security income benefits under title XVI of the Social Security Act [this subchapter] (as in effect after December 1973), and

"(4) is not the eligible spouse (as that term is used in such title XVI [this subchapter]) of such individual or any other individual.
If for any month after December 1973 any person fails to meet the criteria specified in paragraph (2), (3), or (4) of the preceding sentence, such person shall not, for such month or any month thereafter be considered to be an essential person." [Amendment of section 211(a)(1)(A) of Pub. L. 93–66, set out above, by Pub. L. 93–233 effective with respect to payments for months after June 1974, see section 4(b) of Pub. L. 93–233.]

Mandatory Minimum State Supplementation of Supplemental Security Income Benefits Program; December 1973 Income; Title XVI Benefit Plus Other Income; Reduction of Amount; Administration Agreement; Payments to Commissioner; State Constitutional Restriction


(i) the amount of the aid or assistance (in the form of money payments) which such individual would have received (including any part of such amount which is attributable to meeting the needs of any other person whose presence in such individual's home is essential to such individual's well-being) for the month of December 1973 under a plan (approved under section 1612 of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter]) of the State entering into an agreement under this subsection, if the terms and conditions of such plan (relating to eligibility for and amount of such aid or assistance payable thereunder) were, for the month of December 1973, the same as those in effect, under such plan, for the month of June 1973, together with the bonus value of food stamps for January 1972, as set out as notes under section 1382e of this title, if, for such month, such individual resides in a State which provides State supplementary payments (i) of the type described in section 1616(a) of the Social Security Act [section 1382a(a) of this title], and (ii) the level of which has been found by the Commissioner of Social Security pursuant to section 8 of Public Law 93–233 [set out as notes under section 1382e of this title and sections 612c, 1431 and 2012 of Title 7, Agriculture] to have been specifically increased so as to include the bonus value of food stamps; and

(ii) the amount of any income of such individual (other than the aid or assistance described in clause (i)) received by such individual in December 1973, minus any such income which did not result from a circumstance which if properly reported would have resulted in a reduction in the amount of such aid or assistance.

For purposes of subparagraph (A), the amount of an individual's 'title XVI benefit plus other income' for any month means an amount equal to the aggregate of—

(i) the amount (if any) of the supplemental security income benefit to which such individual is entitled for such month under title XVI of the Social Security Act (this subchapter), and

(ii) any special need of such individual (including any special allowance for housing, or the rental value of housing furnished in kind to such individual in lieu of a rental allowance) which existed in December 1973, or

(ii) any special circumstance (such as the recognition of the needs of a person whose presence in such individual's home, in December 1973, was essential to such individual's well-being), and, if for any month after December 1973 there is a change with respect to such special need or circumstance which, if such change had existed in December 1973, the amount described in subparagraph (B)(i) with respect to such individual would have been reduced on account of such change, then, for such month and for each month thereafter the amount of the supplementary payment payable under the agreement entered into under this subsection to such individual shall (unless the State, at its option, otherwise specifies) be reduced by an amount equal to the amount by which the amount (described in subparagraph (B)(i)) would have been so reduced.

(E)(i) In the case of an individual who, for December 1973 lived as a member of a family unit other members of which received aid (in the form of money payments) at the level of which has been found by the Commissioner of Social Security pursuant to section 8 of Public Law 93–233 for the purpose of a State plan approved under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter], such State at its option, may (subject to clause (ii)) reduce such individual's December 1973 income (as determined under subparagraph (B)) to such extent as may be necessary to cause the
supplementary payment (referred to in paragraph (2)) payable to such individual for January 1974 or any month thereafter to be reduced to a level designed to assure that the total income of such individual (and of the members of such family unit) for December 1973 does not exceed the total income of such individual (and of the members of such family unit) for December 1973.

(ii) The amount of the reduction (under clause (i)) of any individual’s December 1973 income shall not be in an amount which would cause the supplementary payment referred to in paragraph (2) payable to such individual to be reduced below the amount of such supplementary payment which would be payable to such individual if he had, for the month of December 1973 not lived in a family, members of which were receiving aid under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter], and had had no income for such month other than that received as aid or assistance under a State plan approved under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter].

(4) Any State having an agreement with the Commissioner of Social Security under paragraph (1), may, at its option, include individuals receiving benefits under section 1619 of the Social Security Act [section 1619 of this title], or who would be eligible to receive such benefits but for their income, under the agreement as though they are aged, blind, or disabled individuals as specified in paragraph (2)(A).

Any State having an agreement with the Commissioner of Social Security under subsection (a) may enter into an administration agreement with the Commissioner of Social Security whereby the Commissioner of Social Security will, on behalf of such State, make the supplementary payments required under the agreement entered into under subsection (a).

(2) Any such administration agreement between the Commissioner of Social Security and a State entered into under this subsection shall provide that the State will (A) certify to the Commissioner of Social Security the names of each individual who, for December 1973, was a recipient of aid or assistance (in the form of money payments) under a plan of such State approved under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter], together with the amount of such assistance payable to each such individual and the amount of such individual’s December 1973 income (as defined in subsection (a)(3)(B)), and (B) provide the Commissioner of Social Security with such additional data at such times as the Commissioner of Social Security may reasonably require in order properly, economically, and efficiently to carry out such administration agreement.

Any State which has entered into an administration agreement under this subsection shall, in accordance with subparagraph (E), pay to the Commissioner of Social Security an amount equal to the expenditures made by the Commissioner of Social Security as supplementary payments to individuals entitled thereto under the agreement entered into with such State under subsection (a), plus an administration fee assessed in accordance with subparagraph (B) and any additional services fee charged in accordance with subparagraph (C).

(B)(i) The Commissioner of Social Security shall assess each State an administration fee in an amount equal to—

(I) the number of supplementary payments made by the Commissioner of Social Security on behalf of the State under this subsection for each month in a fiscal year; multiplied by

(II) the applicable rate for the fiscal year.

(i) As used in clause (i), the term ‘applicable rate’ means—

(1) for fiscal year 1994, $1.67;

(2) for fiscal year 1995, $3.33;

(3) for fiscal year 1996, $5.00;

(4) for fiscal year 1997, $7.50;

(5) for fiscal year 1998, $6.20;

(6) for fiscal year 1999, $7.60;

(7) for fiscal year 2000, $8.00;

(8) for fiscal year 2001, $8.00;

(9) for fiscal year 2002, $8.00; and

(10) for fiscal year 2003 and each succeeding fiscal year—

(aa) the applicable rate in the preceding fiscal year, increased by the percentage, if any, by which the Consumer Price Index for the month of June of the calendar year preceding the calendar year of the increase, and rounded to the nearest whole cent; or

(bb) such different rate as the Commissioner determines is appropriate for the State.

(2) The portion of each administration fee assessed pursuant to subparagraph (B), upon collection, shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.

(3)(A) Any State which has entered into an agreement with the Commissioner of Social Security under this subsection shall remit the payments and fees required under this paragraph with respect to monthly benefits paid to individuals under title XVI of the Social Security Act [this subchapter] and related laws.

(2) Any State having an agreement with the Commissioner of Social Security under this subsection shall remit the payments and fees required under this paragraph with respect to monthly benefits paid to individuals under title XVI of the Social Security Act [this subchapter] and related laws.

(3) The payments and fees assessed pursuant to subparagraph (B), upon collection, shall be credited to a special fund established in the Treasury of the United States for State supplementary payment fees. The amounts so credited, to the extent and in the amounts provided in advance in appropriations Acts, shall be available to defray expenses incurred in carrying out this section and title XVI of the Social Security Act [this subchapter] and related laws.

(4) (A) The first $5 of each administration fee assessed pursuant to subparagraph (B), upon collection, shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.

(B)(i) The business day preceding the date that the Commissioner pays such monthly benefits; or

(ii) with respect to such monthly benefits paid for the month that is the last month of the State’s fiscal year, the fifth business day following such date.

(5) The payments and fees assessed pursuant to subparagraph (B), upon collection, shall be credited to a special fund established in the Treasury of the United States for State supplementary payment fees. The amounts so credited, to the extent and in the amounts provided in advance in appropriations Acts, shall be available to defray expenses incurred in carrying out this section and title XVI of the Social Security Act [this subchapter] and related laws.

(III) The Commissioner of Social Security may charge a State an additional service fee if, at the request of the State, the Commissioner of Social Security provides additional services beyond the level customarily provided, in the administration of State supplementary payments pursuant to this subsection.

(4)(A) The additional services fee shall be in an amount that the Commissioner of Social Security determines is necessary to cover all costs (including indirect costs) incurred by the Federal Government in furnishing the additional services referred to in clause (i).

(B)(I) The first $5 of each administration fee assessed pursuant to subparagraph (B), upon collection, shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.

(ii) The additional services fee shall be in an amount that the Commissioner of Social Security determines is necessary to cover all costs (including indirect costs) incurred by the Federal Government in furnishing the additional services referred to in clause (i).

(5) The Commissioner of Social Security may charge a State an administration fee if, at the request of the State, the Commissioner of Social Security provides additional services beyond the level customarily provided, in the administration of State supplementary payments pursuant to this subsection.
excluded under section 1612(b)(6) of the Social Security Act [section 1382a(b)(6) of this title] (as in effect after December 1973) in determining income of individuals for purposes of title XVI of such Act [this subchapter] (as so in effect).

"(2) Supplementary payments made by the Commissioner of Social Security (pursuant to an administration agreement entered into under subsection (b)) shall, for purposes of section 401 of the Social Security Amendments of 1972 [set out as a note under section 1382e of this title], be considered to be payments made under an agreement entered into under section 1616 of the Social Security Act [section 1382e of this title] (as enacted by section 301 of the Social Security Amendments of 1972); except that nothing in this paragraph shall be construed to waive, with respect to the payments so made by the Commissioner of Social Security, the provisions of subsection (b) of such section 401 [set out as a note under section 1382e of this title].

"(d) For purposes of subsection (a)(1), a State shall be deemed to have entered into an agreement under subsection (a) of this section if such State has entered into an agreement with the Commissioner of Social Security under section 1616 of the Social Security Act [section 1382e of this title] under which—

"(1) individuals, other than individuals described in subsection (a)(2)(A) and (B), are entitled to receive supplementary payments, and

"(2) the supplementary benefits are payable, to individuals described in subsection (a)(2)(A) and (B) at a level and under terms and conditions which meet the minimum requirements set out in subsection (a).

"(e) Except as the Commissioner of Social Security may by regulations otherwise provide, the provisions of title XVI of the Social Security Act [this subchapter] (as enacted by section 301 of the Social Security Amendments of 1972), including the provisions of part B of such title [part B of this subchapter], relating to the terms and conditions under which the benefits authorized by such title [this subchapter] are payable shall, where not inconsistent with the purposes of this section, be applicable to the payments made under an agreement under subsection (b) of this section; and the authority conferred upon the Commissioner of Social Security by such title [this subchapter] may, where appropriate, be exercised by him in the administration of this section.

"(f) The provisions of subsection (a)(1) shall not be applicable in the case of any State—

"(1) the Constitution of which contains provisions which make it impossible for such State to enter into and commence carrying out (on January 1, 1974) an agreement referred to in subsection (a), and

"(2) the Attorney General (or other appropriate State official) of which has, prior to July 1, 1973, made a finding that the State Constitution of such State contains limitations which prevent such State from making supplemental payments of the type described in section 1616 of the Social Security Act [section 1382e of this title].

For effective date of amendment to section 212 of Pub. L. 93–66, set out above, by Pub. L. 101–170, set out as section 410(b) of Pub. L. 96–170, set out as an Effective Date of 1999 Amendment note under section 1382e of this title.

For effective date of amendment to section 212 of Pub. L. 93–66, set out above, by Pub. L. 103–66, set out as section 1382e of this title.


APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and the Trust Territory of the Pacific Islands.
(9) provide, if the plan includes aid or assistance to or on behalf of individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(10) provide a description of the services (if any) which the State agency may make available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for or recipients of aid or assistance under the plan to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services;

(11) provide that no aid or assistance will be furnished any individual under the plan with respect to any period with respect to which he is receiving assistance under the State plan approved under subchapter I of this chapter or assistance under a State program funded under part A of subchapter IV of this chapter or under subchapter X or XIV of this chapter;

(12) provide that in determining whether an individual is blind there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(13) include reasonable standards, consistent with the objectives of this subchapter, for determining eligibility for and the extent of aid or assistance under the plan;

(14) provide that the State agency shall, in determining need for aid to the aged, blind, or disabled, take into consideration any other income and resources of an individual claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination with respect to any individual—

(A) if such individual is blind, the State agency (i) shall disregard the first $85 per month of earned income plus one-half of earned income in excess of $85 per month, and (ii) shall, for a period not in excess of 12 months, and may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of any such individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan.

(B) if such individual is not blind but is permanently and totally disabled, (i) of the first $80 per month of earned income, the State agency may disregard not more than the first $50 thereof plus one-half of the remainder, and

(D) the State agency may, before disregarding the amounts referred to above in this paragraph (14), disregard not more than $7.50 of any income; and

(15) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b-7 of this title.

(16) provide that no aid or assistance will be furnished any individual under the plan with respect to any period with respect to which he is receiving assistance under the State plan approved under subchapter I of this chapter or the State agency which administered or supervised the administration of such plan.

(b) Approval by Commissioner

The Commissioner of Social Security shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that the Commissioner shall not approve any plan which imposes, as a condition of eligibility for aid or assistance under the plan—

(1) an age requirement of more than sixty-five years; or

(2) any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for such aid and has resided therein continuously for one year immediately preceding the application; or

(3) any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Commissioner of Social Security as a condition for the approval of such plan under this subchapter.

In the case of any State to which the provisions of section 344 of the Social Security Act Amendments of 1960 were applicable on January 1, 1962, and to which the sentence of section 3202(b) of this title following paragraph (2) thereof is applicable on the date on which its State plan for aid to the aged, blind, or disabled was submitted for approval under this subchapter, the Commissioner of Social Security shall approve the plan of such State for aid to the aged, blind, or disabled for purposes of this subchapter, even though it does not meet the requirements of requirement of paragraph (14) of subsection (a) of this section, if it meets all other requirements of this subchapter for an approved plan for aid to the aged, blind, or disabled; but payments under section 1383 of this title shall be made, in the case of any such plan, only with respect to expenditures thereunder which would be included as expenditures for the purposes of section 1383 of this title under a plan approved under this section without regard to the provisions of this sentence.

(c) Limitation on number of plans

Subject to the last sentence of subsection (a) of this section, nothing in this subchapter shall be construed to permit a State to have in effect with respect to any period more than one State plan approved under this subchapter.

§ 1382a

10607 [Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and discontinuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.] [Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

§ 1382a. Income; earned and unearned income defined; exclusions from income

(a) For purposes of this subchapter, income means both earned income and unearned income; and—

10607 (1) earned income means only—

(A) wages as determined under section 403(f)(5)(C) of this title but without the application of section 410(j)(3) of this title (and, in the case of cash remuneration paid for service as a member of a uniformed service (other than payments described in paragraph (2)(H) of this subsection or subsection (b)(20)), without regard to the limitations contained in section 409(d) of this title);

(B) net earnings from self-employment, as defined in section 411 of this title (without the application of the second and third sentences following subsection (a)(II)), the last paragraph of subsection (a), and section 410(j)(3) of this title), including earnings for services performed in a sheltered workshop or work activity center; and

(C) remuneration received for services performed in a sheltered workshop or work activity center; and

(D) any royalty earned by an individual in connection with any publication of the work of the individual, and that portion of any honorable which is received for services rendered; and

(2) unearned income means all other income, including—

(A) support and maintenance furnished in cash or kind; except that (i) in the case of any individual (and his eligible spouse, if any) living in another person’s household and receiving support and maintenance in kind from such person, the dollar amounts otherwise applicable to such individual (and spouse) as specified in subsections (a) and (b) of section 1382 of this title shall be reduced by 33% percent in lieu of including such support and maintenance in the unearned income of such individual (and spouse) as otherwise required by this subparagraph, (ii) in the case of any individual or his eligible spouse who resides in a nonprofit retirement home or similar nonprofit institution, support and maintenance shall not be included to the extent that it is furnished to such individual or such spouse without such institution receiving payment therefor (unless such institution has expressly undertaken an obligation to furnish full support and maintenance to such individual or spouse without any current or future payment therefor) or payment therefor is made by another nonprofit organization, and (iii) support and maintenance shall not be included and the provisions of clause (i) shall not be applicable in the case of any individual (and his eligible spouse, if any) for the period which begins with the month in which such individual (or such individual and his eligible spouse) began to receive support and maintenance while living in a residential facility (including a private household) maintained by another person and ends with the close of the month in which such individual (or such individual and his eligible spouse) ceases to receive support and maintenance while living in such a residential facility (or, if earlier, with the close of the seventeenth month following the month in which such period began), if, not more than 30 days prior to the date on which such individual (or such individual and his eligible spouse) began to receive support and maintenance while living in such a residential facility, (I) such individual (or such individual and his eligible spouse) were residing in a household maintained by such individual (or by such individual and others) at his or their own home, (II) there occurred within the area in which such household is located (and while such individual, or such individual and his spouse, were residing in the household referred to in subclause (I)) a catastrophe on account of which the President declared a major disaster to exist therein for purposes of the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.], and (III) such individual declares that he (or he and his eligible spouse) ceased to continue living in the household referred to in subclause (I) because of such catastrophe;

(B) any payments received as an annuity, pension, retirement, or disability benefit, including veterans’ compensation and pensions, workmen’s compensation payments, old-age, survivors, and disability insurance benefits, railroad retirement annuities and pensions, and unemployment insurance benefits;

(C) prizes and awards;

(D) payments to the individual occasioned by the death of another person, to the extent that the total of such payments exceeds the amount expended by such individual for purposes of the deceased person’s last illness and burial;

(E) support and alimony payments, and (subject to the provisions of subparagraph (D) excluding certain amounts expended for purposes of a last illness and burial) gifts (cash or otherwise) and inheritances;

(F) rents, dividends, interest, and royalties not described in paragraph (1)(E);

(G) any earnings of, and additions to, the corpus of a trust established by an individual (within the meaning of section 1382b(e) of this title), of which the individual is a beneficiary, to which section 1382b(e) of this title applies, and, in the case of an irrev-
ocable trust, with respect to which circumstances exist under which a payment from the earnings or additions could be made to or for the benefit of the individual; and

(H) payments to or on behalf of a member of a uniformed service for housing of the member (and his or her dependents, if any) on a facility of a uniformed service, including payments provided under section 403 of title 37 for housing that is acquired or constructed under subchapter IV of chapter 169 of title 10, or any related provision of law, and any such payments shall be treated as support and maintenance in kind subject to subparagraph (A) of this paragraph.

(b) In determining the income of an individual (and his eligible spouse) there shall be excluded—

(1) subject to limitations (as to amount or otherwise) prescribed by the Commissioner of Social Security, if such individual is under the age of 22 and is, as determined by the Commissioner of Social Security, a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment, the earned income of such individual;

(2)(A) the first $240 per year (or proportionately smaller amounts for shorter periods) of income (whether earned or unearned) other than income which is paid on the basis of the need of the eligible individual, and

(B) monthly (or other periodic) payments received by any individual, under a program established prior to July 1, 1973 (or any program established prior to such date but subsequently amended so as to conform to State or Federal constitutional standards), if (i) such payments are made by the State of which the individual receiving such payments is a resident, (ii) eligibility of any individual for such payments is not based on need and is based solely on attainment of age 65 or any other age set by the State and residency in such State by such individual, and (iii) on or before September 30, 1985, such individual (I) first becomes an eligible individual or an eligible spouse under this title, and (II) satisfies the twenty-five-year residency requirement of such program as such program was in effect prior to January 1, 1983;

(3) in any calendar quarter, the first—

(A) $60 of unearned income, and

(B) $30 of earned income,

of such individual (and such spouse, if any) which, as determined in accordance with criteria prescribed by the Commissioner of Social Security, is received too infrequently or irregularly to be included;

(4)(A) if such individual (or such spouse) is blind (and has not attained age 65, or received benefits under this subchapter (or aid under a State plan approved under section 1322 or 1382 of this title) for the month before the month in which he attained age 65), (i) the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, plus one-half of the remainder thereof, (ii) an amount equal to any expenses reasonably attributable to the earning of any income, and (iii) such additional amounts of other income, where such individual has a plan for achieving self-support approved by the Commissioner of Social Security, may prescribe, (iii) one-half of the amount of earned income not excluded after the application of the preceding provisions of this subparagraph, and (iv) such additional amounts of other income, where such individual has a plan for achieving self-support approved by the Commissioner of Social Security, as may be necessary for the fulfillment of such plan, or

(5) any amount received from any public agency as a return or refund of taxes paid on real property or on food purchased by such individual (or such spouse);

(6) assistance, furnished to or on behalf of such individual (and spouse), which is based on need and furnished by any State or political subdivision of a State;

(7) any portion of any grant, scholarship, fellowship, or gift (or portion of a gift) used to pay the cost of tuition and fees at any educational (including technical or vocational education) institution;

(8) home produce of such individual (or spouse) utilized by the household for its own consumption;

(9) if such individual is a child, one-third of any payment for his support received from an absent parent;

(10) any amounts received for the foster care of a child who is not an eligible individual but
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who is living in the same home as such individual and was placed in such home by a public or nonprofit private child-placement or child-care agency;  

(11) assistance received under the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.] or other assistance provided pursuant to a Federal statute on account of a catastrophe which is declared to be a major disaster by the President;  

(12) interest income received on assistance funds referred to in paragraph (11) within the 9-month period beginning on the date such funds are received (or such longer periods as the Commissioner of Social Security shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period);  

(13) any support or maintenance assistance furnished to or on behalf of such individual (and spouse if any) which (as determined under regulations of the Commissioner of Social Security by such State agency as the chief executive officer of the State may designate) is based on need for such support or maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which is (A) assistance furnished in kind by a private nonprofit agency, or (B) assistance furnished by a supplier of home heating oil or gas, by an entity providing home energy whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal governmental entity, or by a municipal utility providing home energy;  

(14) assistance paid, with respect to the dwelling unit occupied by such individual (or such individual and spouse), under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the National Housing Act [42 U.S.C. 1701 et seq.], section 101 of the Housing and Urban Development Act of 1965 [42 U.S.C. 1701s], title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or section 202(h) of the Housing Act of 1959 [12 U.S.C. 1701q(h)];  

(15) the value of any commercial transportation ticket, for travel by such individual (or such individual and spouse) among the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands, which is received as a gift by such individual (or such spouse) and is not converted to cash;  

(16) interest accrued on the value of an agreement entered into by such individual (or such spouse) and is not converted to cash;  

(17) any amount received by such individual (or such spouse) from a fund established by a State to aid victims of crime;  

(18) relocation assistance provided by a State or local government to such individual (or such spouse), comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 which is subject to the treatment required by section 216 of such Act [42 U.S.C. 4636];  

(19) any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit);  

(20) special pay received pursuant to section 310 of title 37;  

(21) the interest or other earnings on any account established and maintained in accordance with section 1383a(a)(2)(F) of this title;  

(22) any gift to, or for the benefit of, an individual who has not attained 18 years of age and who has a life-threatening condition, from an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code—  

(A) in the case of an in-kind gift, if the gift is not converted to cash; or  

(B) in the case of a cash gift, only to the extent that the total amount excluded from the income of the individual pursuant to this paragraph in the calendar year in which the gift is made does not exceed $2,000;  

(23) interest or dividend income from resources—  

(A) not excluded under section 1382b(a) of this title, or  

(B) excluded pursuant to Federal law other than section 1382b(a) of this title;  

(24) any annuity paid by a State to the individual (or such spouse) on the basis of the individual's being a veteran (as defined in section 101 of title 38), and blind, disabled, or aged;  

(25) any benefit (whether cash or in-kind) conferred upon (or paid on behalf of) a participant in an AmeriCorps position approved by the Corporation for National and Community Service under section 12573 of this title; and  

(26) the first $2,000 received during a calendar year by such individual (or such spouse) as compensation for participation in a clinical trial involving research and testing of treatments for a rare disease or condition (as defined in section 360ee(b)(2) of title 21), but only if the clinical trial—  

(A) has been reviewed and approved by an institutional review board that is established—  

(i) to protect the rights and welfare of human subjects participating in scientific research; and  

(ii) in accord with the requirements under part 46 of title 45, Code of Federal Regulations; and  

(B) meets the standards for protection of human subjects as provided under part 46 of title 45, Code of Federal Regulations.  


For complete classification of this Act to the Code, see Short Title note set out under section 1411 of this title and Tables.

The Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, referred to in subsec. (b)(18), is Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894. Title II of the Act enacted subchapter II (§4621 et seq.) of chapter 61 of Title 10, Armed Forces, sections 501 to 512 of Title 23, Highways, sections 1231 to 1234 of Title 43, Public Lands, and enacted provisions set out as notes under sections 4601 and 4621 of this title and under sections 501 to 512 of Title 25. For complete classification of title II to the Code, see Tables.

AMENDMENTS


2009—Subsec. (a)(1)(A). Pub. L. 110–245, §201(a), inserted ``(and, in the case of cash remuneration paid for service as a member of a uniformed service (other than payments described in paragraph (2)(H) of this subsection or subsection (b)(20)), without regard to the limitations contained in section 409(d) of this title)'' before semicolon.


2004—Subsec. (b)(1). Pub. L. 108–103, §432(a), substituted ``under the age of 22 and'' for ``a child who''.

Subsec. (b)(6). Pub. L. 108–103, §430(a), substituted ``(b)'' for ``(b)(1)'' in par. (2) and substituted ``(b)(2)'' for ``(b)(20)'' in par. (6).

2003—Subsec. (b)(2). Pub. L. 108–103, §430(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ``(A) the total unearned income of such individual (and such spouse, if any) in a month which, as determined in accordance with criteria prescribed by the Commissioner of Social Security, is received too infrequently or irregularly to be included, if such income so received does not exceed $30 in such month, and (B) the total earned income of such individual (and such spouse, if any) in a month which, as determined in accordance with such criteria, is received too infrequently or irregularly to be included, if such income so received does not exceed $10 in such month;''.

Subsec. (b)(7). Pub. L. 108–203, §430(a), substituted ``(fellowship or gift (or portion of a gift) used to pay for)'' for ``(or fellowship or gift (or portion of a gift) used to pay for)'' in par. (4), substituted ``(and)'' for ``(andorra)'' in par. (4)(A), and inserted ``(or)'' after ``(B)'' in par. (4)(A).


Subsec. (a)(1)(B). Pub. L. 106–554, §114(a)(1) [title V, §519(2)], substituted `the last for' and `the last and' and inserted `, and section 410(j)(3) of this title' after `subsection (a)'.


1994—Subsec. (a)(1)(C) to (E). Pub. L. 103–432, §207(a), redesignated subpars. (D) and (E) as (C) and (D), respectively, and struck out former subpar. (C) which read as follows: `any refund of Federal income taxes made by such employer for a member of the uniformed services, the uniformed service of which the member served in the same capacity, to a member of such uniformed service (other than payments described in paragraph (2)(H) of this subsection or subsection (b)(20)), without regard to the limitations contained in section 409(d) of this title' before semicolon.
Subsec. (b)(1), (3)(A), (4)(A), (B), (12), (13). Pub. L. 103–296 substituted “Commissioner of Social Security” for “Secretary” wherever appearing.


Subsec. (b)(3)(B)(i). Pub. L. 101–508, § 5036(a), struck out “(for purposes of determining the amount of his or her benefits under this subchapter and of determining his or her eligibility for such benefits for consecutive months of eligibility after the initial month of such eligibility)” after “income of such individual”.


1987—Subsec. (a)(2)(D), (E). Pub. L. 100–203 amended subpars. (D) and (E) generally. Prior to amendment, subpars. (D) and (E) read as follows:

“(D) the proceeds of any life insurance policy to the beneficiary for purposes of the insured individual’s last illness and burial or $1,500, whichever is less;

(E) gifts (cash or otherwise), support and alimony payments, and inheritances; and”.


Subsec. (b)(2). Pub. L. 99–514, § 1883(d)(3)(A), (B), substituted “; and” for a semicolon in subpar. (A) and a semicolon for a period in subpar. (B).

Subsec. (b)(11) to (13). Pub. L. 99–514, § 1883(d)(3)(C), provided for technical corrections relating to concluding punctuation in pars. (11) to (13).


Pub. L. 98–369, § 2616(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “‘monthly (or other periodic) payments received by any individual, under a program established prior to July 1, 1973, if such payments are made by the State of which the individual receiving such payments is a resident, and if eligibility of any individual for such payments is not based on need and is based solely on attainment of age 65 and duration of residence in such State by such individual’.”


Subsec. (b)(12). Pub. L. 98–369, § 2630(b), temporarily amended par. (15) generally, redesignating former cls. (i) and (ii) as (A) and (B), respectively. See Effective and Termination Dates of 1984 Amendment note below.

1983—Subsec. (b)(15). Pub. L. 98–201 temporarily substituted “‘any support or maintenance assistance furnished to or on behalf of such individual (and spouse if any) which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) (A) is based on need for such support or maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which’” for “any assistance received to assist in meeting the costs of home energy, including both heating and cooling, which”.

Subsec. (b)(16). Pub. L. 98–201, § 1973, if such payments are made by the State of which the individual receiving such payments is a resident, and if eligibility of any individual for such payments is not based on need and is based solely on attainment of age 65 and duration of residence in such State by such individual.”


1981—Subsec. (b)(9). Pub. L. 96–265, § 202(a)(2), added subpar. (C) which was subsequently redesignated (D) by Pub. L. 96–473, § 6(g)(2).


Subsec. (b)(10). Pub. L. 96–265, § 302(b), inserted provisions relating to extraordinary work expenses due to severe disability.


Subsec. (b)(2). Pub. L. 94–202 designated existing provisions as par. (A) and added par. (B).

Subsec. (b)(6). Pub. L. 94–366 substituted “assistance, furnished to or on behalf of such individual (and spouse), which” for “assistance described in section 1382e(b)(1)(B) of this title which”.


**Effective and Termination Dates of 2010 Amendment**

Pub. L. 111–255, § 3(d), Oct. 5, 2010, 124 Stat. 2641, provided that: ‘‘The amendments made by this section [amending this section and sections 1382b and 1396a of this title] shall take effect on the date that is the earlier of—

(1) the effective date of final regulations promulgated by the Commissioner of Social Security to carry out this section and such amendments; or

(2) 180 days after the date of enactment of this Act (Oct. 5, 2010).’’

[Section 3(d) of Pub. L. 111–255, set out above, repealed 5 years after Oct. 5, 2010, see section 3(e) of Pub. L. 111–255, set out below.]

Pub. L. 111–255, § 3(e), Oct. 5, 2010, 124 Stat. 2641, provided that: ‘‘This Act [amending this section and sections 1382b and 1396a of this title and enacting provisions set out as notes under this section and section 1305 of this title] and the amendments made by this Act are repealed on the date that is 5 years after the date of the enactment of this Act (Oct. 5, 2010).’’

**Effective Date of 2008 Amendment**

Pub. L. 110–245, title II, § 204, June 17, 2008, 122 Stat. 1638, provided that: ‘‘The amendments made by this title [amending this section and section 1382b of this title] shall be effective with respect to benefits payable for months beginning after 60 days after the date of the enactment of this Act [June 17, 2008].’’

**Effective Date of 2004 Amendment**

Pub. L. 108–203, title IV, § 430(c), Mar. 2, 2004, 118 Stat. 538, provided that: ‘‘The amendments made by this section [amending this section] shall be effective with respect to benefits payable for months in calendar quar-
ters that begin more than 90 days after the date of the enactment of this Act [Mar. 2, 2004]."

Pub. L. 108-203, title IV, §435(c), Mar. 2, 2004, 118 Stat. 540, provided that: "The amendments made by this section [amending this section and section 1382b of this title] shall apply to gifts made on or after the date that is 2 years before the date of the enactment of this Act [Aug. 10, 1993]."

EFFECTIVE DATE OF 1999 AMENDMENT
Pub. L. 106-169, title II, §205(d), Dec. 14, 1999, 113 Stat. 1834, provided that: "The amendments made by this section [amending this section and section 1382b and 1386a of this title] shall take effect on January 1, 2000, and shall apply to trusts established on or after such date."

EFFECTIVE DATE OF 1998 AMENDMENT
Pub. L. 105-306, §7(c), Oct. 28, 1998, 112 Stat. 2928, provided that: "The amendments made by this section [amending this section and section 1382b of this title] shall apply to benefits payable for months that begin after September 30, 1984."

EFFECTIVE DATE OF 1996 AMENDMENT
Section 213(d) of Pub. L. 104-193 provided that: "The amendments made by this section [amending this section and sections 1382b and 1383 of this title] shall apply to payments made after the date of the enactment of this Act [Aug. 22, 1996]."

EFFECTIVE DATE OF 1994 AMENDMENTS
Amendment by section 264(a) of Pub. L. 103-432 effective as if included in the provision of Pub. L. 101-508 to which the amendment relates at the time such provision became law, see section 264(b) of Pub. L. 103-432, set out as a note under section 1320b-9 of this title.


EFFECTIVE DATE OF 1993 AMENDMENT
Section 13733(c) of Pub. L. 102-566 provided that: "The amendments made by this section [amending this section and section 1382b of this title] shall take effect on the 1st day of the 2nd month that begins after the date of the enactment of this Act [Aug. 10, 1993]."

EFFECTIVE DATE OF 1990 AMENDMENT
Section 5031(d) of Pub. L. 101-508 provided that: "The amendments made by this section [amending this section and section 1382b and 1383 of this title] shall apply to determinations of income or resources made for any period after December 31, 1990."

EFFECTIVE DATE OF 1989 AMENDMENT
Section 801(b) of Pub. L. 101-219 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the 1st day of the 3rd calendar month beginning after the date of the enactment of this Act [Dec. 19, 1989]."

Section 801(c) of Pub. L. 101-219 provided that: "The amendments made by subsections (a) and (b) [amending this section and section 1382b of this title] shall take effect on the 1st day of the 4th month beginning after the date of the enactment of this Act [Dec. 19, 1989]."

EFFECTIVE DATE OF 1988 AMENDMENT
Section 8103(c) of Pub. L. 100-647 provided that: "The amendments made by this section [amending this section and section 1382b of this title] shall be effective as though they had been included in section 162 of the Housing and Community Development Act of 1987 [Pub. L. 100-242, see Effective Date of 1988 Amendment note set out under 12 U.S.C. 1701q] at the time of its enactment [May 5, 1988]."

EFFECTIVE DATE OF 1987 AMENDMENT
Section 9120(b) of Pub. L. 100-203 provided that: "The amendments made by subsection (a) [amending this section] shall become effective April 1, 1986."

EFFECTIVE DATE OF 1984 AMENDMENT
Section 2616(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Section 2628(d) of Pub. L. 98-369, as amended by Pub. L. 100-203, title IX, §9101, Dec. 22, 1987, 101 Stat. 1330-299, provided that: "The amendments made by this section [amending this section and section 622 of this title and repealing section 545(a)-(c) of Pub. L. 97-424 and section 404 of Pub. L. 98-21, which had previously amended this section and section 622 of this title and had provided effective dates for those prior amendments] shall be effective with respect to months which begin after September 30, 1984."

Section 9101 of Pub. L. 100-203 provided that the amendment made by that section to section 2639 of Pub. L. 98-369, set out as a note above, is effective as of Oct. 1, 1987.

Amendment by section 2663(c)(3), (4) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENTS
Section 545(c) of Pub. L. 97-424 and section 494(c) of Pub. L. 98-21, which had provided for the effective and termination dates covering the enactment and subsequent amendment of subsection (b)(13) of this section by section 545(a) of Pub. L. 97-424 and section 494(a) of Pub. L. 98-21, were repealed by section 2636(i) of Pub. L. 98-369, effective with respect to months beginning after Sept. 30, 1984.

EFFECTIVE DATE OF 1981 AMENDMENT
Section 5 of Pub. L. 97-35 effective with respect to months after first calendar quarter which ends more than five months after August 1981, with provision for

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transitional payments, see section 2341(c) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment and Transitional Provisions note under section 1382 of this title.

**Effective Date of 1980 Amendments**

Section 202(b) of Pub. L. 96–265 provided that: ‘‘The amendments made by subsection (a) [amending this subchapter] shall apply only with respect to remuneration received in months after September 1980. ‘‘

Amendment by section 302(b) of Pub. L. 96–265 applicable with respect to expenses incurred on or after first day of sixth month which begins after June 9, 1980, see section 302(c) of Pub. L. 96–265, set out as a note under section 423 of this title.

Section 101(b)(1)(B) of Pub. L. 96–222 provided that: ‘‘The amendments made by subparagraphs (A) and (B) of subsection (a)(2) [amending this section and section 602 of this title] shall apply to payments for months beginning after December 31, 1979. ‘‘

**Effective Date of 1977 Amendment**

Section 8(b) of Pub. L. 95–171 provided that: ‘‘The amendment made by this section [amending this subchapter] shall be effective July 1, 1976, with respect to catastrophes which occurred on or after June 1, 1976, and before December 31, 1976. With respect to catastrophes which occurred on or after December 31, 1976, the amendment made by this section shall be effective the first day of the calendar quarter following enactment of this Act [Nov. 12, 1977]. ‘‘

**Effective Date of 1976 Amendments**

Amendment by Pub. L. 94–566 effective Oct. 1, 1976, see section 505(e) of Pub. L. 94–566, set out as a note under section 1801 of Title 48, Territories and Insular Possessions.

**Effective Date of 1975 Amendment**

Section 423 of this title.

Application by Pub. L. 92–603 as amended by Pub. L. 95–171, effective the first day of the calendar quarter following enactment of this Act [Nov. 12, 1977].

**Effective Date of 1974 Amendments**

Section 4 of Pub. L. 93–484 provided that the amendment made by that section is effective Jan. 1, 1974.

**Effective Date**

Section 301 of Pub. L. 92–603 provided that the amendment made by that section is effective Jan. 1, 1974.

**Findings**


‘‘(2) The challenges associated with enrolling participants in clinical research studies are especially difficult for studies that evaluate treatments for rare diseases and conditions (defined by the Orphan Drug Act [Pub. L. 97–101, see Short Title of 1983 Amendments note set out under section 301 of Title 21, Food and Drugs]) as a disease or condition affecting fewer than 200,000 Americans, where the available number of willing and able research participants may be very small.

‘‘(3) In accordance with ethical standards established by the National Institutes of Health, sponsors of clinical research may provide payments to trial participants for out-of-pocket costs associated with trial enrollment and for the time and commitment demanded by those who participate in a study. When offering compensation, clinical trial sponsors are required to provide such payments to all participants.

‘‘(4) The offer of payment for research participation may reduce the likelihood of participants to enroll in trials if such payments threaten the eligibility of clinical trial participants for Supplemental Security Income and Medicaid benefits.

‘‘(5) With a small number of potential trial participants and the possible loss of Supplemental Security Income and Medicaid benefits for many who wish to participate, clinical trial research for rare diseases and conditions becomes exceptionally difficult and may hinder research on new treatments and potential cures for these rare diseases and conditions.

Section 2 of Pub. L. 111–255, set out above, repealed 5 years after Oct. 5, 2010, see section 3(e) of Pub. L. 111–255, set out as an Effective and Termination Dates of 2010 Amendment note above. ‘‘

**Application to Northern Mariana Islands**

For applicability of this section to Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4834, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

**Puerto Rico, Guam, and Virgin Islands**

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1382b. Resources

(a) Exclusions from resources

In determining the resources of an individual (and his eligible spouse, if any) there shall be excluded—

(1) the home (including the land that appertains thereto); and

(2) the personal effects of such an automobile, to the extent that their total value does not exceed an amount established by the Commissioner of Social Security.

(b) The value of any burial space or agreement (including any interest accumulated thereon) representing the purchase of a burial space (subject to such limits as to size or value as the Commissioner of Social Security may by regulation prescribe) held for the purpose of providing a place for the burial of the individual, his spouse, or another member of his immediate family;

(c) other property which is so essential to the means of support of such individual (and such spouse) as to warrant its exclusion, as determined in accordance with and subject to limitations prescribed by the Commissioner of Social Security, except that the Commissioner of Social Security shall not establish a limitation on property (including the tools of a tradesperson and the machinery and livestock of a farmer) that is used in a trade or business or by such individual as an employee;

(4) such resources of an individual who is blind or disabled and who has a plan for achieving self-support approved by the Commissioner of Social Security, as may be necessary for the fulfillment of such plan;
(5) in the case of Natives of Alaska, shares of stock held in a Regional or a Village Corporation, during the period of twenty years in which such stock is inalienable, as provided in section 1606(b) and section 1607(c) of title 43;

(6) assistance referred to in section 1382a(b)(11) of this title for the 9-month period beginning on the date such funds are received (or for such longer period as the Commissioner of Social Security shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period); and, for purposes of this paragraph, the term “assistance” includes interest thereon which is excluded from income under section 1382a(b)(12) of this title;

(7) any amount received from the United States which is attributable to underpayments of benefits due for one or more prior months, under this subchapter or subchapter II of this chapter, to such individual (or spouse) or to any other person whose income is deemed to be included in such individual’s (or spouse’s) income for purposes of this subchapter; but the application of this paragraph in the case of any such individual (and eligible spouse if any), with respect to any amount so received from the United States, shall be limited to the first 9 months following the month in which such amount is received, and written notice of this limitation shall be given to the recipient concurrently with the payment of such amount;

(8) the value of assistance referred to in section 1382a(b)(14) of this title, paid with respect to the dwelling unit occupied by such individual (or such individual and spouse);

(9) for the 9-month period beginning after the month in which received, any amount received by such individual (or such spouse) from a fund established by a State to aid victims of crime, to the extent that such individual (or such spouse) demonstrates that such amount was paid as compensation for expenses incurred or losses suffered as a result of a crime;

(10) for the 9-month period beginning after the month in which received, relocation assistance provided by a State or local government to such individual (or such spouse), comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 which is subject to the treatment required by section 216 of such Act [42 U.S.C. 4636];

(11) for the 9-month period beginning after the month in which received—

(A) notwithstanding section 203 of the Economic Growth and Tax Relief Reconciliation Act of 2001, any refund of Federal income taxes made to such individual (or such spouse) under section 24 of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 which is subject to the treatment required by section 216 of such Act [42 U.S.C. 4636];

(B) any refund of Federal income taxes made to such individual (or such spouse) by reason of subsection (d) thereof; and

(12) any account, including accrued interest or other earnings thereon, established and maintained in accordance with section 1383(a)(2)(F) of this title;

(13) any gift to, or for the benefit of, an individual who has not attained 18 years of age and who has a life-threatening condition, from an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code;

(A) in the case of an in-kind gift, if the gift is not converted to cash; or

(B) in the case of a cash gift, to the extent that the total amount excluded from the resources of the individual pursuant to this paragraph in the calendar year in which the gift is made does not exceed $2,000;

(14) for the 9-month period beginning after the month in which received, any amount received by such individual (or spouse) or any other person whose income is deemed to be included in such individual’s (or spouse’s) income for purposes of this subchapter as restitution for benefits under this subchapter, subchapter II of this chapter, or subchapter VIII of this chapter that a representative payee of such individual (or spouse) or such other person under section 405(j), 1007, or 1383(a)(2) of this title has misused;

(15) for the 9-month period beginning after the month in which received, any grant, scholarship, fellowship, or gift (or portion of a gift) used to pay the cost of tuition and fees at any educational (including technical or vocational education) institution;

(16) for the month of receipt and every month thereafter, any annuity paid by a State to the individual (or such spouse) on the basis of the individual’s being a veteran (as defined in section 101 of title 38), and blind, disabled, or aged; and

(17) any amount received by such individual (or such spouse) which is excluded from income under section 1382a(b)(26) of this title (relating to compensation for participation in a clinical trial involving research and testing of treatments for a rare disease or condition).

In determining the resources of an individual (or eligible spouse) an insurance policy shall be taken into account only to the extent of its cash surrender value; except that if the total face value of all life insurance policies on any person is $1,500 or less, no part of the value of any such policy shall be taken into account.

(b) Disposition of resources; grounds for exemption from disposition requirements

(1) The Commissioner of Social Security shall prescribe the period or periods of time within which, and the manner in which, various kinds of property must be disposed of in order not to be included in determining an individual’s eligibility for benefits. Any portion of the individual’s benefits paid for any such period shall be conditioned upon such disposal; and any benefits so paid shall (at the time of the disposal) be considered overpayments to the extent they would not have been paid had the disposal occurred at the beginning of the period for which such benefits were paid.
(2) Notwithstanding the provisions of paragraph (1), the Commissioner of Social Security shall not require the disposition of any real property for so long as it cannot be sold because (A) it is jointly owned (and its sale would cause undue hardship, due to loss of housing, for the other owner or owners), (B) its sale is barred by a legal impediment, or (C) as determined under regulations issued by the Commissioner of Social Security, the owner's reasonable efforts to sell it have been unsuccessful.

(c) Disposal of resources for less than fair market value

(1)(A)(i) If an individual or the spouse of an individual disposes of resources for less than fair market value on or after the look-back date described in clause (ii)(I), the individual is ineligible for benefits under this subchapter for months during the period beginning on the date described in clause (iii) and equal to the number of months calculated as provided in clause (iv).

(ii)(I) The look-back date described in this subclause is a date that is 36 months before the date described in subclause (II).

(II) The date described in this subclause is the date on which the individual applies for benefits under this subchapter or, if later, the date on which the individual (or the spouse of the individual) disposes of resources for less than fair market value.

(iii) The date described in this clause is the first day of the first month in or after which resources were disposed of for less than fair market value and which does not occur in any other period of ineligibility under this paragraph.

(iv) The number of months calculated under this clause shall be equal to—

(I) the total, cumulative uncompensated benefit payable under section 1382(b) of this title or section 212(b) of Public Law 93-66, for the month in which occurs the date described in clause (iii); or

(II) the resources—

(I) were transferred to the transferor's spouse or to another for the sole benefit of the transferor's spouse;

(ii) were transferred from the transferor's spouse to another for the sole benefit of the transferor's spouse;

(iii) were transferred to, or to a trust established solely for the benefit of an individual who has not attained 65 years of age and who is blind or disabled;

(iv) were transferred to a trust (including a trust described in section 1396p(d)(4) of this title) established solely for the benefit of the transferor's child who is blind or disabled; or

(v) were transferred to a trust (including a trust described in section 1396p(d)(4) of this title) established solely for the benefit of an individual who has not attained 65 years of age and who is disabled;

(iii) a satisfactory showing is made to the Commissioner of Social Security (in accordance with regulations promulgated by the Commissioner) that—

(I) the individual who disposed of the resources intended to dispose of the resources either at fair market value, or for other valuable consideration;

(II) the resources were transferred exclusively for a purpose other than to qualify for benefits under this subchapter;

(iii) all resources transferred for less than fair market value have been returned to the transferor; or
(iv) the Commissioner determines, under procedures established by the Commissioner, that the denial of eligibility would work an undue hardship as determined on the basis of criteria established by the Commissioner.

(D) For purposes of this subsection, in the case of a resource held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the resource (or the affected portion of such resource) shall be considered to be disposed of by the individual when any action is taken, either by the individual or by any other person, that reduces or eliminates the individual’s ownership or control of such resource.

(E) In the case of a transfer by the spouse of an individual that results in a period of ineligibility for the individual under this subsection, the Commissioner shall apportion the period (or any portion of the period) among the individual and the individual’s spouse if the spouse becomes eligible for benefits under this subchapter.

(F) For purposes of this paragraph—

(1) the term “benefits under this subchapter” includes payments of the type described in section 1396(a) of this title and of the type described in section 212(b) of Public Law 93–66;

(2) the term “institutionalized individual” has the meaning given such term in section 1396p(e)(3) of this title; and

(iii) the term “trust” has the meaning given such term in subsection (e)(6)(A) of this section.

(G) Funds set aside for burial expenses

(1) In determining the resources of an individual, paragraph (1) shall apply to a trust (other than a trust described in paragraph (5)) established by the individual.

(2) For purposes of this subsection, an individual shall be reduced by an amount equal to (A) the total face value of all insurance policies on his life which are owned by him or his spouse and the cash surrender value of which has been excluded in determining the resources of such individual or of such individual and his spouse, and (B) the total of any amounts in an irrevocable trust (or other irrevocable arrangement) available to meet the burial and related expenses of such individual or his spouse.

(3) If the Commissioner of Social Security finds that any part of the amount excluded under paragraph (1) was used for purposes other than those for which it was set aside in cases where the inclusion of any portion of the amount would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1382(a) of this title, the Commissioner shall reduce any future benefits payable to the eligible individual (or to such individual and his spouse) by an amount equal to such part.

(4) The Commissioner of Social Security may provide by regulations that whenever an amount set aside to meet burial and related expenses is excluded under paragraph (1) in determining the resources of an individual, any interest earned or accrued on such amount (and left to accumulate), and any appreciation in the value of prepaid burial arrangements for which such amount was set aside, shall also be excluded (to such extent and subject to such conditions or limitations as such regulations may prescribe) in determining the resources (and the income) of such individual.

(e) Trusts

(1) In determining the resources of an individual, paragraph (5) shall apply to a trust (other than a trust described in paragraph (5)) established by the individual.

(2) For purposes of this subsection, an individual shall be considered to have established a trust if any assets of the individual (or of the individual’s spouse) are transferred to the trust.

(B) In the case of an irrevocable trust to which are transferred the assets of an individual (or of the individual’s spouse) and the assets of any other person, this subsection shall apply to the portion of the trust attributable to the assets of the individual (or of the individual’s spouse).

(C) This subsection shall apply to a trust without regard to—

(i) the purposes for which the trust is established;

(ii) whether the trustees have or exercise any discretion under the trust;

(iii) any restrictions on when or whether distributions may be made from the trust; or

(iv) any restrictions on the use of distributions from the trust.

(3)(A) In the case of a revocable trust established by an individual, the corpus of the trust

1 See References in Text note below.
shall be considered a resource available to the individual.

(B) In the case of an irrevocable trust established by an individual, if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual (or of the individual’s spouse), the portion of the corpus from which payment to or for the benefit of the individual (or of the individual’s spouse) could be made shall be considered a resource available to the individual.

(4) The Commissioner of Social Security may waive the application of this subsection with respect to an individual if the Commissioner determines that such application would work an undue hardship (as determined on the basis of criteria established by the Commissioner) on the individual.

(5) This subsection shall not apply to a trust described in subparagraph (A) or (C) of section 1396p(d)(4) of this title.

(6) For purposes of this subsection—

(A) the term “trust” includes any legal instrument or device that is similar to a trust;

(B) the term “corpus” means, with respect to a trust, all property and other interests held by the trust, including accumulated earnings and any other addition to the trust after its establishment (except that such term does not include any such earnings or addition in the month in which the earnings or addition is credited or otherwise transferred to the trust); and

(C) the term “asset” includes any income or resource of the individual (or of the individual’s spouse), including—

(i) any income excluded by section 1382a(b) of this title;

(ii) any resource otherwise excluded by this section; and

(iii) any other payment or property to which the individual (or of the individual’s spouse) is entitled but does not receive or have access to because of action by—

(I) the individual or spouse;

(II) a person or entity (including a court) with legal authority to act in place of, or on behalf of, the individual or spouse; or

(III) a person or entity (including a court) acting at the direction of, or on the request of, the individual or spouse.


AMENDMENT OF SECTION

For repeal of amendment by section 3(e) of Pub. L. 111–255, see Effective and Termination Dates of 2010 Amendment note below.

REFERENCES IN TEXT


AMENDMENTS


2004—Subsec. (a)(7). Pub. L. 108–203, §431(a), substituted “limited to the first 9 months” for “limited to the first 6 months” and struck out “(or to the first 9 months following any month with respect to which the amount so received during the period beginning October 1, 1987, and ending September 30, 1989)” after “month in which such amount is received”.

Subsec. (a)(11). Pub. L. 108–203, §431(b), amended par. (11) generally. Prior to amendment, par. (11) read as follows: “for the month of receipt and the following month, any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 367 of such Code (relating to advance payment of earned income credit)”;.


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Subsec. (c)(2)(A)(I). Pub. L. 107–194 added par. (2) and substituted “paragraph (1) and” for “provisions of”, and substituted “benefits under this subchapter and subchapter XIX of this chapter, respectively, for ‘benefits under subchapter XIX of this chapter’”, “or agreement (including any interest accumulated therein)” for “which may be used”, and substituted “Commissioner of Social Security” for “Secretary” wherever appearing and “the Commissioner” for “Secretary” wherever appearing.

Subsec. (c)(2)(B). Pub. L. 106–169, § 206(a)(3), redesignated par. (2) as (2)(B) and substituted “paragraph (A)(ii)” for “paragraph (1)”.

Subsec. (d). Pub. L. 97–248, § 118(a)(6), redesignated existing provisions as subpar. (A) and added subpar. (B).


Subsec. (a)(9) to (11). Pub. L. 103–296, § 321(h)(2), struck out “and” at end of par. (9) substituted “; and” for period at end of par. (10) relating to relocation assistance, and redesignated par. (10) relating to refunds of Federal income taxes as (11).

Subsec. (b) to (d). Pub. L. 103–296, § 107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing and “the Commissioner shall” for “he shall” in subsec. (d)(3).


1989—Subsec. (a)(2)(B). Pub. L. 101–238, § 803(b), inserted “or agreement (including any interest accumulated therefor) representing the purchase of a burial space”.

Subsec. (a)(3). Pub. L. 101–239, § 801(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “other property which, as determined in accordance with and subject to limitations prescribed by the Secretary, is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion.”.


Subsec. (c). Pub. L. 100–360 substituted “Notification of the award policy restricting eligibility of institutionalized individuals for benefits based on disposal of resources for less than fair market value” for “Disposal of resources for less than fair market value” in heading and amended text generally, substituting pars. (1) and (2) for former pars. (1) to (4).

1987—Subsec. (a)(7). Pub. L. 100–203, § 9114(a), inserted “or to the first 9 months following such month with respect to any amount so received during the period beginning October 1, 1987, and ending September 30, 1989” after “such amount is received”.

Subsec. (b). Pub. L. 100–203, § 9103, designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(1). Pub. L. 100–203, § 9104(a)(1), inserted “, and subject to paragraph (4) of this subsection” after “subsection (a) of this section”.


Subsec. (d)(1). Pub. L. 100–203, § 9105(a)(1), struck out “of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2)” which were applicable to section 1362(a) of this title” after “individual or spouse”.

Subsec. (d)(3). Pub. L. 100–203, § 9105(a)(2), substituted “cases where the inclusion of any portion of the amount would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2)” which were applicable to section 1362(a) of this title” after “individual or spouse”.

Amendment by Pub. L. 111–255 effective on the earlier of the effective date of final regulations promulgated by the Commissioner of Social Security to carry out such amendment or 180 days after Oct. 5, 2010, see section 3(d) of Pub. L. 111–255, set out as a note after section 1382a of this title.


Effective Date of 2008 Amendment

Amendment by Pub. L. 110–245 effective with respect to benefits payable for months beginning after 60 days after June 17, 2008, see section 204 of Pub. L. 110–245, set out as a note under section 1382a of this title.

Effective Date of 2004 Amendment

Amendment by section 101(c)(2) of Pub. L. 108–203 applicable to any case of benefit misuse by a representative payee with respect to which the Commissioner of Social Security makes the determination of misuse on or after Jan. 1, 1995, see section 101(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by Pub. L. 108–203, title IV, § 435(c), Mar. 2, 2004, 118 Stat. 509, provided that: “The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Mar. 2, 2004], and shall apply to amounts described in paragraph (7) of section 1613(a) of the Social Security Act [subsec. (a)(7) of this section] and refunds of Federal income taxes described in paragraph (11) of such section, that are received by an eligible individual or eligible spouse on or after such date.”

Amendment by section 435(b) of Pub. L. 108–203 applicable to benefits payable for months that begin more than 90 days after Mar. 2, 2004, see section 435(c) of Pub. L. 108–203, set out as a note under section 1382a of this title.

Effective Date of 1999 Amendment

Amendment by section 205(a) of Pub. L. 106–169 effective Jan. 1, 2000, and applicable to trusts established on or after such date, see section 206(d) of Pub. L. 106–169, set out as a note under section 1382a of this title.

Pub. L. 106–169, title II, § 209(c), Dec. 14, 1999, 113 Stat. 1837, provided that: “The amendments made by this section [amending this section and section 1396a of this title] shall be effective with respect to disposals made on or after the date of the enactment of this Act [Dec. 14, 1999].”

Effective Date of 1998 Amendment

Amendment by Pub. L. 105–306 applicable to gifts made on or after the date that is 2 years before Oct. 28, 1998, see section 7(c) of Pub. L. 105–306, set out as a note under section 1382a of this title.

Effective Date of 1996 Amendment

Amendment by section 213(b) of Pub. L. 104–193 applicable to payments made after Aug. 22, 1996, see section
§ 1382c. Definitions

(a)(1) For purposes of this subchapter, the term "aged, blind, or disabled individual" means an individual who—

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B)(i) is a resident of the United States, and

(ii) is a child who is a citizen of the United States, and who is living with a parent of the child who is a member of the Armed Forces of the United States, and who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States.

(2) An individual shall be considered to be blind for purposes of this subchapter if he has central visual acuity of 20/200 or less in thebet-
ter eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this subchapter if he is blind as defined under a State plan approved under subchapter X or XVI of this chapter as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.

(3)(A) Except as provided in subparagraph (C), an individual shall be considered to be disabled for purposes of this subchapter if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

For purposes of subparagraph (A), an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), “work which exists in the national economy” means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(C)(i) An individual under the age of 18 shall be considered disabled for the purposes of this subchapter if that individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

(ii) Notwithstanding clause (i), no individual under the age of 18 who engages in substantial gainful activity (determined in accordance with regulations prescribed pursuant to subparagraph (E)) may be considered to be disabled.

(D) For purposes of this paragraph, a physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(E) The Commissioner of Social Security shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual’s ability to engage in substantial gainful activity. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Commissioner of Social Security in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Commissioner of Social Security may prescribe. Notwithstanding the provisions of subparagraph (B), an individual whose services or earnings meet such criteria shall be found not to be disabled. The Commissioner of Social Security shall make determinations under this subchapter with respect to substantial gainful activity, without regard to the legality of the activity.

(F) Notwithstanding the provisions of subparagraphs (A) through (E), an individual shall also be considered to be disabled for purposes of this subchapter if he is permanently and totally disabled as defined under a State plan approved under subchapter XIV or XVI of this chapter as in effect for October 1972 and received aid under such plan (on the basis of disability) for December 1973 (and for at least one month prior to July 1973), so long as he is continuously disabled as so defined.

(G) In determining whether an individual’s physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Commissioner of Social Security shall consider the combined effect of all of the individual’s impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Commissioner of Social Security does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.

(H)(I) In making determinations with respect to disability under this subchapter, the provisions of sections 421(h), 421(k), and 423(d)(5) of this title shall apply in the same manner as they apply to determinations of disability under subchapter II of this chapter.

(II) Not less frequently than once every 3 years, the Commissioner shall review in accordance with paragraph (4) the continued eligibility for benefits under this subchapter of each individual who has not attained 18 years of age and is eligible for such benefits by reason of an impairment (or combination of impairments) which is likely to improve (or, at the option of the Commissioner, which is unlikely to improve).

(II) A representative payee of a recipient whose case is reviewed under this clause shall present, at the time of review, evidence demonstrating that the recipient is, and has been, receiving treatment, to the extent considered medically necessary and available, of the condition which was the basis for providing benefits under this subchapter.
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(III) If the representative payee refuses to comply without good cause with the requirements of subclause (II), the Commissioner of Social Security shall, if the Commissioner determines it is in the best interest of the individual, promptly suspend payment of benefits to the representative payee, and provide for payment of benefits to an alternative representative payee of the individual or, if the interest of the individual under this subchapter would be served thereby, to the individual.

(IV) Subclause (II) shall not apply to the representative payee of any individual with respect to whom the Commissioner determines such application would be inappropriate or unnecessary. In making such determination, the Commissioner shall take into consideration the nature of the individual's impairment (or combination of impairments). Section 1383(c) of this title shall not apply to a finding by the Commissioner that the requirements of subclause (II) should not apply to an individual's representative payee.

(iii) If an individual is eligible for benefits under this subchapter by reason of disability for the month preceding the month in which the individual attains the age of 18 years, the Commissioner shall redetermine such eligibility—

(I) by applying the criteria used in determining initial eligibility for individuals who are age 18 or older; and

(II) either during the 1-year period beginning on the individual's 18th birthday or, in lieu of a continuing disability review, whenever the Commissioner determines that an individual's case is subject to a redetermination under this clause.

With respect to any redetermination under this clause, paragraph (4) shall not apply.

(iv) (I) Except as provided in subclause (VI), not later than 12 months after the birth of an individual, the Commissioner shall review in accordance with paragraph (4) the continuing eligibility for benefits under this subchapter by reason of disability of such individual whose low birth weight is a contributing factor material to the Commissioner's determination that the individual is disabled.

A review under subclause (I) shall be considered a substitute for a review otherwise required under any other provision of this subclause during that 12-month period.

(III) A representative payee of a recipient whose case is reviewed under this clause shall present, at the time of review, evidence demonstrating that the recipient is, and has been, receiving treatment, to the extent considered medically necessary and available, of the condition which was the basis for providing benefits under this subchapter.

(IV) If the representative payee refuses to comply without good cause with the requirements of subclause (III), the Commissioner of Social Security shall, if the Commissioner determines it is in the best interest of the individual, promptly suspend payment of benefits to the representative payee, and provide for payment of benefits to an alternative representative payee of the individual or, if the interest of the individual under this subchapter would be served thereby, to the individual.

(V) Subclause (III) shall not apply to the representative payee of any individual with respect to whom the Commissioner determines such application would be inappropriate or unnecessary. In making such determination, the Commissioner shall take into consideration the nature of the individual's impairment (or combination of impairments). Section 1383(c) of this title shall not apply to a finding by the Commissioner that the requirements of subclause (III) should not apply to an individual's representative payee.

(VI) Subclause (I) shall not apply in the case of an individual described in that subclause who, at the time of the individual's initial disability determination, the Commissioner determines has an impairment that is not expected to improve within 12 months after the birth of that individual, and who the Commissioner schedules for a continuing disability review at a date that is after the individual attains 1 year of age.

(I) In making any determination under this subchapter with respect to the disability of an individual who has not attained the age of 18 years and to whom section 421(h) of this title does not apply, the Commissioner of Social Security shall make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the disability of the individual (as determined by the Commissioner of Social Security) evaluates the case of such individual.

(J) Notwithstanding subparagraph (A), an individual shall not be considered to be disabled for purposes of this subchapter if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled.

(4) A recipient of benefits based on disability under this subchapter may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

(A) in the case of an individual who is age 18 or older—

(i) substantial evidence which demonstrates that—

(I) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

(II) the individual is now able to engage in substantial gainful activity; or

(ii) substantial evidence (except in the case of an individual eligible to receive benefits under section 1382h of this title) which—

(I) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that—

(aa) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

(bb) the individual is now able to engage in substantial gainful activity, or
(II) demonstrates that—

(aa) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

(bb) the individual is now able to engage in substantial gainful activity; or

(iii) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

(B) in the case of an individual who is under the age of 18—

(i) substantial evidence which demonstrates that there has been medical improvement in the individual's impairment or combination of impairments, and that such impairment or combination of impairments no longer results in marked and severe functional limitations; or

(ii) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments, is not as disabling as it was considered to be at the time of the most recent prior decision that the individual was under a disability or continued to be under a disability, and such impairment or combination of impairments does not result in marked and severe functional limitations; or

(C) in the case of any individual, substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this paragraph shall be construed to require a determination that an individual receiving benefits based on disability under this subchapter is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity, cannot be located, or fails, without good cause, to cooperate in a review of his or her entitlement or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity, or (ii) in the case of an individual under the age of 18, to eliminate or improve the individual's impairment or combination of impairments so that it no longer results in marked and severe functional limitations. Any determination made under this paragraph shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled.

(b) For purposes of this subchapter, the term "eligible spouse" means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual, and who, in a month, is living with such aged, blind, or disabled individual on the first day of the month or, in any case in which either spouse files an application for benefits, on the first day of the month following the date the application is filed, or, in any case in which either spouse requests restoration of eligibility under this subchapter during the month, at the time the request is filed. If two aged, blind, or disabled individuals are husband and wife as described in the preceding sentence, only one of them may be an "eligible individual" within the meaning of section 1382(a) of this title.

(c) For purposes of this subchapter, the term "child" means an individual who is neither married nor (as determined by the Commissioner of Social Security) the head of a household, and who is (1) under the age of eighteen, or (2) under the age of twenty-two and (as determined by the Commissioner of Social Security) the head of a household, and

(bb) the individual is now able to engage in substantial gainful activity; or

(c) For purposes of this subchapter, the term "United States", when used in a geographical sense, means the 50 States and the District of Columbia.
ual who is a child under age 18, such individual’s income and resources shall be deemed to include any income and resources of a parent of such individual (or the spouse of such a parent) who is living in the same household as such individual, whether or not available to such individual, except to the extent determined by the Commissioner of Social Security to be inequitable under the circumstances.

(B) Subparagraph (A) shall not apply in the case of any child who has not attained the age of 18 years who—

(i) is disabled;

(ii) received benefits under this subchapter, pursuant to section 1382(e)(1)(B) of this title, while in an institution described in section 1382(e)(1)(B) of this title;

(iii) is eligible for medical assistance under a State home care plan approved by the Secretary under the provisions of section 1396n(c) of this title relating to waivers, or authorized under section 1396a(c)(3) of this title; and

(iv) but for this subparagraph, would not be eligible for benefits under this subchapter.

(3) For purposes of determining eligibility for and the amount of benefits for any individual who is an alien, such individual’s income and resources shall be deemed to include the income and resources of his sponsor and such sponsor’s spouse (if such alien has a sponsor) as provided in section 1382 of this title.


‘‘(I) during the 1-year period beginning on the individual’s 18th birthday; and

‘‘(II) by applying the criteria used in determining the initial eligibility for applicants who are age 18 or older.

With respect to a redetermination under this clause, paragraph (4) shall not apply and such redetermination shall be considered a substitute for a review or redetermination otherwise required under any other provision of this subparagraph during that 1-year period.’’


1996—Subsec. (a)(3)(A). Pub. L. 104–193, § 211(a)(1), (2), substituted ‘‘Except as provided in subparagraph (C), an individual for “an individual” and struck out ‘‘(or, in the case of an individual under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity)’’ before period at end.

Subsec. (a)(3)(C). Pub. L. 104–193, § 211(a)(4), added subpar. (C). Former subpar. (C) redesignated (D). Subsec. (a)(3)(D). Pub. L. 104–193, § 211(a)(3), redesignated subpars. (C) and (D) as (D) and (E), respectively.

Former par. (E) redesignated (F). Subsec. (a)(3)(E)(v). Pub. L. 104–193, § 211(a)(3), (5), redesignated subpar. (E) (as F) and substituted ‘‘subparagraphs (A) through (E)’’ for ‘‘subparagraphs (A) through (D)’’. Former subpar. (F) redesignated (G).


Subsec. (a)(3)(H). Pub. L. 104–193, § 212(a), (b)(1), (c), designated existing provisions as cl. (I) and added cls. (II) to (IV).

Pub. L. 104–193, § 211(a)(3), redesignated subpar. (G) as (H). Former subpar. (H) redesignated (I).


Subsec. (a)(4). Pub. L. 104–193, § 211(c)(7), as amended by Pub. L. 105–33, § 5522(d), in first sentence of concluding provisions inserted ‘‘(i)’’ before ‘‘to restore’’ and ‘‘, or’’ before ‘‘(ii)’’ and added cl. (ii).

Pub. L. 104–193, § 211(c)(7), as amended by Pub. L. 105–33, § 5522(d), in first sentence of concluding provisions inserted ‘‘(i)’’ before ‘‘to restore’’ and ‘‘, or’’ before ‘‘(ii)’’ and added cl. (ii).

Incl. (ii) redesignated former subcls. (I) and (ii) as subcls. (I) and (II), respectively, in cl. (I) redesignated former cls. (i) to (iii), respectively, in cl. (I) redesignated former subcs. (i) and (ii) as subcs. (I) and (II), respectively, in subcs. (I) and (II) of cl. (I) redesignated former subcs. (i) and (II) as items (aa) and (bb), respectively, added subpar. (B), redesignated former subpar. (D) as (C), and inserted ‘‘in the case of any individual, after substantial evidence’’ in that subpar.

Subsec. (b). Pub. L. 104–193, § 214(c)(1), substituted ‘‘, on the first day of the month following the date the application is filed, or, in any case in which either spouse requests for “or requests” and struck out ‘‘application or’’ before ‘‘request is filed.’’


Subsec. (a)(3)(D). Pub. L. 103–296, § 201(b)(4)(A), inserted at end ‘‘The Secretary shall make determina-
tions under this subchapter with respect to substantial gainful activity, without regard to the legality of the activity.


Subsec. (a)(3)(H). Pub. L. 103–432, §121(a), substituted “an individual” for “a child”, “the individual” for “the child”, and “such individual” for “such child”.

Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing:

1993—Subsec. (a)(1)(B)(i). Pub. L. 103–66, §13735(a), substituted “and who, for the month before the parent reported for such assignment, received a benefit under this subchapter” for “the District of Columbia, Puerto Rico, and the territories and possessions of the United States, and who, during the month before the parent reported for such assignment, was receiving benefits under this subchapter”.


1989—Subsec. (a)(3)(B). Pub. L. 101–229, §4009(b), redesignated existing provisions as cl. (1), redesignated former cl. (i) and (ii) as subs. (I) and (II), respectively, substituted “or” for “and”, and added cl. (III).

Subsec. (b). Pub. L. 101–239, §8012(a), amended first sentence generally. Prior to amendment, first sentence read as follows: “For purposes of this subchapter, the term ‘eligible spouse’ means an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection) shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. As used in this paragraph, the term ‘services’ means activity which is performed for remuneration or gain or is determined by the Secretary to be of a type normally performed for remuneration or gain.

(B) The term ‘period of trial work’, with respect to an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection), means a period of months beginning and ending as provided in subparagraphs (C) and (D).

(C) A period of trial work for any individual shall begin with the month in which he becomes eligible for benefits under this subchapter on the basis of his disability; but no such period may begin for an individual who is eligible for benefits under this subchapter on the basis of a disability if he has had a previous period of trial work while eligible for benefits on the basis of the same disability.

(D) A period of trial work for any individual shall end with the close of whichever of the following months is the earlier:

(i) the ninth month, beginning on or after the first day of such period, in which the individual renders services (whether or not such nine months are consecutive); or

(ii) the month in which his disability (as determined under paragraph (3) of this subsection) ceases (as determined after the application of subparagraph (A) of this paragraph).


Pub. L. 98–460, §3(a)(2), inserted reference to section 422(c)(5) of this title.

Pub. L. 98–460, §10(b), inserted reference to section 421(k) of this title.

Subsec. (a)(5). Pub. L. 98–460, §2(c), added par. (5).

Subsec. (d)(1). Pub. L. 98–369, §2663(g)(7), substituted “man and woman” for “man and women”.


Pub. L. 96–265, §303(c)(1)(B), substituted reference to subparagraph (F) or paragraph (4) for reference to paragraph (4).


Subsec. (f)(2). Pub. L. 96–265, §233(a), substituted “under age 18” for “under age 21”.

1973—Subsec. (a)(3)(A). Pub. L. 93–233, §911, struck out last sentence defining a disabled individual as one permanently and totally disabled as defined under a State plan approved under subchapter XIV or XVI of this chapter as in effect for 1972 and receiving aid under such plan (on the basis of disability for December 1973, and as long as the individual is continuously disabled as so defined, which provisions were covered in subsec. (a)(3)(E) of this section.

Subsec. (a)(3)(E). Pub. L. 93–233, §92, incorporated provisions of last sentence of subpar. (A) in provisions designated as subpar. (E) and inserted introductory text “Notwithstanding the provisions of subparagraphs (A) through (D)” and parenthetical phrase “(and for at least one month prior to July 1973)” after “December 1973”.

Effective Date of 2004 Amendment

Pub. L. 108–203, title IV, §434(b), Mar. 2, 2004, 118 Stat. 540, provided that: “The amendments made by this section [amending this section] shall be effective with respect to benefits payable for months beginning after the date of enactment of this Act [Mar. 2, 2004], but only on the basis of an application filed after such date.”

Effective Date of 1997 Amendment

Amendment by Pub. L. 105–33 effective as if included in the enactment of title II of the Personal Responsibi-

**Effective Date of 1996 Amendments**

Amendment by section 204(c)(1) of Pub. L. 104–193 applicable to applications for benefits under this subchapter filed on or after Aug. 22, 1996, without regard to whether regulations have been issued to implement amendments by section 204 of Pub. L. 104–193, see section 204(d) of Pub. L. 104–193, set out as a note under section 903 of this title.

Section 211(d) of Pub. L. 104–193, as amended by Pub. L. 105–33, title V, §5101, Aug. 5, 1997, 111 Stat. 595, provided that:

**'(1) Effective dates.—**

''(A) Subsections (a) and (b).—''

''(i) In general.—The provisions of, and amendments made by, subsections (a) [amending this section] and (b) [110 Stat. 2189] of this section shall apply to any individual who applies for, or whose claim is finally adjudicated with respect to, benefits under title XVI of the Social Security Act [this subchapter] on or after the date of the enactment of this Act [Aug. 22, 1996], without regard to whether regulations have been issued to implement such provisions and amendments.

''(ii) Determination of final adjudication.—For purposes of clause (i), no individual's claim with respect to such benefits may be considered to be finally adjudicated with respect to, benefits under title XVI of the Social Security Act, on or after such date, there is pending a request for either administrative or judicial review with respect to such claim that has been denied in whole, or there is pending, with respect to such claim, reconsideration by the Commissioner of Social Security pursuant to relief in a class action or implementation by the Commissioner of a court remand order.

''(B) Subsection (c).—The amendments made by subsection (c) of this section [amending this section] shall apply with respect to benefits under title XVI of the Social Security Act for months beginning on or after the date of the enactment of this Act, without regard to whether regulations have been issued to implement such amendments.

**'(2) Application to current recipients.—**

''(A) Eligibility Redeterminations.—During the period beginning on the date of the enactment of this Act [Aug. 22, 1996] and ending on the date which is 18 months after such date of enactment, the Commissioner of Social Security shall determine the eligibility of any individual under age 18 who is eligible for supplemental security income benefits by reason of disability under title XVI of the Social Security Act [this subchapter] as of the date of the enactment of this Act and whose eligibility for such benefits may be terminated by reason of the provisions of, or amendments made by, subsections (a) and (b) of this section. Any redetermination required by the preceding sentence that is not performed before the end of the period described in the preceding sentence shall be performed as soon as is practicable thereafter. With respect to any redetermination under this subparagraph—

''(i) section 1614(a)(4) of the Social Security Act (42 U.S.C. 1382c(a)(4)) shall not apply;

''(ii) the Commissioner of Social Security shall apply the eligibility criteria for new applicants for benefits under title XVI of the Social Security Act;

''(iii) the Commissioner shall give such redetermination priority over all continuing eligibility reviews and other reviews under such title; and

''(iv) such redetermination shall be counted as a review or redetermination otherwise required to be made under section 208 of the Social Security Independence and Program Improvements Act of 1994 [Pub. L. 103–256, set out as a note under section 1382 of this title] or any other provision of title XVI of the Social Security Act.

''(B) Grandfather provision.—The provisions of, and amendments made by, subsections (a) [amending this section] and (b) [110 Stat. 2189] of this section, and the redetermination under subparagraph (A) shall only apply with respect to the benefits of an individual described in subparagraph (A) for months beginning on or after the later of July 1, 1997, or the date of the redetermination with respect to such individual.

''(C) Notice.—Not later than January 1, 1997, the Commissioner of Social Security shall notify an individual described in subparagraph (A) of the provisions of this paragraph. Before commencing a redetermination under the 2nd sentence of subparagraph (A), in any case in which the individual involved has not already been notified of the provisions of this paragraph, the Commissioner of Social Security shall notify the individual involved of the provisions of this paragraph.

**'(3) Report.—**The Commissioner of Social Security shall report to the Congress regarding the progress made in implementing the provisions of, and amendments made by, this section [amending this section, sections 665e and 901 of Title 2, The Congress, and provisions set out as a note under section 401 of this title] on child disability evaluations not later than 180 days after the date of the enactment of this Act [Aug. 22, 1996].

''(4) Regulations.—Notwithstanding any other provision of law, the Commissioner of Social Security shall submit for review to the committees of jurisdiction in the Congress any final regulation pertaining to the eligibility of individuals under age 18 for benefits under title XVI of the Social Security Act [this subchapter] at least 45 days before the effective date of such regulation. The submission under this paragraph shall include supporting documentation providing a cost analysis, workload impact, and projections as to how the regulation will affect the future number of recipients under such title.

''(5) Cap adjustment for SSI administrative work required by welfare reform.—

''(A) Authorization.—For the additional costs of continuing disability reviews and redeterminations under title XVI of the Social Security Act, there is hereby authorized to be appropriated to the Social Security Administration, in addition to amounts authorized under section 201(g)(1)(A) of the Social Security Act [section 401(g)(1)(A) of this title], $150,000,000 in fiscal year 1997 and $100,000,000 in fiscal year 1998.

''(B) Cap adjustment.—[Amended section 901 of Title 2, The Congress.]

''(C) Adjustments.—[Amended section 665e of Title 2.]

''(D) Conforming amendment.—[Amended section 103(d)(1) of Pub. L. 104–121, set out as a note under section 401 of this title.]

''(6) Benefits under title XVI.—For purposes of this subsection, the term 'benefits under title XVI of the Social Security Act' includes supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act [section 1382 of this title], and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66 [set out as a note under section 1382 of this title].

Section 212(d) of Pub. L. 104–193 provided that: 'The amendments made by this section [amending this section and repealing provisions set out as a note under section 1382 of this title] shall apply to benefits for months beginning on or after the date of the enactment of this Act [Aug. 22, 1996], without regard to whether regulations have been issued to implement such amendments.'

Amendment by Pub. L. 104–121 applicable to individual who applies for, or whose claim is finally adjudicated with respect to, supplemental security income benefits under this subchapter based on disability on or after Mar. 29, 1996, with special rule in case of individual who has applied for, and whose claim has been fi-
nally adjudicated with respect to, such benefits before Mar. 29, 1996, see section 1382(a)(3) of this title.

**Effective Date of 1994 Amendment**

Section 221(b) of Pub. L. 103–432 provided that: "The amendments made by subsection (a) [amending this section] shall apply to determinations made on or after the date of the enactment of this Act [Aug. 10, 1994]."


Section 301 of Pub. L. 96–263 provided that: "The amendment made by section 302(a)(3) of Pub. L. 96–263 applicable with respect to expenses incurred on or after the first day of the sixth month which begins after June 9, 1980, see section 302(c) of Pub. L. 96–263, set out as a note under section 423 of this title.

Amendment by section 301 of Pub. L. 96–263 provided that: this section is effective Jan. 1, 1974.

**Regulations**

For provisions requiring Secretary of Health and Human Services to prescribe regulations necessary to implement amendment to this section [adding subsec. (a)(5)] by section 2(c) of Pub. L. 98–460 not later than 180 days after Oct. 9, 1984, see section 2(g) of Pub. L. 98–460, set out as a note under section 423 of this title.

**Retroactive Benefits**

For provisions relating to entitlement to retroactive benefits under section 2 of Pub. L. 98–460, which added subsec. (a)(5) of this section, see section 2(f) of Pub. L. 98–460, set out as a note under section 423 of this title.

**Application to Northern Mariana Islands**

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 6334, Oct. 24, 1977, 42 F.R. 6563, set out as notes under section 1901 of Title 48, Territories and Insular Possessions.

**Puerto Rico, Guam, and Virgin Islands**

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1382d. Rehabilitation services for blind and disabled individuals

(a) Referral by Commissioner of eligible individuals to appropriate State agency

In the case of any blind or disabled individual who—

1. has not attained age 16; and

2. with respect to whom benefits are paid under this subchapter,

(b) Referral of information to appropriate State agency

For referral by Commissioner of information under this section to appropriate State agency, see section 1382j of this title.

(c) Referral by appropriate State agency

For referral by appropriate State agency of information under this section to Commissioner, see section 1382j of this title.
the Commissioner of Social Security shall make provision for referral of such individual to the appropriate State agency administering the State program under subchapter V of this chapter.


d) Reimbursement by Commissioner to State agency of costs of providing services to referred individuals

The Commissioner of Social Security is authorized to reimburse the State agency administering or supervising the administration of a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.] for the costs incurred under such plan in the provision of rehabilitation services to individuals who are referred for such services pursuant to subsection (a) of this section, (1) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (2) in cases where such individuals receive benefits as a result of section 1383(a)(6) of this title (except that no reimbursement under this subsection shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first occurs), and (3) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation. The determination that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation, and the determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria determined by the Commissioner in the same manner as under section 422(d)(1) of this title.

e) Reimbursement for vocational rehabilitation services furnished during certain months of nonpayment of insurance benefits

The Commissioner of Social Security may reimburse the State agency described in subsection (d) of this section for the costs described therein incurred in the provision of rehabilitation services—

(1) for any month for which an individual received—

(A) benefits under section 1382 or 1382h(a) of this title;

(B) assistance under section 1382h(b) of this title; or

(C) a federally administered State supplementary payment under section 1382e of this title or section 212(b) of Public Law 93–66; and

(2) for any month before the 13th consecutive month for which an individual, for a reason other than cessation of disability or blindness, was ineligible for—

(A) benefits under section 1382 or 1382h(a) of this title;

(B) assistance under section 1382h(b) of this title; or

(C) a federally administered State supplementary payment under section 1382e of this title or section 212(b) of Public Law 93–66.


REFERENCES IN TEXT


Section 212(b) of Public Law 93–66, referred to in subsec. (e)(1)(C), (2)(C), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–170, § 101(b)(2)(A), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "In the case of any blind or disabled individual who—

"(1) has not attained age 65, and

"(2) is receiving benefits (or with respect to whom benefits are paid) under this subchapter,

the Commissioner of Social Security shall make provision for referral of such individual to the appropriate State agency administering the State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973, or, in the case of any such individual who has not attained age 16, to the State agency administering the State program under subchapter V of this chapter, and (except for individuals who have not attained age 16 and except in such other cases as the Commissioner may determine) for a review not less often than quarterly of such individual's blindness or disability and his need for and utilization of the services made available to him under such plan."

Subsec. (c). Pub. L. 106–170, § 101(b)(2)(B), struck out subsec. (c) which read as follows: "Every individual age 16 or over with respect to whom the Commissioner of Social Security is required to make provision for referral under subsection (a) of this section shall accept such services as are made available to him under the State plan for vocational and rehabilitation services approved under title I of the Rehabilitation Act of 1973; and no such individual shall be an eligible individual or eligible spouse for purposes of this subchapter if he refuses without good cause to accept services for which he is referred under subsection (a) of this section."
Vocational Rehabilitation Act,” and substituting “need for and utilization of the services” for “need for and utilization of the rehabilitation services”.

Subsec. (b). Pub. L. 94–556 added subsec. (b). Former subsec. (b) was split up and its parts were redistributed into subsecs. (c) and (d), respectively, and amended.

Subsec. (c). Pub. L. 94–556 combined into subsec. (c) the existing provisions of subsec, (c) covering the refusal by referred individuals to accept services and added thereto a part of former subsec. (b) covering the required acceptance of vocational and rehabilitation services by the referred individual, and in that provision substituted “Every individual age 16 or over” for “Every individual”.

Subsec. (d). Pub. L. 94–556 redesignated as subsec. (d) the part of former subsec. (b) covering the payment by the Secretary to the State agency administering a State plan and in the provisions so redesignated substituted “administration of a State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act” for “administration of such State plan”.


**Effective Date of 1999 Amendment**

Amendment by Pub. L. 106–170 effective with the first month following one year after Dec. 17, 1999, subject to section 101(d) of Pub. L. 106–170, see section 101(c) of Pub. L. 106–170, set out as an Effective Date note under section 1320b–19 of this title.

**Effective Date of 1997 Amendment**


**Effective Date of 1994 Amendment**


**Effective Date of 1990 Amendment**

Section 5037(b) of Pub. L. 101–506 provided that: ‘‘(The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990] and shall apply to claims for reimbursement pending on or after such date.’’

**Effective Date of 1984 Amendments**

Amendment by Pub. L. 98–460 applicable with respect to individuals who receive benefits as a result of section 425(b) or section 1383(a)(6) of this title, or who are entitled to administrative review and work opportuity under section 1320b–19 of this title.

Amendment by Pub. L. 98–460 applicable with respect to individuals who receive benefits as a result of section 425(b) or section 1383(a)(6) of this title, or who are entitled to administrative review and work opportuity under section 1320b–19 of this title.

**Effective Date of 1981 Amendment**

Section 2344 of Pub. L. 97–35 provided that the amendment made by this section is effective for fiscal year 1982.

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

**Effective and Termination Dates of 1981 Amendment**

Section 219A(a)(4)(B) of Pub. L. 97–35 provided that the amendment made by that section is effective for fiscal year 1982.

For effective date, savings, and transitional provisions relating to amendments by section 219A(a)(4)(A) and (c)(B) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Section 2344 of Pub. L. 97–35 provided that the amendment made by that section is effective Oct. 1, 1981.
§ 1382e. Supplementary assistance by State or subdivision to needy individuals

(a) Exclusion of cash payments in determination of income of individuals for purposes of eligibility for benefits; agreement by Commissioner and State for Commissioner to make supplementary payments on behalf of State or subdivision

Any cash payments which are made by a State (or political subdivision thereof) on a regular basis to individuals who are receiving benefits under this subchapter or who would but for their income be eligible to receive benefits under this subchapter, as assistance based on need in supplementation of such benefits (as determined by the Commissioner of Social Security), shall be excluded under section 1382(a)(3) of this title in the case of persons who have not attained the age of 18.

(b) Agreement between Commissioner and State; contents

Any agreement between the Commissioner of Social Security and a State entered into under subsection (a) of this section shall provide—

(1) that such payments will be made (subject to subsection (c) of this section) to all individuals residing in such State (or subdivision) who are receiving benefits under this subchapter, and

(2) such other rules with respect to eligibility for or amount of the supplementary payments, and such procedural or other general administrative provisions, as the Commissioner of Social Security finds necessary (subject to subsection (a) of this section) to achieve efficient and effective administration of both the program which the Commissioner conducts under this subchapter and the optional State supplementation.

At the option of the State (but subject to paragraph (2) of this subsection), the agreement between the Commissioner of Social Security and such State entered into under subsection (a) of this section shall be modified to provide that the Commissioner of Social Security will make supplementary payments, on and after an effective date to be specified in the agreement as so modified, to individuals receiving benefits determined under section 1382(e)(1)(B) of this title.

(c) Residence requirement by State or subdivision for supplementary payments; disregarding amounts of certain income by State or subdivision in determining eligibility for supplementary payments

(1) Any State (or political subdivision) making supplementary payments described in subsection (a) of this section may at its option impose as a condition of eligibility for such payments, and include in the State's agreement with the Commissioner of Social Security under such subsection, a residence requirement which excludes individuals who have resided in the State (or political subdivision) for less than a minimum period prior to application for such payments.

(2) Any State (or political subdivision), in determining the eligibility of any individual for supplementary payments described in subsection (a) of this section, may disregard amounts of earned and unearned income in addition to other amounts which it is required or permitted to disregard under this section in determining such eligibility, and shall include a provision specifying the amount of any such income that will be disregarded, if any.

(3) Any State (or political subdivision) making supplementary payments described in subsection (a) of this section shall have the option of making such payments to individuals who receive benefits under this subchapter under the provisions of section 1382h of this title, or who would be eligible to receive such benefits but for their income.

(d) Payment to Commissioner by State of amount equal to expenditures by Commissioner as supplementary payments; time and manner of payment by State; fees for Federal administration of State supplementary payments

(1) Any State which has entered into an agreement with the Commissioner of Social Security under this section which provides that the Commissioner of Social Security will, on behalf of such State (or subdivision), make the supplementary payments to individuals who are receiving benefits under this subchapter (or who would but for their income be eligible to receive such benefits), shall, in accordance with paragraph (5), pay to the Commissioner of Social Security the amount of such payments, plus an administration fee assessed in accordance with paragraph (2) and any additional services fee charged in accordance with paragraph (3).

(2)(A) The Commissioner of Social Security shall assess each State an administration fee in an amount equal to—

(i) the number of supplementary payments made by the Commissioner of Social Security...
on behalf of the State under this section for any month in a fiscal year; multiplied by
(ii) the applicable rate for the fiscal year.

(B) As used in subparagraph (A), the term "applicable rate" means—
(i) for fiscal year 1994, $1.67;
(ii) for fiscal year 1995, $3.33;
(iii) for fiscal year 1996, $5.00;
(iv) for fiscal year 1997, $5.00;
(v) for fiscal year 1998, $6.20;
(vi) for fiscal year 1999, $7.60;
(vii) for fiscal year 2000, $7.80;
(viii) for fiscal year 2001, $8.10;
(ix) for fiscal year 2002, $8.50; and
(x) for fiscal year 2003 and each succeeding fiscal year—
(I) the applicable rate in the preceding fiscal year, increased by the percentage, if any, by which the Consumer Price Index for the month of June of the calendar year of the increase exceeds the Consumer Price Index for the month of June of the calendar year preceding the calendar year of the increase, and rounded to the nearest whole cent; or
(II) such different rate as the Commissioner determines is appropriate for the State.

(C) Upon making a determination under subparagraph (B)(x)(II), the Commissioner of Social Security shall promulgate the determination in regulations, which may take into account the complexity of administering the State's supplementary payment program.

(D) All fees assessed pursuant to this paragraph shall be transferred to the Commissioner of Social Security at the same time that amounts for such supplementary payments are required to be so transferred.

(3) (A) The Commissioner of Social Security may charge a State an additional services fee if, at the request of the State, the Commissioner of Social Security provides additional services beyond the level customarily provided, in the administration of State supplementary payments pursuant to this section.

(B) The additional services fee shall be in an amount that the Commissioner of Social Security determines is necessary to cover all costs (including indirect costs) incurred by the Federal Government in furnishing the additional services referred to in subparagraph (A).

(4) (A) The first $5 of each administration fee assessed pursuant to paragraph (2), upon collection, shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.

(B) That portion of each administration fee in excess of $5, and 100 percent of each additional services fee charged pursuant to paragraph (3), upon collection for fiscal year 1998 and each subsequent fiscal year, shall be credited to a special fund established in the Treasury of the United States for State supplementary payment fees. The amounts so credited, to the extent and in the amounts provided in advance in appropriations Acts, shall be available to defray expenses incurred in carrying out this subchapter and related laws.

(5) (A) (i) Any State which has entered into an agreement with the Commissioner of Social Security under this section shall remit the payments and fees required under this subsection with respect to monthly benefits paid to individuals under this subchapter no later than—
(I) the business day preceding the date that the Commissioner pays such monthly benefits; or
(II) with respect to such monthly benefits paid for the month that is the last month of the State's fiscal year, the fifth business day following such date.

(ii) The Commissioner may charge States a penalty in an amount equal to 5 percent of the payment and the fees due if the remittance is received after the date required by clause (i).

(B) The Cash Management Improvement Act of 1990 shall not apply to any payments or fees required under this subsection that are paid by a State before the date required by subparagraph (A)(i).

(C) Notwithstanding subparagraph (A)(i), the Commissioner may make supplementary payments on behalf of a State with funds appropriated for payment of benefits under this subchapter, and subsequently to be reimbursed for such payments by the State at such times as the Commissioner and State may agree. Such authority may be exercised only if extraordinary circumstances affecting a State's ability to make payment when required by subparagraph (A)(i) are determined by the Commissioner to exist.

(e) State standards; establishment; annual public review; annual certification; payments to individuals

(1) Each State shall establish or designate one or more State or local authorities which shall establish, maintain, and insure the enforcement of standards for any category of institutions, foster homes, or group living arrangements in which (as determined by the State) a significant number of recipients of supplemental security income benefits is residing or is likely to reside. Such standards shall be appropriate to the needs of such recipients and the character of the facilities involved, and shall govern such matters as admission policies, safety, sanitation, and protection of civil rights.

(2) Each State shall annually make available for public review a summary of the standards established pursuant to paragraph (1), and shall make available to any interested individual a copy of such standards, along with the procedures available in the State to insure the enforcement of such standards and a list of any waivers of such standards and any violations of such standards which have come to the attention of the authorities responsible for their enforcement.

(3) Each State shall certify annually to the Commissioner of Social Security that it is in compliance with the requirements of this subsection.

(4) Payments made under this subchapter with respect to an individual shall be reduced by an amount equal to the amount of any supplementary payment (as described in subsection (a) of this section) or other payment made by a State (or political subdivision thereof) which is made for or on account of any medical or any
other type of remedial care provided by an institution of the type described in paragraph (1) to such individual as a resident or an inpatient of such institution if such institution is not approved as meeting the standards described in such paragraph by the appropriate State or local authorities.


REPRESENTATIONS IN TEXT


AMENDMENTS

1999—Subsec. (d)(1). Pub. L. 106–170, § 410(a)(1)(A), substituted “in accordance with paragraph (5) for “at such times and in such installments as may be agreed upon between the Commissioner of Social Security and such State”.


1997—Subsec. (d)(2)(B)(iii) to (x). Pub. L. 105–33, § 5102(a)(1)(A), and Pub. L. 105–78, § 516(a)(1)(A), amended subpar. (B) identically, striking out “and” at end of cl. (iii), adding cls. (iv) to (x) and striking out former cl. (iv) which read as follows: “for fiscal year 1997 and each succeeding fiscal year, $5.00, or such different rate as the Commissioner of Social Security determines is appropriate for the State.”


Subsec. (d)(4). Pub. L. 105–78, § 516(b)(1)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The first $5 of each administration fee assessed pursuant to paragraph (2), upon collection, shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts. “

Subsec. (d)(9). Pub. L. 105–33, § 5102(b)(1)(A), amended par. (9) generally. Prior to amendment, par. (9) read as follows: “All administration fees and additional services fees collected pursuant to this subsection shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.”

1994—Pub. L. 103–296 substituted “Commissioner of Social Security” for “Secretary” wherever appearing and “the Commissioner conducts” for “he conducts” in subsec. (b)(2).

1993—Subsec. (d). Pub. L. 103–66 designated existing provisions as par. (1), inserted before period at end, plus an administration fee assessed in accordance with paragraph (2) and any additional services fee charged in accordance with paragraph (3)’, and added pars. (2) to (4).

1986—Subsec. (b)(2). Pub. L. 99–272 inserted provision at end relating to modification of the agreement at the option of the State to provide for supplementary payments on and after an effective date specified in the agreement.

1981—Subsec. (e)(2). Pub. L. 97–35 struck out “as a part of the services program planning procedures established pursuant to section 1397c of this title” after “available for public review.”


EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title IV, § 410(b), Dec. 17, 1999, 113 Stat. 1917, as amended by Pub. L. 106–554, § 1(a)(1) [title V, § 515], Dec. 21, 2000, 114 Stat. 2763, 2763A–72, provided that: “The amendments made by this section and provisions set out as a note under section 1362 of this title shall apply to payments and fees arising under an agreement between a State and the Commissioner of Social Security under section 1616 of the Social Security Act (42 U.S.C. 1382e) or under section 212 of Public Law 95–66 (42 U.S.C. 1382 note) with respect to monthly benefits paid to individuals under title XVI of the Social Security Act (this subchapter) for months after September 2001 (October 2001 in the case of a State with a fiscal year that coincides with the Federal fiscal year), without regard to whether the agreement has been modified to reflect such amendments or the Commissioner has promulgated regulations implementing such amendments.”

EFFECTIVE DATE OF 1994 AMENDMENT


EFFECTIVE DATE OF 1993 AMENDMENT

Section 13731(b) of Pub. L. 103–66 provided that: “The amendments made by this section (amending this section and provisions set out as a note under section 1382 of this title) shall apply to supplementary payments made pursuant to section 1616(a) of the Social Security Act [subsec. (a) of this section] or section 212(a) of Public Law 93–66 [set out as a note under section 1382 of this title] for any calendar month beginning after September 30, 1993, and to services furnished after such date, regardless of whether regulations to implement such amendments have been promulgated by such date, or whether any agreement entered into under such section 1616(a) or such section 212(a) has been modified.”

EFFECTIVE DATE OF 1981 AMENDMENT

Eligibility of Supplemental Security Income Recipients for Food Stamps

Section 8(c) of Pub. L. 93–233, as amended by Pub. L. 95–113, title XIII, §1302(a)(3), Sept. 29, 1977, 91 Stat. 979, provided that: ‘‘For purposes of section 6(g) of the Food Stamp Act of 1977 [Pub. L. 94–175] the limitation on State fiscal liability under section 401 [set out as a note under this section] does result in a reduction in the amount which would otherwise be payable to the Secretary by the State, and (2) only with respect to such months as the State may, at its option, elect.’’

Section 8(c) of Pub. L. 93–233, as amended by Pub. L. 94–379, §1(a), Aug. 10, 1976, 90 Stat. 1111, provided that: ‘‘The amendment made by subsection (c) of section 8(f), formerly §8(e), of Pub. L. 93–233, as added by Pub. L. 94–379, §1(a), Aug. 10, 1976, is effective as of July 1, 1977.’’

Section 8(d) of Pub. L. 93–233, as amended by Pub. L. 94–379, §1(a), Aug. 10, 1976, 90 Stat. 1111, provided that: ‘‘The amendment made by subsection (c) of section 8(f), formerly §8(e), of Pub. L. 93–233, as added by Pub. L. 94–379, §1(a), Aug. 10, 1976, is effective as of July 1, 1977.’’

Section 8(e), formerly §8(d) of Pub. L. 93–233, as renumbered §8(e) by Pub. L. 94–379, §1(a), Aug. 10, 1976, 90 Stat. 1111, provided that: ‘‘The amendment made by subsection (c) of section 8(f), formerly §8(e), of Pub. L. 93–233, as added by Pub. L. 94–379, §1(a), Aug. 10, 1976, is effective as of July 1, 1977.’’

Section 8(f), formerly §8(e), of Pub. L. 93–233, as amended by Pub. L. 93–335, §1(b), July 8, 1974, 88 Stat. 204; Pub. L. 94–44, §3(b), June 28, 1975, 89 Stat. 235; Pub. L. 94–365, §22, July 14, 1974, 88 Stat. 590, and renumbered §8(f) and amended by Pub. L. 94–379, §1(a), (b), Aug. 10, 1976, 90 Stat. 1111; Pub. L. 95–59, §3(2), June 30, 1977, 91 Stat. 255; Pub. L. 95–113, title XIII, §1302(a)(4), Sept. 29, 1977, 91 Stat. 979, provided that: ‘‘The amendment made by subsection (c) [set out above] shall not be effective in any State which provides supplementary payments of the type described in section 1616(a) of the Social Security Act [subsec. (a) of this section] for each month the Secretary is making payments of the type described in section 1616(a) of the Social Security Act [subsec. (a) of this section] for each month after the month referred to in paragraph (1) and up to and including the month for which the Secretary is making the determination.’’


Section 2342(b) of Pub. L. 97–35 provided that the amendment of section 8(d) of Pub. L. 93–233, set out above, by section 2342(a) of Pub. L. 97–35 is effective July 1, 1981.

Adjusted Payment Level; Payment Level Modification
(Section 1302(b) of Pub. L. 95–113 provided that the amendment of section 8(f) of Pub. L. 93–233, set out above, by section 1302(a)(4) of Pub. L. 95–113 is effective Oct. 1, 1977.)

**COMMODITY DISTRIBUTION PROGRAM: INDIVIDUAL RECEIVING SUPPLEMENTAL SECURITY INCOME BENEFITS AS MEMBER OF HOUSEHOLD FOR ANY PURPOSE OF PROGRAM**

Individual receiving supplemental security income benefits or payments as part of benefits or payments described in subsec. (a) of this section as member of a household for any purpose of the food distribution program, see section 4(c) of Pub. L. 93–86, set out as a note under section 612c of Title 7, Agriculture.

**APPLICATION TO NORTHERN MARIANA ISLANDS**

For applicability of this section to the Northern Marianas Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Marianas Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

**PUERTO RICO, GUAM, AND VIRGIN ISLANDS**

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 3006(c) of Pub. L. 92–603, set out as a note under section 3001 of this title.

**LIMITATION ON FINANCIAL LIABILITY OF STATES FOR PAYMENT TO SECRETARY OF SUPPLEMENTARY PAYMENTS MADE BY SECRETARY PURSUANT TO AGREEMENT**


"(a)(1) The amount payable to the Secretary by a State for any fiscal year, other than fiscal year 1974, pursuant to its agreement or agreements under section 1616 of the Social Security Act [this section] shall not exceed the non-Federal share of expenditures as aid or assistance for quarters in the calendar year 1972 under the plans of the State approved under titles I, X, XIV, and XVI of the Social Security Act [subchapters I, X, XIV, and XVI of this chapter] (as defined in subsection (c) of this section), and the amount payable for fiscal year 1972 under such agreements in any fiscal year which does not exceed one-half of the non-Federal share of expenditures as aid or assistance for quarters in the calendar year 1972 under the plans of such State approved under titles I, X, XIV, and XVI of the Social Security Act [subchapters I, X, XIV, and XVI of this chapter], as may be appropriate, and in effect for January 1972; except that the State may, at its option, increase such payment level with respect to any such plan by an amount which does not exceed the sum of—

(A) a payment level modification (as defined in paragraph (2) of this subsection) with respect to such plan, and

(B) the bonus value of food stamps [probably should be "benefits"] in such State for January 1972 (as defined in paragraph (3) of this subsection).

"(2) For purposes of paragraph (1), the term 'payment level modification' with respect to any State plan means that amount by which a State which for January 1972 made money payments under such plan to individuals with no other income which were less than 100 per centum of its standard of need could have increased such money payments without increasing (if it reduced its standard of need under such plan so that such increased money payments equaled 100 per centum of such standard of need) the non-Federal share of expenditures as aid or assistance for quarters in calendar year 1972 under the plans of such State approved under titles I, X, XIV, and XVI of the Social Security Act [subchapters I, X, XIV, and XVI of this chapter], as may be appropriate, and in effect for January 1972; except that the State may, at its option, increase such payment level with respect to any such plan by an amount which does not exceed the sum of—

(A) a payment level modification (as defined in paragraph (2) of this subsection) with respect to such plan, and

(B) the bonus value of food stamps [probably should be "benefits"] in such State for January 1972 (as defined in paragraph (3) of this subsection).

"(3) For purposes of paragraph (1), the term 'bonus value of benefits in a State for January 1972' [with respect to an individual] means—

(A) the face value of the benefit allotment which would have been provided to such an individual under the Food Stamp Act of 1961 [now the Food and Nutrition Act of 1968, 7 U.S.C. 2011 et seq.] for January 1972, reduced by

(B) the charge which such an individual would have paid for such benefit allotment, if the income of such individual, for purposes of determining the charge it would have paid for its benefit allotment, had been equal to the adjusted payment level under the State plan (including any payment level modification with respect to the plan adopted pursuant to paragraph (2) but not including any amount under this paragraph)). The total face value of benefits and the cost thereof in January 1972 shall be determined in accordance with rules prescribed by the Secretary of Agriculture in effect in such month.

"(c) For purposes of this section, the term 'non-Federal share of expenditures as aid or assistance for quarters in the calendar year 1972 under the plans of a State approved under titles I, X, XIV, and XVI of the Social Security Act' [subchapters I, X, XIV, and XVI of this chapter] means the difference between—

(1) the total expenditures in such quarters under such plans for aid or assistance (excluding expenditures authorized under section 1119 of such Act [section 1339 of this title] for repairing the home of an individual who was receiving aid or assistance under one of such plans (as such section was in effect prior to the enactment of this Act)), and

(2) the total of the amounts determined under sections 3, 1003, 1403, and 1603 of the Social Security Act [sections 303, 1203, 1353, and 1383 note of this title], under section 1118 of such Act [section 1318 of this title], and under sections 10 and 16 of this Act of April 19, 1960 [section 639 of Title 25, Indians], for such State with respect to such expenditures in such quarters.
"(d) In addition to the amount which a State must pay to the Secretary for the fiscal year 1983 or the fiscal year 1984, as determined under subsection (a), the State shall also pay, for the fiscal year 1983, 60 percent of the further amount that would be payable but for the limit specified in subsection (a), and, for the fiscal year 1984, 80 percent of such further amount. For each fiscal year thereafter, the limit prescribed in subsection (a) shall be inapplicable and a State shall pay to the Secretary the full amount of any supplementary payments he makes on behalf of such State.

(Amendment of section 401(a)(2) of Pub. L. 92-603, set out above, by Pub. L. 94-585 inserting parenthetical text in subpar. (B) and enacting last sentence, such amendments being identical to amendments by Pub. L. 94-586 less the words “and before July 1, 1979” following “June 30, 1977”, effective with respect to benefits payable for months after June 1977, see section 2(c) of Pub. L. 94-585, set out as a note under section 1382f of this title.)

(Amendment of section 401(a)(2) of Pub. L. 92-603, set out above, by Pub. L. 94-566 inserting parenthetical text in subpar. (B) and enacting last sentence effective under provisions of Pub. L. 94-566, title V, § 504(b), Oct. 20, 1976, 90 Stat. 2686, with respect to benefits payable for months after June 1977.)

(Amendment of section 401 of Pub. L. 92-603, set out above, by section 18(b) of Pub. L. 92-233 effective Jan. 1, 1974, see section 18(a)-3(1) of Pub. L. 93-233.)

[Section 184(b) of Pub. L. 97-248 provided that: “The amendment made by subsection (a) (amending section 401 of Pub. L. 92-603, set out above) shall become effective on the date of the enactment of this Act [Sept. 3, 1982].”]

TRANSITIONAL ADMINISTRATION OF PROGRAMS BY STATE PURSUANT TO AGREEMENT BETWEEN STATE AND SECRETARY

Section 402 of Pub. L. 92-603, as amended by Pub. L. 93-233, §18(b), Dec. 31, 1973, 87 Stat. 970, provided that: “In order for a State to be eligible for any payments pursuant to title IV, V, XVI, or XIX of the Social Security Act [subchapter IV, V, XVI, or XIX of this chapter] for months after June 1977, the State must enter into an agreement with the Secretary of Health, Education, and Welfare under which the State shall make payments to the Secretary for the fiscal year ending June 30, 1974, equal to one-half of the amount which would have been payable to the State for such fiscal year under this subchapter had this subchapter not been in effect for such month.

In the case of any State which has a State plan approved under this subchapter on the date of the enactment of this Act [Sept. 3, 1982] and which has entered into an agreement with the Secretary, the amount which the State may be paid on account of such agreement shall be equal to the amount which would have been paid to the State for the fiscal year ending June 30, 1974, if the State had entered into an agreement under this subchapter on the date of enactment of this Act.

Such an agreement shall be approved by the Secretary if he determines that the agreement fulfills the purposes of this subchapter.”

ELECTION OF PAYMENTS UNDER COMBINED STATE PLAN RATHER THAN SEPARATE PLANS

Pub. L. 87–543, §141(b), July 25, 1962, 76 Stat. 205, provided that: “No payment may be made to a State under title I, X, or XIV of the Social Security Act [subchapter I, X, or XIV of this chapter] for any period for which such State receives any payments under title XVI of such Act or any period thereafter.”

OVERPAYMENT OR UNDERPAYMENT ADJUSTMENTS

Pub. L. 87–543, §141(f), July 25, 1962, 76 Stat. 205, provided that: “In the case of any State which has a State plan approved under title XVI of the Social Security Act [this subchapter], any overpayment or underpayment which the Secretary determines was made to such State under section 3, 1003, or 1403 of such Act [sections 303, 1003, or 1333 of this title] with respect to a period before the approval of the plan under such title XVI, and with respect to which adjustment has not been already made under subsection (b) of such section 3, 1003, or 1403 (section 303(b), 1203, or 1333 of this title), shall, for purposes of section 1603(b) of such Act (section 1382(b) of this title prior to its omission on Oct. 30, 1972), be considered an overpayment or underpayment (as the case may be) made under section 1603 of such Act [section 1383 of this title as it existed prior to Oct. 30, 1972].”

§ 1382f. Cost-of-living adjustments in benefits

(a) Increase of dollar amounts

Whenever benefit amounts under subchapter II of this chapter are increased by any percentage effective with any month as a result of a determination made under section 415(i) of this title—

(1) each of the dollar amounts in effect for such month under subsections (a)(1)(A), (a)(2)(A), (b)(1), and (b)(2) of section 1382 of this title, and subsection (a)(1)(A) of section 211 of Public Law 93–66, as specified in such subsections or as previously increased under this section, shall be increased by the amount (if any) by which—

(A) the amount which would have been in effect for such month under such subsection but for the rounding of such amount pursuant to paragraph (2), exceeds

(B) the amount in effect for such month under such subsection; and

(2) the amount obtained under paragraph (1) with respect to each subsection shall be further increased by the same percentage by which benefit amounts under subchapter II of this chapter are increased for such month, or, if greater (in any case where the increase under subchapter II of this chapter was determined on the basis of the wage increase percentage rather than the CPI increase percentage), the percentage by which benefit amounts under subchapter II of this chapter would be increased for such month if the increase had been determined on the basis of the CPI increase percentage, (and rounded, when not a multiple of $12, to the next lower multiple of $12), effective with respect to benefits for months after such month.

(b) Publication in Federal Register of new dollar amounts

The new dollar amounts to be in effect under section 1382 of this title and under section 211 of Public Law 93–66 by reason of subsection (a) of this section shall be published in the Federal Register together with, and at the same time as, the material required by section 415(i)(2)(D) of this title to be published therein by reason of the determination involved.

(c) Additional increases

Effective July 1, 1983—

(1) each of the dollar amounts in effect under subsections (a)(1)(A) and (b)(1) of section 1382 of this title, as previously increased under this section, shall be increased by $300 (and the dollar amount in effect under subsection (a)(1)(A) of section 211 of Public Law 93–66, as previously so increased, shall be increased by $120); and

(2) each of the dollar amounts in effect under subsections (a)(2)(A) and (b)(2) of section 1382
of this title, as previously increased under this section, shall be increased by $360.


REFERENCES IN TEXT

Section 211 of Public Law 93–66, referred to in subsecs. (a)(1), (b), and (c)(1), is section 211 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 154, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

1983—Subsec. (a)(2). Pub. L. 98–21, §401(b), inserted provision that the amount obtained under par. (1) with respect to each subsection shall be further increased by the percentage by which benefit amounts under subchapter II of this chapter would be increased for such month if the increase had been determined on the basis of the CPI increase percentage, if greater, in any case where the increase under subchapter II of this chapter was determined on the basis of the wage increase percentage rather than the CPI increase percentage.

Subsec. (b). Pub. L. 98–21, §401(a)(2), substituted “subsection (a) of this subsection” for “this section”.


1982—Pub. L. 97–248 redesignated existing provisions as subsec. (a), revised method of computation into pars. (1) and (2) and among other changes increased base for rounding-off from a multiple of $1.20 to a multiple of $12.00, and struck out provisions relating to publication of increased dollar amounts in the Federal Register, and added subsec. (b).

EFFECTIVE DATE OF 1982 AMENDMENT

Section 182(b) of Pub. L. 97–248 provided that: “The amendment made by this section [amending this section] shall become effective on October 1, 1982.”

COST-OF-LIVING INCREASES; COST-OF-LIVING COMPUTATION QUARTER DETERMINATIONS

Payment of increased benefits under program covered in subchapter II of this chapter, see section 1 of Pub. L. 98–604, set out as a note under section 415 of this title.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 562(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1901 of Title 48, Territories and Insular Possessions.

§1382g. Payments to State for operation of supplementation program

(a) Eligibility; agreement with Commissioner

In order for any State which makes supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66), on or after June 30, 1977, to be eligible for payments pursuant to subchapter XIX of this chapter with respect to expenditures for any calendar quarter which begins—

(1) after June 30, 1977, or, if later,

(2) after the calendar quarter in which it first makes such supplementary payments,

such State must have in effect an agreement with the Commissioner of Social Security whereby the State will—

(3) continue to make such supplementary payments, and

(4) maintain such supplementary payments at levels which are not lower than the levels of such payments in effect in December 1976, or, if no such payments were made in that month, the levels for the first subsequent month in which such payments were made.

(b) Levels of supplementary payments

(1) The Commissioner of Social Security shall not find that a State has failed to meet the requirements imposed by paragraph (4) of subsection (a) of this section with respect to the levels of its supplementary payments for a particular month or months if the State’s expenditures for such payments in the twelve-month period (within which such month or months fall) beginning on the effective date of any increase in the level of supplemental security income benefits pursuant to section 1382f of this title are not less than its expenditures for such payments in the preceding twelve-month period.

(2) For purposes of determining under paragraph (1) whether a State’s expenditures for supplementary payments in the 12-month period beginning on the effective date of any increase in the level of supplemental security income benefits are not less than the State’s expenditures for such payments in the preceding 12-month period, the Commissioner of Social Security, in computing the State’s expenditures, shall disregard, pursuant to a 1-time election of the State, all expenditures by the State for retroactive supplementary payments that are required to be made in connection with the retroactive supplemental security income benefits referred to in section 5041 of the Omnibus Budget Reconciliation Act of 1990.

(c) Election to apply subsection (a)(4)

Any State which satisfies the requirements of this section solely by reason of subsection (b) of this section for a particular month or months in any 12-month period (described in such subsection) ending on or after June 30, 1982, may elect, with respect to any month in any subsequent 12-month period (so described), to apply subsection (a)(4) of this section as though the reference to December 1976 in such subsection were a reference to December 1976 in which such supplementation began in the 12-month period immediately preceding such subsequent period.

(d) Determinations respecting any portion of period July 1, 1980, through June 30, 1981

The Commissioner of Social Security shall not find that a State has failed to meet the requirements imposed by paragraph (4) of subsection (a) of this section with respect to the levels of its supplementary payments for any portion of the period July 1, 1980, through June 30, 1981, if the State’s expenditures for such payments in that twelve-month period were not less than its expenditures for such payments for the period July 1, 1976, through June 30, 1977 (or, if the State made no supplementary payments in that month, July 1, 1976, through June 30, 1977, the expenditures for the first twelve-month period extending from July 1 through June 30 in which the State made such payments).
(e) Meeting subsection (a)(4) requirements for any month after March 1983

(1) For any particular month after March 1983, a State which is not treated as meeting the requirements imposed by paragraph (4) of subsection (a) of this section by reason of subsection (b) of this section shall be treated as meeting such requirements if and only if—

(A) the combined level of its supplementary payments (to recipients of the type involved) and the amounts payable (to or on behalf of such recipients) under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93–66, for that particular month, is not less than—

(B) the combined level of its supplementary payments (to recipients of the type involved) and the amounts payable (to or on behalf of such recipients) under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93–66, for March 1983, increased by the amount of all cost-of-living adjustments under section 1382(b) of this title (and any other benefit increases under this subchapter) which have occurred after March 1983 and before that particular month.

(2) In determining the amount of any increase in the combined level involved under paragraph (1)(B) of this subsection, any portion of such amount which would otherwise be attributable to the increase under section 1382f(c) of this title shall be deemed instead to be equal to the amount of the cost-of-living adjustment which would have occurred in July 1983 (without regard to the 3-percent limitation contained in section 415(l)(1)(B) of this title) if section 111 of the Social Security Amendments of 1983 had not been enacted.

(f) Passthrough relating to optional State supplementation

The Commissioner of Social Security shall not find that a State has failed to meet the requirements imposed by subsection (a) of this section with respect to the levels of its supplementary payments for the period January 1, 1984, through December 31, 1985, if in the period January 1, 1986, through December 31, 1986, its supplementary payment levels (other than to recipients of benefits determined under section 1382(e)(1)(B) of this title) are not less than those in effect in December 1976, increased by a percentage equal to the percentage by which payments under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93–66 have been increased as a result of all adjustments under section 1382f(a) and (c) of this title which have occurred after December 1976 and before February 1986.

(g) Mandatory pass-through of increased personal needs allowance

In order for any State which makes supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66) to recipients of benefits determined under section 1382(e)(1)(B) of this title, on or after October 1, 1987, to be eligible for payments pursuant to subchapter XIX of this chapter with respect to any calendar quarter which begins—

(1) after October 1, 1987, or, if later

(2) after the calendar quarter in which it first makes such supplementary payments to recipients of benefits so determined,

such State must have in effect an agreement with the Commissioner of Social Security whereby the State will—

(3) continue to make such supplementary payments to recipients of benefits so determined, and

(4) maintain such supplementary payments to recipients of benefits so determined at levels which assure (with respect to any particular month beginning with July 1988) that—

(A) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under section 1382(e)(1)(B) of this title for that particular month, is not less than—

(B) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under section 1382(e)(1)(B) of this title for October 1987 (or, if no such supplementary payments were made for that month, the combined level for the first subsequent month for which such payments were made), increased—

(i) in a case to which clause (i) of such section 1382(e)(1)(B) of this title applies or (with respect to the individual or spouse who is in the hospital, home, or facility involved) to which clause (ii) of such section applies, by $5, and

(ii) in a case to which clause (iii) of such section 1382(e)(1)(B) of this title applies, by $10.


References in Text
Sections 211(a)(1)(A) and 212(a) of Public Law 93–66, referred to in subsec. (a), (e)(1), (f), and (g), are sections 211(a)(1)(A) and 212(a) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 154, as amended, which are set out as notes under section 1382 of this title.
Section 111 of the Social Security Amendments of 1983, referred to in subsec. (e)(2), is section 111 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 72, which amended sections 402, 403, 415, and 430 of this title and enacted provisions set out as notes under sections 402 and 415 of this title and section 5123 of ‘‘Title 38, Veterans’ Benefits’’.

Amendments
§ 1382h

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Subsecs. (b), Pub. L. 103–296, § 209(a), designated existing provisions as par. (1) and added par. (2).


Subsecs. (d), (f), (g), Pub. L. 103–296, § 107(a)(4), substituted “Commissioner of Social Security” for “Secretary”.


Pub. L. 98–369, § 2663(g)(9)(B), (C), struck out the comma after “levels of its”, and inserted a comma after “1980” and after “1976”, wherever appearing.


1982—Subsec. (c). Pub. L. 97–377 added subsec. (c) relating to conditions under which the Secretary shall not find that a State has failed to meet the requirements of subsecs. (a)(4) of this section concerning levels of supplementary payments.

Pub. L. 97–248 added subsec. (c) relating to conditions under which a State may elect to apply subsec. (a)(4) of this section.

Effecture Date of 1994 Amendment


1987 Amendment

Amendment by section 209(b) of Pub. L. 103–296 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to increases in the level of supplemental security income benefits under title XVI of the Social Security Act [this subchapter] whether occurring before, on, or after the date of the enactment of this Act [Aug. 15, 1994].”

Effective Date of 1987 Amendment

Amendment by Pub. L. 100–203 effective July 1, 1988, see section 9119(c) of Pub. L. 100–203, set out as a note under section 1382 of this title.

Effective Date of 1984 Amendment

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

Effective Date

Section 2(c) of Pub. L. 94–585 provided that: “The provisions of this section [enacting this section and provisions set out as a note under section 1382e of this title] shall be effective with respect to benefits payable for months after June 1977.”

Application to Northern Mariana Islands

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 5590, set out as notes under section 1901 of Title 48, Territories and Insular Possessions.

§ 1382h. Benefits for individuals who perform substantial gainful activity despite severe medical impairment

(a) Eligible individuals

(1) Except as provided in section 1383(j) of this title, any individual who was determined to be an eligible individual (or eligible spouse) by reason of being under a disability and was eligible to receive benefits under section 1382 of this title (or a federally administered State supplementary payment) for a month and whose earnings in a subsequent month exceed the amount designated by the Commissioner of Social Security ordinarily to represent substantial gainful activity shall qualify for a monthly benefit under this subsection for such subsequent month (which shall be in lieu of any benefit under section 1382 of this title) equal to an amount determined under section 1382(b)(1) of this title (or, in the case of an individual who has an eligible spouse, under section 1382(b)(2) of this title), and for purposes of subchapter XIX of this chapter shall be considered to be receiving supplemental security income benefits under this subchapter, for so long as—

(A) such individual continues to have the disabling physical or mental impairment on the basis of which such individual was found to be under a disability; and

(B) the income of such individual, other than income excluded pursuant to section 1382a(b) of this title, is not equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382 of this title and such individual meets all other non-disability-related requirements for eligibility for benefits under this subchapter.

(2) The Commissioner of Social Security shall make a determination under paragraph (1)(A) with respect to an individual not later than 12 months after the first month for which the individual qualifies for a benefit under this subchapter.

(b) Blind or disabled individuals receiving supplemental security income benefits

(1) Except as provided in section 1383(j) of this title, for purposes of subchapter XIX of this chapter, any individual who was determined to be a blind or disabled individual eligible to receive a benefit under section 1382 of this title or any federally administered State supplementary payment for a month and who in a subsequent month is ineligible for benefits under this subchapter (and for any federally administered State supplementary payments) because of his or her income shall, nevertheless, be considered to be receiving supplemental security income benefits for such subsequent month provided that the Commissioner of Social Security determines under regulations that—

(A) such individual continues to be blind or continues to have the disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, meets all non-disability-related requirements for eligibility for benefits under this subchapter;

(B) the income of such individual would not, except for his earnings and increases pursuant to section 415(i) of this title in the level of monthly insurance benefits to which the individual is entitled under subchapter II of this chapter that occur while such individual is considered to be receiving supplemental security income benefits by reason of this subsection, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382(b) of this title (if he were otherwise eligible for such payments);
(C) the termination of eligibility for benefits under subchapter XIX of this chapter would seriously inhibit his ability to continue his employment; and
(D) such individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under this subchapter (including any federally administered State supplementary payments), benefits under subchapter XIX of this chapter, and publicly funded attendant care services (including personal care assistance), which would be available to him in the absence of such earnings.

(2)(A) Determinations made under paragraph (1)(D) shall be based on information and data updated no less frequently than annually.

(B) In determining an individual's earnings for purposes of paragraph (1)(D), there shall be excluded from such earnings an amount equal to purposes of paragraph (1)(D), there shall be excluded under clauses (ii) and (iv) of section 1382a(b)(4)(B) of this title (or under clauses (ii) and (iii) of section 1382a(b)(4)(A) of this title) in determining his or her income.

(3) In the case of a State that exercises the option under section 1396(f) of this title, any individual who—
   (A)(i) qualifies for a benefit under subsection (a)(1) of this section, or
   (ii) meets the requirements of paragraph (1); and
   (B) was eligible for medical assistance under the State plan approved under subchapter XIX of this chapter in the month immediately preceding the first month in which the individual qualified for a benefit under such subsection or met such requirements,
shall remain eligible for medical assistance under such plan for so long as the individual qualifies for a benefit under such subsection or meets such requirements.

(c) Continuing disability or blindness reviews; limitation

Subsection (a)(2) of this section and section 1383(j)(2)(A) of this title shall not be construed, singly or jointly, to require more than 1 determination during any 12-month period with respect to the continuing disability or blindness of an individual.

(d) Information and training programs

The Commissioner of Social Security and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Commissioner of Social Security shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this subchapter and shall conduct such programs for the staffs of the district offices of the Social Security Administration. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled.


AMENDMENTS

Subsec. (b)(1)(B). Pub. L. 103–296, § 205(a), inserted “and increases pursuant to section 415(d) of this title in the level of monthly insurance benefits to which the individual is entitled under subchapter II of this chapter that occur while such individual is considered to be receiving supplemental security income benefits by reason of this subsection” after “earnings”.

Subsecs. (c), (d). Pub. L. 101–508, § 5039(a), added subsec. (c) and redesignated former subsec. (c) as (d).

1986—Subsec. (a). Pub. L. 99–643, § 4(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Any individual who is an eligible individual (or eligible spouse) by reason of being under a disability and was eligible to receive benefits under section 1382(b) of this title or under this section for the month preceding the month for which eligibility for benefits under this section is now being determined, and who would otherwise be denied benefits by reason of section 1382a(b)(4) of this title or ceases to be an eligible individual (or eligible spouse) because his earnings have demonstrated a capacity to engage in substantial gainful activity, shall nevertheless qualify for a monthly benefit equal to an amount determined under section 1382(b)(1) of this title (or, in the case of an individual who has an eligible spouse, under section 1382(b)(2) of this title), and for purposes of subchapter XIX of this chapter shall be considered a disabled individual receiving supplemental security income benefits under this subchapter, for so long as the Secretary determines that—
   (1) such individual continues to have the disabling physical or mental impairment on the basis of which such individual was found to be under a disability, and continues to meet all non-disability-related requirements for eligibility for benefits under this subchapter; and
   (2) the income of such individual, other than income excluded pursuant to section 1382a(b) of this title, is not equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382(b) of this title (if he were otherwise eligible for such payments),”.

Subsec. (a)(1). Pub. L. 99–643, § 4(c)(2)(A), substituted “Except as provided in section 1383(j) of this section, any individual” for “Any individual”.

Subsec. (b). Pub. L. 99–643, § 4(d)(1)(4), substituted “meets” for “continues to meet” in former par. (1) and “(including any federally administered State supplementary payments), benefits under subchapter XIX of this chapter, and publicly funded attendant care services (including personal care assistance),’’ for “and subchapter XIX of this chapter’’ in former par. (4), redesignated former pars. (1) to (4) as subpars. (A) to (D), re-
respectively, of par. (1), and substituted introductory provisions of such par. (1) for former undesignated introductory provisions which read as follows: ‘‘For purposes of subchapter XIX of this chapter, any individual under age 65 who, for the month preceding the first month in the period to which this subsection applies, received—

(i) a payment of supplemental security income benefits under section 1382(b) of this title on the basis of blindness or disability,

(ii) a supplementary payment under section 1382e of this title or under section 212 of Public Law 93–66 on such basis,

(iii) a payment of monthly benefits under subsection (a) of this section, or

(iv) a supplementary payment under section 1382e(c)(3) of this title,

shall be considered to be a blind or disabled individual receiving supplemental security income benefits for so long as the Secretary determines under regulations that—’’.

Subsec. (b)(1). Pub. L. 99–643, § 4(c)(2)(B), substituted ‘‘Except as provided in section 1386(j) of this title, for purposes of’’ for ‘‘For purposes of’’.


1981—Subsec. (a). Pub. L. 97–35, § 2353(1), substituted in provision preceding par. (1) ‘‘subchapter XIX of this chapter’’ for ‘‘subchapters XIX and XX of this chapter’’.

Effective Date of 1994 Amendment

Amendment by section 107(a)(1), (4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Effective Date of 1990 Amendment

Section 5032(b) of Pub. L. 101–508 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply to eligibility determinations for months after December 1994.’’

Effective Date of 1990 Amendment

Section 5032(b) of Pub. L. 101–508 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted [November 1990].’’

Section 5032(c) of Pub. L. 101–508 provided that: ‘‘The amendments made by this section [amending this section and section 1383 of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].’’

Effective Date of 1986 Amendment

Amendment by Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1386a of this title.

Effective Date of 1981 Amendment


Effective Date

Section 201(d) of Pub. L. 96–265, as amended by Pub. L. 98–460, § 14(a), Oct. 9, 1984, 98 Stat. 1863; Pub. L. 99–643, § 2, Nov. 10, 1986, 100 Stat. 3074, provided that: ‘‘The amendments made by subsections (a) and (b) [enacting this section and amending section 1382e of this title and provisions set out as a note under section 1382 of this title] shall become effective on January 1, 1981.’’

Section 10(a) of Pub. L. 99–643 provided that: ‘‘The amendment made by section 2 [amending section 201(d) of Pub. L. 96–265, set out above] shall become effective on the date of the enactment of this Act [Nov. 10, 1986].’’

Separate Accounts With Respect to Benefits Payable; Evaluation of Program

Section 201(e) of Pub. L. 96–265 provided that: ‘‘The Secretary shall provide for separate accounts with respect to the benefits payable by reason of the amendments made by subsections (a) and (b) [enacting this section and amending section 1382e of this title and provisions set out as a note under section 1382 of this title] so as to provide for evaluation of the effects of such amendments on the programs established by titles II, XVI, XIX, and XX of the Social Security Act [subchapters II, XVI, XIX, and XX of this chapter].’’

§ 1382i. Medical and social services for certain handicapped persons

(a) Authorization of appropriations for pilot program

There are authorized to be appropriated such sums as may be necessary to establish and carry out a 3-year Federal-State pilot program to provide medical and social services for certain handicapped individuals in accordance with this section.

(b) State allotments

(1) The total sum of $18,000,000 shall be allotted to the States for such program by the Commissioner of Social Security, during the period beginning September 1, 1981, and ending September 30, 1984, as follows:

A. The total sum of $6,000,000 shall be allotted to the States for the fiscal year ending September 30, 1982 (which for purposes of this section shall include the month of September 1981).

B. The total sum of $6,000,000, plus any amount remaining available (after the application of paragraph (4)) from the allotments made under subparagraphs (A) and (B), shall be allotted to the States for the fiscal year ending September 30, 1983.

C. The total sum of $6,000,000, plus any amount remaining available (after the application of paragraph (4)) from the allotments made under subparagraphs (A) and (B), shall be allotted to the States for the fiscal year ending September 30, 1984.

(2) The allotment to each State from the total sum allotted under paragraph (1) for any fiscal year shall bear the same ratio to such total sum as the number of individuals in such State who are over age 17 and under age 65 and are receiving supplemental security income benefits as disabled individuals in such year (as determined by the Commissioner of Social Security on the basis of the most recent data available) bears to the total number of such individuals in all the States. For purposes of the preceding sentence, the term ‘‘supplemental security income benefits’’ includes payments made pursuant to an agreement under section 1382e(a) of this title or under section 212(b) of Public Law 93–66.

(3) At the beginning of each fiscal year in which the pilot program under this section is in effect, each State that does not intend to use the allotment to which it is entitled for such year (or any allotment which was made to it for a prior fiscal year), or that does not intend to
use the full amount of any such allotment, shall certify to the Commissioner of Social Security the amount of such allotment which it does not intend to use, and the State’s allotment for the fiscal year (or years) involved shall thereupon be reduced by the amount so certified.

(4) The portion of the total amount available for allotment for any particular fiscal year under paragraph (1) which is not allotted to States for that year by reason of paragraph (3) (plus the amount of any reductions made at the beginning of such year in the allotments made to States for prior fiscal years under paragraph (3)) shall be reallocated in such manner as the Commissioner of Social Security may determine to be appropriate to States which need, and will use, additional assistance in providing services to severely handicapped individuals in that particular year under their approved plans. Any amount reallocated to a State under this paragraph for use in a particular fiscal year shall be treated for purposes of this section as increasing such State’s allotment for that year by an equivalent amount.

(c) Requisite features of State plans

In order to participate in the pilot program and be eligible to receive payments for any period under subsection (d) of this section, a State (during such period) must have a plan, approved by the Commissioner of Social Security as meeting the requirements of this section, which provides medical and social services for severely handicapped individuals whose earnings are above the level which ordinarily demonstrates an ability to engage in substantial gainful activity and who are not receiving benefits under section 1382 or 1382h of this title or assistance under a State plan approved under section 1396a of this title, and which—

(1) declares the intent of the State to participate in the pilot program;

(2) designates an appropriate State agency to administer or supervise the administration of the program in the State;

(3) describes the criteria to be applied by the State in determining the eligibility of any individual for assistance under the plan and in any event requires a determination by the State agency to the effect that (A) such individual’s ability to continue his employment would be significantly inhibited without such assistance and (B) such individual’s earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the cash and other benefits that would be available to him under this subchapter and subchapters XIX and XX of this chapter in the absence of those earnings;

(4) describes the process by which the eligibility of individuals for such assistance is to be determined (and such process may not involve the performance of functions by any State agency or entity which is engaged in making determinations of disability for purposes of disability insurance or supplemental security income benefits except when the use of a different agency or entity to perform those functions would not be feasible);

(5) describes the medical and social services to be provided under the plan;

(6) describes the manner in which the medical and social services involved are to be provided and, if they are not to be provided through the State’s medical assistance and social services programs under subchapters XIX and XX of this chapter (with the Federal payments being made under subsection (d) of this section rather than under those subchapters), specifies the particular mechanisms and procedures to be used in providing such services; and

(7) contains such other provisions as the Commissioner of Social Security may find to be necessary or appropriate to meet the requirements of this section or otherwise carry out its purpose.

(d) Payments to States; computation of payments

(1) From its allotment under subsection (b) of this section for any fiscal year (and any amounts remaining available from allotments made to it for prior fiscal years), the Commissioner of Social Security shall from time to time pay to each State which has a plan approved under subsection (c) of this section an amount equal to 75 per centum of the total sum expended under such plan (including the cost of medical and social services to severely handicapped individuals who are eligible for such services under the plan.

(2) The method of computing and making payments under this section shall be as follows:

(A) The Commissioner of Social Security shall, prior to each period for which a payment is to be made to a State, estimate the amount to be paid to the State for such period under the provisions of this section.

(B) From the allotment available therefor, the Commissioner of Social Security shall pay the amount so estimated, reduced or increased, as the case may be, by any sum (not previously adjusted under this subsection) by which the Commissioner finds that the Commissioner’s estimate of the amount to be paid the State for any prior period under this section was greater or less than the amount which should have been paid to the State for such period under this section.

(e) Rules and regulations

Within nine months after June 9, 1980, the Commissioner of Social Security shall prescribe and publish such regulations as may be necessary or appropriate to carry out the pilot program and otherwise implement this section.

(f) Reports

Each State participating in the pilot program under this section shall from time to time report to the Commissioner of Social Security on the operation and results of such program in that State, with particular emphasis upon the work incentive effects of the program. On or before October 1, 1983, the Commissioner of Social Security shall submit to the Congress a report on the program, incorporating the information contained in the State reports along with the Commissioner’s findings and recommendations.
§ 1382j. Attribution of sponsor's income and resources to aliens

(a) Attribution as unearned income

For purposes of determining eligibility for and the amount of benefits under this subchapter for an individual who is an alien, the income and resources of any person who (as a sponsor of such individual's entry into the United States) executed an affidavit of support or similar agreement with respect to such individual, and the income and resources of the sponsor's spouse, shall be deemed to be the income and resources of such individual (in accordance with subsections (b) and (c) of this section) for a period of 3 years after the individual's entry into the United States. Any such income deemed to be income of such individual shall be treated as unearned income of such individual.

(b) Determination of amount and resources

(1) The amount of income of a sponsor (and his spouse) which shall be deemed to be the income of an alien for any year shall be determined as follows:

(A) The total yearly rate of earned and unearned income of such alien for any year shall be deemed as follows:

(B) The amount determined under subparagraph (A) shall be reduced by an amount equal to (i) the applicable amount determined under section 1382(a)(3)(B) of this title in the case of a sponsor who has no spouse with whom he is living, or (ii) the applicable amount determined under section 1382(a)(3)(A) of this title in the case of a sponsor who has a spouse with whom he is living.

(c) Support and maintenance

In determining the amount of income of an alien during the period of 3 years after such alien's entry into the United States, the reduction in dollar amounts otherwise required under section 1382(a)(2)(A)(i) of this title shall not be applicable if such alien is living in the household of a person who is a sponsor (or such sponsor's spouse) of such alien, and is receiving support and maintenance in kind from such sponsor (or spouse), nor shall support or maintenance furnished in cash or kind to an alien by such alien's sponsor (to the extent that it reflects income or resources which were taken into account in determining the amount of income and resources to be deemed to the alien under subsection (a) or (b) of this section) be considered to be income of such alien under section 1382(a)(2)(A) of this title.

(d) Information and documentation; agreements with Secretary of State and Attorney General

(1) Any individual who is an alien shall, during the period of 3 years after entry into the United States, in order to be an eligible individual or eligible spouse for purposes of this subchapter, be required to provide to the Commissioner of Social Security such information and documentation with respect to his sponsor as may be necessary in order for the Commissioner of Social Security to make any determination required under this section and, in the event of a determination under this section, to obtain any cooperation from such sponsor necessary for any such determination. Such alien shall also be required to provide to the Commissioner of Social Security such information and documentation
as the Commissioner of Social Security may request and which such alien or his sponsor provided in support of such alien's immigration application.

(2) The Commissioner of Social Security shall enter into agreements with the Secretary of State and the Attorney General whereby any information available to such persons and required in order to make any determination under this section will be provided by such persons to the Commissioner of Social Security, and whereby such persons shall inform any sponsor of an alien, at the time such sponsor executes an affidavit of support or similar agreement, of the requirements imposed by this section.

(e) Joint and several liability of alien and sponsor for overpayments

Any sponsor of an alien, and such alien, shall be jointly and severally liable for an amount equal to any overpayment made to such alien during the period of 3 years after such alien's entry into the United States, on account of such sponsor's failure to provide correct information under the provisions of this section, except where such sponsor was without fault, or where good cause for such failure existed. Any such overpayment which is not repaid to the Commissioner of Social Security or recovered in accordance with section 1383(b) of this title shall be withheld from any subsequent payment to which such alien or such sponsor is entitled under any provision of this chapter.

(f) Exemptions

(1) The provisions of this section shall not apply with respect to any individual who is an "aged, blind, or disabled individual" for purposes of this subchapter by reason of blindness (as determined under section 1382c(a)(2) of this title) or disability (as determined under section 1382c(a)(3) of this title), from and after the onset of the impairment, if such blindness or disability commences after the date of such individual's admission into the United States for permanent residence.

(2) The provisions of this section shall not apply with respect to any alien who is—

(A) admitted to the United States as a result of the application, prior to April 1, 1980, of the provisions of section 1153(a)(7) of title 8;

(B) admitted to the United States as a result of the application, after March 31, 1980, of the provisions of section 1157(c)(1) of title 8;

(C) paroled into the United States as a refugee under section 1182(d)(5) of title 8; or

(D) granted political asylum by the Attorney General.


REFERENCES IN TEXT

Section 1153(a)(7) of title 8, referred to in subsec. (f)(2)(A), to be deemed a reference to such section as in effect prior to Apr. 1, 1980, and to sections 1157 and 1158 of Title 8, Aliens and Nationality. See section 203(h) of Pub. L. 96–212, set out as a note under section 1153 of Title 8.

AMENDMENTS


1993—Pub. L. 103–152, §7(b)(1), substituted "3 years" for "5 years" in subsecs. (a), (c), (d)(1), and (e).

Pub. L. 103–152, §7(a)(1), substituted "5 years" for "three years" in subsecs. (a), (c), (d)(1), and (e).

1984—Subsec. (b)(2)(B). Pub. L. 98–369, §2611(d), substituted "the applicable amount determined under section 1382a(a)(3)(A) of this title" for "$1,500" and "the applicable amount determined under section 1382a(a)(3)(A) of this title" for "$2,250".

Subsec. (e). Pub. L. 98–369, §2663(g)(10), substituted "severally" for "severably".

EFFECTIVE DATE OF 1994 AMENDMENT


EFFECTIVE DATE OF 1993 AMENDMENT

Section 7(a)(2) of Pub. L. 103–152 provided that: "The amendments made by paragraph (1) [amending this section] shall take effect on January 1, 1994."

Section 7(b)(2) of Pub. L. 103–152 provided that: "The amendments made by paragraph (1) [amending this section] shall take effect on October 1, 1990."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2611(d) of Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98–369, set out as a note under section 657 of this title.

Amendment by section 2663(g)(10) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2646(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 504(c) of Pub. L. 96–265 provided that: "The amendments made by this section (enacting this section and amending section 1382c of this title) shall be effective with respect to individuals applying for supplemental security income benefits under title XVI of the Social Security Act (this subchapter) for the first time after September 30, 1980."

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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


EFFECTIVE DATE OF REPEAL

Repeal effective with respect to benefits for months after December 1981, see section 2(j)(2) of Pub. L. 97–123, set out as an Effective Date of 1981 Amendment note under section 415 of this title.

§ 1383. Procedure for payment of benefits

(a) Time, manner, form, and duration of payments; representative payees; promulgation of regulations

(1) Benefits under this subchapter shall be paid at such time or times and (subject to paragraph (10)) in such installments as will best effectuate the purposes of this subchapter, as determined under regulations (and may in any case be paid less frequently than monthly where the amount of the monthly benefit would not exceed $10).

(2)(A)(i) Payments of the benefit of any individual may be made to any such individual or to the eligible spouse (if any) of such individual or partly to each.

(ii)(I) Upon a determination by the Commissioner of Social Security that the interest of such individual would be served thereby, such payments shall be made, regardless of the legal competency or incompetency of the individual or eligible spouse, to another individual, or an organization, with respect to whom the requirements of subparagraph (B) have been met (in this paragraph referred to as such individual's 'representative payee') for the use and benefit of the individual or eligible spouse.

(II) In the case of an individual eligible for benefits under this subchapter by reason of disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.

(iii) If the Commissioner of Social Security or a court of competent jurisdiction determines that the representative payee of an individual or eligible spouse has misused any benefits which have been paid to the representative payee pursuant to clause (ii) or section 405(j)(1) or 1007 of this title, the Commissioner of Social Security shall—

(B)(i) Any determination made under subparagraph (A) for payment of benefits to the representative payee of an individual or eligible spouse shall be made on the basis of—

(I) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of such payment, and shall, to the extent practicable, include a face-to-face interview with such person; and

(II) adequate evidence that such payment is in the interest of the individual or eligible spouse (as determined by the Commissioner of Social Security in regulations).

(ii) As part of the investigation referred to in clause (i)(I), the Commissioner of Social Security shall—

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity was submitted with an application for benefits under subchapter II of this chapter, subchapter VIII of this chapter, or this subchapter;

(II) verify the social security account number (or employer identification number) of such person;

(III) determine whether such person has been convicted of a violation of section 408, 1011, or 1383a of this title;

(IV) obtain information concerning whether the person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

(V) obtain information concerning whether such person is a person described in section 1382(e)(4)(A) of this title; and

(VI) determine whether payment of benefits to such person has been terminated pursuant to subparagraph (A)(iii), whether the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, and whether certification of payment of benefits to such person has been revoked pursuant to section 405(j) of this title, by reason of misuse of funds paid as benefits under subchapter II of this chapter, subchapter VIII of this chapter, or this subchapter.

(iii) Benefits of an individual may not be paid to any other person pursuant to subparagraph (A)(ii) if—

(I) such person has previously been convicted as described in clause (ii)(III);

(II) except as provided in clause (iv), payment of benefits to such person pursuant to subparagraph (A)(ii) has previously been terminated as described in clause (ii)(VI), the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, or certification of payment of benefits to such person under section 405(j) of this title has previously been revoked as described in section 405(j)(2)(B)(i)(VI) of this title;

(III) except as provided in clause (v), such person is a creditor of such individual who provides such individual with goods or services for consideration;

(IV) the person has previously been convicted as described in clause (i)(IV) of this subparagraph, unless the Commissioner determines that the payment would be appropriate notwithstanding the conviction; or

(V) such person is a person described in section 1382(e)(4)(A) of this title.

(iv) The Commissioner of Social Security shall prescribe regulations under which the Commiss-
sioner of Social Security may grant an exemption from clause (iii)(II) to any person on a case-by-case basis if such exemption would be in the best interest of the individual or eligible spouse whose benefits under this subchapter would be paid to such person pursuant to subparagraph (A)(ii).

(v) Clause (iii)(III) shall not apply with respect to any person who is a creditor referred to there-in if such creditor is—

(I) a relative of such individual if such relative resides in the same household as such individual;

(II) a legal guardian or legal representative of such individual;

(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State;

(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the payment of benefits under this subchapter to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom the payment of such benefits would serve the best interests of such individual; or

(V) an individual who is determined by the Commissioner of Social Security, on the basis of written findings and under procedures which the Commissioner of Social Security shall prescribe by regulation, to be acceptable to serve as a representative payee.

(vi) The procedures referred to in clause (v)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Commissioner of Social Security, that—

(I) such individual poses no risk to the beneficiary;

(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest; and

(III) no other more suitable representative payee can be found.

(vii) In the case of an individual described in subparagraph (A)(ii)(I), when selecting such individual’s representative payee, preference shall be given to—

(I) a certified community-based nonprofit social service agency (as defined in subparagraph (I));

(II) a Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

(III) a State or local government agency with fiduciary responsibilities; or

(IV) a designee of an agency (other than of a Federal agency) referred to in the preceding subclauses of this clause, if the Commissioner of Social Security deems it appropriate, unless the Commissioner of Social Security determines that selection of a family member would be appropriate.

(viii) Subject to clause (ix), if the Commissioner of Social Security makes a determination described in subparagraph (A)(ii) with respect to any individual’s benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Commissioner of Social Security may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subparagraph.

(ix)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (viii) shall be for a period of not more than 1 month.

(II) Subclause (I) shall not apply in any case in which the individual or eligible spouse is, as of the date of the Commissioner’s determination, legally incompetent, under the age of 15 years, or described in subparagraph (A)(ii)(II).

(x) Payment pursuant to this subparagraph of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual, or to the representative payee upon such selection, as a single sum or over such period of time as the Commissioner of Social Security determines is in the best interests of the individual entitled to such benefits.

(xi) Any individual who is dissatisfied with a determination by the Commissioner of Social Security to pay such individual’s benefits to a representative payee under this subchapter, or with the designation of a particular person to serve as representative payee, shall be entitled to a hearing by the Commissioner of Social Security, and to judicial review of the Commissioner’s final decision, to the same extent as is provided in subsection (c) of this section.

(xii) In advance of the first payment of an individual’s benefit to a representative payee under subparagraph (A)(ii), the Commissioner of Social Security shall provide written notice of the Commissioner’s initial determination to make any such payment. Such notice shall be provided to such individual, except that, if such individual—

(I) is under the age of 15,

(II) is an unemancipated minor under the age of 18, or

(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

(xiii) Any notice described in clause (xii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual’s representative payee, and shall explain to the reader the right under clause (xi) of such individual or of such individual’s legal guardian or legal representative—

(I) to appeal a determination that a representative payee is necessary for such individual,

(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

(III) to review the evidence upon which such designation is based and submit additional evidence.

(xiv) Notwithstanding the provisions of section 552a of title 5 or any other provision of Fed-
eral or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1306(c) of this title), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, account number, and photograph (if applicable) of any person investigated under this subparagraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

(I) such person is described in section 1382(e)(4)(A) of this title,

(II) such person has information that is necessary for the officer to conduct the officer’s official duties, and

(III) the location or apprehension of such person is within the officer’s official duties.

(C)(i) In any case where payment is made under this subchapter to a representative payee of an individual or spouse, the Commissioner of Social Security shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

(ii) Clause (i) shall not apply in any case where the representative payee is a State institution. In such cases, the Commissioner of Social Security shall establish a system of accountability monitoring for institutions in each State.

(iii) Clause (i) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the representative payee is the institution.

(iv) Notwithstanding clauses (i), (ii), and (iii), the Commissioner of Social Security may require a report at any time from any representative payee, if the Commissioner of Social Security has reason to believe that the representative payee is misusing such payments.

(v) In any case in which the person described in clause (i) or (iv) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under clause (i) or (iv), the Commissioner may, after furnishing notice to the person and the individual entitled to the payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.

(D)(i) Except as provided in the next sentence, a qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual’s representative payee pursuant to subparagraph (A)(ii) if the fee does not exceed the lesser of—

(I) 10 percent of the monthly benefit involved, or

(II) $25.00 per month ($50.00 per month in any case in which an individual is described in subparagraph (A)(ii)(II)).

A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual’s benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual’s benefit for purposes of subparagraphs (E) and (F). The Commissioner of Social Security shall adjust annually (after 1995) the dollar amount set forth in subclause (II) of this clause under procedures for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(i)(2)(A) of this title, except that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00. Any agreement providing for a fee in excess of the amount permitted under this clause shall be void and shall be treated as misuse by the organization of such individual’s benefit.

(ii) For purposes of this subparagraph, the term “qualified organization” means any State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any certified community-based nonprofit social service agency (as defined in subparagraph (i)), if the agency, in accordance with any applicable regulations of the Commissioner of Social Security—

(I) regularly provides services as a representative payee pursuant to subparagraph (A)(ii) or section 405(j)(4) or 1007 of this title concurrently to 5 or more individuals; and

(II) demonstrates to the satisfaction of the Commissioner of Social Security that such agency is not otherwise a creditor of any such individual.

The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exception from subclause (II) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

(iii) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under clause (i) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with title 18, or imprisoned not more than 6 months, or both.

(iv) In the case of an individual who is no longer eligible for benefits under this subchapter but to whom any amount of past-due benefits under this subchapter has not been paid, for purposes of clause (i), any amount of such past-due benefits shall be treated as a monthly benefit referred to in clause (i)(I).

(E) RESTITUTION.—In cases where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall make payment to the beneficiary or the beneficiary’s representative payee of an amount equal to such misused benefits. In any case in which a representative payee that—
(i) is not an individual (regardless of whether it is a “qualified organization” within the meaning of subparagraph (D)(ii)); or
(ii) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this subchapter, subchapter II of this chapter, subchapter VIII of this chapter, or any combination of such subchapters;

misuses all or part of an individual’s benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiar or the beneficiary’s alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this subparagraph are subject to the limitations of subparagraph (H)(ii). The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(F)(i) Each representative payee of an eligible individual under the age of 18 who is eligible for the payment of benefits described in subclause (II) shall establish on behalf of such individual an account in a financial institution into which such benefits shall be paid, and shall thereafter maintain such account for use in accordance with clause (ii).

(II) Benefits described in this subclause are past-due monthly benefits under this subchapter (which, for purposes of this subclause, include State supplementary payments made by the Commissioner pursuant to an agreement under section 1382e of this title or section 212(b) of Public Law 93–66) in an amount (after any withholding by the Commissioner for reimbursement to a State for interim assistance under sub-section (g) of this section and payment of attorney fees under subsection (d)(2)(B) of this section) that exceeds the product of—

(aa) 6, and
(bb) the maximum monthly benefit payable under this subchapter to an eligible individual.

(ii) If a representative payee shall use funds in the account established under clause (i) to pay for allowable expenses described in subclause (II),

(II) An allowable expense described in this subclause is an expense for—

(aa) education or job skills training;
(bb) personal needs assistance;
(cc) special equipment;
(dd) housing modification;
(ee) medical treatment;
(ff) therapy or rehabilitation; or
(gg) any other item or service that the Commissioner determines to be appropriate;

provided that such expense benefits such individual and, in the case of an expense described in item (bb), (cc), (dd), (ff), or (gg), is related to the impairment (or combination of impairments) of such individual.

(III) The use of funds from an account established under clause (i) in any manner not authorized by this clause—

(aa) by a representative payee shall be considered a misapplication of benefits for all purposes of this paragraph, and any representative payee who knowingly misapplies benefits from such an account shall be liable to the Commissioner in an amount equal to the total amount of such benefits; and
(bb) by an eligible individual who is his or her own payee shall be considered a misapplication of benefits for all purposes of this paragraph and in any case in which the individual knowingly misapplies benefits from such an account, the Commissioner shall reduce future benefits payable to such individual (or to such individual and his spouse) by an amount equal to the total amount of such benefits so misapplied.

(IV) This clause shall continue to apply to funds in the account after the child has reached age 18, regardless of whether benefits are paid directly to the beneficiary or through a representative payee.

(iii) The representative payee may deposit into the account established under clause (i) any other funds representing past due benefits under this subchapter to the eligible individual, provided that the amount of such past due benefits is equal to or exceeds the maximum monthly benefit payable under this subchapter to an eligible individual (including State supplementary payments made by the Commissioner pursuant to an agreement under section 1382e of this title or section 212(b) of Public Law 93–66).

(iv) The Commissioner of Social Security shall establish a system for accountability monitoring whereby such representative payee shall report, at such time and in such manner as the Commissioner shall require, on activity respecting funds in the account established pursuant to clause (i).

(G)(i) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency that receives the benefits payable under this subchapter (alone or in combination with benefits payable under subchapter II of this chapter or subchapter VIII of this chapter) to another individual pursuant to the appointment of the person or agency as a representative payee under this paragraph, section 405(j) of this title, or section 1007 of this title in any case in which—

(I) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

(II) the representative payee is a certified community-based nonprofit social service agency (as defined in subparagraph (I) of this paragraph or section 405(j)(10) of this title); or

(iii) the representative payee is an agency (other than an agency described in subclause (II)) that serves in that capacity with respect to 50 or more such individuals.

(ii) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to clause (i) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this subchapter. Each such report shall describe
in detail all problems identified in the reviews and any corrective action taken or planned to be taken to correct the problems, and shall include—

(I) the number of the reviews;

(II) the results of such reviews;

(III) the number of cases in which the representative payee was changed and why;

(IV) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

(V) the number of cases discovered in which there was a misuse of funds;

(VI) how any such cases of misuse of funds were dealt with by the Commissioner;

(VII) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

(VIII) such other information as the Commissioner deems appropriate.

(H)(i) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual’s benefit that was paid to the representative payee under this paragraph, the representative payee shall be liable for the amount misused, and the amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this subchapter to the representative payee for all purposes of this chapter and related laws pertaining to the recovery of the overpayments. Subject to clause (ii), upon recovering all or any part of the amount, the Commissioner shall make payment of an amount equal to the recovered amount to such individual or such individual’s alternative representative payee.

(ii) The total of the amount paid to such individual or such individual’s alternative representative payee under clause (i) and the amount paid under subparagraph (E) may not exceed the total benefit amount misused by the representative payee with respect to such individual;

(I) For purposes of this paragraph, the term "certified community-based nonprofit social service agency" means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.

(3) The Commissioner of Social Security may by regulation establish ranges of incomes within which a single amount of benefits under this subchapter shall apply.

(4) The Commissioner of Social Security—

(A) may make to any individual initially applying for benefits under this subchapter who is presumptively eligible for such benefits for the month following the date the application is filed and who is faced with financial emergency a cash advance against such benefits, including any federally-administered State supplementary payments, in an amount not exceeding the monthly amount that would be payable to an eligible individual with no other income for the first month of such presumptive eligibility, which shall be repaid through proportionate reductions in such benefits over a period of not more than 6 months; and

(B) may pay benefits under this subchapter to an individual applying for such benefits on the basis of disability or blindness for a period not exceeding 6 months prior to the determination of such individual’s disability or blindness, if such individual is presumptively disabled or blind and is determined to be otherwise eligible for such benefits, and any benefits so paid prior to such determination shall in no event be considered overpayments for purposes of subsection (b) of this section solely because such individual is determined not to be disabled or blind.

(5) Payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1382c(a)(2) of this title) or disability (as determined under section 1382c(a)(3) of this title), and who ceases to be blind or to be under such disability, shall continue (so long as such individual is otherwise eligible) through the second month following the month in which such blindness or disability ceases.

(6) Notwithstanding any other provision of this subchapter, payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1382c(a)(2) of this title) or disability (as determined under section 1382c(a)(3) of this title) shall not be terminated or suspended because the blindness or other physical or mental impairment, on which the individual’s eligibility for such benefit is based, has or may have ceased, if—

(A) such individual is participating in a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1320b–19 of this title or another program of vocational rehabilitation services, employment services, or other support services approved by the Commissioner of Social Security, and

(B) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the blindness and disability benefit rolls.

(7)(A) In any case where—

(i) an individual is a recipient of benefits based on disability or blindness under this subchapter;

(ii) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and
(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Commissioner of Social Security shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after October 9, 1984, for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such request for review or for a hearing is pending.

(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Commissioner of Social Security affirms the determination that he is not entitled to such benefits, any benefits paid under this subchapter pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this subchapter, except as otherwise provided in clause (ii).

(ii) If the Commissioner of Social Security determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual’s election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1) of this section.

(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that such individuals are not entitled to benefits) which are made on or after October 9, 1984, or prior to such date but only on the basis of a timely request for review or for a hearing.

(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Commissioner of Social Security affirms the determination that he is not entitled to such benefits, any benefits paid under this subchapter pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this subchapter, except as otherwise provided in clause (ii).

(ii) If the Commissioner of Social Security determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual’s election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1) of this section.

(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that such individuals are not entitled to benefits) which are made on or after October 9, 1984, or prior to such date but only on the basis of a timely request for review or for a hearing.

(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Commissioner of Social Security affirms the determination that he is not entitled to such benefits, any benefits paid under this subchapter pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this subchapter, except as otherwise provided in clause (ii).

(ii) If the Commissioner of Social Security determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual’s election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1) of this section.

(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that such individuals are not entitled to benefits) which are made on or after October 9, 1984, or prior to such date but only on the basis of a timely request for review or for a hearing.

(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Commissioner of Social Security affirms the determination that he is not entitled to such benefits, any benefits paid under this subchapter pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this subchapter, except as otherwise provided in clause (ii).

(ii) If the Commissioner of Social Security determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual’s election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1) of this section.

(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that such individuals are not entitled to benefits) which are made on or after October 9, 1984, or prior to such date but only on the basis of a timely request for review or for a hearing.

(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Commissioner of Social Security affirms the determination that he is not entitled to such benefits, any benefits paid under this subchapter pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this subchapter, except as otherwise provided in clause (ii).

(ii) If the Commissioner of Social Security determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual’s election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1) of this section.

(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that such individuals are not entitled to benefits) which are made on or after October 9, 1984, or prior to such date but only on the basis of a timely request for review or for a hearing.
(b) Overpayments and underpayments; adjustment, recovery, or payment of amounts by Commissioner

(1)(A) Whenever the Commissioner of Social Security finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual or by recovery from such individual or his eligible spouse (or from the estate of either) or by payment to such individual or his eligible spouse, or, if such individual is deceased, by payment—

(i) to any surviving spouse of such individual, whether or not the individual's eligible spouse, if (within the meaning of the first sentence of section 402(l) of this title) such surviving husband or wife was living in the same household with the individual at the time of his death or within the 6 months immediately preceding the month of such death, or

(ii) if such individual was a disabled or blind child who was living with his parent or parents at the time of his death or within the 6 months immediately preceding the month of such death, to such parent or parents.

(B) The Commissioner of Social Security (i) shall make such provision as the Commissioner finds appropriate in the case of payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual or his eligible spouse who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purposes of this subchapter, or be against equity and good conscience, or (because of the small amount involved) impede efficient or effective administration of this subchapter, and (ii) shall in any event make the adjustment or recovery (in the case of payment of more than the correct amount of benefits), in the case of an individual or eligible spouse receiving monthly benefit payments under this subchapter (including supplementary payments of the type described in section 1382e(a) of this title and payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66), in amounts which in the aggregate do not exceed (for any month) the lesser of (A) the amount of his or her benefit under this subchapter for that month or (B) an amount equal to 10 percent of his or their income for that month (including such benefit but excluding payments under subchapter II of this chapter when recovery is made from subchapter II payments pursuant to section 1320b–17 of this title and excluding income excluded pursuant to section 1329(a)(3) of this title) to whom a lump sum is payable under this subchapter (including under section 1328(a) of this title or under an agreement entered into under section 212(a) of Public Law 93–66) shall, as at least one means of recovering such overpayment, make the adjustment or recovery from the lump sum payment in an amount equal to not less than the lesser of the amount of the overpayment or the lump sum payment, unless fraud, willful misrepresentation, or concealment of material information was involved on the part of the individual or spouse in connection with the overpayment, or unless the individual requests that such adjustment or recovery be made at a higher or lower rate and the Commissioner of Social Security determines that adjustment or recovery at such rate is justified and appropriate. The availability (in the case of an individual who has been paid more than the correct amount of benefits) of procedures for adjustment or recovery at a limited rate under clause (ii) of the preceding sentence shall not, in and of itself, prevent or restrict the provision (in such case) of more substantial relief under clause (i) of such sentence.

(2) Notwithstanding any other provision of this section, when any payment of more than the correct amount is made to or on behalf of an individual who has died, and such payment—

(A) is made by direct deposit to a financial institution;

(B) is credited by the financial institution to a joint account of the deceased individual and another person; and

(C) such other person is the surviving spouse of the deceased individual, and was eligible for a payment under this subchapter (including any State supplementation payment paid by the Commissioner of Social Security) as an eligible spouse (or as either member of an eligible couple) for the month in which the deceased individual died,

the amount of such payment in excess of the correct amount shall be treated as a payment of more than the correct amount to such other person. If any payment of more than the correct amount is made to a representative payee on behalf of an individual after the individual's death, the representative payee shall be liable for the repayment of the overpayment, and the Commissioner of Social Security shall establish an overpayment control record under the social security account number of the representative payee.

(3) If any overpayment with respect to an individual (or an individual and his or her spouse) is attributable solely to the ownership or possession by such individual (and spouse if any) of resources having a value which exceeds the applicable dollar figure specified in paragraph (1)(B) or (2)(B) of section 1328(a) of this title by $50 or less, such individual (and spouse if any) shall be deemed for purposes of the second sentence of paragraph (1) to have been without fault in connection with the overpayment, and no adjustment or recovery shall be made under the first sentence of such paragraph, unless the Commissioner of Social Security finds that the failure of such individual (and spouse if any) to report such value correctly and in a timely manner was known and willful.

(4)(A) With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(f), 3716, 3717, and 3718 of title 31 and in section 5514 of title 5, all as in effect immediately after April 26, 1996.

(B) For purposes of subparagraph (A), the term "delinquent amount" means an amount—

(i) in excess of the correct amount of payment under this subchapter;
(ii) paid to a person after such person has attained 18 years of age; and

(iii) determined by the Commissioner of Social Security, under regulations, to be otherwise unrecoverable under this section after such person ceases to be a beneficiary under this subchapter.

(5) For payments for which adjustments are made by reason of a retroactive payment of benefits under subchapter II of this chapter, see section 1320a–6 of this title.

(6) For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1320b–17 of this title.

(b) Hearing to determine eligibility or amount of benefits; subsequent application; time within which to request hearing; time for determinations of Commissioner pursuant to hearing; judicial review

(1)(A) The Commissioner of Social Security is directed to make findings of fact, and decisions as to the rights of any individual applying for payment under this subchapter. Any such decision by the Commissioner of Social Security which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Commissioner’s determination and the reason or reasons upon which it is based. The Commissioner of Social Security shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this subchapter with respect to eligibility of such individual for benefits, or the amount of such individual’s benefits, if such individual requests a hearing on the matter in disagreement within sixty days after notice of such determination is received, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing affirm, modify, or reverse the Commissioner’s findings of fact and such decision. The Commissioner of Social Security is further authorized, on the Commissioner’s own motion, to hold such hearings and to conduct such investigations and other proceedings as the Commissioner may deem necessary or proper for the administration of this subchapter. In the course of any hearing, investigation, or other proceeding, the Commissioner may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Commissioner of Social Security even though inadmissible under the rules of evidence applicable to court procedure. The Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation of such individual (including any lack of facility with the English language) in determining, with respect to the eligibility of such individual for benefits under this subchapter, whether such individual acted in good faith or was at fault, and in determining fraud, deception, or intent.

(B)(i) A failure to timely request review of an initial adverse determination with respect to an application for any payment under this subchapter or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any payment under this subchapter if the applicant demonstrates that the applicant, or any other individual referred to in subparagraph (A), failed to so request such a review in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for payments in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration or any State agency acting under section 421 of this title.

(ii) In any notice of an adverse determination with respect to which a review may be requested under subparagraph (A), the Commissioner of Social Security shall describe in clear and specific language the effect on possible eligibility to receive payments under this subchapter of choosing to reapply in lieu of requesting review of the determination.

(2) Determination on the basis of such hearing, except to the extent that the matter in disagreement involves a disability (within the meaning of section 1322(c)(3) of this title), shall be made within ninety days after the individual requests the hearing as provided in paragraph (1).

(3) The final determination of the Commissioner of Social Security after a hearing under paragraph (1) shall be subject to judicial review as provided in section 405(g) of this title to the same extent as the Commissioner’s final determinations under section 405 of this title.

(d) Procedures applicable; prohibition on assignment of payments; representation of claimants; maximum fees; penalties for violations

(1) The provisions of section 407 of this title and subsections (a), (d), and (e) of section 405 of this title shall apply with respect to this part to the same extent as they apply in the case of subchapter II of this chapter.
(2) (A) The provisions of section 406 of this title (other than subsections (a)(4) and (d) thereof) shall apply to this part to the same extent as they apply in the case of subchapter II of this chapter, except that such section shall be applied—

(i) by substituting, in subparagraphs (A)(ii)(I) and (D)(i) of subsection (a)(2)\(^1\) the phrase “(as determined before any applicable reduction under section 1383(g) of this title, and reduced by the amount of any reduction in benefits under this subchapter or subchapter II of this chapter made pursuant to section 1320a–6(a) of this title)” for the parenthetical phrase contained therein;

(ii) by substituting, in subsections (a)(2)(B) and (b)(1)(B)(i), the phrase “paragraph (7)(A) or (B)(A) of section 1383(a) of this title or the requirements of due process of law” for the phrase “subsection (g) or (h) of section 423 of this title”;

(iii) by substituting, in subsection (a)(2)(C)(i), the phrase “under subchapter II of this chapter” for the phrase “under subchapter XVI of this chapter”;

(iv) by substituting, in subsection (b)(1)(A), the phrase “pay the amount of such fee” for the phrase “certify the amount of such fee for payment” and by striking, in subsection (b)(1)(A), the phrase “or certified for payment”;

(v) by substituting, in subsection (b)(1)(B)(ii), the phrase “deemed to be such amounts as determined before any applicable reduction under section 1383(g) of this title, and reduced by the amount of any reduction in benefits under this subchapter or subchapter II of this chapter made pursuant to section 1320a–6(a) of this title” for the phrase “determined before any applicable reduction under section 1320a–6(a) of this title”;

(vi) by substituting, in subsection (e)(1)—

(1) “paragraphs (B) and (C) of section 1383(d)(2) of this title” for “the preceding provisions of this section”; and

(2) “subchapter XVI” for “this subchapter”.

(B) Subject to subparagraph (C), if the claimant is determined to be entitled to past-due benefits under this subchapter and the person representing the claimant is an attorney, the Commissioner of Social Security shall pay out of the amount of the assessment calculated in accordance with clause (ii), the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 415(i)(2)(A)(ii) of this title, except such adjustment shall be based on the higher of $75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of $1 shall be rounded to the next lower multiple of $1, but in no case less than $75.

(ii) (I) The amount of an assessment under clause (i) shall be equal to the product obtained by multiplying the amount of the representative’s fee that would be required to be paid by subparagraph (B) before the application of this subparagraph, by the percentage specified in subclause (II), except that the maximum amount of the assessment may not exceed $75. In the case of any calendar year beginning after the amendments made by section 302 of the Social Security Protection Act of 2005\(^3\) take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 415(i)(2)(A)(ii) of this title, except such adjustment shall be based on the higher of $75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of $1 shall be rounded to the next lowest multiple of $1, but in no case less than $75.

(II) The percentage specified in this subclause is such percentage rate as the Commissioner determines is necessary in order to achieve full recovery of the costs of determining and approving fees to attorneys from the past-due benefits of claimants, but not in excess of 6.3 percent.

(iii) The Commissioner may collect the assessment imposed on an attorney under clause (i) by offset from the amount of the fee otherwise required by subparagraph (B) to be paid to the attorney from a claimant’s past-due benefits.

(iv) An attorney subject to an assessment under clause (i) may not, directly or indirectly, request or otherwise obtain reimbursement for such assessment from the claimant whose claim gave rise to the assessment.

(v) Assessments on attorneys collected under this subparagraph shall be deposited as miscellaneous receipts in the general fund of the Treasury.

(vi) The assessments authorized under this subparagraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended, for administrative expenses in carrying out this subchapter and related laws.

(D) The Commissioner of Social Security shall notify each claimant in writing, together with the notice to such claimant of an adverse determination, of the options for obtaining attorneys to represent individuals in presenting their cases before the Commissioner of Social Security. Such notification shall also advise the claimant of the availability to qualifying claimants of legal services organizations which provide legal services free of charge.

\(^1\) See in original. Probably should be followed by a comma.

\(^2\) See in original. Probably should be followed by a comma.

\(^3\) See References in Text note below.
(e) Administrative requirements prescribed by Commissioner; criteria; reduction of benefits to individual for noncompliance with requirements; payment to homeless

(1)(A) The Commissioner of Social Security shall, subject to subparagraph (B) and subsection (j) of this section, prescribe such requirements with respect to the filing of applications, the suspension or termination of assistance, the furnishing of other data and material, and the reporting of events and changes in circumstances, as may be necessary for the effective and efficient administration of this subchapter.

(B)(i) The requirements prescribed by the Commissioner of Social Security pursuant to subparagraph (A) shall require that eligibility for benefits under this subchapter will not be determined solely on the basis of declarations by the applicant concerning eligibility factors or other relevant facts, and that relevant information will be verified from independent or collateral sources and additional information obtained as necessary in order to assure that such benefits are only provided to eligible individuals (or eligible spouses) and that the amounts of such benefits are correct. For this purpose and for purposes of federally administered supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66), the Commissioner of Social Security shall, as may be necessary, request and utilize information available pursuant to section 6103(l)(7) of the Internal Revenue Code of 1986, and any information which may be available from State systems under section 1320b–7 of this title, and shall comply with the requirements applicable to States (with respect to information available pursuant to section 6103(l)(7)(B) of such Code) under subsections (a)(6) and (c) of such section 1320b–7 of this title.

(ii) The Commissioner of Social Security may require each applicant for, or recipient of, benefits under this subchapter to provide authorization by the applicant or recipient (or by any other person whose income or resources are material to the determination of the eligibility of the applicant or recipient for such benefits) for the Commissioner to obtain (subject to the cost reimbursement requirements of section 1115(a) of the Right to Financial Privacy Act [12 U.S.C. 3401(f)]) from any financial institution (within the meaning of section 1101(1) of such Act [12 U.S.C. 3401(1)]) any financial record (within the meaning of section 1101(2) of such Act [12 U.S.C. 3401(2)]) held by the institution with respect to the applicant or recipient (or any other person whose income or resources are material to the determination of the eligibility of the applicant or recipient) pursuant to subclause (I) of this clause shall remain effective until the earliest of—

(aa) the rendering of a final adverse decision on the applicant’s application for eligibility for benefits under this subchapter;

(bb) the cessation of the recipient’s eligibility for benefits under this subchapter; or

(cc) the express revocation by the applicant or recipient (or such other person referred to in subclause (I)) of the authorization, in a written notification to the Commissioner.

(III)(aa) An authorization obtained by the Commissioner of Social Security pursuant to this clause shall be considered to meet the requirements of the Right to Financial Privacy Act [12 U.S.C. 3401 et seq.] for purposes of sections 1103(a) of such Act [12 U.S.C. 3403(a)], and need not be furnished to the financial institution, notwithstanding section 1104(a) of such Act [12 U.S.C. 3404(a)].

(bb) The certification requirements of section 1103(b) of the Right to Financial Privacy Act [12 U.S.C. 3403(b)] shall not apply to requests by the Commissioner of Social Security pursuant to an authorization provided under this clause.

(cc) A request by the Commissioner pursuant to an authorization provided under this clause is deemed to meet the requirements of section 1104(a)(3) of the Right to Financial Privacy Act [12 U.S.C. 3404(a)(3)] and the flush language of section 1102 of such Act [12 U.S.C. 3402].

(IV) The Commissioner shall inform any person who provides authorization pursuant to this clause of the duration and scope of the authorization.

(V) If an applicant for, or recipient of, benefits under this subchapter (or any such other person referred to in subclause (I)) refuses to provide, or revokes, any authorization made by the applicant or recipient for the Commissioner of Social Security to obtain from any financial institution any financial record, the Commissioner may, on that basis, determine that the applicant or recipient is ineligible for benefits under this subchapter.

(C) For purposes of making determinations under section 1382(e) of this title, the requirements prescribed by the Commissioner of Social Security pursuant to subparagraph (A) of this paragraph shall require each administrator of a nursing home, extended care facility, or intermediate care facility, within 2 weeks after the admission of any eligible individual or eligible spouse receiving benefits under this subchapter, to transmit to the Commissioner a report of the admission.

(2) In case of the failure by any individual to submit a report of events and changes in circumstances relevant to eligibility for or amount of benefits under this subchapter as required by the Commissioner of Social Security under paragraph (1), or delay by any individual in submitting a report as so required, the Commissioner of Social Security (in addition to taking any other action the Commissioner may consider appropriate under paragraph (1)) shall reduce any benefits which may subsequently become payable to such individual under this subchapter by—

(A) $25 in the case of the first such failure or delay,

(B) $50 in the case of the second such failure or delay, and
(C) $100 in the case of the third or a subsequent such failure or delay, except where the individual was without fault or good cause for such failure or delay existed.

(3) The Commissioner of Social Security shall, in the case of an individual for benefits under this subchapter who has applied for, or received benefits under this subchapter, unless the Commissioner determines that there is insufficient evidence to support such eligibility, the Commissioner of Social Security shall treat benefits paid on the basis of such insufficient evidence as overpayments.

(4) A translation into English by a third party of a statement made in a foreign language by an applicant for or recipient of benefits under this subchapter shall not be regarded as reliable for any purpose under this subchapter unless the Commissioner organizes a face-to-face interview at the office of the individual with an officer or employee of the Social Security Administration before the close of business on the day of the visit.

(5) In any case in which it is determined to the satisfaction of the Commissioner of Social Security that an individual failed as of any date to apply for benefits under this subchapter by reason of misinformation provided to such individual by any officer or employee of the Social Security Administration relating to such individual's eligibility for benefits under this subchapter, such individual shall be deemed to have applied for such benefits on the later of—

(A) the date on which such misinformation was provided to such individual, or

(B) the date on which such individual met all requirements for entitlement to such benefits (other than application therefor).

(6) In any case in which an individual visits a field office of the Social Security Administration and represents during the visit to an officer or employee of the Social Security Administration in the office that the individual's visit is occasioned by—

(A) the receipt of a notice from the Social Security Administration indicating a time limit for response by the individual, or

(B) the theft, loss, or nonreceipt of a benefit payment under this subchapter,

the Commissioner of Social Security shall ensure that the individual is granted a face-to-face interview at the office with an officer or employee of the Social Security Administration before the close of business on the day of the visit.

(7)(A) The Commissioner of Social Security shall immediately redetermine the eligibility of an individual for benefits under this subchapter if there is reason to believe that fraud or similar fault was involved in the application of the individual for such benefits, unless a United States attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that such action by the Commissioner of Social Security with regard to recipients in a particular investigation would jeopardize the criminal prosecution of a person involved in a suspected fraud.

(ii) When redetermining the eligibility, or making an initial determination of eligibility, of an individual for benefits under this subchapter, the Commissioner of Social Security shall disregard any evidence if there is reason to believe that fraud or similar fault was involved in the providing of such evidence.

(B) For purposes of subparagraph (A), similar fault is involved with respect to a determination if—

(i) an incorrect or incomplete statement that is material to the determination is knowingly made; or

(ii) information that is material to the determination is knowingly concealed.

(C) If, after redetermining the eligibility of an individual for benefits under this subchapter, the Commissioner of Social Security determines that there is insufficient evidence to support such eligibility, the Commissioner of Social Security may terminate such eligibility and may treat benefits paid on the basis of such insufficient evidence as overpayments.

(8)(A) The Commissioner of Social Security shall request the Immigration and Naturalization Service or the Centers for Disease Control and Prevention to provide the Commissioner of Social Security with whatever medical information, identification information, and employment history either such entity has with respect to any alien who has applied for benefits under this subchapter to the extent that the information is relevant to any determination relating to eligibility for such benefits under this subchapter.

(B) Subparagraph (A) shall not be construed to prevent the Commissioner of Social Security from adjudicating the case before receiving such information.

(9) Notwithstanding any other provision of law, the Commissioner shall, at least 4 times annually and upon request of the Immigration and Naturalization Service (hereafter in this paragraph referred to as the "Service"), furnish the Service with the name and address of, and other identifying information on, any individual who the Commissioner knows is not lawfully present in the United States, and shall ensure that each agreement entered into under section 1382e(a) of this title with a State provides that the State shall furnish such information at such times with respect to any individual who the State knows is not lawfully present in the United States.

(f) Furnishing of information by Federal agencies

The head of any Federal agency shall provide such information as the Commissioner of Social Security needs for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto.

(g) Reimbursement to States for interim assistance payments

(1) Notwithstanding subsection (d)(1) of this section and subsection (b) of this section as it relates to the payment of less than the correct amount of benefits, the Commissioner of Social Security may, upon written authorization by an individual, withhold benefits due with respect to that individual and may pay to a State (or a political subdivision thereof if agreed to by the Commissioner of Social Security and the State) from the benefits withheld an amount sufficient to reimburse the State (or political subdivision)
for interim assistance furnished on behalf of the individual by the State (or political subdivision).

(2) For purposes of this subsection, the term "benefits" with respect to any individual means supplemental security income benefits under this subchapter, and any State supplementary payments under section 1382e of this title or under section 212 of Public Law 93–66 which the Commissioner of Social Security makes on behalf of a State (or political subdivision thereof), that the Commissioner of Social Security has determined to be due with respect to the individual at the time the Commissioner of Social Security makes the first payment of benefits with respect to the period described in clause (A) or (B) of paragraph (3). A cash advance made pursuant to subsection (a)(4)(A) of this section shall not be considered as the first payment of benefits for purposes of the preceding sentence.

(3) For purposes of this subsection, the term "interim assistance" with respect to any individual means assistance financed from State or local funds and furnished for meeting basic needs (A) during the period, beginning with the month following the month in which the individual filed an application for benefits (as defined in paragraph (2)), for which he was eligible for such benefits, or (B) during the period beginning with the first month for which the individual's benefits (as defined in paragraph (2)) have been terminated or suspended if the individual was subsequently found to have been eligible for such benefits.

(4) In order for a State to receive reimbursement under the provisions of paragraph (1), the State shall have in effect an agreement with the Commissioner of Social Security which shall provide—

(A) that if the Commissioner of Social Security makes payment to the State (or a political subdivision of the State as provided for under the agreement) in reimbursement for interim assistance (as defined in paragraph (3)) for any individual in an amount greater than the reimbursable amount authorized by paragraph (1), the State (or political subdivision) shall pay to the individual the balance of such payment in excess of the reimbursable amount, as expeditiously as possible, but in any event within ten working days or a shorter period specified in the agreement; and

(B) that the State will comply with such other rules as the Commissioner of Social Security finds necessary to achieve efficient and effective administration of this subsection and to carry out the purposes of the program established by this subchapter, including protection of hearing rights for any individual aggrieved by action taken by the State (or political subdivision) pursuant to this subsection.

(5) The provisions of subsection (c) of this section shall not be applicable to any disagreement concerning payment by the Commissioner of Social Security to a State pursuant to the preceding provisions of this subsection nor the amount retained by the State (or political subdivision).

(h) Payment of certain travel expenses

The Commissioner of Social Security shall pay travel expenses, either on an actual cost or computed basis, to individuals for travel incident to medical examinations requested by the Commissioner of Social Security in connection with disability determinations under this subchapter, and to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 1382c(e) of this title) to attend reconsideration interviews and proceedings before administrative law judges with respect to any determination under this subchapter. The amount available under the preceding sentence for payment for air travel by any person shall not exceed the coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Commissioner of Social Security) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations. The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.

(i) Unnegotiated checks; notice to Commissioner; payment to States; notice to States; investigation of payees

(1) The Secretary of the Treasury shall, on a monthly basis, notify the Commissioner of Social Security of all benefit checks issued under this subchapter which include amounts representing State supplementary payments as described in paragraph (2) and which have not been presented for payment within one hundred and eighty days after the day on which they were issued.

(2) The Commissioner of Social Security shall from time to time determine the amount representing the total of the State supplementary payments made pursuant to agreements under section 1382e(a) of this title and under section 212(b) of Public Law 93–66 which is included in all such benefit checks not presented for payment within one hundred and eighty days after the day on which they were issued, and shall pay each State (or credit each State with) an amount equal to that State's share of all such amount. Amounts not paid to the States shall be returned to the appropriation from which they were originally paid.

(3) The Commissioner of Social Security, upon notice from the Secretary of the Treasury under paragraph (1), shall notify any State having an agreement described in paragraph (2) of all such benefit checks issued under that State's agreement which were not presented for payment within one hundred and eighty days after the day on which they were issued.

(4) The Commissioner of Social Security shall, to the maximum extent feasible, investigate the whereabouts and eligibility of the individuals
whose benefit checks were not presented for payment within one hundred and eighty days after the day on which they were issued.

(j) Application and review requirements for certain individuals

(1) Notwithstanding any provision of section 1382 or 1382h of this title, any individual who—
(A) was an eligible individual (or eligible spouse) under section 1382 of this title or was eligible for benefits under or pursuant to section 1382h of this title, and
(B) who, after such eligibility, is ineligible for benefits under or pursuant to both such sections for a period of 12 consecutive months (or 24 consecutive months, in the case of such an individual whose ineligibility for benefits under or pursuant to both such sections is a result of being called to active duty pursuant to section 12301(d) or 12302 of title 10 or section 502(f) of title 32),

may not thereafter become eligible for benefits under or pursuant to either such section until the individual has reapplied for benefits under section 1382 of this title and been determined to be eligible for benefits under such section, or has filed a request for reinstatement of eligibility under subsection (p)(2) of this section and been determined to be eligible for reinstatement.

(2)(A) Notwithstanding any provision of section 1382 of this title or section 1382h of this title (other than subsection (c) thereof), any individual who was eligible for benefits pursuant to section 1382h(b) of this title, and who—

(i)(I) on the basis of the same impairment on which his or her eligibility under such section 1382h(b) of this title was based becomes eligible (other than pursuant to a request for reinstatement under subsection (p) of this section) for benefits under section 1382 or 1382h(a) of this title for a month that follows a period during which the individual was ineligible for benefits under sections 1382 and 1382h(a) of this title, and

(ii)(I) on the basis of the same impairment on which his or her eligibility under such section 1382h(b) of this title was based becomes eligible under section 1382h(b) of this title for a month that follows a period during which the individual was ineligible for benefits under section 1382h of this title and section 1382h of this title, and

(ii)(II) has earned income (other than income excluded pursuant to section 1382a(b) of this title) for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1382(b) of this title for that month (if he or she were otherwise eligible for such payments); or

(ii)(II) on the basis of the same impairment on which his or her eligibility under such section 1382h(b) of this title was based becomes eligible under section 1382h(b) of this title for a month that follows a period during which the individual was ineligible under section 1382h of this title and section 1382h of this title, and

(ii)(II) has earned income (other than income excluded pursuant to section 1382a(b) of this title) for such month or for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1382(b) of this title for that month (if he or she were otherwise eligible for such payments);

shall, upon becoming eligible (as described in clause (i)(I) or (ii)(II)), be subject to a prompt review of the type described in section 1382c(a)(4) of this title.

(B) If the Commissioner of Social Security determines pursuant to a review required by subparagraph (A) that the impairment upon which the eligibility of an individual is based has ceased, does not exist, or is not disabling, such individual may not thereafter become eligible for a benefit under or pursuant to section 1382 of this title or section 1382h of this title until the individual has reapplied for benefits under section 1382 of this title and been determined to be eligible for benefits under such section.

(k) Notifications to applicants and recipients

The Commissioner of Social Security shall notify an individual receiving benefits under section 1382 of this title on the basis of disability or blindness of his or her potential eligibility for benefits under or pursuant to section 1382h of this title—

(1) at the time of the initial award of benefits to the individual under section 1382 of this title (if the individual has attained the age of 18 at the time of such initial award), and

(2) at the earliest time after an initial award of benefits to an individual under section 1382 of this title that the individual’s earned income for a month (other than income excluded pursuant to section 1382a(b) of this title) is $200 or more, and periodically thereafter so long as such individual has earned income (other than income so excluded) of $200 or more per month.

(l) Special notice to blind individuals with respect to hearings and other official actions

(1) In any case where an individual who is applying for or receiving benefits under this subchapter on the basis of blindness is entitled (under subsection (c) of this section or otherwise) to receive notice from the Commissioner of Social Security of any decision or determination made or other action taken or proposed to be taken with respect to his or her rights under this subchapter, such individual shall at his or her election be entitled either (A) to receive a supplementary notice of such decision, determination, or action, by telephone, within 5 working days after the initial notice is mailed, (B) to receive the initial notice in the form of a certified letter, or (C) to receive notification by some alternative procedure established by the Commissioner of Social Security and agreed to by the individual.

(2) The election under paragraph (1) may be made at any time; but an opportunity to make such an election shall in any event be given (A) to every individual who is an applicant for benefits under this subchapter on the basis of blindness, at the time of his or her application, and (B) to every individual who is a recipient of such benefits on the basis of blindness, at the time of each redetermination of his or her eligibility. Such an election, once made by an individual, shall apply with respect to all notices of decisions, determinations, and actions which such individual may thereafter be entitled to receive under this subchapter until such time as it is revoked or changed.
(m) Pre-release procedures for institutionalized persons

The Commissioner of Social Security shall develop a system under which an individual can apply for supplemental security income benefits under this subchapter prior to the discharge or release of the individual from a public institution.

(n) Concurrent SSI and supplemental nutrition assistance program applications by institutionalized individuals

The Commissioner of Social Security and the Secretary of Agriculture shall develop a procedure under which an individual who applies for supplemental security income benefits under this subchapter shall also be permitted to apply at the same time for participation in the supplemental nutrition assistance program authorized under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

(o) Notice requirements

The Commissioner of Social Security shall take such actions as are necessary to ensure that any notice to one or more individuals issued pursuant to this subchapter by the Commissioner of Social Security or by a State agency—

(1) is written in simple and clear language, and
(2) includes the address and telephone number of the local office of the Social Security Administration which serves the recipient.

In the case of any such notice which is not generated by a local servicing office, the requirements of paragraph (2) shall be treated as satisfied if such notice includes the address of the local office of the Social Security Administration which serves the recipient and a telephone number through which such office can be reached.

(p) Reinstatement of eligibility on the basis of blindness or disability

(1)(A) Eligibility for benefits under this subchapter shall be reinstated in any case where the Commissioner determines that an individual described in subparagraph (B) has filed a request for reinstatement meeting the requirements of paragraph (2)(A) during the period prescribed in subparagraph (C). Reinstatement of eligibility shall be in accordance with the terms of this subchapter.

(B) An individual is described in this subparagraph if—

(i) prior to the month in which the individual files a request for reinstatement—

(I) the individual was eligible for benefits under this subchapter on the basis of blindness or disability pursuant to an application filed therefor; and

(II) the individual thereafter was ineligible for such benefits due to earned income (or earned and unearned income) for a period of 12 or more consecutive months;

(ii) the individual is blind or disabled and the physical or mental impairment that is the basis for the finding of blindness or disability is the same as (or related to) the physical or mental impairment that was the basis for the finding of blindness or disability that gave rise to the eligibility described in clause (i);

(iii) the individual’s blindness or disability renders the individual unable to perform substantial gainful activity; and

(iv) the individual satisfies the nonmedical requirements for eligibility for benefits under this subchapter.

(C)(i) Except as provided in clause (ii), the period prescribed in this subparagraph with respect to an individual is 60 consecutive months beginning with the month following the most recent month for which the individual was eligible for a benefit under this subchapter (including section 1382h of this title) prior to the period of ineligibility described in subparagraph (B)(i)(II).

(ii) In the case of an individual who fails to file a reinstatement request within the period prescribed in clause (i), the Commissioner may extend the period if the Commissioner determines that the individual had good cause for the failure to so file.

(2)(A)(i) A request for reinstatement shall be filed in such form, and containing such information, as the Commissioner may prescribe.

(ii) A request for reinstatement shall include express declarations by the individual that the individual meets the requirements specified in clauses (ii) through (iv) of paragraph (1)(B).

(B) A request for reinstatement filed in accordance with subparagraph (A) may constitute an application for benefits in the case of any individual who the Commissioner determines is not eligible for reinstated benefits under this subchapter.

(3) In determining whether an individual meets the requirements of paragraph (1)(B)(ii), the provisions of section 1382c(a)(4) of this title shall apply.

(4)(A) Eligibility for benefits reinstated under this subsection shall commence with the benefit payable for the month following the month in which a request for reinstatement is filed.

(B)(i) Subject to clause (ii), the amount of the benefit payable for any month pursuant to the reinstatement of eligibility under this subsection shall be determined in accordance with the provisions of this subchapter.

(ii) The benefit under this subchapter payable for any month pursuant to a request for reinstatement filed in accordance with paragraph (2) shall be reduced by the amount of any provisional benefit paid to such individual for such month under paragraph (7).

(C) Except as otherwise provided in this subsection, eligibility for benefits under this subchapter reinstated pursuant to a request filed under paragraph (2) shall be subject to the same terms and conditions as eligibility established pursuant to an application filed therefor.

(5) Whenever an individual’s eligibility for benefits under this subchapter is reinstated under this section, eligibility for such benefits shall be reinstated with respect to the individual’s spouse if such spouse was previously an eligible spouse of the individual under this subchapter and the Commissioner determines that such spouse satisfies all the requirements for eligibility for such benefits except requirements related to the filing of an application. The provisions of paragraph (4) shall apply to the rein-
stated eligibility of the spouse to the same extent that they apply to the reinstated eligibility of such individual.

(6) An individual to whom benefits are payable under this subchapter pursuant to a reinstatement of eligibility under this subsection for twenty-four months (whether or not consecutive) shall, with respect to benefits so payable after such twenty-four month, be deemed for purposes of paragraph (1)(B)(i)(I) to be eligible for such benefits on the basis of an application filed therefor.

(7)(A) An individual described in paragraph (1)(B) who files a request for reinstatement in accordance with the provisions of paragraph (2)(A) shall be eligible for provisional benefits payable in accordance with this paragraph, unless the Commissioner determines that the individual does not meet the requirements of paragraph (1)(B)(i) or that the individual's declaration under paragraph (2)(A)(ii) is false. Any such determination by the Commissioner shall be final and not subject to review under paragraph (2)(A)(ii).

(B) Except as otherwise provided in clause (ii), the amount of a provisional benefit for a month shall equal the amount of the monthly benefit that would be payable to an eligible individual under this subchapter with the same kind and amount of income.

(ii) If the individual has a spouse who was previously an eligible spouse of the individual under this subchapter and the Commissioner determines that such spouse satisfies all the requirements of section 1382c(b) of this title except requirements related to the filing of an application, the amount of a provisional benefit for a month shall equal the amount of the monthly benefit that would be payable to an eligible individual and eligible spouse under this subchapter with the same kind and amount of income.

(C)(i) Provisional benefits shall begin with the month following the month in which a request for reinstatement is filed in accordance with paragraph (2)(A).

(ii) Provisional benefits shall end with the earliest of—

(I) the month in which the Commissioner makes a determination regarding the individual's eligibility for reinstated benefits;

(II) the fifth month following the month for which provisional benefits are first payable under clause (i); or

(III) the month in which the Commissioner determines that the individual does not meet the requirements of paragraph (1)(B)(i) or that the individual's declaration made in accordance with paragraph (2)(A)(ii) is false.

(D) In any case in which the Commissioner determines that an individual is not eligible for reinstated benefits, any provisional benefits paid to the individual under this paragraph shall not be subject to recovery as an overpayment unless the Commissioner determines that the individual knew or should have known that the individual did not meet the requirements of paragraph (1)(B).

(8) For purposes of this subsection other than paragraph (7), the term "benefits under this subchapter" includes State supplementary payments made pursuant to an agreement under section 1382(e) of this title or section 212(b) of Public Law 93–66.

REFERENCES IN TEXT
The Internal Revenue Code of 1986, referred to in subsec. (a)(2)(B)(xiv) and (e)(1)(B)(i), is classified generally to Title 26, Internal Revenue Code.


The Right to Financial Privacy Act by Pub. L. 92–603, § 301, but is set out below in view of its continued applicability to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS


Subsec. (d)(1)(B). Pub. L. 109–163 inserted “or 24 consecutive months, in the case of such an individual whose ineligibility for benefits under or pursuant to both such sections is a result of being called to active duty pursuant to section 12301(d) or 12302 of title 10 or section 565(f) of title 32” after “for a period of 12 consecutive months”.


Subsec. (a)(2)(B)(ii)(V) to (VI). Pub. L. 108–203, § 103(c)(1), added subcl. (IV) and (V) and redesignated former subcl. (IV) as (VI).


Subsec. (a)(2)(D)(i). Pub. L. 108–203, § 104(b), in introductory provisions, substituted “Except as provided in the next sentence, a” for “A” and, in concluding provisions, substituted “A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual’s benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual’s benefit for purposes of subparagraphs (E) and (F). The Commissioner” for “The Commissioner”.

Subsec. (a)(2)(D)(II). Pub. L. 108–203, § 102(a)(2)(B), substituted “or any certified community-based nonprofit social service agency (as defined in subparagraph (I)), if the agency, in accordance” for “or any community-based nonprofit social service agency, which—”.


For complete classification of section 302 of the Social Security Protection Act of 2004, see Short Title note set out under section 1382 of this title.


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406(a),” ‘‘(other than subsections (a)(4) and (d) thereof)’’ for ‘‘(other than paragraph (4) thereof)’’, and ‘‘such section’’ for ‘‘paragraph (2) thereof’’.


Subsec. (d)(2)(A)(ii). Pub. L. 106–203, § 302(a)(3), added clis. (i) to (v) and struck out former cl. (i) which read as follows: ‘‘by substituting ‘‘section 1383(a)(7)(A) of this title or the requirements of due process of law’’ for ‘‘subsection (g) or (h) of section 423 of this title’’.’’

Subsec. (d)(2)(B) to (D). Pub. L. 108–203, § 302(a)(4), added subpars. (B) and (C) and redesignated former subpar. (B) as (D).


Subsec. (a)(2)(B)(iii)(II). Pub. L. 106–199, § 251(b)(9)(E), inserted ‘‘the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title’’, before ‘‘or certification’’. Subsec. (a)(2)(B)(iii)(III). Pub. L. 106–199, § 251(b)(9)(F), inserted ‘‘or 1997’’ after ‘‘405(j)(1)’’.

Subsec. (a)(2)(C). Pub. L. 106–170, § 101(b)(2)(C), substituted ‘‘a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1332b–19 of this title or another program of vocational rehabilitation services, employment services, or other support services for a program of vocational rehabilitation services’’. Subsec. (a)(2)(C). Pub. L. 106–189, § 302(a)(2), inserted ‘‘monthly’’ before ‘‘benefit payments’’ and ‘‘and in the case of an individual or eligible spouse to whom a lump sum is payable under this subchapter (including under section 1382(a)(a) of this title or under an agreement entered into under section 212(a) of Public Law 93–66) shall, as at least one means of recovering such overpayment, make the adjustment or recovery from the lump sum payment in an amount equal to not less than the lesser of the amount of the overpayment or 50 percent of the lump sum payment’’, before ‘‘unless fraud’’.

Subsec. (b)(2). Pub. L. 108–189, § 201(b), inserted at end ‘‘if more than the correct amount is made to a representative payee on behalf of an individual after the individual’s death, the representative payee shall be liable for the repayment of the overpayment of more than 6 months’ control record under the Social Security account number of the representative payee’’.

Subsec. (b)(4) to (6). Pub. L. 106–169, § 203(a), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.


Subsec. (j)(1). Pub. L. 106–170, § 112(b)(2)(A), inserted before period at end ‘‘, or has filed a request for reinstatement of eligibility under subsection (p)(2) of this section and has been determined to be eligible for reinstatement’’.

Subsec. (j)(2)(A)(i)(I). Pub. L. 106–170, § 112(b)(2)(B), inserted ‘‘other than pursuant to a request for reinstatement under subsection (p) of this section’’ after ‘‘eligible’’.


1997—Subsec. (a)(2)(F)(iii)(III)(bb). Pub. L. 105–33, § 5522(b)(1), substituted ‘‘in any case in which the individual knowingly misapplies benefits from such an account, the Commissioner shall reduce future benefits payable to such individual (or to such individual and his spouse) by an amount equal to such benefits so misapplied’’ for ‘‘the total amount of such benefits so used shall be considered to be the uncompensated value of a disposed resource and shall be subject to the provisions of section 1321(b)(1)(A) of this title’’.

Subsec. (a)(2)(F)(iii)(ii). Pub. L. 105–33, § 5522(b)(2), added cl. (iii) and struck out former cl. (ii) which read as follows: ‘‘The representative payee may deposit into the account established pursuant to clause (i) (I) past-due benefits payable to the eligible individual in an amount less than that specified in clause (i)(II), and (II) any other funds representing an underpayment under this subchapter to such individual, provided that the amount of such underpayment is equal to or exceeds the maximum monthly benefit payable under this subchapter to an eligible individual.’’


1996—Subsec. (a)(1). Pub. L. 104–193, § 221(b), inserted ‘‘subject to paragraph (10)’’ before ‘‘in such installments’’.

Subsec. (a)(2)(A)(ii)(II). Pub. L. 104–121, § 105(b)(2)(A), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ‘‘In the case of an individual eligible for benefits under this subchapter by reason of disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner’s determination that the individual is disabled, the payment of such benefits to a representative payee shall be deemed to serve the interest of the individual under this subchapter. In any case in which such payment is so deemed under this subclause to serve the interest of an individual, the Commissioner of Social Security shall include, in the individual’s notification of such eligibility, a notice that alcoholism or drug addiction is a contributing factor material to the Commissioner’s determination that the individual is disabled and that the Commissioner of Social Security is therefore required to pay the individual’s benefits to a representative payee.’’

Subsec. (a)(2)(B)(vii). Pub. L. 104–121, § 105(b)(2)(B), substituted ‘‘in paragraph (A)(i)(II)’’ for ‘‘eligible for benefits under this subchapter by reason of disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner’s determination that the individual is disabled’’.

Subsec. (a)(2)(B)(viii). Pub. L. 104–121, § 105(b)(2)(C), substituted ‘‘in paragraph (A)(i)(II),’’ for ‘‘(if alcoholism or drug addiction is a contributing factor material to the Commissioner’s determination that the individual is disabled) is eligible for benefits under this subchapter by reason of disability:’’

Subsec. (a)(2)(D)(i)(II). Pub. L. 104–121, § 105(b)(2)(D), substituted ‘‘in paragraph (A)(i)(II)’’ for ‘‘eligible for benefits under this subchapter by reason of disability and alcoholism and drug addiction is a contributing factor material to the Commissioner’s determination that the individual is disabled’’.

Subsec. (a)(2)(F) to (H). Pub. L. 104–193, § 213(a), added subpar. (F) and redesignated former subpars. (F) and (G) as (G) and (H), respectively.

Subsec. (a)(4)(A). Pub. L. 104–193, § 204(b), inserted ‘‘for the month following the date the application is filed’’ after ‘‘is presumptively eligible for such benefits’’ and ‘‘, which shall be paid through proportionate reductions in such benefits over a period of not more than 6 months’’ before semicolon.


Subsec. (e)(6) to (8). Pub. L. 104–193, § 404(c)(1), redesignated paras. (6), relating to suspension of fraud or similar fault, and (7) as (7) and (8), respectively.


Subsec. (g)(3). Pub. L. 104–193, § 204(c)(2), inserted ‘‘following the month’’ after ‘‘beginning with the month’’. 

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Subsec. (a)(2)(C). Pub. L. 103–296, §201(b)(2)(A)(ii), redesignated cl. (ii) as (i), redesignated subpar. (B) as (C), added subpar. (C) and restored existing text.


Subsec. (a)(2)(C)(ii). Pub. L. 103–432, §264(f)(2), redesignated cl. (iii) as (ii) and struck out former cl. (ii) which read as follows: “Clause (i) shall not apply in any case where the representative payee is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.”


Subsec. (a)(2)(C)(iv). Pub. L. 103–432, §264(f)(4), substituted “Notwithstanding clauses (i), (ii), and (iii)” for “Notwithstanding clauses (i), (ii), and (iv)” in subcl. (II).

Subsec. (a)(2)(D). Pub. L. 103–296, §201(b)(2)(B)(i)(aa), redesignated by Pub. L. 103–296, §321(f)(2)(B)(i), in subcl. (II) inserted “State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any” after “means any” and a comma after “service agency”, at end of subcl. (I) inserted “and”, and in subcl. (II) inserted “and” at end of item (aa), substituted a period for “,” and “at” end of item (bb), and struck out item (cc) which read as follows: “was in existence on October 1, 1988.”


Subsec. (a)(2)(D)(v). Pub. L. 103–296, §201(b)(2)(B)(i)(bb), inserted in closing provisions “The Secretary shall adjust annually (after 1995) each dollar amount set forth in subclause (II) of this clause under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(A)(2)(A) of this title, except that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00.”


Subsec. (a)(2)(F). Pub. L. 103–296, §201(b)(2)(B)(ii), in introductory provisions inserted “State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any” after “means any” and a comma after “service agency”, at end of subcl. (I) inserted “and”, and in subcl. (II) inserted “and” at end of item (aa), substituted a period for “,” and “at” end of item (bb), and struck out item (cc) which read as follows: “was in existence on October 1, 1988.”


Subsec. (b). Pub. L. 103–296, §107(a)(4), in subpars. (F) and (G) as redesignated by Pub. L. 103–296, §201(b)(2)(B)(ii), substituted “Commissioner of Social Security” for “Secretary” wherever appearing and “Commissioner’s” for “Secretary’s” in subpar. (G).

Subsec. (b)(3). Pub. L. 103–432, §267(b), redesignated pars. (4) and (5) as (3) and (4), respectively, and
struck out former par. (3) which read as follows: “In any case in which advance payments for a taxable year made by all employers to an individual under section 32(g) of such Code for a tax equal to such excess, the Secretary shall provide for a proper adjustment of such individual’s benefit amount under this subchapter so as to provide payment to such individual of an amount equal to the amount of such benefits lost by such individual on account of such excess advance payments.”

Subsec. (c)(1)(A). Pub. L. 103–296, §107(a)(4), substituted “Commissioner of Social Security” for “Secretary” wherever appearing, “Commissioner’s” for “his” and “Secretary’s” for “his” wherever appearing and “the Commissioner” wherever appearing, except where appearing in introductory provisions.


Subsec. (c). Pub. L. 103–296, §107(a)(4), substituted “Secretary” for “Commissioner of Social Security” in subsec. (n) relating to concurrent SSI and food stamp applications by institutionalized individuals.

Subsec. (a)(2)(A). Pub. L. 101–508, §5106(a)(1)(B)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “Payments of the benefit of any individual may be made to any such individual or to his eligible spouse (if any) or partly to each, or, if the Secretary deems it appropriate to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse).”

Subsec. (a)(2)(B). Pub. L. 101–508, §5106(a)(1)(B)(ii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “Any determination made under subparagraph (A) that payment should be made to a person other than the individual or spouse entitled to such payment must be made on the basis of an investigation, carried out either prior to such determination or within forty-five days after such determination, and on the basis of adequate evidence that such determination is in the interest of the individual or spouse entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such determinations are adequately reviewed.”

Subsec. (a)(2)(C)(i). Pub. L. 101–508, §5106(a)(1)(B)(ii)(I), substituted “representative payee of an individual or spouse” for “a person other than the individual or spouse entitled to such payment”.

Subsec. (a)(2)(C)(ii). Pub. L. 101–508, §5106(a)(1)(B)(ii)(II), substituted “representative payee” for “person receiving payments on behalf of an individual or spouse entitled to such payment”.


Subsec. (a)(2)(I). Pub. L. 101–508, §5106(a)(3)(A)(vi), substituted “representative payee to whom such payment is made” for “other person to whom such payment is made”.


Subsec. (a)(4)(B). Pub. L. 101–508, § 503(b), substituted “‘6 months’” for “‘3 months’”.

Subsec. (a)(6)(A). Pub. L. 101–508, § 5115(b), added subpar. (A) and struck out former subpar. (A) which read as follows: “such individual is participating in an approved vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973, and—


Subsec. (c)(1). Pub. L. 101–508, § 5107(a)(2), designated existing provision as subpar. (A) and added subpar. (B).

Subsec. (c)(2)(A). Pub. L. 101–508, § 5106(a)(2), amended subpar. (A) generally, substituting cls. (i) and (ii) for former single par. which authorized Secretary to pre-scribe regulations relating to representation of claimants before the Secretary, representation by attorneys, suspension of representatives, and maximum fees for representation, provided penalties for deceiving claimants and exceeding maximum fees, and required Sec-rety to maintain in the electronic information retrieval system of the Social Security Administration the identity of representatives of claimants.

Subsec. (d). Pub. L. 101–508, § 5106(c), inserted at end “‘and (e)’” for “‘(e), and (f)’”.

Subsec. (e)(1)(A). Pub. L. 101–508, § 5106(c), designated existing provision as subpar. (A) and added subpar. (B).

Subsec. (e)(2)(A). Pub. L. 101–508, § 5108(c), inserted “‘other than subsection (c) thereof’” after first reference to “section 1382h of this title”.

Subsec. (m). Pub. L. 101–508, § 5040(1), struck out at end “The Secretary and the Secretary of Agriculture shall develop a procedure under which an individual who applies for supplemental security income benefits under this subchapter shall also be permitted to apply for participation in the food stamp program by executing a single application.”


Pub. L. 101–508, § 5040(b), added subsec. (n) relating to concurrent SSI and food stamp applications by institutionalized individuals.

1989—Subsec. (c)(1). Pub. L. 101–239, § 10305(c), inserted at end “The Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation of such individual (including any lack of facility with the English language) in determining, with respect to the eligibility of such individual for benefits under this subchapter, whether such individual acted in good faith or was at fault, and in determining fraud, deception, or intent.”

Subsec. (d)(2). Pub. L. 101–239, § 10307(c), added existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 101–239, § 10307(a)(2), inserted at end “The Secretary shall maintain in the electronic information retrieval system used by the Social Security Administration a current record, with respect to any claimant before the Secretary, of the identity of any person representing such claimant in accordance with this paragraph.”


1986—Subsec. (a)(6). Pub. L. 100–203, § 9110(a), substituted “at the time the Secretary makes the first payment of benefits with respect to the period described in clause (A) or (B) of paragraph (3)” for “at the time the Secretary makes the first payment of benefits”.

Subsec. (g)(3). Pub. L. 100–203, § 9110(b), inserted cl. (A) designation after “basic needs” and added cl. (B).

Subsec. (i). Pub. L. 100–203, § 9123, redesignated subsec. (j), relating to pre-release procedures for institutionalized persons, as (m).


Subsec. (m). Pub. L. 100–203, § 9123, redesignated subsec. (j), relating to pre-release procedures for institutionalized persons, as (m) and reenacted heading without change.

1986—Subsec. (b)(1). Pub. L. 99–645, § 8(a), substituted “‘A Whenever the Secretary’” for “‘Whenever the Secretary’”, “‘by recovery from such individual or his eligible spouse (or from the estate of either) or by payment to such individual or his eligible spouse, or, if such individual is deceased, by payment’” for “‘by recovery from or payment to such individual or his eligible spouse (or by recovery from or payment to such individual’s estate of either)’”, and inserted “(other than subsection (c) thereof)” after first reference to “section 1382h of this title”.


Pub. L. 99–272 redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (b)(4), (5). Pub. L. 99–272 redesignated pars. (3) and (4) as (4) and (5), respectively.

Subsec. (e)(1)(A). Pub. L. 99–643, § 4(c)(1)(A), substituted “subparagraph (B) and subsection (j) of this section” for “subparagraph (B)”.


Subsec. (m). Pub. L. 99–570, § 11005(a), added par. (3).


1984—Subsec. (a)(2). Pub. L. 98–460, § 16(b), redesignated existing provisions as subpar. (A) and added subpar. (B) to (D).


Pub. L. 98–369, § 2612(a), inserted “‘(A)’ before ‘shall make such provision’” in second sentence, and added cl. (B).

Subsec. (b)(1). Pub. L. 98–369, § 2663(g)(11)(A), substituted “equity and good conscience” for “equity or good conscience”.

Subsec. (b)(2). Pub. L. 98–369, § 2663(g)(11)(B), substituted “section 32” and “section 32(g)” for “section 43” and “section 43(g)”, respectively.

Subsec. (b)(3), (4). Pub. L. 98–369, § 2613, added par. (3) and redesignated former par. (3) as (4).

Subsec. (d)(1). Pub. L. 98–369, § 2663(g)(12), substituted “and (e)” for “(e) and (f)”.


Pub. L. 99–272 redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (b)(4), (5). Pub. L. 99–272 redesignated pars. (3) and (4) as (4) and (5), respectively.

Subsec. (e)(1)(A). Pub. L. 99–643, § 4(c)(1)(A), substituted “subparagraph (B) and subsection (j) of this section” for “subparagraph (B)”.


Subsec. (e)(1)(B). Pub. L. 98–369, § 2651(j), inserted provision that for this purpose and for purposes of federally administered supplementary payments of the type described in section 1322(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66), the Secretary shall, as may be necessary, request and utilize information available pursuant to section 6103(h)(7) of the Internal Revenue Code of 1984, and any information which may be available from State systems under section 1320b–7 of this title, and shall comply with the requirements applicable to States (with respect to information available pursuant to section 6103(h)(7)(B) of such Code) under subsections (a)(6) and (c) of such section 1320b–7 of this title.

1982—Subsec. (1)(2). Pub. L. 97–248 substituted “such benefit checks” for “checks payable to individuals entitled to benefits under this subchapter but”.


Subsec. (b). Pub. L. 96–473 redesignated par. (2) as added by Pub. L. 96–265, § 301(c), as (3).

Pub. L. 96–265, § 301(c), designated existing provisions as par. (1) and added par. (2), without reference to identical amendment made by Pub. L. 96–222. Such par. (2) was subsequently redesignated par. (3) by Pub. L. 96–473.

Pub. L. 96–222 designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(1). Pub. L. 96–265, § 305(b), inserted provisions relating to information that must accompany a decision of Secretary.


Subsec. (c)(1). Pub. L. 94–202, § 1, increased authority of Secretary by permitting him to hold hearings on his own motion, to administer oaths, examine witnesses, and receive evidence at hearings, and increased time within which a request for a hearing be made after notice of Secretary’s determination is received from thirty to sixty days.

Subsec. (c)(2). Pub. L. 94–202, § 1, reenacted par. (2) without change.

Subsec. (c)(3). Pub. L. 94–202, § 1, struck out exception to judicial review which made factual determinations by the Secretary, after a hearing as provided by subsec. (c)(1), final and conclusive.

Subsec. (d)(2). (3), Pub. L. 94–202, § 2, struck out par. (2) which related to appointment of individuals to serve as hearing examiners without meeting specific standards prescribed for hearing examiners, and redesignated par. (3) as par. (2).

Subsec. (g). Pub. L. 94–365 struck out par. (6) which provided that provisions of this subsection were to expire on June 30, 1976, at least sixty days prior to which, the Secretary was to submit to Congress a report assessing effects of actions taken pursuant to this subsection and including whatever recommendations the Secretary deemed appropriate.


1973—Subsec. (a)(4)(B). Pub. L. 93–233 inserted “solely because such individual is determined not to be disabled.”

Effective Date of 2010 Amendment
Amendment by section 101(c)(1), (3) of Pub. L. 108–203 applicable to any case of benefit misuse by a representative payee with respect to which the Commissioner of Social Security makes the determination of misuse on or after Jan. 1, 1996, see section 101(d) of Pub. L. 108–203, set out as a note under section 405 of this title.


Amendment by section 103(c) of Pub. L. 108–203 effective on the first day of the thirteenth month beginning after Mar. 2, 2004, see section 103(d) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 104(b) of Pub. L. 108–203 applicable to any month involving benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after Mar. 2, 2004, see section 104(c) of Pub. L. 108–203, set out as a note under section 405 of this title.

Amendment by section 105(c) of Pub. L. 108–203 applicable to any case of benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after Mar. 2, 2004, see section 105(c) of Pub. L. 108–203, set out as a note under section 405 of this title.


Amendment by section 210(b)(4) of Pub. L. 108–203 effective Mar. 2, 2004, and effective with respect to overpayments under subchapters I, VIII, and XVI of this chapter that are outstanding on or after such date, see section 210(c) of Pub. L. 108–203, set out as a note under section 404 of this title.

Pub. L. 108–203, title III, § 302(c), Mar. 2, 2004, 118 Stat. 521, as amended by Pub. L. 111–142, § 2(a)(2), Feb. 27, 2010, 124 Stat. 38, provided that: “The amendments made by this section [amending this section] shall apply with respect to fees for representation of claimants which are first required to be paid under section 1631(d)(2) of the Social Security Act (42 U.S.C. 1383(d)(2)) on or after the date of the submission by the Commissioner of Social Security to each House of Congress pursuant to section 303(d) of this Act [set out as a note under section 406 of this title] of written notice of completion of full implementation of the requirements for operation of the demonstration project under section 303 of this Act [set out as a note under section 406 of this title].”

Effective Date of 2009 Amendments
Amendment by section 101(b)(2)(C) of Pub. L. 106–170 effective with the first month following one year after
Amendment by section 522(b) of Pub. L. 101–143 applicable to amounts incorrectly paid which remain outstanding on or after such date, see section 8(c) of Pub. L. 101–306, set out as a note under section 401 of this title.

Effective Date of 1997 Amendment


Effective Date of 1996 Amendments
Amendment by section 204(b), (c)(2) of Pub. L. 104–193 applicable to applications for benefits under this subchapter filed on or after Aug. 22, 1996, without regard to whether regulations have been issued to implement amendments by section 204 of Pub. L. 104–193, as section 5552(a) of Pub. L. 105–33, set out as a note under section 903 of this title.


Effective Date of 1996 Amendments
Amendment by section 204(b), (c)(2) of Pub. L. 104–193 applicable to applications for benefits under this subchapter filed on or after Aug. 22, 1996, without regard to whether regulations have been issued to implement amendments by section 204 of Pub. L. 104–193, as section 5552(a) of Pub. L. 105–33, set out as a note under section 903 of this title.


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Effective Date of 1996 Amendments
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Effective Date of 1996 Amendments
Amendment by section 204(b), (c)(2) of Pub. L. 104–193 applicable to applications for benefits under this subchapter filed on or after Aug. 22, 1996, without regard to whether regulations have been issued to implement amendments by section 204 of Pub. L. 104–193, as section 5552(a) of Pub. L. 105–33, set out as a note under section 903 of this title.
after July 1, 1991, and to reimbursement for travel expenses incurred on or after Apr. 1, 1991, see section 5106(d) of Pub. L. 101-508, set out as a note under section 401 of this title.

Amendment by section 510(a)(2) of Pub. L. 101-508 applicable with respect to adverse determinations made on or after July 1, 1991, see section 5107(b) of Pub. L. 101-508, set out as a note under section 405 of this title.

Amendment by section 510(a)(2) of Pub. L. 101-508 applicable with respect to notices issued on or after July 1, 1991, see section 510(b) of Pub. L. 101-508, set out as a note under section 405 of this title.

Amendment by section 511(b) of Pub. L. 101-508 effective with respect to benefits payable for months after the eleventh month following November 1990, and applicable only with respect to individuals whose blindness or disability has or may have ceased after such eleventh month, see section 5113(c) of Pub. L. 101-508, set out as a note under section 425 of this title.

**Effective Date of 1989 Amendment**

Section 10302(b)(2) of Pub. L. 101-239 provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to misinformation furnished on or after the date of the enactment of this Act [Dec. 19, 1989] and to benefits for months after the month in which this Act is enacted [December 1989]."

Amendment by section 10303(b) of Pub. L. 101-239 applicable to visits to field offices of Social Security Administration on or after Jan. 1, 1990, see section 10303(c) of Pub. L. 101-239, set out as a note under section 405 of this title.

Amendment by section 10305(e) of Pub. L. 101-239 applicable with respect to determinations made on or after July 1, 1990, see section 10305(f) of Pub. L. 101-239, set out as a note under section 405 of this title.

Amendment by section 10307(a)(2) of Pub. L. 101-239 effective June 1, 1991, see section 10307(a)(3) of Pub. L. 101-239, set out as a note under section 405 of this title.

Amendment by section 10307(b)(2) of Pub. L. 101-239 applicable with respect to adverse determinations made on or after Jan. 1, 1991, see section 10307(b)(3) of Pub. L. 101-239, set out as a note under section 405 of this title.

**Effective Date of 1988 Amendment**

Amendment by Pub. L. 100-647 applicable to determinations by administrative law judges of entitlement to benefits made after 180 days after Nov. 10, 1988, see section 8001(c) of Pub. L. 100-647, set out as a note under section 403 of this title.

**Effective Date of 1987 Amendment**

Section 9108(b) of Pub. L. 100-203 provided that: "The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Dec. 22, 1987] and to benefits for months after the month in which this Act is enacted [January 1988]."

Section 9110(c) of Pub. L. 100-203 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to misinformation for months after May 1986."

Section 11005(c)(1) of Pub. L. 99-570 provided that: "The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Oct. 27, 1986]."

Amendment by Pub. L. 99-272 applicable only in the case of deaths of which the Secretary is first notified on or after Apr. 7, 1986, see section 12113(c) of Pub. L. 99-272, set out as a note under section 401 of this title.

**Effective Date of 1984 Amendments**

Amendment by section 16(b) of Pub. L. 98-460 effective Oct. 9, 1984, see section 16(d) of Pub. L. 98-460, set out as a note under section 405 of this title.

Amendment by sections 2612(a) and 2613 of Pub. L. 98-369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98-369, set out as a note under section 657 of this title.

Amendment by section 2651(j) of Pub. L. 98-369 effective July 18, 1984, see section 2651(k)(1) of Pub. L. 98-369, set out as an Effective Date note under section 13209-7 of this title.

Amendment by section 2663(g)(11), (12) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

**Effective Date of 1982 Amendment**

Section 187(b) of Pub. L. 97-248 provided that: "The amendment made by subsection (a) [amending this section] shall become effective October 1, 1982."

**Effective Date of 1981 Amendment**

Section 2343(b) of Pub. L. 97-35 provided that: "The amendment made by subsection (a) [amending this section] shall become effective October 1, 1982."

**Effective Date of 1980 Amendment**

Amendment by section 301(b) of Pub. L. 96-265 effective on first day of sixth month which begins after June 9, 1980, and applicable with respect to individuals whose disability has not been determined to have ceased prior to such first day, see section 301(c) of Pub. L. 96-265, set out as a note under section 425 of this title.

Amendment by section 305(b) of Pub. L. 96-265 applicable with respect to decisions made on or after the first day of the 13th month following June, 1980, see section 305(c) of Pub. L. 96-265, set out as a note under section 405 of this title.

Amendment by section 501(c) of Pub. L. 96-265 applicable in the case of payments of monthly insurance benefits under subchapter II of this chapter, entitlement for which is determined on or after July 1, 1981, see section 501(d) of Pub. L. 96-265, set out as an Effective Date note under section 13209-6 of this title.

**Effective Date of 1976 Amendments**

Section 4(b) of Pub. L. 94-569 provided that: "The amendments made by this section [amending this section] shall apply with respect to months after the month following the month in which this Act is enacted [October 1976]."

Amendment by sections 1 and 2 of Pub. L. 94-202 effective Jan. 2, 1976, with the amendment by section 2 of Pub. L. 94-202, to the extent that it changes the period involved (under the provisions of law involved) before that date, see section 2651(b) of Pub. L. 94-202, set out as a note under section 401 of this title.

**Effective Date of 1973 Amendment**


**Effective Date**

Section 301 of Pub. L. 92-603 provided that this section is effective Jan. 1, 1974.
Regulations
Section 222 of title II of Pub. L. 104–193 provided that: "Within 3 months after the date of the enactment of this Act [Aug. 22, 1996], the Commissioner of Social Security shall prescribe such regulations as may be necessary to implement the amendments made by this subtitle [subtitle C (§§221, 222) of title II of Pub. L. 104–193, amending this section]."

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

Payment of Travel Expenses
Pub. L. 102–394, title II, Oct. 6, 1992, 106 Stat. 1807, provided in part: "That for fiscal year 1993 and thereafter, travel expense payments under section 186(h) of such Act [subsec. (h) of this section] for travel to hearings may be made only when travel of more than seventy-five miles is required".

Similar provisions were contained in the following prior appropriation acts:

Deposit of Overpayments in General Fund of Treasury

Opportunity for Individuals Receiving Benefits To Make Election For Type of Notice of Hearing or Other Official Action
Section 911(a)(2) of Pub. L. 100–203 directed Secretary of Health and Human Services, not later than one year after July 1, 1988, to provide every individual receiving benefits under this subchapter on the basis of blindness an opportunity to make an election under subsection (i)(1) of this section.

Study of Desirability and Feasibility of Special Notices of Hearings and Other Actions to Other Individuals Unable To Read
Section 911(b) of Pub. L. 100–203 directed Secretary of Health and Human Services to study desirability and feasibility of extending special or supplementary notices of the type provided to blind individuals by subsection (i) of this section to other individuals who may lack the ability to read and comprehend regular written notices, and report the results of such study to Congress, along with recommendations, within 12 months after Dec. 22, 1987.

Demonstration Program To Assist Homeless Individuals
Section 917 of Pub. L. 100–203, as amended by Pub. L. 104–80, title I, §106(e), Dec. 21, 1995, 109 Stat. 720, provided that: "(a) In General.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') is authorized to make grants to States for projects designed to demonstrate and test the feasibility of special procedures and services to ensure that homeless individuals are provided SSI and other benefits under the Social Security Act (this chapter) to which they are entitled and receive assistance in using such benefits to obtain permanent housing, food, and health care. Each project approved under this section shall meet such conditions and requirements, consistent with this section, as the Secretary shall prescribe.

(b) Scope of Projects.—Projects for which grants are made under this section shall include, more specifically, procedures and services to overcome barriers which prevent homeless individuals (particularly the chronically mentally ill) from receiving and appropriately using benefits, including—

(1) the creation of cooperative approaches between the Social Security Administration, the Department of Health and Human Services, and local governments, shelters for the homeless, and other providers of services to the homeless;

(2) the establishment, where appropriate, of multi-agency SSI Outreach Teams (as described in subsection (c)), to facilitate communication between the agencies and staff involved in taking and processing claims for SSI and other benefits by the homeless who use shelters;

(3) special efforts to identify homeless individuals who are potentially eligible for SSI or other benefits under the Social Security Act (this chapter);

(4) the provision of special assistance to the homeless in applying for benefits, including assistance in obtaining and developing evidence of disability and supporting documentation for nondisability-related eligibility requirements;

(5) the provision of special training and assistance to public and private agency staff, including shelter employees, on disability eligibility procedures and evidentiary requirements;

(6) the provision of ongoing assistance to formerly homeless individuals to ensure their responding to information requests related to periodic redeterminations of eligibility for SSI and other benefits;

(7) the provision of assistance in ensuring appropriate use of benefit funds for the purpose of enabling homeless individuals to obtain permanent housing, nutrition, and physical and mental health care, including the use, where appropriate, of the disabled individual's representative payee for case management services; and

(8) such other procedures and services as the Secretary may approve.

(c) SSI Outreach Team Projects.—(1) If a State applies for funds under this section for the purpose of establishing a multi-agency SSI Outreach Team, the membership and functions of such Team shall be as follows (except as provided in paragraph (2)):

(A) The membership of the Team shall include a social services case worker (or case workers, if necessary); a consultative medical examiner who is qualified to provide consultative examinations for the Disability Determination Service of the State; a disability examiner, from the State Disability Determination Service; and a claims representative from an office of the Social Security Administration.

(B) The Team shall have designated members responsible for—

(i) identification of homeless individuals who are potentially eligible for SSI or other benefits under the Social Security Act (this chapter);

(ii) ensuring that such individuals understand their rights under the programs;

(iii) assisting such individuals in applying for benefits, including assistance in obtaining and developing evidence and supporting documentation relating to disability- and nondisability-related eligibility requirements;

(iv) arranging transportation and accompanying applicants to necessary examinations, if needed; and

(v) providing for the tracking and monitoring of all claims for benefits by individuals under the project.
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“(2) If the Secretary determines that an application by a State for an SSI Outreach Team Project under this section which proposes a membership and functions for such Team different from those prescribed in paragraph (1) but which is expected to be as effective, the Secretary may waive the requirements of such paragraph.


“(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated to the Secretary—

“(A) the sum of $2,250,000 for the fiscal year 1988;

“(B) the sum of $2,500,000 for the fiscal year 1989; and

“(C) such sums as may be necessary for each fiscal year thereafter.”

NOTIFICATION OF ADJUSTMENT OF BENEFITS BY SECRETARY

Section 2612(b) of Pub. L. 98–369 provided that: “If an adjustment referred to in section 1631(b)(1) of the Social Security Act [subsec. (b)(1) of this section] is in effect with respect to an individual or eligible spouse on the effective date of this subsection [Oct. 1, 1981], and the amount of such adjustment for a month is greater than the amount described in section 1631(b)(1)(B)(ii) of such Act [subsec. (b)(1)(B)(ii) of this section], as added by subsection (a), the Secretary shall notify the individual whose benefits are being adjusted, in writing, of his or her right to have the adjustment reduced to the amount described in such section 1631(b)(1)(B)(ii).”

PAYMENT OF COSTS OF REHABILITATION SERVICES

Amendment to sections 422 and 1382d of this title by section 11(a), (b) of Pub. L. 98–469 applicable with respect to individuals who receive benefits as a result of section 422(b) or section 1382a(d)(6) of this title, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following October 1, 1984, see section 11(c) of Pub. L. 98–469, set out as an Effective Date of 1984 Amendment note under section 422 of this title.

HEARING EXAMINERS APPOINTED PRIOR TO JANUARY 2, 1976

Pub. L. 95–216, title III, §371, Dec. 20, 1977, 91 Stat. 1569, provided that: “The persons who were appointed to serve as hearing examiners under section 1631(b)(2) of the Social Security Act [subsec. (d)(2) of this section] (as in effect prior to January 2, 1976), and who by section 422(c) of Public Law 94–229 [set out as a note under this section] were deemed to be appointed under section 3105 of title 5, United States Code, to the second sentence of such section 3105, and to all of the other provisions of such title 5 which apply to hearing examiners appointed under such section 3105.”

PRESCRIPTIVE DISABILITY BENEFITS: TIME EXTENSION

Pub. L. 93–256, §1, Mar. 28, 1974, 88 Stat. 52, provided: “That any individual who would be considered disabled under section 1614(a)(3)(B) of the Social Security Act [section 1614(a)(3)(B) of this title] except that he did not receive aid under the applicable State plan for at least one month prior to July 1973 may be considered to be presumptively disabled under section 1631(a)(4)(B) of that Act [subsec. (a)(4)(B) of this section] and may be paid supplemental security income benefits under title XVI of that Act [this subchapter] on the basis of such presumptive disability, and State supplementary payments under section 212 of Public Law 89–96 [set out as a note under section 1312 of this title] as though he had been determined to be disabled within the meaning of section 1614(a)(3) of the Social Security Act [section 1614(a)(3) of this title], for any month in calendar year 1974 for which it has been determined that he is otherwise eligible for such benefits, without regard to the three-month limitation in section 1631(a)(4)(B) of that Act [subsec. (a)(4)(B) of this section] and may be paid supplemental security income benefits under title XVI of that Act [this subchapter] on the basis of such presumptive disability, and State supplementary payments under section 212 of Public Law 89–96 [set out as a note under section 1312 of this title] so that such benefits may be paid on the basis of such presumptive disability for any month after the month in which the Secretary of Health, Education, and Welfare [now Health and Human Services] has made a determination as to whether such individual is disabled, as defined in section 1614(a)(3)(A) of that Act [section 1614(a)(3)(A) of this title].”

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of section 1603 of the Social Security Act [this section] by Pub. L. 92–663, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1603 of the Social Security Act [this section] as it existed prior to reenactment by Pub. L. 92–603, and as amended, continues to apply and reads as follows:

§1383. Payments to States; quarterly expenditures to exceed average of total expenditures for each quarter of fiscal year ending June 30, 1965

(a) From the sums appropriated therefor, the Commissioner of Social Security shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing October 1, 1962—


(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to—

...
(A) one-half of the total of the sums expended during such quarter as aid to the aged, blind, or disabled under the State plan, not counting so much of any expenditure with respect to any month as exceeds \$37.50 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month; plus
(b) one-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds the product of \$45 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month; and
(3) in the case of any State, an amount equal to 50 percent of the total amounts expended during such quarter as found necessary by the Commissioner of Social Security for the proper and efficient administration of the State plan.

To determine, for the purposes of determining any amount under subsection (a) of this section for any prior quarter and with respect to which adjustment has not already been made under this subsection,

3. The pro rata share to which the United States is equitably entitled, as determined by the Commissioner of Social Security, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to aid or assistance furnished under the State plan, but excluding any amount of such aid or assistance recovered from the estate of a deceased recipient which is not in excess of the amount expended by such State for the funeral expenses of the deceased, shall be deemed obligated.

4. Upon the making of any estimate by the Commissioner of Social Security under this subsection, any appropriation available for payments under this section shall be deemed obligated.

5. The Commissioner of Social Security shall then pay, in such installments as the Commissioner may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Commissioner of Social Security determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(A) one-half of the total of the sums expended during each quarter as aid to the aged, blind, or disabled under the State plan, not counting so much of any expenditure with respect to any month as exceeds \$37.50 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month; plus
(B) one-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds the product of \$45 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month; and
(C) in the case of any State, an amount equal to 50 percent of the total amounts expended during such quarter as found necessary by the Commissioner of Social Security for the proper and efficient administration of the State plan.

To determine, for the purposes of determining any amount under subsection (a) of this section for any prior quarter and with respect to which adjustment has not already been made under this subsection,

(3) The Commissioner of Social Security shall then pay, in such installments as the Commissioner may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Commissioner of Social Security determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

6. Upon the making of any estimate by the Commissioner of Social Security under this subsection, any appropriation available for payments under this section shall be deemed obligated.

7. The Commissioner of Social Security shall then pay, in such installments as the Commissioner may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Commissioner of Social Security determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

8. Upon the making of any estimate by the Commissioner of Social Security under this subsection, any appropriation available for payments under this section shall be deemed obligated.

9. The Commissioner of Social Security shall then pay, in such installments as the Commissioner may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Commissioner of Social Security determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

10. Upon the making of any estimate by the Commissioner of Social Security under this subsection, any appropriation available for payments under this section shall be deemed obligated.

11. The Commissioner of Social Security shall then pay, in such installments as the Commissioner may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Commissioner of Social Security determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

12. Upon the making of any estimate by the Commissioner of Social Security under this subsection, any appropriation available for payments under this section shall be deemed obligated.

13. The Commissioner of Social Security shall then pay, in such installments as the Commissioner may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Commissioner of Social Security determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

14. Upon the making of any estimate by the Commissioner of Social Security under this subsection, any appropriation available for payments under this section shall be deemed obligated.

15. The Commissioner of Social Security shall then pay, in such installments as the Commissioner may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Commissioner of Social Security determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

16. Upon the making of any estimate by the Commissioner of Social Security under this subsection, any appropriation available for payments under this section shall be deemed obligated.

17. The Commissioner of Social Security shall then pay, in such installments as the Commissioner may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Commissioner of Social Security determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

18. Upon the making of any estimate by the Commissioner of Social Security under this subsection, any appropriation available for payments under this section shall be deemed obligated.

19. The Commissioner of Social Security shall then pay, in such installments as the Commissioner may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Commissioner of Social Security determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

20. Upon the making of any estimate by the Commissioner of Social Security under this subsection, any appropriation available for payments under this section shall be deemed obligated.

21. The Commissioner of Social Security shall then pay, in such installments as the Commissioner may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Commissioner of Social Security determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

22. Upon the making of any estimate by the Commissioner of Social Security under this subsection, any appropriation available for payments under this section shall be deemed obligated.

23. The Commissioner of Social Security shall then pay, in such installments as the Commissioner may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Commissioner of Social Security determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

24. Upon the making of any estimate by the Commissioner of Social Security under this subsection, any appropriation available for payments under this section shall be deemed obligated.

25. The Commissioner of Social Security shall then pay, in such installments as the Commissioner may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Commissioner of Social Security determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

26. Upon the making of any estimate by the Commissioner of Social Security under this subsection, any appropriation available for payments under this section shall be deemed obligated.

27. The Commissioner of Social Security shall then pay, in such installments as the Commissioner may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Commissioner of Social Security determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

28. Upon the making of any estimate by the Commissioner of Social Security under this subsection, any appropriation available for payments under this section shall be deemed obligated.

29. The Commissioner of Social Security shall then pay, in such installments as the Commissioner may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Commissioner of Social Security determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

30. Upon the making of any estimate by the Commissioner of Social Security under this subsection, any appropriation available for payments under this section shall be deemed obligated.

31. The Commissioner of Social Security shall then pay, in such installments as the Commissioner may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Commissioner of Social Security determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

32. Upon the making of any estimate by the Commissioner of Social Security under this subsection, any appropriation available for payments under this section shall be deemed obligated.
to a use other than for the use and benefit of such other person,
shall be fined under title 18, imprisoned not more than 5 years, or both.

(b) Restitution

(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a) of this section, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Commissioner of Social Security, in any case in which such offense results in—

(A) the Commissioner of Social Security making a benefit payment that should not have been made, or

(B) an individual suffering a financial loss due to the defendant's violation of subsection (a) of this section in his or her capacity as the individual's representative payee appointed pursuant to section 1383(a)(2) of this title.

(2) Sections 3612, 3663, and 3664 of title 18 shall apply with respect to the issuance and enforcement of orders of restitution under this subsection. In so applying such sections, the Commissioner of Social Security shall be considered the victim.

(3) If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

(4)(A) Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited as miscellaneous receipts in the general fund of the Treasury.

(B) In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (1)(B), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual's outstanding financial loss as described in such paragraph, except that such amount may be reduced by any overpayment of benefits owed under this subchapter, subchapter II of this chapter, or subchapter VIII of this chapter by the individual.

(c) Prohibition on certification as representative payee

Any person or entity convicted of a violation of subsection (a) of this section or of section 408 of this title may not be certified as a representative payee under section 1383(a)(2) of this title.


AMENDMENTS


Subsec. (c). Pub. L. 108–203, §209(c)(1), (3), redesignated subsec. (b) as (c), struck out “(2)” before “Any person”, and struck out par (1) which read as follows: “If a person or entity violates subsection (a) of this section in the person’s or entity’s role as, or in applying to become, a representative payee under section 1383(a)(2) of this title on behalf of another individual (other than the person’s eligible spouse), and the violation includes a willful misuse of funds by the person or entity, the court may also require that full or partial restitution of funds be made to such other individual.”

1994—Subsec. (a). Pub. L. 103–296, §206(c)(1), inserted closing provisions and struck out former closing provisions which read as follows: “shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.”

Subsec. (b). Pub. L. 103–296, §206(c)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

“(b)(1) Any person or other entity who is convicted of a violation of any of the provisions of paragraphs (1) through (4) of subsection (a) of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a payee under section 1383(a)(2) of this title on behalf of another individual (other than such person’s eligible spouse), in lieu of the penalty set forth in subsection (a) of this section—

“(A) upon his first such conviction, shall be guilty of a misdemeanor and shall be fined not more than $5,000 or imprisoned for not more than one year, or both; and

“(B) upon his second or any subsequent such conviction, shall be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

“(2) In any case in which the court determines that a violation described in paragraph (1) includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

“(3) Any person or entity convicted of a felony under this section or under section 408 of this title may not be certified as a payee under section 1383(a)(2) of this title.”

1984—Pub. L. 98–460 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2004 AMENDMENT


EFFECTIVE DATE OF 1994 AMENDMENT

Section 206(c)(3) of Pub. L. 103–296 provided that: “The amendments made by this subsection [amending this section] shall apply to conduct occurring on or after October 1, 1994.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–460 effective Oct. 9, 1984, and applicable with respect to violations occurring on or after such date, see section 16(d) of Pub. L. 98–460, set out as a note under section 405 of this title.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Vir-
gin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1383b. Administration

(a) Authority of Commissioner

Subject to subsection (b) of this section, the Commissioner of Social Security may make such administrative and other arrangements (including arrangements for the determination of blindness and disability under section 1382c(a)(2) and (3) of this title in the same manner and subject to the same conditions as provided with respect to disability determinations under section 421 of this title) as may be necessary or appropriate to carry out the Commissioner's functions under this subchapter.

(b) Examination to determine blindness

In determining, for purposes of this subchapter, whether an individual is blind, there shall be an examination of such individual by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select.

(c) Notification of review

(1) In any case in which the Commissioner of Social Security initiates a review under this subchapter, similar to the continuing disability reviews authorized for purposes of subchapter II of this chapter under section 421(i) of this title, the Commissioner of Social Security shall notify the individual whose case is to be reviewed in the same manner as required under section 421(i)(4) of this title.

(2) For suspension of continuing disability reviews and other reviews under this subchapter similar to reviews under section 421 of this title in the case of an individual using a ticket to work and self-sufficiency, see section 1320b–19(1) of this title.

(d) Regulations regarding completion of plans for achieving self-support

The Commissioner of Social Security shall establish by regulation criteria for time limits and other criteria related to individuals' plans for achieving self-support, that take into account—

(1) the length of time that the individual will need to achieve the individual's employment goal (within such reasonable period as the Commissioner of Social Security may establish); and

(2) other factors determined by the Commissioner of Social Security to be appropriate.

(e) Review of State agency blindness and disability determinations

(1) The Commissioner of Social Security shall review determinations, made by State agencies pursuant to subsection (a) in connection with applications for benefits under this subchapter on the basis of blindness or disability, that individuals who have attained 18 years of age are blind or disabled as of a specified onset date. The Commissioner of Social Security shall review such a determination before any action is taken to implement the determination.

(2) (A) In carrying out paragraph (1), the Commissioner of Social Security shall review—

(i) at least 20 percent of all determinations referred to in paragraph (1) that are made in fiscal year 2006;

(ii) at least 40 percent of all such determinations that are made in fiscal year 2007; and

(iii) at least 50 percent of all such determinations that are made in fiscal year 2008 or thereafter.

(B) In carrying out subparagraph (A), the Commissioner of Social Security shall, to the extent feasible, select for review the determinations which the Commissioner of Social Security identifies as being the most likely to be incorrect.


AMENDMENTS


1999—Subsec. (c). Pub. L. 106–170 designated existing provisions as par. (1) and added par. (2).

1994—Subsec. (a). Pub. L. 103–296, § 107(a)(4), substituted “Commissioner of Social Security” for “Secretary” and “the Commissioner’s” for “his”.


1973—Subsec. (a). Pub. L. 93–66, § 214(1), (2), designated existing provisions as subsec. (a) and made the authority of the Secretary subject to subsec. (b) of this section.


EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 effective with the first month following one year after Dec. 17, 1999, subject to section 101(d) of Pub. L. 106–170, see section 101(c) of Pub. L. 106–170, set out as an Effective Date note under section 1320b–19 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT


Section 203(b) of Pub. L. 103–296 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1996.”

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

INSTITUTION OF NOTIFICATION SYSTEM

For provisions requiring the Secretary to institute the system of notification required by subsec. (c) of this section as soon as practicable after Oct. 9, 1984, see
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section 6(c) of Pub. L. 98–460, set out as a note under section 421 of this title.

FEDERAL PROGRAM OF SUPPLEMENTAL SECURITY INCOME; PREFERENCE FOR PRESENT STATE AND LOCAL EMPLOYEES

Section 213 of Pub. L. 93–66 provided that: "The Secretary of Health, Education, and Welfare (now Health and Human Services) in the recruitment and selection for employment of personnel whose services will be utilized in the administration of the Federal program of supplemental security income for the aged, blind, and disabled (established by title XVI of the Social Security Act [this subchapter]), shall give a preference, as among applicants whose qualifications are reasonably equal (subject to any preferences conferred by law or regulation on individuals who have been Federal employees and have been displaced from such employment), to applicants for employment who are or were employed in the administration of any State program approved under title I, X, XIV, or XVI of such Act [subchapter I, X, XIV, or XVI of this chapter] and are or were involuntarily displaced from their employment as a result of the displacement of such State program by such Federal program."

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 522(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 333(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1383c. Eligibility for medical assistance of aged, blind, or disabled individuals under State's medical assistance plan

(a) Determination by Commissioner pursuant to agreement between Commissioner and State; costs

The Commissioner of Social Security may enter into an agreement with any State which wishes to do so under which the Commissioner will determine eligibility for medical assistance in the case of aged, blind, or disabled individuals under such State's plan approved under subchapter XIX of this chapter. Any such agreement shall provide for payments by the State, for use by the Commissioner of Social Security in carrying out the agreement, of an amount equal to one-half of the cost of carrying out the agreement, but in computing such cost with respect to individuals eligible for benefits under this subchapter, the Commissioner of Social Security shall include only those costs which are additional to the costs incurred in carrying out this subchapter.

(b) Preservation of benefit status for certain disabled widows and widowers

(1) An eligible disabled widow or widower (described in paragraph (2)) who is entitled to a widow's or widower's insurance benefit based on a disability for any month under section 402(e) or (f) of this title but is not eligible for benefits under this subchapter in that month, and who applies for the protection of this subsection under paragraph (3), shall be deemed for purposes of subchapter XIX of this chapter to be an individual with respect to whom benefits under this subchapter are paid in that month if he or she—

(A) has been continuously entitled to such widow's or widower's insurance benefits from the first month for which the increase described in paragraph (2)(C) was reflected in such benefits through the month involved, and

(B) would be eligible for benefits under this subchapter in the month involved if the amount of the increase described in paragraph (2)(C) in his or her widow's or widower's insurance benefits, and any subsequent cost-of-living adjustments in such benefits under section 415(d) of this title, were disregarded.

(2) For purposes of paragraph (1), the term "eligible disabled widow or widower" means an individual who—

(A) was entitled to a monthly insurance benefit under subchapter II of this chapter for December 1983,

(B) was entitled to a widow's or widower's insurance benefit based on a disability under section 402(e) or (f) of this title for January 1984 and with respect to whom a benefit under this subchapter was paid in that month, and

(C) because of the increase in the amount of his or her widow's or widower's insurance benefits which resulted from the amendments made by section 134 of the Social Security Amendments of 1983 (Public Law 98–21) (eliminating the additional reduction factor for disabled widows and widowers under age 60), was ineligible for benefits under this subchapter in the first month in which such increase was paid to him or her (and in which a retroactive payment of such increase for prior months was not made).

(3) This subsection shall only apply to an individual who files a written application for protection under this subsection, in such manner and form as the Commissioner of Social Security may prescribe, no later than July 1, 1988.

(4) For purposes of this subsection, the term "benefits under this subchapter" includes payments of the type described in section 1332 of this title or of the type described in section 212(a) of Public Law 93–66.

(c) Loss of benefits upon entitlement to child's insurance benefits based on disability

If any individual who has attained the age of 18 and is receiving benefits under this subchapter on the basis of blindness or a disability which began before he or she attained the age of 22—

(1) becomes entitled, on or after the effective date of this subsection, to child's insurance benefits which are payable under section 402(d) of this title on the basis of such disability or to an increase in the amount of the child's insurance benefits which are so payable, and

(2) ceases to be eligible for benefits under this subchapter because of such child's insurance benefits or because of the increase in such child's insurance benefits,

such individual shall be treated for purposes of subchapter XIX of this chapter as receiving ben-
benefits under this subchapter so long as such person (i) would be eligible for such supplemental security income benefits, or such State supplementary payments, in the absence of such benefits under section 402 of this title, so long as he or she (A) applies for and obtains benefits under this subchapter or for State supplementary payments of the type referred to in subsection (e) of this section (or payments of the type described in section 212(a) of Public Law 93–66) if such person received such a payment for the month before the month in which such person began to receive a benefit described in paragraph (1)(A), and

(B) shall be deemed to be a recipient of State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) in the absence of benefits described in paragraph (1)(A), and

(ii) is not entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter.

(2) For purposes of subchapter XIX of this chapter, each person with respect to whom this subsection applies—

(A) shall be deemed to be a recipient of supplemental security income benefits under this subchapter if such person received such a benefit for the month before the month in which such person began to receive a benefit described in paragraph (1)(A), and

(B) shall be deemed to be a recipient of State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) in the absence of benefits described in paragraph (1)(A), and

for so long as such person (i) would be eligible for such supplemental security income benefits, or such State supplementary payments (or payments of the type described in section 212(a) of Public Law 93–66), in the absence of benefits described in paragraph (1)(A), and (ii) is not entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter.


REFERENCES IN TEXT


Section 212(a) of Public Law 93–66, referred to in subsecs. (b)(1)(A), (b)(1)(B), (2) is section 212(a) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

The effective date of this subsection, referred to in subsec. (c)(1), is July 1, 1987, except as otherwise provided. See section 10(b) of Pub. L. 99–643, set out as an Effective Date of 1986 Amendments note under section 1396a of this title.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–121 struck out subsec. (e) which read as follows: "Each person to whom benefits under this subchapter by reason of disability are not payable for any month solely by reason of clause (i) or (v) of section 1382(e)(3)(A) of this title shall be treated, for purposes of subchapter XIX of this chapter, as receiving benefits under this subchapter for the month..."


1990—Subsec. (d). Pub. L. 101–508 designated existing provisions as par. (1), substituted "This section applies with respect to any person who—" for "If any person—" in introductory provisions, redesignated former pars. (1) and (2) as subs paras. (A) and (B), respectively, in subpar. (A) substituted "being then not entitled" for "as required by section 1382(e)(2) of this title, being then at least 60 years of age but not entitled" in subpar. (B) substituted "section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66)" for "section 1382e(a) of this title," and substituted par. (2) for former concluding provisions which read as follows: "such person shall nevertheless be deemed to be a recipient of supplemental security income benefits under this subchapter for purposes of subchapter XIX of this chapter, so long as he or she (A) would be eligible for such supplemental security income benefits, or such State supplementary payments, in the absence of such benefits under section 402 of this title, and (B) is not entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter."

1987—Subsec. (b)(3). Pub. L. 100–203, § 9106, substituted "no later than July 1, 1988" for "during the 15-month period beginning with the month in which this subsection is enacted [April 1986]."

Subsec. (d). Pub. L. 100–203, § 9116(a), added subsec. (d).


EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–121 applicable to any individual who applies for, or whose claim is finally adjudicated with respect to, supplemental security income benefits under this subchapter based on disability on or after Mar. 29, 1996, with special rule in case of any individual who applies for, and whose claim has been finally adjudicated with respect to, such benefits before Mar. 29, 1996, see section 1383d of Pub. L. 104–121, set out as a note under section 1382 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT


Amendment by section 201(b)(3)(D) of Pub. L. 103–296 applicable with respect to supplemental security income benefits under this subchapter by reason of disability which are otherwise payable in months beginning after 180 days after Aug. 15, 1994, with Secretary of Health and Human Services to issue regulations necessary to carry out such amendment not later than 180 days after Aug. 15, 1994, see section 201(b)(3)(E)(i) of
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Pub. L. 103–296, set out as a note under section 1382 of this title.

**Effective Date of 1990 Amendment**

Amendment by Pub. L. 101–508 applicable with respect to medical assistance provided after December 1990, see section 5133(e) of Pub. L. 101–508, set out as a note under section 402 of this title.

**Effective Date of 1987 Amendment**

Section 9108 of Pub. L. 100–203 provided that the amendment made by that section is effective July 1, 1987.

Section 9118(e) of Pub. L. 100–203 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to any individual without regard to whether the determination of his or her eligibility for supplemental security income benefits by reason of the receipt of benefits under section 202 of the Social Security Act [section 402 of this title] (as described in section 1634(d)(2) of such Act [subsec. (d)(2) of this section]) occurred before, on, or after the date of the enactment of this Act [Dec. 22, 1987]; but no individual shall be eligible for medical assistance under title XIX of such Act [subchapter XIX of this chapter] by reason of such amendments for any period after July 1, 1988."

**Effective Date of 1986 Amendments**

Amendment by Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1388a of this title.

Section 12202(c) of Pub. L. 99–272 provided that: "The amendment made by subsection (a)(2) [amending this section] shall not have the effect of deeming an individual eligible for medical assistance for any month which begins less than two months after the date of the enactment of this Act [Apr. 7, 1986]."

**Effective Date**

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

**Notice of Possible Eligibility for Medicaid Assistance**

Section 9118(b) of Pub. L. 100–203 provided that: "The Secretary of Health and Human Services, acting through the Social Security Administration, shall (within 3 months after the date of the enactment of this Act [Dec. 22, 1987]) issue a notice to all individuals who will have attained age 60 but not age 65 as of April 1, 1988, and who received supplemental security income benefits under title XVI of the Social Security Act [this subchapter] prior to attaining age 60 but lost those benefits by reason of the receipt of widow’s or widower’s insurance benefits (or other benefits as described in section 1634(d)(1) of that Act [subsection (d) of this section] as added by subsection (a) of this section) under title II of that Act [subchapter II of this chapter]. Each such notice shall set forth and explain the provisions of section 1634(d) of the Social Security Act (as so added), and shall inform the individual that he or she should contact the Secretary or the appropriate State agency concerning his or her possible eligibility for medical assistance benefits under such title [XIX of subchapter XIX of this chapter]."

**State Determinations**

Section 9118(c) of Pub. L. 100–203 provided that: "Any determination required under section 1634(d) of the Social Security Act [subsection (d) of this section] with respect to whether an individual would be eligible for benefits under title XVI of such Act [this subchapter] (or State supplementary payments in the absence of benefits under section 202 [section 402 of this title]) shall be made by the appropriate State agency."

Section 9(b) of Pub. L. 99–643 provided that: "Any determination required under section 1634(c) of the Social Security Act [subsection (c) of this section] with respect to whether an individual would be eligible for benefits under title XVI of such Act [this subchapter] in the absence of children’s benefits (or an increase thereof) shall be made by the appropriate State agency."

**Identification of Potential Beneficiaries Under Subsection (b) of This Section**

Section 12202(b) of Pub. L. 99–272 provided that:

"(1) As soon as possible after the date of the enactment of this Act [Apr. 7, 1986], the Secretary of Health and Human Services shall provide each State with the names of all individuals receiving widow’s or widower’s insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act [section 402(e) or (f) of this title] based on a disability who might qualify for medical assistance under the plan of that State approved under title XIX of such Act [subchapter XIX of this chapter] by reason of the application of section 1634(b) of the Social Security Act [subsection (b) of this section]."

"(2) Each State shall—

"(A) using the information so provided and any other information it may have, promptly notify all individuals who may qualify for medical assistance under its plan by reason of such section 1634(b) of their right to make application for such assistance,"

"(B) solicit their applications for such assistance, and"

"(C) make the necessary determination of such individuals’ eligibility for such assistance under such section and under such title XIX."

**Application to Northern Mariana Islands**

For applicability of this section to the Northern Mariana Islands, see section 962(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1961 of Title 48, Territories and Insular Possessions.

**Puerto Rico, Guam, and Virgin Islands**

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1383d. Outreach program for children

(a) Establishment

The Commissioner of Social Security shall establish and conduct an ongoing program of outreach to children who are potentially eligible for benefits under this subchapter by reason of disability or blindness.

(b) Requirements

Under this program, the Commissioner of Social Security shall—

(1) aim outreach efforts at populations for whom such efforts would be most effective; and

(2) work in cooperation with other Federal, State, and private agencies, and nonprofit organizations, which serve blind or disabled individuals and have knowledge of potential recipients of supplemental security income benefits, and with agencies and organizations (including school systems and public and private social service agencies) which focus on the needs of children.

AMENDMENTS
1994—Subsecs. (a), (b). Pub. L. 103–296 substituted “Commissioner of Social Security” for “Secretary”.

EFFECTIVE DATE OF 1994 AMENDMENT

EFFECTIVE DATE
Section 8008(b) of Pub. L. 101–239 provided that: “The amendment made by subsection (a) [enacting this section] shall take effect 3 months after the date of the enactment of this Act [Dec. 19, 1989].”

APPLICATION TO NORTHERN MARIANA ISLANDS
For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

§ 1383e. Treatment referrals for individuals with alcoholism or drug addiction condition

In the case of any individual whose benefits under this subchapter are paid to a representative payee pursuant to section 1333(a)(2)(A)(ii)(II) of this title, the Commissioner of Social Security shall refer such individual to the appropriate State agency administering the State plan for substance abuse treatment services approved under subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.).


REFERENCES IN TEXT
The Public Health Service Act, referred to in text, is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Subpart II of part B of title XIX of the Act is classified generally to subpart II (§300x–21 et seq.) of part B of subchapter XVII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

EFFECTIVE DATE
Section effective July 1, 1996, with respect to any individual whose claim for benefits is finally adjudicated on or after Mar. 29, 1996, or whose eligibility for benefits is based upon eligibility redetermination made pursuant to section 105(b)(5) of Pub. L. 104–121, see section 105(b)(5) of Pub. L. 104–121, as amended, set out as an Effective Date of 1996 Amendment note under section 1382 of this title.

§ 1383f. Annual report on program

(a) In general
Not later than May 30 of each year, the Commissioner of Social Security shall prepare and deliver a report annually to the President and the Congress regarding the program under this subchapter, including—

(1) a comprehensive description of the program;

(2) historical and current data on allowances and denials, including number of applications and allowance rates for initial determinations, reconsideration determinations, administrative law judge hearings, appeals council reviews, and Federal court decisions;

(3) historical and current data on characteristics of recipients and program costs, by recipient group (aged, blind, disabled adults, and disabled children);

(4) historical and current data on prior enrollment by recipients in public benefit programs, including State programs funded under part A of subchapter IV of this chapter and State general assistance programs;

(5) projections of future number of recipients and program costs, through at least 25 years;

(6) number of redeterminations and continuing disability reviews, and the outcomes of such redeterminations and reviews;

(7) data on the utilization of work incentives;

(8) detailed information on administrative and other program operation costs;

(9) summaries of relevant research undertaken by the Social Security Administration, or by other researchers;

(10) State supplementation program operations;

(11) a historical summary of statutory changes to this subchapter; and

(12) such other information as the Commissioner deems useful.

(b) Views of individual members of Social Security Advisory Board
Each member of the Social Security Advisory Board shall be permitted to provide an individual report, or a joint report if agreed, of views of the program under this subchapter, to be included in the annual report required under this section.


§ 1384. Omitted

CONFINEMENT

PUERTO RICO, GUAM, AND VIRGIN ISLANDS
Enactment of subchapter XVI of the Social Security Act [this subchapter] by Pub. L. 92–603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92–603, set out as a note under section 1382 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1604 of the Social Security Act [this section] as it existed prior to reenactment of this subchapter by Pub. L. 92–603 continues to apply and reads as follows:

§ 1384. Operation of State plans
If the Commissioner of Social Security, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this subchapter, finds—

(1) that the plan has been so changed that it no longer complies with the provisions of section 1332 of this title; or

(2) that in the administration of the plan there is a failure to comply substantially with any such provision;
the Commissioner of Social Security shall notify such State agency that further payments will not be made to the State (or, in the Commissioner's discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Commissioner of Social Security is satisfied that there will no longer be any such failure to comply. Until the Commissioner is so satisfied, the Commissioner shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).


Puerto Rico, Guam, and Virgin Islands

Enactment of subchapter XVI of the Social Security Act [this subchapter] by section 301 of Pub. L. 92-603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92-603 and as amended, continues to apply and to read as follows:

§1385. Omitted

CODIFICATION


Puerto Rico, Guam, and Virgin Islands

Enactment of subchapter XVI of the Social Security Act [this subchapter] by section 301 of Pub. L. 92-603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92-603 and as amended, continues to apply and to read as follows:

§1385. Definitions

(a) For purposes of this subchapter, the term “aid to the aged, blind, or disabled” means money payments to needy individuals who are 65 years of age or older, are blind, or are 18 years of age or over and permanently and totally disabled, but such term does not include—

(1) any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution); or

(2) any such payments to or care in behalf of any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Commissioner of Social Security) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1382 of this title includes provisions for—

(A) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(B) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan during such period and the amount of aid to the aged, blind, or disabled to be paid (and in conjunction with other income and resources), meet all the need [sic] of the individuals with respect to whom such payments are made;

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

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

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

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


[Amendment by section 107(a)(4) of Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

SUBCHAPTER XVII—GRANTS FOR PLANNING COMPREHENSIVE ACTION TO COMBAT MENTAL RETARDATION

§1391. Authorization of appropriations

For the purpose of assisting the States (including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa) to plan for and take other steps leading to comprehensive State and community action to combat mental retardation, there is authorized to be appropriated the sum of $2,200,000. There are also authorized to be appropriated, for assisting such States in planning and other steps to combat mental retardation, $2,750,000 for the fiscal year ending June 30, 1966, and $2,750,000 for the fiscal year ending June 30, 1967.


[Amendment by section 107(a)(4) of Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

AMENDMENTS

1965—Pub. L. 89-97 authorized appropriations of $2,750,000 for fiscal years ending June 30, 1966 and 1967 for implementation of mental retardation planning.
§ 1392. Availability of funds during certain fiscal years; limitation on amount; utilization of grant

The sums appropriated pursuant to the first sentence of section 1391 of this title shall be available for grants to States by the Secretary during the fiscal year ending June 30, 1964, and the succeeding fiscal year; and the sums appropriated pursuant to the second sentence of such section for the fiscal year ending June 30, 1966, shall be available for such grants during such year and the next two fiscal years, and sums appropriated pursuant thereto for the fiscal year ending June 30, 1967, shall be available for such grants during such year and the succeeding fiscal year. Any such grant to a State, which shall not exceed 75 per centum of the cost of the planning and related activities involved, may be used by it to determine what action is needed to combat mental retardation in the State and the resources available for this purpose, to develop public awareness of the mental retardation problem and of the need for combating it, to coordinate State and local activities relating to the various aspects of mental retardation and its prevention, treatment, or amelioration, and to plan other activities leading to comprehensive State and community action to combat mental retardation.


AMENDMENTS


§ 1393. Applications; single State agency designation; essential planning services; plans for expenditure; final activities report and other necessary reports; records; accounting

In order to be eligible for a grant under section 1392 of this title, a State must submit an application therefor which—

(1) designates or establishes a single State agency, which may be an interdepartmental agency, as the sole agency for carrying out the purposes of this subchapter;
(2) indicates the manner in which provision will be made to assure full consideration of all aspects of services essential to planning for comprehensive State and community action to combat mental retardation, including services in the fields of education, employment, rehabilitation, welfare, health, and the law, and services provided through community programs for and institutions for the mentally retarded;
(3) sets forth its plans for expenditure of such grant, which plans provide reasonable assurance of carrying out the purposes of this subchapter;
(4) provides for submission of a final report of the activities of the State agency in carrying out the purposes of this subchapter, and for submission of such other reports, in such form and containing such information, as the Secretary may from time to time find necessary for carrying out the purposes of this subchapter and for keeping such records and affording such access thereto as he may find necessary to assure the correctness and verification of such reports; and
(5) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for funds paid to the State under this subchapter.


§ 1394. Payments to States; adjustments; advances or reimbursement; installments; conditions

Payment of grants under this subchapter may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Secretary may determine.


SUBCHAPTER XVIII—HEALTH INSURANCE FOR AGED AND DISABLED

§ 1395. Prohibition against any Federal interference

Nothing in this subchapter shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine or the manner in which medical services are provided, or over the selection, tenure, or compensation of any officer or employee of any institution, agency, or person providing health services; or to exercise any supervision or control over the administration or operation of any such institution, agency, or person.


SHORT TITLE

For short title of Pub. L. 88–156, which enacted this subchapter, as the “Maternal and Child Health and Mental Retardation Planning Amendments of 1963”, see section 1 of Pub. L. 88–156, set out as a Short Title of 1963 Amendment note under section 1391 of this title.

§ 1395. —


§ 1394. —


§ 1395. —


SHORT TITLE

For short title of Pub. L. 89–97, which enacted this subchapter as the “Health Insurance for the Aged Act”, see section 100 of Pub. L. 89–97, set out as a Short Title of 1965 Amendment note under section 1391 of this title.

§ 1395. —


SHORT TITLE

For short title of Pub. L. 89–97, which enacted this subchapter as the “Health Insurance for the Aged Act”, see section 100 of Pub. L. 89–97, set out as a Short Title of 1965 Amendment note under section 1391 of this title.

PROTECTING AND IMPROVING GUARANTEED MEDICARE BENEFITS


(a) Protecting Guaranteed Medicare Benefits.—Nothing in the provisions of, or amendments made by, this Act [see Short Title note set out under section 18001 of this title] shall result in a reduction of guaranteed benefits under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(b) Ensuring That Medicare Savings Benefit the Medicare Program and Medicare Beneficiaries.—
§ 1395a Free choice by patient guaranteed

(a) Basic freedom of choice

Any individual entitled to insurance benefits under this subchapter may obtain health services from any institution, agency, or person qualified to participate under this subchapter if such institution, agency, or person undertakes to provide him such services.

(b) Use of private contracts by medicare beneficiaries

(1) In general

Subject to the provisions of this subsection, nothing in this subchapter shall prohibit a physician or practitioner from entering into a private contract with a medicare beneficiary for any item or service—

(A) for which no claim for payment is to be submitted under this subchapter, and

(B) for which the physician or practitioner receives—

(i) no reimbursement under this subchapter directly or on a capitated basis, and

(ii) receives no amount for such item or service from an organization which receives reimbursement for such item or service under this subchapter directly or on a capitated basis.

(2) Beneficiary protections

(A) In general

Paragraph (1) shall not apply to any contract unless—

(i) the contract is in writing and is signed by the medicare beneficiary before any item or service is provided pursuant to the contract;

(ii) the contract contains the items described in subparagraph (B); and

(iii) the contract is not entered into at a time when the medicare beneficiary is facing an emergency or urgent health care situation.

(B) Items required to be included in contract

Any contract to provide items and services to which paragraph (1) applies shall clearly indicate to the medicare beneficiary that by signing such contract the beneficiary—

(i) agrees not to submit a claim (or to request that the physician or practitioner submit a claim) under this subchapter for such items or services even if such items or services are otherwise covered by this subchapter;

(ii) agrees to be responsible, whether through insurance or otherwise, for payment of such items or services and understands that no reimbursement will be provided under this subchapter for such items or services;

(iii) acknowledges that no limits under this subchapter (including the limits under section 1395w–4(g) of this title) apply to amounts that may be charged for such items or services;

(iv) acknowledges that Medigap plans under section 1395ss of this title do not, and other supplemental insurance plans may elect not to, make payments for such items and services because payment is not made under this subchapter; and

(v) acknowledges that the medicare beneficiary has the right to have such items or services provided by other physicians or practitioners for whom payment would be made under this subchapter.

Such contract shall also clearly indicate whether the physician or practitioner is excluded from participation under the medicare program under section 1320a–7 of this title.

(3) Physician or practitioner requirements

(A) In general

Paragraph (1) shall not apply to any contract entered into by a physician or practitioner unless an affidavit described in subparagraph (B) is in effect during the period any item or service is to be provided pursuant to the contract.

(B) Affidavit

An affidavit is described in this subparagraph if—

(i) the affidavit identifies the physician or practitioner and is in writing and is signed by the physician or practitioner;

(ii) the affidavit provides that the physician or practitioner will not submit any claim under this subchapter for any item or service provided to any medicare beneficiary (and will not receive any reimbursement or amount described in paragraph (1)(B) for any such item or service) during the 2-year period beginning on the date the affidavit is signed; and

(iii) a copy of the affidavit is filed with the Secretary no later than 10 days after the first contract to which such affidavit applies is entered into.

(C) Enforcement

If a physician or practitioner signing an affidavit under subparagraph (B) knowingly and willfully submits a claim under this subchapter for any item or service provided during the 2-year period described in subparagraph (B)(ii) (or receives any reimbursement or amount described in paragraph (1)(B) for any such item or service) with respect to such affidavit—

(i) this subsection shall not apply with respect to any items and services provided by the physician or practitioner pursuant to any contract on and after the date of such submission and before the end of such period; and

(ii) no payment shall be made under this subchapter for any item or service furnished by the physician or practitioner during the period described in clause (i) (and no reimbursement or payment of any amount described in clause (i)(A) shall be made for any such item or service).
(4) Limitation on actual charge and claim submission requirement not applicable
Section 1395w-4(g) of this title shall not apply with respect to any item or service provided to a medicare beneficiary under a contract described in paragraph (1).

(5) Definitions
In this subsection:

(A) Medicare beneficiary
The term "medicare beneficiary" means an individual who is entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter.

(B) Physician
The term "physician" has the meaning given such term by paragraphs (1), (2), (3), and (4) of section 1395x(r) of this title.

(C) Practitioner
The term "practitioner" has the meaning given such term by section 1395u(b)(18)(C) of this title.

§ 1395b. Option to individuals to obtain other health insurance protection
Nothing contained in this subchapter shall be construed to preclude any State from providing, or any individual from purchasing or otherwise securing, protection against the cost of any health services.

Impact of increased investments in health research on future Medicare costs

National Bipartisan Commission on the Future of Medicare
Pub. L. 105–33, title IV, §4021, Aug. 5, 1997, 111 Stat. 347, established National Bipartisan Commission on the Future of Medicare which was directed to review and analyze long-term financial condition of medicare program, identify problems that threaten financial integrity of Federal Hospital Insurance Trust Fund and Federal Supplementary Medical Insurance Trust Fund, analyze potential solutions that will ensure both financial integrity of medicare program and provision of appropriate benefits under such program, and make recommendations for, among other things, restoring solvency of Federal Hospital Insurance Trust Fund and financial integrity of Federal Supplementary Medical Insurance Trust Fund, establishing appropriate financial structure of medicare program as a whole, and establishing appropriate balance of benefits covered and beneficiary contributions to medicare program, further provided for membership of Commission, meetings, personnel and staff matters, powers of Commission, appropriations, submission of final report to Congress not later than Mar. 1, 1999, and termination of Commission 30 days after submission of final report.

Exclusion from wages and compensation of refunds required from employers to compensate for duplication of medicare benefits by health care benefits provided by employers

"(a) Old-age, survivors, and disability, and hospital insurance programs.—For purposes of title II of the Social Security Act [subchapter II of this chapter] and chapter 51 of the Internal Revenue Code of 1986 [26 U.S.C. 3101 et seq.], the term 'wages' shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988 [section 421 of Pub. L. 100–360, formerly set out as a note below]."

"(b) Railroad retirement program.—For purposes of chapter 22 of the Internal Revenue Code of 1986 [26 U.S.C. 2201 et seq.], the term 'compenation' shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988."

"(c) Federal unemployment programs.—"

"(1) Federal unemployment tax.—For purposes of chapter 23 of the Internal Revenue Code of 1986 [26 U.S.C. 3301 et seq.], the term 'wages' shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988."

"(2) Railroad unemployment contributions.—For purposes of the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.], the term 'compensation' shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988."

"(3) Railroad unemployment repayment tax.—For purposes of chapter 23A of the Internal Revenue Code of 1986 [26 U.S.C. 3321 et seq.], the term 'rail wages'
shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

“(d) REPORTING REQUIREMENTS.—Any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988 shall be reported to the Secretary of the Treasury or his delegate and to the person to whom such refund is made in such manner as the Secretary of the Treasury or his delegate shall prescribe.

“(e) EFFECTIVE DATE.—This section shall apply with respect to refunds provided on or after January 1, 1989.”

UNIVERSITY OF WISCONSIN-BARABOO

UNITED STATES BIPARTISAN COMMISSION ON COMPREHENSIVE HEALTH CARE

Pub. L. 100–360, title IV, subtitle A, §§401–408, July 1, 1988, 102 Stat. 765–788, as amended by Pub. L. 100–647, title VIII, §841, Nov. 10, 1988, 102 Stat. 3801; Pub. L. 101–229, title VI, §6220, Dec. 19, 1989, 103 Stat. 2254, established the United States Bipartisan Commission on Comprehensive Health Care, also known as the “Claude Pepper Commission” or the “Commission”, directed Commission to examine shortcomings in health care delivery and financing mechanisms that limit or prevent access of all individuals in United States to comprehensive health care, and make specific recommendations respecting Federal programs, policies, and financing needed to assure the availability of comprehensive long-term care services for elderly and disabled, as well as comprehensive health care services for all individuals in the United States, and further provided for membership of Commission, staff and consultants, powers, authorization of appropriations, submission of findings and recommendations to Congress not later than Nov. 9, 1989, and for termination of Commission 30 days after submissions to Congress.

MAINTENANCE OF EFFORT REGARDING DUPLICATIVE BENEFITS


TASK FORCE ON LONG-TERM HEALTH CARE POLICIES

Pub. L. 99–272, title IX, §9601, Apr. 7, 1986, 100 Stat. 221, as amended by Pub. L. 100–239, title VIII, §841, Nov. 10, 1988, 102 Stat. 3326, directed Secretary of Health and Human Services, in consultation with National Association of Insurance Commissioners, to establish Task Force on Long-Term Health Care Policies to develop recommendations for long-term health care policies designed to limit marketing and agent abuse for those policies, to assure dissemination of such information to consumers as is necessary to permit informed choice in purchasing policies and to reduce purchase of unnecessary or duplicative coverage, to assure that benefits provided under policies are reasonable in relationship to premiums charged, and to promote development and availability of long-term health care policies which meet these recommendations, and further provided for composition of Task Force, definition of long-term health care policy, assurance of States’ jurisdiction, submission of recommendations to Secretary and Congress not later than 18 months after Apr. 7, 1986, and termination of Task Force 90 days after submission of recommendations.

§1395b–1. Incentives for economy while maintaining or improving quality in provision of health services

(a) Grants and contracts to develop and engage in experiments and demonstration projects

(1) The Secretary of Health and Human Services is authorized, either directly or through grants to public or private agencies, institutions, and organizations or contracts with public or private agencies, institutions, and organizations, to develop and engage in experiments and demonstration projects for the following purposes:

(A) to determine whether, and if so which, changes in methods of payment or reimbursement (other than those dealt with in section 222(a) of the Social Security Amendments of 1972) for health care and services under health programs established by this chapter, including a change to methods based on negotiated rates, would have the effect of increasing the efficiency and economy of health care and services under such programs through the creation of additional incentives to these ends without adversely affecting the quality of such services;

(B) to determine whether payments for services other than those for which payment may be made under such programs (and which are incidental to services for which payment may be made under such programs) would, in the judgment of the Secretary, result in more economical provision and more effective utilization of services for which payment may be made under such program, where such services are furnished by organizations and institutions which have the capability of providing—

(i) comprehensive health care services,

(ii) mental health care services (as defined by section 2691(c)(1) of this title),

(iii) ambulatory health care services (including surgical services provided on an outpatient basis), or

(iv) institutional services which may substitute, at lower cost, for hospital care;

(C) to determine whether the rates of payment or reimbursement for health care services, approved by a State for purposes of the administration of one or more of its laws, when utilized to determine the amount to be paid for services furnished in such State under the health programs established by this chapter, would have the effect of reducing the costs of such programs without adversely affecting the quality of such services;

(D) to determine whether payments under such programs based on a single combined rate of reimbursement or charge for the teaching activities and patient care which residents, interns, and supervising physicians render in connection with a graduate medical education program in a patient facility would result in more equitable and economical patient care arrangements without adversely affecting the quality of such care;

(E) to determine whether coverage of intermediate care facility services and homemaker services would provide suitable alternatives to

1See References in Text note below.
posthospital benefits presently provided under this subchapter; such experiment and demonstration projects may include:

(i) counting each day of care in an intermediate care facility as one day of care in a skilled nursing facility, if such care was for a condition for which the individual was hospitalized,

(ii) covering the services of homemakers for a maximum of 21 days, if institutional services are not medically appropriate,

(iii) determining whether such coverage would reduce long-range costs by reducing the lengths of stay in hospitals and skilled nursing facilities, and

(iv) establishing alternative eligibility requirements and determining the probable cost of applying each alternative, if the project suggests that such extension of coverage would be desirable;

(F) to determine whether, and if so which type of, fixed price or performance incentive contract would have the effect of inducing to the greatest degree effective, efficient, and economical performance of agencies and organizations making payment under agreements or contracts with the Secretary for health care and services under health programs established by this chapter;

(G) to determine under what circumstances payment for services would be appropriate and the most appropriate, equitable, and non-inflationary methods and amounts of reimbursement under health care programs established by this chapter for services, which are performed independently by an assistant to a physician, including a nurse practitioner (whether or not performed in the office of or at a place at which such physician is physically present), and—

(i) which such assistant is legally authorized to perform by the State or political subdivision wherein such services are performed, and

(ii) for which such physician assumes full legal and ethical responsibility as to the necessity, propriety, and quality thereof;

(H) to establish an experimental program to provide day-care services, which consist of personal care, supervision, and services as the Secretary shall by regulation prescribe, for individuals eligible to enroll in the supplemental medical insurance program established under part B of this subchapter and subchapter XIX of this chapter, in day-care centers which meet such standards as the Secretary shall by regulation establish;

(I) to determine whether the services of clinical psychologists may be made more generally available to persons eligible for services under this subchapter and subchapter XIX of this chapter in a manner consistent with quality of care and equitable and efficient administration;

(J) to develop or demonstrate improved methods for the investigation and prosecution of fraud in the provision of care or services under the health programs established by this chapter; and

(K) to determine whether the use of competitive bidding in the awarding of contracts, or the use of other methods of reimbursement, under part B of subchapter XI of this chapter would be efficient and effective methods of furthering the purposes of that part.

For purposes of this subsection, "health programs established by this chapter" means the program established by this subchapter and a program established by a plan of a State approved under subchapter XIX of this chapter.

(2) Grants, payments under contracts, and other expenditures made for experiments and demonstration projects under paragraph (1) shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1395f of this title) and the Federal Supplementary Medical Insurance Trust Fund (established by section 1395f of this title) and from funds appropriated under subchapter XIX of this chapter. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. With respect to any such grant, payment, or other expenditure, the amount to be paid from each of such trust funds (and from funds appropriated under such subchapter XIX of this chapter) shall be determined by the Secretary, giving due regard to the purposes of the experiment or project involved.

(b) Waiver of certain payment or reimbursement requirements; advice and recommendations of specialists preceding experiments and demonstration projects

In the case of any experiment or demonstration project under subsection (a) of this section, the Secretary may waive compliance with the requirements of this subchapter and subchapter XIX of this chapter insofar as such requirements relate to reimbursement or payment on the basis of reasonable cost, or (in the case of physicians) on the basis of reasonable charge, or to reimbursement or payment only for such services or items as may be specified in the experiment; and costs incurred in such experiment or demonstration project in excess of the costs which would otherwise be reimbursed or paid under such subchapters may be reimbursed or paid to the extent that such waiver applies to them (with such excess being borne by the Secretary). No experiment or demonstration project shall be engaged in or developed under subsection (a) of this section until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed experiment or demonstration project as to the soundness of its objectives, the possibilities of securing productive results, the adequacy of resources to conduct the proposed experiment or demonstration project, and its relationship to other similar experiments and projects already completed or in process.


Codification

Section is comprised of subsecs. (a) and (b) of section 402 of Pub. L. 90–248. Subsec. (c) of such section 402 amended section 1395(b) of this title.

Section was enacted as a part of the Social Security Amendments of 1967, and not as a part of the Social Security Act which comprises this chapter.

Amendments


1972—Subsec. (a)(1). Pub. L. 92–603, §§221(b)(1), 278(b)(2), substituted provisions spelling out in detail the purposes for which experiments and demonstration projects may be carried out for a general statement setting out the increase in efficiency and economy of health services as the purpose of experiments and demonstration projects selected by the Secretary, inserted references to demonstration projects, and inserted references to the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund.

Subsec. (b). Pub. L. 92–663, §222(b)(2), inserted references to demonstration projects and inserted “…or to reimbursement or payment only for such services or items as may be specified in the experiment”.

Change of Name

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in subsec. (a)(1) pursuant to section 309(b) Pub. L. 96–88, which is classified to section 3509(b) of Title 20, Education.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–369 effective July 18, 1984, see section 2331(c) of Pub. L. 98–369, set out as a note under section 1310 of this title.

Effective Date of 1982 Amendment

Amendment by Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 143 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

Effective Date of 1981 Amendment, Savings, and Transitional Provisions

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

Community-Based Care Transitions Program


“(a) IN GENERAL.—The Secretary shall establish a Community-Based Care Transitions Program under which the Secretary provides funding to eligible entities that furnish improved care transition services to high-risk Medicare beneficiaries.

“(b) DEFINITIONS.—In this section:

“(1) ELIGIBLE ENTITY.—The term ‘eligible entity’ means the following:

“(A) A subsection (d) hospital (as defined in section 1889(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)) identified by the Secretary as having a high readmission rate, such as under section 1886(g) of the Social Security Act, as added by section 3625.

“(B) An appropriate community-based organization that provides care transition services under this section across a continuum of care through arrangements with subsection (d) hospitals (as so defined) to furnish the services described in subsection (c)(2)(B)(i) and whose governing body includes sufficient representation of multiple health care stakeholders (including consumers).

“(2) HIGH-RISK MEDICARE BENEFICIARY.—The term ‘high-risk Medicare beneficiary’ means a Medicare beneficiary who has attained a minimum hierarchical condition category score, as determined by the Secretary, based on a diagnosis of multiple chronic conditions or other risk factors associated with a hospital readmission or substandard transition into post-hospitalization care, which may include 1 or more of the following:

“(A) Cognitive impairment.

“(B) Depression.

“(C) A history of multiple readmissions.

“(D) Any other chronic disease or risk factor as determined by the Secretary.


“(4) PROGRAM.—The term ‘program’ means the program conducted under this section.

“(5) READMISSION.—The term ‘readmission’ has the meaning given such term in section 1886(d)(5)(E) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(E)), as added by section 3625.

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

“(c) REQUIREMENTS.—

“(1) DURATION.—

“(A) IN GENERAL.—The program shall be conducted for a 5-year period, beginning January 1, 2011.

“(B) EXPANSION.—The Secretary may expand the duration and the scope of the program, to the extent determined appropriate by the Secretary, if the Secretary determines (and the Chief Actuary of the Centers for Medicare & Medicaid Services, with respect to spending under this title [title III of Pub. L. 111–148, see Tables for classification], certifies) that such expansion would reduce spending under this title without reducing quality.

“(2) APPLICATION; PARTICIPATION.—

“(A) IN GENERAL.—

“(i) APPLICATION.—An eligible entity seeking to participate in the program shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

“(ii) PARTNERSHIP.—If an eligible entity is a hospital, such hospital shall enter into a partner-
ship with a community-based organization to participate in the program.

"(B) INTERVENTION PROPOSAL.—Subject to subsection (C), an application submitted under paragraph (A)(i) shall include a detailed proposal for at least 1 care transition intervention, which may include the following:

"(i) Initiating care transition services for a high-risk Medicare beneficiary not later than 24 hours prior to the discharge of the beneficiary from the eligible entity.

"(ii) Arranging timely post-discharge follow-up services to the high-risk Medicare beneficiary to provide the beneficiary (and, as appropriate, the primary caregiver of the beneficiary) with information regarding responding to symptoms that may indicate additional health problems or a deteriorating condition.

"(iii) Conducting comprehensive medication review and management (including, if appropriate, counseling and self-management support).

"(C) LIMITATION.—A care transition intervention proposed under paragraph (B) may not include payment for services required under the discharge planning process described in section 1861(ee) of the Social Security Act (42 U.S.C. 1395xeee).

"(3) SELECTION.—In selecting eligible entities to participate in the program, the Secretary shall give priority to eligible entities that:

"(A) Participate in a program administered by the Administration on Aging to provide concurrent care transitions interventions with multiple hospital patients and practitioners; or

"(B) Provide services to medically underserved populations, small communities, and rural areas.

"(d) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary may implement the provisions of this section by program instruction or otherwise.

"(e) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act (42 U.S.C. 1301 et seq., 1395 et seq.) as may be necessary to carry out the program.

"(f) PROVISION FOR PAYMENT FOR SERVICES TO MEDICARE BENEFICIARIES.—For purposes of carrying out this section, the Secretary of Health and Human Services shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395l) and the Federal Supplementary Medical Insurance Trust Fund under section 1857 of the Social Security Act (42 U.S.C. 1395kk), to the Centers for Medicare & Medicaid Services Program Management Account for the period of fiscal years 2011 through 2015. Amounts transferred under the preceding sentence shall remain available until expended.

Pilot Testing Pay-for-Performance Programs for Certain Medicare Providers


"(a) In General.—Not later than January 1, 2016, the Secretary of Health and Human Services (in this section referred to as the Secretary) shall, for each provider described in subsection (b), conduct a separate pilot program under title XVIII of the Social Security Act (42 U.S.C. 1395l et seq.) to test the implementation of a value-based purchasing program for payments under such title for the provision of services tocovered beneficiaries.

"(b) Providers Described.—The providers described in this paragraph are the following:

"(1) Psychiatric hospitals (as described in clause (i) of section 1866(d)(1)(B) of such Act (42 U.S.C. 1395w(d)(1)(B)) and psychiatric units (as described in the matter following clause (v) of such section).

"(2) Long-term care hospitals (as described in clause (iv) of such section).

"(3) Rehabilitation hospitals (as described in clause (ii) of such section).

"(4) FFS-exempt cancer hospitals (as described in clause (v) of such section).

"(5) Hospice programs (as defined in section 1861(dd)(2) of such Act (42 U.S.C. 1395x(dd)(2))).

"(c) Waiver Authority.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act (42 U.S.C. 1301 et seq., 1395 et seq.) as may be necessary solely for purposes of carrying out the pilot programs under this section.

"(d) No Additional Program Expenditures.—Payments under this section and under the separate pilot programs for value based purchasing (as described in subsection (a)) for each provider type described in paragraphs (1) through (5) of subsection (b) for applicable items and services under title XVIII of the Social Security Act for a year shall be established in a manner that does not result in spending more under such each value based purchasing program for such year than would otherwise be expended for such provider type for such year if the pilot programs were not implemented, as estimated by the Secretary.

"(e) Expansion of Pilot Program.—The Secretary may, at any point after January 1, 2018, expand the duration and scope of a pilot program conducted under this subsection, to the extent determined appropriate by the Secretary, if

"(1) the Secretary determines that such expansion is expected to—

"(A) reduce spending under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) without reducing the quality of care; or

"(B) improve the quality of care and reduce spending;

"(2) the Chief Actuary of the Centers for Medicare & Medicaid Services certifies that such expansion would reduce program spending under such title XVIII; and

"(3) the Secretary determines that such expansion would not deny or limit the coverage or provision of benefits under such title XIII (XVIII) for Medicare beneficiaries.

Medicare Medical Home Demonstration Project


"(a) In General.—The Secretary of Health and Human Services (in this section referred to as the Secretary) shall establish under title XVIII of the Social Security Act (this subchapter) a medical home demonstration project (in this section referred to as the project) to redesign the health care delivery system to provide targeted, accessible, continuous and coordinated, family-centered care to high-need populations and under which

"(1) care management fees are paid to persons performing services as personal physicians; and

"(2) incentive payments are paid to physicians participating in practices that provide services as a medical home under subsection (d).

For purposes of this subsection, the term 'high-need population' means individuals with multiple chronic illnesses that require regular medical monitoring, advising, or treatment.

"(b) Details.—

"(1) DURATION; SCOPE.—Subject to paragraph (3), the project shall operate during a period of three years and shall include urban, rural, and underserved areas in a total of no more than 8 states.

"(2) Encouraging Participation of Small Physicians.—The project shall be designed to include the participation of physicians in practices
with fewer than three full-time equivalent physicians, as well as physicians in larger practices particularly in rural and underserved areas.

"(3) EXPANSION.—The Secretary may expand the duration and the scope of the project under paragraph (1), to an extent determined appropriate by the Secretary, if the Secretary determines that such expansion will result in any of the following conditions being met:

"(A) The expansion of the project is expected to improve the quality of patient care without increasing spending under the Medicare program (not taking into account amounts available under subsection (g)).

"(B) The expansion of the project is expected to reduce spending under the Medicare program (not taking into account amounts available under subsection (g)) without reducing the quality of patient care.

"(c) PERSONAL PHYSICIAN DEFINED.—

"(1) IN GENERAL.—For purposes of this section, the term ‘personal physician’ means a physician (as defined in section 1861(o)(1) of the Social Security Act (42 U.S.C. 1395w–4)) who—

"(A) meets the requirements described in paragraph (2); and

"(B) performs the services described in paragraph (3).

Nothing in this paragraph shall be construed as preventing such a physician from being a specialist or subspecialist for an individual requiring ongoing care for a specific chronic condition or multiple chronic conditions (such as severe asthma, complex diabetes, cardiovascular disease, rheumatoid disorder) or for an individual with a prolonged illness.

"(2) REQUIREMENTS.—The requirements described in this paragraph for a personal physician are as follows:

"(A) The physician is a board certified physician who provides first contact and continuous care for individuals under the physician’s care.

"(B) The physician has the staff and resources to manage the comprehensive and coordinated health care of each such individual.

"(3) SERVICES PERFORMED.—A personal physician shall perform or provide for the performance of at least the following services:

"(A) Advocates for and provides ongoing support, oversight, and guidance to implement a plan of care that provides an integrated, coherent, cross-discipline plan for ongoing medical care developed in partnership with patients and including all other physicians furnishing care to the patient involved and other appropriate medical personnel or agencies (such as home health agencies).

"(B) Uses evidence-based medicine and clinical decision support tools to guide decision-making at the point-of-care based on patient-specific factors.

"(C) Uses health information technology, that may include remote monitoring and patient registries, to monitor and track the health status of patients and to provide patients with enhanced and convenient access to health care services.

"(D) Encourages patients to engage in the management of their own health through education and support systems.

"(d) MEDICAL HOME DEFINED.—For purposes of this section, the term ‘medical home’ means a physician practice that—

"(1) is in charge of targeting beneficiaries for participation in the project; and

"(2) is responsible for—

"(A) providing safe and secure technology to promote patient access to personal health information; and developing a health assessment tool for the individuals targeted; and

"(C) providing training programs for personnel involved in the coordination of care.

"(e) PAYMENT MECHANISMS.—

"(1) PERSONAL PHYSICIAN CARE MANAGEMENT FEE.—Under the project, the Secretary shall provide for payment under section 1849 of the Social Security Act (42 U.S.C. 1395w–4) of a care management fee to personal physicians providing care management under the project. Under such methodology, 80 percent of the reductions in expenditures under title XVIII of the Social Security Act (this subchapter) resulting from participation of individuals who are attributable to the medical home (as reduced by the total care management fees paid to the medical home under the project) shall be paid to the medical home. The amount of such reductions in expenditures shall be determined by using assumptions with respect to reductions in the occurrence of health complications, hospitalization rates, medical errors, and adverse drug reactions.

"(2) MEDICAL HOME SHARING IN SAVINGS.—The Secretary shall provide for payment under the project of a medical home based on the payment methodology applied to physician group practices under section 1866A of the Social Security Act (42 U.S.C. 1395cc–1). Under such methodology, 80 percent of the reductions in expenditures under title XVIII of the Social Security Act (this subchapter) resulting from participation of individuals that are attributable to the medical home (as reduced by the total care management fees paid to the medical home under the project) shall be paid to the medical home. The amount of such reductions in expenditures shall be determined by using assumptions with respect to reductions in the occurrence of health complications, hospitalization rates, medical errors, and adverse drug reactions.

"(3) SOURCE.—Payments paid under the project shall be made from the Federal Supplementary Medical Insurance Trust Fund under section 1841 of the Social Security Act (42 U.S.C. 1395l).

"(f) EVALUATIONS AND REPORTS.—

"(1) ANNUAL INTERIM EVALUATIONS AND REPORTS.—For each year of the project, the Secretary shall provide for an evaluation of each project and shall submit to Congress, by a date specified by the Secretary, a report on the project and on the evaluation of the project for each such year.

"(2) FINAL EVALUATION AND REPORT.—The Secretary shall provide for an evaluation of the project and shall submit to Congress, not later than one year after completion of the project, a report on the project and on the evaluation of the project.

"(g) FUNDING FROM SMI TRUST FUND.—There shall be available, from the Federal Supplementary Medical Insurance Trust Fund (under section 1841 of the Social Security Act (42 U.S.C. 1395l)), the amount of $100,000,000 to carry out the project.

"(h) APPLICATION.—Chapter 35 of title 44, United States Code, shall not apply to the conduct of the project.

Post-Acute Care Payment Reform Demonstration Program Pub. L. 109–171, title V, § 5008, Feb. 8, 2006, 120 Stat. 36, provided that:

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—By not later than January 1, 2008, the Secretary of Health and Human Services (in this section referred to as the ‘Secretary’) shall establish a demonstration program for purposes of understanding costs and outcomes across different post-acute care sites. Under such program, with respect to diagnoses specified by the Secretary, an individual who receives treatment from a provider for such a diagnosis shall receive a single comprehensive assessment on the date of discharge from a subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) of the needs of the patient and the clinical characteristics of the diagnosis to determine the appropriate placement of such patient in a post-acute care site. The Secretary shall use a standardized patient assessment instrument across all post-acute care sites to measure functional status and other factors during the treatment and at discharge from each provider. Participants in the program shall provide information on the fixed and variable costs for each individual. An additional comprehensive assessment shall be provided at the end of the episode of care.

"(2) NUMBER OF SITES.—The Secretary shall conduct the demonstration program under this section with sufficient numbers to determine statistically reliable results.
“(3) DURATION.—The Secretary shall conduct the demonstration program under this section for a 3-year period.

(4) CONSULTATION.—In carrying out the demonstration program under this section, the Secretary shall consult with private sector and non-profit groups that are undertaking similar efforts to improve quality and reduce avoidable hospitalizations for chronically ill patients.

(5) IN GENERAL.—The Secretary shall provide—

(A) to assess each eligible beneficiary for conditions other than chronic conditions, such as impaired cognitive ability and co-morbidities, for the purposes of developing care management requirements;

(B) to serve as the primary contact of eligible beneficiaries in accessing items and services for which payment may be made under the Medicare program;

(C) to establish and maintain health care information system for such beneficiaries;

(D) to promote continuity of care across providers and settings;

(E) to use evidence-based guidelines and meet such clinical quality and outcome measures as the Secretary shall require;

(F) to promote self-care through the provision of patient education and support for patients or, where appropriate, family caregivers;

(G) when appropriate, to refer such beneficiaries to community service organizations; and

(H) to meet such other complex care management requirements as the Secretary may specify.

The guidelines and measures required under subparagraph (E) shall be designed to take into account beneficiaries with multiple chronic conditions.

(6) PAYMENT METHODOLOGY.—Under the demonstration program under this section the Secretary shall pay a per beneficiary amount to each participating physician who meets or exceeds specific performance standards established by the Secretary with respect to the clinical quality and outcome measures reported under subsection (b)(1)(B). Such amount may vary based on different levels of performance or improvement.

(7) ADMINISTRATION.—

(A) USE OF QUALITY IMPROVEMENT ORGANIZATIONS.—The Secretary shall contract with quality improvement organizations or such other entities as the Secretary deems appropriate to enroll physicians and evaluate their performance under the demonstration program under this section.

(2) TECHNICAL ASSISTANCE.—The Secretary shall require in such contracts that the contractor be responsible for technical assistance and education as needed to physicians enrolled in the demonstration program under this section for the purpose of aiding their adoption of health information technology, meeting practice standards, and implementing required clinical and outcomes measures.

(8) FUNDING.—

(A) IN GENERAL.—The Secretary shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of the Social Security Act (42 U.S.C. 1395 et seq.) of such funds as are necessary for the costs of carrying out the demonstration program under this section.

(B) BUDGET NEUTRALITY.—In conducting the demonstration program under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary estimates would have been paid if the demonstration program under this section was not implemented.

(9) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act (42 U.S.C. 1301 et seq.; 42 U.S.C. 1395 et seq.) as may be necessary for the purpose of carrying out the demonstration program under this section.

(10) REPORT.—Not later than 12 months after the date of completion of the demonstration program under this section, the Secretary shall submit to Congress a report on such program, together with recommendations for such legislation and administrative action as the Secretary determines to be appropriate.

(11) DEFINITIONS.—In this section—

(A) ELIGIBLE BENEFICIARY.—The term 'eligible beneficiary' means any individual who—
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“(A) is entitled to benefits under part A and enrolled for benefits under part B of title XVIII of the Social Security Act [parts A and B of this subchapter] and is not enrolled in a plan under part C of such title [part C of this subchapter]; and

“(B) has one or more chronic medical conditions specified by the Secretary (one of which may be cognitive impairment).

“(2) Health Information Technology.—The term ‘health information technology’ means email communication, clinical alerts and reminders, and other information technology that meets such functionality, interoperability, and other standards as prescribed by the Secretary.”

Demonstration Project for Disease Management for Severely Chronically Ill Medicare Beneficiaries

Pub. L. 106–554, §1(a)(6) [title I, §121], Dec. 21, 2000, 114 Stat. 2763, 2763A–474, provided that the Secretary of Health and Human Services was to conduct a demonstration project under this section to demonstrate the impact on costs and health outcomes of applying disease management to Medicare beneficiaries with diabetes, advanced-stage congestive heart failure, diabetes, or coronary heart disease, that the project was to last for not longer than 3 years, and that the Secretary was to submit a final report to Congress not later than 6 months after the project’s completion.

Cancer Prevention and Treatment Demonstration for Ethnically and Racially Minorities

Pub. L. 106–554, §1(a)(6) [title I, §122], Dec. 21, 2000, 114 Stat. 2763, 2763A–476, provided that:

“(a) Demonstration.—

“(1) In General.—The Secretary of Health and Human Services (in this section referred to as the ‘Secretary’) shall conduct demonstration projects (in this section referred to as ‘demonstration projects’) for the purpose of developing models and evaluating methods that—

“(A) improve the quality of items and services provided to target individuals in order to facilitate reduced disparities in early detection and treatment of cancer;

“(B) improve clinical outcomes, satisfaction, quality of life, and appropriate use of Medicare-covered services and referral patterns among those target individuals with cancer;

“(C) eliminate disparities in the rate of preventive cancer screening measures, such as pap smears and prostate cancer screenings, among target individuals; and

“(D) promote collaboration with community-based organizations to ensure cultural competency of health care professionals and linguistic access for persons with limited English proficiency.

“(2) Target Individual Defined.—In this section, the term ‘target individual’ means an individual of a racial and ethnic minority group, as defined by section 1707 of the Public Health Service Act [section 330u–6 of this title], who is entitled to benefits under part A, and enrolled under part B, of title XVIII of the Social Security Act [parts A and B of this subchapter].

“(b) Program Design.—

“(1) Initial Design.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Secretary shall evaluate best practices in the private sector, community programs, and academic research of methods that reduce disparities among individuals of racial and ethnic minority groups in the prevention and treatment of cancer and shall design the demonstration projects based on such evaluation.

“(2) Number and Project Areas.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall implement at least nine demonstration projects, including the following:

“(A) Two projects for each of the four following major racial and ethnic minority groups:

“(i) American Indians, including Alaska Natives, Eskimos, and Aleuts.

“(ii) Asian Americans and Pacific Islanders.

“(iii) Blacks.

“(iv) Hispanics.

“The two projects must target different ethnic subpopulations.

“(B) One project within the Pacific Islands.

“(C) At least one project each in a rural area and inner-city area.

“(3) Expansion of Projects: Implementation of Demonstration Project Results.—If the initial report under subsection (c) contains an evaluation that demonstration projects—

“(A) reduce expenditures under the Medicare program under title XVIII of the Social Security Act [this subchapter]; or

“(B) do not increase expenditures under the Medicare program and reduce racial and ethnic health disparities in the quality of health care services provided to target individuals and increase satisfaction of beneficiaries and health care providers; the Secretary shall continue the existing demonstration projects and may expand the number of demonstration projects.

“(c) Report to Congress.—

“(1) In General.—Not later than 2 years after the date the Secretary implements the initial demonstration projects, and biannually thereafter, the Secretary shall submit to Congress a report regarding the demonstration projects.

“(2) Contents of Report.—Each report under paragraph (1) shall include the following:

“(A) A description of the demonstration projects.

“(B) An evaluation of—

“(i) the cost-effectiveness of the demonstration projects;

“(ii) the quality of the health care services provided to target individuals under the demonstration projects; and

“(iii) beneficiary and health care provider satisfaction under the demonstration projects.

“(C) Any other information regarding the demonstration projects that the Secretary determines to be appropriate.

“(d) Waiver Authority.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act [this subchapter] to such extent and for such period as the Secretary determines is necessary to conduct demonstration projects.

“(e) Funding.—

“(1) Demonstration Projects.—

“(A) State Projects.—Except as provided in subparagraph (B), the Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund and the Federal Supplementary [Medical] Insurance Trust Fund under title XVIII of the Social Security Act [this subchapter], in such proportions as the Secretary determines to be appropriate, of such funds as are necessary for the costs of carrying out the demonstration projects.

“(B) Territory Projects.—In the case of a demonstration project described in subsection (b)(2)(B), amounts shall be available only as provided in any Federal law making appropriations for the territories.

“(2) Limitation.—In conducting demonstration projects, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the sum of the amount which the Secretary would have paid under the program for the prevention and treatment of cancer if the demonstration projects were not implemented, plus $25,000,000.”

Lifestyle Modification Program Demonstration


“(a) In General.—The Secretary of Health and Human Services shall carry out the demonstration
project known as the Lifestyle Modification Program Demonstration, as described in the Health Care Financing Administration Memorandum of Understanding entered into on November 13, 2000, and as subsequently modified, (in this section referred to as the 'project') in accordance with the following requirements:

(1) The project shall include no fewer than 1,800 medicare beneficiaries who complete under the project the entire course of treatment under the Lifestyle Modification Program.

(2) The project shall be conducted over a course of 4 years.

(b) Study on Cost-Effectiveness.—

(1) Study.—The Secretary shall conduct a study on the cost-effectiveness of the Lifestyle Modification Program as conducted under the project. In determining whether such Program is cost-effective, the Secretary shall determine (using a control group under a matched paired experimental design) whether expenditures incurred for medicare beneficiaries enrolled under the project exceed expenditures for the control group of medicare beneficiaries with similar health conditions who are not enrolled under the project.

(2) Reports.—

(A) Initial Report.—Not later than 1 year after the date on which 900 medicare beneficiaries have completed the entire course of treatment under the Lifestyle Modification Program under the project, the Secretary shall submit to Congress an initial report on the study conducted under paragraph (1).

(B) Final Report.—Not later than 1 year after the date on which 1,800 medicare beneficiaries have completed the entire course of treatment under such Program under the project, the Secretary shall submit to Congress a final report on the study conducted under paragraph (1).

(c) Medicare Coordinated Care Demonstration Project


(a) Demonstration Projects.—

(1) In General.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall conduct demonstration projects for the purpose of evaluating methods, such as case management and other models of coordinated care, that—

(A) improve the quality of items and services provided to target individuals; and

(B) reduce expenditures under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for items and services provided to target individuals.

(2) Target Individual Defined.—In this section, the term 'target individual' means an individual that has a chronic illness, as defined and identified by the Secretary, and is enrolled under the fee-for-service program under parts A and B of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.; 1395d et seq.).

(b) Program Design.—

(1) Initial Design.—The Secretary shall evaluate best practices in the private sector of methods of coordinated care for a period of 1 year and design the demonstration project based on such evaluation.

(2) Number and Project Areas.—Not later than 2 years after the date of enactment of this Act [Aug. 5, 1997], the Secretary shall implement at least 9 demonstration projects, including—

(A) 5 projects in urban areas;

(B) 3 projects in rural areas; and

(C) 1 project within the District of Columbia which is operated by a nonprofit academic medical center that maintains a National Cancer Institute certified comprehensive cancer center.

(3) Expansion of Projects; Implementation of Demonstration Project Results.—

(A) Expansion of Projects.—If the initial report under subsection (c) contains an evaluation that demonstration projects—

(i) reduce expenditures under the medicare program; or

(ii) do not increase expenditures under the medicare program and increase the quality of health care services provided to target individuals and satisfaction of beneficiaries and health care providers;

the Secretary shall continue the existing demonstration projects and may expand the number of demonstration projects.

(B) Implementation of Demonstration Project Results.—If a report under subsection (c) contains an evaluation as described in subparagraph (A), the Secretary may issue regulations to implement, on a permanent basis, the components of the demonstration project that are beneficial to the medicare program.

(c) Report to Congress.—

(1) In General.—Not later than 2 years after the Secretary implements the initial demonstration projects under this section, and biannually thereafter, the Secretary shall submit to Congress a report regarding the demonstration projects conducted under this section.

(2) Contents of Report.—The report in paragraph (1) shall include the following:

(A) A description of the demonstration projects conducted under this section.

(B) An evaluation of—

(i) the cost-effectiveness of the demonstration projects;

(ii) the quality of the health care services provided to target individuals under the demonstration projects; and

(iii) beneficiary and health care provider satisfaction under the demonstration project.

(C) Any other information regarding the demonstration projects conducted under this section.

(d) Waiver Authority.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) to such extent and for such period as the Secretary determines is necessary to conduct demonstration projects.

(e) Funding.—

(1) Demonstration Projects.—

(A) In General.—

(I) State Projects.—Except as provided in clause (ii), the Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund and the Federal Supplementary [Medical] Insurance Trust Fund under title XVIII of the Social Security Act (42 U.S.C. 1395l, 1395t), in such proportions as the Secretary determines to be appropriate, of such funds as are necessary for the costs of carrying out the demonstration projects under this section.

(ii) Cancer Hospital.—In the case of the project described in subsection (b)(2)(C), the Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Insurance Trust Fund [Medical] under title XVIII of the Social Security Act (42 U.S.C. 1395l, 1395t), in such proportions as the Secretary determines to be appropriate, of such funds as are necessary to cover costs of the project, including costs for information infrastructure and recurring costs of case management services, flexible benefits, and program management.

(B) Limitation.—In conducting the demonstration project under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary would have paid if the demonstration projects under this section were not implemented.

(2) Evaluation and Report.—There are authorized to be appropriated such sums as are necessary for the
(a) PURPOSE AND AUTHORIZATION.—

"(1) IN GENERAL.—Not later than 9 months after the date of enactment of this section [Aug. 5, 1997], the Secretary of Health and Human Services shall provide for a demonstration project described in paragraph (2). The Secretary shall make an award for such project not later than 3 months after the date of the enactment of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 [Nov. 29, 1999]. The Secretary shall accept the proposal adjudged to be the best technical proposal as of such date of enactment without the need for additional review or resubmission of proposals.

"(2) DESCRIPTION OF PROJECT.—

"(A) In general.—The demonstration project described in this paragraph is a single demonstration project to use eligible health care provider telemedicine networks to apply high-capacity computing and advanced networks to improve primary care (and prevent health care complications) to Medicare beneficiaries with diabetes mellitus who are residents of medically underserved rural areas or residents of medically underserved inner-city areas that qualify as Federally designated medically underserved areas or health professional shortage areas at the time of enrollment of beneficiaries under the project.

"(B) MEDICALLY UNE rSERVED DEFINED.—As used in this paragraph, the term ‘medically underserved’ has the meaning given such term in section 330(b)(3) of the Public Health Service Act (42 U.S.C. 254b(b)(3)).

"(C) WAIVER.—The Secretary shall waive such provisions of title XVIII of the Social Security Act [this subchapter] as may be necessary to provide for payment for services under the project in accordance with subsection (d).

"(4) DURATION OF PROJECT.—The project shall be conducted over a 8-year period.

(b) OBJECTIVES OF PROJECT.—The objectives of the project include the following:

"(1) Improving patient access to and compliance with appropriate care guidelines for individuals with diabetes mellitus through direct telecommunications link with information networks in order to improve patient quality-of-life and reduce overall health care costs.

"(2) Developing a curriculum to train health professionals (particularly primary care health professionals) in the use of medical informatics and telecommunications.

"(3) Demonstrating the application of advanced technologies, such as video-conferencing from a patient’s home, remote monitoring of a patient’s medical condition, interventional informatics, and applying individualized, automated care guidelines, to assist primary care providers in assisting patients with diabetes in a home setting.

"(4) Application of medical informatics to residents with limited English language skills.

"(5) Developing standards in the application of telemedicine and medical informatics.

"(6) Developing a model for the cost-effective delivery of primary and related care both in a managed care environment and in a fee-for-service environment.

"(c) ELIGIBLE HEALTH CARE PROVIDER TELEMEDICINE NETWORK DEFINED.—For purposes of this section, the term ‘eligible health care provider telemedicine network’ means a consortium that includes at least one
tertiary care hospital (but no more than 2 such hospitals), at least one medical school, no more than 4 facilities in rural or urban areas, and at least one regional telecommunications provider and that meets the following requirements:

"(1) The consortium is located in an area with a high concentration of medical schools and tertiary care facilities in the United States and has appropriate arrangements (within or outside the consortium) with such schools and facilities, universities, and telecommunications providers, in order to conduct the project.

"(2) The consortium submits to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a description of the use to which such consortium would apply any amounts received under the project.

"(3) The consortium guarantees that it will be responsible for payment for all costs of the project that are not paid under this section and that the maximum amount of payment that may be made to the consortium under this section shall not exceed the amount specified in subsection (d)(4).

"(d) COVERAGE AS MEDICARE PART B SERVICES.—

"(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, services related to the treatment or management of (including prevention of complications from) diabetes for Medicare beneficiaries furnished under the project shall be covered under part B of title XVIII of the Social Security Act [part B of this subchapter].

"(2) PAYMENTS.—

"(A) IN GENERAL.—Subject to paragraph (3), payment for such services shall be made for the costs that are related to the provision of such services. In computing such costs, the Secretary shall include costs described in subparagraph (B), but may not include costs described in subparagraph (C).

"(B) COSTS THAT MAY BE INCLUDED.—The costs described in this subparagraph are the permissible costs (as recognized by the Secretary) for the following:

"(i) The acquisition of telemedicine equipment for use in patients’ homes or at sites providing health care to patients located in medically underserved areas.

"(ii) Curriculum development and training of health professionals in medical informatics and telemedicine.

"(iii) Payment of telecommunications costs (including salaries and maintenance of equipment), including costs of telecommunications between patients’ homes and an eligible network and between the network and other entities under the arrangements described in subsection (c)(1).

"(iv) Payments to practitioners and providers under the medicare programs.

"(C) COSTS NOT INCLUDED.—The costs described in this subparagraph are costs for any of the following:

"(i) The purchase or installation of transmission equipment (other than such equipment used by health professionals for activities related to the project).

"(ii) The establishment or operation of a telecommunications common carrier network.

"(iii) Construction (except for minor renovations related to the installation of reimbursable equipment) or the acquisition or building of real property.

"(3) LIMITATION.—The total amount of the payments that may be made under this section shall not exceed $90,000,000 for the period of the project (described in subsection (a)(4)).

"(4) COST-SHARING.—The project may not impose cost-sharing on a Medicare beneficiary for the receipt of services under the project. Project costs will cover all costs to Medicare beneficiaries and providers related to participation in the project.
“(e) REPORTS.—The Secretary shall submit to the Committee on Ways and Means and the Committee on Energy and Commerce [now Committee on Energy and Commerce] of the House of Representatives and the Committee on Finance of the Senate interim reports on the project and a final report on the project within 6 months after the conclusion of the project. The final report shall include an evaluation of the impact of the use of telemedicine and medical informatics on improving access of Medicare beneficiaries to health care services, on reducing the costs of such services, and on improving the quality of life of such beneficiaries.

“(f) DEFINITIONS.—For purposes of this section:

“(1) INTERVENTIONAL INFORMATICS.—The term ‘interventional informatics’ means using information technology and virtual reality technology to intervene in patient care.

“(2) MEDICAL INFORMATICS.—The term ‘medical informatics’ means the storage, retrieval, and use of biomedical and related information for problem solving and decision-making through computing and communications technologies.

“(3) PROJECT.—The term ‘project’ means the demonstration project under this section.’’

CLARIFICATION OF SECRETARIAL WAIVER AUTHORITY FOR RURAL HOSPITAL DEMONSTRATIONS

Pub. L. 101-508, title IV, §4008(1)(1), Nov. 5, 1990, 104 Stat. 1388-50, as amended by Pub. L. 103-66, title XIII, §13507, Aug. 10, 1993, 107 Stat. 579, provided that: “The Secretary of Health and Human Services is authorized to waive such provisions of title XVIII of the Social Security Act [this subchapter] as are necessary to conduct any demonstration project for limited-service rural hospitals with respect to which the Secretary has entered into an agreement before the date of the enactment of the Omnibus Budget Reconciliation Act of 1989 [Dec. 19, 1989]. The Secretary shall continue any such demonstration project until at least July 1, 1997.’’

VOLUNTEER SENIOR AIDES DEMONSTRATION PROJECTS FOR BASY ASSISTANCE AND SUPPORT TO FAMILIES WITH DISABLED OR ILL CHILDREN


“(a) NUMBER OF PROJECTS.—In order to determine whether, and if so, the extent to which, the use of volunteer senior aides to provide basic medical assistance and support to families with moderately or severely disabled or chronically ill children contributes to reducing the costs of care for children, not more than 10 communities may conduct demonstration projects under this section.

“(b) DUTIES OF THE SECRETARY.—

“(1) CONSIDERATION OF APPLICATIONS.—The Secretary of Health and Human Services (in this section referred to as the ‘Secretary’) shall consider all applications received from communities desiring to conduct demonstration projects under this section.

“(2) APPROVAL OF CERTAIN APPLICATIONS.—The Secretary shall approve not more than 10 applications to conduct projects which appear likely to contribute significantly to the achievement of the purpose of this section.

“(3) GRANTS.—The Secretary shall make grants to each community the application of which to conduct a demonstration project under this section is approved by the Secretary to assist the community in carrying out the project.

“(c) REQUIREMENTS.—Each community receiving a grant with respect to a demonstration project under this section shall conduct the project in accordance with such requirements as the Secretary may prescribe.

“(d) LIMITATION ON AUTHORIZATION OF APPROPRIATIONS.—For grants under this section, there are authorized to be appropriated to the Secretary of Health and Human Services not to exceed:

“(1) $1,000,000 for each of the fiscal years 1990 and 1991; and

“(2) $2,000,000 for each of the fiscal years 1992, 1993, and 1994.

“(e) EFFECTIVE DATE.—This section shall take effect on October 1, 1989.’’

TREATMENT OF CERTAIN NURSING EDUCATION PROGRAMS


“(1) The Secretary of Health and Human Services shall provide for demonstration programs under this subsection in each of 5 hospitals for cost reporting periods beginning on or after July 1, 1989, and before July 1, 1994.

“(2) Under each demonstration project, subject to paragraph (4), the reasonable costs incurred by a hospital pursuant to a written agreement with an educational institution for the activities described in paragraph (3) conducted as part of an approved educational program that—

“(A) involves a substantial clinical component (as determined by the Secretary), and

“(B) leads to a master’s or doctoral degree in nursing,

shall be allowable as reasonable costs under title XVIII of the Social Security Act [this subchapter] and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated approved educational program (other than an approved graduate medical education program).

“(3) The activities described in this paragraph are the activities for which the reasonable costs of conducting such activities are allowable under title XVIII of the Social Security Act if conducted under a hospital-operated approved educational program (other than an approved graduate medical education program), but only to the extent such activities are directly related to the operation of the educational program conducted pursuant to the written agreement between the hospital and the educational institution.

“(4) The amount paid under a demonstration program under this subsection to a hospital for a cost reporting period may not exceed $200,000.

“(5) The Secretary shall report to Congress, by not later than January 1, 1995, on the demonstration programs conducted under this subsection and on the supply and characteristics of nurses trained under such programs.

“(b) JOINT UNDERGRADUATE EDUCATION PROGRAM.—In the case of a hospital which (1) was under a waiver under section 402 of the Social Security Amendments of 1967 [section 402 of Pub. L. 90-248, enacting this section and amending section 3305 of title XIX of the Social Security Amendments of 1972 [section 222 of Pub. L. 92-603, amending this section and section 3305 of this title and enacting provisions set out below, which waiver expired on September 30, 1985, and (2) during its cost reporting period beginning in fiscal year 1985 and for each subsequent cost reporting period, has been and is associated with, and has incurred and incurs substantial costs with respect to, a nursing college with which it has shared and shares common directors, educational activities of the nursing college shall be considered to be educational activities operated directly by such hospital for purposes of title XVIII of the Social Security Act [this subchapter], and shall be allowable as reasonable costs under such title and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated approved educational program (other than an approved graduate medical education program), for hospital cost reporting periods beginning in fiscal years 1986 through 1991.’’

RESEARCH ON LONG-TERM CARE SERVICES FOR MEDICARE BENEFICIARIES

Pub. L. 100-360, title II, §207, July 1, 1988, 102 Stat. 732, which provided for research on issues relating to the

ADJUSTMENT OF CONTRACTS WITH PREPAID HEALTH PLANS

For requirement that Secretary of Health and Human Services modify contracts with health maintenance organizations under subsec. (a) of this section and section 222 of Pub. L. 100–360, set out below, so as to apply to such organizations and contracts the requirements imposed by the amendments made by Pub. L. 100–390, see section 222 of Pub. L. 100–360, set out as a note under section 1395mm of this title.

CASE MANAGEMENT DEMONSTRATION PROJECTS


“(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall resume the case management demonstration projects described in paragraph (2) and approved under section 425 of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–390, formerly set out below, in this subsection referred to as "MCCA").

“(2) PROJECT DESCRIPTIONS.—The demonstration projects referred to in paragraph (1) are—

“(A) the project proposed to be conducted by Providence Hospital for case management of the elderly at risk for acute hospitalization as described in Project No. 16–P–99378–5–01;

“(B) the project proposed to be conducted by the Iowa Foundation for Medical Care to study patients with chronic congestive conditions to reduce repeat hospitalizations of such patients as described in Project No. P–99394–0–01; and

“(C) the project proposed to be conducted by Key Health Care Resources, Inc., to examine the effects of case management on 2,500 high cost medicare beneficiaries as described in Project No. 18–P–99396–5.

“(3) TERMS AND CONDITIONS.—Except as provided in paragraph (4), the demonstration projects resumed pursuant to paragraph (1) shall be subject to the same terms and conditions established under section 425 of MCCA. In determining the 2-year duration period of a project resumed pursuant to paragraph (1), the Secretary may not take into account any period of time for which the project was in effect under section 425 of MCCA.

“(4) AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding section 425(g) of MCCA, there are authorized to be appropriated for administrative costs in carrying out the demonstration projects resumed pursuant to paragraph (1) $2,000,000 in each of fiscal years 1991 and 1992.’’

Pub. L. 100–360, title IV, §425, July 1, 1988, 102 Stat. 813, which directed Secretary of Health and Human Services to establish 4 demonstration projects under which an appropriate entity agreed to provide case management services, was repealed by Pub. L. 101-234, title III, §301(a), Dec. 13, 1989, 103 Stat. 1965.

DEMONSTRATION PROJECTS WITH RESPECT TO CHRONIC VENTILATOR-DEPENDENT UNITS IN HOSPITALS

Pub. L. 100–360, title IV, §429, July 1, 1988, 102 Stat. 817, as amended by Pub. L. 100–647, title VIII, §840(a), Nov. 10, 1988, 102 Stat. 3800, directed Secretary of Health and Human Services, in consultation with the Prospective Payment Assessment Commission, to provide for at least 5 demonstration projects, for at least 3 years each, to review appropriateness of classifying chronic ventilator-dependent units in hospitals as rehabilitation units.

RESEARCH AND DEMONSTRATION PROJECTS ON RURAL AND INNER-CITY HEALTH ISSUES


“(a) SET AWAY FOR ISSUES OF HEALTH CARE IN RURAL AREAS AND IN INNER-CITY AREAS.—(1) Not less than ten percent of the total amounts annually appropriated to, and expended by, the Health Care Financing Administration for the conduct of research and demonstration projects in fiscal years 1988, 1989, and 1990 shall be expended for research and demonstration projects relating exclusively or substantially to rural health issues, including (but not limited to) the impact of the payment methodology under section 1866(d) of the Social Security Act (section 1395ww(d) of this title) on the financial viability of small rural hospitals, the effect of medicare payment policies on the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, the appropriateness of medicare conditions of participation and staffing requirements for small rural hospitals, and the impact of medicare policies on access to (and the quality of) health care in rural areas.

“(2) Not less than ten percent of the total amounts annually appropriated to, and expended by, the Health Care Financing Administration for the conduct of research and demonstration projects in fiscal years 1988, 1989, and 1990 shall be expended for research and demonstration projects relating exclusively or substantially to issues of providing health care in inner-city areas, including (but not limited to) the impact of the payment methodology under section 1866(d) of the Social Security Act on the financial viability of inner-city hospitals and the impact of medicare policies on access to (and the quality of) health care in inner-city areas.

“(b) AGENDA.—The Secretary of Health and Human Services shall establish an agenda for research and demonstration projects relating exclusively or substantially to rural health issues or to inner-city health issues, that are in progress or have been proposed, and shall include such agenda in the annual report submitted pursuant to section 1876(b) of the Social Security Act (section 1396h(b) of this title). The agenda shall be accompanied by a statement setting forth the amounts that have been obligated and expended with respect to such projects in the current and most recently completed fiscal years.”

ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS


SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER

For treatment of hospitals in States which have had a waiver approved under this section, upon termination of waiver, see section 9202(j) of Pub. L. 99–272, as amended, set out as a note under section 1395ww of this title.

EXTENSION OF CERTAIN MEDICARE MUNICIPAL HEALTH SERVICES DEMONSTRATION PROJECTS


“(a) The Secretary of Health and Human Services shall extend through December 31, 1997, approval of
four municipal health services demonstration projects (located in Baltimore, Cincinnati, Milwaukee, and San Jose) authorized under section 402(a) of the Social Security Amendments of 1967 

The Secretary shall submit a report to Congress on the waiver program with respect to the quality of health care, beneficiary costs, costs to the Medicaid program and other payers, access to care, outcomes, beneficiary satisfaction, utilization differences among the different populations served by the projects, and such other factors as may be appropriate. Subject to subsection (c), the Secretary may further extend such demonstration projects through December 31, 2006, but only with respect to individuals who received at least one service during the period beginning on January 1, 1996, and ending on the date of enactment of the Balanced Budget Act of 1997 (Aug. 5, 1997).

“(b) The Secretary shall work with each such demonstration project to develop a plan, to be submitted to the Committee on Ways and Means and the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate by March 31, 1998, for the orderly transition of demonstration projects and the project participants to a non-demonstration project health care delivery system, such as through integration with a private or public health plan, including a Medicaid managed care or Medicare+Choice plan.

“(c) The demonstration project under subsection (a) which does not develop and submit a transition plan under subsection (b) by March 31, 1998, or, if later, 6 months after the date of the enactment of the Balanced Budget Act of 1997 (Aug. 5, 1997), shall be discontinued as of December 31, 1998. The Secretary shall provide appropriate technical assistance to assist in the transition so that disruption of medical services to project participants may be minimized.”

[References to Medicare+Choice deemed to refer to Medicare Advantage, see section 201(b) of Pub. L. 108-173, set out as a note under section 1395w–1 of this title.]

DEMONSTRATION PROGRAM FOR REDUCTION OF DISABILITY AND DEPENDENCY THROUGH PROVISION OF PREVENTIVE HEALTH SERVICES UNDER MEDICARE


PAYMENT FOR COSTS OF HOSPITAL-BASED MOBILE INTENSIVE CARE UNITS

Section 2320 of Pub. L. 98–369 provided that:

“(a) In the case of a project described in subsection (b), the Secretary of Health and Human Services shall provide, except as provided in paragraph (2), that the amount of payments to hospitals covered under the project during the period described in paragraph (1) shall include payments for their operation of hospital-based intensive care units (as defined by State statute) if the State provides satisfactory assurances that the total amount of payments to such hospitals under titles XVIII and XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter] under the demonstration project (including any such additional amount of payment) would not exceed the total amount of payments which would have been paid under such titles if the demonstration project were not in effect.

“(2) Paragraph (1) shall not apply if the State in which the project is located notifies the Secretary, with 90 days after the date of the enactment of this section [July 18, 1984], that the State does not want paragraph (1) to apply to that project.

“(3) The period referred to in paragraph (1) begins on the date of the enactment of this section and continues so long as the Secretary continues the Statewide waiver referred to in subsection (b), but in no case earlier than 90 days after the date final regulations to implement section 1886(c) of the Social Security Act (section 1395w(w)(2) of this title) are published.

“(b) The project referred to in subsection (a) is the statewide demonstration project established in the State of New Jersey under section 402 of the Social Security Amendments of 1967, as amended by section 222(b) of the Social Security Amendments of 1972 (Public Law 92–603) [this section], which project provides for payments to hospitals in the State on a prospective basis and related to a classification of patients by diagnosis-related groups.

“(c) Payment for services described in this section shall be considered to be payments for services under part A of title XVIII of the Social Security Act [part A of this subchapter]."

CONTINUATION OF SECRETARY’S AUTHORITY REGARDING EXPERIMENTS AND DEMONSTRATION PROJECTS

Pub. L. 98–21, title VI, § 603(b), Apr. 20, 1983, 97 Stat. 167, provided that:

“(1) Except as provided in paragraph (2), the amendments made by this title [amending sections 1320a–1, 1320c–2, 1365, 1365–1, 1365v, 1365u, 1365v, 1365w, 1365x(c), and 1365xx of this title, enacting provisions set out as notes under this section and sections 1395r, 1365x, 1395cc, and 1395cc–1 of this title, and amending provisions set out as a note under section 1395x of this title] shall not affect the authority of the Secretary to develop, carry out, or continue experiments and demonstration projects.

“(2) The Secretary shall provide that, upon the request of a State which has a demonstration project, for payment of hospitals under title XVIII of the Social Security Act [this subchapter] approved under section 402(a) of the Social Security Amendments of 1967 [subsec. (a) of this section] or section 222(a) of the Social Security Amendments of 1972 [set out as a note below], which (A) is in effect as of March 1, 1983, and (B) was entered into after August 1982 (or upon the request of another party to demonstration project agreement), the terms of the demonstration agreement shall be modified so that the demonstration project is not required to maintain the rate of increase in Medicare hospital costs in that State below the national rate of increase in Medicare hospital costs.”

ALTERNATIVE CARE DEMONSTRATION PROJECTS IN HOSPITALS SHORT OF SKILLED NURSING FACILITIES

Pub. L. 98–21, title VI, § 603(d), Apr. 20, 1983, 97 Stat. 168, provided that: “The Secretary shall conduct demonstrations with hospitals in areas with critical shortages of skilled nursing facilities to study the feasibility of providing alternative systems of care or methods of payment.”

CONTINUATION OF HOSPICE DEMONSTRATION PROJECTS; REPORT TO CONGRESS

Section 122(1), formerly § 122(h), of Pub. L. 97–248, as redesignated and amended by Pub. L. 97–448, title III, § 309(a)(6), (e), Jan. 12, 1983, 96 Stat. 2008, 2140, provided that:

“(1) Notwithstanding any provision of law which has the effect of restricting the time period of a hospice demonstration project in effect on July 19, 1982, pursuant to section 402(a) of the Social Security Amendments of 1967 [subsec. (a) of this section], the Secretary of Health and Human Services, upon request of the hospice involved, shall permit continuation of the project until November 1, 1983, or, if later, the date on which payments can first be made to any hospice program under the amendments made by this section.

“(2) Prior to September 30, 1983, the Secretary shall submit to Congress a report on the effectiveness of demonstration projects referred to in paragraph (1), in-
cluding an evaluation of the cost-effectiveness of hospice care, the reasonableness of the 40-percent cap amount for hospice care as provided in section 1814(e)(1) of the Social Security Act (section 1395f(i) of this title) (as added by this section), proposed methodology for determining such cap amount, proposed standards for requiring and measuring the maintenance of effort for utilizing volunteers as required under section 1395f(h) of such Act [section 1395xx(dd) of this title], an evaluation of physician reimbursement for services furnished as a part of hospice care and for services furnished to individuals receiving hospice care but which are not reimbursed as a part of the hospice care, and any proposed legislative changes in the hospice care provisions of title XVIII of such Act [this subchapter].

3(B) During the period after the date on which a hospice demonstration project described in subparagraph (A) would otherwise have terminated under the provisions of paragraph (1), and prior to September 30, 1986, any such hospice demonstration project shall be subject to the same requirements as are imposed under the hospice program provided for under the amendments made by this section (amending sections 1385c to 1395f, 1983 and 1985 of this title and section 231f of Title 45, Railroads, and enacting provisions set out under the title of such Act [section 1395yy of this title]), with respect to reimbursement and benefits, other than those amendments that certain benefits be provided directly by the hospice involved.

STATE MEDICARE HOSPITAL REIMBURSEMENT DEMONSTRATION PROJECT LIMITATION


STUDY OF NEED FOR DUAL PARTICIPATION OF SKILLED NURSING FACILITIES


DEMONSTRATION PROJECTS FOR PHYSICIAN-DIRECTED CLINICS IN URBAN MEDICALLY UNDERSERVED AREAS; REPORT SUBMITTED NO LATER THAN JANUARY 1, 1981

Pub. L. 95–210, § 3, Dec. 13, 1977, 91 Stat. 1489, required the Secretary to provide, through demonstration projects, reimbursement on a cost basis for services provided by physician-directed clinics in urban medically underserved areas for which payment may be made under this subchapter and, notwithstanding any other provision of this subchapter, for services provided by a physician assistant or nurse practitioner employed by such clinics which would otherwise be covered under this subchapter if provided by a physician. The Secretary was to evaluate the relative advantages and disadvantages of reimbursement on the basis of costs and fee-for-service for physician-directed clinics employing a physician assistant or nurse practitioner, the appropriate method of determining the compensation for physician services on a cost basis for the purposes of reimbursement of services provided in such clinics, the appropriate definition for such clinics, the appropriate criteria to use for the purposes of designating urban medically underserved areas, and such other possible and practicable changes in the provisions of this subchapter as might be appropriate for the efficient and cost-effective reimbursement of services provided in such clinics. Grants, payments under contracts, and other expenditures made for demonstration projects were to be made in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund. The Secretary was to submit to the Congress, no later than Jan. 1, 1981, a complete detailed report on the demonstration projects.

SCOPE OF GRANTS FOR EXPERIMENTS AND DEMONSTRATION PROJECTS TO DETERMINE METHODS FOR PROSPECTIVE PAYMENTS TO HOSPITALS, SKILLED NURSING FACILITIES, AND OTHER PROVIDERS OF SERVICES

Pub. L. 94–182, title I, § 107, Dec. 31, 1975, 89 Stat. 1053, provided that: "Nothing contained in section 222(a) of Public Law 92–603 [set out below] shall be construed to preclude or prohibit the Secretary of Health, Education, and Welfare [now Health and Human Services] from including in any grant otherwise authorized to be made under such section moneys which are to be used for payments, to a participant in a demonstration or experiment with respect to which the grant is made, for or on account of costs incurred or services performed by such participant for a period prior to the date that the project of such participant is placed in operation, if—

(1) the applicant for such grant is a State or an agency thereof;

(2) such participant is an individual practice association which has been in existence for at least 5 years prior to the date of enactment of this section [Dec. 31, 1975] and which has in effect a contract with such State (or an agency thereof), entered into prior to the date on which the grant is approved by the Secretary, under which such association will, for a period which begins before and ends after the date of such grant is so approved, provide health care services for individuals entitled to care and services under the State plan of such State which is approved under title XIX of the Social Security Act [subchapter XIX of this chapter],

(3) the purpose of the inclusion of the project of such association is to test the utility of a particular rate-setting methodology, designed to be employed in prepaid health plans, in an individual practice association operation, and

(4) the applicant for such grant affirms that the use of moneys from such grant to make such payments to such individual practice association is necessary or useful in assuring that such association will be able to continue in operation and carry out the project described in clause (3)."

EXPERIMENTS AND DEMONSTRATION PROJECTS TO DETERMINE METHODS FOR PROSPECTIVE PAYMENTS TO HOSPITALS, SKILLED NURSING FACILITIES, AND OTHER PROVIDERS OF SERVICES FOR CARE AND SERVICES FURNISHED; SCOPE; WAIVER OF PAYMENT REQUIREMENTS; SOURCE AND MANNER OF PAYMENTS FOR GRANTS, ETC.; REPORTS TO CONGRESS


(1) The Secretary of Health, Education, and Welfare [now Health and Human Services], directly or through contracts with, or grants to, public or private agencies or organizations, shall develop and carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of various alternative methods of making payment on a prospective basis to hospitals, skilled nursing facilities, and other providers of services for care and services provided by them under title XVIII of the Social Security Act [this subchapter] and under State plans approved under title XIX of such Act [subchapter XIX of this chapter], including alternative methods for classifying providers, for establishing prospective rates of payment, and for implementing on a graduated, selective, or other basis the establishment of a prospective pay-
ment system, in order to stimulate such providers through positive (or negative) financial incentives to use their facilities and personnel more efficiently and thereby to reduce the total costs of the health programs involved without adversely affecting the quality of services by containing or lowering the rate of increase in provider costs that has been and is being experienced under the existing system of retroactive cost reimbursement.

"(2) The experiments and demonstration projects developed under paragraph (1) shall be of sufficient scope and shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods of prospective payment under consideration while giving assurance that the results derived from the experiments and projects will obtain generally in the operation of programs involved (without commitment of such programs to the adoption of any prospective payment system either locally or nationally).

"(3) In the case of any experiment or demonstration project under paragraph (1), the Secretary may waive compliance with the requirements of titles XVIII and XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter] insofar as such requirements relate to methods of payment for services provided; and costs incurred in such experiment or project in excess of those which would otherwise be reimbursed or paid under such titles [subchapters] may be reimbursed or paid to the extent that such waiver applies to those with such excess being borne by the Secretary. No experiment or demonstration project shall be developed or carried out under paragraph (1) until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed experiment or project as to the soundness of its objectives, the possibilities of securing productive results, the adequacy of resources to conduct it, and its relation to other similar experiments or projects already completed or in process; and no such experiment or project shall be actually placed in operation unless at least 30 days prior thereto a written report, prepared for presentation to the House of Representatives and to the Committee on Finance of the Senate.

"(4) Grants, payments under contracts, and other expenditures made for experiments and demonstration projects under this subsection shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security Act [section 1395i of this title]) and from funds appropriated under title XIX of such Act [subchapter XIX of this chapter]. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this subsection. With respect to any such grant, payment, or other expenditure, the amount to be paid from each of such trust funds (and from funds appropriated under title XIX) shall be determined by the Secretary, giving due regard to the purposes of the experiment or project involved.

"(5) The Secretary shall submit to the Congress no later than July 1, 1974, a full report on the experiments and demonstration projects carried out under this subsection and on the experience of other programs with respect to prospective reimbursement together with any related data and materials which he may consider appropriate. Such report shall include detailed recommendations with respect to the specific methods which could be used in the full implementation of a system of prospective payment to providers of services under the programs involved."

§ 1395b–2. Notice of medicare benefits; medicare and medigap information

(a) Notice of medicare benefits

The Secretary shall prepare (in consultation with groups representing the elderly and with health insurers) and provide for distribution of a notice containing—

1. a clear, simple explanation of the benefits available under this subchapter and the major categories of health care for which benefits are not available under this subchapter,

2. the limitations on payment (including deductibles and coinsurance amounts) that are imposed under this subchapter, and

3. a description of the limited benefits for long-term care services available under this subchapter and generally available under State plans approved under subchapter XIX of this chapter.

Such notice shall be mailed annually to individuals entitled to benefits under part A or part B of this subchapter and when an individual applies for benefits under part A of this subchapter or enrolls under part B of this subchapter.

(b) Medicare and medigap information

The Secretary shall provide information via a toll-free telephone number on the programs under this subchapter. The Secretary shall provide, through the toll-free telephone number 1–800–MEDICARE, for a means by which individuals seeking information about, or assistance with, such programs who phone such toll-free number are transferred (without charge) to appropriate entities for the provision of such information or assistance. Such toll-free number shall be the toll-free number listed for general information and assistance in the annual notice under subsection (a) of this section instead of the listing of numbers of individual contractors.

(c) Contents of notice

The notice provided under subsection (a) of this section shall include—

1. a statement which indicates that because errors do occur and because medicare fraud, waste, and abuse is a significant problem, beneficiaries should carefully check any explanation of benefits or itemized statement furnished pursuant to section 1395b–7 of this title for accuracy and report any errors or questionable charges by calling the toll-free phone number described in paragraph (4);

2. a statement of the beneficiary’s right to request an itemized statement for medicare items and services (as provided in section 1395b–7(b) of this title);

3. a description of the program to collect information on medicare fraud and abuse established under section 1395b–5(b) of this title; and

4. a toll-free telephone number maintained by the Inspector General in the Department of Health and Human Services for the receipt of complaints and information about waste, fraud, and abuse in the provision or billing of services under this subchapter.

§ 1395b–3. Health insurance advisory service for medicare beneficiaries

(a) In general

The Secretary of Health and Human Services shall establish a health insurance advisory service program (in this section referred to as the “beneficiary assistance program”) to assist medicare-eligible individuals with the receipt of services under the medicare and medicaid programs and other health insurance programs.

(b) Outreach elements

The beneficiary assistance program shall provide assistance—

(1) through operation using local Federal offices that provide information on the medicare program,

(2) using community outreach programs, and

(3) using a toll-free telephone information service.

(c) Assistance provided

The beneficiary assistance program shall provide information, counseling, and assistance for medicare-eligible individuals with respect to at least the following:

(1) With respect to the medicare program—

(A) eligibility,

(B) benefits (both covered and not covered),

(C) the process of payment for services,

(D) rights and process for appeals of determinations,

(E) other medicare-related entities (such as peer review organizations, fiscal intermediaries, and carriers), and

(F) recent legislative and administrative changes in the medicare program.

(2) With respect to the medicaid program—

(A) eligibility, benefits, and the application process,

(B) linkages between the medicaid and medicare programs, and

(C) referral to appropriate State and local agencies involved in the medicaid program.

(3) With respect to medicare supplemental policies—
(A) the program under section 1395ss of this title and standards required under such program,
(B) how to make informed decisions on whether to purchase such policies and on what criteria to use in evaluating different policies,
(C) appropriate Federal, State, and private agencies that provide information and assistance in obtaining benefits under such policies, and
(D) other issues deemed appropriate by the Secretary.

The beneficiary assistance program also shall provide such other services as the Secretary deems appropriate to increase beneficiary understanding of, and confidence in, the Medicare program and to improve the relationship between beneficiaries and the program.

(d) Educational material

The Secretary, through the Administrator of the Centers for Medicare & Medicaid Services, shall develop appropriate educational materials and other appropriate techniques to assist employees in carrying out this section.

(e) Notice to beneficiaries

The Secretary shall take such steps as are necessary to assure that Medicare-eligible beneficiaries and the general public are made aware of the beneficiary assistance program.

(f) Report

The Secretary shall include, in an annual report transmitted to the Congress, a report on the beneficiary assistance program and on other health insurance information and counseling services made available to Medicare-eligible individuals. The Secretary shall include in the report recommendations for such changes as may be desirable to improve the relationship between the Medicare program and Medicare-eligible individuals.


CODIFICATION

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1990, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS


MEDICARE ENROLLMENT ASSISTANCE


“(A) ADDITIONAL FUNDING FOR STATE HEALT

INCREASE ASSISTANCE PROGRAMS.—

“(1) GRANTS.—

“(A) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ‘Secretary’) shall use amounts made available under subparagraph (B) to make grants to States for State health insurance assistance programs receiving assistance under section 4360 of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 1395b–4).

“(B) FUNDING.—For purposes of making grants under this subsection, the Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395f) and the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395l), in the same proportion as the Secretary determines under section 1833(f) of such Act (42 U.S.C. 1395w–23(f)), to the Centers for Medicare & Medicaid Services Program Management Account—

“(i) for fiscal year 2009, of $7,500,000; and

“(ii) for the period of fiscal years 2010 through 2012, of $15,000,000.

Amounts appropriated under this subparagraph remain available until expended.

“(2) AMOUNT OF GRANTS.—The amount of a grant to a State under this subsection from the total amount made available under paragraph (1) shall be equal to the sum of the amount allocated to the State under paragraph (3)(A) and the amount allocated to the State under subparagraph (3)(B).

“(3) ALLOCATION TO STATES.—

“(A) ALLOCATION BASED ON PERCENTAGE OF LOW-INCOME BENEFICIARIES.—The amount allocated to a State under this subparagraph from the total amount made available under paragraph (1) shall be based on the number of individuals who meet the requirement under subsection (a)(3)(A) of section 1860D–14 of the Social Security Act (42 U.S.C. 1395w–141) but who have not enrolled to receive a subsidy under such section 1860D–14 relative to the total number of individuals who meet the requirement under such subsection (a)(3)(A) in each State, as estimated by the Secretary.

“(B) ALLOCATION BASED ON PERCENTAGE OF RURAL BENEFICIARIES.—The amount allocated to a State under this subparagraph from the total amount made available under paragraph (1) shall be based on the number of part D eligible individuals as defined in section 1860D–1(a)(3)(A) of such Act residing in a rural area relative to the total number of such individuals in each State, as estimated by the Secretary.

“(C) ALLOCATION BASED ON PERCENTAGE OF LOW-INCOME BENEFICIARIES TO BE USED TO PROVIDE OUTREACH TO INDIVIDUALS WHO MAY BE SUBSIDY ELIGIBLE INDIVIDUALS OR ELIGIBLE FOR THE MEDICARE SAVINGS PROGRAM.—Each grant awarded under this subsection with respect to amounts allocated under paragraph (3)(A) shall be used to provide outreach to individuals who may be subsidy eligible individuals (as defined in section 1860D–1(a)(3)(A) of such Act) residing in a rural area relative to the total number of such individuals in each State, as estimated by the Secretary.

“(4) PORTION OF GRANT BASED ON PERCENTAGE OF LOW-INCOME BENEFICIARIES TO BE USED TO PROVIDE OUTREACH TO INDIVIDUALS WHO MAY BE SUBSIDY ELIGIBLE INDIVIDUALS OR ELIGIBLE FOR THE MEDICARE SAVINGS PROGRAM.—Each grant awarded under this subsection with respect to amounts allocated under paragraph (3)(A) shall be used to provide outreach to individuals who may be subsidy eligible individuals (as defined in section 1860D–1(a)(3)(A) of such Act) residing in a rural area relative to the total number of such individuals in each State, as estimated by the Secretary.

“(5) ADDITIONAL FUNDING FOR AREA AGENCIES ON AGING.—

“(1) GRANTS.—

“(A) IN GENERAL.—The Secretary, acting through the Assistant Secretary for Aging, shall make grants to States for area agencies on aging (as defined in section 102 of the Older Americans Act of 1965 (42 U.S.C. 3002)), and Native American programs carried out under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.), for purposes of making grants under this subsection, the Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395l) and the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395l), in the same proportion as the Secretary determines under section 1833(f) of such Act (42 U.S.C. 1395w–23(f)), to the Administration on Aging—

“(i) for fiscal year 2009, of $7,500,000; and

“(ii) for the period of fiscal years 2010 through 2012, of $15,000,000.

Amounts appropriated under this subparagraph remain available until expended.

“Amounts appropriated under this subparagraph remain available until expended.

“(B) FUNDING.—For purposes of making grants under this subsection, the Secretary shall make grants to States for services that are designed to improve the relationship between Medicare-eligible beneficiaries and the general public are made aware of the beneficiary assistance program.
"(2) AMOUNT OF GRANT AND ALLOCATION TO STATES BASED ON PERCENTAGE OF LOW-INCOME AND RURAL BENEFICIARIES.—The amount of a grant to a State under subsection (a) for the period of fiscal years 2009 through 2012, from the total amount made available under paragraph (1) shall be determined in the same manner as the amount of a grant to a State under subsection (a), from the total amount made available under paragraph (1) of such subsection, is determined under paragraph (2) and subparagraphs (A) and (B) of paragraph (3) of such subsection.

(3) REQUIRED USE OF FUNDS.—(D) PROVIDING IN COLLABORATION WITH FEDERAL AGENCY PARTNERS ADMINISTERING THE FEDERAL PROGRAMS, TRAINING AND TECHNICAL ASSISTANCE ON THE MOST EFFECTIVE OUTREACH, SCREENING, AND FOLLOW-UP STRATEGIES FOR THE FEDERAL AND STATE PROGRAMS.

(2) FUNDING.—For purposes of making a grant or entering into a contract under paragraph (1), the Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395f) and the Federal Disability and Resource Centers for the period of fiscal years 2008 through 2009 under section 118 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173) [121 Stat. 2508] for the sole purpose of providing outreach to individuals regarding the benefits available under part D of title XVIII of the Social Security Act (part D of this subchapter), the Secretary shall provide preference for offices with a high volume of visits by individuals referred to in 1833(f) of such Act (42 U.S.C. 1395w–23(f)), to the Administration on Aging—

"(i) for fiscal year 2009, of $5,000,000; and

"(ii) for the period of fiscal years 2010 through 2012, of $10,000,000.

Amounts appropriated under this subparagraph shall remain available until expended."

"(e) REPROGRAMMING FUNDS FROM MEDICARE, MEDICAID, AND SCHIP EXTENSION ACT OF 2007.—The Secretary shall only use the $5,000,000 in funds allocated to make grants to States for Area Agencies on Aging and Aging Disability and Resource Centers for the period of fiscal years 2008 through 2009 under section 118 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173) [121 Stat. 2508] for the sole purpose of providing outreach to individuals regarding the benefits available under part D of title XVIII of the Social Security Act (part D of this subchapter), the Secretary shall republish the request for proposals issued on April 17, 2008, in order to comply with the preceding sentence."

"(f) MEDICARE SAVINGS PROGRAM DEFINED.—For purposes of this section, the term ‘Medicare Savings Program’ means the program of medical assistance for payment of the cost of Medicare prescription drug benefits under the Medicaid program pursuant to sections 1902(a)(10)(E) and 1933 of the Social Security Act (42 U.S.C. 1396a(a)(10)(E), 1396u–3)."

"(g) SECRETARIAL AUTHORITY TO ENLIST SUPPORT IN CONDUCTING CERTAIN OUTREACH ACTIVITIES.—The Secretary may request that an entity awarded a grant under this section support the conduct of outreach activities aimed at preventing disease and promoting wellness. Notwithstanding any other provision of this section, an entity may use a grant awarded under this subsection [probably should be “section”] to support the conduct of activities described in the preceding sentence.”

BENEFICIARY OUTREACH DEMONSTRATION PROGRAM


"(a) IN GENERAL.—The Secretary [of Health and Human Services] shall establish a demonstration program (in this section referred to as the ‘demonstration program’) under which Medicare specialists employed by the Department of Health and Human Services provide advice and assistance to individuals entitled to benefits under part A of title XVIII of the Social Security Act [part A of this subchapter], or enrolled under part B of such title [part B of this subchapter], or both, regarding the Medicare program at the location of existing local offices of the Social Security Administration.

"(1) IN GENERAL.—The demonstration program shall be conducted in at least 6 offices or areas. Subject to paragraph (2), in selecting such offices and areas, the Secretary shall provide preference for offices with a high volume of visits by individuals referred to in subsection (a).

"(2) ASSISTANCE FOR RURAL BENEFICIARIES.—The Secretary shall provide for the selection of at least 2 rural areas to participate in the demonstration program. In conducting the demonstration program in such rural areas, the Secretary shall provide for Medicare specialists to travel among local offices in a rural area on a scheduled basis.

"(c) DURATION.—The demonstration program shall be conducted over a 3-year period.
“(d) EVALUATION AND REPORT.—

“(1) EVALUATION.—The Secretary shall provide for an evaluation of the demonstration program. Such evaluation shall include an analysis of—

“(A) utilization of, and satisfaction of those individuals referred to in subsection (a) with, the assistance provided under the program; and

“(B) the cost-effectiveness of providing beneficiary assistance through out-stationing medicare specialists at local offices of the Social Security Administration.

“(2) REPORT.—The Secretary shall submit to Congress a report on such evaluation and shall include in such report recommendations regarding the feasibility of permanently out-stationing medicare specialists at local offices of the Social Security Administration.”

QUALIFIED MEDICARE BENEFICIARY OUTREACH

Pub. L. 103–432, title I, § 154, Oct. 31, 1994, 108 Stat. 4437, provided that: “Not later than 1 year after the date of enactment of this Act [Oct. 31, 1994], the Secretary of Health and Human Services shall establish and maintain a method for obtaining information from newly eligible medicare beneficiaries that may be used to determine whether such beneficiaries may be eligible for medical assistance for medicare cost-sharing under State Medicaid plans as qualified medicare beneficiaries, and for transmitting such information to the State in which such a beneficiary resides.”

§ 1395b–4. Health insurance information, counseling, and assistance grants

(a) Grants

The Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall make grants to States, with approved State regulatory programs under section 1395ss of this title, that submit applications to the Secretary that meet the requirements of this section for the purpose of providing information, counseling, and assistance relating to the procurement of adequate and appropriate health insurance coverage to individuals who are eligible to receive benefits under this subchapter (in this section referred to as “eligible individuals”). The Secretary shall prescribe regulations to establish a minimum level of funding for a grant issued under this section.

(b) Grant applications

(1) In submitting an application under this section, a State may consolidate and coordinate an application that consists of parts prepared by more than one agency or department of such State.

(2) As part of an application for a grant under this section, a State shall submit a plan for a State-wide health insurance information, counseling, and assistance program. Such program shall—

(A) establish or improve upon a health insurance information, counseling, and assistance program that provides counseling and assistance to eligible individuals in need of health insurance information, including—

(i) information that may assist individuals in obtaining benefits and filing claims under this subchapter and subchapter XIX of this chapter;

(ii) policy comparison information for medicare supplemental policies (as described in section 1395ss(g)(1) of this title) and information that may assist individuals in filing claims under such medicare supplemental policies;

(iii) information regarding long-term care insurance; and

(iv) information regarding other types of health insurance benefits that the Secretary determines to be appropriate;

(B) in conjunction with the health insurance information, counseling, and assistance program described in subparagraph (A), establish a system of referral to appropriate Federal or State departments or agencies for assistance with problems related to health insurance coverage (including legal problems), as determined by the Secretary;

(C) provide for a sufficient number of staff positions (including volunteer positions) necessary to provide the services of the health insurance information, counseling, and assistance program;

(D) provide assurances that staff members (including volunteer staff members) of the health insurance information, counseling, and assistance program have no conflict of interest in providing the counseling described in subparagraph (A);

(E) provide for the collection and dissemination of timely and accurate health care information to staff members;

(F) provide for training programs for staff members (including volunteer staff members);

(G) provide for the coordination of the exchange of health insurance information between the staff of departments and agencies of the State government and the staff of the health insurance information, counseling, and assistance program;

(H) make recommendations concerning consumer issues and complaints related to the provision of health care to agencies and departments of the State government and the Federal Government responsible for providing or regulating health insurance;

(I) establish an outreach program to provide the health insurance information and counseling described in subparagraph (A) and the referrals described in subparagraph (B) to eligible individuals; and

(J) demonstrate, to the satisfaction of the Secretary, an ability to provide the counseling and assistance required under this section.

(c) Special grants

(1) A State that is conducting a health insurance information, counseling, and assistance program that is substantially similar to a program described in subsection (b)(2) of this section shall, as a requirement for eligibility for a grant under this section, demonstrate, to the satisfaction of the Secretary, that such State shall maintain the activities of such program at least at the level that such activities were conducted immediately preceding the date of the issuance of any grant during the period of time covered by such grant under this section.

(2) If the Secretary determines that the existing health insurance information, counseling, and assistance program is substantially similar to a program described in subsection (b)(2) of this section, the Secretary may waive some or all of the requirements described in such sub-
section and issue a grant to the State for the purpose of increasing the number of services offered by the health insurance information, counseling, and assistance program, experimenting with new methods of outreach in conducting such program, or expanding such program to geographic areas of the State not previously served by the program.

(d) Criteria for issuing grants
In issuing a grant under this section, the Secretary shall consider—

(1) the commitment of the State to carrying out the health insurance information, counseling, and assistance program described in subsection (b)(2) of this section, including the level of cooperation demonstrated—

(A) by the office of the chief insurance regulator of the State, or the equivalent State entity;

(B) other officials of the State responsible for overseeing insurance plans issued by nonprofit hospital and medical service associations; and

(C) the departments and agencies of such State responsible for—

(i) administering funds under subchapter XIX of this chapter, and

(ii) administering funds appropriated under the Older Americans Act [42 U.S.C. 3001 et seq.];

(2) the population of eligible individuals in such State as a percentage of the population of such State; and

(3) in order to ensure the needs of rural areas in such State, the relative costs and special problems associated with addressing the specific problems of providing health care information, counseling, and assistance eligible individuals residing in rural areas of such State.

(e) Annual State report
A State that receives a grant under this section shall, not later than 180 days after receiving such grant, and annually thereafter during the period of the grant, issue a report to the Secretary that includes information concerning—

(1) the number of individuals served by the health insurance information, counseling and assistance program of such State;

(2) an estimate of the amount of funds saved by the State, and by eligible individuals in the State, in the implementation of such program; and

(3) the problems that eligible individuals in such State encounter in procuring adequate and appropriate health care coverage.

(f) Report to Congress
Beginning with 1992, and annually thereafter, the Secretary shall issue a report to the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and the Committee on Energy and Commerce of the House of Representatives that—

(1) summarizes the allocation of funds authorized for grants under this section and the expenditure of such funds;

(2) outlines the problems that eligible individuals encounter in procuring adequate and appropriate health care coverage;

(3) makes recommendations that the Secretary determines to be appropriate to address the problems described in paragraph (3); and

(4) in the case of the report issued 2 years after November 5, 1990, evaluates the effectiveness of counseling programs established under this program, and makes recommendations regarding continued authorization of funds for these purposes.

(g) Authorization of appropriations for grants
There are authorized to be appropriated, in equal parts from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, $10,000,000 for each of fiscal years 1991, 1992, 1993, 1994, 1995, and 1996, to fund the grant programs described in this section.

References in Text
The Older Americans Act, referred to in subsec. (d)(1)(C)(i), probably means the Older Americans Act of 1965, which is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended, and is classified generally to chapter 35 (§3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

Codification
Section was enacted as part of the Omnibus Budget Reconciliation Act of 1990, and not as part of the Social Security Act which comprises this chapter.
subsec. (f), relating to authorization of appropriations for grants, as (g).


Subsec. (f)(2) to (5). Pub. L. 103–432, §171(i)(7), in subsec. (f), relating to report to Congress, redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: “summarizes the scope and content of training conferences convened under this section.”

Subsec. (g). Pub. L. 103–432, §171(i)(8)(B), and Pub. L. 103–437, §15(b)(2), made identical amendments, redesignating subsec. (f), relating to authorization of appropriations for grants, as (g).

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2. The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 171(i) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

DEMONSTRATION TO IMPROVE CARE TO PREVIOUSLY UNINSURED


“(a) Establishment.—Within one year after the date of the enactment of this Act [July 15, 2008], the Secretary (in this section referred to as the ‘Secretary’) shall establish a demonstration project to determine the greatest needs and most effective methods of outreach to medicare beneficiaries who were previously uninsured.

“(b) Scope.—The demonstration shall be in no fewer than 10 sites, and shall include state health insurance assistance programs, community health centers, community-based organizations, community health workers, and other service providers under parts A, B, and C of title XVIII of the Social Security Act [parts A, B, and C of this subchapter]. Grantees that are plans operating under part C shall document that enrollees who were previously uninsured receive the ‘Welcome to Medicare’ physical exam.

“(c) Duration.—The Secretary shall conduct the demonstration project for a period of 2 years.

“(d) Report and Evaluation.—The Secretary shall conduct an evaluation of the demonstration and not later than 1 year after the completion of the project shall submit to Congress a report including the following:

“(1) An analysis of the effectiveness of outreach activities targeting beneficiaries who were previously uninsured, such as revising outreach and enrollment materials (including the potential for use of video information), providing one-on-one counseling, working with community health workers, and amending the Medicare and You handbook.

“(2) The effect of such outreach on beneficiary access to care, utilization of services, efficiency and cost-effectiveness of health care delivery, patient satisfaction, and select health outcomes.”

STATE REGULATORY PROGRAMS

For provisions relating to changes required to conform State regulatory programs to amendments by sec-

§1395b–5. Beneficiary incentive programs


(b) Program to collect information on fraud and abuse

(1) Establishment of program

Not later than 3 months after August 21, 1996, the Secretary shall establish a program under which the Secretary shall encourage individuals to report to the Secretary information on individuals and entities who are engaging in or who have engaged in acts or omissions which constitute grounds for the imposition of a sanction provided under section 1320a–7, 1320a–7a, or 1320a–7b of this title, or who have otherwise engaged in fraud and abuse against the Medicare program under this subchapter for which there is a sanction provided under law. The program shall discourage provision of, and not consider, information which is frivolous or otherwise not relevant or material to the imposition of such a sanction.

(2) Payment of portion of amounts collected

If an individual reports information to the Secretary under the program established under paragraph (1) which serves as the basis for the collection by the Secretary or the Attorney General of any amount of at least $100 (other than any amount paid as a penalty under section 1320a–7b of this title), the Secretary may pay a portion of the amount collected to the individual (under procedures similar to those applicable under section 7623 of the Internal Revenue Code of 1986 to payments to individuals providing information on violations of such Code).

(c) Program to collect information on program efficiency

(1) Establishment of program

Not later than 3 months after August 21, 1996, the Secretary shall establish a program under which the Secretary shall encourage individuals to submit to the Secretary suggestions on methods to improve the efficiency of the Medicare program.

(2) Payment of portion of program savings

If an individual submits a suggestion to the Secretary under the program established under paragraph (1) which is adopted by the Secretary and which results in savings to the program, the Secretary may make a payment to the individual of such amount as the Secretary considers appropriate.


REFERENCES IN TEXT

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

CODIFICATION

Section was enacted as part of the Health Insurance Portability and Accountability Act of 1996, and not as
part of the Social Security Act which comprises this chapter.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105-33 struck out heading and text of subsec. (a). Text read as follows: "The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall provide an explanation of benefits under the Medicare program under this subchapter with respect to each item or service for which payment may be made under the program which is furnished to an individual, without regard to whether or not a deductible or coinsurance may be imposed against the individual with respect to the item or service.''

§ 1395b-6. Medicare Payment Advisory Commission

(a) Establishment

There is hereby established as an agency of Congress the Medicare Payment Advisory Commission (in this section referred to as the "Commission").

(b) Duties

(1) Review of payment policies and annual reports

The Commission shall—

(A) review payment policies under this subchapter, including the topics described in paragraph (2);

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

(C) by not later than March 15, submit a report to Congress containing the results of such reviews and its recommendations concerning such policies; and

(D) by not later than June 15 of each year, submit a report to Congress containing an examination of issues affecting the Medicare program, including the implications of changes in health care delivery in the United States and in the market for health care services on the Medicare program and including a review of the estimate of the conversion factor submitted under section 1395w–4(d)(1)(E)(ii) of this title, and (beginning with 2012) containing an examination of the topics described in paragraph (9), to the extent feasible.

(2) Specific topics to be reviewed

(A) Medicare+Choice program

Specifically, the Commission shall review, with respect to the Medicare+Choice program under part C of this subchapter, the following:

(i) The methodology for making payment to plans under such program, including the making of differential payments and the distribution of differential updates among different payment areas.

(ii) The mechanisms used to adjust payments for risk and the need to adjust such mechanisms to take into account health status of beneficiaries.

(iii) The implications of risk selection both among Medicare+Choice organizations and between the Medicare+Choice option and the original Medicare fee-for-service option.

(iv) The development and implementation of mechanisms to assure the quality of care for those enrolled with Medicare+Choice organizations.

(v) The impact of the Medicare+Choice program on access to care for Medicare beneficiaries.

(vi) Other major issues in implementation and further development of the Medicare+Choice program.

(B) Original Medicare fee-for-service system

Specifically, the Commission shall review payment policies under parts A and B of this subchapter, including—

(i) the factors affecting expenditures for the efficient provision of services in different sectors, including the process for updating hospital, skilled nursing facility, physician, and other fees,

(ii) payment methodologies, and

(iii) their relationship to access and quality of care for Medicare beneficiaries.

(C) Interaction of Medicare payment policies with health care delivery generally

Specifically, the Commission shall review the effect of payment policies under this subchapter on the delivery of health care services other than under this subchapter and assess the implications of changes in health care delivery in the United States and in the general market for health care services on the Medicare program.

(3) Comments on certain secretarial reports

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

(4) Review and comment on the Independent Payment Advisory Board or Secretarial proposal

If the Independent Payment Advisory Board (as established under subsection (a) of section 1395kkk of this title) or the Secretary submits a proposal to the Commission under such section in a year, the Commission shall review the proposal and, not later than March 1 of that year, submit to the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate written comments on such proposal. Such comments may include such recommendations as the Commission deems appropriate.

(5) Agenda and additional reviews

The Commission shall consult periodically with the chairmen and ranking minority members of the appropriate committees of Congress regarding the Commission’s agenda and progress towards achieving the agenda.

'"So in original."
The Commission may conduct additional reviews, and submit additional reports to the appropriate committees of Congress, from time to time on such topics relating to the program under this subchapter as may be requested by such chairmen and members and as the Commission deems appropriate.

(6) Availability of reports

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

(7) Appropriate committees of Congress

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

(8) Voting and reporting requirements

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

(9) Examination of budget consequences

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

(10) Review and annual report on Medicaid and commercial trends

The Commission shall review and report on aggregate trends in spending, utilization, and financial performance under the Medicaid program under subchapter XIX and the private market for health care services with respect to providers for which, on an aggregate national basis, a significant portion of revenue or services is associated with the Medicaid program. Where appropriate, the Commission shall conduct such review in consultation with the Medicaid and CHIP Payment and Access Commission established under section 1396 of this title (in this section referred to as “MACPAC”).

(11) Coordinate and consult with the Federal Coordinated Health Care Office

The Commission shall coordinate and consult with the Federal Coordinated Health Care Office established under section 2081 of the Patient Protection and Affordable Care Act before making any recommendations regarding dual eligible individuals.

(12) Interaction of Medicaid and Medicare

The Commission shall consult with MACPAC in carrying out its duties under this section, as appropriate. Responsibility for analysis of and recommendations to change Medicare policy regarding Medicare beneficiaries, including Medicare beneficiaries who are dually eligible for Medicare and Medicaid, shall rest with the Commission. Responsibility for analysis of and recommendations to change Medicaid policy regarding Medicaid beneficiaries, including Medicaid beneficiaries who are dually eligible for Medicare and Medicaid, shall rest with MACPAC.

(c) Membership

(1) Number and appointment

The Commission shall be composed of 17 members appointed by the Comptroller General.

(2) Qualifications

(A) In general

The membership of the Commission shall include individuals with national recognition for their expertise in health finance and economics, actuarial science, health facility management, health plans and integrated delivery systems, reimbursement of health facilities, allopathic and osteopathic physicians, and other providers of health services, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives.

(B) Inclusion

The membership of the Commission shall include (but not be limited to) physicians and other health professionals, experts in the area of pharmaco-economics or prescription drug benefit programs, employers, third-party payers, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research and expertise in outcomes and effectiveness research and technology assessment. Such membership shall also include representatives of consumers and the elderly.

(C) Majority nonproviders

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

(D) Ethical disclosure

The Comptroller General shall establish a system for public disclosure by members of the Commission of financial and other potential conflicts of interest relating to such members. Members of the Commission shall be treated as employees of Congress for purposes of applying title I of the Ethics in Government Act of 1978 (Public Law 95–521).

(3) Terms

(A) In general

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

(B) Vacancies

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

(4) Compensation

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

(5) Chairman; Vice Chairman

The Comptroller General shall designate a member of the Commission, at the time of appointment of the member as Chairman and a member as Vice Chairman for that term of appointment, except that in the case of vacancy of the Chairmanship or Vice Chairmanship, the Comptroller General may designate another member for the remainder of that member’s term.

(6) Meetings

The Commission shall meet at the call of the Chairman.

(d) Director and staff; experts and consultants

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

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

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

(3) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of the Commission (without regard to section 6101 of title 41);

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

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

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

(e) Powers

(1) Obtaining official data

The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman, the head of that department or agency shall furnish that information to the Commission on an agreed upon schedule.

(2) Data collection

In order to carry out its functions, the Commission shall—

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

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

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

(3) Access of GAO to information

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

(4) Periodic audit

The Commission shall be subject to periodic audit by the Comptroller General.

(f) Authorization of appropriations

(1) Request for appropriations

The Commission shall submit requests for appropriations in the same manner as the Comptroller General submits requests for appropriations, but amounts appropriated for the Commission shall be separate from amounts appropriated for the Comptroller General.

(2) Authorization

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. Sixty percent of such appropriation shall be payable from the Federal Hospital Insurance Trust Fund, and 40 percent of such appropriation shall be payable from the Federal Supplementary Medical Insurance Trust Fund.

121 Stat. 2514; Pub. L. 111–148, title II, §2801(b),
title III, §3403(c), title X, §10320(b), Mar. 23, 2010,
124 Stat. 332, 507, 952.)

REFERENCES IN TEXT

The Patient Protection and Affordable Care Act, re-
defined terms in section 1824(a) of this Act, which is clas-
sified to section 1315b(a)(1) of this title. For complete
classification of this Act to the Code, see Short Title
note set out under section 1300l of this title and Tables.
The Ethics in Government Act of 1978, referred to in
1824. Title I of the Act is set out in the Appendix to
Title 5, Government Organization and Employees. For
classification of this Act to the Code, see Short Title
title set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5 and Tables.

CODIFICATION

In subsec. (d)(3), “section 6101 of title 41” substituted for
Stat. 3854, which Act enacted “Title 41, Public Contracts.

AMENDMENTS

substituted “March 15” for “March 1 of each year (be-
ginning with 1996)”.
and (beginning with 2012) containing an examination of
the topics described in paragraph (9), to the extent
feasible,” before period.
(4). Former par. (4) redesignated (5).
Subsec. (b)(5) to (8). Pub. L. 111–148, §3403(c)(1), redesign-
ated pars. (4) to (7) as (5) to (8), respectively. Former
par. (8) relating to examination of budget consequences
designated.
Subsec. (b)(9). Pub. L. 111–148, §3403(c)(1), redesign-
ated par. (8) relating to examination of budget conse-
quences as (9).
Pub. L. 111–148, §2801(b)(3), added par. (9) relating to
review and annual report on Medicaid and commercial
trends.
pars. (10) and (11).
Subsec. (a). Pub. L. 110–173 inserted “as an agen-
cy of Congress” after “established”.
serted “the efficient provision of” after “expenditures for”.
“experts in the area of pharmaco-economics or pre-
scription drug benefit programs,” after “other health
professionals.”
Subsec. (c)(2)(D). Pub. L. 108–173, §735(c)(1), inserted
at end “Members of the Commission shall be treated as
employees of Congress for purposes of applying title I
of the Ethics in Government Act of 1978 (Public Law
95–521).”
“June 1 of each year (beginning with 1998).”.
1999—Subsec. (b)(1)(D). Pub. L. 106–113 added “and
including a review of the estimate of the conversion
factor submitted under section 1395w–4(d)(1)(E)(ii) of
this title” before period at end.
for “15”.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to
Medicare Advantage or MA, subject to an appropriate
transition provided by the Secretary of Health and
Human Services in the use of those terms, see section
201 of Pub. L. 106–173, set out as a note under section
1395w–23 of this title.

“Independent Payment Advisory Board” substituted for
“Independent Medicare Advisory Board” in subsec.
(b)(4) on authority of section 1322(b) of Pub. L. 111–148,
set out as a note under section 1396kk of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Stat. 2354, provided that: “The amendment made by
paragraph (1) [amending this section] shall take effect
on January 1, 2004.”

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(6) (title V, §544(a)(2)), Dec. 21,
2000, 114 Stat. 2763, 2763A–551, provided that: “The
amendment made by paragraph (1) [amending this sec-
and (beginning with 2001).”

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective in determin-
ing conversion factor under section 1395w–4(d) of this
Title for years beginning with 2001 and not applicable to
any year before 2001, see section 1000(a)(6) (title II, §211(d)) of Pub. L. 106–113, set out as a note under
section 1395w–4 of this title.

EFFECTIVE DATE; TRANSITION; TRANSFER OF FUNCTIONS

Section 4022(c) of Pub. L. 105–33 provided that:
“(1) IN GENERAL.—The Comptroller General shall first
provide for appointment of members to the Medicare
Payment Advisory Commission (in this subsection re-
ferred to as ‘MedPAC’) by not later than September 30,
1997.
“(2) TRANSITION.—As quickly as possible after the
date a majority of members of MedPAC are first ap-
pointed (Oct. 1, 1997, see 62 FR 52131), the Comptroller
General, in consultation with the Prospective Payment
Assessment Commission (in this subsection referred
to as ‘ProPAC’) and the Physician Payment Review Com-
mission (in this subsection referred to as ‘PPRC’) shall
provide for the termination of the ProPAC and the
PPRC. As of the date of termination of the respective
Commissions (Nov. 1, 1997, see 62 FR 59356), the amend-
ments made by paragraphs (1) and (2), respectively, of
subsection (b) [amending this section] shall take effect
on or affecting any update (or any update adjustment fac-
tor) for any year before 2001, see section 1000(a)(6) (title
II, §211(d)) of Pub. L. 106–113, set out as a note under
section 1395w–4 of this title.

APPPOINTMENT OF EXPERTS IN PRESCRIPTION DRUGS

Stat. 2354, provided that: “The Comptroller General of
the United States shall ensure that the membership of
the Commission [Medicare Payment Advisory Commis-
sion] complies with the amendment made by paragraph
(1) [amending this section] with respect to appointments
made on or after the date of the enactment of this
Act [Dec. 8, 2003].”

MEDPAC ANALYSIS OF IMPACT OF VOLUME ON PER
UNIT COST OF RURAL HOSPITALS WITH PSYCHIATRIC
UNITS

Pub. L. 106–554, §1(a)(6) (title II, §214), Dec. 21, 2000,
114 Stat. 2763, 2763A–466, provided that: “The Medicare
The Medicare Payment Advisory Commission, in its study conducted pursuant to subsection (a) of section 411 of BBRA [Pub. L. 106-113, §1000(a)(6) [title IV, §411]], set out as a note below 113 Stat. 1501A-377, shall include—

“(1) in such study an analysis of the impact of volume on the per unit cost of rural hospitals with psychiatric units; and

“(2) in its report under subsection (b) of such section a recommendation on whether special treatment for such hospitals may be warranted.”

MEDPAC STUDY ON COMPLEXITY OF MEDICARE PROGRAM AND LEVELS OF BURDENS PLACED ON PROVIDERS THROUGH FEDERAL REGULATIONS
Pub. L. 106-113, div. B, §1000(a)(6) [title II, §229(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A-357, provided that:

“(1) STUDY.—The Medicare Payment Advisory Commission shall undertake a comprehensive study to review the regulatory burdens placed on all classes of health care providers under parts A and B of the medicare program under title XVIII of the Social Security Act [this subchapter] and to determine the costs these burdens impose on the nation’s health care system. The study shall also examine the complexity of the current regulatory system and its impact on providers.

“(2) REPORT.—Not later than December 31, 2001, the Commission shall submit to Congress one or more reports on the study conducted under paragraph (1). The report shall include recommendations regarding—

“(A) how the Health Care Financing Administration can reduce the regulatory burdens placed on patients and providers; and

“(B) legislation that may be appropriate to reduce the complexity of the medicare program, including improvement of the rules regarding billing, compliance, and fraud and abuse.”

MEDPAC REPORT

“The Medicare Payment Advisory Commission shall include in its report submitted to Congress in March of 2001 recommendations regarding the appropriateness of the initial residency period used under section 1886(h)(5)(F) of the Social Security Act (42 U.S.C. 1395w(h)(5)(F)) for other residency training programs in a specialty that require preliminary years of study in another specialty.”

MEDPAC STUDY OF RURAL PROVIDERS

“(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study of rural providers furnishing items and services for which payment is made under title XVIII of the Social Security Act [this subchapter]. Such study shall examine and evaluate the adequacy and appropriateness of the categories of special payments (and payment methodologies) established for rural hospitals under the medicare program, and the impact of such categories on beneficiary access and quality of health care services.

“(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Nov. 29, 1999], the Medicare Payment Advisory Commission shall submit to Congress a report on the study conducted under subsection (a).”

QUALITY IMPROVEMENT STANDARDS
Pub. L. 106-113, div. B, §1000(a)(6) [title V, §520(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A-386, provided that:

“(1) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on the appropriate quality improvement standards that should apply to—

“(A) each type of Medicare+Choice plan described in section 1801(a)(2) of the Social Security Act (42 U.S.C. 1395w-21(a)(2)), including each type of Medicare+Choice plan that is a coordinated care plan (as described in subparagraph (A) of such section); and

“(B) the original medicare fee-for-service program under parts A and B [sic title XVIII of such Act (42 U.S.C. 1395 et seq.)] [parts A and B of this subchapter].

“(2) CONSIDERATIONS.—Such study shall specifically examine the effects, costs, and feasibility of requiring entities, physicians, and other health care providers that provide items and services under the original medicare fee-for-service program to comply with quality standards and related reporting requirements that are comparable to the quality standards and related reporting requirements that are applicable to Medicare+Choice organizations.

“(3) REPORT.—Not later than 2 years after the date of the enactment of this Act [Nov. 29, 1999], such Commission shall submit a report to Congress on the study conducted under this subsection, together with any recommendations for legislation that it determines to be appropriate as a result of such study.”

INITIAL TERMS OF ADDITIONAL MEMBERS
Pub. L. 105-33 provided that:

“(1) IN GENERAL.—For purposes of staggering the initial terms of members of the Medicare Payment Advisory Commission under section 1805(c)(3) of such Act (42 U.S.C. 1395b-6(c)(3)(A)), the initial terms of the two additional members of the Commission provided for by the amendment under subsection (a) [amending this section] are as follows:

“(A) One member shall be appointed for one year.

“(B) One member shall be appointed for two years.

“(2) COMMENCEMENT OF TERMS.—Such terms shall begin on May 1, 1999.”

INFORMATION INCLUDED IN ANNUAL RECOMMENDATIONS
Section 4804(c) of Pub. L. 105-33 provided that: “The Medicare Payment Advisory Commission shall include in its annual report under section 1805(b)(1)(B) of the Social Security Act [subsec. (b)(1)(B) of this section] recommendations on the methodology and level of payments made to PACE providers under sections 1851(d) and 1914(d) of such Act [sections 1395ee(d) and 1396a-4(d) of this title] and on the treatment of private, for-profit entities as PACE providers.”

§1395b-7. Explanation of medicare benefits

(a) In general

The Secretary shall furnish to each individual for whom payment has been made under this subchapter (or would be made without regard to any deductible) a statement which—

(1) lists the item or service for which payment has been made and the amount of such payment for each item or service; and

(2) includes a notice of the individual’s right to request an itemized statement (as provided in subsection (b) of this section).

(b) Request for itemized statement for medicare items and services

(1) In general

An individual may submit a written request to any physician, provider, supplier, or any other person (including an organization, agency, or other entity) for an itemized statement for any item or service provided to such individual by such person with respect to which payment has been made under this subchapter.

(2) 30-day period to furnish statement

(A) In general

Not later than 30 days after the date on which a request under paragraph (1) has been made, a person described in such paragraph shall furnish an itemized statement describ-
ing each item or service provided to the individual requesting the itemized statement.

(B) Penalty

Whoever knowingly fails to furnish an itemized statement in accordance with subparagraph (A) shall be subject to a civil money penalty of not more than $100 for each such failure. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected under that section.

(3) Review of itemized statement

(A) In general

Not later than 90 days after the receipt of an itemized statement furnished under paragraph (1), an individual may submit a written request for a review of the itemized statement to the Secretary.

(B) Specific allegations

A request for a review of the itemized statement shall identify—

(i) specific items or services that the individual believes were not provided as claimed, or

(ii) any other billing irregularity (including duplicate billing).

(4) Findings of Secretary

The Secretary shall, with respect to each written request submitted under paragraph (3), determine whether the itemized statement identifies specific items or services that were not provided as claimed or any other billing irregularity (including duplicate billing) that has resulted in unnecessary payments under this subchapter.

(5) Recovery of amounts

The Secretary shall take all appropriate measures to recover amounts unnecessarily paid under this subchapter with respect to a statement described in paragraph (4).


Effective Date

Section 4311(b)(3) of Pub. L. 105–33 provided that:

“(A) STATEMENT BY SECRETARY.—Paragraph (1) of section 1806(a) of the Social Security Act [subsec. (a)(1) of this section], as added by paragraph (1), and the repeal made by paragraph (2) [amending section 1320a–7 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].

“(B) ITEMIZED STATEMENT.—Paragraph (2) of section 1806(a) and section 1806(b) of the Social Security Act [subsecs. (a)(2) and (b) of this section], as so added, shall take effect not later than January 1, 1999.”

Inclusion of Additional Information in Notices to Beneficiaries About Skilled Nursing Facility Benefits


“(a) In General.—The Secretary of Health and Human Services shall provide that in medicare beneficiary notices provided (under section 1860(d)(2)(C) of the Social Security Act, 42 U.S.C. 1395k–7(a)) with respect to the provision of post-hospital extended care services under part A of title XVIII of the Social Security Act [part A of this subchapter], there shall be included information on the number of days of coverage of such services remaining under such part for the medicare beneficiary and spell of illness involved.

“(b) Effective Date.—Subsection (a) shall apply to notices provided during calendar quarters beginning more than 6 months after the date of the enactment of this Act [Dec. 8, 2003].”

§ 1395b–8. Chronic care improvement

(a) Implementation of chronic care improvement programs

(1) In general

The Secretary shall provide for the phased-in development, testing, evaluation, and implementation of chronic care improvement programs in accordance with this section. Each such program shall be designed to improve clinical quality and beneficiary satisfaction and achieve spending targets with respect to expenditures under this subchapter for targeted beneficiaries with one or more threshold conditions.

(2) Definitions

For purposes of this section:

(A) Chronic care improvement program

The term “chronic care improvement program” means a program described in paragraph (1) that is offered under an agreement under subsection (b) or (c) of this section.

(B) Chronic care improvement organization

The term “chronic care improvement organization” means an entity that has entered into an agreement under subsection (b) or (c) of this section to provide, directly or through contracts with subcontractors, a chronic care improvement program under this section. Such an entity may be a disease management organization, health insurer, integrated delivery system, physician group practice, a consortium of such entities, or any other legal entity that the Secretary determines appropriate to carry out a chronic care improvement program under this section.

(C) Care management plan

The term “care management plan” means a plan established under subsection (d) of this section for a participant in a chronic care improvement program.

(D) Threshold condition

The term “threshold condition” means a chronic condition, such as congestive heart failure, diabetes, chronic obstructive pulmonary disease (COPD), or other diseases or conditions, as selected by the Secretary as appropriate for the establishment of a chronic care improvement program.

(E) Targeted beneficiary

The term “targeted beneficiary” means, with respect to a chronic care improvement program, an individual who—

(i) is entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, but not enrolled in a plan under part C of this subchapter;

(ii) has one or more threshold conditions covered under such program; and
(iii) has been identified under subsection (d)(1) of this section as a potential participant in such program.

(3) Construction

Nothing in this section shall be construed as—

(A) expanding the amount, duration, or scope of benefits under this subchapter;
(B) providing an entitlement to participate in a chronic care improvement program under this section;
(C) providing for any hearing or appeal rights under section 1395ff, 1395oo of this title, or otherwise, with respect to a chronic care improvement program under this section; or
(D) providing benefits under a chronic care improvement program for which a claim may be submitted to the Secretary by any provider of services or supplier (as defined in section 1395x(d) of this title).

(b) Developmental phase (Phase I)

(1) In general

In carrying out this section, the Secretary shall enter into agreements consistent with subsection (f) of this section with chronic care improvement organizations for the development, testing, and evaluation of chronic care improvement programs using randomized controlled trials. The first such agreement shall be entered into not later than 12 months after December 8, 2003.

(2) Agreement period

The period of an agreement under this subsection shall be for 3 years.

(3) Minimum participation

(A) In general

The Secretary shall enter into agreements under this subsection in a manner so that chronic care improvement programs offered under this section are offered in geographic areas that, in the aggregate, consist of areas in which at least 10 percent of the aggregate number of medicare beneficiaries reside.

(B) Medicare beneficiary defined

In this paragraph, the term “medicare beneficiary” means an individual who is entitled to benefits under part A of this subchapter, enrolled under part B of this subchapter, or both, and who resides in the United States.

(4) Site selection

In selecting geographic areas in which agreements are entered into under this subsection, the Secretary shall ensure that each chronic care improvement program is conducted in a geographic area in which at least 10,000 targeted beneficiaries reside among other individuals entitled to benefits under part A of this subchapter, enrolled under part B of this subchapter, or both to serve as a control population.

(5) Independent evaluations of Phase I programs

The Secretary shall contract for an independent evaluation of the programs conducted under this subsection. Such evaluation shall be done by a contractor with knowledge of chronic care management programs and demonstrated experience in the evaluation of such programs. Each evaluation shall include an assessment of the following factors of the programs:

(A) Quality improvement measures, such as adherence to evidence-based guidelines and rehospitalization rates.
(B) Beneficiary and provider satisfaction.
(C) Health outcomes.
(D) Financial outcomes, including any cost savings to the program under this subchapter.

(c) Expanded implementation phase (Phase II)

(1) In general

With respect to chronic care improvement programs conducted under subsection (b) of this section, if the Secretary finds that the results of the independent evaluation conducted under subsection (b)(6) of this section indicate that the conditions specified in paragraph (2) have been met by a program (or components of such program), the Secretary shall enter into agreements consistent with subsection (f) of this section to expand the implementation of the program (or components) to additional geographic areas not covered under the program as conducted under subsection (b) of this section, which may include the implementation of the program on a national basis. Such expansion shall begin not earlier than 2 years after the program is implemented under subsection (b) of this section and not later than 6 months after the date of completion of such program.

(2) Conditions for expansion of programs

The conditions specified in this paragraph are, with respect to a chronic care improvement program conducted under subsection (b) of this section for a threshold condition, that the program is expected to—

(A) improve the clinical quality of care;
(B) improve beneficiary satisfaction; and
(C) achieve targets for savings to the program under this subchapter specified by the Secretary in the agreement within a range determined to be appropriate by the Secretary, subject to the application of budget neutrality with respect to the program and not taking into account any payments by the organization under the agreement under the program for risk under subsection (f)(3)(B) of this section.

(3) Independent evaluations of Phase II programs

The Secretary shall carry out evaluations of programs expanded under this subsection as the Secretary determines appropriate. Such evaluations shall be carried out in the similar manner as is provided under subsection (b)(5) of this section.

(d) Identification and enrollment of prospective program participants

(1) Identification of prospective program participants

The Secretary shall establish a method for identifying targeted beneficiaries who may
benefit from participation in a chronic care improvement program.

(2) Initial contact by Secretary

The Secretary shall communicate with each targeted beneficiary concerning participation in a chronic care improvement program. Such communication may be made by the Secretary and shall include information on the following:

(A) A description of the advantages to the beneficiary in participating in a program.

(B) Notification that the organization offering a program may contact the beneficiary directly concerning such participation.

(C) Notification that participation in a program is voluntary.

(D) A description of the method for the beneficiary to participate or for declining to participate and the method for obtaining additional information concerning such participation.

(3) Voluntary participation

A targeted beneficiary may participate in a chronic care improvement program on a voluntary basis and may terminate participation at any time.

(e) Chronic care improvement programs

(1) In general

Each chronic care improvement program shall—

(A) have a process to screen each targeted beneficiary for conditions other than threshold conditions, such as impaired cognitive ability and co-morbidities, for the purposes of developing an individualized, goal-oriented care management plan under paragraph (2);

(B) provide each targeted beneficiary participating in the program with such plan; and

(C) carry out such plan and other chronic care improvement activities in accordance with paragraph (3).

(2) Elements of care management plans

A care management plan for a targeted beneficiary shall be developed with the beneficiary and shall, to the extent appropriate, include the following:

(A) A designated point of contact responsible for communications with the beneficiary and for facilitating communications with other health care providers under the plan.

(B) Self-care education for the beneficiary (through approaches such as disease management or medical nutrition therapy) and education for primary caregivers and family members.

(C) Education for physicians and other providers and collaboration to enhance communication of relevant clinical information.

(D) The use of monitoring technologies that enable patient guidance through the exchange of pertinent clinical information, such as vital signs, symptomatic information, and health self-assessment.

(E) The provision of information about hospice care, pain and palliative care, and end-of-life care.

(3) Conduct of programs

In carrying out paragraph (1)(C) with respect to a participant, the chronic care improvement organization shall—

(A) guide the participant in managing the participant’s health (including all co-morbidities, relevant health care services, and pharmaceutical needs) and in performing activities as specified under the elements of the care management plan of the participant;

(B) use decision-support tools such as evidence-based practice guidelines or other criteria as determined by the Secretary; and

(C) develop a clinical information database to track and monitor each participant across settings and to evaluate outcomes.

(4) Additional responsibilities

(A) Outcomes report

Each chronic care improvement organization offering a chronic care improvement program shall monitor and report to the Secretary, in a manner specified by the Secretary, on health care quality, cost, and outcomes.

(B) Additional requirements

Each such organization and program shall comply with such additional requirements as the Secretary may specify.

(5) Accreditation

The Secretary may provide that chronic care improvement programs and chronic care improvement organizations that are accredited by qualified organizations (as defined by the Secretary) may be deemed to meet such requirements under this section as the Secretary may specify.

(f) Terms of agreements

(1) Terms and conditions

(A) In general

An agreement under this section with a chronic care improvement organization shall contain such terms and conditions as the Secretary may specify consistent with this section.

(B) Clinical, quality improvement, and financial requirements

The Secretary may not enter into an agreement with such an organization under this section for the operation of a chronic care improvement program unless—

(i) the program and organization meet the requirements of subsection (e) of this section and such clinical, quality improvement, financial, and other requirements as the Secretary deems to be appropriate for the targeted beneficiaries to be served; and

(ii) the organization demonstrates to the satisfaction of the Secretary that the organization is able to assume financial risk for performance under the agreement (as applied under paragraph (3)(B)) with respect to payments made to the organization under such agreement through available reserves, reinsurance, withholds, or such other means as the Secretary determines appropriate.
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(2) Manner of payment

Subject to paragraph (3)(B), the payment under an agreement under—

(A) subsection (b) of this section shall be computed on a per-member per-month basis; or

(B) subsection (c) of this section may be on a per-member per-month basis or such other basis as the Secretary and organization may agree.

(3) Application of performance standards

(A) Specification of performance standards

Each agreement under this section with a chronic care improvement organization shall specify performance standards for each of the factors specified in subsection (c)(2) of this section, including clinical quality and spending targets under this subchapter, against which the performance of the chronic care improvement organization under the agreement is measured.

(B) Adjustment of payment based on performance

(i) in general

Each such agreement shall provide for adjustments in payment rates to an organization under the agreement insofar as the Secretary determines that the organization failed to meet the performance standards specified in the agreement under subparagraph (A).

(ii) Financial risk for performance

In the case of an agreement under subsection (b) or (c) of this section, the agreement shall provide for a full recovery for any amount by which the fees paid to the organization under the agreement exceed the estimated savings to the programs under this subchapter attributable to implementation of such agreement.

(4) Budget neutral payment condition

Under this section, the Secretary shall ensure that the aggregate sum of medicare program benefit expenditures for beneficiaries participating in chronic care improvement programs and funds paid to chronic care improvement organizations under this section, shall not exceed the medicare program benefit expenditures that the Secretary estimates would have been made for such targeted beneficiaries in the absence of such programs.

(g) Funding

(1) Subject to paragraph (2), there are appropriated to the Secretary, in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, such sums as may be necessary to provide for agreements with chronic care improvement programs under this section.

(2) In no case shall the funding under this section exceed $100,000,000 in aggregate increased expenditures under this subchapter (after taking into account any savings attributable to the operation of this section) over the 3-fiscal-year period beginning on October 1, 2003.


"(a) Establishment.—"

"(1) IN GENERAL.—Subject to the succeeding provisions of this section, the Secretary [of Health and Human Services] shall establish demonstration projects (in this section referred to as ‘demonstration projects’) under which the Secretary shall evaluate methods that improve the quality of care provided to individuals with chronic conditions and that reduce expenditures that would otherwise be made under the medicare program on behalf of such individuals for such chronic conditions, such methods to include permitting those beneficiaries to direct their own health care needs and services.

"(2) INDIVIDUALS WITH CHRONIC CONDITIONS DEFINED.—In this section, the term ‘individuals with chronic conditions’ means an individual entitled to benefits under part A of title XVIII of the Social Security Act [part A of this subchapter], and enrolled under part B of such title [part B of this subchapter], but who is not enrolled under part C of such title [part C of this subchapter] who is diagnosed as having one or more chronic conditions (as defined by the Secretary), such as diabetes.

"(b) Design of Projects.—"

"(1) Evaluation before Implementation of Project.—"

"(A) in general.—In establishing the demonstration projects under this section, the Secretary shall evaluate best practices employed by group health plans and practices under State plans for medical assistance under the medicaid program under title XIX of the Social Security Act [subchapter XIX of this chapter], as well as best practices in the private sector or other areas, of methods that permit patients to self-direct the provision of personal care services. The Secretary shall evaluate such practices for a 1-year period and, based on such evaluation, shall design the demonstration project.

"(B) Requirement for Estimate of Budget Neutral Costs.—As part of the evaluation under subparagraph (A), the Secretary shall evaluate the costs of furnishing care under the projects. The Secretary may not implement the demonstration projects under this section unless the Secretary determines that the costs of providing care to individuals with chronic conditions under the project will not exceed the costs, in the aggregate, of furnishing care to such individuals under title XVIII of the Social Security Act [this subchapter], that would otherwise be paid without regard to the demonstration projects for the period of the project.

"(2) Scope of Services.—The Secretary shall determine the appropriate scope of personal care services that would apply under the demonstration projects.

"(c) Voluntary Participation.—Participation of providers of services and suppliers, and of individuals with chronic conditions, in the demonstration projects shall be voluntary.

"(d) Demonstration Projects Sites.—Not later than 2 years after the date of the enactment of this Act [Dec. 8, 2003], the Secretary shall conduct a demonstration project in at least one area that the Secretary determines has a population of individuals entitled to benefits under part A of title XVIII of the Social Security Act [part A of this subchapter], and enrolled under part B of such title [part B of this subchapter], with a rate of incidence of diabetes that significantly exceeds the national average rate of all areas.

"(e) Evaluation and Report.—"
“(1) Evaluations.—The Secretary shall conduct evaluations of the clinical and cost effectiveness of the demonstration projects.

“(2) Reports.—Not later than 2 years after the commencement of the demonstration projects, and biannually thereafter, the Secretary shall submit to Congress a report on the evaluation, and shall include in the report the following:

“(A) An analysis of the patient outcomes and costs of furnishing care to the individuals with chronic conditions participating in the projects as compared to such outcomes and costs to other individuals for the same health conditions.

“(B) Evaluation of patient satisfaction under the demonstration projects.

“(C) Such recommendations regarding the extension, expansion, or termination of the projects as the Secretary determines appropriate.

“(D) Waiver Authority.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) to such extent and for such period as the Secretary determines is necessary to conduct demonstration projects.

“(g) Authorization of Appropriations.—(1) Payments for the costs of carrying out the demonstration project under this section shall be made from the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395).

“(2) There are authorized to be appropriated from such Trust Fund such sums as may be necessary for the Secretary to enter into contracts with appropriate organizations for the design, implementation, and evaluation of the demonstration project.

“(h) Expenditures under this section may not exceed the aggregate expenditures that would otherwise have been made for the provision of personal care services.”

**Reports**


**§1395b–9. Provisions relating to administration**

(a) Coordinated administration of Medicare prescription drug and Medicare Advantage programs

(1) In general

There is within the Centers for Medicare & Medicaid Services a center to carry out the duties described in paragraph (3).

(2) Director

Such center shall be headed by a director who shall report directly to the Administrator of the Centers for Medicare & Medicaid Services.

(3) Duties

The duties described in this paragraph are the following:

(A) The administration of parts C and D of this subchapter.

(B) The provision of notice and information under section 1395b–2 of this title.

(C) Such other duties as the Secretary may specify.

(4) Deadline

The Secretary shall ensure that the center is carrying out the duties described in paragraph (3) by not later than January 1, 2008.

(b) Employment of management staff

(1) In general

The Secretary may employ, within the Centers for Medicare & Medicaid Services, such individuals as management staff as the Secretary determines to be appropriate. With respect to the administration of parts C and D of this subchapter, such individuals shall include individuals with private sector expertise in negotiations with health benefits plans.
§ 1395b–10

(2) Eligibility

To be eligible for employment under paragraph (1) an individual shall be required to have demonstrated, by their education and experience (either in the public or private sector), superior expertise in at least one of the following areas:

(A) The review, negotiation, and administration of health care contracts.
(B) The design of health care benefit plans.
(C) Actuarial sciences.
(D) Compliance with health plan contracts.
(E) Consumer education and decision making.

(3) Rates of payment

(A) Performance-related pay

Subject to subparagraph (B), the Secretary shall establish the rate of pay for an individual employed under paragraph (1). Such rate shall take into account expertise, experience, and performance.

(B) Limitation

In no case may the rate of compensation determined under subparagraph (A) exceed the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5.

(e) Medicare Beneficiary Ombudsman

(1) In general

The Secretary shall appoint within the Department of Health and Human Services a Medicare Beneficiary Ombudsman who shall have expertise and experience in the fields of health care and education of (and assistance to) individuals entitled to benefits under this subchapter.

(2) Duties

The Medicare Beneficiary Ombudsman shall—

(A) receive complaints, grievances, and requests for information submitted by individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, with respect to any aspect of the medicare program;

(B) provide assistance with respect to complaints, grievances, and requests referred to in subparagraph (A), including—

(i) assistance in collecting relevant information for such individuals, to seek an appeal of a decision or determination made by a fiscal intermediary, carrier, MA organization, or the Secretary;

(ii) assistance to such individuals with any problems arising from disenrollment from an MA plan under part C of this subchapter; and

(iii) assistance to such individuals in presenting information under section 1395r(l)(4)(C) of this title (relating to income-related premium adjustment);1 and

(C) submit annual reports to Congress and the Secretary that describe the activities of the Office and that include such recommendations for improvement in the administration of this subchapter as the Ombudsman determines appropriate.

The Ombudsman shall not serve as an advocate for any increases in payments or new coverage of services, but may identify issues and problems in payment or coverage policies.

(3) Working with health insurance counseling programs

To the extent possible, the Ombudsman shall work with health insurance counseling programs (receiving funding under section 1395b–4 of this title) to facilitate the provision of information to individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both regarding MA plans and changes to those plans.

Nothing in this paragraph shall preclude further collaboration between the Ombudsman and such programs.


AMENDMENTS


DEADLINE FOR APPOINTMENT

Pub. L. 108–173, title IX, §923(b), Dec. 8, 2003, 117 Stat. 2394, provided that: ‘‘By not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall appoint the Medicare Beneficiary Ombudsman under section 1808(c) of the Social Security Act [subsec. (c) of this section], as added by subsection (a).’’

§ 1395b–10. Addressing health care disparities

(a) Evaluating data collection approaches

The Secretary shall evaluate approaches for the collection of data under this subchapter, to be performed in conjunction with existing quality reporting requirements and programs under this subchapter, that allow for the ongoing, accurate, and timely collection and evaluation of data on disparities in health care services and performance on the basis of race, ethnicity, and gender. In conducting such evaluation, the Secretary shall consider the following objectives:

(1) Protecting patient privacy.

(2) Minimizing the administrative burdens of data collection and reporting on providers and health plans participating under this subchapter.

(3) Improving Medicare program data on race, ethnicity, and gender.

(b) Reports to Congress

(1) Report on evaluation

Not later than 18 months after July 15, 2008, the Secretary shall submit to Congress a report on the evaluation conducted under subsection (a). Such report shall, taking into consideration the results of such evaluation—

(A) identify approaches (including defining methodologies) for identifying and collect-
The insurance program for which entitlement is established by sections 426 and 426-1 of this title provides basic protection against the costs of hospital, related post-hospital, home health services, and hospice care in accordance with this part for (1) individuals who are age 65 or over and are eligible for retirement benefits under subchapter II of this chapter (or would be eligible for such benefits if certain government employment were covered employment under such subchapter) or under the railroad retirement system on the basis of a certain government employment were covered employment under subchapter II of this chapter (or would be entitled to such benefits if certain government employment were covered employment under such subchapter) or (2) individuals under age 65 who meet the conditions specified in either clause (1) or (2) but who are medically determined to have end stage renal disease.


PART A—HOSPITAL INSURANCE BENEFITS FOR AGED AND DISABLED

§1395c. Description of program

The insurance program for which entitlement is established by sections 426 and 426-1 of this title provides basic protection against the costs of hospital, related post-hospital, home health services, and hospice care in accordance with this part for (1) individuals who are age 65 or over and are eligible for retirement benefits under subchapter II of this chapter (or would be eligible for such benefits if certain government employment were covered employment under such subchapter) or under the railroad retirement system (2) individuals under age 65 who have been entitled for not less than 24 months to benefits under subchapter II of this chapter (or would have been so entitled to such benefits if certain government employment were covered employment under such subchapter) or under the railroad retirement system (3) individuals who do not meet the conditions specified in either clause (1) or (2) but who are medically determined to have end stage renal disease.

provided that: "The amendments made by this section [amending this section and sections 1395d to 1395f, 1396x, and 1396x to 1396cc of this title and section 231f of Title 42, Railroads, and enacting provisions set out as notes under sections 1395b–1 and 1395f of this title] apply to hospice care provided on or after November 1, 1983.


**Effective Date of 1980 Amendments**

Amendment by Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 956(c)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.


Amendment by Pub. L. 96–265 applicable with respect to hospital insurance or supplementary medical insurance benefits for services provided on or after first day of sixth month which begins after June 9, 1980, see section 103(c) of Pub. L. 96–265, set out as a note under section 426 of this title.

**Effective Date of 1978 Amendment**

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

**Advisory Council to Study Coverage of Disabled Under This Subchapter**

Pub. L. 90–248, title I, §140, Jan. 2, 1968, 81 Stat. 854, directed Secretary of Health, Education, and Welfare to appoint an Advisory Council to study need for coverage of disabled under the health insurance programs of this subchapter, directed Council to submit a report on such study to Secretary by Jan. 1, 1969, and directed Secretary in turn to transmit such report to Congress, resulting in termination of Council's existence.

**Reimbursement of Charges Under Part A for Services to Patients Admitted Prior to 1968 to Certain Hospitals**

Pub. L. 90–248, title I, §142, Jan. 2, 1968, 81 Stat. 855, provided that: "(a) Notwithstanding any provision of title XVIII of the Social Security Act [this subchapter] an individual who is entitled to hospital insurance benefits under section 1866 of such Act [section 1395c of this title] may, subject to subsections (b) and (c), receive, on the basis of an itemized bill, reimbursement for charges to him for inpatient hospital services (as defined in section 1861 of such Act [section 1395x of this title], but without regard to subsection (e) of such section) furnished by, or under arrangements (as defined in section 1861(w) of such Act [section 1395w] of this title) with, a hospital if—

"(1) the hospital did not have an agreement in effect under section 1866 of such Act [section 1395c of this title] but would have been eligible for payment under part A of title XVIII of such Act [this part] with respect to such services if at the time such services were furnished the hospital had such an agreement in effect;

"(2) the hospital (A) meets the requirements of paragraphs (5) and (7) of section 1861(e) of such Act [section 1395x(e) of this title], (B) is not primarily engaged in providing in the services described in section 1861(j)(1)(A) of such Act [section 1395x(j)(1)(A) of this title], and (C) is primarily engaged in providing, by or under the supervision of individuals referred to in paragraph (1) of section 1861(c) of such Act [section 1395x(r) of this title], to inpatients (i) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or (ii) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

"(3) the hospital did not meet the requirements that must be met to permit payment to the hospital under part A of title XVIII of such Act [this part]; and

"(4) an application is filed (submitted in such form and manner and by such person, and containing and supported by such information, as the Secretary shall prescribe) for reimbursement before January 1, 1969.

"(b) Payments under this section may not be made for inpatient hospital services (as described in subsection (a) of this section) furnished to an individual—

"(1) prior to July 1, 1966,

"(2) after December 31, 1967, unless furnished with respect to an admission to the hospital prior to January 1, 1968, and

"(3) for more than—

"(A) 90 days in any spell of illness, but only if (i) prior to January 1, 1969, the hospital furnishing such services entered into an agreement under section 1866 of the Social Security Act [section 1395cc of this title] that hospital's plan for utilization review, as provided for in section 1861(k) of such Act [section 1395xx(k) of this title], has, in accordance with section 1814 of such Act [section 1395f of this title], been applied to the services furnished such individual, or

"(B) 20 days in any spell of illness, if the hospital did not meet the conditions of clauses (i) and (ii) of subparagraph (A).

"(c)(1) The amounts payable in accordance with subsection (a) with respect to inpatient hospital services shall, subject to paragraph (2) of this subsection, be paid from the Federal Hospital Insurance Trust Fund in amounts equal to 60 percent of the hospital's reasonable charges for routine services furnished in the accommodations occupied by the individual or in semi-private accommodations (as defined in section 1861(v)(4) of the Social Security Act [section 1395xv(4) of this title]) whichever is less, plus 90 percent of the hospital's reasonable charges for ancillary services. If separate charges for routine and ancillary services are not made by the hospital, reimbursement may be based on two-thirds of the hospital's reasonable charges for the services received but not to exceed the charges which would have been made if the patient had occupied semi-private accommodations (as so defined). For purposes of the preceding provisions of this paragraph, the term "routine services" shall mean the regular room, dietary, and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made; the term "ancillary services" shall mean those special services for which charges are customarily made in addition to routine services.

"(2) Before applying paragraph (1), payments made under this section shall be reduced to the extent provided for under section 1813 of the Social Security Act [section 1395e of this title] in the case of benefits payable to providers of services under part A of title XVIII of such Act [this part].

"(d) For the purposes of this section—

"(1) the 90-day period, referred to in subsection (b)(3)(A), shall be reduced by the number of days of inpatient hospital services furnished to such individual during the spell of illness, referred to therein, and with respect to which he was entitled to have pay-
entitlement made under part A of title XVIII of the Social Security Act [this part];

"(2) the 20-day period, referred to in subsection (b)(1), shall be reduced by the number of days in excess of 70 days of inpatient hospital services furnished during the spell of illness, referred to therein, and with respect to which such individual was entitled to have payment made under such part A (this part);

"(3) the term ‘spell of illness’ shall have the meaning assigned to it by subsection (a) of section 1861 of such Act [section 1395x(a) of this title] except that the term ‘inpatient hospital services’ as it appears in such subsection shall have the meaning assigned to it by subsection (a) of this section."

§ 1395d. Scope of benefits

(a) Entitlement to payment for inpatient hospital services, post-hospital extended care services, home health services, and hospice care

The benefits provided to an individual by the insurance program under this part shall consist of entitlement to have payment made on his behalf or, in the case of payments referred to in section 1395f(d)(2) of this title to him (subject to the provisions of this part) for—

(1) inpatient hospital services or inpatient critical access hospital services for up to 150 days during any spell of illness minus 1 day for each day of such services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);

(2)(A) post-hospital extended care services for up to 100 days during any spell of illness, and (B) to the extent provided in subsection (f) of this section, extended care services that are not post-hospital extended care services;

(3) in the case of individuals not enrolled in part B of this subchapter, home health services, and in the case of individuals so enrolled, post-institutional home health services furnished during a home health spell of illness for up to 100 visits during such spell of illness;

(4) in lieu of certain other benefits, hospice care with respect to the individual during up to two periods of 90 days each and an unlimited number of subsequent periods of 60 days each with respect to which the individual makes an election under subsection (d)(1) of this section; and

(5) for individuals who are terminally ill, have not made an election under subsection (d)(1) of this section, and have not previously received services under this paragraph, services that are furnished by a physician (as defined in section 1395x(x)(1) of this title) who is either the medical director or an employee of a hospice program and that—

(A) consist of—

(i) an evaluation of the individual’s need for pain and symptom management, including the individual’s need for hospice care; and

(ii) counseling the individual with respect to hospice care and other care options; and

(B) may include advising the individual regarding advanced care planning.

(b) Services not covered

Payment under this part for services furnished to an individual during a spell of illness may not (subject to subsection (c) of this section) be made for—

(1) inpatient hospital services furnished to him during such spell after such services have been furnished to him for 150 days during such spell minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);

(2) post-hospital extended care services furnished to him during such spell after such services have been furnished to him for 100 days during such spell; or

(3) inpatient psychiatric hospital services furnished to him after such services have been furnished to him for a total of 190 days during his lifetime.

Payment under this part for post-institutional home health services furnished an individual during a home health spell of illness may not be made for such services beginning after such services have been furnished for a total of 100 visits during such spell.

(c) Inpatients of psychiatric hospitals

If an individual is an inpatient of a psychiatric hospital on the first day of the first month for which he is entitled to benefits under this part, the days on which he was an inpatient of such a hospital in the 150-day period immediately before such first day shall be included in determining the number of days limit under subsection (b)(1) of this section insofar as such limit applies to (1) inpatient psychiatric hospital services, or (2) inpatient hospital services for an individual who is an inpatient primarily for the diagnosis or treatment of mental illness (but shall not be included in determining such number of days limit insofar as it applies to other inpatient hospital services or in determining the 190-day limit under subsection (b)(3) of this section).

(d) Hospice care; election; waiver of rights; revocation; change of election

(1) Payment under this part may be made for hospice care provided with respect to an individual only during two periods of 90 days each and an unlimited number of subsequent periods of 60 days each with respect to which the individual makes an election under this subchapter with respect to—

(i) hospice care provided by another hospice program (other than under arrangements
made by the particular hospice program) during the period, and
(ii) services furnished during the period that are determined (in accordance with guidelines of the Secretary) to be
(I) related to the treatment of the individual's condition with respect to which a diagnosis of terminal illness has been made or
(II) equivalent to (or duplicative of) hospice care;
except that clause (ii) shall not apply to physicians' services furnished by an individual's attending physician (if not an employee of the hospice program) or to services provided by (or under arrangements made by) the hospice program.

(B) After an individual makes such an election with respect to a 90-day period or a subsequent 60-day period, the individual may revoke the election during the period, in which case—
(i) the revocation shall act as a waiver of the right to have payment made under this part for any hospice care benefits for the remaining time in such period and for purposes of subsection (a)(1) of this section, inpatient hospital services in lieu of, and under subparagraph (B) of this section, inpatient hospital services, inpatient psychiatric hospital services, and post-hospital extended care services at such institution, home health services, and for individuals so enrolled, post-institutional home health services furnished during a home health spell of illness for up to 100 visits during such spell of illness
(ii) services furnished during the period that are determined (in accordance with guidelines of the Secretary) to be
(I) related to the treatment of the individual's condition with respect to which a diagnosis of terminal illness has been made or
(II) equivalent to (or duplicative of) hospice care;
except that clause (ii) shall not apply to physicians' services furnished by an individual's attending physician (if not an employee of the hospice program) or to services provided by (or under arrangements made by) the hospice program.

(C) An individual may, once in each such period, change the hospice program with respect to which the election is made and such change shall not be considered a revocation of an election under subparagraph (B).

(D) For purposes of this subchapter, an individual's election with respect to a hospice program shall no longer be considered to be in effect with respect to that hospice program after the date the individual's revocation or change of election with respect to that election takes effect.

(e) Services taken into account
For purposes of subsections (b) and (c) of this section, inpatient hospital services, inpatient psychiatric hospital services, and post-hospital extended care services shall be taken into account only if payments therefor would be, except for this section or the failure to comply with the request and certification requirements of or under section 1395k(a) of this title, made with respect to such services under this part.

(f) Coverage of extended care services without regard to three-day prior hospitalization requirement
(1) The Secretary shall provide for coverage, under clause (B) of subsection (a)(2) of this section, of extended care services which are not post-hospital extended care services at such time and for so long as the Secretary determines, and under such terms and conditions (described in paragraph (2)) as the Secretary finds appropriate, that the inclusion of such services will not result in any increase in the total of payments made under this subchapter and will not alter the acute care nature of the benefit described in subsection (a)(2) of this section.

(2) The Secretary may provide—
(A) for such limitations on the scope and extent of services described in subsection (a)(2)(B) of this section and on the categories of individuals who may be eligible to receive such services, and
(B) notwithstanding sections 1395f, 1395k, and 1395ww of this title, for such restrictions and alternatives on the amounts and methods of payment for services described in such subsection,
as may be necessary to carry out paragraph (1).

(g) "Spell of illness" defined
For definitions of "spell of illness", and for definitions of other terms used in this part, see section 1395x of this title.


AMENDMENTS
Subsec. (a)(3). Pub. L. 105–33, §4611(a)(1), substituted “for individuals not enrolled in part B of this subchapter, home health services, and for individuals so enrolled, post-institutional home health services furnished during a home health spell of illness for up to 100 visits during such spell of illness” for “home health services”.
Subsec. (a)(4). Pub. L. 105–33, §4443(a), substituted “and an unlimited number of subsequent periods of 60 days each” for “a, a subsequent period of 30 days, and a subsequent extension period”.
Subsec. (d)(1). Pub. L. 105–33, §4443(a), substituted “and an unlimited number of subsequent periods of 60 days each” for “, a subsequent period of 30 days, and a subsequent extension period”.
Subsec. (d)(2)(B). Pub. L. 105–33, §4443(b)(1), substituted “90-day period or a subsequent 60-day period” for “90- or 30-day period or a subsequent extension period”.
1994—Subsec. (a)(1). Pub. L. 103–432 substituted “inpatient hospital services or inpatient rural primary care
hospital services” for “inpatient hospital services” before “for up to 150 days” and “such services” for “inpatient hospital services” before “in excess of 90” and struck out “inpatient extension period” for “90 days each and one subsequent period of 30 days”.

1990—Subsec. (a)(4). Pub. L. 101–508, § 4006(a)(1), substituted “90 days each, a subsequent period of 30 days, and a subsequent extension period” for “90 days each and one subsequent period of 30 days”.

Subsec. (d)(1). Pub. L. 101–508, § 4006(a)(2)(A), substituted “90 days each, a subsequent period of 30 days, and a subsequent extension period during the individual’s lifetime” for “90 days each and one subsequent period of 30 days during the individual’s lifetime”.

Subsec. (d)(2)(B). Pub. L. 101–508, § 4006(a)(2)(B), substituted “substituted “a 90- or 30-day period or a subsequent extension period” for “a 90- or 30-day period”.

1989—Subsec. (a). Pub. L. 101–234 repealed Pub. L. 100–360, § 101(2)–(6), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1989 Amendment note below.


Subsecs. (b) to (d)(1), (2)(B), (e) to (g). Pub. L. 101–234 repealed Pub. L. 100–360, § 101(2)–(6), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1989 Amendment note below.

1988—Subsec. (a). Pub. L. 100–360, § 101(1), struck out former par. (1) and added new pars. (1) to (4) which read as follows:

“(1) inpatient hospital services;

“(2) extended care services for up to 150 days during any calendar year;

“(3) home health services; and

“(4) in lieu of certain other benefits, hospice care with respect to the individual during up to two periods of 90 days each, a subsequent period of 30 days, and a subsequent extension period with respect to which the individual makes an election under subsection (d)(1) of this section.”

Subsec. (b). Pub. L. 100–360, § 101(2), amended subsec. (b) generally, striking out par. (1) and renumbering and amending pars. (2) and (3) as (1) and (2), respectively.

Subsec. (c). Pub. L. 100–360, § 101(3), amended subsec. (c) generally, substituting pars. (1) to (4) limiting periods for inpatients of psychiatric hospitals for former single paragraph.

Subsec. (d)(1). Pub. L. 100–360, § 101(4)(A), substituted “a subsequent period of 30 days, and a subsequent extension period” for “and one subsequent period of 30 days”.


Subsec. (f). Pub. L. 100–360, § 101(6), struck out subsec. (f) which provided coverage of extended care services without regard to three-day prior hospitalization requirement.

Subsec. (g). Pub. L. 100–360, § 101(6), struck out subsec. (g) which cross-referenced section 1396x of this title for definitions of “spell of illness” and other terms used in this part.

1983—Subsec. (d)(2)(A). Pub. L. 97–448 substituted “or to services” for “or to other than par. (d).”

Subsec. (a)(2). Pub. L. 97–248, § 122(a), redesignated existing provisions as subpar. (A) and added subpar. (B).


Subsecs. (f), (g). Pub. L. 97–248, § 123(b), added subsec. (f) and redesignated former subsec. (f) as (g).

Subsec. (i). Pub. L. 97–248, § 125, struck out par. (4) which related to alcohol detoxification facility services.

1989—Subsec. (a)(3). Pub. L. 96–499, § 380(b), substituted “home health services” for “post-hospital home health services for up to 100 visits (during the one-year period described in section 1395f of this title) after the beginning of one spell of illness and before the beginning of the next”.


Subsec. (d). Pub. L. 96–499, § 380(c), struck out subsec. (d) which authorized payment for post-hospital home health services furnished an individual only during the one-year period described in section 1395f(c) of this title following his most recent hospital discharge which met the requirements of such section and only for the first 100 visits in such period.

Subsec. (e). Pub. L. 96–499, § 380(d), substituted “subsections (b) and (c)” for “subsections (b), (c), and (d)” and “and post-hospital extended care services” for “post-hospital extended care services, and post-hospital home health services”.

1986—Subsec. (a). Pub. L. 90–248, § 143(b), inserted “or, in the case of payments referred to in section 1395f(d)(2) of this title to him” after “on his behalf” in text preceding par. (1).

Subsec. (a)(1). Pub. L. 90–248, § 137(a)(1), inserted the maximum duration of benefits from 90 to 150 days minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies that he does not desire to have such payment made).

Subsec. (a)(4). Pub. L. 90–248, § 129(c)(2), struck out par. (4) which provided for payment for outpatient hospital diagnostic services.

Subsec. (b)(1). Pub. L. 90–248, § 136(a), struck out “from 90 to 150 days so that if an individual was an inpatient of a psychiatric or tuberculosis hospital on the first day of the first month for which he is entitled to benefits, the days he was an inpatient in the 150-day period immediately before such first day are included in determining the limit under subsec. (b)(1) insofar as such limit applies to (1) inpatient psychiatric hospital services and (2) inpatient hospital services for an individual who is an inpatient primarily for the diagnosis or treatment of mental illness or tuberculosis (but are not included in determining such limit as it applies to (1) inpatient hospital services or in determining the 190-day limit under subsec. (b)(3)).

Pub. L. 90–248, § 146(a), provided that the limitation of allowable days of inpatient hospital services will not apply to services provided to an inpatient of a tuberculosis hospital.

**Effective Date of 2003 Amendment**

Pub. L. 108–174, title V, § 512(d), Dec. 8, 2003, 117 Stat. 2300, provided that: “The amendments made by this section (amending this section and sections 1395f and 1395x of this title) shall apply to services provided by a hospice program on or after January 1, 2005.”

**Effective Date of 1999 Amendment**

Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 321(cm)], Nov. 29, 1999, 113 Stat. 1536, 1501A–368, provided that: “Except as otherwise provided, the amendments made by this section (amending this section and sections 1395f and 1395x of this title) shall apply to services provided by a hospice program on or after January 1, 2005.”
**Effective Date of 1997 Amendment**

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

Section 4449 of title IV of Pub. L. 105–33 provided that: "Except as otherwise provided in this chapter [chapter 4 (§§4441–4449) of subtitle E of title IV of Pub. L. 105–33, amending this section and sections 1395f, 1395x, and 1395pp of this title and enacting provisions set out as notes under section 1395f and 1395x of this title], the amendments made by this chapter apply to benefits provided on or after the date of the enactment of this chapter [Aug. 5, 1997], regardless of whether or not an individual has made an election under section 1812(d) of the Social Security Act (42 U.S.C. 1395d(d)) before such date."

Section 461(f) of Pub. L. 105–33 provided that: "The amendments made by this section [amending this section and sections 1396u, 1395x, and 1395ff of this title] shall only apply to extended care services furnished after December 31, 1997."

**Effective Date of 1994 Amendment**

Section 102(i) of Pub. L. 103–432 provided that: "The amendments made by this section [amending this section and section 1395f of this title] shall apply to services furnished on or after January 1, 1994. For purpose of applying such amendments, any home health spell of illness that began, but not [sic] did not end, before such date shall be considered to have begun as of such date."

**Effective Date of 1994 Amendment**

Section 4106(c) of Pub. L. 101–508 provided that: "The amendments made by this section [amending this section and section 1395f of this title] shall apply to services furnished on or after January 1, 1996."

**Effective Date of 1990 Amendment**


**Effective Date of 1988 Amendment**

Section 104(a) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, §408(d)(3)(A), Oct. 13, 1988, 102 Stat. 2413, provided that:

- "(1) In General.—Except as provided in paragraph (2) and subsection (b), the amendments made by this sub-title [subtitle A (§§101–104) of title I of Pub. L. 100–360, amending this section and sections 1395c, 1395e, 1395f, 1395i–4, 1395m, 1395x, and 1395ww of this title] take effect on the date of the enactment of this Act [Oct. 31, 1994]."
- "(2) Effective Date.—(A) To the inpatient hospital deductible for 1989 and succeeding years,
- (B) to care and services furnished on or after January 1, 1989,
- (C) to premiums for January 1989 and succeeding months, and
- (D) to blood or blood cells furnished on or after January 1, 1989.

- "(2) Elimination of Post-Hospital Requirement for Extended Care Services.—The amendments made by this sub-title, insofar as they eliminate the requirement (under section 1812(a)(2) of the Social Security Act [subsec. (a)(2) of this section]) that extended care services are only covered under title XVIII of such Act [this subchapter] if they are post-hospital extended care services, shall only apply to extended care services furnished pursuant to an admission to a skilled nursing facility occurring on or after January 1, 1989."

**Effective Date of 1983 Amendment**

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 306(c)(2) of Pub. L. 97–448, set out as a note under section 226 of this title.

**Effective Date of 1982 Amendment**

Amendment by section 122(b) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(b)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

**Effective Date of 1981 Amendment**

Section 212(i) of Pub. L. 97–35 provided that: "The amendments made by this section [amending this section and sections 1395e, 1395f, and 1395x of this title] (other than by subsection (b) [repealing provisions set out as a note under section 1395f of this title]) shall apply to services furnished in detoxification facilities for inpatient stays beginning on or after the tenth day after the date of the enactment of this Act [Aug. 13, 1981]."

**Effective Date of 1980 Amendment**

Amendment by section 930(b)–(d) of Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(b)(1) of Pub. L. 96–499, set out as a note under section 1395c of this title.

Section 931(e) of Pub. L. 96–499 provided that: "The amendments made by subsections (a) through (d) of this section [amending this section and sections 1395f and 1395x of this title] shall become effective on April 1, 1981."

**Effective Date of 1968 Amendment**

Section 129(d) of Pub. L. 90–248 provided that: "The amendments made by this section [amending this section and sections 426, 1395e, 1395f, 1395m, 1395x, and 1396c of this title and section 226–2 of title 45, Railroad] shall apply with respect to services furnished after March 31, 1968, except that subsection (c)(5) of such section [amending section 1395f of this title] shall become effective with respect to services furnished after the date of enactment of this Act [Jan. 2, 1968]."

Section 137(c) of Pub. L. 90–248 provided that: "The amendments made by subsections (a) and (b) [amending this section and section 1395e of this title] shall apply with respect to services furnished after December 31, 1967."

Section 138(b) of Pub. L. 90–248 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to payment for services furnished after December 31, 1967."

Section 143(d) of Pub. L. 90–248 provided that: "The provisions made by subsection (a) of this section [amending section 1395f of this title] shall become effective as of July 1, 1966, and the provisions made by subsections (b) and (c) of this section [amending this section and section 1395f of this title] shall apply to services furnished with respect to admissions occurring after December 31, 1967, and to outpatient diagnostic services furnished after December 31, 1967, and before April 1, 1968."

Section 146(b) of Pub. L. 90–248 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to payment for services furnished after December 31, 1967."

**Medicare Hospice Concurrent Care Demonstration Program**


- "(1) Establishment.—
- ""(A) Establishment.—The Secretary of Health and Human Services (in this section referred to as the ‘Secretary’) shall establish a Medicare Hospice Concurrent Care demonstration program at participating hospice programs under which Medicare beneficiaries are furnished, during the same period, hospice care and any other items or services covered under title
XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) from funds otherwise paid under such title to such hospice programs.

(2) DURATION.—The demonstration program under this section shall be conducted for a 3-year period.

(3) SELECTION.—The Secretary shall select not more than 15 hospice programs at which the demonstration program under this section shall be conducted. Such hospice programs shall be located in urban and rural areas.

(b) INDEPENDENT EVALUATION AND REPORTS.

(1) INDEPENDENT EVALUATION.—The Secretary shall provide for the conduct of an independent evaluation of the demonstration program under this section. Such independent evaluation shall determine whether the demonstration program has improved patient care, quality of life, and cost-effectiveness for Medicare beneficiaries participating in the demonstration program.

(2) REPORTS.—The Secretary shall submit to Congress a report containing the results of the evaluation conducted under paragraph (1), together with such recommendations as the Secretary determines appropriate.

(c) BUDGET NEUTRALITY.—With respect to the 3-year period of the demonstration program under this section, the Secretary shall ensure that the aggregate expenditures under title XVIII (42 U.S.C. 1395 et seq.) for such period shall not exceed the aggregate expenditures that would have been expended under such title if the demonstration program under this section had not been implemented.

PROTECTING HOME HEALTH BENEFITS


RURAL HOSPICE DEMONSTRATION PROJECT


OIG REPORT ON NOTICES RELATING TO USE OF HOSPITAL LIFETIME RESERVE DAYS


(1) the extent to which hospitals provide notice to Medicare beneficiaries in accordance with applicable requirements before they use the 60 lifetime reserve days described in section 1812(a)(1) of the Social Security Act (42 U.S.C. 1395l(a)(1)); and

(2) the appropriateness and feasibility of hospitals providing a notice to such beneficiaries before they completely exhaust such lifetime reserve days.”

MEDPAC REPORT ON ACCESS TO, AND USE OF, HOSPICE BENEFIT


“(a) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study to examine the factors affecting the use of hospice benefits under the Medicare program under title XVIII of the Social Security Act (this subchapter), including a delay in the time (relative to death) of entry into a hospice program, and differences in such use between urban and rural hospice programs and based upon the presenting condition of the patient.

“(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study conducted under subsection (a), together with any recommendations for legislation that the Commission deems appropriate.”

TRANSITION

Section 4611(e) of Pub. L. 105–33 provided that:

“(1) IN GENERAL.—Notwithstanding any provision of title XVIII of the Social Security Act [this subchapter], the Secretary of Health and Human Services shall establish a transition for the aggregate amount of expenditures that are transferred from part A, to part B, of title XVIII of the Social Security Act [this part and part B of this subchapter], as a result of the amendments made by this section [amending this section and sections 1395u, 1395x, and 1395ff of this title], during each of the years during the period beginning with 1998 and ending with 2002 according to this subsection.

Under the transition for each such year, the Secretary shall effect such transfer, between the trust funds under such parts, as will result in only the proportion (specified in paragraph (2)) of such aggregate expenditures for the year being transferred from such part A to such part B.

(2) PROPORTION SPECIFIED.—The proportion specified in this paragraph for—

“A) 1998 is 6/7,

“B) 1999 is 6/7,

“C) 2000 is 6/7,

“(D) 2001 is 6/7, and

“(E) 2002 is 6/7.

(3) APPLICATION IN ESTABLISHING MONTHLY PREMIUMS FOR 1998 THROUGH 2003.—

“A) IN GENERAL.—For purposes only of computing the monthly premium under section 1859 of the Social Security Act (42 U.S.C. 1395w–19), the monthly actuarial rate for enrollees age 65 and over shall be computed as though any reference in paragraph (1) of this subsection to 2002 were a reference to 2003 and as if the following proportions were substituted for the proportions specified in paragraph (2):

“(i) For 1998, 6/7,

“(ii) For 1999, 6/7,

“(iii) For 2000, 6/7,

“(iv) For 2001, 6/7,

“(v) For 2002, 6/7,

“(vi) For 2003, 6/7.

“(B) NO IMPACT ON GOVERNMENT CONTRIBUTION.—

Subparagraph (A) does not apply in determining the
§ 1395e. Deductibles and coinsurance

(a) Inpatient hospital services; outpatient hospital diagnostic services; blood; post-hospital extended care services

(1) The amount payable for inpatient hospital services or inpatient critical access hospital services furnished an individual during any spell of illness shall be reduced by a deduction equal to the inpatient hospital deductible or, if less, the charges imposed with respect to such individual for such services, except that, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed. Such amount shall be further reduced by a coinsurance amount equal to—

(A) one-fourth of the inpatient hospital deductible for each day (before the 91st day) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 60 days during such spell; and

(B) one-half of the inpatient hospital deductible for each day (before the day following the last day for which such individual is entitled under section 1395d(a)(1) of this title to have payment made on his behalf for inpatient hospital services or inpatient critical access hospital services during such spell of illness) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 90 days during such spell;

except that the reduction under this sentence for any day shall not exceed the charges imposed for that day with respect to such individual for such services (and for this purpose, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed).

(2)(A) The amount payable to any provider of services under this part for services furnished an individual shall be further reduced by a deduction equal to the expenses incurred for the first three pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to the individual during each calendar year, except that such deductible for such blood shall in accordance with regulations be appropriately reduced to the extent that there has been a replacement of such blood (or equivalent quantities of packed red blood cells, as so defined); and for such purposes blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual shall be deemed replaced when the institution or other person furnishing such blood (or such equivalent quantities of packed red blood cells, as so defined) is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is made under this sentence.

(B) The deductible under subparagraph (A) for blood or blood cells furnished an individual during any spell of illness shall be reduced by a deduction equal to one-eighth of the inpatient hospital deductible for each day (before the 101st day) on which he is furnished such services after such services have been furnished to him for 20 days during such spell.

(4)(A) The amount payable for hospice care shall be reduced—

(i) in the case of drugs and biologicals provided on an outpatient basis by (or under arrangements made by) the hospice program, by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day (before the 101st day) on which he is furnished such services after such services have been furnished to him for 20 days during such spell.

(B) During the period of an election by an individual under arrangements made by) the hospice program, by a coinsurance amount equal to 5 percent of the amount estimated by the hospice program (in accordance with regulations of the Secretary) to be equal to the amount of payment under section 1395f(i) of this title to that program for respite care;

except that the total of the coinsurance required under clause (ii) for an individual may not exceed for a hospice coinsurance period the inpatient hospital deductible applicable for the year in which the period began. For purposes of this subparagraph, the term “hospice coinsurance period” means, for an individual, a period of consecutive days beginning with the first day for which an election under section 1395d(d) of this title is in effect for the individual and ending with the close of the first period of 14 consecutive days on each of which such an election is not in effect for the individual.

(2) During the period of an election by an individual under section 1395d(d)(1) of this title, no copayments or deductibles other than those under subparagraph (A) shall apply with respect to services furnished to such individual which constitute hospice care, regardless of the setting in which such services are furnished.

(b) Inpatient hospital deductible; application

(1) The inpatient hospital deductible for 1997 shall be $520. The inpatient hospital deductible for any succeeding year shall be an amount equal to the inpatient hospital deductible for the preceding calendar year, changed by the Secretary's best estimate of the payment-
weighted average of the applicable percentage increases (as defined in section 1395ww(b)(3)(B) of this title) which are applied under section 1395ww(d)(3)(A) of this title for discharges in the fiscal year that begins on October 1 of such preceding calendar year, and adjusted to reflect changes in real case mix (determined on the basis of the most recent case mix data available). Any amount determined under the preceding sentence which is not a multiple of $4 shall be rounded to the nearest multiple of $4 (or, if it is midway between two multiples of $4, to the next higher multiple of $4).

(2) The Secretary shall promulgate the inpatient hospital deductible and all coinsurance amounts under this section during the calendar year preceding the year to which they will apply.

(3) The inpatient hospital deductible for a year shall apply to—

(A) the deduction under the first sentence of subsection (a)(1) of this section for the year in which the first day of inpatient hospital services or inpatient critical access hospital services occurs in a spell of illness, and

(B) to the coinsurance amounts under subsection (a) of this section for inpatient hospital services, inpatient critical access hospital services and post-hospital extended care services furnished in that year.


AMENDMENTS


1994—Subsec. (a)(1). Pub. L. 93–432, § 102(g)(2), substituted ‘‘inpatient hospital services or inpatient rural primary care hospital services’’ for ‘‘inpatient hospital services’’ in introductory provisions and in subpar. (B).

Subsec. (b)(3)(A). Pub. L. 93–432, § 102(g)(2), substituted ‘‘inpatient hospital services or inpatient rural primary care hospital services’’ for ‘‘inpatient hospital services’’.

Subsec. (b)(3)(B). Pub. L. 93–432, § 102(g)(3), substituted ‘‘inpatient hospital services, inpatient rural primary care hospital services’’ for ‘‘inpatient hospital services’’.

1989—Subsecs. (a)(1) to (3), (b)(3). Pub. L. 101–234 repealed Pub. L. 100–360, § 162, subject to an exception for blood deduction, and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (a)(1) to (3). Pub. L. 100–360, § 1021, amended paras. (1) to (3) generally, revising and reorganizing former paras. (1)(A), (B), (2), and (3), as par. (1), consisting of subpars. (A) to (D), and pars. (2) and (3), each consisting of subpars. (A) and (B).


Subsec. (b)(3). Pub. L. 100–360, § 1022, struck out par. (3) which related to application of deductible.

1987—Subsec. (b)(1). Pub. L. 100–203, § 4002(c)(3), as added by Pub. L. 100–360, § 411(b)(1)(H)(ii), substituted ‘‘Secretary’s best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1395ww(b)(3)(B) of this title) which are applied’’ for ‘‘applicable percentage increase (as defined in section 1395ww(b)(3)(B) of this title) which is applied’’.

1986—Subsec. (b). Pub. L. 99–509 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

‘‘(1) The inpatient hospital deductible which shall be applicable for the purposes of subsection (a) of this section shall be $40 in the case of any spell of illness beginning before 1969.

‘‘(2) The Secretary shall, between July 1 and September 15 of 1968, and of each year thereafter, determine and promulgate the inpatient hospital deductible which shall be applicable for the purposes of subsection (a) of this section in the case of any inpatient hospital services or post-hospital extended care services furnished during the succeeding calendar year. Such inpatient hospital deductible shall be equal to $45 multiplied by the ratio of (A) the current average per diem rate for inpatient hospital services for the calendar year preceding the promulgation, to (B) the current average per diem rate for such services for 1966. Any amount determined under the preceding sentence which is not a multiple of $4 shall be rounded to the nearest multiple of $4 (or, if it is midway between two multiples of $4, to the next higher multiple of $4).

‘‘(3) If the inpatient hospital deductible shall be applicable for the purposes of subsection (a) of this section shall be $40 in the case of any spell of illness beginning before 1969.

‘‘(2) The Secretary shall, between July 1 and September 15 of 1968, and of each year thereafter, determine and promulgate the inpatient hospital deductible which shall be applicable for the purposes of subsection (a) of this section in the case of any inpatient hospital services or post-hospital extended care services furnished during the succeeding calendar year. Such inpatient hospital deductible shall be equal to $45 multiplied by the ratio of (A) the current average per diem rate for inpatient hospital services for the calendar year preceding the promulgation, to (B) the current average per diem rate for such services for 1966. Any amount determined under the preceding sentence which is not a multiple of $4 shall be rounded to the nearest multiple of $4 (or, if it is midway between two multiples of $4, to the next higher multiple of $4). The current average per diem rate for any year shall be determined by the Secretary on the basis of the best information available to him (at the time the determination is made) as to the amounts paid under this part on account of inpatient hospital services furnished during such year, by hospitals which have agreements in effect under section 1395cc of this title, to individuals who are entitled to hospital insurance benefits under section 426 of this title, plus the amount which would have been so paid but for subsection (a)(1) of this section.’’

Subsec. (b)(2). Pub. L. 99–272 substituted ‘‘September 15’’ for ‘‘October 1’’.


1981—Subsec. (b)(2), Pub. L. 97–35 substituted ‘‘any inpatient hospital services or post-hospital extended care services furnished during the succeeding calendar year’’ for ‘‘inpatient hospital services or post-hospital extended care services furnished during such year, by hospitals which have agreements in effect under section 1395cc of this title, to individuals who are entitled to hospital insurance benefits under section 426 of this title, plus the amount which would have been so paid but for subsection (a)(1) of this section.’’

Subsec. (a)(2). Pub. L. 90–248, § 135(a), made the three pint deductible applicable also to equivalent quantities of packed red blood cells, as defined by the Secretary under regulations.

Subsec. (a)(2) to (4). Pub. L. 90–248, § 129(c)(3), struck out par. (2) which provided for reduction of amount payable for outpatient hospital diagnostic services furnished an individual during a diagnostic study, and redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsec. (b)(1), (2). Pub. L. 90–248, § 129(c)(4)(A), (B), struck out diagnostic studies from application of inpatient hospital deductible.

 EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.
Effective Date of 1989 Amendment

Effective Date of 1988 Amendment
Amendment by section 102 of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Section 411(b)(1)(H)(iii) of Pub. L. 100–360 provided that: "The amendment made by clause (ii) [amending Pub. L. 100–203] shall apply to the inpatient hospital deductible for years beginning with 1989."

Effective Date of 1986 Amendments
Section 9301(b) of Pub. L. 99–509 provided that: "The amendment made by subsection (a) [amending this section] shall apply to inpatient hospital services and post-hospital extended care services furnished on or after January 1, 1987, and to the monthly premium (under part A of title XVIII of the Social Security Act [this part]) for months beginning with January 1987."

Section 9125(b) of Pub. L. 99–272 provided that: "The amendment made by this section [amending this section] shall apply to calendar years after 1985."

Effective Date of 1982 Amendment
Amendment by Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1982, see section 122(b)(1) of Pub. L. 97–248, set out as a note under section 1395c of this title.

Effective Date of 1981 Amendment
Section 231(b) of Pub. L. 97–35 provided that: "The amendment made by subsection (a) [amending this section] is effective for inpatient hospital services and post-hospital extended care services furnished on or after January 1, 1982."

Section 2312(b) of Pub. L. 97–35 provided that: "The amendments made by subsection (a) [amending this section] shall apply to inpatient hospital services and post-hospital extended care services furnished in calendar years beginning with calendar year 1982."

Effective Date of 1968 Amendment
Amendment by section 129(c)(3), (4) of Pub. L. 90–248 applicable with respect to services furnished after Mar. 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Amendment by section 129 of Pub. L. 90–248 provided that: "The amendments made by this section [amending this section and sections 1395/ and 1395cc of this title] shall apply with respect to payment for blood (or packed red blood cells) furnished an individual after December 31, 1967."

Amendment by section 137(b) of Pub. L. 90–248 applicable with respect to services furnished after Dec. 31, 1967, see section 137(c) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Repeal of 1968 Expansion of Medicare Part A Benefits

(a) Sunday.[104 Stat. 1388–53, provided that:

(1) General Rule.—Except as provided in paragraph (2), sections 101, 102, and 104(d) (other than paragraph (7)) of the Medicare Catastrophic Coverage Act of 1988 (Public Law 100–360) [amending this section and sections 1395/ and 1395cc of this title] and 1395tt of this title (in this Act referred to as ‘‘MCACA’’) are repealed, and the provisions of law amended or repealed by such sections are restored or revived as if such section had not been enacted.

(2) Exception for Blood Deduction.—The repeal of section 132(a) of the Social Security Act [section 1395f(a) of this title], as restored by subsection (a)(1), with respect to inpatient hospital services and extended care services provided on or after January 1, 1990—

(A) no day before January 1, 1990, shall be counted in determining the beginning (or period) of a spell of illness;

(B) with respect to the limitation (other than the limitation under section 1812(c) of such Act [section 1395(c) of this title]) on such services provided in a spell of illness, days of such services before January 1, 1990, shall not be counted, except that days of inpatient hospital services before January 1, 1989, which were applied with respect to an individual after receiving 90 days of services in a spell of illness (commonly known as ‘‘lifetime reserve days’’) shall be counted;

(C) the limitation of coverage of extended care services to post-hospital extended care services shall not apply to an individual receiving such services from a skilled nursing facility during a continuous period beginning before (and including) January 1, 1990, until the end of the period of 30 consecutive days in which the individual is not provided inpatient hospital services or extended care services; and

(D) the inpatient hospital deductible under section 1813(a)(1) of such Act [subsection (a)(1) of this section] shall not apply—

(i) in the case of an individual who is receiving inpatient hospital services during a continuous period beginning before (and including) January 1, 1990, with respect to the spell of illness beginning on such date, if such a deductible was imposed on the individual for a period of hospitalization during 1989;

(ii) for a spell of illness beginning during January 1990, if such a deductible was imposed on the individual for a period of hospitalization that began in December 1988; and

(iii) in the case of a spell of illness of an individual that began before January 1, 1990.

(2) Hospice Care.—The restoration of section 1812(a)(4) of the Social Security Act [section 1395f(a)(4) of this title], effected by subsection (a)(1), shall not apply to hospice care provided during the subsequent period (described in such section as in effect on December 31, 1989) with respect to which an election has been made before January 1, 1990.

(3) Hold Harmless Provisions; Application of Subsection (a)(1) and (2).


(1)(A) section 1813(a)(1) of such Act [subsection (a)(1) of this section] (as amended by this subtitle [subtitle...}
§ 1395f. Conditions of and limitations on payment for services

(a) Requirement of requests and certifications

Except as provided in subsections (d) and (g) of this section and in section 1395mm of this title, payment for services furnished an individual may be made only to providers of services which are eligible therefor under section 1395cc of this title and only if—

(1) written request, signed by such individual, except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner, and by such person or persons as the Secretary may by regulation prescribe, no later than the close of the period ending 1 calendar year after the date of service;

(2) a physician, or, in the case of services described in subparagraph (B), a physician, or a nurse practitioner, a clinical nurse specialist, or a physician assistant (as those terms are defined in section 1395x(aa)(5) of this title) who does not have a direct or indirect employment relationship with the facility but is working in collaboration with a physician, ¹ or in the case of services described in subparagraph (C), a physician enrolled under section 1395cc(j) of this title and only if—

(A) in the case of inpatient psychiatric hospital services, such services are or were required to be given on an inpatient basis, by or under the supervision of a physician, for the psychiatric treatment of an individual; and (i) such treatment can or could reasonably be expected to improve the condition for which such treatment is or was necessary or (ii) inpatient diagnostic study is or was medically required and such services are or were necessary for such purposes;

(B) in the case of post-hospital extended care services, such services are or were required to be given because the individual needs or needed on a daily basis skilled nursing care (provided directly by or requiring the supervision of a skilled nursing personnel) or other skilled rehabilitation services, which as a practical matter can only be provided in a skilled nursing facility on an inpatient basis, for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (9) of section 1395x(e) of this title) prior to transfer to the skilled nursing facility or for a condition requiring such extended care services which arose after such transfer and while he was still in the facility for treatment of the condition or conditions for which he was receiving such inpatient hospital services;

(C) in the case of home health services, such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1395x(m)(7) of this title) and needs or needed skilled nursing care (other than solely venipuncture for the purpose of obtaining a blood sample) on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy; a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician; such services are or were furnished while the individual was under the care of a physician, and, in the case of a certification made by a physician after January 1, 2010, prior to making such certification the physician must document that the physician himself or herself, or a nurse practitioner or clinical nurse specialist (as those terms are defined in section 1395x(aa)(5) of this title) who is working in collaboration with the physician in accordance with State law, or a certified nurse-midwife (as defined in section 1395x(gg) of this title) as authorized by State law, or a physician assistant (as defined in section 1395x(aa)(6) of this title) under the supervision of the physician, has had a face-to-face encounter (including through use of telehealth, subject to the requirements in section 1395m(m) of this title, and other than with respect to encounters that are incident to services involved) with the individual within a reasonable timeframe as determined by the Secretary; or

(D) in the case of inpatient hospital services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services;

¹ So in original.
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(3) with respect to inpatient hospital services (other than inpatient psychiatric hospital services) which are furnished over a period of time, a physician certifies that such services are required to be given on an inpatient basis for such individual's medical treatment, or that inpatient diagnostic study is medically required and such services are necessary for such purpose, except that (A) such certification shall be furnished only in such cases, with such frequency, and accompanied by such supporting material, appropriate to the cases involved, as may be provided by regulations, and (B) the first such certification required in accordance with clause (A) shall be furnished no later than the 20th day of such period;

(4) in the case of inpatient psychiatric hospital services, the services are those which the records of the hospital indicate were furnished to the individual during periods when he was receiving (A) intensive treatment services, (B) admission and related services necessary for a diagnostic study, or (C) equivalent services;

(5) with respect to inpatient hospital services furnished such individual after the 20th day of a continuous period of such services, there was not in effect, at the time of admission of such individual to the hospital, a decision under section 1395x(dd)(4) of this title (based on a finding that utilization review of long-stay cases is not being made in such hospital);

(6) with respect to inpatient hospital services or post-hospital extended care services furnished such individual during a continuous period, a finding has not been made (by the physician members of the committee or group, as described in section 1395x(k)(4) of this title, including any finding made in the course of a sample or other review of admissions to the institution) pursuant to the system of utilization review that further inpatient hospital services or further post-hospital extended care services, as the case may be, are not medically necessary; except that, if such a finding has been made, payment may be made for such services furnished before the 4th day after the day on which the hospital or skilled nursing facility, as the case may be, received notice of such finding;

(7) in the case of hospice care provided an individual—

(A)(i) in the first 90-day period—

(I) the individual's attending physician (as defined in section 1395x(dd)(3)(B) of this title) (which for purposes of this subparagraph does not include a nurse practitioner), and

(II) the medical director (or physician member of the interdisciplinary group described in section 1395x(dd)(2)(B) of this title) of the hospice program providing (or arranging for) the care, each certify in writing at the beginning of the period, that the individual is terminally ill (as defined in section 1395x(dd)(3)(A) of this title) based on such clinical judgment;

(B) a written plan for providing hospice care with respect to such individual has been established (before such care is provided by, or under arrangements made by, that hospice program) and is periodically reviewed by the individual's attending physicians and by the medical director (and the interdisciplinary group described in section 1395x(dd)(2)(B) of this title) of the hospice program;

(C) such care is being or was provided pursuant to such plan of care; and

(D) on and after January 1, 2011—

(i) a hospice physician or nurse practitioner has a face-to-face encounter with the individual to determine continued eligibility of the individual for hospice care prior to the 180th-day recertification and each subsequent recertification under subparagraph (A)(ii) and attests that such visit took place (in accordance with procedures established by the Secretary); and

(ii) in the case of hospice care provided an individual for more than 180 days by a hospice program for which the number of such cases for such program comprises more than a percent (specified by the Secretary) of the total number of such cases for all programs under this subchapter, the hospice care provided to such individual is medically reviewed (in accordance with procedures established by the Secretary); and

(8) in the case of inpatient critical access hospital services, a physician certifies that the individual may reasonably be expected to be discharged or transferred to a hospital within 96 hours after admission to the critical access hospital.

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician, nurse practitioner, clinical nurse specialist, or physician assistant (as the case may be) makes certification of the kind provided in subparagraph (A), (B), (C), or (D) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations. With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan for such services, the Secretary shall prescribe regulations which shall become effective no later than July 1, 1981, and which prohibit a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, such home health agency from performing such certification and from establishing or reviewing such plan, except that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary). For purposes
of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency. For purposes of paragraph (2)(C), an individual shall be considered to be "confined to his home" if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the assistance of another individual or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the individual has a condition such that leaving his or her home is medically contraindicated. While an individual does not have to be bedridden to be considered "confined to his home", the condition of the individual should be such that there exists a normal inability to leave home and that leaving home requires a considerable and taxing effort by the individual. Any absence of an individual from the home attributable to the need to receive health care treatment, including regular visits for the purpose of participating in therapeutic, psychosocial, or medical treatment in an adult day-care program that is licensed or certified by a State, or accredited, to furnish adult day-care services in the State shall not disqualify an individual from being considered to be "confined to his home". Any other absence of an individual from the home shall not so disqualify an individual if the absence is of infrequent or of relatively short duration. For purposes of the preceding sentence, any absence for the purpose of attending a religious service shall be deemed to be an absence of infrequent or short duration. In applying paragraph (1), the Secretary may specify exceptions to the 1 calendar year period specified in such paragraph.

(b) Amount paid to provider of services

The amount paid to any provider of services (other than a hospice program providing hospice care, other than a critical access hospital providing inpatient critical access hospital services, and other than a home health agency with respect to durable medical equipment) with respect to services for which payment may be made under this paragraph, free of charge or at nominal charges to the public, the amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such reasonable cost which the Secretary finds will provide fair compensation to such provider for such services; or

(3) if some or all of the hospitals in a State have been reimbursed for services (for which payment may be made under this part) pursuant to a reimbursement system approved as a demonstration project under section 402 of the Social Security Amendments of 1967 or section 222 of the Social Security Amendments of 1972, if the rate of increase in such hospitals in their costs per hospital inpatient admission of individuals entitled to benefits under this part over the duration of such project was equal to or less than such rate of increase for admissions of such individuals with respect to all hospitals in the United States during such period, and if either the State has legislative authority to operate such system and the State elects to have reimbursement to those hospitals made in accordance with this paragraph or the system is operated through a voluntary agreement of hospitals and such hospitals elect to have reimbursement to those hospitals made in accordance with this paragraph, then, subject to section 1395ww(b)(3)(B)(ix)(III) of this title, the Secretary may provide for continuation of reimbursement to such hospitals under such system until the Secretary determines that:

(A) a third-party payor reimburses such a hospital on a basis other than under such system, or

(B) the aggregate rate of increase from January 1, 1981, to the most recent date for which annual data are available in such hospitals in costs per hospital inpatient admission of individuals entitled to benefits under this part is greater than such rate of increase for admissions of such individuals with respect to all hospitals in the United States for such period.

In the case of any State which has had such a demonstration project reimbursement system in continuous operation since July 1, 1977, the Secretary shall provide under paragraph (3) for continuation of reimbursement to hospitals in the State under such system until the first day of the 37th month beginning after the date the Secretary determines and notifies the Governor of the State that either of the conditions described in subparagraph (A) or (B) of such paragraph has occurred. If, by the end of such 36-month period, the Secretary determines, based on evidence submitted by the Governor of the State, that neither of the conditions described in subparagraph (A) or (B) of paragraph (3) continues to apply, the Secretary shall continue without interruption payment to hospitals in the State under the State's system. If, by the end of such 36-month period, the Secretary determines, based on such evidence, that either of the conditions described in subparagraph (A) or (B) of such paragraph continues to apply, the Secretary shall (1) collect any net excess reimbursement to hospitals in the State during such 36-month period (basing such net excess reimbursement on the net difference, if any, in the rate of increase in costs per hospital inpatient admission under the State system compared to the rate of increase in such costs with respect to all hospitals in the United States over the 36-month period, as measured by including the cumulative

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savings under the State system based on the difference in the rate of increase in costs per hospital inpatient admission under the State system as compared to the rate of increase in such costs with respect to all hospitals in the United States between January 1, 1981, and the date of the Secretary’s initial notice, and (ii) provide a reasonable period, not to exceed 2 years, for transition from the State system to the national payment system. For purposes of applying paragraph (3), there shall be taken into account incentive payments, and payment adjustments under subsection (h)(3)(B)(ix) or (n) of section 1395ww of this title.

(c) No payments to Federal providers of services

Subject to section 1395qq of this title, no payment may be made under this part (except under subsection (d) or subsection (h) of this section) to any Federal provider of services, except a provider of services which the Secretary determines is providing services to the public generally as a community institution or agency; and no such payment may be made to any provider of services for any item or service which such provider is obligated by a law of, or a contract with, the United States to render at public expense.

(d) Payments for emergency hospital services

(1) Payments shall also be made to any hospital for inpatient hospital services furnished in a calendar year, by the hospital or under arrangements (as defined in section 1395x(w) of this title) with it, to an individual entitled to hospital insurance benefits under section 426 of this title even though such hospital does not have an agreement in effect under this subchapter if (A) such services were emergency services, (B) the Secretary would be required to make such payment if the hospital had such an agreement in effect and otherwise met the conditions of payment hereunder, and (C) such hospital has elected to claim payments for all such inpatient emergency services and for the emergency outpatient services referred to in section 1395m(b) of this title furnished during such year. Such payments shall be made only in the amounts provided under subsection (b) of this section and then only if such hospital agrees to comply, with respect to the emergency services provided, with the provisions of section 1395cc(a) of this title.

(2) Payment may be made on the basis of an itemized bill to an individual entitled to hospital insurance benefits under section 426 of this title for services described in paragraph (1) which are emergency services if (A) payment cannot be made under paragraph (1) solely because the hospital does not elect to claim such payment, and (B) such individual files application (submitted within such time and in such form by such person, and containing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement.

(3) The amounts payable under the preceding paragraph with respect to services described therein shall, subject to the provisions of section 1395f of this title, be equal to 60 percent of the hospital’s reasonable charges for routine services furnished in the accommodations occupied by the individual or in semiprivate accommodations (as defined in section 1395x(v)(4) of this title), whichever is less, plus 80 percent of the hospital’s reasonable charges for ancillary services. If separate charges for routine and ancillary services are not made by the hospital, reimbursement may be based on two-thirds of the hospital’s reasonable charges for the services received but not to exceed the charges which would have been made if the patient had occupied semiprivate accommodations. For purposes of the preceding provisions of this paragraph, the term “ancillary services” shall mean those special services for which charges are customarily made in addition to routine services.

(e) Payment for inpatient hospital services prior to notification of noneligibility

Notwithstanding that an individual is not entitled to have payment made under this part for inpatient hospital services furnished by any hospital, payment shall be made to such hospital (unless it elects not to receive such payment or, if payment has already been made by or on behalf of such individual, fails to refund such payment within the time specified by the Secretary) for such services which are furnished to the individual prior to notification to such hospital from the Secretary of his lack of entitlement, if such payments are precluded only by reason of section 1395d of this title and the hospital complies with the requirements of and regulations under this subchapter with respect to such payments, has acted in good faith and without knowledge of such lack of entitlement, and has acted reasonably in assuming entitlement existed. Payment under the preceding sentence may not be made for services furnished an individual pursuant to any admission after the 6th elapsed day (not including as an elapsed day Saturday, Sunday, or a legal holiday) after the day on which such admission occurred.

(f) Payment for certain inpatient hospital services furnished outside United States

(1) Payment shall be made for inpatient hospital services furnished to an individual entitled to hospital insurance benefits under section 426 of this title by a hospital located outside the United States, or under arrangements (as defined in section 1395x(w) of this title) with it, if—

(A) such individual is a resident of the United States, and

(B) such hospital was closer to, or substantially more accessible from, the residence of such individual than the nearest hospital within the United States which was adequately equipped to deal with, and was available for the treatment of, such individual’s illness or injury.

(2) Payment may also be made for emergency inpatient hospital services furnished to an individual entitled to hospital insurance benefits under section 426 of this title by a hospital located outside the United States if—

(A) such individual was physically present—
(i) in a place within the United States; or
(ii) at a place within Canada while traveling without unreasonable delay by the most direct route (as determined by the Secretary) between Alaska and another State;

at the time the emergency which necessitated such inpatient hospital services occurred, and

(B) such hospital was closer to, or substantially more accessible from, such place than the nearest hospital within the United States which was adequately equipped to deal with, and was available for the treatment of, such individual's illness or injury.

(3) Payment shall be made in the amount provided under subsection (b) of this section to any hospital for the inpatient hospital services described in paragraph (1) or (2) furnished to an individual by the hospital or under arrangements (as defined in section 1395x(w) of this title) with it if (A) the Secretary would be required to make such payment if the hospital had an agreement in effect under this subchapter and otherwise met the conditions of payment hereunder, (B) such hospital elects to claim such payment, and (C) such hospital agrees to comply, with respect to such services, with the provisions of sections 1395ccc(a) of this title.

(4) Payment for the inpatient hospital services described in paragraph (1) or (2) furnished to an individual entitled to hospital insurance benefits under section 426 of this title may be made on the basis of an itemized bill to such individual if (A) payment for such services cannot be made under paragraph (3) solely because the hospital does not elect to claim such payment, and (B) such individual files application (submitted within such time and in such form and manner and by such person, and continuing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement. The amount payable with respect to such services shall, subject to the provisions of section 1395w of this title, be equal to the amount which would be payable under subsection (d)(3) of this section.

(g) Payments to physicians for services rendered in teaching hospitals

For purposes of services for which the reasonable cost thereof is determined under section 1395x(v)(1)(D) of this title (or would be if section 1395ww of this title did not apply), payment under this part shall be made to such fund as may be designated by the organized medical staff of the hospital in which such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, to such fund as may be designated by such faculty, but only if—

(1) such hospital has an agreement with the Secretary under section 1395vc of this title, and

(2) the Secretary has received written assurances that (A) such payment will be used by such fund solely for the improvement of care of hospital patients or for educational or charitable purposes and (B) the individuals who were furnished such services or any other persons will not be charged for such services (or if charged, provision will be made for return of any moneys incorrectly collected).

(h) Payment for specified hospital services provided in Department of Veterans Affairs hospitals; amount of payment

(1) Payments shall also be made to any hospital operated by the Department of Veterans Affairs for inpatient hospital services furnished in a calendar year by the hospital, or under arrangements (as defined in section 1395x(w) of this title) with it, to an individual entitled to hospital benefits under section 426 of this title even though the hospital is a Federal provider of services if (A) the individual was not entitled to have the services furnished to him free of charge, (B) the individual was admitted to the hospital in the reasonable belief on the part of the admitting authorities that the individual was a person who was entitled to have the services furnished to him free of charge, (C) the authorities operating the hospital first became aware of the fact that the individual was not entitled to have the services furnished to him by the hospital free of charge, or (if later) ended with the first day on which it was medically feasible to remove the individual from the hospital by discharging him therefrom or transferring him to a hospital which has in effect an agreement under this subchapter.

(2) Payment for services described in paragraph (1) shall be in an amount equal to the charge imposed by the Secretary of Veterans Affairs for such services, or (if less) the amount that would be payable under paragraph (b) of this section and section 1395ww of this title (as estimated by the Secretary). Any such payment shall be made to the entity to which payment for the services involved would have been payable, if payment for such services had been made by the individual receiving the services involved (or by another private person acting on behalf of such individual).

(i) Payment for hospice care

(1)(A) Subject to the limitation under paragraph (2) and the provisions of section 1395a(a)(4) of this title and except as otherwise provided in this paragraph, the amount paid to a hospice program with respect to hospice care furnished under this part shall be an amount equal to the costs which are reasonable and related to the cost of providing hospice care or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations (including those authorized under section 1395x(v)(1)(A) of this title), except that no payment may be made for bereavement counseling and no reimbursement may be made for other counseling services (including nutritional and dietary counseling) as separate services.

(B) Notwithstanding subparagraph (A), for hospice care furnished on or after April 1, 1986, the daily rate of payment per day for routine home care shall be $63.17 and the daily rate of payment for other services included in hospice care shall be the daily rate of payment recognized under subparagraph (A) as of July 1, 1985, increased by $10.

(C)(i) With respect to routine home care and other services included in hospice care furnished...
on or after January 1, 1990, and on or before September 30, 1990, the payment rates for such care and services shall be 120 percent of such rates in effect as of September 30, 1989.

(ii) With respect to routine home care and other services included in hospice care furnished during a subsequent fiscal year (before the first fiscal year in which the payment revisions described in paragraph (6)(D) are implemented), the payment rates for such care and services shall be the payment rates in effect under this subparagraph during the previous fiscal year increased by—

(I) for a fiscal year ending on or before September 30, 1993, the market basket percentage increase (as defined in section 1395w(b)(3)(B)(iii) of this title) for the fiscal year;

(II) for fiscal year 1994, the market basket percentage increase for the fiscal year minus 2.0 percentage points;

(III) for fiscal year 1995, the market basket percentage increase for the fiscal year minus 1.5 percentage points;

(IV) for fiscal year 1996, the market basket percentage increase for the fiscal year minus 1.5 percentage points;

(V) for fiscal year 1997, the market basket percentage increase for the fiscal year minus 0.5 percentage point;

(VI) for each of fiscal years 1998 through 2002, the market basket percentage increase for the fiscal year involved minus 1.0 percentage points, plus, in the case of fiscal year 2001, 5.0 percentage points; and

(VII) for a subsequent fiscal year (before the first fiscal year in which the payment revisions described in paragraph (6)(D) are implemented), subject to clause (iv), the market basket percentage increase for the fiscal year.

(iii) With respect to routine home care and other services included in hospice care furnished during fiscal years subsequent to the first fiscal year in which payment revisions described in paragraph (6)(D) are implemented, the payment rates for such care and services shall be the payment rates in effect under this clause during the preceding fiscal year increased by, subject to clause (iv), the market basket percentage increase (as defined in section 1395w(b)(3)(B)(iii) of this title) for the fiscal year.

(iv) After determining the market basket percentage increase under clause (ii)(VII) or (iii), as applicable, with respect to fiscal year 2013 and each subsequent fiscal year, the Secretary shall reduce such percentage—

(I) for 2013 and each subsequent fiscal year, by the productivity adjustment described in section 1395w(b)(3)(B)(x)(II) of this title; and

(II) subject to clause (v), for each of fiscal years 2013 through 2019, by 0.3 percentage point.

The application of this clause may result in the market basket percentage increase under clause (i)(VII) or (iii), as applicable, being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year.

(v) Clause (iv)(II) shall be applied with respect to any of fiscal years 2014 through 2019 by substituting ‘‘0.0 percentage points’’ for ‘‘0.3 percentage point’’, if for such fiscal year—

(I) the excess (if any) of—

(aa) the total percentage of the non-elderly insured population for the preceding fiscal year (based on the most recent estimates available from the Director of the Congressional Budget Office before a vote in either House on the Patient Protection and Affordable Care Act that, if determined in the affirmative, would clear such Act for enrollment); over

(bb) the total percentage of the non-elderly insured population for such preceding fiscal year (as estimated by the Secretary); exceeds

(II) 5 percentage points.

(2)(A) The amount of payment made under this part for hospice care provided by (or under arrangements made by) a hospice program in an accounting year may not exceed the ‘‘cap amount’’ for the year (computed under subparagraph (B)) multiplied by the number of Medicare beneficiaries in the hospice program in that year (determined under subparagraph (C)).

(B) For purposes of subparagraph (A), the ‘‘cap amount’’ for a year is $6,500, increased or decreased, for accounting years that end after October 1, 1984, by the same percentage as the percentage increase or decrease, respectively, in the medical care expenditure category of the Consumer Price Index for All Urban Consumers (United States city average), published by the Bureau of Labor Statistics, from March 1984 to the fifth month of the accounting year.

(C) For purposes of subparagraph (A), the ‘‘number of Medicare beneficiaries’’ in a hospice program in an accounting year is equal to the number of individuals who have made an election under subsection (d) of this section with respect to the hospice program and have been provided hospice care by (or under arrangements made by) the hospice program under this part in the accounting year, such number reduced to reflect the proportion of hospice care that each such individual was provided in a previous or subsequent accounting year or under a plan of care established by another hospice program.

(D) A hospice program shall submit claims for payment for hospice care furnished in an individual’s home under this subchapter only on the basis of the geographic location at which the service is furnished, as determined by the Secretary.

(3) Hospice programs providing hospice care for which payment is made under this subsection shall submit to the Secretary such data with respect to the costs for providing such care for each fiscal year, beginning with fiscal year 1999, as the Secretary determines necessary.

(4) The amount paid to a hospice program with respect to the services under section 1395w(a)(5) of this title for which payment may be made under this part shall be equal to an amount established for an office or other outpatient visit for evaluation and management requiring medical decisionmaking of low complexity under the fee schedule established under section 1395w–4(b) of this title, other than the portion of such amount attributable to the practice expense component.
(5) QUALITY REPORTING.—

(A) REDUCTION IN UPDATE FOR FAILURE TO REPORT.—

(i) IN GENERAL.—For purposes of fiscal year 2014 and each subsequent fiscal year, in the case of a hospice program that does not submit data to the Secretary in accordance with subparagraph (C) with respect to such a fiscal year, after determining the market basket percentage increase under paragraph (1)(C)(ii)(VII) or paragraph (1)(C)(iii), as applicable, and after application of paragraph (1)(C)(iv), with respect to the fiscal year, the Secretary shall reduce such market basket percentage increase by 2 percentage points.

(ii) SPECIAL RULE.—The application of this subparagraph may result in the market basket percentage increase under paragraph (1)(C)(ii)(VII) or paragraph (1)(C)(iii), as applicable, being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year.

(B) NONCUMULATIVE APPLICATION.—Any reduction under subparagraph (A) shall apply only with respect to the fiscal year involved and the Secretary shall not take into account such reduction in computing the payment amount under this subsection for a subsequent fiscal year.

(C) SUBMISSION OF QUALITY DATA.—For fiscal year 2014 and each subsequent fiscal year, each hospice program shall submit to the Secretary data on quality measures specified under subparagraph (D). Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this subparagraph.

(D) QUALITY MEASURES.—

(i) IN GENERAL.—Subject to clause (ii), any measure specified by the Secretary under this subparagraph must have been endorsed by the entity with a contract under section 1395aaa(a) of this title.

(ii) EXCEPTION.—In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1395aaa(a) of this title, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

(iii) TIME FRAME.—Not later than October 1, 2012, the Secretary shall publish the measures selected under this subparagraph that will be applicable with respect to fiscal year 2014.

(E) PUBLIC AVAILABILITY OF DATA SUBMITTED.—The Secretary shall establish procedures for making data submitted under subparagraph (C) available to the public. Such procedures shall ensure that a hospice program has the opportunity to review the data that is to be made public with respect to the hospice program prior to such data being made public. The Secretary shall report quality measures that relate to hospice care provided by hospice programs on the Internet website of the Centers for Medicare & Medicaid Services.

(6)(A) The Secretary shall collect additional data and information as the Secretary determines appropriate to revise payments for hospice care under this subsection pursuant to subparagraph (D) and for other purposes as determined appropriate by the Secretary. The Secretary shall begin to collect such data by not later than January 1, 2011.

(B) The additional data and information to be collected under subparagraph (A) may include data and information on—

(i) charges and payments;

(ii) the number of days of hospice care which are attributable to individuals who are entitled to, or enrolled for, benefits under this part; and

(iii) with respect to each type of service included in hospice care—

(I) the number of days of hospice care attributable to the type of service;

(II) the cost of the type of service; and

(III) the amount of payment for the type of service;

(iv) charitable contributions and other revenue of the hospice program;

(v) the number of hospice visits;

(vi) the type of practitioner providing the visit; and

(vii) the length of the visit and other basic information with respect to the visit.

(C) The Secretary may collect the additional data and information under subparagraph (A) on cost reports, claims, or other mechanisms as the Secretary determines to be appropriate.

(D)(i) Notwithstanding the preceding paragraphs of this subsection, not earlier than October 1, 2013, the Secretary shall, by regulation, implement revisions to the methodology for determining the payment rates for routine home care and other services included in hospice care under this part, as the Secretary determines to be appropriate. Such revisions may be based on an analysis of data and information collected under subparagraph (A). Such revisions may include adjustments to per diem payments that reflect changes in resource intensity in providing such care and services during the course of the entire episode of hospice care.

(ii) Revisions in payment implemented pursuant to clause (i) shall result in the same estimated amount of aggregate expenditures under this subchapter for hospice care furnished in the fiscal year in which such revisions in payment are implemented as would have been made under this subchapter for such care in such fiscal year if such revisions had not been implemented.

(E) The Secretary shall consult with hospice programs and the Medicare Payment Advisory Commission regarding the additional data and information to be collected under subparagraph (A) and the payment revisions under subparagraph (D).

(7) In the case of hospice care provided by a hospice program under arrangements under section 1395x(dd)(5)(D) of this title made by another hospice program, the hospice program that made the arrangements shall bill and be paid for the hospice care.
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(j) Elimination of lesser-of-cost-or-charges provision
(1) The lesser-of-cost-or-charges provisions (described in paragraph (2)) will not apply in the case of services provided by a class of provider of services if the Secretary determines and certifies to Congress that the failure of such provision to apply to the services provided by that class of providers will not result in any increase in the amount of payments made for those services under this subchapter. Such change will take effect with respect to services furnished, or cost reporting periods of providers, on or after such date as the Secretary shall provide in the certification. Such change for a class of provider shall be discontinued if the Secretary determines and notifies Congress that such change has resulted in an increase in the amount of payments made under this subchapter for services provided by that class of provider.

(2) The lesser-of-cost-or-charges provisions referred to in paragraph (1) are as follows:
(A) Clause (B) of paragraph (1) and paragraph (2) of subsection (b) of this section.
(B) Section 1395m(a)(1)(B) of this title.
(C) So much of subparagraph (A) of section 1395x(2)(A) of this title as provides for payment other than of the reasonable cost of such services, as determined under section 1395x(v) of this title.
(D) Subclause (II) of clause (i) and clause (ii) of section 1395l(a)(2)(B) of this title.

(k) Payments to home health agencies for durable medical equipment
The amount paid to any home health agency with respect to durable medical equipment for which payment may be made under this part shall be the amount described in section 1395m(a)(1) of this title.

(l) Payment for inpatient critical access hospital services
(1) Except as provided in the subsequent paragraphs of this subsection, the amount of payment under this part for inpatient critical access hospital services is equal to 101 percent of the reasonable costs of the critical access hospital in providing such services.

(2) In the case of a distinct part psychiatric or rehabilitation unit of a critical access hospital described in section 1395–4(c)(2)(E) of this title, the amount of payment for inpatient critical access hospital services of such unit shall be equal to the amount of the payment that would otherwise be made if such services were inpatient hospital services of a distinct part psychiatric or rehabilitation unit, respectively, described in the matter following clause (v) of section 1395ww(d)(1)(B) of this title.

(3) The following rules shall apply in determining payment and reasonable costs under paragraph (1) for costs described in subparagraph (C) for a critical access hospital that would be a meaningful EHR user (as would be determined under paragraph (3) of section 1395ww(d)(1)(B) of this title) for an EHR reporting period for a cost reporting period beginning during a payment year if such critical access hospital was treated as an eligible hospital under such section:

(i) The Secretary shall compute reasonable costs by expensing such costs in a single payment year and not depreciating such costs over a period of years (and shall include as costs with respect to cost reporting periods beginning during a payment year costs from previous cost reporting periods to the extent they have not been fully depreciated as of the period involved).

(ii) There shall be substituted for the Medicare share that would otherwise be applied under paragraph (1) a percent (not to exceed 100 percent) equal to the sum of—
(I) the Medicare share (as would be specified under paragraph (2)(D) of section 1395ww(n) of this title) for such critical access hospital if such critical access hospital was treated as an eligible hospital under such section; and
(II) 20 percentage points.

(B) The payment under this paragraph with respect to a critical access hospital shall be paid through a prompt interim payment (subject to reconciliation) after submission and review of such information (as specified by the Secretary) necessary to make such payment, including information necessary to apply this paragraph. In no case may payment under this paragraph be made with respect to a cost reporting period beginning during a payment year after 2015 and in no case may a critical access hospital receive payment under this paragraph with respect to more than 4 consecutive payment years.

(C) The costs described in this subparagraph are costs for the purchase of certified EHR technology to which purchase depreciation (excluding interest) would apply if payment was made under paragraph (1) and not under this paragraph.

(D) For purposes of this paragraph, paragraph (4), and paragraph (5), the terms “certified EHR technology”, “eligible hospital”, “EHR reporting period”, and “payment year” have the meanings given such terms in sections 1395ww(n) of this title.

(4) (A) Subject to subparagraph (C), for cost reporting periods beginning in fiscal year 2015 or a subsequent fiscal year, in the case of a critical access hospital that is not a meaningful EHR user (as would be determined under paragraph (3) of section 1395ww(n) of this title if such critical access hospital was treated as an eligible hospital under such section) for an EHR reporting period with respect to such fiscal year, paragraph (1) shall be applied by substituting the applicable percent under subparagraph (B) for the percent described in such paragraph (1).

(B) The percent described in this subparagraph is—
(i) for fiscal year 2015, 100.66 percent;
(ii) for fiscal year 2016, 100.33 percent; and
(iii) for fiscal year 2017 and each subsequent fiscal year, 100 percent.

(C) The provisions of subclause (II) of section 1395ww(b)(3)(B)(ix) of this title shall apply with respect to subparagraph (A) for a critical access hospital with respect to a cost reporting period beginning in a fiscal year in the same manner as such subclause applies with respect to subclause (I) of such section for a subsection (d) hospital with respect to such fiscal year.
There shall be no administrative or judicial review under section 1395ff of this title, section 1395oo of this title, or otherwise, of—

(A) the methodology and standards for determining the amount of payment and reasonable costs under paragraphs (1) and (2) and payment adjustments under paragraph (4), including selection of periods under section 1395ww(n)(2) of this title for determining, and making estimates or using proxies of, inpatient-bed-days, hospice charges, charity charges, and Medicare shares under subparagraph (A) of section 1395ww(n)(2) of this title;

(B) the methodology and standards for determining a meaningful EHR user under section 1395ww(n)(3) of this title as would apply if the hospital was treated as an eligible hospital under section 1395ww(n) of this title, and the hardship exception under paragraph (4); and

(C) the specification of EHR reporting periods under section 1395ww(n)(6)(B) of this title as applied under paragraphs (3) and (4); and

(D) the identification of costs for purposes of paragraph (3)(C).
a face-to-face encounter (including through use of tele-health, subject to the requirements in section 1395m(m) of this title, and other than with respect to encounters that are incident to services involved) with the individual within a reasonable timeframe as determined by the Secretary” after “care of a physician”.


Subsec. (1)(C)(ii). Pub. L. 111–148, § 3132(a)(2)(A), inserted “(before the first fiscal year in which the payment revisions described in paragraph (6)(D) are implemented)” after “subject to clause (iv),” after “subsequent fiscal year”.


Subsec. (i)(2)(D). Pub. L. 111–33, § 4442(a), added subpar. (D).
‘‘(B) in the case of a later reporting period, is the
per diem payment amount established under this
paragraph for the preceding 12-month cost reporting
period, increased by the applicable percentage in-
crease under section 1395ww(b)(3)(B)(ii) of this title for
that particular cost reporting period applicable to
hospitals located in a rural area.

The payment amounts otherwise determined under this
paragraph shall be reduced, to the extent necessary, to
avoid duplication of any payment made under section
1395–4(a)(2) of this title (or under section 4005(e) of the
Omnibus Budget Reconciliation Act of 1987) to cover
the provision of inpatient rural primary care hospital
services.

‘‘(2) The Secretary shall develop a prospective pay-
ment system for determining payment amounts for
inpatient rural primary care hospital services under this
part furnished on or after January 1, 1996.’’

struck out ‘‘and with respect to post-hospital extended
care services furnished after such day of a continuous
period of such services as may be prescribed in or pur-
suant to regulations after ‘‘continuous period of such
services’’’ after ‘‘a skilled nursing facility, as the case may
be’’ after ‘‘such individual to the hospital’’, and ‘‘or fa-
cility’’ after ‘‘made in such hospital’’.

‘‘the individual may reasonably be expected to be dis-
charged or transferred to a hospital within 72 hours
after admission to the rural primary care hospital.’’ for
‘‘the individual was required to be immediately fur-
nished on a temporary, inpatient basis.’’

Subsec. (i)(1)(C)(1). Pub. L. 103–432, § 110(d)(1), sub-
stituted ‘‘September 30, 1990,’’ for ‘‘September 30,
1990,’’

Subsec. (j)(2). Pub. L. 103–432, § 102(d), substituted
‘‘January 1, 1996’’ for ‘‘January 1, 1993’’.

‘‘increased by—’’ and subcl. (1) to (V) for ‘‘increased
by the market basket percentage increase (as defined
in section 1395ww(b)(3)(B)(ii) of this title) otherwise
applicable to discharges occurring in the fiscal year.
1991—Subsec. (b). Pub. L. 102–54 substituted ‘‘Depart-
ment of Veterans Affairs’’ for ‘‘Veterans’ Administra-
tion’’ in heading and par. (1) and ‘‘Secretary of Veter-
ans Affairs’’ for ‘‘Veterans Administration’’ in par. (2).

added cl. (iii).

Subsec. (b)(3). Pub. L. 101–508, § 6028(b)(1), substituted
‘‘January 1, 1983’’ in subpar. (B), substituted ‘‘37th month
for ‘‘seventh month’’ in sentence following subpar. (B),
and inserted at end provi-
sions setting forth procedures to be followed by Sec-
retary in 36-month period.

substituted ‘‘or on or after January 1, 1990, and on or
before September 30, 1990,’’ for ‘‘or during fiscal year
1990’’.

‘‘a physician, nurse practitioner, or clinical nurse spe-
cialist (as the case may be) makes’’ for ‘‘a physician
makes’’ in first sentence of concluding provisions.

Subsec. (a)(2). Pub. L. 101–239, § 6028(b)(1), substituted
‘‘a physician, or, in the case of services described in sub-
paragraph (B), a physician, or a nurse practitioner or
clinical nurse specialist who does not have a direct or
indirect employment relationship with the facility but
is working in collaboration with a physician.’’ for ‘‘a
physician after ‘‘(2)’’.

100–360, §104(d)(2)(C), and provided that the provisions
of law amended or repealed by such section are restored
on or revived as if such section had not been enacted, see
1988 Amendment note below.

100–360, §104(d)(2)(C), and provided that the provisions
of law amended or repealed by such section are restored
on or revived as if such section had not been enacted, see
1988 Amendment note below.

inserted ‘‘, other than a rural primary care hospital pro-
viding inpatient rural primary care hospital services,’’
after ‘‘providing hospice care’’ in introductory provi-
sions.

§104(d)(2)(D), and provided that the provisions of law
amended or repealed by such section are restored or re-
vived as if such section had not been enacted, see 1988
Amendment note below.

‘‘and except as otherwise provided in this paragraph’’ after
‘‘section 1395e(a)(4) of this title’’.

subpar. (C) and struck out former subpar. (C) which read
as follows: ‘‘With respect to care and services fur-
nished on or after October 1, 1986, the Secretary shall,
not less often than annually, review and make appro-
priate adjustments to the payment rate for routine
home care and the payment rates for other services in-
cluded in hospice care based on the costs that are rea-
sonable and related to the costs of furnishing such care
and services. The Secretary shall report to Congress on
October 1 each year on such review and such adjust-
ments and on the adequacy of the rates under this
paragraph to ensure participation by an adequate num-
ber of hospice programs under this subchapter.’’

subsec. (i).

(B), struck out ‘‘post-hospital’’ after ‘‘in the case of’’ and
‘‘, for any of the conditions with respect to which he
was receiving inpatient hospital services (or services
which would constitute inpatient hospital services if
the institution met the requirements of paragraphs (6)
and (9) of section 1395x(e) of this title) prior to transfer
to the skilled nursing facility or for a condition requir-
ing such extended care services which arose after such
transfer and while he was still in the facility for treat-
ment of the condition or conditions for which he was
receiving such inpatient hospital services’’ before semi-
colon at end.

Subsec. (a)(6). Pub. L. 100–360, §104(d)(2)(A), substi-
tuted ‘‘post-hospital’’ before ‘‘extended care services’’ in
two places.

cl. (iii) which read as follows: ‘‘in a subsequent
extension period, the medical director or physician de-
scribed in clause (i)(II) recertifies at the beginning of
the period that the individual is terminally ill’’.

Subsec. (d)(3). Pub. L. 100–360, §104(d)(2)(D), substi-
tuted ‘‘equal to 100 percent’’ for ‘‘equal to 60 per-
cent’’ and ‘‘plus 100 percent’’ for ‘‘plus 80 percent’’ and
struck out ‘‘two-thirds of’’ after ‘‘based on’’.

1987—Subsec. (a). Pub. L. 100–203, § 4024(a)(2), substi-
tuted two sentences at end clarifying ‘‘confined to his home’’
for purposes of par. (2)(C).

Subsec. (b)(3)(B). Pub. L. 100–203, § 4008(b)(1), substi-
tuted ‘‘aggregate rate of increase from October 1,
1983, to the most recent date for which annual data are
available’’ for ‘‘rate of increase for the previous three-
year period’’.

Subsec. (a)(2)(B). Pub. L. 100–203, § 4062(d)(1)(A), substi-
tuted ‘‘Section 1395m(a)(1)(A) of this title’’ for ‘‘Sub-
section (k)(1)(B) of this section’’.

Subsec. (k). Pub. L. 100–203, § 4062(d)(1)(B), substitu-
ted the amount described in section 1395m(a)(1) of this
title, for a dash and former pars. (1) and (2) which read
as follows:

‘‘(1) the lesser of—

(A) the reasonable cost of such equipment, as de-
termined under section 1395m(a)(2) of this title; and

(B) the customary charges with respect to such equipment,

‘‘(2) the amount described in section 1395m(a)(1) of this

title.’’
less the amount the home health agency may charge as described in section 1395cc(a)(2)(A)(i) of this title, but in no case may the payment for such equipment exceed 80 percent of such reasonable cost. [1980 Amendment note]

"(2) if such equipment is furnished by a public home health agency, or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph), free of charge or at nominal charge to the public; or

"(3) the home health agency would be if section 1395ww of this title did not apply" after "public home health agency" and "80 percent of" before "the amount".

1983—Subsec. (g). Pub. L. 98–21, § 602(b), inserted "or would be if section 1395ww of this title did not apply" after "section 1395x(v)(1)(D) of this title".

Subsec. (h)(2). Pub. L. 98–21, § 602(c), substituted "the amount that would be payable for such services under subsection (b) of this section and section 1395ww of this title for "the reasonable costs for such services".

Subsec. (i)(1). Pub. L. 97–448 inserted "made" before "for bereavement counseling".

Subsec. (j)(2)(A). Pub. L. 98–90, § 1(1), struck out "located in a region (as defined by the Secretary) after "a hospice program" and "for the region" after "the cap amount".


Subsec. (k)(2). Pub. L. 98–617, § 9(b)(1), inserted "of another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph), after "public home health agency" and "by the State'' for ''until the Secretary determines and notifies the Governor of the State for purposes of the preceding sentence, service by a physician certified, in the case of inpatient tuberculosis hospital services, the services were those furnished by a public home health agency, or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph), free of charge or at nominal charge to the public; or

"(3) the home health agency would be if section 1395ww of this title did not apply" after "public home health agency" and "80 percent of" before "the amount".

1983—Subsec. (g). Pub. L. 98–21, § 602(b), inserted "or would be if section 1395ww of this title did not apply" after "section 1395x(v)(1)(D) of this title".

Subsec. (h)(2). Pub. L. 98–21, § 602(c), substituted "the amount that would be payable for such services under subsection (b) of this section and section 1395ww of this title for "the reasonable costs for such services".

Subsec. (i)(1). Pub. L. 97–448 inserted "made" before "for bereavement counseling".

Subsec. (j)(2)(A). Pub. L. 98–90, § 1(1), struck out "located in a region (as defined by the Secretary) after "a hospice program" and "for the region" after "the cap amount".

Subsec. (i)(2)(A). Pub. L. 98–90, § 1(2), amended subpar. (b) generally, substituting provisions establishing a hospice reimbursement cap amount of $6,500, indexed by the medical care component of the Consumer Price Index, for provisions which had established a cap of 40% of the estimated regional average medicare expenditure per beneficiary in the regular medicare program during the six months of life for persons dying of cancer.

Subsec. (h). Pub. L. 92–603, §§228(a), 278(b)(4), (17), added subsec. (h) and substituted "skilled nursing facility" for "extended care facility".

Subsec. (i). Pub. L. 92–603, §228(a), added subsec. (i).

1968—Subsec. (a). Pub. L. 90–248, §126(a)(4), 126(c)(5)(B), struck out references to former subpars. (E) and (F) in last sentence.

Subsec. (a)(2)(A) to (E). Pub. L. 90–248, §126(a)(1), (2), struck out subpar. (A) which provided that there be a physician's certification of medical necessity for admissions to hospitals other than psychiatric or tuberculosis institutions, and redesignated subpars. (B) to (E) as (A) to (D), respectively.

Subsec. (a)(2)(F). Pub. L. 90–248, §126(c)(5)(A), struck out subpar. (F) which provided that there be a physician's certification for services furnished to outpatients.

Subsec. (b). Pub. L. 90–248, §126(a)(3), (4), added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively.

Subsec. (c). Pub. L. 90–248, §126(c)(6)(A), struck out reference to outpatient hospital diagnostic services from provisions requiring payment for emergency hospital services.

Subsec. (d). Pub. L. 90–248, §143(c), designated existing provisions as par. (1), inserted "in a calendar year" after "furnished" in first sentence of par. (1), added subpar. (C) to par. (1), and added pars. (2) and (3).

**Effective Date of 2010 Amendment**

Pub. L. 111–148, title III, §3108(b), Mar. 23, 2010, 124 Stat. 418, provided that: "The amendments made by this section [amending this section] shall apply to items and services furnished on or after January 1, 2011."

Pub. L. 111–148, title VI, §6404(b), Mar. 23, 2010, 124 Stat. 768, provided that:

"(1) IN GENERAL.—The amendments made by subsection (a) [amending this section and sections 1395n and 1395u of this title] shall apply to services furnished on or after January 1, 2010.


Pub. L. 111–148, title VIII, §8405(d), Mar. 23, 2010, 124 Stat. 768, provided that: "The amendments made by this section [amending this section and sections 1395n and 1395u of this title] shall apply to written orders and certifications made on or after July 1, 2010."

**Effective Date of 2003 Amendment**

Pub. L. 108–173, title IV, §405(a)(2), Dec. 8, 2003, 117 Stat. 2366, provided that: "The amendments made by paragraph (1) [amending this section and sections 1395n and 1395u of this title] shall apply to payments for services furnished during cost reporting periods beginning on or after January 1, 2004."


Amendment by section 512(b) of Pub. L. 108–173 applicable to services provided by a hospice program on or after Jan. 1, 2006, see section 512(d) of Pub. L. 108–173, set out as a note under section 1395d of this title.

Pub. L. 108–173, title IX, §946(c), Dec. 8, 2003, 117 Stat. 2425, provided that: "The amendments made by this section [amending this section and section 1395i of this title] shall apply to hospice care provided on or after the date of the enactment of this Act [Dec. 8, 2003]."

**Effective Date of 2000 Amendment**

amendment by subsection (a) [amending this section] shall apply to hospice care furnished on or after April 1, 2001. In applying clause (ii) of section 1861(k)(2) of the Social Security Act [42 U.S.C. 1395f(i)(1)(C)] beginning with fiscal year 2002, the payment rates in effect under such section during the period beginning on April 1, 2001, and ending on September 30, shall be treated as the payment rates in effect during fiscal year 2001.'

Pub. L. 106–554, § 1(a)(6) [title III, § 322(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–501, provided that: "The amendments made by paragraph (1) [amending this section] shall apply to certifications made on or after the date of the enactment of this Act [Dec. 21, 2000]."

Pub. L. 106–554, § 1(a)(6) [title V, § 507(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–532, provided that: "The amendments made by paragraph (1) [amending this section and section 1395n of this title] shall apply to home health services furnished on or after the date of the enactment of this Act [Dec. 21, 2000]."

**Effective Date of 1997 Amendment**

Section 4201(d) of Pub. L. 105–33 provided that: "The amendments made by this section [amending this section and sections 1320a–7a, 1320a–7b, 1320b–4, 1320b–8, 1395d, 1395e, 1395f, 1395i–4, 1395k to 1395n, 1395u, 1395w, 1395aaa, 1395dcc, and 1395ww of this title] shall apply to services furnished on or after October 1, 1997.''


Amendment by sections 4441, 4443(b), and 4448 of Pub. L. 105–33 applicable to benefits provided on or after Aug. 5, 1997, except as otherwise provided, see section 4449 of Pub. L. 105–33, set out as a note under section 1395f of this title.

Amendment by section 4603(c)(1) of Pub. L. 105–33 applicable to cost reporting periods beginning on or after Oct. 1, 1999, except as otherwise provided, see section 4603(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395ff of this title.

Section 4616(b) of Pub. L. 105–33 provided that: "The amendments made by subsection (a) [amending this section and section 1395n of this title] apply to home health services furnished after the 6-month period beginning after the date of enactment of this Act [Aug. 5, 1997]."

**Effective Date of 1994 Amendment**

Amendment by section 106(b)(1)(A) of Pub. L. 104–322 effective as if included in the enactment of Pub. L. 104–193, see section 106(b)(2) of Pub. L. 104–322, set out as a note under section 1395cc of this title.

**Effective Date of 1990 Amendment**

Amendment by section 4006(b) of Pub. L. 101–508 applicable with respect to care and services furnished on or after Jan. 1, 1990, see section 4006(c) of Pub. L. 101–508, set out as a note under section 1395d of this title.

**Effective Date of 1989 Amendments**

Section 6005(c) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4008(m)(3)(B), Nov. 5, 1990, 104 Stat. 1388–54, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall become effective with respect to care and services furnished on or after January 1, 1990."


**Effective Date of 1988 Amendment**

Amendment by Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cell furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

**Effective Date of 1987 Amendment**

Section 4008(b)(2) of Pub. L. 100–203 provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 22, 1987]."

Section 4623(c) of Pub. L. 100–203 provided that: "The amendments made by subsections (a) and (b) [amending this act and section 1385n of this title] shall apply to items and services provided on or after January 1, 1988."

Section 4062(e) of Pub. L. 100–203, as amended by Pub. L. 101–508, title IV, § 4152(b), Nov. 5, 1990, 104 Stat. 1388–80, provided that: "The amendments made by this section [enacting section 1395nm of this title, amending this section and sections 1395k, 1395f, and 1395cc of this title, and repealing section 1395zz of this title] shall apply to covered items (other than oxygen and oxygen equipment) furnished on or after January 1, 1989 and to oxygen and oxygen equipment furnished on or after June 1, 1989."

Section 4152(b) of Pub. L. 101–508 provided that amendment by that section to section 4062(e) of Pub. L. 100–203, set out above, is effective as if included in enactment of Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203.

**Effective Date of 1984 Amendments**

Section 1(b) of Pub. L. 98–617 provided that: "The amendments made by this Act [probably means section 1 of Pub. L. 98–617, amending this section] shall apply to routine home care and other services included in hospice care furnished on or after October 1, 1984."

Section 3(c) of Pub. L. 98–617 provided that: "The amendments made by this section [amending this section and sections 1395f, 1395s, 1395u, 1395w, 1395w, 1396a, and 1396b of this title and amending provisions set out as notes under sections 1395h and 1395mm of this title] shall be effective as if they had been originally included in the Deficit Reduction Act of 1984 [Pub. L. 98–369]."

Section 2331(g) of Pub. L. 98–369 provided that: "The amendments made by this section [enacting section 1395zz of this title and amending this section and sections 1395f, 1395s, 1395w, 1395w, 1396a, and 1396b of this title] shall apply to items and services furnished on or after the date of the enactment of this Act [July 18, 1984]."

Section 2335(p) of Pub. L. 98–369 provided that: "The amendments made by this section [amending this section and sections 1395s, 1395w, 1396a, and 1396b of this title] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Section 2338(c)(1) of Pub. L. 98–369 provided that: "The amendments made by subsection (a) [amending this section and section 1395n of this title] shall apply to certifications and plans of care made or established on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(1) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2354(c)(1)(A) of Pub. L. 98–369 effective as if originally included in Pub. L. 98–499, see section 2354(e)(2) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

**Effective Date of 1983 Amendments**

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hos-
pitai beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 606(a)(1) of Pub. L. 98–21, set out as a note under section 1395w of this title.

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 369(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

**Effective Date of 1982 Amendment**

Amendment by section 122(c)(1), (2) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395cc of this title.

**Effective Date of 1981 Amendment**

Amendment by section 212(b)(1) of Pub. L. 97–35 applicable to services furnished in detoxification facilities for inpatient stays beginning on or after the tenth day after Aug. 13, 1981, see section 212(i) of Pub. L. 97–35, set out as a note under section 1395d of this title.

Section 212(b)(2) of Pub. L. 97–35 provided that: "The amendments made by this section (amending this section and section 1396d of this title) shall apply to services furnished pursuant to plans of treatment implemented after the third month beginning after the date of the enactment of this Act [Aug. 13, 1981]."

**Effective Date of 1980 Amendment**

Amendment by section 930(e), (f) of Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(a)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Amendment by section 931(b) of Pub. L. 96–499 effective Apr. 1, 1981, see section 931(e) of Pub. L. 96–499, set out as a note under section 1395d of this title.

Section 936(d) of Pub. L. 96–499 provided that: "The amendments made by this section [amending this section and sections 1395x and 1395y of this title] shall apply with respect to services provided on or after July 1, 1981."

Section 941(c) of Pub. L. 96–499 provided that: "The amendments made by this section [amending this section] shall take effect on January 1, 1981."

**Effective Date of 1978 Amendment**

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an inpatient reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

**Effective Date of 1977 Amendment**

Section 23(c) of Pub. L. 95–142 provided that: "The amendments made by this section [amending this section] shall apply to inpatient hospital services furnished on and after July 1, 1974."

**Effective Date of 1973 Amendment**

Section 18(z–2)(2) of Pub. L. 93–233 provided that: "The amendments made by this section [amending this section and section 1395y of this title] shall be effective with respect to admissions subject to the provisions of section 1814(a)(2) of the Social Security Act [subsec. (a)(2) of this section] which occur after December 31, 1972."

**Effective Date of 1972 Amendment**

Section 211(d) of Pub. L. 92–603 provided that: "The amendments made by this section [amending this section and sections 1395f, 1395a, 1395x, and 1395y of this title] shall apply to services furnished with respect to admissions occurring after December 31, 1972."

Amendment by section 226(c)(1) of Pub. L. 92–603 effective with respect to services provided on or after July 1, 1973, see section 226(f) of Pub. L. 92–603, set out as an Effective Date note under section 1395mm of this title.

Amendment by section 227(b) of Pub. L. 92–603 applicable with respect to accounting periods beginning after June 30, 1973, see section 227(g) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 233(f) of Pub. L. 92–603 provided that: "The amendments made by subsections (a) and (b) [amending this section and any regulations adopted pursuant to such amendment shall apply with respect to plans of care initiated on or after January 1, 1973, and with respect to admission to skilled nursing facilities and home health plans initiated on or after such date."

Section 234(g)(1) of Pub. L. 92–603 applicable with respect to providers of services for fiscal years beginning after fifth month following October 1972, see section 234(i) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 238(b) of Pub. L. 92–603 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to services furnished after the second month following the month in which this Act is enacted (October 1972)."

Section 247(c) of Pub. L. 92–603 provided that: "The amendments made by this section [amending this section and section 1396d of this title] shall be effective with respect to services furnished after December 31, 1972."

Section 256(d) of Pub. L. 92–603 provided that: "The amendments made by this section [amending this section and sections 1395x and 1395y of this title] shall apply with respect to admissions occurring after the second month following the month in which this Act is enacted (October 1972)."

Amendment by section 281(e) of Pub. L. 92–603 applicable in the case of services furnished (or deemed to have been furnished) after 1970, see section 281(g) of Pub. L. 92–603, set out as a note under section 1395gg of this title.

**Effective Date of 1958 Amendment**

Section 129(c) of Pub. L. 90–248 provided that: "The amendments made by this section [amending this section and section 1395d of this title] shall apply with respect to services furnished after the date of the enactment of this Act [Jan. 2, 1968]."

Amendment by section 129(c)(5), (6)(A) of Pub. L. 90–248 applicable with respect to services furnished after Jan. 2, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Amendment by section 128(c)(1) of Pub. L. 90–248 applicable with respect to services furnished with respect to admissions occurring after Dec. 31, 1967, and to outpatient hospital diagnostic services furnished after Dec. 31, 1967, and before Apr. 1, 1968, see section 128(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.
REVISION OF REGULATIONS REGARDING ACCESS TO HOME HEALTH SERVICES

Section 2336(c)(2) of Pub. L. 98–369 provided that: "The Secretary shall provide, not later than 90 days after the date of the enactment of this Act [July 18, 1984], for such revision of regulations as may be required to reflect the amendments made by subsection (b) [amending this section and section 1395n of this title]."

PROCLAMATION OF REGULATIONS

Section 122(h)(2) of Pub. L. 97–248 provided that: "In order to provide for the timely implementation of the amendments made by this Act [probably means section 122 of Pub. L. 97–248, which amended this section and sections 1395c to 1395e, 1395h, and 1395x to 1395cc of this title and section 2331 of Title 45, Railroads, and enacted provisions set out as notes under this section and sections 1395b–1 and 1395c of this title], the Secretary of Health and Human Services shall, not later than September 1, 1993, promulgate such final regulations as may be necessary to set forth—

"(A) a description of the care included in 'hospice care' and the standards for qualification of a 'hospice provider,' under section 1395x(dd) of the Social Security Act [section 1395x(dd) of this title], and

"(B) the standards for payment for hospice care under A part of title XVIII of such Act [this part], pursuant to section 1814(j) of such Act [subsec. (1) of this section]."

APPLICATION OF 2010 AMENDMENT

Pub. L. 111–148, title VI, § 6405(c), Mar. 23, 2010, 124 Stat. 768, provided that: "The Secretary [probably means the Secretary of Health and Human Services] may extend the requirement applied by the amendments made by subsections (a) [amending section 1395m of this title] and (b) [amending this section and section 1395n of this title] to durable medical equipment and home health services (relating to requiring certifications and written orders to be made by enrolled physicians and health professions) to all other categories of items or services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), including covered part D drugs as defined in section 1860D–2(e) of such Act (42 U.S.C. 1395w–4(k)(3)(B))."

Pub. L. 111–148, title VI, § 6407(d), Mar. 23, 2010, 124 Stat. 770, provided that: "The Secretary [probably means the Secretary of Health and Human Services] may apply the face-to-face encounter requirement described in the amendments made by subsections (a) [amending this section and section 1395n of this title] and (b) [amending section 1395m of this title] to other items and services for which payment is provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) based upon a finding that such an decision would reduce the risk of waste, fraud, or abuse."

Pub. L. 111–148, title VI, § 6407(d), Mar. 23, 2010, 124 Stat. 770, provided that: "The requirements pursuant to the amendments made by subsections (a) [amending this section and section 1395n of this title] and (b) [amending section 1395m of this title] shall apply in the case of physicians making certifications for home health services under title XIX of the Social Security Act (42 U.S.C. 1395 et seq.) in the same manner and to the same extent as such requirements apply in the case of physicians making such certifications under title XVIII of such Act (42 U.S.C. 1395 et seq.)."

STUDY AND REPORT ON EFFECT OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title III, § 321(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–501, provided that: "(1) STUDY.—The Secretary of Health and Human Services shall conduct a study to examine the appropriateness of the certification regarding terminal illness of an individual under section 1814(a)(7) of the Social Security Act (42 U.S.C. 1395(a)(7)) that is required in order for such individual to receive hospice benefits under the medicare program under title XVIII of such Act [this subchapter]. In conducting such study, the Secretary shall take into account the effect of the amendment made by subsection (a) [amending this section]."

"(2) REPORT.—Not later than 2 years after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall submit to Congress a report on the study conducted under paragraph (1), together with any recommendations for legislation that the Secretary deems appropriate."

TEMPORARY INCREASE IN PAYMENT FOR HOSPICE CARE

Pub. L. 106–554, § 1(a)(6) [title III, § 321(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–501, provided that: "(a) INCREASE FOR FISCAL YEARS 2001 AND 2002.—For purposes of payments under section 1814(h)(1)(C) of the Social Security Act (42 U.S.C. 1395f(h)(1)(C)) for hospice care furnished during fiscal years 2001 and 2002, the Secretary of Health and Human Services shall increase the payment rate in effect (but for this section) for—

"(1) fiscal year 2001, by 0.5 percent, and

"(2) fiscal year 2002, by 0.75 percent.

"(b) ADDITIONAL PAYMENT NOT BUILT INTO THE BASE.—The Secretary of Health and Human Services shall not include any additional payment made under this subsection (a) in updating the payment rate, as increased by the applicable market basket percentage increase for the fiscal year involved under section 1814(h)(1)(C)(I) of that Act (42 U.S.C. 1395f(h)(1)(C)(I))."

STUDY AND REPORT TO CONGRESS REGARDING MODIFICATION OF PAYMENT RATES FOR HOSPICE CARE

Pub. L. 106–113, div. B, § 1000(a)(6) [title I, § 132], Nov. 29, 1999, 113 Stat. 1351, 1501A–333, provided that: "(a) STUDY.—The Comptroller General of the United States shall conduct a study to determine the feasibility and advisability of updating the payment rates and the cap amount determined with respect to a fiscal year under section 1814(h)(1)(C) of the Social Security Act (42 U.S.C. 1395f(h)) for routine home care and other services included in hospice care. Such study shall examine the cost factors used to determine such rates and such amount and shall evaluate whether such factors should be modified, eliminated, or supplemented with additional cost factors.

"(b) REPORT.—Not later than one year after the date of enactment of this Act [Nov. 29, 1999], the Comptroller General of the United States shall submit to Congress a report on the study conducted under subsection (a), together with any recommendations for legislation that the Comptroller General determines to be appropriate as a result of such study."
STUDY OF METHODS TO COMPENSATE HOSPICES FOR HIGH-COST CARE

Section 6016 of Pub. L. 101–239 directed Secretary of Health and Human Services to conduct a study of high-cost hospice care provided to Medicare beneficiaries under the Medicare program, evaluate the ability of hospice programs participating in the Medicare program to provide such high-cost care to such patients, develop methods to compensate such programs for providing such high-cost care, and submit, not later than Apr. 1, 1991, a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the study, including in the report any recommendations developed by the Secretary to compensate hospice programs for providing high-cost hospice care to Medicare beneficiaries.

CONTINUATION OF BAD DEBT RECOGNITION FOR HOSPITAL SERVICES

Section 4008(c) of Pub. L. 100–203, as amended by Pub. L. 100–647, title VIII, § 8402, Nov. 10, 1987, 102 Stat. 3798; Pub. L. 101–239, title VI, § 6023(a), Dec. 19, 1989, 103 Stat. 2167, provided that: ‘‘In making payments to hospitals under title XVIII of the Social Security Act [this subchapter], the Secretary of Health and Human Services shall not make any change in the policy in effect on August 1, 1987, with respect to payment under title XVIII of the Social Security Act to providers of services for reasonable costs relating to unrecovered costs associated with unpaid deductible and coinsurance amounts incurred under such title (including criteria for what constitutes a reasonable collection effort, including criteria for indigency determination procedures, for record keeping, and for determining whether to refer a claim to an external collection agency). The Secretary may not require a hospital to change its bad debt collection policy if a fiscal intermediary, in accordance with the rules in effect as of August 1, 1987, with respect to criteria for indigency determination procedures, record keeping, and determining whether to refer a claim to an external collection agency, has accepted such policy before that date, and the Secretary may not collect from the hospital on the basis of an expectation of a change in the hospital’s collection policy.’’

Section 6023(b) of Pub. L. 101–239 provided that: ‘‘The amendment made by subsection (a) [amending section 4008(c) of Pub. L. 100–203, set out above] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].’’


PROVIDERS OF SERVICES TO CALCULATE AND REPORT LESSER-OF-COST-OR-CHARGES DETERMINATIONS SEPARATELY WITH RESPECT TO PAYMENTS UNDER PARTS A AND B OF THIS SUBCHAPTER; ISSUANCE OF REGULATIONS

Section 2308(a) of Pub. L. 98–369 provided that: ‘‘The Secretary of Health and Human Services shall issue regulations which require, for purposes of title XVIII of the Social Security Act [this subchapter], that providers of services calculate and report the lesser-of-cost-or-charges determinations separately with respect to payments for services under part A and services under part B of such title [other than clinical diagnostic laboratory tests paid under section 1833(h) (section 1395h(b) of this title)], and that payment under such title be based upon such separate determinations. Such regulations shall apply to cost reporting periods beginning on or after October 1, 1981.’’

DETERMINATION OF NOMINAL CHARGES FOR APPLYING NONMINALITY TEST

Section 2308(b)(1) of Pub. L. 98–369 provided that: ‘‘For purposes of applying the nominality test under sections 1814(b)(2) [subsec. (b)(2) of this section] and 1833(a)(2)(B)(ii) [section 1395(a)(2)(B)(ii) of this title] of the Social Security Act, the Secretary shall, in addition to those rules for establishing nominality with which the Secretary determines to be appropriate, provide that charges representing 60 percent or less of costs shall be considered nominal. The charges used in making such determinations shall be the charges actually billed to charge-paying patients who are not entitled to benefits under either part of such title [sections 1395c et seq., 1395 et seq. of this title]. Such determination shall be made separately with respect to payments for services under part A and services under part B of such title (other than clinical diagnostic laboratory tests paid under section 1833(h)), or on the basis of inpatient and outpatient services, except that the determination need not be made separately for home health services if the Secretary finds that such separation is not appropriate.’’

STUDY AND REPORT RELATING TO THE REIMBURSEMENT METHOD AND BENEFIT STRUCTURE FOR HOSPICE CARE; SUPERVISION OF REPORT BY COMPTROLLER GENERAL

Section 122(i), formerly § 122(i), of Pub. L. 97–248, redesignated § 122(i), by Pub. L. 97–448, title III, § 306(a)(6), Jan. 12, 1983, 96 Stat. 2408, provided that: ‘‘(1) The Secretary of Health and Human Services shall conduct a study and, prior to January 1, 1986, refer to the Congress on whether or not the reimbursement method and benefit structure (including copayments) for hospice care under title XVIII of the Social Security Act [this subchapter] are fair and equitable and promote the most efficient provision of hospice care. Such report shall include the feasibility and advisability of providing for prospective reimbursement for hospice care, an evaluation of the inclusion of payment for outpatient drugs, an evaluation of the need to alter the method of reimbursement for nutritional, dietary, and bereavement counseling as hospice care, and any recommendations for legislative changes in the hospice care reimbursement or benefit structure.

‘‘(2) The Comptroller General shall monitor and evaluate the study and the preparation of the report under paragraph (1).’’

WAIVER OF LIMITATIONS TO ALLOW PRE-EXISTING HOSPICES TO PARTICIPATE AS A HOSPICE PROGRAM

Section 122(k), formerly § 122(k), of Pub. L. 97–248, as redesignated and amended by Pub. L. 97–448, title III, § 309(a)(6), (7), Jan. 12, 1983, 96 Stat. 2408, provided that: ‘‘The Secretary of Health and Human Services shall grant waivers of the limitations imposed by section 1814(i)(2) of the Social Security Act [subsec. (i)(2) of this section] (relating to the cap amount), section 1861(dd)(1)(G) of such Act [section 1395x(dd)(1)(G) of this title] (relating to the limitations on the frequency and number of respite care days), and section 1861(dd)(2)(A)(ii) (section 1395x(dd)(2)(A)(ii) of this title) (relating to the aggregate limit on the number of days of inpatient care), as may be necessary to allow any institution which commenced operations as a hospice prior to January 1, 1975, to participate until October 1, 1986, in a viable manner as a hospice program under title XVIII of the Social Security Act [this subchapter].’’

MEDICARE PAYMENT BASIS FOR SERVICES PROVIDED BY AGENCIES AND PROVIDERS; EFFECTIVE DATE

Section 16 of Pub. L. 93–233 provided that: ‘‘In the administration of titles V, XVIII, and XIX of the Social Security Act [subchapters V, XVIII, and XIX of this chapter], the amount payable under such title to any provider of services on account of services provided by such hospital, skilled nursing facility, or home health agency shall be determined (for any period with respect to which the amendments made by section 233 of Public Law 92–603 [this section and section 709, 1396b of this title]) would, except for the provisions of this section, be applicable) in like manner as if the date
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(b) Conditions

No payment shall be made to a provider of services which is a hospital for or with respect to services furnished by it for any period with respect to which it is deemed, under section 1395x(w)(2) of this title, to have in effect an arrangement with a quality improvement organization for the conduct of utilization review activities by such organization unless such hospital has paid to such organization the amount which should be paid under this part to such organization for the review activities conducted by it pursuant to such arrangements or such hospital has provided assurances satisfactory to the Secretary that such organization will promptly be paid the amount so due to it from the proceeds of the payment claimed by the hospital. Payment under this subchapter for utilization review activities provided by a quality improvement organization pursuant to an arrangement or deemed arrangement with a hospital under section 1395x(w)(2) of this title shall be calculated without any requirement that the reasonable cost of such activities be apportioned among the patients of such hospital, if any, to whom such activities were not applicable.

(c) Payments under assignment or power of attorney

No payment which may be made to a provider of services under this subchapter for any service furnished to an individual shall be made to any other person under an assignment or power of attorney, but nothing in this subsection shall be construed (1) to prevent the making of such a payment in accordance with an assignment from the provider if such assignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (2) to preclude an agent of the provider of services from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such provider under this subchapter is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment.

(d) Accrual of interest on balance of excess or deficit not paid

Whenever a final determination is made that the amount of payment made under this part to a provider of services was in excess of or less than the amount of payment that is due, and payment of such excess or deficit is not made (or affected by offset) within 30 days of the date of the determination, interest shall accrue on the balance of such excess or deficit not paid or offset (to the extent that the balance is owed by or owing to the provider) at a rate determined in accordance with the regulations of the Secretary of the Treasury applicable to charges for late payments.

(e) Periodic interim payments

(1) The Secretary shall provide payment under this part for inpatient hospital services furnished by a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title, and including a distinct psychiatric or rehabilitation unit of such a hospital) and a subsection (d) Puerto Rico hospital (as defined in section 1395ww(d)(9)(A) of this title) on a periodic interim payment basis (rather than on the basis of bills actually submitted) in the following cases:

(A) Upon the request of a hospital which is paid through an agency or organization with an agreement with the Secretary under section 1395h of this title, if the agency or organization, for three consecutive calendar months, fails to meet the requirements of subsection (c)(2) of such section and if the hospital meets the requirements (in effect as of October 1, 1986) applicable to payment on such a basis, until such time as the agency or organization meets such requirements for three consecutive calendar months.

(B) In the case of a hospital that—

(i) has a disproportionate share adjustment percentage (as established in clause (iv) of such section) of at least 5.1 percent (as computed for purposes of establishing the average standardized amounts for discharges occurring during fiscal year 1987), and

(ii) requests payment on such basis, but only if the hospital was being paid for inpatient hospital services on such a periodic interim payment basis as of June 30, 1987, and continues to meet the requirements (in effect as of October 1, 1986) applicable to payment on such a basis.

(C) In the case of a hospital that—

(i) is located in a rural area,

(ii) has 100 or fewer beds, and

(iii) requests payment on such basis, but only if the hospital was being paid for inpatient hospital services on such a periodic interim payment basis as of June 30, 1987, and continues to meet the requirements (in effect as of October 1, 1986) applicable to payment on such a basis.

(2) The Secretary shall provide (or continue to provide) for payment on a periodic interim pay-
ment basis (under the standards established under section 405.454(j) of title 42, Code of Federal Regulations, as in effect on October 1, 1986, in the cases described in subparagraphs (A) through (D)) with respect to—

(A) inpatient hospital services of a hospital that is not a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title);

(B) a hospital which is receiving payment under a State hospital reimbursement system under section 1395f(b)(3) or 1395ww(c) of this title, if payment on a periodic interim payment basis is an integral part of such reimbursement system;

(C) extended care services;

(D) hospice care; and

(E) inpatient critical access hospital services;

if the provider of such services elects to receive, and qualifies for, such payments.

(3) In the case of a subsection (d) hospital or a subsection (d) Puerto Rico hospital (as defined for purposes of section 1395ww of this title) which has significant cash flow problems resulting from operations of its intermediary or from unusual circumstances of the hospital's operation, the Secretary may make available appropriate accelerated payments.

(4) A hospital created by the merger or consolidation of 2 or more hospitals or hospital campuses shall be eligible to receive periodic interim payment on the basis described in paragraph (1)(B) if—

(A) at least one of the hospitals or campuses received periodic interim payment on such basis prior to the merger or consolidation; and

(B) the merging or consolidating hospitals or campuses would each meet the requirement of paragraph (1)(B)(i) if such hospitals or campuses were treated as independent hospitals for purposes of this subchapter.


Amendments


Amendments


1997—Subsec. (e)(2)(C) to (E). Pub. L. 105–33 inserted “and” at end of subpar. (C), redesignated subpar. (E) as (D), and struck out former subpar. (D) which read as follows: “home health services; and”.


1986—Subsec. (c). Pub. L. 96–473 substituted “for or in connection with” for “for on in connection with”.


1975—Pub. L. 94–182 designated existing provisions as subsec. (a) and added subsec. (b).

Effective Date of 2011 Amendment

Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–40, set out as a note under section 1395cc of this title.

Effective Date of 2003 Amendment


Effective Date of 1997 Amendment

Amendment by Pub. L. 105–33 applicable to cost reporting periods beginning on or after Oct. 1, 1999, except as otherwise provided, see section 4603(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395ff of this title.

Effective Date of 1989 Amendment

Section 6021(b) of Pub. L. 101–239 provided that: “The amendments made by subsection (a) [amending this section] shall apply to payments made for discharges occurring on or after the expiration of the 30-day period that begins on the date of the enactment of this Act [Dec. 19, 1989], regardless of the date of the merger or consolidation involved.”

Effective Date of 1986 Amendment

Section 9311(a)(2) of Pub. L. 99–509 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to claims received on or after July 1, 1987.”

Effective Date of 1982 Amendment

Section 117(b) of Pub. L. 97–248 provided that: “The amendments made by subsection (a) [amending this section and section 1395f of this title] apply to final determinations made on or after the date of the enactment of this Act [Sept. 3, 1982].”

Amendment by section 148(b) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1395cc of this title.

Effective Date of 1977 Amendment

Section 2(a)(4) of Pub. L. 95–142 provided that: “The amendments made by this subsection [amending this section and sections 1395u and 1396a of this title] shall apply with respect to care and services furnished on or after the date of the enactment of this Act [Oct. 25, 1977].”

Effective Date of 1975 Amendment

Amendment by Pub. L. 94–182 effective with respect to utilization review activities conducted on and after the first day of the first month which begins more than }
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30 days after Dec. 31, 1975, see section 112(d) of Pub. L. 94–182, set out as a note under section 1395x of this title.

Development of Alternative Timing Methods of Periodic Interim Payments

Pub. L. 108–173, title IV, § 405(c)(2), Dec. 8, 2003, 117 Stat. 2267, provided that: “With respect to periodic interim payments to critical access hospitals for inpatient critical access hospital services under section 1815(e)(2)(E) of the Social Security Act [subsec. (e)(2)(E) of this section], as added by paragraph (1), the Secretary [of Health and Human Services] shall develop alternative methods for the timing of such payments.”

Transition

Section 9311(a)(3) of Pub. L. 99–509 provided that: “(A) as of June 30, 1987, is receiving payments under part A of title XVIII of such Act [this part] for inpatient hospital services on a periodic interim payment basis,

(B) requests continuation of payment on such basis, and

(C) is paid through an agency or organization with an agreement under section 1816 of such Act [section 1395h of this title],

the Secretary of Health and Human Services shall continue payment on such a basis until not earlier than the end of the first period of three consecutive calendar months (beginning no earlier than April 1987) during all of which the agency or organization has met the requirements of section 1816(c)(2) of such Act (relating to prompt payment of claims).”

Delay in Periodic Interim Payments

Section 120 of Pub. L. 97–248 provided that: “Notwithstanding section 1815(a) of the Social Security Act [subsec. (a) of this section], in the case of a hospital which is paid periodic interim payments under such section, the Secretary of Health and Human Services shall provide that—

(1) with respect to the last 21 days for which such payments would otherwise be made during fiscal year 1983, such payments shall be deferred until fiscal year 1984,

and

(2) with respect to the last 21 days for which such payments would otherwise be made during fiscal year 1984, such payments shall be deferred until fiscal year 1985.”


§ 1395h. Provisions relating to the administration of part A

(a) In general

The administration of this part shall be conducted through contracts with medicare administrative contractors under section 1395kk–1 of this title.


(c) Prompt payment of claims


(2)(A) Each contract under section 1395kk–1 of this title that provides for making payments under this part shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to not less than 95 percent of all claims submitted under this subchapter—

(i) which are clean claims, and

(ii) for which payment is not made on a periodic interim payment basis,

within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph:

(i) The term "clean claim" means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this subchapter.

(ii) The term “applicable number of calendar days” means—

(I) with respect to claims received in the 12-month period beginning October 1, 1986, 30 calendar days,

(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days,

(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days,

(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period ending on or before September 30, 1993, 24 calendar days, and

(V) with respect to claims received in the 12-month period beginning October 1, 1993, and claims received in any succeeding 12-month period, 30 calendar days.

(C) If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in clause (ii) of subparagraph (B)) after a clean claim (as defined in clause (i) of such subparagraph) is received from a hospital, critical access hospital, skilled nursing facility, home health agency, hospice program, comprehensive outpatient rehabilitation facility, or rehabilitation agency that is not receiving payments on a periodic interim payment basis with respect to such services, interest shall be paid at the rate used for purposes of section 3902(a) of title 31 (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made.

(3)(A) Each contract under section 1395kk–1 of this title that provides for making payments under this part shall provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted under this subchapter within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph, the term “applicable number of calendar days” means—

(i) with respect to claims submitted electronically as prescribed by the Secretary, 30 days, and

(ii) with respect to claims submitted otherwise, 28 days.


(j) Denial of claim; notification and reconsideration

A contract with a medicare administrative contractor under section 1395kk–1 of this title
with respect to the administration of this part shall require that, with respect to a claim for home health services, extended care services, or post-hospital extended care services submitted by a provider to such medicare administrative contractor that is denied, such medicare administrative contractor—

(1) furnish the provider and the individual with respect to whom the claim is made with a written explanation of the denial and of the statutory or regulatory basis for the denial; and

(2) in the case of a request for reconsideration of a denial, promptly notify such individual and the provider of the disposition of such reconsideration.

(k) Annual reporting requirement on erroneous payment recovery

A contract with a medicare administrative contractor under section 1395kk–1 of this title that provides for making payments under this part that provides for making payments under this part for ‘‘agreement under this section’’ in introductory provisions.


Subsec. (c)(2)(A). Pub. L. 108–173, §911(b)(4)(B), substituted ‘‘contract under section 1395kk–1 of this title that provides for making payments under this part’’ for ‘‘agreement under this section’’ in introductory provisions.


Subsec. (c)(3)(A). Pub. L. 108–173, §911(b)(4)(B), substituted ‘‘contract under section 1395kk–1 of this title that provides for making payments under this part’’ for ‘‘agreement under this section’’.

Subsecs. (d) to (i). Pub. L. 108–173, §911(b)(5), struck out subsecs. (d) to (i), which related to nomination of agency or organization, designation of agency or organization to perform provider services, standards, criteria, and procedures for evaluation of agency or organization performance, termination of agreement, bonding requirement for officers and employees, and liability of certifying and discharging officers.

Subsec. (j). Pub. L. 108–173, §911(b)(6), in introductory provisions, substituted ‘‘A contract with a medicare administrative contractor under section 1395kk–1 of this title with respect to the administration of this part’’ for ‘‘An agreement with an agency or organization under this section’’ and ‘‘such medicare administrative contractor’’ for ‘‘such agency or organization’’ in two places.

Subsec. (k). Pub. L. 108–173, §911(b)(7), substituted ‘‘A contract with a medicare administrative contractor under section 1395kk–1 of this title with respect to the administration of this part’’ for ‘‘An agreement with an agency or organization under this section’’ and ‘‘such medicare administrative contractor’’ for ‘‘such agency or organization’’.

Subsec. (l). Pub. L. 108–173, §911(b)(7), struck out subsec. (l), which prohibited any activity pursuant to an agreement under this section that is carried out pursuant to a contract under the Medicare Integrity Program.


1994—Subsec. (j)(1)(A). Pub. L. 103–432, §151(b)(2)(A), inserted ‘‘(including the agency’s or organization’s success in recovering payments made under this subchapter for services for which payment has been or could be made under a primary plan (as defined in section 1395y(b)(2)(A) of this title))’’ after ‘‘processing’’.

Subsec. (j)(2)(A)(ii). Pub. L. 103–432, §110(d)(2), substituted ‘‘such agency’s’’ for ‘‘such agency’’.


Subsec. (c)(3)(B). Pub. L. 103–66, §1356(a), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

‘‘(i) with respect to claims received in the 3-month period beginning July 1, 1988, 10 days, and

(ii) with respect to claims received in the 12-month period beginning October 1, 1988, 14 days.

1990—Subsec. (i). Pub. L. 101–508 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subspar. (A) and (B), respectively, struck out ‘‘Such standards and criteria’’ and all that follows, which was executed by striking out ‘‘Such standards and criteria shall be published in the Federal Register, and opportunity shall be provided for public comment

A contract with a medicare administrative contractor under section 1395kk–1 of this title that provides for making payments under this part that provides for making payments under this part for ‘‘agreement under this section’’ in introductory provisions.
Federal Register

intermediaries under this section for that fiscal year,
methodology to be used to establish budgets for fiscal
published in the Federal Register, by not later than Sep -
lished in the Federal Register, "subject to the provisions of paragraph (4)"
provisions relating to applicability to providers assigned to the agency or organization under subsec. (e) of this section.
Subsec. (b). Pub. L. 95–142, §14(a)(2), substituted provisions setting forth criteria for agreements by the Secretary or renewal of such agreements with agencies or organizations, for provisions otherwise provided with respect to agreements by the Secretary with agencies or organizations.
Subsecs. (e), (f). Pub. L. 95–142, §14(a)(4), (5), added subsecs. (e) and (f). Former subsecs. (e) and (f) redesignated (g) and (h), respectively.
Subsec. (g). Pub. L. 95–142, §14(a)(3), (4), redesignated former subsec. (e) as (g) and inserted provisions relating to applicability of standards, etc., developed under subsec. (f) of this section. Former subsec. (g) redesignated (i).
Subsecs. (h), (i). Pub. L. 95–142, §14(a)(4), redesignated former subsecs. (f) and (g) as (b) and (1), respectively.

Effective Date of 2006 Amendment
Pub. L. 109–171, title V, §5202(b), Feb. 8, 2006, 120 Stat. 47, provided that: "The amendments made by this section [amending this section and section 1395u of this title] shall apply to claims submitted on or after January 1, 2006."

Effective Date of 2003 Amendment
Amendment by section 911(b) of Pub. L. 106–173 effective Oct. 1, 2005, except as otherwise provided, with respect to provisions setting forth criteria for agreements by the Secretary or renewal of such agreements with agencies or organizations, for provisions otherwise provided with respect to agreements by the Secretary with agencies or organizations.

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

Effective Date of 1994 Amendment
Section 151(b)(4) of Pub. L. 103–432 provided that: "The amendments made by paragraphs (1) and (2) [amending this section and section 1395u of this title] shall apply to contracts with fiscal intermediaries and carriers under title XVIII of the Social Security Act [this subchapter] for contract years beginning with 1995."

Effective Date of 1993 Amendment
Section 13568(c) of Pub. L. 102–603 provided that: "The amendments made by this section [amending this section and section 1395u of this title] shall apply to claims received on or after October 1, 1993."

Effective Date of 1989 Amendments
Section 6202(d)(3) of Pub. L. 101–239 provided that: "The amendments made by this subsection [amending this section and section 1395u of this title] shall apply to agreements and contracts entered into or renewed on or after the date of the enactment of this Act [Dec. 19, 1989]."
Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

**Effective Date of 1988 Amendment**

Amendment by section 203(f) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 208(e) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(e)(1)(B) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA: Effective Date note under section 106 of Title I, General Provisions.

**Effective Date of 1987 Amendment**

Section 4031(a)(3)(A) of Pub. L. 100–203 provided that: "The amendments made by paragraphs (1) and (2) [amending this section and section 1395u of this title] shall apply to claims received on or after July 1, 1988."

Section 4032(c)(1) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(e)(1)(C), July 1, 1988, 102 Stat. 775, provided that:

"(A) The amendment made by subsection (a) [amending this section] shall apply with respect to claims received on or after January 1, 1989.

"(B) The amendment made by subsection (b) [amending this section] shall apply with respect to reconsiderations requested on or after October 1, 1988."

Section 4033 of Pub. L. 100–203 provided that: "The amendments made by this section [amending this section and sections 1395u and 1395h of this title] shall take effect on the date of the enactment of this Act [Dec. 22, 1987] and shall apply to budgets for fiscal years beginning with fiscal year 1989."

Section 4034(d)(2) of Pub. L. 100–360, provided that:

"(A) The amendment made by paragraph (1) [amending this section] shall apply to claims received on or after the date of enactment of this Act [Dec. 22, 1987].

"(B) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 [this section], and regulations, to such extent as may be necessary to implement the amendment made by paragraph (1)."

**Effective Date of 1986 Amendment**

Section 931(d) of Pub. L. 99–509 provided that:

"(1) Except as provided in paragraph (2), the amendments made by subsections (b) and (c) [amending this section and section 1395u of this title] shall apply to claims received on or after October 1, 1986.

"(2) Sections 1816(o)(2)(C) [sic] and 1842(c)(2)(C) of the Social Security Act [subsec. (c)(2)(C) of this section and section 1395u(c)(2)(C) of this title], as added by such amendments, shall apply to claims received on or after April 1, 1987.

"(3) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act [this section] and contracts under section 1842 of such Act [section 1395u of this title], and regulations, to such extent as may be necessary to implement the provisions of this Act on a timely basis."

Amendment by section 932(a)(2) of Pub. L. 99–509 to be implemented by Secretary of Health and Human Services not later than 6 months after Oct. 1, 1986, see section 932(c)(1) of Pub. L. 99–509, set out as a note under section 1320c–2 of this title.

**Effective Date of 1984 Amendment**

Section 2326(d)(3) of Pub. L. 98–369 provided that: "The amendments made by this subsection [amending this section and section 1395u of this title] shall apply to agreements and contracts entered into or renewed after September 30, 1984."

**Effective Date of 1982 Amendment**

Amendment by Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

**Effective Date of 1980 Amendment**


**Effective Date of 1977 Amendment**

Section 14(c), (d) of Pub. L. 95–142 provided that:

"(c) The amendments made by paragraphs (2) and (3) of subsection (a) [amending this section] to the extent that they apply to claims submitted for payment under Federal programs on and after October 1, 1978, shall provide for such timely amendments to agreements and contracts entered into or renewed on or after the date of enactment of this Act [Oct. 25, 1977]."

**Effective Date of 1972 Amendment**

Amendment by Pub. L. 92–693 applicable with respect to cost reports of providers of services for accounting periods ending on or after June 30, 1973, see section 243(c) of Pub. L. 92–693, set out as an Effective Date note under section 1396oo of this title.

**Advisory Committee on Medicare Home Health Claims**

Section 427 of Pub. L. 100–360, which provided that the Administrator of the Health Care Financing Administration was to establish an advisory committee to be known as the Advisory Committee on Medicare Home Health Claims to study the reasons for the increase in the denial of claims for home health services during 1986 and 1987, the ramifications of such increase, and the need to reform the process involved in such denials, was repealed by Pub. L. 101–234, title III, § 301(a), Dec. 13, 1989, 103 Stat. 186.

**Amendments to Agreements and Contracts Necessary to Implement Section 4031(a) of Pub. L. 100–203**

Section 4031(a)(3)(B) of Pub. L. 100–203 provided that: "The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act [this section] and contracts under section 1842 of such Act [section 1395u of this title], and regulations, to such extent as may be necessary to implement the provisions of this subsection [amending this section and section 1395u of this title] on a timely basis."

**Prohibition of Policies Other Than As Provided by Section 4031 of Pub. L. 100–203 Intended to Slow Down Medicare Payments; Budget Considerations**

Section 4031(b), (c) of Pub. L. 100–203 provided that, notwithstanding any other provision of law, the Secretary of Health and Human Services was not authorized to issue, after Dec. 22, 1987, and before Oct. 1, 1990, any final regulation, instruction, or other policy change which was primarily intended to have the effect of slowing down claims processing, or delaying payment of claims, under this subchapter, and that section 4031 of Pub. L. 100–203, amending this section and section 1395u of this title and enacting provisions set out as notes under this section, was a necessary (but secondary) result of a significant policy change.

**Amendments to Agreements and Contracts Necessary to Implement Section 4032(a), (b) of Pub. L. 100–203**

Section 4032(c)(2) provided that: "The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of this title..."
section] and contracts under section 1842 of the Social Security Act [section 1395u of this title], and regulations, to such extent as may be necessary to implement the amendments made by subsections (a) and (b) [amending this section] on a timely basis."

REPLACEMENT OF AGENCY, ORGANIZATION, OR CARRIER PROCESSING MEDICARE CLAIMS; NUMBER OF AGREEMENTS AND CONTRACTS AUTHORIZED FOR FISCAL YEARS 1965 THROUGH 1993

Section 2326(a) of Pub. L. 98–369, as amended by Pub. L. 101–239, § 6215(a), Nov. 3, 1989, 103 Stat. 2326; Pub. L. 99–509, title IX, § 9321(b), Oct. 21, 1986, 100 Stat. 2016; Pub. L. 101–239, title VI, § 6215(a), Dec. 19, 1989, 103 Stat. 2326; Pub. L. 101–412, title I, § 115(a), Oct. 31, 1994, 108 Stat. 4443, provided that: “During each fiscal year (beginning with fiscal year 1985 and ending with fiscal year 1993), the Secretary of Health and Human Services may enter into not more than two agreements under section 1816 of the Social Security Act [this section], and not more than two contracts under section 1842 of such Act [section 1395u of this title], on the basis of competitive bidding, without regard to the nominating process under section 1816(a) of such Act or cost reimbursement provisions under sections 1816(c) or 1842(c) of such Act during the term of the agreement. Such procedures may be used only for the purpose of replacing an agency or organization or carrier which over a 2-year period of time has been in the lowest 20th percentile of agencies and organizations or carriers having agreements or contracts under the respective section, as measured by the Secretary’s cost and performance criteria. In addition, beginning with fiscal year 1990 and any subsequent fiscal year the Secretary may enter into such additional agreements and contracts without regard to such cost reimbursement provisions if the fiscal intermediary or carrier involved and the Secretary agree to waive such provisions, but the Secretary may not take any action that has the effect of requiring that the intermediary or carrier agree to waive such provisions, including requiring such a waiver as a condition for entering into or renewing such an agreement or contract. Any agency or organization or carrier selected on the basis of competitive bidding must perform all of the duties listed in section 1816(a) of such Act, or the duties listed in paragraphs (1) through (4) of section 1842(a) of such Act, as the case may be, and must be a health insurance organization (as determined by the Secretary).”

Section 159(b) of Pub. L. 103–412 provided that: “The amendment made by subsection (a) [amending section 2326(a) of Pub. L. 98–369, set out above] shall apply beginning with fiscal year 1994.”

Section 6215(b) of Pub. L. 101–239 provided that: “The amendments made by subsection (a) [amending section 2326(a) of Pub. L. 98–369, set out above] shall apply beginning with fiscal year 1990.”

AUDIT AND MEDICAL CLAIMS REVIEW

Pub. L. 97–248, title I, § 118, Sept. 3, 1982, 96 Stat. 355, as amended by Pub. L. 99–327, title II, § 6216(a), Apr. 7, 1986, 100 Stat. 180, provided that, in addition to any funds otherwise provided for payments to intermediaries and carriers under agreements entered into under this section and section 1395u of this title, there were transferred from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Fund an additional $45,000,000 for each of fiscal years 1983, 1984, and 1985, and $105,000,000 for each of fiscal years 1986, 1987, and 1988 for payments to such intermediaries and carriers under such agreements to be used exclusively for purposes of carrying out provider cost audits, of reviewing medical necessity, and of recovering third-party liability payments.

DEVELOPMENTAL DATE FOR STANDARDS, CRITERIA, AND PROCEDURES PURSUANT TO SUBSEC. (I) OF THIS SECTION

Section 14(b) of Pub. L. 95–142 directed the Secretary of Health, Education, and Welfare to develop the standard, criteria, and procedures described in subsection (f) of section 1816 of the Social Security Act [subsec. (f) of this section] (as added by subsection (a)(5) not later than Oct. 1, 1978).

§ 1395i. Federal Hospital Insurance Trust Fund

(a) Creation; deposits; transfers from Treasury

There is hereby created on the books of the Treasurer of the United States a trust fund to be known as the “Federal Hospital Insurance Trust Fund” (hereinafter in this section referred to as the “Trust Fund”). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 401(i)(1) of this title, and such amounts as may be deposited in, or appropriated to, such fund as provided in this part. There are hereby appropriated to the Trust Fund for the fiscal year ending June 30, 1966, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per cent of—

(1) the taxes imposed by sections 3101(b) and 3111(b) of the Internal Revenue Code of 1986 with respect to wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code after December 31, 1965, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such sections to such wages, which wages shall be certified by the Commissioner of Social Security on the basis of records of wages established and maintained by the Commissioner of Social Security in accordance with such reports; and

(2) the taxes imposed by section 1401(b) of the Internal Revenue Code of 1986 with respect to self-employment income reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such section to such self-employment income, which self-employment income shall be certified by the Commissioner of Social Security on the basis of records of self-employment established and maintained by the Commissioner of Social Security in accordance with such returns.

The amounts appropriated by the preceding sentence shall be transferred from time to time from the general fund in the Treasury to the Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in the preceding sentence, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such sentence.

(b) Board of Trustees; composition; meetings; duties

With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the “Board of Trustees”). The Board of Trustees is composed of the Commissioner of Social Security, the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be
from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during such term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member’s term until the earlier of the time at which the member’s successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member’s term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the “Managing Trustee”).

The Administrator of the Centers for Medicare & Medicaid Services shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Fund;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years; Each report provided under paragraph (2) beginning with the report in 2005 shall include the information specified in section 801(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.1

(3) Report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly small; and

(4) Review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall also include an actuarial opinion by the Chief Actuary of the Centers for Medicare & Medicaid Services certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable. Such report shall be printed as a House document of the session of the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

(c) Investment of Trust Fund by Managing Trustee

It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(d) Authority of Managing Trustee to sell obligations

Any obligations acquired by the Trust Fund (except public-debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(e) Interest on and proceeds from sale or redemption of obligations

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(f) Payment of estimated taxes

(1) The Managing Trustee is directed to pay from time to time from the Trust Fund into the Treasury the amount estimated by him as taxes imposed under section 3101(b) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1986 with respect to wages paid after December 31, 1965. Such taxes shall be determined on the basis of the records of wages established and maintained by the Commissioner of Social Security in accordance with the wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1986, and the Commissioner of Social Security shall furnish the Managing

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1 So in original. See 2003 Amendment note below.
Trustee such information as may be required by the Managing Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections. (2) Repayments made under paragraph (1) shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(g) Transfers from other Funds

There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1395gg(b) of this title. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1395gg(b) of this title.

(h) Payments from Trust Fund amounts certified by Secretary

The Managing Trustee shall also pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 401(g)(1) of this title.

(i) Payment of travel expenses for travel within United States; reconsideration interviews and proceedings before administrative law judges

There are authorized to be made available for expenditure out of the Trust Fund such amounts as are required to pay travel expenses, either on an actual cost or commuted basis, to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 410(i) of this title) to attend reconsideration interviews and proceedings before administrative law judges with respect to any determination under this subchapter. The amount available under the preceding sentence for payment for air travel by any person shall not exceed the coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Secretary) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations. The amount available for payment under this sub-section for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.

(j) Loans from other Funds; interest; repayment; report to Congress

(1) If at any time prior to January 1988 the Managing Trustee determines that borrowing authorized under this subsection is appropriate in order to best meet the need for financing the benefit payments from the Federal Hospital Insurance Trust Fund, the Managing Trustee may, subject to paragraph (5), borrow such amounts as he determines to be appropriate from either the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund for transfer to and deposit in the Federal Hospital Insurance Trust Fund.

(2) In any case where a loan has been made to the Federal Hospital Insurance Trust Fund under paragraph (1), there shall be transferred on the last day of each month after such loan is made, from such Trust Fund to the lending Trust Fund, the total interest accrued to such day with respect to the unrepaid balance of such loan at a rate equal to the rate which the lending Trust Fund would earn on the amount involved if the loan were an investment under subsection (c) of this section (even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan).

(3)(A) If in any month after a loan has been made to the Federal Hospital Insurance Trust Fund under paragraph (1), the Managing Trustee determines that the assets of such Trust Fund are sufficient to permit repayment of all or part of any loans made to such Fund under paragraph (1), he shall make such repayments as he determines to be appropriate.

(B) If on the last day of any year after a loan has been made under paragraph (1) by the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund to the Federal Hospital Insurance Trust Fund, the Managing Trustee determines that the Hospital Insurance Trust Fund ratio exceeds 15 percent, he shall transfer from such Trust Fund to the lending trust fund an amount that—

(I) together with any amounts transferred to another lending trust fund under this paragraph for such year, will reduce the Hospital Insurance Trust Fund ratio to 15 percent; and

(II) does not exceed the outstanding balance of such loan.

(ii) Amounts required to be transferred under clause (i) shall be transferred on the last day of the first month of the year succeeding the year in which the determination described in clause (i) is made.

(iii) For purposes of this subparagraph, the term "Hospital Insurance Trust Fund ratio" means, with respect to any calendar year, the ratio of—
(I) the balance in the Federal Hospital Insurance Trust Fund, as of the last day of such calendar year; to

(II) the amount estimated by the Secretary to be the total amount to be paid from the Federal Hospital Insurance Trust Fund during the calendar year following such calendar year (other than payments of interest on, and repayments of, loans from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under paragraph (1)), and reducing the amount of any transfer to the Railroad Retirement Account by the amount of any transfers into such Trust Fund from the Railroad Retirement Account.

(C)(i) The full amount of all loans made under paragraph (1) (whether made before or after January 1, 1983) shall be repaid at the earliest feasible date and in any event no later than December 31, 1989.

(ii) For the period after December 31, 1987 and before January 1, 1990, the Managing Trustee shall transfer each month from the Federal Hospital Insurance Trust Fund to any Trust Fund that is owed any amount by the Federal Hospital Insurance Trust Fund on a loan made under paragraph (1), an amount not less than an amount equal to (I) the amount owed to such Trust Fund by the Federal Hospital Insurance Trust Fund at the beginning of such month (plus the interest accrued on the outstanding balance of such loan during such month), divided by (II) the number of months elapsing after the preceding month and before January 1990. The Managing Trustee may, during this period, transfer larger amounts than prescribed by the preceding sentence.

(4) The Board of Trustees shall make a timely report to the Congress of any amounts transferred (including interest payments) under this subsection.

(5)(A) No amounts may be loaned by the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund under paragraph (1) during any month if the OASDI trust fund ratio for such month is less than 10 percent.

(B) For purposes of this paragraph, the term "OASDI trust fund ratio" means, with respect to any month, the ratio of—

(i) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to either such Trust Fund from the Federal Hospital Insurance Trust Fund under section 401(l) of this title, as of the last day of the second month preceding such month, to

(ii) the amount obtained by multiplying by twelve the total amount which (as estimated by the Secretary) will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during the month for which such ratio is to be determined for all purposes authorized by section 401 of this title (other than payments of interest on, or repayments of, loans from the Federal Hospital Insurance Trust Fund under section 401(l) of this title), but excluding any transfer payments between such trust funds and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account.

(k) Health Care Fraud and Abuse Control Account

(1) Establishment

There is hereby established in the Trust Fund an expenditure account to be known as the “Health Care Fraud and Abuse Control Account” (in this subsection referred to as the “Account”).

(2) Appropriated amounts to Trust Fund

(A) In general

There are hereby appropriated to the Trust Fund—

(i) such gifts and bequests as may be made as provided in subparagraph (B);

(ii) such amounts as may be deposited in the Trust Fund as provided in sections 242(b) and 249(c) of the Health Insurance Portability and Accountability Act of 1996, and subchapter XI of this chapter; and

(iii) such amounts as are transferred to the Trust Fund under subparagraph (C).

(B) Authorization to accept gifts

The Trust Fund is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to the Trust Fund, for the benefit of the Account or any activity financed through the Account.

(C) Transfer of amounts

The Managing Trustee shall transfer to the Trust Fund, under rules similar to the rules in section 9601 of the Internal Revenue Code of 1986, an amount equal to the sum of the following:

(i) Criminal fines recovered in cases involving a Federal health care offense (as defined in section 703(a) of title 18),

(ii) Civil monetary penalties and assessments imposed in health care cases, including amounts recovered under this subchapter and subchapters XI and XIX of this chapter, and chapter 53 of title 31 (except as otherwise provided by law),

(iii) Amounts resulting from the forfeiture of property by reason of a Federal health care offense,

(iv) Penalties and damages obtained and otherwise creditable to miscellaneous receipts of the general fund of the Treasury obtained under sections 3729 through 3733 of title 31 (known as the False Claims Act), in cases involving claims related to the provision of health care items and services (other than funds awarded to a relator, for restitution or otherwise authorized by law).

(D) Application

Nothing in subparagraph (C)(iii) shall be construed to limit the availability of recoveries and forfeitures obtained under title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) for the purpose of providing equitable or remedial relief
for employee welfare benefit plans, and for participants and beneficiaries under such plans, as authorized under such title.

(3) Appropriated amounts to Account for fraud and abuse control program, etc.

(A) Departments of Health and Human Services and Justice

(i) In general

There are hereby appropriated to the Account from the Trust Fund such sums as the Secretary and the Attorney General certify are necessary to carry out the purposes described in subparagraph (C), to be available without further appropriation until expended, in an amount not to exceed—

(I) for fiscal year 1997, $104,000,000;

(II) for each of the fiscal years 1998 through 2003, the limit for the preceding fiscal year, increased by 15 percent;

(III) for each of fiscal years 2004, 2005, and 2006, the limit for fiscal year 2003; and

(IV) for each fiscal year after fiscal year 2006, the limit under this clause for the preceding fiscal year, increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) over the previous year.

(ii) Medicare and medicaid activities

For each fiscal year, of the amount appropriated in clause (i), the following amounts shall be available only for the purposes of the activities of the Office of the Inspector General of the Department of Health and Human Services with respect to the programs under this subchapter and subchapter XIX of this chapter—

(I) for fiscal year 1997, not less than $60,000,000 and not more than $70,000,000;

(II) for fiscal year 1998, not less than $80,000,000 and not more than $90,000,000;

(III) for fiscal year 1999, not less than $90,000,000 and not more than $100,000,000;

(IV) for fiscal year 2000, not less than $110,000,000 and not more than $120,000,000;

(V) for fiscal year 2001, not less than $120,000,000 and not more than $130,000,000;

(VI) for fiscal year 2002, not less than $140,000,000 and not more than $150,000,000;

(VII) for each of fiscal years 2003, 2004, 2005, and 2006, not less than $150,000,000 and not more than $160,000,000;

(VIII) for fiscal year 2007, not less than $160,000,000, increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) over the previous year; and

(IX) for each fiscal year after fiscal year 2007, not less than the amount required under this clause for the preceding fiscal year, increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) over the previous year.

(4) Appropriated amounts to Account for Medicare Integrity Program

(A) In general

There are hereby appropriated to the Account from the Trust Fund for each fiscal year such amounts as are necessary for activities described in paragraph (3)(C) and to carry out the Medicare Integrity Program under section 1395ddd of this title, subject to subparagraphs (B), (C), and (D) and to be available without further appropriation until expended.

(B) Amounts specified

Subject to subparagraph (C), the amount appropriated under subparagraph (A) for a fiscal year is as follows:

(i) For fiscal year 1997, such amount shall be not less than $300,000,000 and not more than $330,000,000.

(ii) For fiscal year 1998, such amount shall be not less than $380,000,000 and not more than $410,000,000.

(iii) For fiscal year 1999, such amount shall be not less than $440,000,000 and not more than $470,000,000.

(iv) For each fiscal year after fiscal year 1999, such amount shall be increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) over the previous year.
the Attorney General shall submit jointly a report to Congress which identifies—

2000, 2002, and 2004, the Comptroller General of Congress which—

(C) Adjustments

allows:

graph (A) for a fiscal year is increased as follows for purposes of carrying the operation of the Trust Fund as the Comptroller

Not later than June 1, 1998, and January 1 of each fiscal year thereafter.

The amount appropriated under subparagraph (A) for a fiscal year is further increased as follows for purposes of carrying out section 1982dd(b)(6) of this title for the respective fiscal year:

(i) $12,000,000 for fiscal year 2006.
(ii) $24,000,000 for fiscal year 2007.
(iii) $36,000,000 for fiscal year 2008.
(iv) $48,000,000 for fiscal year 2009.
(v) $50,000,000 for fiscal year 2010 and each fiscal year thereafter.

(5) Annual report

Not later than January 1, the Secretary and the Attorney General shall submit jointly a report to Congress which identifies—

(A) the amounts appropriated to the Trust Fund for the previous fiscal year under paragraph (2)(A) and the source of such amounts; and

(B) the amounts appropriated from the Trust Fund for such year under paragraph (3) and the justification for the expenditure of such amounts.

(6) GAO report

Not later than June 1, 1998, and January 1 of 2000, 2002, and 2004, the Comptroller General of the United States shall submit a report to Congress which—

(A) identifies—

(i) the amounts appropriated to the Trust Fund for the previous two fiscal years under paragraph (2)(A) and the source of such amounts; and

(ii) the amounts appropriated from the Trust Fund for such fiscal years under paragraph (3) and the justification for the expenditure of such amounts;

(B) identifies any expenditures from the Trust Fund with respect to activities not involving the program under this subchapter;

(C) identifies any savings to the Trust Fund, and any other savings, resulting from expenditures from the Trust Fund; and

(D) analyzes such other aspects of the operation of the Trust Fund as the Comptroller General of the United States considers appropriate.

(7) Additional funding

In addition to the funds otherwise appropriated to the Account from the Trust Fund under paragraphs (3) and (4) and for purposes described in paragraphs (3)(C) and (4)(A), there are hereby appropriated an additional $10,000,000 to such Account from such Trust Fund for each of fiscal years 2011 through 2020. The funds appropriated under this paragraph shall be allocated in the same proportion as the total funding appropriated with respect to paragraphs (3)(A) and (4)(A) was allocated with respect to fiscal year 2010, and shall be available without further appropriation until expended.

(8) Additional funding

(A) In general

In addition to the funds otherwise appropriated to the Account from the Trust Fund under paragraphs (3)(C) and (4)(A) and for purposes described in paragraphs (3)(C) and (4)(A), there are hereby appropriated to such Account from such Trust Fund the following additional amounts:

(i) For fiscal year 2011, $95,000,000.
(ii) For fiscal year 2012, $55,000,000.
(iii) For each of fiscal years 2013 and 2014, $30,000,000.
(iv) For each of fiscal years 2015 and 2016, $20,000,000.

(B) Allocation

The funds appropriated under this paragraph shall be allocated in the same proportion as the total funding appropriated with respect to paragraphs (3)(A) and (4)(A) was allocated with respect to fiscal year 2010, and shall be available without further appropriation until expended.


REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a)(1), (2), (5)(A), and (8)(C), is classified generally to Title 26, Internal Revenue Code. Subtitle F of such Code appears at section 6001 et seq. of Title 26.

Section 801 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (b)(2), is section 801(a) of Pub. L. 108–173, which is set out as a note under this section.

Sections 242(b) and 249(b) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (k)(2)(A)(ii), are sections 242(b) and 249(b) of Pub. L. 104–191, which are set out as notes under this section.


See Short Title note set out as a note under this section.

Portability and Accountability Act of 1996, referred to in subsec. (a)(1), (2), (f)(1), and (k)(2)(C), is classified generally to subchapter I (§1001 et seq.) of chapter 18 of Title 29, Labor.

The Internal Revenue Code of 1986, referred to in subsec. (b), is section 6001 et seq. of Title 26, as amended. Title I of the Act is classified generally to subchapter I (§1001 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

AMENDMENTS


Subsec. (k)(3)(A)(i)(X). Pub. L. 111–148, §6402(i)(2)(B)(iii), struck out subcl. (X) which read as follows: “for each fiscal year after fiscal year 2010, not more than the amount required under this clause for fiscal year 2010.”


Subsec. (k)(3)(B)(ix). Pub. L. 111–148, §6402(i)(2)(C)(iii), struck out cl. (ix) which read as follows: “for each fiscal year after fiscal year 2010, the amount to be appropriated under this subparagraph for fiscal year 2010.”


Subsec. (b)(2). Pub. L. 108–173, §801(d)(1), inserted at end “Each report provided under paragraph (2) beginning with the report in 2005 shall include the information specified in section 801(a)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.”


Subsec. (k)(6)(B). Pub. L. 108–173, §786a(j), substituted “program under this subchapter” for “Medicare program under this subchapter”.


1990—Subsec. (i). Pub. L. 101–508 inserted at end “The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.”

1989—Subsec. (b). Pub. L. 101–234 repealed Pub. L. 100–360, §212(c)(3), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (b). Pub. L. 100–647 inserted after first sentence “A member of the Board of Trustees serving as a member of the public and nominated and con-
firmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member’s term until the earlier of the time at which the member’s successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member’s term.”

Pub. L. 100–360 inserted after sixth sentence “Such report shall also identify (and treat separately) those outlays from the Trust Fund which are also outlays from the Medicare Catastrophic Coverage Account created under section 1395t–2 of this title and those outlays for which there are amounts transferred into the Federal Hospital Insurance Catastrophic Coverage Reserve Fund.”


Subsec. (b). Pub. L. 99–272 struck out provision at end of penultimate sentence that certification shall not refer to economic assumptions underlying Trustee’s report.


1984—Subsec. (a). Pub. L. 98–369, §2337(a), in provisions following par. (2), substituted “from time to time” for “monthly on the first day of each calendar month”, “paid to or deposited into the Treasury” for “to be paid to or deposited into the Treasury during such month”, and struck out provision that all amounts transferred to the Trust Fund under the preceding sentence had to be invested by the Managing Trustee in the same manner and to the same extent as the other assets of the Trust Fund, and the Trust Fund had to pay interest to the general fund on the amount so transferred on the first day of any month at a rate calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on January 1, 1983) equal to the rate earned by the investments of the Trust Fund up to that day under the procedures in effect on January 1, 1983) equal to the rate earned by the investments of the Trust Fund in the same month under subsection (c).


1982—Subsec. (a). Pub. L. 96–259, §142(b)(2)(A), substituted “with respect to the interest on amounts transferred to the Trust Fund, and the Trust Fund had to pay interest to the general fund on the amount so transferred on the first day of any month at a rate calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on January 1, 1983) equal to the rate earned by the investments of the Trust Fund up to that day under the procedures in effect on January 1, 1983) equal to the rate earned by the investments of the Trust Fund in the same month under subsection (c).”

Subsec. (b). Pub. L. 98–21, §1395y. inserted “after” in the existing provisions as subpar. (A) and added subpars. (B) and (C).

Pub. L. 98–21, §1395t. deleted “March”.

effective date of 1999 amendment


Effective Date of 1994 Amendment


Effective Date of 1990 Amendment

Amendment by Pub. L. 101–508 applicable with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after Apr. 1, 1991, see section 5106(d) of Pub. L. 101–508, set out as a note under section 401 of this title.

Effective Date of 1989 Amendment


Effective Date of 1988 Amendment

Amendment by Pub. L. 100–647 applicable to members of Board of Trustees of Federal Hospital Insurance Trust Fund serving on such Board as members of the public on or after Nov. 10, 1988, see section 8005(b) of Pub. L. 100–647, set out as a note under section 401 of this title.

Effective Date of 1984 Amendment

Section 2337(b) of Pub. L. 98–369 provided that: “The amendments made by subsection (a) [amending this
section] shall become effective on the first day of the month following the month in which this Act is enacted [July 1984].” Amendment by section 2354(c)(2) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved before that date), see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2663(f)(2)(F)(i) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

**Effective Date of 1983 Amendment**

Amendment by section 141(b) of Pub. L. 98–21 effective on first day of month following April 1983, see section 141(c) of Pub. L. 98–21, set out as a note under section 401 of this title.

Section 142(b)(2)(B) of Pub. L. 98–21 provided that: “The amendment made by this paragraph (amending this section) shall apply with respect to months beginning more than 30 days after the date of enactment of this Act [Apr. 20, 1983].” Amendment by sections 154(b) and 341(b) of Pub. L. 98–21 effective Apr. 20, 1983, see sections 154(e) and 341(d) of Pub. L. 98–21, set out as notes under section 401 of this title.

**Effective Date of 1981 Amendment**


**Effective Date of 1978 Amendment**

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility’s or provider’s first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

**Effective Date of 1972 Amendment**

Amendment by Pub. L. 92–663 applicable with respect to gifts and bequests received after Oct. 30, 1972, see section 120(i) of Pub. L. 92–663, set out as a note under section 401 of this title.

**Restoration of Medicare Trust Funds**


“(a) Definitions.—In this section:

“(1) CLERICAL ERROR.—The term ‘clerical error’ means a failure that occurs on or after April 15, 2001, to have transferred the correct amount from the general fund of the Treasury to a Trust Fund.

“(2) TRUST FUND.—The term ‘Trust Fund’ means the Federal Hospital Insurance Trust Fund established under section 1817 of the Social Security Act (42 U.S.C. 1395) and the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of such Act (42 U.S.C. 1395d).

“(3) TRUST FUND HOLDINGS.—

“(1) IN GENERAL.—The Secretary of the Treasury shall take the actions described in paragraph (2) with respect to the Trust Fund with the goal being that, after such actions are taken, the holdings of the Trust Fund will replicate, to the extent practicable in the judgment of the Secretary of the Treasury, in consultation with the Secretary [of Health and Human Services], the holdings that would have been held by the Trust Fund if the clerical error involved had not occurred.

“(2) OBLIGATIONS ISSUED AND REDEEMED.—The Secretary of the Treasury shall—

“(A) issue to the Trust Fund obligations under chapter 31 of title 31, United States Code, that bear issue dates, interest rates, and maturity dates that are the same as those for the obligations that—

“(i) would have been issued to the Trust Fund if the clerical error involved had not occurred; or

“(ii) were issued to the Trust Fund and were redeemed by reason of the clerical error involved; and

“(B) redeem from the Trust Fund obligations that would have been redeemed from the Trust Fund if the clerical error involved had not occurred.

“(c) APPROPRIATION.—There is appropriated to the Trust Fund, out of any money in the Treasury not otherwise appropriated, an amount determined by the Secretary of the Treasury, in consultation with the Secretary, to be equal to the interest income lost by the Trust Fund through the date on which the appropriation is being made as a result of the clerical error involved.

“(d) CONGRESSIONAL NOTICE.—In the case of a clerical error that occurs after April 15, 2001, the Secretary of the Treasury, before taking action to correct the error under this section, shall notify the appropriate committee of Congress concerning such error and the actions to be taken under this section in response to such error.

“(e) DEADLINE.—With respect to the clerical error that occurred on April 15, 2001, no later than 120 days after the date of the enactment of this Act [Dec. 8, 2003]—

“(1) the Secretary of the Treasury shall take the actions under subsection (b)(1); and

“(2) the appropriation under subsection (c) shall be made.

**Inclusion in Annual Report of Medicare Trustees of Information on Status of Medicare Trust Funds**


“(a) Determinations of Excess General Revenue Medicare Funding.—

“(1) IN GENERAL.—The Board of Trustees of each medicare trust fund shall include in the annual reports submitted under subsection (b)(2) of sections 1817 and 1841 of the Social Security Act (42 U.S.C. 1395 and 1395f)—

“(A) the information described in subsection (b); and

“(B) a determination as to whether there is projected to be excess general revenue medicare funding (as defined in subsection (c)) for the fiscal year in which the report is submitted or for any of the succeeding 6 fiscal years.

“(2) MEDICARE FUNDING WARNING.—For purposes of section 1105(h) of title 31, United States Code, and this subtitle (subtitle A (§§801–804) of title VIII of Pub. L. 108–173, amending this section, section 1395t of this title, and section 1105 of Title 31, Money and Finance, and enacting provisions set out as a note under section 1105 of Title 31), an affirmative determination under paragraph (1)(B) in 2 consecutive annual reports shall be treated as a medicare funding warning in the year in which the second such report is made.

“(3) 7-FISCAL-YEAR REPORTING PERIOD.—For purposes of this subtitle, the term ‘7-fiscal-year reporting period’ means, with respect to a year in which an annual report described in paragraph (1) is made, the period of 7 consecutive fiscal years beginning with the fiscal year in which the report is submitted.

“(b) INFORMATION.—The information described in this subsection for an annual report in a year is as follows:
"(1) Projections of growth of general revenue spending.—A statement of the general revenue Medicare funding as a percentage of the total Medicare outlays for each of the following:

"(A) Each fiscal year within the 7-fiscal-year reporting period.

"(B) Previous fiscal years and as of 10, 30, and 75 years after such year.

"(2) Comparison with other growth trends.—A comparison of the trend of such percentages with the annual growth rate in the following:

"(A) The gross domestic product.

"(B) Private health costs.

"(C) National health expenditures.

"(D) Other appropriate measures.

"(3) Part D spending.—Expenditures, including trends in expenditures, under part D of title XVIII of the Social Security Act [part D of this subchapter], as added by section 101.

"(4) Combined Medicare trust fund analysis.—A financial analysis of the combined Medicare trust funds if general revenue Medicare funding were limited to the percentage specified in subsection (c)(1)(B) of total Medicare outlays.

"(c) Definitions.—For purposes of this section:

"(1) Excess general revenue Medicare funding.—The term 'excess general revenue Medicare funding' means, with respect to a fiscal year, that—

"(A) general revenue Medicare funding (as defined in paragraph (2)), expressed as a percentage of total Medicare outlays (as defined in paragraph (4)) for the fiscal year; exceeds

"(B) 45 percent.

"(2) General revenue Medicare funding.—The term 'general revenue Medicare funding' means for a year—

"(A) the total Medicare outlays (as defined in paragraph (4)) for the year; minus

"(B) the dedicated Medicare financing sources (as defined in paragraph (3)) for the year.

"(3) Dedicated Medicare financing sources.—The term 'dedicated Medicare financing sources' means the following:

"(A) Hospital insurance tax.—Amounts appropriated to the Hospital Insurance Trust Fund under the third sentence of section 1817(a) of the Social Security Act (42 U.S.C. 1395i(a)) and amounts transferred to such Trust Fund under section 7(c)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 2321(c)(2)).

"(B) Taxation of certain Q
d

"(C) Federal hospital insurance trust fund amounts appropriated to the Federal Hospital Insurance Trust Fund under section 1221(e)(1)(B) of the Social Security Amendments of 1983 (Public Law 98–21) [set out as a note under section 401 of this title], as inserted by section 12213(c) of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66).

"(D) State transfers.—The State share of amounts paid to the Federal Government by a State under section 1843 of the Social Security Act (42 U.S.C. 1395v) or pursuant to section 1833(c) of such Act (section 1396u–6(c) of this title).

"(E) Premiums.—The following premiums:


"(ii) Part B.—Premiums paid by non-Federal sources under section 1839 of such Act (42 U.S.C. 1395l), including any adjustments in premiums under such section.

"(iii) Part D.—Monthly beneficiary premiums paid under part D of title XVIII of such Act [part D of this subchapter], as added by section 101, and Medicare Part D prescription drug beneficiary premiums paid under part C of such title [part C of this subchapter] insofar as they are attributable to basic prescription drug coverage.

"(4) Excess general revenue Medicare funding.—If the amount designated as 'excess general revenue Medicare funding' under paragraph (1) exceeds 45 percent of total Medicare outlays, Congress and the President should address the matter under existing rules and procedures.

"(b) Notice of Medicare funding warning.—Whenever any report described in subsection (a) contains a determination that for any fiscal year within the 7-fiscal-year reporting period there will be excess general revenue Medicare funding, Congress and the President should address the matter under existing rules and procedures.

"(c) Costs of asset forfeiture.—For purposes of paragraph (1), the term 'payment of the costs of asset forfeiture' means—

"(A) the payment, at the discretion of the Attorney General, of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell, or dispose of property under seizure, detention, or for-
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fee and, or any other necessary expenses incident to the seizure, detention, forfeiture, or disposal of such property, including payment for—

"(i) contract services;

"(ii) the employment of outside contractors to operate and manage properties or provide other specialized services necessary to dispose of such properties in an effort to maximize the return from such properties; and

"(iii) reimbursement of any Federal, State, or local agency for any expenditures made to perform the functions described in this subparagraph.

"(B) at the discretion of the Attorney General, the payment of awards for information or assistance leading to a civil or criminal forfeiture involving any Federal agency participating in the Health Care Fraud and Abuse Control Account;

"(C) the compromise and payment of valid liens and mortgages against property that has been forfeited, subject to the discretion of the Attorney General to determine the validity of any such lien or mortgage and the amount of payment to be made, and the employment of attorneys and other personnel skilled in State real estate law as necessary;

"(D) payment authorized in connection with remission or mitigation procedures relating to property forfeited; and

"(E) the payment of State and local property taxes on forfeited real property that accrued between the date of the violation giving rise to the forfeiture and the date of the forfeiture order.

"(3) RESTORATION PAYMENT.—Notwithstanding any other provision of law, if the Federal health care offenses referred to in paragraph (1) resulted in a loss to an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)), the Secretary of the Treasury shall transfer to such employee welfare benefit plan, from the amount realized from the forfeiture of property referred to in paragraph (1), an amount equal to such loss. For purposes of paragraph (1), the term ‘restoration payment’ means the amount transferred to an employee welfare benefit plan pursuant to this paragraph.”

DUE DATE FOR 1983 REPORT ON OPERATION AND STATUS OF TRUST FUND

Notwithstanding subsection (b)(2) of this section, the annual report of the Board of Trustees of the Trust Fund required for calendar year 1983 under this section may be filed at any time not later than forty-five days after Apr. 20, 1983, see section 154(d) of Pub. L. 98-21, set out as a note under section 401 of this title.

§ 1395i–1a. Authorization of appropriations

There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund (established by section 1395i of this title) from time to time such sums as the Secretary deems necessary for any fiscal year, on account of—

(1) payments made or to be made during such fiscal year from such Trust Fund under this part with respect to individuals who are qualified railroad retirement beneficiaries (as defined in section 426(c) of this title) and who are not, and upon filing application for monthly insurance benefits under section 402 of this title would not be, entitled to such benefits if service as an employee (as defined in the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.]) after December 31, 1936, had been in order to place such Trust Fund in the same position at the end of such fiscal year in which it would have been if the individuals described in paragraph (1) had not been entitled to benefits under this part.


REFERENCES IN TEXT


CODIFICATION

Section was enacted as part of the Social Security Amendments of 1965 and also as part of the Health Insurance for the Aged Act, and not as part of the Social Security Act which comprises this chapter.

EFFECTIVE DATE

Section 111(e) of Pub. L. 89–97 provided that:

"(1) The amendments made by the preceding provisions of this section (enacting this section and section 228a-2 of Title 45, Railroads, and redesigning section 1395kk of this title and sections 1401, 3101, 3111, 3201, 3211, and 3221 of Title 26, Internal Revenue Code, and section 223a of Title 45) shall apply to the calendar year 1966 or to any subsequent calendar year, but only if the requirement in paragraph (2) has been met with respect to such calendar year.

"(2) The requirement referred to in paragraph (1) shall be deemed to have been met with respect to any calendar year if, as of the October 1 immediately preceding such calendar year, the Railroad Retirement Tax Act [section 3101 et seq. of Title 26] provides that the maximum amount of monthly compensation taxable under such Act during all months of such calendar year will be an amount equal to one-twelfth of the maximum wages which the Federal Insurance Contributions Act [section 3021 et seq. of Title 26] provides may be counted for such calendar year.”


EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1990, see section 102(d)(1) of Pub. L. 101–234, set out as a note under section 599 of Title 26, Internal Revenue Code.

ADJUSTMENTS FOR INTEREST LOST DUE TO DELAY OF TRANSFERS TO RESERVE FUND DURING 1989

Section 112(b) of Pub. L. 100–360, which directed Secretary of the Treasury, in July of 1990, to calculate interest lost to Federal Hospital Insurance Catastrophic Coverage Reserve Fund due to lag between outlays (attributable to amendments made by Pub. L. 100–360) from Federal Hospital Insurance Trust Fund during 1989 and transfers made to such Reserve Fund to cover such outlays, and provided that appropriations under subsection (a)(2) of this section include amount so calculated, was repealed by Pub. L. 101–234, title I, §102(a), Dec. 13, 1989, 103 Stat. 1980.
§ 1395i-2. Hospital insurance benefits for uninsured elderly individuals not otherwise eligible

(a) Individuals eligible to enroll

Every individual who—

(1) has attained the age of 65,
(2) is enrolled under part B of this subchapter,
(3) is a resident of the United States, and is either (A) a citizen or (B) an alien lawfully admitted for permanent residence who has resided in the United States continuously during the 5 years immediately preceding the month in which he applies for enrollment under this section, and
(4) is not otherwise entitled to benefits under this part,

shall be eligible to enroll in the insurance program established by this part. Except as otherwise provided, any reference to an individual entitled to benefits under this part includes an individual entitled to benefits under this part pursuant to an enrollment under this section or section 1395i–2a of this title.

(b) Time, manner, and form of enrollment

An individual may enroll under this section only in such manner and form as may be prescribed in regulations, and only during an enrollment period prescribed in or under this section.

(c) Period of enrollment; scope of coverage

The provisions of section 1395p of this title (except subsection (f) thereof), section 1395q of this title, subsection (b) of section 1395r of this title, and subsections (f) and (h) of section 1395s of this title shall apply to persons authorized to enroll under this section except that—

(1) individuals who meet the conditions of subsection (a)(1), (3), and (4) of this section on or before the last day of the seventh month after October 1972 may enroll under this part and (if not already so enrolled) may also enroll under part B of this subchapter during an initial general enrollment period which shall begin on the first day of the second month which begins after October 30, 1972, and shall end on the last day of the tenth month after October 1972;
(2) in the case of an individual who first meets the conditions of eligibility under this section on or after the first day of the eighth month after October 1972, the initial enrollment period shall begin on the first day of the third month before the month in which he first becomes eligible and shall end 7 months later;
(3) in the case of an individual who enrolls pursuant to paragraph (1) of this subsection, entitlement to benefits shall begin on—
(A) the first day of the second month after the month in which he enrolls,
(B) July 1, 1973, or
(C) the first day of the first month in which he meets the requirements of subsection (a) of this section,

whichever is the latest;
(4) an individual's entitlement under this section shall terminate with the month before the first month in which he becomes eligible for hospital insurance benefits under section 426 of this title or section 426a of this title; and upon such termination, such individual shall be deemed, solely for purposes of hospital insurance entitlement, to have filed in such first month the application required to establish such entitlement;
(5) termination of coverage for supplementary medical insurance shall result in simultaneous termination of hospital insurance benefits for uninsured individuals who are not otherwise entitled to benefits under this chapter;
(6) any percent increase effected under section 1395r(b) of this title in an individual's monthly premium may not exceed 10 percent and shall only apply to premiums paid during a period equal to twice the number of months in the full 12-month periods described in that section and shall be subject to reduction in accordance with subsection (d)(6) of this section;
(7) an individual who meets the conditions of subsection (a) of this section may enroll under this part during a special enrollment period that includes any month during any part of which the individual is enrolled under section 1395mm of this title with an eligible organization and ending with the last day of the 8th consecutive month in which the individual is at no time so enrolled;
(8) in the case of an individual who enrolls during a special enrollment period under paragraph (7)—
(A) in any month of the special enrollment period in which the individual is at any time enrolled under section 1395mm of this title with an eligible organization or in the first month following such a month, the coverage period shall begin on the first day of the month in which the individual so enrolls (or, at the option of the individual, on the first day of any of the following three months), or
(B) in any other month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls;
and
(9) in applying the provisions of section 1395r(b) of this title, there shall not be taken into account months for which the individual can demonstrate that the individual was enrolled under section 1395mm of this title with an eligible organization.

(d) Monthly premiums

(1) The Secretary shall, during September of each year (beginning with 1988), estimate the monthly actuarial rate for months in the succeeding year. Such actuarial rate shall be one-twelfth of the amount which the Secretary estimates (on an average, per capita basis) is equal to 100 percent of the benefits and administrative costs which will be payable from the Federal Hospital Insurance Trust Fund for services performed and related administrative costs incurred in the succeeding year with respect to individuals age 65 and over who will be entitled to benefits under this part during that year.
(2) The Secretary shall, during September of each year determine and promulgate the dollar amount which shall be applicable for premiums for months occurring in the following year. Subject to paragraphs (4) and (5), the amount of an individual's monthly premium under this section shall be equal to the monthly actuarial rate determined under paragraph (1) for that following year. Any amount determined under the preceding sentence which is not a multiple of $1 shall be rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not a multiple of $1, to the next higher multiple of $1).

(3) Whenever the Secretary promulgates the dollar amount which shall be applicable as the monthly premium under this section, he shall, at the time such promulgation is announced, issue a public statement setting forth the actuarial assumptions and bases employed by him in arriving at the amount of an adequate actuarial rate for individuals 65 and older as provided in paragraph (1).

(4)(A) In the case of an individual described in subparagraph (B), the monthly premium for a month shall be reduced by the applicable reduction percent specified in the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>Reduction Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>25</td>
</tr>
<tr>
<td>1995</td>
<td>30</td>
</tr>
<tr>
<td>1996</td>
<td>35</td>
</tr>
<tr>
<td>1997</td>
<td>40</td>
</tr>
<tr>
<td>1998 or subsequent year</td>
<td>45</td>
</tr>
</tbody>
</table>

(B) An individual described in this subparagraph with respect to a month is an individual who establishes to the satisfaction of the Secretary that, as of the last day of the previous month, the individual—

(i) had at least 30 quarters of coverage under subchapter II of this chapter;

(ii) was married (and had been married for the previous 1-year period) to an individual who had at least 30 quarters of coverage under such subchapter;

(iii) had been married to an individual for a period of at least 1 year (at the time of such individual's death) if at such time the individual had at least 30 quarters of coverage under such subchapter; or

(iv) is divorced from an individual and had been married to the individual for a period of at least 10 years (at the time of the divorce) if at such time the individual had at least 30 quarters of coverage under such subchapter.

(C) The amount of the monthly premium shall be zero in the case of an individual who is a person described in subparagraph (B) for a month if—

(i) the individual's premium under this section for the month is not (and will not be) paid for, in whole or in part, by a State (under subchapter XIX of this chapter or otherwise), a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions thereof.

(ii) in each of 84 months before such month, the individual was enrolled in this part under this section and the payment of the individual's premium under this section for the month was not paid for, in whole or in part, by a State (under subchapter XIX of this chapter or otherwise), a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions thereof.

(B) A person described in this subparagraph for a month is a person who establishes to the satisfaction of the Secretary that, as of the last day of the previous month—

(i)(I) the person was receiving cash benefits under a qualified State or local government retirement system (as defined in subparagraph (C)) on the basis of the person's employment in one or more positions covered under any such system, and (II) the person would have at least 40 quarters of coverage under subchapter II of this chapter if remuneration for medicare qualified government employment (as defined in paragraph (1) of section 410(p) of this title, but determined without regard to paragraph (3) of such section) paid to such person were treated as wages paid to such person and credited for purposes of determining quarters of coverage under section 415 of this title;

(ii)(I) the person was married (and had been married for the previous 1-year period) to an individual who is described in clause (i), or (II) the person had at least 30 quarters of coverage under subchapter II of this chapter if remuneration for medicare qualified government employment (as defined in subparagraph (1) of section 410(p) of this title, but determined without regard to paragraph (3) of such section) paid to such person were treated as wages paid to such person and credited for purposes of determining quarters of coverage under section 415 of this title;

(iii) the person had been married to an individual for a period of at least 1 year (at the time of such individual's death) if (I) the individual was described in clause (i) at the time of the individual's death, or (II) the person met the requirement of clause (i)(II) and the individual was described in clause (i)(I) at the time of the individual's death; or

(iv) the person is divorced from an individual and had been married to the individual for a period of at least 10 years (at the time of the divorce) if (I) the individual was described in clause (i) at the time of the divorce, or (II) the person met the requirement of clause (i)(II) and the individual was described in clause (i)(I) at the time of the divorce.

(C) For purposes of subparagraph (B)(i)(I), the term "qualified State or local government retirement system" means a retirement system that—

(i) is established or maintained by a State or political subdivision thereof, or an agency or instrumentality of one or more States or political subdivisions thereof;

(ii) covers positions of some or all employees of such a State, subdivision, agency, or instrumentality; and

(iii) does not adjust cash retirement benefits based on eligibility for a reduction in premium under this paragraph.

(6)(A) In the case where a State, a political subdivision of a State, an agency or instrumentality of a State or political subdivision thereof determines to pay, for the life of each individual, the monthly premiums due under paragraph (1) on behalf of each of the individuals in

1 So in original. Probably should be followed by a comma.
a qualified State or local government retiree group who meets the conditions of subsection (a) of this section, the amount of any increase otherwise applicable under section 1395v(b) of this title, as applied and modified by subsection (c) of this section, with respect to the monthly premium for benefits under this part for an individual who is a member of such group shall be reduced by the total amount of taxes paid under section 3101(b) of the Internal Revenue Code of 1986 by such individual and under section 3111(b) of such Code by the employers of such individual on behalf of such individual with respect to employment as defined in section 3121(b) of such Code.

(B) For purposes of this paragraph, the term "qualified State or local government retiree group" means all of the individuals who retire prior to a specified date that is before January 1, 2002, from employment in one or more occupations or other broad classes of employees of—

(i) the State;

(ii) a political subdivision of the State; or

(iii) an agency or instrumentality of the State or political subdivision of the State.

(e) Contract or other arrangement for payment of monthly premiums

Payment of the monthly premiums on behalf of any individual who meets the conditions of subsection (a) of this section may be made by any public or private agency or organization under a contract or other arrangement entered into between it and the Secretary if the Secretary determines that payment of such premiums under such contract or arrangement is administratively feasible.

(f) Deposit of amounts into Treasury

Amounts paid to the Secretary for coverage under this section shall be deposited in the Treasury to the credit of the Federal Hospital Insurance Trust Fund.

(g) Buy-in under this part for qualified medicare beneficiaries

(1) The Secretary shall, at the request of a State made after 1989, enter into a modification of an agreement entered into with the State pursuant to section 1395v(a) of this title under which the agreement provides for enrollment in the Medicare program established by such agreement, in the program established by any State made after 1989, enter into a modification of the agreement with respect to employment (as defined in section 3121(b) of such Code).

(2)(A) Except as provided in subparagraph (B), the provisions of subsections (c), (d), (e), and (f) of section 1395v of this title shall apply to qualified medicare beneficiaries enrolled, pursuant to such agreement, in the program established by this part in the same manner and to the same extent as they apply to qualified medicare beneficiaries enrolled, pursuant to such agreement, in part B of this chapter.

(B) For purposes of this subsection, section 1395v(d)(1) of this title shall be applied by substituting "section 1395i–2" of this title for "section 1395r" of this title" and "subsection (c)(6)" (with reference to subsection (b) of section 1395r of this title)" for "subsection (b)".

this title, to (B) such deductible promulgated for 1973.
Any amount determined under the preceding sentence which is not a multiple of $1 shall be rounded to the nearest multiple of $1, or, if a multiple of 50 cents but not a multiple of $1, to the next higher multiple of $1."
Subsec. (d)(1). Pub. L. 100–485 substituted "during that year" for "during that entire year".
1987—Subsec. (c)(4) to (7). Pub. L. 100–203, § 4009(j)(9), added by Pub. L. 100–360, § 411(b)(8)(D), redesignated pars. (5) to (7) as (4) to (6), respectively, and struck out former par. (4) which read as follows: "termination of coverage under this section by the filing of notice that the individual no longer wishes to participate in the hospital insurance program shall take effect at the close of the month following the month in which such notice is filed.";
1984—Subsec. (c). Pub. L. 98–369, § 2315(e), substituted "subsection (b) of section 1395r of this title" for "subsection (a) of section 1395r of this title".
Subsec. (c)(1). Pub. L. 98–369, § 2354(b)(3), substituted "October 1972" for "the month in which this Act is enacted".
Subsec. (d)(2). Pub. L. 98–369, § 2354(b)(4), substituted ". , if a multiple of 50 cents but not a multiple of $1," for "if midway between multiples of $1.'"
1983—Subsec. (c). Pub. L. 98–21, § 606(a)(3)(D), substituted "subsection (a) of section 1395r" for "subsection (c) of section 1395r".
Subsec. (d)(2). Pub. L. 98–21, § 606(b), substituted "during the last calendar quarter of each year" for "during the last calendar quarter of each year, beginning in 1973."; "the following calendar year" for "the 12-month period commencing July 1 of the next year", and "for that following calendar year" for "for such next year".

**Effective Date of 2000 Amendment**
Pub. L. 106–554, § 1(a)(6) (title III, § 331(b)), Dec. 21, 2000, 114 Stat. 2763, 2763A–502, provided that: "The amendments made by subsection (a) [amending this section] shall apply to premiums for months beginning with January 1, 2002."  

**Effective Date of 1997 Amendment**
Section 4453(b) of Pub. L. 105–33 provided that: "The amendments made by subsection (a) [amending this section] shall apply to premiums for months beginning with January 1997, and months before such month may be taken into account for purposes of meeting the requirement of section 1818(d)(5)(B)(ii) of the Social Security Act [subsec. (d)(5)(B)(ii) of this section], as added by subsection (a)."

**Effective Date of 1993 Amendment**
Section 13508(b) of Pub. L. 103–66 provided that: "The amendments made by this section [amending this section] shall apply to premiums for months beginning with January 1993, and months before such month may be taken into account for purposes of meeting the requirement of section 1818(d)(5)(B)(ii) of the Social Security Act [this section] for months beginning with January 1, 1994."  

**Effective Date of 1990 Amendment**
Section 4008(g)(2) of Pub. L. 101–508 provided that: ‘‘The amendment made by paragraph (1) [amending this section] shall take effect on February 1, 1991.”  

**Effective Date of 1989 Amendment**
Amendment by section 6012(a)(1) of Pub. L. 101–238 effective Dec. 19, 1989, but not applicable so as to provide coverage under this part for any month before July 1990, see section 6012(b) of Pub. L. 101–238, set out as an Effective Date note under section 1395i–2a of this title. Section 6012(c) of Pub. L. 101–239 provided that: ‘‘The amendments made by this section [amending this section and section 1395v of this title] shall become effective January 1, 1990.”  

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

Amendment by section 103 of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(b)(8)(D) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title I, General Provisions.

**Effective Date of 1986 Amendment**
Section 9124(b) of Pub. L. 99–272 provided that: ‘‘(1) The amendment made by subsection (a)(3) [amending this section] shall apply to premiums paid for months beginning with July 1986.

‘‘(2) In applying that amendment, months (before, during, or after April 1986) in which an individual was required to pay a premium increased under the section that was so amended shall be taken into account in determining the month in which the premium will no longer be subject to an increase under that section as so amended.”

**Effective Date of 1984 Amendment**
Amendment by section 2354(c) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2354(g) of Pub. L. 98–369, set out as an Effective and Termination Dates of 1984 Amendments note under section 1395ww of this title.

Amendment by section 2354(b)(3), (4) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

**Effective Date of 1983 Amendment; Transitional Rule**
Amendment by Pub. L. 98–21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the monthly premium for June 1983 shall apply to individuals enrolled under parts A and B of this subchapter, see section 606(c) of Pub. L. 98–21, set out as a note under section 1395r of this title.

**Special Enrollment Provisions for Merchant Seamen**

‘‘(1) was entitled to medical, surgical, and dental treatment and hospitalization under section 322(a) of the Public Health Service Act (section 249(a) of this title) (as in effect on September 30, 1981), including such entitlement on the basis of continuing medical care under 42 C.F.R. § 32.17, at any time during the period beginning on March 10, 1981, and ending on October 1, 1981, and

‘‘(2) as of September 30, 1981, was eligible under section 1818(a) or section 1336 of the Social Security Act [this section or section 1395v of this title] to enroll in the insurance program established by part A or part B, respectively, of title XVIII of that Act [this subchapter] (hereinafter in this section referred to as the ‘respective program’), may enroll (if not otherwise enrolled) in the respective program during the period beginning on the first day of
§ 1395i–2a. Hospital insurance benefits for dis

enabling on December 31, 1982.

The coverage period under the respective pro-
gram of an individual who enrolls under subsection (a) shall begin—

(A) on the first day of the month following the

month in which the individual enrolls, or

(B) on October 1, 1981, if the individual files a re-

quest for this subparagraph to apply and pays the

monthly premiums for the months so covered.

(2) The coverage period under the respective pro-
gram of an individual described in subsection (a) who

enrolled in the respective program before the enroll-
ment period described in that subsection shall be retro-
actively extended to October 1, 1981, if the individual
files a request before January 1, 1983, for such retro-
active extension and pays the monthly premiums for
the months so covered.

(c)(1) For purposes of section 1839(d) of the Social

Security Act [section 1395r(d) of this title] with respect
to the monthly premium for months after September
1981, if an individual described in subsection (a) has en-
rolled in the insurance program under part B of title
XVIII of the Social Security Act [part B of this sub-
chapter] at any time before the end of the enrollment
period described in subsection (a), any month (before
the end of that enrollment period) in which he was
not enrolled in that program shall not be treated as a
month in which he could have been enrolled in the pro-
gram.

(2) Paragraph (1) shall not apply to an individual—

(A) if the individual has enrolled in the insurance

program before March 10, 1981, unless the enrollment
was terminated solely because the individual lost elig-
ibility to be so enrolled, or

(B) unless the individual applies for the benefit of

such paragraph before January 1, 1983.

(d)(1) The Secretary of Health and Human Services,

beginning as soon as possible but not later than 30 days
after the date of the enactment of this Act [Sept. 3,
1982], shall provide for the dissemination of informa-
don—

(A) to unions and other associations representing

or assisting seamen,

(B) to offices enrolling individuals under the re-
spective programs, and

(C) to such other entities and in such a manner as

will effectively inform individuals eligible for bene-
fits under this section, concerning the special benefits provided under this sec-
tion.

(2) An individual may establish that the individual

was entitled at a date to medical, surgical, and dental

treatment and hospitalization under section 322(a) of
the Public Health Service Act [section 249(a) of this
title] (as in effect before October 1, 1981) by providing—

(A) documentation relating to the status under

which the individual was provided care in (or under
arrangements with) a Public Health Service facility
on that date,

(B) the individual’s seamen’s papers covering that
date, or

(C) such other reasonable documentation as the
Secretary may require.

§ 1395i-2a. Hospital insurance benefits for dis-
abled individuals who have exhausted other

entitlement

(a) Eligibility

Every individual who—

(1) has not attained the age of 65;

(2)(A) has been entitled to benefits under this

part under section 426(b) of this title, and

(B)(i) continues to have the disabling phys-

ical or mental impairment on the basis of

which the individual was found to be under a
disability or to be a disabled qualified railroad

retirement beneficiary, or (ii) is blind (within
the meaning of section 416(i)(1) of this title), but

(C) whose entitlement under section 426(b) of
this title ends due solely to the individual having
earnings that exceed the substantial gainful activ-
ity amount (as defined in section 423(d)(4) of this

title); and

(3) is not otherwise entitled to benefits

under this part,

shall be eligible to enroll in the insurance pro-
gram established by this part.

(b) Enrollment

(1) An individual may enroll under this section
only in such manner and form as may be pre-
scribed in regulations, and only during an en-
rollment period prescribed in or under this sec-
tion.

(2) The individual’s initial enrollment period
shall begin with the month in which the individual
receives notice that the individual’s entitlement to
benefits under section 426(b) of this title will end due solely to the individual having
earnings that exceed the substantial gainful activ-
ity amount (as defined in section 423(d)(4) of this
title) and shall end 7 months later.

(3) There shall be a general enrollment period
during the period beginning on January 1 and
ending on March 31 of each year (beginning with
1990).

(c) Coverage period

(1) The period (in this subsection referred to as
a “coverage period”) during which an individual
is entitled to benefits under the insurance pro-
gram under this part shall begin on whichever of
the following is the latest:

(A) In the case of an individual who enrolls
under subsection (b)(2) of this section before
the month in which the individual first satis-
fies subsection (a) of this section, the first day
of such month.

(B) In the case of an individual who enrolls
under subsection (b)(2) of this section in the
month in which the individual first satis-
fies subsection (a) of this section, the first day
of the month following the month in which
the individual so enrolls.

(C) In the case of an individual who enrolls
under subsection (b)(2) of this section in the
month following the month in which the
individual first satisfies subsection (a) of this
section, the first day of the second month fol-
lowing the month in which the individual so
enrolls.

(D) In the case of an individual who enrolls
under subsection (b)(2) of this section more
than one month following the month in which
the individual first satisfies subsection (a) of
this section, the first day of the third month fol-
lowing the month in which the individual so
enrolls.

(E) In the case of an individual who enrolls
under subsection (b)(3) of this section, the
July 1 following the month in which the indi-
vidual so enrolls.

(2) An individual’s coverage period under this
section shall continue until the individual’s en-
rollment is terminated as follows:

(A) As of the month following the month in

which the Secretary provides notice to the in-
individual that the individual no longer meets the condition described in subsection (a)(2)(B) of this section.

(B) As of the month following the month in which the individual files notice that the individual no longer wishes to participate in the insurance program established by this part.

(C) As of the month before the first month in which the individual becomes eligible for hospital insurance benefits under section 426(a) or 426-1 of this title.

(D) As of a date, determined under regulations of the Secretary, for nonpayment of premiums.

The regulations under subparagraph (D) may provide a grace period of not longer than 90 days, which may be extended to not to exceed 180 days in any case where the Secretary determines that there was good cause for failure to pay the overdue premiums within such 90-day period. Termination of coverage under this section shall result in simultaneous termination of any coverage affected under any other part of this subchapter.

(3) The provisions of subsections (h) and (i) of section 1395p of this title apply to enrollment and nonenrollment under this section in the same manner as they apply to enrollment and nonenrollment and special enrollment periods under section 1395i–2 of this title.

(d) Payment of premiums

(1)(A) Premiums for enrollment under this section shall be paid to the Secretary at such times, and in such manner, as the Secretary shall by regulations prescribe, and shall be deposited in the Treasury to the credit of the Federal Hospital Insurance Trust Fund.

(B)(i) Subject to clause (ii), such premiums shall be payable for the period commencing with the first month of an individual's coverage period and ending with the month in which the individual dies or, if earlier, in which the individual's coverage period terminates.

(ii) Such premiums shall not be payable for any month in which the individual is eligible for benefits under this part pursuant to section 426(b) of this title.

(2) The provisions of subsections (d) through (f) of section 1395i–2 of this title (relating to premiums) shall apply to individuals enrolled under this section in the same manner as they apply to individuals enrolled under that section.


AMENDMENTS


Subsec. (d)(1)(C). Pub. L. 101–508, §4008(m)(3)(C)(ii), struck out subpar. (C) which read as follows: “For purposes of applying section 1395c(c) of this title and section 98B(t)(1)(Bvii) of the Internal Revenue Code of 1986, any reference to section 1395i–2 of this title shall be deemed to include a reference to this section.”

EFFECTIVE DATE

Section 6012(b) of Pub. L. 101–239 provided that: “The amendments made by this section (enacting this section and amending section 1395i–2 of this title) shall take effect on the date of the enactment of this Act [Dec. 19, 1989], but shall not apply so as to provide for coverage under part A of title XVIII of the Social Security Act [this part] for any month before July 1990.”

§ 1395i–3. Requirements for, and assuring quality of care in, skilled nursing facilities

(a) “Skilled nursing facility” defined

In this subchapter, the term “skilled nursing facility” means an institution (or a distinct part of an institution) which—

(1) is primarily engaged in providing to residents—

(A) skilled nursing care and related services for residents who require medical or nursing care, or

(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, and is not primarily for the care and treatment of mental diseases;

(2) has in effect a transfer agreement (meeting the requirements of section 1395x(i) of this title) with one or more hospitals having agreements in effect under section 1380c of this title; and

(3) meets the requirements for a skilled nursing facility described in subsections (b), (c), and (d) of this section.

(b) Requirements relating to provision of services

(1) Quality of life

(A) In general

A skilled nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

(B) Quality assessment and assurance

A skilled nursing facility must maintain a quality assessment and assurance committee, consisting of the director of nursing services, a physician designated by the facility, and at least 3 other members of the facility’s staff, which (i) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and (ii) develops and implements appropriate plans of action to correct identified quality deficiencies. A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.

(2) Scope of services and activities under plan of care

A skilled nursing facility must provide services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, in accordance with a written plan of care which—

(A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;

(B) is initially prepared, with the participation to the extent practicable of the resident or the resident’s family or legal rep-
responsible, by a team which includes the resident’s attending physician and a registered professional nurse with responsibility for the resident; and

(C) is periodically reviewed and revised by such team after each assessment under paragraph (3).

(3) Residents’ assessment

(A) Requirement

A skilled nursing facility must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident’s functional capacity, which assessment—

(i) describes the resident’s capability to perform daily life functions and significant impairments in functional capacity;

(ii) is based on a uniform minimum data set specified by the Secretary under subsection (f)(6)(A) of this section;

(iii) uses an instrument which is specified by the State under subsection (e)(5) of this section; and

(iv) includes the identification of medical problems.

(B) Certification

(i) In general

Each such assessment must be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the completion of the assessment. Each individual who completes a portion of such an assessment shall sign and certify as to the accuracy of that portion of the assessment.

(ii) Penalty for falsification

(I) An individual who willfully and knowingly certifies under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $1,000 with respect to each assessment.

(II) An individual who willfully and knowingly causes another individual to certify under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $5,000 with respect to each assessment.

(III) The provisions of section 1320a-7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this clause in the same manner as such provisions apply to a penalty or proceeding under section 1320a-7a(a) of this title.

(iii) Use of independent assessors

If a State determines, under a survey under subsection (g) of this section or otherwise, that there has been a knowing and willful certification of false assessments under this paragraph, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

(C) Frequency

(i) In general

Subject to the timeframes prescribed by the Secretary under section 1395yy(e)(6) of this title, such an assessment must be conducted—

(I) promptly upon (but no later than 14 days after the date of) admission for each individual admitted on or after October 1, 1990, and by not later than January 1, 1991, for each resident of the facility on that date;

(II) promptly after a significant change in the resident’s physical or mental condition; and

(III) in no case less often than once every 12 months.

(ii) Resident review

The skilled nursing facility must examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident’s assessment to assure the continuing accuracy of the assessment.

(D) Use

The results of such an assessment shall be used in developing, reviewing, and revising the resident’s plan of care under paragraph (2).

(E) Coordination

Such assessments shall be coordinated with any State-required preadmission screening program to the maximum extent practicable in order to avoid duplicative testing and effort.

(4) Provision of services and activities

(A) In general

To the extent needed to fulfill all plans of care described in paragraph (2), a skilled nursing facility must provide, directly or under arrangements (or, with respect to dental services, under agreements) with others for the provision of—

(i) nursing services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(ii) medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident;

(iv) dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident;

(v) an on-going program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident;

(vi) routine and emergency dental services to meet the needs of each resident; and

(vii) other services as prescribed by State law.
(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.

The services provided or arranged by the facility must meet professional standards of quality. Nothing in clause (vi) shall be construed as requiring a facility to provide or arrange for dental services described in that clause without additional charge.

(B) Qualified persons providing services

Services described in clauses (i), (ii), (iii), (iv), and (vi) of subparagraph (A) must be provided by qualified persons in accordance with each resident’s written plan of care.

(C) Required nursing care

(i) In general

Except as provided in clause (ii), a skilled nursing facility must provide 24-hour licensed nursing service which is sufficient to meet nursing needs of its residents and must use the services of a registered professional nurse at least 8 consecutive hours a day, 7 days a week.

(ii) Exception

To the extent that clause (i) may be deemed to require that a skilled nursing facility engage the services of a registered professional nurse for more than 40 hours a week, the Secretary is authorized to waive such requirement if the Secretary finds that—

(I) the facility is located in a rural area and the supply of skilled nursing facility services in such area is not sufficient to meet the needs of individuals residing therein,

(II) the facility has one full-time registered professional nurse who is regularly on duty at such facility 40 hours a week,

(III) the facility either has only patients whose physicians have indicated (through physicians’ orders or admission notes) that each such patient does not require the services of a registered nurse or a physician for a 48-hour period, or has made arrangements for a registered professional nurse or a physician to spend such time at such facility as may be indicated as necessary by the physician to provide necessary skilled nursing services on days when the regular full-time registered professional nurse is not on duty,

(IV) the Secretary provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

(V) the facility that is granted such a waiver notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.

A waiver under this subparagraph shall be subject to annual renewal.

(5) Required training of nurse aides

(A) In general

(i) Except as provided in clause (ii), a skilled nursing facility must not use on a full-time basis any individual as a nurse aide in the facility on or after October 1, 1990 for more than 4 months unless the individual—

(I) has completed a training and competency evaluation program, approved by the State under subsection (e)(1)(A) of this section, and

(II) is competent to provide nursing or nursing-related services.

(ii) A skilled nursing facility must not use on a temporary, per diem, leased, or on any basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).

(B) Offering competency evaluation programs for current employees

A skilled nursing facility must provide, for individuals used as a nurse aide by the facility as of January 1, 1990, for a competency evaluation program approved by the State under subsection (e)(1) of this section and such preparation as may be necessary for the individual to complete such a program by October 1, 1990.

(C) Competency

The skilled nursing facility must not permit an individual, other than in a training and competency evaluation program approved by the State, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use such an individual as a nurse aide unless the facility has inquired of any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information concerning the individual.

(D) Re-training required

For purposes of subparagraph (A), if, since an individual’s most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual performed nursing or nursing-related services for monetary compensation, such individual shall complete a new training and competency evaluation program or a new competency evaluation program.

(E) Regular in-service education

The skilled nursing facility must provide such regular performance review and regular in-service education as assures that individ-
Physician supervision and clinical records

A skilled nursing facility must—
(A) require that the medical care of every resident be provided under the supervision of a physician;
(B) provide for having a physician available to furnish necessary medical care in case of emergency; and
(C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents’ assessments (described in paragraph (3)).

Required social services

In the case of a skilled nursing facility with more than 120 beds, the facility must have at least one social worker (with at least a bachelor’s degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services. Such term includes an individual who provides such services through an agency or under a contract with the facility.

Licensed health professional

In this paragraph, the term “licensed health professional” means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, registered professional nurse, licensed or certified social worker, registered respiratory therapist, or certified respiratory therapy technician.

Physician aide

In this paragraph, the term “nurse aide” means any individual providing nursing or nursing-related services to residents in a skilled nursing facility, but does not include an individual—
(i) who is a licensed health professional (as defined in subparagraph (G)) or a registered dietitian, or
(ii) who volunteers to provide such services without monetary compensation.

Information on nurse staffing

(A) In general

A skilled nursing facility shall post daily for each shift the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. The information shall be displayed in a uniform manner (as specified by the Secretary) and in a clearly visible place.

(B) Publication of data

A skilled nursing facility shall, upon request, make available to the public the nursing staff data described in subparagraph (A).

(c) Requirements relating to residents’ rights

(1) General rights

(A) Specified rights

A skilled nursing facility must protect and promote the rights of each resident, including each of the following rights:

(i) Free choice

The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident’s well-being, and (except with respect to a resident adjudged incompetent) to participate in planning care and treatment or changes in care and treatment.

(ii) Free from restraints

The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident’s medical symptoms. Restraints may only be imposed—
(I) to ensure the physical safety of the resident or other residents, and
(II) only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary until such an order could reasonably be obtained).

(iii) Privacy

The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups.

(iv) Confidentiality

The right to confidentiality of personal and clinical records and to access to current clinical records of the resident upon request by the resident or the resident’s legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request.

(v) Accommodation of needs

The right—
(I) to reside and receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and
(II) to receive notice before the room or roommate of the resident in the facility is changed.

(vi) Grievances

The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.
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(vii) Participation in resident and family groups

The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

(viii) Participation in other activities

The right of the resident to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(ix) Examination of survey results

The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Secretary or a State with respect to the facility and any plan of correction in effect with respect to the facility.

(x) Refusal of certain transfers

The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is a skilled nursing facility (for purposes of this subchapter) to a portion of the facility that is not such a skilled nursing facility.

(xi) Other rights

Any other right established by the Secretary.

Clause (iii) shall not be construed as requiring the provision of a private room. A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to benefits under this subchapter or to medical assistance under subchapter XIX of this chapter.

(B) Notice of rights and services

A skilled nursing facility must—

(i) inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility;

(ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights) including the notice (if any) of the State developed under section 1396r(e)(6) of this title; and

(iii) inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges for such services, including any charges for services not covered under this subchapter or by the facility's basic per diem charge.

The written description of legal rights under this subparagraph shall include a description of the protection of personal funds under paragraph (6) and a statement that a resident may file a complaint with a State survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility.

(C) Rights of incompetent residents

In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this subchapter shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident's behalf.

(D) Use of psychopharmacologic drugs

Psychopharmacologic drugs may be administered only on the orders of a physician and only as part of a plan (included in the written plan of care described in paragraph (2)) designed to eliminate or modify the symptoms for which the drugs are prescribed and only if, at least annually, an independent, external consultant reviews the appropriateness of the drug plan of each resident receiving such drugs. In determining whether such a consultant is qualified to conduct reviews under the preceding sentence, the Secretary shall take into account the needs of nursing facilities under this subchapter to have access to the services of such a consultant on a timely basis.

(E) Information respecting advance directives

A skilled nursing facility must comply with the requirement of section 1395cc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

(2) Transfer and discharge rights

(A) In general

A skilled nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless—

(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) the safety of individuals in the facility is endangered;

(iv) the health of individuals in the facility would otherwise be endangered;

(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this subchapter or subchapter XIX of this chapter on the resident's behalf) for a stay at the facility; or

(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (v), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the cases described in clauses (iii) and (iv) the documentation must be made by a physician.
(B) Pre-transfer and pre-discharge notice

(i) In general
Before effecting a transfer or discharge of a resident, a skilled nursing facility must—

(I) notify the resident (and, if known, a family member of the resident or legal representative) of the transfer or discharge and the reasons therefor;

(II) record the reasons in the resident’s clinical record (including any documentation required under subparagraph (A)), and

(III) include in the notice the items described in clause (iii).

(ii) Timing of notice
The notice under clause (i)(I) must be made at least 30 days in advance of the resident’s transfer or discharge except—

(I) in a case described in clause (iii) or (iv) of subparagraph (A);

(II) in a case described in clause (ii) of subparagraph (A), where the resident’s health improves sufficiently to allow a more immediate transfer or discharge;

(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident’s urgent medical needs; or

(IV) in a case where a resident has not resided in the facility for 30 days.

In the case of such exceptions, notice must be given as many days before the date of the transfer or discharge as is practicable.

(iii) Items included in notice
Each notice under clause (i) must include—

(I) for transfers or discharges effected on or after October 1, 1990, notice of the resident’s right to appeal the transfer or discharge under the State process established under subsection (e)(3) of this section; and

(II) the name, mailing address, and telephone number of the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]).

(C) Orientation
A skilled nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(3) Access and visitation rights
A skilled nursing facility must—

(A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman described in paragraph (2)(B)(iii)(II), or by the resident’s individual physician;

(B) permit immediate access to a resident, subject to the resident’s right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

(C) permit immediate access to a resident, subject to reasonable restrictions and the resident’s right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

(D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident’s right to deny or withdraw consent at any time; and

(E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident’s legal representative) and consistent with State law, to examine a resident’s clinical records.

(4) Equal access to quality care
A skilled nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and covered services under this subchapter for all individuals regardless of source of payment.

(5) Admissions policy
(A) Admissions
With respect to admissions practices, a skilled nursing facility must—

(I) not require individuals applying to reside or residing in the facility to waive their rights to benefits under this subchapter or under a State plan under subchapter XIX of this chapter, (II) not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this subchapter or such a State plan, and (III) prominently display in the facility and provide to such individuals written information about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits; and

(ii) not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility.

(B) Construction
(i) No preemption of stricter standards
Subparagraph (A) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under this subchapter with respect to admissions practices of skilled nursing facilities.

(ii) Contracts with legal representatives
Subparagraph (A)(ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident’s income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident’s income or resources for such care.

(6) Protection of resident funds
(A) In general
The skilled nursing facility—
(i) may not require residents to deposit their personal funds with the facility, and
(ii) upon the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

(B) Management of personal funds

Upon written authorization of a resident under subparagraph (A)(ii), the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(i) Deposit

The facility must deposit any amount of personal funds in excess of $100 with respect to a resident in an interest-bearing account (or accounts) that is separate from any of the facility’s operating accounts and credits all interest earned on such separate account to such account. With respect to any other personal funds, the facility must maintain such funds in a non-interest-bearing account or petty cash fund.

(ii) Accounting and records

The facility must assure a full and complete separate accounting of each such resident’s personal funds, maintain a written record of all financial transactions involving the personal funds of a resident deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record.

(iii) Conveyance upon death

Upon the death of a resident with such an account, the facility must convey promptly the resident’s personal funds (and a final accounting of such funds) to the individual administering the resident’s estate.

(C) Assurance of financial security

The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

(D) Limitation on charges to personal funds

The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under this subchapter or subchapter XIX of this chapter.

(d) Requirements relating to administration and other matters

(1) Administration

(A) In general

A skilled nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident (consistent with requirements established under subsection (f)(5) of this section).

(B) Required notices

If a change occurs in—

(i) the persons with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the facility,
(ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1320a–5(b) of this title) of the facility,
(iii) the corporation, association, or other company responsible for the management of the facility, or
(iv) the individual who is the administrator or director of nursing of the facility,

the skilled nursing facility must provide notice to the State agency responsible for the licensing of the facility, at the time of the change, of the change and of the identity of each new person, company, or individual described in the respective clause.

(C) Skilled nursing facility administrator

The administrator of a skilled nursing facility must meet standards established by the Secretary under subsection (f)(4) of this section.

(2) Licensing and Life Safety Code

(A) Licensing

A skilled nursing facility must be licensed under applicable State and local law.

(B) Life Safety Code

A skilled nursing facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that—

(i) the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiver would not adversely affect the health and safety of residents or personnel, and
(ii) the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents of and personnel in skilled nursing facilities.

(3) Sanitary and infection control and physical environment

A skilled nursing facility must—

(A) establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection, and
(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public.

(4) Miscellaneous

(A) Compliance with Federal, State, and local laws and professional standards

A skilled nursing facility must operate and provide services in compliance with all
applicable Federal, State, and local laws and regulations (including the requirements of section 1320a–3 of this title) and with accepted professional standards and principles which apply to professionals providing services in such a facility.

(B) Other

A skilled nursing facility must meet such other requirements relating to the health, safety, and well-being of residents or relating to the physical facilities thereof as the Secretary may find necessary.

(e) State requirements relating to skilled nursing facility requirements

The requirements, referred to in section 1395aa(d) of this title, with respect to a State are as follows:

(1) Specification and review of nurse aide training and competency evaluation programs and of nurse aide competency evaluation programs

The State must—

(A) by not later than January 1, 1989, specify those training and competency evaluation programs, and those competency evaluation programs, that the State approves for purposes of subsection (b)(5) of this section and that meet the requirements established under subsection (f)(2) of this section, and

(B) by not later than January 1, 1990, provide for the review and reapproval of such programs, at a frequency and using a methodology consistent with the requirements established under subsection (f)(2)(A)(iii) of this section.

The failure of the Secretary to establish requirements under subsection (f)(2) of this section shall not relieve any State of its responsibility under this paragraph.

(2) Nurse aide registry

(A) In general

By not later than January 1, 1989, the State shall establish and maintain a registry of all individuals who have satisfactorily completed a nurse aide training and competency evaluation program, or a nurse aide competency evaluation program, approved under paragraph (1) in the State, or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989.

(B) Information in registry

The registry under subparagraph (A) shall provide (in accordance with regulations of the Secretary) for the inclusion of specific documented findings by a State under subsection (g)(1)(C) of this section of resident neglect or abuse or misappropriation of resident property involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings, but shall not include any allegations of resident abuse or neglect or misappropriation of resident property that are not specifically documented by the State under such subsection. The State shall make available to the public information in the registry. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any such statement in the registry relating to the finding or a clear and accurate summary of such a statement.

(C) Prohibition against charges

A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).

(3) State appeals process for transfers and discharges

The State, for transfers and discharges from skilled nursing facilities effected on or after October 1, 1989, must provide for a fair mechanism for hearing appeals on transfers and discharges of residents of such facilities. Such mechanism must meet the guidelines established by the Secretary under subsection (f)(3) of this section; but the failure of the Secretary to establish such guidelines shall not relieve any State of its responsibility to provide for such a fair mechanism.

(4) Skilled nursing facility administrator standards

By not later than January 1, 1990, the State must have implemented and enforced the skilled nursing facility administrator standards developed under subsection (f)(4) of this section respecting the qualification of administrators of skilled nursing facilities.

(5) Specification of resident assessment instrument

Effective July 1, 1990, the State shall specify the instrument to be used by nursing facilities in the State in complying with the requirement of subsection (b)(3)(A)(iii) of this section. Such instrument shall be—

(A) one of the instruments designated under subsection (f)(6)(B) of this section, or

(B) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary under subsection (f)(6)(A) of this section.

(f) Responsibilities of Secretary relating to skilled nursing facility requirements

(1) General responsibility

It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in skilled nursing facilities under this subchapter, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

(2) Requirements for nurse aide training and competency evaluation programs and for nurse aide competency evaluation programs

(A) In general

For purposes of subsections (b)(5) and (e)(1)(A) of this section, the Secretary shall
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establish, by not later than September 1, 1988—

(i) requirements for the approval of nurse aide training and competency evaluation programs, including requirements relating to (I) the areas to be covered in such a program (including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents’ rights) and content of the curriculum (including, in the case of initial training and, if the Secretary determines appropriate, in the case of ongoing training, dementia management training, and patient abuse prevention training, \(^4\) (II) minimum hours of initial and ongoing training and retraining (including not less than 75 hours in the case of initial training), (III) qualifications of instructors, and (IV) procedures for determination of competency;

(ii) requirements for the approval of nurse aide competency evaluation programs, including requirement relating to the areas to be covered in such a program, including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, residents’ rights, and procedures for determination of competency;

(iii) requirements respecting the minimum frequency and methodology to be used by a State in reviewing such programs’ compliance with the requirements for such programs; and

(iv) requirements, under both such programs, that—

(I) provide procedures for determining competency that permit a nurse aide, at the nurse aide’s option, to establish competency through procedures or methods other than the passing of a written examination and to have the competency evaluation conducted at the nursing facility at which the aide is (or will be) employed (unless the facility is described in subparagraph (B)(i)(I)),

(II) prohibit the imposition on a nurse aide who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program of any charges (including any charges for textbooks and other required course materials and any charges for the competency evaluation) for either such program, and

(iii) in the case of a nurse aide not described in subparagraph (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such program on a prorata basis during the period in which the nurse aide is so employed.

(B) Approval of certain programs

Such requirements—

(i) may permit approval of programs offered by or in facilities (subject to clause (iii)), as well as outside facilities (including employee organizations), and of programs in effect on December 22, 1987;

(ii) shall permit a State to find that an individual who has completed (before July 1, 1989) a nurse aide training and competency evaluation program shall be deemed to have completed such a program approved under subsection (b)(5) of this section if the State determines that, at the time the program was offered, the program met the requirements for approval under such paragraph; and

(iii) subject to subparagraphs (C) and (D), shall prohibit approval of such a program—

(I) offered by or in a skilled nursing facility which, within the previous 2 years—

(a) has operated under a waiver under subsection (b)(4)(C)(ii) of this section;

(b) has been subject to an extended (or partial extended) survey under subsection (g)(2)(B)(i) of section 1396r(g)(2)(B)(i) of this title, unless the survey shows that the facility is in compliance with the requirements of subsections (b), (c), and (d) of this section; or

(c) has been assessed a civil money penalty described in subsection (h)(2)(B)(ii) of this section or section 1396r(h)(2)(A)(ii) of this title of not less than $5,000, or has been subject to a remedy described in clause (i) or (iii) of subsection (h)(4) of this section, subsection (h)(1)(B)(i) of this title, or in clause (i), (iii), or (iv) of section 1396r(h)(2)(A) of this title, or

(II) offered by or in a skilled nursing facility unless the State makes the determination, upon an individual’s completion of the program, that the individual is competent to provide nursing and nursing-related services in skilled nursing facilities.

A State may not delegate (through subcontract or otherwise) its responsibility under clause (iii)(II) to the skilled nursing facility.

(C) Waiver authorized

Clause (iii)(I) of subparagraph (B) shall not apply to a program offered in (but not by) a nursing facility (or skilled nursing facility for purposes of this subchapter) in a State if the State—

(i) determines that there is no other such program offered within a reasonable distance of the facility,

(ii) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and

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\(^4\) So in original. A closing parenthesis probably should appear before the comma.

\(^5\) So in original. Probably should be “pro rata”.

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(iii) provides notice of such determination and assurances to the State long-term care ombudsman.

(D) Waiver of disapproval of nurse-side training programs

Upon application of a nursing facility, the Secretary may waive the application of subparagraph (B)(i)(I) if the imposition of the civil monetary penalty was not related to the quality of care provided to residents of the facility. Nothing in this subparagraph shall be construed as eliminating any requirement upon a facility to pay a civil monetary penalty described in the preceding sentence.

(3) Federal guidelines for State appeals process for transfers and discharges

For purposes of subsections (c)(2)(B)(iii)(I) and (e)(3) of this section, by not later than October 1, 1988, the Secretary shall establish guidelines for minimum standards which State appeals processes under subsection (e)(3) of this section must meet to provide a fair mechanism for hearing appeals on transfers and discharges of residents from skilled nursing facilities.

(4) Secretarial standards for qualification of administrators

For purposes of subsections (d)(1)(C) and (e)(4) of this section, the Secretary shall develop, by not later than March 1, 1989, standards to be applied in assuring the qualification of administrators of skilled nursing facilities.

(5) Criteria for administration

The Secretary shall establish criteria for assessing a skilled nursing facility’s compliance with the requirement of subsection (d)(1) of this section with respect to—

(A) its governing body and management,

(B) agreements with hospitals regarding transfers of residents to and from the hospitals and to and from other skilled nursing facilities,

(C) disaster preparedness,

(D) direction of medical care by a physician,

(E) laboratory and radiological services,

(F) clinical records, and

(G) resident and advocate participation.

(6) Specification of resident assessment data set and instruments

The Secretary shall—

(A) not later than January 1, 1989, specify a minimum data set of core elements and common definitions for use by nursing facilities in conducting the assessments required under subsection (b)(3) of this section, and establish guidelines for utilization of the data set; and

(B) by not later than April 1, 1990, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subsection (e)(5)(A) of this section for use by nursing facilities in complying with the requirements of subsection (b)(3)(A)(iii) of this section.

(7) List of items and services furnished in skilled nursing facilities not chargeable to the personal funds of a resident

(A) Regulations required

Pursuant to the requirement of section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, the Secretary shall issue regulations, on or before the first day of the seventh month to begin after December 22, 1987, that define those costs which may be charged to the personal funds of residents in skilled nursing facilities who are individuals receiving benefits under this part and those costs which are to be included in the reasonable cost (or other payment amount) under this subchapter for extended care services.

(B) Rule if failure to publish regulations

If the Secretary does not issue the regulations under subparagraph (A) on or before the date required in such subparagraph, in the case of a resident of a skilled nursing facility who is eligible to receive benefits under this part, the costs which may not be charged to the personal funds of such resident (and for which payment is considered to be made under this subchapter) shall include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.

(8) Special focus facility program

(A) In general

The Secretary shall conduct a special focus facility program for enforcement of requirements for skilled nursing facilities that the Secretary has identified as having substantially failed to meet applicable requirement of this chapter.

(B) Periodic surveys

Under such program the Secretary shall conduct surveys of each facility in the program not less than once every 6 months.

(g) Survey and certification process

(1) State and Federal responsibility

(A) In general

Pursuant to an agreement under section 1395aa of this title, each State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of skilled nursing facilities (other than facilities of the State) with the requirements of subsections (b), (c), and (d) of this section. The Secretary shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of State skilled nursing facilities with the requirements of such subsections.

(B) Educational program

Each State shall conduct periodic educational programs for the staff and residents (and their representatives) of skilled nursing facilities in order to present current regulations, procedures, and policies under this section.
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(C) Investigation of allegations of resident neglect and abuse and misappropriation of resident property

The State shall provide, through the agency responsible for surveys and certification of nursing facilities under this subsection, for a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a resident in a nursing facility or by another individual used by the facility in providing services to such a resident. The State shall, after providing the individual involved with a written notice of the allegations (including a statement of the availability of a hearing for the individual to rebut the allegations) and the opportunity for a hearing on the record, make a written finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority. A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

(D) Removal of name from nurse aide registry

(i) In general

In the case of a finding of neglect under subparagraph (C), the State shall establish a procedure to permit a nurse aide to petition the State to have his or her name removed from the registry upon a determination by the State that—

(I) the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect; and

(II) the neglect involved in the original finding was a singular occurrence.

(ii) Timing of determination

In no case shall a determination on a petition submitted under clause (i) be made prior to the expiration of the 1-year period beginning on the date on which the name of the petitioner was added to the registry under subparagraph (C).

(E) Construction

The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

(2) Surveys

(A) Standard survey

(i) In general

Each skilled nursing facility shall be subject to a standard survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) a skilled nursing facility of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title other than subsections (a) and (b) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The Secretary shall review each State’s procedures for the scheduling and conduct of standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(ii) Contents

Each standard survey shall include, for a case-mix stratified sample of residents—

(I) a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment,

(II) written plans of care provided under subsection (b)(2) of this section and an audit of the residents’ assessments under subsection (b)(3) of this section to determine the accuracy of such assessments and the adequacy of such plans of care, and

(III) a review of compliance with residents’ rights under subsection (c) of this section.

(iii) Frequency

(I) In general

Each skilled nursing facility shall be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this paragraph. The Statewide average interval between standard surveys of skilled nursing facilities under this subsection shall not exceed 12 months.

(II) Special surveys

If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 2 months of any change of ownership, administration, management of a skilled nursing facility, or the director of nursing in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

(B) Extended surveys

(i) In general

Each skilled nursing facility which is found, under a standard survey, to have provided substandard quality of care shall be subject to an extended survey. Any other facility may, at the Secretary’s or State’s discretion, be subject to such an extended survey (or a partial extended survey).
(ii) Timing

The extended survey shall be conducted immediately after the standard survey (or, if not practicable, not later than 2 weeks after the date of completion of the standard survey).

(iii) Contents

In such an extended survey, the survey team shall review and identify the policies and procedures which produced such substandard quality of care and shall determine whether the facility has complied with all the requirements described in subsections (b), (c), and (d) of this section. Such review shall include an expansion of the size of the sample of residents' assessments reviewed and a review of the staffing, of in-service training, and, if appropriate, of contracts with consultants.

(iv) Construction

Nothing in this paragraph shall be construed as requiring an extended or partial extended survey as a prerequisite to imposing a sanction against a facility under subsection (h) of this section on the basis of findings in a standard survey.

(C) Survey protocol

Standard and extended surveys shall be conducted—

(i) based upon a protocol which the Secretary has developed, tested, and validated by not later than January 1, 1990, and

(ii) by individuals, of a survey team, who meet such minimum qualifications as the Secretary establishes by not later than such date.

The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications shall not relieve any State of its responsibility (or the Secretary of the Secretary's responsibility) to conduct surveys under this subsection.

(D) Consistency of surveys

Each State and the Secretary shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

(E) Survey teams

(i) In general

Surveys under this subsection shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse).

(ii) Prohibition of conflicts of interest

A State may not use as a member of a survey team under this subsection an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance with the requirements of subsections (b), (c), and (d) of this section, or who has a personal or familial financial interest in the facility being surveyed.

(iii) Training

The Secretary shall provide for the comprehensive training of State and Federal surveyors in the conduct of standard and extended surveys under this subsection, including the auditing of resident assessments and plans of care. No individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

(3) Validation surveys

(A) In general

The Secretary shall conduct onsite surveys of a representative sample of skilled nursing facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (2). If the State has determined that an individual skilled nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but the Secretary determines that the facility does not meet such requirements, the Secretary's determination as to the facility's noncompliance with such requirements is binding and supersedes that of the State survey.

(B) Scope

With respect to each State, the Secretary shall conduct surveys under subparagraph (A) each year with respect to at least 5 percent of the number of skilled nursing facilities surveyed by the State in the year, but in no case less than 5 skilled nursing facilities in the State.

(C) Remedies for substandard performance

If the Secretary finds, on the basis of such surveys, that a State has failed to perform surveys as required under paragraph (2) or that a State's survey and certification performance otherwise is not adequate, the Secretary shall provide for an appropriate remedy, which may include the training of survey teams in the State.

(D) Special surveys of compliance

Where the Secretary has reason to question the compliance of a skilled nursing facility with any of the requirements of subsections (b), (c), and (d) of this section, the Secretary may conduct a survey of the facility and, on the basis of that survey, make independent and binding determinations concerning the extent to which the skilled nursing facility meets such requirements.

(4) Investigation of complaints and monitoring compliance

Each State shall maintain procedures and adequate staff to—

(A) investigate complaints of violations of requirements by skilled nursing facilities, and

(B) monitor, on-site, on a regular, as needed basis, a skilled nursing facility's compliance with the requirements of subsections (b), (c), and (d) of this section, if—
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(5) Disclosure of results of inspections and activities

(A) Public information

Each State, and the Secretary, shall make available to the public—

(i) information respecting all surveys and certifications made respecting skilled nursing facilities, including statements of deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans of correction,

(ii) copies of cost reports of such facilities filed under this subchapter or subchapter XIX of this chapter,

(iii) copies of statements of ownership under section 1320a–3 of this title, and

(iv) information disclosed under section 1320a–5 of this title.

(B) Notice to ombudsman

Each State shall notify the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g(b)] of the State’s findings of noncompliance with any of the requirements of subsections (b), (c), and (d) of this section, or of any adverse action taken against a skilled nursing facility under paragraph (1), (2), or (4) of subsection (h) of this section, with respect to a skilled nursing facility in the State.

(C) Notice to physicians and skilled nursing facility administrator licensing board

If a State finds that a skilled nursing facility has provided substandard quality of care, the State shall notify—

(i) the attending physician of each resident with respect to which such finding is made, and

(ii) the State board responsible for the licensing of the skilled nursing facility administrator at the facility.

(D) Access to fraud control units

Each State shall provide its State medicaid fraud and abuse control unit (established under section 1396b(q) of this title) with access to all information of the State agency responsible for surveys and certifications under this subsection.

(E) Submission of survey and certification information to the Secretary

In order to improve the timeliness of information made available to the public under subparagraph (A) and provided on the Nursing Home Compare Medicare website under subsection (i), each State shall submit information respecting any survey or certification made respecting a skilled nursing facility (including any enforcement actions taken by the State) to the Secretary not later than the date on which the State sends such information to the facility. The Secretary shall use the information submitted under the preceding sentence to update the information provided on the Nursing Home Compare Medicare website as expeditiously as practicable but not less frequently than quarterly.

(h) Enforcement process

(1) In general

If a State finds, on the basis of a standard, extended, or partial extended survey under subsection (g)(2) of this section or otherwise, that a skilled nursing facility no longer meets a requirement of subsection (b), (c), or (d) of this section, and further finds that the facility’s deficiencies—

(A) immediately jeopardize the health or safety of its residents, the State shall recommend to the Secretary that the Secretary take such action as described in paragraph (2)(A)(i); or

(B) do not immediately jeopardize the health or safety of its residents, the State may recommend to the Secretary that the Secretary take such action as described in paragraph (2)(A)(i).

If a State finds that a skilled nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but, as of a previous period, did not meet such requirements, the State may recommend a civil money penalty under paragraph (2)(B)(ii) for the days in which it finds that the facility was not in compliance with such requirements.

(2) Secretarial authority

(A) In general

With respect to any skilled nursing facility in a State, if the Secretary finds, or pursuant to a recommendation of the State under paragraph (1) finds, that a skilled nursing facility no longer meets a requirement of subsection (b), (c), (d), or (e) of this section, and further finds that the facility’s deficiencies—

(i) immediately jeopardize the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subparagraph (B)(iii), or terminate the facility’s participation under this subchapter and may provide, in addition, for one or more of the other remedies described in subparagraph (B); or...
(ii) do not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described in subparagraph (B).

Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a skilled nursing facility's deficiencies. If the Secretary finds, or pursuant to the recommendation of the State under paragraph (1) finds, that a skilled nursing facility meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (B)(ii) for the days on which he finds that the facility was not in compliance with such requirements.

(B) Specified remedies

The Secretary may take the following actions with respect to a finding that a facility has not met an applicable requirement:

(i) Denial of payment

The Secretary may deny any further payments under this subchapter with respect to all individuals entitled to benefits under this subchapter in the facility or with respect to such individuals admitted to the facility after the effective date of the finding.

(ii) Authority with respect to civil money penalties

(I) In general

Subject to subclause (II), the Secretary may impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(II) Reduction of civil money penalties in certain circumstances

Subject to subclause (III), in the case where a facility self-reports and promptly corrects a deficiency for which a penalty was imposed under this clause not later than 10 calendar days after the date of such imposition, the Secretary may reduce the amount of the penalty imposed by not more than 50 percent.

(III) Prohibitions on reduction for certain deficiencies

(aa) Repeat deficiencies

The Secretary may not reduce the amount of a penalty under subclause (II) if the Secretary had reduced a penalty imposed on the facility in the preceding year under such subclause with respect to a repeat deficiency.

(bb) Certain other deficiencies

The Secretary may not reduce the amount of a penalty under subclause (II) if the penalty is imposed on the facility for a deficiency that is found to result in a pattern of harm or widespread harm, immediately jeopardizes the health or safety of a resident or residents of the facility, or results in the death of a resident of the facility.

(IV) Collection of civil money penalties

In the case of a civil money penalty imposed under this clause, the Secretary shall issue regulations that—

(aa) subject to item (cc), not later than 30 days after the imposition of the penalty, provide for the facility to have the opportunity to participate in an independent informal dispute resolution process which generates a written record prior to the collection of such penalty;

(bb) in the case where the penalty is imposed for each day of noncompliance, provide that a penalty may not be imposed for any day during the period beginning on the initial day of the imposition of the penalty and ending on the day on which the informal dispute resolution process under item (aa) is completed;

(cc) may provide for the collection of such civil money penalty and the placement of such amounts collected in an escrow account under the direction of the Secretary on the earlier of the date on which the informal dispute resolution process under item (aa) is completed or the date that is 90 days after the date of the imposition of the penalty;

(dd) may provide that such amounts collected are kept in such account pending the resolution of any subsequent appeals;

(ee) in the case where the facility successfully appeals the penalty, may provide for the return of such amounts collected (plus interest) to the facility; and

(ff) in the case where all such appeals are unsuccessful, may provide that some portion of such amounts collected may be used to support activities that benefit residents, including assistance to support and protect residents of a facility that closes (voluntarily or involuntarily) or is decertified (including offsetting costs of relocating residents to home and community-based settings or another facility), projects that support resident and family councils and other consumer involvement in assuring quality care in facilities, and facility improvement initiatives approved by the Secretary (including joint training of facility staff and surveyors, technical assistance for facilities implementing quality assurance programs, the appointment of temporary management firms, and other activities approved by the Secretary).
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(3) Effective period of denial of payment

A finding to deny payment under this subsection shall terminate when the Secretary finds that the facility is in substantial compliance with all the requirements of subsections (b), (c), and (d) of this section.

(4) Immediate termination of participation for facility where Secretary finds noncompliance and immediate jeopardy

If the Secretary finds that a skilled nursing facility has not met a requirement of subsection (b), (c), or (d) of this section, and finds that the failure immediately jeopardizes the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(B)(iii), or the Secretary, subject to section 1320a–7(h) of this title, shall terminate the facility’s participation under this subchapter. If the facility’s participation under this subchapter is terminated, the State shall provide for the safe and orderly transfer of the residents eligible under this subchapter consistent with the requirements of subsection (c)(2) and section 1320a–7(h) of this title.

(5) Construction

The remedies provided under this subsection are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law. The remedies described in clauses (i), (ii)(IV), and (iii) of paragraph (2)(B) may be imposed during the pendency of any hearing.

(6) Sharing of information

Notwithstanding any other provision of law, all information concerning skilled nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available by such facilities to Federal or State employees for purposes consistent with the effective administration of programs established under this subchapter and subchapter XIX of this chapter, including investigations by State medicaid fraud control units.
(i) Nursing Home Compare website

(1) Inclusion of additional information

(A) In general

The Secretary shall ensure that the Department of Health and Human Services includes, as part of the information provided for comparison of nursing homes on the official Internet website of the Federal Government for Medicare beneficiaries (commonly referred to as the “Nursing Home Compare” Medicare website) (or a successor website), the following information in a manner that is prominent, updated on a timely basis, easily accessible, readily understandable to consumers of long-term care services, and searchable:

(i) Staffing data for each facility (including resident census data and data on the hours of care provided per resident per day) based on data submitted under section 1320a–7(j)(g) of this title, including information on staffing turnover and tenure, in a format that is clearly understandable to consumers of long-term care services and State and national averages for the facilities. Such format shall include—

(I) concise explanations of how to interpret the data (such as a plain English explanation of data reflecting “nursing home staff hours per resident day”);

(II) differences in types of staff (such as training associated with different categories of staff);

(III) the relationship between nurse staffing levels and quality of care; and

(IV) an explanation that appropriate staffing levels vary based on patient case mix.

(ii) Links to State Internet websites with information regarding State survey and certification programs, links to Form 2567 State inspection reports (or a successor form) on such websites, information to guide consumers in how to interpret and understand such reports, and the facility plan of correction or other response to such report. Any such links shall be posted on a timely basis.

(iii) The standardized complaint form developed under section 1320a–7(j)(f) of this title, including explanatory material on what complaint forms are, how they are used, and how to file a complaint with the State survey and certification program and the State long-term care ombudsman program.

(iv) Summary information on the number, type, severity, and outcome of substantiated complaints.

(v) The number of adjudicated instances of criminal violations by a facility or the employees of a facility—

(I) that were committed inside the facility;

(II) with respect to such instances of violations or crimes committed inside of the facility that were the violations or crimes of abuse, neglect, and exploitation, criminal sexual abuse, or other violations or crimes that resulted in serious bodily injury; and

(III) the number of civil monetary penalties levied against the facility, employees, contractors, and other agents.

(B) Deadline for provision of information

(i) In general

Except as provided in clause (ii), the Secretary shall ensure that the information described in subparagraph (A) is included on such website (or a successor website) not later than 1 year after March 23, 2010.

(ii) Exception

The Secretary shall ensure that the information described in subparagraph (A)(i) is included on such website (or a successor website) not later than the date on which the requirements under section 1320a–7(j)(g) of this title are implemented.

(2) Review and modification of website

(A) In general

The Secretary shall establish a process—

(i) to review the accuracy, clarity of presentation, timeliness, and comprehensiveness of information reported on such website as of the day before March 23, 2010; and

(ii) not later than 1 year after March 23, 2010, to modify or revamp such website in accordance with the review conducted under clause (i).

(B) Consultation

In conducting the review under subparagraph (A)(i), the Secretary shall consult with—

(i) State long-term care ombudsman programs; 

(ii) consumer advocacy groups; 

(iii) provider stakeholder groups; and

(iv) any other representatives of programs or groups the Secretary determines appropriate.

(j) Construction

Where requirements or obligations under this section are identical to those provided under section 1396r of this title, the fulfillment of those requirements or obligations under section 1396r of this title shall be considered to be the fulfillment of the corresponding requirements or obligations under this section.


*6 So in original. Probably should be cl. (vi).
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AMENDMENT OF SUBSECTION (d)(1)
Pub. L. 111–148, title VI, §6103(c)(1)(A), (2), Mar. 23, 2010, 124 Stat. 709, 710, provided that, effective 1 year after Mar. 23, 2010, subsection (d)(1) of this section, as amended by section 6101 of Pub. L. 111–148, is amended by adding at the end the following new subparagraph:

(C) Availability of survey, certification, and complaint investigation reports
A skilled nursing facility must—
(i) have reports with respect to any surveys, certifications, and complaints, and investigations made respecting the facility during the 3 preceding years available for any individual to review upon request; and
(ii) post notice of the availability of such reports in areas of the facility that are prominent and accessible to the public.

The facility shall not make available under clause (i) identifying information about complainants or residents.

Pub. L. 111–148, title VI, §6103(c)(1)(A), (2), Mar. 23, 2010, 124 Stat. 702, provided that, effective on the date on which the Secretary of Health and Human Services makes certain information available to the public, subsection (d)(1) of this section is amended by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B). See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

AMENDMENTS


Subsec. (h)(2)(B)(ii). Pub. L. 111–148, §6111(a)(1), designated existing provisions as subcl. (i), inserted heading “Subject to subclause (II), the Secretary” for “The Secretary”, and added subcls. (II) to (IV).

Subsec. (h)(4). Pub. L. 111–148, §6113(b), substituted “‘the Secretary, subject to subsection 1320a–7(b) of this title, shall terminate’ for “the Secretary shall terminate” and “subsection (c)(2) and section 1320a–7(h) of this title” for “subsection (c)(2)”.


Subsecs. (i), (j). Pub. L. 111–148, §6103(a)(1), added subsec. (i) and redesignated former subsec. (i) as (j).


1997—Subsec. (b)(3)(C)(i). Pub. L. 106–18, §4432(b)(5)(A), substituted “Subject to the timeframes prescribed by the Secretary under section 1399yy(c)(6) of this title, such” for “‘Such” in introductory provisions.


Subsec. (g)(1)(D). Pub. L. 105–33, §4755(a), added subpar. (D) and redesignated former subpar. (D) as (E).

1994—Subsec. (b)(3)(C)(i)(I). Pub. L. 103–432, §110(b), substituted “but no later than 14 days” for “but no later than not later than 14 days”.

Subsec. (b)(5)(D). Pub. L. 103–432, §106(d)(1), struck out comma before “or a new competency evaluation program”.

Subsec. (b)(5)(G). Pub. L. 103–432, §106(d)(2), substituted “licensed or certified social worker, registered respiratory therapist, or certified respiratory technician” for “or licensed or certified social worker”.

Subsec. (c)(1)(D). Pub. L. 103–432, §106(c)(2)(A), inserted at end “In determining whether such a consultant is qualified to conduct reviews under this subsection, the Secretary shall take into account the needs of nursing facilities under this subchapter to have access to the services of such a consultant on a timely basis.”


Subsec. (e)(2)(B). Pub. L. 103–432, §106(c)(4)(A), inserted “, but shall not include any allegations of resident abuse or neglect or misappropriation of resident property that are not specifically documented by the State under such subsection” after “individual disputing the findings” in first sentence.


Subsec. (f)(2)(B)(ii)(I)(b). Pub. L. 103–432, §106(c)(1)(A), inserted before semicolon at end “, unless the survey shows that the facility is in compliance with the requirements of subsections (b), (c), and (d) of this section”.

Subsec. (g)(1)(C). Pub. L. 101–432, §106(c)(4)(B), substituted second sentence for former second sentence which read as follows: “The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations.”

Subsec. (g)(5)(B). Pub. L. 103–432, §106(d)(5), substituted “paragraph” for “paragraphs” before “(1), (2), or (4)” of subsection (h).


1990—Subsec. (b)(1)(B). Pub. L. 101–508, §4008(b)(2)(B), inserted at end “A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.”


Subsec. (b)(4)(C)(i)(IV), (V), Pub. L. 101–508, §4008(b)(2)(E), added subcls. (IV) and (V).

Subsec. (b)(5)(A). Pub. L. 101–508, §4008(b)(1)(B), redesignated existing provisions as cl. (I), in introductory provisions substituted “Except as provided in clause (I), a skilled nursing facility” for “A skilled nursing facility” and “on a full-time basis” for “on a full-time, temporary, per diem, or other basis”, redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cl. (ii).

Subsec. (b)(5)(C). Pub. L. 101–508, §4008(b)(1)(C), substituted “any State registry established under subsection (e)(2)(A) of this section as to information in the registry”.

Subsec. (b)(5)(D). Pub. L. 101–508, §4008(b)(1)(D), substituted before period at end “, or a new competency evaluation program” after “and competency evaluation program”.

Subsec. (b)(5)(F)(1). Pub. L. 101–508, §4008(b)(2)(F), substituted “(G) or a registered dietitian,” for “(G)”.

Pub. L. 101–508, §4008(b)(2)(G)(I), redesignated former cl. (x) as cl. (xii).”


Subsec. (c)(1)(B)(ii). Pub. L. 101–508, §4008(b)(2)(I), inserted “including the notice (if any) of the State developed under section 1966e(6) of this title” after “in such right(s)”.


Subsec. (e)(1)(A). Pub. L. 101–508, §4008(b)(2)(J), substituted “subsection (f)(2) of this section” for “clause (i) or (ii) of subsection (f)(2)(A) of this section”.

Subsec. (e)(2)(A). Pub. L. 101–508, §4008(b)(2)(K)(i), inserted before period at end “, or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D)” of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989.


Subsec. (b)(5)(A). Pub. L. 100–360, § 411(l)(2)(D)(i), as amended by Pub. L. 100–485, § 608(d)(27)(D), struck out "who is not a licensed health professional (as defined in subparagraph (E)"


Subsec. (b)(5)(G). Pub. L. 100–360, § 411(l)(2)(D)(ii), substituted “nursing or nursing-related services” for “‘services’”.


Subsec. (c)(2)(A)(v). Pub. L. 100–360, § 411(l)(2)(F), substituted “for a stay at the facility” for “an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with this subchapter and chapter XIX of this chapter”.

Subsec. (c)(6). Pub. L. 100–360, § 411(l)(2)(G), substituted “written” for “written accept the written” in subpar. (A)(ii), and “Upon written” for “Upon a facility’s acceptance of written” in subpar. (B).


Subsec. (h)(2)(B)(i). Pub. L. 100–360, § 411(l)(7)(A), substituted “. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this clause in a manner similar to that for the imposition of civil money penalties under section 1320a–7 of this title.” for “and the Secretary shall impose and collect such a penalty in the same manner as civil money penalties are imposed and collected under section 1320a–7 of this title.”

Subsec. (h)(5). Pub. L. 100–360, § 411(l)(11), as added by Pub. L. 100–485, § 608(d)(27)(L), substituted “classes (i), (ii), and (iv) of paragraph (2)(B)” for “classes (i), (ii), and (iv) of paragraph (2)(A)”.

Subsec. (h)(6). Pub. L. 100–360, § 411(l)(7)(B), inserted “by such facilities” after “be made available” 1987—Subsecs. (g) to (i). Pub. L. 100–203, §§ 4292(a)(2), 4238(a)(2), 4206, added subsecs. (g), (h), and (i), respectively.

Effective Date of 2010 Amendment
Pub. L. 111–148, title VI, § 6101(c)(2), Mar. 23, 2010, 124 Stat. 702, provided that: “The amendments made by paragraph (1) [amending this section and section 1396r of this title] shall take effect on the date on which the Secretary of Health and Human Services makes the information described in subsection (b)(1) (probably means subsec. (b) of section 6101, which is set out as a note under section 1320a–3 of this title) available to the public under such subsection.”


Pub. L. 111–148, title VI, § 6103(c)(3), Mar. 23, 2010, 124 Stat. 710, provided that: “The amendments made by this subsection [amending this section and section 1396r of this title] shall take effect on the date on which the Secretary of Health and Human Services makes the information described in subsection (b)(1) (probably means subsec. (b) of section 6101, which is set out as a note under section 1320a–3 of this title) available to the public under such subsection.”
of this title] shall take effect 1 year after the date of the enactment of this Act [Mar. 23, 2010]."

Pub. L. 111–148, title VI, §6111(c), Mar. 23, 2010, 124 Stat. 717, provided that: "The amendments made by this section [amending this section and section 1396f of this title] shall take effect 1 year after the date of the enactment of this Act [Mar. 23, 2010]."

Amendment by section 6113(b) of Pub. L. 111–148 effective 1 year after Mar. 23, 2010, see section 6113(c) of Pub. L. 111–148, set out as a note under section 1323a–7 of this title.

Pub. L. 111–148, title VI, §6121(c), Mar. 23, 2010, 124 Stat. 721, provided that: "The amendments made by this section [amending this section and section 1396f of this title] shall take effect 1 year after the date of the enactment of this Act [Mar. 23, 2010]."

EFFECTIVE DATE OF 2003 AMENDMENT

EFFECTIVE DATE OF 2000 AMENDMENT
Pub. L. 106–554, §1(a)(6) [title IX, §941(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–586, provided that: "The amendments made by this section [amending this section and section 1396f of this title] shall apply with respect to services furnished on or after July 1, 1998."

Pub. L. 106–554, §4008(h)(1)(K) of Pub. L. 101–508 provided that: "The amendments made by subsection (f) [amending this section and enacting provisions set out as a note above], the amendments made by this subsection [probably means this amendment, amending this section] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203]."

Section 4206(e)(1) of Pub. L. 101–508 provided that: "The amendments made by subsections (a) and (d) [amending this section and sections 1395x and 1396yy of this title] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203]."

EFFECTIVE DATE OF 1997 AMENDMENT
Section 4362(d) of Pub. L. 105–33 provided that: "The amendments made by this section [amending this section and sections 1395f, 1395l, 1395u, 1395x, 1395y, 1396r, 1396cc, 1396cc–1, 1396cc–2, 1396cc–3, 1396cc–4, 1396cc–5, and 1396cc–6 of this title] are effective for cost reporting periods beginning on or after July 1, 1996, except that the amendments made by subsection (b) [amending this section and sections 1395f, 1395l, 1395u, 1395x, 1395y, 1396r, 1396cc, 1396cc–1, 1396cc–2, 1396cc–3, 1396cc–4, 1396cc–5, and 1396cc–6 of this title] shall apply to items and services furnished on or after July 1, 1998."

EFFECTIVE DATE OF 1994 AMENDMENT
Section 106(c)(1)(B) of Pub. L. 103–432 provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508]."

Section 106(c)(2)(B) of Pub. L. 103–432 provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of OBRA–1987 [Pub. L. 100–203]."

Section 106(c)(3)(B) of Pub. L. 103–432 provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect January 1, 1995."

Section 106(c)(4)(C) of Pub. L. 103–432 provided that: "The amendments made by this subsection [amending this section and provisions set out as a note below] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508]."

EFFECTIVE DATE OF 1992 AMENDMENT
Amendment by Pub. L. 102–375 inapplicable with respect to fiscal year 1992, see section 4(b) of Pub. L. 102–171, set out as a note under section 3001 of this title.

Amendment by Pub. L. 102–375 inapplicable with respect to fiscal year 1992, see section 4003(b)(6) of Pub. L. 102–375, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT
Section 4008(b)(1)(F)(ii) of Pub. L. 101–508, as amended by Pub. L. 102–372, title I, §106(d)(6), Oct. 31, 1994, 108 Stat. 4407, provided that: "(I) The amendments made by clause (i) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203], except that a State may not approve a training and competency evaluation program offered by or in a skilled nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1989—

Amendment by Pub. L. 106–554, §1(a)(6) [title IX, §941(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–586, provided that: "The amendments made by this section [amending this section and sections 1395cc, 1395x, 1395y, 1395cc–1, 1395cc–2, 1395cc–3, 1395cc–4, 1395cc–5, and 1395cc–6 of this title] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203]."

EFFECTIVE DATE OF 1989 AMENDMENT
Section 6001(b)(6) of Pub. L. 101–239 provided that: "(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and section 1396r of this title] shall apply to nurse aide training and competency evaluation programs, and nurse aide competency evaluation programs, offered on or after the end of the 90-day period beginning on the date of the enactment of this Act [Dec. 19, 1989], but shall not affect competency evaluations conducted under programs offered before the end of such period.

Section 6001(d)(6) of Pub. L. 101–239 provided that: "(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and sections 1396l and 1396r of this title] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203]."

"(B) EXCEPTION.—The amendment made by paragraph (1) [amending section 1396r of this title] shall take effect on the date of the enactment of this Act [Dec. 19, 1989]."
EFFECTIVE DATE OF 1988 AMENDMENTS

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

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–360, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBOA; Effective Date note under section 166 of "Title I, General Provisions.

EFFECTIVE DATE


"(a) New Requirements and Survey and Certification Process.—Except as otherwise specifically provided in section 1819 of the Social Security Act [this section], the amendments made by sections 4201 and 4202 [enacting and amending this section and amending sections 1395x, 1395aa, 1395tt, and 1395yy of this title] (relating to skilled nursing facility requirements and survey and certification requirements) shall apply to services furnished on or after October 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date.

"(b) Enforcement.—(1) Except as otherwise specifically provided in section 1819 of the Social Security Act [this section], the amendments made by section 4203 of this Act [amending this section and section 1395aa of this title] apply January 1, 1988, without regard to whether regulations to implement such amendments are promulgated by such date.

"(2) In applying the amendments made by section 4203 of this Act for services furnished by a skilled nursing facility before October 1, 1990, any reference to a requirement of subsection (b), (c), or (d), of section 1819 of the Social Security Act is deemed a reference to the provisions of section 1861(j) of such Act [section 1395x(j) of this title].

"(c) Waiver of Paperwork Reduction.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this part [part 1 of subtitle C (§§ 4201–4206), enacting this section, amending this section and sections 1395x, 1395aa, 1395tt, and 1395yy of this title] and, enacting provisions set out as notes under this section] and implementing the amendments made by this part.

GUIDANCE TO STATES ON FORM 2567 STATE INSPECTION REPORTS AND COMPLAINT INVESTIGATION REPORTS

Pub. L. 111–148, title VI, § 6103(e), Mar. 23, 2010, 124 Stat. 720, provided that:

"(a) In General.—The Secretary [of Health and Human Services] shall conduct 2 demonstration projects, 1 for the development of best practices in skilled nursing facilities and nursing facilities that are involved in the culture change movement (including dementia). Such projects shall each be implemented not later than 1 year after the date of enactment of this Act [Mar. 23, 2010], the Secretary [of Health and Human Services] shall ensure that the Department of Health and Human Services, as part of the information provided for comparison of nursing facilities on the Nursing Home Compare website develops and includes a consumer rights information page that contains links to descriptions of, and information with respect to, the following:

"(1) The documentation on nursing facilities that is available to the public.

"(2) General information and tips on choosing a nursing facility that meets the needs of the individual.

"(3) General information on consumer rights with respect to nursing facilities.

"(4) The nursing facility survey process (on a national and State-specific basis).

"(5) On a State-specific basis, the services available through the State long-term care ombudsman for such State.''

DEVELOPMENT OF NURSING HOME COMPARE WEBSITE


"(a) In General.—The Secretary [of Health and Human Services] shall conduct 2 demonstration projects, 1 for the development of best practices in skilled nursing facilities and nursing facilities that are involved in the culture change movement (including dementia). Such projects shall each be implemented not later than 1 year after the date of enactment of this Act [Mar. 23, 2010], the Secretary [of Health and Human Services] shall ensure that the Department of Health and Human Services, as part of the information provided for comparison of nursing facilities on the Nursing Home Compare website develops and includes a consumer rights information page that contains links to descriptions of, and information with respect to, the following:

"(1) The documentation on nursing facilities that is available to the public.

"(2) General information and tips on choosing a nursing facility that meets the needs of the individual.

"(3) General information on consumer rights with respect to nursing facilities.

"(4) The nursing facility survey process (on a national and State-specific basis).

"(5) On a State-specific basis, the services available through the State long-term care ombudsman for such State.''

NATIONAL DEMONSTRATION PROJECTS ON CULTURE CHANGE AND USE OF INFORMATION TECHNOLOGY IN NURSING HOMES


"(a) In General.—The Secretary [of Health and Human Services] shall conduct 2 demonstration projects, 1 for the development of best practices in skilled nursing facilities and nursing facilities that are involved in the culture change movement (including dementia). Such projects shall each be implemented not later than 1 year after the date of enactment of this Act [Mar. 23, 2010], the Secretary [of Health and Human Services] shall ensure that the Department of Health and Human Services, as part of the information provided for comparison of nursing facilities on the Nursing Home Compare website develops and includes a consumer rights information page that contains links to descriptions of, and information with respect to, the following:

"(1) The documentation on nursing facilities that is available to the public.

"(2) General information and tips on choosing a nursing facility that meets the needs of the individual.

"(3) General information on consumer rights with respect to nursing facilities.

"(4) The nursing facility survey process (on a national and State-specific basis).

"(5) On a State-specific basis, the services available through the State long-term care ombudsman for such State.''

"(b) Duration.—The demonstration projects shall each be conducted for a period not to exceed 3 years.

"(c) Consideration of Special Needs of Residents.—Each demonstration project conducted under this section shall take into consideration the special needs of residents of skilled nursing facilities and nursing facilities who have cognitive impairment, including dementia.

"(d) Definitions.—In this section:

"(1) Nursing Facility.—The term 'nursing facility' has the meaning given such term in section 1919(a) of the Social Security Act (42 U.S.C. 1395i–3(a)).

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

"(3) Skilled Nursing Facility.—The term 'skilled nursing facility' has the meaning given such term in section 1819(a) of the Social Security Act (42 U.S.C. 1395l–3(a)).

"(4) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out this section.
“(1) REPORT.—Not later than 9 months after the completion of the demonstration project, the Secretary shall submit to Congress a report on such project, together with recommendations for such legislation and administrative action as the Secretary determines appropriate.”

**Review and Report on Current Standards of Practice for Pharmacy Services Provided to Patients in Nursing Facilities**


“(1) REVIEW.—

(A) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall conduct a thorough review of the current standards of practice for pharmacy services provided to patients in nursing facilities;

(B) SPECIFIC MATTERS REVIEWED.—In conducting the review under subparagraph (A), the Secretary shall—

(i) assess the current standards of practice, clinical services, and other service requirements generally used for pharmacy services in long-term care settings; and

(ii) evaluate the impact of those standards with respect to patient safety, reduction of medication errors and quality of care.

“(2) REPORT.—

(A) IN GENERAL.—Not later than the date that is 18 months after the date of the enactment of this Act [Dec. 8, 2003], the Secretary shall submit a report to Congress on the study conducted under paragraph (1)(A).

(B) CONTENTS.—The report submitted under subparagraph (A) shall contain—

(i) a description of the plans of the Secretary to implement the provisions of this Act [see Tables for classification] in a manner consistent with applicable State and Federal laws designed to protect the safety and quality of care of nursing facility patients; and

(ii) recommendations regarding necessary actions and appropriate reimbursement to ensure the provision of prescription drugs to Medicare beneficiaries residing in nursing facilities in a manner consistent with existing patient safety and quality of care standards under applicable State and Federal laws.

**Study and Report Regarding State Licensure and Certification Standards and Respiratory Therapy Competency Examinations**


“(a) STUDY.—The Secretary of Health and Human Services shall conduct a study that—

(i) identifies variations in State licensure and certification standards for health care providers (including nursing and allied health professionals) and other individuals providing respiratory therapy in skilled nursing facilities;

(ii) examines State requirements relating to respiratory therapy competency examinations for such providers and individuals; and

(iii) determines whether regular respiratory therapy competency examinations or certifications should be required under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for such providers and individuals.

“(b) REPORT.—Not later than 18 months after the date of enactment of this Act [Nov. 29, 1999], the Secretary of Health and Human Services shall submit to Congress a report on the results of the study conducted under this section, together with any recommendations for legislation that the Secretary determines to be appropriate as a result of such study.”

**Retroactive Review**

Section 475(c) of Pub. L. 105–33 provided that: ‘‘The procedures developed by a State under the amendments made by subsection(s) (a) and (b) [amending this section and section 1396r of this title] shall permit an individual to petition for a review of any finding made by a State under section 1819(b)(1)(C) or 1919(h)(1)(C) of the Social Security Act [42 U.S.C. 1395–3(g)(1)(C) or 1396g(1)(C) after January 1, 1995].’’

**Study and Report on Requiring for Nursing Facilities and Renal Dialysis Facilities**


“(1) STUDY.—The Secretary of Health and Human Services shall provide for—

(A) a study concerning the effectiveness and appropriateness of the current mechanisms for surveying and certifying skilled nursing facilities for compliance with the conditions and requirements of sections 1819 and 1919 of the Social Security Act [this section and section 1395x(j) of this title] and nursing facilities for compliance with the conditions of section 1019 of such Act [section 1396 of this title], and

(B) a study concerning the effectiveness and appropriateness of the current mechanisms for surveying and certifying renal dialysis facilities for compliance with the conditions and requirements of section 1881 of the Social Security Act [section 1395rr(b) of this title],

“(2) REPORT.—Not later than July 1, 1997, the Secretary shall transmit to Congress a report on each of the studies provided for under paragraph (1). The report on the study under paragraph (1)(A) shall include (and the report on the study under paragraph (1)(B) may include) a specific framework, where appropriate, for implementing a process under which facilities covered under the respective study may be deemed to meet applicable Medicare conditions and requirements if they are accredited by a national accreditation body.”

**Maintaining Regulatory Standards for Certain Services**

Section 4008(h)(2)(O) of Pub. L. 101–568 provided that: ‘‘Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 [Dec. 22, 1987] with respect to services described in clauses (ii), (iv), and (v) of section 1819(b)(4)(A) of the Social Security Act [subsec. (b)(4)(A)(ii), (iv), and (v) of this section] shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.’’

**Nurse Aide Training and Competency Evaluation Programs; Publication of Proposed Regulations**

Section 6901(b)(2) of Pub. L. 101–239 provided that: ‘‘The Secretary of Health and Human Services shall issue proposed regulations to establish the requirements described in sections 1819(f)(2) and 1919(f)(2) of the Social Security Act [subsec. (f)(2) of this section and section 1396f(f)(2) of this title] by not later than 90 days after the date of the enactment of this Act [Dec. 19, 1989].’’

**Nurse Aide Training and Competency Evaluation; Satisfaction of Requirements; Waiver**

Section 6901(b)(4)(B)–(D) of Pub. L. 101–239 provided that:

“(B) A nurse aide shall be considered to satisfy the requirement of sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act [subsec. (b)(5)(A) of this section and section 1396f(b)(5)(A) of this title] of having completed a training and competency evaluation program approved by a State under section 1819(e)(1)(A) or 1919(e)(1)(A) of such Act [subsec. (e)(1)(A) of this section and section 1396e(1)(A) of this title], if such aide would have satisfied such requirement as of July 1,
1989, if a number of hours (not less than 60 hours) were substituted for '75 hours' in sections 1819(f)(2) and 1919(f)(2) of such Act [subsecs. (d)(2) of this section and section 1396r(f)(2) of this title], respectively, and if such aide had received, before July 1, 1989, at least the difference in the number of such hours in supervised practical nurse aide training or in regular in-service nurse aide education.

“(C) A nurse aide shall be considered to satisfy the requirement of sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act (of having completed a training and competency evaluation program approved by a State under section 1819(e)(1)(A) or 1919(e)(1)(A) of such Act), if such aide was found competent (whether or not by the State), before July 1, 1989, after the completion of a course of nurse aide training of at least 100 hours duration.

“(D) With respect to the nurse aide competency evaluation requirements described in sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act, a State may waive such requirements with respect to an individual who can demonstrate to the satisfaction of the State that such individual has served as a nurse aide at one or more facilities of the same employer in the State for at least 24 consecutive months before the date of the enactment of this Act [Dec. 19, 1989].”

EVALUATION AND REPORT ON IMPLEMENTATION OF RESIDENT ASSESSMENT PROCESS

Section 4201(c) of Pub. L. 100–203 provided that: "The Secretary of Health and Human Services shall evaluate, and report to Congress by not later than January 1, 1992, on the implementation of the resident assessment process for residents of skilled nursing facilities under the amendments made by this section [enacting this section and amending sections 1395x, 1395aa, 1395tt, and 1396rr of this title]."

ANNUAL REPORT ON STATUTORY COMPLIANCE AND ENFORCEMENT ACTIONS

Section 4205 of Pub. L. 100–203 provided that: "The Secretary of Health and Human Services shall report to the Congress annually on the extent to which skilled nursing facilities are complying with the requirements of subsections (b), (c), and (d) of section 1819 of the Social Security Act [subsecs. (b), (c), and (d) of this section] (as added by the amendments made by this part) and the number and type of enforcement actions taken by States and the Secretary under section 1819(h) of such Act (as added by section 4203 of this title)."

§ 1395i–3a. Protecting residents of long-term care facilities

(1) National Training Institute for surveyors

(A) In general

The Secretary of Health and Human Services shall enter into a contract with an entity for the purpose of establishing and operating a National Training Institute for Federal and State surveyors. Such Institute shall provide and improve the training of surveyors with respect to investigating allegations of abuse, neglect, and misappropriation of property in programs and long-term care facilities that receive payments under title XVIII or XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.].

(B) Activities carried out by the Institute

The contract entered into under subparagraph (A) shall require the Institute established and operated under such contract to carry out the following activities:

(i) Assess the extent to which State agencies use specialized surveyors for the investigation of reported allegations of abuse, neglect, and misappropriation of property in such programs and long-term care facilities.

(ii) Evaluate how the competencies of surveyors may be improved to more effectively investigate reported allegations of such abuse, neglect, and misappropriation of property, and provide feedback to Federal and State agencies on the evaluations conducted.

(iii) Provide a national program of training, tools, and technical assistance to Federal and State surveyors on investigating reports of such abuse, neglect, and misappropriation of property.

(iv) Develop and disseminate information on best practices for the investigation of such abuse, neglect, and misappropriation of property.

(v) Assess the performance of State complaint intake systems, in order to ensure that the intake of complaints occurs 24 hours per day, 7 days a week (including holidays).

(vi) To the extent approved by the Secretary of Health and Human Services, provide a national 24 hours per day, 7 days a week (including holidays), back-up system to State complaint intake systems in order to ensure optimum national responsiveness to complaints of such abuse, neglect, and misappropriation of property.

(vii) Analyze and report annually on the following:

(I) The total number and sources of complaints of such abuse, neglect, and misappropriation of property.

(II) The extent to which such complaints are referred to law enforcement agencies.

(III) General results of Federal and State investigations of such complaints.

(viii) Conduct a national study of the cost to State agencies of conducting complaint investigations of skilled nursing facilities and nursing facilities under sections 1819 and 1919, respectively, of the Social Security Act (42 U.S.C. 1395i–3; 1396r), and making recommendations to the Secretary of Health and Human Services with respect to options to increase the efficiency and cost-effectiveness of such investigations.

(C) Authorization

There are authorized to be appropriated to carry out this paragraph, for the period of fiscal years 2011 through 2014, $12,000,000.

(2) Grants to State survey agencies

(A) In general

The Secretary of Health and Human Services shall make grants to State agencies that perform surveys of skilled nursing facilities or nursing facilities under sections 1819 or 1919, respectively, of the Social Security Act (42 U.S.C. 1395i–3; 1396r), and the Social Security Act (42 U.S.C. 1395i–3; 1396r)).

(B) Use of funds

A grant awarded under subparagraph (A) shall be used for the purpose of designing and implementing complaint investigations systems that—
(a) Establishment

Any State that submits an application in accordance with subsection (b) of this section may establish a medicare rural hospital flexibility program described in subsection (c) of this section.

(b) Application

A State may establish a medicare rural hospital flexibility program described in subsection (c) of this section if the State submits to the Secretary at such time and in such form as the Secretary may require an application containing—

(1) assurances that the State—
   (A) has developed, or is in the process of developing, a State rural health care plan that—
   (i) provides for the creation of 1 or more rural health networks (as defined in subsection (d) of this section) in the State;
   (ii) promotes regionalization of rural health services in the State; and
   (iii) improves access to hospital and other health services for rural residents of the State; and
   (B) has developed the rural health care plan described in subparagraph (A) in consultation with the hospital association of the State, rural hospitals located in the State, and the State Office of Rural Health (or, in the case of a State in the process of developing such plan, that assures the Secretary that the State will consult with its State hospital association, rural hospitals located in the State, and the State Office of Rural Health in developing such plan);

(2) assurances that the State has designated (consistent with the rural health care plan described in paragraph (1)(A)), or is in the process of designating, rural nonprofit or public hospitals or facilities located in the State as critical access hospitals; and

(3) such other information and assurances as the Secretary may require.

(c) Medicare rural hospital flexibility program described

(1) In general

A State that has submitted an application in accordance with subsection (b) of this section, may establish a medicare rural hospital flexibility program that provides that—

(A) the State shall develop at least 1 rural health network (as defined in subsection (d) of this section) in the State; and

(B) at least 1 facility in the State shall be designated as a critical access hospital in accordance with paragraph (2).

(2) State designation of facilities

(A) In general

A State may designate 1 or more facilities as a critical access hospital in accordance with subparagraphs (B), (C), and (D).

(B) Criteria for designation as critical access hospital

A State may designate a facility as a critical access hospital if the facility—

(I) is a hospital that is located in a county (or equivalent unit of local government) in a rural area (as defined in section 1395ww(d)(2)(D) of this title) or is treated as being located in a rural area pursuant to section 1395ww(d)(8)(E) of this title, and that—
   (i) is located more than a 35-mile drive (or, in the case of mountainous terrain or in areas with only secondary roads available, a 15-mile drive) from a hospital, or another facility described in this subsection; or
   (II) is certified before January 1, 2006, by the State as being a necessary provider of health care services to residents in the area;

(ii) makes available 24-hour emergency care services that a State determines are

(iii) optimizes the collaboration between local authorities, consumers, and providers, including—
   (I) such State agency;
   (II) the State Long-Term Care Ombudsman;
   (III) local law enforcement agencies;
   (IV) advocacy and consumer organizations;
   (V) State aging units;
   (VI) Area Agencies on Aging; and
   (VII) other appropriate entities.

(C) Authorization

There are authorized to be appropriated to carry out this paragraph, for each of fiscal years 2011 through 2014, $5,000,000.


REFERENCES IN TEXT

The Social Security Act, referred to in par. (1)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVIII and XIX of the Act are classified generally to this subchapter (§1396 et seq.) and subchapter XIX (§1396 et seq.), respectively, of this chapter. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

Section was enacted as part of the Elder Justice Act of 2009 and also as part of the Patient Protection and Affordable Care Act, and not as part of the Social Security Act which comprises this chapter.

DEFINITIONS

Pub. L. 111–148, title VI, §6702, Mar. 23, 2010, 124 Stat. 782, provided that: ‘‘Except as otherwise specifically provided, any term that is defined in section 2011 of the Social Security Act [42 U.S.C. 1397j] (as added by section 6703(a)) and is used in this subtitle [subtitle H (§§6701–6703) of title VI of Pub. L. 111–148, enacting this section and sections 1320b–25, 1397l–1, 1397l–2, 1397m to 1397m–5 of this title, amending sections 602, 694, 622, 671 to 673, 1332a–7, 1328a–7a, 1397, 1397a, 1397c to 1397e, and 1397g of this title, and enacting provisions set out as notes under sections 602 and 1305 of this title] has the meaning given such term by such section.’’

§1395i–4. Medicare rural hospital flexibility program

(a) Establishment

Any State that submits an application in accordance with subsection (b) of this section may establish a medicare rural hospital flexibility program described in subsection (c) of this section.

(b) Application

A State may establish a medicare rural hospital flexibility program described in subsection (c) of this section if the State submits to the Secretary at such time and in such form as the Secretary may require an application containing—

(1) promptly prioritize complaints in order to ensure a rapid response to the most serious and urgent complaints;

(ii) respond to complaints with optimum effectiveness and timeliness; and

(iii) optimize the collaboration between local authorities, consumers, and providers, including—

(I) such State agency;

(II) the State Long-Term Care Ombudsman;

(III) local law enforcement agencies;

(IV) advocacy and consumer organizations;

(V) State aging units;

(VI) Area Agencies on Aging; and

(VII) other appropriate entities.
necessary for ensuring access to emergency care services in each area served by a critical access hospital;

(iii) provides not more than 25 acute care inpatient beds (meeting such standards as the Secretary may establish) for providing inpatient care for a period that does not exceed, as determined on an annual, average basis, 96 hours per patient;

(iv) meets such staffing requirements as would apply under section 1395x(e) of this title to a hospital located in a rural area, except that—

(I) the facility need not meet hospital standards relating to the number of hours during a day, or days during a week, in which the facility must be open and fully staffed, except insofar as the facility is required to make available emergency care services as determined under clause (ii) and must have nursing services available on a 24-hour basis, but need not otherwise staff the facility except when an inpatient is present;

(II) the facility may provide any services otherwise required to be provided by a full-time, on site dietitian, pharmacist, laboratory technician, medical technologist, and radiological technologist on a part-time, off site basis under arrangements as defined in section 1395x(w)(1) of this title; and

(III) the inpatient care described in clause (ii) may be provided by a physician assistant, nurse practitioner, or clinical nurse specialist subject to the oversight of a physician who need not be present in the facility; and

(v) meets the requirements of section 1395x(aa)(2)(I) of this title.

(C) Recently closed facilities

A State may designate a facility as a critical access hospital if the facility—

(i) is licensed by the State as a health clinic or a health center—

(I) a psychiatric unit of the hospital that is a distinct part of the hospital,

(ii) was a hospital that ceased operations—

(III) the inpatient care described in subparagraph (B) may be provided by a physician assistant, nurse practitioner, or clinical nurse specialist subject to the oversight of a physician who need not be present in the facility; and

(v) meets the requirements of section 1395x(aa)(2)(I) of this title.

(ii) Limitation on number of beds

The total number of beds that may be established under clause (i) for a distinct part unit may not exceed 10.

(iii) Exclusion of beds from bed count

In determining the number of beds of a critical access hospital for purposes of applying the bed limitations referred to in subparagraph (B)(iii) and subsection (f) of this section, the Secretary shall not take into account any bed established under clause (i).

(iv) Effect of failure to meet requirements

If a psychiatric or rehabilitation unit established under clause (i) does not meet the requirements described in such clause with respect to a cost reporting period, no payment may be made under this subchapter to the hospital for services furnished in such unit during such period. Payment to the hospital for services furnished in the unit may resume only after the hospital has demonstrated to the Secretary that the unit meets such requirements.

(d) “Rural health network” defined

(1) In general

In this section, the term “rural health network” means, with respect to a State, an organization consisting of—

(A) at least 1 facility that the State has designated or plans to designate as a critical access hospital; and

(B) at least 1 hospital that furnishes acute care services.

(2) Agreements

(A) In general

Each critical access hospital that is a member of a rural health network shall have an agreement with respect to each item described in subparagraph (B) with at least 1 hospital that is a member of the network.

(B) Items described

The items described in this subparagraph are the following:

(i) Patient referral and transfer.

(ii) The development and use of communications systems including (where feasible)—

(II) systems for electronic sharing of patient data.

(iii) The provision of emergency and non-emergency transportation among the facility and the hospital.
(C) Credentialing and quality assurance

Each critical access hospital that is a member of a rural health network shall have an agreement with respect to credentialing and quality assurance with at least—

(1) 1 hospital that is a member of the network;
(2) 1 peer review organization or equivalent entity; or
(3) 1 other appropriate and qualified entity identified in the State rural health care plan.

(e) Certification by Secretary

The Secretary shall certify a facility as a critical access hospital if the facility—

(1) is located in a State that has established a medicare rural hospital flexibility program in accordance with subsection (c) of this section;
(2) is designated as a critical access hospital by the State in which it is located; and
(3) meets such other criteria as the Secretary may require.

(f) Permitting maintenance of swing beds

Nothing in this section shall be construed to prohibit a State from certifying a critical access hospital solely because, at the time the facility applies to the State for designation as a critical access hospital, the facility's inpatient hospital facilities are used for the provision of extended care services, so long as the total number of beds that may be used at any time for the furnishing of either such services or acute care inpatient services does not exceed 25 beds. For purposes of the previous sentence, any bed of a unit of the facility that is licensed as a distinct-part skilled nursing facility at the time the facility applies to the State for designation as a critical access hospital shall not be counted.

(g) Grants

(1) Medicare rural hospital flexibility program

The Secretary may award grants to States that have submitted applications in accordance with subsection (b) of this section for—

(A) engaging in activities relating to planning and implementing a rural health care plan;
(B) engaging in activities relating to planning and implementing rural health networks;
(C) designating facilities as critical access hospitals; and
(D) providing support for critical access hospitals for quality improvement, quality reporting, performance improvements, and benchmarking.

(2) Rural emergency medical services

(A) In general

The Secretary may award grants to States that have submitted applications in accordance with subparagraph (B) of this section for the provision of rural emergency medical services.

(B) Application

An application is in accordance with this subparagraph if the State submits to the Secretary at such time and in such form as the Secretary may require an application containing the assurances described in subparagraphs (A)(ii), (A)(iii), and (B) of subsection (b)(1) of this section and paragraph (3) of that subsection.

(3) Upgrading data systems

(A) Grants to hospitals

The Secretary may award grants to hospitals that have submitted applications in accordance with subparagraph (C) to assist eligible small rural hospitals in meeting the costs of implementing data systems required to meet requirements established under the medicare program pursuant to amendments made by the Balanced Budget Act of 1997 and to assist such hospitals in participating in delivery system reforms under the provisions of and amendments made by the Patient Protection and Affordable Care Act, such as value-based purchasing programs, accountable care organizations under section 1395jj of this title, the National pilot program on payment bundling under section 1395cc–4 of this title, and other delivery system reform programs determined appropriate by the Secretary.

(B) Eligible small rural hospital defined

For purposes of this paragraph, the term “eligible small rural hospital” means a non-Federal, short-term general acute care hospital that—

(1) is located in a rural area (as defined for purposes of section 1395ww(d) of this title); and
(2) has less than 50 beds.

(C) Application

A hospital seeking a grant under this paragraph shall submit an application to the Secretary on or before such date and in such form and manner as the Secretary specifies.

(D) Amount of grant

A grant to a hospital under this paragraph may not exceed $50,000.

(E) Use of funds

A hospital receiving a grant under this paragraph may use the funds for the purchase of computer software and hardware, the education and training of hospital staff on computer information systems, to offset costs related to the implementation of prospective payment systems and to participate in delivery system reforms under the provisions of and amendments made by the Patient Protection and Affordable Care Act, such as value-based purchasing programs, accountable care organizations under section 1395jj of this title, the National pilot program on payment bundling under section 1395cc–4 of this title, and other delivery system reform programs determined appropriate by the Secretary.
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(4) Additional requirements with respect to FLEX grants

With respect to grants awarded under paragraph (1) or (2) from funds appropriated for fiscal year 2005 and subsequent fiscal years—

(A) Consultation with the state hospital association and rural hospitals on the most appropriate ways to use grants

A State shall consult with the hospital association of such State and rural hospitals located in such State on the most appropriate ways to use the funds under such grant.

(B) Limitation on use of grant funds for administrative expenses

A State may not expend more than the lesser of—

(i) 15 percent of the amount of the grant for administrative expenses; or

(ii) the State’s federally negotiated indirect rate for administering the grant.

(5) Use of funds for Federal administrative expenses

Of the total amount appropriated for grants under paragraphs (1) and (2) for a fiscal year (for each of fiscal years 2005 through 2008) and, of the total amount appropriated for grants under paragraphs (1), (2), and (6) for a fiscal year (beginning with fiscal year 2009), up to 5 percent of such amount shall be available to the Health Resources and Services Administration for purposes of administering such grants.

(6) Providing mental health services and other health services to veterans and other residents of rural areas

(A) Grants to States

The Secretary may award grants to States that have submitted applications in accord-
mitted by States in which veterans make up a high percentage (as determined by the Secretary) of the total population of the State. Such consideration shall be given without regard to the number of veterans of Operation Iraqi Freedom and Operation Enduring Freedom living in the areas in which mental health services and other health care services would be delivered under the application.

(C) Coordination with VA

The Secretary shall, as appropriate, consult with the Director of the Office of Rural Health of the Department of Veterans Affairs in awarding and administering grants to States under subparagraph (A).

(D) Use of funds

A State awarded a grant under this paragraph may, as appropriate, use the funds to reimburse providers of services described in subparagraph (A) to individuals described in that subparagraph.

(E) Limitation on use of grant funds for administrative expenses

A State awarded a grant under this paragraph may not expend more than 15 percent of the amount of the grant for administrative expenses.

(F) Independent evaluation and final report

The Secretary shall provide for an independent evaluation of the grants awarded under subparagraph (A). Not later than 1 year after the date on which the last grant is awarded to a State under such subparagraph, the Secretary shall submit a report to Congress on such evaluation. Such report shall include an assessment of the impact of such grants on increasing the delivery of mental health services and other health services to veterans of the United States Armed Forces living in rural areas (as so defined and including such areas that are rural census tracks), with particular emphasis on the impact of such grants on the delivery of such services to veterans of Operation Enduring Freedom and Operation Iraqi Freedom, and to other individuals living in such rural areas.

(7) Critical access hospitals transitioning to skilled nursing facilities and assisted living facilities

(A) Grants

The Secretary may award grants to eligible critical access hospitals that have submitted applications in accordance with subparagraph (B) for assisting such hospitals in the transition to skilled nursing facilities and assisted living facilities.

(B) Application

An applicable critical access hospital seeking a grant under this paragraph shall submit an application to the Secretary on or before such date and in such form and manner as the Secretary specifies.

(C) Additional requirements

The Secretary may not award a grant under this paragraph to an eligible critical access hospital unless—

(i) local organizations or the State in which the hospital is located provides matching funds; and

(ii) the hospital provides assurances that it will surrender critical access hospital status under this subchapter within 180 days of receiving the grant.

(D) Amount of grant

A grant to an eligible critical access hospital under this paragraph may not exceed $1,000,000.

(E) Funding

There are appropriated from the Federal Hospital Insurance Trust Fund under section 1395i of this title for making grants under this paragraph, $5,000,000 for fiscal year 2006.

(F) Eligible critical access hospital defined

For purposes of this paragraph, the term “eligible critical access hospital” means a critical access hospital that has an average daily acute census of less than 0.5 and an average daily swing bed census of greater than 10.0.

(h) Grandfathering provisions

(1) In general

Any medical assistance facility operating in Montana and any rural primary care hospital designated by the Secretary under this section prior to August 5, 1997, shall be deemed to have been certified by the Secretary under subsection (c) of this section as a critical access hospital if such facility or hospital is otherwise eligible to be designated by the Secretary as a critical access hospital under subsection (c) of this section.

(2) Continuation of medical assistance facility and rural primary care hospital terms

Notwithstanding any other provision of this subchapter, with respect to any medical assistance facility or rural primary care hospital described in paragraph (1), any reference in this subchapter to a “critical access hospital” shall be deemed to be a reference to a “medical assistance facility” or “rural primary care hospital”.

(3) State authority to waive 35-mile rule

In the case of a facility that was designated as a critical access hospital before January 1, 2006, and was certified by the State as being a necessary provider of health care services to residents in the area under subsection (c)(2)(B)(i)(II) of this section, as in effect before such date, the authority under such subsection with respect to any redesignation of such facility shall continue to apply notwithstanding the amendment made by section 405(h)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

(i) Waiver of conflicting part A provisions

The Secretary is authorized to waive such provisions of this part and part E of this subchapter as are necessary to conduct the program established under this section.

(j) Authorization of appropriations

There are authorized to be appropriated from the Federal Hospital Insurance Trust Fund for
making grants to all States under subsection (g) of this section, $25,000,000 in each of the fiscal years 1998 through 2002, for making grants to all States under paragraphs (1) and (2) of subsection (g) of this section, $35,000,000 in each of fiscal years 2005 through 2008, for making grants to all States under paragraphs (1) and (2) of subsection (g), $55,000,000 in each of fiscal years 2009 and 2010, for making grants to all States under paragraph (6) of subsection (g), $50,000,000 in each of fiscal years 2009 and 2010, to remain available until expended and for making grants to all States under subsection (g), such sums as may be necessary in each of fiscal years 2011 and 2012, to remain available until expended.


REFERENCES IN TEXT


For complete classification of this Act to the Code, see Tables.


For complete classification of this Act to the Code, see Short Title note set out under section 18001 of this title and Tables.


AMENDMENTS

2010—Subsec. (g)(3)(A). Pub. L. 111–148, §3129(b)(1), inserted “and to assist such hospitals in participating in delivery system reforms under the provisions of and amendments made by the Patient Protection and Affordable Care Act, such as value-based purchasing programs, accountable care organizations under section 1397jjj of this title, the National pilot program on payment bundling under section 1395ccc–4 of this title, and other delivery system reform programs determined appropriate by the Secretary” before period at end.

Subsec. (g)(3)(E), Pub. L. 111–148, §3129(b)(2), substituted “, to offset” for “, and to offset” and inserted “and to participate in delivery system reforms under the provisions of and amendments made by the Patient Protection and Affordable Care Act, such as value-based purchasing programs, accountable care organizations under section 1397jjj of this title, the National pilot program on payment bundling under section 1395ccc–4 of this title, and other delivery system reform programs determined appropriate by the Secretary” before period at end.

Subsec. (j). Pub. L. 111–148, §3129(a), substituted “2010, for” for “2010, and for” and inserted “and for making grants to all States under subsection (g), such sums as may be necessary in each of fiscal years 2011 and 2012, to remain available until expended” before period at end.


Subsec. (g)(5). Pub. L. 110–275, §121(b)(2), which directed insertion of “and, of the total amount appropriated for grants under paragraphs (1), (2), and (6) for a fiscal year (beginning with fiscal year 2000)” after “2008”, was executed by making the insertion after “2008” to reflect the probable intent of Congress and the amendment by section 121(b)(1) of Pub. L. 110–275. See note below.

Pub. L. 110–275, §121(b)(1), substituted “for each of fiscal years 2005 through 2008” for “beginning with fiscal year 2005”.


Subsec. (g)(7). Pub. L. 110–275, §121(e), added par. (7).

Subsec. (j). Pub. L. 110–275, §121(c), substituted “2002, for” for “2002, and for” and inserted “, for making grants to all States under paragraphs (1) and (2) of subsection (g), $55,000,000 in each of fiscal years 2009 and 2010, to remain available until expended” before period at end.


Subsec. (c)(2)(B)(iii). Pub. L. 108–173, §405(e)(1), substituted “25” for “15 (or, in the case of a facility under an agreement described in subsection (f) of this section, 25)”.


Subsec. (f). Pub. L. 108–173, §405(e)(2), struck out “and the number of beds used at any time for acute care inpatient services does not exceed 15 beds” after “does not exceed 15 beds”.


Subsec. (i). Pub. L. 108–173, §405(f)(1), inserted before period at end “, and for making grants to all States under paragraphs (1) and (2) of subsection (g) of this section, $35,000,000 in each of fiscal years 2005 through 2008”.

1999—Subsec. (c)(2)(A). Pub. L. 106–113, §1000(a)(6) [title IV, §403(c)(1)], substituted “subparagraphs (B), (C), and (D)” for “subparagraph (B)”.

Subsec. (c)(2)(B)(i). Pub. L. 106–113, §1000(a)(6) [title IV, §403(b)(2)], substituted “hospital” for “nonprofit or public hospital”.

Pub. L. 106–113, §1000(a)(6) [title IV, §403(b)(2)], substituted “is treated as being located in a rural area pursuant to section 1395ww(d)(8)(E) of this title” after “section 1395ww(d)(2)(D) of this title”, and inserted “and is located in a county (or equivalent unit of local government) in a rural area (as defined in section 1395ww(d)(2)(D) of this title)”.

Pub. L. 106–113, §1000(a)(6) [title III, §321(a)], substituted “that is located in a county (or equivalent unit of local government) in a rural area (as defined in section 1395ww(d)(2)(D) of this title)” after “section 1395ww(d)(2)(D) of this title”.

Subsec. (c)(2)(B)(ii). Pub. L. 106–113, §1000(a)(6) [title IV, §403(a)(1)], substituted “for a period that does not exceed, as determined on an annual, average basis, 96 hours per patient” for “for a period not to exceed 96 hours (unless a longer period is required because transfer to a hospital is precluded because of inclement weather or other emergency conditions), except that a peer review organization or equivalent entity may, on request, waive the 96-hour restriction on a case-by-case basis”.

Subsec. (c)(2)(C), (D). Pub. L. 106–113, §1000(a)(6) [title IV, §403(c)(2)], added subpars. (C) and (D).
§ 409, added par. (3).

The medicare rural hospital flexibility program for providing access to essential health care may be expanded to include hospitals located in rural areas, as defined in section 1395ww(d)(2)(D) of this title for the purpose of providing inpatient care for a period not to exceed 72 hours (unless a longer period is required because transfer to a hospital is precluded because of inclement weather or other emergency conditions) to patients requiring stabilization before discharge or transfer to a hospital.

Subsec. (e)(1). Pub. L. 103–432, § 102(b)(1)(A)(i), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: “is located in a rural area (as defined in section 1395ww(d)(2)(D) of this title);”.

Subsec. (e)(1)(A). Pub. L. 103–432, § 102(b)(1)(A)(ii), substituted “except in the case of a hospital located in an urban area, is located” for “is located” in introductory provisions, substituted “or (ii)” for “(ii)”, and struck out “or (iii) is located in an urban area that meets the criteria for classification as a regional referral center under such section,” after “section 1395ww(d)(b)(C) of this title.”.

Subsec. (e)(2) to (6). Pub. L. 103–432, § 102(b)(1)(A)(i), redesignated pars. (2) to (6) as (1) to (5), respectively.

Subsec. (f)(1)(F). Pub. L. 103–432, § 102(a)(3), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “provides not more than 6 inpatient beds (meeting such conditions as the Secretary may establish) for providing inpatient care for a period not to exceed 72 hours (unless a longer period is required because transfer to a hospital is precluded because of inclement weather or other emergency conditions) to patients requiring stabilization before discharge or transfer to a hospital.”

Subsec. (f)(1)(H). Pub. L. 103–432, § 102(f), inserted before period at end “, except that in determining whether a facility meets the requirements of this subparagraph, subparagraphs (E) and (F) of that paragraph shall be applied as if any reference to a ‘physician’ is a reference to a physician as defined in section 1395ww(d)(2)(D) of this title.”.

Subsec. (f)(3). Pub. L. 103–432, § 102(c), substituted “because, at the time the facility applies to the State for designation as a rural primary care hospital, there is in effect an agreement between the facility and the Secretary under section 1395tt of this title under which the facility’s inpatient hospital facilities are used for the furnishing of extended care services, except that the number of beds used for the furnishing of such services may not exceed the number of licensed inpatient beds at the time the facility applies to the State for such designation (minus the number of inpatient beds used for providing inpatient care pursuant to paragraph (1)(F)).” For purposes of the previous sentence, the number of beds of the facility used for the furnishing of extended care services shall not include any beds of a unit of the facility that is licensed as a distinct-part skilled nursing facility at the time the facility applies to the State for designation as a rural primary care hospital for “because the facility has entered into an agreement with the Secretary under section 1395tt of this title under which the facility’s inpatient hospital facilities may be used for the furnishing of extended care services.”


Subsec. (g)(1)(A). Pub. L. 103–432, § 102(a)(2)(B)(ii), in cl. (i) inserted “(except as provided in subsection (k) of this section)” and in cl. (ii) inserted “or subsection (k) of this section”.


Subsec. (h)(2)(A). Pub. L. 103–432, § 102(b)(2)(B)(ii), in cl. (i) inserted “(except as provided in subsection (k) of this section)” and in cl. (ii) inserted “or subsection (k) of this section”.


Subsec. (j). Pub. L. 101–508, § 4008(m)(2)(B)(iii), inserted “and part C of this subchapter” after “this part”.

Subsec. (B). Pub. L. 101–508, § 4008(d)(2), which directed the substitution of “is a hospital (or, in the case of a facility that closed during the 12-month period that ends on the date the facility applies for such designation, at the time the facility closed),’’ for “is a hospital,” was executed by making the substitution for “is a hospital” to reflect the probable intent of Congress.

Subsec. (g)(1)(A)(ii). Pub. L. 101–508, § 4008(m)(2)(B)(i), substituted “(except as provided in subsection (k) of this section)”.

Subsec. (h). Pub. L. 101–508, § 4008(m)(2)(B)(ii), inserted “and part C of this subchapter” after “this part”.


DEMONSTRATION PROJECT ON COMMUNITY HEALTH INTEGRATION MODELS IN CERTAIN RURAL COUNTIES


“(a) In general.—The Secretary shall establish a demonstration project to allow eligible entities to develop and test new models for the delivery of health care services in eligible counties for the purpose of improving access to, and better integrating the delivery of, acute care, extended care, and other essential health care services to Medicare beneficiaries.

“(b) Purpose.—The purpose of the demonstration project under this section is to—

“(1) explore ways to increase access to, and improve the adequacy of, payments for acute care, extended care, and other essential health care services provided under the Medicare and Medicaid programs in eligible counties; and

“(2) evaluate regulatory challenges facing such providers and the communities they serve.

“(c) Requirements.—The following requirements shall apply under the demonstration project:

“(1) Health care providers in eligible counties selected to participate in the demonstration project under subsection (d)(3) shall (when determined appropriate by the Secretary, instead of the payment rates otherwise applicable under the Medicare program, be reimbursed at a rate that covers at least the reasonable costs of the provider in furnishing acute care, extended care, and other essential health care services to Medicare beneficiaries.

“(2) Methods to coordinate the survey and certification process under the Medicare program and the Medicaid program across all health service categories included in the demonstration project shall be tested with the goal of assuring quality and safety while reducing administrative burdens, as appropriate, related to completing such survey and certification process.

“(3) Health care providers in eligible counties selected to participate in the demonstration project under subsection (d)(3) shall work with the State to explore ways to revise reimbursement policies under the Medicaid program to improve access to the range of health care services available in such eligible counties.

“(4) The Secretary shall identify regulatory requirements that may be revised appropriately to improve access to care in eligible counties.

“(5) Other essential health care services necessary to ensure access to the range of health care services in eligible counties selected to participate in the demonstration project under subsection (d)(3) shall be identified. Ways to ensure adequate funding for such services shall also be explored.

“(d) Application process.—

“(1) Eligibility.—

“(A) In general.—Eligibility to participate in the demonstration project under this section shall be limited to eligible entities.

“(B) Eligible entity defined.—In this section, the term ‘eligible entity’ means an entity that—

“(i) is a Rural Hospital Flexibility Program grantee under section 1820(g) of the Social Security Act (42 U.S.C. 1395i–4(g)); and

“(ii) is located in a State in which at least 65 percent of the counties in the State are counties that have 6 or less residents per square mile.

“(2) Application.—

“(A) In general.—An eligible entity seeking to participate in the demonstration project under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

“(B) Limitation.—The Secretary shall select eligible entities located in not more than 4 States to participate in the demonstration project under this section.

“(C) Selection of eligible counties.—An eligible entity selected by the Secretary to participate in the demonstration project under this section shall select eligible counties in the State in which the entity is located in which to conduct the demonstration project.

“(D) Eligible county defined.—In this section, the term ‘eligible county’ means a county that meets the following requirements:

“(i) The county has 6 or less residents per square mile.

“(ii) As of the date of the enactment of this Act [July 15, 2008], a facility designated as a critical access hospital which meets the following requirements was located in the county:

“(A) The critical access hospital has an average daily inpatient census of 5 or less.

“(B) As of the date of the enactment of this Act, skilled nursing facility services were available in the county in—

“(i) a critical access hospital using swing beds; or

“(ii) a local nursing home.

“(E) Administration.—

“(1) in general.—The demonstration project under this section shall be administered jointly by the Administrator of the Office of Rural Health Policy of the Health Resources and Services Administration and the Administrator of the Centers for Medicare & Medicaid Services, in accordance with paragraphs (2) and (3).

“(2) HRSA duties.—In administering the demonstration project under this section, the Administrator of the Office of Rural Health Policy of the Health Resources and Services Administration shall—

“(A) award grants to the eligible entities selected to participate in the demonstration project; and

“(B) work with such entities to provide technical assistance related to the requirements under the project.

“(3) CMS duties.—In administering the demonstration project under this section, the Administrator of the Centers for Medicare & Medicaid Services shall determine which provisions of titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq.) the Secretary should waive under the waiver authority under subsection (i) that are relevant to the development of alternative reimbursement methodologies, which may include, as appropriate, covering at least the reasonable costs of the provider in furnishing acute care, extended care, and other essential health care services to Medicare beneficiaries and coordinating the survey and certification process under the Medicare and Medicaid programs, as appropriate, across all service categories included in the demonstration project.

“(F) Duration.—

“(1) in general.—The demonstration project under this section shall be conducted for a 3-year period beginning on October 1, 2009.

“(2) Beginning date of demonstration project.—

“The demonstration project under this section shall be considered to have begun in a State on the date on which the eligible counties selected to participate in the demonstration project under subsection (d)(3) began operations in accordance with the requirements under the demonstration project.
(g) FUNDING.—

"(1) CMS.—

"(A) IN GENERAL.—The Secretary shall provide for the transfer, in appropriate part from the Federal Hospital Insurance Trust Fund established under section 1817 of the Social Security Act (42 U.S.C. 1395t) and the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of such Act (42 U.S.C. 1395s), of such sums as are necessary for the purpose of carrying out the duties of such Office under the demonstration project under this section, to remain available for the duration of the demonstration project.

"(B) BUDGET NEUTRALITY.—In conducting the demonstration project under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary estimates would have been paid if the demonstration project under this section was not implemented.

"(2) HRSA.—There are authorized to be appropriated to the Office of Rural Health Policy of the Health Resources and Services Administration $800,000 for each of fiscal years 2010, 2011, and 2012 for the purpose of carrying out the duties of such Office under the demonstration project under this section, to remain available for the duration of the demonstration project.

(h) REPORT.—

"(1) INTERIM REPORT.—Not later than the date that is 2 years after the date on which the demonstration project under this section is implemented, the Administrator of the Office of Rural Health Policy of the Health Resources and Services Administration, in coordination with the Administrator of the Centers for Medicare & Medicaid Services, shall submit a report to Congress on the status of the demonstration project that includes initial recommendations on ways to improve access to, and the availability of, health care services in eligible counties based on the findings of the demonstration project.

"(2) FINAL REPORT.—Not later than 1 year after the completion of the demonstration project, the Administrator of the Office of Rural Health Policy of the Health Resources and Services Administration, in coordination with the Administrator of the Centers for Medicare & Medicaid Services, shall submit a report to Congress on such project, together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

(i) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq.; 1396 et seq.) as may be necessary and appropriate for the purpose of carrying out the demonstration project under this section.

"(j) Definitions.—In this section:

"(1) EXTENDED CARE SERVICES.—The term 'extended care services' means the following:

"(A) Home health services.

"(B) Covered skilled nursing facility services.

"(C) Hospice care.

"(2) COVERED SKILLED NURSING FACILITY SERVICES.—The term 'covered skilled nursing facility services' has the meaning given such term in section 1886(e)(2)(A) of the Social Security Act (42 U.S.C. 1395y(c)(2)(A)).

"(3) CRITICAL ACCESS HOSPITAL.—The term 'critical access hospital' means a facility designated as a critical access hospital under section 1861(r) of such Act (42 U.S.C. 1395x(r)).

"(4) HOME HEALTH SERVICES.—The term 'home health services' has the meaning given such term in section 1861(m) of such Act (42 U.S.C. 1395x(m)).

"(5) HOSPICE CARE.—The term 'hospice care' has the meaning given such term in section 1861(dd) of such Act (42 U.S.C. 1395x(dd)).

"(6) MEDICAID PROGRAM.—The term 'Medicaid program' means the program under title XIX of such Act (42 U.S.C. 1396 et seq.).

"(7) MEDICARE PROGRAM.—The term 'Medicare program' means the program under title XVIII of such Act (42 U.S.C. 1395 et seq.).

"(8) OTHER ESSENTIAL HEALTH CARE SERVICES.—The term 'other essential health care services' means the following:

"(A) Ambulance services (as described in section 1861(s)(7) of the Social Security Act (42 U.S.C. 1395x(s)(7))).

"(B) Physicians' services (as defined in section 1861(q) of the Social Security Act (42 U.S.C. 1395x(q))).

"(C) Public health services (as defined by the Secretary).

"(D) Other health care services determined appropriate by the Secretary.

"(9) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.
§ 1395i–5. Conditions for coverage of religious nonmedical health care institutional services

(a) In general

Subject to subsections (c) and (d) of this section, payment under this part may be made for inpatient hospital services or post-hospital extended care services furnished an individual in a religious nonmedical health care institution and for home health services furnished an individual by a religious nonmedical health care institution only if—

(1) the individual has an election in effect for such benefits under subsection (b) of this section; and

(2) the individual has a condition such that the individual would qualify for benefits under this part for inpatient hospital services, extended care services, or home health services, respectively, if the individual were an inpatient or resident in a hospital or skilled nursing facility, or receiving services from a home health agency, that was not such an institution.

(b) Election

(1) In general

An individual may make an election under this subsection in a form and manner specified by the Secretary consistent with this subsection. Unless otherwise provided, such an election shall take effect immediately upon its execution. Such an election, once made, shall continue in effect until revoked.

(2) Form

The election form under this subsection shall include the following:

(A) A written statement, signed by the individual (or such individual’s legal representative), that—

(i) the individual is conscientiously opposed to acceptance of nonexcepted medical treatment; and

(ii) the individual’s acceptance of nonexcepted medical treatment would be inconsistent with the individual’s sincere religious beliefs.

(B) A statement that the receipt of nonexcepted medical services shall constitute a revocation of the election and may limit further receipt of services described in subsection (a) of this section.

(3) Revocation

An election under this subsection by an individual may be revoked by voluntarily notifying the Secretary in writing of such revocation and shall be deemed to be revoked if the individual receives nonexcepted medical treatment for which reimbursement is made under this subchapter.

§ 1395i–5. Conditions for coverage of religious nonmedical health care institutional services

(4) Limitation on subsequent elections

Once an individual’s election under this subsection has been made and revoked twice—

(A) the next election may not become effective until the date that is 1 year after the date of most recent previous revocation, and

(B) any succeeding election may not become effective until the date that is 5 years after the date of the most recent previous revocation.

(5) Excepted medical treatment

For purposes of this subsection:

(A) Excepted medical treatment

The term “excepted medical treatment” means medical care or treatment (including medical and other health services)—

(i) received involuntarily, or

(ii) required under Federal or State law or law of a political subdivision of a State.

(B) Nonexcepted medical treatment

The term “nonexcepted medical treatment” means medical care or treatment (including medical and other health services) other than excepted medical treatment.

(c) Monitoring and safeguard against excessive expenditures

(1) Estimate of expenditures

Before the beginning of each fiscal year (beginning with fiscal year 2000), the Secretary shall estimate the level of expenditures under this part for services described in subsection (a) of this section for that fiscal year.

(2) Adjustment in payments

(A) Proportional adjustment

If the Secretary determines that the level estimated under paragraph (1) for a fiscal year will exceed the trigger level (as defined in subparagraph (C)) for that fiscal year, the Secretary shall, subject to subparagraph (B), provide for such a proportional reduction in payment amounts under this part for services described in subsection (a) of this section for the fiscal year involved as will assure that such level (taking into account any adjustment under subparagraph (B)) does not exceed the trigger level for that fiscal year.

(B) Alternative adjustments

The Secretary may, instead of making some or all of the reduction described in subparagraph (A), impose such other conditions or limitations with respect to the coverage of covered services (including limitations on new elections of coverage and new facilities) as may be appropriate to reduce the level of expenditures described in paragraph (1) to the trigger level.

(C) Trigger level

For purposes of this subsection—

(i) In general

Subject to adjustment under subparagraph (3)(B), the “trigger level” for a year is the...
unadjusted trigger level described in clause (ii).

(ii) Unadjusted trigger level

The “unadjusted trigger level” for—
(I) fiscal year 1998, is $20,000,000, or
(II) a succeeding fiscal year is the amount specified under this clause for the previous fiscal year increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) for the 12-month period ending with July preceding the beginning of the fiscal year.

(D) Prohibition of administrative and judicial review

There shall be no administrative or judicial review under section 1395f of this title, 1395oo of this title, or otherwise of the estimation of expenditures under subparagraph (A) or the application of reduction amounts under subparagraph (B).

(E) Effect on billing

Notwithstanding any other provision of this subchapter, in the case of a reduction in payment provided under this subsection for services of a religious nonmedical health care institution provided to an individual, the amount that the institution is otherwise permitted to charge the individual for such services is increased by the amount of such reduction.

(3) Monitoring expenditure level

(A) In general

The Secretary shall monitor the expenditure level described in paragraph (2)(A) for each fiscal year (beginning with fiscal year 1999).

(B) Adjustment in trigger level

(i) In general

If the Secretary determines that such level for a fiscal year exceeded, or was less than, the trigger level for that fiscal year, then, subject to clause (ii), the trigger level for the succeeding fiscal year shall be reduced, or increased, respectively, by the amount of such excess or deficit.

(ii) Limitation on carryforward

In no case may the increase effected under clause (i) for a fiscal year exceed $50,000,000.

(d) Sunset

If the Secretary determines that the level of expenditures described in subsection (c)(1) of this section for 3 consecutive fiscal years (with the first such year being not earlier than fiscal year 2002) exceeds the trigger level for such expenditures for such years (as determined under subsection (c)(2) of this section), benefits shall be paid under this part for services described in subsection (a) of this section and furnished on or after the first January 1 that occurs after such 3 consecutive years only with respect to an individual who has an election in effect under subsection (b) of this section as of such January 1 and only during the duration of such election.

(e) Annual report

At the beginning of each fiscal year (beginning with fiscal year 1999), the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate an annual report on coverage and expenditures for services described in subsection (a) of this section under this part and under State plans under subchapter XIX of this chapter. Such report shall include—

(1) level of expenditures described in subsection (c)(1) of this section for the previous fiscal year and estimated for the fiscal year involved;
(2) trends in such level; and
(3) facts and circumstances of any significant change in such level from the level in previous fiscal years.


AMENDMENTS


Subsec. (a)(2). Pub. L. 108–173, §706(a)(2), substituted “, extended care services, or home health services” for “or extended care services” and inserted “, or receiving services from a home health agency,” after “skilled nursing facility”.

EFFECTIVE DATE

Section 4454(d) of Pub. L. 105–33 provided that: “The amendments made by this section (enacting this section and amending sections 1320a–1, 1320c–11, 1395x, 1396a, and 1396g of this title) shall take effect on the date of the enactment of this Act [Aug. 5, 1997] and shall apply to items and services furnished on or after such date. By not later than July 1, 1996, the Secretary of Health and Human Services shall first issue regulations to carry out such amendments. Such regulations may be issued so they are effective on an interim basis pending notice and opportunity for public comment. For periods before the effective date of such regulations, such regulations shall recognize elections entered into in good faith in order to comply with the requirements of section 1821(b) of the Social Security Act [subsec. (b) of this section].”

PART B—SUPPLEMENTARY MEDICAL INSURANCE BENEFITS FOR AGED AND DISABLED

§1395j. Establishment of supplementary medical insurance program for aged and disabled

There is hereby established a voluntary insurance program to provide medical insurance benefits in accordance with the provisions of this part for aged and disabled individuals who elect to enroll under such program, to be financed from premium payments by enrollees together with contributions from funds appropriated by the Federal Government.

§ 1395k. Scope of benefits; definitions

(a) Scope of benefits

The benefits provided to an individual by the insurance program established by this part shall consist of—

(1) entitlement to have payment made to him or on his behalf (subject to the provisions of this part) for medical and other health services, except those described in subparagraphs (B) and (D) of paragraph (2) and subparagraphs (E) and (F) of section 1395u(b)(6) of this title; and

(2) entitlement to have payment made on his behalf (subject to the provisions of this part) for—

(A) home health services (other than items described in subparagraph (G) or subparagraph (I));

(B) medical and other health services (other than items described in subparagraph (G) or subparagraph (I)) furnished by a provider of services or by others under arrangement with them made by a provider of services, excluding—

(i) physician services except where furnished by—

(I) a resident or intern of a hospital, or

(II) a physician to a patient in a hospital which has a teaching program approved as specified in paragraph (6) of section 1395x(b) of this title (including services in conjunction with the teaching programs of such hospital whether or not such patient is an inpatient of such hospital) where the conditions specified in paragraph (7) of such section are met,

(ii) services for which payment may be made pursuant to section 1395n(b)(2) of this title,

(iii) services described by section 1395x(s)(2)(K)(i) of this title, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist;\(^1\)

(iv) services of a nurse practitioner or clinical nurse specialist but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services; and\(^2\)

(C) outpatient physical therapy services (other than services to which the second sentence of section 1395x(p) of this title applies), outpatient occupational therapy services (other than services to which such sentence applies through the operation of section 1395x(g) of this title), and outpatient speech-language pathology services (other than services to which the second sentence of section 1395x(p) of this title applies through the application of section 1395x(l)(2) of this title);

(D)(i) rural health clinic services and (ii) Federally qualified health center services;

(E) comprehensive outpatient rehabilitation facility services;

(F) facility services furnished in connection with surgical procedures specified by the Secretary—

(i) pursuant to section 1395x(i)(1)(A) of this title and performed in an ambulatory surgical center (which meets health, safety, and other standards specified by the Secretary in regulations) if the center has an agreement in effect with the Secretary by which the center agrees to accept the standard overhead amount determined under section 1395x(1)(2)(A) of this title as full payment for such services (including intraocular lens in cases described in section 1395x(1)(2)(A)(ii) of this title) and to accept an assignment described in section 1395a(b)(3)(B)(ii) of this title with respect to payment for all such services (including intraocular lens in cases described in section 1395x(1)(2)(A)(ii) of this title) furnished by the center to individuals enrolled under this part, or

(ii) pursuant to section 1395x(i)(1)(B) of this title and performed by a physician, described in paragraph (1), (2), or (3) of section 1395x(r) of this title, in his office, if the Secretary has determined that—

(I) a quality improvement organization (having a contract with the Secretary under part B of subchapter XI of this chapter) is willing, able, and has agreed to carry out a review (on a sample or other reasonable basis) of the physician’s performing such procedures in the physician’s office,

(II) the particular physician involved has agreed to make available to such organization such records as the Secretary determines to be necessary to carry out the review, and

(III) the physician is authorized to perform the procedure in a hospital located in the area in which the office is located, and if the physician agrees to accept the standard overhead amount determined under section 1395x(i)(2)(B) of this title as full payment for such services and to ac-

\(^1\)So in original. The semicolon probably should be a comma.

\(^2\)So in original. The word “and” probably should not appear.
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cept payment on an assignment-related
basis with respect to payment for all services (including all pre- and post-operative
services) described in paragraphs (1) and
(2)(A) of section 1395x(s) of this title and
furnished in connection with such surgical
procedure to individuals enrolled under
this part;
(G) covered items (described in section
1395m(a)(13) of this title) furnished by a provider of services or by others under arrangements with them made by a provider of services;
(H) outpatient critical access hospital
services (as defined in section 1395x(mm)(3)
of this title);
(I) prosthetic devices and orthotics and
prosthetics (described in section 1395m(h)(4)
of this title) furnished by a provider of services or by others under arrangements with
them made by a provider of services; and
(J) partial hospitalization services provided by a community mental health center
(as described in section 1395x(ff)(2)(B) of this
title).
(b) Definitions
For definitions of ‘‘spell of illness’’, ‘‘medical
and other health services’’, and other terms used
in this part, see section 1395x of this title.
(Aug. 14, 1935, ch. 531, title XVIII, § 1832, as added
Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79
Stat. 302; amended Pub. L. 90–248, title I,
§§ 129(c)(6)(B), 133(d), Jan. 2, 1968, 81 Stat. 848, 851;
30, 1972, 86 Stat. 1406, 1445; Pub. L. 95–210, § 1(a),
IX, §§ 930(g), 933(a), 934(a), 948(a)(2), Dec. 5, 1980,
94 Stat. 2631, 2635, 2637, 2643; Pub. L. 97–248, title
I, § 148(c), Sept. 3, 1982, 96 Stat. 394; Pub. L.
98–369, div. B, title III, §§ 2341(b), 2354(b)(6), July
IX, §§ 9320(d), 9337(a), 9343(e)(1), Oct. 21, 1986, 100
Stat. 2013, 2033, 2041; Pub. L. 100–203, title IV,
§§ 4062(d)(2),
4063(e)(2),
4073(b)(1),
4077(b)(2),
1330–118, 1330–120, as amended Pub. L. 100–360,
title
IV,
§ 411(g)(2)(E),
(h)(4)(A),
(7)(B),
(i)(4)(C)(vi), July 1, 1988, 102 Stat. 783, 786, 787,
789; Pub. L. 100–360, title I, § 104(d)(3), title II,
§§ 203(a), 205(a), July 1, 1988, 102 Stat. 689, 721, 729,
783; Pub. L. 101–234, title I, § 101(a), title II,
101–239, title VI, § 6116(a)(2), Dec. 19, 1989, 103
Stat.
2219;
Pub.
L.
101–508,
title
IV,
§§ 4153(a)(2)(A), 4155(b)(1), 4157(b), 4161(a)(3)(A),
4162(b)(1), Nov. 5, 1990, 104 Stat. 1388–83, 1388–86,
1388–89, 1388–93, 1388–96; Pub. L. 105–33, title IV,
§§ 4201(c)(1), 4432(b)(5)(B), 4511(c), 4603(c)(2)(B)(ii),
Aug. 5, 1997, 111 Stat. 373, 421, 443, 471; Pub. L.
106–113, div. B, § 1000(a)(6) [title II, § 227(b)], Nov.
§ 1(a)(6) [title I, § 113(b)(1)], Dec. 21, 2000, 114 Stat.
2763, 2763A–473; Pub. L. 110–275, title I, § 143(b)(1),
AMENDMENTS
‘‘quality improvement’’ for ‘‘quality control and peer
review’’.

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‘‘, outpatient’’ for ‘‘and outpatient’’ and inserted
‘‘, and outpatient speech-language pathology services
(other than services to which the second sentence of
section 1395x(p) of this title applies through the application of section 1395x(ll)(2) of this title)’’ before semicolon at end.
subsec. (c) as (b) and struck out former subsec. (b),
which related to extension of coverage of immunosuppressive drugs for individuals who would exhaust
benefits under section 1395x(s)(2)(J)(v) of this title in a
year during the 5-year period beginning with 2000, and
set forth provisions relating to extension periods for
each year.
(b) and redesignated former subsec. (b) as (c).
substituted ‘‘subparagraphs (E) and (F) of section
1395u(b)(6) of this title;’’ for ‘‘section 1395u(b)(6)(E) of
this title;’’.
Pub. L. 105–33, § 4432(b)(5)(B), substituted ‘‘(2) and section 1395u(b)(6)(E) of this title;’’ for ‘‘(2);’’.
Subsec. (a)(2)(B)(iv). Pub. L. 105–33, § 4511(c), substituted ‘‘but only if no facility or other provider
charges or is paid any amounts with respect to the furnishing of such services’’ for ‘‘provided in a rural area
(as defined in section 1395ww(d)(2)(D) of this title)’’.
Subsec. (a)(2)(H). Pub. L. 105–33, § 4201(c)(1), substituted ‘‘critical access’’ for ‘‘rural primary care’’.
1990—Subsec.
(a)(2)(A),
(B).
Pub.
L.
101–508,
§ 4153(a)(2)(A)(i), substituted ‘‘subparagraph (G) or subparagraph (I)’’ for ‘‘subparagraph (G)’’.
cl. (iv).
added subpar. (I).
subpar. (J).
Pub. L. 100–360, §§ 203(a), 205(a), and provided that the
provisions of law amended or repealed by such sections
are restored or revived as if such sections had not been
enacted, see 1988 Amendment notes below.
100–360, § 104(d)(3), and provided that the provisions of
law amended or repealed by such section are restored
or revived as if such section had not been enacted, see
1988 Amendment note below.
sentence at end relating to in-home care provided to a
chronically dependent individual on any day.
Subsec. (a)(2)(A). Pub. L. 100–360, § 205(a)(1), designated existing provisions as cl. (i) and added cl. (ii)
relating to in-home care for a chronically dependent individual.
Pub. L. 100–360, § 203(a), inserted ‘‘and home intravenous drug therapy services’’ before semicolon at end.
struck out Pub. L. 100–203, § 4077(b)(2), see 1987 Amendment note below.
100–203, § 4073(b)(1), see 1987 Amendment note below.
added Pub. L. 100–203, § 4063(e)(2), see 1987 Amendment
note below.
added Pub. L. 100–203, § 4085(i)(22)(A), see 1987 Amendment note below.
Subsec. (b). Pub. L. 100–360, § 104(d)(3), substituted
‘‘definitions of ‘medical and other health services’ and’’
for ‘‘definitions of ‘spell of illness’, ‘medical and other
health services’, and’’.


applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Amendment by section 203(a) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1395c–3 of this title.

Section 203(f) of Pub. L. 100–360, which provided that the amendments made by section 206 of Pub. L. 100–360; (amending this section and sections 1396f, 1396g, and 1396i of this title) were applicable to items and services furnished on or after January 1, 1990, was repealed by Pub. L. 101–134, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(c)(2)(E), (h)(4)(A), (7)(B), (1)(4)(C)(V) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title I, General Provisions.

**Effective Date of 1987 Amendment**

Amendment by section 4062(d)(2) of Pub. L. 100–203 applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989, see section 4062(e) of Pub. L. 100–203, as amended, set out as a note under section 1395f of this title.

Section 4077(b)(5), formerly §4077(b)(6), of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, §411(b)(7)(F), July 1, 1988, 102 Stat. 787, provided that: "The amendments made by this section [amending this section and sections 1395f, 1395x, and 1396d of this title] shall be effective with respect to services performed on or after July 1, 1988."

**Effective Date of 1986 Amendment**

Section 9328(k) of Pub. L. 99–509, as amended by Pub. L. 100–485, title VI, §608(c)(1), Oct. 13, 1988, 102 Stat. 2412, provided that: "Except as provided in subsection (k) [set out below], the amendments made by this section (other than subsection (a)) [amending this section and sections 1395f, 1395x, 1396y, 1396yA, 1396b, 1396cc, 1395ww, 1396a, and 1396n of this title] shall apply to services furnished on or after January 1, 1989."

Section 9337(e) of Pub. L. 99–509 provided that: "The amendments made by this section [amending this section and sections 1395f, 1395x, 1396x, and 1396cc of this title] shall apply to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987."

**Effective Date of 1984 Amendment**

Section 2341(d) of Pub. L. 98–369 provided that: "The amendments made by this section [amending this section and section 1395x of this title] apply to services furnished on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(6) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(c)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

**Effective Date of 1982 Amendment**

Amendment by Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 1, 1982, see section 148 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

**Effective Date of 1980 Amendment**

Amendment by section 938(g) of Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 938(e)(1) of Pub. L. 96–499, set out as a note under section 1395c of this title.

Section 938(h) of Pub. L. 96–499 provided that: "The amendments made by this section [amending this section and sections 1395n, 1395x, 1396y, and 1396aa of this title] shall become effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981."

Amendment by section 948(a)(2) of Pub. L. 96–499 applicable with respect to cost accounting periods beginning on or after Oct. 1, 1978, see section 948(c)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

**Effective Date of 1977 Amendment**

Section 1(j) of Pub. L. 95–210 provided that: "The amendments made by this section [amending this section and sections 1395, 1395x, 1396y, and 1396aa of this title and enacting provisions set out as notes under sections 1395f and 1396x of this title] shall apply to services rendered on or after the first day of the third calendar month which begins after the date of enactment of this Act [Dec. 13, 1977]."

**Effective Date of 1972 Amendment**

Amendment by section 227(e)(1) of Pub. L. 92–603 applicable with respect to accounting periods beginning after June 30, 1973, see section 227(g) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Amendment by section 251(a)(4) of Pub. L. 92–603 applicable with respect to services furnished on or after July 1, 1973, see section 251(d)(1) of Pub. L. 92–603, set out as a note under section 1395x of this title.

**Effective Date of 1968 Amendment**

Amendment by section 129(c)(6)(B) of Pub. L. 90–248 applicable with respect to services furnished after Mar. 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395x of this title.

**Construction of 2008 Amendment**

Pub. L. 110–275, title I, §143(d), July 15, 2008, 122 Stat. 2943, provided that: "Nothing in this section [amending this section and sections 1395F, 1395X, 1395Y, 1395aa, 1395bb, 1395ccc, 1395ww, 1396a, and 1396n of this title] shall be construed to affect existing regulations and policies of the Centers for Medicare & Medicaid Services that require physician oversight of care as a condition of payment for speech-language pathology services under part B of the Medicare program [42 U.S.C. 1395 et seq.]."

**Construction of 1986 Amendment**

Section 9320(j) of Pub. L. 99–509 provided that: "Nothing in this section or the amendments made by this section [amending this section and section 1395x, 1395x, 1395y, 1395aa, 1395bb, 1395ccc, 1395ww, 1396a, and 1396n of this title, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 1395ww of this title] shall contravene provisions of State law relating to the practice of medicine or nursing or State law requirements or institutional requirements regarding the administration of anesthesia and its medical direction or supervision."

**Report on Immunosuppressive Drug Benefit**

the Secretary of Health and Human Services to submit to Congress not later than Mar. 1, 2003, a report on the operation of section 1000(a)(6) [title II, §227] of Pub. L. 100–360, amending this section and section 1395x of this title, including an analysis of impact and recommendations regarding an appropriate cost-effective method for providing coverage of immunosuppressive drugs under the Medicare program on a permanent basis, was repealed by Pub. L. 106–554, §11(a)(6) [title I, §113(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–473.

QUALITY AND UTILIZATION OF IN-HOME CARE FOR CHRONICALLY DEPENDENT INDIVIDUALS

Section 205(e)(2) of Pub. L. 100–360 directed Secretary of Health and Human Services to take appropriate efforts to assure quality and provide for appropriate utilization of in-home care for chronically dependent individuals under the amendments made by section 205 of Pub. L. 100–360 (amending this section and sections 1395l, 1395m, 1395x, and 1395y of this title), prior to repeal by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

STUDY OF ALTERNATIVE OUT-OF-HOME SERVICES

Section 206(g) of Pub. L. 100–360, which required Secretary of Health and Human Services to study, and report to Congress, not later than 18 months after July 1, 1988, on advisability of providing, to chronically dependent individuals eligible for in-home care under amendments made by section 205 of Pub. L. 100–360 (amending this section and sections 1395l, 1395m, 1395x, and 1395y of this title), out-of-home services as alternative services to in-home care, was repealed by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

CONTINUATION OF COST PASS-THROUGH FOR CERTIFIED REGISTERED NURSE ANESTHETISTS


“(1) Subject to paragraph (2), the amendments made by this section [amending this section and sections 1395l, 1395m, 1395x, 1395y, and 1395z of this title] shall not apply during a year (beginning with 1989) to a hospital located in a rural area (as defined for purposes of section 1861(b) of the Social Security Act [section 1395x(b)(6) of this title]) if the hospital establishes, at any time before the year,[] to the satisfaction of the Secretary of Health and Human Services that—

“(A) as of January 1, 1986, the hospital employed or contracted with a certified registered nurse anesthetist (but not more than one full-time equivalent certified registered nurse anesthetist); and

“(B) in 1987 the hospital had a volume of surgical procedures (including inpatient and outpatient procedures) requiring anesthesia services that did not exceed 500 (or such higher number as the Secretary determines to be appropriate), and

“(C) each certified registered nurse anesthetist employed by, or under contract with, the hospital has agreed not to bill under part B of title XVIII of such Act [this part] for professional services furnished by the anesthetist at the hospital.

“(2) Paragraph (1) shall not apply in a year (after 1989) to a hospital unless the hospital establishes, before the beginning of the year, that the hospital has had a volume of surgical procedures (including inpatient and outpatient procedures) requiring anesthesia services in the previous year that did not exceed 500 (or such higher number as the Secretary determines to be appropriate).

“[Section 6132(b) of Pub. L. 101–239 provided that: “The amendments made by this section [amending section 9320(k) of Pub. L. 99–509, set out above] shall apply to services furnished on or after January 1, 1990.”]"

PAYMENT FOR SERVICES OF PHYSICIANS RENDERED IN A TEACHING HOSPITAL FOR ACCOUNTING PERIODS BEGINNING AFTER JUNE 30, 1975, AND PRIOR TO OCTOBER 1, 1978

Studies, Reports, etc.; Effective Date.

Pub. L. 92–233, §15(a)(2), Dec. 31, 1975, 87 Stat. 866, provided that for the cost accounting periods beginning after June 30, 1975, and prior to Oct. 1, 1978, subsec. (a)(2)(B)(i) of this section will be administered as if subclause (i) of subsec. (a)(2)(B)(i) read as follows: “(I) a physician to a patient in a hospital which has a teaching program approved as specified in paragraph (6) of section 1861(b) [section 1395x(b)(6) of this title] (including services in conjunction with the teaching programs of such hospital whether or not such patient is an inpatient of such hospital), where the conditions specified in paragraph (7) of such section [section 1395x(b)(7) of this title] are met and”.

§1395f. Payment of benefits

(a) Amounts

Except as provided in section 1395mm of this title, and subject to the succeeding provisions of this section, there shall be paid from the Federal Supplementary Medical Insurance Trust Fund, in the case of each individual who is covered under the insurance program established by this part and incurs expenses for services with respect to which benefits are payable under this part, amounts equal to—

(1) in the case of services described in section 1395k(a)(1) of this title—80 percent of the reasonable charges for the services; except that (A) an organization which provides medical and other health services (or arranges for their availability) on a prepayment basis (and either is sponsored by a union or employer, or does not provide, or arrange for the provision of, any inpatient hospital services) may elect to be paid 80 percent of the reasonable cost of services for which payment may be made under this part on behalf of individuals enrolled in such organization in lieu of 80 percent of the reasonable charges for such services if the organization undertakes to charge such individuals no more than 20 percent of such reasonable cost plus any amounts reimbursable by them as a result of subsection (b) of this section, (B) with respect to items and services described in section 1395u(a)(10)(A) of this title, the amounts paid shall be 100 percent of the reasonable charges for such items and services, (C) with respect to expenses incurred for those physicians’ services for which payment may be made under this part that are described in section 1395y(a)(4) of this title, the amounts paid shall be subject to such limitations as may be prescribed by regulations, (D) with respect to clinical diagnostic laboratory tests for which payment is made under this part (I) on the basis of a fee schedule under subsection (h)(1) of this section or section 1395m(d)(1) of this title, the amount paid shall be equal to 80 percent (or 100 percent, in the case of such tests for which payment is made on an assignment-related basis) of the lesser of the amount determined under such fee schedule, the limitation amount for that test determined under subsection (h)(4)(B) of this section, or the amount of the charges
billed for the tests, or (ii) on the basis of a negotiated rate established under subsection (h)(6) of this section, the amount paid shall be equal to 100 percent of such negotiated rate.\(^1\) (E) with respect to services furnished to individuals who have been determined to have end-stage renal disease, the amounts paid shall be determined subject to the provisions of section 1395rr of this title, (F) with respect to clinical social worker services under section 1395x(s)(2)(N) of this title, the amounts paid shall be 80 percent of the lesser of (i) the actual charge for the services or (ii) 75 percent of the amount determined for payment of a psychologist under clause (L), (G) with respect to facility services furnished in connection with a surgical procedure specified pursuant to subsection (I)(1)(A) of this section and furnished to an individual in an ambulatory surgical center described in such subsection, for services furnished beginning with the implementation date of a revised payment system for such services in such facilities specified in subsection (I)(2)(D) of this title, the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount determined by the Secretary under such revised payment system, (H) with respect to services of a certified registered nurse anesthetist under section 1395x(s)(11) of this title, the amounts paid shall be 80 percent of the least of the actual charge, the prevailing charge that would be recognized (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1395w–4 of this title) if the services had been performed by an anesthesiologist, or the fee schedule for such services established by the Secretary in accordance with subsection (l) of this section, (I) with respect to covered items (described in section 1395m(a)(13) of this title), the amounts paid shall be the amounts described in section 1395m(a)(1) of this title, and\(^2\) (J) with respect to expenses incurred for radiologist services (as defined in section 1395m(b)(6) of this title), subject to section 1395w–4 of this title, the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount determined under the fee schedule established under section 1395m(b) of this title, (K) with respect to certified nurse-midwife services under section 1395x(s)(2)(L) of this title, the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount determined by a fee schedule established by the Secretary for the purposes of this subparagraph (but in no event shall such fee schedule exceed 65 percent of the prevailing charge that would be allowed for the same service performed by a physician, or, for services furnished on or after January 1, 1992, 65 percent (or 100 percent for services furnished on or after January 1, 2011) of the fee schedule amount provided under section 1395w–4 of this title for the same service performed by a physician), (L) with respect to qualified psychologist services under section 1395x(s)(2)(M) of this title, the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount determined by a fee schedule established by the Secretary for the purposes of this subparagraph, (M) with respect to prosthetic devices and orthotics and prosthetists (as defined in section 1395m(h)(4) of this title), the amounts paid shall be the amounts described in section 1395m(h)(1) of this title, (N) with respect to expenses incurred for physicans' services (as defined in section 1395w–4(j)(3) of this title) other than personalized prevention plan services (as defined in section 1395x(hhh)(1) of this title), the amounts paid shall be 80 percent of the payment basis determined under section 1395w–4(a)(1) of this title, (O) with respect to services described in section 1395x(s)(2)(K) of this title (relating to services furnished by physician assistants, nurse practitioners, or clinic nurse specialists), the amounts paid shall be equal to 80 percent of (i) the lesser of the actual charge or 85 percent of the fee schedule amount provided under section 1395w–4 of this title (ii) in the case of services as an assistant at surgery, the lesser of the actual charge or 85 percent of the amount that would otherwise be recognized if performed by a physician who is serving as an assistant at surgery, (P) with respect to surgical dressings, the amounts paid shall be the amounts determined under section 1395m(i) of this title, (Q) with respect to items or services for which fee schedules are established pursuant to section 1395u(s) of this title, the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount determined by a fee schedule established by the Secretary under section 1395m(I) of this title and (ii) with respect to ambulance services described in section 1395m(J)(8) of this title, the amounts paid shall be the amounts determined under section 1395m(g) of this title for outpatient critical access hospital services, (S) with respect to drugs and biologicals (including venous immune globulin (as defined in section 1395x(zz) of this title)) not paid on a cost or prospective payment basis as otherwise provided in this part (other than items and services described in subparagraph (B)), the amounts paid shall be 80 percent of the lesser of the actual charge or the payment amount established in section 1395u(o) of this title (or, if applicable, under section 1395w–3, 1395w–3a, or 1395w–3b of this title), (T) with respect to medical nutrition therapy services (as defined in section 1395x(vv) of this title), the amount paid shall be 80 percent (or 100 percent if such services are recommended with a grade of A or B by the United States Preventive Services Task Force for any indication or population and are appropriate for the individual) of the lesser of the actual charge for the services or 85 percent of the amount determined under the fee schedule established under section 1395w–4(b) of this title for the same services furnished by a physician, (U) with respect to facility fees described in section

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\(^1\) So in original.

\(^2\) So in original. The word "and" probably should not appear.
1395m(m)(2)(B) of this title, the amounts paid shall be 80 percent of the lesser of the actual charge or the amounts specified in such section, (V) notwithstanding subparagraphs (I) (relating to durable medical equipment), (M) (relating to prosthetic devices and orthotics and prosthetics), and (Q) (relating to 1395u(a) items), with respect to competitively priced items and services (described in section 1395w–3(a)(2) of this title) that are furnished in a competitive area, the amounts paid shall be the amounts described in section 1395w–3(b)(5) of this title, (W) with respect to additional preventive services (as defined in section 1395x(ddd)(1) of this title), the amount paid shall be (i) in the case of such services which are clinical diagnostic laboratory tests, the amount determined under subparagraph (D) (if such subparagraph were applied, by substituting “100 percent” for “80 percent”), and (ii) in the case of all other such services, 100 percent of the lesser of the actual charge for the service or the amount determined under a fee schedule established by the Secretary for purposes of this subparagraph, (X) with respect to personalized prevention plan services (as defined in section 1395x(hhh)(1) of this title), the amount paid shall be 100 percent of the lesser of the actual charge for the services or the amount determined under the payment basis determined under section 1395w–4 of this title, (Y) with respect to preventive services described in subparagraphs (A) and (B) of section 1395x(ddd)(3) of this title that are appropriate for the individual and, in the case of such services described in subparagraph (A), are recommended with a grade of A or B by the United States Preventive Services Task Force for any indication or population, the amount paid shall be 100 percent of (i) except as provided in clause (ii), the lesser of the actual charge for the services or the amount determined under the fee schedule that applies to such services under this part, and (ii) in the case of such services that are covered OPD services (as defined in subsection (t)(1)(B)), the amount determined under subsection (t), and (Z) with respect to Federally qualified health center services for which payment is made under section 1395m(o) of this title, the amounts paid shall be 80 percent of the lesser of the actual charge or the amount determined under such section;

(2) in the case of services described in section 1395x(a)(2) of this title (except those services described in subparagraphs (C), (D), (E), (F), (G), (H), and (I) of such section and unless otherwise specified in section 1395ff of this title)—

(A) with respect to home health services (other than a covered osteoporosis drug) (as defined in section 1395x(kk) of this title), the amount determined under the prospective payment system under section 1395ff of this title;

(B) with respect to other items and services (except those described in subparagraph (C), (D), or (E) of this paragraph and except as may be provided in section 1395ww of this title or section 1395yy(e)(9) of this title)—

(i) furnished before January 1, 1999, the lesser of—

(I) the reasonable cost of such services, as determined under section 1395x(v) of this title, or

(II) the customary charges with respect to such services,

unless the amount a provider may charge as described in clause (i) of section 1395cc(a)2(A) of this title, but in no case may the payment for such other services exceed 80 percent of such reasonable cost, or

(ii) if such services are furnished before January 1, 1999, by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this clause), free of charge or at nominal charges to the public, 80 percent of the amount determined in accordance with section 1395f(b)(2) of this title, or

(iii) if such services are furnished on or after January 1, 1999, the amount determined under subsection (t) of this section, or

(iv) if (and for so long as) the conditions described in section 1395f(b)(3) of this title are met, the amounts determined under the reimbursement system described in such section;

(C) with respect to services described in the second sentence of section 1395x(p) of this title, 80 percent of the reasonable charges for such services;

(D) with respect to clinical diagnostic laboratory tests for which payment is made under this part (i) on the basis of a fee schedule determined under subsection (h)(1) of this section or this section or, for services or procedures (other than a covered osteoporosis drug) (as defined in section 1395x(hhh)(1) of this title), the amount paid shall be equal to 80 percent (or 100 percent, in the case of such tests for which payment is made on an assignment-related basis or to a provider having an agreement under section 1395cc of this title) of the lesser of the amount determined under such fee schedule, the limitation amount for that test determined under subsection (h)(4)(B) of this section, or the amount of the charges billed for the tests, or

(ii) on the basis of a negotiated rate established under subsection (h)(6) of this section, the amount paid shall be equal to 100 percent of such negotiated rate for such tests;

(E) with respect to—

(i) outpatient hospital radiology services (including diagnostic and therapeutic radiology, nuclear medicine and CAT scan procedures, magnetic resonance imaging, and ultrasound and other imaging services, but excluding screening mammography and, for services furnished on or after January 1, 2005, diagnostic mammography), and

(ii) effective for procedures performed on or after October 1, 1998, diagnostic procedures (as defined by the Secretary) described in section 1395x(s)(3) of this title (other than diagnostic x-ray tests and diagnostic laboratory tests),

the amount determined under subsection (n) of this section or, for services or procedures
performed on or after January 1, 1999, subsection (t) of this section;

(F) with respect to a covered osteoporosis drug (as defined in section 1395x(kk) of this title) furnished by a home health agency, 80 percent of the reasonable cost of such service, as determined under section 1395x(v) of this title;

(G) with respect to items and services described in section 1395x(s)(10)(A) of this title, the lesser of—

(i) the reasonable cost of such services, as determined under section 1395x(v) of this title, or

(ii) the customary charges with respect to such services; and

(H) with respect to personalized prevention plan services (as defined in section 1395x(hhh)(1) of this title) furnished by an outpatient department of a hospital, the amount determined under paragraph (1)(X), or, if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this provision), free of charge or at nominal charges to the public, the amount determined in accordance with section 1395f(b)(2) of this title;

(3) in the case of services described in section 1395k(a)(2)(D) of this title—

(A) except as provided in subparagraph (B), the costs which are reasonable and related to the cost of furnishing such services or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under section 1395x(v)(1)(A) of this title, less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title, but in no case may the payment for such services (other than for items and services described in section 1395x(s)(10)(A) of this title) exceed 80 percent of such costs; or

(B) with respect to the services described in clause (i) of section 1395k(a)(2)(D) of this title that are furnished to an individual enrolled with a MA plan under part C of this subchapter pursuant to a written agreement described in section 1395w–23(a)(4) of this title, the amount (if any) by which—

(i) the amount of payment that would have otherwise been provided (I) under subparagraph (A) (calculated as if “100 percent” were substituted for “80 percent” in such subparagraph) for such services if the individual had not been so enrolled, or (II) in the case of such services furnished on or after the implementation date of the prospective payment system under section 1395m(o) of this title, under such section (calculated as if “100 percent” were substituted for “80 percent” in such section) for such services if the individual had not been so enrolled; exceeds

(ii) the amount of the payments received under such written agreement for such services (not including any financial incentives provided for in such agreement such as risk pool payments, bonuses, or withholds), less the amount the federally qualified health center may charge as described in section 1395w–27(e)(3)(B) of this title;

(4) in the case of facility services described in section 1395k(a)(2)(F) of this title, and outpatient hospital facility services furnished in connection with surgical procedures specified by the Secretary pursuant to subsection (l)(1)(A) of this section, the applicable amount as determined under paragraph (2) or (3) of subsection (i) of this section or subsection (t) of this section;

(5) in the case of covered items (described in section 1395m(a)(13) of this title) the amounts described in section 1395m(a)(1) of this title;

(6) in the case of outpatient critical access hospital services, the amounts described in section 1395m(g) of this title;

(7) in the case of prosthetic devices and orthotics and prosthetics (as described in section 1395m(b)(4) of this title), the amounts described in section 1395m(h) of this title;

(8) in the case of—

(A) outpatient physical therapy services, outpatient speech-language pathology services, and outpatient occupational therapy services furnished—

(i) by a rehabilitation agency, public health agency, clinic, comprehensive outpatient rehabilitation facility, or skilled nursing facility,

(ii) by a home health agency to an individual who is not homebound, or

(iii) by another entity under an arrangement with an entity described in clause (i) or (ii); and

(B) outpatient physical therapy services, outpatient speech-language pathology services, and outpatient occupational therapy services furnished—

(i) by a hospital to an outpatient or to a hospital inpatient who is entitled to benefits under part A of this subchapter but has exhausted benefits for inpatient hospital services during a spell of illness or is not so entitled to benefits under part A of this subchapter, or

(ii) by another entity under an arrangement with a hospital described in clause (i), the amounts described in section 1395m(k) of this title; and

(9) in the case of services described in section 1395k(a)(2)(E) of this title that are not described in paragraph (8), the amounts described in section 1395m(k) of this title.

Paragraph (3)(A) shall not apply to Federally qualified health center services furnished on or after the implementation date of the prospective payment system under section 1395m(o) of this title.

(b) Deductible provision

Before applying subsection (a) of this section with respect to expenses incurred by an individ-

\[\text{So in original. Probably should be "1395m(o)".}\]
ual during any calendar year, the total amount of the expenses incurred by such individual during such year (which would, except for this subsection, constitute incurred expenses from which benefits payable under subsection (a) of this section are determinable) shall be reduced by a deductible of $75 for calendar years before 1991, $100 for 1991 through 2004, $110 for 2005, and for a subsequent year the amount of such deductible for the previous year increased by the annual percentage increase in the monthly actuarial rate under section 1395x(k)(1) of this title ending with such subsequent year (rounded to the nearest $1); except that (1) such total amount shall not include expenses incurred for preventive services described in subparagraph (A) of section 1395x(dd)(3) of this title that are deductible for the previous year increased by the annual percentage increase in the monthly actuarial rate under section 1395x(a)(1) of this title, (2) such deductible shall not apply with respect to clinical diagnostic laboratory tests for which payment is made under this part (A) under subsection (a)(1)(D)(i) or (a)(2)(D)(i) of this section on an assignment-related basis, or to a provider having an agreement under section 1395x(cc) of this title, (B) on the basis of a negotiated rate determined under subsection (h)(6) of this section, (4) such deductible shall not apply to Federally qualified health center services, (5) such deductible shall not apply with respect to screening mammography (as described in section 1395x(jj)) of this title, (6) such deductible shall not apply with respect to screening pap smear and screening pelvic exam (as described in section 1395x(mm) of this title), (7) such deductible shall not apply with respect to ultrasound screening for abdominal aortic aneurysm (as defined in section 1395x(bbb) of this title), (8) such deductible shall not apply with respect to colorectal cancer screening tests (as described in section 1395x(pp)(1) of this title), (9) such deductible shall not apply with respect to an initial preventative physical examination (as defined in section 1395x(ww) of this title), and (10) such deductible shall not apply with respect to personalized prevention plan services (as defined in section 1395x(hhh)(1) of this title). The total amount of the expenses incurred by an individual as determined under the preceding sentence shall, after the reduction specified in such sentence, be further reduced by an amount equal to the expenses incurred for the first three pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to the individual during the calendar year, except that such deductible for such blood shall in accordance with regulations be appropriately reduced to the extent that there has been a replacement of such blood (or equivalent quantities of packed red blood cells, as so defined); and for such purposes blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual shall be deemed replaced when the institution or other person furnishing such blood (or such equivalent quantities of packed red blood cells, as so defined) is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is made under this sentence. The deductible under the previous sentence for blood or blood cells furnished an individual in a year shall be reduced to the extent that a deductible has been imposed under section 1395e(a)(2) of this title to blood or blood cells furnished the individual in the year. Paragraph (1) of the first sentence of this subsection shall apply with respect to a colorectal cancer screening test regardless of the code that is billed for the establishment of a diagnosis as a result of the test, or for the removal of tissue or other matter or other procedure that is furnished in connection with, as a result of, and in the same clinical encounter as the screening test.

c) Mental disorders

(1) Notwithstanding any other provision of this part, with respect to expenses incurred in a calendar year in connection with the treatment of mental, psychoneurotic, and personality disorders of an individual who is not an inpatient of a hospital at the time such expenses are incurred, there shall be considered as incurred expenses for purposes of subsections (a) and (b)—

(A) for expenses incurred in years prior to 2010, only 62 1⁄4 percent of such expenses;

(B) for expenses incurred in 2010 or 2011, only 68 3⁄4 percent of such expenses;

(C) for expenses incurred in 2012, only 75 percent of such expenses;

(D) for expenses incurred in 2013, only 81 1⁄4 percent of such expenses; and

(E) for expenses incurred in 2014 or any subsequent calendar year, 100 percent of such expenses.

(2) For purposes of subparagraphs (A) through (D) of paragraph (1), the term “treatment” does not include brief office visits (as defined by the Secretary) for the sole purpose of monitoring or changing drug prescriptions used in the treatment of such disorders or partial hospitalization services that are not directly provided by a physician.

d) Nonduplication of payments

No payment may be made under this part with respect to any services furnished an individual to the extent that such individual is entitled (or would be entitled except for section 1395e of this title) to have payment made with respect to such services under part A of this subchapter.

e) Information for determination of amounts due

No payment shall be made to any provider of services or other person under this part unless there has been furnished such information as may be necessary in order to determine the amounts due such provider or other person under this part for the period with respect to which the amounts are being paid or for any prior period.

f) Maximum rate of payment per visit for independent rural health clinics

In establishing limits under subsection (a) of this section on payment for rural health clinic
services provided by rural health clinics (other than such clinics in hospitals with less than 50 beds), the Secretary shall establish such limit, for services provided—

(1) in 1988, after March 31, at $46 per visit, and

(2) in a subsequent year, at the limit established under this subsection for the previous year increased by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) applicable to primary care services (as defined in section 1395u(i)(4) of this title) furnished as of the first day of that year.

(g) Physical therapy services

(1) Subject to paragraphs (4) and (5), in the case of physical therapy services of the type described in section 1395x(p) of this title and speech-language pathology services of the type described in such section through the application of section 1395x(l)(2) of this title, but not described in subsection (a)(8)(B) of this section, and physical therapy services and speech-language pathology services of such type which are furnished by a physician or as incident to physicians' services, with respect to expenses incurred in any calendar year, no more than the amount specified in paragraph (2) for the year shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section.

(2) The amount specified in this paragraph—

(A) for 1999, 2000, and 2001, is $1,500, and

(B) for a subsequent year is the amount specified in this paragraph for the preceding year increased by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for such subsequent year;

except that if an increase under subparagraph (B) for a year is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

(3) Subject to paragraphs (4) and (5), in the case of occupational therapy services (of the type that are described in section 1395x(p) of this title (but not described in subsection (a)(8)(B) of this section) through the operation of section 1395x(l)(2) of this title and of such type which are furnished by a physician or as incident to physicians' services), with respect to expenses incurred in any calendar year, no more than the amount specified in paragraph (2) for the year shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section.


(5) With respect to expenses incurred during the period beginning on January 1, 2006, and ending on February 29, 2012, for services, the Secretary shall implement a process under which an individual enrolled under this part may, upon request of the individual or a person on behalf of the individual, obtain an exception from the uniform dollar limitation specified in paragraph (2), for services described in paragraphs (1) and (3) if the provision of such services is determined to be medically necessary. Under such process, if the Secretary does not make a decision on such a request for an exception within 10 business days of the date of the Secretary's receipt of the request, the Secretary shall be deemed to have found the services to be medically necessary.

(h) Fee schedules for clinical diagnostic laboratory tests; percentage of prevailing charge level; nominal fee for samples; adjustments; recipients of payments; negotiated payment rate

(1)(A) Subject to section 1395m(d)(1) of this title, the Secretary shall establish fee schedules for clinical diagnostic laboratory tests (including prostate cancer screening tests under section 1395x(kk) of this title consisting of prostate-specific antigen blood tests) for which payment is made under this part, other than such tests performed by a provider of services for an inpatient of such provider.

(B) In the case of clinical diagnostic laboratory tests performed by a physician or by a laboratory (other than tests performed by a qualified hospital laboratory (as defined in subparagraph (D)) for outpatients of such hospital), the fee schedules established under subparagraph (A) shall be established on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for tests furnished on or after July 1, 1984.

(C) In the case of clinical diagnostic laboratory tests performed by a qualified hospital laboratory (as defined in subparagraph (D)) for outpatients of such hospital, the fee schedules established under subparagraph (A) shall be established on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for tests furnished on or after July 1, 1984.

(D) In this subsection, the term “qualified hospital laboratory” means a hospital laboratory, in a sole community hospital (as defined in section 1395ww(d)(5)(D)(ii) of this title), which provides some clinical diagnostic laboratory tests 24 hours a day in order to serve a hospital emergency room which is available to provide services 24 hours a day and 7 days a week.

(2)(A)(i) Except as provided in paragraph (4), the Secretary shall set the fee schedules at 60 percent (or, in the case of a test performed by a qualified hospital laboratory (as defined in paragraph (1)(D)) for outpatients of such hospital, 62 percent) of the prevailing charge level determined pursuant to the third and fourth sentences of section 1395u(b)(3) of this title for similar clinical diagnostic laboratory tests for the applicable region, State, or area for the 12-month period beginning July 1, 1984, adjusted annually (to become effective on January 1 of each year) by, subject to clause (iv), a percentage increase or decrease equal to the percentage increase or decrease in the Consumer Price Index for All Urban Consumers (United States city average) minus, for each of the years 2009 and 2010, 0.5 percentage points, and subject to such other adjustments as the Secretary determines are justified by technological changes.

(ii) Notwithstanding clause (i),

(I) any change in the fee schedules which would have become effective under this subsection for tests furnished on or after January 1, 1988, shall not be effective for tests furnished during the 3-month period beginning on January 1, 1988.

(II) the Secretary shall not adjust the fee schedules under clause (i) to take into account any increase in the consumer price index for 1988.
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(III) the annual adjustment in the fee schedules determined under clause (i) for each of the years 1991, 1992, and 1993 shall be 2 percent, and

(IV) the annual adjustment in the fee schedules determined under clause (i) for each of the years 1994 and 1995, 1998 through 2002, and 2004 through 2008 shall be 0 percent.

(iii) In establishing fee schedules under clause (i) with respect to automated tests and tests (other than cytopathology tests) which before July 1, 1984, the Secretary made subject to a limit based on lowest charge levels under the sixth sentence of section 1395u(b)(3) of this title performed after March 31, 1988, the Secretary shall reduce by 8.3 percent the fee schedules otherwise established for 1988, and such reduced fee schedules shall serve as the base for 1989 and subsequent years.

(iv) After determining the adjustment to the fee schedules under clause (i), the Secretary shall reduce such adjustment—

(I) for 2011 and each subsequent year, by the productivity adjustment described in section 1395ww(b)(3)(B)(xi)(II) of this title; and

(II) for each of 2011 through 2015, by 1.75 percentage points.

Subclause (I) shall not apply in a year where the adjustment to the fee schedules determined under clause (i) is 0.0 or a percentage decrease for a year. The application of the productivity adjustment under subclause (I) shall not result in an adjustment to the fee schedules under clause (i) being less than 0.0 for a year. The application of subclause (II) may result in an adjustment to the fee schedules under clause (i) being less than 0.0 for a year, and may result in payment rates for a year being less than such payment rates for the preceding year.

(b) The Secretary may make further adjustments or exceptions to the fee schedules to assure adequate reimbursement of (i) emergency laboratory tests needed for the provision of bonafide emergency services, and (ii) certain low volume high-cost tests where highly sophisticated equipment or extremely skilled personnel are necessary to assure quality.

(3) In addition to the amounts provided under the fee schedules, the Secretary shall provide for and establish (A) a nominal fee to cover the appropriate costs in collecting the sample on which a clinical diagnostic laboratory test was performed and for which payment is made under this part, except that not more than one such fee may be provided under this paragraph with respect to samples collected in the same encounter, and (B) a fee to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect the sample, except that such a fee may be provided only with respect to an individual who is homebound or an inpatient in an inpatient facility (other than a hospital). In establishing a fee to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect a sample, the Secretary shall provide a method for computing the fee based on the number of miles traveled and the personnel costs associated with the collection of each individual sample, but the Secretary shall only be required to apply such method in the case of tests furnished during the period beginning on April 1, 1989, and ending on December 31, 1990, by a laboratory that establishes to the satisfaction of the Secretary (based on data for the 12-month period ending June 30, 1988) that (i) the laboratory is dependent upon payments under this subchapter for at least 80 percent of its collected revenues for clinical diagnostic laboratory tests, (ii) at least 85 percent of its gross revenues for such tests are attributable to tests performed with respect to individuals who are homebound or who are residents in a nursing facility, and (iii) the laboratory provided such tests for residents in nursing facilities representing at least 20 percent of the number of such facilities in the State in which the laboratory is located.

(A) In establishing any fee schedule under this subsection, the Secretary may provide for an adjustment to take into account, with respect to the portion of the expenses of clinical diagnostic laboratory tests attributable to wages, the relative difference between a region’s or local area’s wage rates and the wage rate presumed in the data on which the schedule is based.

(B) For purposes of subsections (a)(1)(D)(i) and (a)(2)(D)(i) of this section, the limitation amount for a clinical diagnostic laboratory test performed—

(i) on or after July 1, 1986, and before April 1, 1988, is equal to 115 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1),

(ii) after March 31, 1988, and before January 1, 1990, is equal to the median of all the fee schedules established for that test for that laboratory setting under paragraph (1),

(iii) after December 31, 1989, and before January 1, 1991, is equal to 93 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1),

(iv) after December 31, 1990, and before January 1, 1994, is equal to 88 percent of such median,

(v) after December 31, 1993, and before January 1, 1995, is equal to 84 percent of such median,

(vi) after December 31, 1994, and before January 1, 1996, is equal to 80 percent of such median,

(vii) after December 31, 1995, and before January 1, 1998, is equal to 76 percent of such median, and

(viii) after December 31, 1997, is equal to 74 percent of such median (or 100 percent of such median in the case of a clinical diagnostic laboratory test performed on or after January 1, 2001, that the Secretary determines is a new test for which no limitation amount has previously been established under this subparagraph).

(5)(A) In the case of a bill or request for payment for a clinical diagnostic laboratory test for which payment may otherwise be made under this part on an assignment-related basis or under a provider agreement under section 1395cc of this title, payment may be made only to the
person or entity which performed or supervised the performance of such test; except that—

(i) if a physician performed or supervised the performance of such test, payment may be made to another physician with whom he shares his practice.

(ii) in the case of a test performed at the request of a laboratory by another laboratory, payment may be made to the referring laboratory but only if—

(I) the referring laboratory is located in, or is part of, a rural hospital.

(II) the referring laboratory is wholly owned by the entity performing such test, the referring laboratory wholly owns the entity performing such test, or both the referring laboratory and the entity performing such test are wholly-owned by a third entity, or

(III) not more than 30 percent of the clinical diagnostic laboratory tests for which such referring laboratory (but not including a laboratory described in subclause (II)),

receives requests for testing during the year in which the test is performed are performed by another laboratory, and

(iii) in the case of a clinical diagnostic laboratory test provided under an arrangement (as defined in section 1395x(w)(1) of this title) made by a hospital, critical access hospital, or skilled nursing facility, payment shall be made to the hospital or skilled nursing facility.

(B) In the case of such a bill or request for payment for a clinical diagnostic laboratory test for which payment may otherwise be made under this part, and which is not described in subparagraph (A), payment may be made to the beneficiary only on the basis of the itemized bill of the person or entity which performed or supervised the performance of the test.

(C) Payment for a clinical diagnostic laboratory test, including a test performed in a physician’s office but excluding a test performed by a rural health clinic may only be made on an assignment-related basis or to a provider of services with an agreement in effect under section 1395cc of this title.

(D) A person may not bill for a clinical diagnostic laboratory test, including a test performed in a physician’s office but excluding a test performed by a rural health clinic may only be made on an assignment-related basis or to a provider of services with an agreement in effect under section 1395cc of this title.

(i) knowing and willfully and on a repeated basis

(ii) in the case of a clinical diagnostic laboratory test in violation of the previous sentence, the Secretary may apply sanctions against the person in the same manner as the Secretary may apply sanctions against a physician in accordance with paragraph (2) of section 1395u(u) of this title in the same manner such paragraphs apply with respect to a physician. Paragraph (4) of such section shall apply in this subparagraph in the same manner as such paragraph applies to such section.

6) In the case of any diagnostic laboratory test payment for which is not made on the basis

\footnote{So in original. The comma after “subclause (II)” probably should follow “is performed”.

\footnote{So in original. Probably should be “such paragraph applies”.

of a fee schedule under paragraph (1), the Secretary may establish a payment rate which is acceptable to the person or entity performing the test and which would be considered the full charge for such tests. Such negotiated rate shall be limited to an amount not in excess of the total payment that would have been made for the services in the absence of such rate.

(7) Notwithstanding paragraphs (1) and (4), the Secretary shall establish a national minimum payment amount under this subsection for a diagnostic or screening pap smear laboratory test (including all cervical cancer screening technologies that have been approved by the Food and Drug Administration as a primary screening method for detection of cervical cancer) equal to $14.60 for tests furnished in 2000. For such tests furnished in subsequent years, such national minimum payment amount shall be adjusted annually as provided in paragraph (2).

(B) Determinations under subparagraph (A) shall be made only after the Secretary—

(i) makes available to the public (through an Internet website and other appropriate mechanisms) a list that includes any such test for which establishment of a payment amount under this subsection is being considered for a year;

(ii) on the same day such list is made available, causes to have published in the Federal Register notice of a meeting to receive comments and recommendations (and data on which recommendations are based) from the public on the appropriate basis under this subsection for establishing payment amounts for the tests on such list;

(iii) not less than 30 days after publication of such notice convenes a meeting, that includes representatives of officials of the Centers for Medicare & Medicaid Services involved in determining payment amounts, to receive such comments and recommendations (and accompanying data) recommended by the Secretary and such comments and recommendations (and accompanying data) received during the public comment period, develops and makes available to the public (through an Internet website and other appropriate mechanisms) a list of proposed determinations with respect to the appropriate basis for establishing a payment amount under this subsection for each such code, together with an explanation of the reasons for each such determination, the data on which the determinations are based, and a request for public written comments on the proposed determination; and

(v) taking into account the comments and recommendations (and accompanying data) received during the public comment period, develops and makes available to the public (through an Internet website and other appropriate mechanisms) a list of final determinations of the payment amounts for such tests under this subsection, together with the ra-
(C) Under the procedures established pursuant to subparagraph (A), the Secretary shall—
(i) set forth the criteria for making determinations under subparagraph (A); and
(ii) make available to the public the data (other than proprietary data) considered in making such determinations.

(D) The Secretary may convene such further public meetings to receive public comments on payment amounts for new tests under this subsection as the Secretary deems appropriate.

(E) For purposes of this paragraph:
(i) The term ‘HCPCS’ refers to the Health Care Procedure Coding System.

(ii) A code shall be considered to be ‘substantially revised’ if there is a substantive change to the definition of the test or procedure to which the code applies (such as a new analyte or a new methodology for measuring an existing analyte-specific test).

(9) Notwithstanding any other provision in this part, in the case of any diagnostic laboratory test for HbA1c that is labeled by the Food and Drug Administration for home use and is furnished on or after April 1, 2008, the payment rate for such test shall be the payment rate established under this part for a glycosylated hemoglobin test (identified as of October 1, 2007, by HCPCS code E8828 and any succeeding codes).

(i) Outpatient surgery

(1) The Secretary shall, in consultation with appropriate medical organizations—
(A) specify those surgical procedures which are appropriately (when considered in terms of the proper utilization of hospital inpatient facilities) performed on an inpatient basis in a hospital but which also can be performed safely on an ambulatory basis in an ambulatory surgical center (meeting the standards specified under section 1395lt(a)(2)(F)(1) of this title), critical access hospital, or hospital outpatient department, and

(B) specify those surgical procedures which are appropriately (when considered in terms of the proper utilization of hospital inpatient facilities) performed on an inpatient basis in a hospital but which also can be performed safely on an ambulatory basis in a physician’s office.

The lists of procedures established under subparagraphs (A) and (B) shall be reviewed and updated not less often than every 2 years, in consultation with appropriate trade and professional organizations.

(2)(A) For services furnished prior to the implementation of the system described in subparagraph (D), subject to subparagraph (E), the amount of payment to be made for facility services furnished in connection with a surgical procedure specified pursuant to paragraph (1)(A) and furnished to an individual in an ambulatory surgical center described in such paragraph shall be equal to 80 percent of a standard overhead amount established by the Secretary (with respect to each such procedure) on the basis of the Secretary’s estimate of a fair fee which—
(i) takes into account the costs incurred by such centers, or classes of centers, generally in providing services furnished in connection with the performance of such procedure, as determined in accordance with a survey (based upon a representative sample of procedures and facilities) of the actual audited costs incurred by such centers in providing such services.

(ii) takes such costs into account in such a manner as will assure that the performance of the procedure in such a center will result in substantially less amounts paid under this subchapter than would have been paid if the procedure had been performed on an inpatient basis in a hospital, and

(iii) in the case of insertion of an intraocular lens during or subsequent to cataract surgery includes payment which is reasonable and related to the cost of acquiring the class of lens involved.

Each amount so established shall be reviewed and updated not later than July 1, 1987, and annually thereafter to take account of varying conditions in different areas.

(B) The amount of payment to be made under this part for facility services furnished, in connection with a surgical procedure specified pursuant to paragraph (1)(B), in a physician’s office shall be equal to 80 percent of a standard overhead amount established by the Secretary (with respect to each such procedure) on the basis of the Secretary’s estimate of a fair fee which—
(i) takes into account additional costs, not usually included in the professional fee, incurred by physicians in securing, maintaining, and staffing the facilities and ancillary services appropriate for the performance of such procedure in the physician’s office, and

(ii) takes such items into account in such a manner which will assure that the performance of such procedure in the physician’s office will result in substantially less amounts paid under this subchapter than would have been paid if the services had been furnished on an inpatient basis in a hospital.

Each amount so established shall be reviewed and updated not later than July 1, 1987, and annually thereafter to take account of varying conditions in different areas.

(C)(i) Notwithstanding the second sentence of each of subparagraphs (A) and (B), except as otherwise specified in clauses (ii), (iii), and (iv), if the Secretary has not updated amounts established under such subparagraphs or under subparagraph (D), with respect to facility services furnished during a fiscal year (beginning with fiscal year 1986 or a calendar year (beginning with 2006)), such amounts shall be increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved.

(ii) In each of the fiscal years from 1998 through 2002, the increase under this subparagraph shall be reduced (but not below zero) by 2.0 percentage points.

(iii) In fiscal year 2004, beginning with April 1, 2004, the increase under this subparagraph shall
be the Consumer Price Index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with March 31, 2003, minus 3.0 percentage points.

(3) In fiscal year 2005, the last quarter of calendar year 2005, and each of calendar years 2006 through 2009, the increase under this subparagraph shall be 0 percent.

(D) (i) Taking into account the recommendations in the report under section 626(d) of Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the Secretary shall implement a revised payment system for payment of surgical services furnished in ambulatory surgical centers.

(ii) The year the system described in clause (i) is implemented, such system shall be designed to result in the same aggregate amount of expenditures for such services as would be made if this subparagraph did not apply, as estimated by the Secretary and taking into account reduced expenditures for the preceding year if subparagraph (E) were to continue to apply, as estimated by the Secretary.

(iii) The Secretary shall implement the system described in clause (i) for periods in a manner so that it is first effective beginning on or after January 1, 2006, and not later than January 1, 2008.

(iv) The Secretary may implement such system in a manner so as to provide for a reduction in any annual update for failure to report on quality measures in accordance with paragraph (7).

(v) In implementing the system described in clause (i) for 2011 and each subsequent year, any annual update under such system for the year, after application of clause (iv), shall be reduced by the productivity adjustment described in section 1395ww(b)(3)(B)(x)(II) of this title. The application of the preceding sentence may result in such update being less than 0.0 for a year, and may result in payment rates under the system described in clause (i) for a year being less than such payment rates for the preceding year.

(vi) There shall be no administrative or judicial review under section 1395ff, 1395oo of this title, or otherwise, of the classification system, the relative weights, payment amounts, and the geographic adjustment factor, if any, under this subparagraph.

(E) With respect to surgical procedures furnished on or after January 1, 2007, and before the effective date of the implementation of a revised payment system under subparagraph (D), if—

(i) the standard overhead amount under subparagraph (A) for a facility service for such procedure, without the application of any geographic adjustment, exceeds the Medicare OPD fee schedule amount established under the prospective payment system for hospital outpatient department services under paragraph (3)(D) of subsection (t) for such service for such year, determined without regard to geographic adjustment under paragraph (2)(D) of such subsection, the Secretary shall substitute under subparagraph (A) the amount described in clause (ii) for the standard overhead amount for such service referred to in clause (i).

(ii) The aggregate amount of the payments to be made under this part for outpatient hospital facility services or critical access hospital services furnished before January 1, 1999, in connection with surgical procedures specified under paragraph (1)(A) shall be equal to the lesser of—

(I) the amount determined with respect to such services under subsection (a)(2)(B) of this section; or

(II) the blend amount (described in subparagraph (B)).

(iii) The blend amount for a cost reporting period is the sum of—

(I) the cost proportion (as defined in clause (ii)(I)) of the amount described in subparagraph (A)(i), and

(II) the ASC proportion (as defined in clause (ii)(II)) of the standard overhead amount payable with respect to the same surgical procedure as if it were provided in an ambulatory surgical center in the same area, as determined under paragraph (2)(A), less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title.

(ii) Subject to paragraph (4), in this paragraph:

(I) The term “cost proportion” means 75 percent for cost reporting periods beginning in fiscal year 1988, 50 percent for portions of cost reporting periods beginning on or after October 1, 1988, and ending on or before December 31, 1990, and 42 percent for portions of cost reporting periods beginning on or after January 1, 1991.

(II) The term “ASC proportion” means 25 percent for cost reporting periods beginning in fiscal year 1988, 50 percent for portions of cost reporting periods beginning on or after October 1, 1988, and ending on or before December 31, 1990, and 58 percent for portions of cost reporting periods beginning on or after January 1, 1991.

(4)(A) In the case of a hospital that—

(i) makes application to the Secretary and demonstrates that it specializes in eye services or eye and ear services (as determined by the Secretary),

(ii) receives more than 30 percent of its total revenues from outpatient services, and

(iii) on October 1, 1987—

(I) was an eye specialty hospital or an eye and ear specialty hospital, or

(II) was operated as an eye or eye and ear unit (as defined in subparagraph (B)) of a general acute care hospital which, on the date of the application described in clause (i), operates less than 20 percent of the beds that the hospital operated on October 1, 1987, and has sold or otherwise disposed of a substantial portion of the hospital’s other acute care operations.

the cost proportion and ASC proportion in effect under subclauses (I) and (II) of paragraph (3)(B)(ii) for cost reporting periods beginning in fiscal year 1988 shall remain in effect for cost reporting periods beginning on or after October 1, 1988, and before January 1, 1992.

(B) For purposes of this 6 subparagraph (A)(iii)(II), the term “eye or eye and ear unit” means a physically separate or distinct unit.

6So in original. The word “this” probably should not appear.
containing separate surgical suites devoted solely to eye or ear and ear services.

(5)(A) The Secretary is authorized to provide by regulations that in the case of a surgical procedure, specified by the Secretary pursuant to paragraph (1)(A), performed in an ambulatory surgical center described in such paragraph, there shall be paid (in lieu of any amounts otherwise payable under this part) with respect to the facility services furnished by such center and with respect to all related services (including physicians’ services, laboratory, X-ray, and diagnostic services) a single all-inclusive fee established pursuant to subparagraph (B), if all parties furnishing all such services agree to accept such fee (to be divided among the parties involved in such manner as they shall have previously agreed upon) as full payment for the services furnished.

(B) In implementing this paragraph, the Secretary shall establish with respect to each surgical procedure specified pursuant to paragraph (1)(A) the amount of the all-inclusive fee for such procedure, taking into account such factors as may be appropriate. The amount so established with respect to any surgical procedure shall be reviewed periodically and may be adjusted by the Secretary, when appropriate, to take account of varying conditions in different areas.

(6) Any person, including a facility having an agreement under section 1395(k)(a)(2)(F)(i) of this title, who knowingly and willfully presents, or causes to be presented, a bill or request for payment, for an intraocular lens inserted during or subsequent to cataract surgery for which payment may be made under paragraph (2)(A)(iii), is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(7)(A) For purposes of paragraph (2)(D)(iv), the Secretary may provide, in the case of an ambulatory surgical center that does not submit, to the Secretary in accordance with this paragraph, data required to be submitted on measures selected under this paragraph with respect to a year, any annual increase provided under the system established under paragraph (2)(D) for such year shall be reduced by 2.0 percentage points. A reduction under this subparagraph shall apply only with respect to the year involved and the Secretary shall not take into account such reduction in computing any annual increase factor for a subsequent year.

(B) Except as the Secretary may otherwise provide, the provisions of subparagraphs (B), (C), (D), and (E) of paragraph (17) of subsection (t) shall apply with respect to services of ambulatory surgical centers under this paragraph in a similar manner to the manner in which they apply under such paragraph and, for purposes of this subparagraph, any reference to a hospital, outpatient setting, or outpatient hospital services is deemed a reference to an ambulatory surgical center, the setting of such a center, or services of such a center, respectively.

(j) Accrual of interest on balance of excess or deficit not paid

Whenever a final determination is made that the amount of payment made under this part either to a provider of services or to another person pursuant to an assignment under section 1395u(b)(3)(B) of this title was in excess of or less than the amount of payment that should have been made (or offset by offset) within 30 days of the date of the determination, interest shall accrue on the balance of such excess or deficit not paid or offset (to the extent that the balance is owed by or owing to the provider) at a rate determined in accordance with the regulations of the Secretary of the Treasury applicable to charges for late payments.

(k) Hepatitis B vaccine

With respect to services described in section 1395x(s)(10)(B) of this title, the Secretary may provide, instead of the amount of payment otherwise provided under this part, for payment of such an amount or amounts as reasonably reflects the general cost of efficiently providing such services.

(l) Fee schedule for services of certified registered nurse anesthetists

(1)(A) The Secretary shall establish a fee schedule for services of certified registered nurse anesthetists under section 1395x(s)(11) of this title.

(B) In establishing the fee schedule under this paragraph the Secretary may utilize a system of time units, a system of base and time units, or any appropriate methodology.

(C) The provisions of this subsection shall not apply to certain services furnished in certain hospitals in rural areas under the provisions of section 9320(k) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 6132 of the Omnibus Budget Reconciliation Act of 1989.

(2) Except as provided in paragraph (3), the fee schedule established under paragraph (1) shall be initially based on audited data from cost reporting periods ending in fiscal year 1985 and such other data as the Secretary determines necessary.

(3)(A) In establishing the initial fee schedule for those services, the Secretary shall adjust the fee schedule to the extent necessary to ensure that the estimated total amount which will be paid under this subchapter for those services plus applicable coinsurance in 1989 will equal the estimated total amount which would be paid under this subchapter for those services in 1989 if the services were included as inpatient hospital services and payment for such services was made under part A of this subchapter in the same manner as payment was made in fiscal year 1987, adjusted to take into account changes in prices and technology relating to the administration of anesthesia.

(B) The Secretary shall also reduce the prevailing charge of physicians for medical direction of a certified registered nurse anesthetist, or the fee schedule for services of certified registered nurse anesthetists, or both, to the extent necessary to ensure that the estimated total amount which will be paid under this subchapter...
plus applicable coinsurance for such medical direction and such services in 1989 and 1990 will not exceed the estimated total amount which would have been paid plus applicable coinsurance but for the enactment of the amendments made by section 929 of the Omnibus Budget Reconciliation Act of 1986. A reduced prevailing charge under this subparagraph shall become the prevailing charge but for subsequent years for purposes of applying the economic index under the fourth sentence of section 1395u(b)(3) of this title.

4(A) Except as provided in subparagraphs (C) and (D), in determining the amount paid under the fee schedule under this subsection for medically directed—

(i) the conversion factor shall be—

(I) for services furnished in 1991, $15.50,

(II) for services furnished in 1992, $15.75,

(III) for services furnished in 1993, $16.00,

(IV) for services furnished in 1994, $16.25,

(V) for services furnished in 1995, $16.50,

(VI) for services furnished in 1996, $16.75,

(VII) for services furnished in calendar years after 1996, the previous year’s conversion factor increased by the update determined under section 1395w–4(d) of this title for physician anesthesia services for that year;

(ii) the payment areas to be used shall be the fee schedule areas used under section 1395w–4 of this title (or, in the case of services furnished during 1991, the localities used under section 1395u(b) of this title) for purposes of computing payments for physicians’ services that are anesthesia services;

(iii) the geographic adjustment factors to be applied to the conversion factor under clause (i) for services in a fee schedule area or locality is—

(I) in the case of services furnished in 1991, the geographic work index value and the geographic practice cost index value fixed in the area or locality, and

(II) in the case of services furnished after 1991, the geographic work index value, the geographic practice cost index value, and the geographic malpractice index value used for determining payments for physicians’ services that are anesthesia services under section 1395w–4 of this title,

with 70 percent of the conversion factor treated as attributable to work and 30 percent as attributable to overhead for services furnished in 1991 (and the portions attributable to work, practice expenses, and malpractice expenses in 1992 and thereafter being the same as is applied under section 1395w–4 of this title).

4(B) Except as provided in clause (ii) and subparagraph (D), in determining the amount paid under the fee schedule under this subsection for services furnished on or after January 1, 1991, and before January 1, 1994, by a certified registered nurse anesthetist who is medically directed, the Secretary shall apply the same methodology specified in subparagraph (A).

(ii) The conversion factor used under clause (i) shall be—

(I) for services furnished in 1991, $10.50,

(II) for services furnished in 1992, $10.75, and

(III) for services furnished in 1993, $11.00.

(iii) In the case of services of a certified registered nurse anesthetist who is medically directed or medically supervised by a physician which are furnished on or after January 1, 1994, the fee schedule amount shall be one-half of the amount described in section 1395w–4(a)(5)(B) of this title with respect to the physician.

(C) Notwithstanding subclauses (I) through (V) of subparagraph (A)(i)—

(i) in the case of a 1990 conversion factor that is greater than $16.50, the conversion factor for a calendar year after 1996 shall be the 1990 conversion factor reduced by the product of the last digit of the calendar year and one-fifth of the amount by which the 1990 conversion factor exceeds $16.50; and

(ii) in the case of a 1990 conversion factor that is greater than $16.50 but less than $16.51, the conversion factor for a calendar year after 1990 and before 1996 shall be the greater of—

(I) the 1990 conversion factor, or

(II) the conversion factor specified in subparagraph (A)(i) for the year involved.

(D) Notwithstanding subparagraph (C), in no case may the conversion factor used to determine payment for services in a fee schedule area or locality under this subsection, as adjusted by the adjustment factors specified in subparagraphs (A)(iii), exceed the conversion factor used to determine the amount paid for physicians’ services that are anesthesia services in the area or locality.

5(A) Payment for the services of a certified registered nurse anesthetist (for which payment may otherwise be made under this part) may be made on the basis of a claim or request for payment presented by the certified registered nurse anesthetist furnishing such services, or by a hospital, critical access hospital, physician, group practice, or ambulatory surgical center with which the certified registered nurse anesthetist furnishing such services has an employment or contractual relationship that provides for payment to be made under this part for such services to such hospital, critical access hospital, physician, group practice, or ambulatory surgical center.

(B) No hospital or critical access hospital that presents a claim or request for payment for services of a certified nurse anesthetist under this part may treat any uncollected coinsurance amount imposed under this part with respect to such services as a bad debt of such hospital or critical access hospital for purposes of this subchapter.

6 If an adjustment under paragraph (3)(B) results in a reduction in the reasonable charge for a physicians’ service and a nonparticipating physician furnishes the service to an individual entitled to benefits under this part after the ef-
(m) Incentive payments for physicians’ services furnished in underserved areas

(1) In the case of physicians’ services furnished in a year to an individual, who is covered under the insurance program established by this part and who inures expenses for such services, in an area that is designated (under section 1395u(b)(6) of this title) as a health professional shortage area as identified by the Secretary prior to the beginning of such year, in addition to the amount otherwise paid under this part, there also shall be paid to the physician (or to an employer or facility in the cases described in clause (A) of section 1395u(b)(6) of this title) on a monthly or quarterly basis from the Federal Supplementary Medical Insurance Trust Fund an amount equal to 10 percent of the payment amount for the service under this part.

(2) For each health professional shortage area identified in paragraph (1) that consists of an entire county, the Secretary shall provide for the additional payment under paragraph (1) without any requirement on the physician to identify the area involved. The Secretary may implement the previous sentence using the method specified in subsection (u)(4)(C) of this section.

(3) The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services a list of the health professional shortage areas identified in paragraph (1) that consist of an entire county, the Secretary shall provide for the additional payment under paragraph (1) without any requirement on the physician to identify the area involved. The Secretary may implement the previous sentence using the method specified in subsection (u)(4)(C) of this section.

(n) Payments to hospital outpatient departments for radiology; amount; definitions

(1)(A) The aggregate amount of the payments to be made for all or part of a cost reporting period for services described in subsection (a)(2)(E)(i) of this section furnished under this part on or after October 1, 1988, and before January 1, 1992, shall be equal to the less of:—

(i) the cost proportion (as defined in clause (ii)) of the amount described in subparagraph (A)(i); and

(ii) the charge proportion (as defined in clause (ii)(II)) of 62 percent (for services described in subsection (a)(2)(E)(ii) of this section), or (for procedures described in subsection (a)(2)(E)(ii) of this section), 42 percent or such other percent established by the Secretary (or carriers pursuant to guidelines issued by the Secretary) based on prevailing charges established with actual charge data, of the prevailing charge or (for services described in subsection (a)(2)(E)(ii) of this section furnished on or after April 1, 1989 and for services described in subsection (a)(2)(E)(ii) of this section furnished on or after January 1, 1992) the fee schedule amount established for participating physicians for the same services as if they were furnished in a physician’s office in the same locality as determined under section 1395u(b) of this title (or, in the case of services furnished on or after January 1, 1992, under section 1395w-4 of this title), less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title.

(ii) In this subparagraph:

(I) The term “cost proportion” means 50 percent, except that such term means 65 percent in the case of outpatient radiology services for portions of cost reporting periods which occur in fiscal year 1989 and in the case of diagnostic procedures described in subsection (a)(2)(E)(ii) of this section for portions of cost reporting periods which occur in fiscal year 1990, and such term means 42 percent in the case of outpatient radiology services for portions of cost reporting periods beginning on or after January 1, 1991.

(II) The term “charge proportion” means 100 percent minus the cost proportion.

(o) Limitation on benefit for payment for therapeutic shoes for individuals with severe diabetic foot disease

(1) In the case of shoes described in section 1395x(a)(12) of this title—

(A) no payment may be made under this part, with respect to any individual for any year, for the furnishing of—

(i) more than one pair of custom molded therapeutic shoes for individuals with severe diabetic foot disease and diagnostic procedures determined in accordance with subparagraph (B); and

(ii) more than one pair of extra-depth therapeutic shoes for individuals with severe diabetic foot disease and diagnostic procedures determined in accordance with subparagraph (B); and

(B) with respect to expenses incurred in any calendar year, no more than the amount of payment applicable under paragraph (2) shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section.

Payment for shoes (or inserts) under this part shall be considered to include payment for any expenses for the fitting of such shoes (or inserts).

(2)(A) Except as provided by the Secretary under subparagraphs (B) and (C), the amount of—

So in original. No par. (2) has been enacted.
payment under this paragraph for custom molded shoes, extra-depth shoes, and inserts shall be the amount determined for such items by the Secretary under section 1395m(h) of this title. (B) The Secretary may establish payment amounts for shoes and inserts that are lower than the amount established under section 1395m(h) of this title if the Secretary finds that shoes and inserts of an appropriate quality are readily available at or below the amount established under such section. (C) In accordance with procedures established by the Secretary, an individual entitled to benefits with respect to shoes described in section 1395s(a)(12) of this title may substitute modification of such shoes instead of obtaining one (or more, as specified by the Secretary) pair of inserts (other than the original pair of inserts with respect to such shoes). In such case, the Secretary shall substitute, for the payment amount established under section 1395m(h) of this title, a payment amount that the Secretary estimates will assure critical access hospital that presents a claim or request for payment under this part for services described in section 1395s(a)(2)(K)(ii) of this title may treat any uncollected coinsurance amount imposed under this part with respect to such services as a bad debt of such hospital for purposes of this subchapter.


(q) Requests for payment to include information on referring physician (1) Each request for payment, or bill submitted, for an item or service furnished by an entity for which payment may be made under this part and for which the entity knows or has reason to believe has been a referral by a referring physician (within the meaning of section 1395s of this title) shall include the name and unique physician identification number for the referring physician.

(2)(A) In the case of a request for payment for an item or service furnished by an entity under this part on an assignment-related basis and for which information is required to be provided under paragraph (1) but not included, payment may be denied under this part.

(B) In the case of a request for payment for an item or service furnished by an entity under this part not submitted on an assignment-related basis and for which information is required to be provided under paragraph (1) but not included—

(i) if the entity knowingly and willfully fails to provide such information promptly upon request of the Secretary or a carrier, the entity may be subject to a civil money penalty in an amount not to exceed $2,000, and

(ii) if the entity knowingly, willfully, and in repeated cases fails, after being notified by the Secretary of the obligations and requirements of this subsection to provide the information required under paragraph (1), the entity may be subject to exclusion from participation in the programs under this chapter for a period not to exceed 5 years, in accordance with the procedures of subsections (c), (f), and (g) of section 1320a–7 of this title.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under clause (i) in the same manner as they apply to a penalty proceeding under section 1320a–7a(a) of this title.

(r) Cap on prevailing charge; billing on assignment-related basis (1) With respect to services described in section 1395x(s)(2)(K)(ii) of this title (relating to nurse practitioner or clinical nurse specialist services), payment may be made on the basis of a claim or request for payment presented by the nurse practitioner or clinical nurse specialist furnishing such services, or by a hospital, critical access hospital, skilled nursing facility or nursing facility (as defined in section 1396r(a) of this title), physician, group practice, or ambulatory surgical center with which the nurse practitioner or clinical nurse specialist has an employment or contractual relationship that provides for payment to be made under this part for such services to such hospital, physician, group practice, or ambulatory surgical center.

(2) No hospital or critical access hospital that presents a claim or request for payment under this part for services described in section 1395s(a)(2)(K)(ii) of this title may treat any uncollected coinsurance amount imposed under this part with respect to such services as a bad debt of such hospital for purposes of this subchapter.

(s) Other prepaid organizations The Secretary may not provide for payment under subsection (a)(1)(A) of this section with respect to an organization unless the organization provides assurances satisfactory to the Secretary that the organization meets the requirement of section 1395xcc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

(t) Prospective payment system for hospital outpatient department services (1) Amount of payment (A) In general With respect to covered OPD services (as defined in subparagraph (B)) furnished during a year beginning with 1999, the amount of payment under this part shall be determined under a prospective payment system established by the Secretary in accordance with this subchapter.

(B) Definition of covered OPD services For purposes of this subsection, the term “covered OPD services”—

(i) means hospital outpatient services designated by the Secretary;

(ii) subject to clause (iv), includes inpatient hospital services designated by the Secretary that are covered under this part and furnished to a hospital inpatient who is entitled to benefits under part A of this subchapter but has exhausted benefits for inpatient hospital services during a spell of illness, or (ii) is not so entitled;

(iii) includes implantable items described in paragraph (3), (6), or (8) of section 1395x(s) of this title; but (iv) does not include any therapy services described in subsection (a)(8) of this section or ambulance services, for which
payment is made under a fee schedule described in section 1395m(k) of this title or section 1395m(l) of this title and does not include screening mammography (as defined in section 1395x(jj) of this title), diagnostic mammography, or personalized prevention plan services (as defined in section 1395x(hhh)(1) of this title).

(2) System requirements

Under the payment system—

(A) the Secretary shall develop a classification system for covered OPD services;

(B) the Secretary may establish groups of covered OPD services, within the classification system described in subparagraph (A), so that services classified within each group are comparable clinically and with respect to the use of resources and so that an implantable item is classified to the group that includes the service to which the item relates;

(C) the Secretary shall, using data on claims from 1996 and using data from the most recent available cost reports, establish relative payment weights for covered OPD services (and any groups of such services described in subparagraph (B)) based on median (or, at the election of the Secretary, mean) hospital costs and shall determine projections of the frequency of utilization of each such service (or group of services) in 1999;

(D) subject to paragraph (19), the Secretary shall determine a wage adjustment factor to adjust the portion of payment and coinsurance attributable to labor-related costs for relative differences in labor and labor-related costs across geographic regions in a budget neutral manner;

(E) the Secretary shall establish, in a budget neutral manner, outlier adjustments under paragraph (5) and transitional pass-through payments under paragraph (6) and other adjustments as determined to be necessary to ensure equitable payments, such as adjustments for certain classes of hospitals;

(F) the Secretary shall develop a method for controlling unnecessary increases in the volume of covered OPD services;

(G) the Secretary shall create additional groups of covered OPD services that classify separately those procedures that utilize contrast agents from those that do not; and

(H) with respect to devices of brachytherapy consisting of a seed or seeds (or radioactive source), the Secretary shall create additional groups of covered OPD services that classify such devices separately from the other services (or group of services) paid for under this subsection in a manner reflecting the number, isotope, and radioactive intensity of such devices furnished, including separate groups for palladium-103 and iodine-125 devices and for stranded and non-stranded devices furnished on or after July 1, 2007.

For purposes of subparagraph (B), items and services within a group shall not be treated as “comparable with respect to the use of resources” if the highest median cost (or mean cost, if elected by the Secretary under subparagraph (C)) for an item or service within the group is more than 2 times greater than the lowest median cost (or mean cost, if so elected) for an item or service within the group; except that the Secretary may make exceptions in unusual cases, such as low volume items and services, but may not make such an exception in the case of a drug or biological that has been designated as an orphan drug under section 360bb of title 21.

(3) Calculation of base amounts

(A) Aggregate amounts that would be payable if deductibles were disregarded

The Secretary shall estimate the sum of—

(i) the total amounts that would be payable from the Trust Fund under this part for covered OPD services in 1999, determined without regard to this subsection, as though the deductible under subsection (b) of this section did not apply, and

(ii) the total amounts of copayments estimated to be paid under this subsection by beneficiaries to hospitals for covered OPD services in 1999, as though the deductible under subsection (b) of this section did not apply.

(B) Unadjusted copayment amount

(i) In general

For purposes of this subsection, subject to clause (ii), the “unadjusted copayment amount” applicable to a covered OPD service (or group of such services) is 20 percent of the national median of the charges for the service (or services within the group) furnished during 1996, updated to 1999 using the Secretary’s estimate of charge growth during the period.

(ii) Adjusted to be 20 percent when fully phased in

If the pre-deductible payment percentage for a covered OPD service (or group of such services) furnished in a year would be equal to or exceed 80 percent, then the unadjusted copayment amount shall be 20 percent of amount determined under subparagraph (D).

(iii) Rules for new services

The Secretary shall establish rules for establishment of an unadjusted copayment amount for a covered OPD service not furnished during 1996, based upon its classification within a group of such services.

(C) Calculation of conversion factors

(i) For 1999

(I) In general

The Secretary shall establish a 1999 conversion factor for determining the medicare OPD fee schedule amounts for each covered OPD service (or group of such services) furnished in 1999. Such conversion factor shall be established on the basis of the weights and frequencies described in paragraph (2)(C) and in such a manner that the sum for all services and groups of the products (described in
subclause (II) for each such service or group) equals the total projected amount described in subparagraph (A).

(ii) Product described

The Secretary shall determine for each service or group the product of the medicare OPD fee schedule amounts (taking into account appropriate adjustments described in paragraphs (2)(D) and (2)(E)) and the estimated frequencies for such service or group.

(ii) Subsequent years

Subject to paragraph (8)(B), the Secretary shall establish a conversion factor for covered OPD services furnished in subsequent years in an amount equal to the conversion factor established under this subparagraph and applicable to such services furnished in the previous year increased by the OPD fee schedule increase factor specified under clause (iv) for the year involved.

(iii) Adjustment for service mix changes

Insofar as the Secretary determines that the adjustments for service mix under paragraph (2) for a previous year (or estimates that such adjustments for a future year) did (or are likely to) result in a change in aggregate payments under this subsection during the year that are a result of changes in the coding or classification of covered OPD services that do not reflect real changes in service mix, the Secretary may adjust the conversion factor computed under this subparagraph for subsequent years so as to eliminate the effect of such coding or classification changes.

(iv) OPD fee schedule increase factor

For purposes of this subparagraph, subject to paragraph (17) and subparagraph (F) of this paragraph, the “OPD fee schedule increase factor” for services furnished in a year is equal to the market basket percentage increase applicable under section 1395ww(b)(3)(B)(xi)(II) of this title to hospital discharges occurring during the fiscal year ending in such year, reduced by 1 percentage point for such factor for services furnished in each of 2000 and 2002. In applying the previous sentence for years beginning with 2000, the Secretary may substitute for the market basket percentage increase an annual percentage increase that is computed and applied with respect to covered OPD services furnished in a year in the same manner as the market basket percentage increase is determined and applied to inpatient hospital services for discharges occurring in a fiscal year.

(D) Calculation of medicare OPD fee schedule amounts

The Secretary shall compute a medicare OPD fee schedule amount for each covered OPD service (or group of such services) furnished in a year, in an amount equal to the product of—

(i) the conversion factor computed under subparagraph (C) for the year, and

(ii) the relative payment weight (determined under paragraph (2)(C)) for the service or group.

(E) Pre-deductible payment percentage

The pre-deductible payment percentage for a covered OPD service (or group of such services) furnished in a year is equal to the ratio—

(i) the medicare OPD fee schedule amount established under subparagraph (D) for the year, minus the unadjusted cost-sharing amount determined under subparagraph (B) for the service or group, to

(ii) the medicare OPD fee schedule amount determined under subparagraph (D) for the year for such service or group.

(F) Productivity and other adjustment

After determining the OPD fee schedule increase factor under subparagraph (C)(iv), the Secretary shall reduce such increase factor—

(i) for 2012 and subsequent years, by the productivity adjustment described in section 1395ww(b)(3)(B)(xi)(II) of this title; and

(ii) for each of 2010 through 2019, by the adjustment described in subparagraph (G).

The application of this subparagraph may result in the increase factor under subparagraph (C)(iv) being less than 0.0 for a year, and may result in payment rates under the payment system under this subsection for a year being less than such payment rates for the preceding year.

(G) Other adjustment

For purposes of subparagraph (F)(ii), the adjustment described in this subparagraph is—

(i) for each of 2010 and 2011, 0.25 percentage point;

(ii) for each of 2012 and 2013, 0.1 percentage point;

(iii) for 2014, 0.3 percentage point;

(iv) for each of 2015 and 2016, 0.2 percentage point; and

(v) for each of 2017, 2018, and 2019, 0.75 percentage point.

(4) Medicare payment amount

The amount of payment made from the Trust Fund under this part for a covered OPD service (and such services classified within a group) furnished in a year is determined, subject to paragraph (7), as follows:

(A) Fee schedule adjustments

The medicare OPD fee schedule amount (computed under paragraph (3)(D) for the service or group and year is adjusted for relative differences in the cost of labor and other factors determined by the Secretary, as computed under paragraphs (2)(D) and (2)(E).

(B) Subtract applicable deductible

Reduce the adjusted amount determined under subparagraph (A) by the amount of the deductible under subsection (b) of this section, to the extent applicable.

(C) Apply payment proportion to remainder

The amount of payment is the amount so determined under subparagraph (B) multi-
(5) Outlier adjustment

(A) In general

Subject to subparagraph (D), the Secretary shall provide for an additional payment for each covered OPD service (or group of services) for which a hospital’s charges, adjusted to cost, exceed—

(i) a fixed multiple of the sum of—

(I) the applicable medicare OPD fee schedule amount determined under paragraph (3)(D), as adjusted under paragraph (4)(A) (other than for adjustments under this paragraph or paragraph (6)); and

(II) any transitional pass-through payment under paragraph (6); and

(ii) at the option of the Secretary, such fixed dollar amount as the Secretary may establish.

(B) Amount of adjustment

The amount of the additional payment under subparagraph (A) shall be determined by the Secretary and shall approximate the marginal cost of care beyond the applicable cutoff point under such subparagraph.

(C) Limit on aggregate outlier adjustments

(i) In general

The total of the additional payments made under this paragraph for covered OPD services furnished in a year (as estimated by the Secretary before the beginning of the year) may not exceed the applicable percentage (specified in clause (ii)) of the total program payments estimated to be made under this subsection for all covered OPD services furnished in that year. If this paragraph is first applied to less than a full year, the previous sentence shall apply only to the portion of such year.

(ii) Applicable percentage

For purposes of clause (i), the term “applicable percentage” means a percentage specified by the Secretary up to (but not to exceed)—

(I) for a year (or portion of a year) before 2004, 2.5 percent; and

(II) for 2004 and thereafter, 3.0 percent.

(D) Transitional authority

In applying subparagraph (A) for covered OPD services furnished before January 1, 2002, the Secretary may—

(i) apply such subparagraph to a bill for such services related to an outpatient encounter (rather than for a specific service or group of services) using OPD fee schedule amounts and transitional pass-through payments covered under the bill; and

(ii) use an appropriate cost-to-charge ratio for the hospital involved (as determined by the Secretary), rather than for specific departments within the hospital.

(E) Exclusion of separate drug and biological APCS from outlier payments

No additional payment shall be made under subparagraph (A) in the case of ambulatory payment classification groups established separately for drugs or biologicals.

(6) Transitional pass-through for additional costs of innovative medical devices, drugs, and biologicals

(A) In general

The Secretary shall provide for an additional payment under this paragraph for any of the following that are provided as part of a covered OPD service (or group of services):

(i) Current orphan drugs

A drug or biological that is used for a rare disease or condition with respect to which the drug or biological has been designated as an orphan drug under section 360bb of title 21 if payment for the drug or biological as an outpatient hospital service under this part was being made on the first date that the system under this subsection is implemented.

(ii) Current cancer therapy drugs and biologicals and brachytherapy

A drug or biological that is used in cancer therapy, including (but not limited to) a chemotherapeutic agent, an antiemetic, a hematopoietic growth factor, a colony stimulating factor, a biological response modifier, a biphosphonate, and a device of brachytherapy or temperature monitored cryoablation, if payment for such drug, biological, or device as an outpatient hospital service under this part was being made on such first date.

(iii) Current radiopharmaceutical drugs and biological products

A radiopharmaceutical drug or biological product used in diagnostic, monitoring, and therapeutic nuclear medicine procedures if payment for the drug or biological as an outpatient hospital service under this part was being made on such first date.

(iv) New medical devices, drugs, and biologicals

A medical device, drug, or biological not described in clause (i), (ii), or (iii) if—

(I) payment for the device, drug, or biological as an outpatient hospital service under this part was not being made as of December 31, 1996; and

(II) the cost of the device or biological or the average cost of the category of devices is not insignificant in relation to the OPD fee schedule amount (as calculated under paragraph (3)(D)) payable for the service (or group of services) involved.

(B) Use of categories in determining eligibility of a device for pass-through payments

The following provisions apply for purposes of determining whether a medical de-
(i) Establishment of initial categories

(I) In general

The Secretary shall initially establish under this clause categories of medical devices based on type of device by April 1, 2001. Such categories shall be established in a manner such that each medical device that meets the requirements of clause (ii) or (iv) of subparagraph (A) as of January 1, 2001, is included in such a category and no such device is included in more than one category. For purposes of the preceding sentence, whether a medical device meets such requirements as of such date shall be determined on the basis of the program memoranda issued before such date.

(II) Authorization of implementation other than through regulations

The categories may be established under this clause by program memorandum or otherwise, after consultation with groups representing hospitals, manufacturers of medical devices, and other affected parties.

(ii) Establishing criteria for additional categories

(I) In general

The Secretary shall establish criteria that will be used for creation of additional categories (other than those established under clause (i)) through rule-making (which may include use of an interim final rule with comment period).

(II) Standard

Such categories shall be established under this clause in a manner such that no medical device is described by more than one category. Such criteria shall include a test of whether the average cost of devices that would be included in a category and are in use at the time the category is established is not insignificant, as described in subparagraph (A)(iv)(II).

(III) Deadline

Criteria shall first be established under this clause by July 1, 2001. The Secretary may establish in compelling circumstances categories under this clause before the date such criteria are established.

(IV) Adding categories

The Secretary shall promptly establish a new category of medical devices under this clause for any medical device that meets the requirements of subparagraph (A)(iv) and for which none of the categories in effect (or that were previously in effect) is appropriate.

(iii) Period for which category is in effect

A category of medical devices established under clause (i) or (ii) shall be in effect for a period of at least 2 years, but not more than 3 years, that begins—

(I) in the case of a category established under clause (i), on the first date on which payment was made under this paragraph for any device described by such category (including payments made during the period before April 1, 2001); and

(II) in the case of any other category, on the first date on which payment is made under this paragraph for any medical device that is described by such category.

(iv) Requirements treated as met

A medical device shall be treated as meeting the requirements of subparagraph (A)(iv), regardless of whether the device meets the requirement of subclause (I) of such subparagraph, if—

(I) the device is described by a category established and in effect under clause (i); or

(II) the device is described by a category established and in effect under clause (ii) and an application under section 360e of title 21 has been approved with respect to the device, or the device has been cleared for market under section 360(k) of title 21, or the device is exempt from the requirements of section 360(k) of title 21 pursuant to subsection (l) or (m) of section 360 of title 21 or section 360(g) of title 21.

Nothing in this clause shall be construed as requiring an application or prior approval (other than that described in subclause (II)) in order for a covered device described by a category to qualify for payment under this paragraph.

(C) Limited period of payment

(i) Drugs and biologicals

The payment under this paragraph with respect to a drug or biological shall only apply during a period of at least 2 years, but not more than 3 years, that begins—

(I) on the first date this subsection is implemented in the case of a drug or biological described in clause (i), (ii), or (iii) of subparagraph (A) and in the case of a drug or biological described in subparagraph (A)(iv) and for which payment under this part is made as an outpatient hospital service before such first date; or

(II) in the case of a drug or biological described in subparagraph (A)(iv) not described in subclause (I), on the first date on which payment is made under this part for the drug or biological as an outpatient hospital service.

(ii) Medical devices

Payment shall be made under this paragraph with respect to a medical device only if such device—

(I) is described by a category of medical devices established and in effect under subparagraph (B); and

(II) is provided as part of a service (or group of services) paid for under this subsection and provided during the pe-
(D) Amount of additional payment

Subject to subparagraph (E)(iii), the amount of the payment under this paragraph with respect to a device, drug, or biological provided as part of a covered OPD service is—

(i) in the case of a drug or biological, the amount by which the amount determined under section 1395u(o) of this title (or if the drug or biological is covered under a competitive acquisition contract under section 1395w–3b of this title, an amount determined by the Secretary equal to the average price for the drug or biological for all competitive acquisition areas and year established under such section as calculated and adjusted by the Secretary for purposes of this paragraph) for the drug or biological exceeds the portion of the otherwise applicable Medicare OPD fee schedule that the Secretary determines is associated with the device, adjusted to cost, exceeds the hospital's charges for the device, adjusted to cost, exceeds the portion of the otherwise applicable Medicare OPD fee schedule that the Secretary determines is associated with the drug or biological; or

(ii) in the case of a medical device, the amount by which the hospital's charges for the device, adjusted to cost, exceeds the portion of the otherwise applicable Medicare OPD fee schedule that the Secretary determines is associated with the device.

(E) Limit on aggregate annual adjustment

(i) In general

The total of the additional payments made under this paragraph for covered OPD services furnished in a year (as estimated by the Secretary before the beginning of the year) may not exceed the applicable percentage (specified in clause (ii)) of the total program payments estimated to be made under this subsection for all covered OPD services furnished in that year. If this paragraph is first applied to less than a full year, the previous sentence shall apply only to the portion of such year.

(ii) Applicable percentage

For purposes of clause (i), the term “applicable percentage” means—

(I) for a year (or portion of a year) before 2004, 2.5 percent; and

(II) for 2004 and thereafter, a percentage specified by the Secretary up to (but not to exceed) 2.0 percent.

(iii) Uniform prospective reduction if aggregate limit projected to be exceeded

If the Secretary estimates before the beginning of a year that the amount of the additional payments under this paragraph for the year (or portion thereof) as determined under clause (i) without regard to this clause will exceed the limit established under such clause, the Secretary shall reduce pro rata the amount of each of the additional payments under this paragraph for that year (or portion thereof) in order to ensure that the aggregate additional payments under this paragraph (as so estimated) do not exceed such limit.

(F) Limitation of application of functional equivalence standard

(i) In general

The Secretary may not publish regulations that apply a functional equivalence standard to a drug or biological under this paragraph.

(ii) Application

Clause (i) shall apply to the application of a functional equivalence standard to a drug or biological on or after December 8, 2003, unless—

(I) such application was being made to such drug or biological prior to December 8, 2003; and

(II) the Secretary applies such standard to such drug or biological only for the purpose of determining eligibility of such drug or biological for additional payments under this paragraph and not for the purpose of any other payments under this subchapter.

(iii) Rule of construction

Nothing in this subparagraph shall be construed to effect the Secretary’s authority to deem a particular drug to be identical to another drug if the 2 products are pharmaceutically equivalent and bio-equivalent, as determined by the Commissioner of Food and Drugs.

(7) Transitional adjustment to limit decline in payment

(A) Before 2002

Subject to subparagraph (D), for covered OPD services furnished before January 1, 2002, for which the PPS amount (as defined in subparagraph (E)) is—

(I) at least 90 percent, but less than 100 percent, of the pre-BBA amount, the amount of payment under this subsection shall be increased by 21 percent of the pre-BBA amount, exceeds (II) the product of 0.71 and the pre-BBA amount, exceeds (III) at least 70 percent, but less than 80 percent, of the pre-BBA amount, the amount of payment under this subsection shall be increased by the amount by which (I) the product of 0.63 and the pre-BBA amount, exceeds (II) the product of 0.60 and the PPS amount; or

(iv) less than 70 percent of the pre-BBA amount, the amount of payment under this subsection shall be increased by 21 percent of the pre-BBA amount.

(B) 2002

Subject to subparagraph (D), for covered OPD services furnished during 2002, for which the PPS amount is—

(I) at least 90 percent, but less than 100 percent, of the pre-BBA amount, the
amount of payment under this subsection shall be increased by 70 percent of the amount of such difference; 
(ii) at least 80 percent, but less than 90 percent, of the pre-BBA amount, the amount of payment under this subsection shall be increased by the amount by which (I) the product of 0.61 and the pre-BBA amount, exceeds (II) the product of 0.60 and the PPS amount; or 
(iii) less than 80 percent of the pre-BBA amount, the amount of payment under this subsection shall be increased by 13 percent of the pre-BBA amount.

(C) 2003
Subject to subparagraph (D), for covered OPD services furnished during 2003, for which the PPS amount is—
(i) at least 90 percent, but less than 100 percent, of the pre-BBA amount, the amount of payment under this subsection shall be increased by 60 percent of the amount of such difference; or
(ii) less than 90 percent of the pre-BBA amount, the amount of payment under this subsection shall be increased by 6 percent of the pre-BBA amount.

(D) Hold harmless provisions
(i) Temporary treatment for certain rural hospitals
(I) In the case of a hospital located in a rural area and that has not more than 100 beds or a sole community hospital (as defined in section 1395ww(l)(5)(D)(iii) of this title) located in a rural area, for covered OPD services furnished before January 1, 2006, for which the PPS amount is less than the pre-BBA amount, the amount of payment under this subsection shall be increased by the amount of such difference.

(ii) Base payment-to-cost ratio defined
For purposes of the preceding sentence, the applicable percentage shall be 95 percent with respect to covered OPD services furnished in 2006, 90 percent with respect to such services furnished in 2007, and 85 percent with respect to such services furnished in 2008, 2009, 2010, 2011, or the first two months of 2012.

(iii) In the case of a hospital and children’s hospitals
In the case of a hospital described in clause (ii) or (v) of section 1395ww(d)(1)(B) of this title, for covered OPD services for which the PPS amount is less than the pre-BBA amount, the amount of payment under this subsection shall be increased by the amount of such difference.

(E) PPS amount defined
In this paragraph, the term “PPS amount” means, with respect to covered OPD services, the amount payable under this subchapter for such services (determined without regard to this paragraph), including amounts payable as copayment under paragraph (8), coinsurance under section 1395cc(a)(2)(A)(ii) of this title, and the deductible under subsection (b) of this section.

(F) Pre-BBA amount defined
(i) In general
In this paragraph, the “pre-BBA amount” means, with respect to covered OPD services furnished by a hospital in a year, an amount equal to the product of the reasonable cost of the hospital for such services for the portions of the hospital’s cost reporting period (or periods) occurring in the year and the base OPD payment-to-cost ratio for the hospital (as defined in clause (ii)).

(ii) Base payment-to-cost ratio defined
For purposes of this subparagraph, the “base payment-to-cost ratio” for a hospital means the ratio of—
(I) the hospital’s reimbursement under this part for covered OPD services furnished during the cost reporting period ending in 1996 (or in the case of a hospital that did not submit a cost report for such period, during the first subsequent cost reporting period ending before 2001 for which the hospital submitted a cost report), including any reimbursement for such services through cost-sharing described in subparagraph (E), to
(II) the reasonable cost of such services for such period.

The Secretary shall determine such ratios as if the amendments made by section 4521 of the Balanced Budget Act of 1997 were in effect in 1996.

(G) Interim payments
The Secretary shall make payments under this paragraph to hospitals on an interim basis, subject to retrospective adjustments based on settled cost reports.

(H) No effect on copayments
Nothing in this paragraph shall be construed to affect the unadjusted copayment
amount described in paragraph (3)(B) or the copayment amount under paragraph (8).

(I) Application without regard to budget neutrality

The additional payments made under this paragraph—

(i) shall not be considered an adjustment under paragraph (2)(E); and

(ii) shall not be implemented in a budget neutral manner.

(8) Copayment amount

(A) In general

Except as provided in subparagraphs (B) and (C), the copayment amount under this subsection is the amount by which the amount described in paragraph (4)(B) exceeds the amount of payment determined under paragraph (4)(C).

(B) Election to offer reduced copayment amount

The Secretary shall establish a procedure under which a hospital, before the beginning of a year (beginning with 1999), may elect to reduce the copayment amount otherwise established under subparagraph (A) for some or all covered OPD services to an amount that is not less than 20 percent of the Medicare OPD fee schedule amount (computed under paragraph (3)(D)) for the service involved. Under such procedures, such reduced copayment amount may not be further reduced or increased during the year involved and the hospital may disseminate information on the reduction of copayment amount effected under this subparagraph.

(C) Limitation on copayment amount

(i) To inpatient hospital deductible amount

In no case shall the copayment amount for a procedure performed in a year exceed the amount of the inpatient hospital deductible established under section 1395e(b) of this title for that year.

(ii) To specified percentage

The Secretary shall reduce the national unadjusted copayment amount for a covered OPD service (or group of such services) furnished in a year in a manner so that the effective copayment rate (determined on a national unadjusted basis) for that service in the year does not exceed the following percentage:

(I) For procedures performed in 2001, on or after April 1, 2001, 57 percent.

(II) For procedures performed in 2002 or 2003, 55 percent.

(III) For procedures performed in 2004, 50 percent.

(IV) For procedures performed in 2005, 45 percent.

(V) For procedures performed in 2006 and thereafter, 40 percent.

(D) No impact on deductibles

Nothing in this paragraph shall be construed as affecting a hospital’s authority to waive the charging of a deductible under subsection (b) of this section.

(E) Computation ignoring outlier and pass-through adjustments

The copayment amount shall be computed under subparagraph (A) as if the adjustments under paragraphs (5) and (6) (and any adjustment made under paragraph (2)(E) in relation to such adjustments) had not occurred.

(9) Periodic review and adjustments components of prospective payment system

(A) Periodic review

The Secretary shall review not less often than annually and revise the groups, the relative payment weights, and the wage and other adjustments described in paragraph (2) to take into account changes in medical practice, changes in technology, the addition of new services, new cost data, and other relevant information and factors. The Secretary shall consult with an expert outside advisory panel composed of an appropriate selection of representatives of providers to review (and advise the Secretary concerning) the clinical integrity of the groups and weights. Such panel may use data collected or developed by entities and organizations (other than the Department of Health and Human Services) in conducting such review.

(B) Budget neutrality adjustment

If the Secretary makes adjustments under subparagraph (A), then the adjustments for a year may not cause the estimated amount of expenditures under this part for the year to increase or decrease from the estimated amount of expenditures under this part that would have been made if the adjustments had not been made. In determining adjustments under the preceding sentence for 2004 and 2005, the Secretary shall not take into account under this subparagraph or paragraph (2)(E) any expenditures that would not have been made but for the application of paragraph (14).

(C) Update factor

If the Secretary determines under methodologies described in paragraph (2)(F) that the volume of services paid for under this subsection increased beyond amounts established through those methodologies, the Secretary may appropriately adjust the update to the conversion factor otherwise applicable in a subsequent year.

(10) Special rule for ambulance services

The Secretary shall pay for hospital outpatient services that are ambulance services on the basis described in section 1395x(v)(1)(U) of this title, or, if applicable, the fee schedule established under section 1395m(f) of this title.

(11) Special rules for certain hospitals

In the case of hospitals described in clause (iii) or (v) of section 1395ww(d)(1)(B) of this title—

(A) the system under this subsection shall not apply to covered OPD services furnished before January 1, 2000; and

(B) the Secretary may establish a separate conversion factor for such services in a man-
ner that specifically takes into account the
unique costs incurred by such hospitals by virtue of their patient population and service intensity.

(12) Limitation on review

There shall be no administrative or judicial review under section 1395ff of this title, 1395 of this title, or otherwise of—

(A) the development of the classification system under paragraph (2), including the establishment of groups and relative payment weights for covered OPD services, of wage adjustment factors, other adjustments, and methods described in paragraph (2)(F);

(B) the calculation of base amounts under paragraph (3);

(C) periodic adjustments made under paragraph (6);

(D) the establishment of a separate conversion factor under paragraph (8)(B); and

(E) the determination of the fixed multiple, or a fixed dollar cutoff amount, the marginal cost of care, or applicable percentage under paragraph (5) or the determination of insignificance of cost, the duration of the additional payments, the determination and deletion of initial and new categories (consistent with subparagraphs (B) and (C) of paragraph (6)), the portion of the Medicare OPD fee schedule amount associated with particular devices, drugs, or biologicals, and the application of any pro rata reduction under paragraph (6).

(13) Authorization of adjustment for rural hospitals

(A) Study

The Secretary shall conduct a study to determine if, under the system under this subsection, costs incurred by hospitals located in rural areas by ambulatory payment classification groups (APCs) exceed those costs incurred by hospitals located in urban areas.

(B) Authorization of adjustment

Insofar as the Secretary determines under subparagraph (A) that costs incurred by hospitals located in rural areas exceed those costs incurred by hospitals located in urban areas, the Secretary shall provide for an appropriate adjustment under paragraph (2)(E) to reflect those higher costs by January 1, 2006.

(14) Drug APC payment rates

(A) In general

The amount of payment under this subsection for a specified covered outpatient drug (defined in subparagraph (B)) that is furnished as part of a covered OPD service (or group of services)—

(i) in 2004, in the case of—

(1) a sole source drug shall in no case be less than 88 percent, or exceed 95 percent, of the reference average wholesale price for the drug;

(2) an innovator multiple source drug shall in no case exceed 68 percent of the reference average wholesale price for the drug;

(3) a noninnovator multiple source drug shall in no case exceed 46 percent of the reference average wholesale price for the drug;

(ii) in 2005, in the case of—

(1) a sole source drug shall in no case be less than 83 percent, or exceed 95 percent, of the reference average wholesale price for the drug;

(2) an innovator multiple source drug shall in no case exceed 68 percent of the reference average wholesale price for the drug;

(3) a noninnovator multiple source drug shall in no case exceed 46 percent of the reference average wholesale price for the drug;

(iii) in a subsequent year, shall be equal, subject to subparagraph (B), to—

(I) to the average acquisition cost for the drug for that year which, at the option of the Secretary, may vary by hospital group (as defined by the Secretary based on volume of covered OPD services or other relevant characteristics), as determined by the Secretary taking into account the hospital acquisition cost survey data under subparagraph (D); or

(II) if hospital acquisition cost data are not available, the average price for the drug in the year established under section 1395w–2a of this title, section 1395w–3a of this title, or section 1395w–3b of this title, as the case may be, as calculated and adjusted by the Secretary as necessary for purposes of this paragraph.

(B) Specified covered outpatient drug defined

(i) In general

In this paragraph, the term "specified covered outpatient drug"—means, subject to clause (ii), a covered outpatient drug (as defined in section 1396r–8(b)(1)(B) of this title) for which a separate ambulatory payment classification group (APC) has been established and that is—

(I) a radiopharmaceutical; or

(II) a drug or biological for which payment was made under paragraph (6) (relating to pass-through payments) on or before December 31, 2002.

(ii) Exception

Such term does not include—

(I) a drug or biological for which payment is first made on or after January 1, 2003, under paragraph (6);

(II) a drug or biological for which a temporary HCPCS code has not been assigned; or

(III) during 2004 and 2005, an orphan drug (as designated by the Secretary).

(C) Payment for designated orphan drugs during 2004 and 2005

The amount of payment under this subsection for an orphan drug designated by the Secretary under subparagraph (B)(ii)(III) that is furnished as part of a covered OPD service (or group of services) during 2004 and 2005 shall equal such amount as the Secretary may specify.
(D) Acquisition cost survey for hospital outpatient drugs

(i) Annual GAO surveys in 2004 and 2005

(I) In general

The Comptroller General of the United States shall conduct a survey in each of 2004 and 2005 to determine the hospital acquisition cost for each specified covered outpatient drug. Not later than April 1, 2005, the Comptroller General shall furnish data from such surveys to the Secretary for use in setting the payment rates under subparagraph (A) for 2006.

(II) Recommendations

Upon the completion of such surveys, the Comptroller General shall recommend to the Secretary the frequency and methodology of subsequent surveys to be conducted by the Secretary under clause (ii).

(ii) Subsequent secretarial surveys

The Secretary, taking into account such recommendations, shall conduct periodic subsequent surveys to determine the hospital acquisition cost for each specified covered outpatient drug for use in setting the payment rates under subparagraph (A).

(iii) Survey requirements

The surveys conducted under clauses (i) and (ii) shall have a large sample of hospitals that is sufficient to generate a statistically significant estimate of the average hospital acquisition cost for each specified covered outpatient drug. With respect to the surveys conducted under clause (i), the Comptroller General shall report to Congress on the justification for the size of the sample used in order to assure the validity of such estimates.

(iv) Differentiation in cost

In conducting surveys under clause (i), the Comptroller General shall determine and report to Congress if there is (and the extent of any) variation in hospital acquisition costs for drugs among hospitals based on the volume of covered OPD services performed by such hospitals or other relevant characteristics of such hospitals (as defined by the Comptroller General).

(v) Comment on proposed rates

Not later than 30 days after the date the Secretary promulgated proposed rules setting forth the payment rates under subparagraph (A) for 2006, the Comptroller General shall evaluate such proposed rates and submit to Congress a report regarding the appropriateness of such rates based on the surveys the Comptroller General has conducted under clause (i).

(E) Adjustment in payment rates for overhead costs

(i) MedPAC report on drug APC design

The Medicare Payment Advisory Commission shall submit to the Secretary, not later than July 1, 2005, a report on adjustment of payment for ambulatory payment classifications for specified covered outpatient drugs to take into account overhead and related expenses, such as pharmacy services and handling costs. Such report shall include—

(1) a description and analysis of the data available with regard to such expenses;

(2) a recommendation as to whether such a payment adjustment should be made; and

(3) if such adjustment should be made, a recommendation regarding the methodology for making such an adjustment.

(ii) Adjustment authorized

The Secretary may adjust the weights for ambulatory payment classifications for specified covered outpatient drugs to take into account the recommendations contained in the report submitted under clause (i).

(F) Classes of drugs

For purposes of this paragraph:

(i) Sole source drugs

The term “sole source drug” means—

(I) a biological product (as defined under section 1395x(t)(1) of this title); or

(II) a single source drug (as defined in section 1396r–8(k)(7)(A)(v) of this title).

(ii) Innovator multiple source drugs

The term “innovator multiple source drug” has the meaning given such term in section 1396r–8(k)(7)(A)(ii) of this title.

(iii) Noninnovator multiple source drugs

The term “noninnovator multiple source drug” has the meaning given such term in section 1396r–8(k)(7)(A)(iii) of this title.

(G) Reference average wholesale price

The term “reference average wholesale price” means, with respect to a specified covered outpatient drug, the average wholesale price for the drug as determined under section 1395u(ν) of this title as of May 1, 2003.

(H) Inapplicability of expenditures in determining conversion, weighting, and other adjustment factors

Additional expenditures resulting from this paragraph shall not be taken into account in establishing the conversion, weighting, and other adjustment factors for 2004 and 2005 under paragraph (9), but shall be taken into account for subsequent years.

(15) Payment for new drugs and biologicals until HCPCS code assigned

With respect to payment under this part for an outpatient drug or biological that is covered under this part and is furnished as part of covered OPD services for which a HCPCS code has not been assigned, the amount provided for payment for such drug or biological under this part shall be equal to 95 percent of the average wholesale price for the drug or biological.
(16) Miscellaneous provisions

(A) Application of reclassification of certain hospitals

If a hospital is being treated as being located in a rural area under section 1395ww(d)(B)(E) of this title, that hospital shall be treated under this subsection as being located in that rural area.

(B) Threshold for establishment of separate APCS for drugs

The Secretary shall reduce the threshold for the establishment of separate ambulatory payment classification groups (APCs) with respect to drugs or biologicals to $50 per administration for drugs and biologicals furnished in 2005 and 2006.

(C) Payment for devices of brachytherapy and therapeutic radiopharmaceuticals at charges adjusted to cost

Notwithstanding the preceding provisions of this subsection, for a device of brachytherapy consisting of a seed or seeds (or radioactive source) furnished on or after January 1, 2004, and before January 1, 2010, and for therapeutic radiopharmaceuticals furnished on or after January 1, 2008, and before January 1, 2010, the payment basis for the device or therapeutic radiopharmaceutical under this subsection shall be equal to the hospital’s charges for each device or therapeutic radiopharmaceutical furnished, adjusted to cost. Charges for such devices or therapeutic radiopharmaceuticals shall not be included in determining any outlier payment under this subsection.

(17) Quality reporting

(A) Reduction in update for failure to report

(i) In general

For purposes of paragraph (3)(C)(iv) for 2009 and each subsequent year, in the case of a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title) that does not submit, to the Secretary in accordance with this paragraph, data required to be submitted on measures selected under this paragraph with respect to such a year, the OPD fee schedule increase factor under paragraph (3)(C)(iv) for such year shall be reduced by 2.0 percentage points.

(ii) Non-cumulative application

A reduction under this subparagraph shall apply only with respect to the year involved and the Secretary shall not take into account such reduction in computing the OPD fee schedule increase factor for a subsequent year.

(B) Form and manner of submission

Each subsection (d) hospital shall submit data on measures selected under this paragraph to the Secretary in a form and manner, and at a time, specified by the Secretary for purposes of this paragraph.

(C) Development of outpatient measures

(i) In general

The Secretary shall develop measures that the Secretary determines to be appropriate for the measurement of the quality of care (including medication errors) furnished by hospitals in outpatient settings and that reflect consensus among affected parties and, to the extent feasible and practicable, shall include measures set forth by one or more national consensus building entities.

(ii) Construction

Nothing in this paragraph shall be construed as preventing the Secretary from selecting measures that are the same as (or a subset of) the measures for which data are required to be submitted under section 1395ww(b)(3)(B)(viii) of this title.

(D) Replacement of measures

For purposes of this paragraph, the Secretary may replace any measures or indicators in appropriate cases, such as where all hospitals are effectively in compliance or the measures or indicators have been subsequently shown not to represent the best clinical practice.

(E) Availability of data

The Secretary shall establish procedures for making data submitted under this paragraph available to the public. Such procedures shall ensure that a hospital has the opportunity to review the data that are to be made public with respect to the hospital prior to such data being made public. The Secretary shall report quality measures of process, structure, outcome, patients’ perspectives on care, efficiency, and costs of care that relate to services furnished in outpatient settings in hospitals on the Internet website of the Centers for Medicare & Medicaid Services.

(18) Authorization of adjustment for cancer hospitals

(A) Study

The Secretary shall conduct a study to determine if, under the system under this subsection, costs incurred by hospitals described in section 1395ww(d)(1)(B)(v) of this title with respect to ambulatory payment classification groups exceed those costs incurred by other hospitals furnishing services under this subsection (as determined appropriate by the Secretary). In conducting the study under this subparagraph, the Secretary shall take into consideration the cost of drugs and biologicals incurred by such hospitals.

(B) Authorization of adjustment

Insofar as the Secretary determines under subparagraph (A) that costs incurred by hospitals described in section 1395ww(d)(1)(B)(v) of this title exceed those costs incurred by other hospitals furnishing services under this subsection, the Secretary shall provide for an appropriate adjustment under paragraph (2)(E) to reflect those higher costs effective for services furnished on or after January 1, 2011.
(19) Floor on area wage adjustment factor for hospital outpatient department services in frontier States

(A) In general

Subject to subparagraph (B), with respect to covered OPD services furnished on or after January 1, 2011, the area wage adjustment factor applicable under the payment system established under this subsection to any hospital outpatient department which is located in a frontier State (as defined in section 1395ww(d)(3)(E)(ii) of this title) may not be less than 1.00. The preceding sentence shall not be applied in a budget neutral manner.

(B) Limitation

This paragraph shall not apply to any hospital outpatient department located in a State that receives a non-labor related share adjustment under section 1395ww(d)(5)(H) of this title.

(u) Incentive payments for physician scarcity areas

(1) In general

In the case of physicians’ services furnished on or after January 1, 2005, and before July 1, 2008—

(A) by a primary care physician in a primary care scarcity county (identified under paragraph (4)); or

(B) by a physician who is not a primary care physician in a specialist care scarcity county (as so identified),

in addition to the amount of payment that would otherwise be made for such services under this part, there also shall be paid an amount equal to 5 percent of the payment amount for the service under this part.

(2) Determination of ratios of physicians to medicare beneficiaries in area

Based upon available data, the Secretary shall establish for each county or equivalent area in the United States, the following:

(A) Number of physicians practicing in the area

The number of physicians who furnish physicians’ services in the active practice of medicine or osteopathy in that county or area, other than physicians whose practice is exclusively for the Federal Government, physicians who are retired, or physicians who only provide administrative services. Of such number, the number of such physicians who are—

(i) primary care physicians; or

(ii) physicians who are not primary care physicians.

(B) Number of medicare beneficiaries residing in the area

The number of individuals who are residing in the county and are entitled to benefits under part A of this subchapter or enrolled under this part, or both (in this subsection referred to as “individuals”).

(C) Determination of ratios

(i) Primary care ratio

The ratio (in this paragraph referred to as the “primary care ratio”) of the number of primary care physicians (determined under subparagraph (A)(i)), to the number of individuals determined under subparagraph (B).

(ii) Specialist care ratio

The ratio (in this paragraph referred to as the “specialist care ratio”) of the number of other physicians (determined under subparagraph (A)(ii)), to the number of individuals determined under subparagraph (B).

(3) Ranking of counties

The Secretary shall rank each such county or area based separately on its primary care ratio and its specialist care ratio.

(4) Identification of counties

(A) In general

The Secretary shall identify—

(i) those counties and areas (in this paragraph referred to as “primary care scarcity counties”) with the lowest primary care ratios that represent, if each such county or area were weighted by the number of individuals determined under paragraph (2)(B), an aggregate total of 20 percent of the total of the individuals determined under such paragraph; and

(ii) those counties and areas (in this subsection referred to as “specialist care scarcity counties”) with the lowest specialist care ratios that represent, if each such county or area were weighted by the number of individuals determined under paragraph (2)(B), an aggregate total of 20 percent of the total of the individuals determined under such paragraph.

(B) Periodic revisions

The Secretary shall periodically revise the counties or areas identified in subparagraph (A) (but not less often than once every three years) unless the Secretary determines that there is no new data available on the number of physicians practicing in the county or area or the number of individuals residing in the county or area, as identified in paragraph (2).

(C) Identification of counties where service is furnished

For purposes of paying the additional amount specified in paragraph (1), if the Secretary uses the 5-digit postal ZIP Code where the service is furnished, the dominant county of the postal ZIP Code (as determined by the United States Postal Service, or otherwise) shall be used to determine whether the postal ZIP Code is in a scarcity county identified in subparagraph (A) or revised in subparagraph (B).

(D) Special rule

With respect to physicians’ services furnished on or after January 1, 2008, and before July 1, 2008, for purposes of this subsection, the Secretary shall use the primary care scarcity counties and the specialty care scarcity counties (as identified under the preceding provisions of this paragraph) that the Secretary was using under this sub-
section with respect to physicians’ services furnished on December 31, 2007.

(E) Judicial review

There shall be no administrative or judicial review under section 1395ff, 1395oo of this title, or otherwise, respecting—

(i) the identification of a county or area;
(ii) the assignment of a specialty of any physician under this paragraph;
(iii) the assignment of a physician to a county under paragraph (2); or
(iv) the assignment of a postal ZIP Code to a county or other area under this subsection.

(5) Rural census tracts

To the extent feasible, the Secretary shall treat a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725)), as an equivalent area for purposes of qualifying as a primary care scarcity county or specialist care scarcity county under this subsection.

(6) Physician defined

For purposes of this paragraph, the term “physician” means a physician described in section 1395x(p)(1) of this title and the term “primary care physician” means a physician who is identified in the available data as a general practitioner, family practice practitioner, general internist, or obstetrician or gynecologist.

(7) Publication of list of counties; posting on website

With respect to a year for which a county or area is identified or revised under paragraph (4), the Secretary shall identify such counties or areas as part of the proposed and final rule to implement the physician fee schedule under section 1395w–4 of this title for the applicable year. The Secretary shall post the list of counties identified or revised under paragraph (4) on the Internet website of the Centers for Medicare & Medicaid Services.

(v) Increase of FQHC payment limits

In the case of services furnished by Federally qualified health centers (as defined in section 1395x(aa)(4) of this title), the Secretary shall establish payment limits with respect to such services under this part for services furnished—

(1) in 2010, at the limits otherwise established under this part for such year increased by $5; and
(2) in a subsequent year, at the limits established under this subsection for the previous year increased by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for such subsequent year.

(w) Methods of payment

The Secretary may develop alternative methods of payment for items and services provided under clinical trials and comparative effectiveness studies sponsored or supported by an agency of the Department of Health and Human Services, as determined by the Secretary, to those that would otherwise apply under this section, to the extent such alternative methods are necessary to preserve the scientific validity of such trials or studies, such as in the case where masking the identity of interventions from patients and investigators is necessary to comply with the particular trial or study design.

(x) Incentive payments for primary care services

(1) In general

In the case of primary care services furnished on or after January 1, 2011, and before January 1, 2016, by a primary care practitioner, in addition to the amount of payment that would otherwise be made for such services under this part, there also shall be paid (on a monthly or quarterly basis) an amount equal to 10 percent of the payment amount for the service under this part.

(2) Definitions

In this subsection:

(A) Primary care practitioner

The term “primary care practitioner” means an individual—

(i) who—

(I) is a physician (as described in section 1395x(r)(1) of this title) who has a primary specialty designation of family medicine, internal medicine, geriatric medicine, or pediatric medicine;

(II) is a nurse practitioner, clinical nurse specialist, or physician assistant (as those terms are defined in section 1395x(aa)(5) of this title); and

(ii) for whom primary care services accounted for at least 60 percent of the allowed charges under this part for such physician or practitioner in a prior period as determined appropriate by the Secretary.

(B) Primary care services

The term “primary care services” means services identified, as of January 1, 2008, by the following HCPCS codes (and as subsequently modified by the Secretary):

(i) 99201 through 99215.

(ii) 99304 through 99340.

(iii) 99341 through 99350.

(iv) 99341 through 99350.

(3) Coordination with other payments

The amount of the additional payment for a service under this subsection and subsection (m) shall be determined without regard to any additional payment for the service under subsection (m) and this subsection, respectively.

(4) Limitation on review

There shall be no administrative or judicial review under section 1395ff of this title, 1395oo of this title, or otherwise, respecting the identification of primary care practitioners under this subsection.

(y) Incentive payments for major surgical procedures furnished in health professional shortage areas

(1) In general

In the case of major surgical procedures furnished on or after January 1, 2011, and before
January 1, 2016, by a general surgeon in an area that is designated (under section 254e(a)(1)(A) of this title) as a health profession shortage area as identified by the Secretary prior to the beginning of the year in which the payment is made, in addition to the amount of payment, in the amount of payment that would otherwise be made for such services under this part, there also shall be paid (on a monthly or quarterly basis) an amount equal to 10 percent of the payment amount for the service under this part.

(2) Definitions

In this subsection:

(A) General surgeon

In this subsection, the term “general surgeon” means a physician (as described in section 1395x(r)(1) of this title) who has designated CMS specialty code 02-General Surgery as their primary specialty code in the physician's enrollment under section 1395cc(j) of this title.

(B) Major surgical procedures

The term “major surgical procedures” means physicians' services which are surgical procedures for which a 10-day or 90-day global period is used for payment under the fee schedule under section 1395w–2(b) of this title.

(3) Coordination with other payments

The amount of the additional payment for a service under this subsection and subsection (m) shall be determined without regard to any additional payment for the service under subsection (m) and this subsection, respectively.

(4) Application

The provisions of paragraph (2) and (4) of subsection (m) shall apply to the determination of additional payments under this subsection in the same manner as such provisions apply to the determination of additional payments under section 1395w–2(b) of this title.

Subsec. (a)(1)(N). Pub. L. 111–148, §4104(c)(1)(A), inserted “other than personalized prevention plan services (as defined in section 1395xhhh(1) of this title)” after “(as defined in section 1395w–4(c)(3) of this title)”.

Subsec. (a)(1)(T). Pub. L. 111–148, §4104(b)(1), as amended by Pub. L. 111–148, §10406, inserted “(or 100 percent if such services are recommended with a grade of A or B by the United States Preventive Services Task Force for any indication or population and are appropriate for the individual)” after “90 percent”.

Subsec. (a)(1)(W). Pub. L. 111–148, §4104(b)(2), as amended by Pub. L. 111–148, §10406, inserted “(if such subparagraph were applied, by substituting ‘100 percent’ for ‘80 percent’)” after “subparagraph (D)” in cl. (i) and substituted “100 percent” for “80 percent” in cl. (i).


Subsec. (a)(3)(B)(i). Pub. L. 111–148, §1395l(l)(3)(C)(i)(I), inserted subcl. (I) designation after “one)” and in the case of such services furnished on or after the implementation date of the prospective payment system under section 1395s(m) of this title, under such section (calculated as if ‘100 percent’ were substituted for ‘90 percent’ in such section) for such services if the individual had not been so enrolled after “been so enrolled”.

Subsec. (b). Pub. L. 111–148, §4104(c)(2), inserted at end “Paragraph (1) of the first sentence of this subsection shall apply with respect to a colorectal cancer screening test regardless of the code that is billed for the establishment of a diagnosis as a result of the test, or for the removal of tissue or other matter or other procedure that is furnished in connection with, as a result of, and in the same clinical encounter as the screening test.”

Subsec. (b)(1). Pub. L. 111–148, §4104(c)(1), substituted “preventive services described in subparagraph (A) of section 1395w(dd)(3) of this title that are recommended with a grade of A or B by the United States Preventive Services Task Force for any indication or population and are appropriate for the individual” for “items and services described in section 1395w(s)(10)(A) of this title”.


Subsec. (g)(5). Pub. L. 111–309, §104, substituted “and ending on December 31, 2011” for “and ending on March 31, 2010”.


Subsec. (i)(2)(D)(v). Pub. L. 111–148, §3401(k), added cl. (v) and redesignated former cl. (v) as (vi).

Subsec. (i)(3)(C)(iv). Pub. L. 111–148, §3401(c)(3)(A), substituted “diagnostic mammography, or personalized prevention plan services (as defined in section 1395w(hhh(1) of this title)” for “diagnostic mammography”.

Subsec. (i)(3)(C)(v). Pub. L. 111–148, §3401(l)(1), inserted “and subparagraph (F) of this paragraph” after “(‘17’).”


Subsec. (t)(3)(G)(i)(II). Pub. L. 111–152, §1105(e)(1)(A), placed subcl. (II), which was directed to be inserted after subcl. (I) by Pub. L. 111–148, §10319(g)(3), immediately after subcl. (I) and struck out “and” at end. See Amendment note below.

Pub. L. 111–148, §10319(g)(3), which directed addition of subcl. (II) “after subclause (I)”, could not be executed. See Amendment note above.

Subsec. (t)(3)(G)(i)(III). Pub. L. 111–152, §1105(e)(1), added subcl. (III) which read as follows: “subject to clause (ii), for each of 2014 through 2019, 0.2 percentage point.”


Subsec. (t)(3)(G)(ii). Pub. L. 111–152, §1105(e)(2), struck out cl. (ii). Prior to amendment, text read as follows: “Clauses (i) and (ii) shall be applied with respect to any of 2014 through 2019 by substituting ‘0.0 percentage points’ for ‘0.2 percentage point’, if for such year—

(1) the excess (if any) of—

(a) the total percentage of the non-elderly insured population for the preceding year (based on the most recent estimates available from the Director of the Congressional Budget Office before a vote in either House on the Patient Protection and Affordable Care Act that, if determined in the affirmative, would clear such Act for enrollment); or

(b) the 51 percentage of the non-elderly insured population for such preceding year (as estimated by the Secretary); exceeds

(II) 5 percentage points.”


Subsec. (t)(7)(D)(i)(II). Pub. L. 111–309, §108(2), which directed substitution of “January 1, 2012” for “January 1, 2011,” was executed by making the substitution in two places to reflect the probable intent of Congress.

Pub. L. 111–148, §3212(b), inserted at end “in the case of covered OPD services furnished on or after January 1, 2011, the preceding sentence shall be applied without regard to the 100-bed limitation.”


2008—Subsec. (a)(3)(D)(iii). Pub. L. 110–275, §145(a)(2), before comma at end of subpar. (D), struck out cl. (iii), which read as follows: “on the basis of a rate established under a demonstration project under section 12205c–3(b) of this title, the amount paid shall be equal to 100 percent of such rate.”


Subsec. (c). Pub. L. 110–275, §102, amended subsec. (c) generally. Prior to amendment, text read as follows: “Notwithstanding any other provision of this part, with respect to expenses incurred in any calendar year in connection with the treatment of mental, neurotic, and personality disorders of an individual who is not an inpatient of a hospital at the time such expenses are incurred, there shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section only 62 1⁄2 percent of such expenses. For purposes of this subsection, the term ‘treatment’ does not include brief office visits (as defined by the Secretary) for the sole purpose of monitoring or changing drug prescriptions used in the treatment of such disorders or partial hospitalization services that are not directly provided by a physician.”

Subsec. (g)(1). Pub. L. 110–275, §143(b)(3), inserted “‘and speech-language pathology services of the type described in such subsection through the application of section 1395x(b)(2) of this title’” and “‘and speech-language pathology services’”.


Subsec. (h)(2)(A)(i). Pub. L. 110–275, §145(b), inserted “‘minus, for each of the years 2009 through 2013, 0.5 percentage points’” after “city average.”


Subsec. (g)(1)(3). Pub. L. 109–171, §5107(a)(1)(A), substituted “paragraphs (4) and (5)” for “paragraph (4)’’.


Subsec. (b)(D)(ii). Pub. L. 109–171, §5108(2), inserted “and taking into account reduced expenditures that would apply if subparagraphs (b) and (e) were to continue to apply, as estimated by the Secretary” before period at end.


Subsec. (a)(1)(S). Pub. L. 108–173, § 642(b), inserted “(including intravenous immune globulin (as defined in section 1395zz of this title))” after “with respect to drugs and biologicals”.

Subsec. (i)(2)(A). Pub. L. 108–173, § 619(a)(3), inserted “(or, if applicable, under section 1395w–3, 1395w–3a, or 1395w–3b of this title)” after “1395w(a) of this title”.


Subsec. (a)(3). Pub. L. 108–173, § 237(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “In the case of services described in section 1395x(zz)(2) of this title, the costs which are reasonable and related to the cost of furnishing such services or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under section 1395x(v)(1)(A) of this title, less the amount a provider may charge as described in clause (1) of section 1395cc(a)(2)(A) of this title, but in no case may the payment for such services (other than for items and services described in section 1395x(v)(10)(A) of this title) exceed 80 percent of such costs”.

Subsec. (b). Pub. L. 108–173, § 629, substituted “$100 for 1991 through 2004, $110 for 2005, and for a subsequent year the amount of such deductible for the previous year increased by the annual percentage increase in the monthly actuarial rate under section 1395x(s)(1) of this title ending with such subsequent year (rounded to the nearest $1)” for “$100 for 1991 and subsequent years” before semicolon in first sentence.


Subsec. (i)(2)(A). Pub. L. 108–173, § 626(b)(1)(A), substituted “‘services furnished prior to the implementation of the system described in subparagraph (D), the’” for “‘The’ in introductory provisions.”


Subsec. (i)(2)(C). Pub. L. 108–173, § 626(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “Notwithstanding the second sentence of subparagraph (A) or the second sentence of subparagraph (B), if the Secretary has not updated amounts established under such subparagraphs with respect to facility services furnished during a fiscal year (beginning with fiscal year 1996), such amounts shall be increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) as estimated by the Secretary for the mid-month period with the midpoint of the year involved. In each of the fiscal years 1998 through 2002, the increase under this subparagraph shall be reduced (but not below zero) by 2.0 percentage points.”


Subsec. (m). Pub. L. 108–173, § 413(b)(1), designated existing provisions as par. (1), inserted “in a year” after “‘In the case of physicians’ services furnished’” and “as identified by the Secretary prior to the beginning of such year” after “as a health professional shortage area,” and added para. (2) to (4).

Subsec. (o)(1)(B). Pub. L. 108–173, § 627(a)(1), substituted “no more than the amount of payment applicable under paragraph (2)” for “no more than the limits established under paragraph (2)”.

Subsec. (o)(2). Pub. L. 108–173, § 627(a)(2), amended par. (2) generally, substituting provisions relating to determination of amount of payments pursuant to section 1395m of this title for provisions specifying dollar amounts of payments.

Subsec. (c)(1)(B)(iv). Pub. L. 108–173, § 614(a), inserted “or which are furnished under 1395w(d)(5)(D)(ii) of this title, located in a rural area” after “‘100 beds’.”


Subsec. (t)(14). (15). Pub. L. 108–173, § 621(a)(5), inserted at end “In determining adjustments under the preceding sentence for 2004 and 2005, the Secretary shall not take into account under this subparagraph or paragraph (2)(E) any expenditures that would not have been made but for the application of paragraph (14).”


2000—Subsec. (a)(1)(D)(1). Pub. L. 106–554, § 14(a)(6) (title II, § 201(b)(1)), struck out “or which are furnished on an assignment-related basis” after “critical access hospital” after “on an assignment-related basis”.

“and (ii) with respect to ambulance services described in section 1395m(h)(8) of this title, the amounts paid shall be the amounts determined under section 1395m(g) of this title for outpatient critical access hospital services.”

Subsec. (a)(1)(T). Pub. L. 106–554, § 1(a)(6) [title I, § 111(a)(1)], amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: “In no case shall the copayment amount for a procedure performed in a year exceed the amount of the inpatient hospital deductible established under section 1395e(b) of this title for that year.”


Subsec. (t)(12)(E). Pub. L. 106–554, § 1(a)(6) [title IV, § 402(b)(3)], substituted “additional payments, the determination and deletion of initial and new categories (consistent with subparagraphs (B) and (C) of paragraph (6))” for “additional payments (consistent with paragraph (6)(B))”.


Subsec. (h)(5)(A)(ii). Pub. L. 106–113, § 1000(a)(6) [title III, § 321(k)(2)], substituted “critical access hospital, or skilled nursing facility,” for “or critical access hospital” and inserted “or skilled nursing facility” before period at end.


Subsec. (t)(2)(C). Pub. L. 106–113, § 1000(a)(6) [title II, § 201(f)], inserted “or, at the election of the Secretary, mean)” after “median”.


Subsec. (t)(8). Pub. L. 106–113, §1000(a)(6) [title II, §202(a)(2)], redesignated par. (7) as (8). Former par. (8) redesignated (9). Pub. L. 106–113, §1000(a)(6) [title II, §204(a)(1)], substituted “subparagraphs (B) and (C)” for “subparagraph (B)”.

Subsec. (t)(9). Pub. L. 106–113, §1000(a)(6) [title II, §204(a)(2)], redesignated par. (8) as (9). Former par. (9) redesignated (10). Pub. L. 106–113, §1000(a)(6) [title II, §201(b)(1)(B)], inserted at end “The Secretary shall consult with an expert outside advisory panel composed of an appropriate selection of representatives of providers to review (and advise the Secretary concerning) the clinical integrity of the groups and weights. Such panel may use data collected or developed by entities and organizations (other than the Department of Health and Human Services) in conducting such review.”

Subsec. (t)(10). Pub. L. 106–113, §1000(a)(6) [title II, §201(b)(1)(A)], substituted “may periodically review” for “shall review not less often than annually” for “may periodically review”.

Subsec. (t)(11). Pub. L. 106–113, §1000(a)(6) [title II, §201(b)(1)(B)], redesignated former subpars. (C) and (D) as (E) and (F), respectively.


1997—Subsec. (a)(1)(A). Pub. L. 105–33, §4002(b)(1)(A), inserted “(and either is sponsored by a union or employer, or does not provide, or arrange for the provision of, any inpatient hospital services)” after “prepayment basis”.

Subsec. (a)(1)(D). Pub. L. 105–33, §4104(c), inserted “or section 1395m(d)(1) of this title” after “subsection (h)(1) of this section”.

Subsec. (a)(1)(O). Pub. L. 105–33, §4512(b)(1), substituted “section 1395x(a)(2)(K) of this title” for “section 1395x(a)(2)/(K)(ii) of this title” and “with respect to services described in section 1395x(a)(2)/(K)(ii) of this title (relating to nurse practitioner or clinical nurse specialist services provided in a rural area), the amounts paid shall be 80 percent of the lesser of the actual charge or the prevailing charge that would be recognized (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1396w–4 of this title) if the services had been performed by a physician (subject to the limitation described in subsection (r)(2) of this section),”.


Subsec. (a)(2)(A). Pub. L. 105–33, §4603(c)(2)(A)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “with respect to home health services (other than a covered osteoporosis drug (as defined in section 1395x(k)(4) of this title)) and to items and services described in section 1395x(n)(10)(A) of this title, the lesser of—

“(I) the reasonable cost of such services, as determined under section 1395v of this title, or

“(II) the customary charges with respect to such services, or

if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this provision), free of charge or at nominal charges to the public, the amount determined in accordance with section 1396b(2) of this title.”

Subsec. (a)(2)(B). Pub. L. 105–33, §4322(b)(5)(C), inserted “or section 1395yy(e)(9) of this title” after “1395w of this title” in introductory provisions.

Pub. L. 105–33, §4628(d)(3), inserted “furnished before January 1, 1999,” after “(I)” in cl. (i), inserted “before January 1, 1999,” after “furnished” in cl. (i), added cl. (iii), and redesignated former cl. (iii) as (iv).

Subsec. (a)(2)(D). Pub. L. 105–33, §4104(c)(1), inserted “(or section 1395m(d)(1) of this title)” after “subsection (h)(1) of this section”.

Subsec. (a)(2)(E). Pub. L. 105–33, §4523(d)(2)(B), inserted “or, for services or procedures performed on or after January 1, 1999, subsection (t) of this section” before semicolon at end.


Subsec. (a)(3). Pub. L. 105–33, §4541(a)(1)(B), substituted “section 1395k(a)(2)/(D) of this title” for “subparagraphs (D) and (E) of section 1395k(a)(2) of this title” in introductory provisions.

Subsec. (a)(4). Pub. L. 105–33, §4523(d)(1)(B), inserted “or subsection (t) of this section” before semicolon at end.

Subsec. (a)(5). Pub. L. 105–33, §4201(c)(1), substituted “critical access” for “rural primary care”.


Subsec. (b)(5). Pub. L. 105–33, §4101(b), added par. (5) at end of first sentence.

Subsec. (b)(6). Pub. L. 105–33, §4102(b), added par. (6) at end of first sentence.

Subsec. (f). Pub. L. 105–33, §4205(a)(1)(A), substituted “rural health clinics (other than such clinics in rural hospitals with less than 50 beds)” for “independent rural health clinics” in introductory provisions.

Subsec. (f)(1). Pub. L. 105–33, §4205(a)(2), inserted “per visit” after “$46”.

Subsec. (g). Pub. L. 105–33, §4541(d)(1), substituted “the amount specified in paragraph (2) for the year” for “$400” in two places, redesignated first sentence as par. (1) and last sentence as par. (3), and added par. (2).

Pub. L. 105–33, §4541(c), (d)(1)(A), substituted, in first sentence, “physical therapy services of the type described in subsection (b)(9) of this title, but not described in subsection (a)(8)(B) of this section, and physical therapy services of such type which are furnished
by a physician or as incident to physicians' services" for "services described in the second sentence of section 1395x(p) of this title", and substituted, in last sentence, "occupational therapy services (of the type that are described in section 1395x(p) of this title (but not described in subsection (a)(8)(B) of this section) through the operation of section 1395x(g) of this title and which type which are furnished by a physician or as incident to physicians' services)" for "outpatient occupational therapy services which are described in the second sentence of section 1395x(p) of this title through the operation of section 1395x(g) of this title".

Subsec. (h)(1)(A). Pub. L. 105–33, § 410(c)(2), substituted "Subject to section 1395m(d)(1) of this title, the Secretary'' for "The Secretary''.

Pub. L. 105–33, § 453(b)(2)(A), inserted "(including prostate cancer screening tests under section 1395x(so) of this title consisting of prostate-specific antigen blood tests)" after "laboratory tests".


Subsec. (h)(5). Pub. L. 105–33, § 4201(c)(1), substituted "critical access" for "rural primary care".

Subsec. (i)(1)(A). Pub. L. 105–33, § 4201(c)(1), substituted "critical access" for "rural primary care".

Subsec. (i)(1)(B)(i)(II). Pub. L. 105–33, § 455(a), struck out "of 80 percent" before "of the standard overhead amount" and inserted before period at end "; less the amount a provider may charge as described in clause (i) of section 1395cc(a)(2)(A) of this title".

Subsec. (i)(5). Pub. L. 105–33, § 4201(c)(1), substituted "critical access" for "rural primary care" wherever appearing.


Subsec. (n)(1)(B)(i)(II). Pub. L. 105–33, § 4521(a), struck out "of 80 percent" before "of the prevailing charge and added before period at end "; less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title".

Subsec. (r)(1). Pub. L. 105–33, § 4511(b)(2)(A), substituted "section 1395x(s)(2)(K)(ii) of this title (relating to nurse practitioner or clinical nurse specialist services)" for "section 1395x(s)(2)(K)(ii) of this title (relating to nurse practitioner or clinical nurse specialist services provided in a rural area)".

Pub. L. 105–33, § 4201(c)(1), substituted "critical access" for "rural primary care".

Subsec. (r)(2). Pub. L. 105–33, § 4511(b)(2)(B), (D), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "(2)(A) For purposes of subsection (a)(1)(O) of this section, the prevailing charge for services described in section 1395x(s)(2)(K)(ii) of this title may not exceed the applicable percentage (as defined in subparagraph (B)) of the prevailing charge (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1395x–4 of this title) determined for such services performed by physicians who are not specialists.

(B) In subparagraph (A), the term "applicable percentage"--

(1) 75 percent in the case of services performed in a hospital, and

(2) 85 percent in the case of other services.".

Subsec. (r)(3). Pub. L. 105–33, § 4511(b)(2)(C), (D), redesignated par. (3) as (2) and substituted section 1395x(s)(2)(K)(iii) of this title for "section 1395x(s)(2)(K)(iii) of this title".

Pub. L. 105–33, § 4201(c)(1), substituted "critical access" for "rural primary care".

Subsec. (t). Pub. L. 105–33, § 4525(a), added subsec. (t).

1994—Subsec. (a)(1)(D)(i). Pub. L. 103–432, § 156(a)(2)(B)(i), struck out "", or for tests furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion), the amounts paid shall be 100 percent of the reasonable charges for such items and services,

Subsec. (a)(2)(A). Pub. L. 103–432, § 156(a)(2)(B)(ii), struck out ", to items and services (other than clinical diagnostic laboratory tests) furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or the second opinion was in disagreement with the first opinion), before "and to items and services" in introductory provisions.

Pub. L. 103–432, § 147(f)(6)(C)(i), substituted "health services (other than a covered osteoporosis drug (as defined in section 1395x(kk) of this title))" for "health services" in introductory provisions.

Subsec. (a)(2)(D)(i). Pub. L. 103–432, § 156(a)(2)(B)(iv), substituted "assignment-related basis or" for "assignment-related basis," and struck out ", or for tests furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or the second opinion was in disagreement with the first opinion), before "and to items and services" in introductory provisions.


Subsec. (a)(3). Pub. L. 103–432, § 156(a)(2)(B)(v), struck out "and for items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title, or a third opinion, if the second opinion was in disagreement with the first opinion)" after "section 1395cc of this title".


Subsec. (a)(5). Pub. L. 103–432, § 156(a)(2)(B)(vi), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: "--such deductible shall not apply with respect to items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion),".

Pub. L. 103–432, § 128(e), substituted "paragraph (2) of section 1395u(j)" for "paragraphs (2) and (3) of section 1395u(j)" and inserted at end "Paragraph (4) of such section shall apply in this subparagraph in the same manner as such paragraph applies to such section.".

Subsec. (i)(1). Pub. L. 103–432, § 141(a)(3), inserted before period at end of last sentence "; in consultation with appropriate trade and professional organizations".

Subsec. (i)(2)(A). Pub. L. 103–432, § 141(a)(2)(A), struck out "and may be adjusted by the Secretary, when appropriate," after "annually thereafter" in last sentence.

Subsec. (i)(2)(A)(i). Pub. L. 103–432, § 141(a)(1), inserted before comma at end ", as determined in accordance with a survey (based upon a representative sample of procedures and facilities) taken not later than January 1, 1995, and every 5 years thereafter, of the actual au-
ditional costs incurred by such centers in providing such services.

Subsec. (1)(2)(B). Pub. L. 103–432, § 141(a)(2)(A). struck out and may be adjusted by the Secretary, when appropriate, after ‘‘annually thereafter’’ in last sentence.


Subsec. (1)(3)(B)(ii). Pub. L. 103–432, § 141(c)(1), in subcls. (I) and (II) substituted ‘‘for portions of cost reporting periods for ‘‘for reporting periods’’ and ‘‘and ending on or before December 31, 1990’’ for ‘‘and or before December 31, 1990’’.

Subsec. (1)(b)(B), (C). Pub. L. 103–432, § 123(b)(2)(A)(i), redesignated subpar. (B) as (B) and struck out former subpar. (B) which read as follows: ‘‘(B) Payment for the services of a certified registered nurse anesthetist under this part may be made only on an assignment-related basis, and any such assignment agreed to by a certified registered nurse anesthetist shall be binding upon any other person presenting a claim or request for payment for such services.

‘‘(ii) Except for deductible and coinsurance amounts applicable under this section, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services of a certified registered nurse anesthetist for which payment may be made under this part only on an assignment-related basis is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1395w–4 of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a of this title.’’


Pub. L. 103–432, § 147(d)(1), inserted ‘‘and for services described in subsection (a)(2)(E)(ii) of this section furnished on or after January 1, 1992’’ after ‘‘and or before January 1, 1992’’.

Subsec. (p). Pub. L. 103–432, § 123(b)(2)(A)(ii), struck out subsec. (p) which read as follows: ‘‘In the case of certified nurse-midwife services for which payment may be made under this part only pursuant to section 1395x(s)(2)(L) of this title, in the case of qualified psychologists services for which payment may be made under this part only pursuant to section 1395x(s)(2)(M) of this title, and in the case of clinical social worker services for which payment may be made under this part only pursuant to section 1395x(s)(2)(N) of this title, payment may only be made under this part for services on an assignment-related basis. Except for deductible and coinsurance amounts applicable under this section, whoever knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in the previous sentence, is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1395w–4 of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a of this title.’’

Subsec. (r)(3), (4). Pub. L. 103–432, § 123(b)(2)(A)(iii), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ‘‘(3)(A) Payment under this part for services described in section 1395x(s)(2)(K)(iii) of this title may be made only on an assignment-related basis, and any such assignment agreed to by a nurse practitioner or clinical nurse specialist shall be binding upon any other person presenting a claim or request for payment for such services.

‘‘(B) Except for deductible and coinsurance amounts applicable under this section, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in section 1395x(s)(2)(K)(iii) of this title, who violates the subparagraph (A) of this section to a penalty or proceeding under section 1320a–7a of this title.

Subsec. (s). Pub. L. 103–432, § 160(d)(1), redesignated subsec. (r), relating to other prepay organizations, as (s).

1993—Subsec. (a)(1). Pub. L. 103–66, § 1354(b)(2), redesignated subpar. (M) relating to nurse practitioner and clinical nurse specialist services as (O), inserted comma before ‘‘(O)’’, transferred and inserted such subparagraph to appear before semicolon at end, struck out ‘‘and’’ before ‘‘(N)’’, and inserted ‘‘and’’ and subpar. (P) following subpar. (O) and before semicolon at end.

Subsec. (g). Pub. L. 103–66, § 1355(a), substituted ‘‘$900’’ for ‘‘$750’’ in two places.


Subsec. (i)(4)(B)(iv) to (vii). Pub. L. 103–66, § 1355(b), added cls. (iv) to (vii), and struck out former cl. (iv) which read as follows: ‘‘after December 31, 1990, is equal to 88 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).’’

Subsec. (i)(3)(B)(ii). Pub. L. 103–66, § 1353(a), in introductory provisions substituted ‘‘paragraph (4)’’ for ‘‘the last sentence of this clause’’ and struck out concluding provisions which read as follows: ‘‘In the case of a hospital that makes application to the Secretary and demonstrates that it specializes in eye services or eye and ear services (as determined by the Secretary), receives more than 30 percent of its total revenues from outpatient services and was an eye specialty hospital in fiscal year 1987, the part or subpart of this section applicable under this section, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in the previous sentence, is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a of this title.’’


Subsec. (l)(4)(B)(ii). Pub. L. 103–66, § 1355(b)(2), inserted ‘‘and’’ at end of subcl. (II), substituted a period for the comma at end of subcl. (III), and struck out subcls. (IV) to (VII) which read as follows: ‘‘(IV) for services furnished in 1994, $11.25.’’

‘‘(V) for services furnished in 1995, $11.50.’’

‘‘(VI) for services furnished in 1996, $11.70.’’

‘‘(VII) for services furnished in calendar years after 1997, the previous year’s conversion factor increased by the update determined under section 1395w–4 of this title for physician anesthesia services for that year.’’


1990—Subsec. (a)(1)(H). Pub. L. 101–508, § 4118(b)(2)(D), struck out ‘‘, as the case may be’’ after ‘‘section 1395w–4 of this title’’.

Subsec. (a)(1)(J). Pub. L. 101–508, § 4104(b)(1), struck out ‘‘or physician pathology services’’ after
“1395m(b)(6) of this title” and “or section 1395m(f) of this title, respectively” after “1395m(b) of this title”.


Subsec. (h)(2). Pub. L. 101–508, § 4154(e)(1)(C), substituted “subject to cap on prevailing charge and billing on assignment-related basis.”

Subsec. (h)(3). Pub. L. 101–508, § 4154(e)(1)(D), inserted “‘subject to section 1395w–4 of this title, as the case may be’” after “prevailing charge that would be recognized.”


Subsec. (j)(1). Pub. L. 101–508, § 4160(1), inserted “subject to section 1395w–4 of this title, as the case may be” after “subject to section 1395w–4 of this title.”

Subsec. (j)(2). Pub. L. 101–508, § 4160(2), struck out at end “The fee schedule shall be adjusted annually (to become effective on January 1 of each calendar year) by the percentage increase in the MEI (as defined in section 1385u–3(i) of this title) for that year.”

Subsec. (k)(4). Pub. L. 101–508, § 4160(3), added par. (4) and struck out former par. (4) which read as follows: “In establishing the fee schedule under paragraph (1), the Secretary may utilize a system of time units, a system of base and time units, or any appropriate methodology. The Secretary may establish a nationwide fee schedule or adjust the fee schedule for geographic areas as the Secretary may determine to be appropriate.”

Subsec. (m). Pub. L. 101–508, § 4153(a)(2)(C)(iii), substituted “‘test, including a test performed in a professional shortage area’” for “‘health manpower shortage area’.”

Subsec. (n)(1)(B)(1)(K). Pub. L. 101–508, § 4151(c)(2), inserted before period at end “, and such term means 42 percent for portions of cost reporting periods beginning on or after January 1, 1991”.


Subsec. (a)(1)(F). Pub. L. 101–508, § 4154(e)(1)(A), inserted “‘subject to section 1395w–4 of this title, as the case may be’” after “subject to section 1395w–4 of this title,” before “the amounts.”

Subsec. (a)(1)(G). Pub. L. 101–508, § 4154(e)(1)(B), inserted “‘subject to section 1395w–4 of this title, as the case may be’” after “subject to section 1395w–4 of this title, as the case may be.”


Subsec. (a)(1)(M). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 212(c)(2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(1)(N). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 205(c)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 212(c)(2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 212(c)(2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(1)(O). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 212(c)(2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.
law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.


Subsec. (a)(2)(A). Pub. L. 101–239, § 6131(a)(1)(D), amended cl. (i) generally. Prior to amendment, subcl. (i) read as follows: “for the furnishing of one pair of custom molded shoes is $300”.


1986—Subsec. (a)(1)(D). Pub. L. 100–360, § 202(b)(2), inserted “or, as provided in section 1395t–1(c) of this title, from the Federal Catastrophic Drug Insurance Trust Fund” after “Fund” in introductory provisions.

Pub. L. 100–360, § 205(c)(3), inserted provision at end relating to payment for in-home care for chronically dependent individuals.


Subsec. (a)(1)(E), which directed the amendment of subpar. (H) by striking “and” before “(I)” could not be executed because of the prior amendment by section 409(a)(1) of Pub. L. 100–203, 1987 Amendment note below.


Pub. L. 100–360, § 411(h)(7)(C)(ii), inserted “section 1395m(b)(6) of this title” for “section 1395m(b)(5) of this title”.


Subsec. (a)(2)(B). Pub. L. 100–360, § 203(c)(1)(A), substituted “(E), or (F)” for “or (E)” in introductory provisions.
fiscal year 1989 and 50 percent for other cost reporting periods.

"(II) The term 'charge proportion' means 35 percent for any parts of cost reporting periods which occur in fiscal year 1989 and 50 percent for other cost reporting periods."


Subsec. (r). Pub. L. 100–203, §4065(a)(2), formerly §4055(a)(2), as added and renumbered by Pub. L. 100–360, §411(f)(12)(A), (14), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: "such total amount shall not include expenses incurred for services the amount of payment for which is determined under subsection (a)(1)(F) of this section."


Subsec. (s). Pub. L. 100–203, §4066(c), inserted "or partial hospitalization services that are not directly provided by a physician" before period at end of last sentence.

Pub. L. 100–203, §4070(b)(1)(A), inserted sentence at end defining "treatment."

Subsec. (t). Pub. L. 100–203, §4070(a)(1), substituted "$3375.00" for "$312.50".


Subsec. (v). Pub. L. 100–203, §4064(c), added subpar. (1).


Subsec. (ac). Pub. L. 100–203, §4065(b)(5), added subpar. (C) before subpar. (B).

Subsec. (ad). Pub. L. 100–203, §4070(a)(2), inserted "or partial hospitalization services that are not directly provided by a physician" before period at end of last sentence.
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Subsec. (h)(4)(B)(ii). Pub. L. 100–203, § 4046(b)(2)(B), added subsec. (iii) generally. Prior to amendment, cl. (ii) read as follows: “after December 31, 1987, and so long as a fee schedule for the test has not been established on a nationwide basis, is equal to 110 percent of the prevailing charge for the service after the reduction referred to in subparagraph (A)’. ”

Subsec. (h)(5)(A). Pub. L. 100–203, § 4085(b)(22)(B), as added by Pub. L. 100–360, § 1395f(4)(C)(vi), substituted “on an assignment-related basis” for “on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, in accordance with section 1395u(b)(6)(B) of this title, under the procedure described in section 1395j(g)(1) of this title.”


Subsec. (h)(5)(C). Pub. L. 100–203, § 4085(b)(22)(B), as added by Pub. L. 100–360, § 411(h)(4)(C)(vi), substituted “on an assignment-related basis” for “on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, in accordance with section 1395u(b)(6)(B) of this title, under the procedure described in section 1395j(g)(1) of this title.”


Subsec. (i)(3)(B)(ii). Pub. L. 100–203, § 4068(a)(1), substituted “Subject to the last sentence of this clause,” in for “In.”

Subsec. (i)(4). Pub. L. 100–203, § 4068(a)(2), inserted sentence at end relating to cost and ASC proportions in the case of an eye or ear and ear specialty hospital.

Subsec. (i)(4). Pub. L. 100–203, § 4068(a)(3), as added and redesignated by Pub. L. 100–360, § 411(h)(4)(C)(vi), struck out par. (4) which read as follows: “In the case of services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1395s(e) of this title and furnished in connection with surgical procedures (specified pursuant to paragraph (1) of this subsection) in a physician’s office, an ambulatory surgical center described in such paragraph, or a hospital outpatient department, payment for such services shall be determined in accordance with subsection (a)(1)(F) of this section if the physician accepts an assignment described in section 1395u(b)(5)(D)(ii) of this title with respect to payment for such services.”


Subsec. (j)(2). Pub. L. 100–203, § 4068(a)(2), substituted “1985 and such other data as the Secretary determines necessary” for “1985”.


Subsec. (j)(5)(A). Pub. L. 100–203, § 4068(a)(2), substituted “group practice, or ambulatory surgical center” for “or group practice in two places.”

Subsec. (j)(5)(B)(ii). Pub. L. 100–203, § 4085(b)(23), as added by Pub. L. 100–360, § 411(h)(4)(C)(vi), substituted “money penalty” for “monetary penalty” and amended second sentence generally. Prior to amendment, second sentence read as follows: “Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1320c–7a of this title with respect to actions described in subsection (a) of that section.”

Subsec. (j)(6). Pub. L. 100–203, § 4045(c)(2)(A)(ii), struck out subpar. (A) designation and substituted “after the effective date of the reduction, the physician’s actual charge is subject to a limit under section 1395u(j)(1)(D) of this title,” for “(subject to subparagraph (B), the physician may not charge the individual more than the limiting charge (as defined in subparagraph (B)) plus (for services furnished during the 12-month period beginning on the effective date of the reduction) or the amount by which the physician’s actual charges for the service for the previous 12-month period exceed the limiting charge.”

Pub. L. 100–203, § 4045(c)(2)(A)(iii), struck out subpars. (B) to (D) which read as follows: “(B) In subparagraph (A), the term ‘limiting charge’ means, with respect to a service, 125 percent of the prevailing charge for the service after the reduction referred to in subparagraph (A).”

“(C) If a physician knowingly and willfully imposes charges in violation of subparagraph (A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

“(D) This paragraph shall not apply to services furnished after the earlier of (i) December 31, 1990, or (ii) one year after the date the Secretary reports to Congress, under section 1395w–1(e)(3) of this title, on the development of the relative value scale under section 1395w–1 of this title.”

Subsec. (m). Pub. L. 100–203, § 4043(a), added subsec. (m).


Subsec. (p). Pub. L. 100–203, § 4077(b)(3), formerly § 4077(b)(4), as redesignated and amended by Pub. L. 100–360, § 411(h)(7)(D), (F), inserted “and in the case of qualified psychologists services for which payment may be made under this part only pursuant to section 1369a(a)(2)(M) of this title”.

Pub. L. 100–203, § 4073(b)(2), formerly § 4073(b)(3), as redesignated and amended by Pub. L. 100–360, § 411(h)(7)(D), (F), inserted “, under the procedure described in section 1369(gr)(1) of this title, or for tests furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)” for “or under the procedure described in section 1369(gr)(1) of this title”.

Subsec. (a)(1)(D)(i). Pub. L. 99–272, § 1903(b)(1), inserted “, the limitation amount for that test determined under subsection (h)(4)(B) of this section,” after “lesser of the amount determined under such fee schedule”.


Subsec. (a)(2)(A). Pub. L. 99–272, § 1901(b)(2)(C), inserted “, to items and services (other than clinical diagnostic laboratory tests) furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)” for “or to a provider having an agreement under section 1395cc of this title, or for tests furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)” after “other than durable medical equipment”.}

Subsec. (a)(2)(D). Pub. L. 99–272, § 1901(b)(2)(D), substituted “to a provider having an agreement under section 1395cc of this title” for “to providers having an agreement under section 1395c of this title”.

Subsec. (a)(2)(D). Pub. L. 99–272, § 1903(b)(1), inserted “, the limitation amount for that test determined under subsection (h)(4)(B) of this section,” after “lesser of the amount determined under such fee schedule”.

Subsec. (a)(3). Pub. L. 99–272, § 1901(b)(2)(E), inserted “and for items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)” after “1395s(x)(10)(A) of this title”.

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Subsec. (a)(4). Pub. L. 99–509, §9343(a)(1)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “in the case of facility services described in subparagraph (F) of section 1395x(a)(2) of this title, the applicable amount described in paragraph (2) of subsection (i) of this section.”


Subsec. (c)(1)(D). Pub. L. 98–369, §2303(a), substituted second sentence for “The lists of procedures established under subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “with respect to diagnostic tests performed in a laboratory for which payment is made under this part to the laboratory, the amounts paid shall be equal to 100 percent of the negotiated rate for such tests (as determined pursuant to subsection (h) of this section).”


Subsec. (a)(2)(C). Pub. L. 98–369, §2303(c), added par. (5) which related to payment of reasonable costs for preadmission diagnostic services described in section 1395x(s)(2)(C) of this title furnished to an individual by the outpatient department of a hospital within seven days of such individual’s admission to a hospital as an inpatient.

Subsec. (b)(2). Pub. L. 98–369, §2302(b)(4), added par. (5) which related to payment of reasonable costs for preadmission diagnostic services described in section 1395x(s)(2)(C) of this title furnished to an individual by the outpatient department of a hospital within seven days of such individual’s admission to the same hospital as an inpatient or to another hospital.


laboratory tests at a percentage of the prevailing charge level and nominal fees to cover costs in collecting samples and authorizing the Secretary to make adjustments in the fee schedule, setting forth the recipients of payments, and authorizing the Secretary to establish a negotiated payment rate for provision authorizing the Secretary to establish a negotiated rate of payment with the laboratory which would be considered the full charge for such tests.


1982—Subsec. (a)(1)(B). Pub. L. 97–248, §112(a)(1), substituted provisions that with respect to items and services described in section 1395x(s)(10) of this title, amounts paid shall be 100 percent of reasonable charges for such items and services for provision that with respect to expenses incurred for radiological or pathological services for which payment could be made under this part, furnished to any inpatient of a hospital by a physician in field of radiology or pathology who had in effect an agreement with Secretary by which the physician agreed to accept an assignment (as provided for in section 1395u(b)(3)(B)(ii) of this title) for all physicians' services furnished by him to hospital inpatients enrolled under this part, the amounts paid would be equal to 100 percent of the reasonable charges for such services.

Subsec. (a)(1)(H). Pub. L. 97–248, §112(a)(2), (3), struck out subpar. (H) which provided that, with respect to items and services described in section 1395x(s)(10) of this title, the amount of benefits paid would be 100 percent of reasonable charges for such items and services.

Subsec. (a)(2)(B). Pub. L. 97–248, §112(c)(2), inserted "and except as may be provided in section 1395ww of this title".

Subsec. (b)(1). Pub. L. 97–248, §112(b), struck out subpar. (A) provision that total amount of expenses shall not include expenses incurred for radiological or pathological services furnished an individual as an inpatient of a hospital by a physician in field of radiology or pathology who has an agreement with Secretary by which physician agrees to accept an assignment (as provided for in section 1395u(b)(3)(B)(ii) of this title) for all physicians' services furnished by him to hospital inpatients enrolled under this part, the amounts paid would be equal to 100 percent of the reasonable charges for such services.


1981—Subsec. (a)(2)(A). Pub. L. 97–35, §2106(a), substituted provisions that with respect to home health services and to items and services described in section 1395x(s)(10) of this title, the lesser of reasonable cost of such services determined under section 1395k(a)(2) of this title, or if such services are furnished by a public provider of services free of charge or at nominal charges to the public, the amount determined in accordance with section 1395k(b)(2) of this title for services that with respect to home health services and to items and services described in section 1395x(s)(10) of this title, the lesser of reasonable cost of such services, as determined under section 1395x(s)(10) of this title.

Subsec. (a)(2)(B). Pub. L. 97–35, §2106(a), substituted new formula in cls. (i) to (iii) with respect to other services for provisions providing for reasonable costs of such services less the amount a provider may claim as a reimbursement in excess of amounts paid as the maximum amount in effect an agreement with Secretary by which the physician agrees to accept an assignment (as provided for in section 1395u(b)(3)(B)(ii) of this title) for all physicians' services furnished by him to hospital inpatients enrolled under this part as "for radiology or pathology".

Subsec. (a)(1)(D). Pub. L. 96–499, §918(a)(4), substituted "subsection (b)" for "subsection (g)".


Subsec. (a)(2). Pub. L. 96–611, §11(b)(1)(C), inserted in subpar. (A) "and to items and services described in section 1395x(s)(10) of this title".

Pub. L. 96–499, §942, authorized payment of reasonable cost of home health services and prescribed formula for determining payment amounts for services other than home health services.

Subsec. (a)(3). Pub. L. 96–611, §11(b)(1)(D), inserted "other than for items and services described in section 1395x(s)(10) of this title".

Pub. L. 96–499, §949, prescribed a formula for determining payment amounts for services described in subpars. (D) and (E) of section 1395x(a)(2) of this title.

Subsec. (a)(4). Pub. L. 96–499, §942, added pars. (4) and (5).


Pub. L. 96–499, §943(a), inserted "who has in effect an agreement with the Secretary by which the physician agrees to accept an assignment (as provided for in section 1395u(b)(3)(B)(ii) of this title) for all physicians' services furnished by him to hospital inpatients enrolled under this part, the amounts paid would be equal to 100 percent of the reasonable charges for such services.".


Subsec. (g). Pub. L. 96–499, §935(a), substituted "$500" for "$1000".

Subsec. (h). Pub. L. 96–473 redesignated subsec. (g) as subsec. (j) by section 279(b) of Pub. L. 92–603 as (h), which for purposes of codification had been editorially set out as subsec. (h), thereby requiring no change in text. See 1972 Amendment note below.


Subsec. (a)(2). Pub. L. 95–292, §4(c), inserted "(unless otherwise specified in section 1395rr of this title)" after "and with respect to other services" in provisions preceding subpar. (A).

1977—Subsec. (a)(2). Pub. L. 95–210, §1(b)(2), inserted parenthetical provisions preceding subpar. (A) excepting those services described in subpar. (D) of section 1395k(a)(2) of this title.


Subsec. (f)(1). Pub. L. 95–142 substituted provisions relating to determinations by Secretary with respect to presumptions regarding purchase price or price or quality of buying or renting durable medical equipment for provisions relating to purchase price of durable medical equipment authorized to be paid by Secretary.

Subsec. (f)(2). Pub. L. 95–142 substituted provisions relating to waiver of coinsurance amount in purchase of used durable medical equipment, for provisions relating to reimbursement procedures established by Secretary in cases of rental of durable medical equipment.

Subsec. (f)(3). Pub. L. 95–142 added pars. (3) and (4).

Subsec. (a)(1). Pub. L. 92–603, §§211(c)(4), 279(a), added subpars. (C) and (D).

Subsec. (a)(2). Pub. L. 92–603, §§233(b), 251(a)(3), 299K(a), substituted subpars. (A) and (B) for provisions relating to the amount payable by reference to section 1395(v) of this title, added subpar. (C), and in provisions preceding subpar. (A), inserted "with respect to home health services, 100 percent, and with respect to other services," before "80 percent".

Subsec. (b). Pub. L. 92–603, §204(a), substituted "$60" for "$50".

Subsec. (f). Pub. L. 92–603, §245(d), designated existing provisions as par. (1)(A) and added par. (1)(B) and (2).


Subsec. (h). Pub. L. 92–603, §279(h), added subsec. (h). Subsec. was in the original (g) and was changed to accommodate subsec. (g) as added by section 251(a)(2) of Pub. L. 92–603.

1968—Subsec. (a)(1). Pub. L. 90–248, §131(a)(1), (2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b). Pub. L. 90–248, §§129(c)(7), 131(b), struck out last sentence providing that there shall be a deductible equal to expenses incurred for first three pints of whole blood (or equivalent quantities of packed red blood cells as defined under regulations) furnished to an individual during a calendar year which deductible is to be appropriately reduced to extent that such blood has been replaced, and such blood will be deemed to have been replaced when institution or person furnishing such blood is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells) furnished individual to which three pint deductible applies.


EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title IV, §4103(e), Mar. 23, 2010, 124 Stat. 557, provided that: "The amendments made by this section [amending this section and sections 1395w–4, 1395x, and 1395y of this title] shall apply to services furnished on or after January 1, 2010."

Pub. L. 111–148, title IV, §4104(d), Mar. 23, 2010, 124 Stat. 558, provided that: "The amendments made by this section [amending this section and section 1395h(a)(1) of this title] shall apply to services furnished on or after January 1, 2011."

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–182, title I, §1000(a)(6), Dec. 24, 2007, 122 Stat. 2486, provided that: "The amendments made by this section [amending this section and sections 1395u–1 of this title] shall apply to services furnished on or after January 1, 2008."


Amendment by section 143(b)(2), (3), of Pub. L. 110–182 applicable to services furnished on or after July 1, 2009, see section 143(c) of Pub. L. 110–182, set out as a note under section 1395k of this title.


EFFECTIVE DATE OF 2006 AMENDMENT


Pub. L. 109–171, title V, §511(c), Feb. 8, 2006, 120 Stat. 44, provided that: "The amendments made by this section [amending this section and sections 1395w–4, 1395x, and 1395y of this title] shall apply to services furnished on or after January 1, 2007."

Pub. L. 109–171, title V, §511(c), Feb. 8, 2006, 120 Stat. 44, provided that: "The amendments made by this section [amending this section and section 1395n of this title] shall apply to services furnished on or after January 1, 2007."

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 251(a) of Pub. L. 108–173 applicable to services provided on or after Jan. 1, 2006, and contract years beginning on or after such date, see section 251(e) of Pub. L. 108–173, set out as a note under section 1395a–7b of this title.


Pub. L. 108–173, title VI, §627(c), Dec. 8, 2003, 117 Stat. 2321, provided that: "The amendments made by this section [amending this section and sections 1395m and 1395u of this title] shall apply to items furnished administered [sic] on or after January 1, 2004."


Pub. L. 108–173, title VI, §627(c), Dec. 8, 2003, 117 Stat. 2321, provided that: "The amendments made by this section [amending this section and sections 1395m and 1395u of this title] shall apply to items furnished administered [sic] on or after January 1, 2004."

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(6) [title I, §111(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–473, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to services furnished on or after April 1, 2001."

Pub. L. 106–554, §1(a)(6) [title I, §105(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A–472, provided that: "The amendments made by this section [amending this section and sections 1395u and 1395y of this title] shall apply to services furnished on or after January 1, 2002."

Pub. L. 106–554, §1(a)(6) [title I, §105(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A–472, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to services furnished on or after January 1, 2002."

Pub. L. 106–554, §1(a)(6) [title II, §201(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–481, provided that: "The amendment made—"(1) by subsection (a) [amending section 1395m of this title] shall apply to services furnished on or after the date of the enactment of BBRA [Pub. L. 106–113, §1000(a)(6), approved Nov. 29, 1999]; and

"(2) by subsection (b)(1) [amending this section] shall apply as if included in the enactment of section 403(e)(1) of BBRA [113 Stat. 1501A–371] [Pub. L. 106–113, §1000(a)(6) [title IV, §403(e)(1)]]; and

"(3) by subsection (b)(2) [amending provisions set out as a note under section 1395m of this title] shall apply as if included in the enactment of section 403(e)(1) of BBRA [113 Stat. 1501A–371] [Pub. L. 106–113, §1000(a)(6) [title IV, §403(e)(1)]]; and
system under section 1838(t) of the Social Security Act [subsec. (t) of this section]."

Amendment by section 1002(a)(6) [title III, §321(g)(2), (k)(2)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1002(a)(6) [title III, §321(m)] of Pub. L. 106–113, set out as a note under section 1395s of this title.

Amendment by section 1002(a)(6) [title IV, §401(b)(1)] of Pub. L. 106–113 effective Jan. 1, 2000, see section 1002(a)(6) [title IV, §401(c)] of Pub. L. 106–113, set out as a note under section 1395s of this title.

Pub. L. 106–113, div. B, §1002(a)(6) [title IV, §403(e)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–371, provided that: "The amendments made by paragraph (i) [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Nov. 29, 1999]."

Effective Date of 1997 Amendment

Section 4002(j)(1)(B) of Pub. L. 105–33 provided that: "The amendment made by subparagraph (A) [amending this section] applies to new contracts entered into after the date of enactment of this Act [Aug. 5, 1997] and, with respect to contracts in effect as of such date, shall apply to payment for services furnished after December 31, 1998."
Section 4523(d)(1)(A)(i) of Pub. L. 105–33 provided that: "The amendment made by clause (i) [amending this section] shall apply to services furnished on or after January 1, 1999.''

Section 4531(b)(3) of Pub. L. 105–33 provided that: "The amendments made by subsection (a)(1), (a)(2), and (b) [amending this section and sections 1395m and 1395y of this title] apply to services furnished on or after January 1, 1998,''

Section 4541(e) of Pub. L. 105–33 provided that: "(1) The amendments made by subsections (a)(1), (a)(2), and (b) [amending this section and section 1395cc of this title] shall apply to expenses incurred on or after January 1, 1991.''

Section 4556(d) of Pub. L. 105–33 provided that: "The amendments made by subsections (a)(3) and (c) [amending this section and section 1395cc of this title] apply to services furnished on or after January 1, 1991.''

Section 4603(c)(2)(A) of Pub. L. 105–33 applicable to costs reporting periods beginning on or after Oct. 1, 1999, except as otherwise provided, see section 4603(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395ffh of this title.


effective Date of 1994 Amendment

Section 123(k)(1), (2) of Pub. L. 103–432 provided that: "(1) ENFORCEMENT; MISCELLANEOUS AND TECHNICAL AMENDMENTS.—The amendments made by subsections (a) and (e) [amending this section and section 1395w–4 of this title] shall apply to services furnished on or after the date of the enactment of this Act [Oct. 31, 1994]; except that the amendments made by subsection (a) [amending section 1395w–4 of this title] shall not apply to services of a nonparticipating supplier or other person furnished before January 1, 1995.''

Section 141(c)(2) of Pub. L. 103–432 provided that: "The amendments made by paragraph (1) [amending this section and section 1395u of this title] shall apply to services furnished on or after January 1, 1991.''

Section 141(c)(2) of Pub. L. 103–432 effective as if included in the enactment of OBRA–1990 [Pub. L. 101–506]." Amendment by section 147(a), (e)(2), (3), (f)(6)(C), (D) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 147(g) of Pub. L. 103–432, set out as a note under section 1320h–3 of this title.

Section 147(h)(1), (2) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 101–239.

Amendment by section 156(a)(2)(B) of Pub. L. 103–432 applicable to services provided on or after Oct. 31, 1994, see section 156(a)(3) of Pub. L. 103–432, set out as a note under section 13320–3 of this title.


effective Date of 1993 Amendment

Section 13932(b) of Pub. L. 102–56 provided that: "The amendment made by subsection (a) [amending this section] shall apply to portions of cost reporting periods beginning on or after January 1, 1994.''

Section 1394H(b)(3) of Pub. L. 103–66 provided that: "(1) The amendments made by subsection (a) [amending this section and section 1395m of this title] shall apply to items furnished on or after January 1, 1994.''

Section 1355(b) of Pub. L. 103–66 provided that: "The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1994.''


effective Date of 1990 Amendment

Section 410(d) of Pub. L. 101–508 provided that: "The amendments made by this section [amending this section and sections 1395m and 1395y of this title] shall apply to services furnished on or after January 1, 1991.''

Amendment by section 413(a)(2)(B), (C) of Pub. L. 101–508 applicable to items furnished on or after Jan. 1, 1991, see section 413(a)(3) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Section 414(b)(2) of Pub. L. 101–508 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to tests furnished on or after January 1, 1991.''


Amendment by section 415(b)(2), (3) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 415(e) of Pub. L. 101–508, set out as a note under section 1396k of this title.


Section 4163(e) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 147(f)(3)(B), Oct. 31, 1994, 108 Stat. 4431, provided that: "Except as provided in subsection (d)(3) [enacting provisions set out as a note under section 1396y of this title], the amendments made by this section [amending this section and sections 1395m, 1395w, 1395x, 1395y, 1395aa, and 1395bb of this title] shall apply to screening mammography performed on or after January 1, 1991.''

Section 4206(e)(2) of Pub. L. 101–508 provided that: "The amendments made by subsection (b) [amending this section and section 1395m of this title] shall apply to contracts under section 1767 of the Social Security Act [section 1395mm of this title] and payments under section 1833(a)(1)(A) of such Act [subsec. (a)(1)(A) of this section] as of first day of the first month beginning more than 1 year after the date of the enactment of this Act [Nov. 5, 1990]."


effective Date of 1989 Amendments

Section 6102(c)(2) of Pub. L. 101–239 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to services furnished on or after January 1, 1991.''

Section 6102(c)(3) of Pub. L. 101–239 provided that: "The amendments made by this subsection [amending this section and section 1395m of this title] shall apply to services furnished on or after January 1, 1991.''

Section 6102(g) of Pub. L. 101–239 provided that: "Except as otherwise provided in this section, this section, and the amendments made by this section [enacting provisions set out as a note under this section and sections 1395m, 1395u, and 1395rr of this title, and enacting provisions set out as notes under this section and
sections 1395m, 1395u, and 1395w-4 of this title], shall take effect on the date of the enactment of this Act [Dec. 19, 1989].

Section 611(b)(2) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, §415(e)(4), Nov. 5, 1990, 104 Stat. 1388–86, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to services furnished on or after Jan. 1, 1990.''

Section 613(e) of Pub. L. 101–239 provided that: "The amendments made by this section [amending this section and section 1395w of this title], and the provisions of subsection (c) [set out below], shall apply to services furnished on or after July 1, 1990, and the amendments made by subsection (d) [amending this section] shall apply to expenses incurred in a year beginning with 1990.''

Section 613(c) of Pub. L. 101–239 provided that:

(1) The amendments made by this section [amending this section and section 1395x of this title] shall apply with respect to therapeutic shoes and inserts furnished on or after July 1, 1989.

(2) In applying the amendments made by this section, the increase under subparagraph (C) of section 1833(o)(2) of the Social Security Act [subsec. o(2)(C) of this section] shall apply to the dollar amounts specified under subparagraph (A) of such section (as amended by this section) in the same manner as the increase would have applied to the dollar amounts specified under subparagraph (A) of such section (as in effect before the date of the enactment of this Act [Dec. 19, 1989]).''

Section 613(b) of Pub. L. 101–239 provided that: "The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after Jan. 1, 1990.''

Amendment by section 620(b) of Pub. L. 101–239 effective with respect to referrals made on or after Jan. 1, 1992, see section 620(c) of Pub. L. 101–239, set out as a note under section 1395m of this title.

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1325a–7 of this title.


**Effective Date of 1988 Amendments**

Section 6422(b) of Pub. L. 100–647 provided that: "The amendments made by subsection (a) [amending this section] shall become effective as if included in the amendment made by section 6802(e)(2) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g) of Pub. L. 100–360, as amended, set out as a note under section 1395u of this title.

Amendment by section 201(b) of Pub. L. 101–238 applicable to services furnished on or after Apr. 1, 1988, see section 201(c) of Pub. L. 101–238, as amended, set out as a note under section 1395u of this title.

Amendment by section 204(b)(3) of Pub. L. 101–238 applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Apr. 1, 1988, see section 204(c) of Pub. L. 101–238, as amended, set out as a note under section 1395u of this title.

**Effective Date of 1987 Amendment**

Section 404(c) of Pub. L. 100–203 provided that: "The amendments made by this section [amending this section] shall apply with respect to services furnished in a rural area (as defined in section 1981d(d)(2)(D) of the Social Security Act [section 1833ww(d)(2)(D) of this title]) on or after Jan. 1, 1989, and to other services furnished on or after Jan. 1, 1991.''

Amendment by section 404(c)(2)(A) of Pub. L. 100–203 applicable to items and services furnished on or after Apr. 1, 1988, see section 404(d) of Pub. L. 100–203, set out as a note under section 1395u of this title.

Amendment by section 405(b), formerly §405(b), of Pub. L. 100–203, as added and renumbered by Pub. L. 100–360, title IV, §411(f)(12)(A), July 1, 1988, 102 Stat. 781, provided that: "The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after April 1, 1988.''

Amendment by section 4062(b)(3) of Pub. L. 100–203 applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989, see section 4062(e) of Pub. L. 100–203, as amended, set out as a note under section 1395u of this title.

Amendment by section 4063(c) of Pub. L. 100–203 provided that: "The amendments made by this section [amending this section and section 1395u of this title] shall apply to items furnished on or after July 1, 1988.''

Amendment by section 4064(c)(2) of Pub. L. 100–203, as added by Pub. L. 101–239, title IV, §411(g)(4)(A), July 1, 1988, 102 Stat. 781, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to diagnostic laboratory tests furnished on or after April 1, 1988.''

Amendment by section 4066(c) of Pub. L. 100–203, as added by Pub. L. 101–239, title IV, §411(g)(4)(B), July 1, 1988, 102 Stat. 781, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to diagnostic laboratory tests furnished on or after April 1, 1988.''

Amendment by section 4067(c) of Pub. L. 100–203 provided that: "The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after Apr. 1, 1988.''

Amendment by section 4068(c) of Pub. L. 100–203, provided that: "The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after Apr. 1, 1988.''

Amendment by section 4069(c) of Pub. L. 100–203, provided that: "The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after Apr. 1, 1988.''

Amendment by section 4070(c) of Pub. L. 100–203, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to services furnished on or after April 1, 1988, and other diagnostic procedures performed on or after October 1, 1988.''

Amendment by section 4071(c) of Pub. L. 100–203, provided that: "The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after Apr. 1, 1988.''

Amendment by section 4072(b) of Pub. L. 100–203, provided that: "The amendments made by this section [amending this section] shall apply with respect to services furnished on or after calendar years beginning with 1988; except that with respect to 1988, any reference in section 1833(c) of the Social Security Act [subsec. c of this section], as amended by subsection (a), to '$375.00' is deemed a reference to '$562.50'. The amendment made by subsection (a)(2) [amending this section] shall apply to services furnished on or after Jan. 1, 1989.''

For effective date of amendment by section 4072(b) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395u of this title.

Amendment by section 4073(b) of Pub. L. 100–203 effective with respect to services furnished on or after July 1, 1988, see section 4073(e) of Pub. L. 100–203, set out as a note under section 1395u of this title.
Amendment by section 4077(b)(2), (3) of Pub. L. 100–203 effective with respect to services performed on or after July 1, 1988, see section 4077(b)(5) of Pub. L. 100–203, set out as a note under section 1395k of this title.

Section 4068(b) of Pub. L. 100–203 provided that: "The amendments made by subsection (a) [amending this section] shall apply as if included in the amendment made by section 9229(e)(2) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509]."

Amendment by section 4084(c)(3) of Pub. L. 100–203, as added by Pub. L. 100–360, title IV, §411(i)(3), July 1, 1988, set out as a note under section 1395x of this title, provided that: "The amendments made by this section [amending this section and section 1395x of this title] shall apply to samples collected on or after December 31, 1988.

Section 4085(b)(2) of Pub. L. 100–203 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to procedures performed on or after November 1, 1988.

Amendment by section 4085(21) of Pub. L. 100–203 provided that the amendment to section 9334 of Pub. L. 99–509, as amended, set out as a note under section 1395k of this title, shall apply to services furnished after December 31, 1988.

Section 4087(b)(2) of Pub. L. 100–203 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to clinical diagnostic laboratory tests performed on or after January 1, 1987.

Effective Date of 1986 Amendments

Amendment by section 9320(e)(1), (2) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i)(k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Amendment by section 9337(b) of Pub. L. 99–509 applicable to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987, see section 9337(e) of Pub. L. 99–509, set out as a note under section 1395k of this title.

Section 9338(a)(2) of Pub. L. 99–509 provided that: "(1) The amendments made by this subsection [amending this section] apply to clinical diagnostic laboratory tests performed on or after January 1, 1987.

Section 9339(c)(2) of Pub. L. 99–509 provided that: "(1) The amendments made by paragraph (1) [amending this section] shall apply to samples collected on or after January 1, 1987.


"(2) The amendments made by subsection (b)(1) and (c) [amending this section and sections 1395y and 1395cc of this title] shall apply to services furnished after June 30, 1987.

"(3) The Secretary of Health and Human Services shall first provide, under the amendment made by subsection (b)(2) [amending this section], for the review and update of procedure lists within 6 months after the date of the enactment of this Act [Oct. 21, 1986].

"(3) The amendments made by subsection (a)(1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1987.

"(2) The amendments made by subsections (b)(1) and (c) [amending this section and sections 1395y and 1395cc of this title] shall apply to services furnished after June 30, 1987.

"(3) The amendments made by paragraphs (1) and (2) [amending this section] shall apply to clinical diagnostic laboratory tests performed on or after July 1, 1987.

"(B) The amendment made by paragraph (3) [amending this section] shall apply to clinical diagnostic laboratory tests performed on or after January 1, 1987.

Effective Date of 1984 Amendments

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395y of this title.

Section 2303(j) of Pub. L. 98–369 provided that: "(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 1395n, 1395cc, 1396a, and 1396b of this title] shall apply to clinical diagnostic laboratory tests furnished on or after July 1, 1984.

"(2) The amendments made by subsection (g)(2) [amending section 1396b of this title] shall apply to payments for calendar quarters beginning on or after October 1, 1984.

"(3) The amendments made by this section shall not apply to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of the Social Security Amendments of 1983 [section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title]. Payment for such services shall be made under part B of title XVIII of the Social Security Act [this part] at 80 percent (or 100 percent in the case of such tests for which payment is made on the basis of an assignment described in section 1842(b)(3)(B)(i) of the Social Security Act [section 1395gg(f) of this title] or under the procedure described in section 1870(f)(1) of such Act [section 1395gg(f)(1) of this title]) of the reasonable charge for such service. The deductible under section 1833(b) of such Act [subsection (b) of this section] shall not apply to such tests if payment is made on the basis of such an assignment or procedure.

Amendment by section 4077(b)(2), (3) of Pub. L. 100–203 provided that: "The amendments made by this section [amending this section and enacting provisions set out below] shall apply to services performed after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2331(b), (d)(4)(A) of Pub. L. 98–369 applicable to items and services furnished on or after July 18, 1984, see section 2331(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Section 2331(d) of Pub. L. 98–369 provided that: "The amendments made by this section [amending this section and enacting provisions set out below] apply to services furnished on or after September 1, 1984.

Amendment by section 2354(b)(5), (7) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Section 2354(e) of Pub. L. 98–369 provided that: "The amendments made by this section [amending this section and enacting provisions set out below] apply to such tests if payment is made on the basis of an assignment described in section 1842(b)(3)(B)(i) of the Social Security Act [section 1395gg(f) of this title] or under the procedure described in section 1870(f)(1) of such Act [section 1395gg(f)(1) of this title] of the reasonable charge for such service. The deductible under section 1833(b) of such Act [subsection (b) of this section] shall not apply to such tests if payment is made on the basis of such an assignment or procedure.

Effective Date of 1982 Amendment

Section 112(c) of Pub. L. 97–248 provided that: "The amendments made by this section [amending this section] shall apply with respect to items and services furnished on or after October 1, 1982."

Section 117(a)(2) of Pub. L. 97–248 applicable to final determinations made on or after Sept. 3, 1982, see section 117(b) of Pub. L. 97–248, set out as a note under section 1395cc of this title.

Amendment by section 148(d) of Pub. L. 97–248 effective with respect to contracts entered into on or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

Effective Date of 1981 Amendment

Section 2106(c) of Pub. L. 97–35 provided that: "The amendment made by subsection (a) [amending this section] is effective as of December 5, 1980, and the amendment made by subsection (b)(2) [amending section 1395n(b) of this title] is effective as of April 1, 1981.

Section 2133(b) of Pub. L. 97–35 provided that: "The amendments made by subsection (a) [amending this title] shall apply as if included in the amendment made by section 2133(b) of the Omnibus Budget Reconciliation Act of 1980 [section 4088(c) of Pub. L. 97–35], as amended by section 4088(d) of such Act [Pub. L. 97–35, set out as an Effective Date note under section 1320c of this title]."
section) first apply to the deductible for calendar year 1982 with respect to expenses incurred on or after October 1, 1981.''

Section 213(b) of Pub. L. 97-35 provided that: ‘The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1982, and shall apply to the deductible for calendar years beginning with 1982.’

**Effective Date of 1980 Amendments**

Section 2 of Pub. L. 96-611 provided that: ‘The amendments made by this Act [probably should be the amendments made by section 1 of this Act, which amended this section and sections 1395x, 1395y, 1395aa, and 1395cc of this title] shall take effect on, and apply to services furnished on or after, July 1, 1981.’

Amendment by section 930(b) of Pub. L. 96-499, effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96-499, set out as a note under section 1395x of this title.

Section 935(b) of Pub. L. 96-499 provided that: ‘The amendments made by subsection (a) [amending this section] shall apply to services furnished after the sixth calendar month beginning after the date of the enactment of this Act (Dec. 5, 1980).’

**Effective Date of 1978 Amendment**

Amendment by Pub. L. 95-292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility’s or provider’s first accounting period beginning after the last day of the second calendar month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95-292, set out as a note under section 426 of this title.

**Effective Date of 1977 Amendments**

Amendment by Pub. L. 95-210 applicable to services rendered on or after first day of third calendar month which begins after Dec. 31, 1976, see section 1(a)(1) of Pub. L. 95-210, set out as a note under section 1395x of this title.

Section 16(b) of Pub. L. 95-142 provided that: ‘The amendment made by subsection (a) [amending this section] shall apply with respect to durable medical equipment purchased or rented on or after October 1, 1977.’

**Effective Date of 1972 Amendment**

Section 204(c) of Pub. L. 92-603 provided that: ‘The amendments made by this section [amending this section and section 1395x of this title] shall be effective with respect to calendar years after 1972 (except that, for purposes of applying clause (1) of the first sentence of section 1383(b) of the Social Security Act [sec. (b) of this section], such amendments shall be deemed to have taken effect on January 1, 1972).’

Amendment by section 211(c)(4) of Pub. L. 92-603 applicable to services furnished with respect to admissions occurring after Dec. 31, 1972, see section 211(d) of Pub. L. 92-603, set out as a note under section 1395x of this title.

Amendment by section 226(c)(2) of Pub. L. 92-603 effective with respect to services provided on or after July 1, 1973, see section 226(f) of Pub. L. 92-603, set out as an Effective Date note under section 1395mm of this title.

Amendment by section 233(b) of Pub. L. 92-603 applicable to services furnished by hospitals, extended care facilities, and home health agencies in accounting periods beginning after Dec. 31, 1972, see section 233(f) of Pub. L. 92-603, set out as a note under section 1395f of this title. See, also, Pub. L. 93-233, §16, Dec. 31, 1973, 87 Stat. 967, set out as a note under section 1395f of this title.

Amendment by section 251(a)(2), (3) of Pub. L. 92-603 applicable with respect to services furnished on or after July 1, 1973, see section 251(d)(1) of Pub. L. 92-603, set out as a note under section 1395x of this title.

Section 299(b) of Pub. L. 92-603 provided that: ‘The amendment made by subsection (a) [amending this section] shall apply to services furnished by home health agencies in accounting periods beginning after December 31, 1972.’

**Effective Date of 1968 Amendment**

Amendment by section 129(c)(7), (8) of Pub. L. 90-248 applicable with respect to services furnished after Mar. 31, 1968, see section 129(d) of Pub. L. 90-248, set out as a note under section 1395x of this title.

Section 131(c) of Pub. L. 90-248 provided that: ‘The amendments made by this section [amending this section] shall apply with respect to services furnished after March 31, 1968.’

Section 132(c) of Pub. L. 90-248 provided that: ‘The amendments made by this section [amending this section and section 1395x of this title] shall be construed to provide coverage under title XVIII of the Social Security Act [this subchapter] of items and services for the treatment of a medical condition that is not otherwise covered under such title.’

**Construction Regarding Limiting Increases in Cost-Sharing**

Pub. L. 110-554, §1(a)(6) [title I, §111(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-473, provided that: ‘Nothing in the provisions of, or amendments made by, this subsection [amending this section and sections 1395x and 1395y of this title] shall be construed to prevent an increase in the amount of any coinsurance for outpatient hospital services under the Medicare program under title XVIII of the Social Security Act [this subchapter] that may have been increased as a result of the implementation of the prospective payment system under section 1833(t) of the Social Security Act (42 U.S.C. 1395(t)).’

**Treatment of Certain Complex Diagnostic Laboratory Tests**


‘‘(1) Demonstration Project.—

‘‘(1) In general.—The Secretary of Health and Human Services (in this section referred to as the ‘Secretary’) shall conduct a demonstration project under part B of title XVII of the Social Security Act (42 U.S.C. 1395(bb) et seq.) under which separate payments are made under such part for complex diagnostic laboratory tests provided to individuals under such part. Under the demonstration project, the Secretary shall establish appropriate payment rates for such tests.

‘‘(2) Covered complex diagnostic laboratory tests defined.—In this section, the term ‘complex diagnostic laboratory test’ means a diagnostic laboratory test—

‘‘(A) that is an analysis of gene protein expression, topographic genotyping, or a cancer chemotherapy sensitivity assay;’’
(B) that is determined by the Secretary to be a laboratory test for which there is no alternative test having equivalent performance characteristics;

(C) which is billed using a Health Care Procedure Coding System (HCPCS) code other than a not otherwise classified code under such Coding System;

(D) which is approved or cleared by the Food and Drug Administration or is covered under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) and

(E) is described in section 1861(a)(3) of the Social Security Act (42 U.S.C. 1395a(a)(3)).

(3) SEPARATE PAYMENT DEFINED.—In this section, the term ‘separate payment’ means direct payment to a laboratory (including a hospital-based or independent laboratory) that performs a complex diagnostic laboratory test with respect to a specimen collected from an individual during a period in which the individual is a patient of a hospital if the test is performed after such period of hospitalization and if separate payment would not otherwise be made under title XVIII of the Social Security Act by reason of sections 1862(a)(14) and 1866(a)(1)(H)(1) of the such [sic] Act (42 U.S.C. 1395y(a)(14); 42 U.S.C. 1395cc(a)(1)(H)(1)).

(b) DURATION.—Subject to subsection (c)(2), the Secretary shall conduct the demonstration project under this section for the 2-year period beginning on July 1, 2011.

(c) PAYMENTS AND LIMITATION.—Payments under the demonstration project under this section shall—

(1) be made from the Federal Supplemental [probably should be ‘‘Supplementary’’] Medical Insurance Trust Fund under section 1841 of the Social Security Act (42 U.S.C. 1395b); and

(2) may not exceed $100,000,000.

(d) REPORT.—Not later than 2 years after the completion of the demonstration project under this section, the Secretary shall submit to Congress a report on the project. Such report shall include—

(1) an assessment of the impact of the demonstration project on access to care, quality of care, health outcomes, and expenditures under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] (including any savings under such title); and

(2) such recommendations as the Secretary determines appropriate.

(e) IMPLEMENTATION FUNDING.—For purposes of administering this section (including preparing and submitting the report under subsection (d)), the Secretary shall provide for the transfer, from the Federal Supplemental [probably should be ‘‘Supplementary’’] Medical Insurance Trust Fund under section 1841 of the Social Security Act (42 U.S.C. 1395b), to the Centers for Medicare & Medicaid Services Program Management Account, of $5,000,000. Amounts transferred under the preceding sentence shall remain available until expended.

TREATMENT OF CERTIFIED REGISTERED NURSE ANESTHETISTS

Pub. L. 110–171, title I, §139(b), Jan. 25, 2008, 122 Stat. 2541, provided that: ‘‘With respect to items and services furnished on or after January 1, 2010, the Secretary of Health and Human Services shall make appropriate adjustments to payments under the Medicare program under title XVIII of the Social Security Act [this subchapter] for teaching certified registered nurse anesthetists to implement a policy with respect to teaching certified registered nurse anesthetists that—

(1) is consistent with the adjustments made by the special rule for teaching anesthesiologists under section 1841(a)(6) of the Social Security Act (42 U.S.C. 1395w–4(a)(6)), as added by subsection (a); and

(2) maintains the existing payment differences between teaching anesthesiologists and teaching certified registered nurse anesthetists.’’

IMPLEMENTATION OF 2006 AMENDMENT

Pub. L. 109–171, title I, §107(b)(2), Dec. 20, 2006, 120 Stat. 2983, provided that: ‘‘The Secretary of Health and Human Services may implement the amendment made by paragraph (1) [amending this section] by program instruction or otherwise.’’

Pub. L. 109–171, title V, §303(b), Feb. 8, 2006, 120 Stat. 43, provided that: ‘‘By not later than July 1, 2006, the Secretary of Health and Human Services shall implement clinically appropriate code edits with respect to payments under part B of title XVIII of the Social Security Act [this part] for physical therapy services, occupational therapy services, and speech-language pathology services in order to identify and eliminate improper payments for such services, including edits of clinically illogical combinations of procedure codes and other edits to control inappropriate billings.’’

APPLICATION OF 2003 AMENDMENT TO PHYSICIAN SPECIALTIES

Amendment by section 303 of Pub. L. 108–173, insofar as applicable to payments for drugs or biologicals and drug administration services furnished by physicians, is applicable only to physicians in the specialties of hematology, hematology/oncology, and medical oncology under this subchapter, as amended by Pub. L. 110–173, set out as a note under section 1395u of this title.


GAO STUDY OF MEDICARE PAYMENT FOR INHALATION THERAPY


‘‘(1) STUDY.—The Comptroller General of the United States shall conduct a study to examine the adequacy of current reimbursements for inhalation therapy under the Medicare program.

‘‘(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1).’’

TREATMENT OF CERTAIN CLINICAL DIAGNOSTIC LABORATORY TESTS FURNISHED TO HOSPITAL OUTPATIENTS IN CERTAIN RURAL AREAS


‘‘(a) IN GENERAL.—Notwithstanding subsections (a), (b), and (h) of section 1833 of the Social Security Act (42 U.S.C. 1395l) and section 1834(d)(1) of such Act (42 U.S.C.
1395m(d)(1)), in the case of a clinical diagnostic laboratory test covered under part B of title XVIII of such Act [this part] that is furnished during a cost reporting period described in subsection (b) by a hospital with fewer than 50 beds that is located in a qualified rural area (identified under paragraph (12)(B)(iii) of section 1834(t) of the Social Security Act (42 U.S.C. 1395m(t)), as added by section 416(c) as part of outpatient services of the hospital, the amount of payment for such test shall be 100 percent of the reasonable costs of the hospital in furnishing such test.

(b) APPLICATION.—A cost reporting period described in this subsection is a cost reporting period beginning during the period beginning on July 1, 2004, and ending on June 30, 2008 or during the 2-year period beginning on July 1, 2010.

(c) PROVISION AS PART OF OUTPATIENT HOSPITAL SERVICES.—For purposes of subsection (a), in determining whether clinical diagnostic laboratory services are furnished as part of outpatient services of a hospital, the Secretary [of Health and Human Services] shall apply the same rules that are used to determine whether clinical diagnostic laboratory services are furnished as an outpatient critical access hospital service under section 1833(p)(4) of the Social Security Act (42 U.S.C. 1395m(g)(4)).

{[Pub. L. 108–173, title VI, § 621(b)(3), Dec. 8, 2003, 117 Stat. 2311, provided that: “The Comptroller General of the United States shall conduct a study to determine appropriate payment amounts under section 1833(t)(16)(C) of the Social Security Act [subsec. (t)(16)(C) of this section], as added by paragraph (1), for services of brachytherapy. Not later than January 1, 2005, the Comptroller General shall submit to Congress and the Secretary [of Health and Human Services] a report on the study conducted under this paragraph, and shall include specific recommendations for appropriate payments for such devices.”]}

GAO Report on Payments for Brachytherapy Devices

Pub. L. 108–173, title VI, § 621(b)(3), Dec. 8, 2003, 117 Stat. 2311, provided that: “The Comptroller General of the United States shall conduct a study to determine appropriate payment amounts under section 1833(t)(16)(C) of the Social Security Act [subsec. (t)(16)(C) of this section], as added by paragraph (1), for services of brachytherapy. Not later than January 1, 2005, the Comptroller General shall submit to Congress and the Secretary [of Health and Human Services] a report on the study conducted under this paragraph, and shall include specific recommendations for appropriate payments for such devices.”

Moratorium on Physical Therapy Services Caps in 2003

Pub. L. 108–173, title VI, § 624(a)(2), Dec. 8, 2003, 117 Stat. 2317, provided that: “For the period beginning on the date of the enactment of this Act [Dec. 8, 2003] and ending of [sic] December 31, 2003, the Secretary [of Health and Human Services] shall not apply the provisions of paragraphs (1), (2), and (3) of section 1833(g) [subsec. (g) of this section] to expenses incurred with respect to services described in such paragraphs during such period. Nothing in the preceding sentence shall be construed as affecting the application of such paragraphs by the Secretary before the date of the enactment of this Act.”

Prompt Submission of Overdue Reports on Payment and Utilization of Outpatient Therapy Services


GAO Study of Ambulatory Surgical Center Payments


(1) STUDY.—

“(A) IN GENERAL.—The Comptroller General of the United States shall conduct a study that compares the relative costs of procedures furnished in ambulatory surgical centers to the relative costs of procedures furnished in hospital outpatient departments under section 1833(t) of the Social Security Act (42 U.S.C. 1395t(t)). The study shall also examine how accurately ambulatory payment categories reflect procedures furnished in ambulatory surgical centers.

“(B) CONSIDERATION OF ASC DATA.—In conducting the study under paragraph (1), the Comptroller General shall consider data submitted by ambulatory surgical centers regarding the matters described in clauses (i) through (iii) of paragraph (2)(B).

(2) REPORT AND RECOMMENDATIONS.—

“(A) REPORT.—Not later than January 1, 2005, the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1).

“(B) RECOMMENDATIONS.—The report submitted under subparagraph (A) shall include recommendations on the following matters:

“(i) Whether the weight of any covered service relative to other services described in such paragraphs during such period should be revised, based on specific procedures or types of services (such as ophthalmology and pain management services).

“(ii) Whether a geographic adjustment should be used for payment of services furnished in ambulatory surgical centers, and if so, the labor and nonlabor shares of such payment.”

Demonstration Project for Coverage of Certain Prescription Drugs and Biologicals


“(a) DEMONSTRATION PROJECT.—The Secretary [of Health and Human Services] shall conduct a demonstration project under part B of title XVIII of the Social Security Act [this part] under which payment is made for drugs or biologicals that are prescribed as system components under the outpatient prospective payment system as the basis of payment for ambulatory surgical centers.

“(B) RECOMMENDATIONS.—The report submitted under subparagraph (A) shall include recommendations on the following matters:

“(i) The appropriateness of using the groups of covered services and relative weights established under the outpatient prospective payment system as the basis of payment for ambulatory surgical centers.

“(ii) Whether the weight of any covered service relative to other services described in such paragraphs during such period should be revised, based on specific procedures or types of services (such as ophthalmology and pain management services).

“(iii) Whether a geographic adjustment should be used for payment of services furnished in ambulatory surgical centers, and if so, the labor and nonlabor shares of such payment.”

Demonstration Project for Coverage of Certain Prescription Drugs and Biologicals


“(a) DEMONSTRATION PROJECT.—The Secretary [of Health and Human Services] shall conduct a demonstration project under part B of title XVIII of the Social Security Act [this part] under which payment is made for drugs or biologicals that are prescribed as system components under the outpatient prospective payment system as the basis of payment for ambulatory surgical centers.

“(B) RECOMMENDATIONS.—The report submitted under subparagraph (A) shall include recommendations on the following matters:

“(i) The appropriateness of using the groups of covered services and relative weights established under the outpatient prospective payment system as the basis of payment for ambulatory surgical centers.

“(ii) Whether the weight of any covered service relative to other services described in such paragraphs during such period should be revised, based on specific procedures or types of services (such as ophthalmology and pain management services).

“(iii) Whether a geographic adjustment should be used for payment of services furnished in ambulatory surgical centers, and if so, the labor and nonlabor shares of such payment.”
PAYMENT FOR PANCREATIC ISLET CELL INVESTIGATIONAL TRANSPLANTS FOR MEDICARE BENEFICIARIES IN CLINICAL TRIALS


“(a) CLINICAL TRIAL.—

“(1) IN GENERAL.—The Secretary of Health and Human Services, acting through the National Institute of Diabetes and Digestive and Kidney Disorders, shall conduct a clinical investigation of pancreatic islet cell transplantation which includes medicare beneficiaries.

“(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to conduct the clinical investigation under paragraph (1).

“(b) MEDICARE PAYMENT.—Not earlier than October 1, 2004, the Secretary shall pay for the routine costs as well as transplantation and appropriate related items and services (as described in subsection (c)) in the case of medicare beneficiaries who are participating in a clinical trial described in subsection (a) as if such transplantation were covered under title XVIII of the Social Security Act, as would be paid under part A or part B of such title [part A of this subchapter or this part] for such beneficiary.

“(c) SCOPE OF PAYMENT.—For purposes of subsection (b):

“(1) The term ‘routine costs’ means reasonable and necessary routine patient care costs (as defined in the Centers for Medicare & Medicaid Services Coverage Issues Manual, section 30–1), including immunosuppressive drugs and other followup care.

“(2) The term ‘transplantation and appropriate related items and services’ means items and services related to the acquisition and delivery of the pancreatic islet cell transplantation, notwithstanding any national noncoverage determination contained in the Centers for Medicare & Medicaid Services Coverage Issues Manual.

“(3) The term ‘medicare beneficiary’ means an individual who is entitled to benefits under part A of title XVIII of the Social Security Act [this part], or enrolled under part B of such title [part A of this subchapter or this part] for such beneficiary.

“(d) CONSTRUCTION.—The provisions of this section shall not be construed—

“(1) to permit payment for partial pancreatic tissue or islet cell transplantation under title XVIII of the Social Security Act [this subchapter] other than payment as described in subsection (b); or

“(2) as authorizing or requiring coverage or payment conveying—

“(A) benefits under part A of such title [part A of this subchapter] to a beneficiary not entitled to such part A; or

“(B) benefits under part B of such title [this part] to a beneficiary not enrolled in such part B.”

GAO STUDY OF REDUCTION IN MEDICARE PREMIUM LEVELS RESULTING FROM REDUCTIONS IN COINSURANCE

Pub. L. 106–554, §1(a)(6) [title I, §111(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–473, provided that: “The Comptroller General of the United States shall work, in concert with the National Association of Insurance Commissioners, to evaluate the extent to which the premium levels for medicare supplemental policies reflect the reductions in coinsurance resulting from the amendment made by subsection (a) [amending this section]. Not later than April 1, 2004, the Comptroller General shall submit to Congress a report on the extent to which the reductions in beneficiary coinsurance resulted in actual savings to medicare beneficiaries.”

MEDPAC STUDY ON LOW-VOLUME, ISOLATED RURAL HEALTH CARE PROVIDERS

Pub. L. 106–554, §1(a)(6) [title II, §225], Dec. 21, 2000, 114 Stat. 2763, 2763A–490, provided that:

“(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on the effect of low patient and procedure volume on the medicare program attributable to reduced physi-
“(1) In general.—In the case of a medical device provided as part of a service (or group of services) furnished during the period before initial categories are implemented under subparagraph (B)(i) of section 1833(t)(6) of the Social Security Act [subsec. (t)(6)(B)(i) of this section] (as amended by subsection (a)), payment shall be made for such device under such section in accordance with the provisions in effect before the date of the enactment of this Act [Dec. 21, 2000]. In addition, beginning on the date that is 30 days after the date of the enactment of this Act, payment shall be made for such a device that is not included in a program memorandum described in such subparagraph if the Secretary of Health and Human Services determines that the device (including a device that would have been included in such program memoranda but for the requirement of subparagraph (A)(iv)(I) of that section) is likely to be described by such an initial category.

“(2) Application of current process.—Notwithstanding any other provision of law, the Secretary shall continue to accept applications with respect to medical devices under the process established pursuant to paragraph (6) of section 1833(t) of the Social Security Act [subsec. (t)(6) of this section] (as in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]), and any device—

“(A) with respect to which an application was submitted (pursuant to such process) on or before such date; and

“(B) that meets the requirements of clause (ii) or (iv) of subparagraph (A) of such paragraph (as determined pursuant to such process),

shall be treated as a device with respect to which an initial category is required to be established under subparagraph (A)(iv)(I) of that section is likely to be described by such an initial category.

“(3) Study.—The Secretary shall conduct a study on the barriers to coverage and payment for outpatient interventional pain medicine procedures under the medicare program under title XVIII of the Social Security Act [this subchapter]. Such study shall examine—

“(A) the specific barriers imposed under the medicare program on the provision of pain management procedures in hospital outpatient departments, ambulatory surgery centers, and physicians' offices; and

“(B) the consistency of medicare payment policies for pain management procedures in those different settings.

“(4) Report.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study conducted under paragraph (3)."

STUDY ON STANDARDS FOR SUPERVISION OF PHYSICAL THERAPIST ASSISTANTS
Pub. L. 106–554, §1(a)(6) (title IV, §421(c)), Dec. 21, 2000, 114 Stat. 2763, 2763A–516, provided that:

“(1) In general.—The Secretary of Health and Human Services shall conduct a study of the implications—

“(A) of eliminating the ‘in the room’ supervision requirement for medicare payment for services of physical therapy assistants who are supervised by physical therapists; and

“(B) of such requirement on the cap imposed under section 1833(g) of the Social Security Act (42 U.S.C. 1395l(g)) on physical therapy services.

“(2) Report.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Secretary shall submit to Congress a report on the study conducted under paragraph (1).

DELAY IN IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM FOR AMBULATORY SURGICAL CENTERS

MEDPAC STUDY AND REPORT ON MEDICARE REIMBURSEMENT FOR SERVICES PROVIDED BY CERTAIN PROVIDERS

“(a) Study.—The Medicare Payment Advisory Commission shall conduct a study on the appropriateness of the current payment rates under the medicare program under title XVIII of the Social Security Act [this subchapter] for services provided by a—

“(1) certified nurse-midwife (as defined in subsection (gg)(2) of section 1861 of such Act (42 U.S.C. 1395x));

“(2) physician assistant (as defined in subsection (aa)(5)(A) of such section);

“(3) nurse practitioner (as defined in such subsection); and

“(4) clinical nurse specialist (as defined in subsection (aa)(5)(B) of such section).

“The study shall separately examine the appropriateness of such payment rates for such specific physician assistants, taking into consideration the requirements for accreditation, training, and education.

“(b) Report.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study conducted under subsection (a), together with any recommendations for legislation the Commission determines to be appropriate as a result of such study.”

MEDPAC STUDY ON ACCESS TO OUTPATIENT PAIN MANAGEMENT SERVICES
Pub. L. 106–554, §1(a)(6) (title IV, §438), Dec. 21, 2000, 114 Stat. 2763, 2763A–528, provided that:

“(a) Study.—The Medicare Payment Advisory Commission shall conduct a study on the barriers to coverage and payment for outpatient interventional pain medicine procedures under the medicare program under title XVIII of the Social Security Act [this subchapter]. Such study shall examine—

“(1) the specific barriers imposed under the medicare program on the provision of pain management procedures in hospital outpatient departments, ambulatory surgery centers, and physicians' offices; and

“(2) the consistency of medicare payment policies for pain management procedures in those different settings.

“(b) Report.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study.”

ESTABLISHMENT OF CODING AND PAYMENT PROCEDURES FOR NEW CLINICAL DIAGNOSTIC LABORATORY TESTS AND OTHER ITEMS ON A FEE SCHEDULE
Pub. L. 106–554, §1(a)(6) (title V, §531(b)), Dec. 21, 2000, 114 Stat. 2763, 2763A–547, provided that: “Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall establish procedures for coding and payment determinations for the categories of new clinical diagnostic laboratory tests and new durable medical equipment under part B of title XVIII of the Social Security Act [this part] that permit public consultation in a manner consistent with the procedures established for implementing coding modifications for ICD–9–CM.”

REPORT ON PROCEDURES USED FOR ADVANCED, IMPROVED TECHNOLOGIES
Pub. L. 106–554, §1(a)(6) (title V, §531(c)), Dec. 21, 2000, 114 Stat. 2763, 2763A–547, provided that: “Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall submit to Congress a report that identifies the specific procedures used by the Secretary under part B of title XVIII of the Social Security Act [this part] to adjust payments for clinical diagnostic laboratory tests and durable medical equipment which are classified to existing codes where, because of an advance in technology with respect to the test or equipment, there has been a significant increase or decrease in the resources used in the test or in the manufacture of the equipment, and there has been a significant improvement in the performance of the test or equipment. The report shall include such recommendations for changes in law as may be necessary to assure fair and appropriate payment levels under such part for such improved tests and equipment as reflects increased costs necessary to produce improved results.”

CONGRESSIONAL INTENTION REGARDING BASE AMOUNTS IN APPLYING HOPD PPS
Title 42, Part 2527 - The Public Health and Welfare

With respect to determining the amount of copayments described in paragraph (3)(A)(i) of section 1833(t) of the Social Security Act [subsec. (t) of this section], as added by section 4222(a) of SSA [the Balanced Budget Act of 1997, Pub. L. 105-33], Congress finds that such amount should be determined without regard to such section, in a budget neutral manner with respect to aggregate payments to hospitals, and that the Secretary of Health and Human Services has the authority to determine such amount without regard to such section.

Study and Report to Congress Regarding Special Treatment of Rural and Cancer Hospitals in Prospective Payment System for Hospital Outpatient Department Services


(a) Study.—

(1) in general.—The Medicare Payment Advisory Commission (referred to in this section as ‘‘MedPAC’’) shall conduct a study to determine the appropriate payment (and the appropriate method) of payment to hospitals described in paragraph (2) for covered OPD services (as defined in paragraph (1)(B) of section 1833(t) of the Social Security Act (42 U.S.C. 1395ww(t))) based on the prospective payment system established by the Secretary in accordance with such section.

(2) hospitals described.—The hospitals described in this paragraph are the following:

(A) A medicare-dependent, small rural hospital (as defined in section 1886(d)(6)(G)(i)(v) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(G)(i)(v))).

(B) A sole community hospital (as defined in section 1861(aa)(2) of such Act (42 U.S.C. 1395x(aa)(2))).

(C) Rural health clinics (as defined in section 1861(aa)(2) of such Act (42 U.S.C. 1395x(aa)(2))).

(D) Rural referral centers (as so classified under section 1861(6)(C) of such Act (42 U.S.C. 1395ww(d)(5)(C))).

(E) Any other rural hospital with not more than 100 beds.

(F) Any other rural hospital that the Secretary determines appropriate.

(G) A hospital described in section 1886(d)(1)(B)(v) of such Act (42 U.S.C. 1395ww(d)(1)(B)(v)).

(b) report.—Not later than 2 years after the date of the enactment of this Act [Nov. 29, 1999], MedPAC shall submit a report to the Secretary of Health and Human Services and Congress on the study conducted under subsection (a), together with any recommendations for legislation that MedPAC determines to be appropriate as a result of such study.

Comments.—Not later than 60 days after the date on which MedPAC submits the report under subsection (b) to the Secretary of Health and Human Services, the Secretary shall submit comments on such report to Congress.

GAO study on resources required to provide safe and effective outpatient cancer therapy


(a) study.—The Comptroller General of the United States shall conduct a nationwide study to determine the physician and non-physician clinical resources necessary to provide safe outpatient cancer therapy services and the appropriate rate for such services under the medicare program. In making such determination, the Comptroller General shall—

(1) determine the adequacy of practice expense relative value units associated with the utilization of those clinical resources;

(2) determine the adequacy of work units in the practice expense formula; and

(3) assess various standards to assure the provision of safe outpatient cancer therapy services.

(b) report to congress.—The Comptroller General shall submit to Congress a report on the study conducted under subsection (a). The report shall include MedPAC’s recommendations regarding practice expense adjustments to the payment methodology under part B of title XVIII of the Social Security Act (this part), including the development and inclusion of adequate work units to assure the adequacy of payment amounts for safe outpatient cancer therapy services. The study shall also include an estimate of the cost of implementing such recommendations.

Focused medical reviews of claims during moratorium period

Pub. L. 106-113, div. B, §1000(a)(6) (title II, §221(d)), Nov. 29, 1999, 113 Stat. 1536, 1501A–352, as amended by Pub. L. 106-554, §1(a)(6) (title IV, §421(b)), Dec. 21, 2000, 114 Stat. 2763, 2763A–516, provided that: ‘‘During years in which paragraph (4) of section 1833(g) of the Social Security Act (42 U.S.C. 1395ww(g)) applies, the Secretary of Health and Human Services shall conduct focused medical reviews of claims for reimbursement for services described in paragraph (1) or (3) of such section, with emphasis on such claims that are provided to residents of skilled nursing facilities.’’

Study and report on utilization


(1) study.—

(A) in general.—The Secretary of Health and Human Services shall conduct a study which compares—

(i) utilization patterns (including nationwide patterns, and patterns by region, types of settings, and diagnosis or condition) of outpatient physical therapy services, outpatient occupational therapy services, and speech-language pathology services that are covered under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395) [this subchapter] and provided on or after January 1, 2000; with

(ii) such patterns for such services that were provided in 1998 and 1999.

(B) review of claims.—In conducting the study under this subsection the Secretary of Health and Human Services shall review a statistically significant number of claims for reimbursement for the services described in subparagraph (A).

(2) report.—Not later than 60 days after the date of enactment of this Act [Nov. 29, 1999], the Secretary of Health and Human Services shall submit a report to Congress on the study conducted under paragraph (1), together with any recommendations for legislation that the Secretary determines to be appropriate as a result of such study.

Phase-in of PPS for ambulatory surgical centers

Pub. L. 106-113, div. B, §1000(a)(6) (title II, §226), Nov. 29, 1999, 113 Stat. 1536, 1501A–354, as amended by Pub. L. 106-554, §1(a)(6) (title IV, §424(b), (c)), Dec. 21, 2000, 114 Stat. 2763, 2763A–516, 2763A–519, provided that: ‘‘If the Secretary of Health and Human Services implements a revised prospective payment system for services of ambulatory surgical facilities under section 1833(i) of the Social Security Act (42 U.S.C. 1395) (this subchapter) and provided on or after January 1, 2001, the Secretary calculates the annual update percentage that is in effect for inpatient hospital services, and the Secretary determines appropriate.’’
By not later than January 1, 2003, the Secretary shall incorporate data from a 1999 medicare cost survey or a subsequent cost survey for purposes of implementing or revising such system.

MEDPAC STUDY ON POSTSURGICAL RECOVERY CARE CENTER SERVICES


“(1) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study on the cost-effectiveness and efficacy of covering under the medicare program under title XVIII of the Social Security Act [this subchapter] services of a post-surgical recovery care center (that provides an intermediate level of recovery care following surgery). In conducting such study, the Commission shall consider data on these centers gathered in demonstration projects.

“(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Nov. 29, 1999], the Commission shall submit to Congress a report on such study and shall include in the report recommendations on the feasibility, costs, and savings of covering such services under the medicare program.

MEDICARE REIMBURSEMENT FOR TELEHEALTH SERVICES


“(a) IN GENERAL.—For services furnished on and after January 1, 1999, and before October 1, 2001, the Secretary of Health and Human Services shall make payments from the Federal Supplementary Medical Insurance Trust Fund under part B of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for professional consultation via telecommunications systems with such a physician or practitioner furnishing a service for which payment may be made under such part to a beneficiary described in paragraph (2), notwithstanding that the individual physician or practitioner providing the professional consultation is not at the same location as the physician or practitioner furnishing the service to that beneficiary.

“(b) METHODOLOGY FOR DETERMINING AMOUNT OF PAYMENTS.—Taking into account the findings of the report required under section 192 of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 1988), the findings of the report required under paragraph (c), and any other findings related to the clinical efficacy and cost-effectiveness of telehealth applications, the Secretary shall establish a methodology for determining the amount of payments made under subsection (a) within the following parameters:

“(1) The payment shall be shared between the referring physician or practitioner and the consulting physician or practitioner. The amount of such payment shall not be greater than the current fee schedule of the consulting physician or practitioner for the health care services provided.

“(2) The payment shall not include any reimbursement for any telephone line charges or any facility fees, and a beneficiary may not be billed for any such charges or fees.

“(3) The payment shall be made subject to the coinsurance and deductible requirements under sub-sections (a)(1) and (b) of section 1833 of the Social Security Act (42 U.S.C. 1395).

“(4) The reasonable cost of telecommunications charges incurred in practicing telemedicine and telehealth in rural, frontier, and underserved areas.

“(c) EXPANSION OF TELEHEALTH SERVICES FOR CERTAIN MEDICARE BENEFICIARIES.—

“(1) IN GENERAL.—Not later than January 1, 1999, the Secretary shall submit a report to Congress that examines the possibility of making payments from the Federal Supplementary Medical Insurance Trust Fund under part B of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for professional consultation via telecommunications systems with such a physician or practitioner furnishing a service for which payment may be made under such part to a beneficiary described in paragraph (2), notwithstanding that the individual physician or practitioner providing the professional consultation is not at the same location as the physician or practitioner furnishing the service to that beneficiary.

“(2) BENEFICIARY DESCRIPTION.—A beneficiary described in this paragraph is a beneficiary under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) who does not reside in a rural area (as so defined) that is designated as a health professional shortage area under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254(e)(1)(A)), who is homebound or nursing homebound, and for whom being transferred for health care services imposes a serious hardship.

“(d) REPORT.—The report described in paragraph (1) shall contain a detailed statement of the potential costs and savings to the medicare program of making the payments described in that paragraph using various reimbursement schemes.

REPORT ON COVERAGE OF OUTPATIENT OCCUPATIONAL THERAPY SERVICES


“(A) the establishment of a mechanism for assuring appropriate utilization of outpatient physical therapy services, outpatient occupational therapy services, and speech-language pathology services that are covered under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395) [this subchapter]; and

“(B) the establishment of an alternative payment policy for such services based on classification of individuals by diagnostic category, functional status, prior use of services (in both inpatient and outpatient settings), and such other criteria as the Secretary determines appropriate, in place of the uniform dollar limitations specified in section 1833(g) of such Act [subsec. (g) of this section], as amended by paragraph (1).

The recommendations shall include how such a mechanism or policy might be implemented in a budget-neutral manner.

The amendment made by paragraph (1) [amending section 4511(d)(2) of Pub. L. 105–33, set out above] shall take effect as if included in the enactment of section 4541 of BRBA [the Balanced Budget Act of 1997, Pub. L. 105–33].

**STUDY AND REPORT ON CLINICAL LABORATORY TESTS**

Section 4553(c) of Pub. L. 105–33 provided that:

"(1) IN GENERAL.—The Secretary shall request the Institute of Medicine of the National Academy of Sciences to conduct a study of payments under part B of title XVIII of the Social Security Act [this part] for clinical laboratory tests. The study shall include a review of the adequacy of the current methodology and recommendations regarding alternative payment systems. The study shall also analyze and discuss the relationship between such payment systems and access to high quality laboratory tests for medicare beneficiaries, including availability and access to new testing methodologies.

"(2) REPORT TO CONGRESS.—The Secretary shall, not later than 2 years after the date of enactment of this section [Aug. 5, 1997], report to the Committees on Ways and Means and Commerce of the House of Representatives and the Committee on Finance of the Senate the results of the study described in paragraph (1), including any recommendations for legislation."}

**ADJUSTMENTS TO PAYMENT AMOUNTS FOR NEW TECHNOLOGY INTRAOCULAR LENSES**

Section 141(b) of Pub. L. 103–432 provided that:

"(1) ESTABLISHMENT OF PROCESS FOR REVIEW OF ADJUSTMENTS.—Not later than 1 year after the date of enactment of this Act [Oct. 31, 1994], the Secretary of Health and Human Services (in this subsection referred to as the ‘Secretary’) shall develop and implement a process under which interested parties may request review by the Secretary of the appropriateness of the reimbursement amount provided under section 1833(i)(2)(A)(ii) of the Social Security Act [subsec. (i)(2)(A)(ii) of this section] with respect to a class of new technology intraocular lenses. For purposes of the preceding sentence, an intraocular lens may not be treated as a new technology lens unless it has been approved by the Food and Drug Administration.

"(2) FACTORS CONSIDERED.—In determining whether to provide an adjustment of payment with respect to a particular lens under paragraph (1), the Secretary shall take into account whether use of the lens is likely to result in reduced risk of intraoperative or postoperative complication or trauma, accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or other comparable clinical advantages.

"(3) NOTICE AND COMMENT.—The Secretary shall publish notice in the Federal Register from time to time (but no less often than once each year) of a list of the requests that the Secretary has received for review under this subsection, and shall provide for a 30-day comment period on the lenses that are the subjects of the requests contained in such notice. The Secretary shall publish a notice of the Secretary’s determinations with respect to intraocular lenses listed in the notice within 90 days after the close of the comment period.

"(4) EFFECTIVE DATE OF ADJUSTMENT.—Any adjustment of a payment amount (or payment limit) made under this subsection shall become effective not later than 30 days after the date on which the notice with respect to the adjustment is published under paragraph (3)."

**STUDY OF MEDICARE COVERAGE OF PATIENT CARE COSTS ASSOCIATED WITH CLINICAL TRIALS OF NEW CANCER THERAPIES**

Section 142 of Pub. L. 103–432 directed Secretary of Health and Human Services to conduct a study, and to submit a report to Congress not later than 2 years after Oct. 31, 1994, of effects of expressly covering under medicare program patient care costs for beneficiaries enrolled in clinical trials of new cancer therapies, where protocol for the trial has been approved by the National Cancer Institute or met similar scientific and ethical standards, including approval by an institutional review board.

**STUDY OF ANNUAL CAP ON AMOUNT OF MEDICARE PAYMENT FOR OUTPATIENT PHYSICAL THERAPY AND OCCUPATIONAL THERAPY SERVICES**

Section 143 of Pub. L. 103–432 directed Secretary of Health and Human Services to submit to Congress, not later than Jan. 1, 1996, study and report on appropriateness of continuing annual limitation on amount of payment for outpatient services of independently practicing physical and occupational therapists under medicare program, which was to include such recommendations for changes in such annual limitation as Secretary found appropriate.

**AMBULATORY SURGICAL CENTER SERVICES; INFLATION UPDATE**

Section 1333 of Pub. L. 103–66 provided that: "The Secretary of Health and Human Services shall not provide for any inflation update in the payment amounts under subparagraphs (A) and (B) of section 1833(i)(2) of the Social Security Act [subsec. (i)(2)(A) and (B) of this section] for fiscal year 1995 or for fiscal year 1996."

**FREEZE IN ALLOWANCE FOR INTRAOCULAR LENSES**

Section 13332 of Pub. L. 103–66 provided that: "Notwithstanding section 1833(i)(2)(A)(iii) of the Social Security Act [subsec. (i)(2)(A)(ii) of this section], the amount of payment determined under such section for an intraocular lens inserted subsequent to or during cataract surgery in an ambulatory surgical center on or after January 1, 1994, and before January 1, 1999, shall be equal to $150."

Section 4151(c)(3) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 141(d), Oct. 31, 1994, 108 Stat. 4426, provided that: "Notwithstanding section 1833(i)(2)(A)(ii) of the Social Security Act [subsec. (i)(2)(A)(ii) of this section], the amount of payment determined under such section for an intraocular lens inserted during or subsequent to cataract surgery furnished to an individual in an ambulatory surgical center on or after the date of the enactment of this Act [Nov. 5, 1990] and on or before December 31, 1992, shall be equal to $200."

Section 141(d) of Pub. L. 103–432 provided that the amendment made by that section to section 1833(i)(3)(B)(ii) of Pub. L. 101–508, set out above, is effective as if included in the enactment of Pub. L. 101–508.

**REDUCTION IN PAYMENTS UNDER PART B DURING FINAL TWO MONTHS OF 1990**

Section 4158 of Pub. L. 101–508 provided that:

"(a) IN GENERAL.—Notwithstanding any other provision of law (including any other provision of this Act, other than subsection (b)(4)), payments under part B of title XVIII of the Social Security Act [this part] for items and services furnished during the period beginning on November 1, 1990, and ending on December 31, 1990, shall be reduced by 2 percent, in accordance with subsection (b).

"(b) SPECIAL RULES FOR APPLICATION OF REDUCTION.—

"(1) PAYMENT ON THE BASIS OF COST REPORTING PERIODS.—In the case in which payment for services of a provider of services is made under part B of such title on a basis relating to the reasonable cost incurred for the services during a cost reporting period of the provider, the reduction made under subsection (a) shall be applied to payment for such services incurred at any time during each cost reporting period of the provider any part of which occurs during the period described in such subsection, but only in the same proportion as the fraction of the cost reporting period that occurs during such period.

"(2) NO INCREASE IN BENEFICIARY CHARGES IN ASSIGNMENT-RELATED CASES.—If a reduction in payment
amounts is made under subsection (a) for items or services for which payment under part B of such title is made on an assignment-related basis (as defined in section 1833(h)(1) of the Social Security Act [section 1395u(i)(1) of this title]), the person furnishing the items or services shall be considered to have accepted payment of the reasonable charge for the items or services, less any reduction in payment amount made under subsection (a), as payment in full.

"(3) Treatment of Payments to Health Maintenance Organizations.—Subsection (a) shall not apply to payments under risk-sharing contracts under section 1876 of the Social Security Act (section 1395mm of this title) or under similar contracts under section 402 of the Social Security Amendments of 1967 [Pub. L. 90–248, enacting section 1395b–1 of this title and amending section 1395f of this title or section 222 of the Social Security Amendments of 1972 [Pub. L. 92–663, amending sections 1395j–1 and 1395l of this title and enacting provisions set out as a note under section 1396b–1 of this title]."

Effect on State Law
Conscientious objections of health care provider under State law unaffected by enactment of subsections.

Development of Criteria Regarding Consultation with a Physician
Section 6113(c) of Pub. L. 101–239, as amended by Pub. L. 103–432, title I, § 147(b), Oct. 31, 1994, 108 Stat. 429, provided that: "The Secretary of Health and Human Services shall, taking into consideration the need for patient confidentiality, develop criteria with respect to payment for qualified psychologist services and clinical social worker services for which payment may be made directly to the psychologist or clinical social worker under part B of title XVIII of the Social Security Act (this part) under which such a psychologist or clinical social worker must agree to consult with a patient's attending physician in accordance with such criteria."

Study of Reimbursement for Ambulance Services
Section 6136 of Pub. L. 101–239 directed Secretary of Health and Human Services to conduct a study to determine adequacy and appropriateness of payment amounts under this subchapter for ambulance services and, not later than one year after Dec. 19, 1989, submit a report to Congress on results of the study, with report to include such recommendations for changes in medicare payment policy with respect to ambulance services as may be needed to ensure access by medicare beneficiaries to quality ambulance services in metropolitan and rural areas.

PROPA C Study of Payments for Services in Hospital Outpatient Departments
Section 6137 of Pub. L. 101–239, directed Prospective Payment Assessment Commission to conduct a study on payment under this subchapter for hospital outpatient services and, not later than July 1, 1990, and not later than Mar. 1, 1991, to submit reports to Congress on specified portions of the study, with the reports to include such recommendations as the Commission deemed appropriate, prior to repeal by Pub. L. 103–432, title I, § 147(c)(1), Oct. 31, 1994, 108 Stat. 4429.

Budget Neutrality
Section 621(b) of Pub. L. 100–667 provided that: "The Secretary of Health and Human Services shall adjust the fees for transportation and personnel established under section 1833(h)(3)(B) of the Social Security Act [subsec. (b)(3)(B) of this section] for tests not covered under the amendment made by subsection (a) [amending this section] in such manner that the total cost of fees under such section is the same as would have been the case without such amendment."

Adjustment of Contracts with Prepaid Health Plans
For requirement that Secretary of Health and Human Services modify contracts under subsection (a)(1)(A) of this section to take into account amendments made by Pub. L. 100–360 and that such organizations make appropriate adjustments in their agreements with medicare beneficiaries to take into account such amendments, see section 222 of Pub. L. 100–360, set out as a note under section 1396mm of this title.

Study and Report to Congress Respecting Incentive Payments for Physicians' Services Furnished in Underserved Areas
Section 4043(b) of Pub. L. 100–203 directed Secretary of Health and Human Services to study and report to Congress, by not later than Jan. 1, 1990, on feasibility of making additional payments described in section 1395(m) of this title with respect to physician services performed in health manpower shortage areas located in urban areas, prior to repeal by Pub. L. 101–508, title IV, § 4118(g)(1), Nov. 5, 1990, 104 Stat. 1388–70.

Fee Schedules for Physician Pathology Services
Section 4060 of Pub. L. 100–233 directed Secretary of Health and Human Services to develop a relative value scale and fee schedules with updating index for payment of physician pathology services under this part, and to report to committees of Congress not later than Apr. 1, 1989, on the scale, schedules, and index, prior to repeal by Pub. L. 101–508, title IV, § 4109(b)(3), Nov. 5, 1990, 104 Stat. 1388–59.

Applying Copayment and Deductible to Certain Outpatient Physicians' Services
Section 4054 of Pub. L. 100–233, relating to payment under part B of title XVIII of the Social Security Act (this part) for physicians' services specified in subsection (i) of this section and furnished on or after Apr. 1, 1988, in an ambulatory surgical center or hospital outpatient department on an assignment-related basis, was negated in the amendment of section 4054 by Pub. L. 100–360, title IV, § 411(d)(12)(A), July 1, 1988, 102 Stat. 781.

Other Physician Payment Studies
Section 4056(c), formerly § 4055(c), of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, § 411(f)(14), July 1, 1988, 102 Stat. 781, provided directed Secretary to (1) conduct a study of changes in the payment system for physicians' services, under part B, that would be required for the implementation of a national fee schedule for such services furnished on or after Jan. 1, 1990, and report to Congress on such study by not later than July 1, 1989, (2) conduct a study of issues relating to the volume and intensity of physicians' services under part B and submit to Congress an interim report on such study not later than May 1, 1988, and a final report on such study not later than May 1, 1989, and (3) conduct a survey to determine distribution of (A) the liabilities and expenditures for health care services of individuals entitled to benefits under this subchapter, including liabilities for charges (not paid on an assignment-related basis) in excess of the reasonable charge recognized, and (B) the collection rates among different classes of physicians for such liabilities, including collection rates for required coinsurance and for charges (not paid on an assignment-related basis) in excess of the reasonable charge recognized, report to Congress on such study by not later than July 1, 1990.

Study of Payment for Chemotherapy in Physicians' Offices
Section 4056(d), formerly § 4055(d), of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, § 411(f)(14).
July 1, 1988, 102 Stat. 781, directed Secretary to study ways of modifying part B to permit adequate payment under such part for costs associated with providing chemotherapy to cancer patients in physicians’ offices, with the Secretary to report to Congress on results of study by not later than Apr. 1, 1989, prior to repeal by Pub. L. 105–362, title IV, §411(g)(3A), Nov. 10, 1998, 112 Stat. 3286.

CLINICAL DIAGNOSTIC LABORATORY TESTS: LIMITATION ON CHANGES IN FEE SCHEDULES

Section 4064(a) of Pub. L. 100–203 which provided 3-month freeze in fee schedules for clinical laboratory diagnostic laboratory tests under part B of title XVIII of the Social Security Act [this part] and directed the Secretary of Health and Human Services to not adjust the fee schedules established under subsec. (b) of this section to take into account any increase in the consumer price index, was negated in the amendment of section 4064(a) by Pub. L. 106–362, title VI, §601(b)(7), Nov. 10, 1998, 112 Stat. 3586.

GAO STUDY OF FEE SCHEDULES

Section 4064(b)(4) of Pub. L. 100–203 directed Comptroller General to conduct a study of level of fee schedules established for clinical diagnostic laboratory services under subsec. (b)(2) of this section to determine based on costs of, and revenues received for, such tests the appropriateness of such schedules, with Comptroller General to report on results of such study by not later than Jan. 1, 1990, and with provision that suppliers of such tests which fail to provide Comptroller General with reasonable access to necessary records to carry out study being subject to exclusion from medicare program under section 1395a–7(a) of this title.

AMOUNTS PAID FOR INDEPENDENT RURAL HEALTH CLINIC SERVICES

Section 4067(b) of Pub. L. 100–203 provided that: ‘‘The Secretary of Health and Human Services shall report to Congress, by not later than March 1, 1989, on the adequacy of the amounts paid under title XVIII of the Social Security Act [this subchapter] for rural health clinic services provided by independent rural health clinics.’’

REPORT ON ESTABLISHMENT OF NATIONAL FEE SCHEDULES FOR PAYMENT OF CLINICAL DIAGNOSTIC LABORATORY TESTS


STATE STANDARDS FOR DIRECTORS OF CLINICAL LABORATORIES

Section 3933(d) of Pub. L. 99–509 provided that: ‘‘(1) IN GENERAL.—If a State (as defined for purposes of title XVIII of this chapter) provides for the licensing or other standards with respect to the practice of clinical laboratories (including such laboratories in hospitals) in the State under which such a laboratory may be directed by an individual with certain qualifications, nothing in such title shall be construed as authorizing the Secretary of Health and Human Services to require such a laboratory, as a condition of payment or participation under such title, to be directed by an individual with other qualifications.

‘‘(2) EFFECTIVE DATE.—Paragraph (1) shall take effect on January 1, 1987.’’

TRANSITIONAL PROVISIONS FOR PAYMENT OF FEES FOR CLINICAL DIAGNOSTIC LABORATORY TESTS

Section 9303(a)(3) of Pub. L. 99–272 provided that: ‘‘The Secretary of Health and Human Services shall provide that the annual adjustment under section 1833(h) of the Social Security Act [subsec. (b) of this section] for 1986—

‘‘(A) shall take effect on January 1, 1987,

‘‘(B) shall apply for the 12-month period beginning on that date, and

‘‘(C) shall take into account the percentage increase or decrease in the Consumer Price Index for all urban consumers (United States city average) occurring over an 18-month period, rather than over a 12-month period.’’

EXTENSION OF MEDICARE PHYSICIAN PAYMENT PROVISIONS

Amount of payment under this part for physicians’ services furnished between Oct. 1, 1985, and Mar. 14, 1986, to be determined on the same basis as the amount of such services furnished on Sept. 30, 1985, see section 5(b) of Pub. L. 99–107, as amended, set out as a note under section 1395ww of this title.

FEE SCHEDULES FOR DIAGNOSTIC LABORATORY TESTS AND FEASIBILITY OF DIRECT PAYMENTS TO PHYSICIANS: REPORT TO CONGRESS

Section 2303(i) of Pub. L. 98–369 provided that: ‘‘(1) The Comptroller General shall report to the Congress on—

‘‘(A) the appropriateness of the fee schedules under section 1333(h) of the Social Security Act [subsec. (b) of this section] and their impact on the volume and quality of clinical diagnostic laboratory tests;

‘‘(B) the potential impact of the adoption of a national fee schedule; and

‘‘(C) the potential impact of applying a national fee schedule to clinical diagnostic laboratory tests provided by hospitals to their outpatients.

‘‘(2) The Secretary of Health and Human Services shall report to the Congress with respect to the advisability and feasibility of a system of direct payment to any physician for all clinical diagnostic laboratory tests ordered by such physician.

‘‘(3) The reports required by paragraphs (1) and (2) shall be submitted not later than January 1, 1987.’’

PACKER REIMBURSEMENT REVIEW AND REFORM

Section 2304(a) of Pub. L. 98–369 provided that: ‘‘(1) The Secretary of Health and Human Services shall issue revisions to the current guidelines for the payment under part B of title XVIII of the Social Security Act [this part] for the transtelephonic monitoring of cardiac pacemakers. Such revised guidelines shall include provisions regarding the specifications for and frequency of transtelephonic monitoring procedures which will be found to be reasonable and necessary.

‘‘(2)(A) Except as provided in subparagraph (B), if the guidelines required by paragraph (1) have not been issued and put into effect by October 1, 1984, and until such guidelines have been issued and put into effect, payment may not be made under part B of title XVIII of the Social Security Act for transtelephonic monitoring procedures, with respect to a single-chamber cardiac pacemaker powered by lithium batteries, conducted more frequently than—

(i) weekly during the first month after implantation,

(ii) once every two months during the period representing 80 percent of the estimated life of the implanted device, and

(iii) thereafter.

(B) Subparagraph (A) shall not apply in cases where the Secretary determines that special medical factors (including possible evidence of pacemaker or lead malfunction) justify more frequent transtelephonic monitoring procedures.’’
PAYMENT FOR PREADMISSION DIAGNOSTIC TESTING PERFORMED IN PHYSICIAN'S OFFICE

Section 2305(f) of Pub. L. 98–369 provided that: "The amendments made by this section (amending this section and enacting provisions set out above) shall not be construed as prohibiting payment, subject to the applicable copayments, under part B of title XVIII of the Social Security Act [this part] for preadmission diagnostic testing performed in a physician’s office to the extent such testing is otherwise reimbursable under regulations of the Secretary.”

PROVIDERS OF SERVICES TO CALCULATE AND REPORT LESSER-OF-COST-OR-ChARGES DETERMINATIONS SEPARATELY WITH RESPECT TO PAYMENTS UNDER PARTS A AND B OF THIS SUBCHAPTER; ISSUANCE OF REGULATIONS

For provision directing the Secretary to issue regulations requiring providers of services to calculate and report the lesser-of-cost-or-charges determinations separately with respect to payments for services under parts A and B of this subchapter other than diagnostic tests under subsec. (h) of this section, see section 2308(a) of Pub. L. 98–369, set out as a note under section 1395f of this title.

DETERMINATION OF NOMINAL CHARGES FOR APPLYING NOMINALITY TEST

For provision directing the Secretary to provide, in addition to other rules deemed appropriate, that charges representing 60 percent or less of costs be considered nominal for purposes of applying the nominality test under subsec. (a)(2)(B)(ii) of this section, see section 2308(b)(1) of Pub. L. 98–369, set out as a note under section 1395f of this title.

STUDY OF MEDICARE PART B PAYMENTS; COMPIILATION OF CENTRALIZED CHARGE DATA BASE; REPORT TO CONGRESS

Section 2309 of Pub. L. 98–369 directed Director of Office of Technology Assessment to conduct a study of physician reimbursement under the Medicare program and make a report not later than Dec. 31, 1985, covering findings and recommendations on methods by which payment amounts and other program policies under the program might be modified, and directed that Secretary of Health and Human Services compile a centralized Medicare part B charge data base to aid in the study.

MONITORING PROVISION OF HEPATITIS B VACCINE; REVIEW OF CHANGES IN MEDICAL TECHNOLOGY

Section 2323(e) of Pub. L. 98–369 provided that: “The Secretary shall monitor the provision of hepatitis B vaccine under part B of title XVIII of the Social Security Act [this part], and shall review any changes in medical technology which may have an effect on the amounts which should be paid for such service.”

REPORT ON PREADMISSION DIAGNOSTIC TESTING EXPENSES

Section 932(b) of Pub. L. 96–499 required a report to Congress, no later than one year after Dec. 5, 1980, on the policy respecting expenses incurred for preadmission diagnostic testing furnished to an individual at a hospital within seven days of an individual’s admission to another hospital.

STUDY OF FEASIBILITY AND DESIRABILITY OF IMPOSING COPAYMENT REQUIREMENT ON RURAL HEALTH CLINIC VISITS; REPORT NOT LATER THAN DECEMBER 13, 1978

Section 1(c) of Pub. L. 96–210 directed Secretary of Health, Education, and Welfare to conduct a study of the feasibility and desirability of imposing a copayment for each visit to a rural health clinic for rural health clinic services under this part and that Secretary report to appropriate committee of Congress, not later than one year after Dec. 13, 1977, on such study.

PROHIBITION AGAINST PAYMENTS IN CASES OF NONENTITLEMENT TO MONTHLY BENEFITS UNDER SUBCHAPTER II OR SUSPENSION OF BENEFITS OF ALIENS OUTSIDE THE UNITED STATES

Section 104(b)(1) of Pub. L. 98–97 provided that: “No payments shall be made under part B of title XVIII of the Social Security Act [this part] with respect to expenses incurred by an individual during any month for which such individual may not be paid monthly benefits under title II of such Act [subchapter II of this chapter] (or for which such monthly benefits would be suspended if he were otherwise entitled thereto) by reason of section 202(t) of such Act [section 402(t) of this title] (relating to suspension of benefits of aliens who are outside the United States).”

§ 1395m. Special payment rules for particular items and services

(a) Payment for durable medical equipment

(1) General rule for payment

(A) In general

With respect to a covered item (as defined in paragraph (13)) for which payment is determined under this subsection, payment shall be made in the frequency specified in paragraphs (2) through (7) and in an amount equal to 80 percent of the payment basis described in subparagraph (B).

(B) Payment basis

Subject to subparagraph (F)(i), the payment basis described in this subparagraph is the lesser of—

(1) the actual charge for the item, or

(ii) the payment amount recognized under paragraphs (2) through (7) of this subsection for the item;

except that clause (i) shall not apply if the covered item is furnished by a public home health agency (or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low income) free of charge or at nominal charges to the public.

(C) Exclusive payment rule

Subject to subparagraph (F)(ii), this subsection shall constitute the exclusive provision of this subchapter for payment for covered items under this part or under part A of this subchapter to a home health agency.

(D) Reduction in fee schedules for certain items

With respect to a seat-lift chair or transcutaneous electrical nerve stimulator furnished on or after April 1, 1990, the Secretary shall reduce the payment amount applied under subparagraph (B)(ii) for such an item by 15 percent, and, in the case of a transcutaneous electrical nerve stimulator furnished on or after January 1, 1991, the Secretary shall further reduce such payment amount (as previously reduced) by 45 percent.

(E) Clinical conditions for coverage

(i) In general

The Secretary shall establish standards for clinical conditions for payment for covered items under this subsection.
(ii) Requirements

The standards established under clause (i) shall include the specification of types or classes of covered items that require, as a condition of payment under this subsection, a face-to-face examination of the individual by a physician (as defined in section 1395x(r) of this title), a physician assistant, nurse practitioner, or a clinical nurse specialist (as those terms are defined in section 1395x(aa)(5) of this title) and a prescription for the item.

(iii) Priority of establishment of standards

In establishing the standards under this subparagraph, the Secretary shall first establish standards for those covered items for which the Secretary determines there has been a proliferation of use, consistent findings of charges for covered items that are not delivered, or consistent findings of falsification of documentation to provide for payment of such covered items under this part.

(iv) Standards for power wheelchairs

Effective on December 8, 2003, in the case of a covered item consisting of a motorized or power wheelchair for an individual, payment may not be made for such covered item unless a physician (as defined in section 1395x(r)(1) of this title), a physician assistant, nurse practitioner, or a clinical nurse specialist (as those terms are defined in section 1395x(aa)(5) of this title) has conducted a face-to-face examination of the individual and written a prescription for the item.

(v) Limitation on payment for covered items

Payment may not be made for a covered item under this subsection unless the item meets any standards established under this subparagraph for clinical condition of coverage.

(F) Application of competitive acquisition; limitation of inherent reasonableness authority

In the case of covered items furnished on or after January 1, 2011, subject to subparagraph (G), that are included in a competitive acquisition program in a competitive acquisition area under section 1395w–3(a) of this title:

(i) the payment basis under this subsection for such items and services furnished in such area shall be the payment basis determined under such competitive acquisition program;

(ii) the Secretary may (and, in the case of covered items furnished on or after January 1, 2016, subject to clause (iii), shall) use information on the payment determined under such competitive acquisition programs to adjust the payment amount otherwise recognized under subparagraph (B)(ii) for an area that is not a competitive acquisition area under section 1395w–3 of this title and in the case of such adjustment, paragraph (10)(B) shall not be applied; and

(iii) in the case of covered items furnished on or after January 1, 2016, the Secretary shall continue to make such adjustments described in clause (ii) as, under such competitive acquisition programs, additional covered items are phased in or information is updated as contracts under section 1395w–3 of this title are recompeted in accordance with section 1395w–3(b)(3)(B) of this title.

(G) Use of information on competitive bid rates

The Secretary shall specify by regulation the methodology to be used in applying the provisions of subparagraph (F)(ii) and subsection (b)(1)(B)(i). In promulgating such regulation, the Secretary shall consider the costs of items and services in areas in which such provisions would be applied compared to the payment rates for such items and services in competitive acquisition areas.

(2) Payment for inexpensive and other routinely purchased durable medical equipment

(A) In general

Payment for an item of durable medical equipment (as defined in paragraph (13))—

(i) the purchase price of which does not exceed $150,

(ii) which the Secretary determines is acquired at least 75 percent of the time by

(iii) which is an accessory used in conjunction with a nebulizer, aspirator, or a ventilator excluded under paragraph (3)(A),

shall be made on a rental basis or in a lump-sum amount for the purchase of the item. The payment amount recognized for purchase or rental of such equipment is the amount specified in subparagraph (B) for purchase or rental, except that the total amount of payments with respect to an item may not exceed the payment amount specified in subparagraph (B) with respect to the purchase of the item.

(B) Payment amount

For purposes of subparagraph (A), the amount specified in this subparagraph, with respect to the purchase or rental of an item furnished in a carrier service area—

(i) in 1989 and in 1990 is the average reasonable charge in the area for the purchase or rental, respectively, of the item for the 12-month period ending on June 30, 1987, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987;

(ii) in 1991 is the sum of (I) 67 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(I) for 1991, and (II) 33 percent of the national limited payment amount for the item or device computed under subparagraph (C)(i)(II) for 1991;

(iii) in 1992 is the sum of (I) 33 percent of the local payment amount for the item or
device computed under subparagraph (C)(i)(II) for 1992, and (II) 67 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1992; and
(IV) in 1993 and each subsequent year is the national limited payment amount for the item or device computed under subparagraph (C)(ii) for that year (reduced by 10 percent, in the case of a blood glucose testing strip furnished after 1997 for an individual with diabetes).

(C) Computation of local payment amount and national limited payment amount

For purposes of subparagraph (B)—
(i) the local payment amount for an item or device for a year is equal to—
(I) for 1991, the amount specified in subparagraph (B)(i) for 1990 increased by the covered item update for 1991, and
(II) for 1992, 1993, and 1994, the amount determined under this clause for the preceding year increased by the covered item update for the year; and
(ii) the national limited payment amount for an item or device for a year is equal to—
(I) for 1991, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the weighted average of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the weighted average of all local payment amounts determined under such clause for such item,
(II) for 1992 and 1993, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year,
(III) for 1994, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the median of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the median of all local payment amounts determined under such clause for such item or device for that year, and
(IV) for each subsequent year, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year.

(3) Payment for items requiring frequent and substantial servicing

(A) In general

Payment for a covered item (such as IPPB machines and ventilators, excluding ventilators that are either continuous airway pressure devices or intermittent assist devices with continuous airway pressure devices) for which there must be frequent and substantial servicing in order to avoid risk to the patient’s health shall be made on a monthly basis for the rental of the item and the amount recognized is the amount specified in subparagraph (B).

(B) Payment amount

For purposes of subparagraph (A), the amount specified in this subparagraph, with respect to an item or device furnished in a carrier service area—
(i) in 1989 and in 1990 is the average reasonable charge in the area for the rental of the item or device for the 12-month period ending with June 1987, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987;
(ii) in 1991 is the sum of (I) 67 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(I) for 1991, and (II) 30 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1991;
(iii) in 1992 is the sum of (I) 33 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(II) for 1992, and (II) 67 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1992; and
(iv) in 1993 and each subsequent year is the national limited payment amount for the item or device computed under subparagraph (C)(ii) for that year.

(C) Computation of local payment amount and national limited payment amount

For purposes of subparagraph (B)—
(i) the local payment amount for an item or device for a year is equal to—
(I) for 1991, the amount specified in subparagraph (B)(i) for 1990 increased by the covered item update for 1991, and
(II) for 1992, 1993, and 1994, the amount determined under this clause for the preceding year increased by the covered item update for the year; and
(ii) the national limited payment amount for an item or device for a year is equal to—
(I) for 1991, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the weighted average of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the weighted average of all local payment amounts determined under such clause for such item or device for that year, and
(II) for 1992 and 1993, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year,
(III) for 1994, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the median of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the median of all local payment amounts determined under such clause for such item or device for that year, and
(IV) for each subsequent year, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year.
amount may not exceed 100 percent of the median of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the median of all local payment amounts determined under such clause for such item or device for that year, and (IV) for each subsequent year, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year.

(4) Payment for certain customized items
Payment with respect to a covered item that is uniquely constructed or substantially modified to meet the specific needs of an individual patient, and for that reason cannot be grouped with similar items for purposes of payment under this subchapter, shall be made in a lump-sum amount (A) for the purchase of the item, a payment amount based upon the carrier’s individual consideration for that item, and (B) for the reasonable and necessary maintenance and servicing for parts and labor not covered by the supplier’s or manufacturer’s warranty, when necessary during the period of medical need, and the amount recognized for such maintenance and servicing shall be paid on a lump-sum, as needed basis based upon the carrier’s individual consideration for that item.

(5) Payment for oxygen and oxygen equipment
(A) In general
Payment for oxygen and oxygen equipment shall be made on a monthly basis in the monthly payment amount recognized under paragraph (9) for oxygen and oxygen equipment (other than portable oxygen equipment), subject to subparagraphs (B), (C), (E), and (F).

(B) Add-on for portable oxygen equipment
When portable oxygen equipment is used, but subject to subparagraph (D), the payment amount recognized under subparagraph (A) shall be increased by the monthly payment amount recognized under paragraph (9) for portable oxygen equipment.

(C) Volume adjustment
When the attending physician prescribes an oxygen flow rate—
   (i) exceeding 4 liters per minute, the payment amount recognized under subparagraph (A), subject to subparagraph (D), shall be increased by 50 percent, or
   (ii) of less than 1 liter per minute, the payment amount recognized under subparagraph (A) shall be decreased by 50 percent.

(D) Limit on adjustment
When portable oxygen equipment is used and the attending physician prescribes an oxygen flow rate exceeding 4 liters per minute, there shall only be an increase under either subparagraph (B) or (C), whichever increase is larger, and not under both such subparagraphs.

(E) Recertification for patients receiving home oxygen therapy
In the case of a patient receiving home oxygen therapy services who, at the time such services are initiated, has an initial arterial blood gas value at or above a partial pressure of 56 or an arterial oxygen saturation at or above 89 percent (or such other values, pressures, or criteria as the Secretary may specify) no payment may be made under this part for such services after the expiration of the 90-day period that begins on the date the patient first receives such services unless the patient’s attending physician certifies that, on the basis of a follow-up test of the patient’s arterial blood gas value or arterial oxygen saturation conducted during the final 30 days of such 90-day period, there is a medical need for the patient to continue to receive such services.

(F) Rental cap
(i) In general
Payment for oxygen equipment (including portable oxygen equipment) under this paragraph may not extend over a period of continuous use (as determined by the Secretary) of longer than 36 months.

(ii) Payments and rules after rental cap
After the 36th continuous month during which payment is made for the equipment under this paragraph—
   (I) the supplier furnishing such equipment under this subsection shall continue to furnish the equipment during any period of medical need for the remainder of the reasonable useful lifetime of the equipment, as determined by the Secretary;
   (II) payments for oxygen shall continue to be made in the amount recognized for oxygen under paragraph (9) for the period of medical need; and
   (III) maintenance and servicing payments shall, if the Secretary determines such payments are reasonable and necessary, be made (for parts and labor not covered by the supplier’s or manufacturer’s warranty, as determined by the Secretary to be appropriate for the equipment), and such payments shall be in an amount determined to be appropriate by the Secretary.

(6) Payment for other covered items (other than durable medical equipment)
Payment for other covered items (other than durable medical equipment and other covered items described in paragraph (3), (4), or (5)) shall be made in a lump-sum amount for the purchase of the item in the amount of the purchase price recognized under paragraph (8).

(7) Payment for other items of durable medical equipment
(A) Payment
In the case of an item of durable medical equipment not described in paragraphs (2) through (6), the following rules shall apply:
(i) Rental

(I) In general
Except as provided in clause (iii), payment for the item shall be made on a monthly basis for the rental of the item during the period of medical need (but payments under this clause may not extend over a period of continuous use (as determined by the Secretary) of longer than 12 months).

(II) Payment amount
Subject to subclause (III) and subparagraph (B), the amount recognized for the item, for each of the first 3 months of such period, is 10 percent of the purchase price recognized under paragraph (8) with respect to the item, and, for each of the remaining months of such period, is 7.5 percent of such purchase price.

(III) Special rule for power-driven wheelchairs
For purposes of payment for power-driven wheelchairs, subclause (II) shall be applied by substituting “15 percent” and “6 percent” for “10 percent” and “7.5 percent”, respectively.

(ii) Ownership after rental
On the first day that begins after the 13th continuous month during which payment is made for the rental of an item under clause (i), the supplier of the item shall transfer title to the item to the individual.

(iii) Purchase agreement option for complex, rehabilitative power-driven wheelchairs
In the case of a complex, rehabilitative power-driven wheelchair, at the time the supplier furnishes the item, the supplier shall offer the individual the option to purchase the item, and payment for such item shall be made on a lump-sum basis if the individual exercises such option.

(iv) Maintenance and servicing
After the supplier transfers title to the item under clause (ii) or in the case of a power-driven wheelchair for which a purchase agreement has been entered into under clause (iii), maintenance and servicing payments shall, if the Secretary determines such payments are reasonable and necessary, be made (for parts and labor not covered by the supplier’s or manufacturer’s warranty, as determined by the Secretary to be appropriate for the particular type of durable medical equipment), and such payments shall be in an amount determined to be appropriate by the Secretary.

(B) Range for rental amounts

(i) For 1989
For items furnished during 1989, the payment amount recognized under subparagraph (A)(i) shall not be more than 115 percent, and shall not be less than 85 percent, of the prevailing charge established for rental of the item in January 1987, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987.

(ii) For 1990
For items furnished during 1990, clause (i) shall apply in the same manner as it applies to items furnished during 1989.

(C) Replacement of items

(i) Establishment of reasonable useful lifetime
In accordance with clause (iii), the Secretary shall determine and establish a reasonable useful lifetime for items of durable medical equipment for which payment may be made under this paragraph.

(ii) Payment for replacement items
If the reasonable lifetime of such an item, as so established, has been reached during a continuous period of medical need, or the carrier determines that the item is lost or irreparably damaged, the patient may elect to have payment for an item serving as a replacement for such item made—

(I) on a monthly basis for the rental of the replacement item in accordance with subparagraph (A); or

(II) in the case of an item for which a purchase agreement has been entered into under subparagraph (A)(iii), in a lump-sum amount for the purchase of the item.

(iii) Length of reasonable useful lifetime
The reasonable useful lifetime of an item of durable medical equipment under this subchapter, a reasonable useful lifetime of 5 years is not appropriate with respect to a particular item, the Secretary shall establish an alternative reasonable lifetime for such item.

(8) Purchase price recognized for miscellaneous devices and items
For purposes of paragraphs (6) and (7), the amount that is recognized under this paragraph as the purchase price for a covered item is the amount described in subparagraph (C) of this paragraph, determined as follows:

(A) Computation of local purchase price
Each carrier under section 1395u of this title shall compute a base local purchase price for the item as follows:

(i) The carrier shall compute a base local purchase price, for each item described—

(I) in paragraph (6) equal to the average reasonable charge in the locality for the purchase of the item for the 12-month period ending with June 1987, or

(II) in paragraph (7) equal to the average of the purchase prices on the claims submitted on an assignment-related basis for the unused item supplied during
the 6-month period ending with December 1986.

(ii) The carrier shall compute a local purchase price, with respect to the furnishing of each particular item—

(I) in 1989 and 1990, equal to the base local purchase price computed under clause (i) increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987,

(II) in 1991, equal to the local purchase price computed under this clause for the preceding year, increased by the covered item update for 1991, and decreased by the percentage by which the average of the reasonable charges for claims paid for all items described in paragraph (7) is lower than the average of the purchase prices submitted for such items during the final 9 months of 1988; or

(III) in 1992, 1993, and 1994, equal to the local purchase price computed under this clause for the previous year increased by the covered item update for the year.

(B) Computation of national limited purchase price

With respect to the furnishing of a particular item in a year, the Secretary shall compute a national limited purchase price—

(i) for 1991, equal to the local purchase price computed under subparagraph (A)(ii) for the item for the year, except that such national limited purchase price may not exceed 100 percent of the weighted average of all local purchase prices for the item computed under such subparagraph for the year, and may not be less than 85 percent of the weighted average of all local purchase prices for the item computed under such subparagraph for the year;

(ii) for 1992 and 1993, the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year;

(iii) for 1994, the local purchase price computed under subparagraph (A)(ii) for the item for the year, except that such national limited purchase price may not exceed 100 percent of the median of all local purchase prices computed for the item under such subparagraph for the year and may not be less than 85 percent of the median of all local purchase prices computed under such subparagraph for the item for the year; and

(iv) for each subsequent year, equal to the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year.

(C) Purchase price recognized

For purposes of paragraphs (6) and (7), the amount that is recognized under this paragraph as the purchase price for each item furnished—

1So in original. The semicolon probably should be a comma.

(i) in 1989 or 1990, is 100 percent of the local purchase price computed under subparagraph (A)(ii)(I);

(ii) in 1991, is the sum of (I) 67 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1991, and (II) 33 percent of the national limited purchase price computed under subparagraph (B) for 1991;

(iii) in 1992, is the sum of (I) 33 percent of the local purchase price computed under subparagraph (A)(ii)(III) for 1992, and (II) 67 percent of the national limited purchase price computed under subparagraph (B) for 1992; and

(iv) in 1993 or a subsequent year, is the national limited purchase price computed under subparagraph (B) for that year.

(9) Monthly payment amount recognized with respect to oxygen and oxygen equipment

For purposes of paragraph (5), the amount that is recognized under this paragraph for payment for oxygen and oxygen equipment is the monthly payment amount described in subparagraph (C) of this paragraph. Such amount shall be computed separately (i) for all items of oxygen and oxygen equipment (other than portable oxygen equipment) and (ii) for portable oxygen equipment (each such group referred to in this paragraph as an “item”).

(A) Computation of local monthly payment rate

Each carrier under this section shall compute a base local payment rate for each item as follows:

(i) The carrier shall compute a base local average monthly payment rate per beneficiary as an amount equal to (I) the total reasonable charges for the item during the 12-month period ending with December 1986, divided by (II) the total number of months for all beneficiaries receiving the item in the area during the 12-month period for which the carrier made payment for the item under this subchapter.

(ii) The carrier shall compute a local average monthly payment rate per item applicable—

(I) to 1989 and 1990, equal to 95 percent of the base local average monthly payment rate per beneficiary as an amount equal to (I) the total reasonable charges for the item during the 12-month period ending with December 1986, divided by (II) the total number of months for all beneficiaries receiving the item in the area during the 12-month period for which the carrier made payment for the item under this subchapter.

(ii) to 1991, 1992, 1993, and 1994, equal to the local average monthly payment rate computed under this clause for the item for the previous year increased by the covered item increase for the year.

(B) Computation of national limited monthly payment rate

With respect to the furnishing of an item in a year, the Secretary shall compute a national limited monthly payment rate equal to—

(i) for 1991, the local monthly payment rate computed under subparagraph
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For purposes of paragraph (5), the amount determined under subparagraph (A) for the item for the year, except that such national limited monthly payment rate may not exceed 100 percent of the weighted average of all local monthly payment rates computed for the item under such subparagraph for the year, and may not be less than 85 percent of the weighted average of all local monthly payment rates computed for the item under such subparagraph for the year;

(ii) for 1992 and 1993, the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year;

(iii) for 1994, the local monthly payment rate computed under subparagraph (A)(ii) for the item for the year, except that such national limited monthly payment rate may not exceed 100 percent of the median of all local monthly payment rates computed for the item under such subparagraph for the year and may not be less than 85 percent of the median of all local monthly payment rates computed for the item under such subparagraph for the year;

(iv) for 1995, 1996, and 1997, equal to the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year;

(v) for 1998, 75 percent of the amount determined under this subparagraph for 1997; and

(vi) for 1999 and each subsequent year, 70 percent of the amount determined under this subparagraph for 1997.

(C) Monthly payment amount recognized

For purposes of paragraph (5), the amount that is recognized under this paragraph as the base monthly payment amount for each item furnished—

(i) in 1989 and in 1990, is 100 percent of the local average monthly payment rate computed under subparagraph (A)(ii) for the item;

(ii) in 1991, is the sum of (I) 67 percent of the local average monthly payment rate computed under subparagraph (A)(ii)(II) for the item for 1991, and (II) 33 percent of the national limited monthly payment rate computed under subparagraph (B)(i) for the item for 1991;

(iii) in 1992, is the sum of (I) 33 percent of the local average monthly payment rate computed under subparagraph (A)(ii)(II) for the item for 1992, and (II) 67 percent of the national limited monthly payment rate computed under subparagraph (B)(i) for the item for 1992; and

(iv) in a subsequent year, is the national limited monthly payment rate computed under subparagraph (B) for the item for that year.

(D) Authority to create classes

(i) In general

Subject to clause (ii), the Secretary may establish separate classes for any item of oxygen and oxygen equipment and separate national limited monthly payment rates for each of such classes.

(ii) Budget neutrality

The Secretary may take actions under clause (i) only to the extent such actions do not result in expenditures for any year to be more or less than the expenditures which would have been made if such actions had not been taken.

(10) Exceptions and adjustments

(A) Areas outside continental United States

Exceptions to the amounts recognized under the previous provisions of this subsection shall be made to take into account the unique circumstances of covered items furnished in Alaska, Hawaii, or Puerto Rico.

(B) Adjustment for inherent reasonableness

The Secretary is authorized to apply the provisions of paragraphs (8) and (9) of section 1395u(b) of this title to covered items and suppliers of such items and payments under this subsection in an area and with respect to covered items and services for which the Secretary does not make a payment amount adjustment under paragraph (1)(F).

(C) Transcutaneous electrical nerve stimulator (TENS)

In order to permit an attending physician time to determine whether the purchase of a transcutaneous electrical nerve stimulator is medically appropriate for a particular patient, the Secretary may determine an appropriate payment amount for the initial rental of such item for a period of not more than 2 months. If such item is subsequently purchased, the payment amount with respect to such purchase is the payment amount determined under paragraph (2).

(11) Improper billing and requirement of physician order

(A) Improper billing for certain rental items

Notwithstanding any other provision of this subchapter, a supplier of a covered item for which payment is made under this subsection and which is furnished on a rental basis shall continue to supply the item without charge (other than a charge provided under this subsection for the maintenance and servicing of the item) after rental payments may no longer be made under this subsection. If a supplier knowingly and willfully violates the previous sentence, the Secretary may apply sanctions against the supplier under section 1395u(j)(2) of this title in the same manner such sanctions may apply with respect to a physician.

(B) Requirement of physician order

(i) In general

The Secretary is authorized to require, for specified covered items, that payment may be made under this subsection with respect to the item only if a physician enrolled under section 1395cc(j) of this title or an eligible professional under section 1395w–4(k)(3)(B) of this title that is en-
rolled under section 1395cc(j) of this title has communicated to the supplier, before delivery of the item, a written order for the item.

(ii) Requirement for face to face encounter

The Secretary shall require that such an order be written pursuant to the physician documenting that a physician, a physician assistant, a nurse practitioner, or a clinical nurse specialist (as those terms are defined in section 1395x(aa)(5) of this title) has had a face-to-face encounter (including through use of telehealth under subsection (m) and other than with respect to encounters that are incident to services involved) with the individual involved during the 6-month period preceding such written order, or other reasonable timeframe as determined by the Secretary.

(12) Regional carriers

The Secretary may designate, by regulation under section 1395u of this title, one carrier for one or more entire regions to process all claims within the region for covered items under this section.

(13) “Covered item” defined

In this subsection, the term “covered item” means durable medical equipment (as defined in section 1395x(n) of this title), including such equipment described in section 1395x(m)(5) of this title, but not including implantable items for which payment may be made under section 1395u of this title.

(14) Covered item update

In this subsection, the term “covered item update” means, with respect to a year—

(A) for 1991 and 1992, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year reduced by 1 percentage point;

(B) for 1993, 1994, 1995, 1996, and 1997, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year;

(C) for each of the years 1998 through 2000, 0 percentage points;

(D) for 2001, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June 2000;

(E) for 2002, 0 percentage points;

(F) for 2003, the percentage increase in the consumer price index for all urban consumers (U.S. urban average) for the 12-month period ending with June of 2002;

(G) for 2004 through 2006—

(i) subject to clause (ii), in the case of class III medical devices described in section 360c(a)(1)(C) of title 21, the percentage change determined by the Secretary to be appropriate taking into account recommendations contained in the report of the Comptroller General of the United States under section 302(c)(1)(B) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003; and

(ii) in the case of covered items not described in clause (i), 0 percentage points;

(H) for 2007—

(i) subject to clause (ii), in the case of class III medical devices described in section 360c(a)(1)(C) of title 21, the percentage change determined by the Secretary to be appropriate taking into account recommendations contained in the report of the Comptroller General of the United States under section 302(c)(1)(B) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003; and

(ii) in the case of covered items not described in clause (i), 0 percentage points;

(I) for 2008—

(i) subject to clause (ii), in the case of class III medical devices described in section 360c(a)(1)(C) of title 21, the percentage increase described in subparagraph (B) (as applied to the payment amount for 2007 determined after the application of the percentage change under subparagraph (H)(i)); and

(ii) in the case of covered items not described in clause (i), 0 percentage points;

(J) for 2009—

(i) in the case of items and services furnished in any geographic area, if such items or services were selected for competitive acquisition in any area under the competitive acquisition program under section 1395w–3(a)(1)(B)(ii)(I) of this title before July 1, 2008, including related accessories but only if furnished with such items and services selected for such competition and diabetic supplies but only if furnished through mail order, -9.5 percent; or

(ii) in the case of other items and services, the percentage increase in the consumer price index for all urban consumers (U.S. urban average) for the 12-month period ending with June 2008;

(K) for 2010, the percentage increase in the consumer price index for all urban consumers (U.S. urban average) for the 12-month period ending with June of the previous year;

(L) for 2011 and each subsequent year—

(i) the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year, reduced by—

(ii) the productivity adjustment described in section 1395w(b)(3)(B)(x)(I) of this title.

The application of subparagraph (L)(ii) may result in the covered item update under this paragraph being less than 0.0 for a year, and may result in payment rates under this subsection for a year being less than such payment rates for the preceding year.

(15) Advance determinations of coverage for certain items

(A) Development of lists of items by Secretary

The Secretary may develop and periodically update a list of items for which payment may be made under this subsection that the Secretary determines, on the basis of prior payment experience, are frequently
subject to unnecessary utilization throughout a carrier’s entire service area or a portion of such area.

(B) Development of lists of suppliers by Secretary

The Secretary may develop and periodically update a list of suppliers of items for which payment may be made under this subsection with respect to whom—

(i) the Secretary has found that a substantial number of claims for payment under this part for items furnished by the supplier have been denied on the basis of the application of section 1395y(a)(1) of this title; or

(ii) the Secretary has identified a pattern of overutilization resulting from the business practice of the supplier.

(C) Determinations of coverage in advance

A carrier shall determine in advance of delivery of an item whether payment for the item may not be made because the item is not covered or because of the application of section 1395y(a)(1) of this title if—

(i) the item is included on the list developed by the Secretary under subparagraph (A); or

(ii) the item is furnished by a supplier included on the list developed by the Secretary under subparagraph (B); or

(iii) the item is a customized item (other than inexpensive items specified by the Secretary) and the patient to whom the item is to be furnished or the supplier requests that such advance determination be made.

(16) Disclosure of information and surety bond

The Secretary shall not provide for the issuance (or renewal) of a provider number for a supplier of durable medical equipment, for purposes of payment under this part for durable medical equipment furnished by the supplier, unless the supplier provides the Secretary on a continuing basis—

(A) with—

(i) full and complete information as to the identity of each person with an ownership or control interest (as defined in section 1320a-3(a)(3) of this title) in the supplier or in any subcontractor (as defined by the Secretary in regulations) in which the supplier directly or indirectly has a 5 percent or more ownership interest; and

(ii) to the extent determined to be feasible under regulations of the Secretary, the name of any disclosing entity (as defined in section 1320a-3(a)(2) of this title) with respect to which a person with such an ownership or control interest in the supplier is a person with such an ownership or control interest in the disclosing entity; and

(B) with a surety bond in a form specified by the Secretary and in an amount that is not less than $50,000 that the Secretary determines is commensurate with the volume of the billing of the supplier.

The Secretary may waive the requirement of a bond under subparagraph (B) in the case of a supplier that provides a comparable surety bond under State law. The Secretary, at the Secretary’s discretion, may impose the requirements of the first sentence with respect to some or all providers of items or services under part A of this subchapter or some or all suppliers or other persons (other than physicians or other practitioners, as defined in section 1395u(b)(18)(C) of this title) who furnish items or services under this part.

(17) Prohibition against unsolicited telephone contacts by suppliers

(A) In general

A supplier of a covered item under this subsection may not contact an individual enrolled under this part by telephone regarding the furnishing of a covered item to the individual unless 1 of the following applies:

(i) The individual has given written permission to the supplier to make contact by telephone regarding the furnishing of a covered item.

(ii) The supplier has furnished a covered item to the individual and the supplier is contacting the individual only regarding the furnishing of such covered item.

(iii) If the contact is regarding the furnishing of a covered item other than a covered item already furnished to the individual, the supplier has furnished at least 1 covered item to the individual during the 15-month period preceding the date on which the supplier makes such contact.

(B) Prohibiting payment for items furnished subsequent to unsolicited contacts

If a supplier knowingly contacts an individual in violation of subparagraph (A), no payment may be made under this part for any item subsequently furnished to the individual by the supplier.

(C) Exclusion from program for suppliers engaging in pattern of unsolicited contacts

If a supplier knowingly contacts individuals in violation of subparagraph (A) to such an extent that the supplier’s conduct establishes a pattern of contacts in violation of such subparagraph, the Secretary shall exclude the supplier from participation in the programs under this chapter, in accordance with the procedures set forth in subsections (c), (d), and (g) of section 1320a-7 of this title.

(18) Refund of amounts collected for certain disallowed items

(A) In general

If a nonparticipating supplier furnishes to an individual enrolled under this part a covered item for which no payment may be made under this part by reason of paragraph (17)(B), the supplier shall refund on a timely basis to the patient (and shall be liable to the patient for) any amounts collected from the patient for the item, unless—

(i) the supplier establishes that the supplier did not know and could not reasonably have been expected to know that payment may not be made for the item by reason of paragraph (17)(B), or

(ii) before the item was furnished, the patient was informed that payment under
this part may not be made for that item and the patient has agreed to pay for that item.

(B) Sanctions

If a supplier knowingly and willfully fails to make refunds in violation of subparagraph (A), the Secretary may apply sanctions against the supplier in accordance with section 1395u(j)(2) of this title.

(C) Notice

Each carrier with a contract in effect under this part with respect to suppliers of covered items shall send any notice of denial of payment for covered items by reason of paragraph (17)(B) and for which payment is not requested on an assignment-related basis to the supplier and the patient involved.

(D) Timely basis defined

A refund under subparagraph (A) is considered to be on a timely basis only if—

(i) in the case of a supplier who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the supplier receives a denial notice under subparagraph (C), or

(ii) in the case in which such a reconsideration or appeal is taken, the refund is made within 15 days after the date the supplier receives notice of an adverse determination on reconsideration or appeal.

(19) Certain upgraded items

(A) Individual's right to choose upgraded item

Notwithstanding any other provision of this subchapter, the Secretary may issue regulations under which an individual may purchase or rent from a supplier an item of upgraded durable medical equipment for which payment would be made under this subsection if the item were a standard item.

(B) Payments to supplier

In the case of the purchase or rental of an upgraded item under subparagraph (A)—

(i) the supplier shall receive payment under this subsection with respect to such item as if such item were a standard item; and

(ii) the individual purchasing or renting the item shall pay the supplier an amount equal to the difference between the supplier's charge and the amount under clause (i).

In no event may the supplier's charge for an upgraded item exceed the applicable fee schedule amount (if any) for such item.

(C) Consumer protection safeguards

Any regulations under subparagraph (A) shall provide for consumer protection standards with respect to the furnishing of upgraded equipment under subparagraph (A). Such regulations shall provide for—

(i) determination of fair market prices with respect to an upgraded item;

(ii) full disclosure of the availability and price of standard items and proof of receipt of such disclosure information by the beneficiary before the furnishing of the upgraded item;

(iii) conditions of participation for suppliers in the billing arrangement;

(iv) sanctions of suppliers who are determined to engage in coercive or abusive practices, including exclusion; and

(v) such other safeguards as the Secretary determines are necessary.

(20) Identification of quality standards

(A) In general

Subject to subparagraph (C), the Secretary shall establish and implement quality standards for suppliers of items and services described in subparagraph (D) to be applied by recognized independent accreditation organizations (as designated under subparagraph (B)) and with which such suppliers shall be required to comply in order to—

(i) furnish any such item or service for which payment is made under this part; and

(ii) receive or retain a provider or supplier number used to submit claims for reimbursement for any such item or service for which payment may be made under this subchapter.

(B) Designation of independent accreditation organizations

Not later than the date that is 1 year after the date on which the Secretary implements the quality standards under subparagraph (A), notwithstanding section 1395bb(a) of this title, the Secretary shall designate and approve one or more independent accreditation organizations for purposes of such subparagraph.

(C) Quality standards

The quality standards described in subparagraph (A) may not be less stringent than the quality standards that would otherwise apply if this paragraph did not apply and shall include consumer services standards.

(D) Items and services described

The items and services described in this subparagraph are the following items and services, as the Secretary determines appropriate:

(i) Covered items (as defined in paragraph (13)) for which payment may otherwise be made under this subsection.

(ii) Prosthetic devices and orthotics and prosthetics described in subsection (h)(4) of this section.

(iii) Items and services described in section 1395u(a)(2) of this title.

(E) Implementation

The Secretary may establish by program instruction or otherwise the quality standards under this paragraph, including subparagraph (F), after consultation with representatives of relevant parties. Such standards shall be applied prospectively and shall be published on the Internet website of the Centers for Medicare & Medicaid Services.

(F) Application of accreditation requirement

In implementing quality standards under this paragraph—
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(i) subject to clause (ii) and subparagraph (G), the Secretary shall require suppliers furnishing items and services described in subparagraph (D) on or after October 1, 2009, directly or as a subcontractor for another entity, to have submitted to the Secretary evidence of accreditation by an accreditation organization designated under subparagraph (B) as meeting applicable quality standards, except that the Secretary shall not require under this clause pharmacies to obtain such accreditation before January 1, 2010, except that the Secretary shall not require a pharmacy to have submitted to the Secretary such evidence of accreditation prior to January 1, 2011; and

(ii) in applying such standards and the accreditation requirement of clause (i) with respect to eligible professionals (as defined in section 1395w–4(k)(3)(B) of this title), and including such other persons, such as orthotists and prosthetists, as specified by the Secretary, furnishing such items and services—

(I) such standards and accreditation requirement shall not apply to such professionals and persons unless the Secretary determines that the standards being applied are designed specifically to be applied to such professionals and persons; and

(II) the Secretary may exempt such professionals and persons from such standards and requirement if the Secretary determines that licensing, accreditation, or other mandatory quality requirements apply to such professionals and persons with respect to the furnishing of such items and services.

(G) Application of accreditation requirement to certain pharmacies

(i) In general

With respect to items and services furnished on or after January 1, 2011, in implementing quality standards under this paragraph—

(I) subject to subclause (II), in applying such standards and the accreditation requirement of subparagraph (F)(i) with respect to pharmacies described in clause (ii) furnishing such items and services, such standards and accreditation requirement shall not apply to such pharmacies; and

(II) the Secretary may apply to such pharmacies an alternative accreditation requirement established by the Secretary if the Secretary determines such alternative accreditation requirement is more appropriate for such pharmacies.

(ii) Pharmacies described

A pharmacy described in this clause is a pharmacy that meets each of the following criteria:

(I) The total billings by the pharmacy for such items and services under this subchapter are less than 5 percent of total pharmacy sales, as determined based on the average total pharmacy sales for the previous 3 calendar years, 3 fiscal years, or other yearly period specified by the Secretary.

(II) The pharmacy has been enrolled under section 1395cc(j) of this title as a supplier of durable medical equipment, prosthetics, orthotics, and supplies, has been issued (which may include the renewal of) a provider number for at least 5 years, and for which a final adverse action (as defined in section 424.57(a) of title 42, Code of Federal Regulations) has not been imposed in the past 5 years.

(III) The pharmacy submits to the Secretary an attestation, in a form and manner, and at a time, specified by the Secretary, that the pharmacy meets the criteria described in subclauses (I) and (II). Such attestation shall be subject to section 1001 of title 18.

(IV) The pharmacy agrees to submit materials as requested by the Secretary, or during the course of an audit conducted on a random sample of pharmacies selected annually, to verify that the pharmacy meets the criteria described in subclauses (I) and (II). Materials submitted under the preceding sentence shall include a certification by an accountant on behalf of the pharmacy or the submission of tax returns filed by the pharmacy during the relevant periods, as requested by the Secretary.

(21) Special payment rule for specified items and supplies

(A) In general

Notwithstanding the preceding provisions of this subsection, for specified items and supplies (described in subparagraph (B)) furnished during 2005, the payment amount otherwise determined under this subsection for such specified items and supplies shall be reduced by the percentage difference between—

(i) the amount of payment otherwise determined for the specified item or supply under this subsection for 2002, and

(ii) the amount of payment for the specified item or supply under chapter 89 of title 5, as identified in the table entitled “Median FEHP Price” in the table entitled “SUMMARY OF MEDICARE PRICES COMPARED TO VA, MEDICAID, RETAIL, AND FEHP PRICES FOR 16 ITEMS” included in the Testimony of the Inspector General before the Senate Committee on Appropriations, June 12, 2002, or any subsequent report by the Inspector General.

(B) Specified item or supply described

For purposes of subparagraph (A), a specified item or supply means oxygen and oxygen equipment, standard wheelchairs (including standard power wheelchairs), nebulizers, diabetic supplies consisting of lancets and testing strips, hospital beds, and air mattresses, but only if the HCPCS code for the item or supply is identified in a table referred to in subparagraph (A)(ii).
(C) Application of update to special payment amount

The covered item update under paragraph (14) for specified items and supplies for 2006 and each subsequent year shall be applied to the payment amount under subparagraph (A) unless payment is made for such items and supplies under section 1395w–3 of this title.

(b) Fee schedules for radiologist services

(1) Development

The Secretary shall develop—

(A) a relative value scale to serve as the basis for the payment for radiologist services under this part, and

(B) using such scale and appropriate conversion factors and subject to subsection (c)(1)(A) of this section, fee schedules (on a regional, statewide, locality, or carrier service area basis) for payment for radiologist services under this part, to be implemented for such services furnished during 1989.

(2) Consultation

In carrying out paragraph (1), the Secretary shall regularly consult closely with the Physician Payment Review Commission, the American College of Radiology, and other organizations representing physicians or suppliers who furnish radiologist services and shall share with them the data and data analysis being used to make the determinations under paragraph (1), including data on variations in current medicare payments by geographic area, and by service and physician specialty.

(3) Considerations

In developing the relative value scale and fee schedules under paragraph (1), the Secretary—

(A) shall take into consideration variations in the cost of furnishing such services among geographic areas and among different sites where services are furnished, and

(B) may also take into consideration such other factors respecting the manner in which physicians in different specialties furnish such services as may be appropriate to assure that payment amounts are equitable and designed to promote effective and efficient provision of radiologist services by physicians in the different specialties.

(4) Savings

(A) Budget neutral fee schedules

The Secretary shall develop preliminary fee schedules for 1989, which are designed to result in the same amount of aggregate payments (net of any coinsurance and deductibles under sections 1395(a)(1)(J) and 1395(b) of this title) for radiologist services furnished in 1989 as would have been made if this subsection had not been enacted.

(B) Initial savings

The fee schedules established for payment purposes under this subsection for services furnished in 1989 shall be 97 percent of the amounts permitted under the preliminary fee schedules developed under subparagraph (A).

(C) 1990 fee schedules

For radiologist services (other than portable X-ray services) furnished under this part during 1990, after March 31 of such year, the conversion factors used under this subsection shall be 96 percent of the conversion factors that applied under this subsection as of December 31, 1989.

(D) 1991 fee schedules

For radiologist services (other than portable X-ray services) furnished under this part during 1991, the conversion factors used in a locality under this subsection shall, subject to clause (vii), be reduced to the adjusted conversion factor for the locality determined as follows:

(i) National weighted average conversion factor

The Secretary shall estimate the national weighted average of the conversion factors used under this subsection for services furnished during 1990 beginning on April 1, using the best available data.

(ii) Reduced national weighted average

The national weighted average estimated under clause (i) shall be reduced by 13 percent.

(iii) Computation of 1990 locality index relative to national average

The Secretary shall establish an index which reflects, for each locality, the ratio of the conversion factor used in the locality under this subsection to the national weighted average estimated under clause (i).

(iv) Adjusted conversion factor

The adjusted conversion factor for the professional or technical component of a service in a locality is the sum of the national weighted average conversion factor computed under clause (ii) and 1⁄3 of the GPCI-adjusted amount determined under clause (vi).

(v) Locally-adjusted amount

For purposes of clause (iv), the locally adjusted amount determined under this clause is the product of (I) the national weighted average conversion factor computed under clause (ii), and (II) the index value established under clause (iii) for the locality.

(vi) GPCI-adjusted amount

For purposes of clause (iv), the GPCI-adjusted amount determined under this clause is the sum of—

(I) the product of (a) the portion of the reduced national weighted average conversion factor computed under clause (ii) which is attributable to physician work and (b) the geographic practice cost index value for the locality (specified in Addendum C to the Model Fee Schedule for Physician Services (published on September 4, 1990, 55 Federal Register pp. 36238–36243)); and

(II) the product of (a) the remaining portion of the reduced national weighted average conversion factor computed under clause (ii), and (b) the geographic practice cost index value specified in section 1395u(b)(14)(C)(iv) of this title for the locality.
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In applying this clause with respect to the professional component of a service, 80 percent of the conversion factor shall be considered to be attributable to physician work and with respect to the technical component of the service, 0 percent shall be considered to be attributable to physician work.

(vii) Limits on conversion factor

The conversion factor to be applied to a locality to the professional or technical component of a service shall not be reduced under this subparagraph by more than 9.5 percent below the conversion factor applied in the locality under subparagraph (C) to such component, but in no case shall the conversion factor be less than 60 percent of the national weighted average of the conversion factors (computed under clause (1)).

(E) Rule for certain scanning services

In the case of the technical components of magnetic resonance imaging (MRI) services and computer assisted tomography (CAT) services furnished after December 31, 1990, the amount otherwise payable shall be reduced by 10 percent.

(F) Subsequent updating

For radiologist services furnished in subsequent years, the fee schedules shall be the schedules for the previous year updated by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for the year.

(G) Nonparticipating physicians and suppliers

Each fee schedule so established shall provide that the payment rate recognized for nonparticipating physicians and suppliers is equal to the appropriate percent (as defined in section 1395u(b)(4)(A)(iv) of this title) of the payment rate recognized for participating physicians and suppliers.

(5) Limiting charges of nonparticipating physicians and suppliers

(A) In general

In the case of radiologist services furnished after January 1, 1989, for which payment is made under a fee schedule under this subsection, if a nonparticipating physician or supplier furnishes the service to an individual entitled to benefits under this part, the physician or supplier may not charge the individual more than the limiting charge (as defined in subparagraph (B)).

(B) “Limiting charge” defined

In subparagraph (A), the term “limiting charge” means, with respect to a service furnished—

(i) in 1989, 125 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1),

(ii) in 1990, 120 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1), and

(iii) after 1990, 115 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1).

(C) Enforcement

If a physician or supplier knowingly and willfully bills in violation of subparagraph (A), the Secretary may apply sanctions against such physician or supplier in accordance with section 1395u(j)(2) of this title in the same manner as such sanctions may apply to a physician.

(6) “Radiologist services” defined

For the purposes of this subsection and section 1395x(jj) of this title, the term “radiologist services” only includes radiology services performed by, or under the direction or supervision of, a physician—

(A) who is certified, or eligible to be certified, by the American Board of Radiology, or

(B) for whom radiology services account for at least 50 percent of the total amount of charges made under this part.

(c) Payment and standards for screening mammography

(1) In general

With respect to expenses incurred for screening mammography (as defined in section 1395x(jj) of this title), payment may be made only—

(A) for screening mammography conducted consistent with the frequency permitted under section 263b of this title.

(B) if the screening mammography is conducted by a facility that has a certificate (or provisional certificate) issued under section 263b of this title.

(2) Frequency covered

(A) In general

Subject to revision by the Secretary under subparagraph (B)—

(i) no payment may be made under this part for screening mammography performed on a woman under 35 years of age;

(ii) payment may be made under this part for only one screening mammography performed on a woman over 34 years of age, but under 40 years of age; and

(iii) in the case of a woman over 39 years of age, payment may not be made under this part for screening mammography performed within 11 months following the month in which a previous screening mammography was performed.

(B) Revision of frequency

(i) Review

The Secretary, in consultation with the Director of the National Cancer Institute, shall review periodically the appropriate frequency for performing screening mammography, based on age and other factors as the Secretary believes to be pertinent.

(ii) Revision of frequency

The Secretary, taking into consideration the review made under clause (i), may re-
(d) Frequency limits and payment for colorectal cancer screening tests

(1) Screening fecal-occult blood tests

(A) Payment amount

The payment amount for colorectal cancer screening tests consisting of screening fecal-occult blood tests is equal to the payment amount established for diagnostic fecal-occult blood tests under section 1395w–4 of this title.

(B) Frequency limit

No payment may be made under this part for a colorectal cancer screening test consisting of a screening fecal-occult blood test—

(i) if the individual is under 50 years of age; or

(ii) if the test is performed within the 11 months after a previous screening fecal-occult blood test.

(2) Screening flexible sigmoidoscopies

(A) Fee schedule

With respect to colorectal cancer screening tests consisting of screening flexible sigmoidoscopies, payment under section 1395w–4 of this title shall be consistent with payment under such section for similar or related services.

(B) Payment limit

In the case of screening flexible sigmoidoscopy services, payment under this part shall not exceed such amount as the Secretary specifies, based upon the rates recognized for diagnostic flexible sigmoidoscopy services.

(C) Facility payment limit

(i) In general

Notwithstanding subsections (1)(2)(A) and (t) of section 1395f of this title, in the case of screening flexible sigmoidoscopy services furnished on or after January 1, 1999, that—

(I) in accordance with regulations, may be performed in an ambulatory surgical center and for which the Secretary permits ambulatory surgical center payments under this part, and

(II) are performed in an ambulatory surgical center or hospital outpatient department,

payment under this part shall be based on the lesser of the amount under the fee schedule that would apply to such services if they were performed in a hospital outpatient department in the same area or the amount under the fee schedule that would apply to such services if they were performed in an ambulatory surgical center in the same area.

(ii) Limitation on coinsurance

Notwithstanding any other provision of this subchapter, in the case of a beneficiary who receives the services described in clause (i)—

(I) in computing the amount of any applicable copayment, the computation of such coinsurance shall be based upon the fee schedule under which payment is made for the services, and

(II) the amount of such coinsurance is equal to 25 percent of the payment amount under the fee schedule described in subclause (I).

(D) Special rule for detected lesions

If during the course of such screening flexible sigmoidoscopy, a lesion or growth is detected which results in a biopsy or removal of the lesion or growth, payment under this part shall not be made for the screening flexible sigmoidoscopy but shall be made for the procedure classified as a flexible sigmoidoscopy with such biopsy or removal.

(E) Frequency limit

No payment may be made under this part for a colorectal cancer screening test consisting of a screening flexible sigmoidoscopy—

(i) if the individual is under 50 years of age; or

(ii) if the procedure is performed within the 47 months after a previous screening flexible sigmoidoscopy or, in the case of an individual who is not at high risk for colorectal cancer, if the procedure is performed within the 119 months after a previous screening colonoscopy.

(3) Screening colonoscopy

(A) Fee schedule

With respect to colorectal cancer screening test consisting of a screening colonoscopy, payment under section 1395w–4 of this title shall be consistent with payment amounts under such section for similar or related services.

(B) Payment limit

In the case of screening colonoscopy services, payment under this part shall not exceed such amount as the Secretary specifies, based upon the rates recognized for diagnostic colonoscopy services.

(C) Facility payment limit

(i) In general

Notwithstanding subsections (1)(2)(A) and (t) of section 1395f of this title, in the case of screening colonoscopy services furnished on or after January 1, 1999, that are performed in an ambulatory surgical center or hospital outpatient department, payment under this part shall be based on the lesser of the amount under the fee schedule that would apply to such services if they were performed in a hospital outpatient department in the same area or the amount under the fee schedule that would apply to such services if they were performed in an ambulatory surgical center in the same area.

(ii) Limitation on coinsurance

Notwithstanding any other provision of this subchapter, in the case of a bene-
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An accredited supplier who receives the services described in clause (i)—

(I) in computing the amount of any applicable coinsurance, the computation of such coinsurance shall be based on the fee schedule under which payment is made for the services, and

(II) the amount of such coinsurance is equal to 25 percent of the payment amount under the fee schedule described in subclause (I).

(D) Special rule for detected lesions

If during the course of such screening colonoscopy, a lesion or growth is detected which results in a biopsy or removal of the lesion or growth, payment under this part shall not be made for the screening colonoscopy but shall be made for the procedure classified as a colonoscopy with such biopsy or removal.

(E) Frequency limit

No payment may be made under this part for a colorectal cancer screening test consisting of a screening colonoscopy for individuals at high risk for colorectal cancer if the procedure is performed within the 23 months after a previous screening colonoscopy or for other individuals if the procedure is performed within the 119 months after a previous screening colonoscopy or within 47 months after a previous screening flexible sigmoidoscopy.

(e) Accreditation requirement for advanced diagnostic imaging services

(1) In general

(A) In general

Beginning with January 1, 2012, with respect to the technical component of advanced diagnostic imaging services for which payment is made under the fee schedule established under section 1395w–4(b) of this title and that are furnished by a supplier, payment may only be made if such supplier is accredited by an accreditation organization designated by the Secretary under paragraph (2)(B)(i) and in subclause (I).

(B) Advanced diagnostic imaging services defined

In this subsection, the term “advanced diagnostic imaging services” includes—

(i) diagnostic magnetic resonance imaging, computed tomography, and nuclear medicine (including positron emission tomography); and

(ii) such other diagnostic imaging services, including services described in section 1395w–4(b)(4)(B) of this title (excluding X-ray, ultrasound, and fluoroscopy), as specified by the Secretary in consultation with physician specialty organizations and other stakeholders.

(C) Supplier defined

In this subsection, the term “supplier” has the meaning given such term in section 1395ww(d)(2)(D) of this title.

(2) Accreditation organizations

(A) Factors for designation of accreditation organizations

The Secretary shall consider the following factors in designating accreditation organizations under subparagraph (B)(i) and in reviewing and modifying the list of accreditation organizations designated pursuant to subparagraph (C):

(i) The ability of the organization to conduct timely reviews of accreditation applications.

(ii) Whether the organization has established a process for the timely integration of new advanced diagnostic imaging services into the organization’s accreditation program.

(iii) Whether the organization uses random site visits, site audits, or other strategies for ensuring accredited suppliers maintain adherence to the criteria described in paragraph (3).

(iv) The ability of the organization to take into account the capacities of suppliers located in a rural area (as defined in section 1395ww(d)(2)(D) of this title).

(v) Whether the organization has established reasonable fees to be charged to suppliers applying for accreditation.

(vi) Such other factors as the Secretary determines appropriate.

(B) Designation

Not later than January 1, 2010, the Secretary shall designate organizations to accredit suppliers furnishing the technical component of advanced diagnostic imaging services. The list of accreditation organizations so designated may be modified pursuant to subparagraph (C).

(C) Review and modification of list of accreditation organizations

(i) In general

The Secretary shall review the list of accreditation organizations designated under subparagraph (B) taking into account the factors under subparagraph (A). Taking into account the results of such review, the Secretary may, by regulation, modify the list of accreditation organizations designated under subparagraph (B).

(ii) Special rule for designations done prior to removal from list of designated accreditation organizations

In the case where the Secretary removes an organization from the list of accreditation organizations beginning on the date on which the organization is designated as an accreditation organization under subparagraph (B) and ending on the date on which the organization is removed from such list shall be considered to have been accredited by an organization designated by the Secretary under subparagraph (B) for the remaining period such accreditation is in effect.

(3) Criteria for accreditation

The Secretary shall establish procedures to ensure that the criteria used by an accredita-
tion organization designated under paragraph (2)(B) to evaluate a supplier that furnishes the technical component of advanced diagnostic imaging services for the purpose of accreditation of such supplier is specific to each imaging modality. Such criteria shall include—

(A) standards for qualifications of medical personnel who are not physicians and who furnish the technical component of advanced diagnostic imaging services;

(B) standards for qualifications and responsibilities of medical directors and supervising physicians, including standards that recognize the considerations described in paragraph (4);

(C) procedures to ensure that equipment used in furnishing the technical component of advanced diagnostic imaging services meets performance specifications;

(D) standards that require the supplier have procedures in place to ensure the safety of persons who furnish the technical component of advanced diagnostic imaging services and individuals to whom such services are furnished;

(E) standards that require the establishment and maintenance of a quality assurance and quality control program by the supplier that is adequate and appropriate to ensure the reliability, clarity, and accuracy of the technical quality of diagnostic images produced by such supplier; and

(F) any other standards or procedures the Secretary determines appropriate.

(4) Recognition in standards for the evaluation of medical directors and supervising physicians

The standards described in paragraph (3)(B) shall recognize whether a medical director or supervising physician—

(A) in a particular specialty receives training in advanced diagnostic imaging services in a residency program;

(B) has attained, through experience, the necessary expertise to be a medical director or supervising physician;

(C) has completed any continuing medical education courses relating to such services; or

(D) has met such other standards as the Secretary determines appropriate.

(5) Rule for accreditations made prior to designation

In the case of a supplier that is accredited before January 1, 2010, by an accreditation organization designated by the Secretary under paragraph (2)(B) as of January 1, 2010, such supplier shall be considered to have been accredited by an organization designated by the Secretary under such paragraph as of January 1, 2010, for the remaining period such accreditation is in effect.

(f) Reduction in payments for physician pathology services during 1991

(1) In general

For physician pathology services furnished under this part during 1991, the prevailing charges used in a locality under this part shall be 7 percent below the prevailing charges used in the locality under this part in 1990 after March 31.

(2) Limitation

The prevailing charge for the technical and professional components of an physician pathology service furnished by a physician through an independent laboratory shall not be reduced pursuant to paragraph (1) to the extent that such reduction would reduce such prevailing charge below 115 percent of the prevailing charge for the professional component of such service when furnished by a hospital-based physician in the same locality. For purposes of the preceding sentence, an independent laboratory is a laboratory that is independent of a hospital and separate from the attending or consulting physicians’ office.

(g) Payment for outpatient critical access hospital services

(1) In general

The amount of payment for outpatient critical access hospital services of a critical access hospital is equal to 101 percent of the reasonable costs of the hospital in providing such services, unless the hospital makes the election under paragraph (2).

(2) Election of cost-based hospital outpatient service payment plus fee schedule for professional services

A critical access hospital may elect to be paid for outpatient critical access hospital services amounts equal to the sum of the following, less the amount that such hospital may charge as described in section 1395cc(a)/(A) of this title:

(A) Facility fee

With respect to facility services, not including any services for which payment may be made under subparagraph (B), 101 percent of the reasonable costs of the critical access hospital in providing such services.

(B) Fee schedule for professional services

With respect to professional services otherwise included within outpatient critical access hospital services, 115 percent of such amounts as would otherwise be paid under this part if such services were not included in outpatient critical access hospital services. Subsections (x) and (y) of section 1395/ of this title shall not be taken into account in determining the amounts that would otherwise be paid pursuant to the preceding sentence.

The Secretary may not require, as a condition for applying subparagraph (B) with respect to a critical access hospital, that each physician or other practitioner providing professional services in the hospital must assign billing rights with respect to such services, except that such subparagraph shall not apply to those physicians and practitioners who have not assigned such billing rights.

(3) Disregarding charges

The payment amounts under this subsection shall be determined without regard to the amount of the customary or other charge.

\(^3\)So in original. Probably should be “a”.\(^4\)
(4) Treatment of clinical diagnostic laboratory services

No coinsurance, deductible, copayment, or other cost-sharing otherwise applicable under this part shall apply with respect to clinical diagnostic laboratory services furnished as an outpatient critical access hospital service. Nothing in this subchapter shall be construed as providing for payment for clinical diagnostic laboratory services furnished as part of outpatient critical access hospital services, other than on the basis described in this subchapter. For purposes of the preceding sentence and section 1395x(mm)(3) of this title, clinical diagnostic laboratory services furnished by a critical access hospital shall be treated as being furnished as part of outpatient critical access services without regard to whether the individual with respect to whom such services are furnished is physically present in the critical access hospital, or in a skilled nursing facility or a clinic (including a rural health clinic) that is operated by a critical access hospital, at the time the specimen is collected.

(5) Coverage of costs for certain emergency room on-call providers

In determining the reasonable costs of outpatient critical access hospital services under paragraphs (1) and (2)(A), the Secretary shall recognize as allowable costs, amounts (as defined by the Secretary) for reasonable compensation and related costs for physicians, physician assistants, nurse practitioners, and clinical nurse specialists who are on-call (as defined by the Secretary) for reasonable compensation and related costs for physicians, physician assistants, nurse practitioners, and clinical nurse specialists who are on-call (as defined by the Secretary) to provide emergency services but who are not present on the premises of the critical access hospital involved, and are not otherwise furnishing services covered under this subchapter and are not on-call at any other provider or facility.

(h) Payment for prosthetic devices and orthotics and prosthetics

(1) General rule for payment

(A) In general

Payment under this subsection for prosthetic devices and orthotics and prosthetics shall be made in a lump-sum amount for the purchase of the item in an amount equal to 80 percent of the payment basis described in subparagraph (B).

(B) Payment basis

Except as provided in subparagraphs (C), (E), and (H)(i), the payment basis described in this subparagraph is the lesser of—

(i) the actual charge for the item; or

(ii) the amount recognized under paragraph (2) as the purchase price for the item.

(C) Exception for certain public home health agencies

Subparagraph (B)(i) shall not apply to an item furnished by a public home health agency (or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low income) free of charge or at nominal charges to the public.

(D) Exclusive payment rule

Subject to subparagraph (H)(ii), this sub- section shall constitute the exclusive provision of this subchapter for payment for prosthetic devices, orthotics, and prosthetics under this part or under part A of this subchapter to a home health agency.

(E) Exception for certain items

Payment for ostomy supplies, tracheostomy supplies, and urologicals shall be made in accordance with subparagraphs (B) and (C) of subsection (a)(2) of this section.

(F) Special payment rules for certain prosthetics and custom-fabricated orthotics

(i) In general

No payment shall be made under this subsection for an item of custom-fabricated orthotics described in clause (ii) or for an item of prosthetics unless such item is—

(I) furnished by a qualified practitioner; and

(II) fabricated by a qualified practitioner or a qualified supplier at a facility that meets such criteria as the Secretary determines appropriate.

(ii) Description of custom-fabricated orthotics

(I) In general

An item described in this clause is an item of custom-fabricated orthotics that requires education, training, and experience to custom-fabricate and that is included in a list established by the Secretary in subclause (II). Such an item does not include shoes and shoe inserts.

(II) List of items

The Secretary, in consultation with appropriate experts in orthotics (including national organizations representing manufacturers of orthotics), shall establish and update as appropriate a list of items to which this subparagraph applies. No item may be included in such list unless the item is individually fabricated for the patient over a positive model of the patient.

(iii) Qualified practitioner defined

In this subparagraph, the term ‘qualified practitioner’ means a physician or other individual who—

(I) is a qualified physical therapist or a qualified occupational therapist;

(II) in the case of a State that provides for the licensing of orthotics and prosthetics, is licensed in orthotics or prosthetics by the State in which the item is supplied; or

(III) in the case of a State that does not provide for the licensing of orthotics and prosthetics, is specifically trained and educated to provide or manage the provision of prosthetics and custom-designed or custom-fabricated orthotics, and is certified by the American Board for Certification in Orthotics and Prosthetics, Inc. or by the Board for Orthotist/Prosthetist Certification, or is credentialed...
and approved by a program that the Secretary determines, in consultation with appropriate experts in orthotics and prosthetics, has training and education standards that are necessary to provide such prosthetics and orthotics.

(iv) Qualified supplier defined

In this subparagraph, the term “qualified supplier” means any entity that is accredited by the American Board for Certification in Orthotics and Prosthetics, Inc. or by the Board for Orthotist/Prosthetist Certification, or accredited and approved by a program that the Secretary determines has accreditation and approval standards that are essentially equivalent to those of such Board.

(G) Replacement of prosthetic devices and parts

(i) In general

Payment shall be made for the replacement of prosthetic devices which are artificial limbs, or for the replacement of any part of such devices, without regard to continuous use or useful lifetime restrictions if an ordering physician determines that the provision of a replacement device, or a replacement part of such a device, is necessary because of any of the following:

(I) A change in the physiological condition of the patient.

(II) An irreparable change in the condition of the device, or in a part of the device.

(III) The condition of the device, or the part of the device, requires repairs and the cost of such repairs would be more than 60 percent of the cost of a replacement device, or, as the case may be, of the part being replaced.

(ii) Confirmation may be required if device or part being replaced is less than 3 years old

If a physician determines that a replacement device, or a replacement part, is necessary pursuant to clause (i)—

(I) such determination shall be controlling; and

(II) such replacement device or part shall be deemed to be reasonable and necessary for purposes of section 1395y(a)(1)(A) of this title;

except that if the device, or part, being replaced is less than 3 years old (calculated from the date on which the beneficiary began to use the device or part), the Secretary may also require confirmation of necessity of the replacement device or replacement part, as the case may be.

(H) Application of competitive acquisition to orthotics; limitation of inherent reasonableness authority

In the case of orthotics described in paragraph (2)(C) of section 1395w–3(a) of this title furnished on or after January 1, 2011, subject to subsection (a)(1)(G), that are included in a competitive acquisition program in a competitive acquisition area under such section—

(i) the payment basis under this subsection for such orthotics furnished in such area shall be the payment basis determined under such competitive acquisition program; and

(ii) the Secretary may use information on the payment determined under such competitive acquisition programs to adjust the payment amount otherwise recognized under subparagraph (B)(ii) for an area that is not a competitive acquisition area under section 1395w–3 of this title, and in the case of such adjustment, paragraphs (8) and (9) of section 1395u(b) of this title shall not be applied.

(2) Purchase price recognized

For purposes of paragraph (1), the amount that is recognized under this paragraph as the purchase price for prosthetic devices, orthotics, and prosthetics is the amount described in subparagraph (C) of this paragraph, determined as follows:

(A) Computation of local purchase price

Each carrier under section 1395a of this title shall compute a base local purchase price for the item as follows:

(i) The carrier shall compute a base local purchase price for each item equal to the average reasonable charge in the locality for the purchase of the item for the 12-month period ending with June 1987.

(ii) The carrier shall compute a local purchase price, with respect to the furnishing of each particular item—

(I) in 1989 and 1990, equal to the base local purchase price computed under clause (i) increased by the percentage increase in the consumer price index for all urban consumers (United States city average) for the 6-month period ending with December 1987, or

(II) in 1991, 1992 or 1993, equal to the local purchase price computed under this clause for the previous year increased by the applicable percentage increase for the year.

(B) Computation of regional purchase price

With respect to the furnishing of a particular item in each region (as defined by the Secretary), the Secretary shall compute a regional purchase price—

(i) for 1992, equal to the average (weighted by relative volume of all claims among carriers) of the local purchase prices for the carriers in the region computed under subparagraph (A)(ii) for the year, and

(ii) for each subsequent year, equal to the regional purchase price computed under this subparagraph for the previous year increased by the applicable percentage increase for the year.

(C) Purchase price recognized

For purposes of paragraph (1) and subject to subparagraph (D), the amount that is recognized under this paragraph as the purchase price for each item furnished—

(i) in 1989, 1990, or 1991, is 100 percent of the local purchase price computed under subparagraph (A)(i);
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(3) Applicability of certain provisions relating to graphs (11) of subsection (a) of this section shall apply to prosthetic devices, orthotics, and prosthetics in the same manner as such provisions apply to covered items under such paragraph (C) as the purchase price for an item furnished—

(iv) in 1994 or a subsequent year, is the regional purchase price computed under subparagraph (B) for that year.

(D) Range on amount recognized

The amount that is recognized under subparagraph (C) as the purchase price for an item furnished—

(i) in 1992, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year; and

(ii) in a subsequent year, may not exceed 120 percent, and may not be lower than 90 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year.

(3) Applicability of certain provisions relating to durable medical equipment

Paragraphs (12), (15), and (17) and subparagraphs (A) and (B) of paragraph (10) and paragraph (11) of subsection (a) of this section shall apply to prosthetic devices, orthotics, and prosthetics in the same manner as such provisions apply to covered items under such subsection.

(4) Definitions

In this subsection—

(A) the term “applicable percentage increase” means—

(i) for 1991, 0 percent; (ii) for 1992 and 1993, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year; (iii) for 1994 and 1995, 0 percent; (iv) for 1996 and 1997, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year; (v) for each of the years 1998 through 2000, 1 percent; (vi) for 2001, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June 2000; (vii) for 2002, 1 percent; (viii) for 2003, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year; (ix) for 2004, 2005, and 2006, 0 percent; (x) for for each of 2007 through 2010, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year; and (xi) for 2011 and each subsequent year—

(I) the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year, reduced by— (II) the productivity adjustment described in section 1395ww(b)(3)(B)(x)(II) of this title.

The application of subparagraph (A)(xi)(II) may result in the applicable percentage increase under subparagraph (A) being less than 0.0, and may result in payment rates under this subsection for a year being less than such payment rates for the preceding year.

(B) the term “prosthetic devices” has the meaning given such term in section 1395x(s)(8) of this title, except that such term does not include parenteral and enteral nutrition nutrients, supplies, and equipment and does not include an implantable item for which payment may be made under section 1395(t) of this title; and

(C) the term “orthotics and prosthetics” has the meaning given such term in section 1395x(s)(9) of this title (and includes shoes described in section 1395xx(s)(12) of this title), but does not include intraocular lenses or medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care) furnished by a home health agency under section 1395ww(m)(5) of this title.

(i) Payment for surgical dressings

(1) In general

Payment under this subsection for surgical dressings (described in section 1395x(s)(5) of this title) shall be made in a lump sum amount for the purchase of the item in an amount equal to 80 percent of the lesser of—

(A) the actual charge for the item; or

(B) a payment amount determined in accordance with the methodology described in subparagraphs (B) and (C) of subsection (a)(2) of this section (except that in applying such methodology, the national limited payment amount referred to in such subparagraphs shall be initially computed based on local payment amounts using average reasonable charges for the 12-month period ending December 31, 1992, increased by the covered item updates described in such subsection for 1993 and 1994).

(2) Exceptions

Paragraph (1) shall not apply to surgical dressings that are—

(A) furnished as an incident to a physician’s professional service; or

(B) furnished by a home health agency.

*So in original.*
(j) Requirements for suppliers of medical equipment and supplies

(1) Issuance and renewal of supplier number

(A) Payment

Except as provided in subparagraph (C), no payment may be made under this part after October 31, 1994, for items furnished by a supplier of medical equipment and supplies unless such supplier obtains (and renews at such intervals as the Secretary may require) a supplier number.

(B) Standards for possessing a supplier number

A supplier may not obtain a supplier number unless—

(i) for medical equipment and supplies furnished on or after October 31, 1994, and before January 1, 1996, the supplier meets standards prescribed by the Secretary in regulations issued on June 18, 1992; and

(ii) for medical equipment and supplies furnished on or after January 1, 1996, the supplier meets revised standards prescribed by the Secretary (in consultation with representatives of suppliers of medical equipment and supplies, carriers, and consumers) that shall include requirements that the supplier—

(I) comply with all applicable State and Federal licensure and regulatory requirements;

(II) maintain a physical facility on an appropriate site; and

(III) have proof of appropriate liability insurance; and

(IV) meet such other requirements as the Secretary may specify.

(C) Exception for items furnished as incident to a physician’s service

Subparagraph (A) shall not apply with respect to medical equipment and supplies furnished incident to a physician’s service.

(D) Prohibition against multiple supplier numbers

The Secretary may not issue more than one supplier number to any supplier of medical equipment and supplies unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier’s ownership or control.

(E) Prohibition against delegation of supplier determinations

The Secretary may not delegate (other than by contract under section 1395u of this title) the responsibility to determine whether suppliers meet the standards necessary to obtain a supplier number.

(2) Certificates of medical necessity

(A) Limitation on information provided by suppliers on certificates of medical necessity

(i) In general

Effective 60 days after October 31, 1994, a supplier of medical equipment and supplies may distribute to physicians, or to individuals entitled to benefits under this part, a certificate of medical necessity for commercial purposes which contains no more than the following information completed by the supplier:

(I) An identification of the supplier and the beneficiary to whom such medical equipment and supplies are furnished.

(II) A description of such medical equipment and supplies.

(III) A product code identifying such medical equipment and supplies.

(IV) Any other administrative information (other than information relating to the beneficiary’s medical condition) identified by the Secretary.

(ii) Information on payment amount and charges

If a supplier distributes a certificate of medical necessity containing any of the information permitted to be supplied under clause (i), the supplier shall also list on the certificate of medical necessity the fee schedule amount and the supplier’s charge for the medical equipment or supplies being furnished prior to distribution of such certificate to the physician.

(iii) Penalty

Any supplier of medical equipment and supplies who knowingly and willfully distributes a certificate of medical necessity in violation of clause (i) or fails to provide the information required under clause (ii) is subject to a civil money penalty in an amount not to exceed $1,000 for each such certificate of medical necessity so distributed. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under this subparagraph in the same manner as they apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(B) “Certificate of medical necessity” defined

For purposes of this paragraph, the term “certificate of medical necessity” means a form or other document containing information required by the carrier to be submitted to show that an item is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

(3) Coverage and review criteria

The Secretary shall annually review the coverage and utilization of items of medical equipment and supplies to determine whether such items should be made subject to coverage and utilization review criteria, and if appropriate, shall develop and apply such criteria to such items.

(4) Limitation on patient liability

If a supplier of medical equipment and supplies (as defined in paragraph (5))—

(A) furnishes an item or service to a beneficiary for which no payment may be made by reason of paragraph (1); or

(B) furnishes an item or service to a beneficiary for which payment is denied in advance under subsection (a)(15) of this section; or
(C) furnishes an item or service to a beneficiary for which payment is denied under section 1395y(a)(1) of this title;

any expenses incurred for items and services furnished to an individual by such a supplier not on an assigned basis shall be the responsibility of such supplier. The individual shall have no financial responsibility for such expenses and the supplier shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected from the individual for such items or services. The provisions of subsection (a)(18) of this section shall apply to refunds required under the previous sentence in the same manner as such provisions apply to refunds under such subsection.

(5) “Medical equipment and supplies” defined

The term “medical equipment and supplies” means—

(A) durable medical equipment (as defined in section 1395x(n) of this title);

(B) prosthetic devices (as described in section 1395x(s)(8) of this title);

(C) orthotics and prosthetics (as described in section 1395x(s)(9) of this title);

(D) surgical dressings (as described in section 1395x(s)(5) of this title);

(E) such other items as the Secretary may determine; and

(F) for purposes of paragraphs (1) and (3)—

(i) home dialysis supplies and equipment (as described in section 1395x(s)(2)(F) of this title),

(ii) immunosuppressive drugs (as described in section 1395x(s)(2)(O) of this title),

(iii) therapeutic shoes for diabetics (as described in section 1395x(s)(12) of this title),

(iv) oral drugs prescribed for use as an anticancer therapeutic agent (as described in section 1395x(s)(2)(Q) of this title), and

(v) self-administered erythropoetin (as described in section 1395x(s)(2)(P) of this title).

(k) Payment for outpatient therapy services and comprehensive outpatient rehabilitation services

(1) In general

With respect to services described in section 1395l(a)(8) or 1395l(a)(9) of this title for which payment is determined under this subsection, the payment basis shall be—

(A) for services furnished during 1998, the amount determined under paragraph (2); or

(B) the adjusted reasonable costs (as defined in paragraph (4)) for the services, less 20 percent of the amount of the charges imposed for such services.

(3) Applicable fee schedule amount

In this subsection, the term “applicable fee schedule amount” means, with respect to services furnished in a year, the amount determined under the fee schedule established under section 1395w–4 of this title for such services furnished during the year or, if there is no such fee schedule established for such services, the amount determined under the fee schedule established for such comparable services as the Secretary specifies.

(4) Adjusted reasonable costs

In paragraph (2), the term “adjusted reasonable costs” means, with respect to any services, reasonable costs determined for such services, reduced by 10 percent. The 10-percent reduction shall not apply to services described in section 1395s(a)(8)(B) of this title (relating to services provided by hospitals).

(5) Uniform coding

For claims for services submitted on or after April 1, 1998, for which the amount of payment is determined under this subsection, the claim shall include a code (or codes) under a uniform coding system specified by the Secretary that identifies the services furnished.

(6) Restraint on billing

The provisions of subparagraphs (A) and (B) of section 1395u(b)(18) of this title shall apply to therapy services for which payment is made under this subsection in the same manner as they apply to services provided by a practitioner described in section 1395u(b)(18)(C) of this title.

(l) Establishment of fee schedule for ambulance services

(1) In general

The Secretary shall establish a fee schedule for payment for ambulance services whether provided directly by a supplier or provider or under arrangement with a provider under this part through a negotiated rulemaking process described in title 5 and in accordance with the requirements of this subsection.

(2) Considerations

In establishing such fee schedule, the Secretary shall—

(A) establish mechanisms to control increases in expenditures for ambulance services under this part;

(B) establish definitions for ambulance services which link payments to the type of services provided;

(C) consider appropriate regional and operational differences;

(D) consider adjustments to payment rates to account for inflation and other relevant factors; and

(E) phase in the application of the payment rates under the fee schedule in an efficient and fair manner consistent with paragraph (11), except that such phase-in shall
provide for full payment of any national mileage rate for ambulance services provided by suppliers that are paid by carriers in any of the 50 States where payment by a carrier for such services for all such suppliers in such State did not, prior to the implementation of the fee schedule, include a separate amount for all mileage within the county from which the beneficiary is transported.

(3) Savings

In establishing such fee schedule, the Secretary shall—
(A) ensure that the aggregate amount of payments made for ambulance services under this part during 2000 does not exceed the aggregate amount of payments which would have been made for such services under this part during such year if the amendments made by section 4531(a) of the Balanced Budget Act of 1997 continued in effect, except that in making such determination the Secretary shall assume an update in such payments for 2002 equal to percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year reduced in the case of 2002 by 1.0 percentage points;
(B) set the payment amounts provided under the fee schedule for services furnished in 2001 and each subsequent year at amounts equal to the payment amounts under the fee schedule for services furnished during the previous year, increased, subject to subparagraph (C) and the succeeding sentence of this paragraph, by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year reduced in the case of 2002 by 1.0 percentage points; and
(C) for 2011 and each subsequent year, after determining the percentage increase under subparagraph (B) for the year, reduce such percentage increase by the productivity adjustment described in section 1395ww(b)(3)(B)(xi)(II) of this title.

The application of subparagraph (C) may result in the percentage increase under subparagraph (B) being less than 0.0 for a year, and may result in payment rates under the fee schedule under this subsection for a year being less than such payment rates for the preceding year.

(4) Consultation

In establishing the fee schedule for ambulance services under this subsection, the Secretary shall consult with various national or regional fee schedules for the region involved: a regional fee schedule for the region involved:
(A) the fee schedule for ambulance services if such services are furnished,
(B) the fee schedule for services furnished during the year if the aggregate amount of payments which would have been made for such services under this part during such year is the only provider or supplier of ambulance services for which payment is made under such subsection in the same manner as they apply to services provided for a practitioner described in section 1395u(b)(18)(C) of this title.

(7) Coding system

The Secretary may require the claim for any services for which the amount of payment is determined under this subsection to include a code (or codes) under a uniform coding system specified by the Secretary that identifies the services furnished.

(8) Services furnished by critical access hospitals

Notwithstanding any other provision of this subsection, the Secretary shall pay 101 percent of the reasonable costs incurred in furnishing ambulance services if such services are furnished—
(A) by a critical access hospital (as defined in section 1395x(mm)(1) of this title), or
(B) by an entity that is owned and operated by a critical access hospital, but only if the critical access hospital or entity is the only provider or supplier of ambulance services that is located within a 35-mile drive of such critical access hospital.

(9) Transitional assistance for rural providers

In the case of ground ambulance services furnished on or after January 1, 2004, for which the transportation originates in a rural area (as defined in section 1395x(mm)(1) of this title), or in a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725)), the fee schedule established under this subsection shall provide that, with respect to the payment rate for mileage for a trip above 17 miles, and up to 50 miles, the rate otherwise established shall be increased by not less than ½ of the additional payment per mile established for the first 17 miles of such a trip originating in a rural area.

(10) Phase-in providing floor using blend of fee schedule and regional fee schedules

In carrying out the phase-in under paragraph (2)(E) for each level of ground service furnished in a year, the portion of the payment amount that is based on the fee schedule shall be the greater of the amount determined under such fee schedule (without regard to this paragraph) or the following blended rate of the fee schedule under paragraph (1) and of a regional fee schedule for the region involved:
(A) For 2004 (for services furnished on or after July 1, 2004), the blended rate shall be based 20 percent on the fee schedule under paragraph (1) and 80 percent on the regional fee schedule.
(B) For 2005, the blended rate shall be based 40 percent on the fee schedule under paragraph (1) and 60 percent on the regional fee schedule.
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(C) For 2006, the blended rate shall be based 60 percent on the fee schedule under paragraph (1) and 40 percent on the regional fee schedule.

(D) For 2007, 2008, and 2009, the blended rate shall be based 80 percent on the fee schedule under paragraph (1) and 20 percent on the regional fee schedule.

(E) For 2010 and each succeeding year, the blended rate shall be based 100 percent on the fee schedule under paragraph (1).

For purposes of this paragraph, the Secretary shall establish a regional fee schedule for each of the nine census divisions (referred to in section 1395ww(d)(2) of this title) using the methodology (used in establishing the fee schedule under paragraph (1)) to calculate a regional conversion factor and a regional mileage payment rate and using the same payment adjustments and the same relative value units as used in the fee schedule under such paragraph.

(11) Adjustment in payment for certain long trips

In the case of ground ambulance services furnished on or after July 1, 2004, and before January 1, 2009, regardless of where the transportation originates, the fee schedule established under this subsection shall provide that, with respect to the payment rate for mileage for a trip above 50 miles the per mile rate otherwise established shall be increased by ¼ of the payment per mile otherwise applicable to miles in excess of 50 miles in such trip.

(12) Assistance for rural providers furnishing services in low population density areas

(A) In general

In the case of ground ambulance services furnished on or after July 1, 2004, and before March 1, 2012, for which the transportation originates in—

(i) an area described in paragraphs (9) or in a rural census tract described in such paragraph, the fee schedule established under this section shall provide that the rate for the service otherwise established, after the application of any increase under paragraphs (11) and (12), shall be increased by 2 percent (or 3 percent if such service is furnished on or after July 1, 2008, and before March 1, 2012); and

(ii) an area not described in clause (i), the fee schedule established under this subsection shall provide for a percent increase in the base rate of the fee schedule for a trip established under this subsection. In establishing such percent increase, the Secretary shall estimate the average cost per trip for such services (not taking into account mileage) in the lowest quartile as compared to the average cost per trip for such services (not taking into account mileage) in the highest quartile of all rural county populations.

(B) Identification of qualified rural areas

(i) Determination of population density in area

Based upon data from the United States decennial census for the year 2000, the Secretary shall determine, for each rural area, the population density for that area.

(ii) Ranking of areas

The Secretary shall rank each such area based on such population density.

(iii) Identification of qualified rural areas

The Secretary shall identify those areas (in subparagraph (A) referred to as “qualified rural areas”) with the lowest population densities that represent, if each such area were weighted by the population of such area (as used in computing such population densities), an aggregate total of 25 percent of the total of the population of all such areas.

(iv) Rural area

For purposes of this paragraph, the term “rural area” has the meaning given such term in section 1395ww(d)(2)(D) of this title. If feasible, the Secretary shall treat a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725) as a rural area for purposes of this paragraph.

(v) Judicial review

There shall be no administrative or judicial review under section 1395ff, 1395oo of this title, or otherwise, respecting the identification of an area under this subparagraph.

(13) Temporary increase for ground ambulance services

(A) In general

After computing the rates with respect to ground ambulance services under the other applicable provisions of this subsection, in the case of such services furnished on or after July 1, 2004, and before January 1, 2007, and for such services furnished on or after July 1, 2008, and before March 1, 2012, the Secretary shall provide for a percent increase in the blended rate otherwise established, after the application of any increase under paragraphs (11) and (12), shall be increased by 2 percent (or 3 percent if such service is furnished on or after July 1, 2008, and before March 1, 2012); and

(B) Application of increased payments after applicable period

The increased payments under subparagraph (A) shall not be taken into account in calculating payments for services furnished after the applicable period specified in such subparagraph.

(14) Providing appropriate coverage of rural air ambulance services

(A) In general

The regulations described in section 1395x(s)(7) of this title shall provide, to the extent that any ambulance services (wheth-
er ground or air) may be covered under such section, that a rural air ambulance service (as defined in subparagraph (C)) is reimbursed under this subsection at the air ambulance rate if the air ambulance service—

(i) is reasonable and necessary based on the health condition of the individual being transported at or immediately prior to the time of the transport; and

(ii) complies with equipment and crew requirements established by the Secretary.

(B) Satisfaction of requirement of medically necessary

The requirement of subparagraph (A)(i) is deemed to be met for a rural air ambulance service if—

(i) subject to subparagraph (D), such service is requested by a physician or other qualified medical personnel (as specified by the Secretary) who certifies or reasonably determines that the individual's condition is such need to transport the individual by land or the instability of transportation by land poses a threat to the individual's survival or seriously endangers the individual's health; or

(ii) such service is furnished pursuant to a protocol that is established by a State or regional emergency medical service (EMS) agency and recognized or approved by the Secretary under which the use of an air ambulance is recommended, if such agency does not have an ownership interest in the entity furnishing such service.

(C) Rural air ambulance service defined

For purposes of this paragraph, the term "rural air ambulance service" means fixed wing and rotary wing air ambulance service in which the point of pick up of the individual occurs in a rural area (as defined in section 1395ww(d)(2)(D) of this title) or in a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725)).

(D) Limitation

(i) In general

Subparagraph (B)(i) shall not apply if there is a financial or employment relationship between the person requesting the rural air ambulance service and the entity furnishing the ambulance service, or an entity under common ownership with the entity furnishing the air ambulance service, or a financial relationship between an immediate family member of such requester and such an entity.

(ii) Exception

Where a hospital and the entity furnishing rural air ambulance services are under common ownership, clause (i) shall not apply to remuneration (through employment or other relationship) by the hospital of the requester or immediate family member if the remuneration is for provider-based physician services furnished in a hospital (as described in section 1395xxx of this title) which are reimbursed under part A of this subchapter and the amount of the remuneration is unrelated directly or indirectly to the provision of rural air ambulance services.

(m) Payment for telehealth services

(1) In general

The Secretary shall pay for telehealth services that are furnished via a telecommunications system by a physician (as defined in section 1395x(r) of this title) or a practitioner (described in section 1395u(b)(18)(C) of this title) to an eligible telehealth individual enrolled under this part notwithstanding that the individual physician or practitioner providing the telehealth service is not at the same location as the beneficiary. For purposes of the preceding sentence, in the case of any Federal telemedicine demonstration program conducted in Alaska or Hawaii, the term "telecommunications system" includes store-and-forward technologies that provide for the asynchronous transmission of health care information in single or multimedia formats.

(2) Payment amount

(A) Distant site

The Secretary shall pay to a physician or practitioner located at a distant site that furnishes a telehealth service to an eligible telehealth individual an amount equal to the amount that such physician or practitioner would have been paid under this subchapter had such service been furnished without the use of a telecommunications system.

(B) Facility fee for originating site

With respect to a telehealth service, subject to section 1395(a)(1)(U) of this title, there shall be paid to the originating site a facility fee equal to—

(i) for the period beginning on October 1, 2001, and ending on December 31, 2001, and for 2002, $20; and

(ii) for a subsequent year, the facility fee specified in clause (i) or this clause for the preceding year increased by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for such subsequent year.

(C) Telepresenter not required

Nothing in this subsection shall be construed as requiring an eligible telehealth individual to be presented by a physician or practitioner at the originating site for the furnishing of a service via a telecommunications system, unless it is medically necessary (as determined by the physician or practitioner at the distant site).

(3) Limitation on beneficiary charges

(A) Physician and practitioner

The provisions of section 1395w–4(g) of this title and subparagraphs (A) and (B) of section 1395u(b)(18) of this title shall apply to a physician or practitioner receiving payment under this subsection in the same manner as they apply to physicians or practitioners under such sections.
(B) Originating site
The provisions of section 1395u(b)(18) of this title shall apply to originating sites receiving a facility fee in the same manner as they apply to practitioners under such section.

(4) Definitions
For purposes of this subsection:

(A) Distant site
The term “distant site” means the site at which the physician or practitioner is located at the time the service is provided via a telecommunications system.

(B) Originating site
The term “originating site” means an individual enrolled under this part who receives a telehealth service furnished at an originating site.

(C) Originating site
(i) In general
The term “originating site” means only those sites described in clause (ii) at which the eligible telehealth individual is located at the time the service is furnished via a telecommunications system and only if such site is located—

(I) in an area that is designated as a rural health professional shortage area under section 254e(a)(1)(A) of this title;

(II) in a county that is not included in a Metropolitan Statistical Area; or

(III) from an entity that participates in a Federal telemedicine demonstration project that has been approved by (or receives funding from) the Secretary of Health and Human Services as of December 31, 2000.

(ii) Sites described
The sites referred to in clause (i) are the following sites:

(I) The office of a physician or practitioner.

(II) A critical access hospital (as defined in section 1395x(mm)(1) of this title).

(III) A rural health clinic (as defined in section 1395x(aa)(2) of this title).

(IV) A Federally qualified health center (as defined in section 1395x(aa)(4) of this title).

(V) A hospital (as defined in section 1395x(e) of this title).

(VI) A hospital-based or critical access hospital-based renal dialysis center (including satellites).

(VII) A skilled nursing facility (as defined in section 1395i–3(a) of this title).

(VIII) A community mental health center (as defined in section 1395x(ff)(3)(B) of this title).

(D) Physician
The term “physician” has the meaning given that term in section 1395x(r) of this title.

(E) Practitioner
The term “practitioner” has the meaning given that term in section 1395u(b)(18)(C) of this title.

(F) Telehealth service
(i) In general
The term “telehealth service” means professional consultations, office visits, and office psychiatry services (identified as of July 1, 2000, by HCPCS codes 99241–99275, 99201–99215, 90804–90809, and 90862 (and as subsequently modified by the Secretary)), and any additional service specified by the Secretary.

(ii) Yearly update
The Secretary shall establish a process that provides, on an annual basis, for the addition or deletion of services (and HCPCS codes), as appropriate, to those specified in clause (i) for authorized payment under paragraph (1).

(n) Authority to modify or eliminate coverage of certain preventive services
Notwithstanding any other provision of this subchapter, effective beginning on January 1, 2010, if the Secretary determines appropriate, the Secretary may—

(1) modify—

(A) the coverage of any preventive service described in subparagraph (A) of section 1395x(ddd)(3) of this title to the extent that such modification is consistent with the recommendations of the United States Preventive Services Task Force; and

(B) the services included in the initial preventive physical examination described in subparagraph (B) of such section; and

(2) provide that no payment shall be made under this subchapter for a preventive service described in subparagraph (A) of such section that has not received a grade of A, B, C, or I by such Task Force.

(o) Development and implementation of prospective payment system
(1) Development
(A) In general
The Secretary shall develop a prospective payment system for payment for Federally qualified health center services furnished by Federally qualified health centers under this subchapter. Such system shall include a process for appropriately describing the services furnished by Federally qualified health centers and shall establish payment rates for specific payment codes based on such appropriate descriptions of services. Such system shall be established to take into account the type, intensity, and duration of services furnished by Federally qualified health centers. Such system may include adjustments, including geographic adjustments, determined appropriate by the Secretary.

(B) Collection of data and evaluation
By not later than January 1, 2011, the Secretary shall require Federally qualified health centers to submit to the Secretary such information as the Secretary may require in order to develop and implement the prospective payment system under this subsection, including the reporting of services using HCPCS codes.
(2) Implementation

(A) In general

Notwithstanding section 1395(a)(3)(A) of this title, the Secretary shall provide, for cost reporting periods beginning on or after October 1, 2014, for payments of prospective payment rates for Federally qualified health centers furnished by Federally qualified health centers under this subchapter in accordance with the prospective payment system developed by the Secretary under paragraph (1).

(B) Payments

(i) Initial payments

The Secretary shall implement such prospective payment system so that the estimated aggregate amount of prospective payment rates (determined prior to the application of section 1395(a)(1)(Z) of this title) under this subchapter for Federally qualified health centers under this subchapter in such year if the system had not been implemented.

(ii) Payments in subsequent years

Payment rates in years after the year of implementation of such system shall be the payment rates in the previous year increased—

(I) in the first year after implementation of such system, by the percentage increase in the MEI (as defined in section 1395u(i)(2)) of the year involved; and

(II) in subsequent years, by the percentage increase in a market basket of Federally qualified health center goods and services as promulgated through regulations, or if such an index is not available, by the percentage increase in the MEI (as defined in section 1395u(i)(2)) of the year involved.

(C) Preparation for PPS implementation

Notwithstanding any other provision of law, the Secretary may establish and implement by program instruction or otherwise the payment codes to be used under the prospective payment system under this section.

References in Text


Section 4531(a) of the Balanced Budget Act of 1997, referred to in subsec. (i)(3)(A), is section 4531(a) of Pub. L. 105–33, which amended sections 1395u and 1395x of this title.

Codification


Prior Provisions

Prior section 1395m, act Aug. 14, 1935, ch. 531, title XVIII, §1834, as added July 30, 1965, Pub. L. 89–97, title I, §102(a), 79 Stat. 303, prescribed limitations on pay-
ments for home health services, prior to repeal by Pub. L. 96–499, title IX, §930(i), Dec. 5, 1980, 94 Stat. 2631, effective with respect to services furnished on or after July 1, 1981.


Subsec. (h)(3)(B). Pub. L. 111–148, §3401(n)(2)(A), inserted “subject to subparagraph (C) and the succeeding sentence of this paragraph,” after “increased”.


Pub. L. 111–148, §10311(c), substituted “2011” for “2010, and on or after April 1, 2010, and before January 1, 2011”.

Pub. L. 111–148, §10310(c), substituted “2010, and on or after April 1, 2010, and before January 1, 2011” for “2010”.


Pub. L. 111–148, §10311(a)(1), inserted “including subparagraph (F),” after “under this subparagraph.”


Subsec. (g)(1). Pub. L. 108–173, § 406(a)(1), inserted “equal to 101 percent of” before “the reasonable costs”.


Subsec. (g)(5). Pub. L. 108–173, § 405(b)(1), in heading, inserted “certain” before “emergency” and substituted “providers” for “physicians” and, in text, substituted “physicians, physician assistants, nurse practitioners, and clinical nurse specialists who are on-call (as defined by the Secretary) to provide emergency services” for “emergency room physicians who are on-call (as defined by the Secretary)” and “services covered under this subchapter” for “physicians’ services”.

Subsec. (h)(1)(B). Pub. L. 108–173, § 302(d)(2)(A), substituted “(2), (G), (H), and (I)” for “(B), (G), (H), and (I)”.

Subsec. (h)(1)(C). Pub. L. 108–173, § 302(d)(2)(B), substituted “Subject to paragraph (H)(1), this subsection” for “This subsection”.


Subsec. (h)(4)(C). Pub. L. 108–173, § 627(b)(1), inserted “(and includes shoes described in section 1395x(s)(12) of this title)” after “in section 1395x(s)(9) of this title”.


Subsec. (i)(6). Pub. L. 108–173, § 414(a)(2), redesignated par. (8), relating to transitional assistance for rural providers, as (9).
Subsec. (g)(2)(B). Pub. L. 106–554, § 1(a)(6) [title II, § 201(a)], added “115 percent of” before “such amounts”.


Subsec. (g)(6). Pub. L. 106–554, § 1(a)(6) [title II, § 201(a)], added par. (5).


Subsec. (h)(4)(A)(vi) to (viii). Pub. L. 106–554, § 1(a)(6) [title IV, § 426(a)(1), (3)], added cls. (vi) and (vii) and redesignated former cl. (v) as (vii).

Subsec. (i)(2)(E). Pub. L. 106–554, § 1(a)(6) [title IV, § 425(b)(1)], inserted before period at end “,” except that such phase-in shall provide for full payment of any national mileage rate for ambulance services provided by suppliers that are paid by carriers in any of the 50 States where payment by a carrier for such services for all such suppliers in such State did not, prior to the implementation of the fee schedule, include a separate amount for all mileage within the county from which the beneficiary is transported.


Subsec. (i)(4). Pub. L. 106–554, § 1(a)(6) [title II, § 221(a)], added par. (4) relating to transitional assistance for rural providers.

Pub. L. 106–554, § 1(a)(6) [title II, § 205(a)], added par. (8) relating to services furnished by critical access hospitals.

Subsec. (m). Pub. L. 106–554, § 1(a)(6) [title II, § 223(b)], added subsec. (m).

1999—Subsec. (a)(13). Pub. L. 106–113, § 1000(a)(6) [title II, § 201(e)(2)(A)], substituted “1395m(m) of this title”, but not including implantable items for which payment may be made under section 1395l(t) of this title for “1395m(m) of this title.”

Subsec. (g). Pub. L. 106–113, § 1000(a)(6) [title IV, § 483(d)(1)], amended heading and text of subsec. (g) generally. Prior to amendment, text read as follows: “The amount of payment under this part for outpatient critical access hospital services is the reasonable costs of the critical access hospital in providing such services.”


Subsec. (h)(4)(B). Pub. L. 106–113, § 1000(a)(6) [title II, § 201(e)(2)(B)], inserted “and does not include an implantable item for which payment may be made under section 1395l(t) of this title” before the semicolon.


Subsec. (a)(9)(D). Pub. L. 105–33, § 4552(b), which directed amendment of section 1848a(c)(9) of title 42, United States Code, by adding subpar. (D) at end, was executed by adding subpar. (D) at end of subsec. (a)(9) of this section, to reflect the probable intent of Congress.

Subsec. (a)(10)(B). Pub. L. 105–33, § 4316(b), substituted “The Secretary” for “For covered items furnished on or after January 1, 1997, and Secretary” and struck out “(other than subparagraph (D))” before “of section 1395w–4 of this title” and “as such provisions would otherwise apply to physicians services and physicians and a reasonable charge under section 1395u(b) of this title but for the application of section 1395w–4(i)(3) of this title. In applying such provisions to payments for an item under this subsection, the Secretary shall make adjustments to the payment basis for the item described in paragraph (1)(B) if the Secretary determines (in accordance with such provisions and on the basis of prices and costs applicable at the time the item is furnished) that such payment basis is not inherently reasonable” before period at end.


Subsec. (a)(14)(C), (D). Pub. L. 105–33, § 4512(c)(1), (C)(i), (C), added subpars. (C) and (D).

Subsec. (a)(16). Pub. L. 105–33, § 4312(c), inserted at end “The Secretary, at the Secretary’s discretion, may impose the requirements of the first sentence with respect to some or all providers of items or services under part A of this chapter or some or all suppliers or other persons (other than physicians or other practitioners, as defined in section 1395u(b)(18)(C) of this title) who furnish items or services under this part.”

Pub. L. 105–33, § 4512(a), added par. (16).


Subsec. (c)(1)(C). Pub. L. 105–33, § 4101(c), in introductory provisions, struck out “subject to the deductible established under section 1395u(b) of this title,” before “be equal to 80%.”

Subsec. (c)(2)(A)(ii). Pub. L. 105–33, § 4101(a)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “In the case of a woman over 39 years of age, but under 50 years of age, who—

(I) is at a high risk of developing breast cancer (as determined pursuant to factors identified by the Secretary), payment may not be made under this part for a screening mammography performed within the 11 months following the month in which a previous screening mammography was performed,

(II) is not at a high risk of developing breast cancer, payment may not be made under this part for a screening mammography performed within the 23 months following the month in which a previous screening mammography was performed,”

Subsec. (c)(2)(A)(iv). Pub. L. 105–33, § 4101(a)(2), struck out cls. (iv) and (v), which read as follows: “(IV) In the case of a woman over 49 years of age, but under 65 years of age, payment may not be made under this part for a screening mammography performed within 12 months following the month in which a previous screening mammography was performed,”


Subsec. (g). Pub. L. 105–33, § 4201(c)(5), amended heading and text of subsec. (g) generally. Prior to amendment, text related to payment for outpatient rural primary care hospital services as determined, in par. (1), by either the cost-based facility fee plus professional charges method or the all-inclusive rate method and, in par. (2), by the prospective payment system.


1994—Subsec. (a)(3)(D). Pub. L. 104–322, § 135e(5), struck out heading and text of subpar. (D). Text read as follows: “If the reasonable useful lifetime of such an item, as established under paragraph (7)(C), has been reached during a continuous period of medical need, or the Secretary determines on the basis of investigation by the carrier that the item is lost or irreparably dam-
aged, payment for an item serving as a replacement for such item shall be made on a monthly basis for the rental of the replacement item in accordance with subparagraph (A).


Subsec. (a)(7)(C)(i). Pub. L. 103–432, §135(e)(4), substituted “this paragraph” for “this paragraph or paragraph (3)”.

Subsec. (a)(10)(B). Pub. L. 103–432, §134(a)(1), inserted at end “in applying such provisions to payments for an item under this subsection, the Secretary shall make adjustments to the payment basis for the item described in paragraph (1)(B) if the Secretary determines (in accordance with such provisions and on the basis of prices and costs applicable at the time the item is furnished) that such payment basis is not inherently reasonable.”

Pub. L. 103–432, §126(g)(10)(B), substituted “would otherwise apply to physicians’ services” for “apply to physicians’ services” and inserted before period at end “but for the application of section 1395w–4(1)(C) of this title.”


Subsec. (a)(15). Pub. L. 103–432, §135(b)(1), amended heading and text of par. (15) generally. Prior to amendment, text read as follows: “(A) DEVELOPMENT OF LIST OF ITEMS BY SECRETARY.—The Secretary shall develop and periodically update a list of items for which payment may be made under this subsection that the Secretary determines, on the basis of prior payment experience, are frequently subject to unnecessary utilization, and shall include in such list seat-lift mechanisms, transcutaneous electrical nerve stimulators, and motorized scooters.

“(B) DETERMINATIONS OF COVERAGE IN ADVANCE.—A carrier shall determine in advance whether payment for an item included on the list developed by the Secretary under subparagraph (A) may not be made because of the application of section 1395w–4(1)(C) of this title.”

Subsec. (a)(16). Pub. L. 103–432, §131(a)(2), struck out structed text of par. (16). Text read as follows: “(A) IN GENERAL.—A supplier of a covered item under this subsection may not otherwise apply to physicians or to individuals entitled to benefits under this part for commercial purposes any completed or partially completed forms or other documents required by the Secretary to be submitted to show that a covered item is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

“(B) PENALTY.—Any supplier of a covered item who knowingly and willfully distributes a form or other document in violation of subparagraph (A) is subject to a civil money penalty in an amount not to exceed $1,000 for each such form or document so distributed. The provisions of section 1320a–7a of this title rather than subsections (a) and (b) shall apply to civil money penalties under this paragraph in the same manner as they apply to a penalty or proceeding under section 1320a–7a of this title.”


Subsec. (b)(4)(D). Pub. L. 103–432, §126(b)(2)(A), substituted “Adjusted conversion factor” for “Local adjustment” in heading and “The adjusted conversion factor for” for “Subject to clause (vii), the conversion factor to be applied to” in text.

Subsec. (b)(4)(D)(vii). Pub. L. 103–432, §126(b)(2)(C), (D), struck out “under this paragraph” after “applied to a locality” and inserted “reduced under this subparagraph” before “more than 9.5 percent”.


Pub. L. 103–432, §126(b)(1), redesignated subpar. (E), relating to subsequent updating, as (F), and struck out former par. (F) as redesignating subparagraph (E) and redesignating subparagraph (G), relating to subsequent updating, as (F) and (G), respectively.

Subsec. (c)(1)(B). Pub. L. 103–432, §145(a)(1), substituted “is conducted by a facility that has a certificate (or provisional certificate) issued under section 1395m of this title” for “meets the quality standards established under paragraph (3)”.

Subsec. (c)(1)(C)(i). Pub. L. 103–432, §145(a)(2), substituted “paragraph (5)” for “paragraph (4)”. Subsec. (c)(3) to (5). Pub. L. 103–432, §145(a)(3), (4), redesignated pars. (4) and (5) as (3) and 4, respectively, and struck out former par. (3) which directed Secretory to establish standards to assure the safety and accuracy of screening mammography performed under part.


Subsec. (g)(1). Pub. L. 103–432, §126(e)(1)(A)(1), (2), substituted in introductory provisions “during a year before the prospective payment system described in paragraph (2) is in effect” for “during a year before 1993” and inserted at end “The amount of payment shall be determined under other method without regard to the amount of the customary or other charge.”

Subsec. (g)(1)(B). Pub. L. 103–432, §156(a)(2)(C), struck out “and for items and services furnished in connection with obtaining a second opinion required under section 1320c–3(c)(2) of this title, or a third opinion, if the second opinion was in disagreement with the first opinion” after “section 1395x(s)(10)(A) of this title”.


Subsec. (h)(3). Pub. L. 103–432, §135(b)(3), substituted “Paragraphs (12), (15), and (17)” for “Paragraphs (12) and (17)”. Pub. L. 103–432, §132(b), substituted “Paragraphs (12) and (17)” for “Paragraph (12)”.


Subsec. (j)(4), (5). Pub. L. 103–432, §138(a)(1), added par. (4) and redesignated former par. (4) as (5).

Subsec. (a)(1) to (13). Pub. L. 103–66, §13545(a), substituted “45 percent” for “15 percent” after “as previously reduced by”.


Subsec. (a)(3)(A). Pub. L. 103–66, §13545(a), substituted “IPPP machines and ventilators, excluding ventilators that are either continuous airway pressure devices or intermittent assist devices with continuous airway pressure devices” for “ventilators, respirators, IPPB machines, and nebulizers”.


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Subsec. (a)(9)(B)(ii) to (iv). Pub. L. 101–508, § 13542(a)(3)(B), added cl. (ii) and (iii) and redesignated former cl. (ii) as (iv).


Subsec. (h)(4)(A). Pub. L. 103–66, § 13546, struck out “and” at end of cl. (i), substituted “1992 and 1993” for “a subsequent year” in cl. (ii), and added clss. (iii) and (iv).


Subsec. (a)(1)(D). Pub. L. 101–508, § 1425(a)(1), inserted before period at end “,” and, in the case of a trans-cutaneous electrical nerve stimulator furnished on or before January 1, 1991, the Secretary shall further reduce such payment amount (as previously reduced) by 15 percent.”.

Subsec. (a)(2)(A). Pub. L. 101–508, § 1415(a)(13), substituted “13)’’ in cl. (i), and added cl. (iv) and, struck out former cl. (i) which read as follows: “In a subsequent year, is the amount specified in this subparagraph for the preceding year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of that preceding year.”


Subsec. (a)(3)(B). Pub. L. 101–508, § 1415(b)(1)(A), (B), struck out “or” after “1987.”; in cl. (i), added clss. (ii) to (iv), and struck out former cl. (i) which read as follows: “In a subsequent year, is the amount specified in this subparagraph for the preceding year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of that preceding year.”


Subsec. (a)(4). Pub. L. 101–508, § 1415(c)(4)(B)(i), directed amendment of par. (4) by inserting at end “In the case of a wheelchair furnished on or after January 1, 1992, the wheelchair shall be treated as a customized item for purposes of this paragraph if the wheelchair has been measured, fitted, or adapted in consideration of the patient’s body size, disability, period of need, or intended use, and has been assembled by a supplier or ordered from a manufacturer who makes available customized features, modifications, or components for wheelchairs that are intended for an individual patient’s use in accordance with instructions from the patient’s physician.” The amendment did not become effective pursuant to Pub. L. 101–508, § 1415(b)(4)(B)(ii).

See Effective Date of 1990 Amendment note below.

Subsec. (a)(5)(A). Pub. L. 101–508, § 1415(c)(1)(A), substituted “(B), (C), and (E)” for “(B)”.


Subsec. (a)(7)(A)(i). Pub. L. 101–508, § 1415(c)(2)(A), as amended by Pub. L. 103–432, § 135(e)(2), substituted “15 months or, in the case of an item for which a purchase agreement has been entered into under clause (ii), a period of continuous use of longer than 13 months” for “15 months”.

Pub. L. 101–508, § 1415(c)(1), substituted “for each of the first 5 months of such period for ‘‘a subsequent month’’ and ‘‘and’’, and for each of the remaining months of such period is 7.5 percent of such purchase price,’” for “semicolon at end.”

Subsec. (a)(7)(A)(ii). Pub. L. 101–508, § 1415(c)(2)(B), as amended by Pub. L. 103–432, § 135(e)(2), substituted “(B), (C), and (E)” for “(B) and (C)”.

Subsec. (a)(7)(A)(iii). Pub. L. 101–508, § 1415(c)(2)(C), as amended by Pub. L. 103–432, § 135(e)(2), redesignated cl. (i) as (iv), substituted “in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii), during the first 6-month period of medical need that follows the period of medical need during which payment is made under clause (i),” for “during the succeeding 6-month period of medical need,” and struck out “and” at end.

Subsec. (a)(7)(A)(iv). Pub. L. 101–508, § 1415(c)(2)(D), as amended by Pub. L. 103–432, § 135(e)(2), added clss. (ii) and (iii). Former clss. (ii) and (iii) redesignated (iv) and (v), respectively.

Subsec. (a)(7)(A)(v). Pub. L. 101–508, § 1415(c)(2)(E), as amended by Pub. L. 103–432, § 135(e)(2), redesignated cl. (i) as (iv), substituted “in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii), during the first 6-month period of medical need that follows the period of medical need during which payment is made under clause (i),” for “during the succeeding 6-month period of medical need,” and struck out “and” at end.


Subsec. (a)(8)(A)(i). Pub. L. 101–508, § 1415(b)(2)(A), added subcl. (ii), redesignated former subcl. (II) as (III), struck out “1991 or” before “1992,” and substituted “the covered item update for the year” for “the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.”

Subsec. (a)(8)(B). Pub. L. 101–508, § 1415(b)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “With respect to the furnishing of a particular item in each region (as defined by the Secretary), the Secretary shall compute a regional purchase price—“(i) for 1991 and for 1992, equal to the average (weighted by relative volume of all claims among carriers) of the local purchase prices for the carriers in the region computed under subparagraph (A)(ii)(II) for the year, and“(ii) for each subsequent year, equal to the regional purchase price computed under this subparagraph for the previous year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.”


Subsec. (a)(8)(D). Pub. L. 101–508, § 1415(b)(2)(D), struck out subpar. (D) which read as follows: “The amount that is recognized under subparagraph (C) as the purchase price for an item furnished—
“(i) in 1991, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year; and

“(ii) in a subsequent year, may not exceed 120 percent, and may not be lower than 90 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year.”

Subsec. (a)(9)(A)(i)(II). Pub. L. 101–508, §4152(b)(3)(A), substituted the “covered item increase for the year” for “the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year”.

Subsec. (a)(9)(B). Pub. L. 101–508, §4152(b)(3)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “(B) percent”, “national limited monthly payment rate” for (iii), in subcl. (I) substituted “33 percent” for “50 percent”, “(iii) in a subsequent year, may not exceed 120 percent, and may not be lower than 90 percent”.

Subsec. (a)(9)(C)(ii). Pub. L. 101–508, §4152(b)(3)(C)(ii), (ii), in subcl. (I) substituted “67 percent” for “75 percent” and in subcl. (II) substituted “33 percent” for “25 percent” and “national limited monthly payment rate” for “regional monthly payment rate”.

Subsec. (a)(9)(C)(iii). Pub. L. 101–508, §4152(b)(3)(C)(iii), (iii), in subcl. (I) substituted “33 percent” for “50 percent” and in subcl. (II) substituted “67 percent” for “50 percent”, “national limited monthly payment rate” for “regional monthly payment rate”, and “subparagraph (B)(ii)” for “subparagraph (B)(i)”.


Subsec. (a)(9)(D). Pub. L. 101–508, §4152(b)(3)(D), struck out “but” which read as follows: “The amount that is recognized under subparagraph (C) as the base monthly payment amount for an item furnished—

“(i) in 1991, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the base monthly payment amounts recognized under such subparagraph for all the carrier service areas in the United States in that year; and

“(ii) in a subsequent year, may not exceed 120 percent, and may not be lower than 90 percent, of the average of the base monthly payment amounts recognized under such subparagraph for all the carrier service areas in the United States in that year.”

Subsec. (a)(12). Pub. L. 101–508, §4152(b)(3), struck out “defined for purposes of paragraphs (B)(ii) and (9)(B)” after “one or more regions”.

Subsec. (a)(13). Pub. L. 101–508, §4153(a)(2)(D)(i)(ii), substituted “means durable medical equipment” for “medical equipment” as defined in section 1395x(m)(5) of this title, including such equipment described in section 1395x(m)(5) of this title.

Subsec. (a)(9)(A)(ii)(i). Pub. L. 101–508, §4152(b)(3)(A), inserted “(A) durable medical equipment” for “medical equipment” as defined in section 1395x(m)(5) of this title, including such equipment described in section 1395x(m)(5) of this title.


Subsec. (a)(8)(A)(i)(II). Pub. L. 101–239, §6112(a)(4)(A), substituted “clause (i) shall apply in the same manner as it applies to items furnished during 1989” for “the payment amount recognized under subparagraph (A)(i) shall not be more than the maximum amount established under clause (i), and shall not be less than the minimum amount established under such clause, for 1989, each such amount increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year”.


Subsec. (a)(8)(B)(ii). Pub. L. 101–239, §6112(a)(4)(C), substituted “clause (i) shall apply in the same manner as it applies to items furnished during 1989” for “the payment amount recognized under subparagraph (A)(i) shall not be more than the maximum amount established under clause (i), and shall not be less than the minimum amount established under such clause, for 1989, each such amount increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year”.


Subsec. (a)(8)(B)(ii). Pub. L. 101–239, §6112(a)(4)(A), inserted “1991, may not exceed 125 percent, and may not be lower than 85 percent” for “1991, may not exceed 120 percent, and may not be lower than 85 percent” for “125 percent, and may not be lower than 85 percent”.


Subsec. (a)(9)(D)(i). Pub. L. 101–239, §6140(1), substituted “1991, may not exceed 125 percent, and may not be lower than 85 percent” for “1991, may not exceed 120 percent, and may not be lower than 85 percent”.

Subsec. (a)(9)(D)(ii). Pub. L. 101–239, §6140(2), substituted “120 percent, and may not be lower than 90 percent” for “125 percent, and may not be lower than 85 percent”.


Subsec. (a)(8)(D)(ii). Pub. L. 101–239, §6140(1), substituted “1991 may not exceed 125 percent, and may not be lower than 85 percent” for “1991, may not exceed 120 percent, and may not be lower than 85 percent”.
Subsec. (a)(13). Pub. L. 101–239, §612(e)(2), inserted before period at end “or medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care) furnished by a home health agency under section 1395x(m)(5) of this title”.

Subsec. (b)(1)(B). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §204(b)(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (b)(4)(A). Pub. L. 101–234, §301(b)(1), (c)(1), amended subpar. (A) identically, substituting “coinsurance and deductibles under sections 1395a(a)(1)” for “insurance and deductibles under section 1395a(a)(1)”.

Subsec. (b)(4)(C) to (E). Pub. L. 101–239, §6106(a), added subpars. (C) and (D) as (D) and (E), respectively.

Subsecs. (c) to (e). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §§205(b)(4), 206(c)(1)(F), 209(b)(2), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment note below.


Subsec. (a)(1)(A). Pub. L. 100–360, §411(g)(1)(B)(i), inserted “or under part A of this subchapter to a home health agency” before period at end.


Subsec. (a)(4). Pub. L. 100–360, §411(g)(1)(B)(vii), inserted “and for that reason cannot be grouped with similar items for purposes of payment under this subchapter,” after “individual patient,” inserted cl. (A) and (B) designations, and in cl. (B), substituted “servicing” for “service” in two places.


Subsec. (b). Pub. L. 100–360, §411(g)(1)(B)(x), substituted “fee or fees established by the Secretary” for “reasonable”.

Subsec. (b)(1)(A). Pub. L. 100–360, §411(g)(1)(B)(xi), inserted “maintenance and” before “servicing” and substituted “section 1395u(b)(2)” for “subsection (j)(1) of this section”.

Subsec. (b)(2). Pub. L. 100–360, §411(g)(1)(B)(xii), substituted “as defined by the Secretary” for “as defined in section 1395ww(d)(2)(D)” of this title”.

Subsec. (b)(5)(C). Pub. L. 100–360, §411(g)(1)(B)(xiii), substituted “as defined in section 1395u(b)(2)” for “as defined in section 1395u(b)(2) of this title”.

Subsec. (b)(6). Pub. L. 100–360, §411(g)(1)(B)(xiv), substituted “as defined in section 1395u(b)(2)” for “as defined in section 1395u(b)(2) of this title”.


Subsec. (c). Pub. L. 100–360, §411(g)(1)(B)(xviii), substituted “as defined in section 1395w(d)(2)(D)” of this title”.

Subsec. (c)(2). Pub. L. 100–360, §411(g)(1)(B)(xx), substituted “as defined in section 1395w(d)(2)(D)” of this title”.


1987—Subsec. (b). Pub. L. 100–203, §304(a)(2), added subsec. “(b)(3) relating to services provided as a result of a reasonable estimate of costs.”

Subsec. (c). Pub. L. 100–203, §304(a)(3)(A), (B)(ii), (iv), (v), inserted “and” after “period at end” and inserted “in the same manner as such sanctions may apply to a physician” before period at end.

Subsec. (d)(1). Pub. L. 100–203, §304(a)(4), inserted “substantially similar” before “which cannot be grouped with other items for purposes of payment”.

Subsec. (e). Pub. L. 100–203, §304(a)(5)(A), (B)(ii), (iv), (v), inserted “and” after “period at end” and inserted “in the same manner as such sanctions may apply to a physician” before period at end.

Subsec. (f). Pub. L. 100–203, §304(a)(6), inserted “and” after “period at end” and inserted “in the same manner as such sanctions may apply to a physician” before period at end.

Subsec. (g). Pub. L. 100–203, §304(a)(7), inserted “and” after “period at end” and inserted “in the same manner as such sanctions may apply to a physician” before period at end.

Subsec. (h). Pub. L. 100–203, §304(a)(8), inserted “and” after “period at end” and inserted “in the same manner as such sanctions may apply to a physician” before period at end.

Subsec. (i). Pub. L. 100–203, §304(a)(9), inserted “and” after “period at end” and inserted “in the same manner as such sanctions may apply to a physician” before period at end.

Subsec. (j). Pub. L. 100–203, §304(a)(10), inserted “and” after “period at end” and inserted “in the same manner as such sanctions may apply to a physician” before period at end.

Subsec. (k). Pub. L. 100–203, §304(a)(11), inserted “and” after “period at end” and inserted “in the same manner as such sanctions may apply to a physician” before period at end.

Subsec. (l). Pub. L. 100–203, §304(a)(12), inserted “and” after “period at end” and inserted “in the same manner as such sanctions may apply to a physician” before period at end.
payment made for items and services furnished pursuant to contracts entered into under section 1394 of the Social Security Act (42 U.S.C. 1395w-3) prior to January 1, 2001, shall apply to the amount of subsection (a)(1)(B)(i)(II) of such section 1394.

Amendment by section 6405(a) of Pub. L. 111-148 applicable to written orders and certifications made on or after July 1, 2010, see section 6403(d) of Pub. L. 111-148, set out as a note under section 1395f of this title.

Effective Date of 2008 Amendment
Amendment by section 125(b)(5) of Pub. L. 110-275 applicable to payments for services furnished during calendar year 2008, see section 125(a) of Pub. L. 110-275, set out as a note under section 1395f of this title.

Pub. L. 110-275, title I, §104(a)(6), Dec. 21, 2009, 123 Stat. 5059, provided that: "The amendments made by this section (amending this section) shall apply to items and services furnished on or after July 1, 2010, and shall be effective as if included in enactment of this Act [July 15, 2008]."

Effective Date of 2000 Amendment
Amendment by section 1(a)(6) [title I, §103(c)] of Pub. L. 106-554, set out as a note under section 1395m, provided that: "The amendments made by this section (amending this section) shall apply to cost reporting periods beginning on or after January 1, 2001."

Amendment by section 1(a)(6) [title II, §221(d)] of Pub. L. 106-554 applicable for services furnished on or after Oct. 21, 2001, see section 1(a)(6) [title II, §221(c)] of Pub. L. 106-554, set out as a note under section 1395f of this title.

Peace Corps Act of 2002
Amendment by section 125 of Pub. L. 107-228 applicable to payments for services furnished during calendar year 2002, see section 125(a) of Pub. L. 107-228, set out as a note under section 1395f of this title.

Effective Date of 1999 Amendment
Amendment by section 1000(a)(6) [title II, §201(e)(2)] of Pub. L. 106-113 effective as if included in enactment of this Act [July 15, 2008].

Amendment by section 100(a)(6) [title III, §321(k)(3)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, §321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.

Pub. L. 106–113, div. B, §1900(a)(6) [title IV, §403(d)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–971, as amended by Pub. L. 106–554, §1(a)(6) [title II, §201(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–481, provided that: "Paragraphs (1) through (3) of section 1834(g) of the Social Security Act [subsec. (g) of this section] (as amended by paragraph (1)) apply for cost reporting periods beginning on or after October 1, 2000."

**Effective Date of 1997 Amendment**

Amendment by section 410(a), (c) of Pub. L. 105–33 applicable to items and services furnished on or after January 1, 1998, see section 410(b)(1) of Pub. L. 105–33, set out as a note under section 1395p of this title.

Amendment by section 410(b)(1) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 410(d) of Pub. L. 105–33, set out as a note under section 1395p of this title.

Section 410(d) of Pub. L. 105–33 provided that: "(1) In General.—Except as otherwise provided, see section 135(b)(1) of Pub. L. 105–33, set out as a note under section 1395p of this title.

Section 4132(f)(1) of Pub. L. 105–33 provided that: "The amendment made by subsection (a) [amending this section] shall apply to suppliers of durable medical equipment with respect to such equipment furnished on or after January 1, 1998."

Section 4132(f)(3) of Pub. L. 105–33 provided that: "The amendments made by subsections (c) through (e) [amending this section and section 1395d of this title] shall take effect on the date of enactment of this Act [Aug. 5, 1997] and may be applied with respect to items and services furnished on or after January 1, 1998."

Section 4134(c) of Pub. L. 105–33 provided that: "The amendments made by this section [amending this section and section 1395d of this title] shall apply to items and services furnished on or after January 1, 1998."

Amendment by section 4531(b)(2) of Pub. L. 105–33 applicable to services furnished on or after Jan. 1, 2000, including portions of cost reporting periods occurring on or after such date, except that subsection (k) of this section inapplicable to services described in section 1395p(a)(8)(B) of this title that are furnished during 1998, see section 4531(c)(2) of Pub. L. 105–33, set out as a note under section 1395p of this title.

Amendment by section 4541(a)(2) of Pub. L. 105–33 applicable to services furnished on or after Jan. 1, 2000, including portions of cost reporting periods occurring on or after such date, except that subsection (k) of this section inapplicable to services described in section 1395p(a)(8)(B) of this title that are furnished during 1998, see section 4541(e) of Pub. L. 105–33, set out as a note under section 1395p of this title.

Section 4551(c)(2) of Pub. L. 105–33 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to purchases or rentals after the effective date of any regulations issued pursuant to such amendment."

Section 4552(e) of Pub. L. 105–33 provided that: "(1) OXYGEN.—The amendments made by subsection (a) [amending this section] shall apply to items furnished on or after January 1, 1998."

"(2) OTHER PROVISIONS.—The amendments made by this section other than subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 5, 1997]."

**Effective Date of 1994 Amendment**

Section 126(i) of Pub. L. 103–432 provided that: "Except as provided in subsection (b) [amending section 1395u of this title, enacting provisions set out as notes under sections 1395u and 1395w–4 of this title, and amending provisions set out as a note under section 1395w–4 of this title], the amendments made by this section and the provisions of this section and sections 1395u, 1395w–1, and 1395w–4 of this title, enacting provisions set out as notes under sections 1395u and 1395w–4 of this title, and amending provisions set out as notes under this section and sections 1395u and 1395w–4 of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508]."

Section 131(a)(2) of Pub. L. 103–432 provided that the amendment made by that section is effective 60 days after Oct. 31, 1994.

Section 132(a)(2) of Pub. L. 103–432 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to items furnished after the expiration of the 60-day period that begins on the date of the enactment of this Act [Oct. 31, 1994]."

Section 133(c) of Pub. L. 103–432 provided that: "The amendments made by this section [amending this section and sections 1395m and 1395pp of this title] shall apply to items or services furnished on or after Jan. 1, 1995."

Section 134(a)(2) of Pub. L. 103–432 provided that: "The amendment made by paragraph (1) [amending this section] shall be effective on the date of the enactment of this Act [Oct. 31, 1994]."

Section 135(b)(1) of Pub. L. 103–432 provided that the amendment made by that section is effective Oct. 31, 1994.

Section 135(b)(3) of Pub. L. 103–432 provided that the amendment made by that section is effective Oct. 31, 1994.

Section 135(d)(2) of Pub. L. 103–432 provided that: "The amendments made by subsection (a) [amending this section] shall be effective on the date of the enactment of this Act [Oct. 31, 1994]."

Section 135(e)(8) of Pub. L. 103–432 provided that: "The amendments made by this subsection [amending this section and provisions set out as notes under this section and section 1395c of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508]."

Section 145(d) of Pub. L. 103–432 provided that: "The amendments made by this section [amending this section and sections 1395u to 1395ub of this title] shall apply to mammography furnished by a facility on and after the first date that the certificate requirements of section 354(b) of the Public Health Service Act [section 263(b) of this title] apply to such mammography conducted by such facility."

Amendment by section 156(a)(2)(C) of Pub. L. 103–432 applicable to services provided on or after Oct. 31, 1994, see section 156(a)(3) of Pub. L. 103–432, set out as a note under section 1320c–3 of this title.

**Effective Date of 1993 Amendment**

Section 13542(b) of Pub. L. 103–66 provided that: "The amendments made by this section [amending this section] shall apply to items furnished on or after January 1, 1994."

Section 13543(c) of Pub. L. 103–66 provided that: "The amendments made by this section [amending this section] shall apply to items furnished on or after January 1, 1994."

Section 13544(a)(3) of Pub. L. 103–66 provided that: "The amendments made by this subsection [amending
this section] shall apply to items furnished on or after January 1, 1994,'".

Amendment by section 1354h(b)(1) of Pub. L. 103-66 applicable to items furnished on or after Jan. 1, 1994, see section 1354h(b)(3) of Pub. L. 103-66, set out as a note under section 1365 of this title.

Section 1354s(b) of Pub. L. 103-66 provided: "The amendment made by subsection (a) [amending this section] shall apply to items furnished on or after January 1, 1994.'"

EFFECTIVE DATE OF 1990 AMENDMENT
Section 4102(e) of Pub. L. 101-508 provided that: "(1) Except as otherwise provided, the amendments made by this section [amending this section, section 1395f-4 of this title, and provisions set out as a note under section 1395aa of this title] shall apply to services furnished on or after January 1, 1991.

(2) The amendment made by subsection (f) [amending this section] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100-203]."'

Amendment by section 4104(a) of Pub. L. 101-508 applicable to services furnished on or after Jan. 1, 1991, see section 4104(d) of Pub. L. 101-508, set out as a note under section 1395f of this title.


Section 412(c)(4)(B)(ii) of Pub. L. 101-508 provided that: "The amendment made by clause (i) [amending this section] shall apply to items furnished on or after January 1, 1992, unless the Secretary develops specific criteria before that date for the treatment of wheelchairs as customized items for purposes of section 1834(a)(4) of the Social Security Act [subsec. (a)(4) of this section] (in which case the amendment made by such clause shall not become effective).'" [Citations established by Secretary Nov. 1, 1991, see 56 F.R. 65995, Dec. 20, 1991, 2 CFR §14.224.]  

Section 412(f)(2) of Pub. L. 101-508 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to forms and documents distributed on or after January 1, 1991.'"

Section 412(g)(2) of Pub. L. 101-508 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to patients who first receive home oxygen therapy services on or after January 1, 1991.'"

Section 413(d)(1) of Pub. L. 101-508 provided that: "Except as otherwise provided, the amendments made by this section [amending this section, section 1395f of this title, and provisions set out as a note under section 1395f of this title] shall apply to items furnished on or after January 1, 1991.'"

Amendment by section 413(a)(1), (2)(D) of Pub. L. 101-508 applicable to items furnished on or after Jan. 1, 1991, see section 413(a)(3) of Pub. L. 101-508, set out as a note under section 1395f of this title.

Amendment by section 413(b) of Pub. L. 101-508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 413(e) of Pub. L. 101-508, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS
Amendment by section 6102(f)(1) of Pub. L. 101-239 applicable to items dispensed on or after Jan. 1, 1990, see section 6102(f)(2) of Pub. L. 101-239, set out as a note under section 1395a of this title.

Section 6102(q) of Pub. L. 101-239 provided: "The amendments made by this subsection [amending this section] shall apply to items dispensed on or after January 1, 1969.'"

Section 6102(r) of Pub. L. 101-239 applicable to services furnished on or after Jan. 1, 1990, see section 6102(s) of Pub. L. 101-239, set out as a note under section 1395f of this title.

Amendment by section 202(b)(4) of Pub. L. 100-360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100-360, set out as a note under section 1395u of this title.

Amendment by section 204(e) of Pub. L. 100-360, which provided that the amendments made by section 204 of Pub. L. 100-360 [amending this section and sections 1395x to 1395z, 1395aa, 1395bb, 1396a, and 1396d of this title] applied to screening mammography performed on or after January 1, 1990, and that subsec. (e)(5) of this section only applied until such time as the Secretary of Health and Human Services implemented the physician fee schedulers based on relative value scale developed under section 1395w-1(e) of this title, was repealed by Pub. L. 101-234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

Except as specifically provided in section 411 of Pub. L. 100-360, amendment by section 411(a)(3)(A), (B)(ii), (C)(ii), (f)(8)(A), (B)(ii), (D), (g)(1)(A) and (B) of Pub. L. 100-360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, effective as if included in the enactment of that provision in Pub. L. 100-203, see section 411(a) of Pub. L. 100-360, set out as a Reference to OBRA; Effective Date note under section 106 of Title I, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT
Section 4049(b)(2) of Pub. L. 100-203, as amended by Pub. L. 101-239, title VI, §6102(e)(6)(B), Dec. 19, 1989, 103 Stat. 2186; Pub. L. 101-508, title IV, §411(b)(2), Nov. 5, 1990, 104 Stat. 1388-70, provided that: "The amendments made by this section [amending this section and section 1395f of this title] shall apply to services performed on or after April 1, 1989.'"

Section 411(h) of Pub. L. 101-508 provided that the amendment by that section to section 4049(b)(2) of Pub. L. 100-203, set out above, is effective as if included in enactment of Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203.)

EFFECTIVE DATE
Subsection (a) of this section applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989, see section 6062(e) of Pub. L. 100-521, set out as an Effective Date note under section 1395f of this title.

REGULATIONS
Pub. L. 106-554, §16(a)(6) [title IV, § 427(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-521, provided that: "Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall promulgate revised regulations to carry out the amendment made by subsection (a) [amending this section] using a negotiated rulemaking process under subchapter III of chapter 5 of title 5, United States Code.'"

CONSTRUCTION OF 2010 AMENDMENT
Pub. L. 111-148, title III, §3109(c), Mar. 23, 2010, 124 Stat. 420, provided that: "Nothing in the provisions of or amendments made by this section [amending this section and enacting provisions set out as a note under
this section] shall be construed as affecting the application of an accreditation requirement for pharmacies to qualify for bidding in a competitive acquisition area under section 1847 of the Social Security Act [42 U.S.C. 1395w–3]."

Pub. L. 111–148, title IV, §1405(b), Mar. 23, 2010, 124 Stat. 559, provided that: "Nothing in the amendment made by paragraph (1) [probably means subsec. (a), amending this section] shall be construed to affect the coverage of diagnostic or treatment services under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.]"

CONSTRUCTION OF 2009 AMENDMENT

Pub. L. 111–72, §1(b), Oct. 13, 2009, 123 Stat. 2059, provided that: "Nothing in subsection (a) [amending this section] shall be construed as affecting the application of an accreditation requirement for pharmacies to qualify for bidding in a competitive acquisition area under section 1847 of the Social Security Act [42 U.S.C. 1395w–3]."

CONSTRUCTION OF 2008 AMENDMENT


TRANSFER OF FUNCTIONS

Physician Payment Review Commission (PPRC) was terminated and its assets and staff transferred to the Medicare Payment Advisory Commission (MedPAC) by section 402(c)(2), (3) of Pub. L. 105–33, set out as a note under section 1395b–6 of this title. Section 402(c)(2), (3) further provided that MedPAC was to be responsible for preparation and submission of reports required by law to be submitted by PPRC, and that, for that purpose, any reference in law to PPRC was to be deemed, after the appointment of MedPAC, to refer to MedPAC.

IMPLEMENTATION OF 2010 AMENDMENT

Pub. L. 111–148, title III, §3109(b), Mar. 23, 2010, 124 Stat. 419, provided that: "Notwithstanding any other provision of law, the Secretary may implement the amendments made by subsection (a) [amending this section] by program instruction or otherwise."

DEMONSTRATION PROJECT TO ASSURE THE APPROPRIATE USE OF IMAGING SERVICES


"(A) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ‘Secretary’) shall conduct a demonstration project using the models described in paragraph (2)(E) to collect data regarding physician compliance with appropriateness criteria selected under paragraph (2)(D) in order to determine the appropriateness of advanced diagnostic imaging services furnished to Medicare beneficiaries.

"(B) ADVANCED DIAGNOSTIC IMAGING SERVICES.—In this subsection, the term ‘advanced diagnostic imaging services’ has the meaning given such term in section 1834(e)(1)(B) of the Social Security Act [42 U.S.C. 1395m(e)(1)(B)], as added by subsection (a).

"(C) AUTHORITY TO FOCUS DEMONSTRATION PROJECT.—The Secretary may focus the demonstration project with respect to certain advanced diagnostic imaging services, such as services that account for a large amount of expenditures under the Medicare program, services that have recently experienced a high rate of growth, or services for which appropriateness criteria exist.

"(II) POINT OF SERVICE MODEL DESCRIBED.—A model described in this subparagraph is a model that—

"(i) includes a certification by the physician furnishing the imaging service that the data on the intake form was confirmed with the Medicare beneficiary before the service was furnished;

"(ii) contains standardized data elements for diagnosis, service ordered, service furnished, and such other information determined by the Secretary, in consultation with medical specialty societies and other stakeholders, to be germane to evaluating the effectiveness of the use of appropriateness criteria selected under subparagraph (D); and

"(III) is accessible to physicians participating in the demonstration project under this sub-
section in a format that allows for the electronic submission of such form; and
“(ii) provides for feedback reports in accordance with paragraph (3)(B);
“(G) POINT OF ORDER MODEL DESCRIBED.—A model described in this subparagraph is a model that—
“(i) uses a computerized order-entry system that requires the transmission of relevant supporting information at the time of referral for advanced diagnostic imaging services and provides automated decision-support feedback to the referring physician regarding the appropriateness of furnishing such imaging services; and
“(ii) provides for feedback reports in accordance with paragraph (3)(B);
“(H) LEMNATION.—In no case may the Secretary use prior authorization—
“(i) as a model for collecting data regarding physician compliance with appropriateness criteria selected under subparagraph (D) under the demonstration project under this subsection; or
“(ii) under any model used for collecting such data under the demonstration project.
“(I) REQUIRED CONTRACTS AND PERFORMANCE STANDARDS FOR CERTAIN ENTITIES.—
“(I) IN GENERAL.—The Secretary shall enter into contracts with entities to carry out the model described in subparagraph (G).
“(II) PERFORMANCE STANDARDS.—The Secretary shall establish and enforce performance standards for such entities under the contracts entered into under clause (i), including performance standards with respect to—
“(1) the satisfaction of Medicare beneficiaries who are furnished advanced diagnostic imaging services by a physician participating in the demonstration project;
“(2) the satisfaction of physicians participating in the demonstration project;
“(3) if applicable, timelines for the provision of feedback reports under paragraph (3)(B); and
“(4) any other areas determined appropriate by the Secretary.
“(J) COMPARISON OF UTILIZATION OF ADVANCED DIAGNOSTIC IMAGING SERVICES AND FEEDBACK REPORTS.—
“(A) COMPARISON OF UTILIZATION OF ADVANCED DIAGNOSTIC IMAGING SERVICES.—The Secretary shall consult with medical specialty societies and other stakeholders to develop mechanisms for comparing the utilization of advanced diagnostic imaging services by physicians participating in the demonstration project under this subsection against—
“(1) the appropriateness criteria selected under paragraph (2)(D); and
“(2) to the extent feasible, the utilization of such services by physicians not participating in the demonstration project.
“(B) FEEDBACK REPORTS.—The Secretary shall, in consultation with medical specialty societies and other stakeholders, develop mechanisms to provide feedback reports to physicians participating in the demonstration project under this subsection. Such feedback reports shall include—
“(1) a profile of the rate of compliance by the physician with appropriateness criteria selected under paragraph (2)(D), including a comparison of—
“(i) the rate of compliance by the physician with such criteria; and
“(ii) the rate of compliance by the physician’s peers (as defined by the Secretary) with such criteria; and
“(3) on patterns and trends in national and regional variations of care with respect to the furnishing of such services; and
“(4) the potential for using methods (including financial incentives), in addition to those used under the models under the demonstration project, to ensure compliance with such criteria.
“(B) REPORT.—Not later than 1 year after the completion of the demonstration project conducted under subparagraph (A), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.
“(C) FUNDING.—The Secretary shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of the Social Security Act (42 U.S.C. 1395m) of $10,000,000, for carrying out the demonstration project under this subsection (including costs associated with administering the demonstration project, reimbursing physicians for administrative costs and providing incentives to encourage participation under paragraph (2)(C), entering into contracts under paragraph (2)(H), and evaluating the demonstration project under paragraph (5)).

AIR AMBULANCE PAYMENT IMPROVEMENTS

codes. In carrying out such evaluation, the Secretary
and consider all relevant studies and information fur-
rable Medical Equipment Medicare Administrative
shall use an existing process, administered by the Du-
for negative pressure wound therapy to ensure accurate
Stat. 2566, provided that: ''The Secretary of Health and
Medicare Administrative Contractors, for the consideration of coding changes
rable Medical Equipment Medicare Administrative

Evaluation of Certain Code
provided that: ''The Secretary of Health and Human Services shall evaluate the existing Health Care Common Procedure Coding System (HCPCS) codes for negative pressure wound therapy to ensure accurate reporting and billing for items and services under such codes. In carrying out such evaluation, the Secretary shall use an existing process, administered by the Dur-
able Medical Equipment Medicare Administrative Contractors, for the consideration of coding changes and consider all relevant studies and information furnished pursuant to such process.''

GAO Report on Class III Medical Devices
Pub. L. 108–173, title III, §302(c)(1)(B), Dec. 8, 2003, 117 Stat. 2260, provided that: ''Not later than March 1, 2006, the Comptroller General of the United States shall submit to Congress, and transmit to the Secretary [of Health and Human Services], a report containing recom-
mandations on the appropriate update percentage under section 1844(a)(14) of the Social Security Act (42 U.S.C. 1395m(a)(14)) for class III medical devices de-
scribed in section 5138(c)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360a(a)(1)(C) [360c(a)(1)(C)]) furnished to medicare beneficiaries during
2007 and 2008.''

Use of Data
Pub. L. 108–173, title IV, §411(c)(2), Dec. 8, 2003, 117 Stat. 2260, provided that: ''In order to promptly imple-
mement section 1839(i)(12) of this section, as added by paragraph (1), the Secretary [of Health and Human Services] may use data furnished by the Comptroller General of the United States.''

Implementation of 2003 Amendment
Pub. L. 108–173, title IV, §414(e), Dec. 8, 2003, 117 Stat. 2260, provided that: ''The Secretary [of Health and Human Services] may implement the amendments made by this section [amending this section, section 1395s of this title, and provisions set out as a note under this section], and revise the conversion factor ap-
pllicable under section 1839(i) of the Social Security Act (42 U.S.C. 1395m(i)) for purposes of implementing such amend-
ments, on an interim final basis, or by program instruction.''

GAO Report on Costs and Access
reforts on how costs differ among the types of ambu-
care services in those regions and States that have a reduction in payment under the medicare ambu-

Report on Demonstration Project Permitting Skilled Nursing Facilities To Be Originating Telehealth Sites; Authority To Implement

(a) Evaluation.—The Secretary [of Health and Human Services], acting through the Administrator of the Health Resources and Services Administration in consultation with the Administrator of the Medicare & Medicaid Services, shall evaluate demon-
stration projects conducted by the Secretary under which skilled nursing facilities (as defined in section 1861(a) of the Social Security Act (42 U.S.C. 1395r–3(a)(1))) are treated as originating sites for tele-
health services.

(b) Report.—Not later than January 1, 2005, the Sec-
retary shall submit a report to Congress on the evalua-
tion conducted under subsection (a). Such report shall include recommendations on mechanisms to ensure that permitting a skilled nursing facility to serve as an originating site for the use of telehealth services or any other service delivered via a telecommunications system does not serve as a substitute for in-person visits furnished by a physician, or for in-person visits fur-
nished by a physician assistant, nurse practitioner or clinical nurse specialist, as is otherwise required by the Secretary.

(c) Authority to Expand Originating Telehealth Sites To Include Skilled Nursing Facilities.—In so-
far as the Secretary concludes in the report required under subsection (b) that it is advisable to permit a skilled nursing facility to be an originating site for telehealth services under section 1861(m) of the Social Security Act (42 U.S.C. 1395m(m)), and that the Sec-
retary can establish the mechanisms to ensure such permission does not serve as a substitute for in-person visits furnished by a physician, or for in-person visits furnished by a physician assistant, nurse practitioner orclinical nurse specialist, the Secretary may deem a skilled nursing facility to be an originating site under paragraph (4)(C)(ii) of such section beginning on Jan-
uary 1, 2006.''

Payment for New Technologies
vided that:

(1) Tests furnished in 2001.—

(A) Screening.—For a screening mammography (as defined in section 1861(j)) of the Social Security Act (42 U.S.C. 1395x(j)) furnished during the period begin-
ing on April 1, 2001, and ending on December 31, 2001, that uses a new technology, payment for such screening mammography shall be made as follows:

(1) In the case of a technology which does not currently take a digital image (without involving film), in an amount equal to 150 percent of the amount of payment under section 1848 of such Act (42 U.S.C. 1395w–4) for a bilateral diagnostic mammography (under HCPCS code 76091) for such year.

(2) In the case of a technology which allows conversion of a standard film mammography image to a digital image and subsequently analyzes such resulting image with software to identify possible problem areas, in an amount equal to the limit that would otherwise be applied under section 1834(e)(3) of such Act (42 U.S.C. 1395m(c)(3)) for 2001, increased by $15.

(B) Bilateral Diagnostic Mammography.—For a bilateral diagnostic mammography furnished during the period beginning on April 1, 2001, and ending on December 31, 2001, that uses a new technology described in subparagraph (A), payment for such mammography shall be the amount of payment provided under such subparagraph.

(C) Allocation of Amounts.—The Secretary shall provide for an appropriate allocation of the amounts under subparagraphs (A) and (B) between the profes-
sional and technical components.

(D) Implementation of Provision.—The Secretary of Health and Human Services shall implement the provisions of this paragraph by program memo-
dandum or otherwise.

(2) Consideration of New HCPCS Code For New Techn-
ologies After 2001.—The Secretary shall determine,
for such mammographies performed after 2001, whether the assignment of a new HCPCS code is appropriate for mammography that uses a new technology. If the Secretary determines that a new code is appropriate for such mammography, the Secretary shall provide for such new code for such tests furnished after 2001.

"NEW TECHNOLOGY DESCRIBED.—For purposes of this subsection, a new technology with respect to a mammography is an advance in technology with respect to the test or equipment that results in the following:

"(A) A significant increase or decrease in the resources used in the test or in the manufacture of the equipment.

"(B) A significant improvement in the performance of the test or equipment.

"(C) A significant advance in medical technology that is expected to significantly improve the treatment of medicare beneficiaries.

"(4) HCPCS CODE DEFINED.—The term 'HCPCS code' means a code under the Health Care Common Procedure Coding System (HCPCS)."

MEDPAC STUDY AND REPORT ON MEDICARE COVERAGE OF CARDIAC AND PULMONARY REHABILITATION THERAPY SERVICES

Pub. L. 106–554, §1(a)(6) [title I, §127], Dec. 21, 2000, 114 Stat. 2763, 2763A–479, provided that:

"(4) MEDPAC STUDY.—The Medicare Payment Advisory Commission shall conduct a study on each of the matters described in paragraph (2).

"(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on coverage under Medicare of cardiac rehabilitation therapy services under the medicare program under title XVIII of the Social Security Act [this chapter].

"(b) REPORT.—Not later than 2 years after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study conducted under paragraph (1) together with such recommendations for legislation and administrative action as the Commission determines appropriate.

GAO STUDIES ON COSTS OF AMBULANCE SERVICES FURNISHED IN RURAL AREAS

Pub. L. 106–554, §1(a)(6) [title II, §221(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–486, provided that:

"(1) STUDY.—The Comptroller General of the United States shall conduct a study on each of the matters described in paragraph (2).

"(2) MATTERS DESCRIBED.—The matters referred to in paragraph (1) are the following:

"(A) The cost of efficiently providing ambulance services in rural areas compared with the cost of providing such services in urban areas.

"(B) In rural areas because of low usage. Such study shall also include an analysis of the additional costs of providing ambulance services in rural areas.

ADJUSTMENT IN RURAL RATES


"(A) APPLICABLE.—For purposes of subparagraph (B) of section 1834(h)(2) of the Social Security Act (42 U.S.C. 1395m(h)(2)) for years beginning with 2004, the Secretary of Health and Human Services shall take into consideration the recommendations contained in the report under subsection (b)(3) [set out above] and shall adjust the fee schedule payment rates under such section for ambulance services provided in low density rural areas based on the increased cost (if any) of providing such services in such areas.

"STUDY AND REPORT ON ADDITIONAL COVERAGE FOR TELEHEALTH SERVICES

Pub. L. 106–554, §1(a)(6) [title II, §223(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–489, provided that:

"(1) STUDY.—The Secretary of Health and Human Services shall conduct a study of the following:

"(A) Setting and sites for the provision of telehealth services that are in addition to those permitted under section 1834(m) of the Social Security Act (title XVIII of the Public Health and Welfare Act) [42 U.S.C. 1395m].

"(B) The means by which rural areas with low population densities can be identified for the purpose of determining that a new HCPCS code is appropriate for such new technology described in subparagraph (A).

"(2) REPORT.—Not later than 2 years after the date of the enactment of this Act [Dec. 21, 2000], the Secretary shall submit to Congress a report on the study conducted under paragraph (1) together with such recommendations for legislation that the Secretary determines are appropriate.

SPECIAL RULES FOR PAYMENTS FOR 2001

Pub. L. 106–554, §1(a)(6) [title IV, §423(a)(2)I], Dec. 21, 2000, 114 Stat. 2763, 2763A–518, provided that: "Notwithstanding the amendment made by paragraph (1) [amending this section], for purposes of making payments for ambulance services under part B of title XVIII of the Social Security Act (this part), for services furnished during 2001, the percentage increase in the consumer price index specified in section 1834(m)(3)(B) of such Act (42 U.S.C. 1395m(3)(B))—

"(A) for services furnished on or after January 1, 2001, and before July 1, 2001, shall be the percentage increase for 2001 as determined under the provisions of law in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and

"(B) for services furnished on or after July 1, 2001, and before January 1, 2002, shall be equal to 4.7 percent."
creased by a transitional percentage allowance equal to 3.28 percent (to account for the timing of implementation of the CPI update).

Pub. L. 106–554, §1(a)(b) [title IV, §426(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–529, provided that: "Notwithstanding the amendments made by subsection (a) [amending this section], for purposes of making payments for prosthetic devices and orthotics and prostheses (as defined in subparagraphs (B) and (C) of paragraph (4) of section 1834(h) of the Social Security Act (42 U.S.C. 1395m(h)) under such section, the payment basis recognized for 2001 under paragraph (2) of such section:

"(1) for items furnished on or after January 1, 2001, and before July 1, 2001, shall be the payment basis for 2001 as determined under the provisions of law in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and

"(2) for items furnished on or after July 1, 2001, and before January 1, 2002, shall be the payment basis that is determined under such section taking into account the amendments made by subsection (a), increased by a transitional percentage allowance equal to 2.6 percent (to account for the timing of implementation of the CPI update).

PREEMPTION OF RULE

Pub. L. 106–554, §1(a)(6) [title IV, §426(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–527, provided that: "The provisions of section 1834(b)(1)(G) [subsection (b) of this section] as added by subsection (a) shall supersede any rule that as of the date of the enactment of this Act [Dec. 21, 2000] may have applied a 5-year replacement rule with regard to prosthetic devices.

GAO STUDY AND REPORT ON COSTS OF EMERGENCY AND MEDICAL TRANSPORTATION SERVICES

Pub. L. 106–554, §1(a)(6) [title IV, §436], Dec. 21, 2000, 114 Stat. 2763, 2763A–527, provided that:

"(a) STUDY.—The Comptroller General of the United States shall conduct a study on the costs of providing emergency and medical transportation services across the range of acuity levels of conditions for which such transportation services are provided.

"(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress a report on the study conducted under subsection (a), together with recommendations for any changes in methodology or payment level necessary to fairly compensate suppliers of emergency and medical transportation services and to ensure the access of beneficiaries under the medicare program under title XVIII of the Social Security Act (this subchapter)."

TREATMENT OF TEMPORARY PAYMENT INCREASES AFTER CALENDAR YEAR 2001

Pub. L. 106–554, §1(a)(6) [title V, §547(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–553, provided that: "The payment increase provided under the following sections shall not apply after calendar year 2001 and shall not be taken into account in calculating the payment amounts applicable for items and services furnished after such year:

"(1) Section 461(c)(2) [set out as a note under section 1385 of this title] (relating to covered PDV services).

"(2) Section 422(e)(2) [set out as a note under section 1395rr of this title] (relating to renal dialysis services paid for on a composite rate basis).

"(3) Section 425(a)(2)(B) [set out above] (relating to ambulance services).

"(4) Section 425(b)(2) [set out above] (relating to durable medical equipment).

"(5) Section 425(b)(2) [set out above] (relating to prosthetic devices and orthotics and prostheses).

STUDY OF DELIVERY OF INTRAVENOUS IMMUNE GLOBULIN (IVIG) OUTSIDE HOSPITALS AND PHYSICIANS’ OFFICES

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §201(n)], Nov. 29, 1999, 113 Stat. 1536, 1501A–341, required the Secretary of Health and Human Services to conduct a study of the extent to which intravenous immune globulin could be delivered and reimbursed under the medicare program outside of a hospital or physician’s office and to submit a report on such study to Congress within 18 months after Nov. 29, 1999.

TEMPORARY INCREASE IN PAYMENT RATES FOR DURABLE MEDICAL EQUIPMENT AND OXYGEN


"(a) IN GENERAL.—For purposes of payments under section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)) for covered items (as defined in paragraph (13) of that section) furnished during 2001 and 2002, the Secretary of Health and Human Services shall increase the payment amount in effect (but for this section) for such items for—

"(1) 2001 by 0.3 percent, and

"(2) 2002 by 0.6 percent.

"(b) LIMITING APPLICATION TO SPECIFIED YEARS.—The payment amount increase—

"(1) under subsection (a)(1) shall not apply after 2001 and shall not be taken into account in calculating the payment amounts applicable for covered items furnished after such year; and

"(2) under subsection (a)(2) shall not apply after 2002 and shall not be taken into account in calculating the payment amounts applicable for covered items furnished after such year.

DEMONSTRATION OF COVERAGE OF AMBULANCE SERVICES UNDER MEDICARE THROUGH CONTRACTS WITH UNITS OF LOCAL GOVERNMENT


"(a) DEMONSTRATION CONTRACTS WITH LOCAL GOVERNMENTS.—The Secretary of Health and Human Services shall establish up to 3 demonstration projects under which, at the request of a unit of local government, the Secretary enters into a contract with the unit of local government under which—

"(1) the unit of local government furnishes (or arranges for the furnishing of) ambulance services for which payment may be made under part B of title XVIII of the Social Security Act [this part] for individuals residing in the unit of local government who are enrolled under such part, except that the unit of local government may not enter into the contract unless the contract covers at least 80 percent of the individuals residing in the unit of local government who are enrolled under such part but not in a Medicare+Choice plan;

"(2) any individual or entity furnishing ambulance services under the contract meets the requirements otherwise applicable to individuals and entities furnishing such services under such part; and

"(3) for each month during which the contract is in effect, the Secretary makes a capitated payment to the unit of local government in accordance with subsection (b).

The projects may extend over a period of not to exceed 3 years each. Not later than July 1, 2000, the Secretary shall publish a request for proposals for such projects.

"(b) AMOUNT OF PAYMENT.—

"(1) IN GENERAL.—The amount of the monthly payment made for months occurring during a calendar year to a unit of local government under a demonstration project contract under subsection (a) shall be equal to the product of—
“(A) the Secretary’s estimate of the number of individuals covered under the contract for the month; and

“(B) ¼ of the capitated payment rate for the year established under paragraph (2).

(2) CAPITATED PAYMENT RATE DEFINED.—In this subsection, the term ‘capitated payment rate’ means, with respect to a demonstration project—

“(A) in its first year, a rate established for the project by the Secretary, using the most current available data, in a manner that ensures that aggregate payments under the project will not exceed the aggregate payment that would have been made for ambulance services under part B of title XVIII of the Social Security Act [this part] in the local area of government’s jurisdiction; and

“(B) in a subsequent year, the capitated payment rate for the previous year increased by an appropriate inflation adjustment factor.

“(c) OTHER TERMS OF CONTRACT.—The Secretary and the unit of local government may include in a contract under this section such other terms as the parties consider appropriate, including—

“(1) covering individuals residing in additional units of local government (under arrangements entered into between such units and the unit of local government involved);

“(2) permitting the unit of local government to transport individuals to non-hospital providers if such providers are able to furnish quality services at a lower cost than hospital providers; or

“(3) implementing such other innovations as the unit of local government may propose to improve the quality of ambulance services and control the costs of such services.

“(d) CONTRACT PAYMENTS IN LIEU OF OTHER BENEFITS.—Payments under a contract to a unit of local government under this section shall be instead of the amounts which (in the absence of the contract) would otherwise be payable under part B of title XVIII of the Social Security Act [this part] for the services covered under the contract which are furnished to individuals who reside in the unit of local government.

“(e) REPORT ON EFFECTS OF CAPITATED CONTRACTS.—

“(1) STUDY.—The Secretary shall evaluate the demonstration projects conducted under this section. Such evaluation shall include an analysis of the quality and cost-effectiveness of ambulance services furnished under the projects.

“(2) REPORT.—Not later than January 1, 2000, the Secretary shall submit a report to Congress on the study conducted under paragraph (1), and shall include in the report such recommendations as the Secretary considers appropriate, including recommendations regarding modifications to the methodology used to determine the amount of payments made under such contracts and extending or expanding such projects.

“References to Medicare+Choice deemed to refer to Medicare Advantage, see section 201(b) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.


PAYMENT FREEZE FOR PARENTERAL AND ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT

Section 4551(b) of Pub. L. 105–33 provided that: “In determining the amount of payment under part B of title XVIII of the Social Security Act [this part] with respect to parenteral and enteral nutrients, supplies, and equipment during each of the years 1998 through 2002, the charges determined to be reasonable with respect to such nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such nutrients, supplies, and equipment during 1995.”

SERVICE STANDARDS FOR PROVIDERS OF OXYGEN AND OXYGEN EQUIPMENT

Section 4552(c) of Pub. L. 105–33 provided that: “The Secretary shall as soon as practicable establish service standards for persons seeking payment under part B of title XVIII of the Social Security Act [this part] for the providing of oxygen and oxygen equipment to beneficiaries within their homes.”

ACCESS TO HOME OXYGEN EQUIPMENT

Pub. L. 105–33, title IV, §4552(d), Aug. 5, 1997, 111 Stat. 459, provided that:

“(1) STUDY.—The Comptroller General of the United States shall study issues relating to access to home oxygen equipment and shall, within 18 months after the date of the enactment of this Act [Aug. 5, 1997], report to the Committees on Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of the study, including recommendations (if any) for legislation.

“(2) PEER REVIEW EVALUATION.—The Secretary of Health and Human Services shall arrange for peer review [now ‘quality improvement’] organizations established under section 1154 of the Social Security Act [42 U.S.C. 1320c–3] to evaluate access to, and quality of, home oxygen equipment.

USE OF COVERED ITEMS BY DISABLED BENEFICIARIES

Section 131(b) of Pub. L. 103–422 provided that:

“(1) IN GENERAL.—The Secretary of Health and Human Services, in consultation with representatives of suppliers of durable medical equipment under part B of the Medicare program [this part] and individuals entitled to benefits under such program on the basis of disability, shall conduct a study of the effects of the methodology for determining payments for items of such equipment under such part on the ability of such individuals to obtain items of such equipment, including customized items.

“(2) REPORT.—Not later than one year after the date of the enactment of this Act [Oct. 31, 1994], the Secretary shall submit a report to Congress on the study conducted under paragraph (1), and shall include in the report such recommendations as the Secretary considers appropriate to assure that disabled medicare beneficiaries have access to items of durable medical equipment.”

CRITERIA FOR TREATMENT OF ITEMS AS PROSTHETIC DEVICES OR ORTHOTICS AND PROSTHETICS

Section 131(c) of Pub. L. 103–422 provided that not later than one year after Oct. 31, 1994, Secretary of Health and Human Services was to submit to Congress a report describing prosthetic devices or orthotics and prosthetics covered under this part that do not require individualized or custom fitting and adjustment to be used by a patient, including recommendations for appropriate methodology for determining amount of payment for such items.

ADJUSTMENT REQUIRED FOR CERTAIN ITEMS

Section 134(b) of Pub. L. 103–422 provided that:

“(1) IN GENERAL.—In accordance with section 1834(a)(10)(B) of the Social Security Act [subsec. (a)(10)(B) of this section] (as amended by subsection (a)), the Secretary of Health and Human Services shall determine whether the payment amounts for the items described in paragraph (2) are not inherently reasonable, and shall adjust such amounts in accordance with such section if the amounts are not inherently reasonable.

“(2) ITEMS DESCRIBED.—The items referred to in paragraph (1) are decubitus care equipment, transcutaneous...
electrical nerve stimulators, and any other items considered appropriate by the Secretary.'"

LIMITATION ON PREVAILING CHARGE FOR PHYSICIANS' RADIOL OGY SERVICES FURNISHED DURING 1991; EXCEPTIONS


"(1) IN GENERAL.—In applying part B of title XVIII of the Social Security Act [this part], the prevailing charge for physicians' services, furnished during 1991, which are radiology services may not exceed the fee schedule amount established under section 1834(b) of such Act [subsec. (b) of this section] with respect to such services.

"(2) EXCEPTION.—Paragraph (1) shall not apply to nuclear medicine services."

LIMITATION ON CARRIER ADJUSTMENTS FOR RADIOLOGIST SERVICES FURNISHED DURING 1991

Section 4102(e) of Pub. L. 101–508 provided that: "For radiologist services furnished during 1991 for which payment is made under section 184(b) of the Social Security Act [subsec. (b) of this section]—

"(1) a carrier may not make any adjustment, under section 1842(b)(3)(B) of such Act [section 1386u(b)(3)(B) of this title], in the payment amount for the services under section 184(b) on the basis that the payment amount is higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier,

"(2) no payment adjustment may be made under section 1842(b)(8) of such Act, and

"(3) section 1942(b)(9) of such Act shall not apply."

STUDY OF PAYMENTS FOR PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS

Section 415(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 135(e)(6), Oct. 31, 1994, 108 Stat. 4424, directed Comptroller General to conduct a study of feasibility and desirability of establishing a separate fee schedule for use in determining the amount of payments for covered items under subsec. (b) of this section with respect to suppliers of prosthetic devices, orthotics, and prosthetics who provide professional services that would take into account the costs to such providers of providing such services and, not later than 1 year after Nov. 5, 1990, submit a report on the study to Committees on Energy and Commerce and Ways and Means of House of Representatives and Committee on Finance of Senate, including any recommendations regarding payments for prosthetic devices, orthotics, and prosthetics under the medicare program.

SPECIAL RULE FOR NUCLEAR MEDICINE PHYSICIANS

Section 6105(b) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4102(g)(1), Nov. 5, 1990, 104 Stat. 1388–57, provided that: "In applying section 184(b) of the Social Security Act [subsec. (b) of this section] with respect to nuclear medicine services furnished by a physician for whom nuclear medicine services account for at least 80 percent of the total amount of charges made under part B of title XVIII of the Social Security Act [this part] beginning April 1, 1990, and ending December 31, 1991, there shall be substituted for the fee schedule otherwise applicable a fee schedule based ⅓ on the fee schedule computed under such section (without regard to this subsection) and ⅔ on 101 percent of the 1988 prevailing charge for such services."

SPECIAL RULE FOR INTERVENTIONAL RADIOL OLOGISTS; "SPLIT BILLING"

Section 6105(c) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4102(h), Nov. 5, 1990, 104 Stat. 1388–58, provided that: "In applying section 184(b) of the Social Security Act [subsec. (b) of this section] to radiologist services furnished in 1990 or 1991, the exception for 'split billing' set forth at section 5262j of the Medicare Carriers Manual shall apply to services furnished in 1990 or 1991 in the same manner and to the same extent as the exception applied to services furnished in 1989."

RENTAL PAYMENTS FOR ENTERAL AND PARENTERAL PUMPS

Section 6112(b) of Pub. L. 101–239 provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amount of any monthly rental payment under part B of title XVIII of the Social Security Act [this part] for an enteral or parenteral pump furnished on or after April 1, 1990, shall be determined in accordance with the methodology under which monthly rental payments for such pumps were determined during 1989.

"(2) CAP ON RENTAL PAYMENTS, SERVICING, AND REPAIRS.—In the case of an enteral or parenteral pump described in paragraph (1) that is furnished on a rental basis during a period of medical need—

"(A) monthly rental payments shall not be made under part B of title XVIII of the Social Security Act for more than 15 months during such period, and

"(B) after monthly rental payments have been made for 15 months during such period, payment under such part shall be made for maintenance and servicing of the pump in such amounts as the Secretary of Health and Human Services determines to be reasonable and necessary to ensure the proper operation of the pump."

TREATMENT OF POWER-DRIVEN WHEELCHAIRS AS CUSTOMIZED ITEMS

Section 6112(d)(2) of Pub. L. 101–239 provided that: "The Secretary of Health and Human Services shall by regulation specify criteria to be used by carriers in making determinations on a case-by-case basis as whether to classify power-driven wheelchairs as a customized item (as described in section 1834(a)(4) of the Social Security Act [this subsection]) for purposes of reimbursement under title XVIII of such Act [this subsection]."

STUDY OF PAYMENT FOR PORTABLE X-RAY SERVICES

Section 6134 of Pub. L. 101–239 directed Secretary of Health and Human Services to conduct a study of costs of furnishing, and payments for, portable x-ray services under part B and, not later than 1 year after Dec. 19, 1989, report to Congress on results of such study including a recommendation respecting whether payment for such services should be made in the same manner as for radiologists' services or on the basis of a separate fee schedule.

GAO STUDY OF STANDARDS FOR USE OF AND PAYMENT FOR ITEMS OF DURABLE MEDICAL EQUIPMENT

Section 6139 of Pub. L. 101–239 directed Comptroller General to conduct a study of appropriate uses of items of durable medical equipment and of appropriate criteria for making determinations of medical necessity under this subchapter for such items, with particular emphasis on items (including seat-lift chairs) that may be subject to abusive billing practices, such study to include an analysis of appropriate use of forms in making medical necessity determinations for items of durable medical equipment under such title, and procedures for identifying items of durable medical equipment that should no longer be covered under this subchapter, and to be conducted with a panel convened by the Comptroller General consisting of specialists in the disciplines of orthopedic medicine, rehabilitation, arthritis, and geriatric medicine, representatives of consumer organizations, and representatives of carriers under the medicare program, with the Comptroller General to submit not later than Apr. 1, 1991, a report to Committees on Ways and Means and Energy and Commerce of House of Representatives and Committee on Finance of Senate on the study including recommendations.
RECORDS ON MEDICARE BENEFICIARY DRUG EXPENSES

Section 202(i) of Pub. L. 100–360, directed Secretary of Health and Human Services, by not later than Apr. 1, 1989, to report to Congress on expenses incurred by Medicare beneficiaries for outpatient prescription drugs, and to provide Director of Congressional Budget Office with such data from that Survey as Director might request to make required estimates, prior to repeal by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

ADDITIONAL STUDIES BY SECRETARY OR COMPTROLLER GENERAL

Section 202(c) of Pub. L. 100–360 directed Secretary of Health and Human Services to conduct a study, and make a report to Congress by Jan. 1, 1990, on the possibility of including drugs which have not yet been approved under section 355 or 357 of Title 21, Food and Drugs, and biological products which have not been licensed under section 262 of this title but which are commonly used in the treatment of cancer or in immunosuppressive therapy and other experimental drugs and biological products as covered outpatient drugs under Medicare program, to conduct a study, and report to Congress by Jan. 1, 1990, evaluating potential to use mail service pharmacies to reduce costs to medicare program and to medicare beneficiaries, to conduct a study, and report to Congress by Jan. 1, 1993, on methods to improve utilization review of covered outpatient drugs, and to conduct a longitudinal study, and report to Congress by Jan. 1, 1993, on use of outpatient prescription drugs by medicare beneficiaries with respect to medical necessity, potential for adverse drug interactions, cost (including whether lower cost drugs could have been used), and patient stockpiling or wastage, and which further directed Comptroller General to conduct studies, and report to Congress by not later than May 1, 1991, on comparing average wholesale prices with actual pharmacy acquisition costs by type of pharmacy, on determining the overhead costs of retail pharmacies, and on discounts given by pharmacies to other third-party insurers, prior to repeal by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

DEVELOPMENT OF STANDARD MEDICARE CLAIMS FORMS

Section 202(i) of Pub. L. 100–360 directed Secretary of Health and Human Services to develop, in consultation with representatives of pharmacies and other interested individuals, a standard claims form (and a standard electronic claims format) to be used in requests for payment for covered outpatient drugs under medicare program and other third-party payors, prior to repeal by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

STUDIES AND REPORTS ON SCREENING MAMMOGRAPHY


DEADLINE FOR ESTABLISHMENT OF FEE SCHEDULES FOR RADIOLOGIST SERVICES; REPORT TO CONGRESS

Section 4984(b)(1) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(g)(8)(E), July 1, 1988, 102 Stat. 780; Pub. L. 101–508, title IV, §411(g)(3), Nov. 5, 1990, 104 Stat. 1388–70, directed Secretary of Health and Human Services to specify the relative value scale and fee schedules for radiologist services (under subsec. (b) of this section) by not later than Aug. 1, 1988.

STUDY AND EVALUATION

Section 4062(c) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(g)(1)(C), July 1, 1988, 102 Stat. 782, provided that:

“(1) The Secretary of Health and Human Services shall monitor the impact of the amendments made by this section [enacting this section, amending sections 1395f, 1395k, 1395z(b), and 1395cc of this title] on the availability of covered items and shall evaluate the appropriateness of the volume adjustment for oxygen and oxygen equipment under section 1844(a)(5)(C) of the Social Security Act [subsec. (a)(5)(C) of this section] (as amended by subsection (b) of this section). The Secretary shall report to Congress, by not later than January 1, 1991, on such impact and on the evaluation and shall include in such report recommendations for changes in payment methodology for covered items under section 1834(a) of such Act.

“(2) Before January 1, 1991, the Secretary may not conduct any demonstration project respecting alternative methods of payment for covered items under title XVIII of the Social Security Act [this chapter].

“(3) In this subsection, the term ‘covered item’ has the meaning given such term in section 1834(a)(13) of the Social Security Act [subsec. (a)(13) of this section] (as amended by subsection (b) of this section).

“(4) The Secretary shall, upon written request and payment of a reasonable copying fee which the Secretary may establish, provide the data and information used in determining the payment amounts for covered items under section 1834(a) of the Social Security Act [subsec. (a) of this section], but only in a form which does not permit identification of individual suppliers.

“(5) The Comptroller General shall conduct a study on the appropriateness of the level of payments allowed for covered items under the medicare program, and shall report to Congress on the results of such study (including recommendations on the transition to regional or national rates) by not later than January 1, 1991. Entities furnishing such items which fail to provide the Comptroller General with reasonable access to necessary records to carry out the study under this paragraph are subject to exclusion from the medicare program under section 1128(a) of the Social Security Act [section 1320a–7(a) of this title].”

§1395n. Procedure for payment of claims of providers of services

(a) Conditions for payment for services described in section 1395k(a)(2) of this title

Except as provided in subsections (b), (c), and (e) of this section, payment for services described in section 1395k(a)(2) of this title furnished an individual may be made only to providers of services which are eligible under section 1395cc(a) of this title, and only if—

(1) written request, signed by such individual, except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner and by such person or persons as the Secretary may by regulation prescribe, no later than the close of the period ending 1 calendar year after the date of service; and

(2) a physician, or, in the case of services described in subparagraph (A), a physician enrolled under section 1395cc(j) of this title, certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations) that—

(A) in the case of home health services (1) such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1395x(m)(7) of this...
and needs or needed skilled nursing care (other than solely venipuncture for the purpose of obtaining a blood sample) on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished such services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy, (ii) a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician, (iii) such services are or were furnished while the individual is or was under the care of a physician, and (iv) in the case of a certification after January 1, 2010, prior to making such certification the physician must document that the physician, or a nurse practitioner or clinical nurse specialist (as those terms are defined in section 1395x(aa)(5) of this title) who is working in collaboration with the physician in accordance with State law, or a certified nurse-midwife (as defined in section 1395x(gg) of this title) as authorized by State law, or a physician assistant (as defined in section 1395x(aa)(5) of this title) under the supervision of the physician, has had a face-to-face encounter (including through use of telehealth and other than with respect to encounters that are incidental to services involved) with the individual during the 6-month period preceding such certification, or other reasonable timeframe as determined by the Secretary;

(B) in the case of medical and other health services, except services described in subparagraph (A), such services are or were medically required;

(C) in the case of outpatient physical therapy services or outpatient occupational therapy services, (i) such services are or were required because the individual needed physical therapy services or occupational therapy services, respectively, (ii) a plan for furnishing such services has been established by a physician or by the qualified physical therapist or qualified occupational therapist, respectively, providing such services and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

(D) in the case of outpatient speech pathology services, (i) such services are or were required because the individual needed speech pathology services, (ii) a plan for furnishing such services has been established by a physician or by the speech pathologist providing such services and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

(E) in the case of comprehensive outpatient rehabilitation facility services, (i) such services are or were required because the individual needed skilled rehabilitation services, (ii) a plan for furnishing such services has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician; and

(F) in the case of partial hospitalization services, (i) the individual would require inpatient psychiatric care in the absence of such services, (ii) an individualized, written plan for furnishing such services has been established by a physician and is reviewed periodically by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician.

For purposes of this section, the term "provider of services" shall include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1395x(p)(4)(A) of this title (or meets the requirements of such section through the operation of subsection (g) or (l)(2) of section 1395x of this title), or if, in the case of a public health agency, such agency meets the requirements of section 1395x(p)(4)(B) of this title (or meets the requirements of such section through the operation of subsection (g) or (l)(2) of section 1395x of this title) with respect to the furnishing of outpatient physical therapy services (as therein defined) or (through the operation of subsection (g) or (l)(2) of section 1395x of this title) with respect to the furnishing of outpatient occupational therapy services or outpatient speech-language pathology services, respectively.

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician makes a certification of the kind provided in subparagraph (A) or (B) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations. With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan for such services, the Secretary shall prescribe regulations which shall become effective no later than July 1, 1981, and which prohibit a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, such home health agency from performing such certification and from establishing or reviewing such plan, except that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary). For purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency. For purposes of paragraph (2)(A), an individual shall be considered to be "confined to his home" if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the assistance of another individual.
or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the individual has a condition such that leaving his or her home is medically contraindicated. While an individual does not have to be bedridden to be considered “confined to his home”, the condition of the individual should be such that there exists a normal inability to leave home and that leaving home requires a considerable and taxing effort by the individual. Any absence of an individual from the home attributable to the need to receive health care treatment, including regular absences for the purpose of participating in therapeutic, psychosocial, or medical treatment in an adult day-care program that is licensed or certified by a State, or accredited, to furnish adult day-care services in the State shall not disqualify an individual from being considered to be “confined to his home”. Any other absence of an individual from the home shall not so disqualify an individual if the absence is of infrequent or of relatively short duration. For purposes of the preceding sentence, any absence for the purpose of attending a religious service shall be deemed to be an absence of infrequent or short duration. In applying paragraph (1), the Secretary may specify exceptions to the 1 calendar year period specified in such paragraph.

(b) Conditions for payment for services described in section 1395x(s) of this title

(1) Payment may also be made to any hospital for services described in section 1395x(s) of this title furnished as an outpatient service by a hospital or by others under arrangements made by it to an individual entitled to benefits under this part even though such hospital does not have an agreement in effect under this subsection if (A) such services were emergency services, (B) the Secretary would be required to make such payment if the hospital had such an agreement in effect and otherwise met the conditions of payment hereunder, and (C) such hospital has made an election pursuant to section 1395f(d)(1)(C) of this title with respect to the calendar year in which such emergency services are provided. Such payments shall be made only in the amounts provided under section 1395cc(a)(2) of this title and then only if such hospital agrees to comply, with respect to the emergency services provided, with the provisions of section 1395cc(a) of this title.

(2) Payment may also be made on the basis of an itemized bill to an individual for services described in paragraph (1) of this subsection if (A) the provider has not been paid by the hospital, and (B) the Secretary finds that such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, in accordance with section 1395cc(a)(1) of this title, be equal to 80 percent of the hospital’s reasonable charges for such services.

(c) Collection of charges from individuals for services specified in section 1395x(s) of this title

Notwithstanding the provisions of this section and sections 1395k, 1395n, and 1395cc(a)(1)(A) of this title, a hospital or a critical access hospital may, subject to such individual limitations as may be prescribed by regulations, collect from an individual the customary charges for services specified in section 1395x(s) of this title and furnished to him by such hospital as an outpatient, but only if such charges for such services do not exceed the applicable supplementary medical insurance deductible, and such customary charges shall be regarded as expenses incurred by such individual with respect to which benefits are payable in accordance with section 1395l(a)(1) of this title.

Payments under this subchapter to hospitals which have elected to make collections from individuals in accordance with the preceding sentence shall be adjusted periodically to place the hospital in the same position it would have been had it instead been reimbursed in accordance with section 1395l(a)(2) of this title (or, in the case of a critical access hospital, in accordance with section 1395l(a)(6) of this title).

(d) Payment to Federal provider of services or other Federal agencies prohibited

Subject to section 1395qq of this title, no payment may be made under this part to any Federal provider of services or other Federal agency, except a provider of services which the Secretary determines is providing services to the public generally as a community institution or agency; and no such payment may be made to any provider of services or other person for any item or service which such provider or person is obligated by a law of, or a contract with, the United States to render at public expense.

(e) Payment to fund designated by medical staff or faculty of medical school

For purposes of services (1) which are inpatient hospital services by reason of paragraph (7) of section 1395x(b) of this title or for which entitlement exists by reason of clause (II) of section 1395k(a)(2)(B)(i) of this title, and (2) for which the reasonable cost thereof is determined under section 1395x(v)(1)(D) of this title (or would be if section 1395ww of this title did not apply), payment under this part shall be made to such fund as may be designated by the organized medical staff of the hospital in which such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, to such fund as may be designated by such faculty, but only if—

(A) such hospital has an agreement with the Secretary under section 1395cc of this title, and

(B) the Secretary has received written assurances that (i) such payment will be used by such fund solely for the improvement of care to patients in such hospital or for educational or charitable purposes and (ii) the individuals who were furnished such services or any other persons will not be charged for such services (or if charged provision will be made for return of any moneys incorrectly collected).

§ 1395n

TITLE 42—THE PUBLIC HEALTH AND WELFARE

Stat. 303; amended Pub. L. 90–248, title I,
§§ 126(b), 129(c)(9)(A), (B), 130(a), (b), 133(e), Jan.
2, 1968, 81 Stat. 846, 848, 849, 851; Pub. L. 92–603,
title II, §§ 204(b), 227(e)(2), 251(b)(2), 281(f), 283(b),
Oct. 30, 1972, 86 Stat. 1377, 1406, 1445, 1456; Pub. L.
1408; Pub. L. 96–499, title IX, §§ 930(e), (j), 933(b),
944(a), Dec. 5, 1980, 94 Stat. 2631, 2632, 2635, 2642;
Pub. L. 97–35, title XXI, §§ 2106(b)(1), 2122(a)(1),
VI, § 602(b), Apr. 20, 1983, 97 Stat. 163; Pub. L.
98–369, div. B, title III, §§ 2336(a), (b), 2342(b),
2354(b)(1), (8), (9), July 18, 1984, 98 Stat. 1091, 1094,
3295; Pub. L. 99–509, title IX, § 9337(c), Oct. 21,
1986, 100 Stat. 2034; Pub. L. 100–203, title IV,
§§ 4024(b), 4070(b)(3), 4085(i)(4), Dec. 22, 1987, 101
title II, §§ 203(d)(1), 205(d), July 1, 1988, 102 Stat.
724, 731; Pub. L. 101–234, title II, § 201(a), Dec. 13,
Pub. L. 101–508, title IV, § 4008(m)(2)(D), Nov. 5,
1990, 104 Stat. 1388–53; Pub. L. 105–33, title IV,
§§ 4201(c)(1), 4615(a), Aug. 5, 1997, 111 Stat. 373, 475;
Pub. L. 110–275, title I, § 143(b)(4), July 15, 2008,
122 Stat. 2543; Pub. L. 111–148, title VI,
§§ 6404(a)(2)(B), 6405(b)(2), 6407(a)(2), title X,
§§ 10604, 10605(b), Mar. 23, 2010, 124 Stat. 768, 770,
1006.)
AMENDMENTS
paragraph (1), the Secretary may specify exceptions to
the 1 calendar year period specified in such paragraph.’’
Subsec. (a)(1). Pub. L. 111–148, § 6404(a)(2)(B)(i), substituted ‘‘period ending 1 calendar year after the date
of service;’’ for ‘‘period of 3 calendar years following
the year in which such services are furnished (deeming
any services furnished in the last 3 calendar months of
any calendar year to have been furnished in the succeeding calendar year) except that, where the Secretary deems that efficient administration so requires,
such period may be reduced to not less than 1 calendar
year;’’.
by Pub. L. 111–148, § 10604, inserted ‘‘, or, in the case of
services described in subparagraph (A), a physician enrolled under section 1395cc(j) of this title,’’ after ‘‘a
physician’’ in introductory provisions.
Subsec. (a)(2)(A)(iv). Pub. L. 111–148, § 10605(b), inserted ‘‘, or a nurse practitioner or clinical nurse specialist (as those terms are defined in section
1395x(aa)(5) of this title) who is working in collaboration with the physician in accordance with State law,
or a certified nurse-midwife (as defined in section
1395x(gg) of this title) as authorized by State law, or a
physician assistant (as defined in section 1395x(aa)(5) of
this title) under the supervision of the physician,’’
after ‘‘must document that the physician’’.
2008—Subsec. (a). Pub. L. 110–275, in second sentence,
substituted ‘‘subsection (g) or (ll)(2) of section 1395x of
this title’’ for ‘‘section 1395x(g) of this title’’ wherever
appearing and inserted ‘‘or outpatient speech-language
pathology services, respectively’’ before period at end.
home and’’ for ‘‘leave home,’’ in fifth sentence of concluding provisions.
2000—Subsec. (a). Pub. L. 106–554, in concluding provisions, struck out ‘‘, and that absences of the individual

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from home are infrequent or of relatively short duration, or are attributable to the need to receive medical
treatment’’ after ‘‘taxing effort by the individual’’ and
inserted at end ‘‘Any absence of an individual from the
home attributable to the need to receive health care
treatment, including regular absences for the purpose
of participating in therapeutic, psychosocial, or medical treatment in an adult day-care program that is licensed or certified by a State, or accredited, to furnish
adult day-care services in the State shall not disqualify
an individual from being considered to be ‘confined to
his home’. Any other absence of an individual from the
home shall not so disqualify an individual if the absence is of infrequent or of relatively short duration.
For purposes of the preceding sentence, any absence for
the purpose of attending a religious service shall be
deemed to be an absence of infrequent or short duration.’’
1997—Subsec. (a)(2)(A). Pub. L. 105–33, § 4615(a), inserted ‘‘(other than solely venipuncture for the purpose
of obtaining a blood sample)’’ after ‘‘skilled nursing
care’’.
Subsec. (c). Pub. L. 105–33, § 4201(c)(1), substituted
‘‘critical access’’ for ‘‘rural primary care’’ in two
places.
1990—Subsec. (c). Pub. L. 101–508 substituted ‘‘a hospital or a rural primary care hospital may’’ for ‘‘a hospital may’’ in first sentence, substituted ‘‘section
1395l(a)(2) of this title (or, in the case of a rural primary
care hospital, in accordance with section 1395l(a)(6) of
this title)’’ for ‘‘section 1395l(a)(2) of this title’’ in second sentence, and struck out at end ‘‘A rural primary
care hospital shall be considered a hospital for purposes
of this subsection.’’
Pub. L. 100–360, §§ 203(d)(1), 205(d), and provided that the
provisions of law amended or repealed by such sections
are restored or revived as if such sections had not been
enacted, see 1988 Amendment notes below.
Subsec. (c). Pub. L. 101–239 inserted at end ‘‘A rural
primary care hospital shall be considered a hospital for
purposes of this subsection.’’
added subpar. (G) relating to home intravenous drug
therapy services.
Subsec. (a)(2)(H). Pub. L. 100–360, § 205(d), added subpar. (H) relating to in-home care provided to chronically dependent individuals.
1987—Subsec. (a). Pub. L. 100–203, § 4024(b), inserted
two sentences at end clarifying ‘‘confined to his home’’
for purposes of par. (2)(A).
out second comma at end.
subpar. (F).
in second sentence ‘‘(or meets the requirements of such
section through the operation of section 1395x(g) of this
title)’’ in two places, and ‘‘or (through the operation of
section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services’’.
‘‘or outpatient occupational therapy services’’ in introductory provisions, ‘‘or occupational therapy services,
respectively,’’ in cl. (i), and ‘‘or qualified occupational
therapist, respectively,’’ in cl. (ii).
substituted ‘‘contractual’’ for ‘‘contractural’’.
Pub. L. 98–369, § 2336(b), inserted before period at end
of fourth sentence ‘‘, except that such prohibition shall
not apply with respect to a home health agency which
is a sole community home health agency (as determined by the Secretary)’’.
Pub. L. 98–369, § 2336(a), inserted sentence at end that
for purposes of the preceding sentence, service by a
physician as an uncompensated officer or director of a
home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency.


Section 2342(c) of Pub. L. 98–369 provided that: "The amendments made by this section [amending this section and section 1395x of this title] apply to plans of care established on or after the date of the enactment of this Act (July 18, 1984)."

Amendment by section 2354(b)(1), (8), (9) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1395ww of this title.

**Effective Date of 1983 Amendment**

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital’s cost reporting period made after November 1982 begins on or after Oct. 1, 1983, to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395w of this title.

**Effective Date of 1981 Amendment**

Amendment by section 2122(a)(1) of Pub. L. 97–33 applicable to services furnished pursuant to plans of treatment implemented after the third month beginning after Aug. 13, 1981, see section 2122(b)(1) of Pub. L. 97–33, set out as a note under section 1395w of this title.

**Effective Date of 1980 Amendment**

Amendment by section 930(e), (j) of Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395w of this title.

Amendment by section 933(h) of Pub. L. 96–499, set out as a note under section 1395k of this title.

**Effective Date of 1981 Amendment**

Amendment by section 133(e) of Pub. L. 90–248 applicable with respect to services furnished after June 30, 1968, see section 133(p) of Pub. L. 90–248, set out as a note under section 1395x of this title.

**Regulations**

Secretary of Health and Human Services required to provide, not later than 90 days after July 18, 1984, for revision of regulations as may be required to reflect amendment to subsec. (a) by section 2336(b) of Pub. L. 98–369, see section 2336(c)(2) of Pub. L. 98–369, set out as a note under section 1395w of this title.

**MEDPAC STUDY ON DIRECT ACCESS TO PHYSICAL THERAPY SERVICES**


'(a) Study.—The Medicare Payment Advisory Commission (in this section referred to as the 'Commission') shall conduct a study on the feasibility and advisability of allowing Medicare beneficiaries to obtain direct access to outpatient physical therapy services and physical therapy services furnished as comprehensive rehabilitation facility services.

'(b) Report.—Not later than January 1, 2005, the Commission shall submit to Congress a report on the study conducted under subsection (a) together with recommendations for such legislation or administrative action as the Commission determines to be appropriate.

'(c) Direct Access Defined.—The term 'direct access' means, with respect to outpatient physical therapy services and physical therapy services furnished as comprehensive outpatient rehabilitation facility services, coverage of and payment for such services in accordance with the provisions of title XVIII of the Social Security Act (this subchapter), except that sections 1835(a)(2), 1861(p), and 1861(cc) of such Act (42 U.S.C. 1395n(a)(2), 1366x(p), and 1395x(cc), respectively) shall be applied—

'1) without regard to any requirement that—

'(A) an individual be under the care of (or referred by) a physician; or

'(B) services be provided under the supervision of a physician; and

'2) by allowing a physician or a qualified physical therapist to satisfy any requirement for—

'(A) certification and recertification; and

'(B) establishment and periodic review of a plan of care.'

**HOME HEALTH PROSPECTIVE PAYMENT DEMONSTRATION PROJECT**

Section 4027 of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(d)(6), July 1, 1988, 102 Stat. 775, directed Secretary of Health and Human Services to provide for a demonstration project to develop and test alternative methods of paying home health agencies on a prospective basis for services furnished under the Medicare and Medicaid programs, directed that the project be designed in a manner to enable the Secretary to evaluate the effects of various methods of prospective payment (including payments on a per-visit, per-case, and per-episode basis) on program expenditures, quality of care, and home health agency operations, directed Secretary to assure that services are first furnished under the project not later than Apr. 1, 1989, and, for this purpose, authorized Secretary to reinstate a previously awarded contract, or award a sole source contract, to carry out the project, provided for funding, and directed Secretary to submit to Congress, not later than one year after Dec. 22, 1987, an interim report on the demonstration project and, not later than four years after Dec. 22, 1987, a final report on results of the project.
§ 1395o. Eligible individuals

Every individual who—

(1) is entitled to hospital insurance benefits under part A of this subchapter, or

(2) has attained age 65 and is a resident of the United States, and is either (A) a citizen or (B) an alien lawfully admitted for permanent residence who has resided in the United States continuously during the 5 years immediately preceding the month in which he applies for enrollment under this part,

is eligible to enroll in the insurance program established by this part.


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1972—Pub. L. 92–603 designed former par. (2)(B) as par. (1), former par. (1) as introductory clause in par. (2), and former pars. (2)(A)(i) and (ii) as pars. (2)(A) and (B), and struck out “(A)” after “(2)”.

PERSONS CONVICTED OF SUBVERSIVE ACTIVITIES

Section 104(b)(2) of Pub. L. 89–97 provided that: “An individual who has been convicted of any offense under (A) chapter 37 [section 792 et seq. of Title 18, Crimes and Criminal Procedure] (relating to espionage and censorship), chapter 105 [section 2151 et seq. of Title 18] (relating to subversion, sedition, and subversive activities) of title 18 of the United States Code, or (B) section 4, 112, or 113 of the Internal Security Act of 1950, as amended [section 783, 822, or 823 of Title 50, War and National Defense], may not enroll under part B of title XVIII of the Social Security Act [this part].”

§ 1395p. Enrollment periods

(a) Generally; regulations

An individual may enroll in the insurance program established by this part only in such manner and form as may be prescribed by regulation, and only during an enrollment period prescribed in or under this section.


(c) Initial general enrollment period; eligible individuals before March 1, 1966

In the case of individuals who first satisfy paragraph (1) or (2) of section 1395o of this title before March 1, 1966, the initial general enrollment period shall begin on the first day of the second month which begins after July 30, 1965, and shall end on May 31, 1966. For purposes of this subsection and subsection (d) of this section, an individual who has attained age 65 and who satisfies paragraph (1) of section 1395o of this title but not paragraph (2) of such section shall be treated as satisfying such paragraph (1) on the first day on which he is (or on filing application would have been) entitled to hospital insurance benefits under part A.

(d) Eligible individuals on or after March 1, 1966

In the case of an individual who first satisfies paragraph (1) or (2) of section 1395o of this title on or after March 1, 1966, his initial enrollment period shall begin on the first day of the third month before the month in which he first satisfies such paragraphs and shall end seven months later. Where the Secretary finds that an individual who has attained age 65 failed to enroll under this part during his initial enrollment period (based on a determination by the Secretary of the month in which such individual attained age 65), because such individual (relying on documentary evidence) was mistaken as to his correct date of birth, the Secretary shall establish for such individual an initial enrollment period based on his attaining age 65 at the time shown in such documentary evidence (with a coverage period determined under section 1395q of this title as though he had attained such age at that time).

(e) General enrollment period

There shall be a general enrollment period during the period beginning on January 1 and ending on March 31 of each year.

(f) Individuals deemed enrolled in medical insurance program

Any individual—

(1) who is eligible under section 1395o of this title to enroll in the medical insurance program by reason of entitlement to hospital insurance benefits as described in paragraph (1) of such section, and

(2) whose initial enrollment period under subsection (d) of this section begins after March 31, 1973, and

(3) who is residing in the United States, exclusive of Puerto Rico,

shall be deemed to have enrolled in the medical insurance program established by this part.

(g) Commencement of enrollment period

All of the provisions of this section shall apply to individuals satisfying subsection (f) of this section, except that—

(1) in the case of an individual who satisfies subsection (f) of this section by reason of entitlement to disability insurance benefits described in section 426(b) of this title, his initial enrollment period shall begin on the first day of the later of (A) April 1973 or (B) the third month before the 25th month of such entitlement, and shall reoccur with each continuous period of eligibility (as defined in section 1395r(d) of this title) and upon attainment of age 65;

(2)(A) in the case of an individual who is entitled to monthly benefits under section 423 of this title on the first day of his initial enrollment period or becomes entitled to monthly benefits under section 420 of this title during the first 3 months of such period, his enrollment shall be deemed to have occurred in the third month of his initial enrollment period, and

(B) in the case of an individual who is not entitled to benefits under section 420 of this title on the first day of his initial enrollment period and does not become so entitled during the first 3 months of such period, his enrollment shall be deemed to have occurred in the month in which he files the application establishing his entitlement to hospital insurance benefits provided such filing occurs during the last 4 months of his initial enrollment period; and
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(3) in the case of an individual who otherwise satisfy subsection (f) of this section but does not establish his entitlement to hospital insurance benefits until after the last day of his initial enrollment period (as defined in subsection (d) of this section), his enrollment shall be deemed to have occurred on the first day of the earlier of the then current or immediately succeeding general enrollment period (as defined in subsection (e) of this section).

(h) Waiver of enrollment period requirements where individual’s rights were prejudiced by administrative error or inaction

In any case where the Secretary finds that an individual’s enrollment or nonenrollment in the insurance program established by this part or part A pursuant to section 1395i–2 of this title is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Federal Government, or its instrumentalities, the Secretary may take such action (including the designation for such individual of a special initial or subsequent enrollment period, with a coverage period determined on the basis thereof and with appropriate adjustments of premiums) as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction.

(i) Special enrollment periods

(1) In the case of an individual who—

(A) at the time the individual first satisfies paragraph (1) or (2) of section 1395e of this title, is enrolled in a group health plan described in section 1395y(b)(1)(A)(v) of this title by reason of the individual’s (or the individual’s spouse’s) current employment status, and

(B) has elected not to enroll (or to be deemed enrolled) under this section during the individual’s initial enrollment period,

there shall be a special enrollment period described in paragraph (3). In the case of an individual not described in the previous sentence who was not enrolled in a large group health plan (as that term is defined in section 1395y(b)(1)(B)(iii) of this title) by reason of the individual’s current employment status by reason of the individual’s current employment status ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled.

(2) In the case of an individual who—

(A)(i) has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual’s initial enrollment period, or (ii) is an individual described in paragraph (1)(A);

(B) has enrolled in such program during any subsequent special enrollment period under this subsection during which the individual was not enrolled in a large group health plan by reason of the individual’s current employment status by reason of the individual’s current employment status ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled.

(3)(A) The special enrollment period referred to in the first sentences of paragraphs (1) and (2) is the period including each month during any part of which the individual is enrolled in a group health plan described in section 1395y(b)(1)(A)(v) of this title by reason of current employment status ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled.

(4)(A) In the case of an individual who is entitled to benefits under part A pursuant to section 420(b) of this title and—

(i) who at the time the individual first satisfies paragraph (1) of section 1395e of this title—

(I) is enrolled in a group health plan described in section 1395y(b)(1)(A)(v) of this title by reason of the individual’s current or former employment or by reason of the current or former employment status of a member of the individual’s family, and

(II) has elected not to enroll (or to be deemed enrolled) under this section during the individual’s initial enrollment period; and

(ii) whose continuous enrollment under such group health plan is involuntarily terminated at a time when the enrollment under the plan is not by reason of the individual’s current employment or by reason of the current em-
employment of a member of the individual’s family, there shall be a special enrollment period described in subparagraph (B).

(B) The special enrollment period referred to in subparagraph (A) is the 6-month period beginning on the first day of the month which includes the date of the enrollment termination described in subparagraph (A)(ii).

(j) Special rules for individuals with ALS

In applying this section in the case of an individual who is entitled to benefits under part A pursuant to the operation of section 426(h) of this title, the following special rules apply:

(1) The initial enrollment period under subsection (d) of this section shall begin on the first day of the first month in which the individual satisfies the requirement of section 1395c(1) of this title.

(2) In applying subsection (g)(1) of this section, the initial enrollment period shall begin on the first day of the first month of enrollment to disability insurance benefits referred to in such subsection.

(k) Special enrollment period for certain volunteers serving outside United States

(1) In the case of an individual who—

(A) is serving as a volunteer outside of the United States through a program—

(i) that covers at least a 12-month period; and

(ii) that is sponsored by an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; and

(B) demonstrates health insurance coverage while serving in the program;

(2) The special enrollment period described in this paragraph is the 6-month period beginning on the first day of the month which includes the date of the enrollment termination described in paragraph (3), and has elected not to enroll (or to be enrolled) under this section during the individual’s initial enrollment period; or

(B) has terminated enrollment under this section during a month in which the individual is described in paragraph (3), there shall be a special enrollment period described in paragraph (2).

(3) In the case of an individual who—

(A) is described in paragraph (1) or (2) of section 1395c of this title, is described in paragraph (3), and has elected not to enroll (or to be enrolled) under this section during the individual’s initial enrollment period; or

(B) has terminated enrollment under this section during a month in which the individual is described in paragraph (3), there shall be a special enrollment period described in paragraph (2).

(l) Special enrollment period for certain TRICARE beneficiaries

(1) In the case of any individual who is a covered beneficiary (as defined in section 1072(g) of title 10) at the time the individual is entitled to part A under section 428(b) of this title or section 426-I of this title and who is eligible to enroll but who has elected not to enroll (or to be enrolled) during the individual’s initial enrollment period, there shall be a special enrollment period described in paragraph (2).

(2) The special enrollment period described in this paragraph, with respect to an individual, is the 12-month period beginning on the day after the last day of the initial enrollment period of the individual or, if later, the 12-month period beginning with the month the individual is notified of enrollment under this section.
1986—Subsec. (k). Pub. L. 99–509, § 9319(c)(1), inserted sentence at end providing for a special enrollment period described in paragraph (3)(B) for individuals not age 65, enrolled in a large group health plan, and having elected not to enroll during initial enrollment period.


Subsec. (i)(2). Pub. L. 99–272, § 9219(a)(2)(A), amended subpar. (A) generally, substituting “has attained the age of 65” for “meets the conditions described in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title”.

Subsec. (i)(2)(A). Pub. L. 99–272, § 9219(a)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part, or is an individual described in the second sentence of paragraph (1), has enrolled in such program during a subsequent special enrollment period during which the individual was not enrolled in a large group health plan, and has not terminated enrollment.


Subsec. (i)(2)(C). Pub. L. 99–272, § 9219(a)(2)(B), added subpar. (C) and redesignated former subpar. (C) as (D).


1981—Subsec. (e). Pub. L. 97–35, § 2151(a)(1), substituted “during the period beginning on January 1 and ending on March 31 of each year” for “which is any period after the period described in subsection (d) of this section”.

Subsec. (g)(3). Pub. L. 97–35, § 2151(a)(2), substituted “the earlier of the then current or immediately succeeding general enrollment period (as defined in subsection (e) of this section) for “the month in which the individual files an application establishing such entitlement”.

1980—Subsec. (h). Pub. L. 96–499, § 945(a), struck out subsec. (b) which provided that no individual could enroll under this part more than twice.

Subsec. (e). Pub. L. 96–499, § 945(b)(1), substituted “which is any period after the period described in subsection (d) of this section for “, after the period described in subsection (c) of this section, during the period beginning on January 1 and ending on March 31 of each year beginning with 1969.”

Subsec. (g)(1). Pub. L. 96–265 substituted “the 25th month” for “the 25th consecutive month”.

Subsec. (g)(3). Pub. L. 96–499, § 945(b)(2), substituted “the month in which the individual files an application establishing such entitlement” for “the earlier of the then current or immediately succeeding general enrol-
ment period (as defined in subsection (e) of this section)"

1972—Subsec. (b), Pub. L. 92–603, § 260, struck out provisions preventing enrollment under this part more than three years after first opportunity for such enrollment.

Subsec. (c), Pub. L. 92–603, § 201(c)(2)(A), (B), substituted "paragraph (1) or (2)" for "paragraphs (1) and (2)"

amendment made by this subsection [amending this section and section 1395q of this title] shall take effect on the first day of the first month that begins after the expiration of the 120-day period that begins on the date of the enactment of this Act [Oct. 31, 1994]."

Section 151(c)(2) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 103–66.

Effective Date of 1989 Amendment

Amendment by section 6202(b)(4)(C) of Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 6202(c)(3) of Pub. L. 101–239 provided that: "The amendments made by this subsection [amending this section and section 1395r of this title] shall apply to enrollments occurring after, and premiums for months after, the second calendar quarter beginning after the date of the enactment of this Act [Dec. 19, 1989]."

Effective Date of 1986 Amendments


Amendment by Pub. L. 99–509 applicable to enrollments occurring on or after Jan. 1, 1987, see section 151(c)(2) of Pub. L. 99–509, set out as a note under section 1395q of this title.

Section 9201(d)(2) of Pub. L. 99–272 provided that: "(i) The amendments made by paragraphs (2) and (c) [amending this section, section 1395q of this title, and sections 623 and 631 of Title 29, Labor] shall become effective on May 1, 1986.

(ii) For purposes of clause (i), the term 'first effective month' means the first month that begins more than 90 days after the date of the enactment of this Act [Apr. 7, 1986]."

Effective Date of 1984 Amendment

Section 2354(b)(10) of Pub. L. 98–369 provided that: "(A) The amendments made by subsections (b) and (c) [amending this section and section 1395q of this title] shall apply to enrollments in months beginning with the first effective month, except that in the case of any individual who would have had a special enrollment period under section 1837(i) of the Social Security Act [subsec. (i) of this section] that would have begun after November 1984 and before the first effective month, the period shall be deemed to begin with the first day of the first effective month.

(B) For purposes of subparagraph (A), the term 'first effective month' means the first month that begins more than 90 days after the date of the enactment of this Act [June 18, 1984]."

Amendment by section 2354(b)(10) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Effective Date of 1981 Amendment

Amendment by Pub. L. 97–35 provided that: "The amendments made by this section [amending this sec-
tion and sections 1395q and 1395r of this title] shall not apply to enrollments pursuant to written requests for enrollment filed before October 1, 1961.

**Effective Date of 1980 Amendments**

Section 945(d) of Pub. L. 96-499 provided that: "The amendments made by subsections (a), (b), and (c) [amending this section and sections 1395q and 1395r of this title] shall apply to enrollments occurring on or after April 1, 1981."

Amendment by Pub. L. 96-265 applicable with respect to hospital insurance or supplementary medical insurance benefits for services provided on or after the first day of the sixth month which begins after June 9, 1980, see section 103(c) of Pub. L. 96-265, set out as a note under section 426 of this title.

**Effective Date of 1972 Amendment**

Section 259(b) of Pub. L. 92-603 provided that: "The amendment made by subsection (a) [amending this section] shall be effective as of July 1, 1966."

**Effective Date of 1968 Amendment**

Section 136(b) of Pub. L. 90-248 provided that: "The amendment made by subsection (a) [amending this section] shall apply to individuals enrolling under part B of title XVIII (this part) in months beginning after the date of the enactment of this Act [Jan. 2, 1968]."

Section 140(e) of Pub. L. 90-248 provided that: "The amendments made by subsections (a), (b), and (c) [amending this section and section 1395q of this title] shall become effective April 1, 1968. Notwithstanding the provisions of section 2 of Public Law 90-97, the amendments made by subsection (d) [amending section 1395q of this title] shall become effective December 1, 1968."

**Medicare Part B Special Enrollment Period**

Pub. L. 108-173, title VI, § 625(b), Dec. 8, 2003, 117 Stat. 2318, provided that:

"(1) IN GENERAL.—In the case of any individual who, as of the date of the enactment of this Act [Dec. 8, 2003], is eligible to enroll but is not enrolled under part B of title XVIII of the Social Security Act [this part] and is a covered beneficiary (as defined in section 10725) of title 10, United States Code), the Secretary of Health and Human Services shall provide for a special enrollment period during which the individual may enroll under such part. Such period shall begin on whichever of the following is the latest:

(1) July 1, 1966, or (in the case of a disabled individual who has not attained age 65) July 1, 1973;

(2) (A) in the case of an individual who enrolls pursuant to subsection (d) of section 1395p of this title before the month in which he first satisfies paragraph (1) or (2) of section 1395p of this title, the first day of such month, or

(B) in the case of an individual who enrolls pursuant to such subsection (d) in the month in which he first satisfies such paragraph, the first day of the following month in which he so enrolls, or

(C) in the case of an individual who enrolls pursuant to such subsection (d) in the month more than one month following the month in which he satisfies such paragraph, the first day of the third month following the month in which he so enrolls, or

(E) in the case of an individual who enrolls pursuant to subsection (e) of section 1395p of this title, the July 1 following the month in which he so enrolls, or

(3) (A) in the case of an individual who is deemed to have enrolled on or before the last day of the third month of his initial enrollment period, the first day of the month in which he first meets the applicable requirements of section 1395p of this title or July 1, 1973, whichever is later, or

(B) in the case of an individual who is deemed to have enrolled on or after the first day of the fourth month of his initial enrollment period, as prescribed under subparagraphs (B), (C), (D), and (E) of paragraph (2) of this subsection.

**Continuation**

An individual's coverage period shall continue until his enrollment has been terminated—

(1) by the filing of notice that the individual no longer wishes to participate in the insurance program established by this part, or

"(2) it is shown to the satisfaction of the Secretary of Health, Education, and Welfare (now Health and Human Services) that there was good cause for such failure to enroll before June 1, 1966, such individual may enroll pursuant to this subsection at any time before October 1, 1966. The determination of what constitutes good cause for purposes of the preceding sentence shall be made in accordance with regulations of the Secretary. In the case of any individual who enrolls pursuant to this subsection, the coverage period (within the meaning of section 1838 of the Social Security Act [section 1395q of this title]) shall begin on the first day of the 6th month after the month in which he enrolls."
The termination of a coverage period under paragraph (1) shall (except as otherwise provided in section 1395v(e) of this title) take effect at the close of the month following the month in which the notice is filed. The termination of a coverage period under paragraph (2) shall take effect on a date determined under regulations which may be determined so as to provide a grace period in which overdue premiums may be paid and coverage continued. The grace period determined under the preceding sentence shall not exceed 90 days; except that it may be extended to not to exceed 180 days in any case where the Secretary determines that there was good cause for failure to pay the overdue premiums within such 90-day period.

Where an individual who is deemed to have enrolled for medical insurance pursuant to section 1395p(f) of this title files a notice before the first day of the month in which his coverage period begins advising that he does not wish to be so enrolled, the termination of the coverage period resulting from such deemed enrollment shall take effect with the first day of the month the coverage would have been effective. Where an individual who is deemed enrolled for medical insurance benefits pursuant to section 1395p(f) of this title files a notice requesting termination of his deemed coverage in or after the month in which such coverage becomes effective, the termination of such coverage shall take effect at the close of the month following the month in which the notice is filed.

**(c) Termination**

In the case of an individual satisfying paragraph (1) of section 1395c of this title whose entitlement to hospital insurance benefits under part A of this subchapter is based on a disability rather than on his having attained the age of 65, his coverage period (and his enrollment under this part) shall be terminated as of the close of the last month for which he is entitled to hospital insurance benefits.

**(d) Payment of expenses incurred during coverage period**

No payments may be made under this part with respect to the expenses of an individual unless such expenses were incurred by such individual during a period which, with respect to him, is a coverage period.

***(e) Commencement of coverage for special enrollment periods***

Notwithstanding subsection (a), in the case of an individual who enrolls during a special enrollment period pursuant to section 1395p(k) of this title, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls.


**AMENDMENTS**


1994—Subsec. (e). Pub. L. 103–432 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows: “(1) in the first month of the special enrollment period, the coverage period shall begin on the first day of that month; or “(2) in a month after the first month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls.”

1986—Subsec. (b). Pub. L. 99–509 substituted “month following the month” for “calendar quarter following the calendar quarter” in second and sixth sentences.

1984—Subsec. (e). Pub. L. 99–272 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “Notwithstanding subsection (a) of this section, in the case of an individual who enrolls during a special enrollment period pursuant to— “(1) subparagraph (A) of section 1395p(i)(3) of this title— “(A) before the month in which he attains the age of 70, the coverage period shall begin on the first day of the month in which he has attained the age of 70; or “(B) in or after the month in which he attains the age of 70, the coverage period shall begin on the first day of the month following the month in which he so enrolls; or “(2) subparagraph (B) of section 1395p(i)(3) of this title— “(A) in the first month of the special enrollment period, the coverage period shall begin on the first day of such month; or “(B) in a month after the first month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which he so enrolls.”
Subsec. (b). Pub. L. 97–35, § 2106(b)(2), struck out provision that notice filed by an individual enrolled pursuant to section 1395p(f) of this title shall not be considered a disenrollment for purposes of section 1385p(b) of this title.
1980—Subsec. (a)(2)(E). Pub. L. 96–499, § 945(c)(1), substituted “the first day of the third month” for “the July 1”.
Subsec. (b). Pub. L. 96–499, § 947(b), inserted “except as otherwise provided in section 1395(e) of this title”.
Subsec. (a)(2). Pub. L. 92–603, § 201(c)(3)(B), substituted in subpar. (A) “paragraph (1) or (2)” for “paragraphs (1) and (2)” and in subpars. (B) to (D) “paragraph” for “paragraphs”.
Subsec. (b). Pub. L. 92–603, §§ 206(c), 257(a), inserted provisions relating to an individual who is deemed to have enrolled for medical insurance pursuant to section 1385p(f) of this title and an individual who is deemed enrolled for medical insurance benefits pursuant to section 1385p(f) of this title and struck out provisions limiting the allowable grace period to 90 days and inserted provision for extension of such period of up to 180 days where failure to pay premiums is due to good cause.
Subsecs. (c), (d). Pub. L. 92–603, § 203(c)(3)(C), added subsec. (c) and redesignated former subsec. (c) as (d).
1968—Subsec. (b). Pub. L. 90–248 struck out “, or after the date of enactment of this Act.”

Effective Date of 2006 Amendment

Effective Date of 1997 Amendment
Amendment by Pub. L. 105–33 applicable to involuntary terminations of coverage under a group health plan occurring on or after Aug. 5, 1997, see section 4581(c) of Pub. L. 105–33, set out as a note under section 1385p of this title.

Effective Date of 1994 Amendment
Amendment by Pub. L. 102–27 effective on first day of first month beginning after expiration of the 120-day period that begins on Oct. 31, 1994, see section 147(d)(1)(C) of Pub. L. 102–27, set out as a note under section 1385p of this title.

Effective Date of 1986 Amendments
Section 934(b)(2) of Pub. L. 99–509 provided that: “The amendments made by paragraph (1) of this section shall apply to notices filed on or after July 1, 1987.”

Effective Date of 1984 Amendment
For effective date of amendment by Pub. L. 98–369, see section 2338(d)(2) of Pub. L. 98–369, set out as a note under section 1385p of this title.

Effective Date of 1981 Amendment
Amendment by section 2106(b)(2) of Pub. L. 97–35 effective Apr. 1, 1981, see section 2106(c) of Pub. L. 97–35, set out as a note under section 1385p of this title.

Amendment by section 2151(a)(3) of Pub. L. 97–35 not applicable to enrollments pursuant to written requests for enrollment filed before Oct. 1, 1981, see section 2151(b) of Pub. L. 97–35, set out as a note under section 1385p of this title.

Effective Date of 1980 Amendment
Amendment by section 945(c)(1) of Pub. L. 96–499 applicable to enrollments occurring on or after Apr. 1, 1981, see section 945(d) of Pub. L. 96–499, set out as a note under section 1385p of this title.

Effective Date of 1972 Amendment
Section 257(b) of Pub. L. 92–603 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to nonpayment of premiums which became due and payable on or after the date of the enactment of this Act [Oct. 30, 1972] or which became payable within the 90-day period immediately preceding such date; and for purposes of such amendments any premium which became due and payable within such 90-day period shall be considered a premium becoming due and payable on the date of the enactment of this Act.”

Effective Date of 1968 Amendment
Amendment by Pub. L. 90–248 effective Apr. 1, 1968, see section 145(e) of Pub. L. 90–248, set out as a note under section 1385p of this title.

Coverage Period; Termination Dates
Pub. L. 90–97, § 3(a), Sept. 30, 1967, 81 Stat. 249, provided that: “In the case of any individual who, pursuant to section 1838(b)(1) of the Social Security Act [subsection (b)(1) of this section], terminates his enrollment in the insurance program established under part B of title XVIII of such Act [this part], his coverage period (as defined in section 1838(a) of such Act) [subsection (a) of this section]—

(1) shall terminate at the close of December 31, 1967, if he filed his notice of termination before January 1, 1968; or

(2) shall terminate at the close of March 31, 1968, if he filed his notice of termination after December 31, 1967, and before April 1, 1968.

An individual whose coverage period terminated pursuant to paragraph (1) at the close of December 31, 1967, may, notwithstanding section 1837(b)(2) of such Act [section 1385p(b)(2) of this title], enroll in such program before April 1, 1968, and for purposes of sections 1838(a)(2)(E) [subsection (a)(2)(E) of this section] and 1837(b)(2) of such Act [section 1385p(b)(2) of this title] such enrollment shall be deemed an enrollment under section 1837(e) of such Act [section 1385p(e) of this title] and a second enrollment under such part.”

Extension of 1967 General Enrollment Period Through March 31, 1968
Extension of the general enrollment period under section 1385p(e) of this title through March 31, 1968, see section 1 of Pub. L. 90–97, Sept. 30, 1967, 81 Stat. 249, set out as a note under section 1385p of this title.

Coverage Period for Individuals Becoming Eligible in March 1966 Who Enroll in May 1966
Pub. L. 89–384, § 3(d), Apr. 8, 1966, 80 Stat. 105, provided that: “In the case of any individual who first satisfies paragraphs (1) and (2) of section 1836 of the Social Security Act [section 1385 of this title] in March, 1966, and who enrolls pursuant to subsection (d) of section 1837 of such Act [section 1385 of this title] in May 1966, his coverage period shall, notwithstanding section 1838(a)(2)(D) of such Act [subsection (a)(2)(D) of this section], begin on July 1, 1966.”

Commencement of Coverage Period of Certain Enrollees
Commencement of coverage period upon enrollment before Oct. 1, 1966, of eligible individuals falling for good
§ 1395r. Amount of premiums for individuals enrolled under this part

(a) Determination of monthly actuarial rates and premiums

(1) The Secretary shall, during September of 1983 and of each year thereafter, determine the monthly actuarial rate for enrollees age 65 and over which shall be applicable for the succeeding calendar year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such calendar year with respect to those enrollees age 65 and older will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrollees. In calculating the monthly actuarial rate, the Secretary shall include an appropriate amount for a contingency margin. In applying this paragraph there shall not be taken into account additional payments under section 1395w–4(o) of this title and the Government contribution under section 1395w(a)(3) of this title.

(2) The monthly premium of each individual enrolled under this part for each month after December 1983 shall be the amount determined under paragraph (3), adjusted as required in accordance with subsections (b), (c), (f), and (i) of this section, and to reflect any credit provided under section 1395w–24(b)(1)(C)(ii)(III) of this title.

(3) The Secretary, during September of each year, shall determine and promulgate a monthly premium rate for the succeeding calendar year that (except as provided in subsection (g) of this section) is equal to 50 percent of the monthly actuarial rate for enrollees age 65 and over, determined according to paragraph (1), for that succeeding calendar year. Whenever the Secretary promulgates the dollar amount which shall be applicable as the monthly premium rate for any period, he shall, at the time such promulgation is announced, issue a public statement setting forth the actuarial assumptions and bases employed by him in arriving at the amount of an adequate actuarial rate for enrollees age 65 and older as provided in paragraph (1).

(4) The Secretary shall also, during September of 1983 and of each year thereafter, determine the monthly actuarial rate for disabled enrollees under age 65 which shall be applicable for the succeeding calendar year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such calendar year with respect to disabled enrollees under age 65 will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrollees. In calculating the monthly actuarial rate under this paragraph, the Secretary shall include an appropriate amount for a contingency margin.

(b) Increase in monthly premium

In the case of an individual whose coverage period began pursuant to an enrollment after his initial enrollment period (determined pursuant to subsection (c) or (d) of section 1395p of this title) and not pursuant to a special enrollment period under subsection (i)(4) or (l) of section 1395p of this title, the monthly premium determined under subsection (a) of this section (without regard to any adjustment under subsection (i) of this section) shall be increased by 10 percent of the monthly premium so determined for each full 12 months (in the same continuous period of eligibility) in which he could have been but was not enrolled. For purposes of the preceding sentence, there shall be taken into account (1) the months which elapsed between the close of his initial enrollment period and the close of the enrollment period in which he reenrolled, plus (in the case of an individual who reenrolls) (2) the months which elapsed between the date of termination of a previous coverage period and the close of the enrollment period in which he reenrolled, but there shall not be taken into account months for which the individual can demonstrate that the individual was enrolled in a group health plan described in section 1395y(b)(1)(A)(v) of this title by reason of the individual’s (or the individual’s spouse’s) current employment status or months during which the individual has not attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a large group health plan (as that term is defined in section 1395y(b)(1)(B)(iii) of this title) by reason of the individual’s current employment status (or the current employment status of a family member of the individual) or months for which the individual can demonstrate that the individual was an individual described in section 1395p(k)(3) of this title. Any increase in an individual’s monthly premium under the first sentence of this subsection with respect to a particular continuous period of eligibility shall not be applicable with respect to any other continuous period of eligibility which such individual may have. No increase in the premium shall be effected for a month in the case of an individual who enrolls under this part during 2001, 2002, 2003, or 2004 and who demonstrates to the Secretary before December 31, 2004, that the individual is a covered beneficiary (as defined in section 1072(3) of title 10). The Secretary of Health and Human Services shall consult with the Secretary of Defense in identifying individuals described in the previous sentence.

(c) Premiums rounded to nearest multiple of ten cents

If any monthly premium determined under the foregoing provisions of this section is not a multiple of 10 cents, such premium shall be rounded to the nearest multiple of 10 cents.

(d) "Continuous period of eligibility" defined

For purposes of subsection (b) of this section (and section 1395p(y)(1) of this title), an individual’s “continuous period of eligibility” is the period beginning with the first day on which he is eligible to enroll under section 1395p of this title and ending with his death; except that any pe-
(e) State payment of part B late enrollment premium increases

(1) Upon the request of a State (or any appropriate State or local governmental entity specified by the Secretary), the Secretary may enter into an agreement with the State (or such entity) under which the State (or such entity) agrees to pay on a quarterly or other periodic basis to the Secretary (to be deposited in the Treasury to the credit of the Federal Supplemental Medical Insurance Trust Fund) an amount equal to the amount of the part B late enrollment premium increases with respect to the premiums for eligible individuals (as defined in paragraph (g)(A)).

(2) No part B late enrollment premium increase shall apply to an eligible individual for premiums for months for which the amount of such an increase is payable under an agreement under paragraph (1).

(3) In this subsection:

(A) The term “eligible individual” means an individual who is enrolled under this part B and who is within a class of individuals specified in the agreement under paragraph (1).

(B) The term “part B late enrollment premium increase” means any increase in a premium as a result of the application of subsection (b) of this section.

(f) Limitation on increase in monthly premium

For any calendar year after 1988, if an individual is entitled to monthly benefits under section 402 or 423 of this title or under section 3(a), 4(a), or 4(f) of the Railroad Retirement Act of 1974 (45 U.S.C. 231b(a), 231c(a), (f)) for November and December of the preceding year, if the monthly premium of the individual under this section for December and for January is deducted from those benefits under section 1395s(a)(1) of this title or section 1395s(b)(1) of this title, and if the amount of the individual’s premium is not adjusted for such January under subsection (i) of this section, the monthly premium otherwise determined under this section for an individual for that year shall not be increased, pursuant to this subsection, to the extent that such increase would reduce the amount of benefits payable to that individual for that December below the amount of benefits payable to that individual for that November (after the deduction of the premium under this section). For purposes of this subsection, retroactive adjustments or payments and deductions on account of work shall not be taken into account in determining the monthly benefits to which an individual is entitled under section 402 or 423 of this title or under the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.).

(g) Exclusions from estimate of benefits and administrative costs

In estimating the benefits and administrative costs which will be payable from the Federal Supplementary Medical Insurance Trust Fund for a year for purposes of determining the monthly premium rate under subsection (a)(3) of this section, the Secretary shall exclude an estimate of any benefits and administrative costs attributable to—

(1) the application of section 1395s(v)(1)(L)(viii) of this title or to the establishment under section 1395s(v)(1)(L)(i)(V) of this title of a per visit limit at 106 percent of the median (instead of 105 percent of the median), but only to the extent payment for home health services under this subchapter is not being made under section 1395ff of this title (relating to prospective payment for home health services); and

(2) the medicare prescription drug discount card and transitional assistance program under section 1395w-141 of this title.

(h) Potential application of comparative cost adjustment in CCA areas

(1) In general

Certain individuals who are residing in a CCA area under section 1395w-29 of this title who are not enrolled in an MA plan under part C of this subchapter may be subject to a premium adjustment under subsection (f) of such section for months in which the CCA program under such section is in effect in such area.

(2) No effect on late enrollment penalty or income-related adjustment in subsidies

Nothing in this subsection or section 1395w-29(f) of this title shall be construed as affecting the amount of any premium adjustment under subsection (b) or (i) of this section. Subsection (f) of this section shall be applied without regard to any premium adjustment referred to in paragraph (1).

(3) Implementation

In order to carry out a premium adjustment under this subsection and section 1395w-29(f) of this title (insofar as it is effected through the manner of collection of premiums under section 1395s(a) of this title), the Secretary shall transmit to the Commissioner of Social Security—

(A) at the beginning of each year, the name, social security account number, and the amount of the premium adjustment (if any) for each individual enrolled under this part for each month during the year; and

(B) periodically throughout the year, information to update the information previously transmitted under this paragraph for the year.

(i) Reduction in premium subsidy based on income

(1) In general

In the case of an individual whose modified adjusted gross income exceeds the threshold amount under paragraph (2), the monthly amount of the premium subsidy applicable to the premium under this section for a month after December 2006 shall be reduced (and the monthly premium shall be increased) by the monthly premium adjustment amount specified in paragraph (3).

1 See References in Text note below.
(2) Threshold amount

For purposes of this subsection, subject to paragraph (6), the threshold amount is—
(A) except as provided in subparagraph (B), $80,000, and
(B) in the case of a joint return, twice the amount applicable under subparagraph (A) for the calendar year.

(3) Monthly adjustment amount

(A) In general

Subject to subparagraph (B), the monthly adjustment amount specified in this paragraph for an individual for a month in a year is equal to the product of the following:

(i) Sliding scale percentage

Subject to paragraph (6), the applicable percentage specified in the table in subparagraph (C) for the individual minus 25 percentage points.

(ii) Unsubsidized part B premium amount

200 percent of the monthly actuarial rate for enrollees age 65 and over (as determined under subsection (a)(1) of this section for the year).

(B) 3-year phase in

The monthly adjustment amount specified in this paragraph for an individual for a month in a year before 2009 is equal to the following percentage of the monthly adjustment amount specified in subparagraph (A):

(i) For 2007, 33 percent.
(ii) For 2008, 67 percent.

(C) Applicable percentage

(i) In general

If the modified adjusted gross income is: The applicable percentage is:

More than $80,000 but not more than $100,000 ....................................................... 35 percent
More than $100,000 but not more than $150,000 ....................................................... 50 percent
More than $150,000 but not more than $200,000 ....................................................... 65 percent
More than $200,000 ....................................................... 80 percent.

(ii) Joint returns

In the case of a joint return, clause (i) shall be applied by substituting dollar amounts which are twice the dollar amounts otherwise applicable under clause (i) for the calendar year.

(iii) Married individuals filing separate returns

In the case of an individual who—
(I) is married as of the close of the taxable year (within the meaning of section 7703 of the Internal Revenue Code of 1986) but does not file a joint return for such year, and
(II) does not live apart from such individual’s spouse at all times during the taxable year,
clause (i) shall be applied by reducing each of the dollar amounts otherwise applicable under such clause for the calendar year by the threshold amount for such year applicable to an unmarried individual.

(4) Modified adjusted gross income

(A) In general

For purposes of this subsection, the term “modified adjusted gross income” means adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986)—

(i) determined without regard to sections 135, 911, 931, and 933 of such Code; and
(ii) increased by the amount of interest received or accrued during the taxable year which is exempt from tax under such Code.

In the case of an individual filing a joint return, any reference in this subsection to the modified adjusted gross income of such individual shall be to such return’s modified adjusted gross income.

(B) Taxable year to be used in determining modified adjusted gross income

(i) In general

In applying this subsection for an individual’s premiums in a month in a year, subject to clause (ii) and subparagraph (C), the individual’s modified adjusted gross income shall be such income determined for the individual’s last taxable year beginning in the second calendar year preceding the year involved.

(ii) Temporary use of other data

If, as of October 15 before a calendar year, the Secretary of the Treasury does not have adequate data for an individual in appropriate electronic form for the taxable year referred to in clause (i), the individual’s modified adjusted gross income shall be determined using the data in such form from the previous taxable year. Except as provided in regulations prescribed by the Commissioner of Social Security in consultation with the Secretary, the preceding sentence shall cease to apply when adequate data in appropriate electronic form are available for the individual for the taxable year referred to in clause (i), and proper adjustments shall be made to the extent that the premium adjustments determined under the preceding sentence were inconsistent with those determined using such taxable year.

(iii) Non-filers

In the case of individuals with respect to whom the Secretary of the Treasury does not have adequate data in appropriate electronic form for either taxable year referred to in clause (i) or clause (ii), the Commissioner of Social Security, in consultation with the Secretary, shall prescribe regulations which provide for the treatment of the premium adjustment with respect to such individual under this subsection, including regulations which provide for—

(I) the application of the highest applicable percentage under paragraph (3)(C) to such individual if the Commissioner has information which indicates that such individual’s modified adjusted gross income might exceed the threshold
amount for the taxable year referred to in clause (i), and
(II) proper adjustments in the case of the application of an applicable percentage under subclause (I) to such individual which is inconsistent with such individual’s modified adjusted gross income for such taxable year.

(C) Use of more recent taxable year
(i) In general
The Commissioner of Social Security in consultation with the Secretary of the Treasury shall establish a procedure under which an individual’s modified adjusted gross income shall, at the request of such individual, be determined under this subsection—
(II) for a more recent taxable year than the taxable year otherwise used under subparagraph (B), or
(III) by such methodology as the Commissioner, in consultation with such Secretary, determines to be appropriate, which may include a methodology for aggregating or disaggregating information from tax returns in the case of marriage or divorce.

(ii) Standard for granting requests
A request under clause (i)(I) to use a more recent taxable year may be granted only if—
(I) the individual furnishes to such Commissioner with respect to such year such documentation, such as a copy of a filed Federal income tax return or an equivalent document, as the Commissioner specifies for purposes of determining the premium adjustment (if any) under this subsection; and
(II) the individual’s modified adjusted gross income for such year is significantly less than such income for the taxable year determined under subparagraph (B) by reason of the death of such individual’s spouse, the marriage or divorce of such individual, or other major life changing events specified in regulations prescribed by the Commissioner in consultation with the Secretary.

(5) Inflation adjustment
(A) In general
In the case of any calendar year beginning after 2007, each dollar amount in paragraph (2) or (3) shall be increased by an amount equal to—
(i) such dollar amount, multiplied by the percentage (if any) by which the average of the Consumer Price Index for all urban consumers (United States city average) for the 12-month period ending with August of the 12-month period ending August 2006.

(B) Rounding
If any dollar amount after being increased under subparagraph (A) is not a multiple of $1,000, such dollar amount shall be rounded to the nearest multiple of $1,000.

(6) Temporary adjustment to income thresholds
Notwithstanding any other provision of this subsection, during the period beginning on January 1, 2011, and ending on December 31, 2019—
(A) the threshold amount otherwise applicable under paragraph (2) shall be equal to such amount for 2010; and
(B) the dollar amounts otherwise applicable under paragraph (3)(C)(i) shall be equal to such dollar amounts for 2010.

(7) Joint return defined
For purposes of this subsection, the term “joint return” has the meaning given to such term by section 7701(a)(38) of the Internal Revenue Code of 1986.


REFERENCES IN TEXT
The Railroad Retirement Act of 1974, referred to in subsec. (f), is Act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 89–97, title I, § 102(a), July 30, 1965, 79 Stat. 305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act...
to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.


The Internal Revenue Code of 1986, referred to in subsec. (i)(3)(D), (4)(A), (7), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS


2009—Subsec. (a)(1). Pub. L. 111–5 inserted at end “In applying this paragraph there shall not be taken into account additional payments under section 1395w–4(o) of this title and section 1395w–23(i)(3) of this title and the Government contribution under section 1395w–23(i)(3) of this title.”


1998—Subsec. (a)(2). Pub. L. 105–33, §4631(a)(2), substituted “subsections (b), (c), and (f)” for “subsections (b), (c), and (f) of this section.”

1997—Subsec. (a)(2). Pub. L. 105–33, §4571(b)(1)(A), substituted “subsections (b), (c), and (f)” for “sections (b) and (e)”.

Subsec. (a)(3). Pub. L. 105–33, §4571(b)(1)(B), in last sentence, inserted “rate” after “monthly premium” and struck out “and the derivation of the dollar amounts specified in this paragraph” before period at end.

Pub. L. 105–33, §4571(a), substituted “The Secretary, during September of each year, shall determine and promulgate a monthly premium rate for the succeeding calendar year that is equal to 50 percent of the monthly actuarial rate for enrollees age 65 and over, determined according to paragraph (1), for that succeeding calendar year.” for “The Secretary shall, during September of 1983 and of each year thereafter, determine and promulgate the monthly premium applicable for individuals enrolled under this part for the succeeding calendar year. The monthly premium shall (except as otherwise provided in subsection (e) of this section) be equal to the smaller of—” “(A) the monthly actuarial rate for enrollees age 65 and over, determined according to paragraph (1) of this subsection, for that calendar year, or “(B) the monthly premium rate most recently promulgated by the Secretary under this paragraph, increased by a percentage determined as follows: The Secretary shall ascertain the primary insurance amount computed under section 415(a)(1) of this title, based upon average indexed monthly earnings of $900, that applied to individuals who became eligible for and entitled to old-age insurance benefits on November 1 of the year before the promotion. He shall increase the monthly premium rate by the same percentage by which that primary insurance amount is increased when, by reason of the law in effect at the time the promotion is made, it is so computed to apply to those individuals for the following November 1.”


Pub. L. 105–33, §4571(b)(1)(C), struck out “or (e)” after “determined under subsection (a)” in first sentence.

Pub. L. 105–33, §4561(a), inserted “and not pursuant to a special enrollment period under section 1395p(d)(4) of this title” after “section 1395p of this title)” in first sentence.

Subsec. (e). Pub. L. 105–33, §4571(b)(1)(D), redesignated subsec. (g) as (e) and struck out former subsec. (e) which read as follows: “(1)(A) Notwithstanding the provisions of subsection (a) of this section, the monthly premium for each individual enrolled under this part for each month after December 1995 and prior to January 1999 shall be an amount equal to 50 percent of the monthly actuarial rate for enrollees age 65 and over, as determined under subsection (a)(1) of this section and applicable to such month.” “(B) Notwithstanding the provisions of subsection (a) of this section, the monthly premium for each individual enrolled under this part for each month in— “(i) 1991 shall be $29.90.” “(ii) 1992 shall be $33.80.” “(iii) 1993 shall be $36.60.” “(iv) 1994 shall be $41.10, and “(v) 1995 shall be $46.10.”
“2) Any increases in premium amounts taking effect prior to January 1998 by reason of paragraph (1) shall be taken into account for purposes of determining increases thereafter under subsection (a)(3) of this section.”

Subsec. (e)(1). Pub. L. 105–33, § 4582, inserted “or any appropriate State or local governmental entity specified by the Secretary” after “at request of a State” and inserted “or (such entity)” after “agreement with the State” and after “which the State.”

Subsec. (g). Pub. L. 105–33, § 4571(b)(1)(E), redesignated subsec. (g) as (e).

1994—Subsec. (b). Pub. L. 103–432, § 151(c)(3), in second sentence, inserted “status” after “current employment” and substituted “(as that term is defined in section 1395y(b)(1)(B)(iv) of this title) by reason of the individual’s current employment status (or the current employment status of a family member of the individual)” for “(as active individual (as those terms are defined in section 1395y(b)(1)(A)(v) and section 1395y(b)(1)(B)(iv) of this title)”.

Subsec. (g). Pub. L. 103–432, § 144, added subsec. (g).

1993—Subsec. (e)(1)(A). Pub. L. 103–66, § 13571(1), substituted “after December 1993 and prior to January 1999 shall be an amount equal to 50 percent” for “December 1993 and prior to January 1991 shall be an amount equal to 50 percent”.


1990—Subsec. (e)(1). Pub. L. 101–508 designated existing provisions as subpar. (A) and added subpar. (B).

1988—Subsec. (a). Pub. L. 101–234 repealed Pub. L. 100–360, § 211(c)(1)(A)–(D), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (b). Pub. L. 101–239, § 6920(c)(2), struck out “during which the individual has attained the age of 65 and” after “into account months” in second sentence.


Pub. L. 101–234 repealed Pub. L. 100–360, § 211(c)(1)(E), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment notes below.


Subsec. (e)(1). Pub. L. 101–234, § 6801(F), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (g). Pub. L. 101–234 repealed Pub. L. 100–360, § 211(a), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment notes below.

1988—Subsec. (a)(1). Pub. L. 100–360, § 211(c)(1)(A), (B), inserted “rather than costs relating to the amendments made by the Medicare Catastrophic Coverage Act of 1988” before period at end of second sentence, and “but shall not take into account any amounts in the Trust Fund that may be attributable to receipts or outlays relating to the Medicare Catastrophic Coverage Account” before period at end of last sentence.

Subsec. (a)(2). Pub. L. 100–360, § 211(c)(1)(C), substituted “(e), and (g)” for “(e)”.

Subsec. (a)(9). Pub. L. 100–360, § 211(c)(1)(D), substituted “subsections (e) and (g)” for “subsection (e)” in introductory provisions.

Subsec. (a)(10). Pub. L. 100–360, § 211(c)(1)(A), (B), inserted “rather than costs relating to the amendments made by the Medicare Catastrophic Coverage Act of 1988” before period at end of second sentence, and “but shall not take into account any amounts in the Trust Fund that may be attributable to receipts or outlays relating to the Medicare Catastrophic Coverage Account” before period at end of last sentence.

Subsec. (b). Pub. L. 100–360, § 212(c)(1)(E), substituted “otherwise determined under this section (without regard to subsections (f) and (g)(6) of this section)” for “otherwise determined under subsection (a) or (e) of this section”.

Subsec. (e)(1). Pub. L. 100–360, § 212(c)(1)(F), inserted “except as provided in subsection (g) of this section,” after “subsection (a)” and “(or such entity)” after “agreement with the State” and after “which the State.”

Subsec. (f). Pub. L. 100–485, § 608(b)(8)(B), substituted “for that December below the amount of benefits payable to that individual for that November” for “for that January below the amount of benefits payable to that individual for that December”.

Pub. L. 100–360, § 211(b), amended subsec. (f) generally, substituting a single paragraph for former pars. (1) and (2).

Subsec. (g). Pub. L. 100–360, § 211(a), added subsec. (g) relating to adjustment in Medicare part B premium.

Pub. L. 100–360, § 212(d)(9)(A)(i), substituted “year, over” for “year, and”.


Subsec. (g)(7)(A)(ii). Pub. L. 100–485, § 608(d)(9)(A)(iii), substituted “of such each year” for “of such year”.


1986—Subsec. (b). Pub. L. 99–509, § 9131(c)(4), inserted “or months during which the individual has not attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a large group health plan with the individual’s spouse during the months in which the individual can demonstrate that the individual was enrolled in a large group health plan as an active individual (as those terms are defined in section 1395y(b)(3)(B) of this title)” at end of second sentence.

Pub. L. 99–272, § 219(a)(1), substituted “months during which the individual has attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a group health plan described in section 1385y(b)(3)(A)(iv) of this title for months in which the individual has met the conditions specified in clauses (i) and (ii) of section 1395y(b)(3)(A) of this title and can demonstrate that the individual was enrolled in a group health plan described in clause (iv) of such section”.


Subsec. (f)(2). Pub. L. 99–509, § 9001(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “the monthly premium amount determined under subsection (a)(2) of this section for that January reduced by the amount (if any) necessary to make the monthly benefits under section 402 or 423 of this title for that December after the deduction of the monthly premium (disregarding subsection (b) of this section) for that January at least equal to the monthly benefits under section 402 or 423 of this title for the preceding November after the deduction of the premium (disregarding subsection (b) of this section) for that individual for that December, or.”

1984—Subsec. (b). Pub. L. 98–369, § 2338(a), inserted provision that shall not be taken into account any months in which the individual has met the conditions specified in clauses (i) and (ii) of section 1395y(b)(3)(A) of this title and can demonstrate that the individual was enrolled in a group health plan described in clause (iv) of such section by reason of the individual’s (or the individual’s spouse’s) current employment.

Subsec. (e). Pub. L. 98–369, § 2392(a), substituted “1988” for “1986” in pars. (1) and (2).


Subsec. (f)(2). Pub. L. 98–617, § 3(b)(4), substituted “that December after the deduction” for “for that
January after the deduction” and “for that December” for “for that November”.

1983—Subsec. (a). Pub. L. 98–21, § 606(a)(1), added subsec. and struck out former subsec. (a) which provided that monthly premium of each individual enrolled under this part for each month before 1968 would be $3.

Subsec. (b). Pub. L. 98–21, § 606(a)(3)(A), substituted “subsection (a) or (e)” for “subsection (b), (c), or (g)”. Pub. L. 98–21, § 606(a)(1), (2), redesignated subsec. (d) as (b), and struck out former subsec. (b) which provided for determination by Secretary of monthly premium for each individual enrolled under this part for each month after 1967 and before July 1, 1973.

Subsec. (c). Pub. L. 98–21, § 606(a)(1), (2), redesignated subsec. (e) as (c), and struck out former subsec. (c) which directed Secretary to determine during December of each year after 1972 the monthly actuarial rate for enrollees age 65 and over applicable to succeeding fiscal year (beginning July 1), provided for his determination of monthly premium for such period, and directed him to determine monthly actuarial rate for disabled enrollees under age 65.

Subsec. (d). Pub. L. 98–21, § 606(a)(3)(B), which directed that “purposes of subsection (b)” be substituted for “purposes of subsection (c)” was executed by substituting “purposes of subsection (d)” as the probable intent of Congress in view of previous substitution of “subsection (d)” for “subsection (c)” by Pub. L. 92–663, § 203(d)(2). Pub. L. 98–21, § 606(a)(2), redesignated subsec. (f) as (d). Former subsec. (d) redesignated (b).

Pub. L. 97–484 inserted reference to determination of monthly premium pursuant to subsec. (g) of this section.

Subsec. (e). Pub. L. 98–21, § 606(a)(2), redesignated subsec. (g) as (e). Former subsec. (e) redesignated (c).


Subsecs. (f), (g). Pub. L. 98–21, § 606(a)(2), redesignated subsecs. (f) and (g) as (d) and (e), respectively.

Subsec. (e)(1). Pub. L. 97–248, § 124(a)(1), substituted “except as provided in subsections (d) and (g)” for “except as provided in subsection (d)”.

Subsec. (e)(3). Pub. L. 97–248, § 124(a)(2), inserted “except as otherwise provided in subsection (g) of this section”.

Subsec. (g). Pub. L. 97–248, § 124(b), added subsec. (g). 1981—Subsec. (d). Pub. L. 97–35 substituted “the close of the enrollment period in which he reenrolled” for “the month after the month in which he reenrolled” in cl. (2).

1980—Subsec. (d). Pub. L. 96–409 substituted “who reenrolls (2) the months which elapsed between the date of termination of a previous coverage period and the month after the month in which he reenrolled” for “who enrolls for a second time” (2) the months which elapsed between the date of the termination of his first coverage period and the close of the enrollment period in which he enrolled for the second time”.

1977—Subsec. (c)(3)(B). Pub. L. 95–216 substituted “the monthly premium rate most recently promulgated by the Secretary under this paragraph, increased by a percentage determined as follows: The Secretary shall ascertain the primary insurance amount computed under section 415(a) of this title, based upon average indexed monthly earnings of $900, that applied to individuals who became eligible for and entitled to old-age insurance benefits on May 1 of the year of the promulgation for “the monthly premium rate most recently promulgated by the Secretary under this paragraph or, in the case of the determination made in December 1971, such rate promulgated under subsection (b)(2) of the section multiplied by the ratio of (i) the amount in column IV of the table which, by reason of the law in effect at the time the promulgation is made, will be in effect as of May 1 next following such determination appears (or deemed to appear) in section 415(a) of this title on the line which includes the figure ‘750’ in column III of such table to (ii) the amount in column IV of the table which appeared (or was deemed to appear) in section 415(a) of this title on the line which included the figure ‘750’ in column III as of May 1 of the year in which such determination appears and inserted “He shall increase the monthly premium rate by the same percentage by which that primary insurance amount is increased when, by reason of the law in effect at the time the promulgation is made, it is so computed to apply to those individuals on the following May 1.”.

1975—Subsec. (c)(3). Pub. L. 94–182 substituted “May 1” for “June 1” wherever appearing.


Amendment by section 5115(a)(1) of Pub. L. 109–171 applicable to amounts for months beginning after Jan. 1, 2006, see section 5115(b) of Pub. L. 109–171, set out as a note under section 1395p of this title.

Effective Date of 2006 Amendment
Amendment by section 5115(a)(1) of Pub. L. 109–171 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 5115(b) of Pub. L. 109–171, set out as a note under section 1395p of this title.

Effective Date of 2003 Amendment

Pub. L. 108–173, title VI, § 625(a)(2), Dec. 8, 2003, 117 Stat. 2318, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to premiums for months beginning with January 2004. The Secretary [of Health and Human Services] shall establish a method for providing rebates of premium penalties paid for months on or after January 2004 for which a penalty does not apply under such amendment but for which a penalty was previously collected.”

Effective Date of 2000 Amendment
Pub. L. 106–554, § 1(a)(6) [title VI, § 606(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–558, provided that: “The amendments made by subsection (a) [amending this section and section 1395w–21 of this title and affecting section 1395w–24 of this title] shall apply to years beginning with 2003.”
EFFECTIVE DATE OF 1997 AMENDMENT
Amendment by section 4581(a) of Pub. L. 105–33 applicable to involuntary terminations of coverage under a group health plan occurring on or after Aug. 5, 1997, see section 4581(c)(1) of Pub. L. 105–33, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1994 AMENDMENT
Section 151(c)(3) of Pub. L. 103–323 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 103–66.

EFFECTIVE DATE OF 1989 AMENDMENTS
Amendment by section 6202(b)(4)(C) of Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by section 6202(c)(2) of Pub. L. 101–239 applicable to enrollments occurring after, and premiums for months after, second calendar quarter beginning after Dec. 19, 1989, see section 6202(c)(5) of Pub. L. 101–239, set out as a note under section 1395p of this title.


EFFECTIVE DATE OF 1988 AMENDMENTS
Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 6088(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Section 211(d) of Pub. L. 100–360, which provided that the amendments made by section 211 of Pub. L. 100–360 [amending this section and sections 1395w and 1395mm of this title] (or the amendments made under section 1839(c)(3) of the Social Security Act after the date of the enactment of this Act) shall be construed as changing the amount of the premium in effect for the month of June 1983.''

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT
Amendment by Pub. L. 97–35 not applicable to enrollments pursuant to written requests for enrollment filed before Oct. 1, 1981, see section 251(b) of Pub. L. 97–35, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1980 AMENDMENT
Amendment by Pub. L. 96–499 applicable to enrollments occurring on or after Apr. 1, 1981, see section 145(d) of Pub. L. 96–499, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1977 AMENDMENT
Amendment by Pub. L. 95–216 effective with respect to monthly benefits and lump-sum death payments for deaths occurring after December 1978, see section 206 of Pub. L. 95–216, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT
Section 104(b) of Pub. L. 94–182 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to determinations made by paragraph (1) of this section after the date of the enactment of this Act [Dec. 31, 1975].''

EFFECTIVE DATE OF 1968 AMENDMENT

EFFECTIVE DATE OF 1967 AMENDMENT
Amendment by Pub. L. 90–97, § 2, Sept. 30, 1967, 81 Stat. 249, provided that: ''Notwithstanding the provisions of section 1395(a) and (b) of the Social Security Act [subsecs. (a) and (b) of this section]—

"(1) the dollar amount applicable for premiums under part B of title XVIII of such Act [this part] for each month after April 1968 shall be $3, and

"(2) the Secretary of Health, Education, and Welfare may determine and promulgate such dollar

No Change in Medicare’s Defined Benefit Package
Pub. L. 108–173, title II, §241(c), Dec. 8, 2003, 117 Stat. 2221, provided that: “Nothing in this part [probably should be this section, enacting former section 1395w–29 of this title and amending this section and sections 1395w and 1395w–25 of this title] (or the amendments made by this part) shall be construed as changing the entitlement to defined benefits under parts A and B of title XVIII of the Social Security Act [parts A and B of this subchapter].”

Determination of Premium Amounts by Secretary
Pub. L. 90–97, §2, Sept. 30, 1967, 81 Stat. 249, provided that: “Notwithstanding the provisions of section 1395(a) and (b) of the Social Security Act [subsecs. (a) and (b) of this section]—

“(1) the dollar amount applicable for premiums under part B of title XVIII of such Act [this part] for each month after April 1968 shall be $3, and

“(2) the Secretary of Health, Education, and Welfare may determine and promulgate such dollar
amount for months after March 1968 and before January 1970 at any time on or before December 31, 1967.”

§ 1395s. Payment of premiums

(a) Deductions from section 402 or 423 monthly benefits

(1) In the case of an individual who is entitled to monthly benefits under section 402 or 423 of this title, his monthly premiums under this part shall (except as provided in subsections (b)(1) and (c) of this section) be collected by deducting the amount thereof from the amount of such monthly benefits. Such deduction shall be made in such manner and at such times as the Commissioner of Social Security shall by regulation prescribe. Such regulations shall be prescribed after consultation with the Secretary.

(2) The Secretary of the Treasury shall, from time to time, transfer from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates from benefits under section 402 or 423 of this title which are payable from such Trust Fund. Such transfer shall be made on the basis of a certification by the Commissioner of Social Security and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(b) Deductions from railroad retirement annuities or pensions

(1) In the case of an individual who is entitled to receive for a month an annuity under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.] (whether or not such individual is also entitled for such month to a monthly insurance benefit under section 402 of this title), his monthly premiums under this part shall (except as provided in subsection (c) of this section) be collected by deducting the amount thereof from such annuity or pension. Such deduction shall be made in such manner and at such times as the Secretary shall by regulations prescribe. Such regulations shall be prescribed only after consultation with the Railroad Retirement Board.

(2) The Secretary of the Treasury shall, from time to time, transfer from the Railroad Retirement Account to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfers shall be made on the basis of a certification by the Railroad Retirement Board and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(c) Portion of monthly premium in excess of deducted amount

If an individual to whom subsection (a) or (b) of this section applies estimates that the amount which will be available for deduction under such subsection for any premium payment period will be less than the amount of the monthly premiums for such period, he may (under regulations) pay to the Secretary such portion of the monthly premiums for such period as he desires.

(d) Deductions from civil service retirement annuities

(1) In the case of an individual receiving an annuity under subchapter III of chapter 83 of title 5 or any other law administered by the Director of the Office of Personnel Management providing retirement or survivorship protection, to whom neither subsection (a) nor subsection (b) of this section applies, his monthly premiums under this part (and the monthly premiums of the spouse of such individual under this part if neither subsection (a) nor subsection (b) of this section applies to such spouse and if such individual agrees) shall, upon notice from the Secretary of Health and Human Services to the Director of the Office of Personnel Management, be collected by deducting the amount thereof from each installment of such annuity. Such deduction shall be made in such manner and at such times as the Director of the Office of Personnel Management may determine. The Director of the Office of Personnel Management shall furnish such information as the Secretary of Health and Human Services may reasonably request in order to carry out his functions under this part with respect to individuals to whom this subsection applies. A plan described in section 8903 or 8903a of title 5 may reimburse each annuitant enrolled in such plan an amount equal to the premiums paid by him under this part if such reimbursement is paid entirely from funds of such plan which are derived from sources other than the contributions described in section 8906 of such title.

(2) The Secretary of the Treasury shall, from time to time, but not less often than quarterly, transfer from the Civil Service Retirement and Disability Fund, or the account (if any) applicable in the case of such other law administered by the Director of the Office of Personnel Management, to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfer shall be made on the basis of a certification by the Director of the Office of Personnel Management and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(e) Manner and time of payment prescribed by Secretary

In the case of an individual who participates in the insurance program established by this part but with respect to whom none of the preceding provisions of this section applies, or with respect to whom subsection (c) of this section applies, the premiums shall be paid to the Secretary at such times, and in such manner, as the Secretary shall by regulations prescribe.
(f) Deposit of amounts in Treasury

Amounts paid to the Secretary under subsection (c) or (e) of this section shall be deposited in the Treasury to the credit of the Federal Supplemental Medical Insurance Trust Fund.

(g) Premium payability period

In the case of an individual who participates in the insurance program established by this part, premiums shall be payable for the period commencing with the first month of his coverage period and ending with the month in which he dies or, if earlier, in which his coverage under such program terminates.

(h) Exempted monthly benefits

In the case of an individual who is enrolled under the program established by this part as a member of a coverage group to which an agreement with a State entered into pursuant to section 1395v of this title is applicable, subsections (a), (b), (c), and (d) of this section shall not apply to his monthly premium for any month in his coverage period which is determined under section 1395v(d) of this title.

(i) Adjustments for individuals enrolled in Medicare+Choice plans

In the case of an individual enrolled in a Medicare+Choice plan, the Secretary shall provide for necessary adjustments of the monthly beneficiary premium to reflect 80 percent of any reduction elected under section 1395w–24(f)(1)(E) of this title and to reflect any credit provided under section 1395w–24(b)(1)(C)(iv) of this title. To the extent to which the Secretary determines that such an adjustment is appropriate, with the concurrence of any agency responsible for the administration of such benefits, such premium adjustment may be provided directly, as an adjustment to any social security, railroad retirement, or civil service retirement benefits, or, in the case of an individual who receives medical assistance under subchapter XIX of this title by Pub. L. 94–193, § 2354(b)(11), substituted “Commissioner of Social Security” for “Secretary” and inserted at end “Such regulations shall be prescribed after consultation with the Secretary.”


1972—Subsec. (a)(1). Pub. L. 92–603, §§ 201(c)(6)(A), 263(a), substituted “Commissioner of Social Security” for “Civil Service Commission”. Subsec. (d). Pub. L. 92–603, §§ 201(c)(6)(A), 263(a), substituted subsections (b)(1) and (c) for subsection (d) and inserted reference to section 423 of this title.

Subsec. (a)(2). Pub. L. 92–603, § 201(c)(6)(A), 263(a), substituted “subsections (b)(1) and (c)” for “subsection (d)” and inserted reference to section 423 of this title.


Subsec. (b)(1). Pub. L. 92–603, § 201(c)(6)(B), inserted “whether or not such individual is also entitled for such month to a monthly insurance benefit under section 423 of this title” after “1975” and substituted “subsection (c)” for “subsection (d)”.

Subsec. (c). Pub. L. 92–603, § 263(c), struck out subsec. (c) covering individuals entitled both to monthly benefits under section 402 of this title and to an annuity or pension under Railroad Retirement Act of 1937 and redesignated former subsec. (d) as (c).

Subsec. (d). Pub. L. 92–603, § 263(c), redesignated subsec. (e) as (d) and redesignated subsec. (f) as (e) and substituted “subsection (c)” for “subsection (d)”. Former subsec. (e) redesignated (d).
Subsec. (f). Pub. L. 92–603, §263(c), (d)(2), redesignated subsec. (g) as (f) and substituted "subsections (c) or (e)" for "subsections (d) or (f)". Former subsec. (f) redesignated (e) and amended.

Subsec. (g). Pub. L. 92–603, §263(c), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f) and amended.

Subsecs. (h), (i). Pub. L. 92–603, §263(c), (d)(3), redesignated subsec. (i) as (h) and substituted "(c) and (d)" for "(c) or (e)". Former subsec. (h) redesignated (g).

Pub. L. 96–248 provided for reimbursement of civil service retirement annuitants for certain premium payments under supplementary medical insurance program, and substituted "subchapter III of chapter 83 of Title 5 or any other law" and "such other law" for "the Civil Service Retirement Act, or other Act" and "such other Act", in pars. (1) and (2).

section 402 of this title.

see section 202(b) of Pub. L. 101–234, set out as a note under section 1395w–21 of this title.

Effective Date of 2003 Amendment
Amendment by Pub. L. 106–554 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 106–173, set out as a note under section 1395w–21 of this title.

Effective Date of 2000 Amendment
Amendment by Pub. L. 106–554 applicable to years beginning with 2003, see section 110(a) of Pub. L. 103–296, set out as a note under section 1395w–21 of this title.

Effective Date of 1994 Amendment

Effective Date of 1989 Amendment

Effective Date of 1988 Amendment

Effective Date of 1984 Amendment
Amendment by section 2354(b)(1) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed under the provisions of law involved before that date, see section 2354(b)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2663(j)(2)(F)(ii) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed under the provisions of law involved before that date, see section 2663(j)(2)(F)(ii) of Pub. L. 98–369, set out as a note under section 401 of this title.

Effective Date of 1974 Amendment

Effective Date of 1972 Amendment
Section 263(f) of Pub. L. 92–603 provided that: "The amendments made by this section [amending this section and sections 1395t and 1395u of this title] with respect to collection of premiums shall apply to premiums becoming due and payable after the fourth month following the month in which this Act is enacted [October 1972]."

§ 1395t. Federal Supplementary Medical Insurance Trust Fund

(a) Creation; deposits; fund transfers

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Supplementary Medical Insurance Trust Fund" (hereinafter in this section referred to as the "Trust Fund"). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 401(c)(1) of this title, such amounts as may be deposited in, or appropriated to, the Medicare Prescription Drug Account established by section 1395w–116 of this title or the Transitional Assistance Account established by section 1395w–141(k)(1) of this title.

(b) Board of Trustees; composition; meetings; duties

With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Commissioner of Social Security, the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Administrator of the Centers for Medicare & Medicaid Services shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Fund;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years; Each report provided under paragraph (2) beginning with the

See References in Text note below.
report in 2005 shall include the information specified in section 801(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.\(^2\)

(3) Report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly small; and

(4) Review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall also include an actuarial opinion by the Chief Actuary of the Centers for Medicare & Medicaid Services certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable. Such report shall be printed as a House document of the session of the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

(c) Investment of Trust Fund by Managing Trustee

It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of public-debt obligations issued for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(d) Authority of Managing Trustee to sell obligations

Any obligations acquired by the Trust Fund (except public-debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(e) Interest on or proceeds from sale or redemption of obligations

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(f) Transfers to other Funds

There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1395gg(b) of this title. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1395gg(b) of this title.

(g) Payments from Trust Fund of amounts provided for by this part or with respect to administrative expenses

The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 401(g)(1) of this title. The payments provided for under part D of this subchapter, other than under section 1395w–141(k)(2) of this title, shall be made from the Medicare Prescription Drug Account in the Trust Fund. The payments provided for under section 1395w–141(k)(2) of this title shall be made from the Transitional Assistance Account in the Trust Fund.

(h) Payments from Trust Fund of costs incurred by Director of Office of Personnel Management

The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to pay the costs incurred by the Director of the Office of Personnel Management in making deductions pursuant to section 1395s(d) of this title or pursuant to section 1395w–113(c)(1) or 1395w–24(d)(2)(A) of this title.

\(^2\)So in original. See 2003 Amendment note below.
(in which case payments shall be made in appropriate part from the Medicare Prescription Drug Account in the Trust Fund). During each fiscal year, or after the close of such fiscal year, the Director of the Office of Personnel Management shall certify to the Secretary the amount of the costs the Director incurred in making such de-
ductions, and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.

(i) Payments from Trust Fund of costs incurred by Railroad Retirement Board

The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services cer-
tifies are necessary to pay the costs incurred by the Railroad Retirement Board for services performed pursuant to section 1395sb(b)(1) and section 1395u(g) of this title and pursuant to section 1395w–113(c)(1) and 1395w–24(d)(2)(A) of this title (in which case payments shall be made in appropriate part from the Medicare Prescription Drug Account in the Trust Fund). During each fiscal year or after the close of such fiscal year, the Railroad Retirement Board shall certify to the Secretary the amount of the costs inc-
curred in performing such services and such cer-
sified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.


REFERENCES IN TEXT

Section 9008(c) of the Patient Protection and Affordable Care Act of 2009, referred to in subsec. (a), probably means section 9008(c) of Pub. L. 111–138, known as the Patient Protection and Affordable Care Act, which is set out as a note preceding section 4011 of Title 26, Internal Revenue Code.

Section 801(a) of the Medicare Prescription Drug Improvement, and Modernization Act of 2003, referred to in subsec. (b)(2), is section 801(a) of Pub. L. 108–173, which is set out as a note under section 1395i of this title.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–148 inserted “or section 9008(c) of the Patient Protection and Affordable Care Act of 2009” after “this part”.

2009—Subsec. (a). Pub. L. 108–173, § 106(d)(1), inserted “or the Transitional Assistance Account established by section 1395w–141(i)(1) of this title” after “section 1395w–116 of this title”.

Pub. L. 108–173, § 101(e)(3)(C)(1), substituted “section 4011 of this title,” for “section 4011 of this title, and” and inserted “, and such amounts as may be designated in, or appropriated to, the Medicare Prescription Drug Account established by section 1395w–116 of this title” before period at end.


Subsec. (b)(2). Pub. L. 108–173, § 801(d)(2), inserted at end “Each report provided under paragraph (2) beginning with the report in 2009 shall include the information specified in section 801(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2009.”

Subsec. (g). Pub. L. 108–173, § 105(d)(2), inserted at end “The payments provided for under section 1395w–141(i)(2) of this title shall be made from the Transitional Assistance Account in the Trust Fund.”

Pub. L. 108–173, § 101(e)(3)(C)(ii), inserted at end “The payments provided for under part D of this subchapter, other than under section 1395w–141(i)(2) of this title, shall be made from the Medicare Prescription Drug Account in the Trust Fund” after “section 1395w(d) of this title”.

Subsec. (i). Pub. L. 108–173, § 104(e)(3)(C)(iv), inserted “or pursuant to sections 1395w–113(c)(1) or 1395w–24(d)(2)(A) of this title (in which case payments shall be made in appropriate part from the Medicare Prescription Drug Account in the Trust Fund)” after “section 1395w(d) of this title”.


1989—Subsecs. (a), (b). Pub. L. 101–234 repealed Pub. L. 100–360, § 212(b)(2), (c)(4), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been en-
acted, see 1988 Amendment notes below.


Subsec. (b). Pub. L. 100–474 inserted after first sentence “A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nomi-

nated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member’s term until the earlier of the time at which the member’s successor takes of-

fice or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member’s term.”

Pub. L. 100–360, § 212(c)(4), inserted after sixth sentence “Such report shall also identify (and treat separately) those receipts and outlays in the Trust Fund which are also receipts and outlays in the Medicare Catastrophic Coverage Account created under section 1395–2 of this title.”

1986—Subsec. (b). Pub. L. 99–272 struck out provision at end of penultimate sentence that the certification shall not refer to economic assumptions underlying Trustee’s report.


Subsecs. (f), (g). Pub. L. 98–369, § 2663(j)(2)(F)(iii), substi-

tuted “‘Health and Human Services’” for “‘Health, Education, and Welfare’” wherever appearing.

1983—Subsec. (g)(4). Pub. L. 98–21, §341(c)(1), substituted "Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate" for "Secretary of Health, Education, and Welfare, all ex officio" in provisions preceding par. (1).

Pub. L. 98–21, §154(c), inserted at end provision that the report referred to in par. (2) shall also include an actuarial opinion by the Chief Actuarial Officer of the Health Care Financing Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable, and provided further that the certification shall not refer to economic assumptions underlying the Trustee's report.

Pub. L. 98–21, §411(c)(2), inserted at end provision that a person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.


1972—Subsec. (a). Pub. L. 92–603, §132(e), inserted "such gifts and bequests as may be made as provided in section 401(i)(1) of this title, and after "consist of" and before "such amounts"

Subsec. (h). Pub. L. 92–603, §263(d)(4), substituted "1395s(d)(d)" for "1395s(e)"


**Effective Date of 1994 Amendment**


**Effective Date of 1989 Amendment**


**Effective Date of 1988 Amendment**

Amendment by Pub. L. 100–485 applicable to members of Board of Trustees of Federal Supplementary Medical Insurance Trust Fund serving on such Board as members of the public on or after Nov. 10, 1988, see section 1005(b) of Pub. L. 100–485, set out as a note under section 401 of this title.

**Effective Date of 1984 Amendment**

Amendment by section 2354(b)(2), (11), (12) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed under the provisions of law involved before that date, see section 2354(a)(1) of Pub. L. 98–369, set out as a note under section 2320a–1 of this title.

Amendment by section 2663(j)(2)(F)(iii) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed under the provisions of law involved before that date, see section 2666(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

**Effective Date of 1983 Amendment**

Amendment by sections 154(c) and 341(c) of Pub. L. 98–21 effective Apr. 20, 1983, see sections 154(e) and 341(d) of Pub. L. 98–21, set out as notes under section 401 of this title.

**Effective Date of 1978 Amendment**

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 401 of this title.

**Effective Date of 1972 Amendment**

Amendment by section 132(e) of Pub. L. 92–603 applicable with respect to gifts and bequests received after Oct. 30, 1972, see section 132(f) of Pub. L. 92–603, set out as a note under section 401 of this title.

Amendment by section 263(d)(4), (e) of Pub. L. 92–603 with respect to collection of premiums applicable to premiums becoming due and payable after the fourth month following the month of enactment of Pub. L. 92–603 which was approved on Oct. 30, 1972, see section 263(f) of Pub. L. 92–603, set out as a note under section 1395s of this title.

**Disposal of Funds in Federal Hospital Insurance Catastrophic Coverage Reserve Fund**

Section 102(c) of Pub. L. 101–234 provided that: "Any balance in the Federal Hospital Insurance Catastrophic Coverage Reserve Fund (created under section 1817(a) of the Social Security Act [former section 1817(a) of this title], as inserted by section 112(a) of MCCA [Pub. L. 100–360]) as of January 1, 1990, shall be transferred into the Federal Supplementary Medical Insurance Trust Fund and any amounts payable due to overpayments into such Trust Fund shall be payable from the Federal Supplementary Medical Insurance Trust Fund."

**Due Date for 1983 Report on Operation and Status of Trust Fund**

Notwithstanding subsec. (b)(2) of this section, the annual report of the Board of Trustees of the Trust Fund required for calendar year 1983 under this section may be filed at any time not later than forty-five days after Apr. 20, 1983, see section 154(d) of Pub. L. 98–21, set out as a note under section 401 of this title.


**Effective Date of Repeal**

Repeal effective Jan. 1, 1990, see section 202(b) of Pub. L. 101–234, set out as an Effective Date of 1989 Amendment note under section 401 of this title.
§ 1395u. Provisions relating to the administration of part B

(a) In general

The administration of this part shall be conducted through contracts with medicare administrative contractors under section 1395kk-1 of this title.

(b) Determination of reasonable charges


(C) In the case of residents of nursing facilities who receive services described in clause (i) or (ii) of section 1395x(2)(K) of this title performed by a member of a team, the Secretary shall instruct medicare administrative contractors to develop mechanisms which permit routine payment under this part for up to 1.5 visits per month per resident. In the previous sentence, the term “team” refers to a physician and includes a physician assistant acting under the supervision of the physician or a nurse practitioner working in collaboration with that physician, or both.

(3) The Secretary—

(A) shall take such action as may be necessary to assure that, where payment under this part for a service is on a cost basis, the cost is reasonable cost (as determined under section 1395x(v) of this title);  

(B) shall take such action as may be necessary to assure that, where payment under this part for a service is on a charge basis, such charge will be reasonable and not higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the medicare administrative contractor, and such payment will (except as otherwise provided in section 1395g(f) of this title) be made—

(i) on the basis of an itemized bill; or

(ii) on the basis of an assignment under the terms of which (I) the reasonable charge is the full charge for the service, (II) the physician or other person furnishing such service agrees not to charge (and to refund amounts already collected) for services for which payment under this subchapter is denied under section 1320c-3(a)(1)(B) of this title, and (III) the physician or other person furnishing such service agrees not to charge (and to refund amounts already collected) for such service if payment may not be made therefor by reason of the provisions of paragraph (1) of section 1395y(a) of this title, and if the individual to whom such service was furnished was without fault in incurring the expenses of such service, and if the Secretary’s determination that payment (pursuant to such assignment) was incorrect and was made subsequent to the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this subchapter (except in the case of physicians’ services and ambulance service furnished as described in section 1395y(a)(4) of this title, other than for purposes of section 1395g(f) of this title);

but (in the case of bills submitted, or requests for payment made, after March 1968) only if the bill is submitted, or a written request for payment is made in such other form as may be permitted under regulations, no later than the period ending 1 calendar year after the date of service;


(F) shall take such action as may be necessary to assure that where payment under this part for a service rendered is on a charge basis, such payment shall be determined on the basis of the charge that is determined in accordance with this section on the basis of customary and prevailing charge levels in effect at the time the service was rendered or, in the case of services rendered more than 12 months before the year in which the bill is submitted or request for payment is made, on the basis of such levels in effect for the 12-month period preceding such year;

(G) shall, for a service that is furnished with respect to an individual enrolled under this part, that is not paid on an assignment-related basis, and that is subject to a limiting charge under section 1395w–4(g) of this title—

(i) determine, prior to making payment, whether the amount billed for such service exceeds the limiting charge applicable under section 1395w–4(g)(2) of this title;

(ii) notify the physician, supplier, or other person periodically (but not less often than once every 30 days) of determinations that amounts billed exceeded such applicable limiting charges; and

(iii) provide for prompt response to inquiries of physicians, suppliers, and other persons concerning the accuracy of such limiting charges for their services;

(H) shall implement—

(i) programs to recruit and retain physicians as participating physicians in the area served by the medicare administrative contractor, including educational and outreach activities and the use of professional relations personnel to handle billing and other problems relating to payment of claims of participating physicians; and

(ii) programs to familiarize beneficiaries with the participating physician program and to assist such beneficiaries in locating participating physicians;


(L) shall monitor and profile physicians’ billing patterns within each area or locality and provide comparative data to physicians whose utilization patterns vary significantly from other physicians in the same payment area or locality.

\(^{1}\) So in original. Probably should be followed by “and”.\( ^{1}\)
In determining the reasonable charge for services for purposes of this paragraph, there shall be taken into consideration the customary charges for similar services generally made by the physician or other person furnishing such services, as well as the prevailing charges in the same locality for similar services. No charge may be determined to be reasonable in the case of bills submitted or requests for payment made under this part after December 31, 1970, if it exceeds the higher of (I) the prevailing charge recognized by the carrier and found acceptable by the Secretary for similar services in the same locality in administering this part on December 31, 1970, or (ii) the prevailing charge level that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 75 percent of the customary charges made for similar services in the same locality during the 12-month period ending on the June 30 last preceding the start of the calendar year in which the service is rendered. In the case of physicians' services the prevailing charge level determined for purposes of clause (ii) of the preceding sentence for any twelve-month period (beginning after June 30, 1973) specified in clause (ii) of such sentence may not exceed (in the aggregate) the level determined under such clause for the fiscal year ending June 30, 1973, or (with respect to physicians' services furnished in a year after 1987) the level determined under this sentence (or under any other provision of law affecting the prevailing charge level) for the previous year except to the extent that the Secretary finds, on the basis of appropriate economic index data, that such higher level is justified by year-to-year economic changes. With respect to power-operated wheelchairs for which payment may be made in accordance with section 1395x(s)(6) of this title, charges determined to be reasonable may not exceed the lowest charge at which power-operated wheelchairs are available in the locality. In the case of medical services, supplies, and equipment (including equipment servicing) that, in the judgment of the Secretary, do not generally vary significantly in quality from one supplier to another, the charges incurred after December 31, 1972, determined to be reasonable may not exceed the lowest charge levels at which such services, supplies, and equipment are widely and consistently available in a locality except to the extent and under the circumstances specified by the Secretary. The requirement in subparagraph (B) that a bill be submitted or request for payment be made by the close of the following calendar year shall not apply if (I) failure to submit the bill or request the payment by the close of such year is due to the error or misrepresentation of an officer, employee, fiscal intermediary, carrier, medicare administrative contractor, or agent of the Department of Health and Human Services performing functions under this subchapter and acting within the scope of his or its authority, and (II) the bill is submitted or the payment is requested promptly after such error or misrepresentation is eliminated or corrected. Notwithstanding the provisions of the third and fourth sentences preceding this sentence, the prevailing charge level in the case of a physician service in a particular locality determined pursuant to such third and fourth sentences for any calendar year after 1974 shall, if lower than the prevailing charge level for the fiscal year ending June 30, 1975, in the case of a similar physician service in the same locality by reason of the application of economic index data, be limited to such prevailing charge level for the fiscal year ending June 30, 1975, and shall remain at such prevailing charge level until the prevailing charge for a year (as adjusted by economic index data) equals or exceeds such prevailing charge level. The amount of any charges for outpatient services which shall be considered reasonable shall be subject to the limitations established by regulations issued by the Secretary pursuant to section 1395x(v)(1)(K) of this title, and in determining the reasonable charge for such services, the Secretary may limit such reasonable charge to a percentage of the amount of the prevailing charge for similar services furnished in a physician's office, taking into account the extent to which overhead costs associated with such outpatient services have been included in the reasonable cost or charge of the facility. In applying subparagraph (B), the Secretary may specify exceptions to the 1 calendar year period specified in such subparagraph.

(4)In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 12-month period beginning July 1, 1984, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning July 1, 1983.

(4)(A)(i) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 8-month period beginning May 1, 1986, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) at the time of furnishing the services, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning July 1, 1983.

(ii)In determining the prevailing charge levels under the fourth sentence of paragraph (3) for physicians' services furnished during the 8-month period beginning May 1, 1986, by a physician who is a participating physician (as defined in subsection (h)(1) of this section) at the time of furnishing the services, the Secretary shall permit an additional one percentage point increase in the increase otherwise permitted under that sentence.

(iii)In determining the maximum allowable prevailing charges which may be recognized consistent with the index described in the fourth sentence of paragraph (3) for physicians' services furnished on or after January 1, 1987, by participating physicians, the Secretary shall treat the maximum allowable prevailing charges recognized as of December 31, 1986, under such sentence with respect to participating physicians as having been justified by economic changes.

(iv)The reasonable charge for physicians' services furnished on or after January 1, 1987, and before January 1, 1992, by a nonparticipating physician shall be no greater than the applicable percent of the prevailing charge levels established under the third and fourth sentences of paragraph (3) or under any other applicable pro-
vision of law affecting the prevailing charge level). In the previous sentence, the term "applied percent" means for services furnished (I) on or after January 1, 1987, and before April 1, 1988, 96 percent, (II) on or after April 1, 1988, and before January 1, 1989, 95 percent, and (III) on or after January 1, 1989, 95 percent.

(v) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 3-month period beginning January 1, 1988, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning January 1, 1987.

(vi) Before each year (beginning with 1989), the Secretary shall establish a prevailing charge floor for primary care services (as defined in subsection (i)(4) of this section) at the time of furnishing the services—(I) 3.6 percent for primary care services (as defined in subsection (h)(1) of this section), and (II) 5.5 percent for services furnished during the 8-month period beginning May 1, 1986, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) at any time during the 12-month period beginning May 1, 1986, above the level of the physician's actual charges billed during the 3-month period ending on June 30, 1986.

(vi) Before each year (beginning with 1989), the Secretary shall establish a prevailing charge floor for primary care services (as defined in subsection (i)(4) of this section) at the time of furnishing the services—(I) 3.6 percent for primary care services (as defined in subsection (h)(1) of this section), and (II) 5.5 percent for services furnished during the 8-month period beginning May 1, 1986, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) at any time during the 12-month period beginning May 1, 1986, above the level of the physician's actual charges billed during the 3-month period ending on June 30, 1986.

(vii) Beginning with 1987, the percentage increase in the MEI (as defined in subsection (i)(3) of this section) for each year shall be the same for nonparticipating physicians as for participating physicians.

(B)(i) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 15-month period beginning July 1, 1984, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning January 1, 1987.

(ii) In determining the customary charges under paragraph (3) for physicians' services furnished during the 15-month period beginning July 1, 1984, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning January 1, 1987.

(iii) In determining the customary charges for physicians' services furnished during the 15-month period beginning on July 1, 1984, the physician's actual charges billed during the 3-month period ending on June 30, 1984, shall be the same customary charges as were recognized under this section for the 12-month period beginning January 1, 1987.

(iv) In determining the customary charges for physicians' services furnished during the 15-month period beginning on July 1, 1984, the physician's actual charges billed during the 3-month period ending on June 30, 1984, shall be the same customary charges as were recognized under this section for the 12-month period beginning January 1, 1987.

(v) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 15-month period beginning on July 1, 1984, the Secretary shall not recognize increases in actual charges for services furnished during the 8-month period beginning May 1, 1986, above the level of the physician's actual charges billed during the 3-month period ending on June 30, 1986.

(vi) Before each year (beginning with 1989), the Secretary shall treat the level as set under subparagraph (A)(i) as having fully provided for the economic changes which would have been taken into account but for the limitations contained in subparagraph (A)(i).

(D)(i) In determining the customary charges for physicians' services furnished during the 8-month period beginning May 1, 1986, or the 12-month period beginning January 1, 1987, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning January 1, 1988, if a physician was a nonparticipating physician who was not a participating physician (as defined in subsection (h)(1) of this section) on September 30, 1985, the Secretary shall not recognize increases in actual charges for services furnished during the 15-month period beginning on July 1, 1984, above the level of the physician's actual charges billed in the 3-month period ending on June 30, 1984.

(ii) In determining the customary charges for physicians' services furnished during the 8-month period beginning May 1, 1986, or the 12-month period beginning January 1, 1987, if a physician who was not a participating physician (as defined in subsection (h)(1) of this section) on April 30, 1986, the Secretary shall not recognize increases in actual charges for services furnished during the 15-month period beginning on October 1, 1985, above the level of the physician's actual charges billed during the 3-month period ending on June 30, 1984.

(iii) In determining the customary charges for physicians' services furnished during the 8-month period beginning May 1, 1986, or the 12-month period beginning January 1, 1987, if a physician who was not a participating physician (as defined in subsection (h)(1) of this section) on December 31, 1986, the Secretary shall not recognize increases in actual charges for services furnished during the 15-month period beginning on October 1, 1985, above the level of the physician's actual charges billed during the 3-month period ending on June 30, 1984.

(iv) In determining the customary charges for a physician's service furnished on or after January 1, 1988, if a physician was a nonparticipating physician in a previous year (beginning with 1987), the Secretary shall not recognize any amount of such actual charges (for that service furnished during such previous year) that exceeds the maximum allowable actual charge for such service established under subsection (j)(1)(C) of this section.

(E)(i) For purposes of this part for physicians' services furnished in 1987, the percentage increase in the MEI is 3.2 percent.

(ii) For purposes of this part for physicians' services furnished in 1988, on or after April 1, the percentage increase in the MEI is—

(I) 3.6 percent for primary care services (as defined in subsection (i)(4) of this section), and
(II) 1 percent for other physicians' services.

(iii) For purposes of this part for physicians' services furnished in 1989, the percentage increase in the MEI is—

(I) 3.0 percent for primary care services, and

(II) 1 percent for other physicians' services.

(iv) For purposes of this part for items and services furnished in 1990, after March 31, 1990, the percentage increase in the MEI is—

(I) 0 percent for radiology services, anesthesia services, and for other services specified in the list referred to in paragraph (14)(C)(i),

(II) 2 percent for other services (other than primary care services), and

(III) such percentage increase in the MEI (as defined in subsection (l)(3) of this section) as would be otherwise determined for primary care services (as defined in subsection (l)(4) of this section).

(v) For purposes of this part for items and services furnished in 1991, the percentage increase in the MEI is—

(I) 0 percent for services (other than primary care services), and

(II) 2 percent for primary care services (as defined in subsection (l)(4) of this section).


(6) No payment under this part for a service provided to any individual shall (except as provided in section 1395gg of this title) be made to anyone other than such individual or (pursuant to an assignment described in subparagraph (B)(i) of paragraph (3)) the physician or other person who provided the service, except that (A) payment may be made (i) to the employer of such physician or other person if such physician or other person is required as a condition of his employment to turn over his fee for such service to his employer, or (ii) where the service was provided under a contractual arrangement between such physician or other person and an entity, to the entity if, under the contractual arrangement, the entity submits the bill for the service and the contractual arrangement meets such program integrity and other safeguards as the Secretary may determine to be appropriate, (B) payment may be made to an entity (i) which provides coverage of the services under a health benefits plan, but only to the extent that payment is not made under this part, (ii) which has paid the person who provided the service an amount (including the amount payable under this part) which that person has accepted as payment in full for the service, and (iii) to which the individual has agreed in writing that payment may be made under this part, (C) in the case of services described in clause (i) of section 1395yy(e)(2)(A)(ii) of this title, payment shall be made to either (i) the employer of the physician assistant involved, or (ii) with respect to a physician assistant who was the owner of a rural health clinic (as described in section 1395x(aa)(2) of this title) for a continuous period beginning prior to August 5, 1997, and ending on the date that the Secretary determines such rural health clinic no longer meets the requirements of section 1395x(aa)(2) of this title, payment may be made directly to the physician assistant, (D) payment may be made to a physician for physicians' services (and services furnished incident to such services) furnished by a second physician to patients of the first physician if (i) the first physician is unavailable to provide the services; (ii) the services are furnished pursuant to an arrangement between the two physicians that (I) is informal and reciprocal, or (II) involves per diem or other fee-for-time compensation for such services; (iii) the services are not provided by the second physician over a continuous period of more than 60 days or are provided over a longer continuous period during all of which the first physician has been called or ordered to active duty as a member of a reserve component of the Armed Forces; and (iv) the claim form submitted to the medicare administrative contractor for such services includes the second physician's unique identifier (provided under the system established under subsection (r) of this section) and indicates that the claim meets the requirements of this subparagraph for payment to the first physician, (E) in the case of services furnished pursuant to a reassignment or power of attorney (pursuant to an assignment described in section 1395yy(e)(2)(A)(ii) of this title) furnished by, or under arrangements made by, a skilled nursing facility to an individual who (at the time the item or service is furnished) is a resident of a skilled nursing facility, payment shall be made directly to the facility. (F) In the case of home health services (including medical supplies described in section 1395x(m)(5) of this title, but excluding durable medical equipment to the extent provided for in such section) furnished to an individual who (at the time the item or service is furnished) is under a plan of care of a home health agency, payment shall be made to the agency (without regard to whether or not the item or service was furnished by the agency, by others under arrangement with them made by the agency, or when any other contracting or consulting arrangement, or otherwise), (G) in the case of services in a hospital or clinic to which section 1395yy of this title applies, payment shall be made to such hospital or clinic, and (H) in the case of services described in section 1395x(aa)(3) of this title that are furnished by a health care professional under a contract with a Federally qualified health center, payment shall be made to the center. No payment which under the preceding sentence may be made directly to the physician or other person providing the service involved (pursuant to an assignment described in subparagraph (B)(i) of paragraph (3)) shall be made to anyone else under a reassignment or power of attorney (except to an employer or entity as described in subparagraph (A) of such sentence); but nothing in this subsection shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the individual to whom the service was provided or a reassignment from the physician or other person providing such service if such assignment or reassignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of the physician or other person providing the service from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which
the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such physician or other person under this subchapter is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment. For purposes of subparagraph (C) of the first sentence of this paragraph, an employment relationship may include any independent contractor arrangement, and employer status shall be determined in accordance with the law of the State in which the services described in such clause are performed.

(7)(A) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1395w–4 of this title but which does not meet the conditions described in section 1395w–4(b)(7) of this title, the Secretary shall not provide (except on the basis described in subparagraph (C)) for payment for such services under this part—

(i) unless—

(I) the physician renders sufficient personal and identifiable physicians' services to the patient to exercise full, personal control over the management of the portion of the case for which the payment is sought,

(II) the services are of the same character as the services the physician furnishes to patients not entitled to benefits under this subchapter, and

(III) at least 25 percent of the hospital's patients (during a representative past period, as determined by the Secretary) who were not entitled to benefits under this subchapter and who were furnished services described in subclauses (I) and (II) paid all or a substantial part of charges (other than nominal charges) imposed for such services; and

(ii) to the extent that the payment is based upon a reasonable charge for the services in excess of the customary charge as determined in accordance with subparagraph (B).

(B) The customary charge for such services in a hospital shall be determined in accordance with regulations issued by the Secretary and taking into account the following factors:

(i) In the case of a physician who is not a teaching physician (as defined by the Secretary), the Secretary shall take into account the amounts the physician charges for similar services in the physician's practice outside the teaching setting.

(ii) In the case of a teaching physician, if the hospital, its physicians, or other appropriate billing entity has established one or more schedules of charges which are collected for medical and surgical services, the Secretary shall base payment under this subchapter on the greatest of—

(I) the charges (other than nominal charges) which are most frequently collected in full or substantial part with respect to such patients, or

(III) 85 percent of the prevailing charges paid for similar services in the same locality.

(iii) If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished to patients in such hospital on an assignment-related basis, the customary charge for such services shall be equal to 90 percent of the prevailing charges paid for similar services in the same locality.

(C) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1395w–4(b)(6) of this title but which does not meet the conditions described in section 1395w–4(b)(7) of this title, if the conditions described in subclauses (I) and (II) of subparagraph (A)(i) are met and if the physician elects payment to be determined under this subparagraph, the Secretary shall provide for payment for such services under this part on the basis of regulations of the Secretary governing reimbursement for the services of hospital-based physicians (and not on any other basis).

(8)(A)(i) The Secretary shall by regulation—

(I) are required due to exceptional medical circumstances,

(II) are performed by team physicians needed to perform complex medical procedures, or

(III) constitute concurrent medical care relating to a medical condition which requires the presence of, and active care by, a physician of another specialty during surgery, and under such other circumstances as the Secretary determines by regulation to be appropriate.

(ii) For purposes of this subparagraph, the term "assistant at surgery" means a physician who actively assists the physician in charge of a case in performing a surgical procedure.

(iii) The Secretary shall determine appropriate methods of reimbursement of assistants at surgery where such services are reimbursable under this part.
tion of an amount that, because of its being grossly excessive or grossly deficient, is not inherently reasonable, and

(II) provide in those cases for the factors to be considered in determining an amount that is realistic and equitable.

(ii) Notwithstanding the determination made in clause (i), the Secretary may not apply factors that would increase or decrease the payment under this part during any year for any particular item or service by more than 15 percent from such payment during the preceding year except as provided in subparagraph (B).

(B) The Secretary may make a determination under this subparagraph that would result in an increase or decrease under subparagraph (A) of more than 15 percent of the payment amount for a year, but only if—

(i) the Secretary's determination takes into account the factors described in subparagraph (C) and any additional factors the Secretary determines appropriate,

(ii) the Secretary's determination takes into account the potential impacts described in subparagraph (D), and

(iii) the Secretary complies with the procedural requirements of paragraph (9).

(C) The factors described in this subparagraph are as follows:

(i) The programs established under this subchapter and subchapter XIX of this chapter are the sole or primary sources of payment for an item or service.

(ii) The payment amount does not reflect changing technology, increased facility with that technology, or reductions in acquisition or production costs.

(iii) The payment amount for an item or service under this part is substantially higher or lower than the payment made for the item or service by other purchasers.

(D) The potential impacts of a determination under subparagraph (B) on quality, access, and beneficiary liability, including the likely effects on assignment rates and participation rates.

(9)(A) The Secretary shall consult with representatives of suppliers or other individuals who furnish an item or service before making a determination under paragraph (B) with regard to that item or service.

(B) The Secretary shall publish notice of a proposed determination under paragraph (8)(B) in the Federal Register—

(i) specifying the payment amount proposed to be established with respect to an item or service,

(ii) explaining the factors and data that the Secretary took into account in determining the payment amount so specified, and

(iii) explaining the potential impacts described in paragraph (8)(D).

(C) After publication of the notice required by subparagraph (B), the Secretary shall allow not less than 60 days for public comment on the proposed determination.

(D)(i) Taking into consideration the comments made by the public, the Secretary shall publish in the Federal Register a final determination under paragraph (8)(B) with respect to the payment amount to be established with respect to the item or service.

(ii) A final determination published pursuant to clause (i) shall explain the factors and data that the Secretary took into consideration in making the final determination.

(10)(A)(i) In determining the reasonable charge for procedures described in subparagraph (B) and performed during the 9-month period beginning on April 1, 1988, the prevailing charge for such procedure shall be the prevailing charge otherwise recognized for such procedure for 1987—

(I) subject to clause (iii), reduced by 2.0 percent, and

(II) further reduced by the applicable percentage specified in clause (ii).

(ii) For purposes of clause (i), the applicable percentage specified in this clause is—

(I) 15 percent, in the case of a prevailing charge otherwise recognized (without regard to this paragraph and determined without regard to physician specialty) that is at least 150 percent of the weighted national average (as determined by the Secretary) of such prevailing charges for such procedure for all localities in the United States for 1987;

(II) 0 percent, in the case of a prevailing charge that does not exceed 85 percent of such weighted national average; and

(III) in the case of any other prevailing charge, a percent determined on the basis of a straight-line sliding scale, equal to ½ of a percentage point for each percent by which the prevailing charge exceeds 85 percent of such weighted national average.

(iii) In no case shall the reduction under clause (i) for a procedure result in a prevailing charge in a locality for 1988 which is less than 85 percent of the Secretary’s estimate of the weighted national average of such prevailing charges for such procedure for all localities in the United States for 1987 (based upon the best available data and determined without regard to physician specialty) after making the reduction described in clause (1)(I).

(B) The procedures described in this subparagraph are as follows: bronchoscopy, carpal tunnel repair, cataract surgery (including subsequent insertion of an intraocular lens), coronary artery bypass surgery, diagnostic and/or therapeutic dilation and curettage, knee arthroscopy, knee arthroplasty, pacemaker implantation surgery, total hip replacement, suprapubic prostatectomy, transurethral resection of the prostate, and upper gastrointestinal endoscopy.

(C) In the case of a reduction in the reasonable charge for a physicians’ service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part, after the effective date of such reduction, the physician’s actual charge otherwise recognized (without regard to physician specialty) after making the reduction described in subsection (j)(1)(D) of this section.

(D) There shall be no administrative or judicial review under section 1395ff of this title or otherwise of any determination under subparagraph (A) or under paragraph (11)(B)(ii).

(11)(A) In providing payment for cataract eyeglasses and cataract contact lenses, and professional services relating to them, under this part, each carrier shall—
(i) provide for separate determinations of the payment amount for the eyeglasses and lenses and of the payment amount for the professional services of a physician (as defined in section 1395x(r) of this title), and

(ii) in determining the reasonable charge for such eyeglasses and lenses more than such amount as the Secretary establishes in guidelines relating to the inherent reasonableness of charges for such eyeglasses and lenses.

(B)(i) In determining the reasonable charge under paragraph (3) for a cataract surgical procedure, subject to clause (ii), the prevailing charge for such procedure otherwise recognized for participating and nonparticipating physicians shall be reduced by 10 percent with respect to procedures performed in 1987.

(ii) In no case shall the reduction under clause (i) for a surgical procedure result in a prevailing charge in a locality for a year which is less than 75 percent of the weighted national average of such prevailing charges for such procedure for all the localities in the United States for 1986.

(C)(i) The prevailing charge level determined with respect to A-mode ophthalmic ultrasound procedures may not exceed 5 percent of the prevailing charge level established with respect to extracapsular cataract removal with lens insertion.

(ii) The reasonable charge for an intraocular lens inserted during or subsequent to cataract surgery in a physician’s office may not exceed the actual acquisition cost for the lens (taking into account any discount) plus a handling fee (not to exceed 5 percent of such actual acquisition cost).

(D) In the case of a reduction in the reasonable charge for a physicians’ service or item under subparagraph (B) or (C), if a nonparticipating physician furnishes the service or item to an individual entitled to benefits under this part after the effective date of such reduction, the physician’s actual charge is subject to a limit under subsection (j)(1)(D) of this section.


(13)(A) In determining payments under section 1395u(l) of this title and section 1395w–4 of this title for anesthesia services that have been identified as overvalued by at least 10 percent, and for services furnished by a certified registered nurse anesthetist (whether or not medically directed) and shall be based on the methodology in effect, for anesthesia services furnished by physicians, as of August 10, 1993.

(B) The Secretary shall require claims for physicians’ services for medical direction of nurse anesthetists during the periods in which the provisions of subparagraph (A) apply to indicate the number of such anesthetists being medically directed concurrently at any time during the procedure, the name of each nurse anesthetist being directed, and the type of procedure for which the services are provided.

(C) For purposes of this paragraph:

(i) The physicians’ services specified in this clause are the procedures specified (by code and description) in the Overvalued Procedures List for Finance Committee, Revised September 20, 1989, prepared by the Physician Payment Review Commission which specification is of physicians’ services that have been identified as overvalued by at least 10 percent, based on a comparison of payments for such services under a resource-based relative value scale and of the national average prevailing charges under this part.

(ii) The “national weighted average prevailing charge” specified in this clause, for a physicians’ service specified in clause (i), is the national weighted average prevailing charge for the service in 1989 as determined by the Secretary using the best data available.
(iii) The “percentage change” specified in this clause, for a physicians’ service specified in clause (i), is the percent difference (but expressed as a positive number) specified for the service in the list referred to in clause (i).

(iv) The geographic practice cost index value specified in this clause for a locality is the Geographic Overhead Costs Index specified for the locality in table 1 of the September 1989 Supplement to the Geographic Medicare Economic Index: Alternative Approaches (prepared by the Urban Institute and the Center for Health Economics Research).

(D) In the case of a reduction in the prevailing charge for a physicians’ service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part, after the effective date of such reduction, the physician’s actual charge is subject to a limit under subsection (j)(1)(D) of this section.

(15)(A) In determining the reasonable charge for surgery, radiology, and diagnostic physicians’ services which the Secretary shall designate (based on their high volume of expenditures under this part) and for which the prevailing charge (but for this paragraph) differs by physician specialty, the prevailing charge for such a service may not exceed the prevailing charge or fee schedule amount for that specialty of physicians that furnish the service most frequently nationally.

(B) In the case of a reduction in the prevailing charge for a physician’s service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part, after the effective date of the reduction, the physician’s actual charge is subject to a limit under subsection (j)(1)(D) of this section.

(16)(A) In determining the reasonable charge for all physicians’ services other than physicians’ services specified in subparagraph (B) furnished during 1991, the prevailing charge for a locality shall be 6.5 percent below the prevailing charges used in the locality under this part in 1989 after March 31.

(B) For purposes of subparagraph (A), the physicians’ services specified in this subparagraph are as follows:

(i) Radiology, anesthesia and physician pathology services, the technical components of diagnostic tests specified in paragraph (14)(C)(i).

(ii) Primary care services specified in subsection (i)(4) of this section, hospital inpatient medical services, consultations, other visits, preventive medicine visits, psychiatric services, emergency care facility services, and critical care services.

(iii) Partial mastectomy; tendon sheath injections and small joint arthrocentesis; femoral fracture and trochanteric fracture treatments (based on their high volume of expenditures under this part), intubation; thoracentesis; thoracotomy; aneurysm repair; cystourethroscopy; transurethral fulguration and resection; tympanoplasty with mastoidectomy; and ophthalmoscopy.

(17) With respect to payment under this part for the technical (as distinct from professional) component of diagnostic tests (other than clinical diagnostic laboratory tests, tests specified in paragraph (14)(C)(i), and radiology services, including portable x-ray services) which the Secretary shall designate (based on their high volume of expenditures under this part), the reasonable charge for such technical component (including the applicable portion of a global service) may not exceed the national median of such charges for all localities, as estimated by the Secretary using the best available data.

(18)(A) Payment for any service furnished by a practitioner described in subparagraph (C) or for which payment may be made under this part on a reasonable charge or fee schedule basis may only be made under this part on an assignment-related basis.

(B) A practitioner described in subparagraph (C) or other person may not bill (or collect any amount from) the individual or another person for any service described in subparagraph (A), except for deductible and coinsurance amounts applicable under this part. No person is liable for payment of any amounts billed for such a service in violation of the previous sentence. If a practitioner or other person knowingly and willfully bills (or collects an amount) for such a service in violation of such sentence, the Secretary may apply sanctions against the practitioner or other person in the same manner as the Secretary may apply sanctions against a physician in accordance with subsection (j)(2) of this section in the same manner as such section applies with respect to a physician. Paragraph (4) of subsection (j) of this section shall apply in this subparagraph in the same manner as such paragraph applies to such section.

(C) A practitioner described in this subparagraph is any of the following:

(i) A physician assistant, nurse practitioner, or clinical nurse specialist (as defined in section 1395x(aa)(5) of this title).

(ii) A certified registered nurse anesthetist (as defined in section 1395x(bb)(2) of this title).

(iii) A certified nurse-midwife (as defined in section 1395x(gg)(2) of this title).

(iv) A clinical social worker (as defined in section 1395x(hh)(1) of this title).

(v) A clinical psychologist (as defined by the Secretary for purposes of section 1395x(ii) of this title).

(vi) A registered dietitian or nutrition professional.

(D) For purposes of this paragraph, a service furnished by a practitioner described in subparagraph (C) includes any services and supplies furnished as incident to the service as would otherwise be covered under this part if furnished by a physician or as incident to a physician’s service.

(19) For purposes of section 1395x(a)(1) of this title, the reasonable charge for ambulance services (as described in section 1395x(a)(7) of this title) provided during calendar year 1998 and calendar year 1999 may not exceed the reasonable charge for such services provided during the previous calendar year (after application of this paragraph), increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved reduced by 1.0 percentage point.
(c) Prompt payment of claims


(2)(A) Each contract under section 1395kk–1 of this title that provides for making payments under this part shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to not less than 95 percent of all claims submitted under this part—

(i) which are clean claims, and

(ii) for which payment is not made on a periodic interim payment basis,

within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph:

(i) The term “clean claim” means a claim that has no defect or impropiety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this part.

(ii) The term “applicable number of calendar days” means—

(I) with respect to claims received in the 12-month period beginning October 1, 1986, 30 calendar days,

(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days (or 19 calendar days with respect to claims submitted by participating physicians),

(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days (or 18 calendar days with respect to claims submitted by participating physicians),

(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period ending on or before September 30, 1993, 24 calendar days (or 17 calendar days with respect to claims submitted by participating physicians), and

(V) with respect to claims received in the 12-month period beginning October 1, 1993, and claims received in any succeeding 12-month period, 30 calendar days.

(C) If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in clause (I) of subparagraph (B)) after a clean claim (as defined in clause (i) of such subparagraph) is received, interest shall be paid at the rate used for purposes of section 3902(a) of title 31 (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made.

(3)(A) Each contract under this section which provides for the disbursement of funds, as described in section 1395kk–1(a)(3)(B) of this title, shall provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted under this subchapter within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph, the term “applicable number of calendar days” means—

(i) with respect to claims submitted electronically as prescribed by the Secretary, 13 days, and

(ii) with respect to claims submitted otherwise, 28 days.

(4) Neither a medicare administrative contractor nor the Secretary may impose a fee under this subchapter—

(A) for the filing of claims related to physicians’ services,

(B) for an error in filing a claim relating to physicians’ services or for such a claim which is denied,

(C) for any appeal under this subchapter with respect to physicians’ services,

(D) for applying for (or obtaining) a unique identifier under subsection (r) of this section, or

(E) for responding to inquiries respecting physicians’ services or for providing information with respect to medical review of such services.


(g) Authority of Railroad Retirement Board to enter into contracts with medicare administrative contractors

The Railroad Retirement Board shall, in accordance with such regulations as the Secretary may prescribe, contract with a medicare administrative contractor or contractors to perform the functions set out in this section with respect to individuals entitled to benefits as qualified railroad retirement beneficiaries pursuant to section 426(a) of this title and section 231f(d) of title 45.

(h) Participating physician or supplier; agreement with Secretary; publication of directories; availability; inclusion of program in explanation of benefits; payment of claims on assignment-related basis

(1) Any physician or supplier may voluntarily enter into an agreement with the Secretary to become a participating physician or supplier. For purposes of this section, the term “participating physician or supplier” means a physician or supplier (excluding any provider of services) who, before the beginning of any year beginning with 1984, enters into an agreement with the Secretary which provides that such physician or supplier will accept payment under this part on an assignment-related basis for all items and services furnished to individuals enrolled under this part during such year. In the case of a newly licensed physician or a physician who begins a practice in a new area, or in the case of a new supplier who begins a new business, or in such similar cases as the Secretary may specify, such physician or supplier may enter into such an agreement after the beginning of a year, for items and services furnished during the remainder of the year.

(2) The Secretary shall maintain a toll-free telephone number or numbers at which individuals enrolled under this part may obtain the names, addresses, specialty, and telephone numbers of participating physicians and suppliers and may request a copy of an appropriate directory published under paragraph (4). The Secretary shall, without charge, mail a copy of such directory upon such a request.
In any case in which a Medicare administrative contractor having a contract under section 1395kk–1 of this title that provides for making payments under this part is able to develop a system for the electronic transmission to such contractor of bills for services, such contractor shall establish direct lines for the electronic receipt of claims from participating physicians and suppliers.

(B) The Secretary shall establish a procedure whereby an individual enrolled under this part may assign, in an appropriate manner on the form claiming a benefit under this part for an item or service furnished by a participating physician or supplier, the individual’s rights of payment under a Medicare supplemental policy (described in section 1395ss(g)(1) of this title) in which the individual is enrolled. In the case such an assignment is properly executed and a payment determination is made by a Medicare administrative contractor with a contract under this section, the contractor shall transmit the private entity issuing the Medicare supplemental policy notice of such fact and shall include an explanation of benefits and any additional information that the Secretary may determine to be appropriate in order to enable the entity to decide whether (and the amount of) any payment is due under the policy. The Secretary may enter into agreements for the transmission of such information to entities electronically. The Secretary shall impose user fees for the transmission of information under this subparagraph by a Medicare administrative contractor, whether electronically or otherwise, and such user fees shall be collected and retained by the contractor.

(4) At the beginning of each year the Secretary shall publish directories (for appropriate local geographic areas) containing the name, address, and specialty of all participating physicians and suppliers (as defined in paragraph (1)) for that area for that year. Each directory shall be organized to make the most useful presentation of the information (as shall be determined by the Secretary) for individuals enrolled under this part. Each participating physician directory for an area shall provide an alphabetical listing of all participating physicians practicing in the area and an alphabetical listing by locality and specialty of such physicians.

(5) (A) The Secretary shall promptly notify individuals enrolled under this part through an annual mailing of the participation program under this subsection and the publication and availability of the directories and shall make the appropriate area directory or directories available in each district and branch office of the Social Security Administration, in the offices of Medicare administrative contractors, and to senior citizen organizations. The annual notice provided under subparagraph (A) shall include—

(i) a description of the program,

(ii) an explanation of the advantages to beneficiaries of obtaining covered services through a participating physician or supplier,

(iii) an explanation of the assistance offered by Medicare administrative contractors in obtaining the names of participating physicians and suppliers, and

(iv) the toll-free telephone number under paragraph (2)(A) for inquiries concerning the program and for requests for free copies of appropriate directories.

(6) The Secretary shall provide that the directories shall be available for purchase by the public. The Secretary shall provide that each appropriate area directory is sent to each participating physician located in that area and that an appropriate number of copies of each such directory is sent to hospitals located in the area. Such copies shall be sent free of charge.

(7) The Secretary shall provide that each explanation of benefits provided under this part for services furnished in the United States, in conjunction with the payment of claims under section 1395(a)(1) of this title (made other than on an assignment-related basis), shall include—

(A) a prominent reminder of the participating physician and supplier program established under this subsection (including the limitation on charges that may be imposed by such physicians and suppliers and a clear statement of any amounts charged for the particular items or services on the claim involved above the amount recognized under this part),

(B) the toll-free telephone number or numbers, maintained under paragraph (2), at which an individual enrolled under this part may obtain information on participating physicians and suppliers,

(C)(i) an offer of assistance to such an individual in obtaining the names of participating physicians of appropriate specialty and (ii) an offer to provide a free copy of the appropriate participating physician directory, and

(D) in the case of services for which the billed amount exceeds the limiting charge imposed under section 1395w–4(g) of this title, information regarding such applicable limiting charge (including information concerning the right to a refund under section 1395w–4(g)(1)(A)(iv) of this title).

(8) The Secretary may refuse to enter into an agreement with a physician or supplier under this subsection, or may terminate or refuse to renew such agreement, in the event that such physician or supplier has been convicted of a felony under Federal or State law for an offense which the Secretary determines is detrimental to the best interests of the program or program beneficiaries.

(9) The Secretary may revoke enrollment, for a period of not more than one year for each act, for a physician or supplier under section 1395cc(j) of this title if such physician or supplier has been convicted of a felony under Federal or State law for an offense which the Secretary determines is detrimental to the best interests of the program or program beneficiaries.

The annual notice provided under subparagraph (A) shall include—

(i) a description of the participation program,

(ii) an explanation of the advantages to beneficiaries of obtaining covered services through a participating physician or supplier,

(iii) an explanation of the assistance offered by Medicare administrative contractors in obtaining the names of participating physicians and suppliers, and

(iv) the toll-free telephone number under paragraph (2)(A) for inquiries concerning the program and for requests for free copies of appropriate directories.

(B) The Secretary shall establish a procedure whereby an individual enrolled under this part may assign, in an appropriate manner on the form claiming a benefit under this part for an item or service furnished by a participating physician or supplier, the individual’s rights of payment under a Medicare supplemental policy (described in section 1395ss(g)(1) of this title) in which the individual is enrolled. In the case such an assignment is properly executed and a payment determination is made by a Medicare administrative contractor with a contract under this section, the contractor shall transmit the private entity issuing the Medicare supplemental policy notice of such fact and shall include an explanation of benefits and any additional information that the Secretary may determine to be appropriate in order to enable the entity to decide whether (and the amount of) any payment is due under the policy. The Secretary may enter into agreements for the transmission of such information to entities electronically. The Secretary shall impose user fees for the transmission of information under this subparagraph by a Medicare administrative contractor, whether electronically or otherwise, and such user fees shall be collected and retained by the contractor.

(4) At the beginning of each year the Secretary shall publish directories (for appropriate local geographic areas) containing the name, address, and specialty of all participating physicians and suppliers (as defined in paragraph (1)) for that area for that year. Each directory shall be organized to make the most useful presentation of the information (as shall be determined by the Secretary) for individuals enrolled under this part. Each participating physician directory for an area shall provide an alphabetical listing of all participating physicians practicing in the area and an alphabetical listing by locality and specialty of such physicians.

(5) (A) The Secretary shall promptly notify individuals enrolled under this part through an annual mailing of the participation program under this subsection and the publication and availability of the directories and shall make the appropriate area directory or directories available in each district and branch office of the Social Security Administration, in the offices of Medicare administrative contractors, and to senior citizen organizations. The annual notice provided under subparagraph (A) shall include—

(i) a description of the program,

(ii) an explanation of the advantages to beneficiaries of obtaining covered services through a participating physician or supplier,

(iii) an explanation of the assistance offered by Medicare administrative contractors in obtaining the names of participating physicians and suppliers, and

(iv) the toll-free telephone number under paragraph (2)(A) for inquiries concerning the program and for requests for free copies of appropriate directories.

(B) The Secretary shall establish a procedure whereby an individual enrolled under this part may assign, in an appropriate manner on the form claiming a benefit under this part for an item or service furnished by a participating physician or supplier, the individual’s rights of payment under a Medicare supplemental policy (described in section 1395ss(g)(1) of this title) in which the individual is enrolled. In the case such an assignment is properly executed and a payment determination is made by a Medicare administrative contractor with a contract under this section, the contractor shall transmit the private entity issuing the Medicare supplemental policy notice of such fact and shall include an explanation of benefits and any additional information that the Secretary may determine to be appropriate in order to enable the entity to decide whether (and the amount of) any payment is due under the policy. The Secretary may enter into agreements for the transmission of such information to entities electronically. The Secretary shall impose user fees for the transmission of information under this subparagraph by a Medicare administrative contractor, whether electronically or otherwise, and such user fees shall be collected and retained by the contractor.

(4) At the beginning of each year the Secretary shall publish directories (for appropriate local geographic areas) containing the name, address, and specialty of all participating physicians and suppliers (as defined in paragraph (1)) for that area for that year. Each directory shall be organized to make the most useful presentation of the information (as shall be determined by the Secretary) for individuals enrolled under this part. Each participating physician directory for an area shall provide an alphabetical listing of all participating physicians practicing in the area and an alphabetical listing by locality and specialty of such physicians.

(5) (A) The Secretary shall promptly notify individuals enrolled under this part through an annual mailing of the participation program under this subsection and the publication and availability of the directories and shall make the appropriate area directory or directories available in each district and branch office of the Social Security Administration, in the offices of Medicare administrative contractors, and to senior citizen organizations. The annual notice provided under subparagraph (A) shall include—

(i) a description of the program,

(ii) an explanation of the advantages to beneficiaries of obtaining covered services through a participating physician or supplier,

(iii) an explanation of the assistance offered by Medicare administrative contractors in ob-
on the basis of an assignment described in subsection (b)(3)(B)(ii) of this section, in accordance with subsection (b)(6)(B) of this section, or under the procedure described in section 1395gg(f)(1) of this title.

(2) The term “participating physician” refers, with respect to the furnishing of services, to a physician who at the time of furnishing the services is a participating physician (under subsection (h)(1) of this section); the term “nonparticipating physician” refers, with respect to the furnishing of services, to a physician who at the time of furnishing the services is not a participating physician; and the term “nonparticipating supplier or other person” means a supplier or other person (excluding a provider of services) that is not a participating physician or supplier (as defined in subsection (h)(1) of this section).

(3) The term “percentage increase in the MEI” means, with respect to physicians’ services furnished in a year, the percentage increase in the medicare economic index (referred to in the fourth sentence of subsection (b)(3) applicable to such services furnished as of the first day of that year.

(4) The term “primary care services” means physicians’ services which constitute office medical services, emergency department services, home medical services, skilled nursing, intermediate care, and long-term care medical services, or nursing home, boarding home, domiciliary, or custodial care medical services.

(j) Monitoring of charges of nonparticipating physicians; sanctions; restitution

(1)(A) In the case of a physician who is not a participating physician for items and services furnished during a portion of the 30-month period beginning July 1, 1984, the Secretary shall monitor the physician’s actual charges to individuals enrolled under this part for physicians’ services during that portion of that period. If such physician knowingly and willfully bills individuals enrolled under this part for actual charges in excess of such physician’s actual charges for the calendar quarter beginning on April 1, 1984, the Secretary may apply sanctions against such physician in accordance with paragraph (2).

(B)(i) During any period (on or after January 1, 1987, and before the date specified in clause (ii)), during which a physician is a nonparticipating physician, the Secretary shall monitor the actual charges of each such physician for physicians’ services furnished to individuals enrolled under this part. If such physician knowingly and willfully bills on a repeated basis for a service an actual charge in excess of the maximum allowable actual charge determined under subparagraph (C) for that service, the Secretary may apply sanctions against such physician in accordance with paragraph (2).

(ii) Clause (i) shall not apply to services furnished after December 31, 1996.

(C)(i) For a particular physician’s service furnished by a nonparticipating physician to individuals enrolled under this part during a year, for purposes of subparagraph (B), the maximum allowable actual charge is determined as follows: If the physician’s maximum allowable actual charge for that service in the previous year was—

(I) less than 115 percent of the applicable percent (as defined in subsection (b)(4)(A)(iv) of this section) of the prevailing charge for the year and service involved, the maximum allowable actual charge for the year involved is the greater of the maximum allowable actual charge described in subclause (II) or the charge described in clause (ii), or

(II) equal to, or greater than, 115 percent of the applicable percent (as defined in subsection (b)(4)(A)(iv) of this section) of the prevailing charge for the year and service involved, the maximum allowable actual charge is 101 percent of the physician’s maximum allowable actual charge for the service for the previous year.

(ii) For purposes of clause (i)(I), the charge described in this clause for a particular physician’s service furnished in a year is the maximum allowable actual charge for the service of the physician for the previous year plus the product of the applicable fraction (as defined in clause (iii)) and (II) the amount by which 115 percent of the prevailing charge for the year involved for such service furnished by nonparticipating physicians, exceeds the physician’s maximum allowable actual charge for the service for the previous year.

(iii) In clause (ii), the “applicable fraction” is—

(I) for 1987, 1⁄4,

(II) for 1988, 1⁄3,

(III) for 1989, 1⁄2, and

(IV) for any subsequent year, 1.

(iv) For purposes of determining the maximum allowable actual charge under clauses (I) and (ii) for 1987, in the case of a physicians’ service for which the physician has actual charges for the calendar quarter beginning on April 1, 1984, the “maximum allowable actual charge” for 1986 is the physician’s actual charge for such service furnished during such quarter.

(v) For purposes of determining the maximum allowable actual charge under clauses (I) and (ii) for a year after 1986, in the case of a physicians’ service for which the physician has no actual charges for the calendar quarter beginning on April 1, 1984, and for which a maximum allowable actual charge has not been previously established under this clause, the “maximum allowable actual charge” for the previous year shall be the 50th percentile of the customary charges for the service (weighted by frequency of the service) performed by nonparticipating physicians in the locality during the 12-month period ending June 30 of that previous year.

(vi) For purposes of this subparagraph, a “physician’s actual charge” for a physicians’ service furnished in a year or other period is the weighted average (or, at the option of the Secretary for a service furnished in the calendar quarter beginning April 1, 1984, the median) of the physician’s charges for such service furnished in the year or other period.

(vii) In the case of a nonparticipating physician who was a participating physician during a previous period, for the purpose of computing
the physician's maximum allowable actual charge during the physician's period of nonparticipation, the physician shall be deemed to have had a maximum allowable actual charge during the period of participation, and such deemed maximum allowable actual charge shall be determined according to clauses (i) through (vi).

(viii) Notwithstanding any other provision of this subparagraph, the maximum allowable actual charge for a particular physician's service furnished by a nonparticipating physician to individuals enrolled under this part during the 3-month period beginning on January 1, 1988, shall be the amount determined under this subparagraph for 1987. The maximum allowable actual charge for any such service otherwise determined under this subparagraph for 1988 shall take effect on April 1, 1988.

(ix) If there is a reduction under subsection (b)(13) of this section in the reasonable charge for medical direction furnished by a nonparticipating physician, the maximum allowable actual charge otherwise permitted under this subsection for such services shall be reduced in the same manner and in the same percentage as the reduction in such reasonable charge.

(1) An action described in clause (ii) results in a reduction in a reasonable charge for a physicians' service or item and a nonparticipating physician furnishes the service or item to an individual entitled to benefits under this part after the effective date of such action, the physician may not charge the individual more than 125 percent of the reduced payment allowance (as defined in clause (iii)) plus (for services or items furnished during the 12-month period (or 9-month period in the case of an action described in clause (ii)(II)) beginning on the effective date of such action) 1⁄2 of the amount by which the physician's maximum allowable actual charge for the service or item for the previous 12-month period exceeds such 125 percent level.

(ii) The first sentence of clause (i) shall apply to—

(I) an adjustment under subsection (b)(8)(B) of this section (relating to inherent reasonableness),

(II) a reduction under subsection (b)(10)(A) or (b)(14)(A) of this section (relating to certain overpriced procedures),

(III) a reduction under subsection (b)(11)(B) of this section (relating to certain cataract procedures),

(IV) a prevailing charge limit established under subsection (b)(11)(C)(i) or (b)(15)(A) of this section,

(V) a reasonable charge limit established under subsection (b)(11)(C)(ii) of this section, and

(VI) an adjustment under section 1395u(l)(3)(B) of this title (relating to physician supervision of certified registered nurse anesthetists).

(iii) In clause (i), the term "reduced payment allowance" means, with respect to an action—

(I) under subsection (b)(8)(B) of this section, the inherently reasonable charge established under subsection (b)(8) of this section;

(II) under subsection (b)(10)(A), (b)(11)(B), (b)(11)(C)(i), (b)(14)(A), or (b)(15)(A) of this section or under section 1385(l)(3)(B) of this title, the prevailing charge for the service after the action; or

(III) under subsection (b)(11)(C)(ii) of this section, the payment allowance established under such subsection.

(iv) If a physician knowingly and willfully bills in violation of clause (i) (whether or not such charge violates subparagraph (b)), the Secretary may apply sanctions against such physician in accordance with paragraph (2).

(v) Clause (i) shall not apply to items and services furnished after December 31, 1990.

(2) Subject to paragraph (3), the sanctions which the Secretary may apply under this paragraph are—

(A) excluding a physician from participation in the programs under this chapter for a period not to exceed 5 years, in accordance with the procedures of subsections (c), (l), and (g) of section 1320a–7 of this title, or

(B) civil monetary penalties and assessments, in the same manner as such penalties and assessments are authorized under section 1320a–7(a)(a) of this title, or both. The provisions of section 1320a–7a(a) of this title (other than the first 2 sentences of subsection (a) and other than subsection (b)) shall apply to a civil money penalty and assessment under subparagraph (B) in the same manner as such provisions apply to a penalty, assessment, or proceeding under section 1320a–7a(a) of this title, except to the extent such provisions are inconsistent with subparagraph (A) or paragraph (3).

(3)(A) The Secretary may not exclude a physician pursuant to paragraph (2)(A) if such physician is a sole community physician or sole source of essential specialized services in a community.

(B) The Secretary shall take into account access of beneficiaries to physicians' services for which payment may be made under this part in determining whether to bar a physician from participation under paragraph (2)(A).

(4) The Secretary may, out of any civil monetary penalty or assessment collected from a physician pursuant to this subsection, make a payment to a beneficiary enrolled under this part in the nature of restitution for amounts paid by such beneficiary to such physician which was determined to be an excess charge under paragraph (1).

(k) Sanctions for billing for services of assistant at cataract operations

(1) If a physician knowingly and willfully presents or causes to be presented a claim or bills an individual enrolled under this part for charges for services as an assistant at surgery for which payment may not be made by reason of section 1395y(a)(15) of this title, the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section in the case of surgery performed on or after March 1, 1987.

(2) If a physician knowingly and willfully presents or causes to be presented a claim or bills an individual enrolled under this part for charges that includes a charge for an assistant
at surgery for which payment may not be made by reason of section 1395y(a)(15) of this title, the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section in the case of surgery performed on or after March 1, 1987.

(i) Prohibition of unassigned billing of services determined to be medically unnecessary by carrier

(1)(A) Subject to subparagraph (C), if—

(i) a nonparticipating physician furnishes services to an individual enrolled for benefits under this part,

(ii) payment for such services is not accepted on an assignment-related basis,

(iii)(I) a medicare administrative contractor determines under this part or a quality improvement organization determines under part B of subchapter XI of this chapter that payment may not be made by reason of section 1395y(a)(1) of this title because a service otherwise covered under this subchapter is not reasonable and necessary under the standards described in that section or (II) payment under this subchapter for such services is denied under section 1320c–3(a)(2) of this title by reason of a determination under section 1320c–3(a)(1)(B) of this title, and

(iv) the physician has collected any amounts for such services,

the physician shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts so collected.

(B) A refund under subparagraph (A) is considered to be on a timely basis only if—

(i) in the case of a physician who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the physician receives a denial notice under paragraph (2), or

(ii) in the case in which such a reconsideration or appeal is taken, the refund is made within 15 days after the date the physician receives notice of an adverse determination on reconsideration or appeal.

(C) Subparagraph (A) shall not apply to the furnishing of a service by a physician to an individual in the case described in subparagraph (A)(iii)(I) if—

(i) the physician establishes that the physician did not know and could not reasonably have been expected to know that payment may not be made for the service by reason of section 1395y(a)(1) of this title, or

(ii) before the service was provided, the individual was informed that payment under this part may not be made for the specific service and the individual has agreed to pay for that service.

(2) Each medicare administrative contractor with a contract in effect under this section with respect to physicians and each quality improvement organization with a contract under part B of subchapter XI of this chapter shall send any notice of denial of payment for physicians' services based on section 1395y(a)(1) of this title and for which payment is not requested on an assignment-related basis to the physician and the individual involved.

(3) If a physician knowingly and willfully fails to make refunds in violation of paragraph (1)(A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

(m) Disclosure of information of unassigned claims for certain physicians' services

(1) In the case of a nonparticipating physician who—

(A) performs an elective surgical procedure for an individual enrolled for benefits under this part and for which the physician’s actual charge is at least $500, and

(B) does not accept payment for such procedure on an assignment-related basis,

the physician must disclose to the individual, in writing and in a form approved by the Secretary, the physician’s estimated actual charge for the procedure, the estimated approved charge under this part for the procedure, the excess of the physician’s actual charge over the approved charge, and the coinsurance amount applicable to the procedure. The written estimate may not be used as the basis for, or evidence in, a civil suit.

(2) A physician who fails to make a disclosure required under paragraph (1) with respect to a procedure shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected for the procedure in excess of the charges recognized and approved under this part.

(3) If a physician knowingly and willfully fails to comply with paragraph (2), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

(n) Elimination of markup for certain purchased services

(1) If a physician’s bill or a request for payment for services billed by a physician includes a charge for a diagnostic test described in section 1395u(a)(3) of this title (other than a clinical diagnostic laboratory test) for which the bill or request for payment does not indicate that the billing physician personally performed or supervised the performance of the test or that another physician with whom the physician who shares a practice personally performed or supervised the performance of the test, the amount payable with respect to the test shall be determined as follows:

(A) If the bill or request for payment indicates that the test was performed by a supplier, identifies the supplier, and indicates the amount the supplier charged the billing physician, payment for the test (less the applicable deductible and coinsurance amounts) shall be the actual acquisition costs (net of any discounts) or, if lower, the supplier’s reasonable charge (or other applicable limit) for the test.

(B) If the bill or request for payment (i) does not indicate who performed the test, or (ii) indicates that the test was performed by a supplier but does not identify the supplier or in-
clude the amount charged by the supplier, no payment shall be made under this part.

(2) A physician may not bill an individual enrolled under this part—

(A) any amount other than the payment amount specified in paragraph (1)(A) and any applicable deductible and coinsurance for a diagnostic test for which payment is made pursuant to paragraph (1)(A), or

(B) any amount for a diagnostic test for which payment may not be made pursuant to paragraph (1)(B).

(3) If a physician knowingly and willfully in repeated cases bills one or more individuals in violation of paragraph (2), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

(o) Reimbursement for drugs and biologicals

(1) If a physician’s, supplier’s, or any other person’s bill or request for payment for services includes a charge for a drug or biological for which payment may be made under this part and the drug or biological is not paid on a cost or prospective payment basis as otherwise provided in this part, the amount payable for the drug or biological is equal to the following:

(A) In the case of any of the following drugs or biologicals, 95 percent of the average wholesale price:

(i) A drug or biological furnished before January 1, 2004.

(ii) A drug or biological furnished during 2004.

(iii) A drug or biological furnished during 2004 that was not available for payment under this part as of April 1, 2003.

(iv) A vaccine described in subparagraph (A) or (B) of section 1395x(s)(10) of this title furnished on or after January 1, 2004.

(v) A drug or biological furnished during 2004 in connection with the furnishing of renal dialysis services if separately billed by renal dialysis facilities.

(B) In the case of a drug or biological furnished during 2004 that is not described in—

(i) clause (ii), (iii), (iv), or (v) of subparagraph (A),

(ii) subparagraph (D)(i), or

(iii) subparagraph (F), the amount determined under paragraph (4).

(C) In the case of a drug or biological that is not described in subparagraph (A) or (D)(i), or (F) furnished on or after January 1, 2005, the amount provided under section 1395w–3 of this title, section 1395w–3a of this title, section 1395w–3b of this title, or section 1395w–3r of this title, as the case may be for the drug or biological.

(D)(i) Except as provided in clause (ii), in the case of infusion drugs furnished through an item of durable medical equipment covered under section 1395w–3 of this title on or after January 1, 2004, 95 percent of the average wholesale price for such drug in effect on October 1, 2003.

(ii) In the case of such infusion drugs furnished in a competitive acquisition area under section 1395w–3 of this title on or after January 1, 2007, the amount provided under section 1395w–3 of this title.

(E) In the case of a drug or biological, consisting of intravenous immune globulin, furnished—

(i) in 2004, the amount provided under paragraph (4); and

(ii) in 2005 and subsequent years, the amount of payment provided under section 1395w–3a of this title.

(F) In the case of blood and blood products (other than blood clotting factors), the amount of payment shall be determined in the same manner as such amount of payment was determined on October 1, 2003.

(G) In the case of inhalation drugs or biologicals furnished through durable medical equipment covered under section 1395x(n) of this title that are furnished—

(i) in 2004, the amount provided under paragraph (4) for the drug or biological; and

(ii) in 2005 and subsequent years, the amount provided under section 1395w–3a of this title for the drug or biological.

(2) If payment for a drug or biological is made to a licensed pharmacy approved to dispense drugs or biologicals under this part, the Secretary may pay a dispensing fee (less the applicable deductible and coinsurance amounts) to the pharmacy. This paragraph shall not apply in the case of payment under paragraph (1)(C).

(3)(A) Payment for a charge for any drug or biological for which payment may be made under this part may be made only on an assignment-related basis.

(B) The provisions of subsection (b)(18)(B) of this section shall apply to charges for such drugs or biologicals in the same manner as they apply to services furnished by a practitioner described in subsection (b)(18)(C) of this section.

(4)(A) Subject to the succeeding provisions of this paragraph, the amount of payment for a drug or biological under this paragraph furnished in 2004 is equal to 85 percent of the average wholesale price (determined as of April 1, 2003) for the drug or biological.

(B) The Secretary shall substitute for the percentage under subparagraph (A) for a drug or biological the percentage that would apply to the drug or biological under the column entitled “Average of GAO and OIG data (percent)” in the table entitled “Table 3.—Medicare Part B Drugs and Biologicals” in the Most Recent GAO and OIG Studies” published on August 20, 2003, in the Federal Register (68 Fed. Reg. 60445).

(C)(i) The Secretary may substitute for the percentage under subparagraph (A) a percentage that is based on data and information submitted by the manufacturer of the drug or biological by October 15, 2003.

(ii) The Secretary may substitute for the percentage under subparagraph (A) with respect to drugs and biologicals furnished during 2004 on or after April 1, 2004, a percentage that is based on data and information submitted by the manufacturer of the drug or biological after October 15, 2003, and before January 1, 2004.

(D) In no case may the percentage substituted under subparagraph (B) or (C) be less than 80 percent.

(5)(A) Subject to subparagraph (B), in the case of clotting factors furnished on or after January
1, 2005, the Secretary shall, after reviewing the January 2003 report to Congress by the Comptroller General of the United States entitled “Payment for Blood Clotting Factor Excess Providers Acquisition Cost”, provide for a separate payment, to the entity which furnishes to the patient blood clotting factors, for items and services related to the furnishing of such factors in an amount that the Secretary determines to be appropriate. Such payment amount may take into account any or all of the following:

(i) The mixing (if appropriate) and delivery of factors to an individual, including special inventory management and storage requirements.

(ii) Ancillary supplies and patient training necessary for the self-administration of such factors.

(B) In determining the separate payment amount under subparagraph (A) for blood clotting factors furnished in 2005, the Secretary shall ensure that the total amount of payments under this part (as estimated by the Secretary) for such factors under paragraph (1)(C) and such separate payments for such factors does not exceed the total amount of payments that would have been made for such factors under this part (as estimated by the Secretary) if the amendments made by section 303 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 had not been enacted.

(C) The separate payment amount under this subparagraph for blood clotting factors furnished in 2006 or a subsequent year shall be equal to the separate payment amount determined under this paragraph for the previous year increased by the percentage increase in the consumer price index for medical care for the 12-month period ending with June of the previous year.

(D) In the case of an immunosuppressive drug described in subparagraph (J) of section 1395x(s) of this title and an oral drug described in subparagraph (Q) or (T) of such section, the Secretary shall pay to the pharmacy a supplying fee for such a drug determined appropriate by the Secretary (less the applicable deductible and coinsurance amounts).

(7) There shall be no administrative or judicial review under section 1395f of this title, section 1395oo of this title, or otherwise, of determinations of payment amounts, methods, or adjustments under paragraphs (4) through (6).

(p) Requiring submission of diagnostic information

(1) Each request for payment, or bill submitted, for an item or service furnished by a physician or practitioner specified in subsection (b)(18)(C) of this section for which payment may be made under this part shall include the appropriate diagnosis code (or codes) as established by the Secretary for such item or service.

(2) In the case of a request for payment for an item or service furnished by a physician or practitioner specified in subsection (b)(18)(C) of this section on an assignment-related basis which does not include the code (or codes) required under paragraph (1), payment may be denied under this part.

(3) In the case of a request for payment for an item or service furnished by a physician not submitted on an assignment-related basis and which does not include the code (or codes) required under paragraph (1)—

(A) if the physician knowingly and willfully fails to provide the code (or codes) promptly upon request of the Secretary or a Medicare administrative contractor, the physician may be subject to a civil money penalty in an amount not to exceed $2,000, and

(B) if the physician knowingly, willfully, and in repeated cases fails, after being notified by the Secretary of the obligations and requirements of this subsection, to include the code (or codes) required under paragraph (1), the physician may be subject to the sanction described in subsection (j)(2)(A) of this section.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under subparagraph (A) in the same manner as they apply to a penalty or proceeding under section 1320c–7a(a) of this title.

(4) In the case of an item or service defined in paragraph (3), (6), (8), or (9) of subsection (s) of this title ordered by a physician or a practitioner specified in subsection (b)(18)(C) of this section, but furnished by another entity, if the Secretary or fiscal agent of the Secretary requires the entity furnishing the item or service to provide diagnostic or other medical information in order for payment to be made to the entity, the physician or practitioner shall provide that information to the entity at the time that the item or service is ordered by the physician or practitioner.

(q) Anesthesia services; counting actual time units

(1)(A) The Secretary, in consultation with groups representing physicians who furnish anesthesia services, shall establish by regulation a relative value guide for use in all localities in making payment for physician anesthesia services furnished under this part. Such guide shall be designed so as to result in expenditures under this subchapter for such services in an amount that would not exceed the amount of such expenditures which would otherwise occur.

(B) For physician anesthesia services furnished under this part during 1991, the prevailing charge conversion factor used in a locality under this subsection shall, subject to clause (iv), be reduced to the adjusted prevailing charge conversion factor for the locality determined as follows:

(i) The Secretary shall estimate the national weighted average of the prevailing charge conversion factors used under this subsection for services furnished during 1990 after March 31, using the best available data.

(ii) The national weighted average estimated under clause (i) shall be reduced by 7 percent.

(iii) The adjusted prevailing charge conversion factor for a locality is the sum of—

(1) the product of (a) the portion of the reduced national weighted average prevailing charge conversion factor computed under clause (ii) which is attributable to physician work and (b) the geographic work index value for the locality (specified in Addendum C to the Model Fee Schedule for Physician...
Services (published on September 4, 1990, 55 Federal Register pp. 36238–36243); and

(II) the product of (a) the remaining portion of the reduced national weighted average prevailing charge conversion factor computed under clause (I) and (b) the geographic practice cost index value specified in subsection (b)(14)(C)(iv) of this section for the locality.

In applying this clause, 70 percent of the prevailing charge conversion factor shall be considered to be attributable to physician work.

(iv) The prevailing charge conversion factor to be applied to a locality under this subparagraph shall not be reduced by more than 15 percent below the prevailing charge conversion factor applied in the locality for the period during 1990 after March 31, but in no case shall the prevailing charge conversion factor be less than 60 percent of the national weighted average of the prevailing charge conversion factors (computed under clause (I)).

(2) For purposes of payment for anesthesia services (whether furnished by physicians or by certified registered nurse anesthetists) under this part, the time units shall be counted based on actual time rather than rounded to full time units.

(r) Establishment of physician identification system

The Secretary shall establish a system which provides for a unique identifier for each physician who furnishes services for which payment may be made under this subchapter. Under such system, the Secretary may impose appropriate fees on such physicians to cover the costs of investigation and recertification activities with respect to the issuance of the identifiers.

(s) Application of fee schedule

(1)(A) Subject to paragraph (3), the Secretary may implement a statewide or other area wide fee schedule to be used for payment of any item or service described in paragraph (2) which is paid on a reasonable charge basis.

(B) Any fee schedule established under this paragraph for such item or service shall be updated—

(i) for years before 2011—

(I) subject to subclause (II), by the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the preceding year; and

(II) for items and services described in paragraph (2)(D) for 2009, section 1395w–3(a)(3)(D) for an area that is not a competitive acquisition area under section 1395w–3 of this title, and in the case of such adjustment, paragraphs (8) and (9) of subsection (b) of this section shall not be applied.

(ii) for 2011 and subsequent years—

(I) the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year, reduced by—

(II) the productivity adjustment described in section 1395ww(b)(3)(B)(x)(II) of this title.

The application of subparagraph (B)(ii)(II) may result in the update under this paragraph being less than 0.0 for a year, and may result in payment rates under any fee schedule established under this paragraph for a year being less than such payment rates for the preceding year.

(2) The items and services described in this paragraph are as follows:

(A) Medical supplies.

(B) Home dialysis supplies and equipment (as defined in section 1395rr(b)(8) of this title).


(D) Parenteral and enteral nutrients, equipment, and supplies.

(E) Electromyogram devices.

(F) Salivation devices.

(G) Blood products.

(H) Transfusion medicine.

(3) In the case of items and services described in paragraph (2)(D) that are included in a competitive acquisition program in a competitive acquisition area under section 1395w–3(a) of this title—

(A) the payment basis under this subsection for such items and services furnished in such area shall be the payment basis determined under such competitive acquisition program; and

(B) the Secretary may use information on the payment determined under such competitive acquisition programs to adjust the payment amount otherwise applicable under paragraph (1) for an area that is not a competitive acquisition area under section 1395w–3 of this title, and in the case of such adjustment, paragraphs (8) and (9) of subsection (b) of this section shall not be applied.

(t) Facility provider number required on claims

Each request for payment, or bill submitted, for an item or service furnished to an individual who is a resident of a skilled nursing facility for which payment may be made under this part shall include the facility’s Medicare provider number.

(u) Reporting of anemia quality indicators for cancer anti-anemia drugs

Each request for payment, or bill submitted, for a drug furnished to an individual for the treatment of anemia in connection with the treatment of cancer shall include (in a form and manner specified by the Secretary) information on the hemoglobin or hematocrit levels for the individual.

he would find necessary in performing his functions under this part, and that the carrier would maintain such records and afford such access thereto as the Secretary would find necessary to assure the correctness and verification of the information and reports under former subpar. (D) and otherwise to carry out the purposes of this part.

Subsec. (b)(3)(F). Pub. L. 108–173, § 911(c)(3)(C)(ii), substituted “shall take such action” for “will take such action”.


Subsec. (b)(3)(H). Pub. L. 108–173, § 911(c)(3)(C)(vi), struck out subpar. (I), which directed that each contract would require that the carrier submit annual reports to the Secretary. 

Subsec. (b)(3)(I). Pub. L. 108–173, § 911(c)(3)(C)(iv), struck out subpar. (A), which provided that each contract under this section would be for a term of at least one year and could be made automatically renewable and authorized Secretary to terminate any contract where carrier had failed substantially to carry out the contract or was carrying out the contract in a manner inconsistent with the efficient and effective administration of the insurance program established by this part.

Subsec. (b)(5). Pub. L. 108–173, § 911(c)(3)(D), struck out subpar. (B), which provided that each contract under this section would provide for the establishment of claims procedures relating to the administration of part B” for “Use of carriers for administration of benefits” in section 1395h of this title.

Subsec. (b)(6). Pub. L. 108–173, § 952(b), substituted “except to an employer or entity as described in subparagraph (A)” for “except to an employer or facility as described in clause (A)” in second sentence.

Subsec. (b)(6)(A)(ii). Pub. L. 108–173, § 952(a), added cl. (ii) and struck out former cl. (ii) which read as follows: “(where the service was provided in a hospital, critical access hospital, clinic, or other facility) to the facility in which the service was provided if there is a contractual arrangement between such physician or other person and such facility under which such facility submits the bill for such service,”.


Subsec. (b)(8)(A). Pub. L. 108–173, § 911(c)(4)(A), struck out subpar. (1), which provided that any contract entered into with a carrier under this section would provide for advances of funds for the making of payments and for payment for necessary and proper cost of administration, and directed the Secretary to cause to have published in the Federal Register, by not later than Sept. 1 each year, data, standards, and methodology to be used to establish budgets for carriers and to cause to be published in the Federal Register for public comment, at least 90 days before Sept. 1, the data, standards, and methodology proposed to be used.

Subsec. (c)(2)(A). Pub. L. 108–173, § 911(c)(4)(B), substituted “contract under this section which provides for the dis-
bursement of funds, as described in subsection (a)(1)(B) of this section,” in introductory provisions.


Subsec. (c)(5), (6). Pub. L. 108–173, § 911(c)(4)(E), struck out pars. (5) and (6), which provided that each contract would require the carrier to meet criteria to measure the timeliness of responses to requests for payment of items described in section 1395mm(a)(15)(C) of this title and prohibited any carrier from carrying out any activity pursuant to a contract under the Medicare Integrity Program under section 1395ddd of this title.

Subsec. (d) to (f). Pub. L. 108–173, § 911(c)(5), struck out subsecs. (d) to (f), which provided that contracts under this section could require surety bonds and that certifying or disbursing officers or carriers would not be liable with respect to payments in the absence of gross negligence or intent to defraud and defined “carrier” for purposes of this part.

Subsec. (g). Pub. L. 108–173, § 911(c)(6), substituted “medicare administrative contractor or contractors” for “carrier or carriers”.

Subsec. (h)(2). Pub. L. 108–173, § 911(c)(7)(A), substituted “The Secretary” for “Each carrier having an agreement with the Secretary under subsection (a) of this section” in first sentence and for “Each such carrier” in last sentence.

Subsec. (h)(3)(A). Pub. L. 108–173, § 911(c)(7)(B)(ii), which directed substitution of “such contractor” for “such carrier”, was executed by making the substitution in two places to reflect the probable intent of Congress.

Pub. L. 108–173, § 911(c)(7)(B)(i), substituted “medicare administrative contractor having a contract under section 1395kk–1 of this title that provides for making payments under this part” for “a carrier having an agreement with the Secretary under subsection (a) of this section”.

Subsec. (h)(3)(B). Pub. L. 108–173, § 911(c)(7)(C), substituted “a medicare administrative contractor” for “a carrier” in two places and “the contractor” for “the carrier” in two places.


Subsec. (b)(1)(A)(ii). Pub. L. 108–173, § 736(b)(9), substituted “services, to a physician” for “services, a physician”. 2000—Subsec. (b)(6)(F). Pub. L. 106–554, § 1(a)(6) [title I, § 303(a)], inserted “(including medical supplies described in section 1395x(m)(5) of this title, but excluding durable medical equipment to the extent provided for in such section)” after “home health services”.


Subsec. (c)(3). Pub. L. 106–554, § 1(a)(6) [title I, § 114(a)], added par. (3).

Subsec. (f). Pub. L. 106–554, § 1(a)(6) [title III, § 313(b)(2)], struck out “by a physician” before “to an individual” and “or of a part of a facility that includes a skilled nursing facility” as described under regulations”, before “for which payment may be made”, and “(without regard to whether or not the item or service was furnished by the facility, by others under arrangement with them made by the facility, under any other contracting or consulting arrangement, or otherwise)” after “to the facility”.


Pub. L. 106–553, § 4611(d), added subpar. (E).

Pub. L. 106–553, § 4512(c), inserted at end “For purposes of subparagraph (C) of the first sentence of this paragraph, an employment relationship may include any independent contractor arrangement, and employer status shall be determined in accordance with the law of the State in which the services described in such clause are performed.”

Subsec. (b)(6)(A)(i). Pub. L. 105–33, § 4201(c)(1), added subparagraphs (A) to (G).

Pub. L. 105–33, § 4201(c)(8), amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: “The provisions of subparagraphs (A) through (F) of this paragraph shall not apply to an inhalation drug or biological furnished through durable medical equipment covered under section 1395x(n) of this title.”


Subsec. (e)(1). Pub. L. 108–173, § 302(d)(3)(B), substituted “Subject to paragraph (3), the Secretary” for “The Secretary”.


2000—Subsec. (b)(6)(C). Pub. L. 106–554, § 1(a)(6) [title II, § 222(a)], struck out “for such services provided before January 1, 2000” before “payment may be made” and substituted comma for semicolon at end.

Subsec. (b)(6)(E). Pub. L. 106–554, § 1(a)(6) [title III, § 313(b)(1)], inserted “by, or under arrangements made by, a skilled nursing facility” before “to an individual who” and struck out “or of a part of a facility that includes a skilled nursing facility (as determined under regulations)” before “payment shall be made” and “(without regard to whether or not the item or service was furnished by the facility, by others under arrangement with them made by the facility, under any other contracting or consulting arrangement, or otherwise)” after “to the facility”.


Subsec. (c)(3). Pub. L. 106–554, § 1(a)(6) [title I, § 114(a)], added par. (3).

Subsec. (f). Pub. L. 106–554, § 1(a)(6) [title III, § 313(b)(2)], struck out “by a physician” before “to an individual” and “or of a part of a facility that includes a skilled nursing facility (as determined under regulations)”, before “for which payment may be made”, and “(without regard to whether or not the item or service was furnished by the facility, by others under arrangement with them made by the facility, under any other contracting or consulting arrangement, or otherwise)” after “to the facility”.


Pub. L. 106–553, § 4611(d), added subpar. (E).

Pub. L. 106–553, § 4512(c), inserted at end “For purposes of subparagraph (C) of the first sentence of this paragraph, an employment relationship may include any independent contractor arrangement, and employer status shall be determined in accordance with the law of the State in which the services described in such clause are performed.”


Subsec. (b)(8)(B). Pub. L. 105–33, § 4318(a), amended pars. (8) and (9) generally. Prior to amendment, par. (9) related to determination of reasonable charges for physician services, including factors to be considered, provision for increase or decrease of charge, consideration of resource costs, accounting for regional differences in prevailing charges, and impact of changes in reasonable charges, and par. (9) related to notice of proposed reasonable charges to be published in Federal Register, provision for comments on proposed charges, and publication of final determinations with respect to change in reasonable charges.
Subsec. (b)(12). Pub. L. 105–33, §4512(b)(2), struck out par. (12) which read as follows:

"(12) With respect to services described in clauses (i), (ii), (iv), or (v) of section 1395x(k)(2)(A)(X) of this title (relating to a physician assistants and nurse practitioners)—

"(i) payment under this part may only be made on an assignment-related basis; and

"(ii) the prevailing charges determined under paragraph (3) shall not exceed—

"(I) in the case of services performed as an assistant at surgery, 65 percent of the amount that would otherwise be recognized if performed by a physician who is serving as an assistant at surgery, or

"(II) in other cases, the applicable percentage (as defined in subpart (B) of the prevailing charge rate determined for such services (or, for services furnished on or after January 1, 1992, the fee schedule amount specified in section 1395w–4 of this title) performed by physicians who are not specialists.

"(B) In subparagraph (A)(i)(II), the term 'applicable percentage' means—

"(i) 75 percent in the case of services performed (other than as an assistant at surgery) in a hospital, and—

"(ii) 85 percent in the case of other services.


Subsec. (b)(8). Pub. L. 105–33, §4302(b), added par. (8).


Subsec. (p)(1)(A), (2). Pub. L. 105–33, §4317(a), inserted "or practitioner specified in subsection (b)(18)(C) of this section" after "by a physician.


Subsec. (s). Pub. L. 105–33, §4315(a), added subsec. (s).


Subsec. (r). Pub. L. 104–191, §221(b), inserted at end "Under such system, the Secretary may impose appropriate fees on such physicians to cover the costs of investigation and recertification activities with respect to the issuance of the identifiers.”


Subsec. (b)(3)(G). Pub. L. 104–191, §1295(b)(1)(B)(i), which directed striking out "and" at end of subpar. (G), could not be executed because "and" did not appear at end of subpar. (G) subsequent to amendment by Pub. L. 103–432, §123(c)(2). See below.

Pub. L. 103–432, §123(c)(2), amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: "will provide to each nonparticipating physician, at the beginning of each year, a list of the physician's liability limits established under section 1395w–4(g)(2) of this title for the year for the physician's services most commonly furnished by that physician; and".

Subsec. (b)(3)(H). Pub. L. 103–432, §151(b)(1)(B)(ii), which directed striking out "and" at end of subpar. (H), could not be executed because "and" did not appear at end.


Subsec. (b)(6)(D). Pub. L. 103–432, §1295(b)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "payment may be made to a physician who arranges for visit services (including emergency visits and related services) to be provided to an individual by a second physician on an occasional, reciprocal basis if (i) the first physician is unavailable to provide the visit services, (ii) the individual has arranged or selected to receive the visit services from the first physician, (iii) the claim form submitted to the carrier includes the second physician's unique identifier (provided under the system established under subsection (r) of this section) and indicates that the claim is for such a covered visit service (and related services), and (iv) the visit services are not provided by the second physician over a continuous period of longer than 60 days.

Subsec. (b)(12)(C). Pub. L. 103–432, §1295(b)(2)(B), struck out subpar. (C). Prior to amendment, subpar. (C) read as follows: "Except for deductible and coinsurance amounts applicable under section 1395f of this title, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in clauses (i), (ii), or (iv) of section 1395x(k)(2)(K) of this title in violation of subparagraph (A)(i) is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.”

Subsec. (b)(16)(B)(iii). Pub. L. 103–432, §1296(a)(1), struck out "", simple and subcutaneous” after "injections; small joint” and “femoral fracture and” for “femoral fracture treatments”", struck out “lobeectomy;” after “thoracotomy;” and “enterectomy; colectomy; cholecystectomy;” after “an genuary for” and substituted “fulguration and resection” for “fulguration; transurethral resection”, and struck out “sacral laminectomy;” before “tympanoplasty”."

Subsec. (b)(17). Pub. L. 103–432, §126(e), redesignated par. (18), relating to payment for technical component of diagnostic tests, as (17) and inserted “, tests specified in paragraph (14)(C)(i),” after “diagnostic laboratory tests”.

Subsec. (b)(18). Pub. L. 103–432, §126(e), redesignated par. (18), relating to payment for technical component of diagnostic tests, as (17).

Pub. L. 103–432, §123(b)(1), added par. (18), relating to payment for service furnished by a practitioner described in subpar. (C).
area) furnished during practitioner's first through fourth years of practice.

Subsec. (b)(13)(A). Pub. L. 103–66, § 13518(a)(2)(A), added subpar. (A) and struck out former subpar. (A), which read as follows: "In determining the reasonable charge under paragraph (3) of a physician for medical direction of two or more nurse anesthetists performing, on or after April 1, 1988, and before January 1, 1989, anesthesia services in whole or in part concurrently, the number of base units which may be recognized with respect to such medical direction for each concurrent practice (other than cataract surgery or an iridectomy) shall be reduced by—

(i) 10 percent, in the case of medical direction of 2 nurse anesthetists concurrently,

(ii) 25 percent, in the case of medical direction of 3 nurse anesthetists concurrently, and

(iii) 40 percent, in the case of medical direction of 4 nurse anesthetists concurrently."

Subsec. (b)(13)(B). Pub. L. 103–66, § 13518(a)(2), designated subpar. (C) as (B), substituted "subparagraph (A)" for "subparagraph (A) or (B)" and struck out former subpar. (B) which read as follows: "In determining the reasonable charge under paragraph (3) of a physician for medical direction of two or more nurse anesthetists performing, on or after January 1, 1989, and before January 1, 1996, anesthesia services in whole or in part concurrently, the number of base units which may be recognized with respect to such medical direction for each concurrent cataract surgery or iridectomy procedure shall be reduced by 10 percent."

Subsec. (c)(2)(B)(ii). Pub. L. 103–66, § 13568(b), substituted "period ending on or before September 30, 1993" for "period" in subcl. (IV) and added subcl. (V).

Subsec. (c)(3)(B). Pub. L. 103–66, § 13568(a), added cls. (I) and (II) and struck out former cls. (I) and (II) which read as follows:

(i) with respect to claims received in the 3-month period beginning July 1, 1988, 14 days, and

(ii) with respect to claims received in the 12-month period beginning October 1, 1988, 14 days.

Subsec. (c)(4)(G). Pub. L. 103–66, § 13571(b), substituted "the term", for "the term", and inserted before period at end "; and the term "nonparticipating supplier or other person" means a supplier or other person (excluding a provider of services) that is not a participating physician or supplier (as defined in subsection (b)(1) of this section)", 1990—Subsec. (b)(2)(A). Pub. L. 101–508, § 4118(b)(2), as amended by Pub. L. 103–422, § 1269(b)(9), substituted "section 1395w–1(e)(2)" for "section 1395w–1(f)(2)" and "section 1395w–1(e)(2)", for "section 1395w–1(f)(2)", struck out former subpar. (B) which read as follows: "respect to such medical direction for each concurrent cataract surgery or iridectomy procedure shall be reduced by 10 percent.

Subsec. (b)(4)(A)(i). Pub. L. 101–508, § 4105(a)(1), added subpar. (A) and struck out former subpar. (A), which read as follows: "In determining the customary charges for physicians' services furnished during a calendar year (other than for primary care services and other than services furnished in a rural area as defined in section 1395ww(d)(2)(D) of this title) that is designated, under section 256e(a)(1)(A) of this title (as a health manpower shortage area) for which adequate actual charge data are not available because a physician has not yet been in practice for a sufficient period of time, the Secretary shall set a customary charge at a level no higher than 85 percent of the prevailing charge for a service. For the first calendar year during which the preceding sentence no longer applies, the Secretary shall set the customary charge at a level no higher than 85 percent of the prevailing charge for the service.

Subsec. (b)(4)(F). Pub. L. 101–508, § 13597 substituted "health professional shortage area" for "health manpower shortage area".

Subsec. (b)(4)(F)(iii). Pub. L. 101–508, § 4106(b)(2)(A), substituted "professional services" for "physicians' services and professional services" and "physician's or practitioner's first" for "physician's or practitioner's first".


Subsec. (b)(14)(C). Pub. L. 101–508, § 4155(c), substituted "clauses (i), (ii), or (iv) of section 1395x(e)(2)(K)" for "section 1395x(e)(2)(K)".


Subsec. (b)(12)(A). Pub. L. 101–508, § 4155(c), substituted "clauses (i), (ii), or (iv) of section 1395x(e)(2)(K)" for "section 1395x(e)(2)(K)" in introductory provisions.

Subsec. (b)(13)(A)(i)(II). Pub. L. 101–508, § 4118(b)(2)(C), struck out "; as the case may be" after "section 1395w–4 of this title".


Subsec. (b)(2)(C). Pub. L. 101–508, § 4155(c), substituted "clauses (i), (ii), or (iv) of section 1395x(e)(2)(K)" for "section 1395x(e)(2)(K)".


Subsec. (b)(14)(C)(iii). Pub. L. 101–508, § 4118(a)(1)(D), which directed amendment of cl. (iii) by substituting "The 'percentage change' specified in this clause, for a physicians' service specified in clause (i), is the percent difference (but expressed as a positive number) specified for the service in the list" for "The percent change specified in this clause, for a physicians' service specified in clause (i), is the percent change specified for the service in Table #2 in the Joint Explanatory Statement"; was executed by making the substitution for "The 'percent change' specified in this clause, for physicians' service specified in clause (i), is the percent change specified for the service in Table #2 in the Joint Explanatory Statement" to reflect the probable intent of Congress.
Subsec. (b)(14)(C)(iv). Pub. L. 101–508, § 4101(a)(10)(E), which directed amendment of cl. (iv) by substituting “the Geographic Overhead Costs Index specified for the locality in table #3 of the September 1989 Supplement to the Geographic Medicare Economic Index: Alternative Approaches (prepared by the Urban Institute and the Center for Health Economics Research)” for “such value specified for the locality in table #3 of the Joint Explanatory Statement referred to in clause (i)” was executed by making the substitution for “such value specified for the locality in table #3 of the Joint Explanatory Statement referred to in clause (i)” to reflect the probable intent of Congress.


Subsec. (q)(1). Pub. L. 101–508, § 4108(a), as amended by Pub. L. 100–485, § 608(d)(5)(F), inserted at end “The Secretary may enter into contracts with carriers under this section to perform such activities on a regional basis.”

Subsec. (b)(2)(A). Pub. L. 100–485, § 608(d)(5)(G), in subpar. (A), inserted “furnished during a calendar year” after “physicians’ services” and inserted at end “For the first calendar year during which the preceding sentence no longer applies, the Secretary shall set the customary charge at a level no higher than 85 percent of the prevailing charge for the service.”


Subsec. (n)(1). Pub. L. 100–360, §411(f)(9)(A), in introductory provisions, struck out “‘to a patient’ after “includes a charge”, inserted “‘the bill or request for’ after “for which”, and substituted ‘shares a practice’ for “shares his practice” and ‘supervised the performance of the test, the’ for “supervised the test, the”.
Subsec. (n)(1)(A). Pub. L. 100–360, §408(i)(28), substituted “‘the supplier’s” for “‘the the supplier’s”.
Subsec. (n)(3). Pub. L. 100–360, §411(f)(9)(D), struck out “‘or supplier’ after “‘such physician’.
Subsec. (o)(7). Pub. L. 100–360, §202(c)(1)(C), added subsec. (o) relating to “participating pharmacies” as entities authorized under State law to dispense covered outpatient drugs which had entered into agreements with Secretary to participate in catastrophic coverage program.
Subsec. (q)(1). Pub. L. 100–203, §4041(a)(3)(A)(i), inserted at end “‘in establishing such standards and criteria, the Secretary shall provide a system to measure a carrier’s performance of responsibilities described in paragraph (3)(H) and subsection (b) of this section.’”
Subsec. (b)(3). Pub. L. 100–203, §408(i)(24), as added by Pub. L. 100–360, §411(f)(4)(C)(vi), substituted “in the case of physicians’ services” for “in the case of physician services” and “‘with respect to physicians’ services’” for “‘with respect to physicians services’” in fourth sentence.
Subsec. (b)(1). Pub. L. 100–203, §4045(c)(2)(D), as added by Pub. L. 100–360, §411(f)(4)(C)(vi), substituted “‘in the case of physicians’ services’” for “in the case of physician services” and “‘with respect to physicians’ services’” for “‘with respect to physicians services’” in fourth sentence.
Subsec. (b)(2). Pub. L. 100–203, §4045(c)(2)(D), as added by Pub. L. 100–360, §411(f)(4)(C)(vi), substituted “‘in the case of physicians’ services’” for “in the case of physician services” and “‘with respect to physicians’ services’” for “‘with respect to physicians services’” in fourth sentence.
clause (ii)) plus (for services furnished during the 12-month period beginning on the effective date of the reduction) 1/2 of the amount by which the physician’s actual charges for the service for the previous 12-month period exceeds the limiting charge.”, and struck out former cls. (i) to (iv) which read as follows:

“(ii) In clause (i), the term ‘limiting charge’ means, with respect to a service furnished after the earlier of (I) December 31, 1990, or (II) one-year after the date the Secretary reports to Congress, under section 1395w–1(e)(3) of this title, on the development of the relative value scale under section 1395w–1 of this title.

“Subsec. (b)(11)(D). Pub. L. 100–203, § 4063(a)(1)(B), which directed that subpar. (D) be amended by inserting ‘‘or item’’ after ‘‘service’’ wherever appearing. The word ‘‘services’’ does not appear because of a prior amendment by section 4945(c)(1)(A) of Pub. L. 100–203 to subpar. (D), formerly (C), see above.

Pub. L. 100–203, § 4063(a)(1)(A), (B), redesignated former subpar. (C) as (D) and substituted ‘‘paragraph (B) or (C)’’ for ‘‘paragraph (B)’’.

Subsec. (b)(12)(C). Pub. L. 100–203, § 4085(i)(25), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), substituted ‘‘money penalty’’ for ‘‘monetary penalty’’ and amended second sentence generally. Prior to amendment, second sentence read as follows: ‘‘Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1320a–7a of this title with respect to actions described in subsection (a) or that section.’’

Subsec. (b)(14). Pub. L. 100–203, § 4048(a), added par. (1).

Subsec. (c)(1). Pub. L. 100–203, § 4041a(a)(3)(A)(i)(ii), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 100–203, § 4048(a)(2), inserted at end ‘‘The Secretary shall have power to publish in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for carriers under this section for the fiscal year, and shall cause to be published in the Federal Register for public comment, at least 90 days before such data, standards, and methodology are published, the data, standards, and methodology proposed to be used.’’

Subsec. (c)(3). Pub. L. 100–203, § 4031a(a)(2), added par. (3).

Subsec. (h)(3). Pub. L. 100–203, § 4081(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h)(5). Pub. L. 100–203, § 4085(i)(6), substituted ‘‘the participation program’’ for ‘‘the participation program’’.


Subsec. (h)(8). Pub. L. 100–203, § 4042(b)(1)(B), as added by Pub. L. 100–360, § 411(i)(2)(C), substituted ‘‘(1)’’ for ‘‘(1)’’.

For purposes of this subchapter, ‘‘A’’, inserted such par. 2 ems, and inserted subsec. (i) designation and ‘‘For purposes of this subchapter:’’, effectively transferring former subsec. (h)(8) to subsec. (i).


Subsec. (i)(2). (3). Pub. L. 100–203, § 4042(b)(1)(C), as added by Pub. L. 100–360, § 411(i)(2)(C), transferred par. (2) to subsec. (h)(8) in violation of clause (ii) plus (for services furnished during the 12-month period exceeding the limiting charge.)", and struck out former cls. (i) to (iv) which read as follows:

“(ii) In clause (i), the term ‘actual charges’ means, with respect to a service furnished by nonparticipating physicians in subcls. (I) and (II).


Subsec. (j)(2). Pub. L. 100–203, § 4085(i)(26), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), and amended by Pub. L. 100–360, § 4085(i)(24)(B), substituted ‘‘chapter’’ for ‘‘subchapter’’ in subpar. (A), struck out ‘‘the imposition of’’ before ‘‘civil monetary penalties’’ and inserted ‘‘and assessments’’ in subpar. (B), substituted ‘‘chapter’’ for ‘‘subchapter’’ in two places in last sentence, and amended last sentence generally. Prior to amendment, last sentence read as follows: ‘‘No payment may be made under this chapter with respect to any item or service furnished by a physician during the period when he is excluded from participation in the programs under this chapter pursuant to this subsection.’’

Pub. L. 100–93. § 1395u. Subsec. (j)(3)(A). Pub. L. 100–93, § 8(c)(2)(A), amended subpar. (A) generally and substituted ‘‘excluded from participation in the programs’’ for ‘‘barred from participation in the programs’’ in last sentence. Prior to amendment, subpar. (A) read as follows: ‘‘barring a physician from participation under the program under this subchapter for a period not to exceed 5 years, in accordance with the procedures of paragraphs (2) and (3) of section 1395y(d) of this title, or’’.


Subsec. (j)(3)(A). (B). Pub. L. 100–203, § 4065(g)(1), substituted ‘‘subsection (j)(2) of this section’’ for ‘‘section (j)(2) of this section’’.


Pub. L. 99–272, § 9301(d)(1)(B), (C), substituted "June 30 last preceding the start of the calendar year" for "March 31 last preceding the start of the twelve-month period (beginning October 1 of each year)" in third sentence, and struck out "the twelve-month period beginning on October 1 in" before "any year after 1974" in eighth sentence.

Subsec. (b)(3)(C). Pub. L. 99–509, § 9341(a)(2), substituted "at least $100, but not more than $500" for "$100 or more".


Subsec. (b)(4)(A)(ii). Pub. L. 99–509, § 9333(a)(1), added cl. (ii) and struck out former cl. (ii) which read as follows: "In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during a 12-month period beginning on or after January 1, 1987, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) at the time of furnishing the services, the Secretary shall not set any level higher than the same level as was set for services furnished during the previous calendar year (without regard to clause (ii)(II)) for physicians who were participating physicians during that year." 

Pub. L. 99–272, § 9301(b)(1)(A)(ii), added cl. (ii) and struck out former cl. (ii) which read as follows: "In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the periods beginning October 1, 1985, or October 1, 1986, by a physician who at no time for any services furnished during the 12-month period beginning October 1, 1985, or October 1, 1986, by a physician who at no time for any services furnished during the 12-month period beginning October 1, 1984, was a participating physician (as defined in subsection (h)(1) of this section)," and added cls. (i) and (iii).


Subsec. (b)(6). Pub. L. 99–509, § 9333(c), substituted "except that (A) payment may be made (i)" for "except that payment may be made (A)(i)"; substituted "(B) payment may be made" for "(B)'"; and inserted before the period at end "and (C) in the case of services described in section 1395x(s)(2)(K) of this title that payment shall be made to the employer of the physician assistant involved".


Subsec. (b)(11). Pub. L. 99–509, § 9333(a), designated existing provisions as subpar. (A); redesignated former subpars. (A) and (B) as cl. (i) and (ii), respectively, and added subpars. (B) and (C).

Pub. L. 99–272, § 9304(a), added par. (8).

Pub. L. 99–272, § 9306(a), added par. (9).


Subsec. (b)(11). Pub. L. 99–509, § 9333(a), designated existing provisions as subpar. (A); redesignated former subpars. (A) and (B) as cl. (i) and (ii), respectively, and added subpars. (B) and (C).

Pub. L. 99–509, § 9333(b), redesignated former par. (9) as (ii).


Subsec. (c). Pub. L. 99–509, § 9331(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (h)(1). Pub. L. 99–272, § 9301(b)(2), substituted "before the beginning of any year beginning with 1984" for "before October 1 of any year beginning with 1984", "on an assignment-related basis" for "on the basis of an assignment described in subsection (b)(3)(B)(ii) of this section, in accordance with subsection (b)(6)(B) of this section, or under the procedure described in section 1395gg(f)(1) of this title", "during such year" for "before October 1 of any year beginning with 1984", "during the remainder of the 12-month period beginning on October 1 in such year", "during the year beginning with 1984", and "the period at end " for "the period at end ".

Subsec. (h)(2). Pub. L. 99–509, § 9332(b)(1)(A), struck out period at end and substituted "and may request a copy of an appropriate directory published under paragraph (4). Each such carrier shall, without charge, mail a copy of such directory upon such a request,".

Subsec. (h)(4). Pub. L. 99–509, § 9332(b)(2), inserted at end "Each participating physician directory for an area shall provide an alphabetical listing of all participating physicians practicing in the area and an alphabetical listing by locality and specialty of such physicians." 

Pub. L. 99–272, § 9301(c)(3)(D), redesignated par. (2) of subsec. (i) as par. (4) of this subsection.

Subsec. (h)(5). Pub. L. 99–509, § 9332(b)(1)(B), substituted "the participating program under the third section and the publication and availability of the directories" for "publication of the directories" and inserted at end "The Secretary shall include such notice in the mailing of appropriate benefit checks provided under subchapter II of this chapter." 

Pub. L. 99–514, § 1895(b)(2), struck out "such" before "the directories" and before "the appropriate area directory".

Pub. L. 99–272, § 9301(c)(3)(D), redesignated par. (3) of subsec. (i) as par. (5) of this subsection.
Subsec. (b)(3), Pub. L. 98-369, §2306(b)(1)(B), (C), substituted “during the 12-month period ending on the March 31 last preceding” for “during the last preceding calendar year ending prior to” in third sentence and substituted “October 1” for “July 1” wherever appearing in third and eighth sentences.

Subsec. (b)(3), Pub. L. 98-369, §2354(b)(14), substituted “(1)” and “(1)” for “(1)” and “(1)”, respectively, in concluding provisions.


Subsec. (b)(4), (5). Pub. L. 98-369, §2306(a), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (b)(6). Pub. L. 98-369, §2339, redesignated cl. (A) as cl. (A)(i) and former cl. (B) as cl. (A)(ii), added a new cl. (B), and in the provisions after cl. (B), substituted “clause (A) of such sentence” for “clause (A) or (B) of such sentence”.

Pub. L. 98-369, §2306(a), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (b)(7). Pub. L. 98-369, §2306(a), redesignated par. (6) as (7).

Subsec. (b)(7)(A). Pub. L. 98-617, §3(b)(5)(B), struck out at end “If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(i) or under the procedure described in section 1395g(f)(4)(A) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality.” at the end.

Pub. L. 98-369, §2307(a)(1), as amended by Pub. L. 98-617, §3(a)(1), inserted “If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395g(f)(4)(A) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality.” at the end.

Pub. L. 98-369, §2307(a)(1), as amended by Pub. L. 98-617, §3(a)(1), inserted “If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395g(f)(4)(A) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality.” at the end.

Pub. L. 98-369, §2307(a)(1), as amended by Pub. L. 98-617, §3(a)(1), inserted “If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395g(f)(4)(A) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality.” at the end.

Pub. L. 98-369, §2307(a)(1), as amended by Pub. L. 98-617, §3(a)(1), inserted “If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395g(f)(4)(A) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality.” at the end.

Pub. L. 98-369, §2307(a)(1), as amended by Pub. L. 98-617, §3(a)(1), inserted “If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395g(f)(4)(A) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality.” at the end.

Pub. L. 98-369, §2307(a)(1), as amended by Pub. L. 98-617, §3(a)(1), inserted “If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395g(f)(4)(A) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality.” at the end.

Pub. L. 98-369, §2307(a)(1), as amended by Pub. L. 98-617, §3(a)(1), inserted “If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395g(f)(4)(A) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality.” at the end.

Pub. L. 98-369, §2307(a)(1), as amended by Pub. L. 98-617, §3(a)(1), inserted “If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395g(f)(4)(A) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality.” at the end.

Pub. L. 98-369, §2307(a)(1), as amended by Pub. L. 98-617, §3(a)(1), inserted “If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395g(f)(4)(A) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality.” at the end.
provisions relating to determination of reasonableness of physician charges, medical services, supplies, and therefor.

claims for supplementary medical insurance benefits.

II, inserted exception in the case of services furnished as described in section 1395y(a)(4) of this title, other than as otherwise provided in section 1395gg(f) of this title” after “payment will”.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2. The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–49 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–49, set out as a note under section 1320c of this title.

EFFECTIVE DATE OF 2010 AMENDMENT


Amendment by section 6406(a) of Pub. L. 111–148 applicable to orders, certifications, and referrals made on or after Jan. 1, 2010, see section 6406(d) of Pub. L. 111–148, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT


EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–54, § 1(b), Aug. 3, 2007, 121 Stat. 551, provided that: “The amendment made by subsection (a) [amending this section] shall apply to drugs furnished on or after January 1, 2008. The Secretary of Health and Human Services shall address the implementation of such amendment in the rulemaking process under section 1928 of the Social Security Act (42 U.S.C. 1395w–4) for payment for physicians’ services for 2008, consistent with the previous sentence.”


Section 4302(c) of Pub. L. 105–33 provided that: “The amendments made by this section [amending this section and section 1395cc of this title] shall apply to the date of the enactment of this Act [Aug. 5, 1997] and apply to the entry and renewal of contracts on or after such date.”

Amendment by section 4315(a) of Pub. L. 105–33, to the extent such amendment substitutes for schedules for reasonable charges, applicable to particular services as of date specified by the Secretary of Health and Human Services, see section 4315(c) of Pub. L. 105–33, set out as a note under section 1395m of this title.

Section 4317 of Pub. L. 105–33 provided that: “The amendments made by this section [amending this section shall apply to items and services furnished on or after January 1, 1998.”

Amendment by section 4432(b)(2), (4) of Pub. L. 105–33 applicable to items and services furnished on or after July 1, 1998, see section 4432(d) of Pub. L. 105–33, set out as a note under section 1395s of this title.

Amendment by section 4556(a) of Pub. L. 105–33 applicable to drugs and biologicals furnished on or after Jan. 1, 1998, see section 4556(d) of Pub. L. 105–33, set out as a note under section 1395s of this title.

**Effective Date of 2000 Amendment**

Amendment by section 123(b)(1), (2)(B) of Pub. L. 103–432 applicable to services furnished on or after Jan. 1, 1996, see section 123(r)(2) of Pub. L. 103–432, set out as a note under section 1396n of this title.

Section 123(r)(3), (4) of Pub. L. 103–432 provided that: “(3) EOMBs.—The amendments made by subsection (c) of this section shall apply to the entry and renewal of contracts on or after the first day of the first month beginning more than 60 days after the date of the enactment of this Act [Oct. 31, 1994].”

**Effective Date of 1999 Amendment**

Amendment by section 129(a)(1), (c), (e), (g)(9) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 103–432, see section 129(b)(1) of Pub. L. 103–432, set out as a note under section 1395m of this title.

Section 129(h)(2) of Pub. L. 103–432 provided that the amendment made by that section is effective for payments for fiscal years beginning with fiscal year 1994.

Section 135(b)(2) of Pub. L. 103–432 provided that the amendment made by that section is effective for standards applied for contract years beginning after Oct. 31, 1994.

Amendment by section 151(b)(1)(B), (2)(B) of Pub. L. 103–432 applicable to contracts with fiscal intermediaries and carriers under this subchapter for contract years beginning with 1999, see section 1510(d)(4) of Pub. L. 103–432, set out as a note under section 1395s of this title.
Section 13515(d) of Pub. L. 103–66 provided that: 'The amendments made by subsection (a) [amending this section and section 1395w–4 of this title] shall apply to services furnished on or after January 1, 1994.'

Amendment by section 13568(a), (b) of Pub. L. 103–66 applicable to claims received on or after Oct. 1, 1993, see section 13568(c) of Pub. L. 103–66, set out as a note under section 1356b of this title.

**Effective Date of 1990 Amendment**


Section 4105(b) of Pub. L. 101–508 provided that:

"(1) The amendments made by subsection (a) [amending this section and provisions set out below] apply to services furnished after 1990, except that—

"(A) the provisions concerning the third and fourth years of practice apply only to physicians' services furnished after 1990 and 1991, respectively, and

"(B) the provisions concerning the second, third, and fourth years of practice apply only to services of a health care practitioner furnished after 1991, 1992, and 1993, respectively.

"The amendments made by subsection (b) [amending this section and section 1395w–4 of this title] shall apply to services furnished after 1991.'

Section 4105(b) of Pub. L. 101–508 provided that: 'The amendment made by subsection (a) [amending this section] shall apply to tests and services furnished on or after January 1, 1991.'

Section 4105(b) of Pub. L. 101–508 provided that: 'The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after the first day of the first month beginning more than 60 days after the date of the enactment of this Act [Nov. 5, 1990].'

Section 4118(a)(3) of Pub. L. 101–508 provided that: 'The provisions made by paragraphs (1) and (2) [amending this section] apply to services furnished after March 1990.'

Section 13568(2)(A) of Pub. L. 101–508 provided that the amendment by that section is effective Jan. 1, 1991.

Section 13568(2)(B) of Pub. L. 101–508 provided that the amendment by that section is effective as if in section 4155(e) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4155(e) of Pub. L. 101–508, set out as a note under section 1355b of this title.

**Effective Date of 1989 Amendments**

Section 1301(a)(3) of Pub. L. 101–239 provided that: 'The provisions of this section [amending this section and sections 1395m, 1395cc, 1395d, and 1395ww of this title, enacting provisions set out as notes under section 1395m of this title, and repealing provisions set out as notes under sections 1395b, 1395b–1, 1395b–2, and 1395h of this title and section 8962 of Title 5, Government Organization and Employees] (other than subsections (c) and (d) [amending this section and sections 1395m, 1395cc, 1395d, and 1395ww of this title and enacting provisions set out as notes under section 1395m of this title]) shall take effect January 1, 1990, except that—

"(1) the repeal of section 421 of MCCA [Pub. L. 100–360, set out as a note under section 1395b of this title] shall not apply to duplicative part A benefits for periods before January 1, 1990, and

"(2) the amendments made by subsection (b) [amending this section and sections 1395m, 1395cc, 1395d, and 1395ww of this title] shall take effect on the date of the enactment of this Act [Dec. 13, 1989].'

**Effective Date of 1988 Amendments**

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

Section 201(m) of Pub. L. 100–360, as amended by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 181, provided that:

"(1) [Repealed. Prior to repeal by Pub. L. 101–234, par. (1) read as follows: 'IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 1395w–3 of this title and adding and enacting sections 1320a–7a, 1395i, 1395m, 1395x, 1395cc, 1395mm, and 1396b of this title] shall apply to items dispensed on or after January 1, 1990.]

"(2) [Repealed. Prior to repeal by Pub. L. 101–234, par. (2) read as follows: 'CARRIERS.—The amendments made by subsection (e) [amending this section] shall take effect on the date of the enactment of this Act (July 1, 1988); except that the amendments made by subsection (e)(5) [amending this section] shall take effect on January 1, 1991, but shall not be construed as requiring payment before February 1, 1991.]

"(3) [Repealed. Prior to repeal by Pub. L. 101–234, par. (3) read as follows: 'HMO/CMP ENROLLMENTS.—The amendments made by subsection (f) [amending section 1395mm of this title] shall apply to enrollments effected on or after January 1, 1990.]

"(4) [Repealed. Prior to repeal by Pub. L. 101–234, par. (4) read as follows: 'DIAGNOSTIC CODING.—The amendments made by subsection (g) [amending this section] shall apply to services furnished after March 31, 1990.

"(5) [Repealed. Prior to repeal by Pub. L. 101–234, par. (5) read as follows: 'TRANSITION.—With respect to administrative expenses (and costs of the Prescription Drug Payment Review Commission) for periods before January 1, 1990, amounts otherwise payable from the Federal Catastrophic Drug Insurance Trust Fund shall be payable from the Federal Supplementary Medical Insurance Trust Fund and shall also be treated as a debit to the Medicare Catastrophic Coverage Account.]'
Section 4081(c)(1) of Pub. L. 100–203 provided that: "The amendment made by subsection (a) [amending this section] shall apply to contracts with carriers for claims presented for items and services furnished by participating physicians and suppliers on or after January 1, 1989."  

Section 4082(e)(3) of Pub. L. 100–203 provided that: "The amendments made by subsection (c) [amending this section] shall apply to evaluation of performance of carriers under contracts entered into or renewed on or after October 1, 1988."  

Section 4082(g)(2) of Pub. L. 100–203 provided that: "The amendment made by paragraph (1) [amending this section] shall be effective as if included in section 907(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272]."  

Section 4083(l)(7) of Pub. L. 100–203 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 99–509.  

Amendment by section 4096(a)(1) of Pub. L. 100–203 applicable to services furnished on or after Jan. 1, 1988, see section 4096(d) of Pub. L. 100–203, set out as a note under section 1320c–3 of this title.  

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 9333(c)(3) of Pub. L. 99–509, set out as a note under section 1395l–7 of this title.

**Effective Date of 1987 Amendments**

Amendment by section 4031(a)(2) of Pub. L. 100–203 applicable to claims received on or after July 1, 1988, see section 4031(a)(3)(A) of Pub. L. 100–203, set out as a note under section 1395h of this title.  

Amendment by section 4035(a)(2) of Pub. L. 100–203 effective Dec. 22, 1987, and applicable to budgets for fiscal years beginning with fiscal year 1989, see section 4035(a)(3) of Pub. L. 100–203, set out as a note under section 1395h of this title.  

Section 4044(b) of Pub. L. 100–203 provided that: "The amendments made by subsection (a) [amending this section] shall apply to payment for physicians' services furnished on or after January 1, 1988."  

Section 4045(d) of Pub. L. 100–203 provided that: "The amendments made by subsection (a) [amending this section] shall apply to diagnostic tests performed on or after April 1, 1988."  

Section 4045(b) of Pub. L. 100–203 applicable to services furnished on or after Jan. 1, 1988, see section 4045(c)(1) of Pub. L. 100–203, set out as a note under section 1395h of this title.  

Amendment by section 4047(b) of Pub. L. 100–203, as amended by Pub. L. 100–93, effective as if included in the enactment of Pub. L. 99–509, set out as a note under section 1320c–7 of this title.

**Effective Date of 1986 Amendments**

Section 4051(c) of Pub. L. 100–203 provided that: "The amendments made by subsection (a) [amending this section] shall be effective as if included in the enactment of Pub. L. 99–514."

Amendment by section 4052(b)(16)(B) of Pub. L. 99–514 provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to claims presented after the date of the enactment of this Act [Oct. 22, 1986]."

Amendment by section 4053(a)(2) of Pub. L. 100–203, effective as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, set out as a note under section 162 of Title 26, Internal Revenue Code.  

Section 4053(n)(7) of Pub. L. 100–203 provided that: "The amendments made by subsection (a) [amending this section] shall be effective as if included in the enactment of the Tax Reform Act of 1986, Pub. L. 99–514."

Amendment by section 4054(b)(4) of Pub. L. 100–203, effective as if included in the enactment of Pub. L. 99–509, set out as a note under section 1395l of this title.  

Amendment by section 4055(a)(2) of Pub. L. 100–203 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9331(c), (k) of Pub. L. 99–509, as amended, set out as a note under section 1395i of this title.  

Section 4056(a)(4) of Pub. L. 100–203 provided that: "The amendments made by this subsection [amending this section] shall apply to claims received on or after Nov. 1, 1986, with subsection (c)(2)(C) of this section applicable to claims received on or after Apr. 1, 1987, see section 9331(a) of Pub. L. 99–509, set out as a note under section 1395h of this title."

Amendment by section 4057(b)(3) of Pub. L. 100–203 applicable to services furnished on or after Apr. 1, 1987, see section 9331(c)(3) of Pub. L. 99–509, as amended by Pub. L. 100–93, effective as if included in the enactment of Pub. L. 99–509, set out as a note under section 1395k of this title.  

Amendment by section 4058(c)(3) of Pub. L. 100–203 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9331(d), (k) of Pub. L. 99–509, as amended, set out as a note under section 1395i of this title.

Section 4059(a)(4) of Pub. L. 100–203 provided that: "The amendments made by this subsection [amending this section] shall apply to services furnished on or after January 1, 1987."  

Section 4060(b)(4) of Pub. L. 100–203 provided that: "The amendments made by subsection [amending this section] shall apply to services furnished on or after January 1, 1987."  

Section 4061(b)(4) of Pub. L. 100–203 provided that: "The amendments made by subsection [amending this section] shall apply to services furnished on or after January 1, 1987."  

Section 4062(c)(3) of Pub. L. 100–203 provided that: "The amendments made by this subsection [amending this section] shall apply to contracts with carriers for claims for items and services furnished by participating physicians and suppliers on or after January 1, 1989."  

Section 4063(c) of Pub. L. 100–203 provided that: "The amendments made by subsection (c) [amending this section] shall be effective for contracts under section 1395h of this title.

Section 4064(b)(14)(A) of Pub. L. 100–203 provided that: "The amendments made by paragraphs (1) [amending this section] shall be effective as if included in section 907(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272]."

Section 4065(b) of Pub. L. 100–203 applicable to contracts entered into or renewed on or after Jan. 1, 1988, see section 4065(d) of Pub. L. 100–203, set out as a note under section 1320c–3 of this title.
Section 9332(c)(2) of Pub. L. 99–509 provided that:

"The amendments made by paragraph (1) [amending this section] shall apply to services furnished on or after Oct. 1, 1987." 

Section 9332(d)(2) of Pub. L. 99–509 provided that:

"The amendments made by paragraph (1) [amending this section] shall apply to surgical procedures performed on or after October 1, 1987." 

Section 9333(d) of Pub. L. 99–509 provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 21, 1986]." 

Section 9333(c) of Pub. L. 99–509 provided that: "The amendments made by this section [amending this section] and provisions set out as a note under section 1395x of this title shall apply to services furnished on or after Jan. 1, 1987." 

Amendment by section 9338(b), (c) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1987, see section 9338(f) of Pub. L. 99–509 set out as a note under section 1395x of this title. 

Amendment by section 9341(a)(2) of Pub. L. 99–509 applicable to services furnished on or after Oct. 1, 1985, see section 9341(b) of Pub. L. 99–509, set out as a note under section 1395ff of this title. 

Section 9219(b)(1)(D) of Pub. L. 99–272 provided that:

"The amendments made by this paragraph [amending this section and sections 1395x and 1395yy of this title] shall be effective as if they had been originally included in the Deficit Reduction Act of 1984 [Pub. L. 98–369]." 

Section 9219(b)(2)(B) of Pub. L. 99–272 provided that:

"The amendment made by subparagraph (A) [amending this section] shall apply to surgical procedures performed on or after July 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished after Dec. 20, 1977, see section 390e of Title 7, Agriculture." 

Section 9301(b)(4) of Pub. L. 99–272 provided that:

"The amendments made by this subsection [amending this section and enacting provisions set out as a note under this section] shall apply to services furnished on or after May 1, 1986." 

Section 9301(c)(5) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, § 1895(b)(14)(B), Oct. 22, 1986, 100 Stat. 2394, provided that: "Section 1842(b)(7) of the Social Security Act [subsec. (b)(7) of this section], as added by paragraph (4) of this subsection, shall apply to explanations of benefits provided on or after such date (not later than October 1, 1986) as the Secretary of Health and Human Services shall specify." 

Section 9301(b)(4) of Pub. L. 99–272 provided that:

"The amendments made by this subsection [amending this section and enacting provisions set out as a note under this section] shall apply to services furnished on or after October 1, 1986." 

Section 9301(b)(4) of Pub. L. 99–272 provided that:

"The amendments made by this subsection [amending this section and enacting provisions set out as a note under this section] shall apply to items and services furnished on or after Jan. 1, 1987, see section 9301(b) of Pub. L. 99–509, set out as a note under section 1395x of this title. 

Amendment by section 9341(a)(2) of Pub. L. 99–509 applicable to agreements and contracts entered into or renewed after Sept. 30, 1984, see section 9341(b)(3) of Pub. L. 99–369, set out as a note under section 1395h of this title. 

Amendment by section 2354(b)(13), (14) of Pub. L. 99–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(a)(1) of Pub. L. 99–369, set out as a note under section 1320a–1 of this title. 

Amendment by section 2686(p)(2)(F)(iv) of Pub. L. 99–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2686(a)(b) of Pub. L. 99–369, set out as a note under section 491 of this title. 

**Effective Date of 1982 Amendments**

Section 104(b) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 309(a)(2), Jan. 12, 1983, 96 Stat. 2408, provided that: "The amendment made by subsection (a) [amending this section] shall be effective with respect to services furnished on or after October 1, 1982." 

Section 113(b)(1) of Pub. L. 97–248 provided that: "The amendment made by subsection (a) [amending this section] is effective with respect to services performed on or after October 1, 1982." 


**Effective Date of 1980 Amendments**

Section 918(a)(2) of Pub. L. 96–499 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to bills submitted and requests for payment made on or after such date (not later than April 1, 1981) as the Secretary of Health and Human Services prescribes by a notice published in the Federal Register." 

Section 946(c) of Pub. L. 96–499 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall become effective with respect to bills submitted or requests for payment made on or after July 1, 1981." 

**Effective Date of 1977 Amendments**

Amendment by Pub. L. 95–216 effective in the case of items and services furnished after Dec. 20, 1977, see section 501(c) of Pub. L. 95–216, set out as a note under section 1395x of this title. 

Amendment by Pub. L. 95–142 applicable with respect to care and services furnished on or after Oct. 25, 1977, see section 2(a)(4) of Pub. L. 95–142, set out as a note under section 1395x of this title. 

**Effective Date of 1976 Amendment**

Section 4 of Pub. L. 94–368 provided that: "The amendments made by sections 2 and 3 of this Act [amending this section and provisions set out as a note under section 390e of Title 7, Agriculture] shall be effective with respect to periods beginning after June 30, 1976, except that, for the twelve-month period beginning July 1, 1976, the amendments made by section 3 [amending this section and provisions set out as a note under section 390e of Title 7, Agriculture] shall be applicable with respect to claims filed under part B of title XVIII of the Social Security Act [this part] (after June 30, 1976, and before July 1, 1977) with a carrier designated by the Secretary of Health and Human Services prescribes by a notice published in the Federal Register."
the prevailing charge levels for such twelve-month period under the third and fourth sentences of section 1842(b)(3) of the Social Security Act [subsec. (b)(3) of this section]."

**Effective Date of 1974 Amendment**


**Effective Date of 1972 Amendment**

Amendment by section 211(c)(9) of Pub. L. 92–603 applicable to services furnished with respect to admissions occurring after Dec. 31, 1972, see section 211(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Amendment by section 227(c)(3) of Pub. L. 92–603 applicable with respect to accounting periods beginning after June 30, 1973, see section 227(g) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Section 236(c) of Pub. L. 92–603 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to bills submitted and requests for payments made after the date of the enactment of this Act [Oct. 30, 1972]. The amendments made by subsection (b) [amending section 1396a of this title] shall be effective January 1, 1973 (or earlier if the State plan so provides)."

Section 258(b) of Pub. L. 92–603 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to bills submitted and requests for payment made after March 1968."

Section 263(b) of Pub. L. 92–603 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to hearings requested under the procedures established under section 1842(b)(3)(C) of the Social Security Act [subsec. (b)(3)(C) of this section] after the date of the enactment of this Act [Oct. 30, 1972]."

Amendment by section 268(d)(5) of Pub. L. 92–603 with respect to collection of premiums applicable to premiums becoming due and payable after the fourth month following the month of enactment of Pub. L. 92–603 which was approved on Oct. 30, 1968, see section 268(f) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Amendment by section 268(d)(9) of Pub. L. 92–603 to apply in the case of notices sent to individuals after April 19, 1968, see section 268(g) of Pub. L. 92–603, set out as a note under section 1395f of this title.

**Effective Date of 1968 Amendment**

Section 125(b) of Pub. L. 90–248 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to payments made after the date of enactment of this Act [Jan. 2, 1968]."

**Transfer of Functions**

Physician Payment Review Commission (PPRC) was terminated and its assets and staff transferred to the Medicare Payment Advisory Commission (MedPAC) by section 402(c)(2), (3) of Pub. L. 105–33, set out as a note under section 1395f of this title. Section 402(c)(2), (3) further provided that MedPAC was to be responsible for preparation and submission of reports required by law to be submitted by PPRC, and that, for that purpose, any reference in law to PPRC was to be deemed, after the appointment of MedPAC, to refer to MedPAC.

**Linkage of Revised Drug Payments and Increases for Drug Administration**

Pub. L. 108–173, title III, §303(f), Dec. 8, 2003, 117 Stat. 2253, provided that: "The Secretary [of Health and Human Services] shall not implement the revisions in payment amounts for drugs and biologicals administered by physicians as a result of the amendments made by subsection (b) [amending this section] with respect to 2004 unless the Secretary concurrently makes adjustments to the practice expense payment adjustment under the amendments made by subsection (a) [amending section 1395w–4 of this title]."

**Continuation of Payment Methodology for Radiopharmaceuticals**

Pub. L. 108–173, title III, §303(b), Dec. 8, 2003, 117 Stat. 2253, provided that: "Nothing in the amendments made by this section [enacting sections 1395w–3a and 1395w–3b of this title, amending this section and sections 1395f, 1395w–4, 1395x, 1396y, and 1396z–6 of this title, and repealing provisions set out as a note under this section] shall be construed as changing the payment methodology under part B of title XVIII of the Social Security Act [this part] for radiopharmaceuticals, including the use by carriers of invoice pricing methodology."

**Implementation of 2003 Amendment**

Pub. L. 108–173, title III, §303(i)(5), Dec. 8, 2003, 117 Stat. 2255, provided that: "The provisions of chapter 8 of title 5, United States Code, shall not apply with respect to regulations implementing the amendments made by subsections (a), (b), and (e)(3) [sic] of this section and section 1395w–4 of this title, to regulations implementing section 304 [set out as a note under this section], and to regulations implementing the amendment made by section 305(a) [amending this section], insofar as such regulations apply in 2004."

**Application of 2003 Amendment to Physician Specialties**

Pub. L. 108–173, title III, §303(j), Dec. 8, 2003, 117 Stat. 2255, provided that: "Insofar as the amendments made by this section [enacting sections 1395w–3a and 1395w–3b of this title, amending this section and sections 1395f, 1395w–4, 1395x, 1396y, and 1396z–8 of this title, and repealing provisions set out as a note under this section] apply to payments for drugs or biologicals and drug administration services furnished by physicians, such amendments shall only apply to physicians in the specialties of hematology, hematology/oncology, and medical oncology under title XVIII of the Social Security Act [this subchapter]."

Pub. L. 108–173, title III, §304, Dec. 8, 2003, 117 Stat. 2255, provided that: "Notwithstanding section 303(j) [set out above], the amendments made by section 303 [enacting sections 1395w–3a and 1395w–3b of this title, amending this section and sections 1395f, 1395w–4, 1395x, 1396y, and 1396z–8 of this title, and repealing provisions set out as a note under this section] shall also apply to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology."

**Issuance of Temporary National Codes**


**Revised Part B Payment for Drugs and Biologicals and Related Services**


(a) RECOMMENDATIONS FOR REVISED PAYMENT METHODOLOGY FOR DRUGS AND BIOLOGICALS.—

'(1) STUDY.—

'(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the reimbursement for drugs and biologicals under the current Medicare payment methodology (provided under section 1842(a) of the Social Security Act (42 U.S.C. 1395u(a))) and for related services under part B of title XVIII of such Act [this part].

In the study, the Comptroller General shall—

'(i) identify the average price at which such drugs and biologicals are acquired by physicians and other suppliers;
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“(ii) quantify the difference between such average prices and the reimbursement amount under such section; and

“(iii) determine the extent to which (if any) payment under such part is adequate to compensate physicians, providers of services, or other suppliers of such drugs and biologicals for costs incurred in the administration for handling, or storage of such drugs or biologicals.

“(B) Consultation.—In conducting the study under subparagraph (A), the Comptroller General shall consult with physicians, providers of services, and suppliers of drugs and biologicals under the medicare program under title XVIII of such Act [this subchapter], as well as other organizations involved in the distribution of such drugs and biologicals to such physicians, providers of services, and suppliers.

“(2) Report.—Not later than 9 months after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress and to the Secretary of Health and Human Services a report on the study conducted under this subsection, and shall include in such report recommendations for revised payment methodologies described in paragraph (3).

“(3) Recommendations for revised payment methodologies.—

“(A) In general.—The Comptroller General shall provide specific recommendations for revised payment methodologies for reimbursement for drugs and biologicals and for related services under the medicare program. The Comptroller General may include in the recommendations—

“(i) proposals to make adjustments under subsection (c) of section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for the practice expense component of the physician fee schedule under such section for the costs incurred in the administration, handling, or storage of certain categories of such drugs and biologicals, if appropriate; and

“(ii) proposals for new payments to providers of services or suppliers for such costs, if appropriate.

“(B) Ensuring patient access to care.—In making recommendations under this paragraph, the Comptroller General shall ensure that any proposed revised payment methodology is designed to ensure that medicare beneficiaries continue to have appropriate access to health care services under the medicare program.

“(C) Matters considered.—In making recommendations under this paragraph, the Comptroller General shall consider—

“(i) the method and amount of reimbursement for similar drugs and biologicals made by large group health plans;

“(ii) as a result of any revised payment methodology, the potential for patients to receive inpatient or outpatient hospital services in lieu of services in a physician’s office; and

“(iii) the effect of any revised payment methodology on the delivery of drug therapies by hospital outpatient departments.

“(D) Coordination with BBRA study.—In making recommendations under this paragraph, the Comptroller General shall conclude and take into account the results of the study provided for under section 213(a) of BBRA [Pub. L. 106–113, § 1000(a)(6) [title II, § 213(a)], set out as a note under section 1395 of this title] (113 Stat. 1501A–350).

“(E) Implementation of new payment methodology.—

“(i) In general.—Notwithstanding any other provision of law, based on the recommendations contained in the report under subsection (a), the Secretary of Health and Human Services, subject to paragraph (2), shall revise the payment methodology under section 1820(e) of the Social Security Act (42 U.S.C. 1395u(o)) for drugs and biologicals furnished under part B of the medicare program [this part]. To the extent the Secretary determines appropriate, the Secretary may provide for the adjustments to payments amounts referred to in subsection (a)(3)(A)(I) or additional payments referred to in subsection (a)(2)(A)(II).

“(2) Limitation.—In revising the payment methodology under paragraph (1), in no case may the estimated aggregate payments for drugs and biologicals under the revised system (including additional payments referred to in subsection (a)(3)(A)(II)) exceed the aggregate amount of payment for such drugs and biologicals, as projected by the Secretary, that would have been made under the payment methodology in effect under such section 1842(o).

“(c) Moratorium on decreases in payment rates.—Notwithstanding any other provision of law, effective for drugs and biologicals furnished on or after January 1, 2001, the Secretary may not directly or indirectly decrease the rates of reimbursement (in effect as of such date) for drugs and biologicals under the current medicare payment methodology (provided under section 1842(o) of the Social Security Act (42 U.S.C. 1395u(o))) until such time as the Secretary has reviewed the report submitted under subsection (a)(2).

IMPLEMENTATION OF INHERENT REASONABLENESS (IR) AUTHORITY


“(a) Limitation on use.—The Secretary of Health and Human Services may not use, or permit fiscal intermediaries or carriers to use, the inherent reasonableness authority provided under section 1842(b)(8) of the Social Security Act (42 U.S.C. 1395u(b)(8)) until such time as the Secretary has reviewed the report submitted under subsection (a)(2).

“(b) Initial neutral rate.—The Secretary of Health and Human Services shall set amounts for the first year period to which the Secretary of Health and Human Services (in this section referred to as the ‘Secretary’) shall—

“(1) the Comptroller General of the United States releases a report pursuant to the request for such a report made on March 1, 1999, regarding the impact of the Secretary’s, fiscal intermediaries’, and carriers’ use of such authority; and

“(2) the Secretary has published a notice of final rulemaking in the Federal Register that relates to such authority and that responds to such report and to comments received in response to the Secretary’s interim final regulation relating to such authority that was published in the Federal Register on January 7, 1998.

“(c) Reevaluation of IR criteria.—In promulgating the final regulation under subsection (a)(2), the Secretary shall—

“(1) reevaluate the appropriateness of the criteria included in such interim final regulation for identifying payments which are excessive or deficient; and

“(2) take appropriate steps to ensure the use of valid and reliable data when exercising such authority.”

INITIAL BUDGET NEUTRALITY

Section 4315(d) of Pub. L. 105–33 provided that: “The Secretary, in developing a fee schedule for particular services (under the amendments made by this section (amending this section and section 1395f of this title)), shall set amounts for the first year period to which the fee schedule applies at a level so that the total payments under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for those services for that year period shall be approximately equal to the estimated total payments if such fee schedule had not been implemented.”

IMPROVEMENTS IN ADMINISTRATION OF LABORATORY TESTS BENEFIT

Section 4554 of Pub. L. 105–33 provided that: “(a) Selection of regional carriers.—

“(1) In general.—The Secretary of Health and Human Services (in this section referred to as the ‘Secretary’) shall

“(A) divide the United States into no more than 5 regions, and

“...
“(4) USE OF INTERIM POLICIES.—After the date the Secretary first implements such national policies, the Secretary shall permit any carrier to develop and implement interim policies of the type described in paragraph (1), in accordance with guidelines established by the Secretary, in cases in which a uniform national policy has not been established under this subsection and there is a demonstrated need for a policy to respond to aberrant utilization or provision of unnecessary tests. Except as the Secretary specifically permits, no policy shall be implemented under this paragraph for a period of longer than 2 years.

“(5) INTERIM NATIONAL POLICIES.—After the date the Secretary first designates regional carriers under subsection (a), the Secretary shall establish a process under which designated carriers can collectively develop and implement interim national policies of the type described in paragraph (1). No such policy shall be implemented under this paragraph for a period of longer than 2 years.

“(6) BIENNIAL REVIEW PROCESS.—Not less often than once every 2 years, the Secretary shall solicit and review comments regarding changes in the national policies established under this subsection. As part of such biennial review process, the Secretary shall specifically review and consider whether to incorporate or supersede interim policies developed under paragraph (4) or (5). Based upon such review, the Secretary may provide for appropriate changes in the national policies previously adopted under this subsection.

“(7) REQUIREMENT AND NOTICE.—The Secretary shall ensure that any policies adopted under paragraph (3), (4), or (5) shall apply to all laboratory claims payable under part B of title XVIII of the Social Security Act (this part), and shall provide for advance notice to interested parties and a 45-day period in which such parties may submit comments on the proposed change.

“(c) INCLUSION OF LABORATORY REPRESENTATIVE ON CARRIER ADVISORY COMMITTEES.—The Secretary shall direct that any advisory committee established by a carrier to advise such carrier with respect to coverage and administrative policies under part B of title XVIII of the Social Security Act (this part) shall include an individual to represent the independent clinical laboratories and such other laboratories as the Secretary deems appropriate. The Secretary shall consider recommendations from national and local organizations that represent independent clinical laboratories in such selection.”

WHOLESALE PRICE STUDY AND REPORT

Pub. L. 105–33, title IV, §4556(c), Aug. 5, 1997, 111 Stat. 463, which directed the Secretary of Health and Human Services to study the effect on the average wholesale price of drugs and biologicals of the amendments to this section by section 4556(a) of Pub. L. 105–33, and to report to Congress the result of such study not later than July 1, 1999, was repealed by Pub. L. 108–173, title III, §303(i)(6), Dec. 8, 2003, 117 Stat. 2255.

BUDGET NEUTRALITY ADJUSTMENT

Section 1351(b) of Pub. L. 103–66 provided that: “Notwithstanding any other provision of law, the Secretary of Health and Human Services shall reduce the following values and amounts for 1994 (to be applied for that year and subsequent years) by such uniform percentage as the Secretary determines to be required to assure that the amendments made by subsection (a) [amending this section and section 1395w–4 of this title] will not result in expenditures under part B of title XVIII of the Social Security Act [this part] in 1994 that exceed the amount of such expenditures that would have been made if such amendments had not been made:

“(1) The relative values established under section 1848(c) of such Act [section 1395w–4(c) of this title] for services (other than anesthesia services) and, in the case of anesthesia services, the conversion factor ex-
established under section 1848 of such Act for such services.

(2) The amounts determined under section 1848(a)(2)(B) of such Act as the 'Secretary' may not issue any regulation that changes the coverage of conventional eyewear furnished to individuals (enrolled under part B of title XVIII of the Social Security Act (this part)) following cataract surgery with insertion of an intraocular lens.

(3) The prevailing charges or fee schedule amounts to be applied under such part for services of a health care practitioner (as defined in section 1842(b)(4)(F) of such Act [subsec. (b)(4)(F) of this section], as in effect before the date of the enactment of this Act [Aug. 10, 1990])."

**PROCEDURE CODES**

Section 4101(b)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 117(c)(7)(B), Oct. 31, 1994, 108 Stat. 4432, provided that: "Not later than March 31, 1991, the Secretary of Health and Human Services shall publish, and shall periodically update, a directory of the unique physician identification numbers of all physicians providing services for which payment may be made under part B of title XVIII of the Social Security Act [this part], and shall include in such directory the names, provider numbers, and billing addresses [sic] of all listed physicians."

**TREATMENT OF CERTAIN EYE EXAMINATION VISITS AS PRIMARY CARE SERVICES**

Section 6102(c)(10) of Pub. L. 101–239 provided that: "In applying section 1842(i)(4) of the Social Security Act [subsec. (i)(4) of this section] for services furnished on or after January 1, 1990, intermediate and comprehensive office visits for eye examinations and treatments (codes 92002 and 92004) shall be considered to be primary care services."

**DELAY IN UPDATE UNTIL APRIL 1, 1990, AND REDUCTION IN PERCENTAGE INCREASE IN MEDICARE ECONOMIC INDEX**

Section 6107(a) of Pub. L. 101–239 provided that: "(1) In general.—Subject to the amendments made by this section [amending this section], any increase or adjustment in customary, prevailing, or reasonable charges, fee schedule amounts, maximum allowable actual charges, and other limits on actual charges with respect to physicians' services and other items and services described in paragraph (2) under part B of title XVIII of the Social Security Act [this part] which would otherwise occur as of January 1, 1990, shall be delayed so as to occur as of April 1, 1990, and, notwithstanding any other provision of law, the amount of payment under such part for such items and services which are furnished during the period beginning on January 1, 1990, and ending on March 31, 1990, shall be determined on the same basis as the amount of payment for such services furnished on December 31, 1989.

(2) Items and services covered.—The items and services described in this paragraph are items and services other than ambulance services and clinical diagnostic laboratory services for which payment is made under part B of title XVIII of the Social Security Act on the basis of a reasonable charge or a fee schedule.

(3) Extension of participation agreements and related provisions.—Notwithstanding any other provision of law—

``(A) subject to the last sentence of this paragraph, each participation agreement in effect on December 31, 1989, under section 1842(b)(1) of the Social Security Act [subsec. (h)(1) of this section] shall remain in effect for the 3-month period beginning on January 1, 1990;"

``(B) the effective period for such agreements under such section entered into for 1990 shall be the 9-month period beginning on April 1, 1990, and the Secretary of Health and Human Services shall provide an opportunity for physicians and suppliers to enroll as participating physicians and suppliers before April 1, 1990;"

``(C) instead of publishing, under section 1842(b)(4) of the Social Security Act [subsec. (h)(4) of this section], at the beginning of 1990, directories of participating physicians and suppliers for 1990, the Sec-

**STUDY OF RELEASE OF PREPAYMENT MEDICAL(197,895),(813,928)
retary shall provide for such publication, at the begin-
ning of the 9-month period beginning on April 1, 
1990, of such directories of participating physicians 
and suppliers for such period.

“(D) instead of providing to nonparticipating physi-
cians under section 1842(b)(3)(G) of the Social Secu-
rity Act [subsec. (b)(3)(G) of this section] at the begin-
ing of 1990, a list of maximum allowable actual 
charges for the Secretary shall provide, at the 
beginning of the 9-month period beginning on April 1, 
1990, such physicians such a list for such 9-month pe-
riod.

An agreement with a participating physician or sup-
plier described in subparagraph (A) in effect on December 
31, 1989, under section 1842(b)(1) of the Social Secu-
rity Act shall not remain in effect for the period de-
scribed in subparagraph (A) if the participating physi-
cian or supplier requests on or before December 31, 1989, 
that the agreement be terminated.”

STATE DEMONSTRATION PROJECTS ON APPLICATION OF LIMITATION ON VISITS PER MONTH PER RESIDENT ON AGGREGATE BASIS FOR A TEAM

Section 611(c) of Pub. L. 101–239 provided that: “The Secretary of Health and Human Services shall provide for at least 1 demonstration project under which, in the 
application of section 1862(b)(2)(C) of the Social Secu-
rity Act [subsec. (b)(2)(C) of this section] (as added by subsec-
ction (c)(2) of this section) in one or more States, 
the limitation on the number of visits per month per 
resident would be applied on an average basis over the 
aggregate total of residents receiving services from 
members of the team.”

APPLICATION OF DIFFERENT PERFORMANCE STANDARDS FOR ELECTRONIC SYSTEM FOR COVERED OUTPATIENT DRUGS

Human Services, before entering into contracts under 
section 1395u of this title with respect to implementa-
tion and operation of electronic system for covered 
outpatient drugs, to establish standards with respect to 
performance with respect to such activities, was re-
pealed by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 

DELAY IN APPLICATION OF COORDINATION OF BENEFITS WITH PRIVATE HEALTH INSURANCE

Section 202(e)(4)(B) of Pub. L. 100–360, which provided that the provisions of section 1395u(h)(3) of this title not apply to covered outpatient drugs (other than 
drugs described in section 1395a(g)(2)(J) of this title as of 
July 1, 1988) dispensed after March 1, 1988, was re-
pealed by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 

EXTENSION OF PHYSICIAN PARTICIPATION AGREEMENTS AND RELATED PROVISIONS

Section 4041(a)(2) of Pub. L. 100–203 provided that: “Notwithstanding any other provision of law—

“(A) subject to the last sentence of this paragraph, 
each agreement with a participating physician in ef-
fact on December 31, 1987, under section 1842(h)(1) of the Social Security Act [subsec. (h)(1) of this section] shall remain in effect for the 3-month period begin-
nning on January 1, 1988;

“(B) the effective period for agreements under such 
section entered into for 1988 shall be the nine-month 
period beginning on April 1, 1988, and the Secretary 
shall provide an opportunity for physicians to enroll 
as participating physicians prior to April 1, 1988;

“(C) instead of publishing, under section 1842(h)(4) of the Social Security Act [subsec. (h)(4) of this sec-
tion] at the beginning of 1988, directories of partici-
pating physicians for 1988, the Secretary shall provide 
for such publication, at the beginning of the 9-month period beginning on April 1, 1988, of such directories of participating physicians for such period; and

“(D) instead of providing to nonparticipating physi-
cians, under section 1842(b)(3)(G) of the Social Secu-
rity Act [subsec. (b)(3)(G) of this section] at the begin-
ing of 1988, a list of maximum allowable actual 
charges for 1988, the Secretary shall provide, at the 
beginning of the 9-month period beginning on April 1, 
1988, to such physicians such a list for such 9-month period.

An agreement with a participating physician in effect 
on December 31, 1987, under section 1842(h)(1) of the 
Social Security Act shall not remain in effect for the pe-
riod described in subparagraph (A) if the participating 
physician requests on or before December 31, 1987, that 
the agreement be terminated.”

DEVELOPMENT OF UNIFORM RELATIVE VALUE GUIDE

Section 4048(b) of Pub. L. 100–203, as amended by Pub. L. 101–508, title IV, § 4118(b)(1), Nov. 5, 1990, 104 Stat. 1388–70, provided that: “The Secretary of Health and 
Human Services, in consultation with groups represent-
ing physicians who furnish anesthesia services, shall 
establish by regulation a relative value guide for use in 
carrier localities in making payment for physician anesthesia services furnished under part B of title 
XVIII of the Social Security Act [this part] on and 
after March 1, 1988. Such guide shall be designed so as 
to result in expenditures under such title [this sub-
chapter] for such services in any calendar year that 
do not exceed the amount of such expenditures which would 
otherwise occur.”

[Section 4118(b) of Pub. L. 101–508 provided that the 
amendment by that section to section 4048(b) of Pub. L. 
100–203, set out above, is effective as if included in en-
actment of Omnibus Budget Reconciliation Act of 1987, 
Pub. L. 100–203.]

STUDY OF PREVAILING CHARGES FOR ANESTHESIA SERVICES

Section 4048(c) of Pub. L. 100–203, which required Sec-
retary of Health and Human Services to study vari-
ations in conversion factors used by carriers under sec-
section 1395(h)(1) of this title to determine prevailing 
charge for anesthesia services and to report results of 
study and make recommendations for appropriate ad-
justments in such factors not later than Jan. 1, 1989, 
was repealed by Pub. L. 101–508, title IV, § 4118(c)(2), 

GAO STUDIES

Section 4048(d) of Pub. L. 100–203 provided that:

“(1) The Comptroller General shall conduct a study—

“(A) to determine the average anesthesia times re-
ported for Medicare reimbursement purposes;

“(B) to verify those times from patient medical 
records,

“(C) to compare anesthesia times to average sur-
gical times, and

“(D) to determine whether the current payments 
for physician supervision of nurse anesthetists are ex-
cessive.

The Comptroller General shall report to Congress, 
by not later than January 1, 1989, on such study and in the 
report include recommendations regarding the appro-
priateness of the anesthesia times recognized by medi-
care for reimbursement purposes and recommendations 
regarding adjustments of payments for physician super-
vision of nurse anesthetists.

“(2) The Comptroller General shall conduct a study on 
the impact of the amendment made by subsection 
(a) [amending this section], and shall report to Con-
gress on the results of such study by April 1, 1990.”

ADJUSTMENT IN MEDICARE PREVAILING CHARGES

Section 4051(b) of Pub. L. 100–203 provided that:

“(1) REVIEW.—The Secretary of Health and Human 
Services shall review payment levels under part B of 
title XVIII of the Social Security Act [this part] for di-
agnostic tests (described in section 1861(s)(3) of such 
Act [section 1935x(s)(3) of this title], but excluding clin-
(c) similar procedures would be listed together if the procedures are similar in resource requirements.

PAYMENTS FOR DURABLE MEDICAL EQUIPMENT, PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS: 1-YEAR FREEZE ON CHARGO LIMITATIONS

Section 4062(a) of Pub. L. 100–203 provided that:

“(1) IN GENERAL.—In imposing limitations on allowable charges for items and services (other than physicians' services) furnished in 1988 under part B of title XVIII of such Act (this part) and for which payment is made on the basis of the reasonable charge for the item or service, the Secretary of Health and Human Services shall not impose any limitation at a level higher than the same level as was in effect in December 1987.

“(2) TRANSITION.—The provisions of section 404(a)(2) (other than subparagraph (D) thereof) of this subtitle (set out as a note above) shall apply to suppliers of items and services described in paragraph (1), and directories of participating suppliers of such items and services, in the same manner as such section applies to physicians furnishing physicians' services, and directories of participating physicians.

SPECIAL RULE WITH RESPECT TO PAYMENT FOR INTRAOCULAR LENSES

Section 4063(d) of Pub. L. 100–203 provided that:

“With respect to the establishment of a reasonable charge limit under section 1842(b)(1)(C)(ii) of the Social Security Act [subsec. (b)(1)(C)(ii) of this section] and payments under part B of title XVIII of such Act (this part) before having a hearing before an administrative law judge respecting carrier determinations under that part. The Comptroller General shall report to the Congress on the results of such study by not later than June 30, 1989.

CAPACITY TO SET GEOGRAPHIC PAYMENT LIMITS

Section 4085(e) of Pub. L. 100–203 provided that:

“The Secretary of Health and Human Services shall develop the capability to implement (for services furnished on or after January 1, 1989) geographic limits on charges and payments under part B of title XVIII of the Social Security Act [this part] for physicians' services based on statewide, regional, or national average (or percentile in a distribution) of prevailing charges or payment amounts (weighted by frequency of services). Any such limits shall take into account adjustments for geographic differences in cost of practice and cost of living.”

UTILIZATION SCREENS FOR PHYSICIAN SERVICES PROVIDED TO PATIENTS IN REHABILITATION HOSPITALS

Section 4114 of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §128(e)(4), Oct. 31, 1994, 108 Stat. 4116, provided that: “Not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services shall issue guidelines to assure a uniform level of review of physician visits to patients of a rehabilitation hospital or unit after the medical review screen parameter established under section 4085(h) of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203, set out below] has been exceeded.”

Section 4085(h) of Pub. L. 100–203 provided that:

“(1) The Secretary of Health and Human Services shall establish (in consultation with appropriate physi-
cian groups, including those representing rehabilitative medicine) a separate utilization screen for physician visits to patients in rehabilitation hospitals and rehabilitative units (and patients in long-term-care hospitals receiving rehabilitation services) to be used by carriers under section 1842 of the Social Security Act [this section] in performing functions under subsection (a) of such section related to the utilization practices of physicians in such hospitals and units.

"(2) Not later than 12 months after the date of enactment of this Act [Dec. 22, 1987], the Secretary of Health and Human Services shall take appropriate steps to implement the utilization screen established under paragraph (1)."

MEASURING CARRIER PERFORMANCE; CARRIER BONUSES FOR GOOD PERFORMANCE
Section 9333(a)(2), (3) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, §4041(a)(3)(B)(ii), (iii), Dec. 22, 1987, 101 Stat. 1330–133, which provided that the Secretary of Health and Human Services shall provide, in the standards and criteria established under section 1842(b)(2) of the Social Security Act [subsec. (b)(2) of this section] for contracts under that section, a system to measure a carrier's performance of the responsibilities described in sections 1842(b)(3)(H) and 1842(b)(2) of such Act and that, of the amounts appropriated for administrative activities to carry out part B of title XVIII of the Social Security Act [this part], the Secretary of Health and Human Services was to provide payments, totaling 1 percent of the total payments to carriers for claims processing in any fiscal year, to carriers under section 1842 of such Act, to reward such carriers for their success in increasing the proportion of physicians in the carrier's service area who were participating physicians or in increasing the proportion of total payments for physicians' services which were payments for such services rendered by participating physicians, was repealed by Pub. L. 100–203, title IV, §4041(f)(1)(C), July 1, 1988, 102 Stat. 776, provided that:

"(B) PERFORMANCE MEASURES.—The Secretary of Health and Human Services shall provide for the establishment of the standards and criteria required under the last sentence of section 1842(b)(2) of the Social Security Act [subsec. (b)(2) of this section] by not later than October 1, 1987, which shall apply to contracts as of October 1, 1987.

"(C) CARRIER BONUSES.—From the amounts appropriated for each fiscal year (beginning with fiscal year 1988), the Secretary of Health and Human Services shall first provide for payments of bonuses to carriers under section 1842(c)(1)(B) of the Social Security Act [subsec. (c)(1)(B) of this section] not later than September 30, 1988, to reflect performance of carriers during the enrollment period before April 1, 1988."
“(2) Patient Protections.—In the case of any reduction in the reasonable charge for physicians' services effected under the regulation described in paragraph (1), the provisions of section 1842(b)(1)(D) of the Social Security Act [subsec. (j)(1)(D) of this section] (added by the amendment made by subsection (a)(3)) shall apply in the same manner and to the same extent as they apply to a reduction in the reasonable charge for a physician's service effected under section 1842(b)(8) of such Act.”

Payment for Parenteral and Enteral Nutrition Supplies and Equipment

Section 9340 of Pub. L. 99-509 provided that: “The Secretary of Health and Human Services shall apply the sixth sentence of section 1842(b)(3) of the Social Security Act [subsec. (j)(1)(D) of this section] to payment—

“(1) for enteral nutrition nutrients, supplies, and equipment and parenteral nutrition supplies and equipment furnished on or after January 1, 1987, and

“(2) for parenteral nutrition nutrients furnished on or after October 1, 1987.”

Reporting of OPD Services Using HCPCS

Section 9343(g) of Pub. L. 99-509 provided that: “Not later than July 1, 1987, each fiscal intermediary which processes claims under part B of title XVIII of the Social Security Act [this part] shall require hospitals, as a condition of payment for outpatient hospital services under that part, to report claims for payment for such services under such part using a HCFA Common Procedure Coding System.”

Period for Entering into Participation Agreements

Section 9301(b)(9) of Pub. L. 99-272 provided that: “The Secretary of Health and Human Services shall provide, during the month of April 1986, that physicians and suppliers may enter into an agreement under section 1842(b)(1) of the Social Security Act [subsec. (b)(1) of this section] for the first period beginning on May 1, 1986, or terminate such an agreement previously entered into for fiscal year 1986. In the case of a physician or supplier who entered into such an agreement for fiscal year 1986, the physician or supplier shall be deemed to have entered into such agreement for such 8-month period and for each succeeding year unless the physician or supplier terminates such agreement before the beginning of the respective period. At the beginning of such 8-month period, the Secretary shall publish a new directory (described in section 1842(h)(4) of this Act [subsec. (h)(4) of this section], as redesignated by subsubsection (c)(3)(D) of this section) of participating physicians and suppliers.”

Transitional Provisions for Medicare Part B Payments

Section 9301(d)(5) of Pub. L. 99-272 provided that: “Notwithstanding any other provision of law, for purposes of making payment under part B of title XVIII of the Social Security Act [this part], customarily and prevailing charges (and the lowest charges determined under the sixth sentence of section 1842(b)(3) of such Act [subsec. (b)(3) of this section]) for items and services furnished during the period beginning on October 1, 1986, and ending on December 31, 1986, shall be determined on the same basis as for items and services furnished on September 30, 1986.”

Computation of Customary Charges for Certain Nonhospital-Compensated Physicians

Section 9301(b) of Pub. L. 99-272 provided that: “In applying section 1842(b) of the Social Security Act [subsec. (b) of this section] to payment for physicians' services performed during the 8-month period beginning May 1, 1986, in the case of a physician who at anytime during the period beginning on October 31, 1982, and ending on January 31, 1985, was a hospital-compensated physician (as defined in paragraph (3)) but who, as of February 1, 1985, was no longer a hospital-compensated physician, the physician’s customary charges shall—

“A) be based upon the physician’s actual charges billed during the 12-month period ending on March 31, 1985, and

“B) in the case of a physician who was not a participating physician (as defined in section 1842(b)(1) of the Social Security Act [subsec. (h)(1) of this section]) on September 30, 1985, and who is not such a physician on May 1, 1986, be deflated (to take into account the legislative freeze on actual charges for nonparticipating physicians’ services) by multiplying the physician's customary charges by .85.

“(2) In applying section 1842(b) of the Social Security Act [subsec. (b) of this section] to payment for physicians' services performed during the 8-month period beginning May 1, 1986, in the case of a physician who during the period beginning on February 1, 1985, and ending on December 31, 1986, changes from being a hospital-compensated physician to not being a hospital-compensated physician, the physician’s customary charges shall be determined in the same manner as if the physician were considered to be a new physician.

“(3) In this subsection, the term ‘hospital-compensated physician’ means, with respect to services furnished to patients of a hospital, a physician who is compensated by the hospital for the furnishing of physicians’ services for which payment may be made under this part.”

Extension of Medicare Physician Payment Provisions

Period of 15 months referred to in subsec. (j)(1) of this section for monitoring the charges of nonparticipating physicians to be deemed to include the period Oct. 1, 1985, to Mar. 14, 1986, see section 5(b) of Pub. L. 99-107, set out as a note under section 1395w of this title.

Simplification of Procedures With Respect to Claims and Payments for Clinical Diagnostic Laboratory Tests

Section 2303(b) of Pub. L. 98-369 provided that: “The Secretary of Health and Human Services shall simplify the procedures under section 1842 of the Social Security Act [this section] with respect to claims and payments for clinical diagnostic laboratory tests so as to reduce unnecessary paperwork while assuring that sufficient information is supplied to identify instances of fraud and abuse.”

Study of Amounts Billed for Physician Services and Paid by Carriers Under Subsection (b) of This Section; Report to Congress

Section 2307(c) of Pub. L. 98-369 directed Comptroller General to conduct a study of the amounts billed for physician services and paid by carriers under subsection (b)(7) of this section to determine whether such payments were made only where the physician satisfied the requirements of subsection (b)(7) of this section, and to submit to Congress a report on results of such study not later than 18 months after July 18, 1984.

Replacement of Agency, Organization, or Carrier Processing Medicare Claims; Number of Agreements and Contracts Authorized for Fiscal Years 1963 Through 1993

For provision authorizing two agreements under section 1395h of this title and two contracts under this section for replacement of an agency, organization, or carrier in the lowest 20th percentile, see section 2326(a) of Pub. L. 98-369, as amended, set out as a note under section 1395h of this title.

Rules and Regulations

Section 139(c)(2) of Pub. L. 97-248 provided that: ‘‘The Secretary of Health and Human Services shall first issue such final regulations (whether on an interim or other basis) before October 1, 1982, as may be necessary
to implement the amendment made by subsection (a) [amending this section] on a timely basis. If such regulations are promulgated on an interim final basis, the Secretary shall take such steps as may be necessary to provide opportunity for public comment, and appropriate revision based thereon, so as to provide that such regulations are not on an interim basis later than January 31, 1983."

Report on Reimbursement of Clinical Laboratories

Section 918(a)(3) of Pub. L. 96–409 provided that not later than 24 months after an effective date (not later than Apr. 1, 1981) which was to have been prescribed by the Secretary of Health and Human Services, the Secretary was to report to the Congress (A) the proportion of bills and requests for payment submitted (during the 18-month period beginning on such effective date) under this subchapter for laboratory tests which did not identify who performed the tests, (B) the proportion of bills and requests for payment submitted during such period for laboratory tests with respect to which the amount paid under this subchapter was less than the amount that would otherwise have been payable in the absence of subsec. (h) of this section, (C) with respect to requests for payment described in subparagraph (B) which were submitted by patients, the average additional cost per laboratory test to patients resulting from reductions in payment that would otherwise have been made for such tests in the absence of such subsec. (h), and (D) with respect to bills described in subparagraph (B) which were submitted by physicians, the average reduction in payment per laboratory test to physicians resulting from the application of such subsec. (h).

Prevailing Charge Levels for Fiscal Year Beginning July 1, 1975

Section 101(b) of Pub. L. 94–182 provided that: "The amendment made by subsection (a) [amending subsec. (b)(3) of this section] shall be applicable with respect to claims filed under part B of title XVIII of the Social Security Act [this part] with a carrier designated pursuant to section 1842 of such Act [this section] and processed by such carrier after the appropriate changes were made in the prevailing charge levels for the fiscal year beginning July 1, 1975, on the basis of economic index data under the third and fourth sentences of section 1395(v. Agreements with States

§ 1395v. Agreements with States

(a) Duty of Secretary; enrollment of eligible individuals

The Secretary shall, at the request of a State made before January 1, 1970, or during 1981 or after 1988, enter into an agreement with such State pursuant to which all eligible individuals in either of the coverage groups described in subsection (b) of this section (as specified in the agreement) will be enrolled under the program established by this part.

(b) Coverage of groups to which applicable

An agreement entered into with any State pursuant to subsection (a) of this section may be applicable to either of the following coverage groups:

1. individuals receiving money payments under the plan of such State approved under subchapter I of this chapter or subchapter XVI of this chapter; or

2. individuals receiving money payments under all of the plans of such State approved under subchapters I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter.

Except as provided in subsection (c) of this section, there shall be excluded from any coverage group any individual who is entitled to monthly insurance benefits under subchapter II of this chapter or who is entitled to receive an annuity under the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.). Effective January 1, 1974, and subject to section 1396af of this title, the Secretary shall, at the request of any State not eligible to participate in the State plan program established under subchapter XVI of this chapter, continue in effect the agreement entered into under this section with such State subject to such modifications as the Secretary may by regulations provide to take account of the termination of any plans of such State approved under subchapters I, X, XIV, and XVI of this chapter and the establishment of the supplemental security income program under subchapter XVI of this chapter.

(c) Eligible individuals

For purposes of this section, an individual shall be treated as an eligible individual only if he is an eligible individual (within the meaning of section 1395t of this title) on the date an agreement covering him is entered into under subsection (a) of this section or he becomes an eligible individual (within the meaning of such section) at any time after such date; and he shall be treated as receiving money payments described in subsection (b) of this section if he receives such payments for the month in which the agreement is entered into or any month thereafter.

(d) Monthly premiums; coverage periods

In the case of any individual enrolled pursuant to this section—

1. the monthly premium to be paid by the State shall be determined under section 1395r of this title (without any increase under subsection (b) thereof);

2. his coverage period shall begin on whichever of the following is the latest:

(A) July 1, 1966;

(B) the first day of the third month following the month in which the State agreement is entered into;

(C) the first day of the first month in which he is both an eligible individual and a member of a coverage group specified in the agreement under this section; or
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(D) such date as may be specified in the agreement; and

(3) his coverage period attributable to the agreement with the State under this section shall end on the last day of whichever of the following first occurs:

(A) the month in which he is determined by the State agency to have become ineligible both for money payments of a kind specified in the agreement and (if there is in effect a modification entered into under subsection (h) of this section) for medical assistance, or

(B) the month preceding the first month for which he becomes entitled to monthly benefits under subchapter II of this chapter or to an annuity or pension under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.].

(e) Subsection (d)(3) terminations deemed resulting in section 1395p enrollment

Any individual whose coverage period attributable to the State agreement is terminated pursuant to subsection (d)(3) of this section shall be deemed for purposes of this part (including the continuation of his coverage period under this part) to have enrolled under section 1395p of this title in the initial general enrollment period provided by section 1395p(c) of this title. The coverage period under this part of any such individual who (in the last month of his coverage period attributable to the State agreement or in any of the following six months) files notice that he no longer wishes to participate in the insurance program established by this part, shall terminate at the close of the month in which the notice is filed.

(f) “Carrier” as including State agency; provisions facilitating deductions, coinsurance, etc., and leading to economy and efficiency of operation

With respect to eligible individuals receiving money payments under the plan of a State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, or eligible to receive medical assistance under the plan of such State approved under subchapter XIX of this chapter, or (A) individuals who are eligible both for money payments of a kind specified in such agreement and (if there is in effect a modification entered into under this section) for medical assistance, or (B) individuals who are eligible both for money payments of a kind specified in such agreement and (if there is in effect a modification entered into under this section) for medical assistance and who (in the last month of his coverage period attributable to the State agreement or in any of the following six months) files notice that he no longer wishes to participate in the insurance program established by this part, shall be treated as eligible to receive medical assistance under the plan of such State approved under subchapter XIX of this chapter, or (B) qualified medicare beneficiaries (as defined in section 1396d(p)(1) of this title).

(g) Subsection (b) exclusions from coverage groups

(1) The Secretary shall, at the request of a State made before January 1, 1970, or during 1981 or after 1988, enter into a modification of an agreement entered into with such State pursuant to subsection (a) of this section under which the second sentence of subsection (b) of this section shall not apply with respect to such agreement.

(2) In the case of any individual who would (but for this subsection) be excluded from the applicable coverage group described in subsection (b) of this section by the second sentence of such subsection—

(A) subsections (c) and (d)(2) of this section shall be applied as if such subsections referred to the modification under this subsection (in lieu of the agreement under subsection (a) of this section), and

(B) subsection (d)(3)(B) of this section shall not apply so long as there is in effect a modification entered into by the State under this subsection.

(h) Modifications respecting subsection (b) coverage groups

(1) The Secretary shall, at the request of a State made before January 1, 1970, or during 1981 or after 1988, enter into a modification of an agreement entered into with such State pursuant to subsection (a) of this section under which the coverage group described in subsection (b) of this section and specified in such agreement is broadened to include (A) individuals who are eligible to receive medical assistance under the plan of such State approved under subchapter XIX of this chapter, or (B) qualified medicare beneficiaries (as defined in section 1396d(p)(1) of this title).

(2) For purposes of this section, an individual shall be treated as eligible to receive medical assistance under the plan of the State approved under subchapter XIX of this chapter if, for the month in which the modification is entered into under this subsection or for any month thereafter, he has been determined to be eligible to receive medical assistance under such plan. In the case of any individual who would (but for this subsection) be excluded from the agreement, subsections (c) and (d)(2) of this section shall be applied as if they referred to the modification under this subsection (in lieu of the agreement under subsection (a) of this section), and subsection (d)(2)(C) of this section shall be applied (except in the case of qualified medicare beneficiaries, as defined in section 1396d(p)(1) of this title) by substituting “second month following the first month” for “first month”.

(3) In this subsection, the term “qualified medicare beneficiary” also includes an individual described in section 1396a(a)(10)(E)(iii) of this title.

(i) Enrollment of qualified medicare beneficiaries

For provisions relating to enrollment of qualified medicare beneficiaries under part A of this subchapter, see section 1395i–2(g) of this title.

*See References in Text note below.*

References in Text

1981—Subsec. (b). Pub. L. 96–499, § 947(a), inserted “or are eligible for medical assistance” in section catchline.


Effective Date of 1980 Amendment
Amendment by Pub. L. 100–360 applicable to calendar quarters beginning on or after Jan. 1, 1990, without regard to whether or not regulations to implement such amendment are promulgated by such date, see section 4501(f) of Pub. L. 100–360, set out as a note under section 1396l of this title.

Effective Date of 1989 Amendment

Effective Date of 1988 Amendments
Amendment by Pub. L. 100–465 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–465, set out as a note under section 794 of this title.

Section 301(e)(3) of Pub. L. 100–360 provided that: “The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1989, and the amendments made by paragraph (2) [amending section 1396a of this title] shall take effect on July 1, 1989.”
months after June 1983 and before January 1984, the monthly premium for June 1983 shall apply to individuals enrolled under parts A and B of this subchapter, see section 606(c) of Pub. L. 93–621, set out as a note under section 1395r of this title.

**Effective Date of 1980 Amendment**

Section 947(d) of Pub. L. 96–499 provided that: "The amendments made by this section [amending this section and section 1395q of this title] apply to notices filed after the third calendar month beginning after the date of the enactment of this Act [Dec. 5, 1980]."

**Effective Date of 1974 Amendment**


**Effective Date of 1973 Amendment**


**Termination Period for Certain Individuals Covered Pursuant to State Agreements**

Section 947(e) of Pub. L. 96–499 provided that: "The coverage period under part B of title XVIII of the Social Security Act [this part] of an individual whose coverage period attributable to a State agreement under section 1843 of such Act [this section] is terminated and who has filed notice before the end of the third calendar month beginning after the date of the enactment of this Act [Dec. 5, 1980] that he no longer wishes to participate in the insurance program established by part B of title XVIII shall terminate on the earlier of (1) the day specified in section 1838 (section 1395q of this title) without the amendments made by this section, or (2) unless the individual files notice before the day specified in this clause that he wishes his coverage period to terminate as provided in clause (1) the day on which his coverage period would terminate if the individual filed notice in the fourth calendar month beginning after the date of the enactment of this Act."

**District of Columbia; Agreement of Commissioner With Secretary for Supplementary Medical Insurance**

Pub. L. 90–227, § 2, Dec. 27, 1967, 81 Stat. 745, provided that: "The Commissioner [now Mayor of District of Columbia] may enter into an agreement (and any modifications of such agreement) with the Secretary under section 1843 of the Social Security Act [this section] pursuant to which (1) eligible individuals (as defined in section 1836 of the Social Security Act [section 1395o of this title]) who are eligible to receive medical assistance under the District of Columbia's plan for medical assistance approved under title XIX of the Social Security Act [subchapter XIX of this chapter] will be enrolled in the supplementary medical insurance program established under part B of title XVIII of the Social Security Act [this part], and (2) provisions will be made for payment of the monthly premiums of such individuals for such program."

§ 1395w. Appropriations to cover Government contributions and contingency reserve

(a) In general

There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, to the Federal Supplementary Medical Insurance Trust Fund—

(1)(A) a Government contribution equal to the aggregate premiums payable for a month for enrollees age 65 and over under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee age 65 and over as determined under section 1395r(a)(1) of this title for such month minus the dollar amount of the premium per enrollee for such month, as determined under section 1395r(a)(3) of this title, to

(ii) the dollar amount of the premium per enrollee for such month, plus

(B) a Government contribution equal to the aggregate premiums payable for a month for enrollees age 65 under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee age 65 as determined under section 1395r(a)(4) of this title for such month minus the dollar amount of the premium per enrollee for such month, as determined under section 1395r(a)(3) of this title, to

(ii) the dollar amount of the premium per enrollee for such month; minus

(C) the aggregate amount of additional premium payments attributable to the application of section 1395r(i) of this title; plus

(2) such sums as the Secretary deems necessary to place the Trust Fund, at the end of any fiscal year occurring after June 30, 1967, in the same position in which it would have been at the end of such fiscal year if (A) a Government contribution representing the excess of the premiums deposited in the Trust Fund during the fiscal year ending June 30, 1967, over the Government contribution actually appropriated to the Trust Fund during such fiscal year had been appropriated to it on June 30, 1967, and (B) the Government contribution for premiums deposited in the Trust Fund after June 30, 1967, had been appropriated to it when such premiums were deposited; plus

(3) a Government contribution equal to the amount of payment incentives payable under sections 1395w–4(c) and 1395w–23(i)(3) of this title.

(b) Contingency reserve

In order to assure prompt payment of benefits provided under this part and the administrative expenses otherwise incurred during the early months of the program established by this part, and to provide a contingency reserve, there is authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, to remain available through the calendar year 1969 for repayable advances (without interest) to the Trust Fund, an amount equal to $18 multiplied by the number of individuals (as estimated by the Secretary) who could be covered in July 1966 by the insurance program established by this part if they had theretofore enrolled under this part.

(c) Election under section 1395w–24

The Secretary shall determine the Government contribution under subparagraphs (A) and (B) of subsection (a)(1) of this section without regard to any premium reduction resulting from an election under section 1395w–24(f)(1)(E) of this title or any credits provided under section 1395w–24(b)(1)(C)(iv) of this title and without re-

See References in Text note below.
Section 1395w–2(c) of this title, referred to in subsec. (c), was redesignated section 1395w–2(b)(1)(A)(v) of this title by Pub. L. 111–152, title I, § 1102(f), Mar. 30, 2010, 124 Stat. 1046.

Effective Date of 2003 Amendment
Amendment by section 222(b)(2)(C) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Effective Date of 2000 Amendment
Amendment by Pub. L. 106–554 applicable to years beginning with 2003, see section 1(a)(6) [title VI, § 606(b)] of Pub. L. 106–554, set out as a note under section 1395r of this title.

Effective Date of 1989 Amendment

Effective Date of 1988 Amendment
Amendment by Pub. L. 100–360 applicable, except as otherwise specified in such amendment, to monthly premiums for months beginning with January 1989, see section 211(d) of Pub. L. 100–360, set out as a note under section 1395r of this title.

Effective Date of 1984 Amendment
Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Effective Date of 1983 Amendment; Transitional Rule
Amendment by Pub. L. 98–21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the amount of Government contributions under subsec. (a)(1) of this section shall be computed with the actuarially adequate rate which would have been in effect but for the amendments made by this section and using the amount of the premium in effect for June 1983, see section 606(c) of Pub. L. 98–21, set out as a note under section 1395r of this title.

Effective Date of 1972 Amendment
Section 206(e) of Pub. L. 92–603 provided that the amendment made by that section is effective with respect to enrollee premiums payable for months after June 1973.

Repealed. Pub. L. 97–248 substituted “section 1395r(c)(3) or 1395r(g)” of this title, as the case may be” for “section 1395r(c)(3) of this title”.

Amendment by section 211(d) of Pub. L. 100–360, set out as a note under section 1395w–1 of this title.


Amendment by section 222(b)(2)(C) of Pub. L. 108–173, set out as a note under section 1395w–29 of this title, inserted “and without regard to any premium adjustment” before section 1395r–19 of this title.

Amendment by Pub. L. 106–554, § 1(a)(6) [title VI, § 606(b)] of Pub. L. 106–554, set out as a note under section 1395r of this title.


Amendment by Pub. L. 108–173, § 811(b)(2)(B), inserted “and without regard to any premium adjustment under section 1395w–29 of this title” before period at end.


Amendment by Pub. L. 106–554, § 1(a)(6) [title VI, § 606(b)] of Pub. L. 106–554, set out as a note under section 1395r of this title.

Amendment by Pub. L. 103–306 applicable, except as otherwise specified in such amendment, to monthly premiums for months beginning with January 1989, see section 211(d) of Pub. L. 103–306, set out as a note under section 1395w–1 of this title.

Amendment by Pub. L. 101–234 repealed Pub. L. 100–360, § 211(c)(2), and provided that the provisions of this title are restored for months beginning with January 1989, see section 203(e) of Pub. L. 92–603, designated existing provisions as par. (1), inserted provision for deposit of Government contribution in Trust Fund, and added par. (2).

Amendment by Pub. L. 100–360, § 211(c)(2), and provided that the provisions of this title are restored for months beginning with January 1989, see section 203(e) of Pub. L. 92–603, designated existing provisions as par. (1), inserted provision for deposit of Government contribution in Trust Fund, and added par. (2).

Amendment by Pub. L. 100–360, § 211(c)(2), and provided that the provisions of this title are restored for months beginning with January 1989, see section 203(e) of Pub. L. 92–603, designated existing provisions as par. (1), inserted provision for deposit of Government contribution in Trust Fund, and added par. (2).
§ 1395w–2. Intermediate sanctions for providers or suppliers of clinical diagnostic laboratory tests

(a) If the Secretary determines that any provider or clinical laboratory approved for participation under this subchapter no longer substantially meets the conditions of participation or for coverage specified under this subchapter with respect to the provision of clinical diagnostic laboratory tests under this part, the Secretary may (for a period not to exceed one year) impose intermediate sanctions developed pursuant to subsection (b) of this section, in lieu of terminating immediately the provider agreement or cancelling immediately approval of the clinical laboratory.

(b)(1) The Secretary shall develop and implement—

(A) a range of intermediate sanctions to apply to providers or clinical laboratories under the conditions described in subsection (a), and

(B) appropriate procedures for appealing determinations relating to the imposition of such sanctions.

(2)(A) The intermediate sanctions developed under paragraph (1) shall include—

(i) specified plans of correction,

(ii) civil money penalties in an amount not to exceed $10,000 for each day of substantial noncompliance,

(iii) payment for the costs of onsite monitoring by an agency responsible for conducting surveys, and

(iv) suspension of all or part of the payments to which a provider or clinical laboratory would otherwise be entitled under this subchapter with respect to clinical diagnostic laboratory tests furnished on or after the date on which the Secretary determines that intermediate sanctions should be imposed pursuant to subsection (a) of this section.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (ii) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a of this title.

(B) The sanctions specified in subparagraph (A) are in addition to sanctions otherwise available under State or Federal law.

(3) The Secretary shall develop and implement specific procedures with respect to when and how each of the intermediate sanctions developed under paragraph (1) is to be applied, the amounts of any penalties, and the severity of each of these penalties. Such procedures shall be designed so as to minimize the time between identification of violations and imposition of these sanctions and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.


AMENDMENTS

1990—Pub. L. 101–508 substituted “providers or suppliers of” for “providers of” in section catchline.

1989—Pub. L. 101–101–234 repealed Pub. L. 100–360, §203(e)(4), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.


Pub. L. 100–360, §411(g)(3)(G)(II), inserted “or for coverage” after “conditions of participation.”

Pub. L. 100–360, §411(g)(3)(G)(III), which directed amendment of subsec. (a) by substituting “terminating immediately the provider agreement or cancelling immediately approval of the clinical laboratory,” was executed by making the substitution for “cancelling immediately the certification of the provider or clinical laboratory” to reflect the probable intent of Congress.

Pub. L. 100–360, §203(e)(4)(B), inserted “or that a qualified home intravenous drug therapy provider that is certified for participation under this subchapter no longer substantially meets the requirements of section 1395x(jj)(3) of this title” after “under this part.”


Subsec. (b)(2)(A). Pub. L. 100–360, §411(g)(3)(G)(IV), inserted at end “The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (ii) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.”

Subsec. (b)(2)(A)(i). Pub. L. 100–360, §411(g)(3)(G)(II), substituted “civil money penalties in an amount not to exceed $10,000 for each day of substantial noncompliance” for “civil fines and penalties”.


Subsec. (b)(2)(A)(iv). Pub. L. 100–360, §411(g)(3)(G)(II), (VI), struck out “certified” before “clinical laboratory” and substituted “furnished on or after the date on” for “provided on or after the date in.”

Pub. L. 100–360, §203(e)(4)(C), inserted “or home intravenous drug therapy services” after “clinical diagnostic laboratory tests.”

Subsec. (b)(3). Pub. L. 100–360, §411(g)(3)(G)(VI), substituted “any penalties” for “any fines” and “severe penalties” for “severe fines.”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconcili-
§ 1395w–3. Competitive acquisition of certain items and services

(a) Establishment of competitive acquisition programs

(1) Implementation of programs

(A) In general

The Secretary shall establish and implement programs under which competitive acquisition areas are established throughout the United States for contract award purposes for the furnishing under this part of competitively priced items and services (described in paragraph (2)) for which payment is made under this part. Such areas may differ for different items and services.

(B) Phased-in implementation

The programs—

(i) shall be phased in among competitive acquisition areas in a manner consistent with subparagraph (D) so that the competition under the programs occurs in—

(I) 10 of the largest metropolitan statistical areas in 2007;

(II) an additional 91 of the largest metropolitan statistical areas in 2011; and

(III) additional areas after 2011 (or, in the case of national mail order for items and services, after 2010); and

(ii) may be phased in first among the highest cost and highest volume items and services or those items and services that the Secretary determines have the largest savings potential.

(C) Waiver of certain provisions

In carrying out the programs, the Secretary may waive such provisions of the Federal Acquisition Regulation as are necessary for the efficient implementation of this sec-

(D) Changes in competitive acquisition programs

(i) Round 1 of competitive acquisition programs

Notwithstanding subparagraph (B)(i)(I) and in implementing the first round of the competitive acquisition programs under this section—

(I) the contracts awarded under this section before July 15, 2008, are terminated, no payment shall be made under this subchapter on or after July 15, 2008, based on such a contract, and, to the extent that any damages may be applicable as a result of the termination of such contracts, such damages shall be payable from the Federal Supplementary Medical Insurance Trust Fund under section 1395t of this title;

(II) the Secretary shall conduct the competition for such round in a manner so that it occurs in 2009 with respect to the same items and services and the same areas, except as provided in subclauses (III) and (IV);

(III) the Secretary shall exclude Puerto Rico so that such round of competition covers 9, instead of 10, of the largest metropolitan statistical areas; and

(IV) there shall be excluded negative pressure wound therapy items and services.

Nothing in subclause (I) shall be construed to provide an independent cause of action or right to administrative or judicial review with regard to the termination provided under such subclause.

(ii) Round 2 of competitive acquisition programs

In implementing the second round of the competitive acquisition programs under this section described in subparagraph (B)(i)(II)—

(I) the metropolitan statistical areas to be included shall be those metropolitan statistical areas selected by the Secretary for such round as of June 1, 2008;

(II) the Secretary shall include the next 21 largest metropolitan statistical areas by total population (after those selected under subclause (I)) for such round; and

(III) the Secretary may divide metropolitan statistical areas with populations (based upon the most recent data from the Census Bureau) of at least 8,000,000 into separate areas for competitive acquisition purposes.

(iii) Exclusion of certain areas in subsequent rounds of competitive acquisition programs

In implementing subsequent rounds of the competitive acquisition programs under this section, including under sub-
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paragraph (B)(i)(III), for competitions occurring before 2015, the Secretary shall exempt from the competitive acquisition program (other than national mail order) the following:

(I) Rural areas.

(II) Metropolitan statistical areas not selected under round 1 or round 2 with a population of less than 250,000.

(III) Areas with a low population density within a metropolitan statistical area that is otherwise selected, as determined for purposes of paragraph (3)(A).

(E) Verification by OIG

The Inspector General of the Department of Health and Human Services shall, through post-award audit, survey, or otherwise, assess the process used by the Centers for Medicare & Medicaid Services to conduct post-award audit, survey, or otherwise, as follows:

- (i) The process used by the Centers for Medicare & Medicaid Services to conduct post-award audit, survey, or otherwise, shall be verified for the basis for pivotal bid amounts and single payment amounts for items and services in competitive bidding areas under rounds 1 and 2 of the competitive acquisition programs under this section and may continue to verify such calculations for subsequent rounds of such programs.

- (F) Supplier feedback on missing financial documentation

   (i) In general

   In the case of a bid where one or more covered documents in connection with such bid have been submitted not later than the covered document review date specified in clause (ii), the Secretary—

   - (I) shall provide, by not later than 45 days (in the case of the first round of the competitive acquisition programs as described in subparagraph (B)(i)(I)) or 90 days (in the case of a subsequent round of such programs) after the covered document review date, for notice to the bidder of all such documents that are missing as of the covered document review date; and

   - (II) may not reject the bid on the basis that any covered document is missing or has not been submitted on a timely basis, if all such missing documents identified in the notice provided to the bidder under subclause (I) are submitted to the Secretary not later than 10 business days after the date of such notice.

   (ii) Covered document review date

   The covered document review date specified in this clause with respect to a competitive acquisition program is the later of—

   - (I) the date that is 30 days before the final date specified by the Secretary for submission of bids under such program; or

   - (II) the date that is 30 days after the first date specified by the Secretary for submission of bids under such program.

   (iii) Limitations of process

   The process provided under this subparagraph—

   - (I) applies only to the timely submission of covered documents;

   - (II) does not apply to any determination as to the accuracy or completeness of covered documents submitted or whether such documents meet applicable requirements;

   - (III) shall not prevent the Secretary from rejecting a bid based on any basis not described in clause (I)(II); and

   - (IV) shall not be construed as permitting a bidder to change bidding amounts or to make other changes in a bid submission.

   (iv) Covered document defined

   In this subparagraph, the term “covered document” means a financial, tax, or other document required to be submitted by a bidder as part of an original bid submission under a competitive acquisition program in order to meet required financial standards. Such term does not include other documents, such as the bid itself or accreditation documentation.

(2) Items and services described

The items and services referred to in paragraph (1) are the following:

(A) Durable medical equipment and medical supplies

Covered items (as defined in section 1395m(a)(13) of this title) for which payment would otherwise be made under section 1395m(a) of this title, including items used in infusion and drugs (other than inhalation drugs) and supplies used in conjunction with durable medical equipment, but excluding class III devices under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] and excluding certain complex rehabilitative power wheelchairs recognized by the Secretary as classified within group 3 or higher (and related accessories when furnished in connection with such wheelchairs).

(B) Other equipment and supplies

Items and services described in section 1395u(s)(2)(D) of this title, other than parenteral nutrients, equipment, and supplies.

(C) Off-the-shelf orthotics

Orthotics described in section 1395x(s)(9) of this title for which payment would otherwise be made under section 1395m(h) of this title which require minimal self-adjustment for appropriate use and do not require expertise in trimming, bending, molding, assembling, or customizing to fit to the individual.

(3) Exception authority

In carrying out the programs under this section, the Secretary may exempt—

- (A) rural areas and areas with low population density within urban areas that are not competitive, unless there is a significant national market through mail order for a particular item or service; and

- (B) items and services for which the application of competitive acquisition is not likely to result in significant savings.
(4) Special rule for certain rented items of durable medical equipment and oxygen

In the case of a covered item for which payment is made on a rental basis under section 1395m(a) of this title and in the case of payment for oxygen under section 1395m(a)(6) of this title, the Secretary shall establish a process by which rental agreements for the covered items and supply arrangements with oxygen suppliers entered into before the application of the competitive acquisition program under this section for the item may be continued notwithstanding this section. In the case of any such continuation, the supplier involved shall provide for appropriate servicing and replacement, as required under section 1395m(a) of this title.

(5) Physician authorization

(A) In general

With respect to items or services included within a particular HCPCS code, the Secretary may establish a process for certain items and services under which a physician may prescribe a particular brand or mode of delivery of an item or service within such code if the physician determines that use of the particular item or service would avoid an adverse medical outcome on the individual, as determined by the Secretary.

(B) No effect on payment amount

A prescription under subparagraph (A) shall not affect the amount of payment otherwise applicable for the item or service under the code involved.

(6) Application

For each competitive acquisition area in which the program is implemented under this subsection with respect to items and services, the payment basis determined under the competition conducted under subsection (b) of this section shall be substituted for the payment basis otherwise applied under section 1395m(a) of this title, section 1395m(h) of this title, or section 1395a(s) of this title, as appropriate.

(7) Exemption from competitive acquisition

The programs under this section shall not apply to the following:

(A) Certain off-the-shelf orthotics

Items and services described in paragraph (2)(C) if furnished—

(i) by a physician or other practitioner (as defined by the Secretary) to the physician’s or practitioner’s own patients as part of the physician’s or practitioner’s professional service; or

(ii) by a hospital to the hospital’s own patients during an admission or on the date of discharge.

(B) Certain durable medical equipment

Those items and services described in paragraph (2)(A)—

(i) that are furnished by a hospital to the hospital’s own patients during an admission or on the date of discharge; and

(ii) to which such programs would not apply, as specified by the Secretary, if furnished by a physician to the physician’s own patients as part of the physician’s professional service.

(b) Program requirements

(1) In general

The Secretary shall conduct a competition among entities supplying items and services described in subsection (a)(2) of this section for each competitive acquisition area in which the program is implemented under subsection (a) of this section with respect to such items and services.

(2) Conditions for awarding contract

(A) In general

The Secretary may not award a contract to any entity under the competition conducted in an competitive acquisition area pursuant to paragraph (1) to furnish such items or services unless the Secretary finds all of the following:

(i) The entity meets applicable quality standards specified by the Secretary under section 1395m(a)(20) of this title.

(ii) The entity meets applicable financial standards specified by the Secretary, taking into account the needs of small providers.

(iii) The total amounts to be paid to contractors in a competitive acquisition area are expected to be less than the total amounts that would otherwise be paid.

(iv) Access of individuals to a choice of multiple suppliers in the area is maintained.

(B) Timely implementation of program

Any delay in the implementation of quality standards under section 1395m(a)(20) of this title or delay in the receipt of advice from the program oversight committee established under subsection (c) of this section shall not delay the implementation of the competitive acquisition program under this section.

(3) Contents of contract

(A) In general

A contract entered into with an entity under the competition conducted pursuant to paragraph (1) is subject to terms and conditions that the Secretary may specify.

(B) Term of contracts

The Secretary shall recompete contracts under this section not less often than once every 3 years.

(C) Disclosure of subcontractors

(i) Initial disclosure

Not later than 10 days after the date a supplier enters into a contract with the Secretary under this section, such supplier shall disclose to the Secretary in a form and manner specified by the Secretary, the information on—

(I) each subcontracting relationship that such supplier has in furnishing items and services under the contract; and

\footnote{So in original. Probably should be “a”.}
§ 1395w–3  TITLE 42—THE PUBLIC HEALTH AND WELFARE

(II) whether each such subcontractor meets the requirements of section 1395m(a)(20)(F)(i) of this title, if applicable to such subcontractor.

(ii) Subsequent disclosure
Not later than 10 days after such a supplier subsequently enters into a subcontracting relationship described in clause (I)(II), such supplier shall disclose to the Secretary, in such form and manner, the information described in subclauses (I) and (II) of clause (i).

(4) Limit on number of contractors

(A) In general
The Secretary may limit the number of contractors in a competitive acquisition area to the number needed to meet projected demand for items and services covered under the contracts. In awarding contracts, the Secretary shall take into account the ability of bidding entities to furnish items or services in sufficient quantities to meet the anticipated needs of individuals for such items or services in the geographic area covered under the contract on a timely basis.

(B) Multiple winners
The Secretary shall award contracts to multiple entities submitting bids in each area for an item or service.

(5) Payment

(A) In general
Payment under this part for competitively priced items and services described in subsection (a)(2) of this section shall be based on bids submitted and accepted under this section for such items and services. Based on such bids the Secretary shall determine a single payment amount for each item or service in each competitive acquisition area.

(B) Reduced beneficiary cost-sharing

(i) Application of coinsurance
Payment under this section for items and services shall be in an amount equal to 80 percent of the payment basis described in subparagraph (A).

(ii) Application of deductible
Before applying clause (i), the individual shall be required to meet the deductible described in section 1395g(b) of this title.

(C) Payment on assignment-related basis
Payment for any item or service furnished by the entity may only be made under this section on an assignment-related basis.

(D) Construction
Nothing in this section shall be construed as precluding the use of an advanced beneficiary notice with respect to a competitively priced item and service.

(6) Participating contractors

(A) In general
Except as provided in subsection (a)(4) of this section, payment shall not be made for items and services described in subsection (a)(2) of this section furnished by a contractor and for which competition is conducted under this section unless—

(i) the contractor has submitted a bid for such items and services under this section; and

(ii) the Secretary has awarded a contract to the contractor for such items and services under this section.

(B) Bid defined
In this section, the term “bid” means an offer to furnish an item or service for a particular price and time period that includes, where appropriate, any services that are attendant to the furnishing of the item or service.

(C) Rules for mergers and acquisitions
In applying subparagraph (A) to a contractor, the contractor shall include a successor entity in the case of a merger or acquisition, if the successor entity assumes such contract along with any liabilities that may have occurred thereunder.

(D) Protection of small suppliers
In developing procedures relating to bids and the awarding of contracts under this section, the Secretary shall take appropriate steps to ensure that small suppliers of items and services have an opportunity to be considered for participation in the program under this section.

(7) Consideration in determining categories for bids
The Secretary may consider the clinical efficiency and value of specific items within codes, including whether some items have a greater therapeutic advantage to individuals.

(8) Authority to contract for education, monitoring, outreach, and complaint services
The Secretary may enter into contracts with appropriate entities to address complaints from individuals who receive items and services from an entity with a contract under this section and to conduct appropriate education of and outreach to such individuals and monitoring quality of services with respect to the program.

(9) Authority to contract for implementation
The Secretary may contract with appropriate entities to implement the competitive bidding program under this section.

(10) Special rule in case of competition for diabetic testing strips

(A) In general
With respect to the competitive acquisition program for diabetic testing strips conducted after the first round of the competitive acquisition programs, if an entity does not demonstrate to the Secretary that its bid covers types of diabetic testing strip products that, in the aggregate and taking into account volume for the different products, cover 50 percent (or such higher percentage as the Secretary may specify) of all such types of products, the Secretary shall reject such bid. The volume for such types of products may be determined in accordance
with such data (which may be market based data) as the Secretary recognizes.

(B) Study of types of testing strip products

Before 2011, the Inspector General of the Department of Health and Human Services shall conduct a study to determine the types of diabetic testing strip products by volume that could be used to make determinations pursuant to subparagraph (A) for the first competition under the competitive acquisition program described in such subparagraph and submit to the Secretary a report on the results of the study. The Inspector General shall also conduct such a study and submit such a report before the Secretary conducts a subsequent competitive acquisition program described in subparagraph (A).

(11) No administrative or judicial review

There shall be no administrative or judicial review under section 1395ff of this title, section 1395oo of this title, or otherwise, of—

(A) the establishment of payment amounts under paragraph (5);

(B) the awarding of contracts under this section;

(C) the designation of competitive acquisition areas under subsection (a)(1)(A) and the identification of areas under subsection (a)(1)(D)(iii);

(D) the phased-in implementation under subsection (a)(1)(B) and implementation of subsection (a)(1)(D);

(E) the selection of items and services for competitive acquisition under subsection (a)(2) of this section;

(F) the bidding structure and number of contractors selected under this section; or

(G) the implementation of the special rule described in paragraph (10).

(c) Program Advisory and Oversight Committee

(1) Establishment

The Secretary shall establish a Program Advisory and Oversight Committee (hereinafter in this section referred to as the "Committee").

(2) Membership; terms

The Committee shall consist of such members as the Secretary may appoint who shall serve for such term as the Secretary may specify.

(3) Duties

(A) Advice

The Committee shall provide advice to the Secretary with respect to the following functions:

(i) The implementation of the program under this section.

(ii) The establishment of financial standards for purposes of subsection (b)(2)(A)(ii) of this section.

(iii) The establishment of requirements for collection of data for the efficient management of the program.

(iv) The development of proposals for efficient interaction among manufacturers, providers of services, suppliers (as defined in section 1395x(d) of this title), and individuals.

(v) The establishment of quality standards under section 1395m(a)(20) of this title.

(B) Additional duties

The Committee shall perform such additional functions as to assist the Secretary in carrying out this section as the Secretary may specify.

(4) Inapplicability of FACA

The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply.

(5) Termination

The Committee shall terminate on December 31, 2011.

(d) Report

Not later than July 1, 2011, the Secretary shall submit to Congress a report on the programs under this section. The report shall include information on savings, reductions in cost-sharing, access to and quality of items and services, and satisfaction of individuals.


(f) Competitive acquisition ombudsman

The Secretary shall provide for a competitive acquisition ombudsman within the Centers for Medicare & Medicaid Services in order to respond to complaints and inquiries made by suppliers and individuals relating to the application of the competitive acquisition program under this section. The ombudsman may be within the office of the Medicare Beneficiary Ombudsman appointed under section 1395b–9(c) of this title. The ombudsman shall submit to Congress an annual report on the activities under this subsection, which report shall be coordinated with the report provided under section 1395b–9(c)(2)(C) of this title.


REFERENCES IN TEXT


AMENDMENTS


Subsec. (a)(1)(D)(iii)'' after ''(a)(1)(A)''.

tive power wheelchairs recognized by the Secretary as classified within group 3 or higher (and related acces-
sories when furnished in connection with such wheel-
chairs)” before period at end, was executed by making the insertion in subsec. (a)(2)(A), to reflect the probable intent of Congress.


Subsec. (b)(3)(C). Pub. L. 110–275, §154(b)(2), added sub-
par. (C).


ated par. (11).

serted “and the identification of areas under subsection (a)(1)(D)(III)” after “(a)(1)(D)”.

Subsec. (b)(11)(D). Pub. L. 110–275, §154(d)(4)(B), in-
serted “and implementation of subsection (a)(1)(D)” after “(a)(1)(B)”.


Subsec. (c)(5). Pub. L. 110–275, §154(c)(2)(A), substi-
tuted “December 31, 2011” for “December 31, 2009”.


(e) which related to a demonstration project on the application of competitive acquisition to clinical diag-
nostic laboratory tests, terms and conditions of the
project, and reporting requirement.

(f).

2003—Pub. L. 108–173 amended section catchline and text generally, substituting provisions relating to com-
petitive acquisition of certain items and services for provisions relating to demonstration projects for com-
petitive acquisition of items and services.

1999—Subsec. (b)(2). Pub. L. 106–113 inserted “and the identification of areas under subsection (a)(1)(D)” after “specified by the Secretary”.

EFFECTIVE DATE OF 2008 AMENDMENT


EFFECTIVE DATE OF 1999 AMENDMENT


GOA REPORT ON IMPACT OF COMPETITIVE ACQUISITION ON SUPPLIERS

turers of such equipment and on patients. Such study shall specifically examine the impact of such competitive
acquisition on access to, and quality of, such equipment and service related to such equipment and the topics specified in subparagraph (C).

(”B) REPORT.—Not later than 1 year after the first date that payments are made under section 1847 of the Social Security Act, the Comptroller General shall submit to Congress a report on the study conducted under subparagraph (A) and shall include in the report such recommendations as the Comptroller General determines appropriate.

(”C) TOPICS.—The topics specified in this subpara-
graph, for the study under subparagraph (A) concerning the competitive acquisition program, are the following:

(1) Beneficiary access to items and services under the program, including the impact on such access of awarding contracts to bidders that—

(I) did not have a physical presence in an area where they received a contract; or

(II) had no previous experience providing the product category they were contracted to provide.

(ii) Beneficiary satisfaction with the program and cost savings to beneficiaries under the program.

(iii) Costs to suppliers of participating in the program and recommendations about ways to reduce those costs without compromising quality standards or savings to the Medicare program.

(iv) Impact of the program on small business suppli-
ers.

(v) Analysis of the impact on utilization of dif-
f erent items and services paid within the same
Healthcare Common Procedure Coding System (HCPCS) code.

(vi) Costs to the Centers for Medicare & Medicaid Services, including payments made to contractors, for administering the program compared with admin-
istration of a fee schedule, in comparison with the relative savings of the program.

(vii) Impact on access, Medicare spending, and beneficiary spending of any difference in treatment for diabetic testing supplies depending on how such supplies are furnished.

(viii) Such other topics as the Comptroller Gen-
eral determines to be appropriate.”

REPORT ON ACTIVITIES OF SUPPLIERS

Pub. L. 108–173, title III, §302(e), Dec. 8, 2003, 117 Stat. 2233, as amended by Pub. L. 110–275, title I, §154(c)(2)(C), July 15, 2008, 122 Stat. 2566, provided that: “The Inspector General of the Department of Health and Human Services shall conduct a study to determine the extent to which (if any) suppliers of covered items of durable medical equipment that are subject to the competitive acquisition program under section 1847 of the Social Security Act [this section], as amended by subsection (a) [probably should be (b)(1)], are soliciting physicians
to prescribe certain brands or modes of delivery of cov-
ered items based on profitability. Not later than July 1, 2011, the Inspector General shall submit to Congress a report on such study.”

STUDY BY GAO

Section 4319(c) of Pub. L. 105–33 provided that: “The Comptroller of the United States shall study the effect-

\[\text{\textsuperscript{1995–3}}\] TITLE 42—THE PUBLIC HEALTH AND WELFARE Page 2654

tiveness of the establishment of competitive acquisition areas under section 1847(a) of the Social Security Act [subsec. (a) of this section], as added by this section.

§ 1395w–3a. Use of average sales price payment methodology

(a) Application

(1) In general

Except as provided in paragraph (2), this section shall apply to payment for drugs and biologicals that are described in section 1395u[(a)(1)](C) of this title and that are furnished on or after January 1, 2005.

(2) Election

This section shall not apply in the case of a physician who elects under subsection (a)(1)(A)(ii) of section 1395w–3b of this title for that section to apply instead of this section for the payment for drugs and biologicals.

(b) Payment amount

(1) In general

Subject to paragraph (7) and subsections (d)(3) and (e) of this section, the amount of payment determined under this section for the billing and payment code for a drug or biological (based on a minimum dosage unit) is, subject to applicable deductible and coinsurance—

(A) in the case of a multiple source drug (as defined in subsection (c)(6)(C) of this section), 106 percent of the amount determined under paragraph (3) for a multiple source drug furnished before April 1, 2008, or 106 percent of the amount determined under paragraph (6) for a multiple source drug furnished on or after April 1, 2008;

(B) in the case of a single source drug or biological (as defined in subsection (c)(6)(D) of this section), 106 percent of the amount determined under paragraph (4); or

(C) in the case of a biosimilar biological product (as defined in subsection (c)(6)(H)), the amount determined under paragraph (8).

(2) Specification of unit

(A) Specification by manufacturer

The manufacturer of a drug or biological shall specify the unit associated with each National Drug Code (including package size) as part of the submission of data under section 1396r–8(b)(3)(A)(iii) of this title.

(B) Unit defined

In this section, the term “unit” means, with respect to each National Drug Code (including package size) associated with a drug or biological, the lowest identifiable quantity (such as a capsule or tablet, milligram of molecules, or grams) of the drug or biological that is dispensed, exclusive of any diluent without reference to volume measures pertaining to liquids. For years after 2004, the Secretary may establish the unit for a manufacturer to report and methods for counting units as the Secretary determines appropriate to implement this section.

(3) Multiple source drug

For all drug products included within the same multiple source drug billing and payment code, the amount specified in this paragraph is the volume-weighted average of the average sales prices reported under section 1396r–8(b)(3)(A)(iii) of this title determined by—

(A) computing the sum of the products (for each National Drug Code assigned to such drug product(s)) of—

(i) the manufacturer’s average sales price (as defined in subsection (c) of this section); and

(ii) the total number of units specified under paragraph (2) sold; and

(B) dividing the sum determined under subparagraph (A) by the sum of the total number of units under subparagraph (A)(ii) for all National Drug Codes assigned to such drug products.

(4) Single source drug or biological

The amount specified in this paragraph for a single source drug or biological is the lesser of the following:

(A) Average sales price

The average sales price as determined using the methodology applied under paragraph (3) for single source drugs and biologicals furnished before April 1, 2008, and using the methodology applied under paragraph (6) for single source drugs and biologicals furnished on or after April 1, 2008, for all National Drug Codes assigned to such drug or biological product.

(B) Wholesale acquisition cost (WAC)

The wholesale acquisition cost (as defined in subsection (c)(6)(B) of this section) using the methodology applied under paragraph (3) for single source drugs and biologicals furnished before April 1, 2008, and using the methodology applied under paragraph (6) for single source drugs and biologicals furnished on or after April 1, 2008, for all National Drug Codes assigned to such drug or biological product.

(5) Basis for payment amount

The payment amount shall be determined under this subsection based on information reported under subsection (f) of this section and without regard to any special packaging, labeling, or identifiers on the dosage form or product or package.

(6) Use of volume-weighted average sales prices in calculation of average sales price

(A) In general

For all drug products included within the same multiple source drug billing and payment code, the amount specified in this paragraph is the volume-weighted average of the average sales prices reported under section 1396r–8(b)(3)(A)(iii) of this title determined by—

(1) computing the sum of the products (for each National Drug Code assigned to such drug product(s)) of—

(I) the manufacturer’s average sales price (as defined in subsection (c)), determined by the Secretary without dividing such price by the total number of billing
§ 1395w–3a  TITLE 42—THE PUBLIC HEALTH AND WELFARE

units for the National Drug Code for the billing and payment code; and

(II) the total number of units specified under paragraph (2) sold; and

(ii) dividing the sum determined under clause (i) by the sum of the products (for each National Drug Code assigned to such drug products) of—

(I) the total number of units specified under paragraph (2) sold; and

(II) the total number of billing units for the National Drug Code for the billing and payment code.

(B) Billing unit defined

For purposes of this subsection, the term “billing unit” means the identifiable quantity associated with a billing and payment code, as established by the Secretary.

(7) Special rule

Beginning with April 1, 2008, the payment amount for—

(A) each single source drug or biological described in section 1395u(o)(1)(G) of this title that is treated as a multiple source drug because of the application of subsection (c)(6)(I) is the lower of—

(i) the payment amount that would have been determined for such drug or biological applying such subsection; or

(ii) the payment amount that would have been determined for such drug or biological if such subsection were not applied; and

(B) a multiple source drug described in section 1395u(o)(1)(G) of this title (excluding a drug or biological that is treated as a multiple source drug because of the application of such subsection) is the lower of—

(i) the payment amount that would be determined for such drug or biological taking into account the application of such subsection; or

(ii) the payment amount that would have been determined for such drug or biological if such subsection were not applied.

(8) Biosimilar biological product

The amount specified in this paragraph for a biosimilar biological product described in paragraph (1)(C) is the sum of—

(A) the average sales price as determined using the methodology described under paragraph (6) applied to a biosimilar biological product for all National Drug Codes assigned to such product in the same manner as such paragraph is applied to drugs described in such paragraph; and

(B) 6 percent of the amount determined under paragraph (4) for the reference biological product (as defined in subsection (c)(6)(I)).

(c) Manufacturer’s average sales price

(1) In general

For purposes of this section, subject to paragraphs (2) and (3), the manufacturer’s “average sales price” means, of a drug or biological for a National Drug Code for a calendar quarter for a manufacturer for a unit—

(A) the manufacturer’s sales to all purchasers (excluding sales exempted in paragraph (2)) in the United States for such drug or biological in the calendar quarter; divided by

(B) the total number of such units of such drug or biological sold by the manufacturer in such quarter.

(2) Certain sales exempt from computation

In calculating the manufacturer’s average sales price under this subsection, the following sales shall be excluded:

(A) Sales exempt from best price

Sales exempt from the inclusion in the determination of “best price” under section 1396r–8(c)(1)(C)(1) of this title.

(B) Sales at nominal charge

Such other sales as the Secretary identifies as sales to an entity that are merely nominal in amount (as applied for purposes of section 1396r–8(c)(1)(C)(i)(II) of this title, except as the Secretary may otherwise provide).

(3) Sale price net of discounts

In calculating the manufacturer’s average sales price under this subsection, such price shall include volume discounts, prompt pay discounts, cash discounts, free goods that are contingent on any purchase requirement, chargebacks, and rebates (other than rebates under section 1396r–8 of this title). For years after 2004, the Secretary may include in such price other price concessions, which may be based on recommendations of the Inspector General, that would result in a reduction of the cost to the purchaser.

(4) Payment methodology in cases where average sales price during first quarter of sales is unavailable

In the case of a drug or biological during an initial period (not to exceed a full calendar quarter) in which data on the prices for sales for the drug or biological is not sufficiently available from the manufacturer to compute an average sales price for the drug or biological, the Secretary may determine the amount payable under this section for the drug or biological based on—

(A) the wholesale acquisition cost; or

(B) the methodologies in effect under this part on November 1, 2003, to determine payment amounts for drugs or biologicals.

(5) Frequency of determinations

(A) In general on a quarterly basis

The manufacturer’s average sales price, for a drug or biological of a manufacturer, shall be calculated by such manufacturer under this subsection on a quarterly basis. In making such calculation insofar as there is a lag in the reporting of the information on rebates and chargebacks, the manufacturer shall apply a methodology based on a 12-month rolling average for the manufacturer to estimate costs attributable to rebates and chargebacks. For years after 2004, the Sec-
(B) Updates in payment amounts

The payment amounts under subsection (b) of this section shall be updated by the Secretary on a quarterly basis and shall be applied based upon the manufacturer's average sales price calculated for the most recent calendar quarter for which data is available.

(C) Use of contractors; implementation

The Secretary may contract with appropriate entities to calculate the payment amount under subsection (b) of this section. Notwithstanding any other provision of law, the Secretary may implement, by program instruction or otherwise, any of the provisions of this section.

(6) Definitions and other rules

In this section:

(A) Manufacturer

The term “manufacturer” means, with respect to a drug or biological, the manufacturer (as defined in section 1396r–8(k)(5) of this title).

(B) Wholesale acquisition cost

The term “wholesale acquisition cost” means, with respect to a drug or biological, the manufacturer’s list price for the drug or biological to wholesalers or direct purchasers in the United States, not including prompt pay or other discounts, rebates or reductions in price, for the most recent month for which the information is available, as reported in wholesale price guides or other publications of drug or biological pricing data.

(C) Multiple source drug

(i) In general

The term “multiple source drug” means, for a calendar quarter, a drug for which there are 2 or more drug products which—

(I) are rated as therapeutically equivalent (under the Food and Drug Administration’s most recent publication of “Approved Drug Products with Therapeutic Equivalence Evaluations”);

(II) except as provided in subparagraph (E), are pharmaceutically equivalent and bioequivalent, as determined under subparagraph (F) and as determined by the Food and Drug Administration, and

(III) are sold or marketed in the United States during the quarter.

(ii) Exception

With respect to single source drugs or biologicals that are within the same billing and payment code as of October 1, 2003, the Secretary shall treat such single source drugs or biologicals as if the single source drugs or biologicals were multiple source drugs.

(D) Single source drug or biological

The term “single source drug or biological” means—

(i) a biological; or

(ii) a drug which is not a multiple source drug and which is produced or distributed under a new drug application approved by the Food and Drug Administration, including a drug product marketed by any cross-licensed producers or distributors operating under the new drug application.

(E) Exception from pharmaceutical equivalence and bioequivalence requirement

Subparagraph (C)(ii) shall not apply if the Food and Drug Administration changes by regulation the requirement that, for purposes of the publication described in subparagraph (C)(i), in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent, as defined in subparagraph (F).

(F) Determination of pharmaceutical equivalence and bioequivalence

For purposes of this paragraph—

(i) drug products are pharmaceutically equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity; and

(ii) drugs are bioequivalent if they do not present a known or potential bioequivalence problem, or, if they do present such a problem, they are shown to meet an appropriate standard of bioequivalence.

(G) Inclusion of vaccines

In applying provisions of section 1396r–8 of this title under this section, “other than a vaccine” is deemed deleted from section 1396r–8(k)(2)(B) of this title.

(H) Biosimilar biological product

The term “biosimilar biological product” means a biological product approved under an abbreviated application for a license of a biological product that relies in part on data or information in an application for another biological product licensed under section 262 of this title.

(I) Reference biological product

The term “reference biological product” means the biological product licensed under such section 262 of this title that is referred to in the application described in subparagraph (H) of the biosimilar biological product.

(d) Monitoring of market prices

(1) In general

The Inspector General of the Department of Health and Human Services shall conduct studies, which may include surveys, to determine the widely available market prices of drugs and biologicals to which this section applies, as the Inspector General, in consultation with the Secretary, determines to be appropriate.

(2) Comparison of prices

Based upon such studies and other data for drugs and biologicals, the Inspector General
shall compare the average sales price under this section for drugs and biologicals with—

(A) the widely available market price for such drugs and biologicals (if any); and

(B) the average manufacturer price (as determined under section 1396r–8(k)(1) of this title) for such drugs and biologicals.

(3) Limitation on average sales price

(A) In general

The Secretary may disregard the average sales price for a drug or biological that exceeds the widely available market price or the average manufacturer price for such drug or biological by the applicable threshold percentage (as defined in subparagraph (B)).

(B) Applicable threshold percentage defined

In this paragraph, the term “applicable threshold percentage” means—

(i) in 2005, in the case of an average sales price for a drug or biological that exceeds widely available market price or the average manufacturer price, 5 percent; and

(ii) in 2006 and subsequent years, the percentage applied under this subparagraph subject to such adjustment as the Secretary may specify for the widely available market price or the average manufacturer price, or both.

(C) Authority to adjust average sales price

If the Inspector General finds that the average sales price for a drug or biological exceeds such widely available market price or average manufacturer price for such drug or biological by the applicable threshold percentage, the Inspector General shall inform the Secretary (at such times as the Secretary may specify to carry out this subparagraph) and the Secretary shall, effective as of the next quarter, substitute for the amount of payment otherwise determined under this section for such drug or biological the lesser of—

(i) the widely available market price for the drug or biological (if any); or

(ii) 103 percent of the average manufacturer price (as determined under section 1396r–8(k)(1) of this title) for the drug or biological.

(4) Civil money penalty

(A) In general

If the Secretary determines that a manufacturer has made a misrepresentation in the reporting of the manufacturer’s average sales price for a drug or biological, the Secretary may apply a civil money penalty in an amount of up to $10,000 for each such price misrepresentation and for each day in which such price misrepresentation was applied.

(B) Procedures

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under subparagraph (B) in the same manner as they apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(5) Widely available market price

(A) In general

In this subsection, the term “widely available market price” means the price that a prudent physician or supplier would pay for the drug or biological. In determining such price, the Inspector General shall take into account the discounts, rebates, and other price concessions routinely made available to such prudent physicians or suppliers for such drugs or biologicals.

(B) Considerations

In determining the price under subparagraph (A), the Inspector General shall consider information from one or more of the following sources:

(i) Manufacturers.

(ii) Wholesalers.

(iii) Distributors.

(iv) Physician supply houses.

(v) Specialty pharmacies.

(vi) Group purchasing arrangements.

(vii) Surveys of physicians.

(viii) Surveys of suppliers.

(ix) Information on such market prices from insurers.

(x) Information on such market prices from private health plans.

(e) Authority to use alternative payment in response to public health emergency

In the case of a public health emergency under section 274 of this title in which there is a documented inability to access drugs and biologicals, and a concomitant increase in the price, of a drug or biological which is not reflected in the manufacturer’s average sales price for one or more quarters, the Secretary may use the wholesale acquisition cost (or other reasonable measure of drug or biological price) instead of the manufacturer’s average sales price for such quarters and for subsequent quarters until the price and availability of the drug or biological has stabilized and is substantially reflected in the applicable manufacturer’s average sales price.

(f) Quarterly report on average sales price

For requirements for reporting the manufacturer’s average sales price (and, if required to make payment, the manufacturer’s wholesale acquisition cost) for the drug or biological under this section, see section 1396r–8(b)(3) of this title.

(g) Judicial review

There shall be no administrative or judicial review under section 1395ff of this title, section 1395oo of this title, or otherwise, of—

(1) determinations of payment amounts under this section, including the assignment of National Drug Codes to billing and payment codes;

(2) the identification of units (and package size) under subsection (b)(2) of this section;

(3) the method to allocate rebates, chargebacks, and other price concessions to a quarter if specified by the Secretary;

(4) the manufacturer’s average sales price when it is used for the determination of a payment amount under this section; and

1 So in original. The comma probably should not appear.
(5) the disclosure of the average manufacturer price by reason of an adjustment under subsection (d)(3)(C) or (e) of this section.


AMENDMENTS


Subsec. (b)(4)(B). Pub. L. 110–173, § 112(a)(2), inserted “for single source drugs and biologicals furnished on or after April 1, 2008” after “paragraph (3)”.


effective date of 2010 amendment

Pub. L. 111–148, title III, § 3139(b), Mar. 23, 2010, 124 Stat. 440, provided that: “The amendments made by subsection (a) [amending this section] shall apply to payments for biosimilar biological products beginning with the first day of the second calendar quarter after enactment of legislation providing for a biosimilar pathway (as determined by the Secretary (probably means the Secretary of Health and Human Services)).”

report on sales to pharmacy benefit managers


“(A) Study.—The Secretary [of Health and Human Services] shall conduct a study on sales of drugs and biologicals to large volume purchasers, such as pharmacy benefit managers and health maintenance organizations, for purposes of determining whether the price at which such drugs and biologicals are sold to such purchasers does not represent the price such drugs and biologicals are made available for purchase to prudent physicians.

“(B) Report.—Not later than January 1, 2006, the Secretary shall submit to Congress a report on the study conducted under paragraph (1), and shall include recommendations on whether such sales to large volume purchasers should be excluded from the computation of a manufacturer’s average sales price under section 1847A of the Social Security Act [this section], as added by paragraph (1).”

Inspector general report on adequacy of reimbursement rate under average sales price methodology


“(A) Study.—The Inspector General of the Department of Health and Human Services shall conduct a study on the ability of physician practices in the specialties of hematology, hematology/oncology, and medical oncology of different sizes, especially particularly large practices, to obtain drugs and biologicals for the treatment of cancer patients at 106 percent of the average sales price for the drugs and biologicals. In conducting the study, the Inspector General shall conduct an audit of a representative sample of such practices to determine the adequacy of reimbursement under section 1847A of the Social Security Act [this section], as added by paragraph (1).

“(B) Report.—Not later than October 1, 2005, the Inspector General shall submit to Congress a report on the study conducted under subparagraph (A), and shall include recommendations on the adequacy of reimbursement for such drugs and biologicals under such section 1847A [this section].”

§ 1395w–3b. Competitive acquisition of outpatient drugs and biologicals

(a) Implementation of competitive acquisition

(1) Implementation of program

(A) In general

The Secretary shall establish and implement a competitive acquisition program under which—

(i) competitive acquisition areas are established for contract award purposes for acquisition of and payment for categories of competitively biddable drugs and biologicals (as defined in paragraph (2)) under this part;

(ii) each physician is given the opportunity annually to elect to obtain drugs and biologicals under the program, rather than under section 1395w–3a of this title; and

(iii) each physician who elects to obtain drugs and biologicals under the program makes an annual selection under paragraph (5) of the contractor through which drugs and biologicals within a category of drugs and biologicals will be acquired and delivered to the physician under this part.

This section shall not apply in the case of a physician who elects section 1395w–3a of this title to apply.

(B) Implementation

For purposes of implementing the program, the Secretary shall establish categories of competitively biddable drugs and biologicals. The Secretary shall phase in the program with respect to those categories beginning in 2006 in such manner as the Secretary determines to be appropriate.

(C) Waiver of certain provisions

In order to promote competition, in carrying out the program the Secretary may
waive such provisions of the Federal Acquisition Regulation as are necessary for the efficient implementation of this section, other than provisions relating to confidentiality of information and such other provisions as the Secretary determines appropriate.

(D) Exclusion authority

The Secretary may exclude competitively biddable drugs and biologicals (including a class of such drugs and biologicals) from the competitive bidding system under this section if the application of competitive bidding to such drugs or biologicals—

(i) is not likely to result in significant savings; or

(ii) is likely to have an adverse impact on access to such drugs or biologicals.

(2) Competitively biddable drugs and biologicals and program defined

For purposes of this section—

(A) Competitively biddable drugs and biologicals defined

The term “competitively biddable drugs and biologicals” means a drug or biological described in section 1395u(o)(1)(C) of this title and furnished on or after January 1, 2006.

(B) Program

The term “program” means the competitive acquisition program under this section.

(C) Competitive acquisition area; area

The terms “competitive acquisition area” and “area” mean an appropriate geographic region established by the Secretary under the program.

(D) Contractor

The term “contractor” means an entity that has entered into a contract with the Secretary under this section.

(3) Application of program payment methodology

(A) In general

With respect to competitively biddable drugs and biologicals which are supplied under the program in an area and which are prescribed by a physician who has elected this section to apply—

(i) the claim for such drugs and biologicals shall be submitted by the contractor that supplied the drugs and biologicals;

(ii) collection of amounts of any deductible and coinsurance applicable with respect to such drugs and biologicals shall be the responsibility of such contractor and shall not be collected unless the drug or biological is administered to the individual involved; and

(iii) the payment under this section (and related amounts of any applicable deductible and coinsurance) for such drugs and biologicals shall be made only to such contractor upon receipt of a claim for a drug or biological supplied by the contractor for administration to a beneficiary.

(B) Process for adjustments

The Secretary shall provide a process for adjustments to payments in the case in which payment is made for drugs and biologicals which were billed at the time of dispensing but which were not actually administered.

(C) Information for purposes of cost-sharing

The Secretary shall provide a process by which physicians submit information to contractors for purposes of the collection of any applicable deductible or coinsurance amounts under subparagraph (A)(ii).

(D) Post-payment review process

The Secretary shall establish (by program instruction or otherwise) a post-payment review process (which may include the use of statistical sampling) to assure that payment is made for a drug or biological under this section only if the drug or biological has been administered to a beneficiary. The Secretary shall recoup, offset, or collect any overpayments determined by the Secretary under such process.

(4) Contract required

Payment may not be made under this part for competitively biddable drugs and biologicals prescribed by a physician who has elected this section to apply within a category and a competitive acquisition area with respect to which the program applies unless—

(A) the drugs or biologicals are supplied by a contractor with a contract under this section to apply within such category and a competitive acquisition area;

(B) the physician has elected such contractor under paragraph (5) for such category and area.

(5) Contractor selection process

(A) Annual selection

(i) In general

The Secretary shall provide a process for the selection of a contractor, on an annual basis and in such exigent circumstances as the Secretary may provide and with respect to each category of competitively biddable drugs and biologicals for an area by selecting physicians.

(ii) Timing of selection

The selection of a contractor under clause (i) shall be made at the time of the election described in section 1395w–3a(a) of this title for this section to apply and shall be coordinated with agreements entered into under section 1395u(h) of this title.

(B) Information on contractors

The Secretary shall make available to physicians on an ongoing basis, through a directory posted on the Internet website of the Centers for Medicare & Medicaid Services or otherwise and upon request, a list of the contractors under this section in the different competitive acquisition areas.

(C) Selecting physician defined

For purposes of this section, the term “selecting physician” means, with respect to a contractor and category and competitive acquisition area, a physician who has elected
this section to apply and has selected to apply under this section such contractor for such category and area.

(b) Program requirements

(1) Contract for competitively biddable drugs and biologicals

The Secretary shall conduct a competition among entities for the acquisition of competitively biddable drugs and biologicals. Notwithstanding any other provision of this subchapter, in the case of a multiple source drug, the Secretary shall conduct such competition among entities for the acquisition of at least one competitively biddable drug and biological within each billing and payment code within each category for each competitive acquisition area.

(2) Conditions for awarding contract

(A) In general

The Secretary may not award a contract to any entity under the competition conducted in a competition area pursuant to paragraph (1) with respect to the acquisition of competitively biddable drugs and biologicals within a category unless the Secretary finds that the entity meets all of the following with respect to the contract period involved:

(i) Capacity to supply competitively biddable drug or biological within category

(I) In general

The entity has sufficient arrangements to acquire and to deliver competitively biddable drugs and biologicals within such category in the area specified in the contract.

(II) Shipment methodology

The entity has arrangements in effect for the shipment at least 5 days each week of competitively biddable drugs and biologicals under the contract and for timely delivery (including for emergency situations) of such drugs and biologicals in the area under the contract.

(ii) Quality, service, financial performance and solvency standards

The entity meets quality, service, financial performance, and solvency standards specified by the Secretary, including—

(I) the establishment of procedures for the prompt response and resolution of complaints of physicians and individuals and of inquiries regarding the shipment of competitively biddable drugs and biologicals; and

(II) a grievance and appeals process for the resolution of disputes.

(B) Additional considerations

The Secretary may refuse to award a contract under this section, and may terminate such a contract, with an entity based upon—

(i) the suspension or revocation, by the Federal Government or a State government, of the entity’s license for the distribution of drugs or biologicals (including controlled substances); or

(ii) the exclusion of the entity under section 1320a–7 of this title from participation under this subchapter.

(C) Application of Medicare Provider Ombudsman

For provision providing for a programwide Medicare Provider Ombudsman to review complaints, see section 1395ee(b) of this title, as added by section 923 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. ¹

(3) Awarding multiple contracts for a category and area

The Secretary may limit (but not below 2) the number of qualified entities that are awarded such contracts for any category and area. The Secretary shall select among qualified entities based on the following:

(A) The bid prices for competitively biddable drugs and biologicals within the category and area.

(B) Bid price for distribution of such drugs and biologicals.

(C) Ability to ensure product integrity.

(D) Customer service.

(E) Past experience in the distribution of drugs and biologicals, including controlled substances.

(F) Such other factors as the Secretary may specify.

(4) Terms of contracts

(A) In general

A contract entered into with an entity under the competition conducted pursuant to paragraph (1) is subject to terms and conditions that the Secretary may specify consistent with this section.

(B) Period of contracts

A contract under this section shall be for a term of 3 years, but may be terminated by the Secretary or the entity with appropriate, advance notice.

(C) Integrity of drug and biological distribution system

A contractor (as defined in subsection (a)(2)(D) of this section) shall—

(i) acquire all drug and biological products it distributes directly from the manufacturer or from a distributor that has acquired the products directly from the manufacturer; and

(ii) comply with any product integrity safeguards as may be determined to be appropriate by the Secretary.

Nothing in this subparagraph shall be construed to relieve or exempt any contractor from the provisions of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] that relate to the wholesale distribution of prescription drugs or biologicals.

(D) Compliance with code of conduct and fraud and abuse rules

Under the contract—

¹ See References in Text note below.
(i) the contractor shall comply with a code of conduct, specified or recognized by the Secretary, that includes standards relating to conflicts of interest; and

(ii) the contractor shall comply with all applicable provisions relating to prevention of fraud and abuse, including compliance with applicable guidelines of the Department of Justice and the Inspector General of the Department of Health and Human Services.

(E) Direct delivery of drugs and biologicals to physicians

Under the contract the contractor shall only supply competitively biddable drugs and biologicals directly to the selecting physician and not directly to individuals, except under circumstances and settings where an individual currently receives a drug or biological in the individual’s home or other non-physician office setting as the Secretary may provide. The contractor shall not deliver drugs and biologicals to a selecting physician except upon receipt of a prescription for such drugs and biologicals, and such necessary data as may be required by the Secretary to carry out this section. This section does not—

(i) require a physician to submit a prescription for each individual treatment; or

(ii) change a physician’s flexibility in terms of writing a prescription for drugs or biologicals for a single treatment or a course of treatment.

(5) Permitting access to drugs and biologicals

The Secretary shall establish rules under this section under which drugs and biologicals which are acquired through a contractor under this section may be used to resupply inventories of such drugs and biologicals which are administered consistent with safe drug practices and with adequate safeguards against fraud and abuse. The previous sentence shall apply if the physicians can demonstrate to the Secretary all of the following:

(A) The drugs or biologicals are required immediately.

(B) The physician could not have reasonably anticipated the immediate requirement for the drugs or biologicals.

(C) The contractor could not deliver to the physician the drugs or biologicals in a timely manner.

(D) The drugs or biologicals were administered in an emergency situation.

(6) Construction

Nothing in this section shall be construed as waiving applicable State requirements relating to licensing of pharmacies.

c) Bidding process

(1) In general

In awarding a contract for a category of drugs and biologicals in an area under the program, the Secretary shall consider with respect to each entity seeking to be awarded a contract the bid price and the other factors referred to in subsection (b)(3) of this section.

(2) Bid defined

In this section, the term “bid” means an offer to furnish a competitively biddable drug or biological for a particular price and time period.

(3) Bidding on a national or regional basis

Nothing in this section shall be construed as precluding a bidder from bidding for contracts in all areas of the United States or as requiring a bidder to submit a bid for all areas of the United States.

(4) Uniformity of bids within area

The amount of the bid submitted under a contract offer for any competitively biddable drug or biological for an area shall be the same for that drug or biological for all portions of that area.

(5) Confidentiality of bids

The provisions of subparagraph (D) of section 1395w–3b of this title shall apply to periods during which a bid is submitted with respect to a competitively biddable drug or biological under this section in the same manner as it applies to information disclosed under such section, except that any reference—

(A) in that subparagraph to a “manufacturer or wholesaler” is deemed a reference to a “bidder” under this section;

(B) in that section to “prices charged for drugs” is deemed a reference to a “bid” submitted under this section; and

(C) in clause (i) of that section to “this section”, is deemed a reference to “part B of subchapter XVIII of this chapter”.

(6) Inclusion of costs

The bid price submitted in a contract offer for a competitively biddable drug or biological shall—

(A) include all costs related to the delivery of the drug or biological to the selecting physician (or other point of delivery); and

(B) include the costs of dispensing (including shipping) of such drug or biological and management fees, but shall not include any costs related to the administration of the drug or biological, or wastage, spillage, or spoilage.

(7) Price adjustments during contract period; disclosure of costs

Each contract awarded shall provide for—

(A) disclosure to the Secretary the contractor’s reasonable, net acquisition costs for periods specified by the Secretary, not more often than quarterly, of the contract; and

(B) appropriate price adjustments over the period of the contract to reflect significant increases or decreases in a contractor’s reasonable, net acquisition costs, as so disclosed.

d) Computation of payment amounts

(1) In general

Payment under this section for competitively biddable drugs or biologicals shall be based on bids submitted and accepted under this section for such drugs or biologicals in an area. Based on such bids the Secretary shall determine a single payment amount for each competitively biddable drug or biological in the area.
Judicial review

There shall be no administrative or judicial review under section 1395ff of this title, section 1395oo of this title, or otherwise, of—

(1) the establishment of payment amounts under subsection (d)(1) of this section;

(2) the awarding of contracts under this section;

(3) the establishment of competitive acquisition areas under subsection (a)(2)(C) of this section;

(4) the phased-in implementation under subsection (a)(1)(B) of this section;

(5) the selection of categories of competitively biddable drugs and biologicals for competitive acquisition under such subsection or the selection of a drug in the case of multiple source drugs; or

(6) the bidding structure and number of contractors selected under this section.

(2) Special rules

The Secretary shall establish rules regarding the use under this section of the alternative payment amount provided under section 1395w–3a of this title to the use of a price for specific competitively biddable drugs and biologicals in the following cases:

(A) New drugs and biologicals

A competitively biddable drug or biological for which a payment and billing code has not been established.

(B) Other cases

Such other exceptional cases as the Secretary may specify in regulations.

(e) Cost-sharing

(1) Application of coinsurance

Payment under this section for competitively biddable drugs and biologicals shall be in an amount equal to 80 percent of the payment basis described in subsection (d)(1) of this section.

(2) Deductible

Before applying paragraph (1), the individual shall be required to meet the deductible described in section 1395(b) of this title.

(3) Collection

Such coinsurance and deductible shall be collected by the contractor that supplies the drug or biological involved. Subject to subsection (a)(3)(B) of this section, such coinsurance and deductible may be collected in a manner similar to the manner in which the coinsurance and deductible are collected for durable medical equipment under this part.

(f) Special payment rules

(1) Use in exclusion cases

If the Secretary excludes a drug or biological (or class of drugs or biologicals) under subsection (a)(1)(D) of this section, the Secretary may provide for payment to be made under this part for such drugs and biologicals (or class) using the payment methodology under section 1395w–3a of this title.

(2) Application of requirement for assignment

For provision requiring assignment of claims for competitively biddable drugs and biologicals, see section 1395u(o)(3) of this title.

(3) Protection for beneficiary in case of medical necessity denial

For protection of individuals against liability in the case of medical necessity determinations, see section 1395u(b)(3)(B)(i)(I) of this title.

(g) Judicial review

There shall be no administrative or judicial review under section 1395ff of this title, section 1395oo of this title, or otherwise, of—

(1) the establishment of payment amounts under subsection (d)(1) of this section;

(2) the awarding of contracts under this section;

(3) the establishment of competitive acquisition areas under subsection (a)(2)(C) of this section;

(4) the phased-in implementation under subsection (a)(1)(B) of this section;

(5) the selection of categories of competitively biddable drugs and biologicals for competitive acquisition under such subsection or the selection of a drug in the case of multiple source drugs; or

(6) the bidding structure and number of contractors selected under this section.


References in Text

Section 1395ee(b) of this title, referred to in subsec. (b)(2)(C), was added by section 942(a)(5) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108–173, not section 923 of that Act, and relates to the Council for Technology and Innovation, not to the Medicare Provider Ombudsman.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. subsec. (b)(4)(C), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs.

AMENDMENTS

2006—Subsec. (a)(3)(A)(iii). Pub. L. 109–432, §108(a)(1), substituted “and biologicals shall be made only to such contractor upon receipt of a claim for a drug or biological supplied by the contractor for administration to a beneficiary,” for “and biologicals—

‘‘(I) shall be made only to such contractor; and

‘‘(II) shall be conditioned upon the administration of such drugs and biologicals.’’


Effective Date of 2006 Amendment


‘‘(1) on or after April 1, 2007; and

‘‘(2) on or after July 1, 2006, and before April 1, 2007, for claims that are unpaid as of April 1, 2007.’’

Construction of 2006 Amendment


‘‘(1) requiring the conduct of any additional competition under subsection (b)(1) of section 1847B of the Social Security Act (42 U.S.C. 1395w–3b); or

‘‘(2) requiring any additional process for elections by physicians under subsection (a)(1)(A)(ii) of such section or additional selection by a selecting physician of a contractor under subsection (a)(5) of such section.’’

Report

Pub. L. 108–173, title III, §303(d)(2), Dec. 8, 2003, 117 Stat. 2252, provided that: ‘‘Not later than July 1, 2008, the Secretary [of Health and Human Services] shall submit to Congress a report on the program conducted under section 1847B of the Social Security Act [this section], as added by paragraph (1). Such report shall include information on savings, reductions in cost-sharing, access to competitively biddable drugs and biologicals, the range of choices of contractors available to physicians, the satisfaction of physicians and of
§ 1395w–4. Payment for physicians’ services

(a) Payment based on fee schedule

(1) In general

Effective for all physicians’ services (as defined in subsection (j)(3) of this section) furnished under this part during a year (beginning with 1992) for which payment is otherwise made on the basis of a reasonable charge or on the basis of a fee schedule under section 1395m(b) of this title, payment under this part shall instead be based on the lesser of—

(A) the actual charge for the service, or

(B) subject to the succeeding provisions of this subsection, the amount determined under the fee schedule established under subsection (b) of this section for services furnished during that year (in this subsection referred to as the “fee schedule amount”).

(2) Transition to full fee schedule

(A) Limiting reductions and increases to 15 percent in 1992

(i) Limit on increase

In the case of a service in a fee schedule area (as defined in subsection (j)(2) of this section) for which the adjusted historical payment basis (as defined in subparagraph (D)) is less than 85 percent of the fee schedule amount for services furnished in 1992, there shall be substituted for the fee schedule amount an amount equal to the adjusted historical payment basis plus 15 percent of the fee schedule amount otherwise established (without regard to this paragraph).

(ii) Limit in reduction

In the case of a service in a fee schedule area for which the adjusted historical payment basis exceeds 115 percent of the fee schedule amount for services furnished in 1992, there shall be substituted for the fee schedule amount an amount equal to the adjusted historical payment basis minus 15 percent of the fee schedule amount otherwise established (without regard to this paragraph).

(B) Special rule for 1993, 1994, and 1995

If a physicians’ service in a fee schedule area is subject to the provisions of subparagraph (A) in 1992, for physicians’ services furnished in the area—

(1) during 1993, there shall be substituted for the fee schedule amount an amount equal to the sum of—

(I) 75 percent of the fee schedule amount determined under subparagraph (A), adjusted by the update established under subsection (d)(3) of this section for 1993, and

(II) 25 percent of the fee schedule amount determined under paragraph (1) for 1993 without regard to this paragraph;

(ii) during 1994, there shall be substituted for the fee schedule amount an amount equal to the sum of—

(I) 67 percent of the fee schedule amount determined under clause (i), adjusted by the update established under subsection (d)(3) of this section for 1994 and as adjusted under subsection (c)(2)(F)(i) of this section and under section 13513(b) of the Omnibus Budget Reconciliation Act of 1993, and

(II) 33 percent of the fee schedule amount determined under paragraph (1) for 1994 without regard to this paragraph; and

(iii) during 1995, there shall be substituted for the fee schedule amount an amount equal to the sum of—

(I) 50 percent of the fee schedule amount determined under clause (ii) adjusted by the update established under subsection (d)(3) of this section for 1995, and

(II) 50 percent of the fee schedule amount determined under paragraph (1) for 1995 without regard to this paragraph.

(C) Special rule for anesthesia and radiology services

With respect to physicians’ services which are anesthesia services, the Secretary shall provide for a transition in the same manner as a transition is provided for other services under subparagraph (B). With respect to radiology services, “109 percent” and “9 percent” shall be substituted for “115 percent” and “15 percent”, respectively, in subparagraph (A)(i).

(D) “Adjusted historical payment basis” defined

(i) In general

In this paragraph, the term “adjusted historical payment basis” means, with respect to a physicians’ service furnished in a fee schedule area, the weighted average prevailing charge applied in the area for the service in 1991 (as determined by the Secretary without regard to physician specialty and as adjusted to reflect payments for services with customary charges below the prevailing charge or other payment
limitations imposed by law or regulation) adjusted by the update established under subsection (d)(3) of this section for 1992.

(ii) Application to radiology services

In applying clause (i) in the case of physicians’ services which are radiology services (including radiologist services, as defined in section 1395m(b)(6) of this title), but excluding nuclear medicine services that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989, there shall be substituted for the weighted average prevailing charge the amount provided under the fee schedule established for the service for the fee schedule area under section 1395m(b) of this title.

(iii) Nuclear medicine services

In applying clause (i) in the case of physicians’ services which are nuclear medicine services, there shall be substituted for the weighted average prevailing charge the amount provided under section 6105(b) of the Omnibus Budget Reconciliation Act of 1989.

(3) Incentives for participating physicians and suppliers

In applying paragraph (1)(B) in the case of a nonparticipating physician or a nonparticipating supplier or other person, the fee schedule amount shall be 95 percent of such amount otherwise applied under this subsection (without regard to this paragraph). In the case of physicians’ services (including services which the Secretary excludes pursuant to subsection (j)(3) of this section) of a nonparticipating physician, supplier, or other person for which payment is made under this part on a basis other than the fee schedule amount, the payment shall be based on 95 percent of the payment basis for such services furnished by a participating physician, supplier, or other person.

(4) Special rule for medical direction

(A) In general

With respect to physicians’ services furnished on or after January 1, 1994, and consisting of medical direction of two, three, or four concurrent anesthesia cases, except as provided in paragraph (5), the fee schedule amount to be applied shall be equal to one-half of the amount described in subparagraph (B).

(B) Amount

The amount described in this subparagraph, for a physician’s medical direction of the performance of anesthesia services, is the following percentage of the fee schedule amount otherwise applicable under this section if the anesthesia services were personally performed by the physician alone:

(i) For services furnished during 1994, 120 percent.
(ii) For services furnished during 1995, 115 percent.
(iii) For services furnished during 1996, 110 percent.
(iv) For services furnished during 1997, 105 percent.
(v) For services furnished after 1997, 100 percent.

(5) Incentives for electronic prescribing

(A) Adjustment

(i) In general

Subject to subparagraph (B) and subsection (m)(2)(B), with respect to covered professional services furnished by an eligible professional during 2012, 2013 or 2014, if the eligible professional is not a successful electronic prescriber for the reporting period for the year (as determined under subsection (m)(3)(B)), the fee schedule amount for such services furnished by such professional during the year (including the fee schedule amount for purposes of determining a payment based on such amount) shall be equal to the applicable percent of the fee schedule amount that would otherwise apply to such services under this subsection (determined after application of paragraph (3) but without regard to this paragraph).

(ii) Applicable percent

For purposes of clause (i), the term “applicable percent” means—

(I) for 2012, 99 percent;
(II) for 2013, 98.5 percent; and
(III) for 2014, 98 percent.

(B) Significant hardship exception

The Secretary may, on a case-by-case basis, exempt an eligible professional from the application of the payment adjustment under subparagraph (A) if the Secretary determines, subject to annual renewal, that compliance with the requirement for being a successful electronic prescriber would result in a significant hardship, such as in the case of an eligible professional who practices in a rural area without sufficient Internet access.

(C) Application

(i) Physician reporting system rules

Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this paragraph in the same manner as they apply for purposes of such subsection.

(ii) Incentive payment validation rules

Clauses (ii) and (iii) of subsection (m)(5)(D) shall apply for purposes of this paragraph in a similar manner as they apply for purposes of such subsection.

(D) Definitions

For purposes of this paragraph:

(i) Eligible professional; covered professional services

The terms “eligible professional” and “covered professional services” have the meanings given such terms in subsection (k)(3).

(ii) Physician reporting system

The term “physician reporting system” means the system established under subsection (k).
(iii) Reporting period
The term “reporting period” means, with respect to a year, a period specified by the Secretary.

(6) Special rule for teaching anesthesiologists
With respect to physicians’ services furnished on or after January 1, 2010, in the case of teaching anesthesiologists involved in the training of physician residents in a single anesthesia case or two concurrent anesthesia cases, the fee schedule amount to be applied shall be 100 percent of the fee schedule amount otherwise applicable under this section if the anesthesia services were personally performed by the teaching anesthesiologist alone and paragraph (4) shall not apply if—

(A) the teaching anesthesiologist is present during all critical or key portions of the anesthesia service or procedure involved; and

(B) the teaching anesthesiologist (or another anesthesiologist with whom the teaching anesthesiologist has entered into an arrangement) is immediately available to furnish anesthesia services during the entire procedure.

(7) Incentives for meaningful use of certified EHR technology

(A) Adjustment

(i) In general
Subject to subparagraphs (B) and (D), with respect to covered professional services furnished by an eligible professional during 2015 or any subsequent payment year, if the eligible professional is not a meaningful EHR user (as determined under subsection (o)(2)) for an EHR reporting period for the year, the fee schedule amount for such services furnished by such professional during the year (including the fee schedule amount for purposes of determining a payment based on such amount) shall be equal to the applicable percent of the fee schedule amount that would otherwise apply to such services under this subsection (determined after application of paragraph (3) but without regard to this paragraph).

(ii) Applicable percent
Subject to clause (iii), for purposes of clause (i), the term “applicable percent” means—

(I) for 2015, 99 percent (or, in the case of an eligible professional who was subject to the application of the payment adjustment under subsection (a)(5) for 2014, 98 percent);

(II) for 2016, 98 percent; and

(III) for 2017 and each subsequent year, 97 percent.

(iii) Authority to decrease applicable percentage for 2018 and subsequent years
For 2018 and each subsequent year, if the Secretary finds that the proportion of eligible professionals who are meaningful EHR users (as determined under subsection (o)(2)) is less than 75 percent, the applicable percent shall be decreased by 1 percentage point from the applicable percent in the preceding year, but in no case shall the applicable percent be less than 95 percent.

(B) Significant hardship exception
The Secretary may, on a case-by-case basis, exempt an eligible professional from the application of the payment adjustment under subparagraph (A) if the Secretary determines, subject to annual renewal, that compliance with the requirement for being a meaningful EHR user would result in a significant hardship, such as in the case of an eligible professional who practices in a rural area without sufficient Internet access. In no case may an eligible professional be granted an exemption under this subparagraph for more than 5 years.

(C) Application of physician reporting system rules
Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this paragraph in the same manner as they apply for purposes of such subsection.

(D) Non-application to hospital-based eligible professionals
No payment adjustment may be made under subparagraph (A) in the case of hospital-based eligible professionals (as defined in subsection (o)(1)(C)(i)).

(E) Definitions
For purposes of this paragraph:

(i) Covered professional services
The term “covered professional services” has the meaning given such term in subsection (k)(3).

(ii) EHR reporting period
The term “EHR reporting period” means, with respect to a year, a period (or periods) specified by the Secretary.

(iii) Eligible professional
The term “eligible professional” means a physician, as defined in section 1395x(r) of this title.

(8) Incentives for quality reporting

(A) Adjustment

(i) In general
With respect to covered professional services furnished by an eligible professional during 2015 or any subsequent year, if the eligible professional does not satisfactorily submit data on quality measures for covered professional services for the quality reporting period for the year (as determined under subsection (m)(3)(A)), the fee schedule amount for such services furnished by such professional during the year (including the fee schedule amount for purposes of determining a payment based on such amount) shall be equal to the applicable percent of the fee schedule amount that would otherwise apply to such services under this subsection (determined after application of paragraphs (3),
(b) Establishment of fee schedules

(1) In general
Before November 1 of the preceding year, for each year beginning with 1998, subject to subsection (p), the Secretary shall establish, by regulation, fee schedules that establish payment amounts for all physicians’ services furnished in all fee schedule areas (as defined in subsection (k)(2) of this section) for the year. Except as provided in paragraph (2), each such payment amount for a service shall be equal to the product of—
(A) the relative value for the service (as determined in subsection (c)(2) of this section),
(B) the conversion factor (established under subsection (d) of this section) for the year, and
(C) the geographic adjustment factor (established under subsection (e)(2) of this section) for the service for the fee schedule area.

(2) Treatment of radiology services and anesthesia services
(A) Radiology services
With respect to radiology services (including radiologist services, as defined in section 1395m(b)(6) of this title), the Secretary shall base the relative values on the relative value scale developed under section 1395m(b)(1)(A) of this title, with appropriate modifications of the relative values to assure that the relative values established for radiology services which are similar or related to other physicians’ services are consistent with the relative values established for those similar or related services.

(B) Anesthesia services
In establishing the fee schedule for anesthesia services for which a relative value guide has been established under section 4048(b) of the Omnibus Budget Reconciliation Act of 1987, the Secretary shall use, to the extent practicable, such relative value guide, with appropriate adjustment of the conversion factor, in a manner to assure that the fee schedule amounts for anesthesia services are consistent with the fee schedule amounts for other services determined by the Secretary to be of comparable value. In applying the previous sentence, the Secretary shall adjust the conversion factor by geographic adjustment factors in the same manner as such adjustment is made under paragraph (1)(C).

(C) Consultation
The Secretary shall consult with the Physician Payment Review Commission and organizations representing physicians or suppliers who furnish radiology services and anesthesia services in applying subparagraphs (A) and (B).

(3) Treatment of interpretation of electrocardiograms
The Secretary—
(A) shall make separate payment under this section for the interpretation of electrocardiograms performed or ordered to be performed as part of or in conjunction with a visit to or a consultation with a physician, and
(B) shall adjust the relative values established for visits and consultations under subsection (c) of this section so as not to include relative value units for interpretations of electrocardiograms in the relative value for visits and consultations.

(4) Special rule for imaging services
(A) In general
In the case of imaging services described in subparagraph (B) furnished on or after January 1, 2007, if—
(i) the technical component (including the technical component portion of a global fee) of the service established for a year under the fee schedule described in paragraph (1) without application of the geographic adjustment factor described in paragraph (1)(C), exceeds
(ii) the Medicare OPD fee schedule amount established under the prospective payment system for hospital outpatient department services under paragraph (3)(D) of section 1395(t) of this title for such service for such year, determined without regard to geographic adjustment under paragraph (2)(D) of such section,
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the Secretary shall substitute the amount described in clause (ii), adjusted by the geographic adjustment factor described in paragraph (1)(C), for the fee schedule amount for such technical component for such year.

(B) Imaging services described

For purposes of subparagraph (A), imaging services described in this subparagraph are imaging and computer-assisted imaging services, including X-ray, ultrasound (including echocardiography), nuclear medicine (including positron emission tomography), magnetic resonance imaging, computed tomography, and fluoroscopy, but excluding diagnostic and screening mammography, and for 2010, 2011, and the first 2 months of 2012, dual-energy x-ray absorptiometry services (as described in paragraph (6)).

(C) Adjustment in imaging utilization rate

With respect to fee schedules established for 2011 and subsequent years, in the methodology for determining practice expense relative value units for expensive diagnostic imaging equipment under the final rule published by the Secretary in the Federal Register on November 25, 2009 (42 CFR 410 et al.), the Secretary shall use a 75 percent assumption instead of the utilization rates otherwise established in such final rule.

(D) Adjustment in technical component discount on single-session imaging involving consecutive body parts

For services furnished on or after July 1, 2010, the Secretary shall increase the reduction in payments attributable to the multiple procedure payment reduction applicable to the technical component for imaging under the final rule published by the Secretary in the Federal Register on November 21, 2005 (part 405 of title 42, Code of Federal Regulations) from 25 percent to 50 percent.

(5) Treatment of intensive cardiac rehabilitation program

(A) In general

In the case of an intensive cardiac rehabilitation program described in section 1395x(eee)(4) of this title, the Secretary shall substitute the Medicare OPD fee schedule amount established under the prospective payment system for hospital outpatient department service under paragraph (3)(D) of section 1395(t) of this title for cardiac rehabilitation (under HCPCS codes 76075 and 76077 and any succeeding codes) furnished during 2010, 2011, and the first 2 months of 2012.

(B) Definition of session

Each of the services described in subparagraphs (A) through (E) of section 1395x(eee)(3) of this title, when furnished for one hour, is a separate session of intensive cardiac rehabilitation.

(C) Multiple sessions per day

Payment may be made for up to 6 sessions per day of the series of 72 one-hour sessions of intensive cardiac rehabilitation services described in section 1395x(eee)(4)(B) of this title.

(6) Treatment of bone mass scans

For dual-energy x-ray absorptiometry services identified in 2006 by HCPCS codes 76075 and 76077 and any succeeding codes) furnished during 2010, 2011, and the first 2 months of 2012, instead of the payment amount that would otherwise be determined under this section for such years, the payment amount shall be equal to 70 percent of the product of—

(A) the relative value for the service (as determined in subsection (c)(2)) for 2006;

(B) the conversion factor (established under subsection (d)) for 2006; and

(C) the geographic adjustment factor (established under subsection (e)(2)) for the service for the fee schedule area for 2010, 2011, and the first 2 months of 2012, respectively.

(7) Adjustment in discount for certain multiple therapy services

In the case of therapy services furnished on or after January 1, 2011, and for which payment is made under fee schedules established under this section, instead of the 25 percent multiple procedure payment reduction specified in the final rule published by the Secretary in the Federal Register on November 29, 2010, the reduction percentage shall be 20 percent.

(c) Determination of relative values for physicians’ services

(1) Division of physicians’ services into components

In this section, with respect to a physicians’ service:

(A) “Work component” defined

The term “work component” means the portion of the resources used in furnishing the service that reflects physician time and intensity in furnishing the service. Such portion shall—

(i) include activities before and after direct patient contact, and

(ii) be defined, with respect to surgical procedures, to reflect a global definition including pre-operative and post-operative physicians’ services.

(B) “Practice expense component” defined

The term “practice expense component” means the portion of the resources used in furnishing the service that reflects the general categories of expenses (such as office rent and wages of personnel, but excluding malpractice expenses) comprising practice expenses.

(C) “Malpractice component” defined

The term “malpractice component” means the portion of the resources used in furnishing the service that reflects malpractice expenses in furnishing the service.

(2) Determination of relative values

(A) In general

(i) Combination of units for components

The Secretary shall develop a methodology for combining the work, practice expense, and malpractice relative value
units, determined under subparagraph (C), for each service in a manner to produce a single relative value for that service. Such relative values are subject to adjustment under subparagraph (F)(i) and section 13315(b) of the Omnibus Budget Reconciliation Act of 1999.

(ii) Extrapolation
The Secretary may use extrapolation and other techniques to determine the number of relative value units for physicians' services for which specific data are not available and shall take into account recommendations of the Physician Payment Review Commission and the results of consultations with organizations representing physicians who provide such services.

(B) Periodic review and adjustments in relative values

(i) Periodic review
The Secretary, not less often than every 5 years, shall review the relative values established under this paragraph for all physicians' services.

(ii) Adjustments

(I) In general
The Secretary shall, to the extent the Secretary determines to be necessary and subject to subclause (II), adjust the number of such units to take into account changes in medical practice, coding changes, new data on relative value components, or the addition of new procedures. The Secretary shall publish an explanation of the basis for such adjustments.

(II) Limitation on annual adjustments
Subject to clauses (iv) and (v), the adjustments under subclause (I) for a year may not cause the amount of expenditures under this part for the year to differ by more than $20,000,000 from the amount of expenditures under this part that would have been made if such adjustments had not been made.

(iii) Consultation
The Secretary, in making adjustments under clause (ii), shall consult with the Medicare Payment Advisory Commission and organizations representing physicians.

(iv) Exemption of certain additional expenditures from budget neutrality calculation
The additional expenditures attributable to—

(I) subparagraph (H) shall not be taken into account in applying clause (ii)(II) for 2004;

(II) subparagraph (I) insofar as it relates to a physician fee schedule for 2005 or 2006 shall not be taken into account in applying clause (ii)(II) for drug administration services under the fee schedule for such year; and

(IV) subsection (b)(6) shall not be taken into account in applying clause (ii)(II) for 2010, 2011, or the first 2 months of 2012.

(v) Exemption of certain reduced expenditures from budget-neutrality calculation
The following reduced expenditures, as estimated by the Secretary, shall not be taken into account in applying clause (ii)(II):

(I) Reduced payment for multiple imaging procedures
Effective for fee schedules established beginning with 2007, reduced expenditures attributable to the multiple procedure payment reduction for imaging services under the final rule published by the Secretary in the Federal Register on November 21, 2006 (42 CFR 405, et al.) insofar as it relates to the physician fee schedules for 2006 and 2007.

(II) OPD payment cap for imaging services
Effective for fee schedules established beginning with 2007, reduced expenditures attributable to subsection (b)(4).

(III) Change in utilization rate for certain imaging services
Effective for fee schedules established beginning with 2011, reduced expenditures attributable to the change in the utilization rate applicable to 2011, as described in subsection (b)(4)(C).


(VI) Additional reduced payment for multiple imaging procedures
Effective for fee schedules established beginning with 2010 (but not applied for services furnished prior to July 1, 2010), reduced expenditures attributable to the increase in the multiple procedure payment reduction from 25 to 50 percent (as described in subsection (b)(4)(D)).

(VII) Reduced expenditures for multiple therapy services
Effective for fee schedules established beginning with 2011, reduced expenditures attributable to the multiple procedure payment reduction for therapy services (as described in subsection (b)(7)).

(vi) Alternative application of budget-neutrality adjustment
Notwithstanding subsection (d)(9)(A), effective for fee schedules established beginning with 2009, with respect to the 5-year review of work relative value units used in fee schedules for 2007 and 2008, in lieu of continuing to apply budget-neutrality adjustments required under clause (ii) for
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2007 and 2008 to work relative value units, the Secretary shall apply such budget-neutrality adjustments to the conversion factor otherwise determined for years beginning with 2009.

(C) Computation of relative value units for components

For purposes of this section for each physician's service—

(i) Work relative value units

The Secretary shall determine a number of work relative value units for the service based on the relative resources incorporating physician time and intensity required in furnishing the service.

(ii) Practice expense relative value units

The Secretary shall determine a number of practice expense relative value units for the service for years before 1999 equal to the product of—

(I) the base allowed charges (as defined in subparagraph (D)) for the service, and

(II) the practice expense percentage for the service (as determined under paragraph (3)(C)(ii)),

and for years beginning with 1999 based on the relative practice expense resources involved in furnishing the service. For 1999, such number of units shall be determined based 75 percent on such product and based 25 percent on the relative practice expense resources involved in furnishing the service. For 2000, such number of units shall be determined based 50 percent on such product and based 50 percent on such relative practice expense resources. For 2001, such number of units shall be determined based 25 percent on such product and based 75 percent on such relative practice expense resources. For a subsequent year, such number of units shall be determined based entirely on such relative practice expense resources.

(iii) Malpractice relative value units

The Secretary shall determine a number of malpractice relative value units for the service for years before 2000 equal to the product of—

(I) the base allowed charges (as defined in subparagraph (D)) for the service, and

(II) the malpractice percentage for the service (as determined under paragraph (3)(C)(iii)),

and for years beginning with 2000 based on the malpractice expense resources involved in furnishing the service.

(D) “Base allowed charges” defined

In this paragraph, the term “base allowed charges” means, with respect to a physician's service, the national average allowed charges for the service under this part for services furnished during 1991, as estimated by the Secretary using the most recent data available.

(E) Reduction in practice expense relative value units for certain services

(i) In general

Subject to clause (ii), the Secretary shall reduce the practice expense relative value units applied to services described in clause (iii) furnished in—

(I) 1994, by 25 percent of the number by which the number of practice expense relative value units (determined for 1994 without regard to this subparagraph) exceeds the number of work relative value units determined for 1994,

(II) 1995, by an additional 25 percent of such excess, and

(III) 1996, by an additional 25 percent of such excess.

(ii) Floor on reductions

The practice expense relative value units for a physician's service shall not be reduced under this subparagraph to a number less than 128 percent of the number of work relative value units.

(iii) Services covered

For purposes of clause (i), the services described in this clause are physicians' services that are not described in clause (iv) and for which—

(I) there are work relative value units, and

(II) the number of practice expense relative value units (determined for 1994) exceeds 128 percent of the number of work relative value units (determined for such year).

(iv) Excluded services

For purposes of clause (iii), the services described in this clause are services which the Secretary determines at least 75 percent of which are provided under this subchapter in an office setting.

(F) Budget neutrality adjustments

The Secretary—

(i) shall reduce the relative values for all services (other than anesthesia services) established under this paragraph (and, in the case of anesthesia services, the conversion factor established by the Secretary for such services) by such percentage as the Secretary determines to be necessary so that, beginning in 1996, the amendment made by section 13514(a) of the Omnibus Budget Reconciliation Act of 1993 would not result in expenditures under this section that exceed the amount of such expenditures that would have been made if such amendment had not been made, and

(ii) shall reduce the amounts determined under subsection (a)(2)(B)(i)(I) of this section by such percentage as the Secretary determines to be required to assure that, taking into account the reductions made under clause (i), the amendment made by section 13514(a) of the Omnibus Budget Reconciliation Act of 1993 would not result in expenditures under this section in 1994 that exceed the amount of such expenditures that would have been made if such amendment had not been made.
(G) Adjustments in relative value units for 1998

(i) In general

The Secretary shall—

(I) subject to clauses (iv) and (v), reduce the practice expense relative value units applied to any services described in clause (ii) furnished in 1998 to a number equal to 110 percent of the number of work relative value units, and

(II) increase the practice expense relative value units for office visit procedure codes during 1998 by a uniform percentage which the Secretary estimates will result in an aggregate increase in payments for such services equal to the aggregate decrease in payments by reason of subclause (I).

(ii) Services covered

For purposes of clause (i), the services described in this clause are physicians’ services that are not described in clause (iii) and for which—

(I) there are work relative value units, and

(II) the number of practice expense relative value units (determined for 1998) exceeds 110 percent of the number of work relative value units (determined for such year).

(iii) Excluded services

For purposes of clause (ii), the services described in this clause are services which the Secretary determines at least 75 percent of which are provided under this subchapter in an office setting.

(iv) Limitation on aggregate reallocation

If the application of clause (i)(I) would result in an aggregate amount of reductions under such clause in excess of $390,000,000, such clause shall be applied by substituting for 110 percent such greater percentage as the Secretary estimates will result in the aggregate amount of such reductions equaling $390,000,000.

(v) No reduction for certain services

Practice expense relative value units for a procedure performed in an office or in a setting out of an office shall not be reduced under clause (i) if the in-office or out-of-office practice expense relative value, respectively, for the procedure would increase under the proposed rule on resource-based practice expenses issued by the Secretary on June 18, 1997 (62 Federal Register 33158 et seq.).

(H) Adjustments in practice expense relative value units for certain drug administration services beginning in 2004

(i) Use of survey data

In establishing the physician fee schedule under subsection (b) of this section with respect to payments for services furnished on or after January 1, 2004, the Secretary shall, in determining practice expense relative value units under this subsection, utilize a survey submitted to the Secretary as of January 1, 2003, by a physician specialty organization pursuant to section 212 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 if the survey—

(I) covers practice expenses for oncology drug administration services; and

(II) meets criteria established by the Secretary for acceptance of such surveys.

(ii) Pricing of clinical oncology nurses in practice expense methodology

If the survey described in clause (i) includes data on wages, salaries, and compensation of clinical oncology nurses, the Secretary shall utilize such data in the methodology for determining practice expense relative value units under subsection (c) of this section.

(iii) Work relative value units for certain drug administration services

In establishing the relative value units under this paragraph for drug administration services described in clause (iv) furnished on or after January 1, 2004, the Secretary shall establish work relative value units equal to the work relative value units for a level 1 office medical visit for an established patient.

(iv) Drug administration services described

The drug administration services described in this clause are physicians’ services—

(I) which are classified as of October 1, 2003, within any of the following groups of procedures: therapeutic or diagnostic infusions (excluding chemotherapy); chemotherapy administration services; and therapeutic, prophylactic, or diagnostic injections;

(II) for which there are no work relative value units assigned under this subsection as of such date; and

(III) for which national relative value units have been assigned under this subsection as of such date.

(I) Adjustments in practice expense relative value units for certain drug administration services beginning with 2005

(i) In general

In establishing the physician fee schedule under subsection (b) of this section with respect to payments for services furnished on or after January 1, 2005 or 2006, the Secretary shall adjust the practice expense relative value units for each year consistent with clause (ii).

(ii) Use of supplemental survey data

(I) In general

Subject to subclause (II), if a specialty submits to the Secretary by not later than March 1, 2004, for 2005, or March 1, 2005, for 2006, data that includes expenses for the administration of drugs and biologicals for which the payment amount is determined pursuant to section 1395u(o) of this title, the Secretary
shall use such supplemental survey data in carrying out this subparagraph for the years involved insofar as they are collected and provided by entities and organizations consistent with the criteria established by the Secretary pursuant to section 212(a) of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999.

(II) Limitation on specialty

Subclause (I) shall apply to a specialty only insofar as not less than 40 percent of payments for the specialty under this subchapter in 2002 are attributable to the administration of drugs and biologicals, as determined by the Secretary.

(III) Application

This clause shall not apply with respect to a survey to which subparagraph (H)(i) applies.

(J) Provisions for appropriate reporting and billing for physicians’ services associated with the administration of covered outpatient drugs and biologicals

(i) Evaluation of codes

The Secretary shall promptly evaluate existing drug administration codes for physicians’ services to ensure accurate reporting and billing for such services, taking into account levels of complexity of the administration and resource consumption.

(ii) Use of existing processes

In carrying out clause (i), the Secretary shall use existing processes for the consideration of coding changes and, to the extent coding changes are made, shall use such processes in establishing relative values for such services.

(iii) Implementation

In carrying out clause (i), the Secretary shall consult with representatives of physician specialties affected by the implementation of section 1395w–3a of this title or section 1395w–3b of this title, and shall take such steps within the Secretary’s authority to expedite such considerations under clause (i).

(iv) Subsequent, budget neutral adjustments permitted

Nothing in subparagraph (H) or (I) or this subparagraph shall be construed as preventing the Secretary from providing for adjustments in practice expense relative value units under (and consistent with) subparagraph (B) for years after 2004, 2005, or 2006, respectively.

(K) Potentially misvalued codes

(i) In general

The Secretary shall—
(I) periodically identify services as being potentially misvalued using criteria specified in clause (ii); and
(II) review and make appropriate adjustments to the relative values established under this paragraph for services identified as being potentially misvalued under subclause (I).

(ii) Identification of potentially misvalued codes

For purposes of identifying potentially misvalued services pursuant to clause (i)(I), the Secretary shall examine (as the Secretary determines to be appropriate) codes (and families of codes as appropriate) for which there has been the fastest growth; codes (and families of codes as appropriate) that have experienced substantial changes in practice expenses; codes for new technologies or services within an appropriate period (such as 3 years) after the relative values are initially established for such codes; multiple codes that are frequently billed in conjunction with furnishing a single service; codes with low relative values, particularly those that are often billed multiple times for a single treatment; codes which have not been subject to review since the implementation of the RBRVS (the so-called “Harvard-valued codes”); and such other codes determined to be appropriate by the Secretary.

(iii) Review and adjustments

(I) The Secretary may use existing processes to receive recommendations on the review and appropriate adjustment of potentially misvalued services described in clause (i)(II).

(II) The Secretary may conduct surveys, other data collection activities, studies, or other analyses as the Secretary determines to be appropriate to facilitate the review and appropriate adjustment described in clause (i)(II).

(III) The Secretary may use analytic contractors to identify and analyze services identified under clause (i)(I), conduct surveys or collect data, and make recommendations on the review and appropriate adjustment of services described in clause (i)(II).

(IV) The Secretary may coordinate the review and appropriate adjustment described in clause (i)(II) with the periodic review described in subparagraph (B).

(V) As part of the review and adjustment described in clause (i)(II), including with respect to codes with low relative values described in clause (ii), the Secretary may make appropriate coding revisions (including using existing processes for consideration of coding changes) which may include consolidation of individual services into bundled codes for payment under the fee schedule under subsection (b).

(VI) The provisions of subparagraph (B)(ii)(II) shall apply to adjustments to relative value units made pursuant to this subparagraph in the same manner as such provisions apply to adjustments under subparagraph (B)(ii)(II).

(L) Validating relative value units

(i) In general

The Secretary shall establish a process to validate relative value units under the fee schedule under subsection (b).
(ii) Components and elements of work
The process described in clause (i) may include validation of work elements (such as time, mental effort and professional judgment, technical skill and physical effort, and stress due to risk) involved with furnishing a service and may include validation of the pre-, post-, and intra-service components of work.

(iii) Scope of codes
The validation of work relative value units shall include a sampling of codes for services that is the same as the codes listed under subparagraph (K)(ii).

(iv) Methods
The Secretary may conduct the validation under this subparagraph using methods described in subclauses (I) through (V) of subparagraph (K)(iii) as the Secretary determines to be appropriate.

(v) Adjustments
The Secretary shall make appropriate adjustments to the work relative value units under the fee schedule under subsection (b). The provisions of subparagraph (B)(ii)(II) shall apply to adjustments to relative value units made pursuant to this subparagraph in the same manner as such provisions apply to adjustments under subparagraph (B)(ii)(II).

(3) Component percentages
For purposes of paragraph (2), the Secretary shall determine a work percentage, a practice expense percentage, and a malpractice percentage for each physician’s service as follows:

(A) Division of services by specialty
For each physician’s service or class of physicians’ services, the Secretary shall determine the average percentage of each such service or class of services that is performed, nationwide, under this part by physicians in each of the different physician specialties (as identified by the Secretary).

(B) Division of specialty by component
The Secretary shall determine the average percentage division of resources, among the work component, the practice expense component, and the malpractice component, used by physicians in each of such specialties in furnishing physicians’ services. Such percentages shall be based on national data that describe the elements of physician practice costs and revenues, by physician specialty. The Secretary may use extrapolation and other techniques to determine practice costs and revenues for specialties for which adequate data are not available.

(C) Determination of component percentages
(i) Work percentage
The work percentage for a service (or class of services) is equal to the sum (for all physician specialties) of—

(I) the average percentage division for the work component for each physician specialty (determined under subparagraph (B)), multiplied by

(II) the proportion (determined under subparagraph (K)(ii)) of such service (or services) performed by physicians in that specialty.

(ii) Practice expense percentage
For years before 2002, the practice expense percentage for a service (or class of services) is equal to the sum (for all physician specialties) of—

(I) the average percentage division for the practice expense component for each physician specialty (determined under subparagraph (B)), multiplied by

(II) the proportion (determined under subparagraph (K)(ii)) of such service (or services) performed by physicians in that specialty.

(iii) Malpractice percentage
For years before 1999, the malpractice percentage for a service (or class of services) is equal to the sum (for all physician specialties) of—

(I) the average percentage division for the malpractice component for each physician specialty (determined under subparagraph (B)), multiplied by

(II) the proportion (determined under subparagraph (K)(ii)) of such service (or services) performed by physicians in that specialty.

(D) Periodic recomputation
The Secretary may, from time to time, provide for the recomputation of work percentages, practice expense percentages, and malpractice percentages determined under this paragraph.

(4) Ancillary policies
The Secretary may establish ancillary policies (with respect to the use of modifiers, local codes, and other matters) as may be necessary to implement this section.

(5) Coding
The Secretary shall establish a uniform procedure coding system for the coding of all physicians’ services. The Secretary shall provide for an appropriate coding structure for visits and consultations. The Secretary may incorporate the use of time in the coding for visits and consultations. The Secretary, in establishing such coding system, shall consult with the Physician Payment Review Commission and other organizations representing physicians.

(6) No variation for specialists
The Secretary may not vary the conversion factor or the number of relative value units for a physicians’ service based on whether the physician furnishing the service is a specialist or based on the type of specialty of the physician.

(d) Conversion factors

(1) Establishment

(A) In general

The conversion factor for each year shall be the conversion factor established under this subsection for the previous year (or, in the case of 1992, specified in subparagraph
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(3) Update for 1999 and 2000

(A) In general

Unless otherwise provided by law, subject to subparagraph (D) and the budget-neutrality factor determined by the Secretary under subsection (c)(2)(B)(ii) of this section, the update to the single conversion factor established in paragraph (1)(C) for 1999 and 2000 is equal to the product of—

(i) 1 plus the Secretary’s estimate of the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for the year (divided by 100), and

(ii) 1 plus the Secretary’s estimate of the update adjustment factor for the year (divided by 100), minus 1 and multiplied by 100.

(B) Update adjustment factor

For purposes of subparagraph (A)(ii), the “update adjustment factor” for a year is equal (as estimated by the Secretary) to—

(i) the difference between (I) the sum of the allowed expenditures for physicians’ services (as determined under subparagraph (C)) for the period beginning April 1, 1997, and ending on March 31 of the year involved, and (II) the amount of actual expenditures for physicians’ services furnished during the period beginning April 1, 1997, and ending on March 31 of the preceding year; divided by

(ii) the actual expenditures for physicians’ services for the 12-month period ending on March 31 of the preceding year, increased by the sustainable growth rate under subsection (f) of this section for the fiscal year which begins during such 12-month period.

(C) Determination of allowed expenditures

For purposes of this paragraph and paragraph (4), the allowed expenditures for physicians’ services for the 12-month period ending with March 31 of—

(i) 1997 is equal to the actual expenditures for physicians’ services furnished during such 12-month period, as estimated by the Secretary; or

(ii) a subsequent year is equal to the allowed expenditures for physicians’ services for the previous year, increased by the sustainable growth rate under subsection (f) of this section for the fiscal year which begins during such 12-month period.

(D) Restriction on variation from medicare economic index

Notwithstanding the amount of the update adjustment factor determined under subparagraph (B) for a year, the update in the conversion factor under this paragraph for the year may not be—

(i) greater than 100 times the following amount: (1.03 + (MEI percentage/100)) – 1; or

(ii) less than 100 times the following amount: (0.93 + (MEI percentage/100)) – 1,

where “MEI percentage” means the Secretary’s estimate of the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for the year involved.

(4) Update for years beginning with 2001

(A) In general

Unless otherwise provided by law, subject to the budget-neutrality factor determined by the Secretary under subsection (c)(2)(B)(ii) of this section and subject to adjustment under subparagraph (F), the update
to the single conversion factor established in paragraph (1)(C) for a year beginning with 2001 is equal to the product of—

(i) 1 plus the Secretary’s estimate of the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for the year (divided by 100); and

(ii) 1 plus the Secretary’s estimate of the update adjustment factor under subparagraph (B) for the year.

(B) Update adjustment factor

For purposes of subparagraph (A)(ii), subject to subparagraph (D) and the succeeding paragraphs of this subsection, the “update adjustment factor” for a year is equal (as estimated by the Secretary) to the sum of the following:

(i) Prior year adjustment component

An amount determined by—

(I) computing the difference (which may be positive or negative) between the amount of the allowed expenditures for physicians’ services for the prior year (as determined under subparagraph (C)) and the amount of the actual expenditures for such services for that year;

(II) dividing that difference by the amount of the actual expenditures for such services for that year; and

(III) multiplying that quotient by 0.75.

(ii) Cumulative adjustment component

An amount determined by—

(I) computing the difference (which may be positive or negative) between the amount of the allowed expenditures for physicians’ services (as determined under subparagraph (C)) from April 1, 1996, through the end of the prior year and the amount of the actual expenditures for such services during that period;

(II) dividing that difference by the amount of the actual expenditures for such services for the prior year as increased by the sustainable growth rate under subsection (f) of this section for the year involved.

(E) Recalculation of allowed expenditures for updates beginning with 2001

For purposes of determining the update adjustment factor for a year beginning with 2001, the Secretary shall recompute the allowed expenditures for previous periods beginning on or after April 1, 1999, consistent with subsection (f)(3) of this section.

(F) Transitional adjustment designed to provide for budget neutrality

Under this subparagraph the Secretary shall provide for an adjustment to the update adjustment factor under subparagraph (A)—

(i) for each of 2001, 2002, 2003, and 2004, of −0.2 percent; and

(ii) for 2005 of +0.8 percent.

(5) Update for 2004 and 2005

The update to the single conversion factor established in paragraph (1)(C) for each of 2004 and 2005 shall be not less than 1.5 percent.

(6) Update for 2006

The update to the single conversion factor established in paragraph (1)(C) for 2006 shall be 0 percent.

(7) Conversion factor for 2007

(A) In general

The conversion factor that would otherwise be applicable under this subsection for 2007 shall be the amount of such conversion factor divided by the product of—

(i) 1 plus the Secretary’s estimate of the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for 2007 (divided by 100); and

(ii) 1 plus the Secretary’s estimate of the update adjustment factor under paragraph (4)(B) for 2007.

(B) No effect on computation of conversion factor for 2008

The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2008 as if subparagraph (A) had never applied.

(8) Update for 2008

(A) In general

Subject to paragraph (7)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for 2008, the update to the single conversion factor shall be 0.5 percent.
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(B) No effect on computation of conversion factor for 2009

The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2009 and subsequent years as if subparagraph (A) had never applied.

(9) Update for 2009

(A) In general

Subject to paragraphs (7)(B) and (8)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for 2009, the update to the single conversion factor shall be 1.1 percent.

(B) No effect on computation of conversion factor for 2010 and subsequent years

The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2010 and subsequent years as if subparagraph (A) had never applied.

(10) Update for January through May of 2010

(A) In general

Subject to paragraphs (7)(B), (8)(B), and (9)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for 2010 for the period beginning on January 1, 2010, and ending on May 31, 2010, the update to the single conversion factor shall be 0 percent for 2010.

(B) No effect on computation of conversion factor for remaining portion of 2010 and subsequent years

The conversion factor under this subsection shall be computed under paragraph (1)(A) for the period beginning on June 1, 2010, and ending on December 31, 2010, and for 2011 and subsequent years as if subparagraph (A) had never applied.

(11) Update for June through December of 2010

(A) In general

Subject to paragraphs (7)(B), (8)(B), (9)(B), and (10)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for 2010 for the period beginning on June 1, 2010, and ending on December 31, 2010, the update to the single conversion factor shall be 2.2 percent.

(B) No effect on computation of conversion factor for 2011 and subsequent years

The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2011 and subsequent years as if subparagraph (A) had never applied.

(12) Update for 2011

(A) In general

Subject to paragraphs (7)(B), (8)(B), (9)(B), (10)(B), and (11)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for 2011, the update to the single conversion factor shall be 0 percent.

(B) No effect on computation of conversion factor for 2012 and subsequent years

The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2012 and subsequent years as if subparagraph (A) had never applied.

(13) Update for first two months of 2012

(A) In general

Subject to paragraphs (7)(B), (8)(B), (9)(B), (10)(B), (11)(B), and (12)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for the period beginning on January 1, 2012, and ending on February 29, 2012, the update to the single conversion factor shall be zero percent.

(B) No effect on computation of conversion factor for remaining portion of 2012 and subsequent years

The conversion factor under this subsection shall be computed under paragraph (1)(A) for the period beginning on March 1, 2012, and ending on December 31, 2012, and for 2013 and subsequent years as if subparagraph (A) had never applied.

(e) Geographic adjustment factors

(1) Establishment of geographic indices

(A) In general

Subject to subparagraphs (B), (C), (E), (G), (H), and (I), the Secretary shall establish—

(i) an index which reflects the relative costs of the mix of goods and services comprising practice expenses (other than malpractice expenses) in the different fee schedule areas compared to the national average of such costs,

(ii) an index which reflects the relative costs of malpractice expenses in the different fee schedule areas compared to the national average of such costs, and

(iii) an index which reflects ¼ of the difference between the relative value of physicians’ work effort in each of the different fee schedule areas and the national average of such work effort.

(B) Class-specific geographic cost-of-practice indices

The Secretary may establish more than one index under subparagraph (A)(i) in the case of classes of physicians’ services, if, because of differences in the mix of goods and services comprising practice expenses for the different classes of services, the application of a single index under such clause to different classes of such services would be substantially inequitable.

(C) Periodic review and adjustments in geographic adjustment factors

The Secretary, not less often than every 3 years, shall, in consultation with appropriate representatives of physicians, review the indices established under subparagraph (A)(i) in the case of classes of physicians’ services, if, because of differences in the mix of goods and services comprising practice expenses for the different classes of services, the application of a single index under such clause to different classes of such services would be substantially inequitable.

1 So in original. Probably should be “elapsed”. 
the first year of the next adjustment shall be 
\( \frac{1}{2} \) of the adjustment that otherwise would be 
made.

(D) Use of recent data

In establishing indices and index values under this paragraph, the Secretary shall use the most recent data available relating to practice expenses, malpractice expenses, and physician work effort in different fee schedule areas.

(E) Floor at 1.0 on work geographic index

After calculating the work geographic index in subparagraph (A)(iii), for purposes of payment for services furnished on or after January 1, 2004, and before March 1, 2012, the Secretary shall increase the work geographic index to 1.00 for any locality for which such work geographic index is less than 1.00.

(G) Floor for practice expense, malpractice, and work geographic indices for services furnished in Alaska

For purposes of payment for services furnished in Alaska on or after January 1, 2004, and before January 1, 2006, after calculating the practice expense, malpractice, and work geographic indices in clauses (i), (ii), and (iii) of subparagraph (A) and in subparagraph (B), the Secretary shall increase any such index to 1.67 if such index would otherwise be less than 1.67. For purposes of payment for services furnished in the State described in the preceding sentence on or after January 1, 2006, after calculating the work geographic index in subparagraph (A)(iii), the Secretary shall increase the work geographic index to 1.5 if such index would otherwise be less than 1.5.

(H) Practice expense geographic adjustment for 2010 and subsequent years

(i) For 2010

Subject to clause (iii), for services furnished during 2010, the employee wage and rent portions of the practice expense geographic index described in subparagraph (A)(i) shall reflect \( \frac{1}{2} \) of the difference between the relative costs of employee wages and rents in each of the different fee schedule areas and the national average of such employee wages and rents.

(ii) For 2011

Subject to clause (iii), for services furnished during 2011, the employee wage and rent portions of the practice expense geographic index described in subparagraph (A)(i) shall reflect \( \frac{1}{2} \) of the difference between the relative costs of employee wages and rents in each of the different fee schedule areas and the national average of such employee wages and rents.

(iii) Hold harmless

The practice expense portion of the geographic adjustment factor applied in a fee schedule area for services furnished in 2010 or 2011 shall not, as a result of the application of clause (i) or (ii), be reduced below the practice expense portion of the geographic adjustment factor under subparagraph (A)(i) (as calculated prior to the application of such clause (i) or (ii), respectively) for such area for such year.

(iv) Analysis

The Secretary shall analyze current methods of establishing practice expense geographic adjustments under subparagraph (A)(i) and evaluate data that fairly and reliably establishes distinctions in the costs of operating a medical practice in the different fee schedule areas. Such analysis shall include an evaluation of the following:

(I) The feasibility of using actual data or reliable survey data developed by medical organizations on the costs of operating a medical practice, including office rents and non-physician staff wages, in different fee schedule areas.

(II) The office expense portion of the practice expense geographic adjustment described in subparagraph (A)(i), including the extent to which types of office expenses are determined in local markets instead of national markets.

(III) The weights assigned to each of the categories within the practice expense geographic adjustment described in subparagraph (A)(i).

(v) Revision for 2012 and subsequent years

As a result of the analysis described in clause (iv), the Secretary shall, not later than January 1, 2012, make appropriate adjustments to the practice expense geographic adjustment described in subparagraph (A)(i) to ensure accurate geographic adjustments across fee schedule areas, including—

(I) basing the office rents component and its weight on office expenses that vary among fee schedule areas; and

(II) considering a representative range of professional and non-professional personnel employed in a medical office based on the use of the American Community Survey data or other reliable data for wage adjustments.

Such adjustments shall be made without regard to adjustments made pursuant to clauses (i) and (ii) and shall be made in a budget neutral manner.

(I) Floor for practice expense index for services furnished in frontier States

(i) In general

Subject to clause (ii), for purposes of payment for services furnished in a frontier State (as defined in section 1395ww(d)(3)(E)(iii)(II) of this title) on or after January 1, 2011, after calculating the practice expense index in subparagraph (A)(i), the Secretary shall increase any such index to 1.00 if such index would otherwise be less than 1.00.

\( ^2 \)So in original. No subpar. (F) has been enacted.

\( ^3 \)So in original. Probably should be followed by a period.

\( ^4 \)So in original. Probably should be “than”.

\( ^5 \)So in original. No subpar. (F) has been enacted.
(2) Computation of geographic adjustment factor

For purposes of subsection (b)(1)(C) of this section, for all physicians’ services for each fee schedule area the Secretary shall establish a geographic adjustment factor equal to the sum of the geographic cost-of-practice adjustment factor (specified in paragraph (3)), the geographic malpractice adjustment factor (specified in paragraph (4)), and the geographic physician work adjustment factor (specified in paragraph (5)) for the service and the area.

(3) Geographic cost-of-practice adjustment factor

For purposes of paragraph (2), the “geographic cost-of-practice adjustment factor”, for a service for a fee schedule area, is the product of—

(A) the proportion of the total relative value for the service that reflects the relative value units for the practice expense component, and

(B) the geographic cost-of-practice index value for the area, based on the index established under paragraph (1)(A)(i) or (1)(B) (as the case may be).

(4) Geographic malpractice adjustment factor

For purposes of paragraph (2), the “geographic malpractice adjustment factor”, for a service for a fee schedule area, is the product of—

(A) the proportion of the total relative value for the service that reflects the relative value units for the malpractice component, and

(B) the geographic malpractice index value for the area, based on the index established under paragraph (1)(A)(ii).

(5) Geographic physician work adjustment factor

For purposes of paragraph (2), the “geographic physician work adjustment factor”, for a service for a fee schedule area, is the product of—

(A) the proportion of the total relative value for the service that reflects the relative value units for the work component, and

(B) the geographic physician work index value for the area, based on the index established under paragraph (1)(A)(iii).

(f) Sustainable growth rate

(1) Publication

The Secretary shall cause to have published in the Federal Register not later than—

(A) November 1, 2000, the sustainable growth rate for 2000 and 2001; and

(B) November 1 of each succeeding year the sustainable growth rate for such succeeding year and each of the preceding 2 years.

(2) Specification of growth rate

The sustainable growth rate for all physicians’ services for a fiscal year (beginning with fiscal year 1998 and ending with fiscal year 2000) and a year beginning with 2000 shall be equal to the product of—

(A) 1 plus the Secretary’s estimate of the weighted average percentage increase (divided by 100) in the fees for all physicians’ services in the applicable period involved.

(B) 1 plus the Secretary’s estimate of the percentage change (divided by 100) in the average number of individuals enrolled under this part (other than Medicare+Choice plan enrollees) from the previous applicable period to the applicable period involved,

(C) 1 plus the Secretary’s estimate of the annual average percentage growth in real gross domestic product per capita (divided by 100) during the 10-year period ending with the applicable period involved, and

(D) 1 plus the Secretary’s estimate of the percentage change (divided by 100) in expenditures for all physicians’ services in the applicable period (compared with the previous applicable period) which will result from changes in law and regulations, determined without taking into account estimated changes in expenditures resulting from the update adjustment factor determined under subsection (d)(3)(B) or (d)(4)(B) of this section, as the case may be, minus 1 and multiplied by 100.

(3) Data to be used

For purposes of determining the update adjustment factor under subsection (d)(4)(B) of this section for a year beginning with 2001, the sustainable growth rates taken into consideration in the determination under paragraph (2) shall be determined as follows:

(A) For 2001

For purposes of such calculations for 2001, the sustainable growth rates for fiscal year 2000 and the years 2000 and 2001 shall be determined on the basis of the best data available to the Secretary as of September 1, 2000.

(B) For 2002

For purposes of such calculations for 2002, the sustainable growth rates for fiscal year 2000 and for years 2000, 2001, and 2002 shall be determined on the basis of the best data available to the Secretary as of September 1, 2001.

(C) For 2003 and succeeding years

For purposes of such calculations for a year after 2002—

(i) the sustainable growth rates for that year and the preceding 2 years shall be determined on the basis of the best data available to the Secretary as of September 1 of the year preceding the year for which the calculation is made; and

(ii) the sustainable growth rate for any year before a year described in clause (i) shall be the rate as most recently determined for that year under this subsection.

Nothing in this paragraph shall be construed as affecting the sustainable growth rates es-
established for fiscal year 1998 or fiscal year 1999.

(4) Definitions
In this subsection:

(A) Services included in physicians' services

The term "physicians' services" includes other items and services (such as clinical diagnostic laboratory tests and radiology services), specified by the Secretary, that are commonly performed or furnished by a physician or in a physician's office, but does not include services furnished to a Medicare+Choice plan enrollee.

(B) Medicare+Choice plan enrollee

The term "Medicare+Choice plan enrollee" means, with respect to a fiscal year, an individual enrolled under this part who has elected to receive benefits under this subchapter for the fiscal year through a Medicare+Choice plan offered under part C of this subchapter, and also includes an individual who is receiving benefits under this part through enrollment with an eligible organization with a risk-sharing contract under section 1395mm of this title.

(C) Applicable period

The term "applicable period" means—

(i) a fiscal year, in the case of fiscal year 1998, fiscal year 1999, and fiscal year 2000; or

(ii) a calendar year with respect to a year beginning with 2000; as the case may be.

(g) Limitation on beneficiary liability

(1) Limitation on actual charges

(A) In general

In the case of a nonparticipating physician or nonparticipating supplier or other person (as defined in section 1395u(u)(2) of this title) who does not accept payment on an assignment-related basis for a physician's service furnished with respect to an individual enrolled under this part, the following rules apply:

(i) Application of limiting charge

No person may bill or collect an actual charge for the service in excess of the limiting charge described in paragraph (2) for such service.

(ii) No liability for excess charges

No person is liable for payment of any amounts billed for the service in excess of such limiting charge.

(iii) Correction of excess charges

If such a physician, supplier, or other person bills, but does not collect, an actual charge for a service in violation of clause (i), the physician, supplier, or other person shall provide on a timely basis a refund to the individual charged in the amount by which the amount collected exceeded the limiting charge for the service. The amount of such a refund shall be reduced to the extent the individual has an outstanding balance owed by the individual to the physician.

(B) Sanctions

If a physician, supplier, or other person—

(i) knowingly and willfully bills or collects for services in violation of subparagraph (A)(i) on a repeated basis, or

(ii) fails to comply with clause (iii) or (iv) of subparagraph (A) on a timely basis, the Secretary may apply sanctions against the physician, supplier, or other person in accordance with paragraph (2) of such section and any reference in such section to a physician is deemed also to include a reference to a supplier or other person under this subparagraph.

(C) Timely basis

For purposes of this paragraph, a correction of a bill for an excess charge or refund of an amount with respect to a violation of subparagraph (A)(i) in the case of a service is considered to be provided "on a timely basis", if the reduction or refund is made not later than 30 days after the date the physician, supplier, or other person is notified by the carrier under this part of such violation and of the requirements of subparagraph (A).

(2) "Limiting charge" defined

(A) For 1991

For physicians' services of a physician furnished during 1991, other than radiologist services subject to section 1395m(b) of this title, the "limiting charge" shall be the same percentage (or, if less, 25 percent) above the recognized payment amount under this part as of such date.

(B) For 1992

For physicians' services furnished during 1992, other than radiologist services subject to section 1395m(b) of this title, the "limiting charge" shall be the maximum allowable actual charge (as determined under section 1395u(j)(1)(C) of this title as of December 31, 1990, or, if less, the maximum actual charge otherwise permitted for the service under this part as of such date) for the service of the physician, exceeds

(ii) the recognized payment amount for the service of the physician (as a nonparticipating physician) as of such date.

In the case of evaluation and management services (as specified in section 1395u(b)(16)(B)(ii) of this title), the preceding sentence shall be applied by substituting "40 percent" for "25 percent".
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The Secretary shall monitor—
(i) the actual charges of nonparticipating physicians for physicians' services furnished on or after January 1, 1991, to individuals enrolled under this part, and
(ii) changes (by specialty, type of service, and geographic area) in (I) the proportion of expenditures for physicians' services provided under this part by participating physicians, (II) the proportion of expenditures for such services for which payment is made under this part on an assignment-related basis, and (III) the amounts charged above the recognized payment amounts under this part.

(B) Report
The Secretary shall, by not later than April 15 of each year (beginning in 1992), report to the Congress on the extent to which actual charges exceed limiting charges, the number and types of services involved, and the average amount of excess charges and information regarding the changes described in subparagraph (A)(ii).

(C) Plan
If the Secretary finds that there has been a significant decrease in the proportions de-
describe in subclauses (I) and (II) of subparagraph (A)(ii) or an increase in the amounts described in subclause (III) of that subparagraph, the Secretary shall develop a plan to address such a problem and transmit to Congress recommendations regarding the plan. The Medicare Payment Advisory Commission shall review the Secretary’s plan and recommendations and transmit to Congress its comments regarding such plan and recommendations.

(7) Monitoring of utilization and access

(A) In general
The Secretary shall monitor—
(i) changes in the utilization of and access to services furnished under this part within geographic, population, and service related categories,
(ii) possible sources of inappropriate utilization of services furnished under this part which contribute to the overall level of expenditures under this part, and
(iii) factors underlying these changes and their interrelationships.

(B) Report
The Secretary shall by not later than April 15, of each year (beginning with 1991) report to the Congress on the changes described in subparagraph (A)(i) and shall include in the report an examination of the factors (including factors relating to different services and specific categories and groups of services and geographic and demographic variations in utilization) which may contribute to such changes.

(C) Recommendations
The Secretary shall include in each annual report under subparagraph (B) recommendations—
(i) addressing any identified patterns of inappropriate utilization,
(ii) on utilization review,
(iii) on physician education or patient education,
(iv) addressing any problems of beneficiary access to care made evident by the monitoring process, and
(v) on such other matters as the Secretary deems appropriate.

The Medicare Payment Advisory Commission shall comment on the Secretary’s recommendations and in developing its comments, the Commission shall convene and consult a panel of physician experts to evaluate the implications of medical utilization patterns for the quality of and access to patient care.

(h) Sending information to physicians
Before the beginning of each year (beginning with 1992), the Secretary shall send to each physician or nonparticipating supplier or other person furnishing physicians’ services (as defined in subsection (j)(3) of this section) furnishing physicians’ services under this part, for services commonly performed by the physician, supplier, or other person, information on fee schedule amounts that apply for the year in the fee schedule area for participating and non-participating physicians, and the maximum amount that may be charged consistent with subsection (g)(2) of this section. Such information shall be transmitted in conjunction with notices to physicians, suppliers, and other persons under section 1395u(h) of this title (relating to the participating physician program) for a year.

(i) Miscellaneous provisions

(1) Restriction on administrative and judicial review
There shall be no administrative or judicial review under section 1395ff of this title or otherwise of—
(A) the determination of the adjusted historical payment basis (as defined in subsection (a)(2)(D)(i) of this section),
(B) the determination of relative values and relative value units under subsection (c) of this section, including adjustments under subsections (c)(2)(F), (c)(2)(H), and (c)(2)(I) of this section and section 13515(b) of the Omnibus Budget Reconciliation Act of 1993,
(C) the determination of conversion factors under subsection (d) of this section, including without limitation a prospective re-determination of the sustainable growth rates for any or all previous fiscal years,
(D) the establishment of geographic adjustment factors under subsection (e) of this section, and
(E) the establishment of the system for the coding of physicians’ services under this section.

(2) Assistants-at-surgery

(A) In general
Subject to subparagraph (B), in the case of a surgical service furnished by a physician, if payment is made separately under this part for the services of a physician serving as an assistant-at-surgery, the fee schedule amount shall not exceed 16 percent of the fee schedule amount otherwise determined under this section for the global surgical service involved.

(B) Denial of payment in certain cases
If the Secretary determines, based on the most recent data available, that for a surgical procedure (or class of surgical procedures) the national average percentage of such procedure performed under this part which involve the use of a physician as an assistant at surgery is less than 5 percent, no payment may be made under this part for services of an assistant at surgery involved in the procedure.

(3) No comparability adjustment
For physicians’ services for which payment under this part is determined under this section—
(A) a carrier may not make any adjustment in the payment amount under section 1395w–4(b)(3)(B) of this title on the basis that the payment amount is higher than the charge applicable, for comparable services and under comparable circumstances, to the policyholders and subscribers of the carrier,
(B) no payment adjustment may be made under section 1395u(b)(8) of this title, and
(C) section 1395u(b)(9) of this title shall not apply.

(j) Definitions
In this section:

(1) Category
For services furnished before January 1, 1998, the term “category” means, with respect to physicians’ services, surgical services, and all physicians’ services other than surgical services (as defined by the Secretary and including anesthesia services), primary care services (as defined in section 1395u(i)(4) of this title), and all other physicians’ services. The Secretary shall define surgical services and publish such definition in the Federal Register no later than May 1, 1999, after consultation with organizations representing physicians.

(2) Fee schedule area
The term “fee schedule area” means a locality used under section 1395a(b) of this title for purposes of computing payment amounts for physicians’ services.

(3) Physicians’ services
The term “physicians’ services” includes items and services described in paragraphs (1), (2)(A), (2)(D), (2)(G), (2)(P) (with respect to services described in subparagraphs (A) and (C) of section 1395x(oo)(2) of this title), (2)(R) (with respect to services described in subparagraphs (B), (C), and (D) of section 1395x(pp)(1) of this title), (2)(S), (2)(W), (2)(AA), (2)(DD), (2)(EE), (2)(FF) (including administration of the health risk assessment), (3), (4), (13), (14) (with respect to services described in section 1395x(mm)(2) of this title), and (15) of section 1395x(s) of this title (other than clinical diagnostic laboratory tests and, except for purposes of subsections (a)(3), (g), and (h) of this section and services as the Secretary may specify).

(4) Practice expenses
The term “practice expenses” includes all expenses for furnishing physicians’ services, excluding malpractice expenses, physician compensation, and other physician fringe benefits.

(k) Quality reporting system

(1) In general
The Secretary shall implement a system for the reporting by eligible professionals of data on quality measures specified under paragraph (2). Such data shall be submitted in a form and manner specified by the Secretary (by program instruction or otherwise), which may include submission of such data on claims under this part.

(2) Use of consensus-based quality measures

(A) For 2007

(i) In general
For purposes of applying this subsection for the reporting of data on quality measures for covered professional services furnished during the period beginning July 1, 2007, and ending December 31, 2007, the quality measures specified under this paragraph are the measures identified as 2007 physician quality measures under the Physician Voluntary Reporting Program as published on the public website of the Centers for Medicare & Medicaid Services as of December 20, 2006, except as may be changed by the Secretary based on the results of a consensus-based process in January of 2007, if such change is published on such website by not later than April 1, 2007.

(ii) Subsequent refinements in application permitted
The Secretary may, from time to time (but not later than July 1, 2007), publish on such website (without notice or opportunity for public comment) modifications or refinements (such as code additions, corrections, or revisions) for the application of quality measures previously published under clause (i), but may not, under this clause, change the quality measures under the reporting system.

(iii) Implementation
Notwithstanding any other provision of law, the Secretary may implement by program instruction or otherwise this subsection for 2007.

(B) For 2008 and 2009

(i) In general
For purposes of reporting data on quality measures for covered professional services furnished during 2008 and 2009, the quality measures specified under this paragraph for covered professional services shall be measures that have been adopted or endorsed by a consensus organization (such as the National Quality Forum or AQA), that include measures that have been submitted by a physician specialty, and that the Secretary identifies as having used a consensus-based process for developing such measures. Such measures shall include structural measures, such as the use of electronic health records and electronic prescribing technology.

(ii) Proposed set of measures
Not later than August 15 of each of 2007 and 2008, the Secretary shall publish in the Federal Register a proposed set of quality measures that the Secretary determines are described in clause (i) and would be appropriate for eligible professionals to use to submit data to the Secretary in 2008 or 2009, as applicable. The Secretary shall provide for a period of public comment on such set of measures.

(iii) Final set of measures
Not later than November 15 of each of 2007 and 2008, the Secretary shall publish in the Federal Register a final set of quality measures that the Secretary determines are described in clause (i) and would

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be appropriate for eligible professionals to use to submit data to the Secretary in 2008 or 2009, as applicable.

(C) For 2010 and subsequent years

(i) In general

Subject to clause (ii), for purposes of reporting data on quality measures for covered professional services furnished during 2010 and each subsequent year, subject to subsection (m)(3)(C), the quality measures (including electronic prescribing quality measures) specified under this paragraph shall be such measures selected by the Secretary from measures that have been endorsed by the entity with a contract with the Secretary under section 1395aaa(a) of this title.

(ii) Exception

In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1395aaa(a) of this title, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary, such as the AQA alliance.

(D) Opportunity to provide input on measures for 2009 and subsequent years

For each quality measure (including an electronic prescribing quality measure) adopted by the Secretary under subparagraph (B) with respect to 2009 or subparagraph (C), the Secretary shall ensure that eligible professionals have the opportunity to provide input during the development, endorsement, or selection of measures applicable to services they furnish.

(3) Covered professional services and eligible professionals defined

For purposes of this subsection:

(A) Covered professional services

The term “covered professional services” means services for which payment is made under, or is based on, the fee schedule established under this section and which are furnished by an eligible professional.

(B) Eligible professional

The term “eligible professional” means any of the following:

(i) A physician.

(ii) A practitioner described in section 1395u(b)(18)(C) of this title.

(iii) A physical or occupational therapist or a qualified speech-language pathologist.

(iv) Beginning with 2009, a qualified audiologist (as defined in section 1395x(l)(3)(B) of this title).

(4) Use of registry-based reporting

As part of the publication of proposed and final quality measures for 2008 under clauses (ii) and (iii) of paragraph (2)(B), the Secretary shall address a mechanism whereby an eligible professional may provide data on quality measures through an appropriate medical registry (such as the Society of Thoracic Surgeons National Database) or through a Maintenance of Certification program operated by a specialty body of the American Board of Medical Specialties that meets the criteria for such a registry, as identified by the Secretary.

(5) Identification units

For purposes of applying this subsection, the Secretary may identify eligible professionals through billing units, which may include the use of the Provider Identification Number, the unique physician identification number (described in section 1395f(q)(1) of this title), the taxpayer identification number, or the National Provider Identifier. For purposes of applying this subsection for 2007, the Secretary shall use the taxpayer identification number as the billing unit.

(6) Education and outreach

The Secretary shall provide for education and outreach to eligible professionals on the operation of this subsection.

(7) Limitations on review

There shall be no administrative or judicial review under section 1395ff of this title, section 1395gg of this title, or otherwise, of the development and implementation of the reporting system under paragraph (1), including identification of quality measures under paragraph (2) and the application of paragraphs (4) and (5).

(8) Implementation

The Secretary shall carry out this subsection acting through the Administrator of the Centers for Medicare & Medicaid Services.

(l) Physician Assistance and Quality Initiative Fund

(1) Establishment

The Secretary shall establish under this subsection a Physician Assistance and Quality Initiative Fund (in this subsection referred to as the “Fund”) which shall be available to the Secretary for physician payment and quality improvement initiatives, which may include application of an adjustment to the update of the conversion factor under subsection (d).

(2) Funding

(A) Amount available

(i) In general

Subject to clause (ii), there shall be available to the Fund the following amounts:

(I) For expenditures during 2008, an amount equal to $150,500,000.

(II) For expenditures during 2009, an amount equal to $24,500,000.

(ii) Limitations on expenditures

(I) 2008

The amount available for expenditures during 2008 shall be reduced as provided by subparagraph (A) of section 225(c)(1) and section 524 of the Departments of Labor, Health and Human Services, and

(II) 2009

The amount available for expenditures during 2009 shall be reduced as provided by subparagraph (B) of such section 225(c)(1).

(B) Timely obligation of all available funds for services

The Secretary shall provide for expenditures from the Fund in a manner designed to provide (to the maximum extent feasible) for the obligation of the entire amount available for expenditures, after application of subparagraph (A)(ii), during—

(i) 2008 for payment with respect to physicians’ services furnished during 2008; and

(ii) 2009 for payment with respect to physicians’ services furnished during 2009.

(C) Payment from Trust Fund

The amount specified in subparagraph (A) shall be available to the Fund, as expenditures are made from the Fund, from the Federal Supplementary Medical Insurance Trust Fund under section 1395t of this title.

(D) Funding limitation

Amounts in the Fund shall be available in advance of appropriations in accordance with subparagraph (B) but only if the total amount obligated from the Fund does not exceed the amount available to the Fund under subparagraph (A). The Secretary may obligate funds from the Fund only if the Secretary determines (and the Chief Actuary of the Centers for Medicare & Medicaid Services and the appropriate budget officer certify) that there are available in the Fund sufficient amounts to cover all such obligations incurred consistent with the previous sentence.

(E) Construction

In the case that expenditures from the Fund are applied to, or otherwise affect, a conversion factor under subsection (d) for a year, the conversion factor under such subsection shall be computed for a subsequent year as if such application or effect had never occurred.

(m) Incentive payments for quality reporting

(1) Incentive payments

(A) In general

For 2007 through 2014, with respect to covered professional services furnished during a reporting period by an eligible professional, if—

(i) there are any quality measures that have been established under the physician reporting system that are applicable to any such services furnished by such professional for such reporting period; and

(ii) the eligible professional satisfactorily submits (as determined under this subsection) to the Secretary data on such quality measures in accordance with such reporting system for such reporting period, in addition to the amount otherwise paid under this part, there also shall be paid to the eligible professional (or to an employer or facility in the cases described in clause (A) of section 1395u(b)(6) of this title) or, in the case of a group practice under paragraph (3)(C), to the group practice, from the Federal Supplementary Medical Insurance Trust Fund established under section 1395t of this title an amount equal to the applicable quality percent of the Secretary’s estimate (based on claims submitted not later than 2 months after the end of the reporting period) of the allowed charges under this part for all such covered professional services furnished by the eligible professional (or, in the case of a group practice under paragraph (3)(C), by the group practice) during the reporting period.

(B) Applicable quality percent

For purposes of subparagraph (A), the term “applicable quality percent” means—

(i) for 2007 and 2008, 1.5 percent;

(ii) for 2009 and 2010, 2.0 percent;

(iii) for 2011, 1.0 percent; and

(iv) for 2012, 2013, and 2014, 0.5 percent.

(2) Incentive payments for electronic prescribing

(A) In general

Subject to subparagraph (D), for 2009 through 2013, with respect to covered professional services furnished during a reporting period by an eligible professional, if the eligible professional is a successful electronic prescriber for such reporting period, in addition to the amount otherwise paid under this part, there also shall be paid to the eligible professional (or to an employer or facility in the cases described in clause (A) of section 1395u(b)(6) of this title) or, in the case of a group practice under paragraph (3)(C), to the group practice, from the Federal Supplementary Medical Insurance Trust Fund established under section 1395t of this title an amount equal to the applicable electronic prescribing percent of the Secretary’s estimate (based on claims submitted not later than 2 months after the end of the reporting period) of the allowed charges under this part for all such covered professional services furnished by the eligible professional (or, in the case of a group practice under paragraph (3)(C), by the group practice) during the reporting period.

(B) Limitation with respect to electronic prescribing quality measures

The provisions of this paragraph and subsection (a)(5) shall not apply to an eligible professional (or, in the case of a group practice under paragraph (3)(C), to the group practice) if, for the reporting period (or, for purposes of subsection (a)(5), for the reporting period for a year)—

(i) the allowed charges under this part for all covered professional services furnished by the eligible professional (or, group, as applicable) for the codes to which the electronic prescribing quality measure applies (as identified by the Sec-
(3) Satisfactory reporting and successful elec-
tronic prescribing described

(A) In general
For purposes of paragraph (1), an eligible professional shall be treated as satisfac-
tory reporting system and that are applicable to such services of such professional furn-
nished during the period, each such quality measure has been reported under such system in at least 80 percent of the cases in which the respective measure is reportable under the system.

For years after 2008, quality measures for purposes of this subparagraph shall not in-
clude electronic prescribing quality measures.

(B) Successful electronic prescriber

(i) In general
For purposes of paragraph (2) and sub-
section (a)(5), an eligible professional shall be treated as a successful electronic pre-
scriber for a reporting period if, for purposes of subsection (a)(5), for the reporting period for a year) if the eligible professional meets the requirement described in clause (ii), or, if the Secretary determines appropriate, the requirement described in clause (iii). If the Secretary makes the determination under the preceding sentence to apply the requirement described in clause (ii) for a period, then the require-
ment described in clause (ii) shall not apply for such period.

(ii) Requirement for submitting data on elec-
tronic prescribing quality measures
The requirement described in this clause is that, with respect to covered profes-
sional services furnished by an eligible professional during a reporting period (or, for purposes of subsection (a)(5), for the reporting period for a year), if there are any electronic prescribing quality measures that have been established under the phys-
ician reporting system and are applicable to any such services furnished by such professional for the period, such professional reported each such measure under such system in at least 50 percent of the cases in which such measure is reportable by such professional under such system.

(iii) Requirement for electronically pres-
cribing under part D
The requirement described in this clause is that the eligible professional electronically submitted a sufficient number (as de-
etermined by the Secretary) of prescrip-
tions under part D during the reporting pe-
riod (or, for purposes of subsection (a)(5), for the reporting period for a year).

(iv) Use of part D data
Notwithstanding sections 1395w–115(d)(3)(B) and 1395w–115(f)(2) of this title, the Secretary may use data regard-
ing drug claims submitted for purposes of section 1395w–115 of this title that are nec-
ecessary for purposes of clause (iii), para-
graph (2)(B)(ii), and paragraph (5)(G).

(v) Standards for electronic prescribing
To the extent practicable, in determin-
whether eligible professionals meet the requirements under clauses (ii) and (iii) for purposes of clause (i), the Secretary shall ensure that eligible professionals utilize electronic prescribing systems in compli-
ance with standards established for such systems pursuant to the Part D Electronic
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(5) Application

(A) Physician reporting system rules

Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this subsection in the same manner as they apply for purposes of such subsection.

(B) Coordination with other bonus payments

The provisions of this subsection shall not be taken into account in applying subsections (m) and (u) of section 1395f of this title and any payment under such subsections shall not be taken into account in computing allowable charges under this subsection.

(C) Satisfactory reporting measures for group practices

(i) In general

By January 1, 2010, the Secretary shall establish and have in place a process under which eligible professionals in a group practice (as defined by the Secretary) shall be treated as satisfactorily submitting data on quality measures under subparagraph (A) and as meeting the requirement described in subparagraph (B)(ii) for covered professional services for a reporting period (or, for purposes of subsection (a)(5), for a reporting period for a year), or, for purposes of subsection (a)(8), for a quality reporting period for the year if, in lieu of reporting measures under subsection (k)(2)(C), the group practice reports measures determined appropriate by the Secretary, such as measures that target high-cost chronic conditions and preventive care, in a form and manner, and at a time, specified by the Secretary.

(ii) Statistical sampling model

The process under clause (i) shall provide for the use of a statistical sampling model to submit data on measures, such as the model used under the Physician Group Practice Demonstration project under section 1395cc–1 of this title.

(iii) No double payments

Payments to a group practice under this subsection by reason of the process under clause (i) shall be in lieu of the payments that would otherwise be made under this subsection to eligible professionals in the group practice for satisfactorily submitting data on quality measures.

(D) Authority to revise satisfactorily reporting data

For years after 2009, the Secretary, in consultation with stakeholders and experts, may revise the criteria for submitting data on electronic prescribing quality measures under subparagraph (B)(ii).

(4) Form of payment

The payment under this subsection shall be in the form of a single consolidated payment.

(5) Application

(A) Physician reporting system rules

Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this subsection in the same manner as they apply for purposes of such subsection.

(B) Coordination with other bonus payments

The provisions of this subsection shall not be taken into account in applying subsections (m) and (u) of section 1395f of this title and any payment under such subsections shall not be taken into account in computing allowable charges under this subsection.

(C) Implementation

Notwithstanding any other provision of law, for 2007, 2008, and 2009, the Secretary may implement by program instruction or otherwise this subsection.

(D) Validation

(i) In general

Subject to the succeeding provisions of this subparagraph, for purposes of determining whether a measure is applicable to the covered professional services of an eligible professional under this subsection for 2007 and 2008, the Secretary shall presume that if an eligible professional submits data for a measure, such measure is applicable to such professional.

(ii) Method

The Secretary may establish procedures to validate (by sampling or other means as the Secretary determines to be appropriate) whether measures applicable to covered professional services of an eligible professional have been reported.

(iii) Denial of payment authority

If the Secretary determines that an eligible professional (or, in the case of a group practice under paragraph (3)(C), the group practice) has not reported measures determined appropriate by the Secretary, such as measures that target high-cost chronic conditions and preventive care, in a form and manner, and at a time, specified by the Secretary.

(E) Limitations on review

Except as provided in subparagraph (I), there shall be no administrative or judicial review under section 1395ff of this title, section 1395oo of this title, or otherwise of—

(i) the determination of measures applicable to services furnished by eligible professionals under this subsection;

(ii) the determination of satisfactory reporting under this subsection;

(iii) the determination of a successful electronic prescriber under paragraph (3), the limitation under paragraph (2)(B), and the exception under subsection (a)(5)(B); and

(iv) the determination of any incentive payment under this subsection and the payment adjustment under paragraphs (5)(A) and (8)(A) of subsection (a).

(F) Extension

For 2008 and subsequent years, the Secretary shall establish alternative criteria for satisfactorily reporting under this subsection and alternative reporting periods under paragraph (6)(C) for reporting groups of measures under subsection (k)(2)(B) and for reporting using the method specified in subsection (k)(4).

(G) Posting on website

The Secretary shall post on the Internet website of the Centers for Medicare & Medic-
subject to satisfactorily submitting data on quality measures under this subsection.

(6) Definitions

For purposes of this subsection:

(A) Eligible professional; covered professional services

The terms “eligible professional” and “covered professional services” have the meanings given such terms in subsection (k)(3).

(B) Physician reporting system

The term “physician reporting system” means the system established under subsection (k).

(C) Reporting period

(i) In general

Subject to clauses (ii) and (iii), the term “reporting period” means—

(I) for 2007, the period beginning on July 1, 2007, and ending on December 31, 2007; and

(II) for 2008 and subsequent years, the entire year.

(ii) Authority to revise reporting period

For years after 2009, the Secretary may revise the reporting period under clause (i) if the Secretary determines such revision is appropriate, produces valid results on measures reported, and is consistent with the goals of maximizing scientific validity and reducing administrative burden. If the Secretary revises such period pursuant to the preceding sentence, the term “reporting period” shall mean such revised period.

(iii) Reference

Any reference in this subsection to a reporting period with respect to the application of subsection (a)(5) (a)(8) shall be deemed a reference to the reporting period under subsection (a)(5)(D)(iii) or the quality reporting period under subsection (a)(5)(D)(iii). respectively.

(7) Integration of physician quality reporting and EHR reporting

Not later than January 1, 2012, the Secretary shall develop a plan to integrate reporting on quality measures under this subsection with reporting requirements under subsection (o) relating to the meaningful use of electronic health records. Such integration shall consist of the following:

(A) The selection of measures, the reporting of which would both demonstrate—

(1) meaningful use of an electronic health record for purposes of subsection (o); and

(2) quality of care furnished to an individual.

(B) Such other activities as specified by the Secretary.

(7) Additional incentive payment

(A) In general

For 2011 through 2014, if an eligible professional meets the requirements described in subparagraph (B), the applicable quality percent for such year, as described in clauses (iii) and (iv) of paragraph (1)(B), shall be increased by 0.5 percentage points.

(B) Requirements described

In order to qualify for the additional incentive payment described in subparagraph (A), an eligible professional shall meet the following requirements:

(i) The eligible professional shall—

(I) satisfactorily submit data on quality measures for purposes of paragraph (1) for a year; and

(II) have such data submitted on their behalf through a Maintenance of Certification Program (as defined in subparagraph (C)(i)) that meets—

(aa) the criteria for a registry (as described in subsection (k)(4)); or

(bb) an alternative form and manner determined appropriate by the Secretary.

(ii) The eligible professional, more frequently than is required to qualify for or maintain board certification status—

(I) participates in such a Maintenance of Certification program for a year; and

(II) successfully completes a qualified Maintenance of Certification Program practice assessment (as defined in subparagraph (C)(ii)) for such year.

(iii) A Maintenance of Certification program submits to the Secretary, on behalf of the eligible professional, information—

(I) in a form and manner specified by the Secretary, that the eligible professional has successfully met the requirements of clause (ii) (which may be in the form of a structural measure);

(II) if requested by the Secretary, on the survey of patient experience with

8So in original. Probably should be “(a)(5)(D)(iii).
9So in original. Two pars. (7) have been enacted.
care (as described in subparagraph (C)(ii)(II)); and

(iii) Inclusion of certain information
If determined appropriate by the Secretary, the Secretary may include information on the quality of care furnished to individuals under this subchapter by the physician (or group of physicians) in such reports.

(B) Resource use
The resources described in subparagraph (A)(ii) may be measured—

(i) on an episode basis;
(ii) on a per capita basis; or
(iii) on both an episode and a per capita basis.

(2) Implementation
The Secretary shall implement the Program by not later than January 1, 2009.

(3) Data for reports
To the extent practicable, reports under the Program shall be based on the most recent data available.

(4) Authority to focus initial application
The Secretary may focus the initial application of the Program as appropriate, such as focusing the Program on—

(A) physician specialties that account for a certain percentage of all spending for physicians’ services under this subchapter;
(B) physicians who treat conditions that have a high cost or a high volume, or both, under this subchapter;
(C) physicians who use a high amount of resources compared to other physicians;
(D) physicians practicing in certain geographic areas; or
(E) physicians who treat a minimum number of individuals under this subchapter.

(5) Authority to exclude certain information if insufficient information
The Secretary may exclude certain information regarding a service from a report under the Program with respect to a physician (or group of physicians) if the Secretary determines that there is insufficient information relating to that service to provide a valid report on that service.

(6) Adjustment of data
To the extent practicable, the Secretary shall make appropriate adjustments to the data used in preparing reports under the Program, such as adjustments to take into account variations in health status and other patient characteristics. For adjustments for reports on utilization under paragraph (9), see subparagraph (D) of such paragraph.

(7) Education and outreach
The Secretary shall provide for education and outreach activities to physicians on the operation of, and methodologies employed under, the Program.
(8) Disclosure exemption
Reports under the Program shall be exempt from disclosure under section 552 of title 5.

(9) Reports on utilization

(A) Development of episode grouper

(i) In general
The Secretary shall develop an episode grouper that combines separate but clinically related items and services into an episode of care for an individual, as appropriate.

(ii) Timeline for development
The episode grouper described in subparagraph (A) shall be developed by not later than January 1, 2012.

(iii) Public availability
The Secretary shall make the details of the episode grouper described in subparagraph (A) available to the public.

(iv) Endorsement
The Secretary shall seek endorsement of the episode grouper described in subparagraph (A) by the entity with a contract under section 1395aaa(a) of this title.

(B) Reports on utilization
Effective beginning with 2012, the Secretary shall provide reports to physicians that compare, as determined appropriate by the Secretary, patterns of resource use of the individual physician to such patterns of other physicians.

(C) Analysis of data
The Secretary shall, for purposes of preparing reports under this paragraph, establish methodologies as appropriate, such as to—

(i) attribute episodes of care, in whole or in part, to physicians;
(ii) identify appropriate physicians for purposes of comparison under subparagraph (B); and
(iii) aggregate episodes of care attributed to a physician under clause (i) into a composite measure per individual.

(D) Data adjustment
In preparing reports under this paragraph, the Secretary shall make appropriate adjustments, including adjustments—

(i) to account for differences in socioeconomic and demographic characteristics, ethnicity, and health status of individuals (such as to recognize that less healthy individuals may require more intensive interventions); and
(ii) to eliminate the effect of geographic adjustments in payment rates (as described in subsection (e)).

(E) Public availability of methodology
The Secretary shall make available to the public—

(i) the methodologies established under subparagraph (C);
(ii) information regarding any adjustments made to data under subparagraph (D); and
(iii) aggregate reports with respect to physicians.

(F) Definition of physician
In this paragraph:

(i) In general
The term “physician” has the meaning given that term in section 1395x(r)(1) of this title.

(ii) Treatment of groups
Such term includes, as the Secretary determines appropriate, a group of physicians.

(G) Limitations on review
There shall be no administrative or judicial review under section 1395ff of this title, section 1395oo of this title, or otherwise of the establishment of the methodology under subparagraph (C), including the determination of an episode of care under such methodology.

(10) Coordination with other value-based purchasing reforms
The Secretary shall coordinate the Program with the value-based payment modifier established under subsection (p) and, as the Secretary determines appropriate, other similar provisions of this subchapter.

(o) Incentives for adoption and meaningful use of certified EHR technology

(1) Incentive payments

(A) In general

(i) In general
Subject to the succeeding subparagraphs of this paragraph, with respect to covered professional services furnished by an eligible professional during a payment year (as defined in subparagraph (E)), if the eligible professional is a meaningful EHR user (as determined under paragraph (2)) for the EHR reporting period with respect to such year, in addition to the amount otherwise paid under this part, there also shall be paid to the eligible professional (or to an employer or facility in the cases described in clause (A) of section 1395u(b)(6) of this title), from the Federal Supplementary Medical Insurance Trust Fund established under section 1395t of this title an amount equal to 75 percent of the Secretary’s estimate (based on claims submitted not later than 2 months after the end of the payment year) of the allowed charges under this part for all such covered professional services furnished by the eligible professional during such year.

(ii) No incentive payments with respect to years after 2016
No incentive payments may be made under this subsection with respect to a year after 2016.

(B) Limitations on amounts of incentive payments

(i) In general
In no case shall the amount of the incentive payment provided under this para-
(ii) Amount

Subject to clauses (iii) through (v), the applicable amount specified in this subparagraph for an eligible professional is as follows:

(I) For the first payment year for such professional, $15,000 (or, if the first payment year for such professional is 2011 or 2012, $18,000).

(II) For the second payment year for such professional, $12,000.

(III) For the third payment year for such professional, $8,000.

(IV) For the fourth payment year for such professional, $4,000.

(V) For the fifth payment year for such professional, $2,000.

(VI) For any succeeding payment year for such professional, $0.

(iii) Phase down for eligible professionals first adopting EHR after 2013

If the first payment year for an eligible professional is after 2013, then the amount specified in this subparagraph for a payment year for such professional is the same as the amount specified in clause (ii) for such payment year for an eligible professional whose first payment year is 2013.

(iv) Increase for certain eligible professionals

In the case of an eligible professional who predominantly furnishes services under this part in an area that is designated by the Secretary (under section 254e(a)(1)(A) of this title) as a health professional shortage area, the amount that would otherwise apply for a payment year for such professional under subclauses (I) through (V) of clause (ii) shall be increased by 10 percent. In implementing the preceding sentence, the Secretary may, as determined appropriate, apply provisions of subsections (m) and (u) of section 1395w–4 of this title in a similar manner as such provisions apply under such subsection.

(v) No incentive payment if first adopting after 2014

If the first payment year for an eligible professional is after 2014 then the applicable amount specified in this subparagraph for such professional for such year and any subsequent year shall be $0.

(C) Non-application to hospital-based eligible professionals

(i) In general

No incentive payment may be made under this paragraph in the case of a hospital-based eligible professional.

(ii) Hospital-based eligible professional

For purposes of clause (i), the term “hospital-based eligible professional” means, with respect to covered professional services furnished by an eligible professional during the EHR reporting period for a payment year, an eligible professional, such as a pathologist, anesthesiologist, or emergency physician, who furnishes substantially all of such services in a hospital inpatient or emergency room setting and through the use of the facilities and equipment, including qualified electronic health records, of the hospital. The determination of whether an eligible professional is a hospital-based eligible professional shall be made on the basis of the site of service (as defined by the Secretary) and without regard to any employment or billing arrangement between the eligible professional and any other provider.

(D) Payment

(i) Form of payment

The payment under this paragraph may be in the form of a single consolidated payment or in the form of such periodic installments as the Secretary may specify.

(ii) Coordination with application of limitation for professionals in different practices

In the case of an eligible professional furnishing covered professional services in more than one practice (as specified by the Secretary), the Secretary shall establish rules to coordinate the incentive payments, including the application of the limitation on amounts of such incentive payments under this paragraph, among such practices.

(iii) Coordination with Medicaid

The Secretary shall seek, to the maximum extent practicable, to avoid duplicative requirements from Federal and State governments to demonstrate meaningful use of certified EHR technology under this subchapter and subchapter XIX. The Secretary may also adjust the reporting periods under such subchapter and such subsections in order to carry out this clause.

(E) Payment year defined

(i) In general

For purposes of this subsection, the term “payment year” means a year beginning with 2011.

(ii) First, second, etc. payment year

The term “first payment year” means, with respect to covered professional services furnished by an eligible professional, the first year for which an incentive payment is made for such services under this subsection. The terms “second payment year”, “third payment year”, “fourth payment year”, and “fifth payment year” mean, with respect to covered professional services furnished by such eligible professional, each successive year immediately following the first payment year for such professional.

(2) Meaningful EHR user

(A) In general

For purposes of paragraph (1), an eligible professional shall be treated as a meaningful
EHR user for an EHR reporting period for a payment year (or, for purposes of subsection (a)(7), for an EHR reporting period under such subsection for a year) if each of the following requirements is met:

(i) Meaningful use of certified EHR technology

The eligible professional demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period the professional is using certified EHR technology in a meaningful manner, which shall include the use of electronic prescribing as determined to be appropriate by the Secretary.

(ii) Information exchange

The eligible professional demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period such certified EHR technology is connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination.

(iii) Reporting on measures using EHR

Subject to subparagraph (B)(ii) and using such certified EHR technology, the eligible professional submits information for such period, in a form and manner specified by the Secretary, on such clinical quality measures and such other measures as selected by the Secretary under subparagraph (B)(i).

The Secretary may provide for the use of alternative means for meeting the requirements of clauses (i), (ii), and (iii) in the case of an eligible professional furnishing covered professional services in a group practice (as defined by the Secretary). The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.

(B) Reporting on measures

(i) Selection

The Secretary shall select measures for purposes of subparagraph (A)(iii) but only consistent with the following:

(I) The Secretary shall provide preference to clinical quality measures that have been endorsed by the entity with a contract with the Secretary under section 1395aaa(a) of this title.

(II) Prior to any measure being selected under this subparagraph, the Secretary shall publish in the Federal Register such measure and provide for a period of public comment on such measure.

(ii) Limitation

The Secretary may not require the electronic reporting of information on clinical quality measures under subparagraph (A)(iii) unless the Secretary has the capacity to accept the information electronically, which may be on a pilot basis.

(iii) Coordination of reporting of information

In selecting such measures, and in establishing the form and manner for reporting measures under subparagraph (A)(iii), the Secretary shall seek to avoid redundant or duplicative reporting otherwise required, including reporting under subsection (k)(2)(C).

(C) Demonstration of meaningful use of certified EHR technology and information exchange

(i) In general

A professional may satisfy the demonstration requirement of clauses (i) and (ii) of subparagraph (A) through means specified by the Secretary, which may include—

(I) an attestation;

(II) the submission of claims with appropriate coding (such as a code indicating that a patient encounter was documented using certified EHR technology);

(III) a survey response;

(IV) reporting under subparagraph (A)(ii); and

(V) other means specified by the Secretary.

(ii) Use of part D data

Notwithstanding sections 1395w–115(d)(2)(B) and 1395w–115(f)(2) of this title, the Secretary may use data regarding drug claims submitted for purposes of section 1395w–115 of this title that are necessary for purposes of subparagraph (A).

(3) Application

(A) Physician reporting system rules

Paragraphs (5), (6), and (8) of subsection (k) shall apply for purposes of this subsection in the same manner as they apply for purposes of such subsection.

(B) Coordination with other payments

The provisions of this subsection shall not be taken into account in applying the provisions of subsection (m) of this section and of section 1395(m) of this title and any payment under such provisions shall not be taken into account in computing allowable charges under this subsection.

(C) Limitations on review

There shall be no administrative or judicial review under section 1395ff of this title, section 1395oo of this title, or otherwise, of—

(i) the methodology and standards for determining payment amounts under this subsection and payment adjustments under subsection (a)(7)(A), including the limitation under paragraph (1)(B) and coordination under clauses (ii) and (iii) of paragraph (1)(D);

(ii) the methodology and standards for determining a meaningful EHR user under paragraph (2), including selection of measures under paragraph (2)(B), specification
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do...of the means of demonstrating meaningful EHR use under paragraph (2)(C), and the hardship exception under subsection (a)(7)(B);
(iii) the methodology and standards for determining a hospital-based eligible professional under paragraph (1)(C); and
(iv) the specification of reporting periods under paragraph (5) and the selection of the form of payment under paragraph (1)(D)(i).

(D) Posting on website
The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services, in an easily understandable format, a list of the names, business addresses, and business phone numbers of the eligible professionals who are meaningful EHR users and, as determined appropriate by the Secretary, of group practices receiving incentive payments under paragraph (1).

(4) Certified EHR technology defined
For purposes of this section, the term “certified EHR technology” means a qualified electronic health record (as defined in section 300jj(13) of this title) that is certified pursuant to section 300jj–11(c)(5) of this title as meeting standards adopted under section 300jj–14 of this title that are applicable to the type of record involved (as determined by the Secretary, such as an ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals).

(5) Definitions
For purposes of this subsection:
(A) Covered professional services
The term “covered professional services” has the meaning given such term in subsection (k)(3).
(B) EHR reporting period
The term “EHR reporting period” means, with respect to a payment year, any period (or periods) as specified by the Secretary.
(C) Eligible professional
The term “eligible professional” means a physician, as defined in section 1395x(r) of this title.

(p) Establishment of value-based payment modifier

(1) In general
The Secretary shall establish a payment modifier that provides for differential payment to a physician or a group of physicians under the fee schedule established under subsection (b) based upon the quality of care furnished compared to cost (as determined under paragraphs (2) and (3), respectively) during a performance period. Such payment modifier shall be separate from the geographic adjustment factors established under subsection (e).

(2) Quality
(A) In general
For purposes of paragraph (1), quality of care shall be evaluated, to the extent practicable, based on a composite of measures of the quality of care furnished (as established by the Secretary under subparagraph (B)).

(B) Measures
(i) The Secretary shall establish appropriate measures of the quality of care furnished by a physician or group of physicians to individuals enrolled under this part, such as measures that reflect health outcomes. Such measures shall be risk adjusted as determined appropriate by the Secretary.
(ii) The Secretary shall seek endorsement of the measures established under this subparagraph by the entity with a contract under section 1395aaa(a) of this title.

(3) Costs
For purposes of paragraph (1), costs shall be evaluated, to the extent practicable, based on a composite of appropriate measures of costs established by the Secretary (such as the composite measure under the methodology established under subsection (n)(9)(C)(iii)) that eliminate the effect of geographic adjustments in payment rates (as described in subsection (e)), and take into account risk factors (such as socioeconomic and demographic characteristics, ethnicity, and health status of individuals (such as to recognize that less healthy individuals may require more intensive interventions)) and other factors determined appropriate by the Secretary.

(4) Implementation

(A) Publication of measures, dates of implementation, performance period
Not later than January 1, 2012, the Secretary shall publish the following:
(i) The measures of quality of care and costs established under paragraphs (2) and (3), respectively.
(ii) The dates for implementation of the payment modifier (as determined under subparagraph (B)).
(iii) The initial performance period (as specified under subparagraph (B)(ii)).

(B) Deadlines for implementation

(i) Initial implementation
Subject to the preceding provisions of this subparagraph, the Secretary shall begin implementing the payment modifier established under this subsection through the rulemaking process during 2013 for the physician fee schedule established under subsection (b).

(ii) Initial performance period

(I) In general
The Secretary shall specify an initial performance period for application of the payment modifier established under this subsection with respect to 2015.

(II) Provision of information during initial performance period
During the initial performance period, the Secretary shall, to the extent prac-
ticable, provide information to physicians and groups of physicians about the quality of care furnished by the physician or group of physicians to individuals enrolled under this part compared to cost (as determined under paragraphs (2) and (3), respectively) with respect to the performance period.

(iii) Application

The Secretary shall apply the payment modifier established under this subsection for items and services furnished—

(I) beginning on January 1, 2015, with respect to specific physicians and groups of physicians the Secretary determines appropriate; and

(II) beginning not later than January 1, 2017, with respect to all physicians and groups of physicians.

(C) Budget neutrality

The payment modifier established under this subsection shall be implemented in a budget neutral manner.

(5) Systems-based care

The Secretary shall, as appropriate, apply the payment modifier established under this subsection in a manner that promotes systems-based care.

(6) Consideration of special circumstances of certain providers

In applying the payment modifier under this subsection, the Secretary shall, as appropriate, take into account the special circumstances of physicians or groups of physicians in rural areas and other underserved communities.

(7) Application

For purposes of the initial application of the payment modifier established under this subsection during the period beginning on January 1, 2015, and ending on December 31, 2016, the term “physician” has the meaning given by section during the period beginning on January 1, 2015, and ending on December 31, 2016, the term “physician” has the meaning given.

(8) Definitions

For purposes of this subsection:

(A) Costs

The term “costs” means expenditures per individual as determined appropriate by the Secretary. In making the determination under the preceding sentence, the Secretary may take into account the amount of growth in expenditures per individual for a physician compared to the amount of such growth for other physicians.

(B) Performance period

The term “performance period” means a period specified by the Secretary.

(9) Coordination with other value-based purchasing reforms

The Secretary shall coordinate the value-based payment modifier established under this subsection with the Physician Fee Schedule Program under subsection (n) and, as the Secretary determines appropriate, other similar provisions of this subchapter.

(10) Limitations on review

There shall be no administrative or judicial review under section 1395ff of this title, section 1395oo of this title, or otherwise of—

(A) the establishment of the value-based payment modifier under this subsection;

(B) the evaluation of quality of care under paragraph (2), including the establishment of appropriate measures of the quality of care under paragraph (2)(B);

(C) the evaluation of costs under paragraph (3), including the establishment of appropriate measures of costs under such paragraph;

(D) the dates for implementation of the value-based payment modifier;

(E) the specification of the initial performance period and any other performance period under paragraphs (4)(B)(i) and (8)(B), respectively;

(F) the application of the value-based payment modifier under paragraph (7); and

(G) the determination of costs under paragraph (8)(A).
Section 13515(b) of the Omnibus Budget Reconciliation Act of 1993, referred to in subsec. (a)(2)(B)(ii)(I), (c)(2)(A)(i), and (h)(1)(B), is section 13515(b) of Pub. L. 103–66, which is set out as a note under section 1395u of this title.

Section 6105(b) of the Omnibus Budget Reconciliation Act of 1993, referred to in subsec. (a)(2)(D)(ii)(I), (ii), is section 6105(b) of Pub. L. 101–239, which is set out as a note under section 1395m of this title.

Section 4048(b) of the Omnibus Budget Reconciliation Act of 1997, referred to in subsec. (b)(2)(B), is section 4048(b) of Pub. L. 100–203, which is set out as a note under section 1395m of this title.

Section 13514(a) of the Omnibus Budget Reconciliation Act of 1993, referred to in subsec. (c)(2)(F), is section 13514(a) of Pub. L. 103–66, which amended subsec. (b)(3) of this section. See 1993 Amendment note below.

Section 2012 of the Medicare, Medicaid, and SCHIP Program Technical Corrections and Reform Act of 1997, referred to in subsec. (h)(1)(I), is section 2012 of Pub. L. 105–33, which is set out as a note under this section.

The Balanced Budget Act of 1997, referred to in subsec. (d)(1)(C), is Pub. L. 105–33, Aug. 5, 1997, 111 Stat. 251. Chapter 1 of subtitle F of title IV of the Act is chapter 1 (§§ 4501–4513) of subtitle F of title IV of Pub. L. 105–33, which amended this section and sections 1395a, 1395b, 1395c, 1395g, 1395u, 1395v, 1395y, 1395cc, and 1396y of this title and enacted provisions set out as notes under this section.

For complete classification of this Act to the Code, see Tables.


Prior to amendment, text read as follows: “Consistent with the methodology for computing the number of practice expense relative value units under subsection (c)(2)(C)(ii) with respect to advanced diagnostic imaging services (as defined in section 1395m(e)(1)(B) of this title) furnished on or after January 1, 2010, the Secretary shall adjust such number of units so it reflects—

(i) in the case of services furnished on or after January 1, 2010, and before January 1, 2013, a 65 percent (rather than 50 percent) presumed rate of utilization of imaging equipment;

(ii) in the case of services furnished on or after January 1, 2013, and before January 1, 2014, a 70 percent (rather than 50 percent) presumed rate of utilization of imaging equipment; and

(iii) in the case of services furnished on or after January 1, 2014, a 75 percent (rather than 50 percent) presumed rate of utilization of imaging equipment.”


Subsec. (c)(2)(B)(v)(III) to (V). Pub. L. 111–152, § 1107(2), added subcl. (III) and struck out former subcls. (III) to (V), which read as follows:

“(III) CHANGE IN PRESUMED UTILIZATION LEVEL OF CERTAIN ADVANCED DIAGNOSTIC IMAGING SERVICES FOR 2010 THROUGH 2012—Effective for fee schedules established beginning with 2010 and ending with 2012, reduced expenditures attributable to the presumed rate of utilization of imaging equipment of 65 percent under subsection (b)(4)(C)(i) instead of a presumed rate of utilization of such equipment of 50 percent.

(IV) CHANGE IN PRESUMED UTILIZATION LEVEL OF CERTAIN ADVANCED DIAGNOSTIC IMAGING SERVICES FOR 2013—Effective for fee schedules established for 2013, reduced expenditures attributable to the presumed rate of utilization of imaging equipment of 70 percent under subsection (b)(4)(C)(i) instead of a presumed rate of utilization of such equipment of 50 percent.

(V) CHANGE IN PRESUMED UTILIZATION LEVEL OF CERTAIN ADVANCED DIAGNOSTIC IMAGING SERVICES FOR 2014 AND SUBSEQUENT YEARS—Effective for fee schedules established beginning with 2014, reduced expenditures attributable to the presumed rate of utilization of imaging equipment of 75 percent under subsection (b)(4)(C)(i) instead of a presumed rate of utilization of such equipment of 50 percent.”


Subsec. (c)(2)(B)(vii). Pub. L. 111–148, § 5501(c), which directed the addition of cl. (vii), was repealed by Pub. L. 111–148, § 10501(b). As enacted, text read as follows: “Fifty percent of the additional expenditures under this part attributable to subsections (x) and (y) of section 1395s of this title for a year (as estimated by the Secretary) shall be taken into account in applying clause (ii)(II) for 2011 and subsequent years. In lieu of applying the budget-neutrality adjustments required

...
under clause (1)(II) to relative value units to account for such costs for the year, the Secretary shall apply such budget-neutrality adjustments to the conversion factor otherwise determined for the year. For 2011 and subsequent years, the Secretary shall increase the incentive payment otherwise applicable under section 1395f(m) of this title by a percent estimated to be equal to the additional expenditures estimated under the first sentence of this clause for such year that is applicable to physicians who primarily furnish services in areas designated under paragraph 294(a)(1)(A) of this title as national health professional short-term shortage areas.

Subsec. (c)(2)(K). Pub. L. 111–148, §313(a), added subpars. (K) and (L).


Pub. L. 111–148, §3101, which directed the addition of par. (19) relating to update for 2010, was repealed by Pub. L. 111–148, §3101, which directed the renumbering of par. (19) as par. (20). As enacted, text read as follows:

“(A) In general. — Subject to paragraphs (7)(B), (8)(B), and (9)(B), in lieu of the update to the single conversion factor established in paragraph (1)(C) that would otherwise apply for 2010, the update to the single conversion factor shall be 0.5 percent.

“(B) No effect on computation of conversion factor for 2011 and subsequent years. — The conversion factor under this subsection shall be computed under paragraph (1)(A) for 2011 and subsequent years as if subparagraph (A) had never applied.”


Pub. L. 111–148, §3102(d), added par. (7) relating to additional incentive payment.


Subsec. (m)(6)(C)(I). Pub. L. 111–148, §3002(a)(4)(A), substituted “(a)(8)” after “(a)(5)” and substituted “under subsection (a)(5)(D)(iii)” or the quality reporting period under subsection (a)(8)(D)(ii), respectively” for “under subparagraph (D)(ii) of such subsection.”

Subsec. (m)(7). Pub. L. 111–148, §3002(a), added par. (7) relating to additional incentive payment.


Subsec. (m)(1)(A). Pub. L. 111–148, §3003(a)(1)(A), designated existing provisions as cl. (i), inserted heading, substituted “the ‘Program’” for “the ‘Program’ under which the Secretary shall use claims data under this subchapter (and may use other data to provide confidential reports to physicians (and, as determined appropriate by the Secretary, to groups of physicians) that measure the resources involved in furnishing care to individuals under this subchapter) if determined appropriate by the Secretary, may include information on the quality of care furnished to individuals under this subchapter by the physician (or group of physicians) in such reports.”, and added cls. (ii) and (iii).


Subsec. (n)(1). Pub. L. 111–148, §3003(a)(2)(B), inserted “‘inpatient or emergency room setting’” for “setting (whether inpatient or outpatient)”.


Subsec. (a)(5)(B). Pub. L. 111–148, §3101, which directed the renumbering of par. (19) as par. (20). As enacted, text read as follows:

“(A) In general.—Subject to subparagraph (D), for ‘For 2009’”.

Subsec. (m)(2)(D). Pub. L. 111–148, §3101, which directed the renumbering of par. (19) as par. (20). As enacted, text read as follows:


Subsec. (e)(1)(G). Pub. L. 110–275, §131(b), inserted at end "For purposes of payment for services furnished in the State described in the preceding sentence during any year after January 1, 2009, after calculating the work geographic index in subparagraph (A)(iii), the Secretary shall increase the work geographic index to 1.5 if such increase would otherwise be less than 1.5, and successful electronic prescriber" after "reporting" in heading.


Pub. L. 110–275, §131(a)(2)(A)(ii)(IV), added subcl. (IV) at end of cl. (i), substituted period for "1869 or 1878 of the Social Security Act."
“(i) for 2007, the period beginning on July 1, 2007, and ending on December 31, 2007; and

(ii) for 2008, all of 2008.”

Subsec. (m)(6)(D). Pub. L. 110–275, § 131(b)(5)(C), struck out subpar. (D). Text read as follows: “The term ‘Secretary’ means the Secretary of Health and Human Services.”


2007—Subsec. (d)(4)(B). Pub. L. 110–173, § 101(a)(1)(A), substituted “(A)” for “(A) and” and inserted “for the obligation of the entire first paragraph for payment with respect to physicians’ services furnished during 2008 and of the entire second amount so specified for payment with respect to physicians’ services furnished on or after January 1, 2007.”


Subsec. (e)(1)(A). Pub. L. 108–173, § 602(1), as amended by Pub. L. 110–275, § 134(c), substituted “subparagraphs (B), (C), (E), and (G)” for “subparagraphs (B), (C), (E)”.

Pub. L. 108–173, § 412(1), substituted “subparagraphs (B), (C), and (E)” for “subparagraphs (B) and (C)”.

Subsec. (e)(1)(E). Pub. L. 108–173, § 601(b)(1), substituted “‘average annual’ for ‘projected’ and “during the 10-year period ending with the applicable period involved’ for ‘from the previous applicable period to the applicable period involved’.”

Subsec. (j)(1)(B). Pub. L. 108–173, § 303(c)(2), substituted “subsections (c)(2)(F), (c)(2)(H), and (c)(2)(I) of this section” for “subsection (c)(2)(F) of this section”.

Subsec. (j)(1)(C). Pub. L. 108–7 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “the determination of conversion factors under subsection (d) of this section.”.


Subsec. (d)(1)(E). Pub. L. 106–113, § 1000(a)(6) [title II, § 211(a)(2)(A)], amended heading and text of subpar. (E) generally. Prior to amendment, text read as follows: “The Secretary shall cause to have published in the Federal Register, during the last 15 days of October of—

‘‘(i) 1991, the conversion factor which will apply to physicians’ services for 1992, and the update determined under paragraph (3) for 1993; and

‘‘(ii) each succeeding year, the conversion factor which will apply to physicians’ services for 1992, and the update determined under paragraph (3) for such year.’’

Subsec. (j)(1). Pub. L. 105–33, § 4501(b)(4), substituted "For services furnished before January 1, 1998, the term for "The term". Subsec. (j)(3). Pub. L. 105–33, § 4106(b), substituted "(4), (14)" for "(4) and (14)" and inserted "and (15)" after "1395xmn(2) of this title)."
Pub. L. 105–33, § 4106(a)(2), inserted "(2)(8), before "1395xmn(2) of this title)."
Pub. L. 105–33, § 4103(d), inserted "(2)(P) (with respect to services described in subparagraphs (A) and (C) of section 1395xmn(2) of this title)" after "(2)(G)."
Pub. L. 105–31, §§ 4106(d), 4104(d), inserted "(2)(B) (with respect to services described in subparagraphs (B), (C), and (D) of section 1395xppp(1) of this title)," before "(3)" and substituted "(4) and (14) (with respect to services described in section 1395xmn(2) of this title)" for "(4) and (14)".
Subsec. (a)(2)(D)(iii). Pub. L. 103–412, § 1395w–3(7), struck out "that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989" after "nuclear medicine services" and substituted "provided under section 6105(b) of the Omnibus Budget Reconciliation Act of 1989" for "provided under such section".
Subsec. (c)(2)(C)(ii). Pub. L. 103–412, § 121(b)(1), inserted "for the service for years before 1998" before "equal to in introductory provisions, substituted computed comparable period at end inserted "and for years beginning with 1998 based on the relative practice expense resources involved in furnishing the service." as closing provisions.
Subsec. (e)(1)(C). Pub. L. 103–412, § 125(g)(5), inserted "date of the" before "last previous adjustment".
Pub. L. 103–412, § 122(a), substituted "shall, in consultation with appropriate representatives of physicians, review" for "shall review".
Subsec. (g)(1). Pub. L. 103–412, § 123(a)(1), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "If a nonparticipating physician or nonparticipating supplier or other person (as defined in section 1395xmn(2) of this title) knowingly and willfully bills on a repeated basis for physicians' services (including services which the Secretary excludes pursuant to subsection (j) of this section) for which payment is not made under this part separately for such a service in violation of the previous sentence, the Secretary may apply sanctions against such physician, supplier, or other person in accordance with section 1395u(f)(2) of this title.
In applying this subparagraph, any reference in such section to a physician is deemed also to include a reference to a supplier or other person under this subparagraph." Subsec. (g)(3)(B). Pub. L. 103–412, § 123(a)(2), inserted after first sentence "No person is liable for payment of any amounts billed for such a service in violation of the previous sentence." and in last sentence substituted "first sentence" for "previous sentence".
Subsec. (h)(6)(B). Pub. L. 103–412, § 120(d), inserted "information on the extent to which actual charges exceed limiting charges, the number and types of services involved, and the average amount of excess charges and information after "report to the Congress"
Subsec. (i)(3). Pub. L. 103–412, § 126(g)(10)(A), struck out space before the period at end.
cludes pursuant to subsection (j)(3) of this section," after "physician's services ("), was executed by making the insertion after "physicians' services (" to reflect the probable intent of Congress.

Pub. L. 103–66, §13517(a)(2)(A), inserted "or nonparticipating supplier or other person (as defined in section 1395u(i)(2) of this title)" after "nonparticipating physician".

Subsec. (g)(2)(C). Pub. L. 103–66, §13517(a)(3), inserted "or for nonparticipating suppliers or other persons" after "nonparticipating physicians".

Subsec. (g)(2)(D). Pub. L. 103–66, §13517(a)(4), inserted "(or, if payment under this part is made on a basis other than the fee schedule under this section, 95 percent of the other payment basis)" after "subsection (a) of this section".

Subsec. (h). Pub. L. 103–66, §13517(a)(5), inserted "or nonparticipating supplier or other person furnishing physicians' services (as defined in subsection (j)(3) of this section) after "each physician", inserted "', supplier, or other person" after "by the physician", and inserted ", suppliers, and other persons" after "notices to physicians"

Subsec. (i)(1)(B). Pub. L. 103–66, §13515(c)(3), inserted "and section 13515(b) of the Omnibus Budget Reconciliation Act of 1995 after "subsection (c)(2)(F) of this section"

Pub. L. 103–66, §13515(c)(3), inserted at end "including adjustments under subsection (c)(2)(F) of this section".

Subsec. (j)(1). Pub. L. 103–66, §13515(a)(2), substituted "Special rule for anesthesia services, primary care services (as defined in section 1395u(i)(4) of this title)," for "Secretary"


Pub. L. 103–66, §13517(a)(6), inserted ", except for purposes of subsections (a)(3), (g), and (h) of this section after "tests and"

1986—Subsec. (a)(1). Pub. L. 100–508, §1104(b)(2), struck out "or 1395m(f)" after "section 1395m(b)" in introductory provisions.

Subsec. (a)(2)(C). Pub. L. 100–508, §4102(b), inserted "and radiology" after "Special rule for anesthesia" in heading and inserted at end "With respect to radiology services, 109 percent and 9 percent shall be substituted for '115 percent' and '15 percent', respectively, in subparagraph (A)(i)."

Subsec. (a)(2)(D)(ii). Pub. L. 100–508, §4102(g)(2)(A), inserted "-, but excluding nuclear medicine services that are subject to section 6155(b) of the Omnibus Budget Reconciliation Act of 1989 after "section 1395m(b)(4) of this title)"


Subsec. (b)(3). Pub. L. 100–508, §4109(a), added par. (3).

Subsec. (c)(1)(B). Pub. L. 100–508, §4118(x)(1), struck out at end "in this subparagraph, the term 'practice expenses' includes all expenses for furnishing physicians' services, excluding malpractice expenses, physician compensation, and other physician fringe benefits."

Subsec. (c)(3). Pub. L. 100–508, §4118(x)(1)(C), redesignated par. (3), relating to ancillary policies, as (4).

Subsec. (c)(3)(C)(ii)(II). (iii)(I). Pub. L. 100–508, §4118(x)(1)(B), struck out "by" before "the proportion".

Subsec. (c)(4). Pub. L. 100–508, §4118(x)(1)(D), as amended by Pub. L. 103–432, §126(g)(6), struck out "section" for "subsection".

Pub. L. 101–508, §4118(x)(1)(E), redesignated par. (3), relating to ancillary policies, as (4). Former par. (4) redesignated (5).

Pub. L. 101–508, §4118(d), struck out "only for services furnished on or after January 1, 1999" after "visits and consultations"

Subsec. (c)(5), (6). Pub. L. 101–508, §4118(b)(1)(C), redesignated pars. (4) and (5) as (3) and (6), respectively.


Pub. L. 101–508, §4118(b)(1)(F)(1)(I), (II), substituted "conversion factor (or factors)" for "conversion factor" in two places and "update or updates" for "update"

Subsec. (d)(1)(C)(I). Pub. L. 101–508, §4118(b)(1)(II), inserted "the conversion factor (or factors) which will apply to physicians' services for the following year and" before "the update (or updates) and substituted "such year" for "the following year".

Subsec. (d)(2)(A). Pub. L. 101–508, §4118(b)(1)(G), (I), substituted "physicians' services (as defined in subsection (n)(5)(A) of this section) for physicians' services" in first sentence and "proportion of individuals who are enrolled under this part who are HMO enrollees" for "proportion of HMO enrollees" in last sentence.

Subsec. (d)(2)(A)(ii). Pub. L. 101–508, §4118(b)(1)(H), substituted "and for the services involved for "(as defined in subsection (f)(5)(A) of this section)" and "such services" for "all such physicians' services".


Subsec. (d)(3)(B)(I). Pub. L. 101–508, §4118(b)(1)(L)(1)(I), which directed amendment of cl. (i) by substituting "services in such category" for "physicians' services (as defined in subsection (f)(5)(A))", was executed by making the substitution for "physicians' services (as defined in section (f)(5)(A))" to reflect the probable intent of Congress.

Pub. L. 101–508, §4118(b)(1)(L)(1)(II), inserted "update for a category of physicians' services for a year" for "update for a year".

Subsec. (d)(3)(B)(II). Pub. L. 101–508, §4118(b)(1)(L)(1)(II), inserted "more than" after "decrease of" in introductory provisions and struck out "more than" before "2 percentage points in subcl. (i)."

Subsec. (e)(1)(A). Pub. L. 101–508, §4118(c)(1), substituted "subparagraphs (B) and (C)" for "subparagraph (B)" in introductory provisions.


Subsec. (f)(2)(A). Pub. L. 101–508, §4118(b)(1), (f)(1)(N)(i), in introductory provisions, substituted "the performance standard rate of increase, for all physicians' services and for each category of physicians' services," for "each performance standard rate of increase and "product" for "sum"

Pub. L. 101–508, §4118(b)(6), substituted "minus 1, multiplied by 100, and reduced" for "reduced" in concluding provisions.

Subsec. (f)(2)(A)(I). Pub. L. 101–508, §4118(b)(2), (3), substituted "1 plus the Secretary's" for "the Secretary's" and "percentage increase (divided by 100)" for "percentage increase"

Subsec. (f)(2)(A)(II). Pub. L. 101–508, §4118(b)(2), (4), substituted "1 plus the Secretary's" for "the Secretary's" and inserted "(divided by 100)" after "decrease"

of physicians' services, respectively," for "physicians' services".

Pub. L. 101–508, §411b(b)(2), (5), substituted "1 plus the Secretary's" for "the Secretary's" and inserted "(divided by 100)" after "percentage growth".

Subsec. (f)(2)(A)(iv). Pub. L. 101–508, §411b(e), (f)(1)(N)(iv), substituted "all physicians' services or of the category of physicians' services, respectively," for "all physicians' services (as defined in subsection (f)(5)(A) of this section)" and inserted "including changes in law and regulations affecting the percentage increase described in clause (i) after "law or regulations'".

Pub. L. 101–508, §411b(b)(2), (4), substituted "1 plus the Secretary's" for "the Secretary's" and "decrease (divided by 100)" for "decrease".


Pub. L. 101–508, §4116, inserted at end "In the case of evaluation and management services (as specified in section 1395d of this title), the preceding sentence shall be applied by substituting '40 percent' for '35 percent'".


Pub. L. 101–508, §4116, inserted at end "In the case of evaluation and management services (as specified in section 1395d of this title), the preceding sentence shall be applied by substituting '40 percent' for '35 percent'".

Subsec. (i)(1)(A). Pub. L. 101–508, §4118(f)(1)(R), substituted "adjusted historical payment basis (as defined in subsection (a)(2)(D)(i))" for "historical payment basis (as defined in subsection (a)(2)(C)(i))".


Subsec. (j)(1). Pub. L. 101–508, §4118(f)(1)(S), which directed the amendment of par. (1) by substituting "(as defined by the Secretary) and all other physicians' services" for "", and such other " and all that follows through the period was executed by making the substitution for "", and such other category or categories of physicians' services as the Secretary, from time to time, defines in regulation." to reflect the probable intent of Congress.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT


Pub. L. 111–112, title I, §1108, Mar. 23, 2010, 124 Stat. 1050, provided that the amendment made by section 1108 is effective as if included in the enactment of the Patient Protection and Affordable Care Act (Pub. L. 111–148).


Amendment by section 4103(c)(2) of Pub. L. 111–148 applicable to services furnished on or after Jan. 1, 2011, see section 4103(e) of Pub. L. 111–148, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 2008 AMENDMENT


Pub. L. 110–275, title I, §152(b)(2), July 15, 2008, 122 Stat. 2553, provided that: "The amendments made by this subsection [amending this section and sections 1395x and 1395y of this title] shall apply to services furnished on or after January 1, 2010."

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–173, title I, §101(a)(2)(B), Dec. 29, 2007, 121 Stat. 2694, provided that: "(i) In general.—Subject to clause (ii), the amendments made by subparagraph (A) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 29, 2007]."

"(ii) Special rule for coordination with consolidated appropriations Act, 2008.—If the date of the enactment of the Consolidated Appropriations Act, 2008 [Dec. 26, 2007], occurs on or after the date described in clause (i), the amendments made by subparagraph (A) shall be deemed to be made on the day after the effective date of sections 225(c)(1) [121 Stat. 2190] and 524 [amending this section] of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008 (division G of the Consolidated Appropriations Act, 2008).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 5112(c) of Pub. L. 109–171 applicable to services furnished on or after Jan. 1, 2007, see section 5112(f) of Pub. L. 109–171, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 2003 AMENDMENT


Pub. L. 108–173, title VI, §611(e), Dec. 8, 2003, 117 Stat. 2304, provided that: "The amendments made by this section [amending this section and sections 1396x and 1396y of this title] shall apply to services furnished on or after January 1, 2005, but only for individuals whose coverage period under part B [probably means part B of title XVIII of the Social Security Act, which is classified to this part] begins on or after such date."

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable with respect to screening mammographies furnished on or after Jan. 1, 2002, see section 11a(6) [title I, §1104(c)] of Pub. L. 106–554, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1009(a)(6) [title II, §211(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A–350, provided that: "The amendments made by this section [amending this section and sections 1395b–6 and 1395y of this title] shall be effective in determining the conversion factor under section 1848(d) of the Social Security Act (42 U.S.C. 1395w–4(d)) for years beginning with 2001 and shall not apply to or affect any update (or any update adjustment factor) for any year before 2001."

Amendment by section 1009(a)(6) [title III, §321(k)(5)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, as excepted as otherwise provided, see section 1009(a)(6) [title III, §321(m)] of Pub. L. 106–113, set out as a note under section 1395d of this title.
Effective Date of 1997 Amendment
Amendment by section 4022(b)(2)(B) of Pub. L. 105–33 effective Nov. 1, 1997, the date of termination of the Prospective Payment Assessment Commission and the Provisional Payment Review Commission, see section 4022(c)(2) of Pub. L. 105–33 set out as an Effective Date; Transition: Transfer of Functions note under section 1395b–6 of this title.

Amendment by section 4102(d) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4102(e) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Amendment by section 4103(e) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 2000, see section 4103(e) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Amendment by section 4104(e) of Pub. L. 105–33 set out as a note under section 1395f of this title.

Amendment by section 4105(a)(2) of Pub. L. 105–33 applicable to bone mass measurements performed on or after July 1, 1998, see section 4105(d)(1) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Amendment by section 4106(b) of Pub. L. 105–33 applicable to services furnished on or after January 1, 1998.

Amendment by section 4107(b)(2) of Pub. L. 105–33 applicable to services furnished on or after Aug. 5, 1997, see section 4107(c)(4) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Effective Date of 1994 Amendment
Amendment by section 122(a) of Pub. L. 103–432 applicable to services furnished on or after Oct. 31, 1994, but inapplicable to services of nonparticipating supplier or other person furnished before Jan. 1, 1995, see section 123(f)(1) of Pub. L. 103–432, set out as a note under section 1395f of this title.

Amendment by section 129(g)(6) of Pub. L. 103–432 provided that: "The amendments made by subsection (a) [amending this section] shall apply to reports for years beginning with 1995.

Amendment by section 126(b)(6), (g)(2)(B), (5)(7), (10)(A) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 103–508, see section 126(d)(1) of Pub. L. 103–508, set out as a note under section 1395m of this title.

Effective Date of 1993 Amendment
Section 1351(b) of Pub. L. 103–66 provided that: "The amendments made by this section [amending this section] shall apply to services furnished on or after January 1, 1994; except that amendment made by subsection (a)(2) shall not apply- (1) to volume performance standard rates of increase established under section 1848(f) of the Social Security Act [subsec. (f) of this section] for fiscal years before fiscal year 1994, and (2) to adjustment in updates in the conversion factors for physicians' services under section 1848(d)(3)(B) of such Act for physicians' services to be furnished in calendar years before 1996."

Section 1351(a)(1) of Pub. L. 103–66 applicable to services furnished on or after Jan. 1, 1994, see section 13515(d) of Pub. L. 103–66, set out as a note under section 1395u of this title.

Section 1351(c) of Pub. L. 103–66 provided that: "The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1994.

Section 1351(c) of Pub. L. 103–66 provided that: "The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1995."

Effective Date of 1990 Amendment
Amendment by section 4102(b), (g)(2) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4102(1)(1) of Pub. L. 101–508, set out as a note under section 1395u of this title.

Amendment by section 4106(b)(2) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4106(d)(2) of Pub. L. 101–508, set out as a note under section 1395u of this title.

Amendment by section 4106(b)(1) of Pub. L. 101–508 applicable to services furnished after 1991, see section 4106(d)(2) of Pub. L. 101–508, set out as a note under section 1395u of this title.

Section 4107(a)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §126(d)(2), Oct. 31, 1994, 108 Stat. 4415, provided that: "Section 1848(g)(2)(D) of the Social Security Act [section (2)(D) of section 1848(g)(2)(D)] of such Act (as added by the amendment made by paragraph (1), shall apply to services furnished in 1991 in the same manner as it applies to services furnished after 1991. In applying the previous sentence, the prevailing charge shall be substituted for the fee schedule amount. In applying section 1848(g)(2)(D) of the Social Security Act for services of an assistant-at-surgery furnished during 1991, the recognized payment amount shall not exceed the maximum amount specified under section 1848(g)(2)(A) of such Act (as applied under this paragraph in such year)."


Section 4109(b) of Pub. L. 101–508 provided that: "The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1992. In applying section 1848(b)(3) of the Social Security Act [section (3) of section 1848(b)(3)] of such Act (as added by the amendment made by paragraph (1), shall apply to services furnished in 1991 in the same manner as it applies to services furnished after 1991. In applying the previous sentence, the prevailing charge shall be substituted for the fee schedule amount. In applying section 1848(g)(2)(D) of the Social Security Act for services of an assistant-at-surgery furnished during 1991, the recognized payment amount shall not exceed the maximum amount specified under section 1848(g)(2)(A) of such Act (as applied under this paragraph in such year)."

Transfer of Functions
Physician Payment Review Commission (PPRC) was terminated and its assets and staff transferred to the Medicare Payment Advisory Commission (MedPAC) by section 4022(c)(2), (3) of Pub. L. 105–33, set out as a note under section 1395b–6 of this title.

Termination of Reporting Requirements
For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which item 8 on page 94 identifies a reporting provision which, as subsequently amended, is contained in subsec. (g)(6)(B) of this section and in which item 9 on page 94 identifies a reporting provision which is contained in subsec. (g)(7)(B) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.
IMPLEMENTATION OF 2010 AMENDMENT


“(A) Chapter 35 of title 42, United States Code and the provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to this section [amending this section and section 1396e of this title and enacting provisions set out as a note under this section] by program instruction or otherwise.”

Pub. L. 111–148, title III, §3111(a)(2), Mar. 23, 2010, 124 Stat. 421, provided that: “Notwithstanding any other provision of law, the Secretary may implement the amendments made by this section [amending this section and section 1396 of this title and enacting provisions set out as a note under this section] by program instruction or otherwise.”


“(A) Chapter 35 of title 42, United States Code and the provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to this section [amending this section and section 1396e of this title and enacting provisions set out as a note under this section] or the amendment made by this section.

“(B) Notwithstanding any other provision of law, the Secretary may implement subparagraphs (K) and (L) of section 1848(c)(2) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)(K), (L)), as added by subsection (a), by program instruction or otherwise.

“(C) [Repealed section 4505(d) of Pub. L. 105–33, formerly set out below.]

“Except for provisions related to confidentiality of information, the provisions of the Federal Acquisition Regulation shall not apply to this section or the amendment made by this section.”

AUTHORITY TO INCORPORATE MAINTENANCE OF CERTIFICATION PROGRAMS INTO MEASURES OF QUALITY OF CARE

Pub. L. 111–148, title III, §3002(c)(3), as added by Pub. L. 110–275, title I, §131(b)(4)(B), July 15, 2008, 122 Stat. 2525, provided that: “Nothing in the amendment made by paragraph (1) [amending this section] shall affect the operation of the provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to this section [amending this section and section 1396e of this title and enacting provisions set out as a note under this section] by program instruction or otherwise.”

Pub. L. 111–148, title X, §10327(b), Mar. 23, 2010, 124 Stat. 963, provided that: “Notwithstanding any other provision of law, the Secretary may implement this section [amending this section] shall affect the operation of the provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to this section [amend-
"(B) MODIFICATION OF POLICY.—After conducting the review under subparagraph (A), the Secretary shall modify such payment policy as the Secretary determines to be appropriate.

"(C) EXEMPTION FROM BUDGET NEUTRALITY UNDER PHYSICIAN PER SCHEDULE.—If the Secretary modifies such payment policy pursuant to subparagraph (B), any increased expenditures under title XVIII of the Social Security Act [this subchapter] resulting from such modification shall be treated as additional expenditures attributable to subparagraph (B) of section 184(c)(2) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)), as added by paragraph (1)(B), for purposes of applying the exemption to budget neutrality under subparagraph (B)(iv) of such section, as added by paragraph (1)(A)."

TRANSMITTED ADJUSTMENT


"(A) IN GENERAL.—In order to provide for a transition during 2004 and 2005 to the payment system established under the amendments made by this section [enacting sections 1395w–3a and 1395w–3b of this title, amending this section and sections 1395l, 1395u, 1396x, 1396y, and 1396z–8 of this title, and repealing provisions set out as a note under section 1396u of this title], in the case of physicians' services consisting of drug administration services described in subparagraph (H)(iv) of section 1848(c)(2) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)), as added by paragraph (1)(B), furnished on or after January 1, 2004, and before January 1, 2006, in addition to the amount determined under the fee schedule under section 1848 of the Social Security Act (42 U.S.C. 1395w–4(b)) there also shall be paid to the physician from the Federal Supplementary Medical Insurance Trust Fund an amount equal to the applicable percentage specified in subparagraph (B) of such fee schedule amount for the services so determined.

"(B) APPLICABLE PERCENTAGE.—The applicable percentage specified in this subparagraph for services furnished—

"(i) during 2004, is 32 percent; and

"(ii) during 2005, is 3 percent.

MEDPAC REVIEW AND REPORTS; SECRETARIAL RESPONSE


"(1) REVIEW.—The Medicare Payment Advisory Commission shall review the payment changes made under this section [enacting sections 1395w–3a and 1395w–3b of this title, amending this section and sections 1395l, 1395u, 1396x, 1396y, and 1396z–8 of this title, and repealing provisions set out as a note under section 1396u of this title] insofar as they affect payment under part B of title XVIII of the Social Security Act [this part]—

"(i) for items and services furnished by oncologists; and

"(ii) for drug administration services furnished by other specialists.

"(B) OTHER MATTERS STUDIED.—In conducting the review under subparagraph (A), the Commission shall also review such changes as they affect—

"(i) the quality of care furnished to individuals enrolled under part B and the satisfaction of such individuals with that care;

"(ii) the adequacy of reimbursement as applied in, and the availability in, different geographic areas and to different physician practice sizes; and

"(iii) the impact on physician practices.

"(C) REPORTS.—The Commission shall submit to the Secretary [of Health and Human Services] and Congress—

"(i) not later than January 1, 2006, a report on the review conducted under subparagraph (A)(i); and

"(ii) not later than January 1, 2007, a report on the review conducted under subparagraph (A)(ii).

Each such report may include such recommendations regarding further adjustments in such payments as the Commission deems appropriate.

"(D) SECRETARIAL RESPONSE.—As part of the rule-making with respect to payment for physicians services under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for 2007, the Secretary may make appropriate adjustments to payment amounts and set such rates as described in subparagraph (A)(i), taking into account the report submitted under such subparagraph (C)(i)."

MULTIPLE CHEMOTHERAPY AGENTS, OTHER SERVICES CURRENTLY ON THE NON-PHYSICIAN WORK POOL, AND TRANSITIONAL ADJUSTMENT

Pub. L. 108–173, title III, §303(g)(3), Dec. 8, 2003, 117 Stat. 2253, provided that: "There shall be no administrative or judicial review under section 1869 [probably means section 1869 of the Social Security Act, which is classified to section 1395f of this title], section 1878 (probably means section 1878 of the Social Security Act, which is classified to section 1395oo of this title), or otherwise, of determinations of payment amounts, methods, or adjustments under paragraphs (2) through (4) of subsection (a) [enacting provisions set out as notes under this section]."

APPLICATION OF 2003 AMENDMENT TO PHYSICIAN SPECIALTIES

Amendment by section 303 of Pub. L. 108–173, insofar as applicable to payments for drugs or biologicals and drug administration services furnished by physicians, is applicable only to physicians in the specialties of hematology, hematology/oncology, and medical oncology under this subsection, see section 303(j) of Pub. L. 108–173, set out as a note under section 1396u of this title.

Notwithstanding section 303(j) of Pub. L. 108–173 (see note above), amendment by section 303 of Pub. L. 108–173 also applicable to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology, see section 304 of Pub. L. 108–173, set out as a note under section 1396u of this title.

GAO STUDY OF GEOGRAPHIC DIFFERENCES IN PAYMENTS FOR PHYSICIANS' SERVICES

Pub. L. 108–173, title IV, §413(c), Dec. 8, 2003, 117 Stat. 2277, provided that: "(1) STUDY.—The Comptroller General of the United States shall conduct a study of differences in payment amounts under the physician fee schedule under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for physicians' services in different geographic areas. Such study shall include—

"(A) an assessment of the validity of the geographic adjustment factors used for each component of the fee schedule;

"(B) an evaluation of the measures used for such adjustment, including the frequency of revisions;

"(C) an evaluation of the methods used to determine professional liability insurance costs used in computing the malpractice component, including a review of increases in professional liability insurance premiums and variation in such increases by State and physician specialty and methods used to update the geographic cost of practice index and relative weights for the malpractice component; and

"(D) an evaluation of the effect of the adjustment to the physician work geographic index under section 1848(e)(1)(E) of the Social Security Act [section 1848(e)(1)(E) of this section], as added by section 412, on physician location and retention in areas affected by such adjustment, taking into account—

"(i) differences in recruitment costs and retention rates for physicians, including specialists, between large urban areas and other areas; and

"(ii) the mobility of physicians, including specialists, over the last decade.
“(2) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1). The report shall include recommendations regarding the use of more current data in computing geographic cost of practice indices as well as the use of data directly representative of physicians’ costs (rather than proxy measures of such costs).”

AMENDMENTS NOT TREATED AS CHANGE IN LAW AND REGULATION IN SUSTAINABLE GROWTH RATE DETERMINATION


COLLABORATIVE DEMONSTRATION-BASED REVIEW OF PHYSICIAN PRACTICE EXPENSE GEOGRAPHIC ADJUSTMENT DATA

Pub. L. 108–173, title VI, §605, Dec. 8, 2003, 117 Stat. 2302, provided that: “(a) IN GENERAL.—Not later than January 1, 2005, the Secretary of Health and Human Services shall, in collaboration with State and other appropriate organizations representing physicians, and other appropriate persons, review and consider alternative data sources than those currently used in establishing the geographic index for the practice expense component under the medicare physician fee schedule under section 1848(f)(2)(D)(ii) of the Social Security Act (42 U.S.C. 1395w–4(f)(2)(D)).”

“(b) SITES.—The Secretary shall select two physician payment localities in which to carry out subsection (a). One locality shall include rural areas and at least one locality shall be a statewide locality that includes both urban and rural areas.

“(c) REPORT AND RECOMMENDATIONS.—

“(1) REPORT.—Not later than January 1, 2006, the Secretary shall submit to Congress a report on the review and consideration conducted under subsection (a). Such report shall include information on the alternative developed data sources considered by the Secretary under subsection (a), including the accuracy and validity of the data as measures of the elements of the geographic index for practice expenses under the medicare physician fee schedule as well as the feasibility of using such alternative data nationwide in lieu of current proxy data used in such index, and the estimated impacts of using such alternative data.

“(2) RECOMMENDATIONS.—The report submitted under paragraph (1) shall contain recommendations on which data sources reviewed and considered under subsection (a) are appropriate for use in calculating the geographic index for practice expenses under the medicare physician fee schedule.”

MEDPAC REPORT ON PAYMENT FOR PHYSICIANS’ SERVICES


“(a) PRACTICE EXPENSE COMPONENT.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Medicare Payment Advisory Commission shall submit to Congress a report on the effect of refinements to the practice expense component of payment for physicians’ services, after the transition to a full resource-based payment system in 2002, under section 1848 of the Social Security Act (42 U.S.C. 1395w–4).

Such report shall examine the following matters by physician specialty:

“(1) The effect of such refinements on payment for physicians’ services.

“(2) The interaction of the practice expense component with other components of and adjustments to payment for physicians’ services under such section.

“(3) The appropriateness of the amount of compensation by reason of such refinements.

“(4) The effect of such refinements on access to care by Medicare beneficiaries to physicians’ services.

“(5) The effect of such refinements on physician participation under the Medicare program.

“(b) VOLUME OF PHYSICIANS’ SERVICES.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003], the Medicare Payment Advisory Commission shall submit to Congress a report on the extent to which increases in the volume of physicians’ services under part B [this part] of the Medicare program are a result of care that improves the health and well-being of Medicare beneficiaries. The study shall include the following:

“(1) An analysis of recent and historic growth in the components that the Secretary [of Health and Human Services] includes under the sustainable growth rate (under section 1848(f) of the Social Security Act (42 U.S.C. 1395w–4(f))).

“(2) An examination of the relative growth of volume in physicians’ services between Medicare beneficiaries and other populations.

“(3) An analysis of the degree to which new technology, including coverage determinations of the Centers for Medicare & Medicaid Services, has affected the volume of physicians’ services.

“(4) An examination of the impact on volume of demographic changes.

“(5) An examination of shifts in the site of service or services that influence the number and intensity of services furnished in physicians’ offices and the extent to which changes in reimbursement rates to other providers have affected these changes.

“(6) An evaluation of the extent to which the Centers for Medicare & Medicaid Services takes into account the impact of law and regulations on the sustainable growth rate.”

MEDPAC STUDY OF PAYMENT FOR CARDIO-THORACIC SURGEONS


“(a) STUDY.—The Medicare Payment Advisory Commission (in this section referred to as the ‘Commission’) shall conduct a study on the practice expense relative values established by the Secretary of Health and Human Services under the medicare physician fee schedule under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for physicians in the specialties of thoracic and cardiac surgery to determine whether such values adequately take into account the attendant costs that such physicians incur in providing clinical staff for patient care in hospitals.

“(b) REPORT.—Not later than January 1, 2005, the Commission shall submit to Congress a report on the study conducted under subsection (a) together with recommendations for such legislation or administrative action as the Commission determines to be appropriate.”

REPORT ON PHYSICIAN COMPENSATION

Pub. L. 108–173, title IX, §953(a)(2), Dec. 8, 2003, 117 Stat. 2428, provided that: “Not later than 12 months after the date of the enactment of this Act [Dec. 8, 2003], the Comptroller General shall submit to Congress a report on all aspects of physician compensation for services furnished under title XVIII of the Social Security Act [this subchapter], and how those aspects interact and the effect on appropriate compensation for physicians’ services. Such report shall review alternatives for the physician fee schedule under section 1848 of such title (42 U.S.C. 1395w–4).”
TREATMENT OF CERTAIN PHYSICIAN PATHOLOGY SERVICES UNDER MEDICARE


"(i) the estimated actual expenditures described in subsection (d) of such section for 1999; and

(ii) the sustainable growth rate under subsection (f) of such section for 2000.

USE OF DATA COLLECTED BY ORGANIZATIONS AND ENTITIES IN DETERMINING PRACTICE EXPENSE RELATIVE VALUES


"(a) In General.—The Secretary of Health and Human Services shall establish by regulation (after notice and opportunity for public comment) a process (including data collection standards) under which the Secretary will accept for use and will use, to the maximum extent practicable and consistent with sound data practices, data collected or developed by entities and organizations (other than the Department of Health and Human Services) to supplement the data collected by that Department in determining the practice expense component under section 1848(c)(2)(C)(ii) of the Social Security Act (42 U.S.C. 1395w–4(c)) for purposes of determining relative values for payment for physicians' services under the fee schedule under section 1848 of such Act (42 U.S.C. 1395w–4). The Secretary shall promulgate such regulation on an interim final basis in a manner that permits the submission and use of data in the computation of practice expense relative value units for payment rates for 2001.

(b) Publication of Information.—The Secretary shall include, in the publication of the estimated and final updates under section 1848(c) of such Act (42 U.S.C. 1395w–4(c)) for payments for 2001 and for 2002, a description of the process established under subsection (a) for the use of external data in making adjustments in relative value units and the extent to which the Secretary has used such external data in making such adjustments for each such year, particularly in cases in which the data otherwise used are inadequate because such data are not based upon a large enough sample size to be statistically reliable.

CONSULTATION WITH ORGANIZATIONS IN ESTABLISHING PAYMENT AMOUNTS FOR SERVICES PROVIDED BY PHYSICIANS

Section 4105(a)(3) of Pub. L. 105–33 provided that: "In establishing payment amounts under section 1848 of the Social Security Act (this section) for physicians' services consisting of diabetes outpatient self-management training services, the Secretary of Health and Human Services shall consult with appropriate organizations, including such organizations representing individuals and Medicare beneficiaries with diabetes.

DEVELOPMENT OF RESOURCE-BASED PRACTICE EXPENSE RELATIVE VALUE UNITS


APPLICATION OF CERTAIN BUDGET NEUTRALITY PROVISIONS

Section 4505(f)(2) of Pub. L. 105–33 provided that: "In implementing the amendment made by paragraph
(1)(A)(i) [amending this section], the provisions of clauses (ii)(I) and (iii) of section 1848(c)(2)(B) of the Social Security Act (42 U.S.C. 1395w–4(c)(2)(B)) shall apply in the same manner as they apply to adjustments under clause (i)(I) of such section."

DEVELOPMENT OF RESOURCE-BASED METHODOLOGY FOR PRACTICE EXPENSES

Section 121(a) of Pub. L. 103–432 provided that:

“(1) IN GENERAL.—The Secretary of Health and Human Services shall develop a methodology for implementing in 1998 a resource-based system for determining practice expense relative value units for each physicians’ service. The methodology utilized shall recognize the staff, equipment, and supplies used in the provision of various medical and surgical services in various settings.

“(2) REPORT.—The Secretary shall transmit a report by June 30, 1996, on the methodology developed under paragraph (1) to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate. The report shall include a presentation of data utilized in developing the methodology and an explanation of the methodology.”

APPLICATION OF SUBSECTION (C)(2)(B)(i)(I), (III)

Section 121(b)(3) of Pub. L. 103–432 provided that: “In implementing the amendment made by paragraph (i)(C) [amending this section], the provisions of clauses (i)(I) and (iii) of section 1848(c)(2)(B) of the Social Security Act [subsec. (c)(2)(B)(i)(I), (ii)(I) of this section] shall apply in the same manner as they apply to adjustments under clause (i)(I) of such section.”

REPORT ON REVIEW PROCESS

Section 122(c) of Pub. L. 103–432 provided that not later than 1 year after Oct. 31, 1994, Secretary of Health and Human Services was to study and report to Congress on data necessary to review and revise indices established under subsection (a) of section 1848(c)(2)(B) of the Social Security Act [subsec. (c)(2)(B)(ii)(I), (ii)(I) of this section] for the full range of pediatric physicians’ services which are consistent with the relative values developed for physicians’ services under section 1848(c)(2)(B)(ii)(I), (ii)(I) of this section] by June 30, 1996, on the methodology developed under paragraph (1) to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate. The report shall include a presentation of data utilized in developing the methodology and an explanation of the methodology.”

RELATIVE VALUE FOR PEDIATRIC SERVICES

Section 124(a) of Pub. L. 103–432 provided that: “The Secretary of Health and Human Services shall fully develop, by not later than July 1, 1995, relative values for the full range of pediatric physicians’ services which are consistent with the relative values developed for other physicians’ services under section 1848(c)(2)(B)(ii)(I), (ii)(I) of this section] for the full range of pediatric physicians’ services in an area and area variations in the mix of services furnished; that the methodology utilized shall recognize the staff, equipment, and supplies used in the provision of various medical and surgical services in various settings; that the provisions of clauses (i)(I) and (iii) of section 1848(c)(2)(B) of the Social Security Act [subsec. (c)(2)(B)(i)(I), (ii)(I) of this section] shall apply in the same manner as they apply to adjustments under clause (i)(I) of such section.”

BUDGET NEUTRALITY ADJUSTMENT

For provisions requiring reduction of relative values established under subsec. (c) of this section and amounts determined under subsec. (a)(2)(B)(i)(I) of this section for 1994 (to be applied for that year and subsequent years) in order to assure that the amendments to this section and section 1395u of this title by section 13515(a) of Pub. L. 103–66 will not result in expenditures under this part that exceed the amount of such expenditures that would have been made if such amendments had not been made, see section 13516(b) of Pub. L. 103–66, set out as a note under section 1395u of this title. Section 13518(b) of Pub. L. 103–66 provided that: “Notwithstanding any other provision of law, the Secretary of Health and Human Services shall implement the amendment made by subsection (a) [amending this section] in a manner to assure that such amendment will result in expenditures under part B of title XVIII of the Social Security Act [this part] in 1995 for services described in such amendment that shall be equal to the amount of expenditures for such services that would have been made if such amendment had not been made.”

ANCILLARY POLICIES; ADJUSTMENT FOR INDEPENDENT LABORATORIES FURNISHING PHYSICIAN PATHOLOGY SERVICES

Section 4107(c) of Pub. L. 101–508 provided that: “The Secretary of Health and Human Services, in establishing ancillary policies under section 1848(c)(3) of the Social Security Act [subsec. (c)(3) of this section], shall consider an appropriate adjustment to reflect the technical component of furnishing physician pathology services through a laboratory that is independent of a hospital and separate from an attending or consulting physician’s office.”

COMPUTATION OF CONVERSION FACTOR FOR 1992


Section 4106(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(g)(3)(A), Oct. 31, 1994, 108 Stat. 4416, provided that: “In computing the conversion factor under section 1848(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section] for 1992, the Secretary of Health and Human Services shall determine the estimated aggregate amount of payments under part B [this part] for physicians’ services in 1991 assuming that the amendments made by this section [amending this section, section 1395u of this title, and provisions set out as a note under section 1395u of title 42 by this subsection (d) (notwithstanding subsection (d) [set out as an Effective Date of 1990 Amendment note under section 1395u of title 42 by this subsection]) applied to all services furnished during such year.”

PUBLICATION OF PERFORMANCE STANDARD RATES

Section 4105(d) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(g)(2)(C), Oct. 31, 1994, 108 Stat. 4416, provided that: “Not later than 45 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services, based on the most recent data available, shall estimate and publish in the Federal Register the performance standard rates of increase specified in section 1848(c)(2)(C) of the Social Security Act [subsec. (c)(2)(C) of this section] for fiscal year 1991.”

STUDY OF REGIONAL VARIATIONS IN IMPACT OF MEDICARE PHYSICIAN PAYMENT REFORM

Section 4115 of Pub. L. 101–508 provided that: “(a) STUDY.—The Secretary of Health and Human Services shall conduct a study of—

“(1) factors that may explain geographic variations in Medicare reasonable charges for physicians’ services that are not attributable to variations in physician practice costs (including the supply of physicians in an area and area variations in the mix of services furnished);

“(2) the extent to which the geographic practice cost indices applied under the fee schedule established under section 1848 of the Social Security Act [this section] accurately reflect variations in practice costs and malpractice costs (and alternative sources of information upon which to base such index); and

“(3) the impact of the transition to a national, resource-based fee schedule for physicians’ services...
under Medicare on access to physicians' services in areas that experience a disproportionately large reduction in payments for physicians' services under the fee schedule by reason of such variations; and

"(4) appropriate adjustments or modifications in the transition to, or manner of determining payments under, the fee schedule established under section 1848 of the Social Security Act, to compensate for such variations and ensure continued access to physicians' services for Medicare beneficiaries in such areas.

"(b) Report.—By not later than July 1, 1992, the Secretary shall submit to Congress a report on the study conducted under subsection (a)."

**STATEWIDE FEE SCHEDULE AREAS FOR PHYSICIANS' SERVICES**

Section 4117 of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §126(f), Oct. 31, 1994, 108 Stat. 4415, provided that: "(6) the Secretary of Health and Human Services shall submit the Model Fee Schedule to the appropriate committees of Congress and make it generally available to the public by not later than Jan. 1, 1992.''

**STUDIES**

Pub. L. 101–239, title VI, §6102(d), Dec. 19, 1989, 103 Stat. 2185, as amended by Pub. L. 103–432, title I, §126(h)(1), Oct. 31, 1994, 108 Stat. 4416; Pub. L. 105–362, title VI, §601(b)(5), Nov. 10, 1998, 112 Stat. 3286, provided for various studies and reports as follows: (1) directed Comptroller General to conduct study of alternative payment methodologies for malpractice component for physicians' services, and to submit report to Congress by not later than Apr. 1, 1991; (2) directed Secretary of Health and Human Services to conduct study of how payments under this section may affect payments to eligible organizations with risk-sharing contracts under section 1389m of this title, and to submit report to Congress by not later than Jan. 1, 1990; (3) directed Secretary to conduct study of volume performance standards of increase for services furnished by geography, specialty, and type of service, and to submit report with appropriate recommendations to Congress by not later than July 1, 1990; (4) directed Physician Payment Review Commission to conduct study of payment for practice and malpractice expenses, including appropriate methods for allocating malpractice expenses to particular procedures which could be incorporated into the determination of relative values for such procedures using a consensus panel and other appropriate methodologies, and to submit report and recommendations to Congress by not later than July 1, 1991; (5) directed Physician Payment Review Commission to conduct study of feasibility and desirability of using Metropolitan Statistical Areas or other payment areas for purposes of payment for physicians' services under this part, and to submit report to Congress by not later than July 1, 1991; (6) directed Physician Payment Review Commission to conduct study of payment for non-physician providers of medical services, including physician assistants, clinical psychologists, nurse midwives, and other health practitioners whose services can be billed under medicare program on a fee-for-service basis, and to submit report to Congress by not later than July 1, 1991; (7) directed Physician Payment Review Commission to conduct study of physician fees under state medicaid programs established under subchapter XIX of this chapter, and to submit report with recommendations to Congress by no later than July 1, 1991; and (8) directed Comptroller General to conduct study of effect of anti-trust laws on ability of physicians to act in groups to educate and discipline peers of such physicians in order to reduce and eliminate ineffective practice patterns and inappropriate utilization, and to submit report to Congress by no later than July 1, 1991.

**DISTRIBUTION OF MODEL FEE SCHEDULE**

Section 6102(e)(11) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, §4118(c)(2)(E), Nov. 5, 1990, 104 Stat. 1388–70, provided that: "By September 1, 1990, the Secretary of Health and Human Services shall develop a Model Fee Schedule, using the methodology set forth in section 1848 of the Social Security Act [this section]. The Model Fee Schedule shall include as many services as the Secretary of Health and Human Services concludes can be assigned valid relative values. The Secretary of Health and Human Services shall submit the Model Fee Schedule to the appropriate committees of Congress and make it generally available to the public."

**§1395w–5. Public reporting of performance information**

(a) In general

(1) Development

Not later than January 1, 2011, the Secretary shall develop a Physician Compare Internet website with information on physicians enrolled in the Medicare program under section 1866(j) of the Social Security Act (42 U.S.C. 1395w–4) and other eligible professionals who participate in the Physician Quality Reporting Initiative under section 1848 of such Act (42 U.S.C. 1395w–4).

(2) Plan

Not later than January 1, 2013, and with respect to reporting periods that begin no earlier than January 1, 2012, the Secretary shall also implement a plan for making publicly available through Physician Compare, consistent with subsection (c), information on physician performance that provides comparable information for the public on quality and patient experience measures with respect to physicians enrolled in the Medicare program under such section 1866(j). To the extent scientifically sound measures that are developed consistent with the requirements of this section are available, such information, to the extent practicable, shall include—

(A) measures collected under the Physician Quality Reporting Initiative;

(B) an assessment of patient health outcomes and the functional status of patients;

(C) an assessment of the continuity and coordination of care and care transitions, including episodes of care and risk-adjusted resource use;

(D) an assessment of efficiency;

(E) an assessment of patient experience and patient, caregiver, and family engagement;

(F) an assessment of the safety, effectiveness, and timeliness of care; and

(G) other information as determined appropriate by the Secretary.

(b) Other required considerations

In developing and implementing the plan described in subsection (a)(2), the Secretary shall, to the extent practicable, include—
(1) processes to assure that data made public, either by the Centers for Medicare & Medicaid Services or by other entities, is statistically valid and reliable, including risk adjustment mechanisms used by the Secretary;

(2) processes by which a physician or other eligible professional whose performance on measures is being publicly reported has a reasonable opportunity, as determined by the Secretary, to review his or her individual results before they are made public;

(3) processes by the Secretary to assure that the implementation of the plan and the data made available on Physician Compare provide a robust and accurate portrayal of a physician’s performance;

(4) data that reflects the care provided to all patients seen by physicians, under both the Medicare program and, to the extent practicable, other payers, to the extent such information would provide a more accurate portrayal of physician performance;

(5) processes to ensure appropriate attribution of care when multiple physicians and other providers are involved in the care of a patient;

(6) processes to ensure timely statistical performance feedback is provided to physicians concerning the data reported under any program subject to public reporting under this section; and

(7) implementation of computer and data systems of the Centers for Medicare & Medicaid Services that support valid, reliable, and accurate public reporting activities authorized under this section.

(c) Ensuring patient privacy

The Secretary shall ensure that information on physician performance and patient experience is not disclosed under this section in a manner that violates sections 552 or 552a of title 5 with regard to the privacy of individually identifiable health information.

(d) Feedback from multi-stakeholder groups

The Secretary shall take into consideration input provided by multi-stakeholder groups, consistent with sections 1890(b)(7) and 1890A of the Social Security Act [42 U.S.C. 1395aaa(b)(7), 1395aaa–1], as added by section 3014 of this Act, in selecting quality measures for use under this section.

(e) Consideration of transition to value-based purchasing

In developing the plan under this subsection (a)(2), the Secretary shall, as the Secretary determines appropriate, consider the plan to transition to a value-based purchasing program for physicians and other practitioners developed under section 131 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275).

(f) Report to Congress

Not later than January 1, 2015, the Secretary shall submit to Congress a report on the Physician Compare Internet website developed under subsection (a)(1). Such report shall include information on the efforts of and plans made by the Secretary to collect and publish data on physician quality and efficiency and on patient experience of care in support of value-based purchasing and consumer choice, together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

(g) Expansion

At any time before the date on which the report is submitted under subsection (f), the Secretary may expand (including expansion to other providers of services and suppliers under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.]) the information made available on such website.

(h) Financial incentives to encourage consumers to choose high quality providers

The Secretary may establish a demonstration program, not later than January 1, 2010, to provide financial incentives to Medicare beneficiaries who are furnished services by high quality physicians, as determined by the Secretary based on factors in subparagraphs (A) through (G) of subsection (a)(2). In no case may Medicare beneficiaries be required to pay increased premiums or cost sharing or be subject to a reduction in benefits under title XVIII of the Social Security Act as a result of such demonstration program. The Secretary shall ensure that any such demonstration program does not disadvantage those beneficiaries without reasonable access to high performing physicians or create financial inequities under such title.

(i) Definitions

In this section:

(1) Eligible professional

The term “eligible professional” has the meaning given that term for purposes of the Physician Quality Reporting Initiative under section 1848 of the Social Security Act (42 U.S.C. 1395w–4).

(2) Physician

The term “physician” has the meaning given that term in section 1861(r) of such Act (42 U.S.C. 1395x(r)).

(3) Physician Compare

The term “Physician Compare” means the Internet website developed under subsection (a)(1).

(4) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

(5) Eligible professional, as determined by the Secretary based on factors in subparagraphs (A) through (G) of subsection (a)(2), the Secretary shall, as the Secretary determines appropriate, consider the plan to transition to a value-based purchasing program for physicians and other practitioners developed under section 131 of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275).
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Eligibility, election, and enrollment

(a) Choice of medicare benefits through Medicare+Choice plans

(1) In general

Subject to the provisions of this section, each Medicare+Choice eligible individual (as defined in paragraph (3)) is entitled to elect to receive benefits (other than qualified prescription drug benefits) under this subchapter—

(A) through the original medicare fee-for-service program under parts A and B of this subchapter, or

(B) through enrollment in a Medicare+Choice plan under this part,

and may elect qualified prescription drug coverage in accordance with section 1395w–101 of this title.

(2) Types of Medicare+Choice plans that may be available

A Medicare+Choice plan may be any of the following types of plans of health insurance:

(A) Coordinated care plans (including regional plans)

(i) In general

Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without point of service options), plans offered by provider-sponsored organizations (as defined in section 1395w–22(d) of this title), and regional or local preferred provider organization plans (including MA regional plans).

(ii) Specialized MA plans for special needs individuals

Specialized MA plans for special needs individuals (as defined in section 1395w–28(b)(6) of this title) may be any type of coordinated care plan.

(B) Combination of MSA plan and contributions to Medicare+Choice MSA

An MSA plan, as defined in section 1395w–28(b)(3) of this title, and a contribution into a Medicare+Choice medical savings account (MSA).

(C) Private fee-for-service plans

A Medicare+Choice private fee-for-service plan, as defined in section 1395w–28(b)(2) of this title.

(3) Medicare+Choice eligible individual

(A) In general

In this subchapter, subject to subparagraph (B), the term “Medicare+Choice eligible individual” means an individual who is entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter.

(B) Special rule for end-stage renal disease

Such term shall not include an individual medically determined to have end-stage renal disease, except that—

(i) an individual who develops end-stage renal disease while enrolled in a Medicare+Choice plan may continue to be enrolled in that plan; and

(ii) in the case of such an individual who is enrolled in a Medicare+Choice plan under clause (i) (or subsequently under this clause), if the enrollment is discontinued under circumstances described in subsection (e)(4)(A) of this section, then the individual will be treated as a “Medicare+Choice eligible individual” for purposes of electing to continue enrollment in another Medicare+Choice plan.

(b) Special rules

(1) Residence requirement

(A) In general

Except as the Secretary may otherwise provide and except as provided in subparagraph (C), an individual is eligible to elect a Medicare+Choice plan offered by a Medicare+Choice organization only if the plan serves the geographic area in which the individual resides.

(B) Continuation of enrollment permitted

Pursuant to rules specified by the Secretary, the Secretary shall provide that an MA local plan may offer to all individuals residing in a geographic area the option to continue enrollment in the plan, notwithstanding that the individual no longer resides in the service area of the plan, so long as the plan provides that individuals exercising this option have, as part of the benefits under the original medicare fee-for-service program option, reasonable access within that geographic area to the full range of basic benefits, subject to reasonable cost sharing liability in obtaining such benefits.

(C) Continuation of enrollment permitted where service changed

Notwithstanding subparagraph (A) and in addition to subparagraph (B), if a Medicare+Choice organization eliminates
from its service area a Medicare+Choice payment area that was previously within its service area, the organization may elect to offer individuals residing in all or portions of the affected area who would otherwise be ineligible to continue enrollment the option to continue enrollment in an MA local plan it offers so long as—

(i) the enrollee agrees to receive the full range of basic benefits (excluding emergency and urgently needed care) exclusively at facilities designated by the organization within the plan service area; and

(ii) there is no other Medicare+Choice plan offered in the area in which the enrollee resides at the time of the organization’s election.

(2) Special rule for certain individuals covered under FEHBP or eligible for veterans or military health benefits

(A) FEHBP

An individual who is enrolled in a health benefit plan under chapter 89 of title 5 is not eligible to enroll in an MSA plan until such time as the Director of the Office of Management and Budget certifies to the Secretary that the Office of Personnel Management has adopted policies which will ensure that the enrollment of such individuals in such plans will not result in increased expenditures for the Federal Government for health benefit plans under such chapter.

(B) VA and DOD

The Secretary may apply rules similar to the rules described in subparagraph (A) in the case of individuals who are eligible for health care benefits under chapter 55 of title 38.

(3) Limitation on eligibility of qualified medicare beneficiaries and other medicaid beneficiaries to enroll in an MSA plan

An individual who is a qualified Medicare beneficiary (as defined in section 1396d(p)(1) of this title), a qualified disabled and working individual (described in section 1396d(a)(10)(E)(iii) of this title), or otherwise entitled to Medicare cost-sharing under a State plan under subchapter XIX of this chapter is not eligible to enroll in an MSA plan.

(4) Coverage under MSA plans

(A) In general

Under rules established by the Secretary, an individual is not eligible to enroll (or continue enrollment) in an MSA plan for a year unless the individual provides assurances satisfactory to the Secretary that the individual will reside in the United States for at least 183 days during the year.

(B) Evaluation

The Secretary shall regularly evaluate the impact of permitting enrollment in MSA plans as under this part on selection (including adverse selection), use of preventive care, access to care, and the financial status of the Trust Funds under this subchapter.

(C) Reports

The Secretary shall submit to Congress periodic reports on the numbers of individuals enrolled in such plans and on the evaluation being conducted under subparagraph (B).

(c) Process for exercising choice

(1) In general

The Secretary shall establish a process through which elections described in subsection (a) of this section are made and changed, including the form and manner in which such elections are made and changed. Such elections shall be made or changed only during coverage election periods specified under subsection (e) of this section and shall become effective as provided in subsection (f) of this section.

(2) Coordination through Medicare+Choice organizations

(A) Enrollment

Such process shall permit an individual who wishes to elect a Medicare+Choice plan offered by a Medicare+Choice organization to make such election through the filing of an appropriate election form with the organization.

(B) Disenrollment

Such process shall permit an individual, who has elected a Medicare+Choice plan offered by a Medicare+Choice organization and who wishes to terminate such election, to terminate such election through the filing of an appropriate election form with the organization.

(3) Default

(A) Initial election

(i) In general

Subject to clause (ii), an individual who fails to make an election during an initial election period under subsection (e)(1) of this section is deemed to have chosen the original medicare fee-for-service program option.

(ii) Seamless continuation of coverage

The Secretary may establish procedures under which an individual who is enrolled in a health plan (other than Medicare+Choice plan) offered by a Medicare+Choice organization at the time of the initial election period and who fails to elect to receive coverage other than through the organization is deemed to have elected the Medicare+Choice plan offered by the organization (or, if the organization offers more than one such plan, such plan or plans as the Secretary identifies under such procedures).

(B) Continuing periods

An individual who has made (or is deemed to have made) an election under this section is considered to have continued to make such election until such time as—

(i) the individual changes the election under this section, or

(ii) the Medicare+Choice plan with respect to which such election is in effect is discontinued or, subject to subsection (b)(1)(B) of this section, no longer serves the area in which the individual resides.
(d) Providing information to promote informed choice

(1) In general

The Secretary shall provide for activities under this subsection to broadly disseminate information to Medicare beneficiaries (and prospective Medicare beneficiaries) on the coverage options provided under this section in order to promote an active, informed selection among such options.

(2) Provision of notice

(A) Open season notification

At least 15 days before the beginning of each annual, coordinated election period (as defined in subsection (e)(3)(B) of this section), the Secretary shall mail to each Medicare+Choice eligible individual residing in an area the following:

(i) General information

The general information described in paragraph (3).

(ii) List of plans and comparison of plan options

A list identifying the Medicare+Choice plans that are (or will be) available to residents of the area and information described in paragraph (4) concerning such plans. Such information shall be presented in a comparative form.

(iii) Additional information

Any other information that the Secretary determines will assist the individual in making the election under this section.

The mailing of such information shall be coordinated, to the extent practicable, with the mailing of any annual notice under section 1395b–2 of this title.

(B) Notification to newly eligible Medicare+Choice eligible individuals

To the extent practicable, the Secretary shall, not later than 30 days before the beginning of the initial Medicare+Choice enrollment period for an individual described in subsection (e)(1) of this section, mail to the individual the information described in subparagraph (A).

(C) Form

The information disseminated under this paragraph shall be written and formatted using language that is easily understandable by Medicare beneficiaries.

(D) Periodic updating

The information described in subparagraph (A) shall be updated on at least an annual basis to reflect changes in the availability of Medicare+Choice plans and the benefits and Medicare+Choice monthly basic and supplemental beneficiary premiums for such plans.

(3) General information

General information under this paragraph, with respect to coverage under this part during a year, shall include the following:

(A) Benefits under original Medicare fee-for-service program option

A general description of the benefits covered under the original Medicare fee-for-service program under parts A and B of this subchapter, including—

(i) covered items and services,

(ii) beneficiary cost sharing, such as deductibles, coinsurance, and copayment amounts, and

(iii) any beneficiary liability for balance billing.

(B) Election procedures

Information and instructions on how to exercise election options under this section.

(C) Rights

A general description of procedural rights (including grievance and appeals procedures) of beneficiaries under the original Medicare fee-for-service program and the Medicare+Choice program and the right to be protected against discrimination based on health status-related factors under section 1395w–22(b) of this title.

(D) Information on medigap and Medicare select

A general description of the benefits, enrollment rights, and other requirements applicable to Medicare supplemental policies under section 1395ss of this title and provisions relating to Medicare select policies described in section 1395ss(t) of this title.

(E) Potential for contract termination

The fact that a Medicare+Choice organization may terminate its contract, refuse to renew its contract, or reduce the service area included in its contract, under this part, and the effect of such a termination, nonrenewal, or service area reduction may have on individuals enrolled with the Medicare+Choice plan under this part.

(F) Catastrophic coverage and single deductible

In the case of an MA regional plan, a description of the catastrophic coverage and single deductible applicable under the plan.

(4) Information comparing plan options

Information under this paragraph, with respect to a Medicare+Choice plan for a year, shall include the following:

(A) Benefits

The benefits covered under the plan, including the following:

(i) Covered items and services beyond those provided under the original Medicare fee-for-service program.

(ii) Any beneficiary cost sharing, including information on the single deductible (if applicable) under section 1395w–27a(b)(1) of this title.

(iii) Any maximum limitations on out-of-pocket expenses.

(iv) In the case of an MSA plan, differences in cost sharing, premiums, and balance billing under such a plan compared to under other Medicare+Choice plans.

(v) In the case of a Medicare+Choice private fee-for-service plan, differences in cost sharing, premiums, and balance bill-
ing under such a plan compared to under other Medicare+Choice plans.

(vi) The extent to which an enrollee may obtain benefits through out-of-network health care providers.

(vii) The extent to which an enrollee may select among in-network providers and the types of providers participating in the plan’s network.

(viii) The organization’s coverage of emergency and urgently needed care.

(B) Premiums

(i) In general

The monthly amount of the premium charged to an individual.

(ii) Reductions

The reduction in part B premiums, if any.

(C) Service area

The service area of the plan.

(D) Quality and performance

To the extent available, plan quality and performance indicators for the benefits under the plan (and how they compare to such indicators under the original medicare fee-for-service program under parts A and B of this subchapter in the area involved), including—

(i) disenrollment rates for medicare enrollees electing to receive benefits through the plan for the previous 2 years (excluding disenrollment due to death or moving outside the plan’s service area),

(ii) information on medicare enrollee satisfaction,

(iii) information on health outcomes, and

(iv) the recent record regarding compliance of the plan with requirements of this part (as determined by the Secretary).

(E) Supplemental benefits

Supplemental health care benefits, including any reductions in cost-sharing under section 1395w–22(a)(3) of this title and the terms and conditions (including premiums) for such benefits.

(5) Maintaining a toll-free number and Internet site

The Secretary shall maintain a toll-free number for inquiries regarding Medicare+Choice options and the operation of this part in all areas in which Medicare+Choice plans are offered and an Internet site through which individuals may electronically obtain information on such options and Medicare+Choice plans.

(6) Use of non-Federal entities

The Secretary may enter into contracts with non-Federal entities to carry out activities under this subsection.

(7) Provision of information

A Medicare+Choice organization shall provide the Secretary with such information on the organization and each Medicare+Choice plan it offers as may be required for the prepa-

ration of the information referred to in paragraph (2)(A).

(e) Coverage election periods

(1) Initial choice upon eligibility to make election if Medicare+Choice plans available to individual

If, at the time an individual first becomes entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, there is one or more Medicare+Choice plans offered in the area in which the individual resides, the individual shall make the election under this section during a period specified by the Secretary such that if the individual elects a Medicare+Choice plan during the period, coverage under the plan becomes effective as of the first date on which the individual may receive such coverage. If any portion of an individual’s initial enrollment period under part B of this subchapter occurs after the end of the annual, coordinated election period described in paragraph (3)(B)(ii), the initial enrollment period under this part shall further extend through the end of the individual’s initial enrollment period under part B of this subchapter.

(2) Open enrollment and disenrollment opportunities

Subject to paragraph (5)—

(A) Continuous open enrollment and disenrollment through 2005

At any time during the period beginning January 1, 1998, and ending on December 31, 2005, a Medicare+Choice eligible individual may change the election under subsection (a)(1) of this section.

(B) Continuous open enrollment and disenrollment for first 6 months during 2006

(i) In general

Subject to clause (ii), subparagraph (C)(iii),1 and subparagraph (D), at any time during the first 6 months of 2006, or, if the individual first becomes a Medicare+Choice eligible individual during 2006, during the first 6 months during 2006 in which the individual is a Medicare+Choice eligible individual, a Medicare+Choice eligible individual may change the election under subsection (a)(1) of this section.

(ii) Limitation of one change

An individual may exercise the right under clause (i) only once. The limitation under this clause shall not apply to changes in elections effected during an annual, coordinated election period under paragraph (3) or during a special enrollment period under the first sentence of paragraph (4).

(C) Annual 45-day period for disenrollment from MA plans to elect to receive benefits under the original Medicare fee-for-service program

Subject to subparagraph (D), at any time during the first 45 days of a year (beginning

1 See References in Text note below.
with 2011), an individual who is enrolled in a Medicare Advantage plan may change the election under subsection (a)(1), but only with respect to coverage under the original Medicare fee-for-service program under parts A and B, and may elect qualified prescription drug coverage in accordance with section 1395w–101 of this title.

(D) Continuous open enrollment for institutionalized individuals

At any time after 2005 in the case of a Medicare+Choice eligible individual who is institutionalized (as defined by the Secretary), the individual may elect under subsection (a)(1) of this section—

(i) to enroll in a Medicare+Choice plan; or

(ii) to change the Medicare+Choice plan in which the individual is enrolled.

(E) Limited continuous open enrollment of original fee-for-service enrollees in Medicare advantage non-prescription drug plans

(i) In general

On any date during the period beginning on January 1, 2007, and ending on July 31, 2007, on which a Medicare Advantage eligible individual is institutionalized (as defined in clause (ii)), the individual may elect under subsection (a)(1) to enroll in a Medicare Advantage plan that is not an MA–PD plan.

(ii) Unenrolled fee-for-service individual defined

In this subparagraph, the term “unenrolled fee-for-service individual” means, with respect to a date, a Medicare Advantage eligible individual who—

(I) is receiving benefits under this subchapter through enrollment in the original Medicare fee-for-service program under parts A and B;

(II) is not enrolled in an MA plan on such date; and

(III) as of such date is not otherwise eligible to elect to enroll in an MA plan.

(iii) Limitation of one change during the applicable period

An individual may exercise the right under clause (i) only once during the period described in such clause.

(iv) No effect on coverage under a prescription drug plan

Nothing in this subparagraph shall be construed as permitting an individual exercising the right under clause (i)—

(I) who is enrolled in a prescription drug plan under part D, to disenroll from such plan or to enroll in a different prescription drug plan; or

(II) who is not enrolled in a prescription drug plan, to enroll in such a plan.

(3) Annual, coordinated election period

(A) In general

Subject to paragraph (5), each individual who is eligible to make an election under this section may change such election during an annual, coordinated election period.

(B) Annual, coordinated election period

For purposes of this section, the term “annual, coordinated election period” means—

(i) with respect to a year before 2002, the month of November before such year;

(ii) with respect to 2002, 2003, 2004, and 2005, the period beginning on November 15 and ending on December 31 of the year before such year;

(iii) with respect to 2006, the period beginning on November 15, 2005, and ending on May 15, 2006;

(iv) with respect to 2007, 2008, 2009, and 2010, the period beginning on November 15 and ending on December 31 of the year before such year; and

(v) with respect to 2012 and succeeding years, the period beginning on October 15 and ending on December 7 of the year before such year.

(C) Medicare+Choice health information fairs

During the fall season of each year (beginning with 1999) and during the period described in subparagraph (B)(iii), in conjunction with the annual coordinated election period defined in subparagraph (B), the Secretary shall provide for a nationally coordinated educational and publicity campaign to inform Medicare+Choice eligible individuals about Medicare+Choice plans and the election process provided under this section.

(D) Special information campaigns

During November 1998 the Secretary shall provide for an educational and publicity campaign to inform Medicare+Choice eligible individuals about the availability of Medicare+Choice plans, and eligible organizations with risk-sharing contracts under section 1395mm of this title, offered in different areas and the election process provided under this section. During the period described in subparagraph (B)(iii), the Secretary shall provide for an educational and publicity campaign to inform MA eligible individuals about the availability of MA plans (including MA–PD plans) offered in different areas and the election process provided under this section.

(4) Special election periods

Effective as of January 1, 2006, an individual may discontinue an election of a Medicare+Choice plan offered by a Medicare+Choice organization other than during an annual, coordinated election period and make a new election under this section if—

(A)(i) the certification of the organization or plan under this part has been terminated, or the organization or plan has notified the individual of an impending termination of such certification; or

(ii) the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides, or has notified the individual of an impending termination or discontinuation of such plan;

(B) the individual is no longer eligible to elect the plan because of a change in the in-
individual’s place of residence or other change in circumstances (specified by the Secretary, but not including termination of the individual’s enrollment on the basis described in clause (i) or (ii) of subsection (g)(3)(B) of this section);

(C) the individual demonstrates (in accordance with guidelines established by the Secretary) that—

(i) the organization offering the plan substantially violated a material provision of the organization’s contract under this part in relation to the individual (including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards); or

(ii) the organization (or an agent or other entity acting on the organization’s behalf) materially misrepresented the plan’s provisions in marketing the plan to the individual; or

(D) the individual meets such other exceptional conditions as the Secretary may provide.

Effective as of January 1, 2006, an individual who, upon first becoming eligible for benefits under part A of this subchapter at age 65, enrolls in a Medicare+Choice plan under this part, the individual may discontinue the election of such plan, and elect coverage under the original fee-for-service plan, at any time during the 12-month period beginning on the effective date of such enrollment.

(5) Special rules for MSA plans

Notwithstanding the preceding provisions of this subsection, an individual—

(A) may elect an MSA plan only during—

(i) an initial open enrollment period described in paragraph (1), or

(ii) an annual, coordinated election period described in paragraph (3)(B);

(B) subject to subparagraph (C), may not discontinue an election of an MSA plan except during the periods described in clause (ii) or (iii) of subparagraph (A) and under the first sentence of paragraph (4); and

(C) who elects an MSA plan during an annual, coordinated election period, and who never previously had elected such a plan, may revoke such election, in a manner determined by the Secretary, by not later than December 15 following the date of the election.

(6) Open enrollment periods

Subject to paragraph (5), a Medicare+Choice organization—

(A) shall accept elections or changes to elections during the initial enrollment periods described in paragraph (1), during the month of November 1998 and during the annual, coordinated election period under paragraph (3) for each subsequent year, and during special election periods described in the first sentence of paragraph (4); and

(B) may accept other changes to elections at such other times as the organization provides.

(f) Effectiveness of elections and changes of elections

(1) During initial coverage election period

An election of coverage made during the initial coverage election period under subsection (e)(1) of this section shall take effect upon the date the individual becomes entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, except as the Secretary may provide (consistent with section 1395q of this title) in order to prevent retroactive coverage.

(2) During continuous open enrollment periods

An election or change of coverage made under subsection (e)(2) of this section shall take effect with the first day of the first calendar month following the date on which the election or change is made.

(3) Annual, coordinated election period

An election or change of coverage made during an annual, coordinated election period (as defined in subsection (e)(3)(B) of this section, other than the period described in clause (iii) of such subsection) in a year shall take effect as of the first day of the following year.

(4) Other periods

An election or change of coverage made during any other period under subsection (e)(4) of this section shall take effect in such manner as the Secretary provides in a manner consistent (to the extent practicable) with protecting continuity of health benefit coverage.

(g) Guaranteed issue and renewal

(1) In general

Except as provided in this subsection, a Medicare+Choice organization shall provide that at any time during which elections are accepted under this section with respect to a Medicare+Choice plan offered by the organization, the organization will accept without restrictions individuals who are eligible to make such election.

(2) Priority

If the Secretary determines that a Medicare+Choice organization, in relation to a Medicare+Choice plan it offers, has a capacity limit and the number of Medicare+Choice eligible individuals who elect the plan under this section exceeds the capacity limit, the organization may limit the election of individuals of the plan under this section but only if priority in election is provided—

(A) first to such individuals as have elected the plan at the time of the determination, and

(B) then to other such individuals in such a manner that does not discriminate, on a basis described in section 1395w–22(b) of this title, among the individuals (who seek to elect the plan).

The preceding sentence shall not apply if it would result in the enrollment of enrollees substantially nonrepresentative, as determined in accordance with regulations of the Secretary, of the Medicare population in the service area of the plan.
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(3) Limitation on termination of election

(A) In general

Subject to subparagraph (B), a Medicare+Choice organization may not for any reason terminate the election of any individual under this section for a Medicare+Choice plan it offers.

(B) Basis for termination of election

A Medicare+Choice organization may terminate an individual’s election under this section with respect to a Medicare+Choice plan it offers if—

(i) any Medicare+Choice monthly basic and supplemental beneficiary premiums required with respect to such plan are not paid on a timely basis (consistent with standards under section 1395w–26 of this title that provide for a grace period for late payment of such premiums),

(ii) the individual has engaged in disruptive behavior (as specified in such standards), or

(iii) the plan is terminated with respect to all individuals under this part in the area in which the individual resides.

(C) Consequence of termination

(i) Terminations for cause

Any individual whose election is terminated under clause (i) or (ii) of subparagraph (B) is deemed to have elected the original medicare fee-for-service program option described in subsection (a)(1)(A) of this section.

(ii) Termination based on plan termination or service area reduction

Any individual whose election is terminated under subparagraph (B)(iii) shall have a special election period under subsection (e)(4)(A) of this section in which to change coverage to coverage under another Medicare+Choice plan. Such an individual who fails to make an election during such period is deemed to have chosen an area in which to change coverage to the original medicare fee-for-service program option described in subsection (a)(1)(A) of this section.

(D) Organization obligation with respect to election forms

Pursuant to a contract under section 1395w–27 of this title, each Medicare+Choice organization receiving an election form under subsection (c)(2) of this section shall transmit to the Secretary (at such time and in such manner as the Secretary may specify) a copy of such form or such other information respecting the election as the Secretary may specify.

(h) Approval of marketing material and application forms

(1) Submission

No marketing material or application form may be distributed by a Medicare+Choice organization to (or for the use of) Medicare+Choice eligible individuals unless—

(A) at least 45 days (or 10 days in the case described in paragraph (5)) before the date of distribution the organization has submitted the material or form to the Secretary for review, and

(B) the Secretary has not disapproved the distribution of such material or form.

(2) Review

The standards established under section 1395w–26 of this title shall include guidelines for the review of any material or form submitted and under such guidelines the Secretary shall disapprove (or later require the correction of) such material or form if the material or form is materially inaccurate or misleading or otherwise makes a material misrepresentation.

(3) Deemed approval (1-stop shopping)

In the case of material or form that is submitted under paragraph (1)(A) to the Secretary or a regional office of the Department of Health and Human Services and the Secretary or the office has not disapproved the distribution of such material or form under paragraph (1)(B) with respect to a Medicare+Choice plan in an area, the Secretary is deemed not to have disapproved such distribution in all other areas covered by the plan and organization except with regard to that portion of such material or form that is specific only to an area involved.

(4) Prohibition of certain marketing practices

Each Medicare+Choice organization shall conform to fair marketing standards, in relation to Medicare+Choice plans offered under this part, included in the standards established under section 1395w–26 of this title. Such standards—

(A) shall not permit a Medicare+Choice organization to provide for, subject to subsection (j)(2)(C), cash, gifts, prizes, or other monetary rebates as an inducement for enrollment or otherwise;

(B) may include a prohibition against a Medicare+Choice organization (or agent of such an organization) completing any portion of any election form used to carry out elections under this section on behalf of any individual;

(C) shall not permit a Medicare Advantage organization (or the agents, brokers, and other third parties representing such organization) to conduct the prohibited activities described in subsection (j)(1); and

(D) shall only permit a Medicare Advantage organization (and the agents, brokers, and other third parties representing such organization) to conduct the activities described in subsection (j)(2) in accordance with the limitations established under such subsection.

(5) Special treatment of marketing material following model marketing language

In the case of marketing material of an organization that uses, without modification, proposed model language specified by the Secretary, the period specified in paragraph (1)(A) shall be reduced from 45 days to 10 days.

(6) Required inclusion of plan type in plan name

For plan years beginning on or after January 1, 2010, a Medicare Advantage organization
must ensure that the name of each Medicare Advantage plan offered by the Medicare Advantage organization includes the plan type of the plan (using standard terminology developed by the Secretary).

(7) Strengthening the ability of States to act in collaboration with the Secretary to address fraudulent or inappropriate marketing practices

(A) Appointment of agents and brokers
Each Medicare Advantage organization shall—
(i) only use agents and brokers who have been licensed under State law to sell Medicare Advantage plans offered by the Medicare Advantage organization;
(ii) in the case where a State has a State appointment law, abide by such law; and
(iii) report to the applicable State the termination of any such agent or broker, including the reasons for such termination (as required under applicable State law).

(B) Compliance with State information requests
Each Medicare Advantage organization shall comply in a timely manner with any request by a State for information regarding the performance of a licensed agent, broker, or other third party representing the Medicare Advantage organization as part of an investigation by the State into the conduct of the agent, broker, or other third party.

(i) Effect of election of Medicare+Choice plan option

(1) Payments to organizations
Subject to sections 1395w–22(a)(5), 1395w–23(a)(4), 1395w–23(g), 1395w–23(h), 1395w–23(j)(1), 1395ww(h)(5)(D), and 1395w–23(m) of this title, payments under a contract with a Medicare+Choice organization under section 1395w–23(a) of this title with respect to an individual enrolling in Medicare Advantage plans conducted—
(A) through a licensed agent, broker, or other third party representing the Medicare Advantage organization; and
(B) at educational events.

(2) Limitations
Subject to sections 1395w–23(a)(4), 1395w–23(e), 1395w–23(g), 1395w–23(h), 1395w–27(f)(2), 1395w–27(a)(h), 1395ww(d)(11), and 1395ww(h)(3)(D) of this title, only the Medicare+Choice organization shall be entitled to receive payments from the Secretary under this subchapter for services furnished to the individual.

(j) Prohibited activities described and limitations on the conduct of certain other activities

(1) Prohibited activities described
The following prohibited activities are described in this paragraph:

(A) Unsolicited means of direct contact
Any unsolicited means of direct contact of prospective enrollees, including soliciting door-to-door or any outbound telemarketing without the prospective enrollee initiating contact.

(B) Cross-selling
The sale of other non-health related products (such as annuities and life insurance) during any sales or marketing activity or presentation conducted with respect to a Medicare Advantage plan.

(C) Meals
The provision of meals of any sort, regardless of value, to prospective enrollees at promotional and sales activities.

(D) Sales and marketing in health care settings and at educational events
Sales and marketing activities for the enrollment of individuals in Medicare Advantage plans that are conducted—
(i) in health care settings in areas where health care is delivered to individuals (such as physician offices and pharmacies), except in the case where such activities are conducted in common areas in health care settings; and
(ii) at educational events.

(2) Limitations
The Secretary shall establish limitations with respect to at least the following:

(A) Scope of marketing appointments
The scope of any appointment with respect to the marketing of a Medicare Advantage plan. Such limitation shall require advance agreement with a prospective enrollee on the scope of the marketing appointment and documentation of such agreement by the Medicare Advantage organization. In the case where the marketing appointment is in person, such documentation shall be in writing.

(B) Co-branding
The use of the name or logo of a co-branded network provider on Medicare Advantage plan membership and marketing materials.

(C) Limitation of gifts to nominal dollar value
The offering of gifts and other promotional items other than those that are of nominal value (as determined by the Secretary) to prospective enrollees at promotional activities.

(D) Compensation
The use of compensation other than as provided under guidelines established by the Secretary. Such guidelines shall ensure that the use of compensation creates incentives for agents and brokers to enroll individuals in the Medicare Advantage plan that is intended to best meet their health care needs.

(E) Required training, annual retraining, and testing of agents, brokers, and other third parties
The use by a Medicare Advantage organization of any individual as an agent, broker, or other third party representing the organization that has not completed an initial training and testing program and does not
complete an annual retraining and testing program.  


AMENDMENTS  

Subsec. (a)(1)(A). Pub. L. 108–173, § 102(a)(1)(A), substituted “(1) specified regional plans” for “(1) specified regional plans (including regional plans)” after “(1) specified regional plans” in heading, inserted cl. (i) designating the option and “(ii) designated regional or local plans” and inserted “(including (1) specified regional plans)” before period at end.  

References in Text  

Subsec. (a)(2)(B). Pub. L. 108–173, § 102(a)(1)(B), substituted “(i) on or after January 1, 2003, unless the enrollment is the continuation of such an enrollment in effect as of that date; or “(ii) as of any date if the number of such individuals so enrolled as of such date has reached 390,000.”

Subsec. (a)(1)(A)(i)(aa), Pub. L. 108–173, § 223(b)(2), struck out at end “The Secretary shall submit such a report, by not later than March 1, 2002, on whether the time limitation under subparagraph (A)(i) should be extended or removed and whether to change the numerical limitation under subparagraph (A)(ii).”

Subsec. (a)(1)(A)(ii), Pub. L. 108–173, § 222(b)(3)(B)(ii), substituted “(i) on or after January 1, 2003, unless the enrollment is the continuation of such an enrollment in effect as of that date; or “(ii) as of any date if the number of such individuals so enrolled as of such date has reached 390,000.”

Subsec. (a)(1)(B)(i), Pub. L. 108–173, § 222(b)(3)(B)(ii), substituted “(i) on or after January 1, 2003, unless the enrollment is the continuation of such an enrollment in effect as of that date; or “(ii) as of any date if the number of such individuals so enrolled as of such date has reached 390,000.”


Subsec. (b)(4)(A), Pub. L. 108–173, § 233(b)(2), struck out first sentence which read as follows: “An individual is not eligible to enroll in an MSA plan under this part— “(i) on or after January 1, 2003, unless the enrollment is the continuation of such an enrollment in effect as of that date; or “(ii) as of any date if the number of such individuals so enrolled as of such date has reached 390,000.”


Subsec. (d)(4)(B)(ii), Pub. L. 108–173, § 222(b)(3)(B)(ii), substituted “monthly amount of the premium charged to an individual” for “Medicare+Choice monthly basic beneficiary premium and Medicare+Choice monthly supplemental beneficiary premium, if any, for the plan or, in the case of an MSA plan, the Medicare+Choice monthly MSA premium”.

Subsec. (d)(4)(E). Pub. L. 108–173, § 222(b)(3)(B)(iv), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Whether the organization offering the plan includes mandatory supplemental benefits in its base benefit package or offers optional supplemental benefits and the terms and conditions (including premium) for such coverage.”

Subsec. (e)(1). Pub. L. 108–173, § 202(a)(4), inserted at end “If any portion of an individual’s initial enrollment period under part B of this subchapter occurs after the end of the annual, coordinated election period described in paragraph (3)(B)(ii), the initial enrollment period under this part shall further extend through the end of the individual’s initial enrollment period under part B of this subchapter.”


Subsec. (e)(2)(B)(ii), Pub. L. 108–173, § 202(a)(6)(A), inserted “, and paragraph (3)(A)(ii)”, as after “clauses (i) and (ii)”.

Subsec. (e)(2)(C)(ii), Pub. L. 108–173, § 202(a)(6)(B), substituted “clauses (i) and (ii)” for “clause (i)”.

Prior to amendment, text read as follows: “For purposes of this section, the term ‘annual, coordinated election period’ means, with respect to a year before 2003 and after 2005, the month of November before such year and with respect to 2003, 2004, and 2005, the period beginning on November 15 and ending on December 31 of the year before such year.”

Subsec. (e)(3)(C), Pub. L. 108–173, §102(a)(3)(A), inserted “and during the period described in subparagraph (B)(iii) after ‘beginning with 1999’.”

Subsec. (e)(3)(D), Pub. L. 108–173, §102(a)(3)(B), in heading, substituted “campaign” for “campaign in 1998” and, in text, inserted at end “During the period described in subparagraph (B)(iii), the Secretary shall provide for an educational and publicity campaign to inform MA eligible individuals about the availability of MA plans (including MA-PD plans) offered in different areas and the election process provided under this section.”


Subsec. (e)(5)(A)(ii), Pub. L. 108–173, §233(d)(2), substituted semicolon for “;” or “,”.

Subsec. (e)(5)(A)(ii), Pub. L. 108–173, §233(d)(3), struck out cl. (iii) which read as follows: “the month of November.”


Subsec. (f)(3), Pub. L. 108–173, §102(a)(5), inserted “other than the period described in clause (ii) of such subsection” after “(subsection (e)(3)(B) of this section).”


Subsec. (o)(3), Pub. L. 108–173, §532(c)(1)(A), substituted “‘means, with respect to a year before 2003 and after 2005, the month of November before such year and with respect to 2003, 2004, and 2005, the period beginning on November 15 and ending on December 31 of the year before such year’” for “‘means, with respect to a calendar year (beginning with 2000), the month of November before such year’.”


Subsec. (q)(6)(A), Pub. L. 108–178, §532(c)(1)(B), substituted “during the annual, coordinated election period under paragraph (3) for each subsequent year” for “each subsequent year (as provided in paragraph (3)).”


Subsec. (s)(2), Pub. L. 108–554, §11(a)(6) [title VI, §619(a)], struck out “, except that if such election or change is made after the 10th day of any calendar month, then the election or change shall not take effect until the first day of the second calendar month following the date on which the election or change is made” before period at end.
subsection [amending this section] shall apply on and after January 1, 2006."


Pub. L. 108–173, title II, §231(f)(1), Dec. 8, 2003, 117 Stat. 2208, provided that: "The amendments made by subsections (a), (b), and (c) [amending this section and section 1395w–28 of this title] shall take effect upon the date of the enactment of this Act (Dec. 8, 2003)."

Amendment by section 227(b)(2)(A) of Pub. L. 108–173 applicable to services provided on or after Jan. 1, 2006, and contract years beginning on or after such date, see section 237(e) of Pub. L. 108–173, set out as a note under section 1395a–7b of this title.

Effective Date of 2002 Amendment


Effective Date of 2000 Amendment

Amendment by section 1(a)(6) [title VI, §606(a)(2)(C)] of Pub. L. 106–554 applicable to years beginning with 2003, see section 1(a)(6) [title VI, §606(b)] of Pub. L. 106–554, set out as a note under section 1395v of this title.

Pub. L. 106–554, §148(a) [title VI, §613(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–560, provided that: "The amendments made by subsection (a) [amending this section] shall apply to marketing material submitted on or after January 1, 2001."

Pub. L. 106–554, §148(a) [title VI, §619(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–563, provided that: "The amendment made by this section [amending this section] shall apply to elections and changes of coverage made on or after June 1, 2001."

Pub. L. 106–554, §148(a) [title VI, §620(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–564, provided that:

(1) in general.—The amendment made by subsection (a) [amending this section] shall apply to terminations and discontinuations occurring after the date of the enactment of this Act (Dec. 21, 2000).

(2) application to prior plan terminations.—Clause (ii) of section 1851(a)(3)(B) of the Social Security Act [subsection (a)(3)(B)(ii) of this section] (as inserted by subsection (a)) shall also apply to individuals whose enrollment in a Medicare+Choice plan was terminated or discontinued after December 31, 1998, and before the date of the enactment of this Act. In applying this paragraph, such an individual shall be treated, for purposes of part C of title XVIII of the Social Security Act [this part], as having discontinued enrollment in such a plan as of the date of the enactment of this Act."

Effective Date of 1999 Amendment


(1) The amendments made by subsection (a) [amending this section and section 1395w–5 of this title] apply to notices of impending terminations or discontinuances made on or after the date of the enactment of this Act (Nov. 29, 1999).

(2) The amendments made by subsection (c) [amending this section] apply to elections made on or after the date of the enactment of this Act (Nov. 29, 1999) with respect to eliminations of Medicare+Choice payment areas from a service area that occur before, on, or after the date of the enactment of this Act."


Regulations

Pub. L. 108–173, title II, §223(b), Dec. 8, 2003, 117 Stat. 2207, provided that: "The Secretary [of Health and Human Services] shall revise the regulations previously promulgated to carry out part C of title XVIII of the Social Security Act [this part] to carry out the provisions of this Act [see Tables for classification]."

Construccion

Pub. L. 108–173, title II, §223(b)(2), Dec. 8, 2003, 117 Stat. 2181, provided that: "Nothing in part C of title XVIII of the Social Security Act [this part] shall be construed as preventing an MSA plan or MA private fee-for-service plan from having a service area that covers one or more MA regions or the entire nation."

No Cuts in Guaranteed Benefits


Implementation of Medicare Advantage Program


(a) in general.—There is hereby established the Medicare Advantage program. The Medicare Advantage program shall consist of the program under part C of title XVIII of the Social Security Act [this part] (as amended by this Act [see Tables for classification]).

(b) references.—Subject to subsection (c), any reference to the program under part C of title XVIII of the Social Security Act [this part] shall be deemed a reference to the Medicare Advantage program and, with respect to such part, any reference to 'Medicare Advantage' is deemed a reference to 'Medicare Advantage' and 'MA'.

(c) transition.—In order to provide for an orderly transition and avoid beneficiary and provider confusion, the Secretary [of Health and Human Services] shall provide for an appropriate transition in the use of the terms 'Medicare+Choice' and 'Medicare Advantage' (or 'MA') in reference to the program under part C of title XVIII of the Social Security Act [this part]. Such transition shall be fully completed for all materials for plan years beginning not later than January 1, 2006. Before the completion of such transition, any reference to 'Medicare Advantage' or 'MA' shall be deemed to include a reference to 'Medicare+Choice'."

Report on Impact of Increased Financial Assistance to Medicare Advantage Plans

Pub. L. 108–173, title II, §211(g), Dec. 8, 2003, 117 Stat. 2178, directed the Secretary of Health and Human Services to submit to Congress, not later than July 1, 2006, a report that described the impact of additional financing provided under Pub. L. 108–173 and other Acts on the availability of Medicare Advantage plans in dif-
different areas and its impact on lowering premiums and increasing benefits under such plans.

**MedPAC Study and Report on Clarification of Authority Regarding Disapproval of Unreasonable Beneficiary Cost-Sharing**

Pub. L. 108–173, title II, §211(b), Dec. 8, 2003, 117 Stat. 2179, directed the Medicare Payment Advisory Commission, in consultation with beneficiaries, consumer groups, employers, and organizations offering plans under this part, to conduct a study to determine the extent to which the cost-sharing structures under such plans affect access to covered services or select enrollees based on the health status of eligible individuals described in subsection (a)(3) of this section, and to submit a report to Congress on such study not later than Dec. 31, 2004.

**Moratorium on New Local Preferred Provider Organization Plans**

Pub. L. 108–173, title II, §221(a)(2), Dec. 8, 2003, 117 Stat. 2180, directed the Secretary of Health and Human Services not to permit the offering of a local preferred provider organization plan under this part during 2006 or 2007 in a service area unless such plan was offered under this part (including under a demonstration project under this part) in such area as of Dec. 31, 2005.

**Specialized MA Plans**


Pub. L. 110–173, title I, §108(b), Dec. 29, 2009, 121 Stat. 2496, provided that: “(1) Authority to Designate Other Plans as Specialized MA Plans.—During the period beginning on January 1, 2008, and ending on December 31, 2009, the Secretary of Health and Human Services shall not exercise the authority provided under section 231(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 [Pub. L. 108–173] (42 U.S.C. 1397w–21 note) to designate other plans as specialized MA plans for special needs individuals under part C of title XVIII of the Social Security Act [this part]. The preceding sentence shall not apply to plans designated as specialized MA plans for special needs individuals under such authority prior to January 1, 2008.

“(2) Enrollment in New Plans.—During the period beginning on January 1, 2008, and ending on December 31, 2009, the Secretary of Health and Human Services shall not permit enrollment of any individual residing in an area in a specialized Medicare Advantage plan for special needs individuals under part C of title XVIII of the Social Security Act to take effect unless that specialized Medicare Advantage plan for special needs individuals was available for enrollment for individuals residing in that area on January 1, 2008.”

Pub. L. 108–173, title II, §231(d), Dec. 8, 2003, 117 Stat. 2208, provided that: “In promulgating regulations to carry out section 1851(a)(2)(A)(ii) of the Social Security Act [subsection (a)(1)(i) of this section] (as added by subsection (a)) and section 1851(b)(6) of such Act [section 1397w–26(b)(6) of this title] (as added by subsection (b)), the Secretary of Health and Human Services may provide (notwithstanding section 1859(b)(6)(A) of such Act) for the offering of specialized MA plans for special needs individuals by MA plans that disproportionately serve special needs individuals.”

Pub. L. 108–173, title II, §231(e), Dec. 8, 2003, 117 Stat. 2208, provided that: “Not later than December 31, 2007, the Secretary of Health and Human Services shall submit to Congress a report that assesses the impact of specialized MA plans for special needs individuals on the cost and quality of services provided to enrollees. Such report shall include an assessment of the costs and savings to the Medicare program as a result of amendments made by subsections (a), (b), and (c) [amending this section and section 1395w–28 of this title].”

**MedPAC Study on Consumer Coalitions**

Pub. L. 106–554, §1(a)(6) [title I, §124], Dec. 21, 2000, 114 Stat. 2783, 2783A–478, directed the Medicare Payment Advisory Commission to conduct a study examining the use of consumer coalitions in the marketing of Medicare+Choice plans under the Medicare program under this subchapter and to submit a report on the study to Congress no later than 1 year after Dec. 21, 2000.

**Report on Accounting for VA and DOD Expenditures for Medicare Beneficiaries**


**Report on Medicare MSA (Medical Savings Account) Plans**

Pub. L. 106–113, div. B, §1000(a)(6) [title V, §552(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–393, directed the Medicare Payment Advisory Commission to submit to Congress, no later than 1 year after Nov. 29, 1999, a report on specific legislative changes that should be made to make MSA plans a viable option under the Medicare+Choice program.

**GAO Audit and Reports on Provision of Medicare+Choice Health Information to Beneficiaries**

Pub. L. 106–113, div. B, §1000(a)(6) [title V, §552(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–393, provided that: “(1) In General.—Beginning in 2000, the Comptroller General shall conduct an annual audit of the expenditures by the Secretary of Health and Human Services during the preceding year in providing information regarding the Medicare+Choice program under part C of title XVIII of the Social Security Act (42 U.S.C. 1395w–21 et seq.) to eligible Medicare beneficiaries.

“(2) (2) Reports.—Not later than March 31 of 2001, 2004, 2007, and 2010, the Comptroller General shall submit a report to Congress on the results of the audit of the expenditures of the preceding 3 years conducted pursuant to subsection (a) [enacting provisions set out as a note under section 1395w of this title], together with an evaluation of the effectiveness of the means used by the Secretary of Health and Human Services in providing information regarding the Medicare+Choice program under part C of title XVIII of the Social Security Act (42 U.S.C. 1395w–21 et seq.) to eligible medicare beneficiaries.”

**Enrollment Transition Rule**

Section 4002(c) of Pub. L. 105–33 provided that: “An individual who is enrolled on December 31, 1998, with an eligible organization under section 1876 of the Social Security Act (42 U.S.C. 1395mm) shall be considered to be enrolled with that organization on January 1, 1999, under part C of title XVIII of such Act [this part] if that organization has a contract under that part for providing services on January 1, 1999 (unless the individual has disenrolled effective on that date).”

**Secretarial Submission of Legislative Proposal**

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REPORT ON INTEGRATION AND TRANSITION

Pub. L. 105–33, title IV, §4014(c), Aug. 5, 1997, 111 Stat. 337, directed the Secretary of Health and Human Services to submit to Congress, no later than Jan. 1, 1999, a plan which provided for the integration of health plans offered by social health maintenance organizations and similar plans as an option under the Medicare+Choice program under this part, for a transition for such organizations operating under demonstration project authority, and for appropriate payment levels for plans offered by such organizations.

MEDICARE ENROLLMENT DEMONSTRATION PROJECT

Section 4018 of Pub. L. 105–33 provided that:

“(a) DEMONSTRATION PROJECT.—

“(1) ESTABLISHMENT.—The Secretary shall implement a demonstration project (in this section referred to as the ‘project’) for the purpose of evaluating the use of a third-party contractor to conduct the Medicare+Choice plan enrollment and disenrollment functions, as described in part C of title XVIII of the Social Security Act [this part] (as added by section 4001 of this Act), in an area.

“(2) CONSULTATION.—Before implementing the project under this section, the Secretary shall consult with affected parties on—

“(A) the design of the project;

“(B) the selection criteria for the third-party contractor; and

“(C) the establishment of performance standards, as described in paragraph (3).

“(3) PERFORMANCE STANDARDS.—

“(A) IN GENERAL.—The Secretary shall establish performance standards for the accuracy and timeliness of the Medicare+Choice plan enrollment and disenrollment functions performed by the third-party contractor.

“(B) NONCOMPLIANCE.—In the event that the third-party contractor is not in substantial compliance with the performance standards established under subparagraph (A), such enrollment and disenrollment functions shall be performed by the Medicare+Choice plan until the Secretary appoints a new third-party contractor.

“(b) REPORT TO CONGRESS.—The Secretary shall periodically report to Congress on the progress of the project conducted pursuant to this section.

“(c) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of part C of title XVIII of the Social Security Act [this part] (as amended by section 4001 of this Act) to such extent and for such period as the Secretary determines is necessary to conduct the project.

“(d) DURATION.—A demonstration project under this section shall be conducted for a 3-year period.

“(e) SEPARATE FROM OTHER DEMONSTRATION PROJECTS.—A project implemented by the Secretary under this section shall not be conducted in conjunction with any other demonstration project.”

§ 1395w–22. Benefits and beneficiary protections

(a) Basic benefits

(1) Requirement

(A) In general

Except as provided in section 1395w–28(b)(3) of this title for MSA plans and except as provided in paragraph (6) for MA regional plans, each Medicare+Choice plan shall provide to members enrolled under this part, through providers and other persons that meet the applicable requirements of this subchapter and part A of subchapter XI of this chapter, benefits under the original medicare fee-for-service program option (and, for plan years before 2006, additional benefits required under section 1395w–24(f)(1)(A) of this title).

(B) Benefits under the original medicare fee-for-service program option defined

(i) In general

For purposes of this part, the term ‘benefits under the original medicare fee-for-service program option’ means those items and services (other than hospice care) for which benefits are available under parts A and B to individuals entitled to benefits under part A and enrolled under part B, with cost-sharing for those services as required under parts A and B or, subject to clause (ii), an actuarially equivalent level of cost-sharing as determined in this part.

(ii) Special rule for regional plans

In the case of an MA regional plan in determining an actuarially equivalent level of cost-sharing with respect to benefits under the original medicare fee-for-service program option, there shall only be taken into account, with respect to the application of section 1395w–27a(b)(2) of this title, such expenses only with respect to subparagraph (A) of such section.

(iii) Limitation on variation of cost sharing for certain benefits

Subject to clause (v), cost-sharing for services described in clause (iv) shall not exceed the cost-sharing required for those services under parts A and B.

(iv) Services described

The following services are described in this clause:

(I) Chemotherapy administration services.

(II) Renal dialysis services (as defined in section 1395rr(b)(14)(B) of this title).

(III) Skilled nursing care.

(IV) Such other services that the Secretary determines appropriate (including services that the Secretary determines require a high level of predictability and transparency for beneficiaries).

(v) Exception

In the case of services described in clause (iv) for which there is no cost-sharing required under parts A and B, cost-sharing may be required for those services in accordance with clause (i).

(2) Satisfaction of requirement

(A) In general

A Medicare+Choice plan (other than an MSA plan) offered by a Medicare+Choice organization satisfies paragraph (1)(A), with respect to benefits for items and services furnished other than through a provider or other person that has a contract with the organization offering the plan, if the plan provides payment in an amount so that—

(i) the sum of such payment amount and any cost sharing provided for under the plan, is equal to at least...
(ii) the total dollar amount of payment for such items and services as would otherwise be authorized under parts A and B of this subchapter (including any balance billing permitted under such parts).

(B) Reference to related provisions

For provision relating to—

(i) limitations on balance billing against Medicare+Choice organizations for non-contract providers, see subsection (k) of this section and section 1395cc(a)(1)(O) of this title, and

(ii) limiting actuarial value of enrollee liability for covered benefits, see section 1395w–24(e) of this title.

(C) Election of uniform coverage determination

In the case of a Medicare+Choice organization that offers a Medicare+Choice plan in an area in which more than one local coverage determination is applied with respect to different parts of the area, the organization may elect to have the local coverage determination for the part of the area that is most beneficial to Medicare+Choice enrollees (as identified by the Secretary) apply with respect to all Medicare+Choice enrollees enrolled in the plan.

(3) Supplemental benefits

(A) Benefits included subject to Secretary's approval

Each Medicare+Choice organization may provide to individuals enrolled under this part, other than under an MSA plan (without affording those individuals an option to decline the coverage), supplemental health care benefits that the Secretary may approve. The Secretary shall approve any such supplemental benefits unless the Secretary determines that including such supplemental benefits would substantially discourage enrollment by Medicare+Choice eligible individuals with the organization.

(B) At enrollees' option

(i) In general

Subject to clause (ii), a Medicare+Choice organization may provide to individuals enrolled under this part supplemental health care benefits that the individuals may elect, at their option, to have covered.

(ii) Special rule for MSA plans

A Medicare+Choice organization may not provide, under an MSA plan, supplemental health care benefits that cover the deductible described in section 1395w–28(b)(2)(B) of this title. In applying the previous sentence, health benefits described in section 1395ss(u)(2)(B) of this title shall not be treated as covering such deductible.

(C) Application to Medicare+Choice private fee-for-service plans

Nothing in this paragraph shall be construed as preventing a Medicare+Choice private fee-for-service plan from offering supplemental benefits that include payment for some or all of the balance billing amounts permitted consistent with subsection (k) of this section and coverage of additional services that the plan finds to be medically necessary. Such benefits may include reductions in cost-sharing below the actuarial value specified in section 1395w–24(e)(4)(B) of this title.

(4) Organization as secondary payer

Notwithstanding any other provision of law, a Medicare+Choice organization may (in the case of the provision of items and services to an individual under a Medicare+Choice plan under circumstances in which payment under this subchapter is made secondary pursuant to section 1395y(b)(2) of this title) charge or authorize the provider of such services to charge, in accordance with the charges allowed under a law, plan, or policy described in such section—

(A) the insurance carrier, employer, or other entity which under such law, plan, or policy is to pay for the provision of such services, or

(B) such individual to the extent that the individual has been paid under such law, plan, or policy for such services.

(5) National coverage determinations and legislative changes in benefits

If there is a national coverage determination or legislative change in benefits required to be provided under this part made in the period beginning on the date of an announcement under section 1395w–23(b) of this title and ending on the date of the next announcement under such section and the Secretary projects that the determination will result in a significant change in the costs to a Medicare+Choice organization of providing the benefits that are the subject of such national coverage determination and that such change in costs was not incorporated in the determination of the annual Medicare+Choice capitation rate under section 1395w–23 of this title included in the announcement made at the beginning of such period, then, unless otherwise required by law—

(A) such determination or legislative change in benefits shall not apply to contracts under this part until the first contract year that begins after the end of such period, and

(B) if such coverage determination or legislative change provides for coverage of additional benefits or coverage under additional circumstances, section 1395w–21(i)(1) of this title shall not apply to payment for such additional benefits or benefits provided under such additional circumstances until the first contract year that begins after the end of such period.

The projection under the previous sentence shall be based on an analysis by the Chief Actuary of the Centers for Medicare & Medicaid Services of the actuarial costs associated with the coverage determination or legislative change in benefits.
(6) Special benefit rules for regional plans
In the case of an MA plan that is an MA regional plan, benefits under the plan shall include the benefits described in paragraphs (1) and (2) of section 1395w–27a(b) of this title.

(7) Limitation on cost-sharing for dual eligibles and qualified medicare beneficiaries
In the case of an individual who is a full-benefit dual eligible individual (as defined in section 1396u–5(c)(6) of this title) or a qualified medicare beneficiary (as defined in section 1396d(p)(1) of this title) and who is enrolled in a specialized Medicare Advantage plan for special needs individuals described in section 1395w–28(b)(6)(B)(ii) of this title, the plan may not impose cost-sharing that exceeds the amount of cost-sharing that would be permitted with respect to the individual under subchapter XIX if the individual were not enrolled in such plan.

(b) Antidiscrimination

(1) Beneficiaries

(A) In general
A Medicare+Choice organization may not deny, limit, or condition the coverage or provision of benefits under this part, for individuals permitted to be enrolled with the organization under this part, based on any health status-related factor described in section 2702(a)(1) of the Public Health Service Act. The Secretary shall not approve a plan of an organization if the Secretary determines that the design of the plan and its benefits are likely to substantially discourage enrollment by certain MA eligible individuals with the organization.

(B) Construction
Subparagraph (A) shall not be construed as requiring a Medicare+Choice organization to enroll individuals who are determined to have end-stage renal disease, except as provided under section 1395w–21(d)(2)(A) of this title.

(2) Providers
A Medicare+Choice organization shall not discriminate with respect to participation, reimbursement, or indemnification as to any provider who is acting within the scope of the provider’s license or certification under applicable State law, solely on the basis of such license or certification. This paragraph shall not be construed to prohibit a plan from including providers only to the extent necessary to meet the needs of the plan’s enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the plan.

(c) Disclosure requirements

(1) Detailed description of plan provisions
A Medicare+Choice organization shall disclose, in clear, accurate, and standardized form to each enrollee with a Medicare+Choice plan offered by the organization under this part at the time of enrollment and at least annually thereafter, the following information regarding such plan:

(A) Service area
The plan’s service area.

(B) Benefits
Benefits offered under the plan, including information described in section 1395w–21(d)(3)(A) of this title and exclusions from coverage and, if it is an MSA plan, a comparison of benefits under such a plan with benefits under other Medicare+Choice plans.

(C) Access
The number, mix, and distribution of plan providers, out-of-network coverage (if any) provided by the plan, and any point-of-service option (including the supplemental premium for such option).

(D) Out-of-area coverage
Out-of-area coverage provided by the plan.

(E) Emergency coverage
Coverage of emergency services, including—
(i) the appropriate use of emergency services, including use of the 911 telephone system or its local equivalent in emergency situations and an explanation of what constitutes an emergency situation;
(ii) the process and procedures of the plan for obtaining emergency services; and
(iii) the locations of (I) emergency departments, and (II) other settings, in which plan physicians and hospitals provide emergency services and post-stabilization care.

(F) Supplemental benefits
Supplemental benefits available from the organization offering the plan, including—
(i) whether the supplemental benefits are optional,
(ii) the supplemental benefits covered, and
(iii) the Medicare+Choice monthly supplemental beneficiary premium for the supplemental benefits.

(G) Prior authorization rules
Rules regarding prior authorization or other review requirements that could result in nonpayment.

(H) Plan grievance and appeals procedures
All plan appeal or grievance rights and procedures.

(I) Quality improvement program
A description of the organization’s quality improvement program under subsection (e) of this section.

(2) Disclosure upon request
Upon request of a Medicare+Choice eligible individual, a Medicare+Choice organization must provide the following information to such individual:

(A) The general coverage information and general comparative plan information made available under clauses (i) and (ii) of section 1395w–21(d)(2)(A) of this title.
(B) Information on procedures used by the organization to control utilization of services and expenditures.

(C) Information on the number of grievances, redeterminations, and appeals and on the disposition in the aggregate of such matters.

(D) An overall summary description as to the method of compensation of participating physicians.

(d) Access to services

(1) In general

A Medicare+Choice organization offering a Medicare+Choice plan may select the providers from whom the benefits under the plan are provided so long as—

(A) the organization makes such benefits available and accessible to each individual electing the plan within the plan service area with reasonable promptness and in a manner which assures continuity in the provision of benefits;

(B) when medically necessary the organization makes such benefits available and accessible 24 hours a day and 7 days a week;

(C) the plan provides for reimbursement with respect to services which are covered under subparagraphs (A) and (B) and which are provided to such an individual other than through the organization, if—

(i) the services were not emergency services (as defined in paragraph (3)), but (I) the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition, and (II) it was not reasonable given the circumstances to obtain the services through the organization;

(ii) the services were renal dialysis services and were provided other than through the organization because the individual was temporarily out of the plan’s service area, or

(iii) the services are maintenance care or post-stabilization care covered under the guidelines established under paragraph (2);

(D) the organization provides access to appropriate providers, including credentialed specialists, for medically necessary treatment and services; and

(E) coverage is provided for emergency services (as defined in paragraph (3)) without regard to prior authorization or the emergency care provider’s contractual relationship with the organization.

(2) Guidelines respecting coordination of post-stabilization care

A Medicare+Choice plan shall comply with such guidelines as the Secretary may prescribe relating to promoting efficient and timely coordination of appropriate maintenance and post-stabilization care of an enrollee after the enrollee has been determined to be stable under section 1395dd of this title.

(3) “Emergency services” defined

In this subsection—

(A) In general

The term “emergency services” means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that—

(i) are furnished by a provider that is qualified to furnish such services under this subchapter, and

(ii) are needed to evaluate or stabilize an emergency medical condition (as defined in subparagraph (B)).

(B) Emergency medical condition based on prudent layperson

The term “emergency medical condition” means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—

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

(ii) serious impairment to bodily functions, or

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

(4) Assuring access to services in Medicare+Choice private fee-for-service plans

In addition to any other requirements under this part, in the case of a Medicare+Choice private fee-for-service plan, the organization offering the plan must demonstrate to the Secretary that the organization has sufficient number and range of health care professionals and providers willing to provide services under the terms of the plan. Subject to paragraphs (5) and (6), the Secretary shall find that an organization has met such requirement with respect to any category of health care professional or provider if, with respect to that category of provider—

(A) the plan has established payment rates for covered services furnished by that category of provider that are not less than the payment rates provided for under part A of this subchapter, part B of this subchapter, or both, for such services, or

(B) the plan has contracts or agreements (other than deemed contracts or agreements under subsection (j)(6) of this section) with a sufficient number and range of providers within such category to meet the access standards in subparagraphs (A) through (E) of paragraph (1), or a combination of both. The previous sentence shall not be construed as restricting the persons from whom enrollees under such a plan may obtain covered benefits, except that, if a plan entirely meets such requirement with respect to a category of health care professional or provider on the basis of subparagraph (B), it may provide for a higher beneficiary cost-payment in the case of health care professionals and providers of that category who do not have contracts or agreements (other than deemed contracts or agreements under subsection (j)(6) of this section) to provide covered services under the terms of the plan.
(5) Requirement of certain nonemployer Medicare Advantage private fee-for-service plans to use contracts with providers

(A) In general

For plan year 2011 and subsequent plan years, in the case of a Medicare Advantage private fee-for-service plan not described in paragraph (1) or (2) of section 1395w–27(i) of this title operating in a network area (as defined in subparagraph (B)), the plan shall meet the access standards under paragraph (4) in that area only through entering into written contracts as provided for under subparagraph (B) of such paragraph and not, in whole or in part, through the establishment of payment rates meeting the requirements under subparagraph (A) of such paragraph.

(B) Network area defined

For purposes of subparagraph (A), the term “network area” means, for a plan year, an area which the Secretary identifies (in the Secretary’s announcement of the proposed payment rates for the previous plan year under section 1395w–23(b)(1)(B) of this title) as having at least 2 network-based plans (as defined in subparagraph (C)) with enrollment under this part as of the first day of the year in which such announcement is made.

(C) Network-based plan defined

(i) In general

For purposes of subparagraph (B), the term “network-based plan” means—

(I) except as provided in clause (ii), a Medicare Advantage plan that is a coordinated care plan described in section 1395w–21(a)(2)(A)(i) of this title;

(II) a network-based MSA plan; and

(III) a reasonable cost reimbursement plan under section 1395mm of this title.

(ii) Exclusion of non-network regional PPOS

The term “network-based plan” shall not include an MA regional plan that, with respect to the area, meets access adequacy standards under this part substantially through the authority of section 422.112(a)(1)(ii) of title 42, Code of Federal Regulations, rather than through written contracts.

(6) Requirement of all employer Medicare Advantage private fee-for-service plans to use contracts with providers

For plan year 2011 and subsequent plan years, in the case of a Medicare Advantage private fee-for-service plan that is described in paragraph (1) or (2) of section 1395w–27(i) of this title, the plan shall meet the access standards under paragraph (4) only through entering into written contracts as provided for under subparagraph (B) of such paragraph and not, in whole or in part, through the establishment of payment rates meeting the requirements under subparagraph (A) of such paragraph.

(e) Quality improvement program

(1) In general

Each MA organization shall have an ongoing quality improvement program for the purpose of improving the quality of care provided to enrollees in each MA plan offered by such organization.

(2) Chronic care improvement programs

As part of the quality improvement program under paragraph (1), each MA organization shall have a chronic care improvement program. Each chronic care improvement program shall have a method for monitoring and identifying enrollees with multiple or sufficiently severe chronic conditions that meet criteria established by the organization for participation under the program.

(3) Data

(A) Collection, analysis, and reporting

(i) In general

Except as provided in clauses (ii) and (iii) with respect to plans described in such clause and subject to subparagraph (B), as part of the quality improvement program under paragraph (1), each MA organization shall provide for the collection, analysis, and reporting of data that permits the measurement of health outcomes and other indices of quality. With respect to MA private fee-for-service plans and MSA plans, the requirements under the preceding sentence may not exceed the requirements under this subparagraph with respect to MA local plans that are preferred provider organization plans, except that, for plan year 2010, the limitation under clause (iii) shall not apply and such requirements shall apply only with respect to administrative claims data.

(ii) Special requirements for specialized MA plans for special needs individuals

In addition to the data required to be collected, analyzed, and reported under clause (i) and notwithstanding the limitations under subparagraph (B), as part of the quality improvement program under paragraph (1), each MA organization offering a specialized Medicare Advantage plan for special needs individuals shall provide for the collection, analysis, and reporting of data that permits the measurement of health outcomes and other indices of quality with respect to the requirements described in paragraphs (2) through (5) of subsection (f). Such data may be based on claims data and shall be at the plan level.

(iii) Application to local preferred provider organizations and MA regional plans

Clausel (i) shall apply to MA organizations with respect to MA local plans that are preferred provider organization plans and to MA regional plans only insofar as services are furnished by providers or services, physicians, and other health care practitioners and suppliers that have contracts with such organization to furnish services under such plans.

(iv) Definition of preferred provider organization plan

In this subparagraph, the term “preferred provider organization plan” means an MA plan that—
(I) has a network of providers that have agreed to a contractually specified reimbursement for covered benefits with the organization offering the plan;

(II) provides for reimbursement for all covered benefits regardless of whether such benefits are provided within such network of providers; and

(III) is offered by an organization that is not licensed or organized under State law as a health maintenance organization.

(B) Limitations

(i) Types of data

The Secretary shall not collect under subparagraph (A) data on quality, outcomes, and beneficiary satisfaction to facilitate consumer choice and program administration other than the types of data that were collected by the Secretary as of November 1, 2003.

(ii) Changes in types of data

Subject to subclause (iii), the Secretary may only change the types of data that are required to be submitted under subparagraph (A) after submitting to Congress a report on the reasons for such changes that was prepared in consultation with MA organizations and private accrediting bodies.

(iii) Construction

Nothing in the provision described in this subsection shall be construed as restricting the ability of the Secretary to carry out the duties under section 1395w–21(d)(4)(D) of this title.

(4) Treatment of accreditation

(A) In general

The Secretary shall provide that a Medicare+Choice organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccredited) by a private accrediting organization is accredited (and periodically reaccred

(B) Requirements described

The provisions described in this subparagraph are the following:

(i) Paragraphs (1) through (3) of this subsection (relating to quality improvement programs).

(ii) Subsection (b) of this section (relating to antidiscrimination).

(iii) Subsection (d) of this section (relating to access to services).

(iv) Subsection (h) of this section (relating to confidentiality and accuracy of enrollee records).

(v) Subsection (l) of this section (relating to information on advance directives).

(vi) Subsection (j) of this section (relating to provider participation rules).

(vii) The requirements described in section 1395w–104(j) of this title, to the extent such requirements apply under section 1395w–131(c) of this title.

(C) Timely action on applications

The Secretary shall determine, within 210 days after the date the Secretary receives an application by a private accrediting organization and using the criteria specified in section 1395bb(a)(2) of this title, whether the process of the private accrediting organization meets the requirements with respect to any specific clause in subparagraph (B) with respect to which the application is made. The Secretary may not deny such an application on the basis that it seeks to meet the requirements with respect to only one, or more than one, such specific clause.

(D) Construction

Nothing in this paragraph shall be construed as limiting the authority of the Secretary under section 1395w–27 of this title, including the authority to terminate contracts with Medicare+Choice organizations under subsection (c)(2) of such section.

(f) Grievance mechanism

Each Medicare+Choice organization must provide meaningful procedures for hearing and resolving grievances between the organization (including any entity or individual through which the organization provides health care services) and enrollees with Medicare+Choice plans of the organization under this part.

(g) Coverage determinations, reconsiderations, and appeals

(1) Determinations by organization

(A) In general

A Medicare+Choice organization shall have a procedure for making determinations regarding whether an individual enrolled with the plan of the organization under this part is entitled to receive a health service under this section and the amount (if any) that the individual is required to pay with respect to such service. Subject to paragraph (3), such procedures shall provide for such determination to be made on a timely basis.

(B) Explanation of determination

Such a determination that denies coverage, in whole or in part, shall be in writing and shall include a statement in understandable language of the reasons for the denial and a description of the reconsideration and appeals processes.

(2) Reconsiderations

(A) In general

The organization shall provide for reconsideration of a determination described in paragraph (1)(B) upon request by the enrollee involved. The reconsideration shall be within a time period specified by the Secretary, but shall be made, subject to paragraph (3), not later than 60 days after the date of the receipt of the request for reconsideration.
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(3) Expedited determinations and reconsiderations

(A) Receipt of requests

(i) Enrollee requests

An enrollee in a Medicare+Choice plan may request, either in writing or orally, an expedited determination under paragraph (1) or an expedited reconsideration under paragraph (2) by the Medicare+Choice organization.

(ii) Physician requests

A physician, regardless whether the physician is affiliated with the organization or not, may request, either in writing or orally, such an expedited determination or reconsideration.

(B) Organization procedures

(i) In general

The Medicare+Choice organization shall maintain procedures for expediting organization determinations and reconsiderations when, upon request of an enrollee, the organization determines that the application of the normal time frame for making a determination (or a reconsideration involving a determination) could seriously jeopardize the life or health of the enrollee or the enrollee’s ability to regain maximum function.

(ii) Expedition required for physician requests

In the case of a request for an expedited determination or reconsideration made under subparagraph (A)(ii), the organization shall expedite the determination or reconsideration if the request indicates that the application of the normal time frame for making a determination (or a reconsideration involving a determination) could seriously jeopardize the life or health of the enrollee or the enrollee’s ability to regain maximum function.

(iii) Timely response

In cases described in clauses (i) and (ii), the organization shall notify the enrollee (and the physician involved, as appropriate) of the determination or reconsideration under time limitations established by the Secretary, but not later than 72 hours of the time of receipt of the request for the determination or reconsideration (or receipt of the information necessary to make the determination or reconsideration), or such longer period as the Secretary may permit in specified cases.

(4) Independent review of certain coverage denials

The Secretary shall contract with an independent, outside entity to review and resolve in a timely manner reconsiderations that affirm denial of coverage, in whole or in part. The provisions of section 1395ff(c)(5) of this title shall apply to independent outside entities under contract with the Secretary under this paragraph.

(5) Appeals

An enrollee with a Medicare+Choice plan of a Medicare+Choice organization under this part who is dissatisfied by reason of the enrollee’s failure to receive any health service to which the enrollee believes the enrollee is entitled and at no greater charge than the enrollee believes the enrollee is required to pay is entitled, if the amount in controversy is $100 or more, to a hearing before the Secretary to the same extent as is provided in section 405(b) of this title, and in any such hearing the Secretary shall make the organization a party. If the amount in controversy is $1,000 or more, the individual or organization shall, upon notifying the other party, be entitled to judicial review of the Secretary’s final decision as provided in section 405(g) of this title, and both the individual and the organization shall be entitled to be parties to that judicial review. In applying subsections (b) and (g) of section 405 of this title as provided in this paragraph, and in applying section 405(i) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively. The provisions of section 1395ff(b)(1)(E)(iii) of this title shall apply with respect to dollar amounts specified in the first 2 sentences of this paragraph in the same manner as they apply to the dollar amounts specified in section 1395ff(b)(1)(E)(i) of this title.

(h) Confidentiality and accuracy of enrollee records

Insofar as a Medicare+Choice organization maintains medical records or other health information regarding enrollees under this part, the Medicare+Choice organization shall establish procedures—

(1) to safeguard the privacy of any individually identifiable enrollee information;

(2) to maintain such records and information in a manner that is accurate and timely; and

(3) to assure timely access of enrollees to such records and information.

(i) Information on advance directives

Each Medicare+Choice organization shall meet the requirement of section 1395cc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

(j) Rules regarding provider participation

(1) Procedures

Insofar as a Medicare+Choice organization offers benefits under a Medicare+Choice plan through agreements with physicians, the organization shall establish reasonable procedures relating to the participation (under an agreement between a physician and the organization) of physicians under such a plan. Such procedures shall include—
(A) providing notice of the rules regarding participation,
(B) providing written notice of participation decisions that are adverse to physicians, and
(C) providing a process within the organization for appealing such adverse decisions, including the presentation of information and views of the physician regarding such decision.

(2) Consultation in medical policies

A Medicare+Choice organization shall consult with physicians who have entered into participation agreements with the organization regarding the organization’s medical policy, quality, and medical management procedures.

(3) Prohibiting interference with provider advice to enrollees

(A) In general

Subject to subparagraphs (B) and (C), a Medicare+Choice organization (in relation to an individual enrolled under a Medicare+Choice plan offered by the organization under this part) shall not prohibit or otherwise restrict a covered health care professional (as defined in subparagraph (D)) from advising such an individual about the health status of the individual or medical care or treatment for the individual’s condition or disease, regardless of whether benefits for such care or treatment are provided under the plan, if the professional is acting within the lawful scope of practice.

(B) Conscience protection

Subparagraph (A) shall not be construed as requiring a Medicare+Choice plan to provide, reimburse for, or provide coverage of a counseling or referral service if the Medicare+Choice organization offering the plan—

(i) objects to the provision of such service on moral or religious grounds; and
(ii) in the manner and through the written instrumentality such Medicare+Choice organization deems appropriate, makes available information on its policies regarding such service to prospective enrollees before or during enrollment and to enrollees within 90 days after the date that the organization or plan adopts a change in policy regarding such a counseling or referral service.

(C) Construction

Nothing in subparagraph (B) shall be construed to affect disclosure requirements under State law or under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.].

(D) “Health care professional” defined

For purposes of this paragraph, the term “health care professional” means a physician (as defined in section 1395x(r) of this title) or other health care professional if coverage for the professional’s services is provided under the Medicare+Choice plan for the services of the professional. Such term includes a podiatrist, optometrist, chiropractor, psychologist, dentist, physician assistant, physical or occupational therapist and therapy assistant, speech-language pathologist, audiologist, registered or licensed practical nurse (including nurse practitioner), clinical nurse specialist, certified registered nurse anesthetist, and certified nurse-midwife, licensed certified social worker, registered respiratory therapist, and certified respiratory therapy technician.

(4) Limitations on physician incentive plans

(A) In general

No Medicare+Choice organization may operate any physician incentive plan (as defined in subparagraph (B)) unless the organization provides assurances satisfactory to the Secretary that the following requirements are met:

(i) No specific payment is made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the organization.
(ii) If the plan places a physician or physician group at substantial financial risk (as determined by the Secretary) for services not provided by the physician or physician group, the organization provides stop-loss protection for the physician or group that is adequate and appropriate, based on standards developed by the Secretary that take into account the number of physicians placed at such substantial financial risk in the group or under the plan and the number of individuals enrolled with the organization who receive services from the physician or group.

(B) “Physician incentive plan” defined

In this paragraph, the term “physician incentive plan” means any compensation arrangement between a Medicare+Choice organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the organization under this part.

(5) Limitation on provider indemnification

A Medicare+Choice organization may not provide (directly or indirectly) for a health care professional, provider of services, or other entity providing health care services (or group of such professionals, providers, or entities) to indemnify the organization against any liability resulting from a civil action brought for any damage caused to an enrollee with a Medicare+Choice plan of the organization under this part by the organization’s denial of medically necessary care.

(6) Special rules for Medicare+Choice private fee-for-service plans

For purposes of applying this part (including subsection (k)(1) of this section) and section 1395cc(a)(1)(O) of this title, a hospital (or other provider of services), a physician or other health care professional, or other entity furnishing health care services is treated as hav-
(k) Treatment of services furnished by certain providers

(1) In general

Except as provided in paragraph (2), a physician or other entity (other than a provider of services) that does not have a contract establishing payment amounts for services furnished to an individual enrolled under this part with a Medicare+Choice organization described in section 1395w–21(a)(3)(A) of this title or with an organization offering an MSA plan shall accept as payment in full for covered services under this subchapter that are furnished to such an individual the amounts that the physician or other entity could collect if the individual were not so enrolled. Any penalty or other provision of law that applies to such a payment with respect to an individual entitled to benefits under this subchapter (but not enrolled with a Medicare+Choice organization under this part) also applies with respect to an individual so enrolled.

(2) Application to Medicare+Choice private fee-for-service plans

(A) Balance billing limits under Medicare+Choice private fee-for-service plans in case of contract providers

(i) In general

In the case of an individual enrolled in a Medicare+Choice private fee-for-service plan under this part, a physician, provider of services, or other entity that has a contract (including through the operation of subsection (j)(6) of this section) establishing a payment rate for services furnished to the enrollee shall accept as payment in full for covered services under this subchapter that are furnished to such an individual an amount not to exceed (including any deductibles, coinsurance, copayments, or balance billing otherwise permitted under the plan) an amount equal to 115 percent of such payment rate.

(ii) Procedures to enforce limits

The Medicare+Choice organization that offers such a plan shall establish procedures, similar to the procedures described in section 1395w–4(g)(1)(A) of this title, in order to carry out the previous sentence.

(iii) Assuring enforcement

If the Medicare+Choice organization fails to establish and enforce procedures required under clause (ii), the organization is subject to intermediate sanctions under section 1395w–27(g) of this title.

(B) Enrollee liability for noncontract providers

For provision—

(1) establishing minimum payment rate in the case of noncontract providers under a Medicare+Choice private fee-for-service plan, see subsection (a)(2) of this section; or

(ii) limiting enrollee liability in the case of covered services furnished by such providers, see paragraph (1) and section 1395cc(a)(1)(O) of this title.

(C) Information on beneficiary liability

(i) In general

Each Medicare+Choice organization that offers a Medicare+Choice private fee-for-service plan shall provide that enrollees under the plan who are furnished services for which payment is sought under the plan are provided an appropriate explanation of benefits (consistent with that provided under parts A and B of this subchapter and, if applicable, under medicare supplemental policies) that includes a clear statement of the amount of the enrollee’s liability (including any liability for balance billing consistent with this

(7) Promotion of e-prescribing by MA plans

(A) In general

An MA–PD plan may provide for a separate payment or otherwise provide for a differential payment for a participating physician that prescribes covered part D drugs in accordance with an electronic prescription drug program that meets standards established under section 1395w–104(e) of this title.

(B) Considerations

Such payment may take into consideration the costs of the physician in implementing such a program and may also be increased for those participating physicians who significantly increase—

(i) formulary compliance;

(ii) lower cost, therapeutically equivalent alternatives;

(iii) reductons in adverse drug interactions; and

(iv) efficiencies in filing prescriptions through reduced administrative costs.

(C) Structure

Additional or increased payments under this subsection may be structured in the same manner as medication therapy management fees are structured under section 1395w–104(c)(2)(E) of this title.
In providing coverage of post-hospital extended care services, a Medicare+Choice plan shall provide for such coverage through a home skilled nursing facility if the following conditions are met:

(i) Enrollee election

The enrollee elects to receive such coverage through such facility.

(ii) SNF agreement

The facility has a contract with the Medicare+Choice organization for the provision of such services and through which the enrollee would otherwise receive such services.

(B) Manner of payment to home SNF

The organization shall provide payment to the home skilled nursing facility consistent with the terms and conditions of the contract or agreement described in subparagraph (A), as the case may be.

(2) No less favorable coverage

The coverage provided under paragraph (1) (including scope of services, cost-sharing, and other criteria of coverage) shall be no less favorable to the enrollee than the coverage that would be provided to the enrollee with respect to a skilled nursing facility the post-hospital extended care services of which are otherwise covered under the Medicare+Choice plan.

(3) Rule of construction

Nothing in this subsection shall be construed to do the following:

(A) To require coverage through a skilled nursing facility that is not otherwise qualified to provide benefits under part A of this subchapter for Medicare beneficiaries not enrolled in a Medicare+Choice plan.

(B) To prevent a skilled nursing facility from refusing to accept, or imposing conditions upon the acceptance of, an enrollee for the receipt of post-hospital extended care services.

(4) Definitions

In this subsection:

(A) Home skilled nursing facility

The term “home skilled nursing facility” means, with respect to an enrollee who is entitled to receive post-hospital extended care services under a Medicare+Choice plan, any of the following skilled nursing facilities:

(i) SNF residence at time of admission

The skilled nursing facility in which the enrollee resided at the time of admission to the hospital preceding the receipt of such post-hospital extended care services.

(ii) SNF in continuing care retirement community

A skilled nursing facility that is providing such services through a continuing care retirement community (as defined in subparagraph (B)) in which provided residence to the enrollee at the time of such admission.

(iii) SNF residence of spouse at time of discharge

The skilled nursing facility in which the spouse of the enrollee is residing at the time of discharge from such hospital.

(B) Continuing care retirement community

The term “continuing care retirement community” means, with respect to an enrollee in a Medicare+Choice plan, an arrangement under which housing and health-related services are provided (or arranged) through an organization for the enrollee under an arrangement that is effective for the life of the enrollee or for a specified period.


For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.


AMENDMENTS


Subsec. (d)(4). Pub. L. 110–275, §162(a)(3)(A), (2)(A), in introductory provisions, substituted ``(Subject to paragraphs (5) and (6)), the Secretary'' for ``(The Secretary)'' in second sentence.

Subsec. (d)(5). Pub. L. 110–275, §162(a)(3)(A), substituted ``(other than a non-network MSA plan),'' after ``(other than MSA plans)''.


Subsec. (e)(1). Pub. L. 110–275, §163(a), struck out ``(other than an MA private fee-for-service plan or an MSA plan)'' before period at end.

Subsec. (e)(3)(A)(i). Pub. L. 110–275, §163(b)(1), inserted at end ``With respect to MA private fee-for-service plans and MSA plans, the requirements under the preceding sentence may not exceed the requirements under this subparagraph with respect to MA local plans that are preferred provider organization plans, except that, for plan year 2010, the limitation under clause (i) shall not apply and such requirements shall apply only with respect to administrative claims data.''


Prior to amendment, text read as follows: ``The Secretary shall establish as appropriate by regulation requirements for the collection, analysis, and reporting of data that permits the measurement of health outcomes and other indices of quality for MA organizations with respect to MA regional plans. Such requirements may not exceed the requirements under this subparagraph with respect to MA local plans that are preferred provider organization plans.''


2003—Subsec. (a)(1). Pub. L. 108–173, §222(a)(2), substituted ``Requirement'' for ``In general'' in par. heading, designated existing provisions as subpar. (A), inserted introductory provisions, and substituted under the original Medicare fee-for-service program option (and, for plan years before 2006, additional benefits required under section 1395w–24(f)(1)(A) of this title),'', for chapter—'', added subpar. (B), and struck out former subpars. (A) and (B) which read as follows: ``(A) those items and services (other than hospice care) for which benefits are available under parts A and B of this subchapter to individuals residing in the area served by the plan, and (B) additional benefits required under section 1395w–24(f)(1)(A) of this title.''

Pub. L. 108–173, §221(d)(3)(A), inserted ``and except as provided in paragraph (6) for MA regional plans'' after ``MSA plans'' in introductory provisions.


Subsec. (a)(3)(C). Pub. L. 108–173, §222(a)(3), inserted at end ``(other than an MA private fee-for-service plan or an MSA plan)'' in heading and text.


Subsec. (a)(6). Pub. L. 108–173, §222(a)(1), inserted at end ``The Secretary shall not approve a plan of an organization if the Secretary determines that the design of the plan and its benefits are likely to substantially discourage enrollment by certain MA eligible individuals with the organization.''

Subsec. (c)(1)(D). Pub. L. 108–173, §722(b), amended heading and text of subpar. (i) generally. Prior to amendment, text read as follows: ``A description of the organization’s quality assurance program for health care services it provides to individuals enrolled with Medicare+Choice care (for which benefits are available under parts A and B of such plan) to meet the access standards in subparagraph (A) through (E) of paragraph (1) for a sufficient number and range of providers within such category to meet the access standards in subparagraphs (A) through (E) of paragraph (1) for a sufficient number and range of providers within such category to provide covered services under the terms of the plan''.


Subsec. (e)(3). Pub. L. 108–173, §222(a)(2), amended par. (3) generally, substituting provisions relating to collec-
tion, analysis, and reporting of data for provisions relating to external review by an independent quality review and improvement organization.

Subsec. (e)(4)(B)(i). Pub. L. 108–173, §722(a)(3)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ‘‘Paragraphs (1) and (2) of this subsection (relating to quality assurance programs),’’


Subsec. (g)(5). Pub. L. 108–173, §940(b)(2)(A), inserted at end—‘‘The provisions of section 1395f(b)(1)(B)(ii) of this title shall apply with respect to dollar amounts specified in the first 2 sentences of this paragraph in the same manner as they apply to the dollar amounts specified in section 1395f(b)(1)(B)(i) of this title.’’


Subsec. (j)(4)(A)(II). Pub. L. 108–173, §222(b)(2), substituted ‘‘the organization’’ for ‘‘the organization—‘‘, struck out subcl. (I) designation before ‘‘provides’’, substituted cl. (iii) which read as follows: ‘‘The organization periodically surveys of both individuals enrolled and individuals previously enrolled with the organization to determine the degree of access of such individuals to services provided by the organization and satisfaction with the quality of such services.’’

Subsec. (j)(4)(A)(II). Pub. L. 108–173, §222(b)(3), struck out cl. (iii) which read as follows: ‘‘The organization provides the Secretary with descriptive information regarding the plan, sufficient to permit the Secretary to determine whether the plan is in compliance with the requirements of this subparagraph.’’


Subsec. (k)(1). Pub. L. 108–173, §233(c), inserted ‘‘or with an organization offering an MSA plan’’ after ‘‘section 1395w–2(a)(2)(A) of this title’’.


Pub. L. 106–554, §1(a)(4)(B) [title VI, §615(b)(1), (2)], inserted ‘‘and legislative changes in benefits’’ after ‘‘National coverage determinations’’ in heading and inserted ‘‘or legislative change in benefits required to be provided under this part’’ after ‘‘there is a national coverage determination’’ in introductory provisions.

Subsec. (a)(5)(A). Pub. L. 106–554, §1(a)(4)(B) [title VI, §615(b)(3)], inserted ‘‘or legislative change in benefits’’ after ‘‘such determination’’.

Subsec. (a)(5)(B). Pub. L. 106–554, §1(a)(4)(B) [title VI, §615(b)(4)], inserted ‘‘or legislative change after’’ after ‘‘if such coverage determination’’.


Subsec. (g)(4). Pub. L. 106–554, §1(a)(6)(B) [title V, §520(b)(1)], inserted at end—‘‘The provisions of section 1395w(c)(5) of this title shall apply to independent outside entities under contract with the Secretary under this paragraph.’’


Subsec. (e)(2)(A). Pub. L. 106–113, §1000(a)(6) [title V, §520(a)(1)], substituted ‘‘a non-network MSA plan, or a preferred provider organization plan’’ for ‘‘or a non-network MSA plan, or a preferred provider organization plan’’.

Subsec. (e)(2)(B). Pub. L. 106–113, §1000(a)(6) [title V, §520(a)(2)], substituted ‘‘non-network MSA plans, and preferred provider organization plans’’ for ‘‘and non-network MSA plans’’ in heading and ‘‘a non-network MSA plan, or a preferred provider organization plan’’ for ‘‘or a non-network MSA plan’’ in introductory provisions.


Subsec. (e)(4). Pub. L. 106–113, §1000(a)(6) [title V, §518], amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ‘‘The Secretary shall provide that a Medicare+Choice organization is deemed to meet requirements of paragraphs (1) and (2) of this subsection and subsection (h) of this section (relating to confidentiality and accuracy of enrollee records) if the organization is accredited (and periodically reaccredited) by a private organization under a process that the Secretary has determined assures that the organization, as a condition of accreditation, applies and enforces standards with respect to the requirements involved that are no less stringent than the standards established under section 1395w–2 of this title to carry out the respective requirements.’’


CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT


EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 125(b)(6) of Pub. L. 110–275 applicable with respect to accreditations of hospitals granted on or after the date that is 24 months after July 15, 2008, with transition rule, see section 125(d) of Pub. L. 110–275, set out as an Effective Date of 2008 Amendment, Transition Rule note under section 1395lb of this title.


Pub. L. 110–275, title I, §163(c), July 15, 2008, 122 Stat. 2571, provided that: ‘‘The amendments made by this subsection [amending this section] shall apply to plan years beginning on or after January 1, 2010.’’


Pub. L. 110–275, title I, §165(b), July 15, 2008, 122 Stat. 2571, provided that: ‘‘The amendment made by this subsection [amending this section] shall apply to plan years beginning on or after January 1, 2010.’’


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paragraph is equal to the MA area-specific non-drug monthly benchmark amount, adjusted under subparagraph (C) and (if applicable) under subparagraphs (F) and (G).

(iii) Payment of benchmark for MSA plans
Notwithstanding clauses (i) and (ii), in the case of an MSA plan, the amount specified in this subparagraph is equal to the MA area-specific non-drug monthly benchmark amount, adjusted under subparagraph (C).

(iv) Authority to apply frailty adjustment under PACE payment rules for certain specialized MA plans for special needs individuals

(I) In general
Notwithstanding the preceding provisions of this paragraph, for plan year 2011 and subsequent plan years, in the case of a plan described in subclause (II), the Secretary may apply the payment rules under section 1395eee(d) of this title (other than paragraph (3) of such section) rather than the payment rules that would otherwise apply under this part, but only to the extent necessary to reflect the costs of treating high concentrations of frail individuals.

(II) Plan described
A plan described in this subclause is a specialized MA plan for special needs individuals described in section 1395w-28(b)(6)(B)(ii) of this title that is fully integrated with capitated contracts with States for Medicaid benefits, including long-term care, and that have similar average levels of frailty (as determined by the Secretary) as the PACE program.

(C) Demographic adjustment, including adjustment for health status

(i) In general
The Secretary shall adjust the payment amount under subparagraph (A)(i) and the amount specified under subparagraph (B)(i), (B)(ii), and (B)(iii) for such risk factors as age, disability status, gender, institutional status, and such other factors as the Secretary determines to be appropriate, including adjustment for health status under paragraph (3), so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such adjustment factors if such changes will improve the determination of actuarial equivalence.

(ii) Application of coding adjustment
For 2006 and each subsequent year:

(I) In applying the adjustment under clause (i) for health status to payment amounts, the Secretary shall ensure that such adjustment reflects changes in treatment and coding practices in the fee-for-service sector and reflects differences in coding patterns between Medicare Advantage plans and providers under part A and B to the extent that the Secretary has identified such differences.

(II) In order to ensure payment accuracy, the Secretary shall annually conduct an analysis of the differences described in subclause (I). The Secretary shall complete such analysis by a date necessary to ensure that the results of such analysis are incorporated on a timely basis into the risk scores for 2008 and subsequent years. In conducting such analysis, the Secretary shall use data submitted with respect to 2004 and subsequent years, as available and updated as appropriate.

(III) In calculating each year’s adjustment, the adjustment factor shall be for 2014, not less than the adjustment factor applied for 2010, plus 1.3 percentage points; for each of years 2015 through 2018, not less than the adjustment factor applied for the previous year, plus 0.25 percentage point; and for 2019 and each subsequent year, not less than 5.7 percent.

(IV) Such adjustment shall be applied to risk scores until the Secretary implements risk adjustment using Medicare Advantage diagnostic, cost, and use data.

(iii) Improvements to risk adjustment for special needs individuals with chronic health conditions

(I) In general
For 2011 and subsequent years, for purposes of the adjustment under clause (i) with respect to individuals described in subclause (II), the Secretary shall use a risk score that reflects the known underlying risk profile and chronic health status of similar individuals. Such risk score shall be used instead of the default risk score for new enrollees in Medicare Advantage plans that are not specialized MA plans for special needs individuals (as defined in section 1395w-28(b)(6) of this title).

(II) Individuals described
An individual described in this subclause is a special needs individual described in subsection (b)(6) of this title who enrolls in a specialized MA plan for special needs individuals on or after January 1, 2011.

(III) Evaluation
For 2011 and periodically thereafter, the Secretary shall evaluate and revise the risk adjustment system under this subparagraph in order to, as accurately as possible, account for higher medical and care coordination costs associated with frailty, individuals with multiple, comorbid chronic conditions, and individuals with a diagnosis of mental illness, and also to account for costs that may be associated with higher concentrations of beneficiaries with those conditions.

1See References in Text note below.
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(IV) Publication of evaluation and revisions

The Secretary shall publish, as part of an announcement under subsection (b), a description of any evaluation conducted under subclause (III) during the preceding year and any revisions made under such subclause as a result of such evaluation.

(D) Separate payment for Federal drug subsidies

In the case of an enrollee in an MA–PD plan, the MA organization offering such plan also receives—

(i) subsidies under section 1395w–115 of this title (other than under subsection (g)); and

(ii) reimbursement for premium and cost-sharing reductions for low-income individuals under section 1395w–114(c)(1)(C) of this title.

(E) Payment of rebate for plans with bids below benchmark

In the case of a plan for which there are average per capita monthly savings described in section 1395w–24(b)(3)(C) or 1395w–24(b)(4)(C) of this title, as the case may be, the amount specified in this subparagraph is the amount of the monthly rebate computed under section 1395w–24(b)(1)(C) of this title.

(F) Adjustment for intra-area variations

(i) Intra-regional variations

In the case of payment with respect to an MA regional plan for an MA region, the Secretary shall adjust the amounts specified under subparagraphs (B)(i) and (B)(ii) in a manner to take into account variations in MA local payment rates under this part among the different MA local areas included in such region.

(ii) Intra-service area variations

In the case of payment with respect to an MA local plan for a service area that covers more than one MA local area, the Secretary shall adjust the amounts specified under subparagraphs (B)(i) and (B)(ii) in a manner to take into account variations in MA local payment rates under this part among the different MA local areas included in such service area.

(G) Adjustment relating to risk adjustment

The Secretary shall adjust payments with respect to MA plans as necessary to ensure that—

(i) the sum of—

(I) the monthly payment made under subparagraph (A)(ii); and

(II) the MA monthly basic beneficiary premium under section 1395w–24(b)(2)(A) of this title; equals

(ii) the unadjusted MA statutory non-drug monthly bid amount, adjusted in the manner described in subparagraph (C) and, for an MA regional plan, subparagraph (F).

(H) Special rule for end-stage renal disease

The Secretary shall establish separate rates of payment to a Medicare+Choice organization with respect to classes of individuals determined to have end-stage renal disease and enrolled in a Medicare+Choice plan of the organization. Such rates of payment shall be actuarially equivalent to rates that would have been paid with respect to other enrollees in the MA payment area (or such other area as specified by the Secretary) under the provisions of this section as in effect before December 8, 2003. In accordance with regulations, the Secretary shall provide for the application of the seventh sentence of section 1395rr(b)(7) of this title to payments under this section covering the provision of renal dialysis treatment in the same manner as such sentence applies to composite rate payments described in such sentence. In establishing such rates, the Secretary shall provide for appropriate adjustments to increase each rate to reflect the demonstration rate (including the risk adjustment methodology associated with such rate) of the social health maintenance organization end-stage renal disease capitation demonstration (established by section 2355 of the Deficit Reduction Act of 1984, as amended by section 13567(b) of the Omnibus Budget Reconciliation Act of 1993), and shall compute such rates by taking into account such factors as renal treatment modality, age, and the underlying cause of the end-stage renal disease. The Secretary may apply the competitive bidding methodology provided for in this section, with appropriate adjustments to account for the risk adjustment methodology applied to end stage renal disease payments.

(2) Adjustment to reflect number of enrollees

(A) In general

The amount of payment under this subsection may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled with an organization under this part and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

(B) Special rule for certain enrollees

(i) In general

Subject to clause (ii), the Secretary may make retroactive adjustments under subparagraph (A) to take into account individuals enrolled during the period beginning on the date on which the individual enroll with a Medicare+Choice organization under a plan operated, sponsored, or contributed to by the individual’s employer or former employer (or the employer or former employer of the individual’s spouse) and ending on the date on which the individual is enrolled in the organization under this part, except that for purposes of making such retroactive adjustments under this subparagraph, such period may not exceed 90 days.
(ii) Exception

No adjustment may be made under clause (i) with respect to any individual who does not certify that the organization provided the individual with the disclosure statement described in section 1395w–22(c) of this title at the time the individual enrolled with the organization.

(3) Establishment of risk adjustment factors

(A) Report

The Secretary shall develop, and submit to Congress by not later than March 1, 1999, a report on the method of risk adjustment of payment rates under this section, to be implemented under subparagraph (C), that accounts for variations in per capita costs based on health status. Such report shall include an evaluation of such method by an outside, independent actuary of the actuarial soundness of the proposal.

(B) Data collection

In order to carry out this paragraph, the Secretary shall require Medicare+Choice organizations (and eligible organizations with risk-sharing contracts under section 1395mm of this title) to submit data regarding inpatient hospital services for periods beginning on or after July 1, 1997, and data regarding other services and other information as the Secretary deems necessary for periods beginning on or after July 1, 1998. The Secretary may not require an organization to submit such data before January 1, 1998.

(C) Initial implementation

(i) In general

The Secretary shall first provide for implementation of a risk adjustment methodology that accounts for variations in per capita costs based on health status and other demographic factors for payments by no later than January 1, 2000.

(ii) Phase-in

Except as provided in clause (iv), such risk adjustment methodology shall be implemented in a phased-in manner so that the methodology insofar as it makes adjustments to capitation rates for health status applies to—

(I) 10 percent of 1/12 of the annual Medicare+Choice capitation rate in 2000 and each succeeding year through 2003;

(II) 30 percent of such capitation rate in 2004;

(III) 50 percent of such capitation rate in 2005;

(IV) 75 percent of such capitation rate in 2006; and

(V) 100 percent of such capitation rate in 2007 and succeeding years.

(iii) Data for risk adjustment methodology

Such risk adjustment methodology for 2004 and each succeeding year, shall be based on data from inpatient hospital and ambulatory settings.

(iv) Full implementation of risk adjustment for congestive heart failure enrollees for 2001

(I) Exemption from phase-in

Subject to subclause (II), the Secretary shall fully implement the risk adjustment methodology described in clause (i) with respect to each individual who has had a qualifying congestive heart failure inpatient diagnosis (as determined by the Secretary under such risk adjustment methodology) during the period beginning on July 1, 1999, and ending on June 30, 2000, and who is enrolled in a coordinated care plan that is the only coordinated care plan offered on January 1, 2001, in the service area of the individual.

(II) Period of application

Such risk adjustment methodology for congestive heart failure enrollees for 2001 shall only apply during the 1-year period beginning on January 1, 2001.

(D) Uniform application to all types of plans

Subject to section 1395w–28(e)(4) of this title, the methodology shall be applied uniformly without regard to the type of plan.

(4) Payment rule for federally qualified health center services

If an individual who is enrolled with an MA plan under this part receives a service from a federally qualified health center that has a written agreement with the MA organization that offers such plan for providing such a service (including any agreement required under section 1395w–27(e)(3) of this title)—

(A) the Secretary shall pay the amount determined under section 1395w(a)(3)(B) of this title directly to the federally qualified health center not less frequently than quarterly; and

(B) the Secretary shall not reduce the amount of the monthly payments under this subsection as a result of the application of subparagraph (A).

(b) Annual announcement of payment rates

(1) Annual announcements

(A) For 2005

The Secretary shall determine, and shall announce (in a manner intended to provide notice to interested parties), not later than the second Monday in May of 2004, with respect to each MA payment area, the following:

(i) MA capitation rates

The annual MA capitation rate for each MA payment area for 2005.

(ii) Adjustment factors

The risk and other factors to be used in adjusting such rates under subsection (a)(1)(C) of this section for payments for months in 2005.

(B) For 2006 and subsequent years

For a year after 2005—

(i) Initial announcement

The Secretary shall determine, and shall announce (in a manner intended to provide
§ 1395w–23 Medicare+Choice payment area for the second
section 426–1 of this title for each
sive of individuals eligible for coverage under
parts A and B of this subchapter (exclu-
original medicare fee-for-service program
the time of publication of the annual
ation, on an annual basis beginning with 2001 at
Centers for Medicare & Medicaid Services,
changes to be made in the methodology from
Medicare+Choice capitation rates under para-
(1), the Secretary shall include an expla-
previous announcement and shall provide such
Medicare+Choice organizations of proposed
ouncement under paragraph (1) for a year,
section 1395w–29(b)(1)(A)
ify under section 1395w–29(e)(1) of this title for the area for the
elled under section 1395w–24 of this title,
MA region-specific non-drug monthly
benchmark amount for that region for the
year involved.
(3) Explanation of assumptions
In each announcement made under para-
the Secretary shall include an ex-
ations and changes in
methodology used in such announcement.
(4) Continued computation and publication of
county-specific per capita fee-for-service
expenditure information
The Secretary, through the Chief Actuary of
the Centers for Medicare & Medicaid Services,
shall provide for the computation and publica-
on, on an annual basis beginning with 2001 at
time of publication of the annual
Medicare+Choice capitation rates under para-
(1), of the following information for the
original medicare fee-for-service program
under parts A and B of this subchapter (exclu-
individuals eligible for coverage under
section 426–1 of this title) for each
Medicare+Choice payment area for the second
calendar year ending before the date of publi-
cation:
(A) Total expenditures per capita per
month, computed separately for part A of
this subchapter and for part B of this sub-
chapter.
(B) The expenditures described in subpara-
graph (A) reduced by the best estimate of
the expenditures (such as graduate medical
education and disproportionate share hospital
payments) not related to the payment
claims.
(C) The average risk factor for the covered
population based on diagnoses reported for
medicare inpatient services, using the same
methodology as is expected to be applied in
making payments under subsection (a) of
this section.
(D) Such average risk factor based on diag-
noses for inpatient and other sites of service,
using the same methodology as is expected
to be applied in making payments under sub-
section (a) of this section.
(c) Calculation of annual Medicare+Choice capi-
tation rates
(1) In general
For purposes of this part, subject to para-
graphs (6)(C) and (7), each annual
Medicare+Choice capitation rate, for a
Medicare+Choice payment area that is an MA
local area for a contract year consisting of a
calendar year, is equal to the largest of the
amounts specified in the following subpara-
graphs (A), (B), (C), or (D):
(A) Blended capitation rate
For a year before 2005, the sum of—
(i) the area-specific percentage (as speci-
fi ed under paragraph (2) for the year) of
the annual area-specific Medicare+Choice
capitation rate for the Medicare+Choice
payment area, as determined under para-
graph (3) for the year, and
(ii) the national percentage (as specified
under paragraph (2) for the year) of the
input-price-adjusted annual national
Medicare+Choice capitation rate, as deter-
m ined under paragraph (4) for the year,
multiplied (for a year other than 2004) by the
budget neutrality adjustment factor deter-
m ined under paragraph (5).
(B) Minimum amount
12 multiplied by the following amount:
(i) For 1998, $367 (but not to exceed, in
the case of an area outside the 50 States
and the District of Columbia, 150 percent
of the annual per capita rate of payment
for 1997 determined under section
1395mm(a)(1)(C) of this title for the area).
(ii) For 1999 and 2000, the minimum
amount determined under clause (i) or this
clause, respectively, for the preceding
year, increased by the national per capita
Medicare+Choice growth percentage de-
scribed in paragraph (6)(A) applicable to
1999 or 2000, respectively.
(iii)(I) Subject to subclause (II), for 2001,
for any area in a Metropolitan Statistical
Area with a population of more than
250,000, $525, and for any other area $475.
(II) In the case of an area outside the 50 States and the District of Columbia, the amount specified in this clause shall not exceed 120 percent of the amount determined under clause (ii) for such area for 2000.

(iv) For 2002, 2003, and 2004, the minimum amount specified in this clause (or clause (iii)) for the preceding year increased by the national per capita Medicare+Choice growth percentage, described in paragraph (6)(A) for that succeeding year.

(C) Minimum percentage increase

(i) For 1998, 102 percent of the annual per capita rate of payment for 1997 determined under section 1395mm(a)(1)(C) of this title for the Medicare+Choice payment area.

(ii) For 1999 and 2000, 102 percent of the annual Medicare+Choice capitation rate under this paragraph for the area for the previous year.

(iii) For 2001, 103 percent of the annual Medicare+Choice capitation rate under this paragraph for the area for 2000.

(iv) For 2002 and 2003, 102 percent of the annual Medicare+Choice capitation rate under this paragraph for the area for the previous year.

(v) For 2004 and each succeeding year, the greater of—

(I) 102 percent of the annual MA capitation rate under this paragraph for the area for the previous year; or

(II) the annual MA capitation rate under this paragraph for the area for the previous year increased by the national per capita MA growth percentage, described in paragraph (6) for that succeeding year, but not taking into account any adjustment under subparagraph (A) for a year before 2004.

(D) 100 percent of fee-for-service costs

(i) In general

For each year specified in clause (ii), the adjusted average per capita cost for the year involved, determined under section 1395mm(a)(4) of this title and adjusted as appropriate for the purpose of risk adjustment, for the MA payment area for individuals who are not enrolled in an MA plan under this part for the year, but adjusted to exclude costs attributable to payments under sections, and 1395w–4(o), and 1395ww(n) and 1395ww(h) of this title.

(ii) Periodic rebasing

The provisions of clause (i) shall apply for 2004 and for subsequent years as the Secretary shall specify (but not less than once every 3 years).

(iii) Inclusion of costs of VA and DOD military facility services to Medicare-eligible beneficiaries

In determining the adjusted average per capita cost under clause (i) for a year, such cost shall be adjusted to include the Secretary’s estimate, on a per capita basis, of the amount of additional payments that would have been made in the area involved under this subchapter if individuals entitled to benefits under this subchapter had not received services from facilities of the Department of Veterans Affairs.

(2) Area-specific and national percentages

For purposes of paragraph (1)(A)—

(A) for 1998, the “area-specific percentage” is 90 percent and the “national percentage” is 10 percent,

(B) for 1999, the “area-specific percentage” is 82 percent and the “national percentage” is 18 percent,

(C) for 2000, the “area-specific percentage” is 74 percent and the “national percentage” is 26 percent,

(D) for 2001, the “area-specific percentage” is 66 percent and the “national percentage” is 34 percent,

(E) for 2002, the “area-specific percentage” is 58 percent and the “national percentage” is 42 percent, and

(F) for a year after 2002, the “area-specific percentage” is 50 percent and the “national percentage” is 50 percent.

(3) Annual area-specific Medicare+Choice capitation rate

(A) In general

For purposes of paragraph (1)(A), subject to subparagraphs (B) and (E), the annual area-specific Medicare+Choice capitation rate for a Medicare+Choice payment area—

(i) for 1998 is, subject to subparagraph (D), the annual per capita rate of payment for 1997 determined under section 1395mm(a)(1)(C) of this title shall be adjusted to exclude from the rate the applicable percent (specified in clause (ii)) of the payment adjustments described in subparagraph (C).

(B) Removal of medical education from calculation of adjusted average per capita cost

(i) In general

In determining the area-specific Medicare+Choice capitation rate under subparagraph (A) for a year (beginning with 1998), the annual per capita rate of payment for 1997 determined under section 1395mm(a)(1)(C) of this title shall be adjusted to exclude from the rate the applicable percent (specified in clause (ii)) of the payment adjustments described in subparagraph (C).

(ii) Applicable percent

For purposes of clause (i), the applicable percent for—

(I) 1998 is 20 percent,

(II) 1999 is 40 percent,

(III) 2000 is 60 percent.
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(4) Input-price-adjusted annual national Medicare+Choice capitation rate

(A) In general

For purposes of paragraph (1)(A), the input-price-adjusted annual national Medicare+Choice capitation rate for a Medicare+Choice payment area for a year is equal to the sum, for all the types of Medicare services (as classified by the Secretary), of the product (for each such type of service) of—

(i) the national standardized annual Medicare+Choice capitation rate (determined under subparagraph (B)) for the year,

(ii) the proportion of such rate for the year which is attributable to such type of services, and

(iii) an index that reflects (for that year and that type of services) the relative input price of such services in the area compared to the national average input price of such services.

In applying clause (iii), the Secretary may, subject to subparagraph (C), apply those indices under this subchapter that are used in applying (or updating) national payment rates for specific areas and localities.

(B) National standardized annual Medicare+Choice capitation rate

In subparagraph (A)(i), the “national standardized annual Medicare+Choice capitation rate” for a year is equal to—

(i) the sum (for all Medicare+Choice payment areas) of the product of—

(I) the annual area-specific Medicare+Choice capitation rate for that year for the area under paragraph (3), and

(II) the average number of Medicare beneficiaries residing in that area in the year, multiplied by the average of the risk factor weights used to adjust payments under subsection (a)(1)(A) of this section for such beneficiaries in such area; divided by

(ii) the sum of the products described in clause (i)(II) for all areas for that year.

(C) Special rules for 1998

In applying this paragraph for 1998—

(i) medicare services shall be divided into 2 types of services: part A services and part B services;

(ii) the proportions described in subparagraph (A)(ii)—

(I) for part A services shall be the ratio (expressed as a percentage) of the national average annual per capita rate of payment for part A of this subchapter for 1997 to the total national average annual per capita rate of payment for parts A and B of this subchapter for 1997, and

(II) for part B services shall be 100 percent minus the ratio described in subclause (I); and

(iii) for part A services, 70 percent of payments attributable to such services shall be adjusted by the index used under section 1395ww(d)(3)(E) of this title to adjust payment rates for relative hospital wage levels for hospitals located in the payment area involved;

(iv) for part B services—

(I) 66 percent of payments attributable to such services shall be adjusted by the index of the geographic area factors under section 1395w–4(e) of this title used to adjust payment rates for physicians’ services furnished in the payment area, and

(II) of the remaining 34 percent of the amount of such payments, 40 percent
shall be adjusted by the index described in clause (iii); and

(v) the index values shall be computed based only on the beneficiary population who are 65 years of age or older and who are not determined to have end stage renal disease.

The Secretary may continue to apply the rules described in this subparagraph (or similar rules) for 1999.

(5) Payment adjustment budget neutrality factor

For purposes of paragraph (1)(A), for each year (other than 2004), the Secretary shall determine a budget neutrality adjustment factor so that the aggregate of the payments under this part (other than those attributable to subsections (a)(3)(C)(iv), (a)(4), and (i) of this section) shall equal the aggregate payments that would have been made under this part if payment were based entirely on area-specific capitation rates.

(6) “National per capita Medicare+Choice growth percentage” defined

(A) In general

In this part, the “national per capita Medicare+Choice growth percentage” for a year is the percentage determined by the Secretary, by March 1st before the beginning of the year involved, to reflect the Secretary’s estimate of the projected per capita rate of growth in expenditures under this subchapter for an individual entitled to benefits under part A of this subchapter, excluding expenditures attributable to subsections (a)(T), and (o) of section 1395w–4 of this title and subsections (h)(3)(B)(ix) and (n) of section 1395ww of this title, reduced by the number of percentage points specified in subparagraph (B) for the year. Separate determinations may be made for aged enrollees, disabled enrollees, and enrollees with end-stage renal disease.

(B) Adjustment

The number of percentage points specified in this subparagraph is—

(i) for 1998, 0.8 percentage points,

(ii) for 1999, 0.5 percentage points,

(iii) for 2000, 0.5 percentage points,

(iv) for 2001, 0.5 percentage points,

(v) for 2002, 0.3 percentage points, and

(vi) for a year after 2002, 0 percentage points.

(C) Adjustment for over or under projection of national per capita Medicare+Choice growth percentage

Beginning with rates calculated for 1999, before computing rates for a year as described in paragraph (1), the Secretary shall adjust all area-specific and national Medicare+Choice capitation rates (and beginning in 2000, the minimum amount) for the previous year for the differences between the projections of the national per capita Medicare+Choice growth percentage for that year and previous years and the current estimate of such percentage for such years, except that for purposes of paragraph (1)(C)(v)(II), no such adjustment shall be made for a year before 2004.

(7) Adjustment for national coverage determinations and legislative changes in benefits

If the Secretary makes a determination with respect to coverage under this subchapter or there is a change in benefits required to be provided under this part that the Secretary projects will result in a significant increase in the costs to Medicare+Choice of providing benefits under contracts under this part (for periods after any period described in section 1395w–22(a)(5) of this title), the Secretary shall adjust appropriately the payments to such organizations under this part. Such projection and adjustment shall be based on an analysis by the Chief Actuary of the Centers for Medicare & Medicaid Services of the actuarial costs associated with the new benefits.

(d) MA payment area; MA local area; MA region defined

(1) MA payment area

In this part, except as provided in this subsection, the term “MA payment area” means—

(A) with respect to an MA local plan, an MA local area (as defined in paragraph (2)); and

(B) with respect to an MA regional plan, an MA region (as established under section 1395w–27a(a)(2) of this title).

(2) MA local area

The term “MA local area” means a county or equivalent area specified by the Secretary.

(3) Rule for ESRD beneficiaries

In the case of individuals who are determined to have end stage renal disease, the Medicare+Choice payment area shall be a State or such other payment area as the Secretary specifies.

(4) Geographic adjustment

(A) In general

Upon written request of the chief executive officer of a State for a contract year (beginning after 1998) made by not later than February 1 of the previous year, the Secretary shall make a geographic adjustment to a Medicare+Choice payment area in the State otherwise determined under paragraph (1) for MA local plans—

(i) to a single statewide Medicare+Choice payment area,

(ii) to the metropolitan based system described in subparagraph (C), or

(iii) to consolidating into a single Medicare+Choice payment area noncontiguous counties (or equivalent areas described in paragraph (1)(A)) within a State.

Such adjustment shall be effective for payments for months beginning with January of the year following the year in which the request is received.

(B) Budget neutrality adjustment

In the case of a State requesting an adjustment under this paragraph, the Secretary
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shall initially (and annually thereafter) adjust the payment rates otherwise established under this section with respect to MA local plans for Medicare+Choice payment areas in the State in a manner so that the aggregate of the payments under this section for such plans in the State shall not exceed the aggregate payments that would have been made under this section for such plans for Medicare+Choice payment areas in the State in the absence of the adjustment under this paragraph.

(C) Metropolitan based system

The metropolitan based system described in this subparagraph is one in which—

(i) all the portions of each metropolitan statistical area in the State or in the case of a consolidated metropolitan statistical area, all of the portions of each primary metropolitan statistical area within the consolidated area within the State, are treated as a single Medicare+Choice payment area, and

(ii) all areas in the State that do not fall within a metropolitan statistical area are treated as a single Medicare+Choice payment area.

(D) Areas

In subparagraph (C), the terms “metropolitan statistical area”’, “consolidated metropolitan statistical area”, and “primary metropolitan statistical area” mean any area designated as such by the Secretary of Com-

(e) Special rules for individuals electing MSA plans

(1) In general

If the amount of the Medicare+Choice monthly MSA premium (as defined in section 1395w–21(b)(2)(C) of this title) for an MSA plan for a year is less than \( \frac{1}{2} \) of the annual Medicare+Choice capitation rate applied under this section for the year and year involved, the Secretary shall deposit an amount equal to 100 percent of such difference in a Medicare+Choice MSA established (and, if applicable, designated) by the individual under paragraph (2).

(2) Establishment and designation of Medicare+Choice medical savings account as requirement for payment of contribution

In the case of an individual who has elected coverage under an MSA plan, no payment shall be made under paragraph (1) on behalf of an individual for a month unless the individual—

(A) has established before the beginning of the month (or by such other deadline as the Secretary may specify) a Medicare+Choice MSA (as defined in section 138(b)(2) of the Internal Revenue Code of 1986), and

(B) if the individual has established more than one such Medicare+Choice MSA, has designated one of such accounts as the individual’s Medicare+Choice MSA for purposes of this part.

Under rules under this section, such an individual may change the designation of such ac-

count under subparagraph (B) for purposes of this part.

(3) Lump-sum deposit of medical savings account contribution

In the case of an individual electing an MSA plan effective beginning with a month in a year, the amount of the contribution to the Medicare+Choice MSA on behalf of the indi-

vidual for that month and all successive months in the year shall be deposited during that first month. In the case of a termination of such an election as of a month before the end of a year, the Secretary shall provide for a procedure for the recovery of deposits attributable to the remaining months in the year.

(f) Payments from Trust Funds

The payment to a Medicare+Choice organization under this section for individuals enrolled under this part with the organization and for payments under subsection (l) and subsection (m) and payments to a Medicare+Choice MSA under subsection (e)(1) of this section shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in such proportion as the Secretary determines reflects the relative weight that benefits under part A of this sub-
chapter and under part B of this subchapter represent of the actuarial value of the total bene-
fits under this subchapter. Payments to MA organ-
izations for statutory drug benefits provided under this subchapter are made from the Medi-
care Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund.

Monthly payments otherwise payable under this section for October 2000 shall be paid on the first business day of each month. Monthly payments otherwise payable under this section for October 2001 shall be paid on the last business day of September 2001. Monthly payments otherwise payable under this section for October 2006 shall be paid on the first business day of October 2006.

(g) Special rule for certain inpatient hospital stays

In the case of an individual who is receiving inpatient hospital services from a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title), a rehabilitation hospital described in section 1395ww(d)(1)(B)(ii) of this title or a distinc-
t part rehabilitation unit described in the matter following clause (v) of section 1395ww(d)(1)(B)(iv) of this title or a long-term care hospital (described in section 1395ww(d)(1)(B)(v) of this title) as of the effective date of the individ-

ual’s—

(1) election under this part of a Medicare+Choice plan offered by a Medicare+Choice organization—

(A) payment for such services until the date of the individual’s discharge shall be made under this subchapter through the Medicare+Choice plan or the original medi-
care fee-for-service program option de-

scribed in section 1395w–21(a)(1)(A) of this title (as the case may be) elected before the election with such organization,

(B) the elected organization shall not be fi-
nancially responsible for payment for such services until the date after the date of the individual’s discharge, and
(C) the organization shall nonetheless be paid the full amount otherwise payable to the organization under this part; or
(2) termination of election with respect to a Medicare+Choice organization under this part—
(A) the organization shall be financially responsible for payment for such services after such date and until the date of the individual’s discharge,
(B) payment for such services during the stay shall not be made under section 1395ww(d) of this title or other payment provision under this subchapter for inpatient services for the type of facility, hospital, or unit involved, described in the matter preceding paragraph (1), as the case may be, or by any succeeding Medicare+Choice organization, and
(C) the terminated organization shall not receive any payment with respect to the individual under this part during the period the individual is not enrolled.

(h) Special rule for hospice care
(1) Information
A contract under this part shall require the Medicare+Choice organization to inform each individual enrolled under this part with a Medicare+Choice organization to inform each Medicare+Choice organization under this part—
(A) a hospice program participating under this subchapter for inpatient hospice care if—
(1) it is common practice to refer patients to hospice programs outside such service area; or
(2) a hospice program other than the hospice program elected by the individual by the Secretary;
(B) payment for services not related to the individual’s terminal illness, shall be made by the Secretary to the Medicare+Choice organization or the provider or supplier of the service instead of payments calculated under subsection (a) of this section; and
(C) the Secretary shall continue to make monthly payments to the Medicare+Choice organization in an amount equal to the value of the additional benefits required under section 1395w–24(f)(1)(A) of this title.

(i) New entry bonus
(1) In general
Subject to paragraphs (2) and (3), in the case of Medicare+Choice payment area in which a Medicare+Choice plan has not been offered since 1997 (or in which all organizations that offered a plan since such date have filed notice with the Secretary, as of October 13, 1999, that they will not be offering such a plan as of January 1, 2000, or filed notice with the Secretary as of October 3, 2000, that they will not be offering such a plan as of January 1, 2001), the amount of the monthly payment otherwise made under this section shall be increased—
(A) only for the first 12 months in which any Medicare+Choice plan is offered in the area, by 5 percent of the total monthly payment otherwise computed for such payment area; and
(B) only for the subsequent 12 months, by 3 percent of the total monthly payment otherwise computed for such payment area.

(2) Period of application
Paragraph (1) shall only apply to payment for Medicare+Choice plans which are first offered in a Medicare+Choice payment area during the 2-year period beginning on January 1, 2000.

(3) Limitation to organization offering first plan in an area
Paragraph (1) shall only apply to payment to the first Medicare+Choice organization that offers a Medicare+Choice plan in each Medicare+Choice payment area, except that if more than one such organization first offers such a plan in an area on the same date, paragraph (1) shall apply to payment for such organizations.

(4) Construction
Nothing in paragraph (1) shall be construed as affecting the calculation of the annual Medicare+Choice capitation rate under subsection (c) of this section for any payment area or as applying to payment for any period not described in such paragraph and paragraph (2).

(5) Offered defined
In this subsection, the term “offered” means, with respect to a Medicare+Choice plan as of a date, that a Medicare+Choice eligible individual may enroll with the plan on that date, regardless of when the enrollment takes effect or when the individual obtains benefits under the plan.

(j) Computation of benchmark amounts
For purposes of this part, subject to subsection (o), the term “MA area-specific non-drug benchmark amount” means for a month in a year—
(1) with respect to—
(A) a service area that is entirely within an MA local area, subject to section 1395w–29(d)(2)(A) of this title, an amount equal to \( \frac{1}{12} \) of the annual MA capitation rate under subsection (c)(1) for the area for the year (or, for 2007, 2008, 2009, and 2010, \( \frac{1}{12} \) of the applicable amount determined under subsection (k)(1) for the area for the year; for 2011, \( \frac{1}{12} \) of the applicable amount determined under subsection (k)(1) for the area for the year; for 2012, \( \frac{1}{12} \) of the applicable amount determined under subsection (k)(1) for the area for the year, adjusted as appropriate (for years before 2007) for the purpose of risk adjustment; or
(B) a service area that includes more than one MA local area, an amount equal to the average of the amounts described in subparagraph (A) for each such local MA area, weighted by the projected number of enrollees in the plan residing in the respective local MA areas (as used by the plan for purposes of the bid and disclosed to the Secretary under section 1395w–24(a)(6)(A)(iii) of this title), adjusted as appropriate (for years before 2007) for the purpose of risk adjustment; or

(2) with respect to an MA region for a month in a year, the MA region-specific non-drug monthly benchmark amount, as defined in section 1395w–27a(f) of this title for the region for the year.

(k) Determination of applicable amount for purposes of calculating the benchmark amounts

(1) Applicable amount defined

For purposes of subsection (j), subject to paragraphs (2) and (4), the term “applicable amount” means for an area—

(A) for 2007—

(i) if such year is not specified under subsection (c)(1)(D)(ii), an amount equal to the amount specified in subsection (c)(1)(C) for the area for 2006—

(I) first adjusted by the rescaling factor for 2006 for the area (as made available by the Secretary in the announcement of the rates on April 4, 2005, under subsection (b)(1), but excluding any national adjustment factors for coding intensity and risk adjustment budget neutrality that were included in such factor); and

(II) then increased by the national per capita MA growth percentage, described in subsection (c)(6) for 2007, but not taking into account any adjustment under subparagraph (C) of such subsection for a year before 2004;

(ii) if such year is specified under subsection (c)(1)(D)(ii), an amount equal to the greater of—

(I) the amount determined under clause (i) for the area for the year; or

(II) the amount specified in subsection (c)(1)(D) for the area for the year; and

(B) for a subsequent year—

(i) if such year is not specified under subsection (c)(1)(D)(ii), an amount equal to the amount determined under this paragraph for the area for the previous year (determined without regard to paragraphs (2) and (4)), increased by the national per capita MA growth percentage, described in subsection (c)(6) for that succeeding year, but not taking into account any adjustment under subparagraph (C) of such subsection for a year before 2004; and

(ii) if such year is specified under subsection (c)(1)(D)(ii), an amount equal to the greater of—

(I) the amount determined under clause (i) for the area for the year; or

(II) the amount specified in subsection (c)(1)(D) for the area for the year.

(2) Phase-out of budget neutrality factor

(A) In general

Except as provided in subparagraph (D), in the case of 2007 through 2010, the applicable amount determined under paragraph (1) shall be multiplied by a factor equal to 1 plus the product of—

(i) the percent determined under subparagraph (B) for the year; and

(ii) the applicable phase-out factor for the year under subparagraph (C).

(B) Percent determined

(i) In general

For purposes of subparagraph (A)(i), subject to clause (iv), the percent determined under this subparagraph for a year is a percent equal to a fraction the numerator of which is described in clause (ii) and the denominator of which is described in clause (iii).

(ii) Numerator based on difference between demographic rate and risk rate

(I) In general

The numerator described in this clause is an amount equal to the amount by which the demographic rate described in subclause (II) exceeds the risk rate described in subclause (III).

(II) Demographic rate

The demographic rate described in this subclause is the Secretary’s estimate of the total payments that would have been made under this part in the year if all the monthly payment amounts for all MA plans were equal to 1⁄12 of the annual MA capitation rate under subsection (c)(1) for the area and year, adjusted pursuant to subsection (a)(1)(C).

(III) Risk rate

The risk rate described in this subclause is the Secretary’s estimate of the total payments that would have been made under this part in the year if all the monthly payment amounts for all MA plans were equal to the amount described in subsection (j)(1)(A) (determined as if this paragraph had not applied) under subsection (j) for the area and year, adjusted pursuant to subsection (a)(1)(C).

(iii) Denominator based on risk rate

The denominator described in this clause is equal to the total amount estimated for the year under clause (ii)(III).

(iv) Requirements

In estimating the amounts under the previous clauses, the Secretary shall—

(I) use a complete set of the most recent and representative Medicare Advantage risk scores under subsection (a)(3) that are available from the risk adjustment model announced for the year;

(II) adjust the risk scores to reflect changes in treatment and coding practices in the fee-for-service sector;

(III) adjust the risk scores for differences in coding patterns between
Medicare Advantage plans and providers under the original Medicare fee-for-service program under parts A and B to the extent that the Secretary has identified such differences, as required in subsection (a)(1)(C); (IV) as necessary, adjust the risk scores for late data submitted by Medicare Advantage organizations; (V) as necessary, adjust the risk scores for lagged cohorts; and (VI) as necessary, adjust the risk scores for changes in enrollment in Medicare Advantage plans during the year.

(v) Authority

In computing such amounts the Secretary may take into account the estimated health risk of enrollees in preferred provider organization plans (including MA regional plans) for the year.

(C) Applicable phase-out factor

For purposes of subparagraph (A)(ii), the term “applicable phase-out factor” means—

(i) for 2007, 0.55;
(ii) for 2008, 0.40;
(iii) for 2009, 0.25; and
(iv) for 2010, 0.05.

(D) Termination of application

Subparagraph (A) shall not apply in a year if the amount estimated under subparagraph (B)(ii)(III) for the year is equal to or greater than the amount estimated under subparagraph (B)(ii)(II) for the year.

(3) No revision in percent

(A) In general

The Secretary may not make any adjustment to the percent determined under paragraph (2)(B) for any year.

(B) Rule of construction

Nothing in this subsection shall be construed to limit the authority of the Secretary to make adjustments to the applicable amounts determined under paragraph (1) as appropriate for purposes of updating data or for purposes of adopting an improved risk adjustment methodology.

(4) Phase-out of the indirect costs of medical education from capitation rates

(A) In general

After determining the applicable amount for an area for a year under paragraph (1) (beginning with 2010), the Secretary shall adjust such applicable amount to exclude from such applicable amount the phase-in percentage (as defined in subparagraph (B)(i)) for the year of the Secretary’s estimate of the standardized costs for payments under section 1395ww(d)(5)(B) of this title in the area for the year. Any adjustment under the preceding sentence shall be made prior to the application of paragraph (2).

(B) Percentages defined

For purposes of this paragraph:

(i) Phase-in percentage

The term “phase-in percentage” means, for an area for a year, the ratio (expressed as a percentage, but in no case greater than 100 percent) of—

(I) the maximum cumulative adjustment percentage for the year (as defined in clause (ii)); to
(II) the standardized IME cost percentage (as defined in clause (iii)) for the area and year.

(ii) Maximum cumulative adjustment percentage

The term “maximum cumulative adjustment percentage” means, for—

(I) 2010, 0.60 percent; and
(II) a subsequent year, the maximum cumulative adjustment percentage for the previous year increased by 0.60 percentage points.

(iii) Standardized IME cost percentage

The term “standardized IME cost percentage” means, for an area for a year, the per capita costs for payments under section 1395ww(d)(5)(B) of this title (expressed as a percentage of the fee-for-service amount specified in subparagraph (C)) for the area and the year.

(C) Fee-for-service amount

The fee-for-service amount specified in this subparagraph for an area for a year is the amount specified under subsection (c)(1)(D) for the area and the year.

(I) Application of eligible professional incentives for certain MA organizations for adoption and meaningful use of certified EHR technology

(1) In general

Subject to paragraphs (3) and (4), in the case of a qualifying MA organization, the provisions of sections 1395w–4(o) and 1395w–4(a)(7) of this title shall apply with respect to eligible professionals described in this paragraph of the organization who the organization attests under paragraph (6) to be meaningful EHR users in a similar manner as they apply to eligible professionals under such sections. Incentive payments under paragraph (3) shall be made to and payment adjustments under paragraph (4) shall apply to such qualifying organizations.

(2) Eligible professional described

With respect to a qualifying MA organization, an eligible professional described in this paragraph is an eligible professional (as defined for purposes of section 1395w–4(o) of this title) who—

(A)(i) is employed by the organization; or
(ii) is employed by, or is a partner of, an entity that through contract with the organization furnishes at least 80 percent of the entity’s Medicare patient care services to enrollees of such organization; and
(II) furnishes at least 80 percent of the professional services of the eligible professional covered under this subchapter to enrollees of the organization; and
(B) furnishes, on average, at least 20 hours per week of patient care services.
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(3) Eligible professional incentive payments
   (A) In general
      In applying section 1395w–4(o) of this title under paragraph (1), instead of the additional payment amount under section 1395w–4(o)(1)(A) of this title and subject to subparagraph (B), the Secretary may substitute an amount determined by the Secretary to the extent feasible and practical to be similar to the estimated amount in the aggregate that would be payable if payment for services furnished by such professionals was payable under part B instead of this part.
   (B) Avoiding duplication of payments
      (i) In general
         In the case of an eligible professional described in paragraph (2)—
            (I) that is eligible for the maximum incentive payment under section 1395w–4(o)(1)(A) of this title for the same payment period, the payment incentive shall be made only under such section and not under this subsection; and
            (II) that is eligible for less than such maximum incentive payment for the same payment period, the payment incentive shall be made only under this subsection and not under section 1395w–4(o)(1)(A) of this title.
      (ii) Methods
         In the case of an eligible professional described in paragraph (2) who is eligible for an incentive payment under section 1395w–4(o)(1)(A) of this title but is not described in clause (i) for the same payment period, the Secretary shall develop a process—
            (I) to ensure that duplicate payments are not made with respect to an eligible professional both under this subsection and under section 1395w–4(o)(1)(A) of this title; and
            (II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.
   (C) Fixed schedule for application of limitation on incentive payments for all eligible professionals
      In applying section 1395w–4(o)(1)(B)(ii) of this title under subparagraph (A), in accordance with rules specified by the Secretary, a qualifying MA organization shall specify a year (not earlier than 2011) that shall be treated as the first payment year for all eligible professionals with respect to such organization.
   (4) Payment adjustment
      (A) In general
         In applying section 1395w–4(a)(7) of this title under paragraph (1), instead of the payment adjustment being an applicable percent of the fee schedule amount for a year under such section, subject to subparagraph (D), the payment adjustment under paragraph (1) shall be equal to the percent specified in subparagraph (B) for such year of the payment amount otherwise provided under this section for such year.
      (B) Specified percent
         The percent specified under this subparagraph for a year is 100 percent minus a number of percentage points equal to the product of—
            (i) the number of percentage points by which the applicable percent (under section 1395w–4(a)(7)(A)(ii) of this title) for the year is less than 100 percent; and
            (ii) the Medicare physician expenditure proportion specified in subparagraph (C) for the year.
   (C) Medicare physician expenditure proportion
      The Medicare physician expenditure proportion under this subparagraph for a year is the Secretary’s estimate of the proportion, of the expenditures under parts A and B that are not attributable to this part, that are attributable to expenditures for physicians’ services.
   (D) Application of payment adjustment
      In the case that a qualifying MA organization attests that not all eligible professionals of the organization are meaningful EHR users with respect to a year, the Secretary shall apply the payment adjustment under this paragraph based on the proportion of all such eligible professionals of the organization that are not meaningful EHR users for such year.
(5) Qualifying MA organization defined
   In this subsection and subsection (m), the term “qualifying MA organization” means a Medicare Advantage organization that is organized as a health maintenance organization (as defined in section 300gg–91(h)(3) of this title).
   (6) Meaningful EHR user attestation
      For purposes of this subsection and subsection (m), a qualifying MA organization shall submit an attestation, in a form and manner specified by the Secretary which may include the submission of such attestation as part of submission of the initial bid under section 1395w–24(a)(1)(A)(iv) of this title, identifying—
         (A) whether each eligible professional described in paragraph (2), with respect to such organization is a meaningful EHR user (as defined in section 1395w–24(a)(1)(A)(iv) of this title), identifying—
            (i) to ensure that duplicate payments are not made with respect to an eligible professional both under this subsection and under section 1395w–4(o)(1)(A) of this title; and
            (II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.
   (7) Posting on website
      The Secretary shall post on the Internet website of the Centers for Medicare & Health

8So in original. Section 1395w–24(a)(1)(A) of this title does not contain a cl. (iv).
9So in original. Probably should be “(m)(2),”.
aid Services, in an easily understandable format, a list of the names, business addresses, and business phone numbers of—

(A) each qualifying MA organization receiving an incentive payment under this subsection for eligible professionals of the organization; and

(B) the eligible professionals of such organization for which such incentive payment is based.

(8) Limitation on review

There shall be no administrative or judicial review under section 1395f of this title, section 1395oo of this title, or otherwise, of—

(A) the methodology and standards for determining payment amounts and payment adjustments under this subsection, including avoiding duplication of payments under paragraph (3)(B) and the specification of rules for the fixed schedule for application of limitation on incentive payments for all eligible professionals under paragraph (3)(C);

(B) the methodology and standards for determining eligible professionals under paragraph (2); and

(C) the methodology and standards for determining a meaningful EHR user under section 1395w–4(o) of this title, including specification of the means of demonstrating meaningful EHR use under section 1395w–4(o)(3)(C) of this title and selection of measures under section 1395w–4(o)(3)(B) of this title.

(m) Application of eligible hospital incentives for certain MA organizations for adoption and meaningful use of certified EHR technology

(1) Application

Subject to paragraphs (3) and (4), in the case of a qualifying MA organization, the provisions of sections 1395ww(n) and 1395ww(b)(3)(B)(ix) of this title shall apply with respect to eligible hospitals described in paragraph (2) of the organization which the organization attests under subsection (i)(6) to be meaningful EHR users in a similar manner as they apply to eligible hospitals under such sections. Incentive payments under paragraph (3) shall be made to and payment adjustments under paragraph (4) shall apply to such qualifying organizations.

(2) Eligible hospital described

With respect to a qualifying MA organization, an eligible hospital described in this paragraph is an eligible hospital (as defined in section 1395ww(n)(6)(A) of this title) that is under common corporate governance with such organization and serves individuals enrolled under an MA plan offered by such organization.

(3) Eligible hospital incentive payments

(A) In general

In applying section 1395ww(n)(2) of this title under paragraph (1), instead of the additional payment amount under section 1395ww(n)(2) of this title, there shall be substituted an amount determined by the Secretary to be similar to the estimated amount in the aggregate that would be payable if payment for services furnished by such hospitals was payable under part A instead of this part. In implementing the previous sentence, the Secretary—

(i) shall, insofar as data to determine the discharge related amount under section 1395ww(n)(2)(C) of this title for an eligible hospital are not available to the Secretary, use such alternative data and methodology to estimate such discharge related amount as the Secretary determines appropriate; and

(ii) shall, insofar as data to determine the medicare share described in section 1395ww(n)(3)(D) of this title for an eligible hospital are not available to the Secretary, use such alternative data and methodology to estimate such share, which data and methodology may include use of the inpatient-bed-days (or discharges) with respect to an eligible hospital during the appropriate period which are attributable to both individuals for whom payment may be made under part A or individuals enrolled in an MA plan under a Medicare Advantage organization under this part as a proportion of the estimated total number of patient-bed-days (or discharges) with respect to such hospital during such period.

(B) Avoiding duplication of payments

(i) In general

In the case of a hospital that for a payment year is an eligible hospital described in paragraph (2) and for which at least one-third of their discharges (or bed-days) of Medicare patients for the year are covered under part A, payment for the payment year shall be made only under section 1395ww(n) of this title and not under this subsection.

(ii) Methods

In the case of a hospital that is an eligible hospital described in paragraph (2) and also is eligible for an incentive payment under section 1395ww(n) of this title but is not described in clause (i) for the same payment period, the Secretary shall develop a process—

(I) to ensure that duplicate payments are not made with respect to an eligible hospital both under this subsection and under section 1395ww(n) of this title; and

(II) to collect data from Medicare Advantage organizations to ensure against such duplicate payments.

(4) Payment adjustment

(A) Subject to paragraph (3), in the case of a qualifying MA organization (as defined in subsection (i)(5)), if, according to the attestation of the organization submitted under subsection (i)(6) for an applicable period, one or more eligible hospitals (as defined in section 1395ww(n)(6)(A) of this title) that are under common corporate governance with such orga-
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nization and that serve individuals enrolled under a plan offered by such organization are not meaningful EHR users (as defined in section 1395ww(n)(3) of this title) with respect to a period, the payment amount payable under this section for such organization for such period shall be the percent specified in subparagraph (B) for such period of the payment amount otherwise provided under this section for such period.

(B) SPECIFIED PERCENT.—The percent specified under this subparagraph for a year is 100 percent minus a number of percentage points equal to the product of—

(i) the number of the percentage point reduction effected under section 1395ww(b)(8)(B)(ix)(I) of this title for the period; and

(ii) the Medicare hospital expenditure proportion specified in subparagraph (C) for the year.

(C) MEDICARE HOSPITAL EXPENDITURE PROPORTION.—The Medicare hospital expenditure proportion under this subparagraph for a year is the Secretary’s estimate of the proportion of the expenditures under parts A and B that are not attributable to this part, that are attributable to expenditures for inpatient hospital services.

(D) APPLICATION OF PAYMENT ADJUSTMENT.—In the case that a qualifying MA organization attests that not all eligible hospitals are meaningful EHR users with respect to an applicable period, the Secretary shall apply the payment adjustment under this paragraph based on a methodology specified by the Secretary, taking into account the proportion of such eligible hospitals, or discharges from such hospitals, that are not meaningful EHR users for such period.

(5) Posting on website

The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services, in an easily understandable format—

(A) a list of the names, business addresses, and business phone numbers of each qualifying MA organization receiving an incentive payment under this subsection for eligible hospitals described in paragraph (2); and

(B) a list of the names of the eligible hospitals for which such incentive payment is based.

(6) Limitations on review

There shall be no administrative or judicial review under section 1395f of this title, section 1395oo of this title, or otherwise, of—

(A) the methodology and standards for determining payment amounts and payment adjustments under this subsection, including avoiding duplication of payments under paragraph (3)(B);

(B) the methodology and standards for determining eligible hospitals under paragraph (2); and

(C) the methodology and standards for determining a meaningful EHR user under section 1395ww(n)(3) of this title, including specification of the means of demonstrating meaningfull EHR use under subparagraph (C) of such section and selection of measures under subparagraph (B) of such section.

(n) Determination of blended benchmark amount

(1) In general

For purposes of subsection (j), subject to paragraphs (3), (4), and (5), the term “blended benchmark amount” means for an area—

(A) for 2012 the sum of—

(i) ½ of the applicable amount for the area and year; and

(ii) ½ of the amount specified in paragraph (2)(A) for the area and year; and

(B) for a subsequent year the amount specified in paragraph (2)(A) for the area and year.

(2) Specified amount

(A) In general

The amount specified in this subparagraph for an area and year is the product of—

(i) in the highest quartile under subparagraph (C) for the previous year is 100 percent; or

(ii) in the second highest quartile under such subparagraph for the previous year is 107.5 percent; or

(iii) in the third highest quartile under such subparagraph for the previous year is 115 percent.

(B) Applicable percentage

Subject to subparagraph (D), the applicable percentage specified in this subparagraph for an area for a year in the case of an area that is ranked—

(i) in the highest quartile under subparagraph (C) for the previous year is 95 percent; or

(ii) in the second highest quartile under such subparagraph for the previous year is 100 percent; or

(iii) in the third highest quartile under such subparagraph for the previous year is 107.5 percent; or

(iv) in the lowest quartile under such subparagraph for the previous year is 115 percent.

(C) Periodic ranking

For purposes of this paragraph in the case of an area located—

(i) in 1 of the 50 States or the District of Columbia, the Secretary shall rank such area in each year specified under subsection (c)(1)(D)(ii) based upon the level of the amount specified in subparagraph (A)(i) for such areas; or

(ii) in a territory, the Secretary shall rank such areas in each such year based upon the level of the amount specified in subparagraph (A)(i) for such area relative to quartile rankings computed under clause (i).

(D) 1-year transition for changes in applicable percentage

If, for a year after 2012, there is a change in the quartile in which an area is ranked compared to the previous year, the applicable percentage for the area in the year shall be the average of—
(i) the applicable percentage for the area for the previous year; and
(ii) the applicable percentage that would otherwise apply for the area for the year.

(E) Base payment amount

Subject to subparagraph (F), the base payment amount specified in this subparagraph—
(i) for 2012 is the amount specified in subsection (c)(1)(D) for the area for the year; or
(ii) for a subsequent year that—
(I) is not specified under subsection (c)(1)(D)(ii), is the base amount specified in this subparagraph for the area for the previous year, increased by the national per capita MA growth percentage, described in subsection (c)(6) for that succeeding year, but not taking into account any adjustment under subparagraph (C) of such subsection for a year before 2004; and
(II) is specified under subsection (c)(1)(D)(ii), is the amount specified in subsection (c)(1)(D) for the area for the year.

(F) Application of indirect medical education phase-out

The base payment amount specified in subparagraph (E) for a year shall be adjusted in the same manner under paragraph (4) of subsection (k) as the applicable amount is adjusted under such subsection.

(3) Alternative phase-ins

(A) 4-year phase-in for certain areas

If the difference between the applicable amount (as defined in subsection (k)) for an area for 2010 and the projected 2010 benchmark amount (as defined in subparagraph (C)) for the area is at least $30 but less than $50, the blended benchmark amount for the area is—
(i) for 2012 the sum of—
(I) % of the applicable amount for the area and year; and
(II) % of the amount specified in paragraph (2)(A) for the area and year;
(ii) for 2013 the sum of—
(I) % of the applicable amount for the area and year; and
(II) % of the amount specified in paragraph (2)(A) for the area and year;
(iii) for 2014 the sum of—
(I) % of the applicable amount for the area and year; and
(II) % of the amount specified in paragraph (2)(A) for the area and year;
(iv) for 2015 the sum of—
(I) % of the applicable amount for the area and year; and
(II) % of the amount specified in paragraph (2)(A) for the area and year;
(v) for 2016 the sum of—
(I) % of the applicable amount for the area and year; and
(II) % of the amount specified in paragraph (2)(A) for the area and year;
(vi) for a subsequent year the amount specified in paragraph (2)(A) for the area and year.

(B) 6-year phase-in for certain areas

If the difference between the applicable amount (as defined in subsection (k)) for an area for 2010 and the projected 2010 benchmark amount (as defined in subparagraph (C)) for the area is at least $50, the blended benchmark amount for the area is—
(i) for 2012 the sum of—
(I) % of the applicable amount for the area and year; and
(II) % of the amount specified in paragraph (2)(A) for the area and year;
(ii) for 2013 the sum of—
(I) % of the applicable amount for the area and year; and
(II) % of the amount specified in paragraph (2)(A) for the area and year;
(iii) for 2014 the sum of—
(I) % of the applicable amount for the area and year; and
(II) % of the amount specified in paragraph (2)(A) for the area and year;
(iv) for a subsequent year the amount specified in paragraph (2)(A) for the area and year.

(C) Projected 2010 benchmark amount

The projected 2010 benchmark amount described in this subparagraph for an area is equal to the sum of—
(I) % of the applicable amount (as defined in subsection (k)) for the area for 2010; and
(ii) % of the amount specified in paragraph (2)(A) for the area for 2010 but determined as if there were substituted for the applicable percentage specified in clause (II) of such paragraph the sum of—
(I) the applicable percent that would be specified under subparagraph (B) of paragraph (2) (determined without regard to subparagraph (D) of such paragraph) for the area for 2010 if any reference in such paragraph to "the previous year" were deemed a reference to 2010; and
(II) the applicable percentage increase that would apply to a qualifying plan in the area under subsection (o) as if any reference in such subsection to 2012 were deemed a reference to 2010 and as if the determination of a qualifying county under paragraph (3)(B) of such subsection were made for 2010.

(4) Cap on benchmark amount

In no case shall the blended benchmark amount for an area for a year (determined taking into account subsection (o)) be greater than the applicable amount that would (but for the application of this subsection) be determined under subsection (k)(1) for the area for the year.

(5) Non-application to PACE plans

This subsection shall not apply to payments to a PACE program under section 1395eee of this title.
(o) Applicable percentage quality increases

(1) In general

Subject to the succeeding paragraphs, in the case of a qualifying plan with respect to a year beginning with 2012, the applicable percentage under subsection (n)(2)(B) shall be increased on a plan or contract level, as determined by the Secretary—

(A) for 2012, by 1.5 percentage points;
(B) for 2013, by 3.0 percentage points; and
(C) for 2014 or a subsequent year, by 5.0 percentage points.

(2) Increase for qualifying plans in qualifying counties

The increase applied under paragraph (1) for a qualifying plan located in a qualifying county for a year shall be doubled.

(3) Qualifying plans and qualifying county defined; application of increases to low enrollment and new plans

For purposes of this subsection:

(A) Qualifying plan

(i) In general

The term “qualifying plan” means, for a year and subject to paragraph (4), a plan that had a quality rating under paragraph (4) of 4 stars or higher based on the most recent data available for such year.

(ii) Application of increases to low enrollment plans

(I) 2012

For 2012, the term “qualifying plan” includes a MA plan that the Secretary determines is not able to have a quality rating under paragraph (4) because of low enrollment.

(II) 2013 and subsequent years

For 2013 and subsequent years, for purposes of determining whether an MA plan with low enrollment (as defined by the Secretary) is included as a qualifying plan, the Secretary shall establish a method to apply to MA plans with low enrollment (as defined by the Secretary) the computation of quality rating and the rating system under paragraph (4).

(iii) Application of increases to new plans

(I) In general

A new MA plan that meets criteria specified by the Secretary shall be treated as a qualifying plan, except that in applying paragraph (1), the applicable percentage under subsection (n)(2)(B) shall be increased—

(aa) for 2012, by 1.5 percentage points; and
(bb) for 2013, by 2.5 percentage points; and
(cc) for 2014 or a subsequent year, by 3.5 percentage points.

(II) New MA plan defined

The term “new MA plan” means, with respect to a year, a plan offered by an organization or sponsor that has not had a contract as a Medicare Advantage organization in the preceding 3-year period.

(B) Qualifying county

The term “qualifying county” means, for a year, a county—

(i) that has an MA capitation rate that, in 2004, was based on the amount specified in subsection (c)(1)(B) for a Metropolitan Statistical Area with a population of more than 250,000;
(ii) for which, as of December 2009, of the Medicare Advantage eligible individuals residing in the county at least 25 percent of such individuals were enrolled in Medicare Advantage plans; and
(iii) that has per capita fee-for-service spending that is lower than the national monthly per capita cost for expenditures for individuals enrolled under the original medicare fee-for-service program for the year.

(4) Quality determinations for application of increase

(A) Quality determination

The quality rating for a plan shall be determined according to a 5-star rating system (based on the data collected under section 1395w–22(e) of this title).

(B) Plans that failed to report

An MA plan which does not report data that enables the Secretary to rate the plan for purposes of this paragraph shall be counted as having a rating of fewer than 3.5 stars.

(5) Exception for PACE plans

This subsection shall not apply to payments to a PACE program under section 1395eee of this title.

REFERENCES IN TEXT


Section 1395w–24(b)(1)(C)(IV) of this title, referred to in subsec. (a)(1)(E), was redesignated section
Revenue Code.


(b)(1)(B)(iii) and (j)(1)(A), was repealed by Pub. L. 111–152, § 1102(a). See Effective Date of 2010 Amendment note below.

Section 1359–29 of this title, referred to in subsecs. (b)(1)(B) and (j)(1)(A), was repealed by Pub. L. 111–152, § 1102(a). See Effective Date of 2010 Amendment note below.


A

MENDMENTS

2010—Subsec. (a)(1)(B)(i), (ii). Pub. L. 111–148, § 3201(e)(2)(A)(ii), which directed amendment of subpar. (B) by inserting “‘and any performance bonus under subsection (n)” before period at end of cl. (i) and substituting “(G), plus the amount (if any) of any performance bonus under subsection (n)” for “(G)” in cl. (ii), was repealed by Pub. L. 111–152, § 1102(a). See Effective Date of 2010 Amendment note below.


Subsec. (c)(6). Pub. L. 111–148, § 3201(e)(1)(C), which directed amendment of par. (6) by substituting “for 2003 through 2010” for “for a year after 2002” in cl. (vi) and adding cl. (vii), which read “for 2011, 3 percentage points; and”, and cl. (viii), which read “for a year after 2011, 0 percentage points.”, was repealed by Pub. L. 111–152, § 1102(a). See Effective Date of 2010 Amendment note below.

Subsec. (d). Pub. L. 111–148, § 3201(e)(1)(A), which directed substitution of “MA region; MA local plan service area” for “MA region” in heading, was repealed by Pub. L. 111–152, § 1102(a). See Effective Date of 2010 Amendment note below.

Subsec. (d)(1)(A). Pub. L. 111–148, § 3201(e)(1)(B), which directed substitution of “with respect to an MA local plan” for “(i) for years before 2012, an MA local area (as defined in paragraph (2)); and” “(ii) for 2012 and succeeding years, a service area that is an entire urban or rural area, as applicable (as described in paragraph (5))”, and “for—with respect to an MA local plan, an MA local area (as defined in paragraph (2))”, and, was repealed by Pub. L. 111–152, § 1102(a). See Effective Date of 2010 Amendment note below.

Subsec. (d)(5). Pub. L. 111–148, § 3201(e)(1)(C), which directed the addition of par. (5), was repealed by Pub. L. 111–152, § 1102(a). As enacted, text read as follows: “For 2012 and succeeding years, the service area for an MA local plan shall be an entire urban or rural area in each State as follows:

A

URBAN AREAS.—

(i) IN GENERAL.—Subject to clause (ii) and subparagraphs (C) and (D), the service area for an MA local plan in an urban area shall be the Core Based Statistical Area (in this paragraph referred to as a ‘CBSA’) or, if applicable, a conceptually similar alternative classification, as defined by the Director of the Office of Management and Budget.

(ii) CBSA COVERING MORE THAN ONE STATE.—In the case of a CBSA (or alternative classification) that covers more than one State, the Secretary shall divide the CBSA (or alternative classification) into separate service areas with respect to each State covered by the CBSA (or alternative classification).

B RURAL AREAS.—Subject to subparagraphs (C) and (D), the service area for an MA local plan in a rural area shall be a county that does not qualify for inclusion in a CBSA (or alternative classification), as defined by the Director of the Office of Management and Budget.

C REFINEMENTS TO SERVICE AREAS.—For 2015 and succeeding years, in order to reflect actual patterns of health care service utilization, the Secretary may adjust the boundaries of service areas for MA local plans in urban areas and rural areas under subparagraphs (A) and (B), respectively, but may only do so based on recent analyses of actual patterns of care.

D ADDITIONAL AUTHORITY TO MAKE LIMITED EXCEPTIONS TO SERVICE AREA REQUIREMENTS FOR MA LOCAL PLANS.—The Secretary may, in addition to any adjustments under subparagraph (C), make limited exceptions to service area requirements otherwise applicable under this part for MA local plans that have in effect (as of March 25, 2010): (i) agreements with another MA organization or MA plan that preclude the offering of benefits throughout an entire service area; or (ii) limitations in their structural capacity to support adequate network access throughout an entire service area as a result of the delivery system model of the MA local plan.”
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See Effective Date of 2010 Amendment note below.

Subsec. (d)(6), Pub. L. 111–148, §3201(i)(2), which directed the addition of par. (6), was repealed by Pub. L. 111–152, §1102(a). As enacted, text read as follows: "For years beginning with 2012, in the case of a PACE program under section 1935ee of this title, the MA payment area shall be the MA local area (as defined in paragraph (2))." See Effective Date of 2010 Amendment note below.

Subsec. (j), Pub. L. 111–152, §1102(c)(1), inserted "subject to subsection (a)", after "For purposes of this part"

in introductory provisions.

Pub. L. 111–148, §3201(a)(1)(A)–(C)(1), which directed the designation of existing provisions as par. (1), the insertion of par. (1) heading, the redesignation of former pars. (1) and (2) as subs. (A) and (B), respectively, and former subpars. (A) and (B) of former par. (1) as clgs. (i) and (ii) of subpar. (A), respectively, and the realignment of margins, was repealed by Pub. L. 111–152, §1102(a). See Effective Date of 2010 Amendment note below.

Subsec. (j)(1)(A), Pub. L. 111–152, §1102(b)(1), substituted "for the area for the year (or, for 2007, 2008, 2009, and 2010, subcls. (I) to (VI) for "directed substitution of "section 1395w–29(d)(2)(A) of amount determined under subsection (k)(1) for the area of the applicable amount determined under subsection (k)(1) for the area for the year (or, beginning with 2007, 2008, 2009, and 2010, subcls. (I) to (VI) for "clause (i)" for "subparagraph (A)"...

Pub. L. 111–148, §3201(a)(1)(A)–(C)(1), which, in cl. (i), directed substitution of "section 1395w–29(d)(2)(A) of this title an amount equal to ". See Effective Date of 2010 Amendment note below.

Pub. L. 111–148, §3201(a)(1)(C)(ii), (iii), which, in cl. (i), directed substitution of "section 1395w–29(d)(2)(A) of this title an amount equal to ". See Effective Date of 2010 Amendment note below.

Pub. L. 111–148, §3201(a)(1)(C)(i), which, in cl. (i), directed substitution of "section 1395w–29(d)(2)(A) of this title an amount equal to ". See Effective Date of 2010 Amendment note below.

Pub. L. 111–148, §3201(a)(1)(C)(ii), (iii), which, in cl. (i), directed substitution of "section 1395w–29(d)(2)(A) of this title an amount equal to ". See Effective Date of 2010 Amendment note below.

Pub. L. 111–148, §3201(a)(1)(C)(ii), (iii), which, in cl. (i), directed substitution of "section 1395w–29(d)(2)(A) of this title an amount equal to ". See Effective Date of 2010 Amendment note below.


Pub. L. 111–148, §3201(f)(1)(A), which directed addition of subsec. (n), relating to performance bonuses, was repealed by Pub. L. 111–152, §1102(a). As enacted, text read as follows: "(2) COMPUTATION OF MA COMPETITIVE BENCHMARK AMOUNT.—

(A) IN GENERAL.—Subject to subparagraph (B) and paragraph (3), for months in each year (beginning with 2012) for each MA payment area the Secretary shall compute an MA competitive benchmark amount equal to the weighted average of the unadjusted MA statutory non-drug monthly bid amount (as defined in section 1395w–24(b)(2)(E) of this title) for each MA plan in the area, with the weight for each plan being equal to the average number of beneficiaries enrolled under such plan in the reference month (as defined in section 1395w–27a(c)(4) of this title, except that, in applying such definition for purposes of this paragraph, to compute the MA capitation rate under section 1395w–23(j)(2) of this title' shall be substituted for 'to compute the percentage specified in subparagraph (A) and other relevant percentages under this part').

(B) WEIGHTING RULES.—

(i) SINGLE PLAN RULE.—In the case of an MA payment area in which only a single MA plan is being offered, the weight under subparagraph (A) shall be equal to 1.

(ii) USE OF SIMPLE AVERAGE AMONG MULTIPLE PLANS IF NO PLANS OFFERED IN PREVIOUS YEAR.—In the case of an MA payment area in which no MA plan was offered in the previous year and more than 1 MA plan is offered in the current year, the Secretary shall use a simple average of the unadjusted MA statutory non-drug monthly bid amount (as so defined) for purposes of computing the MA competitive benchmark amount under subparagraph (A).

(iii) CAP ON MA COMPETITIVE BENCHMARK AMOUNT.—In no case shall the MA competitive benchmark amount for an area for a month in a year be greater than the applicable amount that would (but for the application of this subsection) be determined under subsection (k)(1) for the area for the month in the year.''

See Effective Date of 2010 Amendment note below.

Subsec. (k)(2), Pub. L. 111–152, §1102(b)(1), which directed amendment of par. (2) by substituting "and subsequent years" for "through 2010" in subpar. (A) and "(j)(1)(A)(ii)'' for "(j)(1)(A)'' in subpar. (B)(ii)(III), and by adding, in subpar. (C), cl. (vi), which read "for 2011 and subsequent years, 0.00.'', was repealed by Pub. L. 111–152, §1102(a). See Effective Date of 2010 Amendment note below.

Subsec. (n), Pub. L. 111–152, §1102(b)(2), added subsec. (n).

Pub. L. 111–148, §3201(f)(1)(A), which directed addition of subsec. (n), relating to performance bonuses, was repealed by Pub. L. 111–152, §1102(a). As enacted, text read as follows: "(1) CARE COORDINATION AND MANAGEMENT PERFORMANCE BONUS.—

(A) IN GENERAL.—For years beginning with 2014, subject to subparagraph (B), in the case of an MA plan that conducts 1 or more programs described in subparagraph (C) with respect to the year, the Secretary shall, in addition to any other payment provided under this part, make monthly payments, with respect to coverage of an individual under this part, to the MA plan in an amount equal to the product of—

(i) 0.5 percent of the national monthly per capita cost for expenditures for individuals enrolled under the original medicare fee-for-service program for the year; and

(ii) the total number of programs described in classes (i) through (ix) of subparagraph (C) that the Secretary determines the plan is conducting for the year under such subparagraph.

(B) LIMITATION.—In no case may the total amount of payment with respect to a year under subparagraph (A) be greater than 2 percent of the national monthly per capita cost for expenditures for individuals enrolled under the original medicare fee-for-service program for the year and (d) and (3), as read by Pub. L. 111–152, §1102(a). As enacted, pars. (2) and (3) read as follows:
“(C) PROGRAMS DESCRIBED.—The following programs are described in this paragraph:

“(i) Care management programs that—

“(I) target individuals with 1 or more chronic conditions;

“(II) identify gaps in care; and

“(III) facilitate improved care by using additional resources like nurses, nurse practitioners, and physician assistants.

“(ii) Programs that focus on patient education and self-management of health conditions, including interventions that—

“(I) help manage chronic conditions;

“(II) reduce declines in health status; and

“(III) foster patient and provider collaboration.

“(iii) Transitional care interventions that focus on care provided around a hospital inpatient epis-

“ode, including programs that target post-discharge patient care in order to reduce unnecessary health complications and readmissions.

“(iv) Patient safety programs, including provi- sions for hospital-based patient safety programs in contracts that the Medicare Advantage organization offering the MA plan has with hospitals.

“(v) Financial policies that promote systematic coordination of care by primary care physicians across the full spectrum of specialties and sites of care, such as medical homes, capitation arrange- ments, or pay-for-performance programs.

“(vi) Programs that address, identify, and amelio- rate health care disparities among principal at-risk subpopulations.

“(vii) Medication therapy management programs that are more extensive than is required under section 1395w–104(c) of this title (as determined by the Secretary).

“(viii) Health information technology programs, including clinical decision support and other tools to facilitate data collection and ensure patient-centric, appropriate care.

“(ix) Such other care management and coordina- tion programs as the Secretary determines appropriate.

“(D) CONDUCT OF PROGRAM IN URBAN AND RURAL AREAS.—An MA plan may conduct a program de- scribed in subparagraph (C) in a manner appropriate for an urban or rural area, as applicable.

“(E) REPORTING OF DATA.—Each Medicare Advan- tage organization shall provide to the Secretary the information needed to determine whether they are eligible for a care coordination and management performance bonus at a time and in a manner specified by the Secretary.

“(F) PERIODIC AUDITING.—The Secretary shall pro- vide for the annual auditing of programs described in subparagraph (C) for which an MA plan receives a care coordination and management performance bonus under this paragraph. The Comptroller General shall monitor auditing activities conducted under this subparagraph.

“(2) QUALITY PERFORMANCE BONUSES.—

“(A) QUALITY BONUS.—For years beginning with 2014, the Secretary shall, in addition to any other payment provided under this part, make monthly payments, with respect to coverage of an individual under this part, to an MA plan that achieves at least a 3 star rating (or comparable rating) on a rating sys- tem described in subparagraph (C) in an amount equal to—

“(i) in the case of a plan that achieves a 3 star rating (or comparable rating) on such system 2 per- cent of the national monthly per capita cost for expenditures for individuals enrolled under the original medicare fee-for-service program for the year; and

“(ii) in the case of a plan that achieves a 4 or 5 star rating (or comparable rating) on such system 4 percent of such national monthly per capita cost for each year.

“(B) IMPROVED QUALITY BONUS.—For years begin- ning with 2014, in the case of an MA plan that does not receive a quality bonus under subparagraph (A) and is an improved quality MA plan with respect to the year (as identified by the Secretary), the Sec- retary shall, in addition to any other payment pro- vided under this part, make monthly payments, with respect to coverage of an individual under this part, to the MA plan in an amount equal to 1 percent of such national monthly per capita cost for the year.

“(C) USE OF RATING SYSTEM.—For purposes of sub- paragraph (A), a rating system described in this para- graph is—

“(i) a rating system that uses up to 5 stars to rate clinical quality and enrollee satisfaction and per- formance at the Medicare Advantage contract or MA plan level; or

“(ii) such other system established by the Sec- retary that provides for the determination of a comparable quality performance rating to the rat- ing system described in clause (i).

“(D) DATA USED IN DETERMINING SCORE.—

“(i) IN GENERAL.—The rating of an MA plan under the rating system described in subparagraph (C) with respect to a year shall be based on data and on the most recent data available.

“(ii) PLANS THAT FAIL TO REPORT DATA.—An MA plan which does not report data that enables the Secretary to rate the plan for purposes of subparagraph (A) or identify the plan for purposes of subparagraph (B) shall be counted, for purposes of such rating or identification, as having the lowest plan performance rating and the lowest percentage improvement, respectively.

“(3) QUALITY BONUS FOR NEW AND LOW ENROLLMENT MA PLANS.—

“(A) NEW MA PLANS.—For years beginning with 2014, in the case of an MA plan that first submits a bid under section 1395w–24(a)(1)(A) of this title for 2012 or a subsequent year, only receives enrollments made during the coverage election periods described in section 1395w–21(e) of this title, and is not able to receive a bonus under subparagraph (A) or (B) of paragraph (2) for the year, the Secretary shall, in addition to any other payment provided under this part, make monthly payments, with respect to coverage of an indi- vidual under this part, to the MA plan in an amount equal to 2 percent of national monthly per capita cost for expenditures for individuals enrolled under the original medicare fee-for-service program for the year. In its fourth year of operation, the MA plan shall be paid in the same manner as other MA plans with comparable enrollment.

“(B) LOW ENROLLMENT PLANS.—For years beginning with 2014, in the case of an MA plan that has low en- rollment (as defined by the Secretary) and would not otherwise be able to receive a bonus under subpara- graph (A) or (B) of paragraph (2) or subparagraph (A) of this paragraph for the year (referred to in this sub- paragraph as a ‘low enrollment plan’), the Secretary shall use a regional or local mean of the rating of all MA plans in the region or local area, as determined appropriate by the Secretary, on measures used to de- termine whether MA plans are eligible for a quality or an improved quality bonus, as applicable, to deter- mine whether the low enrollment plan is eligible for a bonus under such a subparagraph.

“(4) RISK ADJUSTMENT.—The Secretary shall risk adj- just a performance bonus under this subsection in the same manner as the Secretary risk adjusts beneficiary rebates described in section 1395w–24(b)(1)(C) of this title.

“(5) NOTIFICATION.—The Secretary, in the annual an- nouncement required under subsection (b)(1)(B) for 2014 and each succeeding year, shall notify the Medicare Ad- vantage organization of any performance bonus (in- cluding a care coordination and management performance bonus under paragraph (1), a quality performance bonus under paragraph (2), and a quality bonus for new and low enrollment plans under paragraph (3)) that the organization will receive under this subsection with re- spect to the year. The Secretary shall provide for the
Section 1395w–24(b)(1)(C) of this title shall not apply with respect to the MA local plan.

(2) Election to provide rebates to grandfathered enrollees.—

(A) In general. For years beginning with 2012, each Medicare Advantage organization offering an MA local plan in an area identified by the Secretary under paragraph (1) may elect to provide rebates to grandfathered enrollees under section 1395w–24(b)(1)(C) of this title. In the case where an MA organization makes such an election, the monthly per capita dollar amount of such rebates shall not exceed the applicable amount for the year (as defined in subparagraph (B)).

(B) Applicable amount.—For purposes of this subsection, the term ‘applicable amount’ means—

(i) for 2012 and 2013, the sum of—

(A) the MA area-specific non-drug monthly benchmark amount for a month in 2011; and

(B) the applicable amount (as defined in paragraph (1)(B)) for the MA local plan for the year; and

(ii) for 2014 and subsequent years, the sum of—

(A) the MA competitive benchmark amount under Section 1395w–24(b)(1)(C) for the area for the month, adjusted, only to the extent the Secretary determines necessary, to account for induced utilization as a result of rebates provided to grandfathered enrollees under this paragraph (2) for any bonus payment under subsection (n) or any rebate under this part (other than as provided under this subsection) with respect to grandfathered enrollees.

(C) Nonapplication of bonus payments and any other rebates.—The Medicare Advantage organization offering the MA local plan shall not be eligible for any bonus payment under subsection (n) or any rebate under this part (other than as provided under this subsection) with respect to grandfathered enrollees.

(D) Nonapplication of uniform bid and premium amounts to grandfathered enrollees.—Section 1395w–24(c) of this title shall not apply with respect to the MA local plan.

(E) Nonapplication of limitation on application of plan rebates toward payment of part b premium.—Notwithstanding clause (ii) of section 1395w–24(b)(1)(C) of this title, in the case of a grandfathered enrollee, a rebate under such section may be used for the purpose described in clause (ii)(III) of such section.

(F) Risk adjustment.—The Secretary shall adjust rebates to grandfathered enrollees under this subsection in the same manner as the Secretary risk adjusts beneficiary rebates described in section 1395w–24(b)(1)(C) of this title.

(T) Definition of grandfathered enrollee.—In this subsection, the term ‘grandfathered enrollee’ means an individual who is enrolled (effective as of March 23, 2010) in an MA local plan in an area that is identified by the Secretary under paragraph (1).

See Effective Date of 2010 Amendment note below.

Subsec. (p), Pub. L. 111–148, §3201(h), which directed addition of subsec. (e) relating to grandfathering supplemental benefits for current enrollees after implementation of competitive bidding, was repealed by Pub. L. 111–152, §1102(a). As enacted, text read as follows:

‘‘(1) IDENTIFICATION OF AREAS.—The Secretary shall identify MA local areas in which, with respect to 2009, average bids submitted by an MA organization under section 1395w–24(a) of this title for MA local plans in the area are not greater than 75 percent of the adjusted average per capita cost for the year involved, determined under section 1395w–24(b)(1)(C) of this title, for the area for individuals who are not enrolled in an MA plan under this part for the year, but adjusted to exclude costs attributable to payments under section 1395w–4(o), 1395ww(n), and 1395ww(h) of this title.

‘‘(2) ELECTION TO PROVIDE REBATES TO GRANDFATHERED ENROLLEES.—

‘‘(A) In general. For years beginning with 2012, each Medicare Advantage organization offering an MA local plan in an area identified by the Secretary under paragraph (1) may elect to provide rebates to grandfathered enrollees under section 1395w–24(b)(1)(C) of this title. In the case where an MA organization makes such an election, the monthly per capita dollar amount of such rebates shall not exceed the applicable amount for the year (as defined in subparagraph (B)).

‘‘(B) Applicable amount.—For purposes of this subsection, the term ‘applicable amount’ means—

(i) for 2012 and 2013, the sum of—

(A) the MA area-specific non-drug monthly benchmark amount for a month in 2011; and

(B) the applicable amount (as defined in paragraph (1)(B)) for the MA local plan for the year; and

(ii) for 2014 and subsequent years, the sum of—

(A) the MA competitive benchmark amount under Section 1395w–24(b)(1)(C) for the area for the month, adjusted, only to the extent the Secretary determines necessary, to account for induced utilization as a result of rebates provided to grandfathered enrollees under this paragraph (2) for any bonus payment under subsection (n) or any rebate under this part (other than as provided under this subsection) with respect to grandfathered enrollees.

(C) Nonapplication of bonus payments and any other rebates.—The Medicare Advantage organization offering the MA local plan shall not be eligible for any bonus payment under subsection (n) or any rebate under this part (other than as provided under this subsection) with respect to grandfathered enrollees.

(D) Nonapplication of uniform bid and premium amounts to grandfathered enrollees.—Section 1395w–24(c) of this title shall not apply with respect to the MA local plan.

(E) Nonapplication of limitation on application of plan rebates toward payment of part b premium.—Notwithstanding clause (ii) of section 1395w–24(b)(1)(C) of this title, in the case of a grandfathered enrollee, a rebate under such section may be used for the purpose described in clause (ii)(III) of such section.

(F) Risk adjustment.—The Secretary shall adjust rebates to grandfathered enrollees under this subsection in the same manner as the Secretary risk adjusts beneficiary rebates described in section 1395w–24(b)(1)(C) of this title.

(T) Definition of grandfathered enrollee.—In this subsection, the term ‘grandfathered enrollee’ means an individual who is enrolled (effective as of March 23, 2010) in an MA local plan in an area that is identified by the Secretary under paragraph (1).

See Effective Date of 2010 Amendment note below.

Subsec. (p), Pub. L. 111–148, §3201(h), which directed addition of subsec. (p) relating to transitional extra benefits, was repealed by Pub. L. 111–152, §1102(a). As enacted, text read as follows:

‘‘(1) In general. For years beginning with 2012, the Secretary shall provide transitional rebates under section 1395w–24(b)(1)(C) of this title for the provision of extra benefits (as specified by the Secretary) to enrollees described in paragraph (2).

‘‘(2) Enrollees described.—An enrollee described in this paragraph is an individual who—

(A) enrolls in an MA local plan in an applicable area; and

(B) experiences a significant reduction in extra benefits described in clause (ii) of section 1395w–24(b)(1)(C) of this title, as a result of competitive bidding under this part (as determined by the Secretary).

‘‘(3) Applicable areas.—In this subsection, the term ‘applicable area’ means the following:

(A) The 2 largest metropolitan statistical areas, if the Secretary determines that the total amount of such extra benefits for each enrollee for the month in those areas is greater than $100.

(B) A county where—

(i) the MA area-specific non-drug monthly benchmark amount for a month in 2011 is equal to the legacy urban floor amount (as described in subsection (c)(1)(B)) for any bonus payment under subsection (n) or any rebate under this part (other than as provided under this subsection) with respect to grandfathered enrollees.

(ii) the percentage of Medicare Advantage eligible beneficiaries in the county who are enrolled in an MA plan for 2009 is greater than 30 percent (as determined by the Secretary).

(iii) average bids submitted by an MA organization under section 1395w–24(a) of this title for MA local plans in the county for 2011 are not greater than the adjusted average per capita cost for the year involved, determined under section 1395w–24(b)(1)(C) of this title, for the county for individuals who are not enrolled in an MA plan under this part for the year, but adjusted to exclude costs attributable to payments under section 1395w–4(o), 1395ww(n), and 1395ww(h) of this title.

(C) If the Secretary determines that it is appropriate, a county contiguous to an area or county described in subparagraph (A) or (B), respectively.
“(4) REVIEW OF PLAN BIDS.—In the case of a bid submitted by an MA organization under section 1395w–24(a) of this title for an MA local plan in an applicable area, the Secretary shall review the bid in order to ensure that extra benefits (as specified by the Secretary) are provided to enrollees described in paragraph (2).

“(5) FUNDING.—The Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund and the Federal Supplemental Medical Insurance Trust Fund, under section 1395f of this title, in such proportion as the Secretary determines appropriate, of an amount not to exceed $5,000,000,000 for the period of fiscal years 2012 through 2019 for the purpose of providing transitional rebates under section 1395w–24(b)(1)(C) of this title for the provision of extra benefits under this subsection.”

See Effective Date of 2010 Amendment note below.

Subsec. (p)(3)(A). Pub. L. 111–148, § 10301, which directed that subsec. (p)(3)(A), as added by Pub. L. 111–148, § 201(h), be amended by inserting “in 2009” before the period at the end, was executed to reflect the probable intent of Congress and the subsequent repeal of § 201(h) by Pub. L. 111–152, § 1102(a). See Amendment note above.

2009—Subsec. (a)(3)(A). Pub. L. 111–5, § 401(e)(1), substituted “(1), and (I)” for “and (1)”


Pub. L. 111–5, § 410(e)(2)(A), substituted “sections 1395w–4(o) and 1395ww(n) of this title” for “section 1395ww(n)” of this title.

Subsec. (c)(6)(A). Pub. L. 111–5, § 4102(d)(3)(A)(II), inserted “and subsections (b)(3)(B)(ix) and (n) of section 1395ww(n) of this title” after “1395w–4 of this title”.

Pub. L. 111–5, § 410(e)(2)(B), inserted “excluding expenditures attributable to subsections (a)(7) and (o) of section 1395w–4 of this title,” after “under part B of this subchapter,”.

Subsec. (f). Pub. L. 111–5, § 4102(d)(3)(B), inserted “and subsection (m)” after “under subsection (l)”.

Pub. L. 111–5, § 410(e)(3), inserted “and for payments under subsection (l)” after “with the organization”.


Subsec. (m). Pub. L. 111–5, § 4102(c), added subsec. (m).

2008—Subsec. (k)(1). Pub. L. 110–275, § 161(a)(1), (b), substituted “paragraphs (2) and (4)” for “paragraph (2)” in introductory provisions and cl. (i) of subpar. (B).


Subsec. (j)(1)(A). Pub. L. 109–171, § 5301(a)(1)(A), inserted “or, beginning with 2007, ½ of the applicable amount determined under subsection (k)(1) after “subsection (o)(1)” and “for years before 2007” after “adjusted as appropriate”.


2003—Subsec. (a)(1)(A). Pub. L. 108–173, § 222(e)(1)(B), substituted “amount determined as follows:” and cl. (I) and (II) for “amount” and provisions describing amount equal to ½ of the annual Medicare+Choice capitation rate, reduced by the amount of any reduction elected under section 1395w–24(f)(1)(E) of this title and adjusted for certain factors.

Subsec. (a)(1)(B) to (G). Pub. L. 108–173, § 222(e)(1)(B), added subpars. (B) to (G). Former subpar. (D) redesignated (II).

Subsec. (a)(1)(H). Pub. L. 108–173, § 222(e)(1)(B), substituted second sentence provisions relating to actuarial equivalence of rates of payment to rates that would have been paid with respect to the MA payment area under this section as in effect before Dec. 8, 2003, for provisions relating to actuarial equivalence of rates of payment to rates paid to other enrollees in the Medicare+Choice payment area and inserted sentence at end authorizing application of the competitive bidding methodology provided for in this section, with appropriate adjustments to account for the risk adjustment methodology applied to end stage renal disease payments.


Subsec. (b)(3). Pub. L. 108–173, § 222(d)(2), substituted “such announcement” for “for “in the announcement in sufficient detail so that Medicare+Choice organizations can compute monthly adjusted Medicare+Choice capitation rates for individuals in each Medicare+Choice payment area which is in whole or in part within the service area of such an organization”.


Pub. L. 108–173, § 211(a)(2), substituted “(C), or (D)” for “or (C)” in introductory provisions.


Pub. L. 108–173, § 237(b)(2)(B), substituted “sections (a)(3)(C)(iii), (a)(4), and (i)” for “sections (a)(3)(C)(iii) and (i)”.

Pub. L. 108–173, § 211(c)(2), inserted “(other than 2004)” after “for each year”.

Subsec. (c)(6)(C). Pub. L. 108–173, § 211(b)(2), inserted “, except that for purposes of paragraph (1)(C)(v)(II), no such adjustment shall be made for a year before 2004” before period at end.


Subsec. (d)(1). Pub. L. 108–173, § 221(d)(1)(C), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: “In this part, except as provided in paragraph (3), the term Medicare+Choice payment area means a county, or equivalent area specified by the Secretary.”

Subsec. (d)(2). Pub. L. 108–173, § 221(d)(1)(B), (D), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (4).


Subsec. (d)(4)(B). Pub. L. 108–173, § 221(d)(1)(E)(iii), inserted “with respect to MA local plans” after “established under this section” and “for such plans” after “payments under this section” and “made under this section”.


Subsec. (g). Pub. L. 108–173, § 221(e)(1)(A), inserted “a rehabilitation hospital described in section 1395ww(d)(1)(B)(ii) of this title or a distinct part rehabilitation unit described in the matter following clause (v) of section 1395ww(d)(1)(B) of this title, or a long-term care hospital (described in section 1395ww(d)(1)(B)(v) of this title)” after “1395ww(d)(1)(B)” of this title” in introductory provisions.

Subsec. (g)(2)(B). Pub. L. 108–173, § 221(e)(1)(B), inserted “or other payment provision under this subchapter for inpatient services for the type of facility, hospital, or unit involved, described in the matter preceding paragraph (1), as the case may be.” after “1395ww(d) of this title”.


2002—Subsec. (b)(1). Pub. L. 107–188 in introductory provisions substituted “for years before 2004 and after 2005 not later than March 1 before the calendar year concerned” for “for years before 2004 and not later than the second Monday in May before the respective calendar year concerned”.


Subsec. (c)(1)(B)(ii). Pub. L. 106–554, § 1(a)(6) (title VI, § 601(a)(1)), (3), redesignated cl. (ii) as (iv) and substituted “2002 and each succeeding year” for “for a succeeding year” and “clause (ii)” for “clause (i)”.


Subsec. (c)(1)(C)(iv). Pub. L. 106–554, § 1(a)(6) (title VI, § 602(a)(1)), (3), redesignated cl. (ii) as (iv) and substituted “2002 and each succeeding year” for “a subsequent year”.

Subsec. (c)(5). Pub. L. 106–554, § 1(a)(6) (title VI, § 607(b)), substituted “sections (a)(3)(C)(iii) and (i)” for “subsection (i)”.

Subsec. (c)(7). Pub. L. 106–554, § 1(a)(6) (title VI, § 611(a)), amended heading and text of par. (7) generally. Prior to amendment, text read as follows: “If the Secretary makes a determination with respect to coverage under this subchapter that the Secretary projects will result in a significant increase in the costs to Medicare+Choice of providing benefits under contracts under this part (for periods after any period described in section 1395w–22(a)(6) of this title), the Secretary shall adjust appropriately the payments to such organizations under this part.”

Subsec. (i)(1). Pub. L. 106–554, § 1(a)(6) (title VI, § 608(a)), in introductory provisions, inserted “,” or filed notice with the Secretary as of October 3, 2000, that they will not be offering such a plan as of January 1, 2001” after “January 1, 2000”.

1999—Subsec. (a)(1)(A). Pub. L. 106–113, § 1000(a)(6) (title V, § 512(1)), substituted “sections (e), (g), and (i) of this section” for “sections (e) and (f) of this section”.


Subsec. (c)(5). Pub. L. 106–113, § 1000(a)(6) (title V, § 512(2)), inserted “(other than those attributable to subsection (i) of this section)” after “payments under this part”.

Subsec. (c)(6)(B)(v). Pub. L. 106–113, § 1000(a)(6) (title V, § 517), substituted “0.3 percentage points” for “0.5 percentage points”.


CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Repeal of sections 3201 and 3203 of Pub. L. 111–148 and the amendments made by such sections, effective as if included in the enactment of Pub. L. 111–148, see section 1120(a) of Pub. L. 111–152, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by sections 221(d)(1), (4) and 222(d)-(f), (1) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.


Effective Date of 2002 Amendment
Pub. L. 107–188, title V, §532(d)(2), June 12, 2002, 116 Stat. 697, provided that: ‘‘The amendment made by paragraph (1) [amending this section] shall first apply to announcements for years after 2003.’’

Effective Date of 2000 Amendment
Pub. L. 106–554, §1(a)(6) [title VI, §605(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–554, provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply to payments for months beginning with January 2002.’’

Amendment by section 1(a)(6) [title VI, §606(a)(1)] of Pub. L. 106–554 applicable to years beginning with 2003, see section 1(a)(6) [title VI, §606(b)] of Pub. L. 106–554, set out as a note under section 1395v of this title.

Pub. L. 106–554, §1(a)(6) [title VI, §606(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–554, provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply as if included in the enactment of BBRA [Pub. L. 106–113, §100(a)(6)].’’

Amendment by section 1(a)(6) [title VI, §611(a)] of Pub. L. 108–173 effective Dec. 21, 2000, and applicable to national coverage determinations and legislative changes in benefits occurring on or after such date, see section 1(a)(6) [title VI, §611(c)] of Pub. L. 108–173, set out as a note under section 1395v–22 of this title.

MMPAC STUDY OF AAPCC
Pub. L. 108–173, title II, §211(f), Dec. 8, 2003, 117 Stat. 2178, directed the Medicare Payment Advisory Commission to conduct a study that would assess the method used for determining the adjusted average per capita cost (AAPCC) under section 1395mm(a)(4) of this title, as applied under subsection (c)(1)(A) of this section, and to submit to Congress a report on such study not later than 18 months after Dec. 8, 2003.

IMPLEMENTATION OF 2003 AMENDMENT

‘‘(1) ANNOUNCEMENT OF REVISED MEDICARE ADVANTAGE PAYMENT RATES.—Within 6 weeks after the date of the enactment of this Act [Dec. 8, 2003], the Secretary of Health and Human Services shall determine, and shall announce (in a manner intended to provide notice to interested parties) MA capitation rates under section 1853 of the Social Security Act (42 U.S.C. 1395w–23) for 2004, revised in accordance with the provisions of this section [amending this section and section 1395w–21 of this title], and to submit to Congress a report on such study not later than 18 months after Dec. 8, 2003.

‘‘(2) TRANSACTION TO REVISED PAYMENT RATES.—The provisions of section 601 of BIPA (the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, H.R. 5661, as enacted by section 1(a)(6) of Public Law 106–554, set out as a note under this section) (114 Stat. 2763A–555) (other than subsection (a)) shall apply to the provisions of subsections (a) through (d) of this section [amending this section] for 2004 in the same manner as the provisions of such section 601 applied to the provisions of BIPA for 2001.

‘‘(3) SPECIAL RULE FOR PAYMENT RATES IN 2003.—

‘‘(A) JANUARY AND FEBRUARY.—Notwithstanding the amendments made by subsection (a) [amending this section], for purposes of making payments under section 1853 of the Social Security Act (42 U.S.C. 1395w–23) for January and February 2004, the annual capitation rate for a payment area shall be calculated and the excess amount under section 1854(f)(1)(B) of such Act (42 U.S.C. 1395w–23) shall be determined as if such amendments had not been enacted.

‘‘(B) MARCH THROUGH DECEMBER.—Notwithstanding the amendments made by subsections (a) through (d) [amending this section], for purposes of making payments under section 1853 of the Social Security Act (42 U.S.C. 1395w–23) for March through December 2004, the annual capitation rate for a payment area shall be calculated and the excess amount under section 1854(f)(1)(B) of such Act (42 U.S.C. 1395w–23) shall be determined, in such manner as the Secretary estimates will ensure that the total of such payments with respect to 2004 is the same as the amounts that would have been if subparagraph (A) had not been enacted.

‘‘(C) CONSTRUCTION.—Subparagraphs (A) and (B) shall not be taken into account in computing such capitation rate for 2005 and subsequent years.

‘‘(4) PLANS REQUIRED TO PROVIDE NOTICE OF CHANGES IN PLAN BENEFITS.—In the case of an organization offering a plan under part C of title XVIII of the Social Security Act (this part) that revises its submission of the information described in section 1854(a)(1) of such Act (42 U.S.C. 1395w–23(a)(1)) for a plan pursuant to the application of paragraph (2), if such revision results in changes in beneficiary premiums, beneficiary cost-sharing, or benefits under the plan, the plan shall not later than 3 weeks after the date the Secretary approves such submission, the organization offering the plan shall provide each beneficiary enrolled in the plan with written notice of such changes.

‘‘(5) LIMITATION ON REVIEW.—There shall be no administrative or judicial review under section 1869 or section 1879 of the Social Security Act (42 U.S.C. 1395f and 1395o), or otherwise of any determination made by the Secretary under this subsection or the application of the payment rates determined pursuant to this subsection.’’

SPECIAL RULE FOR JANUARY AND FEBRUARY OF 2001
Pub. L. 106–554, §1(a)(6) [title VI, §601(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–554, provided that:

‘‘(1) IN GENERAL.—Notwithstanding the amendments made by subsection (a) [amending this section], for purposes of making payments under section 1853 of the Social Security Act (42 U.S.C. 1395w–23) for January and February 2001, the annual Medicare+Choice capitation rate for a Medicare+Choice payment area shall be calculated, and the excess amount under section 1854(f)(1)(B) of such Act (42 U.S.C. 1395w–23) shall be determined, as if such amendments had not been enacted.

‘‘(2) CONSTRUCTION.—Paragraph (1) shall not be taken into account in computing such capitation rate for 2002 and subsequent years.’’

Pub. L. 106–554, §1(a)(6) [title VI, §602(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–554, provided that: ‘‘The provisions of section 601(b) [set out above] shall apply with respect to the amendments made by subsection (a) [amending this section] in the same manner as they apply to the amendments made by section 601(a) [amending this section].’’

TRANSITION TO REVISED MEDICARE+CHOICE PAYMENT RATES
Pub. L. 106–554, §1(a)(6) [title VI, §604], Dec. 21, 2000, 114 Stat. 2763, 2763A–555, provided that:

‘‘(a) ANNOUNCEMENT OF REVISED MEDICARE+CHOICE PAYMENT RATES.—Within 2 weeks after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall determine, and shall announce (in a manner intended to provide notice to interested parties) Medicare+Choice capitation rates under section 1853 of the Social Security Act (42 U.S.C. 1395w–23) for January and February 2001, revised in accordance with the provisions of this section [amending this section].’’

TRANSITION TO REVISED MEDICARE+CHOICE PAYMENT RATES
of Health and Human Services shall report to Congress by not later than January 1, 2003, on a method to phase-in the costs of military facility services furnished by the Department of Defense, to Medicare-eligible beneficiaries in the calculation of an area’s Medicare+Choice capitation payment. Such report shall include on a county-by-county basis—

"(1) the actual or estimated cost of such services to Medicare-eligible beneficiaries;"

"(2) the change in Medicare+Choice capitation payment rates if such costs are included in the calculation of payment rates;"

"(3) one or more proposals for the implementation of payment adjustments to Medicare+Choice plans in counties where the payment rate has been affected due to the failure to calculate the cost of such services to Medicare-eligible beneficiaries; and"

"(4) a system to ensure that when a Medicare+Choice enrollee receives covered services through a facility of the Department of Veterans Affairs or the Department of Defense there is an appropriate payment recovery to the Medicare program under title XVIII of the Social Security Act [this subchapter]."

MedPAC STUDY AND REPORT


"(1) STUDY.—The Medicare Payment Advisory Commission shall conduct a study that evaluates the methodology used by the Secretary of Health and Human Services in developing the risk factors used in adjusting the Medicare+Choice capitation rate paid to Medicare+Choice organizations under section 1853 of the Social Security Act [42 U.S.C. 1395w–23] and includes the issues described in paragraph (2).

"(2) ISSUES TO BE STUDIED.—The issues described in this paragraph are the following:

"(A) The ability of the average risk adjustment factor applied to a Medicare+Choice plan to explain variations in plans’ average per capita Medicare costs, as reported by Medicare+Choice plans in the plans’ adjusted community rate filings.

"(B) The year-to-year stability of the risk factors applied to each Medicare+Choice plan and the potential for substantial changes in payment for small Medicare+Choice plans.

"(C) For Medicare beneficiaries newly enrolled in Medicare+Choice plans in a given year, the correspondence between the average risk factor calculated from Medicare fee-for-service data for those individuals from the period prior to their enrollment in a Medicare+Choice plan and the average risk factor calculated for such individuals during their initial year of enrollment in a Medicare+Choice plan.

"(D) For Medicare beneficiaries disenrolling from or switching among Medicare+Choice plans in a given year, the correspondence between the average risk factor calculated from data pertaining to the period prior to their disenrollment from a Medicare+Choice plan and the average risk factor calculated from data pertaining to the period after disenrollment for Medicare+Choice plans.

"(E) An evaluation of the exclusion of ‘discretionary’ hospitalizations from consideration in the risk adjustment methodology.

"(F) Suggestions for changes or improvements in the risk adjustment methodology.

"(3) REPORT.—Not later than December 1, 2000, the Commission shall submit a report to Congress on the study conducted under paragraph (1), together with any recommendations for legislation that the Commission determines to be appropriate as a result of such study."

STUDY AND REPORT REGARDING REPORTING OF ENCOUNTER DATA

Pub. L. 106–113, div. B, §1000(a)(6) [title V, §511(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–381, provided that:
"(1) STUDY.—The Secretary of Health and Human Services shall conduct a study on how to reduce the costs and burdens on Medicare+Choice organizations of their complying with reporting requirements for encounter data imposed by the Secretary in establishing and implementing a risk adjustment methodology used in making payments to such organizations under section 1833 of the Social Security Act (42 U.S.C. 1395w–23). The Secretary shall consult with representatives of Medicare+Choice organizations in conducting the study. The study shall address the following issues:

(A) Limiting the number and types of sites of services (that are in addition to inpatient sites) for which encounter data must be reported.

(B) Establishing alternative risk adjustment methods that would require submission of less data.

(C) The potential for Medicare+Choice organizations to misreport, overreport, or underreport prevalence of diagnoses in outpatient sites of care, the potential for increases in payments to Medicare+Choice organizations from changes in Medicare+Choice plan coding practices (commonly known as ‘coding creep’) and proposed methods for detecting and adjusting for such variations in diagnosis coding as part of the risk adjustment methodology using encounter data from multiple sites of care.

(D) The impact of such requirements on the willingness of insurers to offer Medicare+Choice MSA plans and options for modifying encounter data reporting requirements to accommodate such plans.

(E) Differences in the ability of Medicare+Choice organizations to report encounter data, and the potential for adverse competitive impacts on group and staff model health maintenance organizations or other integrated providers of care based on data reporting capabilities.

(2) REPORT.—Not later than January 1, 2001, the Secretary shall submit a report to Congress on the study conducted under this subsection, together with any recommendations for legislation that the Secretary determines to be appropriate as a result of such study.

SPECIAL RULE FOR 2001

Pub. L. 106–113, div. B, §1000(a)(6) [title V, §514(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–384, provided that: "In providing for the publication of information under section 1833(b)(4) of the Social Security Act (42 U.S.C. 1395w–23(b)(4)), as added by subsection (a), in 2001, the Secretary of Health and Human Services shall also include the information described in such section for 1998, as well as for 1999."
"(3) CONFORMING DEADLINES.—Any dates specified in the succeeding provisions of this section shall be delayed (as specified by the Secretary) in a manner consistent with the delay effective under paragraph (2).

(4) MONITORING IMPACT.—Taking into consideration the recommendations of the Competitive Pricing Advisory Committee and the area advisory committee, the Secretary shall closely monitor and measure the impact of the project in the different areas on the price and quality of, and access to, Medicare covered services, the choice of health plans, changes in enrollment, and other relevant factors.

(5) APPOINTMENT OF AREA ADVISORY COMMITTEE.—Upon the designation of an area for inclusion in the project.
project, the Secretary shall appoint an area advisory committee, composed of representatives of health plans, providers, and medicare beneficiaries in the area, to advise the Secretary concerning how the project will be implemented in the area. Such advice may include advice concerning the marketing and pricing of plans in the area and other salient factors. The duration of such a committee for an area shall be for the duration of the operation of the project in the area.

"(c) SPECIAL APPLICATION.—Notwithstanding section 9(c) of the Federal Advisory Committee Act (5 U.S.C. App.), the Competitive Pricing Advisory Commission and any area advisory committee (described in subsection (b)) may meet as soon as the members of the commission or committee, respectively, are appointed."

§ 1395w–24. Premiums and bid amounts
(a) Submission of proposed premiums, bid amounts, and related information

(1) In general
(A) Initial submission
Not later than the second Monday in September of 2002, 2003, and 2004 (or the first Monday in June of each subsequent year), each MA organization shall submit to the Secretary, in a form and manner specified by the Secretary and for each MA plan for the service area (or segment of such an area if permitted under subsection (b) of this section) in which it intends to be offered in the following year the following:

(i) The information described in paragraph (2), (3), (4), or (6)(A) for the type of plan and year involved.
(ii) The plan type for each plan.
(iii) The enrollment capacity (if any) in relation to the plan and area.

(B) Beneficiary rebate information
In the case of a plan required to provide a monthly rebate under subsection (b)(1)(C) of this section for a year, the MA organization offering the plan shall submit to the Secretary, in such form and manner and at such time as the Secretary specifies, information on:

(i) the manner in which such rebate will be provided under clause (ii) of such subsection; and
(ii) the Medicare+Choice monthly prescription drug beneficiary premium (if any) and the MA monthly supplemental beneficiary premium (if any).

(C) Paperwork reduction for offering of MA regional plans nationally or in multi-region areas
The Secretary shall establish requirements for information submission under this subsection in a manner that promotes the offering of MA regional plans in more than one region (including all regions) through the filing of consolidated information.

(2) Information required for coordinated care plans before 2006
For a Medicare+Choice plan described in section 1395w–22(a)(2)(A) of this title for a year before 2006, the information described in this paragraph is as follows:

(A) Basic (and additional) benefits
For benefits described in section 1395w–22(a)(1)(A) of this title—

(i) the adjusted community rate (as defined in subsection (f)(3) of this section);
(ii) the Medicare+Choice monthly basic beneficiary premium (as defined in subsection (b)(2)(A) of this section);
(iii) a description of the deductibles, coinsurance, and copayments applicable under the plan and the actuarial value of such deductibles, coinsurance, and copayments, described in subsection (e)(1)(A) of this section; and
(iv) if required under subsection (f)(1) of this section, a description of the additional benefits to be provided pursuant to such subsection and the value determined for such proposed benefits under such subsection.

(B) Supplemental benefits
For benefits described in section 1395w–22(a)(3) of this title—

(i) the adjusted community rate (as defined in subsection (f)(3) of this section);
(ii) the Medicare+Choice monthly supplemental beneficiary premium (as defined in subsection (b)(2)(B) of this section); and
(iii) a description of the deductibles, coinsurance, and copayments applicable under the plan and the actuarial value of such deductibles, coinsurance, and copayments, described in subsection (e)(2) of this section.

(3) Requirements for MSA plans
For an MSA plan for any year, the information described in this paragraph is as follows:

(A) Basic (and additional) benefits
For benefits described in section 1395w–22(a)(1)(A) of this title, the amount of the Medicare+Choice monthly MSA premium.

(B) Supplemental benefits
For benefits described in section 1395w–22(a)(3) of this title, the amount of the Medicare+Choice monthly supplementary beneficiary premium.

(4) Requirements for private fee-for-service plans before 2006
For a Medicare+Choice plan described in section 1395w–22(a)(2)(C) of this title for benefits described in section 1395w–22(a)(1)(A) of this title for a year before 2006, the information described in this paragraph is as follows:

(A) Basic (and additional) benefits
For benefits described in section 1395w–22(a)(1)(A) of this title—

(i) the adjusted community rate (as defined in subsection (f)(3) of this section);
(ii) the Medicare+Choice monthly basic beneficiary premium;
(iii) a description of the deductibles, coinsurance, and copayments applicable under the plan, and the actuarial value of such deductibles, coinsurance, and copayments, as described in subsection (e)(4)(A) of this section; and
(iv) if required under subsection (f)(1) of this section, a description of the additional benefits to be provided pursuant to
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(5) Review

(A) In general

Subject to subparagraph (B), the Secretary shall review the adjusted community rates, the amounts of the basic and supplemental premiums, and values filed under paragraphs (2) and (4) of this subsection and shall approve or disapprove such rates, amounts, and values so submitted. The Chief Actuary of the Centers for Medicare & Medicaid Services shall review the actuarial assumptions and data used by the Medicare+Choice organization with respect to such rates, amounts, and values so submitted to determine the appropriateness of such assumptions and data.

(B) Exception

The Secretary shall not review, approve, or disapprove the amounts submitted under paragraph (3) or, in the case of an MA private fee-for-service plan, subparagraphs (A)(1) and (B) of paragraph (4).

(6) Submission of bid amounts by MA organizations beginning in 2006

(A) Information to be submitted

For an MA plan (other than an MSA plan) for a plan year beginning on or after January 1, 2006, the information described in this subparagraph is as follows:

(i) The monthly aggregate bid amount for the provision of all items and services under the plan, which amount shall be based on average revenue requirements (as used for purposes of section 300e–1(8) of this title) in the payment area for an enrollee with a national average risk profile for the factors described in section 1395w–22(a)(1)(C) of this title (as specified by the Secretary).

(ii) The proportions of such bid amount that are attributable to—

(I) the provision of benefits under the original medicare fee-for-service program option (as defined in section 1395w–22(a)(1)(B) of this title);

(II) the provision of basic prescription drug coverage; and

(III) the provision of supplemental health care benefits.

(iii) The actuarial basis for determining the amount under clause (i) and the proportions described in clause (ii) and such additional information as the Secretary may require to verify such actuarial bases and the projected number of enrollees in each MA local area.

(iv) A description of deductibles, coinsurance, and copayments, and values so submitted to deter- mine the appropriateness of such deductibles, coinsurance, and copayments, described in subsection (e)(4)(A) of this section.

(v) With respect to qualified prescription drug coverage, the information required under section 1395w–104 of this title, as incorporated under section 1395w–111(b)(2) of this title, with respect to such coverage.

In the case of a specialized MA plan for special needs individuals, the information described in this subparagraph is such information as the Secretary shall specify.

(B) Acceptance and negotiation of bid amounts

(i) Authority

Subject to clauses (ii) and (iv), the Secretary has the authority to negotiate regarding monthly bid amounts submitted under subparagraph (A) and the proportions described in subparagraph (A)(1)(iv), including supplemental benefits provided under subsection (b)(1)(C)(ii)(I) of this section and in exercising such authority the Secretary shall have authority similar to the authority of the Director of the Office of Personnel Management with respect to health benefits plans under chapter 89 of title 5.

(ii) Application of FEHBP standard

Subject to clause (iv), the Secretary may only accept such a bid amount or proportion if the Secretary determines that such amount and proportions are supported by the actuarial bases provided under subparagraph (A) and reasonably and equitably reflects the revenue requirements (as used for purposes of section 300e–1(8) of this title) of benefits provided under that plan.

(iii) Noninterference

In order to promote competition under this part and part D of this subchapter and in carrying out such parts, the Secretary may not require any MA organization to contract with a particular hospital, physician, or other entity or individual to furnish items and services under this subchapter or require a particular price structure for payment under such a contract to the extent consistent with the Secretary’s authority under this part.
(iv) Exception

In the case of a plan described in section 1395w–21(a)(2)(C) of this title, the provisions of clauses (i) and (ii) shall not apply and the provisions of paragraph (5)(B), prohibiting the review, approval, or disapproval of amounts described in such paragraph, shall apply to the negotiation and rejection of the monthly bid amounts and the proportions referred to in subparagraph (A).

(b) Monthly premium charged

(1) In general

(A) Rule for other than MSA plans

Subject to the rebate under subparagraph (C), the monthly amount (if any) of the premium charged to an individual enrolled in a Medicare+Choice plan (other than an MSA plan) offered by a Medicare+Choice organization shall be equal to the sum of the Medicare+Choice monthly basic beneficiary premium, the Medicare+Choice monthly supplementary beneficiary premium (if any), and, if the plan provides qualified prescription drug coverage, the MA monthly prescription drug beneficiary premium.

(B) MSA plans

The monthly amount of the premium charged to an individual enrolled in an MSA plan offered by a Medicare+Choice organization shall be equal to the sum of the Medicare+Choice monthly basic beneficiary premium, the Medicare+Choice monthly supplementary beneficiary premium (if any), and the proportions referred to in subpart A.

(C) Beneficiary rebate rule

(i) Requirement

The MA plan shall provide to the enrollee a monthly rebate equal to 75 percent (or the applicable rebate percentage specified in clause (iii) in the case of plan years beginning on or after January 1, 2012) of the average per capita savings (if any) described in paragraph (3)(C) or (4)(C), as applicable to the plan and year involved.

(ii) Form of rebate for plan years before 2012

For plan years before 2012, a rebate required under this subparagraph shall be provided through the application of the amount of the rebate toward one or more of the following:

(I) Provision of supplemental health care benefits and payment for premium for supplemental benefits

The provision of supplemental health care benefits described in section 1395w–22(a)(3) of this title in a manner specified under the plan, which may include the reduction of cost-sharing otherwise applicable as well as additional health care benefits which are not benefits under the original medicare fee-for-service program option, or crediting toward an MA monthly supplemental beneficiary premium (if any).

(II) Payment for premium for prescription drug coverage

Crediting toward the MA monthly prescription drug beneficiary premium.

(III) Payment toward part B premium

Crediting toward the premium imposed under part B of this subchapter (determined without regard to the application of subsections (b), (h), and (i) of section 1395r of this title).

(iii) Applicable rebate percentage

The applicable rebate percentage specified in this clause for a plan for a year, based on the system under section 1395w–23(o)(4)(A), is the sum of—

(I) the product of the old phase-in proportion for the year under clause (iv) and 75 percent; and

(II) the product of the new phase-in proportion for the year under clause (iv) and the final applicable rebate percentage under clause (v).

(iv) Old and new phase-in proportions

For purposes of clause (iv)—

(I) for 2012, the old phase-in proportion is $ and the new phase-in proportion is $;

(II) for 2013, the old phase-in proportion is $ and the new phase-in proportion is $; and

(III) for 2014 and any subsequent year, the old phase-in proportion is $ and the new phase-in proportion is $.

(v) Final applicable rebate percentage

Subject to clause (vi), the final applicable rebate percentage under this clause is—

(I) in the case of a plan with a quality rating under such system of at least 4.5 stars, 70 percent;

(II) in the case of a plan with a quality rating under such system of at least 3.5 stars and less than 4.5 stars, 65 percent; and

(III) in the case of a plan with a quality rating under such system of less than 3.5 stars, 50 percent.

(vi) Treatment of low enrollment and new plans

For purposes of clause (v)—

(I) for 2012, in the case of a plan described in subclause (I) of subsection (o)(3)(A)(ii), the plan shall be treated as having a rating of 4.5 stars; and

(II) for 2012 or a subsequent year, in the case of a new MA plan (as defined under subclause (III) of subsection (o)(3)(A)(iii)) that is treated as a qualifying plan pursuant to subsection (I) of such subsection, the plan shall be treated as having a rating of 4.5 stars.

(vii) Disclosure relating to rebates

The plan shall disclose to the Secretary information on the form and amount of the rebate provided under this subparagraph or the actuarial value in the case of supplemental health care benefits.
(viii) Application of part B premium reduction

Insofar as an MA organization elects to provide a rebate under this subparagraph under a plan as a credit toward the part B premium under clause (i)(III), the Secretary shall apply such credit to reduce the premium under section 1395w of this title of each enrollee in such plan as provided in section 1395w(i) of this title.

(2) Premium and bid terminology defined

For purposes of this part:

(A) MA monthly basic beneficiary premium

The term “MA monthly basic beneficiary premium” means, with respect to an MA plan—

(i) described in section 1395w–23(a)(1)(B)(i) of this title (relating to plans providing rebates), zero; or

(ii) described in section 1395w–23(a)(1)(B)(ii) of this title, the amount (if any) by which the unadjusted MA statutory non-drug monthly bid amount (as defined in subparagraph (E)) exceeds the applicable unadjusted MA area-specific non-drug monthly benchmark amount (as defined in section 1395w–23(j) of this title).

(B) MA monthly prescription drug beneficiary premium

The term “MA monthly prescription drug beneficiary premium” means, with respect to an MA plan, the base beneficiary premium (as determined under section 1395w–113(a)(2) of this title and as adjusted under section 1395w–113(a)(1)(B) of this title), less the amount of rebate credited toward such amount under subsection (b)(1)(C)(ii)(II) of this section.

(C) MA monthly supplemental beneficiary premium

(i) In general

The term “MA monthly supplemental beneficiary premium” means, with respect to an MA plan, the portion of the aggregate monthly bid amount submitted under clause (i) of subsection (a)(6)(A) of this section for the year that is attributable under clause (i)(III) of such subsection to the provision of supplemental health care benefits, less the amount of rebate credited toward such portion under subsection (b)(1)(C)(ii)(I) of this section.

(ii) Application of MA monthly supplemental beneficiary premium

For plan years beginning on or after January 1, 2012, any MA monthly supplemental beneficiary premium charged to an individual enrolled in an MA plan shall be used for the purposes, and in the priority order, described in subclauses (I) through (III) of paragraph (1)(C)(iii).

(D) Medicare+Choice monthly MSA premium

The term “Medicare+Choice monthly MSA premium” means, with respect to a Medicare+Choice plan, the amount of such premium filed under subsection (a)(3)(A) of this section for the plan.

(E) Unadjusted MA statutory non-drug monthly bid amount

The term “unadjusted MA statutory non-drug monthly bid amount” means the portion of the bid amount submitted under clause (i) of subsection (a)(6)(A) of this section for the year that is attributable under clause (ii)(I) of such subsection to the provision of benefits under the original medicare fee-for-service program option (as defined in section 1395w–22(a)(1)(B) of this title).

(3) Computation of average per capita monthly savings for local plans

For purposes of paragraph (1)(C)(i), the average per capita monthly savings referred to in such paragraph for an MA local plan and year is computed as follows:

(A) Determination of statewide average risk adjustment for local plans

(i) In general

Subject to clause (iii), the Secretary shall determine, at the same time rates are promulgated under section 1395w–23(b)(1) of this title (beginning with 2006) for each State, the average of the risk adjustment factors to be applied under section 1395w–23(a)(1)(C) of this title to payment for enrollees in that State for MA local plans.

(ii) Treatment of States for first year in which local plan offered

In the case of a State in which no MA local plan was offered in the previous year, the Secretary shall estimate such average. In making such estimate, the Secretary may use average risk adjustment factors applied to comparable States or applied on a national basis.

(iii) Authority to determine risk adjustment for areas other than States

The Secretary may provide for the determination and application of risk adjustment factors under this subparagraph on the basis of areas other than States or on a plan-specific basis.

(B) Determination of risk adjusted benchmark and risk-adjusted bid for local plans

For each MA plan offered in a local area in a State, the Secretary shall—

(i) adjust the applicable MA area-specific non-drug monthly benchmark amount (as defined in section 1395w–23(j)(1) of this title) for the area by the average risk adjustment factor computed under subparagraph (A); and

(ii) adjust the unadjusted MA statutory non-drug monthly bid amount by such applicable average risk adjustment factor.

(C) Determination of average per capita monthly savings

The average per capita monthly savings described in this subparagraph for an MA

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3See References in Text note below.
local plan is equal to the amount (if any) by which—

(i) the risk-adjusted benchmark amount computed under subparagraph (B)(i); or

(ii) the risk-adjusted bid computed under subparagraph (B)(ii).

(4) Computation of average per capita monthly savings for regional plans

For purposes of paragraph (1)(C)(i), the average per capita monthly savings referred to in such paragraph for an MA regional plan and year is computed as follows:

(A) Determination of regionwide average risk adjustment for regional plans

(i) In general

The Secretary shall determine, at the same time rates are promulgated under section 1395w–23(b)(1) of this title (beginning with 2006) for each MA region the average of the risk adjustment factors to be applied under section 1395w–23(a)(1)(C) of this title to payment for enrollees in that region for MA regional plans.

(ii) Treatment of regions for first year in which regional plan offered

In the case of an MA region in which no MA regional plan was offered in the previous year, the Secretary shall estimate such average. In making such estimate, the Secretary may use average risk adjustment factors applied to comparable regions or applied on a national basis.

(iii) Authority to determine risk adjustment for areas other than regions

The Secretary may provide for the determination and application of risk adjustment factors under this subparagraph on the basis of areas other than MA regions or on a plan-specific basis.

(B) Determination of risk-adjusted benchmark and risk-adjusted bid for regional plans

For each MA regional plan offered in a region, the Secretary shall—

(i) adjust the applicable MA area-specific non-drug monthly benchmark amount (as defined in section 1395w–23(j)(2) of this title) for the region by the average risk adjustment factor computed under subparagraph (A); and

(ii) adjust the unadjusted MA statutory non-drug monthly bid amount by such applicable average risk adjustment factor.

(C) Determination of average per capita monthly savings

The average per capita monthly savings described in this subparagraph for an MA regional plan is equal to the amount (if any) by which—

(i) the risk-adjusted benchmark amount computed under subparagraph (B)(i); or

(ii) the risk-adjusted bid computed under subparagraph (B)(ii).

(c) Uniform premium and bid amounts

Except as permitted under section 1395w–27(1) of this title, the MA monthly bid amount sub-

mitted under subsection (a)(6) of this section, the amounts of the MA monthly basic, prescription drug, and supplemental beneficiary premiums, and the MA monthly MSA premium charged under subsection (b) of this section of an MA organization under this part may not vary among individuals enrolled in the plan.

(d) Terms and conditions of imposing premiums

(1) In general

Each Medicare+Choice organization shall permit the payment of Medicare+Choice monthly basic, prescription drug, and supplemental beneficiary premiums on a monthly basis, may terminate election of individuals for a Medicare+Choice plan for failure to make premium payments only in accordance with section 1395w–21(g)(3)(B)(i) of this title, and may not provide for cash or other monetary rebates as an inducement for enrollment or otherwise.

(2) Beneficiary’s option of payment through withholding from social security payment or use of electronic funds transfer mechanism

In accordance with regulations, an MA organization shall permit each enrollee, at the enrollee’s option, to make payment of premiums (if any) under this part to the organization through—

(A) withholding from benefit payments in the manner provided under section 1395s of this title with respect to monthly premiums under section 1395r of this title;

(B) an electronic funds transfer mechanism (such as automatic charges of an account at a financial institution or a credit or debit card account); or

(C) such other means as the Secretary may specify, including payment by an employer or under employment-based retiree health coverage (as defined in section 1395w–132(c)(1) of this title) on behalf of an employee or former employee (or dependents).

All premium payments that are withheld under subparagraph (A) shall be credited to the appropriate Trust Fund (or Account thereof), as specified by the Secretary, under this subchapter and shall be paid to the MA organization involved. No charge may be imposed under an MA plan with respect to the election of the payment option described in subparagraph (A). The Secretary shall consult with the Commissioner of Social Security and the Secretary of the Treasury regarding methods for allocating premiums withheld under subparagraph (A) among the appropriate Trust Funds and Account.

(3) Information necessary for collection

In order to carry out paragraph (2)(A) with respect to an enrollee who has elected such paragraph to apply, the Secretary shall transmit to the Commissioner of Social Security—

(A) by the beginning of each year, the name, social security account number, consolidated monthly beneficiary premium described in paragraph (4) owed by such enrollee for each month during the year, and
other information determined appropriate by the Secretary, in consultation with the Commissioner of Social Security; and

(B) periodically throughout the year, information to update the information previously transmitted under this paragraph for the year.

(4) Consolidated monthly beneficiary premium

In the case of an enrollee in an MA plan, the Secretary shall provide a mechanism for the consolidation of—

(A) the MA monthly basic beneficiary premium (if any);
(B) the MA monthly supplemental beneficiary premium (if any); and
(C) the MA monthly prescription drug beneficiary premium (if any).

(e) Limitation on enrollee liability

(1) For basic and additional benefits before 2006

For periods before 2006, in no event may—

(A) the Medicare+Choice monthly basic beneficiary premium (multiplied by 12) and the actuarial value of the deductibles, coinsurance, and copayments applicable on average to individuals enrolled under this part, as determined based upon an adjusted community rate described in paragraph (2) (as reduced for the actuarial value of the coinsurance, copayments, and deductibles under parts A and B of this subchapter);

(B) the actuarial value of the deductibles, coinsurance, and copayments that would be applicable with respect to such benefits on average to individuals entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter if they were not members of a Medicare+Choice organization for the year

(2) For supplemental benefits before 2006

For periods before 2006, if the Medicare+Choice organization provides to its members enrolled under this part in a Medicare+Choice plan described in section 1395w–23(a)(2)(A) of this title with respect to all individuals in same geographic area, the State, or in the United States, eligible to enroll in the Medicare+Choice plan involved under this part or on the basis of other appropriate data.

(3) Determination on other basis

If the Secretary determines that adequate data are not available to determine the actuarial value under paragraph (1)(A), (2), or (4), the Secretary may determine such amount with respect to all individuals in same geographic area, the State, or in the United States, eligible to enroll in the Medicare+Choice plan involved under this part or on the basis of other appropriate data.

(4) Special rule for private fee-for-service plans and for basic benefits beginning in 2006

With respect to a Medicare+Choice private fee-for-service plan (other than a plan that is an MSA plan) and for periods beginning with 2006, with respect to an MA plan described in section 1395w–21(a)(2)(A) of this title, in no event may—

(A) the actuarial value of the deductibles, coinsurance, and copayments applicable on average to individuals enrolled under this part with such a plan of an organization with respect to benefits under the original medicare fee-for-service program option, exceed

(B) the actuarial value of the deductibles, coinsurance, and copayments that would be applicable with respect to such benefits on average to individuals entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter if they were not members of a Medicare+Choice organization for the year.

(f) Requirement for additional benefits before 2006

(1) Requirement

(A) In general

For years before 2006, each Medicare+Choice organization (in relation to a Medicare+Choice plan, other than an MSA plan, it offers) shall provide that if there is an excess amount (as defined in subparagraph (B)) for the plan for a contract year, subject to the succeeding provisions of this subsection, the organization shall provide to individuals such additional benefits (as the organization may specify) in a value which the Secretary determines is at least equal to the adjusted excess amount (as defined in subparagraph (C)).

(B) Excess amount

For purposes of this paragraph, the “excess amount”, for an organization for a plan, is the amount (if any) by which—

(i) the average of the capitation payments made to the organization under section 1395w–23 of this title for the plan at the beginning of contract year, exceeds

(ii) the actuarial value of the required benefits described in section 1395w–22(a)(1)(A) of this title under the plan for individuals under this part, as determined based upon an adjusted community rate described in paragraph (3) (as reduced for the actuarial value of the coinsurance, copayments, and deductibles under parts A and B of this subchapter). (C) Adjusted excess amount

For purposes of this paragraph, the “adjusted excess amount”, for an organization for a plan, is the excess amount reduced to reflect any amount withheld and reserved for the organization for the year under paragraph (2).

(D) Uniform application

This paragraph shall be applied uniformly for all enrollees for a plan.

(E) Premium reductions

(i) In general

Subject to clause (ii), as part of providing any additional benefits required under
paragraph (A), a Medicare+Choice organization may elect a reduction in its payments under section 1395w–23(a)(1)(A) of this title with respect to a Medicare+Choice plan and the Secretary shall apply such reduction to reduce the premium under section 1395r of this title of each enrollee in such plan as provided in section 1395s(i) of this title.

(ii) Amount of reduction

The amount of the reduction under clause (i) with respect to any enrollee in a Medicare+Choice plan—

(I) may not exceed 125 percent of the premium described under section 1395r(a)(3) of this title; and

(II) shall apply uniformly to each enrollee of the Medicare+Choice plan to which such reduction applies.

(F) Construction

Nothing in this subsection shall be construed as preventing a Medicare+Choice organization from providing supplemental benefits (described in section 1395w–22(a)(3) of this title) that are in addition to the health care benefits otherwise required to be provided under this paragraph and from imposing a premium for such supplemental benefits.

(2) Stabilization fund

A Medicare+Choice organization may provide that a part of the value of an excess amount described in paragraph (1) be withheld and reserved in the Federal Hospital Insurance Trust Fund and in the Federal Supplementary Medical Insurance Trust Fund (in such proportion as the Secretary determines to be appropriate) by the Secretary for subsequent annual contract periods, to the extent required to stabilize and prevent undue fluctuations in the additional benefits offered in those subsequent periods by the organization in accordance with such paragraph. Any of such value of the amount reserved which is not provided as additional benefits described in paragraph (1)(A) to individuals electing the Medicare+Choice plan of the organization in accordance with such paragraph prior to the end of such periods, shall revert for the use of such trust funds.

(3) Adjusted community rate

For purposes of this subsection, subject to paragraph (4), the term “adjusted community rate” for a service or services means, at the election of a Medicare+Choice organization, either—

(A) the rate of payment for that service or services which the Secretary annually determines would apply to an individual electing a Medicare+Choice plan under this part if the rate of payment were determined under a “community rating system” (as defined in section 300e–1(8) of this title, other than subparagraph (C)), or

(B) such portion of the weighted aggregate premium, which the Secretary annually estimates would apply to such an individual, as the Secretary annually estimates is attributable to that service or services, but adjusted for differences between the utilization characteristics of the individuals electing coverage under this part and the utilization characteristics of the other enrollees with the plan (or, if the Secretary finds that adequate data are not available to adjust for those differences, the differences between the utilization characteristics of individuals selecting other Medicare+Choice coverage, or Medicare+Choice eligible individuals in the area, in the State, or in the United States, eligible to elect Medicare+Choice coverage under this part and the utilization characteristics of the rest of the population in the area, in the State, or in the United States, respectively).

(4) Determination based on insufficient data

For purposes of this subsection, if the Secretary finds that there is insufficient enrollment experience to determine an average of the capitation payments to be made under this part at the beginning of a contract period or to determine (in the case of a newly operated provider-sponsored organization or other new organization) the adjusted community rate for the organization, the Secretary may determine such an average based on the enrollment experience of other contracts entered into under this part and may determine such a rate using data in the general commercial marketplace.

(g) Prohibition of State imposition of premium taxes

No State may impose a premium tax or similar tax with respect to payments to Medicare+Choice organizations under section 1395w–23 of this title or premiums paid to such organizations under this part.

(h) Permitting use of segments of service areas

The Secretary shall permit a Medicare+Choice organization to elect to apply the provisions of this section uniformly to separate segments of a service area (rather than uniformly to an entire service area) as long as such segments are composed of one or more Medicare+Choice payment areas.


References in Text

Cl. (iii) of par. (1)(C), referred to in subsec. (b)(2)(C)(ii), was struck out and a new cl. (iii) was added by Pub. L. 111–152, §1102(d)(2). See 2010 Amendment note below. As so amended, par. (1)(C)(iii) no longer relates to purposes of rebate and no longer contains a subcl. (III).
Secretary may provide guidance on meaningfully reducing cost-sharing under this subclause, except that such guidance may not require a particular amount of cost-sharing or reduction in cost-sharing.

"(II) Second, to use the next most significant share to meaningfully provide coverage of preventive and wellness health care benefits (as defined by the Secretary) which are not benefits under the original medicare fee-for-service program, such as smoking cessation, a free flu shot, and an annual physical examination.

"(III) Third, to use the remaining share to meaningfully provide coverage of other health care benefits which are not benefits under the original medicare fee-for-service program, such as eye examinations and dental coverage, and are not benefits described in subclause (II)."

Pub. L. 111–148, § 3202(b)(i), redesignated (vii).


Prior to amendment, text read as follows: "Not later than the second Monday in September of 2002, 2003, and 2004 (or July 1 of each other year), each Medicare+Choice organization shall submit to the Secretary, in a form and manner specified by the Secretary, the information described in clause (iii) and struck out former cl. (iii). Prior to amendment, text read as follows: "For plan years beginning on or after January 1, 2012", after "75 percent".


See Effective Date of 2010 Amendment note below.


Pub. L. 111–148, § 3202(b)(i), redesignated cl. (iv) as (v).


See Effective Date of 2010 Amendment note below.

Pub. L. 111–148, § 3202(b)(iii), which directed substitution of "1395w–23(j)(1)(B) for "1395w–23(j)(2)(B) was repealed by Pub. L. 111–152, § 1102(a).

See Effective Date of 2010 Amendment note below.

Pub. L. 111–148, § 3202(b)(iv), which directed repeal of subsec. (b), was repealed by Pub. L. 111–152, § 1102(a).

See Effective Date of 2010 Amendment note below.


Pub. L. 108–173, § 222(g)(1)(A), redesignated "(ii) the information described in paragraph (2), (3), or (4) for the type of plan involved; and" as (ii) "the enrollment capacity (if any) in relation to the plan and area."


Pub. L. 108–173, § 222(g)(1)(D), substituted "For an MSA plan for any year" for "For an MSA plan described" in introductory provisions.


Subsec. (a)(5)(B). Pub. L. 108–173, § 222(g)(1)(G), inserted "in the case of an MA private fee-for-service plan," after "paragraph (3) or".


Subsec. (b)(1)(A). Pub. L. 108–173, § 222(b)(1)(A), (g)(1)(B), substituted "Subject to the rebate under subsection (C), the monthly amount (if any)" for "The monthly amount (if any) and a comma for "and" after "basic beneficiary premium" and inserted before period at end ", and, if the plan provides qualified prescription drug coverage, the MA monthly prescription drug benefit fund premium".


Subsec. (b)(2). Pub. L. 108–173, § 222(b)(2), inserted "a "1" bid after "Premium" in heading, added subpars. (A) to (C) and (E), redesignated former subpar. (C) as (D), and struck out former subpars. (A) and (B) which defined the terms Medicare+Choice monthly basic beneficiary premium and Medicare+Choice monthly supplemental beneficiary premium".


Subsec. (c). Pub. L. 108–173, § 222(g)(2), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: "For years before 2006, in this section and section 1395w–22(a)(1), insert "and for periods beginning with 2006" after "benefits" in heading and subordinated provisions".

Subsec. (d). Pub. L. 108–173, § 222(c), (g)(3), designated existing provisions as par. (1), inserted heading and prescription drug," after "basic", and added pars. (2) to (4).


Subsec. (e)(3). Pub. L. 108–173, § 222(g)(4)(C), substituted "(2), or (4)" for "or (2)".

Subsec. (e)(4). Pub. L. 108–173, § 222(g)(4)(D), (i), (ii), inserted "and the basic benefits beginning in 2006" after "plans" in heading and "and for periods beginning with 2006, with respect to an MA plan described in section 1395w–22(a)(1), insert "and for periods before 2006, in", for "In" in introductory provisions.

Subsec. (e)(5). Pub. L. 108–173, § 222(g)(4)(D), (iv), inserted "with respect to such benefits" after "would be applicable"


Subsec. (g). Pub. L. 108–173, § 222(i)(5)(A), inserted "or premiums paid to such organizations under this part" after "section 1395w–25 of this title".


Pub. L. 106–113, § 1000(a)(6) (title V, § 516(a)(1), inserted "(or segment of such an area if permitted under subsection (b) of this section)" after "service area" in introductory provisions.


Subsec. (a)(4). Pub. L. 106–113, § 1000(a)(6) (title III, § 321(k)(6)(C)(iv)), which directed insertion of "section" after "described in", was executed by making the insertion after "described in" the second time appearing in introductory provisions to reflect the probable intent of Congress.


CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

**Effective Date of 2010 Amendment**

Repeal of sections 3201 and 3203 of Pub. L. 111–148 and the amendments made by such sections, effective as if included in the enactment of Pub. L. 111–148, see section 1102(a) of Pub. L. 111–152, set out as a note under section 1395w–21 of this title.

**Effective Date of 2003 Amendment**

Amendment by section 222(a)(1), (b), (c), (g) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

**Effective Date of 2002 Amendment**

Amendment by section 222(a)(1), (b), (c), (g) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Pub. L. 108–173, title II, § 232(c), Dec. 8, 2003, 117 Stat. 2499, provided that: "The amendments made by this subsection [probably should be "this section", amending this section and section 1395w–26 of this title] shall take effect on the date of the enactment of this Act [Dec. 8, 2003]."

**Effective Date of 2002 Amendment**

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EFFECTIVE DATE OF 2000 AMENDMENT
Amendment by section 1(a)(6) [title VI, § 606(a)(1)] of Pub. L. 106–554 applicable to years beginning with 2003, see section 1(a)(6) [title VI, § 606(b)] of Pub. L. 106–554, set out as a note under section 1395r of this title.

EFFECTIVE DATE OF 1999 AMENDMENT
Amendment by section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as Pub. L. 105–33, except as otherwise provided, see section 1(a)(6) [title VI, § 606(b)] of Pub. L. 106–113, set out as a note under section 1395r of this title.


§ 1395w–25. Organizational and financial requirements for Medicare+Choice organizations; provider-sponsored organizations

(a) Organized and licensed under State law

(1) In general

Subject to paragraphs (2) and (3), a Medicare+Choice organization shall be organized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in each State in which it offers a Medicare+Choice plan.

(2) Special exception for provider-sponsored organizations

(A) In general

In the case of a provider-sponsored organization that seeks to offer a Medicare+Choice plan in a State, the Secretary shall waive the requirement of paragraph (1) that the organization be licensed in that State if—

(i) the organization files an application for such waiver with the Secretary by not later than November 1, 2002, and

(ii) the Secretary determines, based on the application and other evidence presented to the Secretary, that any of the grounds for approval of the application described in subparagraph (B), (C), or (D) has been met.

(B) Failure to act on licensure application on a timely basis

The ground for approval of such a waiver application described in this subparagraph is that the State has denied such a licensing application and—

(i) the standards or review process imposed by the State as a condition of approval of the license imposes any material requirements, procedures, or standards (other than solvency requirements) to such organizations that are not generally applicable to other entities engaged in a substantially similar business, or

(ii) the State requires the organization, as a condition of licensure, to offer any product or plan other than a Medicare+Choice plan.

(D) Denial of application based on application of solvency requirements

With respect to waiver applications filed on or after the date of publication of solvency standards under section 1395w–26(a) of this title, the ground for approval of such a waiver application described in this subparagraph is that the State has denied such a licensing application based (in whole or in part) on the organization’s failure to meet applicable solvency requirements and—

(i) such requirements are not the same as the solvency standards established under section 1395w–26(a) of this title; or

(ii) the State has imposed as a condition of approval of the license documentation or information requirements relating to solvency or other material requirements, procedures, or standards relating to solvency that are different from the requirements, procedures, and standards applied by the Secretary under subsection (d)(2) of this section.

For purposes of this paragraph, the term “solvency requirements” means requirements relating to solvency and other matters covered under the standards established under section 1395w–26(a) of this title.

(E) Treatment of waiver

In the case of a waiver granted under this paragraph for a provider-sponsored organization with respect to a State—

(i) Limitation to State

The waiver shall be effective only with respect to that State and does not apply to any other State.

(ii) Limitation to 36-month period

The waiver shall be effective only for a 36-month period and may not be renewed.

(iii) Conditioned on compliance with consumer protection and quality standards

The continuation of the waiver is conditioned upon the organization’s compliance with the requirements described in subparagraph (G).

(iv) Preemption of State law

Any provisions of law of that State which relate to the licensing of the organization and which prohibit the organization from providing coverage pursuant to a contract under this part shall be superseded.

(2) Special exception for provider-sponsored organizations

(A) In general

In the case of a provider-sponsored organization that seeks to offer a Medicare+Choice plan in a State, the Secretary shall waive the requirement of paragraph (1) that the organization be licensed in that State if—

(i) the standards or review process imposed by the State as a condition of approval of the license imposes any material requirements, procedures, or standards (other than solvency requirements) to such organizations that are not generally applicable to other entities engaged in a substantially similar business, or

(ii) the State requires the organization, as a condition of licensure, to offer any product or plan other than a Medicare+Choice plan.

(D) Denial of application based on application of solvency requirements

With respect to waiver applications filed on or after the date of publication of solvency standards under section 1395w–26(a) of this title, the ground for approval of such a waiver application described in this subparagraph is that the State has denied such a licensing application based (in whole or in part) on the organization’s failure to meet applicable solvency requirements and—

(i) such requirements are not the same as the solvency standards established under section 1395w–26(a) of this title; or

(ii) the State has imposed as a condition of approval of the license documentation or information requirements relating to solvency or other material requirements, procedures, or standards relating to solvency that are different from the requirements, procedures, and standards applied by the Secretary under subsection (d)(2) of this section.

For purposes of this paragraph, the term “solvency requirements” means requirements relating to solvency and other matters covered under the standards established under section 1395w–26(a) of this title.

(E) Treatment of waiver

In the case of a waiver granted under this paragraph for a provider-sponsored organization with respect to a State—

(i) Limitation to State

The waiver shall be effective only with respect to that State and does not apply to any other State.

(ii) Limitation to 36-month period

The waiver shall be effective only for a 36-month period and may not be renewed.

(iii) Conditioned on compliance with consumer protection and quality standards

The continuation of the waiver is conditioned upon the organization’s compliance with the requirements described in subparagraph (G).

(iv) Preemption of State law

Any provisions of law of that State which relate to the licensing of the organization and which prohibit the organization from providing coverage pursuant to a contract under this part shall be superseded.
(F) Prompt action on application

The Secretary shall grant or deny such a waiver application within 60 days after the date the Secretary determines that a substantially complete waiver application has been filed. Nothing in this section shall be construed as preventing an organization which has had such a waiver application denied from submitting a subsequent waiver application.

(G) Application and enforcement of State consumer protection and quality standards

(i) In general

A waiver granted under this paragraph to an organization with respect to licensing under State law is conditioned upon the organization’s compliance with all consumer protection and quality standards insofar as such standards—

(I) would apply in the State to the organization if it were licensed under State law;

(II) are generally applicable to other Medicare+Choice organizations and plans in the State; and

(III) are consistent with the standards established under this part.

Such standards shall not include any standard preempted under section 1395w–26(b)(3)(B) of this title.

(ii) Incorporation into contract

In the case of such a waiver granted to an organization with respect to a State, the Secretary shall incorporate the requirement that the organization (and Medicare+Choice organizations and plans it offers) comply with standards under clause (i) as part of the contract between the Secretary and the organization under section 1395w–27 of this title.

(iii) Enforcement

In the case of such a waiver granted to an organization with respect to a State, the Secretary may enter into an agreement with the State under which the State agrees to provide for monitoring and enforcement activities with respect to compliance of such an organization and its Medicare+Choice plans with such standards. Such monitoring and enforcement shall be conducted by the State in the same manner as the State enforces such standards with respect to other Medicare+Choice organizations and plans, without discrimination based on the type of organization to which the standards apply. Such an agreement shall specify or establish mechanisms by which compliance activities are undertaken, while not lengthening the time required to review and process applications for waivers under this paragraph.

(H) Report

By not later than December 31, 2001, the Secretary shall submit to the Committee on Ways and Means and the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate a report regarding whether the waiver process under this paragraph should be continued after December 31, 2002. In making such recommendation, the Secretary shall consider, among other factors, the impact of such process on beneficiaries and on the long-term solvency of the program under this subchapter.

(3) Licensure does not substitute for or constitute certification

The fact that an organization is licensed in accordance with paragraph (1) does not deem the organization to meet other requirements imposed under this part.

(b) Assumption of full financial risk

The Medicare+Choice organization shall assume full financial risk on a prospective basis for the provision of the health care services for which benefits are required to be provided under section 1395w–22(a)(1) of this title, except that the organization—

(1) may obtain insurance or make other arrangements for the cost of providing to any enrolled member such services the aggregate value of which exceeds such aggregate level as the Secretary specifies from time to time,

(2) may obtain insurance or make other arrangements for the cost of such services provided to its enrolled members other than through the organization because medical necessity required their provision before they could be secured through the organization,

(3) may obtain insurance or make other arrangements for not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for such fiscal year, and

(4) may make arrangements with physicians or other health care professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions.

(c) Certification of provision against risk of insolvency for unlicensed PSOs

(1) In general

Each Medicare+Choice organization that is a provider-sponsored organization, that is not licensed by a State under subsection (a) of this section, and for which a waiver application has been approved under subsection (a)(2) of this section, shall meet standards established under section 1395w–26(a) of this title relating to the financial solvency and capital adequacy of the organization.

(2) Certification process for solvency standards for PSOs

The Secretary shall establish a process for the receipt and approval of applications of a provider-sponsored organization described in paragraph (1) for certification (and periodic recertification) of the organization as meeting such solvency standards. Under such process, the Secretary shall act upon such a certifi-
(d) “Provider-sponsored organization” defined

(1) In general

In this part, the term “provider-sponsored organization” means a public or private entity—

(A) that is established or organized, and operated, by a health care provider, or group of affiliated health care providers,

(B) that provides a substantial proportion (as defined by the Secretary in accordance with paragraph (2)) of the health care items and services under the contract under this part directly through the provider or affiliated group of providers, and

(C) with respect to which the affiliated providers share, directly or indirectly, substantial financial risk with respect to the provision of such items and services and have at least a majority financial interest in the entity.

(2) Substantial proportion

In defining what is a “substantial proportion” for purposes of paragraph (1)(B), the Secretary—

(A) shall take into account the need for such an organization to assume responsibility for providing—

(i) significantly more than the majority of the items and services under the contract under this section through its own affiliated providers; and

(ii) most of the remainder of the items and services under the contract through providers with which the organization has an agreement to provide such items and services,

in order to assure financial stability and to address the practical considerations involved in integrating the delivery of a wide range of service providers;

(B) shall take into account the need for such an organization to provide a limited proportion of the items and services under the contract through providers that are neither affiliated with nor have an agreement with the organization; and

(C) may allow for variation in the definition of substantial proportion among such organizations based on relevant differences among the organizations, such as their location in an urban or rural area.

(3) Affiliation

For purposes of this subsection, a provider is “affiliated” with another provider if, through contract, ownership, or otherwise—

(A) one provider, directly or indirectly, controls, is controlled by, or is under common control with the other,

(B) both providers are part of a controlled group of corporations under section 1563 of the Internal Revenue Code of 1986,

(C) each provider is a participant in a lawful combination under which each provider shares substantial financial risk in connection with the organization’s operations, or

(D) both providers are part of an affiliated service group under section 414 of such Code.

(4) Control

For purposes of paragraph (3), control is presumed to exist if one party, directly or indirectly, owns, controls, or holds the power to vote, or proxies for, not less than 51 percent of the voting rights or governance rights of another.

(5) “Health care provider” defined

In this subsection, the term “health care provider” means—

(A) any individual who is engaged in the delivery of health care services in a State and who is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State, and

(B) any entity that is engaged in the delivery of health care services in a State and that, if it is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State, is so licensed.

(6) Regulations

The Secretary shall issue regulations to carry out this subsection.

(a) Establishment of solvency standards for provider-sponsored organizations

(1) Establishment

The Secretary shall establish, on an expedited basis and using a negotiated rulemaking process under subchapter III of chapter 5 of title 5, standards described in section 1395w–25(c)(1) of this title (relating to the financial solvency and capital adequacy of the organization) that entities must meet to qualify as provider-sponsored organizations under this part.

(B) Factors to consider for solvency standards

In establishing solvency standards under subparagraph (A) for provider-sponsored organizations, the Secretary shall consult with interested parties and shall take into account—
(1) the delivery system assets of such an organization and ability of such an organization to provide services directly to enrollees through affiliated providers,
(2) alternative means of protecting against insolvency, including reinsurance, unrestricted surplus, letters of credit, guarantees, organizational insurance coverage, partnerships with other licensed entities, and valuation attributable to the ability of such an organization to meet its service obligations through direct delivery of care, and
(3) any standards developed by the National Association of Insurance Commissioners specifically for risk-based health care delivery organizations.

(C) Enrollee protection against insolvency
Such standards shall include provisions to prevent enrollees from being held liable to any person or entity for the Medicare+Choice organization’s debts in the event of the organization’s insolvency.

(2) Publication of notice
In carrying out the rulemaking process under this subsection, the Secretary, after consultation with the National Association of Insurance Commissioners, the American Academy of Actuaries, organizations representative of Medicare beneficiaries, and other interested parties, shall publish the notice provided for under section 564(a) of title 5 by not later than 45 days after August 5, 1997.

(3) Target date for publication of rule
As part of the notice under paragraph (2), and for purposes of this subsection, the “target date for publication” (referred to in section 564(a)(5) of such title) shall be April 1, 1998.

(4) Abbreviated period for submission of comments
In applying section 564(c) of such title under this subsection, “15 days” shall be substituted for “30 days”.

(5) Appointment of negotiated rulemaking committee and facilitator
The Secretary shall provide for—
(A) the appointment of a negotiated rulemaking committee under section 565(a) of such title by not later than 30 days after the end of the comment period provided for under section 564(c) of such title (as shortened under paragraph (4)), and
(B) the nomination of a facilitator under section 566(c) of such title by not later than 10 days after the date of appointment of the committee.

(6) Preliminary committee report
The negotiated rulemaking committee appointed under paragraph (5) shall report to the Secretary, by not later than January 1, 1998, regarding the committee’s progress on achieving a consensus with regard to the rulemaking proceeding and whether such consensus is likely to occur before 1 month before the target date for publication of the rule. If the committee reports that the committee has failed to make significant progress towards such consensus or is unlikely to reach such consensus by the target date, the Secretary may terminate such process and provide for the publication of a rule under this subsection through such other methods as the Secretary may provide.

(7) Final committee report
If the committee is not terminated under paragraph (6), the rulemaking committee shall submit a report containing a proposed rule by not later than 1 month before the target date of publication.

(8) Interim, final effect
The Secretary shall publish a rule under this subsection in the Federal Register by not later than the target date of publication. Such rule shall be effective and final immediately on an interim basis, but is subject to change and revision after public notice and opportunity for a period (of not less than 60 days) for public comment. In connection with such rule, the Secretary shall specify the process for the timely review and approval of applications of entities to be certified as provider-sponsored organizations pursuant to such rules and consistent with this subsection.

(9) Publication of rule after public comment
The Secretary shall provide for consideration of such comments and republication of such rule by not later than 1 year after the target date of publication.

(b) Establishment of other standards
(1) In general
The Secretary shall establish by regulation other standards (not described in subsection (a) of this section) for Medicare+Choice organizations and plans consistent with, and to carry out, this part. The Secretary shall publish such regulations by June 1, 1998. In order to carry out this requirement in a timely manner, the Secretary may promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment.

(2) Use of current standards
Consistent with the requirements of this part, standards established under this subsection shall be based on standards established under section 1395mm of this title to carry out analogous provisions of such section.

(3) Relation to State laws
The standards established under this part shall supersede any State law or regulation (other than State licensing laws or State laws relating to plan solvency) with respect to MA plans which are offered by MA organizations under this part.

(4) Prohibition of midyear implementation of significant new regulatory requirements
The Secretary may not implement, other than at the beginning of a calendar year, regulations under this section that impose new, significant regulatory requirements on a Medicare+Choice organization or plan.
AMENDMENTS


§ 1395w–27. Contracts with Medicare+Choice organizations

(a) In general

The Secretary shall not permit the election under section 1395w–21 of this title of a Medicare+Choice plan offered by a Medicare+Choice organization under this part, and no payment shall be made under section 1395w–23 of this title to an organization, unless the Secretary has entered into a contract under this section with the organization with respect to the offering of such plan. Such a contract with an organization may cover more than 1 Medicare+Choice plan. Such contract shall provide that the organization agrees to comply with the applicable requirements and standards of this part and the terms and conditions of payment as provided for in this part.

(b) Minimum enrollment requirements

(1) In general

Subject to paragraph (2), the Secretary may not enter into a contract under this section with a Medicare+Choice organization unless the organization has—

(A) at least 5,000 individuals (or 1,500 individuals in the case of an organization that is a provider-sponsored organization) who are receiving health benefits through the organization; or

(B) at least 1,500 individuals (or 500 individuals in the case of an organization that is a provider-sponsored organization) who are receiving health benefits through the organization if the organization primarily serves individuals residing outside of urbanized areas.

(2) Application to MSA plans

In applying paragraph (1) in the case of a Medicare+Choice organization that is offering an MSA plan, paragraph (1) shall be applied by substituting covered lives for individuals.

(3) Allowing transition

The Secretary may waive the requirement of paragraph (1) during the first 3 contract years with respect to an organization.

(c) Contract period and effectiveness

(1) Period

Each contract under this section shall be for a term of at least 1 year, as determined by the Secretary, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term.

(2) Termination authority

In accordance with procedures established under subsection (h) of this section, the Secretary may at any time terminate any such contract if the Secretary determines that the organization—

(A) has failed substantially to carry out the contract;

(B) is carrying out the contract in a manner inconsistent with the efficient and effective administration of this part; or

(C) no longer substantially meets the applicable conditions of this part.

(3) Effective date of contracts

The effective date of any contract executed pursuant to this section shall be specified in the contract, except that in no case shall a contract under this section which provides for coverage under an MSA plan be effective before January 1999 with respect to such coverage.

(4) Previous terminations

(A) In general

The Secretary may not enter into a contract with a Medicare+Choice organization if a previous contract with that organization under this section was terminated at the request of the organization within the preceding 2-year period, except as provided in subparagraph (B) and except in such other circumstances which warrant special consideration, as determined by the Secretary.

(B) Earlier re-entry permitted where change in payment policy

Subparagraph (A) shall not apply with respect to the offering by a Medicare+Choice organization of a Medicare+Choice plan in a Medicare+Choice payment area if during the 6-month period beginning on the date the organization notified the Secretary of the intention to terminate the most recent previous contract, there was a legislative change enacted (or a regulatory change adopted) that has the effect of increasing payment amounts under section 1395w–23 of this title for that Medicare+Choice payment area.
(5) Contracting authority

The authority vested in the Secretary by this part may be performed without regard to such provisions of law or regulations relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the furtherance of the purpose of this subchapter.

(d) Protections against fraud and beneficiary protections

(1) Periodic auditing

The Secretary shall provide for the annual auditing of the financial records (including data relating to medicare utilization and costs, including allowable costs under section 1395w–27 of this title) of at least one-third of the Medicare+Choice organizations offering Medicare+Choice plans under this part. The Comptroller General shall monitor auditing activities conducted under this subsection.

(2) Inspection and audit

Each contract under this section shall provide that the Secretary, or any party or organization designated by the Secretary—

(A) shall have the right to timely inspect or otherwise evaluate (i) the quality, appropriateness, and timeliness of services performed under the contract, and (ii) the facilities of the organization when there is reasonable evidence of some need for such inspection, and

(B) shall have the right to timely audit and inspect any books and records of the Medicare+Choice organization that pertain (i) to the ability of the organization to bear the risk of potential financial losses, or (ii) to services performed or determinations of amounts payable under the contract.

(3) Enrollee notice at time of termination

Each contract under this section shall require the organization to provide (and pay for) written notice in advance of the contract’s termination, as well as a description of alternatives for obtaining benefits under this subchapter, to each individual enrolled with the organization under this part.

(4) Disclosure

(A) In general

Each Medicare+Choice organization shall, in accordance with regulations of the Secretary, report to the Secretary financial information which shall include the following:

(i) Such information as the Secretary may require demonstrating that the organization has a fiscally sound operation.

(ii) A copy of the report, if any, filed with the Secretary containing the information required to be reported under section 1320a–3 of this title by disclosing entities.

(iii) A description of transactions, as specified by the Secretary, between the organization and a party in interest. Such transactions shall include—

(I) any sale or exchange, or leasing of any property between the organization and a party in interest;

(II) any furnishing for consideration of goods, services (including management services), or facilities between the organization and a party in interest, but not including salaries paid to employees for services provided in the normal course of their employment and health services provided to members by hospitals and other providers and by staff, medical group (or groups), individual practice association (or associations), or any combination thereof; and

(III) any lending of money or other extension of credit between an organization and a party in interest.

The Secretary may require that information reported respecting an organization which controls, is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

(B) “Party in interest” defined

For the purposes of this paragraph, the term “party in interest” means—

(i) any director, officer, partner, or employee responsible for management or administration of a Medicare+Choice organization, any person who is directly or indirectly the beneficial owner of more than 5 percent of the equity of the organization, any person who is the beneficial owner of a mortgage, deed of trust, note, or other interest secured by, and valuing more than 5 percent of the organization, and, in the case of a Medicare+Choice organization organized as a nonprofit corporation, an incorporator or member of such corporation under applicable State corporation law;

(ii) any entity in which a person described in clause (i)—

(I) is an officer or director;

(II) is a partner (if such entity is organized as a partnership);

(III) has directly or indirectly a beneficial interest of more than 5 percent of the equity; or

(IV) has a mortgage, deed of trust, note, or other interest valuing more than 5 percent of the assets of such entity;

(iii) any person directly or indirectly controlling, controlled by, or under common control with an organization; and

(iv) any spouse, child, or parent of an individual described in clause (i).

(C) Access to information

Each Medicare+Choice organization shall make the information reported pursuant to subparagraph (A) available to its enrollees upon reasonable request.

(5) Loan information

The contract shall require the organization to notify the Secretary of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates, and related parties.
(6) Review to ensure compliance with care management requirements for specialized Medicare Advantage plans for special needs individuals

In conjunction with the periodic audit of a specialized Medicare Advantage plan for special needs individuals under paragraph (1), the Secretary shall conduct a review to ensure that such organization offering the plan meets the requirements described in section 1395w–28(f)(5) of this title.

(e) Additional contract terms

(1) In general

The contract shall contain such other terms and conditions not inconsistent with this part (including requiring the organization to provide the Secretary with such information) as the Secretary may find necessary and appropriate.

(2) Cost-sharing in enrollment-related costs

(A) In general

A Medicare+Choice organization and a PDP sponsor under part D of this subchapter shall pay the fee established by the Secretary under subparagraph (B).

(B) Authorization

The Secretary is authorized to charge a fee to each Medicare+Choice organization with a contract under this part and each PDP sponsor with a contract under part D of this subchapter that is equal to the organization’s or sponsor’s pro rata share (as determined by the Secretary) of the aggregate amount of fees which the Secretary is directed to collect in a fiscal year. Any amounts collected shall be available without further appropriation to the Secretary for the purpose of carrying out section 1395w–21 of this title (relating to enrollment and dissemination of information), section 1395w–101(c) of this title, and section 1395b–4 of this title (relating to the health insurance counseling and assistance program).

(C) Authorization of appropriations

There are authorized to be appropriated for the purposes described in subparagraph (B) for each fiscal year beginning with fiscal year 2001 and ending with fiscal year 2005 an amount equal to $100,000,000, and for each fiscal year beginning with fiscal year 2006 an amount equal to $200,000,000, reduced by the amount of fees authorized to be collected under this paragraph and section 1395w–112(b)(3)(D) of this title for the fiscal year.

(D) Limitation

In any fiscal year the fees collected by the Secretary under subparagraph (B) shall not exceed the lesser of—

(i) the estimated costs to be incurred by the Secretary in the fiscal year in carrying out the activities described in section 1395w–21 of this title and section 1395w–101(c) of this title and section 1395b–4 of this title; or

(ii)(I) $200,000,000 in fiscal year 1998;

(II) $150,000,000 in fiscal year 1999;

(III) $100,000,000 in fiscal year 2000;

(IV) the Medicare+Choice portion (as defined in subparagraph (E)) of $100,000,000 in fiscal year 2001 and each succeeding fiscal year before fiscal year 2006; and

(V) the applicable portion (as defined in subparagraph (F)) of $200,000,000 in fiscal year 2006 and each succeeding fiscal year.

(E) Medicare+Choice portion defined

In this paragraph, the term “Medicare+Choice portion” means, for a fiscal year, the ratio, as estimated by the Secretary, of—

(i) the average number of individuals enrolled in Medicare+Choice plans during the fiscal year, to

(ii) the average number of individuals entitled to benefits under part A of this subchapter, and enrolled under part B of this subchapter, during the fiscal year.

(F) Applicable portion defined

In this paragraph, the term “applicable portion” means, for a fiscal year—

(i) with respect to MA organizations, the Secretary’s estimate of the total proportion of expenditures under this subchapter that are attributable to expenditures made under this part (including payments under part D of this subchapter that are made to such organizations); or

(ii) with respect to PDP sponsors, the Secretary’s estimate of the total proportion of expenditures under this subchapter that are attributable to expenditures made to such sponsors under part D of this subchapter.

(3) Agreements with federally qualified health centers

(A) Payment levels and amounts

A contract under this section with an MA organization shall require the organization to provide, in any written agreement described in section 1395w–23(a)(4) of this title between the organization and a federally qualified health center, for a level and amount of payment to the federally qualified health center for services provided by such health center that is not less than the level and amount of payment that the plan would make for such services if the services had been furnished by an entity providing similar services that was not a federally qualified health center.

(B) Cost-sharing

Under the written agreement referred to in subparagraph (A), a federally qualified health center must accept the payment amount referred to in such subparagraph plus the Federal payment provided for in section 1395(a)(3)(B) of this title as payment in full for services covered by the agreement, except that such a health center may collect any amount of cost-sharing permitted under the contract under this section, so long as the amounts of any deductible, coinsurance, or copayment comply with the requirements under section 1395w–24(e) of this title.
(4) Requirement for minimum medical loss ratio

If the Secretary determines for a contract year (beginning with 2014) that an MA plan has failed to have a medical loss ratio of at least .85—

(A) the MA plan shall remit to the Secretary an amount equal to the product of—

(i) the total revenue of the MA plan under this part for the contract year; and

(ii) the difference between .85 and the medical loss ratio;

(B) for 3 consecutive contract years, the Secretary shall not permit the enrollment of new enrollees under the plan for coverage during the second succeeding contract year; and

(C) the Secretary shall terminate the plan contract if the plan fails to have such a medical loss ratio for 5 consecutive contract years.

(f) Prompt payment by Medicare+Choice organization

(1) Requirement

A contract under this part shall require a Medicare+Choice organization to provide prompt payment (consistent with the provisions of sections 1395h(c)(2) and 1395u(c)(2) of this title) of claims submitted for services and supplies furnished to enrollees pursuant to the contract, if the services or supplies are not furnished under a contract between the organization and the provider or supplier (or in the case of a Medicare+Choice private fee-for-service plan, if a claim is submitted to such organization by an enrollee).

(2) Secretary's option to bypass noncomplying organization

In the case of a Medicare+Choice eligible organization which the Secretary determines, after notice and opportunity for a hearing, has failed to make payments of amounts in compliance with paragraph (1), the Secretary may provide for direct payment of the amounts owed to providers and suppliers (or, in the case of a Medicare+Choice private fee-for-service plan, amounts owed to the enrollees) for covered services and supplies furnished to individuals enrolled under this part under the contract. If the Secretary provides for the direct payments, the Secretary shall provide for an appropriate reduction in the amount of payments otherwise made to the organization under this part to reflect the amount of the Secretary's payments (and the Secretary's costs in making the payments).

(3) Incorporation of certain prescription drug plan contract requirements

The following provisions shall apply to contracts with a Medicare Advantage organization offering an MA–PD plan in the same manner as they apply to contracts with a PDP sponsor offering a prescription drug plan under part D:

(A) Prompt payment

Section 1395w–112(b)(4) of this title.

(B) Submission of claims by pharmacies located in or contracting with long-term care facilities

Section 1395w–112(b)(5) of this title.

(C) Regular update of prescription drug pricing standard

Section 1395w–112(b)(6) of this title.

(g) Intermediate sanctions

(1) In general

If the Secretary determines that a Medicare+Choice organization with a contract under this section—

(A) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

(B) imposes premiums on individuals enrolled under this part in excess of the amount of the Medicare+Choice monthly basic and supplemental beneficiary premiums permitted under section 1395w–24 of this title;

(C) acts to expel or to refuse to re-enroll an individual in violation of the provisions of this part;

(D) engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this part) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services;

(E) misrepresents or falsifies information that is furnished—

(i) to the Secretary under this part, or

(ii) to an individual or to any other entity under this part;

(F) fails to comply with the applicable requirements of section 1395w–22(j)(3) or 1395w–22(k)(2)(A)(i) of this title;

(G) employs or contracts with any individual or entity that is excluded from participation under section 1320a–7 or 1320a–7a of this title for the provision of health care, utilization review, medical social work, or administrative services or employs or contracts with any entity for the provision (directly or indirectly) through such an excluded individual or entity of such services;

(H) except as provided under subparagraph (C) or (D) of section 1395w–101(b)(1) of this title, enrolls an individual in any plan under this part without the prior consent of the individual or the designee of the individual;

(I) transfers an individual enrolled under this part from one plan to another without the prior consent of the individual or the designee of the individual or solely for the purpose of earning a commission;

(J) fails to comply with marketing restrictions described in subsections (b) and (j) of section 1395w–21 of this title or applicable implementing regulations or guidance; or

(K) employs or contracts with any individual or entity who engages in the conduct de-
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The remedies described in this paragraph are—

(A) civil money penalties of not more than $25,000 for each determination under paragraph (1) or, with respect to a determination under subparagraph (D) or (E)(i) of such paragraph, of not more than $100,000 for each such determination, except with respect to a determination under subparagraph (E), an assessment of not more than the amount claimed by such plan or plan sponsor based upon the misrepresentation or falsified information involved, plus, with respect to a determination under paragraph (1)(B), double the excess amount charged in violation of such paragraph (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned), and plus, with respect to a determination under paragraph (1)(D), $15,000 for each individual not enrolled as a result of the practice involved.

(B) suspension of enrollment of individuals under this part after the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur, or

(C) suspension of payment to the organization under this part for individuals enrolled after the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur.

(3) Other intermediate sanctions

In the case of a Medicare+Choice organization for which the Secretary makes a determination under subsection (c)(2) of this section the basis of which is not described in paragraph (1), the Secretary may apply the following intermediate sanctions:

(A) Civil money penalties of not more than $25,000 for each determination under subsection (c)(2) of this section if the deficiency that is the basis of the determination has directly adversely affected (or has the substantial likelihood of adversely affecting) an individual covered under the organization’s contract.

(B) Civil money penalties of not more than $10,000 for each week beginning after the initiation of civil money penalty procedures by the Secretary during which the deficiency that is the basis of a determination under subsection (c)(2) of this section exists.

(C) Suspension of enrollment of individuals under this part after the date the Secretary notifies the organization of a determination under subsection (c)(2) of this section and until the Secretary is satisfied that the deficiency that is the basis for the determination has been corrected and is not likely to recur.

(D) Civil monetary penalties of not more than $100,000, or such higher amount as the Secretary may establish by regulation, where the finding under subsection (c)(2)(A) of this section is based on the organization’s termination of its contract under this section other than at a time and in a manner provided for under subsection (a) of this section.

(4) Civil money penalties

The provisions of section 1320a–7a (other than subsections (a) and (b)) of this title shall apply to a civil money penalty under paragraph (2) or (3) in the same manner as they apply to a civil money penalty or proceeding under section 1320a–7a(a) of this title.

(h) Procedures for termination

(1) In general

The Secretary may terminate a contract with a Medicare+Choice organization under this section in accordance with formal investigation and compliance procedures established by the Secretary under which—

(A) the Secretary provides the organization with the reasonable opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the Secretary’s determination under subsection (c)(2) of this section; and

(B) the Secretary provides the organization with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before terminating the contract.

(2) Exception for imminent and serious risk to health

Paragraph (1) shall not apply if the Secretary determines that a delay in termination, resulting from compliance with the procedures specified in such paragraph prior to termination, would pose an imminent and serious risk to the health of individuals enrolled under this part with the organization.

(i) Medicare+Choice program compatibility with employer or union group health plans

(1) Contracts with MA organizations

To facilitate the offering of Medicare+Choice plans under contracts between Medicare+Choice organizations and employers, labor organizations, or the trustees of a fund established by one or more employers or labor organizations (or combination thereof) to furnish benefits to the entity’s employees, former employees (or combination thereof) or members or former members (or combination thereof) of the labor organizations, the

1 So in original. Probably means subpar. (E) of par. (1).
Secretary may waive or modify requirements that hinder the design of, the offering of, or the enrollment in such Medicare+Choice plans.

(2) **Employer sponsored MA plans**

To facilitate the offering of MA plans by employers, labor organizations, or the trustees of a fund established by one or more employers or labor organizations (or combination thereof) to furnish benefits to the entity’s employees, former employees (or combination thereof) or members or former members (or combination thereof) of the labor organizations, the Secretary may waive or modify requirements that hinder the design of, the offering of, or the enrollment in such MA plans. Notwithstanding section 1395w–21(g) of this title, an MA plan described in the previous sentence may restrict the enrollment of individuals under this part to individuals who are beneficiaries and participants in such plan.


**AMENDMENTS**


Subsec. (g)(1). Pub. L. 111–148, §6408(b)(2)(C), inserted at end of concluding provisions “The Secretary may provide, in addition to any other remedies authorized by law, for any of the remedies described in paragraph (2), if the Secretary determines that any employee or agent of such organization, or any provider or supplier who contracts with such organization, has engaged in any conduct described in subparagraphs (A) through (K) of this paragraph.”

Subsec. (g)(1)(H) to (K). Pub. L. 111–148, §6408(b)(2)(H), added subpars. (H) to (K).

Subsec. (g)(2)(A). Pub. L. 111–148, §6408(b)(3), inserted “with respect to a determination under subparagraph (E), an assessment of not more than the amount claimed by such plan or plan sponsor based upon the misrepresentation or falsified information involved,” after “for each such determination.”


2003—Subsec. (d)(1). Pub. L. 108–173, §222(h)(3)(C), substituted “and costs, including allowable costs under section 1395w–27(a) of this title” for “; costs, and computation of the adjusted community rate”.


Subsec. (e)(2)(A). Pub. L. 108–173, §222(k)(1), inserted “and each PDP sponsor with a contract under part D of this subchapter” after “contract under this part”, “or sponsor”’s after “organization’s” and “section 1395w–101(c) of this title,” after “information”.

Subsec. (e)(2)(C). Pub. L. 108–173, §222(k)(3), inserted “and ending with fiscal year 2005” after “beginning with fiscal year 2001”, “and for each fiscal year beginning with fiscal year 2006 an amount equal to $200,000,000,” after “$100,000,000,.”, and “and section 1395w–112(b)(3)(D) of this title” after “under this paragraph”.


Subsec. (e)(2)(D)(i)(IV). Pub. L. 108–173, §222(k)(4)(C), substituted “each succeeding fiscal year before fiscal year 2006; and” for “each succeeding fiscal year.”


Subsec. (i). Pub. L. 106–554, §114(a)(6) [title VI, §617(a)], added subsec. (i).


Pub. L. 106–113, §1000(a)(6) [title V, §513(a), (b)(1)(A)], substituted “2-year period” for “5-year period” and “except as provided in subparagraph (B) and except in such other circumstances” for “except in circumstances”.

Subsec. (e)(2)(B). Pub. L. 106–113, §1000(a)(6) [title V, §522(a)(1)], substituted “Any amounts collected shall be available without further appropriation to the Secretary for” for “Any amounts collected are authorized to be appropriated only for”.


Prior to amendment, text read as follows: “For any fiscal year, the fees authorized under subparagraph (B) are contingent upon enactment in an appropriations act of a provision specifying the aggregate amount of fees the Secretary is directed to collect in a fiscal year. Fees collected during any fiscal year under this paragraph shall be deposited and credited as offsetting collections.”


**CHANGE OF NAME**

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

**EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by section 6408(b)(1) of Pub. L. 111–148 effective Mar. 23, 2010, and amendment by section 6408(b)(2), (3) of Pub. L. 111–148 applicable to acts com-
mitted on or after Jan. 1, 2010, see section 6108(d) of Pub. L. 111–148, set out as a note under section 1320a–7 of this title.

**Effective Date of 2008 Amendment**

Pub. L. 110–275, title I, §164(e), July 15, 2008, 122 Stat. 2575, provided that: “The amendments made by subsections (c)(1), (d), and (e)(1) [amending this section and section 1395w–28 of this title] shall apply to plan years beginning on or after January 1, 2010, and shall apply to all specialized Medicare Advantage plans for special needs individuals regardless of when the plan first entered the Medicare Advantage program under part C of title XVIII of the Social Security Act [this part].”


**Effective Date of 2003 Amendment**

Amendment by section 222(j), (k), (l)(3)(C) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Amendment by section 237(c) of Pub. L. 108–173 applicable to services provided on or after Jan. 1, 2006, and contract years beginning on or after such date, see section 237(e) of Pub. L. 108–173, set out as a note under section 1320a–7b of this title.

**Effective Date of 2000 Amendment**

Pub. L. 106–554, §1(a)(6) [title VI, §617(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–562, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to years beginning with 2001.”

Pub. L. 106–554, §1(a)(6) [title VI, §623(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–566, provided that: “The amendment made by subsection (a) [amending this section] shall apply to terminations occurring after the date of the enactment of this Act [Dec. 21, 2000].”

**Effective Date of 1999 Amendment**

Pub. L. 106–113, div. B, §1000(a)(6) [title V, §515(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–383, provided that: “The amendments made by this section [amending this section] apply to contract terminations occurring before, on, or after the date of the enactment of this Act [Nov. 29, 1999].”

Pub. L. 106–113, div. B, §1000(a)(6) [title V, §522(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–387, provided that: “The amendments made by subsection (a) [amending this section] apply to fees charged on or after January 1, 2001. The Secretary of Health and Human Services may not increase the fees charged under section 1855(e)(2) of the Social Security Act (42 U.S.C. 1395w–27(e)(2)) for the 3-month period beginning with October 2000 above the level in effect during the previous 9-month period.”

**Construction Relating to Additional Exceptions**

Pub. L. 106–113, div. B, §1000(a)(6) [title V, §513(b)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–383, provided that: “Nothing in the amendment made by paragraph (1)(C) [amending this section] shall be construed to affect the authority of the Secretary of Health and Human Services to provide for exceptions in addition to the exceptions provided in such amendment, including exceptions provided under Operational Policy Letter #103 (OPL99.103).”

**Technical Correction to MA Private Fee-for-Service Plans**

Pub. L. 111–148, title III, §3307, Mar. 23, 2010, 124 Stat. 459, provided that: “For plan year 2011 and subsequent plan years, to the extent that the Secretary of Health and Human Services is applying the 2008 service area extension waiver policy (as modified in the April 11, 2008, Centers for Medicare & Medicaid Services’ memorandum with the subject ‘2009 Employer Group Waiver Modification of the 2008 Service Area Extension Waiver Granted to Certain MA Local Coordinated Care Plans’) to Medicare Advantage coordinated care plans, the Secretary shall extend the application of such waiver policy to employers who contract directly with the Secretary as a Medicare Advantage private fee-for-service plan under section 1857(1)(2) of the Social Security Act (42 U.S.C. 1395w–27(1)(2)) and that had enrollment as of October 1, 2009.”

**Study of Multi-Year Contracts**

Pub. L. 108–173, title I, §107(d), Dec. 8, 2003, 117 Stat. 2171, directed the Secretary of Health and Human Services to provide for a study on the feasibility and advisability of providing for contracting with PDP sponsors and MA organizations under this part and part D of this subchapter on a multi-year basis, and to submit to Congress a report on such study not later than Jan. 1, 2007.

**Immediate Effective Date for Certain Requirements for Demonstrations**

Section 4002(g) of Pub. L. 105–33 provided that: “Section 1857(e)(2) of the Social Security Act [subsec. (e)(2) of this section] (requiring contribution to certain costs related to the enrollment process comparative materials) applies to demonstrations with respect to which enrollment is effected or coordinated under section 1851 of such Act [section 1395w–21 of this title].”

§1395w–27a. Special rules for MA regional plans

(a) Regional service area; establishment of MA regions

(1) Coverage of entire MA region

The service area for an MA regional plan shall consist of an entire MA region established under paragraph (2) and the provisions of section 1395w–24(h) of this title shall not apply to such a plan.

(2) Establishment of MA regions

(A) MA region

For purposes of this subchapter, the term “MA region” means such a region within the 50 States and the District of Columbia as established by the Secretary under this paragraph.

(B) Establishment

(i) Initial establishment

Not later than January 1, 2005, the Secretary shall first establish and publish MA regions.

(ii) Periodic review and revision of service areas

The Secretary may periodically review MA regions under this paragraph and, based on such review, may revise such regions if the Secretary determines such revision to be appropriate.

(C) Requirements for MA regions

The Secretary shall establish, and may revise, MA regions under this paragraph in a manner consistent with the following:

...
(i) Number of regions

There shall be no fewer than 10 regions, and no more than 50 regions.

(ii) Maximizing availability of plans

The regions shall maximize the availability of MA regional plans to all MA eligible individuals without regard to health status, especially those residing in rural areas.

(D) Market survey and analysis

Before establishing MA regions, the Secretary shall conduct a market survey and analysis, including an examination of current insurance markets, to determine how the regions should be established.

(3) National plan

Nothing in this subsection shall be construed as preventing an MA regional plan from being offered in more than one MA region (including all regions).

(b) Application of single deductible and catastrophic limit on out-of-pocket expenses

An MA regional plan shall include the following:

(1) Single deductible

Any deductible for benefits under the original medicare fee-for-service program option shall be a single deductible (instead of a separate inpatient hospital deductible and a part B deductible) and may be applied differentially for in-network services and may be waived for preventive or other items and services.

(2) Catastrophic limit

(A) In-network

A catastrophic limit on out-of-pocket expenditures for in-network benefits under the original medicare fee-for-service program option.

(B) Total

A catastrophic limit on out-of-pocket expenditures for all benefits under the original medicare fee-for-service program option.

(c) Portion of total payments to an organization subject to risk for 2006 and 2007

(1) Application of risk corridors

(A) In general

This subsection shall only apply to MA regional plans offered during 2006 or 2007.

(B) Notification of allowable costs under the plan

In the case of an MA organization that offers an MA regional plan in an MA region in 2006 or 2007, the organization shall notify the Secretary, before such date in the succeeding year as the Secretary specifies, of—

(i) its total amount of costs that the organization incurred in providing rebatable integrated benefits (as defined in subparagraph (D)) and with respect to such benefits the portion of such costs that is attributable to administrative expenses described in subparagraph (C) and not described in clause (i) of this subparagraph.

(C) Allowable costs defined

For purposes of this subsection, the term “allowable costs” means, with respect to an MA regional plan for a year, the total amount of costs described in subparagraph (B) for the plan and year, reduced by the portion of such costs attributable to administrative expenses incurred in providing the benefits described in such subparagraph.

(D) Rebatable integrated benefits

For purposes of this subsection, the term “rebatable integrated benefits” means such non-drug supplemental benefits under subclause (I) of section 1395w–24(b)(1)(C)(ii) of this title pursuant to a rebate under such section that the Secretary determines are integrated with the benefits described in subparagraph (B)(i).

(2) Adjustment of payment

(A) No adjustment if allowable costs within 3 percent of target amount

If the allowable costs for the plan for the year are at least 97 percent, but do not exceed 103 percent, of the target amount for the plan and year, there shall be no payment adjustment under this subsection for the plan and year.

(B) Increase in payment if allowable costs above 103 percent of target amount

(i) Costs between 103 and 108 percent of target amount

If the allowable costs for the plan for the year are greater than 103 percent, but not greater than 108 percent, of the target amount for the plan and year, the Secretary shall increase the total of the monthly payments made to the organization offering the plan for the year under section 1395w–23(a) of this title by an amount equal to 50 percent of the difference between such allowable costs and 103 percent of such target amount.

(ii) Costs above 108 percent of target amount

If the allowable costs for the plan for the year are greater than 108 percent of the target amount for the plan and year, the Secretary shall increase the total of the monthly payments made to the organization offering the plan for the year under section 1395w–23(a) of this title by an amount equal to the sum of—

(I) 2.5 percent of such target amount; and

(II) 80 percent of the difference between such allowable costs and 108 percent of such target amount.

(C) Reduction in payment if allowable costs below 97 percent of target amount

(i) Costs between 92 and 97 percent of target amount

If the allowable costs for the plan for the year are less than 97 percent, but greater
than or equal to 92 percent, of the target amount for the plan and year, the Secretary shall reduce the total of the monthly payments made to the organization offering the plan for the year under section 1395w–23(a) of this title by an amount (or otherwise recover from the plan an amount) equal to 50 percent of the difference between 97 percent of the target amount and such allowable costs.

(d) Organizational and financial requirements

(1) In general

In the case of an MA organization that is offering an MA regional plan in an MA region and—

(A) meets the requirements of section 1395w–25(a)(1) of this title with respect to at least one such State in such region; and

(B) with respect to each other State in such region in which it does not meet requirements, it demonstrates to the satisfaction of the Secretary that it has filed the necessary application to meet such requirements,

the Secretary may waive such requirement with respect to each State described in subparagraph (B) for such period of time as the Secretary determines appropriate for the timely processing of such an application by the State (and, if such application is denied, through the end of such plan year as the Secretary determines appropriate to provide for a transition).

(2) Selection of appropriate State

In applying paragraph (1) in the case of an MA organization that meets the requirements of section 1395w–25(a)(1) of this title with respect to more than one State in a region, the organization shall select, in a manner specified by the Secretary among such States, one State the rules of which shall apply in the case of the States described in paragraph (1)(B).


(f) Computation of applicable MA region-specific non-drug monthly benchmark amounts

(1) Computation for regions

For purposes of section 1395w–23(j)(2) of this title and this section, subject to subsection (e) of this section, the term ‘‘MA region-specific non-drug monthly benchmark amount’’ means, with respect to an MA region for a month in a year, the sum of the 2 components described in paragraph (2) for the region and year. The Secretary shall compute such benchmark amount for each MA region before the beginning of each annual, coordinated election period under section 1395w–21(e)(3)(B) of this title for each year (beginning with 2006).

(2) 2 components

For purposes of paragraph (1), the 2 components described in this paragraph for an MA region and a year are the following:

(A) Statutory component

The product of the following:

(i) Statutory region-specific non-drug amount

The statutory region-specific non-drug amount (as defined in paragraph (3)) for the region and year.
(ii) Statutory national market share

The statutory national market share percentage, determined under paragraph (4) for the year.

(B) Plan-bid component

The product of the following:

(i) Weighted average of MA plan bids in region

The weighted average of the plan bids for the region and year (as determined under paragraph (5)(A)).

(ii) Non-statutory market share

1 minus the statutory national market share percentage, determined under paragraph (4) for the year.

(3) Statutory region-specific non-drug amount

For purposes of paragraph (2)(A)(i), the term “statutory region-specific non-drug amount” means, for an MA region and year, an amount equal the sum (for each MA local area within the region) of the product of—

(A) MA area-specific non-drug monthly benchmark amount, under section 1395w–23(j)(1)(A) of this title for that area and year; and

(B) the number of MA eligible individuals residing in the local area, divided by the total number of MA eligible individuals residing in the region.

(4) Computation of statutory market share percentage

(A) In general

The Secretary shall determine for each year a statutory national market share percentage that is equal to the proportion of MA eligible individuals nationally who were not enrolled in an MA plan during the reference month.

(B) Reference month defined

For purposes of this part, the term “reference month” means, with respect to a year, the most recent month during the previous year for which the Secretary determines that data are available to compute the percentage specified in subparagraph (A) and other relevant percentages under this part.

(5) Determination of weighted average MA bids for a region

(A) In general

For purposes of paragraph (2)(B)(i), the weighted average of plan bids for an MA region and year is the sum, for MA regional plans described in subparagraph (D) in the region and year, of the products (for each such plan) of the following:

(i) Monthly MA statutory non-drug bid amount

The unadjusted MA statutory non-drug monthly bid amount for the plan.

(ii) Plan’s share of MA enrollment in region

The factor described in subparagraph (B) for the plan.

(B) Plan’s share of MA enrollment in region

(i) In general

Subject to the succeeding provisions of this subparagraph, the factor described in this subparagraph for a plan is equal to the number of individuals described in subparagraph (C) for such plan, divided by the total number of such individuals for all MA regional plans described in subparagraph (D) for that region and year.

(ii) Single plan rule

In the case of an MA region in which only a single MA regional plan is being offered, the factor described in this subparagraph shall be equal to 1.

(iii) Equal division among multiple plans in year in which plans are first available

In the case of an MA region in the first year in which any MA regional plan is offered, if more than one MA regional plan is offered in such year, the factor described in this subparagraph for a plan shall (as specified by the Secretary) be equal to—

(I) 1 divided by the number of such plans offered in such year; or

(II) a factor for such plan that is based upon the organization’s estimate of projected enrollment, as reviewed and adjusted by the Secretary to ensure reasonableness and as is certified by the Chief Actuary of the Centers for Medicare & Medicaid Services.

(C) Counting of individuals

For purposes of subparagraph (B)(i), the Secretary shall count for each MA regional plan described in subparagraph (D) for an MA region and year, the number of individuals who reside in the region and who were enrolled under such plan under this part during the reference month.

(D) Plans covered

For an MA region and year, an MA regional plan described in this subparagraph is an MA regional plan that is offered in the region and year and was offered in the region in the reference month.

(g) Election of uniform coverage determination

Instead of applying section 1395w–22(a)(2)(C) of this title with respect to an MA regional plan, the organization offering the plan may elect to have a local coverage determination for the entire MA region be the local coverage determination applied for any part of such region (as selected by the organization).

(h) Assuring network adequacy

(1) In general

For purposes of enabling MA organizations that offer MA regional plans to meet applicable provider access requirements under section 1395w–22 of this title with respect to such plans, the Secretary may provide for payment under this section to an essential hospital that provides inpatient hospital services to enrollees in such a plan where the MA organization offering the plan certifies to the Secretary that the organization was unable to reach an
agreement between the hospital and the organization regarding provision of such services under the plan. Such payment shall be available only if—

(A) the organization provides assurances satisfactory to the Secretary that the organization will make payment to the hospital for inpatient hospital services of an amount that is not less than the amount that would be payable to the hospital under section 1395w of this title with respect to such services; and

(B) with respect to specific inpatient hospital services provided to an enrollee, the hospital demonstrates to the satisfaction of the Secretary that the hospital’s costs of such services exceed the payment amount described in subparagraph (A).

(2) Payment amounts

The payment amount under this subsection for inpatient hospital services provided by a subsection (d) hospital to an enrollee in an MA regional plan shall be, subject to the limitation of funds under paragraph (3), the amount (if any) by which—

(A) the amount of payment that would have been paid for such services under this subchapter if the enrollees were covered under the original medicare fee-for-service program option and the hospital were a critical access hospital; exceeds

(B) the amount of payment made for such services under paragraph (1)(A).

(3) Available amounts

There shall be available for payments under this subsection—

(A) in 2006, $25,000,000; and

(B) in each succeeding year the amount specified in this paragraph for the preceding year increased by the market basket percentage increase (as defined in section 1395ww(b)(3)(B)(ii) of this title) for the fiscal year ending in such succeeding year.

Payments under this subsection shall be made from the Federal Hospital Insurance Trust Fund.

(4) Essential hospital

In this subsection, the term “essential hospital” means, with respect to an MA regional plan offered by an MA organization, a subsection (d) hospital (as defined in section 1395ww(d) of this title) that the Secretary determines, based upon an application filed by the organization with the Secretary, is necessary to meet the requirements referred to in paragraph (1) for such plan.


§ 1395w–28. Definitions; miscellaneous provisions

(a) Definitions relating to Medicare+Choice organizations

In this part—

(1) Medicare+Choice organization

The term “Medicare+Choice organization” means a public or private entity that is cer-
(2) Provider-sponsored organization

The term "provider-sponsored organization" is defined in section 1395w–25(d)(1) of this title.

(b) Definitions relating to Medicare+Choice plans

(1) Medicare+Choice plan

The term "Medicare+Choice plan" means health benefits coverage offered under a policy, contract, or plan by a Medicare+Choice organization pursuant to and in accordance with a contract under section 1395w–27 of this title.

(2) Medicare+Choice private fee-for-service plan

The term "Medicare+Choice private fee-for-service plan" means a Medicare+Choice plan that—

(A) reimburses hospitals, physicians, and other providers at a rate determined by the plan on a fee-for-service basis without placing the provider at financial risk;

(B) does not vary such rates for such a provider based on utilization relating to such provider; and

(C) does not restrict the selection of providers among those who are lawfully authorized to provide the covered services and agree to accept the terms and conditions of payment established by the plan.

Nothing in subparagraph (B) shall be construed to preclude a plan from varying rates for such a provider based on the specialty of the provider, the location of the provider, or other factors related to such provider that are not related to utilization, or to preclude a plan from increasing rates for such a provider based on increased utilization of specified preventive or screening services.

(3) MSA plan

(A) In general

The term "MSA plan" means a Medicare+Choice plan that—

(i) provides reimbursement for at least the items and services described in section 1395w–22(a)(1) of this title in a year but only after the enrollee incurs countable expenses (as specified under the plan) equal to the amount of an annual deductible (described in subparagraph (B));

(ii) counts as such expenses (for purposes of such deductible) at least all amounts that would have been payable under parts A and B of this subchapter, and that would have been payable by the enrollee as deductibles, coinsurance, or copayments, if the enrollee had elected to receive benefits through the provisions of such parts; and

(iii) provides, after such deductible is met for a year and for all subsequent expenses for items and services referred to in clause (i) in the year, for a level of reimbursement that is not less than—

(I) 100 percent of such expenses, or

(II) 100 percent of the amounts that would have been paid (without regard to any deductibles or coinsurance) under parts A and B of this subchapter with respect to such expenses, whichever is less.

(B) Deductible

The amount of annual deductible under an MSA plan—

(i) for contract year 1999 shall be not more than $6,000; and

(ii) for a subsequent contract year shall be not more than the maximum amount of such deductible for the previous contract year under this subparagraph increased by the national per capita Medicare+Choice growth percentage under section 1395w–23(c)(6) of this title for the year.

If the amount of the deductible under clause (ii) is not a multiple of $50, the amount shall be rounded to the nearest multiple of $50.

(4) MA regional plan

The term "MA regional plan" means an MA plan described in section 1395w–21(a)(2)(A)(i) of this title—

(A) that has a network of providers that have agreed to a contractually specified reimbursement for covered benefits with the organization offering the plan;

(B) that provides for reimbursement for all covered benefits regardless of whether such benefits are provided within such network of providers; and

(C) the service area of which is one or more entire MA regions.

(5) MA local plan

The term "MA local plan" means an MA plan that is not an MA regional plan.

(6) Specialized MA plans for special needs individuals

(A) In general

The term "specialized MA plan for special needs individuals" means an MA plan that exclusively serves special needs individuals (as defined in subparagraph (B)) and that, as of January 1, 2010, meets the applicable requirements of paragraph (2), (3), or (4) of subsection (f), as the case may be.

(B) Special needs individual

The term "special needs individual" means an MA eligible individual who—

(i) is institutionalized (as defined by the Secretary);

(ii) is entitled to medical assistance under a State plan under subchapter XIX of this chapter; or

(iii) meets such requirements as the Secretary may determine would benefit from enrollment in such a specialized MA plan described in subparagraph (A) for individuals with severe or disabling chronic conditions who have one or more comorbid and medically complex chronic conditions that are substantially disabling or life threatening, have a high risk of hospitalization or other significant adverse health outcomes, and require specialized delivery systems across domains of care.
The Secretary may waive application of section 1395w–21(a)(3)(B) of this title in the case of an individual described in clause (i), (ii), or (iii) of this subparagraph and may apply rules similar to the rules of section 1395eee(c)(4) of this title for continued eligibility of special needs individuals.

(c) Other references to other terms

(1) Medicare+Choice eligible individual

The term “Medicare+Choice eligible individual” is defined in section 1395w–21(a)(3) of this title.

(2) Medicare+Choice payment area

The term “Medicare+Choice payment area” is defined in section 1395w–23(d) of this title.

(3) National per capita Medicare+Choice growth percentage

The “national per capita Medicare+Choice growth percentage” is defined in section 1395w–23(c)(6) of this title.

(4) Medicare+Choice monthly basic beneficiary premium; Medicare+Choice monthly supplemental beneficiary premium

The terms “Medicare+Choice monthly basic beneficiary premium” and “Medicare+Choice monthly supplemental beneficiary premium” are defined in section 1395w–24(a)(2) of this title.

(5) MA local area

The term “MA local area” is defined in section 1395w–23(d)(2) of this title.

(d) Coordinated acute and long-term care benefits under Medicare+Choice plan

Nothing in this part shall be construed as preventing a State from coordinating benefits under a Medicaid plan under subchapter XIX of this chapter with those provided under a Medicare+Choice plan, in a manner that assures continuity of a full-range of acute care and long-term care services to poor elderly or disabled individuals eligible for benefits under this subchapter and under such plan.

(e) Restriction on enrollment for certain Medicare+Choice plans

(1) In general

In the case of a Medicare+Choice religious fraternal benefit society plan described in paragraph (2), notwithstanding any other provision of this part to the contrary and in accordance with regulations of the Secretary, the society offering the plan may restrict the enrollment of individuals under this part to individuals who are members of the church, convention, or group; and

(2) Medicare+Choice religious fraternal benefit society plan described

For purposes of this subsection, a Medicare+Choice religious fraternal benefit society plan described in this paragraph is a Medicare+Choice plan described in section 1395w–21(a)(3) of this title that—

(A) is offered by a religious fraternal benefit society described in paragraph (3)(B) only to members of the church, convention, or group described in paragraph (3)(B); and

(B) permits all such members to enroll under the plan without regard to health status-related factors.

Nothing in this subsection shall be construed as waiving any plan requirements relating to financial solvency.

(3) “Religious fraternal benefit society” defined

For purposes of paragraph (2)(A), a “religious fraternal benefit society” described in this section is an organization that—

(A) is described in section 501(c)(8) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of such Act;

(B) is affiliated with, carries out the tenets of, and shares a religious bond with, a church or convention or association of churches or an affiliated group of churches; and

(C) offers, in addition to a Medicare+Choice religious fraternal benefit society plan, health coverage to individuals not entitled to benefits under this subchapter who are members of such church, convention, or group; and

(D) does not impose any limitation on membership in the society based on any health status-related factor.

(4) Payment adjustment

Under regulations of the Secretary, in the case of individuals enrolled under this part under a Medicare+Choice religious fraternal benefit society plan described in paragraph (2), the Secretary shall provide for such adjustment to the payment amounts otherwise established under section 1395w–24 of this title as may be appropriate to assure an appropriate payment level, taking into account the actuarial characteristics and experience of such individuals.

(f) Requirements regarding enrollment in specialized MA plans for special needs individuals

(1) Requirements for enrollment

In the case of a specialized MA plan for special needs individuals (as defined in subsection (b)(6)(A) of this section), notwithstanding any other provision of this part and in accordance with regulations of the Secretary and for periods before January 1, 2014, the plan may restrict the enrollment of individuals under the plan to individuals who are within one or more classes of special needs individuals.

(2) Additional requirements for institutional SNPS

In the case of a specialized MA plan for special needs individuals described in subsection (b)(6)(B)(i), the applicable requirements described in this paragraph are as follows:

(A) Each individual that enrolls in the plan on or after January 1, 2010, is a special needs individuals described in subsection (b)(6)(B)(i). In the case of an individual who is living in the community but requires an institutional level of care, such individual shall not be considered a special needs individual described in subsection (b)(6)(B)(i) unless the determination that the individual requires an institutional level of care was made—
(i) using a State assessment tool of the State in which the individual resides; and
(ii) by an entity other than the organization offering the plan.

(B) The plan meets the requirements described in paragraph (5).

(C) If applicable, the plan meets the requirement described in paragraph (7).

(3) Additional requirements for dual SNPS

In the case of a specialized MA plan for special needs individuals described in subsection (b)(6)(B)(ii), the applicable requirements described in this paragraph are as follows:

(A) Each individual that enrolls in the plan on or after January 1, 2010, is a special needs individual described in subsection (b)(6)(B)(ii).

(B) The plan meets the requirements described in paragraph (5).

(C) The plan provides each prospective enrollee, prior to enrollment, with a comprehensive written statement (using standardized content and format established by the Secretary) that describes—

(i) the benefits and cost-sharing protections that the individual is entitled to under the State Medicaid program under subchapter XIX; and

(ii) which of such benefits and cost-sharing protections are covered under the plan.

Such statement shall be included with any description of benefits offered by the plan.

(D) The plan has a contract with the State Medicaid agency to provide benefits, or arrange for benefits to be provided, for which such individual is entitled to receive as medical assistance under subchapter XIX. Such benefits may include long-term care services consistent with State policy.

(E) If applicable, the plan meets the requirement described in paragraph (7).

(4) Additional requirements for severe or disabling chronic condition SNPS

In the case of a specialized MA plan for special needs individuals described in subsection (b)(6)(B)(ii), the applicable requirements described in this paragraph are as follows:

(A) Each individual that enrolls in the plan on or after January 1, 2010, is a special needs individual described in subsection (b)(6)(B)(ii).

(B) The plan meets the requirements described in paragraph (5).

(C) If applicable, the plan meets the requirement described in paragraph (7).

(5) Care management requirements for all SNPS

The requirements described in this paragraph are that the organization offering a specialized MA plan for special needs individuals—

(A) have in place an evidenced-based model of care with appropriate networks of providers and specialists; and

(B) with respect to each individual enrolled in the plan—

(1) conduct an initial assessment and an annual reassessment of the individual's physical, psychosocial, and functional needs;

(ii) develop a plan, in consultation with the individual as feasible, that identifies goals and objectives, including measurable outcomes as well as specific services and benefits to be provided; and

(iii) use an interdisciplinary team in the management of care.

(6) Transition and exception regarding restriction on enrollment

(A) In general

Subject to subparagraph (C), the Secretary shall establish procedures for the transition of applicable individuals to—

(i) a Medicare Advantage plan that is not a specialized MA plan for special needs individuals (as defined in subsection (b)(6)); or

(ii) the original Medicare fee-for-service program under parts A and B.

(B) Applicable individuals

For purposes of clause (i), the term 'applicable individual' means an individual who—

(i) is enrolled under a specialized MA plan for special needs individuals (as defined in subsection (b)(6)); and

(ii) is not within the 1 or more of the classes of special needs individuals to which enrollment under the plan is restricted to.

(C) Exception

The Secretary shall provide for an exception to the transition described in subparagraph (A) for a limited period of time for individuals enrolled under a specialized MA plan for special needs individuals described in subsection (b)(6)(B)(ii) who are no longer eligible for medical assistance under subchapter XIX.

(D) Timeline for initial transition

The Secretary shall ensure that applicable individuals enrolled in a specialized MA plan for special needs individuals described in subparagraph (A) by not later than January 1, 2013, are transitioned to a plan or the program described in subparagraph (A) by not later than January 1, 2013.

(7) Authority to require special needs plans be NCQA approved

For 2012 and subsequent years, the Secretary shall require that a Medicare Advantage organization offering a specialized MA plan for special needs individuals be approved by the National Committee for Quality Assurance (based on standards established by the Secretary).

(g) Special rules for senior housing facility plans

(1) In general

In the case of a Medicare Advantage senior housing facility plan described in paragraph (2), notwithstanding any other provision of this part to the contrary and in accordance with regulations of the Secretary, the service
area of such plan may be limited to a senior housing facility in a geographic area.

(2) Medicare Advantage senior housing facility plan described

For purposes of this subsection, a Medicare Advantage senior housing facility plan is a Medicare Advantage plan that—

(A) restricts enrollment of individuals under this part to individuals who reside in a continuing care retirement community (as defined in section 1395w–22(l)(4)(B) of this title);

(B) provides primary care services onsite and has a ratio of accessible physicians to beneficiaries that the Secretary determines is adequate;

(C) provides transportation services for beneficiaries to specialty providers outside of the facility; and

(D) has participated (as of December 31, 2006) in a demonstration project established by the Secretary under which such a plan was offered for not less than 1 year.


REFERENCES IN TEXT


AMENDMENTS


Subsec. (f)(6), (7). Pub. L. 111–148, §3205(c), (e)(4), added pars. (4) and (7).

Subsec. (g). Pub. L. 111–148, §3208(a), added subsec. (g).


Subsec. (b)(6)(A). Pub. L. 110–275, §164(c)(1)(A), inserted “and that, as of January 1, 2010, meets the applicable requirements of paragraph (2), (3), or (4) of subsection (f), as the case may be” before period at end.

Subsec. (b)(6)(B)(i)(i). Pub. L. 110–275, §164(e)(1), inserted “who have one or more comorbid and medically complex chronic conditions that are substantially disabling or life threatening, have a high risk of hospitalization or other significant adverse health outcomes, and require specialized delivery systems across domains of care” before period at end.


Pub. L. 110–275, §164(c)(1)(B)(i), amended heading generally. Prior to amendment, heading read “Restriction on enrollment for specialized MA plans for special needs individuals”.

Pub. L. 110–275, §164(a), substituted “2011” for “2010”.


CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to a proper transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title III, §3208(b), Mar. 23, 2010, 124 Stat. 458, provided that: “The amendment made by this section [amending this section] shall take effect on January 1, 2010, and shall apply to plan years beginning on or after such date.”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 164(c)(1), (d)(1), (e)(1) of Pub. L. 110–275 applicable to plan years beginning on or after Jan. 1, 2010, and applicable to all specialized Medicare Advantage plans for special needs individuals regardless of when the plan first entered the Medicare Advantage program under this part, see section 164(g) of Pub. L. 110–275, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 221(b)(1), (d)(2) of Pub. L. 108–173 applicable with respect to plan years beginning on or after Jan. 1, 2006, see section 223(a) of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.


REGULATIONS

Pub. L. 108–173, title II, §231(c), Dec. 8, 2003, 117 Stat. 2208, provided that: “No later than 1 year after the date of the enactment of this Act (Dec. 8, 2003), the Secretary [of Health and Human Services] shall issue final regulations to establish requirements for special needs individuals under section 1859(b)(6)(B)(iii) of the Social Security Act [sub sect. (b)(6)(B)(iii) of this section], as added by subsection (b).”

AUTHORIZATION TO OPERATE; RESOURCES FOR STATE MEDICAID AGENCIES; CONTRACTING REQUIREMENTS

Pub. L. 110–275, title I, §164(c)(2)–(4), July 15, 2008, 122 Stat. 2573, as amended by Pub. L. 111–148, title III, §3205(d), Mar. 23, 2010, 124 Stat. 458, provided that: “(2) AUTHORIZATION TO OPERATE BUT NO SERVICE AREA EXPANSION FOR DUAL SNPs THAT DO NOT MEET CERTAIN REQUIREMENTS.—Notwithstanding subsection (f) of section 1859 of the Social Security Act (42 U.S.C. 1395w–28), during the period beginning on January 1, 2010, and ending on December 31, 2012, in the case of a specialized Medicare Advantage plan for special needs individuals described in subsection (b)(6)(B)(ii) of such section, as amended by this section, that does not meet the re-
quirement described in subsection (f)(3)(D) of such section, the Secretary of Health and Human Services—

"(A) shall permit such plan to be offered under part C of title XVIII of such Act (this part); and

"(B) shall not permit an expansion of the service area of the plan under such part C.

"(3) RESOURCES FOR STATE MEDICAID AGENCIES.—The Secretary of Health and Human Services shall provide for the designation of appropriate staff and resources that can address State inquiries with respect to the coordination of State and Federal policies for specialized MA plans for special needs individuals described in section 1859(b)(6)(B)(ii) of the Social Security Act (42 U.S.C. 1395w–28(b)(6)(B)(ii)), as amended by this section.

"(4) No requirement for contract.—Nothing in the provisions of, or amendments made by, this subsection [amending this section] shall require a State to enter into a contract with a Medicare Advantage organization with respect to a specialized MA plan for special needs individuals described in section 1859(b)(6)(B)(ii) of the Social Security Act (42 U.S.C. 1395w–28(b)(6)(B)(ii)), as amended by this section.

PANEL OF CLINICAL ADVISORS TO DETERMINE CONDITIONS


"(B) Medicare Advantage enrollees

(i) Enrollees in a plan providing qualified prescription drug coverage may receive coverage through the plan.

A part D eligible individual who is enrolled in an MA plan may obtain qualified prescription drug coverage through enrollment in a prescription drug plan (as defined in section 1395w–151(a)(14) of this title).

(ii) Limitation on enrollment of MA plan enrollees in prescription drug plans

 Except as provided in clauses (iii) and (iv), a part D eligible individual who is enrolled in an MA plan may not enroll in a prescription drug plan under this part.

(iii) Private fee-for-service enrollees in MA plans not providing qualified prescription drug coverage permitted to enroll in a prescription drug plan

A part D eligible individual who is enrolled in an MA private fee-for-service plan (as defined in section 1395w–28(b)(2) of this title) may obtain qualified prescription drug coverage through enrollment in a prescription drug plan.

(iv) Enrollees in MSA plans permitted to enroll in a prescription drug plan

A part D eligible individual who is enrolled in an MSA plan (as defined in section 1395w–28(b)(3) of this title) may obtain qualified prescription drug coverage through enrollment in a prescription drug plan.

(2) Coverage first effective January 1, 2006

Coverage under prescription drug plans and MA–PD plans shall first be effective on January 1, 2006.

(3) Definitions

For purposes of this part:

(A) Part D eligible individual

The term “part D eligible individual” means an individual who is entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter.

(B) MA plan

The term “MA plan” has the meaning given such term in section 1395w–28(b)(1) of this title.
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(C) MA–PD plan

The term “MA–PD plan” means an MA plan that provides qualified prescription drug coverage.

(b) Enrollment process for prescription drug plans

(1) Establishment of process

(A) In general

The Secretary shall establish a process for the enrollment, disenrollment, termination, and change of enrollment of part D eligible individuals in prescription drug plans consistent with this subsection.

(B) Application of MA rules

In establishing such process, the Secretary shall use rules similar to (and coordinated with) the rules for enrollment, disenrollment, termination, and change of enrollment with an MA–PD plan under the following provisions of section 1395w–21 of this title:

(i) Residence requirements

Section 1395w–21(b)(1)(A) of this title, relating to residence requirements.

(ii) Exercise of choice

Section 1395w–21(c) of this title (other than paragraph (3)(A) of such section), relating to exercise of choice.

(iii) Coverage election periods

Subject to paragraphs (2) and (3) of this subsection, section 1395w–21(e) of this title (other than subparagraphs (B), (C), and (E) of paragraph (2) and the second sentence of paragraph (4) of such section), relating to coverage election periods, including initial periods, annual coordinated election periods, special election periods, and election periods for exceptional circumstances.

(iv) Coverage periods

Section 1395w–21(f) of this title, relating to effectiveness of elections and changes of elections.

(v) Guaranteed issue and renewal

Section 1395w–21(g) of this title (other than paragraph (2) of such section and clause (i) and the second sentence of clause (ii) of paragraph (3)(C) of such section), relating to guaranteed issue and renewal.

(vi) Marketing material and application forms

Section 1395w–21(h) of this title, relating to approval of marketing material and application forms.

In applying clauses (ii), (iv), and (v) of this subparagraph, any reference to section 1395w–21(e) of this title shall be treated as a reference to such section as applied pursuant to clause (iii) of this subparagraph.

(C) Special rule

The process established under subparagraph (A) shall include, except as provided in subparagraph (D), in the case of a part D eligible individual who is a full-benefit dual eligible individual (as defined in section 1396u–5(c)(6) of this title) who has failed to enroll in a prescription drug plan or an MA–PD plan, for the enrollment in a prescription drug plan that has a monthly beneficiary premium that does not exceed the premium assistance available under section 1395w–114(a)(1)(A) of this title.1 If there is more than one such plan available, the Secretary shall enroll such an individual on a random basis among all such plans in the PDP region. Nothing in the previous sentence shall prevent such an individual from declining or changing such enrollment.

(D) Special rule for plans that waive de minimis premiums

The process established under subparagraph (A) may include, in the case of a part D eligible individual who is a subsidy eligible individual (as defined in section 1395w–114(a)(3) of this title) who has failed to enroll in a prescription drug plan or an MA–PD plan, for the enrollment in a prescription drug plan or MA–PD plan that has waived the monthly beneficiary premium for such subsidy eligible individual under section 1395w–114(a)(5) of this title. If there is more than one such plan available, the Secretary shall enroll such an individual under the preceding sentence on a random basis among all such plans in the PDP region. Nothing in the previous sentence shall prevent such an individual from declining or changing such enrollment.

(2) Initial enrollment period

(A) Program initiation

In the case of an individual who is a part D eligible individual as of November 15, 2005, there shall be an initial enrollment period that shall be the same as the annual, coordinated open election period described in section 1395w–21(e)(3)(B)(iii) of this title, as applied under paragraph (1)(B)(iii).

(B) Continuing periods

In the case of an individual who becomes a part D eligible individual after November 15, 2005, there shall be an initial enrollment period which is the period under section 1395w–21(e)(1)(A) of this title, relating to guaranteed issue and renewal.

1 So in original. The closing parenthesis probably should not appear.
scription drug coverage (as defined in section 1395w–113(b)(4) of this title).

(ii) Notice
In establishing special enrollment periods under clause (i), the Secretary shall take into account when the part D eligible individuals are provided notice of the loss of creditable prescription drug coverage.

(iii) Failure to pay premium
For purposes of clause (i), a loss of coverage shall be treated as voluntary if the coverage is terminated because of failure to pay a required beneficiary premium.

(iv) Reduction in coverage
For purposes of clause (i), a reduction in coverage so that the coverage no longer meets the requirements under section 1395w–113(b)(5) of this title (relating to actuarial equivalence) shall be treated as an involuntary loss of coverage.

(B) Errors in enrollment
In the case described in section 1395p(h) of this title (relating to errors in enrollment), in the same manner as such section applies to part B of this subchapter.

(C) Exceptional circumstances
In the case of part D eligible individuals who meet such exceptional conditions (in addition to those conditions applied under paragraph (1)(B)(iii)) as the Secretary may provide.

(D) Medicaid coverage
In the case of an individual (as determined by the Secretary) who is a full-benefit dual eligible individual (as defined in section 1396u–5(c)(6) of this title).

(E) Discontinuance of MA–PD election during first year of eligibility
In the case of a part D eligible individual who discontinues enrollment in an MA–PD plan under the second sentence of section 1395w–21(e)(4) of this title at the time of the election of coverage under such sentence under the original medicare fee-for-service program.

(4) Information to facilitate enrollment

(A) In general
Notwithstanding any other provision of law but subject to subparagraph (B), the Secretary may provide to each PDP sponsor and MA organization such identifying information about part D eligible individuals as the Secretary determines to be necessary to facilitate efficient marketing of prescription drug plans and MA–PD plans to such individuals and enrollment of such individuals in such plans.

(B) Limitation

(i) Provision of information
The Secretary may provide the information under subparagraph (A) only to the extent necessary to carry out such subparagraph.

(ii) Use of information
Such information provided by the Secretary to a PDP sponsor or an MA organi-

zation may be used by such sponsor or organization only to facilitate marketing of, and enrollment of part D eligible individuals in, prescription drug plans and MA–PD plans.

(5) Reference to enrollment procedures for MA–PD plans
For rules applicable to enrollment, dis-enrollment, termination, and change of enrollment of part D eligible individuals in MA–PD plans, see section 1395w–21 of this title.

(6) Reference to penalties for late enrollment
Section 1395w–113(b) of this title imposes a late enrollment penalty for part D eligible individuals who—

(A) enroll in a prescription drug plan or an MA–PD plan after the initial enrollment period described in paragraph (2); and

(B) fail to maintain continuous creditable prescription drug coverage during the period of non-enrollment.

(c) Providing information to beneficiaries

(1) Activities
The Secretary shall conduct activities that are designed to broadly disseminate information to part D eligible individuals (and prospective part D eligible individuals) regarding the coverage provided under this part. Such activities shall ensure that such information is first made available at least 30 days prior to the initial enrollment period described in subsection (b)(2)(A) of this section.

(2) Requirements
The activities described in paragraph (1) shall—

(A) be similar to the activities performed by the Secretary under section 1395w–21(d) of this title, including dissemination (including through the toll-free telephone number 1–800–MEDICARE) of comparative information for prescription drug plans and MA–PD plans; and

(B) be coordinated with the activities performed by the Secretary under such section and under section 1395b–2 of this title.

(3) Comparative information

(A) In general
Subject to subparagraph (B), the comparative information referred to in paragraph (2)(A) shall include a comparison of the following with respect to qualified prescription drug coverage:

(i) Benefits
The benefits provided under the plan.

(ii) Monthly beneficiary premium
The monthly beneficiary premium under the plan.

(iii) Quality and performance
The quality and performance under the plan.

(iv) Beneficiary cost-sharing
The cost-sharing required of part D eligible individuals under the plan.

(v) Consumer satisfaction surveys
The results of consumer satisfaction surveys regarding the plan conducted pursuant to section 1395w–104(d) of this title.
(B) Exception for unavailability of information

The Secretary is not required to provide comparative information under clauses (iii) and (v) of subparagraph (A) with respect to a plan—

(i) for the first plan year in which it is offered; and

(ii) for the next plan year if it is impracticable or the information is otherwise unavailable.

(4) Information on late enrollment penalty

The information disseminated under paragraph (1) shall include information concerning the methodology for determining the late enrollment penalty under section 1395w–113(b) of this title.

(A) Date of enactment


AMENDMENTS

2010—Subsec. (b)(1)(C). Pub. L. 111–148, § 3303(b)(1), inserted “except as provided in subparagraph (D),” after “shall include,”.


2006—Subsec. (b)(1)(B)(iii). Pub. L. 109–432 substituted “subparagraphs (B), (C), and (E)” for “subparagraphs (B) and (C)”.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title III, § 3303(c), Mar. 23, 2010, 124 Stat. 477, provided that:

“(a) STUDY AND ANNUAL REPORT ON PART D FORMULARIES inclusion of drugs commonly used by dual eligibles.—

“(1) STUDY.—The Inspector General of the Department of Health and Human Services shall conduct a study of the extent to which formularies used by prescription drug plans and MA–PD plans under part D [this part] include drugs commonly used by full-benefit dual eligible individuals (as defined in section 1395w–101(c)(4) of the Social Security Act (42 U.S.C. 1395w–113(b))].

“(2) ANNUAL REPORTS.—Not later than July 1 of each year (beginning with 2011), the Inspector General shall submit to Congress a report on the study conducted under paragraph (1), together with such recommendations as the Inspector General determines appropriate.

(b) STUDY AND REPORT ON PRESCRIPTION DRUG PRICES UNDER MEDICARE PART D AND MEDICAID.—

“(1) STUDY.—

“(A) IN GENERAL.—The Inspector General of the Department of Health and Human Services shall conduct a study on prices for covered part D drugs under the Medicare prescription drug program under part D of title XVIII of the Social Security Act (42 U.S.C. 1395w–101 et seq.) and for covered outpatient drugs under title XIX (42 U.S.C. 1396 et seq.). Such study shall include the following:

“(i) A comparison, with respect to the 200 most frequently dispensed covered part D drugs under such program and covered outpatient drugs under such title (as determined by the Inspector General based on volume and expenditures), of—

“(I) the prices paid for covered part D drugs by PDP sponsors of prescription drug plans and Medicare Advantage organizations offering MA–PD plans; and

“(II) the prices paid for covered outpatient drugs by a State plan under title XIX.

“(ii) An assessment of—

“(I) the financial impact of any discrepancies in such prices on the Federal Government; and

“(II) the financial impact of any such discrepancies on enrollees under part D or individuals eligible for medical assistance under a State plan under title XIX.

“(B) PRICE.—For purposes of subparagraph (A), the price of a covered part D drug or a covered outpatient drug shall include any rebate or discount under such program or such title, respectively, including any negotiated price concession described in section 1860D–2(d)(1)(B) of the Social Security Act (42 U.S.C. 1395w–102(d)(1)(B)) or rebate under an agreement under section 1927 of the Social Security Act (42 U.S.C. 1395j–8).

“(C) AUTHORITY TO COLLECT ANY NECESSARY INFORMATION.—Notwithstanding any other provision of law, the Inspector General of the Department of Health and Human Services shall be able to collect any information related to the prices of covered part D drugs under such program and covered outpatient drugs under such title XIX necessary to carry out the comparison under subparagraph (A).

“(2) REPORT.—

“(A) IN GENERAL.—Not later than October 1, 2011, subject to subparagraph (B), the Inspector General shall submit to Congress a report containing the results of the study conducted under paragraph (1), together with recommendations for such legislation and administrative action as the Inspector General determines appropriate.

“(B) LIMITATION ON INFORMATION CONTAINED IN REPORT.—The report submitted under subparagraph (A) shall not include any information that the Inspector General determines is proprietary or is likely to negatively impact the ability of a PDP sponsor or a State plan under title XIX (42 U.S.C. 1396 et seq.) to negotiate prices for covered part D drugs or covered outpatient drugs, respectively.

“(3) DEFINITIONS.—In this section:

“(A) COVERED PART D DRUG.—The term ‘covered part D drug’ has the meaning given such term in section 1860D–2(e) of the Social Security Act (42 U.S.C. 1395w–102(e)).

“(B) COVERED OUTPATIENT DRUG.—The term ‘covered outpatient drug’ has the meaning given such term in section 1927(k) of such Act (42 U.S.C. 1395j–8(k)).

“(C) MA–PD PLAN.—The term ‘MA–PD plan’ has the meaning given such term in section 1860D–1(a)(9) of such Act (42 U.S.C. 1395w–151(a)(9)).

“(D) MEDICARE ADVANTAGE ORGANIZATION.—The term ‘Medicare Advantage organization’ has the meaning given such term in section 1859(a)(1) of such Act (42 U.S.C. 1395w–151(a)(1)).

“(E) PDP SPONSOR.—The term ‘PDP sponsor’ has the meaning given such term in section 1860D–1(a)(15) of such Act (42 U.S.C. 1395w–151(a)(15)).

“(F) PRESCRIPTION DRUG PLAN.—The term ‘prescription drug plan’ has the meaning given such term in section 1860D–1(a)(14) of such Act (42 U.S.C. 1395w–151(a)(14)).

SUBMISSION OF LEGISLATIVE PROPOSAL

Pub. L. 108–173, title I, § 101(b), Dec. 8, 2003, 117 Stat. 2150, provided that: ‘‘Not later than 6 months after the date of the enactment of this Act (Dec. 6, 2003), the Sec-
retary [of Health and Human Services] shall submit to the appropriate committees of Congress a legislative proposal providing for such technical and conforming amendments in the law as are required by the provisions of this title and title II [see Tables for classification]."

**STUDY ON TRANSITIONING PART B PRESCRIPTION DRUG COVERAGE**

Pub. L. 108–173, title I, §101(c), Dec. 8, 2003, 117 Stat. 2150, provided that: "Not later than January 1, 2005, the Secretary [of Health and Human Services] shall submit a report to Congress that makes recommendations regarding methods for providing benefits under subpart 1 of part D of title XVIII of the Social Security Act [this subpart] for outpatient prescription drugs for which benefits are provided under part B of such title [part B of this subchapter]."

**REPORT ON PROGRESS IMPLEMENTATION OF PRESCRIPTION DRUG BENEFIT**

Pub. L. 108–173, title I, §101(d), Dec. 8, 2003, 117 Stat. 2150, provided that: "Not later than March 1, 2005, the Secretary [of Health and Human Services] shall submit a report to Congress on the progress that has been made in implementing the prescription drug benefit under this title [see Tables for classification]. The Secretary shall include in the report specific steps that have been taken, and that need to be taken, to ensure a timely start of the program on January 1, 2006. The report shall include recommendations regarding an appropriate transition from the program under section 1860D–31 of the Social Security Act [section 1395w–141 of this title] to prescription drug benefits under subpart 1 of part D of title XVIII of such Act [this subpart]."

**STATE PHARMACEUTICAL ASSISTANCE TRANSITION COMMISSION**


"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—There is established, as of the first day of the third month beginning after the date of the enactment of this Act [Dec. 8, 2003], a State Pharmaceutical Assistance Transition Commission (in this section referred to as the 'Commission') to develop a proposal for addressing the unique transitional issues facing State pharmaceutical assistance programs, and program participants, due to the implementation of the voluntary prescription drug benefit program under part D of title XVIII of the Social Security Act [this part], as added by section 101.

"(2) DEFINITIONS.—For purposes of this section:

"(A) STATE PHARMACEUTICAL ASSISTANCE PROGRAM DEFINED.—The term 'State pharmaceutical assistance program' means a program (other than the medicaid program) operated by a State (or under contract with a State) that provides as of the date of the enactment of this Act [Dec. 8, 2003] financial assistance to medicare beneficiaries for the purchase of prescription drugs.

"(B) PROGRAM PARTICIPANT.—The term 'program participant' means a low-income medicare beneficiary who is a participant in a State pharmaceutical assistance program.

"(C) COMPOSITION.—The Commission shall include the following:

"(i) A representative of each Governor of each State that the Secretary [of Health and Human Services] identifies as operating on a statewide basis a State pharmaceutical assistance program that provides for eligibility and benefits that are comparable or more generous than the low-income assistance eligibility and benefits offered under section 1886D–14 of the Social Security Act [section 1395w–114 of this title].

"(ii) Representatives from other States that the Secretary identifies as having in operation other State pharmaceutical assistance programs, as appointed by the Secretary.

"(3) Representatives of organizations that have an inherent interest in program participants or the program itself, as appointed by the Secretary but not to exceed the number of representatives under paragraphs (1) and (2).

"(4) Representatives of Medicare Advantage organizations, pharmaceutical benefit managers, and other private health insurance plans, as appointed by the Secretary.

"(5) The Secretary (or the Secretary's designee) and such other members as the Secretary may specify. The Secretary shall designate a member to serve as Chair of the Commission and the Commission shall meet at the call of the Chair.

"(c) DEVELOPMENT OF PROPOSAL.—The Commission shall develop the proposal described in subsection (a) in a manner consistent with the following principles:

"(1) Protection of the interests of program participants in a manner that is the least disruptive to such participants and that includes a single point of contact for enrollment and processing of benefits.

"(2) Protection of the financial and flexibility interests of States so that States are not financially worse off as a result of the enactment of this title [see Tables for classification].

"(3) Principles of medicare modernization under this Act [see Tables for classification].

"(d) REPORT.—By not later than January 1, 2005, the Commission shall submit to the President and Congress a report that contains a detailed proposal (including specific legislative or administrative recommendations, if any) and such other recommendations as the Commission deems appropriate.

"(e) SUPPORT.—The Secretary shall provide the Commission with the administrative support services necessary for the Commission to carry out its responsibilities under this section.

"(f) TERMINATION.—The Commission shall terminate 30 days after the date of submission of the report under subsection (d)."

**CONFLICT OF INTEREST STUDY**


"(a) STUDY.—The Federal Trade Commission shall conduct a study of differences in payment amounts for pharmacy services provided to enrollees in group health plans that utilize pharmacy benefit managers. Such study shall include the following:

"(1) An assessment of the differences in costs incurred by such enrollees and plans for prescription drugs dispensed by mail-order pharmacies owned by pharmaceutical benefit managers compared to mail-order pharmacies not owned by pharmaceutical benefit managers, and community pharmacies.

"(2) Whether such plans are acting in a manner that maximizes competition and results in lower prescription drug prices for enrollees.

"(b) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 8, 2003], the Commission shall submit to Congress a report on the study conducted under subsection (a). Such report shall include recommendations regarding any need for legislation to ensure the fiscal integrity of the voluntary prescription drug benefit program under part D of title XVIII [this part], as added by section 101, that may be appropriated as the result of such study.

"(c) EXEMPTION FROM PAPERWORK REDUCTION ACT.—Chapter 35 of title 44, United States Code, shall not apply to the collection of information under subsection (a)."

§ 1395w–102. Prescription drug benefits

(a) Requirements

(1) In general

For purposes of this part and part C of this subchapter, the term "qualified prescription drug coverage" means either of the following:
(A) Standard prescription drug coverage with access to negotiated prices

Standard prescription drug coverage (as defined in subsection (b) of this section) and access to negotiated prices under subsection (d) of this section.

(B) Alternative prescription drug coverage with at least actuarially equivalent benefits and access to negotiated prices

Coverage of covered part D drugs that provides supplemental prescription drug coverage pursuant to subsection (c) of this section and access to negotiated prices under subsection (d) of this section, but only if the benefit design of such coverage is approved by the Secretary, as provided under subsection (c) of this section.

(2) Permitting supplemental prescription drug coverage

(A) In general

Subject to subparagraph (B), qualified prescription drug coverage may include supplemental prescription drug coverage consisting of either or both of the following:

(i) Certain reductions in cost-sharing

(I) In general

A reduction in the annual deductible, a reduction in the coinsurance percentage, or an increase in the initial coverage limit with respect to covered part D drugs, or any combination thereof, in so far as such a reduction or increase increases the actuarial value of benefits above the actuarial value of basic prescription drug coverage.

(II) Construction

Nothing in this paragraph shall be construed as affecting the application of subsection (c)(3) of this section.

(ii) Optional drugs

Coverage of any product that would be a covered part D drug but for the application of subsection (e)(2)(A) of this section.

(B) Requirement

A PDP sponsor may not offer a prescription drug plan that provides supplemental prescription drug coverage pursuant to subparagraph (A) in an area unless the sponsor also offers a prescription drug plan in the area that only provides basic prescription drug coverage.

(3) Basic prescription drug coverage

For purposes of this part and part C of this subchapter, the term “basic prescription drug coverage” means either of the following:

(A) Coverage that meets the requirements of paragraph (1)(A).

(B) Coverage that meets the requirements of paragraph (1)(B) but does not have any supplemental prescription drug coverage described in paragraph (2)(A).

(4) Application of secondary payor provisions

The provisions of section 1395w–22(a)(4) of this title shall apply under this part in the same manner as they apply under part C of this subchapter.

(5) Construction

Nothing in this subsection shall be construed as changing the computation of incurred costs under subsection (b)(4) of this section.

(b) Standard prescription drug coverage

For purposes of this part and part C of this subchapter, the term “standard prescription drug coverage” means coverage of covered part D drugs that meets the following requirements:

(1) Deductible

(A) In general

The coverage has an annual deductible—

(i) for 2006, that is equal to $250; or

(ii) for a subsequent year, that is equal to the amount specified under this paragraph for the previous year increased by the percentage specified in paragraph (6) for the year involved.

(B) Rounding

Any amount determined under subparagraph (A)(ii) that is not a multiple of $5 shall be rounded to the nearest multiple of $5.

(2) Benefit structure

(A) 25 percent coinsurance

Subject to subparagraphs (C) and (D), the coverage has coinsurance (for costs above the annual deductible specified in paragraph (1) and up to the initial coverage limit under paragraph (3)) that is—

(i) equal to 25 percent; or

(ii) actuarially equivalent (using processes and methods established under section 1395w–111(c) of this title) to an average expected payment of 25 percent of such costs.

(B) Use of tiers

Nothing in this part shall be construed as preventing a PDP sponsor or an MA organization from applying tiered copayments under a plan, so long as such tiered copayments are consistent with subparagraphs (A)(ii), (C), and (D).

(C) Coverage for generic drugs in coverage gap

(i) In general

Except as provided in paragraph (4), the coverage for an applicable beneficiary (as defined in section 1395w–114a(g)(1) of this title) has coinsurance (for costs above the initial coverage limit under paragraph (3) and below the out-of-pocket threshold) for covered part D drugs that are not applicable drugs under section 1395w–114a(g)(2) of this title that is—

(I) equal to the generic-gap coinsurance percentage (specified in clause (ii)) for the year; or

(II) actuarially equivalent (using processes and methods established under section 1395w–111(c) of this title) to an average expected payment of such percentage of such costs for covered part D drugs that are not applicable drugs under section 1395w–114a(g)(2) of this title.
(ii) Generic-gap coinsurance percentage

The generic-gap coinsurance percentage specified in this clause for—

(I) 2011 is 93 percent;

(II) 2012 and each succeeding year before 2020 is the generic-gap coinsurance percentage under this clause for the previous year decreased by 7 percentage points; and

(III) 2020 and each subsequent year is 25 percent.

(D) Coverage for applicable drugs in coverage gap

(i) In general

Except as provided in paragraph (4), the coverage for an applicable beneficiary (as defined in section 1395w–114a(g)(1) of this title) has coinsurance (for costs above the initial coverage limit under paragraph (3) and below the out-of-pocket threshold) for the negotiated price (as defined in section 1395w–114a(g)(6) of this title) of covered part D drugs that are applicable drugs under section 1395w–114a(g)(2) of this title that is—

(I) equal to the difference between the applicable gap percentage (specified in clause (ii)) for the year and the discount percentage specified in section 1395w–114a(g)(4)(A) of this title for such applicable drugs; or

(II) actuarially equivalent (using processes and methods established under section 1396r–8(k)(7)(A)(i) of this title) to an average expected payment of such percentage of such costs, for covered part D drugs that are applicable drugs under section 1395w–114a(g)(2) of this title.

(ii) Applicable gap percentage

The applicable gap percentage specified in this clause for—

(I) 2013 and 2014 is 97.5 percent;

(II) 2015 and 2016 is 95 percent;

(III) 2017 is 90 percent;

(IV) 2018 is 85 percent;

(V) 2019 is 80 percent; and

(VI) 2020 and each subsequent year is 75 percent.

(3) Initial coverage limit

(A) In general

Except as provided in paragraphs (2)(C), (2)(D), and (4), the coverage has an initial coverage limit on the maximum costs that may be recognized for payment purposes (including the annual deductible)—

(i) for 2006, that is equal to $2,250; or

(ii) for a subsequent year, that is equal to the amount specified in this paragraph for the previous year, increased by the annual percentage increase described in paragraph (6) for the year involved.

(B) Rounding

Any amount determined under subparagraph (A)(ii) that is not a multiple of $10 shall be rounded to the nearest multiple of $10.

(4) Protection against high out-of-pocket expenditures

(A) In general

(i) In general

The coverage provides benefits, after the part D eligible individual has incurred costs (as described in subparagraph (C)) for covered part D drugs in a year equal to the annual out-of-pocket threshold specified in subparagraph (B), with cost-sharing that is equal to the greater of—

(I) a copayment of $2 for a generic drug or a preferred drug that is a multiple source drug (as defined in section 1396r–8(k)(7)(A)(i) of this title) and $5 for any other drug; or

(II) coinsurance that is equal to 5 percent.

(ii) Adjustment of amount

For a year after 2006, the dollar amounts specified in clause (i)(I) shall be equal to the dollar amounts specified in this subparagraph for the previous year, increased by the annual percentage increase described in paragraph (6) for the year involved. Any amount established under this clause that is not a multiple of 5 cents shall be rounded to the nearest multiple of 5 cents.

(B) Annual out-of-pocket threshold

(i) In general

For purposes of this part, the “annual out-of-pocket threshold” specified in this subparagraph—

(I) for 2006, is equal to $3,600;

(II) for each of years 2007 through 2013, is equal to the amount specified in this subparagraph for the previous year, increased by the annual percentage increase described in paragraph (6) for the year involved;

(III) for 2014 and 2015, is equal to the amount specified in this subparagraph for the previous year, increased by the annual percentage increase described in paragraph (6) for the year involved, minus 0.25 percentage point;

(IV) for each of years 2016 through 2019, is equal to the amount specified in this subparagraph for the previous year, increased by the lesser of—

(aa) the annual percentage increase described in paragraph (7) for the year involved, plus 2 percentage points; or

(bb) the annual percentage increase described in paragraph (6) for the year;

(V) for 2020, is equal to the amount that would have been applied under this subparagraph for 2020 if the amendments made by section 1101(d)(1) of the Health Care and Education Reconciliation Act of 2010 had not been enacted; or

(VI) for a subsequent year, is equal to the amount specified in this subparagraph for the previous year, increased by the annual percentage increase described in paragraph (6) for the year involved.
(ii) Rounding

Any amount determined under clause (i)(II) that is not a multiple of $50 shall be rounded to the nearest multiple of $50.

(C) Application

Except as provided in subparagraph (E), in applying subparagraph (A)—

(i) incurred costs shall only include costs incurred with respect to covered part D drugs for the annual deductible described in paragraph (1), for cost-sharing described in paragraph (2), and for amounts for which benefits are not provided because of the application of the initial coverage limit described in paragraph (3), but does not include any costs incurred for covered part D drugs which are not included (or treated as being included) in the plan's formulary;

(ii) subject to clause (iii), such costs shall be treated as incurred only if they are paid by the part D eligible individual (or by another person, such as a family member, on behalf of the individual) and the part D eligible individual (or other person) is not reimbursed through insurance or otherwise, a group health plan, or other third-party payment arrangement (other than under such section or such a Program) for such costs; and

(iii) such costs shall be treated as incurred and shall not be considered to be reimbursed under clause (ii) if such costs are borne or paid—

(I) under section 1395w–114 of this title;

(II) under a State Pharmaceutical Assistance Program;

(III) by the Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization (as defined in section 1603 of title 25); or

(IV) under an AIDS Drug Assistance Program under part B of title XXVI of the Public Health Service Act [42 U.S.C. 300ff–21 et seq.].

(D) Information regarding third-party reimbursement

(i) Procedures for exchanging information

In order to accurately apply the requirements of subparagraph (C)(ii), the Secretary is authorized to establish procedures, in coordination with the Secretary of the Treasury and the Secretary of Labor—

(I) for determining whether costs for part D eligible individuals are being reimbursed through insurance or otherwise, a group health plan, or other third-party payment arrangement; and

(II) for alerting the PDP sponsors and MA organizations that offer the prescription drug plans and MA–PD plans in which such individuals are enrolled about such reimbursement arrangements.

(ii) Authority to request information from enrollees

A PDP sponsor or an MA organization may periodically ask part D eligible indi-viduals enrolled in a prescription drug plan or an MA–PD plan offered by the sponsor or organization whether such individuals have or expect to receive such third-party reimbursement. A material misrepresentation of the information described in the preceding sentence by an individual (as defined in standards set by the Secretary and determined through a process established by the Secretary) shall constitute grounds for termination of enrollment in any plan under section 1395w–21(g)(3)(B) of this title (and as applied under this part under section 1395w–101(b)(1)(B)(v) of this title) for a period specified by the Secretary.

(E) Inclusion of costs of applicable drugs under medicare coverage gap discount program

In applying subparagraph (A), incurred costs shall include the negotiated price (as defined in paragraph (6) of section 1395w–14a(g) of this title) of an applicable drug (as defined in paragraph (2) of such section) of a manufacturer that is furnished to an applicable beneficiary (as defined in paragraph (1) of such section) under the Medicare coverage gap discount program under section 1395w–114a of this title, regardless of whether part of such costs were paid by a manufacturer under such program, except that incurred costs shall not include the portion of the negotiated price that represents the reduction in coinsurance resulting from the application of paragraph (2)(D).

(5) Construction

Nothing in this part shall be construed as preventing a PDP sponsor or an MA organization offering an MA–PD plan from reducing to zero the cost-sharing otherwise applicable to preferred or generic drugs.

(6) Annual percentage increase

The annual percentage increase specified in this paragraph for a year is equal to the annual percentage increase in average per capita aggregate expenditures for covered part D drugs in the United States for part D eligible individuals, as determined by the Secretary for the 12-month period ending in July of the previous year using such methods as the Secretary shall specify.

(7) Additional annual percentage increase

The annual percentage increase specified in this paragraph for a year is equal to the annual percentage increase in average per capita aggregate expenditures for covered part D drugs in the United States for part D eligible individuals, as determined by the Secretary for the 12-month period ending in July of the previous year.

(c) Alternative prescription drug coverage requirements

A prescription drug plan or an MA–PD plan may provide a different prescription drug benefit design from standard prescription drug coverage so long as the Secretary determines (consistent with section 1395w–111(c) of this title) that the following requirements are met and the plan applies for, and receives, the approval of the Secretary for such benefit design:
(1) Assuring at least actuarially equivalent coverage

(A) Assuring equivalent value of total coverage

The actuarial value of the total coverage is at least equal to the actuarial value of standard prescription drug coverage.

(B) Assuring equivalent unsubsidized value of coverage

The unsubsidized value of the coverage is at least equal to the unsubsidized value of standard prescription drug coverage. For purposes of this subparagraph, the unsubsidized value of coverage is the amount by which the actuarial value of the coverage exceeds the actuarial value of the subsidy payments under section 1395w–115 of this title with respect to such coverage.

(C) Assuring standard payment for costs at initial coverage limit

The coverage is designed, based upon an actuarially representative pattern of utilization, to provide for the payment, with respect to costs incurred that are equal to the initial coverage limit under subsection (b)(3) of this section for the year, of an amount equal to at least the product of:

(i) the amount by which the initial coverage limit described in subsection (b)(3) of this section for the year exceeds the deductible described in subsection (b)(1) of this section for the year; and

(ii) 100 percent minus the coinsurance percentage specified in subsection (b)(2)(A)(i) of this section.

(2) Maximum required deductible

The deductible under the coverage shall not exceed the deductible amount specified under subsection (b)(1) of this section for the year.

(3) Same protection against high out-of-pocket expenditures

The coverage provides the coverage required under subsection (b)(4) of this section.

(d) Access to negotiated prices

(1) Access

(A) In general

Under qualified prescription drug coverage offered by a PDP sponsor offering a prescription drug plan or an MA organization offering an MA–PD plan, the sponsor or organization shall provide enrollees with access to negotiated prices used for payment for covered part D drugs, regardless of the fact that no benefits may be payable under the coverage with respect to such drugs because of the application of a deductible or other cost-sharing or an initial coverage limit described in subsection (b)(3) of this section.

(B) Negotiated prices

For purposes of this part, negotiated prices shall take into account negotiated price concessions, such as discounts, direct or indirect subsidies, rebates, and direct or indirect remunerations, for covered part D drugs, and include any dispensing fees for such drugs.

(C) Medicaid-related provisions

The prices negotiated by a prescription drug plan, by an MA–PD plan with respect to covered part D drugs, or by a qualified retiree prescription drug plan (as defined in section 1395w–132(a)(2) of this title) with respect to such drugs on behalf of part D eligible individuals, shall (notwithstanding any other provision of law) not be taken into account for the purposes of establishing the best price under section 1396r–8(c)(1)(C) of this title.

(2) Disclosure

A PDP sponsor offering a prescription drug plan or an MA organization offering an MA–PD plan shall disclose to the Secretary (in a manner specified by the Secretary) the aggregate negotiated price concessions described in paragraph (1)(B) made available to the sponsor or organization by a manufacturer which are passed through in the form of lower subsidies, lower monthly beneficiary prescription drug premiums, and lower prices through pharmacies and other dispensers. The provisions of section 1396r–8(b)(3)(D) of this title apply to information disclosed to the Secretary under this paragraph.

(3) Audits

To protect against fraud and abuse and to ensure proper disclosures and accounting under this part and in accordance with section 1395w–27(d)(2)(B) of this title (as applied under section 1395w–112(b)(3)(C) of this title), the Secretary may conduct periodic audits, directly or through contracts, of the financial statements and records of PDP sponsors with respect to prescription drug plans and MA organizations with respect to MA–PD plans.

(e) Covered part D drug defined

(1) In general

Except as provided in this subsection, for purposes of this part, the term “covered part D drug” means—

(A) a drug that may be dispensed only upon a prescription and that is described in subparagraph (A)(i), (A)(ii), or (A)(iii) of section 1396r–8(k)(2) of this title; or

(B) a biological product described in clauses (i) through (iii) of subparagraph (B) of such section or insulin described in subparagraph (C) of such section and medical supplies associated with the injection of insulin (as defined in regulations of the Secretary),

and such term includes a vaccine licensed under section 262 of this title (and, for vaccines administered on or after January 1, 2008, its administration) and any use of a covered part D drug for a medically accepted indication (as defined in paragraph (4)).

(2) Exclusions

(A) In general

Such term does not include drugs or classes of drugs, or their medical uses, which may be excluded from coverage or otherwise restricted under this part and, for purposes of this title, other than subparagraph (E) of such section (relating to smoking cessation agents), other than subparagraph (I) of such section (relating to barbiturates) if the bar-
biturate is used in the treatment of epilepsy, cancer, or a chronic mental health disorder, and other than subparagraph (J) of such section (relating to benzodiazepines), or under section 1396r–8(d)(3) of this title, as such sections were in effect on December 8, 2003. Such term also does not include a drug when used for the treatment of sexual or erectile dysfunction, unless such drug were used to treat a condition, other than sexual or erectile dysfunction, for which the drug has been approved by the Food and Drug Administration.

(B) Medicare covered drugs

A drug prescribed for a part D eligible individual that would otherwise be a covered part D drug under this part shall not be so considered if payment for such drug as so prescribed and dispensed or administered with respect to that individual is available (or would be available but for the application of a deductible) under part A or B of this subchapter for that individual.

(3) Application of general exclusion provisions

A prescription drug plan or an MA–PD plan may exclude from qualified prescription drug coverage any covered part D drug—

(A) for which payment would not be made if section 1395y(a) of this title applied to this part; or

(B) which is not prescribed in accordance with the plan or this part.

Such exclusions are determinations subject to reconsideration and appeal pursuant to subpart B of part D of title I, section 1396r–8(j), as such section was in effect on December 8, 2003.

(A) In general

For purposes of paragraph (1), the term “medically accepted indication” has the meaning given that term—

(I) in the case of a covered part D drug used in an anticancer chemotherapeutic regimen, in section 1395x(t)(2)(B) of this title, except that in applying such section—

(1) “prescription drug plan or MA–PD plan” shall be substituted for “carrier” each place it appears; and

(2) subject to subparagraph (B), the compendia described in section 1396r–8(g)(1)(B)(i)(III) of this title shall be included in the list of compendia described in clause (II) of section 1395x(t)(2)(B) of this title; and

(II) in the case of any other covered part D drug, in section 1396r–8(k)(6) of this title.

(B) Conflict of interest

On and after January 1, 2010, subparagraph (A)(i)(II) shall not apply unless the compendia described in section 1396r–8(g)(1)(B)(i)(III) of this title meets the requirement in the third sentence of section 1395x(t)(2)(B) of this title.

(C) Update

For purposes of applying subparagraph (A)(i), the Secretary shall revise the list of compendia described in section 1396r–8(g)(1)(B)(i) of this title as is appropriate for identifying medically accepted indications for drugs. Any such revision shall be done in a manner consistent with the process for revising compendia under section 1395x(t)(2)(B) of this title.


References in Text


The Public Health Service Act, referred to in subsec. (b)(4)(C)(iii)(IV), is act July 1, 1944, ch. 373, 58 Stat. 682.

Part B of title XXVI of the Act is classified generally to part B (§3002–21 et seq.) of subchapter XXIV of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

Amendments

2010—Subsec. (b)(2)(A). Pub. L. 111–152, §1101(b)(3)(A), substituted “subject to subparagraphs (C) and (D), the coverage” for “The coverage”.

Subsec. (b)(2)(B). Pub. L. 111–152, §1101(b)(3)(B), substituted “subject to subparagraphs (A)(ii), (C), and (D)” for “subject to subparagraph (A)(ii)”.

Subsec. (b)(2)(C), (D). Pub. L. 111–152, §1101(b)(3)(C), added subs. (C) and (D).


Pub. L. 111–148, §3315(1), which directed substitution of “paragraphs (4) and (7)” for “paragraph (4)” in introductory provisions, was repealed by Pub. L. 111–152, §1101(a)(2). See Construction of 2010 Amendment note below.

Subsec. (b)(4)(B)(i)(II) to (VI). Pub. L. 111–152, §1101(d)(1), added (II) to (V) and redesignated former subcl. (II) as (VI).

Subsec. (b)(4)(C). Pub. L. 111–148, §3314(a), in cl. (ii), substituted “subject to clause (ii), such costs shall be treated as incurred only if” for “such costs shall be treated as incurred only if and struck out “, under section 1395w–114 of this title, or under a State Pharmaceutical Assistance Program” after “on behalf of the individual”), and added cl. (iii).

Pub. L. 111–148, §3301(c)(1)(A), substituted “Except as provided in subparagraph (E), in applying” for “In applying” in introductory provisions.

Subsec. (b)(4)(E). Pub. L. 111–152, §1101(b)(3)(E), inserted before period at end “, except that incurred costs shall not include the portion of the negotiated price that represents the reduction in coinsurance resulting from the application of paragraph (2)(D)”.


Pub. L. 111–148, §3315(2), which directed addition of par. (7), was repealed by Pub. L. 111–152, §1101(a)(2). As enacted, text read as follows:

“(A) In general.—For the plan year beginning on January 1, 2010, the initial coverage limit described in paragraph (3)(B) otherwise applicable shall be increased by $500.”
“(B) APPLICATION.—In applying subparagraph (A)—
“(i) except as otherwise provided in this subparagraph, there shall be no change in the premiums, bids, or any other parameters under this part or part C;
“(ii) costs that would be treated as incurred costs for purposes of applying paragraph (4) but for the application of subparagraph (A) shall continue to be treated as incurred costs;
“(iii) the Secretary shall establish procedures, which may include a reconciliation process, to fully reimburse PDP sponsors with respect to prescription drug plans and MA organizations with respect to MA-PD plans for the reduction in beneficiary cost sharing associated with the application of subparagraph (A);
“(iv) the Secretary shall develop an estimate of the additional increased costs attributable to the application of this paragraph for increased drug utilization and financing and administrative costs and shall use such estimate to adjust payments to PDP sponsors with respect to prescription drug plans under this part and MA organizations with respect to MA-PD plans under part C; and
“(v) the Secretary shall establish procedures for retroactive reimbursement of part D eligible individuals who are covered under such a plan for costs which are incurred before the date of initial implementation of subparagraph (A) and which would be reimbursed under such a plan if such implementation occurred as of January 1, 2010.
“(C) NO EFFECT ON SUBSEQUENT YEARS.—The increase under subparagraph (A) shall only apply with respect to the plan year beginning on January 1, 2010, and the initial coverage limit for plan years beginning on or after January 1, 2011, shall be determined as if subparagraph (A) had never applied.”

See Construction of 2010 Amendment note below.

2006—Subsec. (e)(1). Pub. L. 110–275, §182(a)(1)(A), substituted “(as defined in paragraph (4))” for “(as defined in section 1396k(e)(6) of this title)” in concluding provisions.

Subsec. (e)(2)(A). Pub. L. 110–275, §175(a), inserted “other than subparagraph (I) of such section (relating to barbiturates) if the barbiturate is used in the treatment of epilepsy, cancer, or a chronic mental health disorder, and other than subparagraph (J) of such section (relating to benzodiazipines),” after “agents,”.

Subsec. (e)(4). Pub. L. 110–275, §182(a)(1)(B), which directed amendment of subsec. (e)(1) in the matter following subpar. (B) by adding par. (4) at the end, was executed by adding par. (4) at end of subsec. (e), to reflect the probable intent of Congress.


2005—Subsec. (e)(2)(A). Pub. L. 110–91, §103(a)(2), inserted at end “Such term also does not include a drug when used for the treatment of sexual or erectile dysfunction, unless such drug were used to treat a condition, other than sexual or erectile dysfunction, for which the drug has been approved by the Food and Drug Administration.”

Pub. L. 110–91, §103(a)(1), inserted before period at end “, as such sections were in effect on December 8, 2003”.

EFFECTIVE DATE OF 2010 AMENDMENT


EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–275, title I, §175(b), July 15, 2008, 122 Stat. 2581, provided that: “The amendments made by subsection (a) [amending this section] shall apply to prescription drugs dispensed on or after January 1, 2013.”


EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–91, title I, §103(c), Oct. 20, 2005, 119 Stat. 2092, provided that: “The amendment made by subsection (a)(1) [amending this section] shall take effect as if included in the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173) and the amendment made by subsection (a)(2) [amending this section] shall apply to coverage for drugs dispensed on or after January 1, 2007.”

CONSTRUCTION OF 2010 AMENDMENT

Pub. L. 111–152, title I, §110(a)(2), Mar. 30, 2010, 124 Stat. 1037, provided that: “Section 1101 of the Patient Protection and Affordable Care Act (section 3315 of Pub. L. 111–148, amending this section) including the amendments made by such section is repealed, and any provision of law amended or repealed by such sections [sic] is hereby restored or revived as if such section had not been enacted into law.”

CONSTRUCTION


PAYMENT FOR ADMINISTRATION OF PART D VACCINES IN 2007

Pub. L. 109–432, div. B, title II, §202(a), Dec. 20, 2006, 120 Stat. 2986, provided that: “Notwithstanding any other provision of law, in the case of a vaccine that is covered under part D of such Act (as defined in paragraph (3)) in the area in which the individual resides, at least one of which is a prescription drug plan, the Secretary shall make payments to such plan under the provisions of title I of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. 1395w–202) in such manner as the Secretary determines is necessary to enable such plan to make such payments in a timely manner.”

§1395w–103. Access to a choice of qualified prescription drug coverage

(a) Assuring access to a choice of coverage

(1) Choice of at least two plans in each area

The Secretary shall ensure that each part D eligible individual has available, consistent with paragraph (2), a choice of enrollment in at least 2 qualifying plans (as defined in paragraph (3)) in the area in which the individual resides, at least one of which is a prescription drug plan. In any such case in which such plans are not available, the part D eligible individual shall be given the opportunity to enroll in a fallback prescription drug plan.

(2) Requirement for different plan sponsors

The requirement in paragraph (1) is not satisfied with respect to an area if only one entity offers all the qualifying plans in the area.

(3) Qualifying plan defined

For purposes of this section, the term “qualifying plan” means—
(A) a prescription drug plan; or
(B) an MA–PD plan described in section 1395w–21(a)(2)(A)(i) of this title that provides—
   (i) basic prescription drug coverage; or
   (ii) qualified prescription drug coverage that provides supplemental prescription drug coverage so long as there is no MA monthly supplemental beneficiary premium applied under the plan, due to the application of a credit against such premium of a rebate under section 1395w–24(b)(1)(C) of this title.

(b) Flexibility in risk assumed and application of fallback plan
In order to ensure access pursuant to subsection (a) of this section in an area—
   (1) the Secretary may approve limited risk plans under section 1395w–111(f) of this title for the area; and
   (2) only if such access is still not provided in the area after applying paragraph (1), the Secretary shall provide for the offering of a fallback prescription drug plan for that area under section 1395w–111(g) of this title.


§ 1395w–104. Beneficiary protections for qualified prescription drug coverage
(a) Dissemination of information
(1) General information
   (A) Application of MA information
      A PDP sponsor shall disclose, in a clear, accurate, and standardized form to each enrollee with a prescription drug plan offered by the sponsor under this part at the time of enrollment and at least annually thereafter, the information described in section 1395w–22(c)(1) of this title relating to such plan, insofar as the Secretary determines appropriate with respect to benefits provided under this part, and including the information described in subparagraph (B).
   (B) Drug specific information
      The information described in this subparagraph is information concerning the following:
      (i) Access to specific covered part D drugs, including access through pharmacy networks.
      (ii) How any formulary (including any tiered formulary structure) used by the sponsor functions, including a description of how a part D eligible individual may obtain information on the formulary consistent with paragraph (3).
      (iii) Beneficiary cost-sharing requirements and how a part D eligible individual may obtain information on such requirements, including tiered or other copayment level applicable to each drug (or class of drugs), consistent with paragraph (3).
      (iv) The medication therapy management program required under subsection (c) of this section.

(2) Disclosure upon request of general coverage, utilization, and grievance information
   Upon request of a part D eligible individual who is eligible to enroll in a prescription drug plan, the PDP sponsor offering such plan shall provide information similar (as determined by the Secretary) to the information described in subparagraphs (A), (B), and (C) of section 1395w–22(c)(2) of this title to such individual.

(3) Provision of specific information
   (A) Response to beneficiary questions
      Each PDP sponsor offering a prescription drug plan shall have a mechanism for providing specific information on a timely basis to enrollees upon request. Such mechanism shall include access to information through the use of a toll-free telephone number and, upon request, the provision of such information in writing.
   (B) Availability of information on changes in formulary through the Internet
      A PDP sponsor offering a prescription drug plan shall make available on a timely basis through an Internet website information on specific changes in the formulary under the plan (including changes to tiered or preferred status of covered part D drugs).

(4) Claims information
   A PDP sponsor offering a prescription drug plan must furnish to each enrollee in a form easily understandable to such enrollees—
      (A) an explanation of benefits (in accordance with section 1395b–7(a) of this title or in a comparable manner); and
      (B) when prescription drug benefits are provided under this part, a notice of the benefits in relation to—
         (i) the initial coverage limit for the current year; and
         (ii) the annual out-of-pocket threshold for the current year.
   Notices under subparagraph (B) need not be provided more often than as specified by the Secretary and notices under subparagraph (B)(ii) shall take into account the application of section 1395w–102(b)(4)(C) of this title to the extent practicable, as specified by the Secretary.

(b) Access to covered part D drugs
(1) Assuring pharmacy access
   (A) Participation of any willing pharmacy
      A prescription drug plan shall permit the participation of any pharmacy that meets the terms and conditions under the plan.
   (B) Discounts allowed for network pharmacies
      For covered part D drugs dispensed through in-network pharmacies, a prescription drug plan may, notwithstanding subparagraph (A), reduce coinsurance or copayments for part D eligible individuals enrolled in the plan below the level otherwise required. In no case shall such a reduction result in an increase in payments made by the Secretary under section 1395w–115 of this title to a plan.
(C) Convenient access for network pharmacies

(i) In general

The PDP sponsor of the prescription drug plan shall secure the participation in its network of a sufficient number of pharmacies that dispense (other than by mail order) drugs directly to patients to ensure convenient access (consistent with rules established by the Secretary).

(ii) Application of TRICARE standards

The Secretary shall establish rules for convenient access to in-network pharmacies under this subparagraph that are no less favorable to enrollees than the rules for convenient access to pharmacies included in the statement of work of solicitation (#MDA906–03–R–0002) of the Department of Defense under the TRICARE Retail Pharmacy (TRRx) as of March 13, 2003.

(iii) Adequate emergency access

Such rules shall include adequate emergency access for enrollees.

(iv) Convenient access in long-term care facilities

Such rules may include standards with respect to access for enrollees who are residing in long-term care facilities and for pharmacies operated by the Indian Health Service, Indian tribes and tribal organizations, and urban Indian organizations (as defined in section 1603 of title 25).

(D) Level playing field

Such a sponsor may not require participating pharmacies to accept insurance risk as a condition of participation.

(E) Not required to accept insurance risk

The terms and conditions under subparagraph (A) may not require participating pharmacies to accept insurance risk as a condition of participation.

(2) Use of standardized technology

(A) In general

The PDP sponsor of a prescription drug plan shall issue (and reissue, as appropriate) such a card (or other technology) that may be used by an enrollee to assure access to negotiated prices under section 1395w–102(d) of this title.

(B) Standards

(i) In general

The Secretary shall provide for the development, adoption, or recognition of standards relating to a standardized format for the card or other technology required under subparagraph (A). Such standards shall be compatible with part C of subchapter XI of this chapter and may be based on standards developed by an appropriate standard setting organization.

(ii) Consultation

In developing the standards under clause (i), the Secretary shall consult with the National Council for Prescription Drug Programs and other standard setting organizations determined appropriate by the Secretary.

(iii) Implementation

The Secretary shall develop, adopt, or recognize the standards under clause (i) by such date as the Secretary determines shall be sufficient to ensure that PDP sponsors utilize such standards beginning January 1, 2006.

(3) Requirements on development and application of formularies

If a PDP sponsor of a prescription drug plan uses a formulary (including the use of tiered cost-sharing), the following requirements must be met:

(A) Development and revision by a pharmacy and therapeutic (P&T) committee

(i) In general

The formulary must be developed and reviewed by a pharmacy and therapeutic committee. A majority of the members of such committee shall consist of individuals who are practicing physicians or practicing pharmacists (or both).

(ii) Inclusion of independent experts

Such committee shall include at least one practicing physician and at least one practicing pharmacist, each of whom—

(I) is independent and free of conflict with respect to the sponsor and plan; and

(II) has expertise in the care of elderly or disabled persons.

(B) Formulary development

In developing and reviewing the formulary, the committee shall—

(i) base clinical decisions on the strength of scientific evidence and standards of practice, including assessing peer-reviewed medical literature, such as randomized clinical trials, pharmacoeconomic studies, outcomes research data, and on such other information as the committee determines to be appropriate; and

(ii) take into account whether including in the formulary (or in a tier in such formulary) particular covered part D drugs has therapeutic advantages in terms of safety and efficacy.

(C) Inclusion of drugs in all therapeutic categories and classes

(i) In general

Subject to subparagraph (G), the formulary must include drugs within each therapeutic category and class of covered part D drugs, although not necessarily all drugs within such categories and classes.

(ii) Model guidelines

The Secretary shall request the United States Pharmacopeia to develop, in consultation with pharmaceutical benefit managers and other interested parties, a list of categories and classes that may be used by prescription drug plans under this paragraph and to revise such classification
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from time to time to reflect changes in therapeutic uses of covered part D drugs and the additions of new covered part D drugs.

(iii) Limitation on changes in therapeutic classification

The PDP sponsor of a prescription drug plan may not change the therapeutic categories and classes in a formulary other than at the beginning of each plan year except as the Secretary may permit to take into account new therapeutic uses and newly approved covered part D drugs.

(D) Provider and patient education

The PDP sponsor shall establish policies and procedures to educate and inform health care providers and enrollees concerning the formulary.

(E) Notice before removing drug from formulary or changing preferred or tier status of drug

Any removal of a covered part D drug from a formulary and any change in the preferred or tiered cost-sharing status of such a drug shall take effect only after appropriate notice is made available (such as under subsection (a)(3) of this section) to the Secretary, affected enrollees, physicians, pharmacists, and pharmacists.

(F) Periodic evaluation of protocols

In connection with the formulary, the sponsor of a prescription drug plan shall provide for the periodic evaluation and analysis of treatment protocols and procedures.

(G) Required inclusion of drugs in certain categories and classes

(i) Formulary requirements

(1) In general

Subject to subclause (II), a PDP sponsor offering a prescription drug plan shall be required to include all covered part D drugs in the categories and classes identified by the Secretary under clause (ii)(I).

(II) Exceptions

The Secretary may establish exceptions that permit a PDP sponsor offering a prescription drug plan to exclude from its formulary a particular covered part D drug in a category or class that is otherwise required to be included in the formulary under subclause (I) or to otherwise limit access to such a drug, including through prior authorization or utilization management.

(ii) Identification of drugs in certain categories and classes

(1) In general

Subject to clause (iv), the Secretary shall identify, as appropriate, categories and classes of drugs for which the Secretary determines are of clinical concern.

(II) Criteria

The Secretary shall use criteria established by the Secretary in making any determination under subclause (I).

(iii) Implementation

The Secretary shall establish the criteria under clause (ii)(II) and any exceptions under clause (i)(II) through the promulgation of a regulation which includes a public notice and comment period.

(iv) Requirement for certain categories and classes until criteria established

Until such time as the Secretary establishes the criteria under clause (ii)(II) the following categories and classes of drugs shall be identified under clause (ii)(I):

(I) Anticonvulsants.

(II) Antidepressants.

(III) Antineoplastics.

(IV) Antipsychotics.

(V) Antiretrovirals.

(VI) Immunosuppressants for the treatment of transplant rejection.

(H) Use of single, uniform exceptions and appeals process

Notwithstanding any other provision of this part, each PDP sponsor of a prescription drug plan shall—

(i) use a single, uniform exceptions and appeals process (including, to the extent the Secretary determines feasible, a single, uniform model form for use under such process) with respect to the determination of prescription drug coverage for an enrollee under the plan; and

(ii) provide instant access to such process by enrollees through a toll-free telephone number and an Internet website.

(c) Cost and utilization management; quality assurance; medication therapy management program

(1) In general

The PDP sponsor shall have in place, directly or through appropriate arrangements, with respect to covered part D drugs, the following:

(A) A cost-effective drug utilization management program, including incentives to reduce costs when medically appropriate, such as through the use of multiple source drugs (as defined in section 1396r–8(k)(7)(A)(i) of this title).

(B) Quality assurance measures and systems to reduce medication errors and adverse drug interactions and improve medication use.

(C) A medication therapy management program described in paragraph (2).

(D) A program to control fraud, abuse, and waste.

Nothing in this section shall be construed as impairing a PDP sponsor from utilizing cost management tools (including differential payments) under all methods of operation.

(2) Medication therapy management program

(A) Description

(i) In general

A medication therapy management program described in this paragraph is a program of drug therapy management that may be furnished by a pharmacist and that
is designed to assure, with respect to targeted beneficiaries described in clause (ii), that covered part D drugs under the prescription drug plan are appropriately used to optimize therapeutic outcomes through improved medication use, and to reduce the risk of adverse events, including adverse drug interactions. Such a program may distinguish between services in ambulatory and institutional settings.

(ii) Targeted beneficiaries described

Targeted beneficiaries described in this clause are part D eligible individuals who—

(I) have multiple chronic diseases (such as diabetes, asthma, hypertension, hyperlipidemia, and congestive heart failure);

(II) are taking multiple covered part D drugs; and

(III) are identified as likely to incur annual costs for covered part D drugs that exceed a level specified by the Secretary.

(B) Elements

Such program may include elements that promote—

(i) enhanced enrollee understanding to promote the appropriate use of medications by enrollees and to reduce the risk of potential adverse events associated with medications, through beneficiary education, counseling, and other appropriate means;

(ii) increased enrollee adherence with prescription medication regimens through medication refill reminders, special packaging, and other compliance programs and other appropriate means; and

(iii) detection of adverse drug events and patterns of overuse and underuse of prescription drugs.

(C) Required interventions

For plan years beginning on or after the date that is 2 years after March 23, 2010, prescription drug plan sponsors shall offer medication therapy management services to targeted beneficiaries described in subparagraph (A)(ii) that include, at a minimum, the following to increase adherence to prescription medications or other goals deemed necessary by the Secretary:

(i) An annual comprehensive medication review furnished person-to-person or using telehealth technologies (as defined by the Secretary) by a licensed pharmacist or other qualified provider. The comprehensive medication review—

(I) shall include a review of the individual's medications and may result in the creation of a recommended medication action plan or other actions in consultation with the individual and with input from the prescriber to the extent necessary and practicable; and

(II) shall include providing the individual with a written or printed summary of the results of the review.

The Secretary, in consultation with relevant stakeholders, shall develop a standardized format for the action plan under subclause (I) and the summary under subclause (II).

(ii) Follow-up interventions as warranted based on the findings of the annual medication review or the targeted medication enrollment and which may be provided person-to-person or using telehealth technologies (as defined by the Secretary).

(D) Assessment

The prescription drug plan sponsor shall have in place a process to assess, at least on a quarterly basis, the medication use of individuals who are at risk but not enrolled in the medication therapy management program, including individuals who have experienced a transition in care, if the prescription drug plan sponsor has access to that information.

(E) Automatic enrollment with ability to opt-out

The prescription drug plan sponsor shall have in place a process to—

(i) subject to clause (ii), automatically enroll targeted beneficiaries described in subparagraph (A)(ii), including beneficiaries identified under subparagraph (D), in the medication therapy management program required under this subsection; and

(ii) permit such beneficiaries to opt-out of enrollment in such program.

(F) Development of program in cooperation with licensed pharmacists

Such program shall be developed in cooperation with licensed and practicing pharmacists and physicians.

(G) Coordination with care management plans

The Secretary shall establish guidelines for the coordination of any medication therapy management program under this paragraph with respect to a targeted beneficiary with any care management plan established with respect to such beneficiary under a chronic care improvement program under section 1395b–8 of this title.

(H) Considerations in pharmacy fees

The PDP sponsor of a prescription drug plan shall take into account, in establishing fees for pharmacists and others providing services under such plan, the resources used, and time required to, implement the medication therapy management program under this paragraph. Each such sponsor shall disclose to the Secretary upon request the amount of any such management or dispensing fees. The provisions of section 1396d–9(b)(3)(D) of this title apply to information disclosed under this subparagraph.

(3) Reducing wasteful dispensing of outpatient prescription drugs in long-term care facilities

The Secretary shall require PDP sponsors of prescription drug plans to utilize specific, uni-
form dispensing techniques, as determined by the Secretary, in consultation with relevant stakeholders (including representatives of nursing facilities, residents of nursing facilities, pharmacists, the pharmacy industry (including retail and long-term care pharmacy), prescription drug plans, MA–PD plans, and any other stakeholders the Secretary determines appropriate), such as weekly, daily, or automated dose dispensing, when dispensing covered part D drugs to enrollees who reside in a long-term care facility in order to reduce waste associated with 30-day fills.

(d) Consumer satisfaction surveys
In order to provide for comparative information under section 1395w–101(c)(3)(A)(v) of this title, the Secretary shall conduct consumer satisfaction surveys with respect to PDP sponsors and prescription drug plans in a manner similar to the manner such surveys are conducted for MA organizations and MA plans under part C of this subchapter.

(e) Electronic prescription program
(1) Application of standards
As of such date as the Secretary may specify, but not later than 1 year after the date of promulgation of final standards under paragraph (4)(D), prescriptions and other information described in paragraph (2)(A) for covered part D drugs prescribed for part D eligible individuals that are transmitted electronically shall be transmitted only in accordance with such standards under an electronic prescription drug program that meets the requirements of paragraph (2).

(2) Program requirements
Consistent with uniform standards established under paragraph (3)—

(A) Provision of information to prescribing health care professional and dispensing pharmacies and pharmacists
An electronic prescription drug program shall provide for the electronic transmittal to the prescribing health care professional and to the dispensing pharmacy and pharmacist of the prescription and information on eligibility and benefits (including the drugs included in the applicable formulary, any tiered formulary structure, and any requirements for prior authorization) and of the following information with respect to the prescribing and dispensing of a covered part D drug:

(i) Information on the drug being prescribed or dispensed and other drugs listed on the medication history, including information on drug-drug interactions, warnings or cautions, and, when indicated, dosage adjustments.

(ii) Information on the availability of lower cost, therapeutically appropriate alternatives (if any) for the drug prescribed.

(B) Application to medical history information
Effective on and after such date as the Secretary specifies and after the establishment of appropriate standards to carry out this subparagraph, the program shall provide for the electronic transmittal in a manner similar to the manner under subparagraph (A) of information that relates to the medication history concerning the individual and related to a covered part D drug being prescribed or dispensed, upon request of the professional or pharmacist involved.

(C) Limitations
Information shall only be disclosed under subparagraph (A) or (B) if the disclosure of such information is permitted under the Federal regulations (concerning the privacy of individually identifiable health information) promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996.

(D) Timing
To the extent feasible, the information exchanged under this paragraph shall be on an interactive, real-time basis.

(3) Standards
(A) In general
The Secretary shall provide consistent with this subsection for the promulgation of uniform standards relating to the requirements for electronic prescription drug programs under paragraph (2).

(B) Objectives
Such standards shall be consistent with the objectives of improving—

(i) patient safety;

(ii) the quality of care provided to patients; and

(iii) efficiencies, including cost savings, in the delivery of care.

(C) Design criteria
Such standards shall—

(i) be designed so that, to the extent practicable, the standards do not impose an undue administrative burden on prescribing health care professionals and dispensing pharmacies and pharmacists;

(ii) be compatible with standards established under part C of subchapter XI of this chapter, standards established under subsection (b)(2)(B)(i) of this section, and with general health information technology standards; and

(iii) be designed so that they permit electronic exchange of drug labeling and drug listing information maintained by the Food and Drug Administration and the National Library of Medicine.

(D) Permitting use of appropriate messaging
Such standards shall allow for the messaging of information only if it relates to the appropriate prescribing of drugs, including quality assurance measures and systems referred to in subsection (c)(1)(B) of this section.

(E) Permitting patient designation of dispensing pharmacy

(i) In general
Consistent with clause (ii), such standards shall permit a part D eligible individ-
(ii) No change in benefits
Clause (i) shall not be construed as affecting—
(I) the access required to be provided to pharmacies by a prescription drug plan; or
(II) the application of any differences in benefits or payments under such a plan based on the pharmacy dispensing a covered part D drug.

(4) Development, promulgation, and modification of standards
(A) Initial standards
Not later than September 1, 2005, the Secretary shall develop, adopt, recognize, or modify initial uniform standards relating to the requirements for electronic prescription drug programs described in paragraph (2) taking into consideration the recommendations (if any) from the National Committee on Vital and Health Statistics (as established under section 242k(k) of this title) under subparagraph (B).

(B) Role of NCVHS
The National Committee on Vital and Health Statistics shall develop recommendations for uniform standards relating to such requirements for electronic prescription drug programs described in paragraph (2) and for uniform standards relating to the requirements for electronic prescription drug programs described in paragraph (2).

(C) Pilot project to test initial standards
(i) In general
During the 1-year period that begins on January 1, 2006, the Secretary shall conduct a pilot project to test the initial standards developed under subparagraph (A) prior to the promulgation of the final uniform standards under subparagraph (D) in order to provide for the efficient implementation of the requirements described in paragraph (2).

(ii) Exception
Pilot testing of standards is not required under clause (i) where there already is adequate industry experience with such standards, as determined by the Secretary after consultation with affected standard setting organizations and industry users.

(iii) Voluntary participation of physicians and pharmacies
In order to conduct the pilot project under clause (i), the Secretary shall enter into agreements with physicians, pharmacists, pharmacies, hospitals, PDP sponsors, MA organizations, and other appropriate entities under which health care professionals electronically transmit prescriptions to dispensing pharmacies and pharmacists in accordance with such standards.

(iv) Evaluation and report
(I) Evaluation
The Secretary shall conduct an evaluation of the pilot project conducted under clause (i).

(II) Report to Congress
Not later than April 1, 2007, the Secretary shall submit to Congress a report on the evaluation conducted under subclause (I).

(D) Final standards
Based upon the evaluation of the pilot project under subparagraph (C)(iv)(I) and not later than April 1, 2008, the Secretary shall promulgate uniform standards relating to the requirements described in paragraph (2).

(5) Relation to State laws
The standards promulgated under this subsection shall supersede any State law or regulation that—
(A) is contrary to the standards or restricts the ability to carry out this part; and
(B) pertains to the electronic transmission of medication history and of information on eligibility, benefits, and prescriptions with respect to covered part D drugs under this part.

(6) Establishment of safe harbor
The Secretary, in consultation with the Attorney General, shall promulgate regulations that provide for a safe harbor from sanctions under paragraphs (1) and (2) of section 1320a–7b(b) of this title and an exception to the prohibition under subsection (a)(1) of section 1395nn of this title with respect to the provision of nonmonetary remuneration (in the form of hardware, software, or information technology and training services) necessary and used solely to receive and transmit electronic prescription information in accordance with the standards promulgated under this subsection—
(A) in the case of a hospital, by the hospital to members of its medical staff;
(B) in the case of a group practice (as defined in section 1395nn(h)(4) of this title), by the practice to prescribing health care professionals who are members of such practice; and
(C) in the case of a PDP sponsor or MA organization, by the sponsor or organization to pharmacists and pharmacies participating in the network of such sponsor or organization, and to prescribing health care professionals.

(f) Grievance mechanism
Each PDP sponsor shall provide meaningful procedures for hearing and resolving grievances between the sponsor (including any entity or individual through which the sponsor provides

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covered benefits) and enrollees with prescription drug plans of the sponsor under this part in accordance with section 1395w–22(f) of this title.

(g) Coverage determinations and reconsiderations

(1) Application of coverage determination and reconsideration provisions

A PDP sponsor shall meet the requirements of paragraphs (1) through (4) of section 1395w–22(g) of this title with respect to covered benefits under the prescription drug plan it offers under this part in the same manner as such requirements apply to an MA organization with respect to benefits it offers under an MA plan under part C of this subchapter.

(2) Request for a determination for the treatment of tiered formulary drug

In the case of a prescription drug plan offered by a PDP sponsor that provides for tiered cost-sharing for drugs included within a formulary and provides lower cost-sharing for preferred drugs included within the formulary, a part D eligible individual who is enrolled in the plan may request an exception to the tiered cost-sharing structure. Under such an exception, a nonpreferred drug could be covered under the terms applicable for preferred drugs if the prescribing physician determines that the preferred drug for treatment of the same condition either would not be as effective for the individual or would have adverse effects for the individual or both. A PDP sponsor shall have an exceptions process under this paragraph consistent with guidelines established by the Secretary for making a determination with respect to such a request. Denial of such an exception shall be treated as a coverage denial for purposes of applying subsection (h) of this section.

(h) Appeals

(1) In general

Subject to paragraph (2), a PDP sponsor shall meet the requirements of paragraphs (4) and (5) of section 1395w–22(g) of this title with respect to benefits (including a determination related to the application of tiered cost-sharing described in subsection (g)(2) of this section) in a manner similar (as determined by the Secretary) to the manner such requirements apply to an MA organization with respect to benefits under the original medicare fee-for-service program option it offers under an MA plan under part C of this subchapter. In applying this paragraph only the part D eligible individual shall be entitled to bring such an appeal.

(2) Limitation in cases on nonformulary determinations

A part D eligible individual who is enrolled in a prescription drug plan offered by a PDP sponsor may appeal under paragraph (1) a determination not to provide for coverage of a covered part D drug that is not on the formulary under the plan only if the prescribing physician determines that all covered part D drugs on any tier of the formulary for treatment of the same condition would not be as effective for the individual as the nonformulary drug, would have adverse effects for the individual, or both.

(i) Treatment of nonformulary determinations

If a PDP sponsor determines that a plan provides coverage for a covered part D drug that is not on the formulary of the plan, the drug shall be treated as being included on the formulary for purposes of section 1395w–102(b)(4)(C) of this title.

(j) Privacy, confidentiality, and accuracy of enrollee records

The provisions of section 1395w–22(h) of this title shall apply to a PDP sponsor and prescription drug plan in the same manner as it applies to an MA organization and an MA plan.

(k) Public disclosure of pharmaceutical prices for equivalent drugs

(1) In general

A PDP sponsor offering a prescription drug plan shall provide that each pharmacy that dispenses a covered part D drug shall inform an enrollee of any differential between the price of the drug to the enrollee and the price of the lowest priced generic covered part D drug under the plan that is therapeutically equivalent and bioequivalent and available at such pharmacy.

(2) Timing of notice

(A) In general

Subject to subparagraph (B), the information under paragraph (1) shall be provided at the time of purchase of the drug involved, or, in the case of dispensing by mail order, at the time of delivery of such drug.

(B) Waiver

The Secretary may waive subparagraph (A) in such circumstances as the Secretary may specify.

(l) Requirements with respect to sales and marketing activities

The following provisions shall apply to a PDP sponsor (and the agents, brokers, and other third parties representing such sponsor) in the same manner as such provisions apply to a Medicare Advantage organization (and the agents, brokers, and other third parties representing such organization):

(1) The prohibition under section 1395w–21(h)(4)(C) of this title on conducting ac-
activities described in section 1395w–21(j)(1) of this title.

(2) The requirement under section 1395w–21(h)(4)(D) of this title to conduct activities described in section 1395w–21(j)(2) of this title in accordance with the limitations established under such subsection.

(3) The inclusion of the plan type in the plan name under section 1395w–21(h)(6) of this title.

(4) The requirements regarding the appointment of agents and brokers and compliance with State information requests under subparagraphs (A) and (B), respectively, of section 1395w–21(h)(7) of this title.


REFERENCES IN TEXT

Section 324(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (e)(2)(C), is section 324(c) of Pub. L. 104–191, which is set out as a note under section 1320d–2 of this title.

AMENDMENTS


Subsec. (c)(2)(C) to (G). Pub. L. 111–148, §10328(a), added subpars. (C) to (E) and redesignated former subpars. (C) to (E) as (E) to (G), respectively.


EFFECTIVE DATE OF 2010 AMENDMENT


EFFECTIVE DATE OF 2008 AMENDMENT


Amendment by section 103(b)(2) of Pub. L. 110–275 effective on a date specified by the Secretary (but in no case later than Nov. 15, 2008), see section 103(b)(3) of Pub. L. 110–275, set out as a note under section 1395w–21 of this title.

Amendment by section 103(d)(2) of Pub. L. 110–275 applicable to plan years beginning on or after Jan. 1, 2009, see section 103(d)(3) of Pub. L. 110–275, set out as a note under section 1395w–21 of this title.

RULE OF CONSTRUCTION


GRANTS TO PHYSICIANS TO IMPLEMENT ELECTRONIC PRESCRIPTION DRUG PROGRAMS


“(a) IN GENERAL.—The Secretary [of Health and Human Services] is authorized to make grants to physicians for the purpose of assisting such physicians to implement electronic prescription drug programs that comply with the standards promulgated or modified under section 1603D–4(e) of the Social Security Act [subsection (e) of this section], as inserted by section 101(a).

“(b) AWARDING OF GRANTS.—

“(1) APPLICATION.—No grant may be made under this section except pursuant to a grant application that is submitted and approved in a time, manner, and form specified by the Secretary.

“(2) CONSIDERATIONS AND PREFERENCES.—In awarding grants under this section, the Secretary shall—

“(A) give special consideration to physicians who serve a disproportionate number of medicare patients;

“(B) give preference to physicians who serve a rural or underserved area.

“(3) LIMITATION ON GRANTS.—Only 1 grant may be awarded under this section with respect to any physician or group practice of physicians.

“(c) TERMS AND CONDITIONS.—

“(1) IN GENERAL.—Grants under this section shall be made under such terms and conditions as the Secretary specifies consistent with this section.

“(2) USE OF GRANT FUNDS.—Funds provided under grants under this section may be used for any of the following:

“(A) For purchasing, leasing, and installing computer software and hardware, including handheld computer technologies.

“(B) Making upgrades and other improvements to existing computer software and hardware to enable e-prescribing.

“(C) Providing education and training to eligible physician staff on the use of technology to implement the electronic transmission of prescription and patient information.

“(3) PROVISION OF INFORMATION.—As a condition for the awarding of a grant under this section, an applicant shall provide to the Secretary such information as the Secretary may require in order to—

“(A) evaluate the project for which the grant is made; and

“(B) ensure that funding provided under the grant is expended only for the purposes for which it is made.

“(4) AUDIT.—The Secretary shall conduct appropriate audits of grants under this section.

“(5) MATCHING REQUIREMENT.—The applicant for a grant under this section shall agree, with respect to the costs to be incurred by the applicant in implementing an electronic prescription drug program, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 50 percent of such costs. Non-Federal contributions
under the previous sentence may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such contributions.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $50,000,000 for fiscal year 2007 and such sums as may be necessary for each of fiscal years 2008 and 2009.”

Subpart 2—Prescription Drug Plans; PDP Sponsors; Financing

§ 1395w–111. PDP regions; submission of bids; plan approval

(a) Establishment of PDP regions; service areas

(1) Coverage of entire PDP region

The service area for a prescription drug plan shall consist of an entire PDP region established under paragraph (2).

(2) Establishment of PDP regions

(A) In general

The Secretary shall establish, and may revise, PDP regions in a manner that is consistent with the requirements for the establishment and revision of MA regions under subparagraphs (B) and (C) of section 1395w–27(a)(2) of this title.

(B) Relation to MA regions

To the extent practicable, PDP regions shall be the same as MA regions under section 1395w–27(a)(2) of this title. The Secretary may establish PDP regions which are not the same as MA regions if the Secretary determines that the establishment of different regions under this part would improve access to benefits under this part.

(C) Authority for territories

The Secretary shall establish, and may revise, PDP regions for areas in States that are not within the 50 States or the District of Columbia.

(3) National plan

Nothing in this subsection shall be construed as preventing a prescription drug plan from being offered in more than one PDP region (including all PDP regions).

(b) Submission of bids, premiums, and related information

(1) In general

A PDP sponsor shall submit to the Secretary information described in paragraph (2) with respect to each prescription drug plan it offers. Such information shall be submitted at the same time and in a similar manner to the manner in which information described in paragraph (6) of section 1395w–24(a) of this title is submitted by an MA organization under paragraph (1) of such section.

(2) Information described

The information described in this paragraph is information on the following:

(A) Coverage provided

The prescription drug coverage provided under the plan, including the deductible and other cost-sharing.

(B) Actuarial value

The actuarial value of the qualified prescription drug coverage in the region for a part D eligible individual with a national average risk profile for the factors described in section 1395w–115(c)(1)(A) of this title (as specified by the Secretary).

(C) Bid

Information on the bid, including an actuarial certification of—

(i) the basis for the actuarial value described in subparagraph (B) assumed in such bid;

(ii) the portion of such bid attributable to basic prescription drug coverage and, if applicable, the portion of such bid attributable to supplemental benefits;

(iii) assumptions regarding the reinsurance subsidy payments provided under section 1395w–115(b) of this title subtracted from the actuarial value to produce such bid; and

(iv) administrative expenses assumed in the bid.

(D) Service area

The service area for the plan.

(E) Level of risk assumed

(i) In general

Whether the PDP sponsor requires a modification of risk level under clause (ii) and, if so, the extent of such modification. Any such modification shall apply with respect to all prescription drug plans offered by a PDP sponsor in a PDP region. This subparagraph shall not apply to an MA–PD plan.

(ii) Risk levels described

A modification of risk level under this clause may consist of one or more of the following:

(I) Increase in Federal percentage assumed in initial risk corridor

An equal percentage point increase in the percents applied under subparagraphs (B)(i), (B)(ii)(I), (C)(i), and (C)(ii)(I) of section 1395w–115(e)(2) of this title. In no case shall the application of previous sentence prevent the application of a higher percentage under section 1395w–115(e)(2)(B)(iii) of this title.

(II) Increase in Federal percentage assumed in second risk corridor

An equal percentage point increase in the percents applied under subparagraphs (B)(ii)(II) and (C)(ii)(II) of section 1395w–115(e)(2) of this title.

(III) Decrease in size of risk corridors

A decrease in the threshold risk percentages specified in section 1395w–115(e)(3)(C) of this title.

(F) Additional information

Such other information as the Secretary may require to carry out this part.

1See References in Text note below.
(3) Paperwork reduction for offering of prescription drug plans nationally or in multi-region areas

The Secretary shall establish requirements for information submission under this subsection in a manner that promotes the offering of such plans in more than one PDP region (including all regions) through the filing of consolidated information.

(c) Actuarial valuation

(1) Processes

For purposes of this part, the Secretary shall establish processes and methods for determining the actuarial valuation of prescription drug coverage, including—

A) an actuarial valuation of standard prescription drug coverage under section 1395w–102(b) of this title;
B) actuarial valuations relating to alternative prescription drug coverage under section 1395w–102(c)(1) of this title;
C) an actuarial valuation of the reinsurance subsidy payments under section 1395w–115(b) of this title;
D) the use of generally accepted actuarial principles and methodologies; and
E) applying the same methodology for determinations of actuarial valuations under subparagraphs (A) and (B).

(2) Accounting for drug utilization

Such processes and methods for determining actuarial valuation shall take into account the effect that providing alternative prescription drug coverage (rather than standard prescription drug coverage) has on drug utilization.

(3) Responsibilities

(A) Plan responsibilities

PDP sponsors and MA organizations are responsible for the preparation and submission of actuarial valuations required under this part for prescription drug plans and MA–PD plans they offer.

(B) Use of outside actuaries

Under the processes and methods established under paragraph (1), PDP sponsors offering prescription drug plans and MA organizations offering MA–PD plans may use actuarial opinions certified by independent, qualified actuaries to establish actuarial values.

(d) Review of information and negotiation

(1) Review of information

The Secretary shall review the information filed under subsection (b) of this section for the purpose of conducting negotiations under paragraph (2).

(2) Negotiation regarding terms and conditions

Subject to subsection (i) of this section, in exercising the authority under paragraph (1), the Secretary—

A) has the authority to negotiate the terms and conditions of the proposed bid submitted and other terms and conditions of a proposed plan; and
B) has authority similar to the authority of the Director of the Office of Personnel Management with respect to health benefits plans under chapter 89 of title 5.

(3) Rejection of bids

Paragraph (5)(C) of section 1395w–24(a) of this title shall apply with respect to bids submitted by a PDP sponsor under subsection (b) in the same manner as such paragraph applies to bids submitted by an MA organization under such section 1395w–24(a) of this title.

(e) Approval of proposed plans

(1) In general

After review and negotiation under subsection (d) of this section, the Secretary shall approve or disapprove the prescription drug plan.

(2) Requirements for approval

The Secretary may approve a prescription drug plan only if the following requirements are met:

(A) Compliance with requirements

The plan and the PDP sponsor offering the plan comply with the requirements under this part, including the provision of qualified prescription drug coverage.

(B) Actuarial determinations

The Secretary determines that the plan and PDP sponsor meet the requirements under this part relating to actuarial determinations, including such requirements under section 1395w–102(c) of this title.

(C) Application of FEHBP standard

(i) In general

The Secretary determines that the portion of the bid submitted under subsection (b) of this section that is attributable to basic prescription drug coverage is supported under such subsection and reasonably and equitably reflects the revenue requirements (as used for purposes of section 300e–1(8)(C) of this title) for benefits provided under that plan, less the sum (determined on a monthly per capita basis) of the actuarial value of the reinsurance payments under section 1395w–115(b) of this title.

(ii) Supplemental coverage

The Secretary determines that the portion of the bid submitted under subsection (b) of this section that is attributable to supplemental prescription drug coverage pursuant to section 1395w–102(a)(2) of this title is supported by the actuarial bases provided under such subsection and reasonably and equitably reflects the revenue requirements (as used for purposes of section 300e–1(8)(C) of this title) for such coverage under the plan.

(D) Plan design

(i) In general

The Secretary does not find that the design of the plan and its benefits (including any formulary and tiered formulary structure) are likely to substantially discourage enrollment by certain part D eligible individuals under the plan.
(ii) Use of categories and classes in formularies

The Secretary may not find that the design of categories and classes within a formulary violates clause (i) if such categories and classes are consistent with guidelines (if any) for such categories and classes established by the United States Pharmacopeia.

(f) Application of limited risk plans

(1) Conditions for approval of limited risk plans

The Secretary may only approve a limited risk plan (as defined in paragraph (4)(A)) for a PDP region if the access requirements under section 1395w–103(a) of this title would not be met for the region but for the approval of such a plan (or a fallback prescription drug plan under subsection (g) of this section).

(2) Rules

The following rules shall apply with respect to the approval of a limited risk plan in a PDP region:

(A) Limited exercise of authority

Only the minimum number of such plans may be approved in order to meet the access requirements under section 1395w–103(a) of this title.

(B) Maximizing assumption of risk

The Secretary shall provide priority in approval for those plans bearing the highest level of risk (as computed by the Secretary), but the Secretary may take into account the level of the bids submitted by such plans.

(C) No full underwriting for limited risk plans

In no case may the Secretary approve a limited risk plan under which the modification of risk level provides for no (or a de minimis) level of financial risk.

(3) Acceptance of all full risk contracts

There shall be no limit on the number of full risk plans that are approved under subsection (e) of this section.

(4) Risk-plans defined

For purposes of this subsection:

(A) Limited risk plan

The term “limited risk plan” means a prescription drug plan that provides basic prescription drug coverage and for which the PDP sponsor includes a modification of risk level described in subparagraph (E) of subsection (b)(2) of this section in its bid submitted for the plan under such subsection. Such term does not include a fallback prescription drug plan.

(B) Full risk plan

The term “full risk plan” means a prescription drug plan that is not a limited risk plan or a fallback prescription drug plan.

(g) Guaranteeing access to coverage

(1) Solicitation of bids

(A) In general

Separate from the bidding process under subsection (b) of this section, the Secretary shall provide for a process for the solicitation of bids from eligible fallback entities (as defined in paragraph (2)) for the offering in all fallback service areas (as defined in paragraph (3)) in one or more PDP regions of a fallback prescription drug plan (as defined in paragraph (4)) during the contract period specified in paragraph (5).

(B) Acceptance of bids

(i) In general

Except as provided in this subparagraph, the provisions of subsection (e) of this section shall apply with respect to the approval or disapproval of fallback prescription drug plans. The Secretary shall enter into contracts under this subsection with eligible fallback entities for the offering of fallback prescription drug plans so approved in fallback service areas.

(ii) Limitation of 1 plan for all fallback service areas in a PDP region

With respect to all fallback service areas in any PDP region for a contract period, the Secretary shall approve the offering of only 1 fallback prescription drug plan.

(iii) Competitive procedures

Competitive procedures (as defined in section 132 of title 41) shall be used to enter into a contract under this subsection. The provisions of subsection (d) of section 1395kk–1 of this title shall apply to a contract under this section in the same manner as they apply to a contract under such section.

(iv) Timing

The Secretary shall approve a fallback prescription drug plan for a PDP region in a manner so that, if there are any fallback service areas in the region for a year, the fallback prescription drug plan is offered at the same time as prescription drug plans would otherwise be offered.

(V) No national fallback plan

The Secretary shall not enter into a contract with a single fallback entity for the offering of fallback plans throughout the United States.

(2) Eligible fallback entity

For purposes of this section, the term “eligible fallback entity” means, with respect to all fallback service areas in a PDP region for a contract period, an entity that—

(A) meets the requirements to be a PDP sponsor (or would meet such requirements but for the fact that the entity is not a risk-bearing entity); and

(B) does not submit a bid under subsection (b) of this section for any prescription drug plan for any PDP region for the first year of such contract period.

For purposes of subparagraph (B), an entity shall be treated as submitting a bid with respect to a prescription drug plan if the entity is acting as a subcontractor of a PDP sponsor.
that is offering such a plan. The previous sentence shall not apply to entities that are subcontractors of an MA organization except insofar as such organization is acting as a PDP sponsor with respect to a prescription drug plan.

(3) Fallback service area

For purposes of this subsection, the term “fallback service area” means, for a PDP region with respect to a year, any area within such region for which the Secretary determines before the beginning of the year that the access requirements of the first sentence of section 1395w–103(a) of this title will not be met for part D eligible individuals residing in the area for the year.

(4) Fallback prescription drug plan

For purposes of this part, the term “fallback prescription drug plan” means a prescription drug plan that—

(A) only offers the standard prescription drug coverage and access to negotiated prices described in section 1395w–102(a)(1)(A) of this title and does not include any supplemental prescription drug coverage; and

(B) meets such other requirements as the Secretary may specify.

(5) Payments under the contract

(A) In general

A contract entered into under this subsection shall provide for—

(i) payment for the actual costs (taking into account negotiated price concessions described in section 1395w–102(d)(1)(B) of this title) of covered part D drugs provided to part D eligible individuals enrolled in a fallback prescription drug plan offered by the entity; and

(ii) payment of management fees that are tied to performance measures established by the Secretary for the management, administration, and delivery of the benefits under the contract.

(B) Performance measures

The performance measures established by the Secretary pursuant to subparagraph (A)(ii) shall include at least measures for each of the following:

(i) Costs

The entity contains costs to the Medicare Prescription Drug Account and to part D eligible individuals enrolled in a fallback prescription drug plan offered by the entity through mechanisms such as generic substitution and price discounts.

(ii) Quality programs

The entity provides such enrollees with quality programs that avoid adverse drug reactions and overutilization and reduce medical errors.

(iii) Customer service

The entity provides timely and accurate delivery of services and pharmacy and beneficiary support services.

(iv) Benefit administration and claims adjudication

The entity provides efficient and effective benefit administration and claims adjudication.

(6) Monthly beneficiary premium

Except as provided in section 1395w–113(b) of this title (relating to late enrollment penalty) and subject to section 1395w–114 of this title (relating to low-income assistance), the monthly beneficiary premium to be charged under a fallback prescription drug plan offered in all fallback service areas in a PDP region shall be uniform and shall be equal to 25.5 percent of an amount equal to the Secretary’s estimate of the average monthly per capita actuarial cost, including administrative expenses, under the fallback prescription drug plan of providing coverage in the region, as calculated by the Chief Actuary of the Centers for Medicare & Medicaid Services. In calculating such administrative expenses, the Chief Actuary shall use a factor that is based on similar expenses of prescription drug plans that are not fallback prescription drug plans.

(7) General contract terms and conditions

(A) In general

Except as may be appropriate to carry out this section, the terms and conditions of contracts with eligible fallback entities offering fallback prescription drug plans under this subsection shall be the same as the terms and conditions of contracts under this part for prescription drug plans.

(B) Period of contract

(i) In general

Subject to clause (ii), a contract approved for a fallback prescription drug plan for fallback service areas for a PDP region under this section shall be for a period of 3 years (except as may be renewed after a subsequent bidding process).

(ii) Limitation

A fallback prescription drug plan may be offered under a contract in an area for a year only if that area is a fallback service area for that year.

(C) Entity not permitted to market or brand fallback prescription drug plans

An eligible fallback entity with a contract under this subsection may not engage in any marketing or branding of a fallback prescription drug plan.

(h) Annual report on use of limited risk plans and fallback plans

The Secretary shall submit to Congress an annual report that describes instances in which limited risk plans and fallback prescription drug plans were offered under subsections (f) and (g) of this section. The Secretary shall include in such report such recommendations as may be appropriate to limit the need for the provision of such plans and to maximize the assumption of financial risk under section subsection (f) of this section.
(i) Noninterference

In order to promote competition under this part and in carrying out this part, the Secretary—

(1) may not interfere with the negotiations between drug manufacturers and pharmacies and PDP sponsors; and

(2) may not require a particular formulary or institute a price structure for the reimbursement of covered part D drugs.

(j) Coordination of benefits

A PDP sponsor offering a prescription drug plan shall permit State Pharmaceutical Assistance Programs and Rx plans under sections 1395w–133 and 1395w–134 of this title to coordinate benefits with the plan and, in connection with such coordination with such a Program, not to impose fees that are unrelated to the cost of coordination.


REFERENCES IN TEXT

Amendments


Effective Date of 2010 Amendment

Amendment by Pub. L. 111–148 applicable to bids submitted for contract years beginning on or after Jan. 1, 2011, see section 3209(c) of Pub. L. 111–148, set out as a note under section 1398w–24 of this title.

Study Regarding Regional Variations in Prescription Drug Spending


“(a) in general.—The Secretary of Health and Human Services shall conduct a study that examines variations in per capita spending for covered part D drugs under part D of title XVIII of the Social Security Act [this part] among PDP regions and, with respect to such spending, the amount of such variation that is attributable to—

"(1) price variations (described in section 1860D–15(c)(2) of such Act [section 1395w–115(c)(2) of this title]); and

"(2) differences in per capita utilization that is not taken into account in the health status risk adjustment provided under section 1860D–15(c)(1) of such Act [section 1395w–115(c)(1) of this title]."

“(b) Report and recommendations.—Not later than January 1, 2009, the Secretary shall submit to Congress a report on the study conducted under paragraph (1). Such report shall include—

"(A) information regarding the extent of geographic variation described in paragraph (1)(B);

"(B) an analysis of the impact on direct subsidies under section 1860D–15(a)(1) of the Social Security Act [section 1395w–115(a)(1) of this title] in different PDP regions if such subsidies were adjusted to take into account the variation described in subparagraph (A); and

"(C) recommendations regarding the appropriate steps of applying an additional geographic adjustment factor under section 1860D–15(c)(2) [section 1395w–115(c)(2) of this title] that reflects some or all of the variation described in subparagraph (A)."

§ 1395w–112. Requirements for and contracts with prescription drug plan (PDP) sponsors

(a) General requirements

Each PDP sponsor of a prescription drug plan shall meet the following requirements:

(1) Licensure

Subject to subsection (c) of this section, the sponsor is organized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in each State in which it offers a prescription drug plan.

(2) Assumption of financial risk for unsubsidized coverage

(A) In general

Subject to subparagraph (B), to the extent that the entity is at risk the entity assumes financial risk on a prospective basis for benefits that it offers under a prescription drug plan and that is not covered under section 1395w–115(b) of this title.

(B) Reinsurance permitted

The plan sponsor may obtain insurance or make other arrangements for the cost of coverage provided to any enrollee to the extent that the sponsor is at risk for providing such coverage.

(3) Solvency for unlicensed sponsors

In the case of a PDP sponsor that is not described in paragraph (1) and for which a waiver has been approved under subsection (c) of this section, such sponsor shall meet solvency standards established by the Secretary under subsection (d) of this section.

(b) Contract requirements

(1) In general

The Secretary shall not permit the enrollment under section 1395w–101 of this title in a prescription drug plan offered by a PDP sponsor under this part, and the sponsor shall not be eligible for payments under section 1395w–114 or 1395w–115 of this title, unless the Secretary has entered into a contract under this subsection with the sponsor with respect to the offering of such plan. Such a contract with a sponsor may cover more than one prescription drug plan. Such contract shall provide that the sponsor agreed to comply with the applicable requirements and standards of this part and the terms and conditions of payment as provided for in this part.

(2) Limitation on entities offering fallback prescription drug plans

The Secretary shall not enter into a contract with a PDP sponsor for the offering of a
provision drug plan (other than a fallback prescription drug plan) in a PDP region for a year if the sponsor—
(A) submitted a bid under section 1395w–111(g) of this title for such year (as the first year of a contract period under such section) to offer a fallback prescription drug plan in any PDP region;
(B) offers a fallback prescription drug plan in any PDP region during the year; or
(C) offered a fallback prescription drug plan in that PDP region during the previous year.

For purposes of this paragraph, an entity shall be treated as submitting a bid with respect to a prescription drug plan or offering a fallback prescription drug plan if the entity is acting as a subcontractor of a PDP sponsor that is offering such a plan. The previous sentence shall not apply to entities that are subcontractors of an MA organization except insofar as such organization is acting as a PDP sponsor with respect to a prescription drug plan.

(3) Incorporation of certain medicare advantage contract requirements

Except as otherwise provided, the following provisions of section 1395w–27 of this title shall apply to contracts under this section in the same manner as they apply to contracts under section 1395w–27(a) of this title:

(A) Minimum enrollment

Paragraphs (1) and (3) of section 1395w–27(b) of this title, except that—
(i) the Secretary may increase the minimum number of enrollees required under such paragraph (1) as the Secretary determines appropriate; and
(ii) the requirement of such paragraph (1) shall be waived during the first contract year with respect to an organization in a region.

(B) Contract period and effectiveness

Section 1395w–27(c) of this title, except that in applying paragraph (4)(B) of such section any reference to payment amounts under section 1395w–23 of this title shall be deemed payment amounts under section 1395w–115 of this title.

(C) Protections against fraud and beneficiary protections

Section 1395w–27(d) of this title.

(D) Additional contract terms

Section 1395w–27(e) of this title; except that section 1395w–27(e)(2) of this title shall apply as specified to PDP sponsors and payments under this part to an MA–PD plan shall be treated as expenditures made under part D. Notwithstanding any other provision of law, information provided to the Secretary under the application of section 1395w–27(e)(1) of this title to contracts under this section under the preceding sentence—
(i) may be used for the purposes of carrying out this part, improving public health through research on the utilization, safety, effectiveness, quality, and efficiency of health care services (as the Secretary determines appropriate); and
(ii) shall be made available to Congressional support agencies (in accordance with their obligations to support Congress as set out in their authorizing statutes) for the purposes of conducting Congressional oversight, monitoring, making recommendations, and analysis of the program under this subchapter.

(E) Intermediate sanctions

Section 1395w–27(g) of this title (other than paragraph (1)(F) of such section), except that in applying such section the reference in section 1395w–27(g)(1)(B) of this title to section 1395w–24 of this title is deemed a reference to this part.

(F) Procedures for termination

Section 1395w–27(h) of this title.

(4) Prompt payment of clean claims

(A) Prompt payment

(i) In general

Each contract entered into with a PDP sponsor under this part with respect to a prescription drug plan offered by such sponsor shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to all clean claims submitted by pharmacies (other than pharmacies that dispense drugs by mail order only or are located in, or contract with, a long-term care facility) under this part within the applicable number of calendar days after the date on which the claim is received.

(ii) Clean claim defined

In this paragraph, the term “clean claim” means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this part.

(iii) Date of receipt of claim

In this paragraph, a claim is considered to have been received—
(I) with respect to claims submitted electronically, on the date on which the claim is transferred; and
(II) with respect to claims submitted otherwise, on the 5th day after the postmark date of the claim or the date specified in the time stamp of the transmission.

(B) Applicable number of calendar days defined

In this paragraph, the term “applicable number of calendar days” means—
(i) with respect to claims submitted electronically, 14 days; and
(ii) with respect to claims submitted otherwise, 30 days.

(C) Interest payment

(i) In general

Subject to clause (ii), if payment is not issued, mailed, or otherwise transmitted

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1 So in original. Probably should not be capitalized.
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within the applicable number of calendar days (as defined in subparagraph (B)) after a clean claim is received, the PDP sponsor shall pay interest to the pharmacy that submitted the claim at a rate equal to the weighted average of interest on 3-month marketable Treasury securities determined for such period, increased by 0.1 percentage point for the period beginning on the day after the required payment date and ending on the date on which payment is made (as determined under subparagraph (D)(iv)). Interest amounts paid under this subparagraph shall not be counted against the administrative costs of a prescription drug plan or treated as allowable risk corridor costs under section 1995w–118(e) of this title.

(ii) Authority not to charge interest

The Secretary may provide that a PDP sponsor is not charged interest under clause (i) in the case where there are exigent circumstances, including natural disasters and other unique and unexpected events, that prevent the timely processing of claims.

(D) Procedures involving claims

(i) Claim deemed to be clean

A claim is deemed to be a clean claim if the PDP sponsor involved does not provide notice to the claimant of any deficiency in the claim—

(I) with respect to claims submitted electronically, within 10 days after the date on which the claim is received; and

(II) with respect to claims submitted otherwise, within 15 days after the date on which the claim is received.

(ii) Claim determined to not be a clean claim

(I) In general

If a PDP sponsor determines that a submitted claim is not a clean claim, the PDP sponsor shall, not later than the end of the period described in clause (i), notify the claimant of such determination. Such notification shall specify all defects or improprieties in the claim and shall list all additional information or documents necessary for the proper processing and payment of the claim.

(II) Determination after submission of additional information

A claim is deemed to be a clean claim under this paragraph if the PDP sponsor involved does not provide notice to the claimant of any defect or impropriety in the claim within 10 days of the date on which additional information is received under subclause (I).

(iii) Obligation to pay

A claim submitted to a PDP sponsor that is not paid or contested by the sponsor within the applicable number of days (as defined in subparagraph (B)) after the date on which the claim is received shall be deemed to be a clean claim and shall be paid by the PDP sponsor in accordance with subparagraph (A).

(iv) Date of payment of claim

Payment of a clean claim under such subparagraph is considered to have been made on the date on which—

(I) with respect to claims paid electronically, the payment is transferred; and

(II) with respect to claims paid otherwise, the payment is submitted to the United States Postal Service or common carrier for delivery.

(E) Electronic transfer of funds

A PDP sponsor shall pay all clean claims submitted electronically by electronic transfer of funds if the pharmacy so requests or has so requested previously. In the case where such payment is made electronically, remittance may be made by the PDP sponsor electronically as well.

(F) Protecting the rights of claimants

(i) In general

Nothing in this paragraph shall be construed to prohibit or limit a claim or action not covered by the subject matter of this section that any individual or organization has against a provider or a PDP sponsor.

(ii) Anti-retaliation

Consistent with applicable Federal or State law, a PDP sponsor shall not retaliate against an individual or provider for exercising a right of action under this subparagraph.

(G) Rule of construction

A determination under this paragraph that a claim submitted by a pharmacy is a clean claim shall not be construed as a positive determination regarding eligibility for payment under this subchapter, nor is it an indication of government approval of, or acquiescence regarding, the claim submitted. The determination shall not relieve any party of civil or criminal liability with respect to the claim, nor does it offer a defense to any administrative, civil, or criminal action with respect to the claim.

(5) Submission of claims by pharmacies located in or contracting with long-term care facilities

Each contract entered into with a PDP sponsor under this part with respect to a prescription drug plan offered by such sponsor shall provide that a pharmacy located in, or having a contract with, a long-term care facility shall have not less than 30 days (but not more than 90 days) to submit claims to the sponsor for reimbursement under the plan.

(6) Regular update of prescription drug pricing standard

If the PDP sponsor of a prescription drug plan uses a standard for reimbursement of pharmacies based on the cost of a drug, each contract entered into with such sponsor under this part with respect to the plan shall provide
that the sponsor shall update such standard not less frequently than once every 7 days, beginning with an initial update on January 1 of each year, to accurately reflect the market price of acquiring the drug.

(c) Waiver of certain requirements to expand choice

(1) Authorizing waiver

(A) In general

In the case of an entity that seeks to offer a prescription drug plan in a State, the Secretary shall waive the requirement of subsection (a)(1) of this section that the entity be licensed in that State if the Secretary determines, based on the application and other evidence presented to the Secretary, that any of the grounds for approval of the application described in paragraph (2) have been met.

(B) Application of regional plan waiver rule

In addition to the waiver available under subparagraph (A), the provisions of section 1395w–27a(d) of this title shall apply to PDP sponsors under this part in a manner similar to the manner in which such provisions apply to MA organizations under part C of this subchapter, except that no application shall be required under paragraph (1)(B) of such section in the case of a State that does not provide a licensing process for such a sponsor.

(2) Grounds for approval

(A) In general

The grounds for approval under this paragraph are—

(i) subject to subparagraph (B), the grounds for approval described in subparagraphs (B), (C), and (D) of section 1395w–25(a)(2) of this title; and

(ii) the application by a State of any grounds other than those required under Federal law.

(B) Special rules

In applying subparagraph (A)(i)—

(i) the ground of approval described in section 1395w–25(a)(2)(B) of this title is deemed to have been met if the State does not have a licensing process in effect with respect to the PDP sponsor; and

(ii) for plan years beginning before January 1, 2008, if the State does have such a licensing process in effect, such ground for approval described in such section is deemed to have been met upon submission of an application described in such section.

(3) Application of waiver procedures

With respect to an application for a waiver (or a waiver granted) under paragraph (1)(A) of this subsection, the provisions of subparagraphs (E), (F), and (G) of section 1395w–25(a)(2) of this title shall apply, except that clauses (i) and (ii) of such subparagraph (E) shall not apply in the case of a State that does not have a licensing process described in paragraph (2)(B)(i) in effect.

(4) References to certain provisions

In applying provisions of section 1395w–25(a)(2) of this title under paragraphs (2) and (3) of this subsection to prescription drug plans and PDP sponsors—

(A) any reference to a waiver application under section 1395w–25 of this title shall be treated as a reference to a waiver application under paragraph (1)(A) of this subsection; and

(B) any reference to solvency standards shall be treated as a reference to solvency standards established under subsection (d) of this section.

(d) Solvency standards for non-licensed entities

(1) Establishment and publication

The Secretary, in consultation with the National Association of Insurance Commissioners, shall establish and publish, by not later than January 1, 2005, financial solvency and capital adequacy standards for entities described in paragraph (2).

(2) Compliance with standards

A PDP sponsor that is not licensed by a State under subsection (a)(1) of this section and for which a waiver application has been approved under subsection (c) of this section shall meet solvency and capital adequacy standards established under paragraph (1). The Secretary shall establish certification procedures for such sponsors with respect to such solvency standards in the manner described in section 1395w–25(c)(2) of this title.

(e) Licensure does not substitute for or constitute certification

The fact that a PDP sponsor is licensed in accordance with subsection (a)(1) of this section or has a waiver application approved under subsection (c) of this section does not deem the sponsor to meet other requirements imposed under this part for a sponsor.

(f) Periodic review and revision of standards

(1) In general

Subject to paragraph (2), the Secretary may periodically review the standards established under this section and, based on such review, may revise such standards if the Secretary determines such revision to be appropriate.

(2) Prohibition of midyear implementation of significant new regulatory requirements

The Secretary may not implement, other than at the beginning of a calendar year, regulations under this section that impose new, significant regulatory requirements on a PDP sponsor or a prescription drug plan.

(g) Prohibition of State imposition of premium taxes; relation to State laws

The provisions of sections 1395w–24(g) and 1395w–26(b)(3) of this title shall apply with respect to PDP sponsors and prescription drug plans under this part in the same manner as such sections apply to MA organizations and MA plans under part C of this subchapter.


Amendments

2008—Subsec. (b)(3)(D). Pub. L. 110–275, 1181, inserted at end “Notwithstanding any other provision of law, in-
§ 1395w–113 Premiums; late enrollment penalty

(a) Monthly beneficiary premium

(1) Computation

(A) In general

The monthly beneficiary premium for a prescription drug plan is the base beneficiary premium computed under paragraph (2) as adjusted under this paragraph.

(B) Adjustment to reflect difference between bid and national average bid

(i) Above average bid

If for a month the amount of the standardized bid amount (as defined in paragraph (5)) exceeds the amount of the adjusted national average monthly bid amount (as defined in clause (iii)), the base beneficiary premium for the month shall be increased by the amount of such excess.

(ii) Below average bid

If for a month the amount of the adjusted national average monthly bid amount for the month exceeds the standardized bid amount, the base beneficiary premium for the month shall be decreased by the amount of such excess.

(iii) Adjusted national average monthly bid amount defined

For purposes of this subparagraph, the term “adjusted national average monthly bid amount” means the national average monthly bid amount computed under paragraph (4), as adjusted under section 1395w–115(c)(2) of this title.

(C) Increase for supplemental prescription drug benefits

The base beneficiary premium shall be increased by the portion of the PDP approved bid that is attributable to supplemental prescription drug benefits.

(D) Increase for late enrollment penalty

The base beneficiary premium shall be increased by the amount of any late enrollment penalty under subsection (b) of this section.

(E) Decrease for low-income assistance

The monthly beneficiary premium is subject to decrease in the case of a subsidy eligible individual under section 1395w–114 of this title.

(F) Increase based on income

The monthly beneficiary premium shall be increased pursuant to paragraph (7).

(G) Uniform premium

Except as provided in subparagraphs (D), (E), and (F), the monthly beneficiary premium for a prescription drug plan in a PDP region is the same for all part D eligible individuals enrolled in the plan.

(2) Base beneficiary premium

The base beneficiary premium under this paragraph for a prescription drug plan for a month is equal to the product:

(1) the beneficiary premium percentage (as specified in paragraph (3)); and

(2) the national average monthly bid amount (computed under paragraph (4)) for the month.

(3) Beneficiary premium percentage

For purposes of this subsection, the beneficiary premium percentage for any year is the percentage equal to a fraction:

(A) the numerator of which is 25.5 percent; and

(B) the denominator of which is 100 percent minus a percentage equal to:

(i) the total reinsurance payments which the Secretary estimates are payable under section 1395w–115(b) of this title with respect to the coverage year; divided by

(ii) the sum of:

(I) the amount estimated under clause (i) for the year; and

(II) the total payments which the Secretary estimates will be paid to prescription drug plans and MA–PD plans that are attributable to the standardized bid amount during the year, taking into account amounts paid by the Secretary and enrollees.

(4) Computation of national average monthly bid amount

(A) In general

For each year (beginning with 2006) the Secretary shall compute a national average monthly bid amount equal to the average of the standardized bid amounts (as defined in paragraph (5)) for each prescription drug plan and for each MA–PD plan described in section 1395w–21(a)(2)(A)(i) of this title. Such average does not take into account the bids submitted for MSA plans, MA private fee-for-service plans, and specialized MA plans for special needs individuals, PACE programs under section 1395see of this title (pursuant to section 1395w–131(f) of this title), and under reasonable cost reimbursement contracts under section 1395mm(h) of this title (pursuant to section 1395w–131(e) of this title).

(B) Weighted average

(i) In general

The monthly national average monthly bid amount computed under subparagraph

1 So in original. The word “of” probably should appear after “product.”
(A) for a year shall be a weighted average, with the weight for each plan being equal to the average number of part D eligible individuals enrolled in such plan in the reference month (as defined in section 1395w–27a(f)(4) of this title).

(ii) Special rule for 2006 For purposes of applying this paragraph for 2006, the Secretary shall establish procedures for determining the weighted average under clause (i) for 2005.

(5) Standardized bid amount defined

For purposes of this subsection, the term "standardized bid amount" means the following:

(A) Prescription drug plans

(i) Basic coverage

In the case of a prescription drug plan that provides basic prescription drug coverage, the PDP approved bid (as defined in paragraph (6)).

(ii) Supplemental coverage

In the case of a prescription drug plan that provides supplemental prescription drug coverage, the portion of the PDP approved bid that is attributable to basic prescription drug coverage.

(B) MA–PD plans

In the case of an MA–PD plan, the portion of the accepted bid amount that is attributable to basic prescription drug coverage.

(6) PDP approved bid defined

For purposes of this part, the term "PDP approved bid" means, with respect to a prescription drug plan, the bid amount approved for the plan under this part.

(7) Increase in base beneficiary premium based on income

(A) In general

In the case of an individual whose modified adjusted gross income exceeds the threshold amount applicable under paragraph (2) of section 1395r(i)(4) of this title (including application of paragraph (5) of such section) for the calendar year, the monthly amount of the base beneficiary premium under this paragraph (as computed under paragraph (3)(C) of section 1395r(i) of this title (including application of paragraph (5) of such section)) for the calendar year, the monthly amount of the base beneficiary premium applicable under this paragraph for a month after December 2010 shall be increased by the monthly adjustment amount specified in subparagraph (B).

(B) Monthly adjustment amount

The monthly adjustment amount specified in this subparagraph for an individual for a month in a year is equal to the product of—

(I) the quotient obtained by dividing—

(i) the applicable percentage determined under paragraph (3)(C) of section 1395r(i) of this title (including application of paragraph (5) of such section) for the individual for the calendar year reduced by 25.5 percent; and

(ii) the base beneficiary premium (as computed under paragraph (2)).

(C) Modified adjusted gross income

For purposes of this paragraph, the term "modified adjusted gross income" has the meaning given such term in subparagraph (A) of section 1395r(i)(4) of this title, determined for the taxable year applicable under subparagraphs (B) and (C) of such section.

(D) Determination by Commissioner of Social Security

The Commissioner of Social Security shall make any determination necessary to carry out the income-related increase in the base beneficiary premium under this paragraph.

(E) Procedures to assure correct income-related increase in base beneficiary premium

(i) Disclosure of base beneficiary premium

Not later than September 15 of each year beginning with 2010, the Secretary shall disclose to the Commissioner of Social Security the amount of the base beneficiary premium (as computed under paragraph (2)) for the purpose of carrying out the income-related increase in the base beneficiary premium under this paragraph with respect to the following year.

(ii) Additional disclosure

Not later than October 15 of each year beginning with 2010, the Secretary shall disclose to the Commissioner of Social Security the following information for the purpose of carrying out the income-related increase in the base beneficiary premium under this paragraph with respect to the following year:

(I) The modified adjusted gross income threshold applicable under paragraph (2) of section 1395r(i) of this title (including application of paragraph (5) of such section).

(II) The applicable percentage determined under paragraph (3)(C) of section 1395r(i) of this title (including application of paragraph (5) of such section).

(III) The monthly adjustment amount specified in subparagraph (B).

(IV) Any other information the Commissioner of Social Security determines necessary to carry out the income-related increase in the base beneficiary premium under this paragraph.

(F) Rule of construction

The formula used to determine the monthly adjustment amount specified under subparagraph (B) shall only be used for the purpose of determining such monthly adjustment amount under such subparagraph.

(b) Late enrollment penalty

(1) In general

Subject to the succeeding provisions of this subsection, in the case of a part D eligible individual described in paragraph (2) with respect to a continuous period of eligibility, there shall be an increase in the monthly beneficiary premium established under subsection (a) of this section in an amount determined under paragraph (3).

(2) Individuals subject to penalty

A part D eligible individual described in this paragraph is, with respect to a continuous pe-
period of eligibility, an individual for whom there is a continuous period of 63 days or longer (all of which in such continuous period of eligibility) beginning on the day after the last date of the individual’s initial enrollment period under section 1395w–101(b)(2) of this title and ending on the date of enrollment under a prescription drug plan or MA–PD plan during all of which the individual was not covered under any creditable prescription drug coverage.

(3) Amount of penalty

(A) In general

The amount determined under this paragraph for a part D eligible individual for a continuous period of eligibility is the greater of—

(i) an amount that the Secretary determines is actuarially sound for each uncovered month (as defined in subparagraph (B)) in the same continuous period of eligibility; or

(ii) 1 percent of the base beneficiary premium (computed under subsection (a)(2) of this section) for each such uncovered month in such period.

(B) Uncovered month defined

For purposes of this subsection, the term “uncovered month” means, with respect to a part D eligible individual, any month beginning after the end of the initial enrollment period under section 1395w–101(b)(2) of this title unless the individual can demonstrate that the individual had creditable prescription drug coverage (as defined in paragraph (4)) for any portion of such month.

(4) Creditable prescription drug coverage defined

For purposes of this part, the term “creditable prescription drug coverage” means any of the following coverage, but only if the coverage meets the requirement of paragraph (5):

(A) Coverage under prescription drug plan or MA–PD plan

Coverage under a prescription drug plan or under an MA–PD plan.

(B) Medicaid

Coverage under a medicaid plan under subchapter XIX of this chapter or under a waiver under section 1315 of this title.

(C) Group health plan

Coverage under a group health plan, including a health benefits plan under chapter 89 of title 5 (commonly known as the Federal employees health benefits program), and a qualified retiree prescription drug plan (as defined in section 1395w–132(a)(2) of this title).

(D) State pharmaceutical assistance program

Coverage under a State pharmaceutical assistance program described in section 1395w–133(b)(1) of this title.

(E) Veterans’ coverage of prescription drugs

Coverage for veterans, and survivors and dependents of veterans, under chapter 17 of title 38.

(F) Prescription drug coverage under medicare supplemental policies

Coverage under a medicare supplemental policy under section 1395ss of this title that provides benefits for prescription drugs (whether or not such coverage conforms to the standards for packages of benefits under section 1395ss(p)(1) of this title).

(G) Military coverage (including TRICARE)

Coverage under chapter 55 of title 10.

(H) Other coverage

Such other coverage as the Secretary determines appropriate.

(5) Actuarial equivalence requirement

Coverage meets the requirement of this paragraph only if the coverage is determined (in a manner specified by the Secretary) to provide coverage of the cost of prescription drugs the actuarial value of which (as defined by the Secretary) to the individual equals or exceeds the actuarial value of standard prescription drug coverage (as determined under section 1395w–111(c) of this title).

(6) Procedures to document creditable prescription drug coverage

(A) In general

The Secretary shall establish procedures (including the form, manner, and time) for the documentation of creditable prescription drug coverage, including procedures to assist in determining whether coverage meets the requirement of paragraph (5).

(B) Disclosure by entities offering creditable prescription drug coverage

(i) In general

Each entity that offers prescription drug coverage of the type described in subparagraphs (B) through (H) of paragraph (4) shall provide for disclosure, in a form, manner, and time consistent with standards established by the Secretary, to the Secretary and part D eligible individuals of whether the coverage meets the requirement of paragraph (5) or whether such coverage is changed so it no longer meets such requirement.

(ii) Disclosure of non-creditable coverage

In the case of such coverage that does not meet such requirement, the disclosure to part D eligible individuals under this subparagraph shall include information regarding the fact that because such coverage does not meet such requirement there are limitations on the periods in a year in which the individuals may enroll under a prescription drug plan or an MA–PD plan and that any such enrollment is subject to a late enrollment penalty under this subsection.

(C) Waiver of requirement

In the case of a part D eligible individual who was enrolled in prescription drug coverage of the type described in subparagraphs (B) through (H) of paragraph (4) which is not creditable prescription drug coverage be-
cause it does not meet the requirement of paragraph (5), the individual may apply to the Secretary to have such coverage treated as creditable prescription drug coverage if the individual establishes that the individual was not adequately informed that such coverage did not meet such requirement.

(7) Continuous period of eligibility

(A) In general

Subject to subparagraph (B), for purposes of this subsection, the term “continuous period of eligibility” means, with respect to a part D eligible individual, the period that begins with the first day on which the individual is eligible to enroll in a prescription drug plan under this part and ends with the individual’s death.

(B) Separate period

Any period during all of which a part D eligible individual is entitled to hospital insurance benefits under part A of this subchapter and—

(i) which terminated in or before the month preceding the month in which the individual attained age 65; or

(ii) for which the basis for eligibility for such entitlement changed between section 426(b) of this title and section 426(a) of this title, between section 426(b)2 of this title and section 426-1 of this title, or between section 426-1 of this title and section 426(a) of this title,

shall be a separate continuous period of eligibility with respect to the individual (and each such period which terminates shall be deemed not to have existed for purposes of subsequently applying this paragraph).

(8) Waiver of penalty for subsidy-eligible individuals

In no case shall a part D eligible individual who is determined to be a subsidy eligible individual (as defined in section 1395w–114(a)(3) of this title) be subject to an increase in the income-related increase in the base beneficiary premium established under subsection (a).

(c) Collection of monthly beneficiary premiums

(1) In general

Subject to paragraphs (2), (3), and (4), the provisions of section 1385w–24(d) of this title shall apply to PDP sponsors and premiums (and any late enrollment penalty) under this part in the same manner as they apply to MA organizations and beneficiary premiums under part C of this subchapter, except that any reference to a Trust Fund is deemed for this purpose a reference to the Medicare Prescription Drug Account.

(2) Crediting of late enrollment penalty

(A) Portion attributable to increased actuarial costs

With respect to late enrollment penalties imposed under subsection (b) of this section, the Secretary shall specify the portion of such a penalty that the Secretary estimates is attributable to increased actuarial costs assumed by the PDP sponsor or MA organization (and not taken into account through risk adjustment provided under section 1385w–115(c)(1) of this title or through reinsurance payments under section 1385w–115(b) of this title) as a result of such late enrollment.

(B) Collection through withholding

In the case of a late enrollment penalty that is collected from a part D eligible individual in the manner described in section 1385w–24(d)(2)(A) of this title, the Secretary shall provide that only the portion of such penalty estimated under subparagraph (A) shall be paid to the PDP sponsor or MA organization offering the part D plan in which the individual is enrolled.

(C) Collection by plan

In the case of a late enrollment penalty that is collected from a part D eligible individual in a manner other than the manner described in section 1385w–24(d)(2)(A) of this title, the Secretary shall establish procedures for reducing payments otherwise made to the PDP sponsor or MA organization by an amount equal to the amount of such penalty less the portion of such penalty estimated under subparagraph (A).

(3) Fallback plans

In applying this subsection in the case of a fallback prescription drug plan, paragraph (2) shall not apply and the monthly beneficiary premium shall be collected in the manner specified in section 1385w–24(d)(2)(A) of this title (or such other manner as may be provided under section 1395s of this title in the case of monthly premiums under section 1395r of this title).

(4) Collection of monthly adjustment amount

(A) In general

Notwithstanding any provision of this subsection or section 1385w–24(d)(2) of this title, subject to subparagraph (B), the amount of the income-related increase in the base beneficiary premium for an individual for a month (as determined under subsection (a)(7)) shall be paid through withholding from benefit payments in the manner provided under section 1395s of this title.

(B) Agreements

In the case where the monthly benefit payments of an individual that are withheld under subparagraph (A) are insufficient to pay the amount described in such subparagraph, the Commissioner of Social Security shall enter into agreements with the Secretary, the Director of the Office of Personnel Management, and the Railroad Retirement Board as necessary in order to allow other agencies to collect the amount described in subparagraph (A) that was not withheld under such subparagraph.

§ 1395w–114  TITLE 42—THE PUBLIC HEALTH AND WELFARE


AMENDMENTS

2010—Subsec. (a)(1)(F),(G). Pub. L. 111–148, §3308(b)(1), added subpar. (F), redesignated former subpar. (F) as (G), and substituted “(D), (E), and (F)” for “(D) and (E)” in subpar. (G).
Subsec. (c)(1). Pub. L. 111–148, §3308(a)(2)(A), substituted “(2), (3), and (4)” for “(2) and (3)”.


EFFECTIVE DATE OF 2008 AMENDMENT


§ 1395w–114. Premium and cost-sharing subsidies for low-income individuals

(a) Income-related subsidies for individuals with income up to 150 percent of poverty line

(1) Individuals with income below 135 percent of poverty line

In the case of a subsidy eligible individual (as defined in paragraph (3)) who is determined to have income that is below 135 percent of the poverty line applicable to a family of the size involved and who meets the resources requirement described in paragraph (3)(D) or who is covered under this paragraph under paragraph (3)(B)(i), the individual is entitled under this section to the following:

(A) Full premium subsidy

An income-related premium subsidy equal to 100 percent of the amount described in subsection (b)(1), but not to exceed the premium amount specified in subsection (b)(2)(B).

(B) Elimination of deductible

A reduction in the annual deductible applicable under section 1395w–102(b)(1) of this title to $0.

(C) Continuation of coverage above the initial coverage limit

The continuation of coverage from the initial coverage limit (under paragraph (3) of section 1395w–102(b) of this title) for expenditures incurred through the total amount of expenditures at which benefits are available under section 1395w–102(b)(4) of this title if and only if the individual is a full-benefit dual eligible individual and whose income does not exceed 135 percent of such level.

(D) Reduction in cost-sharing below out-of-pocket threshold

(i) Institutionalized individuals

In the case of an individual who is a full-benefit dual eligible individual and who is an institutionalized individual or couple (as defined in section 1396a(q)(1)(B) of this title) or, effective on a date specified by the Secretary (but in no case earlier than January 1, 2012), who would be such an institutionalized individual or couple, if the full-benefit dual eligible individual were not receiving services under a home and community-based waiver authorized for a State under section 1315 of this title or subsection (c) or (d) of section 1396n of this title or under a State plan amendment under subsection (i) of such section or services provided through enrollment in a medicare managed care organization with a contract under section 1396b(m) of this title or under section 1396u–2 of this title, the elimination of any beneficiary coinsurance described in section 1395w–102(b)(2) of this title (for all amounts through the total amount of expenditures at which benefits are available under section 1395w–102(b)(4) of this title).

(ii) Lowest income dual eligible individuals

In the case of an individual not described in clause (i) who is a full-benefit dual eligible individual and whose income does not exceed 100 percent of the poverty line applicable to a family of the size involved, the substitution for the beneficiary coinsurance described in section 1395w–102(b)(2) of this title (for all amounts through the total amount of expenditures at which benefits are available under section 1395w–102(b)(4) of this title) of a copayment amount that does not exceed $1 for a generic drug or a preferred drug that is a multiple source drug (as defined in section 1396y–2(k)(7)(A)(i) of this title) and $3 for any other drug, or, if less, the copayment amount applicable to an individual under clause (iii).

(iii) Other individuals

In the case of an individual not described in clause (i) or (ii), the substitution for the beneficiary coinsurance described in section 1395w–102(b)(2) of this title (for all amounts through the total amount of expenditures at which benefits are available under section 1395w–102(b)(4) of this title) of a copayment amount that does not exceed the copayment amount specified under section 1395w–102(b)(4)(A)(i)(I) of this title for the drug and year involved.

(E) Elimination of cost-sharing above annual out-of-pocket threshold

The elimination of any cost-sharing imposed under section 1395w–102(b)(4)(A) of this title.

(2) Other individuals with income below 150 percent of poverty line

In the case of a subsidy eligible individual who is not described in paragraph (1), the individual is entitled under this section to the following:

(A) Sliding scale premium subsidy

An income-related premium subsidy equal to 100 percent of the amount described in subsection (b)(1), but not to exceed the premium amount specified in subsection (b)(2)(B).
(B) Reduction of deductible
A reduction in the annual deductible applicable under section 1395w–102(b)(1) of this title to $50.

(C) Continuation of coverage above the initial coverage limit
The continuation of coverage from the initial coverage limit (under paragraph (3) of section 1395w–102(b) of this title) for expenditures incurred through the total amount of expenditures at which benefits are available under paragraph (4) of such section, subject to the reduced coinsurance described in subparagraph (D).

(D) Reduction in cost-sharing below out-of-pocket threshold
The substitution for the beneficiary coinsurance described in section 1395w–102(b)(2) of this title (for all amounts above the deductible under subparagraph (B) through the total amount of expenditures at which benefits are available under paragraph (4) of such section, subject to the reduced coinsurance described in subparagraph (D).

(E) Reduction of cost-sharing above annual out-of-pocket threshold
Subject to subsection (c) of this section, the substitution for the cost-sharing imposed under section 1395w–102(b)(4)(A) of this title of a copayment or coinsurance not to exceed the copayment or coinsurance amount specified under section 1395w–102(b)(2) of this title.

(3) Determination of eligibility
(A) Subsidy eligible individual defined
For purposes of this part, subject to subparagraph (F), the term “subsidy eligible individual” means a part D eligible individual who—

(i) is enrolled in a prescription drug plan or MA–PD plan;

(ii) has income below 150 percent of the poverty line applicable to a family of the size involved; and

(iii) meets the resources requirement described in subparagraph (D) or (E).

(B) Determinations
(i) In general
The determination of whether a part D eligible individual residing in a State is a subsidy eligible individual and whether the individual is described in paragraph (1) shall be determined under the State plan under subchapter XIX of this chapter for the State under section 1396u–5(a) of this title or by the Commissioner of Social Security. There are authorized to be appropriated to the Social Security Administration such sums as may be necessary for the determination of eligibility under this subparagraph.

(ii) Effective period
Determinations under this subparagraph shall be effective beginning with the month in which the individual applies for a determination that the individual is a subsidy eligible individual and shall remain in effect for a period specified by the Secretary, but not to exceed 1 year.

(iii) Redeterminations and appeals through medicaid
Redeterminations and appeals, with respect to eligibility determinations under clause (i) made under a State plan under subchapter XIX of this chapter, shall be made in accordance with the frequency of, and manner in which, redeterminations and appeals of eligibility are made under such plan for purposes of medical assistance under such subchapter.

(iv) Redeterminations and appeals through Commissioner
With respect to eligibility determinations under clause (i) made by the Commissioner of Social Security—

(I) redeterminations shall be made at such time or times as may be provided by the Commissioner;

(II) the Commissioner shall establish procedures for appeals of such determinations that are similar to the procedures described in the third sentence of section 1383(c)(1)(A) of this title; and

(III) judicial review of the final decision of the Commissioner made after a hearing shall be available to the same extent, and with the same limitations, as provided in subsections (g) and (h) of section 405 of this title.

(v) Treatment of medicaid beneficiaries
Subject to subparagraph (F), the Secretary—

(I) shall provide that part D eligible individuals who are full-benefit dual eligible individuals (as defined in section 1396u–5(c)(6) of this title) or who are recipients of supplemental security income benefits under subchapter XVI of this chapter shall be treated as subsidy eligible individuals described in paragraph (1); and

(II) may provide that part D eligible individuals not described in subclause (I) who are determined for purposes of the State plan under subchapter XIX of this chapter to be eligible for medical assistance under clause (i), (iii), or (iv) of section 1396a(a)(30)(A) of this title are treated as being determined to be subsidy eligible individuals described in paragraph (1).

Insofar as the Secretary determines that the eligibility requirements under the State plan for medical assistance referred to in subclause (II) are substantially the same as the requirements for being treated as a subsidy eligible individual described in paragraph (1), the Secretary shall provide for the treatment described in such subclause.

(vi) Special rule for widows and widowers
Notwithstanding the preceding provisions of this subparagraph, in the case of
Section 1395w–114

The resources requirement of this subparagraph is that an individual’s assets or resources (as determined under section 1382b of this title) do not exceed—

(I) for 2006, $10,000 (or $20,000 in the case of the combined value of the individual’s assets or resources and the assets or resources of the individual’s spouse); and

(ii) for a subsequent year the dollar amounts specified in this subclause (or subclause (I)) for the previous year increased by the annual percentage increase in the consumer price index (all items; U.S. city average) as of September of such previous year.

Any dollar amount established under subclause (I) that is not a multiple of $10 shall be rounded to the nearest multiple of $10.

(ii) Use of simplified application form and process

The Secretary, jointly with the Commission of Social Security, shall—

(I) develop a model, simplified application form and process consistent with clause (ii) for the determination and verification of a part D eligible individual’s assets or resources under this subparagraph; and

(II) provide such form to States.

(iii) Documentation and safeguards

Under such process—

(I) the application form shall consist of an attestation under penalty of perjury regarding the level of assets or resources (or combined assets and resources in the case of a married part D eligible individual) and valuations of general classes of assets or resources;

(II) such form shall be accompanied by copies of recent statements (if any) from financial institutions in support of the application; and

(III) matters attested to in the application shall be subject to appropriate methods of verification.

(iv) Methodology flexibility

The Secretary may permit a State in making eligibility determinations for premium and cost-sharing subsidies under this section to use the same asset or resource methodologies that are used with respect to eligibility for medical assistance for medicare cost-sharing described in section 1396u–5(e) of this title so long as the Secretary determines that the use of such methodologies will not result in any significant differences in the number of individuals determined to be subsidy eligible individuals.

(F) Treatment of territorial residents

In the case of a part D eligible individual who is not a resident of the 50 States or the District of Columbia, the individual is not eligible to be a subsidy eligible individual under this section but may be eligible for financial assistance with prescription drug expenses under section 1396u–5(e) of this title.

(G) Life insurance policy exclusion

In determining the resources of an individual (and the eligible spouse of the individual, if any) under section 1382b of this title for purposes of subparagraphs (D) and (E) no part of the value of any life insurance policy shall be taken into account.
(4) Indexing dollar amounts

(A) Copayment for lowest income dual eligible individuals

The dollar amounts applied under paragraph (1)(D)(ii)—

(i) for 2007 shall be the dollar amounts specified in such paragraph increased by the annual percentage increase in the consumer price index (all items; U.S. city average) as of September of such previous year; or

(ii) for a subsequent year shall be the dollar amount specified in this clause (or clause (i)) for the previous year increased by the annual percentage increase in the consumer price index (all items; U.S. city average) as of September of such previous year.

Any amount established under clause (i) or (ii), that is based on an increase of $1 or $3, that is not a multiple of 5 cents or 10 cents, respectively, shall be rounded to the nearest multiple of 5 cents or 10 cents, respectively.

(B) Reduced deductible

The dollar amount applied under paragraph (2)(B)—

(i) for 2007 shall be the dollar amount specified in such paragraph increased by the annual percentage increase described in section 1395w–102(b)(6) of this title for 2007; or

(ii) for a subsequent year shall be the dollar amount specified in this clause (or clause (i)) for the previous year increased by the annual percentage increase described in section 1395w–102(b)(6) of this title for the year involved.

Any amount established under clause (i) or (ii) that is not a multiple of $1 shall be rounded to the nearest multiple of $1.

(5) Waiver of de minimis premiums

The Secretary shall, under procedures established by the Secretary, permit a prescription drug plan or an MA–PD plan to waive the monthly beneficiary premium for a subsidy eligible individual if the amount of such premium is de minimis. If such premium is waived under the plan, the Secretary shall not reassign subsidy eligible individuals enrolled in the plan to other plans based on the fact that the monthly beneficiary premium under the plan was greater than the low-income benchmark premium amount.

(b) Premium subsidy amount

(1) In general

The premium subsidy amount described in this subsection for a subsidy eligible individual residing in a PDP region and enrolled in a prescription drug plan or MA–PD plan is the low-income benchmark premium amount (as defined in paragraph (2)) for the PDP region in which the individual resides or, if greater, the amount specified in paragraph (3).

(2) Low-income benchmark premium amount defined

(A) In general

For purposes of this subsection, the term “low-income benchmark premium amount” means, with respect to a PDP region in which—

(i) all prescription drug plans are offered by the same PDP sponsor, the weighted average of the amounts described in subparagraph (B)(i) for such plans; or

(ii) there are prescription drug plans offered by more than one PDP sponsor, the weighted average of amounts described in subparagraph (B) for prescription drug plans and MA–PD plans described in section 1395w–21(a)(2)(A)(i) of this title offered in such region.

(B) Premium amounts described

The premium amounts described in this subparagraph are, in the case of—

(i) a prescription drug plan that is a basic prescription drug plan, the monthly beneficiary premium for such plan;

(ii) a prescription drug plan that provides alternative prescription drug coverage, the actuarial value of which is greater than that of standard prescription drug coverage, the portion of the monthly beneficiary premium that is attributable to basic prescription drug coverage; and

(iii) an MA–PD plan, the portion of the MA monthly prescription drug beneficiary premium that is attributable to basic prescription drug benefits (described in section 1395w–22(a)(6)(B)(ii) of this title) and determined before the application of the monthly rebate computed under section 1395w–24(b)(1)(C)(i) of this title for that plan and year involved and, in the case of a qualifying plan, before the application of the increase under section 1395w–23(a) of this title for that plan and year involved.

The premium amounts described in this subparagraph do not include any amounts attributable to late enrollment penalties under section 1395w–113(b) of this title.

(3) Access to 0 premium plan

In no case shall the premium subsidy amount under this subsection for a PDP region be less than the lowest monthly beneficiary premium for a prescription drug plan that offers basic prescription drug coverage in the region.

(c) Administration of subsidy program

(1) In general

The Secretary shall provide a process whereby, in the case of a part D eligible individual who is determined to be a subsidy eligible individual and who is enrolled in a prescription drug plan or is enrolled in an MA–PD plan—

(A) the Secretary provides for a notification of the PDP sponsor or the MA organization offering the plan involved that the individual is eligible for a subsidy and the amount of the subsidy under subsection (a) of this section;

(B) the sponsor or organization involved reduces the premiums or cost-sharing otherwise imposed by the amount of the applica-
facilitation of reassignments

Secretary to a new prescription drug plan, pro-
drug plan and is subsequently reassigned by the
individual who is enrolled in one prescription
Secretary shall, in the case of a subsidy eligible

(Aug. 14, 1935, ch. 531, title XVIII, § 1860D–14, as
gram relating to medicare prescription drug

(e) Relation to medicaid program

serted "or, effective on a date specified by the Sec-
if the full-benefit dual eligible individual were not re-

2011, the Secretary shall, in the case of a subsidy eligible
individual who is enrolled in one prescription

(d) Facilitation of reassignments

Beginning not later than January 1, 2011, the
Secretary to a new prescription drug plan, pro-
drug plan and is subsequently reassigned by the
Secretary (but in no case earlier than January 1, 2012), who

of such section or services provided through enrollment
under section 1396b(m) of this title or under sec-
tion 1396b–23(n) of this title; plus

"and except that support and maintenance furnished in
kind shall not be counted as income" after "section
1996a(r) of this title".

inserted "subject to the life insurance policy exclusion
provided under subparagraph (G) after "program" in
introductory provisions.

(G).

Effective Date of 2010 Amendment

Stat. 468, provided that: "The amendment made by
subsection (a) [amending this section] shall apply to pre-
miums for months beginning on or after January 1, 2011."

Amendment by section 3303(a) of Pub. L. 111–148 ap-
plicable to premiums for months and enrollments for
plan years, beginning on or after January 1, 2011, see
section 3303(c) of Pub. L. 111–148, set out as a note under
section 1395w–113 of this title.

Stat. 468, provided that: "The amendment made by
section (a) [amending this section] shall apply to pre-
miums for months beginning on or after January 1, 2011."

Effective Date of 2008 Amendment

2507, provided that: "The amendments made by this
section [amending this section] shall take effect with
respect to applications filed on or after January 1, 2010."

2507, provided that: "The amendments made by
subsection (a) [amending this section] shall take effect as
if included in the enactment of section 101 of the Medi-
care Prescription Drug, Improvement, and Moderniza-

GPO STUDY REGARDING IMPACT OF ASSETS TEST FOR
SUBSIDY ELIGIBLE INDIVIDUALS

2171, provided that:

(2) Use of capitaled form of payment

The reimbursement under this section with
respect to cost-sharing subsidies may be com-
puted on a capitaled basis, taking into ac-
count the actuarial value of the subsidies and
with appropriate adjustments to reflect dif-
fences in the risks actually involved.

(d) Facilitation of reassignments

ble subsidy and submits to the Secretary in-
formation on the amount of such reduction;
(C) the Secretary periodically and on a
timely basis reimburses the sponsor or or-
organization for the amount of such reduc-
tions; and

(D) the Secretary ensures the confidentiality
of individually identifiable information.

In applying subparagraph (C), the Secretary
shall compute reductions based upon imposi-
tion under subsections (a)(1)(D) and (a)(2)(E) of
this section of unreduced copayment amounts
applied under such subsections.

"(1) 100 percent of the amount described in
subsection (b)(1) of this section, but not to exceed the
premium amount specified in subsection (b)(2)(B) of
this section; plus

"(ii) 80 percent of any late enrollment penalties
imposed under section 1396w–13(b) of this title for
the first 60 months in which such penalties are imposed
for that individual, and 100 percent of any such pen-
alties for any subsequent month.


"and except that support and maintenance furnished in
kind shall not be counted as income" after "section
1996a(r) of this title".

inserted "subject to the life insurance policy exclusion
provided under subparagraph (G) after "program" in
introductory provisions.

(G).

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if included in the enactment of section 101 of the Medi-
care Prescription Drug, Improvement, and Moderniza-

GPO STUDY REGARDING IMPACT OF ASSETS TEST FOR
SUBSIDY ELIGIBLE INDIVIDUALS

2171, provided that:
“(1) Study.—The Comptroller General of the United States shall conduct a study to determine the extent to which drug utilization and access to covered part D drugs under part D of title XVIII of the Social Security Act [this part] by subsidy eligible individuals differs from such utilization and access for individuals who would qualify as such subsidy eligible individuals but for the application of section 1860D-13(a)(3)(A)(iii) of such Act [subsec. (a)(3)(A)(iii) of this section].

“(2) Report.—Not later than September 30, 2007, the Comptroller General shall submit a report to Congress on the study conducted under paragraph (1) that includes such recommendations for legislation as the Comptroller General determines are appropriate.”

§ 1395w–114a. Medicare coverage gap discount program

(a) Establishment

The Secretary shall establish a Medicare coverage gap discount program (in this section referred to as the ‘‘program’’) by not later than January 1, 2011. Under the program, the Secretary shall enter into agreements described in subsection (b) with manufacturers and provide for the performance of the duties described in subsection (c)(1). The Secretary shall establish a model agreement for use under the program by not later than 180 days after March 23, 2010, in consultation with manufacturers, and allow for comment on such model agreement.

(b) Terms of agreement

(1) In general

(A) Agreement

An agreement under this section shall require the manufacturer to provide applicable beneficiaries access to discounted prices for applicable drugs of the manufacturer.

(B) Provision of discounted prices at the point-of-sale

Except as provided in subsection (c)(1)(A)(iii), such discounted prices shall be provided to the applicable beneficiary at the pharmacy or by the mail order service at the point-of-sale of an applicable drug.

(C) Timing of agreement

(i) Special rule for 2011

In order for an agreement with a manufacturer to be in effect under this section with respect to the period beginning on January 1, 2011, and ending on December 31, 2011, the manufacturer shall enter into such agreement not later than not later than 30 days after the date of the establishment of a model agreement under subsection (a).

(ii) 2012 and subsequent years

In order for an agreement with a manufacturer to be in effect under this section with respect to plan year 2012 or a subsequent plan year, the manufacturer shall enter into such agreement (or such agreement shall be renewed under paragraph (4)(A)) not later than January 30 of the preceding year.

(2) Provision of appropriate data

Each manufacturer with an agreement in effect under this section shall collect and have available appropriate data, as determined by the Secretary, to ensure that it can demonstrate to the Secretary compliance with the requirements under the program.

(3) Compliance with requirements for administration of program

Each manufacturer with an agreement in effect under this section shall comply with requirements imposed by the Secretary or a third party with a contract under subsection (d)(3), as applicable, for purposes of administering the program, including any determination under clause (i) of subsection (c)(1)(A) or procedures established under such subsection (c)(1)(A).

(4) Length of agreement

(A) In general

An agreement under this section shall be effective for an initial period of not less than 18 months and shall be automatically renewed for a period of not less than 1 year unless terminated under subparagraph (B).

(B) Termination

(i) By the Secretary

The Secretary may provide for termination of an agreement under this section for a knowing and willful violation of the requirements of the agreement or other good cause shown. Such termination shall not be effective earlier than 30 days after the date of notice to the manufacturer of such termination. The Secretary shall provide, upon request, a manufacturer with a hearing concerning such a termination, and such hearing shall take place prior to the effective date of the termination with sufficient time for such effective date to be repealed if the Secretary determines appropriate.

(ii) By a manufacturer

A manufacturer may terminate an agreement under this section for any reason. Any such termination shall be effective, with respect to a plan year—

(I) if the termination occurs before January 30 of a plan year, as of the day after the end of the preceding plan year;

(II) if the termination occurs on or after January 30 of a plan year, as of the day after the end of the succeeding plan year.

(iii) Effectiveness of termination

Any termination under this subparagraph shall not affect discounts for applicable drugs of the manufacturer that are due under the agreement before the effective date of its termination.

(iv) Notice to third party

The Secretary shall provide notice of such termination to a third party with a contract under subsection (d)(3) within not less than 30 days before the effective date of such termination.

(c) Duties described and special rule for supplemental benefits

(1) Duties described

The duties described in this subsection are the following:

1 So in original. Second “not later than” probably should not appear.
(A) Administration of program

Administering the program, including—

(i) the determination of the amount of the discounted price of an applicable drug of a manufacturer;

(ii) except as provided in clause (iii), the establishment of procedures under which discounted prices are provided to applicable beneficiaries at pharmacies or by mail order service at the point-of-sale of an applicable drug;

(iii) in the case where, during the period beginning on January 1, 2011, and ending on December 31, 2011, it is not practicable to provide such discounted prices at the point-of-sale (as described in clause (ii)), the establishment of procedures to provide such discounted prices as soon as practicable after the point-of-sale;

(iv) the establishment of procedures to ensure that, not later than the applicable number of calendar days after the dispensing of an applicable drug by a pharmacy or mail order service, the pharmacy or mail order service is reimbursed for an amount equal to the difference between—

(I) the negotiated price of the applicable drug; and

(II) the discounted price of the applicable drug;

(v) the establishment of procedures to ensure that the discounted price for an applicable drug under this section is applied before any coverage or financial assistance under other health benefit plans or programs that provide coverage or financial assistance for the purchase or provision of prescription drug coverage on behalf of applicable beneficiaries as the Secretary may specify;

(vi) the establishment of procedures to implement the special rule for supplemental benefits under paragraph (2); and

(vii) providing a reasonable dispute resolution mechanism to resolve disagreements between manufacturers, applicable beneficiaries, and the third party with a contract under subsection (d)(3).

(B) Monitoring compliance

(i) In general

The Secretary shall monitor compliance by a manufacturer with the terms of an agreement under this section.

(ii) Notification

If a third party with a contract under subsection (d)(3) determines that the manufacturer is not in compliance with such agreement, the third party shall notify the Secretary of such noncompliance for appropriate enforcement under subsection (e).

(C) Collection of data from prescription drug plans and MA–PD plans

The Secretary may collect appropriate data from prescription drug plans and MA–PD plans in a timeframe that allows for discounted prices to be provided for applicable drugs under this section.

(2) Special rule for supplemental benefits

For plan year 2011 and each subsequent plan year, in the case where an applicable beneficiary has supplemental benefits with respect to applicable drugs under the prescription drug plan or MA–PD plan that the applicable beneficiary is enrolled in, the applicable beneficiary shall not be provided a discounted price for an applicable drug under this section until after such supplemental benefits have been applied with respect to the applicable drug.

(d) Administration

(1) In general

Subject to paragraph (2), the Secretary shall provide for the implementation of this section, including the performance of the duties described in subsection (c)(1).

(2) Limitation

(A) In general

Subject to subparagraph (B), in providing for such implementation, the Secretary shall not receive or distribute any funds of a manufacturer under the program.

(B) Exception

The limitation under subparagraph (A) shall not apply to the Secretary with respect to drugs dispensed during the period beginning on January 1, 2011, and ending on December 31, 2011, but only if the Secretary determines that the exception to such limitation under this subparagraph is necessary in order for the Secretary to begin implementation of this section and provide applicable beneficiaries timely access to discounted prices during such period.

(3) Contract with third parties

The Secretary shall enter into a contract with 1 or more third parties to administer the requirements established by the Secretary in order to carry out this section. At a minimum, the contract with a third party under the preceding sentence shall require that the third party—

(A) receive and transmit information between the Secretary, manufacturers, and other individuals or entities the Secretary determines appropriate;

(B) receive, distribute, or facilitate the distribution of funds of manufacturers to appropriate individuals or entities in order to meet the obligations of manufacturers under agreements under this section;

(C) provide adequate and timely information to manufacturers, consistent with the agreement with the manufacturer under this section, as necessary for the manufacturer to fulfill its obligations under this section; and

(D) permit manufacturers to conduct periodic audits, directly or through contracts, of the data and information used by the third party to determine discounts for applicable drugs of the manufacturer under the program.

(4) Performance requirements

The Secretary shall establish performance requirements for a third party with a contract
under paragraph (3) and safeguards to protect the independence and integrity of the activities carried out by the third party under the program under this section.

(5) Implementation

The Secretary may implement the program under this section by program instruction or otherwise.

(6) Administration

Chapter 35 of title 44 shall not apply to the program under this section.

(e) Enforcement

(1) Audits

Each manufacturer with an agreement in effect under this section shall be subject to periodic audit by the Secretary.

(2) Civil money penalty

(A) In general

The Secretary shall impose a civil money penalty on a manufacturer that fails to provide applicable beneficiaries discounts for applicable drugs of the manufacturer in accordance with such agreement for each such failure in an amount the Secretary determines is commensurate with the sum of—

(i) the amount that the manufacturer would have paid with respect to such discounts under the agreement, which will then be used to pay the discounts which the manufacturer had failed to provide; and

(ii) 25 percent of such amount.

(B) Application

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this paragraph in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(f) Clarification regarding availability of other covered part D drugs

Nothing in this section shall prevent an applicable beneficiary from purchasing a covered part D drug that is not an applicable drug (including a generic drug or a drug that is not on the formulary of the prescription drug plan or MA–PD plan that the applicable beneficiary is enrolled in).

(g) Definitions

In this section:

(1) Applicable beneficiary

The term “applicable beneficiary” means an individual who, on the date of dispensing a covered part D drug—

(A) is enrolled in a prescription drug plan or an MA–PD plan;

(B) is not enrolled in a qualified retiree prescription drug plan;

(C) is not entitled to an income-related subsidy under section 1395w–114(a) of this title; and

(D) who—

(i) has reached or exceeded the initial coverage limit under section 1395w–102(b)(3) of this title during the year; and

(ii) has not incurred costs for covered part D drugs in the year equal to the annual out-of-pocket threshold specified in section 1395w–102(b)(4)(B) of this title.

(2) Applicable drug

The term “applicable drug” means, with respect to an applicable beneficiary, a covered part D drug—

(A) approved under a new drug application under section 355(b) of this title or, in the case of a biologic product, licensed under section 262 of this title (other than a product licensed under subsection (k) of such section 262); and

(B)(i) if the PDP sponsor of the prescription drug plan or the MA organization offering the MA–PD plan uses a formulary, which is on the formulary of the prescription drug plan or MA–PD plan that the applicable beneficiary is enrolled in;

(ii) if the PDP sponsor of the prescription drug plan or the MA organization offering the MA–PD plan does not use a formulary, for which benefits are available under the prescription drug plan or MA–PD plan that the applicable beneficiary is enrolled in; or

(iii) is provided through an exception or appeal.

(3) Applicable number of calendar days

The term “applicable number of calendar days” means—

(A) with respect to claims for reimbursement submitted electronically, 14 days; and

(B) with respect to claims for reimbursement submitted otherwise, 30 days.

(4) Discounted price

(A) In general

The term “discounted price” means 50 percent of the negotiated price of the applicable drug of a manufacturer.

(B) Clarification

Nothing in this section shall be construed as affecting the responsibility of an applicable beneficiary for payment of a dispensing fee for an applicable drug.

(C) Special case for certain claims

In the case where the entire amount of the negotiated price of an individual claim for an applicable drug with respect to an applicable beneficiary does not fall at or above the initial coverage limit under section 1395w–102(b)(3) of this title and below the annual out-of-pocket threshold specified in section 1395w–102(b)(4)(B) of this title for the year, the manufacturer of the applicable drug shall provide the discounted price under this section on only the portion of the negotiated price of the applicable drug that falls at or above such initial coverage limit and below such annual out-of-pocket threshold.

(5) Manufacturer

The term “manufacturer” means any entity which is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from
substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. Such term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law.

(6) Negotiated price

The term "negotiated price" has the meaning given such term in section 1320vv–2(a)(2) of this title.


AMENDMENTS


Subsec. (b)(1)(C)(i). Pub. L. 111–152, §1101(b)(2)(B)(i), which directed the amendment of subpar. (C) by striking out “2010” and “in the heading, was enacted by striking “2010” and before “2011” in cl. (i) heading to reflect the probable intent of Congress.

Subsec. (b)(2). Pub. L. 111–152, §1101(b)(2)(B)(ii), (iii), substituted “January 1, 2011” for “July 1, 2010” and “not later than 30 days after the date of the establishment of a model agreement under subsection (a)” for “May 1, 2010”.


Subsec. (g)(1)(C) to (E). Pub. L. 111–152, §1101(b)(2)(E)(ii)–(iv), inserted “and” at end of subpar. (C), redesignated subpar. (E) as (D), and struck out former subpar. (D) which read as follows: “is not subject to a reduction in premium subsidy under section 1395w–113 of this title; and”.

§1395w–115. Subsidies for part D eligible individuals for qualified prescription drug coverage

(a) Subsidy payment

In order to reduce premium levels applicable to qualified prescription drug coverage for part D eligible individuals consistent with an overall subsidy level of 74.5 percent for basic prescription drug coverage, to reduce adverse selection among prescription drug plans and MA–PD plans, and to promote the participation of PDP sponsors under this part and MA organizations under part C of this subchapter, the Secretary shall provide for payment to a PDP sponsor that offers a prescription drug plan and an MA organization that offers an MA–PD plan of the following subsidies in accordance with this section:

(1) Direct subsidy

A direct subsidy for each part D eligible individual enrolled in a prescription drug plan or MA–PD plan for a month equal to—

(A) the amount of the plan’s standardized bid amount (as defined in section 1395w–113(a)(6) of this title), adjusted under subsection (c)(1) of this section, reduced by

(B) the base beneficiary premium (as computed under paragraph (2) of section 1395w–113(a) of this title and as adjusted under paragraph (1)(B) of such section).

(2) Subsidy through reinsurance

The reinsurance payment amount (as defined in subsection (b) of this section).

This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Secretary to provide for the payment of amounts provided under this section.

(b) Reimbursement payment amount

(1) In general

The reimbursement payment amount under this subsection for a part D eligible individual enrolled in a prescription drug plan or MA–PD plan for a coverage year is an amount equal to 80 percent of the allowable reinsurance costs (as specified in paragraph (2)) attributable to that portion of gross covered prescription drug costs as specified in paragraph (3) incurred in the coverage year after such individual has incurred costs that exceed the annual out-of-pocket threshold specified in section 1395w–102(b)(4)(B) of this title.

(2) Allowable reinsurance costs

For purposes of this section, the term “allowable reinsurance costs” means, with respect to gross covered prescription drug costs under a prescription drug plan offered by a PDP sponsor or an MA–PD plan offered by an MA organization, the part of such costs that are actually paid (net of discounts, chargebacks, and average percentage rebates) by the sponsor or organization by or on behalf of an enrollee under the plan, but in no case more than the part of such costs that would have been paid by the plan if the prescription drug coverage under the plan were basic prescription drug coverage, or, in the case of a plan providing supplemental prescription drug coverage, if such coverage were standard prescription drug coverage.

(3) Gross covered prescription drug costs

For purposes of this section, the term “gross covered prescription drug costs” means, with respect to covered prescription drug costs under a prescription drug plan offered by a PDP sponsor or an MA–PD plan offered by an MA organization, the part of such costs that are actually paid (net of discounts, chargebacks, and average percentage rebates) by the sponsor or organization by or on behalf of an enrollee under the plan, but in no case more than the part of such costs that would have been paid by the plan if the prescription drug coverage under the plan were basic prescription drug coverage, or, in the case of a plan providing supplemental prescription drug coverage, if such coverage were standard prescription drug coverage.

(4) Coverage year defined

For purposes of this section, the term “coverage year” means a calendar year in which
covered part D drugs are dispensed if the claim for such drugs (and payment on such claim) is made not later than such period after the end of such year as the Secretary specifies.

(e) Adjustments relating to bids

(1) Health status risk adjustment

(A) Establishment of risk adjustors

The Secretary shall establish an appropriate methodology for adjusting the standardized bid amount under subsection (a)(1)(A) of this section to take into account variation in costs for basic prescription drug coverage among prescription drug plans and MA–PD plans based on the differences in actuarial risk of different enrollees being served. Any such risk adjustment shall be designed in a manner so as not to result in a change in the aggregate amounts payable to such plans under subsection (a)(1) of this section and through that portion of the monthly beneficiary prescription drug premiums described in subsection (a)(1)(B) of this section and MA monthly prescription drug beneficiary premiums.

(B) Considerations

In establishing the methodology under subparagraph (A), the Secretary may take into account the similar methodologies used under section 1395w–23(a)(3) of this title to adjust payments to MA organizations for benefits under the original medicare fee-for-service program option.

(C) Data collection

In order to carry out this paragraph, the Secretary shall require—

(i) PDP sponsors to submit data regarding drug claims that can be linked at the individual level to part A and part B data and such other information as the Secretary determines necessary; and

(ii) MA organizations that offer MA–PD plans to submit data regarding drug claims that can be linked at the individual level to other data that such organizations are required to submit to the Secretary and such other information as the Secretary determines necessary.

(D) Publication

At the time of publication of risk adjustment factors under section 1395w–23(b)(1)(B)(i)(II) of this title, the Secretary shall publish the risk adjusters established under this paragraph for the succeeding year.

(2) Geographic adjustment

(A) In general

Subject to subparagraph (B), for purposes of section 1395w–113(a)(1)(B)(iii) of this title, the Secretary shall establish an appropriate methodology for adjusting the national average monthly bid amount (computed under section 1395w–113(a)(4) of this title) to take into account differences in prices for covered part D drugs among PDP regions.

(B) De minimis rule

If the Secretary determines that the price variations described in subparagraph (A)

among PDP regions are de minimis, the Secretary shall not provide for adjustment under this paragraph.

(C) Budget neutral adjustment

Any adjustment under this paragraph shall be applied in a manner so as to not result in a change in the aggregate payments made under this part that would have been made if the Secretary had not applied such adjustment.

(d) Payment methods

(1) In general

Payments under this section shall be based on such a method as the Secretary determines. The Secretary may establish a payment method by which interim payments of amounts under this section are made during a year based on the Secretary’s best estimate of amounts that will be payable after obtaining all of the information.

(2) Requirement for provision of information

(A) Requirement

Payments under this section to a PDP sponsor or MA organization are conditioned upon the furnishing to the Secretary, in a form and manner specified by the Secretary, of such information as may be required to carry out this section.

(B) Restriction on use of information

Information disclosed or obtained pursuant to subparagraph (A) may be used by officers, employees, and contractors of the Department of Health and Human Services only for the purposes of, and to the extent necessary in, carrying out this section.

(3) Source of payments

Payments under this section shall be made from the Medicare Prescription Drug Account.

(4) Application of enrollee adjustment

The provisions of section 1395w–23(a)(2) of this title shall apply to payments to PDP sponsors under this section in the same manner as they apply to payments to MA organizations under section 1395w–23(a) of this title.

(e) Portion of total payments to a sponsor or organization subject to risk (application of risk corridors)

(1) Computation of adjusted allowable risk corridor costs

(A) In general

For purposes of this subsection, the term “adjusted allowable risk corridor costs” means, for a plan for a coverage year (as defined in subsection (b)(4) of this section)—

(i) the allowable risk corridor costs (as defined in subparagraph (B)) for the plan for the year, reduced by

(ii) the sum of (I) the total reinsurance payments made under subsection (b) of this section to the sponsor of the plan for the year, and (II) the total subsidy payments made under section 1395w–114 of this title to the sponsor of the plan for the year.

(B) Allowable risk corridor costs

For purposes of this subsection, the term “allowable risk corridor costs” means, with
§ 1395w–115

(2) Adjustment of payment

discounts, chargebacks, and average per-
under the plan that are actually paid (net of
discounts, chargebacks, and average per-
centage rebates) by the sponsor or organiza-
tion under the plan, but in no case more
than the part of such costs that would have
been paid under the plan if the prescription
drug coverage under the plan were basic pre-
scription drug coverage, or, in the case of a
plan providing supplemental prescription
drug coverage, if such coverage were basic
prescription drug coverage taking into ac-
count the adjustment under subsection
1395w–111(c)(2) of this title. In computing al-
lowable costs under this paragraph, the Sec-
retary shall compute such costs based upon
imposition under paragraphs (1)(D) and
(2)(E) of section 1395w–114(a) of this title of
the maximum amount of copayments per-
mitted under such paragraphs.

(2) Adjustment of payment

(A) No adjustment if adjusted allowable risk
corridor costs within risk corridor

If the adjusted allowable risk corridor
costs (as defined in paragraph (1)) for the
plan for the year are at least equal to the
first threshold lower limit of the risk cor-
rador (specified in paragraph (3)(A)(i)), but
not greater than the first threshold upper
limit of the risk corridor (specified in para-
graph (5)(A)(i)) for the plan for the year,
then no payment adjustment shall be made
under this subsection.

(B) Increase in payment if adjusted allowable
risk corridor costs above upper limit of
risk corridor

(i) Costs between first and second thresh-
old upper limits

If the adjusted allowable risk corridor
costs for the plan for the year are greater
than the first threshold upper limit, but
not greater than the second threshold
upper limit, of the risk corridor for the
plan for the year, the Secretary shall in-
crease the total of the payments made to
the sponsor or organization offering the
plan for the year under this subsection by
an amount equal to 50 percent (or, for 2006
and 2007, 75 percent or 90 percent if the
conditions described in clause (ii) are met
for the year) of the difference between the
second threshold upper limit and the first
threshold upper limit; and

(ii) Costs above second threshold upper
limits

If the adjusted allowable risk corridor
costs for the plan for the year are greater
than the second threshold upper limit of
the risk corridor for the plan for the year,
the Secretary shall increase the total of
the payments made to the sponsor or orga-
nization offering the plan for the year under
this subsection by an amount equal to the
sum of—

(I) 50 percent (or, for 2006 and 2007, 75
percent or 90 percent if the conditions
described in clause (i) are met for the
year) of the difference between the sec-
ond threshold upper limit and the first
threshold upper limit; and

(II) 80 percent of the difference be-
 tween such adjusted allowable risk cor-
rador costs and the second threshold
upper limit of the risk corridor.

(iii) Conditions for application of higher
percentage for 2006 and 2007

The conditions described in this clause
are met for 2006 or 2007 if the Secretary de-
termines with respect to such year that—

(I) at least 60 percent of prescription
drug plans and MA–PD plans to which
this subsection applies have a “trust-
able risk corridor costs for the plan
for the year that are more than the first
threshold upper limit of the risk corridor
for the plan for the year; and

(II) such plans represent at least 60
percent of part D eligible individuals en-
rolled in any prescription drug plan or
MA–PD plan.

(C) Reduction in payment if adjusted allow-
able risk corridor costs below lower limit of
risk corridor

(i) Costs between first and second thresh-
old lower limits

If the adjusted allowable risk corridor
costs for the plan for the year are less than
the first threshold lower limit, but not less
than the second threshold lower limit, of
the risk corridor for the plan for the year,
the Secretary shall reduce the total of the
payments made to the sponsor or organiza-
tion offering the plan for the year under
this subsection by an amount (or otherwise
recover from the sponsor or organization
an amount) equal to 50 percent (or, for 2006
and 2007, 75 percent) of the difference be-
tween the first threshold lower limit of the
risk corridor and such adjusted allowable
risk corridor costs.

(ii) Costs below second threshold lower
limit

If the adjusted allowable risk corridor
costs for the plan for the year are less the
second threshold lower limit of the risk
corridor for the plan for the year, the Sec-
retary shall reduce the total of the pay-
ments made to the sponsor or organization
offering the plan for the year under this
section by an amount (or otherwise re-
cover from the sponsor or organization an
amount) equal to the sum of—

(I) 50 percent (or, for 2006 and 2007, 75
percent) of the difference between the
first threshold lower limit and the sec-
ond threshold lower limit; and

(II) 80 percent of the difference be-
 tween the second threshold upper limit of
the risk corridor and such adjusted al-
lowable risk corridor costs.
(3) Establishment of risk corridors

(A) In general

For each plan year the Secretary shall establish a risk corridor for each prescription drug plan and each MA–PD plan. The risk corridor for a plan for a year shall be equal to a range as follows:

(i) First threshold lower limit

The first threshold lower limit of such corridor shall be equal to—

(I) the target amount described in subparagraph (B) for the plan; minus

(II) an amount equal to the first threshold risk percentage for the plan (as determined under subparagraph (C)(i) of such target amount).

(ii) Second threshold lower limit

The second threshold lower limit of such corridor shall be equal to—

(I) the target amount described in subparagraph (B) for the plan; minus

(II) an amount equal to the second threshold risk percentage for the plan (as determined under subparagraph (C)(ii)) of such target amount.

(iii) First threshold upper limit

The first threshold upper limit of such corridor shall be equal to the sum of—

(I) such target amount; and

(II) the amount described in clause (i)(II).

(iv) Second threshold upper limit

The second threshold upper limit of such corridor shall be equal to the sum of—

(I) such target amount; and

(II) the amount described in clause (i)(II).

(B) Target amount described

The target amount described in this paragraph is, with respect to a prescription drug plan or an MA–PD plan in a year, the total amount of payments paid to the PDP sponsor or MA–PD organization for the plan for the year, taking into account amounts paid by the Secretary and enrollees, based upon the standardized bid amount (as defined in section 1395w–113(a)(5) of this title and as risk adjusted under subsection (c)(1) of this section), reduced by the total amount of administrative expenses for the year assumed in such standardized bid.

(C) First and second threshold risk percentage defined

(i) First threshold risk percentage

Subject to clause (iii), for purposes of this section, the first threshold risk percentage is—

(I) for 2006 and 2007, 2.5 percent; (II) for 2008 through 2011, 5 percent; and (III) for 2012 and subsequent years, a percentage established by the Secretary that is greater than the percent established for the year under clause (i)(III), but in no case less than 10 percent.

(ii) Second threshold risk percentage

Subject to clause (iii), for purposes of this section, the second threshold risk percentage is—

1 See in original. The word “and” probably should not appear.

2 See References in Text note below.
§ 1395w–116. Medicare Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund

(a) Establishment and operation of Account

(1) Establishment

There is created within the Federal Supplementary Medical Insurance Trust Fund established by section 1395f of this title an account to be known as the “Medicare Prescription Drug Account” (in this section referred to as the “Account”).

(2) Funding

The Account shall consist of such gifts and bequests as may be made as provided in section 401(k)(1) of this title, accrued interest on balances in the Account, and such amounts as may be deposited in, or appropriated to, such Account as provided in this part.

(3) Separate from rest of Trust Fund

Funds provided under this part to the Account shall be kept separate from all other funds within the Federal Supplementary Medical Insurance Trust Fund, but shall be invested, and such investments redeemed, in the same manner as all other funds and investments within such Trust Fund.

(b) Payments from Account

(1) In general

The Managing Trustee shall pay from time to time from the Account such amounts as the Secretary certifies are necessary to make payments to operate the program under this part, including—

(A) payments under section 1395w–114 of this title (relating to low-income subsidy payments);

(B) payments under section 1395w–115 of this title (relating to subsidy payments and payments for fallback plans);

(C) payments to sponsors of qualified retiree prescription drug plans under section 1395w–132(a) of this title; and

(D) payments with respect to administrative expenses under this part in accordance with section 401(g) of this title.

(2) Transfers to Medicaid account for increased administrative costs

The Managing Trustee shall transfer from time to time from the Account to the Grants to States for Medicaid account amounts the Secretary certifies are attributable to increases in payment resulting from the application of section 1396u–5(b) of this title.

(3) Payments of premiums withheld

The Managing Trustee shall make payment to the PDP sponsor or MA organization involved of the premiums (and the portion of late enrollment penalties) that are collected in the manner described in section 1395w–24(d)(1)(A) of this title and that are payable under a prescription drug plan or MA–PD plan offered by such sponsor or organization.

(4) Treatment in relation to part B premium

Amounts payable from the Account shall not be taken into account in computing actuarial rates or premium amounts under section 1395r of this title.

(c) Deposits into Account

(1) Low-income transfer

Amounts paid under section 1396u–5(c) of this title (and any amounts collected or offset under paragraph (1a)(C) of such section) are deposited into the Account.

(2) Amounts withheld

Pursuant to sections 1395w–113(c) and 1395w–24(d) of this title (as applied under this part), amounts that are withheld (and allocated) to the Account are deposited into the Account.

(3) Appropriations to cover Government contributions

There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, to the Account, an amount equivalent to the amount of payments made from the Account under subsection (b) of this section plus such amounts as the Managing Trustee certifies is necessary to maintain an appropriate contingency margin, reduced by the amounts deposited under paragraph (1) or subsection (a)(2) of this section.

(4) Initial funding and reserve

In order to assure prompt payment of benefits provided under this part and the administrative expenses thereunder during the early months of the program established by this part and to provide an initial contingency reserve, there are authorized to be appropriated to the Account, out of any moneys in the Treasury not otherwise appropriated, such amount as the Secretary certifies are required, but not to exceed 10 percent of the estimated total expenditures from such Account in 2006.

(5) Transfer of any remaining balance

Any balance in the Transitional Assistance Account that is transferred under section
§ 1395w–131. Application to Medicare Advantage program and related managed care programs

(a) Special rules relating to offering of qualified prescription drug coverage

(1) In general

An MA organization on and after January 1, 2006—

(A) may not offer an MA plan described in section 1395w–21(a)(2)(A) of this title in an area unless either that plan (or another MA plan offered by the organization in that same service area) includes required prescription drug coverage (as defined in paragraph (2)); and

(B) may not offer prescription drug coverage (other than that required under parts A and B of this subchapter) to an enrollee—

(i) under an MSA plan; or

(ii) under another MA plan unless such drug coverage under such other plan provides qualified prescription drug coverage and unless the requirements of this section with respect to such coverage are met.

(2) Qualifying coverage

For purposes of paragraph (1)(A), the term “required coverage” means with respect to an MA–PD plan—

(A) basic prescription drug coverage; or

(B) qualified prescription drug coverage that provides supplemental prescription drug coverage, so long as there is no MA monthly supplemental beneficiary premium applied under the plan (due to the application of a credit against such premium of a rebate under section 1395w–24(b)(1)(C) of this title).

(b) Application of default enrollment rules

(1) Seamless continuation

In applying section 1395w–21(c)(3)(A)(ii) of this title, an individual who is enrolled in a health benefits plan shall not be considered to have been deemed to make an election into an MA–PD plan unless such health benefits plan provides any prescription drug coverage.

(2) MA continuation

In applying section 1395w–21(c)(3)(B) of this title, an individual who is enrolled in an MA plan shall not be considered to have been deemed to make an election into an MA–PD plan unless—

(A) for purposes of the election as of January 1, 2006, the MA plan provided as of December 31, 2005, any prescription drug coverage; or

(B) for periods after January 1, 2006, such MA plan is an MA–PD plan.

(3) Discontinuance of MA–PD election during first year of eligibility

In applying the second sentence of section 1395w–21(e)(4) of this title in the case of an individual who is electing to discontinue enrollment in an MA–PD plan, the individual shall be permitted to enroll in a prescription drug plan under part D at the time of the election of coverage under the original medicare fee-for-service program.

(4) Rules regarding enrollees in MA plans not providing qualified prescription drug coverage

In the case of an individual who is enrolled in an MA plan (other than an MSA plan) that does not provide qualified prescription drug coverage, if the organization offering such coverage discontinues the offering with respect to the individual of all MA plans that do not provide such coverage—

(i) the individual is deemed to have elected the original medicare fee-for-service program option, unless the individual affirmatively elects to enroll in an MA–PD plan; and

(ii) in the case of such a deemed election, the disenrollment shall be treated as an involuntary termination of the MA plan described in subparagraph (B)(ii) of section 1395ss(s)(3) of this title for purposes of applying such section.

The information disclosed under section 1395w–22(c)(1) of this title for individuals who are enrolled in such an MA plan shall include information regarding such rules.

(c) Application of part D rules for prescription drug coverage

With respect to the offering of qualified prescription drug coverage by an MA organization under this part on and after January 1, 2006—

(1) In general

Except as otherwise provided, the provisions of this part shall apply under part C of this subchapter with respect to prescription drug coverage provided under MA–PD plans in lieu of the other provisions of part C of this subchapter that would apply to such coverage under such plans.

(2) Waiver

The Secretary shall waive the provisions referred to in paragraph (1) to the extent the Secretary determines that such provisions duplicate, or are in conflict with, provisions otherwise applicable to the organization or plan under part C of this subchapter or as may be necessary in order to improve coordination of this part with the benefits under this part.

(3) Treatment of MA owned and operated pharmacies

The Secretary may waive the requirement of section 1395w–104(b)(1)(C) of this title in the case of an MA–PD plan that provides access (other than mail order) to qualified prescription drug coverage through pharmacies owned and operated by the MA organization, if the Secretary determines that the organization’s pharmacy network is sufficient to provide
comparable access for enrollees under the plan.

(d) Special rules for private fee-for-service plans
that offer prescription drug coverage

With respect to an MA plan described in section 1395w–21(a)(2)(C) of this title that offers qualified prescription drug coverage, on and after January 1, 2006, the following rules apply:

(1) Requirements regarding negotiated prices

Subsections (a)(1) and (d)(1) of section 1395w–102 of this title and section 1395w–104(b)(2)(A) of this title shall not be construed to require the plan to provide negotiated prices (described in subsection (d)(1)(B) of such section), but shall apply to the extent the plan does so.

(2) Modification of pharmacy access standard
and disclosure requirement

If the plan provides coverage for drugs purchased from all pharmacies, without charging additional cost-sharing, and without regard to whether they are participating pharmacies in a network or have entered into contracts or agreements with pharmacies to provide drugs to enrollees covered by the plan, subsections (b)(1)(C) and (k) of section 1395w–104 of this title shall not apply to the plan.

(3) Drug utilization management program and
medication therapy management program
not required

The requirements of subparagraphs (A) and (C) of section 1395w–104(c)(1) of this title shall not apply to the plan.

(4) Application of reinsurance

The Secretary shall determine the amount of reinsurance payments under section 1395w–115(b) of this title using a methodology that—

(A) bases such amount on the Secretary’s estimate of the amount of such payments that would be payable if the plan were an MA–PD plan described in section 1395w–21(a)(2)(A)(1) of this title and the previous provisions of this subsection did not apply; and

(B) takes into account the average reinsurance payments made under section 1395w–115(b) of this title for populations of similar risk under MA–PD plans described in such section.

(5) Exemption from risk corridor provisions

The provisions of section 1395w–115(e) of this title shall not apply.

(6) Exemption from negotiations

Subsections (d) and (e)(2)(C) of section 1395w–111 of this title shall not apply and the provisions of section 1395w–24(a)(5)(B) of this title prohibiting the review, approval, or disapproval of amounts described in such section shall apply to the proposed bid and terms and conditions described in section 1395w–111(d) of this title.

(7) Treatment of incurred costs without regard
to formulary

The exclusion of costs incurred for covered part D drugs which are not included (or treated as being included) in a plan’s formulary under section 1395w–102(b)(4)(B)(1) of this title shall not apply insofar as the plan does not utilize a formulary.

(e) Application to reasonable cost reimburse-
ment contractors

(1) In general

Subject to paragraphs (2) and (3) and rules established by the Secretary, in the case of an organization that is providing benefits under a reasonable cost reimbursement contract under section 1395mm(h) of this title and that elects to provide qualified prescription drug coverage to a part D eligible individual who is enrolled under such a contract, the provisions of this part (and related provisions of part C of this subchapter) shall apply to the provision of such coverage to such enrollee in the same manner as such provisions apply to the provision of such coverage under an MA–PD local plan described in section 1395–21(a)(2)(A)(1) of this title and coverage under such a contract that so provides qualified prescription drug coverage shall be deemed to be an MA–PD local plan.

(2) Limitation on enrollment

In applying paragraph (1), the organization may not enroll part D eligible individuals who are not enrolled under the reasonable cost reimbursement contract involved.

(3) Bids not included in determining national average monthly bid amount

The bid of an organization offering prescription drug coverage under this subsection shall not be taken into account in computing the national average monthly bid amount and low-income benchmark premium amount under this part.

(f) Application to PACE

(1) In general

Subject to paragraphs (2) and (3) and rules established by the Secretary, in the case of a PACE program under section 1395eee of this title that elects to provide qualified prescription drug coverage to a part D eligible individual who is enrolled under such program, the provisions of this part (and related provisions of part C of this subchapter) shall apply to the provision of such coverage to such enrollee in a manner that is similar to the manner in which such provisions apply to the provision of such coverage under an MA–PD local plan described in section 1395w–21(a)(2)(A)(1) of this title and a PACE program that so provides such coverage may be deemed to be an MA–PD local plan.

(2) Limitation on enrollment

In applying paragraph (1), the organization may not enroll part D eligible individuals who are not enrolled under the PACE program involved.

(3) Bids not included in determining standard-
ized bid amount

The bid of an organization offering prescription drug coverage under this subsection is not be taken into account in computing any aver-
§ 1395w–132. Special rules for employer-sponsored programs

(a) Subsidy payment

(1) In general

The Secretary shall provide in accordance with this subsection for payment to the sponsor of a qualified retiree prescription drug plan (as defined in paragraph (2)) of a special subsidy payment equal to the amount specified in paragraph (3) for each qualified covered retiree under the plan (as defined in paragraph (4)). This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Secretary to provide for the payment of amounts provided under this section.

(2) Qualified retiree prescription drug plan defined

For purposes of this subsection, the term “qualified retiree prescription drug plan means employment-based retiree health coverage (as defined in subsection (c)(1) of this section) if, with respect to a part D eligible individual who is a participant or beneficiary under such coverage, the following requirements are met:

(A) Attestation of actuarial equivalence to standard coverage

The sponsor of the plan provides the Secretary, annually or at such other time as the Secretary may require, with an attestation that the actuarial value of prescription drug coverage under the plan (as determined using the processes and methods described in section 1395w–111(c) of this title) is at least equal to the actuarial value of standard prescription drug coverage, not taking into account the value of any discount or coverage provided during the gap in prescription drug coverage that occurs between the initial coverage limit under section 1395w–102(b)(3) of this title during the year and the out-of-pocket threshold specified in section 1395w–102(b)(4)(B) of this title.

(B) Audits

The sponsor of the plan, or an administrator of the plan designated by the sponsor, shall maintain (and afford the Secretary access to) such records as the Secretary may require for purposes of audits and other oversight activities necessary to ensure the adequacy of prescription drug coverage and the accuracy of payments made under this section. The provisions of section 1395w–102(d)(3) of this title shall apply to such information under this section (including such actuarial value and attestation) in a manner similar to the manner in which they apply to financial records of PDP sponsors and MA organizations.

(C) Provision of disclosure regarding prescription drug coverage

The sponsor of the plan shall provide for disclosure of information regarding prescription drug coverage in accordance with section 1395w–113(b)(6)(B) of this title.

(3) Employer and union special subsidy amounts

(A) In general

For purposes of this subsection, the special subsidy payment amount under this paragraph for a qualifying covered retiree for a coverage year enrolled with the sponsor of a qualified retiree prescription drug plan is, for the portion of the retiree’s gross covered retiree plan-related prescription drug costs (as defined in subparagraph (C)(i)) for such year that exceeds the cost threshold amount specified in subparagraph (B) and does not exceed the cost limit under such subparagraph, an amount equal to 28 percent of the allowable retiree costs (as defined in subparagraph (C)(ii)) attributable to such gross covered prescription drug costs.

(B) Cost threshold and cost limit applicable

(i) In general

Subject to clause (ii)—

(I) the cost threshold under this subparagraph is equal to $250 for plan years that end in 2006; and

(II) the cost limit under this subparagraph is equal to $5,000 for plan years that end in 2006.

(ii) Indexing

The cost threshold and cost limit amounts specified in subclauses (I) and (II) of clause (i) for a plan year that ends after 2006 shall be adjusted in the same manner as the annual deductible and the annual out-of-pocket threshold, respectively, are annually adjusted under paragraphs (1) and (4)(B) of section 1395w–102(b) of this title.

(C) Definitions

For purposes of this paragraph:

(i) Allowable retiree costs

The term “allowable retiree costs” means, with respect to gross covered prescription drug costs under a qualified retiree prescription drug plan by a plan sponsor, the part of such costs that are actually paid (net of discounts, chargebacks, and average percentage rebates) by the sponsor or by or on behalf of a qualifying covered retiree under the plan.

(ii) Gross covered retiree plan-related prescription drug costs

For purposes of this section, the term “gross covered retiree plan-related prescription drug costs” means, with respect to a qualifying covered retiree enrolled in a qualified retiree prescription drug plan during a coverage year, the costs incurred under the plan, not including administrative costs, but including costs directly related to the dispensing of covered part D drugs during the year. Such costs shall be
determined whether they are paid by the retiree or under the plan.

(iii) Coverage year

The term ‘‘coverage year’’ has the meaning given such term in section 1395w–115(b)(4) of this title.

(4) Qualifying covered retiree defined

For purposes of this subsection, the term ‘‘qualifying covered retiree’’ means a part D eligible individual who is not enrolled in a prescription drug plan or an MA–PD plan but is covered under a qualified retiree prescription drug plan.

(5) Payment methods, including provision of necessary information

The provisions of section 1395w–115(d) of this title (including paragraph (2), relating to requirement for provision of information) shall apply to payments under this subsection in a manner similar to the manner in which they apply to payment under section 1395w–115(b) of this title.

(6) Construction

Nothing in this subsection shall be construed as—
(A) precluding a part D eligible individual who is covered under employment-based retiree health coverage from enrolling in a prescription drug plan or in an MA–PD plan;
(B) precluding such employment-based retiree health coverage or an employer or other person from paying all or any portion of any premium required for coverage under a prescription drug plan or MA–PD plan on behalf of such an individual;
(C) preventing such employment-based retiree health coverage from providing coverage—
(i) that is better than standard prescription drug coverage to retirees who are covered under a qualified retiree prescription drug plan; or
(ii) that is supplemental to the benefits provided under a prescription drug plan or an MA–PD plan, including benefits to retirees who are not covered under a qualified retiree prescription drug plan but who are enrolled in such a prescription drug plan or MA–PD plan; or
(D) preventing employers to provide for flexibility in benefit design and pharmacy access provisions, without regard to the requirements for basic prescription drug coverage, so long as the actuarial equivalence requirement of paragraph (2)(A) is met.

(b) Application of MA waiver authority

The provisions of section 1395w–27(i) of this title shall apply with respect to prescription drug plans in relation to employment-based retiree health coverage in a manner similar to the manner in which they apply to an MA plan in relation to employers, including authorizing the establishment of separate premium amounts for enrollees in a prescription drug plan by reason of such coverage and limitations on enrollment to part D eligible individuals enrolled under such coverage.

(c) Definitions

For purposes of this section:

(1) Employment-based retiree health coverage

The term ‘‘employment-based retiree health coverage’’ means health insurance or other coverage of health care costs (whether provided by voluntary insurance coverage or pursuant to statutory or contractual obligation) for part D eligible individuals (or for such individuals and their spouses and dependents) under a group health plan based on their status as retired participants in such plan.

(2) Sponsor

The term ‘‘sponsor’’ means a plan sponsor, as defined in section 1002(16)(B) of title 29, in relation to a group health plan, except that, in the case of a plan maintained jointly by one employer and an employee organization and with respect to which the employer is the primary source of financing, such term means such employer.

(3) Group health plan

The term ‘‘group health plan’’ includes such a plan as defined in section 1167(1) of title 29 and also includes the following:

(A) Federal and State governmental plans

Such a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, including a health benefits plan offered under chapter 89 of title 5.

(B) Collectively bargained plans

Such a plan established or maintained under or pursuant to one or more collective bargaining agreements.

(C) Church plans

Such a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1986.


REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (c)(3)(C), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2010—Subsec. (a)(2)(A). Pub. L. 111–152 inserted before period at end ‘‘, not taking into account the value of any discount or coverage provided during the gap in prescription drug coverage that occurs between the initial coverage limit under section 1395w–102(b)(3) of this title during the year and the out-of-pocket threshold specified in section 1395w–102(b)(4)(B) of this title’’.

STUDY ON EMPLOYMENT-BASED RETIREE HEALTH COVERAGE


‘‘(a) STUDY.—The Comptroller General of the United States shall conduct an initial and final study under
this subsection [probably should be this section] to examine trends in employment-based retiree health coverage (as defined in [sic] 1860D–22(c)(1) of the Social Security Act [subsec. (c)(1) of this section], as added by section 101), including coverage under the Federal Employees Health Benefits Program (FEHBP), and the options and incentives available under this Act [see Tables for classification] which may have an effect on the voluntary provision of such coverage.

“(b) CONTENT OF INITIAL STUDY.—The initial study under this section shall consider the following:

“(1) Trends in employment-based retiree health coverage prior to the date of the enactment of this Act [Dec. 8, 2003].

“(2) The opinions of sponsors of employment-based retiree health coverage concerning which of the options available under this Act [see Tables for classification] they are most likely to utilize for the provision of health coverage to their medicare-eligible retirees, including an assessment of the administrative burdens associated with the available options.

“(3) The likelihood of sponsors of employment-based retiree health coverage to maintain or adjust their levels of retiree health benefits beyond coordination with medicare, including for prescription drug coverage, provided to medicare-eligible retirees after the date of the enactment of this Act.

“(4) The factors that sponsors of employment-based retiree health coverage expect to consider in making decisions about any changes they may make in the health coverage provided to medicare-eligible retirees.

“(5) Whether the prescription drug plan options available, or the health plan options available under the Medicare Advantage program, are likely to cause employers and other entities that did not provide health coverage to retirees prior to the date of the enactment of this Act to provide supplemental coverage or contributions toward premium expenses for medicare-eligible retirees who may enroll in such options in the future.

“(c) CONTENTS OF FINAL STUDY.—The final study under this section shall consider the following:

“(1) Changes in the trends in employment-based retiree health coverage since the completion of the initial study by the Comptroller General.

“(2) Factors contributing to any changes in coverage levels.

“(3) The number and characteristics of sponsors of employment-based retiree health coverage who receive the special subsidy payments under section 1860D–22 of the Social Security Act [this section], as added by section 101, for the provision of prescription drug coverage to their medicare-eligible retirees that is the same or greater actuarial value as the prescription drug coverage available to other medicare beneficiaries without employment-based retiree health coverage.

“(4) The extent to which sponsors of employment-based retiree health coverage provide supplemental health coverage or contribute to the premiums for medicare-eligible retirees who enroll in a prescription drug plan or an MA–PD plan.

“(5) Other coverage options, including tax-preferred retirement or health savings accounts, consumer-directed health plans, or other vehicles that sponsors of employment-based retiree health coverage believe would assist retirees with their future health care needs and their willingness to sponsor such alternative plan designs.

“(6) The extent to which employers or other entities that did not provide employment-based retiree health coverage prior to the date of the enactment of this Act [Dec. 8, 2003] provided some form of coverage or financial assistance for retiree health care needs after the date of the enactment of this Act.

“(7) Recommendations by employers, benefits experts, academics, and others on ways that the voluntary provision of employment-based retiree health coverage may be improved and expanded.

“(d) REPORTS.—The Comptroller General shall submit a report to Congress on—

“(1) the initial study under subsection (b) not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003]; and

“(2) the final study under subsection (c) not later than January 1, 2007.

“(e) CONSULTATION.—The Comptroller General shall consult with sponsors of employment-based retiree health coverage, benefits experts, human resources professionals, employee benefits consultants, and academics with experience in health benefits and survey research in the development and design of the initial and final studies under this section.”

§ 1395w–133. State Pharmaceutical Assistance Programs

(a) Requirements for benefit coordination

(1) In general

Before July 1, 2005, the Secretary shall establish consistent with this section requirements for prescription drug plans to ensure the effective coordination between a part D plan (as defined in paragraph (5)) and a State Pharmaceutical Assistance Program (as defined in subsection (b) of this section) with respect to—

(A) payment of premiums and coverage; and

(B) payment for supplemental prescription drug benefits, for part D eligible individuals enrolled under both types of plans.

(2) Coordination elements

The requirements under paragraph (1) shall include requirements relating to coordination of each of the following:

(A) Enrollment file sharing.

(B) The processing of claims, including electronic processing.

(C) Claims payment.

(D) Claims reconciliation reports.

(E) Application of the protection against high out-of-pocket expenditures under section 1395w–102(b)(4) of this title.

(F) Other administrative processes specified by the Secretary.

Such requirements shall be consistent with applicable law to safeguard the privacy of any individually identifiable beneficiary information.

(3) Use of lump sum per capita method

Such requirements shall include a method for the application by a part D plan of specified funding amounts from a State Pharmaceutical Assistance Program for enrolled individuals for supplemental prescription drug benefits.

(4) Consultation

In establishing requirements under this subsection, the Secretary shall consult with State Pharmaceutical Assistance Programs, MA organizations, States, pharmaceutical benefit managers, employers, representatives of part D eligible individuals, the data processing experts, pharmacists, pharmaceutical manufacturers, and other experts.

(5) Part D plan defined

For purposes of this section and section 1395w–134 of this title, the term “part D plan”
means a prescription drug plan and an MA-PD plan.

(b) State Pharmaceutical Assistance Program

For purposes of this part, the term “State Pharmaceutical Assistance Program” means a State program—

(1) which provides financial assistance for the purchase or provision of supplemental prescription drug coverage or benefits on behalf of part D eligible individuals;

(2) which, in determining eligibility and the amount of assistance to part D eligible individuals under the Program, provides assistance to such individuals in all part D plans and does not discriminate based upon the part D plan in which the individual is enrolled; and

(3) which satisfies the requirements of subsections (a) and (c) of this section.

(c) Relation to other provisions

(1) Medicare as primary payor

The requirements of this section shall not change or affect the primary payor status of a part D plan.

(2) Use of a single card

A card that is issued under section 1395w–104(b)(2)(A) of this title for use under a part D plan may also be used in connection with coverage of benefits provided under a State Pharmaceutical Assistance Program and, in such case, may contain an emblem or symbol indicating such connection.

(3) Other provisions

The provisions of section 1395w–134(c) of this title shall apply to the requirements under this section.

(4) Special treatment under out-of-pocket rule

In applying section 1395w–102(b)(4)(C)(ii) of this title, expenses incurred under a State Pharmaceutical Assistance Program may be counted toward the annual out-of-pocket threshold.

(5) Construction

Nothing in this section shall be construed as requiring a State Pharmaceutical Assistance Program to coordinate or provide financial assistance with respect to any part D plan.

(d) Facilitation of transition and coordination with State Pharmaceutical Assistance Programs

(1) Transitional grant program

The Secretary shall provide payments to State Pharmaceutical Assistance Programs with an application approved under this subsection.

(2) Use of funds

Payments under this section may be used by a Program for any of the following:

(A) Educating part D eligible individuals enrolled in the Program about the prescription drug coverage available through part D plans under this part.

(B) Providing technical assistance, phone support, and counseling for such enrollees to facilitate selection and enrollment in such plans.

(c) Other activities designed to promote the effective coordination of enrollment, coverage, and payment between such Program and such plans.

(3) Allocation of funds

Of the amount appropriated to carry out this subsection for a fiscal year, the Secretary shall allocate payments among Programs that have applications approved under paragraph (4) for such fiscal year in proportion to the number of enrollees enrolled in each such Program as of October 1, 2003.

(4) Application

No payments may be made under this subsection except pursuant to an application that is submitted and approved in a time, manner, and form specified by the Secretary.

(5) Funding

Out of any funds in the Treasury not otherwise appropriated, there are appropriated for each of fiscal years 2005 and 2006, $62,500,000 to carry out this subsection.


§ 1395w–134. Coordination requirements for plans providing prescription drug coverage

(a) Application of benefit coordination requirements to additional plans

(1) In general

The Secretary shall apply the coordination requirements established under section 1395w–133(a) of this title to Rx plans described in subsection (b) of this section in the same manner as such requirements apply to a State Pharmaceutical Assistance Program.

(2) Application to treatment of certain out-of-pocket expenditures

To the extent specified by the Secretary, the requirements referred to in paragraph (1) shall apply to procedures established under section 1395w–102(b)(4)(D) of this title.

(3) User fees

(A) In general

The Secretary may impose user fees for the transmittal of information necessary for benefit coordination under section 1395w–102(b)(4)(D) of this title in a manner similar to the manner in which user fees are imposed under section 1395u(h)(3)(B) of this title, except that the Secretary may retain a portion of such fees to defray the Secretary’s costs in carrying out procedures under section 1395w–102(b)(4)(D) of this title.

(B) Application

A user fee may not be imposed under subparagraph (A) with respect to a State Pharmaceutical Assistance Program.

(b) Rx Plan

An Rx plan described in this subsection is any of the following:

(1) Medicaid programs

A State plan under subchapter XIX of this chapter, including such a plan operating under
a waiver under section 1315 of this title, if it meets the requirements of section 1395w–133(b)(2) of this title.

(2) Group health plans

An employer group health plan.

(3) FEHBP

The Federal employees health benefits plan under chapter 89 of title 5.

(4) Military coverage (including TRICARE)

Coverage under chapter 55 of title 10.

(5) Other prescription drug coverage

Such other health benefit plans or programs that provide coverage or financial assistance for the purchase or provision of prescription drug coverage on behalf of part D eligible individuals as the Secretary may specify.

(c) Relation to other provisions

(1) Use of cost management tools

The requirements of this section shall not impair or prevent a PDP sponsor or MA organization from applying cost management tools (including differential payments) under all methods of operation.

(2) No affect on treatment of certain out-of-pocket expenditures

The requirements of this section shall not affect the application of the procedures established under section 1395w–102(b)(4)(D) of this title.


§ 1395w–141. Medicare prescription drug discount card and transitional assistance program

(a) Establishment of program

(1) In general

The Secretary shall establish a program under this section—

(A) to endorse prescription drug discount card programs that meet the requirements of this section in order to provide access to prescription drug discounts through prescription drug card sponsors for discount card eligible individuals throughout the United States; and

(B) to provide for transitional assistance for transitional assistance eligible individuals enrolled in such endorsed programs.

(2) Period of operation

(A) Implementation deadline

The Secretary shall implement the program under this section so that discount cards and transitional assistance are first available by not later than 6 months after December 8, 2003.

(B) Expediting implementation

The Secretary shall promulgate regulations to carry out the program under this section which may be effective and final immediately on an interim basis as of the date of publication of the interim final regulation. If the Secretary provides for an interim final regulation, the Secretary shall provide for a period of public comments on such regulation after the date of publication. The Secretary may change or revise such regulation after completion of the period of public comment.

(C) Termination and transition

(i) In general

Subject to clause (ii)—

(I) the program under this section shall not apply to covered discount card drugs dispensed after December 31, 2005; and

(II) transitional assistance shall be available after such date to the extent the assistance relates to drugs dispensed on or before such date.

(ii) Transition

In the case of an individual who is enrolled in an endorsed discount card program as of December 31, 2005, during the individual’s transition period (if any) under clause (iii), in accordance with transition rules specified by the Secretary—

(I) such endorsed program may continue to apply to covered discount card drugs dispensed to the individual under the program during such transition period;

(II) no annual enrollment fee shall be applicable during the transition period;

(III) during such period the individual may not change the endorsed program plan in which the individual is enrolled; and

(IV) the balance of any transitional assistance remaining on January 1, 2006, shall remain available for drugs dispensed during the individual’s transition period.

(iii) Transition period

The transition period under this clause for an individual is the period beginning on January 1, 2006, and ending in the case of an individual who—

(I) is enrolled in a prescription drug plan or an MA–PD plan before the last date of the initial enrollment period under section 1395w–101(b)(2)(A) of this title, on the effective date of the individual’s coverage under such part; or

(II) is not so enrolled, on the last day of such initial period.

(3) Voluntary nature of program

Nothing in this section shall be construed as requiring a discount card eligible individual to enroll in an endorsed discount card program under this section.

(4) Glossary and definitions of terms

For purposes of this section:

(A) Covered discount card drug

The term “covered discount card drug” has the meaning given the term “covered part D drug” in section 1395w–102(e) of this title.

1 So in original. Probably should be “effect”. 
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(B) Discount card eligible individual

The term “discount card eligible individual” is defined in subsection (b)(1)(A) of this section.

(C) Endorsed discount card program; endorsed program

The terms “endorsed discount card program” and “endorsed program” mean a prescription drug discount card program that is endorsed (and for which the sponsor has a contract with the Secretary) under this section.

(D) Negotiated price

Negotiated prices are described in subsection (e)(1)(A)(ii) of this section.

(E) Prescription drug card sponsor; sponsor

The terms “prescription drug card sponsor” and “sponsor” are defined in subsection (h)(1)(A) of this section.

(F) State

The term “State” has the meaning given such term for purposes of subchapter XIX of this chapter.

(G) Transitional assistance eligible individual

The term “transitional assistance eligible individual” is defined in subsection (b)(2) of this section.

(b) Eligibility for discount card and for transitional assistance

For purposes of this section:

(1) Discount card eligible individual

(A) In general

The term “discount card eligible individual” means an individual who—

(i) is entitled to benefits, or enrolled, under part A of this subchapter or enrolled under part B of this subchapter; and

(ii) subject to paragraph (4), is not an individual described in subparagraph (B).

(B) Individual described

An individual described in this subparagraph is an individual described in subparagraph (A)(i) who is enrolled under subchapter XIX of this chapter (or under a waiver under section 1315 of this title of the requirements of such subchapter) and is entitled to any medical assistance for outpatient prescribed drugs described in section 1396d(a)(12) of this title.

(2) Transitional assistance eligible individual

(A) In general

Subject to subparagraph (B), the term “transitional assistance eligible individual” means a discount card eligible individual who resides in one of the 50 States or the District of Columbia and whose income (as determined under subsection (f)(1)(B) of this section) is not more than 135 percent of the poverty line (as defined in section 9902(2) of this title, including any revision required by such section) applicable to the family size involved (as determined under subsection (f)(1)(B) of this section).

(B) Exclusion of individuals with certain prescription drug coverage

Such term does not include an individual who has coverage of, or assistance for, covered discount card drugs under any of the following:

(i) A group health plan or health insurance coverage (as such terms are defined in section 300gg-91 of this title), other than coverage under a plan under part C of this subchapter and other than coverage consisting only of excepted benefits (as defined in such section).

(ii) Chapter 55 of title 10 (relating to medical and dental care for members of the uniformed services).

(iii) A plan under chapter 89 of title 5 (relating to the Federal employees’ health benefits program).

(3) Special transitional assistance eligible individual

The term “special transitional assistance eligible individual” means a transitional assistance eligible individual whose income (as determined under subsection (f)(1)(B) of this section) is not more than 100 percent of the poverty line (as defined in section 9902(2) of this title, including any revision required by such section) applicable to the family size involved (as determined under subsection (f)(1)(B) of this section).

(4) Treatment of medicaid medically needy

For purposes of this section, the Secretary shall provide for appropriate rules for the treatment of medicaid needy individuals described in section 1396a(a)(10)(C) of this title as discount card eligible individuals and as transitional assistance eligible individuals.

(c) Enrollment and enrollment fees

(1) Enrollment process

The Secretary shall establish a process through which a discount card eligible individual is enrolled and disenrolled in an endorsed discount card program under this section consistent with the following:

(A) Continuous open enrollment

Subject to the succeeding provisions of this paragraph and subsection (b)(9) of this section, a discount card eligible individual who is not enrolled in an endorsed discount card program and is residing in a State may enroll in any such endorsed program—

(i) that serves residents of the State; and

(ii) at any time beginning on the initial enrollment date, specified by the Secretary, and before January 1, 2006.

(B) Use of standard enrollment form

An enrollment in an endorsed program shall only be effected through completion of a standard enrollment form specified by the Secretary. Each sponsor of an endorsed program shall transmit to the Secretary (in a form and manner specified by the Secretary) information on individuals who complete such enrollment forms and, to the extent provided under subsection (f) of this section, information regarding certification as a transitional assistance eligible individual.
(C) Enrollment only in one program

(i) In general

Subject to clauses (ii) and (iii), a discount card eligible individual may be enrolled in only one endorsed discount card program under this section.

(ii) Change in endorsed program permitted for 2005

The Secretary shall establish a process, similar to (and coordinated with) the process for annual, coordinated elections under section 1395w–21(e)(3) of this title during 2004, under which an individual enrolled in an endorsed discount card program may change the endorsed program in which the individual is enrolled for 2005.

(iii) Additional exceptions

The Secretary shall permit an individual to change the endorsed discount program in which the individual is enrolled in the case of an individual who changes residence to be outside the service area of such program and in such other exceptional cases as the Secretary may provide (taking into account the circumstances for special election periods under section 1395w–21(e)(4) of this title). Under the previous sentence, the Secretary may consider a change in residential setting (such as placement in a nursing facility) or enrollment or disenrollment from a plan under part C of this subchapter through which the individual was enrolled in an endorsed program to be an exceptional circumstance.

(D) Disenrollment

(i) Voluntary

An individual may voluntarily disenroll from an endorsed discount card program at any time. In the case of such a voluntary disenrollment, the individual may not enroll in another endorsed program, except under such exceptional circumstances as the Secretary may recognize under subparagraph (C)(iii) or during the annual coordinated enrollment period provided under subparagraph (C)(ii).

(ii) Involuntary

An individual who is enrolled in an endorsed discount card program and not a transitional assistance eligible individual may be disenrolled by the sponsor of the program if the individual fails to pay any annual enrollment fee required under the program.

(E) Application to certain enrollees

In the case of a discount card eligible individual who is enrolled in a plan described in section 1395w–21(a)(2)(A) of this title or under a reasonable cost reimbursement contract under section 1395mm(h) of this title that is offered by an organization that also is a prescription discount card sponsor that offers an endorsed discount card program under which the individual may be enrolled and that has made an election to apply the special rules under subsection (h)(9)(B) of this section for such an endorsed program, the individual may only enroll in such an endorsed discount card program offered by that sponsor.

(2) Enrollment fees

(A) In general

Subject to the succeeding provisions of this paragraph, a prescription drug card sponsor may charge an annual enrollment fee for each discount card eligible individual enrolled in an endorsed discount card program offered by such sponsor. The annual enrollment fee for either 2004 or 2005 shall not be prorated for portions of a year. There shall be no annual enrollment fee for a year after 2005.

(B) Amount

No annual enrollment fee charged under subparagraph (A) may exceed $90.

(C) Uniform enrollment fee

A prescription drug card sponsor shall ensure that the annual enrollment fee (if any) for an endorsed discount card program is the same for all discount card eligible individuals enrolled in the program and residing in the State.

(D) Collection

The annual enrollment fee (if any) charged for enrollment in an endorsed program shall be collected by the sponsor of the program.

(E) Payment of fee for transitional assistance eligible individuals

Under subsection (g)(1)(A) of this section, the annual enrollment fee (if any) otherwise charged under this paragraph with respect to a transitional assistance eligible individual shall be paid by the Secretary on behalf of such individual.

(F) Optional payment of fee by State

(i) In general

The Secretary shall establish an arrangement under which a State may provide for payment of some or all of the enrollment fee for some or all enrollees who are not transitional assistance eligible individuals in the State, as specified by the State under the arrangement. Insofar as such a payment arrangement is made with respect to an enrollee, the amount of the enrollment fee shall be paid directly by the State to the sponsor.

(ii) No Federal matching available under medicaid or SCHIP

Expenditures made by a State for enrollment fees described in clause (i) shall not be treated as State expenditures for purposes of Federal matching payments under subchapter XIX or XXI of this chapter.

(G) Rules in case of changes in program enrollment during a year

The Secretary shall provide special rules in the case of payment of an annual enrollment fee for a discount card eligible individual who changes the endorsed program in which the individual is enrolled during a year.
(3) Issuance of discount card

Each prescription drug card sponsor of an endorsed discount card program shall issue, in a standard format specified by the Secretary, to each discount card eligible individual enrolled in such program a card that establishes proof of enrollment and that can be used in a coordinated manner to identify the sponsor, program, and individual for purposes of the program under this section.

(4) Period of access

In the case of a discount card eligible individual who enrolls in an endorsed program, access to negotiated prices and transitional assistance, if any, under such endorsed program shall take effect on such date as the Secretary shall specify.

d) Provision of information on enrollment and program features

(1) Secretarial responsibilities

(A) In general

The Secretary shall provide for activities under this subsection to broadly disseminate information to discount card eligible individuals (and prospective eligible individuals) regarding—

(i) enrollment in endorsed discount card programs; and

(ii) the features of the program under this section, including the availability of transitional assistance.

(B) Promotion of informed choice

In order to promote informed choice among endorsed prescription drug discount card programs, the Secretary shall provide for the dissemination of information which—

(i) compares the annual enrollment fee and other features of such programs, which may include comparative prices for covered discount card drugs; and

(ii) includes educational materials on the variability of discounts on prices of covered discount card drugs under an endorsed program.

The dissemination of information under clause (i) shall, to the extent practicable, be coordinated with the dissemination of educational information on other Medicare options.

(C) Special rule for initial enrollment date under the program

To the extent practicable, the Secretary shall ensure, through the activities described in subparagraphs (A) and (B), that discount card eligible individuals are provided with such information at least 30 days prior to the initial enrollment date specified under subsection (c)(1)(A)(ii) of this section.

(D) Use of Medicare toll-free number

The Secretary shall provide through the toll-free telephone number 1–800–MEDICARE for the receipt and response to inquiries and complaints concerning the program under this section and endorsed programs.

(2) Prescription drug card sponsor responsibilities

(A) In general

Each prescription drug card sponsor that offers an endorsed discount card program shall make available to discount card eligible individuals (through the Internet and otherwise) information that the Secretary identifies as being necessary to promote informed choice among endorsed discount card programs by such individuals, including information on enrollment fees and negotiated prices for covered discount card drugs charged to such individuals.

(B) Response to enrollee questions

Each sponsor offering an endorsed discount card program shall have a mechanism (including a toll-free telephone number) for providing upon request specific information (such as negotiated prices and the amount of transitional assistance remaining available through the program) to discount card eligible individuals enrolled in the program. The sponsor shall inform transitional assistance eligible individuals enrolled in the program of the availability of such toll-free telephone number to provide information on the amount of available transitional assistance.

(C) Information on balance of transitional assistance available at point-of-sale

Each sponsor offering an endorsed discount card program shall have a mechanism so that information on the amount of transitional assistance remaining under subsection (g)(1)(B) of this section is available (electronically or by telephone) at the point-of-sale of covered discount card drugs.

(3) Public disclosure of pharmaceutical prices for equivalent drugs

(A) In general

A prescription drug card sponsor offering an endorsed discount card program shall provide that each pharmacy that dispenses a covered discount card drug shall inform a discount card eligible individual enrolled in the program of any differential between the price of the drug to the enrollee and the price of the lowest priced generic covered discount card drug under the program that is therapeutically equivalent and bioequivalent and available at such pharmacy.

(B) Timing of notice

(i) In general

Subject to clause (ii), the information under subparagraph (A) shall be provided at the time of purchase of the drug involved, or, in the case of dispensing by mail order, at the time of delivery of such drug.

(ii) Waiver

The Secretary may waive clause (i) in such circumstances as the Secretary may specify.
(e) Discount card features

(1) Savings to enrollees through negotiated prices
(A) Access to negotiated prices
(i) In general
Each prescription drug card sponsor that offers an endorsed discount card program shall provide each discount card eligible individual enrolled in the program with access to negotiated prices.
(ii) Negotiated prices
For purposes of this section, negotiated prices shall take into account negotiated price concessions, such as discounts, direct or indirect subsidies, rebates, and direct or indirect remunerations, for covered discount card drugs, and include any dispensing fees for such drugs.

(B) Ensuring pharmacy access
Each prescription drug card sponsor offering an endorsed discount card program shall secure the participation in its network of a sufficient number of pharmacies that dispense (other than solely by mail order) drugs directly to enrollees to ensure convenient access to covered discount card drugs at negotiated prices (consistent with rules established by the Secretary). The Secretary shall establish convenient access rules under this clause that are no less favorable to enrollees than the standards for convenient access to pharmacies included in the statement of work of solicitation (#MDA906–03–R–0002) of the Department of Defense under the TRICARE Retail Pharmacy (TRRX) as of March 13, 2003.

(C) Prohibition on charges for required services
(i) In general
Subject to clause (ii), a prescription drug card sponsor (and any pharmacy contracting with such sponsor for the provision of covered discount card drugs to individuals enrolled in such sponsor’s endorsed discount card program) may not charge an enrollee any amount for any items and services required to be provided by the sponsor under this section.
(ii) Construction
Nothing in clause (i) shall be construed to prevent—
(I) the sponsor from charging the annual enrollment fee (except in the case of a transitional assistance eligible individual); and
(II) the pharmacy dispensing the covered discount card drug, from imposing a charge (consistent with the negotiated price) for the covered discount card drug dispensed, reduced by the amount of any transitional assistance made available.

(D) Inapplicability of medicaid best price rules
The prices negotiated from drug manufacturers for covered discount card drugs under an endorsed discount card program under this section shall (notwithstanding any other provision of law) not be taken into account for the purposes of establishing the best price under section 1396r–8(c)(1)(C) of this title.

(2) Reduction of medication errors and adverse drug interactions
Each endorsed discount card program shall implement a system to reduce the likelihood of medication errors and adverse drug interactions and to improve medication use.

(f) Eligibility procedures for endorsed programs and transitional assistance

(1) Determinations

(A) Procedures
The determination of whether an individual is a discount card eligible individual or a transitional assistance eligible individual or a special transitional assistance eligible individual (as defined in subsection (b) of this section) shall be determined under procedures specified by the Secretary consistent with this subsection.

(B) Income and family size determinations
For purposes of this section, the Secretary shall define the terms “income” and “family size” and shall specify the methods and period for which they are determined. If under such methods income or family size is determined based on the income or family size for prior periods of time, the Secretary shall permit (whether through a process of reconsideration or otherwise) an individual whose income or family size has changed to elect to have eligibility for transitional assistance determined based on income or family size for a more recent period.

(2) Use of self-certification for transitional assistance

(A) In general
Under the procedures specified under paragraph (1)(A) an individual who wishes to be treated as a transitional assistance eligible individual or a special transitional assistance eligible individual under this section (or another qualified person on such individual’s behalf) shall certify on the enrollment form under subsection (c)(1)(B) of this section (or similar form specified by the Secretary), through a simplified means specified by the Secretary and under penalty of perjury or similar sanction for false statements, as to the amount of the individual’s income, family size, and individual’s prescription drug coverage (if any) insofar as they relate to eligibility to be a transitional assistance eligible individual or a special transitional assistance eligible individual. Such certification shall be deemed as consent to verification of respective eligibility under paragraph (3). A certification under this paragraph may be provided before, on, or after the time of enrollment under an endorsed program.

(B) Treatment of self-certification
The Secretary shall treat a certification under subparagraph (A) that is verified
under paragraph (3) as a determination that the individual involved is a transitional assistance eligible individual or special transitional assistance eligible individual (as the case may be) for the entire period of the enrollment of the individual in any endorsed program.

(3) Verification

(A) In general

The Secretary shall establish methods (which may include the use of sampling and the use of information described in subparagraph (B)) to verify eligibility for individuals who seek to enroll in an endorsed program and for individuals who provide a certification under paragraph (2).

(B) Information described

The information described in this subparagraph is as follows:

(i) Medicaid-related information

Information on eligibility under subchapter XIX of this chapter and provided to the Secretary under arrangements between the Secretary and States in order to verify the eligibility of individuals who seek to enroll in an endorsed program and of individuals who provide certification under paragraph (2).

(ii) Social security information

Financial information made available to the Secretary under arrangements between the Secretary and the Commissioner of Social Security in order to verify the eligibility of individuals who provide such certification.

(iii) Information from Secretary of the Treasury

Financial information made available to the Secretary under section 6103(l)(19) of the Internal Revenue Code of 1986 in order to verify the eligibility of individuals who provide such certification.

(C) Verification in cases of medicaid enrollees

(i) In general

Nothing in this section shall be construed as preventing the Secretary from finding that a discount card eligible individual meets the income requirements under subsection (b)(2)(A) of this section if the individual is within a category of discount card eligible individuals who are enrolled under subchapter XIX of this chapter (such as qualified medicare beneficiaries (QMBs), specified low-income medicare beneficiaries (SLMBs), and certain qualified individuals (QI–1s)).

(ii) Availability of information for verification purposes

As a condition of provision of Federal financial participation to a State that is one of the 50 States or the District of Columbia under subchapter XIX of this chapter, for purposes of carrying out this section, the State shall provide the information it submits to the Secretary relating to such sub-

chapter in a manner specified by the Secretary that permits the Secretary to identify individuals who are described in subsection (b)(1)(B) of this section or are transitional assistance eligible individuals or special transitional assistance eligible individuals.

(4) Reconsideration

(A) In general

The Secretary shall establish a process under which a discount card eligible individual, who is determined through the certification and verification methods under paragraphs (2) and (3) not to be a transitional assistance eligible individual or a special transitional assistance eligible individual, may request a reconsideration of the determination.

(B) Contract authority

The Secretary may enter into a contract to perform the reconsiderations requested under subparagraph (A).

(C) Communication of results

Under the process under subparagraph (A) the results of such reconsideration shall be communicated to the individual and the prescription drug card sponsor involved.

(g) Transitional assistance

(1) Provision of transitional assistance

An individual who is a transitional assistance eligible individual (as determined under this section) and who is enrolled with an endorsed program is entitled—

(A) to have payment made of any annual enrollment fee charged under subsection (c)(2) of this section for enrollment under the program; and

(B) to have payment made, up to the amount specified in paragraph (2), under such endorsed program of 90 percent (or 95 percent in the case of a special transitional assistance eligible individual) of the costs incurred for covered discount card drugs obtained through the program taking into account the negotiated price (if any) for the drug under the program.

(2) Limitation on dollar amount

(A) In general

Subject to subparagraph (B), the amount specified in this paragraph for a transitional assistance eligible individual—

(i) for costs incurred during 2004, is $600; or

(ii) for costs incurred during 2005, is—

(I) $600, plus

(II) except as provided in subparagraph (E), the amount by which the amount available under this paragraph for 2004 for that individual exceeds the amount of payment made under paragraph (1)(B) for that individual for costs incurred during 2004.

(B) Proration

(i) In general

In the case of an individual not described in clause (i) with respect to a year, the
Secretary may prorate the amount specified in subparagraph (A) for the balance of the year involved in a manner specified by the Secretary.

(ii) Individual described
An individual described in this clause is a transitional assistance eligible individual who—
(I) with respect to 2004, enrolls in an endorsed program, and provides a certification under subsection (f)(2) of this section, before the initial implementation date of the program under this section; and
(II) with respect to 2005, is enrolled in an endorsed program, and has provided such a certification, before February 1, 2005.

(C) Accounting for available balances in cases of changes in program enrollment
In the case of a transitional assistance eligible individual who changes the endorsed discount card program in which the individual is enrolled under this section, the Secretary shall provide a process under which the Secretary provides to the sponsor of the endorsed program in which the individual enrolls information concerning the balance of amounts available on behalf of the individual under this paragraph.

(D) Limitation on use of funds
Pursuant to subsection (a)(2)(C) of this section, no assistance shall be provided under paragraph (1)(B) with respect to covered discount card drugs dispensed after December 31, 2005.

(E) No rollover permitted in case of voluntary disenrollment
Except in such exceptional cases as the Secretary may provide, in the case of a transitional assistance eligible individual who voluntarily disenrolls from an endorsed plan, the provisions of subclause (II) of subparagraph (A)(ii) shall not apply.

(3) Payment
The Secretary shall provide a method for the reimbursement of prescription drug card sponsors for assistance provided under this subsection.

(4) Coverage of coinsurance
(A) Waiver permitted by pharmacy
Nothing in this section shall be construed as precluding a pharmacy from reducing or waiving the application of coinsurance imposed under paragraph (1)(B) in accordance with section 1320a-7(b)(3)(G) of this title.

(B) Optional payment of coinsurance by State
(i) In general
The Secretary shall establish an arrangement under which a State may provide for payment of some or all of the coinsurance under paragraph (1)(B) for some or all enrollees in the State, as specified by the State under the arrangement. Insofar as such a payment arrangement is made with respect to an enrollee, the amount of the coinsurance shall be paid directly by the State to the pharmacy involved.

(ii) No Federal matching available under medicaid or SCHIP
Expenditures made by a State for coinsurance described in clause (i) shall not be treated as State expenditures for purposes of Federal matching payments under subchapter XIX or XXI of this chapter.

(iii) Not treated as medicare cost-sharing
Coinsurance described in paragraph (1)(B) shall not be treated as coinsurance under this subchapter for purposes of section 1396d(p)(3)(B) of this title.

(C) Treatment of coinsurance
The amount of any coinsurance imposed under paragraph (1)(B), whether paid or waived under this paragraph, shall not be taken into account in applying the limitation in dollar amount under paragraph (2).

(5) Ensuring access to transitional assistance for qualified residents of long-term care facilities and American Indians

(A) Residents of long-term care facilities
The Secretary shall establish procedures and may waive requirements of this section as necessary to negotiate arrangements with sponsors to provide arrangements with pharmacies that support long-term care facilities in order to ensure access to transitional assistance for transitional assistance eligible individuals who reside in long-term care facilities.

(B) American Indians
The Secretary shall establish procedures and may waive requirements of this section to ensure that, for purposes of providing transitional assistance, pharmacies operated by the Indian Health Service, Indian tribes and tribal organizations, and urban Indian organizations (as defined in section 1603 of title 25) have the opportunity to participate in the pharmacy networks of at least two endorsed programs in each of the 50 States and the District of Columbia where such a pharmacy operates.

(6) No impact on benefits under other programs
The availability of negotiated prices or transitional assistance under this section shall not be treated as benefits or otherwise taken into account in determining an individual’s eligibility for, or the amount of benefits under, any other Federal program.

(7) Disregard for purposes of part C
Nonuniformity of benefits resulting from the implementation of this section (including the provision or nonprovision of transitional assistance and the payment or waiver of any enrollment fee under this section) shall not be taken into account in applying section 1395w–24(f) of this title.
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(h) Qualification of prescription drug card sponsors and endorsement of discount card programs; beneficiary protections

(1) Prescription drug card sponsor and qualification

(A) Prescription drug card sponsor and sponsor defined

For purposes of this section, the terms "prescription drug card sponsor" and "sponsor" mean any nongovernmental entity that the Secretary determines to be appropriate to offer an endorsed discount card program under this section, which may include—

(i) a pharmaceutical benefit management company;

(ii) a wholesale or retail pharmacy delivery system;

(iii) an insurer (including an insurer that offers Medicare supplemental policies under section 1395ss of this title);

(iv) an organization offering a plan under part C of this subchapter; or

(v) any combination of the entities described in clauses (i) through (iv).

(B) Administrative qualifications

Each endorsed discount card program shall be operated directly, or through arrangements with an affiliated organization (or organizations), by one or more entities that have demonstrated experience and expertise in operating such a program or a similar program and that meets such business stability and integrity requirements as the Secretary may specify.

(C) Accounting for transitional assistance

The sponsor of an endorsed discount card program shall have arrangements satisfactory to the Secretary to account for the assistance provided under subsection (g) of this section on behalf of transitional assistance eligible individuals.

(2) Applications for program endorsement

(A) Submission

Each prescription drug card sponsor that seeks endorsement of a prescription drug discount card program under this section shall submit to the Secretary, at such time and in such manner as the Secretary may specify, an application containing such information as the Secretary may require.

(B) Approval; compliance with applicable requirements

The Secretary shall review the application submitted under subparagraph (A) and shall determine whether to endorse the prescription drug discount card program. The Secretary may not endorse such a program unless—

(i) the program and prescription drug card sponsor offering the program comply with the applicable requirements under this section; and

(ii) the sponsor has entered into a contract with the Secretary to carry out such requirements.

(C) Termination of endorsement and contracts

An endorsement of an endorsed program and a contract under subparagraph (B) shall be for the duration of the program under this section (including any transition applicable under subsection (a)(2)(C)(ii) of this section), except that the Secretary may, with notice and for cause (as defined by the Secretary), terminate such endorsement and contract.

(D) Ensuring choice of programs

(i) In general

The Secretary shall ensure that there is available to each discount card eligible individual a choice of at least 2 endorsed programs (each offered by a different sponsor).

(ii) Limitation on number

The Secretary may limit (but not below 2) the number of sponsors in a State that are awarded contracts under this paragraph.

(3) Service area encompassing entire States

Except as provided in paragraph (9), if a prescription drug card sponsor that offers an endorsed program enrolls in the program individual residing in any part of a State, the sponsor must permit any discount card eligible individual residing in any portion of the State to enroll in the program.

(4) Savings to medicare beneficiaries

Each prescription drug card sponsor that offers an endorsed discount card program shall pass on to discount card eligible individuals enrolled in the program negotiated prices on covered discount card drugs, including discounts negotiated with pharmacies and manufacturers, to the extent disclosed under subsection (i)(1) of this section.

(5) Grievance mechanism

Each prescription drug card sponsor shall provide meaningful procedures for hearing and resolving grievances between the sponsor (including any entity or individual through which the sponsor carries out the endorsed discount card program) and enrollees in endorsed discount card programs of the sponsor under this section in a manner similar to that required under section 1395w–22(f) of this title.

(6) Confidentiality of enrollee records

(A) In general

For purposes of the program under this section, the operations of an endorsed program are covered functions and a prescription drug card sponsor is a covered entity for purposes of applying part C of subchapter XI of this chapter and all regulatory provisions promulgated thereunder, including regulations (relating to privacy) adopted pursuant to the authority of the Secretary under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).1

(B) Waiver authority

In order to promote participation of sponsors in the program under this section, the Secretary may waive such relevant portions

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1 See References in Text note below.
of regulations relating to privacy referred to in subparagraph (A), for such appropriate, limited period of time, as the Secretary specifies.

(7) Limitation on provision and marketing of products and services

The sponsor of an endorsed discount card program—
(A) may provide under the program—
(i) a product or service only if the product or service is directly related to a covered discount card drug; or
(ii) a discount price for nonprescription drugs; and
(B) may, to the extent otherwise permitted under paragraph (6) (relating to application of HIPAA requirements), market a product or service under the program only if the product or service is directly related to—
(i) a covered discount card drug; or
(ii) a drug described in subparagraph (A)(ii) and the marketing consists of information on the discounted price made available for the drug involved.

(8) Additional protections

Each endorsed discount card program shall meet such additional requirements as the Secretary identifies to protect and promote the interest of discount card eligible individuals, including requirements that ensure that discount card eligible individuals enrolled in endorsed discount card programs are not charged more than the lower of the price based on negotiated prices or the usual and customary price.

(9) Special rules for certain organizations

(A) In general

In the case of an organization that is offering a plan under part C of this subchapter or enrollment under a reasonable cost reimbursement contract under section 1395mm(h) of this title that is seeking to be a prescription drug card sponsor under this section, the organization may elect to apply the special rules under subparagraph (B) with respect to enrollees in any plan described in section 1395w–21(a)(2)(A) of this title that it offers or under such contract and an endorsed discount card program it offers, but only if it limits enrollment under such program to individuals enrolled in such plan or under such contract.

(B) Special rules

The special rules under this subparagraph are as follows:

(i) Limitation on enrollment

The sponsor limits enrollment under this section under the endorsed discount card program to discount card eligible individuals who are enrolled in the part C plan involved or under the reasonable cost reimbursement contract involved and is not required nor permitted to enroll other individuals under such program.

(ii) Pharmacy access

Pharmacy access requirements under subsection (e)(1)(B) of this section are deemed to be met if the access is made available through a pharmacy network (and not only through mail order) and the network used by the sponsor is approved by the Secretary.

(iii) Sponsor requirements

The Secretary may waive the application of such requirements for a sponsor as the Secretary determines to be duplicative or to conflict with a requirement of the organization under part C of this subchapter or section 1395mm of this title (as the case may be) or to be necessary in order to improve coordination of this section with the benefits under such part or section.

(ii) Disclosure and oversight

(1) Disclosure

Each prescription drug card sponsor offering an endorsed discount card program shall disclose to the Secretary (in a manner specified by the Secretary) information relating to program performance, use of prescription drugs by discount card eligible individuals enrolled in the program, the extent to which negotiated price concessions described in subsection (e)(1)(A)(ii) of this section made available to the entity by a manufacturer are passed through to enrollees through pharmacies or otherwise, and such other information as the Secretary may specify. The provisions of section 1396r–8(b)(3)(D) of this title shall apply to drug pricing data reported under the previous sentence (other than data in aggregate form).

(2) Oversight; audit and inspection authority

The Secretary shall provide appropriate oversight to ensure compliance of endorsed discount card programs and their sponsors with the requirements of this section. The Secretary shall have the right to audit and inspect any books and records of a prescription discount card sponsor (and of any affiliated organization referred to in subsection (h)(1)(B) of this section) that pertain to the endorsed discount card program under this section, including amounts payable to the sponsor under this section.

(3) Sanctions for abusive practices

The Secretary may implement intermediate sanctions or may revoke the endorsement of a program offered by a sponsor under this section if the Secretary determines that the sponsor or the program no longer meets the applicable requirements of this section or that the sponsor has engaged in false or misleading marketing practices. The Secretary may impose a civil money penalty in an amount not to exceed $10,000 for conduct that a party knows or should know is a violation of this section. The provisions of section 1320a–7a of this title (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.
(j) Treatment of territories

(1) In general

The Secretary may waive any provision of this section (including subsection (h)(2)(D)) in the case of a resident of a State (other than the 50 States and the District of Columbia) insofar as the Secretary determines it is necessary to secure access to negotiated prices for discount card eligible individuals (or, at the option of the Secretary, individuals described in subsection (b)(1)(A)(i) of this section).

(2) Transitional assistance

(A) In general

In the case of a State, other than the 50 States and the District of Columbia, if the State establishes a plan described in subparagraph (B) (for providing transitional assistance with respect to the provision of prescription drugs to some or all individuals residing in the State who are described in subparagraph (B)(i)), the Secretary shall pay to the State for the entire period of the operation of this section an amount equal to the amount allotted to the State under subparagraph (C).

(B) Plan

The plan described in this subparagraph is a plan that—

(i) provides transitional assistance with respect to the provision of covered discount card drugs to some or all individuals who are entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, who reside in the State, and who have income below 135 percent of the poverty line; and

(ii) assures that amounts received by the State under this paragraph are used only for such assistance.

(C) Allotment limit

The amount described in this subparagraph for a State is equal to $35,000,000 multiplied by the ratio (as estimated by the Secretary) of—

(i) the number of individuals who are entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, who reside in the State (as determined by the Secretary as of July 1, 2003), to

(ii) the sum of such numbers for all States to which this paragraph applies.

(D) Continued availability of funds

Amounts made available to a State under this paragraph which are not used under this paragraph shall be added to the amount available to that State for purposes of carrying out section 1396u–5(e) of this title.

(k) Funding

(1) Establishment of Transitional Assistance Account

(A) In general

There is created within the Federal Supplementary Medical Insurance Trust Fund established by section 1395t of this title an account to be known as the “Transitional Assistance Account” (in this subsection referred to as the “Account”).

(B) Funds

The Account shall consist of such gifts and bequests as may be made as provided in section 401(i)(1) of this title, accrued interest on balances in the Account, and such amounts as may be deposited in, or appropriated to, the Account as provided in this subsection.

(C) Separate from rest of Trust Fund

Funds provided under this subsection to the Account shall be kept separate from all other funds within the Federal Supplementary Medical Insurance Trust Fund, but shall be invested, and such investments redeemed, in the same manner as all other funds and investments within such Trust Fund.

(2) Payments from account

(A) In general

The Managing Trustee shall pay from time to time from the Account such sums as the Secretary certifies are necessary to make payments for transitional assistance provided under subsections (g) and (j)(2) of this section.

(B) Treatment in relation to part B premium

Amounts payable from the Account shall not be taken into account in computing actuarial rates or premium amounts under section 1395r of this title.

(3) Appropriations to cover benefits

There are appropriated to the Account in a fiscal year, out of any moneys in the Treasury not otherwise appropriated, an amount equal to the payments made from the Account in the year.

(4) For administrative expenses

There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out the Secretary’s responsibilities under this section.

(5) Transfer of any remaining balance to Medicare Prescription Drug Account

Any balance remaining in the Account after the Secretary determines that funds in the Account are no longer necessary to carry out the program under this section shall be transferred and deposited into the Medicare Prescription Drug Account under section 1395w–116 of this title.

(6) Construction

Nothing in this section shall be construed as authorizing the Secretary to provide for payment (other than payment of an enrollment fee on behalf of a transitional assistance eligible individual under subsection (g)(1)(A) of this section) to a sponsor for administrative expenses incurred by the sponsor in carrying out this section (including in administering the transitional assistance provisions of subsections (f) and (g) of this section).

REFERENCES IN TEXT

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (h)(6)(A), is section 264(c) of Pub. L. 104–191, which is set out as a note under section 1329d–2 of this title.

RULES FOR IMPLEMENTATION

(a) Definitions
The term "basic prescription drug coverage" is defined in section 1395w–102(a)(3) of this title.

(2) Covered part D drug
The term "covered part D drug" is defined in section 1395w–102(e) of this title.

(3) Creditable prescription drug coverage
The term "creditable prescription drug coverage" has the meaning given such term in section 1395w–112(b)(4) of this title.

(4) Part D eligible individual
The term "part D eligible individual" has the meaning given such term in section 1395w–101(a)(3)(A) of this title.

(5) Fallback prescription drug plan
The term "fallback prescription drug plan" has the meaning given such term in section 1395w–111(g)(4) of this title.

(6) Initial coverage limit
The term "initial coverage limit" means such limit as established under section 1395w–102(b)(3) of this title, or, in the case of coverage that is not standard prescription drug coverage, the comparable limit (if any) established under the coverage.

(7) Insurance risk
The term "insurance risk" means, with respect to a participating pharmacy, risk of the type commonly assumed only by insurers licensed by a State and does not include payment variations designed to reflect performance-based measures of activities within the control of the pharmacy, such as formulary compliance and generic drug substitution.

(8) MA plan
The term "MA plan" has the meaning given such term in section 1395w–101(a)(3)(B) of this title.

(9) MA–PD plan
The term "MA–PD plan" has the meaning given such term in section 1395w–101(a)(3)(C) of this title.

(10) Medicare Prescription Drug Account
The term "Medicare Prescription Drug Account" means the Account created under section 1395w–11(b)(a) of this title.

(11) PDP approved bid
The term "PDP approved bid" has the meaning given such term in section 1395w–102(a)(3)(B) of this title.

(12) PDP region
The term "PDP region" means such a region as provided under section 1395w–112(a)(2) of this title.

(13) PDP sponsor
The term "PDP sponsor" means a non-governmental entity that is certified under this part as meeting the requirements and standards of this part for such a sponsor.

(14) Prescription drug plan
The term "prescription drug plan" means prescription drug coverage that is offered—

(A) under a policy, contract, or plan that has been approved under section 1395w–111(e) of this title; and

(B) by a PDP sponsor pursuant to, and in accordance with, a contract between the Secretary and the sponsor under section 1395w–112(b) of this title.

(15) Qualified prescription drug coverage
The term "qualified prescription drug coverage" is defined in section 1395w–102(a)(1) of this title.

(16) Standard prescription drug coverage
The term "standard prescription drug coverage" is defined in section 1395w–102(b) of this title.

(17) State Pharmaceutical Assistance Program
The term "State Pharmaceutical Assistance Program" has the meaning given such term in section 1395w–133(b) of this title.

1 See References in Text note below.
(18) Subsidy eligible individual

The term “subsidy eligible individual” has the meaning given such term in section 1395w–114(a)(3)(A) of this title.

(b) Application of part C provisions under this part

For purposes of applying provisions of part C of this subchapter under this part with respect to a prescription drug plan and a PDP sponsor, unless otherwise provided in this part such provisions shall be applied as if—

(1) any reference to an MA plan included a reference to a prescription drug plan;

(2) any reference to an MA organization or a provider-sponsored organization included a reference to a PDP sponsor;

(3) any reference to a contract under section 1395w–27 of this title included a reference to a contract under section 1395w–112(b) of this title;

(4) any reference to part C of this subchapter included a reference to this part; and

(5) any reference to an election period under section 1395w–21 of this title were a reference to an enrollment period under section 1395w–101 of this title.

(c) Coverage gap rebate for 2010

(a) In general

In order for coverage to be available under this part for covered part D drugs (as defined in section 1395w–102(e) of this title) of a manufacturer, the manufacturer must—

(1) participate in the Medicare coverage gap discount program under section 1395w–114a of this title;

(2) have entered into and have in effect an agreement described in subsection (b) of such section with the Secretary; and

(3) have entered into and have in effect, under terms and conditions specified by the Secretary, a contract with a third party that the Secretary has entered into a contract with under subsection (d)(3) of such section.

(b) Effective date

Subsection (a) shall apply to covered part D drugs dispensed under this part on or after January 1, 2011.

(c) Authorizing coverage for drugs not covered under agreements

Subsection (a) shall not apply to the dispensing of a covered part D drug if—

(1) the Secretary has made a determination that the availability of the drug is essential to the health of beneficiaries under this part; or

(2) the Secretary determines that in the period beginning on January 1, 2011, and ending on December 31, 2011, there were extenuating circumstances.

(d) Definition of manufacturer

In this section, the term “manufacturer” has the meaning given such term in section 1395w–114a(g)(5) of this title.

(1) In general

The Secretary may waive such requirements of this part, including section 1395w–103(a)(1) of this title, insofar as the Secretary determines it necessary to secure access to qualified prescription drug coverage for part D eligible individuals residing in a State (other than the 50 States and the District of Columbia).

(b) Application of demonstration authority

The provisions of section 402 of the Social Security Amendments of 1967 (Public Law 90–248) shall apply with respect to this part and part C of this subchapter in the same manner it applies with respect to parts A and B of this subchapter, except that any reference with respect to a Trust Fund in relation to an experiment or demonstration project relating to prescription drug coverage under this part shall be deemed a reference to the Medicare Prescription Drug Account within the Federal Supplementary Medical Insurance Trust Fund.

(c) Coverage gap rebate for 2010

In the case of an individual described in subparagraphs (A) through (D) of section 1395w–114a(g)(1) of this title who as of the last day of a calendar quarter in 2010 has incurred costs for covered part D drugs so that the individual has exceeded the initial coverage limit under section 1395w–102(b)(3) of this title for 2010, the Secretary shall provide for payment from the Medicare Prescription Drug Account of $250 to the individual by not later than the 15th day of the third month following the end of such quarter.

(2) Limitation

The Secretary shall provide only 1 payment under this subsection with respect to any individual.

1 In this section, the term “manufacturer” has the meaning given such term in section 1395w–114a(g)(5) of this title.

1 So in original. Probably should be followed by “ending on”.

REFERENCES IN TEXT


AMENDMENTS


§ 1395w–153. Condition for coverage of drugs under this part

(a) In general

In order for coverage to be available under this part for covered part D drugs (as defined in section 1395w–102(e) of this title) of a manufacturer, the manufacturer must—

(1) participate in the Medicare coverage gap discount program under section 1395w–114a of this title;

(2) have entered into and have in effect an agreement described in subsection (b) of such section with the Secretary; and

(3) have entered into and have in effect, under terms and conditions specified by the Secretary, a contract with a third party that the Secretary has entered into a contract with under subsection (d)(3) of such section.

(b) Effective date

Subsection (a) shall apply to covered part D drugs dispensed under this part on or after January 1, 2011.

(c) Authorizing coverage for drugs not covered under agreements

Subsection (a) shall not apply to the dispensing of a covered part D drug if—

(1) the Secretary has made a determination that the availability of the drug is essential to the health of beneficiaries under this part; or

(2) the Secretary determines that in the period beginning on January 1, 2011, and ending on December 31, 2011, there were extenuating circumstances.

(d) Definition of manufacturer

In this section, the term “manufacturer” has the meaning given such term in section 1395w–114a(g)(5) of this title.
§ 1395w–154. Improved Medicare prescription drug and MA–PD plan complaint system

(a) In general

The Secretary shall develop and maintain a complaint system, that is widely known and easy to use, to collect and maintain information on MA–PD plan and prescription drug plan complaints that are received (including by telephone, letter, e-mail, or any other means) by the Secretary (including by a regional office of the Department of Health and Human Services, the Medicare Beneficiary Ombudsman, a subcontractor, a carrier, a fiscal intermediary, and a Medicare administrative contractor under section 1395kk–1 of this title) through the date on which the complaint is resolved. The system shall be able to report and initiate appropriate interventions and monitoring based on substantial complaints and to guide quality improvement.

(b) Model electronic complaint form

The Secretary shall develop a model electronic complaint form to be used for reporting plan complaints under the system. Such form shall be prominently displayed on the front page of the Medicare.gov Internet website and on the Internet website of the Medicare Beneficiary Ombudsman.

(c) Annual reports by the Secretary

The Secretary shall submit to Congress annual reports on the system. Such reports shall include an analysis of the number and types of complaints reported in the system, geographic variations in such complaints, the timeliness of agency or plan responses to such complaints, and the resolution of such complaints.

(d) Definitions

In this section:

(1) MA–PD plan

The term “MA–PD plan” has the meaning given such term in section 1395w–151(a)(9) of this title.

(2) Prescription drug plan

The term “prescription drug plan” has the meaning given such term in section 1395w–151(a)(14) of this title.

(3) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

(4) System

The term “system” means the plan complaint system developed and maintained under subsection (a).


AMENDMENTS


§ 1395x. Definitions

For purposes of this subchapter—

(a) Spell of illness

The term “spell of illness” with respect to any individual means a period of consecutive days—

(1) beginning with the first day (not included in a previous spell of illness) (A) on which such individual is furnished inpatient hospital services, inpatient critical access hospital services or extended care services, and (B) which occurs in a month for which he is entitled to benefits under part A of this subchapter, and

(2) ending with the close of the first period of 60 consecutive days thereafter on each of which he is neither an inpatient of a hospital or critical access hospital nor an inpatient of a facility described in section 1395i–3(a)(1) of this title or subsection (y)(1) of this section.

(b) Inpatient hospital services

The term “inpatient hospital services” means the following items and services furnished to an inpatient of a hospital and (except as provided in paragraph (3)) by the hospital—

(1) bed and board;

(2) such nursing services and other related services, such use of hospital facilities, and such medical social services as are ordinarily furnished by the hospital for the care and treatment of inpatients, and such drugs, biologicals, supplies, appliances, and equipment, for use in the hospital, as are ordinarily furnished by such hospital for the care and treatment of inpatients; and

(3) such other diagnostic or therapeutic items or services, furnished by the hospital or by others under arrangements with them made by the hospital, as are ordinarily furnished to inpatients either by such hospital or by others under such arrangements;

excluding, however—

(4) medical or surgical services provided by a physician, resident, or intern, services described by subsection (s)(2)(K) of this section, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist; and

(5) the services of a private-duty nurse or other private-duty attendant.

Paragraph (4) shall not apply to services provided in a hospital by—

(6) an intern or a resident-in-training under a teaching program approved by the Council on Medical Education of the American Medical Association or, in the case of an osteo-
pathic hospital, approved by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, or, in the case of services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of podiatry, approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association; or

(7) a physician where the hospital has a teaching program approved as specified in paragraph (6), if (A) the hospital elects to receive any payment due under this subchapter for reasonable costs of such services, and (B) all physicians in such hospital agree not to bill charges for professional services rendered in such hospital to individuals covered under the insurance program established by this subchapter.

(c) Inpatient psychiatric hospital services

The term “inpatient psychiatric hospital services” means inpatient hospital services furnished to an inpatient of a psychiatric hospital.

(d) Supplier

The term “supplier” means, unless the context otherwise requires, a physician or other practitioner, a facility, or other entity (other than a provider of services) that furnishes items or services under this subchapter.

(e) Hospital

The term “hospital” (except for purposes of sections 1395f(d), 1395f(f), and 1395n(b) of this title, subsection (a)(2) of this section, paragraph (7) of this subsection, and subsection (i) of this section) means an institution which—

(1) is primarily engaged in providing, by or under the supervision of physicians, to inpatients (A) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

(2) maintains clinical records on all patients;

(3) has bylaws in effect with respect to its staff of physicians;

(4) has a requirement that every patient with respect to whom payment may be made under this subchapter must be under the care of a physician, except that a patient receiving qualified psychologist services (as defined in subsection (ii) of this section) may be under the care of a clinical psychologist with respect to such services to the extent permitted under State law;

(5) provides 24-hour nursing service rendered or supervised by a registered professional nurse, and has a licensed practical nurse or supervised by a registered professional nurse (except that in any event a registered professional nurse must be present on the premises to render or supervise the nursing service provided, during at least the regular daytime shift), where immediately preceding such one-year period he finds that—

(A) such institution is located in a rural area and the supply of hospital services in such area is not sufficient to meet the needs of individuals residing therein,

(B) the failure of such institution to qualify as a hospital would seriously reduce the availability of such services to such individuals, and

(C) such institution has made and continues to make a good faith effort to comply with this paragraph, but such compliance is impeded by the lack of qualified nursing personnel in such area;

(6)(A) has in effect a hospital utilization review plan which meets the requirements of subsection (k) of this section and (B) has in place a discharge planning process that meets the requirements of subsection (ee) of this section;

(7) in the case of an institution in any State in which State or applicable local law provides for the licensing of hospitals, (A) is licensed pursuant to such law or (B) is approved, by the agency of such State or locality responsible for licensing hospitals, as meeting the standards established for such licensing;

(8) has in effect an overall plan and budget that meets the requirements of subsection (z) of this section; and

(9) meets such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the institution.

For purposes of subsection (a)(2) of this section, such term includes any institution which meets the requirements of paragraphs (1) of this subsection. For purposes of sections 1395f(d) and 1395f(f) of this title (including determination of whether an individual received inpatient hospital services or diagnostic services for purposes of such sections), section 1395f(f)(2), and 1395n(b) of this title, and subsection (i) of this section, such term includes any institution which (i) meets the requirements of paragraphs (5) and (7) of this subsection, (ii) is not primarily engaged in providing the services described in subsection (j)(1)(A) of this section and (iii) is primarily engaged in providing, by or under the supervision of individuals referred to in paragraph (1) of subsection (r) of this section, to inpatients diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. For purposes of section 1395f(f) of this title, such term includes an institution which (i) is a hospital for purposes of sections 1395f(d), 1395f(f), and 1395n(b) of this title and (ii) is accredited by a national accreditation body recognized by the Secretary under section 1395b(a) of this title, or is accredited by or approved by a program of the country in which such institution is located if the Secretary finds the accreditation or comparable approval standards of such
program to be essentially equivalent to those of such a national accreditation body.\footnote{So in original.} Notwithstanding the preceding provisions of this subsection, such term shall not, except for purposes of subsection (a)(2) of this section, include any institution which is primarily for the care and treatment of mental diseases unless it is a psychiatric hospital (as defined in subsection (f) of this section). The term “hospital” also includes a religious nonmedical health care institution (as defined in subsection (ss)(1) of this section), but only with respect to personnel and services ordinarily furnished by such institution to inpatients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations consistent with section 1395i-5 of this title. For provisions deeming certain requirements of this subsection to be met in the case of accredited institutions, see section 1395w(bb) of this title. The term “hospital” also includes a facility of fifty beds or less which is located in an area determined by the Secretary to meet the definition relating to a rural area described in subparagraph (A) of paragraph (5) of this subsection and which meets the other requirements of this subsection, except that—

(A) with respect to the requirements for nursing services applicable after December 31, 1978, such requirements shall provide for temporary waiver of the requirements, for such period as the Secretary deems appropriate, where (i) the facility’s failure to fully comply with the requirements is attributable to a temporary shortage of qualified nursing personnel in the area in which the facility is located, (ii) a registered professional nurse is present on the premises to render or supervise the nursing service provided during at least the regular daytime shift, and (iii) the Secretary determines that the employment of such nursing personnel as are available to the facility during such temporary period will not adversely affect the health and safety of patients;

(B) with respect to the health and safety requirements promulgated under paragraph (9), such requirements shall be applied by the Secretary to a facility herein defined in such manner as to assure that personnel requirements take into account the availability of technical personnel and the educational opportunities for technical personnel in the area in which such facility is located, and the scope of services rendered by such facility; and the Secretary, by regulations, shall provide for the continued participation of such a facility where such personnel requirements are not fully met, for such period as the Secretary determines that (i) the facility is making good faith efforts to fully comply with the personnel requirements, (ii) the employment by the facility of such personnel as are available to the facility will not adversely affect the health and safety of patients, and (iii) if the Secretary has determined that because of the

facility’s waiver under this subparagraph the facility should limit its scope of services in order not to adversely affect the health and safety of the facility’s patients, the facility is so limiting the scope of services it provides; and

(C) with respect to the fire and safety requirements promulgated under paragraph (9), the Secretary (i) may waive, for such period as he deems appropriate, specific provisions of such requirements which if rigidly applied would result in unreasonable hardship for such a facility and which, if not applied, would not jeopardize the health and safety of patients, and (ii) may accept a facility’s compliance with all applicable State codes relating to fire and safety in lieu of compliance with the fire and safety requirements promulgated under paragraph (9), if he determines that such State has in effect fire and safety codes, imposed by State law, which adequately protect patients.

The term “hospital” does not include, unless the context otherwise requires, a critical access hospital (as defined in subsection (mm)(1) of this section).

(f) Psychiatric hospital

The term “psychiatric hospital” means an institution which—

(1) is primarily engaged in providing, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons;

(2) satisfies the requirements of paragraphs (3) through (9) of subsection (e) of this section;

(3) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree and intensity of the treatment provided to individuals entitled to hospital insurance benefits under part A of this subchapter; and

(4) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the institution.

In the case of an institution which satisfies paragraphs (1) and (2) of the preceding sentence and which contains a distinct part which also satisfies paragraphs (3) and (4) of such sentence, such distinct part shall be considered to be a “psychiatric hospital”:

(g) Outpatient occupational therapy services

The term “outpatient occupational therapy services” has the meaning given the term “outpatient physical therapy services” in subsection (p) of this section, except that “occupational” shall be substituted for “physical” each place it appears therein.

(h) Extended care services

The term “extended care services” means the following items and services furnished to an inpatient of a skilled nursing facility and (except as provided in paragraphs (6), (7), and (8)) by such skilled nursing facility—

(1) nursing care provided by or under the supervision of a registered professional nurse;

(2) bed and board in connection with the furnishing of such nursing care;
(3) physical or occupational therapy or speech-language pathology services furnished by the skilled nursing facility or by others under arrangements with them made by the facility;
(4) medical social services;
(5) such drugs, biologicals, supplies, appliances, and equipment, furnished for use in the skilled nursing facility, as are ordinarily furnished by such facility for the care and treatment of inpatients;
(6) medical services provided by an intern or resident-in-training of a hospital with which the facility has in effect a transfer agreement (meeting the requirements of subsection (f) of this section), under a teaching program of such hospital approved as provided in the last sentence of subsection (b) of this section, and other diagnostic or therapeutic services provided by a hospital with which the facility has such an agreement in effect; and
(7) such other services necessary to the health of the patients as are generally provided by skilled nursing facilities, or by others under arrangements with them made by the facility;

excluding, however, any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital.

(i) Post-hospital extended care services

The term “post-hospital extended care services” means extended care services furnished an individual after transfer from a hospital in which he was an inpatient for not less than 3 consecutive days before his discharge from the hospital in connection with such transfer. For purposes of the preceding sentence, items and services shall be deemed to have been furnished to an individual after transfer from a hospital, and he shall be deemed to have been an inpatient in the hospital immediately before transfer therefrom, if he is admitted to the skilled nursing facility (A) within 30 days after discharge from such hospital, or (B) within such time as it would be medically appropriate to begin an active course of treatment, or, in the case of an individual whose condition is such that skilled nursing facility care would not be medically appropriate within 30 days after discharge from the hospital; and an individual shall be deemed not to have been discharged from a skilled nursing facility if, within 30 days after discharge therefrom, he is admitted to such facility or any other skilled nursing facility.

(j) Skilled nursing facility

The term “skilled nursing facility” has the meaning given such term in section 1395i–3(a) of this title.

(k) Utilization review

A utilization review plan of a hospital or skilled nursing facility shall be considered sufficient if it is applicable to services furnished by the institution to individuals entitled to insurance benefits under this subchapter and if it provides—

(1) for the review, on a sample or other basis, of admissions to the institution, the duration of stays therein, and the professional services (including drugs and biologicals) furnished, (A) with respect to the medical necessity of the services, and (B) for the purpose of promoting the most efficient use of available health facilities and services;

(2) for such review to be made by either (A) a staff committee of the institution composed of two or more physicians (of which at least two must be physicians described in subsection (r)(1) of this section), with or without participation of other professional personnel, or (B) a group outside the institution which is similarly composed and (i) which is established by the local medical society and some or all of the hospitals and skilled nursing facilities in the locality, or (ii) if (and for as long as) there has not been established such a group which serves such institution, which is established in such other manner as may be approved by the Secretary;

(3) for such review, in each case of inpatient hospital services or extended care services furnished to an individual during a continuous period of extended duration, as of such days of such period (which may differ for different classes of cases) as may be specified in regulations, with such review to be made as promptly as possible, after each day so specified, and in no event later than one week following such day; and

(4) for prompt notification to the institution, the individual, and his attending physician of any finding (made after opportunity for consultation to such attending physician) by the physician members of such committee or group that any further stay in the institution is not medically necessary.

The review committee must be composed as provided in clause (B) of paragraph (2) rather than as provided in clause (A) of such paragraph in the case of any hospital or skilled nursing facility where, because of the small size of the institution, or (in the case of a skilled nursing facility) because of lack of an organized medical staff, or for such other reason or reasons as may be included in regulations, it is impracticable for the institution to have a properly functioning staff committee for the purposes of this subsection. If the Secretary determines that the utilization review procedures established pursuant to subchapter XIX of this chapter are superior in their effectiveness to the procedures required under this section, he may, to the extent that he deems it appropriate, require for purposes of this subchapter that the procedures established pursuant to subchapter XIX of this chapter be utilized instead of the procedures required by this section.

(l) Agreements for transfer between skilled nursing facilities and hospitals

A hospital and a skilled nursing facility shall be considered to have a transfer agreement in effect if, by reason of a written agreement between them or (in case the two institutions are under common control) by reason of a written undertaking by the person or body which controls them, there is reasonable assurance that—

(1) transfer of patients will be effected between the hospital and the skilled nursing facility whenever such transfer is medically ap-
properly reviewed by a physician, which items and services to such individual) established and periodically used as such individual's home—

Any skilled nursing facility which does not have such an agreement in effect, but which is found by a State agency (of the State in which such facility is situated) with which an agreement (m) Home health services

The term “home health services” means the following items and services furnished to an individual, who is under the care of a physician, by a home health agency or by others under arrangements with them made by such agency, under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician, which items and services are, except as provided in paragraph (7), provided on a visiting basis in a place of residence used as such individual’s home:

(1) part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse;
(2) physical or occupational therapy or speech-language pathology services;
(3) medical social services under the direction of a physician;
(4) to the extent permitted in regulations, part-time or intermittent services of a home health aide who has successfully completed a training program approved by the Secretary;
(5) medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care, and a covered osteoporosis drug (as defined in subsection (kk) of this section), but excluding other drugs and biologicals) and durable medical equipment while under such a plan;
(6) in the case of a home health agency which is affiliated or under common control with a hospital, medical services provided by an intern or resident-in-training of such hospital, under a teaching program of such hospital approved as provided in the last sentence of paragraph (b) of this section; and
(7) any of the foregoing items and services which are provided on an outpatient basis, under arrangements made by the home health agency, at a hospital or skilled nursing facility, or at a rehabilitation center which meets such standards as may be prescribed in regulations, and—

(A) the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in such place of residence, or
(B) which are furnished at such facility while he is there to receive any such item or service described in clause (A), but not including transportation of the individual in connection with any such item or service;

excluding, however, any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital. For purposes of paragraphs (1) and (4), the term “part-time or intermittent services” means skilled nursing and home health aide services furnished any number of days per week as long as they are furnished (combined) less than 8 hours each day and 28 or fewer hours each week (or, subject to review on a case-by-case basis as to the need for care, less than 8 hours each day and 35 or fewer hours per week). For purposes of sections 1395f(a)(2)(C) and 1395m(a)(2)(A) of this title, “intermittent” means skilled nursing care that is either provided or needed on fewer than 7 days each week, or less than 8 hours of each day for periods of 21 days or less (with extensions in exceptional circumstances when the need for additional care is finite and predictable).

(n) Durable medical equipment

The term “durable medical equipment” includes iron lungs, oxygen tents, hospital beds, and wheelchairs (which may include a power-operated vehicle that may be appropriately used as a wheelchair, but only where the use of such a vehicle is determined to be necessary on the basis of the individual’s medical and physical condition and the vehicle meets such safety requirements as the Secretary may prescribe) used in the patient’s home (including an institution used as his home other than an institution that meets the requirements of subsection (e)(1) of this section or section 1395j-3(a)(1) of this title), whether furnished on a rental basis or purchased, and includes blood-testing strips and blood glucose monitors for individuals with diabetes without regard to whether the individual has Type I or Type II diabetes or to the individual’s use of insulin (as determined under standards established by the Secretary in consultation with the appropriate organizations); except that such term does not include such equipment furnished by a supplier who has used, for the demonstration and use of specific equipment, an individual who has not met such minimum training standards as the Secretary may establish with respect to the demonstration and use of such specific equipment. With respect to a seat-lift chair, such term includes only the seat-lift mechanism and does not include the chair.

(o) Home health agency

The term “home health agency” means a public agency or private organization, or a subdivision of such an agency or organization, which—
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(1) is primarily engaged in providing skilled nursing services and other therapeutic services;

(2) has policies, established by a group of professional personnel (associated with the agency or organization), including one or more physicians and one or more registered professional nurses, to govern the services (referred to in paragraph (1)) which it provides, and provides for supervision of such services by a physician or registered professional nurse;

(3) maintains clinical records on all patients;

(4) in the case of an agency or organization in any State in which State or applicable local law provides for the licensing of agencies or organizations of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing agencies or organizations of this nature, as meeting the standards established for such licensing;

(5) has in effect an overall plan and budget that meets the requirements of subsection (2) of this section;

(6) meets the conditions of participation specified in section 1395bbb(a) of this title and such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such agency or organization;

(7) provides the Secretary with a surety bond—

(A) effective for a period of 4 years (as specified by the Secretary) or in the case of a change in the ownership or control of the agency (as determined by the Secretary) during or after such 4-year period, an additional period of time that the Secretary determines appropriate, such additional period not to exceed 4 years from the date of such change in ownership or control;

(B) in a form specified by the Secretary; and

(C) for a year in the period described in subparagraph (A) in an amount that is equal to the lesser of $50,000 or 10 percent of the aggregate amount of payments to the agency under this subchapter or subchapter XIX of this chapter for that year, as estimated by the Secretary that the Secretary determines is commensurate with the volume of the billing of the home health agency, and

(8) meets such additional requirements (including conditions relating to bonding or establishing of escrow accounts as the Secretary finds necessary for the financial security of the program) as the Secretary finds necessary for the effective and efficient operation of the program;

except that for purposes of part A of this subchapter such term shall not include any agency or organization which is primarily for the care and treatment of mental diseases. The Secretary may waive the requirement of a surety bond under paragraph (7) in the case of an agency or organization that provides a comparable surety bond under State law.

(p) Outpatient physical therapy services

The term "outpatient physical therapy services" means physical therapy services furnished by a provider of services, a clinic, rehabilitation agency, or a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient—

(1) who is under the care of a physician (as defined in paragraph (1), (3), or (4) of subsection (r) of this section), and

(2) with respect to whom a plan prescribing the type, amount, and duration of physical therapy services that are to be furnished such individual has been established by a physician (as so defined) or by a qualified physical therapist and is periodically reviewed by a physician (as so defined);

excluding however—

(3) any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital; and

(4) any such service—

(A) if furnished by a clinic or rehabilitation agency, or by others under arrangements with such clinic or agency, unless such clinical or rehabilitation agency—

(i) provides an adequate program of physical therapy services for outpatients and has the facilities and personnel required for such program or required for the supervision of such a program, in accordance with such requirements as the Secretary may specify,

(ii) has policies, established by a group of professional personnel, including one or more physicians (associated with the clinic or rehabilitation agency) and one or more qualified physical therapists, to govern the services (referred to in clause (i)) it provides,

(iii) maintains clinical records on all patients,

(iv) if such clinic or agency is situated in a State in which State or applicable local law provides for the licensing of institutions of this nature, (I) is licensed pursuant to such law, or (II) is approved, by the agency of such State or locality responsible for licensing institutions of this nature, as meeting the standards established for such licensing; and

(v) meets such other conditions relating to the health and safety of individuals who are furnished services by such clinic or agency on an outpatient basis, as the Secretary may find necessary, and provides the Secretary on a continuing basis with a surety bond in a form specified by the Secretary and in an amount that is not less than $50,000, or

(B) if furnished by a public health agency, unless such agency meets such other conditions relating to health and safety of individuals who are furnished services by such agency on an outpatient basis, as the Secretary may find necessary.

The term "outpatient physical therapy services" also includes physical therapy services fur-
nished an individual by a physical therapist (in his office or in such individual’s home) who meets licensing and other standards prescribed by the Secretary in regulations, otherwise than under an arrangement with and under the supervision of a provider of services, clinic, rehabilitation agency, or public health agency, if the furnishing of such services meets such conditions relating to health and safety as the Secretary may find necessary. In addition, such term includes physical therapy services which meet the requirements of the first sentence of this subsection except that they are furnished to an individual as an inpatient of a hospital or extended care facility. Nothing in this subsection shall be construed as requiring, with respect to outpatients who are not entitled to benefits under this subchapter, a physical therapist to provide outpatient physical therapy services only to outpatients who are under the care of a physician or pursuant to a plan of care established by a physician. The Secretary may waive the requirement of a surety bond under paragraph (4)(A)(v) in the case of a clinic or agency that provides a comparable surety bond under State law.

(q) Physicians’ services

The term “physicians’ services” means professional services performed by physicians, including surgery, consultation, and home, office, and institutional calls (but not including services described in subsection (b)(6) of this section).

(c) Physician

The term “physician”, when used in connection with the performance of any function or action, means (1) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action (including a physician within the meaning of section 1301(a)(7) of this title), (2) a doctor of dental surgery or of dental medicine who is legally authorized to practice dentistry by the State in which he performs such function and who is acting within the scope of his license when he performs such functions, (3) a doctor of podiatric medicine for the purposes of subsections (k), (m), (p)(1), and (s) of this section, and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title but only with respect to functions which he is legally authorized to perform as such by the State in which he performs them, (4) a doctor of optometry, but only for purposes of subsection (p)(1) of this section and with respect to the provision of items or services described in subsection (s) of this section which he is legally authorized to perform as a doctor of optometry by the State in which he performs them, or (5) a chiropractor who is licensed as such by the State (or in a State which does not license chiropractors as such, is legally authorized to perform the services of a chiropractor in the jurisdiction in which he performs such services), and who meets uniform minimum standards promulgated by the Secretary, but only for the purpose of subsections (s)(1) and (s)(2)(A) of this section and only with respect to treatment by means of manual manipulation of the spine (to correct a subluxation) which he is legally authorized to perform by the State or jurisdiction in which such treatment is provided. For the purposes of section 1395y(a)(4) of this title and subject to the limitations and conditions provided in the previous sentence, such term includes a doctor of one of the arts, specified in such previous sentence, legally authorized to practice such art in the country in which the inpatient hospital services (referred to in such section 1395y(a)(4) of this title) are furnished.

(s) Medical and other health services

The term “medical and other health services” means any of the following items or services:

(1) physicians’ services;
(2) (A) services and supplies (including drugs and biologicals which are not usually self-administered by the patient) furnished as an incident to a physician’s professional service, of kinds which are commonly furnished in physicians’ offices and are commonly either rendered without charge or included in the physicians’ bills (or would have been so included but for the application of section 1395w–3b of this title);
(B) hospital services (including drugs and biologicals which are not usually self-administered by the patient) incident to physicians’ services rendered to outpatients and partial hospitalization services incident to such services;
(C) diagnostic services which are—
(i) furnished to an individual as an outpatient by a hospital or by others under arrangements with them made by a hospital, and
(ii) ordinarily furnished by such hospital (or by others under such arrangements) to its outpatients for the purpose of diagnostic study;
(D) outpatient physical therapy services, outpatient speech-language pathology services, and outpatient occupational therapy services;
(E) rural health clinic services and Federally qualified health center services;
(F) home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies, and, for items and services furnished on or after January 1, 2011, renal dialysis services (as defined in section 1395rrr(b)(14)(B) of this title);
(G) antigens (subject to quantity limitations prescribed in regulations by the Secretary) prepared by a physician, as defined in subsection (r)(1) of this section, for a particular patient, including antigens so prepared which are forwarded to another qualified person (including a rural health clinic) for administration to such patient, from time to time, by or under the supervision of another such physician;
(H)(i) services furnished pursuant to a contract under section 1395mm of this title to a member of an eligible organization by a physician assistant or by a nurse practitioner (as defined in subsection (aa)(5) of this section) and such services and supplies furnished as an incident to his service to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician’s service; and
(ii) services furnished pursuant to a risk-sharing contract under section 1395mm(g) of this title to a member of an eligible organization by a clinical psychologist (as defined by the Secretary) or by a clinical social worker (as defined in subsection (hh)(3) of this section), and such services and supplies furnished as an incident to such clinical psychologist’s services or clinical social worker’s services to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician’s service;

(I) blood clotting factors, for hemophilia patients competent to use such factors to control bleeding without medical or other supervision, and items related to the administration of such factors, subject to utilization controls deemed necessary by the Secretary for the efficient use of such factors;

(J) prescription drugs used in immuno-suppressive therapy furnished, to an individual who receives an organ transplant for which payment is made under this subchapter;

(K)(i) services which would be physicians’ services and services described in subsections (ww)(1) and (hhh) of this section if furnished by a physician (as defined in subsection (r)(1) of this section) and which are performed by a physician assistant (as defined in subsection (aa)(5) of this section) under the supervision of a physician (as so defined) and which the physician assistant is legally authorized to perform by the State in which the services are performed, and such services and supplies furnished as incident to such services as would be covered under subparagraph (A) if furnished incident to a physician’s professional service, but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services,

(ii) services which would be physicians’ services and services described in subsections (ww)(1) and (hhh) of this section if furnished by a physician (as defined in subsection (r)(1) of this section) and which are performed by a nurse practitioner or clinical nurse specialist (as defined in subsection (aa)(5) of this section) working in collaboration (as defined in subsection (aa)(6) of this section) with a physician (as defined in subsection (r)(1) of this section) which the nurse practitioner or clinical nurse specialist is legally authorized to perform by the State in which the services are performed, and such services and supplies furnished as an incident to such services as would be covered under subparagraph (A) if furnished incident to a physician’s professional service, but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services;

(L) certified nurse-midwife services;

(M) qualified psychologist services;

(N) clinical social worker services (as defined in subsection (hh)(2) of this section);

(O) erythropoietin for dialysis patients competent to use such drug without medical or other supervision with respect to the administration of such drug, subject to methods and standards established by the Secretary by regulation for the safe and effective use of such drug, and items related to the administration of such drug;

(P) prostate cancer screening tests (as defined in subsection (oo) of this section);

(Q) an oral drug (which is approved by the Federal Food and Drug Administration) prescribed for use as an anticancer chemotherapeutic agent for a given indication, and containing an active ingredient (or ingredients), which is the same indication and active ingredient (or ingredients) as a drug which the carrier determines would be covered pursuant to subparagraph (A) or (B) if the drug could not be self-administered;

(R) colorectal cancer screening tests (as defined in subsection (pp) of this section); and

(S) diabetes outpatient self-management training services (as defined in subsection (qq) of this section);

(T) an oral drug (which is approved by the Federal Food and Drug Administration) prescribed for use as an acute anti-emetic used as part of an anticancer chemotherapeutic regimen if the drug is administered by a physician (or as prescribed by a physician)—

(i) for use immediately before, at, or within 48 hours after the time of the administration of the anticancer chemotherapeutic agent;

(ii) as a full replacement for the anti-emetic therapy which would otherwise be administered intravenously;

(U) screening for glaucoma (as defined in subsection (uu) of this section) for individuals determined to be at high risk for glaucoma, individuals with a family history of glaucoma and individuals with diabetes;

(V) medical nutrition therapy services (as defined in subsection (vv)(1) of this section) in the case of a beneficiary with diabetes or a renal disease who—

(i) has not received diabetes outpatient self-management training services within a time period determined by the Secretary;

(ii) is not receiving maintenance dialysis for which payment is made under section 1395rr of this title; and

(iii) meets such other criteria determined by the Secretary after consideration of protocols established by dietitian or nutrition professional organizations;

(W) an initial preventive physical examination (as defined in subsection (ww) of this section);

(X) cardiovascular screening blood tests (as defined in subsection (xx)(1) of this section);

(Y) diabetes screening tests (as defined in subsection (yy) of this section);

(Z) intravenous immune globulin for the treatment of primary immune deficiency diseases in the home (as defined in subsection (zz) of this section);

(AA) ultrasound screening for abdominal aortic aneurysm (as defined in subsection (bb) of this section) for an individual—

(i) who receives a referral for such an ultrasound screening as a result of an initial

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2So in original. Probably should be followed by “and”.

3So in original. The word “and” probably should not appear.
preventive physical examination (as defined in subsection (ww)(1));
(ii) who has not been previously furnished such an ultrasound screening under this sub-
chapter; and—
(iii) who—
(I) has a family history of abdominal aortic aneurysm; or
(II) manifests risk factors included in a beneficiary category recommended for screening by the United States Preventive Services Task Force regarding abdominal aortic aneurysms;
(BB) additional preventive services (described in subsection (ddd)(1));
(CC) items and services furnished under a cardiac rehabilitation program (as defined in subsection (eee)(4)) or under a pulmonary re-
habilitation program (as defined in subsection (fff)(1));
(DD) items and services furnished under an intensive cardiac rehabilitation program (as defined in subsection (eee)(4));
(EE) kidney disease education services (as defined in subsection (ggg)); and
(FF) personalized prevention plan services (as defined in subsection (hhh));
(3) diagnostic X-ray tests (including tests under the supervision of a physician, furnished in a place of residence used as the patient’s home, if the performance of such tests meets such conditions relating to health and safety as the Secretary may find necessary and including diagnostic mammography if conducted by a facility that has a certificate (or provisional certificate) issued under section 354 of the Public Health Service Act [42 U.S.C. 263b]), diagnostic laboratory tests, and other diagnostic tests;
(4) X-ray, radium, and radioactive isotope therapy, including materials and services of technicians;
(5) surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations;
(6) durable medical equipment;
(7) ambulance service where the use of other methods of transportation is contraindicated by the individual’s condition, but, subject to section 1395m(i)(14) of this title, only to the extent provided in regulations;
(8) prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), including replacement of such devices, and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens;
(9) leg, arm, back, and neck braces, and arti-
ficial legs, arms, and eyes, including replacement-
ments if required because of a change in the patient’s physical condition;
(10)(A) pneumococcal vaccine and its admin-
istration and, subject to section 4071(b) of the Omnibus Budget Reconciliation Act of 1987, influenza vaccine and its administration; and
(B) hepatitis B vaccine and its administra-
tion, furnished to an individual who is at high
or intermediate risk of contracting hepatitis B
(as determined by the Secretary under regula-
tions);
(11) services of a certified registered nurse
anesthetist (as defined in subsection (bb) of
this section);
(12) subject to section 4072(e) of the Omnibus
Budget Reconciliation Act of 1987, extra-depth
shoes with inserts or custom molded shoes
with inserts for an individual with diabetes, if—
(A) the physician who is managing the indi-
fidual’s diabetic condition (i) documents
that the individual has peripheral neurop-
athy with evidence of callus formation, a
history of pre-ulcerative calluses, a history
of previous ulceration, foot deformity, or
previous amputation, or poor circulation,
and (ii) certifies that the individual needs
such shoes under a comprehensive plan of
care related to the individual’s diabetic con-
dition;
(B) the particular type of shoes are pre-
scribed by a podiatrist or other qualified
physician (as established by the Secretary); and
(C) the shoes are fitted and furnished by a
podiatrist or other qualified individual (such
as a pedorthist or orthotist, as established
by the Secretary) who is not the physician
described in subparagraph (A) (unless the
Secretary finds that the physician is the
only such qualified individual in the area);
(13) screening mammography (as defined in
subsection (jj) of this section);
(14) screening pap smear and screening pel-
vic exam; and
(15) bone mass measurement (as defined in
subsection (rr) of this section).

No diagnostic tests performed in any laboratory, including a laboratory that is part of a rural
health clinic, or a hospital (which, for purposes
of this sentence, means an institution consid-
ered a hospital for purposes of section 1395f(d) of
this title) shall be included within paragraph (3)
unless such laboratory—
(16) if situated in any State in which State
or applicable local law provides for licensing
of establishments of this nature, (A) is li-
censed pursuant to such law, or (B) is ap-
proved, by the agency of such State or locality
responsible for licensing establishments of
this nature, as meeting the standards estab-
lished for such licensing; and
(17)(A) meets the certification requirements
under section 353 of the Public Health Service
Act [42 U.S.C. 263a]; and
(B) meets such other conditions relating to
the health and safety of individuals with re-
spect to whom such tests are performed as the
Secretary may find necessary.

There shall be excluded from the diagnostic
services specified in paragraph (2)(C) any item or
service (except services referred to in paragraph
(1)) which would not be included under sub-
section (b) of this section if it were furnished to
an inpatient of a hospital. None of the items and
services referred to in the preceding paragraphs
(other than paragraphs (1) and (2)(A)) of this
subsection which are furnished to a patient of an
institution which meets the definition of a hos-
pital for purposes of section 1395f(d) of this title
shall be included unless such other conditions
are met as the Secretary may find necessary relating to health and safety of individuals with respect to whom such items and services are furnished.

(t) Drugs and biologicals

(1) The term "drugs" and the term "biologicals", except for purposes of subsection (m)(5) of this section and paragraph (2), include only such drugs (including contrast agents) and biologicals, respectively, as are included (or approved for inclusion) in the United States Pharmacopoeia, the National Formulary, or the United States Homeopathic Pharmacopoeia, or in New Drugs or Accepted Dental Remedies (except for any drugs and biologicals unfavorably evaluated therein), or as are approved by the pharmacy and drug therapeutics committee (or equivalent committee) of the medical staff of the hospital furnishing such drugs and biologicals for use in such hospital.

(2)(A) For purposes of paragraph (1), the term "drugs" also includes any drugs or biologicals used in an anticancer chemotherapeutic regimen for a medically accepted indication (as described in subparagraph (B)).

(B) In subparagraph (A), the term "medically accepted indication", with respect to the use of a drug, includes any use which has been approved by the Food and Drug Administration for the drug, and includes another use of the drug if—

(i) the drug has been approved by the Food and Drug Administration; and

(ii) such use is supported by one or more citations which are included (or approved for inclusion) in one or more of the following compendia: the American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluations, the United States Pharmacopoeia-Drug Information (or its successor publications), and other authoritative compendia as identified by the Secretary, unless the Secretary has determined that the use is not medically appropriate or the use is identified as not indicated in one or more such compendia, or

(ii) the carrier involved determines, based upon guidance provided by the Secretary to carriers for determining accepted uses of drugs, that such use is medically accepted based on supportive clinical evidence in peer reviewed medical literature appearing in publications which have been identified for purposes of this subclause by the Secretary.

The Secretary may revise the list of compendia in clause (ii)(I) as is appropriate for identifying medically accepted indications for drugs. On and after January 1, 2010, no compendia may be included on the list of compendia under this subparagraph unless the compendia has 4 a publicly transparent process for evaluating therapies and for identifying potential conflicts of interests.

(u) Provider of services

The term "provider of services" means a hospital, critical access hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, or, for purposes of section 1395f(g) and section 1395m(e) of this title, a fund.

(v) Reasonable costs

(1)(A) The reasonable cost of any services shall be the cost actually incurred, excluding therefrom any part of incurred cost found to be unnecessary in the efficient delivery of needed health services, and shall be determined in accordance with regulations establishing the method or methods to be used, and the items to be included, in determining such costs for various types or classes of institutions, agencies, and services; except that in any case to which paragraph (2) or (3) applies, the amount of the payment determined under such paragraph with respect to the services involved shall be considered the reasonable cost of such services. In prescribing the regulations referred to in the preceding sentence, the Secretary shall consider, among other things, the principles generally applied by national organizations or established prepayment organizations (which have developed such principles) in computing the amount of payment, to be made by persons other than the recipients of services, to providers of services on account of services furnished to such recipients by such providers. Such regulations may provide for determination of the costs of services on a per diem, per unit, per capita, or other basis, may provide for using different methods in different circumstances, may provide for the use of estimates of costs of particular items or services, may provide for the establishment of limits on the direct or indirect overall incurred costs or incurred costs of specific items or services or groups of items or services to be recognized as reasonable based on estimates of the costs necessary in the efficient delivery of needed health services to individuals covered by the insurance programs established under this subchapter, and may provide for the use of charges or a percentage of charges where this method reasonably reflects the costs. Such regulations shall (i) take into account both direct and indirect costs of providers of services (excluding therefrom any such costs, including standby costs, which are determined in accordance with regulations to be unnecessary in the efficient delivery of services covered by the insurance programs established under this subchapter) in order that, under the methods of determining costs, the necessary costs of efficiently delivering covered services to individuals covered by the insurance programs established by this subchapter will not be borne by individuals not so covered, and the costs with respect to individuals not so covered will not be borne by such insurance programs, and (ii) provide for the making of suitable retroactive corrective adjustments where, for a provider of services for any fiscal period, the aggregate reimbursement produced by the methods of determining costs proves to be either inadequate or excessive.

(B) In the case of extended care services, the regulations under subparagraph (A) shall not include provision for specific recognition of a return on equity capital.

(C) Where a hospital has an arrangement with a medical school under which the faculty of such
school provides services at such hospital, an amount not in excess of the reasonable cost of such services to the medical school shall be included in determining the reasonable cost to the hospital of furnishing services—

(a) for which payment may be made under part A of this subchapter, but only if—

(I) payment for such services as furnished under such arrangement would be made under part A of this subchapter to the hospital had such services been furnished by the hospital, and

(II) such hospital pays to the medical school at least the reasonable cost of such services to the medical school,

(b) for which payment may be made under part B of this subchapter, but only if such hospital pays to the medical school at least the reasonable cost of such services to the medical school,

(D) Where (i) physicians furnish services which are either inpatient hospital services (including services in conjunction with the teaching programs of such hospital) by reason of paragraph (7) of subsection (b) of this section or for which entitlement exists by reason of clause (II) of section 1395k(a)(2)(B)(i) of this title, and (ii) such hospital (or medical school under arrangement with such hospital) incurs no actual cost in furnishing of such services, the reasonable cost of such services shall (under regulations of the Secretary) be deemed to be the cost such hospital or medical school would have incurred had it paid a salary to such physicians rendering such services approximately equivalent to the average salary paid to all physicians employed by such hospital (or if such employment does not exist, or is minimal in such hospital, by similar hospitals in a geographic area of sufficient size to assure reasonable inclusion of sufficient physicians in development of such average salary).

(E) Such regulations may, in the case of skilled nursing facilities in any State, provide for the use of rates, developed by the State in which such facilities are located, for the payment of the cost of skilled nursing facility services furnished under the State’s plan approved under subchapter XIX of this chapter (and such rates may be increased by the Secretary on a basis by a percentage factor not in excess of 10 percent to take into account determinable items or other requirements under this subchapter not otherwise included in the computation of such State rates), if the Secretary finds that such rates are reasonable related to (but not necessarily limited to) analyses undertaken by such State of costs of care in comparable facilities in such State. Notwithstanding the previous sentence, such regulations with respect to skilled nursing facilities shall take into account (in a manner consistent with subparagraph (A) and based on patient-days of services furnished) the costs (including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter) of such facilities complying with the requirements of subsections (b), (c), and (d) of section 1395l–3 of this title (including the costs of conducting nurse aide training and competency evaluation programs and competency evaluation programs).

(F) Such regulations shall require each provider of services (other than a fund) to make reports to the Secretary of information described in section 1320a(a) of this title in accordance with the uniform reporting system (established under such section) for that type of provider.

(G)(i) In any case in which a hospital provides inpatient services to an individual that would constitute post-hospital extended care services if provided by a skilled nursing facility and a quality improvement organization (or, in the absence of such a qualified organization, the Secretary or such agent as the Secretary may designate) determines that inpatient hospital services for the individual are not medically necessary but post-hospital extended care services for the individual are medically necessary and such extended care services are not otherwise available to the individual (as determined in accordance with criteria established by the Secretary at the time of such determination, payment for such services provided to the individual shall continue to be made under this subchapter at the payment rate described in clause (ii) during the period in which—

(I) such post-hospital extended care services for the individual are medically necessary and not otherwise available to the individual (as so determined),

(II) inpatient hospital services for the individual are not medically necessary, and

(III) the individual is entitled to have payment made for post-hospital extended care services under this subchapter, except that if the Secretary determines that there is not an excess of hospital beds in such hospital and (subject to clause (iv)) there is not an excess of hospital beds in the area of such hospital, such payment shall be made (during such period) on the basis of the amount otherwise payable under part A with respect to inpatient hospital services.

(ii)(I) Except as provided in subclause (II), the payment rate referred to in clause (i) is a rate equal to the estimated adjusted State-wide average rate per patient-day paid for services provided in skilled nursing facilities under the State plan approved under subchapter XIX of this chapter for the State in which such hospital is located, or, if the State in which the hospital is located does not have a State plan approved under subchapter XIX of this chapter, the estimated adjusted State-wide average allowable costs per patient-day for extended care services under this subchapter in that State.

(II) If a hospital has a unit which is a skilled nursing facility, the payment rate referred to in clause (i) for the hospital is a rate equal to the lesser of the rate described in subclause (I) or the allowable costs in effect under this subchapter for extended care services provided to patients of such unit.

(iii) Any day on which an individual receives inpatient services for which payment is made under this subparagraph shall, for purposes of this chapter (other than this subparagraph), be deemed to be a day on which the individual received inpatient hospital services.
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(iv) In determining under clause (i), in the case of a public hospital, whether or not there is an excess of hospital beds in the area of such hospital, such determination shall be made on the basis of only the public hospitals (including the hospital) which are under common ownership with that hospital.

(H) In determining such reasonable cost with respect to home health agencies, the Secretary may not include—

(i) any costs incurred in connection with bonding or establishing an escrow account by any such agency as a result of the surety bond requirement described in subsection (o)(7) of this section and the financial security requirement described in subsection (o)(8) of this section;

(ii) in the case of home health agencies to which the surety bond requirement described in subsection (o)(7) of this section and the financial security requirement described in subsection (o)(8) of this section apply, any costs attributed to interest charged such an agency in connection with amounts borrowed by the agency to repay overpayments made under this subchapter for any such contract which is entered into for a period exceeding five years; and

(iv) in the case of contracts entered into by a home health agency before December 5, 1980, for the purpose of having services furnished for or on behalf of such agency, any cost incurred by such agency pursuant to any such contract which is entered into for a period exceeding five years; and

(iv) if the subcontractor carries out any of the duties of the contract through a subcontract, with a value or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request by the Secretary, or upon request by the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

The Secretary shall prescribe in regulation criteria and procedures which the Secretary shall use in obtaining access to books, documents, and records under clauses required in contracts and subcontracts under this subparagraph. (J) Such regulations may not provide for any inpatient routine salary cost differential as a reimbursable cost for hospitals and skilled nursing facilities.

(K)(i) The Secretary shall issue regulations that provide, to the extent feasible, for the establishment of limitations on the amount of any costs or charges that shall be considered reasonable with respect to services provided on an outpatient basis by hospitals (other than bona fide emergency services as defined in clause (ii)) or clinics (other than rural health clinics), which are reimbursed on a cost basis or on the basis of cost related charges, and by physicians utilizing such outpatient facilities. Such limitations shall be reasonably related to the charges in the same area for similar services provided in physicians' offices. Such regulations shall provide for exceptions to such limitations in cases where similar services are not generally available in physicians' offices in the area to individuals entitled to benefits under this subchapter.

(ii) For purposes of clause (i), the term "bona fide emergency services" means services provided in a hospital emergency room after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(I) placing the patient's health in serious jeopardy;

(II) serious impairment to bodily functions; or

(III) serious dysfunction of any bodily organ or part.

(L)(i) The Secretary, in determining the amount of the payments that may be made under this subchapter with respect to services furnished by home health agencies, may not recognize as reasonable (in the efficient delivery of such services) costs for the provision of such services by an agency to the extent these costs exceed (on the aggregate for the agency) the expiring reporting period beginning on or after—

(I) July 1, 1985, and before July 1, 1986, 120 percent of the mean of the labor-related and

5So in original. Probably should be "regulations".
nonlabor per visit costs for freestanding home health agencies,

(II) July 1, 1986, and before July 1, 1987, 115 percent of such mean,

(III) July 1, 1987, and before October 1, 1997, 112 percent of such mean,

(IV) October 1, 1997, and before October 1, 1998, 105 percent of the median of the labor-related and nonlabor per visit costs for freestanding home health agencies, or

(V) October 1, 1998, 106 percent of such median.

(ii) Effective for cost reporting periods beginning on or after July 1, 1986, such limitations shall be applied on an aggregate basis for the agency, rather than on a discipline specific basis. The Secretary may provide for such exemptions and exceptions to such limitation as he deems appropriate.

(iii) Not later than July 1, 1991, and annually thereafter (but not for cost reporting periods beginning on or after July 1, 1984, and before July 1, 1996, or on or after July 1, 1997, and before October 1, 1997), the Secretary shall establish limits under this subparagraph for cost reporting periods beginning on or after such date by utilizing the area wage index applicable under section 1395ww(d)(1)(E) of this title and determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the home health service is furnished (determined without regard to whether such hospitals have been reclassified to a new geographic area pursuant to section 1395ww(d)(1)(B) of this title, a decision of the Medicare Geographic Classification Review Board under section 1395ww(d)(10) of this title, or a decision of the Secretary).

(iv) In establishing limits under this subparagraph for cost reporting periods beginning after September 30, 1997, the Secretary shall not take into account any changes in the home health market basket, as determined by the Secretary, with respect to cost reporting periods which began on or after July 1, 1994, and before July 1, 1996.

(v) For services furnished by home health agencies for cost reporting periods beginning on or after October 1, 1997, subject to clause (viii)(I), the Secretary shall provide for an interim system of limits. Payment shall not exceed the costs determined under the preceding provisions of this subparagraph or, if lower, the product of—

(I) an agency-specific per beneficiary annual limitation calculated based 75 percent on 98 percent of the reasonable costs (including nonroutine medical supplies) for the agency’s 12-month cost reporting period ending during fiscal year 1994, and based 25 percent on 98 percent of the standardized regional average of such costs for the agency’s census division, as applied to such agency, for cost reporting periods ending during fiscal year 1994, such costs updated by the home health market basket index; and

(II) the agency’s unduplicated census count of patients (entitled to benefits under this subchapter) for the cost reporting period subject to the limitation.

(vi) For services furnished by home health agencies for cost reporting periods beginning on or after October 1, 1997, the following rules apply:

(I) For new providers and those providers without a 12-month cost reporting period ending in fiscal year 1994 subject to clauses (viii)(II) and (viii)(III), the per beneficiary limitation shall be equal to the median of these limits (or the Secretary’s best estimates thereof) applied to other home health agencies as determined by the Secretary. A home health agency that has altered its corporate structure or name shall not be considered a new provider for this purpose.

(II) For beneficiaries who use services furnished by more than one home health agency, the per beneficiary limitations shall be prorated among the agencies.

(vii)(I) Not later than January 1, 1998, the Secretary shall establish per visit limits applicable for fiscal year 1998, and not later than April 1, 1998, the Secretary shall establish per beneficiary limits under clause (v)(I) for fiscal year 1998.

(II) Not later than August 1 of each year (beginning in 1998) the Secretary shall establish the limits applicable under this subparagraph for services furnished during the fiscal year beginning October 1 of the year.

(viii)(I) In the case of a provider with a 12-month cost reporting period ending in fiscal year 1994, if the limit imposed under clause (v) (determined without regard to this subclause) for a cost reporting period beginning during or after fiscal year 1999 is less than the median described in clause (vi)(I) (but determined as if any reference in clause (v) to “98 percent” were a reference to “100 percent”), the limit otherwise imposed under clause (v) for such provider and period shall be increased by 1/2 of such difference.

(II) Subject to subclause (IV), for new providers and those providers without a 12-month cost reporting period ending in fiscal year 1994, but for which the first cost reporting period begins before fiscal year 1999, for cost reporting periods beginning during or after fiscal year 1999, the per beneficiary limitation described in clause (vi)(I) shall be equal to the median described in such clause (determined as if any reference in clause (v) to “98 percent” were a reference to “100 percent”).

(III) Subject to subclause (IV), in the case of a new provider for which the first cost reporting period begins during or after fiscal year 1999, the limitation applied under clause (vi)(I) (but only with respect to such provider) shall be equal to 75 percent of the median described in clause (vi)(I).

(IV) In the case of a new provider or a provider without a 12-month cost reporting period ending in fiscal year 1994, subclause (II) shall apply, instead of subclause (III), to a home health agency which filed an application for home health agency provider status under this subchapter before September 15, 1998, or which was approved as a branch of its parent agency before such date and becomes a subunit of the parent agency or a separate agency on or after such date.

(V) Each of the amounts specified in subclauses (I) through (III) are such amounts as ad-
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justed under clause (iii) to reflect variations in wages among different areas.

(ix) Notwithstanding the per beneficiary limit under clause (viii), if the limit imposed under clause (v) (determined without regard to this clause) for a reporting period beginning during or after fiscal year 2000 is less than the median described in clause (vi)(I) (but determined as if any reference in clause (v) to "98 percent" were a reference to "100 percent"), the limit otherwise imposed under clause (v) for such provider and period shall be increased by 2 percent.

(x) Notwithstanding any other provision of this subparagraph, in updating any limit under this subparagraph by a home health market basket index for cost reporting periods beginning during each of fiscal years 2000, 2002, and 2003, the update otherwise provided shall be reduced by 1.1 percentage points. With respect to cost reporting periods beginning during fiscal year 2001, the update to any limit under this subparagraph shall be the home health market basket index.

(M) Such regulations shall provide that costs respecting care provided by a provider of services, pursuant to an assurance under title VI or XVI of the Public Health Service Act [42 U.S.C. 291 et seq., 300q et seq.] that the provider will make available a reasonable volume of services to persons unable to pay therefor, shall not be allowable as reasonable costs.

(N) In determining such reasonable costs, costs incurred for activities directly related to influencing employees respecting unionization may not be included.

(O)(I) In establishing an appropriate allowance for depreciation and for interest on capital indebtedness with respect to an asset of a provider of services which has undergone a change of ownership, such regulations shall provide, except as provided in clause (iii), that the valuation of the asset after such change of ownership shall be the historical cost of the asset, as recognized under this subchapter, less depreciation allowed, to the owner of record as of August 5, 1997 (or, in the case of an asset not in existence as of August 5, 1997, the first owner of record of the asset after August 5, 1997).

(ii) Such regulations shall not recognize, as reasonable in the provision of health care services, costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which any payment has previously been made under this subchapter.

(iii) In the case of the transfer of a hospital from ownership by a State to ownership by a nonprofit corporation without monetary consideration, the basis for capital allowances to the new owner shall be the book value of the hospital to the State at the time of the transfer.

(P) If such regulations provide for the payment for a return on equity capital (other than with respect to costs of inpatient hospital services), the rate of return to be recognized, for determining the reasonable cost of services furnished in a cost reporting period, shall be equal to the average of the rates of interest, for each of the months any part of which is included in the period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

(Q) Except as otherwise explicitly authorized, the Secretary is not authorized to limit the rate of increase on allowable costs incurred by a provider of services representing a beneficiary in an unsuccessful appeal of a determination described in section 1395ff(b) of this title shall not be allowable as reasonable costs.

(S)(I) Such regulations shall not include provision for specific recognition of any return on equity capital with respect to hospital outpatient departments.

(ii)(I) Such regulations shall provide that, in determining the amount of the payments that may be made under this subchapter with respect to all the capital-related costs of outpatient hospital services, the Secretary shall reduce the amounts of such payments otherwise established under this subchapter by 15 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1990, by 15 percent for payments attributable to portions of cost reporting periods occurring during fiscal years 1991 through 1999 and until the first date that the prospective payment system under section 1395(t) of this title is implemented.

(ii) The Secretary shall reduce the reasonable cost of outpatient hospital services (other than the capital-related costs of such services) otherwise determined pursuant to section 1395(a)(2)(B)(i) of this title by 5.8 percent for payments attributable to portions of cost reporting periods occurring during fiscal years 1991 through 1999 and until the first date that the prospective payment system under section 1395(t) of this title is implemented.

(III) Subclauses (I) and (II) shall not apply to payments with respect to the costs of hospital outpatient services provided by any hospital that is a sole community hospital (as defined in section 1395ww(d)(5)(D)(ii) of this title) or a critical access hospital (as defined in subsection (m)(1)(A)(ii) of this title).

(IV) In applying subclauses (I) and (II) to services for which payment is made on the basis of a blend amount under section 1395(i)(3)(A)(ii) or 1395(n)(1)(A)(ii) of this title, the costs reflected in the amounts described in sections 1395(i)(3)(B)(i)(I) and 1395(n)(1)(B)(i)(I) of this title, respectively, shall be reduced in accordance with such subclause.

(T) In determining such reasonable costs for hospitals, no reduction in copayments under section 1395(t)(8)(B) of this title shall be treated as a bad debt and the amount of bad debts otherwise treated as allowable costs which are attributable to the deductibles and coinsurance amounts under this subchapter shall be reduced—

(i) for cost reporting periods beginning during fiscal year 1998, by 25 percent of such amount otherwise allowable.

*So in original. Probably should be "subclauses."
bacterial hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations other than, but not more expensive than, semi-private accommodations and the use of such other accommodations rather than semi-private accommodations was neither at the request of the patient nor for a reason which the Secretary determines is consistent with the purposes of this subchapter, the amount of the payment with respect to such bed and board under part A of this subchapter shall be the amount otherwise payable under this subchapter for such bed and board furnished in semi-private accommodations minus the difference between the charge customarily made by the hospital or skilled nursing facility for bed and board in semi-private accommodations and the charge customarily made by it for bed and board in the accommodations furnished.

(4) A provider of services furnishes items or services to an individual which are in excess of or more expensive than the items or services which would have been furnished in the fiscal period in which such charges are imposed.

(3)(A) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations more expensive than semi-private accommodations, the amount taken into account for purposes of payment under this subchapter with respect to such services may not exceed the amount that would be taken into account with respect to such services if furnished in such semi-private accommodations unless the more expensive accommodations were required for medical reasons.

(B) Where a provider of services which has an agreement in effect under this subchapter furnishes to an individual items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under part A or part B of this subchapter, as the case may be, the Secretary shall take into account for purposes of payment to such provider of services only the items or services with respect to which such payment may be made.

(3) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations other than, but not more expensive than, semi-private accommodations and the use of such other accommodations rather than semi-private accommodations was neither at the request of the patient nor for a reason which the Secretary determines is consistent with the purposes of this subchapter, the amount of the payment with respect to such bed and board under part A of this subchapter shall be the amount otherwise payable under this subchapter for such bed and board furnished in semi-private accommodations minus the difference between the charge customarily made by the hospital or skilled nursing facility for bed and board in semi-private accommodations and the charge customarily made by it for bed and board in the accommodations furnished.

(4) If a provider of services furnishes items or services to an individual which are in excess of or more expensive than the items or services which would have been furnished in the fiscal period in which such charges are imposed.

(3)(A) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations more expensive than semi-private accommodations, the amount taken into account for purposes of payment under this subchapter with respect to such services may not exceed the amount that would be taken into account with respect to such services if furnished in such semi-private accommodations unless the more expensive accommodations were required for medical reasons.

(B) Where a provider of services which has an agreement in effect under this subchapter furnishes to an individual items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under part A or part B of this subchapter, as the case may be, the Secretary shall take into account for purposes of payment to such provider of services only the items or services with respect to which such payment may be made.
reasonable rate per unit of service, even though such rate is greater per unit of time than salary related amounts, where he finds that such greater payment is, in the aggregate, less than the amount that would have been paid if such organization had employed a therapist on a full- or part-time salary basis.

(6) For purposes of this subsection, the term, "semi-private accommodations" means two-bed, three-bed, or four-bed accommodations.

(7)(A) For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or areawide planning agency, see section 1320a–1 of this title.

(B) For further limitations on reasonable cost and determination of payment amounts for operating costs of inpatient hospital services and waivers for certain States, see section 1395ww of this title.

(C) For provisions restricting payment for provider-based physicians’ services and for payments under certain percentage arrangements, see section 1395xx of this title.

(D) For further limitations on reasonable cost and determination of payment amounts for routine service costs of skilled nursing facilities, see subsections (a) through (c) of section 1395yy of this title.

(8) ITEMS UNRELATED TO PATIENT CARE.—Reasonable costs do not include costs for the following—

(i) entertainment, including tickets to sporting and other entertainment events;

(ii) gifts or donations;

(iii) personal use of motor vehicles;

(iv) costs for fines and penalties resulting from violations of Federal, State, or local laws; and

(v) education expenses for spouses or other dependents of providers of services, their employees or contractors.

(w) Arrangements for certain services; payments pursuant to arrangements for utilization review activities

(1) The term "arrangements" is limited to arrangements under which receipt of payment by the hospital, critical access hospital, skilled nursing facility, home health agency, or hospice program (whether in its own right or as agent), with respect to services for which an individual is entitled to have payment made under this subchapter, discharges the liability of such individual or any other person to pay for the services.

(2) Utilization review activities conducted, in accordance with the requirements of the program established under part B of subchapter XI of this chapter with respect to services furnished by a hospital or critical access hospital to patients insured under part A of this subchapter or entitled to have payment made for such services under part B of this subchapter or under a State plan approved under subchapter XIX of this chapter, by a quality improvement organization designated for the area in which such hospital or critical access hospital is located shall be deemed to have been conducted pursuant to arrangements between such hospital or critical access hospital and such organization under which such hospital or critical access hospital is obligated to pay to such organization, as a condition of receiving payment for hospital or critical access hospital services so furnished under this part or under such a State plan, such amount as is reasonably incurred and for the conditions (as determined under regulations of the Secretary) by such organization in conducting such review activities with respect to services furnished by such hospital or critical access hospital to such patients.

(x) State and United States

The terms "State" and "United States" have the meaning given to them by subsections (h) and (i), respectively, of section 410 of this title.

(y) Extended care in religious nonmedical health care institutions

(1) The term "skilled nursing facility" also includes a religious nonmedical health care institution (as defined in subsection (sa)(1) of this section), but only (except for purposes of subsection (a)(2) of this section) with respect to items and services ordinarily furnished by such an institution to inpatients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations consistent with section 1395i–5 of this title.

(2) Notwithstanding any other provision of this subchapter, payment under part A of this subchapter may not be made for services furnished an individual in a skilled nursing facility to which paragraph (1) applies unless such individual elects, in accordance with regulations, for a spell of illness to have such services treated as post-hospital extended care services for purposes of such part; and payment under part A of this subchapter may not be made for post-hospital extended care services—

(A) furnished an individual during such spell of illness in a skilled nursing facility to which paragraph (1) applies after—

(i) such services have been furnished to him in such a facility for 30 days during such spell, or

(ii) such services have been furnished to him during such spell in a skilled nursing facility to which such paragraph does not apply; or

(B) furnished an individual during such spell of illness in a skilled nursing facility to which paragraph (1) does not apply after such services have been furnished to him during such spell in a skilled nursing facility to which such paragraph applies.

(3) The amount payable under part A of this subchapter for post-hospital extended care services furnished an individual during any spell of illness in a skilled nursing facility to which paragraph (1) applies shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day before the 31st day on which he is furnished such services in such a facility during such spell (and the reduction under this paragraph shall be in lieu of any reduction under section 1395e(a)(3) of this title).

TEMS UNRELATED TO PATIENT CARE

(8) I
(4) For purposes of subsection (i) of this section, the determination of whether services furnished by or in an institution described in paragraph (1) constitute post-hospital extended care services shall be made in accordance with and subject to such conditions, limitations, and requirements as may be provided in regulations.

(2) Institutional planning

An overall plan and budget of a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, or home health agency shall be considered sufficient if it—

(1) provides for an annual operating budget which includes all anticipated income and expenses related to items which would, under generally accepted accounting principles, be considered income and expense items (except that nothing in this paragraph shall require that there be prepared, in connection with any budget, an item-by-item identification of the components of each type of anticipated expenditure or income);

(2)(A) provides for a capital expenditures plan for at least a 3-year period (including the year to which the operating budget described in paragraph (1) is applicable) which includes and identifies in detail the anticipated sources of financing for, and the objectives of, each anticipated expenditure in excess of $600,000 (or such lesser amount as may be established by the State under section 1320a-1(g)(1) of this title in which the hospital is located) related to the acquisition of land, the improvement of land, buildings, and equipment, and the replacement, modernization, and expansion of the buildings and equipment which would, under generally accepted accounting principles, be considered capital items;

(B) provides that such plan is submitted to the agency designated under section 1320a-1(b) of this title, or if no such agency is designated, to the appropriate health planning agency in the State (but this subparagraph shall not apply in the case of a facility which is not a physician-directed clinic) has arrangements with one or more physicians and licensed practical nurses or licensed vocational nurses, and for advice and assistance in the management of medical emergencies; and, in the case of a physician-directed clinic, has one or more physicians and one or more physician assistants or nurse practitioners, to govern those services described in paragraph (1) which are furnished as an incident to the physician’s service as would otherwise be covered if furnished by a physician or as an incident to a physician’s service, and

(C) in the case of a rural health clinic located in an area in which there exists a shortage of home health agencies, part-time or intermittent nursing care and related medical supplies (other than drugs and biologicals) furnished by a registered professional nurse or licensed practical nurse to a homebound individual under a written plan of treatment (i) established and periodically reviewed by a physician described in paragraph (2)(B), or (ii) established by a nurse practitioner or physician assistant and periodically reviewed and approved by a physician described in paragraph (2)(B), when furnished to an individual as an outpatient of a rural health clinic.

(2) The term “rural health clinic” means a facility which—

(A) is primarily engaged in furnishing to outpatients services described in subparagraphs (A) and (B) of paragraph (1);

(B) in the case of a facility which is not a physician-directed clinic, has an arrangement (consistent with the provisions of State and local law relative to the practice, performance, and delivery of health services) with one or more physicians (as defined in subsection (r)(1)) of this section under which provision is made for the periodic review by such physicians of covered services furnished by physician assistants and nurse practitioners, the supervision and guidance by such physicians of physician assistants and nurse practitioners, the preparation by such physicians of such medical orders for care and treatment of clinic patients as may be necessary, and the availability of such physicians for such referral of and consultation for patients as is necessary and for advice and assistance in the management of medical emergencies; and, in the case of a physician-directed clinic, has one or more of its staff physicians perform the activities accomplished through such an arrangement;

(C) maintains clinical records on all patients;

(D) has arrangements with one or more hospitals, having agreements in effect under section 1395cc of this title, for the referral and admission of patients requiring inpatient services or such diagnostic or other specialized services as are not available at the clinic;

(E) has written policies, which are developed with the advice of (and with provision for review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more physician assistants or nurse practitioners, to govern those services described in paragraph (1) which it furnishes;

(F) has a physician, physician assistant, or nurse practitioner responsible for the execution of policies described in subparagraph (E) and relating to the provision of the clinic’s services;

(G) directly provides routine diagnostic services, including clinical laboratory services, as prescribed in regulations by the Secretary,
and has prompt access to additional diagnostic services from facilities meeting requirements under this subchapter;

(H) in compliance with State and Federal law, has available for administering to patients of the clinic at least such drugs and biologicals as are determined by the Secretary to be necessary for the treatment of emergency cases (as defined in regulations) and has appropriate procedures or arrangements for storing, administering, and dispensing any drugs and biologicals;

(I) has a quality assessment and performance improvement program, and appropriate procedures for review of utilization of clinical services, as the Secretary may specify;

(J) has a nurse practitioner, a physician assistant, or a certified nurse-midwife (as defined in subsection (gg) of this section) available to furnish patient care services not less than 50 percent of the time the clinic operates; and

(K) meets such other requirements as the Secretary may find necessary in the interest of the health and safety of the individuals who are furnished services by the clinic.

For the purposes of this subchapter, such term includes only a facility which (i) is located in an area that is not an urbanized area (as defined by the Bureau of the Census) and in which there are insufficient numbers of needed health care practitioners (as determined by the Secretary), and that, within the previous 4-year period, has been designated by the chief executive officer of the State and certified by the Secretary as an area with a shortage of personal health services or designated by the Secretary either (I) as an area with a shortage of personal health services under section 330(b)(3) or 1302(7) of the Public Health Service Act [42 U.S.C. 254b(b)(3), 300e–1(7)], (II) as a health professional shortage area described in section 332(a)(1)(A) of that Act [42 U.S.C. 254e(a)(1)(A)] because of its shortage of primary medical care manpower, (III) as a high impact area described in section 329(a)(5) of that Act, or (IV) as an area which includes a population group which the Secretary determines has a health manpower shortage under section 332(a)(1)(B) of that Act [42 U.S.C. 254e(a)(1)(B)], has filed an agreement with the Secretary by which it agrees not to charge the Secretary by which it agrees not to charge any individual or other person for items or services for which such individual is entitled to have payment made under this subchapter, except for the amount of any deductible or coinsurance amount imposed with respect to such items or services (not in excess of the amount customarily charged for such items and services by such clinic), pursuant to subsections (a) and (b) of section 1995f of this title, (iii) employs a physician assistant or nurse practitioner, and (iv) is not a rehabilitation agency or a facility which is primarily for the care and treatment of mental diseases. A facility that is in operation and qualifies as a rural health clinic under this subchapter or subchapter XIX of this chapter and that subsequently fails to satisfy the requirement of clause (i) shall be considered, for purposes of this subchapter and subchapter XIX of this chapter, as still satisfying the requirement of such clause if it is determined, in accordance with criteria established by the Secretary in regulations, to be essential to the delivery of primary care services that would otherwise be unavailable in the geographic area served by the clinic. If a State agency has determined under section 1395aa(a) of this title that a facility is a rural health clinic and the facility has applied to the Secretary for approval as such a clinic, the Secretary shall notify the facility of the Secretary's approval or disapproval not later than 60 days after the date of the State agency determination or the application (whichever is later).

(3) The term "Federally qualified health center services" means—

(A) services of the type described in subparagraphs (A) through (C) of paragraph (1) and preventive services (as defined in subsection (ddd)(3)); and

(B) preventive primary health services that a center is required to provide under section 330 of the Public Health Service Act [42 U.S.C. 254b], when furnished to an individual as an outpatient of a Federally qualified health center by the center or by a health care professional under contract with the center and, for this purpose, any reference to a rural health clinic or a physician described in paragraph (2)(B) is deemed a reference to a Federally qualified health center or a physician at the center, respectively.

(4) The term "Federally qualified health center" means an entity which—

(A)(i) is receiving a grant under section 330 of the Public Health Service Act [42 U.S.C. 254b], or

(ii)(I) is receiving funding from such a grant under a contract with the recipient of such a grant, and (II) meets the requirements to receive a grant under section 330 of such Act [42 U.S.C. 254b];

(B) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary to meet the requirements for receiving such a grant;

(C) was treated by the Secretary, for purposes of part B of this subchapter, as a comprehensive Federally funded health center as of January 1, 1990; or

(D) is an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act [25 U.S.C. 450f et seq.] or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.].

(5)(A) The term "physician assistant" and the term "nurse practitioner" mean, for purposes of this subchapter, a physician assistant or nurse practitioner who performs such services as such individual is legally authorized to perform (in the State in which the individual performs such services) in accordance with State law (or the State regulatory mechanism provided by State law), and who meets such training, education, and experience requirements (or any combination thereof) as the Secretary may prescribe in regulations.

(B) The term "clinical nurse specialist" means, for purposes of this subchapter, an individual who—
(i) is a registered nurse and is licensed to practice nursing in the State in which the clinical nurse specialist services are performed; and

(ii) holds a master’s degree in a defined clinical area of nursing from an accredited educational institution.

(6) The term “collaboration” means a process in which a nurse practitioner works with a physician to deliver health care services within the scope of the practitioner’s professional expertise, with medical direction and appropriate supervision as provided for in jointly developed guidelines or other mechanisms as defined by the law of the State in which the services are performed.

(7)(A) The Secretary shall waive for a 1-year period the requirements of paragraph (2) that a rural health clinic employ a physician assistant, nurse practitioner or certified nurse midwife or that such clinic require such providers to furnish services at least 50 percent of the time that the clinic operates for any facility that requests such waiver if the facility demonstrates that the facility has been unable, despite reasonable efforts, to hire a physician assistant, nurse practitioner, or certified nurse-midwife in the previous 90-day period.

(B) The Secretary may not grant such a waiver under subparagraph (A) to a facility if the request for the waiver is made less than 6 months after the date of the expiration of any previous such waiver for the facility, or if the facility has not yet been determined to meet the requirements (including subparagraph (J) of the first sentence of paragraph (2)) of a rural health clinic.

(C) A waiver which is requested under this paragraph shall be deemed granted unless such request is denied by the Secretary within 60 days after the date such request is received.

(bb) Services of a certified registered nurse anesthetist

(1) The term “services of a certified registered nurse anesthetist” means anesthesia services and related care furnished by a certified registered nurse anesthetist (as defined in paragraph (2)) which the nurse anesthetist is legally authorized to perform as such by the State in which the services are furnished.

(2) The term “certified registered nurse anesthetist” means a certified registered nurse anesthetist licensed by the State who meets such education, training, and other requirements relating to anesthesia services and related care as the Secretary may prescribe. In prescribing such requirements the Secretary may use the same requirements as those established by a national organization for the certification of nurse anesthetists. Such term also includes, as prescribed by the Secretary, anesthesiologist assistant.

(cc) Comprehensive outpatient rehabilitation facility services

(1) The term “comprehensive outpatient rehabilitation facility services” means the following items and services furnished by a physician or other qualified professional personnel (as defined in regulations by the Secretary) to an individual who is an outpatient of a comprehensive outpatient rehabilitation facility under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician—

(A) physicians’ services;

(B) physical therapy, occupational therapy, speech-language pathology services, and respiratory therapy;

(C) prosthetic and orthotic devices, including testing, fitting, or training in the use of prosthetic and orthotic devices;

(D) social and psychological services;

(E) nursing care provided by or under the supervision of a registered professional nurse;

(F) drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered;

(G) supplies and durable medical equipment; and

(H) such other items and services as are medically necessary for the rehabilitation of the patient and are ordinarily furnished by comprehensive outpatient rehabilitation facilities,

excluding, however, any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital. In the case of physical therapy, occupational therapy, and speech pathology services, there shall be no requirement that the item or service be furnished at any single fixed location if the item or service is furnished pursuant to such plan and payments are not otherwise made for the item or service under this subchapter.

(2) The term “comprehensive outpatient rehabilitation facility” means a facility which—

(A) is primarily engaged in providing (by or under the supervision of physicians) diagnostic, therapeutic, and restorative services to outpatients for the rehabilitation of injured, disabled, or sick persons;

(B) provides at least the following comprehensive outpatient rehabilitation services: (i) physicians’ services (rendered by physicians, as defined in subsection (r)(1) of this section, who are available at the facility on a full- or part-time basis); (ii) physical therapy; and (iii) social or psychological services;

(C) maintains clinical records on all patients;

(D) has policies established by a group of professional personnel (associated with the facility), including one or more physicians defined in subsection (r)(1) of this section to govern the comprehensive outpatient rehabilitation services it furnishes, and provides for the carrying out of such policies by a full- or part-time physician referred to in subparagraph (B)(i);

(E) has a requirement that every patient must be under the care of a physician;

(F) in the case of a facility in any State in which State or applicable local law provides for the licensing of facilities of this nature (i) is licensed pursuant to such law, or (ii) is approved by the agency of such State or locality, responsible for licensing facilities of this nature, as meeting the standards established for such licensing;

(G) has in effect a utilization review plan in accordance with regulations prescribed by the Secretary;
(H) has in effect an overall plan and budget that meets the requirements of subsection (2) of this section;

(I) provides the Secretary on a continuing basis with a surety bond in a form specified by the Secretary and in an amount that is not less than $50,000; and

(J) meets such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such facility, including conditions concerning qualifications of personnel in these facilities.

The Secretary may waive the requirement of a surety bond under subparagraph (I) in the case of a facility that provides a comparable surety bond under State law.

(dd) Hospice care; hospice program; definitions; certification; waiver by Secretary

(1) The term “hospice care” means the following items and services provided to a terminally ill individual by, or by others under arrangements made by, a hospice program under a written plan (for providing such care to such individual) established and periodically reviewed by the individual’s attending physician and by the medical director (and by the interdisciplinary group described in paragraph (2)(B)) of the program—

(A) nursing care provided by or under the supervision of a registered professional nurse,

(B) physical or occupational therapy, or speech-language pathology services,

(C) medical social services under the direction of a physician,

(D) services of a home health aide who has successfully completed a training program approved by the Secretary and (ii) homemaker services,

(E) medical supplies (including drugs and biologicals) and the use of medical appliances, while under such a plan,

(F) physicians’ services,

(G) short-term inpatient care (including both respite care and procedures necessary for pain control and acute and chronic symptom management) in an inpatient facility meeting such conditions as the Secretary determines to be appropriate to provide such care, but such respite care may be provided only on an intermittent, nonroutine, and occasional basis and may not be provided consecutively over longer than five days,

(H) counseling (including dietary counseling) with respect to care of the terminally ill individual and adjustment to his death, and

(I) any other item or service which is specified in the plan and for which payment may otherwise be made under this subchapter.

The care and services described in subparagraphs (A) and (D) may be provided on a 24-hour, continuous basis only during periods of crisis (meeting criteria established by the Secretary) and only as necessary to maintain the terminally ill individual at home.

The term “hospice program” means a public agency or private organization (or a subdivision thereof) which—

(A)(i) is primarily engaged in providing the care and services described in paragraph (1) and makes such services available (as needed) on a 24-hour basis and which also provides bereavement counseling for the immediate family of terminally ill individuals and services described in section 1395d(a)(5) of this title,

(ii) provides for such care and services in individuals’ homes, on an outpatient basis, and on a short-term inpatient basis, directly or under arrangements made by the agency or organization, except that—

(I) the agency or organization must routinely provide directly substantially all of each of the services described in subparagraphs (A), (C), and (H) of paragraph (1), except as otherwise provided in paragraph (5), and

(ii) in the case of other services described in paragraph (1) which are not provided directly by the agency or organization, the agency or organization must maintain professional management responsibility for all such services furnished to an individual, regardless of the location or facility in which such services are furnished; and

(iii) provides assurances satisfactory to the Secretary that the aggregate number of days of inpatient care described in paragraph (1)(G) provided in any 12-month period to individuals who have an election in effect under section 1395d(d) of this title with respect to that agency or organization does not exceed 20 percent of the aggregate number of days during that period on which such elections for such individuals are in effect;

(B) has an interdisciplinary group of personnel which—

(i) includes at least—

(I) one physician (as defined in subsection (r)(1) of this section),

(II) one registered professional nurse, and

(III) one social worker,

employed by or, in the case of a physician described in subclause (I), under contract with the agency or organization, and also includes at least one pastoral or other counselor;

(ii) provides (or supervises the provision of) the care and services described in paragraph (1), and

(iii) establishes the policies governing the provision of such care and services;

(C) maintains central clinical records on all patients;

(D) does not discontinue the hospice care it provides with respect to a patient because of the inability of the patient to pay for such care;

(E)(i) utilizes volunteers in its provision of care and services in accordance with standards set by the Secretary, which standards shall ensure a continuing level of effort to utilize such volunteers, and (ii) maintains records on the use of these volunteers and the cost savings and expansion of care and services achieved through the use of these volunteers;

(F) in the case of an agency or organization in any State in which State or applicable local law provides for the licensing of agencies or organizations of this nature, is licensed pursuant to such law; and
(G) meets such other requirements as the Secretary may find necessary in the interest of the health and safety of the individuals who are provided care and services by such agency or organization.

(3)(A) An individual is considered to be ‘‘terminally ill’’ if the individual has a medical prognosis that the individual’s life expectancy is 6 months or less.

(B) The term ‘‘attending physician’’ means, with respect to an individual, the physician (as defined in subsection (r)(1) of this section) or nurse practitioner (as defined in subsection (aa)(5) of this section), who may be employed by a hospice program, whom the individual identifies as having the most significant role in the determination and delivery of medical care to the individual at the time the individual makes an election to receive hospice care.

(4)(A) An entity which is certified as a provider of services other than a hospice program shall be considered, for purposes of certification as a hospice program, to have met any requirements under paragraph (2) which are also the same requirements for certification as such other type of provider. The Secretary shall coordinate surveys for determining certification under this subchapter so as to provide, to the extent feasible, for simultaneous surveys of an entity which seeks to be certified as a hospice program and as a provider of services of another type.

(B) Any entity which is certified as a hospice program and as a provider of another type shall have separate provider agreements under section 1395cc of this title and shall file separate cost reports with respect to costs incurred in providing hospice care and in providing other services and items under this subchapter.

(5)(A) The Secretary may waive the requirements of paragraph (2)(A)(ii)(I) for an agency or organization with respect to all or part of the nursing care described in paragraph (1)(A) if such agency or organization—

(i) is located in an area which is not an urbanized area (as defined by the Bureau of the Census);

(ii) was in operation on or before January 1, 1983; and

(iii) has demonstrated a good faith effort (as determined by the Secretary) to hire a sufficient number of nurses to provide such nursing care directly.

(B) Any waiver, which is in such form and containing such information as the Secretary may require and which is requested by an agency or organization under subparagraph (A) or (C), shall be deemed to be granted unless such request is denied by the Secretary within 60 days after the date such request is received by the Secretary. The granting of a waiver under subparagraph (A) or (C) shall not preclude the granting of any subsequent waiver request should such a waiver again become necessary.

(C) The Secretary may waive the requirements of paragraph (2)(A)(i) and (C)(A)(ii)(I) for an agency or organization with respect to the services described in paragraph (1)(B) and, with respect to dietary counseling, paragraph (1)(H), if such agency or organization—

(i) is located in an area which is not an urbanized area (as defined by the Bureau of the Census), and

(ii) demonstrates to the satisfaction of the Secretary that the agency or organization has been unable, despite diligent efforts, to recruit appropriate personnel.

(D) In extraordinary, exigent, or other non-routine circumstances, such as unanticipated periods of high patient loads, staffing shortages due to illness or other events, or temporary travel of a patient outside a hospice program’s service area, a hospice program may enter into arrangements with another hospice program for the provision by that other program of services described in paragraph (2)(A)(ii)(I). The provisions of paragraph (2)(A)(ii)(II) shall apply with respect to the services provided under such arrangements.

(E) A hospice program may provide services described in paragraph (1)(A) other than directly by the program if the services are highly specialized services of a registered professional nurse and are provided non-routinely and so infrequently so that the provision of such services directly would be impracticable and prohibitively expensive.

(ee) Discharge planning process

(1) A discharge planning process of a hospital shall be considered sufficient if it is applicable to services furnished by the hospital to individuals entitled to benefits under this subchapter and if it meets the guidelines and standards established by the Secretary under paragraph (2).

(2) The Secretary shall develop guidelines and standards for the discharge planning process in order to ensure a timely and smooth transition to the most appropriate type of and setting for post-hospital or rehabilitative care. The guidelines and standards shall include the following:

(A) The hospital must identify, at an early stage of hospitalization, those patients who are likely to suffer adverse health consequences upon discharge in the absence of adequate discharge planning.

(B) Hospitals must provide a discharge planning evaluation for patients identified under subparagraph (A) and for other patients upon the request of the patient, patient’s representative, or patient’s physician.

(C) Any discharge planning evaluation must be made on a timely basis to ensure that appropriate arrangements for post-hospital care will be made before discharge and to avoid unnecessary delays in discharge.

(D) A discharge planning evaluation must include an evaluation of a patient’s likely need for appropriate post-hospital services, including hospice care and post-hospital extended care services, and the availability of those services, including the availability of home health services through individuals and entities that participate in the program under this subchapter and that serve the area in which the patient resides and that request to be listed by the hospital as available and, in the case of individuals who are likely to need post-hospital extended care services, the availability of such services through facilities that participate in the program under this sub-
chapter and that serve the area in which the patient resides.

(E) The discharge planning evaluation must be included in the patient’s medical record for use in establishing an appropriate discharge plan and the results of the evaluation must be discussed with the patient (or the patient’s representative).

(F) Upon the request of a patient’s physician, the hospital must arrange for the development and initial implementation of a discharge plan for the patient.

(G) Any discharge planning evaluation or discharge plan required under this paragraph must be developed by, or under the supervision of, a registered professional nurse, social worker, or other appropriately qualified personnel.

(H) Consistent with section 1395a of this title, the discharge plan shall—

(i) not specify or otherwise limit the qualified provider which may provide post-hospital home health services, and

(ii) identify (in a form and manner specified by the Secretary) any entity to whom the individual is referred in which the hospital has a disclosable financial interest (as specified by the Secretary consistent with section 1395cc(a)(1)(S) of this title) or which has such an interest in the hospital.

(3) With respect to a discharge plan for an individual who is enrolled with a Medicare+Choice organization under a Medicare+Choice plan and is furnished inpatient hospital services by a hospital under a contract with the organization—

(A) the discharge planning evaluation under paragraph (2)(D) is not required to include information on the availability of home health services through individuals and entities which do not have a contract with the organization; and

(B) notwithstanding subparagraph (H)(i), the plan may specify or limit the provider (or providers) of post-hospital home health services or other post-hospital services under the plan.

(ff) Partial hospitalization services

(1) The term “partial hospitalization services” means the items and services described in paragraph (2) prescribed by a physician and provided under a program described in paragraph (3) under the supervision of a physician pursuant to an individualized, written plan of treatment established and periodically reviewed by a physician (in consultation with appropriate staff participating in such program), which plan sets forth the physician’s diagnosis, the type, amount, frequency, and duration of the items and services provided under the plan, and the goals for treatment under the plan.

(2) The items and services described in this paragraph are—

(A) individual and group therapy with physicians or psychologists (or other mental health professionals to the extent authorized under State law).

(B) occupational therapy requiring the skills of a qualified occupational therapist.

(C) services of social workers, trained psychiatric nurses, and other staff trained to work with psychiatric patients,

(D) drugs and biologicals furnished for therapeutic purposes (which cannot, as determined in accordance with regulations, be self-administered).

(E) individualized activity therapies that are not primarily recreational or diversionary.

(F) family counseling (the primary purpose of which is treatment of the individual’s condition).

(G) patient training and education (to the extent that training and educational activities are closely and clearly related to individual’s care and treatment).

(H) diagnostic services, and

(I) such other items and services as the Secretary may provide (but in no event to include meals and transportation); that are reasonable and necessary for the diagnosis or active treatment of the individual’s condition, reasonably expected to improve or maintain the individual’s condition and functional level and to prevent relapse or hospitalization, and furnished pursuant to such guidelines relating to frequency and duration of services as the Secretary shall by regulation establish (taking into account accepted norms of medical practice and the reasonable expectation of patient improvement).

(3)(A) A program described in this paragraph is a program which is furnished by a hospital to its outpatients or by a community mental health center (as defined in subparagraph (B)), and which is a distinct and organized intensive ambulatory treatment service offering less than 24-hour-daily care other than in an individual’s home or in an inpatient or residential setting.

(B) For purposes of subparagraph (A), the term “community mental health center” means an entity that—

(i) provides the mental health services described in section 1913(c)(1) of the Public Health Service Act [42 U.S.C. 300x–2(c)(1)]; or

(ii) in the case of an entity operating in a State that by law precludes the entity from providing itself the service described in subparagraph (E) of such section, provides for such service by contract with an approved organization or entity (as determined by the Secretary);

(iii) meets applicable licensing or certification requirements for community mental health centers in the State in which it is located;

(iv) provides at least 40 percent of its services to individuals who are not eligible for benefits under this subchapter; and

(v) meets such additional conditions as the Secretary shall specify to ensure (I) the health and safety of individuals being furnished such services, (II) the effective and efficient furnishing of such services, and (III) the compliance of such entity with the criteria described in section 1931(c)(1) of the Public Health Service Act [42 U.S.C. 300x–3(c)(1)].

(gg) Certified nurse-midwife services

(1) The term “certified nurse-midwife services” means such services furnished by a cer-
tified nurse-midwife (as defined in paragraph (2)) and such services and supplies furnished as an incident to the nurse-midwife’s service which the certified nurse-midwife is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician or as an incident to a physician’s service.

(2) The term “certified nurse-midwife” means a registered nurse who has successfully completed a program of study and clinical experience meeting guidelines prescribed by the Secretary, or has been certified by an organization recognized by the Secretary.

(hh) Clinical social worker; clinical social worker services

(1) The term “clinical social worker” means an individual who—
   (A) possesses a master’s or doctor’s degree in social work;
   (B) after obtaining such degree has performed at least 2 years of supervised clinical social work; and
   (C) (i) is licensed or certified as a clinical social worker by the State in which the services are performed, or
   (ii) in the case of an individual in a State which does not provide for licensure or certification—
      (I) has completed at least 2 years or 3,000 hours of post-master’s degree supervised clinical social work practice under the supervision of a master’s level social worker in an appropriate setting (as determined by the Secretary), and
      (II) meets such other criteria as the Secretary establishes.

(2) The term “clinical social worker services” means services performed by a clinical social worker (as defined in paragraph (1)) for the diagnosis and treatment of mental illnesses (other than services furnished to an inpatient of a hospital and other than services furnished to an inpatient of a skilled nursing facility which the facility is required to provide as a requirement for participation) which the clinical social worker is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) of the State in which such services are performed as would otherwise be covered if furnished by a physician or as an incident to a physician’s professional service.

(ii) Qualified psychologist services

The term “qualified psychologist services” means such services and supplies furnished as an incident to his service furnished by a clinical psychologist (as defined by the Secretary) which the psychologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician or as an incident to a physician’s service.

(jj) Screening mammography

The term “screening mammography” means a radiologic procedure provided to a woman for the purpose of early detection of breast cancer and includes a physician’s interpretation of the results of the procedure.

(kk) Covered osteoporosis drug

The term “covered osteoporosis drug” means an injectable drug approved for the treatment of post-menopausal osteoporosis provided to an individual by a home health agency if, in accordance with regulations promulgated by the Secretary—

(1) the individual’s attending physician certifies that the individual has suffered a bone fracture related to post-menopausal osteoporosis and that the individual is unable to learn the skills needed to self-administer such drug or is otherwise physically or mentally incapable of self-administering such drug; and

(2) the individual is confined to the individual’s home (except when receiving items and services referred to in subsection (m)(7) of this section).

(ii) Speech-language pathology services; audiology services

(1) The term “speech-language pathology services” means such speech, language, and related function assessment and rehabilitation services furnished by a qualified speech-language pathologist as the speech-language pathologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician.

(2) The term “outpatient speech-language pathology services” has the meaning given the term “outpatient physical therapy services” in subsection (p), except that in applying such subsection—

   (A) “speech-language pathology” shall be substituted for “physical therapy” each place it appears; and
   (B) “speech-language pathologist” shall be substituted for “physical therapist” each place it appears.

(3) The term “audiology services” means such hearing and balance assessment services furnished by a qualified audiologist as the audiologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), as would otherwise be covered if furnished by a physician.

(4) In this subsection:

   (A) The term “qualified speech-language pathologist” means an individual with a master’s or doctoral degree in speech-language pathology who—
   (i) is licensed as a speech-language pathologist by the State in which the individual furnishes such services, or
   (ii) in the case of an individual who furnishes services in a State which does not license speech-language pathologists, has successfully completed 360 clock hours of supervised clinical practicum (or is in the process of accumulating such supervised clinical experience), performed not less than 9 months of supervised full-time speech-language pathology services after obtaining a master’s or doctoral degree in speech-language pathology or a related field, and successfully completed a national examination in speech-language pathology approved by the Secretary.
(B) The term “qualified audiologist” means an individual with a master’s or doctoral degree in audiology who—
   (i) is licensed as an audiologist by the State in which the individual furnishes such services; or
   (ii) in the case of an individual who furnishes services in a State which does not license audiologists, has successfully completed 350 clock hours of supervised clinical practicum (or in the process of accumulating such supervised clinical experience), performed not less than 9 months of supervised full-time audiology services after obtaining a master’s or doctoral degree in audiology or a related field, and successfully completed a national examination in audiology approved by the Secretary.

(mm) Critical access hospital; critical access hospital services

(1) The term “critical access hospital” means a facility certified by the Secretary as a critical access hospital under section 1395i–4(e) of this title.

(2) The term “inpatient critical access hospital services” means items and services, furnished to an inpatient of a critical access hospital, that would be inpatient hospital services if furnished to an inpatient of a hospital by a hospital.

(3) The term “outpatient critical access hospital services” means medical and other health services furnished by a critical access hospital on an outpatient basis.

(nn) Screening pap smear; screening pelvic exam

(1) The term “screening pap smear” means a diagnostic laboratory test consisting of a routine exfoliative cytology test (Papanicolaou test) provided to a woman for the purpose of early detection of cervical or vaginal cancer and includes a physician’s interpretation of the results of the test, if the individual involved has not had such a test during the preceding 2 years, or during the preceding year in the case of a woman described in paragraph (3).

(2) The term “screening pelvic exam” means a pelvic examination provided to a woman if the woman involved has not had such an examination during the preceding 2 years, or during the preceding year in the case of a woman described in paragraph (3), and includes a clinical breast examination.

(3) A woman described in this paragraph is a woman who—
   (A) is of childbearing age and has had a test described in this subsection during any of the preceding 3 years that indicated the presence of cervical or vaginal cancer or other abnormality; or
   (B) is at high risk of developing cervical or vaginal cancer (as determined pursuant to factors identified by the Secretary).

(oo) Prostate cancer screening tests

(1) The term “prostate cancer screening test” means a test that consists of any (or all) of the procedures described in paragraph (2) provided for the purpose of early detection of prostate cancer to a man over 50 years of age who has not had such a test during the preceding year.

(2) The procedures described in this paragraph are as follows:
   (A) A digital rectal examination.
   (B) A prostate-specific antigen blood test.
   (C) For years beginning after 2002, such other procedures as the Secretary finds appropriate for the purpose of early detection of prostate cancer, taking into account changes in technology and standards of medical practice, availability, effectiveness, costs, and such other factors as the Secretary considers appropriate.

(pp) Colorectal cancer screening tests

(1) The term “colorectal cancer screening test” means any of the following procedures furnished to an individual for the purpose of early detection of colorectal cancer:
   (A) Screening fecal-occult blood test.
   (B) Screening flexible sigmoidoscopy.
   (C) Screening colonoscopy.
   (D) Such other tests or procedures, and modifications to tests and procedures under this subsection, with such frequency and payment limits, as the Secretary determines appropriate, in consultation with appropriate organizations.

(2) An “individual at high risk for colorectal cancer” is an individual who, because of family history, prior experience of cancer or precursor neoplastic polyps, a history of chronic digestive disease condition (including inflammatory bowel disease, Crohn’s Disease, or ulcerative colitis), the presence of any appropriate recognized gene markers for colorectal cancer, or other predisposing factors, faces a high risk for colorectal cancer.

(qq) Diabetes outpatient self-management training services

(1) The term “diabetes outpatient self-management training services” means educational and training services furnished (at such times as the Secretary determines appropriate) to an individual with diabetes by a certified provider (as described in paragraph (2)(A)) in an outpatient setting by an individual or entity designated by the Secretary, that, in addition to providing diabetes outpatient self-management training services, provides other items or services for which payment may be made under this subchapter; and

   (A) a “certified provider” is a physician, or other individual or entity designated by the Secretary, that, in addition to providing diabetes outpatient self-management training services, provides other items or services for which payment may be made under this subchapter; and
   (B) a physician, or such other individual or entity, meets the quality standards described in this paragraph if the physician, or individual or entity, meets quality standards established by the Secretary, except that the physi-
cian or other individual or entity shall be deemed to have met such standards if the physician or other individual or entity meets applicable standards originally established by the National Diabetes Advisory Board and subsequently revised by organizations who participated in the establishment of standards by such Board, or is recognized by an organization that represents individuals (including individuals under this subchapter) with diabetes as meeting standards for furnishing the services.

**(rr) Bone mass measurement**

(1) The term “bone mass measurement” means a radiologic or radioisotopic procedure or other procedure approved by the Food and Drug Administration performed on a qualified individual (as defined in paragraph (2)) for the purpose of identifying bone mass or detecting bone loss or determining bone quality, and includes a physician’s interpretation of the results of the procedure.

(2) For purposes of this subsection, the term “qualified individual” means an individual who is (in accordance with regulations prescribed by the Secretary)—

(A) an estrogen-deficient woman at clinical risk for osteoporosis;

(B) an individual with vertebral abnormalities;

(C) an individual receiving long-term glucocorticoid steroid therapy;

(D) an individual with primary hyperparathyroidism; or

(E) an individual being monitored to assess the response to or efficacy of an approved osteoporosis drug therapy.

(3) The Secretary shall establish such standards regarding the frequency with which a qualified individual shall be eligible to be provided benefits for bone mass measurement under this subchapter.

**(ss) Religious nonmedical health care institution**

(1) The term “religious nonmedical health care institution” means an institution that—

(A) is described in subsection (c)(3) of section 501 of the Internal Revenue Code of 1986 and is exempt from taxes under subsection (a) of such section;

(B) is lawfully operated under all applicable Federal, State, and local laws and regulations;

(C) provides only nonmedical nursing items and services exclusively to patients who choose to rely solely upon a religious method of healing and for whom the acceptance of medical health services would be inconsistent with their religious beliefs;

(D) provides such nonmedical items and services exclusively through nonmedical nursing personnel who are experienced in caring for the physical needs of such patients;

(E) provides such nonmedical items and services to inpatients on a 24-hour basis;

(F) on the basis of its religious beliefs, does not provide through its personnel or otherwise medical items and services (including any medical screening, examination, diagnosis, prognosis, treatment, or the administration of drugs) for its patients;

(G)(i) is not owned by, under common ownership with, or has an ownership interest in, a provider of medical treatment or services;

(ii) is not affiliated with—

(I) a provider of medical treatment or services, or

(II) an individual who has an ownership interest in a provider of medical treatment or services;

(H) has in effect a utilization review plan which—

(i) provides for the review of admissions to the institution, of the duration of stays therein, of cases of continuous extended duration, and of the items and services furnished by the institution;

(ii) requires that such reviews be made by an appropriate committee of the institution that includes the individuals responsible for overall administration and for supervision of nursing personnel at the institution;

(iii) provides that records be maintained of the meetings, decisions, and actions of such committee, and

(iv) meets such other requirements as the Secretary finds necessary to establish an effective utilization review plan;

(I) provides the Secretary with such information as the Secretary may require to implement section 1395i–5 of this title, including information relating to quality of care and coverage determinations; and

(J) meets such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the institution.

(2) To the extent that the Secretary finds that the accreditation of an institution by a State, regional, or national agency or association provides reasonable assurances that any or all of the requirements of paragraph (1) are met or exceeded, the Secretary may treat such institution as meeting the condition or conditions with respect to which the Secretary made such finding.

(3)(A)(i) In administering this subsection and section 1395i–5 of this title, the Secretary shall not require any patient of a religious nonmedical health care institution to undergo medical screening, examination, diagnosis, prognosis, or treatment or to accept any other medical health care service, if such patient (or legal representative of the patient) objects thereto on religious grounds.

(ii) Clause (i) shall not be construed as preventing the Secretary from requiring under section 1395i–5(a)(2) of this title the provision of sufficient information regarding an individual’s condition as a condition for receipt of benefits under part A of this subchapter for services provided in such an institution.

(B)(i) In administering this subsection and section 1395i–5 of this title, the Secretary shall not subject a religious nonmedical health care institution or its personnel to any medical supervision, regulation, or control, insofar as such supervision, regulation, or control would be contrary to the religious beliefs observed by the institution or such personnel.

(ii) Clause (i) shall not be construed as preventing the Secretary from reviewing items and services to inpatients on a 24-hour basis;
services billed by the institution to the extent the Secretary determines such review to be necessary to determine whether such items and services were not covered under part A of this subchapter, are excessive, or are fraudulent. 

(4) For purposes of paragraph (3)(B)(ii), an ownership interest of less than 5 percent shall not be taken into account.

(B) For purposes of paragraph (1)(G)(ii), none of the following shall be considered to create an affiliation:

(i) An individual serving as an uncompensated director, trustee, officer, or other member of the governing body of a religious nonmedical health care institution.

(ii) An individual who is a director, trustee, officer, employee, or staff member of a religious nonmedical health care institution having a family relationship with an individual who is affiliated with (or has an ownership interest in) a provider of medical treatment or services.

(iii) An individual or entity furnishing goods or services as a vendor to both providers of medical treatment or services and religious nonmedical health care institutions.

(tt) Post-institutional home health services; home health spell of illness

(1) The term “post-institutional home health services” means home health services furnished to an individual—

(A) after discharge from a hospital or critical access hospital in which the individual was an inpatient for not less than 3 consecutive days before such discharge if such home health services were initiated within 14 days after the date of such discharge; or

(B) after discharge from a skilled nursing facility in which the individual was provided post-hospital extended care services if such home health services were initiated within 14 days after the date of such discharge.

(2) The term “home health spell of illness” with respect to any individual means a period of consecutive days—

(A) beginning with the first day (not included in a previous home health spell of illness) (i) on which such individual is furnished post-institutional home health services, and (ii) which occurs in a month for which the individual is entitled to benefits under part A of this subchapter, and

(B) ending with the close of the first period of 60 consecutive days thereafter on each of which the individual is neither an inpatient of a hospital or critical access hospital nor an inpatient of a facility described in section 1395i-3(a)(1) of this title or subsection (y)(1) of this section nor provided home health services.

(uu) Screening for glaucoma

The term “screening for glaucoma” means a dilated eye examination with an intraocular pressure measurement, and a direct ophthalmoscopy or a slit-lamp biomicroscopic examination for the early detection of glaucoma which is furnished by or under the direct supervision of an optometrist or ophthalmologist who is legally authorized to furnish such services under State law (or the State regulatory mechanism provided by State law) of the State in which the services are furnished, as would otherwise be covered if furnished by a physician or as an incident to a physician’s professional service, if the individual involved has not had such an examination in the preceding year.

(vv) Medical nutrition therapy services; registered dietitian or nutrition professional

(1) The term “medical nutrition therapy services” means nutritional diagnostic, therapy, and counseling services for the purpose of disease management which are furnished by a registered dietitian or nutrition professional (as defined in paragraph (2)) pursuant to a referral by a physician (as defined in subsection (r)(1) of this section).

(2) Subject to paragraph (3), the term “registered dietitian or nutrition professional” means an individual who—

(A) holds a baccalaureate or higher degree granted by a regionally accredited college or university in the United States (or an equivalent foreign degree) with completion of the academic requirements of a program in nutrition or dietetics, as accredited by an appropriate national accreditation organization recognized by the Secretary for this purpose;

(B) has completed at least 900 hours of supervised dietetics practice under the supervision of a registered dietitian or nutrition professional; and

(C)(i) is licensed or certified as a dietitian or nutrition professional by the State in which the services are performed; or

(ii) in the case of an individual in a State that does not provide for such licensure or certification, meets such other criteria as the Secretary establishes.

(3) Subparagraphs (A) and (B) of paragraph (2) shall not apply in the case of an individual who, as of December 21, 2000, is licensed or certified as a dietitian or nutrition professional by the State in which medical nutrition therapy services are performed.

(ww) Initial preventive physical examination

(1) The term “initial preventive physical examination” means physicians’ services consisting of a physical examination (including measurement of height, weight body mass index, and blood pressure) with the goal of health promotion and disease detection and includes education, counseling, and referral with respect to screening and other preventive services described in paragraph (2) and end-of-life planning (as defined in paragraph (3)) upon the agreement with the individual, but does not include clinical laboratory tests.

(2) The screening and other preventive services described in this paragraph include the following:

(A) Pneumococcal, influenza, and hepatitis B vaccine and administration under subsection (s)(10).

(B) Screening mammography as defined in subsection (jj).

9So in original. Probably should be “weight, body mass index.”
(C) Screening pap smear and screening pelvic exam as defined in subsection (nn).
(D) Prostate cancer screening tests as defined in subsection (oo).
(E) Colorectal cancer screening tests as defined in subsection (pp).
(F) Diabetes outpatient self-management training services as defined in subsection (qq)(1).
(G) Bone mass measurement as defined in subsection (rr).
(H) Screening for glaucoma as defined in subsection (uu).
(I) Medical nutrition therapy services as defined in subsection (vv).
(J) Cardiovascular screening blood tests as defined in subsection (xx)(1).
(K) Diabetes screening tests as defined in subsection (yy).
(L) Ultrasound screening for abdominal aortic aneurysm as defined in subsection (bbb).
(M) An electrocardiogram.
(N) Additional preventive services (as defined in subsection (dd)(1)).

(3) For purposes of paragraph (1), the term “end-of-life planning” means verbal or written information regarding—
(A) an individual’s ability to prepare an advance directive in the case that an injury or illness causes the individual to be unable to make health care decisions; and
(B) whether or not the physician is willing to follow the individual’s wishes as expressed in an advance directive.

(xx) Cardiovascular screening blood test

(1) The term “cardiovascular screening blood test” means a blood test for the early detection of cardiovascular disease (or abnormalities associated with an elevated risk of cardiovascular disease) that tests for the following:
(A) Cholesterol levels and other lipid or triglyceride levels.
(B) Such other indications associated with the presence of, or an elevated risk for, cardiovascular disease as the Secretary may approve for all individuals (or for some individuals determined by the Secretary to be at risk for cardiovascular disease), including indications measured by noninvasive testing.

The Secretary may not approve an indication under subparagraph (B) for any individual unless a blood test for such is recommended by the United States Preventive Services Task Force.

(2) The Secretary shall establish standards, in consultation with appropriate organizations, regarding the frequency of diabetes screening tests, except that such frequency may not be more often than twice within the 12-month period following the date of the most recent diabetes screening test of that individual.

(zz) Intravenous immune globulin

The term “intravenous immune globulin” means an approved pooled plasma derivative for the treatment in the patient’s home of a patient with a diagnosed primary immune deficiency disease, but not including items or services related to the administration of the derivative, if a physician determines administration of the derivative in the patient’s home is medically appropriate.

(aaa) Extended care in religious nonmedical health care institutions

(1) The term “home health agency” also includes a religious nonmedical health care institution (as defined in subsection (ss)(1) of this section), but only with respect to items and services ordinarily furnished by such an institution to individuals in their homes, and that are comparable to items and services furnished to individuals by a home health agency that is not religious nonmedical health care institution.

(2)(A) Subject to subparagraphs (B), payment may be made with respect to services provided by such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations consistent with section 1395i–5 of this title.

(B) Notwithstanding any other provision of this subchapter, payment may not be made under subparagraph (A)—
(i) in a year insofar as such payments exceed $700,000; and
(ii) after December 31, 2006.

(bbb) Ultrasound screening for abdominal aortic aneurysm

The term “ultrasound screening for abdominal aortic aneurysm” means—
(1) a procedure using sound waves (or such other procedures using alternative tech-
nologies, of commensurate accuracy and cost, that the Secretary may specify) provided for the early detection of abdominal aortic aneurysm; and

(2) includes a physician’s interpretation of the results of the procedure.

(ccc) Long-term care hospital

The term “long-term care hospital” means a hospital which—

(1) is primarily engaged in providing inpatient services, by or under the supervision of a physician, to Medicare beneficiaries whose medically complex conditions require a long hospital stay and programs of care provided by a long-term care hospital;

(2) has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days, or meets the requirements of clause (II) of section 1395ww(d)(1)(B)(iv) of this title;

(3) satisfies the requirements of subsection (e); and

(4) meets the following facility criteria:

(A) the institution has a patient review process, documented in the patient medical record, that screens patients prior to admission for appropriateness of admission to a long-term care hospital, validates within 48 hours of admission that patients meet admission criteria for long-term care hospitals, regularly evaluates patients throughout their stay for continuation of care in a long-term care hospital, and assesses the available discharge options when patients no longer meet such continued stay criteria;

(B) the institution has active physician involvement with patients during their treatment through an organized medical staff, physician-directed treatment with physician on-site availability on a daily basis to review patient progress, and consulting physicians on call and capable of being at the patient’s side within a moderate period of time, as determined by the Secretary; and

(C) the institution has interdisciplinary team treatment for patients, requiring interdisciplinary teams of health care professionals, including physicians, to prepare and carry out an individualized treatment plan for each patient.

(ddd) Additional preventive services; preventive services

(1) The term “additional preventive services” means services not described in subparagraph (A) or (C) of paragraph (3) that identify medical conditions or risk factors and that the Secretary determines are—

(A) reasonable and necessary for the prevention or early detection of an illness or disability;

(B) recommended with a grade of A or B by the United States Preventive Services Task Force; and

(C) appropriate for individuals entitled to benefits under part A or enrolled under part B.

(2) In making determinations under paragraph (1) regarding the coverage of a new service, the Secretary shall use the process for making national coverage determinations (as defined in section 1395ff(f)(1)(B) of this title) under this subchapter. As part of the use of such process, the Secretary may conduct an assessment of the relation between predicted outcomes and the expenditures for such service and may take into account the results of such assessment in making such determination.

(3) The term “preventive services” means the following:

(A) The screening and preventive services described in subsection (ww)(2) (other than the service described in subparagraph (M) of such subsection).

(B) An initial preventive physical examination (as defined in subsection (ww)).

(C) Personalized prevention plan services (as defined in subsection (hhh)(1)).

(eee) Cardiac rehabilitation program; intensive cardiac rehabilitation program

(1) The term “cardiac rehabilitation program” means a physician-supervised program (as described in paragraph (2)) that furnishes the items and services described in paragraph (3).

(2) A program described in this paragraph is a program under which—

(A) items and services under the program are delivered—

(i) in a physician’s office;

(ii) in a hospital on an outpatient basis; or

(iii) in other settings determined appropriate by the Secretary.

(B) a physician is immediately available and accessible for medical consultation and medical emergencies at all times items and services are being furnished under the program, except that, in the case of items and services furnished under such a program in a hospital, such availability shall be presumed; and

(C) individualized treatment is furnished under a written plan established, reviewed, and signed by a physician every 30 days that describes—

(i) the individual’s diagnosis;

(ii) the type, amount, frequency, and duration of the items and services furnished under the plan; and

(iii) the goals set for the individual under the plan.

(3) The items and services described in this paragraph are—

(A) physician-prescribed exercise;

(B) cardiac risk factor modification, including education, counseling, and behavioral intervention (to the extent such education, counseling, and behavioral intervention is closely related to the individual’s care and treatment and is tailored to the individual’s needs);

(C) psychosocial assessment;

(D) outcomes assessment; and

(E) such other items and services as the Secretary may determine, but only if such items and services are—

(i) reasonable and necessary for the diagnosis or active treatment of the individual’s condition;

(ii) reasonably expected to improve or maintain the individual’s condition and functional level; and
(iii) furnished under such guidelines relating to the frequency and duration of such items and services as the Secretary shall establish, taking into account accepted norms of medical practice and the reasonable expectation of improvement of the individual.

(4)(A) The term "intensive cardiac rehabilitation program" means a physician-supervised program (as described in paragraph (2)) that furnishes the items and services described in paragraph (3) and has shown, in peer-reviewed published research, that it accomplished—

(i) one or more of the following:

(A) positively affected the progression of coronary heart disease; or

(B) reduced the need for coronary bypass surgery; or

(ii) a statistically significant reduction in 5 or more of the following measures from their level before receipt of cardiac rehabilitation services to their level after receipt of such services:

(I) low density lipoprotein;

(II) triglycerides;

(III) body mass index;

(IV) systolic blood pressure;

(V) diastolic blood pressure; or

(VI) the need for cholesterol, blood pressure, and diabetes medications.

(B) To be eligible for an intensive cardiac rehabilitation program, an individual must have—

(i) had an acute myocardial infarction in the preceding 12 months;

(ii) had coronary artery surgery;

(iii) stable angina pectoris;

(iv) had heart valve repair or replacement;

(v) had percutaneous transluminal coronary angioplasty (PTCA) or coronary stenting; or

(vi) had a heart or heart-lung transplant.

(C) An intensive cardiac rehabilitation program may be provided in a series of 72 one-hour sessions (as defined in section 1395w–4(b)(5) of this title), up to 6 sessions per day, over a period of up to 18 weeks.

(5) The Secretary shall establish standards to ensure that a physician with expertise in the management of individuals with respiratory pathophysiology who is licensed to practice medicine in the State in which a pulmonary rehabilitation program is offered—

(A) is responsible for such program; and

(B) in consultation with appropriate staff, is involved substantially in directing the progress of individual 10 in the program.

(fff) Pulmonary rehabilitation program

(1) The term "pulmonary rehabilitation program" means a physician-supervised program (as described in subsection (ee)(2)) with respect to a program under this subsection) that furnishes the items and services described in paragraph (2).

(2) The items and services described in this paragraph are—

(A) physician-prescribed exercise;

(B) education or training (to the extent the education or training is closely and clearly related to the individual's care and treatment and is tailored to such individual's needs);

(C) psychosocial assessment; and

(D) outcomes assessment; and

(E) such other items and services as the Secretary may determine, but only if such items and services are—

(i) reasonable and necessary for the diagnosis or active treatment of the individual's condition;

(ii) reasonably expected to improve or maintain the individual's condition and functional level; and

(iii) furnished under such guidelines relating to the frequency and duration of such items and services as the Secretary shall establish, taking into account accepted norms of medical practice and the reasonable expectation of improvement of the individual.

(3) The Secretary shall establish standards to ensure that a physician with expertise in the management of individuals with respiratory pathophysiology who is licensed to practice medicine in the State in which a pulmonary rehabilitation program is offered—

(A) is responsible for such program; and

(B) in consultation with appropriate staff, is involved substantially in directing the progress of individuals in the program.

(ggg) Kidney disease education services

(1) The term "kidney disease education services" means educational services that are—

(A) furnished to an individual with stage IV chronic kidney disease who, according to accepted clinical guidelines identified by the Secretary, will require dialysis or a kidney transplant;

(B) furnished, upon the referral of the physician managing the individual's kidney condition, by a qualified person (as defined in paragraph (2)); and

(C) designed—

(i) to provide comprehensive information (consistent with the standards set under paragraph (3)) regarding—

(I) the management of comorbidities, including for purposes of delaying the need for dialysis;

(II) the prevention of uremic complications; and

(III) each option for renal replacement therapy (including hemodialysis and peritoneal dialysis at home and in-center as well as vascular access options and transplantation);

(ii) to ensure that the individual has the opportunity to actively participate in the choice of therapy; and

(iii) to be tailored to meet the needs of the individual involved.

(2)(A) The term "qualified person" means—

(i) a physician (as defined in subsection (r)(1)) or a physician assistant, nurse practitioner, or clinical nurse specialist (as defined in subsection (aa)(5)), who furnishes services for which payment may be made under the fee

10So in original.
schedule established under section 1395w-4 of this title; and

(ii) a provider of services located in a rural area (as defined in section 1395ww(d)(2)(D) of this title).

(B) Such term does not include a provider of services (other than a provider of services described in subparagraph (A)(ii)) or a renal dialysis facility.

(3) The Secretary shall set standards for the content of such information to be provided under paragraph (1)(C)(i) after consulting with physicians, other health professionals, health educators, professional organizations, accreditating organizations, kidney patient organizations, dialysis facilities, transplant centers, network organizations described in section 1395rr(c)(2) of this title, and other knowledgeable persons. To the extent possible the Secretary shall consult with persons or entities described in the previous sentence, other than a dialysis facility, that has not received industry funding from a drug or biological manufacturer or dialysis facility.

(4) No individual shall be furnished more than 6 sessions of kidney disease education services under this subchapter.

(hhh) Annual wellness visit

(1) The term “personalized prevention plan services” means the creation of a plan for an individual—

(A) that includes a health risk assessment (that meets the guidelines established by the Secretary under paragraph (4)(A)) of the individual that is completed prior to or as part of the same visit with a health professional described in paragraph (3); and

(B) that—

(i) takes into account the results of the health risk assessment; and

(ii) may contain the elements described in paragraph (2).

(2) Subject to paragraph (4)(H), the elements described in this paragraph are the following:

(A) The establishment of, or an update to, the individual’s medical and family history;

(B) A list of current providers and suppliers that are regularly involved in providing medical care to the individual (including a list of all prescribed medications);

(C) A measurement of height, weight, body mass index (or waist circumference, if appropriate), blood pressure, and other routine measurements;

(D) Detection of any cognitive impairment.

(E) The establishment of, or an update to, the following:

(i) A screening schedule for the next 5 to 10 years, as appropriate, based on recommendations of the United States Preventive Services Task Force and the Advisory Committee on Immunization Practices, and the individual’s health status, screening history, and age-appropriate preventive services covered under this subchapter.

(ii) A list of risk factors and conditions for which primary, secondary, or tertiary prevention interventions are recommended or are underway, including any mental health conditions or any such risk factors or conditions that have been identified through an initial preventive physical examination (as described under subsection (ww)(1)), and a list of treatment options and their associated risks and benefits.

(F) The furnishing of personalized health advice and a referral, as appropriate, to health education or preventive counseling services or programs aimed at reducing identified risk factors and improving self-management, or community-based lifestyle interventions to reduce health risks and promote self-management and wellness, including weight loss, physical activity, smoking cessation, fall prevention, and nutrition.

(G) Any other element determined appropriate by the Secretary.

(3) A health professional described in this paragraph is—

(A) a physician;

(B) a practitioner described in clause (i) of section 1395u(b)(18)(C) of this title; or

(C) a medical professional (including a health educator, registered dietitian, or nutrition professional) or a team of medical professionals, as determined appropriate by the Secretary, under the supervision of a physician.

(4)(A) For purposes of paragraph (1)(A), the Secretary, not later than 1 year after March 23, 2010, shall establish publicly available guidelines for health risk assessments. Such guidelines shall be developed in consultation with relevant groups and entities and shall provide that a health risk assessment—

(i) identify chronic diseases, injury risks, modifiable risk factors, and urgent health needs of the individual; and

(ii) may be furnished—

(I) through an interactive telephonic or web-based program that meets the standards established under subparagraph (B);

(II) during an encounter with a health care professional;

(III) through community-based prevention programs; or

(IV) through any other means the Secretary determines appropriate to maximize accessibility and ease of use by beneficiaries, while ensuring the privacy of such beneficiaries.

(B) Not later than 1 year after March 23, 2010, the Secretary shall establish standards for interactive telephonic or web-based programs used to furnish health risk assessments under subparagraph (A)(II)(I). The Secretary may utilize any health risk assessment developed under section 300u–12(f) of this title as part of the requirement to develop a personalized prevention plan to comply with this subparagraph.

(C)(i) Not later than 18 months after March 23, 2010, the Secretary shall develop and make available to the public a health risk assessment model. Such model shall meet the guidelines under subparagraph (A) and may be used to meet the requirement under paragraph (1)(A).

(ii) Any health risk assessment that meets the guidelines under subparagraph (A) and is approved by the Secretary may be used to meet the requirement under paragraph (1)(A).
(D) The Secretary may coordinate with community-based entities (including State Health Insurance Programs, Area Agencies on Aging, Aging and Disability Resource Centers, and the Administration on Aging) to—

(i) encourage that health risk assessments are accessible to beneficiaries; and

(ii) provide appropriate support for the completion of health risk assessments by beneficiaries.

(E) The Secretary shall establish procedures to make beneficiaries and providers aware of the requirement that a beneficiary complete a health risk assessment prior to or at the same time as receiving personalized prevention plan services.

(F) To the extent practicable, the Secretary shall encourage the use of, integration with, and coordination of health information technology (including use of technology that is compatible with electronic medical records and personal health records) and may experiment with the use of personalized technology to aid in the development of self-management skills and management of and adherence to provider recommendations in order to improve the health status of beneficiaries.

(G) A beneficiary shall be eligible to receive only an initial preventive physical examination (as defined under subsection (ww)(1)) during the 12-month period after the date that the beneficiary’s coverage begins under part B and shall be eligible to receive personalized prevention plan services under this subsection each year thereafter provided that the beneficiary has not received either an initial preventive physical examination or personalized prevention plan services within the preceding 12-month period.

(H) The Secretary shall issue guidance that—

(i) identifies elements under paragraph (2) that are required to be provided to a beneficiary as part of their first visit for personalized prevention plan services; and

(ii) establishes a yearly schedule for appropriate provision of such elements thereafter.

(Aug. 14, 1995, ch. 531, § 1861, as added Pub. L. 99-97, title I, § 102(a), July 30, 1965, 79 Stat. 313; amended Pub. L. 89-791, § 7, Nov. 2, 1966, 80 Stat. 1111; Pub. L. 90-248, title I, §§ 127(a), 129(a), (b), (c), (9)(C), (10), (11), 123(a), 133(a), (b), 134(a), 143(a), 144(a)-(d), Jan. 26, 1968, 81 Stat. 814-850, 823, 857, 858; Pub. L. 91-690, Jan. 12, 1971, 84 Stat. 2074; Pub. L. 92-603, title II, §§ 211(b), (c), (2), 221(c)(4), 223(a)-(d), (f), 227(a), (c), (d), (1), (2), 234(a)-(f), 237(c), 244(c), 246(b), 248, 249(b), 251(a)(1), (b)(1), (2), 252(a), 264(b), 265, 267, 273(a), 276(a), 278(a) (4)-(15), (b)(6), (10), (11), (13), 283(a), Oct. 20, 1972, 86 Stat. 1333, 1389, 1393, 1397, 1404-1407, 1412, 1413, 1416, 1419-1420, 1425-1427, 1429-1430, 1433; Pub. L. 94-182, title I, § 102(a), 103(a), (b), 105(a), 106(a), 107(a), 108(a)-(2), 109(b), 114(b), 126(b), 127(1), 128(a)(1), (d)(2), 148(b), Sept. 3, 1982, 96 Stat. 335-339, 350, 359, 366, 367, 394; Pub. L. 97-148, title III, §§ 309(a)-(4), Jan. 12, 1983, 97 Stat. 9428; Pub. L. 98-21, title VI, §§ 622(d), 1970(b), (d), Apr. 20, 1983, 97 Stat. 163, 171, 172; Pub. L. 98-369, div. B, title III, §§ 231(a), 231(b), (b), 231(m), 232(a), 233(a), 234(a), 235(b), 2340(a), 2341(a), (c), 2342(a), 2343(a), (b), 2343(b)(18)-(29), July 18, 1984, 98 Stat. 1079, 1081, 1083, 1086, 1090, 1093, 1101; Pub. L. 98-617, § 9(a)(4), (b)(7), Nov. 8, 1984, 98 Stat. 3265; Pub. L. 99-272, title IX, §§ 9107(b), 9110(a), 9202(i)(1), 9219(b)(1)(B), (3)(A), Apr. 7, 1986, 100 Stat. 160, 162, 177, 182, 183; Pub. L. 99-509, title IX, §§ 9303(c)(1), (2), 9313(a)(2), 9315(a), 9320(b), (c), (f), 9335(c)(1), 9336(a), 9337(d), 9338(a), Oct. 21, 1986, 100 Stat. 1861, 2002, 2005, 2011, 2016; Pub. L. 100-180, title IV, §§ 4109(e), (f), 4121(a)(1), 4126(a)(1), 4133(a), 4146(a), 4151(a), (b)(2), 4152(a)(2), 4153(b)(2)(A), 4155(a)(1), (d), 4156(a), 4157(a), 4161(a), (2), (5), (b)(1), (2), 4162(a), 4163(a), 4201(d)(1), 4207(d)(1), formerly 4207(d)(1), Nov. 5, 1989, 104 Stat. 3435; Pub. L. 104-208, title IV, §§ 606(h)(2)(A)(i), 4151(a), (b), 4152(a)(2), 4153(b)(2)(A), 4155(a)(1), (d), 4156(a), 4157(a), 4161(a), (2), (5), (b)(1), (2), 4162(a), 4163(a), 4201(d)(1), 4207(d)(1), formerly 4207(d)(1), Nov. 5, 1990, 104 Stat. 3435; Pub. L. 104-121, title IX, §§ 13503(c)(1)-(A), 13521, 13522, 13535(a), (b), 13554(a), 13556(a), 13564(a)(2), (b), (1), 13565, 13566, Aug. 10, 1993, 107 Stat. 578, 586, 591, 592, 607; Pub. L. 104-122, title I, §§ 149(b)(4), 154(a), 149(b), (a), (b), 156(c)(1), (4), (5), 13520(a), (4)(A), (6)(A), (B), (E), 158(a)(1), Oct. 13, 1993, 107 Stat. 4404, 4405, 4407, 4427-4432, 4442; Pub. L. 104-299, § 4(b)(1), Oct. 11, 1996, 110 Stat. 3645; Pub. L. 105-33, title IV, §§ 4102(a), (c), 4103(a), 4104(a)(1), 4105(a), (b), 1406x,

Subsec. (s)(2)(A). Pub. L. 106–554, §1(a)(6) [title III, §113(a)], substituted “‘including drugs and biologicals which are not usually self-administered by the patient’” for “‘including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered’”.

Subsec. (s)(2)(J). Pub. L. 106–554, §1(a)(6) [title I, §113(a)], struck out provisions limiting application to drugs furnished within 12 months after the date of the transplant procedure for drugs furnished before 1999, and in 18 months after the date of the transplant procedure for drugs furnished during 1999, to within 24 months after the date of the transplant procedure for drugs furnished during 1999, and to within 36 months after the date of the transplant procedure plus additional number of months provided under section 1395k(b) for drugs furnished during any year after 1997.


Subsec. (t)(1). Pub. L. 106–554, §1(a)(6) [title IV, §502(b)], inserted “‘including contract agents’” after “‘only such drugs’”.


Subsec. (e). Pub. L. 105–35, §454(a)(1)(A), in fifth sentence after par. (9), substituted “includes a religious nonmedical health care institution (as defined in subsection (ss)(1) of this section’),” for “‘includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts,’” and inserted “‘consistently with section 1395–5 of this title’” before the period.


Subsec. (g). Pub. L. 105–33, §1315(c)(1), substituted “‘paragraphs (3), (6), and (7)’” for “‘paragraphs (3) and (6)’” in introductory provisions.

Subsec. (h)(7). Pub. L. 105–35, §482(b)(5)(D)(ii), inserted “‘or, by others under arrangements with them by the facility’” after “‘skilled nursing facilities’”.

Subsec. (i). Pub. L. 105–35, §4612(a), substituted “before closing provisions ‘‘For purposes of paragraphs (1) and (4), the term ‘part-time or intermittent services’ means skilled nursing and home health aide services furnished any number of days per week as long as they are furnished (combined) less than 8 hours each day and 28 or fewer hours each week’ (or, subject to review on a case-by-case basis as to the need for care, less than 8 hours each day and 35 or fewer hours per week). For purposes of sections 1395(a)(2)(C) and 1395n(a)(2)(A), ‘‘intersplenic nursing care’’ means skilled nursing care that is either provided or needed on fewer than 7 days each week, or less than 8 hours of each day for periods of 21 days or less (with extensions in exceptional circumstances when the need for additional care is finite and predictable).’’”.

Subsec. (m). Pub. L. 105–35, §451(b)(1), added before semicolon in first sentence “‘, and includes blood-testing strips and blood glucose monitors for individuals with diabetes without regard to whether the individual has Type I or Type II diabetes or to the individual’s use of insulin (as determined under standards established by the Secretary in consultation with the appropriate organizations)’”.

Subsec. (n). Pub. L. 105–35, §451(b)(1), inserted before semicolon in first sentence “‘, and includes blood-testing strips and blood glucose monitors for individuals with diabetes without regard to whether the individual has Type I or Type II diabetes or to the individual’s use of insulin (as determined under standards established by the Secretary in consultation with the appropriate organizations)’”.

Subsec. (o)(7). Pub. L. 106–113, §1000(a)(6) [title III, §303(a)], added cl. (ix) and redesignated former cl. (ix) as (x).

Subsec. (p)(1). Pub. L. 106–113, §1000(a)(6) [title II, §201(k)], substituted “‘and until the first date that the prospective payment system under section 1395t(c) of this title is implemented’” for “‘and during fiscal year 2000 before January 1, 2000’”.


Subsec. (ss)(1)(G)(i). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(9)(B)], which directed substitution of “‘or’” for “‘and’”, was executed by making the substitution for “‘of’” the second time appearing to reflect the probable intent of Congress.

Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(9)(A)], substituted “‘owned’” for “‘owed’”.


Subsec. (o). Pub. L. 105–33, §4312(b)(1)(D), inserted at end of closing provisions “The Secretary may waive the requirement of a surety bond under paragraph (7) in the case of an agency or organization that provides a comparable surety bond under State law.”

Subsec. (o)(7). Pub. L. 105–33, §4312(b)(1)(A)(C), added par. (7) and redesignated former par. (7) as (8).

Subsec. (p). Pub. L. 105–33, §4312(e)(2), inserted at end of closing provisions “The Secretary may waive the requirement of a surety bond under paragraph (4)(A)(v) in the case of a clinic or agency that provides a comparable surety bond under State law.”

Subsec. (p)(4)(A)(v). Pub. L. 105–33, §4312(e)(1), inserted “and provides the Secretary on a continuing basis with a surety bond in a form specified by the Secretary and in an amount that is not less than $50,000,” after “as the Secretary may find necessary.”

Subsec. (r)(5). Pub. L. 105–33, §4513(a), struck out “demonstrated by x-ray to exist” following “(to correct a subluxation”.

Subsec. (s)(2)(K)(i). Pub. L. 105–33, §4602(a)(5), struck out “in a hospital, skilled nursing facility, or nursing facility (as defined in section 1396r(a) of this title)” generally. Prior to amendment, cl. (ii) read as follows: “services which would be physicians’ services if furnished by a physician (as defined in subsection (r)(1) of this section) which are performed by a nurse practitioner (as defined in subsection (aa)(5) of this section) working in collaboration (as defined in subsection (aa)(6) of this section) with a physician (as defined in subsection (r)(1) of this section) in a skilled nursing facility or nursing facility (as defined in section 1396r(a) of this title) which the nurse practitioner is legally authorized to perform by the State in which the services are performed.”

Subsec. (s)(2)(K)(i)(ii). Pub. L. 105–33, §4513(a)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “services which would be physicians’ services if furnished by a physician (as defined in subsection (r)(1) of this section) and which are performed by a nurse practitioner (as defined in subsection (aa)(5) of this section) working in collaboration (as defined in subsection (aa)(6) of this section) with a physician (as defined in subsection (r)(1) of this section) in a skilled nursing facility or nursing facility (as defined in section 1396r(a) of this title) which the nurse practitioner is legally authorized to perform by the State in which the services are performed.”

Subsec. (s)(2)(K)(ii). Pub. L. 105–33, §4513(a)(1), struck out “(i)” generally. Prior to amendment, cl. (i) read as follows: “services which would be physicians’ services if furnished by a physician (as defined in subsection (r)(1) of this section) which are performed by a nurse practitioner (as defined in subsection (aa)(5) of this section) working in collaboration (as defined in subsection (aa)(6) of this section) with a physician (as defined in subsection (r)(1) of this section) which is legally authorized to perform by the State in which the services are performed.”

Subsec. (s)(2)(K)(iii). Pub. L. 105–33, §4513(a)(1), struck out “(ii)” generally. Prior to amendment, cl. (ii) read as follows: “services which would be physicians’ services if furnished by a physician (as defined in subsection (r)(1) of this section) which are performed by a nurse practitioner (as defined in subsection (aa)(5) of this section) working in collaboration (as defined in subsection (aa)(6) of this section) with a physician (as defined in subsection (r)(1) of this section) in a skilled nursing facility or nursing facility (as defined in section 1396r(a) of this title) which the nurse practitioner is legally authorized to perform by the State in which the services are performed.”

Subsec. (s)(2)(K)(iv). Pub. L. 105–33, §4513(a)(1), struck out “and if (applicable) a return on equity capital” after “capital indebtedness” and substituted “provider of services” for “hospital or skilled nursing facility,” “clause (iii)” for “clause (iv)” and “and the historical cost of the asset, as recognized under this subchapter, less depreciation allowed, to the owner of record as of August 5, 1997 (or, in the case of an asset not in existence as of August 5, 1997, the first owner of record of the asset after August 5, 1997),” for “the lesser of the allowable acquisition cost of such asset to the owner of record as of July 18, 1984, or, in the case of an asset not in existence as of such date, the first owner of record of the asset after such date), or the acquisition cost of such asset to the new owner.”

Subsec. (s)(2)(K)(v). Pub. L. 105–33, §4490(a)(a)(2), (3), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out former cls. (ii) which read as follows: “Such regulations shall provide for recapture of depreciation in the same manner as provided under the regulations in effect on June 1, 1984.”


Subsec. (s)(15) to (17). Pub. L. 105–33, §4316(a)(1)(B)(D), added par. (15) and redesignated former pars. (15) and (16) as (16) and (17), respectively.

Subsec. (u). Pub. L. 105–33, §4201(c)(1), substituted “critical access” for “rural primary care”.

Subsec. (v)(1)(H)(i). Pub. L. 105–33, §4312(b)(2)(A), substituted “the surety bond requirement described in subsection (o)(7) of this section and the financial security requirement described in subsection (o)(8) of this section” for “the financial security requirement described in subsection (o)(7) of this section”.

Subsec. (v)(1)(H)(ii). Pub. L. 105–33, §4312(b)(2)(B), substituted “the surety bond requirement described in subsection (o)(7) of this section and the financial security requirement described in subsection (o)(8) of this section” for “the financial security requirement described in subsection (o)(7) of this section”.
Subsec. (y). Pub. L. 105–33, § 4454(a)(1)(B)(ii), substituted "extended care in rural nonmedical health care institutions for "Post-hospital extended care in rural nonmedical health care institutions for". Pub. L. 105–33, § 4454(a)(1)(B)(ii), substituted "a religious nonmedical health care institution (as defined in subsection (aa) of this section), for "includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts".

Subsec. (aa)(2). Pub. L. 105–33, § 4205(d)(3)(A), in second sentence of concluding provisions inserted before period at end "if it is determined, in accordance with criteria established by the Secretary in regulations, to be essential to the delivery of primary care services that would otherwise be unavailable in the geographic area served by the clinic".

Subsec. (dd)(2)(B). Pub. L. 105–33, § 4205(b)(1), amended subpar. (I) generally. Prior to amendment, subpar. (I) read as follows: "has appropriate procedures for review of utilization of clinic services to the extent that the Secretary determines to be necessary and feasible".

Subsec. (aa)(5). Pub. L. 105–33, § 4511(d), designated existing provisions as subpar. (A), substituted "the term 'physician assistant' and the term 'nurse practitioner' mean, for purposes of this subchapter, a physician assistant or nurse practitioner who performs, for the term 'physician assistant', the term 'nurse practitioner', and the term 'clinical nurse specialist' mean, for purposes of this subchapter, a physician assistant, nurse practitioner, or clinical nurse specialist who performs", and added subpar. (B).


Subsec. (mm). Pub. L. 105–33, § 4201(c)(2), amended heading and text of subsec. (mm) generally. Prior to amendment, text read as follows:

"(1) The term 'rural primary care hospital' means a facility designated by the Secretary as a rural primary care hospital under section 1395i–1(1)(2) of this title.

"(2) The term 'inpatient rural primary care hospital services' means items and services, furnished to an inpatient of a rural primary care hospital by such a hospital, that would be inpatient hospital services if furnished to an inpatient of a hospital.

"(3) The term 'outpatient rural primary care hospital services' means medical and other health services furnished by a rural primary care hospital."


Pub. L. 101–508, §4157(a)(1), as amended by Pub. L. 103–432, §147(f)(3), struck out “(including clinical psychologist (as defined by the Secretary))” after “the hospital or by others”.

Subsec. (b)(4). Pub. L. 101–508, §4157(a)(2), as amended by Pub. L. 103–432, §147(f)(3), substituted “, services described by subsection (s)(2)(K)(i) of this section, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist; and” for “and anesthesia services provided by a certified registered nurse anesthetist”.

Subsec. (n). Pub. L. 101–508, §4152(a)(2), inserted at end “With respect to a seat-lift chair, such term includes only the seat-lift mechanism and does not include the chair.”


Subsec. (ee)(2). Pub. L. 103–432, §1690(d)(4), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “In establishing limits under this subparagraph, the Secretary shall—
“(I) utilize a wage index that is based on verified wage data obtained from home health agencies, and

(II) base such limits on the most recent verified wage data available, which data may be for cost reporting periods beginning no earlier than July 1, 1985.

In the case of a home health agency that refuses to provide data, or deliberately provides false data, respecting the wage index for purposes of this clause upon the request of the Secretary, the Secretary may withhold up to 5 percent of the amount of the payments otherwise payable to the agency under this subchapter until such date as the Secretary determines that such data has been satisfactorily provided.”


Pub. L. 101–508, § 4151(b)(1)(A), substituted “Subclauses (I) and (II)” for “Subclause (I)” and “costs of hospital outpatient services provided by any hospital” for “capital-related costs of any hospital”.

Pub. L. 101–508, § 4151(a)(2), substituted “section 1395ww(d)(5)(D)(ii) of this title” for “capital-related costs of any hospital”.

Pub. L. 101–508, § 4151(a)(2), substituted “paragraph (5)” for “paragraph (3)”.


Pub. L. 101–508, § 4151(b)(1)(B), substituted “Subclauses (I) and (II)” for “Subclause (I)” and “the costs reflected” for “capital-related costs reflected”.


Pub. L. 101–508, § 4161(b)(1), inserted at end “If a State agency has determined under section 1395aa(a) of this title that a facility is a rural health clinic and the facility has applied to the Secretary for certification as such a clinic, the Secretary shall notify the facility of the the Secretary’s approval or disapproval of the certification not later than 60 days after the date of the State agency determination or the application (which ever is later).”


Pub. L. 101–508, § 4161(a)(2)(B), which directed amendment of (3) by substituting “the previous provisions of this subsection” for “paragraphs (1) and (2)”, could not be executed because the words “paragraphs (1) and (2)” did not appear after amendment by Pub. L. 101–508, § 4155(d). See below.

Pub. L. 101–508, § 4155(d), substituted “The term ‘physician assistant’, the term ‘nurse practitioner’, and the term ‘clinical nurse specialist’ mean, for purposes of this chapter, a physician assistant, nurse practitioner, or clinical nurse specialist who performs” for “The term ‘physician assistant’ and the term ‘nurse practitioner’ mean, for the purposes of paragraphs (1) and (2), a physician assistant or nurse practitioner who perform”.

Subsec. (a)(a)(4) to (6), Pub. L. 101–508, § 4161(a)(2)(B), (C), redesignated par. (4) and redesignated former pars. (3) and (4) as (5) and (6), respectively.


Subsec. (f)(f)(3). Pub. L. 101–508, § 4162(a), designated existing provision as subpar. (A), substituted “outpatients or by a community mental health center (as defined in subparagraph (B)),” for “outpatients”, and added subpar. (B).


1969—Subsec. (a). Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(4)(A), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (e). Pub. L. 101–234, § 6005(g)(3)(D)(x)(I), inserted at end “The term ‘hospital’ does not include, unless the context otherwise requires, a rural primary care hospital (as defined in subsection (mm)(1) of this section).”

Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(4)(A), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (i). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 104(d)(4)(A), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (m). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 206(a), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (s). Pub. L. 101–239, § 6141(a)(1), substituted “including a laboratory that is part of” for “which is independent of a physician’s office, a laboratory not independent of a physician’s office that has a volume of clinical diagnostic laboratory tests exceeding 5,000 per year,” in provisions following par. (14).


Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 202(a)(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (s)(2)(K). Pub. L. 101–239, § 6114(a)(2), added cl. (ii), redesignated former cl. (ii) as (iii), and substituted “to services described in clause (i) or (ii)” for “to such services” in cl. (iii).


Subsec. (s)(13). Pub. L. 101–234, § 201(a), which repealed Pub. L. 100–360, § 204(a)(1)(B)(D), and directed that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, was executed by striking out par. (13) as added by Pub. L. 100–360, § 204(a)(1)(B)(D), but former par. (13) which was redesignated (14) was not restored in view of intervening redesignation as (15) by Pub. L. 101–239, § 6115(a)(1)(C), see 1988 Amendment note below.


Pub. L. 101–234, § 201(a), which repealed Pub. L. 100–360, § 204(a)(1)(A), and directed that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, was not executed in view of intervening redesignation of par. (14) as (15) by Pub. L. 101–239, § 6115(a)(1)(C), see 1988 Amendment note below.

such services that are necessarily furnished off-site (other than at an off-site office of such psychologist) as part of a treatment plan because of the inability of the individual furnished such services to travel to the center by reason of physical or mental impairment, because of institutionalization, or because of similar circumstances of the individual," after "as defined by the Secretary"

Subsecs. (j) to (l), Pub. L. 101–234, §104(d)(4)B, struck out subsec. (a) which defined "spell of illness"


Subsec. (i), Pub. L. 100–360, §410(d)(4)(C), struck out subsec. (i) which defined "post-hospital extended care services"

Subsec. (m), Pub. L. 100–360, §206(a), inserted at end "For purposes of paragraphs (1) and (4) and sections 1395a(a)(2) and 1395a(a)(2)A of this title, nursing care and home health aide services shall be considered to be provided or needed on an "intermittent" basis if they are provided or needed less than 7 days each week and, in the case they are provided or needed for 7 days each week, if they are provided or needed for a period of up to 38 consecutive days."


1988—Subsec. (a). Pub. L. 100–360, §104(d)(4)(A), struck out subsec. (a) which defined "spelling of illness".


Subsec. (s)(2)(J). Pub. L. 100–360, §202(a)(1), amended subpar. (J) generally, substituting "covered outpatient drugs (as defined in section 1395x of this title); and" for former provision which related to prescription drugs used in immunosuppressive therapy.
out; and for the purposes of subsections (k), (m), and (p)(1) of this section and sections 1395(a), 1395(a)(2)(F)(ii), and 1395n of this title but only if his performance of services under subsections (k), (m), and (p)(1) of this section and sections 1395(a), 1395(a)(2)(F)(ii), and 1395n of this title is consistent with the policy of the institution or agency with respect to which he performs them and with the functions which he is legally authorized to perform.

Subsec. (e). Pub. L. 100–203, §4085(i)(11), substituted in closing provisions "which would not be included under subsection (b) of this section if it were furnished to an inpatient of a hospital." for "which—" before par. (15) and struck out pars. (15) and (16).

Pub. L. 100–203, §4061(e)(1), inserted "a laboratory not independent of a physician’s office that has a volume of clinical diagnostic laboratory tests exceeding 5,000 per year" in provisions preceding par. (13).

Subsec. (e)(2)(B). Pub. L. 100–203, §4070(b)(1), inserted "and partial hospitalization services incident to such services" before semicolon.

Subsec. (e)(2)(H)(II). Pub. L. 100–203, §4074(a), as amended by Pub. L. 100–350, §411(h)(5)(A), inserted "or by a clinical social worker" for "as defined in subsection (hh) of this section") after "clinical psychologist (as defined by the Secretary)", and substituted "incident to his services" for "incident to his services".

Subsec. (e)(2)(J). Pub. L. 100–203, §4074(a), as amended by Pub. L. 100–360, §411(h)(6), inserted "(I)" and substituted ", (II) as an assistant at surgery, or (III) in a rural area (as defined in section 1395vv(d)(2)(D) of this title that is designated, under section 332(a)(1)(A) of the Public Health Service Act, as a health manpower shortage area," for "or as an assistant at surgery".


Subsec. (e)(12). Former par. (12) redesignated (13).

Subsec. (e)(13). Pub. L. 100–203, §4072(a)(1), redesignated par. (12) and (13) as (12) and (14), respectively. Former par. (14) redesignated (15).

Subsec. (e)(15). Pub. L. 100–203, §4085(i)(11), as amended by Pub. L. 100–350, §411(h)(4)(D), struck out par. (16) which read as follows: "is furnished under arrangements referred to in such paragraph (2)(C) unless furnished in the hospital or in other facilities operated by or under the supervision of the hospital or its organized medical staff.

Pub. L. 100–203, §4072(a)(1), redesignated par. (15) as (16).

Subsec. (v)(1)(E). Pub. L. 100–203, §4203(b)(1), inserted at end "Notwithstanding the previous sentence, such regulations with respect to skilled nursing facilities shall take into account (in a manner consistent with subparagraph (A) and based on patient-days of services furnished) the costs of such facilities complying with the requirements of subsections (b), (c), and (d) of section 1395i–3 of this title (including the costs of conducting nurse aide training and competency evaluation programs)


Subsec. (v)(5)(A). Pub. L. 100–203, §4085(i)(12), substituted "subsection (a)(2)(F) and (p)(1) of this section for "section 1861(p)" and "section 1861(g)" respectively.

Subsec. (aa)(1)(B). Pub. L. 100–203, §4077(a)(1), substituted "physician assistant or a nurse practitioner" for "physician assistant or by a nurse practitioner" as defined in paragraph (3), or by a clinical psychologist (as defined by the Secretary)", for "physician assistant or by a nurse practitioner".


Subsec. (bb)(2). Pub. L. 100–203, §4086(c)(1), as added by Pub. L. 100–360, §411(h)(5)(B), inserted at end "Such term also includes, as prescribed by the Secretary, an anesthesiologist assistant."

Subsec. (cc)(1). Pub. L. 100–203, §4076, inserted provision at end relating to location requirements in case of physical therapy, occupational therapy, and speech pathology services.

Subsec. (ee). Pub. L. 100–203, §4085(i)(14), made technical amendment to heading.


1986—Subsec. (b)(4). Pub. L. 99–509, §9320, inserted before the semicolon at end ", anesthesia services provided by a certified registered nurse anesthetist"


Subsec. (n). Pub. L. 99–272, §9219(b)(1)(B), substituted "as his home" for "at his home".

Subsec. (r)(4). Pub. L. 99–509, §9336(a), amended cl. (4) generally. Prior to amendment, cl. (4) read as follows: "A doctor of optometry who is legally authorized to practice optometry by the State in which he performs such function, but only with respect to services related to the condition of aphakia, or"

Subsec. (s)(2)(D). Pub. L. 99–509, §9353(d)(2), inserted "and outpatient occupational therapy services"


Subsec. (s)(11) to (15). Pub. L. 99–509, §9230(b), added par. (11) and redesignated former pars. (11) to (14) as (12) to (15), respectively.

Subsec. (v)(1)(B). Pub. L. 99–272, §9107(b)(2), substituted "any cost reporting period shall be equal to" for "any fiscal period shall not exceed one and one-half times" and "the period" for "such fiscal period".


Subsec. (v)(1)(L). Pub. L. 99–509, §6131(a), inserted "(I)" after "(L)", struck out "the 75th percentile of such costs per visit for free standing home health agencies, or, in the judgment of the Secretary, such lower percentile or such comparable or lower limit (based on or related to the mean of the costs of such agencies or otherwise) as the Secretary may determine.", and substituted in lieu "for cost reporting periods beginning on or after—"

"(I) July 1, 1985, and before July 1, 1986, 120 percent,

"(II) July 1, 1986, and before July 1, 1987, 115 percent,

"(III) July 1, 1987, 112 percent, of the mean of the labor-related and nonlabor per visit costs for free standing home health agencies,

"(ii) Effective for cost reporting periods beginning on or after July 1, 1986, such limitations shall be applied on an aggregate basis for the agency, rather than on a
discipline specific basis, with appropriate adjustment for administrative and general costs of hospital-based agencies."

Subsec. (v)(1)(O)(1). Pub. L. 99–272, §411(a)(1), inserted ", except as provided in clause (iv)," after "such regulations shall provide".


Subsec. (v)(1)(S). Pub. L. 99–509, §927(d)(3), inserted "(including through the operation of subsection (g) of this section)" after "subsection (p) of this section".


1984—Subsec. (d). Pub. L. 98–369, §2335(b)(1), struck out subsec. (d) which defined "inpatient tuberculosis hospital services" as inpatient hospital services furnished to an inpatient of a tuberculosis hospital.

Subsec. (e). Pub. L. 98–369, §2333(b)(2), struck out "or tuberculosis unless it is a tuberculosis hospital (as defined in subsection (g) of this section)" or "before "unless it is a psychiatric hospital" in provisions following par. (9).

Subsec. (f). Pub. L. 98–369, §2340(a), struck out par. (5) which provided that "psychiatric hospital" meant an institution which was accredited by the Joint Commission on Accreditation of Hospitals, and struck out "if the institution is accredited by the Joint Commission on Accreditation of Hospitals or if such distinct part meets requirements equivalent to such accreditation requirements as determined by the Secretary" in concluding provisions.

Subsec. (g). Pub. L. 98–369, §2333(b)(1), struck out subsec. (g) which defined "tuberculosis hospital".

Subsec. (j). Pub. L. 98–369, §2353(b)(8), in provisions following par. (15), struck out "or tuberculosis" after "treatment of mental diseases".

Subsec. (j)(2). Pub. L. 98–369, §2354(b)(18), substituted "provision for" for "provision of".

Subsec. (j)(13). Pub. L. 98–369, §2354(b)(19), substituted an "institution" for "a nursing home".

Subsec. (m)(b). Pub. L. 98–369, §2321(e)(1), which directed the substitution of "and durable medical equipment" for "", and the use of medical appliances" was executed by making the substitution for "", and the use of medical appliances" as the probable intent of Congress.


Subsec. (p)(1). Pub. L. 98–369, §2341(a), substituted "paragraph (1) or (3) of subsection (r) of this section" for "subsection (r)(1) of this section".

Subsec. (p)(2). Pub. L. 98–369, §2342(a), substituted "by a physician as so defined" or by a qualified physical therapist and is periodically reviewed by a physician (as so defined)" for "", and is periodically reviewed, by a physician (as so defined)".

Subsec. (r)(3). Pub. L. 98–617, §3(b)(7), substituted "under subsections (k), (m), and (p) of this section and sections 1395(a), 1395a(a)(2)(F)(i), and 1395n of this title" for "under subsections (k) and (m) and sections 1395(a) and 1395n of this title" before "is consistent with the policy".

Pub. L. 98–369, §2341(c), substituted "for the purposes of subsections (k), (m), and (p) of this section" for "for the purposes of subsections (k) and (m) of this section".

Subsec. (s)(2)(H). Pub. L. 98–369, §2322(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (s)(2)(I). Pub. L. 98–369, §2324(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (s)(6). Pub. L. 98–369, §2321(e)(2), struck out provision which included iron lungs, oxygen tents, etc., with durable medical equipment. See subsec. (r) of this section.

Subsec. (s)(10). Pub. L. 98–369, §2323(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (u). Pub. L. 98–369, §2354(b)(20), struck out "or" before "home health agency".


Subsec. (v)(1)(C)(i). Pub. L. 98–369, §2354(b)(22), inserted a dash after "but only if".


Pub. L. 98–369, §2354(b)(21)(C), inserted a comma after "section 1395k(a)(2)(B)(i) of this title".

Pub. L. 98–369, §2319(a)(1), struck out cl. (i) which directed that such regulations provide any determination of reasonable cost with respect to services provided by hospital-based skilled nursing facilities be made on the basis of a single standard based on the reasonableness of costs incurred by free standing skilled nursing facilities, subject to such adjustments as deemed appropriate by the Secretary, and struck out the designation "(ii)".


Subsec. (v)(1)(I). Pub. L. 98–369, §2354(b)(24), substituted "by the Secretary, or upon request by the Comptroller General" for "to the Secretary, or upon request to the Comptroller General".

Subsec. (v)(1)(K). Pub. L. 98–369, §2318(a), designated existing provisions as cl. (i), substituted therefor in "as defined in clause (ii)" for "provided in an emergency room", and added cl. (ii).


Subsec. (v)(2)(D). Pub. L. 98–369, §2354(b)(26), substituted "paragraph (1)" for "paragraph (2)".


Subsec. (cc)(1)(G). Pub. L. 98–369, §2321(e)(4), substituted "and durable medical equipment" for "appliances, and equipment, including the purchase or rental of equipment".


Subsec. (dd)(2)(A)(1)(I). Pub. L. 98–369, §2343(a), inserted "except as otherwise provided in paragraph (5)".


Subsec. (v)(2)(A). Pub. L. 98–21, §602(d)(2), substituted the "amount that would be taken into account with respect to" for "an amount equal to the reasonable cost of"

Subsec. (v)(2)(B). Pub. L. 98–21, §602(d)(3), struck out "the equivalent of the reasonable cost of" after "only".

Subsec. (v)(3). Pub. L. 98–21, §602(d)(4), substituted the "amount otherwise payable under this subchapter for such bed and board furnished in semiprivate accommodations" for "the reasonable cost of such bed and board furnished in semiprivate accommodations" (determined pursuant to paragraph (1))


Subsec. (g)(2). Pub. L. 98–21, §607(d), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (v)(1)(G)(1). Pub. L. 97–35, § 2102(a)(1), substituted “there is not an excess of hospital beds in the area of such hospital and (subject to clause (iv) there is not an excess of hospital beds in the area of such hospital” for “the hospital had (during the immediately preceding calendar year) an average daily occupancy rate of 80 percent or more” in provision following subcl. (III).

Pub. L. 97–35, § 2114, substituted “the Secretary or such agent as the Secretary may designate” for “an organization or agency with review responsibility as is otherwise provided for under part A of subchapter XI of this chapter” in provision preceding subcl. (i).

Subsec. (v)(1)(G)(v). Pub. L. 97–35, § 2102(a)(2), substituted provisions that the determination under cl. (i) of this subparagraph, in the case of a public hospital, whether or not there is an excess of hospital beds in the area of such hospital, be made on the basis of only the public hospitals which are in the area of the hospital and which are under common ownership with that hospital for provisions that public hospitals under common ownership may elect to be treated as a single hospital, and beginning two years after the date this subparagraph is first applied with respect to a hospital, the Secretary, to the extent feasible, shall not treat as an inpatient an individual with respect to whom payment was made to the hospital only because of this subparagraph or section 1396h(a) of this title for such determination.


Pub. L. 97–35, § 2144(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (w)(2). Pub. L. 97–35, § 2193(c)(9), substituted “subchapter XV of this chapter” for “subchapter V or XIX of this chapter”.

Subsec. (bb). Pub. L. 97–35, § 2212(d), struck out subsec. (bb) which defined “alcohol detoxification facility services” and “detoxification facility services”.

1980—Subsec. (b)(7). Pub. L. 96–499, § 949(a)(1), provided that par. (4) was not to apply to services provided in a hospital by a physician where the hospital had a teaching program approved as specified in par. (6) if the hospital elected to receive payment for reasonable costs of such services and all physicians in such hospital agreed not to bill charges for professional services rendered in such hospital for individuals covered under the insurance program established by this subchapter.

Subsec. (e). Pub. L. 96–499, § 951(b), inserted “subsection (i)” for “subsections (i) and (n)” in text preceding par. (1) and in text following par. (9).

Pub. L. 96–499, § 949, in text following par. (9), inserted provision defining “hospital” as “facility of fifty beds or less located in an area determined by the Secretary to meet definition relating to a rural area described in subpar. (A) of par. (5) and prescribing exceptions to such definition.

Subsec. (l). Pub. L. 96–499, § 950, substituted “30 days” for “14 days” in three places and struck out former cl. (B) which related to admission to skilled nursing facilities within 28 days after hospital discharge of an individual unable to be admitted to such facilities within 14 days because of a shortage of appropriate bed space, and redesignated former cl. (C) as (B).


Subsec. (k)(2)(A). Pub. L. 96–499, § 951(b), inserted “of which at least two must be physicians described in subsection (c)(1) of this section)” after “two or more physicians”.

Subsec. (m)(4). Pub. L. 96–499, § 900(l), inserted “who has successfully completed a training program approved by the Secretary” after “health aide”.


Subsec. (w)(2). Pub. L. 96–499, § 930(b), substituted “(i) may” for “may (i),”.


Subsec. (u). Pub. L. 97–248, § 122(d)(1), inserted “‘hospice program,’” after “‘home health agency’.”

Subsec. (v)(1)(E). Pub. L. 97–248, § 110(a), struck out provisions that the paragraphs would not apply to any skilled nursing facility where either was a distinct part of or directly operated by a hospital or was in a close, formal satellite relationship with a participating hospital, and in the case of the latter, the reasonable cost of any services furnished by such facility as determined by the Secretary under this subsection would not exceed 150 percent of the costs determined by the application of this subparagraph, redesignated the remainder as cl. (ii), and added cl. (i).


Subsec. (v)(1)(H)(ii). Pub. L. 97–248, § 109(b)(1), struck out “(i)” and “(ii) which determines the amount payable by the home health agency on the basis of a percentage of the agency’s reimbursement or claim for reimbursement for services furnished by the agency”.


Subsec. (v)(1)(J). Pub. L. 97–248, § 110(a), struck out provisions that cost regulations may not provide for any inpatient routine salary cost differential as a reimbursable cost for hospitals and skilled nursing facilities for provisions that such regulations would provide that any inpatient routine salary cost differential would be allowable as a reimbursable cost of hospitals, at a rate not to exceed 5 percent, to be applied under the same methodology used for the nursing salary cost differential for the month of April 1981.

Subsec. (v)(1)(L). Pub. L. 97–248, § 101(a)(2), struck out cl. (i) which provided that the Secretary, in determining the amount of the payments that could be made under this subchapter with respect to routine operating costs for the provision of general inpatient hospital services, could not recognize as reasonable, routine operating costs for the provision of general inpatient hospital services by a hospital to the extent these costs exceeded 100 percent of the mean of such routine operating costs per diem for hospitals, or, in the judgment of the Secretary, such lower percentage or such comparable or lower limit as the Secretary could determine, and struck out “(ii)”,

Pub. L. 97–248, § 105(a), added “free standing” after “hospital, and in the case of the latter, the reasonable cost of any services furnished by such facility as determined by the Secretary under this subsection would not exceed 150 percent of the costs determined by the application of this subparagraph, redesignated the remainder as cl. (ii), and added cl. (i).”


Subsec. (n). Pub. L. 96–499, §930(m), struck out subsec. (n) which defined “post-hospital home health services”.
Subsec. (o). Pub. L. 96–499, §930(n)(2), in provisions for power of par. (7), struck out provision that “home health agency” was not to include a private organization which was not a nonprofit organization exempt from Federal income taxation under section 501 of title 26 unless it were licensed pursuant to State law and met such additional standards and requirements as prescribed by regulations.
Subsec. (i)(2). Pub. L. 96–499, §936(a), amended cl. (2) generally to expand definition of “physician” to include doctors of dental surgery or dental medicine acting within the scope of their licenses.
Subsec. (r)(4). Pub. L. 96–499, §937(a), substituted “services related to the condition of aphakia” for “establishing the necessity for prosthetic lenses”.
Subsec. (e)(10) to (14). Pub. L. 96–611, §1(a)(1), added par. (10) and redesignated former pars. (10) to (14) as (11) to (14), respectively.
Subsec. (u). Pub. L. 96–499, §933(c), inserted “comprehensive outpatient rehabilitation facility,” after “nursing facility”.
Pub. L. 96–499, §931(c), inserted “detoxification facility.”
Subsec. (2). Pub. L. 96–499, §933(d), which purported to substitute “outpatient facility, comprehensive outpatient rehabilitation facility,” for “extended care facility,” was executed by inserting “comprehensive outpatient rehabilitation facility,” after “skilled nursing facility,” as the probable intent of Congress, in view of the substitution of “skilled nursing facility” for “extended care facility” by section 278(b)(6) of Pub. L. 92–603.
1977—Subsec. (j)(11). Pub. L. 95–142, §33(a)(2), substituted provisions relating to compliance with requirements of section 1328aa–3 of this title, for provisions relating to compliance with corporate status, etc., information to the Secretary or his delegate.
Subsec. (j)(13). Pub. L. 95–142, §21(a), struck out “, and” after “nursing facilities”.
Subsec. (j)(14). Pub. L. 95–142, §21(a), added par. (14). Subsec. (s). Pub. L. 95–210, §11(g), (h), added subpar. (6) of par. (2) and in provisions following par. (9) inserted “, a rural health clinic,” after “independent of a physician’s office”.
Subsec. (s)(6). Pub. L. 95–216 inserted “(which may include the power-operated wheelchair that may be appropriately used as a wheelchair, but only where the use of such a vehicle is determined to be necessary on the basis of the individual’s medical and physical condition and the vehicle meets such safety requirements as the Secretary may prescribe)” after “wheelchairs”.
Subsec. (w)(2). Pub. L. 95–142, §5(m), inserted “part B of this subsection or under” after “or entitled to have payment made for such services under”.
Subsec. (w). Pub. L. 94–182, §112(a)(1), designated existing provisions as par. (1) and added par. (2).
1972—Subsec. (a)(2). Pub. L. 92–603, §278(a)(4), substituted “skilled nursing facility” for “extended care facility” and “a” for “an”. Subsec. (b)(6) as so designated inserted reference to services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of podiatry, approved by the Council on Podiatry Education of the American Podiatry Association.
Subsec. (e). Pub. L. 92–603, §211(b), inserted reference to section 1395f(f)(1) of this title in the provisions preceding par. (1), inserted reference to sections 1395f(f)(2) of this title after “For purposes of sections 1395f(d) and 1395a(b) of this title (including determination of whether an individual received inpatient hospital services or diagnostic services for purposes of such sections)”., and inserted provisions for accreditation by the Joint Commission on Accreditation of Hospitals.
Subsec. (e)(9). Pub. L. 92–603, §§234(a), 244(c), redesignated former par. (8) as (9) and struck out provisions requiring that other requirements not be higher than the comparable requirements prescribed for the accreditation of hospitals by the Joint Commission on Accreditation of Hospitals.
Subsec. (f)(2), (g)(2). Pub. L. 92–603, §234(b), (c), inserted reference to par. (9) of subsec. (e) of this section.
Subsec. (h). Pub. L. 92–603, §270(a)(5), substituted “skilled nursing facility” for “extended care facility”. “skilled nursing facilities” for “extended care facilities” and “a” for “an”.
Subsec. (i). Pub. L. 92–603, §§234, 270(a)(6), (b)(10), extended the class of persons qualifying to be deemed as having been an inpatient in a hospital immediately before transfer therefrom by designating as clause (A) the existing requirement that the person have been admitted to the skilled nursing facility within 14 days after discharge from such hospital and adding cl. (B) and (C) and substituted “skilled nursing facility” for “extended care facility”.
Subsec. (j)(15). Pub. L. 92–603, §§234(d), 246(b)(2), (4), 265, 267, 278(b)(10), redesignated former par. (10) as (11), amended par. (11) as thus redesignated by inserting provisions that the Secretary shall not require as a condition of participation that medical social services be furnished in any such institution, redesignated such par. (11) as thus amended as par. (15), and inserted provision that all information concerning skilled nursing facilities required to be filed with the Secretary be made available to Federal and state employees for purposes consistent with the effective administration of programs established under subchapters XVIII and XIX and inserted provision for the waiver of the registered nurse requirement in skilled nursing facilities in rural areas.
Subsec. (k). Pub. L. 92–603, §§237(c), 278(a)(8), inserted provisions authorizing the Secretary to utilize the procedures established under subchapter XIX of this chapter if such procedures were determined to be necessary in order to determine their effectiveness and substituted “skilled nursing facility” for “extended care facility”, “skilled nursing
facilities’ for “extended care facilities”, and “a” for “an”.

Subsec. (i). Pub. L. 92–603, §278(a)(9), substituted “skilled nursing facility” for “extended care facility” and “a” for “an”.

Subsec. (m)(7). Pub. L. 92–603, §278(a)(10), substituted “skilled nursing facility” for “extended care facility”.

Subsec. (n). Pub. L. 92–603, §278(a)(11), substituted “skilled nursing facility” for “extended care facility” and “a” for “an”.

Subsec. (o)(5), (6). Pub. L. 92–603, §234(e), added par. (5) and redesignated former par. (5) as (6).

Subsec. (p). Pub. L. 92–603, §§251(a)(1), (b)(1), 283(a), inserted provisions covering physical therapy services of a licensed physical therapist other than under an arrangement with and under the supervision of a provider of services, clinic, rehabilitation agency, or public health agency, inserted “in addition, such term includes physical therapy services which meet the requirements of the first sentence of this subsection except that they are furnished to an individual as an inpatient of a hospital or extended care facility”, and extended the definition of “outpatient physical therapy services” to include outpatient speech pathology services.

Subsec. (q). Pub. L. 92–603, §227(f), substituted “section (b)(6) of this section” for “the last sentence of section (b)(6) of this section” in parenthesis phrase.

Subsec. (r). Pub. L. 92–603, §§211(c)(2), 256(d), 294(a), 273(a), inserted “or (C) the certification required by section 1395y(a)(4) are furnished, added cl. (4) covering doctors of optometry who are legally authorized to practice optometry for prosthetic lenses, and added cl. (5) providing for colostomy care)” after “organ”.

Subsec. (s). Pub. L. 92–603, §227(d)(1), 278(a)(12), substituted “skilled nursing facility, or home health agency”, or, for purposes of sections 1395(g) and 1395n(e) of this title, a fund,” for “extended care facility, or home health agency”.

Subsec. (v)(1). Pub. L. 92–603, §§223(a), (b), (c), (d), 227(c)(1), (2), (3), (4), 278(b), 278(b)(11), inserted definition of the costs of services, inserted provision that the regulations establishing the limits on the direct or indirect overall incurred costs or incurred costs of specific items or services or groups of items or services be based as reasonably based on estimates of the costs necessary in the efficient delivery of needed health services to individuals covered by the insurance programs established under this chapter, inserted parenthetical provisions covering exclusion of costs of the necessary costs of efficiently delivering covered services covered by the insurance programs for “the costs with respect to individuals covered by the insurance programs”, designated existing provisions as subpars. (A) and (B), and added subpars. (C), (D), and (E), and substituted “skilled nursing facilities” for “extended care facilities”.


Former par. (4) redesignated (6).


Subsec. (v)(6). Pub. L. 92–603, §§222(f), 251(c), redesignated former par. (4) as (6).


Subsecs. (w), (y). Pub. L. 92–603, §§278(a)(14), (15), substituted “skilled nursing facility” for “extended care facility” and “a” for “an”.

Subsec. (z). Pub. L. 92–603, §§234(b), 278(b)(6), added subsec. (2) and substituted “skilled nursing facility” for “extended care facility”.

1971—Subsec. (e)(5). Pub. L. 91–690 authorized the Secretary, until January 1, 1976, to waive the requirement relating to the provision of 24 hour nursing service rendered or supervised by a registered professional nurse.

1968—Subsec. (e). Pub. L. 90–248, §129(c)(9)(C), inserted reference to section 1395n(b) in first and third sentences and inserted “or diagnostic services” after “hospital services” in third sentence.

Pub. L. 90–248, §143(a), in second sentence after par. (8), changed definition of hospitals for purposes of making payments for emergency hospital services by deleting provision that hospital meet requirements of pars. (1) to (4), by requiring that such hospitals have full-time nursing services, be licensed as a hospital, and be primarily engaged in providing not nursing care and related services but medical or rehabilitative care by or under the supervision of a doctor of medicine or osteopathy.

Subsec. (g). Pub. L. 90–248, §129(c)(10), 133(b), struck out definition of “outpatient hospital diagnostic services” and inserted definition of “outpatient physical therapy services”, respectively.


Subsec. (s). Pub. L. 90–248, §144(a)(c), struck out “(unless they would otherwise constitute inpatient hospital services, extended care services, or home health services) to include provision for specific recognition of a reason services will be covered under the medical insurance program only if such facility satisfies such health and safety requirements as are appropriate for the item or service furnished as the Secretary may determine are necessary.

Subsec. (s)(2)(A) to (C). Pub. L. 90–248, §129(a), designated existing provisions as subpars. (A) and (B) and added subpar. (C).


Subsec. (s)(3). Pub. L. 90–248, §154(a), included in medical and other health services diagnostic X-ray tests furnished to a patient in the patient’s home under the supervision of a physician if the tests meets such health and safety conditions as the Secretary finds necessary.

Subsec. (s)(6). Pub. L. 90–248, §132(a), provided that payments may be made with respect to expenses incurred in the purchase as well as in the rental of durable medical equipment.

Pub. L. 90–248, §144(d), inserted “other than in institutions that meet the requirements of subsection (e)(1) or (j)(1) of this section”.

Subsec. (s)(12). (18) Pub. L. 90–248, §129(b), added pars. (12) and (13) which excluded from the diagnostic services referred to in par. (2)(C) (other than physician’s services) certain items or service.

Subsec. (y)(3). Pub. L. 90–248, §129(c)(11), substituted “1395e(a)(3)” for “1395e(a)(4)”.

1966—Subsec. (v)(1). Pub. L. 89–713 inserted provisions which required that, in the case of extended care services furnished by proprietary facilities, the regulations include provision for specific recognition of a reasonable return on equity capital and which placed a limitation on the rate of return of one and one-half times the average of the rates of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, as section 201 of Pub. L. 108–173, set out as a note under section 1398w–21 of this title.
tion] shall apply with respect to community mental health centers with respect to services furnished on or after the first day of the third month beginning after the date of enactment of this Act [Dec. 21, 2000]."

**Effective Date of 1999 Amendment**


Pub. L. 106–113, div. B, § 1000(a)(6) (title III, §303(c)), Nov. 29, 1999, 113 Stat. 1556, 1501A–361, provided that: "The amendments made by this section [amending this section and section 1395ff of this title] shall apply to services furnished by home health agencies for cost reporting periods beginning on or after October 1, 1999."

Amendment by section 1000(a)(6) (title III, §§303(c)), Nov. 29, 1999, 113 Stat. 1556, 1501A–361, provided that: "The amendments made by this section [amending this section and enacting section 1395fff of this title] take effect on the date of the enactment of the Act [Nov. 29, 1999], and in applying section 1861(o)(7) of the Social Security Act (42 U.S.C. 1395x(a)(7)), as amended by subsection (a), the Secretary of Health and Human Services may take into account the previous period for which a home health agency had a surety bond in effect under such section before such date."


**Effective Date of 1997 Amendment**

Amendment by section 4102(a), (c) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4102(e) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Amendment by section 4103(a) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 2000, see section 4103(e) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Amendment by section 4104(a) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4104(e) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Amendment by section 4106(a)(1) of Pub. L. 105–33 applicable to items and services furnished on or after Jan. 1, 1998, see section 4106(a)(1), (b)(1) of Pub. L. 105–33 applicable to items and services furnished on or after July 1, 1998, see section 4106(d)(1) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Section 4106(d) of Pub. L. 105–33 provided that: "The amendments made by this section [amending this section and sections 1356w–4, 1356aa, 1356a, and 1356n of this title] shall apply to bone mass measurements performed on or after July 1, 1998."

Amendment by section 4201(c)(1), (2) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Section 4205(b)(2) of Pub. L. 105–33 provided that: "The amendment made by paragraph (1) [amending this section] takes effect on January 1, 1998."

Section 4205(c)(2) of Pub. L. 105–33 provided that: "The amendment made by paragraph (1) [amending this section] applies to waivers requests made on or after January 1, 1998."

Section 4206(d)(4) of Pub. L. 105–33 provided that: "(A) [In General.—Except as otherwise provided, the amendments made by the preceding paragraphs [amending this section and section 1395f of this title] shall take effect on the date of enactment of this Act [Aug. 5, 1997].]"
Amendment by section 4611(b) of Pub. L. 105–33 applicable to services furnished on or after Jan. 1, 1998, and for purposes of applying such amendment, any home health spell of illness that began, but did not end, before such date, to be considered to have begun as of such date, see section 4611(f) of Pub. L. 105–33, set out as a note under section 1395s of this title.

Section 4612(b) of Pub. L. 105–33 provided that: "The amendment made by subsection (a) [amending this section] applies to services furnished on or after October 1, 1997."

**Effective Date of 1996 Amendment**


**Effective Date of 1994 Amendment**

Section 107(b) of Pub. L. 103–432 provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after the first day of the first month beginning more than one year after the date of the enactment of this Act (Oct. 31, 1994).’’

Amendment by section 145(b) of Pub. L. 103–432 applicable to mammography furnished by the facility on and after the first date that the certificate requirements of section 145(b) of this title apply to such mammography conducted by such facility, see section 145(d) of Pub. L. 103–432, set out as a note under section 1395m of this title.

Section 146(c) of Pub. L. 103–432 provided that: ‘‘The amendments made by this section [amending this section] shall take effect on January 1, 1995.’’

Amendment by section 147(e)(1), (4), (5), (7)(3), (4)(A), (6)(A), (B), (E) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 147(g) of Pub. L. 103–432, set out as a note under section 1392a–3a of this title.

Amendment by section 135(a)(2) of Pub. L. 103–432 provided that: ‘‘The amendment made by paragraph (1) [amending this section] shall apply with respect to cost reporting periods beginning on or after July 1, 1996.’’

**Effective Date of 1993 Amendment**

Section 1353(c)(2) of Pub. L. 101–66 provided that: ‘‘The amendments made by paragraph (1) [amending this section and section 1395oo of this title] take effect October 1, 1993.’’

Section 1355(c) of Pub. L. 103–66 provided that: ‘‘The amendments made by subsections (a) and (b) [amending this section] shall apply to items furnished on or after January 1, 1994.’’

Section 1355(d)(b) of Pub. L. 103–66 provided that: ‘‘The amendments made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 4161(a)(2)(C) of OBRA–1990 [Pub. L. 101–508].’’

Section 1356(d)(2) of Pub. L. 103–66 provided that: ‘‘The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1993.’’

Section 1356(e) of Pub. L. 103–66 provided that: ‘‘The amendments made by this section [amending this section and section 1395rr of this title] shall apply to erythropoetin furnished on or after January 1, 1994.’’

**Effective Date of 1992 Amendment**


Amendment by section 4152(a)(2) of Pub. L. 101–508 applicable to items furnished on or after Jan. 1, 1991, see section 4152(a)(3) of Pub. L. 101–508, set out as a note under section 1395m of this title.

Section 4153(b)(2)(C) of Pub. L. 101–508 provided that: ‘‘The amendments made by subparagraphs (A) and (B) [amending this section and section 1395y of this title] shall apply to items furnished on or after January 1, 1991.’’

Amendment by section 4155(a), (d) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4155(e) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4161(a)(1), (2), (5) of Pub. L. 101–508 applicable to services furnished on or after Oct. 1, 1991, see section 4161(a)(8) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4161(b)(5) of Pub. L. 101–508 provided that: ‘‘This subsection [amending this section and section 1395oo of this title and enacting provisions set out as a note below] shall take effect on October 1, 1991, except that the amendment made by paragraph (4) [amending section 1395y of this title] shall apply to cost reports for periods beginning on or after October 1, 1991.’’

Amendment by section 4162(a) of Pub. L. 101–508 applicable with respect to partial hospitalization services provided on or after Oct. 1, 1991, see section 4162(c) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4163(a) of Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, set out as a note under section 1395m of this title.

Section 4201(d)(3)(d)(1) of Pub. L. 101–508 provided that: ‘‘The amendments made by paragraphs (1) and (2) [amending this section and section 1395rr of this title] shall apply to items and services furnished on or after July 1, 1991.’’

Section 4207(d)(4), formerly 4027(d)(3), of Pub. L. 101–508, as renumbered and amended by Pub. L. 103–432, title I, § 140(d)(4), (10), Oct. 31, 1994, 108 Stat. 4444, provided that: ‘‘The amendment made by paragraph (1) [amending this section] shall apply with respect to home health agency cost reporting periods beginning on or after July 1, 1991.’’

**Effective Date of 1989 Amendments**

Amendment by section 6112(e)(1) of Pub. L. 101–239 applicable with respect to items furnished on or after Jan. 1, 1990, see section 6112(e)(4) of Pub. L. 101–239, set out as a note under section 1395m of this title.

Amendment by section 6113(a)(1) of Pub. L. 101–239 applicable to services furnished on or after July 1, 1990, see section 6113(c) of Pub. L. 101–239, set out as a note under section 1395f of this title.

Amendment by section 6114(a), (d) of Pub. L. 101–239 applicable to services furnished on or after Apr. 1, 1990, see section 6114(f) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by section 6115(d) of Pub. L. 101–239 provided that: ‘‘The amendments made by this section [amending this section and sections 1395y, 1395aa, 1395bb, 1396a, and 1396n of this title] shall apply to screening pap smears performed on or after July 1, 1990.’’

Amendment by section 6131(a)(2) of Pub. L. 101–239 applicable with respect to therapeutic shoes and inserts furnished on or after July 1, 1989, with additional provisions regarding applicability of the increase under section 1395(o)(2)(C) of this title, see section 6131(c) of Pub. L. 101–239, set out as a note under section 1395f of this title.

103–432, title I, §160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: "The amendments made by subsections (a) through (c) of this section [amending this section] shall apply to services furnished on or after October 1, 1989."


Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1395aa–7a of this title.

**Effective Date of 1988 Amendment**

Section 402(b)(2) of Pub. L. 100–647 provided that: "The amendments made by subsection (a) [amending this section] shall be effective with respect to services furnished on or after January 1, 1989."

Amendment by section 203(b) of Pub. L. 100–647 provided that: "The amendment made by subsection (a) [amending this section] shall become effective with respect to services provided after December 31, 1988.

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

Amendment by section 104(d)(4) of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395x of this title.

Amendment by section 202(a) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Amendment by section 203(b), (e)(1) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 13226–3 of this title.

Amendment by section 204(a) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(c) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Amendment by section 205(b) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 205(j) of Pub. L. 100–360, set out as a note under section 1395k of this title.

Section 206(b) of Pub. L. 100–360, which provided that the amendment of this section by section 206(a) of Pub. L. 100–360 applied to services furnished in cases of initial periods of home health services beginning on or after January 1, 1990, was repealed by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1891.

As specifically provided by section 411 of Pub. L. 100–360, amendment by section 411(d)(5)(A), (g)(3)(H), (h)(1)(B)–(3)(A), (4)(D), (5)–(7)(A), (E), (F), (1)(G), (4)(C)(ii), (h)(1)(B), (C) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 101 of Title I, General Provisions.

Section 411(d)(1)(B)(ii) of Pub. L. 100–360 provided that: "The amendment made by clause (i) [amending this section] shall apply to equipment furnished on or after the effective date provided in section 402(c) of OBRA [Pub. L. 100–203, set out below]."

**Effective Date of 1987 Amendment**

Section 4009(o)(2) of Pub. L. 100–203 provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to services furnished on or after April 1, 1988."

Section 4021(c) of Pub. L. 100–203 provided that: "Except as otherwise provided, the amendments made by subsections (a) and (b) [enacting section 1395bb of this title and amending this section] shall apply to home health agencies as of the first day of the 18th calendar month that begins after the date of the enactment of this Act [Dec. 22, 1987]."

Section 4028(a)(2) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(d)(9)(B), July 1, 1988, 102 Stat. 775, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after July 1, 1989.

Section 4064(e)(2) of Pub. L. 100–203 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to diagnostic tests performed on or after January 1, 1990."

Section 4065(c) of Pub. L. 100–203 provided that: "The amendments made by this section [amending section 1395m of this title] shall become effective on January 1, 1989.

Section 4076(c)(2) of Pub. L. 100–203 provided that: "(A) The amendments made by subsection (b) [amending this section and sections 1395j and 1395m of this title] shall become effective on the date of enactment of this Act [Dec. 22, 1987].

"(B) The Secretary of Health and Human Services shall implement the amendments made by subsection (b) so as to ensure that there is no additional cost to the medicare program by reason of such amendments."

Section 4071(b) of Pub. L. 100–203 provided that: "(1) The provisions of subsection (e) of section 4072 of this subpart [section 4072 of Pub. L. 100–203, set out below] shall apply to this section [amending this section] in the same manner as it applies to section 4072. [Amendments became effective pursuant to final report dated Apr. 28, 1993. See Cong. Rec., vol. 139, pt. 7, p. 10460, Ex. Comm. 1254.]

"(2) In conducting the demonstration project pursuant to paragraph (1), in order to determine the cost effectiveness of including influenza vaccine in the medicare program, the Secretary of Health and Human Services is required to conduct a demonstration of the provision of influenza vaccine as a service for medicare beneficiaries and to expend $25,000,000 each year of the demonstration project for this purpose. In conducting this demonstration, the Secretary is authorized to purchase in bulk influenza vaccine and to distribute it in a manner to make it widely available to medicare beneficiaries, to develop projects to provide vaccine in the same manner as other covered medicare services in large scale demonstration projects, including statewide projects, and to engage in other appropriate use of money to provide influenza vaccine to medicare beneficiaries and evaluate the cost effectiveness of its use. In determining cost effectiveness, the Secretary shall consider the direct cost of the vaccine, the utilization of vaccine which might otherwise not have occurred, the costs of illnesses and nursing home days avoided, and other relevant factors, except that extended life for beneficiaries shall not be considered to reduce the cost effectiveness of the vaccine."

Section 4072(e) of Pub. L. 100–203 provided that: "(1) The amendments made by this section [amending this section and sections 1395j, 1395y, 1395aa, 1395bb, 1396a, and 1396n of this title] shall become effective (if at all) in accordance with paragraph (2).

"(2)(A) The Secretary of Health and Human Services (in this paragraph referred to as the ‘Secretary’), shall establish a demonstration project to begin on October 1, 1988, to test the cost-effectiveness of furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section to a sample group of medicare beneficiaries.

"(B)(i) The demonstration project under paragraph (A) shall be conducted for an initial period of 24 months. Not later than October 1, 1990, the Secretary shall report to the Congress on the results of such project. If the Secretary finds, on the basis of existing data, that furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section is cost-effective, the Sec-
retary shall include such finding in such report, such project shall be discontinued, and the amendments made by this section shall become effective on November 21, 1986.

"(ii) If the Secretary determines that such finding cannot be made on the basis of existing data, such project shall continue for an additional 24 months. Not later than April 1, 1983, the Secretary shall submit a final report to the Congress on the results of such project. The amendments made by this section shall become effective on the first day of the first month to begin after such report is submitted to the Congress unless the report contains a finding by the Secretary that furnishing therapeutic shoes under the medicare program shall be effective with respect to such services furnished on or after January 1, 1983.

"The amendments made by this section and section 1395u of this title shall apply to services furnished on or after January 1, 1983."

Section 9335(c) of Pub. L. 99-509 provided that: "The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after April 1, 1987."

Amendment by section 9337(d) of Pub. L. 99-509 applicable to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987, see section 9337(e) of Pub. L. 99-509, set out as a note under section 1395x of this title.

"The amendments made by this section [amending this section and section 1395u of this title] shall apply to services furnished on or after January 1, 1987."

Section 9335(e) of Pub. L. 99-509 provided that: "The amendments made by this section [amending this section] shall apply to services furnished on or after April 1, 1987."

Amendment by section 9337(d) of Pub. L. 99-509 applicable to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987, see section 9337(e) of Pub. L. 99-509, set out as a note under section 1395x of this title.

"The amendments made by this section [amending this section and section 1395u of this title] shall apply to services furnished on or after January 1, 1987."

Section 9107(c)(2) of Pub. L. 99-272 provided that: "The amendments made by subsection (b) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1985."

Section 9110(b) of Pub. L. 99-272 provided that: "The amendments made by subsection (a) [amending this section] shall be applied as though they were originally included in the Deficit Reduction Act of 1984 [Pub. L. 98-369]."

Section 9201(a)(2) of Pub. L. 99-272 provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to cost reporting periods beginning on or after January 1, 1985."
Amendment by section 235(b) of Pub. L. 98-369 effective July 18, 1984, see section 235(b)(2) of Pub. L. 98-369, set out as a note under section 1396d of this title. Amendment by section 234(b) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section and section 1396d of this title] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 234(a), (c) of Pub. L. 98-369 applicable to services furnished on or after July 18, 1984, see section 234(d) of Pub. L. 98-369, set out as a note under section 1396k of this title. Amendment by section 234(a) of Pub. L. 98-369 applicable to plans of care established on or after July 18, 1984, see section 234(c) of Pub. L. 98-369, set out as a note under section 1395s of this title. Section 234(c) of Pub. L. 98-369 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 235(b)(16)–(29) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 235(a)(1) of Pub. L. 98-369, set out as a note under section 1395w of this title.

**Effective Date of 1983 Amendments**

Amendment by section 602(d) of Pub. L. 98-21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recomputed for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98-21, set out as a note under section 1395n of this title.

Amendment by section 97-448 effective as if originally included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 309(c)(1) of Pub. L. 97-448, set out as a note under section 1392a of this title.

**Effective Date of 1982 Amendment**

Amendment by section 101(a)(2) of Pub. L. 97-248 applicable to cost reporting periods beginning on or after Oct. 1, 1982, see section 101(b)(1) of Pub. L. 97-248, set out as an Effective Date note under section 1395sw of this title.

Section 102(b) of Pub. L. 97-248, as amended by Pub. L. 98-21, title VI, §605(a), Apr. 20, 1983, 97 Stat. 159, provided that: "The amendment made by subsection (a) [amending this section] shall be in effect with respect to cost reporting periods beginning on or after October 1, 1983."

Section 103(b) of Pub. L. 97-248 provided that: "The amendment made by subsection (a) [amending this section] shall be effective with respect to cost reporting periods ending after September 30, 1982, but in the case of any cost reporting period beginning before October 1, 1982, any reduction in payments under title XVIII of the Social Security Act [this subchapter] to a hospital or skilled nursing facility resulting from such amendment shall be imposed only in proportion to the part of the period which occurs after September 30, 1982."

Section 105(b) of Pub. L. 97-248 provided that: "The amendment made by subsection (a) [amending this section] shall be effective with respect to cost reporting periods beginning on or after the date of the enactment of this Act [Sept. 3, 1982]."

Section 106(b) of Pub. L. 97-248 provided that: "The amendment made by subsection (a) [amending this section] shall be effective with respect to cost reporting periods beginning on or after the date of the enactment of this Act [Sept. 3, 1982]."

Section 107(b) of Pub. L. 97-248 provided that: "The amendment made by subsection (a) [amending this section] shall be effective with respect to costs incurred after the date of the enactment of this Act [Sept. 3, 1982]."

Amendment by section 109(b)(2) of Pub. L. 97-248 effective Sept. 3, 1982, see section 109(c)(1) of Pub. L. 97-248, set out as a note under section 1395xx of this title. Section 109(c)(3) of Pub. L. 97-248 provided that: "The amendment made by subsection (b)(1) [amending this section] shall not apply to contracts entered into before the date of the enactment of this Act [Sept. 3, 1982]."

Amendment by section 122(b) of Pub. L. 97-248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(b)(1) of Pub. L. 97-248, as amended, set out as a note under section 1395c of this title.

Section 123(e) of Pub. L. 97-248, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "(1) Any amendment to the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97-35] made by this section [amending provisions set out as notes under sections 428 and 1365x of this title] shall be effective as if it had been originally included in the provision of the Omnibus Budget Reconciliation Act of 1981 to which such amendment relates."

"(2) Except as otherwise provided in this section, any amendment to the Social Security Act [this chapter] or the Internal Revenue Code of 1986 [formerly I.R.C. 1954] ["Title 26, Internal Revenue Code"] made by this section (other than subsection (d)) [amending this section and sections 1395y, 1395cc, and 1395uu of this title and section 162 of Title 26] shall be effective as if it had been originally included as a part of that provision of the Social Security Act or Internal Revenue Code of 1986 to which it relates, as such provision of such Act or Code was amended by the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97-35]."

"(3) The amendments made by subsection (d) [amending this section and sections 1395u, 1395bb, 1395cc, and 1395gg of this title] shall take effect upon enactment [Sept. 3, 1982]."

Amendment by section 148(b) of Pub. L. 97-248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97-248, set out as an Effective Date note under section 1320c of this title.

**Effective Date of 1981 Amendment**

Section 2102(b)(1) of Pub. L. 97-35 provided that: "The amendments made by subsection (a) [amending this section], shall apply to services provided on or after the first day of the first month beginning after the date of the enactment of this Act [Aug. 13, 1981]."

Amendment by section 2121(c), (d) of Pub. L. 97-35 applicable to services furnished in detoxification facilities for inpatient stays beginning on or after the tenth day after Aug. 13, 1981, see section 2121(d) of Pub. L. 97-35, set out as a note under section 1395d of this title.

Section 2141(c) of Pub. L. 97-35 provided that:"(1) Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to cost reporting periods ending after September 30, 1981."

"(2) In the case of a cost reporting period beginning before October 1, 1981, any reduction in payments resulting from the amendment made by subsection (a) shall be imposed only in proportion to the part of the period that occurs after September 30, 1981."

Section 2143(b) of Pub. L. 97-35, as amended by Pub. L. 97-35, set out as a note under section 1395d of this title. Section 122(c) of Pub. L. 97-35, as amended, set out as an Effective Date note under section 1320c of this title.

**Title 42—The Public Health and Welfare**
Section 214(b) of Pub. L. 97–35 provided that:

"(1) Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to costs incurred after December 31, 1980, but no reduction in payments resulting from the amendment made by subsection (a) shall be imposed only in proportion to the part of the period that occurs after December 31, 1981."

"(2) In the case of a cost reporting period beginning before October 1, 1981, any reduction in payments resulting from the amendment made by subsection (a) shall become effective on the date of (probably should be "on") which final regulations, promulgated by the Secretary to implement such amendments, are first issued; and those regulations shall be issued not later than the first day of the sixth month following the month in which this Act is enacted [December 1980]."

Section 930(c) of Pub. L. 96–499 provided that:

"(1) the amendment made by this section [amending this section and sections 1320c–7 and 1396a of this title] shall become effective on the date of which this Act is enacted [December 5, 1980].

"(2) The Secretary of Health and Human Services shall take administrative action to assure that improvements, in accordance with the amendment made by subsection (n)(1) [amending this section], will be made not later than June 30, 1981.

Amendment by section 931(c), (d) of Pub. L. 96–499 effective Apr. 1, 1981, see section 931(e) of Pub. L. 96–499, set out as a note under section 1395k of this title.

Amendment by section 933(c)–(e) of Pub. L. 96–499 effective Oct. 25, 1977, see section 3(e) of Pub. L. 96–499, set out as an Effective Date note under section 1322a of this title.

Section 930(s) of Pub. L. 96–499 provided that:

"(1) Subject to paragraph (2), the amendment made by this section [amending this section and section 1395c of this title] shall be effective on the first day of the first month which begins after the last day of the twelfth accounting period ending after the end of the sixth month beginning after June 30, 1977, except that for other types of facilities or organizations effective with respect to operations on and after the first day of its first fiscal year which begins after the end of the six-month period beginning on the date a uniform reporting system is established under section 1322a(a) of this title for that type of health services facility, except that for other types of facilities or organizations effective with respect to operations on and after the first day of its first fiscal year which begins after such date as the Secretary determines to be appropriate for the implementation of the reporting requirement for that type of facility or organization, see section 19(c)(2) of Pub. L. 95–42, set out as a note under section 1396a of this title.

Section 21(c)(1) of Pub. L. 95–42 provided that: "The amendments made by subsection (a) [amending this section] shall be effective on the first day of the first calendar quarter which begins more than six months after the date of enactment of this Act [Oct. 25, 1977]."

Effective Date of 1975 Amendment
Section 106(b) of Pub. L. 94–182 provided that: "Subject to subsection (c) [enacting provisions set out below], the amendment made by subsection (a) [amending this section] shall be effective on the first day of the sixth month which begins after the date of enactment of this Act [Dec. 31, 1975]."

Effective Date of 1972 Amendment
Section 211(b), (c)(2) of Pub. L. 92–603 applicable to services furnished with respect to admissions occurring after Dec. 31, 1972, see section 211(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Section 223(h) of Pub. L. 92–603 provided that: "The amendments made by this section [amending this section and sections 1320c–17 and 1395cc of this title] shall be effective with respect to accounting periods beginning after December 31, 1972."

Section 227(g) of Pub. L. 92–603 provided that: "The amendments made by this section [amending this sec-
tions and sections 1395f, 1395k, 1395n, 1395u, and 1395cc of this title shall apply with respect to accounting periods beginning after June 30, 1973.

"The amendments made by this section (amending this section and section 1395f of this title) shall apply with respect to services furnished after December 31, 1967."

Amendment by section 143(a) of Pub. L. 90–248 effective July 1, 1968, see section 143(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Section 144(e) of Pub. L. 90–248 provided that: "The amendments made by this section (amending this section) shall apply with respect to services furnished after March 31, 1968."

Effective Date of 1966 Amendment


Construction of 2008 Amendment


Conforming References to Previous Part D

Pub. L. 108–173, title I, §101(e)(1), Dec. 8, 2003, 117 Stat. 2150, provided that: "Any reference in law (in effect before the date of the enactment of this Act [Dec. 8, 2003]) to part D of title XVIII of the Social Security Act [part D of this subchapter] is deemed a reference to part E of such title (this part) (as in effect after such date)."

Application of 2003 Amendment to Physician Specialties

Amendment by section 303 of Pub. L. 108–173, insofar as applicable to payments for drugs or biologicals and drug administration services furnished by physicians, is applicable only to physicians in the specialties of hematology, hematology/oncology, and medical oncology under this subchapter, see section 303(j) of Pub. L. 108–173, set out as a note under section 1395u of this title.

Notwithstanding section 303(j) of Pub. L. 108–173 (see note above), amendment by section 303 of Pub. L. 108–173 also applicable to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology, see section 304 of Pub. L. 108–173, set out as a note under section 1395u of this title.

Frontier Extended Stay Clinic Demonstration Project


"(a) Authority To Conduct Demonstration Project.—The Secretary [of Health and Human Services] shall waive such provisions of the Medicare program established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) as are necessary to conduct a demonstration project under which frontier extended stay clinics described in subsection (b) in isolated rural areas are treated as providers of items and services under the Medicare program.

"(b) Clinics Described.—A frontier extended stay clinic is described in this subsection if the clinic—

"(1) is located in a community where the closest short-term acute care hospital or critical access hospital is at least 75 miles away from the community or is inaccessible by public road; and

"(2) is designed to address the needs of—

"(A) seriously or critically ill or injured patients who, due to adverse weather conditions or other reasons, cannot be transferred quickly to acute care referral centers; or

"(B) patients who need monitoring and observation for a limited period of time.

"(c) Specification of Codes.—The Secretary shall determine the appropriate life-safety codes for such clinics that treat patients for needs referred to in subsection (b)(2).

"(d) Funding.—
‘‘(1) In General.—Subject to paragraph (2), there are authorized to be appropriated, in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, such sums as are necessary to conduct the demonstration project under this section.

‘‘(2) Budget Neutral Implementation.—In conducting the demonstration project under this section, the Secretary shall ensure that the aggregate payments made by the Secretary under the medicare program do not exceed the amount which the Secretary would have paid under the medicare program if the demonstration project under this section was not implemented.

‘‘(e) Three-Year Period.—The Secretary shall conduct the demonstration under this section for a 3-year period.

‘‘(f) Report.—Not later than the date that is 1 year after the date on which the demonstration project concludes, the Secretary shall submit to Congress a report on the demonstration project, together with such recommendations for legislation or administrative action as the Secretary determines appropriate.

‘‘(g) Definitions.—In this section, the terms ‘hospital’ and ‘critical access hospital’ have the meanings given that term by the Secretary of Health and Human Services.

MEDPAC Study of Coverage of Surgical First Assisting Services of Certified Registered Nurse First Assistants

‘‘(a) Study.—The Medicare Payment Advisory Commission (in this section referred to as the ‘Commission’) shall conduct a study on the feasibility and advisability of providing for payment under part B of the medicare program of surgical first assisting services furnished by a certified registered nurse first assistant to medicare beneficiaries.

‘‘(b) Report.—Not later than January 1, 2005, the Commission shall submit to Congress a report on the study conducted under subsection (a) together with recommendations for such legislation or administrative action as the Commission determines to be appropriate.

Demonstration of Coverage of Chiropractic Services Under Medicare

‘‘(a) Definitions.—In this section:

‘‘(1) Chiropractic services.—The term ‘chiropractic services’ has the meaning given that term by the Secretary of Health and Human Services for purposes of the demonstration projects, but shall include, at a minimum:

(A) care for neuromusculoskeletal conditions typical among eligible beneficiaries; and

(B) diagnostic and other services that a chiropractor is legally authorized to perform by the State or jurisdiction in which such treatment is provided.

‘‘(2) Demonstration project.—The term ‘demonstration project’ means a demonstration project established by the Secretary under subsection (b)(1).

‘‘(3) Eligible beneficiary.—The term ‘eligible beneficiary’ means an individual who is enrolled under part B of the medicare program.

‘‘(4) Medicare program.—The term ‘medicare program’ means the health benefits program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(b) Demonstration of Coverage of Chiropractic Services Under Medicare.—

‘‘(1) Establishment.—The Secretary shall establish demonstration projects in accordance with the provisions of this section for the purpose of evaluating the feasibility and advisability of covering chiropractic services under the medicare program (in addition to the coverage provided for services consisting of treatment by means of manual manipulation of the spine to correct a subluxation described in section 1861(r)(5) of the Social Security Act (42 U.S.C. 1395x(r)(5))).

‘‘(2) No Physician Approval Required.—In establishing the demonstration projects, the Secretary shall ensure that an eligible beneficiary who participates in a demonstration project, including an eligible beneficiary who is enrolled for coverage under a Medicare+Choice plan (as defined in section 1877(f)(1)), is not required to receive approval from a physician or other

STUDIES RELATING TO VISION IMPAIRMENTS

‘‘(1) Study.—The Secretary of Health and Human Services shall conduct a study to determine the feasibility and advisability of providing for payment for vision rehabilitation services furnished by vision rehabilitation professionals.

‘‘(2) Report.—Not later than January 1, 2005, the Secretary shall submit to Congress a report on the study conducted under paragraph (1) together with recommendations for such legislation or administrative action as the Secretary determines to be appropriate.

‘‘(3) Vision Rehabilitation Professional Defined.—In this subsection, the term ‘vision rehabilitation professional’ means an orientation and mobility specialist, a rehabilitation teacher, or a low vision therapist.

‘‘(4) Report on Appropriateness of a Demonstration Project To Test Feasibility of Using PPO Networks To Reduce Costs of Acquiring Eyeglasses For Medicare Beneficiaries After Cataract Surgery.—Not later than January 1, 2005, the Secretary shall submit to Congress a report on the demonstration projects in accordance with the provisions of this section for the purpose of evaluating the feasibility and advisability of providing for payment under the medicare program of surgical first assisting services furnished by a certified registered nurse first assistant to medicare beneficiaries. In such report, the Secretary shall include an estimate of potential cost savings to the Medicare program through the use of such networks, taking into consideration quality of service and beneficiary access to services offered by vision care preferred provider organization networks.

DEMONSTRATION OF COVERAGE OF CHIROPRACIC SERVICES UNDER MEDICARE

‘‘(a) Definitions.—In this section:

‘‘(1) Chiropractic services.—The term ‘chiropractic services’ has the meaning given that term by the Secretary of Health and Human Services for purposes of the demonstration projects, but shall include, at a minimum:

(A) care for neuromusculoskeletal conditions typical among eligible beneficiaries; and

(B) diagnostic and other services that a chiropractor is legally authorized to perform by the State or jurisdiction in which such treatment is provided.

‘‘(2) Demonstration project.—The term ‘demonstration project’ means a demonstration project established by the Secretary under subsection (b)(1).

‘‘(3) Eligible beneficiary.—The term ‘eligible beneficiary’ means an individual who is enrolled under part B of the medicare program.

‘‘(4) Medicare program.—The term ‘medicare program’ means the health benefits program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(b) Demonstration of Coverage of Chiropractic Services Under Medicare.—

‘‘(1) Establishment.—The Secretary shall establish demonstration projects in accordance with the provisions of this section for the purpose of evaluating the feasibility and advisability of covering chiropractic services under the medicare program (in addition to the coverage provided for services consisting of treatment by means of manual manipulation of the spine to correct a subluxation described in section 1861(r)(5) of the Social Security Act (42 U.S.C. 1395x(r)(5))).

‘‘(2) No Physician Approval Required.—In establishing the demonstration projects, the Secretary shall ensure that an eligible beneficiary who participates in a demonstration project, including an eligible beneficiary who is enrolled for coverage under a Medicare+Choice plan (as defined in section 1877(f)(1)), is not required to receive approval from a physician or other
health care provider in order to receive a chiropractic service under a demonstration project.

"(3) Consultation.—In establishing the demonstration project, the Secretary shall consult with chiropractors, organizations representing chiropractors, eligible beneficiaries, and organizations representing eligible beneficiaries.

"(4) Participation.—Any eligible beneficiary may participate in the demonstration projects on a voluntary basis.

"(c) Conduct of Demonstration Projects.—

"(1) Demonstration Sites.—

"(A) Selection of Demonstration Sites.—The Secretary shall conduct demonstration projects at 4 demonstration sites.

"(B) Geographic Diversity.—Of the sites described in subparagraph (A)—

"(i) two shall be in rural areas; and

"(ii) two shall be in urban areas.

"(C) Sites Located in HPSAs.—At least 1 site described in clause (i) of subparagraph (B) and at least 1 site described in clause (ii) of such subparagraph shall be located in an area that is designated under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A)) as a health professional shortage area.

"(2) Implementation; Duration.—

"(A) Implementation.—The Secretary shall not implement the demonstration projects before October 1, 2004.

"(B) Duration.—The Secretary shall complete the demonstration projects by the date that is 2 years after the date on which the first demonstration project is implemented.

"(d) Evaluation and Report.—

"(1) Evaluation.—The Secretary shall conduct an evaluation of the demonstration projects—

"(A) to determine whether eligible beneficiaries who use chiropractic services use a lesser overall amount of items and services for which payment is made under the medicare program than eligible beneficiaries who do not use such services; and

"(B) to determine the cost of providing payment for chiropractic services under the medicare program;

"(2) Report.—Not later than the date that is 1 year after the date on which the demonstration projects conclude, the Secretary shall submit to Congress a report on the evaluation conducted under paragraph (1) together with such recommendations for legislation or administrative action as the Secretary determines is appropriate.

"(e) Waiver of Medicare Requirements.—The Secretary shall waive with compliance with such requirements of the medicare program to the extent and for the period the Secretary finds necessary to conduct the demonstration projects.

"(f) Funding.—

"(1) Demonstration Projects.—

"(A) In General.—Subject to subparagraph (B) and paragraph (2), the Secretary shall provide for the transfer from the Federal Supplementary Insurance Trust Fund under section 1841 of the Social Security Act (42 U.S.C. 265l) of such funds as are necessary for the costs of carrying out the demonstration projects under this section.

"(B) Limitation.—In conducting the demonstration projects under this section, the Secretary shall ensure that the aggregate payments made by the Secretary under the medicare program do not exceed the amount which the Secretary would have paid under the medicare program for the provision of such services under the medicare program if the demonstration projects under this section were not implemented.

"(2) Evaluation and Report.—There are authorized to be appropriated such sums as are necessary for the purpose of developing and submitting the report to Congress under subsection (d).

Demonstration Project to Clarify the Definition of Homebound


"(a) Demonstration Project.—Not later than 180 days after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall conduct a 2-year demonstration project under part B of title XVIII of the Social Security Act [part B of this subchapter] under which medicare beneficiaries with chronic conditions described in subsection (b) are deemed to be homebound for purposes of receiving home health services under the medicare program.

"(b) Medicare Beneficiary Described.—For purposes of subsection (a), a medicare beneficiary is eligible to be deemed to be homebound, without regard to the purpose, frequency, or duration of absences from the home, if—

"(1) the beneficiary has been certified by one physician as an individual who has a permanent and severe, disabling condition that is not expected to improve;

"(2) the beneficiary is dependent upon assistance from another individual with at least 3 out of the 5 activities of daily living for the rest of the beneficiary's life;

"(3) the beneficiary requires skilled nursing services for the rest of the beneficiary's life and the skilled nursing is more than medication management;

"(4) an attendant is required to visit the beneficiary on a daily basis to monitor and treat the beneficiary's medical condition or to assist the beneficiary with activities of daily living;

"(5) the beneficiary does not regularly work in a paid position full-time or part-time outside the home.

"(c) Demonstration Project Sites.—The demonstration project established under this section shall be conducted in 3 States selected by the Secretary to represent the Northeast, Midwest, and Western regions of the United States.

"(d) Limitation on Number of Participants.—The aggregate number of such beneficiaries that may participate in the project may not exceed 15,000.

"(e) Data.—The Secretary shall collect such data on the demonstration project in respect to the provision of home health services to medicare beneficiaries that relates to quality of care, patient outcomes, and additional costs, if any, to the medicare program.

"(f) Report to Congress.—Not later than 1 year after the date of the completion of the demonstration project under this section, the Secretary shall submit to Congress a report on the project using the data collected under subsection (e). The report shall include the following:

"(1) An examination of whether the provision of home health services to medicare beneficiaries under the project has had any of the following effects:

"(A) Has adversely affected the provision of home health services under the medicare program.

"(B) Has directly caused an increase of expenditures that is directly attributable to such clarification.

"(2) The specific data evidencing the amount of any increase in expenditures that is directly attributable to the demonstration project (expressed both in absolute dollar terms and as a percentage) above expenditures that would otherwise have been incurred for home health services under the medicare program if the demonstration project had not been implemented.

"(3) Specific recommendations to exempt permanently and severely disabled homebound beneficiaries...
from restrictions on the length, frequency, and purpose of their absences from the home to qualify for home health services without incurring additional costs to the medicare program.

“(g) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) to such extent and for such period as the Secretary determines is necessary to conduct demonstration projects.

“(h) CONSTRUCTION.—Nothing in this section shall be construed as waiving any applicable civil monetary penalty, criminal penalty, or other remedy available to the Secretary under title XI or title XVIII of the Social Security Act (this subchapter and subchapter XI of this chapter) for facts prohibited under such titles, including penalties for false certifications for purposes of receipt of items or services under the medicare program.

“(1) AUTHORIZATION OF APPROPRIATIONS.—Payments for the costs of carrying out the demonstration project under this section shall be made from the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395f).

“(2) HOME HEALTH SERVICES.—The term ‘home health services’ has the meaning given such term in section 161(m) of the Social Security Act (42 U.S.C. 1395x(m)).

“(3) ACTIVITIES OF DAILY LIVING DEFINED.—The term ‘activities of daily living’ means eating, toileting, transferring, bathing, and dressing.”

INFORMATION ON MEDICARE-CERTIFIED SKILLED NURSING FACILITIES IN HOSPITAL DISCHARGE PLANS

Pub. L. 108–173, title IX, § 926(a), Dec. 8, 2003, 117 Stat. 2396, provided that: “The Secretary of Health and Human Services shall publicly provide information that enables hospital discharge planners, medicare beneficiaries, and the public to identify skilled nursing facilities that are participating in the medicare program.”

IMPLEMENTATION OF AMENDMENTS BY PUB. L. 105–277


“(1) IN GENERAL.—The Secretary of Health and Human Services shall promptly issue (without regard to chapter 8 of title 5, United States Code) such regulations or program memoranda as may be necessary to effect the amendments made by this section [amending this section, sections 1395u and 1395fff of this title, and provisions set out as notes under section 1395fff of this title] for cost reporting periods beginning during fiscal year 1999.

“(2) USE OF PAYMENT AMOUNTS AND LIMITS FROM PUBLISHED TABLES.—

“(A) PER BENEFICIARY LIMITS.—In effecting the amendments made by subsection (a) [amending this section] for cost reporting periods beginning in fiscal year 1999, the ‘median’ referred to in section 1861(v)(1)(L)(vi)(I) of the Social Security Act [subsection (v)(1)(L)(vi)(I) of this section] for such periods shall be the national standardized per beneficiary limitation specified in Table 3C published in the Federal Register on August 11, 1998 (63 FR 42926) and the ‘standardized regional average of such costs’ referred to in section 1861(v)(1)(L)(vi)(I) of such Act [subsection (v)(1)(L)(vi)(I) of this section] for a census division shall be the sum of the labor and nonlabor components of the standardized per beneficiary limitation for that census division published in Table 3B published in the Federal Register on that date (63 FR 42926) or in Table 3D as so published with respect to Puerto Rico and Guam, and adjusted to reflect variations in wages among different geographic areas as specified in Tables 4a and 4b published in the Federal Register on that date (63 FR 42926–42933).

“(B) PER VISIT LIMITS.—In effecting the amendments made by subsection (b) [amending this section] for cost reporting periods beginning in fiscal year 1999, the limits determined under 1861(v)(1)(L)(vi)(V) of such Act [subsection (v)(1)(L)(vi)(V) of this section] for such reporting periods beginning during such fiscal year shall be equal to the per visit limits as specified in Table 6A published in the Federal Register on August 11, 1998 (63 FR 42925) and as subsequently corrected, multiplied by 150%, and adjusted to reflect variations in wages among different geographic areas as specified in Tables 4a and 4b published in the Federal Register on August 11, 1998 (63 FR 42926–42933).”

STUDY ON EXPANSION OF MEDICAL NUTRITION THERAPY SERVICES BENEFIT

Pub. L. 106–554, § 1(a)(6) [title I, § 105(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A–472, provided that: “Not later than July 1, 2003, the Secretary of Health and Human Services shall submit to Congress a report that contains recommendations with respect to the expansion to other medicare beneficiary populations of the medical nutrition therapy services benefit (furnished under the amendments made by this section [amending this section and sections 1395u and 1395a of this title]).”

STUDY ON MEDICARE COVERAGE OF ROUTINE THYROID SCREENING

Pub. L. 106–554, § 1(a)(6) [title I, § 123], Dec. 21, 2000, 114 Stat. 2763, 2763A–478, provided that: “(a) STUDY.—The Secretary of Health and Human Services shall request the National Academy of Sciences, and as appropriate in conjunction with the United States Preventive Services Task Force, to conduct a study on the addition of coverage of routine thyroid screening using a thyroid stimulating hormone test as a preventive benefit provided to medicare beneficiaries under title XVIII of the Social Security Act (this subchapter) for some or all medicare beneficiaries. In conducting the study, the Academy shall consider the short-term and long-term benefits, and costs to the medicare program, of such addition.

“(b) REPORT.—Not later than 2 years after the date of the enactment of this Act [Dec. 21, 2000], the Secretary of Health and Human Services shall submit to Congress a report that contains recommendations with respect to the expansion to other medicare beneficiary populations of the medical nutrition therapy services benefit (furnished under the amendments made by this section [amending this section and sections 1395u and 1395a of this title]).”

GAO STUDY ON COVERAGE OF SURGICAL FIRST ASSISTING SERVICES OF CERTIFIED REGISTERED NURSE FIRST ASSISTANTS

Pub. L. 106–554, § 1(a)(6) [title IV, § 433], Dec. 21, 2000, 114 Stat. 2763, 2763A–526, provided that: “(a) STUDY.—The Comptroller General of the United States shall conduct a study on the effect on the medicare program under title XVIII of the Social Security Act (this subchapter) and on medicare beneficiaries of the program of surgical first assisting services of certified registered nurse first assistants. The Comptroller General shall consider the following when conducting the study:

“(1) Any impact on the quality of care furnished to medicare beneficiaries by reason of such coverage.

“(2) Appropriate rates of payment under the program to such certified registered nurse first assistants who furnish such first assisting services.

“(3) Appropriate rates of payment under the program to such certified registered nurse first assistants for furnishing such services, taking into account the costs of compensation, overhead, and supervision attributable to certified registered nurse first assistants.

“(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Comptrol-
pler General shall submit to Congress a report on the study conducted under subsection (a)."

MEDPAC Study and Report on Medicare Coverage of Services Provided by Certain Nonphysician Providers


"(a) Study.—

"(1) in General.—The Medicare Payment Advisory Commission shall conduct a study to determine the appropriateness of providing coverage under the medicare program under title XVIII of the social security act [this subchapter] for services provided by—

"(A) surgical technologist;

"(B) marriage counselor;

"(C) marriage and family therapist;

"(D) pastoral care counselor; and

"(E) licensed professional counselor of mental health.

"(2) Costs to Program.—The study shall consider the short-term and long-term benefits, and costs to the medicare program, of providing the coverage described in paragraph (1).

"(b) Report.—Not later than 18 months after the date of the enactment of this subchapter (Dec. 21, 2000), the Commission shall submit to Congress a report on the study conducted under subsection (a), together with any recommendations for legislation that the Commission determines to be appropriate as a result of such study.

Development of Patient Assessment Instruments


"(a) Development.—

"(1) in General.—Not later than January 1, 2005, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means and the Committee on Commerce [now Committee on Energy and Commerce] of the House of Representatives and the Committee on Finance of the Senate a report on the development of standard instruments for the assessment of the health and functional status of patients, for whom items and services described in subsection (b) are furnished, and include in the report a recommendation on the use of such standard instruments for payment purposes.

"(2) Design for Comparison of Common Elements.—The Secretary shall design such standard instruments in a manner such that—

"(A) elements that are common to the items and services described in subsection (b) may be readily comparable and are statistically compatible;

"(B) only elements necessary to meet program objectives are collected; and

"(C) the standard instruments supersede any other assessment instrument used before that date.

"(3) Consultation.—In developing an assessment instrument under paragraph (1), the Secretary shall consult with the Medicare Payment Advisory Commission, the Agency for Healthcare Research and Quality, and qualified organizations representing providers of services and suppliers under title XVIII of the Social Security Act [part A or part B of this subchapter] for which payment is made under such title (this subchapter), and include the following:

"(1) Inpatient and outpatient hospital services.

"(2) Inpatient and outpatient rehabilitation services.

"(3) Covered skilled nursing facility services.

"(4) Home health services.

"(5) Physical or occupational therapy or speech-language pathology services.

"(6) Items and services furnished to such individuals determined to have end stage renal disease.

"(7) Partial hospitalization services and other mental health services.

"(8) Any other service for which payment is made under such title as the Secretary determines to be appropriate.

Conforming References to Previous Part C

Section 4002(c)(1) of Pub. L. 105–33 provided that:

"Any reference in law (in effect before the date of the enactment of this Act [Aug. 5, 1997]) to part C of title XVIII of the Social Security Act [part C of this subchapter] is deemed a reference to part D of such title (this part) (as in effect after such date)."

Deadline for Publication of Determination on Coverage of Screening Barium Enema

Section 410(a)(2) of Pub. L. 105–33 provided that:

"Not later than the earlier of the date that is January 1, 1998, or 90 days after the date of the enactment of this Act [Aug. 5, 1997], the Secretary of Health and Human Services shall publish notice in the Federal Register with respect to the determination under paragraph (1)(D) of section 1861(pp) of the Social Security Act (42 U.S.C. 1395xx(pp)), as added by paragraph (1), on the coverage of a screening barium enema as a colorectal cancer screening test under such section."

Establishment of Outcome Measures for Beneficiaries With Diabetes

Section 410(c) of Pub. L. 105–33 provided that:

"(1) in General.—The Secretary of Health and Human Services, in consultation with appropriate organizations, shall establish outcome measures, including glycosylated hemoglobin (past 90-day average blood sugar levels), for purposes of evaluating the improvement of the health status of medicare beneficiaries with diabetes mellitus.

"(2) Recommendations for Modifications to Screening Benefits.—Taking into account information on the health status of medicare beneficiaries with diabetes mellitus as measured under the outcome measures established under paragraph (1), the Secretary shall from time to time submit recommendations to Congress regarding modifications to the coverage of services for such beneficiaries under the medicare program.

Vaccines Outreach Expansion

Section 4107 of Pub. L. 105–33 provided that:

"(a) Extension of Influenza and Pneumococcal Vaccination Campaign.—In order to increase utilization of pneumococcal and influenza vaccines in medicare beneficiaries, the Influenza and Pneumococcal Vaccination Campaign carried out by the Health Care Financing Administration in conjunction with the Centers for Disease Control and Prevention and the National Coalition for Adult Immunization, is extended until the end of fiscal year 2002.

"(b) Authorization of Appropriation.—There are hereby authorized to be appropriated for each of fiscal years 2002 to 2004, $8,000,000 for the Campaign described in subsection (a). Of the amount so authorized to be appropriated in each fiscal year, 60 percent of the amount so appropriated shall be payable from the Federal Hospital Insurance Trust Fund, and 40 percent shall be payable from the Federal Supplementary Medical Insurance Trust Fund.

Study on Preventive and Enhanced Benefits

Section 4108 of Pub. L. 105–33 directed the Secretary of Health and Human Services to request the National Academy of Sciences to analyze the expansion or modification of preventive or other benefits provided to medicare beneficiaries under this subchapter, and not later than 2 years after Aug. 5, 1997, to submit a report on the findings of the analysis to Congress.

Utilization Guidelines

Section 4513(c) of Pub. L. 105–33 provided that: ‘‘The Secretary of Health and Human Services shall develop
and implement utilization guidelines relating to the coverage of chiropractic services under part B of title XVIII of the Social Security Act [part B of this subchapter] in cases in which a submission has not been demonstrated by X-ray to exist."

**AUTHORIZING PAYMENT FOR PARAMEDIC INTERCEPT SERVICE PROVIDERS IN RURAL COMMUNITIES**

Pub. L. 105–33, title IV, § 4531(c), Aug. 5, 1997, 111 Stat. 452, as amended by Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, § 412(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–377, provided that: "In promulgating regulations to carry out section 1861(a)(7) of the Social Security Act [42 U.S.C. 1395x(a)(7)] with respect to the coverage of ambulance service, the Secretary of Health and Human Services may include coverage of advanced life support services (in this subsection referred to as "ALS intercept services") provided by a paramedic intercept service provider in a rural area if the following conditions are met:

1. The ALS intercept services are provided under a contract with one or more volunteer ambulance services and are medically necessary on the health condition of the individual being transported.

2. The volunteer ambulance service involved—
   1. is certified as qualified to provide ambulance service for purposes of such section,
   2. provides only basic life support services at the time of the intercept, and
   3. is prohibited by State law from billing for any services.

3. The entity supplying the ALS intercept services—
   1. is certified as qualified to provide such services under the medicare program under title XVIII of the Social Security Act [this subchapter], and
   2. bills all recipients who receive ALS intercept services from the entity, regardless of whether or not such recipients are medicare beneficiaries.

For purposes of this subsection, an area shall be treated as a rural area if it is designated as a rural area by any law or regulation of the State or if it is located in a rural census tract of a metropolitan statistical area (as determined under the most recent Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725))."

[Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, § 412(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–377, provided that: "The amendment made by subsection (a) [amending section 4531(c) of Pub. L. 105–33, set out above] takes effect on January 1, 2000, and applies to ALS intercept services furnished on or after such date."]

**NO EXCEPTIONS PERMITTED BASED ON AMENDMENT TO SUBSECTION (V)(1)(L)**

Section 4601(b) of Pub. L. 105–33 provided that: "The Secretary of Health and Human Services shall not consider the amendment made by subsection (a) [amending this section] in making any exemptions and exceptions pursuant to section 1861(v)(1)(L)(i)(II) of the Social Security Act [42 U.S.C. 1395x(v)(1)(L)(i)(II)]."

**STUDY ON DEFINITION OF HOMEBOUND**

Section 4613 of Pub. L. 105–33 provided that: "(a) STUDY.—The Secretary of Health and Human Services shall conduct a study of the criteria that should be applied, and the method of applying such criteria, in the determination of whether an individual is homebound for purposes of qualifying for receipt of benefits for home health services under the medicare program. Such criteria shall include the extent and circumstances under which a person may be absent from the home but nonetheless qualify.

(b) REPORT.—Not later than October 1, 1998, the Secretary shall submit a report to Congress on the study conducted under subsection (a) [amending this section] to Congress by not later than Mar. 1, 1994, an analysis of and comments on the proposal.

**APPLICATION OF BUDGET-NEUTRAL BASIS**

Section 4207(d)(2), formerly 4207(c)(2), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, Pub. L. 103–362, title VI, § 601(b)(2), Nov. 10, 1994, 112 Stat. 3396, directed Secretary of Health and Human Services to develop a proposal to modify the current system under which payment is made for home health services under this subchapter or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates, with Secretary to submit to Congress by not later than Apr. 1, 1993, the research findings upon which the proposal was to be based, and directed Prospective Payment Assessment Commission to submit to Congress by not later than Apr. 1, 1993, an analysis of and comments on the proposal.
sec. (v)(1)(L)(iii) of this section], the Secretary shall ensure that aggregate payments to home health agencies under title XVIII of such Act [this subchapter] will be not greater or lesser than such payments would have been without regard to such update."

**Transition Provisions for Determining Reasonable Costs for Home Health Agency Services**

Section 4207(d)(3), formerly 4027(d)(3), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, §160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that, notwithstanding subsec. (v)(1)(L)(iii) of this section, the Secretary of Health and Human Services was to, in determining the limits of reasonable costs under this subchapter with respect to services furnished by a home health agency, utilize a wage index equal to (1) for cost reporting periods beginning on or after July 1, 1991, and on or before June 30, 1992, a combined area wage index consisting of 67 percent of the area wage index applicable to such home health agency, determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States, and 33 percent of the area wage index applicable to hospitals located in the geographic area in which the home health agency was located, determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States, and (2) for cost reporting periods beginning on or after July 1, 1992, and on or before June 30, 1993, a combined area wage index consisting of 33 percent of the area wage index applicable to such home health agency, determined using the survey of the 1982 wages and wage-related costs of hospitals in the United States, and 67 percent of the area wage index applicable to hospitals located in the geographic area in which the home health agency was located, determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States.

**Permitting Dentist To Serve As Hospital Medical Director**

Section 6025 of Pub. L. 101–239 provided that: "Notwithstanding the requirement that the responsibility for organization and conduct of the medical staff of an institution be assigned only to a doctor of medicine or osteopathy in order for the institution to participate as a hospital under the medicare program, an institution that has a doctor of dental surgery or of dental medicine serving as its medical director shall be considered to meet such requirement if the laws of the State in which the institution is located permit a doctor of dental surgery or of dental medicine to serve as the medical staff director of a hospital."

**Recognition of Costs of Certain Hospital-Based Nursing Schools**

Section 6205(a)(1)(A) of Pub. L. 101–239 provided that: "The reasonable costs incurred by a hospital in training students of a hospital-based nursing school shall be allowable as reasonable costs under title XVIII of the Social Security Act [this subchapter] and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated educational program (other than an approved graduate medical education program) if, before June 15, 1989, and thereafter, the hospital demonstrates that for each year, it incurs at least 50 percent of the costs of training nursing students at such school, the nursing school and the hospital share some common board members, and an instruction is provided at the hospital or, if in another building, a building on the immediate grounds of the hospital."

Section 6205(a)(2) of Pub. L. 101–239 provided that: "Paragraph (1)(A) [set out above] shall apply with respect to cost reporting periods beginning on or after the date of the enactment of this Act [Dec. 18, 1989] and on or before the date on which the Secretary issues regulations pursuant to subsection (b)(2)(A) [set out as a note under section 1395ww of this title]."

**Dissemination of Rural Health Clinic Information**

Section 6213(e) of Pub. L. 101–239 directed Secretary of Health and Human Services, not later than 60 days after Dec. 19, 1989, in consultation with the Director of the Office of Rural Health Policy, to disseminate information to health care facilities and to the chief executive officer, chief health officer, and chief human services officer of each State, applications and other necessary information to enable such a facility to apply for designation as a rural health clinic for the purposes of this subchapter and subchapter XIX of this chapter.

**Treatment of Certain Facilities as Rural Health Clinics**

Section 6213(f) of Pub. L. 101–239 provided that: "The Secretary of Health and Human Services shall not deny certification of a facility as a rural health clinic under section 1861(aa)(2) of the Social Security Act [subsec. (aa)(2) of this section] if the facility is located on an island and would otherwise be qualified to be certified as such a facility but for the requirement that the services of a physician assistant or nurse practitioner be provided in the facility."

**Continued Use of Home Health Wage Index in Effect Prior to July 1, 1989, Until After July 1, 1991**

Section 6222 of Pub. L. 101–239 provided that: "Notwithstanding the requirement of section 1861(v)(1)(L)(iii) of the Social Security Act [subsec. (v)(1)(L)(iii) of this section], the Secretary of Health and Human Services shall, in determining the limits of reasonable costs under title XVIII of the Social Security Act [this subchapter] with respect to services furnished by home health agencies, continue to utilize the wage index that was in effect for cost reporting periods beginning before July 1, 1989, until cost reporting periods beginning on or after July 1, 1991."

**Payment for Medical Escort or Medical Attendant on Commercial Airliner Allowed**

Section 6427 of Pub. L. 100–647 provided that: "(a) In General.—The Secretary of Health and Human Services shall provide that in cases where (as of the date of the enactment of this Act [Nov. 10, 1988]) transportation on a commercial airliner is covered under section 1819(c)(7) of the Social Security Act [subsec. (c)(7) of this section], the Secretary shall also provide for payment for medically necessary services of a medical escort or medical attendant."

**Skilled Nursing Facility; Access and Visitation Rights**

Section 411(l)(2)(E) of Pub. L. 100–360 provided that: "Effective as of the date of the enactment of this Act [July 1, 1988] and until the effective date of section 1819(c) of such Act [see Effective Date note set out under section 1816–3 of this title], section 1861(i) of the Social Security Act [subsec. (i) of this section] is deemed to include the requirement described in section 1819(c)(3)(A) of such Act [section 1861(i)(3)(A) of this title] (as added by section 4201(a)(3) of OBRA)."

**Moratorium on Prior Authorization for Home Health and Post-Hospital Extended Care Services**

Section 4699(e) of Pub. L. 100–203 provided that: "The Secretary of Health and Human Services shall not implement any voluntary or mandatory program of prior authorization for home health services, extended care services, or post-hospital extended care services under part A or B of title XVIII of the Social Security Act [part A or B of this subchapter] at any time prior to six months after the date on which the Congress receives the report required under section 9305(k)(4) of the Omnibus Budget Reconciliation Act of 1986 [section 9305(k)(4) of Pub. L. 100–509, set out below]."
DELAY IN PUBLISHING REGULATIONS WITH RESPECT TO
DEEMING STATUS OF ENTITIES

Section 4039(f) of Pub. L. 100–203 provided that: "The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall not deem any entity to be a provider of services (as defined in section 1861(u) of the Social Security Act [subsec. (u) of this section]) for purposes of title XVIII of such Act (this subchapter)—

'(1) on any date prior to 6 months after the date on which the Secretary has published a proposed rule with respect to the deeming of the entity, and

'(2) until the Secretary publishes a final rule with respect to the deeming of the entity.'

DEVELOPMENT OF UNIFORM NEEDS ASSESSMENT INSTRUMENT

Section 9338(h) of Pub. L. 99–509 directed Secretary of Health and Human Services to develop a uniform needs assessment instrument that could be used by discharge planners, hospitals, nursing facilities, other health care providers, and fiscal intermediaries in evaluating individual's need for post-hospital extended care services, home health services, and long-term care services of health-related or supportive nature, and further provided for creation of advisory panel to assist Secretary and for a report to Congress not later than Jan. 1, 1989.

PRIOR AND CONCURRENT AUTHORIZATION FOR DEMONSTRATION PROJECTS

Section 9339(k) of Pub. L. 99–509 directed Secretary of Health and Human Services to conduct a demonstration program concerning prior and concurrent authorization for post-hospital extended care services and home health services furnished under part A or part B of this subchapter, which was to include at least four demonstration projects in each of the 50 states and the District of Columbia, funded in amounts not to exceed $100,000 per project, to (1) conduct the demonstration projects to determine certain outcomes, such as cost-sharing, quality of services, and patient satisfaction, and to determine whether the demonstration projects were effective in achieving the outcomes; (2) collect and analyze data on the costs and outcomes of the demonstration projects, including the costs and outcomes of the demonstration projects in comparison to the costs and outcomes of similar services provided under the Medicare program; and (3) report the results of the demonstration projects to Congress.

CONSIDERATIONS IN ESTABLISHING LIMITS ON PAYMENT FOR HOME HEALTH SERVICES

Section 9331(b)(2) of Pub. L. 99–509 provided that: "In establishing limitations under section 1861(v)(1)(L) of the Social Security Act [subsec. (v)(1)(L) of this section] on payment for home health services for cost reporting periods beginning on or after July 1, 1986, the Secretary of Health and Human Services shall—

'(1) base such limitations on the most recent data available, which data may be for cost reporting periods beginning no earlier than October 1, 1985; and

'(2) take into account the changes in costs of home health agencies for billing and verification procedures that result from the Secretary's changing the requirements for such procedures, to the extent the changes in costs are not reflected in such data.

Paragraph (2) shall apply to changes in requirements effected before, on, or after July 1, 1986.'

COMPTROLLER GENERAL STUDY AND REPORT ON COST LIMITS FOR HOME HEALTH SERVICES

Section 6915(c) of Pub. L. 99–509 directed Comptroller General to study and report to Congress, not later than Feb. 1, 1988, on appropriateness and impact on Medicare beneficiaries of applying the per visit cost limits for home health services under subsec. (v)(1)(L) of this section on a discipline-specific basis, rather than on an aggregate basis, for all home health services furnished by an agency, and appropriateness of the percentage limits so established.

REDUCTION IN PAYMENT TO AVOID DUPLICATE PAYMENT FOR SERVICES OF PHYSICIAN ASSISTANTS

Section 9338(d) of Pub. L. 99–509 directed Secretary of Health and Human Services to reduce the amount of payments otherwise made to hospitals and skilled nursing facilities under this subchapter to eliminate estimated duplicate payments for historical or current costs attributable to services described in section 1395x(s)(2)(K) of this title, prior to repeal by Pub. L. 101–508, title IV, §4002(f), Nov. 5, 1990, 104 Stat. 1388–36, effective as if included in the enactment of Pub. L. 99–509.

STUDY AND REPORT ON PAYMENTS FOR PHYSICIAN ASSISTANTS

Section 9338(e) of Pub. L. 99–509 directed Secretary to report to Congress, by Apr. 1, 1988, concerning adjustments to amount of payment made, under part B for services described in subsec. (a)(2)(K) of this section, to ensure that amount of such payments reflects approximate cost of furnishing the services, taking into account compensation costs and overhead and supervision costs attributable to physician assistants.

COST LIMITS FOR ROUTINE SERVICES FOR URBAN AND RURAL HOSPITAL-BASED SKILLED NURSING FACILITIES; COST REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 1982, AND PRIOR TO JULY 1, 1984

Section 2313(d) of Pub. L. 98–369 provided that: "Notwithstanding limits on the cost of skilled nursing facilities which may have been issued under section 1861(v) of the Social Security Act [subsec. (v) of this section] prior to the date of the enactment of this Act [July 18, 1984], in the case of cost reporting periods beginning on or after October 1, 1982, and prior to July 1, 1984, the cost limits for routine services for urban and rural hospital-based skilled nursing facilities shall be 112 percent of the mean of the respective routine costs for urban and rural hospital-based skilled nursing facilities."

STUDY AND REPORT RELATING TO REQUIREMENTS THAT CORE SERVICES BE FURNISHED DIRECTLY BY HOSPICES

Section 9343(d) of Pub. L. 98–369 directed Secretary of Health and Human Services to conduct a study of necessity and appropriateness of requirements that certain "core" services be furnished directly by a hospice, as required under subsec. (d)(2)(A)(I) of this section and report results of such study to Congress with the report required under section 122(i)(1) [122(j)(1)] of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248), set out as a note under section 1395f of this title.

REPORT ON EFFECT OF 1982 AMENDMENT ON HOSPITAL-BASED SKILLED NURSING FACILITIES

Section 605(b) of Pub. L. 98–21 directed Secretary of Health and Human Services, prior to Dec. 31, 1983, to complete a study and report to Congress with respect to (1) effect which implementation of section 102 of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, set out as a note under section 1395f of this title.

ELIMINATION OF PRIVATE ROOM SUBSIDY

Section 111 of Pub. L. 97–248 provided that: "(a) The Secretary of Health and Human Services shall, pursuant to section 1861(v)(2) of the Social Security Act [subsec. (v)(2) of this section], not allow as a reasonable cost the estimated amount by which the costs incurred by a hospital or skilled nursing facility for nonmedically necessary private accommodations for Medicare beneficiaries exceed the costs which..."
would have been incurred by such hospital or facility for semiprivate accommodations.

“(b) The Secretary of Health and Human Services shall issue such final regulations (whether on an interim or other basis) as may be necessary to implement subsection (a) by October 1, 1982. If such regulations are promulgated on an interim final basis, the Secretary shall take such steps as may be necessary to provide opportunity for public comment, and appropriate revision based thereon, so as to provide that such regulations are not on an interim basis later than January 31, 1983.”

REGULATIONS REGARDING ACCESS TO BOOKS AND RECORDS

Section 932(b) of Pub. L. 96–499, as added by Pub. L. 97–248, title I, §127(2), Sept. 3, 1982, 96 Stat. 366, provided that: “Unless the Secretary of Health and Human Services first issue final regulations prescribing the criteria and procedures described in the last sentence of section 1861(v)(1)(I) of the Social Security Act (subsec. (v)(1)(I) of this section) by January 1, 1983, after providing a period of not less than 60 days for public comment on proposed regulations, the amendment made by this subsection (a) [amending this section] shall only apply to books, documents, and records relating to services furnished (pursuant to contract or subcontract) on or after the date on which final regulations of the Secretary are first published.”

COMPLIANCE WITH THE LIFE SAFETY CODE OR STATE FIRE AND SAFETY CODE

Section 915(b) of Pub. L. 96–499 provided that: “Any institution (or part of an institution) which complied with the requirements of section 1861(j)(13) of the Social Security Act [subsec. (j)(13) of this section] on the day before the date of the enactment of this Act [Dec. 5, 1980] shall, so long as such compliance is maintained (either by meeting the applicable provisions of the Life Safety Code (21st edition, 1967, or 23d edition, 1973), with or without waivers of specific provisions, or by meeting the applicable provisions of a fire and safety code imposed by State law) as provided for in such section 1861(j)(13), be considered (for purposes of titles XVIII or XIX of such Act [this subchapter or subchapter XIX of this chapter]) to be in compliance with the requirements of such section 1861(j)(13), as it is amended by subsection (a) of this section.”

Section 906(c) of Pub. L. 94–182 provided that: “Any institution (or part of an institution) which complied with the requirements of section 1861(j)(13) of the Social Security Act [subsec. (j)(13) of this section] on the day preceding the first day referred to in subsection (b) [enacting provisions set out as a note under this section] shall, so long as such compliance is maintained (either by meeting the applicable provisions of the Life Safety Code (21st edition, 1967), with or without waivers of specific provisions, or by meeting the applicable provisions of a fire and safety code imposed by State law) as provided for in such section 1861(j)(13), be considered (for purposes of titles XVIII and XIX of such Act) (subchapters XVIII and XIX of this chapter) to be in compliance with the requirements of such section 1861(j)(13), as it is amended by subsection (a) of this section.”

PRIVATE, NONPROFIT HEALTH CARE CLINICS QUALIFYING, AS OF JULY 1, 1977, AS RURAL HEALTH CLINICS

Section 1(e) of Pub. L. 95–210 provided that: “Any private, nonprofit health care clinic that—

“(1) on July 1, 1977, was operating and located in an area which on that date (A) was not an urbanized area as defined by the Bureau of the Census and (B) had a supply of physicians insufficient to meet the needs of the area (as determined by the Secretary), and

“(2) meets the definition of a rural health clinic under section 1861(aa)(2) [subsec. (aa)(2) of this section] or section 1905(i) of the Social Security Act [section 1905d(i) of this title], except for clause (i) of section 1861(aa)(2) [subsec. (aa)(2) of this section], shall be considered, for the purposes of title XVIII or XIX, respectively, of the Social Security Act [this subchapter or subchapter XIX of this chapter], as satisfying the definition of a rural health clinic under such section.”

PROCLAMATION OF REGULATIONS DEFINING COSTS CHARGEABLE TO PERSONAL FUNDS OF PATIENTS IN SKILLED NURSING FACILITIES; DATE OF ISSUANCE

Section 21(b) of Pub. L. 95–142 provided that: “The Secretary of Health, Education, and Welfare, shall, by regulation, define those costs which may be charged to the personal funds of patients in skilled nursing facilities who are individuals receiving benefits under the provisions of title XVIII [this subchapter], or under a State plan approved under the provisions of title XIX [subchapter XIX of this chapter], of the Social Security Act, and those costs which are to be included in the reasonable cost or reasonable charge for extended care services as determined under the provisions of title XVIII for skilled nursing and intermediate care facility services as determined under the provisions of title XIX, of such Act.”

Section 21(c)(2) of Pub. L. 95–142 provided that: “The Secretary of Health, Education, and Welfare shall issue the regulations required under subsection (b) [set out above] within ninety days after the date of enactment of this Act (Oct. 25, 1977).”

HOMER HEALTH SERVICES; GRANTS FOR ESTABLISHMENT, OPERATION, STAFFING, ETC., OF PUBLIC AND NONPROFIT PRIVATE AGENCIES AND ENTITIES; PROCEDURES; PAYMENTS; AUTHORIZATION OF APPROPRIATIONS


PAYMENT FOR SERVICE OF PHYSICIANS RENDERED IN A TEACHING HOSPITAL FOR ACCOUNTING PERIOD BEGINNING AFTER JUNE 30, 1975, AND PRIOR TO OCTOBER 1, 1978: STUDIES, REPORTS, ETC.; EFFECTIVE DATES

Pub. L. 94–233, §15(a)(1), (b)–(d), Dec. 31, 1973, 87 Stat. 965, as amended by Pub. L. 93–368, §7, Aug. 7, 1974, 88 Stat. 422; Pub. L. 94–968, §1, July 16, 1976, 90 Stat. 997; Pub. L. 95–292, §7, June 13, 1978, 92 Stat. 316, provided that for the cost accounting periods beginning after June 30, 1975, and prior to October 1, 1978, subsec. (b) of this section will be administered as if paragraph (7) of subsec. (b) read as follows: “(7) a physician where the hospital has a teaching program approved as specified in paragraph (6), if (A) the hospital elects to receive any payment due under this title [this subchapter] for reasonable costs of such services, and (B) all physicians in such hospital agree not to bill charges for professional services rendered in such hospital to individuals covered under the insurance program established by this title [this subchapter], provided for studies with respect to methods of reimbursement for physicians’ services under subchapters XVIII and XIX of this chapter in hospitals which have a teaching program and a determination as to how and to what extent such funds are utilized, and provided that a final report be submitted to the Secretary of Health, Education, and Welfare, the Committee on Finance of the Senate, and the Committee on Ways and Means of the House of Representatives not later than Mar. 1, 1976.

PHYSICAL THERAPY SERVICES REQUIREMENTS; EFFECTIVE DATE POSTPONEMENT

Section 17(a) of Pub. L. 93–233 provided that: “In the administration of title XVIII of the Social Security Act
[this subchapter], the amount payable thereunder with respect to physical therapy and other services referred to in section 1861(v)(5)(A) of such Act (subsec. (v)(5)(A) of this section) (as added by section 153(c) [251(c)] of the Social Security Amendments of 1972) shall be determined (for the period with respect to which the amendment made by such section 151(c) [251(c)] would, except for the provisions of this provision, be applicable) in like manner as if the ‘December 31, 1972’, which appears in such subsection (d)(3) of such section 151 [251(d)(3), set out as Effective Date of 1972 Amendment note above], read ‘the month in which there are promulgated, by the Secretary of Health, Education, and Welfare [now Health and Human Services], final regulations implementing the provisions of section 1861(v)(5) of the Social Security Act (subsec. (v)(5) of this section).’

PAYMENT FOR DURABLE MEDICAL EQUIPMENT

Section 245(a)–(c) of Pub. L. 92–603 provided that:

(a) The Secretary is authorized to conduct reimbursement experiments designed to eliminate unreasonable expenses resulting from prolonged rentals of durable medical equipment described in section 1861(s)(6) of the Social Security Act [subsec. (s)(6) of this section].

(b) Such experiment may be conducted in one or more geographic areas, as the Secretary deems appropriate, and may, pursuant to agreements with suppliers, provide for reimbursement for such equipment on a lump-sum basis whenever it is determined (in accordance with guidelines established by the Secretary) that a lump-sum payment would be more economical than the anticipated period of rental payments. Such experiments may also provide for incentives to beneficiaries (including waiver of the 20 percent coinsurance amount applicable under section 1886 of the Social Security Act (section 1395f of this title)) to purchase used equipment whenever the purchase price is at least 25 percent less than the reasonable charge for new equipment.

(c) The Secretary is authorized, at such time as he deems appropriate, to implement on a nationwide basis any such reimbursement procedures which he finds to be workable, desirable and economical and which are consistent with the purposes of this section.”

RESPECTING THE RIGHTS OF HOSPITAL PATIENTS TO RECEIVE VISITORS AND TO DESIGNATE SURROGATE DECISION MAKERS FOR MEDICAL EMERGENCIES

Memorandum of President of the United States, Apr. 13, 2010. 75 F.R. 26511, provided:

Memorandum for the Secretary of Health and Human Services

There are few moments in our lives that call for greater compassion and companionship than when a loved one is admitted to the hospital. In these hours of need and moments of pain and anxiety, all of us would hope to have a hand to hold, a shoulder on which to lean—a loved one to be there for us, as we would be there for them.

Yet every day, all across America, patients are denied the kindnesses and caring of a loved one at their side—whether in a sudden medical emergency or a prolonged hospital stay. Often, a widow or widower with no children is denied the support and comfort of a good friend. Members of religious orders are sometimes unable to choose someone other than an immediate family member to visit them and make medical decisions on their behalf. Also uniquely affected are gay and lesbian Americans who are often barred by the bedside of the partners with whom they may have spent decades of their lives—unable to be there for the person they love, and unable to act as a legal surrogate if their partner is incapacitated.

For all of these Americans, the failure to have their wishes respected concerning who may visit them or make medical decisions on their behalf has real consequences. It means that doctors and nurses do not always have the best information about patients’ medical care and equal treatment during their hospital stays. By this memorandum, I request that you take the following steps:

1. Initiate appropriate rulemaking, pursuant to your authority under 22 U.S.C. 1395c and other relevant provisions of law, to ensure that hospitals that participate in Medicare or Medicaid respect the rights of patients to designate visitors. It should be made clear that designated visitors, including individuals designated by legally valid advance directives (such as durable powers of attorney and health care proxies), should enjoy visitation privileges that are no more restrictive than those that immediate family members enjoy. You should also provide that participating hospitals may not deny visitation privileges on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, or disability. The rulemaking should take into account the need for hospitals to restrict visitation in medically appropriate circumstances as well as the clinical decisions that medical professionals make about a patient’s care or treatment.

2. Ensure that all hospitals participating in Medicare or Medicaid are in full compliance with regulations, modified at 42 CFR 482.13 and 42 CFR 488.102(a), promulgated to guarantee that all patients’ advance directives, such as durable powers of attorney and health care proxies, are respected, and that patients’ representatives otherwise have the right to make informed decisions regarding patients’ care. Additionally, I request that you issue new guidelines, pursuant to your authority under 42 U.S.C. 1395vc and other relevant provisions of law, and provide technical assistance on how hospitals participating in Medicare or Medicaid can best comply with the regulations and take any additional appropriate measures to fully enforce the regulations.

3. Provide additional recommendations to me, within 180 days of the date of this memorandum, on actions the Department of Health and Human Services can take to address hospital visitation, medical decision-making, or other health care issues that affect LGBT patients and their families.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§1395y. Exclusions from coverage and medicare as secondary payer

(a) Items or services specifically excluded

Notwithstanding any other provision of this subchapter, no payment may be made under part A or part B of this subchapter for any expenses incurred for items or services—
(1) (A) which, except for items and services described in a succeeding subparagraph or additional preventive services (as described in section 1395x(kk)(1) of this title), are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member,

(B) in the case of items and services described in section 1395x(s)(10) of this title, which are not reasonable and necessary for the prevention of illness,

(C) in the case of hospice care, which are not reasonable and necessary for the palliation or management of terminal illness,

(D) in the case of clinical care items and services provided with the concurrence of the Secretary and with respect to research and experimentation conducted by, or under contract with, the Medicare Payment Advisory Commission or the Secretary, which are not reasonable and necessary to carry out the purposes of section 1395ww(e)(6) of this title;

(E) in the case of research conducted pursuant to section 1320b–12 of this title, which is not reasonable and necessary to carry out the purposes of that section,

(F) in the case of screening mammography, which is performed more frequently than is covered under section 1395m(c)(2) of this title or which is not conducted by a facility described in section 1395m(c)(1)(B) of this title, in the case of screening pap smear and screening pelvic exam, which is performed more frequently than is provided under section 1395x(nn) of this title, and, in the case of screening for glaucoma, which is performed more frequently than is provided under section 1395x(uu) of this title,

(G) in the case of prostate cancer screening tests (as defined in section 1395x(oo) of this title), which are performed more frequently than is covered under section 1395m(d) of this title,

(H) in the case of colorectal cancer screening tests, which are performed more frequently than is covered under section 1395x(nn) of this title,

(I) the frequency and duration of home health services which are in excess of normative guidelines that the Secretary shall establish by regulation,

(J) in the case of a drug or biological specified in section 1395w–3a(c)(6)(C) of this title for which payment is made under part B of this subchapter that is furnished in a competitive area under section 1395w–3b of this title, that is not furnished by an entity under a contract under such section,

(K) in the case of an initial preventive physical examination, which is performed more than 1 year after the date the individual’s first coverage period begins under part B of this subchapter,

(L) in the case of cardiovascular screening blood tests (as defined in section 1395x(xx)(1) of this title), which are performed more frequently than is covered under section 1395x(xx)(2) of this title,

(M) in the case of a diabetes screening test (as defined in section 1395x(yy)(1) of this title), which is performed more frequently than is covered under section 1395x(yy)(3) of this title,

(N) in the case of ultrasound screening for abdominal aortic aneurysm which is performed more frequently than is provided for under section 1395x(gggg)(1) of this title,

(O) in the case of kidney disease education services (as defined in paragraph (1) of section 1395x(ggg) of this title), which are furnished in excess of the number of sessions covered under paragraph (4) of such section, and

(P) in the case of personalized prevention plan services (as defined in section 1395x(hhh)(1) of this title), which are performed more frequently than is covered under such section;

(2) for which the individual furnished such items or services has no legal obligation to pay, and which no other person (by reason of such individual’s membership in a prepayment plan or otherwise) has a legal obligation to provide or pay for, except in the case of Federally qualified health center services;

(3) which are paid for directly or indirectly by a governmental entity (other than under this chapter and other than under a health benefits or insurance plan established for employees of such an entity), except in the case of rural health clinic services, as defined in section 1395x(aa)(1) of this title, in the case of Federally qualified health center services, as defined in section 1395x(aa)(3) of this title, in the case of services for which payment may be made under section 1395q(e) of this title, and in such other cases as the Secretary may specify;

(4) which are not provided within the United States (except for inpatient hospital services furnished outside the United States under the conditions described in section 1395f(f) of this title and, subject to such conditions, limitations, and requirements as are provided under or pursuant to this subchapter, physicians’ services and ambulance services furnished an individual in conjunction with such inpatient hospital services but only for the period during which such inpatient hospital services were furnished);

(5) which are required as a result of war, or of an act of war, occurring after the effective date of such individual’s current coverage under such part;

(6) which constitute personal comfort items (except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C));

(7) where such expenses are for routine physical checkups, eyeglasses (other than eyewear described in section 1395x(s)(8) of this title) or eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, procedures performed (during the course of an eye examination) to determine the refractive state of the eyes, hearing aids or examinations thereof, or immunizations (except as otherwise allowed under section 1395x(s)(10) of this title and subparagraph (B), (F), (G), (H), (K), or (P) of paragraph (1));

(8) where such expenses are for orthopedic shoes or other supportive devices for the feet, other than shoes furnished pursuant to section 1395x(s)(12) of this title.

1 See References in Text note below.
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(9) where such expenses are for custodial care (except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C));

(10) where such expenses are for cosmetic surgery or are incurred in connection there-with, except as required for the prompt repair of accidental injury or for improvement of the function of a malformed body member;

(11) where such expenses constitute charges imposed by immediate relatives of such indi-

vidual or members of his household;

(12) where such expenses are for services in connection with the care, treatment, filling,

removal, or replacement of teeth or structures directly supporting teeth, except that pay-

ment may be made under part A of this sub-

chapter in the case of inpatient hospital serv-

ices in connection with the provision of such
dental services if the individual, because of his
underlying medical condition and clinical
status or because of the severity of the dental
procedure, requires hospitalization in connec-
tion with the provision of such services;

(13) where such expenses are for-

(A) the treatment of flat foot conditions
and the prescription of supportive devices
therefor,

(B) the treatment of subluxations of the
foot, or

(C) routine foot care (including the cutting
or removal of corns or calluses, the trim-
ing of nails, and other routine hygienic
care);

(14) which are other than physicians’ serv-

ices (as defined in regulations promulgated
specifically for purposes of this paragraph),
services described by section 1395x(s)(2)(K)
of this title, certified nurse-midwife services,
qualified psychologist services, and services of
a certified registered nurse anesthetist, and
which are furnished to an individual who is a
patient of a hospital or critical access hospital
by an entity other than the hospital or critical
access hospital, unless the services are fur-
nished under arrangements (as defined in sec-
tion 1395x(w)(1) of this title) with the entity
made by the hospital or critical access hosp-
ital;

(15)(A) which are for services of an assistant
at surgery in a cataract operation (including
subsequent insertion of an intracocular lens)
unless, before the surgery is performed, the
appropriate quality improvement organization
(under part B of subchapter XI of this chapter)
or a carrier under section 1395a of this title
has approved of the use of such an assistant
in the surgical procedure based on the existence
of a complicating medical condition, or

(B) which are for services of an assistant at
surgery to which section 1395w–4(1)(2)(B) of
this title applies;

(16) in the case in which funds may not be
used for such items and services under the As-
sisted Suicide Funding Restriction Act of 1997
[42 U.S.C. 14401 et seq.];

(17) where the expenses are for an item or
service furnished in a competitive acquisition
area (as established by the Secretary under
section 1395w–3(a) of this title) by an entity
other than an entity with which the Secretary
has entered into a contract under section
1395w–3(b) of this title for the furnishing of
such an item or service in that area, unless
the Secretary finds that the expenses were in-
curred in a case of urgent need, or in other cir-
cumstances specified by the Secretary;

(18) which are covered skilled nursing fac-

ility services described in section 1395yy(e)(2)(A)(i) of this title and which are
furnished to an individual who is a resident of
a skilled nursing facility during a period in
which the resident is provided covered post-
hospital extended care services (or, for serv-
ices described in section 1395x(s)(2)(D) of this
title, which are furnished to such an individ-
ual without regard to such period), by an en-
tity other than the skilled nursing facility,
unless the services are furnished under ar-
rangements (as defined in section 1395x(w)(1)
of this title) with the entity made by the
skilled nursing facility;

(19) which are for items or services which are
furnished pursuant to a private contract de-
scribed in section 1395aa(b) of this title;

(20) in the case of outpatient physical ther-

apy services, outpatient speech-language pa-
thology services, or outpatient occupational
therapy services furnished as an incident to
a physician’s professional services (as described
in section 1395x(s)(2)(A) of this title), that
do not meet the standards and conditions (other
than any licensing requirement specified by
the Secretary) under the second sentence of
section 1395x(p) of this title (or under such
sentence through the operation of subsection
(g) or (h)(2) of section 1395x of this title) as
such standards and conditions would apply to
such therapy services if furnished by a ther-
papist;

(21) where such expenses are for home health
services (including medical supplies described
in section 1395x(m)(5) of this title, but exclud-
ing durable medical equipment to the extent
provided for in such section) furnished to an
individual who is under a plan of care of the
home health agency if the claim for payment
for such services is not submitted by the agen-
cy;

(22) subject to subsection (h) of this section,
for which a claim is submitted other than in
an electronic form specified by the Secretary;

(23) which are the technical component of
advanced diagnostic imaging services de-
scribed in section 1395m(e)(1)(B) of this title
for which payment is made under the fee
schedule established under section 1395w–4(b)
of this title and that are furnished by a sup-
plier (as defined in section 1395x(d) of this
title), if such supplier is not accredited by an
accreditation organization designated by the
Secretary under section 1395m(e)(2)(B) of this
title;

(24) where such expenses are for renal dial-
ysis services (as defined in subparagraph (B)
of section 1395rr(b)(14) of this title) for which
payment is made under such section unless
such payment is made under such section to a
provider of services or a renal dialysis facility
for such services; or

(25) not later than January 1, 2014, for which
the payment is other than by electronic funds
transfer (EFT) or an electronic remittance in
Paragraph (7) shall not apply to Federally qualified health center services described in section 1395x(aa)(3)(B) of this title. In making a national coverage determination (as defined in paragraph (1)(B) of section 1395ff(f) of this title) the Secretary shall ensure consistent with subsection 1395x(aa)(3)(B) of this title. In making a national coverage determination, the Secretary shall ensure consistent with subsection (i) of this section that the public is afforded notice and opportunity to comment prior to implementation by the Secretary of the determination; meetings of advisory committees with respect to the determination are made on the record; in making the determination, the Secretary has considered applicable information (including clinical experience and medical, technical, and scientific evidence) with respect to the subject matter of the determination; and in the determination, provide a clear statement of the basis for the determination (including responses to comments received from the public), the assumptions underlying that basis, and make available to the public the data (other than proprietary data) considered in making the determination.

(b) Medicare as secondary payer

(1) Requirements of group health plans

(A) Working aged under group health plans

(i) In general

A group health plan—

(I) may not take into account that an individual (or the individual’s spouse) who is covered under the plan by virtue of the individual’s current employment status with an employer is entitled to benefits under this subchapter under section 426(a) of this title, and

(II) shall provide that any individual age 65 or older (and the spouse age 65 or older of any individual) who has current employment status with an employer shall be entitled to the same benefits under the plan under the same conditions as any such individual (or spouse) under age 65.

(ii) Exclusion of group health plan of a small employer

Clause (i) shall not apply to a group health plan unless the plan is a plan of, or contributed to by, an employer that has 20 or more employees for each working day in each of 20 or more calendar weeks in the current calendar year or the preceding calendar year.

(iii) Exception for small employers in multiemployer or multiple employer group health plans

Clause (i) also shall not apply with respect to individuals enrolled in a multiemployer or multiple employer group health plan if the coverage of the individuals under the plan is by virtue of current employment status with an employer that does not have 20 or more individuals in current employment status for each working day in each of 20 or more calendar weeks in the current calendar year and the preceding calendar year; except that the exception provided in this clause shall only apply if the plan elects treatment under this clause.

(iv) Exception for individuals with end stage renal disease

Subparagraph (C) shall apply instead of clause (i) to an item or service furnished in a month to an individual if for the month the individual is, or (without regard to entitlement under section 426 of this title) would upon application be, entitled to benefits under section 426–1 of this title.

(v) “Group health plan” defined

In this subparagraph, and subparagraph (C), the term “group health plan” has the meaning given such term in section 5000(b)(1) of the Internal Revenue Code of 1986, without regard to section 5000(d) of such Code.

(B) Disabled individuals in large group health plans

(i) In general

A large group health plan (as defined in clause (iii)) may not take into account that an individual (or a member of the individual’s family) who is covered under the plan by virtue of the individual’s current employment status with an employer is entitled to benefits under this subchapter under section 426(b) of this title.

(ii) Exception for individuals with end stage renal disease

Subparagraph (C) shall apply instead of clause (i) to an item or service furnished in a month to an individual if for the month the individual is, or (without regard to entitlement under section 426 of this title) would upon application be, entitled to benefits under section 426–1 of this title.

(iii) “Large group health plan” defined

In this subparagraph, the term “large group health plan” has the meaning given such term in section 5000(b)(2) of the Internal Revenue Code of 1986, without regard to section 5000(d) of such Code.

(C) Individuals with end stage renal disease

A group health plan (as defined in subparagraph (A)(v))—

(i) may not take into account that an individual is entitled to or eligible for benefits under this subchapter under section 426–1 of this title during the 12-month period which begins with the first month in which the individual becomes entitled to benefits under part A of this subchapter under the provisions of section 426–1 of this title, or, if earlier, the first month in which the individual would have been entitled to benefits under such part under the provisions of section 426–1 of this title if the individual had filed an application for such benefits; and

(ii) may not differentiate in the benefits it provides between individuals having end stage renal disease and other individuals covered by such plan on the basis of the
existence of end stage renal disease, the need for renal dialysis, or in any other manner;
except that clause (ii) shall not prohibit a plan from paying benefits secondary to this subchapter when an individual is entitled to or eligible for benefits under this subchapter under section 426–1 of this title after the end of the 12-month period described in clause (i). Effective for items and services furnished on or after February 1, 1991, and before August 5, 1997,^2^ (with respect to periods beginning on or after February 1, 1990), this subparagraph shall be applied by substituting “18-month” for “12-month” each place it appears. Effective for items and services furnished on or after August 5, 1997,^2^ (with respect to periods beginning on or after the date that is 18 months prior to August 5, 1997), clauses (i) and (ii) shall be applied by substituting “30-month” for “12-month” each place it appears.

(D) Treatment of certain members of religious orders
In this subsection, an individual shall not be considered to be employed, or an employee, with respect to the performance of services as a member of a religious order which are considered employment only by virtue of an election made by the religious order under section 3121(r) of the Internal Revenue Code of 1986.

(E) General provisions
For purposes of this subsection:
(i) Aggregation rules
(I) All employers treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as a single employer.
(II) All employees of the members of an affiliated service group (as defined in section 414(m) of such Code) shall be treated as employed by a single employer.
(III) Leased employees (as defined in section 414(n)(2) of such Code) shall be treated as employees of the person for whom they perform services to the extent they are so treated under section 414(n) of such Code.

In applying sections of the Internal Revenue Code of 1986 under this clause, the Secretary shall rely upon regulations and decisions of the Secretary of the Treasury respecting such sections.
(ii) “Current employment status” defined
An individual has “current employment status” with an employer if the individual is an employee, is the employer, or is associated with the employer in a business relationship.
(iii) Treatment of self-employed persons as employers
The term “employer” includes a self-employed person.

(F) Limitation on beneficiary liability
An individual who is entitled to benefits under this subchapter and is furnished an item or service for which such benefits are incorrectly paid is not liable for repayment of such benefits under this paragraph unless payment of such benefits was made to the individual.

(2) Medicare secondary payer
(A) In general
Payment under this subchapter may not be made, except as provided in subparagraph (B), with respect to any item or service to the extent that—
(i) payment has been made, or can reasonably be expected to be made, with respect to the item or service as required under paragraph (1), or
(ii) payment has been made or can reasonably be expected to be made under a workmen’s compensation law or plan of the United States or a State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance.

In this subsection, the term “primary plan” means a group health plan or large group health plan, to the extent that clause (i) applies, and a workmen’s compensation law or plan, an automobile or liability insurance policy or plan (including a self-insured plan) or no fault insurance, to the extent that clause (ii) applies. An entity that engages in a business, trade, or profession shall be deemed to have a self-insured plan if it carries its own risk (whether by a failure to obtain insurance, or otherwise) in whole or in part.

(B) Conditional payment
(i) Authority to make conditional payment
The Secretary may make payment under this subchapter with respect to an item or service if a primary plan described in subparagraph (A)(ii) has not made or cannot reasonably be expected to make payment with respect to such item or service promptly (as determined in accordance with regulations). Any such payment by the Secretary shall be conditioned on reimbursement to the appropriate Trust Fund in accordance with the succeeding provisions of this subsection.
(ii) Repayment required
A primary plan, and an entity that receives payment from a primary plan, shall reimburse the appropriate Trust Fund for any payment made by the Secretary under this subchapter with respect to an item or service if it is demonstrated that such primary plan has or had a responsibility to make payment with respect to such item or service. A primary plan’s responsibility for such payment may be demonstrated by a judgment, a payment conditioned upon the recipient’s compromise, waiver, or re-
lease (whether or not there is a determination or admission of liability) of payment for items or services included in a claim against the primary plan or the primary plan’s insured, or by other means. If reimbursement is not made to the appropriate Trust Fund before the expiration of the 60-day period that begins on the date notice of, or information related to, a primary plan’s responsibility for such payment or other information is received, the Secretary may charge interest (beginning with the date on which the notice or other information is received) on the amount of the reimbursement until reimbursement is made (at a rate determined by the Secretary in accordance with regulations of the Secretary of the Treasury applicable to charges for late payments).

(iii) Action by United States

In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any or all entities that are or were required or responsible (directly, as an insurer or self-insurer, as a third-party administrator, as an employer that sponsors or contributes to a group health plan, or large group health plan, or otherwise) to make payment with respect to the same item or service (or any portion thereof) under a primary plan. The United States may, in accordance with paragraph (3)(A), collect double damages against any such entity. In addition, the United States may recover under this clause from any entity that has received payment from a primary plan or from the proceeds of a primary plan’s payment to any entity. The United States may not recover from a third-party administrator under this clause in cases where the third-party administrator would not be able to recover the amount at issue from the employer or group health plan and is not employed by or under contract with the employer or group health plan at the time the action for recovery is initiated by the United States or for whom it provides administrative services due to the insolvency or bankruptcy of the employer or plan.

(iv) Subrogation rights

The United States shall be subrogated (to the extent of payment made under this subchapter for such an item or service) to any right under this subsection of an individual or any other entity to payment with respect to such item or service under a primary plan.

(v) Waiver of rights

The Secretary may waive (in whole or in part) the provisions of this subparagraph in the case of an individual claim if the Secretary determines that the waiver is in the best interests of the program established under this subchapter.

(vi) Claims-filing period

Notwithstanding any other time limits that may exist for filing a claim under an employer group health plan, the United States may seek to recover conditional payments in accordance with this subparagraph where the request for payment is submitted to the entity required or responsible under this section to pay with respect to the item or service (or any portion thereof) under a primary plan within the 3-year period beginning on the date on which the item or service was furnished.

(C) Treatment of questionnaires

The Secretary may not fail to make payment under subparagraph (A) solely on the ground that an individual failed to complete a questionnaire concerning the existence of a primary plan.

(3) Enforcement

(A) Private cause of action

There is established a private cause of action for damages (which shall be in an amount double the amount otherwise provided) in the case of a primary plan which fails to provide for primary payment (or appropriate reimbursement) in accordance with paragraphs (1) and (2)(A).

(B) Reference to excise tax with respect to nonconforming group health plans

For provision imposing an excise tax with respect to nonconforming group health plans, see section 5000 of the Internal Revenue Code of 1986.

(C) Prohibition of financial incentives not to enroll in a group health plan or a large group health plan

It is unlawful for an employer or other entity to offer any financial or other incentive for an individual entitled to benefits under this subchapter not to enroll (or to terminate enrollment) under a group health plan or a large group health plan which would (in the case of such enrollment) be a primary plan (as defined in paragraph (2)(A)). Any entity that violates the previous sentence is subject to a civil money penalty of not to exceed $5,000 for each such violation. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(4) Coordination of benefits

Where payment for an item or service by a primary plan is less than the amount of the charge for such item or service and is not payment in full, payment may be made under this subchapter (without regard to deductibles and coinsurance under this subchapter) for the remainder of such charge, but—

(A) payment under this subchapter may not exceed an amount which would be payable under this subchapter for such item or service if paragraph (2)(A) did not apply; and

(B) payment under this subchapter, when combined with the amount payable under the primary plan, may not exceed—
(i) in the case of an item or service payment for which is determined under this subchapter on the basis of reasonable cost (or other cost-related basis) or under section 1395ww of this title, the amount which would be payable under this subchapter on such basis, and
(ii) in the case of an item or service for which payment is authorized under this subchapter on another basis—
(I) the amount which would be payable under the primary plan (without regard to deductibles and coinsurance under such plan), or
(II) the reasonable charge or other amount which would be payable under this subchapter (without regard to deductibles and coinsurance under this subchapter), whichever is greater.

(5) Identification of secondary payer situations

(A) Requesting matching information

(i) Commissioner of Social Security

The Commissioner of Social Security shall, not less often than annually, transmit to the Secretary of the Treasury a list of the names and TINs of medicare beneficiaries (as defined in section 6103(l)(12) of the Internal Revenue Code of 1986) and request that the Secretary disclose to the Commissioner the information described in subparagraph (A) of such section.

(ii) Administrator

The Administrator of the Centers for Medicare & Medicaid Services shall request, not less often than annually, the Commissioner of the Social Security Administration to disclose to the Administrator the information described in subparagraph (B) of section 6103(l)(12) of the Internal Revenue Code of 1986.

(B) Disclosure to fiscal intermediaries and carriers

In addition to any other information provided under this subchapter to fiscal intermediaries and carriers, the Administrator shall disclose to such intermediaries and carriers (or to such a single intermediary or carrier as the Secretary may designate) the information received under subparagraph (A) for purposes of carrying out this subsection.

(C) Contacting employers

(i) In general

With respect to each individual (in this subparagraph referred to as an “employee”) who was furnished a written statement under section 6051 of the Internal Revenue Code of 1986 by a qualified employer (as defined in section 6103(l)(12)(E)(i)(II) of such Code), as disclosed under subparagraph (B), the appropriate fiscal intermediary or carrier shall contact the employer in order to determine during what period the employee or employee’s spouse may be (or have been) covered under a group health plan of the employer and the nature of the coverage that is or was provided under the plan (including the name, address, and identifying number of the plan).

(ii) Employer response

Within 30 days of the date of receipt of the inquiry, the employer shall notify the intermediary or carrier making the inquiry as to the determinations described in clause (i). An employer (other than a Federal or other governmental entity) who willfully or repeatedly fails to provide timely and accurate notice in accordance with the previous sentence shall be subject to a civil money penalty of not to exceed $1,000 for each individual with respect to which such an inquiry is made. The provisions of section 1320a-7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a-7a(a) of this title.

(D) Obtaining information from beneficiaries

Before an individual applies for benefits under part A of this subchapter or enrolls under part B of this subchapter, the Administrator shall mail the individual a questionnaire to obtain information on whether the individual is covered under a primary plan and the nature of the coverage provided under the plan, including the name, address, and identifying number of the plan.

(6) Screening requirements for providers and suppliers

(A) In general

Notwithstanding any other provision of this subchapter, no payment may be made for any item or service furnished under part B of this subchapter unless the entity furnishing such item or service completes (to the best of its knowledge and on the basis of information obtained from the individual to whom the item or service is furnished) the portion of the claim form relating to the availability of other health benefit plans.

(B) Penalties

An entity that knowingly, willfully, and repeatedly fails to complete a claim form in accordance with subparagraph (A) or provides inaccurate information relating to the availability of other health benefit plans on a claim form under such subparagraph shall be subject to a civil money penalty of not to exceed $2,000 for each such incident. The provisions of section 1320a-7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a-7a(a) of this title.

(7) Required submission of information by group health plans

(A) Requirement

On and after the first day of the first calendar quarter beginning after the date that is 1 year after December 29, 2007, an entity serving as an insurer or third party adminis-
trator for a group health plan, as defined in paragraph (1)(A)(v), and, in the case of a group health plan that is self-insured and self-administered, a plan administrator or fiduciary, shall—
(i) secure from the plan sponsor and plan participants such information as the Secretary shall specify for the purpose of identifying situations where the group health plan is or has been a primary plan to the program under this subchapter; and
(ii) submit such information to the Secretary in a form and manner (including frequency) specified by the Secretary.

(B) Enforcement

(i) In general
An entity, a plan administrator, or a fiduciary described in subparagraph (A) that fails to comply with the requirements under such subparagraph shall be subject to a civil money penalty of $1,000 for each day of noncompliance for each individual for which the information under such subparagraph should have been submitted. The provisions of subsections (e) and (k) of section 1320a–7a of this title shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. A civil money penalty under this clause shall be in addition to any other penalties prescribed by law and in addition to any Medicare secondary payer claim under this subchapter with respect to an individual.

(ii) Deposit of amounts collected
Any amounts collected pursuant to clause (i) shall be deposited in the Federal Hospital Insurance Trust Fund under section 1395i of this title.

(C) Sharing of information
Notwithstanding any other provision of law, under terms and conditions established by the Secretary, the Secretary—
(i) shall share information on entitlement under part A and enrollment under part B under this subchapter with entities, plan administrators, and fiduciaries described in subparagraph (A);
(ii) may share the entitlement and enrollment information described in clause (i) with entities and persons not described in such clause; and
(iii) may share information collected under this paragraph as necessary for purposes of the proper coordination of benefits.

(D) Implementation
Notwithstanding any other provision of law, the Secretary may implement this paragraph by program instruction or otherwise.

(8) Required submission of information by or on behalf of liability insurance (including self-insurance), no fault insurance, and workers' compensation laws and plans

(A) Requirement
On and after the first day of the first calendar quarter beginning after the date that is 18 months after December 29, 2007, an applicable plan shall—
(i) determine whether a claimant (including an individual whose claim is unresolved) is entitled to benefits under the program under this subchapter on any basis; and
(ii) if the claimant is determined to be so entitled, submit the information described in subparagraph (B) with respect to the claimant to the Secretary in a form and manner (including frequency) specified by the Secretary.

(B) Required information
The information described in this subparagraph is—
(i) the identity of the claimant for which the determination under subparagraph (A) was made; and
(ii) such other information as the Secretary shall specify in order to enable the Secretary to make an appropriate determination concerning coordination of benefits, including any applicable recovery claim.

(C) Timing
Information shall be submitted under subparagraph (A)(ii) within a time specified by the Secretary after the claim is resolved through a settlement, judgment, award, or other payment (regardless of whether or not there is a determination or admission of liability).

(D) Claimant
For purposes of subparagraph (A), the term "claimant" includes—
(i) an individual filing a claim directly against the applicable plan; and
(ii) an individual filing a claim against an individual or entity insured or covered by the applicable plan.

(E) Enforcement
(i) In general
An applicable plan that fails to comply with the requirements under subparagraph (A) with respect to any claimant shall be subject to a civil money penalty of $1,000 for each day of noncompliance with respect to each claimant. The provisions of subsections (e) and (k) of section 1320a–7a of this title shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. A civil money penalty under this clause shall be in addition to any other penalties prescribed by law and in addition to any Medicare secondary payer claim under this subchapter with respect to an individual.

(ii) Deposit of amounts collected
Any amounts collected pursuant to clause (i) shall be deposited in the Federal Hospital Insurance Trust Fund.

(F) Applicable plan
In this paragraph, the term "applicable plan" means the following laws, plans, or
other arrangements, including the fiduciary or administrator for such law, plan, or arrangement:

(i) Liability insurance (including self-insurance).
(ii) No fault insurance.
(iii) Workers’ compensation laws or plans.

(G) Sharing of information

The Secretary may share information collected under this paragraph as necessary for purposes of the proper coordination of benefits.

(H) Implementation

Notwithstanding any other provision of law, the Secretary may implement this paragraph by program instruction or otherwise.

(c) Drug products

No payment may be made under part B of this subchapter for any expenses incurred for—

(1) a drug product—
   (A) which is described in section 107(c)(3) of the Drug Amendments of 1962.
   (B) which may be dispensed only upon prescription,
   (C) for which the Secretary has issued a notice of an opportunity for a hearing under subsection (e) of section 355 of title 21 on a proposed order of the Secretary to withdraw approval of an application for such drug product under such section because the Secretary has determined that the drug is less than effective for all conditions of use prescribed, recommended, or suggested in its labeling, and
   (D) for which the Secretary has not determined there is a compelling justification for its medical need; and
(2) any other drug product—
   (A) which is identical, related, or similar (as determined in accordance with section 310.6 of title 21 of the Code of Federal Regulations) to a drug product described in paragraph (1), and
   (B) for which the Secretary has not determined there is a compelling justification for its medical need,

until such time as the Secretary withdraws such proposed order.

(d) Items or services provided for emergency medical conditions

For purposes of subsection (a)(1)(A) of this section, in the case of any item or service that is required to be provided pursuant to section 1983(k) of this title to an individual who is entitled to benefits under this subchapter, determinations as to whether the item or service is reasonable and necessary shall be made on the basis of the information available to the treating physician or practitioner (including the patient’s presenting symptoms or complaint) at the time the item or service was ordered or furnished by the physician or practitioner (and not on the patient’s principal diagnosis). When making such determinations with respect to such an item or service, the Secretary shall not consider the frequency with which the item or service was provided to the patient before or after the time of the admission or visit.

(e) Item or service by excluded individual or entity or at direction of excluded physician; limitation of liability of beneficiaries with respect to services furnished by excluded individuals and entities

(1) No payment may be made under this subchapter with respect to any item or service (other than an emergency item or service, not including items or services furnished in an emergency room of a hospital) furnished—
   (A) by an individual or entity during the period when such individual or entity is excluded pursuant to section 1320a–7, 1320a–7a, 1320c–5 or 1395u(j)(2) of this title from participation in the program under this subchapter; or
   (B) at the medical direction or on the prescription of a physician during the period when he is excluded pursuant to section 1320a–7, 1320a–7a, 1320c–5 or 1395u(j)(2) of this title from participation in the program under this subchapter and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person).

(2) Where an individual eligible for benefits under this subchapter submits a claim for payment for items or services furnished by an individual or entity excluded from participation in the programs under this subchapter, pursuant to section 1320a–7, 1320a–7a, 1320c–5, 1320c–9 (as in effect on September 2, 1982), 1395u(j)(2), 1395y(d) (as in effect on August 18, 1987), or 1395cc of this title, and such beneficiary did not know or have reason to know that such individual or entity was so excluded, then, to the extent permitted by this subchapter, and notwithstanding such exclusion, payment shall be made for such items or services. In each such case the Secretary shall notify the beneficiary of the exclusion of the individual or entity furnishing the items or services. Payment shall not be made for items or services furnished by an excluded individual or entity to a beneficiary after a reasonable time (as determined by the Secretary in regulations) after the Secretary has notified the beneficiary of the exclusion of that individual or entity.

(f) Utilization guidelines for provision of home health services

The Secretary shall establish utilization guidelines for the determination of whether or not payment may be made, consistent with paragraph (1)(A) of subsection (a) of this section, under part A or part B of this subchapter for expenses incurred with respect to the provision of home health services, and shall provide for the implementation of such guidelines through a process of selective postpayment coverage review by intermediaries or otherwise.

(g) Contracts with quality improvement organizations

The Secretary shall, in making the determinations under paragraphs (1) and (9) of subsection (a) of this section, and for the purposes of promoting the effective, efficient, and economical
delivery of health care services, and of promoting the quality of services of the type for which payment may be made under this subchapter, enter into contracts with quality improvement organizations pursuant to part B of subchapter XI of this chapter.

(h) Waiver of electronic form requirement

(1) The Secretary—

(A) shall waive the application of subsection (a)(22) of this section in cases in which—

(i) there is no method available for the submission of claims in an electronic form; or

(ii) the entity submitting the claim is a small provider of services or supplier; and

(B) may waive the application of such subsection in such unusual cases as the Secretary finds appropriate.

(2) For purposes of this subsection, the term "small provider of services or supplier" means—

(A) a provider of services with fewer than 25 full-time equivalent employees; or

(B) a physician, practitioner, facility, or supplier (other than provider of services) with fewer than 10 full-time equivalent employees.

(i) Awards and contracts for original research and experimentation of new and existing medical procedures; conditions

In order to supplement the activities of the Medicare Payment Advisory Commission under section 1395ww(e) of this title in assessing the safety, efficacy, and cost-effectiveness of new and existing medical procedures, the Secretary may carry out, or award grants or contracts for, original research and experimentation of the type described in clause (ii) of section 1395ww(e)(6)(E) of this title with respect to such a procedure if the Secretary finds that—

(1) such procedure is not of sufficient commercial value to justify research and experimentation by a commercial organization;

(2) research and experimentation with respect to such procedure is not of a type that may appropriately be carried out by an institution, division, or bureau of the National Institutes of Health; and

(3) such procedure has the potential to be more cost-effective in the treatment of a condition than procedures currently in use with respect to such condition.

(j) Nonvoting members and experts

(1) Any advisory committee appointed to advise the Secretary on matters relating to the interpretation, application, or implementation of subsection (a)(1) of this section shall assure the full participation of a nonvoting member in the deliberations of the advisory committee, and shall provide such nonvoting member access to all information and data made available to voting members of the advisory committee, other than information that—

(A) is exempt from disclosure pursuant to subsection (a) of section 552 of title 5 by reason of subsection (b)(4) of such section (relating to trade secrets); or

(B) the Secretary determines would present a conflict of interest relating to such nonvoting member.

(2) If an advisory committee described in paragraph (1) organizes into panels of experts according to types of items or services considered by the advisory committee, any such panel of experts may report any recommendation with respect to such items or services directly to the Secretary without the prior approval of the advisory committee or an executive committee thereof.

(k) Dental benefits under group health plans

(1) Subject to paragraph (2), a group health plan (as defined in subsection (a)(1)(A)(v) of this section) providing supplemental or secondary coverage to individuals also entitled to services under this subchapter shall not require a medicare claims determination under this subchapter for dental benefits specifically excluded under subsection (a)(12) of this section as a condition of making a claims determination for such benefits under the group health plan.

(2) A group health plan may require a claims determination under this subchapter in cases involving or appearing to involve inpatient dental hospital services or dental services expressly covered under this subchapter pursuant to actions taken by the Secretary.

(l) National and local coverage determination process

(1) Factors and evidence used in making national coverage determinations

The Secretary shall make available to the public the factors considered in making national coverage determinations of whether an item or service is reasonable and necessary. The Secretary shall develop guidance documents to carry out this paragraph in a manner similar to the development of guidance documents under section 371(h) of title 21.

(2) Timeframe for decisions on requests for national coverage determinations

In the case of a request for a national coverage determination that—

(A) does not require a technology assessment from an outside entity or deliberation from the Medicare Coverage Advisory Committee, the decision on the request shall be made not later than 6 months after the date of the request; or

(B) requires such an assessment or deliberation and in which a clinical trial is not requested, the decision on the request shall be made not later than 9 months after the date of the request.

(3) Process for public comment in national coverage determinations

(A) Period for proposed decision

Not later than the end of the 6-month period (or 9-month period for requests described in paragraph (2)(B)) that begins on the date a request for a national coverage determination is made, the Secretary shall make a draft of proposed decision on the request available to the public through the Internet website of the Centers for Medicare & Medicaid Services or other appropriate means.

*So in original. Probably should be "(b)(1)(A)(v)".

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(B) 30-day period for public comment

Beginning on the date the Secretary makes a draft of the proposed decision available under subparagraph (A), the Secretary shall provide a 30-day period for public comment on such draft.

(C) 60-day period for final decision

Not later than 60 days after the conclusion of the 30-day period referred to under subparagraph (B), the Secretary shall—

(i) make a final decision on the request;

(ii) include in such final decision summaries of the public comments received and responses to such comments;

(iii) make available to the public the clinical evidence and other data used in making such a decision when the decision differs from the recommendations of the Medicare Coverage Advisory Committee; and

(iv) in the case of a final decision under clause (i) to grant the request for the national coverage determination, the Secretary shall assign a temporary or permanent code (whether existing or unclassified) and implement the coding change.

(4) Consultation with outside experts in certain national coverage determinations

With respect to a request for a national coverage determination for which there is not a review by the Medicare Coverage Advisory Committee, the Secretary shall consult with appropriate outside clinical experts.

(5) Local coverage determination process

(A) Plan to promote consistency of coverage determinations

The Secretary shall develop a plan to evaluate new local coverage determinations to determine which determinations should be adopted nationally and to what extent greater consistency can be achieved among local coverage determinations.

(B) Consultation

The Secretary shall require the fiscal intermediaries or carriers providing services within the same area to consult on all new local coverage determinations within the area.

(C) Dissemination of information

The Secretary should serve as a center to disseminate information on local coverage determinations among fiscal intermediaries and carriers to reduce duplication of effort.

(6) National and local coverage determination defined

For purposes of this subsection—

(A) National coverage determination

The term "national coverage determination" means a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under this subchapter.

(B) Local coverage determination

The term "local coverage determination" has the meaning given that in section 1395ff(f)(2)(B) of this title.

(m) Coverage of routine costs associated with certain clinical trials of category A devices

(1) In general

In the case of an individual entitled to benefits under part A of this subchapter, or enrolled under part B of this subchapter, or both who participates in a category A clinical trial, the Secretary shall not exclude under subsection (a)(1) of this section payment for coverage of routine costs of care (as defined by the Secretary) furnished to such individual in the trial.

(2) Category A clinical trial

For purposes of paragraph (1), a "category A clinical trial" means a trial of a medical device if—

(A) the trial is of an experimental/investigational (category A) medical device (as defined in regulations under section 405.201(b) of title 42, Code of Federal Regulations (as in effect as of September 1, 2003));

(B) the trial meets criteria established by the Secretary to ensure that the trial conforms to appropriate scientific and ethical standards; and

(C) in the case of a trial initiated before January 1, 2010, the device involved in the trial has been determined by the Secretary to be intended for use in the diagnosis, monitoring, or treatment of an immediately life-threatening disease or condition.

(n) Requirement of a surety bond for certain providers of services and suppliers

(1) In general

The Secretary may require a provider of services or supplier described in paragraph (2) to provide the Secretary on a continuing basis with a surety bond in a form specified by the Secretary in an amount (not less than $50,000) that the Secretary determines is commensurate with the volume of the billing of the provider of services or supplier. The Secretary may waive the requirement of a bond under the preceding sentence in the case of a provider of services or supplier that provides a comparable surety bond under State law.

(2) Provider of services or supplier described

A provider of services or supplier described in this paragraph is a provider of services or supplier the Secretary determines appropriate based on the level of risk involved with respect to the provider of services or supplier, and consistent with the surety bond requirements under sections 1395m(a)(16)(B) and 1395x(o)(7)(C) of this title.

(o) Suspension of payments pending investigation of credible allegations of fraud

(1) In general

The Secretary may suspend payments to a provider of services or supplier under this subchapter pending an investigation of a credible allegation of fraud against the provider of services or supplier, unless the Secretary determines there is good cause not to suspend such payments.

(2) Consultation

The Secretary shall consult with the Inspector General of the Department of Health and
Human Services in determining whether there is a credible allegation of fraud against a provider of services or supplier.

(3) **Promulgation of regulations**

The Secretary shall promulgate regulations to carry out this subsection and section 1396w(i)(2)(C) of this title.


2008—Subsec. (a)(1)(A). Pub. L. 110–275, § 101(a)(3), inserted “or additional preventive services (as described in section 1395x(dd)(1) of this title)” after “succeeding subparagraph”.

Subsec. (a)(1)(K). Pub. L. 110–275, § 101(b)(3), substituted “more” for “not later” and “1 year” for “6 months”.


Subsec. (a)(20). Pub. L. 110–275, § 143(b)(7), substituted “outpatient physical therapy services, outpatient speech-language pathology services, or outpatient occupational therapy services” for “outpatient physical therapy services, outpatient speech-language pathology services, or outpatient occupational therapy services or outpatient physical therapy services” and “subsection (g)” for “subsection (g) or (h)” of section 1395x(c) for “section 1395x(c)”.


Pub. L. 108–173, § 731(a)(1)(A), inserted “consistent with subsection (I) of this section” after “the Secretary shall ensure” in concluding provisions.


Subsec. (a)(7). Pub. L. 108–173, § 611(d)(1)(B), substituted “(H), or (K)” for “or (H)”.


Subsec. (b)(2)(A). Pub. L. 108–173, § 301(b)(1), inserted at end of concluding provisions “An entity that engages in a business, trade, or profession shall be deemed to have a self-insured plan if it carries its own risk in a business, trade, or profession”.

Subsec. (b)(2)(A)(iv). Pub. L. 108–173, § 301(a)(2)(A), struck out “promptly (as determined in accordance with regulations)” after “be expected to be made”.


Subsec. (b)(2)(B)(ii). Pub. L. 108–173, § 301(b)(2), substituted “A primary plan, and an entity that receives that payment for such item or service has been or could be made under such subparagraph” and “on the date such notice or other information is received” for “on the date such notice or other information is received”.


Subsec. (b)(2)(B)(iii). Pub. L. 108–173, § 301(b)(3), substituted “In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any or all entities that are or were required or responsible (directly, as an insurer or self-insurer, as a third-party administrator, as an employer that sponsors or contributes to a group health plan, or large group health plan, or otherwise)” to make payment with respect to the same item or service (or any portion thereof) under a primary plan. The United States may, in accordance with paragraph (3)(A) collect double damages against any such entity. In addition, the United States may recover under this clause from any entity that has received payment from a primary plan or from the proceeds of a primary plan’s payment to any entity.” for “In order to recover payment under this subchapter for such an item or service, the United States may bring an action against any entity which is required or responsible (directly, as a third-party administrator, or otherwise) to make payment with respect to such item or service (or any portion thereof) under a primary plan (and may, in accordance with paragraph (3)(A) collect double damages against that entity), or against any other entity (including any physician or provider) that has received payment from that entity with respect to the item or service, and may join or intervene in any action to the events that gave rise to the need for the item or service.”.


Subsec. (b)(2)(B)(iv) to (vi). Pub. L. 108–173, § 301(a)(2)(A), redesignated cl. (iv) as (v) and (v) as (vi), respectively.


Subsec. (j)(1). Pub. L. 108–173, § 1948(a)(2)(B), in introductory provisions, struck out “under subsection (f) of this section” after “appointed” and substituted “subsection (a)(1) of this section” for “section 1395ff(a)(1) of this title”.


2000—Subsec. (a). Pub. L. 106–554, § 1(a)(6) [title V, § 522(b)], inserted at end “In making a national coverage determination (as defined in paragraph (1)(B) of section 1395ff(f) of this title) the Secretary shall ensure that the public is afforded notice and opportunity to comment prior to implementation by the Secretary of the determination; meetings of advisory committees established under section 1314(f) of this title with respect to the determination are made available to the public, and in making the determination, the Secretary has considered applicable information (including clinical evidence and medical, technical, and scientific evidence) with respect to the subject matter of the determination; and in the determination, provide a clear statement of the basis for the determination (including responses to comments received from the public), the assumptions underlying that basis, and make available to
the public the data (other than proprietary data) considered in making the determination.''

Subsec. (a)(1)(F). Pub. L. 106–554, § 1(a)(6) (title I, § 4322(b)(1)), struck out second comma after "section 1395m(a)(1)(B) of this title," and inserted at end "and, in the case of screening for glaucoma, which is performed more frequently than is provided under section 1395xx(a)(1)(B) of this title,".

Subsec. (a)(3). Pub. L. 106–554, § 1(a)(6) (title IV, § 4322(b)(1)), struck out second comma after "section 1395xx(a)(1)(B) of this title" and inserted "in the case of services for which payment may be made under section 1395qq(e) of this title," after "section 1395xx(a)(3) of this title,"


Subsec. (a)(21). Pub. L. 106–113, § 1009(a)(6) (title III, § 313(a)), substituted "(includ[ed medical supplies described in section 1395mm(5) of this title, but excluding durable medical equipment to the extent provided for in such section)" after "home health services"


Subsec. (b)(1)(F). Pub. L. 105–33, § 412(e), inserted "and screening pelvic exam" after "screening pap smear".


Subsec. (a)(7). Pub. L. 105–33, § 410(c)(3)(B), substituted "(G), or (H)" for "or (G)"

Subsec. (a)(8). Pub. L. 105–33, § 410(c)(4)(B), substituted "subparagraphs (B), (F), or (G) of paragraph (1)" for "paragraph (1)(B) or under paragraph (1)(F)".

Subsec. (a)(14). Pub. L. 105–33, § 4511(a)(2)(C), substituted "section 1395m(a)(2)(K) of this title" for "section 1395m(a)(2)(K)(i) or 1395m(a)(2)(K)(ii) of this title"

Pub. L. 105–33, § 420(c)(1), substituted "critical access" for "rural primary care" wherever appearing.


Subsec. (b)(1)(B)(ii). Pub. L. 105–33, § 4631(a)(1)(B), (C), redesignated cl. (iv) as (ii) and struck out heading and text of former cl. (ii). Text read as follows: "Clause (i) shall only apply to items and services furnished on or after January 1, 1997, and before October 1, 1998.

Subsec. (b)(1)(C). Pub. L. 105–33, § 4631(b), in concluding provisions, substituted "August 5, 1997" for "October 1, 1998" and inserted at end "Effective for items and services furnished on or after August 5, 1997, with respect to periods beginning on or after the date that is 18 months prior to August 5, 1997, clauses (i) and (ii) shall be applied by substituting ‘30-month’ for ‘12-month’ each place it appears.


Subsec. (b)(2)(B)(i). Pub. L. 105–33, § 4633(a), substituted "directly, as a third-party administrator, or otherwise) to make payment" for "under this subsection to pay" and inserted at end "The United States may not recover from a third-party administrator under this clause in cases where the third-party administrator would not be able to recover the amount at issue from the employer or group health plan and is not employed by or under contract with the employer or group health plan.


1996—Subsec. (b)(5)(B). Pub. L. 104–226, § 1(b)(1)(A), substituted "(including medical supplies described in section 1395m(2)(K) of this title, for "section 1395m(2)(K)(i) of this title") for "section 1395m(2)(K)(i) of this title, for purposes of carrying out this subsection" for "under—"

(i) subparagraph (A), and

(ii) section 1320b–4 of this title, for purposes of carrying out this subsection,"

Subsec. (b)(5)(C)(ii). Pub. L. 104–226, § 1(b)(1)(B), substituted "disclosed under subparagraph (B) for "disclosed under subparagraph (B)"

Subsec. (b)(1)(B). Pub. L. 104–224 struck out subsec. (b) which required Secretary to provide registry of all cardiac pacemaker devices and pacemaker leads for which payment was made under this chapter.

1994—Subsec. (a)(1)(F). Pub. L. 103–432, § 145(c)(1), substituted "(including medical supplies described in section 1395m(2)(K)) of this title for "(including medical supplies described in section 1395m(2)(K)(i) of this title) for "(including medical supplies described in section 1395m(2)(K)(ii) of this title)."


Subsec. (a)(16). Pub. L. 103–323, § 156(a)(2)(D)(iii), struck out par. (16) which read as follows: "furnished in connection with a surgical procedure for which a second opinion is required under section 1320b–3(c)(2) of this title and has not been obtained.

Subsec. (b)(1)(A)(ii). Pub. L. 103–322, § 151(c)(1)(A), substituted "older (and the spouse age 65 or older of any individual) who has current employment status with an employer" for "over (and the individual's spouse age 65 or older) who is covered under the plan by virtue of the individual's current employment status with an employer"

Subsec. (b)(1)(A)(ii). Pub. L. 103–432, § 151(c)(1)(B), substituted "employer that has 20 or more employees" for "employer or employee organization that has 20 or more individuals in current employment status"


Subsec. (b)(1)(C). Pub. L. 103–323, § 151(c)(5), substituted "paying benefits secondary to this subchapter when" for "taking into account that" in closing provisions.

Pub. L. 103–432, § 151(c)(4), substituted this subparagraph for "clauses (i) and (ii) after "February 1, 1990"," in last sentence.

Subsec. (b)(2)(B)(i). Pub. L. 103–432, § 151(b)(3)(A), (B), substituted "Repayment required" for "Primary plans" in heading and inserted at end "If reimbursement is not made to the appropriate Trust Fund before the expiration of the 60-day period that begins on the date such notice or other information is received, the Secretary may charge interest (beginning with the date on which
the notice or other information is received) on the amount of the reimbursement until reimbursement is made (at a rate determined by the Secretary in accordance with regulations of the Secretary of the Treasury applicable to charges for late payments).


Subsec. (b)(3)(C). Pub. L. 103–432, §157b(b)(7), substituted “group health plan or a large group health plan” for “group health plan” in heading and text, struck out ‘‘unless such incentive is also offered to all individuals who are eligible for coverage under the plan’’ after “(as defined in paragraph (2)(A))”, and substituted “other than subsections (a) and (b)” for “(other than the first occurrence of subsection (a) and other than subsection (b))”.


1993—Subsec. (b)(1)(A)(i). Pub. L. 103–66, §13561(e)(1)(A), amended subcls. (I) and (II) generally. Prior to amendment, subcls. (I) and (II) read as follows: “(I) may not take into account, for any item or service furnished to an individual 65 years of age or older at the time the individual is covered under the plan by reason of the current employment status of the individual’s spouse, that the individual is entitled to benefits under this subchapter under section 426(a) of this title, and “(II) shall provide that any employee age 65 or older, and any employee’s spouse age 65 or older, shall be entitled to the same benefits under the plan under the same conditions as any employee, and the spouse of such employee, under age 65.”

Subsec. (b)(1)(A)(ii). Pub. L. 103–66, §13561(e)(1)(B), substituted “unless the plan is a plan of, or contributed to by, an employer or employee organization that has 20 or more employees in current employment status” for “unless the plan is sponsored by or contributed to by an employer or employee organization that has 20 or more employees in current employment status”.

Subsec. (b)(1)(A)(iii). Pub. L. 103–66, §13561(e)(1)(C), substituted “by virtue of current employment status with an employer that does not have 20 or more individuals in current employment status for each working day in each of 20 or more calendar weeks in the current calendar year and” for “by virtue of employment with an employer that does not have 20 or more employees for each working day in each of 20 or more calendar weeks in the current calendar year and”.

Subsec. (b)(1)(A)(iv). Pub. L. 103–66, §13561(c)(2), substituted “Subparagraph (C) shall apply instead of” for “the provisions of” and “(without regard to entitlement under section 426 of this title, or, if entitled to benefits under part A of this subchapter under the first month in which the individual becomes entitled to such Code”.

Subsec. (b)(1)(A)(v). Pub. L. 103–66, §13561(e)(1)(D), as amended by Pub. L. 103–432, §151(c)(9)(B), inserted before period at end “, without regard to section 5000(d) of such Code”.


Subsec. (b)(1)(C). Pub. L. 103–66, §13561(e)(1)(F), substituted “clause (iv)” may not take into account that an individual (or a member of the individual’s family) who is covered under the plan by virtue of the individual’s current employment status with an employer” for “clause (iv)” may not take into account that an active individual (as defined in clause (iv)(I))”.

Subsec. (b)(1)(D)(i). Pub. L. 103–66, §13561(e)(1)(G), amended heading and text generally. Prior to amendment, text defined “active individual” and “large group health plan”.

Subsec. (b)(1)(C). Pub. L. 103–66, §13561(c)(1)(A), substituted “or eligible for benefits under this subchapter under” for “benefits under this subchapter solely by reason of” in cl. (i) and concluding provisions and substituted “before October 1, 1998” for “on or before January 1, 1996” in concluding provisions.


Subsec. (b)(5)(B). Pub. L. 103–66, §13561(b)(1)(A), substituted “under—” for “for subparagraph (A) for the purposes of carrying out this subsection,” and added cls. (i) and (ii) and concluding provisions.

Subsec. (b)(5)(C)(i). Pub. L. 103–66, §13561(b)(1)(B), substituted “paragraph (B)(i)” for “paragraph (B)”.


Subsec. (a)(1)(A). Pub. L. 101–508, §4163(d)(2)(A)(i), substituted “a succeeding subparagraph” for “paragraph (B), (C), (D), or (E)”.


Subsec. (a)(2). Pub. L. 101–508, §4161(a)(3)(C)(i), inserted before semicolon at end “, except in the case of Federally qualified health center services”, substituted “individual is, or” for “individual is, or”.


Subsec. (a)(7). Pub. L. 101–508, §4163(d)(2)(B), inserted “or under paragraph (i)(1)(F) of this title,” after “‘(II)”’, and inserted “other than eyewear described in section 1395x(n)(8) of this title’’ after first reference to ‘‘eyeglasses’’.

Subsec. (a)(14). Pub. L. 101–508, §4153(c)(1), inserted “, services described by section 1395x(n)(2)(K)(i) of this title, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist,” after “this paragraph)” and struck out before semicolon at end “or services of a certified registered nurse anesthetist”.

Subsec. (a)(15). Pub. L. 101–508, §4107(b), designated existing provisions as par. (A), substituted “, or” for “; or” at end, and added par. (B).


Subsec. (b)(1)(C). Pub. L. 101–508, §4203(c)(1)(B), inserted at end “Effective for items and services furnished on or after February 1, 1991, and on or before January 1, 1996, (with respect to periods beginning on or after February 1, 1990, clauses (i) and (ii) shall be applied by substituting ‘18-month’ for ‘12-month’ each place it appears.”

Subsec. (b)(1)(C). Pub. L. 101–508, §4203(c)(1)(A), substituted “during the 12-month period which begins with the first month in which the individual becomes entitled to benefits under part A of this subchapter under the provisions of section 426 of this title, or, if earlier, the first month in which the individual would have been entitled to benefits under such part under the provisions of section 426 of this title if the individual had filed an application for such benefits; and”.


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1989—Pub. L. 101–239, §6202(b)(1)(A), inserted “and medical services as secondary payer” in section catchline. Subsec. (a)(1)(A). Pub. L. 101–234 repealed Pub. L. 100–360, §204(d)(2)(A), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below. Subsec. (a)(1)(B). Pub. L. 101–239 repealed Pub. L. 100–360, §§204(d)(2)(B), 205(e)(1), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment note below. Subsec. (a)(1)(C). Pub. L. 101–239, §603(b)(3)(B), substituted “section 1320b–12” for “section 1395h(c)”. Subsec. (a)(1)(F). Pub. L. 101–239, §611(b), inserted before semicolon at end “and, in the case of screening for pap smear, which is performed more frequently than is provided under 1395x(nn) of this title”. Pub. L. 101–234 repealed Pub. L. 100–360, §304(a)(2)(A), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below. Subsec. (a)(2)(A). Pub. L. 101–239, §6202(b)(1)(B), amended heading and text generally, substituting pars. (1) to (4) relating to medical as secondary payer for former pars. (1) to (4) relating to items or services provided under workmen’s compensation laws and end stage renal disease program. Subsec. (b)(1)(D). Pub. L. 101–239, §6202(e)(1), added subpar. (D). Subsec. (b)(5). Pub. L. 101–239, §6202(a)(2)(A), added par. (5). Subsec. (c). Pub. L. 101–234 repealed Pub. L. 100–360, §202(d), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below. Subsec. (e)(1). Pub. L. 101–239, §611(d)(2), inserted “not including items or services furnished in an emergency room of a hospital” after “an emergency room”. 1988—Subsec. (a)(1)(A). Pub. L. 100–360, §204(d)(2)(A)(1), substituted “a succeeding subparagraph” for “subparagraph (B), (C), (D), or (E)”. Subsec. (a)(1)(F). Pub. L. 100–360, §204(d)(2)(A)(ii–(iv), added subpar. (F) relating to screening mammography. Subsec. (a)(1)(G). Pub. L. 100–360, §205(e)(1)(A), as amended by Pub. L. 100–360, §304(a)(2)(A), added subpar. (G), relating to in-home care for chronically dependent individuals. Subsec. (a)(8). Pub. L. 100–360, §205(e)(1)(B), inserted “and except, in the case of in-home care, as is otherwise permitted under paragraph (1)(G)” after “paragraph (1)(G)”. Subsec. (a)(7). Pub. L. 100–360, §204(d)(2)(B), inserted “or under paragraph (1)(I)” after “(1)(B)”. Subsec. (a)(15). Pub. L. 100–360, §411(f)(4)(D)(1), inserted “including subsequent insertion of an intraocular lens” after “operation”. Subsec. (c). Pub. L. 100–360, §202(d), designated existing provisions as par. (1), redesignated former par. (1) as subpar. (A), redesignated former subpars. (A) to (D) as cl. (1) to (iv), redesignated former par. (2) as subpar. (B), redesignated former subpar. (A) as cl. (1) and substituted “subparagraph (A)” for “paragraph (1)” and redesignated subpar. (B) as cl. (ii), and added par. (2) prohibiting payment for expenses incurred for a covered outpatient drug if the drug is dispensed in a quantity exceeding a supply of 30 days with an exception. Subsec. (d)(1). Pub. L. 100–360, §411(f)(4)(D)(1), as amended by Pub. L. 100–485, §608(d)(24)(C)(ii), redesignated former sections 1395aaa of this title by striking out the catchline “Limitation of liability of beneficiaries with respect to services furnished by excluded individuals and entities”, substituting “(2)” for the section designation, inserting “1395a(j)(2)”, in text, and transferring the text to par. (2) of subsec. (e) of this section. 1987—Subsec. (a)(1)(A). Pub. L. 100–203, §4085(b)(15), substituted “(D), or (E)” for “or (D)”. Subsec. (a)(8). Pub. L. 100–203, §4072(c), inserted “other than shoes furnished pursuant to section 1395x(s)(12) of this title” before semicolon. Subsec. (a)(14). Pub. L. 100–203, §4085(b)(16), substituted “a patient” for “an patient”. Pub. L. 100–203, §4099(d)(6)(C), made technical amendment to Pub. L. 99–509, §9230(h)(1). See 1986 Amendment note below. Subsec. (b)(2)(A)(1). Pub. L. 100–203, §4096(a)(1), substituted “can reasonably be expected to be made under such a plan” for “the Secretary determines will be made under such a plan as promptly as would otherwise be the case if payment were made by the Secretary under this chapter”. Subsec. (b)(4)(B)(i). Pub. L. 100–203, §4034(a), substituted “subsection (b) of section 5000 of the Internal Revenue Code of 1986 without regard to subsection (d) of such section” for “section 5000(b) of the Internal Revenue Code of 1986”. Subsec. (d). Pub. L. 100–93, §8(c)(1)(A), struck out subsec. (d), which provided that no payment be made under this chapter for any item or service to an individual by a person where Secretary determines such person knowingly and willfully made any false statement or representation of a material fact, submitted excessive bills or requests, or furnished excessive services or supplies, and provided a dissatisfied person with a hearing determination of the Secretary. Subsec. (e) (formerly §1395aa). Pub. L. 100–93, §10, added par. (2). See 1986 Amendment note above. Pub. L. 100–93, §8(c)(1)(B), amended subsec. (e). Generally. Prior to amendment, subsec. (e) read as follows: “No payment may be made under this chapter with respect to any item or service furnished by a physician or other individual during the period when he is barred pursuant to section 1320a–7 of this title from participation in the program under this chapter.” Subsec. (h)(1)(B). Pub. L. 100–203, §4039(c)(1)(A), substituted “law (and any amount paid to a provider under such a plan)” for “law”. Subsec. (h)(1)(D). Pub. L. 100–203, §4039(c)(1)(B), inserted “in determining the amount subject to repayment under paragraph (2)(C)” after “(3)”. Subsec. (i)(2)(C). Pub. L. 100–203, §4098(c)(1)(C), added subpar. (C). Subsec. (h)(4). Pub. L. 100–93, §8(c)(3), substituted “subsections (c), (d), and (g) of section 1320a–7 of this title” for “paragraphs (2) and (3) of subsection (d) of this section”. Subsec. (h)(4)(B). Pub. L. 100–203, §4039(c)(1)(D), substituted “, has improperly” for “or has improperly” and inserted “or has failed to make repayment to the Secretary as required under paragraph (2)(C)”, after “(2)(B)”. 1986—Subsec. (a)(1)(E). Pub. L. 99–509, §9316(b), added subpar. (E). Subsec. (a)(14). Pub. L. 99–509, §9343(c)(1), substituted “patient” for “inpatient”. Pub. L. 99–509, §9320(h)(1), as amended by Pub. L. 100–203, §4009(j)(6)(C), inserted “or are services of a certified registered nurse anesthetist” after “hospital” at end. Subsec. (a)(15). Pub. L. 99–272, §9307(a), added par. (15). Subsec. (a)(16). Pub. L. 99–272, §9401(c)(1), added par. (16). Subsec. (b)(2)(A). Pub. L. 99–514 substituted “‘Internal Revenue Code of 1986’” for “‘Internal Revenue Code of 1954’”. Subsec. (b)(3)(A)(i). Pub. L. 99–272, §9201(a)(1), substituted “or to the spouse of such individual)” for
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"who is under 70 years of age during any part of such month (or to the spouse of such individual, if the spouse is under 70 years of age during any part of such month)".

Subsec. (b)(3)(A)(iii). Pub. L. 99–272, §9201(a)(2), struck out "and ending with the month before the month in which such individual attains the age of 70" after "section 1395y of this title!"


Subsec. (b)(1). Pub. L. 98–369, §244(a), substituted "to be made promptly" for "to be made" and "has been or could be made under such a law" for "has been made under such a law", and inserted "In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a law, policy, plan, or insurance, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such law, policy, plan, or insurance, to whom or against whom the United States may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a law, policy, plan, or insurance.".

Subsec. (b)(2)(B). Pub. L. 98–389, §244(b), substituted "has been or could be made under a plan" for "has been made under a plan", and inserted "In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a law, policy, plan, or insurance, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a plan.".

Subsec. (b)(3)(A)(i). Pub. L. 98–369, §2301(a), struck out "over 64 but" before "under 70 years" in two places.

Subsec. (b)(3)(A)(ii). Pub. L. 98–369, §2301(b), substituted "has been or could be made under a group health plan" for "has been made under a group health plan", and inserted "In order to recover payment made under this title for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a plan, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a plan.".


Subsec. (b)(3)(A)(iv). Pub. L. 98–369, §2301(b), substituted "paragraph (1)(B)" for "paragraph (1)".


Subsec. (b)(5). Pub. L. 98–369, §2301(d), added par. (5).


Subsec. (b)(1). Pub. L. 98–369, §244(a), substituted "to be made promptly" for "to be made" and "has been or could be made under such a law" for "has been made under such a law", and inserted "In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a law, policy, plan, or insurance, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such law, policy, plan, or insurance, to whom or against whom the United States may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a law, policy, plan, or insurance.".

Subsec. (b)(2)(B). Pub. L. 98–389, §244(b), substituted "has been or could be made under a plan" for "has been made under a plan", and inserted "In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a law, policy, plan, or insurance, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such plan.".

Subsec. (b)(3)(A)(i). Pub. L. 98–369, §2301(a), struck out "over 64 but" before "under 70 years" in two places.

Subsec. (b)(3)(A)(ii). Pub. L. 98–369, §2301(b), substituted "has been or could be made under a group health plan" for "has been made under a group health plan", and inserted "In order to recover payment made under this title for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a plan, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a plan.".


Subsec. (b)(3)(A)(iv). Pub. L. 98–369, §2301(b), substituted "paragraph (1)(B)" for "paragraph (1)".


Subsec. (b)(5). Pub. L. 98–369, §2301(d), added par. (5).


Subsec. (d). Pub. L. 97–35, §2152(a), added subsec. (f). 1980—Subsec. (a)(1). Pub. L. 96–611, §1(a)(3)(A), inserted "or, in the case of items and services described in section 1395x(a)(10) of this title, which are not reasonable and necessary for the prevention of illness" after "of a malformed body member"

Subsec. (a)(2). Pub. L. 96–611, §1(a)(3)(B), inserted "except as otherwise allowed under section 1395x(a)(10) of this title and paragraph (1)" after "immunizations"

Subsec. (a)(12). Pub. L. 96–499, §836(c), inserted "of the severity of the dental procedure," after "and clinical status".


Subsec. (b). Pub. L. 96–499, §953, inserted "or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance and "policy, plan, or insurance" after "or a State" and "policy, plan, or insurance" after "law or plan" and inserted provision authorizing the Secretary to waive the provisions of this subsection in the case of an individual claim if he determined that the probability of recovery or amount involved did not warrant the pursuit of the claim.


Subsec. (e). Pub. L. 96–499, §919(b), substituted provisions barring payment under this subchapter with respect to items or services furnished by a physician or other individual during a period when such physician or other individual was barred pursuant to section 1395a–7 of this title from participation under this subchapter for provisions authorizing the Secretary to suspend a physician or individual practitioner from participation under this subchapter upon determining that such physician or practitioner had been convicted of a criminal offense related to such physician's or practitioner's involvement in the programs under this subchapter or the program under subchapter XIX of this chapter.

1977—Subsec. (a)(3). Pub. L. 95–210 substituted "except in the case of rural health clinic services, as de-
fined in section 1395x(aa)(1) of this title, and in such other cases as the Secretary may specify" for "except in such cases as the Secretary may specify." Subsec. (d)(1)(B), Pub. L. 95–142, §19(b)(1), struck out requirement for concurrence of appropriate program review team for finding of Secretary under this paragraph. Subsec. (d)(1)(C), Pub. L. 95–142, §13(b)(2), substituted provisions relating to determinations by the Secretary on the basis of reports transmitted to him in accordance with section 1335c–6 of this title or other data acquired in the administration of this subchapter, for provisions relating to determinations by the Secretary with the concurrence of appropriate review team members. Subsec. (d)(4), Pub. L. 95–142, §13(a), struck out par. (4) which set forth provisions relating to appointment and functions of program review teams. 

1975—Subsec. (c), Pub. L. 94–182 struck out subsec. (c) prohibiting payments to Federal employees under this subchapter unless a determination and certification by the Secretary of a modification of any health benefits plan under chapter 89 of Title 5 was made which would allow a Federal employee benefits under part A or B of this subchapter. 


1973—Subsec. (a)(12). Pub. L. 93–243 substituted “the provision of such dental services if the individual, because of his underlying medical condition and clinical status, requires hospitalization in connection with the provision of such services” for “a dental procedure where the individual suffers from impairments of such severity as to require hospitalization”. 

1972—Subsec. (a)(4). Pub. L. 92–603, §211(c)(1), inserted reference to physicians’ services and ambulance services furnished an individual in conjunction with emergency inpatient hospital services. Subsec. (a)(12). Pub. L. 92–603, §256(c), authorized payment under part A in the case of inpatient hospital services in connection with a dental procedure where the individual suffers from impairments of such severity as to require hospitalization. 


**Effective Date of 2011 Amendment**

Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–40, set out as a note under section 1320c of this title.

**Effective Date of 2010 Amendment**

Amendment by section 4103(d) of Pub. L. 111–148 applicable to services furnished on or after Jan. 1, 2011, see section 4103(e) of Pub. L. 111–148, set out as a note under section 1395f of this title.

**Effective Date of 2008 Amendment**

Amendment by section 101(a)(3), (b)(3), (4) of Pub. L. 110–275 applicable to services furnished on or after Jan. 1, 2009, see section 101(c) of Pub. L. 110–275, set out as a note under section 1395f of this title.


**Effective Date of 2006 Amendment**

Amendment by Pub. L. 109–171 applicable to services furnished on or after Jan. 1, 2007, see section 512(f) of Pub. L. 109–171, set out as a note under section 1395f of this title.

**Effective Date of 2003 Amendment**


“(1) in the case of subsection (a), as if included in the enactment of title III [sic] of the Medicare and Medicaid Budget Reconciliation Amendments of 1994 (Public Law 98–369); and” 

“(2) in the case of subsections (b) and (c), as if included in the enactment of section 953 of the Omnibus Reconciliation Act of 1980 (Public Law 96–499; 94 Stat. 2647).” 

Amendment by section 611(d)(1) of Pub. L. 108–173 applicable to services furnished on or after Jan. 1, 2005, but only for individuals whose coverage period under this part begins on or after such date, see section 611(e) of Pub. L. 108–173, set out as a note under section 1395w–4 of this title.

Amendment by section 612(c) of Pub. L. 108–173 applicable to tests furnished on or after Jan. 1, 2005, see section 612(d) of Pub. L. 108–173, set out as a note under section 1395x of this title.

Amendment by section 613(c) of Pub. L. 108–173 applicable to tests furnished on or after Jan. 1, 2005, see section 613(d) of Pub. L. 108–173, set out as a note under section 1395x of this title.

Pub. L. 108–173, title VII, §731(a)(2), Dec. 8, 2003, 117 Stat. 2351, provided that: “The amendments made by paragraph (1) [amending this section] shall apply to national coverage determinations as of January 1, 2004, and section 1862(b)(5) of the Social Security Act [subsec. (b)(5) of this section], as added by such paragraph, shall apply to local coverage determinations made on or after July 1, 2004.”

Pub. L. 108–173, title VII, §731(b)(2), Dec. 8, 2003, 117 Stat. 2351, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to routine costs incurred on and after January 1, 2005, and, as of such date, section 411.15(e) of title 42, Code of Federal Regulations, is superseded to the extent inconsistent with section 1862(m) of the Social Security Act [subsec. (m) of this section], as added by such paragraph.”


Amendment by section 948(a) of Pub. L. 108–173 effective, except as otherwise provided, as if included in the enactment of BIPA [the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, H.R. 5661, as enacted by section 1(a)(e) of Public Law 106–554], see section 948(e) of Pub. L. 108–173, set out as a note under section 1314 of this title.

Pub. L. 108–173, title IX, §950(b), Dec. 8, 2003, 117 Stat. 2427, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date that is 60 days after the date of the enactment of this Act [Dec. 8, 2003].”

**Effective Date of 2001 Amendment**


**Effective Date of 2000 Amendment**

Amendment by section 1(a)(6) [title I, §102(c)] of Pub. L. 106–554 applicable to services furnished on or after
Amendment by section 1(a)(6) [title III, § 313(a)] of Pub. L. 106–113 applicable to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 106–554, set out as a note under section 1395l of this title.

Amendment by section 1(a)(6) [title IV, § 422(b)(1)] of Pub. L. 106–554 applicable to services furnished on or after July 1, 2001 see section 1(a)(6) [title IV, § 422(c)] of Pub. L. 106–554, set out as a note under section 1395u of this title.

Amendment by section 1(a)(6) [title V, § 522(b)] of Pub. L. 106–554 applicable with respect to a review of any nationwide or extended area April 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as a note under section 1314 of this title.

Effective Date of 1999 Amendments

Amendment by section 1000(a)(6) [title III, § 305(b)] of Pub. L. 106–113 applicable to payments for services provided on or after Nov. 29, 1999, see §1000(a)(6) [title III, § 305(c)] of Pub. L. 106–113, set out as a note under section 1395u of this title.


Effective Date of 1997 Amendments

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also making such a determination made, and a national coverage determination determined, on or after Oct. 1, 2001, see section 1(a)(6) [title V, § 522(d)] of Pub. L. 106–554, set out as a note under section 1314 of this title.

Effective Date of 1994 Amendment

Amendment by section 145(c)(1) of Pub. L. 103–432 applicable to mammography furnished by a facility on and after the first date that the certificate requirements of section 263(b)(1) of this title apply to such mammography conducted by such facility, see section 145(d) of Pub. L. 103–432, set out as a note under section 1395m of this title.

Amendment by section 147(e)(6) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 147(g) of Pub. L. 103–432, set out as a note under section 1320c–3a of this title.

Section 151(a)(2)(B) of Pub. L. 103–432 provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to items and services furnished on or after the first date that the certificate requirements of section 1395k of this title apply to items and services furnished on or after the date of the enactment of this Act [Aug. 5, 1997]."

Section 151(c)(3)(C) of Pub. L. 103–432 provided that: "The amendments made by this section [amending this section] shall apply to services furnished on or after October 1, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

Amendment by section 4201(b)(1)(B) of Pub. L. 105–33 effective Nov. 1, 1997, the date of termination of the Prospective Payment Assessment Commission and the Physician Payment Review Commission, see section 4202(c)(2) of Pub. L. 105–33, set out as an Effective Date; Transition; Transfer of Functions note under section 1395o–6 of this title.

Amendment by section 4102(e) of Pub. L. 105–33, set out as a note under section 1395x of this title.

Amendment by section 4103(e) of Pub. L. 105–33, set out as a note under section 1395x of this title.

Amendment by section 4104(e) of Pub. L. 105–33, set out as a note under section 1395x of this title.

Amendment by section 4105(e) of Pub. L. 105–33, set out as a note under section 1395x of this title.

Amendment by section 4106(e) of Pub. L. 105–33, set out as a note under section 1395x of this title.

Amendment by section 147(e)(6) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 147(g) of Pub. L. 103–432, set out as a note under section 1320c–3a of this title.

Section 151(a)(2)(B) of Pub. L. 103–432 provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to payments for items and services furnished on or after the date of the enactment of this Act [Aug. 5, 1997]."

Section 151(c)(3)(C) of Pub. L. 103–432 provided that: "The amendments made by this section [amending this section] shall apply to items and services furnished on or after the date of the enactment of this Act [Aug. 5, 1997]."

Section 147(e)(6) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 147(g) of Pub. L. 103–432, set out as a note under section 1320c–3a of this title.

Section 151(a)(2)(B) of Pub. L. 103–432 provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to payments for items and services furnished on or after the date of the enactment of this Act [Aug. 5, 1997]."

Section 151(c)(3)(C) of Pub. L. 103–432 provided that: "The amendments made by this section [amending this section] shall apply to items and services furnished on or after the date of the enactment of this Act [Aug. 5, 1997]."

Effective Date of 1993 Amendment

Amendment by section 151(c)(10) of Pub. L. 103–432 provided that: "The amendment made by section 1361(e)(1)(G) of OBRA–1993 [Pub. L. 103–66, amending this section], to the extent it relates to the definition of large group health plan, shall be effective as if included in the enactment of OBRA–1990 [Pub. L. 101–239]."

Amendment by section 151(c)(10) of Pub. L. 103–432 provided that: "The amendments made by this section [amending this section, section 1395mm of this title, and provisions set out as notes under section 1395mm of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–568]."

Effective Date of 1993 Amendment

Amendment by section 151(c)(10) of Pub. L. 103–432 provided that: "The amendment made by section 1361(e)(1)(G) of OBRA–1993 [Pub. L. 103–66, amending this section], to the extent it relates to the definition of large group health plan, shall be effective as if included in the enactment of OBRA–1990 [Pub. L. 101–239]."

Amendment by section 151(c)(10) of Pub. L. 103–432 provided that: "The amendments made by this section [amending this section, section 1395mm of this title, and provisions set out as notes under section 1395mm of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–568]."

Section 1358(d) of Pub. L. 103–66 provided that: ‘‘The amendments made by this section [enacting section 1320b–14 of this title and amending this section, section 1396a of this title, and section 552a of Title 5, Government Organization and Employees] shall take effect on January 1, 1994.’’

**Effective Date of 1990 Amendments**

Amendment by section 4153(b)(2)(B) of Pub. L. 101–508 applicable to items furnished on or after Jan. 1, 1991, see section 4153(b)(2)(C) of Pub. L. 101–508, set out as a note under section 1396x of this title.

Amendment by section 4157(c)(1) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4157(d) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4161(a)(3)(C) of Pub. L. 101–508 applicable to services furnished on or after Oct. 1, 1991, see section 4161(a)(B) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4163(d)(2)(A)(i)–(iii), (B) of Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, as amended, set out as a note under section 1395f of this title.


Section 420(g)(2) of Pub. L. 101–508 provided that: ‘‘The amendment made by paragraph (1) [amending this section] shall apply to incentives offered on or after the date of the enactment of this Act [Nov. 5, 1990].’’

**Effective Date of 1989 Amendments**

Amendment by section 6115(b) of Pub. L. 101–239 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 101–239, set out as a note under section 1396x of this title.


Amendment by section 6202(c)(2) of Pub. L. 101–239 provided that: ‘‘The amendment made by paragraph (1) [amending this section] shall apply to items and services furnished on or after October 1, 1989.’’

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7 of this title.

**Effective Date of 1988 Amendments**

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

Amendment by section 202(d) of Pub. L. 100–360 applicable to items and services dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Amendment by section 204(d)(2) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Amendment by section 205(e)(1) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 205(f) of Pub. L. 100–360, set out as a note under section 1395k of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(i)(4)(D) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a)(4)(D) of Pub. L. 100–203, set out as a Reference to ORBA; Effective Date note under section 106 of Title I, General Provisions.

**Effective Date of 1987 Amendments**

Section 4008(j)(6) of Pub. L. 100–203 provided that the amendment made by that section is as effective as if included in the enactment of Pub. L. 99–509.

Section 4034(b) of Pub. L. 100–203 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall be effective as if included in the enactment of section 9319(a) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].’’

Section 4038(a)(2) of Pub. L. 100–203 provided that: ‘‘The amendment made by paragraph (1) [amending this section] shall apply with respect to items and services furnished on or after 30 days after the date of the enactment of this Act [Dec. 22, 1987].’’

Section 4038(c)(2) of Pub. L. 100–203 provided that: ‘‘The amendments made by paragraphs (1) and (2) [amending this section] shall become effective on January 1, 1988.’’

For effective date of amendment by section 4072(c) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 1356a of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

**Effective Date of 1986 Amendments**

Section 9319(b) of Pub. L. 99–509 provided that: ‘‘(1) Except as provided in paragraph (2), the amendments made by this section [enacting section 5000 of Title 26, Internal Revenue Code, and amending this section and sections 1395p and 1395x of this title] shall apply to items and services furnished on or after Janu ary 1, 1987.

(2) The amendments made by subsection (c) [amending sections 1395p and 1395x of this title] shall apply to enrollments occurring on or after January 1, 1987.’’

Amendment by section 9320(h)(1) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395z of this title.

Amendment by section 9343(c)(1) of Pub. L. 99–509 applicable to services furnished after June 30, 1987, see section 9343(h)(2) of Pub. L. 99–509, as amended, set out as a note under section 1395l of this title.

**Effective Date of 1984 Amendment**

Section 2301(c)(1) of Pub. L. 98–369 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply with respect to items and services furnished on or after May 1, 1986.’’

Amendment by section 2301(a) of Pub. L. 99–272 applicable to services performed on or after Apr. 1, 1986, see section 2301(e) of Pub. L. 99–272, set out as a note under section 1320c–3 of this title.

**Effective Date of 1984 Amendment**

Section 2301(c)(1) of Pub. L. 98–369 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall be effective with respect to items and services furnished on or after January 1, 1983.’’

Amendment by section 2304(c) of Pub. L. 98–369 applicable to pacemaker devices and leads implanted or removed on or after the effective date of final regulations promulgated to carry out such amendment, see section 2304(d) of Pub. L. 98–369, set out as a note below.
Section 2313(e) of Pub. L. 98–369 provided that: "The amendments made by this section [amending this section and section 1395ww of this title] shall become effective on the date of the enactment of this Act [July 18, 1984]."

Section 2344(d) of Pub. L. 98–369 provided that: "The amendments made by this section [amending this section] shall apply to items and services furnished on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2354(b)(30), (31) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1395w–1 of this title.

**Effective Date of 1983 Amendments**

Amendment by section 601(f) of Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, and amendment by section 602(e)(3) of Pub. L. 98–21 effective Oct. 1, 1983, see section 604(a)(1), (2) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

**Effective Date of 1982 Amendment**

Amendment by section 116(b) of Pub. L. 97–248 applicable with respect to items and services furnished on or after Jan. 1, 1983, see section 115(c) of Pub. L. 97–248, set out as a note under section 623 of Title 29, Labor.

Amendment by section 122(f), (g)(1) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1982, see section 122(h)(1), (2) of Pub. L. 97–248, as amended, set out as a note under section 1395f of this title.

Amendment by section 128(a)(2)–(4) of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 128(e)(2) of Pub. L. 97–248, set out as a note under section 1395f of this title.

Amendment by sections 142 and 148(a) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1395f of this title.

**Effective Date of 1981 Amendment**

Section 2103(a)(2) of Pub. L. 97–35 provided that: "The amendments made by paragraph (1) [amending this section] shall apply with respect to expenses incurred on or after October 1, 1981."

Section 2146(c)(1) of Pub. L. 97–35 provided that: "The amendments made by subsection (a) [amending this section] shall become effective on October 1, 1981."

**Effective Date of 1980 Amendments**

Amendment by Pub. L. 96–611 applicable effective July 1, 1981, and applicable to services furnished on or after that date, see section 2 of Pub. L. 96–611, set out as a note under section 1395f of this title.

Amendment by section 936(c) of Pub. L. 96–499 applicable with respect to services provided on or after July 1, 1981, see section 936(d) of Pub. L. 96–499, set out as a note under section 1395f of this title.

Amendment by section 939(b) of Pub. L. 96–499 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to services furnished on or after July 1, 1981."

**Effective Date of 1977 Amendments**

Amendment by Pub. L. 95–210 applicable to services rendered on or after first day of third calendar month which begins after Dec. 31, 1977, see section 11(j) of Pub. L. 95–210, set out as a note under section 1395f of this title.

Section 13(c) of Pub. L. 95–142 provided that: "The amendments made by this section [amending this section and sections 1320c–6 and 1320c–9 of this title] shall take effect on the date of the enactment of this Act [Oct. 25, 1977]."

**Effective Date of 1976 Amendment**

Amendment by section 936(c) of Pub. L. 96–499 effective with respect to admissions subject to the provisions of section 1395(a)(2) of this title which occur after Dec. 31, 1973, see section 18(z–3)(2) of Pub. L. 93–233, set out as a note under section 1395f of this title.

**Effective Date of 1972 Amendment**

Amendment by section 211(c)(1) of Pub. L. 92–603 applicable to services furnished with respect to admissions occurring after Dec. 31, 1972, see section 211(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Amendment by section 256(c) of Pub. L. 92–603 applicable with respect to admissions occurring after the second month following the month of enactment of Pub. L. 92–603 which was approved on Oct. 30, 1972, see section 256(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

**Effective Date of 1968 Amendment**

Amendment by section 127(b) of Pub. L. 90–248 applicable with respect to services furnished after Dec. 31, 1967, see section 127(c) of Pub. L. 90–248, set out as a note under section 1396x of this title.

**Construction of 2008 Amendment**

For construction of amendment by section 133(b)(2) of Pub. L. 110–275, see section 133(b)(4) of Pub. L. 110–275, set out as a note under section 1395rrf of this title.

**Construction of 2007 Amendment**

Pub. L. 110–173, title I, §111(b), Dec. 29, 2007, 121 Stat. 2499, provided that: “Nothing in the amendments made by this section [amending this section] shall be construed as applying to, or affecting, coverage or payment for a nonexperimental/investigational (category B) device.”

**Application of 2003 Amendment to Physician Specialties**

Amendment by section 303 of Pub. L. 108–173, insofar as applicable to payments for drugs or biologicals and drug administration services furnished by physicians, is applicable only to physicians in the specialties of hematology, hematology/oncology, and medical oncology under this subchapter, see section 303(j) of Pub. L. 108–173, set out as a note under section 1395u of this title.

Notwithstanding section 303(j) of Pub. L. 108–173 (see note above), amendment by section 303 of Pub. L. 108–173 also applicable to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical on-
TREATMENT OF HOSPITALS FOR CERTAIN SERVICES UNDER MEDICAID SECONDARY PAYOR (MSP) PROVISIONS


"(a) IN GENERAL.—The Secretary [of Health and Human Services] shall not require a hospital (including a critical access hospital) to ask questions (or obtain information) relating to the application of section 1862(b) of the Social Security Act [subsec. (b) of this section] (relating to secondary payor provisions) in the case of reference laboratory services described in subsection (b), if the Secretary does not impose such requirement in the case of such services furnished by an independent laboratory.

"(b) REFERENCE LABORATORY SERVICES DESCRIBED.—Reference laboratory services described in this subsection are clinical laboratory diagnostic tests (or the interpretation of such tests, or both) furnished without a face-to-face encounter between the individual entitled to benefits under part A [probably means part A of title XVIII of the Social Security Act which is classified to part A of this subchapter] or enrolled under part B [probably means part B of title XVIII of the Social Security Act which is classified to part B of this subchapter], or both, and the hospital involved and in which the hospital submits a claim only for such test or interpretation."

ANNUAL PUBLICATION OF LIST OF NATIONAL COVERAGE DETERMINATIONS

Pub. L. 108–173, title IX, §953(b), Dec. 8, 2003, 117 Stat. 2428, provided that: "The Secretary [of Health and Human Services] shall provide, in an appropriate annual publication available to the public, a list of national coverage determinations made under title XVIII of the Social Security Act [this subchapter] in the previous year and information on how to get more information with respect to such determinations."

NOTIFICATION TO PHYSICIANS OF EXCESSIVE HOME HEALTH VISITS

Section 461(b) of Pub. L. 105–33 provided that: "The Secretary of Health and Human Services may establish a process for notifying a physician in cases in which the number of home health visits, furnished under title XVIII of the Social Security Act [this subchapter] pursuant to a prescription or certification of the physician significantly exceeds such threshold (or thresholds) as the Secretary specifies. The Secretary may adjust such threshold to reflect demonstrated differences in the need for home health services among different beneficiaries."

DISTRIBUTION OF QUESTIONNAIRE BY CONTRACTOR

Section 151(a)(1)(B) of Pub. L. 103–432 provided that: "The Secretary of Health and Human Services shall enter into an agreement with an entity not later than 60 days after the date of the enactment of the Social Security Act Amendments of 1994 [Oct. 31, 1994], to distribute the questionnaire described in section 1862(b)(5)(D) of the Social Security Act [subsec. (b)(5)(D) of this section] (as added by subparagraph (A))."

RETROACTIVE EXEMPTION FOR CERTAIN SITUATIONS INVOLVING RELIGIOUS ORDERS

Section 1365(f) of Pub. L. 106–162 provided that: "Section 1862(b)(1)(D) of the Social Security Act [subsec. (b)(1)(D) of this section] applies, with respect to items and services furnished before October 1, 1989, to any claims that the Secretary of Health and Human Services had not identified as of that date as subject to the provisions of section 1862(b) of such Act.”

GOA STUDY OF EXTENSION OF SECONDARY PAYER PERIOD


DEADLINE FOR FIRST TRANSMITTAL AND REQUEST OF MATCHING INFORMATION


"(1) transmit to the Secretary of the Treasury information under paragraph (5)(A)(i) of section 1862(b) of the Social Security Act [subsec. (b)(5)(A)(i) of this section] (as inserted by subparagraph (A)), and

"(2) request from the Secretary disclosure of information described in section 6013(h)(12)(A) of the Internal Revenue Code of 1986 [26 U.S.C. 6013(h)(12)(A)], by not later than 14 days after the date of the enactment of this Act [Dec. 19, 1989]."

DESIGNATION OF PEDIATRIC HOSPITALS AS MEETING CERTIFICATION AS HEART TRANSPLANT FACILITY

Section 4009(b) of Pub. L. 103–203 provided that: "For purposes of determining whether a pediatric hospital that performs pediatric heart transplants meets the criteria established by the Secretary of Health and Human Services for facilities in which the heart transplants performed will be considered to meet the requirement of section 1862(a)(1)(A) of the Social Security Act [subsec. (a)(1)(A) of this section], the Secretary shall treat such a hospital as meeting such criteria if—

"(1) the hospital's pediatric heart transplant program is operated jointly by the hospital and another facility that meets such criteria,

"(2) the unified program shares the same transplant surgeons and quality assurance program (including oversight committee, patient protocol, and patient selection criteria), and

"(3) the hospital demonstrates to the satisfaction of the Secretary that it is able to provide the specialized facilities, services, and personnel that are required by pediatric heart transplant patients."

APPROVAL OF SURGICAL ASSISTANTS FOR PROCEDURES PERFORMED APRIL 1, 1986, TO DECEMBER 15, 1986

Section 1855(b)(10)(C) of Pub. L. 99–514 provided that: "For purposes of section 1862(a)(15) of the Social Security Act [42 U.S.C. 1395y(a)(15)], added by section 9307(a)(3) of COBRA, and for surgical procedures performed during the period beginning on April 1, 1986, and ending on December 15, 1986, a carrier is deemed to have approved the use of an assistant in a surgical procedure, before the surgery is performed, based on the existence of a complicating medical condition if the carrier determines after the surgery is performed that the use of the assistant in the procedure was appropriate based on the existence of a complicating medical condition before or during the surgery."

EXTENDING WAIVER OF LIABILITY PROVISIONS TO HOSPICE PROGRAMS


"(1) IN GENERAL.—The Secretary of Health and Human Services shall, for purposes of determining whether payments to a hospice program should be denied pursuant to section 1862(a)(1)(C) of the Social Security Act [subsec. (a)(1)(C) of this section], apply (under section 1859(a) of such Act [section 1395ppa(a) of this title]) a presumption of compliance of 2.5 percent (based on the number of days of hospice care billed) in a manner substantially similar to that provided to..."
home health agencies under policies in effect as of July 1, 1985.

“(2) Effective date.—Paragraph (1) shall apply to hospice care furnished on or after the first day of the first month that begins at least 6 months after the date of the enactment of this Act [Oct. 21, 1986] and before December 31, 1986.’’

Section 4906(a)(3) of Pub. L. 101–508 provided that: ‘‘The amendments made by paragraphs (1) and (2) [amending section 9305(f) of Pub. L. 99–509, set out above, and section 9126(c) of Pub. L. 99–272, set out below] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].’’"

STUDY OF IMPACT ON DISABLED BENEFICIARIES AND FAMILY OF AMENDMENTS RELATING TO LARGE GROUP HEALTH PLANS AND MEDICARE AS SECONDARY PAYER

Section 9139(e) of Pub. L. 99–509 directed Comptroller General to study and report to Congress, not later than Mar. 1, 1990, the impact of the amendments made by this section (enacting section 5000 of Title 26, Internal Revenue Code, and amending this section and sections 1395p and 1395r of this title) on access of disabled individuals and members of their family to employment and health insurance, such report to include information relating to number of disabled medicare beneficiaries for whom medicare has become secondary, either through their employment or the employment of a family member, amount of savings to the medicare program achieved annually through this provision, and effect on employment, and employment-based health coverage, of disabled individuals and family members.

REINSTATEMENT OF WAIVER OF LIABILITY PRESUMPTION

Section 9126(c) of Pub. L. 99–272, as amended by Pub. L. 100–360, title IV, §426(b), July 1, 1988, 102 Stat. 814; Pub. L. 101–508, title IV, §4008(a)(1), Nov. 5, 1990, 104 Stat. 1398–44, provided that: ‘‘The Secretary of Health and Human Services shall, for purposes of determining whether payments to a skilled nursing facility should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act [subsec. (a)(1)(A) of this section], apply the same presumption of compliance (5 percent) as in effect under regulations as of July 1, 1985. Such presumption shall apply for the period beginning with the first month beginning after the date of the enactment of this Act [Apr. 7, 1986] and ending on December 31, 1995.’’

HOME HEALTH WAIVER OF LIABILITY

Section 2905 of Pub. L. 99–272, as amended by Pub. L. 100–360, title IV, §426(d), July 1, 1988, 102 Stat. 814; Pub. L. 103–432, title I, §158(b)(1), Oct. 31, 1994, 108 Stat. 4442 provided that: ‘‘(1) The Secretary of Health and Human Services may, for any cost reporting period beginning prior to October 1, 1988, waive the requirements of sections 1862(a)(14) and 1866(a)(1)(H) of the Social Security Act [subsec. (a)(14) of this section and section 1395cc(a)(1)(H) of this title] in the case of a hospital which has followed a practice, since prior to October 1, 1982, of allowing direct billing under part B of title XVIII of such Act [part B of this subchapter] for services (other than physicians’ services) so extensively, that immediate compliance with those requirements would threaten the stability of patient care. Any such waiver shall provide that such billing may continue to be made under part B of such title but that the payments to such hospital under part A of such title [part A of this subchapter] shall be reduced by the amount of the billings for such services under part B of such title.

If such a waiver is granted, at the end of the waiver period the Secretary may provide for such methods of payments under part A as is appropriate, given the organizational structure of the institution.

(2) In the case of a hospital which is receiving payments pursuant to a waiver under paragraph (1), payment of the adjustment for indirect costs of approved educational activities shall be made as if the hospital were receiving under part A of title XVIII of the Social Security Act all the payments which are made under part B of such title solely by reason of such waiver.

Any waiver granted under paragraph (1) shall provide that, with respect to those items and services billed under part B of title XVIII of the Social Security Act solely by reason of such waiver—

(A) payment under such part shall be equal to 100 percent of the reasonable charge or other applicable payment base for the items and services; and

(B) the entity furnishing the items and services must agree to accept the amount paid pursuant to subparagraph (A) as the full charge for the items and services.’’

Section 9112(b) of Pub. L. 99–272 provided that: ‘‘(1) Section 602(k) of Pub. L. 98–21, as amended by Pub. L. 99–272, title IX, §9112(a), Apr. 7, 1986, 100 Stat. 163, provided that:

‘‘(3) The Secretary of Health and Human Services may, for any cost reporting period beginning prior to October 1, 1986, waive the requirements of sections 1862(a)(14) and 1866(a)(1)(H) of the Social Security Act [subsec. (a)(14) of this section and section 1395cc(a)(1)(H) of this title] in the case of a hospital which has followed a practice, since prior to October 1, 1982, of allowing direct billing under part B of title XVIII of such Act [part B of this subchapter] for services (other than physicians’ services) so extensively, that immediate compliance with those requirements would threaten the stability of patient care. Any such waiver shall provide that such billing may continue to be made under part B of such title but that the payments to such hospital under part A of such title [part A of this subchapter] shall be reduced by the amount of the billings for such services under part B of such title.

If such a waiver is granted, at the end of the waiver period the Secretary may provide for such methods of payments under part A as is appropriate, given the organizational structure of the institution.

(2) In the case of a hospital which is receiving payments pursuant to a waiver under paragraph (1), payment of the adjustment for indirect costs of approved educational activities shall be made as if the hospital were receiving under part A of title XVIII of the Social Security Act all the payments which are made under part B of such title solely by reason of such waiver.

Any waiver granted under paragraph (1) shall provide that, with respect to those items and services billed under part B of title XVIII of the Social Security Act solely by reason of such waiver—

(A) payment under such part shall be equal to 100 percent of the reasonable charge or other applicable payment base for the items and services; and

(B) the entity furnishing the items and services must agree to accept the amount paid pursuant to subparagraph (A) as the full charge for the items and services.’’

Section 9112(b) of Pub. L. 99–272 provided that: ‘‘(1) Section 602(k)(2) of the Social Security Amendments of 1983 (as added by section 9112(a)) [set out above] shall apply to cost reporting periods beginning on or after January 1, 1986.’’
("(2) Section 602(k)(3) of the Social Security Amendments of 1983 (as added by subsection (a)) [set out above] shall apply to items and services furnished after the end of the 30-day period beginning on the date of the enactment of this Act [Apr. 7, 1986]."

**PROHIBITION OF PAYMENT FOR INEFFECTIVE DRUGS**

Section 115(b) of Pub. L. 97–248 provided that: "No provision of law limiting the use of funds for purposes of enforcing or implementing section 1862(c) [subsec. (c) of this section] or section 1903(i)(5) [section 1396b(i)(5) of this title] of the Social Security Act, section 2103 of the Omnibus Budget Reconciliation Act of 1981 [section 2103 of Pub. L. 97–35, amending sections 1395y and 13996b of this title and enacting provisions set out as notes of this section] or section 1395m(c)(9) of this title, or any rule or regulation issued pursuant to any such section (including any provision contained in, or incorporated by reference into, any appropriation Act or resolution making continuing appropriations) shall apply to any period after September 30, 1982, unless such provision of law is enacted after the date of the enactment of this Act [Sept. 3, 1982] and specifically states that such provision is to supersede this section."**

**ESTABLISHMENT AND IMPLEMENTATION OF GUIDELINES**

Section 215(b) of Pub. L. 97–35 directed the Secretary of Health and Human Services to establish, and provide for the implementation of, the guidelines described in subsec. (f) of this section not later than Oct. 1, 1981.

**REPORT TO CONGRESSIONAL COMMITTEES ON IMPLEMENTATION OF CERTIFICATION REQUIREMENTS RELATING TO MODIFICATION OF HEALTH BENEFITS PLAN OR PROGRAM: FAILURE TO SUBMIT REPORT**

Section 4(b) of Pub. L. 99–480 provided that the Civil Service Commission and the Secretary of Health, Education, and Welfare submit a report on or before Mar. 1, 1975, on the steps which have been taken, and the steps which are planned, to enable the Secretary to make the determination and certification referred to in former subsec. (c) of this section, and that if such report is not submitted by Mar. 1, 1975, the date specified in former subsec. (c) shall be deemed to be July 1, 1975, rather than Jan. 1, 1976.

**§ 1395z. Consultation with State agencies and other organizations to develop conditions of participation for providers of services**

In carrying out his functions, relating to determination of conditions of participation by providers of services, under subsections (e)(9), (f)(4), (j)(15), (o)(6), (cc)(2)(I), and (dd)(2), and (mm)(1) of section 1395x of this title, the Secretary shall consult with appropriate State agencies and recognized national listing or accrediting bodies, and may consult with appropriate local agencies. Such conditions prescribed under any of such subsections may be varied for different areas or different classes of institutions or agencies and may, at the request of a State, provide higher requirements for such State than for other States; except that, in the case of any State or political subdivision of a State which imposes higher requirements on institutions as a condition to the purchase of services (or of certain specified services) in such institutions under a State plan approved under subchapter I of this chapter, the Secretary may impose like requirements as a condition to the payment for services (or for the services specified by the State or subdivision) in such institutions in such State or subdivision.


**REFERENCES IN TEXT**

Subsection (j) of section 1395z of this title, referred to in text, was amended generally by Pub. L. 100–203, title IV, § 4201(a)(1), Dec. 22, 1987, 101 Stat. 1330–160, and, as so amended, does not contain a par. (15).

**AMENDMENTS**

1994—Pub. L. 103–432 struck out "or whether screening mammography meets the standards established under section 1395m(c)(6) of this title," before "the Secretary shall consult".

1990—Pub. L. 101–508 inserted "or whether screening mammography meets the standards established under section 1395m(c)(6) of this title," after "section 1395k(a)(2)(F)(i) of this title,".

1989—Pub. L. 101–239 substituted "(j)(3), and (mm)(1)" for "(j)(3)".

Pub. L. 101–234 repealed Pub. L. 100–360, §§ 203(e)(2), 204(c)(1), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted. In the case of the amendment by Pub. L. 100–360, § 203(e)(2), Pub. L. 101–234 was given effect by substituting "and (dd)(2)" for "(dd)(2), (j)(3)" because of the intervening amendment by Pub. L. 101–239, see note above and 1988 Amendment note below.

1988—Pub. L. 100–360, § 204(c)(1), inserted "or whether screening mammography meets the standards established under section 1395m(c)(3) of this title," after "section 1395k(a)(2)(F)(i) of this title,".

Pub. L. 100–360, §§ 203(e)(2), substituted "(dd)(2), and (j)(3)" for "(dd)(2)".

1984—Pub. L. 98–369, § 2335(c), struck out "(g)(4)" after "(e)(9), (f)(4)".

Pub. L. 98–369, § 2349(b)(32), substituted "(j)(15)" for "(j)(11)".

Pub. L. 98–369, § 2349(b)(1), substituted "appropriate State agencies" for "the Health Insurance Benefits Advisory Council established by section 1395dd of this title, appropriate State agencies, for each State or political subdivision of a State which imposes higher requirements on institutions as a condition to the purchase of services under this subchapter", and provided for the submission of "(cc)(2)(I) and (dd)(2)" for "(cc)(2)(I)".

1980—Pub. L. 96–496, § 933(f), substituted "(o)(8), and (cc)(2)(I) of section 1395x" for "subsection (o)(8) of section 1395x".

1979—Pub. L. 96–496, § 934(c)(1), inserted "or by ambulatory surgical centers under section 1395k(a)(2)(F)(i) of this title, for higher requirements as a condition to the purchase of services," after "(e)(9), (f)(4), (g)(4), (j)(11), and (o)(6) of section 1395x of this title".


See References in Text note below.

*See references in Text note below.

So in original. The word "and" probably should not appear.
date that the certificate requirements of section 263b(b) of this title apply to such mammography conducted by such facility, see section 145s(d) of Pub. L. 103–432, set out as a note under section 1395m of this title.

**Effective Date of 1990 Amendment**
Amendment by Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 416(e) of Pub. L. 101–508, set out as a note under section 1395f of this title.

**Effective Date of 1989 Amendment**
Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1395k of this title.

**Effective Date of 1988 Amendment**
Amendment by section 203(e)(2) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320a–7a of this title.

**Effective Date of 1984 Amendment**
Amendment by section 2335(c) of Pub. L. 98–369 effective July 18, 1984, see section 2335(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

**Effective Date of 1982 Amendment**
Amendment by Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, set out as a note under section 1395c of this title.

**Effective Date of 1980 Amendment**
Amendment by section 933(f) of Pub. L. 96–499 effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period beginning on or after July 1, 1981, see section 933(h) of Pub. L. 96–499, set out as a note under section 1395c of this title.

**Effective Date of 1972 Amendment**
Amendment by Pub. L. 92–693 applicable with respect to providers of services for fiscal years beginning after the fifth month following October 1972, see section 234(i) of Pub. L. 92–693, set out as a note under section 1395c of this title.

**Termination of Advisory Councils**
Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 312 and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.
center, rural health clinic, comprehensive outpatient rehabilitation facility, laboratory, clinic, agency, or organization. Any agreement under this subsection shall provide for the appropriate State or local agency to maintain a toll-free hotline (1) to collect, maintain, and continually update information on home health agencies located in the State or locality that meet subsection (c) of this section, or related to the facilities and personnel for the provision of services similar to those for which payment may be made under part A of this subchapter, or related to the facilities and personnel required for the provision of such services, or related to improving the quality of such services.

(b) Payment in advance or by way of reimbursement to State for performance of functions of subsection (a)

The Secretary shall pay any State, in advance or by way of reimbursement, as may be provided in the agreement with it (and may impose under this subchapter with respect to the home health agency, when that survey was completed, the consumer or his or her legal representative).

(d) Prohibition of user fees for survey and certification

Notwithstanding any other provision of law, the Secretary may not enter into an agreement under this section with a State with respect to determining whether an institution therein is a skilled nursing facility unless the State meets the requirements specified in section 1395i–3(e) of this title and the establishment of remedies under sections 1395i–3(b)(2)(B) and 1395i–3(b)(2)(C) of this title (relating to establishment and application of remedies).

(e) Prohibition of user fees for survey and certification

Notwithstanding any other provision of law, the Secretary may not impose, or require a State to impose, any fee on any facility or entity subject to a determination under subsection (a) of this section, or any renal dialysis facility subject to the requirements of section 1395rr(b)(1) of this title, for any such determination or any survey relating to the determination of the compliance of such facility or entity with any requirement of this subchapter (other than any fee relating to section 263a of this title).

1996—Subsec. (c) was amended generally by Pub. L. 100–360, § 411(f)(6)(B), so that it does not amend this section but rather section 1396b of this title.

Pub. L. 100–203, § 4202(a)(2), inserted, "and require (in the case of skilled nursing facilities) the posting in a place readily accessible to patients (and patients' representatives)," after "place" in fifth sentence.

Pub. L. 100–203, § 4201(d)(4), as added by Pub. L. 100–360, § 411(I)(1)(C), as added by Pub. L. 100–485, § 608(d)(27)(B), substituted "conditions specified in section 1395l–3(a) of this title" for "conditions specified in section 1395x(s) of this title".

Pub. L. 100–203, § 4072(d), substituted "paragraphs (13) and (14)" for "paragraphs (12) and (13)" in first sentence.

1990—Subsec. (a) was amended generally by Pub. L. 100–485, § 608(d)(20)(B)(i), struck out "or (in the case of a laboratory that does not participate or seek to participate in the medicare program) the requirements of section 263a of this title," after "section 1395x(s) of this title" in first sentence.

Pub. L. 100–485, § 608(d)(27)(B), substituted "conditions specified in section 1395l–3(a) of this title" for "conditions specified in section 1395x(s) of this title." for "section 1395k(a)(2)(F)(i) of this title" in first sentence.

1990—Subsec. (a), Pub. L. 101–508, § 4163(c)(2), inserted before period at end "other than any fee relating to section 263a of this title".


1989—Subsec. (a). Pub. L. 101–239, § 6135(c), substituted paragraphs (15) and (16) for paragraphs (14) and (15).

Pub. L. 101–239, § 6003(c)(3)(C)(ii), inserted "a rural primary care hospital, as defined in section 1395x(mm)(1) of this title," after "1395x(aa)(2) of this title.

Pub. L. 101–234 repealed Pub. L. 100–360, §§ 203(d)(3), 204(c)(2), (d)(3), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 and 1989 Amendment notes.


1988—Subsec. (a) was amended generally by Pub. L. 100–360, § 411(d)(4)(A)(i)(I), as amended by Pub. L. 100–485, § 608(d)(20)(B)(ii), substituted most recent certification survey conducted by a State agency or accreditation survey conducted by a private accreditation agency under section 1395x(b) of this title with respect to the home health agency," for "most recent certification survey conducted with respect to the agency,".

Pub. L. 100–360, § 411(d)(4)(A)(i), as amended by Pub. L. 100–485, § 608(d)(20)(B)(ii), substituted "utilized by the Secretary under section 1395b of this title" for "pursuant to an agreement with the Secretary under this subsection,".

Pub. L. 100–360, § 294(d)(3), substituted paragraphs (14) and (15) for paragraphs (13) and (14).

Pub. L. 100–360, § 294(c)(2), inserted, "or whether screening mammography meets the standards established under section 1395mm(c)(3) of this title" after "section 1395x(aa)(2) of this title," in first sentence.

Pub. L. 100–360, § 294(d)(3), substituted paragraphs (14) and (15) for paragraphs (13) and (14).

Pub. L. 100–360, § 294(c)(2), inserted, "or a home intravenous drug therapy provider," after "hospice program" and substituted "hospice program, or home intravenous drug therapy provider" for "or hospice program."
etc., and substituted "skilled nursing facility" for "extended care facility".

Subsec. (c). Pub. L. 92–663, § 244(a), added subsec. (c). 1968—Subsec. (a). Pub. L. 90–248, § 139(f), inserted clause at end of first sentence for determining whether a clinic, rehabilitation agency, or public health agency meets the requirements of section 1395x(p)(4)(A) or (B) of this title.

Pub. L. 90–248, § 228(b), struck out last sentence providing for utilization of State facilities to provide consultative services to institutions furnishing medical care, covered in section 1396a(a)(24) of this title.

**Effective Date of 2008 Amendment: Transition Rule**

Amendment by Pub. L. 110–275 applicable with respect to accreditations of hospitals granted on or after the date that is 24 months after July 15, 2008, with transition rule, see section 125(d) of Pub. L. 110–275, set out as a note under section 1395bb of this title.

**Effective Date of 1997 Amendment**

Amendment by section 4106(c) of Pub. L. 105–33 applicable to bone mass measurements performed on or after July 1, 1998, see section 4108(d) of Pub. L. 105–33, set out as a note under section 1395x of this title.

Amendment by section 420(a)(1) of Pub. L. 103–432 applicable to services furnished on or after Oct. 1, 1997, see section 420(a)(1) of Pub. L. 103–432, set out as a note under section 1395j of this title.

**Effective Date of 1994 Amendment**

Amendment by section 415(c)(3) of Pub. L. 101–332 applicable to mammography furnished by a facility on and after the first date that the certificate requirements of section 283(b)(3) of this title apply to such mammography conducted by such facility, see section 145(c)(3) of Pub. L. 101–332, set out as a note under section 1395m of this title.

**Effective Date of 1990 Amendment**

Section 4154(d)(3) of Pub. L. 101–508 provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in the enactment of the Clinical Laboratory Improvement Amendments of 1988 [Pub. L. 100–578]."

Amendment by section 4163(c)(2) of Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, set out as a note under section 1395j of this title.

**Effective Date of 1989 Amendments**

Amendment by section 6115(c) of Pub. L. 100–203 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1395a–7a of this title.

**Effective Date of 1988 Amendments**

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–300, see section 698(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 238(e)(3) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Amendment by section 204(c)(2), (d)(3) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(d)(4)(A), (I)(1)(C), (6)(8) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–203, set out as a Reference to OBRA; Effective Date note under section 106 of Title I, General Provisions.

**Effective Date of 1987 Amendment**

Section 4023(c), formerly § 4025(b), of Pub. L. 100–203, as redesignated and amended by Pub. L. 100–280, title IV, § 411(d)(4)(B)(1), July 1, 1988, 102 Stat. 774, provided that: "The amendment made by this section [amending this section and section 1395bb of this title] shall apply with respect to agreements entered into or renewed on or after the date of enactment of this Act [Dec. 22, 1987]."

For effective date of amendment by section 4072(d) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Amendments by sections 4201(a)(2), (d)(4) and 4202(a)(1), (c) of Pub. L. 100–203 applicable to services furnished on or after Oct. 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date, except as otherwise specifically provided in section 1395i–3 of this title, see section 4204(a) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1395i–3 of this title.

Amendment by section 420(a)(1) of Pub. L. 100–203 applicable Jan. 1, 1988, except as otherwise specifically provided in section 1395i–3 of this title, with regard to whether regulations to implement such amendment are promulgated by such date, and in applying amendment by section 420(a)(1) of Pub. L. 100–203 for services furnished by a skilled nursing facility before Oct. 1, 1990, any reference to a requirement of section 1395i–3(b), (c), or (d) of this title is deemed a reference to section 1395i(c) of this title, see section 4204(b) of Pub. L. 100–203, as added by Pub. L. 100–485, set out as an Effective Date note under section 1395i–3 of this title.

**Effective Date of 1986 Amendment**

Amendment by Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395x of this title.

**Effective Date of 1984 Amendment**

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed under the provisions of law involved before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

**Effective Date of 1982 Amendment**

Amendment by Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395w of this title.

**Effective Date of 1980 Amendments**

Amendment by Pub. L. 96–611 effective July 1, 1981, and applicable to services furnished on or after that date, see section 2 of Pub. L. 96–611, set out as a note under section 1395f of this title.

For effective date of amendment by section 933(g) of Pub. L. 96–499, see section 933(h) of Pub. L. 96–499, set out as a note under section 1395x of this title.

**Effective Date of 1977 Amendment**

Amendment by Pub. L. 95–210 applicable to services rendered on or after first day of third calendar month which begins after Dec. 31, 1977, see section 111(1) of Pub. L. 95–210, set out as a note under section 1395x of this title.
§ 1395bb. Effect of accreditation

(a) Accreditation by American Osteopathic Association or other national accreditation body

(1) If the Secretary finds that accreditation of a provider entity (as defined in paragraph (4)) by the American Osteopathic Association or any other national accreditation body demonstrates that all of the applicable conditions or requirements of this subchapter (other than the requirements of section 1395rr(b) of this title and the conditions and requirements under section 1395rrr(b) of this title) are met or exceeded—

(A) in the case of a provider entity not described in paragraph (3)(B), the Secretary shall treat such entity as meeting those conditions or requirements with respect to which the Secretary made such finding; or

(B) in the case of a provider entity described in paragraph (3)(B), the Secretary may treat such entity as meeting those conditions or requirements with respect to which the Secretary made such finding.

(2) In making such a finding, the Secretary shall consider, among other factors with respect to a national accreditation body, its requirements for accreditation, its survey procedures, its ability to provide adequate resources for conducting required surveys and supplying information for use in enforcement activities, its monitoring procedures for provider entities found out of compliance with the conditions or requirements, and its ability to provide the Secretary with necessary data for validation.

(3)(A) Except as provided in subparagraph (B), not later than 60 days after the date of receipt of a written request for a finding under paragraph (1) (with any documentation necessary to make a determination on the request), the Secretary shall publish a notice identifying the national accreditation body making the request, describing the nature of the request, and providing a period of at least 30 days for the public to comment on the request. The Secretary shall approve or deny a request for such a finding, and shall publish notice of such approval or denial, not later than 210 days after the date of receipt of the request (with such documentation). Such an approval shall be effective with respect to accreditation determinations made on or after such effective date (which may not be later than the date of publication of the approval) as the Secretary specifies in the publication notice.

(B) The 210-day and 60-day deadlines specified in subparagraph (A) shall not apply in the case of any request for a finding with respect to accreditation of a provider entity to which the conditions and requirements of sections 1385i–3 and 1385x(i) of this title apply.

(c) Deficiencies

Notwithstanding any other provision of this subchapter, if the Secretary finds that a provider entity has significant deficiencies (as defined in regulations pertaining to health and safety), the entity shall, after the date of notice of such finding to the entity and for such period as may be prescribed in regulations, be deemed not to meet the conditions or requirements the entity has been treated as meeting pursuant to subsection (a)(1).

(d) State or local accreditation

For provisions relating to validation surveys of entities that are treated as meeting applicable conditions or requirements of this subchapter pursuant to subsection (a)(1), see section 1395aa(c) of this title.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–275, § 125(a), redesignated subsec. (b) as (a) and struck out former subsec. (a) which provided criteria necessary for an institution to meet certain requirements enumerated in section 1395x(e) of this title.

Subsec. (a)(1). Pub. L. 110–275, § 125(b)(1)(A), substituted “II” for “In addition, if.”

Subsec. (b). Pub. L. 110–275, § 125(a), (b)(1)(B), redesignated subsec. (c) as (b), substituted “released to the Secretary by” for “released to him by the Joint Commission on Accreditation of Hospitals,” and struck out the comma after “Osteopathic Association.” Former subsec. (b) redesignated (a).

Subsecs. (c), (d). Pub. L. 110–275, § 125(a), (b)(1)(C), (D), redesignated subsecs. (d) and (e) as (c) and (d), respectively, and substituted “pursuant to subsection (a)” for “pursuant to subsection (a) (a) or (b)(1))”, Former subsec. (c) redesignated (b).

Subsec. (e). Pub. L. 110–275, § 125(a), redesignated subsec. (e) as (d).


Subsec. (b)(6). Pub. L. 108–173 inserted ”(on a confidential basis)” after “release to the Secretary” in par. (2), and inserted provision that the Secretary may not disclose any accreditation survey made and released to him by the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or any other national accreditation body, of an entity accredited by the Commission, if such section had not been enacted, see 1988 and 1989 Amendment notes.

1989—Subsec. (a). Pub. L. 101–239, § 6109(b), inserted before period at end “, except that the Secretary may disclose such survey and information related to such a survey to the extent such survey and information relate to an enforcement action taken by the Secretary.”

Pub. L. 101–239, § 6010(b), inserted before period at end “, except that the Secretary may disclose such survey and information related to such a survey to the extent such survey and information relate to an enforcement action taken by the Secretary.”

Pub. L. 101–239, § 6003(g)(3)(C)(iv), substituted “1395x(dd)(2), or 1395x(mm)(1) of this title” for “or 1395x(dd)(2) of this title” in second sentence.

Pub. L. 101–234 repealed Pub. L. 100–360, § 204(c)(3), (d)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 and 1989 Amendment notes.

Subsec. (a)(2). Pub. L. 101–239, § 6109(a), designated existing provisions as subpar. (A), struck out “if it is included within a survey described in section 1395aa(c) of this title,” after “the Secretary finds” in last sentence, and added subpar. (B).

Subsec. (b). Pub. L. 101–239, § 6109(c), struck out “following a survey made pursuant to section 1395aa(c) of this title” after “if the Secretary finds” in last sentence.


Pub. L. 100–360, § 204(d)(3), substituted “paragraphs (14) and (15)” for “paragraphs (13) and (14)” in penultimate sentence.


Pub. L. 100–360, § 204(c)(3), inserted “1395m(e)(3),” after “1395ka(2)(F)(1),” in third sentence.

Pub. L. 100–360, § 4025(b), substituted “paragraphs (13) and (14)” for “paragraphs (12) and (13)” in penultimate sentence.

Pub. L. 100–203, § 4025(b), as added by Pub. L. 100–360, § 411(d)(4)(B)(ii), substituted “paragraphs (12) and (13)” for “paragraphs (11) and (12)” in third sentence.

Pub. L. 99–509, § 9305(c)(3), inserted “, requires a discharge planning process (or imposes another requirement which serves substantially the same purpose)” after “the same purpose)”, and “clause (A) or (B) of” after “comply also with” in second sentence.

Pub. L. 99–509, § 9320(b)(3), substituted “paragraphs (12) and (13)” for “paragraphs (11) and (12)” in third sentence.

Pub. L. 98–369, § 2246(a), in provisions following par. (4), substituted “1395x(aa)(2)(F)(1), 1395x(e), 1395x(f), 1395x(j), 1395x(x), 1395x(p)(4)(A) or (B), paragraphs (11) and (12) of section 1395x(s), section 1395x(aa)(2), 1395x(cc)(2), 1395x(dd)(2), or 1395x(mm)(1) of this title” for “of section 1395x(e), (j), (m), or (dd) of this title” and substituted “entity” for “institution or agency in two places.

Pub. L. 98–369, § 2246(a), struck out “(on a confidential basis)” after “release to the Secretary” in par. (2), and inserted provision that the Secretary may not disclose any accreditation survey made and released to him by the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or any other national accreditation body, of an entity accredited by such body, in provisions following par. (4).

Subsec. (a). Pub. L. 97–248, § 122(d)(4), substituted “(c) or (d)”, substituted “(c) or (d)” for “or (c)”, and substituted “a hospital” for “the hospital” in two places.

Subsec. (b). Pub. L. 97–248, § 128(d)(3), substituted “a hospital” for “an institution” in “the hospital” for “such institution”.

Subsec. (b). Pub. L. 97–248, § 128(d)(3), substituted “‘a hospital’ for ‘an institution’” and “‘the hospital’ for ‘such institution’”.

Subsec. (b). Pub. L. 92–603 designated existing provisions as subsec. (a), inserted reference to subsec. (b) of this section in opening provisions, redesignated existing provisions as pars. (1) and (3) and added pars. (2), (4) and (5) in provisions following par. (4) inserted provisions for the imposition of a standard which the Secretary determines is at least equivalent to the standard promulgated by the American Osteopathic Association or any other national accreditation body, of an entity accredited by such body, in provisions following par. (4).
gated by the Secretary as described in par. (4), and added subsec. (b).

**Effective Date of 2008 Amendment; Transition Rule**

Pub. L. 110–275, title I, §125(d), July 15, 2008, 122 Stat. 2520, provided that:

(1) Subject to paragraph (2), the amendments made by this section [amending this section and sections 1395m, 1395w–22, 1395x, 1395aa, and 1395f of this title] shall apply with respect to accreditations of hospitals granted on or after the date that is 24 months after the date of the enactment of this Act [July 15, 2008].

(2) For purposes of title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], the amendments made by this section shall not affect (sic) the accreditation of a hospital by the Joint Commission, or under accreditation or comparable approval standards found to be essentially equivalent to accreditation or approval standards of the Joint Commission, for the period of time applicable under such accreditation.

**Effective Date of 1994 Amendment**

Amendment by Pub. L. 103–432 applicable to mammography furnished by a facility on and after the first date that the certificate requirements of section 263b(b) of this title apply to such mammography conducted by such facility, see section 145(d) of Pub. L. 103–432, set out as a note under section 1395m of this title.

**Effective Date of 1990 Amendment**

Amendment by Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, set out as a note under section 1395 of this title.

**Effective Date of 1989 Amendments**

Section 6019(d) of Pub. L. 101–239 provided that:

(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].

(2) The amendments made by subsection (a) [amending this section] shall take effect 6 months after the date of the enactment of this Act.

Amendment by section 6115(c) of Pub. L. 101–239 applicable to screening pap smears performed on or after July 1, 1990, see section 201(c) of Pub. L. 101–239, set out as a note under section 1395x of this title.

**Effective Date of 1987 Amendments**

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 1303 of this title.

Amendment by section 204(c)(3), (d)(3) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1303m of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(d)(4)(B)(ii) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title I, General Provisions.

**Effective Date of 1987 Amendment**

Amendment by section 4025(b) of Pub. L. 100–203 applicable with respect to agreements entered into or renewed on or after Dec. 22, 1987, see section 4025(c) of Pub. L. 100–203, as amended, set out as a note under section 1395aa of this title.

For effective date of amendment by section 4072(d) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

**Effective Date of 1986 Amendment**

Amendment by section 9305(c)(3) of Pub. L. 99–509 applicable to hospitals as of one year after Oct. 1, 1986, see section 9305(c)(4) of Pub. L. 99–509, set out as a note under section 1395x of this title.

Amendment by section 9320(b)(3) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(1), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395x of this title.

**Effective Date of 1984 Amendment**

Section 234(b) of Pub. L. 98–369 provided that: "The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984], and shall apply with respect to surveys released to the Secretary on, before, or after such date.''

**Effective Date of 1982 Amendment**

Amendment by section 122(g)(4) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395x of this title.


**Effective Date of 1972 Amendment**

Amendment by section 234(b) of Pub. L. 92–603 applicable with respect to providers of services for fiscal years beginning after the fifth month following October 1972, see section 234(a) of Pub. L. 92–603, set out as a note under section 1395x of this title.

**Authority To Recognize the Joint Commission as a National Accreditation Body**

Pub. L. 110–275, title I, §125(c), July 15, 2008, 122 Stat. 2519, provided that: "The Secretary of Health and Human Services may recognize the Joint Commission as a national accreditation body under section 1865 of the Social Security Act (42 U.S.C. 1395bb), as amended by this section, upon such terms and conditions, and upon submission of such information, as the Secretary may require."

§ 1395ec. Agreements with providers of services; enrollment processes

(a) Filing of agreements; eligibility for payment; charges with respect to items and services

(1) Any provider of services (except a fund designated for purposes of section 1395(m) and section 1395(e) of this title) shall be qualified to participate under this subchapter and shall be eligible for payments under this subchapter if it files with the Secretary an agreement—

(A) not to charge, except as provided in paragraph (2), any individual or any other person for items or services for which such individual is entitled to have payment made under this subchapter (or for which he would be so entitled if such provider of services had complied with the procedural and other requirements under or pursuant to this subchapter or for which such provider is paid pursuant to the
provisions of section 1395f(e) of this title), and (ii) not to impose any charge that is prohibited under section 1396a(n)(3) of this title, (B) not to charge any individual or any other person for items or services for which such individual is not entitled to have payment made under this subchapter because payment for expenses incurred for such items or services may not be made by reason of the provisions of paragraph (1) or (9) of section 1395y(a) of this title, but only if (i) such individual was without fault in incurring such expenses and (ii) the Secretary's determination that such payment may not be made for such items and services was made after the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this subchapter, (C) to make adequate provision for return (or other disposition, in accordance with regulations) of any moneys incorrectly collected from such individual or other person, (D) to promptly notify the Secretary of its employment of an individual who, at any time during the year preceding such employment, was employed in a managerial, accounting, auditing, or similar capacity (as determined by the Secretary by regulation) by an agency or organization which serves as a fiscal intermediary or carrier (for purposes of part A or part B, or both, of this subchapter) with respect to the provider, (E) to release data with respect to patients of such provider upon request to an organization having a contract with the Secretary under part B of subchapter XI of this chapter as may be necessary (i) to allow such organization to carry out its functions under such contract, or (ii) to allow such organization to carry out similar review functions under any contract the organization may have with a private or public agency paying for health care in the same area with respect to patients who authorize release of such data for such purposes, (F)(i) in the case of hospitals which provide inpatient hospital services for which payment may be made under subsection (b), (c), or (d) of section 1395ww of this title, to maintain an agreement with a professional standards review organization (if there is such an organization in existence in the area in which the hospital is located) or with a quality improvement organization which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital is located to perform the functions described in paragraph (3)(A), (G) in the case of hospitals which provide inpatient hospital services for which payment may be made under subsection (b) or (d) of section 1395ww of this title, not to charge any individual or any other person for inpatient hospital services for which such individual would be entitled to have payment made under part A of this subchapter but for a denial or reduction of payments under section 1395ww(f)(2) of this title, (H)(i) in the case of hospitals which provide services for which payment may be made under this subchapter and in the case of critical access hospitals which provide critical access hospital services, to have all items and services (other than physician services as defined in regulations for purposes of section 1395y(a)(14) of this title, and other than services described by section 1395x(s)(2)(D) of this title, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist) that are furnished to an individual who is a patient of the hospital, and (II) for which the individual is entitled to have payment made under this subchapter, furnished by the hospital or otherwise under arrangements (as defined in section 1395x(w)(4) of this title) made by the hospital, (ii) in the case of skilled nursing facilities which provide covered skilled nursing facility services, (I) that are furnished to an individual who is a resident of the skilled nursing facility during a period in which the resident is provided covered post-hospital extended care services (or, for services described in section 1395x(s)(2)(D) of this title, that are furnished to such an individual without regard to such period), and (II) for which the individual is entitled to have payment made under this subchapter,
to have items and services (other than services described in section 1395yy(e)(2)(A)(ii) of this title) furnished by the skilled nursing facility or otherwise under arrangements (as defined in section 1395x(w)(1) of this title) made by the skilled nursing facility.

(I) in the case of a hospital or critical access hospital—

(i) to adopt and enforce a policy to ensure compliance with the requirements of section 1395dd of this title and to meet the requirements of such section.

(ii) to maintain medical and other records related to individuals transferred to or from the hospital for a period of five years from the date of the transfer, and

(iii) to maintain a list of physicians who are on call for duty after the initial examination to provide treatment necessary to stabilize an individual with an emergency medical condition.

(J) in the case of hospitals which provide inpatient hospital services for which payment may be made under this subchapter, to be a participating provider of medical care under any health plan contracted for under section 1079 or 1086 of title 10, or under section 1719 of this title, in accordance with such admission practices, payment methodology, and amounts as prescribed under joint regulations issued by the Secretary and by the Secretaries of Defense and Transportation, in implementation of sections 1079 and 1086 of title 10.

(K) not to charge any individual or any other person for items or services for which payment under this subchapter is denied under section 1320c–3(a)(2) of this title by reason of a determination under section 1320c–3(a)(1)(B) of this title.

(L) in the case of hospitals which provide inpatient hospital services for which payment may be made under this subchapter, to be a participating provider of medical care under section 1703 of title 38, in accordance with such admission practices, payment methodology, and amounts as prescribed under joint regulations issued by the Secretary and by the Secretary of Veterans Affairs in implementation of such section.

(M) in the case of hospitals, to provide to each individual who is entitled to benefits under part A of this subchapter (or to a person acting on the individual's behalf), at or about the time of the individual's admission as an inpatient to the hospital, a written statement (containing such language as the Secretary prescribes consistent with this paragraph) which explains—

(i) the individual's rights to benefits for inpatient hospital services and for posthospital services under this subchapter,

(ii) the circumstances under which such an individual will and will not be liable for charges for continued stay in the hospital,

(iii) the individual's right to appeal denials of benefits for continued inpatient hospital services, including the practical steps to initiate such an appeal, and

(iv) the individual's liability for payment for services if such a denial of benefits is upheld on appeal,

and which provides such additional information as the Secretary may specify.

(N) in the case of hospitals and critical access hospitals—

(i) to make available to its patients the directory or directories of participating physicians (published under section 1395(b)(4) of this title) for the area served by the hospital or critical access hospital.

(ii) if hospital personnel (including staff of any emergency or outpatient department) refer a patient to a nonparticipating physician for further medical care on an outpatient basis, the personnel must inform the patient that the physician is a nonparticipating physician and, whenever practicable, must identify at least one qualified participating physician who is listed in such a directory and from whom the patient may receive the necessary services,

(iii) to post conspicuously in any emergency department a sign (in a form specified by the Secretary) specifying rights of individuals under section 1395dd of this title with respect to examination and treatment for emergency medical conditions and women in labor, and

(iv) to post conspicuously (in a form specified by the Secretary) information indicating whether or not the hospital participates in the medicaid program under a State plan approved under subchapter XIX of this chapter.

(O) to accept as payment in full for services that are covered under this subchapter and are furnished to any individual enrolled with a Medicare+Choice organization under part C of this subchapter, with a PACE provider under section 1395see or 1396w–4 of this title, or with an eligible organization with a risk-sharing contract under section 1395mm of this title, under section 1395mm(i)(2)(A) of this title (as in effect before February 1, 1985), under section 1395mm(i)(2)(A) of this title, or under section 222(a) of the Social Security Amendments of 1972, which does not have a contract (or, in the case of a PACE provider, contract or other agreement) establishing payment amounts for services furnished to members of the organization or PACE program eligible individuals enrolled with the PACE provider, the amounts that would be made as a payment in full under this subchapter (less any payments under sections 1395ww(d)(4) and 1395ww(h)(3)(D) of this title) if the individuals were not so enrolled.

(P) in the case of home health agencies which provide home health services to individuals entitled to benefits under this subchapter who require catheters, catheter supplies, ostomy bags, and supplies related to ostomy care (described in section 1395x(m)(5) of this title), to offer to furnish such supplies to such an individual as part of their furnishing of home health services.

(Q) in the case of hospitals, skilled nursing facilities, home health agencies, and hospice programs, to comply with the requirement of

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1 See References in Text note below.
subsection (f) of this section (relating to maintaining written policies and procedures respecting advance directives),

(R) to contract only with a health care clearinghouse (as defined in section 1320c of this title) that meets the standard and implementation specification adopted or established under part C of subchapter XI of this chapter on or after the date on which the health care clearinghouse is required to comply with the standard or specification,

(S) in the case of a hospital that has a financial interest (as specified by the Secretary in regulations) in an entity to which individuals are referred as described in section 1395x(ee)(2)(H)(ii) of this title, or in which such an entity has such a financial interest, or in which another entity has such a financial interest (directly or indirectly) with such hospital and such an entity, to maintain and disclose to the Secretary (in a form and manner specified by the Secretary) information on—

(i) the nature of such financial interest,

(ii) the number of individuals who were discharged from the hospital and who were identified as requiring home health services, and

(iii) the percentage of such individuals who received such services from such provider (or another such provider),

(T) in the case of hospitals and critical access hospitals, to furnish to the Secretary such data as the Secretary determines appropriate pursuant to subparagraph (E) of section 1395w(d)(12) of this title to carry out such section,

(U) in the case of hospitals which furnish inpatient hospital services for which payment may be made under this subchapter, to be a participating provider of medical care both—

(i) under the contract health services program funded by the Indian Health Service and operated by the Indian Health Service, an Indian tribe, or tribal organization (as those terms are defined in section 1603 of title 25), with respect to items and services that are covered under such program and furnished to an individual eligible for such items and services under such program; and

(ii) under any program funded by the Indian Health Service and operated by an urban Indian organization with respect to the purchase of items and services for an eligible urban Indian (as those terms are defined in such section 1603),

in accordance with regulations promulgated by the Secretary regarding admission practices, payment methodology, and rates of payment (including the acceptance of no more than such payment rate as payment in full for such items and services).2

(V) in the case of hospitals that are not otherwise subject to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) (or a State occupational safety and health plan that is approved under 18(b)3 of such Act (29 U.S.C. 667(b))), to comply with the Bloodborne Pathogens standard under section 1910.1039 of title 29 of the Code of Federal Regulations (or as subsequently redesignated), and

(W)4 in the case of a hospital described in section 1395ww(d)(1)(B) of this title, to report quality data to the Secretary in accordance with subsection (k).

(W)4 maintain and, upon request of the Secretary, provide access to documentation relating to written orders or requests for payment for durable medical equipment, certifications for home health services, or referrals for other items or services written or ordered by the provider under this subchapter, as specified by the Secretary.

In the case of a hospital which has an agreement in effect with an organization described in subparagraph (F), which organization’s contract with the Secretary under part B of subchapter XI of this chapter is terminated on or after October 1, 1984, the hospital shall not be determined to be out of compliance with the requirement of such subparagraph during the six month period beginning on the date of the termination of that contract.

(2)(A) A provider of services may charge such individual or other person (i) the amount of any deduction or coinsurance amount imposed pursuant to section 1395(ea)(1), (a)(3), or (a)(4), section 1395l(b), or section 1395x(y)(3) of this title with respect to such items and services (not in excess of the amount customarily charged for such items and services by such provider), and (ii) an amount equal to 20 per centum of the reasonable charges for such items and services (not in excess of 20 per centum of the amount customarily charged for such items and services by such provider) for which payment is made under part B of this subchapter or which are durable medical equipment furnished as home health services (but in the case of items and services furnished to individuals with end-stage renal disease, an amount equal to 20 percent of the estimated amounts for such items and services calculated on the basis established by the Secretary). In the case of items and services described in section 1395(c) of this title, clause (ii) of the preceding sentence shall be applied by substituting for 20 percent the proportion which is appropriate under such section. A provider of services may not impose a charge under clause (i) of the first sentence of this subparagraph (ii) of the first sentence of this subparagraph with respect to items and services described in section 1395x(s)(10)(A) of this title and with respect to clinical diagnostic laboratory tests for which payment is made under part B of this subchapter. Notwithstanding the first sentence of this subparagraph, a home health agency may charge such an individual or person, with respect to covered items subject to payment under section 1395m(a) of this title, the amount of any deduction imposed under section 1395l(b) of this title and 20 percent of the payment basis described in section 1395m(a)(1)(B) of this title. In the case of items and services for which payment is made under part B of this subchapter under the prospective payment system estab-

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2So in original. The comma probably should be preceded by a closing parenthesis.

3So in original. Probably should be preceded by "section".

4So in original. Two subpars. (W) have been enacted.
lished under section 1395(t) of this title, clause (ii) of the first sentence shall be applied by substituting for 20 percent of the reasonable charge, the applicable copayment amount established under section 1395(c)(5) of this title. In the case of services described in section 1395(a)(9) of this title or section 1395(a)(9) of this title for which payment is made under part B of this subchapter under section 1395m(k) of this title, clause (ii) of the first sentence shall be applied by substituting for 20 percent of the reasonable charge for such services 20 percent of the lesser of the actual charge or the applicable fee schedule amount (as defined in such section) for such services.

(B) Where a provider of services has furnished, at the request of such individual, items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under this subchapter, such provider of services may also charge such individual or other person for such more expensive items or services to the extent that the amount customarily charged by it for the items or services furnished at such request exceeds the amount customarily charged by it for the items or services with respect to which payment may be made under this subchapter.

(C) A provider of services may in accordance with its customary practice also appropriately charge any such individual for any whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished him with respect to which a deductible is imposed under section 1395e(a)(2) of this title, except that (i) any excess of such charge over the cost to such provider for the blood (or equivalent quantities of packed red blood cells, as so defined) shall be deducted from any payment to such provider under this subchapter, (ii) no such charge may be imposed for the cost of administration of such blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is imposed under section 1395e(a)(2) of this title.

(D) Where a provider of services customarily furnishes items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under this subchapter, such provider, notwithstanding the preceding provisions of this paragraph, may not, under the authority of subparagraph (B)(ii) of this paragraph, charge any individual or other person any amount for such items or services in excess of the amount of the payment which may otherwise be made for such items or services under this subchapter if the admitting physician has a direct or indirect financial interest in such provider.

(3)(A) Under the agreement required under paragraph (1)(F)(ii), the quality improvement organization must perform functions (other than those covered under an agreement under paragraph (1)(F)(i)) under the third sentence of this title and under section 1320c-3(a)(4) of this title and under section 1320c-3(a)(14) of this title with respect to services, furnished by the hospital, critical access hospital, facility, or agency involved, for which payment may be made under this subchapter.

(B) For purposes of payment under this subchapter, the cost of such an agreement to the hospital, critical access hospital, facility, or agency shall be considered a cost incurred by such hospital, critical access hospital, facility, or agency in providing covered services under this subchapter and shall be paid directly by the Secretary to the quality improvement organization on behalf of such hospital, critical access hospital, facility, or agency in accordance with a schedule established by the Secretary.

(C) Such payments—

(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

(ii) shall not be less in the aggregate for a fiscal year—

(I) in the case of hospitals, than the amount specified in paragraph (1)(F)(i)(III), and

(II) in the case of facilities, critical access hospitals, and agencies, than the amounts the Secretary determines to be sufficient to cover the costs of such organizations’ conducting the activities described in subparagraph (A) with respect to such facilities, critical access hospitals, or agencies under part B of subchapter XI of this chapter.

(b) Termination or nonrenewal of agreements

(1) A provider of services may terminate an agreement with the Secretary under this section at such time and upon such notice to the Secretary and the public as may be provided in regulations, except that notice of more than six months shall not be required.

(2) The Secretary may refuse to enter into an agreement under this section or, upon such reasonable notice to the provider and the public as may be specified in regulations, may refuse to renew or may terminate such an agreement after the Secretary—

(A) has determined that the provider fails to comply substantially with the provisions of this agreement, with the provisions of this subchapter and regulations thereunder, or with a corrective action required under section 1395ww(f)(2)(B) of this title,

(B) has determined that the provider fails substantially to meet the applicable provisions of section 1320c-3(a)(4)(A) of this title and under section 1320c-3(a)(14) of this title, or

(C) has excluded the provider from participation in a program under this subchapter pursuant to section 1320a-7 of this title or section 1320a-7a of this title, or
(D) has ascertained that the provider has been convicted of a felony under Federal or State law for an offense which the Secretary determines is detrimental to the best interests of the program or program beneficiaries.

(3) A termination of an agreement or a refusal to renew an agreement under this subsection shall become effective on the same date and in the same manner as an exclusion from participation under the programs under this subchapter becomes effective under section 1320a–7(c) of this title.

(4)(A) A hospital that fails to comply with the requirement of subsection (a)(1)(V) of this section (relating to the Bloodborne Pathogens standard) is subject to a civil money penalty in an amount described in subparagraph (B), but is not subject to termination of an agreement under this section.

(B) The amount referred to in subparagraph (A) is an amount that is similar to the amount of civil penalties that may be imposed under section 17 of the Occupational Safety and Health Act of 1970 [29 U.S.C. 666] for a violation of the Bloodborne Pathogens standard referred to in subsection (a)(1)(U) of this section by a hospital that is subject to the provisions of such Act [29 U.S.C. 651 et seq.].

(C) A civil money penalty under this paragraph shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected under that section.

(e) Refiling after termination or nonrenewal; agreements with skilled nursing facilities

(1) Where the Secretary has terminated or has refused to renew an agreement under this subchapter with a provider of services, such provider may not file another agreement under this subchapter unless the Secretary finds that the reason for the termination or nonrenewal has been removed and that there is reasonable assurance that it will not recur.

(2) Where the Secretary has terminated or has refused to renew an agreement under this subchapter with a provider of services, the Secretary shall promptly notify each State agency which administers or supervises the administration of a State plan approved under subchapter XIX of this chapter of such termination or nonrenewal.

(f) Decision to withhold payment for failure to review long-stay cases

If the Secretary finds that there is a substantial failure to make timely review in accordance with section 1395x(k) of this title of long-stay cases in a hospital, he may, in lieu of terminating his agreement with such hospital, decide that, with respect to any individual admitted to such hospital after a subsequent date specified by him, no payment shall be made under this subchapter for inpatient hospital services (including inpatient psychiatric hospital services) after the 20th day of a continuous period of such services. Such decision may be made effective only after such notice to the hospital and to the public, as may be prescribed by regulations, and its effectiveness shall terminate when the Secretary finds that the reason therefor has been removed and that there is reasonable assurance that it will not recur. The Secretary shall not make any such decision except after reasonable notice and opportunity for hearing to the institution or agency affected thereby.

(e) "Provider of services" defined

For purposes of this section, the term "provider of services" shall include—

(1) a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1395x(p)(4)(A) of this title (or meets the requirements of such section through the operation of subsection (g) or (ll)(2) of section 1395x of this title), or if, in the case of a public health agency, such agency meets the requirements of section 1395x(p)(4)(B) of this title (or meets the requirements of such section through the operation of subsection (g) or (ll)(2) of section 1395x of this title), but only with respect to the furnishing of outpatient physical therapy services (as therein defined), through the operation of section 1395x(g) of this title with respect to the furnishing of outpatient occupational therapy services, or through the operation of section 1395x(ll)(2) of this title with respect to the furnishing of outpatient speech-language pathology; and

(2) a community mental health center (as defined in section 1395x(ff)(3)(B) of this title), but only with respect to the furnishing of partial hospitalization services (as described in section 1395x(ff)(1) of this title).

(f) Maintenance of written policies and procedures

(1) For purposes of subsection (a)(1)(Q) of this section and sections 1395i–3(c)(2)(E), 1395i(s), 1395w–25(l), 1395mm(c)(8), and 1395bb(a)(6) of this title, the requirement of this subsection is that a provider of services, Medicare+Choice organization, or prepaid or eligible organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization—

(A) to provide written information to each such individual concerning—

(i) an individual’s rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and

(ii) the written policies of the provider or organization respecting the implementation of such rights;

(B) to document in a prominent part of the individual’s current medical record whether or not the individual has executed an advance directive;

(C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;
(D) to ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State) respecting advance directives at facilities of the provider or organization; and
(E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

(2) The written information described in paragraph (1)(A) shall be provided to an adult individual

(A) in the case of a hospital, at the time of the individual’s admission as an inpatient,

(B) in the case of a skilled nursing facility, at the time of the individual’s admission as a resident,

(C) in the case of a home health agency, in advance of the individual coming under the care of the agency,

(D) in the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program, and

(E) in the case of an eligible organization (as defined in section 1395mm(b) of this title) or an organization provided payments under section 1395f(a)(1)(A) of this title or a Medicare+ Choice organization, at the time of enrollment of the individual with the organization.

(3) In this subsection, the term “advance directive” means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) respecting the pendency of an appeal under this subparagraph.

(4) For construction relating to this subsection, see section 14406 of this title (relating to clarification respecting assisted suicide, euthanasia, and mercy killing).

(g) Penalties for improper billing

Except as permitted under subsection (a)(2) of this section, any person who knowingly and willfully presents, or causes to be presented, a bill or request for payment inconsistent with an arrangement under subsection (a)(1)(H) of this section or in violation of the requirement for such an arrangement, is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(h) Dissatisfaction with determination of Secretary; appeal by institutions or agencies; single notice and hearing

(1)(A) Except as provided in paragraph (2), an institution or agency dissatisfied with a determination by the Secretary that it is not a provider of services or with a determination described in subsection (b)(2) of this section shall be entitled to a hearing thereon by the Secretary (after reasonable notice) to the same extent as is provided in section 405(g) of this title, except that, in so applying such sections and in applying section 405(f) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(B) An institution or agency described in subparagraph (A) that has filed for a hearing under subparagraph (A) shall have expedited access to judicial review under this subparagraph in the same manner as providers of services, suppliers, and individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, may obtain expedited access to judicial review under the process established under section 1395f(b)(2) of this title.

Nothing in this subparagraph shall be construed to affect the application of any remedy imposed under section 1395–3 of this title during the pendency of an appeal under this subparagraph.

(C)(i) The Secretary shall develop and implement a process to expedite proceedings under this subsection in which—

(I) the remedy of termination of participation has been imposed;

(II) a remedy described in clause (i) or (iii) of section 1395f–3(h)(2)(B) of this title has been imposed, but only if such remedy has been imposed on an immediate basis; or

(iii) a determination has been made as to a finding of substandard quality of care that results in the loss of approval of a skilled nursing facility’s nurse aide training program.

(ii) Under such process under clause (i), priority shall be provided in cases of termination described in clause (i)(I).

(iii) Nothing in this subparagraph shall be construed to affect the application of any remedy imposed under section 1395f–3 of this title during the pendency of an appeal under this subparagraph.

(2) An institution or agency is not entitled to separate notice and opportunity for a hearing under both section 1320a–7 of this title and this section with respect to a determination or determinations based on the same underlying facts and issues.

(i) Intermediate sanctions for psychiatric hospitals

(1) If the Secretary determines that a psychiatric hospital which has an agreement in effect under this section no longer meets the requirements for a psychiatric hospital under this subchapter and further finds that the hospital’s deficiencies—

(A) immediately jeopardize the health and safety of its patients, the Secretary shall terminate such agreement; or

(B) do not immediately jeopardize the health and safety of its patients, the Secretary may terminate such agreement, or provide that no payment will be made under this subchapter with respect to any individual admitted to such hospital after the effective date of the finding, or both.

(2) If a psychiatric hospital, found to have deficiencies described in paragraph (1)(B), has not
complied with the requirements of this subchapter—

(A) within 3 months after the date the hospital is found to be out of compliance with such requirements, the Secretary shall provide that no payment will be made under this subchapter with respect to any individual admitted to such hospital after the end of such 3-month period, or

(B) within 6 months after the date the hospital is found to be out of compliance with such requirements, no payment may be made under this subchapter with respect to any individual in the hospital until the Secretary finds that the hospital is in compliance with the requirements of this subchapter.

(j) Enrollment process for providers of services and suppliers

(1) Enrollment process

(A) In general

The Secretary shall establish by regulation a process for the enrollment of providers of services and suppliers under this subchapter. Such process shall include screening of providers and suppliers in accordance with paragraph (2), a provisional period of enhanced oversight in accordance with paragraph (3), disclosure requirements in accordance with paragraph (4), the imposition of temporary enrollment moratoria in accordance with paragraph (5), and the establishment of compliance programs in accordance with paragraph (6).

(B) Deadlines

The Secretary shall establish by regulation procedures under which there are deadlines for actions on applications for enrollment (and, if applicable, renewal of enrollment). The Secretary shall monitor the performance of Medicare administrative contractors in meeting the deadlines established under this subparagraph.

(C) Consultation before changing provider enrollment forms

The Secretary shall consult with providers of services and suppliers before making changes in the provider enrollment forms required of such providers and suppliers to be eligible to submit claims for which payment may be made under this subchapter.

(2) Provider screening

(A) Procedures

Not later than 180 days after March 23, 2010, the Secretary, in consultation with the Inspector General of the Department of Health and Human Services, shall establish procedures under which screening is conducted with respect to providers of medical or other items or services and suppliers under the program under this subchapter, the Medicaid program under subchapter XIX, and the CHIP program under subchapter XXI.

(B) Level of screening

The Secretary shall determine the level of screening conducted under this paragraph according to the risk of fraud, waste, and abuse, as determined by the Secretary, with respect to the category of provider of medical or other items or services or supplier. Such screening—

(i) shall include a licensure check, which may include such checks across States; and

(ii) may, as the Secretary determines appropriate based on the risk of fraud, waste, and abuse described in the preceding sentence, include—

(I) a criminal background check;

(II) fingerprinting;

(III) unscheduled and unannounced site visits, including preenrollment site visits;

(IV) database checks (including such checks across States); and

(V) such other screening as the Secretary determines appropriate.

(C) Application fees

(i) Institutional providers

Except as provided in clause (ii), the Secretary shall impose a fee on each institutional provider of medical or other items or services or supplier (such as a hospital or skilled nursing facility) with respect to which screening is conducted under this paragraph in an amount equal to—

(I) for 2010, $500; and

(II) for 2011 and each subsequent year, the amount determined under this clause for the preceding year, adjusted by the percentage change in the consumer price index for all urban consumers (all items; United States city average) for the 12-month period ending with June of the previous year.

(ii) Hardship exception; waiver for certain Medicaid providers

The Secretary may, on a case-by-case basis, exempt a provider of medical or other items or services or supplier from the imposition of an application fee under this subparagraph if the Secretary determines that the imposition of the application fee would result in a hardship. The Secretary may waive the application fee under this subparagraph if the State demonstrates that imposition of the fee would impede beneficiary access to care.

(iii) Use of funds

Amounts collected as a result of the imposition of a fee under this subparagraph shall be used by the Secretary for program integrity efforts, including to cover the costs of conducting screening under this paragraph and to carry out this subsection and section 1320a–7k of this title.

(D) Application and enforcement

(i) New providers of services and suppliers

The screening under this paragraph shall apply, in the case of a provider of medical or other items or services or supplier who is not enrolled in the program under this subchapter, subchapter XIX, or subchapter
(3) Provisional period of enhanced oversight for new providers of services and suppliers

(A) In general

The Secretary shall establish procedures to provide for a provisional period of not less than 30 days and not more than 1 year during which new providers of medical or other items or services and suppliers, as the Secretary determines appropriate, including categories of providers or suppliers, would be subject to enhanced oversight, such as pre-payment review and payment caps, under the program under this subchapter, the Medicaid program under subchapter XIX, and the CHIP program under subchapter XXI.

(B) Implementation

The Secretary may establish by program instruction or otherwise the procedures under this paragraph.

(4) 90-day period of enhanced oversight for initial claims of DME suppliers

For periods beginning after January 1, 2011, if the Secretary determines that there is a significant risk of fraudulent activity among suppliers of durable medical equipment, in the case of a supplier of durable medical equipment who is within a category or geographic area under this subchapter identified pursuant to such determination and who is initially enrolling under such subchapter, the Secretary shall, notwithstanding sections 1395h(c), 1395a(c), and 1395ff(a)(2) of this title, withhold payment under such subchapter, the Medicaid program under subchapter XIX, or the CHIP program under subchapter XXI, or has had its billing privileges denied or revoked.

(B) Authority to deny enrollment

If the Secretary determines that such previous affiliation poses an undue risk of fraud, waste, or abuse, the Secretary may deny such application. Such a denial shall be subject to appeal in accordance with paragraph (7).

(6) Authority to adjust payments of providers of services and suppliers with the same tax identification number for medicare obligations

(A) In general

Notwithstanding any other provision of this subchapter, in the case of an applicable provider of services or supplier, the Secretary may make any necessary adjustments to payments to the applicable provider of services or supplier under the program under this subchapter in order to satisfy any amount described in subparagraph (B)(ii) due from such obligated provider of services or supplier.

(B) Definitions

In this paragraph:

(i) In general

The term “applicable provider of services or supplier” means a provider of serv-

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ices or supplier that has the same taxpayer identification number assigned under section 6109 of the Internal Revenue Code of 1986 as is assigned to the obligated provider of services or supplier under such section, regardless of whether the applicable provider of services or supplier is assigned a different billing number or national provider identification number under the program under this subchapter than is assigned to the obligated provider of services or supplier.

(ii) Obligated provider of services or supplier

The term “obligated provider of services or supplier” means a provider of services or supplier that owes an amount that is more than the amount required to be paid under the program under this subchapter (as determined by the Secretary).

(7) Temporary moratorium on enrollment of new providers

(A) In general

The Secretary may impose a temporary moratorium on the enrollment of new providers of services and suppliers, including categories of providers of services and suppliers, in the program under this subchapter, under the Medicaid program under subchapter XIX, or under the CHIP program under subchapter XXI if the Secretary determines such moratorium is necessary to prevent or combat fraud, waste, or abuse under any subchapter if the Secretary determines such moratorium is necessary to prevent or combat fraud, waste, or abuse under either such program.

(B) Limitation on review

There shall be no judicial review under section 1395cc of this title, section 1395oo of this title, or otherwise, of a temporary moratorium imposed under subparagraph (A).

(8) Compliance programs

(A) In general

On or after the date of implementation determined by the Secretary under subparagraph (C), a provider of medical or other items or services or supplier within a particular industry sector or category shall, as a condition of enrollment in the program under this subchapter, subchapter XIX, or subchapter XXI, establish a compliance program that contains the core elements established under subparagraph (B) with respect to that provider or supplier and industry or category.

(B) Establishment of core elements

The Secretary, in consultation with the Inspector General of the Department of Health and Human Services, shall establish core elements for a compliance program under subparagraph (A) for providers or suppliers within a particular industry or category.

(C) Timeline for implementation

The Secretary shall determine the timeline for the establishment of the core elements under subparagraph (B) and the date of the implementation of subparagraph (A) for providers or suppliers within a particular industry or category. The Secretary shall, in determining such date of implementation, consider the extent to which the adoption of compliance programs by a provider of medical or other items or services or supplier is widespread in a particular industry sector or with respect to a particular provider or supplier category.

(8) Hearing rights in cases of denial or non-renewal

A provider of services or supplier whose application to enroll (or, if applicable, to renew enrollment) under this subchapter is denied may have a hearing and judicial review of such denial under the procedures that apply under subsection (h)(1)(A) of this section to a provider of services that is dissatisfied with a determination by the Secretary.

(k) Quality reporting by cancer hospitals

(1) In general

For purposes of fiscal year 2014 and each subsequent fiscal year, a hospital described in section 1395ww(d)(1)(B)(v) of this title has the opportunity to report data submitted under paragraph (4) with respect to fiscal year 2014 or each subsequent fiscal year.

(2) Submission of quality data

For fiscal year 2014 and each subsequent fiscal year, each hospital described in such section shall submit to the Secretary data on quality measures specified under paragraph (3). Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this subparagraph.

(3) Quality measures

(A) In general

Subject to subparagraph (B), any measure specified by the Secretary under this paragraph must have been endorsed by the entity with a contract under section 1395aaa(a) of this title.

(B) Exception

In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1395aaa(a) of this title, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

(C) Time frame

Not later than October 1, 2012, the Secretary shall publish the measures selected under this paragraph that will be applicable with respect to fiscal year 2014.

(4) Public availability of data submitted

The Secretary shall establish procedures for making data submitted under paragraph (4) available to the public. Such procedures shall ensure that a hospital described in section 1395ww(d)(1)(B)(v) of this title has the oppor-
tunity to review the data that is to be made public with respect to the hospital prior to such data being made public. The Secretary shall report quality measures of process, structure, outcome, patients' perspective on care, efficiency, and costs of care that relate to services furnished in such hospitals on the Internet website of the Centers for Medicare & Medicaid Services.


ance with paragraph (4), the imposition of temporary enrollment moratoria in accordance with paragraph (5), and the establishment of compliance programs in accordance with paragraph (6).


Former par. (2) redesignated subpar. (E).


Pub. L. 111–148, § 6401(a)(3), added par. (4) and (5).


Subsec. (j)(7). Pub. L. 114–112, § 1303(c)(2), substituted “amount described in subparagraph (B)(ii) due from such” for “past-due obligations described in subparagraph (B)(ii) of an”.


2008—Subsec. (c)(1). Pub. L. 110–275 substituted “section through the operation of subsection (g) or (h) or (i) of section 1395x” for “section through the operation of section 1395x” in two places, substituted “defined,” for “defined” or, and inserted “(or the operation of section 1395x[(h)(2)] of this title) with respect to the furnishing of outpatient speech-language pathology services.”


Subsec. (h)(1). Pub. L. 108–173, §§ 832(b), (c)(1), redesignated existing provisions as subpars. (A) and added subpar. (B) and (C).


2009—Subsec. (a)(1)(H)(iii)(I). Pub. L. 106–554 inserted “during a period in which the resident is provided covered post-hospital extended care services or (for services described in section 1395x(s)(2)(D) of this title, that are furnished to such an individual without regard to such period)” after “skilled nursing facility”.


Subsec. (a)(1)(S). Pub. L. 105–33, 10714(b)(1), designated existing provisions as cl. (i) and inserted before comma at end of cl. (i) and (ii) not to impose any charge that is prohibited under section 1396a(n)(3) of this title”.


Subsec. (a)(1)(H). Pub. L. 105–33, § 431(a)(2)(D), substituted “section 1395x(s)(2)(K) of this title” for “section 1395x(s)(2)(K) or 1395x(s)(2)(K)(iii) of this title”.

Pub. L. 105–33, § 443(b)(5)(F), designated existing provisions as cl. (i), redesignated former cl. (ii) as subcls. (i) and (ii), respectively, and added cl. (ii).

Pub. L. 105–33, § 420(c)(1), substituted “critical access” for “rural primary care” in two places.

Subsec. (a)(1)(I), (N). Pub. L. 105–33, § 420(c)(1), substituted “critical access” for “rural primary care” in introductory provisions of subpars. (I) and (N) and in subpar. (N)(i).

Subsec. (a)(1)(O). Pub. L. 105–33, § 4002(e), struck out “in the case of hospitals and skilled nursing facilities, before “to accept as payment in full”, “inpatient hospital and extended care” after “to accept as payment in full”, and “in the case of hospitals or limited (in the case of skilled nursing facilities)” after “the organization the amounts”; inserted “with a Medicare+Choice organization under part C of such subchapter or after any “individual enrolled” and “less any payments under sections 1395ww(d)(11) and 1395ww(h)(3)(D) of this title” after “under this subchapter”.


Subsec. (a)(2)(A). Pub. L. 105–33, § 451(a)(3), which directed the amendment of subsec. (a)(2)(A) by inserting the following at the end “In the case of services described in section 1395(a)(8) of this title or section 1395x(a)(9) of this title for which payment is made under part B of such subchapter under section 1395k of this title, clause (ii) of the first sentence shall be applied by substituting for 20 percent of the reasonable charge for such services 20 percent of the lesser of the actual charge or the applicable fee schedule amount (as defined in such section) for such services,”, was executed by inserting the material at the end of subpar. (A) to reflect the probable intent of Congress.

Pub. L. 105–33, § 452(b), which directed the amendment of subsec. (a)(2)(A) by inserting the following at the end “In the case of items and services for which payment is made under part B of such subchapter under the prospective payment system established under section 1395(s) of this title, clause (ii) of the first sentence shall be applied by substituting for 20 percent of the reasonable charge, the applicable copayment amount established under section 1395(t)(5) of this title,”, was
executed by inserting the material at the end of subpar. (A) to reflect the probable intent of Congress. 


Subsec. (f)(1)(B). Pub. L. 105–33, § 4641(a), inserted "in a prominent part of the individual's current medical record" for "in the individual's medical record".

Subsec. (g)(2)(E). Pub. L. 105–33, § 4002(d)(2), inserted "or a Medicare+Choice organization" after "section 1395(a)(1)(A) of this title".


Subsec. (a)(2)(A). Pub. L. 103–432, § 156(a)(2)(E), struck out "", with respect to items and services furnished in connection with obtaining a second opinion required under section 1920–1395c(i)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)," after "section 1395x(s)(10)(A) of this title".

Subsec. (d). Pub. L. 103–432, § 106(b)(1)(B), substituted "long-stay cases in a hospital" for "long-stay cases in a hospital or skilled nursing facility", "such hospital" for "such hospital or facility" in two places, "period of such services or for post-hospital extended care services after such day of a continuous period of such care as is prescribed in or pursuant to regulations, as the case may be", and "notice to the hospital" for "notice to the hospital, or (in the case of a skilled nursing facility) to the facility and the hospital or hospitals with which it has a transfer agreement".


Subsec. (h)(1). Pub. L. 103–296 inserted before period at end "except that, in so applying such sections and in applying section 466(f) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary of Health and Human Services, respectively".


Pub. L. 102–54 substituted "Secretary of Veterans Affairs" for "Administrator of Veterans Affairs".


Subsec. (a)(1)(H). Pub. L. 101–508, § 4157(c)(2), inserted "services described by section 1395x(s)(2)(K)(i) of this title, certified nurse-midwife services, qualified psychological services, and "after and other than".

Subsec. (a)(1)(i)(1). Pub. L. 101–508, § 4008(b)(3)(B), inserted "and to meet the requirements of such section after "section 1395dd of this title".

Subsec. (a)(1)(P). Pub. L. 101–508, § 4153(d)(1), substituted "catheters, catheter supplies, ostomy bags, and supplies related to ostomy care" for "ostomy supplies".


Subsec. (a)(1)(S)(1), (2), Pub. L. 101–329, § 6003(g)(3)(D)(xii)(II), inserted "and in the case of rural primary care hospitals which provide rural primary care hospital services" after "payment may be made under this subchapter".

Subsec. (a)(1)(T), Pub. L. 101–239, § 6018(a)(1), added subpar. (I) generally. Prior to amendment, subpar. (I) read as follows: "in the case of a hospital or hospital district in the case of a rural primary care hospital, to comply with the requirements of section 1395dd of this title to the extent applicable.".


Subsec. (a)(2)(A). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, §§ 201(b), (d), 202(h)(1), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (a)(2)(B). Pub. L. 101–239, § 6017, redesignated cl. (i) as subpar. (B) and struck out cl. (ii) which authorized charges for items or services more expensive than determined to be necessary and which have not been requested by the individual to the extent that such costs in the second fiscal period preceding the fiscal period in which such charges are imposed exceed necessary costs, under certain circumstances.

Subsec. (a)(3)(A), (B). Pub. L. 101–239, § 6003(g)(3)(D)(xii)(II), substituted "facility of rural primary care hospital services" after "payment may be made under this subchapter".


Subsec. (d). Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(5), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

only if such facility has been approved pursuant to section 1396i(a) of this title, and the term of any such agreement shall be in accordance with the period of approval of eligibility specified by the Secretary pursuant to section 1395b of this title.”

Subsec. (c)(3). Pub. L. 100–203, § 4212(e)(4), redesignated par. (3) as (2).

Pub. L. 100–93, §§ (d)(3), (4), substituted “the Secretary has terminated or has refused to renew an agreement under this subchapter with a provider of services for” an agreement filed under this subchapter by a provider of services has been terminated by the Secretary and inserted “or nonrenewal” after “termination”.

Subsec. (g). Pub. L. 100–203, § 4085(b)(26), as added by Pub. L. 100–360, § 411(i)(4)(C)(v), substituted “money penalty” for “monetary penalty” in first sentence and amended second sentence generally. Prior to amendment, second sentence read as follows: “Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1320a–7a of this title with respect to actions described in subsection (a) of that section.”

Pub. L. 100–203, § 4085(b)(17), substituted “inconsistent with an arrangement under subsection (a)(1)(H) of this section or in violation of the requirement for such an arrangement” for “for a hospital outpatient service for which payment may be made under part B of this subchapter and such bill or request violates an arrangement under subsection (a)(1)(H) of this section.”

Subsec. (h). Pub. L. 100–93, § 8(d)(3), inserted the period “in a hospital” after “inconsistent with an arrangement under subsection (a)(1)(H) of this section or in violation of the requirement for such an arrangement” and struck out former par. (3).


Subsec. (a)(1)(F). Pub. L. 98–369, §2313(d), substituted ‘‘(b), (c), or (d)’’ for ‘‘(c) or (d)’’.

Pub. L. 98–369, §2347(a)(1), substituted ‘‘maintain an agreement with a professional standards review organization (if there is such an organization in existence in the area in which the hospital is located) or with a utilization and quality control peer review organization which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital is located, under which the organization has a contract with an organization under part B of subchapter XI of this chapter for the area in which the hospital is located) under which the organization’’.


Subsec. (a)(2)(A). Pub. L. 98–369, §2303(f), inserted ‘‘and with respect to clinical diagnostic laboratory testing’’ after ‘‘section 1395x(s)(10) of this title’’.

Pub. L. 98–369, §2321(c), inserted ‘‘or which are durable medical equipment furnished as home health services, and in the case of an extended care facility, or post-hospital extended medical care services, with respect to such services furnished to any individual who is such an organization’’.

Pub. L. 98–369, §2323(b)(3), substituted ‘‘section 1395x(s)(10)(A) of this title’’ for ‘‘section 1395x(s)(10) of this title’’.

Subsec. (b)(3). Pub. L. 98–369, §2335(d)(1), substituted ‘‘(including inpatient psychiatric hospital services)’’ for ‘‘(including tuberculosis hospital services and inpatient psychiatric hospital services)’’.

Pub. L. 98–369, §2354(b)(34), realigned margin of par. (3).

Subsec. (b)(4). Pub. L. 98–369, §2348(a), substituted ‘‘more than 30 days after such effective date’’ for ‘‘after the calendar year in which such termination is effective’’.

Subsec. (d). Pub. L. 98–369, §2335(d)(2), substituted ‘‘(including inpatient psychiatric hospital services for ‘‘(including inpatient tuberculosis hospital services and inpatient psychiatric hospital services)’’.

1983—Subsec. (a)(1). Pub. L. 98–21, §602(f)(2), inserted provision at end of par. (1) that in the case of a hospital which has an agreement in effect with an organization described in subparagraph (F), which organization’s contract with the Secretary under part B of subchapter XI terminates on or after October 1, 1984, the hospital shall not be determined to be out of compliance with the requirement of such subparagraph during the six month period beginning on the date of the termination of that contract.

Subsec. (a)(1)(F). Pub. L. 98–21, §602(c)(1), which provided that, effective Oct. 1, 1984, subpar. (F) is amended by substituting ‘‘(with an organization’’ for ‘‘(if there is such an organization’’, was repealed by Pub. L. 98–369, §2347(a)(2), effective July 18, 1984.

Subsec. (a)(1)(F) to (H). Pub. L. 98–21, §602(c)(1), added subpars. (F) to (H).


Subsec. (a)(2)(B)(ii). Pub. L. 98–21, §602(b)(2), inserted ‘‘and except with respect to inpatient hospital costs which are subject to which amounts are payable under section 1395ww(d) of this title’’ after ‘‘(except with respect to emergency services)’’ in provision preceding subcl. (I).


Subsec. (b). Pub. L. 97–248, §128(a)(5), in provisions preceding par. (1), struck out ‘‘(and in the case of a skilled nursing facility, prior to the end of the term specified in subsection (a)(1) of this section)’’ after ‘‘may be terminated’’.

Subsec. (b)(4)(A). Pub. L. 97–248, §122(g)(6), inserted ‘‘or hospice care’’ after ‘‘home health services’’.

1981—Subsec. (a)(1). Pub. L. 97–35 struck out provision following subpar. (D) which provided that an agreement with a skilled nursing facility be for a term not exceeding 12 months with the exception that the Secretary could extend the time in specified situations.

1980—Subsec. (a)(2)(A). Pub. L. 96–611 inserted provision that a provider of services may not impose a charge under clause (ii) of the first sentence of this subparagraph with respect to items and services furnished to any individual who is (I) a medicare beneficiary, (II) an individual who is a welfare recipient, or (III) an individual who is a recipient of any other public assistance program, for the period beginning on the date of the termination of the agreement which is such an organization, was repealed by Pub. L. 92–603, §2323(g)(1), added subpar. (D).

Subsec. (b)(2)(C). Pub. L. 95–142, §7(b)(3), substituted exist... and services furnished to any individual who is such an organization’’.

Pub. L. 95–142, §7(c)(3), substituted ‘‘of a quality which fails to meet professionally recognized standards of health care’’ for ‘‘harmful to individuals or to be of a grossly inferior quality’’, and struck out provisions relating to approval by an appropriate program review team.

1979—Subsec. (a)(2)(D). Pub. L. 95–210 substituted ‘‘section 1396i(a)(1)’’ for ‘‘section 1396i(a)’’.

1978—Subsec. (a)(2)(A). Pub. L. 95–292 provided for computation of and charging of coinsurance amounts for items and services furnished to any individual who is such an organization, was repealed by Pub. L. 92–603, §§2323(g)(1), added subpar. (D).

Subsec. (b)(2)(C). Pub. L. 95–142, §7(b)(3), substituted ‘‘of section 1395w(g) and section 1395n(e) of this title’’ for ‘‘Any provider of services’, ‘‘skilled nursing facility’’ for ‘‘extended care facility’’, inserted provision that the agreement be for a term of not to exceed 12 months with an allowable extension of 2 months under specified circumstances, redesignated subpar. (B) as (C) and added subpar. (B).

Subsec. (a)(2)(B). Pub. L. 95–142, §2328(e), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(2)(C). Pub. L. 92–603, §2323(g)(2), substituted ‘‘this subparagraph’’ for ‘‘clause (iii) of the preceding sentence’’.


Subsec. (b). Pub. L. 92–603, §§229(b)(2), 249A(c), 278(a)(17), (b)(18), 281(c), substituted ‘‘Any provider of services except a fund designated for purposes of section 1395w(g) and section 1395n(e) of this title’’ for ‘‘Any provider of services’, ‘‘skilled nursing facility’’ for ‘‘extended care facility’’, inserted provision that the agreement be for a term of not to exceed 12 months with an allowable extension of 2 months under specified circumstances, redesignated subpar. (B) as (C) and added subpar. (B).

Subsec. (a)(2)(B). Pub. L. 92–603, §2328(e), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(2)(C). Pub. L. 92–603, §2323(g)(2), substituted ‘‘this subparagraph’’ for ‘‘clause (iii) of the preceding sentence’’.


Subsec. (b). Pub. L. 92–603, §§229(b)(2), 249A(c), 278(a)(17), inserted ‘‘(and in the case of an extended care facility, prior to the end of the term specified in subsection (a)(1) of this section)’’ in provision preceding par. (1), in par. (2), added cl. (D) to (F), and in par. (3), substituted ‘‘(including tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended medical care services, with respect to services furnished after the effective date of such termination, except that payment may be made for up to thirty days with respect to inpatient institutional services furnished to any eligible individual who was admitted to such institution prior to’’ for ‘‘(including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended medical care services, with respect to such services furnished to any individual who is admitted to the hospital or extended care facility furnishing such services on or after’’ and substituted ‘‘skilled nursing facility’’ for ‘‘extended care facility’’.  

Subsec. (c). Pub. L. 92–603, §249A(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 92–603, §278(a)(17), substituted ‘‘skilled nursing facility’’ for ‘‘extended care facility’’ and ‘‘a’’ for ‘‘an’’.


Amendments by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of this title.

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

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

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

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

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

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

Amendment by section 4321(b) of Pub. L. 105–33 effective as of date specified by Secretary of Health and Human Services in regulations to be issued by Secretary not later than date which is one year after Aug. 5, 1997, see section 4321(b) of Pub. L. 105–33, set out as an Effective Date note under section 1320b–16 of this title.

Amendment by section 4321(b) of Pub. L. 105–33 effective as of date specified by Secretary of Health and Human Services in regulations to be issued by Secretary not later than date which is one year after Aug. 5, 1997, see section 4321(b) of Pub. L. 105–33, set out as an Effective Date note under section 1320b–16 of this title.

Amendment by section 4321(b) of Pub. L. 105–33 effective as of date specified by Secretary of Health and Human Services in regulations to be issued by Secretary not later than date which is one year after Aug. 5, 1997, see section 4321(b) of Pub. L. 105–33, set out as an Effective Date note under section 1320b–16 of this title.

Amendment by section 4321(b) of Pub. L. 105–33 effective as of date specified by Secretary of Health and Human Services in regulations to be issued by Secretary not later than date which is one year after Aug. 5, 1997, see section 4321(b) of Pub. L. 105–33, set out as an Effective Date note under section 1320b–16 of this title.

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Amendment by section 4321(b) of Pub. L. 105–33 effective as of date specified by Secretary of Health and Human Services in regulations to be issued by Secretary not later than date which is one year after Aug. 5, 1997, see section 4321(b) of Pub. L. 105–33, set out as an Effective Date note under section 1320b–16 of this title.

Amendment by section 4321(b) of Pub. L. 105–33 effective as of date specified by Secretary of Health and Human Services in regulations to be issued by Secretary not later than date which is one year after Aug. 5, 1997, see section 4321(b) of Pub. L. 105–33, set out as an Effective Date note under section 1320b–16 of this title.

Amendment by section 4321(b) of Pub. L. 105–33 effective as of date specified by Secretary of Health and Human Services in regulations to be issued by Secretary not later than date which is one year after Aug. 5, 1997, see section 4321(b) of Pub. L. 105–33, set out as an Effective Date note under section 1320b–16 of this title.
EFFECTIVE DATE OF 1994 AMENDMENTS

Section 106(b)(2) of Pub. L. 103–342 provided that: ‘‘The amendments made by paragraph (1) [amending this section and section 1395d of this title] shall take effect as if included in the enactment of OBRA–1987 [Pub. L. 100–203].’’

Amendment by section 147(e)(7) of Pub. L. 101–432 effective as if included in the enactment of Pub. L. 101–508, see section 147(c)(3)(B) of Pub. L. 101–508, set out as a note under section 1320c–3 of this title.

Amendment by section 156(a)(2)(E) of Pub. L. 101–432 applicable to services provided on or after Oct. 31, 1994, see section 156(a)(3) of Pub. L. 101–508, set out as a note under section 1320c–3 of this title.


EFFECTIVE DATE OF 1990 AMENDMENT

Section 4008(b)(4) of Pub. L. 101–508 provided that: ‘‘The amendments made by this subsection [amending this section and section 1395dd of this title] shall apply to actions occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act [Nov. 5, 1990].’’


Amendment by section 4157(c)(2) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4157(d) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4162(b)(2) of Pub. L. 101–508 applicable with respect to partial hospitalization services provided on or after Oct. 1, 1991, see section 4162(c) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4206(a) of Pub. L. 101–508 applicable with respect to services furnished on or after the first day of the month beginning more than 1 year after Nov. 5, 1990, see section 4206(e)(1) of Pub. L. 101–508, set out as a note under section 1395l–3 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6018(b) of Pub. L. 101–239 provided that: ‘‘The amendments made by subsection (a) [amending this section] shall take effect on the first day of the first month beginning more than 1 year after Mar. 31, 1989, see section 6018(e)(1) of Pub. L. 101–239, set out as a note under section 1320e–7 of this title.’’

EFFECTIVE DATE OF 1988 AMENDMENTS


Amendment by section 104(d)(5) of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Amendment by section 202(h)(1) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

As except specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(c)(2)(C), (D)(1)(D), (1)(C)(VI), (I)(5) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title I, General Provisions.

Section 411(c)(2)(3)(ii) of Pub. L. 100–360 provided that: ‘‘The amendment made by clause (i) [amending this section] shall apply to admissions occurring on or after the first day of the fourth month beginning after the date of the enactment of this Act [July 1, 1988].’’

EFFECTIVE DATE OF 1987 AMENDMENTS

Amendment by section 4012(a) of Pub. L. 100–203 applicable to admissions occurring on or after Apr. 1, 1988, or, if later, the earliest date the Secretary can provide all the information required under section 4012(a) of Pub. L. 100–203 [42 U.S.C. 1395mm note] in machine readable form, see section 4012(d) of Pub. L. 100–203, set out as a note under section 1395m of this title.

Amendment by section 4962(d)(4) of Pub. L. 100–360 applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989, see section 4962(e) of Pub. L. 100–360, as amended, set out as a note under section 1395f of this title.

Section 4908(i)(17) of Pub. L. 100–203 provided that the amendment made by such section 4908(i)(17) is effective as if included in the enactment of Pub. L. 99–509.

Section 4907(c) of Pub. L. 100–203 provided that: ‘‘The amendments made by this section [amending this section] shall apply with respect to fiscal years beginning on or after October 1, 1988.’’

Amendment by section 4212(e)(4) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, amended, set out as an Effective Date note under section 1396r of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 233(b) of Pub. L. 99–514 provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply to inpatient hospital services provided pursuant to admissions to hospitals occurring after June 30, 1987.’’


Section 9305(b)(2) of Pub. L. 99–509 provided that: ‘‘The Secretary of Health and Human Services shall first prescribe the language required under section 1956(a)(1)(M) of the Social Security Act [subsec. E(1)(1)(M) of this section] not later than the date of the enactment of this Act [Oct. 21, 1984].’’

The requirement of such section shall apply to admis-
sions to hospitals occurring on such date (not later than 60 days after the date such language is first prescribed) as the Secretary shall provide."

Amendment by section 9337(c)(2) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9338(h)(1), (K) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Amendment by section 9338(c)(2) of Pub. L. 99–509 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to agreements under section 1395k of this title as a note under section 1395x of this title.

Amendment by section 9343(c)(2), (3) of Pub. L. 99–509 applicable to services furnished after June 30, 1987, see section 9343(d)(1) of Pub. L. 99–509, as amended, set out as a note under section 1395f of this title.

Section 9353(e)(3)(A) of Pub. L. 99–509 provided that: "The amendments made by subsection (a) [amending this section] shall apply to terminations issued on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 9121(a) of Pub. L. 99–272 effective on first day of first month that begins at least 90 days after Apr. 7, 1986, see section 9121(c) of Pub. L. 99–272, set out as a note under section 1395dd of this title.

Section 9402(c)(1) of Pub. L. 99–272 provided that: "The amendments made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986]." 


**Effective Date of 1984 Amendment**

Amendment by section 2303(f) of Pub. L. 98–369 applicable to clinical diagnostic laboratory tests furnished on or after July 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a hospital operating under a waiver granted pursuant to section 602(k) of Pub. L. 98–97, set out as a note under section 1395y of this title, see section 2303(j)(1), (3) of Pub. L. 98–369, set out as a note under section 1395y of this title.

Amendment by section 2315(d) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2315(g) of Pub. L. 98–369, set out as an Effective and Termination Dates of 1984 Amendment note under section 1395ww of this title.

Amendment by section 2321(c) of Pub. L. 98–369 applicable to items and services furnished on or after July 18, 1984, see section 2321(g) of Pub. L. 98–369, set out as a note under section 1395y of this title.

Amendment by section 2322(b)(3) of Pub. L. 98–369 applicable to services furnished on or after Sept. 1, 1984, see section 2322(d) of Pub. L. 98–369, set out as a note under section 1395y of this title.

Amendment by section 2335(d) of Pub. L. 98–369 applicable to services furnished on or after the third calendar month beginning after Apr. 19, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the fourth month following the month of April 1978, and except that provisions for reimbursement rates for home dialysis to become effective for the fiscal year beginning on Apr. 1, 1978, set out as a note under section 1220c of this title.

**Effective Date of 1980 Amendment**

Amendment by Pub. L. 96–611 effective July 1, 1981, and applicable to services furnished on or after that date, see section 2 of Pub. L. 96–611, set out as a note under section 1395y of this title.

**Effective Date of 1978 Amendment**

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the tenth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective for the fiscal year beginning on Apr. 1, 1978, set out as a note under section 1220c of this title.
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**Effective Date of 1977 Amendments**

Section 2(f) of Pub. L. 95–210 provided that:

“(1) The amendments made by this section (amending this section and sections 1396a, 1396d, and 1396i of this title) shall (except as otherwise provided in paragraph (2)) apply to medical assistance provided, under a State plan approved under title XIX of the Social Security Act [subchapter XIX of this chapter], on and after the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Dec. 13, 1977].

“(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [subchapter XIX of this chapter] which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title [subchapter] solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the date of enactment of this Act [Dec. 13, 1977].

Amendment by section 2(b) of Pub. L. 95–142 effective Oct. 25, 1977, see section 3(e) of Pub. L. 95–142, set out as an Effective Date note under section 1320a–3 of this title.

Amendment by section 8(b) of Pub. L. 95–142 (amending this section) applicable with respect to contracts, agreements, etc., made on and after first day of fourth month beginning after Oct. 25, 1977, see section 8(e) of Pub. L. 95–142, set out as an Effective Date note under section 1320a–5 of this title.

Amendment by section 13(b)(3) of Pub. L. 95–142 effective Oct. 25, 1977, see section 13(c) of Pub. L. 95–142, set out as a note under section 1395y of this title.

Amendment by section 15(b) of Pub. L. 95–142 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to agreements entered into or renewed on and after the date of enactment of this Act [Oct. 25, 1977].”

**Effective Date of 1972 Amendment**

Amendment by section 222(e), (g) of Pub. L. 92–603 effective with respect to accounting periods beginning after June 30, 1972, see section 222(b) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Amendment by section 227(d)(2) of Pub. L. 92–603 applicable with respect to accounting periods beginning after June 30, 1973, see section 227(g) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 294(a) of Pub. L. 92–603 provided that: “The provisions of this section [enacting section 1396g of this title and amending this section] shall be effective with respect to agreements filed with the Secretary under section 1866 of the Social Security Act [this section] by skilled nursing facilities (as defined in section 3796(u)) of such title (section 1395x(g)) of this title) before, on, or after the date of enactment of this Act [Oct. 30, 1972], but accepted by him on or after such date.”

Amendment by section 281(c) of Pub. L. 92–603 applicable in the case of notices sent to individuals after 1968, see section 281(g) of Pub. L. 92–603, set out as a note under section 1396g of this title.

**Effective Date of 1968 Amendment**

Amendment by section 129(c)(12) of Pub. L. 90–248 applicable with respect to services furnished after Mar. 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Amendment by section 133(c) of Pub. L. 90–248 applicable with respect to services furnished after June 30, 1968, see section 133(c) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Amendment by section 135(b) of Pub. L. 90–248 applicable with respect to payment to blood (or packed red blood cells) furnished an individual after Dec. 31, 1967, see section 135(d) of Pub. L. 90–248, set out as a note under section 1395e of this title.

**Regulations**

Pub. L. 108–173, title V, §506(c), Dec. 8, 2003, 117 Stat. 2295, provided that: “The Secretary [of Health and Human Services] shall promulgate regulations to carry out the amendments made by subsection (a) [amending this section].”

**Disclosure of Medicare Terminated Providers and Suppliers to States**

Pub. L. 111–148, title VI, §6401(b)(2), Mar. 23, 2010, 124 Stat. 752, provided that: “The Administrator of the Centers for Medicare & Medicaid Services shall establish a process for making available to the each [sic] State agency with responsibility for administering a State Medicaid plan (or a waiver of such plan) under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] or a child health plan under title XXI [42 U.S.C. 1397aa et seq.] the name, national provider identifier, and other identifying information for any provider of medical or other items or services or supplier under the Medicare program under title XVIII [42 U.S.C. 1395 et seq.] or under the CHIP program under title XXI that is terminated from participation under that program within 30 days of the termination (and, with respect to all such providers or suppliers who are terminated from the Medicare program on the date of enactment of this Act [Mar. 23, 2010], within 90 days of such date).”


“(a) Report.—Not later than two years after the date of the enactment of this Act (July 15, 2008), the Inspector General of the Department of Health and Human Services shall prepare and publish a report on—

“(1) the extent to which Medicare providers and plans are complying with the Office for Civil Rights’ Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons and the Office of Minority Health’s Culturally and Linguistically Appropriate Services Standards in health care; and

“(2) a description of the costs associated with or savings related to the provision of language services. Such report shall include recommendations on improving compliance with CLAS Standards and recommendations on improving enforcement of CLAS Standards.

“(b) Implementation.—Not later than one year after the date of publication of the report under subsection (a), the Department of Health and Human Services shall implement changes responsive to any deficiencies identified in the report.”

**GAO Study and Report on the Propagation of Concierge Care**


“(a) Study.—

“(1) In general.—The Comptroller General of the United States shall conduct a study on concierge care (as defined in paragraph (2)) to determine the extent to which such care—

“(A) is used by Medicare beneficiaries (as defined in section 1820(b)(5)(A) of the Social Security Act [42 U.S.C. 1395a(b)(5)(A)]); and

“(B) has impacted upon the access of Medicare beneficiaries (as so defined) to items and services for which reimbursement is provided under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

“(2) Concierge care.—In this section, the term ‘concierge care’ means an arrangement under which, as a prerequisite for the provision of a health care item or service to an individual, a physician, practitioner (as described in section 1842(b)(18)(C) of the So-
(A) charges a membership fee or another incidental fee to an individual desiring to receive the health care item or service from such physician, practitioner, or other individual; or

(B) requires the individual desiring to receive the health care item or service from such physician, practitioner, or other individual to purchase an item or service.

(b) Report.—Not later than the date that is 12 months after the date of enactment of this Act (Dec. 8, 2003), the Comptroller General of the United States shall submit to Congress a report on the study conducted under subsection (a)(1) together with such recommendations for legislative or administrative action as the Comptroller General determines to be appropriate.

REPORTS TO CONGRESS ON NUMBER OF HOSPITALS TERMINATING OR NOT RENEWING PROVIDER AGREEMENTS

Section 233(c) of Pub. L. 99–576 provided that:

"(1) The Secretary of Health and Human Services shall periodically submit to the Congress a report on the number of hospitals that have terminated or failed to renew an agreement under section 1866 of the Social Security Act [this section] as a result of the additional conditions imposed under the amendments made by subsection (a) [amending this section].

(2) Not later than October 1, 1987, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding implementation of this section [amending this section]. Thereafter, the Administrator shall notify such committees if any hospital terminates or fails to renew an agreement described in paragraph (1) for the reasons described in that paragraph."

[For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which item 7 on page 96 identifies a report on "Hospitals that have terminated or failed to renew an agreement under section 1866 of Social Security Act as a result of the additional conditions imposed" authorized by 42 U.S.C. 1395cc note), see section 3503 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.]

DEMONSTRATION OF APPLICATION OF PHYSICIAN VOLUME INCREASES TO GROUP PRACTICES

(a) Demonstration program authorized

(1) In general

The Secretary shall conduct demonstration projects to test and, if proven effective, expand the use of incentives to health care groups participating in the program under this subchapter that—

(A) encourage coordination of the care furnished to individuals under the programs under parts A and B of this subchapter by institutional and other providers, practitioners, and suppliers of health care items and services;
(B) encourage investment in administrative structures and processes to ensure efficient service delivery; and
(C) reward physicians for improving health outcomes.

Such projects shall focus on the efficiencies of furnishing health care in a group-practice setting as compared to the efficiencies of furnishing health care in other health care delivery systems.

(2) Administration by contract

Except as otherwise specifically provided, the Secretary may administer the program under this section in accordance with section 1395cc-2 of this title.

(3) Definitions

For purposes of this section, terms have the following meanings:

(A) Physician

Except as the Secretary may otherwise provide, the term “physician” means any individual who furnishes services which may be paid for as physicians’ services under this subchapter.

(B) Health care group

The term “health care group” means a group of physicians (as defined in subparagraph (A)) organized at least in part for the purpose of providing physicians’ services under this subchapter. As the Secretary finds appropriate, a health care group may include a hospital and any other individual or entity furnishing items or services for which payment may be made under this subchapter that is affiliated with the health care group under an arrangement structured so that such individual or entity participates in a demonstration under this section and will share in any bonus earned under subsection (d) of this section.

(b) Eligibility criteria

(1) In general

The Secretary is authorized to establish criteria for health care groups eligible to participate in a demonstration under this section, including criteria relating to numbers of health care professionals in, and of patients served by, the group, scope of services provided, and quality of care.

(2) Payment method

A health care group participating in the demonstration under this section shall agree with respect to services furnished to beneficiaries within the scope of the demonstration (as determined under subsection (c) of this section)—

(A) to be paid on a fee-for-service basis; and
(B) that payment with respect to all such services furnished by members of the health care group to such beneficiaries shall (where determined appropriate by the Secretary) be made to a single entity.

(3) Data reporting

A health care group participating in a demonstration under this section shall report to the Secretary such data, at such times and in such format as the Secretary requires, for purposes of monitoring and evaluation of the demonstration under this section.

(c) Patients within scope of demonstration

(1) In general

The Secretary shall specify, in accordance with this subsection, the criteria for identifying those patients of a health care group who shall be considered within the scope of the demonstration under this section for purposes of application of subsection (d) of this section and for assessment of the effectiveness of the group in achieving the objectives of this section.

(2) Other criteria

The Secretary may establish additional criteria for inclusion of beneficiaries within a demonstration under this section, which may include frequency of contact with physicians in the group or other factors or criteria that the Secretary finds to be appropriate.

(3) Notice requirements

In the case of each beneficiary determined to be within the scope of a demonstration under this section with respect to a specific health care group, the Secretary shall ensure that such beneficiary is notified of the incentives, and of any waivers of coverage or payment rules, applicable to such group under such demonstration.

(d) Incentives

(1) Performance target

The Secretary shall establish for each health care group participating in a demonstration under this section—

(A) a base expenditure amount, equal to the average total payments under parts A and B of this subchapter for patients served by the health care group on a fee-for-service basis in a base period determined by the Secretary; and
(B) an annual per capita expenditure target for patients determined to be within the scope of the demonstration, reflecting the base expenditure amount adjusted for risk and expected growth rates.

(2) Incentive bonus

The Secretary shall pay to each participating health care group (subject to paragraph (4)) a bonus for each year under the demonstration equal to a portion of the medicare savings realized for such year relative to the performance target.

(3) Additional bonus for process and outcome improvements

At such time as the Secretary has established appropriate criteria based on evidence the Secretary determines to be sufficient, the Secretary shall also pay to a participating health care group (subject to paragraph (4)) an additional bonus for a year, equal to such portion as the Secretary may designate of the saving to the program under this subchapter resulting from process improvements made by and patient outcome improvements attributable to activities of the group.
(4) Limitation

The Secretary shall limit bonus payments under this section as necessary to ensure that the aggregate expenditures under this subchapter (inclusive of bonus payments) with respect to patients within the scope of the demonstration do not exceed the amount which the Secretary estimates would be expended if the demonstration projects under this section were not implemented.


§1395cc–2. Provisions for administration of demonstration program

(a) General administrative authority

(1) Beneficiary eligibility

Except as otherwise provided by the Secretary, an individual shall only be eligible to receive benefits under the program under section 1395cc–1 of this title (in this section referred to as the “demonstration program”) if such individual—

(A) is enrolled under the program under part B of this subchapter and entitled to benefits under part A of this subchapter; and

(B) is not enrolled in a Medicare+Choice plan under part C of this subchapter, an eligible organization under a contract under section 1395mm of this title (or a similar organization operating under a demonstration project authority), an organization with an agreement under section 1395ee of this title, or a PACE program under section 1395eee of this title.

(2) Secretary’s discretion as to scope of program

The Secretary may limit the implementation of the demonstration program to—

(A) a geographic area (or areas) that the Secretary designates for purposes of the program, based upon such criteria as the Secretary finds appropriate;

(B) a subgroup (or subgroups) of beneficiaries or individuals and entities furnishing items or services (otherwise eligible to participate in the program), selected on the basis of the number of such participants that the Secretary finds consistent with the effective and efficient implementation of the program;

(C) an element (or elements) of the program that the Secretary determines to be suitable for implementation; or

(D) any combination of any of the limits described in subparagraphs (A) through (C).

(3) Voluntary receipt of items and services

Items and services shall be furnished to an individual under the demonstration program only at the individual’s election.

(4) Agreements

The Secretary is authorized to enter into agreements with individuals and entities to furnish health care items and services to beneficiaries under the demonstration program.

(5) Program standards and criteria

The Secretary shall establish performance standards for the demonstration program including, as applicable, standards for quality of health care items and services, cost-effectiveness, beneficiary satisfaction, and such other factors as the Secretary finds appropriate. The eligibility of individuals or entities for the initial award, continuation, and renewal of agreements to provide health care items and services under the program shall be conditioned, at a minimum, on performance that meets or exceeds such standards.

(6) Administrative review of decisions affecting individuals and entities furnishing services

An individual or entity furnishing services under the demonstration program shall be entitled to a review by the program administrator (or, if the Secretary has not contracted with a program administrator, by the Secretary) of a decision not to enter into, or to terminate, or not to renew, an agreement with the entity to provide health care items or services under the program.

(7) Secretary’s review of marketing materials

An agreement with an individual or entity furnishing services under the demonstration program shall require the individual or entity to guarantee that it will not distribute materials that market items or services under the program without the Secretary’s prior review and approval.

(8) Payment in full

(A) In general

Except as provided in subparagraph (B), an individual or entity receiving payment from the Secretary under a contract or agreement under the demonstration program shall agree to accept such payment as payment in full, and such payment shall be in lieu of any payments to which the individual or entity would otherwise be entitled under this subchapter.

(B) Collection of deductibles and coinsurance

Such individual or entity may collect any applicable deductible or coinsurance amount from a beneficiary.

(b) Contracts for program administration

(1) In general

The Secretary may administer the demonstration program through a contract with a program administrator in accordance with the provisions of this subsection.

(2) Scope of program administrator contracts

The Secretary may enter into such contracts for a limited geographic area, or on a regional or national basis.
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(3) Eligible contractors
The Secretary may contract for the administration of the program with—
(A) an entity that, under a contract under section 1395h or 1395u of this title, determines the amount of and makes payments for health care items and services furnished under this subchapter; or
(B) any other entity with substantial experience in managing the type of program concerned.

(4) Contract award, duration, and renewal
(A) In general
A contract under this subsection shall be for an initial term of up to three years, renewable for additional terms of up to three years.

(B) Noncompetitive award and renewal for entities administering part A or part B payments
The Secretary may enter or renew a contract under this subsection with an entity described in paragraph (3)(A) without regard to the requirements of section 6101 of title 41.

(5) Applicability of Federal Acquisition Regulation
The Federal Acquisition Regulation shall apply to program administration contracts under this subsection.

(6) Performance standards
The Secretary shall establish performance standards for the program administrator including, as applicable, standards for the quality and cost-effectiveness of the program administered, and such other factors as the Secretary finds appropriate. The eligibility of entities for the initial award, continuation, and renewal of program administration contracts shall be conditioned, at a minimum, on performance that meets or exceeds such standards.

(7) Functions of program administrator
A program administrator shall perform any or all of the following functions, as specified by the Secretary:
(A) Agreements with entities furnishing health care items and services
Determine the qualifications of entities seeking to enter or renew agreements to provide services under the demonstration program, and as appropriate enter or renew (or refuse to enter or renew) such agreements on behalf of the Secretary.

(B) Establishment of payment rates
Negotiate or otherwise establish, subject to the Secretary’s approval, payment rates for covered health care items and services.

(C) Payment of claims or fees
Administer payments for health care items or services furnished under the program.

(D) Payment of bonuses
Using such guidelines as the Secretary shall establish, and subject to the approval of the Secretary, make bonus payments as described in subsection (c)(2)(B) of this section to entities furnishing items or services for which payment may be made under the program.

(E) Oversight
Monitor the compliance of individuals and entities with agreements under the program with the conditions of participation.

(F) Administrative review
Conduct reviews of adverse determinations specified in subsection (a)(6) of this section.

(G) Review of marketing materials
Conduct a review of marketing materials proposed by an entity furnishing services under the program.

(H) Additional functions
Perform such other functions as the Secretary may specify.

(8) Limitation of liability
The provisions of section 1320c–6(b) of this title shall apply with respect to activities of contractors and their officers, employees, and agents under a contract under this subsection.

(c) Rules applicable to both program agreements and program administration contracts
(1) Records, reports, and audits
The Secretary is authorized to require entities with agreements to provide health care items or services under the demonstration program, and entities with program administration contracts under subsection (b) of this section, to maintain adequate records, to afford the Secretary access to such records (including for audit purposes), and to furnish such reports and other materials (including audited financial statements and performance data) as the Secretary may require for purposes of implementation, oversight, and evaluation of the program and of individuals’ and entities’ effectiveness in performance of such agreements or contracts.

(2) Bonuses
Notwithstanding any other provision of law, but subject to subparagraph (B)(ii), the Secretary may make bonus payments under the demonstration program from the Federal Health Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in amounts that do not exceed the amounts authorized under the program in accordance with the following:

(A) Payments to program administrators
The Secretary may make bonus payments under the program to program administrators.
(B) Payments to entities furnishing services

(i) In general

Subject to clause (ii), the Secretary may make bonus payments to individuals or entities furnishing items or services for which payment may be made under the demonstration program, or may authorize the program administrator to make such bonus payments in accordance with such guidelines as the Secretary shall establish and subject to the Secretary’s approval.

(ii) Limitations

The Secretary may condition such payments on the achievement of such standards related to efficiency, improvement in processes or outcomes of care, or such other factors as the Secretary determines to be appropriate.

(3) Antidiscrimination limitation

The Secretary shall not enter into an agreement with an entity to provide health care items or services under the demonstration program, or with an entity to administer the program, unless such entity guarantees that it will not deny, limit, or condition the coverage or provision of benefits under the program, for individuals eligible to be enrolled under such program, based on any health status-related factor described in section 2702(a)(1) of the Public Health Service Act.

(d) Limitations on judicial review

The following actions and determinations with respect to the demonstration program shall not be subject to review by a judicial or administrative tribunal:

(1) Limiting the implementation of the program under subsection (a)(2) of this section.

(2) Establishment of program participation standards under subsection (a)(5) of this section or the denial or termination of, or refusal to renew, an agreement with an entity to provide health care items and services under the program.

(3) Establishment of program administration contract performance standards under subsection (b)(6) of this section, the refusal to renew a program administration contract, or the noncompetitive award or renewal of a program administration contract under subsection (b)(4)(B) of this section.

(4) Establishment of payment rates, through negotiation or otherwise, under a program agreement or a program administration contract.

(5) A determination with respect to the program (where specifically authorized by the program authority or by subsection (c)(2) of this section)—

(A) as to whether cost savings have been achieved, and the amount of savings; or

(B) as to whether, to whom, and in what amounts bonuses will be paid.

e) Application limited to parts A and B

None of the provisions of this section or of the demonstration program shall apply to the programs under part C of this subchapter.

§1395cc–3. Health care quality demonstration program

(a) Definitions

In this section:

(1) Beneficiary

The term “beneficiary” means an individual who is entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, including any individual who is enrolled in a Medicare Advantage plan under part C of this subchapter.

(2) Health care group

(A) In general

The term “health care group” means—

(i) a group of physicians that is organized at least in part for the purpose of providing physician’s services under this subchapter;

(ii) an integrated health care delivery system that delivers care through coordinated hospitals, clinics, home health agencies, ambulatory surgery centers, skilled nursing facilities, rehabilitation facilities
and clinics, and employed, independent, or contracted physicians; or
(iii) an organization representing regional coalitions of groups or systems described in clause (i) or (ii).

(B) Inclusion
As the Secretary determines appropriate, a health care group may include a hospital or any other individual or entity furnishing items or services for which payment may be made under this subchapter that is affiliated with the health care group under an arrangement structured so that such hospital, individual, or entity participates in a demonstration project under this section.

(3) Physician
Except as otherwise provided for by the Secretary, the term “physician” means any individual who furnishes services that may be paid for as physicians’ services under this subchapter.

(b) Demonstration projects
The Secretary shall establish a demonstration program under which the Secretary shall approve demonstration projects that examine health delivery factors that encourage the delivery of improved quality in patient care, including—

(1) the provision of incentives to improve the safety of care provided to beneficiaries;
(2) the appropriate use of best practice guidelines by providers and services by beneficiaries;
(3) reduced scientific uncertainty in the delivery of care through the examination of variations in the utilization and allocation of services, and outcomes measurement and research;
(4) encourage shared decision making between providers and patients;
(5) the provision of incentives for improving the quality and safety of care and achieving the efficient allocation of resources;
(6) the appropriate use of culturally and ethnically sensitive health care delivery; and
(7) the financial effects on the health care marketplace of altering the incentives for care delivery and changing the allocation of resources.

c) Administration by contract
(1) In general
Except as otherwise provided in this section, the Secretary may administer the demonstration program established under this section in a manner that is similar to the manner in which the demonstration program established under section 1395cc–1 of this title is administered in accordance with section 1395cc–2 of this title.

(2) Alternative payment systems
A health care group that receives assistance under this section may, with respect to the demonstration project to be carried out with such assistance, include proposals for the use of alternative payment systems for items and services provided to beneficiaries by the group that are designed to—

(A) encourage the delivery of high quality care while accomplishing the objectives described in subsection (b) of this section; and
(B) streamline documentation and reporting requirements otherwise required under this subchapter.

(3) Benefits
A health care group that receives assistance under this section may, with respect to the demonstration project to be carried out with such assistance, include modifications to the package of benefits available under the original medicare fee-for-service program under parts A and B of this subchapter or the package of benefits available through a Medicare Advantage plan under part C of this subchapter. The criteria employed under the demonstration program under this section to evaluate outcomes and determine best practice guidelines and incentives shall not be used as a basis for the denial of medicare benefits under the demonstration program to patients against their wishes (or if the patient is incompetent, against the wishes of the patient’s surrogate) on the basis of the patient’s age or expected length of life or of the patient’s present or predicted disability, degree of medical dependency, or quality of life.

d) Eligibility criteria
To be eligible to receive assistance under this section, an entity shall—

(1) be a health care group;
(2) meet quality standards established by the Secretary, including—
(A) the implementation of continuous quality improvement mechanisms that are aimed at integrating community-based support services, primary care, and referral care;
(B) the implementation of activities to increase the delivery of effective care to beneficiaries;
(C) encouraging patient participation in preference-based decisions;
(D) the implementation of activities to encourage the coordination and integration of medical service delivery; and
(E) the implementation of activities to measure and document the financial impact on the health care marketplace of altering the incentives of health care delivery and changing the allocation of resources; and
(3) meet such other requirements as the Secretary may establish.

e) Waiver authority
The Secretary may waive such requirements of this subchapter and subchapter XI of this chapter as may be necessary to carry out the purposes of the demonstration program established under this section.

(f) Budget neutrality
With respect to the period of the demonstration program under subsection (b) of this section, the aggregate expenditures under this subchapter for such period shall not exceed the aggregate expenditures that would have been expended under this subchapter if the program established under this section had not been implemented.
(g) Notice requirements
In the case of an individual that receives health care items or services under a demonstration program carried out under this section, the Secretary shall ensure that such individual is notified of any waivers of coverage or payment rules that are applicable to such individual under this subchapter as a result of the participation of the individual in such program.

(h) Participation and support by Federal agencies
In carrying out the demonstration program under this section, the Secretary may direct—
(1) the Director of the National Institutes of Health to expand the efforts of the Institutes to evaluate current medical technologies and improve the foundation for evidence-based practice;
(2) the Administrator of the Agency for Healthcare Research and Quality to, where possible and appropriate, use the program under this section as a laboratory for the study of quality improvement strategies and to evaluate, monitor, and disseminate information relevant to such program; and
(3) the Administrator of the Centers for Medicare & Medicaid Services and the Administrator of the Center for Medicare Choices to support linkages of relevant medicare data to registry information from participating health care groups for the beneficiary populations served by the participating groups, for analysis supporting the purposes of the demonstration program, consistent with the applicable provisions of the Health Insurance Portability and Accountability Act of 1996.


References in Text

Amendments
Subsec. (f). Pub. L. 111–148 struck out “5-year” before “period of the demonstration program”.

§ 1395cc–4. National pilot program on payment bundling

(a) Implementation
(1) In general
The Secretary shall establish a pilot program for integrated care during an episode of care provided to an applicable beneficiary around a hospitalization in order to improve the coordination, quality, and efficiency of health care services under this subchapter.

(2) Definitions
In this section:
(A) Applicable beneficiary
The term “applicable beneficiary” means an individual who—

(i) is entitled to, or enrolled for, benefits under part A and enrolled for benefits under part B of such subchapter, but not enrolled under part C or a PACE program under section 1385ee of this title; and
(ii) is admitted to a hospital for an applicable condition.

(B) Applicable condition
The term “applicable condition” means 1 or more of 10 conditions selected by the Secretary. In selecting conditions under the preceding sentence, the Secretary shall take into consideration the following factors:

(i) Whether the conditions selected include a mix of chronic and acute conditions.
(ii) Whether the conditions selected include a mix of surgical and medical conditions.
(iii) Whether a condition is one for which there is evidence of an opportunity for providers of services and suppliers to improve the quality of care furnished while reducing total expenditures under this subchapter.
(iv) Whether a condition has significant variation in—
(I) the number of readmissions; and
(II) the amount of expenditures for post-acute care spending under this subchapter.
(v) Whether a condition is high-volume and has high post-acute care expenditures under this subchapter.
(vi) Which conditions the Secretary determines are most amenable to bundling across the spectrum of care given practice patterns under this subchapter.

(C) Applicable services
The term “applicable services” means the following:

(i) Acute care inpatient services.
(ii) Physicians’ services delivered in and outside of an acute care hospital setting.
(iii) Outpatient hospital services, including emergency department services.
(iv) Post-acute care services, including home health services, skilled nursing services, inpatient rehabilitation services, and inpatient hospital services furnished by a long-term care hospital.
(v) Other services the Secretary determines appropriate.

(D) Episode of care
(i) In general
Subject to clause (ii), the term “episode of care” means the period that includes—
(I) the 3 days prior to the admission of the applicable beneficiary to a hospital for the applicable condition;
(II) the length of stay of the applicable beneficiary in such hospital; and
(III) the 30 days following the discharge of the applicable beneficiary from such hospital.
(ii) Establishment of period by the Secretary
The Secretary, as appropriate, may establish a period (other than the period described in clause (i)) for an episode of care under the pilot program.

(E) Physicians' services
The term “physicians’ services” has the meaning given such term in section 1395x(q) of this title.

(F) Pilot program
The term “pilot program” means the pilot program under this section.

(G) Provider of services
The term “provider of services” has the meaning given such term in section 1395x(u) of this title.

(H) Readmission
The term “readmission” has the meaning given such term in section 1395ww(q)(5)(E) of this title.

(I) Supplier
The term “supplier” has the meaning given such term in section 1395x(d) of this title.

(3) Deadline for implementation
The Secretary shall establish the pilot program not later than January 1, 2013.

(b) Developmental phase

(1) Determination of patient assessment instrument
The Secretary shall determine which patient assessment instrument (such as the Continuity Assessment Record and Evaluation (CARE) tool) shall be used under the pilot program to evaluate the applicable condition of an applicable beneficiary for purposes of determining the most clinically appropriate site for the provision of post-acute care to the applicable beneficiary.

(2) Development of quality measures for an episode of care and for post-acute care
(A) In general
The Secretary, in consultation with the Agency for Healthcare Research and Quality and the entity with a contract under section 1395aaa(a) of this title, shall develop quality measures for use in the pilot program—

(i) for episodes of care; and

(ii) for post-acute care.

(B) Site-neutral post-acute care quality measures
Any quality measures developed under subparagraph (A)(ii) shall be site-neutral.

(C) Coordination with quality measure development and endorsement procedures
The Secretary shall ensure that the development of quality measures under subparagraph (A) is done in a manner that is consistent with the measures developed and endorsed under section 1395aaa and 1395aaa–1 of this title that are applicable to all post-acute care settings.

(c) Details

(1) Duration
(A) In general
Subject to subparagraph (B), the pilot program shall be conducted for a period of 5 years.

(B) Expansion
The Secretary may, at any point after January 1, 2016, expand the duration and scope of the pilot program, to the extent determined appropriate by the Secretary, if—

(i) the Secretary determines that such expansion is expected to—

(I) reduce spending under this subchapter without reducing the quality of care; or

(II) improve the quality of care and reduce spending;

(ii) the Chief Actuary of the Centers for Medicare & Medicaid Services certifies that such expansion would reduce program spending under this subchapter; and

(iii) the Secretary determines that such expansion would not deny or limit the coverage or provision of benefits under this subchapter for individuals.

(2) Participating providers of services and suppliers
(A) In general
An entity comprised of providers of services and suppliers, including a hospital, a physician group, a skilled nursing facility, and a home health agency, who are otherwise participating under this subchapter, may submit an application to the Secretary to provide applicable services to applicable individuals under this section.

(B) Requirements
The Secretary shall develop requirements for entities to participate in the pilot program under this section. Such requirements shall ensure that applicable beneficiaries have an adequate choice of providers of services and suppliers under the pilot program.

(3) Payment methodology
(A) In general
(i) Establishment of payment methods
The Secretary shall develop payment methods for the pilot program for entities participating in the pilot program. Such payment methods may include bundled payments and bids from entities for episodes of care. The Secretary shall make payments to the entity for services covered under this section.

(ii) No additional program expenditures
Payments under this section for applicable items and services under this subchapter (including payment for services described in subparagraph (B)) for applicable beneficiaries for a year shall be established in a manner that does not result in spending more for such entity for such
beneficiaries than would otherwise be expended for such entity for such beneficiaries for such year if the pilot program were not implemented, as estimated by the Secretary.

(B) Inclusion of certain services
A payment methodology tested under the pilot program shall include payment for the furnishing of applicable services and other appropriate services, such as care coordination, medication reconciliation, discharge planning, transitional care services, and other patient-centered activities as determined appropriate by the Secretary.

(C) Bundled payments
(i) In general
A bundled payment under the pilot program shall—
(I) be comprehensive, covering the costs of applicable services and other appropriate services furnished to an individual during an episode of care (as determined by the Secretary); and
(II) be made to the entity which is participating in the pilot program.
(ii) Requirement for provision of applicable services and other appropriate services
Applicable services and other appropriate services for which payment is made under this subparagraph shall be furnished or directed by the entity which is participating in the pilot program.

(D) Payment for post-acute care services after the episode of care
The Secretary shall establish procedures, in the case where an applicable beneficiary requires continued post-acute care services after the last day of the episode of care, under which payment for such services shall be made.

(4) Quality measures
(A) In general
The Secretary shall establish quality measures (including quality measures of process, outcome, and structure) related to care provided by entities participating in the pilot program. Quality measures established under the preceding sentence shall include measures of the following:
(i) Functional status improvement.
(ii) Reducing rates of avoidable hospital readmissions.
(iii) Rates of discharge to the community. 
(iv) Rates of admission to an emergency room after a hospitalization. 
(v) Incidence of health care acquired infections.
(vi) Efficiency measures.
(vii) Measures of patient-centeredness of care.
(viii) Measures of patient perception of care.
(ix) Other measures, including measures of patient outcomes, determined appropriate by the Secretary.

(B) Reporting on quality measures
(i) In general
A entity shall submit data to the Secretary on quality measures established under subparagraph (A) during each year of the pilot program (in a form and manner, subject to clause (iii), specified by the Secretary).

(ii) Submission of data through electronic health record
To the extent practicable, the Secretary shall specify that data on measures be submitted under clause (i) through the use of an qualified electronic health record (as defined in section 300jj(13) of this title) in a manner specified by the Secretary.

(d) Waiver
The Secretary may waive such provisions of this subchapter and subchapter XI as may be necessary to carry out the pilot program.

(e) Independent evaluation and reports on pilot program
(1) Independent evaluation
The Secretary shall conduct an independent evaluation of the pilot program, including the extent to which the pilot program has—
(A) improved quality measures established under subsection (c)(4)(A);
(B) improved health outcomes;
(C) improved applicable beneficiary access to care; and
(D) reduced spending under this subchapter.

(2) Reports
(A) Interim report
Not later than 2 years after the implementation of the pilot program, the Secretary shall submit to Congress a report on the initial results of the independent evaluation conducted under paragraph (1).

(B) Final report
Not later than 3 years after the implementation of the pilot program, the Secretary shall submit to Congress a report on the final results of the independent evaluation conducted under paragraph (1).

(f) Consultation
The Secretary shall consult with representatives of small rural hospitals, including critical access hospitals (as defined in section 1395x(mm)(1) of this title), regarding their participation in the pilot program. Such consultation shall include consideration of innovative methods of implementing bundled payments in hospitals described in the preceding sentence, taking into consideration any difficulties in doing so as a result of the low volume of services provided by such hospitals.

(g) Application of pilot program to continuing care hospitals
(1) In general
In conducting the pilot program, the Secretary shall apply the provisions of the program so as to separately pilot test the continuing care hospital model.
(2) Special rules
In pilot testing the continuing care hospital model under paragraph (1), the following rules shall apply:

(A) Such model shall be tested without the limitation to the conditions selected under subsection (a)(2)(B).

(B) Notwithstanding subsection (a)(2)(D), an episode of care shall be defined as the full period that a patient stays in the continuing care hospital plus the first 30 days following discharge from such hospital.

(3) Continuing care hospital defined
In this subsection, the term “continuing care hospital” means an entity that has demonstrated the ability to meet patient care and patient safety standards and that provides under common management the medical and rehabilitation services provided in inpatient rehabilitation hospitals and units (as defined in section 1395ww(d)(1)(B)(ii) of this title), long term care hospitals (as defined in section 1395ww(d)(1)(B)(iv) of this title), and skilled nursing facilities (as defined in section 1395f-3(a) of this title) that are located in a hospital described in section 1395ww(d) of this title.

(b) Administration
Chapter 35 of title 42 shall not apply to the selection, testing, and evaluation of models or the expansion of such models under this section.


§1395cc-5. Independence at home medical practice demonstration program

(a) Establishment

(1) In general

The Secretary shall conduct a demonstration program (in this section referred to as the “demonstration program”) to test a payment incentive and service delivery model that utilizes physician and nurse practitioner directed home-based primary care teams designed to reduce expenditures and improve health outcomes in the provision of items and services under this subchapter to applicable beneficiaries (as defined in subsection (d)).

(2) Requirement

The demonstration program shall test whether a model described in paragraph (1), which is accountable for providing comprehensive, coordinated, continuous, and accessible care to high-need populations at home and coordinating health care across all treatment settings, results in—

(A) reducing preventable hospitalizations;

(B) preventing hospital readmissions;

(C) reducing emergency room visits;

(D) improving health outcomes commensurate with the beneficiaries’ stage of chronic illness;

(E) improving the efficiency of care, such as by reducing duplicative diagnostic and laboratory tests;

(F) reducing the cost of health care services covered under this subchapter; and

(G) achieving beneficiary and family caregiver satisfaction.

(b) Independence at home medical practice defined

In this section:

(A) In general

The term “independence at home medical practice” means a legal entity that—

(i) is comprised of an individual physician or nurse practitioner or group of physicians and nurse practitioners that provides care as part of a team that includes physicians, nurses, physician assistants, pharmacists, and other health and social services staff as appropriate who have experience providing home-based primary care to applicable beneficiaries, make in-home visits, and are available 24 hours per day, 7 days per week to carry out plans of care that are tailored to the individual beneficiary’s chronic conditions and designed to achieve the results in subsection (a);

(ii) is organized at least in part for the purpose of providing physicians’ services;

(iii) has documented experience in providing home-based primary care services to high-cost chronically ill beneficiaries, as determined appropriate by the Secretary;

(iv) furnishes services to at least 200 applicable beneficiaries (as defined in subsection (d)) during each year of the demonstration program;
(v) has entered into an agreement with the Secretary;
(vi) uses electronic health information systems, remote monitoring, and mobile diagnostic technology; and
(vii) meets such other criteria as the Secretary determines to be appropriate to participate in the demonstration program.

The entity shall report on quality measures (in such form, manner, and frequency as specified by the Secretary, which may be for the group, for providers of services and suppliers, or both) and report to the Secretary (in a form, manner, and frequency as specified by the Secretary) such data as the Secretary determines appropriate to monitor and evaluate the demonstration program.

(B) Physician

The term “physician” includes, except as the Secretary may otherwise provide, any individual who furnishes services for which payment may be made as physicians’ services and has the medical training or experience to fulfill the physician’s role described in subparagraph (A)(i).

(2) Participation of nurse practitioners and physician assistants

Nothing in this section shall be construed to prevent a nurse practitioner or physician assistant from participating in, or leading, a home-based primary care team as part of an independence at home medical practice if—

(A) all the requirements of this section are met;

(B) the nurse practitioner or physician assistant, as the case may be, is acting consistent with State law; and

(C) the nurse practitioner or physician assistant has the medical training or experience to fulfill the nurse practitioner or physician assistant role described in paragraph (1).

(3) Inclusion of providers and practitioners

Nothing in this subsection shall be construed as preventing an independence at home medical practice from including a provider of services or a participating practitioner described in section 1395u(b)(18)(C) of this title (in a form, manner, and frequency as specified by the Secretary) such data as the Secretary determines appropriate to monitor and evaluate the demonstration program.

(4) Quality and performance standards

The Secretary shall develop quality performance standards for independence at home medical practices participating in the demonstration program.

(c) Payment methodology

(1) Establishment of target spending level

The Secretary shall establish an estimated annual spending target, for the amount the Secretary estimates would have been spent in the absence of the demonstration, for items and services covered under parts A and B furnished to applicable beneficiaries for each qualifying independence at home medical practice under this section. Such spending targets shall be determined on a per capita basis. Such spending targets shall include a risk corridor that takes into account normal variation in expenditures for items and services covered under parts A and B furnished to such beneficiaries with the size of the corridor being related to the number of applicable beneficiaries furnished services by each independence at home medical practice. The spending targets may also be adjusted for other factors as the Secretary determines appropriate.

(2) Incentive payments

Subject to performance on quality measures, a qualifying independence at home medical practice is eligible to receive an incentive payment under this section if actual expenditures for a year for the applicable beneficiaries it enrolls are less than the estimated spending target established under paragraph (1) for such year. An incentive payment for such year shall be equal to a portion (as determined by the Secretary) of the amount by which actual expenditures (including incentive payments under this paragraph) for applicable beneficiaries under parts A and B for such year are estimated to be less than 5 percent less than the estimated spending target for such year, as determined under paragraph (1).

(d) Applicable beneficiaries

(1) Definition

In this section, the term “applicable beneficiary” means, with respect to a qualifying independence at home medical practice, an individual who the practice has determined—

(A) is entitled to benefits under part A and enrolled for benefits under part B;

(B) is not enrolled in a Medicare Advantage plan under part C or a PACE program under section 1395eee of this title;

(C) has 2 or more chronic illnesses, such as congestive heart failure, diabetes, other dementias designated by the Secretary, chronic obstructive pulmonary disease, ischemic heart disease, stroke, Alzheimer’s Disease and neurodegenerative diseases, and other diseases and conditions designated by the Secretary which result in high costs under this subchapter;

(D) within the past 12 months has had a nonemergency hospital admission;

(E) within the past 12 months has received acute or subacute rehabilitation services;

(F) has 2 or more functional dependencies requiring the assistance of another person (such as bathing, dressing, toileting, walking, or feeding); and

(G) meets such other criteria as the Secretary determines appropriate.

(2) Patient election to participate

The Secretary shall determine an appropriate method of ensuring that applicable beneficiaries have agreed to enroll in an independence at home medical practice under the demonstration program. Enrollment in the demonstration program shall be voluntary.

(3) Beneficiary access to services

Nothing in this section shall be construed as encouraging physicians or nurse practitioners
to limit applicable beneficiary access to services covered under this subchapter and applicable beneficiaries shall not be required to relinquish access to any benefit under this subchapter as a condition of receiving services from an independence at home medical practice.

(e) Implementation

(1) Starting date

The demonstration program shall begin no later than January 1, 2012. An agreement with an independence at home medical practice under the demonstration program may cover not more than a 3-year period.

(2) No physician duplication in demonstration participation

The Secretary shall not pay an independence at home medical practice under this section that participates in section 1395jjj of this title.

(3) No beneficiary duplication in demonstration participation

The Secretary shall ensure that no applicable beneficiary enrolled in an independence at home medical practice under this section is participating in the programs under section 1395jjj of this title.

(4) Preference

In approving an independence at home medical practice, the Secretary shall give preference to practices that are—

(A) located in high-cost areas of the country;

(B) have experience in furnishing health care services to applicable beneficiaries in the home; and

(C) use electronic medical records, health information technology, and individualized plans of care.

(5) Limitation on number of practices

In selecting qualified independence at home medical practices to participate under the demonstration program, the Secretary shall limit the number of such practices so that the number of applicable beneficiaries that may participate in the demonstration program does not exceed 10,000.

(6) Waiver

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

(7) Administration

Chapter 35 of title 41 shall not apply to this section.

(f) Evaluation and monitoring

(1) In general

The Secretary shall evaluate each independence at home medical practice under the demonstration program to assess whether the practice achieved the results described in subsection (a).

(2) Monitoring applicable beneficiaries

The Secretary may monitor data on expenditures and quality of services under this sub-

chapter after an applicable beneficiary discontinues receiving services under this subchapter through a qualifying independence at home medical practice.

(g) Reports to Congress

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

(h) Funding

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

(i) Termination

(1) Mandatory termination

The Secretary shall terminate an agreement with an independence at home medical practice if—

(A) the Secretary estimates or determines that such practice will not receive an incentive payment for the second of 2 consecutive years under the demonstration program; or

(B) such practice fails to meet quality standards during any year of the demonstration program.

(2) Permissive termination

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


REFERENCES IN TEXT

Parts A, B, and C, referred to in subsecs. (c) and (d)(1)(A), (B), are classified to sections 1395c et seq., 1395d et seq., and 1395w–21 et seq., respectively, of this title.

§ 1395dd. Examination and treatment for emergency medical conditions and women in labor

(a) Medical screening requirement

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

(b) Necessary stabilizing treatment for emergency medical conditions and labor

(1) In general

If any individual (whether or not eligible for benefits under this subchapter) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either—

(A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or

(B) for transfer of the individual to another medical facility in accordance with subsection (c) of this section.

(2) Refusal to consent to treatment

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

(3) Refusal to consent to transfer

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

(c) Restricting transfers until individual stabilized

(1) Rule

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

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

(ii) a physician (within the meaning of section 1395x(r)(1) of this title) has signed a certification that based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual and, in the case of labor, to the unborn child from effecting the transfer, or

(iii) if a physician is not physically present in the emergency department at the time an individual is transferred, a qualified medical person (as defined by the Secretary in regulations) has signed a certification described in clause (ii) after a physician (as defined in section 1395x(r)(1) of this title), in consultation with the person, has made the determination described in such clause, and subsequently countersigns the certification; and

(B) the transfer is an appropriate transfer (within the meaning of paragraph (2)) to that facility.

A certification described in clause (ii) or (iii) of subparagraph (A) shall include a summary of the risks and benefits upon which the certification is based.

(2) Appropriate transfer

An appropriate transfer to a medical facility is a transfer—

(A) in which the transferring hospital provides the medical treatment within its capacity which minimizes the risks to the individual’s health and, in the case of a woman in labor, the health of the unborn child;

(B) in which the receiving facility—

(i) has available space and qualified personnel for the treatment of the individual, and

(ii) has agreed to accept transfer of the individual and to provide appropriate medical treatment;

(C) in which the transferring hospital sends to the receiving facility all medical records (or copies thereof), related to the emergency condition for which the individual has presented, available at the time of the transfer, including records related to the individual’s emergency medical condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) provided under paragraph (1)(A), and the name and address of any on-call physician (described in subsection (d)(1)(C) of this section) who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment;

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

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1 So in original. Probably should be followed by a comma.
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(E) which meets such other requirements as the Secretary may find necessary in the interest of the health and safety of individuals transferred.

(d) Enforcement

(1) Civil money penalties

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

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

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

(ii) misrepresents an individual’s condition or other information, including a hospital’s obligations under this section,

is subject to a civil money penalty of not more than $50,000 for each such violation and, if the violation is gross and flagrant or is repeated, than $50,000 for each such violation and, if the

(C) Limitations on actions

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

(3) Consultation with quality improvement organizations

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

(4) Notice upon closing an investigation

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

(e) Definitions

In this section:

(1) The term ‘emergency medical condition’ means—

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

(i) placing the health of the individual (or, with respect to a pregnant woman, the
health of the woman or her unborn child) in serious jeopardy,
(ii) serious impairment to bodily functions, or
(iii) serious dysfunction of any bodily organ or part; or
(B) with respect to a pregnant woman who is having contractions—
(i) that there is inadequate time to effect a safe transfer to another hospital before delivery, or
(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.
(2) The term “participating hospital” means a hospital that has entered into a provider agreement under section 1395cc of this title.
(3)(A) The term “to stabilize” means, with respect to an emergency medical condition described in paragraph (1)(A), to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), to deliver (including the placenta).
(B) The term “stabilized” means, with respect to an emergency medical condition described in paragraph (1)(A), that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), that the woman has delivered (including the placenta).
(4) The term “transfer” means the movement (including the discharge of an individual outside a hospital’s facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of an individual who (A) has been declared dead, or (B) leaves the facility without the permission of any such person.
(5) The term “hospital” includes a critical access hospital (as defined in section 1395xx(mm)(1) of this title).
(f) Preemption
The provisions of this section do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section.
(g) Nondiscrimination
A participating hospital that has specialized capabilities or facilities (such as burn units, shock-trauma units, neonatal intensive care units, or (with respect to rural areas) regional referral centers as identified by the Secretary in regulation) shall not refuse to accept an appropriate transfer of an individual who requires such specialized capabilities or facilities if the hospital has the capacity to treat the individual.
(h) No delay in examination or treatment
A participating hospital may not delay provi- sion of an appropriate medical screening exami- nation required under subsection (a) of this section or further medical examination and treatment required under subsection (b) of this section in order to inquire about the individual’s method of payment or insurance status.
(i) Whistleblower protections
A participating hospital may not penalize or take adverse action against a qualified medical person described in subsection (c)(1)(A)(ii) of this section or a physician because the person or physician refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized or against any hospital employee because the employee reports a violation of a requirement of this section.

PRIORITY PROVISIONS

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


1990—Subsec. (c)(2)(C). Pub. L. 101–508, § 4008(b)(3)(A)(i), (ii), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: “If a hospital knowingly and willfully, or negligently, fails to meet the requirements of this section, such hospital is subject to—

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

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

Subsec. (d)(1)(B). Pub. L. 101–508, § 4207(a)(2), (3), formerly § 4027(a)(2), (3), as renumbered by Pub. L. 105–342, § 160(d)(4), which directed amendment of par. (2)(B) by substituting “negligently” for “knowingly” and “is gross and flagrant or is repeated” for “knowing and willful or negligent”, was executed by making the substitutions in par. (1)(B) to reflect the probable intent of Congress and the intervening redesignation of par. (2) as (1) by Pub. L. 101–508, § 4008(b)(3)(A)(ii). See above.


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


Subsec. (c)(2)(A). Pub. L. 101–508, § 4207(k)(5)(A), redesignated subpar. (A) as (B) and substituted “the individual” for “the patient” in cls. (i) and (ii). Former subpar. (B) redesignated (C).

Subsec. (c)(2)(B). Pub. L. 101–508, § 4207(k)(5)(B), redesignated subpar. (B) as (C) and substituted “sends to” for “provides” and “all medical records (or copies thereof)” for “provides” and “all medical records (or copies thereof)”.


Subsec. (a)(2)(B). Pub. L. 103–432, § 160(d)(4), redesignated subpar. (B), which directed the amendment of subsec. (a) by striking out “or to determine if the individual is in active labor (within the meaning of section (e)(2) of this section)” was executed by striking out “or to determine if the individual is in active labor (within the meaning of subsection (e)(2) of this section)” after “exists”.

Pub. L. 101–239, § 6211(a), substituted “hospital’s emergency department, including ancillary services routinely available to the emergency department,” for “hospital’s emergency department”.


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

Subsec. (b)(2). Pub. L. 101–239, § 6211(b)(1), inserted “(or for a person acting on the individual’s behalf)” after “the risks and benefits to the individual of such examination and treatment,” after “in that paragraph”, substituted “and treatment,” for “or treatment,” and inserted at end “The hospital shall take all reasonable steps to secure the individual’s (or person’s) written informed consent to such examination and treatment.”

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


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

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

Subsec. (c)(1)(A)(ii). Pub. L. 101–239, § 6211(c)(2)(B), (3), (g)(1)(B), substituted “has signed a certification that based upon the information available at the time of transfer”, for “requests that the transfer”, which deleted “if, at the option of the Secretary, the transfer is based upon the information available at the time” and “individual and, in the case of labor, to the unborn child” for “individual’s medical condition”.


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

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

Subsec. (c)(2)(D). Pub. L. 101–239, § 6211(c)(5)(A), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

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

Subsec. (c)(2)(F). Pub. L. 101–239, § 6211(e)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “The responsible physician in a participating hospital with respect to the hospital’s violation of a requirement of this subsection is subject to the civil sanctions described in section 1395w(j)(2) of this title, except that, for purposes of this subparagraph, the civil
money penalty with respect to each violation may not exceed $50,000, rather than $2,000." Subsec. (d)(2)(C). Pub. L. 101–239, § 6211(e)(2), added substituted “means—” and subpars. (A) and (B) for “means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—” “(A) placing the patient’s health in serious jeopardy,” “(B) serious impairment to bodily functions, or “(C) serious dysfunction of any bodily organ or part.” Subsec. (e)(2). Pub. L. 101–239, § 6211(h)(1)(B), redesignated par. (3) as (2) and struck out former par. (2) which defined “active labor”. Subsec. (e)(3). Pub. L. 101–239, § 6211(h)(1)(E), redesignated par. (4) as (3). Former par. (3) redesignated (2). Subsec. (e)(4). Pub. L. 101–239, § 6211(h)(1)(E), redesignated par. (5) as (4). Former par. (4) redesignated (3). Subsec. (e)(4)(A). Pub. L. 101–239, § 6211(h)(1)(C), substituted “emergency medical condition described in paragraph (1)(A)” for “emergency medical condition”, “likely to result from or occur during” for “likely to result from”, “or, from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), to deliver (including the placenta)” for “from a facility”. Subsec. (e)(4)(B). Pub. L. 101–239, § 6211(h)(1)(D), inserted “described in paragraph (1)(A)” after “emergency medical condition”, “or occur during” after “to result from”, “and”, or, with respect to an emergency medical condition described in paragraph (1)(B), that the woman has delivered (including the placenta)” after “from a facility”. Subsec. (e)(5). Pub. L. 101–239, § 6211(h)(1)(E), redesignated par. (6) as (5). Former par. (5) redesignated (4). Subsec. (f)(4). Pub. L. 101–239, § 6211(g)(2), substituted “individual for “a patient” in two places. Subsec. (e)(6). Pub. L. 101–239, § 6211(h)(1)(E), redesignated par. (6) as (5). Pub. L. 101–239, § 6211(h)(1)(D), redesignated par. (5) as (6). Pub. L. 101–239, § 6211(h)(1)(D), added par. (6). Subsecs. (g) to (i). Pub. L. 101–239, § 6211(f), added subsecs. (g) to (i). 1989—Subsec. (d)(1). Pub. L. 100–360, § 411(b)(8)(A)(i), amended Pub. L. 100–203, § 4009(a)(2), see 1987 Amendment note below. Subsec. (d)(2). Pub. L. 100–360, § 411(b)(8)(A)(i), as amended by Pub. L. 100–485, § 608(d)(18)(E), amended Pub. L. 100–203, § 4009(a)(1), see 1987 Amendment note below. 1987—Subsec. (d)(1). Pub. L. 100–203, § 4009(a)(2), which directed insertion of a provision related to imposing the sanction described in section 1395a(j)(2)(A) of this title, was amended generally by Pub. L. 100–360, § 411(b)(8)(A)(i), so that it does not amend par. (1). Subsec. (d)(2). Pub. L. 100–203, § 4009(a)(1), as amended by Pub. L. 100–360, § 411(b)(8)(A)(i), as amended by Pub. L. 100–485, § 608(d)(18)(E), substituted subpars. (A) and (B) for “In addition to the other grounds for imposition of a civil money penalty under section 1320a–7a(a) of this title, a participating hospital that knowingly violates a requirement of this section and the responsible physician in the hospital with respect to such a violation,” designated second sentence as subpar. (C), substituted “this paragraph” for “the previous sentence”, and redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (C). 1986—Subsec. (b)(2). (3), and struck out Pub. L. 99–508 struck out “legally responsible” after “individual or a”. Subsec. (e)(3). Pub. L. 99–514 struck out “and has, under the agreement, obligated itself to comply with the requirements of this section” after “section 1395cc of this title”. **Effective Date of 2011 Amendment** Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–40, set out as a note under section 1320c of this title. **Effective Date of 2003 Amendment** Pub. L. 106–173, title IX, § 944(c)(2), Dec. 8, 2003, 117 Stat. 2423, provided that: “The amendments made by paragraph (1) [amending this section] shall apply to terminations of participation initiated on or after the date of the enactment of this Act [Dec. 8, 2003].” **Effective Date of 1997 Amendment** Amendment by Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4201(d) of Pub. L. 105–33, set out as a note under section 1395f of this title. **Effective Date of 1990 Amendment** Amendment by section 4008(b)(1)–(3)(A) of Pub. L. 101–508 applicable to actions occurring on or after the first day of the sixth month beginning after Nov. 5, 1990, see section 4009(b)(4) of Pub. L. 101–508, set out as a note under section 1395cc of this title. Amendment by section 4207(a)(1)(A) of Pub. L. 101–508 effective on the first day of the first month beginning more than 60 days after Nov. 5, 1990, see section 4207(a)(4) of Pub. L. 101–508, set out as a note under section 1320c–3 of this title. Amendment by section 4207(a)(4), formerly 4207(a)(4), of Pub. L. 101–508, as renumbered and amended by Pub. L. 105–432, title I, § 140(d)(4), (5)(B), Oct. 31, 1994, 108 Stat. 4444, provided that: “The amendments made by paragraphs (2) and (3) [amending this section] shall apply to actions occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act [Nov. 5, 1990].” **Effective Date of 1989 Amendment** Section 6211(i) of Pub. L. 101–239 provided that: “The amendments made by this section [amending this section] shall take effect on the first day of the first month that begins more than 180 days after the date of the enactment of this Act [Dec. 19, 1989], without regard to whether regulations to carry out such amendments have been promulgated by such date.” **Effective Date of 1988 Amendments** Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title. Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title I, General Provisions. **Effective Date of 1987 Amendment** Section 4009(a)(2), formerly § 4009(a)(3), of Pub. L. 100–203, as redesignated by Pub. L. 100–360, title IV, § 411(b)(8)(A)(ii), July 1, 1988, 102 Stat. 772, provided that: “The amendments made by this subsection
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[amending this section] shall apply to actions occurring on or after the date of the enactment of this Act [Dec. 22, 1987].”

**Effective Date of 1986 Amendment**

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1905(c) of Pub. L. 99–514, set out as a note under section 196 of Title 26, Internal Revenue Code.

**Effective Date**

Section 921(c) of Pub. L. 99–272 provided that: ‘‘The amendments made by this section [enacting this section and amending section 1396cc of this title] shall take effect on the first day of the first month that begins at least 90 days after the date of the enactment of this Act [Apr. 7, 1986].’’

**Short Title**

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

**Emergency Medical Treatment and Labor Act (EMTALA)**


‘‘(a) Establishment.—The Secretary [of Health and Human Services] shall establish a Technical Advisory Group (in this section referred to as the ‘Advisory Group’) to review issues related to the Emergency Medical Treatment and Labor Act (EMTALA) and its implementation. In this section, the term ‘EMTALA’ refers to the provisions of section 1867 of the Social Security Act (42 U.S.C. 1395dd).

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

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

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

‘‘(3) 2 shall represent patients;

‘‘(4) 2 shall be staff involved in EMTALA investigations from different regional offices of the Centers for Medicare & Medicaid Services; and

‘‘(5) 1 shall be from a State survey office involved in EMTALA investigations and 1 shall be from a peer review organization, both of whom shall be from areas other than the regions represented under paragraph (4).

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

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

‘‘(1) shall review EMTALA regulations;

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

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

‘‘(4) may disseminate information on the application of such regulations to hospitals, physicians, and the public.

‘‘(d) Administrative Matters.—

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

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

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

‘‘(f) Waiver of Administrative Limitation.—The Secretary shall establish the Advisory Group notwithstanding any limitation that may apply to the number of advisory committees that may be established (within the Department of Health and Human Services or otherwise).’’

**Federal Reimbursement of Emergency Health Services Furnished to Undocumented Aliens**


‘‘(a) Total Amount Available for Allotment.—

‘‘(1) In general.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary [of Health and Human Services] $250,000,000 for each of fiscal years 2005 through 2008 for the purpose of making allotments under this section for payments to eligible providers in States described in paragraph (1) or (2) of subsection (b).

‘‘(2) Availability.—Funds appropriated under paragraph (1) shall remain available until expended.

‘‘(b) State Allotments.—

‘‘(1) Based on Percentage of Undocumented Aliens.—

‘‘(A) In general.—Out of the amount appropriated under subsection (a) for a fiscal year, the Secretary shall use $157,000,000 of such amount to make allotments for such fiscal year in accordance with subparagraph (B).

‘‘(B) Formula.—The amount of the allotment for payments to eligible providers in each State for a fiscal year shall be equal to the product of—

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

‘‘(ii) the percentage of undocumented aliens residing in the State as compared to the total number of such aliens residing in all States, as determined by the Statistics Division of the Immigration and Naturalization Service, as of January 2003, based on the 2000 decennial census.

‘‘(2) Based on Number of Undocumented Alien Apprehensions States.—

‘‘(A) In general.—Out of the amount appropriated under subsection (a) for a fiscal year, the Secretary shall use $157,000,000 of such amount to make allotments, in addition to amounts allotted under paragraph (1), for each fiscal year for each of the 6 States with the highest number of undocumented alien apprehensions for such fiscal year.

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

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

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

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

‘‘(D) Use of Funds.—

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

(2) Determination of Payment Amounts.—In general.—Subject to subparagraph (B), the payment amount determined under this paragraph shall be an amount determined by the Secretary that is equal to the lesser of—

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

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

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

(3) Methodology.—In establishing a methodology under paragraph (2)(A)(ii), the Secretary—

“(1) may establish different methodologies for types of eligible providers;

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

“(3) shall provide for the election by a hospital to receive either payments to the hospital for—

“(i) hospital and physician services; or

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

“(4) shall make quarterly payments under this section to eligible providers.

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

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

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

“(A) Undocumented aliens.

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

“(C) Mexican citizens permitted to enter the United States for not more than 72 hours under the authority of a biometric machine readable border crossing identification card (also referred to as a ‘laser visa’) issued in accordance with the requirements of regulations prescribed under section 101(a)(6) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(6)).

(6) Applications; Advance Payments.—

“(1) Deadline for Establishment of Application Process.—

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

“(B) Inclusion of Measures to Combat Fraud and Abuse.—The Secretary shall include in the process established under subparagraph (A) measures to ensure that inappropriate, excessive, or fraudulent payments are not made from the allotments determined under subsection (b), including certification by the eligible provider of the veracity of the payment request.

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

(6) Definitions.—In this section—

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

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

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

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

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

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

Inspector General Study of Prohibition on Hospital Employment of Physicians

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

§ 1395ee. Practicing Physicians Advisory Council; Council for Technology and Innovation


(b) Council for Technology and Innovation

(1) Establishment

The Secretary shall establish a Council for Technology and Innovation within the Centers for Medicare & Medicaid Services (in this section referred to as “CMS”).

(2) Composition

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

(3) Duties

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

(4) Executive Coordinator for Technology and Innovation

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


PRIOR PROVISIONS


AMENDMENTS


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


TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1395ff. Determinations; appeals

(a) Initial determinations

(1) Promulgations of regulations

The Secretary shall promulgate regulations and make initial determinations with respect to benefits under part A of this subchapter or part B of this subchapter in accordance with those regulations for the following:

(A) The initial determination of whether an individual is entitled to benefits under such parts.

(B) The initial determination of the amount of benefits available to the individual under such parts.

(C) Any other initial determination with respect to a claim for benefits under such parts, including an initial determination by the Secretary that payment may not be made, or may no longer be made, for an item or service under such parts, an initial determination made by a quality improvement organization under section 1320c–3(a)(2) of this title, and an initial determination made by an entity pursuant to a contract (other than a contract under section 1395w–22 of this title) with the Secretary to administer provisions of this subchapter or subchapter XI of this chapter.

(2) Deadlines for making initial determinations

(A) In general

Subject to subparagraph (B), in promulgating regulations under paragraph (1), initial determinations shall be concluded by not later than the 45-day period beginning on the date the fiscal intermediary or the carrier, as the case may be, receives a claim for benefits from an individual as described in paragraph (1). Notice of such determination shall be mailed to the individual filing the claim before the conclusion of such 45-day period.

(B) Clean claims

Subparagraph (A) shall not apply with respect to any claim that is subject to the requirements of section 1395h(c)(2) of this title.

(3) Redeterminations

(A) In general

In promulgating regulations under paragraph (1) with respect to initial determinations, such regulations shall provide for a fiscal intermediary or a carrier to make a redetermination with respect to a claim for benefits that is denied in whole or in part.

(B) Limitations

(i) Appeal rights

No initial determination may be reconsidered or appealed under subsection (b) of this section unless the fiscal intermediary or carrier has made a redetermination of that initial determination under this paragraph.

(ii) Decisionmaker

No redetermination may be made by any individual involved in the initial determination.

(C) Deadlines

(i) Filing for redetermination

A redetermination under subparagraph (A) shall be available only if notice is filed with the Secretary to request the redetermination by not later than the end of the
120-day period beginning on the date the individual receives notice of the initial determination under paragraph (2).

(ii) Concluding redeterminations

Redeterminations shall be concluded by not later than the 60-day period beginning on the date the fiscal intermediary or the carrier, as the case may be, receives a request for a redetermination. Notice of such determination shall be mailed to the individual filing the claim before the conclusion of such 60-day period.

(D) Construction

For purposes of the succeeding provisions of this section a redetermination under this paragraph shall be considered to be part of the initial determination.

(4) Requirements of notice of determinations

With respect to an initial determination insofar as it results in a denial of a claim for benefits—

(A) the written notice on the determination shall include—

(i) the reasons for the determination, including whether a local medical review policy or a local coverage determination was used;

(ii) the procedures for obtaining additional information concerning the determination, including the information described in subparagraph (B); and

(iii) notification of the right to seek a redetermination or otherwise appeal the determination and instructions on how to initiate such a redetermination under this section;

(B) such written notice shall be provided in printed form and written in a manner calculated to be understood by the individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both; and

(C) the individual provided such written notice may obtain, upon request, information on the specific provision of the policy, manual, or regulation used in making the redetermination.

(b) Appeal rights

(1) In general

(A) Reconsideration of initial determination

Subject to subparagraph (D), any individual dissatisfied with any initial determination under subsection (a)(1) of this section shall be entitled to reconsideration of the determination, and, subject to subparagraphs (D) and (E), a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title and, subject to paragraph (2), to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title. For purposes of the preceding sentence, any reference to the "Commissioner of Social Security" or the "Social Security Administration" in subsection (g) or (l) of section 405 of this title shall be considered a reference to the "Secretary" or the "Department of Health and Human Services", respectively.

(B) Representation by provider or supplier

(i) In general

Sections 1395pp(a)(2) of this title shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this section by a person that furnishes or supplies the individual, directly or indirectly, with services or items, solely on the basis that the person furnishes or supplies the individual with such a service or item.

(ii) Mandatory waiver of right to payment from beneficiary

Any person that furnishes services or items to an individual may not represent an individual under this section with respect to appeals under this section by a person that furnishes or supplies the individual, directly or indirectly, with services or items, solely on the basis that the person furnishes or supplies the individual with such a service or item.

(iii) Prohibition on payment for representation

If a person furnishes services or items to an individual and represents the individual under this section, the person may not impose any financial liability on such individual in connection with such representation.

(iv) Requirements for representatives of a beneficiary

The provisions of section 405(j) of this title and of section 406 of this title (other than subsection (a)(4) of such section) regarding representation of claimants shall apply to representation of an individual with respect to appeals under this section in the same manner as they apply to rep-
(C) Succession of rights in cases of assignment

The right of an individual to an appeal under this section with respect to an item or service may be assigned to the provider of services or supplier of the item or service upon the written consent of such individual using a standard form established by the Secretary for such an assignment.

(D) Time limits for filing appeals

(i) Reconsiderations

Reconsideration under subparagraph (A) shall be available only if the individual described in subparagraph (A) files notice with the Secretary to request reconsideration by not later than the end of the 180-day period beginning on the date the individual receives notice of the redetermination under subsection (a)(3) of this section, or within such additional time as the Secretary may allow.

(ii) Hearings conducted by the Secretary

The Secretary shall establish in regulations time limits for the filing of a request for a hearing by the Secretary in accordance with provisions in sections 405 and 406 of this title.

(E) Amounts in controversy

(i) In general

A hearing (by the Secretary) shall not be available to an individual under this section if the amount in controversy is less than $1,000, and judicial review shall not be available to the individual if the amount in controversy is less than $1,000.

(ii) Aggregation of claims

In determining the amount in controversy, the Secretary, under regulations, shall allow two or more appeals to be aggregated if the appeals involve—

(I) the delivery of similar or related services to the same individual by one or more providers of services or suppliers, or

(II) common issues of law and fact arising from services furnished to two or more individuals by one or more providers of services or suppliers.

(iii) Adjustment of dollar amounts

For requests for hearings or judicial review made in a year after 2004, the dollar amounts specified in clause (i) shall be equal to such dollar amounts increased by the percentage increase in the medical care component of the consumer price index for all urban consumers (U.S. city average) for July 2003 to the July preceding the year involved. Any amount determined under the previous sentence that is not a multiple of $10 shall be rounded to the nearest multiple of $10.

(F) Expedited proceedings

(i) Expedited determination

In the case of an individual who has received notice from a provider of services that such provider plans—

(I) to terminate services provided to an individual and a physician certifies that failure to continue the provision of such services is likely to place the individual’s health at significant risk, or

(II) to discharge the individual from the provider of services,

the individual may request, in writing or orally, an expedited determination or an expedited reconsideration of an initial determination made under subsection (a)(1) of this section, as the case may be, and the Secretary shall provide such expedited determination or expedited reconsideration.

(ii) Reference to expedited access to judicial review

For the provision relating to expedited access to judicial review, see paragraph (2).

(G) Reopening and revision of determinations

The Secretary may reopen or revise any initial determination or reconsidered determination described in this subsection under guidelines established by the Secretary in regulations.

(2) Expedited access to judicial review

(A) In general

The Secretary shall establish a process under which a provider of services or supplier that furnishes an item or service or an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, who has filed an appeal under paragraph (1) (other than an appeal filed under paragraph (1)(F)(i)) may obtain access to judicial review when a request only once with respect to a question of law or regulation for a specific matter in dispute in a case of an appeal.

(B) Prompt determinations

If, after or coincident with appropriately filing a request for an administrative hearing, the appellant requests a determination by the appropriate review entity that the Departmental Appeals Board does not have the authority to decide the question of law or regulation relevant to the matters in controversy and that there is no material issue of fact in dispute. The appellant may make such request only once with respect to a question of law or regulation for a specific matter in dispute in a case of an appeal.
(C) Access to judicial review
   (i) In general
      If the appropriate review entity—
      (I) determines that there are no material issues of fact in dispute and that the only issues to be adjudicated are ones of law or regulation that the Departmental Appeals Board does not have authority to decide; or
      (II) fails to make such determination within the period provided under subparagraph (B),
then the appellant may bring a civil action as described in this subparagraph.

(ii) Deadline for filing
      Such action shall be filed, in the case described in—
      (I) clause (i)(I), within 60 days of the date of the determination described in such clause; or
      (II) clause (i)(II), within 60 days of the end of the period provided under subparagraph (B) for the determination.

(iii) Venue
      Such action shall be brought in the district court of the United States for the judicial district in which the appellant is located (or, in the case of an action brought jointly by more than one applicant, the judicial district in which the greatest number of applicants are located) or in the District Court for the District of Columbia.

(iv) Interest on any amounts in controversy
      Where a provider of services or supplier is granted judicial review pursuant to this paragraph, the amount in controversy (if any) shall be subject to annual interest beginning on the first day of the first month beginning after the 60-day period as determined pursuant to clause (ii) and equal to the rate of interest on obligations issued for purchase by the Federal Supplementary Medical Insurance Trust Fund for the month in which the civil action authorized under this paragraph is commenced, to be awarded by the reviewing court in favor of the prevailing party. No interest awarded pursuant to the preceding sentence shall be deemed income or cost for the purposes of determining reimbursement due providers of services or suppliers under this subchapter.

(D) Review entity defined
      For purposes of this subsection, the term “review entity” means an entity of up to three reviewers who are administrative law judges or members of the Departmental Appeals Board selected for purposes of making determinations under this paragraph.

(3) Requiring full and early presentation of evidence by providers
      A provider of services or supplier may not introduce evidence in any appeal under this section that was not presented at the reconsideration conducted by the qualified independent contractor under subsection (c) of this section, unless there is good cause which precluded the introduction of such evidence at or before that reconsideration.

(c) Conduct of reconsiderations by independent contractors
   (1) In general
      The Secretary shall enter into contracts with qualified independent contractors to conduct reconsiderations of initial determinations made under subparagraphs (B) and (C) of subsection (a)(1) of this section. Contracts shall be for an initial term of three years and shall be renewable on a triennial basis thereafter.

   (2) Qualified independent contractor
      For purposes of this subsection, the term “qualified independent contractor” means an entity or organization that is independent of any organization under contract with the Secretary that makes initial determinations under subsection (a)(1) of this section, and that meets the requirements established by the Secretary consistent with paragraph (3).

(3) Requirements
      Any qualified independent contractor entering into a contract with the Secretary under this subsection shall meet all of the following requirements:

      (A) In general
         The qualified independent contractor shall perform such duties and functions and assume such responsibilities as may be required by the Secretary to carry out the provisions of this subsection, and shall have sufficient medical, legal, and other expertise (including knowledge of the program under this subchapter) and sufficient staffing to make reconsiderations under this subsection.

      (B) Reconsiderations
         (i) In general
            The qualified independent contractor shall review initial determinations. Where an initial determination is made with respect to whether an item or service is reasonable and necessary for the diagnosis or treatment of illness or injury (under section 1395y(a)(1)(A) of this title), such review shall include consideration of the facts and circumstances of the initial determination by a panel of physicians or other appropriate health care professionals and any decisions with respect to the reconsideration shall be based on applicable information, including clinical experience (including the medical records of the individual involved) and medical, technical, and scientific evidence.

         (ii) Effect of national and local coverage determinations
            If the Secretary has made a national coverage determination pursuant to the requirements established under the third sentence of section 1395y(a) of this title, such determination shall be binding on the qualified independent contractor in
making a decision with respect to a reconsideration under this section.

(II) Local coverage determinations

If the Secretary has made a local coverage determination, such determination shall not be binding on the qualified independent contractor in making a decision with respect to a reconsideration under this section. Notwithstanding the previous sentence, the qualified independent contractor shall consider the local coverage determination in making such decision.

(III) Absence of national or local coverage determination

In the absence of such a national coverage determination or local coverage determination, the qualified independent contractor shall make a decision with respect to the reconsideration based on applicable information, including clinical experience and medical, technical, and scientific evidence.

(C) Deadlines for decisions

(i) Reconsiderations

Except as provided in clauses (iii) and (iv), the qualified independent contractor shall conduct and conclude a reconsideration under subparagraph (B), and mail the notice of the decision with respect to the reconsideration by not later than the end of the 60-day period beginning on the date a request for reconsideration has been timely filed.

(ii) Consequences of failure to meet deadline

In the case of a failure by the qualified independent contractor to mail the notice of the decision by the end of the period described in clause (i) or to provide notice by the end of the period described in clause (iii), as the case may be, the party requesting the reconsideration or appeal may request a hearing before the Secretary, notwithstanding any requirements for a reconsidered determination for purposes of the party’s right to such hearing.

(iii) Expedited reconsiderations

The qualified independent contractor shall perform an expedited reconsideration under subsection (b)(1)(F) of this section as follows:

(I) Deadline for decision

Notwithstanding section 416(j) of this title and subject to clause (iv), not later than the end of the 72-hour period beginning on the date the qualified independent contractor has received a request for such reconsideration and has received such medical or other records needed for such reconsideration, the qualified independent contractor shall provide notice (by telephone and in writing) to the individual and the provider of services and attending physician of the individual of the results of the reconsideration. Such reconsideration shall be conducted regardless of whether the provider of services or supplier will charge the individual for continued services or whether the individual will be liable for payment for such continued services.

(II) Consultation with beneficiary

In such reconsideration, the qualified independent contractor shall solicit the views of the individual involved.

(III) Special rule for hospital discharges

A reconsideration of a discharge from a hospital shall be conducted under this clause in accordance with the provisions of paragraphs (2), (3), and (4) of section 1320c–3(e) of this title as in effect on the date that precedes December 21, 2000.

(iv) Extension

An individual requesting a reconsideration under this subparagraph may be granted such additional time as the individual specifies (not to exceed 14 days) for the qualified independent contractor to conclude the reconsideration. The individual may request such additional time orally or in writing.

(D) Qualifications for reviewers

The requirements of subsection (g) of this section shall be met (relating to qualifications of reviewing professionals).

(E) Explanation of decision

Any decision with respect to a reconsideration of a qualified independent contractor shall be in writing, be written in a manner calculated to be understood by the individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, and shall include a detailed explanation of the decision as well as a discussion of the pertinent facts and applicable regulations applied in making such decision, and a notification of the right to appeal such determination and instructions on how to initiate such appeal under this section in the case of a determination of whether an item or service is reasonable and necessary for the diagnosis or treatment of illness or injury (under section 1395y(a)(1)(A) of this title) an explanation of the medical and scientific rationale for the decision.

(F) Notice requirements

Whenever a qualified independent contractor makes a decision with respect to a reconsideration under this subsection, the qualified independent contractor shall promptly notify the entity responsible for the payment of claims under part A of this subchapter or part B of this subchapter of such decision.

(G) Dissemination of decisions on reconsiderations

Each qualified independent contractor shall make available all decisions with re-
(K) Independence requirements

(i) In general

Subject to clause (ii), a qualified independent contractor shall not conduct any activities in a case unless the entity—

(I) is not a related party (as defined in subsection (g)(5) of this section);

(II) does not have a material familial, financial, or professional relationship with such a party in relation to such case; and

(III) does not otherwise have a conflict of interest with such a party.

(ii) Exception for reasonable compensation

Nothing in clause (i) shall be construed to prohibit receipt by a qualified independent contractor of compensation from the Secretary for the conduct of activities under this section if the compensation is provided consistent with clause (iii).

(iii) Limitations on entity compensation

Compensation provided by the Secretary to a qualified independent contractor in connection with reviews under this section shall not be contingent on any decision rendered by the contractor or by any reviewing professional.

(4) Number of qualified independent contractors

The Secretary shall enter into contracts with a sufficient number of qualified independent contractors (but not fewer than 4 such contractors) to conduct reconsiderations consistent with the timeframes applicable under this subsection.

(5) Limitation on qualified independent contractor liability

No qualified independent contractor having a contract with the Secretary under this subsection and no person who is employed by, or who has a fiduciary relationship with, any such qualified independent contractor or who furnishes professional services to such qualified independent contractor, shall be held by reason of the performance of any duty, function, or activity required or authorized pursuant to this subsection or to a valid contract entered into under this subsection, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) provided due care was exercised in the performance of such duty, function, or activity.

(d) Deadlines for hearings by the Secretary; notice

(1) Hearing by administrative law judge

(A) In general

Except as provided in subparagraph (B), an administrative law judge shall conduct and conclude a hearing on a decision of a qualified independent contractor under subsection (c) of this section and render a decision on such hearing by not later than the end of the 90-day period beginning on the date a request for hearing has been timely filed.
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(B) Waiver of deadline by party seeking hearing

The 90-day period under subparagraph (A) shall not apply in the case of a motion or stipulation by the party requesting the hearing to waive such period.

(2) Departmental Appeals Board review

(A) In general

The Departmental Appeals Board of the Department of Health and Human Services shall conduct and conclude a review of the decision on a hearing described in paragraph (1) and make a decision or remand the case to the administrative law judge for reconsideration by not later than the end of the 90-day period beginning on the date a request for review has been timely filed.

(B) DAB hearing procedure

In reviewing a decision on a hearing under this paragraph, the Departmental Appeals Board shall review the case de novo.

(3) Consequences of failure to meet deadlines

(A) Hearing by administrative law judge

In the case of a failure by an administrative law judge to render a decision by the end of the period described in paragraph (1), the party requesting the hearing may request a review by the Departmental Appeals Board of the Department of Health and Human Services, notwithstanding any requirements for a hearing for purposes of the party’s right to such a review.

(B) Departmental Appeals Board review

In the case of a failure by the Departmental Appeals Board to render a decision by the end of the period described in paragraph (2), the party requesting the hearing may seek judicial review, notwithstanding any requirements for a hearing for purposes of the party’s right to such judicial review.

(4) Notice

Notice of the decision of an administrative law judge shall be in writing in a manner calculated to be understood by the individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, and shall include—

(A) the specific reasons for the determination (including, to the extent appropriate, a summary of the clinical or scientific evidence used in making the determination);

(B) the procedures for obtaining additional information concerning the decision; and

(C) notification of the right to appeal the decision and instructions on how to initiate such an appeal under this section.

(e) Administrative provisions

(1) Limitation on review of certain regulations

A regulation or instruction that relates to a method for determining the amount of payment under part B of this subchapter and that was initially issued before January 1, 1981, shall not be subject to judicial review.

(2) Outreach

The Secretary shall perform such outreach activities as are necessary to inform individuals entitled to benefits under this subchapter and providers of services and suppliers with respect to their rights of, and the process for, appeals made under this section. The Secretary shall use the toll-free telephone number maintained by the Secretary under section 1395b–2(b) of this title to provide information regarding appeal rights and respond to inquiries regarding the status of appeals.

(3) Continuing education requirement for qualified independent contractors and administrative law judges

The Secretary shall provide to each qualified independent contractor, and, in consultation with the Commissioner of Social Security, to administrative law judges that decide appeals of reconsiderations of initial determinations or other decisions or determinations under this section, such continuing education with respect to coverage of items and services under this subchapter or policies of the Secretary with respect to such actions. The Secretary shall include in such report an analysis of determinations by qualified independent contractors and administrative law judges to make informed decisions with respect to appeals.

(4) Reports

(A) Annual report to Congress

The Secretary shall submit to Congress an annual report describing the number of appeals for the previous year, identifying issues that require administrative or legislative actions, and including any recommendations of the Secretary with respect to such actions. The Secretary shall include in such report an analysis of determinations by qualified independent contractors with respect to inconsistent decisions and an analysis of the causes of any such inconsistencies.

(B) Survey

Not less frequently than every 5 years, the Secretary shall conduct a survey of a valid sample of individuals entitled to benefits under this subchapter who have filed appeals of determinations under this section, providers of services, and suppliers to determine the satisfaction of such individuals or entities with the process for appeals of determinations provided for under this section and education and training provided by the Secretary with respect to that process. The Secretary shall submit to Congress a report describing the results of the survey, and shall include any recommendations for administrative or legislative actions that the Secretary determines appropriate.

(f) Review of coverage determinations

(1) National coverage determinations

(A) In general

Review of any national coverage determination shall be subject to the following limitations:

(i) Such a determination shall not be reviewed by any administrative law judge.

(ii) Such a determination shall not be held unlawful or set aside on the ground that a requirement of section 553 of title 5
or section 1395hh(b) of this title, relating to publication in the Federal Register or opportunity for public comment, was not satisfied.

(iii) Upon the filing of a complaint by an aggrieved party, such a determination shall be reviewed by the Departmental Appeals Board of the Department of Health and Human Services. In conducting such a review, the Departmental Appeals Board—

(I) shall review the record and shall permit discovery and the taking of evidence to evaluate the reasonableness of the determination, if the Board determines that the record is incomplete or lacks adequate information to support the validity of the determination;

(II) may, as appropriate, consult with appropriate scientific and clinical experts; and

(III) shall defer only to the reasonable findings of fact, reasonable interpretations of law, and reasonable applications of fact to law by the Secretary.

(iv) The Secretary shall implement a decision of the Departmental Appeals Board within 30 days of receipt of such decision.

(v) A decision of the Departmental Appeals Board constitutes a final agency action and is subject to judicial review.

(B) Definition of national coverage determination

For purposes of this section, the term “national coverage determination” means a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under this subchapter, but does not include a determination of what code, if any, is assigned to a particular item or service covered under this subchapter or a determination with respect to the amount of payment made for a particular item or service so covered.

(2) Local coverage determination

(A) In general

Review of any local coverage determination shall be subject to the following limitations:

(i) Upon the filing of a complaint by an aggrieved party, such a determination shall be reviewed by an administrative law judge. The administrative law judge—

(I) shall review the record and shall permit discovery and the taking of evidence to evaluate the reasonableness of the determination, if the administrative law judge determines that the record is incomplete or lacks adequate information to support the validity of the determination;

(II) may, as appropriate, consult with appropriate scientific and clinical experts; and

(III) shall defer only to the reasonable findings of fact, reasonable interpretations of law, and reasonable applications of fact to law by the Secretary.

(ii) Upon the filing of a complaint by an aggrieved party, a decision of an administrative law judge under clause (i) shall be reviewed by the Departmental Appeals Board of the Department of Health and Human Services.

(iii) The Secretary shall implement a decision of the Departmental Appeals Board within 30 days of receipt of such decision.

(A) The Departmental Appeals Board constitutes a final agency action and is subject to judicial review.

(B) Definition of local coverage determination

For purposes of this section, the term “local coverage determination” means a determination by a fiscal intermediary or a carrier under part A of this subchapter or part B of this subchapter, as applicable, respecting whether or not a particular item or service is covered on an intermediary- or carrier-wide basis under such parts, in accordance with section 1395y(a)(1)(A) of this title.

(3) No material issues of fact in dispute

In the case of a determination that may otherwise be subject to review under paragraph (1)(A)(iii) or paragraph (2)(A)(i), where the moving party alleges that—

(A) there are no material issues of fact in dispute, and

(B) the only issue of law is the constitutionality of a provision of this subchapter, or that a regulation, determination, or ruling by the Secretary is invalid,

the moving party may seek review by a court of competent jurisdiction without filing a complaint under such paragraph and without otherwise exhausting other administrative remedies.

(4) Pending national coverage determinations

(A) In general

In the event the Secretary has not issued a national coverage or noncoverage determination with respect to a particular type or class of items or services, an aggrieved person (as described in paragraph (5)) may submit to the Secretary a request to make such a determination with respect to such items or services. By not later than the end of the 90-day period beginning on the date the Secretary receives such a request (notwithstanding the receipt by the Secretary of new evidence (if any) during such 90-day period), the Secretary shall take one of the following actions:

(i) Issue a national coverage determination, with or without limitations.

(ii) Issue a national noncoverage determination.

(iii) Issue a determination that no national coverage or noncoverage determination is appropriate as of the end of such 90-day period with respect to national coverage of such items or services.

(iv) Issue a notice that states that the Secretary has not completed a review of the request for a national coverage determination and that includes an identifica-
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(8) Construction

Nothing in this subsection shall be construed as permitting administrative or judicial review pursuant to this section insofar as such review is explicitly prohibited or restricted under another provision of law.

(g) Qualifications of reviewers

(1) In general

In reviewing determinations under this section, a qualified independent contractor shall assure that—

(A) each individual conducting a review shall meet the qualifications of paragraph (2);

(B) compensation provided by the contractor to each such reviewer is consistent with paragraph (3); and

(C) in the case of a review by a panel described in subsection (c)(3)(B) of this section composed of physicians or other health care professionals (each in this subsection referred to as a "reviewing professional"), a reviewing professional meets the qualifications described in paragraph (4) and, when a claim is regarding the furnishing of treatment by a physician (allopathic or osteopathic) or the provision of items or services by a physician (allopathic or osteopathic), a reviewing professional shall be a physician (allopathic or osteopathic).

(2) Independence

(A) In general

Subject to subparagraph (B), each individual conducting a review in a case shall—

(i) not be a related party (as defined in paragraph (5));

(ii) not have a material familial, financial, or professional relationship with such a party in the case under review; and

(iii) not otherwise have a conflict of interest with such a party.

(B) Exception

Nothing in subparagraph (A) shall be construed to—

(i) prohibit an individual, solely on the basis of a participation agreement with a fiscal intermediary, carrier, or other contractor, from serving as a reviewing professional; and

(ii) prohibit a party objects; and

B of this subchapter, or both, or such intermediary, carrier, or contractor and does not provide services exclusively or primarily to or on behalf of such intermediary, carrier, or contractor;

(iii) the individual is not involved in the provision of items or services in the case under review;

(II) the fact of such an agreement is disclosed to the Secretary and the individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, or such individual's authorized representative, and neither party objects; and

(III) the individual is not an employee of the intermediary, carrier, or contractor and does not provide services exclusively or primarily to or on behalf of such intermediary, carrier, or contractor;

(iv) not otherwise have a conflict of interest with such a party.
ing as a reviewer merely on the basis of having such staff privileges if the existence of such privileges is disclosed to the Secretary and such individual (or authorized representative), and neither party objects; or

(iii) prohibit receipt of compensation by a reviewing professional from a contractor if the compensation is provided consistent with paragraph (3).

For purposes of this paragraph, the term “participation agreement” means an agreement relating to the provision of health care services by the individual and does not include the provision of services as a reviewer under this subsection.

(3) Limitations on reviewer compensation

Compensation provided by a qualified independent contractor to a reviewer in connection with a review under this section shall not be contingent on the decision rendered by the reviewer.

(4) Licensure and expertise

Each reviewing professional shall be—

(A) a physician (allopathic or osteopathic) who is appropriately credentialed or licensed in one or more States to deliver health care services and has medical expertise in the field of practice that is appropriate for the items or services at issue; or

(B) a health care professional who is legally authorized in one or more States (in accordance with State law or the State regulatory mechanism provided by State law) to furnish the health care items or services at issue and has medical expertise in the field of practice that is appropriate for such items or services.

(5) Related party defined

For purposes of this section, the term “related party” means, with respect to a case under this subchapter involving a specific individual entitled to benefits under this subchapter, or both, any of the following:

(A) The Secretary, the medicare administrative contractor involved, or any fiduciary, officer, director, or employee of the Department of Health and Human Services, or of such contractor.

(B) The individual (or authorized representative).

(C) The health care professional that provides the items or services involved in the case.

(D) The institution at which the items or services (or treatment) involved in the case are provided.

(E) The manufacturer of any drug or other item that is included in the items or services involved in the case.

(F) Any other party determined under any regulations to have a substantial interest in the case involved.

(h) Prior determination process for certain items and services

(1) Establishment of process

(A) In general

With respect to a medicare administrative contractor that has a contract under section 1395kk–1 of this title that provides for making payments under this subchapter with respect to physicians’ services (as defined in section 1395w–4(j)(3) of this title), the Secretary shall establish a prior determination process that meets the requirements of this subsection and that shall be applied by such contractor in the case of eligible requesters.

(B) Eligible requester

For purposes of this subsection, each of the following shall be an eligible requester:

(i) A participating physician, but only with respect to physicians’ services to be furnished to an individual who is entitled to benefits under this subchapter and who has consented to the physician making the request under this subsection for those physicians’ services.

(ii) An individual entitled to benefits under this subchapter, but only with respect to a physicians’ service for which the individual receives, from a physician, an advance beneficiary notice under section 1395pp(a) of this title.

(2) Secretarial flexibility

The Secretary shall establish by regulation reasonable limits on the physicians’ services for which a prior determination of coverage may be requested under this subsection. In establishing such limits, the Secretary may consider—

the dollar amount involved with respect to the physicians’ service, administrative costs and burdens, and other relevant factors.

(3) Request for prior determination

(A) In general

Subject to paragraph (2), under the process established under this subsection an eligible requester may submit to the contractor a request for a determination, before the furnishing of a physicians’ service, as to whether the physicians’ service is covered under this subsection consistent with the applicable requirements of section 1395v(a)(1)(A) of this title (relating to medical necessity).

(B) Accompanying documentation

The Secretary may require that the request be accompanied by a description of the physicians’ service, supporting documentation relating to the medical necessity for the physicians’ service, and any other appropriate documentation. In the case of a request submitted by an eligible requester who is described in paragraph (1)(B)(ii), the Secretary may require that the request also be accompanied by a copy of the advance beneficiary notice involved.

(4) Response to request

(A) In general

Under such process, the contractor shall provide the eligible requester with written notice of a determination as to whether—

(i) the physicians’ service is so covered;

(ii) the physicians’ service is not so covered; or

(iii) the contractor lacks sufficient information to make a coverage determination with respect to the physicians’ service.
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(B) Contents of notice for certain determinations  

(i) Noncoverage  

If the contractor makes the determination described in subparagraph (A)(ii), the contractor shall include in the notice a brief explanation of the basis for the determination, including on what national or local coverage or noncoverage determination (if any) the determination is based, and a description of any applicable rights under subsection (a) of this section.  

(ii) Insufficient information  

If the contractor makes the determination described in subparagraph (A)(iii), the contractor shall include in the notice a description of the additional information required to make the coverage determination.  

(C) Deadline to respond  

Such notice shall be provided within the same time period as the time period applicable to the contractor providing notice of initial determinations on a claim for benefits under subsection (a)(2)(A) of this section.  

(D) Informing beneficiary in case of physician request  

In the case of a request by a participating physician under paragraph (1)(B)(1), the process shall provide that the individual to whom the physicians’ service is proposed to be furnished shall be informed of any determination described in subparagraph (A)(ii) (relating to a determination of non-coverage) and the right (referred to in paragraph (6)(B)) to obtain the physicians’ service and have a claim submitted for the physicians’ service.  

(5) Binding nature of positive determination  

If the contractor makes the determination described in paragraph (4)(A)(i), such determination shall be binding on the contractor in the absence of fraud or evidence of misrepresentation of facts presented to the contractor.  

(6) Limitation on further review  

(A) In general  

Contractor determinations described in paragraph (4)(A)(ii) or (4)(A)(iii) (relating to pre-service claims) are not subject to further administrative appeal or judicial review under this section or otherwise.  

(B) Decision not to seek prior determination or negative determination does not impact right to obtain services, seek reimbursement, or appeal rights  

Nothing in this subsection shall be construed as affecting the right of an individual who—  

(i) decides not to seek a prior determination under this subsection with respect to physicians’ services; or  

(ii) seeks such a determination and has received a determination described in paragraph (4)(A)(ii),  

from receiving (and submitting a claim for) such physicians’ services and from obtaining administrative or judicial review respecting such claim under the other applicable provisions of this section. Failure to seek a prior determination under this subsection with respect to physicians’ service shall not be taken into account in such administrative or judicial review.  

(C) No prior determination after receipt of services  

Once an individual is provided physicians’ services, there shall be no prior determination under this subsection with respect to such physicians’ services.  

(i) Mediation process for local coverage determinations  

(1) Establishment of process  

The Secretary shall establish a mediation process under this subsection through the use of a physician trained in mediation and employed by the Centers for Medicare & Medicaid Services.  

(2) Responsibility of mediator  

Under the process established in paragraph (1), such a mediator shall mediate in disputes between groups representing providers of services, suppliers (as defined in section 1395x(d) of this title), and the medical director for a medicare administrative contractor whenever the regional administrator (as defined by the Secretary) involved determines that there was a systematic pattern and a large volume of complaints from such groups regarding decisions of such director or there is a complaint from the co-chair of the advisory committee for that contractor to such regional administrator regarding such dispute.  


AMENDMENTS  

Subsec. (b)(1)(A). Pub. L. 108–173, § 932(a)(1)(A), inserted "‘subject to paragraph (2),’ before ‘‘to judicial review of the Secretary’s final decision’’.


Subsec. (b)(1)(F)(ii). Pub. L. 108–173, § 932(a)(2), amended heading and text of cl. (ii) generally. Prior amendment, text read as follows: ‘‘In a hearing by the Secretary under this section, in which the moving party alleges that no material issues of fact are in dispute, the Secretary shall make an expedited determination as to whether any such facts are in dispute and, if not, shall render a decision expeditiously.’’


Subsec. (c)(3)(A). Pub. L. 108–173, § 933(d)(1)(A), substituted ‘‘sufficient medical, legal, and other expertise (including knowledge of the program under this subchapter) and sufficient staffing’’ for ‘‘sufficient training and expertise in medical science and legal matters’’.

Subsec. (c)(3)(B)(i). Pub. L. 108–173, § 933(b), inserted ‘‘including the medical records of the individual involved’’ after ‘‘clinical experience’’.


Subsec. (c)(3)(D). Pub. L. 108–173, § 955(c)(2)(A), amended subparagraphs (D) generally, substituting provisions directing that subsec. (g) requirements be met for provisions prohibiting a physician or health care professional from reviewing a determination where such physician or health care professional had been directly responsible for furnishing services or had had a significant financial interest in the institution, organization, or agency which provided the services.

Subsec. (c)(3)(E). Pub. L. 108–173, § 955(c)(2)(B), inserted ‘‘be written in a manner calculated to be understood by the individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, and shall include (to the extent appropriate)’’ after ‘‘in writing’’ and ‘‘and a notification of the right to appeal such determination and instructions on how to initiate such appeal under this section’’ after ‘‘such decision.’’


Subsec. (c)(3)(J)(1). Pub. L. 108–173, § 933(c)(4), substituted ‘‘submit’’ for ‘‘prepare’’ and struck out ‘‘with respect to a reconsideration to the Secretary for a hearing, including as necessary, explanations of issues involved in the decision and relevant policies’’ after ‘‘decision of the contractor’’.


Subsec. (c)(4). Pub. L. 108–173, § 933(d)(3), substituted ‘‘a sufficient number of qualified independent contractors (but not fewer than 4 such contractors) to conduct reconsiderations consistent with the timeframes applicable under this subsection’’ for ‘‘not fewer than 12 qualified independent contractors under this subchapter’’.


Subsec. (f)(4)(A)(iv). Pub. L. 108–173, § 948(c)(1), substituted ‘‘clause (I), (ii), or (iii)’’ for ‘‘subclause (I), (II), or (III)’’.


Subsec. (f)(4)(C). Pub. L. 108–173, § 948(c)(3), substituted ‘‘subparagraph (A)’’ for ‘‘clause (I)’’ in two places, ‘‘clause (iv)’’ for ‘‘subclause (IV)’’, and ‘‘paragraph (1)(A)’’ for ‘‘subparagraph (A)’’.


Subsec. (i). Pub. L. 108–173, § 940(a)(a), added subsec. (i). 2009—Pub. L. 108–164, § 1(a)(6) [title V, § 522(a)], amended section generally, completing reviewing provisions relating to determinations with respect to benefits under part A or part B of this subchapter, changing the structure of the section from two subsecs. lettered (a) and (b) to five subsecs. lettered (a) to (e).


1997—Subsec. (b)(2)(B). Pub. L. 105–33 inserted ‘‘(or $100 in the case of home health services)’’ after ‘‘$500’’.

1994—Subsec. (b)(1). Pub. L. 103–296 inserted ‘‘, except that, in so applying such sections and in applying section 405(i) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively’’ after ‘‘section 405(g) of this title’’ in closing provisions.

1987—Subsec. (a). Pub. L. 100–203, § 4085(c)(1)(B), substituted ‘‘or a claim for benefits with respect to home health services under part B of this subchapter’’ before ‘‘shall’’.

Subsec. (b)(2). Pub. L. 100–203, § 4085(c)(19), inserted ‘‘and (1)(D)’’ after ‘‘paragraph (1)(C)’’ in two places.

Subsec. (b)(3). Pub. L. 100–203, § 4082(a), inserted ‘‘section 553’’ for ‘‘chapter 5’’.

Subsec. (b)(5). Pub. L. 100–203, § 4082(b), added par. (5).

Subsec. (c). Pub. L. 100–93 struck out subsec. (c) which read as follows: ‘‘Any institution or agency dissatisfied with any determination by the Secretary that it is not a provider of services, or with any determination described in section 1395cc(b)(2) of this title, shall be entitled to a hearing thereon by the Secretary (after reasonable notice and opportunity for hearing) to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary’s final decision after such hearing as is provided in section 405(g) of this title.’’

1986—Subsec. (a). Pub. L. 99–509, § 931(a)(1), inserted ‘‘or part B’’ after ‘‘amount of benefits under part A’’.

Pub. L. 99–509, § 931(b)(1), inserted ‘‘and any other determination with respect to a claim for benefits under part A of this subchapter’’ before ‘‘shall’’.

Subsec. (b)(1). Pub. L. 99–509, § 931(a)(1), in concluding provisions, inserted at end ‘‘Sections 406(a), 1302, and 1395ff of this title shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this subchapter by a person that furnishes or supplies the individual, directly or indirectly, with services or items solely on the basis that the person furnishes or supplies those services or items to an individual and represents the individual under this subchapter with respect to the issue involved in the appeal. Any person that furnishes services or items to an individual may not represent an individual under this subsection with respect to the issue described in section 1395ff(a)(2) of this title unless the person has waived any rights for payment from the beneficiary with respect to the services or items involved in the appeal. If a person furnishes services or items to an individual and represents the individual under this subsection, the person may not impose any financial liability on such individual in connection with such representation.’’

Subsec. (b)(1)(C). Pub. L. 99–509, § 934(a)(1)(C), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ‘‘Notwithstanding the provisions of subparagraph (C) of paragraph (1) of this subsection, a hearing shall not be available to an individual by reason of such subparagraph (C) if the amount in controversy is less than $100; nor shall judicial review be available to an individual who alleges that no material issues of fact are in dispute, the Secretary shall make an expedited determination as to whether any such facts are in dispute and, if not, shall render a decision expeditiously.’’
individual by reason of such subparagraph (C) if the amount in controversy is less than $1,000.''


1984—Subsec. (b)(1)(B). Pub. L. 98–369 struck out the comma before ‘‘or section 1395i–2’’ and struck out ‘‘, or section 1819’’ after ‘‘section 1395i–2 of this title’’.

Subsec. (b)(2). Pub. L. 92–993 redesignated existing provisions as pars. (1), generally amended conditions under which a dissatisfied individual shall be entitled to a hearing by Secretary and to judicial review of final decision of Secretary after such hearing, and added par. (2).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 2000, Pub. L. 104–191, set out as notes under section 1395w–1 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–40, set out as a note under section 1320c of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 933(a) of Pub. L. 108–173 applicable to appeals filed on or after Oct. 1, 2003, see section 933(d) of Pub. L. 108–173, set out as a note under section 1395w–3 of this title.

Pub. L. 108–173, title IX, §933(a)(2), Dec. 8, 2003, 117 Stat. 2492, provided that: ‘‘The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 2004.’’


‘‘(1) EFFECTIVE DATE.—The Secretary [of Health and Human Services] shall establish the prior determination process under the amendment made by subsection (a) [amending this section] in such a manner as to provide for the acceptance of requests for determinations under such process filed not later than 12 months after the date of the enactment of this Act [Dec. 8, 2003].’’

‘‘(2) SUNSET.—Such prior determination process shall not apply to requests filed after the end of the 5-year period beginning on the first date on which requests for determinations under such process are accepted.

‘‘(3) TRANSITION.—During the period in which the amendment made by subsection (a) [amending this section] has become effective but contracts are not provided under section 1874A of the Social Security Act [section 1395ck–1 of this title] with medicare administrative contractors, any reference in section 1869(b) [probably should be 1989(b)] of such Act [subsec. (b) of this section] (as added by such amendment) to such a contractor is deemed a reference to a fiscally intermediary or carrier with an agreement under section 1866, or contract under section 1912, respectively, of such Act [sections 1395k and 1395u of this title].

‘‘(4) LIMITATION ON APPLICATION TO SGH.—For purposes of applying section 1846(c)(2)(D) of the Social Security Act [42 U.S.C. 1395w–4(c)(2)(D)], the amendment made by subsection (a) [amending this section] shall not be considered to be a change in law or regulation.’’

Amendment by section 948(b)(1), (c) of Pub. L. 108–173 effective, except as otherwise provided, as if included in the enactment of BIPA [the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, H.R. 5661, as enacted by section 1(a)(6) of Public Law 106–554], see section 948(e) of Pub. L. 108–173, set out as a note under section 1314 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(6) [title V, §521(a)] of Pub. L. 106–554 applicable with respect to initial determinations made on or after Oct. 1, 2002, see section 1(a)(6) [title V, §521(d)] of Pub. L. 106–554, set out as a note under section 1320c–3 of this title.

Amendment by section 1(a)(6) [title V, §522(a)] of Pub. L. 106–554 applicable with respect to a review of any national or local coverage determination filed, on or after Oct. 1, 2001, see section 1(a)(6) [title V, §522(d)] of Pub. L. 106–554, set out as a note under section 1313 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 applicable to services furnished on or after Jan. 1, 1998, and for purposes of applying such amendment, any home health spell of illness that began, but did not end, before such date, to be considered to have begun as of such date, see section 4011(c) of Pub. L. 105–33, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1994 AMENDMENT


EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4082(e)(1), (2) of Pub. L. 100–203 provided that: ‘‘(1) The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 22, 1987].’’

‘‘(2) The amendment made by subsection (b) [amending this section] shall apply to requests for hearings filed after the end of the 60-day period beginning on the date of the enactment of this Act.’’

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 933(b)(2) of Pub. L. 99–509 provided that: ‘‘The amendments made by this subsection [amending this section] take effect on the date of the enactment of this Act [Oct. 21, 1986].’’

Section 9341(b) of Pub. L. 99–509 provided that: ‘‘The amendments made by subsection (a) [amending this section and sections 1395u and 1395pp of this title] shall apply to items and services furnished on or after January 1, 1987.’’

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed under such law in effect at the time of enactment of this Act [Oct. 21, 1972], see section 23B(c)(4) of Pub. L. 98–369, set out as a note under section 1320a of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 299O(b) of Pub. L. 92–603 provided that: ‘‘(1) The provisions of subparagraphs (A) and (B) of section 1869(b)(1) of the Social Security Act [subsec. (b)(1)(A), (B) of this section], as amended by subsection (a) of this section, shall be effective on the date of enactment of this Act [Oct. 30, 1972].’’

‘‘(2) The provisions of paragraph (2) and subparagraph (C) of paragraph (1) of section 1869(b) of the Social Security Act [subsec. (b)(2)(C) and (b)(2)(D) of this section], as amended by subsection (a) of this section, shall be effective with respect to any claims under part A of
TRANSFER OF RESPONSIBILITY FOR MEDICAID APPEALS


"(A) in or after the month in which this Act is enacted [Oct. 1972], or
"(B) before the month in which this Act is enacted [Oct. 1972], but only if a civil action with respect to a final decision of the Secretary of Health, Education, and Welfare on such claim has not been commenced under such section 1869(b) [subsec. (b) of this section] before such month."

TRANSFER OF RESPONSIBILITY FOR MEDICARE APPEALS


"(a) TRANSITION PLAN.—
"(1) IN GENERAL.—Not later than April 1, 2004, the Commissioner of Social Security and the Secretary of Health and Human Services shall develop and transmit to Congress a report on such plan."

"(b) COST PROJECTIONS AND FINANCING.—Funding levels required for fiscal year 2005 and subsequent fiscal years to carry out the functions transferred under the plan.
"(c) TRANSITION TIMETABLE.—A timetable for the transition.
"(d) REGULATIONS.—The establishment of specific regulations to govern the appeals process.
"(e) CASE TRACKING.—The development of a unified case tracking system that will facilitate the maintenance and transfer of case specific data across both the fee-for-service and managed care components of the medicare program.
"(f) FEASIBILITY OF PRECEDENTIAL AUTHORITY.—The feasibility of developing a process to give decisions of the Departmental Appeals Board in the Department of Health and Human Services addressing broad legal issues binding, precedential authority.
"(g) ACCESS TO ADMINISTRATIVE LAW JUDGES.—The feasibility of—
"(i) filing appeals with administrative law judges electronically; and
"(ii) conducting hearings using tele- or video-conference technologies.
"(h) INDEPENDENCE OF ADMINISTRATIVE LAW JUDGES.—The steps that should be taken to ensure the independence of administrative law judges consistent with the requirements of subsection (b)(2).
"(i) GEOGRAPHIC DISTRIBUTION.—The steps that should be taken to ensure the geographic distribution of administrative law judges throughout the United States to carry out subsection (b)(3).
"(j) HIRING.—The steps that should be taken to hire administrative law judges (and support staff) to carry out subsection (b)(4).
"(k) PERFORMANCE STANDARDS.—The appropriateness of establishing performance standards for administrative law judges with respect to timeliness for decisions in cases under title XVIII of the Social Security Act [this subchapter] taking into account the current anticipated claims volume, appeals, number of beneficiaries, and statutory changes.
"(L) SHARED RESOURCES.—The steps that should be taken to carry out subsection (b)(6) (relating to the arrangements with the Commissioner of Social Security to share office space, support staff, and other resources, with appropriate reimbursement).
"(M) TRAINING.—The training that should be provided to administrative law judges with respect to laws and regulations as set forth in title XVIII of the Social Security Act [this subchapter].
"(N) ADDITIONAL INFORMATION.—The plan may also include recommendations for further congressional action, including modifications to the requirements and deadlines established under section 1869 of the Social Security Act (42 U.S.C. 1395ff) (as amended by this Act).
"(O) GAO EVALUATION.—The Comptroller General of the United States shall evaluate the plan and, not later than the date that is 6 months after the date on which the plan is received by the Comptroller General, shall submit to Congress a report on such evaluation.

"(b) TRANSFER OF JUDICIARY AUTHORITY.—
"(1) IN GENERAL.—Not earlier than July 1, 2005, and not later than October 1, 2005, the Commissioner of Social Security and the Secretary shall implement the transition plan under subsection (a) and transfer the administrative law judge functions described in such subsection from the Social Security Administration to the Secretary.
"(2) ASSURING INDEPENDENCE OF JUDGES.—The Secretary shall assure the independence of administrative law judges performing the administrative law judge functions transferred under paragraph (1) from the Centers for Medicare & Medicaid Services and its contractors. In order to assure such independence, the Secretary shall place such judges in an administrative office that is organizationally and functionally separate from such Centers. Such judges shall report to, and be under the general supervision of, the Secretary, but shall not report to, or be subject to supervision by, another officer of the Department of Health and Human Services.
"(3) GEOGRAPHIC DISTRIBUTION.—The Secretary shall provide for an appropriate geographic distribution of administrative law judges performing the administrative law judge functions transferred under paragraph (1) throughout the United States to ensure timely access to such judges.
"(4) HIRING AUTHORITY.—Subject to the amounts provided in advance in appropriations Acts, the Secretary shall have authority to hire administrative law judges to hear such cases, taking into consideration those judges with expertise in handling medicare appeals and in a manner consistent with paragraph (3), and to hire support staff for such judges.
"(5) FINANCING.—Amounts payable under law to the Commissioner for administrative law judges performing the administrative law judge functions transferred under paragraph (1) from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund shall be paid to the Secretary for the functions so transferred.
"(6) SHARED RESOURCES.—The Secretary shall enter into such arrangements with the Commissioner as may be appropriate with respect to transferred functions of administrative law judges to share office space, support staff, and other resources, with appropriate reimbursement from the Trust Funds described in paragraph (5).
"(c) INCREASED FINANCIAL SUPPORT.—In addition to any amounts otherwise appropriated, to ensure timely action on appeals before administrative law judges and the Departmental Appeals Board consistent with section 1869 of the Social Security Act (42 U.S.C. 1395ff) (as amended by this Act), there are authorized to be appropriated (in appropriate part from the Federal Hospital Insurance Trust Fund, and Federal Supplementary Medical Insurance Trust Fund, es-
established under section 1841 of such Act (42 U.S.C. 1395v)) to the Secretary such sums as are necessary for fiscal year 2005 and each subsequent fiscal year to—

"(1) increase the number of administrative law judges (and their staffs) under subsection (b)(4);

"(2) improve education and training opportunities for administrative law judges (and their staffs); and

"(3) increase the staff of the Departmental Appeals Board."

**TRANSITION**

Pub. L. 108–173, title IX, §933(d)(5), Dec. 8, 2003, 117 Stat. 2406, provided that: "In applying section 1869(g) of the Social Security Act [subsec. (g) of this section] by telephone and shall each re-

**PROCESS FOR CORRECTION OF MINOR ERRORS AND OMISSIONS WITHOUT PURSUING APPEALS PROCESS**


"(a) CLAIMS.—The Secretary [of Health and Human Services] shall develop, in consultation with appropriate Medicare contractors (as defined in section 1856(g) of the Social Security Act [section 1395wgg of this title], as inserted by section 301(a)(1) [probably should be §1816(g)]) and representatives of providers of services and suppliers, a process whereby, in the case of minor errors or omissions (as defined by the Secretary) that are detected in the submission of claims under the programs under title XVIII of such Act [this sub-

**STUDY OF AGGREGATION RULE FOR CLAIMS FOR SIMILAR PHYSICIANS’ SERVICES**

Pub. L. 101–508, title IV, §4113, Nov. 5, 1990, 104 Stat. 1388–64, directed Secretary of Health and Human Services to carry out a study of the effects of permitting the aggregation of claims that involve common issues of law and fact furnished in the same carrier area to two or more individuals by two or more physicians within the same 12-month period for purposes of appeals provided for under subsec. (b)(2) of this section, and to report on the results of such study and any recommendations to Congress by Dec. 31, 1992.

**MEDICARE HEARINGS AND APPEALS**

Section 4067 of Pub. L. 100–203 provided that:

"(a) MAINTAINING CURRENT SYSTEM FOR HEARINGS AND APPEALS.—Any hearing conducted under section 1869(b)(1) of the Social Security Act [subsec. (b)(1) of this section] prior to the earliest of the date on which the Secretary of Health and Human Services submits the report required to be submitted by the Secretary under subsection (b)(1) or September 1 shall be conducted by Administrative Law Judges of the Office of Hearings and Appeals of the Social Security Administration in the same manner as are hearings conducted under section 265(b)(1) of such Act [section 1395hh(b)(1) of this title].

"(b) STUDY AND REPORT ON USE OF TELEPHONE HEARINGS.—

"(1) The Secretary of Health and Human Services and the Comptroller General of the United States shall each conduct a study on holding hearings under section 1869(b)(1) of the Social Security Act (as inserted by section 301(a)(1) of this section) by telephone and shall each report the results of the study not later than 6 months after the date of enactment of this Act [Dec. 22, 1987].

"(2) The studies under paragraph (1) shall focus on whether telephone hearings allow for a full and fair evidentiary hearing, in general, or with respect to any particular category of claims and shall examine the possible improvements to the hearing process (such as cost-effectiveness, convenience to the claimant, and reduction in time under the process) resulting from the use of such hearings as compared to the adoption of other changes to the process (such as expansions in staff and resources)."

**§1395gg. Overpayment on behalf of individuals and settlement of claims for benefits on behalf of deceased individuals**

(a) Payments to providers of services or other person regarded as payment to individuals

Any payment under this subchapter to any provider of services or other person with respect to any items or services furnished any individual shall be regarded as a payment to such individual.

(b) Incorrect payments on behalf of individuals; payment adjustment

Where—

(1) more than the correct amount is paid under this subchapter to a provider of services or other person for items or services furnished an individual and the Secretary determines (A) that, within such period as he may specify, the excess over the correct amount cannot be recouped from such provider of services or other person, or (B) that such provider of services or other person was without fault with respect to the payment of such excess over the correct amount, or

(2) any payment has been made under section 1395f(e) of this title to a provider of services or other person for items or services furnished an individual, proper adjustments shall be made, under regulations prescribed (after consultation with the Railroad Retirement Board) by the Secretary, by decreasing subsequent payments—

(3) to which such individual is entitled under subchapter II of this chapter or under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], as the case may be, or

(4) if such individual dies before such adjustment has been completed, to which any other individual is entitled under subchapter II of this chapter or under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], as the case may be, with respect to the wages and self-employment income or the compensation constituting the basis of the benefits of such deceased individual under subchapter II of this chapter.

As soon as practicable after any adjustment under paragraph (3) or (4) is determined to be necessary, the Secretary, for purposes of this section, section 1395i(g) of this title, and section 1395t(f) of this title, shall certify (to the Railroad Retirement Board if the adjustment is to be made by decreasing subsequent payments under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.]) the amount of the overpayment as to which the adjustment is to be made. For purposes of clause (B) of paragraph (1), such provider of services or such other person shall, in the absence of evidence to the contrary, be
deemed to be without fault if the Secretary’s determination that more than such correct amount was paid was made subsequent to the third year following the year in which notice was sent to such individual that such amount had been paid; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this subchapter.

(c) Exception to subsection (b) payment adjustment

There shall be no adjustment as provided in subsection (b) of this section (nor shall there be recovery) in any case where the incorrect payment has been made (including payments under section 1395(f) of this title) with respect to an individual who is without fault or where the adjustment (or recovery) would be made by decreasing payments to which another person who is without fault is entitled as provided in subsection (b)(4) of this section, if such adjustment (or recovery) would defeat the purposes of subchapter II or subchapter XVIII of this chapter or would be against equity and good conscience. Adjustment or recovery of an incorrect payment (or only such part of an incorrect payment as the Secretary determines to be inconsistent with the purposes of this subchapter) against an individual who is without fault shall be deemed to be against equity and good conscience if (A) the incorrect payment was made for expenses incurred for items or services for which payment may not be made under this subchapter by reason of the provisions of paragraph (1) or (9) of section 1395y(a) of this title and (B) if the Secretary’s determination that such payment was incorrect was made subsequent to the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this subchapter.

(d) Liability of certifying or disbursing officer for failure to recoup

No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any provider of services or other person where the adjustment or recovery of such amount is waived under subsection (c) of this section or where adjustment under subsection (b) of this section is not completed prior to the death of all persons against whose benefits such adjustment is authorized.

(e) Settlement of claims for benefits under this subchapter on behalf of deceased individuals

If an individual, who received services for which payment may be made to such individual under this subchapter, dies, and payment for such services was made (other than under this subchapter), and the individual died before any payment due him under this subchapter with respect to such services was completed, payment of the amount due (including the amount of any unobtained checks) shall be made—

(1) if the payment for such services was made (before or after such individual’s death) by a person other than the deceased individual, to the person or persons determined by the Secretary under regulations to have paid for such services, or if the payment for such services was made by the deceased individual before his death, to the legal representative of the estate of such deceased individual, if any;

(2) if there is no person who meets the requirements of paragraph (1), to the person, if any, who is determined by the Secretary to be the surviving spouse of the deceased individual and who was either living in the same household with the deceased at the time of his death or was, for the month in which the deceased individual died, entitled to a monthly benefit on the basis of the same wages and self-employment income as was the deceased individual;

(3) if there is no person who meets the requirements of paragraph (1) or (2), if the person who meets such requirements dies before the payment due him under this subchapter is completed, to the child or children, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(4) if there is no person who meets the requirements of paragraph (1), (2), (3), or (4), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the parent or parents, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent);

(5) if there is no person who meets the requirements of paragraph (1), (2), (3), or (4), or (5), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the person or persons, if any, determined by the Secretary to be the child or children of the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(6) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), or (6), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the parent or parents, if any, of the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent);

(7) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), or (6), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the legal representatives of the estate of the deceased individual, if any.
(f) Settlement of claims for section 1395k benefits on behalf of deceased individuals

If an individual who received medical and other health services for which payment may be made under section 1395k(a)(1) of this title dies, and no assignment of the right to payment for such services was made by such individual before his death, and payment for such services has not been made—

(1) if the person or persons who furnished the services agree to the terms of assignment specified in section 1395u(b)(3)(B)(i) of this title with respect to the services, payment for such services shall be made to such person or persons, and

(2) if the person or persons who furnished the services do not agree to the terms of assignment specified in section 1395u(b)(3)(B)(i) of this title with respect to the services, payment for such services shall be made on the basis of an itemized bill to the person who has agreed to assume the legal obligation to make payment for such services and files a request for payment (with such accompanying evidence of such legal obligation as may be required in regulations), but only in such amount and subject to such conditions as would be applicable if the individual who received the services had not died.

(g) Refund of premiums for deceased individuals

If an individual, who is enrolled under section 1395u–2(c) of this title or under section 1395p of this title, dies, and premiums with respect to such enrollment have been received with respect to such individual for any month after the month of his death, such premiums shall be refunded to the person or persons determined by the Secretary under regulations to have paid such premiums or if payment for such premiums was made by the deceased individual before his death, to the legal representative of the estate of such deceased individual, if any. If there is no person who meets the requirements of the preceeding sentence such premiums shall be refunded to the person or persons in the priorities specified in paragraphs (2) through (7) of subsection (e) of this section.

(h) Appeals by providers of services or suppliers

Notwithstanding subsection (f) of this section or any other provision of law, the Secretary shall permit a provider of services or supplier to appeal any determination of the Secretary under this subchapter relating to services rendered under this subchapter to an individual who subsequently dies if there is no other party available to appeal such determination.


REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (b), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1353, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

AMENDMENTS


Subsec. (f)(1), (2). Pub. L. 100–360, §411(j)(4)(B), substituted “of assignment specified in” for “specified in subparagraphs (I) and (II) of”.


Subsec. (f)(1), (2). Pub. L. 100–203, §4096(a)(2), substituted “to the terms specified in subclauses (I) and (II) of section 1395u(b)(3)(B)(ii) of this title with respect to the services” for “that the reasonable charge is the full charge for the services”.


1980—Subsec. (f). Pub. L. 96–499 amended subsec. (f) generally, inserting provision for payments to providers of medical and other health services where the person or persons furnishing the services did not agree that the reasonable charge was the full charge for such services.


1972—Subsec. (b). Pub. L. 92–603, §281(a), required that provider of services or other person be without fault with respect to payment of excess over correct amount as prerequisite to adjustment or recovery of incorrect payments.

Subsec. (c). Pub. L. 92–603, §§261(a), 281(b), substituted “where the adjustment (or recovery) would be made by decreasing payments to which another person who is without fault is entitled as provided in subsection (b)(4) of this section, if” for “and where”, inserted reference to subchapter XVIII of this chapter, and inserted provisions covering the adjustment or recovery of incorrect payments against individuals who are without fault.


1968—Pub. L. 90–248, §154(b), provided for settlement of claims for benefits on behalf of deceased individuals in section catchline.

Subsecs. (e), (f). Pub. L. 90–248, §154(c), added subsecs. (e) and (f).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IX, §939(b), Dec. 8, 2003, 117 Stat. 2416, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 8, 2003] and shall apply to items and services furnished on or after such date.”

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.
WAIVER OF LIABILITY LIMITING RECEIPT IN CERTAIN CASES

Pub. L. 101–239, title VI, § 6109, Dec. 19, 1989, 103 Stat. 2213, provided that: "In the case where more than the correct amount may have been paid to a physician or individual under part B of title XVIII of the Social Security Act [part B of this subchapter] with respect to services furnished during the period beginning on July 1, 1985, and ending on March 31, 1986, as a result of a carrier's establishing statewide fees for certain procedures, and a publication of the provision again as a Federal Register notice of the different timeline by not later than the timeline previously established with respect to such regulation. Such notice shall include a brief explanation of the justification for such variation."

§ 1395hh. Regulations

(a) Authority to prescribe regulations; ineffectiveness of substantive rules not promulgated by regulation

(1) The Secretary shall prescribe such regulations as may be necessary to carry out the administration of the insurance programs under this subchapter. When used in this subchapter, the term "regulations" means, unless the context otherwise requires, regulations prescribed by the Secretary.

(2) No rule, requirement, or other statement of policy (other than a national coverage determination) that establishes or changes a substantive legal standard governing the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive services or benefits under this subchapter shall take effect unless it is promulgated by the Secretary by regulation under paragraph (1).

(b) Notice of proposed regulations; public comment

(1) Except as provided in paragraph (2), before issuing in final form any regulation under subsection (a) of this section, the Secretary shall provide for notice of the proposed regulation in the Federal Register and a period of not less than 60 days for public comment thereon.

(2) Paragraph (1) shall not apply where—

(A) a statute specifically permits a regulation to be issued in interim final form or
otherwise with a shorter period for public comment,
(B) a statute establishes a specific deadline for the implementation of a provision and the deadline is less than 150 days after the date of the enactment of the statute in which the deadline is contained, or
(C) subsection (b) of section 553 of title 5 does not apply pursuant to subparagraph (B) of such subsection.

(c) Publication of certain rules; public inspection; changes in data collection and retrieval

(1) The Secretary shall publish in the Federal Register, not less frequently than every 3 months, a list of all manual instructions, interpretative rules, statements of policy, and guidelines of general applicability which—
(A) are promulgated to carry out this subchapter, but
(B) are not published pursuant to subsection (a)(1) of this section and have not been previously published in a list under this subsection.

(2) Effective June 1, 1988, each fiscal intermediary and carrier administering claims for extended care, post-hospital extended care, home health care, and durable medical equipment benefits under this subchapter shall make available to the public all interpretative materials, guidelines, and clarifications of policies which relate to payments for such benefits.

(3) The Secretary shall to the extent feasible make such changes in automated data collection and retrieval by the Secretary and fiscal intermediaries with agreements under section 1395h of this title as are necessary to make easily accessible for the Secretary and other appropriate parties a data base which fairly and accurately reflects the provision of extended care, post-hospital extended care and home health care benefits pursuant to this subchapter; including such categories as benefit denials, results of appeals, and other relevant factors, and selectable by such categories and by fiscal intermediary, service provider, and region.

(e) Retroactivity of substantive changes; reliance upon written guidance

(1)(A) A substantive change in regulations, manual instructions, interpretative rules, statements of policy, or guidelines of general applicability under this subchapter shall not be applied (by extrapolation or otherwise) retroactively to items and services furnished before the effective date of the change, unless the Secretary determines that—
(i) such retroactive application is necessary to comply with statutory requirements; or
(ii) failure to apply the change retroactively would be contrary to the public interest.

(B)(i) Except as provided in clause (ii), a substantive change referred to in subparagraph (A) shall not become effective before the end of the 30-day period that begins on the date that the Secretary has issued or published, as the case may be, the substantive change.

(ii) The Secretary may provide for such a substantive change to take effect on a date that precedes the end of the 30-day period under clause (i) if the Secretary finds that waiver of such 30-day period is necessary to comply with statutory requirements or that the application of such 30-day period is contrary to the public interest. If the Secretary provides for an earlier effective date pursuant to this clause, the Secretary shall include in the issuance or publication of the substantive change a finding described in the first sentence, and a brief statement of the reasons for such finding.

(C) No action shall be taken against a provider of services or supplier with respect to non-compliance with such a substantive change for items and services furnished before the effective date of such a change.

(2)(A) If—

(i) a provider of services or supplier follows the written guidance (which may be transmitted electronically) provided by the Secretary or by a medicare contractor (as defined in section 1395zz(g) of this title) acting within the scope of the contractor’s contract authority, with respect to the furnishing of items or services and submission of a claim for benefits for such items or services with respect to such provider or supplier;

(ii) the Secretary determines that the provider of services or supplier has accurately relied on such guidance.

(B) Subparagraph (A) shall not be construed as preventing the recoupment or repayment (without any additional penalty) relating to an overpayment insofar as the overpayment was solely the result of a clerical or technical operational error.

(f) Report on areas of inconsistency or conflict

(1) Not later than 2 years after December 8, 2003, and every 3 years thereafter, the Secretary shall submit to Congress a report with respect to the administration of this subchapter and areas of inconsistency or conflict among the various provisions under law and regulation.

(2) In preparing a report under paragraph (1), the Secretary shall collect—

(A) information from individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, providers of services, and suppliers and from the Medicare Beneficiary Ombudsman with respect to such areas of inconsistency and conflict; and

(B) information from medicare contractors that tracks the nature of written and telephone inquiries.

(3) A report under paragraph (1) shall include a description of efforts by the Secretary to re-
duces such inconsistency or conflicts, and recommendations for legislation or administrative action that the Secretary determines appropriate to further reduce such inconsistency or conflicts.


AMENDMENTS
1987—Subsec. (a). Pub. L. 100–203, §4035(b), designated existing provisions as par. (1) and added par. (2).
1986—Pub. L. 99–509 redesignated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2003 AMENDMENT
Pub. L. 108–173, title IX, §902(a)(2), Dec. 8, 2003, 117 Stat. 2375, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 8, 2003]. The Secretary of Health and Human Services shall provide for an appropriate transition to take into account the backlog of previously published interim final regulations.”

Pub. L. 108–173, title IX, §902(b)(2), Dec. 8, 2003, 117 Stat. 2376, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to final regulations published on or after the date of the enactment of this Act [Dec. 8, 2003].”

Pub. L. 108–173, title IX, §903(a)(2), Dec. 8, 2003, 117 Stat. 2376, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to substantive changes issued on or after the date of the enactment of this Act [Dec. 8, 2003].”

Pub. L. 108–173, title IX, §903(b)(2), Dec. 8, 2003, 117 Stat. 2376, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to compliance actions undertaken on or after the date of the enactment of this Act [Dec. 8, 2003].”

Pub. L. 108–173, title IX, §903(c)(2), Dec. 8, 2003, 117 Stat. 2377, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 8, 2003] and shall only apply to a penalty or interest imposed with respect to guidance provided on or after July 24, 2003.”

EFFECTIVE DATE OF 1987 AMENDMENT

EFFECTIVE DATE OF 1986 AMENDMENT
Section 9321(e)(3)(A) of Pub. L. 99–509 provided that: “The amendments made by paragraph (1) [amending this section] shall apply to notices of proposed rulemaking issued after the date of the enactment of this Act [Oct. 21, 1986].”

REGULATIONS

Section 4039(g) of title IV of Pub. L. 100–203 provided that: “The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subtitle and the amendments made by this subtitle ([§§4001–4097] of title IV of Pub. L. 101–508, see Tables for classification).”

GAO STUDY ON ADVISORY OPINION AUTHORITY

“(1) STUDY.—The Comptroller General of the United States shall conduct a study to determine the feasibility and appropriateness of establishing in the Secretary of Health and Human Services authority to provide legally binding advisory opinions on appropriate interpretation and application of regulations to carry out the medicare program under title XVIII of the Social Security Act [this subchapter]. Such study shall examine the appropriate timeframe for issuing such advisory opinions, as well as the need for additional staff and funding to provide such opinions.

“(2) REPORT.—The Comptroller General shall submit to Congress a report on the study conducted under paragraph (1) by not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003].”

§1395ii. Application of certain provisions of subchapter II

The provisions of sections 406 and 416(j) of this title, and of subsections (a), (d), (e), (h), (j), (k), and (l) of section 405 of this title, shall also apply with respect to this subchapter to the same extent as they are applicable with respect to subchapter II of this chapter, except that, in applying such provisions with respect to this subchapter, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.


AMENDMENTS
1994—Pub. L. 103–296 inserted before period at end ‘‘, except that, in applying such provisions with respect to this subchapter, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively’’.


(A) at least 50 percent of all payments under parts A and B are processed through such program beginning within 1 year after July 15, 2008; 1
(B) at least 75 percent of all payments under parts A and B are processed through such program beginning within 2 years after July 15, 2008; and
(C) all payments under parts A and B are processed through such program beginning not later than September 30, 2011.

(2) Assistance

The Financial Management Service and the Internal Revenue Service shall provide assistance to the Centers for Medicare & Medicaid Services to ensure that all payments described in paragraph (1) are included in the Federal Payment Levy Program by the deadlines specified in that subsection.

(e) Availability of Medicare data

(1) In general

Subject to paragraph (4), the Secretary shall make available to qualified entities (as defined in paragraph (2)) data described in paragraph (3) for the evaluation of the performance of providers of services and suppliers.

(2) Qualified entities

For purposes of this subsection, the term “qualified entity” means a public or private entity that—

(A) is qualified (as determined by the Secretary) to use claims data to evaluate the performance of providers of services and suppliers on measures of quality, efficiency, effectiveness, and resource use; and
(B) agrees to meet the requirements described in paragraph (4) and meets such other requirements as the Secretary may specify, such as ensuring security of data.

(3) Data described

The data described in this paragraph are standardized extracts (as determined by the Secretary) of claims data under parts A, B, and D for items and services furnished under such parts for one or more specified geographic areas and time periods requested by a qualified entity. The Secretary shall take such actions as the Secretary deems necessary to protect the identity of individuals entitled to or enrolled for benefits under such parts.

(4) Requirements

(A) Fee

Data described in paragraph (3) shall be made available to a qualified entity under this subsection at a fee equal to the cost of making such data available. Any fee collected pursuant to the preceding sentence shall be deposited into the Federal Supplementary Medical Insurance Trust Fund under section 1395f of this title.

(B) Specification of uses and methodologies

A qualified entity requesting data under this subsection shall—

(i) submit to the Secretary a description of the methodologies that such qualified

1 See References in Text note below.
entity will use to evaluate the performance of providers of services and suppliers using such data;

(ii) except as provided in subclause (II), if available, use standard measures, such as measures endorsed by the entity with a contract under section 1395aaa(a) of this title and measures developed pursuant to section 299h–3 of this title; or

(II) use alternative measures if the Secretary, in consultation with appropriate stakeholders, determines that use of such alternative measures would be more valid, reliable, responsive to consumer preferences, cost-effective, or relevant to dimensions of quality and resource use not addressed by such standard measures.

(iii) include data made available under this subsection with claims data from sources other than claims data under this subchapter in the evaluation of performance of providers of services and suppliers;

(iv) only include in the evaluation of performance of providers and suppliers in reports described in subparagraph (C);

(v) make available to providers of services and suppliers, upon their request, data made available under this subsection; and

(vi) prior to their release, submit to the Secretary the format of reports under subparagraph (C).

(C) Reports

Any report by a qualified entity evaluating the performance of providers of services and suppliers using data made available under this subsection shall—

(i) include an understandable description of the measures, which shall include quality measures and the rationale for use of other measures described in subparagraph (B)(ii)(II), risk adjustment methods, physician attribution methods, other applicable methods, data specifications and limitations, and the sponsors, so that consumers, providers of services and suppliers, health plans, researchers, and other stakeholders can assess such reports;

(ii) be made available confidentially, to any provider of services or supplier to be identified in such report, prior to the public release of such report, and provide an opportunity to appeal and correct errors;

(iii) only include information on a provider of services or supplier in an aggregate form as determined appropriate by the Secretary; and

(iv) except as described in clause (ii), be made available to the public.

(D) Approval and limitation of uses

The Secretary shall not make data described in paragraph (3) available to a qualified entity unless the qualified entity agrees to release the information on the evaluation of performance of providers of services and suppliers, in such format as the Secretary determines appropriate, to a provider of services or supplier.


References in Text

The Railroad Retirement Act of 1974, referred to in subsec. (a), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 89–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1359, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (d)(1), is classified generally to Title 26, Internal Revenue Code. July 15, 2008, referred to in subsec. (d)(1)(A) and (B), was in the original “the date of the enactment of this section” and “such date”, which were translated as meaning the date of enactment of Pub. L. 110–275, which enacted subsec. (d), to reflect the probable intent of Congress.

Amendments


Effective Date of 2010 Amendment


Effective Date of 2008 Amendment

Amendment by Pub. L. 110–275 effective July 15, 2008, see section 189(c) of Pub. L. 110–275, set out as a note under section 3716 of Title 31, Money and Finance.

Effective Date of 1974 Amendment


Effective Date of 1965 Amendment

Amendment by Pub. L. 89–97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97.

§ 1395kk–1. Contracts with medicare administrative contractors

(a) Authority

(1) Authority to enter into contracts

The Secretary may enter into contracts with any eligible entity to serve as a medicare ad-
administrative contractor with respect to the performance of any or all of the functions described in paragraph (4) or parts of those functions (or, to the extent provided in a contract, to secure performance thereof by other entities).

(2) Eligibility of entities
An entity is eligible to enter into a contract with respect to the performance of a particular function described in paragraph (4) only if—

(A) the entity has demonstrated capability to carry out such function;
(B) the entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement;
(C) the entity has sufficient assets to financially support the performance of such function; and
(D) the entity meets such other requirements as the Secretary may impose.

(3) Medicare administrative contractor defined
For purposes of this subchapter and subchapter XI of this chapter—

(A) In general
The term “medicare administrative contractor” means an agency, organization, or other person with a contract under this section.

(B) Appropriate medicare administrative contractor
With respect to the performance of a particular function in relation to an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, a specific provider of services or supplier (or class of such providers of services or suppliers), the “appropriate” medicare administrative contractor is the medicare administrative contractor that has a contract under this section with respect to the performance of that function in relation to that individual, provider of services or supplier or class of provider of services or supplier.

(4) Functions described
The functions referred to in paragraphs (1) and (2) are payment functions (including the function of developing local coverage determinations, as defined in section 1395d(f)(2)(B) of this title), provider services functions, and functions relating to services furnished to individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, as follows:

(A) Determination of payment amounts
Determining (subject to the provisions of section 1395oo of this title and to such review by the Secretary as may be provided for by the contracts) the amount of the payments required pursuant to this subchapter to be made to providers of services, suppliers and individuals.

(B) Making payments
Making payments described in subparagraph (A) (including receipt, disbursement, and accounting for funds in making such payments).

(C) Beneficiary education and assistance
Providing education and outreach to individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, and providing assistance to those individuals with specific issues, concerns, or problems.

(D) Provider consultative services
Providing consultative services to institutions, agencies, and other persons to enable them to establish and maintain fiscal records necessary for purposes of this subchapter and otherwise to qualify as providers of services or suppliers.

(E) Communication with providers
Communicating to providers of services and suppliers any information or instructions furnished to the medicare administrative contractor by the Secretary, and facilitating communication between such providers and suppliers and the Secretary.

(F) Provider education and technical assistance
Performing the functions relating to provider education, training, and technical assistance.

(G) Additional functions
Performing such other functions, including (subject to paragraph (5)) functions under the Medicare Integrity Program under section 1395ddd of this title, as are necessary to carry out the purposes of this subchapter.

(5) Relationship to MIP contracts

(A) Nonduplication of duties
In entering into contracts under this section, the Secretary shall assure that functions of medicare administrative contractors in carrying out activities under parts A and B of this subchapter do not duplicate activities carried out under a contract entered into under the Medicare Integrity Program under section 1395ddd of this title. The previous sentence shall not apply with respect to the activity described in section 1395ddd(b)(5) of this title (relating to prior authorization of certain items of durable medical equipment) under section 1395m(a)(15) of this title.

(B) Construction
An entity shall not be treated as a medicare administrative contractor merely by reason of having entered into a contract with the Secretary under section 1395ddd of this title.

(6) Application of Federal Acquisition Regulation
Except to the extent inconsistent with a specific requirement of this section, the Federal Acquisition Regulation applies to contracts under this section.

(b) Contracting requirements

(1) Use of competitive procedures

(A) In general
Except as provided in laws with general applicability to Federal acquisition and pro-
(2) Compliance with requirements

The Secretary shall ensure that performance quality is considered in such transfers. The Secretary shall provide public notice (whether in the Federal Register or otherwise) of any such transfer (including a description of the functions so transferred, a description of the providers of services and suppliers affected by such transfer, and contact information for the contractors involved).

(B) Renewal of contracts

The Secretary may renew a contract with a medicare administrative contractor unless the contractor has met or exceeded the performance requirements applicable with respect to the contract and contractor, except that the Secretary shall provide for the application of competitive procedures under such a contract not less frequently than once every 5 years.

(C) Transfer of functions

The Secretary may transfer functions among medicare administrative contractors consistent with the provisions of this paragraph. The Secretary shall ensure that performance quality is considered in such transfers. The Secretary shall provide public notice (whether in the Federal Register or otherwise) of any such transfer (including a description of the functions so transferred, a description of the providers of services and suppliers affected by such transfer, and contract information for the contractors involved).

(D) Incentives for quality

The Secretary shall provide incentives for medicare administrative contractors to provide quality service and to promote efficiency.

(2) Compliance with requirements

No contract under this section shall be entered into with any medicare administrative contractor unless the Secretary finds that such medicare administrative contractor will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, quality of services provided, and other matters as the Secretary finds pertinent.

(3) Performance requirements

(A) Development of specific performance requirements

(i) In general

The Secretary shall develop contract performance requirements to carry out the purposes of this subchapter to a function described in sub-section (a)(4) of this section and shall develop standards for measuring the extent to which a contractor has met such requirements. Such requirements shall include specific performance duties expected of a medical director of a medicare administrative contractor, including requirements relating to professional relations and the availability of such director to conduct medical determination activities within the jurisdiction of such a contractor.

(ii) Consultation

In developing such performance requirements and standards for measurement, the Secretary shall consult with providers of services, organizations representative of beneficiaries under this subchapter, and organizations and agencies performing functions necessary to carry out the purposes of this section with respect to such performance requirements.

(iii) Publication of standards

The Secretary shall make such performance requirements and measurement standards available to the public.

(B) Considerations

The Secretary shall include, as one of the standards developed under subparagraph (A), provider and beneficiary satisfaction levels.

(C) Inclusion in contracts

All contractor performance requirements shall be set forth in the contract between the Secretary and the appropriate medicare administrative contractor. Such performance requirements—

(i) shall reflect the performance requirements published under subparagraph (A), but may include additional performance requirements;

(ii) shall be used for evaluating contractor performance under the contract; and

(iii) shall be consistent with the written statement of work provided under the contract.

(4) Information requirements

The Secretary shall not enter into a contract with a medicare administrative contractor under this section unless the contractor agrees—

(A) to furnish to the Secretary such timely information and reports as the Secretary may find necessary in performing his functions under this subchapter; and

(B) to maintain such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of the information and reports under subparagraph (A) and otherwise to carry out the purposes of this subchapter.

(5) Surety bond

A contract with a medicare administrative contractor under this section may require the medicare administrative contractor, and any of its officers or employees certifying payments or disbursing funds pursuant to the contract, or otherwise participating in carrying out the contract, to give surety bond to the United States in such amount as the Secretary may deem appropriate.

(c) Terms and conditions

(1) In general

A contract with any medicare administrative contractor under this section may contain such terms and conditions as the Sec-
retary finds necessary or appropriate and may provide for advances of funds to the medicare administrative contractor for the making of payments by it under subsection (a)(4)(B) of this section.

(2) Prohibition on mandates for certain data collection

The Secretary may not require, as a condition of entering into, or renewing, a contract under this section, that the medicare administrative contractor match data obtained other than in its activities under this subchapter with data used in the administration of this subchapter for purposes of identifying situations in which the provisions of section 1395y(b) of this title may apply.

(d) Limitation on liability of medicare administrative contractors and certain officers

(1) Certifying officer

No individual designated pursuant to a contract under this section as a certifying officer shall, in the absence of the reckless disregard of the individual's obligations or the intent by that individual to defraud the United States, be liable with respect to any payments certified by the individual under this section.

(2) Disbursing officer

No disbursing officer shall, in the absence of the reckless disregard of the officer's obligations or the intent by that officer to defraud the United States, be liable with respect to any payment by such officer under this section if it was based upon an authorization (which meets the applicable requirements for such internal controls established by the Comptroller General of the United States) of a certifying officer designated as provided in paragraph (1) of this subsection.

(3) Liability of medicare administrative contractor

(A) In general

No medicare administrative contractor shall be liable to the United States for a payment by a certifying or disbursing officer unless, in connection with such payment, the medicare administrative contractor acted with reckless disregard of its obligations under its medicare administrative contract or with intent to defraud the United States.

(B) Relationship to False Claims Act

Nothing in this subsection shall be construed to limit liability for conduct that would constitute a violation of sections 3729 through 3731 of title 31.

(4) Indemnification by Secretary

(A) In general

Subject to subparagraphs (B) and (D), in the case of a medicare administrative contractor (or a person who is a director, officer, or employee of such a contractor or who is engaged by the contractor to participate directly in the claims administration process) who is made a party to any judicial or administrative proceeding arising from or relating directly to the claims administra-

tion process under this subchapter, the Secretary may, to the extent the Secretary determines to be appropriate and as specified in the contract with the contractor, indemnify the contractor and such persons.

(B) Conditions

The Secretary may not provide indemnification under subparagraph (A) insofar as the liability for such costs arises directly from conduct that is determined by the judicial proceeding or by the Secretary to be criminal in nature, fraudulent, or grossly negligent. If indemnification is provided by the Secretary with respect to a contractor before a determination that such costs arose directly from such conduct, the contractor shall reimburse the Secretary for costs of indemnification.

(C) Scope of indemnification

Indemnification by the Secretary under subparagraph (A) may include payment of judgments, settlements (subject to subparagraph (D)), awards, and costs (including reasonable legal expenses).

(D) Written approval for settlements or compromises

A contractor or other person described in subparagraph (A) may not propose to negotiate a settlement or compromise of a proceeding described in such subparagraph without the prior written approval of the Secretary to negotiate such settlement or compromise. Any indemnification under subparagraph (A) with respect to amounts paid under a settlement or compromise of a proceeding described in such subparagraph are conditioned upon prior written approval by the Secretary of the final settlement or compromise.

(E) Construction

Nothing in this paragraph shall be construed—

(i) to change any common law immunity that may be available to a medicare administrative contractor or person described in subparagraph (A); or

(ii) to permit the payment of costs not otherwise allowable, reasonable, or allocable under the Federal Acquisition Regulation.

(e) Requirements for information security

(1) Development of information security program

A medicare administrative contractor that performs the functions referred to in subparagraphs (A) and (B) of subsection (a)(4) of this section (relating to determining and making payments) shall implement a contractor-wide information security program to provide information security for the operation and assets of the contractor with respect to such functions under this subchapter. An information security program under this paragraph shall meet the requirements for information security programs imposed on Federal agencies under paragraphs (1) through (8) of section 3544(b) of title 44 (other than the requirements under
paragraphs (2)(D)(i), (5)(A), and (5)(B) of such section).

(2) Independent audits

(A) Performance of annual evaluations

Each year a medicare administrative contractor that performs the functions referred to in subparagraphs (A) and (B) of subsection (a)(4) of this section (relating to determining and making payments) shall undergo an evaluation of the information security of the contractor with respect to such functions under this subchapter. The evaluation shall—

(i) be performed by an entity that meets such requirements for independence as the Inspector General of the Department of Health and Human Services may establish; and

(ii) test the effectiveness of information security control techniques of an appropriate subset of the contractor’s information systems (as defined in section 3502(8) of title 44) relating to such functions under this subchapter and an assessment of compliance with the requirements of this subchapter and related information security policies, procedures, standards and guidelines, including policies and procedures as may be prescribed by the Director of the Office of Management and Budget and applicable information security standards promulgated under section 11331 of title 40.

(B) Deadline for initial evaluation

(i) New contractors

In the case of a medicare administrative contractor covered by this subsection that has not previously performed the functions referred to in subparagraphs (A) and (B) of subsection (a)(4) of this section (relating to determining and making payments) as a fiscal intermediary or carrier under section 1395h or 1395u of this title, the first independent evaluation conducted pursuant to subparagraph (A) shall be completed prior to commencing such functions.

(ii) Other contractors

In the case of a medicare administrative contractor covered by this subsection that is not described in clause (i), the first independent evaluation conducted pursuant to subparagraph (A) shall be completed within 1 year after the date the contractor commences functions referred to in clause (i) under this section.

(C) Reports on evaluations

(i) To the Department of Health and Human Services

The results of independent evaluations under subparagraph (A) shall be submitted promptly to the Inspector General of the Department of Health and Human Services and to the Secretary.

(ii) To Congress

The Inspector General of the Department of Health and Human Services shall submit to Congress annual reports on the results of such evaluations, including assessments of the scope and sufficiency of such evaluations.

(iii) Agency reporting

The Secretary shall address the results of such evaluations in reports required under section 3544(c) of title 44.

(f) Incentives to improve contractor performance in provider education and outreach

The Secretary shall use specific claims payment error rates or similar methodology of medicare administrative contractors in the processing or reviewing of medicare claims in order to give such contractors an incentive to implement effective education and outreach programs for providers of services and suppliers.

(g) Communications with beneficiaries, providers of services and suppliers

(1) Communication strategy

The Secretary shall develop a strategy for communications with individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, and with providers of services and suppliers under this subchapter.

(2) Response to written inquiries

Each medicare administrative contractor shall, for those providers of services and suppliers which submit claims to the contractor for claims processing and for those individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, with respect to whom claims are submitted for claims processing, provide general written responses (which may be through electronic transmission) in a clear, concise, and accurate manner to inquiries of providers of services, suppliers, and individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, concerning the programs under this subchapter within 45 business days of the date of receipt of such inquiries.

(3) Response to toll-free lines

The Secretary shall ensure that each medicare administrative contractor shall provide, for those providers of services and suppliers which submit claims to the contractor for claims processing and for those individuals entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, or both, with respect to whom claims are submitted for claims processing, a toll-free telephone number at which such individuals, providers of services, and suppliers may obtain information regarding billing, coding, claims, coverage, and other appropriate information under this subchapter.

(4) Monitoring of contractor responses

(A) In general

Each medicare administrative contractor shall, consistent with standards developed by the Secretary under subparagraph (B)—

(i) maintain a system for identifying who provides the information referred to in paragraphs (2) and (3); and

(ii) monitor the accuracy, consistency, and timeliness of the information so provided.
(B) Development of standards

(i) In general

The Secretary shall establish and make public standards to monitor the accuracy, consistency, and timeliness of the information provided in response to written and telephone inquiries under this subsection.

(ii) Evaluation

In conducting evaluations of individual Medicare administrative contractors, the Secretary shall take into account the results of the monitoring conducted under subparagraph (A) taking into account as performance requirements the standards established under clause (i). The Secretary shall, in consultation with organizations representing providers of services, suppliers, and individuals entitled to benefits under part A of this chapter, or enrolled under part B of this chapter, or both, establish standards relating to the accuracy, consistency, and timeliness of the information so provided.

(C) Direct monitoring

Nothing in this paragraph shall be construed as preventing the Secretary from directly monitoring the accuracy, consistency, and timeliness of the information so provided.

(5) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this subsection.

(Aug. 14, 1935, ch. 531, title XVIII, § 1874A, as added and amended Pub. L. 108–173, title IX, §§ 911(a)(1), 912(a), 921(b)(1), (c)(1), 934(a), 940A(b), Dec. 8, 2003, 117 Stat. 3854, which Act enacted Title 41, Public Contracting, and provided that: "(i) In General.—Except as provided in this subsection, the amendment made by subsection (a) [amending this section] shall take effect 1 year after the date of the enactment of this Act (Dec. 8, 2003).

(ii) Deadline for promulgation of certain regulations.—The Secretary of Health and Human Services shall, by not later than 1 year after the date of the enactment of this Act (Dec. 8, 2003), promulgate regulations under section 1874A(h) of the Social Security Act (subsec. (h) of this section), as added by subsection (a), by not later than 1 year after the date of the enactment of this Act (Dec. 8, 2003).

(3) Application of standard protocols for random prepayment review.—Section 1874A(d)(1)(B) of the Social Security Act (subsec. (h)(1)(B) of this section), as added by subsection (a), shall apply to prepayment reviews conducted on or after such date (not later than 1 year after the date of the enactment of this Act (Dec. 8, 2003)) as the Secretary shall specify.

Effective date; transition rule


"(1) Effective date.—

"(A) In general.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 1395d(d)(2) and 1395f of this title] shall take effect on October 1, 2005, and the Secretary of Health and Human Services is authorized to take such steps before such date as may be necessary to implement such amendments on a timely basis.

"(B) Construction for current contracts.—Such amendments shall not apply to contracts in effect before the date specified under subparagraph (A) that continue to retain the terms and conditions in effect on such date (except as otherwise provided under this Act [see Tables for classification], other than under this section) until such date as the contract is let out for competitive bidding under such amendments.

"(C) Deadline for competitive bidding.—The Secretary shall provide for the letting by competitive bidding of all contracts for functions of Medicare administrative contractors for annual contract periods that begin on or after October 1, 2011.

"(2) General transition rules.—

"(A) Authority to continue to enter into new agreements and contracts and waiver of provider nomination provisions during transition.—Prior to October 1, 2005, the Secretary may, consistent with subparagraph (B), continue to enter into agreements under section 1816 and contracts under section 1842 of the Social Security Act (42 U.S.C. 1395h, 1395u) to contracts under section 1874A [this section], as added by subsection (a)(1).

"(B) Appropriate transition.—The Secretary shall take such steps as are necessary to provide for an appropriate transition from agreements under section 1816 and contracts under section 1842 of the Social Security Act (42 U.S.C. 1395h, 1395u) to contracts under section 1874A [this section], as added by subsection (a)(1).

"(C) Authorization of continuation of MIP functions under current contracts and agreements and under transition contracts.—Notwithstanding the amendments made by this section [enacting this section and amending sections 1395d and 1395f of this title], the provisions contained in the section in section 1893(d)(2) of the Social Security Act (42 U.S.C. 1395ddd(d)(2)) shall continue to apply during the period that begins on the date of the enactment of this Act (Dec. 8, 2003) and ends on October 1, 2011, and any reference in such provisions to an agreement or contract shall be construed to include a contract under section 1874A of such Act [this section], as inserted by such section (a)(1), that continues the activities referred to in such provisions."
CONSTRUCTION


‘‘(1) to compromise or affect existing legal remedies for addressing fraud or abuse, whether it be criminal prosecution, civil enforcement, or administrative remedies, including under sections 3729 through 3733 of title 31, United States Code (commonly known as the ‘False Claims Act’); or

‘‘(2) to prevent or impede the Department of Health and Human Services in any way from its ongoing efforts to eliminate waste, fraud, and abuse in the Medicare program.

Furthermore, the consolidation of Medicare administrative contracting set forth in this division (Pub. L. 108–173 does not contain any divisions) does not constitute consolidation of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund or reflect any position on that issue.’’

CONSIDERATION OF INCORPORATION OF CURRENT LAW STANDARDS

Pub. L. 108–173, title IX, § 911(a)(2), Dec. 8, 2003, 117 Stat. 2366, provided that: ‘‘In developing contract performance requirements under section 1874A(b) of the Social Security Act [subsec. (b) of this section], as inserted by paragraph (1), the Secretary [of Health and Human Services] shall consider inclusion of the performance standards described in sections 1816(f)(2) of such Act [section 1396h(f)(2) of this title] (relating to timely processing of reconsiderations and applications for coverage under such provisions) and section 1872(b)(2)(B) of such Act [section 1395u(b)(2)(B) of this title] (relating to timely review of determinations and fair hearing requests), as such sections were in effect before the date of the enactment of this Act [Dec. 8, 2003].’’

REFERENCES

Pub. L. 108–173, title IX, § 911(e), Dec. 8, 2003, 117 Stat. 2366, provided that: ‘‘On and after the effective date of such section (as added by paragraph (1), to the extent not applicable to fiscal intermediaries or carriers under title XVIII of the Social Security Act [subchapter XI of this chapter and this subchapter] (other than subparagraph (B)), as added by paragraph (1), shall apply to each fiscal intermediary under section 1816 of the Social Security Act [42 U.S.C. 1395h] and each carrier under section 1842 of such Act (42 U.S.C. 1395u) in the same manner as they apply to Medicare administrative contractors under such provisions.’’

(2) DEADLINE FOR INITIAL EVALUATION.—In the case of such a fiscal intermediary or carrier with an agreement or contract under such respective section in effect as of the date of the enactment of this Act [Dec. 8, 2003], the first evaluation under section 1874A(e)(2)(A) of the Social Security Act [subsec. (e)(2)(A) of this section] (as added by subsection (a)), pursuant to paragraph (1), shall be completed (and a report on the evaluation submitted to the Secretary [of Health and Human Services] by not later than 1 year after such date).

Pub. L. 108–173, title IX, § 921(b)(2), Dec. 8, 2003, 117 Stat. 2389, provided that: ‘‘The provisions of section 1874A(f) of the Social Security Act [subsec. (f) of this section], as added by paragraph (1), shall apply to each fiscal intermediary under section 1816 of the Social Security Act [42 U.S.C. 1395h] and each carrier under section 1842 of such Act (42 U.S.C. 1395u) in the same manner as they apply to Medicare administrative contractors under such provisions.’’

Pub. L. 108–173, title IX, § 921(c)(3), Dec. 8, 2003, 117 Stat. 2390, provided that: ‘‘The provisions of section 1874A(g) of the Social Security Act [subsec. (g) of this section], as added by paragraph (1), shall apply to each fiscal intermediary under section 1816 of the Social Security Act [42 U.S.C. 1395h] and each carrier under section 1842 of such Act (42 U.S.C. 1395u) in the same manner as they apply to Medicare administrative contractors under such provisions.’’

REPORTS ON IMPLEMENTATION

Pub. L. 108–173, title IX, § 911(g), Dec. 8, 2003, 117 Stat. 2385, provided that: ‘‘(1) PLAN FOR IMPLEMENTATION.—By not later than October 1, 2004, the Secretary [of Health and Human Services] shall submit to Congress and the Comptroller General of the United States that describes the plan for implementation of the amendments made by this section [enacting this section and amending sections 1395h and 1395u of this title]. The Comptroller General shall conduct an evaluation of such plan and shall submit to Congress, not later than 6 months after the date the report is received, a report on such evaluation and shall include in such report such recommendations as the Comptroller General deems appropriate.

‘‘(2) STATUS OF IMPLEMENTATION.—The Secretary shall submit a report to Congress not later than October 1, 2008, that describes the status of implementation of such amendments and that includes a description of the following:

‘‘(A) The number of contracts that have been competitively bid as of such date.

‘‘(B) The distribution of functions among contracts and contractors.

‘‘(C) A timeline for complete transition to full competition.

‘‘(D) A detailed description of how the Secretary has modified oversight and management of Medicare contractors to adapt to full competition.’’

APPLICATION TO FISCAL INTERMEDIARIES AND CARRIERS


‘‘(1) IN GENERAL.—The provisions of section 1874A(e)(2) of the Social Security Act [subsec. (e)(2) of this section] (other than subparagraph (B), as added by subsection (a)), shall apply to each fiscal intermediary under section 1816 of the Social Security Act [42 U.S.C. 1395h] and each carrier under section 1842 of such Act (42 U.S.C. 1395u) in the same manner as they apply to Medicare administrative contractors under such provisions.

‘‘(2) DEADLINE FOR INITIAL EVALUATION.—In the case of such a fiscal intermediary or carrier with an agreement or contract under such respective section in effect as of the date of the enactment of this Act [Dec. 8, 2003], the first evaluation under section 1874A(e)(2)(A) of the Social Security Act [subsec. (e)(2)(A) of this section] (as added by subsection (a)), pursuant to paragraph (1), shall be completed (and a report on the evaluation submitted to the Secretary [of Health and Human Services] by not later than 1 year after such date).

Pub. L. 108–173, title IX, § 921(b)(2), Dec. 8, 2003, 117 Stat. 2389, provided that: ‘‘The provisions of section 1874A(f) of the Social Security Act [subsec. (f) of this section], as added by paragraph (1), shall apply to each fiscal intermediary under section 1816 of the Social Security Act [42 U.S.C. 1395h] and each carrier under section 1842 of such Act (42 U.S.C. 1395u) in the same manner as they apply to Medicare administrative contractors under such provisions.’’

Pub. L. 108–173, title IX, § 921(c)(3), Dec. 8, 2003, 117 Stat. 2390, provided that: ‘‘The provisions of section 1874A(g) of the Social Security Act [subsec. (g) of this section], as added by paragraph (1), shall apply to each fiscal intermediary under section 1816 of the Social Security Act [42 U.S.C. 1395h] and each carrier under section 1842 of such Act (42 U.S.C. 1395u) in the same manner as they apply to Medicare administrative contractors under such provisions.’’

POLICY DEVELOPMENT REGARDING EVALUATION AND MANAGEMENT (E & M) DOCUMENTATION GUIDELINES


‘‘(a) IN GENERAL.—The Secretary [of Health and Human Services] may not implement any new or modified documentation guidelines (which for purposes of this section includes clinical examples) for evaluation and management physician services under the [sic] title XVIII of the Social Security Act [this subchapter] on or after the date of the enactment of this Act [Dec. 8, 2003] unless the Secretary—
“(1) has developed the guidelines in collaboration with practicing physicians (including both generalists and specialists) and provided for an assessment of the proposed guidelines by the physician community; "

“(2) has established a plan that contains specific goals, including a schedule, for improving the use of such guidelines;

“(3) has conducted appropriate and representative pilot projects under subsection (b) to test such guidelines;

“(4) finds, based on reports submitted under subsection (b)(5) with respect to pilot projects conducted for such or related guidelines, that the objectives described in subsection (c) will be met in the implementation of such guidelines; and

“(5) has established, and is implementing, a program to educate physicians on the use of such guidelines and that includes appropriate outreach.

The Secretary shall make changes to the manner in which existing evaluation and management documentation guidelines are implemented to reduce paperwork burdens on physicians.

(b) Pilot Projects to Test Modified or New Evaluation and Management Documentation Guidelines.—

“(1) In General.—With respect to proposed new or modified documentation guidelines referred to in subsection (a), the Secretary shall conduct under this subsection appropriate and representative pilot projects to test the proposed guidelines.

“(2) Length and Consultation.—Each pilot project under this subsection shall—

“(A) be voluntary;

“(B) be of sufficient length as determined by the Secretary (but in no case to exceed 1 year) to allow for preparatory physician and Medicare contractor education, analysis, and use and assessment of potential evaluation and management guidelines; and

“(C) be conducted, in development and throughout the planning and operational stages of the project, in consultation with practicing physicians (including both generalists and specialists).

“(3) Range of Pilot Projects.—Of the pilot projects conducted under this subsection with respect to proposed new or modified documentation guidelines—

“(A) at least one shall focus on a peer review method by physicians (not employed by a Medicare contractor) which evaluates medical record information for claims submitted by physicians identified as statistical outliers relative to codes used for billing purposes for such services;

“(B) at least one shall focus on an alternative methodology to detailed guidelines based on physician documentation of face to face encounter time with a patient;

“(C) at least one shall be conducted for services furnished in an rural area and at least one shall be conducted in a setting outside such an area; and

“(D) at least one shall be conducted in a setting where physicians bill under physicians’ services in teaching settings and at least one shall be conducted in a setting other than a teaching setting.

“(4) Study of Impact.—Each pilot project shall examine the effect of the proposed guidelines on—

“(A) different types of physician practices, including those with fewer than 10 full-time-equivalent employees (including physicians); and

“(B) the costs of physician compliance, including education, implementation, auditing, and monitoring.

“(5) Report on Pilot Projects.—Not later than 6 months after the date of completion of pilot projects carried out under this subsection with respect to a proposed guideline described in paragraph (1), the Secretary shall submit to Congress a report on the pilot projects. Each such report shall include a finding by the Secretary of whether the objectives described in subsection (c) will be met in the implementation of such proposed guideline.

“(c) Objectives for Evaluation and Management Guidelines.—The objectives for modified evaluation and management documentation guidelines developed by the Secretary shall be—

“(1) identify clinically relevant documentation needed to code accurately and assess coding levels accurately;

“(2) decrease the level of non-clinically pertinent and burdensome documentation time and content in the physician’s medical record;

“(3) increase accuracy by reviewers; and

“(4) educate both physicians and reviewers.

“(d) Study of Simpler, Alternative Systems of Documentation for Physician Claims.—

“(1) Study.—The Secretary shall carry out a study of the matters described in paragraph (2).

“(2) Matters Described.—The matters referred to in paragraph (1) are—

“(A) the development of a simpler, alternative system of requirements for documentation accompanying claims for evaluation and management physician services for which payment is made under title XVIII of the Social Security Act (this subchapter); and

“(B) consideration of systems other than current coding and documentation requirements for payment for such physician services.

“(3) Consultation with Practicing Physicians.—In designing and carrying out the study under paragraph (1), the Secretary shall consult with practicing physicians, including physicians who are part of group practices and including both generalists and specialists.

“(4) Application of HIPAA Uniform Coding Requirements.—In developing an alternative system under paragraph (2), the Secretary shall consider requirements of administrative simplification under part C of title XI of the Social Security Act [part C of chapter XI of this chapter].

“(5) Report to Congress.—

“(A) Not later than October 1, 2005, the Secretary shall submit to Congress a report on the results of the study conducted under paragraph (1).

“(B) The Medicare Payment Advisory Commission shall conduct an analysis of the results of the study included in the report under subparagraph (A) and shall submit a report on such analysis to Congress.

“(e) Study on Appropriate Coding of Certain Extended Office Visits.—The Secretary shall conduct a study of the appropriateness of coding in cases of extended office visits in which there is no diagnosis made. Not later than October 1, 2005, the Secretary shall submit a report to Congress on such study and shall include recommendations on how to code appropriately for such visits in a manner that takes into account the amount of time the physician spent with the patient.

“(f) Definitions.—In this section—

“(1) the term 'rural area' has the meaning given that term in section 1866(d)(2)(D) of the Social Security Act; and

“(2) the term 'teaching settings' are those settings described in section 415.150 of title 42, Code of Federal Regulations.'
constructive alternative to inpatient hospital care; and (3) the effects of the deductible and coinsurance provisions upon beneficiaries, persons who provide health services, and the financing of the program.

(b) Operation and administration of insurance programs

The Secretary shall make a continuing study of the operation and administration of this subchapter (including a validation of the accreditation process of national accreditation bodies under section 1395bb(a) of this title\(^1\)) the operation and administration of health maintenance organizations authorized by section 226 of the Social Security Amendments of 1972 [42 U.S.C. 1395mm], the experiments and demonstration projects authorized by section 402 of the Social Security Amendments of 1967 [42 U.S.C. 1395b–1] and the experiments and demonstration projects authorized by section 222(a) of the Social Security Amendments of 1972 [42 U.S.C. 1395b–1 note]), and shall transmit to the Congress annually a report concerning the operation of such programs.


REFERENCES IN TEXT

Section 226 of the Social Security Amendments of 1972, referred to in subsec. (b), is section 226 of Pub. L. 92–603, which enacted section 1395bbm of this title and provisions set out as notes under that section and amended this section and sections 1395f, 1395g, and 1396b of this title.

Section 402 of the Social Security Amendments of 1967, referred to in subsec. (b), is section 402 of Pub. L. 90–248, which enacted section 1395bb–1 of this title and amended this section.

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (b), is section 222(a) of Pub. L. 92–603, which enacted provisions set out as note under section 1395bb–1 of this title.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–275 substituted “national accreditation bodies under section 1395bb(a) of this title” for “‘the Joint Commission on Accreditation of Hospitals,’”.

2003—Subsec. (b). Pub. L. 106–173 substituted “this subchapter” for “the insurance programs under parts A and B of this subchapter”.


Subsec. (c)(7). Pub. L. 101–234, § 301(b)(5), (d)(2), amended par. (7) identically, substituting “date of the enactment of this section” for “date of the enactment of this Act”.

1988—Subsec. (c)(3). Pub. L. 100–647 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “For purposes of carrying out the research program, there are authorized to be appropriated—

(A) from the Federal Hospital Insurance Trust Fund $4,000,000 for fiscal year 1987 and $5,000,000 for each of fiscal years 1988 and 1989, and

(B) from the Federal Supplementary Medical Insurance Trust Fund $2,000,000 for fiscal year 1987 and $2,500,000 for each of fiscal years 1988 and 1989.”


1984—Subsec. (b). Pub. L. 98–369 struck out “the” after “Joint Commission on”.


Subsec. (b). Pub. L. 92–603, §§ 222(c), 226(d)(1), 244(d), substituted “including a validation of the accreditation process of the Joint Commission on the Accreditation of Hospitals, the operation and administration of health maintenance organizations authorized by section 226 of the Social Security Amendments of 1972, the experiments and demonstration projects authorized by section 402 of the Social Security Amendments of 1967 and the experiments and demonstration projects authorized by section 222(a) of the Social Security Amendments of 1972” for “‘including the experimentation authorized by section 402 of the Social Security Amendments of 1967’”, Pub. L. 92–603, § 226(d)(2), which directed the substitution of “‘1972’” for “‘1971’”, could not be executed because “‘1971’ did not appear.

1968—Subsec. (b). Pub. L. 90–248 inserted “including the experimentation authorized by section 402 of the Social Security Amendments of 1967 after ‘under parts A and B of this subchapter’”.

EFFECTIVE DATE OF 2008 AMENDMENT; TRANSITION RULE

Amendment by Pub. L. 110–275 applicable with respect to accreditations of hospitals granted on or after the date that is 24 months after July 15, 2008, with transition rule, see section 125(d) of Pub. L. 110–275, set out as a note under section 1395bb of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6103(b)(3)(A) of Pub. L. 101–239 provided that the amendment made by that section is effective for fiscal years beginning after fiscal year 1990.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 226(d) of Pub. L. 92–603 effective with respect to services provided on or after July 1, 1973, see section 226(f) of Pub. L. 92–603, set out as an Effective Date note under section 1395vb of this title.

INSTITUTE OF MEDICINE EVALUATION AND REPORT ON HEALTH CARE PERFORMANCE MEASURES


“(a) EVALUATION.—

“(1) IN GENERAL.—Not later than the date that is 2 months after the date of the enactment of this Act [Dec. 8, 2003], the Secretary [of Health and Human Services] shall enter into an arrangement under which the Institute of Medicine of the National Academy of Sciences (in this section referred to as the ‘Institute’) shall conduct an evaluation of leading health care performance measures in the public and

1 So in original. Probably should be followed by a comma.
private sectors and options to implement policies that align performance with payment under the medicare program under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

“(2) SPECIFIC MATTERS EVALUATED.—In conducting the evaluation under paragraph (1), the Institute shall—

“(A) catalogue, review, and evaluate the validity of leading health care performance measures;

“(B) catalogue and evaluate the success and utility of alternative performance incentive programs in public or private sector settings; and

“(C) identify and prioritize options to implement policies that align performance with payment under the medicare program that indicate—

“(1) the performance measurement set to be used and how that measurement set will be updated;

“(ii) the payment policy that will reward performance; and

“(iii) the key implementation issues (such as data and information technology requirements) that must be addressed.

“(3) SCOPE OF HEALTH CARE PERFORMANCE MEASURES.—The health care performance measures described in paragraph (2)(A) shall encompass a variety of perspectives, including physicians, hospitals, other health care providers, health plans, purchasers, and patients.

“(4) CONSULTATION WITH MEDPAC.—In evaluating the matters described in paragraph (2)(C), the Institute shall consult with the Medicare Payment Advisory Commission established under section 1885 of the Social Security Act (42 U.S.C. 1395b–6).

“(b) REPORT.—Not later than the date that is 18 months after the date of enactment of this Act [Dec. 8, 2003], the Institute shall submit to the Secretary and appropriate committees of jurisdiction of the Senate and House of Representatives a report on the evaluation conducted under subsection (a)(1) describing the findings of such evaluation and recommendations for an overall strategy and approach for aligning payment with performance, including options for updating performance measures, in the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act [parts A and B of this subchapter], the Medicare Advantage program under part C of such title [part C of this subchapter], and any other programs under such title XVIII [this subchapter].

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are appropriated such sums as may be necessary for purposes of conducting the evaluation and preparing the report required by this section.”

GAO STUDY ON ACCESS TO PHYSICIANS’ SERVICES


“(a) STUDY.—The Comptroller General of the United States shall conduct a study on access of medicare beneficiaries to physicians’ services that may have improved, remained constant, or deteriorated over time.”

STUDY ON ENROLLMENT PROCEDURES FOR GROUPS THAT RETAIN INDEPENDENT CONTRACTOR PHYSICIANS

Pub. L. 106–554, § 1(a)(6) [title IV, § 413], Dec. 21, 2000, 114 Stat. 2783, 2783A–515, provided that:

“(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the current medicare enrollment process for groups that retain independent contractor physicians with particular emphasis on hospital-based physicians, such as emergency department staffing groups. In conducting the evaluation, the Comptroller General shall consult with groups that retain independent contractor physicians and shall—

“(1) review the issuance of individual medicare provider numbers and the possible medicare program integrity vulnerabilities of the current process;

“(2) review direct and indirect costs associated with the current process incurred by the medicare program and groups that retain independent contractor physicians;

“(3) assess the effect on program integrity by the enrollment of groups that retain independent contractor hospital-based physicians; and

“(4) develop suggested procedures for the enrollment of these groups.

“(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress a report on the study conducted under subsection (a).”

GAO STUDIES AND REPORTS ON MEDICARE PAYMENTS

Pub. L. 106–554, § 1(a)(6) [title IV, § 437], Dec. 21, 2000, 114 Stat. 2783, 2783A–527, provided that:

“(a) GAO STUDY ON HCFA POST-PAYMENT AUDIT PROCEDURE

“(1) STUDY.—The Comptroller General of the United States shall conduct a study on the post-payment audit process under the medicare program under title XVIII of the Social Security Act [this subchapter] as such process applies to physicians, including the proper level of resources that the Health Care Financing Administration should devote to educating physicians regarding—

“(A) coding and billing;

“(B) documentation requirements; and

“(C) the calculation of overpayments.

“(2) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1) together with specific recommendations for changes or improvements in the post-payment audit process described in such paragraph.

“(b) GAO STUDY ON ADMINISTRATION AND OVERSIGHT

“(1) STUDY.—The Comptroller General of the United States shall conduct a study on the aggregate effects of regulatory, audit, oversight, and paperwork burdens on physicians and other health care providers participating in the medicare program under title XVIII of the Social Security Act [this subchapter].

“(2) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 21, 2000], the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1) together with recommendations regarding any area in which—

“(A) a reduction in paperwork, an ease of administration, or an appropriate change in oversight and review may be accomplished; or

“(B) additional payments or education are needed to assist physicians and other health care providers in understanding and complying with any legal or regulatory requirements.”
STUDY AND REPORT REGARDING UTILIZATION OF PHYSICIANS’ SERVICES BY MEDICARE BENEFICIARIES

Pub. L. 106–113, div. B, § 1000(a)(6) [title II, § 211(c)], Nov. 29, 1999, 113 Stat. 1358, 1351A–349, provided that:

“(1) STUDY BY SECRETARY. The Secretary of Health and Human Services, acting through the Administrator of the Agency for Health Care Policy and Research, shall conduct a study of the issues specified in paragraph (2).

“(2) ISSUES TO BE STUDIED. The issues specified in this paragraph are the following:

“(A) The various methods for accurately estimating the economic impact on expenditures for physicians’ services under the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) (parts A and B of this subchapter) resulting from—

“(i) improvements in medical capabilities;

“(ii) advancements in scientific technology;

“(iii) demographic changes in the types of medicare beneficiaries that receive benefits under such program; and

“(iv) geographic changes in locations where medicare beneficiaries receive benefits under such program.

“(B) The rate of usage of physicians’ services under the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) among beneficiaries between ages 65 and 74, 75 and 84, 85 and over, and disabled beneficiaries under age 65.

“(C) Other factors that may be reliable predictors of beneficiary utilization of physicians’ services under the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

“(D) The study conducted pursuant to paragraph (1), together with any recommendations the Secretary determines are appropriate.

“(E) A MEDPAC REPORT TO CONGRESS. Not later than 180 days after the date of submission of the report under paragraph (3), the Medicare Payment Advisory Commission shall submit a report to Congress that includes—

“(A) an analysis and evaluation of the report submitted under paragraph (3); and

“(B) such recommendations as it determines are appropriate.

STUDY OF ADULT DAY CARE SERVICES


STUDY TO DEVELOP A STRATEGY FOR QUALITY REVIEW AND ASSURANCE

Section 303(d) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4065(i)(21)(A), Dec. 22, 1987, 101 Stat. 1359–133, directed Secretary of Health and Human Servs. to arrange, with the National Academy of Sciences or other appropriate nonprofit private entity, for a study to design a strategy for reviewing and assuring the quality of care for which payment may be made under this subchapter, specified items to be included in the study, and directed Secretary to submit to Congress, not later than Jan. 1, 1990, a report on the study with recommendations with respect to strengthening quality assurances and review activities for services furnished under the medicare program.

SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER

For treatment of hospitals in States which have had a waiver approved under this section, upon termination of the waiver, see section 1395ww of this title.

DRUG DETOXIFICATION MEDICARE COVERAGE AND FACILITY INCENTIVES


LEGISLATIVE RECOMMENDATIONS REGARDING REIMBURSEMENT FOR OPTOMETRISTS’ SERVICES

Pub. L. 96–499, title IX, § 937(b), Dec. 5, 1980, 94 Stat. 2649, provided that the Secretary of Health and Human Services submit to the Congress by Jan. 1, 1982, legislative recommendations with respect to reimbursement under title XVIII of the Social Security Act (this subchapter) for services furnished by optometrists in connection with cataracts and such other services which they are legally authorized to perform.

DEMONSTRATION PROJECTS, STUDIES, AND REPORTS: NUTRITIONAL THERAPY, SECOND OPINION COST-SHARING, SERVICES OF REGISTERED DIETITIANS, SERVICES OF CLINICAL SOCIAL WORKERS, ORTHOPEDIC SHOES, RESPIRATORY THERAPY SERVICES, AND FOOT CONDITIONS; GRANTS, PAYMENTS, AND EXPENDITURES

Pub. L. 96–499, title IX, § 958, Dec. 5, 1980, 94 Stat. 2648, directed Secretary of Health and Human Services to carry out certain demonstration projects and conduct certain studies as follows: (a) a demonstration project to determine extent to which nutritional therapy in early renal failure could retard the disease with resultant substantive deferral of dialysis, and aspects of making such therapy available under this subchapter, report to Congress to be submitted within twenty-four months of Dec. 5, 1980; (b) demonstration projects with respect to waiving the applicable cost sharing amounts which beneficiaries under this subchapter had to pay for obtaining a second opinion on having surgery, report to be submitted within one year after Dec. 5, 1980; (c) a study of conditions under which services of registered dietitians could be covered as a home health benefit under this subchapter, report to be submitted within twenty-four months of Dec. 5, 1980; (d) demonstration projects to determine aspects of making services of social workers more generally available under this subchapter, report to be submitted within twenty-four months of Dec. 5, 1980; (e) a study of methods for providing coverage under part B of this subchapter for orthopedic shoes for individuals with disabling or deforming conditions requiring special fitting considerations, or requiring special shoes in conjunction with the use of an orthosis or foot support, report to be submitted no later than July 1, 1981; (f) a study of conditions under which services with respect to respiratory therapy could be covered as a home health benefit under this subchapter, report to be submitted within twenty-four months of Dec. 5, 1980; and (g) a study analyzing cost effects of alternative approaches to improving coverage under this subchapter for treatment of various types of foot conditions, report to be submitted within twenty-four months of Dec. 5, 1980. Payments and expenditures for such studies and projects were to be made in appropriate part from the Federal Hospital Insurance Trust Fund established by section 1395i of this title, and the Federal Supplementary Medical Insurance Trust Fund established by section 1395t of this title.

DEMONSTRATION PROJECT RELATING TO THE TERMINALLY ILL

provide for participation, by Social Security Administration, in a demonstration project relating to the terminally ill then being conducted within the Department of Health and Human Services, the purpose of such participation to be to study impact on terminally ill of provisions of disability programs administered by Social Security Administration and to determine how best to provide services needed by persons who were terminally ill through programs over which the Social Security Administration had administrative responsibility, and authorized to be appropriated necessary sums not in excess of $2,000,000 for any fiscal year.

Report to Congress With Respect to Urban or Rural Comprehensive Mental Health Centers and Centers for Treatment of Alcoholism and Drug Abuse; Submission No Later Than June 13, 1978


Study and Review by Comptroller General of Administrative Structure for Processing Medicare Claims; Report to Congress

Pub. L. 95-142, § 12; Oct. 25, 1977, 91 Stat. 1197, directed Comptroller General to conduct a comprehensive study and review of administrative structure established for processing of claims under this subchapter for purpose of determining whether and to what extent more efficient claims administration under this subchapter could be achieved and directed Comptroller General to submit to Congress no later than July 1, 1978, a complete report with respect to such study and review.

Report by Secretary of Health, Education, and Welfare on Delivery of Home Health and Other In-Home Services; Contents; Consultation Requirements; Submission to Congress

Pub. L. 95-142, § 18; Oct. 25, 1977, 91 Stat. 1202, directed Secretary of Health, Education, and Welfare, not later than one year after Oct. 25, 1977, to submit to appropriate committees of Congress a report analyzing, evaluating, and making recommendations with respect to all aspects of delivery of home health and other in-home services authorized to be provided under subchapters XVIII, XIX, and XX of this chapter.

§ 1395mm. Payments to health maintenance organizations and competitive medical plans

(a) Rates and adjustments

(1)(A) The Secretary shall annually determine, and shall announce (in a manner intended to provide notice to interested parties) not later than September 7 before the calendar year concerned—

(i) a per capita rate of payment for each class of individuals who are enrolled under this section with an eligible organization which has entered into a risk-sharing contract and who are entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, and

(ii) a per capita rate of payment for each class of individuals who are so enrolled with such an organization and who are enrolled under part B of this subchapter only.

For purposes of this section, the term “risk-sharing contract” means a contract entered into under subsection (h) of this section.

(B) The Secretary shall define appropriate classes of members, based on age, disability status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence.

(C) The annual per capita rate of payment for each such class shall be equal to 95 percent of the adjusted average per capita cost (as defined in paragraph (4)) for that class.

(D) In the case of an eligible organization with a risk-sharing contract, the Secretary shall make monthly payments in advance and in accordance with the rate determined under subparagraph (C) and except as provided in subsection (g)(2) of this section, to the organization for each individual enrolled with the organization under this section.

(E)(i) The amount of payment under this paragraph may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

(ii) Subject to subclause (II), the Secretary may make retroactive adjustments under clause (i) to take into account individuals enrolled during the period beginning on the date on which the individual enrolls with an eligible organization (which has a risk-sharing contract under this section) under a health benefit plan operated, sponsored, or contributed to by the individual’s employer or former employer (or the employer or former employer of the individual’s spouse) and ending on the date on which the individual is enrolled in the plan under this section, except that for purposes of making such retroactive adjustments under this clause, such period may not exceed 90 days.

(II) No adjustment may be made under subclause (I) with respect to any individual who does not certify that the organization provided the individual with the explanation described in subsection (c)(3)(E) of this section at the time the individual enrolled with the organization.

(F)(i) At least 45 days before making the announcement under subparagraph (A) for a year (beginning with the announcement for 1991), the Secretary shall provide for notice to eligible organizations of proposed changes to be made in the methodology or benefit coverage assumptions from the methodology and assumptions used in the previous announcement and shall provide such organizations an opportunity to comment on such proposed changes.

(ii) In each announcement made under subparagraph (A) for a year (beginning with the announcement for 1991), the Secretary shall include an explanation of the assumptions (including any benefit coverage assumptions) and changes in methodology used in the announcement in sufficient detail so that eligible organizations can compute per capita rates of payment for classes of individuals located in each county (or equivalent area) which is in whole or in part within the service area of such an organization.
(2) With respect to any eligible organization which has entered into a reasonable cost reimbursement contract, payments shall be made to such plan in accordance with subsection (h)(2) of this section rather than paragraph (1).

(3) Subject to subsections (c)(2)(B)(i) and (c)(7) of this section, payments under a contract to an eligible organization under paragraph (1) or (2) shall be instead of the amounts which (in the absence of the contract) would be otherwise payable, pursuant to sections 1395f(b) and 1395(a) of this title, for services furnished by or through the organization to individuals enrolled with the organization under this section.

(4) For purposes of this section, the term “adjusted average per capita cost” means the average per capita amount that the Secretary estimates in advance (on the basis of actual experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in a geographic area served by an eligible organization or in a similar area, with appropriate adjustments to assure actuarial equivalence) would be payable in any contract year for services covered under parts A and B of this subchapter, or part B only, and types of expenses otherwise reimbursable under parts A and B of this subchapter, or part B only (including administrative costs incurred by organizations described in sections 1395h and 1395a of this title), if the services were to be furnished by other than an eligible organization or, in the case of services covered only under section 1395x(s)(2)(H) of this title, if the services were to be furnished by a physician or as an incident to a physician’s service.

(5) The payment to an eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A of this subchapter and entitled under this section for individuals enrolled under this section rather than paragraph (1).

(6) Subject to subsections (c)(2)(B)(i) and (c)(7) of this section, if an individual is enrolled under this section with an eligible organization having a risk-sharing contract, only the eligible organization shall be entitled to receive payments from the Secretary under this subchapter for services furnished to the individual.

(b) Definitions; requirements

For purposes of this section, the term “eligible organization” means a public or private entity (which may be a health maintenance organization or a competitive medical plan), organized under the laws of any State, which—

(1) is a qualified health maintenance organization (as defined in section 300e-9(d) of this title), or

(2) meets the following requirements:

(A) The entity provides to enrolled members at least the following health care services:

(i) Physicians’ services performed by physicians (as defined in section 1395x(r)(1) of this title).

(ii) Inpatient hospital services.

(iii) Laboratory, X-ray, emergency, and preventive services.

(iv) Out-of-area coverage.

(B) The entity is compensated (except for deductibles, coinsurance, and copayments) for the provision of health care services to enrolled members by a payment which is paid on a periodic basis without regard to the care the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health care service actually provided to a member.

(C) The entity provides physicians’ services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through contracts with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(D) The entity assumes full financial risk on a prospective basis for the provision of the health care services listed in subparagraph (A), except that such entity may—

(i) obtain insurance or make other arrangements for the cost of providing to any enrolled member health care services listed in subparagraph (A) the aggregate value of which exceeds $5,000 in any year.

(ii) obtain insurance or make other arrangements for the cost of health care service listed in subparagraph (A) provided to its enrolled members other than through the entity because medical necessity required their provision before they could be secured through the entity.

(iii) obtain insurance or make other arrangements for not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for such fiscal year, and

(iv) make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions.

(E) The entity has made adequate provision against the risk of insolvency, which provision is satisfactory to the Secretary.

1 See References in Text note below.
Paragraph (2)(A)(ii) shall not apply to an entity which had contracted with a single State agency administering a State plan approved under subchapter XIX of this chapter for the provision of services (other than inpatient hospital services) to individuals eligible for such services under such State plan on a prepaid risk basis prior to 1970.

(c) Enrollment in plan; duties of organization to enrollees

(1) The Secretary may not enter into a contract under this section with an eligible organization unless it meets the requirements of this subchapter and subsection (e) of this section with respect to members enrolled under this section.

(2)(A) The organization must provide to members enrolled under this section, through providers and other persons that meet the applicable requirements of this subchapter and part A of subchapter XI of this chapter—

(i) only those services covered under parts A and B of this subchapter, for those members entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, or

(ii) only those services covered under part B of this subchapter, for those members enrolled only under such part,

which are available to individuals residing in the geographic area served by the organization, except that (I) the organization may provide such members with such additional health care services as the members may elect, at their option, to have covered, and (II) in the case of an organization with a risk-sharing contract, the organization may provide such members with such additional health care services as the Secretary may approve. The Secretary shall approve any such additional health care services which the organization proposes to offer to such members, unless the Secretary determines that including such additional services will substantially discourage enrollment by covered individuals with the organization.

(B) If there is a national coverage determination made in the period beginning on the date of an announcement under subsection (a)(1)(A) of this section and ending on the date of the next announcement under such subsection that the Secretary projects will result in a significant change in the costs to the organization of providing the benefits that are the subject of such national coverage determination and that was not incorporated in the determination of the per capita rate of payment included in the announcement made at the beginning of such period—

(i) such determination shall not apply to risk-sharing contracts under this section until the first contract year that begins after the end of such period; and

(ii) if such coverage determination provides for coverage of additional benefits or under additional circumstances, subsection (a)(3) of this section shall not apply to payment for such additional benefits or benefits provided under such additional circumstances until the first contract year that begins after the end of such period,

unless otherwise required by law.

(3)(A)(i) Each eligible organization must have an open enrollment period, for the enrollment of individuals under this section, of at least 30 days duration every year and including the period or periods specified under clause (ii), and must provide that at any time during which enrollments are accepted, the organization will accept up to the limits of its capacity (as determined by the Secretary) and without restrictions, except as may be authorized in regulations, individuals who are eligible to enroll under subsection (d) of this section in the order in which they apply for enrollment, unless to do so would result in failure to meet the requirements of subsection (f) of this section or would result in the enrollment of enrollees substantially nonrepresentative, as determined in accordance with regulations of the Secretary, of the population in the geographic area served by the organization.

(ii)(I) If a risk-sharing contract under this section is not renewed or is otherwise terminated, eligible organizations with risk-sharing contracts under this section and serving any part of the same service area as under the terminated contract are required to have an open enrollment period for individuals who were enrolled under the terminated contract as of the date of notice of such termination. If a risk-sharing contract under this section is renewed in a manner that discontinues coverage for individuals residing in part of the service area, eligible organizations with risk-sharing contracts under this section and enrolling individuals residing in that part of the service area are required to have an open enrollment period for individuals residing in the part of the service area who were enrolled under the contract as of the date of notice of such discontinued coverage.

(II) The open enrollment periods required under subclause (I) shall be for 30 days and shall begin 30 days after the date that the Secretary provides notice of such requirement.

(III) Enrollment under this clause shall be effective 30 days after the end of the open enrollment period, or, if the Secretary determines that such date is not feasible, such other date as the Secretary specifies.

(B) An individual may enroll under this section with an eligible organization in such manner as may be prescribed in regulations and may terminate his enrollment with the eligible organization as of the beginning of the first calendar month following the date on which the request is made for such termination (or, in the case of financial insolvency of the organization, as may be prescribed by regulations) or, in the case of such an organization with a reasonable cost reimbursement contract, as may be prescribed by regulations. In the case of an individual’s termination of enrollment, the organization shall provide the individual with a copy of the written request for termination of enrollment and a written explanation of the period (ending on the effective date of the termination) during which the individual continues to be enrolled with the organization and may not receive benefits under this subchapter other than through the organization.

(C) The Secretary may prescribe the procedures and conditions under which an eligible or-
organization that has entered into a contract with the Secretary under this subsection may inform individuals eligible to enroll under this section with the organization about the organization, or may enroll such individuals with the organization. No brochures, application forms, or other promotional or informational material may be distributed by an organization to (or for the use of) individuals eligible to enroll with the organization under this section unless (I) at least 45 days before its distribution, the organization has submitted the material to the Secretary for review and (ii) the Secretary has not disapproved the distribution of the material. The Secretary shall review all such material submitted and shall disapprove such material if the Secretary determines, in the Secretary’s discretion, that the material is materially inaccurate or misleading or otherwise makes a material misrepresentation.

(D) The organization must provide assurances to the Secretary that it will not expel or refuse to re-enroll any such individual because of the individual’s health status or requirements for health care services, and that it will notify each such individual of such fact at the time of the individual’s enrollment.

(E) Each eligible organization shall provide each enrollee, at the time of enrollment and not less frequently than annually thereafter, an explanation of the enrollee’s rights under this section, including an explanation of—

(i) the enrollee’s rights to benefits from the organization,
(ii) the restrictions on payments under this subchapter for services furnished other than by or through the organization,
(iii) out-of-area coverage provided by the organization,
(iv) the organization’s coverage of emergency services and urgently needed care, and
(v) appeal rights of enrollees.

(F) Each eligible organization that provides items and services pursuant to a contract under this section shall provide assurances to the Secretary that in the event the organization ceases to provide such items and services, the organization shall provide or arrange for supplemental coverage of benefits under this subchapter related to a pre-existing condition with respect to any exclusion period, to all individuals enrolled with the entity who receive benefits under this subchapter, for the lesser of six months or the duration of such period.

(G)(i) Each eligible organization having a risk-sharing contract under this section shall notify individuals eligible to enroll with the organization under this section and individuals enrolled with the organization under this section that—

(I) the organization is authorized by law to terminate or refuse to renew the contract, and
(II) termination or nonrenewal of the contract may result in termination of the enrollments of individuals enrolled with the organization under this section.

(ii) The notice required by clause (i) shall be included in—

(I) any marketing materials described in subparagraph (C) that are distributed by an eligible organization to individuals eligible to enroll under this section with the organization, and
(II) any explanation provided to enrollees by the organization pursuant to subparagraph (E).

(4) The organization must—

(A) make the services described in paragraph (2) (and such other health care services as such individuals have contracted for) (i) available and accessible to each such individual, within the area served by the organization, with reasonable promptness and in a manner which assures continuity, and (ii) when medically necessary, available and accessible twenty-four hours a day and seven days a week, and

(B) provide for reimbursement with respect to services which are described in subparagraph (A) and which are provided to such an individual other than through the organization, if (i) the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition and (ii) it was not reasonable given the circumstances to obtain the services through the organization.

(5)(A) The organization must provide meaningful procedures for hearing and resolving grievances between the organization (including any entity or individual through which the organization provides health care services) and members enrolled with the organization under this section.

(B) A member enrolled with an eligible organization under this section who is dissatisfied by reason of his failure to receive any health service to which he believes he is entitled and at no greater charge than he believes he is required to pay is entitled, if the amount in controversy is $100 or more, to a hearing before the Secretary to the same extent as is provided in section 405(b) of this title, and in any such hearing the Secretary shall make the eligible organization a party. If the amount in controversy is $1,000 or more, the individual or eligible organization shall, upon notifying the other party, be entitled to judicial review of the Secretary’s final decision as provided in section 405(g) of this title, and both the individual and the eligible organization shall be entitled to be parties to that judicial review. In applying sections 405(b) and 405(g) of this title as provided in this subparagraph, and in applying section 405(i) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively. The provisions of section 1395ff(b)(1)(E)(iii) of this title shall apply with respect to dollar amounts specified in the first 2 sentences of this subparagraph in the same manner as they apply to the dollar amounts specified in section 1395ff(b)(1)(E)(i) of this title.

(6) The organization must have arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for health care services it provides to such individuals, which program (A) stresses health outcomes and (B) provides review by physicians and other health care professionals of
the process followed in the provision of such health care services.

(7) A risk-sharing contract under this section shall provide that in the case of an individual who is receiving inpatient hospital services from a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title) as of the effective date of the individual's—

(A) enrollment with an eligible organization under this section—

(i) payment for such services until the date of the individual's discharge shall be made under this subchapter as if the individual were not enrolled with the organization,

(ii) the organization shall not be financially responsible for payment for such services until the date after the date of the individual's discharge, and

(iii) the organization shall nonetheless be paid the full amount otherwise payable to the organization under this section; or

(B) termination of enrollment with an eligible organization under this section—

(i) the organization shall be financially responsible for payment for such services after such date and until the date of the individual's discharge,

(ii) payment for such services during the stay shall not be made under section 1395ww(d) of this title, and

(iii) the organization shall not receive any payment with respect to the individual under this section during the period the individual is not enrolled.

(8) A contract under this section shall provide that the eligible organization shall meet the requirement of section 1395ccc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

d) Right to enroll with contracting organization in geographic area

Subject to the provisions of subsection (c)(3) of this section, every individual entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter or enrolled under part B of this subchapter only (other than an individual medically determined to have end-stage renal disease) shall be eligible to enroll under this section with any eligible organization that serves the geographic area in which the individual resides.

e) Limitation on charges; election of coverage; "adjusted community rate" defined; workmen's compensation and insurance benefits

(1) In no case may—

(A) the portion of an eligible organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to services covered under parts A and B of this subchapter) to individuals who are enrolled under this section with the organization and enrolled under part B of this subchapter only exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this section with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, the actuarial value of the coinsurance and deductibles applicable on the average to individuals in the area, in the State, or in the United States, eligible to enroll under this section with the organization, or other appropriate data) and entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, or enrolled under part B only, respectively, if they were not members of an eligible organization.

(2) If the eligible organization provides to its members enrolled under this section services in addition to services covered under parts A and B of this subchapter, election of coverage for such additional services (unless such services have been approved by the Secretary under subsection (c)(2) of this section) shall be optional for such members and such organization shall furnish such members with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

(A) the portion of such organization's premium rate charged, with respect to such additional services, to members enrolled under this section, and

(B) the actuarial value of its deductibles, coinsurance, and copayments charged, with respect to such services to such members

exceed the adjusted community rate for such services.

(3) For purposes of this section, the term "adjusted community rate" for a service or services means, at the election of an eligible organization, either—

(A) the rate of payment for that service or services which the Secretary annually determines would apply to a member enrolled under this section with an eligible organization if the rate of payment were determined under a "community rating system" (as defined in section 300e–1(8) of this title, other than subparagraph (C)), or

(B) such portion of the weighted aggregate premium, which the Secretary annually estimates would apply to a member enrolled under this section with the eligible organization, as the Secretary annually estimates is attributable to that service or services, but adjusted for differences between the utilization characteristics of the members enrolled with the eligible organization under this section and the utilization characteristics of the other members of the organization (or, if the Secretary finds that adequate data are not available to adjust for those differences, the differences between the utilization characteristics of members in other eligible organizations, or individuals in the area, in the State, or in the United States, eligible to enroll under this section with an eligible organization and the utilization characteristics of the rest of the popul-
luation in the area, in the State, or in the United States, respectively).

(4) Notwithstanding any other provision of law, the eligible organization may (in the case of the provision of services to a member enrolled under this section for an illness or injury for which the member is entitled to benefits under a workmen’s compensation law or plan of the United States or a State, under an automobile or liability insurance policy or plan, including a self-insured plan, or under no fault insurance) charge or authorize the provider of such services to charge, in accordance with the charges allowed under such law or policy—

(A) the insurance carrier, employer, or other entity which under such law, plan, or policy is to pay for the provision of such services, or

(B) such member to the extent that the member has been paid under such law, plan, or policy for such services.

(f) Membership requirements

(1) For contract periods beginning before January 1, 1999, each eligible organization with which the Secretary enters into a contract under this section shall have, for the duration of such contract, an enrolled membership at least one-half of which consists of individuals who are not entitled to benefits under this subchapter.

(2) Subject to paragraph (4), the Secretary may modify or waive the requirement imposed by paragraph (1) only—

(A) to the extent that more than 50 percent of the population of the area served by the organization consists of individuals who are entitled to benefits under this subchapter or under a State plan approved under subchapter XIX of this chapter, or

(B) in the case of an eligible organization that is owned and operated by a governmental entity, only with respect to a period of three years beginning on the date the organization first enters into a contract under this section, and only if the organization has taken and is making reasonable efforts to enroll individuals who are not entitled to benefits under this subchapter or under a State plan approved under subchapter XIX of this chapter.

(3) If the Secretary determines that an eligible organization has failed to comply with the requirements of this subsection, the Secretary may provide for the suspension of enrollment of individuals under this section or of payment to the organization under this section for individuals newly enrolled with the organization, after the date the Secretary notifies the organization of such noncompliance.

(4) Effective for contract periods beginning after December 31, 1996, the Secretary may waive or modify the requirement imposed by paragraph (1) to the extent the Secretary finds that it is in the public interest.

(g) Risk-sharing contract

(1) The Secretary may enter a risk-sharing contract with any eligible organization, as defined in subsection (b) of this section, which has at least 5,000 members, except that the Secretary may enter into such a contract with an eligible organization that has fewer members if the organization primarily serves members residing outside of urbanized areas.

(2) Each risk-sharing contract shall provide that—

(A) if the adjusted community rate, as defined in subsection (e)(3) of this section, for services under parts A and B of this subchapter (as reduced for the actuarial value of the coinsurance and deductibles under those parts) for members enrolled under this section with the organization and entitled to benefits under part A of this subchapter and enrolled in part B of this subchapter, or

(B) if the adjusted community rate for services under part B of this subchapter (as reduced for the actuarial value of the coinsurance and deductibles under that part) for members enrolled under this section with the organization and entitled to benefits under part B of this subchapter only

is less than the average of the per capita rates of payment to be made under subsection (a)(1) of this section at the beginning of an annual contract period for members enrolled under this section with the organization and entitled to benefits under part A of this subchapter and enrolled in part B of this subchapter, or enrolled in part B of this subchapter only, respectively, the eligible organization shall provide to members enrolled under a risk-sharing contract under this section with the organization and entitled to benefits under part A of this subchapter and enrolled in part B of this subchapter, or enrolled in part B of this subchapter only, respectively, the additional benefits described in paragraph (3) which are selected by the eligible organization and which the Secretary finds are at least equal in value to the difference between that average per capita payment and the adjusted community rate (as so reduced); except that this paragraph shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced) and except that an organization (with the approval of the Secretary) may provide that a part of the value of such additional benefits be withheld and reserved by the Secretary as provided in paragraph (5). If the Secretary finds that there is insufficient enrollment experience to determine an average of the per capita rates of payment to be made under subsection (a)(1) of this section at the beginning of a contract period, the Secretary may determine such an average based on the enrollment experience of other contracts entered into under this section.

(3) The additional benefits referred to in paragraph (2) are—

(A) the reduction of the premium rate or other charges made with respect to services furnished by the organization to members enrolled under this section, or

(B) the provision of additional health benefits, or both.


(5) An organization having a risk-sharing contract under this section may (with the approval of the Secretary) provide that a part of the value of additional benefits otherwise required
to be provided by reason of paragraph (2) be withheld and reserved in the Federal Hospital Insurance Trust Fund and in the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate) by the Secretary for subsequent annual contract periods, to the extent required to stabilize and prevent undue fluctuations in the additional benefits offered in those subsequent periods by the organization in accordance with paragraph (3). Any of such value of additional benefits which is not provided to members of the organization in accordance with paragraph (3) prior to the end of such period, shall revert for the use of such trust funds.

(6)(A) A risk-sharing contract under this section shall require the eligible organization to provide prompt payment (consistent with the provisions of sections 1395h(c)(2) and 1395l(c)(2) of this title) of claims submitted for services and supplies furnished to individuals pursuant to such contract, if the services or supplies are not furnished under a contract between the organization and the provider or supplier.

(B) In the case of an eligible organization which the Secretary determines, after notice and opportunity for a hearing, has failed to make payments of amounts in compliance with subparagraph (A), the Secretary may provide for direct payment of the amounts owed to providers and suppliers for supplies furnished to individuals enrolled under this section under the contract. If the Secretary provides for such direct payments, the Secretary shall provide for an appropriate reduction in the amount of payments otherwise made to the organization under this section to reflect the amount of the Secretary’s payments (and costs incurred by the Secretary in making such payments).

(h) Reasonable cost reimbursement contract; requirements

(1) If—

(A) the Secretary is not satisfied that an eligible organization has the capacity to bear the risk of potential losses under a risk-sharing contract under this section, or

(B) the eligible organization so elects or has an insufficient number of members to be eligible to enter into a risk-sharing contract under subsection (p)(1) of this section,

the Secretary may, if he is otherwise satisfied that the eligible organization is able to perform its contractual obligations effectively and efficiently, enter into a contract with such organization pursuant to which such organization is reimbursed on the basis of its reasonable cost (as defined in section 1395x(v) of this title) in the manner prescribed in paragraph (3).

(2) A reasonable cost reimbursement contract under this subsection may, at the option of such organization, provide that the Secretary—

(A) will reimburse hospitals and skilled nursing facilities either for the reasonable cost (as determined under section 1395v(v) of this title) or for payment amounts determined in accordance with section 1395ww of this title, as applicable, of services furnished to individuals enrolled with such organization pursuant to subsection (d) of this section, and

(B) will deduct the amount of such reimbursement from payment which would otherwise be made to such organization.

If such an eligible organization pays a hospital or skilled nursing facility directly, the amount paid shall not exceed the reasonable cost of the services (as determined under section 1395x(v) of this title) or the amount determined under section 1395ww of this title, as applicable, unless such organization demonstrates to the satisfaction of the Secretary that such excess payments are justified on the basis of advantages gained by the organization.

(3) Payments made to an organization with a reasonable cost reimbursement contract shall be subject to appropriate retroactive corrective adjustment at the end of each contract year so as to assure that such organization is paid for the reasonable cost actually incurred (excluding any part of incurred cost found to be unnecessary in the efficient delivery of health services) or the amounts otherwise determined under section 1395ww of this title for the types of expenses otherwise reimbursable under this subchapter for providing services covered under this subchapter to individuals described in subsection (a)(1) of this section.

(4) Any reasonable cost reimbursement contract with an eligible organization under this subsection shall provide that the Secretary shall require, at such time following the expiration of each accounting period of the eligible organization (and in such form and in such detail) as he may prescribe—

(A) that the organization report to him in an independently certified financial statement its per capita incurred cost based on the types of components of expenses otherwise reimbursable under this subchapter for providing services described in subsection (a)(1) of this section, including therein, in accordance with accounting procedures prescribed by the Secretary, its methods of allocating costs between individuals enrolled under this section and other individuals enrolled with such organization;

(B) that failure to report such information as may be required may be deemed to constitute evidence of likely overpayment on the basis of which appropriate collection action may be taken;

(C) that in any case in which an eligible organization is related to another organization by common ownership or control, a consolidated financial statement shall be filed and that the allowable costs for such organization may not include costs for the types of expense otherwise reimbursable under this subchapter, in excess of those which would be determined to be reasonable in accordance with regulations (providing for limiting reimbursement to costs rather than charges to the eligible organization by related organizations and owners) issued by the Secretary; and

(D) that in any case in which compensation is paid by an eligible organization substantially in excess of what is normally paid for similar services by similar practitioners (regardless of method of compensation), such compensation may as appropriate be considered to constitute a distribution of profits.
(5)(A) After August 5, 1997, the Secretary may not enter into a reasonable cost reimbursement contract under this subsection (if the contract is not in effect as of August 5, 1997), except for a contract with an eligible organization which, immediately previous to entering into such contract, had an agreement in effect under section 1395(a)(1)(A) of this title.

(B) Subject to subparagraph (C), the Secretary shall approve an application for a modification to a reasonable cost contract under this section in order to expand the service area of such contract if:

(i) such application is submitted to the Secretary on or before September 1, 2003; and

(ii) the Secretary determines that the organization with the contract continues to meet the requirements applicable to such organizations and contracts under this section.

(C)(i) Subject to clause (ii), a reasonable cost reimbursement contract under this subsection may be extended or renewed indefinitely.

(ii) For any period beginning on or after January 1, 2013, a reasonable cost reimbursement contract under this subsection may not be extended or renewed for a service area insofar as such area during the entire previous year was within the service area of—

(I) 2 or more MA regional plans described in clause (iii), provided that all such plans are not offered by the same Medicare Advantage organization; or

(II) 2 or more MA local plans described in clause (iii), provided that all such plans are not offered by the same Medicare Advantage organization.

(iii) A plan described in this clause for a year for a service area is a plan described in section 1395w–21(a)(2)(A)(i) of this title if the service area for the year meets the following minimum enrollment requirements:

(I) With respect to any portion of the area involved that is within a Metropolitan Statistical Area with a population of more than 250,000 and counties contiguous to such Metropolitan Statistical Area that are not in another Metropolitan Statistical Area with a population of more than 250,000, 5,000 individuals.

(II) With respect to any other portion of such area, 1,500 individuals.

(i) Duration, termination, effective date, and terms of contract; powers and duties of Secretary

(1) Each contract under this section shall be for a term of at least one year, as determined by the Secretary, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that in accordance with procedures established under paragraph (9), the Secretary may at any time terminate any such contract or may impose the intermediate sanctions described in paragraph (6)(B) or (6)(C) (whichever is applicable) on the eligible organization if the Secretary determines that the organization—

(A) has failed substantially to carry out the contract;

(B) is carrying out the contract in a manner substantially inconsistent with the efficient and effective administration of this section; or

(C) no longer substantially meets the applicable conditions of subsections (b), (c), (e), and (f) of this section.

(2) The effective date of any contract executed pursuant to this section shall be specified in the contract.

(3) Each contract under this section—

(A) shall provide that the Secretary, or any person or organization designated by him—

(i) shall have the right to inspect or otherwise evaluate (I) the quality, appropriateness, and timeliness of services performed under the contract and (II) the facilities of the organization when there is reasonable evidence of some need for such inspection, and

(ii) shall have the right to audit and inspect any books and records of the eligible organization that pertain (I) to the ability of the organization to bear the risk of potential financial losses, or (II) to services performed or determinations of amounts payable under the contract;

(B) shall require the organization with a risk-sharing contract to provide (and pay for) written notice in advance of the contract's termination, as well as a description of alternatives for obtaining benefits under this subchapter, to each individual enrolled under this section with the organization; and

(C)(i) shall require the organization to comply with subsections (a) and (c) of section 300e–17 of this title (relating to disclosure of certain financial information) and with the requirement of section 300e(c)(6) of this title (relating to liability arrangements to protect members);

(ii) shall require the organization to provide and supply information (described in section 1395cc(b)(2)(C)(ii) of this title) in the manner such information is required to be provided or supplied under that section;

(iii) shall require the organization to notify the Secretary of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates, and related parties; and

(D) shall contain such other terms and conditions not inconsistent with this section (including requiring the organization to provide the Secretary with such information) as the Secretary may find necessary and appropriate.

(4) The Secretary may not enter into a risk-sharing contract with an eligible organization if a previous risk-sharing contract with that organization under this section was terminated at the request of the organization within the preceding five-year period, except in circumstances which warrant special consideration, as determined by the Secretary.
(5) The authority vested in the Secretary by this section may be performed without regard to such provisions of law or regulations relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the furtherance of the purpose of this subchapter.

(6)(A) If the Secretary determines that an eligible organization with a contract under this section—

(i) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

(ii) imposes premiums on individuals enrolled under this section in excess of the premiums permitted;

(iii) acts to expel or to refuse to re-enroll an individual in violation of the provisions of this section;

(iv) engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this section) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services;

(v) misrepresents or falsifies information that is furnished—

(I) to the Secretary under this section, or

(II) to an individual or to any other entity under this section;

(vi) fails to comply with the requirements of subsection (g)(6)(A) of this section or paragraph (B); or

(vii) in the case of a risk-sharing contract, employs or contracts with any individual or entity that is excluded from participation under this subchapter under section 1320a–7 or 1320a–7a of this title for the provision of health care, utilization review, medical social work, or administrative services or employs or contracts with any entity for the provision (directly or indirectly) through such an excluded individual or entity of such services;

the Secretary may provide, in addition to any other remedies authorized by law, for any of the remedies described in subparagraph (B).

(B) The remedies described in this subparagraph are—

(i) civil money penalties of not more than $25,000 for each determination under subparagraph (A) or, with respect to a determination under clause (iv) or (v)(I) of such subparagraph, of not more than $100,000 for each such determination, plus, with respect to a determination under subparagraph (A)(ii), double the excess amount charged in violation of such subparagraph (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned), and plus, with respect to a determination under subparagraph (A)(iv), $15,000 for each individual not enrolled as a result of the practice involved,

(ii) suspension of enrollment of individuals under this section after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur;

(C) In the case of an eligible organization for which the Secretary makes a determination under paragraph (1), the basis of which is not described in subparagraph (A), the Secretary may apply the following intermediate sanctions:

(i) Civil money penalties of not more than $25,000 for each determination under paragraph (1) if the deficiency that is the basis of the determination has directly adversely affected (or has the substantial likelihood of adversely affecting) an individual covered under the organization’s contract.

(ii) Civil money penalties of not more than $10,000 for each week beginning after the initiation of procedures by the Secretary under paragraph (9) during which the deficiency that is the basis of a determination under paragraph (1) exists.

(iii) Suspension of enrollment of individuals under this section after the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the deficiency that is the basis for the determination has been corrected and is not likely to recur.

(D) The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under subparagraph (A) or (B) or (C) in the same manner as such provisions apply to a civil money penalty or proceeding under section 1320a–7a of this title.

(7)(A) Each risk-sharing contract with an eligible organization under this section shall provide that the organization will perform functions under section 1320c–3(a)(4)(C) of this title under which the review organization will perform functions under section 1320c–3(a)(4)(B) of this title and section 1320c–3(a)(14) of this title (other than those performed under contracts described in section 1395cc(a)(1)(F) of this title) with respect to services furnished by the eligible organization, for which payment may be made under this subchapter.

(B) For purposes of payment under this subchapter, the cost of such agreement to the eligible organization shall be considered a cost incurred by a provider of services in providing covered services under this subchapter and shall be paid directly by the Secretary to the review organization on behalf of such eligible organization in accordance with a schedule established by the Secretary.
(C) Such payments—
   (i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and
   (ii) shall not be less in the aggregate for such organizations for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations’ conducting activities described in subparagraph (A) with respect to such eligible organizations under part B of subchapter XI of this chapter.

(8)(A) Each contract with an eligible organization under this section shall provide that the organization may not operate any physician incentive plan (as defined in subparagraph (B)) unless the following requirements are met:

(i) No specific payment is made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the organization.

(ii) If the plan places a physician or physician group at substantial financial risk (as determined by the Secretary) for services not provided by the physician or physician group, the organization—
   (I) provides stop-loss protection for the physician or group that is adequate and appropriate, based on standards developed by the Secretary that take into account the number of physicians placed at such substantial financial risk in the group or under the plan and the number of individuals enrolled with the organization who receive services from the physician or the physician group, and
   (II) conducts periodic surveys of both individuals enrolled and individuals previously enrolled with the organization to determine the degree of access of such individuals to services provided by the organization and satisfaction with the quality of such services.

(iii) The organization provides the Secretary with descriptive information regarding the plan, sufficient to permit the Secretary to determine whether the plan is in compliance with the requirements of this subparagraph.

(B) In this paragraph, the term “physician incentive plan” means any compensation arrangement between an eligible organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the organization.

(9) The Secretary may terminate a contract with an eligible organization under this section or may impose the intermediate sanctions described in paragraph (6) on the organization in accordance with formal investigation and compliance procedures established by the Secretary under which—

(A) the Secretary first provides the organization with the reasonable opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the Secretary’s determination under paragraph (1) and the organization fails to develop or implement such a plan;

(B) in deciding whether to impose sanctions, the Secretary considers aggravating factors such as whether an organization has a history of deficiencies or has not taken action to correct deficiencies the Secretary has brought to the organization’s attention;

(C) there are no unreasonable or unnecessary delays in the finding of a deficiency and the imposition of sanctions; and

(D) the Secretary provides the organization with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before imposing any sanction or terminating the contract.

(j) Payment in full and limitation on actual charges; physicians, providers of services, or renal dialysis facilities not under contract with organization

(1)(A) In the case of physicians’ services or renal dialysis services described in paragraph (2) which are furnished by a participating physician or provider of services or renal dialysis facility to an individual enrolled with an eligible organization under this section and enrolled under part B of this subchapter, the applicable participation agreement is deemed to provide that the physician or provider of services or renal dialysis facility will accept as payment in full from the (B) the Secretary considers aggravating factors such as whether the organization has a history of deficiencies or has not taken action to correct deficiencies the Secretary has brought to the organization’s attention;

(c) in deciding whether to impose sanctions, the Secretary considers aggravating factors such as whether an organization has a history of deficiencies or has not taken action to correct deficiencies the Secretary has brought to the organization’s attention;

(D) the Secretary provides the organization with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before imposing any sanction or terminating the contract.

(k) Risk-sharing contracts

(1) Except as provided in paragraph (2)—

(A) on or after the date standards for Medicare+Choice organizations and plans are first established under section 1395w–25(b)(1) of this title, the Secretary shall not enter into any risk-sharing contract under this section with an eligible organization; and

(B) for any contract year beginning on or after January 1, 1999, the Secretary shall not renew any such contract.

(2) An individual who is enrolled in part B of this subchapter only and is enrolled in an eligi-
ble organization with a risk-sharing contract under this section on December 31, 1998, may continue enrollment in such organization in accordance with regulations described in section 1395w–26(b)(1) of this title.

(b) Without regard to section (a) of this section, the Secretary shall provide that payment amounts under risk-sharing contracts under this section for months in a year (beginning with January 1998) shall be computed—

(A) with respect to individuals entitled to benefits under both parts A and B of this subchapter, by substituting payment rates under section 1395w–23(a) of this title for the payment rates otherwise established under sub-section (a) of this section, and

(B) with respect to individuals only entitled to benefits under part B of this subchapter, by substituting an appropriate proportion of such rates (reflecting the relative proportion of payments under this subchapter attributable to such part) for the payment rates otherwise established under sub-section (a) of this section.

(4) The following requirements shall apply to organizations with risk-sharing contracts under section 1395w–23(a) of this title for the payment rates otherwise established under sub-section (a) of this section.

(5) Restrictions on imposition of premium taxes under section 1395w–24(g) of this title in relating to payments to such organizations under this section.

(6) The requirement to accept enrollment of new enrollees during November 1998 under section 1395w–21(e)(6) of this title.

(D) Payments under section 1395w–27(e)(2) of this title.

(3) Notwithstanding subsection (a) of this section, and

(4) The following requirements shall apply to organizations with risk-sharing contracts under section 1395w–23(a) of this title for the payment rates otherwise established under sub-section (a) of this section, and

(5) Restrictions on imposition of premium taxes under section 1395w–24(g) of this title in relating to payments to such organizations under this section.

(6) The requirement to accept enrollment of new enrollees during November 1998 under section 1395w–21(e)(6) of this title.

(D) Payments under section 1395w–27(e)(2) of this title.

(A) Data collection requirements under section 1395w–23(a)(3)(B) of this title.

(B) Restrictions on imposition of premium taxes under section 1395w–24(g) of this title in relating to payments to such organizations under this section.

(C) The requirement to accept enrollment of new enrollees during November 1998 under section 1395w–21(e)(6) of this title.

(D) Payments under section 1395w–27(e)(2) of this title.


REFERENCES IN TEXT

Section 300e–9(d) of this title, referred to in subsec. (b)(1), was redesignated section 300e–9(c) of this title by Pub. L. 104–171, §7(b), Oct. 28, 1996.

Section 300e(c)(3) of this title, referred to in subsec. (3), was redesignated section 300e(c)(7) of this title by Pub. L. 100–517, §5(b), Oct. 24, 1988, 102 Stat. 2379.


AMENDMENTS


Subsec. (b)(5)(C)(i)(I). Pub. L. 110–275, §167(b), inserted “; provided that all such plans are not offered by the same Medicare Advantage organization after clause (ii)”.

Subsec. (b)(5)(C)(ii)(i). Pub. L. 110–275, §167(c), inserted “that are not in another Metropolitan Statistical Area” for “that are not in another Medical Statistical Area”.


Subsec. (c)(5)(B). Pub. L. 108–173, §1409(b)(2)B, which directed amendment of subsec. (b)(5)(B) by inserting at end “The provisions of section 1395ff(b)(1)(E)(iii) of this title shall apply with respect to dollar amounts specified in the first 2 sentences of this subparagraph in the same manner as they apply to the dollar amounts specified in section 1395ff(b)(1)(E)(i) of this title.”, was executed by making the insertion at end of subsec. (c)(5)(B), to reflect the probable intent of Congress. Subsec. (b) does not contain a par. (5)A.


read as follows: "The Secretary may not extend or renew a reasonable cost reimbursement contract for this subsection for any period beyond December 31, 2004." 


Subsec. (i)(1). Pub. L. 105–33, §4002(a)(1), substituted "For contract periods beginning before January 1, 1999, each" for "Each" and struck out "or under a State plan approved under subchapter XIX of this title" before period at end.

Subsec. (f)(2). Pub. L. 105–33, §4002(a)(2), substituted "Subject to paragraph (4), the Secretary" for "The Secretary".


Subsec. (k)(1). Pub. L. 104–191, §215(a)(1), substituted "in accordance with procedures established under paragraph (9), the Secretary may at any time terminate any such contract or may impose the intermediate sanctions described in paragraph (6)(B) or (6)(C)(i) (whichever is applicable) on the eligible organization if the Secretary determines that the organization—" for "the Secretary may at any time terminate any such contract or may impose the intermediate sanctions described in paragraph (6)(B) or (6)(C)(i) (whichever is applicable) on the eligible organization if the Secretary determines that the organization—".

Subsec. (i)(6)(A)(vii). Pub. L. 101–239, §6411(d)(3)(A), added cl. (ii) and struck out former cl. (i) which read as follows: "For each area served by more than one eligible organization under this section, the Secretary (after consultation with such organizations) shall establish a single 30-day period each year during which all eligible organizations serving the area must provide for open enrollment under this section. The Secretary shall determine annual per capita rates under subsection (a)(1)(A) of this section in a manner that assures that individuals enrolling during such a 30-day period will not have premium charges increased or any additional benefits decreased for 12 months beginning on the date the individual’s enrollment becomes effective. An eligible organization may provide for such other open enrollment period or periods as it deems appropriate consistent with this section."

Subsec. (g)(5). Pub. L. 101–239, §6206(b)(1), added par. (ii) and struck out former par. (ii) which read as follows: "For each area served by more than one eligible organization under this section, the Secretary (after consultation with such organizations) shall establish a single 30-day period each year during which all eligible organizations serving the area must provide for open enrollment under this section. The Secretary shall determine annual per capita rates under subsection (a)(1)(A) of this section in a manner that assures that individuals enrolling during such a 30-day period will not have premium charges increased or any additional benefits decreased for 12 months beginning on the date the individual’s enrollment becomes effective. An eligible organization may provide for such other open enrollment period or periods as it deems appropriate consistent with this section."
“(B) the product of (i) the number of such individuals for the month who have not attained age 65, and (ii) the monthly actuarial rate for supplementary medical insurance for the month as determined under section 1395d(a)(4) of this title.”


Subsec. (c)(3)(F). Pub. L. 100–360, §413(c)(1), realigned margins with left margin of subpar. (G).

Subsec. (e)(1). Pub. L. 100–360, §202(f)(1), inserted end “The preceding sentence shall be applied separately with respect to covered outpatient drugs.”

Subsec. (f)(3). Pub. L. 100–647 redesignated former par. (3) which read as follows: “(A) An eligible organization described in subparagraph (B) may elect, for purposes of enrollment and residency requirements under this section and for determining the compliance of a subdivision, subsidiary, or affiliate described in subparagraph (B)(iii) with the requirement of paragraph (1) for the period before October 1, 1992, to have members described in subparagraph (B)(ii) who receive services through the subdivision, subsidiary, or affiliate considered to be members of the parent organization.”

“(B) An eligible organization described in this subparagraph is an eligible organization which—

(1) is described in section 1396b(m)(2)(B)(iii) of this title;

(2) has members which have a collectively bargained contractual right to obtain health benefits from the organization;

(3) elects to provide benefits under a risk-sharing contract to individuals residing in a service area, who have a collectively bargained contractual right to obtain benefits from the organization, through a subdivision, subsidiary, or affiliate which itself is an eligible organization serving the area and which is owned or controlled by the parent eligible organization; and

(4) has assumed any risk of insolvency and quality assurance with respect to individuals receiving benefits through such a subdivision, subsidiary, or affiliate.”

Pub. L. 100–360, §411(c)(6), formerly §411(c)(5), as redesignated by Pub. L. 100–485, §606(a)(d)(19)(C), inserted “enrollment and residency requirements under this section and for” after “for purposes of” described in subparagraph (B)(iii) who receives services through the subdivision” for “of the subdivision”.


Subsec. (g)(3)(A). Pub. L. 100–360, §411(c)(6), substituted “rates” for “rate”.


Subsec. (i)(6)(A). Pub. L. 100–360, §411(c)(4)(A), inserted “in addition to any other remedies authorized by law,” after “the Secretary may provide” in concluding provisions.


Pub. L. 100–360, §622, inserted at end “plus, with respect to a determination under subparagraph (A)(ii), double the excess amount charged in violation of such subparagraph (and the excess amount charged deducted from the penalty and returned to the individual concerned), and, plus, with respect to a determination under subparagraph (A)(iv), $15,000 for each individual not enrolled as a result of the practice involved,”.


Subsec. (f)(3). Pub. L. 100–360, §4018(a), added par. (5) and redesignated former par. (3) as (4).

Subsec. (g)(4). Pub. L. 100–203, §4012(b), struck out par. (4) which read as follows: “A risk-sharing contract under this subsection may, at the option of an eligible organization, provide that the Secretary—

“(A) will reimburse hospitals and skilled nursing facilities either for payment amounts determined in accordance with section 1395ww of this title, or, if applicable, for the reasonable cost (as determined under section 1395x(v) of this title) or other appropriate basis for payment established under this subchapter, of inpatient services furnished to individuals enrolled with such organization pursuant to subsection (d) of this section, and

“(B) will deduct the amount of such reimbursement for payment which would otherwise be made to such organization.”

Subsec. (g)(5). Pub. L. 100–203, §4013, which directed amendment of par. (5) by substituting “six years” for “four years”, was amended generally by Pub. L. 100–360, §411(c)(3), so that it does not amend this section.

Subsec. (i)(6). Pub. L. 100–360, §4014, amended par. (6) generally. Prior to amendment, par. (6) read as follows: “(6)(A) Any eligible organization with a risk-sharing contract under this section that fails substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under such contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, is subject to a civil money penalty of not more than $50,000 for each such failure.

“(B) The provisions of section 1320a-7a of this title (other than subsection (a)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.”

Subsec. (i)(7)(A). Pub. L. 100–203, §4039(h)(8)(A), (B), as added by Pub. L. 100–360, §411(e)(5), substituted “Each” for “Except as provided under section 1320c–3(a)(4)(C) of this title, each”, inserted “or with an entity selected by the Secretary under section 1320c–3(a)(4)(C) of this title after ‘located’, and substituted ‘which the review organization’ for ‘which the peer review organization’.”

Subsec. (i)(7)(B). Pub. L. 100–360, §4039(h)(8)(C), as added by Pub. L. 100–360, §411(e)(5), substituted “the review organization” for “the peer review organization”.


Pub. L. 99–272, §221(d), inserted “, and shall publish not later than September 7 before the calendar year concerned” after “The Secretary shall annually determine in introductory provisions.”

Subsec. (a)(3). Pub. L. 99–272, §221(a)(2), substituted “Subject to subsection (c)(7) of this section, payments for ‘Payments’”.

Subsec. (a)(6). Pub. L. 99–272, §221(a)(3), substituted “Subject to subsection (c)(7) of this section, if” for “If”.

Subsec. (c)(3)(B). Pub. L. 99–272, §221(b), substituted “the date on which” for “a full calendar month after”, and inserted provision at end that in the case of an individual’s termination of enrollment, the organization shall provide the individual with a copy of the request for termination of enrollment and a written explanation of the period (ending on the effective date of
the termination) during which the individual continues to be enrolled with the organization and may not receive benefits under this subchapter other than through the organization.

Subsec. (c)(3)(C). Pub. L. 99–272, § 2311(a)(1), inserted provisions at end that no brochures, application forms, or other promotional or informational material may be distributed by an organization to (or for the use of) individuals eligible to enroll with the organization under this section unless at least 45 days before its distribution, the organization has submitted the material to the Secretary for review and the Secretary has not disapproved the distribution of the material, and that Secretary shall review all such material submitted and shall disapprove such material if the Secretary determines that, in the Secretary's discretion, that the material is materially inaccurate or misleading or otherwise makes a material misrepresentation.


Subsec. (f)(2). Pub. L. 99–509, § 9312(c)(1), struck out “if the Secretary determines that” after “imposed by paragraph (1) only”, added new subpars. (A) and (B), and struck out former subpars. (A) and (B) which read as follows:

“(A) special circumstances warrant such modification or waiver, and

(B) the eligible organization has taken and is making reasonable efforts to enroll individuals who are not entitled to benefits under this subchapter or under a State plan approved under subchapter XIX of this chapter;”


Subsec. (1)(1)(C). Pub. L. 99–509, § 9312(c)(3)(B), substituted “(e), and (f)” for “and (e)”.  

Subsec. (1)(3)(C). Pub. L. 99–509, § 9312(e)(1), designated existing provisions as cl. (i) and added cls. (ii) and (iii).


Subsec. (c)(3)(A). Pub. L. 98–369, § 2350(a)(1), designated existing provisions as cl. (i), inserted “and including the 30-day period specified under clause (ii)” after “30 days duration every year”, and added cl. (ii).

Subsec. (c)(4)(A)(i). Pub. L. 98–369, § 2350(b)(38), substituted “reasonable promptness” for “promptly as appropriate”.

Subsec. (g)(2). Pub. L. 98–369, § 2350(b)(1), inserted “except that an organization (with the approval of the Secretary) may provide that a part of the value of such additional benefits be withheld and reserved by the Secretary as provided in paragraph (5)” at end of first sentence.

Subsec. (g)(4)(A). Pub. L. 98–369, § 2350(c), inserted “‘skilled nursing facilities’ after “hospitals””, inserted “or the appropriate basis for payment established under this subchapter” after “section 1395x(v) of this title””, and struck out “hospital” before “services furnished to individuals”.


Subsec. (g)(1). Pub. L. 97–468 substituted “subsection (b)” for “subsection (a)(1)”.

Subsec. (g)(4). Pub. L. 98–21, § 602(g), added par. (4).

1982—Pub. L. 97–248 completely revised section, expanding its coverage to permit payments to both health maintenance organizations and competitive medical plans.


1976—Subsec. (b). Pub. L. 94–460, § 201(a), struck out provisions defining a health maintenance organization as a public or private organization which provides physicians’ services and a sufficient number of primary care and specialty care physicians, assures its members access to qualified practitioners in specialties in an area served by such organization, demonstrates financial responsibility and means to provide comprehensive health care services, has at least half of its enrolled members under age 65, assures prompt and qualified health service, and has an open enrollment period at least every year, and revised the definition and requirements of an health maintenance organization to conform to those set forth in the Public Health Service Act, except that the services which such an organization must provide are those covered in parts A and B of this subchapter rather than the basic health services defined in the Public Health Service Act, and inserted provisions requiring Secretary to administer determinations of whether an organization is a health maintenance organization through and in the office of the Assistant Secretary for Health, to integrate the administration of such functions and duties with the administration of provisions requiring the continued regulation of health maintenance organizations under the Public Health Service Act, and to administer other provisions of this section through the Commissioner of Social Security.

Subsec. (b). Pub. L. 94–460, § 201(b), substituted provisions that each health maintenance organization with which the Secretary enters into a contract under this section have an enrolled membership at least half of which consists of individuals who have not attained age 65, with the Secretary empowered to waive that requirement for a period of not more than three years from the date a health maintenance organization first enters into an agreement with the Secretary pursuant to subsection (i) of this section for provisions that such requirement not apply with respect to any health maintenance organization for such period not to exceed three years from the date such organization enters into an agreement with the Secretary pursuant to subsection (i) of this section, as the Secretary might permit.

Subsec. (b)(6)(A). Pub. L. 94–460, § 201(c), substituted “other than costs with respect to out-of-area services and, in the case of an organization which has entered into a risk-sharing contract with the Secretary pursuant to paragraph (2)(A), the cost of providing any member with basic health services the aggregate value of which exceeds $5,000 in any year” for “(Other than those with respect to out-of-area services)”.


1975—Subsec. (a)(3)(A)(i). Pub. L. 93–233, § 18(m), struck out “,” with the apportionment of savings being proportional to the losses absorbed and not yet offset” at end.

Subsec. (g)(2). Pub. L. 93–233, § 18(m), substituted “portion of its premium rate or other charges” for “portion” and “may not exceed” for “shall not exceed”.

1972—Subsec. (i). Pub. L. 92–603, § 27(b)(3), substituted “skilled nursing facility” for “extended care facility” and “skilled nursing facilities” for “extended care facilities”.

CHANGE OF NAME

References to MedicareChoice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–2 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–40, set out as a note under section 1320c of this title.
shall take effect on the date of the enactment of this Act.

"(C) TREATMENT OF CURRENT WAIVERS.—In the case of an eligible organization (or successor organization) that—

"(i) as of the date of the enactment of this Act, has been granted, under paragraph (2) of section 1876(f) of the Social Security Act [subsec. (f)(3) of this section], a modification or waiver of the requirement imposed by paragraph (1) of that section, but

"(ii) does not meet the requirement for such modification or waiver under the amendment made by paragraph (1) of this subsection, the organization shall make, and continue to make, reasonable efforts to meet scheduled enrollment goals, consistent with a schedule of compliance approved by the Secretary of Health and Human Services. If the Secretary determines that the organization has complied, or made significant progress towards compliance, with such schedule of compliance, the Secretary may extend such waiver. If the Secretary determines that the organization has not complied with such schedule, the Secretary may provide for a sanction described in section 1876(b)(3) of the Social Security Act [subsec. (f)(3) of this section] (as amended by this section) effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization of such noncompliance.

"(D) TREATMENT OF CERTAIN WAIVERS.—In the case of an eligible organization (or successor organization) that—

"(i) as of the date of the enactment of this Act, has been granted, under section 1876(f) of the Social Security Act [subsec. (c)(6) of this section]; and

"(ii) after January 1, 1990, if the organization receives an unfavorable review under clause (i), the Secretary, after notice to the organization of the unfavorable review and an opportunity to correct any deficiencies identified during the review, may provide for the sanction described in section 1876(f)(3) of such Act [subsec. (f)(3) of this section] effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization that the organization is in noncompliance with the requirements of section 1876(e)(6) of such Act.""

Section 9312(d)(2) of Pub. L. 99–509 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to contracts as of January 1, 1987.

"Section 9312(e)(2) of Pub. L. 99–509 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to contracts as of January 1, 1987.

Effective Date of 1984 Amendment

Section 2350(d) of Pub. L. 98–369 provided that: "The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [June 22, 1984]."

Amendment by section 2354(b)(37), (38) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed under the provisions of law involved before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Effective Date of 1983 Amendments; Transitional Rule

Amendment by section 602(g) of Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins with a change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 602(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by section 606(a)(3)(H) of Pub. L. 98–21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the monthly premium for June 1983 shall apply to individuals enrolled under parts A and B of this subchapter, see section 608(c) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by section 309(b)(12) of Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

Effective Date of 1982 Amendment

Section 114(c) of Pub. L. 97–248, as amended by Pub. L. 98–369, div. B, title III, §2554(c)(3)(A), (B), July 18,

be so received under a new risk-sharing contract shall

medicare enrollees with respect to whom payment may

focus an eligible organization from providing for enroll-

be made in a nonbiased manner.

paragraph (D)). The selection of those current nonrisk

organization may receive payment under a new risk-sharing

paragraph (3)(A)) on the initial effective date, the orga-

lization first enters into a new risk-sharing

contract (as defined in paragraph (3)(D)) un-

able organization because of administrative costs or

other administrative burdens involved and so in-

forms in advance each affected member of the eligi-

ble organization;

(B) with respect to services furnished by an eligi-

ble organization during the five-year period begin-

ning on the initial effective date, if—

“(i) the organization has an existing risk-sharing contract (as defined in paragraph (3)(B)) on the initial effective date, or

“(ii) on the date of the enactment of this Act [Sept. 3, 1982] the organization was furnishing services pursuant to an existing demonstration project (as defined in paragraph (3)(C)), such demonstration project is concluded before the initial effective date, and before such initial effective date the organization

enters into an existing risk-sharing con-

tract, unless the organization requests that the amendment

apply earlier; or

“(C) with respect to services furnished by an eligi-

ble organization during the period of an existing demo-

stration project if on the initial effective date the organization was furnishing services pursuant to the project and if the project concludes after such date.

“(2)(A) In the case of an eligible organization which has in effect an existing cost contract (as defined in paragraph (3)(A)) on the initial effective date, the organization may receive payment under a new risk-sharing contract with respect to a current, nonrisk medicare enrollee (as defined in subparagraph (C)) only to the ex-

tent that the organization enrolls, for each such en-

rollment, two new medicare enrollees (as defined in sub-

paragraph (D)). The selection of those current nonrisk medicare enrollees with respect to whom payment may be so received under a new risk-sharing contract shall be made in a nonbiased manner.

“(B) Subparagraph (A) shall not be construed to pre-

vent an eligible organization from providing for enrollment, on a basis described in subsection (a)(6) of section 1876 of the Social Security Act [subsec. (a)(6) of this section] (as amended by this Act [Pub. L. 97–248]), other than under a reasonable cost reimbursement contract, of current, nonrisk medicare enrollees and from providing such enrollees with some or all of the addi-

tional benefits described in section 1876(g)(2) of the So-

cial Security Act [subsec. (g)(2) of this section] (as amended by this Act [Pub. L. 97–248]), but (except as provided in subparagraph (A))—

“(i) payment to the organization with respect to such enrollees shall only be made in accordance with the terms of a reasonable cost reimbursement con-

tract provided

“(ii) no payment may be made under section 1876 of such Act [this section] with respect to such enrollees for any such additional benefits.

Individuals with the organization under this subparagraph shall be considered to be individuals en-

rolled with the organization for the purpose of meeting the requirement of section 1876(g)(2) of the Social Security Act [subsec. (g)(2) of this section] (as amended by this Act [Pub. L. 97–248]).

For purposes of this paragraph, the term ‘current, nonrisk medicare enrollee’ means, with respect to an organization, an individual who on the initial effective date—

“(i) is enrolled with that organization under an ex-

isting cost contract, and

“(ii) is entitled to benefits under part A and en-

rolled under part B, or enrolled in part B, of title XVIII of the Social Security Act [this subchapter].

“(D) For purposes of this paragraph, the term ‘new medicare enrollee’ means, with respect to an organization, an individual who—

“(i) is enrolled with the organization after the date

the organization first enters into a new risk-sharing contract,

“(ii) at the time of such enrollment is entitled to

benefits under part A, or enrolled in part B, of title XVIII of the Social Security Act [this subchapter], and

“(iii) was not enrolled with the organization at the time the individual became entitled to benefits under part A, or to enroll in part B, of such title (this sub-

chapter).

(E) The preceding provisions of this paragraph shall not to [sic] apply to payments made for current, nonrisk medicare enrollees for months beginning with April 1987.

“(3) For purposes of this subsection:

“(A) The term ‘existing cost contract’ means a contract which is entered into under section 1876 of the Social Security Act [this section], as in effect before the initial effective date, or reimbursement on a reason-

able cost basis under section 1833(a)(1)(A) of such Act (section 1995(a)(1)(A) of this title), and which is not an existing risk-sharing contract or an existing demonstration project.

“(B) The term ‘existing risk-sharing contract’ means a contract entered into under section 1876(i)(2)(A) of the Social Security Act [subsec. (i)(2)(A) of this section], as in effect before the initial effective date.

“(C) The term ‘existing demonstration project’ means a demonstration project under section 402(a) of the Social Security Amendments of 1967 [section 1395b–1(a) of the Social Security Amendments of 1972 [section 222(a) of Pub. L. 92–603, set out as a note under section 1395b–1 of this title], relating to the provision of services for which payment may be made under title XVIII of the Social Security Act [this subchapter].

“(D) The term ‘new risk-sharing contract’ means a contract entered into under section 1876(g)(2) of the Social Security Act [subsec. (g)(2) of this section], as amended by this Act [Pub. L. 97–248].

“(E) The term ‘reasonable cost reimbursement con-

tract’ means a contract entered into under section 1876(h) of such Act [subsec. (h) of this section], as amended by this Act [Pub. L. 97–248].

“(F) The term ‘reasonable cost reimbursement con-

tract’ means a contract entered into under section 1876(b) of such Act [subsec. (b) of this section], as amended by this Act, or reimbursement on a reason-

able cost basis under section 1833(a)(1)(A) of such Act (section 1395b–1(a)(1)(A) of this title).

“(4) As used in this section, the term ‘initial effective date’ means—

“(A) the first day of the thirteenth month which begins after the date of the enactment of this Act [Sept. 3, 1982], or

“(B) the first day of the first month [Feb. 1, 1983] after the month in which the Secretary of Health and Human Services notifies the Committee on Finance of the Senate and the Committees on Ways and Means and on Energy and Commerce of the House of Representatives that he is reasonably certain that the methodology to make appropriate adjustments (referred to in section 1876(a)(4) of the Social Security Act [subsec. (a)(4) of this section], as amended by this Act [Pub. L. 97–248]) has been developed and can be implemented to assure actuarial equivalence in the estimation of adjusted average per capita costs under that section.
whichever is later.’’

**Effective Date of 1978 Amendment**

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility’s or provider’s first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

**Effective Date of 1976 Amendment**

Section 201(e) of Pub. L. 94–460 provided that: ‘‘The amendments made by this section [amending this section] shall be effective with respect to contracts entered into between the Secretary and health maintenance organizations under section 1876 of the Social Security Act [this section] on and after the first day of the first calendar month which begins more than 30 days after the date of enactment of this Act [Oct. 8, 1976].’’

**Effective Date of 1973 Amendment**

Section 18(c)-2(3) of Pub. L. 93–233 provided that: ‘‘The amendments made by subsections (m) and (n) [amending this section] shall be effective with respect to services provided after June 30, 1973.’’

**Effective Date**

Section 226(f) of Pub. L. 92–601 provided that: ‘‘The amendments made by this section [enacting this section, amending sections 1395d, 1395f, 1395g, and 1395h of this title, and enacting provisions set out as notes under this section] shall be effective with respect to services provided on or after July 1, 1973.’’

**Report on Impact**

Section 4002(b)(2)(B) of Pub. L. 101–53 provided that: ‘‘By not later than January 1, 2001, the Secretary of Health and Human Services shall submit to Congress a report that analyzes the potential impact of termination of reasonable cost reimbursement contracts, pursuant to the amendment made by subparagraph (A), on Medicare beneficiaries enrolled under such contracts and on the Medicare program. The report shall include such recommendations regarding any extension or transition with respect to such contracts as the Secretary deems appropriate.’’

**Transition Rule for PSO Enrollment**

Section 4002(h) of Pub. L. 105–33 provided that: ‘‘In applying subsection (g)(1) of section 1876 of the Social Security Act [42 U.S.C. 1395ll] to a risk-sharing contract entered into with an eligible organization that is a provider-sponsored organization (as defined in section 1855(d)(1) of such Act [section 1395w–25(d)(1) of this title]), as inserted by section 2001 (4001) for a contract year beginning on or after January 1, 1998, there shall be substituted for the minimum number of enrollees provided under such section the minimum number of enrollees permitted under section 1877(b)(1) of such Act [1395w–27(b)(1) of this title] (as so inserted).’’

**Requirements with Respect to Actuarial Equivalence of AAPCC**

Section 2304(b) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §157(a), Oct. 31, 1994, 108 Stat. 4411; Pub. L. 104–116, title I, §122(g), Oct. 19, 1996, 110 Stat. 3837, provided that: ‘‘(i)(A) Not later than October 1, 1995, the Secretary of Health and Human Services (in this subsection referred to as the ‘Secretary’) shall submit a proposal to the Congress that provides for revisions to the payment method to be applied in years beginning with 1997 for organizations with a risk-sharing contract under section 1876(g) of the Social Security Act [subsec. (g) of this section].

‘‘(B) In proposing the revisions required under subparagraph (A), the Secretary shall consider—

‘‘(i) the difference in costs associated with medicare beneficiaries with differing health status and demographic characteristics; and

‘‘(ii) the effects of using alternative geographic classifications on the determinations of costs associated with beneficiaries residing in different areas.

‘‘(2) Not later than 3 months after the date of submission of the proposal under paragraph (1), the Comptroller General shall review the proposal and shall report to Congress on the appropriateness of the proposed modifications.’’

[Amendment by section 122(g) of Pub. L. 101–316 to section 4204(b)(4), (5) of Pub. L. 101–508 did not contain pars. (4) and (5) subsequent to amendment by Pub. L. 103–432.]

**STUDY OF CHIROPRACTIC SERVICES**

Section 4204(f) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §157(b)(6), Oct. 31, 1994, 108 Stat. 4442, directed Secretary to conduct a study of the extent to which health maintenance organizations with contracts under section 1876 of the Social Security Act (this section) make available to enrollees entitled to benefits under title XVIII of such Act (this subchapter) chiropractic services that are covered under such title, such study to examine the arrangements under which such services are made available and the types of practitioners furnishing such services to such enrollees and to be based on contracts entered into or renewed on or after Jan. 1, 1991, and before Jan. 1, 1993, with Secretary to issue a report to Congress on results of the study not later than Jan. 1, 1993, including recommendations with respect to any legislative and regulatory changes determined necessary by Secretary to ensure access to such services.

**Effect on State Law**

Conscientious objections of health care provider under State law unaffected by enactment of subsection (c)(8) of this section, see section 4206(c) of Pub. L. 101–508, set out as a note under section 1395cc of this title.

**Notice of Methodology Used in Making Announcements Under Subsection (a)(1)(A)**

Section 6206(a)(2) of Pub. L. 101–239 provided that: ‘‘Before July 1, 1990, the Secretary of Health and Human Services shall provide for notice to eligible organizations of the methodology used in making the announcement under section 1876a(1)(A) of the Social Security Act [subsec. (a)(1)(A) of this section] for 1990.’’

**Adjustment of Contracts With Prepaid Health Plans**

Section 2303(b) of Pub. L. 101–234 provided that: ‘‘Notwithstanding any other provision of this Act [see Tables for classification], the amendments made by this Act (other than the repeal of sections 1833(c)(5) and 1834(c)(6) of the Social Security Act [sections 1395l(c)(5) and 1395m(c)(6) of this title]) shall not apply to risk-sharing contracts, for contract year 1993—

‘‘(1) with eligible organizations under section 1876 of the Social Security Act [this section], or

‘‘(2) with health maintenance organizations under section 1876(b)(2)(A) of such Act [subsec. (b)(2)(A) of this section] (as in effect before February 1, 1985), under section 402(a) of the Social Security Amendments of 1967 [section 1395b–1(a) of this title], or under section 222(a) of the Social Security Amendments of 1972 [Pub. L. 92–601, set out as a note under section 1395b–1 of this title].’’
ADJUSTMENT OF CONTRACTS WITH PREPAID HEALTH PLANS


‘‘(1) modify contracts under section 1876 of the Social Security Act [this section], for portions of contract years occurring after December 31, 1988, to take into account the amendments made by this Act [see Short Title of 1988 Amendment note under section 1396 of this title]; and

‘‘(2) require such organizations and organizations paid under section 1833(a)(1)(A) of such Act [section 1396a(a)(1)(B) of this title] to make appropriate adjustments (including adjustments in premiums and benefits) in the terms of their agreements with Medicare beneficiaries to take into account such amendments.

The Secretary shall also provide for appropriate modifications of contracts with health maintenance organizations under section 1876(c)(2)(A) of the Social Security Act [subsec. (1)(2)(A) of this section] (as in effect before February 1, 1985), under section 402(a) of the Social Security Amendments of 1967 [section 1395b-1(a) of this title], or under section 222(a) of the Social Security Amendments of 1972 [42 U.S.C. 1395b-1 note], for portions of contract years occurring after December 31, 1988, so as to apply to such organizations and contracts the requirements imposed by the amendments made by this Act upon an organization with a risk-sharing contract under section 1876 of the Social Security Act.’’

PROVISION OF MEDICARE DRG RATES FOR CERTAIN PAYMENTS AND DATA ON INPATIENT COST PASS-THROUGH ITEMS

Section 4012(c) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(c)(2)(B), July 1, 1988, 102 Stat. 773, provided that: ‘‘The Secretary of Health and Human Services shall provide (in machine readable form) to eligible organizations under section 1876 of the Social Security Act [this section] medicare DRG rates for payments required by the amendment made by subsection (a) [amending section 1395cc of this title] and data on cost pass-through items for all inpatient services provided to Medicare beneficiaries enrolled with such organizations.’’

MEDICARE PAYMENT DEMONSTRATION PROJECTS


‘‘(1) The Secretary of Health and Human Services (in this subsection referred to as the ‘Secretary’) may provide for demonstration contracts to projects (in this subsection referred to as ‘projects’) with an entity which is an eligible organization with a contract with the Secretary under section 1876 of the Social Security Act (this section) or which meets the restrictions and requirements of this subsection. The Secretary may not approve a project unless it meets the requirements of this subsection.

‘‘(2) The Secretary may not conduct more than 3 projects and may not expend, from funds under title XVIII of the Social Security Act (this subchapter), more than $600,000,000 in any fiscal year for all such projects.

‘‘(3) The per capita rate of payment under a project—

‘‘(A) may be based on the adjusted average per capita cost (as defined in section 1876(a)(4) of the Social Security Act [subsec. (a)(4) of this section]) determined only with respect to the group of individuals involved (rather than with respect to Medicare beneficiaries generally), but

‘‘(B) the rate of payment may not exceed the lesser of—

‘‘(i) 95 percent of the adjusted average per capita cost described in subparagraph (A), or

‘‘(ii) (I) in the 4th year or 5th year of a project, 115 percent of the adjusted average per capita cost (as defined in section 1876(a)(4) of such Act [subsec. (a)(4) of this section]) for classes of individuals described in section 1876(a)(1)(B) of that Act (subsec. (a)(1)(B) of this section), or

‘‘(II) in any subsequent year of a project, 95 percent of the adjusted average per capita cost (as defined in section 1876(a)(4) of such Act [subsec. (a)(4) of this section]) for such classes.

‘‘(4) If the payment amounts made to a project are greater than the costs of the project (as determined by the Secretary or, if applicable, on the basis of adjusted community rates described in section 1876(c)(3) of the Social Security Act [subsec. (c)(3) of this section]), the project—

‘‘(A) may retain the surplus, but not to exceed 5 percent of the average adjusted per capita cost determined in accordance with paragraph (3)(A), and

‘‘(B) with respect to any additional surplus not retained by the project, shall apply such surplus to additional benefits for individuals served by the project or return such surplus to the Secretary.

‘‘(5) Enrollment under the project shall be voluntary. Individuals enrolled with the project may terminate such enrollment as of the beginning of the first calendar month following the date on which the request is made for such termination. Upon such termination, such individuals shall retain the same rights to other health benefits that such individuals would have had if they had never enrolled with the project without any exclusion or waiting period for pre-existing conditions.

‘‘(6) The requirements of—

‘‘(A) subsection (c)(3)(C) (relating to dissemination of information),

‘‘(B) subsection (c)(3)(E) (annual statement of rights),

‘‘(C) subsection (c)(5) (grievance procedures),

‘‘(D) subsection (c)(6) (on-going quality),

‘‘(E) subsection (g)(6) (relating to prompt payment of claims),

‘‘(F) subsection (h)(3)(A) and (B) (relating to access to information and termination notices),

‘‘(G) subsection (i)(6) (relating to providing necessary services), and

‘‘(H) subsection (i)(7) (relating to agreements with peer review [now ‘quality improvement’] organizations),

of section 1876 of the Social Security Act (this section) shall apply to a project in the same manner as they apply to eligible organizations with risk-sharing contracts under such section.

‘‘(7) The benefits provided under a project must be at least actuarially equivalent to the combination of the benefits provided under title XVIII of the Social Security Act (this subchapter) and the benefits available through any alternative plans in which the individual can enroll through the employer. The project shall guarantee the actuarial value of benefits available under the employer plan for the duration of the project.

‘‘(8) A project shall comply with all applicable State laws.

‘‘(9) The Secretary may not authorize a project unless the entity offering the project demonstrates to the satisfaction of the Secretary that it has the necessary financial reserves to pay for any liability for benefits under the project (including those liabilities for health benefits under Medicare and any supplemental benefits).

‘‘(10) The Comptroller General shall monitor projects under this subsection and shall report periodically (not less often than once every year) to the Committee on Finance of the Senate and the Committee on Energy and Commerce and Committee on Ways and Means of the House of Representatives on the status of such projects and the effect on such
projects of the requirements of this section and shall submit a final report to each such committee on the results of such projects.

(b) **PAYMENT METHODOLOGY REFORM DEMONSTRATION PROJECTS.**

“(1) The Secretary of Health and Human Services (in this subsection referred to as the ‘Secretary’) is specifically authorized to conduct demonstration projects under this subsection for the purpose of testing alternative payment methodologies pertaining to capitation payments under title XVIII of the Social Security Act (this chapter), including:

“(A) computing adjustments to the average per capita cost under section 1876 of such Act [this section] on the basis of health status or prior utilization of services, and

“(B) accounting for geographic variations in cost in the adjusted average per capita costs applicable to an eligible organization under such section which differs from payments currently provided on a county-by-county basis.

“(2) No project may be conducted under this subsection—

“(A) with an entity which is not an eligible organization (as defined in section 1876(b) of the Social Security Act [subsec. (b) of this section]), and

“(B) unless the project meets all the requirements of subsections (c) and (d)(3) of section 1876 of such Act [subsecs. (c) and (d)(3) of this section].

“(3) There are authorized to be appropriated to carry out projects under this subsection $5,000,000 in each of fiscal years 1989 and 1990.

(c) **APPLICATION OF PROVISIONS.**—The provisions of subsection (a)(2) and the first sentence of subsection (b) of section 402 of the Social Security Amendments of 1967 [section 1395m(a)(2), (b) of this title] shall apply to the demonstration projects under this section in the same manner as they apply to experiments under subsection (a)(1) of that section.”

[For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the requirement to submit such reports was made pursuant to section 3003 of Pub. L. 103–100, as amended, set out as a note under section 1113 of Title 31, Money and Finance.)

**GAO STUDY AND REPORTS ON MEDICARE CAPITATION**

Section 4017 of Pub. L. 100–203 directed Comptroller General to conduct a study on medicare capitation rates that would include an analysis and assessment of the current method for computing per capita rates of payment under section 1876 of the Social Security Act (this section), including the method for determining the United States per capita cost; the method for establishing relative costs for geographic areas and the data used to establish age, sex, and other weighting factors; ways to refine the calculation of adjusted average per capita costs under section 1876 of such Act, including making adjustments for health status or prior utilization of services and improvements in the definition of geographic areas; the extent to which individuals enrolled with organizations with a risk-sharing contract with the Secretary under section 1876 of such Act differ in utilization and cost from fee-for-service beneficiaries and ways for modifying enrollment patterns through program changes or for reflecting the differences in rates through group experience rating or other means; approaches for limiting the liability of the contracting organization under section 1876 of such Act in catastrophic cases; ways of establishing capitation rates on a basis other than fee-for-service experience in areas with high prepaid market penetration; and methods for providing the rate levels necessary to maintain access to quality prepaid services in rural or medically underserved areas.

The results of such standardized written health assessment; and

“(II) the application of appropriate care planning approaches;

“(II) disease management programs for targeted diseases (such as congestive heart failure, arthritis, diabetes, and hypertension) that are highly prevalent in the enrolled populations;

“(III) systems and protocols to track enrollees through hospitalizations, including pre-admission planning, concurrent management during inpa-
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42 U.S.C. 1395mm(b)(2)(B), (D), (E)

(c) AGREEMENTS WITH ELIGIBLE ORGANIZATIONS TO CONDUCT DEMONSTRATION PROJECTS—

(1) The Secretary may not enter into an agreement with an eligible organization to conduct a demonstration project under this section unless the organization meets the requirements of this subsection and subsection (e) with respect to members enrolled with the organization under this section.

(2) The organization shall have an open enrollment period for the enrollment of individuals under this section. The duration of such period of enrollment and any other requirement pertaining to enrollment or termination of enrollment shall be specified in the agreement with the organization.

(3) The organization must provide to members enrolled with the organization under this section,

"(A) Part-time or intermittent nursing care furnished by or under the supervision of registered professional nurses.

"(B) Physical, occupational, or speech therapy.

"(C) Social and other services supportive of a plan of ambulatory care.

"(D) Part-time or intermittent services of a home health aide.

"(E) Medical supplies (other than drugs and biologicals) and durable medical equipment while under a plan of care.

"(F) Medical and other health services described in paragraphs (2)(H)(i) and (5) through (9) of section 1861(s) of the Social Security Act [section 1395x(i)(2)(H)(i), (5)–(9) of this title].

"(G) Rural health clinic services described in section 1861(aa)(1)(C) of such Act [section 1395x(aa)(1)(C) of this title].

"(H) Certain other related services listed in section 1915(c)(4)(B) of such Act [section 1915(c)(4)(B) of this title] to the extent the Secretary finds such services are appropriate to prevent the need for institutionalization of a patient.

"(I) The term ‘eligible organization’ means a public or private entity, organized under the laws of any State, which meets the following requirements:

(A) The entity (or a division of such entity) is primarily engaged in the direct provision of community nursing and ambulatory care.

(B) The entity provides, directly or through arrangements with other qualified personnel, the services described in paragraph (1).

(C) The entity provides that all nursing care (including services of home health aides) is furnished by or under the supervision of a registered nurse.

(D) The entity provides that all services are furnished by qualified staff and are coordinated by a registered professional nurse.

(E) The entity complies with applicable State and local laws governing the provision of community nursing and ambulatory care to patients.

(2) The requirements of subparagraphs (B), (D), and (E) of section 1915(e)(2) of the Social Security Act [42 U.S.C. 1396mm(b)(2)(B), (D), (E)].

(3) The organization must provide to members enrolled with the organization under this section,
through providers and other persons that meet the applicable requirements of titles XVIII and XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter], community nursing and ambulatory care (as defined in subsection (b)(1)) which is generally available to individuals residing in the geographic area served by the organization, except that the organization may provide such services to enrollees with such additional health care services as the members may elect, at their option, to have covered.

(4) The organization must make community nursing and ambulatory care (and such other health care services as such individuals have contracted for) available and accessible to each individual enrolled with the organization under this section, within the area served by the organization, with reasonable promptness and in a manner which assures continuity.

(5) Section 1876(c)(5) of the Social Security Act [subsec. (c)(5) of this section] shall apply to organizations under this section in the same manner as it applies to organizations under section 1876 of such Act.

(6) The organization must have arrangements established in accordance with regulations of the Secretary for an ongoing quality assurance program for health care services it provides to such individuals under the demonstration project conducted under this section, which program (A) stresses health outcomes and (B) provides review by health care professionals of the process followed in the provision of such health care services.

(7) Under a demonstration project under this section—

(A) the Secretary could require the organization to provide financial or other assurances (including financial risk-sharing) that minimize the inapposite substitution of other services under title XVIII of such Act (this subchapter) for community nursing services; and

(B) if the Secretary determines that the organization has failed to perform in accordance with the requirements of the project (including financial responsibility requirements under the project, any pattern of disproportionate or inapropriate institutionalization) the Secretary shall, after notice, terminate the project.

(8) **DETERMINATION OF PER CAPITA PAYMENT RATES.**—

(1) The Secretary shall determine for each 12-month period in which a demonstration project is conducted under this section, and shall announce (in a manner intended to provide notice to interested parties) not later than three months before the beginning of such period, with respect to any eligible organization conducting a demonstration project under this section, a per capita rate of payment for each class of individuals who are enrolled with such organization, who are entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act [part A and part B of this subchapter].

(2) (A) Except as provided in paragraph (3), the per capita rate of payment under paragraph (1) shall be determined in accordance with this paragraph.

(B) The Secretary shall define appropriate classes of members, based on age, disability status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence.

(C) The per capita rate of payment under paragraph (1) for each such class shall be equal to 95 percent of the adjusted average per capita cost (as defined in subparagraph (D)) for that class.

(D) For purposes of subparagraph (C), the term ‘adjusted average per capita cost’ means the average per capita amount that the Secretary estimates in advance (on the basis of past experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in a geographic area served by an eligible organization or in a similar area, with appropriate adjustments to assure actuarial equivalence) would be payable in any contract year for those services covered under parts A and B of title XVIII of the Social Security Act (parts A and B of this subchapter) and types of expenses otherwise reimbursable under such parts A and B which are described in subparagraph (A) for that class.

(3) The Secretary shall, in consultation with providers, health policy experts, and consumer groups develop capitation-based reimbursement rates for such classes of individuals entitled to benefits under part A and enrolled under part B of the Social Security Act (probably means parts A and B of title XVIII of that Act, this subchapter) as the Secretary shall determine. Such rates shall be applied in determining per capita rates of payment under paragraph (1) with respect to at least one eligible organization conducting a demonstration project under this section.

(4) (A) In the case of an eligible organization conducting a demonstration project under this section, the amount of payment under paragraph (1) shall be made monthly payments in accordance with the rate determined under paragraph (2) or (3), except as provided in subsection (e)(3)(B), to the organization for each individual enrolled with the organization under this section.

(B) The amount of payment under paragraph (2) or (3) may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

(5) The payment to an eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A and enrolled under part B of the Social Security Act shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established under such Act [this chapter] in such proportions from each such trust fund as the Secretary deems to be fair and equitable taking into consideration benefits attributable to such parts A and B, respectively.

(6) During any period in which an individual is enrolled with an eligible organization conducting a demonstration project under this section, only the eligible organization (and no other individual or person) shall be entitled to such payments from the Secretary under this title (probably means title XVIII of the Social Security Act, this subchapter) for community nursing and ambulatory care (as defined in subsection (b)(1)) furnished to the individual.

(7) **RESTRICTION ON PREMIUMS, DEDUCTIBLES, COPAYMENTS, AND COINSURANCE.**—

(1) In no case may the portion of an eligible organization’s premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to community nursing and ambulatory care) to individuals who are enrolled under this section with the organization, exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this section with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, the actuarial value of the coinsurance and deductibles applicable on the average to individuals in the area, the State, or in the United States, eligible to enroll under this section with the organization, or other appropriate data) and entitled to benefits under part A and enrolled under part B of the Social Security Act (probably means parts A and B of title XVIII of this Act, this subchapter), if they were not members of an eligible organization.
“(2) If the eligible organization provides to its members enrolled under this section services in addition to community nursing and ambulatory care, election of coverage for such additional services shall be optional for such members and such organization shall furnish such members with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

“(A) the portion of such organization’s premium rate charged, with respect to such additional services, to members enrolled under this section, and

“(B) the actuarial value of its deductibles, coinsurance, and copayments charged, with respect to such additional services to such members exceed the adjusted community rate for such services (as defined in section 1876(e)(3) of the Social Security Act [subsec. (e)(3) of this section]).

“(3)(A) Subject to subparagraphs (B) and (C), each agreement to conduct a demonstration project under this section shall provide that if—

“(i) the adjusted community rate (as defined in paragraph (2), for community nursing and ambulatory care covered under parts A and B of title XVIII of the Social Security Act [parts A and B of this subchapter]) is less than the actuarial value of the coinsurance and deductibles under those parts) for members enrolled under this section with the organization,

“is greater than

“(ii) the average of the per capita rates of payment to be made under subsection (d)(1) at the beginning of the 12-month period (as determined on such basis as the Secretary determines appropriate) described in such subsection for members enrolled under this section with the organization,

the organization shall provide to such members the additional benefits described in section 1876(g)(3) of the Social Security Act [subsec. (g)(3) of this section] which are selected by the eligible organization and which the Secretary finds are at least equal in value to the difference between that average per capita payment and the adjusted community rate (as so reduced).

“(B) Subparagraph (A) shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced).

“(C) An organization conducting a demonstration project under this section may provide (with the approval of the Secretary) that a part of the value of such additional benefits under subparagraph (A) be withheld and reserved by the Secretary as provided in section 1876(g)(5) of the Social Security Act [subsec. (g)(5) of this section].

“(4) The provisions of paragraphs (3), (5), and (6) of section 1876(g) of the Social Security Act [subsec. (g)(3), (5), and (6) of this section] shall apply in the same manner to agreements under this section as they apply to risk-sharing contracts under section 1876 of such Act, and, for this purpose, any reference in such paragraphs to paragraph (2) is deemed a reference to paragraph (3) of this subsection.

“(5) Section 1876(e)(4) of the Social Security Act [subsec. (e)(4) of this section] shall apply to eligible organizations under this section in the same manner as it applies to eligible organizations under section 1876 of such Act.

“(f) Commencement and Duration of Projects.—Each demonstration project under this section shall begin not later than July 1, 1989, and shall be conducted for a period of three years.

“(g) Report.—Not later than January 1, 1992, the Secretary shall submit to the Congress a report on the results of the demonstration projects conducted under this section.”

STUDY OF AAPCC AND ACR

Section 9312(g) of Pub. L. 99–509 directed Secretary of Health and Human Services to conduct a study evaluating the extent of, and reasons for, termination by Medicare beneficiaries of membership in organizations with contracts under this section and to report to Congress with respect to the findings and conclusions made as a result of such study.

STUDY OF ADDITIONAL BENEFITS SELECTED BY ELIGIBLE ORGANIZATIONS

Section 114(d) of Pub. L. 97–248 directed Secretary of Health and Human Services to conduct a study of the additional benefits selected by eligible organizations pursuant to subsec. (g)(2) of this section, with Secretary to report to Congress within 24 months of the initial effective date (as defined in subsec. (c)(4) of section 114 of Pub. L. 97–248) with respect to the findings and conclusions made as a result of such study.
mentary Medical Insurance Trust Fund in such year for
the manner prescribed in section 1876(a)(3) of such Act
ing losses shall be absorbed by such organization, in
less than or greater than the adjusted average per capi-
providing out-of-plan services to such individuals, is
pital Insurance Trust Fund and the Federal Supple-
providing services to individuals described in paragraph
[subsec. (a)(3) of this section].''

Such organization and such Trust Funds, or the result-
graph shall be subject to retroactive adjustment at the
organization to be provided by that organization, be-
tween such individuals and individuals who are en-
rolled with such organization pursuant to section 1876
of such Act [this section] shall, for a period not to exceed
three years commencing on July 1, 1973, pay to such or-
ganization on the basis of an interim per capita rate,

determined in accordance with the provisions of sec-
gtion 1876(a)(2) of such Act [subsec. (a)(2) of this sec-
tion], with appropriate actuarial adjustments to reflect the
difference in utilization of out-of-plan services, which
would have been considered sufficiently reasonable and
ecessary under the rules of the health maintenance
organization to be provided by that organization, be-
tween such individuals and individuals who are mem-
ber of such organization has entered into a contract with the
Secretary pursuant to subsection (1)(i)(2)(A) [of this section]
providing that the per capita cost of any such organi-
cation in any contract year for providing services to
individuals described in paragraph (2), when combined with the cost of the Federal Hos-
tial Insurance Trust Fund and the Federal Supple-
mentary Medical Insurance Trust Fund in such year for
providing out-of-plan services to such individuals, is
less than or greater than the adjusted average per capi-
ta cost (as defined in section 1876(a)(3) of such Act)
[subsec. (a)(3) of this section] of providing such ser-
dices, the resulting savings shall be apportioned between
such organization and such Trust Funds, or the result-
ing losses shall be absorbed by such organization, in
the manner prescribed in section 1876(a)(3) of such Act
[subsec. (a)(3) of this section].''

§ 1395nn. Limitation on certain physician refer-
als

(a) Prohibition of certain referrals

(1) In general

Except as provided in subsection (b) of this
section, if a physician (or an immediate family
member of such physician) has a financial rela-
tionship with an entity specified in para-
graph (2), then—

(A) the physician may not make a referral
to the entity for the furnishing of designated
health services for which payment otherwise
may be made under this subchapter, and

(B) the entity may not present or cause to
be presented a claim under this subchapter

or bill to any individual, third party payor,
or other entity for designated health serv-
ces furnished pursuant to a referral prohib-
ited under subparagraph (A).

(2) Financial relationship specified

For purposes of this section, a financial rela-
tionship of a physician (or an immediate fam-
ily member of such physician) with an entity
specified in this paragraph is—

(A) except as provided in subsections (c) and
(d) of this section, an ownership or in-
vestment interest in the entity, or

(B) except as provided in subsection (e) of
this section, a compensation arrangement
(as defined in subsection (b)(1) of this sec-
tion) between the physician (or an imme-
diate family member of such physician) and
the entity.

An ownership or investment interest described
in subparagraph (A) may be through equity,
debt, or other means and includes an interest in
an entity that holds an ownership or invest-
ment interest in any entity providing the des-
ignated health service.

(b) General exceptions to both ownership and
compensation arrangement prohibitions

Subsection (a)(1) of this section shall not
apply in the following cases:

(1) Physicians’ services

In the case of physicians’ services (as defined
in section 1395x(q) of this title) provided per-
sonally by (or under the personal supervision of)
another physician in the same group prac-
tice (as defined in subsection (b)(4) of this sec-
tion) as the referring physician.

(2) In-office ancillary services

In the case of services (other than durable
medical equipment (excluding infusion pumps)
and parenteral and enteral nutrients, equip-
ment, and supplies)—

(A) that are furnished—

(i) personally by the referring physician,

(ii) by an entity that is not the same

entity as the entity described in para-
graph (2)(ii)(I) of such subparagraph

(iii) by a group practice which is not

the same group practice as the

entity described in paragraph (2)(ii)(I)

such group practice

(p) by an employee of such

entity

(q) by an independent contractor

under a contract

(r) by a group practice

or other entity that is not the same

entity as the entity described in para-
graph (2)(ii)(I) of such subparagraph

such group practice

(ii) the following services:

(A) ancillary services provided by

such group practice

(B) ancillary services provided by

such group practice

(C) ancillary services provided by

such group practice

(D) ancillary services provided by

such group practice

(E) ancillary services provided by

such group practice

(F) ancillary services provided by

such group practice

(G) ancillary services provided by

such group practice

(H) ancillary services provided by

such group practice

(I) ancillary services provided by

such group practice

(J) ancillary services provided by

such group practice

(K) ancillary services provided by

such group practice

(L) ancillary services provided by

such group practice

(M) ancillary services provided by

such group practice

(N) ancillary services provided by

such group practice

(O) ancillary services provided by

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(P) ancillary services provided by

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(Q) ancillary services provided by

such group practice

(R) ancillary services provided by

such group practice

(S) ancillary services provided by

such group practice

(T) ancillary services provided by

such group practice

(U) ancillary services provided by

such group practice

(V) ancillary services provided by

such group practice

(W) ancillary services provided by

such group practice

(X) ancillary services provided by

such group practice

(Y) ancillary services provided by

such group practice

(Z) ancillary services provided by

such group practice

(aa) for the provision of some or all of

the group’s clinical laboratory services,

or

(bb) for the centralized provision of

the group’s designated health services

(other than clinical laboratory services),

unless the Secretary determines other

terms and conditions under which the pro-
vision of such services does not present a
risk of program or patient abuse, and

(2) the physician is not a member of such

entity

(B) that are billed by the physician performing or supervising the services, by a group practice of which such physician is a member under a billing number assigned to the group practice, or by an entity that is wholly owned by such physician or such group practice,

if the ownership or investment interest in such services meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse. Such requirements shall, with respect to magnetic resonance imaging, computed tomography, positron emission tomography, and any other designated health services specified under subsection (h)(6)(D) that the Secretary determines appropriate, include a requirement that the referring physician inform the individual in writing at the time of the referral that the individual may obtain the services for which the individual is being referred from a person other than a person described in subparagraph (A) (i) and provide such individual with a written list of suppliers (as defined in section 1395x(d) of this title) who furnish such services in the area in which such individual resides.

(3) Prepaid plans

In the case of services furnished by an organization—

(A) with a contract under section 1395nn of this title to an individual enrolled with the organization,

(B) described in section 1395(a)(1)(A) of this title to an individual enrolled with the organization,

(C) receiving payments on a prepaid basis, under a demonstration project under section 1395b–1(a)(b) of this title or under section 222(a) of the Social Security Amendments of 1972, to an individual enrolled with the organization,

(D) that is a qualified health maintenance organization (within the meaning of section 300e–9(a)(1) of this title) to an individual enrolled with the organization, or

(E) that is a Medicare+Choice organization under part C of this subchapter that is offering a coordinated care plan described in section 1395w–21(a)(2)(A) of this title to an individual enrolled with the organization.

(4) Other permissible exceptions

In the case of any other financial relationship which the Secretary determines, and specifies in regulations, does not pose a risk of program or patient abuse.

(5) Electronic prescribing

An exception established by regulation under section 1395w–104(e)(6) of this title.

(c) General exception related only to ownership or investment prohibition for ownership in publicly traded securities and mutual funds

Ownership of the following shall not be considered to be an ownership or investment interest described in subsection (a)(2)(A) of this section:

(1) Ownership of investment securities (including shares or bonds, debentures, notes, or other debt instruments) which may be purchased on terms generally available to the public and which are—

(A)(i) securities listed on the New York Stock Exchange, the American Stock Exchange, or any regional exchange in which quotations are published on a daily basis, or foreign securities listed on a recognized foreign, national, or regional exchange in which quotations are published on a daily basis, or

(ii) traded under an automated interdealer quotation system operated by the National Association of Securities Dealers, and

(B) in a corporation that had, at the end of the corporation’s most recent fiscal year, or on average during the previous 3 fiscal years, stockholder equity exceeding $75,000,000.

(2) Ownership of shares in a regulated investment company as defined in section 851(a) of the Internal Revenue Code of 1986, if such company had, at the end of the company’s most recent fiscal year, or on average during the previous 3 fiscal years, total assets exceeding $75,000,000.

(d) Additional exceptions related only to ownership or investment prohibition

The following, if not otherwise excepted under subsection (b) of this section, shall not be considered to be an ownership or investment interest described in subsection (a)(2)(A) of this section:

(1) Hospitals in Puerto Rico

In the case of designated health services provided by a hospital located in Puerto Rico.

(2) Rural providers

In the case of designated health services furnished in a rural area (as defined in section 1395ww(d)(2)(D) of this title) by an entity, if—

(A) substantially all of the designated health services furnished by the entity are furnished to individuals residing in such a rural area;

(B) effective for the 18-month period beginning on December 8, 2003, the entity is not a specialty hospital (as defined in subsection (h)(7) of this section); and

(C) in the case where the entity is a hospital, the hospital meets the requirements of paragraph (3)(D).

(3) Hospital ownership

In the case of designated health services provided by a hospital (other than a hospital described in paragraph (1)) if—

(A) the referring physician is authorized to perform services at the hospital;

(B) effective for the 18-month period beginning on December 8, 2003, the hospital is not a specialty hospital (as defined in subsection (h)(7) of this section);

(C) the ownership or investment interest is in the hospital itself (and not merely in a subdivision of the hospital); and

(D) the hospital meets the requirements described in subsection (1)(1) not later than 18 months after March 23, 2010.

1 See References in Text note below.
(e) Exceptions relating to other compensation arrangements

The following shall not be considered to be a compensation arrangement described in subsection (a)(2)(B) of this section:

(1) Rental of office space; rental of equipment

(A) Office space

Payments made by a lessee to a lessor for the use of premises if—

(i) the lease is set out in writing, signed by the parties, and specifies the premises covered by the lease,

(ii) the space rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee, except that the lessee may make payments for the use of space consisting of common areas if such payments do not exceed the lessee’s pro rata share of expenses for such space based upon the ratio of the space used exclusively by the lessee to the total amount of space (other than common areas) occupied by all persons using such common areas,

(iii) the lease provides for a term of rental or lease for at least 1 year,

(iv) the rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(v) the lease would be commercially reasonable even if no referrals were made between the parties, and

(vi) the lease meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(B) Equipment

Payments made by a lessee of equipment to the lessor of the equipment for the use of the equipment if—

(i) the lease is set out in writing, signed by the parties, and specifies the equipment covered by the lease,

(ii) the equipment rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee,

(iii) the lease provides for a term of rental or lease of at least 1 year,

(iv) the rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(v) the lease would be commercially reasonable even if no referrals were made between the parties, and

(vi) the lease meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(2) Bona fide employment relationships

Any amount paid by an employer to a physician (or an immediate family member of such physician) who has a bona fide employment relationship with the employer for the provision of services if—

(A) the employment is for identifiable services,

(B) the amount of the remuneration under the employment—

(i) is consistent with the fair market value of the services, and

(ii) is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician,

(C) the remuneration is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the employer, and

(D) the employment meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

Subparagraph (B)(ii) shall not prohibit the payment of remuneration in the form of a productivity bonus based on services performed personally by the physician (or an immediate family member of such physician).

(3) Personal service arrangements

(A) In general

Remuneration from an entity under an arrangement (including remuneration for specific physicians’ services furnished to a non-profit blood center) if—

(i) the arrangement is set out in writing, signed by the parties, and specifies the services covered by the arrangement,

(ii) the arrangement covers all of the services to be provided by the physician (or an immediate family member of such physician) to the entity,

(iii) the aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement,

(iv) the term of the arrangement is for at least 1 year,

(v) the compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value, and except in the case of a physician incentive plan described in subparagraph (B), is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(vi) the services to be performed under the arrangement do not involve the counseling or promotion or a business arrangement or other activity that violates any State or Federal law, and

(vii) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.
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(6) Isolated transactions

In the case of an isolated financial transaction, such as a one-time sale of property or practice, if—

(A) the requirements described in subparagraphs (B) and (C) of paragraph (2) are met with respect to the entity in the same manner as they apply to an employer, and

(B) the transaction meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(7) Certain group practice arrangements with a hospital

(A) In general

An arrangement between a hospital and a group under which designated health services are provided by the group but are billed by the hospital if—

(i) with respect to services provided to an inpatient of the hospital, the arrangement is pursuant to the provision of inpatient hospital services under section 1395x(b)(3) of this title,

(ii) the arrangement began before December 19, 1989, and has continued in effect without interruption since such date,

(iii) with respect to the designated health services covered under the arrangement, substantially all of such services furnished to patients of the hospital are furnished by the group under the arrangement,

(iv) the arrangement is pursuant to an agreement that is set out in writing and that specifies the services to be provided by the parties and the compensation for services provided under the agreement,

(v) the compensation paid over the term of the agreement is consistent with fair market value and the compensation per unit of services is fixed in advance and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(vi) the compensation is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the entity, and

(vii) the arrangement between the parties meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(8) Payments by a physician for items and services

Payments made by a physician—

(A) to a laboratory in exchange for the provision of clinical laboratory services, or

(B) to an entity as compensation for other items or services if the items or services are furnished at a price that is consistent with fair market value.

(f) Reporting requirements

Each entity providing covered items or services for which payment may be made under this

3So in original. No subpar. (B) has been enacted.
subchapter shall provide the Secretary with the information concerning the entity’s ownership, investment, and compensation arrangements, including—

(1) the covered items and services provided by the entity, and

(2) the names and unique physician identification numbers of all physicians with an ownership or investment interest (as described in subsection (a)(2)(A) of this section), or with a compensation arrangement (as described in subsection (a)(2)(B) of this section), in the entity, or whose immediate relatives have such an ownership or investment interest or who have such a compensation relationship with the entity.

Such information shall be provided in such form, manner, and at such times as the Secretary shall specify. The requirement of this subsection shall not apply to designated health services provided outside the United States or to entities which the Secretary determines provides services for which payment may be made under this subchapter very infrequently.

(g) Sanctions

(1) Denial of payment

No payment may be made under this subchapter for a designated health service which is provided in violation of subsection (a)(1) of this section.

(2) Requiring refunds for certain claims

If a person collects any amounts that were billed in violation of subsection (a)(1) of this section, the person shall be liable to the individual for, and shall refund on a timely basis to the individual, any amounts so collected.

(3) Civil money penalty and exclusion for improper claims

Any person that presents or causes to be presented a bill or a claim for a service that such person knows or should know is for a service for which payment may not be made under paragraph (1) or for which a refund has not been made under paragraph (2) shall be subject to a civil money penalty of not more than $15,000 for each such service. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(5) Failure to report information

Any person who is required, but fails, to meet a reporting requirement of subsection (f) of this section is subject to a civil money penalty of not more than $10,000 for each day for which reporting is required to have been made. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(6) Advisory opinions

(A) In general

The Secretary shall issue written advisory opinions concerning whether a referral relating to designated health services (other than clinical laboratory services) is prohibited under this section. Each advisory opinion issued by the Secretary shall be binding as to the Secretary and the party or parties requesting the opinion.

(B) Application of certain rules

The Secretary shall, to the extent practicable, apply the rules under subsections (b)(3) and (b)(4) of this section and take into account the regulations promulgated under subsection (b)(5) of section 1320a–7d of this title in the issuance of advisory opinions under this paragraph.

(C) Regulations

In order to implement this paragraph in a timely manner, the Secretary may promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment.

(D) Applicability

This paragraph shall apply to requests for advisory opinions made after the date which is 90 days after August 5, 1997, and before the close of the period described in section 1320a–7d(b)(6) of this title.

(h) Definitions and special rules

For purposes of this section:

(1) Compensation arrangement; remuneration

(A) The term “compensation arrangement” means any arrangement involving any remuneration between a physician (or an immediate family member of such physician) and an entity other than an arrangement involving only remuneration described in subparagraph (C).

(B) The term “remuneration” includes any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

(C) Remuneration described in this subparagraph is any remuneration consisting of any of the following:

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3So in original. Probably should be “provide”. 
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(i) The forgiveness of amounts owed for inaccurate tests or procedures, mistakenly performed tests or procedures, or the correction of minor billing errors.

(ii) The provision of items, devices, or supplies that are used solely to—

(I) collect, transport, process, or store specimens for the entity providing the item, device, or supply, or

(II) order or communicate the results of tests or procedures for such entity.

(iii) A payment made by an insurer or a self-insured plan to a physician to satisfy a claim, submitted on a fee for service basis, for the furnishing of health services by that physician to an individual who is covered by a policy with the insurer or by the self-insured plan, if—

(I) the health services are not furnished, and the payment is not made, pursuant to a contract or other arrangement between the insurer or the plan and the physician;

(II) the payment is made to the physician on behalf of the covered individual and would otherwise be made directly to such individual;

(III) the amount of the payment is set in advance, does not exceed fair market value, and is not determined in a manner that takes into account directly or indirectly the volume or value of any referrals, and

(IV) the payment meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(2) Employee

An individual is considered to be “employed by” or an “employee” of an entity if the individual would be considered to be an employee of the entity under the usual common law rules applicable in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986).

(3) Fair market value

The term “fair market value” means the value in arms length transactions, consistent with the general market value, and, with respect to rentals or leases, the value of rental property for general commercial purposes (not taking into account its intended use) and, in the case of a lease of space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessee is a potential source of patient referrals to the lessee.

(4) Group practice

(A) Definition of group practice

The term “group practice” means a group of 2 or more physicians legally organized as a partnership, professional corporation, foundation that are used solely to—

(i) in which each physician who is a member of the group provides substantially the full range of services which the physician routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment and personnel,

(ii) for which substantially all of the services of the physicians who are members of the group are provided through the group and are billed under a billing number assigned to the group and amounts so received are treated as receipts of the group,

(iii) in which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined,

(iv) except as provided in subparagraph (B)(i), in which no physician who is a member of the group directly or indirectly receives compensation based on the volume or value of referrals by the physician,

(v) in which members of the group personally conduct no less than 75 percent of the physician-patient encounters of the group practice, and

(vi) which meets such other standards as the Secretary may impose by regulation.

(B) Special rules

(i) Profits and productivity bonuses

A physician in a group practice may be paid a share of overall profits of the group, or a productivity bonus based on services personally performed or services incident to such personally performed services, so long as the share or bonus is not determined in any manner which is directly related to the volume or value of referrals by such physician.

(ii) Faculty practice plans

In the case of a faculty practice plan associated with a hospital, institution of higher education, or medical school with an approved medical residency training program in which physician members may provide a variety of different specialty services and provide professional services both within and outside the group, as well as perform other tasks such as research, subparagraph (A) shall be applied only with respect to the services provided within the faculty practice plan.

(5) Referral; referring physician

(A) Physicians’ services

Except as provided in subparagraph (C), in the case of an item or service for which payment may be made under part B of this subchapter, the request by a physician for the item or service, including the request by a physician for a consultation with another physician and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician, constitutes a “referral” by a “referring physician”.

(B) Other items

Except as provided in subparagraph (C), the request or establishment of a plan of care by a physician which includes the pro-
vision of the designated health service constitutes a “referral” by a “referring physician”.

(C) Clarification respecting certain services integral to a consultation by certain specialists

A request by a pathologist for clinical diagnostic laboratory tests and pathological examination services, a request by a radiologist for diagnostic radiology services, and a request by a radiation oncologist for radiation therapy, if such services are furnished by (or under the supervision of) such pathologist, radiologist, or radiation oncologist pursuant to a consultation requested by another physician does not constitute a “referral” by a “referring physician”.

(6) Designated health services

The term “designated health services” means any of the following items or services:

(A) Clinical laboratory services.
(B) Physical therapy services.
(C) Occupational therapy services.
(D) Radiology services, including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services.
(E) Radiation therapy services and supplies.
(F) Durable medical equipment and supplies.
(G) Parenteral and enteral nutrients, equipment, and supplies.
(H) Prosthetics, orthotics, and prosthetic devices and supplies.
(I) Home health services.
(J) Outpatient prescription drugs.
(K) Inpatient and outpatient hospital services.
(L) Outpatient speech-language pathology services.

(7) Specialty hospital

(A) In general

For purposes of this section, except as provided in subparagraph (B), the term “specialty hospital” means a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title) that is primarily or exclusively engaged in the care and treatment of one of the following categories:

(i) Patients with a cardiac condition.
(ii) Patients with an orthopedic condition.
(iii) Patients receiving a surgical procedure.
(iv) Any other specialized category of services that the Secretary designates as inconsistent with the purpose of permitting physician ownership and investment interests in a hospital under this section.

(B) Exception

For purposes of this section, the term “specialty hospital” does not include any hospital—

(i) determined by the Secretary—
   (I) to be in operation before November 18, 2003; or
   (II) under development as of such date;
(ii) for which the number of physician investors at any time on or after such date is no greater than the number of such investors as of such date;
(iii) for which the type of categories described in subparagraph (A) at any time on or after such date is no different than the type of such categories as of such date;
(iv) for which any increase in the number of beds occurs only in the facilities on the main campus of the hospital and does not exceed 50 percent of the number of beds in the hospital as of November 18, 2003, or 5 beds, whichever is greater; and
(v) that meets such other requirements as the Secretary may specify.

(i) Requirements for hospitals to qualify for rural provider and hospital exception to ownership or investment prohibition

(1) Requirements described

For purposes of subsection (d)(3)(D), the requirements described in this paragraph for a hospital are as follows:

(A) Provider agreement

The hospital had—

(i) physician ownership or investment on December 31, 2010; and
(ii) a provider agreement under section 1395cc of this title in effect on such date.

(B) Limitation on expansion of facility capacity

Except as provided in paragraph (3), the number of operating rooms, procedure rooms, and beds for which the hospital is licensed at any time on or after March 23, 2010, is no greater than the number of operating rooms, procedure rooms, and beds for which the hospital is licensed as of such date.

(C) Preventing conflicts of interest

(i) The hospital submits to the Secretary an annual report containing a detailed description of—
   (I) the identity of each physician owner or investor and any other owners or investors of the hospital; and
   (II) the nature and extent of all ownership and investment interests in the hospital.

(ii) The hospital has procedures in place to require that any referring physician owner or investor discloses to the patient being referred, by a time that permits the patient to make a meaningful decision regarding the receipt of care, as determined by the Secretary—
   (I) the ownership or investment interest, as applicable, of such referring physician in the hospital; and
   (II) if applicable, any such ownership or investment interest of the treating physician.

(iii) The hospital does not condition any physician ownership or investment interests either directly or indirectly on the physician owner or investor making or influencing referrals to the hospital or otherwise generating business for the hospital.

(iv) The hospital discloses the fact that the hospital is partially owned or invested in by physicians—
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(1) on any public website for the hospital; and
(II) in any public advertising for the hospital.

(D) Ensuring bona fide investment

(i) The percentage of the total value of the ownership or investment interests held in the hospital, or in an entity whose assets include the hospital, by physician owners or investors in the aggregate does not exceed such percentage as of March 23, 2010.
(ii) Any ownership or investment interests that the hospital offers to a physician owner or investor are not offered on more favorable terms than the terms offered to a person who is not a physician owner or investor.
(iii) The hospital (or any owner or investor in the hospital) does not directly or indirectly provide loans or financing for any investment in the hospital by a physician owner or investor.
(iv) The hospital (or any owner or investor in the hospital) does not directly or indirectly guarantee a loan, make a payment toward a loan, or otherwise subsidize a loan, for any individual physician owner or investor or group of physician owners or investors that is related to acquiring any ownership or investment interest in the hospital.
(v) Ownership or investment returns are distributed to each owner or investor in the hospital in an amount that is directly proportional to the ownership or investment interest of such owner or investor in the hospital.
(vi) Physician owners and investors do not receive, directly or indirectly, any guaranteed receipt of or right to purchase other business interests related to the hospital, including the purchase or lease of any property under the control of other owners or investors in the hospital or located near the premises of the hospital.
(vii) The hospital does not offer a physician owner or investor the opportunity to purchase or lease any property under the control of the hospital or any other owner or investor in the hospital on more favorable terms than the terms offered to an individual who is not a physician owner or investor.

(E) Patient safety

(i) Insofar as the hospital admits a patient and does not have any physician available on the premises to provide services during all hours in which the hospital is providing services to such patient, before admitting the patient—
(I) the hospital discloses such fact to a patient; and
(II) following such disclosure, the hospital receives from the patient a signed acknowledgment that the patient understands such fact.
(ii) The hospital has the capacity to—
(I) provide assessment and initial treatment for patients; and
(II) refer and transfer patients to hospitals with the capability to treat the needs of the patient involved.

(F) Limitation on application to certain converted facilities

The hospital was not converted from an ambulatory surgical center to a hospital on or after March 23, 2010.

(2) Publication of information reported

The Secretary shall publish, and update on an annual basis, the information submitted by hospitals under paragraph (1)(C)(i) on the public Internet website of the Centers for Medicare & Medicaid Services.

(3) Exception to prohibition on expansion of facility capacity

(A) Process

(i) Establishment

The Secretary shall establish and implement a process under which a hospital that is an applicable hospital (as defined in subparagraph (E)) or is a high Medicaid facility described in subparagraph (F) may apply for an exception from the requirement under paragraph (1)(B).

(ii) Opportunity for community input

The process under clause (i) shall provide individuals and entities in the community in which the applicable hospital applying for an exception is located with the opportunity to provide input with respect to the application.

(iii) Timing for implementation

The Secretary shall implement the process under clause (i) on February 1, 2012.

(iv) Regulations

Not later than January 1, 2012, the Secretary shall promulgate regulations to carry out the process under clause (i).

(B) Frequency

The process described in subparagraph (A) shall permit an applicable hospital to apply for an exception up to once every 2 years.

(C) Permitted increase

(i) In general

Subject to clause (ii) and subparagraph (D), an applicable hospital granted an exception under the process described in subparagraph (A) may increase the number of operating rooms, procedure rooms, and beds for which the applicable hospital is licensed above the baseline number of operating rooms, procedure rooms, and beds of the applicable hospital (or, if the applicable hospital has been granted a previous exception under this paragraph, above the number of operating rooms, procedure rooms, and beds for which the hospital is licensed after the application of the most recent increase under such an exception).

(ii) 100 percent increase limitation

The Secretary shall not permit an increase in the number of operating rooms, procedure rooms, and beds for which an applicable hospital is licensed under clause (i) to the extent such increase would result in the number of operating rooms, proce-
dure rooms, and beds for which the applicable hospital is licensed exceeding 200 percent of the baseline number of operating rooms, procedure rooms, and beds of the applicable hospital.

(iii) Baseline number of operating rooms, procedure rooms, and beds

In this paragraph, the term “baseline number of operating rooms, procedure rooms, and beds” means the number of operating rooms, procedure rooms, and beds for which the applicable hospital is licensed as of March 23, 2010 (or, in the case of a hospital that did not have a provider agreement in effect as of such date but does have such an agreement in effect on December 31, 2010, the effective date of such provider agreement).

(D) Increase limited to facilities on the main campus of the hospital

Any increase in the number of operating rooms, procedure rooms, and beds for which an applicable hospital is licensed pursuant to this paragraph may only occur in facilities on the main campus of the applicable hospital.

(E) Applicable hospital

In this paragraph, the term “applicable hospital” means a hospital—

(i) that is located in a county in which the percentage increase in the population during the most recent 5-year period (as of the date of the application under subparagraph (A)) is at least 150 percent of the percentage increase in the population growth of the State in which the hospital is located during that period, as estimated by Bureau of the Census;

(ii) whose annual percent of total inpatient admissions that represent inpatient admissions under the program under subchapter XIX is equal to or greater than the national average bed capacity for which the applicable hospital is licensed;

(iii) that does not discriminate against beneficiaries of Federal health care programs and does not permit physicians practicing at the hospital to discriminate against such beneficiaries;

(iv) that is located in a State in which the average bed occupancy rate that is greater than the average bed occupancy rate in the State in which the hospital is located.

(F) High Medicaid facility described

A high Medicaid facility described in this subparagraph is a hospital that—

(i) is not the sole hospital in a county;

(ii) with respect to each of the 3 most recent years for which data are available, has an annual percent of total inpatient admissions that represent inpatient admissions under subchapter XIX that is estimated to be greater than such percent with respect to such admissions for any other hospital located in the county in which the hospital is located; and

(iii) meets the conditions described in subparagraph (E)(iii).

(G) Procedure rooms

In this subsection, the term “procedure rooms” includes rooms in which catheterizations, angiographies, angiograms, and endoscopies are performed, except such term shall not include emergency rooms or departments (exclusive of rooms in which catheterizations, angiographies, angiograms, and endoscopies are performed).

(H) Publication of final decisions

Not later than 60 days after receiving a complete application under this paragraph, the Secretary shall publish in the Federal Register the final decision with respect to such application.

(I) Limitation on review

There shall be no administrative or judicial review under section 1395ff of this title, section 1395oo of this title, or otherwise of the process under this paragraph (including the establishment of such process).

(4) Collection of ownership and investment information

For purposes of subparagraphs (A)(i) and (D)(i) of paragraph (1), the Secretary shall collect physician ownership and investment information for each hospital.

(5) Physician owner or investor defined

For purposes of this subsection, the term “physician owner or investor” means a physician (or an immediate family member of such physician) with a direct or an indirect ownership or investment interest in the hospital.

(6) Clarification

Nothing in this subsection shall be construed as preventing the Secretary from revoking a hospital’s provider agreement if not in compliance with regulations implementing section 1395ccc of this title.

References in Text

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (b)(3)(C), is section 222(a) of...

Section 3060–9(d) of this title, referred to in subsec. (b)(3)(D), was redesignated section 3060–8(c) of this title by Pub. L. 100–517, §7(b), Oct. 24, 1988, 102 Stat. 2580.

Section 1395w–104(e)(6) of this title, referred to in subsec. (b)(5), was in the original “section 1860D–3(e)(6)” and was translated as read “section 1860D–4(e)(6)” meaning section 1860D–4(e)(6) of the Social Security Act, to reflect the probable intent of Congress, because section 1860D–3, which is classified to section 1395w–103 of this title, does not contain a subsec. (e), and section 1860D–4(e)(6) relates to electronic prescription program regulations.

The Internal Revenue Code, referred to in subsecs. (c)(2) and (h)(2), is classified generally to Title 26, Internal Revenue Code.

Prior Provisions


Amendments

2010—Subsec. (b)(2). Pub. L. 111–148, §6003(a), inserted at end of concluding provisions “Such requirements shall, with respect to magnetic resonance imaging, computed tomography, positron emission tomography, and any other designated health services specified under subsection (h)(6)(D) that the Secretary determines appropriate, include a requirement that the referring physician inform the individual in writing at the time of the referral that the individual may obtain the services for which the individual is being referred from a person other than a person described in subparagraph (A)(ii) and provide such individual with a written list of suppliers (as defined in section 1395x(d) of this title) who furnish such services in the area in which such individual resides.”


Subsec. (i)(1)(A)(i). Pub. L. 111–152, §11061, substituted “a hospital that is an applicable hospital (as defined in subparagraph (E)) or a high Medicaid facility described in subparagraph (F)” for “an applicable hospital (as defined in subparagraph (E))”.


Subsec. (i)(3)(C)(ii). Pub. L. 111–152, §11062(B), inserted “or, in the case of a hospital that did not have a provider agreement in effect as of such date but does have an agreement in effect on December 31, 2010, the effective date of such provider agreement)” after “March 23, 2010”.

Subsec. (i)(3)(D) to (I). Pub. L. 111–152, §11062(C)(D), added subpar. (F) and redesignated former subpars. (F) to (I).


Subsec. (d)(2). Pub. L. 108–173, §507(a)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “In the case of designated health services furnished in a rural area (as defined in section 1395w–1(d)(2)(D) of this title) by an entity, if designated health services furnished by such entity are furnished to individuals residing in such a rural area.”

Subsec. (d)(3)(B), (C). Pub. L. 108–173, §507(a)(1)(A), added subpar. (B) and redesignated former subpar. (B) as (C).


Subsec. (b)(3)(D). Pub. L. 106–113, §1006(a)(6) (title V, §524a(a)(2)), substituted “or” for “and” at the end.

Subsec. (b)(3)(E). Pub. L. 106–113, §1006(a)(6) (title V, §524a(a)(3)), which directed addition of provisions at end of par. (3) but which separated directory language from language to be added because of the apparent placement out of sequence of pars. (2) and (3) of §524(a), was executed by adding subpar. (E) at the end of par. (3) to reflect the probable intent of Congress.


1994—Subsec. (f). Pub. L. 103–432, §152(a)(1), (4), (5), in introductory provisions, substituted “ownership, investment, and compensation arrangements” for “ownership arrangements”, and in closing provisions, substituted “designated health services” for “covered items and services” and struck out “Such information shall first be provided not later than October 1, 1991.” after “shall specify.” and “The Secretary may waive the requirements of this subsection (and the requirements of chapter 35 of title 44 with respect to information provided under this subsection) with respect to reporting by entities in a State (except for entities providing designated health services) so long as such reporting occurs in at least 10 States, and the Secretary may waive such requirements with respect to the providers in a State required to report so long as such requirements are not waived with respect to parenteral and enteral suppliers, end stage renal disease facilities, suppliers of ambulance services, hospitals, entities providing physical therapy services, and entities providing diagnostic imaging services of any type.” at end.

Subsec. (i)(2). Pub. L. 103–432, §152(a)(2), (3), inserted “or with a compensation arrangement (as described in subsection (a)(2)(B) of this section),” after “investment interest (as described in subsection (a)(2)(A) of this section)” and “interest or who have such a compensation relationship with the entity” before period at end.

Subsec. (h)(6). Pub. L. 103–432, §152(b), in subpar. (D), substituted “services, including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services” for “or other diagnostic services”, and in subpars. (E), (F), and (H), inserted “and supplies” before period at end.

1993—Subsecs. (a) to (e). Pub. L. 103–66, §13562(a)(1), amended headings and text of subsecs. (a) to (e) generally, substituting present provisions for provisions which related to: prohibition of certain referrals in subsec. (a), general exceptions to both ownership and compensation arrangement prohibitions in subsec. (b), general exception related only to ownership or investment prohibition for ownership in publicly-traded securities in subsec. (c), additional exceptions related only to ownership or investment prohibition in subsec. (d), and exceptions relating to other compensation arrangements in subsec. (e).


Subsec. (g)(1). Pub. L. 103–66, §13562(a)(4), substituted “designated health service” for “clinical laboratory service”.

(1) to (6) for former pars. (1) to (7) which defined “compensation arrangement”, “remuneration”, “employee”, “fair market value”, “group practice”, “investor”, “interested investor”, “disinterested investor”, “referral”, and “referring physician.”


Subsec. (f). Pub. L. 101–508, § 4207(e)(3)(A), formerly § 4207(e)(3)(A), as renumbered by Pub. L. 103–432, § 160(d)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The names and all of the Medicare provider numbers of the physicians who are interested investors or who are immediate relatives of interested investors.”

Subsec. (g)(5). Pub. L. 101–508, § 4207(k)(2), formerly § 4207(k)(2), as renumbered by Pub. L. 103–432, § 160(d)(4), inserted at end “The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to clinical laboratory services, and entities providing diagnostic imaging services of any type.”


Pub. L. 101–508, § 4207(e)(1)(A), (B), formerly § 4207(e)(1)(A), (B), as renumbered by Pub. L. 103–432, § 160(d)(4), substituted “in the case of an item or service for which payment may be made under part B of this subchapter, the request by a physician for the item or service,” for “in the case of a clinical laboratory service which under law is required to be provided by or under the supervision of a physician, the request by a physician for the service.”


CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 103–134, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT


EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–275 applicable to services furnished on or after July 1, 2009, see section 143(c) of Pub. L. 110–275, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, § 1000(a)(6) [title V, § 524(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–388, provided that: “The amendment made by this section [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Nov. 29, 1999].”

EFFECTIVE DATE OF 1994 AMENDMENT

Section 152(d)(1) of Pub. L. 103–432 provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply to referrals made on or after January 1, 1995.”

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13562(b) of Pub. L. 103–66, as amended by Pub. L. 103–432, title I, § 152(c), Oct. 31, 1994, 108 Stat. 4437, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to referrals—

“(A) made on or after January 1, 1992, in the case of clinical laboratory services, and

“(B) made after December 31, 1994, in the case of other designated health services.

“(2) EXCEPTIONS.—With respect to referrals made for clinical laboratory services on or before December 31, 1994—

“(A) the second sentence of subsection (a)(2), and subsections (b)(2)(B) and (d)(2), of section 1877 of the Social Security Act [subsecs. (a)(2), (b)(2)(B), and (d)(2) of this section] (as in effect on the day before the date of the enactment of this Act [Aug. 10, 1993]) shall apply instead of the corresponding provisions in section 1877 (as amended by this Act);

“(B) section 1877(b)(4) of the Social Security Act [subsec. (b)(4) of this section] (as in effect on the day before the date of the enactment of this Act) shall apply;

“(C) the requirements of section 1877(c)(2) of the Social Security Act [subsec. (c)(2) of this section] (as amended by this Act) shall not apply to any securities of a corporation that meets the requirements of section 1877(c)(2) of the Social Security Act (as in effect on the day before the date of the enactment of this Act);

“(D) section 1877(e)(3) of the Social Security Act [subsec. (e)(3) of this section] (as amended by this Act) shall apply, except that it shall not apply to any arrangement that meets the requirements of subsection (e)(2) or subsection (e)(3) of section 1877 of the Social Security Act (as in effect on the day before the date of the enactment of this Act);

“(E) the requirements of clauses (iv) and (v) of section 1877(b)(4)(A), and of clause (i) of section 1877(b)(4)(B), of the Social Security Act [subsec. (h)(4)(A)(iv), (v), (B)(1) of this section] (as amended by this Act) shall not apply; and

“(F) section 1877(b)(4)(B) of the Social Security Act [subsec. (h)(4)(B) of this section] (as in effect on the day before the date of the enactment of this Act) shall apply instead of section 1877(b)(4)(A)(ii) of such Act (as amended by this Act).”

Section 152(d)(2) of Pub. L. 103–432 provided that: “The amendment made by subsection (c) [amending section 13562(b) of Pub. L. 103–66, set out above] shall apply as if included in the enactment of OBRA–1993 [Pub. L. 103–66].”

EFFECTIVE DATE OF 1990 AMENDMENT

“The amendments made by this subsection [amending this section and provisions set out below] shall be effective as if included in the enactment of section 6204 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239).”

**Effective Date**

Section 6204(c) of Pub. L. 101–239 provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 1395 of this title] shall become effective with respect to referrals made on or after January 1, 1992.

“(2) The reporting requirement of section 1877(f) of the Social Security Act [subsec. (f) of this section] shall take effect on October 1, 1990.”

**Deadline for Certain Regulations**

Section 6203(d) of Pub. L. 101–239, as amended by Pub. L. 108–173, title V, § 507(c), Dec. 8, 2003, 117 Stat. 2296, provided that: “For purposes of section 1877(h)(7)(B)(i)(II) of the Social Security Act [subsec. (h)(7)(B)(i)(II) of this section], as added by subsection (a)(1)(B), in determining whether a hospital is under development as of November 18, 2003, the Secretary of Health and Human Services shall establish, not later than 6 months after the date such requirements first apply. Such policies and procedures may include methods for the selection of specialty hospitals; the use of a national database of specialty hospitals; and the determination of the need for a national study of specialty hospitals.

“Not later than 18 months after the date on which the SRDP protocol is established under subsection (a)(1), the Secretary shall submit to Congress a report on the implementation of this section. Such report shall include—

“(1) the number of health care providers of services and suppliers making disclosures pursuant to the SRDP;

“(2) the amounts collected pursuant to the SRDP;

“(3) the types of violations reported under the SRDP; and

“(4) such other information as may be necessary to evaluate the impact of this section.”

**Application of Exception for Hospitals Under Development**


“(A) any differences in the costs of health care services furnished to patients by physician-owned specialty hospitals and the costs of such services furnished by local full-service community hospitals within specific diagnosis-related groups; and

“(B) the extent to which specialty hospitals, relative to local full-service community hospitals, treat patients in certain diagnosis-related groups within a category, such as cardiology, and an analysis of the selection;

“(C) the financial impact of physician-owned specialty hospitals on local full-service community hospitals; and

“(D) how the current diagnosis-related group system should be updated to better reflect the cost of delivering care in a hospital setting; and

“(E) the proportions of payments received, by type of payer, between the specialty hospitals and local full-service community hospitals.

“(2) HHS study.—The Secretary of Health and Human Services shall conduct a study of a representative sample of specialty hospitals—

“(A) to determine the percentage of patients admitted to physician-owned specialty hospitals who are referred by physicians with an ownership interest;

“(B) to determine the referral patterns of physician owners, including the percentage of patients they referred to physician-owned specialty hospitals and the percentage of patients they referred to local full-service community hospitals for the same condition;
“(C) to compare the quality of care furnished in physician-owned specialty hospitals and in local full-service community hospitals for similar conditions and patient satisfaction with such care; and

“(D) to assess the differences in uncompensated care, as defined by the Secretary, between the specialty hospital and local full-service community hospitals, and the relative value of any tax exemption available to such hospitals.

“(3) REPORTS.—Not later than 15 months after the date of the enactment of this Act (Dec. 8, 2003), the Commissioner and the Secretary, respectively, shall each submit to Congress a report on the studies conducted under paragraphs (1) and (2), respectively, and shall include any recommendations for legislation or administrative changes.

GAO STUDY OF OWNERSHIP BY REFERRING PHYSICIANS


STATISTICAL SUMMARY OF COMPARATIVE UTILIZATION


§1395oo. Provider Reimbursement Review Board

(a) Establishment

Any provider of services which has filed a required cost report within the time specified in regulations may obtain a hearing with respect to such cost report by a Provider Reimbursement Review Board (hereinafter referred to as the “Board”) which shall be established by the Secretary in accordance with subsection (b) of this section and (except as provided in subsection (g)(2) of this section) any hospital which receives payments in amounts computed under subsection (b) or (d) of section 1395ww of this title and which has submitted such reports within such time as the Secretary may require in order to make payment under such section may obtain a hearing with respect to such payment by the Board, if—

(1) such provider—

(A) is dissatisfied with a final determination of the organization serving as its fiscal intermediary pursuant to section 1395f of this title as to the amount of total program reimbursement due the provider for the items and services furnished to individuals for which payment may be made under this subchapter for the period covered by such report, or

(ii) is dissatisfied with a final determination of the Secretary as to the amount of the payment under subsection (b) or (d) of section 1395ww of this title,

(B) has not received such final determination from such intermediary on a timely basis after filing such report, where such report complied with the rules and regulations of the Secretary relating to such report, or

(C) has not received such final determination on a timely basis after filing a supplementary cost report, where such cost report did not so comply and such supplementary cost report did so comply,

(2) the amount in controversy is $10,000 or more, and

(3) such provider files a request for a hearing within 180 days after notice of the intermediary’s final determination under paragraph (1)(A)(i), or with respect to appeals under paragraph (1)(A)(ii), 180 days after notice of the Secretary’s final determination, or with respect to appeals pursuant to paragraph (1)(B) or (C), within 180 days after notice of such determination would have been received if such determination had been made on a timely basis.

(b) Appeals by groups

The provisions of subsection (a) of this section shall apply to any group of providers of services if each provider of services in such group would, upon the filing of an appeal (but without regard to the $10,000 limitation), be entitled to such a hearing, but only if the matters in controversy involve a common question of fact or interpretation of law or regulations and the amount in controversy is, in the aggregate, $50,000 or more.

c) Right to counsel; rules of evidence

At such hearing, the provider of services shall have the right to be represented by counsel, to introduce evidence, and to examine and cross-examine witnesses. Evidence may be received at such hearing even though inadmissible under rules of evidence applicable to court procedure.

(d) Decisions of Board

A decision by the Board shall be based upon the record made at such hearing, which shall include the evidence considered by the intermediary and such other evidence as may be obtained or received by the Board, and shall be supported by substantial evidence when the record is viewed as a whole. The Board shall have the power to affirm, modify, or reverse a final determination of the fiscal intermediary with respect to a cost report and to make any other revisions on matters covered by such cost report (including revisions adverse to the provider of services) even though such matters were not considered by the intermediary in making such final determination.

e) Rules and regulations

The Board shall have full power and authority to make rules and establish procedures, not inconsistent with the provisions of this subchapter or regulations of the Secretary, which are necessary or appropriate to carry out the provisions of this section. In the course of any hearing the Board may administer oaths and affirmations. The provisions of subsections (d) and (e) of section 405 of this title with respect to subpoenas shall apply to the Board to the same extent as
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they apply to the Secretary with respect to sub-
chapter II of this chapter.

(f) Finality of decision; judicial review; deter-
minations of Board authority; jurisdiction; venue; interest on amount in controversy

(1) A decision of the Board shall be final unless the Secretary, on his own motion, and within 60 days after the provider of services is notified of the Board's decision, reverses, affirms, or modifies the Board's decision. Providers shall have the right to obtain judicial review of any final decision of the Board, or of any reversal, affirmation, or modification by the Secretary, by a civil action commenced within 60 days of the date on which notice of any final decision by the Board or of any reversal, affirmation, or modification by the Secretary is received. Providers shall also have the right to obtain judicial review of any action of the fiscal intermediary which involves a question of law or regulations relevant to the matters in controversy whenever the Board determines (on its own motion or at the request of a provider of services as described in the following sentence) that it is without authority to decide the question, by a civil action commenced within sixty days of the date on which notification of such determination is received. If a provider of services may obtain a hearing under subsection (a) of this section and has filed a request for such a hearing, such provider may file a request for a determination by the Board of its authority to decide the question of law or regulations relevant to the matters in controversy (accompanied by such documents and materials as the Board shall require for purposes of rendering such determination). The Board shall render such determination in writing within thirty days after the Board receives the request and such accompanying documents and materials, and the determination shall be considered a final decision and not subject to review by the Secretary. If the Board fails to render such determination within such period, the provider may bring a civil action (within sixty days of the end of such period) with respect to the matter in controversy contained in such request for a hearing. Such action shall be brought in the district court of the United States for the judicial district in which the provider is located (or, in an action brought jointly by several providers, the judicial district in which the greatest number of such providers are located) or in the District Court for the District of Columbia and shall be tried pursuant to the applicable provisions under chapter 7 of title 5 notwithstanding any other provisions in section 405 of this title. Any appeal to the Board or action for judicial review by providers which are under common ownership or control or which have obtained a hearing under subsection (b) of this section must be brought by such providers as a group with respect to any matter involving an issue common to such providers.

(2) Where a provider seeks judicial review pursuant to paragraph (1), the amount in controversy shall be subject to annual interest beginning on the first day of the first month beginning after the 180-day period as determined pursuant to subsection (a)(3) of this section and equal to the rate of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund for the month in which the civil action authorized under paragraph (1) is commenced, to be awarded by the reviewing court in favor of the prevailing party.

(3) No interest awarded pursuant to paragraph (2) shall be deemed income or cost for the purposes of determining reimbursement due providers under this chapter.

(g) Certain findings not reviewable

(1) The finding of a fiscal intermediary that no payment may be made under this subchapter for any expenses incurred for items or services furnished to an individual because such items or services are listed in section 1395y of this title shall not be reviewed by the Board or by any court pursuant to an action brought under subsection (f) of this section.

(2) The determinations and other decisions described in section 1395ww(d)(7) of this title shall not be reviewed by the Board or by any court pursuant to an action brought under subsection (f) of this section or otherwise.

(h) Composition and compensation

The Board shall be composed of five members appointed by the Secretary without regard to the provisions of title 5 governing appointments in the competitive services. Two of such members shall be representative of providers of services. All of the members of the Board shall be persons knowledgeable in the field of payment of providers of services, and at least one of them shall be a certified public accountant. Members of the Board shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the rate specified (at the time the service involved is rendered by such members) for grade GS-18 in section 5332 of title 5. The term of office of the Board for shorter terms to the extent necessary to permit staggered terms of office.

(i) Technical and clerical assistance

The Board is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Board such secretarial, clerical, and other assistance as the Board may require to carry out its functions.

(j) “Provider of services” defined

In this section, the term “provider of services” includes a rural health clinic and a Federally qualified health center.

1993—Subsec. (f)(2). Pub. L. 103–66 substituted “the rate of interest on obligations issued for purchase by
the Federal Hospital Insurance Trust Fund for the month in which for "the rate of return on equity capital established by regulation pursuant to section 1395x of this title and in effect at the time"


1989—Subsec. (c). Pub. L. 98–369, § 2354(b)(39), substituted "inadmissible" for "inadmissable".

Subsec. (e). Pub. L. 98–369, § 2354(b)(40), substituted "and (e)" for "(e), and (f)".

Subsec. (f)(1). Pub. L. 98–369, § 2351(a)(1), substituted "notification of such determination is received" for "such determination is rendered" in third sentence.

Pub. L. 98–369, § 2351(b)(1), inserted "or which have obtained a hearing under subsection (b) of this section" after "common ownership or control" in last sentence.

1983—Subsec. (a). Pub. L. 98–21, § 602(h)(2), inserted "(or, in an action brought jointly by several providers, the judicial district in which the greatest number of such providers are located)" after "the judicial district in which the provider is located", and "Any appeal to the Board or action for judicial review by providers which are under common ownership or control must be brought by such providers as a group with respect to any matter involving an issue common to such providers."

Subsec. (g). Pub. L. 98–21, § 602(b)(3), designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 98–21, § 602(h)(4), substituted "payment of providers for services" for "cost reimbursement".

1980—Subsec. (f)(1). Pub. L. 96–499 inserted provision empowering providers of services to obtain judicial review of any action of a fiscal intermediary involving a question of law or regulations relevant to matters in controversy whenever Board determined that it was without authority to decide such matters in controversy.

1974—Subsec. (f). Pub. L. 93–484 redesignated existing provisions as par. (1), inserted provisions authorizing judicial review for providers of final decisions of Board and judicial review of any affiance by Secretary, and added pars. (2) and (3).

Effective Date of 1993 Amendment

Effective Date of 1990 Amendment

Amendment by section 4161(b)(4) of Pub. L. 101–508 applicable to cost reports for periods beginning on or after Oct. 1, 1991, see section 4161(b)(5) of Pub. L. 101–508, set out as a note under section 1395x of this title.

Effective Date of 1984 Amendment
Section 2351(a)(2) of Pub. L. 98–369 provided that: "The amendment made by paragraph (1) [amending this section] shall be effective with respect to any civil action commenced on or after the date of the enactment of this Act [July 18, 1984]."
(1) a determination is made that, by reason of section 1395y(a)(1) or (9) of this title or by reason of a coverage denial described in subsection (g) of this section, payment may not be made under part A or part B of this subchapter for any expenses incurred for items or services furnished an individual by a provider of services or by another person pursuant to an assignment under section 1395u(b)(3)(B)(ii) of this title, and

(2) both such individual and such provider of services or such other person, as the case may be, did not know, and could not reasonably have been expected to know, that payment would not be made for such items or services under such part A or part B of this subchapter, then to the extent permitted by this subchapter, payment shall, notwithstanding such determination, be made for such items or services (and for such period of time as the Secretary finds will carry out the objectives of this subchapter), as though section 1395y(a)(1) and section 1395y(a)(9) of this title did not apply and as though the coverage denial described in subsection (g) of this section had not occurred. In each such case the Secretary shall notify both such individual and such provider of services or such other person, as the case may be, of the conditions under which payment for such items or services was made and in the case of comparable situations arising thereafter with respect to such individual or such provider or such other person, each shall, by reason of such notice (or similar notices provided before the enactment of this section), be deemed to have knowledge that payment cannot be made for such items or services or reasonably comparable items or services. Any provider or other person furnishing items or services for which payment may not be made by reason of section 1395y(a)(1) or (9) of this title or by reason of a coverage denial described in subsection (g) of this section shall be deemed to have knowledge that payment cannot be made for such items or services if the claim relating to such items or services involves a case, provider or other person furnishing services, procedure, or test, with respect to which such provider or other person has been notified by the Secretary (including notification by a quality improvement organization) that a pattern of inappropriate utilization has occurred in the past, and such provider or other person has been allowed a reasonable time to correct such inappropriate utilization.

(b) Knowledge of person or provider that payment could not be made; indemnification of individual

In any case in which the provisions of paragraphs (1) and (2) of subsection (a) of this section are met, except that such provider or such other person, as the case may be, knew, or could be expected to know, that payment for such services or items could not be made under such part A or part B of this subchapter, then the Secretary shall, upon proper application filed within such time as may be prescribed in regulations, indemnify the individual (referred to in such paragraphs) for any payments received from such individual by such provider or such other person, as the case may be, for such items or services.

Any payments made by the Secretary as indemnification shall be deemed to have been made to such provider or such other person, as the case may be, and shall be treated as overpayments, recoverable from such provider or such other person, as the case may be, under applicable provisions of law. In each such case the Secretary shall notify such individual of the conditions under which indemnification is made and in the case of comparable situations arising thereafter with respect to such individual, he shall, by reason of such notice (or similar notices provided before the enactment of this section), be deemed to have knowledge that payment cannot be made for such items or services. No item or service for which an individual is indemnified under this subsection shall be taken into account in applying any limitation on the amount of items and services for which payment may be made to or on behalf of the individual under this subchapter.

(c) Knowledge of both provider and individual to whom items or services were furnished that payment could not be made

No payments shall be made under this subchapter in any cases in which the provisions of paragraph (1) of subsection (a) of this section are met, but both the individual to whom the items or services were furnished and the provider of service or other person, as the case may be, who furnished the items or services knew, or could reasonably have been expected to know, that payment could not be made for items or services under part A or part B of this subchapter by reason of a coverage denial described in subsection (g) of this title or by reason of a coverage denial described in subsection (g) of this section.

(d) Exercise of rights

In any case arising under subsection (b) of this section (but without regard to whether payments have been made by the individual to the provider or other person) or subsection (c) of this section, the provider or other person shall have the same rights that an individual has under sections 1395ff(b) and 1395u(b)(3)(C) of this title (as may be applicable) when the amount of benefit or payments is in controversy, except that such rights may, under prescribed regulations, be exercised by such provider or other person only after the Secretary determines that the individual will not exercise such rights under such sections.

(e) Payment where beneficiary not at fault

Where payment for inpatient hospital services or extended care services may not be made under part A of this subchapter on behalf of an individual entitled to benefits under such part solely because of an unintentional, inadvertent, or erroneous action with respect to the transfer of such individual from a hospital or skilled nursing facility that meets the requirements of section 1395x(e) or (j) of this title by such a provider of services acting in good faith in accordance with the advice of a utilization review committee, quality improvement organization, other fiscal intermediary, or on the basis of a clearly erroneous administrative decision by a provider of services, the Secretary shall take such action with respect to the payment of such benefits as
he determines may be necessary to correct the effects of such unintentional, inadvertent, or erroneous action.

(f) Presumption with respect to coverage denial; rebuttal; requirements; “fiscal intermediary” defined

(1) A home health agency which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) of this section.

(2) The presumption of paragraph (1) with respect to specific services may be rebutted by actual or imputed knowledge of the facts described in subsection (a)(2) of this section, including any of the following:

(A) Notice by the fiscal intermediary of the fact that payment may not be made under this subchapter with respect to the services.

(B) It is clear and obvious that the provider should have known at the time the services were furnished that they were excluded from coverage.

(3) The requirements of this paragraph are as follows:

(A) The agency complies with requirements of the Secretary under this subchapter respecting timely submittal of bills for payment and medical documentation.

(B) The agency program has reasonable procedures to notify promptly each patient (and the patient’s physician) where it is determined that a patient is being or will be furnished items or services which are excluded from coverage under this subchapter.

(4)(A) The requirement of this paragraph is that, on the basis of bills submitted by a home health agency during the previous quarter, the rate of denial of bills for the agency by reason of a coverage denial described in subsection (g) of this section does not exceed 2.5 percent, computed based on visits for home health services billed.

(B) For purposes of determining the rate of denial of bills for a home health agency under subparagraph (A), a bill shall not be considered to be denied until the expiration of the 60-day period that begins on the date such bill is denied by the fiscal intermediary, or, with respect to such a denial for which the agency requests reconsideration, until the fiscal intermediary issues a decision denying payment for such bill.

(5) In this subsection, the term “fiscal intermediary” means, with respect to a home health agency, an agency or organization with an agreement under section 1395h of this title with respect to the agency.

(6) The Secretary shall monitor the proportion of denied bills submitted by home health agencies for which reconsideration is requested, and shall notify Congress if the proportion of denials reversed upon reconsideration increases significantly.

(g) Coverage denial defined

The coverage denial described in this subsection is—

(1) with respect to the provision of home health services to an individual, a failure to meet the requirements of section 1395x(a)(2)(C) of this title or section 1395m(a)(2)(A) of this title in that the individual—

(A) is or was not confined to his home, or

(B) does or did not need skilled nursing care on an intermittent basis; and

(2) with respect to the provision of hospice care to an individual, a determination that the individual is not terminally ill.

(h) Supplier responsibility for items furnished on assignment basis

If a supplier of medical equipment and supplies (as defined in section 1395m(j)(5) of this title)—

(1) furnishes an item or service to a beneficiary for which no payment may be made by reason of section 1395m(j)(1) of this title;

(2) furnishes an item or service to a beneficiary for which payment is denied in advance under section 1395m(a)(15) of this title; or

(3) furnishes an item or service to a beneficiary for which no payment may be made by reason of section 1395m(a)(17)(B) of this title, any expenses incurred for items and services furnished to an individual by such a supplier on an assignment-related basis shall be the responsibility of such supplier. The individual shall have no financial responsibility for such expenses and the supplier shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected from the individual for such items or services. The provisions of section 1395m(a)(18) of this title shall apply to refunds required under the previous sentence in the same manner as such provisions apply to refunds under such section.


AMENDMENTS


1997—Subsec. (g). Pub. L. 105–33 substituted “subsection is—” for “subsection is,” redesignated remaining text as par. (1) and former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), realigned margins, substituted “and” for period at end, and added subpar. (2).


1989—Subsec. (f)(1). Pub. L. 101–239, §6214(a)(1), struck out “with respect to any coverage denial described in subsection (g) of this section” before period at end.


1987—Subsec. (h). Pub. L. 100–203 struck out “; subject to the deductible and coinsurance provisions of this subchapter,” after “(referred to in such paragraphs)”.

Subsec. (i)(1). Pub. L. 100–203 substituted “the individual is not terminally ill.” for “the individual is terminally ill.”

Subsec. (i)(2). Pub. L. 100–203 inserted “is or was not confined to his home,” before “(or)”. 1986—Pub. L. 99–509 substituted “fiscal intermediary” for “utilization and quality control peer review”.
and inserted at end "No item or service for which an individual is indemnified under this subsection shall be taken into account in applying any limitation on the amount of items and services for which payment may be made to or on behalf of the individual under this subchapter.'"

1986—Subsec. (a). Pub. L. 99–509, § 9305(g)(1)(A)–(C), inserted "or by reason of a coverage denial described in subsection (g) of this section".

Subsec. (b). Pub. L. 99–509, § 9305(g)(1)(D), inserted "or by reason of a coverage denial described in subsection (g) of this section".

Subsec. (c). Pub. L. 99–509, § 9305(g)(1)(D), inserted "or by reason of a coverage denial described in subsection (g) of this section".

Subsec. (d). Pub. L. 99–509, § 9341(a)(3), substituted "sections 1395ff(b) and 1395u(b)(3)(C) of this title (as may be applicable)" for "section 1395ff(b) of this title (when the determination is under part A) or section 1395u(b)(3)(C) of this title (when the determination is under part B)".

Subsecs. (f) and (g). Pub. L. 99–509, § 9305(g)(1)(E), added subsec. (f) and (g).

1982—Subsec. (a). Pub. L. 97–248, § 145, inserted provisions relating to imputed knowledge to provider or other person furnishing items or services for which payment may not be made that payment may not be made if the provider or other person has been notified that a pattern of inappropriate utilization has occurred in the past and there has been a reasonable time for correction of such utilization.

Subsec. (e). Pub. L. 97–248, § 148(e), substituted "quality control and peer review organization" for "professional standards review organization".


Effective Date of 2011 Amendment
Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–40, set out as a note under section 1395d of this title.

Effective Date of 1997 Amendment
Amendment by Pub. L. 105–33 applicable to contracts entered into or renewed on or after Jan. 1, 2002, see section 956(b) of Pub. L. 96–499, set out as an amendment made by section 956(b) of Pub. L. 96–499.

Effective Date of 1994 Amendment
Amendment by Pub. L. 103–432 applicable to items or services furnished on or after Jan. 1, 1994, see section 1320c of this title.

Effective Date of 1989 Amendment
Section 621(c) of Pub. L. 101–239 provided that: "The amendments made by subsection (a) [amending this section] shall apply to determinations for quarters beginning on or after the date of the enactment of this Act [Dec. 19, 1989]."

Effective Date of 1987 Amendment
Amendment by Pub. L. 100–203 applicable to items or services furnished on or after Jan. 1, 1988, see section 149 of Pub. L. 97–248, set out as a note under section 1320c–3 of this title.

Effective Date of 1986 Amendment

Amendment by section 9341(a)(3) of Pub. L. 99–509 applicable to items and services furnished on or after Jan. 1, 1987, see section 9341(b) of Pub. L. 99–509, set out as a note under section 1395ff of this title.

Effective Date of 1982 Amendment
Amendment by Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 140 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

Effective Date of 1980 Amendment
Section 956(b) of Pub. L. 96–499 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1981."

Effective Date
Section 213(b) of Pub. L. 92–603 provided that: "The amendments made by this section [enacting this section] shall be effective with respect to claims under part A or part B of title XVIII of the Social Security Act [part A or part B of this subchapter], filed with respect to items or services furnished after the date of the enactment of this Act [Oct. 30, 1972]."

Pub. L. 108–173, title IX, § 938(c), Dec. 8, 2003, 117 Stat. 2415, provided that:
"(1) DATA COLLECTION.—The Secretary [of Health and Human Services] shall establish a program for the collection of information on the instances in which an advance beneficiary notice (as defined in paragraph (5)) has been provided and on instances in which a beneficiary indicates on such a notice that the beneficiary does not intend to seek to have the item or service that is the subject of the notice furnished.
"(2) OUTREACH AND EDUCATION.—The Secretary shall establish a program of outreach and education for beneficiaries and providers of services and other persons on the appropriate use of advance beneficiary notices and coverage policies under the medicare program.
"(3) GAO REPORT ON USE OF ADVANCE BENEFICIARY NOTICES.—Not later than 18 months after the date on which section 1869(h) of the Social Security Act [section 1395ff(h) of this title] (as added by subsection (a)) takes effect, the Comptroller General of the United States shall submit to Congress a report on the use of advance beneficiary notices under title XVIII of such Act [this subchapter]. Such report shall include information concerning the providers of services and other persons that have provided such notices and the response of beneficiaries to such notices.
"(4) GAO REPORT ON USE OF PRIOR DETERMINATION PROCESSES.—Not later than 30 months after the date on which section 1869(h) of the Social Security Act [section 1395ff(h) of this title] (as added by subsection (a)) takes effect, the Comptroller General of the United States shall submit to Congress a report on the use of the prior determination process under such section. Such report shall include—
"(A) information concerning—
"(i) the number and types of procedures for which a prior determination has been sought;
"(ii) determinations made under the process;
"(iii) the percentage of beneficiaries prevailing;
"(iv) in those cases in which the beneficiaries do not prevail, the reasons why such beneficiaries did not prevail; and
"(v) changes in receipt of services resulting from the application of such process;
"(B) an evaluation of whether the process was useful for physicians (and other suppliers and beneficiaries, whether it was timely, and whether the amount of information required was burdensome to physicians and beneficiaries; and
"(C) recommendations for improvements or continuation of such process.
"(5) ADVANCE BENEFICIARY NOTICE DEFINED.—In this subsection, the term 'advance beneficiary notice'
means a written notice provided under section 1879(a) of the Social Security Act (42 U.S.C. 1395pp(a)) to an individual entitled to benefits under part A or enrolled under part B of title XVIII of such Act (part A and part B of this subchapter) before items or services are furnished under such part in cases where a provider of services or other person that would furnish the item or service believes that payment will not be made for some or all of such items or services under such title [this subchapter].”

REPORTS TO CONGRESS ON DENIALS OF BILLS FOR PAYMENT

Section 9305(g)(2) of Pub. L. 99–509 directed Secretary of Health and Human Services to report to Congress annually in March of 1987 and 1988 information on frequency and distribution (by type of provider) of denials of bills for payment under this subchapter for extended care services, home health services, and hospice care, by reason of section 1395q(a)(1) or (9) of this title, and coverage denials described in subsec. (g) of this section, and such other information as appropriate to evaluate the appropriateness of any percentage standards established for the granting of favorable presumptions with respect to such denials.

§ 1395qq. Indian Health Service facilities

(a) Eligibility for payments; conditions and requirements

A hospital or skilled nursing facility of the Indian Health Service, whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 1603 of title 25), shall be eligible for payments under this subchapter, notwithstanding sections 1395f(c) and 1395n(d) of this title, if and for so long as it meets all of the conditions and requirements for such payments which are applicable generally to hospitals or skilled nursing facilities (as the case may be) under this subchapter.

(b) Eligibility based on submission of plan to achieve compliance with conditions and requirements; twelve-month period

Notwithstanding subsection (a) of this section, a hospital or skilled nursing facility of the Indian Health Service which does not meet all of the conditions and requirements of this subchapter which are applicable generally to hospitals or skilled nursing facilities (as the case may be), but which submits to the Secretary within six months after September 30, 1976, an acceptable plan for achieving compliance with such conditions and requirements, shall be deemed to meet such conditions and requirements (and to be eligible for payments under this subchapter), without regard to the extent of its actual compliance with such conditions and requirements, during the first 12 months after the month in which such plan is submitted.

(c) Payments into special fund for improvements to achieve compliance with conditions and requirements; certification of compliance by Secretary

Notwithstanding any other provision of this subchapter, payments to which any hospital or skilled nursing facility of the Indian Health Service is entitled by reason of this section shall be placed in a special fund to be held by the Secretary and used by him (to such extent or in such amounts as are provided in appropriation Acts) exclusively for the purpose of making any improvements in the hospitals and skilled nursing facilities of such Service which may be necessary to achieve compliance with the applicable conditions and requirements of this subchapter.

The preceding sentence shall cease to apply when the Secretary determines and certifies that substantially all of the hospitals and skilled nursing facilities of such Service in the United States are in compliance with such conditions and requirements.

(d) Report by Secretary; status of facilities in complying with conditions and requirements

The annual report of the Secretary which is required by section 1671 of title 25 shall include (along with the matters specified in section 1643 of title 25) a detailed statement of the status of the hospitals and skilled nursing facilities of the Service in terms of their compliance with the applicable conditions and requirements of this subchapter and of the progress being made by such hospitals and facilities (under plans submitted under subsection (b) of this section and otherwise) toward the achievement of such compliance.

(e) Services provided by Indian Health Service, Indian tribe, or tribal organization

(1)(A) Notwithstanding section 1395n(d) of this title, subject to subparagraph (B), the Secretary shall make payment under part B of this subchapter to a hospital or an ambulatory care clinic (whether provider-based or freestanding) that is operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined for purposes of subsection (a) of this section) for services described in paragraph (2) (and for items and services furnished on or after January 1, 2005, all items and services for which payment may be made under part B of this subchapter) furnished in or at the direction of the hospital or clinic under the same situations, terms, and conditions as would apply if the services were furnished in or at the direction of such a hospital or clinic that was operated by such Service, tribe, or organization.

(B) Payment shall not be made for services under subparagraph (A) to the extent that payment is otherwise made for such services under this subchapter.

(2) The services described in this paragraph are the following:

(A) Services for which payment is made under section 1395w–4 of this title.

(B) Services furnished by a practitioner described in section 1395u(b)(18)(C) of this title for which payment under part B of this subchapter is made under a fee schedule.

(C) Services furnished by a physical therapist or occupational therapist as described in section 1395u(p)(1) of this title for which payment under part B of this subchapter is made under a fee schedule.

(3) Subsection (c) of this section shall not apply to payments made under this subsection.

(f) Cross reference

For provisions relating to the authority of certain Indian tribes, tribal organizations, and Alaska Native health organizations to elect to directly bill for, and receive payment for, health care services provided by a hospital or clinic of
such tribes or organizations and for which payment may be made under this subchapter, see section 1645 of title 25.1


REFERENCES IN TEXT

Section 1645 of title 25, referred to in subsec. (f), was amended generally by section 10221(a) of title X of Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 935, and, as so amended, no longer contains provisions relating to direct billing of medicare, medicaid, and other third party payors.

CODIFICATION

Pub. L. 111–148, § 10221(a), enacted into law S. 1790, One Hundred Eleventh Congress, as reported by the Committee on Indian Affairs of the Senate in Dec. 2009, “‘[e]xcept as provided in’ section 10221(b) of Pub. L. 111–148. Section 201(a) of S. 1790 would have amended this section but was stricken out by section 10221(b)(4) of Pub. L. 111–148.

AMENDMENTS

2010—Subsec. (e)(1)(A). Pub. L. 111–148, § 2902(a), substituted “on or after” for “during the 5-year period beginning on”.

2003—Subsec. (e)(1)(A). Pub. L. 108–173 inserted “(and for items and services furnished during the 5-year period beginning on January 1, 2005, all items and services for which payment may be made under part B of this subchapter)” after “(for services described in paragraph (2))”.


EFFECTIVE DATE OF 2010 AMENDMENT


EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(6) [title IV, § 432(a)] of Pub. L. 106–554 applicable to services furnished on or after July 1, 2001, see section 1(a)(6) [title IV, § 432(c)] of Pub. L. 106–554, set out as a note under section 1395rr of this title. Amendment by Pub. L. 106–417 effective Oct. 1, 2000, see section 3(c) of Pub. L. 106–417, set out as a note under section 1645 of Title 25, Indians.

MEDICARE PAYMENTS NOT CONSIDERED IN DETERMINING APPROPRIATIONS FOR INDIAN HEALTH CARE

Pub. L. 94–437, title IV, § 401(c), Sept. 30, 1976, 90 Stat. 1409, provided that any payments received for services provided to beneficiaries under this section were not to be considered in determining appropriations for health care and services to Indians, prior to the general amendment of section 401 of Pub. L. 94–437 by Pub. L. 102–573, title IV, § 401(a), Oct. 29, 1992, 106 Stat. 4565. Similar provisions are contained in section 401(a) of Pub. L. 94–437, which is classified to section 1641(a) of Title 25, Indians.

PREFERENCE IN SERVICES FOR INDIANS WITH MEDICARE COVERAGE NOT AUTHORIZED

Pub. L. 94–437, title IV, § 401(d), Sept. 30, 1976, 90 Stat. 1409, which provided that nothing in this section authorized the Secretary to provide services to an Indian beneficiary with coverage under this subchapter, in preference to an Indian beneficiary without such coverage, prior to the general amendment of section 401 of Pub. L. 94–437 by Pub. L. 102–573, title IV, § 401(a), Oct. 29, 1992, 106 Stat. 4565. Similar provisions are contained in section 401(b) of Pub. L. 94–437, which is classified to section 1641(b) of Title 25, Indians.

§ 1395rr. End stage renal disease program

(a) Type, duration, and scope of benefits

The benefits provided by parts A and B of this subchapter shall include benefits for individuals who have been determined to have end stage renal disease as provided in section 426–1 of this title, and benefits for kidney donors as provided in subsection (d) of this section. Notwithstanding any other provision of this subchapter, the type, duration, and scope of the benefits provided by parts A and B of this subchapter with respect to individuals who have been determined to have end stage renal disease and who are entitled to such benefits without regard to section 426–1 of this title shall in no case be less than the type, duration, and scope of the benefits so provided for individuals entitled to such benefits solely by reason of that section.

(b) Payments with respect to services; dialysis; regulations; physicians’ services; target reimbursement rates; home dialysis supplies and equipment; self-care home dialysis support services; self-care dialysis units; hepatitis B vaccine

(1) Payments under this subchapter with respect to services, in addition to services for which payment would otherwise be made under this subchapter, furnished to individuals who have been determined to have end stage renal disease shall include (A) payments on behalf of such individuals to providers of services and renal dialysis facilities which meet such requirements as the Secretary shall by regulation prescribe for institutional dialysis services and supplies (including self-dialysis services in a self-care dialysis unit maintained by the provider or facility), transplantation services, self-care home dialysis support services which are furnished by the provider or facility, and routine professional services performed by a physician during a maintenance dialysis episode if payments for his other professional services furnished to an individual who has end stage renal disease are made on the basis specified in paragraph (3)(A) of this subsection, (B) payments to or on behalf of such individuals for home dialysis supplies and equipment, and (C) payments to a supplier of home dialysis supplies and equipment that is not a provider of services, a renal dialysis facility, or a physician for self-administered erythropoietin as described in section

1 See References in Text note below.
1395x(s)(2)(P) of this title if the Secretary finds that the patient receiving such drug from such a supplier can safely and effectively administer the drug (in accordance with the applicable methods and standards established by the Secretary pursuant to such section). The requirements prescribed by the Secretary under subparagraph (A) shall include requirements for a minimum utilization rate for transplantations.

2)(A) With respect to payments for dialysis services furnished by providers of services and renal dialysis facilities to individuals determined to have end stage renal disease for which payments may be made under part B of this subchapter, such payments (unless otherwise provided in this section) shall be equal to 80 percent of the amounts determined in accordance with subparagraph (B) and with respect to payments for services for which payments may be made under part A of this subchapter, the amounts of such payments (which amounts shall not exceed, in respect to costs in procuring organs attributable to payments made to an organ procurement agency or histocompatibility laboratory, the costs incurred by that agency or laboratory) shall be determined in accordance with section 1395x(v) of this title or section 1395ww of this title (if applicable). Payments shall be made to a renal dialysis facility only if it agrees to accept such payments as payment in full for covered services, except for payment by the individual of 20 percent of the estimated amounts for such services calculated on the basis established by the Secretary under subparagraph (B) and the deductible amount imposed by section 1395(b) of this title.

(B) The Secretary shall prescribe in regulations any methods and procedures to (i) determine the costs incurred by providers of services and renal dialysis facilities in furnishing covered services to individuals determined to have end stage renal disease, and (ii) determine, on a cost-related basis or other economical and equitable basis (including any basis authorized under section 1395x(v) of this title) and consistent with any regulations promulgated under paragraph (7), the amounts of payments to be made for part B services furnished by such providers and facilities to such individuals.  

(C) Such regulations, in the case of services furnished by proprietary providers and facilities (other than hospital outpatient departments) may include, if the Secretary finds it feasible and appropriate, provision for recognition of a reasonable rate of return on equity capital, providing such rate of return does not exceed the rate of return stipulated in section 1395x(v)(1)(B) of this title.

(D) For purposes of section 1395w of this title, a renal dialysis facility shall be treated as a provider of services.

3) With respect to payments for physicians’ services furnished to individuals determined to have end stage renal disease, the Secretary shall pay 80 percent of the amounts calculated for such services—

(A) on a reasonable charge basis (but may, in such case, make payment on the basis of the prevailing charges of other physicians for comparable services or, for services furnished on or after January 1, 1992, on the basis described in section 1395w of this title) except that payment may not be made under this subparagraph for routine services furnished during a maintenance dialysis episode, or

(B) on a comprehensive monthly fee or other basis (which effectively encourages the efficient delivery of dialysis services and provides incentives for the increased use of home dialysis) for an aggregate of services provided over a period of time (as defined in regulations).

4)(A) Pursuant to agreements with approved providers of services and renal dialysis facilities, the Secretary may make payments to such providers and facilities for the cost of home dialysis supplies and equipment and self-care home dialysis support services furnished to patients whose self-care home dialysis is under the direct supervision of such provider or facility, on the basis of a target reimbursement rate (as defined in paragraph (6) or on the basis of a method established under paragraph (7).

(B) The Secretary shall make payments to a supplier of home dialysis supplies and equipment furnished to a patient whose self-care home dialysis is under the direct supervision of an approved provider of services or renal dialysis facility only in accordance with a written agreement under which—

(i) the patient certifies that the supplier is the sole provider of such supplies and equipment to the patient,

(ii) the supplier agrees to receive payment for the cost of such supplies and equipment only on an assignment-related basis, and

(iii) the supplier certifies that it has entered into a written agreement with an approved provider of services or renal dialysis facility under which such provider or facility agrees to furnish to such patient all self-care home dialysis support services and all other necessary dialysis services and supplies, including institutional dialysis services and supplies and emergency services.

(5) An agreement under paragraph (4) shall require, in accordance with regulations prescribed by the Secretary, that the provider or facility will—

(A) assume full responsibility for directly obtaining or arranging for the provision of—

(i) such medically necessary dialysis equipment as is prescribed by the attending physician;

(ii) dialysis equipment maintenance and repair services;

(iii) the purchase and delivery of all necessary medical supplies; and

(iv) where necessary, the services of trained home dialysis aides;

(B) perform all such administrative functions and maintain such information and records as the Secretary may require to verify the transactions and arrangements described in subparagraph (A).

(C) submit such cost reports, data, and information as the Secretary may require with respect to the costs incurred for equipment, supplies, and services furnished to the facility’s home dialysis patient population; and

1 See References in Text note below.
(D) provide for full access for the Secretary to all such records, data, and information as he may require to perform his functions under this section.

(6) The Secretary shall establish, for each calendar year, commencing with January 1, 1979, a target reimbursement rate for home dialysis which shall be adjusted for regional variations in the cost of providing home dialysis. In establishing such a rate, the Secretary shall include—

(A) the Secretary's estimate of the cost of providing medically necessary home dialysis supplies and equipment;

(B) an allowance, in an amount determined by the Secretary, to cover the cost of providing personnel to aid in home dialysis; and

(C) an allowance, in an amount determined by the Secretary, to cover administrative costs and to provide an incentive for the efficient delivery of home dialysis;

but in no event (except as may be provided in regulations under paragraph (7)) shall such target rate exceed 75 percent of the national average payment, adjusted for regional variations, for maintenance dialysis services furnished in approved providers and facilities during the preceding fiscal year. Any such target rate so established shall be utilized, without renegotiation of the rate, throughout the calendar year for which it is established. During the last quarter of each calendar year, the Secretary shall establish a home dialysis target reimbursement rate for the next calendar year based on the most recent data available to the Secretary at the time. In establishing any rate under this paragraph, the Secretary may utilize a competitive-bid procedure, a prenegotiated rate procedure, or any other procedure (including methods established under paragraph (7)) which the Secretary determines is appropriate and feasible in order to carry out this paragraph in an effective and efficient manner.

(7) Subject to paragraph (12), the Secretary shall provide by regulation for a method (or methods) for determining prospectively the amounts of payments to be made for dialysis services furnished by providers of services and renal dialysis facilities to individuals in a facility and to such individuals at home. Such method (or methods) shall provide for the prospective determination of a rate (or rates) for each mode of care based on a single composite weighted formula (which takes into account the mix of patients who receive dialysis services at a facility or at home and the relative costs of providing such services in such settings) for hospital-based facilities and such a single composite weighted formula for other renal dialysis facilities, or based on such other method or combination of methods which differentiate between hospital-based facilities and other renal dialysis facilities and which the Secretary determines, after detailed analysis, will more effectively encourage the more efficient delivery of dialysis services and will provide greater incentives for increased use of home dialysis than through the single composite weighted formulas. The amount of a payment made under any method other than a method based on a single composite weighted formula may not exceed the amount (or, in the case of continuous cycling peritoneal dialysis, 130 percent of the amount) of the median payment that would have been made under the formula for hospital-based facilities. Subject to section 422(a)(2) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, the Secretary shall provide for such exceptions to such methods as may be warranted by unusual circumstances (including the special circumstances of sole facilities located in isolated, rural areas and of pediatric facilities). Each application for such an exception shall be deemed to be approved unless the Secretary disapproves it by not later than 60 working days after the date the application is filed. The Secretary may provide that such method will serve in lieu of any target reimbursement rate that would otherwise be established under paragraph (6). The Secretary shall reduce the amount of each composite rate payment under this paragraph for each treatment by 50 cents (subject to such adjustments as may be required to reflect modes of dialysis other than hemodialysis) and provide for payment of such amount to the organizations (designated under subsection (c)(1)(A) of this section) for such organizations' necessary and proper administrative costs incurred in carrying out the responsibilities described in subsection (c)(2) of this section. The Secretary shall provide that amounts paid under the previous sentence shall be distributed to the organizations described in subsection (c)(1)(A) of this section to ensure equitable treatment of all such network organizations. The Secretary in distributing any such payments to network organizations shall take into account—

(A) the geographic size of the network area;

(B) the number of providers of end stage renal disease services in the network area;

(C) the number of individuals who are entitled to end stage renal disease services in the network area; and

(D) the proportion of the aggregate administrative funds collected in the network area.

The Secretary shall increase the amount of each composite rate payment for dialysis services furnished during 2000 by 1.2 percent above such composite rate payment amounts for such services furnished on December 31, 1999, for such services furnished on or after January 1, 2001, and before January 1, 2005, by 2.4 percent above such composite rate payment amounts for such services furnished on December 31, 2000, and for such services furnished on or after January 1, 2005, by 1.6 percent above such composite rate payment amounts for such services furnished on December 31, 2004.

(8) For purposes of this subchapter, the term "home dialysis supplies and equipment" means medically necessary supplies and equipment (including supportive equipment) required by an individual suffering from end stage renal disease in connection with renal dialysis carried out in his home (as defined in regulations), including obtaining, installing, and maintaining such equipment.

(9) For purposes of this subchapter, the term "self-care home dialysis support services", to the extent permitted in regulation, means—

(A) periodic monitoring of the patient's home adaptation, including visits by qualified
provider or facility personnel (as defined in regulations), so long as this is done in accordance with a plan prepared and periodically reviewed by a professional team (as defined in regulations) including the individual’s physician;

(B) installation and maintenance of dialysis equipment;

(C) testing and appropriate treatment of the water; and

(D) such additional supportive services as the Secretary finds appropriate and desirable.

(10) For purposes of this subchapter, the term “self-care dialysis unit” means a renal dialysis facility or a distinct part of such facility or of a provider of services, which has been approved by the Secretary to make self-dialysis services, as defined by the Secretary in regulations, available to individuals who have been trained for self-dialysis. A self-care dialysis unit must, at a minimum, furnish the services, equipment and supplies needed for self-care dialysis, have patient-staff ratios which are appropriate to self-dialysis (allowing for such appropriate lesser degree of ongoing medical supervision and assistance of ancillary personnel than is required for full care maintenance dialysis), and meet such other requirements as the Secretary may prescribe with respect to the quality and cost-effectiveness of services.

(11) (A) Hepatitis B vaccine and its administration, when provided to a patient determined to have end stage renal disease, shall not be included as dialysis services for purposes of payment under any prospective payment amount or comprehensive fee established under this section. Payment for such vaccine and its administration shall be made separately in accordance with section 1395f of this title.

(B) Erythropoietin, when provided to a patient determined to have end stage renal disease, shall not be included as dialysis service for purposes of payment under any prospective payment amount or comprehensive fee established under this section, when provided to a patient determined to have end stage renal disease, shall not be included as dialysis service for purposes of payment under any prospective payment amount or comprehensive fee established under this section.

(C) In applying subparagraph (B)(ii) for 2005, such payment amounts under this subchapter for separately billed drugs and biologicals (including erythropoietin) and acquisition costs of such drugs and biologicals, as determined by the Inspector General reports to the Secretary as required by section 623(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003—

(1) beginning with 2005, for such drugs and biologicals for which a billing code exists prior to January 1, 2004; and

(2) beginning with 2007, for such drugs and biologicals for which a billing code does not exist prior to January 1, 2004, adjusted to 2005, or 2007, respectively, as determined to be appropriate by the Secretary.

(C)(i) In applying subparagraph (B)(ii) for 2005, such payment amounts under this subchapter shall be determined using the methodology specified in paragraph (13)(A)(i).

(ii) For 2006, the Secretary shall provide for an adjustment to the payments under clause (i) to reflect the difference between the payment amounts using the methodology under paragraph (13)(A)(i) and the payment amount determined using the methodology applied by the Secretary under paragraph (13)(A)(III) of such paragraph, as estimated by the Secretary.

(D) The Secretary shall adjust the payment rates under such system by a geographic index as the Secretary determines to be appropriate. If the Secretary applies a geographic index under this paragraph that differs from the index applied under paragraph (7) the Secretary shall phase-in the application of the index under this paragraph over a multiyear period.

(E)(i) Such system shall be designed to result in the same aggregate amount of expenditures for such services, as estimated by the Secretary, as would have been made for 2005 if this paragraph did not apply.

(ii) The adjustment made under subparagraph (B)(ii)(II) shall be done in a manner to result in
the same aggregate amount of expenditures after such adjustment as would otherwise have been made for such services for 2006 or 2007, respectively, as estimated by the Secretary, if this paragraph did not apply.

(F) Beginning with 2006, the Secretary shall annually increase the basic case-mix adjusted payment amounts established under this paragraph, by an amount determined by—

(i) applying the estimated growth in expenditures for drugs and biologicals (including erythropoietin) that are separately billable to the component of the basic case-mix adjusted system described in subparagraph (B)(ii); and

(ii) converting the amount determined in clause (i) to an increase applicable to the basic case-mix adjusted payment amounts established under subparagraph (B).

Except as provided in subparagraph (G), nothing in this paragraph or paragraph (14) shall be construed as providing for an update to the composite rate component of the basic case-mix adjusted payment amounts, the geographic adjustment factor, or the determination of the difference between medicare payment amounts and acquisition costs for separately billed drugs and biologicals (including erythropoietin) furnished in 2006 and subsequent years, such acquisition cost or the amount determined under section 1395w–3a of this title for the drug or biological, as the Secretary may specify.

(B) Drugs and biologicals (including erythropoietin) which were separately billed under this subchapter to a provider of services or a renal dialysis facility for renal dialysis services (as defined in subparagraph (B)) in lieu of any other payment (including a payment adjustment under paragraph (12)(B)(ii)) and for such services furnished pursuant to paragraph (4).

(ii) In implementing the system under this paragraph the Secretary shall ensure that the estimated total amount of payments under this subchapter for 2011 for renal dialysis services shall equal 98 percent of the estimated total amount of payments for renal dialysis services, including payments under paragraph (12)(B)(ii), that would have been made under this subchapter with respect to services furnished in 2011 if such system had not been implemented. In making the estimation under subclause (I), the Secretary shall use per patient utilization data from 2007, 2008, or 2009, whichever has the lowest per patient utilization.

(B) For purposes of this paragraph, the term “renal dialysis services” includes—

(i) items and services included in the composite rate for renal dialysis services as of December 31, 2010; and

(ii) erythropoiesis stimulating agents and any oral form of such agents that are furnished to individuals for the treatment of end stage renal disease;

(iii) other drugs and biologicals that are furnished to individuals for the treatment of end stage renal disease and for which payment was made separately under this subchapter, and any oral equivalent form of such drug or biological; and

(iv) diagnostic laboratory tests and other items and services not described in clause (i) that are furnished to individuals for the treatment of end stage renal disease.

Such term does not include vaccines.

(C) The system under this paragraph may provide for payment on the basis of services furnished during a week or month or such other appropriate unit of payment as the Secretary specifies.

(D) Such system—

(i) shall include a payment adjustment based on case mix that may take into account pa-
The Secretary shall take into consideration the unique treatment needs of children and young adults in establishing such system.

(E) Subject to clause (i), the Secretary shall provide for a four-year phase-in (in equal increments) of the payment amount under the payment system under this paragraph, with such payment amount being fully implemented for renal dialysis services furnished on or after January 1, 2014.

(ii) A provider of services or renal dialysis facility may make a one-time election to be excluded from the phase-in under clause (i) and be paid entirely based on the payment amount under the payment system that is applicable so that the estimated total amount of payments under this paragraph for years during which the phase-in under clause (i) is applicable shall equal the payment amount under the payment system under this paragraph had not been enacted:

(I) furnished to an individual for the treatment of end stage renal disease; and

(ii) included in subparagraph (B) for purposes of payment under this paragraph.

(c) Renal disease network areas; coordinating councils, executive committees, and medical review boards; national end stage renal disease medical information system; functions of network organizations

(I) The Secretary shall make an adjustment to the payments under this paragraph for years during which the phase-in under clause (i) is applicable so that the estimated total amount of payments under this paragraph, including payments under this subparagraph, shall equal the estimated total amount of payments that would otherwise occur under this paragraph without such phase-in.

(F) Subject to subclause (II) and clause (ii), beginning in 2012, the Secretary shall annually increase payment amounts established under this paragraph by an ESRD market basket percentage increase factor for a bundled payment system for renal dialysis services that reflects changes over time in the prices of an appropriate mix of goods and services included in renal dialysis services.

(ii) For 2012 and each subsequent year, after determining the increase factor described in subclause (I), the Secretary shall reduce such increase factor by the productivity adjustment described in section 1395ww(b)(3)(B)(xi)(II) of this title. The application of the preceding sentence may result in such increase factor being less than 0.0 for a year, and may result in payment rates under the payment system under this paragraph for a year being less than such payment rates for the preceding year.

(iii) May include such other payment adjustments as the Secretary determines appropriate, such as a payment adjustment—

(I) for pediatric providers of services and renal dialysis facilities;

(II) by a geographic index, such as the index referred to in paragraph (12)(D), as the Secretary determines to be appropriate; and

(III) for providers of services or renal dialysis facilities located in rural areas.

The Secretary may make a one-time election to be excluded from the phase-in under clause (i) and be paid entirely based on the payment amount under the payment system that is applicable so that the estimated total amount of payments under this paragraph for years during which the phase-in under clause (i) is applicable shall equal the payment amount under the payment system that is applicable so that the estimated total amount of payments under this paragraph had not been enacted:

I. The update under clause (i) shall not apply.

(II) Subject to clause (i)(II), the Secretary shall annually increase such composite rate by the ESRD market basket percentage increase factor described in clause (i)(I).

(I) There shall be no administrative or judicial review under section 1395ff of this title, section 1395oo of this title, or otherwise of the determination of payment amounts under subparagraph (A), the establishment of an appropriate unit of payment under subparagraph (C), the identification of renal dialysis services included in the bundled payment, the adjustments under subparagraph (D), the application of the phase-in under subparagraph (E), and the establishment of the market basket percentage increase factors under subparagraph (F).

(H) Erythropoiesis stimulating agents and other drugs and biologicals shall be treated as prescribed and dispensed or administered and available only under part B if they are—

(I) furnished to an individual for the treatment of end stage renal disease; and

(ii) included in subparagraph (B) for purposes of payment under this paragraph.
(ii)(1) In order to determine whether the Secretary should enter into, continue, or terminate an agreement with a network administrative organization designated for an area established under clause (i), the Secretary shall develop and publish in the Federal Register standards, criteria, and procedures to evaluate an applicant organization’s capabilities to perform (and, in the case of an organization with which such an agreement is in effect, actual performance of) the responsibilities described in paragraph (2). The Secretary shall evaluate each applicant based on quality and scope of services and may not accord more than 20 percent of the weight of the evaluation to the element of price.

(ii) (A) An agreement with a network administrative organization may be terminated by the Secretary only if he finds, after applying such standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If such an agreement is to be terminated, the Secretary shall select a successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition.

(B) At least one patient representative shall serve as a member of each network council and each medical review board.

(C) The Secretary shall, in regulations, prescribe requirements with respect to membership in network organizations by individuals (and the relatives of such individuals) (i) who have an ownership or control interest in a facility or provider which furnishes services referred to in section 1395x(e)(2)(F) of this title, or (ii) who have received remuneration from any such facility or provider in excess of such amounts as constitute reasonable compensation for services (including time and effort relative to the provision of professional and planning services) or goods supplied to such facility or provider; and such requirements shall provide for the definition, disclosure, and, to the maximum extent consistent with effective administration, prevention of potential or actual financial or professional conflicts of interest with respect to decisions concerning the appropriateness, nature, or site of patient care.

(2) The network organizations of each network shall be responsible, in addition to such other duties and functions as may be prescribed by the Secretary, for—

(A) encouraging, consistent with sound medical practice, the use of those treatment settings most compatible with the successful rehabilitation of the patient and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs;

(B) developing criteria and standards relating to the quality and appropriateness of patient care and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs; and network goals with respect to the placement of patients in self-care settings and undergoing or preparing for transplantation;

(C) evaluating the procedure by which facilities and providers in the network assess the appropriateness of patients for proposed treatment modalities;

(D) implementing a procedure for evaluating and resolving patient grievances;

(E) conducting on-site reviews of facilities and providers as necessary (as determined by a medical review board or the Secretary), utilizing standards of care established by the network organization to assure proper medical care;

(F) collecting, validating, and analyzing such data as are necessary to prepare the reports required by subparagraph (H) and to assure the maintenance of the registry established under paragraph (7);

(G) identifying facilities and providers that are not cooperating toward meeting network goals and assisting such facilities and providers in developing appropriate plans for correction and reporting to the Secretary on facilities and providers that are not providing appropriate medical care; and

(H) submitting an annual report to the Secretary on July 1 of each year which shall include a full statement of the network’s goals, data on the network’s performance in meeting its goals (including data on the comparative performance of facilities and providers with respect to the identification and placement of suitable candidates in self-care settings and transplantation and encouraging participation in vocational rehabilitation programs), identification of those facilities that have consistently failed to cooperate with network goals, and recommendations with respect to the need for additional or alternative services or facilities in the network in order to meet the network goals, including self-dialysis training, transplantation, and organ procurement facilities.

(3) Where the Secretary determines, on the basis of the data contained in the network’s annual report and such other relevant data as may be available to him, that a facility or provider has consistently failed to cooperate with network plans and goals or to follow the recommendations of the medical review board, he may terminate or withhold certification of such facility or provider (for purposes of payment for services furnished to individuals with end stage renal disease) until he determines that such provider or facility is making reasonable and appropriate efforts to cooperate with the network’s plans and goals. If the Secretary determines that the facility’s or provider’s failure to cooperate with network plans and goals does not jeopardize patient health or safety or justify termination of certification, he may instead, after reasonable notice to the provider or facility and to the public, impose such other sanctions as he determines to be appropriate, which sanctions may include denial of reimbursement with respect to some or all patients admitted to the facility after the date of notice to the facility or provider, and graduated reduction in reimbursement for all patients.

(4) The Secretary shall, in determining whether to certify additional facilities or expansion of existing facilities within a network, take into account the network’s goals and performance as reflected in the network’s annual report.

(5) The Secretary, after consultation with appropriate professional and planning organizat-
tions, shall provide such guidelines with respect to the planning and delivery of renal disease services as are necessary to assist network organizations in their development of their respective networks' goals to promote the optimum use of self-dialysis and transplantation by suitable candidates for such modalities.

(6) It is the intent of the Congress that the maximum practical number of patients who are medically, socially, and psychologically suitable candidates for home dialysis or transplantation should be so treated and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment. The Secretary shall consult with appropriate professional and network organizations and consider available evidence relating to developments in research, treatment methods, and technology for home dialysis and transplantation.

(7) The Secretary shall establish a national end stage renal disease registry the purpose of which shall be to assemble and analyze the data reported by network organizations, transplant centers, and other sources on all end stage renal disease patients in a manner that will permit—

(A) the preparation of the annual report to the Congress required under subsection (g) of this section;

(B) an identification of the economic impact, cost-effectiveness, and medical efficacy of alternative modalities of treatment;

(C) an evaluation with respect to the most appropriate allocation of resources for the treatment and research into the cause of end stage renal disease;

(D) the determination of patient mortality and morbidity rates, and trends in such rates, and other indices of quality of care; and

(E) such other analyses relating to the treatment and management of end stage renal disease as will assist the Congress in evaluating the end stage renal disease program under this section.

The Secretary shall provide for such coordination of data collection activities, and such consolidation of existing end stage renal disease data systems, as is necessary to achieve the purpose of such registry, shall determine the appropriate location of the registry, and shall provide for the appointment of a professional advisory group to assist the Secretary in the formulation of policies and procedures relevant to the management of such registry.

(8) The provisions of sections 1320c-6 and 1320c-11 of this title shall apply with respect to network administrative organizations (including such organizations as medical review boards) with which the Secretary has entered into agreements under this subsection.

(d) Donors of kidney for transplant surgery

Notwithstanding any provision to the contrary in section 426 of this title any individual who donates a kidney for transplant surgery shall be entitled to benefits under parts A and B of this subchapter with respect to such donation. Reimbursement for the reasonable expenses incurred by such an individual with respect to a kidney donation shall be made (with-
reimbursement for nurses and dialysis technicians to assist with home dialysis, and reimbursement to family members assisting with home dialysis.

(3) The Secretary shall conduct experiments to evaluate methods of dietary control for reducing the costs of the end stage renal disease program, including (without being limited to) the use of protein-controlled products to delay the necessity for, or reduce the frequency of, dialysis in the treatment of end stage renal disease.

(4) The Secretary shall conduct a comprehensive study of methods for increasing public participation in kidney donation and other organ donation programs.

(5) The Secretary shall conduct a full and complete study of the reimbursement of physicians for services furnished to patients with end stage renal disease under this subchapter, giving particular attention to the range of payments to physicians for such services, the average amounts of such payments, and the number of hours devoted to furnishing such services to patients at home, in renal disease facilities, in hospitals, and elsewhere.

(6) The Secretary shall conduct a study of the number of patients with end stage renal disease who are not eligible for benefits with respect to such disease under this subchapter (by reason of this section or otherwise), and of the economic impact of such noneligibility of such individuals. Such study shall include consideration of mechanisms whereby governmental and other health plans might be instituted or modified to permit the purchase of actuarially sound coverage for the costs of end stage renal disease.

(7)(A) The Secretary shall establish protocols on standards and conditions for the reuse of dialyzer filters for those facilities and providers which voluntarily elect to reuse such filters.

(B) With respect to dialysis services furnished on or after January 1, 1988 (or July 1, 1988, with respect to protocols that relate to the reuse of bloodlines), no dialysis facility may reuse dialysis supplies (other than dialyzer filters) unless the Secretary has established a protocol with respect to the reuse of such supplies and the facility follows the protocol so established.

(C) The Secretary shall incorporate protocols established under this paragraph, and the requirement of subparagraph (B), into the requirements for facilities prescribed under subsection (b)(1)(A) of this section and failure to follow such a protocol or requirement subjects such a facility to denial of participation in the program established under this section and to denial of payment for dialysis treatment not furnished in compliance with such a protocol or in violation of such requirement.

(8) The Secretary shall submit to the Congress no later than October 1, 1979, a full report on the experiments conducted under paragraphs (1), (2), (3), and (7), and the studies under paragraphs (4), (5), (6), and (7). Such report shall include any recommendations for legislative changes which the Secretary finds necessary or desirable as a result of such experiments and studies.

(g) Conditional approval of dialysis facilities; restriction-of-payments notice to public and facility; notice and hearing; judicial review

(1) In any case where the Secretary—

(A) finds that a renal dialysis facility is not in substantial compliance with requirements for such facilities prescribed under subsection (b)(1)(A) of this section,

(B) finds that the facility's deficiencies do not immediately jeopardize the health and safety of patients, and

(C) has given the facility a reasonable opportunity to correct its deficiencies,

the Secretary may, in lieu of terminating approval of the facility, determine that payment under this subchapter shall be made to the facility only for services furnished to individuals who were patients of the facility before the effective date of the notice.

(2) The Secretary's decision to restrict payments under this subsection shall be made effective only after such notice to the public and to the facility as may be prescribed in regulations, and shall remain in effect until (A) the Secretary finds that the facility is in substantial compliance with the requirements under subsection (b)(1)(A) of this section, or (B) the Secretary terminates the agreement under this subchapter with the facility.

(3) A facility dissatisfied with a determination by the Secretary under paragraph (1) shall be entitled to a hearing thereon by the Secretary (after reasonable notice) to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title, except that, in so applying such sections and in applying section 405(j) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(h) Quality incentives in the end-stage renal disease program

(1) Quality incentives

(A) In general

With respect to renal dialysis services (as defined in subsection (b)(14)(B)) furnished on or after January 1, 2012, in the case of a provider of services or a renal dialysis facility that does not meet the requirement described in subparagraph (B) with respect to the year, payments otherwise made to such provider or facility under the system under subsection (b)(14) for such services shall be reduced by up to 2.0 percent, as determined appropriate by the Secretary.

(B) Requirement

The requirement described in this subparagraph is that the provider or facility meets (or exceeds) the total performance score under paragraph (3) with respect to performance standards established by the Secretary with respect to measures specified in paragraph (2).

(C) No effect in subsequent years

The reduction under subparagraph (A) shall apply only with respect to the year involved, and the Secretary shall not take into account such reduction in computing the single payment amount under the system under paragraph (14) in a subsequent year.
(2) Measures

(A) In general

The measures specified under this paragraph with respect to the year involved shall include—

(i) measures on anemia management that reflect the labeling approved by the Food and Drug Administration for such management and measures on dialysis adequacy;

(ii) to the extent feasible, such measure (or measures) of patient satisfaction as the Secretary shall specify; and

(iii) such other measures as the Secretary specifies, including, to the extent feasible, measures on—

(I) iron management;

(II) bone mineral metabolism; and

(III) vascular access, including for maximizing the placement of arterial venous fistula.

(B) Use of endorsed measures

(i) In general

Subject to clause (ii), any measure specified by the Secretary under subparagraph (A)(iii) must have been endorsed by the entity with a contract under section 1395aaa(a) of this title.

(ii) Exception

In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1395aaa(a) of this title, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

(C) Updating measures

The Secretary shall establish a process for updating the measures specified under subparagraph (A) in consultation with interested parties.

(D) Consideration

In specifying measures under subparagraph (A), the Secretary shall consider the availability of measures that address the unique treatment needs of children and young adults with kidney failure.

(3) Performance scores

(A) Total performance score

(i) In general

Subject to clause (ii), the Secretary shall develop a methodology for assessing the total performance of each provider of services and renal dialysis facility based on performance standards with respect to the measures selected under paragraph (2) for a performance period established under paragraph (4)(D) (in this subsection referred to as the “total performance score”).

(ii) Application

For providers of services and renal dialysis facilities that do not meet (or exceed) the total performance score established by the Secretary, the Secretary shall ensure that the application of the methodology developed under paragraph (2) results in an appropriate distribution of reductions in payment under paragraph (1) among providers and facilities achieving different levels of total performance scores, with providers and facilities achieving the lowest total performance scores receiving the largest reduction in payment under paragraph (1)(A).

(iii) Weighting of measures

In calculating the total performance score, the Secretary shall weight the scores with respect to individual measures calculated under subparagraph (B) to reflect priorities for quality improvement, such as weighting scores to ensure that providers of services and renal dialysis facilities have strong incentives to meet or exceed anemia management and dialysis adequacy performance standards, as determined appropriate by the Secretary.

(B) Performance score with respect to individual measures

The Secretary shall also calculate separate performance scores for each measure, including for dialysis adequacy and anemia management.

(4) Performance standards

(A) Establishment

Subject to subparagraph (E), the Secretary shall establish performance standards with respect to measures selected under paragraph (2) for a performance period with respect to a year (as established under subparagraph (D)).

(B) Achievement and improvement

The performance standards established under subparagraph (A) shall include levels of achievement and improvement, as determined appropriate by the Secretary.

(C) Timing

The Secretary shall establish the performance standards under subparagraph (A) prior to the beginning of the performance period for the year involved.

(D) Performance period

The Secretary shall establish the performance period with respect to a year. Such performance period shall occur prior to the beginning of such year.

(E) Special rule

The Secretary shall initially use as the performance standard for the measures specified under paragraph (2)(A)(i) for a provider of services or a renal dialysis facility the lesser of—

(i) the performance of such provider or facility for such measures in the year selected by the Secretary under the second sentence of subsection (b)(14)(A)(ii); or

(ii) a performance standard based on the national performance rates for such measures in a period determined by the Secretary.
(5) Limitation on review
There shall be no administrative or judicial review under section 1395f of this title, section 1395oo of this title, or otherwise of the following:
(A) The determination of the amount of the payment reduction under paragraph (1).
(B) The establishment of the performance standards and the performance period under paragraph (4).
(C) The specification of measures under paragraph (2).
(D) The methodology developed under paragraph (3) that is used to calculate total performance scores and performance scores for individual measures.

(6) Public reporting

(A) In general
The Secretary shall establish procedures for making information regarding performance under this subsection available to the public, including—

(i) the total performance score achieved by the provider of services or renal dialysis facility under paragraph (3) and appropriate comparisons of providers of services and renal dialysis facilities to the national average with respect to such scores; and

(ii) the performance score achieved by the provider or facility with respect to individual measures.

(B) Opportunity to review
The procedures established under subparagraph (A) shall ensure that a provider of services and renal dialysis facility has the opportunity to review the information that is to be made public with respect to the provider or facility prior to such data being made public.

(C) Certificates

(i) In general
The Secretary shall provide certificates to providers of services and renal dialysis facilities who furnish renal dialysis services under this section to display in patient areas. The certificate shall indicate the total performance score achieved by the provider or facility under paragraph (3).

(ii) Display
Each facility or provider receiving a certificate under clause (i) shall prominently display the certificate at the provider or facility.

(D) Web-based list
The Secretary shall establish a list of providers of services and renal dialysis facilities who furnish renal dialysis services under this section that indicates the total performance score and the performance score for individual measures achieved by the provider and facility under paragraph (3). Such information shall be posted on the Internet website of the Centers for Medicare & Medicaid Services in an easily understandable format.


References in Text

Section 422(a)(2) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, referred to in subsec. (b)(7), is section 1(a)(6) (title IV, § 422(a)(2)) of Pub. L. 106-554, which is set out as a note under this section.

Section 623(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (b)(12)(B)(ii), is section 623(c) of Pub. L. 108-173, which is set out as a note under this section.

Subsection (g) of this section, referred to in subsec. (c)(7)(A), was repealed, and subsec. (b) was redesignated (g), by Pub. L. 103-66, title XIV, §§ 4036(d)(5)(C), (D), Dec. 20, 2006, 120 Stat. 4444.

Amendments
2010—Subsec. (b)(14)(P)(i). Pub. L. 111-148, § 3401(b)(1), designated existing provisions as subcl. (I), substituted “subject clause (II) and clause (II)’” for “clause (II)” and struck out “minus 1.0 percentage point” before period at end, and added subcl. (II).

Subsec. (b)(14)(P)(ii). Pub. L. 111-148, § 3401(b)(2), substituted “subject clause (i)(II), the” for “The” and “clause (i)(I)” for “clause (I) minus 1.0 percentage point”.

2009—Subsec. (b)(12)(A). Pub. L. 110-275, § 153(a)(2), (b)(8)(A)(i), substituted “subject clause (14), in lieu of payment” for “subject clause (14), in lieu of payment” and inserted at end “Under such system, the payment rate for dialysis services furnished on or after January 1, 2009, by providers of services shall be the same as the payment rate (computed without regard to this sentence) for such services furnished by renal dialysis facilities, and in applying the geographic index under subparagraph (D) to providers of services, the labor share shall be based on the labor share otherwise applied for renal dialysis facilities.”
Subsec. (b)(12)(F). Pub. L. 110–275, § 135(b)(3)(A)(ii), in concluding provisions, inserted “or paragraph (14)” after “this paragraph” and “or under the system paragraph (14)” after “subject paragraph (B)”.

Subsec. (b)(12)(G). Pub. L. 110–275, § 135(a)(1), inserted “and before January 1, 2009,” after “April 1, 2007,” in cl. (i) which read as follows: “Nothing in this paragraph, section 1395u(o) of this title, section 1395w–3a of this title, or section 1395w–3b of this title shall be construed as requiring or authorizing the bundling of payment for drugs and biologicals into the basic case-mix adjusted payment system under this paragraph.”


Subsec. (b)(12)(G). Pub. L. 109–432 amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: “Nothing in this paragraph, section 1395u(o) of this title, section 1395w–3a of this title, or section 1395w–3b of this title shall be construed as requiring or authorizing the bundling of payment for drugs and biologicals into the basic case-mix adjusted payment system under this paragraph for such services furnished on December 31, 2005.”


2005—Subsec. (b)(7). Pub. L. 108–173, § 623(a), (b)(2), (d)(2), in first sentence substituted “Subject to paragraph (12), the Secretary” for “The Secretary”, in fourth sentence substituted “Subject to section 422(a)(2) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, the Secretary” for “The Secretary”, and, in concluding provisions, struck out “and” before “for such services furnished on or after January 1, 2001,”, inserted “and before January 1, 2006,” after “July 1, 2005,”, and inserted “, and for such services furnished on or after January 1, 2005, by 1.6 percent above such composite rate component for services furnished on December 31, 2004” before period at end.


2000—Subsec. (b)(7). Pub. L. 106–554 substituted “for such services furnished on or after January 1, 2001, by 2.4 percent” for “for such services furnished on or after January 1, 2001, by 1.2 percent” in concluding provisions.


1994—Subsec. (g)(3). Pub. L. 103–296 inserted before period at end “, except that, in so applying such sections and in applying section 405(l) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.”


Subsec. (c)(1)(A). Pub. L. 99–509, §9335(d)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall establish, in accordance with such criteria as he finds appropriate, renal disease network areas, such network organizations (including a coordinating council, an executive committee of such council, and a medical review board, for each network area) as he finds necessary to accomplish such purpose, and a national end stage renal disease medical information system. The Secretary may by regulations provide for such coordination of network planning and quality assurance activities and such exchange of data and information among agencies with responsibilities for health planning and quality assurance activities under Federal law as is consistent with the economical and efficient administration of this section and with the responsibilities established for network organizations under this section.”

Subsec. (c)(1)(B). Pub. L. 99–509, §9335(e), amended subpar. (B) generally, substituting “network council and each medical review board” for “coordinating council and executive committee”.

Subsec. (c)(2)(A). Pub. L. 99–509, §9335(f)(1), inserted “and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs” before the semicolon.

Subsec. (c)(2)(B). Pub. L. 99–509, §9335(f)(2), inserted “and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs” before first semicolon.

Subsec. (c)(2)(D) to (F). Pub. L. 99–509, §9335(f)(5), added subpars. (D) to (F). Former subpars. (D) and (E) redesignated (G) and (H), respectively.

Subsec. (c)(2)(G). Pub. L. 99–509, §9335(f)(3), (5), redesignated former subpar. (D) as (G) and inserted “and reporting to the Secretary on facilities and providers that are not providing appropriate medical care” before the semicolon.

Subsec. (c)(2)(H). Pub. L. 99–509, §9335(f)(4), (5), redesignated former subpar. (E) as (H) and inserted “and encouraging participation in vocational rehabilitation programs” after “and transplantation”.

Subsec. (c)(3). Pub. L. 99–509, §9335(g), inserted “or to follow the recommendations of the medical review board” after “network plans and goals”.

Subsec. (c)(6). Pub. L. 99–509, §9335(h), inserted “and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment” at end of first sentence.


Subsec. (f)(7). Pub. L. 99–509, §9335(c)(1), amended par. (7) generally. Prior to amendment, par. (7) read as follows: “The Secretary shall conduct a study of the medical appropriateness and safety of cleaning and reuse of dialysis filters by home dialysis patients. In such cases in which the Secretary determines that such home cleaning and reuse of filters is a medically sound procedure, the Secretary shall conduct experiments to evaluate such home cleaning and reuse as a method of reducing the costs of the end stage renal disease program.”

1984—Subsecs. (a), (b)(1), (2)(A), (B), (3), (8). Pub. L. 98–369, §2354(b)(41), substituted “end stage” for “end-stage” wherever appearing.


Pub. L. 98–369, §2323(c), added par. (11).

Subsec. (c)(3). Pub. L. 98–369, §2352(a), inserted provision that if the Secretary determines that the facility’s or provider’s failure to cooperate with network plans and goals does not jeopardize patient health or safety or justify termination of certification, he may instead, after reasonable notice to the provider or facility and to the public, impose such other sanctions as he determines to be appropriate, which sanctions may include denial of reimbursement with respect to some or all patients admitted to the facility after the date of notice to the facility or provider, and graduated reduction in reimbursement for all patients.

1983—Subsec. (b)(2)(A). Pub. L. 98–21 inserted “or section 1395ww of this title (if applicable)” after “section 1395x(v) of this title”.

1981—Subsec. (b)(2)(B). Pub. L. 97–35, §2145(a)(1), (2), substituted “section 1395x(v) of this title” and consistent with any regulations promulgated under paragraph (7)” for “section 1395x(v) of this title” and struck out provisions that such regulations provide for the implementation of appropriate incentives for encouraging more efficient and effective delivery of services, and include a system for classifying comparable providers and facilities, and prospectively set rates or target rates with arrangements for sharing such reductions in costs as may be attributable to more efficient and effective delivery of services.

Subsec. (b)(3)(B). Pub. L. 97–35, §2145(a)(3), substituted “or other basis (which effectively encourages the efficient delivery of dialysis services and provides incentives for the increased use of home dialysis)” for “or other basis”.


Subsec. (b)(6). Pub. L. 97–35, §2145(a)(5), (6), substituted “except as may be provided in regulations under paragraph (7)” shall such target rate exceed 75 percent” and “any other procedure (including methods established under paragraph (7)) which the Secretary” shall such target rate exceed 75 percent” and “any other procedure which the Secretary” respectively.

Subsec. (b)(7) to (10). Pub. L. 97–35, §2145(a)(7), (8), added par. (7) and redesignated former pars. (7) to (9) as (8) to (10), respectively.

1980—Subsec. (e)(1). Pub. L. 96–499, §507(a)(1)–(3), substituted “services, renal dialysis facilities, and non-profit entities which the Secretary finds can furnish equipment economically and efficiently,” for “services and renal dialysis facilities” and “such providers, facilities, and non-profit entities” for “such providers and facilities”.

Subsec. (e)(2). Pub. L. 96–499, §495(a)(4), substituted “facility, or other entity will” for “or facility will”.

Subsec. (g). Pub. L. 96–499, §507(b), substituted “July” for “April” in two places.

**Effective Date of 1994 Amendment**


**Effective Date of 1993 Amendment**

Amendment by Pub. L. 103–66 applicable to erythropoietin furnished on or after Jan. 1, 1994, see section 3566(c) of Pub. L. 103–66, set out as a note under section 1395x of this title.

**Effective Date of 1990 Amendment**

Section 4201(c)(2) of Pub. L. 101–508 provided that: “The amendments made by paragraph (1) [amending this section] shall apply to erythropoietin furnished on or after January 1, 1991.”

Amendment by section 4201(d)(2) of Pub. L. 101–508 applicable to items and services furnished on or after July 1, 1991, see section 4201(d)(3)(4) of Pub. L. 101–508, set out as a note under section 1395x of this title.

**Effective Date of 1989 Amendment**

Section 6203(b)(3) of Pub. L. 101–239 provided that: “The amendments made by this subsection [amending this section] shall apply with respect to dialysis services, supplies, and equipment furnished on or after February 1, 1990.”

**Effective Date of 1987 Amendments**

Amendment by section 4065(b) of Pub. L. 100–203 effective Jan. 1, 1988, see section 4065(c) of Pub. L. 100–203, set out as a note under section 1395x of this title.
Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 18(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

**Effective Date of 1986 Amendment**
Section 9335(a)(3) of Pub. L. 99–509 provided that: ‘‘The amendments made by paragraph (2) [amending this section] shall apply to applications filed on or after the date of the enactment of this Act [Oct. 21, 1986].’’

Section 9335(c)(2) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, §4085(i)(1)(C), Dec. 22, 1987, 101 Stat. 1330–133, provided that: ‘‘The amendment made by paragraph (1) [amending this section] shall apply to treatment furnished on or after January 1, 1987, except that, until network administrative organizations are established under section 1881(c)(1)(A) of the Social Security Act [subsec. (c)(1)(A) of this section] (as amended by subsection (d)(1) of this section), the distribution of payments described in the last sentence of section 1881(b)(7) of such Act shall be made based on the distribution of payments under section 1881 of such Act to network administrative organizations for fiscal year 1986.’’. [Section 4085(i)(21) of Pub. L. 100–203 provided that the amendment of section 9335(c)(2) of Pub. L. 99–509, set out above, by section 4085(i)(21)(C) of Pub. L. 100–203 is effective as if included in the enactment of Pub. L. 99–509.]

Section 9335(f) of Pub. L. 99–509 provided that: ‘‘The amendments made by subsections (e), (f), and (g) [amending this section] shall apply to network administrative organizations designated for network areas established under the amendment made by subsection (d)(1) [amending this section].’’

**Effective Date of 1984 Amendments**
Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1385 of this title.

Amendment by section 2323(c) of Pub. L. 98–369 applicable to services furnished on or after Sept. 1, 1984, see section 2323(d) of Pub. L. 98–369, set out as a note under section 1383 of this title.

Amendment by section 2325(b) of Pub. L. 98–369 provided that: ‘‘The amendment made by this section [amending this section] shall apply to determinations made by the Secretary on or after the date of the enactment of this Act [July 18, 1984].’’

Amendment by section 2354(b)(41) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

**Effective Date of 1983 Amendment**
Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital’s cost reporting period made after November 1982 begins on or after Oct. 1, 1983, any change in a hospital’s cost reporting period made after November 1982 begins on or after Oct. 1, 1983, any change in a hospital’s cost reporting period made after November 1982 begins on or after Oct. 1, 1983.

**Effective Date of 1981 Amendment**
Section 2145(b) of Pub. L. 97–35 provided that: ‘‘The amendments made by subsection (a) [amending this section] apply to services furnished on or after October 1, 1981, and the Secretary of Health and Human Services shall first promulgate regulations to carry out section 1881(b)(7) of the Social Security Act [subsec. (b)(7) of this section] not later than October 1, 1981.’’

**Effective Date**
Section effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility’s or provider’s first accounting period beginning after the last day of the month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as an Effective Date of 1978 Amendment note under section 426 of this title.

**Construction of 2008 Amendment**
Pub. L. 110–173, title I, §115(b)(4), July 15, 2008, 122 Stat. 2556, provided that: ‘‘Nothing in this subsection (amending this section and sections 1395x and 1395y of this title and repealing provisions set out as a note under this section) or the amendments made by this subsection shall be construed as authorizing or requiring the Secretary of Health and Human Services to make payments under the payment system implemented under paragraph (14)(A)(i) of section 1881(b) of the Social Security Act (42 U.S.C. 1395rr(b)), as added by paragraph (1), for any unrecovered amount for any bad debt attributable to deductible and coinsurance on items and services not included in the basic case-mix adjusted composite rate under paragraph (12) of such section as in effect before the date of the enactment of this Act [July 15, 2008].’’

**Inspector General Studies on ESRD Drugs**
Pub. L. 108–173, title VI, §623(c), Dec. 8, 2003, 117 Stat. 2312, provided that:

‘‘(1) IN GENERAL.—The Inspector General of the Department of Health and Human Services shall conduct two studies with respect to drugs and biologicals (including erythropoietin) furnished to end-stage renal disease patients under the medicare program which are separately billed by end stage renal disease facilities.

‘‘(2) STUDIES ON ESRD DRUGS.—

(A) EXISTING DRUGS.—The first study under paragraph (1) shall be conducted with respect to such drugs and biologicals for which a billing code exists prior to January 1, 2004.

(B) NEW DRUGS.—The second study under paragraph (1) shall be conducted with respect to such drugs and biologicals for which a billing code does not exist prior to January 1, 2004.

‘‘(3) MATTERS STUDIED.—Under each study conducted under paragraph (1), the Inspector General shall:

(A) determine the difference between the amount of payment made to end stage renal disease facilities under title XVIII of the Social Security Act [this subchapter] for such drugs and biologicals and the acquisition costs of such facilities for such drugs and biologicals and which are separately billed by end stage renal disease facilities, and

(B) estimate the rates of growth of expenditures for such drugs and biologicals billed by such facilities.

‘‘(4) REPORTS.—

(A) EXISTING ESRD DRUGS.—Not later than April 1, 2004, the Inspector General shall report to the Secretary of Health and Human Services on the study described in paragraph (2)(A).

(B) NEW ESRD DRUGS.—Not later than April 1, 2006, the Inspector General shall report to the Secretary on the study described in paragraph (2)(B).’’

**Demonstration of Bundled Case-Mix Adjusted Payment System for ESRD Services**
Pub. L. 108–173, title VI, §623(e), Dec. 8, 2003, 117 Stat. 2315, which provided for establishment of a demonstration project to be conducted for the 3-year period beginning on Jan. 1, 2006, of the use of a fully case-mix adjusted payment system for end stage renal disease serv-
ices that bundled into payment rates amounts for drugs and biologicals (including erythropoietin) furnished to end stage renal disease patients under the medicare program which were separately billed by end stage renal disease facilities as of Dec. 8, 2003, and clinical laboratory tests related to such drugs and biologicals, and which authorized appropriations for the demonstration project, was repealed by Pub. L. 110-276, title I, §153(b)(3)(C), July 15, 2008, 122 Stat. 2556.

REPORT ON A BUNDLED PROSPECTIVE PAYMENT SYSTEM FOR END STAGE RENAL DISEASE SERVICES


“(1) REPORT.—

“(A) IN GENERAL.—Not later than October 1, 2005, the Secretary [of Health and Human Services] shall submit to Congress a report detailing the elements and features for the design and implementation of a bundled prospective payment system for services furnished by end stage renal disease facilities including:

1. to the maximum extent feasible, bundling of drugs, clinical laboratory tests, and other items that are separately billed by such facilities. The report shall include a description of the methodology to be used for the establishment of payment rates, including components of the new system described in paragraph (2).

“(B) RECOMMENDATIONS.—The Secretary shall include in such report recommendations on elements, features, and methodology for a bundled prospective payment system or other issues related to such system as the Secretary determines to be appropriate.

“(2) ELEMENTS AND FEATURES OF A BUNDLED PROSPECTIVE PAYMENT SYSTEM.—The report required under paragraph (1) shall include the following elements and features of a bundled prospective payment system:

1. A BUNDLE OF ITEMS AND SERVICES.—A description of the bundle of items and services to be included under the prospective payment system.

2. CASE MIX.—A description of the case-mix adjustment to account for the relative resource use of different types of patients.

3. WAGE INDEX.—A description of an adjustment to account for geographic differences in wages.

4. RURAL AREAS.—The appropriateness of establishing a specific payment adjustment to account for additional costs incurred by rural facilities.

5. OTHER ADJUSTMENTS.—Such other adjustments as may be necessary to reflect the variation in costs incurred by facilities in caring for patients with end stage renal disease.

6. UPDATE FRAMEWORK.—A methodology for appropriate updates under the prospective payment system.

7. ADDITIONAL RECOMMENDATIONS.—Such other matters as the Secretary determines to be appropriate.”

PROHIBITION ON EXCEPTIONS


“(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the Secretary of Health and Human Services may not provide for an exception under section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) on or after December 31, 2001.

“(B) DEADLINE FOR NEW APPLICATIONS.—Subject to subparagraph (D), in the case of a facility that during 2000 did not file for an exception rate under such section, the facility may submit an application for an exception rate by not later than July 1, 2001.

“(C) PROTECTION OF APPROVED EXCEPTION RATES.—Any exception rate under such section in effect on December 31, 2000 (or, in the case of an application under subparagraph (B), as approved under such application) shall continue in effect so long as such rate is greater than the composite rate as updated by the amendment made by paragraph (1) [amending this section].

“(D) INAPPLICABILITY TO PEDIATRIC FACILITIES.—Subparagraphs (A) and (B) shall not apply to pediatric facilities that do not have an exception rate described in subparagraph (C) in effect on such date. For purposes of this subparagraph, the term ‘pediatric facility’ means a renal facility at least 50 percent of whose patients are individuals under 18 years of age.”

DEVELOPMENT OF ESRD MARKET BASKET

Pub. L. 106-554, §11(a)(6) [title IV, §422(b)], Dec. 21, 2000, 114 Stat. 2783, 2783A-516, provided that:

“(1) DEVELOPMENT.—The Secretary of Health and Human Services shall collect data and develop an ESRD market basket whereby the Secretary can estimate, before the beginning of a year, the percentage by which the costs for the year of the mix of labor and nonlabor goods and services included in the ESRD composite rate under section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) will exceed the costs of such mix of goods and services for the preceding year. In developing such index, the Secretary may take into account measures of changes in—

(A) technology used in furnishing dialysis services; and

(B) the manner or method of furnishing dialysis services; and

(C) the amounts by which the payments under such section for all services billed by a facility for a year exceed the aggregate allowable audited costs of such services for such facility for such year.

“(2) REPORT.—The Secretary of Health and Human Services shall submit to Congress a report on the index developed under paragraph (1) no later than July 1, 2002, and shall include in the report recommendations on the appropriateness of an annual or periodic update mechanism for renal dialysis services under the medicare program under title XVIII of the Social Security Act [this subchapter] based on such index.

INCLUSION OF ADDITIONAL SERVICES IN COMPOSITE RATE

Pub. L. 106-554, §11(a)(6) [title IV, §422(c)], Dec. 21, 2000, 114 Stat. 2783, 2783A-517, provided that:

“(1) DEVELOPMENT.—The Secretary of Health and Human Services shall develop a system which includes, to the maximum extent feasible, in the composite rate used for payment under section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) payment for clinical diagnostic laboratory tests and drugs (including drugs paid under section 1881(b)(11)(B) of such Act (42 U.S.C. 1395rr(b)(11)(B)) that are routinely used in furnishing dialysis services to medicare beneficiaries but which are currently separately billable by renal dialysis facilities.

“(2) REPORT.—The Secretary shall include, as part of the report submitted under subsection (b)(2) [set out above], a report on the system developed under paragraph (1) and recommendations on the appropriateness of incorporating the system into medicare payment for renal dialysis services.”

GAO STUDY ON ACCESS TO SERVICES

Pub. L. 106-554, §11(a)(6) [title IV, §422(d)], Dec. 21, 2000, 114 Stat. 2783, 2783A-517, provided that:

“(1) STUDY.—The Comptroller General of the United States shall study access of medicare beneficiaries to renal dialysis services. Such study shall include whether there is a sufficient supply of facilities to furnish needed renal dialysis services, whether medicare payment levels are appropriate, taking into account audited costs of facilities for all services furnished, to ensure continued access to such services and improvements in access (and quality of care) that may result in the increased use of long nightly and short daily hemodialysis modalities.

“(2) REPORT.—Not later than January 1, 2003, the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1).”
SPECIAL RULE FOR PAYMENT FOR 2001
Pub. L. 106–554, §1(a)(6) (title IV, §422(e)), Dec. 21, 2000, 114 Stat. 2763, 2763A–517, provided that: "Notwithstanding the amendment made by subsection (a)(1) [amending this section], for purposes of making payments under section 1881(b) of the Social Security Act (42 U.S.C. 1395rr(b)) for dialysis services furnished during 2001, the composite rate payment under paragraph (7) of such section—

"(1) for services furnished on or after January 1, 2001, and before April 1, 2001, shall be the composite rate payment determined under the provisions of law in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and

"(2) for services furnished on or after April 1, 2001, and before January 1, 2002, shall be the composite rate payment (as determined taking into account the amendment made by subsection (a)(1)) increased by a transitional percentage allowance equal to 0.39 percent (to account for the timing of implementation of the CPI update)."

STUDY ON PAYMENT LEVEL FOR HOME HEMODIALYSIS
Pub. L. 106–113, div. B, §1000(a)(6) (title II, §222(c)), Nov. 29, 1999, 113 Stat. 1358, 1501A–352, provided that: "The Medicare Payment Advisory Commission shall conduct a study on the appropriateness of the differential payment under the medicare program for home hemodialysis services furnished in a facility and such services furnished in a home. Not later than 18 months after the date of the enactment of this Act [Nov. 29, 1999], the Commission shall submit to Congress a report on such study and shall include recommendations regarding changes in medicare payment policy in response to the study."

RENAI!, DIALYSIS-RELATED SERVICES
Pub. L. 105–33, title IV, §4558, Aug. 5, 1997, 111 Stat. 463, provided that:

"(a) AUDITING OF COST REPORTS.—Beginning with cost reports for 1996, the Secretary shall audit cost reports of each renal dialysis provider at least once every 3 years.

"(b) IMPLEMENTATION OF QUALITY STANDARDS.—The Secretary of Health and Human Services shall develop, by not later than January 1, 1999, and implement, by not later than January 1, 2000, a method to measure and report quality of renal dialysis services provided under the medicare program under title XVIII of the Social Security Act [this subchapter]."

PROPAC STUDY ON ESRD COMPOSITE RATES
Section 4202(b) of Pub. L. 101–508, as amended by Pub. L. 105–33, title I, §160(b), Oct. 31, 1994, 108 Stat. 4443, provided that:

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—Not later than 9 months after the date of the enactment of this Act [Nov. 5, 1994], the Secretary shall establish and carry out a 3-year demonstration project to determine whether the services of a home hemodialysis staff assistant providing services to a patient during hemodialysis treatment at the patient's home may be covered under the medicare program in a cost-effective manner that ensures patient safety.

"(2) NUMBER OF PARTICIPANTS.—The total number of eligible patients receiving services under the demonstration project established under paragraph (1) may not exceed 800.

"(B) PAYMENTS TO PARTICIPATING PROVIDERS AND FACILITIES.—

"(1) SERVICES FOR WHICH PAYMENT MAY BE MADE.—

"(A) IN GENERAL.—Under the demonstration project established under subsection (a), the Secretary shall make payments for 3 years under title XVIII of the Social Security Act [this subchapter] to providers of services (other than a skilled nursing facility or renal dialysis facilities) for services of a qualified home hemodialysis staff assistant (as described in subsection (d)) provided to an individual described in subsection (c) during hemodialysis treatment at the individual's home in an amount determined under paragraph (2).

"(B) SERVICES DESCRIBED.—For purposes of subparagraph (A), the term 'services of a home hemodialysis staff assistant' means—

"(i) technical assistance with the operation of a hemodialysis machine in the patient's home and
with such patient's care during in-home hemodialysis; and

(ii) administration of medications within the patient's home to maintain the patency of the extra corporeal circuit.

(2) AMOUNT OF PAYMENT.--

(A) IN GENERAL.--Payment to a provider of services or renal dialysis facility participating in the demonstration project established under subsection (a) for the services described in paragraph (1) shall be prospectively determined by the Secretary, made on a per treatment basis, and shall be in an amount determined under subparagraph (B).

(B) DETERMINATION OF PAYMENT AMOUNT.--(i) The amount of payment made under subparagraph (A) shall be the product of--

(I) the rate determined under clause (ii) with respect to a provider of services or a renal dialysis facility; and

(II) the factor by which the labor portion of the composite rate determined under section 1881(b)(7) of the Social Security Act [subsec. (b)(7) of this section] is adjusted for differences in area wage levels.

(ii) The rate determined under this clause, with respect to a provider of services or renal dialysis facility, shall be equal to the difference between--

(I) two-thirds of the labor portion of the composite rate applicable under section 1881(b)(7) of such Act to the provider or facility, and

(II) the product of the national median hourly wage for a home hemodialysis staff assistant and the national median time expended in the provision of home hemodialysis staff assistant services (taking into account time expended in travel and predialysis patient care).

(iii) For purposes of clause (i)(II)--

(I) the national median hourly wage for a home hemodialysis staff assistant and the national median average time expended for home hemodialysis staff assistant services shall be determined annually on the basis of the most recent data available, and

(II) the national median hourly wage for a home hemodialysis staff assistant shall be the sum of 65 percent of the national median hourly wage for a licensed practical nurse and 35 percent of the national median hourly wage for a registered nurse.

(C) PAYMENT AS ADD-ON TO COMPOSITE RATE.--The amount of payment determined under this paragraph shall be in addition to the amount of payment otherwise made to the provider of services or renal dialysis facility under section 1881(b) of such Act.

(D) INDIVIDUALS ELIGIBLE TO RECEIVE SERVICES UNDER PROJECT.--

(1) IN GENERAL.--An individual may receive services from a provider of services or renal dialysis facility participating in the demonstration project if--

(A) the individual is not a resident of a nursing facility;

(B) the individual is an end stage renal disease patient entitled to benefits under title XVIII of the Social Security Act [this subchapter];

(C) the individual's physician certifies that the individual is confined to a bed or wheelchair and cannot transfer themselves [sic] from a bed to a chair;

(D) the individual has a serious medical condition (as specified by the Secretary) which would be exacerbated by travel to and from a dialysis facility;

(E) the individual is eligible for ambulance transportation to receive routine maintenance dialysis treatments, and, based on the individual's medical condition, there is reasonable expectation that such transportation will be used by the individual for a period of at least 6 consecutive months, such that the cost of ambulance transportation can reasonably be expected to meet or exceed the cost of home hemodialysis staff assistance as provided under subsection (b)(2); and

(F) no family member or other individual is available to provide such assistance to the individual.

(2) COVERAGE OF INDIVIDUALS CURRENTLY RECEIVING SERVICES.--Any individual who, on the date of the enactment of this Act [Nov. 5, 1990], is receiving staff assistance under the experimental authority provided under section 1881(f)(2) of the Social Security Act [subsec. (f)(2) of this section] shall be deemed to be an eligible individual for purposes of this subsection.

(3) CONTINUATION OF COVERAGE UPON TERMINATION OF PROJECT.--Notwithstanding any provision of title XVIII of the Social Security Act, any individual receiving services under the demonstration project established under subsection (a) as of the date of the termination of the project shall continue to be eligible for home hemodialysis staff assistance after such date under such title on the same terms and conditions as applied under the demonstration project.

(E) QUALIFICATIONS FOR HOME HEMODIALYSIS STAFF ASSISTANTS.--For purposes of subsection (b), a home dialysis aide is qualified if the aide--

(1) meets minimum qualifications as specified by the Secretary; and

(2) meets any applicable qualifications as specified under the law of the State in which the home hemodialysis staff assistant is providing services.

(F) REPORTS.--

(1) INTERIM STATUS REPORT.—Not later than December 1, 1992, the Secretary shall submit to Congress a preliminary report on the status of the demonstration project established under subsection (a).

(2) FINAL REPORT.—Not later than December 31, 1995, the Secretary shall submit to Congress a final report evaluating the project, and shall include in such report recommendations regarding appropriate eligibility criteria and cost-control mechanisms for medicare coverage of the services of a home dialysis aide providing medical assistance to a patient during hemodialysis treatment at the patient's home.

(G) AUTHORIZATION OF APPROPRIATIONS.—The Secretary shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund (established under section 1841 of the Social Security Act [section 1395t of this title]) of not more than the following amounts to carry out the demonstration project established under subsection (a) (without regard to amounts appropriated in advance in appropriation Acts):

(1) For fiscal year 1991, $4,000,000.

(2) For fiscal year 1992, $4,000,000.

(3) For fiscal year 1993, $3,000,000.

(4) For fiscal year 1994, $2,000,000.

(5) For fiscal year 1995, $1,000,000.”

STUDIES OF END-STAGE RENAL DISEASE PROGRAM Section 408(b)(1)–(4) of Pub. L. 100–203 provided that:

(1) The Secretary of Health and Human Services (in this subsection referred to as the ‘Secretary’) shall arrange for a study of the end-stage renal disease program within the medicare program.

(2) Among other items, the study shall address--

(A) access to treatment by both individuals eligible for medicare benefits and those not eligible for such benefits;

(B) the quality of care provided to end-stage renal disease beneficiaries, as measured by clinical indicators, functional status of patients, and patient satisfaction;

(C) the effect of reimbursement on quality of treatment;

(D) major epidemiological and demographic changes in the end-stage renal disease population that may affect access to treatment, the quality of care, or the resource requirements of the program; and

(E) the adequacy of existing data systems to monitor these matters on a continuing basis.
“(3) The Secretary shall submit to Congress, not later than 3 years after the date of the enactment of this Act [Dec. 22, 1987], a report on the study.

The Secretary shall request the National Academy of Sciences, acting through the Institute of Medicine, to submit an application to conduct the study described in this section. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.”

RATES FOR DIALYSIS SERVICES


STUDY AND REPORT ON MEDICARE PAYMENT RATE REDUCTIONS FOR PATIENTS WITH END STAGE RENAL DISEASE
Section 1395rr(b) of Pub. L. 99–509 directed Secretary of Health and Human Services to provide for a study to evaluate the effects of reductions in the rates of payment for facility and physicians’ services under the medicare program for patients with end stage renal disease on their access to care or on the quality of care, and a report to Congress on results of the study by not later than Jan. 1, 1988, with Secretary to enter into an appropriate arrangement with the National Academy of Sciences or other appropriate nonprofit private entity for the conduct of the study.

DEADLINE FOR ESTABLISHING NEW END STAGE RENAL DISEASE NETWORK AREAS; TRANSITION

“(2) DEADLINE FOR ESTABLISHING NEW AREAS.—The Secretary of Health and Human Services shall establish end stage renal disease network areas, pursuant to the amendment made by paragraph (1) [amending this section], not later than May 1, 1987. The Secretary shall designate network administrative organizations for such areas by not later than July 1, 1987.

“(3) TRANSITION.—If, under the amendment made by paragraph (1), the Secretary designates a network administrative organization for an area which was not previously designated for that area, the Secretary shall offer to continue to fund the previously designated organization for that area for a period of 30 days after the first date the newly designated organization assumes the duties of a network administrative organization for that area.”

REPORT ON ESTABLISHMENT OF NATIONAL END STAGE RENAL DISEASE REGISTRY
Section 1395rr(i)(2) of Pub. L. 99–509 provided that: “The Secretary of Health and Human Services shall submit to the Congress, no later than April 1, 1987, a full report on the progress made in establishing the national end stage renal disease registry under the amendment made by paragraph (1) [amending this section] and shall establish such registry by not later than January 1, 1988.”

DEADLINE FOR ESTABLISHMENT OF PROTOCOLS ON REUSE OF DIALYZER FILTERS


LIMITATION ON MERGER OF END STAGE RENAL DISEASE NETWORKS
Pub. L. 99–272, title IX, § 9214, Apr. 7, 1986, 100 Stat. 180, provided that: “The Secretary of Health and Human Services shall maintain renal disease network organizations as authorized under section 1881(c) of the Social Security Act [subsec. (c) of this section], and may not merge the network organizations into other organizations or entities. The Secretary may consolidate such network organizations, but only if such consolidation does not result in fewer than 14 such organizations being permitted to exist.”

§ 1395rr–1. Medicare coverage for individuals exposed to environmental health hazards
(a) Deeming of individuals as eligible for medicare benefits
(1) In general
For purposes of eligibility for benefits under this subchapter, an individual determined under subsection (c) to be an environmental exposure affected individual described in subsection (e)(2) shall be deemed to meet the conditions specified in section 428(a) of this title.

(2) Discretionary deeming
For purposes of eligibility for benefits under this subchapter, the Secretary may deem an individual determined under subsection (c) to be an environmental exposure affected individual described in subsection (e)(2) to meet the conditions specified in section 428(a) of this title.

(3) Effective date of coverage
An Individual1 who is deemed eligible for benefits under this subchapter under paragraph (1) or (2) shall be—

1 So in original. Probably should not be capitalized.
(A) entitled to benefits under the program under Part 1 A as of the date of such deeming; and
(B) eligible to enroll in the program under Part 1 B beginning with the month in which such deeming occurs.

(b) Pilot program for care of certain individuals residing in emergency declaration areas

(1) Program; purpose

(A) Primary pilot program

The Secretary shall establish a pilot program in accordance with this subsection to provide innovative approaches to furnishing comprehensive, coordinated, and cost-effective care under this subchapter to individuals described in paragraph (2)(A).

(B) Optional pilot programs

The Secretary may establish a separate pilot program, in accordance with this subsection, with respect to each geographic area subject to an emergency declaration made as of June 17, 2009, in order to furnish such comprehensive, coordinated and cost-effective care to individuals described in subparagraph (2)(B) who reside in each such area.

(2) Individual described

For purposes of paragraph (1), an individual described in this paragraph is an individual who enrolls in part B, submits to the Secretary an application to participate in the applicable pilot program under this subsection, and—

(A) is an environmental exposure affected individual described in subsection (e)(2) who resides in or around the geographic area subject to an emergency declaration made as of June 17, 2009; or

(B) is an environmental exposure affected individual described in subsection (e)(3) who—

(i) is deemed under subsection (a)(2); and

(ii) meets such other criteria or conditions for participation in a pilot program under paragraph (1)(B) as the Secretary specifies.

(3) Flexible benefits and services

A pilot program under this subsection may provide for the furnishing of benefits, items, or services not otherwise covered or authorized under this subchapter, if the Secretary determines that furnishing such benefits, items, or services will further the purposes of such pilot program (as described in paragraph (1)).

(4) Innovative reimbursement methodologies

For purposes of the pilot program under this subsection, the Secretary—

(A) shall develop and implement appropriate methodologies to reimburse providers for furnishing benefits, items, or services for which payment is not otherwise covered or authorized under this subchapter, if such benefits, items, or services are furnished pursuant to paragraph (3); and

(B) may develop and implement innovative approaches to reimbursing providers for any benefits, items, or services furnished under this subsection.

(5) Limitation

Consistent with section 1395y(b) of this title, no payment shall be made under the pilot program under this subsection with respect to benefits, items, or services furnished to an environmental exposure affected individual (as defined in subsection (e)) to the extent that such individual is eligible to receive such benefits, items, or services through any other public or private benefits plan or legal agreement.

(6) Waiver authority

The Secretary may waive such provisions of this subchapter and subchapter XI as are necessary to carry out pilot programs under this subsection.

(7) Funding

For purposes of carrying out pilot programs under this subsection, the Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1395i of this title and the Federal Supplementary Medical Insurance Trust Fund under section 1395t of this title, in such proportion as the Secretary determines appropriate, of such sums as the Secretary determines necessary, to the Centers for Medicare & Medicaid Services Program Management Account.

(8) Waiver of budget neutrality

The Secretary shall not require that pilot programs under this subsection be budget neutral with respect to expenditures under this subchapter.

(e) Determinations

(1) By the Commissioner of Social Security

For purposes of this section, the Commissioner of Social Security, in consultation with the Secretary, and using the cost allocation method prescribed in section 401(g) of this title, shall determine whether individuals are environmental exposure affected individuals.

(2) By the Secretary

The Secretary shall determine eligibility for pilot programs under subsection (b).

(d) Emergency declaration defined

For purposes of this section, the term “emergency declaration” means a declaration of a public health emergency under section 9604(a) of this title.

(e) Environmental exposure affected individual defined

(1) In general

For purposes of this section, the term “environmental exposure affected individual” means—

(A) an individual described in paragraph (2); and

(B) an individual described in paragraph (3).

(2) Individual described

(A) In general

An individual described in this paragraph is any individual who—
(i) is diagnosed with 1 or more conditions described in subparagraph (B);
(ii) as demonstrated in such manner as the Secretary determines appropriate, has been present for an aggregate total of 6 months in the geographic area subject to an emergency declaration involved, during a period determined appropriate by the Secretary;
(D) files an application for benefits under this subchapter (or has an application filed on behalf of the individual), including pursuant to this section; and
(E) is determined under this section to meet the criteria in this paragraph.


REFERENCES IN TEXT
Parts A and B, referred to in subsecs. (a)(3) and (b)(2), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

§ 1395ss. Certification of medicare supplemental health insurance policies

(a) Submission of policy by insurer
(1) The Secretary shall establish a procedure whereby medicare supplemental policies (as defined in subsection (g)(1) of this section) may be certified by the Secretary as meeting minimum standards and requirements set forth in subsection (c) of this section. Such procedure shall provide an opportunity for any insurer to submit any such policy, and such additional data as the Secretary finds necessary, to the Secretary for his examination and for his certification thereof as meeting the standards and requirements set forth in subsection (c) of this section. Subject to subsections (k)(3), (m), and (n) of this section, such certification shall remain in effect if the insurer files a notarized statement with the Secretary no later than June 30 of each year stating that the policy continues to meet such standards and requirements and if the insurer submits such additional data as the Secretary finds necessary to independently verify the accuracy of such notarized statement. Where the Secretary determines such a policy meets (or continues to meet) such standards and requirements, he shall authorize the insurer to have printed on such policy (but only in accordance with such requirements and conditions as the Secretary may prescribe) an emblem which the Secretary shall cause to be designed for use as an indication that a policy has received the Secretary’s certification. The Secretary shall provide each State commissioner or superintendent of insurance with a list of all the policies which have received his certification.

(2) No medicare supplemental policy may be issued in a State on or after the date specified in subsection (p)(1)(C) of this section unless—
(A) the State’s regulatory program under subsection (b)(1) of this section provides for the application and enforcement of the standards and requirements set forth in such subsection (including the 1991 NAIC Model Regulation or 1991 Federal Regulation (as the case may be)) by the date specified in subsection (p)(1)(C) of this section; or
(B) if the State’s program does not provide for the application and enforcement of such standards and requirements, the policy has been certified by the Secretary under para-
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program (1) as meeting the standards and requirements set forth in subsection (c) of this section (including such applicable standards) by such date.

Any person who issues a medicare supplemental policy, on and after the effective date specified in subsection (p)(1)(C) of this section, in violation of this paragraph is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(b) Standards and requirements; periodic review

by Secretary

(1) Any medicare supplemental policy issued in any State which the Secretary determines has established under State law a regulatory program that—

(A) provides for the application and enforcement of standards with respect to such policies equal to or more stringent than the NAIC Model Standards (as defined in subsection (g)(2)(A) of this section), except as otherwise provided by paragraph (H);

(B) includes requirements equal to or more stringent than the requirements described in paragraphs (2) through (5) of subsection (c) of this section;

(C) provides that—

(i) information with respect to the actual ratio of benefits provided to premiums collected under such policies will be reported to the State on forms conforming to those developed by the National Association of Insurance Commissioners for such purpose, or

(ii) such ratios will be monitored under the program in an alternative manner approved by the Secretary, and that a copy of each such policy, the most recent premium for each such policy, and a listing of the ratio of benefits provided to premiums collected for the most recent 3-year period for each such policy issued or sold in the State is maintained and made available to interested persons;

(D) provides for application and enforcement of the standards and requirements described in subparagraphs (A), (B), and (C) to all medicare supplemental policies (as defined in subsection (g)(1) of this section) issued in such State;

(E) provides the Secretary periodically (but at least annually) with a list containing the name and address of the issuer of each such policy and the name and number of each such policy (including an indication of policies that have been previously approved, newly approved, or withdrawn from approval since the previous list was provided),

(F) reports to the Secretary on the implementation and enforcement of standards and requirements of this paragraph at intervals established by the Secretary,

(G) provides for a process for approving or disapproving proposed premium increases with respect to such policies, and establishes a policy for the holding of public hearings prior to approval of a premium increase, and

(H) in the case of a policy that meets the standards under subparagraph (A) except that benefits under the policy are limited to items and services furnished by certain entities, reduced benefits are provided when items or services are furnished by other entities, provides for the application of requirements equal to or more stringent than the requirements under subsection (t) of this section, shall be deemed (subject to subsections (k)(3), (m), and (n) of this section, for so long as the Secretary finds that such State regulatory program continues to meet the standards and requirements of this paragraph) to meet the standards and requirements set forth in subsection (c) of this section. Each report required under subparagraph (F) shall include information on loss ratios of policies sold in the State, frequency and types of instances in which policies approved by the State fail to meet the standards and requirements of this paragraph, actions taken by the State to bring such policies into compliance, information regarding State programs implementing consumer protection provisions, and such further information as the Secretary in consultation with the National Association of Insurance Commissioners may specify.

(2) The Secretary periodically shall review State regulatory programs to determine if they continue to meet the standards and requirements specified in paragraph (1). If the Secretary finds that a State regulatory program no longer meets the standards and requirements, before making a final determination, the Secretary shall provide the State an opportunity to adopt such a plan of correction as would permit the State regulatory program to continue to meet such standards and requirements. If the Secretary makes a final determination that the State regulatory program, after such an opportunity, fails to meet such standards and requirements, the program shall no longer be considered to have in operation a program meeting such standards and requirements.

(3) Notwithstanding paragraph (1), a medicare supplemental policy offered in a State shall not be deemed to meet the standards and requirements set forth in subsection (c) of this section with respect to an advertisement (whether through written, radio, or television medium) used (or, at a State’s option, to be used) for the policy in the State, unless the entity issuing the policy provides a copy of each advertisement to the Commissioner of Insurance (or comparable officer identified by the Secretary of that State) for review or approval to the extent it may be required under State law.

(c) Requisite findings

The Secretary shall certify under this section any medicare supplemental policy, or continue certification of such a policy, only if he finds that such policy (or, with respect to paragraph (3) or the requirement described in subsection (s) of this section, the issuer of the policy) meets or exceeds (either in a single policy or, in the case of nonprofit hospital and medical service associations, in one or more poli-
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It is unlawful for a person to sell or issue to an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter (including an individual electing a Medicare+Choice plan under section 1395w-21 of this title)—

(I) a health insurance policy with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled under this subchapter or subchapter XIX of this chapter;

(II) in the case of an individual not electing a Medicare+Choice plan, a medicare supplemental policy with knowledge that the individual is entitled to benefits under another medicare supplemental policy or in the case of an individual electing a Medicare+Choice plan, a medicare supplemental policy with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled under the Medicare+Choice plan or under another medicare supplemental policy, or

(III) a health insurance policy (other than a medicare supplemental policy) with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled, other than benefits to which the individual is entitled under a requirement of State or Federal law.

(ii) Whoever violates clause (i) shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a person other than the issuer of the policy) for each such prohibited act.

(iii) A seller (who is not the issuer of a health insurance policy) shall not be considered to violate clause (i)(II) with respect to the sale of a medicare supplemental policy if the policy is sold in compliance with subparagraph (B).

(iv) For purposes of this subparagraph, a health insurance policy (other than a Medicare supplemental policy) providing for benefits which are payable to or on behalf of an individual without regard to the manner in which the purchase of the policy was solicited, and

(v) For purposes of this subparagraph, a health insurance policy (or a rider to an insurance contract which is not a health insurance policy) is not considered to "duplicate" any health benefits under this subchapter, under subchapter XIX of this chapter, or under a health insurance policy, and subs-clauses (i) and (III) of clause (i) do not apply to such a policy.

(v) For purposes of this subparagraph, a health insurance policy (or a rider to an insurance contract which is not a health insurance policy) is not considered to "duplicate" health benefits under this subchapter or under another health insurance policy if it—

(1) provides health care benefits only for long-term care, nursing home care, home health care, or community-based care, or any combination thereof;

(2) coordinates against or excludes items and services available or paid for under this subchapter or under another health insurance policy, and

(3) complies with the requirements of this subchapter or subchapter XIX of this chapter.

(d) Criminal penalties; civil penalties for certain violations

(1) Whoever knowingly and willfully makes or causes to be made or induces or seeks to induce the making of any false statement or representation of a material fact with respect to the compliance of any policy with the standards and requirements set forth in subsection (c) of this section or in regulations promulgated pursuant to such subsection, or with respect to the use of the emblem designed by the Secretary under subsection (a) of this section, shall be fined under title 18, imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $5,000 for each such prohibited act.

(2) Whoever falsely assumes or pretends to be acting, or misrepresents in any way that he is acting, under the authority of or in association with, the program of health insurance established by this subchapter, or any Federal agency, for the purpose of selling or attempting to sell insurance, or in such pretended character demands, or obtains money, paper, documents, or anything of value, shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $5,000 for each such prohibited act.
For purposes of this clause, the terms “coordinates” and “coordinating” mean, with respect to a policy in relation to health benefits under this subchapter or under another health insurance policy, that the policy under its terms is secondary to, or excludes from payment, items and services to the extent available or paid for under this subchapter or under another health insurance policy.

(vi)(I) An individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter who is applying for a health insurance policy (other than a policy described in subclause (III)) shall be furnished a disclosure statement described in clause (vii) for the type of policy being applied for. Such statement shall be furnished as a part of (or together with) the application for such policy.

(ii) Whoever issues or sells a health insurance policy (other than a policy described in subclause (III)) to an individual described in subclause (I) and fails to furnish the appropriate disclosure statement as required under such subclause shall be fined under title 18, or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a person other than the issuer of the policy) for each such violation.

(III) A policy described in this subclause (to which subclauses (I) and (II) do not apply) is a Medicare supplemental policy, a policy described in clause (v), or a health insurance policy identified under 60 Federal Register 30880 (June 12, 1995) as a policy not required to have a disclosure statement.

(IV) Any reference in this section to the revised NAIC model regulation (referred to in subsection (m)(2) of this section) is deemed a reference to such regulation as revised by section 171(m)(2) of the Social Security Act Amendments of 1994 (Public Law 103-432) and as modified by substituting, for the disclosure required under section 16D(2), disclosure under subclause (I) of an appropriate disclosure statement under clause (vii).

(vii) The disclosure statement described in this clause for a type of policy is the statement specified under subparagraph (D) of this paragraph (as in effect before August 21, 1996) for that type of policy, as revised as follows:

(I) In each statement, amend the second line to read as follows:

“THIS IS NOT MEDICARE SUPPLEMENT INSURANCE”.

(II) In each statement, strike the third line and insert the following: “Some health care services paid for by Medicare may also trigger the payment of benefits under this policy.”

(III) In each statement not described in subclause (V), strike the boldface matter that begins “This insurance” and all that follows up to the next paragraph that begins “Medicare”.

(IV) In each statement not described in subclause (V), insert before the boxed matter (that states “Before You Buy This Insurance”) the following: “This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.”

(V) In a statement relating to policies providing both nursing home and non-institutional coverage, to policies providing nursing home benefits only, or policies providing home care benefits only, amend the sentence that begins “Federal law requires us to inform you that in certain situations this insurance may pay for some care also covered by Medicare.”

(viii)(I) Subject to subclause (II), nothing in this subparagraph shall restrict or preclude a State’s ability to regulate health insurance policies, including any health insurance policy that is described in clause (iv), (v), or (vi)(III).

(II) A State may not declare or specify, in statute, regulation, or otherwise, that a health insurance policy (other than a Medicare supplemental policy) or rider to an insurance contract which is not a health insurance policy, that is described in clause (iv), (v), or (vi)(III) and that is sold, issued, or renewed to an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter “duplicates” health benefits under this subchapter or under a Medicare supplemental policy.

(B)(i) It is unlawful for a person to issue or sell a medicare supplemental policy to an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, whether directly, through the mail, or otherwise, unless—

(I) the person obtains from the individual, as part of the application for the issuance or purchase and on a form described in clause (ii), a written acknowledgment, signed by the seller of the policy, of the request for and receipt of such statement.

(ii) The statement required by clause (i) shall be made on a form that—

(I) states in substance that a medicare-eligible individual does not need more than one medicare supplemental policy.

(II) states in substance that individuals may be eligible for benefits under the State medicaid program under subchapter XIX of this chapter and that such individuals who are entitled to benefits under that program usually do not need a medicare supplemental policy and that benefits and premiums under any such policy shall be suspended upon request of the policyholder during the period (of not longer than 24 months) of entitlement to benefits under such subchapter and may be reinstituted upon loss of such entitlement, and

(III) states that counseling services may be available in the State to provide advice concerning the purchase of medicare supplemental policies and enrollment under the medicaid program and may provide the telephone number for such services.
(ii)(I) Except as provided in subclauses (II) and (III), if the statement required by clause (i) is not obtained or indicates that the individual has a medicare supplemental policy or indicates that the individual is entitled to any medical assistance under section 1396d(p)(1) of this title, the sale of a medicare supplemental policy shall be considered to be a violation of subparagraph (A).

(II) Subclause (I) shall not apply in the case of an individual who has a medicare supplemental policy, if the individual indicates in writing, as part of the application for purchase, that the policy being purchased replaces such other policy and indicates an intent to terminate the policy being replaced when the new policy becomes effective and the issuer or seller certifies in writing that such policy will not, to the best of the issuer’s or seller’s knowledge, duplicate coverage (taking into account any such replacement).

(III) If the statement required by clause (i) is obtained and indicates that the individual is entitled to any medical assistance under subchapter XIX of this chapter, the sale of the policy is not in violation of clause (i) (insofar as such clause relates to such medical assistance), if (aa) a State medicaid plan under such subchapter pays the premiums for the policy, (bb) in the case of a qualified medicare beneficiary described in section 1396d(p)(1) of this title, the policy provides for coverage of outpatient prescription drugs, or (cc) the only medical assistance to which the individual is entitled under the State plan is medicare cost sharing described in section 1905(k) of this title.

(iv) Whoever issues or sells a medicare supplemental policy in violation of this subparagraph shall be fined under title 18, or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not the issuer of a policy) for each such violation.

(C) Subparagraph (A) shall not apply with respect to the sale or issuance of a group policy or plan of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations (or combination thereof), for employees or former employees (or combination thereof) or for members or former members (or combination thereof) of the labor organizations.

(4)(A) Whoever knowingly, directly or through his agent, mails or causes to be mailed any matter for a prohibited purpose (as determined under subparagraph (B)) shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $5,000 for each such prohibited act.

(B) For purposes of subparagraph (A), a prohibited purpose means the advertising, solicitation, or offer for sale of a medicare supplemental policy, or the delivery of such a policy, in or into any State in which such policy has not been approved by the State commissioner or superintendent of insurance.

(C) Subparagraph (A) shall not apply in the case of a person who mails or causes to be mailed a medicare supplemental policy into a State if such person has ascertained that the party insured under such policy to whom (or on whose behalf) such policy is mailed is located in such State on a temporary basis.

(D) Subparagraph (A) shall not apply in the case of a person who mails or causes to be mailed a duplicate copy of a medicare supplemental policy previously issued to the party to whom (or on whose behalf) such duplicate copy is mailed.

(E) Subparagraph (A) shall not apply in the case of an issuer who mails or causes to be mailed a policy, certificate, or other matter that the individual is entitled to any medical assistance under subparagraph (A), if (aa) the policy is not in violation of clause (i) (insofar as such clause relates to such medical assistance), (bb) the person to whom the policy is mailed is located in a State if such person has ascertained that the party insured under such policy to whom (or on whose behalf) such policy is mailed is located in such State on a temporary basis.

(5) The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under paragraphs (1), (2), (3)(A), and (4)(A) in the same manner as such provisions apply to penalties and proceedings under section 1320a–7a(a) of this title.

(e) Dissemination of information

(1) The Secretary shall provide to all individuals entitled to benefits under this subchapter (and, to the extent feasible, to individuals about to become so entitled) such information as will permit such individuals to evaluate the value of medicare supplemental policies to them and the relationship of any such policies to benefits provided under this subchapter.

(2) The Secretary shall—

(A) inform all individuals entitled to benefits under this subchapter (and, to the extent feasible, individuals about to become so entitled) of—

(i) the actions and practices that are subject to sanctions under subsection (d) of this section, and

(ii) the manner in which they may report any such action or practice to an appropriate official of the Department of Health and Human Services (or to an appropriate State official), and

(B) publish the toll-free telephone number for individuals to report suspected violations of the provisions of such subchapter.

(3) The Secretary shall provide individuals entitled to benefits under this subchapter (and, to the extent feasible, individuals about to become so entitled) with a listing of the addresses and telephone numbers of State and Federal agencies and offices that provide information and assistance to individuals with respect to the selection of medicare supplemental policies.

(f) Study and evaluation of comparative effectiveness of various State approaches to regulating medicare supplemental policies; report to Congress no later than January 1, 1982; periodic evaluations

(1)(A) The Secretary shall, in consultation with Federal and State regulatory agencies, the National Association of Insurance Commissioners, private insurers, and organizations representing consumers and the aged, conduct a comprehensive study and evaluation of the comparative effectiveness of various State approaches to the regulation of medicare supplemental policies in (i) limiting marketing and...
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agent abuse, (ii) assuring the dissemination of such information to individuals entitled to benefits under this subchapter (and to other consumers) as is necessary to permit informed choice, (iii) promoting policies which provide reasonable economic benefits for such individuals, (iv) reducing the purchase of unnecessary duplicative coverage, (v) improving price competition, and (vi) establishing effective approved State regulatory programs described in subsection (b) of this section.

(B) Such study shall also address the need for standards or certification of health insurance policies, other than medicare supplemental policies, sold to individuals eligible for benefits under this subchapter.

(C) The Secretary shall, no later than January 1, 1982, submit a report to the Congress on the results of such study and evaluation, accompanied by such recommendations as the Secretary finds warranted by such results with respect to the need for legislative or administrative changes to accomplish the objectives set forth in subparagraphs (A) and (B), including the need for a mandatory regulatory program to assure the marketing of appropriate types of medicare supplemental policies, and such other means as he finds may be appropriate to enhance effective State regulation of such policies.

(2) The Secretary shall submit to the Congress no later than July 1, 1982, and periodically as may be appropriate thereafter (but not less often than once every 2 years), a report evaluating the effectiveness of the certification procedure and the criminal penalties established under this section, and shall include in such report an analysis of—

(A) the impact of such procedure and penalties on the types, market share, value, and cost to individuals entitled to benefits under this subchapter of medicare supplemental policies which have been certified by the Secretary;

(B) the need for any change in the certification procedure to improve its administration or effectiveness; and

(C) whether the certification program and criminal penalties should be continued.

(3) The Secretary shall provide information via a toll-free telephone number on medicare supplemental policies (including the relationship of State programs under subchapter XIX of this chapter to such policies).

(g) Definitions

(1) For purposes of this section, a medicare supplemental policy is a health insurance policy or other health benefit plan offered by a private entity to individuals who are entitled to have payment made under this subchapter, which provides reimbursement for expenses incurred for services and items for which payment may be made under this subchapter but which are not reimbursable by reason of the applicability of deductibles, coinsurance amounts, or other limitations imposed pursuant to this subchapter; but does not include a prescription drug plan under part D of this subchapter or a Medicare+Choice plan or any such policy or plan of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations (or combination thereof), for employees or former employees (or combination thereof) or for members or former members (or combination thereof) of the labor organizations and does not include a policy or plan of an eligible organization (as defined in section 1395mm(b) of this title) if the policy or plan provides benefits pursuant to a contract under section 1395mm of this title or an approved demonstration project described in section 609(c) of the Social Security Amendments of 1983, section 2355 of the Deficit Reduction Act of 1984, or section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, or a policy or plan of an organization if the policy or plan provides benefits pursuant to an agreement under section 1395(a)(1)(A) of this title. For purposes of this section, the term “policy” includes a certificate issued under such policy.

(2) For purposes of this section:

(A) The term “NAIC Model Standards” means the “NAIC Model Regulation to Implement the Individual Accident and Sickness Insurance Minimum Standards Act”, adopted by the National Association of Insurance Commissioners on June 6, 1979, as it applies to medicare supplemental policies.

(B) The term “State with an approved regulatory program” means a State for which the Secretary has made a determination under subsection (b)(1) of this section.

(C) The State in which a policy is issued means—

(i) in the case of an individual policy, the State in which the policyholder resides; and

(ii) in the case of a group policy, the State in which the holder of the master policy resides.

(h) Rules and regulations

The Secretary shall prescribe such regulations as may be necessary for the effective, efficient, and equitable administration of the certification procedure established under this section. The Secretary shall first issue final regulations to implement the certification procedure established under subsection (a) of this section not later than March 1, 1981.

(i) Commencement of certification program

(1) No medicare supplemental policy shall be certified and no such policy may be issued bearing the emblem authorized by the Secretary under subsection (a) of this section until July 1, 1982. On and after such date policies certified by the Secretary may bear such emblem, including policies which were issued prior to such date and were subsequently certified, and insurers may notify holders of such certified policies issued prior to such date using such emblem in the notification.

(2)(A) The Secretary shall not implement the certification program established under subsection (a) of this section with respect to policies issued in a State unless the Panel makes a finding that such State cannot be expected to have established, by July 1, 1982, an approved State regulatory program meeting the standards and requirements of subsection (b)(1) of this section. If the Panel makes such a finding, the Secretary shall implement such program under sub-
section (a) of this section with respect to medicare supplemental policies issued in such State, until such time as the Panel determines that such State has a program that meets the standards and requirements of subsection (b)(1) of this section.

(B) Any finding by the Panel under subparagraph (A) shall be transmitted in writing, not later than January 1, 1982, to the Committee on Finance of the Senate and to the Committee on Energy and Commerce and the Committee on Ways and Means of the House of Representatives and shall not become effective until 60 days after the date of its transmittal to the Committees of the Congress under this subparagraph. In counting such days, days on which either House is not in session because of an adjournment sine die or an adjournment of more than three days to a day certain are excluded in the computation.

(j) State regulation of policies issued in other States

Nothing in this section shall be construed so as to affect the right of any State to regulate medicare supplemental policies which, under the provisions of this section, are considered to be issued in another State.

(k) Amended NAIC Model Regulation or Federal model standards applicable; effective date; medicare supplemental policy and State regulatory program meeting applicable standards

(1)(A) If, within the 90-day period beginning on July 1, 1988, the National Association of Insurance Commissioners (in this subsection referred to as the “Association”) amends the NAIC Model Regulation adopted on June 6, 1979 (as it relates to medicare supplemental policies), with respect to matters such as minimum benefit standards, loss ratios, disclosure requirements, and replacement requirements and provisions otherwise necessary to reflect the changes in law made by the Medicare Catastrophic Coverage Act of 1988, except as provided in subsection (m) of this section, subsection (g)(2)(A) of this section shall be applied in a State, effective on and after the date specified in paragraph (3), if the reference to the Model Regulation as amended by the Association in accordance with this paragraph (in this subsection and subsection (l) of this section referred to as the “amended NAIC Model Regulation”).

(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the amended NAIC Model Regulation by January 1, 1989, and

(i) no medicare supplemental policy may be certified by the Secretary pursuant to subsection (a) of this section,

(ii) has not adopted standards equal to or more stringent than the Federal model standards or

(C) no State regulatory program shall be found to meet (or to continue to meet) the requirements of subsection (b)(1)(A) of this section, unless such policy meets (or such program provides for the application of standards equal to or more stringent than) the standards set forth in the amended NAIC Model Regulation or the Federal model standards (as the case may be) by the date specified in paragraph (1)(B) or (2)(B) (as the case may be).

(l) Transitional compliance with NAIC Model Transition Regulation; “qualifying medicare supplemental policy” and “NAIC Model Transition Regulation” defined

(1) Until the date specified in paragraph (3), in the case of a qualifying medicare supplemental policy described in paragraph (2) issued—

(A) before January 1, 1989, the policy is deemed to remain in compliance with this section (as in effect on June 1, 1988).

(B) on or after January 1, 1989, the policy is deemed to be in compliance with this section if the insurer issuing the policy complies with the NAIC Model Transition Regulation (including giving notices to subscribers and filing for premium adjustments with the State as described in section 5.B. of such Regulation) by January 1, 1989; and

(B) which has been issued in compliance with this section (as in effect on June 1, 1988).

(2) In paragraph (1), the term “qualifying medicare supplemental policy” means a medicare supplemental policy—

(A) issued in a State which—

(i) has not adopted standards equal to or more stringent than the amended NAIC Model Regulation or 1 year after the date the Association first adopts such amended Regulation.

(ii) has not adopted standards equal to or more stringent than the amended NAIC Model Regulation (or Federal model standards) by January 1, 1989; and

(B) which has been issued in compliance with this section (as in effect on June 1, 1988).

(3) The date specified in this paragraph is the earlier of—

(i) the first date a State adopts, after January 1, 1989, standards equal to or more stringent than the NAIC Model Transition Regula-
(m) Revision of amended NAIC Model Regulation and amended Federal model standards; effective dates; medicare supplemental policy and State regulatory program meeting applicable standards

(1)(A) If, within the 90-day period beginning on December 13, 1989, the National Association of Insurance Commissioners (in this subsection and subsection (n) of this section referred to as the "Association") revises the amended NAIC Model Regulation (referred to in subsection (k)(1)(A) of this section and adopted on September 20, 1988) to improve such regulation and otherwise to reflect the changes in law made by the Medicare Catastrophic Coverage Repeal Act of 1989, subsection (g)(2)(A) of this section shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the revised Federal model standards or 1 year after the date the Association first adopts such revised Regulation.

(2)(A) If the Association does not revise the amended NAIC Model Regulation, within the 90-day period specified in paragraph (1)(A), the Secretary shall promulgate, not later than 60 days after the end of such period, revised Federal model standards (in this subsection and subsection (n) of this section referred to as "revised Federal model standards") for medicare supplemental policies to improve such standards and otherwise to reflect the changes in law made by the Medicare Catastrophic Coverage Repeal Act of 1989, subsection (g)(2)(A) of this section shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the revised Federal model standards.

(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised NAIC Model Regulation or 1 year after the date the Association first adopts such revised Regulation.

(3) Notwithstanding any other provision of this section (except as provided in subsection (n) of this section)—

(A) no medicare supplemental policy may be certified by the Secretary pursuant to subsection (a) of this section,

(B) no certification made pursuant to subsection (a) of this section shall remain in effect, and

(C) no State regulatory program shall be found to meet (or to continue to meet) the requirements of subsection (b)(1)(A) of this section, unless such policy meets (or such program provides for the application of standards equal to or more stringent than) the standards set forth in the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) by the date specified in paragraph (1)(B) or (2)(B) (as the case may be).

(n) Transition compliance with revision of NAIC Model Regulation and Federal model standards

(1) Until the date specified in paragraph (4), in the case of a qualifying medicare supplemental policy described in paragraph (3) issued in a State—
(A) before the transition deadline, the policy is deemed to remain in compliance with the standards described in subsection (b)(1)(A) of this section only if the insurer issuing the policy complies with the transition provision described in paragraph (2) or

(B) on or after the transition deadline, the policy is deemed to be in compliance with the standards described in subsection (b)(1)(A) of this section only if the insurer issuing the policy complies with the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) before the date of the sale of the policy.

In this paragraph, the term “transition deadline” means 1 year after the date the Association adopts the revised NAIC Model Regulation or 1 year after the date the Secretary promulgates revised Federal model standards (as the case may be).

(2) The transition provision described in this paragraph is—

(A) such transition provision as the Association provides, by not later than December 15, 1989, so as to provide for an appropriate transition (i) to restore benefit provisions which are no longer duplicative as a result of the changes in benefits under this subchapter made by the Medicare Catastrophic Coverage Repeal Act of 1989 and (ii) to eliminate the requirement of payment for the first 8 days of coinsurance for extended care services, or

(B) if the Association does not provide for a transition provision by the date described in subparagraph (A), such transition provision as the Secretary shall provide, by January 1, 1990, so as to provide for an appropriate transition described in subparagraph (A).

(3) In paragraph (1), the term “qualifying medicare supplemental policy” means a medicare supplemental policy which has been issued in compliance with this section as in effect on the date before December 13, 1989.

(4)(A) The date specified in this paragraph for a policy issued in a State is—

(i) the first date a State adopts, after December 13, 1989, standards equal to or more stringent than the revised NAIC Model Regulation (or revised Federal model standards), as the case may be, or

(ii) the date specified in subparagraph (B), whichever is earlier.

(B) In the case of a State which the Secretary identifies, in consultation with the Association, as—

(i) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet standards described in subparagraph (A)(i), but

(ii) having a legislature which is not scheduled to meet in 1990 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1990. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

(5) In the case of a medicare supplemental policy in effect on January 1, 1990, the policy shall not be deemed to meet the standards in subsection (c) of this section unless each individual who is entitled to benefits under this subchapter and is a policyholder or certificate holder under such policy on such date is sent a notice in an appropriate form by not later than January 31, 1990, that explains—

(A) the changes in benefits under this subchapter effected by the Medicare Catastrophic Coverage Repeal Act of 1989, and

(B) how these changes may affect the benefits contained in such policy and the premium for the policy.

(6)(A) Except as provided in subparagraph (B), in the case of an individual who had in effect, as of December 31, 1988, a medicare supplemental policy with an insurer (as a policyholder or, in the case of a group policy, as a certificate holder) and the individual terminated coverage under such policy before December 13, 1989, no medicare supplemental policy of the insurer shall be deemed to meet the standards in subsection (c) of this section unless the insurer—

(i) provides written notice, no earlier than December 15, 1989, and no later than January 30, 1990, to the policyholder or certificate holder (at the most recent available address) of the offer described in clause (ii), and

(ii) offers the individual, during a period of at least 60 days beginning not later than February 1, 1990, reinstatement of coverage (with coverage effective as of January 1, 1990), under the terms which (I) do not provide for any waiting period with respect to treatment of pre-existing conditions, (II) provides for coverage which is substantially equivalent to coverage in effect before the date of such termination, and (III) provides for classification of premiums on which terms are at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage never terminated.

(B) An insurer is not required to make the offer under subparagraph (A)(ii) in the case of an individual who is a policyholder or certificate holder in another medicare supplemental policy as of December 13, 1989, if (as of January 1, 1990) the individual is not subject to a waiting period with respect to treatment of a pre-existing condition under such other policy.

(o) Requirements of group benefits; core group benefits; uniform outline of coverage

The requirements of this subsection are as follows:

(1) Each medicare supplemental policy shall provide for coverage of a group of benefits consistent with subsections (p), (v), (w), and (y) of this section.

(2) If the medicare supplemental policy provides for coverage of a group of benefits other than the core group of basic benefits described

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in subsection (p)(2)(B) of this section, the issuer of the policy must make available to the individual a medicare supplemental policy with only such core group of basic benefits.

(3) The issuer of the policy has provided, before the sale of the policy, an outline of coverage that uses uniform language and format (including layout and print size) that facilitates comparison among medicare supplemental policies and comparison with medicare benefits.

(4) The issuer of the medicare supplemental policy complies with subsection (s)(2)(E) and subsection (x).

(5) In addition to the requirement under paragraph (2), the issuer of the policy must make available to the individual at least Medicare supplemental policies with benefit packages classified as “C” or “F”.

(p) Standards for group benefits

(1)(A) If, within 9 months after November 5, 1990, the National Association of Insurance Commissioners (in this subsection referred to as the “Association”) changes the revised NAIC Model Regulation (described in subsection (m) of this section) to incorporate—

(i) limitations on the groups or packages of benefits that may be offered under a medicare supplemental policy consistent with paragraphs (2) and (3) of this subsection;

(ii) uniform language and definitions to be used with respect to such benefits;

(iii) uniform format to be used in the policy with respect to such benefits, and

(iv) other standards to meet the additional requirements imposed by the amendments made by the Omnibus Budget Reconciliation Act of 1990,

subsection (g)(2)(A) of this section shall be applied in each State, effective for policies issued to policyholders on and after the date specified in subparagraph (C), as if the reference to the revised NAIC Model Regulation (as changed under this subparagraph (such changed regulation referred to in this section as the “1991 NAIC Model Regulation”)).

(B) If the Association does not make the changes in the revised NAIC Model Regulation within the 9-month period specified in subparagraph (A), the Secretary shall promulgate, not later than 9 months after the end of such period, a regulation and subsection (g)(2)(A) of this section shall be applied in each State, effective for policies issued to policyholders on and after the date specified in subparagraph (C), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the revised NAIC Model Regulation as changed under this subparagraph (such changed regulation referred to in this section as the “1991 NAIC Model Regulation”).

(C) (i) Subject to clause (ii), the date specified in this subparagraph for a State is the date the State adopts the 1991 NAIC Model Regulation or 1991 Federal Regulation or 1 year after the date the Association or the Secretary first adopts such standards, whichever is earlier.

(ii) In the case of a State which the Secretary identifies, in consultation with the Association, as—

(I) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet the 1991 NAIC Model Regulation or 1991 Federal Regulation, but

(II) having a legislature which is not scheduled to meet in 1992 in a legislative session in which such legislation may be considered, the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1992. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

(D) In promulgating standards under this paragraph, the Association or Secretary shall consult with a working group composed of representatives of issuers of medicare supplemental policies, consumer groups, medicare beneficiaries, and other qualified individuals. Such representatives shall be selected in a manner so as to assure balanced representation among the interested groups.

(E) If benefits (including deductibles and coinsurance) under this subchapter are changed and the Secretary determines, in consultation with the Association, that changes in the 1991 NAIC Model Regulation or 1991 Federal Regulation are needed to reflect such changes, the preceding provisions of this paragraph shall apply to the modification of standards previously established in the same manner as they applied to the original establishment of such standards.

(2) The benefits under the 1991 NAIC Model Regulation or 1991 Federal Regulation shall provide—

(A) for such groups or packages of benefits as may be appropriate taking into account the considerations specified in paragraph (3) and the requirements of the succeeding subparagraphs;

(B) for identification of a core group of basic benefits common to all policies; and

(C) that, subject to paragraph (4)(B), the total number of different benefit packages (counting the core group of basic benefits described in subparagraph (B) and each other combination of benefits that may be offered as a separate benefit package) that may be established in all the States and by all issuers shall not exceed 10 plus the 2 plans described in paragraph (1)(A).

(3) The benefits under paragraph (2) shall, to the extent possible—

(A) provide for benefits that offer consumers the ability to purchase the benefits that are available in the market as of November 5, 1990; and

(B) balance the objectives of (i) simplifying the market to facilitate comparisons among policies, (ii) avoiding adverse selection, (iii) providing consumer choice, (iv) providing market stability, and (v) promoting competition.

(4) (A) (i) Except as provided in subparagraph (B) or paragraph (6), no State with a regulatory program approved under subsection (b)(1) of this section may provide for or permit the grouping
of benefits (or language or format with respect to such benefits) under a medicare supplemental policy unless such grouping meets the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation.

(ii) Except as provided in subparagraph (B), the Secretary may not provide for or permit the grouping of benefits (or language or format with respect to such benefits) under a medicare supplemental policy seeking approval by the Secretary unless such grouping meets the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation.

(B) With the approval of the State (in the case of a policy issued in a State with an approved regulatory program) or the Secretary (in the case of any other policy), the issuer of a medicare supplemental policy may offer new or innovative benefits in addition to the benefits provided in a policy that otherwise complies with the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation. Any such new or innovative benefits may include benefits that are not otherwise available and are cost-effective and shall be offered in a manner which is consistent with the goal of simplification of medicare supplemental policies.

(5)(A) Except as provided in subparagraph (B), this subsection shall not be construed as preventing a State from restricting the groups of benefits that may be offered in medicare supplemental policies in the State.

(B) A State with a regulatory program approved under subsection (b)(1) of this section may not restrict under subparagraph (A) the offering of a medicare supplemental policy consisting only of the core group of benefits described in paragraph (2)(B).

(6) The Secretary may waive the application of standards described in clauses (i) through (iii) of paragraph (1)(A) in those States that on November 5, 1990, had in place an alternative simplification program.

(7) This subsection shall not be construed as preventing an issuer of a medicare supplemental policy who otherwise meets the requirements of this section from providing, through an arrangement with a vendor, for discounts from that vendor to policyholders or certificateholders for the purchase of items or services not covered under its medicare supplemental policies.

(8) Any person who sells or issues a medicare supplemental policy, on and after the effective date specified in paragraph (1)(C) (but subject to paragraph (10)), in violation of the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation insofar as such regulation relates to the requirements of subsection (o) or (q) of this section or clause (l), (ll), or (iii) of paragraph (1)(A) is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not an issuer of a policy) for each such violation.

The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(9)(A) Anyone who sells a medicare supplemental policy to an individual shall make available for sale to the individual a medicare supplemental policy with only the core group of basic benefits (described in paragraph (2)(B)).

(B) Anyone who sells a medicare supplemental policy to an individual shall provide the individual, before the sale of the policy, an outline of coverage which describes the benefits under the policy. Such outline shall be on a standard form approved by the State regulatory program or the Secretary (as the case may be) consistent with the 1991 NAIC Model Regulation or 1991 Federal Regulation under this subsection.

(C) Whoever sells a medicare supplemental policy in violation of this paragraph is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not the issuer of the policy) for each such violation. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(D) Subject to paragraph (10), this paragraph shall apply to sales of policies occurring on or after the effective date specified in paragraph (1)(C).

(10) No penalty may be imposed under paragraph (8) or (9) in the case of a seller who is not the issuer of a policy until the Secretary has published a list of the groups of benefit packages that may be sold or issued consistent with paragraph (1)(A)(i).

(11)(A) For purposes of paragraph (2), the benefit packages described in this subparagraph are as follows:

(i) The benefit package classified as “F” under the standards established by such paragraph, except that it has a high deductible feature.

(ii) The benefit package classified as “J” under the standards established by such paragraph, except that it has a high deductible feature.

(B) For purposes of subparagraph (A), a high deductible feature is one which—

(i) requires the beneficiary of the policy to pay annual out-of-pocket expenses (other than premiums) in the amount specified in subparagraph (C) before the policy begins payment of benefits, and

(ii) covers 100 percent of covered out-of-pocket expenses once such deductible has been satisfied in a year.

(C) The amount specified in this subparagraph—

(i) for 1998 and 1999 is $1,500, and

(ii) for a subsequent year, is the amount specified in this subparagraph for the preceding year, increased by the percentage increase in the Consumer Price Index for all urban consumers (all items; U.S. city average) for the 12-month period ending with August of the preceding year.

If any amount determined under clause (ii) is not a multiple of $10, it shall be rounded to the nearest multiple of $10.
(q) Guaranteed renewal of policies; termination; suspension

The requirements of this subsection are as follows:

(1) Each medicare supplemental policy shall be guaranteed renewable and—
   (A) the issuer may not cancel or nonrenew the policy solely on the ground of health status of the individual; and
   (B) the issuer shall not cancel or nonrenew the policy for any reason other than non-payment of premium or material misrepresentation.

(2) If the medicare supplemental policy is terminated by the group policyholder and is not replaced as provided under paragraph (4), the issuer shall offer certificateholders an individual medicare supplemental policy which at the option of the certificateholder—
   (A) provides for continuation of the benefits contained in the group policy, or
   (B) provides for such benefits as otherwise meets the requirements of this section.

(3) If an individual is a certificateholder in a group medicare supplemental policy and the individual terminates membership in the group, the issuer shall—
   (A) offer the certificateholder the continuation opportunity described in paragraph (2), or
   (B) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(4) If a group medicare supplemental policy is replaced by another group medicare supplemental policy purchased by the same policyholder, issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(5)(A) Each medicare supplemental policy shall provide that benefits and premiums under the policy shall be suspended at the request of the policyholder if the policyholder is entitled to benefits under section 426(b) of this title and is covered under a group health plan (as defined in section 1356y(b)(1)(A)(v) of this title). If such suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, such policy shall be automatically reinstated (effective as of the date of such loss of coverage) under terms described in subsection (n)(6)(A)(ii) of this section as of the date of such loss if the policyholder provides notice of loss of such coverage within 90 days after the date of such loss.

(r) Required ratio of aggregate benefits to aggregate premiums

(1) A medicare supplemental policy may not be issued or renewed (or otherwise provide coverage after the date described in subsection (p)(1)(C) of this section) in any State unless—
   (A) the policy can be expected for periods after the effective date of these provisions (as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such periods and in accordance with a uniform methodology, including uniform reporting standards, developed by the National Association of Insurance Commissioners) to return to policyholders in the form of aggregate benefits provided under the policy, at least 75 percent of the aggregate amount of premiums collected in the case of group policies and at least 65 percent in the case of individual policies; and
   (B) the issuer of the policy provides for the issuance of a proportional refund, or a credit against future premiums of a proportional amount, based on the premium paid and in accordance with paragraph (2), of the amount of premiums received necessary to assure that the ratio of aggregate benefits provided to the aggregate premiums collected (net of such refunds or credits) complies with the expectation required under subparagraph (A), treating policies of the same type as a single policy for each standard package.

For purposes of applying subparagraph (A) only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual

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policies. For the purpose of calculating the refund or credit required under paragraph (1)(B) for a policy issued before the date specified in subsection (p)(1)(C) of this section, the refund or credit calculation shall be based on the aggregate benefits provided and premiums collected under all such policies issued by an insurer in a State (separated as to individual and group policies) and shall be based only on aggregate benefits provided and premiums collected under such policies after the date specified in section 171(m)(4) of the Social Security Act Amendments of 1994.

(2)(A) Paragraph (1)(B) shall be applied with respect to each type of policy by standard package. Paragraph (1)(B) shall not apply to a policy until 12 months following issue. The Comptroller General, in consultation with the National Association of Insurance Commissioners, shall submit to Congress a report containing recommendations on adjustment in the percentages under paragraph (1)(A) that may be appropriate.

In the case of a policy issued before the date specified in section 171(m)(4) of the Social Security Act Amendments of 1994.

(B) A refund or credit required under paragraph (1)(B) shall be made to each policyholder insuring under the applicable policy as of the last day of the year involved.

(C) Such a refund or credit shall include interests from the end of the calendar year involved until the date of the refund or credit at a rate as specified by the Secretary for this purpose from time to time which is not less than the average rate of interest for 13-week Treasury notes.

(D) For purposes of this paragraph and paragraph (1)(B), refunds or credits against premiums due shall be made, with respect to a calendar year, not later than the third quarter of the succeeding calendar year.

(3) The provisions of this subsection do not preempt a State from requiring a higher percentage than that specified in paragraph (1)(A).

(4) The Secretary shall submit in October of each year (beginning with 1995) a report to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate on loss ratios under medicare supplemental policies and the use of sanctions, such as a required rebate or credit or the disallowance of premium increases, for policies that fail to meet the requirements of this subsection (relating to loss ratios). Such report shall include a list of the policies that failed to comply with such loss ratio requirements or other requirements of this section.

(5) The Secretary may perform audits with respect to the compliance of medicare supplemental policies with the loss ratio requirements of this subsection and shall report the results of such audits to the State involved.

(6)(A) A person who fails to provide refunds or credits as required in paragraph (1)(B) is subject to a civil money penalty of not to exceed $25,000 for each policy issued for which such failure occurred. The provisions of section 1320a-7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a-7a(a) of this title.

(B) Each issuer of a policy subject to the requirements of paragraph (1)(B) shall be liable to the policyholder or, in the case of a group policy, to the certificate holder for credits required under such paragraph.

(s) Coverage for pre-existing conditions

(1) If a medicare supplemental policy replaces another medicare supplemental policy, the issuer of the replacing policy shall waive any time period applicable to the pre-existing condition, waiting period, elimination periods and probationary periods in the new medicare supplemental policy for similar benefits to the extent such time was spent under the original policy.

(2)(A) The issuer of a medicare supplemental policy may not deny or condition the issuance or effectiveness of a medicare supplemental policy, or discriminate in the pricing of the policy, because of health status, claims experience, receipt of health care, or medical condition in the case of an individual for whom an application is submitted prior to or during the 6 month period beginning with the first month as of the first day on which the individual is 65 years of age or older and is enrolled for benefits under part B of this subchapter.

(B) Subject to subparagraphs (C) and (D), subparagraph (A) shall not be construed as preventing the exclusion of benefits under a policy, during its first 6 months, based on a pre-existing condition for which the policyholder received treatment or was otherwise diagnosed during the 6 months before the policy became effective.

(C) If a medicare supplemental policy or certificate replaces another such policy or certificate which has been in effect for 6 months or longer, the replacing policy may not provide any time period applicable to pre-existing conditions, waiting periods, elimination periods, and probationary periods in the new policy or certificate for similar benefits.

(D) In the case of a policy issued during the 6-month period described in subparagraph (A) to an individual who is 65 years of age or older as of the date of issuance and who as of the date of the application for enrollment has a continuous period of creditable coverage (as defined in section 2701(c) of the Public Health Service Act) of—

(i) at least 6 months, the policy may not exclude benefits based on a pre-existing condition; or

(ii) less than 6 months, if the policy excludes benefits based on a pre-existing condition, the policy shall reduce the period of any pre-existing condition exclusion by the aggregate of the periods of creditable coverage (if any, as so defined) applicable to the individual as of the enrollment date.

The Secretary shall specify the manner of the reduction under clause (ii), based upon the rules used by the Secretary in carrying out section 2701(a)(3) of such Act.

(E) An issuer of a medicare supplemental policy shall not deny or condition the issuance or

*See References in Text note below.
effectiveness of the policy (including the imposition of any exclusion of benefits under the policy based on a pre-existing condition) and shall not discriminate in the pricing of the policy (including the adjustment of premium rates) of an individual on the basis of the genetic information with respect to such individual.

(F) RULE OF CONSTRUCTION.—Nothing in subparagraph (E) or in subparagraphs (A) or (B) of subsection (x)(2) shall be construed to limit the ability of an issuer of a medicare supplemental policy from, to the extent otherwise permitted under this subchapter—

(i) denying or conditioning the issuance or effectiveness of the policy or increasing the premium for an employer based on the manifestation of a disease or disorder of an individual who is covered under the policy; or

(ii) increasing the premium for any policy issued to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy (in such case, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members and to further increase the premium for the employer).

(3)(A) The issuer of a medicare supplemental policy—

(i) may not deny or condition the issuance or effectiveness of a medicare supplemental policy described in subparagraph (C) that is offered and is available for issuance to new enrollees by such issuer;

(ii) may not discriminate in the pricing of such policy, because of health status, claims experience, receipt of health care, or medical condition; and

(iii) may not impose an exclusion of benefits based on a preexisting condition under such policy,

in the case of an individual described in subparagraph (B) who seeks to enroll under the policy during the period specified in subparagraph (E) and who submits evidence of the date of termination or disenrollment along with the application for such medicare supplemental policy.

(B) An individual described in this subparagraph is an individual described in any of the following clauses:

(i) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under this subchapter and the plan terminates or ceases to provide all such supplemental health benefits to the individual.

(ii) The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under part C of this subchapter, and there are circumstances permitting discontinuance of the individual’s election of the plan under the first sentence of section 1395w–21(e)(4) of this title or the individual is 65 years of age or older and is enrolled with a PACE provider under section 1395eee of this title, and there are circumstances that would permit the discontinuance of the individual’s enrollment with such provider under circumstances that are similar to the circumstances that would permit discontinuance of the individual’s election under the first sentence of such section if such individual were enrolled in a Medicare+Choice plan.

(iii) The individual is enrolled with an eligible organization under a contract under section 1395mm of this title, a similar organization operating under demonstration project authority, effective for periods before April 1, 1999, with an organization under an agreement under section 1395(a)(1) of this title, or with an organization under a policy described in subsection (t) of this section, and such enrollment ceases under the same circumstances that would permit discontinuance of an individual’s election of coverage under the first sentence of section 1395w–21(e)(4) of this title and, in the case of a policy described in subsection (t) of this section, there is no provision under applicable State law for the continuation or conversion of coverage under such policy.

(iv) The individual is enrolled under a medicare supplemental policy under this section and such enrollment ceases because—

(I) of the bankruptcy or insolvency of the issuer or because of other involuntary termination of coverage or enrollment under such policy and there is no provision under applicable State law for the continuation or conversion of such coverage;

(II) the issuer of the policy substantially violated a material provision of the policy; or

(III) the issuer (or an agent or other entity acting on the issuer’s behalf) materially misrepresented the policy’s provisions in marketing the policy to the individual.

(v) The individual—

(I) was enrolled under a medicare supplemental policy under this section,

(II) subsequently terminates such enrollment and enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under part C of this subchapter, any eligible organization under a contract under section 1395mm of this title, any similar organization operating under demonstration project authority, any PACE provider under section 1395eee of this title, or any policy described in subsection (t) of this section, and

(III) the subsequent enrollment under subclause (II) is terminated by the enrollee during any period within the first 12 months of such enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1395w–21(e) of this title).

(vi) The individual, upon first becoming eligible for benefits under part A of this subchapter at age 65, enrolls in a Medicare+Choice plan under part C of this subchapter or in a PACE program under section 1395eee of this title, and disenrolls from such plan or such program by not later than 12 months after the effective date of such enrollment.

(C)(i) Subject to clauses (ii) and (iii), a medicare supplemental policy described in this subparagraph is a medicare supplemental policy which has a benefit package classified as “A”,
“(B), “C”, or “F” under the standards established under subsection (p) of this section.

(ii) Subject to subclause (II), only for purposes of an individual described in subparagraph (B)(v), a medicare supplemental policy described in this subparagraph is the same medicare supplemental policy referred to in such subparagraph in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in clause (i).

(II) If the medicare supplemental policy referred to in subparagraph (B)(v) was a medigap Rx policy (as defined in subsection (v)(6)(A) of this section), a medicare supplemental policy described in this subparagraph is such policy in which the individual was most recently enrolled as modified under subsection (v) (2)(C)(i) of this section or, at the election of the individual, a policy referred to in subsection (v) (3)(A)(i) of this section.

(iii) Only for purposes of an individual described in subparagraph (B)(vi) and subject to subsection (v)(1) of this section, a medicare supplemental policy described in this subparagraph shall include any medicare supplemental policy.

(iv) For purposes of applying this paragraph in the case of a State that provides for offering of benefit packages other than under the classification referred to in clause (i), the references to benefit packages in such clause are deemed references to comparable benefit packages offered in such State.

(D) At the time of an event described in subparagraph (B) because of which an individual ceases enrollment or loses coverage or benefits under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, the insurer offering the policy, or the administrator of the plan, respectively, shall notify the individual of the rights of the individual under this paragraph, provider, plan, or program.

(E) For purposes of subparagraph (A), the time period specified in this subparagraph is—

(i) in the case of an individual described in subparagraph (B)(i), the period beginning on the date that the individual receives a notice of termination of all supplemental health benefits (or, if no such notice is received, notice that a claim has been denied because of such a termination or cessation) and ending on the date that is 63 days after the applicable coverage is terminated;

(ii) in the case of an individual described in clause (ii), (iii), (v), or (vi) of subparagraph (B) whose enrollment is terminated involuntarily, the period beginning on the date that the individual receives a notice of termination and ending on the date that is 63 days after the date the applicable coverage is terminated;

(iii) in the case of an individual described in subparagraph (B)(iv)(I), the period beginning on the earlier of (I) the date that the individual was first enrolled with such an organization or provider, (II) if the medicare supplemental policy referred to in subparagraph (B)(v) was a medigap Rx policy, the period beginning on the effective date of the discontinuance provisions of this subparagraph, the period beginning on the effective date of the discontinuance and ending on the date that is 63 days after such effective date; and

(F) Subject to clause (ii), for purposes of this paragraph—

(i) in the case of an individual described in subparagraph (B)(v) (or deemed to be so described, pursuant to this subparagraph) whose enrollment with an organization or provider described in clause (ii) of such subparagraph is involuntarily terminated within the first 12 months of such enrollment, and who, without an intervening enrollment, enrolls in such organization or provider, such subsequent enrollment shall be deemed to be an initial enrollment described in such subparagraph; and

(ii) in the case of an individual described in clause (vi) of subparagraph (B) (or deemed to be so described, pursuant to this subparagraph) whose enrollment with a plan or in a program described in such clause is involuntarily terminated within the first 12 months of such enrollment, and who, without an intervening enrollment, enrolls in such plan or program, such subsequent enrollment shall be deemed to be an initial enrollment described in such clause.

(4) Any issuer of a medicare supplemental policy that fails to meet the requirements of this section is subject to a civil money penalty of not to exceed $5,000 for each such failure. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(6) Medicare select policies

(1) If a medicare supplemental policy meets the 1991 NAIC Model Regulation or 1991 Federal Regulation and otherwise complies with the requirements of this section except that benefits under the policy are restricted to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities), the policy shall nevertheless be treated as meeting those standards if—
(A) full benefits are provided for items and services furnished through a network of entities which have entered into contracts or agreements with the issuer of the policy;

(B) full benefits are provided for items and services furnished by other entities if the services are medically necessary and immediately required because of an unforeseen illness, injury, or condition and it is not reasonable given the circumstances to obtain the services through the network;

(C) the network offers sufficient access;

(D) the issuer of the policy has arrangements for an ongoing quality assurance program for items and services furnished through the network;

(E)(i) the issuer of the policy provides to each enrollee at the time of enrollment an explanation of (I) the restrictions on payment under the policy for services furnished other than by or through the network, (II) out of area coverage under the policy, (III) the policy’s coverage of emergency services and urgently needed care, and (IV) the availability of a policy through the entity that meets the standards in the 1991 NAIC Model Regulation or 1991 Federal Regulation without reference to this subsection and the premium charged for such policy, and

(ii) each enrollee prior to enrollment acknowledges receipt of the explanation provided under clause (i); and

(F) the issuer of the policy makes available to individuals, in addition to the policy described in this subsection, any policy (otherwise offered by the issuer to individuals in the State) that meets the standards in the 1991 NAIC Model Regulation or 1991 Federal Regulation without reference to this subsection and the premium charged for such policy, and

(ii) each enrollee prior to enrollment acknowledges receipt of the explanation provided under clause (i); and

(vi) Rules relating to medigap policies that provide prescription drug coverage

(1) Prohibition on sale, issuance, and renewal of new policies that provide prescription drug coverage

(A) In general

Notwithstanding any other provision of law, on or after January 1, 2006, a medigap Rx policy (as defined in paragraph (6)(A)) may not be sold, issued, or renewed under this section—

(i) to an individual who is a part D enrollee (as defined in paragraph (6)(B)); or

(ii) except as provided in subparagraph (B), to an individual who is not a part D enrollee.

(B) Continuation permitted for non-part D enrollees

Subparagraph (A)(ii) shall not apply to the renewal of a medigap Rx policy that was issued before January 1, 2006.
(C) Construction

Nothing in this subsection shall be construed as preventing the offering on and after January 1, 2006, of “H”, “I”, and “J” policies described in paragraph (2)(D)(i) if the benefit packages are modified in accordance with paragraph (2)(C).

(2) Elimination of duplicative coverage upon part D enrollment

(A) In general

In the case of an individual who is covered under a medicare Rx policy and enrolls under a part D plan—

(i) before the end of the initial part D enrollment period, the individual may—

(I) enroll in a medicare supplemental policy without prescription drug coverage under paragraph (3); or

(II) continue the policy in effect subject to the modification described in subparagraph (C)(i); or

(ii) after the end of such period, the individual may continue the policy in effect subject to such modification.

(B) Notice required to be provided to current policyholders with medicare Rx policy

No medicare supplemental policy of an issuer shall be deemed to meet the standards in subsection (c) of this section unless the issuer—

(i) provides written notice (in accordance with standards of the Secretary established in consultation with the National Association of Insurance Commissioners) during the 60-day period immediately preceding the initial part D enrollment period, to each individual who is a policyholder or certificate holder of a medicare Rx policy (at the most recent available address of that individual) of the following:

(I) If the individual enrolls in a plan under part D of this subchapter during the initial enrollment period under section 1395w–101(b)(2)(A) of this title, the individual has the option of—

(II) continuing enrollment in the individual’s current plan, but the plan’s coverage of prescription drugs will be modified under subparagraph (C)(i); or

(II) enrolling in another medicare supplemental policy pursuant to paragraph (3).

(ii) If the individual does not enroll in a plan under part D of this subchapter during such period, the individual may continue enrollment in the individual’s current plan without change, but—

(I) the individual will not be guaranteed the option of enrollment in another medicare supplemental policy pursuant to paragraph (3); and

(II) if the current plan does not provide creditable prescription drug coverage (as defined in section 1395w–113(b)(4) of this title), notice of such fact and that there are limitations on the periods in a year in which the individual may enroll under a part D plan and any such enrollment is subject to a late enrollment penalty.

(iii) Such other information as the Secretary may specify (in consultation with the National Association of Insurance Commissioners), including the potential impact of such election on premiums for medicare supplemental policies.

(C) Modification

(i) In general

The policy modification described in this subparagraph is the elimination of prescription coverage for expenses of prescription drugs incurred after the effective date of the individual’s coverage under a part D plan and the appropriate adjustment of premiums to reflect such elimination of coverage.

(ii) Continuation of renewability and application of modification

No medicare supplemental policy of an issuer shall be deemed to meet the standards in subsection (c) of this section unless the issuer—

(I) continues renewability of medicare Rx policies that it has issued, subject to subparagraph (II); and

(II) applies the policy modification described in clause (i) in the cases described in clauses (i)(II) and (ii) of subparagraph (A).

(D) References to Rx policies

(i) H, I, and J policies

Any reference to a benefit package classified as “H”, “I”, or “J” (including the benefit package classified as “J” with a high deductible feature, as described in subsection (p)(11) of this section) under the standards established under subsection (p)(2) of this section shall be construed as including a reference to such a package as modified under subparagraph (C) and such packages as modified shall not be counted as a separate benefit package under such subsection.

(ii) Application in waivered States

Except for the modification provided under subparagraph (C), the waivers previously in effect under subsection (p)(2) of this section shall continue in effect.

(3) Availability of substitute policies with guaranteed issue

(A) In general

The issuer of a medicare supplemental policy—

(i) may not deny or condition the issuance or effectiveness of a medicare supplemental policy that has a benefit package classified as “A”, “B”, “C”, or “F” (including the benefit package classified as “F” with a high deductible feature, as described in subsection (p)(11) of this section), under the standards established under subsection (p)(2) of this section, or a benefit package described in subparagraph (A) or (B) of subsection (w)(2) of this section and that is offered and is available for issuance to new enrollees by such issuer; and

(ii) may not discriminate in the pricing of such policy, because of health status,
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claims experience, receipt of health care, or medical condition; and
(iii) may not impose an exclusion of benefits based on a pre-existing condition under such policy,
in the case of an individual described in subparagraph (B) who seeks to enroll under the policy not later than 63 days after the effective date of the individual’s coverage under a part D plan.

(B) Individual covered

An individual described in this subparagraph with respect to the issuer of a medicare supplemental policy is an individual who—
(i) enrolls in a part D plan during the initial part D enrollment period;
(ii) at the time of such enrollment was enrolled in a medigap Rx policy issued by such issuer; and
(iii) terminates enrollment in such policy and submits evidence of such termination along with the application for the policy under subparagraph (A).

(C) Special rule for waived States

For purposes of applying this paragraph in the case of a State that provides for offering of benefit packages other than under the classification referred to in subparagraph (A)(i), the references to benefit packages in such subparagraph are deemed references to comparable benefit packages offered in such State.

(4) Enforcement

(A) Penalties for duplication

The penalties described in subsection (d)(3)(A)(i) of this section shall apply with respect to a violation of paragraph (1)(A).

(B) Guaranteed issue

The provisions of paragraph (4) of subsection (s) of this section shall apply with respect to the requirements of paragraph (3) in the same manner as they apply to the requirements of such subsection.

(5) Construction

Any provision in this section or in a medicare supplemental policy relating to guaranteed renewability of coverage shall be deemed to have been met with respect to a part D enrollee through the continuation of the policy subject to modification under paragraph (2)(C) or the offering of a substitute policy under paragraph (3). The previous sentence shall not be construed to affect the guaranteed renewability of such a modified or substitute policy.

(6) Definitions

For purposes of this subsection:

(A) Medigap Rx policy

The term “medigap Rx policy” means a medicare supplemental policy—
(i) which has a benefit package classified as “H”, “I”, or “J” (including the benefit package classified as “J” with a high deductible feature, as described in subsection (p)(11) of this section) under the standards established under subsection (p)(2) of this section, without regard to this subsection; and
(ii) to which such standards do not apply (or to which such standards have been waived under subsection (p)(6) of this section) but which provides benefits for prescription drugs.

Such term does not include a policy with a benefit package as classified under clause (i) which has been modified under paragraph (2)(C)(i).

(B) Part D enrollee

The term “part D enrollee” means an individual who is enrolled in a part D plan.

(C) Part D plan

The term “part D plan” means a prescription drug plan or an MA–PD plan (as defined for purposes of part D of this subchapter).

(D) Initial part D enrollment period

The term “initial part D enrollment period” means the initial enrollment period described in section 1395w–101(b)(2)(A) of this title.

(w) Development of new standards for medicare supplemental policies

(1) In general

The Secretary shall request the National Association of Insurance Commissioners to review and revise the standards for benefit packages under subsection (p)(1) of this section, taking into account the changes in benefits resulting from enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and to otherwise update standards to reflect other changes in law included in such Act. Such revision shall incorporate the inclusion of the 2 benefit packages described in paragraph (2). Such revisions shall be made consistent with the rules applicable under subsection (p)(1)(E) of this section with the reference to the “1991 NAIC Model Regulation” deemed a reference to the NAIC Model Regulation as published in the Federal Register on December 4, 1998, and as subsequently updated by the National Association of Insurance Commissioners to reflect previous changes in law (and subsection (v) of this section) and the reference to “date of enactment of this subsection” deemed a reference to December 8, 2003. To the extent practicable, such revision shall provide for the implementation of revised standards for benefit packages as of January 1, 2006.

(2) New benefit packages

The benefit packages described in this paragraph are the following (notwithstanding any other provision of this section relating to a core benefit package):

(A) First new benefit package

A benefit package consisting of the following:
(i) Subject to clause (ii), coverage of 50 percent of the cost-sharing otherwise applicable under parts A and B of this sub chapter, except there shall be no coverage of the part B deductible and coverage of
100 percent of any cost-sharing otherwise applicable for preventive benefits.

(ii) Coverage for all hospital inpatient coinsurance and 365 extra lifetime days of coverage of inpatient hospital services (as in the current core benefit package).

(iii) A limitation on annual out-of-pocket expenditures under parts A and B of this subchapter to $4,000 in 2006 (or, in a subsequent year, to such limitation for the previous year increased by an appropriate inflation adjustment specified by the Secretary).

(B) Second new benefit package

A benefit package consisting of the benefit package described in subparagraph (A), except as follows:

(i) Substitute “75 percent” for “50 percent” in clause (i) of such subparagraph.

(ii) Substitute “$2,000” for “$4,000” in clause (iii) of such subparagraph.

(x) Limitations on genetic testing and information

(1) Genetic testing

(A) Limitation on requesting or requiring genetic testing

An issuer of a medicare supplemental policy shall not request or require an individual or a family member of such individual to undergo a genetic test.

(B) Rule of construction

Subparagraph (A) shall not be construed to limit the authority of a health care professional who is providing health care services to an individual to request that such individual undergo a genetic test.

(C) Rule of construction regarding payment

(i) In general

Nothing in subparagraph (A) shall be construed to preclude an issuer of a medicare supplemental policy from obtaining and using the results of a genetic test in making a determination regarding payment (as such term is defined for the purposes of applying the regulations promulgated by the Secretary under part C of subchapter XI and section 261 of the Health Insurance Portability and Accountability Act of 1996, as may be revised from time to time) consistent with subsection (s)(2)(E).

(ii) Limitation

For purposes of clause (i), an issuer of a medicare supplemental policy may request only the minimum amount of information necessary to accomplish the intended purpose.

(D) Research exception

Notwithstanding subparagraph (A), an issuer of a medicare supplemental policy may request, but not require, that an individual or a family member of such individual undergo a genetic test if each of the following conditions is met:

(i) The request is made pursuant to research that complies with part 46 of title 45, Code of Federal Regulations, or equivalent Federal regulations, and any applicable State or local law or regulations for the protection of human subjects in research.

(ii) The issuer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of such child, to whom the request is made that—

(I) compliance with the request is voluntary; and

(II) non-compliance will have no effect on enrollment status or premium or contribution amounts.

(iii) No genetic information collected or acquired under this subparagraph shall be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rating, or the creation, renewal, or replacement of a plan, contract, or coverage for health insurance or health benefits.

(iv) The issuer notifies the Secretary in writing that the issuer is conducting activities pursuant to the exception provided for under this subparagraph, including a description of the activities conducted.

(v) The issuer complies with such other conditions as the Secretary may by regulation require for activities conducted under this subparagraph.

(2) Prohibition on collection of genetic information

(A) In general

An issuer of a medicare supplemental policy shall not request, require, or purchase genetic information for underwriting purposes (as defined in paragraph (3)).

(B) Prohibition on collection of genetic information prior to enrollment

An issuer of a medicare supplemental policy shall not request, require, or purchase genetic information with respect to any individual prior to such individual’s enrollment under the policy in connection with such enrollment.

(C) Incidental collection

If an issuer of a medicare supplemental policy obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a violation of subparagraph (B) if such request, requirement, or purchase is not in violation of subparagraph (A).

(3) Definitions

In this subsection:

(A) Family member

The term “family member” means with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual.

(B) Genetic information

(i) In general

The term “genetic information” means, with respect to any individual, information about—
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(i) such individual’s genetic tests,
(ii) the genetic tests of family members of such individual, and
(iii) subject to clause (iv), the manifestation of a disease or disorder in family members of such individual.

(ii) Inclusion of genetic services and participation in genetic research

Such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual.

(iii) Exclusions

The term “genetic information” shall not include information about the sex or age of any individual.

(C) Genetic test

(i) In general

The term “genetic test” means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

(ii) Exceptions

The term “genetic test” does not mean—

(I) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

(II) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

(D) Genetic services

The term “genetic services” means—

(i) a genetic test;

(ii) genetic counseling (including obtaining, interpreting, or assessing genetic information); or

(iii) genetic education.

(E) Underwriting purposes

The term “underwriting purposes” means, with respect to a medicare supplemental policy—

(i) rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the policy;

(ii) the computation of premium or contribution amounts under the policy;

(iii) the application of any pre-existing condition exclusion under the policy; and

(iv) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

(F) Issuer of a medicare supplemental policy

The term “issuer of a medicare supplemental policy” includes a third-party administrator or other person acting for or on behalf of such issuer.

(4) Genetic information of a fetus or embryo

Any reference in this section to genetic information concerning an individual or family member of an individual shall—

(A) with respect to such an individual or family member of an individual who is a pregnant woman, include genetic information of any fetus carried by such pregnant woman; and

(B) with respect to an individual or family member utilizing an assisted reproductive technology, include genetic information of any embryo legally held by the individual or family member.

(y) Development of new standards for certain medicare supplemental policies

(1) In general

The Secretary shall request the National Association of Insurance Commissioners to review and revise the standards for benefit packages described in paragraph (2) under subsection (p)(1), to otherwise update standards to include requirements for nominal cost sharing to encourage the use of appropriate physicians’ services under part B. Such revisions shall be based on evidence published in peer-reviewed journals or current examples used by integrated delivery systems and made consistent with the rules applicable under subsection (p)(1)(E) with the reference to the “1991 NAIC Model Regulation” deemed a reference to the NAIC Model Regulation as published in the Federal Register on December 4, 1998, and as subsequently updated by the National Association of Insurance Commissioners to reflect previous changes in law and the reference to “date of enactment of this subsection” deemed a reference to March 23, 2010. To the extent practicable, such revision shall provide for the implementation of revised standards for benefit packages as of January 1, 2015.

(2) Benefit packages described


REFERENCES IN TEXT


Section 650(c) of the Social Security Amendments of 1983, referred to in subsec. (g)(1), is section 650(c) of Pub. L. 98–21, Apr. 20, 1983, 97 Stat. 168, which was not classified to the Code, and was repealed by Pub. L. 105–53, title IV, §4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.


Section 9412(b) of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (g)(1), is section 9412(b) of Pub. L. 100–505, title IX, Oct. 21, 1988, 100 Stat. 2062, which was not classified to the Code, and was repealed by Pub. L. 105–53, title IV, §4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.


Section 2701 of the Public Health Service Act, referred to in subsec. (s)(2)(D), is section 2701 of the Public Health Service Act, redesignated existing provisions as subcl. (I), substituted new section 2701 for former section 2701, and struck out subpars. (E) and (F).


Subsec. (w). Pub. L. 110–161, 117 Stat. 2250, 264, 911, and was classified to section 300gg of this title, was redesignated section 2704, effective for plan years beginning on or after Jan. 1, 1944, which was classified to section 300gg of this title, was renumbered section 2701 of the Public Health Service Act, redesignated existing provisions as subcl. (I), substituted new section 2701 for former section 2701, and struck out subpars. (E) and (F).


AMENDMENTS


Subsec. (s)(2)(E), (F). Pub. L. 110–233, §104(a), added subpars. (E) and (F).


2007—Subsec. (r)(5). Pub. L. 110–161 substituted “The Secretary may” for “(A) The Comptroller General shall periodically, not less often than once every 3 years,” and struck out “and to the Secretary” after “State involved” and subpar. (B) which read as follows: “The Secretary may independently perform such compliance audits.”


Subsec. (d)(3)(B)(ii). Pub. L. 108–173, §736(e)(2), substituted “to the best of the issuer’s or seller’s knowledge” for “to the best of the issuer or seller’s knowledge”.

Subsec. (g)(1). Pub. L. 108–173, §104(b)(2)(A), inserted “a prescription drug plan under part D of this subchapter or” after “but does not include”.


Subsec. (s)(3)(C)(iii). Pub. L. 108–173, §104(a)(2)(B), inserted “and subject to subsection (v)(1) of this section” after “paragraph (D)(v)”.


2000—Subsec. (s)(3)(A). Pub. L. 106–554, §1(a)(6) [title VI, §618(a)(1)], in concluding provisions, substituted “See to it that an insurer seeking to enroll under the policy during the period specified in subparagraph (E) for “, subject to subparagraph (E), seeks to enroll under the policy not later than 63 days after the date of the termination of enrollment described in such subparagraph”. Subsec. (s)(3)(E). Pub. L. 106–554, §1(a)(6) [title VI, §618(a)(2)], added subpart (E) and struck out former subpar. (E) which read as follows: “(E)(i) An individual described in subparagraph (B)(ii) may elect to apply subparagraph (A) by substituting, for the date of termination of enrollment, the date on which the individual was notified by the Medicare+Choice organization of the impending termination or discontinuance of the Medicare+Choice plan it offers in the area in which the individual resides, but only if the individual disallows the plan as a result of such notification.

(ii) In the case of an individual making such an election, the issuer involved shall accept the application of the individual submitted before the date of termination of enrollment, but the coverage under subparagraph (A) shall only become effective upon termination of coverage under the Medicare+Choice plan involved.”


1999—Subsec. (g)(1). Pub. L. 106–113, §1000(a)(6) [title III, §321(k)(13)], struck out “or” after “; but does not include”.

tory provisions.


Subsec. (c)(3)(B)(ii). Pub. L. 106–113, § 1000(a)(6) [title V, § 5011(a)(1)], inserted before period at end “or the individual is otherwise entitled under the Medicare+Choice plan”.


Subsec. (g)(1). Pub. L. 105–33, § 4003(a)(3), inserted “a Medicare+Choice plan” in section if such individual were enrolled in a Medicare+Choice plan.

Subsec. (h)(6). Pub. L. 105–362 struck out par. (6) which read as follows: “The Secretary shall report to the Congress in March 1999 and in July 1999 on actions States have taken in adopting standards equal to or more stringent than the NAIC Model Transition Regulation or the amended NAIC Model Regulation (or Federal model standards).”

Subsec. (i)(6). Pub. L. 105–362 struck out par. (6) which provided for development of standards for various types of health insurance policies sold or issued to persons entitled to health benefits under this subchapter regarding extent to which benefits payable under those policies duplicate benefits under this subchapter regarding extent to which benefits payable under those policies duplicate benefits under this subchapter.

1994—Subsec. (a)(2). Pub. L. 103–432, § 171(c)(1)(B), in closing provisions substituted “on and after the effective date of the NAIC or Federal standards with respect to the policy”.


Subsec. (b)(1). Pub. L. 103–432, § 171(e)(2), substituted subparagraph (F)” for “subsection (F)” in last sentence.

Subsec. (d)(3)(A). Pub. L. 103–432, § 171(d)(1), substituted “the Secretary determines” for “the the Secretary determines” in introductory provisions.

1993—Pub. L. 103–432, § 171(c)(2), in last sentence substituted “Each report” for “The report”, “fail to meet the standards” for “fail to meet the standards”, “compliance, information regarding” for “compliance, and information regarding”, and “Commissioners may specify” for “Commissioners, may specify”.


Subsec. (d)(3)(A). Pub. L. 103–432, § 171(d)(1)(D), struck out at end “This subsection shall not apply to such a seller until such date as the Secretary publishes a list of the standardized benefit packages that may be offered consistent with subsection (p) of this section.”
amendment, first sentence read as follows: “It is unlawful for a person to sell or issue a health insurance policy to an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, with knowledge that such policy duplicates health benefits to which such individual is otherwise entitled, other than benefits to which he is entitled under any requirement of State or Federal law (other than this subchapter or subchapter XIX of this chapter).”

Subsec. (d)(3)(B)(ii)(II). Pub. L. 103–432, §171(a)(2)(A), struck out “65 years of age or older” before “may be eligible”.

Subsec. (d)(3)(B)(ii)(I). Pub. L. 103–432, §171(a)(2)(B), (C), substituted “has a medicare supplemental policy for “has any medicare supplemental policy” for “sale of a medicare supplemental policy” for “sale of such a policy”.


Subsec. (d)(4)(D). Pub. L. 103–432, §171(k)(1), struck out before period at end “, if such policy expires not more than 12 months after the date on which the duplicate copy is mailed”.


Subsec. (g)(1). Pub. L. 103–432, §171(f)(1), substituted “an eligible organization (as defined in section 1396d(p)(1)(A) or (q) of this title) if the policy or plan provides benefits pursuant to a contract under section 1395mm of this title or an approved demonstration project described in section 693(c) of the Social Security Amendments of 1983, section 2355 of the Deficit Reduction Act of 1984, or section 912(b) of the Omnibus Budget Reconciliation Act of 1986, or, during the period beginning on the date specified in subsection (p)(2)(C) of this section and ending on December 31, 1995, a policy or plan of an organization if the policy or plan provides benefits pursuant to an agreement under section 1395mm(a)(1)(A) of this title for “a health maintenance organization or other direction service organization which offers benefits under this subchapter, including such services under a contract under section 1395mm of this title or an agreement under section 1395mm of this title”.

Subsec. (g)(2)(B). Pub. L. 103–432, §171(c)(3), substituted “Secretary” for “Panel”.


Subsec. (p)(1)(A). Pub. L. 103–432, §171(a)(2)(A), in introductory provisions, substituted “changes the revised NAIC Model Regulation (described in subsection (m) of this section) to incorporate” for “promulgate”, and in closing provisions, struck out “(such limitations, language, definitions, format, and standards referred to collectively in this subsection as ‘NAIC standards’),” before “subsection (g)(2)(A) of this section” and substituted “were a reference to the revised NAIC Model Regulation as changed under this subparagraph (such changed regulation referred to in this section as the ‘1991 NAIC Model Regulation’)” for “included a reference to the NAIC standards’”.

Subsec. (p)(1)(B). Pub. L. 103–432, §171(a)(2)(B), substituted “make the changes in the revised NAIC Model Regulation for “promulgate NAIC standards”, “a regulation” for “limitations, language, definitions, format, and standards described in clauses (i) through (iv) of such subparagraph (in this subsection referred to collectively as ‘Federal standards’),” and “were a reference to the revised NAIC Model Regulation as changed by the Secretary under this subparagraph (such changed regulation referred to in this section as the ‘1991 Federal Regulation’)” for “included a reference to the Federal standards”.


Subsec. (p)(4)(A)(i). Pub. L. 103–432, §171(a)(2)(H), inserted “or paragraph (6)” after “paragraph (B)”.

Subsec. (p)(6). Pub. L. 103–432, §171(a)(2)(I), substituted “described in clauses (i) through (iii) of paragraph (1)(A)” for “in regard to the limitation of benefits described in paragraph (4)”.


Subsec. (p)(8). Pub. L. 103–432, §171(a)(2)(K), substituted “on and after the effective date specified in paragraph (1)(A)” for “after the effective date of the NAIC or Federal standards with respect to the policy, in violation of the previous requirements of this subsection”.


Subsec. (p)(10). Pub. L. 103–432, §171(a)(2)(L), substituted “consistent with paragraph (1)(A)” for “consistent with this subsection”.

Subsec. (q)(2). Pub. L. 103–432, §171(b)(1), substituted “paragraph (4)” for “paragraph (2)”.

Subsec. (q)(3). Pub. L. 103–432, §171(b)(2), substituted “issuer of the replacement policy” for “the succeeding issuer”.

Subsec. (q)(5)(A), (B). Pub. L. 103–432, §171(d)(4), made technical amendment to the reference to subchapter XIX of this chapter to correct reference to corresponding provision of original act.

Subsec. (r)(1). Pub. L. 103–432, §171(e)(1)(A), (E), in introductory provisions substituted “or renewed (or otherwise provide coverage after the date described in subsection (p)(1)(C) of this section)” for “or sold” and inserted at end of closing provisions “For the purpose of calculating the refund or credit required under paragraph (1)(B) for a policy issued before the date specified in subsection (p)(1)(C) of this section, the refund or credit calculation shall be based on the aggregate benefits provided and premiums collected under all such policies issued by an insurer in a State (separate as to individual and group policies) and shall be based only
on aggregate benefits provided and premiums collected under such policies after the date specified in section 171(m)(4) of the Social Security Act Amendments of 1994.


Pub. L. 103–432, §171(e)(1)(B), inserted “for periods after the effective date of these provisions” after “the policy can be expected”.

Subsec. (1)(B). Pub. L. 103–432, §171(e)(1)(D), inserted before period at end “treated as a single policy for each standard package”.

Subsec. (2)(A). Pub. L. 103–432, §171(e)(1)(F)–(I), substituted “by standard package” for “by policy number” in first sentence and “until 12 months following issue” for “with respect to the first 2 years in which it is in effect” in second sentence, struck out “in order to apply paragraph (1B) to the first 2 years in which policies are effective” after “may be appropriate” in third sentence, and inserted at end “in the case of a policy issued before the date specified in subsection (p)(1)(C) of this section, paragraph (1B) shall not apply until 1 year after the effective date specified in section 171(m)(4) of the Social Security Act Amendments of 1994.”


Subsec. (6)(A). Pub. L. 103–432, §171(e)(1)(L), substituted “fails to provide refunds or credits as required in paragraph (1B)” for “issues a policy in violation of the loss ratio requirements of this subsection and ‘policy issued for which such failure occurred’ for ‘such violation’.”

Subsec. (8)(A). Pub. L. 103–432, §171(e)(1)(M), substituted “to the policyholder or, in the case of a group policy, to the certificate holder” for “to policyholders”.

Subsec. (8)(B). Pub. L. 103–432, §171(g)(1), substituted “in the case of an individual for whom an application is submitted prior to or” for “for which an application is submitted” and “as of the first day on which the individual is 65 years of age or older and is enrolled for benefits under part B” for “in which the individual (who is 65 years of age or older) first is enrolled for benefits under part B”.

Subsec. (8)(B). Pub. L. 103–432, §171(g)(3), substituted “before the policy became effective” for “before it became effective”.

Subsec. (9)(A). Pub. L. 103–432, §171(h)(1)(A), substituted “If a Medicare supplemental policy meets the 1991 NAIC Model Regulation or 1991 Federal Regulation” for “If a policy meets the NAIC Model Standards”.


Subsec. (10)(A). Pub. L. 103–432, §171(h)(1)(E), inserted as the Supplemental Health Insurance Panel. The Panel shall consist of the Secretary, and four State commissioners or superintendents of insurance, who shall be appointed by the Secretary and serve at his pleasure. Such members shall first be appointed not later than December 31, 1980.


Subsec. (t)(2). Pub. L. 103–432, §171(c)(1), inserted “and enforcement” after “application”.


Subsec. (b)(1)(F). Pub. L. 103–432, §171(b)(4), directed amendment of par. (1) by adding at the end thereof a new subpar. (G), which was executed by adding the new subpar. (G) immediately after subpar. (F) to reflect the probable intent of Congress.


Subsec. (b)(2). Pub. L. 101–508, §4353(b)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

“(A) There is hereby established a panel (hereinafter in this section referred to as the ‘Panel’) to be known as the Supplemental Health Insurance Panel. The Panel shall consist of the Secretary, which shall serve as the Chairman, and four State commissioners or superintendents of insurance, who shall be appointed by the Secretary and serve at his pleasure. Such members shall first be appointed not later than December 31, 1980.

“(B) A majority of the members of the Panel shall constitute a quorum, but a lesser number may conduct hearings.

“(C) The Secretary shall provide such technical, secretarial, clerical, and other assistance as the Panel may require.

“(D) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

“(E) Members of the Panel shall be allowed, while away from their homes or regular places of business in the performance of services for the Panel, travel expenses (including per diem in lieu of subsistence) in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5.”

Subsec. (a). Pub. L. 101–508, §4353(a)(1), inserted “or the requirement described in subsection (a) of this section” after “paragraph (3)” in introductory provisions. Pub. L. 101–508, §4355(a)(2), struck out at end “For purposes of paragraph (2), policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.”
Subsec. (c)(2), Pub. L. 101–508, § 4355(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “can be expected (as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such period and in accordance with accepted actuarial principles and practices) to return the policyholders in the form of aggregate benefits provided under the policy, at least 75 percent of the aggregate amount of premiums collected in the case of group policies and at least 60 percent of the aggregate amount of premiums collected in the case of individual policies”.


Subsec. (d)(3)(A). Pub. L. 101–508, § 4354(a)(1), substituted “It is unlawful for a person to sell or issue” for “‘Whoever knowingly sells’”, “duplicates health benefits” for “substantially duplicates health benefits”, “. . . whoever violates the previous sentence shall be fined” for “‘. . . shall be fined’”, “. . . shall be fined” for “‘. . . shall be fined’”, “. . . who violates the. . . ” for “‘. . . who violates the. . . ’”, “for ‘. . . as the Secretary . . . ’” for “‘. . . as the Secretary . . . ’”, “the policy is approved for sale” for “‘the policy is approved for sale’”, “the policy may be sold” for “‘the policy may be sold’”, “standardized benefit packages that may be offered consistent with subsection (p) of this section” for “‘standardized benefit packages that may be offered consistent with subsection (p) of this section’”, “subject to subsection (k)(3) of this section, for so long as” for “‘for so long as’” in concluding provisions.

Subsec. (d)(3)(B). Pub. L. 101–508, § 4221(d)(1), substituted “Subject to subsection (k)(3) of this section, such” for “Such”.

Subsec. (b)(1). Pub. L. 101–360, § 4221(d)(2), substituted “subject to subsection (k)(3) of this section, for so long as” for “‘for so long as’” in concluding provisions.


Subsec. (b)(1)(D). Pub. L. 101–360, § 4221(b)(2), redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (b)(2)(A). Pub. L. 101–360, § 4221(f), substituted “appointed by the Secretary” for “‘appointed by the President’”.

Subsec. (b)(3). Pub. L. 101–360, § 4221(e), added par. (3).


Subsec. (c)(1)(B), (2). Pub. L. 100–360, § 4111(1)(B), amended subpars. (1) and (2) generally. Prior to amendment, subpar. (B) read as follows: “For purposes of this paragraph, benefits which are payable to or on behalf of an individual without regard to other health benefit coverage of such individual, shall not be considered as duplicative.”

Subsec. (d)(4)(B). Pub. L. 101–508, § 4355(d)(1), struck out at end “For purposes of this paragraph, a Medicare supplement policy shall be deemed to be approved by the commissioner or superintendent of insurance of a State if—

(i) the policy has been certified by the Secretary pursuant to subsection (c) of this section or was issued in a State with an approved regulatory program (as defined in section 1395r of this title);

(ii) the policy has been approved by the commissioner or superintendent of insurance in States in which more than 30 percent of such policies are sold; or

(iii) the State has in effect a law which the Secretary determines gives him the authority to review, and to approve, or effectively bar from sale in the State, such policy, except that such a policy shall not be deemed to be approved by a State commissioner or superintendent of insurance if the State notifies the Secretary that such policy has been submitted for approval to the State and has been specifically disapproved by such State after providing appropriate notice and opportunity for hearing pursuant to the procedures (if any) of the State.”

Subsec. (g). Pub. L. 101–508, § 4356(a), inserted before “subsection (g)(2)(B)” the words “subject to subsection (k)(3) of this section”.


Subsec. (m). Pub. L. 101–234, § 203(a)(1)(C), added subsec. (m) and (n).


Subsec. (o). Pub. L. 100–360, § 420(b)(1), substituted “shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $25,000 or imprisoned for not more than 5 years, or both” in pars. (3), (2), (3)(A), and (4)(A).


Subsec. (q). Pub. L. 101–360, § 420(b)(1), substituted “shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $5,000 for each such prohibited act” for “‘shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than 5 years, or both’” in pars. (3), (2), (3)(A), and (4)(A).


Subsec. (s). Pub. L. 100–360, § 4111(1)(B), redesignated existing provision as par. (1) and added pars. (2) and (3).

Subsecs. (k), (l), (o). Pub. L. 100–360, § 4111(c)(3), added subsecs. (k) and (l).

1987—Subsec. (b)(1)(B). Pub. L. 100–203, § 4081(b)(1)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “includes a requirement equal to or more stringent than the requirement described in subsection (c)(2) of this section; and’’.


Subsec. (c). Pub. L. 100–203, § 4081(b)(2)(A), as added by Pub. L. 100–360, § 4111(b)(1)(B), inserted “or, with respect to paragraph (3), the issuer of the policy” in introductory provisions.

Subsec. (d)(2). Pub. L. 100–203, § 4081(b)(3)(A), as added by Pub. L. 100–360, § 4111(b)(1)(B), substituted “knowingly and willfully” for “‘knowingly or willfully’.”
References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 101–175, set out as a note under section 1395w–21 of this title.


Effective Date of 2008 Amendment

Pub. L. 110–233, title I, § 104(c), May 21, 2008, 122 Stat. 903, provided that: "The amendments made by this section [amending this section] shall apply to terminations or discontinuances of a contract described in subsection (d)(2) of section 1395z–2 of the Social Security Act [as added by subsection (a), after the date of the enactment of this Act [May 21, 2008]]."

Effective Date of 1999 Amendments

Pub. L. 106–170, title II, § 205(b), Dec. 17, 1999, 113 Stat. 100, provided that: "The amendments made by subsection (a) [amending this section] apply with respect to requests made after the date of the enactment of this Act [Dec. 17, 1999]."

Amendment by section 1000(a)(6) [title III, § 321(k)(13), (14)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, § 321(m)] of Pub. L. 106–113, set out as a note under section 1395w–21 of this title.

Amendment by section 1000(a)(6) [title V, § 501(a)(2)] of Pub. L. 106–113 applicable to notices of impending terminations or discontinuances made on or after Nov. 29, 1999, see section 1000(a)(6) [title V, § 501(d)(1)] of Pub. L. 106–113, set out as a note under section 1395w–21 of this title.

Pub. L. 106–113, div. B, § 1004(a)(6) [title V, § 538(b)], Nov. 29, 1999, 113 Stat. 1358, 1358A–1, provided that: "The amendments made by this section [amending this section shall apply to terminations or discontinuances made on or after the date of the enactment of this Act [Nov. 29, 1999]]."

Effective Date of 1997 Amendment

Section 4353(d)(2) of Pub. L. 101–33 provided that: "(1) GUARANTEED ISSUE.—The amendment made by subsection (a) [amending this section] shall take effect on July 1, 1996.

(2) LIMIT ON PREEXISTING CONDITION EXCLUSIONS.—The amendment made by subsection (b) [amending this section] shall apply to policies issued on or after July 1, 1996.

(3) CONFORMING AMENDMENT.—The amendment made by subsection (c) [amending this section] shall be effective as if included in the enactment of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191]."

Section 4352(b) of Pub. L. 105–33 provided that: "(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall take effect the date of the enactment of this Act [Aug. 5, 1997].

(2) TRANSITION.—The provisions of section 4831(e) [set out as a note below] shall apply with respect to this section in the same manner as they apply to section 4831 (amending this section and enacting provisions set out as notes below)."

Effective Date of 1996 Amendment

Section 211(d) of Pub. L. 104–191 provided that: "(1) Except as provided in this subsection, the amendment made by subsection (a) [amending this section] shall be effective as if included in the enactment of section 4354 of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508].

(2)(A) Clause (vi) of section 1882(d)(3)(A) of the Social Security Act [subsec. (d)(3)(A)(vi) of this section], as added by subsection (a), shall only apply to individuals applying for—

(i) a health insurance policy described in section 1882(d)(3)(A)(iv) of such Act (as added by subsection (a), after the date of the enactment of this Act [Aug. 21, 1996], or

(ii) another health insurance policy after the end of the 30-day period beginning on the date of the enactment of this Act.

(B) A seller or issuer of a health insurance policy may substitute, for the disclosure statement described in clause (vii) of such section, the statement specified under section 1882(d)(3)(D) of the Social Security Act (as in effect before the date of the enactment of this Act), without the revision specified in such clause."

Effective Date of 1994 Amendment

Section 171(l) of Pub. L. 103–423 provided that: "The amendments made by this section [amending this section and sections 1320c–3, 1320c–2, and 1320c–4 of this title, repealing section 1395ss of this title, and enacting and amending provisions set out as notes below] shall be effective as if included in the enactment of OBRA–1990 [Pub. L. 101–508]; except that—

(1) the amendments made by subsection (d)(1) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 31, 1994], but no penalty shall be imposed under section 1882(d)(3)(A) of the Social Security Act [subsec. (d)(3)(A) of this section] (for an act occurring after the effective date of the amendments made by section 4354 of OBRA–1990 [see section 4354(c) of Pub. L. 101–508], set out as an Effective Date of 1990 Amendment note below) and before the date of the enactment of this Act with respect to the sale or issuance of a policy which is not unlawful under section 1882(d)(3)(A)(i)(II) of the Social Security Act [subsec. (d)(3)(A)(i)(II) of this section] (as amended by this section); and

(2) the amendments made by subsection (d)(2)(A) [amending this section] and by subparagraphs (A), (B), and (E) of subsection (d)(2)(B) [amending this section] shall be effective on the date specified in subsection (m)(4) [set out as a note below]; and

(3) the amendment made by subsection (g)(2) [amending this section] shall take effect on January 1, 1995, and shall apply to individuals who attain 65 years of age or older on or after the effective date of section 1882(a)(2) of the Social Security Act [subsec. (x)(2) of this section, for effective date see section 4357(b) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note below] and, in the case of individuals who attained 65 years of age after such effective date and before January 1, 1995, who were not covered under such section before January 1, 1995, the 6-month period specified in that section shall begin January 1, 1996."

Effective Date of 1990 Amendment

Section 4353(d)(2) of Pub. L. 101–508 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to policies mailed, on or after July 1, 1991.

Section 4354(c) of Pub. L. 101–508 provided that: "The amendments made by this section [amending this sec-
tion) shall apply to policies issued or sold more than 1
year after the date of the enactment of this Act [Nov.
5, 1990].
Section 4356(d) of Pub. L. 101–508, as amended by Pub.
provided that: "The amendments made by this section
[amending this section] shall apply to policies issued or re-
newed (or otherwise provided for) after the date des-
cribed in section 1822(p)(1)(C) of the Social Security Act
[subsec. (p)(1)(C) of this section]) or on or after the date
specified in section 1822(p)(1)(C) of the Social Secu-
irty Act.".
Section 4356(b) of Pub. L. 101–508, as amended by Pub.
provided that: "The amendment made by subsection (a)
[amending this section] shall take effect on the date
specified in section 1822(p)(1)(C) of the Social Security
Act [subsec. (p)(1)(C) of this section]."
Section 4357(b) of Pub. L. 101–508 provided that: "The
amendments made by subsection (a) [amending this
section] shall take effect 1 year after the date of the en-
actment of this Act [Nov. 5, 1990].".
Amendment by section 4336(a), (b)(1), (2) of Pub. L.
101–508 only applicable in 15 States (as determined by
Secretary of Health and Human Services) and such
other States as elect such amendment to apply to those
and during the 6½-year period beginning with
1992, with such amendment to remain in effect beyond
the 6½-year period unless the Secretary makes certain
determinations, see section 4357(c) of Pub. L. 101–508,
as amended, set out as a note under section 1320c–3 of
this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 203(e) of Pub. L. 101–234 provided that: "The
provisions of this section [amending this section, en-
acting provisions set out as notes under sections 1395b–2 and
1395nm of this title, and amending provi-
sions set out as a note under this section] shall take ef-
fect January 1, 1990, except that the amendment made
by subsection (d) [amending provisions set out as an Ef-
fective Date of 1988 Amendment note under this sec-
tion] shall be effective as if included in the enactment of
MCCA [Pub. L. 100–360]."

EFFECTIVE DATE OF 1988 AMENDMENT

Section 221(g) of Pub. L. 100–360, as amended by Pub.
Stat. 1865, provided that:
"(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this
section] shall take effect on the date of the enactment of
this Act [July 1, 1988].
"(2) The amendments made by subsections (a) and (b)
[amending this section] shall become effective on the
date specified in subsection (k)(1)(B) or (k)(2)(B) of sec-
tion 1882 of the Social Security Act [subsec. (k)(1)(B)
or (k)(2)(B) of this section] as added by subsection (d)
of this section).
"(3) The amendment made by subsection (e) [amend-
ing this section] shall apply to medicare supplemental
policies as of January 1, 1989, with respect to advert-
sing used on or after such date.
"(4) The Secretary of Health and Human Services
shall provide for the reappointment of members to the
Supplemental Health Insurance Panel (under section
1882(b)(2) of the Social Security Act [subsec. (b)(2) of
this section]) by not later than 90 days after the date of
the enactment of this Act [July 1, 1988].
Except as specifically provided in section 411 of Pub. L.
100–360, amendment by section 411(i)(1)(B), (C) of
Pub. L. 100–360, as it relates to a provision in the Omni-
bus Budget Reconciliation Act of 1987, Pub. L. 100–203,
effective as if included in the enactment of that provi-
sion in Pub. L. 100–203, see section 411(a) of Pub. L.
100–360, set out as a Reference to ORSA; Effective Date
note under section 106 of Title I, General Provisions.
Amendment by section 428(b) of Pub. L. 100–360 effective
July 1, 1988, and applicable only with respect to
violations occurring on or after such date, see section
428(c) of Pub. L. 100–360, set out as an Effective Date
note under section 1320a–10 of this title.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4081(c)(2) of Pub. L. 100–203, as amended by
Pub. L. 100–360, title IV, § 411(i)(1)(D), (E), July 1, 1988,
102 Stat. 788; Pub. L. 100–885, title VI, § 608(d)(24A),
Oct. 13, 1988, 102 Stat. 2421, provided that:
"(A) The amendments made by subsection (b)
[amending this section] shall apply to medicare supple-
cmental policies as of January 1, 1989 (or, if applicable,
the date established under subparagraph (B)).
"(B) In the case of a State which the Secretary of
Health and Human Services identifies as—
"(i) requiring State legislation (other than legis-
lation appropriating funds) in order for medicare sup-
plemental policies to be changed to meet the require-
ments of section 1882(c)(3) of the Social Security Act
[subsec. (c)(3) of this section], and
"(ii) having a legislature which is not scheduled
to meet in 1988 in a legislative session in which such leg-
islation may be considered or which has not enacted
such legislation before July 1, 1988,
the date specified in this subparagraph is the first day
of the first calendar quarter beginning after the close
of the first legislative session of the State legislature
that begins on or after January 1, 1989, and in which
legislation described in clause (i) may be considered.
"(C) Amendment by Pub. L. 100–93 effective at end of
fourteen-day period beginning Aug. 18, 1987, and inap-
plicable to administrative proceedings commenced before
end of such period, see section 15(a) of Pub. L. 100–93,
s set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE

Section 507(b) of Pub. L. 96–265 provided that: "The
amendment made by this section [enacting this sec-
tion] shall become effective on the date of the en-
actment of this Act [June 9, 1980], except that the pro-
visions of paragraph (4) of section 1882(d) of the Social
Security Act [subsec. (d)(4) of this section] (as added by
this section) shall become effective on July 1, 1982.".

RULE OF CONSTRUCTION

2165, provided that:
"(1) IN GENERAL.—Nothing in this Act [see Tables for
classification] shall be construed to require an issuer of
a medicare supplemental policy under section 1882 of
the Social Security Act (42 U.S.C. 1395rr) [42 U.S.C.
1395ss] to participate as a PDP sponsor under part D
of title XVIII of such Act [part D of this subchapter], as
amended by section 101, as a condition for issuing such
policy.
"(2) PROHIBITION ON STATE REQUIREMENT.—A State
may not require an issuer of a medicare supplemental
policy under section 1882 of the Social Security Act (42
U.S.C. 1395rr) [42 U.S.C. 1395ss] to participate as a PDP
sponsor under such part D as a condition for issuing such
policy.

IMPLEMENTATION OF NAIC RECOMMENDATIONS

2561, provided that:
"(1) IN GENERAL.—The Secretary of Health and
Human Services (in this section [enacting section
1395ss–1 of this title and amending this section] referred
to as the 'Secretary') shall provide for implementation
of the changes made under this Act [see Short Title of
2008 Amendment note set out under section 1385 of this
title] and the Genetic Information Nondiscrimination Act
of 2008 (Public Law 110–233) [see Short Title note set out
under section 2000ff of this title].
“(2) IMPLEMENTATION DATES.—

“(A) IN GENERAL.—The modifications to Model #651 required under paragraph (1) shall be completed by the National Association of Insurance Commissioners not later than October 31, 2008. Except as provided in subparagraph (B), each State shall have 1 year from the date the National Association of Insurance Commissioners adopts the revised NAIC model law and regulations (as changed by Model #651, as so modified) to conform the regulatory program established by the State to such revised NAIC model law and regulations.

“(B) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State which the Secretary determines requires State legislation in order to conform the regulatory program established by the State to such revised NAIC model law and regulations, the State shall not be regarded as failing to comply with the requirements of this section solely on the basis of its failure to meet such requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [July 15, 2008]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

“(C) TRANSITION DATES.—No carrier may issue a new or revised Medicare supplemental policy or certificate under section 1882 of the Social Security Act (42 U.S.C. 1395ss) that meets the requirements of such revised NAIC model law and regulations for coverage effective prior to June 1, 2010. A carrier may continue to offer or issue a Medicare supplemental policy under such section that meets the requirements of the NAIC model law and regulations and State law (as effect prior to the adoption of such revised NAIC model law and regulations) prior to June 1, 2010. Nothing shall preclude carriers from marketing new or revised Medicare supplemental policies or certificates that meet the requirements of such revised NAIC model law and regulations on or after the date on which the State conforms the regulatory program established by the State to such revised NAIC model law and regulations.

STUDY OF MEDICARE POLICIES

Pub. L. 106-113, div. B, § 1000(a)(6) [title V, § 553(a)], Nov. 29, 1999, 113 Stat. 1538, 1501A-393, provided that:

“(1) IN GENERAL.—The Comptroller General of the United States (in this section referred to as the ‘Comptroller General’) shall conduct a study of the issues described in paragraph (2) regarding Medicare supplemental policies described in section 1882(g)(1) of the Social Security Act (42 U.S.C. 1395ss(g)(1)).

“(2) ISSUES TO BE STUDIED.—The issues described in this paragraph are the following:

“(A) The level of coverage provided by each type of Medicare supplemental policy.

“(B) The current enrollment levels in each type of Medicare supplemental policy.

“(C) The availability of each type of Medicare supplemental policy to Medicare beneficiaries over age 65.

“(D) The number and type of Medicare supplemental policies offered in each State.

“(E) The average out-of-pocket costs (including premiums) per beneficiary under each type of Medicare supplemental policy.

“(3) REPOR.—Not later than July 31, 2001, the Comptroller General shall submit a report to Congress on the results of the study conducted under this subsection, together with any recommendations for legislation that the Comptroller General determines to be appropriate as a result of such study.

CONFIRMING BENEFITS TO CHANGES IN TERMINOLOGY FOR HOSPITAL OUTPATIENT DEPARTMENT COST SHARING

Section 4031(t) of Pub. L. 105-33 provided that: “For purposes of applying [sic] section 1882 of the Social Security Act (42 U.S.C. 1395ss) and regulations referred to in subsection (e) [set out as a note above], copayment amounts provided under section 1833(t)(5) of such Act (section 1395s(t)(5) of this title) with respect to hospital outpatient department services shall be treated under Medicare supplemental policies in the same manner as coinsurance with respect to such services.”

TRANSITION PROVISIONS

Pub. L. 110-233, title I, § 104(d), May 21, 2008, 122 Stat. 903, provided that:

“(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section (amending this section), the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act (42 U.S.C. 1395ss) due solely to failure to make such change until the date specified in paragraph (4).

“(2) NAIC STANDARDS.—If, not later than October 31, 2008, the National Association of Insurance Commissioners (in this subsection referred to as the ‘NAIC’) modifies its NAIC Model Regulation relating to section 1882 of the Social Security Act (42 U.S.C. 1395ss) (referred to in such section as the 1991 NAIC Model Regulation, as subsequently modified) to conform to the amendments made by this section (amending this section), such revised regulation incorporating the modifications shall be considered to be the applicable NAIC model regulation (including the revised NAIC model regulation and the 1991 NAIC Model Regulation) for the purposes of such section.

“(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall, not later than July 1, 2009, make the modifications described in such paragraph and such revised regulation incorporating the modifications shall be considered to be the appropriate regulation for the purposes of such section.

“(4) DATE SPECIFIED.—

“(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is the earlier of—

“(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

“(ii) July 1, 2009.

“(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies as—

“(i) requiring State legislation (other than legislation appropriating funds) to conform its regulatory program to the changes made in this section, but

“(ii) having a legislature which is not scheduled to meet in 2009 in a legislative session in which such legislation may be considered, the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after July 1, 2009. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.”

Section 4031(e) of Pub. L. 105-33 provided that:

“(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section (amending this section), the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act [this section] due solely to failure to make such change until the date specified in paragraph (4).

“(2) NAIC STANDARDS.—If, within 9 months after the date of the enactment of this Act [Aug. 5, 1997], the Na-
tional Association of Insurance Commissioners (in this subsection referred to as the 'NAIC') modifies its NAIC Model Regulation relating to section 1882 of the Social Security Act [this section] (as amended by subsection (a)) and as modified pursuant to section 1882(d)(3)(A)(vi)(IV) of the Social Security Act [subsection (d)(3)(A)(vi)(IV) of this section], as added by section 271a of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191) to conform to the amendments made by this section [amending this section], such revised regulation incorporating the modifications shall be considered to be the applicable NAIC model regulation and the 1991 NAIC Model Regulation) for the purposes of such section.

(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall make the modifications described in such paragraph and such revised regulation incorporating the modifications shall be considered to be the applicable Regulation for the purposes of such section.

(4) DATE SPECIFIED.—

(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is the earlier of—

(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

(ii) 1 year after the date the NAIC or the Secretary first makes the modifications under paragraph (2) or (3), respectively.

(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies as—

(i) requiring State legislation (other than legislation appropriating funds) to conform its regulatory program to the changes made in this section, but

(ii) having a legislature which is not scheduled to meet in 1999 in a legislative session in which such legislation may be considered,

the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after July 1, 1999. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the same legislature.''

Section 271(c) of Pub. L. 104–191 provided that:

(1) No PENALTIES.—Subject to paragraph (3), no criminal or civil money penalty may be imposed under section 1882(d)(3)(A) of the Social Security Act [subsection (d)(3)(A) of this section] for any act or omission that occurred during the transition period (as defined in paragraph (i)) and that relates to any health insurance policy that is described in clause (iv) or (v) of such section (as amended by subsection (a)).

(2) LIMITATION ON LEGAL ACTION.—Subject to paragraph (3), no legal action shall be brought or continued in any Federal or State court insofar as such action—

(A) includes a cause of action which arose, or which is based on or evidenced by any act or omission which occurred, during the transition period; and

(B) relates to the application of section 1882(d)(3)(A) of the Social Security Act to any act or omission with respect to the sale, issuance, or renewal of any health insurance policy that is described in clause (iv) or (v) of such section (as amended by subsection (a)).

(3) DISCLOSURE CONDITION.—In the case of a policy described in clause (iv) of section 1882(d)(3)(A) of the Social Security Act that is issued on or after the effective date of statements under section 171(d)(3)(C) of the Social Security Act Amendments of 1994 [Pub. L. 103–432, set out below] and before the end of the 30-day period beginning on the date of the enactment of this Act [Aug. 21, 1996], paragraphs (1) and (2) shall only apply if disclosure was made in accordance with section 1882(d)(3)(C)(ii) of the Social Security Act (as in effect before the date of the enactment of this Act).

(4) TRANSITION PERIOD.—In this subsection, the term ‘transition period’ means the period beginning on November 5, 1991, and ending on the date of the enactment of this Act.''

APPLICABILITY OF DISCLOSURE REQUIREMENT

Section 171(m) of Pub. L. 103–432 provided that:

"(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section [amending this section and sections 1320c–3, 1320c–4, 1320c–5 to 1320c–9, and 1356–2 to 1356–4 of this title], the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act [this section] due solely to failure to make such change until the date specified in paragraph (4).

(2) NAIC STANDARDS.—If, within 6 months after the date of the enactment of this Act [Oct. 31, 1994], the National Association of Insurance Commissioners (in this subsection referred to as the NAIC) modifies its 1991 NAIC Model Regulation (adopted in July 1991) to conform to the amendments made by this section and to delete from section 153 the exception which begins with 'unless', such revised regulation incorporating the modifications shall be considered to be the 1991 Regulations for the purposes of section 1882 of the Social Security Act.

(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall make the modifications described in such paragraph and such revised regulation incorporating the modifications shall be considered to be the 1991 Regulations for the purposes of section 1882 of the Social Security Act.

STATE REGULATORY PROGRAMS

Section 171(m) of Pub. L. 103–432 provided that:

(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section [amending this section and sections 1320c–3, 1320c–4, 1320c–5 to 1320c–9, and 1356–2 to 1356–4 of this title], the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act [this section] due solely to failure to make such change until the date specified in paragraph (4).

(2) NAIC STANDARDS.—If, within 6 months after the date of the enactment of this Act [Oct. 31, 1994], the National Association of Insurance Commissioners (in this subsection referred to as the NAIC) modifies its 1991 NAIC Model Regulation (adopted in July 1991) to conform to the amendments made by this section and to delete from section 153 the exception which begins with 'unless', such revised regulation incorporating the modifications shall be considered to be the 1991 Regulations for the purposes of section 1882 of the Social Security Act.

(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall make the modifications described in such paragraph and such revised regulation incorporating the modifications shall be considered to be the 1991 Regulations for the purposes of section 1882 of the Social Security Act.
§ 1395ss–1. Clarification

Any health insurance policy that provides reimbursement for expenses incurred for items and services for which payment may be made under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] but which are not reimbursable by reason of the applicability of deductibles, coinsurance, copayments, or other limitations imposed by a Medicare Advantage plan (including a Medicare Advantage private fee-for-service plan) under part C of such title [42 U.S.C. 1395w–21 et seq.] shall comply with the requirements of section 1882(o) of the such 1 Act (42 U.S.C. 1395ss(o)).


REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XVIII of the Act is classified generally to this subchapter. Part C of title XVIII of the Act is classified to section 1395w–21 et seq. of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

Section was enacted as part of the Medicare Improvements for Patients and Providers Act of 2008, and not as part of the Social Security Act which comprises this chapter.

§ 1395st. Hospital providers of extended care services

(a) Hospital facility agreements; reasonable costs of services

(1) Any hospital which has an agreement under section 1395cc of this title may (subject to subsection (b) of this section) enter into an agreement with the Secretary under which its inpatient hospital facilities may be used for the furnishing of services of the type which, if furnished by a skilled nursing facility, would constitute extended care services.

(2)(A) Notwithstanding any other provisions of this subchapter, payment to any hospital (other than a critical access hospital) for services furnished under an agreement entered into under this section shall be based upon the reasonable cost of the services as determined under subparagraph (B).

(B)(i) The reasonable cost of the services consists of the reasonable cost of routine services (determined under clause (ii) and the reasonable cost of ancillary services (determined under clause (iii)).

(ii) The reasonable cost of routine services furnished during any calendar year by a hospital under an agreement under this section is equal to the product of—

(I) the number of patient-days during the year for which the services were furnished, and

(II) the average reasonable cost per patient-day, such average reasonable cost per patient-day being the average rate per patient-day being paid for routine services during the most recent year for which cost reporting data are available with respect to such services (increased in a compounded manner by the applicable increase for payments for routine service costs of skilled nursing facilities under subsections (a) through (d) of section 1395yy of this title for subsequent cost reporting periods and up to and including such calendar year) under this subchapter to freestanding skilled nursing facilities in the region (as defined in section 1395ww(d)(2)(D) of this title) in which the facility is located.

(iii) The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

(3) Notwithstanding any other provision of this subchapter, a critical access hospital shall be paid for covered skilled nursing facility services furnished under an agreement entered into under this section on the basis of equal to 101 percent of the reasonable costs of such services (as determined under section 1395xx of this title).

(b) Eligible facilities

The Secretary may not enter into an agreement under this section with any hospital unless, except as provided under subsection (g) of this section, the hospital is located in a rural area and has less than 100 beds.

(c) Terms and conditions of facility agreements

An agreement with a hospital under this section shall, except as otherwise provided under regulations of the Secretary, be of the same duration and subject to termination on the same conditions as agreements with skilled nursing facilities under section 1395cc of this title and shall, where not inconsistent with any provision of this section, impose the same duties, responsibilities, conditions, and limitations, as those imposed under such agreements entered into under section 1395cc of this title; except that no such agreement with any hospital shall be in effect for any period during which the hospital does not have in effect an agreement under section 1395cc of this title. A hospital with respect to which an agreement under this section has been terminated shall not be eligible to enter into a new agreement until a two-year period has elapsed from the termination date.

(d) Post-hospital extended care services

Any agreement with a hospital under this section shall provide that payment for services will be made only for services for which payment would be made as post-hospital extended care services if those services had been furnished by a skilled nursing facility under an agreement entered into under section 1395cc of this title; and any individual who is furnished services, for which payment may be made under an agreement under this section, shall, for purposes of

1 So in original.
this subchapter (other than this section), be deemed to have received post-hospital extended care services in like manner and to the same extent as if the services furnished to him had been post-hospital extended care services furnished by a skilled nursing facility under an agreement with any hospital under section 1395cc of this title.

(e) Reimbursement for routine hospital services

During a period for which a hospital has in effect an agreement under this section, in order to allocate routine costs between hospital and long-term care services for purposes of determining payment for inpatient hospital services, the total reimbursement for routine services from all classes of long-term care patients (including this subchapter, subchapter XIX of this chapter, and private pay patients) shall be subtracted from the hospital’s total routine costs before calculations are made to determine this subchapter reimbursement for routine hospital services.

(f) Conditions applicable to skilled nursing facilities

A hospital which enters into an agreement with the Secretary under this section shall be required to meet those conditions applicable to skilled nursing facilities relating to discharge planning and the social services function (and staffing requirements to satisfy 11) which are promulgated by the Secretary under section 1395l–3 of this title. Services furnished by such a hospital which would otherwise constitute post-hospital extended care services if furnished by a skilled nursing facility will be subject to the same requirements applicable to such services when furnished by a skilled nursing facility except for those requirements the Secretary determines are inappropriate in the case of these services being furnished by a hospital under this section.

(g) Agreements on demonstration basis

The Secretary may enter into an agreement under this section on a demonstration basis with any hospital which does not meet the requirements of subsection (b)(1) of this section, if the hospital otherwise meets the requirements of this section.


Amendments


1999—Subsec. (a)(1). Pub. L. 106–113, §1000(a)(6) (title IV, §408(b)(1)), struck out ‘‘other than a hospital which has in effect a waiver under subparagraph (A) of the last sentence of section 1395x(e) of this title’’ after ‘‘Any hospital’’.

Subsec. (b). Pub. L. 106–113, §1000(a)(6) (title IV, §408(b)(a)), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ‘‘The Secretary may not enter into an agreement under this section with any hospital unless—

‘‘(1) except as provided under subsection (g) of this section, the hospital is located in a rural area and has less than 100 beds; and

‘‘(2) the hospital has been granted a certificate of need for the provision of long-term care services from the State health planning and development agency (designated under section 1396a(k) of this title) for the State in which the hospital is located.’’

Subsec. (c). Pub. L. 106–113, §1000(a)(6) (title IV, §408(b)(2)), struck out ‘‘. . . or during which there is in effect for the hospital a waiver under subparagraph (A) of the last sentence of section 1395x(e) of this title before the period at end of first sentence.’’

Subsec. (d). Pub. L. 106–113, §1000(a)(6) (title IV, §408(b)(3)), struck out ‘‘(1)’’ before ‘‘Any agreement with a hospital’’ and struck out paras. (2) and (3), which related to limiting payments under extended care service agreements pursuant to this section to hospitals with more than 49 beds where skilled nursing facilities were available or where such payments exceeded a designated maximum.

1997—Subsec. (a)(2)(B)(1)(II). Pub. L. 105–33 inserted ‘‘subsections (a) through (d) of’’ before ‘section 1395yy’’.

1993—Subsec. (a)(2)(B)(1)(II). Pub. L. 101–508 substituted ‘‘the most recent year for which cost reporting data are available with respect to such services (increased in a compounded manner by the applicable increase for payments under extended care service agreements with hospitals under this subchapter to skilled nursing facilities in the region (as defined in section 1395ww(d)(2)(A) of this title))’’ for ‘‘the previous calendar year’’ appearing in provisions of law amended or repealed by section 1395yy.

1987—Subsec. (b)(1), Pub. L. 100–203, § 4005(b)(1), substituted “100” for “50”.
Subsec. (d), Pub. L. 100–203, § 4005(b)(2), designated existing provisons as par. (1) and added pars. (2) and (3). Subsec. (f), Pub. L. 100–203, § 4201(d)(3), as added by Pub. L. 100–360, § 411(k)(1)(C), and Pub. L. 100–345, § 608(d)(27)(B), substituted “section 1395i–3” for “section 1395x(j)(15)”.

Effective Date of 2003 Amendment

Effective Date of 2000 Amendment
Pub. L. 106–554, § 1(a)(6) [title II, § 203(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–482, provided that: “The amendments made by this section [amending this section and section 1385c of this title] shall apply to cost reporting periods beginning on or after the date of enactment of this Act [Dec. 21, 2000].”

Effective Date of 1999 Amendment
Amendment by Pub. L. 106–113, div. B, § 1000(a)(6) [title IV, § 408(e)], Nov. 29, 1999, 113 Stat. 1536, 1510A–375, provided that: “The amendments made by this section [amending section 1395c of this title] shall apply to cost reporting periods beginning on or after the expiration of the transition period under section 1888(e)(2)(E) of the Social Security Act [42 U.S.C. 1395yy(e)(2)(E)] for payments for covered skilled nursing facility services under the medicare program.”

Effective Date of 1997 Amendment
Amendment by Pub. L. 105–33 applicable to items and services furnished on or after July 1, 1998, see section 4422(d) of Pub. L. 105–33, set out as a note under section 1395i–3 of this title.

Effective Date of 1990 Amendment
Section 4008(j)(3) of Pub. L. 101–508 provided that: “Notwithstanding the requirement of section 1883(b)(1) of the Social Security Act [subsec. (b) of this section] that the Secretary may not enter into an agreement under such section with a hospital that is not located in a rural area, any agreement entered into under section 1395(b)(1) of the Social Security Act [this section] is less than the reasonable cost of such services determined under such section for the previous calendar year, the reasonable cost of such services furnished by the hospital during the calendar year under section 1395f of this title shall be equal to the reasonable cost determined under such section for the previous calendar year.”

Swing Beds Certified Prior to May 1, 1987
Section 4008(j)(3) of Pub. L. 101–508 provided that: “The amendments made by paragraph (1) [amending this section], the reasonable cost of routine hospital services furnished by a hospital during a calendar year (as determined under section 1883 of the Social Security Act [this section]) is less than the reasonable cost of such services determined under such section for the previous calendar year, the reasonable cost of such services furnished by the hospital during the calendar year under section 1395f of this title shall be equal to the reasonable cost determined under such section for the previous calendar year.”

Report of Hospital Admissions for Extended Care Services
Section 4005(b)(3) of Pub. L. 100–203, as amended by Pub. L. 100–345, title IV, § 411(b)(4)(E), as added by Pub. L. 100–485, title VI, § 608(d)(18)(C), Oct. 5, 1988, 102 Stat. 2419, directed Secretary of Health and Human Services to report to Congress, not later than Feb. 1, 1989, concerning the proportion of admissions to hospitals for extended care services under this section which are denied or approved by a peer review organization, and recommendations for methods of encouraging hospitals that have a low occupancy rate, are eligible to enter into an agreement under this section, and are located in areas with a need for additional providers of extended care services, to enter into such agreements.
other hospitals, regardless of bed size or geographic location, where there is a shortage of long-term care beds.

§ 1395uu. Payments to promote closing or conversion of underutilized hospital facilities

(a) Transitional allowances; procedures applicable

Any hospital may file an application with the Secretary (in such form and including such data and information as the Secretary may require) for establishment of a transitional allowance under this subchapter with respect to such closure or conversion of an underutilized hospital facility. The Secretary also may establish procedures, consistent with this section, by which a hospital, before undergoing an actual closure or conversion of a hospital facility, can have a determination made as to whether or not it will be eligible for a transitional allowance under this section with respect to such closure or conversion.

(b) Allowable costs as transitional allowances; findings and determinations

If the Secretary finds, after consideration of an application under subsection (a) of this section, that—

(1) the hospital’s closure or conversion—
   (A) is formally initiated after September 30, 1981, and
   (B) is expected to benefit the program under this subchapter by (i) eliminating excess bed capacity, (ii) discontinuing an underutilized service for which there are adequate alternative sources, or (iii) substituting for the underutilized service some other service which is needed in the area, and
   (C) is consistent with the findings of an appropriate health planning agency and with any applicable State program for reduction in the number of hospital beds in the State, and
   (2) in the case of a complete closure of a hospital—
      (A) the hospital is a private nonprofit hospital or a local governmental hospital, and
      (B) the closure is not for replacement of the hospital,

the Secretary may include as an allowable cost in the hospital’s reasonable cost (for the purpose of making payments to the hospital under this subchapter) an amount (in this section referred to as a “transitional allowance”), as provided in subsection (c) of this section.

(c) Factors determinative of transitional allowance

(1) Each transitional allowance established shall be reasonably related to the prior or prospective use of the facility involved under this subchapter and shall recognize—
   (A) in the case of a facility conversion or closure (other than a complete closure of a hospital)—
      (i) in the case of a private nonprofit or local governmental hospital, that portion of the hospital’s costs attributable to capital assets of the facility which have been taken into account in determining reasonable cost for purposes of determining the amount of payment to the hospital under this subchapter, and
      (ii) in the case of any hospital, transitional operating cost increases related to the conversion or closure to the extent that such operating costs exceed amounts ordinarily reimbursable under this subchapter; and
   (B) in the case of complete closure of a hospital, the outstanding portion of actual debt obligations previously recognized as reasonable for purposes of reimbursement under this subchapter, less any salvage value of the hospital.

(2) A transitional allowance shall be for a period (not to exceed 20 years) specified by the Secretary, except that, in the case of a complete closure described in paragraph (1)(B), the Secretary may provide for a lump-sum allowance where the Secretary determines that such a one-time allowance is more efficient and economical.

(3) A transitional allowance shall take effect on a date established by the Secretary, but not earlier than the date of completion of the closure or conversion concerned.

(4) A transitional allowance shall not be considered in applying the limits to costs recognized as reasonable pursuant to the third sentence of subparagraph (A) and subparagraph (L)(i) of section 1395x(v)(1) of this title, or in determining whether the reasonable cost exceeds the customary charges for a service for purposes of determining the amount to be paid to a provider pursuant to sections 1395f(b) and 1395f(a)(2) of this title.

(d) Hearing to review determination

A hospital dissatisfied with a determination of the Secretary on its application under this section may obtain an informal or formal hearing, at the discretion of the Secretary, by filing (in such form and within such time period as the Secretary establishes) a request for such a hearing. The Secretary shall make a final determination on such application within 30 days after the last day of such hearing.


AMENDMENTS


EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was enacted by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 126(e)(2) of Pub. L. 97–248, set out as a note under section 1396x of this title.

EFFECTIVE DATE

Section 2101(c) of Pub. L. 97–35 provided that: ‘‘The amendment made by subsection (a) [enacting this section and amending section 1396b of this title] shall apply only to services furnished by a hospital during
§ 1395vv. Withholding payments from certain medicaid providers

(a) Adjustments by Secretary

The Secretary may adjust, in accordance with this section, payments under parts A and B to any institution which has in effect an agreement with the Secretary under section 1395cc of this title, and any person who has accepted payment on the basis of an assignment under section 1395u(b)(3)(B)(ii) of this title, where such institution or person—

(1) has (or previously had) in effect an agreement with a State agency to furnish medical care and services under a State plan approved under subchapter XIX of this chapter, and

(2) from which (or from whom) such State agency (A) has been unable to recover overpayments made under the State plan, or (B) has been unable to collect the information necessary to enable it to determine the amount (if any) of the overpayments made to such institution or person under the State plan.

(b) Implementing regulations; notice, opportunity to be heard, etc.

The Secretary shall by regulation provide procedures for implementation of this section, which procedures shall—

(1) assure that the authority under this section is exercised only on behalf of a State agency which demonstrates to the Secretary’s satisfaction that it has provided adequate notice of a determination or of a need for information, and an opportunity to appeal such determination or to provide such information,

(2) determine the amount of the payment to which the institution or person would otherwise be entitled under this subchapter which shall be treated as a setoff against overpayments under subchapter XIX of this chapter, and

(3) assure the restoration to the institution or person of amounts withheld under this section which are ultimately determined to be in excess of overpayments under subchapter XIX of this chapter and to which the institution or person would otherwise be entitled under this subchapter.

(c) Payment to States of amounts recovered

Notwithstanding any other provision of this chapter, from the trust funds established under sections 1395i and 1395t of this title, as appropriate, the State agency amounts recovered under this section to offset the State agency’s overpayment under subchapter XIX of this chapter. Such payments shall be accounted for by the State agency as recoveries of overpayments under the State plan.

§ 1395ww. Payments to hospitals for inpatient hospital services

(a) Determination of costs for inpatient hospital services; limitations; exemptions; “operating costs of inpatient hospital services” defined

(1)(A)(i) The Secretary, in determining the amount of the payments that may be made under this subchapter with respect to operating costs of inpatient hospital services (as defined in paragraph (4)) shall not recognize as reasonable (in the efficient delivery of health services) costs for the provision of such services by a hospital for a cost reporting period to the extent such costs exceed the applicable percentage (as determined under clause (ii)) of the average of such costs for all hospitals in the same grouping as such hospital for comparable time periods.

(ii) For purposes of clause (i), the applicable percentage for hospital cost reporting periods beginning—

(I) on or after October 1, 1982, and before October 1, 1983, is 120 percent;

(II) on or after October 1, 1983, and before October 1, 1984, is 115 percent; and

(III) on or after October 1, 1984, is 110 percent.

(B)(i) For purposes of subparagraph (A) the Secretary shall establish case mix indexes for all short-term hospitals, and shall set limits for each hospital based upon the general mix of types of medical cases with respect to which such hospital provides services for which payment may be made under this subchapter.

(ii) The Secretary shall set such limits for a cost reporting period of a hospital—

(I) by updating available data for a previous period to the immediate preceding cost reporting period by the estimated average rate of change of hospital costs industry-wide, and

(II) by projecting for the cost reporting period by the applicable percentage increase (as defined in subsection (b)(3)(B) of this section).

(C) The limitation established under subparagraph (A) for any hospital shall in no event be
lower than the allowable operating costs of inpatient hospital services (as defined in paragraph (4)) recognized under this subchapter for such hospital for such hospital’s last cost reporting period prior to the hospital’s first cost reporting period for which this section is in effect.

(D) Subparagraph (A) shall not apply to cost reporting periods beginning on or after October 1, 1983.

(2) The Secretary shall provide for such exemptions from, and exceptions and adjustments to, the limitation established under paragraph (1)(A) as he deems appropriate, including those which he deems necessary to take into account—

(A) the special needs of sole community hospitals, of new hospitals, of risk based health maintenance organizations, and of hospitals which provide atypical services or essential community services, and to take into account extraordinary circumstances beyond the hospital’s control, medical and paramedical education costs, significantly fluctuating population in the service area of the hospital, and unusual labor costs,

(B) the special needs of psychiatric hospitals and of public or other hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A of this subchapter, and

(C) a decrease in the inpatient hospital services that a hospital provides and that are customarily provided directly by similar hospitals which results in a significant distortion in the operating costs of inpatient hospital services.

(3) The limitation established under paragraph (1)(A) shall not apply with respect to any hospital which—

(A) is located outside of a standard metropolitan statistical area, and

(B)(i) has less than 50 beds, and

(ii) was in operation and had less than 50 beds on September 3, 1982.

(4) For purposes of this section, the term “operating costs of inpatient hospital services” includes all routine operating costs, ancillary service operating costs, and special care unit operating costs with respect to inpatient hospital services as such costs are determined on an average per admission or per discharge basis (as determined by the Secretary), and includes the costs of all services for which payment may be made under this subchapter that are provided by the hospital (or by an entity wholly owned or operated by the hospital) to a patient—

(A) on the date of the patient’s inpatient admission; or

(B) during the 3 days (or, in the case of a hospital that is not a subsection (d) hospital, during the 1 day) immediately preceding the date of such admission unless the hospital demonstrates (in a form and manner, and at a time, specified by the Secretary) that such services are not related (as determined by the Secretary) to such admission.

(b) Computation of payment; definitions; exemptions; adjustments

(1) Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title, if the operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) of a hospital (other than a subsection (d) hospital, as defined in subsection (d)(1)(B) of this section and other than a rehabilitation facility described in subsection (j)(1) of this section) for a cost reporting period subject to this paragraph—

(A) are less than or equal to the target amount (as defined in paragraph (3)) for that hospital for that period, the amount of the payment with respect to such operating costs payable under part A of this subchapter on a per discharge or per admission basis (as the case may be) shall be equal to the amount of such operating costs, plus—

(i) 15 percent of the amount by which the target amount exceeds the amount of the operating costs, or

(ii) 2 percent of the target amount, whichever is less;

(B) are greater than the target amount but do not exceed 110 percent of the target amount, the amount of the payment with respect to those operating costs payable under part A of this subchapter on a per discharge basis shall equal the target amount; or

(C) are greater than 110 percent of the target amount, the amount of the payment with respect to such operating costs payable under part A of this subchapter on a per discharge or per admission basis (as the case may be) shall be equal to (i) the target amount, plus (ii) in the case of cost reporting periods beginning on or after October 1, 1991, an additional amount equal to 50 percent of the amount by which the operating costs exceed 110 percent of the target amount (except that such additional amount may not exceed 10 percent of the target amount) after any exceptions or adjustments are made to such target amount for the cost reporting period; plus the amount, if any, provided under paragraph (2), except that in no case may the amount payable under this subchapter (other than on the basis of a DRG prospective payment rate determined under subsection (d) of this sec-
tion) with respect to operating costs of inpatient hospital services exceed the maximum amount payable with respect to such costs pursuant to subsection (a) of this section.

(2)(A) Except as provided in subparagraph (E), in addition to the payment computed under paragraph (1), in the case of an eligible hospital (described in subparagraph (B)) for a cost reporting period beginning on or after October 1, 1997, the amount of payment on a per discharge basis under paragraph (1) shall be increased by the lesser of—

(i) 50 percent of the amount by which the operating costs are less than the expected costs (as defined in subparagraph (D)) for the period; or

(ii) 1 percent of the target amount for the period.

(B) For purposes of this paragraph, an “eligible hospital” means with respect to a cost reporting period, a hospital—

(i) that has received payments under this subsection for at least 3 full cost reporting periods before that cost reporting period, and

(ii) whose operating costs for the period are less than the least of its target amount, its trended costs (as defined in subparagraph (C)), or its expected costs (as defined in subparagraph (D)) for the period.

(C) For purposes of subparagraph (B)(ii), the term “trended costs” means for a hospital cost reporting period ending in a fiscal year—

(i) in the case of a hospital for which its cost reporting period ending in fiscal year 1996 was its third or subsequent full cost reporting period for which it receives payments under this subsection, the lesser of the operating costs or target amount for that hospital for its cost reporting period ending in fiscal year 1996, or

(ii) in the case of any other hospital, the operating costs for that hospital for its third full cost reporting period for which it receives payments under this subsection, increased (in a compounded manner) for each succeeding fiscal year (through the fiscal year involved) by the market basket percentage increase for the fiscal year.

(D) For purposes of this paragraph, the term “expected costs”, with respect to the cost reporting period ending in a fiscal year, means the lesser of the operating costs of inpatient hospital services or target amount per discharge for the previous cost reporting period updated by the market basket percentage increase (as defined in paragraph (3)(B)(iii)) for the fiscal year.

(E)(i) In the case of an eligible hospital that is a hospital or unit that is within a class of hospitals described in clause (ii) with a 12-month cost reporting period beginning before November 29, 1999, in determining the amount of the increase under subparagraph (A), the Secretary shall substitute for the percentage of the target amount applicable under subparagraph (A)(ii)—

(I) for a cost reporting period beginning on or after October 1, 2000, and before September 30, 2001, 1.5 percent; and

(II) for a cost reporting period beginning on or after October 1, 2001, and before September 30, 2002, 2 percent.

(ii) For purposes of clause (i), each of the following shall be treated as a separate class of hospital:

(I) Hospitals described in clause (i) of subsection (d)(1)(B) of this section and psychiatric units described in the matter following clause (v) of such subsection.

(II) Hospitals described in clause (iv) of such subsection.

(3)(A) Except as provided in subparagraph (C) and succeeding subparagraphs, and in paragraph (7)(A)(ii), for purposes of this subsection, the term “target amount” means, with respect to a hospital for a particular 12-month cost reporting period—

(i) in the case of the first such reporting period for which this subsection is in effect, the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) recognized under this subchapter for such hospital for the preceding 12-month cost reporting period, and

(ii) in the case of a later reporting period, the target amount for the preceding 12-month cost reporting period, increased by the applicable percentage increase under subparagraph (B) for that particular cost reporting period.

(E)(i) For purposes of subsection (d) of this section and subsection (j) of this section for discharges occurring during a fiscal year, the “applicable percentage increase” shall be—

(I) for fiscal year 1986, ½ percent,

(II) for fiscal year 1987, 1.15 percent,

(III) for fiscal year 1988, 3.0 percent for hospitals located in a rural area, 1.5 percent for hospitals located in a large urban area (as defined in subsection (d)(2)(D) of this section), and 1.0 percent for hospitals located in other urban areas,

(IV) for fiscal year 1989, the market basket percentage increase minus 1.5 percent for hospitals located in a rural area, the market basket percentage increase minus 2.0 percentage points for hospitals located in a large urban area, and the market basket percentage increase minus 2.5 percentage points for hospitals located in other urban areas,

(V) for fiscal year 1990, the market basket percentage increase plus 4.22 percentage points for hospitals located in a rural area, the market basket percentage increase plus 0.12 percentage points for hospitals located in a large urban area, and the market basket percentage increase minus 0.53 percentage points for hospitals located in other urban areas,

(VI) for fiscal year 1991, the market basket percentage increase minus 2.0 percentage points for hospitals in a large urban or other urban area, and the market basket percentage increase minus 0.7 percentage point for hospitals located in a rural area,

(VII) for fiscal year 1992, the market basket percentage increase minus 1.6 percentage points for hospitals in a large urban or other urban area, and the market basket percentage increase minus 0.6 percentage point for hospitals located in a rural area,

(VIII) for fiscal year 1993, the market basket percentage increase minus 1.55 percentage
point for hospitals in a large urban or other urban area, and the market basket percentage increase minus 0.55 \(^\dagger\) for hospitals located in a rural area.

(IX) for fiscal year 1994, the market basket percentage increase minus 2.5 percentage points for hospitals located in a large urban or other urban area, and the market basket percentage increase minus 1.0 percentage point for hospitals located in a rural area.

(X) for fiscal year 1995, the market basket percentage increase minus 2.5 percentage points for hospitals located in a large urban or other urban area, and such percentage increase for hospitals located in a rural area as will provide for the average standardized amount determined under subsection (d)(2)(A) of this section for hospitals located in a rural area being equal to such average standardized amount for hospitals located in an urban area (other than a large urban area),

(XI) for fiscal year 1996, the market basket percentage increase minus 0.5 percentage point for hospitals in all areas,

(XII) for fiscal year 1997, the market basket percentage increase minus 0.5 percentage point for hospitals in all areas,

(XIII) for fiscal year 1998, 0 percent,

(XIV) for fiscal year 1999, the market basket percentage increase minus 1.9 percentage points for hospitals in all areas,

(XV) for fiscal year 2000, the market basket percentage increase minus 1.8 percentage points for hospitals in all areas,

(XVI) for fiscal year 2001, the market basket percentage increase minus 1.8 percentage points for hospitals in all areas,

(XVII) for fiscal year 2002, the market basket percentage increase minus 0.55 percentage points for hospitals in all areas,

(XVIII) for fiscal year 2003, the market basket percentage increase minus 0.55 percentage points for hospitals in all areas,

(XIX) for each of fiscal years 2004 through 2006, subject to clause (vii), the market basket percentage increase for hospitals in all areas; \(^\dagger\)

(XX) for each subsequent fiscal year, subject to clauses (viii), (ix), (xi), and (xii), the market basket percentage increase for hospitals in all areas.

(ii) For purposes of subparagraphs (A) and (E), the “applicable percentage increase” for 12-month cost reporting periods beginning during—

(I) fiscal year 1986, is 0.5 percent,

(II) fiscal year 1987, is 1.15 percent.

(III) fiscal year 1988, is the market basket percentage increase minus 2.0 percentage points

(IV) a subsequent fiscal year ending on or before September 30, 1993, is the market basket percentage increase.

(V) fiscal years 1994 through 1997, is the market basket percentage increase minus the applicable reduction (as defined in clause (v)(II)), or in the case of a hospital for a fiscal year for which the hospital’s update adjustment percentage (as defined in clause (v)(I)) is at least 10 percent, the market basket percentage increase,

(VI) for fiscal year 1998, is 0 percent,

(VII) for fiscal years 1999 through 2002, is the applicable update factor specified under clause (vi) for the fiscal year, and

(VIII) subsequent fiscal years is the market basket percentage increase.

(iii) For purposes of this subparagraph, the term “market basket percentage increase” means, with respect to cost reporting periods and discharges occurring in a fiscal year, the percentage, estimated by the Secretary before the beginning of the period or fiscal year, by which the cost of the mix of goods and services (including personnel costs but excluding non-

operating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services, for the period or fiscal year will exceed the cost of such mix of goods and services for the preceding 12-month cost reporting period or fiscal year.

(iv) For purposes of subparagraphs (C) and (D), the “applicable percentage increase” is—

(I) for 12-month cost reporting periods beginning during fiscal years 1986 through 1993, the applicable percentage increase specified in clause (ii),

(II) for fiscal year 1994, the market basket percentage increase minus 2.3 percentage points (adjusted to exclude any portion of a cost reporting period beginning during fiscal year 1993 for which the applicable percentage increase is determined under subparagraph (I)),

(III) for fiscal year 1995, the market basket percentage increase minus 2.2 percentage points, and

(IV) for fiscal year 1996 and each subsequent fiscal year, the applicable percentage increase under clause (I).

(v) For purposes of clause (ii)(V)—

(I) a hospital’s “update adjustment percentage” for a fiscal year is the percentage by which the hospital’s allowable operating costs of inpatient hospital services recognized under this subchapter for the cost reporting period beginning in fiscal year 1990 exceeds the hospital’s target amount (as determined under subparagraph (A)) for such cost reporting period, increased for each fiscal year (beginning with fiscal year 1994) by the sum of any of the hospital’s applicable reductions under sub-

clause (V) for previous fiscal years; and

(II) the “applicable reduction” with respect to a hospital for a fiscal year is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital’s update adjustment percentage for the fiscal year.

(vi) For purposes of clause (ii)(VII) for a fiscal year, if a hospital’s allowable operating costs of inpatient hospital services recognized under this subchapter for the most recent cost reporting period for which information is available—

(I) is equal to, or exceeds, 110 percent of the hospital’s target amount (as determined under

\(^\dagger\) So in original. Probably should be followed by “percentage point”.

\(^\dagger\) So in original. The semicolon probably should be a comma.
subsection (A) for such cost reporting period, the applicable update factor specified under this clause is the market basket percentage:

(II) exceeds 100 percent, but is less than 110 percent, of such target amount for the hospital, the applicable update factor specified under this clause is 0 percent or, if greater, the market basket percentage minus 0.25 percentage points for each percentage point by which such allowable operating costs (expressed as a percentage of such target amount) is less than 110 percent of such target amount;

(III) is equal to, or less than 100 percent, but exceeds 2/3 of such target amount for the hospital, the applicable update factor specified under this clause is 0 percent or, if greater, the market basket percentage minus 2.5 percentage points; or

(IV) does not exceed 2/3 of such target amount for the hospital, the applicable update factor specified under this clause is 0 percent.

(vii)(I) For purposes of clause (i)(XIX) for fiscal years 2005 and 2006, a case of a subsection (d) hospital that does not submit data to the Secretary in accordance with subclause (II) with respect to such fiscal year, the applicable percentage increase under such clause for such fiscal year shall be reduced by 0.4 percentage points. Such reduction shall apply only with respect to the fiscal year involved, and the Secretary shall not take into account such reduction in computing the applicable percentage increase under clause (i)(XIX) for a subsequent fiscal year.

(II) For fiscal years 2005 and 2006, each subsection (d) hospital shall submit to the Secretary quality data (for a set of 10 indicators established by the Secretary as of November 1, 2003) that relate to the quality of care furnished by the hospital in inpatient settings in a form and manner, and at a time, specified by the Secretary for purposes of this clause, but with respect to fiscal year 2005, the Secretary shall provide for a 30-day grace period for the submission of data by a hospital.

(viii)(I) For purposes of clause (i) for fiscal years 2005 through 2012, in the event to which a case of a subsection (d) hospital that does not submit, to the Secretary in accordance with this clause, data required to be submitted on measures selected under this clause with respect to such a fiscal year, the applicable percentage increase under clause (i) for such fiscal year shall be reduced by 2.0 percentage points (or, beginning with fiscal year 2015, by one-quarter of such applicable percentage increase (determined without regard to clause (ix), (xi), or (xiii))). Such reduction shall apply only with respect to the fiscal year involved and the Secretary shall not take into account such reduction in computing the applicable percentage increase under clause (i) for a subsequent fiscal year, and the Secretary and the Medicare Payment Advisory Commission shall carry out the requirements under section 5001(b) of the Deficit Reduction Act of 2005.

(II) Each subsection (d) hospital shall submit data on measures selected under this clause to the Secretary in a form and manner, and at a time, specified by the Secretary for purposes of this clause. The Secretary may require hospitals to submit data on measures that are not used for the determination of value-based incentive payments under subsection (o).

(III) The Secretary shall expand, beyond the measures specified under clause (vii)(II) and consistent with the succeeding subclauses, the set of measures that the Secretary determines to be appropriate for the measurement of the quality of care (including medication errors) furnished by hospitals in inpatient settings.

(IV) Effective for payments beginning with fiscal year 2007, in expanding the number of measures under subclause (III), the Secretary shall begin to adopt the baseline set of performance measures as set forth in the November 2005 report by the Institute of Medicine of the National Academy of Sciences under section 258(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

(V) Effective for payments for fiscal years 2008 through 2012, the Secretary shall add other measures that reflect consensus among affected parties and, to the extent feasible and practicable, shall include measures set forth by one or more national consensus building entities.

(VI) For purposes of this clause and clause (vii), the Secretary may replace any measures or indicators in appropriate cases, such as where all hospitals are effectively in compliance or the measures or indicators have been subsequently shown not to represent the best clinical practice.

(VII) The Secretary shall establish procedures for making information regarding measures submitted under this clause available to the public. Such procedures shall ensure that a hospital has the opportunity to review the data that are to be made public with respect to the hospital prior to such data being made public. The Secretary shall report quality measures of process, structure, outcome, patients’ perspectives on care, efficiency, and costs of care that relate to services furnished in inpatient settings in hospitals on the Internet website of the Centers for Medicare & Medicaid Services.

(VIII) Effective for payments beginning with fiscal year 2013, in the event to which a case of a subsection (d) hospital that does not submit, to the Secretary in accordance with this clause, data required to be submitted on measures selected under this clause with respect to such a fiscal year, the applicable percentage increase under clause (i) for such fiscal year shall be reduced by 0.4 percentage points. Such reduction shall apply only with respect to the fiscal year involved, and the Secretary shall not take into account such reduction in computing the applicable percentage increase under clause (i)(XIX) for a subsequent fiscal year.

(IX)(aa) Subject to item (bb), effective for payments beginning with fiscal year 2013, each measure specified by the Secretary under this clause shall be endorsed by the entity with a contract under section 1395aaa(a) of this title.

(bb) In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1395aaa(a) of this title, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

(X) To the extent practicable, the Secretary shall, with input from consensus organizations and other stakeholders, take steps to ensure
that the measures specified by the Secretary under this clause are coordinated and aligned with quality measures applicable to—

(aa) physicians under section 1395w–4(k) of this title; and

(bb) other providers of services and suppliers under this subchapter.

(XI) The Secretary shall establish a process to validate measures specified under this clause as appropriate. Such process shall include the auditing of a number of randomly selected hospitals sufficient to ensure validity of the reporting program under this clause as a whole and shall provide a hospital with an opportunity to appeal the validation of measures reported by such hospital.

(ix)(I) For purposes of clause (i) for fiscal year 2015 and each subsequent fiscal year, in the case of an eligible hospital (as defined in subsection (n)(3)) for an EHR reporting period for such fiscal year, three-quarters of the applicable percentage increase otherwise applicable under clause (i) (determined without regard to clause (viii), (xi), or (xii)) for such fiscal year shall be reduced by 33\(\frac{1}{3}\) percent for fiscal year 2015, 50 percent for fiscal year 2016, and 100 percent for fiscal year 2017 and each subsequent fiscal year. Such reduction shall apply only with respect to the fiscal year involved and the Secretary shall not take into account such reduction in computing the applicable percentage increase under clause (i) for a subsequent fiscal year.

(II) The Secretary may, on a case-by-case basis, exempt a subsection (d) hospital from the application of subclause (I) with respect to a fiscal year if the Secretary determines, subject to annual renewal, that requiring such hospital to be a meaningful EHR user during such fiscal year would result in a significant hardship, such as in the case of a hospital in a rural area without sufficient Internet access. In no case may a hospital be granted an exemption under this subclause for more than 5 years.

(III) For fiscal year 2015 and each subsequent fiscal year, a State in which hospitals are paid for services under section 1395f(b)(3) of this title shall adjust the payments to each subsection (d) hospital in the State that is not a meaningful EHR user (as defined in subsection (n)(3)) in a manner that is designed to result in an aggregate reduction in payments to hospitals in the State that is equivalent to the aggregate reduction that would have occurred if payments had been reduced to each subsection (d) hospital in the State in a manner comparable to the reduction under the previous provisions of this clause. The application of this clause may result in the application of subclause (I) may result in the applicable percentage increase described in clause (i) being less than 0.0 for a fiscal year, and may result in payment rates under this section for a fiscal year being less than such payment rates for the preceding fiscal year.

(xii) After determining the applicable percentage increase described in clause (i), and after application of clauses (viii), (ix), and (xi), the Secretary shall reduce such applicable percentage increase—

(I) for each of fiscal years 2010 and 2011, by 0.25 percentage point;

(II) for each of fiscal years 2012 and 2013, by 0.1 percentage point;

(III) for fiscal year 2014, by 0.3 percentage point;

(IV) for each of fiscal years 2015 and 2016, by 0.2 percentage point; and

(V) for each of fiscal years 2017, 2018, and 2019, by 0.75 percentage point.

The application of this clause may result in the applicable percentage increase described in clause (i) being less than 0.0 for a fiscal year, and may result in payment rates under this section for a fiscal year being less than such payment rates for the preceding fiscal year.

(C) In the case of a hospital that is a sole community hospital (as defined in subsection (d)(5)(D)(ii) of this section), subject to subparagraphs (I) and (L), the term ‘‘target amount’’ means—

(i) with respect to the first 12-month cost reporting period in which this subparagraph is applied to the hospital—

(I) the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) recognized under this subchapter for the hospital for the 12-month cost reporting period (in this subparagraph referred to as the ‘‘base cost reporting period’’) preceding the first cost reporting period for which this subsection was in effect with respect to such hospital, increased (in a compounded manner) by—

(II) the applicable percentage increases applied to such hospital under this paragraph...
for cost reporting periods after the base cost reporting period and up to and including such first 12-month cost reporting period,

(ii) with respect to a later cost reporting period beginning before fiscal year 1994, the target amount for the preceding 12-month cost reporting period, increased by the applicable percentage increase under subparagraph (B)(iv) for discharges occurring in the fiscal year in which that later cost reporting period begins,

(iii) with respect to discharges occurring in fiscal year 1994, the target amount for the cost reporting period beginning in fiscal year 1993 increased by the applicable percentage increase under subparagraph (B)(iv), or

(iv) with respect to discharges occurring in fiscal year 1995 and each subsequent fiscal year, the target amount for the preceding year increased by the applicable percentage increase under subparagraph (B)(iv).

There shall be substituted for the base cost reporting period described in clause (i) a hospital’s cost reporting period (if any) beginning during fiscal year 1987 if such substitution results in an increase in the target amount for the hospital.

(D) For cost reporting periods ending on or before September 30, 1994, and for discharges occurring on or after October 1, 1997, and before October 1, 2012, in the case of a hospital that is a medicare-dependent, small rural hospital (as defined in subsection (d)(5)(G) of this section), subject to subparagraph (K), the term “target amount” means—

(i) with respect to the first 12-month cost reporting period in which this subparagraph is applied to the hospital—

(I) the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) recognized under this subchapter for the hospital for the 12-month cost reporting period (in this subparagraph referred to as the “base cost reporting period”) preceding the first cost reporting period for which this subsection was in effect with respect to such hospital, increased (in a compounded manner) by—

(II) the applicable percentage increases applied to such hospital under this paragraph for cost reporting periods after the base cost reporting period and up to and including such first 12-month cost reporting period, or

(ii) with respect to a later cost reporting period beginning before fiscal year 1994, the target amount for the preceding 12-month cost reporting period, increased by the applicable percentage increase under subparagraph (B)(iv) for discharges occurring in the fiscal year in which that later cost reporting period begins,

(iii) with respect to discharges occurring in fiscal year 1994, the target amount for the cost reporting period beginning in fiscal year 1993 increased by the applicable percentage increase under subparagraph (B)(iv), and

(iv) with respect to discharges occurring during fiscal year 1998 through fiscal year 2012, the target amount for the preceding year increased by the applicable percentage increase under subparagraph (B)(iv).

There shall be substituted for the base cost reporting period described in clause (i) a hospital’s cost reporting period (if any) beginning during fiscal year 1987 if such substitution results in an increase in the target amount for the hospital.

(E) In the case of a hospital described in clause (v) of subsection (d)(1)(B) of this section, the term “target amount” means—

(i) with respect to the first 12-month cost reporting period in which this subparagraph is applied to the hospital—

(I) the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) recognized under this subchapter for the hospital for the 12-month cost reporting period (in this subparagraph referred to as the “base cost reporting period”) preceding the first cost reporting period for which this subsection was in effect with respect to such hospital, increased (in a compounded manner) by—

(II) the applicable percentage increases applied to such hospital under this paragraph for cost reporting periods after the base cost reporting period and up to and including such first 12-month cost reporting period, or

(ii) with respect to a later cost reporting period, the target amount for the preceding 12-month cost reporting period, increased by the applicable percentage increase under subparagraph (B)(iv) for that later cost reporting period.

There shall be substituted for the base cost reporting period described in clause (i) a hospital’s cost reporting period (if any) beginning during fiscal year 1987 if such substitution results in an increase in the target amount for the hospital.

(F)(i) In the case of a hospital (or unit described in the matter following clause (v) of subsection (d)(1)(B) of this section) that received payment under this subsection for inpatient hospital services furnished during cost reporting periods beginning before October 1, 1990, that is within a class of hospital described in clause (iii), and that elects (in a form and manner determined by the Secretary) this subparagraph to apply to the hospital, the target amount for the hospital’s 12-month cost reporting period beginning during fiscal year 1998 is equal to the average described in clause (ii).

(ii) The average described in this clause for a hospital or unit shall be determined by the Secretary as follows:

(I) The Secretary shall determine the allowable operating costs for inpatient hospital services for the hospital or unit for each of the 5 cost reporting periods for which the Secretary has the most recent settled cost reports as of August 5, 1997.

(II) The Secretary shall increase the amount determined under subclause (I) for each cost reporting period by the applicable percentage increase under subparagraph (B)(ii) for each subsequent cost reporting period up to the cost reporting period described in clause (i).

(III) The Secretary shall identify among such 5 cost reporting periods the cost reporting periods for which the amount determined under subclause (II) is the highest, and the lowest.
(IV) The Secretary shall compute the averages of the amounts determined under subclause (II) for the 3 cost reporting periods not identified under subclause (III).

(iii) For purposes of this subparagraph, each of the following shall be treated as a separate class of hospital:

(I) Hospitals described in clause (i) of subsection (d)(1)(B) of this section and psychiatric units described in the matter following clause (v) of such subsection.

(II) Hospitals described in clause (ii) of such subsection and rehabilitation units described in the matter following clause (v) of such subsection.

(III) Hospitals described in clause (iii) of such subsection.

(IV) Hospitals described in clause (iv) of such subsection.

(V) Hospitals described in clause (v) of such subsection.

(G)(i) In the case of a qualified long-term care hospital (as defined in clause (ii)) that elects (in a form and manner determined by the Secretary) this subparagraph to apply to the hospital, the target amount for the hospital's 12-month cost reporting period beginning during fiscal year 1997 is equal to the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) recognized under this subchapter for the hospital for the 12-month cost reporting period beginning during fiscal year 1996, increased by the applicable percentage increase for the cost reporting period beginning during fiscal year 1997.

(ii) In clause (i), a ''qualified long-term care hospital'' means, with respect to a cost reporting period, a hospital described in clause (iv) of subsection (d)(1)(B) of this section during each of the 2 cost reporting periods for which the Secretary has the most recent settled cost reports as of August 5, 1997, for each of which—

(I) the hospital's allowable operating costs of inpatient hospital services recognized under this subchapter exceeded 115 percent of the hospital's target amount, and

(II) the hospital would have a disproportionately patient percentage of at least 70 percent (as determined by the Secretary under subsection (d)(5)(F)(vi) of this section) if the hospital were a subsection (d) hospital.

(H)(i) In the case of a hospital or unit that is within a class of hospital described in clause (iv), for a cost reporting period beginning during fiscal years 1998 through 2002, the target amount for such a hospital or unit may not exceed the amount as updated up to or for such cost reporting period under clause (ii).

(ii)(I) In the case of a hospital or unit that is within a class of hospital described in clause (iv), the Secretary shall estimate the 75th percentile of the target amounts for such hospitals within such class for cost reporting periods ending during fiscal year 1996, as adjusted under clause (iii).

(II) The Secretary shall update the amount determined under subclause (I), for each cost reporting period after the cost reporting period described in such subclause and up to the first cost reporting period beginning on or after October 1, 1997, by a factor equal to the market basket percentage increase.

(III) For cost reporting periods beginning during each of fiscal years 1999 through 2002, subject to subparagraph (J), the Secretary shall update such amount by a factor equal to the market basket percentage increase.

(iii) In applying clause (ii)(I) in the case of a hospital or unit, the Secretary shall provide for an appropriate adjustment to the labor-related portion of the amount determined under such subparagraph to take into account differences between average wage-related costs in the area of the hospital and the national average of such costs within the same class of hospital.

(iv) For purposes of this subparagraph, each of the following shall be treated as a separate class of hospital:

(I) Hospitals described in clause (i) of subsection (d)(1)(B) of this section and psychiatric units described in the matter following clause (v) of such subsection.

(II) Hospitals described in clause (ii) of such subsection and rehabilitation units described in the matter following clause (v) of such subsection.

(III) Hospitals described in clause (iv) of such subsection.

(I)(i) Subject to subparagraph (L), for cost reporting periods beginning on or after October 1, 2000, in the case of a sole community hospital there shall be substituted for the amount otherwise determined under subsection (d)(5)(D)(i) of this section, if such substitution results in a greater amount of payment under this section for the hospital—

(I) with respect to discharges occurring in fiscal year 2001, 75 percent of the amount otherwise applicable to the hospital under subsection (d)(5)(D)(i) of this section (referred to in this clause as the "subsection (d)(5)(D)(i) amount") and 25 percent of the rebased target amount (as defined in clause (ii));

(II) with respect to discharges occurring in fiscal year 2002, 50 percent of the subsection (d)(5)(D)(i) amount and 50 percent of the rebased target amount;

(III) with respect to discharges occurring in fiscal year 2003, 25 percent of the subsection (d)(5)(D)(i) amount and 75 percent of the rebased target amount; and

(IV) with respect to discharges occurring after fiscal year 2003, 100 percent of the rebased target amount.

(ii) For purposes of this subparagraph, the "rebased target amount" has the meaning given the term "target amount" in subparagraph (C) except that—

(I) there shall be substituted for the base cost reporting period the 12-month cost reporting period beginning during fiscal year 1996;

(II) any reference in subparagraph (C)(i) to the "first cost reporting period" described in such subparagraph is deemed a reference to the first cost reporting period beginning on or after October 1, 2000; and

(III) applicable increase percentage shall only be applied under subparagraph (C)(iv) for discharges occurring in fiscal years beginning with fiscal year 2002.
(iii) In no case shall a hospital be denied treatment as a sole community hospital or payment (on the basis of a target rate as such as a hospital) because data are unavailable for any cost reporting period due to changes in ownership, changes in fiscal intermediaries, or other extraordinary circumstances, so long as data for at least one applicable base cost reporting period is available.

(J) For cost reporting periods beginning during fiscal year 2001, for a hospital described in subsection (d)(1)(B)(iii) of this section—

(i) the limiting or cap amount otherwise determined under subparagraph (H) shall be increased by 2 percent; and

(ii) the target amount otherwise determined under subparagraph (A) shall be increased by 25 percent (subject to the limiting or cap amount determined under subparagraph (H), as increased by clause (i)).

(K)(i) With respect to discharges occurring on or after October 1, 2006, in the case of a medicare-dependent, small rural hospital, for purposes of applying subparagraph (D)—

(1) there shall be substituted for the base cost reporting period described in subparagraph (D)(i) the 12-month cost reporting period beginning during fiscal year 2002; and

(2) any reference in such subparagraph to the “first cost reporting period” described in such subparagraph is deemed a reference to the first cost reporting period beginning on or after October 1, 2006.

(ii) This subparagraph shall only apply to a hospital if the substitution described in clause (i) results in an increase in the target amount under subparagraph (D) for the hospital.

(L)(i) For cost reporting periods beginning on or after January 1, 2009, in the case of a sole community hospital, there shall be substituted for the amount otherwise determined under subsection (d)(5)(D)(i) of this section, if such substitution results in a greater amount of payment under this section for the hospital, the subparagraph (L) rebased target amount.

(ii) For purposes of this subparagraph, the term “subparagraph (L) rebased target amount” has the meaning given the term “target amount” in subparagraph (C), except that—

(1) there shall be substituted for the base cost reporting period the 12-month cost reporting period beginning during fiscal year 2006;

(2) any reference in subparagraph (C)(i) to the “first cost reporting period” described in such subparagraph is deemed a reference to the first cost reporting period beginning on or after January 1, 2009; and

(3) the applicable percentage increase shall only be applied under subparagraph (C)(iv) for discharges occurring on or after January 1, 2009.

(4) The Secretary shall provide for an exception and adjustment to (and in the case of a hospital described in subsection (d)(1)(B)(iii) of this section, may provide an exemption from) the method under this subsection for determining the amount of payment to a hospital where events beyond the hospital’s control or extraordinary circumstances, including changes in the case mix of such hospital, create a distortion in the increase in costs for a cost reporting period (including any distortion in the costs for the base period against which such increase is measured). The Secretary may provide for such other exceptions and adjustments to, such method as the Secretary deems appropriate, including the assignment of a new base period which is more representative, as determined by the Secretary, of the reasonable and necessary cost of inpatient services and including those which he deems necessary to take into account a decrease in the inpatient hospital services that a hospital provides and that are customarily provided directly by similar hospitals which results in a significant distortion in the operating costs of inpatient hospital services. The Secretary shall announce a decision on any request for an exemption, exception, or adjustment under this paragraph not later than 180 days after receiving a completed application from the intermediary for such exemption, exception, or adjustment, and shall include in such decision a detailed explanation of the grounds on which such request was approved or denied.

(ii) The payment reductions under paragraph (3)(B)(ii)(V) shall not be considered by the Secretary in making adjustments pursuant to clause (i). In making such reductions, the Secretary shall treat the applicable update factor described in paragraph (3)(B)(vi) for a fiscal year as being equal to the market basket percentage for that year.

(B) In determining under subparagraph (A) whether to assign a new base period which is more representative of the reasonable and necessary cost to a hospital of providing inpatient services, the Secretary shall take into consideration—

(i) changes in applicable technologies and medical practices, or differences in the severity of illness among patients, that increase the hospital’s costs;

(ii) whether increases in wages and wage-related costs for hospitals located in the geographic area in which the hospital is located exceed the average of the increases in such costs paid by hospitals in the United States; and

(iii) such other factors as the Secretary considers appropriate in determining increases in the hospital’s costs of providing inpatient services.

(C) Paragraph (1) shall not apply to payment of hospitals which is otherwise determined under paragraph (3) of section 1395f(b) of this title.

(5) In the case of any hospital having any cost reporting period of other than a 12-month period, the Secretary shall determine the 12-month period which shall be used for purposes of this section.

(6) In the case of any hospital which becomes subject to the taxes under section 3111 of the Internal Revenue Code of 1986, with respect to any or all of its employees, for part or all of a cost reporting period, and was not subject to such taxes with respect to any or all of its employees for all or part of the 12-month base cost reporting period referred to in subsection (b)(3)(A)(i) of this section, the Secretary shall provide for an
adjustment by increasing the base period amount described in such subsection for such hospital by an amount equal to the amount of such taxes which would have been paid or accrued by such hospital for such base period if such hospital had been subject to such taxes for all of such base period with respect to all its employees, minus the amount of any such taxes actually paid or accrued for such base period.

(7)(A) Notwithstanding paragraph (1), in the case of a hospital or unit that is within a class of hospital described in subparagraph (B) which first receives payments under this section on or after October 1, 1997—

(i) for each of the first 2 cost reporting periods for which the hospital has a settled cost report, the amount of the payment with respect to operating costs described in paragraph (1) under part A of this subchapter on a per discharge or per admission basis (as the case may be) is equal to the lesser of—

(I) the amount of operating costs for such respective period, or

(II) 110 percent of the national median (as estimated by the Secretary) of the target amount for hospitals in the same class as the hospital for cost reporting periods ending during fiscal year 1996, updated by the hospital market basket increase percentage to the fiscal year in which the hospital first received payments under this section, as adjusted under subparagraph (C); and

(ii) for purposes of computing the target amount for the subsequent cost reporting period, the target amount for the preceding cost reporting period is equal to the amount determined under clause (i) for such preceding period.

(B) For purposes of this paragraph, each of the following shall be treated as a separate class of hospital:

(i) Hospitals described in clause (i) of subsection (d)(1)(B) of this section and psychiatric units described in the matter following clause (v) of such subsection.

(ii) Hospitals described in clause (ii) of such subsection and rehabilitation units described in the matter following clause (v) of such subsection.

(iii) Hospitals described in clause (iv) of such subsection.

(C) In applying subparagraph (A)(i)(II) in the case of a hospital or unit, the Secretary shall provide for an appropriate adjustment to the labor-related portion of the amount determined under such subparagraph to take into account differences between average wage-related costs in the area of the hospital and the national average of such costs within the same class of hospital.

(c) Payment in accordance with State hospital reimbursement control system; amount of payment; discontinuance of payments

(1) The Secretary may provide, in his discretion, that payment with respect to services provided by a hospital in a State may be made in accordance with a hospital reimbursement control system in a State, rather than in accordance with the other provisions of this chapter, if the chief executive officer of the State requests such treatment and if—

(A) the Secretary determines that the system, if approved under this subsection, will apply (i) to substantially all non-Federal acute care hospitals (as defined by the Secretary) in the State and (ii) to the review of at least 75 percent of all revenues or expenses in the State for inpatient hospital services and of revenues or expenses for inpatient hospital services provided under the State's plan approved under subchapter XIX of this chapter;

(B) the Secretary has been provided satisfactory assurances as to the equitable treatment under the system of all entities (including Federal and State programs) that pay hospitals for inpatient hospital services, of hospital employees, and of hospital patients;

(C) the Secretary has been provided satisfactory assurances that under the system, over 36-month periods (the first such period beginning with the first month in which this section applies to that system in the State), the amount of payments made under this subchapter under such system will not exceed the amount of payments which would otherwise have been made under this subchapter not using such system;

(D) the Secretary determines that the system will not preclude an eligible organization (as defined in section 1395mm(b) of this title) from negotiating directly with hospitals with respect to the organization's rate of payment for inpatient hospital services; and

(E) the Secretary determines that the system requires hospitals to meet the requirements of section 1395rr(a)(1)(G) of this title and the system provides for the exclusion of certain costs in accordance with section 1395y(a)(14) of this title (except for such waivers thereof as the Secretary provides by regulation).

The Secretary cannot deny the application of a State under this subsection on the ground that the State's hospital reimbursement control system is based on a payment methodology other than on the basis of a diagnosis-related group or on the ground that the amount of payments made under this subchapter under such system must be less than the amount of payments which would otherwise have been made under this subchapter not using such system. If the Secretary determines that the conditions described in subparagraph (C) are based on maintaining payment amounts at no more than a specified percentage increase above the payment amounts in a base period, the State has the option of applying such test (for inpatient hospital services under part A of this subchapter) on an aggregate payment basis or on the basis of the amount of payment per inpatient discharge or admission. If the Secretary determines that the conditions described in subparagraph (C) are based on maintaining aggregate payment amounts below a national average percentage increase in total payments under part A of this subchapter for inpatient hospital services, the Secretary cannot deny the application of a State under this subsection on the ground that the State's rate of increase in such payments for such services must be less than such national average rate of increase.
(2) In determining under paragraph (1)(C) the amount of payment which would otherwise have been made under this subchapter for a State, the Secretary may provide for appropriate adjustment of such amount to take into account previous reductions effected in the amount of payments made under this subchapter in the State due to the operation of the hospital reimbursement control system in the State if the system has resulted in an aggregate rate of increase in operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) under this subchapter for hospitals in the State which is less than the aggregate rate of increase in such costs under this subchapter for hospitals in the United States.

(3) The Secretary shall discontinue payments under a system described in paragraph (1) if the Secretary—

(A) determines that the system no longer meets the requirements of subparagraphs (A), (D), and (E) of paragraph (1) and, if applicable, the requirements of paragraph (5), or

(B) has reason to believe that the assurances described in subparagraph (B) or (C) of paragraph (1) (or, if applicable, in paragraph (5)) are not being (or will not be) met.

(4) The Secretary shall approve the request of a State under paragraph (1) with respect to a hospital reimbursement control system if—

(A) the requirements of subparagraphs (A), (B), (C), (D), and (E) of paragraph (1) have been met with respect to the system, and

(B) with respect to that system a waiver of certain requirements of this subchapter has been approved on or before (and which is in effect as of) April 20, 1983, pursuant to section 1395b–1(a) of this title or section 222(a) of the Social Security Amendments of 1972.

With respect to a State system described in this paragraph, the Secretary shall judge the effectiveness of such system on the basis of its rate of increase or inflation in inpatient hospital payments for individuals under this subchapter, as compared to the national rate of increase or inflation for such payments, with the State retaining the option to have the test applied on the basis of the aggregate payments under the State system as compared to aggregate payments which would have been made under the national system since October 1, 1984, to the most recent date for which annual data are available.

(5) The Secretary shall approve the request of a State under paragraph (1) with respect to a hospital reimbursement control system if—

(A) the requirements of subparagraphs (A), (B), (C), (D), and (E) of paragraph (1) have been met with respect to the system;

(B) the Secretary determines that the system—

(i) is operated directly by the State or by an entity designated pursuant to State law,

(ii) provides for payment of hospitals covered under the system under a methodology (which sets forth exceptions and adjustments, as well as any method for changes in the methodology) by which rates or amounts to be paid for hospital services during a specified period are established under the system prior to the defined rate period, and

(iii) hospitals covered under the system will make such reports (in lieu of cost and other reports, identified by the Secretary, otherwise required under this subchapter) as the Secretary may require in order to properly monitor assurances provided under this subsection;

(C) the State has provided the Secretary with satisfactory assurances that operation of the system will not result in any change in hospital admission practices which result in—

(i) a significant reduction in the proportion of patients (receiving hospital services covered under the system) who have no third-party coverage and who are unable to pay for hospital services,

(ii) a significant reduction in the proportion of individuals admitted to hospitals for inpatient hospital services for which payment is (or is likely to be) less than the anticipated charges for or costs of such services,

(iii) the refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital, or

(iv) the refusal to provide emergency services to any person who is in need of emergency services if the hospital provides such services;

(D) any change by the State in the system which has the effect of materially reducing payments to hospitals can only take effect upon 60 days notice to the Secretary and to the hospitals the payment to which is likely to be materially affected by the change; and

(E) the State has provided the Secretary with satisfactory assurances that in the development of the system the State has consulted with local governmental officials concerning the impact of the system on public hospitals.

The Secretary shall respond to requests of States under this paragraph within 60 days of the date the request is submitted to the Secretary.

(6) If the Secretary determines that the assurances described in paragraph (1)(C) have not been met with respect to any 36-month period, the Secretary may reduce payments under this subchapter to hospitals under the system in an amount equal to the amount by which the payment under this subchapter under such system for such period exceeded the amount of payments which would otherwise have been made under this subchapter not using such system.

(7) In the case of a State which made a request under paragraph (5) before December 31, 1984, for the approval of a State hospital reimbursement control system and which request was approved—

(A) in applying paragraphs (1)(C) and (6), a reference to a ‘‘36-month period’’ is deemed a reference to a ‘‘48-month period’’, and

(B) in order to allow the State the opportunity to provide the assurances described in paragraph (1)(C) for a 48-month period, the Secretary may not discontinue payments under the system, under the authority of paragraph (3)(A) because the Secretary has reason
(d) Inpatient hospital service payments on basis of prospective rates; Medicare Geographical Classification Review Board

(1)(A) Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title, the amount of the payment with respect to the operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) of a subsection (d) hospital (as defined in subparagraph (B)) for inpatient hospital discharges in a cost reporting period or in a fiscal year—

(i) beginning on or after October 1, 1983, and before October 1, 1984, is equal to the sum of—

(I) the target percentage (as defined in subparagraph (C)) of the hospital’s target amount for the cost reporting period (as defined in subsection (b)(3)(A) of this section, but determined without the application of subsection (a) of this section), and

(II) the DRG percentage (as defined in subparagraph (C)) of the regional adjusted DRG prospective payment rate determined under paragraph (2) for such discharges;

(ii) beginning on or after October 1, 1984, and before October 1, 1987, is equal to the sum of—

(I) the target percentage (as defined in subparagraph (C)) of the hospital’s target amount for the cost reporting period (as defined in subsection (b)(3)(A) of this section, but determined without the application of subsection (a) of this section), and

(II) the DRG percentage (as defined in subparagraph (C)) of the applicable combined adjusted DRG prospective payment rate determined under subparagraph (D) for such discharges; or

(iii) beginning on or after April 1, 1988, is equal to—

(I) the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges, or

(II) for discharges occurring during a fiscal year ending on or before September 30, 1996, the sum of 85 percent of the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges and 15 percent of the regional adjusted DRG prospective payment rate determined under such paragraph, but only if the average standardized amount (described in clause (i)(I) or clause (ii)(I) of paragraph (3)(D)) for hospitals within the region of, and in the same large urban or other area (or, for discharges occurring during a fiscal year ending on or before September 30, 1994, the same large urban or other area) as, the hospital is greater than the average standardized amount (described in the respective clause) for hospitals within the United States in that type of area for discharges occurring during such fiscal year.

(B) As used in this section, the term “sub-section (d) hospital” means a hospital located in one of the fifty States or the District of Columbia other than—

(i) a psychiatric hospital (as defined in section 1395x(f) of this title),

(ii) a rehabilitation hospital (as defined by the Secretary),

(iii) a hospital whose inpatients are predominantly individuals under 18 years of age.

(iv)(I) a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days, or

(II) a hospital that first received payment under this subsection in 1986 which has an average inpatient length of stay (as determined by the Secretary) of greater than 20 days and that has 80 percent or more of its annual Medicare inpatient discharges with a principal diagnosis that reflects a finding of neoplastic disease in the 12-month cost reporting period ending in fiscal year 1997, or

(v)(I) a hospital that the Secretary has classified, at any time on or before December 31, 1990, or, in the case of a hospital that, as of December 19, 1989, is located in a State operating a demonstration project under section 1395f(b) of this title, on or before December 31, 1991 for purposes of applying exceptions and adjustments to payment amounts under this subsection, as a hospital involved extensively in treatment for or research on cancer, and

(II) a hospital that was recognized as a comprehensive cancer center or clinical cancer research center by the National Cancer Institute of the National Institutes of Health as of April 20, 1983, that is located in a State which, as of December 19, 1989, was not operating a demonstration project under section 1395f(b) of this title, that applied and was denied, on or before December 31, 1990, for classification as a hospital involved extensively in treatment for or research on cancer under this clause (as in effect on the day before August 5, 1997), that as of August 5, 1997, is licensed for less than 50 acute care beds, and that demonstrates for the 4-year period ending on December 31, 1996, that at least 50 percent of its total discharges have a principal finding of neoplastic disease, as defined in subparagraph (E), or

(III) a hospital that was recognized as a clinical cancer research center by the National Cancer Institute of the National Institutes of Health as of February 18, 1998, that has never been reimbursed for inpatient hospital services pursuant to a reimbursement system under a demonstration project under section 1395f(b) of this title, that is a freestanding facility organized primarily for treatment of and research on cancer and is not a unit of another hospital, that as of December 21, 2000, is licensed for 162 acute care beds, and that demonstrates for the 4-year period ending on June 30, 1999, that at least 50 percent of its total discharges have a principal finding of neoplastic disease, as defined in subparagraph (E);

and, in accordance with regulations of the Secretary, does not include a psychiatric or rehabilitation unit of the hospital which is a distinct part of the hospital (as defined by the Secretary). A hospital that was classified by the Secretary on or before September 30, 1995, as a hospital described in clause (iv) shall continue to be so classified notwithstanding that it is located in a State other than—
The Secretary shall compute an average of the standardized amounts determined under subparagraph (C) for the United States and for each region—

(i) for all subsection (d) hospitals located in an urban area within the United States or that region, respectively, and

(ii) for all subsection (d) hospitals located in a rural area within the United States or that region, respectively.

For purposes of this subsection, the term “region” means one of the nine census divisions, comprising the fifty States and the District of Columbia, established by the Bureau of the Census for statistical and reporting purposes;
the term “urban area” means an area within a Metropolitan Statistical Area (as defined by the Office of Management and Budget) or within such similar area as the Secretary has recognized under subsection (a) of this section by regulation; the term “large urban area” means, with respect to a fiscal year, such an urban area which the Secretary determines (in the publications described in subsection (e)(5) of this section before the fiscal year) has a population of more than 1,000,000 (as determined by the Secretary based on the most recent available population data published by the Bureau of the Census); and the term “rural area” means any area outside such an area or similar area. A hospital located in a Metropolitan Statistical Area shall be deemed to be located in the region in which the largest number of the hospitals in the same Metropolitan Statistical Area are located, or, at the option of the Secretary, the region in which the majority of the inpatient discharges (with respect to which payments are made under this subchapter) from hospitals in the same Metropolitan Statistical Area are made.

(E) REDUCING FOR VALUE OF OUTLIER PAYMENTS.—The Secretary shall reduce each of the average standardized amounts determined under subparagraph (D) by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment rates which are additional payments described in paragraph (5)(A) (relating to outlier payments).

(F) MAINTAINING BUDGET NEUTRALITY.—The Secretary shall adjust each of such average standardized amounts as may be required under subsection (e)(1)(B) of this section for that fiscal year.

(G) COMPUTING DRG-SPECIFIC RATES FOR URBAN AND RURAL HOSPITALS IN THE UNITED STATES AND IN EACH REGION.—For each discharge classified within a diagnosis-related group, the Secretary shall establish a national DRG prospective payment rate and shall establish a regional DRG prospective payment rate for each region, each of which is equal—

(i) for hospitals located in an urban area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (D), reduced under subparagraph (E), and adjusted under subparagraph (F)) for hospitals located in an urban area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group; and

(ii) for hospitals located in a rural area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (D), reduced under subparagraph (E), and adjusted under subparagraph (F)) for hospitals located in a rural area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(H) ADJUSTING FOR DIFFERENT AREA WAGE LEVELS.—The Secretary shall adjust the proportion, (as estimated by the Secretary from time to time) of hospitals’ costs which are attributable to wages and wage-related costs, of the national and regional DRG prospective payment rates computed under subparagraph (G) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

(3) The Secretary shall determine a national adjusted DRG prospective payment rate for each inpatient hospital discharge in a fiscal year after fiscal year 1984 involving inpatient hospital services of a subsection (d) hospital in the United States, and shall determine, for fiscal years before fiscal year 1997, a regional adjusted DRG prospective payment rate for discharges in each region for which payment may be made under part A of this subchapter. Each such rate shall be determined for hospitals located in large urban, other urban, or rural areas within the United States and within each such region, respectively, as follows:

(A) UPDATING PREVIOUS STANDARDIZED AMOUNTS.—(i) For discharges occurring in a fiscal year beginning before October 1, 1987, the Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area within the United States and for hospitals located in an urban area and for hospitals located in a rural area within each region, equal to the respective average standardized amount for hospitals located in an urban area or that region computed under paragraph (2)(D) or under this subparagraph, increased for the fiscal year involved by the applicable percentage increase under subsection (b)(3)(B) of this section. With respect to discharges occurring on or after October 1, 1987, the Secretary shall compute urban and rural averages on the basis of discharge weighting rather than hospital weighting, making appropriate adjustments to ensure that computation on such basis does not result in total payments under this section that are greater or less than the total payments that would have been made under this section but for this sentence, and making appropriate changes in the manner of determining the reductions under subparagraph (C)(ii).

(ii) For discharges occurring in a fiscal year beginning on or after October 1, 1987, and ending on or before September 30, 1994, the Secretary shall compute an average standardized amount for hospitals located in a large urban area, for hospitals located in a rural area, and for hospitals located in other urban areas, within the United States and within each region, equal to the respective average standardized amount computed for the previous fiscal year under this subparagraph increased by the applicable percentage increase under subsection (b)(3)(B)(i) of this section with respect to hospitals located in the respective areas for the fiscal year involved.

(iii) For discharges occurring in the fiscal year beginning on October 1, 1994, the average standardized amount for hospitals located in a
rural area shall be equal to the average standardized amount for hospitals located in an urban area. For discharges occurring on or after October 1, 1994, the Secretary shall adjust the ratio of the labor portion to non-labor portion of each average standardized amount to equal such ratio for the national average of all standardized amounts.

(iv)(1) Subject to subclause (II), for discharges occurring in a fiscal year beginning on or after October 1, 1995, the Secretary shall compute an average standardized amount for hospitals located in a large urban area and for hospitals located in other areas within the United States and within each region equal to the respective average standardized amount computed for the previous fiscal year under this subparagraph increased by the applicable percentage increase under subsection (b)(3)(B)(i) of this section with respect to hospitals located in the respective areas for the fiscal year involved.

(II) For discharges occurring in a fiscal year (beginning with fiscal year 2004), the Secretary shall compute a standardized amount for hospitals located in any area within the United States and within each region equal to the standardized amount computed for the previous fiscal year under this subparagraph for hospitals located in a large urban area (or, beginning with fiscal year 2005, for all hospitals in the previous fiscal year) increased by the applicable percentage increase under subsection (b)(3)(B)(i) of this section for the fiscal year involved.

(v) Average standardized amounts computed under this paragraph shall be adjusted to reflect the most recent case-mix data available.

(vi) Insofar as the Secretary determines that the adjustments under paragraph (4)(C)(i) for a previous fiscal year (or estimates that such adjustments for a future fiscal year) did (or are likely to) result in a change in aggregate payments under this subsection during the fiscal year that are a result of changes in the coding or classification of discharges that do not reflect real changes in case mix, the Secretary may adjust the average standardized amounts computed under this paragraph for subsequent fiscal years so as to eliminate the effect of such coding or classification changes.

(B) REDUCING FOR VALUE OF OUTLIER PAYMENTS.—The Secretary shall reduce each of the average standardized amounts determined under subparagraph (A) by a factor equal to the proportion of payments under this subsection (as estimated by the Secretary) based on DRG prospective payment amounts which are additional payments described in paragraph (5)(B) that would have resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 and by section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1990 and by the Omnibus Budget Reconciliation Act of 1990 were applied for discharges occurring on or after such date instead of the factor described in clause (ii) of that paragraph.

(D) COMPUTING DRG-SPECIFIC RATES FOR HOSPITALS.—For each discharge classified within a diagnosis-related group, the Secretary shall establish for the fiscal year a national DRG prospective payment rate and shall establish, for fiscal years before fiscal year 1997, a regional DRG prospective payment rate for each region which is equal—

(i) for fiscal years before fiscal year 2004, for hospitals located in a large urban area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (A), reduced under subparagraph (B), and adjusted or reduced under subparagraph (C)) for the fiscal year for hospitals located in such a large urban area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group;

(ii) for fiscal years before fiscal year 2004, for hospitals located in other areas in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (A), reduced under subparagraph (B), and adjusted or reduced under subparagraph (C)) for the fiscal year for hospitals located in other areas in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group; and

(iii) for a fiscal year beginning after fiscal year 2003, for hospitals located in all areas, to the product of—

(I) the applicable standardized amount (computed under subparagraph (A), reduced under subparagraph (B), and adjusted or reduced under subparagraph (C)) for the fiscal year; and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(E) ADJUSTING FOR DIFFERENT AREA WAGE LEVELS.—

(i) IN GENERAL.—Except as provided in clause (ii) or (iii), the Secretary shall adjust the proportion, (as estimated by the Sec-
(4)(A) The Secretary shall establish a classification of inpatient hospital discharges by diagnosis-related groups and a methodology for classifying specific hospital discharges within these groups.

(B) For each such diagnosis-related group the Secretary shall assign an appropriate weighting factor which reflects the relative hospital resources used with respect to discharges classified within that group compared to discharges classified within other groups.

(C)(i) The Secretary shall adjust the classifications and weighting factors established under subparagraphs (A) and (B), for discharges in fiscal year 1988 and at least annually thereafter, to reflect changes in treatment patterns, technology (including a new medical service or technology under paragraph (5)(K)), and other factors which may change the relative use of hospital resources.

(ii) For discharges in fiscal year 1990, the Secretary shall reduce the weighting factor for each diagnosis-related group by 1.22 percent.

(iii) Any such adjustment under clause (i) for discharges in a fiscal year (beginning with fiscal year 1991) shall be made in a manner that assures that the aggregate payments under this subsection for discharges in the fiscal year are not greater or less than those that would have been made for discharges in the year without such adjustment.

(D)(i) For discharges occurring on or after October 1, 2007, the diagnosis-related group to be assigned under this paragraph for a discharge described in clause (ii) shall be a diagnosis-related group that does not result in higher payment based on the presence of a secondary diagnosis code described in clause (iv).

(ii) A discharge described in this clause is a discharge which meets the following requirements:

(I) The discharge includes a condition identified by a diagnosis code selected under clause (iv) as a secondary diagnosis.

(II) But for clause (i), the discharge would have been classified to a diagnosis-related group that results in a higher payment based on the presence of a secondary diagnosis code selected under clause (iv).

(iii) At the time of admission, no code selected under clause (iv) was present.

(iv) By not later than October 1, 2007, the Secretary shall select diagnosis codes associated with at least two conditions, each of which codes meets all of the following requirements (as determined by the Secretary):

(I) Cases described by such code have a high cost or high volume, or both, under this subchapter.

(II) The code results in the assignment of a case to a diagnosis-related group that has a higher payment when the code is present as a secondary diagnosis.

(III) The code describes such conditions that could reasonably have been prevented through the application of evidence-based guidelines.
The Secretary may from time to time revise (through addition or deletion of codes) the diagnosis codes selected under this clause so long as there are diagnosis codes associated with at least two conditions selected for discharges occurring during any fiscal year.

(v) In selecting and revising diagnosis codes under clause (iv), the Secretary shall consult with the Centers for Disease Control and Prevention and other appropriate entities.

(vi) Any change resulting from the application of this subparagraph shall not be taken into account in adjusting the weighting factors under subparagraph (C)(i) or in applying budget neutrality under subparagraph (C)(iii).

(5)(A)(i) For discharges occurring during fiscal years ending on or before September 30, 1997, the Secretary shall provide for an additional payment for a subsection (d) hospital for any discharge in a diagnosis-related group, the length of stay of which exceeds the mean length of stay for discharges within that group by a fixed number of days, or exceeds such mean length of stay by some fixed multiple of standard deviations, whichever is the fewer number of days.

(ii) For cases which are not included in clause (i), a subsection (d) hospital may request additional payments in any case where charges, adjusted to cost, exceed a fixed multiple of the applicable DRG prospective payment rate, or exceed such other fixed dollar amount, whichever is greater, or, for discharges in fiscal years beginning on or after October 1, 1994, exceed the sum of the applicable DRG prospective payment rate plus any amounts payable under subparagraphs (B) and (F) plus a fixed dollar amount determined by the Secretary.

(iii) The amount of such additional payment under clauses (i) and (ii) shall be determined by the Secretary and shall (except as payments under clause (i) are required to be reduced to take into account the requirements of clause (v)) approximate the marginal cost of care beyond the cutoff point applicable under clause (i) or (ii).

(iv) The total amount of the additional payments made under this subparagraph for discharges in a fiscal year shall not be less than 1 percent nor more than 6 percent of the total payments projected or estimated to be made based on DRG prospective payment rates for discharges in that year.

(v) The Secretary shall provide that—

(I) the day outlier percentage for fiscal year 1995 shall be 75 percent of the day outlier percentage for fiscal year 1994;

(II) the day outlier percentage for fiscal year 1996 shall be 50 percent of the day outlier percentage for fiscal year 1994; and

(III) the day outlier percentage for fiscal year 1997 shall be 25 percent of the day outlier percentage for fiscal year 1994.

(vi) For purposes of this subparagraph, the term “day outlier percentage” means, for a fiscal year, the percentage of the total additional payments made by the Secretary under this subparagraph for discharges in that fiscal year which are additional payments under clause (i).

(B) The Secretary shall provide for an additional payment amount for subsection (d) hospitals with indirect costs of medical education, in an amount computed in the same manner as the adjustment for such costs under regulations (in effect as of January 1, 1983) under subsection (a)(2) of this section, except as follows:

(i) The amount of such additional payment shall be determined by multiplying (I) the sum of the amount determined under paragraph (I)(A)(ii)(II) (or, if applicable, the amount determined under paragraph (I)(A)(iii)) and, for cases qualifying for additional payment under subparagraph (A)(i), the amount paid to the hospital under subparagraph (A), by (II) the indirect teaching adjustment factor described in clause (ii).

(ii) For purposes of clause (i)(II), the indirect teaching adjustment factor is equal to $c \times ((1+r) to the nth power) - 1$, where “$r$” is the ratio of the hospital’s full-time equivalent interns and residents to beds and “n” equals 0.45. Subject to clause (ix), for discharges occurring—

(I) on or after October 1, 1988, and before October 1, 1997, “$c$” is equal to 1.89;

(II) during fiscal year 1998, “$c$” is equal to 1.72;

(III) during fiscal year 1999, “$c$” is equal to 1.6;

(IV) during fiscal year 2000, “$c$” is equal to 1.47;

(V) during fiscal year 2001, “$c$” is equal to 1.54;

(VI) during fiscal year 2002, “$c$” is equal to 1.6;

(VII) on or after October 1, 2002, and before April 1, 2004, “$c$” is equal to 1.35;

(VIII) on or after April 1, 2004, and before October 1, 2004, “$c$” is equal to 1.47;

(IX) during fiscal year 2005, “$c$” is equal to 1.42;

(X) during fiscal year 2006, “$c$” is equal to 1.37;

(XI) during fiscal year 2007, “$c$” is equal to 1.32; and

(XII) on or after October 1, 2007, “$c$” is equal to 1.35.

(iii) In determining such adjustment the Secretary shall not distinguish between those interns and residents who are employees of a hospital and those interns and residents who furnish services to a hospital but are not employees of such hospital.

(iv) (I) Effective for discharges occurring on or after October 1, 1997, and before July 1, 2010, all the time spent by an intern or resident in patient care activities under an approved medical residency training program at an entity in a nonhospital setting shall be counted towards the determination of full-time equivalency if the hospital incurs all, or substantially all, of the costs of the training program in that setting.

(II) Effective for discharges occurring on or after July 1, 2010, all the time spent by an intern or resident in patient care activities in a nonhospital setting shall be counted towards the determination of full-time equivalency if the hospital incurs the costs of the stipends and fringe benefits of the intern or resident during the time the intern or resident spends in that setting. If more than one hospital incurs these costs, either directly or through a third party,
such hospitals shall count a proportional share of the time, as determined by written agreement between the hospitals, that a resident spends training in that setting.

(v) In determining the adjustment with respect to a hospital for discharges occurring on or after October 1, 1997, the total number of full-time equivalent interns and residents in the fields of allopathic and osteopathic medicine in either a hospital or nonhospital setting may not exceed the number (or, 130 percent of such number in the case of a hospital located in a rural area) of such full-time equivalent interns and residents in the hospital with respect to the hospital's most recent cost reporting period ending on or before December 31, 1996. Rules similar to the rules of subsection (h)(4)(F)(ii) of this section shall apply for purposes of this clause. The provisions of subsections (h)(4)(H)(vi), (h)(7), and (h)(8) of this section shall apply with respect to the first sentence of this clause in the same manner as they apply with respect to subsection (h)(4)(F)(l) of this section.

(vi) For purposes of clause (ii)—
(I) “r” may not exceed the ratio of the number of interns and residents, subject to the limits under clause (v), with respect to the hospital for its most recent cost reporting period to the hospital's available beds (as defined by the Secretary) during that cost reporting period, and
(II) for the hospital's cost reporting periods beginning on or after October 1, 1997, subject to the limits described in clauses (iv) and (v), the total number of full-time equivalent residents for payment purposes shall equal the average of the actual full-time equivalent resident count for the cost reporting period and the preceding two cost reporting periods.

In the case of the first cost reporting period beginning on or after October 1, 1997, subclause (II) shall be applied by using the average for such period and the preceding cost reporting period.

(vii) If any cost reporting period beginning on or after October 1, 1997, is not equal to twelve months, the Secretary shall make appropriate modifications to ensure that the average full-time equivalent residency count pursuant to subclause (II) of clause (vi) is based on the equivalent of full twelve-month cost reporting periods.

(viii) Rules similar to the rules of subsection (h)(4)(H) of this section shall apply for purposes of clauses (v) and (vi).

(ix) For discharges occurring on or after July 1, 2005, insofar as an additional payment amount under this subparagraph is attributable to resident positions redistributed to a hospital under subsection (h)(7)(B), the indirect teaching adjustment factor shall be computed in the same manner as provided under clause (ii) with respect to such resident positions.

(x) For discharges occurring on or after July 1, 2011, insofar as an additional payment amount under this subparagraph is attributable to resident positions distributed to a hospital under subsection (h)(8)(B), the indirect teaching adjustment factor shall be computed in the same manner as provided under clause (ii) with respect to such resident positions.

6So in original. Two cls. (x) have been enacted.
ning during October 1984, during the first quarter of that period), and the Secretary must make a final determination with respect to such appeal within 60 days after the date the appeal was submitted. Any payment adjustments necessitated by a reclassification based upon the appeal shall be effective at the beginning of such cost reporting period.

(ii) The Secretary shall provide, under clause (i), for the classification of a rural hospital as a regional referral center if the hospital has a case mix index equal to or greater than the median case mix index for hospitals (other than hospitals with approved teaching programs) located in an urban area in the same region (as defined in paragraph (2)(D)), has at least 5,000 discharges a year or, if less, the median number of discharges in urban hospitals in the region in which the hospital is located (or, in the case of a rural osteopathic hospital, meets the criterion established by the Secretary under clause (i) with respect to the annual number of discharges for such hospitals), and meets any other criteria established by the Secretary under clause (i).

(D)(i) For any cost reporting period beginning on or after April 1, 1990, with respect to a subsection (d) hospital which is a sole community hospital, payment under paragraph (1)(A) shall be—

(I) an amount based on 100 percent of the hospital’s target amount for the cost reporting period, as defined in subsection (b)(3)(C) of this section, or

(II) the amount determined under paragraph (1)(A)(iii), whichever results in greater payment to the hospital.

(ii) In the case of a sole community hospital that experiences, in a cost reporting period compared to the previous cost reporting period, a decrease of more than 5 percent in its total number of inpatient cases due to circumstances beyond its control, the Secretary shall provide for such adjustment to the payment amounts under this subsection (other than under paragraph (9)) as may be necessary to fully compensate the hospital for the fixed costs it incurs in the period in providing inpatient hospital services, including the reasonable cost of maintaining necessary core staff and services.

(iii) For purposes of this subchapter, the term ‘‘sole community hospital’’ means any hospital—

(I) that the Secretary determines is located more than 35 road miles from another hospital.

(II) that, by reason of factors such as the time required for an individual to travel to the nearest alternative source of appropriate inpatient care (in accordance with standards promulgated by the Secretary), location, weather conditions, travel conditions, or absence of other like hospitals (as determined by the Secretary), is the sole source of inpatient hospital services reasonably available to individuals in a geographic area who are entitled to benefits under part A of this subchapter, or

(III) that is located in a rural area and designated by the Secretary as an essential access community hospital under section 1395i–4(i)(1) of this title as in effect on September 30, 1997.

(iv) The Secretary shall promulgate a standard for determining whether a hospital meets the criteria for classification as a sole community hospital under clause (iii)(II) because of the time required for an individual to travel to the nearest alternative source of appropriate inpatient care.

(v) If the Secretary determines that, in the case of a hospital located in a rural area and designated by the Secretary as an essential access community hospital under section 1395i–4(i)(1) of this title as in effect on September 30, 1997, the hospital has incurred increases in reasonable costs during a cost reporting period as a result of becoming a member of a rural health network (as defined in section 1395i–4(d) of this title) in the State in which it is located, and in incurring such increases, the hospital will increase its costs for subsequent cost reporting periods, the Secretary shall increase the hospital’s target amount under subsection (b)(3)(C) of this section to account for such incurred increases.

(E)(i) The Secretary shall estimate the amount of reimbursement made for services described in section 1385y(a)(14) of this title with respect to which payment was made under part B of this subchapter in the base reporting periods referred to in paragraph (2)(A) and with respect to which payment is no longer being made.

(ii) The Secretary shall provide for an adjustment to the payment for subsection (d) hospitals in each fiscal year so as appropriately to reflect the net amount described in clause (i).

(F)(i) Subject to subsection (r), for discharges occurring on or after May 1, 1986, the Secretary shall provide, in accordance with this subparagraph, for an additional payment amount for each subsection (d) hospital which—

(I) serves a significantly disproportionate number of low-income patients (as defined in clause (v)), or

(II) is located in an urban area, has 100 or more beds, and can demonstrate that its net inpatient care revenues (excluding any of such revenues attributable to this subchapter or State plans approved under subchapter XIX of this chapter), during the cost reporting period in which the discharges occur, for indigent care from State and local government sources exceed 30 percent of its total of such net inpatient care revenues during the period.

(ii) Subject to clause (ix), the amount of such payment for each discharge shall be determined by multiplying (I) the sum of the amount determined under paragraph (1)(A)(ii)(II) (or, if applicable, the amount determined under paragraph (1)(A)(iii)) and, for cases qualifying for additional payment under subparagraph (A)(i), the amount paid to the hospital under subparagraph (A) for that discharge, by (II) the disproportionate share adjustment percentage established under clause (iii) or (iv) for the cost reporting period in which the discharge occurs.

(iii) The disproportionate share adjustment percentage for a cost reporting period for a hospital described in clause (i)(II) is equal to 35 percent.

(iv) The disproportionate share adjustment percentage for a cost reporting period for a hospital that is not described in clause (i)(II) and that—
(I) is located in an urban area and has 100 or more beds or is described in the second sentence of clause (v), is equal to the percent determined in accordance with the applicable formula described in clause (vii);

(II) is located in an urban area and has less than 100 beds, is equal to 5 percent or, subject to clause (xiv) and for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xii);

(III) is located in a rural area and is not described in subclause (IV) or (V) or in the second sentence of clause (v), is equal to 4 percent or, subject to clause (xiv) and for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xii);

(IV) is located in a rural area, is classified as a rural referral center under subparagraph (C), and is classified as a sole community hospital under subparagraph (D), is equal to 10 percent or, if greater, the percent determined in accordance with the applicable formula described in clause (viii) or, subject to clause (xiv) and for discharges occurring on or after April 1, 2001, the greater of the percentages determined under clause (x) or (xi);

(V) is located in a rural area, is classified as a rural referral center under subparagraph (C), and is not classified as a sole community hospital under subparagraph (D), is equal to the percent determined in accordance with the applicable formula described in clause (viii) or, subject to clause (xiv) and for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (x) or (xi);

(VI) is located in a rural area, is classified as a sole community hospital under subparagraph (D), and is not classified as a rural referral center under subparagraph (C), is 10 percent or, subject to clause (xiv) and for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (x) or (xi);

(v) In this subparagraph, a hospital “serves a significantly disproportionate number of low income patients” for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (vi)) for that period which equals or exceeds a percentage specified by the Secretary.

(vi) In this subparagraph, the term “disproportionate patient percentage” means, with respect to a cost reporting period of a hospital, the sum of—

(I) the fraction (expressed as a percentage), the numerator of which is the number of such hospital’s patient days for such period which were made up of patients who (for such days) were entitled to benefits under part A of this subchapter and were entitled to supplementary security income benefits (excluding any State supplementation) under subchapter XVI of this chapter, and the denominator of which is the total number of the hospital’s patient days for such period.

In determining under subclause (II) the number of the hospital’s patient days for such period which consist of patients who (for such days) were eligible for medical assistance under a State plan approved under subchapter XIX of this chapter, but who were not entitled to benefits under part A of this subchapter, and the denominator of which is the total number of the hospital’s patient days for such period.

(II) the fraction (expressed as a percentage), the numerator of which is the number of such hospital’s patient days for such period which consist of patients who (for such days) were entitled to benefits under part A of this subchapter, and the denominator of which is the total number of the hospital’s patient days for such period.

(III) in the case of any other such hospital—

(a) for discharges occurring on or after October 1, 1994, (P – 20.2)(.825) + 5.88,

(b) for discharges occurring on or after January 1, 1991, and on or before September 30, 1993, (P – 20.2)(.7) + 5.62,

(c) for discharges occurring on or after October 1, 1993, and on or before September 30, 1994, (P – 20.2)(.8) + 5.88, and

(d) for discharges occurring on or after October 1, 1994, (P – 20.2)(.825) + 5.88; or

(IV) in this subparagraph, a hospital “serves a significantly disproportionate number of low income patients” for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (vi)) for that period which equals or exceeds a percentage specified by the Secretary.

(v) In this subparagraph, a hospital “serves a significantly disproportionate number of low income patients” for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (vi)) for that period which equals or exceeds a percentage specified by the Secretary.

(II) the fraction (expressed as a percentage), the numerator of which is the number of such hospital’s patient days for such period which were made up of patients who (for such days) were entitled to benefits under part A of this subchapter and were entitled to supplementary security income benefits (excluding any State supplementation) under subchapter XVI of this chapter, and the denominator of which is the total number of the hospital’s patient days for such period.

In determining under subclause (II) the number of the hospital’s patient days for such period which consist of patients who (for such days) were entitled to benefits under part A of this subchapter, and the denominator of which is the total number of the hospital’s patient days for such period.

(vi) In this subparagraph, the term “disproportionate patient percentage” means, with respect to a cost reporting period of a hospital, the sum of—

(I) the fraction (expressed as a percentage), the numerator of which is the number of such hospital’s patient days for such period which were made up of patients who (for such days) were entitled to benefits under part A of this subchapter and were entitled to supplementary security income benefits (excluding any State supplementation) under subchapter XVI of this chapter, and the denominator of which is the total number of the hospital’s patient days for such period.

In determining under subclause (II) the number of the hospital’s patient days for such period which consist of patients who (for such days) were entitled to benefits under part A of this subchapter, and the denominator of which is the total number of the hospital’s patient days for such period.

(vii) The formula used to determine the disproportionate share adjustment percentage for a cost reporting period for a hospital described in clause (iv)(I) is—

(I) in the case of such a hospital with a disproportionate patient percentage (as defined in clause (vi)) greater than 20.2—

(a) for discharges occurring on or after April 1, 1990, and on or before December 31, 1990, (P – 20.2)(.65) + 5.62,

(b) for discharges occurring on or after January 1, 1991, and on or before September 30, 1993, (P – 20.2)(.7) + 5.62,

(c) for discharges occurring on or after October 1, 1993, and on or before September 30, 1994, (P – 20.2)(.8) + 5.88, and

(d) for discharges occurring on or after October 1, 1994, (P – 20.2)(.825) + 5.88; or

(II) in the case of any other such hospital—

(a) for discharges occurring on or after April 1, 1990, and on or before December 31, 1990, (P – 20.2)(.6) + 2.5,

(b) for discharges occurring on or after January 1, 1991, and on or before September 30, 1993, (P – 20.2)(.6) + 2.5.7

7So in original. Probably should be followed by “and”.
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(c) for discharges occurring on or after October 1, 1993, \((P-15)(.65) + 2.5,\) where "\(P\)" is the hospital’s disproportionate patient percentage (as defined in clause (vi)).

(viii) Subject to clause (xiv), the formula used to determine the disproportionate share adjustment percentage for a cost reporting period for a hospital described in clause (iv)(IV) or (iv)(V) is the percentage determined in accordance with the following formula: \((P-30)(.6) + 4.0,\) where "\(P\)" is the hospital’s disproportionate patient percentage (as defined in clause (vi)).

(ix) In the case of discharges occurring—

(I) during fiscal year 1999, the additional payment amount otherwise determined under clause (ii) shall be reduced by 1 percent;

(II) during fiscal year 1999, such additional payment amount shall be reduced by 2 percent;

(III) during fiscal years 2000 and 2001, such additional payment amount shall be reduced by 3 percent and 2 percent, respectively;

(IV) during fiscal year 2002, such additional payment amount shall be reduced by 3 percent; and

(V) during fiscal year 2003 and each subsequent fiscal year, such additional payment amount shall be reduced by 0 percent.

(x) Subject to clause (xiv), for purposes of clause (iv)(VI) (relating to rural community hospitals), in the case of a hospital for a cost reporting period with a disproportionate patient percentage (as defined in clause (vi)) that—

(I) is less than 19.3, the disproportionate share adjustment percentage is determined in accordance with the following formula: \((P-15)(.65) + 2.5;\) or

(II) is equal to or exceeds 19.3, such adjustment percentage is equal to 5.25 percent, where "\(P\)" is the hospital’s disproportionate patient percentage (as defined in clause (vi)).

(xi) Subject to clause (xiv), for purposes of clause (iv)(V) (relating to rural referral centers), in the case of a hospital for a cost reporting period with a disproportionate patient percentage (as defined in clause (vi)) that—

(I) is less than 19.3, the disproportionate share adjustment percentage is determined in accordance with the following formula: \((P-15)(.65) + 2.5;\) or

(II) is equal to or exceeds 19.3, such adjustment percentage is equal to 5.25 percent, where "\(P\)" is the hospital’s disproportionate patient percentage (as defined in clause (vi)).

(xii) Subject to clause (xiv), for purposes of clause (iv)(VII) (relating to sole community hospitals), in the case of a hospital for a cost reporting period with a disproportionate patient percentage (as defined in clause (vi)) that—

(i) during fiscal year 1998, the additional payment amount otherwise determined under clause (ii) shall be reduced by 1 percent;

(ii) during fiscal year 1999, such additional payment amount shall be reduced by 2 percent;

(iii) during fiscal years 2000 and 2001, such additional payment amount shall be reduced by 3 percent and 2 percent, respectively;

(iv) during fiscal year 2002, such additional payment amount shall be reduced by 3 percent; and

(v) during fiscal year 2003 and each subsequent fiscal year, such additional payment amount shall be reduced by 0 percent.

(xiii) Subject to clause (xiv), for purposes of clause (iv) (other than subclause (I)) or under clause (viii), (x), (xi), (xii), or (xiii), the disproportionate share adjustment percentage is determined in accordance with the following formula: \((P-15)(.65) + 2.5;\) or

(xiv) In the case of discharges occurring on or after April 1, 2004, subject to subclause (II), there shall be substituted for the disproportionate share adjustment percentage otherwise determined under clause (iv) (other than subclause (I)) or under clause (viii), (x), (xi), (xii), or (xiii), the disproportionate share adjustment percentage determined under clause (vii) (relating to large, urban hospitals).

(II) Under subclause (I), the disproportionate share adjustment percentage shall not exceed 12 percent for a hospital that is not classified as a rural referral center under subparagraph (C) or, in the case of discharges occurring on or after October 1, 2006, as a medicare-dependent, small rural hospital under subparagraph (G)(iv).

(G) (i) For any cost reporting period beginning on or after April 1, 1990, and before October 1, 1994, or discharges occurring on or after October 1, 1997, and before October 1, 2012, in the case of a subsection (d) hospital which is a medicare-dependent, small rural hospital, payment under paragraph (1)(A) shall be equal to the sum of the amount determined under clause (ii) and the amount determined under paragraph (1)(A)(iii).

(ii) The amount determined under this clause is—

(I) for discharges occurring during the 36-month period beginning with the first day of the cost reporting period that begins on or after April 1, 1990, the amount by which the hospital’s target amount for the cost reporting period (as defined in subsection (b)(3)(D) of this section) exceeds the amount determined under paragraph (1)(A)(iii); and

(II) for discharges occurring during any subsequent cost reporting period (or portion thereof) and before October 1, 1994, or discharges occurring on or after October 1, 1997, and before October 1, 2012, 50 percent (or 75 percent in the case of discharges occurring on or after October 1, 2006) of the amount by which the hospital’s target amount for the cost reporting period or for discharges in the fiscal year (as defined in subsection (b)(3)(D) of this section) exceeds the amount determined under paragraph (1)(A)(iii).

(iii) In the case of a medicare dependent, small rural hospital that experiences, in a cost reporting period compared to the previous cost reporting period, a decrease of more than 5 percent in its total number of inpatient cases due to cir-
circumstances beyond its control, the Secretary shall provide for such adjustment to the payment amounts under this subsection (other than under paragraph (9)) as may be necessary to fully compensate the hospital for the fixed costs it incurs in providing inpatient hospital services, including the reasonable cost of maintaining necessary core staff and services.

(iv) The term "medicare-dependent, small rural hospital" means, with respect to any cost reporting period to which clause (i) applies, any hospital—

(I) located in a rural area,

(II) that has not more than 100 beds,

(III) that is not classified as a sole community hospital under subparagraph (D), and

(IV) for which not less than 60 percent of its inpatient days or discharges during the cost reporting period beginning in fiscal year 1987, or two of the three most recently audited cost reporting periods for which the Secretary has a settled cost report, were attributable to inpatients entitled to benefits under part A of this subchapter.

(H) The Secretary may provide for such adjustments to the payment amounts under this subsection as the Secretary deems appropriate to take into account the unique circumstances of hospitals located in Alaska and Hawaii.

(I) The Secretary shall provide by regulation for such other exceptions and adjustments to such payment amounts under this subsection as the Secretary deems appropriate.

(ii) In making adjustments under clause (i) for transfer cases (as defined by the Secretary) in a fiscal year, not taking in account the effect of subparagraph (J), the Secretary may make adjustments to each of the average standardized amounts determined under paragraph (3) to assure that the aggregate payments made under this subsection for such fiscal year are not greater or lesser than those that would have otherwise been made in such fiscal year.

(J)(i) The Secretary shall treat the term "transfer case" (as defined in subparagraph (I)(iii)) as including the case of a qualified discharge (as defined in clause (ii)), which is classified within a diagnosis-related group described in clause (iii), and which occurs on or after October 1, 1998. In the case of a qualified discharge for which a substantial portion of the costs of care are incurred in the early days of the inpatient stay (as defined by the Secretary), in no case may the payment amount otherwise provided under this subsection exceed an amount equal to the sum of—

(I) 50 percent of the amount of payment under this subsection for transfer cases (as established under subparagraph (I)(i)), and

(II) 50 percent of the amount of payment which would have been made under this subsection with respect to the qualified discharge if no transfer were involved.

(ii) For purposes of clause (i), subject to clause (iii), the term "qualified discharge" means a discharge classified with a diagnosis-related group (described in clause (ii)) of an individual from a subsection (d) hospital, if upon such discharge the individual—

(I) is admitted as an inpatient to a hospital or hospital unit that is not a subsection (d) hospital for the provision of inpatient hospital services;

(II) is admitted to a skilled nursing facility;

(III) is provided home health services from a home health agency, if such services relate to the condition or diagnosis for which such individual received inpatient hospital services from the subsection (d) hospital, and if such services are provided within an appropriate period (as determined by the Secretary); or

(IV) for discharges occurring on or after October 1, 2000, the individual receives post discharge services described in clause (iv)(I).

(iii) Subject to clause (iv), a diagnosis-related group described in this clause is—

(I) 1 of 10 diagnosis-related groups selected by the Secretary based upon a high volume of discharges classified within such groups and a disproportionate use of post discharge services described in clause (ii); and

(II) a diagnosis-related group specified by the Secretary under clause (iv)(II).

(iv) The Secretary shall include in the proposed rule published under subsection (e)(5)(A) of this section for fiscal year 2001, a description of the effect of this subparagraph. The Secretary may include in the proposed rule (and in the final rule published under paragraph (6)) for fiscal year 2001 or a subsequent fiscal year, a description of—

(I) post-discharge services not described in subclauses (I), (II), and (III) of clause (ii), the receipt of which results in a qualified discharge; and

(II) diagnosis-related groups described in clause (ii)(I) in addition to the 10 selected under such clause.

(K)(i) Effective for discharges beginning on or after October 1, 2001, the Secretary shall establish a mechanism to recognize the costs of new medical services and technologies under the payment system established under this subsection. Such mechanism shall be established after notice and opportunity for public comment (in the publications required by subsection (e)(5)) of this section for a fiscal year or otherwise). Such mechanism shall be modified to meet the requirements of clause (viii).

(ii) The mechanism established pursuant to clause (i) shall—

(I) apply to a new medical service or technology if, based on the estimated costs incurred with respect to discharges involving such service or technology, the DRG prospective payment rate otherwise applicable to such discharges under this subsection is inadequate (applying a threshold specified by the Secretary that is the lesser of 75 percent of the standardized amount (increased to reflect the difference between cost and charges) or 75 percent of one standard deviation for the diagnosis-related group involved);

(II) provide for the collection of data with respect to the costs of a new medical service or technology described in subparagraph (I) for a period of not less than two years and not more than three years beginning on the date on which an inpatient hospital code is issued with respect to the service or technology;

(III) provide for additional payment to be made under this subsection with respect to
(i) For purposes of clause (ii)(II), the term “inpatient hospital code” means any code that is used with respect to inpatient hospital services for which payment may be made under this subsection and includes an alphanumeric code issued under the International Classification of Diseases, 9th Revision, Clinical Modification (“ICD–9–CM”) and its subsequent revisions.

(iv) For purposes of clause (ii)(III), the term “additional payment” means, with respect to a discharge for a new medical service or technology described in clause (ii)(I), an amount that exceeds the prospective payment rate otherwise applicable under this subsection to discharges involving such service or technology that would be made but for this subparagraph.

(v) The requirement under clause (ii)(III) for an additional payment may be satisfied by means of a new-technology group (described in subparagraph (L)), an add-on payment, a payment adjustment, or any other similar mechanism established under subsection (a) or (h) of section 1395m of this title to determine the amount of such additional payment, or by other similar mechanisms or methodologies.

(vi) For purposes of this subparagraph and subparagraph (L), a medical service or technology will be considered a “new medical service or technology” if the service or technology meets criteria established by the Secretary after notice and an opportunity for public comment.

(vii) Under the mechanism under this subparagraph, the Secretary shall provide for the addition of new diagnosis and procedure codes in April 1 of each year, but the addition of such codes shall not require the Secretary to adjust the payment (or diagnosis-related group classification) under this subsection until the fiscal year that begins after such date.

(viii) The mechanism established pursuant to clause (i) shall be adjusted to provide, before publication of a proposed rule, for public input regarding whether a new service or technology represents an advance in medical technology that substantially improves the diagnosis or treatment of individuals entitled to benefits under part A of this subchapter as follows:

(1) The Secretary shall accept comments, recommendations, and data from the public regarding whether the service or technology represents a substantial improvement.

(2) The Secretary shall provide for a meeting at which organizations representing hospitals, physicians, such individuals, manufacturers, and any other interested party may present comments, recommendations, and data to the clinical staff of the Centers for Medicare & Medicaid Services before publication of a notice of proposed rulemaking regarding whether service or technology represents a substantial improvement.

(ix) Before establishing any add-on payment under this subparagraph with respect to a new technology, the Secretary shall seek to identify one or more diagnosis-related groups associated with such technology, based on similar clinical or anatomical characteristics and the cost of the technology. Within such groups the Secretary shall assign an eligible new technology into a diagnosis-related group where the average costs of care most closely approximate the costs of care of using the new technology. No add-on payment under this subparagraph shall be made with respect to such new technology and this clause shall not affect the application of paragraph (4)(C)(iii).

(L)(i) In establishing the mechanism under subparagraph (K), the Secretary may establish new-technology groups into which a new medical service or technology will be classified if, based on the estimated average costs incurred with respect to discharges involving such service or technology, the DRG prospective payment rate otherwise applicable to such discharges under this subsection is inadequate.

(ii) Such groups—

(I) shall not be based on the costs associated with a specific new medical service or technology; but

(II) shall, in combination with the applicable standardized amounts and the weighting factors assigned to such groups under paragraph (4)(B), reflect such cost cohorts as the Secretary determines are appropriate for all new medical services and technologies that are likely to be provided as inpatient hospital services in a fiscal year.

(iii) The methodology for classifying specific hospital discharges within a diagnosis-related group under paragraph (4)(A) or a new-technology group shall provide that a specific hospital discharge may not be classified within both a diagnosis-related group and a new-technology group.

(6) The Secretary shall provide for publication in the Federal Register, on or before the August 1 before each fiscal year (beginning with fiscal year 1984), of a description of the methodology and data used in computing the adjusted DRG prospective payment rates under this subsection, including any adjustments required under subsection (e)(1)(B) of this section.

(7) There shall be no administrative or judicial review under section 1395oo of this title or otherwise of—

(A) the determination of the requirement, or the proportional amount, of any adjustment
effect of subsection (e)(1) of this section or the determination of the applicable percentage increase under paragraph (12)(A)(ii).

(B) the establishment of diagnosis-related groups, of the methodology for the classification of discharges within such groups, and of the appropriate weighting factors thereof under paragraph (4), including the selection and revision of codes under paragraph (4)(D), and

(C) the determination of whether services provided prior to a patient's inpatient admission are related to the admission (as described in subsection (a)(4)).

(8)(A) In the case of any hospital which is located in an area which is, at any time after April 20, 1983, reclassified from an urban to a rural area, payments to such hospital for the first two cost reporting periods for which such reclassification is effective shall be made as follows:

(i) For the first such cost reporting period, payment shall be equal to the amount payable to such hospital for such reporting period on the basis of the rural classification, plus an amount equal to two-thirds of the amount (if any) by which—

(I) the amount which would have been payable to such hospital for such reporting period on the basis of an urban classification, exceeds

(II) the amount payable to such hospital for such reporting period on the basis of the rural classification.

(ii) For the second such cost reporting period, payment shall be equal to the amount payable to such hospital for such reporting period on the basis of the rural classification, plus an amount equal to one-third of the amount (if any) by which—

(I) the amount which would have been payable to such hospital for such reporting period on the basis of an urban classification, exceeds

(II) the amount payable to such hospital for such reporting period on the basis of the rural classification.

(B)(i) For purposes of this subsection, the Secretary shall treat a hospital located in a rural county adjacent to one or more urban areas as being located in the urban metropolitan statistical area to which the greatest number of workers in the county commute, if the rural county would otherwise be considered part of an urban area, under the standards for designating Metropolitan Statistical Areas (and for designating New England County Metropolitan Areas) described in clause (ii), if the commuting rates used in determining outlying counties (or, for New England, similar recognized areas) were determined on the basis of the aggregate number of resident workers who commute to (and, if applicable under the standards, from) the central county or counties of all contiguous Metropolitan Statistical Areas (or New England County Metropolitan Areas).

(ii) The standards described in this clause for cost reporting periods beginning in a fiscal year—

(I) before fiscal year 2003, are the standards published in the Federal Register on January 3, 1980, or, at the election of the hospital with respect to fiscal years 2001 and 2002, standards so published on March 30, 1990; and

(II) after fiscal year 2002, are the standards published in the Federal Register by the Director of the Office of Management and Budget based on the most recent available decennial population data.

Subparagraphs (C) and (D) shall not apply with respect to the application of subclause (I).

(C)(i) If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10), by treating hospitals located in a rural county or counties as being located in an urban area, or by treating hospitals located in one urban area as being located in another urban area—

(I) reduces the wage index for that urban area (as applied under this subsection) by 1 percentage point or less, the Secretary, in calculating such wage index under this subsection, shall exclude those hospitals so treated; or

(II) reduces the wage index for that urban area by more than 1 percentage point (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so treated) and to the hospitals so treated (as if such hospitals were located in such urban area).

(ii) If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10), by treating hospitals located in a rural county or counties as not being located in the rural area in a State, reduces the wage index for that urban area (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection as if the hospitals so treated had not been excluded from calculation of the wage index for that rural area.

(iii) The application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10) may not result in the reduction of any county's wage index to a level below the wage index for rural areas in the State in which the county is located.

(iv) The application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or of the Secretary under paragraph (10) may not result in a reduction in an urban area's wage index if—

(I) the urban area has a wage index below the wage index for rural areas in the State in which it is located; or

(II) the urban area is located in a State that is composed of a single urban area.

(v) This subparagraph shall apply with respect to discharges occurring in a fiscal year only if the Secretary uses a method for making adjustments to the DRG prospective payment rate for area differences in hospital wage levels under paragraph (3)(E) for the fiscal year that is based
on the use of Metropolitan Statistical Area classifications.

(D) The Secretary shall make a proportional adjustment in the standardized amounts determined under paragraph (3) to assure that the provisions of subparagraphs (B) and (C) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10) do not result in aggregate payments under this section that are greater or less than those that would otherwise be made.

(E)(1) For purposes of this subsection, not later than 60 days after the receipt of an application (in a form and manner determined by the Secretary) from a subsection (d) hospital described in clause (ii), the Secretary shall treat the hospital as being located in the rural area (as defined in paragraph (2)(D)) of the State in which the hospital is located.

(ii) For purposes of clause (i), a subsection (d) hospital described in this clause is a subsection (d) hospital that is located in an urban area (as defined in paragraph (2)(D)) and satisfies any of the following criteria:

(I) The hospital is located in a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725)).

(II) The hospital is located in an area designated by any law or regulation of such State as a rural area (or is designated by such State as a rural hospital).

(III) The hospital would qualify as a rural, regional, or national referral center under paragraph (5)(C) or as a sole community hospital under paragraph (5)(D) if the hospital were located in a rural area.

(IV) The hospital meets such other criteria as the Secretary may specify.

(9)(A) Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title, the amount of the payment with respect to the operating costs of inpatient hospital services of a subsection (d) Puerto Rico hospital for inpatient hospital discharges is equal to the sum of—

(i) the applicable Puerto Rico percentage (specified in subparagraph (E)) of the Puerto Rico adjusted DRG prospective payment rate (determined under subparagraph (B) or (C)) for such discharges,

(ii) the applicable Federal percentage (specified in subparagraph (E)) of—

(I) for discharges beginning in a fiscal year beginning on or after October 1, 1997, and before October 1, 2003, the discharge-weighted average of—

(aa) the national adjusted DRG prospective payment rate (determined under paragraph (3)(D)) for hospitals located in a large urban area,

(bb) such rate for hospitals located in other urban areas, and

(cc) such rate for hospitals located in a rural area,

for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels; and

(II) for discharges in a fiscal year beginning on or after October 1, 2003, the national DRG prospective payment rate determined under paragraph (3)(D)(iii) for hospitals located in any area for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels.

As used in this section, the term “subsection (d) Puerto Rico hospital” means a hospital that is located in Puerto Rico and that would be a subsection (d) hospital (as defined in paragraph (1)(B)) if it were located in one of the 50 States.

(B) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge in fiscal year 1988 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this subchapter. Such rate shall be determined for such hospitals located in urban or rural areas within Puerto Rico, as follows:

(i) The Secretary shall determine the target amount (as defined in subsection (b)(3)(A) of this section) for the hospital for the cost reporting period beginning in fiscal year 1987 and increase such amount by prorating the applicable percentage increase (as defined in subsection (b)(3)(B) of this section) to update the amount to the midpoint in fiscal year 1988.

(ii) The Secretary shall standardize the amount determined under clause (i) for each hospital by—

(I) excluding an estimate of indirect medical education costs,

(II) adjusting for variations among hospitals by area in the average hospital wage level,

(III) adjusting for variations in case mix among hospitals, and

(IV) excluding an estimate of the additional payments to certain subsection (d) Puerto Rico hospitals to be made under subparagraph (D)(iii) (relating to disproportionate share payments).

(iii) The Secretary shall compute a discharge weighted average of the standardized amounts determined under clause (ii) for all hospitals located in an urban area and for all hospitals located in a rural area (as such terms are defined in paragraph (2)(D)).

(iv) The Secretary shall reduce the average standardized amount by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(iii) (relating to outlier payments).

(v) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

(I) the average standardized amount (computed under clause (iii) and reduced under clause (iv)) for hospitals located in an urban or rural area, respectively, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.
Rico has adjusted DRG prospective payment rates, year 1988 involving inpatient hospital services of each inpatient hospital discharge after fiscal years in hospitals located in urban or rural areas within Puerto Rico as follows:

(C) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge after fiscal year 1988 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this subsection (d) hospital wage level in the geographic area of the hospital compared to the Puerto Rican average hospital wage level.

The Secretary shall compute an average standardized amount for hospitals located in an urban area or for hospitals located in a rural area equal to the respective average standardized amount computed for the previous fiscal year under subparagraph (b)(3)(B) of this section, and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4) of this section, and adjusted for applicable percentage increase under subsection (b)(3)(B) of this section, and adjusted for applicable percentage increase under subsection (b)(3)(B) of this section, and adjusted for applicable percentage increase under subsection (b)(3)(B) of this section, and adjusted to reflect the most recent case-mix data available.

(ii) For discharges occurring in a fiscal year (beginning with fiscal year 2004), the Secretary shall compute an average standardized amount for hospitals located in any area of Puerto Rico that is equal to the average standardized amount computed under subparagraph (I) for fiscal year 2003 for hospitals in a large urban area (or, beginning with fiscal year 2005, for all hospitals in the previous fiscal year) increased by the applicable percentage increase under subsection (b)(3)(B) of this section, and adjusted for applicable percentage increase under subsection (b)(3)(B) of this section for the fiscal year involved.

(iii) For each discharge classified within a diagnosis-related group for hospitals located in urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of:

- (I) the average standardized amount (computed under clause (i) and reduced under clause (II)), and
- (II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(iv) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals’ costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (iii) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rico average hospital wage level. The second and third sentences of paragraph (3)(E)(i) shall apply to subsection (d) Puerto Rico hospitals under this clause in the same manner as they apply to subsection (d) hospitals under such paragraph, and, for purposes of this clause, any reference in such paragraph to a subsection (d) hospital is deemed a reference to a subsection (d) Puerto Rico hospital.

(ii) For discharges occurring on or after October 1, 2004, the Secretary shall substitute “62 percent” for the proportion described in the first sentence of clause (i), unless the application of this subsection (d) hospitals would result in lower payments to a hospital than would otherwise be made.

(i) Subparagraph (A) (relating to outlier payments).

(ii) Subparagraph (B) (relating to payments for indirect medical education costs), except that for this purpose the sum of the amount determined under subparagraph (A) of this paragraph and the amount paid to the hospital under clause (i) of this subparagraph shall be substituted for the sum referred to in paragraph 5(b)(i)(I).

(iii) Subparagraph (F) (relating to disproportionate share payments), except that for this purpose the sum described in clause (ii) of this subparagraph shall be substituted for the sum referred to in paragraph 5(f)(ii)(I).

(iv) Subparagraph (H) (relating to exceptions and adjustments).

(E) For purposes of subparagraph (A), for discharges occurring—

(i) on or after October 1, 1987, and before October 1, 1997, the applicable Puerto Rico percentage is 75 percent; and the applicable Federal percentage is 25 percent;

(ii) on or after October 1, 1997, and before April 1, 2004, the applicable Puerto Rico percentage is 50 percent and the applicable Federal percentage is 50 percent; and

(iii) on or after April 1, 2004, and before October 1, 2004, the applicable Puerto Rico percentage is 37.5 percent and the applicable Federal percentage is 62.5 percent; and

(iv) on or after October 1, 2004, the applicable Puerto Rico percentage is 25 percent and the applicable Federal percentage is 75 percent.

(10)(A) There is hereby established the Medicare Geographic Classification Review Board (hereinafter in this paragraph referred to as the “Board”).

(B)(i) The Board shall be composed of 5 members appointed by the Secretary without regard
to the provisions of title 5, governing appointments in the competitive service. Two of such members shall be representative of subsection (d) hospitals located in a rural area under paragraph (2)(D). At least 1 member shall be knowledgeable in the field of analyzing costs with respect to the provision of inpatient hospital services.

(ii) The Secretary shall make initial appointments to the Board as provided in this paragraph within 180 days after December 19, 1989.

(C)(i) The Board shall consider the application of any subsection (d) hospital requesting that the Secretary change the hospital’s geographic classification for purposes of determining for a fiscal year—

(I) the hospital’s average standardized amount under paragraph (2)(D), or

(II) the factor used to adjust the DRG prospective payment rate for area differences in hospital wage levels that applies to such hospital under paragraph (3)(E).

(ii) A hospital requesting a change in geographic classification under clause (i) for a fiscal year shall submit its application to the Board not later than the first day of the 13-month period ending on September 30 of the preceding fiscal year.

(iii)(I) The Board shall render a decision on an application submitted under clause (i) not later than 180 days after the deadline referred to in clause (ii).

(II) Appeal of decisions of the Board shall be subject to the provisions of section 557b* of title 5. The Secretary shall issue a decision on such an appeal not later than 90 days after the date on which the appeal is filed. The decision of the Secretary shall be final and shall not be subject to judicial review.

(D)(i) The Secretary shall publish guidelines to be utilized by the Board in rendering decisions on applications submitted under this paragraph, and shall include in such guidelines the following:

(I) Guidelines for comparing wages, taking into account (to the extent the Secretary determines appropriate) occupational mix, in the area in which the hospital is classified and the area in which the hospital is applying to be classified.

(II) Guidelines for determining whether the county in which the hospital is located should be treated as being a part of a particular Metropolitan Statistical Area.

(III) Guidelines for considering information provided by an applicant with respect to the effects of the hospital’s geographic classification on access to inpatient hospital services by medicare beneficiaries.

(IV) Guidelines for considering the appropriateness of the criteria used to define New England County Metropolitan Areas.

(ii) Notwithstanding clause (i), if the Secretary uses a method for making adjustments to the DRG prospective payment rate for area differences in hospital wage levels under paragraph (3)(E) that is not based on the use of Metropolitan Statistical Area classifications, the Secretary may revise the guidelines published under clause (i) to the extent such guidelines are used to determine the appropriateness of the geographic area in which the hospital is determined to be located for purposes of making such adjustments.

(iii) Under the guidelines published by the Secretary under clause (i), in the case of a hospital which has ever been classified by the Secretary as a rural referral center under paragraph (5)(C), the Board may not reject the application of the hospital under this paragraph on the basis of any comparison between the average hourly wage of the hospital and the average hourly wage of hospitals in the area in which it is located.

(iv) The Secretary shall publish the guidelines described in clause (i) by July 1, 1990.

(v) Any decision of the Board to reclassify a subsection (d) hospital for purposes of the adjustment factor described in subparagraph (C)(i)(II) for fiscal year 2001 or any fiscal year thereafter shall be effective for a period of 3 fiscal years, except that the Secretary shall establish procedures under which a subsection (d) hospital may elect to terminate such reclassification before the end of such period.

(vi) Such guidelines shall provide that, in making decisions on applications for reclassification for the purposes described in clause (v) for fiscal year 2003 and any succeeding fiscal year, the Board shall base any comparison of the average hourly wage for the hospital with the average hourly wage for hospitals in an area on—

(I) an average of the average hourly wage amount for the hospital from the most recently published hospital wage survey data of the Secretary (as of the date on which the hospital applies for reclassification) and such amount from each of the two immediately preceding surveys; and

(II) an average of the average hourly wage amount for hospitals in such area from the most recently published hospital wage survey data of the Secretary (as of the date on which the hospital applies for reclassification) and such amount from each of the two immediately preceding surveys.

(E)(i) The Board shall have full power and authority to make rules and establish procedures, not inconsistent with the provisions of this subchapter or regulations of the Secretary, which are necessary or appropriate to carry out the provisions of this paragraph. In the course of any hearing the Board may administer oaths and affirmations. The provisions of subsections (d) and (e) of section 405 of this title with respect to subpenas shall apply to the Board to the same extent as such provisions apply to the Secretary with respect to subchapter II of this chapter.

(ii) The Board is authorized to engage such technical assistance and to receive such information as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Board such secretarial, clerical, and other assistance as the Board may require to carry out its functions.

(F)(i) Each member of the Board who is not an officer or employee of the Federal Government
shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for grade GS–18 of the General Schedule under section 5332 of title 5 for each day (including travel time) during which such member is engaged in the performance of the duties of the Board. Each member of the Board who is an officer or employee of the United States shall serve without compensation in addition to that received for service as an officer or employee of the United States.

(5) Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Board.

(11) ADDITIONAL PAYMENTS FOR MANAGED CARE ENROLLERS.—

(A) IN GENERAL.—For portions of cost reporting periods occurring on or after January 1, 1998, the Secretary shall provide for an additional payment amount for each applicable discharge of any subsection (d) hospital that has an approved medical residency training program.

(B) APPLICABLE DISCHARGE.—For purposes of this paragraph, the term “applicable discharge” means the discharge of any individual who is enrolled under a risk-sharing contract with an eligible organization under section 1395mm of this title and who is entitled to benefits under part A of this subchapter or any individual who is enrolled with a Medicare+ Choice organization under part C of this subchapter.

(C) DETERMINATION OF AMOUNT.—The amount of the payment under this paragraph with respect to any applicable discharge shall be equal to the applicable percentage (as defined in subsection (h)(3)(D)(i) of this section) of the estimated average per discharge amount that would otherwise have been paid under paragraph (5)(B) if the individuals had not been enrolled as described in subparagraph (B).

(D) SPECIAL RULE FOR HOSPITALS UNDER REIMBURSEMENT SYSTEM.—The Secretary shall establish rules for the application of this paragraph to a hospital reimbursed under a reimbursement system authorized under section 1395f(b)(3) of this title in the same manner as it would apply to the hospital if it were not reimbursed under such section.

(12) PAYMENT ADJUSTMENT FOR LOW-VOLUME HOSPITALS.—

(A) IN GENERAL.—In addition to any payments calculated under this section for a subsection (d) hospital, for discharges occurring during a fiscal year (beginning with fiscal year 2005), the Secretary shall provide for an additional payment amount to each low-volume hospital (as defined in subparagraph (C)(i)) for discharges occurring during that fiscal year that is equal to the applicable percentage increase (determined under subparagraph (B) or (D) for the hospital involved) in the amount paid to such hospital under this section for such discharges (determined without regard to this paragraph).

(B) APPLICABLE PERCENTAGE INCREASE.—For discharges occurring in fiscal years 2005 through 2010 and for discharges occurring in fiscal year 2013 and subsequent fiscal years, the Secretary shall determine an applicable percentage increase for purposes of subparagraph (A) as follows:

(i) The Secretary shall determine the empirical relationship for subsection (d) hospitals between the standardized cost-per-discharge for such hospitals and the total number of discharges of such hospitals and the amount of the additional incremental costs (if any) that are associated with such number of discharges.

(ii) The applicable percentage increase shall be determined based upon such relationship in a manner that reflects, based upon the number of such discharges for a subsection (d) hospital, such additional incremental costs.

(iii) In no case shall the applicable percentage increase exceed 25 percent.

(C) DEFINITIONS.—

(i) LOW-VOLUME HOSPITAL.—For purposes of this paragraph, the term “low-volume hospital” means, for a fiscal year, a subsection (d) hospital (as defined in paragraph (1)(B)) that the Secretary determines is located more than 25 road miles (or, with respect to fiscal years 2011 and 2012, 15 road miles) from another subsection (d) hospital and has less than 800 discharges of individuals entitled to, or enrolled for, benefits under part A) during the fiscal year.

(ii) DISCHARGE.—For purposes of subparagraph (B) and clause (i), the term “discharge” means an inpatient acute care discharge of an individual regardless of whether the individual is entitled to benefits under part A of this subchapter.

(D) TEMPORARY APPLICABLE PERCENTAGE INCREASE.—For discharges occurring in fiscal years 2011 and 2012, the Secretary shall determine an applicable percentage increase for purposes of subparagraph (A) using a continuous linear sliding scale ranging from 25 percent for low-volume hospitals with 200 or fewer discharges of individuals entitled to, or enrolled for, benefits under part A in the fiscal year to 0 percent for low-volume hospitals with greater than 1,600 discharges of such individuals in the fiscal year.

(E) (A) In order to recognize commuting patterns among geographic areas, the Secretary shall establish a process through application or otherwise for an increase of the wage index applied under paragraph (3)(E) for subsection (d) hospitals located in a qualifying county described in subparagraph (B) in the amount computed under subparagraph (D) based on out-migration of hospital employees who reside in that county to any higher wage index area.

(B) The Secretary shall establish criteria for a qualifying county under this subparagraph based on the out-migration referred to in subparagraph (A) and differences in the area wage indices. Under such criteria the Secretary shall, utilizing such data as the Secretary determines to be appropriate, establish—

(i) a threshold percentage, established by the Secretary, of the weighted average of the area...
(E) The process under this paragraph may be based upon the process used by the Medicare Geographic Classification Review Board under paragraph (10). As the Secretary determines to be appropriate to carry out such process, the Secretary may require hospitals (including subsection (d) hospitals and other hospitals) and critical access hospitals, as required under section 1395cc(a)(1)(F) of this section, to submit data regarding the location of residence, or the Secretary may use data from other sources.

(F) A wage index increase under this paragraph shall be effective for a period of 3 fiscal years, except that the Secretary shall establish procedures under which a subsection (d) hospital may elect to waive the application of such wage index increase.

(G) A hospital in a county that has a wage index increase under this paragraph for a period and that has not waived the application of such wage index increase under subparagraph (F) is not eligible for reclassification under paragraph (8) or (10) during that period.

(H) Any increase in a wage index under this paragraph for a county shall not be taken into account for purposes of—

(i) computing the wage index for portions of the wage index area (not including the county) in which the county is located; or

(ii) applying any budget neutrality adjustment with respect to such index under paragraph (9).

(I) The thresholds described in subparagraph (B), data on hospital employees used under this paragraph, and any determination of the Secretary under the process described in subparagraph (E) shall be final and shall not be subject to judicial review.

(e) Proportional adjustments in applicable percentage increases

(1) (A) For cost reporting periods of hospitals beginning in fiscal year 1984 or fiscal year 1985, the Secretary shall provide for such proportional adjustment in the applicable percentage increase (otherwise applicable to the periods under subsection (b)(3)(B) of this section) as may be necessary to assure that—

(i) the aggregate payment amounts otherwise provided under subsection (d)(1)(A)(i)(I) of this section for that fiscal year for operating costs of inpatient hospital services of hospitals (excluding payments made under section 1395cc(a)(1)(F) of this title),

are not greater or less than—

(ii) the target percentage (as defined in subsection (d)(1)(C) of this section) of the payment amounts which would have been payable for such services for those same hospitals for that fiscal year under this section under the law as in effect before April 20, 1983 (excluding payments made under section 1395cc(a)(1)(F) of this title);

except that the adjustment made under this subparagraph shall apply only to subsection (d) hospitals and shall not apply for purposes of making computations under subsection (d)(2)(B)(ii) of this section or subsection (d)(3)(A) of this section.

(B) For discharges occurring in fiscal year 1984 or fiscal year 1985, the Secretary shall provide under subsections (d)(2)(F) and (d)(3)(C) of this section for such equal proportional adjustment in each of the average standardized amounts otherwise computed for that fiscal year as may be necessary to assure that—

(i) the aggregate payment amounts otherwise provided under subsection (d)(1)(A)(i)(I) and (d)(5) of this section for that fiscal year for operating costs of inpatient hospital services of hospitals (excluding payments made under section 1395cc(a)(1)(F) of this title),

are not greater or less than—

(ii) the DRG percentage (as defined in subsection (d)(1)(C) of this section) of the payment amounts which would have been payable for such services for those same hospitals for that fiscal year under this section under the law as in effect before April 20, 1983 (excluding payments made under section 1395cc(a)(1)(F) of this title).

(C) For discharges occurring in fiscal year 1986, the Secretary shall provide for such equal proportional adjustment in each of the average standardized amounts otherwise computed under subsection (d)(3) of this section for that fiscal year as may be necessary to assure that—

(i) the aggregate payment amounts otherwise provided under subsections (d)(1)(A)(iii), (d)(5), and (d)(9) of this section for that fiscal year for operating costs of inpatient hospital services of subsection (d) hospitals and subsection (d) Puerto Rico hospitals,

are not greater or less than—

(ii) the payment amounts that would have been payable for such services for those same hospitals for that fiscal year but for the enact-


(4)(A) Taking into consideration the recommendations of the Commission, the Secretary shall recommend for each fiscal year (beginning with fiscal year 1988) an appropriate change factor for inpatient hospital services for discharges in that fiscal year which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. The appropriate change factor may be different for all large urban subsection (d) hospitals, other urban subsection (d) hospitals, urban subsection (d) Puerto Rico hospitals, rural subsection (d) hospitals, and rural subsection (d) Puerto Rico hospitals, and all other hospitals and units not paid under subsection (d) of this section, and may vary among such other hospitals and units.

(B) In addition to the recommendation made under subparagraph (A), the Secretary shall, taking into consideration the recommendations of the Commission under paragraph (2), recommend for each fiscal year (beginning with fiscal year 1992) other appropriate changes in each existing reimbursement policy under this subchapter under which payments to an institution are based upon prospectively determined rates.

The Secretary shall include in the publication referred to in subparagraph (A), the Secretary’s proposed recommendations under paragraph (4) for that fiscal year for public comment, and the Secretary shall cause to have published in the Federal Register, not later than—

(A) the April 1 before each fiscal year (beginning with fiscal year 1986), the Secretary’s proposed recommendations under paragraph (4) for that fiscal year for public comment, and

(B) the August 1 before such fiscal year after such consideration of public comment on the proposal as is feasible in the time available, the Secretary’s final recommendations under such paragraph for that year.

The Secretary shall include in the publication referred to in subparagraph (A) for a fiscal year the report of the Commission’s recommendations submitted under paragraph (9) for that fiscal year. To the extent that the Secretary’s recommendations under paragraph (4) differ from the Commission’s recommendations for that fiscal year, the Secretary shall include in the publication referred to in subparagraph (A) an explanation of the Secretary’s grounds for not following the Commission’s recommendations.

(f) Reporting of costs of hospitals receiving payments on basis of prospective rates

(1)(A) The Secretary shall maintain a system for the reporting of costs of hospitals receiving payments computed under subsection (d) of this section.

(B)(i) Subject to clause (ii), the Secretary shall place into effect a standardized electronic cost reporting format for hospitals under this subchapter.

(ii) The Secretary may delay or waive the implementation of such format in particular instances where such implementation would result in financial hardship (in particular with respect to hospitals with a small percentage of patients entitled to benefits under this subchapter).

(2) If the Secretary determines, based upon information supplied by a quality improvement organization under part B of this chapter, that a hospital, in order to circumvent the payment method established under subsection (b) or (d) of this section, has taken an action that results in the admission of individuals entitled to benefits under part A unnecessarily, unnecessary multiple admissions of the same such individuals, or other inappropriate medical or other practices with respect to such individuals, the Secretary may—

(A) deny payment (in whole or in part) under part A of this subchapter with respect to inpatient hospital services provided with respect to such an unnecessary admission (or subsequent admission of the same individual), or

(B) the Secretary to take other corrective action necessary to prevent or correct the inappropriate practice.

(3) The provisions of subsections (c) through (g) of section 1320a–7 of this title shall apply to determinations made under paragraph (2) in the same manner as they apply to exclusions effected under section 1320a–7(b)(13) of this title.

(g) Prospective payment for capital-related costs; return on equity capital for hospitals

(1)(A) Notwithstanding section 1395x(v) of this title, instead of any amounts that are otherwise payable under this subchapter with respect to the reasonable costs of subsection (d) hospitals and subsection (d) Puerto Rico hospitals for capital-related costs of inpatient hospital services, the Secretary shall, for hospital cost reporting periods beginning on or after October 1, 1991, provide for payments for such costs in accordance with a prospective payment system established by the Secretary. Aggregate payments made under subsection (d) of this section and this subsection during fiscal years 1992 through 1995 shall be reduced in a manner that results in a reduction (as estimated by the Secretary) in the amount of such payments equal to a 10 percent reduction in the amount of payments attributable to capital-related costs that would otherwise have been made during such fiscal year had the amount of such payments been based on reasonable costs (as defined in section 1395x(v) of this title). For discharges occurring after September 30, 1993, the Secretary shall reduce by 7.4 percent the unadjusted standard Federal capital payment rate (as described in 42 CFR 412.308(c), as in effect on August 10, 1993) and shall (for hospital cost reporting periods beginning on or after October 1, 1993) redetermine which payment methodology is applied to the hospital under such system to take into account such reduction. In addition to the reduction described in the preceding sentence, for discharges occurring on or after October 1, 1997, the Secretary shall apply the budget neutrality adjustment factor used to determine the Federal capital payment rate in effect on September 30, 1995 (as described in section 412.352 of title 42 of the Code of Federal Regulations), to (i) the unadjusted standard Federal capital payment rate (as described in section 412.308(c) of that title, as
in effect on September 30, 1997, and (ii) the unadjusted hospital-specific rate (as described in section 412.323(e)(1) of that title, as in effect on September 30, 1997), and, for discharges occurring on or after October 1, 1997, and before October 1, 2002, reduce the rates described in clauses (i) and (ii) by 2.1 percent.

(B) Such system—
(i) shall provide for (I) a payment on a per discharge basis, and (II) an appropriate weighting of such payment amount as relates to the classification of the discharge;
(ii) may provide for an adjustment to take into account variations in the relative costs of capital and construction for the different types of facilities or areas in which they are located;
(iii) may provide for such exceptions (including appropriate exceptions to reflect capital obligations) as the Secretary determines to be appropriate, and
(iv) may provide for suitable adjustment to reflect hospital occupancy rate.

(C) In this paragraph, the term "capital-related costs" has the meaning given such term by the Secretary under subsection (a)(4) of this section as of September 30, 1987, and does not include a return on equity capital.

(2)(A) The Secretary shall provide that the amount which is allowable, with respect to reasonable costs of inpatient hospital services for which payment may be made under this subchapter, for a return on equity capital for hospitals shall, for cost reporting periods beginning on or after April 20, 1983, be equal to amounts otherwise allowable under regulations in effect on March 1, 1983, except that the rate of return to be recognized shall be equal to the applicable percentage (described in subparagraph (B)) of the average of the rates of interest, for each of the months any part of which is included in the reporting period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

(B) In this paragraph, the "applicable percentage" is—
(i) 75 percent, for cost reporting periods beginning during fiscal year 1987,
(ii) 50 percent, for cost reporting periods beginning during fiscal year 1988,
(iii) 25 percent, for cost reporting periods beginning during fiscal year 1989, and
(iv) 0 percent, for cost reporting periods beginning on or after October 1, 1989.

(3)(A) Except as provided in subparagraph (B), in determining the amount of the payments that may be made under this subchapter with respect to all the capital-related costs of inpatient hospital services of a subsection (d) hospital and a subsection (d) Puerto Rico hospital, the Secretary shall reduce the amounts of such payments otherwise established under this subchapter by—
(i) 3.5 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1987;
(ii) 7 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1988 on or after October 1, 1987, and before January 1, 1988,
(iii) 12 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) in fiscal year 1988, occurring on or after January 1, 1988,
(iv) 15 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1989, and
(v) 15 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during the period beginning January 1, 1990, and ending September 30, 1991.

(B) Subparagraph (A) shall not apply to payments with respect to the capital-related costs of any hospital that is a sole community hospital (as defined in subsection (d)(5)(D)(iii) of this section) or a critical access hospital (as defined in section 1395x(mm)(1) of this title).

(4) In determining the amount of the payments that are attributable to portions of cost reporting periods occurring during fiscal years 1998 through 2002 and that may be made under this subchapter with respect to capital-related costs of inpatient hospital services of a hospital which is described in clause (i), (ii), or (iv) of subsection (d)(1)(B) of this section or a unit described in the matter after clause (v) of such subsection, the Secretary shall reduce the amounts of such payments otherwise determined under this subchapter by 15 percent.

(h) Payments for direct graduate medical education costs

(1) Substitution of special payment rules

Notwithstanding section 1395x(v) of this title, instead of any amounts that are otherwise payable under this subchapter with respect to the reasonable costs of hospitals for direct graduate medical education costs, the Secretary shall provide for payments for such costs in accordance with paragraph (3) of this subsection. In providing for such payments, the Secretary shall provide for an allocation of such payments between part A and part B of this subchapter (and the trust funds established under the respective parts) as reasonably reflects the proportion of direct graduate medical education costs of hospitals associated with the provision of services under each respective part.

(2) Determination of hospital-specific approved FTE resident amounts

The Secretary shall determine, for each hospital with an approved medical residency training program, an approved FTE resident amount for each cost reporting period beginning on or after July 1, 1985, as follows:

(A) Determining allowable average cost per FTE resident in a hospital's base period

The Secretary shall determine, for the hospital's cost reporting period that began during fiscal year 1984, the average amount recognized as reasonable under this subchapter for direct graduate medical education costs of the hospital for each full-time-equivalent resident.
(B) Updating to the first cost reporting period

(i) In general

The Secretary shall update each average amount determined under subparagraph (A) by the percentage increase in the consumer price index during the 12-month cost reporting period described in such subparagraph.

(ii) Exception

The Secretary shall not perform an update under clause (i) in the case of a hospital if the hospital's reporting period, described in subparagraph (A), began on or after July 1, 1984, and before October 1, 1984.

(C) Amount for first cost reporting period

For the first cost reporting period of the hospital beginning on or after July 1, 1985, the approved FTE resident amount for the hospital is equal to the amount determined under subparagraph (B) increased by 1 percent.

(D) Amount for subsequent cost reporting periods

(i) In general

Except as provided in a subsequent clause, for each subsequent cost reporting period, the approved FTE resident amount for the hospital is equal to the approved FTE resident amount determined under this paragraph for the previous cost reporting period updated, through the midpoint of the period, by projecting the estimated percentage change in the consumer price index during the 12-month period ending at that midpoint, with appropriate adjustments to reflect previous under- or over-estimations under this subparagraph in the projected percentage change in the consumer price index.

(ii) Freeze in update for fiscal years 1994 and 1995

For cost reporting periods beginning during fiscal year 1994 or fiscal year 1995, the approved FTE resident amount for a hospital shall not be updated under clause (i) for a resident who is not a primary care resident (as defined in paragraph (5)(H)) or a resident enrolled in an approved medical residency training program in obstetrics and gynecology.

(iii) Floor for locality adjusted national average per resident amount

The approved FTE resident amount for a hospital for the cost reporting period beginning during fiscal year 2001 shall not be less than 70 percent, and for the cost reporting period beginning during fiscal year 2002 shall not be less than 85 percent, of the locality adjusted national average per resident amount computed under subparagraph (E) for the hospital and period.

(iv) Adjustment in rate of increase for hospitals with FTE approved amount above 140 percent of locality adjusted national average per resident amount

(I) Freeze for fiscal years 2001 and 2002 and 2004 through 2013

For a cost reporting period beginning during fiscal year 2001 or fiscal year 2002 or during the period beginning with fiscal year 2004 and ending with fiscal year 2013, if the approved FTE resident amount for a hospital for the preceding cost reporting period exceeds 140 percent of the locality adjusted national average per resident amount computed under subparagraph (E) for that hospital and period, subject to subclause (III), the approved FTE resident amount for the period involved shall be the same as the approved FTE resident amount for the hospital for such preceding cost reporting period.

(II) 2 percent decrease in update for fiscal years 2003, 2004, and 2005

For the cost reporting period beginning during fiscal year 2003, if the approved FTE resident amount for a hospital for the preceding cost reporting period exceeds 140 percent of the locality adjusted national average per resident amount computed under subparagraph (E) for that hospital and period, the approved FTE resident amount for the period involved shall be updated in the manner described in subparagraph (D)(i) except that, subject to subclause (III), the consumer price index applied for a 12-month period shall be reduced (but not below zero) by 2 percentage points.

(III) No adjustment below 140 percent

In no case shall subclause (I) or (II) reduce an approved FTE resident amount for a hospital for a cost reporting period below 140 percent of the locality adjusted national average per resident amount computed under subparagraph (E) for such hospital and period.

(E) Determination of locality adjusted national average per resident amount

The Secretary shall determine a locality adjusted national average per resident amount with respect to a cost reporting period of a hospital beginning during a fiscal year as follows:

(i) Determining hospital single per resident amount

The Secretary shall compute for each hospital operating an approved graduate medical education program a single per resident amount equal to the average (weighted by number of full-time equivalent residents, as determined under paragraph (4)(i) of the primary care per resident amount and the non-primary care per resident amount computed under paragraph (2) for cost reporting periods ending during fiscal year 1997.

\[ \text{Single per resident amount} = \frac{1}{n} \sum_{i=1}^{n} \text{Primary care per resident amount}_i \]
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(II) Standardizing per resident amounts

The Secretary shall compute a standardized per resident amount for each such hospital by dividing the single per resident amount computed under clause (i) by an average of the 3 geographic index values (weighted by the national average weight for each of the work, practice expense, and malpractice components) as applied under section 1395w–4(e) of this title for 1999 for the fee schedule area in which the hospital is located.

(iii) Computing of weighted average

The Secretary shall compute the average of the standardized per resident amounts computed under clause (ii) for such hospitals, with the amount for each hospital weighted by the average number of full-time equivalent residents at such hospital (as determined under paragraph (4)).

(iv) Computing national average per resident amount

The Secretary shall compute the national average per resident amount, for a hospital's cost reporting period that begins during fiscal year 2001, equal to the weighted average computed under clause (iii) increased by the estimated percentage increase in the consumer price index for all urban consumers during the period beginning with the month that represents the midpoint of the cost reporting periods described in clause (i) and ending with the midpoint of the hospital's cost reporting period that begins during fiscal year 2001.

(v) Adjusting for locality

The Secretary shall compute the product of—

(I) the national average per resident amount computed under clause (iv) for the hospital, and

(II) the geographic index value average (described and applied under clause (ii)) for the fee schedule area in which the hospital is located.

(vi) Computing locality adjusted amount

The locality adjusted national per resident amount for a hospital for—

(I) the cost reporting period beginning during fiscal year 2001 is the product computed under clause (v); or

(II) each subsequent cost reporting period is equal to the locality adjusted national per resident amount for the hospital for the previous cost reporting period (as determined under this clause) updated, through the midpoint of the period, by projecting the estimated percentage change in the consumer price index for all urban consumers during the 12-month period ending at that midpoint.

(F) Treatment of certain hospitals

In the case of a hospital that did not have an approved medical residency training program or was not participating in the program under this subchapter for a cost reporting period beginning during fiscal year 1984, the Secretary shall, for the first such period for which it has such a residency training program and is participating under this subchapter, provide for such approved FTE resident amounts as the Secretary determines to be appropriate, based on approved FTE resident amounts for comparable programs.

(3) Hospital payment amount per resident

(A) In general

The payment amount, for a hospital cost reporting period beginning on or after July 1, 1985, is equal to the product of—

(i) the aggregate approved amount (as defined in subparagraph (B)) for that period, and

(ii) the hospital's medicare patient load (as defined in subparagraph (C)) for that period.

(B) Aggregate approved amount

As used in subparagraph (A), the term “aggregate approved amount” means, for a hospital cost reporting period, the product of—

(i) the hospital's approved FTE resident amount (determined under paragraph (2)) for that period, and

(ii) the weighted average number of full-time-equivalent residents (as determined under paragraph (4)) in the hospital's approved medical residency training programs in that period.

(C) Medicare patient load

As used in subparagraph (A), the term “medicare patient load” means, with respect to a hospital's cost reporting period, the fraction of the total number of inpatient-bed-days (as established by the Secretary) during the period which are attributable to patients with respect to whom payment may be made under part A of this subchapter.

(D) Payment for managed care enrollees

(i) In general

For portions of cost reporting periods occurring on or after January 1, 1998, the Secretary shall provide for an additional payment amount under this subsection for services furnished to individuals who are enrolled under a risk-sharing contract with an eligible organization under section 1395mm of this title and who are entitled to part A of this subchapter or with a Medicare+Choice organization under part C of this subchapter. The amount of such a payment shall equal, subject to clause (iii), the applicable percentage of the product of—

(I) the aggregate approved amount (as defined in subparagraph (B)) for that period; and

(II) the fraction of the total number of inpatient-bed days (as established by the Secretary) during the period which are attributable to such enrolled individuals.
(ii) Applicable percentage

For purposes of clause (i), the applicable percentage is—

(I) 20 percent in 1998,
(II) 40 percent in 1999,
(III) 60 percent in 2000,
(IV) 80 percent in 2001, and
(V) 100 percent in 2002 and subsequent years.

(iii) Proportional reduction for nursing and allied health education

The Secretary shall estimate a proportional adjustment in payments to all hospitals determined under clauses (i) and (ii) for portions of cost reporting periods beginning in a year (beginning with 2000) such that the proportional adjustment reduces payments in an amount for such year equal to the total additional payment amounts for nursing and allied health education determined under subsection (i) of this section for portions of cost reporting periods occurring in that year.

(iv) Special rule for hospitals under reimbursement system

The Secretary shall establish rules for the application of this subparagraph to a hospital reimbursed under a reimbursement system authorized under section 1395f(b)(3) of this title in the same manner as it would apply to the hospital if it were not reimbursed under such section.

(4) Determination of full-time-equivalent residents

(A) Rules

The Secretary shall establish rules consistent with this paragraph for the computation of the number of full-time-equivalent residents in an approved medical residency training program.

(B) Adjustment for part-year or part-time residents

Such rules shall take into account individuals who serve as residents for only a portion of a period with a hospital or simultaneously with more than one hospital.

(C) Weighting factors for certain residents

Subject to subparagraph (D), such rules shall provide, in calculating the number of full-time-equivalent residents in an approved residency program—

(i) before July 1, 1986, for each resident the weighting factor is 1.00,
(ii) on or after July 1, 1986, for a resident who is in the resident’s initial residency period (as defined in paragraph (5)(F)), the weighting factor is 1.00,
(iii) on or after July 1, 1986, and before July 1, 1987, for a resident who is not in the resident’s initial residency period (as defined in paragraph (5)(F)), the weighting factor is .75, and
(iv) on or after July 1, 1987, for a resident who is not in the resident’s initial residency period (as defined in paragraph (5)(F)), the weighting factor is .50.

(D) Foreign medical graduates required to pass FMGEMS examination

(i) In general

Except as provided in clause (ii), such rules shall provide that, in the case of an individual who is a foreign medical graduate (as defined in paragraph (5)(D)), the individual shall not be counted as a resident on or after July 1, 1986, unless—

(I) the individual has passed the FMGEMS examination (as defined in paragraph (5)(E)), or
(II) the individual has previously received certification from, or has previously passed the examination of, the Educational Commission for Foreign Medical Graduates.

(ii) Transition for current FMGS

On or after July 1, 1986, but before July 1, 1987, in the case of a foreign medical graduate who—

(i) has served as a resident before July 1, 1986, and is serving as a resident after that date, but
(ii) has not passed the FMGEMS examination or a previous examination of the Educational Commission for Foreign Medical Graduates before July 1, 1986,

the individual shall be counted as a resident at a rate equal to one-half of the rate at which the individual would otherwise be counted.

(E) Counting time spent in outpatient settings

Subject to subparagraphs (J) and (K), such rules shall provide that only time spent in activities relating to patient care shall be counted and that—

(i) effective for cost reporting periods beginning before July 1, 2010, all the time;\(^9\) so spent by a resident under an approved medical residency training program shall be counted towards the determination of full-time equivalency, without regard to the setting in which the activities are performed, if the hospital incurs all, or substantially all, of the costs for the training program in that setting; and
(ii) effective for cost reporting periods beginning on or after July 1, 2010, all the time so spent by a resident shall be counted towards the determination of full-time equivalency, without regard to the setting in which the activities are performed, if a hospital incurs the costs of the stipends and fringe benefits of the resident during the time the resident spends in that setting. If more than one hospital incurs these costs, either directly or through a third party, such hospitals shall count a proportional share of the time, as determined by written agreement between the hospitals, that a resident spends training in that setting.

Any hospital claiming under this subparagraph for time spent in a nonprovider set-

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\(^9\)So in original. The semicolon probably should not appear.
§ 1395ww TITLE 42—THE PUBLIC HEALTH AND WELFARE

Limitation on number of residents in allopathic and osteopathic medicine

(i) In general

Such rules shall provide that for purposes of a cost reporting period beginning on or after October 1, 1997, subject to paragraphs (7) and (8), the total number of full-time equivalent residents before application of weighting factors (as determined under this paragraph) with respect to a hospital’s approved medical residency training program in the fields of allopathic medicine and osteopathic medicine may not exceed the number (or, 130 percent of such number in the case of a hospital located in a rural area) of such full-time equivalent residents for the hospital’s most recent cost reporting period ending on or before December 31, 1996.

(ii) Counting primary care residents on certain approved leaves of absence in base year FTE count

(I) In general

In determining the number of such full-time equivalent residents for a hospital’s most recent cost reporting period ending on or before December 31, 1996, for purposes of clause (i), the Secretary shall count an individual to the extent that the individual would have been counted as a primary care resident for such period but for the fact that the individual, as determined by the Secretary, was on maternity or disability leave or a similar approved leave of absence.

(II) Limitation to 3 FTE residents for any hospital

The total number of individuals counted under subclause (I) for a hospital may not exceed 3 full-time equivalent residents.

(G) Counting interns and residents for FY 1998 and subsequent years

(i) In general

For cost reporting periods beginning during fiscal years beginning on or after October 1, 1997, subject to the limit described in subparagraph (F), the total number of full-time equivalent residents for determining a hospital’s graduate medical education payment shall equal the average of the actual full-time equivalent resident counts for the cost reporting period and the preceding two cost reporting periods.

(ii) Adjustment for short periods

If any cost reporting period beginning on or after October 1, 1997, is not equal to twelve months, the Secretary shall make appropriate modifications to ensure that the average full-time equivalent resident counts pursuant to clause (i) are based on the equivalent of full twelve-month cost reporting periods.

(iii) Transition rule for 1998

In the case of a hospital’s first cost reporting period beginning on or after October 1, 1997, clause (i) shall be applied by using the average for such period and the preceding cost reporting period.

(H) Special rules for application of subparagraphs (F) and (G)

(i) New facilities

The Secretary shall, consistent with the principles of subparagraphs (F) and (G) and subject to paragraphs (7) and (8), prescribe rules for the application of such subparagraphs in the case of medical residency training programs established on or after January 1, 1995. In promulgating such rules for purposes of subparagraph (F), the Secretary shall give special consideration to facilities that meet the needs of underserved rural areas.

(ii) Aggregation

The Secretary may prescribe rules which allow institutions which are members of the same affiliated group (as defined by the Secretary) to elect to apply the limitation of subparagraph (F) on an aggregate basis.

(iii) Data collection

The Secretary may require any entity that operates a medical residency training program and to which subparagraphs (F) and (G) apply to submit to the Secretary such additional information as the Secretary considers necessary to carry out such subparagraphs.

(iv) Nonrural hospitals operating training programs in rural areas

In the case of a hospital that is not located in a rural area but establishes separately accredited approved medical residency training programs (or rural tracks) in an rural area or has an accredited training program with an integrated rural track, the Secretary shall adjust the limitation under subparagraph (F) in an appropriate manner insofar as it applies to such programs in such rural areas in order to encourage the training of physicians in rural areas.

(v) Special provider agreement

If an entity enters into a provider agreement pursuant to section 1395cc(a) of this title to provide hospital services on the same physical site previously used by Medicare Provider No. 05–0578—

(I) the limitation on the number of total full time equivalent residents under subparagraph (F) and clauses (v) and (vi)(I) of subsection (d)(5)(B) applicable to such provider shall be equal to the limitation applicable under such provisions to Provider No. 05–0578 for its cost reporting period ending on June 30, 2006; and

So in original. Probably should be “a”. 
(II) the provisions of subparagraph (G) and subsection (d)(5)(B)(vi)(II) shall not be applicable to such provider for the first three cost reporting years in which such provider trains residents under any approved medical residency training program.

(vi) Redistribution of residency slots after a hospital closes

(I) In general

Subject to the succeeding provisions of this clause, the Secretary shall, by regulation, establish a process under which, in the case where a hospital (other than a hospital described in clause (v)) with an approved medical residency program closes on or after a date that is 2 years before March 23, 2010, the Secretary shall increase the otherwise applicable resident limit under this clause.

(II) Priority for hospitals in certain areas

Subject to the succeeding provisions of this clause, in determining for which hospitals the increase in the otherwise applicable resident limit is provided under such process, the Secretary shall distribute the increase to hospitals in the following priority order (with preference given within each category to hospitals that are members of the same affiliated group (as defined by the Secretary under clause (ii)) as the closed hospital):

(aa) First, to hospitals located in the same core-based statistical area as, or a core-based statistical area contiguous to, the hospital that closed.

(bb) Second, to hospitals located in the same State as the hospital that closed.

(cc) Third, to hospitals located in the same region of the country as the hospital that closed.

(dd) Fourth, only if the Secretary is not able to distribute the increase to hospitals described in item (cc), to qualifying hospitals in accordance with the provisions of paragraph (8).

(III) Requirement hospital likely to fill position within certain time period

The Secretary may only increase the otherwise applicable resident limit of a hospital under such process if the Secretary determines the hospital has demonstrated a likelihood of filling the positions made available under this clause within 3 years.

(IV) Limitation

The aggregate number of increases in the otherwise applicable resident limits for hospitals under this clause shall be equal to the number of resident positions in the approved medical residency programs that closed on or after the date described in subclause (I).

(V) Administration

Chapter 35 of title 44 shall not apply to the implementation of this clause.

(J) Treatment of certain nonprovider and didactic activities

Such rules shall provide that all time spent by an intern or resident in an approved medical residency training program in a nonprovider setting that is primarily engaged in furnishing patient care (as defined in paragraph (5)(K) in non-patient care activities, such as didactic conferences and seminars, but not including research not associated with the treatment or diagnosis of a particular patient, as such time and activities are defined by the Secretary, shall be counted toward the determination of full-time equivalency.

(K) Treatment of certain other activities

In determining the hospital’s number of full-time equivalent residents for purposes of this subsection, all the time that is spent by an intern or resident in an approved medical residency training program on vacation, sick leave, or other approved leave, as such time is defined by the Secretary, and that does not prolong the total time the resident is participating in the approved program beyond the normal duration of the program shall be counted toward the determination of full-time equivalency.

(5) Definitions and special rules

As used in this subsection:

(A) Approved medical residency training program

The term “approved medical residency training program” means a residency or other postgraduate medical training program participation in which may be counted toward certification in a specialty or subspecialty and includes formal postgraduate training programs in geriatric medicine approved by the Secretary.

(B) Consumer price index

The term “consumer price index” refers to the Consumer Price Index for All Urban Consumers (United States city average), as published by the Secretary of Commerce.

(C) Direct graduate medical education costs

The term “direct graduate medical education costs” means direct costs of approved educational activities for approved medical residency training programs.

(D) Foreign medical graduate

The term “foreign medical graduate” means a resident who is not a graduate of—

(i) a school of medicine accredited by the Liaison Committee on Medical Education of the American Medical Association and the Association of American Medical Colleges (or approved by such Committee as meeting the standards necessary for such accreditation),

(ii) a school of osteopathy accredited by the American Osteopathic Association, or approved by such Association as meeting the standards necessary for such accreditation, or

So in original. No subpar. (i) has been enacted.
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any successor examination recognized by the Secretary for this purpose.

The term “FMGEMS examination” means parts I and II of the Foreign Medical Graduation Examination in the Medical Sciences or any successor examination recognized by the Secretary for this purpose.

The term “initial residency period” means the period of board eligibility, except that—

(i) except as provided in clause (ii), in no case shall the initial period of residency exceed an aggregate period of formal training of more than five years for any individual, and

(ii) a period, of not more than two years, during which an individual is in a geriatric residency or fellowship program or a preventive medicine residency or fellowship program which meets such criteria as the Secretary may establish, shall be treated as part of the initial residency period, but shall not be counted against any limitation on the initial residency period.

Subject to subparagraph (G)(v), the initial residency period shall be determined, with respect to a resident, as of the time the resident enters the residency training program.

The term “resident” includes an intern or other participant in an approved medical residency training program in family medicine, general internal medicine, general pediatrics, preventive medicine, geriatric medicine, or osteopathic general practice.

The term “primary care resident” means a resident enrolled in an approved medical residency training program in family medicine, general internal medicine, general pediatrics, preventive medicine, geriatric medicine, or osteopathic general practice.

In the case of an approved medical residency training program that includes an obstetrics and gynecology program shall qualify for the period of board eligibility under subclause (I) if the other programs such resident combines with such obstetrics and gynecology program are for training a primary care resident.

The term “child neurology training programs” includes an obstetrics and gynecology program if the other programs such resident combines with such obstetrics and gynecology program are for training a primary care resident.

In the case of a resident enrolled in a combined medical residency training program in which all of the individual programs (that are combined) are for training a primary care resident (as defined in subparagraph (H)), the period of board eligibility shall be the minimum number of years of formal training required to satisfy the requirements for initial board eligibility in the longest of the individual programs plus one additional year.

Subject to clauses (ii), (iii), (iv), and (v), the term “period of board eligibility” means, for a resident, the minimum number of years of formal training necessary to satisfy the requirements for initial board eligibility in the particular specialty for which the resident is training.

Except as provided in clause (iii), the period of board eligibility shall be such period specified in the 1985–1986 Directory of Residency Training Programs published by the Accreditation Council on Graduate Medical Education.

On or after July 1, 1989, if the Accreditation Council on Graduate Medical Education, in its Directory of Residency Training Programs—

(I) increases the minimum number of years of formal training necessary to satisfy the requirements for a specialty, above the period specified in its 1985–1986 Directory, the Secretary may increase the period of board eligibility for that specialty, but not to exceed the period of board eligibility specified in that later Directory, or

(ii) decreases the minimum number of years of formal training necessary to satisfy the requirements for a specialty, below the period specified in its 1985–1986 Directory, the Secretary may decrease the period of board eligibility for that specialty, but not below the period of board eligibility specified in that later Directory.

(iv) Special rule for certain primary care combined residency programs

(I) In the case of a resident enrolled in a combined medical residency training program in which all of the individual programs (that are combined) are for training a primary care resident, the period of board eligibility shall be the minimum number of years of formal training required to satisfy the requirements for initial board eligibility in the longest of the individual programs plus one additional year.

(II) A resident enrolled in a combined medical residency training program that includes an obstetrics and gynecology program shall qualify for the period of board eligibility under subclause (I) if the other programs such resident combines with such obstetrics and gynecology program are for training a primary care resident.

(v) Child neurology training programs

In the case of a resident enrolled in a child neurology residency training program, the period of board eligibility and the initial residency period shall be the period of board eligibility for pediatrics plus 2 years.

In the case of an approved medical residency training program (meeting the requirements of clause (ii)) of a hospital which received funds from the United States, a State, or a political subdivision of a State or an instrumentality of such a State or political subdivision (other than payments under this subchapter or a State plan under subchapter XIX of this chapter) for the program during the cost reporting period that began during fiscal year 1984, the Secretary shall—

(I) provide for an average amount under paragraph (2)(A) that takes into account the Secretary’s estimate of the amount that would have been recognized as reasonable under this subchapter if the hospital had not received such funds, and

(II) reduce the payment amount otherwise provided under this subsection in an
amount equal to the proportion of such program funds received during the cost reporting period involved that is allocable to this subchapter.

(ii) Additional requirements

A hospital's approved medical residency program meets the requirements of this clause if—

(I) the program is limited to training for family and community medicine;

(II) the program is the only approved medical residency program of the hospital; and

(III) the average amount determined under paragraph (2)(A) for the hospital (as determined without regard to the increase in such amount described in clause (i)(I)) does not exceed $10,000.

(K) Nonprovider setting that is primarily engaged in furnishing patient care

The term "nonprovider setting that is primarily engaged in furnishing patient care" means a nonprovider setting in which the primary activity is the care and treatment of patients, as defined by the Secretary.

(6) Incentive payment under plans for voluntary reduction in number of residents

(A) In general

In the case of a voluntary residency reduction plan for which an application is approved under subparagraph (B), subject to subparagraph (F), each hospital which is part of the qualifying entity submitting the plan shall be paid an applicable hold harmless percentage (as specified in subparagraph (E)) of the sum of—

(i) the amount (if any) by which—

(I) the amount of payment which would have been made under this subsection if there had been a 5-percent reduction in the number of full-time equivalent residents in the approved medical education training programs of the hospital as of June 30, 1997, exceeds the amount of payment which is made under this subsection, taking into account the reduction in such number effected under the reduction plan; and

(ii) the amount of the reduction in payment under subsection (d)(5)(B) of this section for the hospital that is attributable to the reduction in number of residents effected under the plan below 95 percent of the number of full-time equivalent residents in such programs of the hospital as of June 30, 1997.

The determination of the amounts under clauses (i) and (ii) for any year shall be made on the basis of the provisions of this subchapter in effect on the application deadline date for the first calendar year to which the reduction plan applies.

(B) Approval of plan applications

The Secretary may not approve the application of a qualifying entity unless—

(i) the application is submitted in a form and manner specified by the Secretary and by not later than November 1, 1999;  

(ii) the application provides for the operation of a plan for the reduction in the number of full-time equivalent residents in the approved medical residency training programs of the entity consistent with the requirements of subparagraph (D);

(iii) the entity elects in the application the period of residency training years (not greater than 5) over which the reduction will occur;

(iv) the entity will not reduce the proportion of its residents in primary care (to the total number of residents) below such proportion as in effect as of the applicable time described in subparagraph (D)(v); and

(v) the Secretary determines that the application and the entity and such plan meet such other requirements as the Secretary specifies in regulations.

(C) Qualifying entity

For purposes of this paragraph, any of the following may be a qualifying entity:

(i) Individual hospitals operating one or more approved medical residency training programs.

(ii) Two or more hospitals that operate such programs and apply for treatment under this paragraph as a single qualifying entity.

(iii) A qualifying consortium (as described in section 4628 of the Balanced Budget Act of 1997).

(D) Residency reduction requirements

(i) Individual hospital applicants

In the case of a qualifying entity described in subparagraph (C)(i), the number of full-time equivalent residents in all the approved medical residency training programs operated by or through the entity shall be reduced as follows:

(I) If the base number of residents exceeds 750 residents, by a number equal to at least 20 percent of such base number.

(II) Subject to subclause (IV), if the base number of residents exceeds 600 but is less than 750 residents, by 150 residents.

(III) Subject to subclause (IV), if the base number of residents does not exceed 600 residents, by a number equal to at least 25 percent of such base number.

(IV) In the case of a qualifying entity which is described in clause (v) and which elects treatment under this subclause, by a number equal to at least 20 percent of the base number.

(ii) Joint applicants

In the case of a qualifying entity described in subparagraph (C)(ii), the number of full-time equivalent residents in the aggregate for all the approved medical residency training programs operated by or through the entity shall be reduced as follows:

12So in original. The comma probably should be a semicolon.
(I) Subject to subclause (II), by a number equal to at least 25 percent of the base number.

(II) In the case of such a qualifying entity which is described in clause (v) and which elects treatment under this subclause, by a number equal to at least 20 percent of the base number.

(iii) Consortia

In the case of a qualifying entity described in subparagraph (C)(iii), the number of full-time equivalent residents in the aggregate for all the approved medical residency training programs operated by or through the entity shall be reduced by a number equal to at least 20 percent of the base number.

(iv) Manner of reduction

The reductions specified under the preceding provisions of this subparagraph for a qualifying entity shall be below the base number of residents for that entity and shall be fully effective not later than the 5th residency training year in which the application under subparagraph (B) is effective.

(v) Entities providing assurance of increase in primary care residents

An entity is described in this clause if—

(I) the base number of resident's for the entity is less than 750 or the entity is described in subparagraph (C)(ii); and

(II) the entity represents in its application under subparagraph (B) that it will increase the number of full-time equivalent residents in primary care by at least 20 percent (from such number included in the base number of residents) by not later than the 5th residency training year in which the application under subparagraph (B) is effective.

If a qualifying entity fails to comply with the representation described in subclause (II) by the end of such 5th residency training year, the entity shall be subject to repayment of all amounts paid under this paragraph, in accordance with procedures established to carry out subparagraph (F).

(vi) "Base number of residents" defined

For purposes of this paragraph, the term "base number of residents" means, with respect to a qualifying entity (or its participating hospitals) operating approved medical residency training programs, the number of full-time equivalent residents in such programs (before application of weighting factors) of the entity as of the most recent residency training year ending before June 30, 1997, or, if less, for any subsequent residency training year that ends before the date the entity makes application under this paragraph.

(E) Applicable hold harmless percentage

For purposes of subparagraph (A), the "applicable hold harmless percentage" for the—

(i) first and second residency training years in which the reduction plan is in effect, 100 percent,

(ii) third such year, 75 percent,

(iii) fourth such year, 50 percent, and

(iv) fifth such year, 25 percent.

(F) Penalty for noncompliance

(i) In general

No payment may be made under this paragraph to a hospital for a residency training year if the hospital has failed to reduce the number of full-time equivalent residents (in the manner required under subparagraph (D)) to the number agreed to by the Secretary and the qualifying entity in approving the application under this paragraph with respect to such year.

(ii) Increase in number of residents in subsequent years

If payments are made under this paragraph to a hospital, and if the hospital increases the number of full-time equivalent residents above the number of such residents permitted under the reduction plan as of the completion of the plan, then, as specified by the Secretary, the entity is liable for repayment to the Secretary of the total amounts paid under this paragraph to the entity.

(G) Treatment of rotating residents

In applying this paragraph, the Secretary shall establish rules regarding the counting of residents who are assigned to institutions the medical residency training programs in which are not covered under approved applications under this paragraph.

(7) Redistribution of unused resident positions

(A) Reduction in limit based on unused positions

(i) Programs subject to reduction

(I) In general

Except as provided in subclause (II), if a hospital’s reference resident level (specified in clause (ii)) is less than the otherwise applicable resident limit (as defined in subparagraph (C)(ii)), effective for portions of cost reporting periods occurring on or after July 1, 2005, the otherwise applicable resident limit shall be reduced by 75 percent of the difference between such otherwise applicable resident limit and such reference resident level.

(II) Exception for small rural hospitals

This subparagraph shall not apply to a hospital located in a rural area (as defined in subsection (d)(2)(D)(ii) of this section) with fewer than 250 acute care inpatient beds.

(ii) Reference resident level

(I) In general

Except as otherwise provided in subclauses (II) and (III), the reference resident level specified in this clause for a hospital is the resident level for the most recent cost reporting period of the hospital ending on or before September 30, 2002, for which a cost report has been
settled (or, if not, submitted (subject to audit)), as determined by the Secretary.

II) Use of most recent accounting period to recognize expansion of existing programs

If a hospital submits a timely request to increase its resident level due to an expansion of an existing residency training program that is not reflected on the most recent settled cost report, after audit and subject to the discretion of the Secretary, the reference resident level for such hospital is the resident level for the cost reporting period that includes July 1, 2005, as determined by the Secretary.

III) Expansions under newly approved programs

Upon the timely request of a hospital, the Secretary shall adjust the reference resident level specified under subclause (I) or (II) to include the number of medical residents that were approved in an application for a medical residency training program that was approved by an appropriate accrediting organization (as determined by the Secretary) before January 1, 2002, but which was not in operation during the cost reporting period used under subclause (I) or (II), as the case may be, as determined by the Secretary.

(iii) Affiliation

The provisions of clause (i) shall be applied to hospitals which are members of the same affiliated group (as defined by the Secretary under paragraph (4)(H)(ii)) as of July 1, 2003.

(B) Redistribution

(i) In general

The Secretary is authorized to increase the otherwise applicable resident limit for each qualifying hospital that submits a timely application under this subparagraph by such number as the Secretary may approve for portions of cost reporting periods occurring on or after July 1, 2005. The aggregate number of increases in the otherwise applicable resident limits under this subparagraph may not exceed the Secretary’s estimate of the aggregate reduction in such limits attributable to subparagraph (A).

(ii) Considerations in redistribution

In determining for which hospitals the increase in the otherwise applicable resident limit is provided under clause (i), the Secretary shall take into account the demonstrated likelihood of the hospital filling the positions within the first 3 cost reporting periods beginning on or after July 1, 2005, made available under this subparagraph, as determined by the Secretary.

(iii) Priority for rural and small urban areas

In determining for which hospitals and residency training programs an increase in the otherwise applicable resident limit is provided under clause (i), the Secretary shall distribute the increase to programs of hospitals located in the following priority order:

(I) First, to hospitals located in rural areas (as defined in subsection (d)(2)(D)(i) of this section).

(II) Second, to hospitals located in urban areas that are not large urban areas (as defined for purposes of subsection (d) of this section).

(III) Third, to other hospitals in a State if the residency training program involved is in a specialty for which there are not other residency training programs in the State.

Increases of residency limits within the same priority category under this clause shall be determined by the Secretary.

(iv) Limitation

In no case shall more than 25 full-time equivalent additional residency positions be made available under this subparagraph with respect to any hospital.

(v) Application of locality adjusted national average per resident amount

With respect to additional residency positions in a hospital attributable to the increase provided under this subparagraph, notwithstanding any other provision of this subsection, the approved FTE resident amount is deemed to be equal to the locality adjusted national average per resident amount computed under paragraph (4)(E) for that hospital.

(vi) Construction

Nothing in this subparagraph shall be construed as permitting the redistribution of reductions in residency positions attributable to voluntary reduction programs under paragraph (6), under a demonstration project approved as of October 31, 2003, under the authority of section 402 of Public Law 90–248, or as affecting the ability of a hospital to establish new medical residency training programs under paragraph (4)(H).

(C) Resident level and limit defined

In this paragraph:

(i) Resident level

The term “resident level” means, with respect to a hospital, the total number of full-time equivalent residents, before the application of weighting factors (as determined under paragraph (4)), in the fields of allopathic and osteopathic medicine for the hospital.

(ii) Otherwise applicable resident limit

The term “otherwise applicable resident limit” means, with respect to a hospital, the limit otherwise applicable under subparagraphs (F)(i) and (H) of paragraph (4) on the resident level for the hospital determined without regard to this paragraph.
(D) Adjustment based on settled cost report

In the case of a hospital with a dual accredited osteopathic and allopathic family practice program for which—

(i) the otherwise applicable resident limit was reduced under subparagraph (A)(i)(I); and

(ii) such reduction was based on a reference resident level that was determined using a cost report and where a revised or corrected notice of program reimbursement was issued for such cost report between September 1, 2006 and September 15, 2006, whether as a result of an appeal or otherwise, and the reference resident level under such settled cost report is higher than the level used for the reduction under subparagraph (A)(i)(I);

the Secretary shall apply subparagraph (A)(i)(I) using the higher resident reference level and make any necessary adjustments to such reduction. Any such necessary adjustments shall be effective for portions of cost reporting periods occurring on or after July 1, 2005.

(E) Judicial review

There shall be no administrative or judicial review under section 1395ff, 1395oo of this title, or otherwise, with respect to determinations made under this title, or otherwise, and the reference resident level under such unsettled cost report is higher than the level used for the reduction under subparagraph (A)(i)(I).

(8) Distribution of additional residency positions

(A) Reductions in limit based on unused positions

(i) In general

Except as provided in clause (ii), if a hospital’s reference resident level (as defined in subparagraph (H)(i)) is less than the otherwise applicable resident limit (as defined in subparagraph (H)(iii)), effective for portions of cost reporting periods occurring on or after July 1, 2011, the otherwise applicable resident limit shall be reduced by 65 percent of the difference between such otherwise applicable resident limit and such reference resident level.

(ii) Exceptions

This subparagraph shall not apply to—

(I) a hospital that was part of a qualifying entity which had a voluntary residency reduction plan approved under paragraph (6)(B) or under the authority of section 402 of Public Law 90-248, if the hospital demonstrates to the Secretary that it has a specified plan in place for filling the unused positions by not later than 2 years after March 23, 2010; or

(II) a hospital described in paragraph (6)(B) or under the authority of section 402 of Public Law 90-248, if the hospital demonstrates to the Secretary that it has a specified plan in place for filling the unused positions by not later than 2 years after March 23, 2010; or

(III) a hospital described in paragraph (6)(B) or under the authority of section 402 of Public Law 90-248, if the hospital demonstrates to the Secretary that it has a specified plan in place for filling the unused positions by not later than 2 years after March 23, 2010; or

(B) Distribution

(i) In general

The Secretary shall increase the otherwise applicable resident limit for each qualifying hospital that submits an application under this subparagraph by such number as the Secretary may approve for portions of cost reporting periods occurring on or after July 1, 2011. The aggregate number of increases in the otherwise applicable resident limit under this subparagraph shall be equal to the aggregate reduction in such limits attributable to subparagraph (A) (as estimated by the Secretary).

(ii) Requirements

Subject to clause (iii), a hospital that receives an increase in the otherwise applicable resident limit under this subparagraph shall ensure, during the 5-year period beginning on the date of such increase, that—

(I) the number of full-time equivalent primary care residents, as defined in paragraph (5)(H) (as determined by the Secretary), excluding any additional positions under subclause (II), is less than the average number of full-time equivalent primary care residents (as so determined) during the 3 most recent cost reporting periods ending prior to March 23, 2010; and

(II) not less than 75 percent of the positions attributable to such increase are in a primary care or general surgery residency (as determined by the Secretary).

The Secretary may determine whether a hospital has met the requirements under this clause during such 5-year period in such manner and at such time as the Secretary determines appropriate, including at the end of such 5-year period.

(iii) Redistribution of positions if hospital no longer meets certain requirements

In the case where the Secretary determines that a hospital described in clause (ii) does not meet either of the requirements under subclause (I) or (II) of such clause, the Secretary shall—

(I) reduce the otherwise applicable resident limit of the hospital by the amount by which such limit was increased under this paragraph; and

(II) provide for the distribution of positions attributable to such reduction in accordance with the requirements of this paragraph.

(C) Considerations in redistribution

In determining for which hospitals the increase in the otherwise applicable resident limit is provided under subparagraph (B), the Secretary shall take into account—

(i) the demonstration likelihood of the hospital filling the positions made available under this paragraph within the first 3 cost reporting periods beginning on or after July 1, 2011, as determined by the Secretary; and

(ii) whether the hospital has an accredited rural training track (as described in paragraph (4)(H)(iv)).

(D) Priority for certain areas

In determining for which hospitals the increase in the otherwise applicable resident
limit is provided under subparagraph (B), subject to subparagraph (E), the Secretary shall distribute the increase to hospitals based on the following factors:

(i) Whether the hospital is located in a State with a resident-to-population ratio in the lowest quartile (as determined by the Secretary).

(ii) Whether the hospital is located in a State, a territory of the United States, or the District of Columbia that is among the top 10 States, territories, or Districts in terms of the ratio of—

(I) the total population of the State, territory, or District living in an area designated (under such section 332(a)(1)(A)) as a health professional shortage area (as of the date of enactment of this paragraph); to

(II) the total population of the State, territory, or District (as determined by the Secretary based on the most recent available population data published by the Bureau of the Census).

(iii) Whether the hospital is located in a rural area (as defined in subsection (d)(2)(D)(ii)).

(E) Reservation of positions for certain hospitals

(i) In general

Subject to clause (ii), the Secretary shall reserve the positions available for distribution under this paragraph as follows:

(I) 70 percent of such positions for distribution to hospitals described in clause (i) of subparagraph (D).

(II) 30 percent of such positions for distribution to hospitals described in clause (ii) and (iii) of such subparagraph.

(ii) Exception if positions not redistributed by July 1, 2011

In the case where the Secretary does not distribute positions to hospitals in accordance with clause (i) by July 1, 2011, the Secretary shall distribute such positions to other hospitals in accordance with the considerations described in subparagraph (C) and the priority described in subparagraph (D).

(F) Limitation

A hospital may not receive more than 75 full-time equivalent additional residency positions under this paragraph.

(G) Application of per resident amounts for primary care and nonprimary care

With respect to additional residency positions in a hospital attributable to the increase provided under this paragraph, the approved FTE per resident amounts are deemed to be equal to the hospital per resident amounts for primary care and nonprimary care computed under paragraph (2)(D) for that hospital.

(H) Definitions

In this paragraph:

(i) Reference resident level

The term “reference resident level” means, with respect to a hospital, the highest resident level for any of the 3 most recent cost reporting periods (ending before March 23, 2010) of the hospital for which a cost report has been settled (or, if not, submitted (subject to audit)), as determined by the Secretary.

(ii) Resident level

The term “resident level” has the meaning given such term in paragraph (7)(C)(i).

(iii) Otherwise applicable resident limit

The term “otherwise applicable resident limit” means, with respect to a hospital, the limit otherwise applicable under subparagraphs (F)(1) and (H) of paragraph (4) on the resident level for the hospital determined without regard to this paragraph but taking into account paragraph (7)(A).

(I) Affiliation

The provisions of this paragraph shall be applied to hospitals which are members of the same affiliated group (as defined by the Secretary under paragraph (4)(H)(ii)) and the reference resident level for each such hospital shall be the reference resident level with respect to the cost reporting period that results in the smallest difference between the reference resident level and the otherwise applicable resident limit.

(i) Avoiding duplicative payments to hospitals participating in rural demonstration programs

The Secretary shall reduce any payment amounts otherwise determined under this section to the extent necessary to avoid duplication of any payment made under section 4005(e) of the Omnibus Budget Reconciliation Act of 1987.

(j) Prospective payment for inpatient rehabilitation services

(1) Payment during transition period

(A) In general

Notwithstanding section 1395f(b) of this title, but subject to the provisions of section 1395e of this title, the amount of the payment with respect to the operating and capital costs of inpatient hospital services of a rehabilitation hospital or a rehabilitation unit (in this subsection referred to as a “rehabilitation facility”), other than a facility making an election under subparagraph (F) in a cost reporting period beginning on or after October 1, 2000, and before October 1, 2002, is equal to the sum of—

(i) the TEFRA percentage (as defined in subparagraph (C)) of the amount that would have been paid under part A of this title, but subject to the provisions of section
§ 1395ww TITLE 42—THE PUBLIC HEALTH AND WELFARE

(2) Patient case mix groups

(A) Establishment

The Secretary shall establish—

(i) classes of patient discharges of rehabilitation facilities by functional-related groups (each in this subsection referred to as a “case mix group”), based on impairment, age, comorbidities, and functional capability of the patient and such other factors as the Secretary deems appropriate to improve the explanatory power of functional independence measure-function related groups; and

(ii) a method of classifying specific patients in rehabilitation facilities within these groups.

(B) Weighting factors

For each case mix group the Secretary shall assign an appropriate weighting which reflects the relative facility resources used with respect to patients classified within that group compared to patients classified within other groups.

(C) Adjustments for case mix

(i) In general

The Secretary shall from time to time adjust the classifications and weighting factors established under this paragraph as appropriate to reflect changes in treatment patterns, technology, case mix, number of payment units for which payment is made under this subchapter, and other factors which may affect the relative use of resources. Such adjustments shall be made in a manner so that changes in aggregate payments under the classification system are a result of real changes and are not a result of changes in coding that are unrelated to real changes in case mix.

(ii) Adjustment

Insofar as the Secretary determines that such adjustments for a previous fiscal year (or estimates that such adjustments for a future fiscal year) did (or are likely to) result in a change in aggregate payments under the classification system during the fiscal year that are a result of changes in the coding or classification of patients that do not reflect real changes in case mix, the Secretary shall adjust the per payment unit payment rate for subsequent years so as to eliminate the effect of such coding or classification changes.

(D) Data collection

The Secretary is authorized to require rehabilitation facilities that provide inpatient hospital services to submit such data as the Secretary deems necessary to establish and administer the prospective payment system under this subsection.

(3) Payment rate

(A) In general

The Secretary shall determine a prospective payment rate for each payment unit for which such rehabilitation facility is entitled to receive payment under this subchapter. Subject to subparagraph (B), such rate for payment units occurring during a fiscal year shall be based on the average payment per payment unit under this subchapter for inpatient operating and capital costs of rehabilitation facilities using the most recent data available (as estimated by the Secretary as of the date of establishment of the system) adjusted—

(i) by updating such per-payment-unit amount to the fiscal year involved by the weighted average of the applicable percentage increases provided under subsection (b)(3)(B)(ii) of this section (for cost reporting periods beginning during the fiscal year) covering the period from the midpoint of the period for such data through the midpoint of fiscal year 2000 and by an increase factor (described in subparagraph (C)) specified by the Secretary for subsequent fiscal years up to the fiscal year involved; and

(ii) by reducing such rates by a factor equal to the proportion of payments under
this subsection (as estimated by the Secretary) based on prospective payment amounts which are additional payments described in paragraph (4) (relating to outlier and related payments); (iii) for variations among rehabilitation facilities by area under paragraph (6); (iv) by the weighting factors established under paragraph (2)(B); and (v) by such other factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities.

(B) Budget neutral rates

The Secretary shall establish the prospective payment amounts under this subsection for payment units during fiscal years 2001 and 2002 at levels such that, in the Secretary's estimation, the amount of total payments under this subsection for such fiscal years (including any payment adjustments pursuant to paragraphs (4) and (6) but not taking into account any payment adjustment resulting from an election permitted under paragraph (1)(D)) shall be equal to 98 percent for fiscal year 2001 and 100 percent for fiscal year 2002 of the amount of payments that would have been made under this subchapter during the fiscal years for operating and capital costs of rehabilitation facilities had this subsection not been enacted.

In establishing such payment amounts, the Secretary shall consider the effects of the prospective payment system established under this subsection on the total number of payment units from rehabilitation facilities and other factors described in subparagraph (A).

(C) Increase factor

(i) In general

For purposes of this subsection for payment units in each fiscal year (beginning with fiscal year 2001), the Secretary shall establish an increase factor subject to clause (ii). Such factor shall be based on an appropriate percentage increase in a market basket of goods and services comprising services for which payment is made under this subsection, which may be the market basket percentage increase described in subsection (b)(3)(B)(iii) of this section. The increase factor to be applied under this subparagraph for each of fiscal years 2008 and 2009 shall be 0 percent.

(ii) Productivity and other adjustment

After establishing the increase factor described in clause (i) for a fiscal year, the Secretary shall reduce such increase factor— (I) for fiscal year 2012 and each subsequent fiscal year, by the productivity adjustment described in subsection (b)(5)(B)(x)(II); and (II) for each of fiscal years 2010 through 2019, by the other adjustment described in subparagraph (D).

The application of this clause may result in the increase factor under this subparagraph being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year.

(D) Other adjustment

For purposes of subparagraph (C)(ii)(II), the other adjustment described in this subparagraph is— (i) for each of fiscal years 2010 and 2011, 0.25 percentage point; (ii) for each of fiscal years 2012 and 2013, 0.1 percentage point; (iii) for fiscal year 2014, 0.3 percentage point; (iv) for each of fiscal years 2015 and 2016, 0.2 percentage point; and (v) for each of fiscal years 2017, 2018, and 2019, 0.75 percentage point.

(4) Outlier and special payments

(A) Outliers

(i) In general

The Secretary may provide for an additional payment to a rehabilitation facility for patients in a case mix group, based upon the patient being classified as an outlier based on an unusual length of stay, costs, or other factors specified by the Secretary.

(ii) Payment based on marginal cost of care

The amount of such additional payment under clause (i) shall be determined by the Secretary and shall approximate the marginal cost of care beyond the cutoff point applicable under clause (i).

(iii) Total payments

The total amount of the additional payments made under this subparagraph for payment units in a fiscal year may not exceed 5 percent of the total payments projected or estimated to be made based on prospective payment rates for payment units in that year.

(B) Adjustment

The Secretary may provide for such adjustments to the payment amounts under this subsection as the Secretary deems appropriate to take into account the unique circumstances of rehabilitation facilities located in Alaska and Hawaii.

(5) Publication

The Secretary shall provide for publication in the Federal Register, on or before August 1 before each fiscal year (beginning with fiscal year 2001), of the classification and weighting factors for case mix groups under paragraph (2) for such fiscal year and a description of the methodology and data used in computing the prospective payment rates under this subsection for that fiscal year.

(6) Area wage adjustment

The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of rehabilitation facilities’ costs which are attributable to wages and wage-related costs, of the prospective payment rates com-
computed under paragraph (3) for area differences in wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for such facilities. Not later than October 1, 2001 (and at least every 36 months thereafter), the Secretary shall update the factor under the preceding sentence on the basis of information available to the Secretary (and updated as appropriate) of the wages and wage-related costs incurred in furnishing rehabilitation services. Any adjustments or updates made under this paragraph for a fiscal year shall be made in a manner that assures that the aggregated payments under this subsection in the fiscal year are not greater or less than those that would have been made in the year without such adjustment.

(7) Quality reporting

(A) Reduction in update for failure to report

(i) In general

For purposes of fiscal year 2014 and each subsequent fiscal year, in the case of a rehabilitation facility that does not submit data to the Secretary in accordance with subparagraph (C) with respect to such a fiscal year, after determining the increase factor described in paragraph (3)(C), and after application of paragraph (3)(D), the Secretary shall reduce such increase factor for payments for discharges occurring during such fiscal year by 3 percentage points.

(ii) Special rule

The application of this subparagraph may result in the increase factor described in paragraph (3)(C) being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year.

(B) Noncumulative application

Any reduction under subparagraph (A) shall apply only with respect to the fiscal year involved and the Secretary shall not take into account such reduction in computing the payment amount under this subsection for a subsequent fiscal year.

(C) Submission of quality data

For fiscal year 2014 and each subsequent rate year, each rehabilitation facility shall submit to the Secretary data on quality measures specified under subparagraph (D). Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this subparagraph.

(D) Quality measures

(i) In general

Subject to clause (ii), any measure specified by the Secretary under this subparagraph must have been endorsed by the entity with a contract under section 1395aaa(a) of this title.

(ii) Exception

In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1395aaa(a) of this title, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

(iii) Time frame

Not later than October 1, 2012, the Secretary shall publish the measures selected under this subparagraph that will be applicable with respect to fiscal year 2014.

(E) Public availability of data submitted

The Secretary shall establish procedures for making data submitted under subparagraph (C) available to the public. Such procedures shall ensure that a rehabilitation facility has the opportunity to review the data that is to be made public with respect to the facility prior to such data being made public. The Secretary shall report quality measures that relate to services furnished in inpatient settings in rehabilitation facilities on the Internet website of the Centers for Medicare & Medicaid Services.

(8) Limitation on review

There shall be no administrative or judicial review under section 1331 with respect to fiscal year 2014, nor may such review under section 1395ff of this title, 1395oo of this title, or otherwise of the establishment of—

(A) case mix groups, of the methodology for the classification of patients within such groups, and of the appropriate weighting factors thereof under paragraph (2),

(B) the prospective payment rates under paragraph (3),

(C) outlier and special payments under paragraph (4), and

(D) area wage adjustments under paragraph (6).

(k) Payment to nonhospital providers

(1) In general

For cost reporting periods beginning on or after October 1, 1997, the Secretary may establish rules for payment to nonhospital providers for their direct costs of medical education, if those costs are incurred in the operation of an approved medical residency training program described in subsection (h) of this section. Such rules shall specify the amounts, form, and manner in which such payments will be made and the portion of such payments that will be made from each of the trust funds under this subchapter.

(2) Qualified nonhospital providers

For purposes of this subsection, the term "qualified nonhospital providers" means—

(A) a Federally 14 qualified health center, as defined in section 1395x(a)(4) of this title; 14So in original. Probably should not be capitalized.

(B) a rural health clinic, as defined in section 1395x(a)(2) of this title;

(C) Medicare+Choice organizations; and

(D) such other providers (other than hospitals) as the Secretary determines to be appropriate.
(l) Payment for nursing and allied health education for managed care enrollees

(1) In general

For portions of cost reporting periods occurring in a year (beginning with 2000), the Secretary shall provide for an additional payment amount for any hospital that receives payments for the costs of approved educational activities for nurse and allied health professional training under section 1395x(v)(1) of this title.

(2) Payment amount

The additional payment amount under this subsection for each hospital for portions of cost reporting periods occurring in a year shall be an amount specified by the Secretary in a manner consistent with the following:

(A) Determination of managed care enrollee payment ratio for graduate medical education payments

The Secretary shall estimate the ratio of payments for all hospitals for portions of cost reporting periods occurring in the year under subsection (h)(3)(D) of this section to total direct graduate medical education payments estimated for such portions of periods under subsection (h)(3) of this section.

(B) Application to fee-for-service nursing and allied health education payments

Such ratio shall be applied to the Secretary's estimate of total payments for nursing and allied health education to be distributed to hospitals under this subsection for portions of cost reporting periods occurring in the year; except that in no case shall such total amount exceed $60,000,000 in any year.

(C) Application to hospital

The amount of payment under this subsection to a hospital for portions of cost reporting periods occurring in a year is equal to the total amount of payments determined under subparagraph (B) for the year multiplied by the ratio of—

(i) the product of (I) the Secretary's estimate of the ratio of the amount of payments made under section 1395x(v) of this title to the hospital for nursing and allied health education activities for the hospital's cost reporting period ending in the second preceding fiscal year, to the hospital's total inpatient days for such period, and (II) the total number of inpatient days (as established by the Secretary) for such period which are attributable to services furnished to individuals who are enrolled under a risk sharing contract with an eligible organization under section 1395mm of this title and who are entitled to benefits under part A of this subchapter or who are enrolled with a Medicare+Choice organization under part C of this subchapter; to

(ii) the sum of the products determined under clause (i) for such cost reporting periods.

(m) Prospective payment for long-term care hospitals

(1) Reference to establishment and implementation of system

For provisions related to the establishment and implementation of a prospective payment system for payments under this subchapter for inpatient hospital services furnished by a long-term care hospital described in subsection (d)(1)(B)(iv), see section 123 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 and section 307(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000.

(2) Update for rate year 2008

In implementing the system described in paragraph (1) for discharges occurring during the rate year ending in 2008 for a hospital, the base rate for such discharges for the hospital shall be the same as the base rate for discharges for the hospital occurring during the rate year ending in 2007.

(3) Implementation for rate year 2010 and subsequent years

(A) In general

In implementing the system described in paragraph (1) for rate year 2010 and each subsequent rate year, any annual update to a standard Federal rate for discharges for the hospital during the rate year, shall be reduced—

(i) for rate year 2012 and each subsequent rate year, by the productivity adjustment described in subsection (h)(3)(B)(x)(II); and

(ii) for each of rate years 2010 through 2019, by the other adjustment described in paragraph (4).

(B) Special rule

The application of this paragraph may result in such annual update being less than 0.0 for a rate year, and may result in payment rates under the system described in paragraph (1) for a rate year being less than such payment rates for the preceding rate year.

(4) Other adjustment

For purposes of paragraph (3)(A)(ii), the other adjustment described in this paragraph is—

(A) for rate year 2010, 0.25 percentage point;

(B) for rate year 2011, 0.50 percentage point;

(C) for each of the rate years beginning in 2012 and 2013, 0.1 percentage point;

(D) for rate year 2014, 0.3 percentage point;

(E) for each of rate years 2015 and 2016, 0.2 percentage point; and

(F) for each of rate years 2017, 2018, and 2019, 0.75 percentage point.

(5) Quality reporting

(A) Reduction in update for failure to report

(i) In general

Under the system described in paragraph (1), for rate year 2014 and each subsequent
rate year, in the case of a long-term care hospital that does not submit data to the Secretary in accordance with subparagraph (C) with respect to such a rate year, any annual update to a standard Federal rate for discharges for the hospital during the rate year, and after application of paragraph (3), shall be reduced by 2 percentage points.

(ii) Special rule
The application of this subparagraph may result in such annual update being less than 0.0 for a rate year, and may result in payment rates under the system described in paragraph (1) for a rate year being less than such payment rates for the preceding rate year.

(B) Noncumulative application
Any reduction under subparagraph (A) shall apply only with respect to the rate year involved and the Secretary shall not take into account such reduction in computing the payment amount under the system described in paragraph (1) for a subsequent rate year.

(C) Submission of quality data
For rate year 2014 and each subsequent rate year, each long-term care hospital shall submit to the Secretary data on quality measures specified under subparagraph (D). Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this subparagraph.

(D) Quality measures
(i) In general
Subject to clause (ii), any measure specified by the Secretary under this subparagraph must have been endorsed by the entity with a contract under section 1395aaa(a) of this title.

(ii) Exception
In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1395aaa(a) of this title, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

(iii) Time frame
Not later than October 1, 2012, the Secretary shall publish the measures selected under this subparagraph that will be applicable with respect to rate year 2014.

(E) Public availability of data submitted
The Secretary shall establish procedures for making data submitted under subparagraph (C) available to the public. Such procedures shall ensure that a long-term care hospital has the opportunity to review the data that is to be made public with respect to the hospital prior to such data being made public. The Secretary shall report quality measures that relate to services furnished in inpatient settings in long-term care hospitals on the Internet website of the Centers for Medicare & Medicaid Services.

(n) Incentives for adoption and meaningful use of certified EHR technology
(1) In general
Subject to the succeeding provisions of this subsection, with respect to inpatient hospital services furnished by an eligible hospital during a payment year (as defined in paragraph (2)(G)), if the eligible hospital is a meaningful EHR user (as determined under paragraph (3)) for the EHR reporting period with respect to such year, in addition to the amount otherwise paid under this section, there also shall be paid to the eligible hospital, from the Federal Hospital Insurance Trust Fund established under section 1395i of this title, an amount equal to the applicable amount specified in paragraph (2)(A) for the hospital for such payment year.

(2) Payment amount
(A) In general
Subject to the succeeding subparagraphs of this paragraph, the applicable amount specified in this subparagraph for an eligible hospital for a payment year is equal to the product of the following:

(i) Initial amount
The sum of—
(I) the base amount specified in subparagraph (B); plus
(II) the discharge related amount specified in subparagraph (C) for a 12-month period selected by the Secretary with respect to such payment year.

(ii) Medicare share
The Medicare share as specified in subparagraph (D) for the eligible hospital for a period selected by the Secretary with respect to such payment year.

(iii) Transition factor
The transition factor specified in subparagraph (E) for the eligible hospital for the payment year.

(B) Base amount
The base amount specified in this subparagraph is $2,000,000.

(C) Discharge related amount
The discharge related amount specified in this subparagraph for a 12-month period selected by the Secretary shall be determined as the sum of the amount, estimated based upon total discharges for the eligible hospital (regardless of any source of payment) for the period, for each discharge up to the 23,000th discharge as follows:

(i) For the first through 1,149th discharge, $0.
(ii) For the 1,150th through the 23,000th discharge, $200.
(iii) For any discharge greater than the 23,000th, $0.

(D) Medicare share
The Medicare share specified under this subparagraph for an eligible hospital for a
period selected by the Secretary for a payment year is equal to the fraction—

(i) the numerator of which is the sum (for such period and with respect to the eligible hospital) of—

(I) the estimated number of inpatient-bed-days (as established by the Secretary) which are attributable to individuals with respect to whom payment may be made under part A; and

(II) the estimated total amount of the eligible hospital’s charges during such period, not including any charges that are attributable to charity care (as such term is used for purposes of hospital cost reporting under this subchapter), divided by the estimated total amount of the hospital’s charges during such period.

Insofar as the Secretary determines that data are not available on charity care necessary to calculate the portion of the formula specified in clause (ii)(II), the Secretary shall use data on uncompensated care and may adjust such data so as to be an appropriate proxy for charity care including a downward adjustment to eliminate bad debt data from uncompensated care data. In the absence of the data necessary, with respect to a hospital, for the Secretary to compute the amount described in clause (ii)(II), the amount under such clause shall be deemed to be 1. In the absence of data, with respect to a hospital, necessary to compute the amount described in clause (i)(II), the amount under such clause shall be deemed to be 0.

(E) Transition factor specified

(i) In general

Subject to clause (ii), the transition factor specified in this subparagraph for an eligible hospital for a payment year is as follows:

(I) For the first payment year for such hospital, 1.

(II) For the second payment year for such hospital, ¾.

(III) For the third payment year for such hospital, ⅔.

(IV) For the fourth payment year for such hospital, ⅓.

(V) For any succeeding payment year for such hospital, 0.

(ii) Phase down for eligible hospitals first adopting EHR after 2013

If the first payment year for an eligible hospital is after 2013, then the transition factor specified in this subparagraph for a payment year for such hospital is the same as the amount specified in clause (i) for such payment year for an eligible hospital for which the first payment year is 2013. If the first payment year for an eligible hospital is after 2015 then the transition factor specified in this subparagraph for such hospital and for such year and any subsequent year shall be 0.

(F) Form of payment

The payment under this subsection for a payment year may be in the form of a single consolidated payment or in the form of such periodic installments as the Secretary may specify.

(G) Payment year defined

(i) In general

For purposes of this subsection, the term “payment year” means a fiscal year beginning with fiscal year 2011.

(ii) First, second, etc. payment year

The term “first payment year” means, with respect to inpatient hospital services furnished by an eligible hospital, the first fiscal year for which an incentive payment is made for such services under this subsection. The terms “second payment year”, “third payment year”, and “fourth payment year” mean, with respect to an eligible hospital, each successive year immediately following the first payment year for that hospital.

(3) Meaningful EHR user

(A) In general

For purposes of paragraph (1), an eligible hospital shall be treated as a meaningful EHR user for an EHR reporting period for a payment year (or, for purposes of subsection (b)(3)(B)(ix), for an EHR reporting period under such subsection for a fiscal year) if each of the following requirements are met:

(i) Meaningful use of certified EHR technology

The eligible hospital demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period the hospital is using certified EHR technology in a meaningful manner.

(ii) Information exchange

The eligible hospital demonstrates to the satisfaction of the Secretary, in accordance with subparagraph (C)(i), that during such period such certified EHR technology is connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination.

(iii) Reporting on measures using EHR

Subject to subparagraph (B)(i) and using such certified EHR technology, the eligible hospital submits information for such period, in a form and manner specified by the Secretary, on such clinical quality meas-
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The Secretary shall seek to improve the use of electronic health records and health care quality over time by requiring more stringent measures of meaningful use selected under this paragraph.

(B) Reporting on measures

(i) Selection

The Secretary shall select measures for purposes of subparagraph (A)(ii) but only consistent with the following:

(I) The Secretary shall provide preference to clinical quality measures that have been selected for purposes of applying subsection (b)(3)(B)(viii) or that have been endorsed by the entity with a contract with the Secretary under section 1395aaa(a) of this title.

(II) Prior to any measure (other than a clinical quality measure that has been selected for purposes of applying subsection (b)(3)(B)(viii)) being selected under this subparagraph, the Secretary shall publish in the Federal Register such measure and provide for a period of public comment on such measure.

(ii) Limitations

The Secretary may not require the electronic reporting of information on clinical quality measures under subparagraph (A)(iii) unless the Secretary has the capacity to accept the information electronically, which may be on a pilot basis.

(iii) Coordination of reporting of information

In selecting such measures, and in establishing the form and manner for reporting measures under subparagraph (A)(iii), the Secretary shall seek to avoid redundant or duplicative reporting with reporting otherwise required, including reporting under subsection (b)(3)(B)(viii).

(C) Demonstration of meaningful use of certified EHR technology and information exchange

(i) In general

An eligible hospital may satisfy the demonstration requirement of clauses (i) and (ii) of subparagraph (A) through means specified by the Secretary, which may include—

(I) an attestation;

(II) the submission of claims with appropriate coding (such as a code indicating that inpatient care was documented using certified EHR technology);

(III) a survey response;

(IV) reporting under subparagraph (A)(iii); and

(V) other means specified by the Secretary.

(ii) Use of part D data

Notwithstanding sections 1395w–115(d)(2)(B) and 1395w–115(f)(2) of this title, the Secretary may use data regarding drug claims submitted for purposes of section 1395w–115 of this title that are necessary for purposes of subparagraph (A).

(4) Application

(A) Limitations on review

There shall be no administrative or judicial review under section 1395f of this title, section 1395oo of this title, or otherwise, of—

(i) the methodology and standards for determining payment amounts under this subsection and payment adjustments under subsection (b)(3)(B)(ix), including selection of periods under paragraph (2) for determining, and making estimates or using proxies of, discharges under paragraph (2)(C) and inpatient-bed-days, hospital charges, charity charges, and Medicare share under paragraph (2)(D);

(ii) the methodology and standards for determining a meaningful EHR user under paragraph (3), including selection of measures under paragraph (3)(B), specification of the means of demonstrating meaningful EHR use under paragraph (3)(C), and the hardship exception under subsection (b)(3)(B)(ix)(II); and

(iii) the specification of EHR reporting periods under paragraph (6)(B) and the selection of the form of payment under paragraph (2)(F).

(B) Posting on website

The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services, in an easily understandable format, a list of the names of the eligible hospitals that are meaningful EHR users under this subsection or subsection (b)(3)(B) (and a list of the names of critical access hospitals to which paragraph (3) or (4) of section 1395f(l) of this title applies), and other relevant data as determined appropriate by the Secretary. The Secretary shall ensure that an eligible hospital (or critical access hospital) has the opportunity to review the other relevant data that are to be made public with respect to the hospital (or critical access hospital) prior to such data being made public.

(5) Certified EHR technology defined

The term “certified EHR technology” has the meaning given such term in section 1395w–4(o) of this title.

(6) Definitions

For purposes of this subsection:

(A) EHR reporting period

The term “EHR reporting period” means, with respect to a payment year, any period (or periods) as specified by the Secretary.

(B) Eligible hospital

The term “eligible hospital” means a subsection (d) hospital.

(o) Hospital value-based purchasing program

(1) Establishment

(A) In general

Subject to the succeeding provisions of this subsection, the Secretary shall estab-
lish a hospital value-based purchasing program (in this subsection referred to as the "Program") under which value-based incentive payments are made in a fiscal year to hospitals that meet the performance standards under paragraph (3) for the performance period for such fiscal year (as established under paragraph (4)).

(B) Program to begin in fiscal year 2013
The Program shall apply to payments for discharges occurring on or after October 1, 2012.

(C) applicability of Program to hospitals

(i) In general
For purposes of this subsection, subject to clause (ii), the term "hospital" means a subsection (d) hospital (as defined in subsection (d)(1)(B)).

(ii) Exclusions
The term "hospital" shall not include, with respect to a fiscal year, a hospital—
(I) that is subject to the payment reduction under subsection (b)(3)(B)(viii)(I) for such fiscal year;
(II) for which, during the performance period for such fiscal year, the Secretary has cited deficiencies that pose immediate jeopardy to the health or safety of patients;
(III) for which there are not a minimum number (as determined by the Secretary) of measures that apply to the hospital for the performance period for such fiscal year; or
(IV) for which there are not a minimum number (as determined by the Secretary) of cases for the measures that apply to the hospital for the performance period for such fiscal year.

(iii) Independent analysis
For purposes of determining the minimum numbers under subclauses (III) and (IV) of clause (ii), the Secretary shall have conducted an independent analysis of what numbers are appropriate.

(iv) Exemption
In the case of a hospital that is paid under section 1395f(b)(3) of this title, the Secretary may exempt such hospital from the application of this subsection if the State which is paid under such section submits an annual report to the Secretary describing how a similar program in the State for a participating hospital or hospitals achieves or surpasses the measured results in terms of patient health outcomes and cost savings established under this subsection.

(2) Measures

(A) In general
The Secretary shall select measures, other than measures of readmissions, for purposes of the Program. Such measures shall be selected from the measures specified under subsection (b)(3)(B)(viii).

(B) Requirements

(i) For fiscal year 2013
For value-based incentive payments made with respect to discharges occurring during fiscal year 2013, the Secretary shall ensure the following:

(I) Conditions or procedures
Measures are selected under subparagraph (A) that cover at least the following 5 specific conditions or procedures:
(aa) Acute myocardial infarction (AMI).
(bb) Heart failure.
(cc) Pneumonia.
(dd) Surgeries, as measured by the Surgical Care Improvement Project (formerly referred to as "Surgical Infection Prevention" for discharges occurring before July 2006).
(ee) Healthcare-associated infections, as measured by the prevention metrics and targets established in the HHS Action Plan to Prevent Healthcare-Associated Infections (or any successor plan) of the Department of Health and Human Services.

(II) HCAHPS
Measures selected under subparagraph (A) shall be related to the Hospital Consumer Assessment of Healthcare Providers and Systems survey (HCAHPS).

(ii) Inclusion of efficiency measures
For value-based incentive payments made with respect to discharges occurring during fiscal year 2014 or a subsequent fiscal year, the Secretary shall ensure that measures selected under subparagraph (A) include efficiency measures, including measures of "Medicare spending per beneficiary". Such measures shall be adjusted for factors such as age, sex, race, severity of illness, and other factors that the Secretary determines appropriate.

(C) Limitations

(i) Time requirement for prior reporting and notice
The Secretary may not select a measure under subparagraph (A) for use under the Program with respect to a performance period for a fiscal year (as established under paragraph (4)) unless such measure has been specified under subsection (b)(3)(B)(viii) and included on the Hospital Compare Internet website for at least 1 year prior to the beginning of such performance period.

(ii) Measure not applicable unless hospital furnishes services appropriate to the measure
A measure selected under subparagraph (A) shall not apply to a hospital if such hospital does not furnish services appropriate to such measure.

(D) Replacing measures
Subclause (VI) of subsection (b)(3)(B)(viii) shall apply to measures selected under sub-
paragraph (A) in the same manner as such subclause applies to measures selected under such subsection.

(3) Performance standards

(A) Establishment
The Secretary shall establish performance standards with respect to measures selected under paragraph (2) for a performance period for a fiscal year (as established under paragraph (4)).

(B) Achievement and improvement
The performance standards established under subparagraph (A) shall include levels of achievement and improvement.

(C) Timing
The Secretary shall establish and announce the performance standards under subparagraph (A) not later than 60 days prior to the beginning of the performance period for the fiscal year involved.

(D) Considerations in establishing standards
In establishing performance standards with respect to measures under this paragraph, the Secretary shall take into account appropriate factors, such as—

(i) practical experience with the measures involved, including whether a significant proportion of hospitals failed to meet the performance standard during previous performance periods;
(ii) historical performance standards;
(iii) improvement rates; and
(iv) the opportunity for continued improvement.

(4) Performance period
For purposes of the Program, the Secretary shall establish the performance period for a fiscal year. Such performance period shall begin and end prior to the beginning of such fiscal year.

(5) Hospital performance score

(A) In general
Subject to subparagraph (B), the Secretary shall develop a methodology for assessing the total performance of each hospital based on performance standards with respect to the measures selected under paragraph (2) for a performance period (as established under paragraph (4)). Using such methodology, the Secretary shall provide for an assessment (in this subsection referred to as the “hospital performance score”) for each hospital for each performance period.

(B) Application

(i) Appropriate distribution
The Secretary shall ensure that the application of the methodology developed under subparagraph (A) results in an appropriate distribution of value-based incentive payments under paragraph (6) among hospitals achieving different levels of hospital performance scores, with hospitals achieving the highest hospital performance scores receiving the largest value-based incentive payments.

(ii) Higher of achievement or improvement
The methodology developed under subparagraph (A) shall provide that the hospital performance score is determined using the higher of its achievement or improvement score for each measure.

(iii) Weights
The methodology developed under subparagraph (A) shall provide for the assignment of weights for categories of measures as the Secretary determines appropriate.

(iv) No minimum performance standard
The Secretary shall not set a minimum performance standard in determining the hospital performance score for any hospital.

(v) Reflection of measures applicable to the hospital
The hospital performance score for a hospital shall reflect the measures that apply to the hospital.

(6) Calculation of value-based incentive payments

(A) In general
In the case of a hospital that the Secretary determines meets (or exceeds) the performance standards under paragraph (3) for the performance period for a fiscal year (as established under paragraph (4)), the Secretary shall increase the base operating DRG payment amount (as defined in paragraph (7)(D)), as determined after application of paragraph (7)(B)(i), for a hospital for each discharge occurring in such fiscal year by the value-based incentive payment amount.

(B) Value-based incentive payment amount
The value-based incentive payment amount for each discharge of a hospital in a fiscal year shall be equal to the product of—

(i) the base operating DRG payment amount (as defined in paragraph (7)(D)) for the discharge for the hospital for such fiscal year; and
(ii) the value-based incentive payment percentage specified under subparagraph (C) for the hospital for such fiscal year.

(C) Value-based incentive payment percentage

(i) In general
The Secretary shall specify a value-based incentive payment percentage for a hospital for a fiscal year.

(ii) Requirements
In specifying the value-based incentive payment percentage for each hospital for a fiscal year under clause (i), the Secretary shall ensure that—

(I) such percentage is based on the hospital performance score of the hospital under paragraph (5); and
(II) the total amount of value-based incentive payments under this paragraph to all hospitals in such fiscal year is equal to the total amount available for value-based incentive payments for such
fiscal year under paragraph (7)(A), as estimated by the Secretary.

(7) Funding for value-based incentive payments

(A) Amount

The total amount available for value-based incentive payments under paragraph (6) for all hospitals for a fiscal year shall be equal to the total amount of reduced payments for all hospitals under subparagraph (B) for such fiscal year, as estimated by the Secretary.

(B) Adjustment to payments

(i) In general

The Secretary shall reduce the base operating DRG payment amount (as defined in subparagraph (D)) for a hospital for each discharge in a fiscal year (beginning with fiscal year 2013) by an amount equal to the applicable percent (as defined in subparagraph (C)) of the base operating DRG payment amount for the discharge for the hospital for such fiscal year. The Secretary shall make such reductions for all hospitals in the fiscal year involved, regardless of whether or not the hospital has been determined by the Secretary to have earned a value-based incentive payment under paragraph (6) for such fiscal year.

(ii) No effect on other payments

Payments described in items (aa) and (bb) of subparagraph (D)(i)(II) for a hospital shall be determined as if this subsection had not been enacted.

(C) Applicable percent defined

For purposes of subparagraph (B), the term “applicable percent” means—

(i) with respect to fiscal year 2013, 1.0 percent;
(ii) with respect to fiscal year 2014, 1.25 percent;
(iii) with respect to fiscal year 2015, 1.5 percent;
(iv) with respect to fiscal year 2016, 1.75 percent; and
(v) with respect to fiscal year 2017 and succeeding fiscal years, 2 percent.

(D) Base operating DRG payment amount defined

(i) In general

Except as provided in clause (ii), in this subsection, the term “base operating DRG payment amount” means, with respect to a hospital for a fiscal year—

(I) the payment amount that would otherwise be made under subsection (d) (determined without regard to subsection (q)) for a discharge if this subsection did not apply; reduced by

(II) any portion of such payment amount that is attributable to—

(aa) payments under paragraphs (5)(A), (5)(B), (5)(F), and (12) of subsection (d); and

(bb) such other payments under subsection (d) determined appropriate by the Secretary.

(ii) Special rules for certain hospitals

(I) Sole community hospitals and medicare-dependent, small rural hospitals

In the case of a medicare-dependent, small rural hospital (with respect to discharges occurring during fiscal year 2012 and 2013) or a sole community hospital, in applying subparagraph (A)(i), the payment amount that would otherwise be made under subsection (d) shall be determined without regard to subparagraphs (I) and (L) of subsection (b)(3) and subparagraphs (D) and (G) of subsection (d)(5).

(II) Hospitals paid under section 1395f

In the case of a hospital that is paid under section 1395f(b)(3) of this title, the term “base operating DRG payment amount” means the payment amount under such section.

(8) Announcement of net result of adjustments

Under the Program, the Secretary shall, not later than 60 days prior to the fiscal year involved, inform each hospital of the adjustments to payments to the hospital for discharges occurring in such fiscal year under paragraphs (6) and (7)(B)(i).

(9) No effect in subsequent fiscal years

The value-based incentive payment under paragraph (6) and the payment reduction under paragraph (7)(B)(i) shall each apply only with respect to the fiscal year involved, and the Secretary shall not take into account such value-based incentive payment or payment reduction in making payments to a hospital under this section in a subsequent fiscal year.

(10) Public reporting

(A) Hospital specific information

(i) In general

The Secretary shall make information available to the public regarding the performance of individual hospitals under the Program, including—

(I) the performance of the hospital with respect to each measure that applies to the hospital;

(II) the performance of the hospital with respect to each condition or procedure; and

(III) the hospital performance score assessing the total performance of the hospital.

(ii) Opportunity to review and submit corrections

The Secretary shall ensure that a hospital has the opportunity to review, and submit corrections for, the information to be made public with respect to the hospital under clause (i) prior to such information being made public.

(iii) Website

Such information shall be posted on the Hospital Compare Internet website in an easily understandable format.

(B) Aggregate information

The Secretary shall periodically post on the Hospital Compare Internet website ag-
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In general

In order to provide an incentive for applicable hospitals to reduce hospital acquired conditions under this subchapter, with respect to discharges from an applicable hospital occurring during fiscal year 2015 or a subsequent fiscal year, the amount of payment under this section or section 1395f(b)(3) of this title, as applicable, for such discharges during the fiscal year shall be equal to 99 percent of the amount of payment that would otherwise apply to such discharges under this section or section 1395f(b)(3) of this title (determined after the application of subsections (o) and (q) and section 1395f(l)(4) but without regard to this subsection).

(2) Applicable hospitals

(A) In general

For purposes of this subsection, the term “applicable hospital” means a subsection (d) hospital that meets the criteria described in subparagraph (B).

(B) Criteria described

(i) In general

The criteria described in this subparagraph, with respect to a subsection (d) hospital, is that the subsection (d) hospital is in the top quartile of all subsection (d) hospitals, relative to the national average, of hospital acquired conditions during the applicable period, as determined by the Secretary.

(ii) Risk adjustment

In carrying out clause (i), the Secretary shall establish and apply an appropriate risk adjustment methodology.

(C) Exemption

In the case of a hospital that is paid under section 1395f(b)(3) of this title, the Secretary may exempt such hospital from the application of this subsection if the State which is paid under such section submits an annual report to the Secretary describing how a similar program in the State for a participating hospital or hospitals achieves or surpasses the measured results in terms of patient health outcomes and cost savings established under this subsection.

(3) Hospital acquired conditions

For purposes of this subsection, the term “hospital acquired condition” means a condition identified for purposes of subsection (d)(4)(D)(iv) and any other condition determined appropriate by the Secretary that an individual acquires during a stay in an applicable hospital, as determined by the Secretary.

(4) Applicable period

In this subsection, the term “applicable period” means, with respect to a fiscal year, a period specified by the Secretary.

(5) Reporting to hospitals

Prior to fiscal year 2015 and each subsequent fiscal year, the Secretary shall provide confidential reports to applicable hospitals with respect to hospital acquired conditions of the applicable hospital during the applicable period.
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(6) Reporting hospital specific information
(A) In general
The Secretary shall make information available to the public regarding hospital acquired conditions of each applicable hospital.

(B) Opportunity to review and submit corrections
The Secretary shall ensure that an applicable hospital has the opportunity to review, and submit corrections for, the information to be made public with respect to the hospital under subparagraph (A) prior to such information being made public.

(C) Website
Such information shall be posted on the Hospital Compare Internet website in an easily understandable format.

(7) Limitations on review
There shall be no administrative or judicial review under section 1395f of this title, section 1395oo of this title, or otherwise of the following:
(A) The criteria described in paragraph (2)(A).
(B) The specification of hospital acquired conditions under paragraph (6).
(C) The specification of the applicable period under paragraph (4).
(D) The provision of reports to applicable hospitals under paragraph (5) and the information made available to the public under paragraph (6).

(q) Hospital readmissions reduction program

(1) In general
With respect to payment for discharges from an applicable hospital (as defined in paragraph (5)(C)) occurring during a fiscal year beginning on or after October 1, 2012, in order to account for excess readmissions in the hospital, the Secretary shall make payments (in addition to the payments described in paragraph (2)(A)(ii)) for such a discharge to such hospital under subsection (d) (or section 1395f(b)(3) of this title, as the case may be) in an amount equal to the product of—
(A) the base operating DRG payment amount (as defined in paragraph (2)) for the discharge; and
(B) the adjustment factor (described in paragraph (3)(A)) for the hospital for the fiscal year.

(2) Base operating DRG payment amount defined
(A) In general
Except as provided in subparagraph (B), in this subsection, the term “base operating DRG payment amount” means, with respect to a hospital for a fiscal year—
(i) the payment amount that would otherwise be made under subsection (d) (determined without regard to subsection (e)) for a discharge if this subsection did not apply; reduced by
(ii) any portion of such payment amount that is attributable to payments under paragraphs (5)(A), (5)(B), (5)(F), and (12) of subsection (d).

(B) Special rules for certain hospitals
(i) Sole community hospitals and medicare-dependent, small rural hospitals
In the case of a medicare-dependent, small rural hospital (with respect to discharges occurring during fiscal years 2012 and 2013) or a sole community hospital, in applying subparagraph (A)(i), the payment amount that would otherwise be made under subsection (d) shall be determined without regard to subparagraphs (I) and (L) of subsection (b)(3) and subparagraphs (D) and (G) of subsection (d)(5).

(ii) Hospitals paid under section 1395f of this title
In the case of a hospital that is paid under section 1395f(b)(3) of this title, the Secretary may exempt such hospitals provided that States paid under such section submit an annual report to the Secretary describing how a similar program in the State for a participating hospital or hospitals achieves or surpasses the measured results in terms of patient health outcomes and cost savings established herein with respect to this section.

(3) Adjustment factor
(A) In general
For purposes of paragraph (1), the adjustment factor under this paragraph for an applicable hospital for a fiscal year is equal to the greater of—
(i) the ratio described in subparagraph (B) for the hospital for the applicable period (as defined in paragraph (5)(D)) for such fiscal year; or
(ii) the floor adjustment factor specified in subparagraph (C).

(B) Ratio
The ratio described in this subparagraph for a hospital for an applicable period is equal to 1 minus the ratio of—
(i) the aggregate payments for excess readmissions (as defined in paragraph (4)(A)) with respect to an applicable hospital for the applicable period; and
(ii) the aggregate payments for all discharges (as defined in paragraph (4)(B)) with respect to such applicable hospital for such applicable period.

(C) Floor adjustment factor
For purposes of subparagraph (A), the floor adjustment factor specified in this subparagraph for—
(i) fiscal year 2013 is 0.99;
(ii) fiscal year 2014 is 0.98; or
(iii) fiscal year 2015 and subsequent fiscal years is 0.97.

(4) Aggregate payments, excess readmission ratio defined
For purposes of this subsection:
(A) Aggregate payments for excess readmissions
The term “aggregate payments for excess readmissions” means, for a hospital for an
applicable period, the sum, for applicable conditions (as defined in paragraph (5)(A)), of the product, for each applicable condition, of—

(i) the base operating DRG payment amount for such hospital for such applicable period for such condition;

(ii) the number of admissions for such applicable period for such hospital;

(iii) the excess readmissions ratio (as defined in subparagraph (C)) for such applicable hospital for such applicable period.

(B) Aggregate payments for all discharges

The term “aggregate payments for all discharges” means, for a hospital for an applicable period, the sum of the base operating DRG payment amounts for all discharges for all conditions from such hospital for such applicable period.

(C) Excess readmission ratio

(i) In general

Subject to clause (ii), the term “excess readmissions ratio” means, with respect to an applicable condition for a hospital for an applicable period, the ratio (but not less than 1.0) of—

(I) the risk adjusted readmissions based on actual readmissions, as determined consistent with a readmission measure methodology that has been endorsed under paragraph (5)(A)(ii)(I), for an applicable hospital for such condition for such applicable period to such applicable period; and

(II) the risk adjusted expected readmissions (as determined consistent with such a methodology) for such hospital for such condition with respect to such applicable period.

(ii) Exclusion of certain readmissions

For purposes of clause (i), with respect to a hospital, excess readmissions shall not include readmissions for an applicable condition for which there are fewer than a minimum number (as determined by the Secretary) of discharges for such applicable condition for the applicable period and such hospital.

(5) Definitions

For purposes of this subsection:

(A) Applicable condition

The term “applicable condition” means, subject to subparagraph (B), a condition or procedure selected by the Secretary among conditions and procedures for which—

(I) readmissions (as defined in subparagraph (B)) that represent conditions or procedures that are high volume or high expenditures under this subchapter (or other criteria specified by the Secretary); and

(II) measures of such readmissions—

(I) have been endorsed by the entity with a contract under section 1395aaa(a) of this title; and

(II) such endorsed measures have exclusions for readmissions that are unrelated to the prior discharge (such as a planned readmission or transfer to another applicable hospital).

(B) Expansion of applicable conditions

Beginning with fiscal year 2015, the Secretary shall, to the extent practicable, expand the applicable conditions beyond the 3 conditions for which measures have been endorsed as described in subparagraph (A)(ii)(I) as of March 23, 2010, to the additional 4 conditions that have been identified by the Medicare Payment Advisory Commission in its report to Congress in June 2007 and to other conditions and procedures as determined appropriate by the Secretary. In expanding such applicable conditions, the Secretary shall seek the endorsement described in subparagraph (A)(ii)(I) but may apply such measures without such an endorsement in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1395aaa(a) of this title as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

(C) Applicable hospital

The term “applicable hospital” means a subsection (d) hospital or a hospital that is paid under section 1395f(b)(3) of this title, as the case may be.

(D) Applicable period

The term “applicable period” means, with respect to a fiscal year, such period as the Secretary shall specify.

(E) Readmission

The term “readmission” means, in the case of an individual who is discharged from an applicable hospital, the admission of the individual to the same or another applicable hospital within a time period specified by the Secretary from the date of such discharge. Insofar as the discharge relates to an applicable condition for which there is an endorsed measure described in subparagraph (A)(ii)(I), such time period (such as 30 days) shall be consistent with the time period specified for such measure.

(6) Reporting hospital specific information

(A) In general

The Secretary shall make information available to the public regarding readmission rates of each subsection (d) hospital under the program.

(B) Opportunity to review and submit corrections

The Secretary shall ensure that a subsection (d) hospital has the opportunity to review, and submit corrections for, the information to be made public with respect to the hospital under subparagraph (A) prior to such information being made public.

(C) Website

Such information shall be posted on the Hospital Compare Internet website in an easily understandable format.
(7) Limitations on review

There shall be no administrative or judicial review under section 1395ff of this title, section 1395oo of this title, or otherwise of the following:

(A) The determination of base operating DRG payment amounts;

(B) The methodology for determining the adjustment factor under paragraph (3), including excess readmissions ratio under paragraph (4)(C), aggregate payments for excess readmissions under paragraph (4)(A), and aggregate payments for all discharges under paragraph (4)(B), and applicable periods and applicable conditions under paragraph (5).

(C) The measures of readmissions as described in paragraph (5)(A)(ii).

(8) Readmission rates for all patients

(A) Calculation of readmission

The Secretary shall calculate readmission rates for all patients (as defined in subparagraph (D)) for a specified hospital (as defined in subparagraph (D)(ii)) for an applicable condition (as defined in paragraph (5)(B)) and other conditions deemed appropriate by the Secretary for an applicable period (as defined in paragraph (5)(D)) in the same manner as used to calculate such readmission rates for hospitals with respect to this subchapter and posted on the CMS Hospital Compare website.

(B) Posting of hospital specific all patient readmission rates

The Secretary shall make information on all patient readmission rates calculated under subparagraph (A) available on the CMS Hospital Compare website in a form and manner determined appropriate by the Secretary. The Secretary may also make other information determined appropriate by the Secretary available on such website.

(C) Hospital submission of all patient data

(i) Except as provided for in clause (ii), each specified hospital (as defined in subparagraph (D)(ii)) shall submit to the Secretary, in a form, manner and time specified by the Secretary, data and information determined necessary by the Secretary for the Secretary to calculate the all patient readmission rates described in subparagraph (A).

(ii) Instead of a specified hospital submitting to the Secretary the data and information described in clause (i), such data and information may be submitted to the Secretary, on behalf of such a specified hospital, by a state or an entity determined appropriate by the Secretary.

(D) Definitions

For purposes of this paragraph:

(i) The term “all patients” means patients who are treated on an inpatient basis and discharged from a specified hospital (as defined in clause (ii)).

(ii) The term “specified hospital” means a subsection (d) hospital, hospitals described in clauses (i) through (v) of subsection (d)(1)(B) and, as determined feasible and appropriate by the Secretary, other hospitals not otherwise described in this subparagraph.

(e) Adjustments to Medicare DSH payments

(1) Empirically justified DSH payments

For fiscal year 2014 and each subsequent fiscal year, instead of the amount of disproportionate share hospital payment that would otherwise be made under subsection (d)(5)(F) to a subsection (d) hospital for the fiscal year, the Secretary shall pay to the subsection (d) hospital 25 percent of such amount (which represents the empirically justified amount for such payment, as determined by the Medicare Payment Advisory Commission in its March 2007 Report to the Congress).

(2) Additional payment

In addition to the payment made to a subsection (d) hospital under paragraph (1), for fiscal year 2014 and each subsequent fiscal year, the Secretary shall pay to such subsection (d) hospitals an additional amount equal to the product of the following factors:

(A) Factor one

A factor equal to the difference between—

(i) the aggregate amount of payments that would be made to subsection (d) hospitals under subsection (d)(5)(F) if this subsection did not apply for such fiscal year (as estimated by the Secretary); and

(ii) the aggregate amount of payments that are made to subsection (d) hospitals under paragraph (1) for such fiscal year (as so estimated).

(B) Factor two

(i) Fiscal years 2014, 2015, 2016, and 2017

For each of fiscal years 2014, 2015, 2016, and 2017, a factor equal to 1 minus the percent change in the percent of individuals under the age of 65 who are uninsured, as determined by comparing the percent of such individuals—

(I) who are uninsured in 2013, the last year before coverage expansion under the Patient Protection and Affordable Care Act (as calculated by the Secretary based on the most recent estimates available from the Director of the Congressional Budget Office before a vote in either House on the Health Care and Education Reconciliation Act of 2010 that, if determined in the affirmative, would clear such Act for enrollment); and

(II) who are uninsured in the most recent period for which data is available (as so calculated), minus 0.1 percentage points for fiscal year 2014 and minus 0.2 percentage points for each of fiscal years 2015, 2016, and 2017.

(ii) 2018 and subsequent years

For fiscal year 2018 and each subsequent fiscal year, a factor equal to 1 minus the percent change in the percent of individuals who are uninsured, as determined by comparing the percent of individuals—
(I) who are uninsured in 2013 (as estimated by the Secretary, based on data from the Census Bureau or other sources the Secretary determines appropriate, and certified by the Chief Actuary of the Centers for Medicare & Medicaid Services); and

(ii) for each of the rate years beginning in 2010 through 2019, by the other adjustment described in paragraph (3).

(B) Special rule
The application of this paragraph may result in such update being less than 0.0 for a rate year, and may result in payment rates under the system described in paragraph (1) for a rate year being less than such payment rates for the preceding rate year.

(3) Other adjustment
For purposes of paragraph (2)(A)(i), the other adjustment described in this paragraph is—

(A) for each of the rate years beginning in 2010 and 2011, 0.25 percentage point;

(B) for each of the rate years beginning in 2012 and 2013, 0.1 percentage point;

(C) for the rate year beginning in 2014, 0.3 percentage point;

(D) for each of the rate years beginning in 2015 and 2016, 0.2 percentage point; and

(E) for each of the rate years beginning in 2017, 2018, and 2019, 0.75 percentage point.

(4) Quality reporting

(A) Reduction in update for failure to report

(i) In general

Under the system described in paragraph (1), for rate year 2014 and each subsequent rate year, in the case of a psychiatric hospital or psychiatric unit that does not submit data to the Secretary in accordance with subparagraph (C) with respect to such a rate year, any annual update to a standard Federal rate for discharges for the hospital during the rate year, and after application of paragraph (2), shall be reduced by 2 percentage points.

(ii) Special rule

The application of this subparagraph may result in such annual update being less than 0.0 for a rate year, and may result in payment rates under the system described in paragraph (1) for a rate year being less than such payment rates for the preceding rate year.

(B) Noncumulative application

Any reduction under subparagraph (A) shall apply only with respect to the rate year involved and the Secretary shall not take into account such reduction in computing the payment amount under the system described in paragraph (1) for a subsequent rate year.

(C) Submission of quality data

For rate year 2014 and each subsequent rate year, each psychiatric hospital and psychiatric unit shall submit to the Secretary data on quality measures specified under subparagraph (D). Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this subparagraph.

(D) Quality measures

(i) In general

Subject to clause (ii), any measure specified by the Secretary under this subpara-
graph must have been endorsed by the entity with a contract under section 1395aaa(a) of this title.

(ii) Exception

In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1395aaa(a) of this title, the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

(iii) Time frame

Not later than October 1, 2012, the Secretary shall publish the measures selected under this subparagraph that will be applicable with respect to rate year 2013.

(E) Public availability of data submitted

The Secretary shall establish procedures for making data submitted under subparagraph (C) available to the public. Such procedures shall ensure that a psychiatric hospital and a psychiatric unit have the opportunity to review the data that is to be made public with respect to the hospital or unit prior to such data being made public. The Secretary shall report quality measures that relate to services furnished in inpatient settings in psychiatric hospitals and psychiatric units on the Internet website of the Centers for Medicare & Medicaid Services.
REFERENCES IN TEXT
Section 5001(b) of the Deficit Reduction Act of 2005, referred to in subsec. (b)(3)(B)(vii)(I), is section 5001(b) of Pub. L. 109–171, which is set out below.


The Internal Revenue Code of 1986, referred to in subsec. (b)(6), is classified generally to Title 26, Internal Revenue Code.

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (c)(4)(B), is section 222(a) of Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1329, which is set out as a note under section 1395b–1 of this title.

Section 9101(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985, referred to in subsec. (d)(2)(C)(i), is section 9101(a) of Pub. L. 99–272, which amended subsec. (d)(5)(B) of this section.


Section 1395f of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (d)(2)(C)(iv), is section 1395f of Pub. L. 100–203, which enacted provisions set out as a note under this section.

Section 1395f of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (d)(2)(C)(iv), is section 1395f of Pub. L. 100–203, which enacted provisions set out as a note under this section.

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Section 1395f of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (d)(2)(C)(iv), is section 1395f of Pub. L. 100–203, which enacted provisions set out as a note under this section.


Such section 332(a)(1)(A), referred to in subsec. (b)(8)(D)(ii)(I), probably means section 332(a)(1)(A) of the Public Health Service Act, which is classified to section 254(a)(1)(A) of this title.

Section 4005(e) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (1), is section 4005(e) of Pub. L. 105–110, which is set out below.

Section 123 of the Medicare, Medicaid, and SCHIP Balanced Budget Reconciliation Act of 1999, referred to in subsec. (m)(1), is section 1000(a)(6) (title I, § 123) of Pub. L. 106–113, which enacted provisions set out as a note under this section.

Section 307(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, referred to in subsec. (m)(1), is section 1(a)(6) (title I, § 123) of Pub. L. 106–113, which enacted provisions set out as a note under this section.


AMENDMENTS

2010—Subsec. (a)(4). Pub. L. 111–152, §102(a)(1), inserted “‘applying the first sentence of this paragraph, the term ‘other services related to the admission’ includes all services that are not diagnostic services (other than ambulance and maintenance renal dialysis services) for which payment may be made under this subchapter that are provided by a hospital (or an entity wholly owned or operated by the hospital) to a patient—’” after “hemophilia,” and added subpar. (A) and (B).


Subsec. (b)(3)(B)(VIII)(V). Pub. L. 111–148, §3001(a)(2), inserted “of such applicable percentage increase (determined without regard to clause (ix), (x), or (xii)) after ‘one-quarter’”.

Subsec. (b)(3)(B)(VIII)(I). Pub. L. 111–148, §3001(a)(2), inserted at end “The Secretary may require hospitals to submit data on measures that are not used for the determination of value-based incentive payments under subsection (a)”.


Subsec. (d)(12)(A). Pub. L. 111–148, §3125(1), inserted “or (D)” after “paragraph (B)”.

Subsec. (d)(12)(B). Pub. L. 111–148, §3125(2), substituted “For discharges occurring in fiscal years 2005 through 2010 and for discharges occurring in fiscal year 2011 and subsequent fiscal years, the Secretary” for “The Secretary” in introductory provisions.


Pub. L. 111–148, §3125(3), inserted “(or, with respect to fiscal years 2011 and 2012, 15 road miles)” after “25 road miles” and “(or, with respect to fiscal years 2011 and 2012, 1,500 discharges of individuals entitled to, or enrolled for, benefits under part A)” after “800 discharges”.

Subsec. (d)(12)(D). Pub. L. 111–148, §10314(2), substituted “1,600 discharges” for “1,500 discharges”.


Subsec. (h)(4)(E). Pub. L. 111–148, §5506(a)(1)(A), substituted “Subject to subparagraphs (J) and (K), such rules” for “Such rules” in introductory provisions.

Subsec. (h)(4)(F)(i). Pub. L. 111–148, §5503(a)(1), substituted “paragraphs (7) and (8)” for “paragraph (7)”.

Subsec. (h)(4)(G)(i). Pub. L. 111–148, §5503(a)(2), substituted “paragraphs (7) and (8)” for “paragraph (7)”.


Subsec. (h)(7)(E). Pub. L. 111–148, §5506(e), substituted “this paragraph, paragraph (8), or paragraph (4)(H)(vi)” for “paragraph or paragraph (8)”.

Pub. L. 111–148, §5506(a)(3), inserted “or paragraph (8)” before period at end.


Subsec. (j)(3)(D). Pub. L. 111–152, §1105(c)(3), struck out cl. (i) designation and heading, redesignated subcl. (I) to (V) of former cl. (i) as cls. (I) to (V), respectively, and realigned margins.


Subsec. (j)(3)(D)(i)(III). Pub. L. 111–152, §1105(c)(1)(B), added subcl. (III) and struck out former subcl. (III) which read “subject to clause (ii)” for “paragraph of subparagraph (B)”.


Subsec. (d)(12)(A). Pub. L. 111–148, §3125(1), inserted “or (D)” after “paragraph (B)”.

Subsec. (d)(12)(B). Pub. L. 111–148, §3125(2), substituted “For discharges occurring in fiscal years 2005 through 2010 and for discharges occurring in fiscal year 2011 and subsequent fiscal years, the Secretary” for “The Secretary” in introductory provisions.


Pub. L. 111–148, §3125(3), inserted “(or, with respect to fiscal years 2011 and 2012, 15 road miles)” after “25 road miles” and “(or, with respect to fiscal years 2011 and 2012, 1,500 discharges of individuals entitled to, enrolled for, benefits under part A)” after “800 discharges”.

Subsec. (d)(12)(D). Pub. L. 111–148, §10314(2), substituted “1,600 discharges” for “1,500 discharges”.


Subsec. (h)(7)(E). Pub. L. 111–148, §5506(e), substituted “this paragraph, paragraph (8), or paragraph (4)(H)(vi)” for “paragraph or paragraph (8)”.

Pub. L. 111–148, §5506(a)(3), inserted “or paragraph (8)” before period at end.


Subsec. (j)(3)(D). Pub. L. 111–152, §1105(c)(3), struck out cl. (i) designation and heading, redesignated subcl. (I) to (V) of former cl. (i) as cls. (I) to (V), respectively, and realigned margins.


Subsec. (j)(3)(D)(i)(III). Pub. L. 111–152, §1105(c)(1)(B), added subcl. (III) and struck out former subcl. (III) which read as follows: “subject to clause (ii)”, for each of fiscal years 2014 through 2019, 0.2 percentage point.”.

Pub. L. 111–148, §10319(c)(2), (4), redesignated subcl. (II) as (III) and substituted “2014” for “2012”.

Subsec. (j)(3)(D)(i)(IV). Pub. L. 111–148, §3125(3), inserted “(or, with respect to fiscal years 2011 and 2012, 15 road miles)” after “25 road miles” and “(or, with respect to fiscal years 2011 and 2012, 1,500 discharges of individuals entitled to, enrolled for, benefits under part A)” after “800 discharges”.


Subsec. (h)(4)(E). Pub. L. 111–148, §5506(a)(1)(A), substituted “Subject to subparagraphs (J) and (K), such rules” for “Such rules” in introductory provisions.

“(ii) 5 percentage points.”


Subsec. (h)(7)(D), (E). Pub. L. 110–161, §225(b)(1), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (j)(3)(C). Pub. L. 110–173, §115(a)(1), inserted at end “The increase factor to be applied under this subparagraph for each of fiscal years 2008 and 2009 shall be 0 percent.”


Subsec. (b)(3)(B)(x)(XX). Pub. L. 109–171, §5001(a)(1)(B), substituted “for each subsequent fiscal year, subject to clause (viii),” for “for fiscal years 2008 and each subsequent fiscal year,.”


Subsec. (b)(3)(B)(viii). Pub. L. 109–432, §736(a)(9), substituted “the amount” for “the amount”.


Subsec. (d)(3)(D). Pub. L. 108–173, §401(b)(1)(A), (B), (2)(B), in heading, struck out “in different areas” after “hospitals” and, in introductory provisions, inserted “, for fiscal years before fiscal year 1997,” before “a regional DRG prospective payment rate” and struck out “, each of” before “which is equal—”.


Subsec. (d)(3)(E). Pub. L. 108–173, §408(a), designated existing provisions as cl. (I), inserted cl. heading, substituted “Except as provided in clause (ii), the Secretary” for “‘The Secretary’, inserted at end ‘The Secretary shall apply the previous sentence for any period or if the amendments made by section 408(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 had not been enacted.”.” and added cl. (ii).


Subsec. (d)(5)(B)(v). Pub. L. 108–173, § 422(b)(1)(B), inserted at end “The provisions of subsection (h)(7) of this section shall apply with respect to the first sentence of this clause in the same manner as it applies with respect to subsection (h)(4)(F)(I) of this section.”


Subsec. (d)(5)(F)(xvi) to (VI). Pub. L. 108–173, § 402(b)(1)(A), inserted “subject to clause (xvi) and” before “for discharges occurring.”


Subsec. (d)(5)(K)(i). Pub. L. 108–173, § 503(b)(2)(A), inserted “applying a threshold specified by the Secretary that is the lesser of 75 percent of the standardized amount (increased to reflect the difference between costs and charges) or 75 percent of one standard deviation for the diagnosis-related group involved)” after “is inadequate.”


Subsec. (d)(7)(A). Pub. L. 108–173, § 406(b), inserted “or the determination of the applicable percentage increase under paragraph (12)(A)(ii)” after “to subsection (e)(1) of this section.”


“. . .the national adjusted DRG prospective payment rate (determined under paragraph (3)(D)) for hospitals located in a large urban area, “(i) such rate for hospitals located in other urban areas, and “(iii) such rate for hospitals located in a rural area, “for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels. As used in this section, the term ‘subsection (d) Puerto Rico hospital’ means a hospital that is located in Puerto Rico and that would be a subsection (d) hospital (as defined in paragraph (1)(B)) if it were located in one of the fifty States.”


Subsec. (d)(9)(C)(ii). Pub. L. 108–173, § 401(c)(2)(B), inserted “(or for fiscal year 2004 and thereafter, the average standardized amount)” after “each of the average standardized amounts”.

Subsec. (d)(9)(C)(iii). Pub. L. 108–173, § 401(c)(2)(C), struck out “for hospitals located in an urban or rural area, respectively” after “reduced under clause (i)”.


Subsec. (h)(4)(H)(i). Pub. L. 108–173, § 422(a)(2), inserted “and subject to paragraph (7)” after “paragraphs (F) and (G)”.


Pub. L. 106–554, § 1(a)(6) (title III, § 301(a)(2)(A)), which directed amendment of subcl. (XVII) by “striking ‘minus 1.1 percentage points’ and inserting ‘minus 0.55 percentage points; and, was executed as an end quotation mark for the inserted material followed “points’, to reflect the probable intent of Congress.


Subsec. (b)(3)(I). Pub. L. 106–554, § 1(a)(6) (title II, § 219(a)(1)), in introductory provisions, substituted “there shall be substituted for the amount otherwise determined under subsection (d)(5)(D)(i) of this section, if such substitution results in a greater amount of payment under this section for the hospital” for “that for its cost reporting period beginning during 1999 is paid on the basis of the target amount applicable to the hospital under subparagraph (C) and that elects (in a form and manner determined by the Secretary) this subparagraph to apply to the hospital, there shall be substituted for such target amount”.

Subsec. (b)(3)(I)(i). Pub. L. 106–554, § 1(a)(6) (title II, § 219(a)(2)), substituted “the amount otherwise applicable to the hospital under subsection (d)(5)(D)(i) of this section (referred to in this clause as the ‘subsection (d)(5)(D)(i) amount’)” for “target amount otherwise applicable to the hospital under subparagraph (C) (referred to in this clause as the ‘subsection (C) target amount’).”
Subsec. (b)(3)(I)(ii), (III). Pub. L. 106–554, § 1(a)(6) [title II, § 213(a)], redesignated former subcl. (XV) as (XVI), and redesignated former subcl. (XVIII) as (XIX). Pub. L. 106–554, § 1(a)(6) [title V, § 533(b)], substituted “‘other than a facility making an election under subparagraph (F)’” for “in a cost reporting period” in introductory provisions.

Subsec. (b)(3)(B). Pub. L. 106–554, § 1(a)(6) [title IV, § 406], added subcls. (XVI) and (XVII), redesignated former subcl. (XV) as (XVI), and struck out “and 2 percent, respectively” after “3 percent”.

Subsec. (b)(3)(C). Pub. L. 106–113, § 1000(a)(6) [title IV, § 406], added subcls. (XVI) and (XVII), redesignated former subcl. (XV) as (XVI), and struck out former subcl. (XVI) which read as follows: “For each of the fiscal years 2001 and 2002, the market basket percentage increase minus 1.1 percentage point for hospitals in all areas, and”.

Subsec. (b)(3)(D)(i). Pub. L. 106–113, § 1000(a)(6) [title IV, § 406], added subcl. (D)(i), redesignated former subcl. (D)(ii) as (D)(iii), and inserted “or the enactment of section 303 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000” after “Balanced Budget Reconciliation Act of 1997”.


Subsec. (b)(3)(E). Pub. L. 106–554, § 1(a)(6) [title III, § 303(c)], substituted “‘other than a facility making an election under subparagraph (F)’” for “in a cost reporting period” in introductory provisions.


Subsec. (b)(3)(H)(i) to (iii). Pub. L. 106–113, §1000(a)(6) [title I, §121(a)], added cl. (i), redesignated former cl. (i) as subcl. (I) of cl. (ii) and inserted “as adjusted under clause (ii)” after “fiscal year 1996,” redesignated former cl. (i) as subcl. (II) of cl. (ii) and inserted “subclause (I)” for “clause (I)” and “such subclause for such clause”, added cl. (iii), and redesignated former cl. (ii) as subcl. (III) of cl. (ii).


Subsec. (b)(7)(A)(i)(II). Pub. L. 106–113, §1000(a)(6) [title III, §321(h)], inserted “(as estimated by the Secretary) after “median”.


Subsec. (d)(5)(B)(i)(V). Pub. L. 106–113, §1000(a)(6) [title IV, §407(b)(2)], inserted “(or, 130 percent of such number in the case of a hospital located in a rural area)” after “may not exceed the number”.

Pub. L. 106–113, §1000(a)(6) [title IV, §407(a)(2)], designated existing provisions as cl. (i), substituted “Subject to subparagraph (G)(v), the initial residency period” for “The initial residency period” in concluding provisions.

Subsec. (h)(4)(F). Pub. L. 106–113, §1000(a)(6) [title IV, §407(a)(1)], designated existing provisions as cl. (i), substituted “may not exceed the number”.

Subsec. (j)(1)(E). Pub. L. 106–113, §1000(a)(6) [title I, §125(a)(1)], struck out “a subsequent clause” for “clause (ii)” and “the approved FTE resident amount determined” for “the amount determined”.


Subsec. (h)(2)(F). Pub. L. 106–113, §1000(a)(6) [title IV, §407(b)(1)], inserted “(or, 130 percent of such number in the case of a hospital located in a rural area)” after “may not exceed the number”.

teaching adjustment factor for discharges occurring on or before October 1, 1988, is equal to 1.89 × (1 + r) to the nth power − 1, where r is the ratio of the hospital’s full-time-equivalent interns and residents to beds and n equals 405.”

Subsec. (d)(5)(B)(iv). Pub. L. 105–33, § 4621(b)(2), amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: “In determining such adjustment, the Secretary shall continue to count intern and residents assigned to outpatient services of the hospital or providing services at any entity receiving a grant under section 1395f of this title that is under the ownership or control of the hospital (if the hospital incurs all, or substantially all, of the costs of the services furnished by such interns and residents) as part of the calculation of the full-time-equivalent number of interns and residents.”


Subsec. (d)(5)(D)(v) to (vIII). Pub. L. 105–33, § 4201(c)(4)(A), inserted “as in effect on September 30, 1997,” before cl. (xvii). Pub. L. 105–33, § 4411(a)(1), added subcls. (XIII) to (XVII) and struck out former subcl. (XIII) which read as follows: “for fiscal year 1998 and each subsequent fiscal year, the market basket percentage increase for hospitals in all areas.”


Subsec. (b)(3)(F), Pub. L. 105–33, § 4413(a)(2), (b), added subpars. (F) and (G).


Subsec. (b)(4)(A)(i). Pub. L. 105–33, § 4419(a)(1), in first sentence, substituted “The Secretary shall provide for an exemption and adjustment to (and in the case of a hospital or unit described in subsection (d)(1)(B) of this section, may provide an exemption from)” for “The Secretary shall provide for an exemption from, or an exemption and adjustment to,”.

Subsec. (b)(4)(A)(ii). Pub. L. 105–33, § 4411(b), inserted at end “In making such reductions, the Secretary shall treat the applicable update factor described in paragraph (2) of a fiscal year as being equal to the market basket percentage for that year.”


Subsec. (d)(1)(B). Pub. L. 105–33, § 4417(a)(1), inserted at end “A hospital that was classified by the Secretary on or before September 30, 1995, as a hospital described in clause (iv) shall continue to be so classified notwithstanding that it is located in the same building as, or one on the same campus as, another hospital.”


Subsec. (d)(2)(C)(i). Pub. L. 105–33, § 4621(a)(2), inserted at end “except that the Secretary shall not take into account any reduction in the amount of additional payments under paragraph (3) resulting from the amendment made by section 4621(a)(1) of the Balanced Budget Act of 1997.”

Subsec. (d)(3)(A)(ii). Pub. L. 105–33, § 4486(c), substituted “the sum of the applicable DRG prospective payment rate plus any amounts payable under subparagraphs (B) and (F)” for “the applicable DRG prospective payment rate.”

Subsec. (d)(5)(B)(i). Pub. L. 105–33, § 4450(a), inserted “for cases qualifying for additional payment under subparagraph (A)(i),” before “the amount paid to the hospital.”

Subsec. (d)(5)(B)(ii). Pub. L. 105–33, § 4621(a)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “For purposes of clause (i)(II), the indirect
recommendations to Congress on an appropriate change factor which should be used for inpatient hospital services for discharges in that fiscal year, together with its general recommendations under paragraph (2)(B) regarding the effectiveness and quality of health care delivery systems in the United States.’’

Subsec. (e)(5)(A). Pub. L. 105–33, § 4644(b)(1)(A), substituted ‘‘August 1’’ for ‘‘May 1’’.

Subsec. (e)(5)(B). Pub. L. 105–33, § 4644(b)(1)(B), substituted ‘‘August 1’’ for ‘‘September 1’’.

Subsec. (g)(1)(A). Pub. L. 105–33, § 4402, inserted at end ‘‘In addition to the reduction described in the preceding sentence, for discharges occurring on or after October 1, 1997, the Secretary shall apply the designated neutrality adjustment factor used to determine the Federal capital payment rate in effect on September 30, 1995 (as described in section 412.352 of title 42 of the Code of Federal Regulations), to (i) the unadjusted standard Federal capital payment rate (as described in section 412.358 of that title, as in effect on September 30, 1997), and, for discharges occurring on or after October 1, 1997, and before September 30, 2002, reduce the rates described in clauses (i) and (ii) by 2.1 percent.’’

Subsec. (g)(3)(B). Pub. L. 105–33, § 4201(c)(1), substituted ‘‘critical access’’ for ‘‘rural primary care’’.


Subsec. (h)(4)(F) to (H). Pub. L. 105–33, § 4623, added subpars. (F) to (H).

Subsec. (i)(6). Pub. L. 105–33, § 4402, inserted at end ‘‘The Prospective Payment Assessment Commission.’’


1994—Subsec. (a)(4). Pub. L. 103–432, § 110(a), inserted ‘‘(or, in the case of a hospital that is not a subsection (d) hospital, during the 1-day period beginning during fiscal year 1993 in which the applicable percentage increase is determined under subparagraph (I))’’ for ‘‘(taking into account any portion of the 12-month cost reporting period beginning during fiscal year 1994)’’.

Subsec. (b)(3)(D). Pub. L. 103–432, § 108, substituted ‘‘(to the extent the Secretary determines appropriate)’’ after ‘‘taking into account’’.


Subsec. (d)(10)(C)(i)(II). Pub. L. 103–432, § 101(b)(2)(A), substituted ‘‘the factor used to adjust the DRG prospective payment rate for area differences in hospital wage levels that applies’’ for ‘‘the area wage index applicable’’.

Subsec. (d)(10)(D)(i). Pub. L. 103–432, § 101(a)(1), inserted ‘‘(to the extent the Secretary determines appropriate)’’ after ‘‘taking into account’’.


Subsec. (e)(6)(B). Pub. L. 103–432, § 108, substituted ‘‘health facility management, reimbursement of health facilities or other providers of services which reflect the scope of the Commission’s responsibilities’’ for ‘‘hospital reimbursement, hospital financial management’’.

Subsec. (b)(5)(E). Pub. L. 103–432, § 153(a), inserted ‘‘or any successor examination’’ after ‘‘Medical Sciences’’.

1993—Subsec. (b)(3)(B)(i)(IX). Pub. L. 103–66, § 13501(a)(1)(A), substituted ‘‘percentage increase minus 2.5 percentage points for hospitals’’ and ‘‘percentage increase minus 2.5 percentage points for hospitals’’ for ‘‘percentage increase for hospitals’’ and ‘‘percentage increase minus 1.0 percentage point’’ for ‘‘percentage increase plus 1.5 percentage points’’.


Subsec. (b)(3)(B)(i)(XII). Pub. L. 103–66, § 13502(a)(2), added cls. (c) and (d) after ‘‘subparagraphs (A)’’.

Subsec. (b)(3)(B)(i)(XIII). Pub. L. 103–66, § 13502(a)(2), added cls. (e), (f), and (g) after ‘‘subparagraph (D)’’.

Subsec. (b)(3)(B)(i)(XIV). Pub. L. 103–66, § 13502(a)(2), added cls. (h), (i), and (j) after ‘‘subparagraph (E)’’.

Subsec. (b)(3)(B)(i)(XV). Pub. L. 103–66, § 13502(a)(2), added cls. (k), (l), and (m) after ‘‘subparagraph (F)’’.

Subsec. (b)(3)(B)(i)(XVI). Pub. L. 103–66, § 13502(a)(2), added cls. (n), (o), and (p) after ‘‘subparagraph (G)’’.

Subsec. (b)(3)(B)(i)(XVII). Pub. L. 103–66, § 13502(a)(2), added cls. (q), (r), and (s) after ‘‘subparagraph (H)’’.

Subsec. (b)(3)(B)(i)(XVIII). Pub. L. 103–66, § 13502(a)(2), added cls. (t), (u), and (v) after ‘‘subparagraph (I)’’.

Subsec. (b)(3)(B)(i)(XIX). Pub. L. 103–66, § 13502(a)(2), added cls. (w), (x), and (y) after ‘‘subparagraph (J)’’.

Subsec. (b)(3)(B)(i)(XX). Pub. L. 103–66, § 13502(a)(2), added cls. (z), (aa), and (ab) after ‘‘subparagraph (K)’’.

Subsec. (b)(3)(B)(i)(XXI). Pub. L. 103–66, § 13502(a)(2), added cls. (ac), (ad), and (ae) after ‘‘subparagraph (L)’’.
ending on or before September 30, 1997, the Secretary'' for “The Secretary''.

Subsec. (d)(5)(A)(ii). Pub. L. 103–66, §13501(c)(2), substituted “or, for discharges in fiscal years beginning on or after October 1, 1994, exceed the applicable DRG prospective payment rate plus a fixed dollar amount determined by the Secretary,” for period at end.

Subsec. (d)(5)(A)(ii). Pub. L. 103–66, §13501(c)(3), substituted “shall (except as payments under clause (i) are required to be reduced to take into account the requirements of clause (v)) approximate” for “shall approximate”.


Subsec. (d)(5)(B)(iv). Pub. L. 103–66, §13506, inserted “or providing services at any entity receiving a grant under section 254c of this title that is under the ownership or control of the hospital (if the hospital incurs all, or substantially all, of the costs of the services furnished by such interns and residents)” after “the hospital”.

Subsec. (d)(5)(G)(I). Pub. L. 103–66, §13501(e)(1)(A), which directed amendment of subsec. (d)(5)(G) in clause (i) in the matter preceding subclause (I), by striking “‘ending on or before March 31, 1993,’” and all that follows and inserting “‘before October 1, 1994, in the case of a subsection (d) hospital which is a Medicare-dependent, small rural hospital, payment under paragraph (1)(A) shall be—

‘‘(I) an amount based on 100 percent of the hospital’s target amount for the cost reporting period, as defined in subsection (b)(3)(D) of this section, or

‘‘(II) the amount determined under paragraph (1)(A)(iii), which results in the greater payment to the hospital,’’ to reflect the probable intent of Congress.

Subsec. (d)(5)(G)(ii) to (iv). Pub. L. 103–66, §13501(e)(1)(A), (C), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.


Subsec. (g)(1)(A). Pub. L. 103–66, §13501(a)(3), inserted at end “For discharges occurring after September 30, 1993, the Secretary shall reduce by 7.4 percent the unadjusted standard Federal capital payment rate (as described in 42 CFR 412.308(c), as in effect on August 30, 1993) and shall (for hospital cost reporting periods beginning on or after October 1, 1993) redesignate which payment methodology is applied to the hospital under such system to take into account such reduction.”

Subsec. (h)(2)(D). Pub. L. 103–66, §13501(a)(1), designated existing provisions as cl. (I), substituted “Except as provided in clause (I), for ‘‘For each’’, and added cl. (I).


Subsec. (h)(5)(F)(ii). Pub. L. 103–66, §13503(b)(1)(B), inserted “or a preventive medicine residency or fellowship program” after “fellowship program”.

Subsec. (h)(5)(H). Pub. L. 103–66, §13503(c)(2), added subpar. (H) and redesignated former subpar. (H) as (I).


Subsec. (i)(A)(4). Pub. L. 101–508, §4003(a), struck out period at end of first sentence and inserted “, and includes the costs of all services for which payment may be made under this subchapter that are provided by the hospital (or by an entity wholly owned or operated by the hospital) to the patient during the 3 days immediately preceding the date of the patient’s admission if such services are diagnostic services (including clinical diagnostic laboratory services) related to the admission (as defined by the Secretary),”

(1) on or after May 1, 1986, and before October 1, 1995, is equal to 1.89×e(1+r); and

(2) on or after October 1, 1995, is equal to 1.43×(1+r)²—1, where “r” is the ratio of the hospital’s full-time equivalent interns and residents to beds.”


Subsec. (d)(8)(C)(ii). Pub. L. 101–508, § 4002(h)(1)(A)(ii), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: “For purposes of clause (i)(II), the index under this subsection, shall exclude those counties so reclassified, or


(1) on or after July 1, 1987, and before October 1, 1989, is equal to 1.43×(1+r)²—1; (2) on or after October 1, 1989, and before October 1, 1993, is equal to 1.43×(1+r)²—1; (3) on or after October 1, 1993, and before October 1, 1995, is equal to 1.43×(1+r)²—1; (4) on or after October 1, 1995, and before October 1, 1997, is equal to 1.43×(1+r)²—1; (5) on or after October 1, 1999, is equal to 1.89×e(1+r); and (6) on or after October 1, 2000, is equal to 1.89×e(1+r); where “r” is the ratio of the hospital’s full-time equivalent interns and residents to beds.”

Subsec. (d)(8)(D). Pub. L. 101–508, § 4002(c)(2)(B)(vi), struck out “for hospitals located in an urban area or for hospitals located in a rural area (excluding all the hospitals so treated) and to the hospitals so treated (as if each affected rural county were a separate urban area).”

Subsec. (d)(9)(A). Pub. L. 101–508, § 4002(h)(1)(A)(i), amended subcl. (i) generally. Prior to amendment, subcl. (i) which read as follows: “(I) reduces the wage index for the urban area within which the county or counties is reclassified by more than 1 percentage point (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so treated and to the hospitals so treated (as if each affected rural county were a separate urban area).”

Subsec. (d)(9)(B)(ii). Pub. L. 101–508, § 4002(h)(1)(A)(ii), amended subcl. (I) generally. Prior to amendment, subcl. (I) which read as follows: “If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (30), by reclassifying a county from a rural to an urban area or by reclassifying an urban county from one urban area to another urban area—

(1) reduces the wage index for the urban area within which the county or counties is reclassified by more than 1 percentage point (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so treated and to the hospitals so treated (as if each affected rural county were a separate urban area).”

Subsec. (d)(9)(B)(D). Pub. L. 101–508, § 4002(c)(2)(B)(vi), struck out “for hospitals located in an urban area after “determined under paragraph (3)” and struck out at end “The Secretary shall make such adjustment in payments under this section to hospitals located in rural areas as are necessary to assure that the aggregate of payments to rural hospitals not affected by subparagraphs (B) and (C) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (30), by reclassifying a county from a rural to an urban area or by reclassifying an urban county from one urban area to another urban area—

(1) reduces the wage index for the urban area within which the county or counties is reclassified by more than 1 percentage point (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so treated and to the hospitals so treated (as if each affected rural county were a separate urban area).”


struck out "1 member shall be a member of the Pro-

spective Payment Assessment Commission, and at

least" after "At least":


Subsec. (d)(10)(C)(iii)(II). Pub. L. 101–508, §4002(h)(2)(C), substituted "The Commission" for "In addition to carry-

ing out its functions under subsection (d)(4)(D) of this

section, the Commission".


existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (e)(2)(A). Pub. L. 101–508, §4002(g)(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (e)(2)(A). Pub. L. 101–508, §4002(g)(2)(B), substituted "The Commission" for "In addition to carry-

ing out its functions under subsection (d)(4)(D) of this

section, the Commission".

Subsec. (e)(3)(A). Pub. L. 101–508, §4002(g)(2)(C), substituted "Congress" for "the Secretary" and inserted

before period at end "", together with its general recom-

mendations under paragraph (2)(B) regarding the effec-

tiveness of and quality of health care delivery systems in

the United States".

Subsec. (e)(4). Pub. L. 101–508, §4002(g)(2)(D), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (e)(5). Pub. L. 101–508, §4002(g)(2)(E), substituted "recommendations" for "recommendation" in

paragraph (4) and at end "To the extent that the Secretary's recommendations under paragraph

(4) differ from the Commission's recommendations for

that fiscal year, the Secretary shall include in the pub-

lic record referred to in subparagraph (A) an explanation of the Secretary's grounds for not following the Com-

mission's recommendations.".

Subsec. (e)(6)(G). Pub. L. 101–508, §4002(g)(2)(F), redesignated cls. (ii) and (iii) as (i) and (ii), respectively, and

struck out former cl. (i) which read as follows: "The Of-

fice shall report annually to the Congress on the func-

tioning and progress of the Commission and on the

status of the assessment of medical procedures and services by the Commission.".

Subsec. (g)(1)(A). Pub. L. 101–508, §4001(a), substituted at end "Aggregate payments made under subsection (d) of

this section and this subsection during fiscal years 1992 through 1995 shall be reduced in a manner that results in

a reduction (as estimated by the Secretary) in the amount of such payments equal to a 10 percent reduc-

tion in the amount of payments attributable to capital-

related costs that would otherwise have been made during

such fiscal year had the amount of such payments been

based on reasonable costs (as defined in this paragraph)

of this title)".


Subsec. (g)(3)(B). Pub. L. 101–508, §4001(c), substituted "(d)(5)(D)(iii) of this section or a rural pri-

mary care hospital (as defined in section 1395x(mm)(1)) of

this title)" (for "subsection (d)(5)(D)(ii) of this section")


1, 1987", or costs with respect to administering blood clotting factors to individuals with hemophilia" for "October

1, 1987".

Subsec. (b)(3)(A). Pub. L. 101–239, §6004(b)(1)(A), substituted "(C), (D), and (E)" for "(C) and (D)" in intro-

ductory provisions.

Pub. L. 101–239, §6003(c)(2)(B), substituted "recommendations" for "recommendation" in the following

provisions: ( ) for "( )" in introductory provisions.

Pub. L. 101–239, §6003(c)(1)(B)(i), substituted "(A) Ex-

cept as provided in subparagraph (C), for purposes of this

subsection for "(A) For purposes of this sub-

section" in introductory provisions.

§ 1395ww

Title 42—The Public Health and Welfare
Subsec. (d)(3)(B)(ii). Pub. L. 100–203, § 4002(b)(2), substituted “‘1990’ for ‘‘1989’". Pub. L. 100–203, § 4002(c)(1)(A), inserted sentence at end providing that hospital is considered located in urban area or large urban area, respectively, if it is paid under this subsection at rate for hospitals located in such area. Pub. L. 100–203, § 4002(b), in second sentence inserted definition of “large urban area”. Pub. L. 100–203, § 4002(c)(1)(A), substituted “‘large urban, other urban, or rural areas’ for ‘‘urban or rural areas’” in subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4) of this section, and adjusted to reflect the most recent case-mix data available”, and added cls. (I) and (III).

Subsec. (d)(3)(C)(i). Pub. L. 100–203, § 4003(c), made technical amendment to Pub. L. 100–360, § 411(b)(5)(B), added subparagraph (C) for 12-month cost reporting periods beginning on April 1, 1988, and ending on September 30, 1989, the sum of the number of residents of the rural county who are employed, or (II) the sum of the number of residents of the rural county who commute for employment to the central county or counties of any adjacent urban area; and

Subsec. (d)(3)(C)(ii). Pub. L. 100–203, § 4003(c), substituted “1.89” for “2”.

Subsec. (d)(3)(C)(iii). Pub. L. 100–203, § 4003(b)(1)(A), inserted at end “Not later than October 1, 1990, the Secretary shall update the factor under the preceding sentence on the basis of a survey conducted by the Secretary (and updated as appropriate) of the wages and wage-related costs of subsection (d) hospitals in the United States. To the extent determined feasible by the Secretary, such survey shall measure the earnings and paid hours of employment by occupational category and shall exclude data with respect to the wages and wage-related costs incurred in furnishing skilled nursing facility services.”


that meets the criteria for classification as a sole community hospital and otherwise qualifies for the adjustment authorized by the preceding sentence may qualify for such an adjustment without regard to the formula by which payments are determined for the hospital under paragraph (1)(A)."

Subsec. (d)(5)(F)(ii). Pub. L. 100–203, § 4009(c), substituted "such net inpatient care revenues" for second reference to "such revenues".

Subsec. (d)(5)(F)(iii). Pub. L. 100–203, § 4009(b)(1), substituted "25 percent" for "15 percent".


Subsec. (d)(8). Pub. L. 100–203, § 4009(a)(1), as amended by Pub. L. 100–360, § 411(b)(4)(C)(i), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as (I) and (II), respectively, redesignated former subpar. (B) as (III), and struck out subpar. (C). See 1989 Amendment note below.

Subsec. (e)(4). Pub. L. 100–203, § 4002(f)(1)(C), substituted "for each fiscal year (beginning with fiscal year 1988)" for "for fiscal year 1988", struck out "and shall determine for each subsequent fiscal year the percentage change which will apply for purposes of this section as the applicable percentage increase (otherwise described in subsection (b)(3)(B) of this section) for discharges in that fiscal year, and after "in that fiscal year", and amended last sentence generally. Prior to amendment, last sentence read as follows: "The percentage change shall be the same for all subsection (d) hospitals and subsection (d) Puerto Rico hospitals under this clause in the same manner as they apply to subsection (d) hospitals under such paragraph and, for purposes of this clause, any reference in such paragraph to a subsection (d) hospital is deemed a reference to a subsection (d) Puerto Rico hospital.""


Subsec. (f)(3). Pub. L. 100–93 amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The provisions of paragraphs (2), (3), and (4) of section 1395y(d) of this title shall apply to determinations under paragraph (2) of this subsection in the same manner as they apply to determinations made under section 1395y(d)(1) of this title."

Subsec. (g)(1). Pub. L. 100–203, § 4006(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "If the Congress does not enact legislation, after April 30, 1983, and before October 1, 1987, respecting the payment under this subchapter for capital-related costs for inpatient hospital services, no payment may be made under this subchapter for capital-related costs for discharges in that fiscal year (as defined in section 1320a–1(g) of this title and except as provided in section 1320a–1(c) of this title) for inpatient hospital services in a State, which expenditures are obrigated after September 30, 1987, unless the State has an agreement with the Secretary under section 1320a–1(b) of this title and under the agreement the State has recommended approval of the capital expenditures."

Subsec. (h)(4)(C). Pub. L. 100–203, § 4006(b)(2)(B), struck out subpar. (C) which read as follows: "If the Secretary provides, under subsection (a)(4) of this section, for the inclusion of other capital-related costs in operating costs of inpatient hospital services, the Secretary shall provide—"

"(i) notwithstanding any other provision of this subsection, for the continuation of payment under the reasonable cost methodology described in section 1395x(v)(1) of this title with respect to capital-related costs of any hospital that is such a sole community hospital for cost reporting periods beginning before October 1, 1990, and"

"(ii) in the design of such payment system that the aggregate payment amounts under this subchapter for such other capital-related costs shall be an amount attributable to portions of cost reporting periods occurring during fiscal year 1988 and fiscal year 1989 shall approximate the aggregate payment amount under this subchapter that would have been made (taking into account the provisions of subparagraphs (A) and (B)) during that fiscal year but for the inclusion of such costs by the Secretary."

Subsec. (h)(4)(D). Pub. L. 100–203, § 4009(j)(5), substituted "subparagraph (D)" for "subparagraph (E)".

Subsec. (a)(4). Pub. L. 99–509, § 9303(c), substituted "October 1 of 1987 and", for ", and", at end of cl. (ii), added cls. (iii) and (iv), and struck out former cl. (iii) which read as follows: "10 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1989."
read as follows: ‘‘For purposes of subparagraph (A) and subsection (d) of this section and except as provided in subsection (e) of this section, the ‘applicable percentage increase’ for any 12-month cost reporting period or fiscal year shall be equal to one-quarter of 1 percentage point plus the percentage, estimated by the Secretary before the beginning of the period or year, by which the costs of the mix of goods and services (including personnel costs but excluding non-operating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services, for such cost reporting period or fiscal year will exceed the cost of such mix of goods and services for the preceding 12-month cost reporting period or fiscal year. In determining a percentage change under subsection (e)(4) of this section with respect to discharges occurring in any cost reporting period or fiscal year beginning on or after October 1, 1985, and before October 1, 1986, the Secretary may not establish a percentage increase which exceeds the applicable percentage increase otherwise determined for that period or fiscal year under the preceding sentence.’’

Subsec. (b)(3)(B)(ii). Pub. L. 99–509, §9302(a)(1), amended subcl. (B) generally. Prior to amendment, subcl. (B) read as follows: ‘‘for fiscal years 1987 and 1988, a percentage determined by the Secretary pursuant to subsection (e) of this section, but not to exceed the market basket percentage increase as defined in clause (ii), and’’.

Subsec. (b)(6). Pub. L. 99–514, §1895(b)(1)(C), substituted ‘‘for fiscal year 1986 and at least every four fiscal years’’ for ‘‘for each of fiscal years 1985 and 1986’’.

Subsec. (c)(4). Pub. L. 99–509, §9302(a)(1), substituted ‘‘in fiscal year 1988 and at least annually’’ for ‘‘in fiscal year 1986 and at least every four fiscal years’’. Pub. L. 99–509, §9302(a)(1), added subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ‘‘The Secretary shall provide for an additional payment amount for subsection (d) hospitals with indirect costs of medical education, in an amount computed in the same manner as the adjustment for such costs under regulations (in effect as of January 1, 1983) subsection (a)(2) of this section based on DRG prospective payment amounts’’.


titled to benefits under part A of this subchapter" after "in rural areas")
Subsec. (d)(5)(C)(i)(A), Pub. L. 99–509, § 9306(b)(1), inserted "(other than under paragraph (B))" after "established under this subsection" in first sentence.
Subsec. (d)(5)(C)(ii), Pub. L. 99–509, § 9306(b)(2), inserted "(other than under paragraph (9))" after "this subsection and third sentences.
Pub. L. 99–272, § 911(a), inserted provision authorizing the Secretary to adjust amount of payments to sole community hospitals that realize a significant increase in operating costs in a cost reporting period attributable to addition of new inpatient facilities or services.
Subsec. (d)(5)(E), Pub. L. 99–509, § 9302(g)(2), struck out subpar. (E) which read as follows: "(E) The Secretary shall provide for an additional payment amount under this subsection (d) hospital equal to the reasonable costs incurred by such hospital for anesthesia services provided by a certified registered nurse anesthetist. Payment under this subparagraph shall be made on a quarterly basis.
Subsec. (d)(5)(F), Pub. L. 99–272, § 910(a), added subpar. (F).
Subsec. (d)(5)(F)(iv)(III), Pub. L. 99–509, § 9306(b)(2), inserted "and is not described in the second sentence of clause (II) after "100 or more beds"
Subsec. (d)(5)(F)(iv)(III), Pub. L. 99–509, § 9306(b)(2), inserted "and is not described in the second sentence of clause (II) after "rural area"
Subsec. (d)(5)(F)(v), Pub. L. 99–509, § 9306(a), inserted at end "A hospital located in a rural area and with 500 or more beds also serves a significantly disproportionate number of low income patients' for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (vi)) for that period which equals or exceeds a percentage specified by the Secretary."
Subsec. (e)(1)(C), Pub. L. 99–509, § 9304(a), added subpar. (C).
Subsec. (e)(3), Pub. L. 99–509, § 9302(c)(3), designated existing provisions as subpar. (A) and added subpar. (B).
Pub. L. 99–272, § 910(a), inserted provisio that in determining the percentage increase otherwise determined for that period or fiscal year under the preceding sentence.
Subsec. (e)(4), Pub. L. 99–509, § 9302(a)(2)(B), inserted provision that in determining such adjustment the Secretary not distinguish between those interns and residents who are employees of a hospital and those who furnish services to a hospital but are not employees of such hospital.
Subsec. (f)(5)(C)(i), Pub. L. 98–617 substituted "August 17, 1984" for "30 days after July 18, 1984" before "for implementation by"
Pub. L. 98–369, § 2311(a), inserted provisions permitting a hospital classified as a rural hospital to appeal to the Secretary for reclassification as a rural referral center on the basis of criteria established and published by the Secretary and requiring the Secretary to make a final determination with respect to such appeal within 60 days after the date the appeal was submitted.
Sec. Effective and Termination Dates of 1984 Amendments note below.
Subsec. (g)(2), Pub. L. 99–272, § 9107(a)(1), designated existing provision as subpar. (A), inserted "the applicable percentage (described in subparagraph (B))", and added subpar. (B).
Subsec. (g)(3), Pub. L. 99–509, § 9305(a), added par. (3).
Subsec. (g)(3)(A), Pub. L. 99–509, § 1885(b)(9)(A), substituted "paragraph (B)" for "paragraph (B)".
Subsec. (h)(4)(B), Pub. L. 99–514, § 1885(b)(9)(B), redesignated subpar. (B) as (D) and in cl. (ii) inserted "but before July 1, 1987”.
Pub. L. 99–514, § 1885(b)(9)(C), redesignated former subpar. (E) as (D).
Subsec. (h)(5)(B), Pub. L. 99–514, § 1885(b)(9)(D), substituted "The" for "As used in this paragraph, the".
Subsec. (a)(4), Pub. L. 98–369, § 2312(b), temporarily inserted "and is not described in the second sentence of clause (II) after "100 or more beds"
Subsec. (a)(3)(A)(ii), Pub. L. 98–369, § 2354(b)(43), inserted "or" after "in the case".
Subsec. (b)(3)(B), Pub. L. 98–369, § 2310(a), substituted "one-quarter of 1 percentage point" for "1 percentage point and inserted provision that in determining the percentage change under subsec. (e) of this section with respect to discharges occurring in any cost reporting period or fiscal year beginning on or after Oct. 1, 1985, and before Oct. 1, 1986, the Secretary may not establish a percentage increase which exceeds the applicable percentage increase otherwise determined for that period or fiscal year under the preceding sentence.
Subsec. (c)(4)(A), Pub. L. 98–369, § 2311(a), substituted "(D), and (E)" for "(D)"
Subsec. (d)(2)(D), Pub. L. 98–369, § 2315(b), struck out "Standard" before "Metropolitan" in provision following cl. (ii).
Pub. L. 98–369, § 2311(b), inserted provision for determining the region a hospital located in a Metropolitan Statistical Area would be deemed to be located.
Subsec. (d)(3)(D)(i), Pub. L. 98–369, § 2354(b)(44), substituted "(C)" for "(C)"
Subsec. (d)(5)(B), Pub. L. 98–369, § 2307(b)(1), inserted provision that in determining such adjustment the Secretary not distinguish between those interns and residents who are employees of a hospital and those who furnish services to a hospital but are not employees of such hospital.
Subsec. (g)(5)(C)(i), Pub. L. 98–617 substituted "August 17, 1984" for "30 days after July 18, 1984" before "for implementation by"
Pub. L. 98–369, § 2311(a), inserted provisions permitting a hospital classified as a rural hospital to appeal to the Secretary for reclassification as a rural referral center on the basis of criteria established and published by the Secretary and requiring the Secretary to make a final determination with respect to such appeal within 60 days after the date the appeal was submitted.
Subsec. (d)(5)(E), Pub. L. 98–369, § 2312(a), temporarily added subpar. (E).
Sec. Effective and Termination Dates of 1984 Amendments note below.
Subsec. (d)(8), Pub. L. 98–369, § 2311(c), added par. (8).
Subsec. (e)(2), Pub. L. 98–369, § 2312(a), inserted "(without regard to the provisions of title 5 governing appointments in the competitive service)" after "appointed by the Director."
Subsec. (e)(5), Pub. L. 98–369, § 2312(c)(1), struck out "for public comment" after "have published" in provisions preceding subpar. (A).
Subsec. (e)(5)(A), Pub. L. 98–369, § 2312(c)(2), inserted "for public comment" after “that fiscal year”.

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Subsec. (e)(6)(C). Pub. L. 98–369, §2313(b)(3), inserted provi- sion that section 19(a)(1) of the Federal Advisory Committee Act not apply to any portion of a Commis- sion meeting if the Commission, by majority vote, deter- mines such portion of such meeting should be closed.

Subsec. (e)(6)(C)(i). Pub. L. 98–369, §2313(b)(1), amended cl. (i) generally, substituting provision authorizing the Commission to employ and fix the compensation of an Executive Director, subject to the approval of the Director of the Office, and such other personnel, not to exceed 25, as necessary, without regard to the provi- sions of title 5 governing appointment in the competi- tive service, for provision authorizing the Commission to employ and fix the compensation of such personnel, not to exceed 25, as may be necessary to carry out its duties.


Subsec. (e)(6)(C)(iii). Pub. L. 98–369, §2313(b)(4), inserted provision relating to payment of physician comparabil- ity allowance in the same manner as provided under section 5948 of title 5 and providing that for such purpose subsec. (i) of such section apply to the Commission in the same manner as it applies to the Tennessee Valley Authority.


Subsec. (a)(4). Pub. L. 98–21, §601(a)(2), inserted provision that term `operating costs of inpatient hospital services' does not include costs of approved educational activities, or, with respect to costs incurred in cost reporting periods beginning prior to Oct. 1, 1986, capital-related costs, as defined by the Secretary.

Pub. L. 97–448, §309(b)(13), substituted ``such costs are determined'' for ``(other than a subsection (d) hospital, as defined in provisions preceding subpar. (A),)'' inserted Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title for Notwithstanding sections 1395f(b) of this title, but subject to the provisions of sections 1395e of this title'' and inserted ``(other than a subsection (d) hospital, as defined in sub- section (d)(1)(B) of this section)''.

Pub. L. 98–21, §601(b)(1), (2), in provisions preceding subpar. (A), substituted Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title for Notwithstanding sections 1395f(b) of this title, but subject to the provisions of sections 1395e of this title'' and inserted ``(other than a subsection (d) hospital, as defined in subsection (d)(1)(B) of this section)''.

Pub. L. 98–21, §601(b)(3), inserted ``(other than on the basis of a DRG prospective payment rate determined under subsection (d) of this section)'' in provisions fol- lowing subpar. (B).

Pub. L. 97–448, §309(b)(14), substituted section 1395f(b) for ``sections 1395f(b)'' in provisions preceding subpar. (A).

Subsec. (b)(2). Pub. L. 98–21, §601(b)(4), struck out par. (2) which provided that par. (1) would not apply to cost reporting periods of hospitals beginning on or after Oct. 1, 1986.

Subsec. (b)(3)(B). Pub. L. 98–21, §601(b)(5)–(8), inserted ``and subsection (d) of this section and except as pro- vided in subsection (e) of this section'' after subparagraph (A)'', inserted ``(other than section 1395f(b) of this title but subject to the provi- sions of section 1395e of this title'' and inserted ``(other than a subsection (d) hospital, as defined in subsection (d)(1)(B) of this section)''.

Pub. L. 98–21, §601(b)(3), inserted ``(other than on the basis of a DRG prospective payment rate determined under subsection (d) of this section)'' in provisions fol- lowing subpar. (B).

Subsec. (c)(3)(A). Pub. L. 98–21, §601(c)(2), substituted `meets the requirements of subparagraphs (A), (D), and (E) of paragraph (1)'', inserted `(or, if applicable, in paragraph (5))''

Subsec. (c)(4) to (6). Pub. L. 98–21, §601(c)(3), added paras. (4) to (6).

Subsec. (d). Pub. L. 98–21, §601(d)(1), (2)., added subsec. (d) and redesignated former subsec. (d), relating to the elimination of lesser-of-cost-or-charges provisions, as subsec. (j) of section 1811 of act Aug. 14, 1933, which is classified to subsec. (j) of section 1395f of this title.

Subsecs. (e) to (g). Pub. L. 98–21, §601(e), added subsec- ses. (e) to (g).


CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 1320c of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see sec- tion 261(e) of Pub. L. 112–40, set out as a note under sec- tion 1320c of this title.

EFFECTIVE DATE OF 2010 AMENDMENT


Pub. L. 111–192, title I, §102(b), June 25, 2010, 124 Stat. 1281, provided that: "The amendments made by subsec- tion (a) [amending this section] shall apply to services furnished on or after the date of the enactment of this Act that in making such service payment for costs associated with inpatient hospital services under this title (taking into account any limitation under subsection (a) of this section) for the period by the amount by which (i) the amount that would have been paid the hospital if (I) the amount of the operating costs of inpatient hospital services estimated under subparagraph (B) were treated as the amount of the operating costs of inpatient hos- pital services and (II) subsection (a) of this section did not apply to the determination, exceeded (ii) the amount that would otherwise have been paid the hospital if subsection (a) of this section (and this para- graph) did not apply, except that, in making such de- termination for cost reporting periods beginning on or after Oct. 1, 1984, clause (ii) of paragraph (1)(B) was to continue to apply.

Pub. L. 97–448, §309(b)(15), substituted "under this subchapter (taking into account any limitation under subsection (a) of this section)" for "under this subchapter" in provisions preceding cl. (I).

Pub. L. 98–21, §601(c)(2)(A)., substituted `meets the requirements of subparagraphs (A), (D), and (E) of paragraph (1) and, if applicable, the requirements of paragraph (5),'' for "meets the require- ment of paragraph (1)(A)''.

Pub. L. 98–21, §601(c)(2)(B), inserted `(or, if applicable, in paragraph (5))''

Pub. L. 98–21, §601(c)(3), added subpars. (D) and (E) and provisions following subpar. (E).

Pub. L. 98–21, §601(c)(2), added subpars. (D) and (E) and provisions following subpar. (E).

Amendment by Pub. L. 111–148, title III, §3401(p), Mar. 23, 2010, 124 Stat. 488, provided that: "Notwithstanding the preced-
provisions of this section [amending this section and sections 1395f, 1395i, 1395m, 1395u, 1395y, and 1395ff of this title], the amendments made by subsections (c), (d) and (e) of section 1395cc of this title shall not apply to discharges occurring before April 1, 2010.''

Pub. L. 111–118, title V, §505(c), Mar. 23, 2010, 124 Stat. 661, provided that: "(1) IN GENERAL.—Except as otherwise provided, the Secretary of Health and Human Services shall implement the amendments made by this section [amending this section] in a manner so as to apply to cost reporting periods beginning on or after January 1, 1983.


"(3) IME.—Section 1886(d)(5)(B)(x)(III) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(x)(III)), as added by subsection (b), shall apply to cost reporting periods beginning on or after October 1, 2001. Such section, as so added, shall not give rise to any inference as to how the law in effect prior to such date should be interpreted.''

Effective Date of 2007 Amendment

Pub. L. 110–173, title I, §114(e)(2), Dec. 28, 2007, 121 Stat. 2565, provided that: "Subsection (m) of section 1886 of the Social Security Act [subsec. (m)(2) of this section], as added by paragraph (1), shall not apply to discharges occurring on or after July 1, 2007, and before April 1, 2008.''

Pub. L. 110–173, title I, §115(a)(2), Dec. 29, 2007, 121 Stat. 2189, provided that: "(1) The amendment made by paragraph (1) [amending this section] shall not apply to payment units occurring before April 1, 2008.''


Effective Date of 2006 Amendment

Amendment by section 109(a)(2) of Pub. L. 109–432 applicable to payment for services furnished on or after Jan. 1, 2006, set out as a note under section 1395w of this title.


Effective Date of 2003 Amendment

Pub. L. 108–173, title IV, §407(b), Dec. 8, 2003, 117 Stat. 2270, provided that: "The amendment made by subsection (a) [amending this section] shall apply to cost reporting periods beginning on or after January 1, 2004.''

Pub. L. 108–173, title V, §502(c), Dec. 8, 2003, 117 Stat. 2291, provided that: "The amendments made by this section [amending this section] shall apply to discharges occurring on or after April 1, 2004.''

Pub. L. 108–173, title V, §503(e), Dec. 8, 2003, 117 Stat. 2292, provided that: "(1) IN GENERAL.—The Secretary of Health and Human Services shall implement the amendments made by this section [amending this section] so that they apply to classification for fiscal years beginning with fiscal year 2004.

"(2) RECONSIDERATIONS OF APPLICATIONS FOR FISCAL YEAR 2004 THAT ARE DENIED.—In the case of an application for a classification of a medical service or technology as a new medical service or technology under section 1886(d)(5)(K) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(K)) that was filed for fiscal year 2004 and that is denied, the Secretary shall automatically reconsider the application as an application for fiscal year 2005 under the amendments made by this section; and

"(B) the maximum time period otherwise permitted for such classification of the service or technology shall be extended by 12 months.''

Pub. L. 108–173, title V, §505(c), Dec. 8, 2003, 117 Stat. 2294, provided that: "The amendments made by this section [amending this section and section 1395cc of this title] shall first apply to the wage index for discharges occurring on or after October 1, 2004. In initially implementing such amendments, the Secretary (or Health and Human Services) may modify the deadlines otherwise applicable under clauses (i) and (ii) of section 1886(d)(10)(C) of the Social Security Act (42 U.S.C. 1395ww(d)(10)(C)), for submission of, and actions on, applications relating to changes in hospital geographic reclassification.''

Effective Date of 2000 Amendment

Pub. L. 106–554, §1(a)(6) [title II, §212(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–485, provided that: "The amendment made by this section [amending this section] shall apply with respect to cost reporting periods beginning on or after April 1, 2001.''


Pub. L. 106–554, §1(a)(6) [title III, §301(e)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–492, provided that: "The amendment made by paragraph (1) [amending this section] is effective as if included in the enactment of BBA [Pub. L. 106–33–33].''

Pub. L. 106–554, §1(a)(6) [title III, §303(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–494, provided that: "The amendment made by paragraph (1) [amending this section] is effective as if included in the enactment of BBA [Pub. L. 106–33–33].''

Pub. L. 106–554, §1(a)(6) [title V, §512(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–534, provided that: "The amendment made by subsection (a) [amending this section] shall apply to cost reporting periods beginning on or after January 1, 2001.''

Effective Date of 1999 Amendment

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §121(b)], Nov. 29, 1999, 113 Stat. 1558, 1501A–330, provided that: "The amendments made by subsection (a) [amending this section] apply to cost reporting periods beginning on or after October 1, 1999.''

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §125(c)], Nov. 29, 1999, 113 Stat. 1558, 1501A–333, provided that: "The amendments made by subsection (a) [amending this section] are effective as if included in the enactment of section 421(a) of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].''

Pub. L. 106–113, div. B, §1000(a)(6) [title III, §312(b)], Nov. 29, 1999, 113 Stat. 1558, 1501A–365, provided that: "The amendments made by subsection (a) [amending this section] apply on and after July 1, 2000, to residency programs that began before, on, or after the date of the enactment of this Act [Nov. 29, 1999].''

Amendment by section 1000(a)(6) [title III, §321(b), (e), (f), (h), (k),(15)–(17)] of Pub. L. 106–113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105–33, except as otherwise provided, see section 1000(a)(6) [title III, §321(m)] of Pub. L. 106–113, set out as a note under section 1395cc of this title.

Amendment by section 1000(a)(6) [title IV, §401(a)] of Pub. L. 106–113 effective Jan. 1, 2000, see section 1000(a)(6) [title IV, §401(c)] of Pub. L. 106–113, set out as a note under section 1395cc of this title.

“The amendments made by subsection (a) [amending this section] apply with respect to discharges occurring during cost reporting periods beginning on or after October 1, 1997.”


“(A) DME.—The amendments made by paragraph (1) [amending this section] apply to cost reporting periods that begin on or after the date of the enactment of this Act [Nov. 29, 1999].

“(B) IME.—The amendment made by paragraph (2) [amending this section] applies to cost reporting periods that begin on or after April 1, 2000.”


“...the amendments made by this subsection [amending this section] apply to discharges occurring on or after April 1, 2000.”


effective date of 1997 Amendment

Amendment by section 4022(b) of Pub. L. 105–33 effective Nov. 1, 1997, the date of termination of the Prospective Payment Review Commission and the Physician Payment Review Commission, see section 4022(c)(2) of Pub. L. 105–33, set out as an Effective Date; Transition; Transfer of Functions note under section 1395f of this title.

Amendment by section 4021(c)(1), (4) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4021(d) of Pub. L. 105–33, set out as a note under section 1395f of this title.

Section 4020(b) of Pub. L. 105–33 provided that: “The amendments made by subsection (a) [amending this section and provisions set out as a note below] shall apply with respect to discharges occurring on or after October 1, 1997.”

Section 4018(d) of Pub. L. 105–33 provided that: “The amendments made by this section [amending this section] apply to discharges occurring after September 30, 1997.”

Section 4115(e) of Pub. L. 105–33 provided that: “The amendments made by subsection (a) and (c) [amending this section] shall apply with respect to cost reporting periods beginning on or after October 1, 1997.”

Section 4117(a)(2) of Pub. L. 105–33 provided that: “...the amendments made by paragraph (1) [amending this section] shall apply to discharges occurring on or after October 1, 1995.”

Section 4117(b)(2) of Pub. L. 105–33 provided that: “...the amendments made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after the date of the enactment of this Act [Aug. 5, 1997].”

Section 4119(a)(2) of Pub. L. 105–33 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to hospitals or units that first qualify as a hospital or unit described in section 1886(d)(1)(B) (42 U.S.C. 1395ww(d)(1)(B)) for cost reporting periods beginning on or after October 1, 1997.”

Section 4211(c) of Pub. L. 105–33 provided that: “The amendments made by this section [amending this section] shall apply to hospitals or units that first qualify as a hospital or unit described in section 1886(d)(1)(B) (42 U.S.C. 1395ww(d)(1)(B)) for cost reporting periods beginning on or after October 1, 1997.”

Section 4211(c) of Pub. L. 105–33 provided that: “The amendments made by this section [amending this section] shall apply to hospitals or units that first qualify as a hospital or unit described in section 1886(d)(1)(B) (42 U.S.C. 1395ww(d)(1)(B)) for cost reporting periods beginning on or after October 1, 2000, except that the Secretary of Health and Human Services may require the submission of data under section 1886(j)(2)(D) of the Social Security Act [subsec. (j)(2)(D) of this section] (as added by subsection (a) on and after the date of the enactment of this section [Aug. 5, 1997]).”

Section 4207(b) of Pub. L. 105–33 provided that: “...the amendments made by subsection (a) [amending this section] apply to combined medical residency training programs in effect for residency years beginning on or after July 1, 1997.”


effective date of 1994 amendment

Section 101(a)(2) of Pub. L. 103–322 provided that: “The amendment made by paragraph (1) [amending this section] shall take effect as if included in the enactment of OBRA–1991 [Pub. L. 101–239].”

Section 135(b) of Pub. L. 103–322 provided that: “...the amendment made by subsection (a) [amending this section] shall apply as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272).”


effective date of 1993 amendment

Section 1353(b)(3) of Pub. L. 103–66 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to discharges occurring on or after October 1, 1991.”

Section 1353(b)(2) of Pub. L. 103–66 provided that: “...the amendments made by paragraphs (1)(A) and (1)(B) [amending this section] shall take effect on July 1, 1996, and the date of the enactment of this Act [Aug. 10, 1993], respectively.”

Section 1353(c)(2) of Pub. L. 103–66 provided that: “...the amendment made by paragraph (1) [amending this section] shall apply to payments under section 1886(h) of the Social Security Act [subsec. (h) of this section] for cost reporting periods beginning on or after October 1, 1992.”


effective date of 1990 amendment

Section 4002(a)(2) of Pub. L. 101–508 provided that: “...the amendments made by paragraph (1) [amending this section] shall apply to payments for discharges occurring on or after January 1, 1991.”

Section 4002(b)(5) of Pub. L. 101–508 provided that: “...the amendments made by paragraphs (1), (3), and (4)(B) [amending this section] shall apply to discharges occurring on or after January 1, 1991, the amendment made by paragraph (2) [amending this section] shall apply to discharges occurring on or after October 1, 1991, and the amendment made by paragraph (4)(A) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub L. 101–508].”

Section 4002(c)(3) of Pub. L. 101–508 provided that: “...the amendments made by paragraph (1) and paragraph (2)(A) [amending this section] shall apply to payments for discharges occurring on or after January 1, 1991, and the amendments made by paragraph (2)(B) [amending this section] shall take effect October 1, 1994.”

Section 4002(e)(4)(3) of Pub. L. 101–508 provided that: “...the amendment made by paragraph (1) [amending this section] shall apply to discharges occurring on or after October 1, 1990.”

Section 4002(g)(5) of Pub. L. 101–508 provided that: “...the amendments made by this subsection [amending this section and section 1395ww–1 of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].”

Section 4002(h)(1)(B) of Pub. L. 101–508 provided that: “...the amendments made by subparagraph (A) [amending this section] shall apply to discharges occurring on or after January 1, 1991.”

Section 4003(b) of Pub. L. 101–508 provided that: “...the amendment made by subsection (a) [amending this section] shall apply—

“(1) in the case of any services provided during the day immediately preceding the date of a patient’s admission (without regard to whether the services are..."
related to the admission), to services furnished on or after the date of the enactment of this Act [Nov. 5, 1988] and before October 1, 1991; and

(3) in the case of any other services, to services furnished on or after January 1, 1991; and

Section 4005(c) of Pub. L. 101–508 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to payments for discharges occurring on or after January 1, 1990.

Section 4003(e)(1)(A) of this section because it is a sole community hospital—

(A) the amendment made by subsections (a) and (c) [amending this section] shall apply to payments made under section 1886(d)(1)(A)(ii) of the Social Security Act [subsec. (d)(1)(A)(iii) of this section] on the basis of discharges occurring on or after April 1, 1988, and

(B) for discharges occurring on or after October 1, 1988, the applicable percentage increase shall be the percentage increase as amended by subsection (a).

(2) PPS sole community hospitals, hospital surgical service portion of payment.—In the case of a subsection (d) hospital which receives payments made under section 1886(d)(1)(A) of the Social Security Act [subsec. (d)(1)(A) of this section] because it is a sole community hospital—

(A) the amendment made by subsections (a) and (c) [amending this section] shall apply to payments made under section 1886(b)(3)(B) of such Act [subsec. (b)(3)(B) of this section] for discharges occurring during fiscal year 1987 which are deemed to have been such percentage increase as amended by subsection (a).

Amendment by section 1019(a) of Pub. L. 100–203, set out as a note under section 1019(a) of Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA.

Effective date note under section 106 of Title 1, General Provisions.

The amendments made by subsections (a) and (c) [amending this section] shall apply to payments made under section 1886(d)(1)(A)(ii) of the Social Security Act [subsec. (d)(1)(A)(iii) of this section] on the basis of discharges occurring on or after April 1, 1988, and

(B) for discharges occurring on or after October 1, 1988, the applicable percentage increase (described in section 1886(b)(3)(B) of such Act [subsec. (b)(3)(B) of this section]) for discharges occurring during fiscal year 1987 is deemed to have been such percentage increase as amended by subsection (a).

(2) PPS sole community hospitals, hospital surgical service portion of payment.—In the case of a subsection (d) hospital which receives payments made under section 1886(d)(1)(A) of the Social Security Act [subsec. (d)(1)(A) of this section] because it is a sole community hospital—

(A) the amendment made by subsections (a) and (c) [amending this section] shall apply to payments made under section 1886(b)(3)(B) of such Act [subsec. (b)(3)(B) of this section] for the—

(i) first 51 days of the cost reporting period shall be 0 percent,

(ii) next 123 days of such period shall be 2.7 percent, and

(iii) remainder of such period shall be the applicable percentage increase (as so defined, as amended by subsection (a)); and

(C) for cost reporting periods beginning on or after October 1, 1988, the applicable percentage increase (as so defined with respect to the previous cost reporting period shall be the applicable percentage increase (as so defined, as amended by subsection (a)).
“(3) PP$-EXEMPT HOSPITALS.—In the case of a hospital that is not a subsection (d) hospital—

(A) the amendments made by subsection (e) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1987;

(B) notwithstanding subparagraph (A), for the hospital's cost reporting period beginning during fiscal year 1988, payment under title XVIII of the Social Security Act [this subchapter] shall be made as though the applicable percentage increase described in section 1886(b)(3)(B) of such Act [subsec. (b)(3)(B) of this section] were equal to the product of 2.7 percent and the ratio of 315 to 366; and

(C) for cost reporting periods beginning on or after October 1, 1988, the applicable percentage increase (as so defined) with respect to the cost reporting period beginning during fiscal year 1988 shall be deemed to have been 2.7 percent.

(4) DEFINITION. In this subsection, the term ‘subsection (d) hospital’ has the meaning given such term in section 1886(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section]."

Section 4005(e) of Pub. L. 100–203 provided that: ‘‘The amendments made by this section [amending this section] shall apply to payments for discharges occurring on or after October 1, 1988.’’

Section 4005(a)(3) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(b)(4)(C)(ii), July 1, 1988, 102 Stat. 770, provided that: ‘‘This section [amending this section] shall apply to discharges occurring on or after October 1, 1988.’’

Section 4005(c)(2)(A) of Pub. L. 100–203 provided that: ‘‘The amendments made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1987.’’

Section 4005(b)(1) of Pub. L. 100–203 provided that: ‘‘The amendments made by subparagraph (A) [amending this section] shall apply to discharges occurring on or after April 1, 1988.’’

Section 4005(b)(3) of Pub. L. 100–203 provided that: ‘‘The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1987. The amendments made by paragraph (2) [amending this section] shall apply to costs reporting periods beginning on or after October 1, 1987.’’

Section 4007(b)(2) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(b)(6)(B), July 1, 1988, 102 Stat. 770, provided that: ‘‘The amendment made by paragraph (1)(C) [amending this section] shall apply to hospital cost reporting periods beginning on or after October 1, 1989.’’

Section 4009(d)(2) of Pub. L. 100–203 provided that: ‘‘The amendments made by paragraph (1) [amending this section] shall apply to appointments made after the date of the enactment of this Act [Dec. 22, 1987].’’

Section 4008(b)(6) of Pub. L. 100–203 provided that the amendment made by that section is effective as if included in the enactment of the Tax Reform Act of 1986 (Pub. L. 99–514), if H.Con.Res. 395, 99th Congress, 2d Session, is not adopted. H.Con.Res. 395 was not adopted.

Section 4014(b) of Pub. L. 100–203 provided that: ‘‘(ii) An appeal for classification of a rural hospital as a regional referral center, pursuant to the amendments made by subparagraph (A), which is filed before January 1, 1987, and which is approved shall be effective with respect to discharges occurring on or after October 1, 1986.’’

Section 4003(b) and (c) of Pub. L. 99–509 provided that: ‘‘The amendments made by this section [amending this section] shall apply to discharges occurring on or after October 1, 1986.’’

Section 9302(d)(1)(B) of Pub. L. 99–509 provided that: ‘‘(i) Subject to clause (ii), the amendments made by subparagraph (A) [amending this section] shall apply to payments for discharges occurring on or after October 1, 1986.

‘‘(ii) An appeal for classification of a rural hospital as a regional referral center, pursuant to the amendments made by subparagraph (A), which is filed before January 1, 1987, and which is approved shall be effective with respect to discharges occurring on or after October 1, 1986.’’

Section 9302(b)(2) of Pub. L. 99–509 provided that: ‘‘The amendments made by paragraph (1) [amending this section] shall apply to discharges occurring on or after October 1, 1986.’’

Section 9302(d)(2) of Pub. L. 99–509 provided that: ‘‘The amendments made by this section [amending this section] shall apply to discharges occurring on or after October 1, 1986.’’

Effective Date of 1986 Amendments


Amendment by section 1895(b)(3), (9) of Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 9302(a)(3) of Pub. L. 100–93 provided that: ‘‘The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1986 and, for purposes of section 1886(d) of the Social Security Act [subsec. (d) of this section], for cost reporting periods beginning and discharges occurring on or after October 1, 1986.’’

Section 9302(c)(2) of Pub. L. 99–509 provided that: ‘‘The amendments made by paragraph (1) [amending this section] shall apply to discharges occurring on or after October 1, 1986.’’

Section 9302(b)(1)(B) of Pub. L. 99–509 provided that: ‘‘The amendments made by this section [amending this section] shall apply to discharges occurring on or after October 1, 1986.’’

Section 9302(d)(1)(B) of Pub. L. 99–509 provided that: ‘‘The amendments made by subsections (a) and (b) [amending this section] shall apply to discharges occurring on or after October 1, 1986.’’

Section 9302(a)(1) of Pub. L. 99–509 provided that: ‘‘The amendments made by such section 9307(c)(1) is effective for cost reporting periods beginning and discharges occurring (as the case may be) on or after October 1, 1987.’’

Section 9303(d) of Pub. L. 99–509 provided that: ‘‘The amendments made by this section [amending this section] shall apply to discharges occurring on or after October 1, 1987.’’

Section 9306(d) of Pub. L. 99–509 provided that: ‘‘The amendments made by subsections (a) and (b) [amending this section] shall apply to discharges occurring on or after October 1, 1987.’’


Section 9314(b) of Pub. L. 99–509 provided that: ‘‘The amendments made by this section shall apply to payments for approved residency training programs as of July 1, 1987.’’

Amendment by section 9320(g) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(1), (k) of Pub. L. 99–509, as amended, set out as notes under section 1895k of this title.

Section 9321(e)(3)(B) of Pub. L. 99–509 provided that: ‘‘The amendments made by paragraph (2) [amending
this section] shall take effect beginning with fiscal year 1989."

Section 910(d) of Pub. L. 99–272 provided that: "The amendment made by subsection (a) [amending section 5(c) of Pub. L. 99–107, set out below] shall take effect on March 15, 1986, and the amendments made by subsection (c) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 7, 1986]."

Section 910(e) of Pub. L. 99–272 provided that:

"(1) PPS HOSPITALS, DRG PORTION OF PAYMENT.—In the case of a subsection (d) hospital [as defined in paragraph (d)(4)]—

"(A) the amendment made by subsection (b) [amending this section] shall apply to payments made under section 1886(d)(1)(A) of such Act [subsec. (d)(1)(A) of this section] made on the basis of discharges occurring on or after May 1, 1986; and

"(B) for discharges occurring on or after October 1, 1985, the applicable percentage increase (as defined in section 1886(b)(3)(B) [subsec. (b)(3)(B) of this section]) for discharges occurring during fiscal year 1986 shall be deemed to have been 1 1/2 percent.

"(2) PPS HOSPITALS, HOSPITAL SPECIFIC PORTION OF PAYMENT.—In the case of a subsection (d) hospital—

"(A) the amendment made by subsection (b) [amending this section] shall apply to payments made under section 1886(d)(1)(A) of the Social Security Act [subsec. (d)(1)(A) of this section] made on the basis of discharges occurring during a cost reporting period of a hospital, for the hospital's cost reporting periods beginning on or after October 1, 1986;

"(B) notwithstanding subparagraph (A), for the cost reporting period beginning during fiscal year 1986, the applicable percentage increase (as defined in section 1886(b)(3)(B) [subsec. (b)(3)(B) of this section]) for the—

"(i) first 7 months of the cost reporting period shall be 0 percent, and

"(ii) for the remaining 5 months of the cost reporting period shall be 1 1/2 percent; and

"(C) for cost reporting periods beginning on or after October 1, 1986, the applicable percentage increase (as defined in section 1886(b)(3)(B) [subsec. (b)(3)(B) of this section]) were equal to 75 percent of 1 percent; and

"(D) for cost reporting periods beginning on or after October 1, 1986, the applicable percentage increase (as so defined) with respect to the previous cost reporting period shall be deemed to have been 1 1/2 percent.

"(3) PPS-EXEMPT HOSPITALS.—In the case of a hospital that is not a subsection (d) hospital—

"(A) the amendment made by subsection (b) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1985;

"(B) notwithstanding subparagraph (A), for the hospital's cost reporting period beginning during fiscal year 1986, payment under title XVIII of the Social Security Act [this subchapter] shall be made as though the applicable percentage increase described in section 1886(b)(3)(B) [subsec. (b)(3)(B) of this section] were equal to 3/4 of 1 percent; and

"(C) for cost reporting periods beginning on or after October 1, 1986, the applicable percentage increase (as so defined) with respect to the previous cost reporting period beginning during fiscal year 1986 shall be deemed to have been 1 1/2 percent.

"(4) DEFINITION.—In this subsection, the term 'subsection (d) hospital' has the meaning given such term in section 1886(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section]."

Section 910(d) of Pub. L. 99–272 provided that:

"(1) DELAY IN FINAL TRANSITION.—The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 7, 1986]."

"(2) CHANGE IN HOSPITAL SPECIFIC PERCENTAGE.—The amendments made by subsection (b) [amending this section] shall apply—

"(A) to cost reporting periods beginning on or after October 1, 1985, but

"(B) notwithstanding subparagraph (A), for a hospital's cost reporting period beginning during fiscal year 1986, for purposes of section 1886(d)(1)(A) of the Social Security Act [subsec. (d)(1)(A) of this section]—

"(i) during the first 7 months of the period the 'target percentage' is 50 percent and the 'DRG percentage' is 50 percent, and

"(ii) during the remaining 5 months of the period the 'target percentage' is 45 percent and the 'DRG percentage' is 55 percent.

"(3) CHANGE IN BLENDED RATE.—The amendments made by subsection (c) [amending this section] shall apply to discharges occurring on or after May 1, 1986.

"(4) EXCEPTION.—

"(A) Notwithstanding any other provision of this subsection, the amendments made by this section [amending this section] shall not apply to payments with respect to the operating costs of inpatient hospital services (as defined in section 1886(a)(4) of the Social Security Act [subsec. (a)(4) of this section]) of a subsection (d) hospital (as defined in section 1886(d)(1)(B) of such Act [subsec. (d)(1)(B) of this section]) located in the State of Oregon.

"(B) Notwithstanding any other provision of law, for a cost reporting period beginning during fiscal year 1986 of a subsection (d) hospital to which the amendments made by this section [amending this section] do not apply, for purposes of section 1886(d)(1)(A) of such Act [subsec. (d)(1)(A) of this section]—

"(i) during the first 7 months of the period the 'target percentage' is 50 percent and the 'DRG percentage' is 50 percent, and

"(ii) during the remaining 5 months of the period the 'target percentage' is 25 percent and the 'DRG percentage' is 75 percent.

"(C) Notwithstanding any other provision of law, for purposes of section 1886(d)(1)(D) of such Act [subsec. (d)(1)(D) of this section], the applicable combined adjusted DRG prospective payment rate for a subsection (d) hospital to which the amendments made by this section [amending this section] do not apply is, for discharges occurring on or after October 1, 1986, a combined rate consisting of 25 percent of the national adjusted DRG prospective payment rate and 75 percent of the regional adjusted DRG prospective payment rate for such discharges.

Section 910(c) of Pub. L. 99–272 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to discharges occurring on or after May 1, 1986.

"(2) The amendments made by this section shall not first be applied to discharges occurring as of a date unless, for discharges occurring on that date, the amendments made by section 9105 [amending this section] are also being applied."

Section 910(e) of Pub. L. 99–272 provided that: "The amendments made by this section [amending this section] shall apply to discharges occurring on or after May 1, 1986."

Section 910(b) of Pub. L. 99–272 provided that: "The amendment made by subsection (a) [amending this section] shall apply to cost reporting periods beginning on or after January 1, 1986."

Section 910(d) of Pub. L. 99–272 provided that: "The amendments made by this section [amending this section] shall apply to hospital cost reporting periods beginning on or after October 1, 1986."

Section 910(b) of Pub. L. 99–272 provided that: "The amendment made by subsection (a) [amending this section] shall apply to the date of the enactment of this Act [Apr. 7, 1986]."

Section 911(b) of Pub. L. 99–272 provided that: "The amendment made by subsection (a) [amending this section] shall apply to hospital cost reporting periods beginning on or after October 1, 1983, and before October 1, 1985."

Section 9203(b) of Pub. L. 99–272 provided that: "The amendment made by subsection (a) [amending this section] shall apply to hospital cost reporting periods beginning on or after July 1, 1985."
**Amendments**

Amendment by Pub. L. 97–417 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Section 2307(b)(2) of Pub. L. 98–369 provided that: "The amendment made by the Office of the Secretary of the Treasury of the United States by reason of an amendment to section 1395f of the Public Health and Welfare Act [amending subtitle E of title XIX of the Social Security Act] shall be effective as though it had been included as a part of this section as this section was amended by this title.

"The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1984.

"(1) Except as provided in paragraph (2), the amendments by subsections (b) and (c) [amending this section] shall be effective with respect to cost reporting periods beginning on or after October 1, 1984, and the amendment made by subsection (a) [amending this section] shall be effective with respect to cost reporting periods beginning on or after October 1, 1984.

"(2) The amendment made by subsection (b) [amending this section] shall not apply so as to reduce any payment under section 1886(d) of the Social Security Act [subsection (d)].

Section 2312(c) of Pub. L. 98–369, as amended by Pub. L. 97–417, section 604, title IX, § 9320(a), Oct. 21, 1986, 100 Stat. 303; Pub. L. 99–509, title V, § 5311, Oct. 1, 1986, 100 Stat. 1395–399, title IV, § 411(p), July 1, 1988, as added by Pub. L. 100–485, title VI, § 608(d)(2), Oct. 13, 1988, 102 Stat. 2324, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply to periods beginning on or after October 1, 1984, and before January 1, 1985. In the case of a cost reporting period that begins before January 1, 1985, but ends after such date, additional payments under the amendment made by subsection (a) shall be proportionately reduced to reflect the portion of the period occurring after such date.

"Amendment by section 2312(a), (b), (d), and (e) of Pub. L. 98–369 effective July 18, 1984, see section 2313(c) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 1395y of this title.

Section 2316(g) of Pub. L. 98–369 provided that: "The amendments made by this section [amending this section and sections 1395i–2 and 1395cc of this title and enacting and amending provisions set out as notes under section 1395y of this title] shall be effective as though they had been included in the enactment of the Social Security Amendments of 1983 [Public Law 98–21]."

Amendment by section 2354(b)(42)–(44) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed under the provisions of law involved before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 1395a–1 of this title.

**Effective Date of 1983 Amendments**

Section 601(b)(9) of Pub. L. 98–21 provided that the repeal of subsec. (b)(9) of Pub. L. 98–21 is effective with respect to cost reporting periods beginning on or after October 1, 1982, and that the enactment of a new subsec. (b)(9) of this section is effective with respect to cost reporting periods beginning on or after October 1, 1983.

Section 604 of title VI of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title III, § 2315(f)(1), July 18, 1984, 98–369, set out as a note under section 1300(b) of this title, provided that: "(a) Except as provided in section 602(d) [amending section 1395cc of this title] and in paragraph (2), the amendments made by the preceding provisions of this title [amending this section and sections 1320c–2, 1395f, 1395i–2, 1395v, 1395w, 1395y, 1395cc, 1395mm, 1395so, 1395rr, and 1395xx of this title] apply to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983. A change in a hospital's cost reporting period that has been made after November 1982 shall be recognized for purposes of this section only if the Secretary finds good cause for that change.

"(2) Section 1866(a)(1)(F) of the Social Security Act [section 1395cc(a)(1)(F) of this title] as added by section 602(d)(1)(C) of this title, and section 1866(a)(1)(G) and (H) of such Act (as added by section 602(d)(1)(C) of this title) shall be effective on October 1, 1983.

"(b) The Secretary shall make an appropriate reduction in the payment amount under section 1886(d) of the Social Security Act [subsection (d) of this section] as amended by this title for any discharge, if the admission has occurred before a hospital's first cost reporting period that begins after September 1983, to take into account amounts payable under title XVIII of that Act [as amended by this title] before the date of the enactment of this Act [Apr. 20, 1983] for items and services furnished before that period.

"(c)(1) The Secretary shall cause to be published in the Federal Register a notice of the interim final DRG prospective payment rates established under subsection (a) of section 1886 of the Social Security Act [title XIX of this title] no later than September 1, 1983, and allow for a period of public comment thereon. Payment on the basis of prospective payment rates shall become effective on October 1, 1983, without the necessity for consideration of comments received, but the Secretary shall, by notice published in the Federal Register, affirm or modify the amounts by December 31, 1983, after considering such comments."

"(2) A modification under paragraph (1) that reduces a prospective payment rate shall apply only to discharges occurring after 30 days after the date the notice of the modification is published in the Federal Register."

"(3) Rules to implement the amendments made by this title [amending this section and sections 1320a–1, 1320c–2, 1395f, 1395i–2, 1395so, 1395v, 1395w, 1395y, 1395cc, 1395mm, 1395so, 1395rr, and 1395xx of this title, enacting provisions set out as notes under sections 1385f and 1386x of this title, and amending provisions set out as a note under section 1396x of this title] shall be established in accordance with the procedure described in this subsection.

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

**Effective Date**

Section 101(b)(1) of Pub. L. 97–248 provided that: "The amendments made by subsection (a) [enacting section 1395x of this title] shall apply to cost reporting periods beginning on or after October 1, 1982."

**Regulations**

Section 400(c) of Pub. L. 101–506 provided that: "The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this section [amending this section and enacting provisions set out as a note above]."

Section 2315(f)(2) of Pub. L. 98–369 provided that: "Notwithstanding section 604(c) of the Social Security Amendments of 1983 [section 604(c) of Pub. L. 98–21, set out above], the Secretary of Health and Human Services shall cause to be published in the Federal Register proposed regulations to carry out subsection (c) of section 1396x of the Social Security Act [subsection (c) of this section] not later than July 1, 1984, and allow for a period of 45 days for public comment thereon. After con-
sideration of the comments received, the Secretary shall cause to be published in the Federal Register final regulations to carry out such subsection not later than October 1, 1983.'

Section 101(b)(2)(A) of Pub. L. 97–248 provided that: ‘‘The Secretary of Health and Human Services shall first issue such final regulations (whether or not on an interim (other basis) before October 1, 1982, as may be necessary to implement such amendments (amendments by section 101(a) of Pub. L. 97–248, enacting this section and amending section 1395x of this title) on a timely basis. If such regulations are promulgated on an interim final basis, the Secretary shall take such steps as may be necessary to provide opportunity for public comment, and appropriate revision based thereon, so as to provide that such regulations are not on an interim basis later than March 31, 1983.’’

CONSTRUCTION OF 2010 AMENDMENT

Pub. L. 111–192, title I, §102(e), June 25, 2010, 124 Stat. 1282, provided that: ‘‘Nothing in the amendments made by this section [amending this section] shall be construed as changing the policy described in section 1886(a)(4) of the Social Security Act (42 U.S.C. 1395wwa(a)(4)), as applied by the Secretary of Health and Human Services before the date of the enactment of this Act [June 25, 2010], with respect to diagnostic services.’’

Pub. L. 111–148, title V, §5504(c), Mar. 23, 2010, 124 Stat. 660, provided that: ‘‘The amendments made by this section [amending this section] shall not be applied in a manner that requires reopening of any settled hospital cost reports as to which there is not a jurisdictionally proper appeal pending as of the date of enactment of this Act [Mar. 23, 2010] on the issue of payment for indirect costs of medical education under section 1886(d)(5)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)) or for direct graduate medical education costs under section 1886(h) of such Act (42 U.S.C. 1395ww(h)).’’

Pub. L. 111–148, title V, §5505(d), title X, §10501(j), Mar. 23, 2010, 124 Stat. 999, provided that: ‘‘The amendments made by this section [amending this section] shall not be applied in a manner that requires reopening of any settled hospital cost reports as to which there is not a jurisdictionally proper appeal pending as of the date of enactment of this Act [Mar. 23, 2010] on the issue of payment for indirect costs of medical education under section 1886(d)(5)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)) or for direct graduate medical education costs under section 1886(h) of such Act (42 U.S.C. 1395ww(h)).’’

Pub. L. 111–148, title V, §5506(c), Mar. 23, 2010, 124 Stat. 662, provided that: ‘‘The amendments made by this section [amending this section] shall not be applied in a manner that requires reopening of any settled hospital cost reports as to which there is not a jurisdictionally proper appeal pending as of the date of the enactment of this Act [Mar. 23, 2010] on the issue of payment for indirect costs of medical education under section 1886(d)(5)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)) or for direct graduate medical education costs under section 1886(h) of such Act (42 U.S.C. Section [sic] 1395ww(h)).’’

TRANSFER OF FUNCTIONS

Prospective Payment Assessment Commission (ProPAC) was terminated and its assets and staff transferred to the Medicare Payment Advisory Commission (MedPAC) by section 4022(c)(2), (3) of Pub. L. 105–33, set out as a note under section 1395ww of this title. Section 4022(c)(2), (3) further provided that MedPAC was to be responsible for preparation and submission of reports required by law to be submitted by ProPAC, and that, for purposes, any reclassifications in law to ProPAC were to be deemed, after the appointment of MedPAC, to refer to MedPAC.

SPECIAL RULE FOR FISCAL YEAR 2011 AND ADJUSTMENT FOR CERTAIN HOSPITALS IN FISCAL YEAR 2011


‘‘(A) IN GENERAL.—Subject to subparagraph (B), for purposes of implementation of the amendment made by paragraph (1) [amending section 106(a) of div. B of Pub. L. 109–432, set out as a note under this section], including (notwithstanding paragraph (3) of section 117(a) of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173) [set out as a note under this section], as amended by section 124(b) of the Medicare Improvements for Patients and Providers Act of 2008 (Public Law 110–275) for purposes of the implementation of paragraph (2) of such section 117(a), during fiscal year 2011, the Secretary of Health and Human Services shall use the hospital wage index that was promulgated by the Secretary of Health and Human Services in the Federal Register on August 16, 2010 (75 Fed. Reg. 50042), and any subsequent corrections.

‘‘(B) EXCEPTION.—Beginning on April 1, 2011, in determining the wage index applicable to hospitals that qualify for wage index reclassification, the Secretary shall include the average hourly wage data of hospitals whose reclassification was extended pursuant to the amendment made by paragraph (1) only if including such data results in a higher applicable reclassified wage index. Any revision to hospital wage indexes made as a result of this subparagraph shall not be effect in a budget neutral manner.

(3) ADJUSTMENT FOR CERTAIN HOSPITALS IN FISCAL YEAR 2011.—

‘‘(A) IN GENERAL.—In the case of a subsection (d) hospital (as defined in subsection (d)(1)(B) of section 1886 of the Social Security Act (42 U.S.C. 1395ww)) with respect to which—

‘‘(i) the wage index applicable for such hospital for the period beginning on October 1, 2010, and ending on March 31, 2011, was lower than for the period beginning on April 1, 2011, and ending on September 30, 2011, by reason of the application of paragraph (2)(B);

‘‘(ii) the wage index applicable for such hospital for the period beginning on October 1, 2010, and extending on March 31, 2011, was lower than for the period beginning on April 1, 2011, and extending on September 30, 2011, by reason of the application of paragraph (2)(B);

the Secretary shall pay such hospital an additional payment that reflects the difference between the wage index for such periods.

‘‘(B) TIMEFRAME FOR PAYMENTS.—The Secretary shall make payments required under subparagraph (A) by no later than December 31, 2011.


NO REOPENING OF PREVIOUSLY BUNDLED CLAIMS

Pub. L. 111–192, title I, §102(c), June 25, 2010, 124 Stat. 1281, provided that: ‘‘(1) IN GENERAL.—The Secretary of Health and Human Services may not reopen a claim, adjust a claim, or make a payment pursuant to any request for payment under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), submitted by an entity (including a hospital or an entity wholly owned or operated by the hospital) for services described in paragraph (2) for purposes of treating, as unrelated to a patient’s inpatient admission, services provided during the 3 days (or, in the case of a hospital that is not a subsection (d) hospital, during the 1 day) immediately preceding the date of the patient’s inpatient admission.

‘‘(2) SERVICES INCLUDED.—For purposes of paragraph (1), the services described in this paragraph are other services related to the admission (as described in section 1886(a)(4) of the Social Security Act (42 U.S.C. 1395wwa(a)(4)), as amended by subsection (a) which was previously included on a claim or request for payment submitted under part A of title XVIII of such Act (42
U.S.C. 1395c et seq.] for which a reopening, adjustment, or request for payment under part B of such title [42 U.S.C. 1395 et seq.], was not submitted prior to the date of the enactment of this Act [June 25, 2010]."

"IMPLEMENTATION OF AMENDMENT BY PUB. L. 111-192"

Pub. L. 111-192, title I, §102(d), June 25, 2010, 124 Stat. 1281, provided that: "Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement the provisions of this section [amending this section and enacting provisions set out as notes under this section] (and amendments made by this section) by program instruction or otherwise."

"PAYMENT FOR QUALIFYING HOSPITALS"

Pub. L. 111-192, title I, §1109, Mar. 30, 2010, 124 Stat. 1051, provided that:

"(a) IN GENERAL.—From the amount available under subsection (b), the Secretary of Health and Human Services shall provide for a payment to qualifying hospitals (as defined in subsection (d)) for fiscal years 2011 and 2012 of the amount determined under subsection (c).

"(b) AMOUNTS AVAILABLE.—There shall be available from the Federal Hospital Insurance Trust Fund $400,000,000 for payments under this section for fiscal years 2011 and 2012.

"(c) PAYMENT AMOUNT.—The amount of payment under this section for a qualifying hospital shall be determined, in a manner consistent with the amount available under subsection (b), in proportion to the portion of the amount of the aggregate payments under section 1866(d) of the Social Security Act [42 U.S.C. 1395ww(d)] to the hospital for fiscal year 2009 bears to the sum of all such payments to all qualifying hospitals for such fiscal year.

"(d) QUALIFYING HOSPITAL DEFINED.—In this section, the term ‘qualifying hospital’ means a subsection (d) hospital (as defined for purposes of section 1886(d) of the Social Security Act) that is located in a county that ranks, based on its ranking in age, sex, and race adjusted spending for benefits under parts A and B under title XVIII of such Act [42 U.S.C. 1395c et seq.], for such fiscal years 2011 and 2012, among the lowest quartile of such counties in the United States."

"VALUE-BASED PURCHASING DEMONSTRATION PROGRAMS"


"(A) ESTABLISHMENT.—

"(i) IN GENERAL.—Not later than 2 years after the date of enactment of this Act [Mar. 23, 2010], the Secretary of Health and Human Services (in this subsection referred to as the ‘Secretary’) shall establish a demonstration program under which the Secretary establishes a value-based purchasing program under the Medicare program for critical access hospitals (as defined in paragraph (1) of section 1861(mm) of such Act [42 U.S.C. 1395x(b)]) in order to test innovative methods of measuring and rewarding quality and efficient health care furnished by such hospitals.

"(ii) DURATION.—The demonstration program under this paragraph shall be conducted for a 3-year period.

"(B) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act [42 U.S.C. 1301 et seq., 1395 et seq.] as may be necessary to carry out the demonstration program under this paragraph.

"(C) BUDGET NEUTRALITY REQUIREMENT.—In conducting the demonstration program under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary would have paid if the demonstration program under this section was not implemented.

"(D) REPORT.—Not later than 18 months after the completion of the demonstration program under this paragraph, the Secretary shall submit to Congress a report on the demonstration program together with—

"(i) recommendations on the establishment of a permanent value-based purchasing program under the Medicare program for critical access hospitals with respect to inpatient critical access hospital services; and

"(ii) recommendations for such other legislation and administrative action as the Secretary determines appropriate.

"(1) GRAM FOR INPATIENT CRITICAL ACCESS HOSPITALS

Pub. L. 111-152, title I, §1109, Mar. 30, 2010, 124 Stat. 399, provided that:

"(A) EMBRACE VARIOUS MEASURES AND CASES.—The Secretary shall conduct the demonstration program under this paragraph at an appropriate number (as determined by the Secretary) of critical access hospitals. The Secretary shall ensure that such hospitals are representative of the spectrum of such hospitals that participate in the Medicare program.

"(B) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act [42 U.S.C. 1301 et seq., 1395 et seq.] as may be necessary to carry out the demonstration program under this paragraph.

"(C) BUDGET NEUTRALITY REQUIREMENT.—In conducting the demonstration program under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary would have paid if the demonstration program under this section was not implemented.

"(D) REPORT.—Not later than 18 months after the completion of the demonstration program under this paragraph, the Secretary shall submit to Congress a report on the demonstration program together with—

"(i) recommendations on the establishment of a permanent value-based purchasing program under the Medicare program for critical access hospitals with respect to inpatient critical access hospital services; and

"(ii) recommendations for such other legislation and administrative action as the Secretary determines appropriate."
REFORMING THE MEDICARE HOSPITAL WAGE INDEX SYSTEM

Pub. L. 111–148, Title III, §3317(b), (c), Mar. 23, 2010, 124 Stat. 438, 439, provided that:

(1) PLAN FOR REFORMING THE MEDICARE HOSPITAL WAGE INDEX SYSTEM

"(1) IN GENERAL.—Not later than December 31, 2011, the Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall submit to Congress a report that includes a plan to reform the hospital wage index system under section 1886 of the Social Security Act (42 U.S.C. 1395ww).

"(2) DETAILS.—In developing the plan under paragraph (1), the Secretary shall take into account the goals for reforming such system set forth in the Medicare Payment Advisory Commission June 2007 report entitled 'Report to Congress: Promoting Greater Efficiency in Medicare', including establishing a new hospital compensation index system that—

"(A) uses Bureau of Labor Statistics data, or other data or methodologies, to calculate relative wages for each geographic area involved;

"(B) minimizes wage index adjustments between area wage indexes within metropolitan statistical areas and state-wide rural areas;

"(C) includes methods to minimize the volatility of wage index adjustments that result from implementation of policy, while maintaining budget neutrality in applying such adjustments;

"(D) takes into account the effect that implementation of the system has on health care providers and on each region of the country;

"(E) addresses issues related to occupational mix, such as staffing practices and ratios, and any evidence on the effect on quality of care or patient safety as a result of the implementation of the system; and

"(F) provides for a transition.

"(3) CONSULTATION.—In developing the plan under paragraph (1), the Secretary shall consult with relevant affected parties.

"(4) USE OF PARTICULAR CRITERIA FOR DETERMINING RECLASSIFICATIONS.—Notwithstanding any other provision of law, in making decisions on applications for reclassification of a subsection (d) hospital (as defined in paragraph (1)(B) of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)(1))) for the purposes described in paragraph (10)(D)(v) of section for fiscal year 2011 and each subsequent fiscal year (until the first fiscal year beginning on or after the date that is 1 year after the Secretary of Health and Human Services submits the report to Congress under subsection (b)), the Geographic Classification Review Board established under paragraph (10) of such section shall use the average hourly wage comparison criteria used in making such decisions as of September 30, 2008. The preceding sentence shall be effected in a budget neutral manner.

APPLICATION OF BUDGET NEUTRALITY ON A NATIONAL BASIS IN THE CALCULATION OF THE MEDICARE HOSPITAL WAGE INDEX FLOOR

Pub. L. 111–148, title III, §3141, Mar. 23, 2010, 124 Stat. 441, provided that: "In the case of discharges occurring on or after October 1, 2010, for purposes of applying section 4140 of the Balanced Budget Act of 1997 (section 4140 of Pub. L. 105–33, set out as a note under this section] (42 U.S.C. 1395ww note) and paragraph (b)(4) of section 412.64 of title 42, Code of Federal Regulations, the Secretary of Health and Human Services shall administer subsection (b) of such section 4140 and paragraph (e) of such section 412.64 in the same manner as the Secretary administered such subsection (b) and paragraph (e) for discharges occurring during fiscal year 2008 (through a uniform, national adjustment to the area wage index)."

EFFECT ON TEMPORARY FTE CAP ADJUSTMENTS

Pub. L. 111–148, title V, §5506(d), Mar. 23, 2010, 124 Stat. 662, provided that: "The Secretary of Health and Human Services shall give consideration to the effect of the amendments made by this section [amending this section] on any temporary adjustment to a hospital's FTE cap under section 1886(h)(4)(H)(v) of title 42, Code of Federal Regulations (as in effect on the date of enactment of this Act [Mar. 23, 2010]) in order to ensure that there is no duplication of FTE slots. Such amendments shall not affect the application of section 1886(h)(4)(H)(v) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(H)(v))."

GRADUATE NURSE EDUCATION DEMONSTRATION


"(a) IN GENERAL.—

"(1) ESTABLISHMENT.—

"(A) IN GENERAL.—The Secretary shall establish a graduate nurse education demonstration under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) under which an eligible hospital may receive payment for the hospital's reasonable costs (as described in paragraph (2)) for the provision of qualified clinical training to advance practice nurses.

"(B) NUMBER.—The demonstration shall include up to 5 eligible hospitals.

"(C) WRITTEN AGREEMENTS.—Eligible hospitals selected to participate in the demonstration shall enter into written agreements pursuant to subsection (b) in order to reimburse the eligible partners of the hospital the share of the costs attributable to each partner.

"(2) COSTS DESCRIBED.—

"(A) IN GENERAL.—Subject to subparagraph (B) and subsection (d), the costs described in this paragraph are the reasonable costs (as described in section 1861(v) of the Social Security Act (42 U.S.C. 1395v)) of each eligible hospital for the clinical training costs (as determined by the Secretary) that are attributable to providing advanced practice registered nurses with qualified training.

"(B) LIMITATION.—With respect to a year, the amount reimbursed under subparagraph (A) may not exceed the amount of costs described in subparagraph (A) that are attributable to an increase in the number of advanced practice registered nurses enrolled in a program that provides qualified training during the year and for which the hospital is being reimbursed under the demonstration, as compared to the average number of advanced practice registered nurses who graduated in each year during the period beginning on January 1, 2006, and ending on December 31, 2010 (as determined by the Secretary) from the graduate nursing education program operated by the applicable school of nursing that is an eligible partner of the hospital for purposes of the demonstration.

"(3) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act (42 U.S.C. 1301 et seq., 1395 et seq.) under which an eligible hospital may receive such amounts reimbursed under subparagraph (A) in a manner that the Secretary determines to be in the best interest of the hospital.

"(4) ADMINISTRATION.—Chapter 35 of title 44, United States Code, shall not apply to the implementation of this section.

"(b) WRITTEN AGREEMENTS WITH ELIGIBLE PARTNERS.—No payment shall be made under this section to an eligible hospital unless such hospital has in effect a written agreement with the eligible partners of the hospital. Such written agreement shall describe, at a minimum—

"(1) the obligations of the eligible partners with respect to the provision of qualified training; and

"(2) the obligation of the eligible hospital to reimburse such eligible partners applicable (in a timely manner) for the costs of such qualified training attributable to partner.

"(c) EVALUATION.—Not later than October 17, 2017, the Secretary shall submit to Congress a report on the demonstration. Such report shall include an analysis of the following:

"(1) The growth in the number of advanced practice registered nurses with respect to a specific base year as a result of the demonstration.
“(2) The growth for each of the specialties described in subparagraphs (A) through (D) of subsection (e)(1).

“(3) The costs to the Medicare program under title XVIII of the Social Security Act as a result of the demonstration.

“(4) Other items the Secretary determines appropriate and relevant.

“(3) Reporting.—

“(1) IN GENERAL.—There is hereby appropriated to the Secretary, out of any funds in the Treasury not otherwise appropriated, $50,000,000 for each of fiscal years 2012 through 2015 to carry out this section, including the design, implementation, monitoring, and evaluation of the demonstration.

“(2) PROHIBITION.—If the aggregate payments to eligible hospitals under the demonstration exceed $50,000,000 for a fiscal year described in paragraph (1), the Secretary shall prorate the payment amounts to each eligible hospital in order to ensure that the aggregate payments do not exceed such amount.

“(3) WITHOUT FISCAL YEAR LIMITATION.—Amounts appropriated under this subsection shall remain available without fiscal year limitation.

“(e) DEFINITIONS.—In this section:

“(1) ADVANCED PRACTICE REGISTERED NURSE.—The term ‘advanced practice registered nurse’ includes the following:

“(A) A clinical nurse specialist (as defined in subsection (aa)(5) of section 1861 of the Social Security Act (42 U.S.C. 1395x)).

“(B) A nurse practitioner (as defined in such subsection).

“(C) A certified registered nurse anesthetist (as defined in subsection (bb)(2) of such section).

“(2) APPLICABLE NON-HOSPITAL COMMUNITY-BASED CARE SETTING.—The term ‘applicable non-hospital community-based care setting’ means a non-hospital community-based care setting which has entered into a written agreement (as described in subsection (b)) with the eligible hospital participating in the demonstration. Such settings include Federally qualified health centers, rural health clinics, and other non-hospital settings as determined appropriate by the Secretary.

“(3) APPLICABLE SCHOOL OF NURSING.—The term ‘applicable school of nursing’ means an accredited school of nursing (as defined in section 801 of the Public Health Service Act [42 U.S.C. 296j]) which has entered into a written agreement (as described in subsection (b)) with the eligible hospital participating in the demonstration.

“(4) DEMONSTRATION.—The term ‘demonstration’ means the graduate nurse education demonstration established under subsection (a).

“(5) ELIGIBLE HOSPITAL.—The term ‘eligible hospital’ means a hospital (as defined in subsection (c) of section 1861 of the Social Security Act (42 U.S.C. 1395x)) or a critical access hospital (as defined in subsection (mm)(1) of such section) that has a written agreement in place with—

“(A) 1 or more applicable schools of nursing; and

“(B) 2 or more applicable non-hospital community-based care settings.

“(6) ELIGIBLE PARTNERS.—The term ‘eligible partners’ includes the following:

“(A) An applicable non-hospital community-based care setting.

“(B) An applicable school of nursing.

“(7) QUALIFIED TRAINING.—

“(A) IN GENERAL.—The term ‘qualified training’ means training that provides an advanced practice registered nurse with the clinical skills necessary to provide primary care, preventive care, transitional care, chronic care management, and other services appropriate for individuals entitled to, or enrolled for, benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.), or enrolled under part B of such title [42 U.S.C. 1395 et seq.]; and

“(B) subject to subparagraph (B), at least half of which is provided in a non-hospital community-based care setting.

“(B) WAIVER OF REQUIREMENT HALF OF TRAINING BE PROVIDED IN NON-HOSPITAL COMMUNITY-BASED CARE SETTING IN CERTAIN AREAS.—The Secretary may waive the requirement under subparagraph (A)(i) with respect to eligible hospitals located in rural or medically underserved areas.

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

PAYMENT FOR LONG-TERM CARE HOSPITAL SERVICES


“(1) DELAY IN APPLICATION OF 25 PERCENT PATIENT THRESHOLD PAYMENT ADJUSTMENT.—The Secretary (of Health and Human Services) shall not apply, for cost reporting periods beginning on or after July 1, 2007, for a 5-year period—

“(A) section 412.536 of title 42, Code of Federal Regulations, or any similar provision, to freestanding long-term care hospitals or to a long-term care hospital, or satellite facility, that as of December 29, 2007, was co-located with an entity that is a provider-based, off-campus location of a subsection (d) hospital which did not provide services payable under section 1886(d) of the Social Security Act [42 U.S.C. 1395ww(d)] at the off-campus location; and

“(B) such section or section 412.534 of title 42, Code of Federal Regulations, or any similar provisions, to a long-term care hospital identified by the amendment made by section 4411(a) of the Balanced Budget Act of 1997 (Public Law 105–33) (amending this section and enacting provisions set out as a note under this section).

“(2) PAYMENT FOR HOSPITALS-WITHIN-HOSPITALS.—

“(A) IN GENERAL.—Payment to an applicable long-term care hospital or satellite facility which is located in a rural area or which is co-located with an urban single or MSA dominant hospital under paragraphs (d)(1), (e)(1), and (e)(4) of section 412.534 of title 42, Code of Federal Regulations, shall not be subject to any payment adjustment under such section if no more than 75 percent of the hospital’s Medicare discharges (other than discharges described in paragraph (d)(2) or (e)(3) of such section) are admitted from a co-located hospital.

“(B) CO-LOCATED LONG-TERM CARE HOSPITALS AND SATELLITE FACILITIES.—

“(i) IN GENERAL.—Payment to an applicable long-term care hospital or satellite facility which is co-located with another hospital shall not be subject to any payment adjustment under section 412.534 of title 42, Code of Federal Regulations, if no more than 50 percent of the hospital’s Medicare discharges (other than discharges described in paragraph (c)(3) of such section) are admitted from a co-located hospital.

“(ii) APPLICABLE LONG-TERM CARE HOSPITAL OR SATELLITE FACILITY DEFINED.—In this paragraph, the term ‘applicable long-term care hospital or satellite facility’ means a hospital or satellite facility that is subject to the transition rules under section 11137 of the Balanced Budget Act of 1997 (Public Law 105–33) (amending this section and enacting provisions set out as a note under this section).

“(C) EFFECTIVE DATE.—Subparagraphs (A) and (B) shall apply to cost reporting periods beginning on or after October 1, 2007 (or July 1, 2007, in the case of a satellite facility described in section 412.22(h)(3)(i) of title 42, Code of Federal Regulations) for a 5-year period.

“(3) NO APPLICATION OF VERY SHORT-STAY OUTLIER POLICY.—The Secretary shall not apply, for the 5-year pe-
period beginning on the date of the enactment of this Act, the amendments finalized on May 11, 2007 (72 Fed. Reg. 26904, 26992) made to the short-stay outlier payment provision for long-term care hospitals contained in section 412.528(e)(3)(i) of title 42, Code of Federal Regulations, or any similar provision.

(4) NO APPLICABILITY OF ON-SITE ADJUSTMENT TO STATISTICAL AMOUNT.—The Secretary shall not, for the 5-year period beginning on the date of the enactment of this Act, make the one-time prospective adjustment to long-term care hospital prospective payment rates provided in section 412.528(e)(3) of title 42 Code of Federal Regulations, or any similar provision.


MORATORIUM ON THE ESTABLISHMENT OF LONG-TERM CARE HOSPITALS, LONG-TERM CARE SATCHELATELITIES AND ON THE INCREASE OF LONG-TERM CARE HOSPITAL BEDS IN EXISTING LONG-TERM CARE HOSPITALS OR SATCHELATELITIES FACILITIES

Pub. L. 110–173, title I, §114(c), Dec. 29, 2007, 121 Stat. 2565, provided that:

'(1) IN GENERAL.—The Secretary of Health and Human Services shall not apply for discharges occurring on or after October 1, 2007.

'(2) REVIEW METHODOLOGY.—The medical necessity reviews under paragraph (1) shall be conducted on an annual basis in accordance with rules specified by the Secretary. Such reviews shall—

'(A) provide for a statistically valid and representative sample of admissions of such individuals sufficient to provide results at a 95 percent confidence interval; and

'(B) guarantee that at least 75 percent of overpayments received by long-term care hospitals for medically unnecessary admissions and continued stays of individuals in long-term care hospitals will be identified and recovered and that related days of care will not be counted toward the length of stay requirement contained in section 418.47 of title 42, Code of Federal Regulations, as of the date of the enactment of this subsection.

'(3) CONTINUATION OF REVIEWS.—Under contracts under this subsection, the Secretary shall establish an error rate with respect to such reviews that could require further review of the medical necessity of admissions and continued stay in the hospital involved and other actions as determined by the Secretary.

'(4) TERMINATION OF REQUIRED REVIEWS.—

'(A) In general.—Subject to subparagraph (B), the previous provisions of this subsection shall cease to apply for discharges occurring on or after October 1, 2010.

'(B) Continuation.—As of the date specified in subparagraph (A), the Secretary shall determine whether to continue to guarantee, through continued medical review and sampling under this paragraph, recovery of at least 75 percent of overpayments received by long-term care hospitals due to medically unnecessary admissions and continued stays.

'(5) FUNDING.—The costs to fiscal intermediaries or Medicare administrative contractors conducting the medical necessity reviews under paragraph (1) shall be funded from the aggregate overpayments received by long-term care hospitals due to medically unnecessary admissions and continued stays. The Secretary may use an amount not in excess of 49 percent of the overpayments under this paragraph to compensate the fiscal intermediaries or Medicare administrative contractors for the costs of services performed.'
EXTENDING CERTAIN MEDICARE HOSPITAL WAGE INDEX RECLASSIFICATIONS


“(2) SPECIAL EXCEPTION RECLASSIFICATIONS.—The Secretary of Health and Human Services shall extend for discharge occurring through the last date of the extension of reclassifications under section 106(a) of the Medicare Improvement[s] and Extension Act of 2006 (division B of Public Law 109–332) [set out below], the special exception reclassifications made under the authority of section 1886(d)(5)(I)(i) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(I)(i)) and contained in the final rule promulgated by the Secretary in the Federal Register on August 11, 2004 (69 Fed. Reg. 49105, 49107).

“(3) USE OF PARTICULAR WAGE INDEX.—For purposes of implementation of this subsection [par. (1) of this subsection amended section 106(a) of Pub. L. 109–332, set out below] in fiscal years 2008 and 2009, the Secretary shall apply the hospital wage index that was promulgated by the Secretary in the Federal Register on October 10, 2007 (72 Fed. Reg. 57634), and any subsequent corrections.”

CORRECTION OF APPLICATION OF WAGE INDEX DURING ‘‘BARE BONES’’ RECLASSIFICATION

Pub. L. 110–173, title I, §117(c), Dec. 29, 2007, 121 Stat. 2508, provided that: “In the case of a subsection (d) hospital (as defined for purposes of section 1886 of the Social Security Act (42 U.S.C. 1395ww)) with respect to which—

“(1) a reclassification of its wage index for purposes of such section was extended for the period beginning on April 1, 2007, and ending on September 30, 2007, pursuant to subsection (a) of section 106 of division F of the Tax Relief and Health Care Act of 2006 [Pub. L. 109–332 (42 U.S.C. 1395ww note)] note; and

“(2) the wage index applicable for such hospital during such period was lower than the wage index applicable for such hospital during the period beginning on October 1, 2006, and ending on March 31, 2007,

the Secretary [of Health and Human Services] shall apply the higher wage index that was applicable for such hospital during the period beginning on October 1, 2006, and ending on March 31, 2007, for purposes of reclassifying such hospital (as defined for purposes of section 1886 of the Social Security Act (42 U.S.C. 1395ww)) with respect to which a reclassification of its wage index for purposes of such section would have been extended for the period beginning on April 1, 2007, and ending on September 30, 2007, pursuant to subsection (a) of section 106 of division F of the Tax Relief and Health Care Act of 2006 [Pub. L. 109–332 (42 U.S.C. 1395ww note)] note; and

“(3) the Secretary’s application of such wage index for purposes of paragraphs (1) and (2) shall be made in a budget-neutral manner.”

CORRECTION OF MID-YEAR RECLASSIFICATION EXPANSION


Pub. L. 112–78, title III, §302(b), (c), Dec. 23, 2011, 125 Stat. 1284, provided that:

“(b) SPECIAL RULE FOR OCTOBER AND NOVEMBER 2011.—

“(1) IN GENERAL.—Subject to paragraph (2), for purposes of implementation of subsection (a) [amending section 106(a) of Pub. L. 109–332, set out above], including for purposes of the implementation of paragraph (2) of section 117(a) of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173) [set out as a note above], for the period beginning on October 1, 2011, and ending on November 30, 2011, the Secretary of Health and Human Services shall apply the hospital wage index that was promulgated by the Secretary of Health and Human Services in the Federal Register on August 18, 2011 (76 Fed. Reg. 51476), and any subsequent corrections.

“(2) EXCEPTION.—In determining the wage index applicable to hospitals that qualify for wage index reclassification, the Secretary shall, for the period beginning on October 1, 2011, and ending on November 30, 2011, include the average hourly wage data of hospitals whose reclassification was extended pursuant to the amendment made by subsection (a) only if including such data results in a higher applicable reclassified wage index. Any revision to hospital wage indexes made as a result of this paragraph shall not be effected in a budget neutral manner.

“(c) TIMEFRAME FOR PAYMENTS.—The Secretary shall make payment required under subsections (a) and (b) not later than December 31, 2012.”

PLAN FOR HOSPITAL VALUE BASED PURCHASING PROGRAM

Pub. L. 110–171, title V, §5001(b), Feb. 8, 2006, 120 Stat. 29, provided that:

“(1) IN GENERAL.—The Secretary of Health and Human Services shall develop a plan to implement a value based purchasing program for payments under the Medicare program for subsection (d) hospitals beginning with fiscal year 2009.

“(2) DETAILS.—Such a plan shall include consideration of the following issues:

“(A) The on-going development, selection, and modification process for measures of quality and efficiency in hospital inpatient settings.

“(B) The reporting, collection, and validation of quality data.

“(C) The structure of value based payment adjustments, including the determination of thresholds or improvements in quality that would substantiate a payment adjustment, the size of such payments, and the sources of funding for the value based payments.

“(D) The disclosure of information on hospital performance.

In developing such a plan, the Secretary shall consult with relevant affected parties and shall consider experience with such demonstrations that are relevant to the value based purchasing program under this subsection.”

EXTENDED PHASE-IN OF THE INPATIENT REHABILITATION FACILITY CLASSIFICATION CRITERIA


“(a) IN GENERAL.—Notwithstanding section 412.23(b) of title 42, Code of Federal Regulations, the Secretary of Health and Human Services shall require a compliance rate that is no greater than the 60 percent compliance rate that became effective for cost reporting periods beginning on or after July 1, 2006, in the classification criterion used under the IRF regulation (as defined in subsection (c)) to determine whether a hospital or unit of a hospital is an inpatient rehabilitation facility under the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173) [set out as a note above], including such data results in a higher applicable reclassified wage index. Any revision to hospital wage indexes made as a result of this paragraph shall not be affected in a budget-neutral manner.

“(b) CONTINUED USE OF COMORBIDITIES.—For cost reporting periods beginning on or after July 1, 2007, the Secretary shall include patients with comorbidities as described in section 412.23(b)(2)(i) of title 42, Code of Federal Regulations (as in effect as of January 1, 2007), in the inpatient population that counts toward the percent specified in subsection (a).

“(c) IRF REGULATION.—For purposes of subsection (a), the term ‘IRF regulation’ means the rule published in


"(a) ESTABLISHMENT.—The Secretary shall establish
under this section a qualified gainsharing demonstration program under which the Secretary shall approve demonstration projects by not later than November 1, 2006, to test and evaluate methodologies and arrangements between hospitals and physicians designed to govern the utilization of inpatient hospital resources and physician work to improve the quality and efficiency of care provided to Medicare beneficiaries and to develop improved operational and financial hospital performance with sharing of remuneration as specified in the project. Such projects shall be operational by not later than January 1, 2007.

"(b) REQUIREMENTS DESCRIBED.—A demonstration project under this section shall meet the following requirements for purposes of maintaining or improving quality while achieving cost savings:

"(1) ARRANGEMENT FOR REMUNERATION AS SHARE OF SAVINGS.—The demonstration project shall involve an arrangement between a hospital and a physician under which the hospital provides remuneration to the physician that represents solely a share of the savings incurred directly as a result of collaborative efforts between the hospital and the physician.

"(2) WRITTEN PLAN AGREEMENT.—The demonstration project shall be conducted pursuant to a written agreement that—

"(A) is submitted to the Secretary prior to implementation of the project; and

"(B) includes a plan outlining how the project will achieve improvements in quality and efficiency.

"(3) PATIENT NOTIFICATION.—The demonstration project shall include a notification process to inform patients who are treated in a hospital participating in the project of the participation of the hospital in such project.

"(4) MONITORING QUALITY AND EFFICIENCY OF CARE.—

"(A) The demonstration projects shall provide measures to ensure that the quality and efficiency of care provided to patients who are treated in a hospital participating in the demonstration project is continuously monitored to ensure that such quality and efficiency is maintained or improved.

"(5) INDEPENDENT REVIEW.—The demonstration project shall certify, prior to implementation, that the elements of the demonstration project are reviewed by an organization that is not affiliated with the hospital or the physician participating in the project.

"(6) REFERRAL LIMITATIONS.—The demonstration project shall not be structured in such a manner as to reward any physician participating in the project on the basis of the volume or value of referrals to the hospital by the physician.

"(c) WAIVER OF CERTAIN RESTRICTIONS.—

"(1) IN GENERAL.—An incentive payment made by a hospital to a physician under and in accordance with a demonstration project shall not constitute—

"(A) remuneration for purposes of section 1128B of the Social Security Act (42 U.S.C. 1320a-7b);

"(B) a payment intended to induce a physician to reduce or limit services, or to reduce or limit services submitted for benefits under Medicare or a State plan approved under title XIX of such Act (subchapter XIX of this chapter) in violation of section 1128A of such Act (42 U.S.C. 1320a-7a); or

"(C) a financial relationship for purposes of section 1877 of such Act (42 U.S.C. 1395mm).

"(2) PROTECTION FOR EXISTING ARRANGEMENTS.—In no case shall the failure to comply with the requirements described in paragraph (1) affect a finding made by the Inspector General of the Department of Health and Human Services prior to the date of the enactment of this Act (Feb. 8, 2006) that an arrangement between a hospital and a physician does not violate paragraph (1) or (2) of section 1128A(a) of the Social Security Act (42 U.S.C. 1320a-7a(a)).

"(d) PROGRAM ADMINISTRATION.—

"(1) SOLICITATION OF APPLICATIONS.—By not later than 90 days after the date of the enactment of this Act (Feb. 8, 2006), the Secretary shall solicit applications for approval of a demonstration project, in such form and manner, and at such time specified by the Secretary.

"(2) NUMBER OF PROJECTS APPROVED.—The Secretary shall approve not more than 6 demonstration projects, at least 2 of which shall be located in a rural area.

"(3) DURATION.—The qualified gainsharing demonstration program under this section shall be conducted for the period beginning on January 1, 2007, and ending on December 31, 2009 (or September 30, 2011, in the case of a demonstration project in operation as of October 1, 2008).

"(e) REPORTS.—

"(1) INITIAL REPORT.—By not later than December 1, 2006, the Secretary shall submit to Congress a report on the number of demonstration projects that will be conducted under this section.

"(2) PROJECT UPDATE.—By not later than December 1, 2007, the Secretary shall submit to Congress a report on the details of such projects (including the project improvements towards quality and efficiency described in subsection (b)(2)(B)).

"(3) QUALITY IMPROVEMENT AND SAVINGS.—By not later than March 31, 2011, the Secretary shall submit to Congress a report on quality improvement and savings achieved as a result of the qualified gainsharing demonstration program established under subsection (a).

"(4) FINAL REPORT.—By not later than March 31, 2013, the Secretary shall submit to Congress a final report on the information described in paragraph (3).

"(f) FUNDING.—

"(1) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary for fiscal years 2006, $6,000,000, and for fiscal year 2010, $1,600,000, to carry out this section.

"(2) AVAILABILITY.—Funds appropriated under paragraph (1) shall remain available for expenditure through fiscal year 2014 or until expended.

"(g) DEFINITIONS.—For purposes of this section:

"(1) DEMONSTRATION PROJECT.—The term ‘demonstration project’ means a project implemented under the qualified gainsharing demonstration program established under subsection (a).

"(2) HOSPITAL.—The term ‘hospital’ means a hospital that receives payment under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)), and does not include a critical access hospital (as defined in section 1861(mm) of such Act (42 U.S.C. 1395x(mm))).

"(3) MEDICARE.—The term ‘Medicare’ means the programs under title XVIII of the Social Security Act [this subchapter].

"(4) PHYSICIAN.—The term ‘physician’ means, with respect to a demonstration project, a physician described in paragraph (1) or (3) of section 1861(r) of the Social Security Act (42 U.S.C. 1395ww(r)) who is licensed as such a physician in the area in which the project is located and meets requirements to provide services for which benefits are provided under Medicare. Such term shall be deemed to include a practi-
tioner described in section 1842(e)(13)(C) of such Act (42 U.S.C. 1395u(e)(13)(C)).

"(5) Secretary.—The term ‘Secretary’ means the Secretary of Health and Human Services.

MORE FREQUENT UPDATE IN WEIGHTS USED IN HOSPITAL MARKET BASKET


"(a) More Frequent Updates in Weights.—After revising the weights used in the hospital market basket under section 1886(b)(3)(B)(iii) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(iii)) to reflect the most current data available, the Secretary [of Health and Human Services] shall establish a frequency for revising such weights, including the labor share, in such market basket to reflect the most current data available more frequently than once every 5 years.

"(b) Incorporation of Explanation in Rule-Making.—The Secretary shall include in the publication of the final rule for payment for inpatient hospital services under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) for fiscal year 2006, an explanation of the reasons for, and options considered, in determining frequency established under subsection (a)."

RURAL COMMUNITY HOSPITAL DEMONSTRATION PROGRAM


"(1) In general.—The Secretary [of Health and Human Services] shall establish a demonstration program to test the feasibility and advisability of the establishment of rural community hospitals (as defined in subsection (i)(1) to furnish covered inpatient hospital services (as defined in subsection (f)(2)) to Medicare beneficiaries.

"(2) Demonstration areas.—The program shall be conducted in rural areas selected by the Secretary in States with low population densities, as determined by the Secretary.

"(3) Application.—Each rural community hospital that is located in a demonstration area selected under paragraph (2) that desires to participate in the demonstration program under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(4) Selection of hospitals.—The Secretary shall select from among rural community hospitals submitting applications under paragraph (3) not more than 15 of such hospitals to participate in the demonstration program under this section.

"(5) Duration.—The Secretary shall conduct the demonstration program under this section for a 5-year period (in this section referred to as the ‘initial 5-year period’) and, as provided in subsection (g), for the 5-year extension period.

"(6) Implementation.—The Secretary shall implement the demonstration program not later than January 1, 2005, but may not implement the program before October 1, 2004.

"(b) Payment.—

"(1) In general.—The amount of payment under the demonstration program for covered inpatient hospital services furnished in a rural community hospital, other than such services furnished in a psychiatric or rehabilitation unit of the hospital which is a distinct part, is—

"(A) for discharges occurring in the first cost reporting period beginning on or after the implementation of the demonstration program, the reasonable costs of providing such services; and

"(B) for discharges occurring in a subsequent cost reporting period under the demonstration program, the lesser of—

"(i) the reasonable costs of providing such services in the cost reporting period involved; or

"(ii) the target amount (as defined in paragraph (2)), applicable to the cost reporting period involved.

"(2) Target amount.—For purposes of paragraph (1)(B)(ii), the term ‘target amount’ means, with respect to a rural community hospital for a particular 12-month cost reporting period—

"(A) in the case of the second such cost reporting period for which this subsection is in effect, the reasonable costs of providing such covered inpatient hospital services as determined under paragraphs (1)(A) and (B); and

"(B) in the case of a later cost reporting period, the target amount for the preceding 12-month cost reporting period, increased by the applicable percentage increase (under clause (i) of section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) in the market basket percentage increase (as defined in clause (iii) of such section) for that particular cost reporting period.

"(c) Funding.—

"(1) In general.—The Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i) of such funds as are necessary for the costs of carrying out the demonstration program under this section.

"(2) Budget neutrality.—In conducting the demonstration program under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary would have paid if the demonstration program under this section was not implemented.

"(d) Waiver authority.—The Secretary may waive such requirements of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) as may be necessary for the purpose of carrying out the demonstration program under this section.

"(e) Report.—Not later than 6 months after the completion of the demonstration program under this section, the Secretary shall submit to Congress a report on such program, together with recommendations for such legislation and administrative action as the Secretary determines to be appropriate.

"(f) Definitions.—In this section:

"(1) Rural Community Hospital Defined.—

"(A) In general.—The term ‘rural community hospital’ means a hospital (as defined in section 1861(e) of the Social Security Act (42 U.S.C. 1395x(e))) that—

"(i) is located in a rural area (as defined in section 1395x(e)(6));

"(ii) is a distinct part, is—

"(I) subject to subparagraph (B), has fewer than 51 acute care inpatient beds, as reported in its most recent cost report;

"(ii) makes available 24-hour emergency care services; and

"(iv) is not eligible for designation, or has not been designated, as a critical access hospital under section 1820 (probably means section 1820 of the Social Security Act which is classified to section 1395i–4 of this title).

"(B) Treatment of Psychiatric and Rehabilitation Units.—For purposes of subparagraph (A)(ii), beds in a psychiatric or rehabilitation unit of the hospital which is a distinct part of the hospital shall not be counted.

"(2) Covered Inpatient Hospital Services.—The term ‘covered inpatient hospital services’ means inpatient hospital services, and includes extended care hospital services furnished under an agreement under section 1886 of the Social Security Act (42 U.S.C. 1395ww(d)(8)(E));

"(g) Five-Year Extension of Demonstration Program.—

"(1) In general.—Subject to the succeeding provisions of this subsection, the Secretary shall conduct
the demonstration program under this section for an additional 5-year period (in this section referred to as the ‘5-year extension period’) that begins on the date immediately following the last day of the initial 5-year period under subsection (a)(5).

“(2) EXPANSION OF DEMONSTRATION STATES.—Notwithstanding subsection (a)(2), during the 5-year extension period, the Secretary shall expand the number of States with low population densities determined by the Secretary under such subsection to 20. In determining which States to include in such expansion, the Secretary shall use the same criteria and data that the Secretary used to determine the States under such subsection for purposes of the initial 5-year period.

“(3) INCREASE IN MAXIMUM NUMBER OF HOSPITALS PARTICIPATING IN THE DEMONSTRATION PROGRAM.—Notwithstanding subsection (a)(4), during the 5-year extension period, not more than 30 rural community hospitals may participate in the demonstration program under this section.

“(4) HOSPITALS IN DEMONSTRATION PROGRAM ON DATE OF ENACTMENT [Mar. 23, 2010].—In the case of a rural community hospital that is participating in the demonstration program under this section as of the last day of the initial 5-year period, the Secretary—

“(A) shall provide for the continued participation of such rural community hospital in the demonstration program during the 5-year extension period unless the rural community hospital makes an election, in such form and manner as the Secretary may specify, to discontinue such participation; and

“(B) in calculating the amount of payment under subsection (b) to the rural community hospital for covered inpatient hospital services furnished by the hospital during such 5-year extension period, shall substitute, under paragraph (1)(A) of such subsection—

“(i) the reasonable costs of providing such services for discharges occurring in the first cost reporting period beginning on or after the first day of the 5-year extension period, for

“(ii) the reasonable costs of providing such services for discharges occurring in the first cost reporting period beginning on or after the implementation of the demonstration program.”

APPLICABILITY OF CHAPTER 35 OF TITLE 44


REPORT ON EXTENSION OF APPLICATIONS UNDER REDISTRIBUTION PROGRAM

Pub. L. 108–173, title IV, § 422(c), Dec. 8, 2003, 117 Stat. 2286, provided that: ‘‘Not later than July 1, 2005, the Secretary [of Health and Human Services] shall submit to Congress a report containing recommendations regarding whether to extend the deadline for applications for an increase in resident limits under section 1886(h)(4)(I)(ii)(II) of the Social Security Act [section 1886(h)(4) (subsec. (h)(4) of this section) does not contain a subpar. (I) as added by subsection (a)(i)].’’

MEDPAC STUDY ON RURAL HOSPITAL PAYMENT ADJUSTMENTS


“(a) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study of the impact of sections 401 through 406, 411, 416, and 505 [amending this section and sections 1395f, 1395g, 1395i–4, 1395m, 1395c, and 1395tt of this title and enacting provisions set out as notes under sections 1395f, 1395g, 1395i–4, 1395m, and 1395tt of this title]. The Com- mission shall analyze the effect on total payments, growth in costs, capital spending, and such other payment effects under those sections.

“(b) REPORTS.—

“(1) INTERIM REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 8, 2003], the Commission shall submit to Congress an interim report on the matters studied under subsection (a) with respect only to changes to the critical access hospital provisions under section 405 [amending sections 1395f, 1395g, 1395i–4, 1395m, and 1395tt of this title and enacting provisions set out as notes under sections 1395f, 1395g, 1395i–4, and 1395m of this title].

“(2) FINAL REPORT.—Not later than 3 years after the date of the enactment of this Act [Dec. 8, 2003], the Commission shall submit to Congress a final report on all matters studied under subsection (a).’’

GAO STUDY AND REPORT ON APPROPRIATENESS OF PAYMENTS UNDER THE PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES


“(1) STUDY.—The Comptroller General of the United States, using the most current data available, shall conduct a study to determine—

“(A) the appropriate level and distribution of payments under such system to reflect legitimate differences in costs across different geographic areas, kinds of hospitals, and types of cases.

“(2) REPORT.—Not later than 24 months after the date of the enactment of this Act [Dec. 8, 2003], the Comptroller General of the United States shall submit to Congress a report on the study conducted under paragraph (1) together with such recommendations for legislative and administrative action as the Comptroller General determines appropriate.’’

NOT BUDGET NEUTRAL

Pub. L. 108–173, title V, § 503(d)(2), Dec. 8, 2003, 117 Stat. 2292, provided that: ‘‘There shall be no reduction or other adjustment in payments under section 1886 of the Social Security Act [this section] because an additional payment is provided under subsection (d)(5)(A)(v)(III) of such section.’’

ONE-TIME APPEALS PROCESS FOR HOSPITAL WAGE INDEX CLASSIFICATION


“(a) ESTABLISHMENT OF PROCESSES.—

“(1) IN GENERAL.—The Secretary [of Health and Human Services] shall establish not later than January 1, 2004, by instruction or otherwise a process under which a hospital may appeal the wage index classification otherwise applicable to the hospital and select another area within the State (or, at the discretion of the Secretary, within a contiguous State) to which to be reclassified.

“(2) PROCESS REQUIREMENTS.—The process established under paragraph (1) shall be consistent with the following:

“(A) Such an appeal may be filed as soon as possible after the date of the enactment of this Act [Dec. 8, 2003] but shall be filed by not later than February 15, 2004.

“(B) Such an appeal shall be heard by the Medicare Geographic Reclassification Review Board.

“(C) There shall be no further administrative or judicial review of a decision of such Board.

“(3) RECLASSIFICATION UPON SUCCESSFUL APPEAL.—If the Medicare Geographic Reclassification Review Board determines that the wage index classification otherwise applicable to the hospital is not appropriate, the hospital shall be classified under such Board.”
Board determines that the hospital is a qualifying hospital (as defined in subsection (c)), the hospital shall be reclassified to the area selected under paragraphs (8) and (10) of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) shall not apply to an appeal under this section.

"(d) Application of Reclassification.—In the case of an appeal decided in favor of a qualifying hospital under subsection (a), the wage index reclassification shall not affect the wage index computation for any area or for any other hospital and shall not be reflected in a budget neutral manner. The provisions of this section shall not affect payment for discharges occurring after the end of the 3-year-period referred to in subsection (a).

"(e) Limitation on Expenditures.—The aggregate amount of additional expenditures resulting from the application of this section shall not exceed $900,000,000.

"(f) Transitional Extension.—Any reclassification of a county or other area made by Act of Congress for purposes of making payments under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) that expired on September 30, 2003, shall be deemed to be in effect for the period beginning on January 1, 2004, and ending on September 30, 2004.

"(g) Disregarding Hospital Reclassifications for Purposes of Group Reclassifications.—For purposes of a reclassification of a group of hospitals in a geographic area under section 1886(d) of the Social Security Act [subtitle (d) of this section] for purposes of discharges occurring beginning on October 1, 2007, and ending on the last date of the extension of reclassification under section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272), to provide an exception to the initial residency period for geriatric residency or fellowship programs such that, where a particular approved geriatric training program requires a resident to complete 2 years of training to initially become board eligible in the geriatric specialty, the 2 years spent in the geriatric training program are treated as part of the resident’s initial residency period, but are not counted against any limitation on the initial residency period.

"(h) Interim Final Regulatory Authority and Effective Date.—The Secretary [of Health and Human Services] shall promulgate interim final regulations consistent with the congressional intent expressed in this section after notice and pending opportunity for public comment to be effective for cost reporting periods beginning on or after October 1, 2003."

**TREATMENT OF VOLUNTEER SUPERVISION**


"(a) Moratorium on Changes in Treatment.—During the 1-year period beginning on January 1, 2004, for purposes of applying subsections (d)(5)(B) and (h) of section 1886 of the Social Security Act (42 U.S.C. 1395ww), the Secretary [of Health and Human Services] shall allow all hospitals to count residents in osteopathic and allopathic family practice programs in existence as of January 1, 2002, who are training at non-hospital sites, without regard to the financial arrangement between the hospital and the teaching physician practicing in the non-hospital site to which the resident has been assigned.

"(b) Study and Report.—

"(1) STUDY.—The Inspector General of the Department of Health and Human Services shall conduct a study of the appropriateness of alternative payment methodologies under such sections for the costs of training residents in non-hospital settings.

"(2) REPORT.—Not later than 1 year after the date of the enactment of this Act (Dec. 8, 2003), the Inspector General shall submit to Congress a report on the study conducted under paragraph (1), together with such recommendations as the Inspector General determines appropriate."

**FURNISHING HOSPITALS WITH INFORMATION TO COMPUTE DSH FORMULA**

Pub. L. 108–173, title IX, § 951, Dec. 8, 2003, 117 Stat. 2427, provided that: "Beginning not later than 1 year after the date of the enactment of this Act (Dec. 8, 2003), the Secretary [of Health and Human Services] shall arrange to furnish to subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act, 42 U.S.C. 1395ww(d)(1)(B)) the data necessary for such hospitals to compute the number of patient days used in computing the disproportionate patient percentage under such section for that hospital for the current cost reporting period. Such data shall also be furnished to other hospitals which would qualify for additional payments under part A of title XVIII of the Social Security Act [part A of this subchapter] on the basis of such data."

**SPECIAL RULES FOR PAYMENT FOR FISCAL YEAR 2001**

Pub. L. 106–534, §1(a)(b) (title III, §301(b)), Dec. 21, 2000, 114 Stat. 2763, 2763A–481, provided that: "Notwithstanding the amendment made by subsection (a) (amending this section), for purposes of making payments for fiscal year 2001 for impatient hospital services furnished by subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))), the ‘applicable percentage increase’ referred to in section 1886(b)(3)(B)(i) of such Act (42 U.S.C. 1395ww(b)(3)(B)(i))—

"(1) for discharges occurring on or after October 1, 2000, and before April 1, 2001, shall be determined in accordance with subclause (XVI) of such section as in
effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and
(2) for discharges occurring on or after April 1, 2001, and before October 1, 2001, shall be equal to—

(A) the market basket percentage increase plus 1.1 percentage points for hospitals (other than sole community hospitals) in all areas; and
(B) the market basket percentage increase for sole community hospitals.


(1) for discharges occurring on or after October 1, 2000, and before April 1, 2001, shall be adjusted as provided by clause (ixa)(III) of such section as in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and
(2) for discharges occurring on or after April 1, 2001, and before October 1, 2001, shall, instead of being reduced by 3 percent as provided by clause (ixa)(III) of such section as in effect after the date of the enactment of this Act, be reduced by 1 percent.”

Pub. L. 106–554, §1(a)(6) [title V, §547(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–553, provided that:

“(a) IMPARTIENT HOSPITAL SERVICES.—The payment increase provided under the following sections shall not apply to discharges occurring after fiscal year 2001 and shall not be taken into account in calculating the payment amounts applicable for discharges occurring after such fiscal year:

(1) Section 301(b)(2)(A) [set out as a note above] (relating to acute care hospital payment update).
(2) Section 302(b) [set out as a note above] (relating to IME percentage adjustment).
(3) Section 303(b)(2) [set out as a note above] (relating to DSH payments).”

CONSIDERATION OF PRICE OF BLOOD AND BLOOD PRODUCTS IN MARKET BASKET INDEX

Pub. L. 106–554, §1(a)(6) [title III, §301(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–491, provided that: “The Secretary of Health and Human Services shall provide for more timely and accurate recognition of such cost increases in the future.”

(‘‘B‘‘ organizations involved in the collection, processing, and delivery of blood; and
‘‘C‘‘ organizations involved in the development of new blood safety technologies.

(3) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Commission shall submit to Congress a report on the study conducted under paragraph (1) together with such recommendations for legislation and administrative action as the Commission determines appropriate.”

PROCESS TO PERMIT STATEWIDE WAGE INDEX CALCULATION AND APPLICATION

Pub. L. 106–554, §1(a)(6) [title III, §304(c)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–494, provided that: “‘(1) IN GENERAL.—The Secretary of Health and Human Services shall establish a process (based on the voluntary process utilized by the Secretary of Health and Human Services under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for purposes of computing and applying a statewide geographic adjustment factor) under which an appropriate statewide entity may apply to have all the geographic areas in a State treated as a single geographic area for purposes of computing and applying the area wage index under section 1886(d)(3)(E) of such Act (42 U.S.C. 1395ww(d)(3)(E)). Such process shall be established by October 1, 2001, for reclassifications beginning in fiscal year 2003.

‘‘(2) PROHIBITION ON INDIVIDUAL HOSPITAL RECLASSIFICATION.—Notwithstanding any other provision of law, if the Secretary applies a statewide geographic wage index under paragraph (1) with respect to a State, any application submitted by a hospital in that State under section 1886(d)(10) of the Social Security Act (42 U.S.C. 1395ww(d)(10)) for geographic reclassification shall not be considered.”

COLLECTION OF INFORMATION ON OCCUPATIONAL MIX

Pub. L. 106–554, §1(a)(6) [title III, §304(c)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–495, provided that: “The Secretary of Health and Human Services shall provide for the collection of data every 3 years on occupational mix for employees of each subsection (d) hospital (as defined in section 1886(d)(1)(D)) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(D)) in the provision of inpatient hospital services, in order to construct an occupational mix adjustment in the hospital area wage index applied under section 1886(d)(3)(E) of such Act (42 U.S.C. 1395ww(d)(3)(E)).”

Pub. L. 106–554, §1(a)(6) [title III, §304(c)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–495, provided that: “By not later than September 30, 2003, for application beginning October 1, 2004, the Secretary shall first complete—
"(A) the collection of data under paragraph (1) [set out above]; and

(B) the measurement under the third sentence of section 1886(d)(1)(E) [subsection (d)(3)(E) of this section], as amended by paragraph (2)."

PAYMENT FOR INPATIENT SERVICES OF PSYCHIATRIC HOSPITALS

Pub. L. 106–554, §1(a)(6) [title III, §307(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–496, provided that: "With respect to hospitals described in clause (i) of section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)) and psychiatric units described in the matter following clause (v) of such section, in making incentive payments to such hospitals under section 1886(b)(1)(A) of such Act (42 U.S.C. 1395ww(b)(1)(A)) for cost reporting periods beginning on or after October 1, 2000, and before October 1, 2001, the Secretary of Health and Human Services, in clause (d) of such section, shall substitute '3 percent' for '2 percent.'"

EXPEDITING RECOGNITION OF NEW TECHNOLOGIES INTO INPATIENT PPS CODING SYSTEM

Pub. L. 106–554, §1(a)(6) [title V, §533(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–548, provided that: "(1) Report.—Not later than April 1, 2001, the Secretary of Health and Human Services shall submit to Congress a report on methods of expeditiously incorporating new medical services and technologies into the clinical coding system used with respect to payment for inpatient hospital services furnished under the medicare program under title XVIII of the Social Security Act [this subchapter], together with a detailed description of the Secretary's preferred methods to achieve this purpose.

(2) IMPLEMENTATION.—Not later than October 1, 2001, the Secretary shall implement the preferred methods described in the report transmitted pursuant to paragraph (1)."

CONSULTATION PRIOR TO RULEMAKING

Pub. L. 106–554, §1(a)(6) [title V, §533(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–549, provided that: "(1) ADDITIONAL PAYMENT.—In addition to payments made to each subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)) under section 1886(d)(5)(B) of such Act (42 U.S.C. 1395ww(d)(5)(B)) which receives payment for the direct costs of medical education for discharges occurring in fiscal year 2000, the Secretary of Health and Human Services shall make one or more payments to each hospital in an amount which, as estimated by the Secretary, is equal in the aggregate to the difference between the amount of payments to the hospital under such section for such discharges and the amount of payments that would have been paid under such section for such discharges if 'c' in clause (iv)(V) of such section equaled 1.6 rather than 1.47. Additional payments made under this subsection shall be made applying the same structure as applies to payments made under section 1886(d)(5)(B) of such Act.

(2) NO EFFECT ON OTHER PAYMENTS OR DETERMINATIONS.—In making such additional payments, the Secretary shall not change payments, determinations, or budget neutrality adjustments made for such period under section 1886(d) of such Act (42 U.S.C. 1395ww(d))."

DATA COLLECTION


"(1) IN GENERAL.—The Secretary of Health and Human Services shall require any subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)) to submit to the Secretary, in the cost reports submitted to the Secretary by such hospital for discharges occurring during a fiscal year, data on the costs incurred by the hospital for providing inpatient and outpatient hospital services for which the hospital is not compensated, including non-medicare bad debt, charity care, and charges for medicare and indigent care.

(2) EFFECTIVE DATE.—The Secretary shall require the submission of the data described in paragraph (1) in cost reports for cost reporting periods beginning on or after October 1, 2001."

PER DISCHARGE PROSPECTIVE PAYMENT SYSTEM FOR LONG-TERM CARE HOSPITALS


Pub. L. 106–554, §1(a)(6) [title III, §307(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–496, provided that: "(1) MODIFICATION OF REQUIREMENT.—In developing the prospective payment system for payment for inpatient hospital services provided in long-term care hospitals described in section 1886(d)(1)(B)(IV) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)(IV)) under the medicare program under title XVIII of such Act [this subchapter] required under section 123 of BBRA [Pub. L. 106–113, §1000(a)(6) [title I, §123], set out as a note below], the Secretary of Health and Human Services shall examine the feasibility and the impact of basing payment under such a system on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data. The Secretary shall examine and may provide for appropriate adjustments to the long-term hospital payment system, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment consistent with section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)).

(2) DEFAULT IMPLEMENTATION OF SYSTEM BASED ON EXISTING DRG METHODOLOGY.—If the Secretary is unable to implement the prospective payment system for long-term care hospitals under section 123 of the BBRA by October 1, 2002, the Secretary shall implement a prospective payment system for such hospitals that bases payment under such a system using existing hospital diagnosis-related groups (DRGs), modified where feasible to account for resource use of long-term care hospital patients using the most recently available hospital discharge data for such services furnished on or after that date."

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §123], Nov. 29, 1999, 113 Stat. 1536, 1501A–331, provided that: "(1) DEVELOPMENT OF SYSTEM.—"(1) IN GENERAL.—The Secretary of Health and Human Services shall require any subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)) to submit to the Secretary, in the cost reports submitted to the Secretary by such hospital for discharges occurring during a fiscal year, data on the costs incurred by the hospital for providing inpatient and outpatient hospital services for which the hospital is not compensated, including non-medicare bad debt, charity care, and charges for medicare and indigent care.

(2) EFFECTIVE DATE.—The Secretary shall require the submission of the data described in paragraph (1) in cost reports for cost reporting periods beginning on or after October 1, 2001."
to submit such information to the Secretary as the Secretary may require to develop the system.

"(b) REPORT.—Not later than October 1, 2001, the Secretary shall submit to the appropriate committees of Congress a report that includes a description of the system developed under subsection (a)(1).

"(c) IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM.—Notwithstanding section 1886(b)(3) of the Social Security Act (42 U.S.C. 1395ww(b)(3)), the Secretary shall provide, for cost reporting periods beginning on or after October 1, 2002, for payments for inpatient hospital services furnished by long-term care hospitals under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) in accordance with the system described in subsection (a)."

PER DIEM PROSPECTIVE PAYMENT SYSTEM FOR PSYCHIATRIC HOSPITALS

"(a) DEVELOPMENT OF SYSTEM.—

"(1) IN GENERAL.—The Secretary of Health and Human Services shall develop a per diem prospective payment system for payment for inpatient hospital services of psychiatric hospitals and units (as defined in paragraph (3)) under the medicare program. Such system shall include an adequate patient classification system that reflects the differences in patient resource use and costs among such hospitals and shall maintain budget neutrality.

"(2) COLLECTION OF DATA AND EVALUATION.—In developing the system described in paragraph (1), the Secretary may require such psychiatric hospitals and units to submit such information to the Secretary as the Secretary may require to develop the system.

"(3) DEFINITION.—In this section, the term ‘psychiatric hospitals and units’ means a psychiatric hospital described in clause (i) of section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)) and psychiatric units described in the matter following clause (v) of such section.

"(b) REPORT.—Not later than October 1, 2001, the Secretary shall submit to the appropriate committees of Congress a report that includes a description of the system developed under subsection (a)(1).

"(c) IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM.—Notwithstanding section 1886(b)(3) of the Social Security Act (42 U.S.C. 1395ww(b)(3)), the Secretary shall provide, for cost reporting periods beginning on or after October 1, 2002, for payments for inpatient hospital services furnished by psychiatric hospitals and units under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) in accordance with the prospective payment system established by the Secretary under this section in a budget neutral manner."

STUDY ON IMPACT OF IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM

"(1) STUDY.—The Secretary of Health and Human Services shall conduct a study of the impact on utilization and beneficiary access to services of the implementation of the medicare prospective payment system for inpatient hospital services or rehabilitation facilities under section 1886(j) of the Social Security Act (42 U.S.C. 1395ww(j)).

"(2) REPORT.—Not later than 3 years after the date such system is first implemented, the Secretary shall submit to Congress a report on such study."

MEDPAC STUDY ON MEDICARE PAYMENT FOR NONPHYSICIAN HEALTH PROFESSIONAL CLINICAL TRAINING IN HOSPITALS

"(1) STUDY.—The Medicare Payment Advisory Commission shall conduct a study of medicare payment policy with respect to professional clinical training of different classes of nonphysician health care professionals (such as nurses, nurse practitioners, allied health professionals, physician assistants, and psychologists) and the basis for any differences in treatment among such classes.

"(b) REPORT.—Not later than 18 months after the date of the enactment of this Act (Nov. 29, 1999), the Commission shall submit a report to Congress on the study conducted under subsection (a)."

NOT COUNTING AGAINST NUMERICAL LIMITATION CERTAIN INTERNS AND RESIDENTS TRANSFERRED FROM A VA RESIDENCY PROGRAM THAT LOSTS ACCREDITATION

"(1) IN GENERAL.—Any applicable resident described in paragraph (2) shall not be taken into account in applying any limitation regarding the number of residents or interns for which payment may be made under section 1886 of the Social Security Act (42 U.S.C. 1395ww).

"(2) APPLICABLE RESIDENT DESCRIBED.—An applicable resident described in this paragraph is a resident or intern who—

"(A) participated in graduate medical education at a facility of the Department of Veterans Affairs;

"(B) was subsequently transferred on or after January 1, 1997, and before July 31, 1998, to a hospital that was not a Department of Veterans Affairs facility; and

"(C) was transferred because the approved medical residency program in which the resident or intern participated would lose accreditation by the Accreditation Council on Graduate Medical Education if such program continued to train residents at the Department of Veterans Affairs facility.

"(3) EFFECTIVE DATE.—

"(A) IN GENERAL.—Paragraph (1) applies as if included in the enactment of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33].

"(B) RETROACTIVE PAYMENTS.—If the Secretary of Health and Human Services determines that a hospital operating an approved medical residency program is owed payments as a result of enactment of this subsection, the Secretary shall make such payments not later than 60 days after the date of enactment of this Act (Nov. 29, 1999)."

GAO STUDY ON GEOGRAPHIC RECLASSIFICATION

"(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the current laws and regulations for geographic reclassification of hospitals to determine whether such reclassification is appropriate for purposes of applying wage indices under the medicare program and whether such reclassification results in more accurate payments for all hospitals. Such study shall examine data on the number of hospitals that are reclassified and their reclassified status in determining payments under the medicare program. The study shall evaluate—

"(1) the magnitude of the effect of geographic reclassification on rural hospitals that are not reclassified;

"(2) whether the current thresholds used in geographic reclassification reclassify hospitals to the appropriate labor markets;

"(3) the effect of eliminating geographic reclassification through use of the occupational mix data;

"(4) the group reclassification policy;

"(5) changes in the number of reclassifications and the compositions of the groups;

"(6) the effect of State-specific budget neutrality compared to national budget neutrality; and

"(7) whether there are sufficient controls over the intermediary evaluation of the wage data reported by hospitals.

"(b) REPORT.—Not later than 18 months after the date of the enactment of this Act (Nov. 29, 1999), the Com-
troller General of the United States shall submit to Congress a report on the study conducted under subsection (a).”

CONTINUING TREATMENT OF PREVIOUSLY DESIGNATED CENTERS

Section 4202(b) of Pub. L. 105–33 provided that:

“(1) IN GENERAL.—Any hospital classified as a rural referral center by the Secretary of Health and Human Services under section 1866(d)(5)(C) of the Social Security Act [subsec. (d)(5)(C) of this section] for fiscal year 1991 shall be classified as such a rural referral center for fiscal year 1998 and each subsequent fiscal year.

“(2) BUDGET NEUTRALITY.—The provisions of section 1866(d)(8)(D) of the Social Security Act [subsec. (d)(8)(D) of this section] shall apply to reclassifications made pursuant to paragraph (1) in the same manner as such provisions apply to a reclassification under section 1866(d)(10) of such Act [subsec. (d)(10) of this section].”

HOSPITAL GEOGRAPHIC RECLASSIFICATION PERMITTED FOR PURPOSES OF DISPROPORTIONATE SHARE PAYMENT ADJUSTMENTS

Section 4203 of Pub. L. 105–33 provided that:

“(a) IN GENERAL.—For the period described in subsection (c), the Medicare Geographic Classification Review Board shall consider the application under section 1886(d)(10)(C)(i) of the Social Security Act (42 U.S.C. 1395ww(d)(10)(C)(i)) of a hospital described in section 1886(d)(1)(B) of such Act (42 U.S.C. 1395ww(d)(1)(B)) to change the hospital’s geographic classification for purposes of determining for a fiscal year eligibility for and amount of additional payment amounts under section 1886(d)(5)(F) of such Act (42 U.S.C. 1395ww(d)(5)(F)).

“(b) APPLICABLE GUIDELINES.—The Medicare Geographic Classification Review Board shall apply the guidelines established for reclassification under subclause (I) of section 1886(d)(10)(C)(i) of such Act to reclassification by reason of subsection (a) until the Secretary of Health and Human Services promulgates separate guidelines for such reclassification.

“(c) PERIOD DESCRIBED.—The period described in this subsection is the period beginning on the date of the enactment of this Act [Aug. 5, 1997] and ending 30 months after such date.”

TEMPORARY RELIEF FOR CERTAIN NON-TEACHING, NON-DHS HOSPITALS


“(1) IN GENERAL.—In the case of a hospital described in paragraph (2) for its cost reporting period—

“(A) beginning in fiscal year 1998 the amount of payment made to the hospital under section 1886(d) of the Social Security Act [subsec. (d) of this section] for discharges occurring during such fiscal year only shall be increased as though the applicable percentage increase otherwise applicable to discharges occurring during fiscal year 1998 under section 1886(b)(3)(B)(i)(XIII) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(i)(XIII)) had been increased by 0.5 percentage points; and

“(B) beginning in fiscal year 1999 the amount of payment made to the hospital under section 1886(d) of the Social Security Act for discharges occurring during such fiscal year only shall be increased as though the applicable percentage increase (otherwise applicable to discharges occurring during fiscal year 1999 under section 1886(b)(3)(B)(i)(XIV) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(i)(XIV)) had been increased by 0.3 percentage points.

Subparagraph (A) shall not apply in computing the increase under subparagraph (B) and neither subparagraph shall apply for discharges for any hospital occurring during a fiscal year after fiscal year 1999. Payment increases under this subsection for discharges occurring during a fiscal year are subject to settlement after the close of the fiscal year.”

“(2) HOSPITALS COVERED.—A hospital described in this paragraph for a cost reporting period is a hospital—

“(A) that is described in paragraph (3) for such period;

“(B) that is located in a State in which the amount of the aggregate payments under section 1886(d) of such Act [subsec. (d) of this section] for hospitals located in the State and described in paragraph (3) for their cost reporting periods beginning during fiscal year 1995 is less than the aggregate allowable operating costs of inpatient hospital services (as defined in section 1886(a)(4) of such Act) for such hospitals in such State with respect to such cost reporting periods; and

“(C) with respect to which the payments under section 1886(d) of such Act (42 U.S.C. 1395ww(d)) for discharges occurring in the cost reporting period involved, as estimated by the Secretary, is less than the allowable operating costs of inpatient hospital services (as defined in section 1886(a)(4) of such Act (42 U.S.C. 1395ww(a)(4))) for such hospital for such period, as estimated by the Secretary.

“(3) NON-TEACHING, NON-DHS HOSPITALS DESCRIBED.—A hospital described in this paragraph for a cost reporting period is a subsection (d) hospital (as defined in section 1886(d)(1)(B) of such Act (42 U.S.C. 1395ww(d)(1)(B))) that—

“(A) not receiving any additional payment amount described in section 1886(d)(5)(F) of such Act (42 U.S.C. 1395ww(d)(5)(F)) for discharges occurring during the period;

“(B) is not receiving any additional payment under section 1886(d)(5)(B) of such Act (42 U.S.C. 1395ww(d)(5)(B)) or a payment under section 1886(h) of such Act (42 U.S.C. 1395ww(h)) for discharges occurring during the period; and

“(C) does not qualify for payment under section 1886(d)(5)(G) of such Act (42 U.S.C. 1395ww(d)(5)(G)) for the period.”

FORMULA FOR ADDITIONAL PAYMENT AMOUNTS; REPORT

Section 4403(b), (c) of Pub. L. 105–33 provided that:

“(1) REPORT.—Not later than 1 year after the date of the enactment of this Act [Aug. 5, 1997], the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report that contains a formula for determining additional payment amounts to hospitals under section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)).

“(2) FACTORS IN DETERMINATION OF FORMULA.—In determining such formula the Secretary shall—

“(A) establish a single threshold for costs incurred by hospitals in serving low-income patients, and

“(B) consider the costs described in paragraph (3).

“(3) The costs described in this paragraph are as follows:

“(A) The costs incurred by the hospital during a period (as determined by the Secretary) of furnishing hospital services to individuals who are entitled to benefits under part A of title XVIII of the Social Security Act [part A of this subchapter] and who receive supplemental security income benefits under title XVI of such Act [subchapter XVI of this chapter] (excluding any supplementation of such benefits by a State under section 1616 of such Act (42 U.S.C. 1382e)).

“(B) The costs incurred by the hospital during a period (as so determined) of furnishing hospital services to individuals who receive medical assistance under the State plan under title XIX of such Act [subchapter XIX of this chapter] and are not entitled to benefits under part A of title XI of such Act [part A of this subchapter] (including individuals enrolled in a managed care organization (as
defined in section 1903(m)(1)(A) of such Act (42 U.S.C. 1396(m)(1)(A)) or any other managed care plan under such title and individuals who receive medical assistance under such title pursuant to a waiver approved by the Secretary under section 1115 of such Act (42 U.S.C. 1315)).

(c) DATA COLLECTION.—In developing the formula described in subsection (b), the Secretary of Health and Human Services may require any subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) receiving additional payments by reason of section 1886(d)(5)(F) of such Act (42 U.S.C. 1395ww(d)(5)(F)) to submit to the Secretary any information that the Secretary determines is necessary to develop such formula.''

GEOPHIC RECLASSIFICATION FOR CERTAIN DISPROPORTIONATELY LARGE HOSPITALS

Section 4409 of Pub. L. 105–33 provided that:

"(a) NEW GUIDELINES FOR RECLASSIFICATION.—Notwithstanding the guidelines published under section 1886(d)(10)(B)(i) of the Social Security Act (42 U.S.C. 1395ww(d)(10)(B)(i)), the Secretary of Health and Human Services shall publish and use alternative guidelines under which a hospital described in subsection (b), the Secretary determines is necessary to develop such formula.''

Section 4410 of Pub. L. 105–33 provided that:

"(b) HOSPITALS COVERED.—A hospital described in this subsection is a hospital that demonstrates that—

"(1) the average hourly wage paid by the hospital is not less than 40 percent of the adjusted unskilled wage paid by all hospitals located in the Metropolitan Statistical Area (as defined in section 1886(d)(1)(B)(vi)(I)) in each of fiscal years 1992 through 1997 and that such request was approved for each of such fiscal years.''

FLOOR ON AREA WAGE INDEX

Section 4411 of Pub. L. 105–33 provided that:

"(a) IN GENERAL.—For purposes of section 1886(d)(3)(E) of the Social Security Act (42 U.S.C. 1395ww(d)(3)(E)) for discharges occurring on or after October 1, 1997, the area wage index applicable under such section to any hospital which is not located in a rural area (as defined in section 1886(d)(2)(D) of such Act (42 U.S.C. 1395ww(d)(2)(D))) may not be less than the area wage index applicable under such section to hospitals located in rural areas in the State in which the hospital is located.

"(b) IMPLEMENTATION.—The Secretary of Health and Human Services shall adjust the area wage index referred to in subsection (a) for hospitals not described in such subsection in a manner which assures that the aggregate payments made under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) in a fiscal year for the operating costs of inpatient hospital services are not greater or less than those which would have been made in the year if this section did not apply.

"(2) EXCLUSION OF CERTAIN WAGES.—In the case of a hospital that is owned by a municipality and that was reclassified as an urban hospital under section 1886(d)(10) of the Social Security Act [subsec. (d)(10) of this section] for fiscal year 1996, in calculating the hospital's average hourly wage for purposes of geographic reclassification under such section for fiscal year 1998, the Secretary of Health and Human Services shall exclude the general service wages and hours of personnel associated with a skilled nursing facility that is owned by the hospital of the same municipality and that is physically separated from the hospital to the extent that such wages and hours of such personnel are not shared with the hospital and are separately documented. A hospital that applied for and was denied reclassification as an urban hospital for fiscal year 1996, but that would have received reclassification had the exclusion required by this section been applied to it, shall be reclassified as an urban hospital for fiscal year 1996.''

REPORT ON EFFECT OF AMENDMENTS BY PUB. L. 105–33, §4415, ON PSYCHIATRIC HOSPITALS

Section 4415(d) of Pub. L. 105–33 provided that: "Not later than October 1, 1999, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report that describes the effect of the amendments to section 1886(b)(1) of the Social Security Act (42 U.S.C. 1395ww(b)(1)), made under this section, on psychiatric hospitals (as defined in section 1886(d)(1)(B)(i)) of such Act (42 U.S.C. 1395ww(d)(1)(B)(i)) that have approved medical residency training programs under title XVIII of such Act (42 U.S.C. 1395 et seq.).''

TREATMENT OF CERTAIN CANCER HOSPITALS; PAYMENT STANDARDS

Section 4416(b) of Pub. L. 105–33 provided that:

"(1) APPLICATION TO COST REPORTING PERIODS.—Any classification by reason of section 1886(d)(3)(E) of the Social Security Act (subsec. (d)(3)(E)) or any other provision to the contrary, the base cost reporting period for purposes of determining the target amount for any hospital classified by reason of section 1886(d)(1)(B)(vi)(I) of such Act (subsec. (d)(1)(B)(vi)(I)) of this section (as added by subsection (a)) shall apply to 12-month cost reporting periods beginning on or after July 1, 1999.

"(2) BASE YEAR.—Notwithstanding the provisions of section 1886(b)(3)(E) of such Act (42 U.S.C. 1395ww(b)(3)(E)) or other provisions to the contrary, the base cost reporting period for purposes of determining the target amount for any hospital classified by reason of section 1886(d)(1)(B)(vi)(I) of such Act (subsec. (d)(1)(B)(vi)(I)) of this section (as added by subsection (a)) shall be the 12-month cost reporting period beginning on July 1, 1999.

"(3) DEADLINE FOR PAYMENTS.—Any payments owed to a hospital by reason of this subsection shall be made expeditiously, but in no event later than 1 year after the date of the enactment of this Act [Dec. 21, 2000].''

Section 4418(b) of Pub. L. 105–33 provided that:

"(1) APPLICATION TO COST REPORTING PERIODS.—Any classification by reason of section 1886(d)(1)(B)(vi)(II) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)(vi)(II)) (as added by subsection (a)) shall apply to all cost reporting periods beginning on or after January 1, 1991.

"(2) BASE YEAR.—Notwithstanding the provisions of section 1886(b)(3)(E) of such Act (42 U.S.C. 1395ww(b)(3)(E)) or other provisions to the contrary, the base cost reporting period for purposes of determining the target amount for any hospital classified by reason of section 1886(d)(1)(B)(vi)(II) of such Act shall be either—

"(A) the hospital's cost reporting period beginning during fiscal year 1990, or

"(B) pursuant to an election under section 1886(b)(3)(G) of such Act (42 U.S.C. 1395ww(b)(3)(G)), as added in section 4415(b), the period provided for under such section.

"(3) DEADLINE FOR PAYMENTS.—Any payments owed to a hospital by reason of this subsection shall be made expeditiously, but in no event later than 1 year after the date of the enactment of this Act [Aug. 5, 1997].''

REPORT ON EXCEPTIONS

Section 4419(b) of Pub. L. 105–33 provided that: "The Secretary of Health and Human Services shall publish annually in the Federal Register a report describing the total amount of payments made to hospitals by reason of section 1886(b)(3)(E) of such Act (42 U.S.C. 1395ww(b)(4)), as amended by subsection (a), ending during the previous fiscal year.'"
Development of Proposal on Payments for Long-Term Care Hospitals

Section 4222 of Pub. L. 105–33 provided that:

“(a) IN GENERAL.—

“(1) LEGISLATIVE PROPOSAL.—The Secretary of Health and Human Services shall develop a legislative proposal for establishing a case-mix adjusted prospective payment system for payment of long-term care hospitals described in section 1886(d)(1)(B)(iv) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)(iv)) under the medicare program. Such system shall include an adequate patient classification system that reflects the differences in patient resource use and costs among such hospitals.

“(2) COLLECTION OF DATA AND EVALUATION.—In developing the legislative proposal described in paragraph (1), the Secretary—

“(A) may require such long-term care hospitals to submit such information to the Secretary as the Secretary may require to develop the proposal; and

“(B) shall consider several payment methodologies, including the feasibility of expanding the current diagnosis-related groups and prospective payment system established under section 1886(d) of the Social Security Act [subsec. (d) of this section] to apply to payments under the medicare program to long-term care hospitals.

“(3) DATE.—Not later than October 1, 1999, the Secretary shall submit to the appropriate committees of Congress a report that includes the legislative proposal developed under subsection (a)(1).”

Dissemination of Information on High Per Discharge Relative Values for In-Hospital Physicians’ Services

Section 4506 of title IV of Pub. L. 105–33 provided that:

“(a) DETERMINATION AND NOTICE CONCERNING HOSPITAL-SPECIFIC PER DISCHARGE RELATIVE VALUES.—

“(1) IN GENERAL.—For 1999 and 2001 the Secretary of Health and Human Services shall determine for each hospital—

“(A) the hospital-specific per discharge relative value under subsection (b); and

“(B) whether the hospital-specific relative value is projected to be excessive (as determined based on such value represented as a percentage of the median of hospital-specific per discharge relative values determined under subsection (b)).

“(2) NOTICE TO SUBSET OF MEDICAL STAFF; EVALUATION OF RESPONSES.—The Secretary shall notify the medical executive committee of a subset of the hospitals identified under paragraph (1)(B) as having an excessive hospital-specific relative value, of the determinations made with respect to the medical staff under paragraph (1). The Secretary shall evaluate the responses of the hospitals so notified with the responses of other hospitals so identified that were not so notified.

“(b) DETERMINATION OF HOSPITAL-SPECIFIC PER DISCHARGE RELATIVE VALUES.—

“(1) IN GENERAL.—For purposes of this section, the hospital-specific per discharge relative value for the medical staff of a hospital (other than a teaching hospital) for a year shall be equal to the average per discharge relative value (as determined under section 1848(c)(2)) for physicians’ services furnished to inpatients of the hospital by the hospital’s medical staff (excluding interns and residents) during the second year preceding that calendar year, adjusted for variations in case-mix among hospitals and disproportionate share status and teaching status among hospitals (as determined by the Secretary under paragraph (3)).

“(2) SPECIAL RULE FOR TEACHING HOSPITALS.—The hospital-specific relative value projected for a teaching hospital in a year shall be equal to the sum of—

“(A) the average per discharge relative value (as determined under section 1848(c)(2)) of such Act (section 1395w–4(c)(2) of this title) for physicians’ services furnished to inpatients of the hospital by the hospital’s medical staff (excluding interns and residents) during the second year preceding that calendar year, and

“(B) the equivalent per discharge relative value (as determined under such section) for physicians’ services furnished to inpatients of the hospital by interns and residents of the hospital during the second year preceding that calendar year, adjusted for variations in case-mix among hospitals, and in disproportionate share status and teaching status among hospitals (as determined by the Secretary under paragraph (3)).

“The Secretary shall determine the equivalent relative value unit per discharge for interns and residents based on the best available data and may make such adjustment in the aggregate.

“(3) ADJUSTMENT FOR TEACHING AND DISPROPORTIONATE SHARE HOSPITALS.—The Secretary shall adjust the allowable per discharge relative values otherwise determined under this subsection to take into account the needs of teaching hospitals and hospitals receiving additional payments under subparagraphs (F) and (G) of section 1886(d)(5) of the Social Security Act (42 U.S.C. 1395ww(d)(5)). The adjustment for teaching status or disproportionate share shall not be less than zero.

“(c) DEFINITIONS.—For purposes of this section:

“(1) HOSPITAL.—The term ‘hospital’ means a subsection (d) hospital as defined in section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)).

“(2) MEDICAL STAFF.—An individual furnishing a physician’s service is considered to be on the medical staff of a hospital—

“(A) if (in accordance with requirements for hospitals established by the Joint Commission on Accreditation of Health Organizations) the individual is subject to bylaws, rules, and regulations established by the hospital to provide a framework for the self-governance of medical staff activities,

“(B) subject to the bylaws, rules, and regulations, the individual has clinical privileges granted by the hospital’s governing body, and

“(C) if the physician provides at least one service to an individual entitled to benefits under this title in that hospital.

“(3) PHYSICIANS’ SERVICES.—The term ‘physicians’ services’ means the services described in section 1848(b)(3) of the Social Security Act (42 U.S.C. 1395w–4(b)(3)).

“(4) RURAL AREA; URBAN AREA.—The terms ‘rural area’ and ‘urban area’ have the meaning given those terms under section 1886(d)(2)(D) of such Act (42 U.S.C. 1395ww(d)(2)(D)).

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

“(6) TEACHING HOSPITAL.—The term ‘teaching hospital’ means a hospital which has a teaching program approved as specified in section 1861(b)(6) of the Social Security Act (42 U.S.C. 1395x(b)(6)).”

Incentive Payments Under Plans for Voluntary Reduction in Number of Residents; Relation to Demonstration Projects and Authority; Regulations

Section 4626(b), (c) of Pub. L. 105–33 provided that:

“(b) RELATION TO DEMONSTRATION PROJECTS AND AUTHORITY.—

“(1) Section 1866(b)(6) of the Social Security Act [subsec. (h)(6) of this section], added by subsection (a), other than subparagraph (F)(ii) thereof, shall not apply to any residency training program with respect to which a demonstration project described in paragraph (3) has been approved by the Health Care Financing Administration as of May 27, 1997.
“(2) Effective May 27, 1997, the Secretary of Health and Human Services is not authorized to approve any demonstration project described in paragraph (3) for any residency training year beginning before July 1, 2006.

“(3) A demonstration project described in this paragraph is a project that primarily provides for additional payments under title XVIII of the Social Security Act [this subchapter] in connection with a reduction in the number of residents in a medical residency training program.

“(c) IN GENERAL.—The Secretary of Health and Human Services shall establish a demonstration project under which, instead of making payments to teaching hospitals pursuant to section 1886(h) of the Social Security Act [subsec. (h) of this section], the Secretary shall make payments under this section to each consortium that meets the requirements of subsection (b) and that applies to be included under the project.

“(b) QUALIFYING CONSORTIA.—For purposes of subsection (a), a consortium meets the requirements of this subsection if the consortium is in compliance with the following:

“(1) The consortium consists of a teaching hospital with one or more approved medical residency training programs and one or more of the following entities:

“(A) A school of allopathic medicine or osteopathic medicine.

“(B) Another teaching hospital, which may be a children’s hospital.

“(C) A Federally qualified health center.

“(D) A medical group practice.

“(E) A managed care entity.

“(F) An entity furnishing outpatient services.

“(G) Such other entity as the Secretary determines to be appropriate.

“(2) The members of the consortium have agreed to participate in the programs of graduate medical education that are operated by the entities in the consortium.

“(3) With respect to the receipt by the consortium of payments made pursuant to this section, the members of the consortium have agreed on a method for allocating the payments among the members.

“(4) The consortium meets such additional requirements as the Secretary may establish.

“(c) AMOUNT AND SOURCE OF PAYMENT.—The total of payments to a qualifying consortium for a fiscal year pursuant to subsection (a) shall not exceed the amount that would have been paid under section 1886(h) or (k) of the Social Security Act [subsecs. (h), (k) of this section] for the teaching hospital (or hospitals) in the consortium. Such payments shall be made in such proportion from each of the trust funds established under title XVIII of such Act [this subchapter] as the Secretary specifies.”

RECOMMENDATIONS ON LONG-TERM POLICIES REGARDING TEACHING HOSPITALS AND GRADUATE MEDICAL EDUCATION

Section 4629 of Pub. L. 105-33 provided that:

“(a) IN GENERAL.—The Medicare Payment Advisory Commission (established under section 1805 of the Social Security Act [section 1385b-6 of this title] and in this section referred to as the Commission) shall examine and develop recommendations on whether and to what extent medicare payment policies and other Federal policies regarding teaching hospitals and graduate medical education should be changed. Such recommendations shall include recommendations regarding each of the following:

“(1) Possible methodologies for making payments for graduate medical education and the selection of entities to receive such payments. Matters considered under this paragraph shall include—

“(A) issues regarding children’s hospitals and approved medical residency training programs in pediatrics, and

“(B) whether and to what extent payments are being made (or should be made) for training in the nursing and other allied health professions.

“(2) Federal policies regarding international medical graduates.

“(3) The dependence of schools of medicine on service-generated income.

“(4) Whether and to what extent the needs of the United States regarding the supply of physicians, in the aggregate and in different specialties, will change during the 10-year period beginning on October 1, 1997, and whether and to what extent any such changes will have significant financial effects on teaching hospitals.

“(5) Methods for promoting an appropriate number, mix, and geographical distribution of health professionals.

“(b) CONSULTATION.—In conducting the study under subsection (a), the Commission shall consult with the Council on Graduate Medical Education and Individuals with expertise in the area of graduate medical education, including—

“(1) deans from allopathic and osteopathic schools of medicine;

“(2) chief executive officers (or equivalent administrative heads) from academic health centers, integrated health care systems, approved medical residency training programs, and teaching hospitals that sponsor approved medical residency training programs;

“(3) chairs of departments or divisions from allopathic and osteopathic schools of medicine, schools of dentistry, and approved medical residency training programs in oral surgery;

“(4) individuals with leadership experience from representative fields of non-physician health professionals;

“(5) individuals with substantial experience in the study of issues regarding the composition of the health care workforce of the United States; and

“(6) individuals with expertise in health care payment policies.

“(c) REPORT.—Not later than 2 years after the date of the enactment of this Act [Aug. 5, 1997], the Commission shall submit to the Congress a report providing its recommendations under this section and the reasons and justifications for such recommendations.”

STUDY OF HOSPITAL OVERHEAD AND SUPERVISORY PHYSICIAN COMPONENTS OF DIRECT MEDICAL EDUCATION COSTS

Section 4630 of Pub. L. 105-33 provided that:

“(a) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study with respect to—

“(1) variations among hospitals in the hospital overhead and supervisory physician components of their direct medical education costs taken into account under section 1886(b) of the Social Security Act [subsec. (h) of this section], and

“(2) the reasons for such variations.

“(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Aug. 5, 1997], the Secretary shall report the results of the study conducted under subsection (a) to the appropriate committees of Congress, including recommendations for legislation reducing variations described in subsection (a) that the Secretary finds inappropriate.”
DRG PROSPECTIVE PAYMENT RATE METHODOLOGY: TRANSITION RULE FOR FISCAL YEAR 1998

Section 464(a)(2) of Pub. L. 105–33 provided that: "With respect to the publication in the Federal Register of the DRG prospective payment rate methodology under such section for fiscal year 1998, the term '60 days' in section 801(a)(3)(A) and section 802(a) of title 5, United States Code, is deemed to be a reference to '30 days'."

HOSPITAL PAYMENT UPDATES: TRANSITION RULE FOR FISCAL YEAR 1998

Section 464(b)(2) of Pub. L. 105–33 provided that: "With respect to the publication in the Federal Register of the appropriate change factor for inpatient hospital services for discharges in fiscal year 1998 under section 1886(e)(5)(B) (42 U.S.C. 1395ww(e)(5)(B)), the term '60 days' in section 801(a)(3)(A) and section 802(a) of title 5, United States Code, is deemed to be a reference to '30 days'."

GEOGRAPHICAL RECLASSIFICATION: SPECIAL RULE FOR APPLICATIONS RECEIVED IN FISCAL YEAR 1997

Section 464(c)(2) of Pub. L. 105–33 provided that: "In the case of an application for a change in geographic classification under such section [subsec. (d)(10)(C)(i) of this section] for fiscal year 1997, the Secretary of Health and Human Services shall shorten the deadlines under such section so as to permit completion of a final decision by the Secretary by June 15, 1996."

NO STANDARDIZED AMOUNT ADJUSTMENTS FOR FISCAL YEARS 1992 OR 1993

Section 13501(b)(2) of Pub. L. 103–66 provided that: "The Secretary of Health and Human Services shall not revise the fiscal year 1992 or fiscal year 1993 standard - of return to the Federal Register under such section so as to permit completion of a final decision by the Secretary by June 15, 1996."

EXTENSION OF REGIONAL REFERRAL CENTER CLASSIFICATIONS THROUGH FISCAL YEAR 1994; RECLASSIFICATION

Section 13501(d) of Pub. L. 103–66 provided that:

"(1) EXTENSION OF CLASSIFICATION THROUGH FISCAL YEAR 1994.—Any hospital that is classified as a regional referral center under section 1886(d)(5)(C) of the Social Security Act [subsec. (d)(5)(C) of this section] as of September 30, 1992, shall continue to be so classified for cost reporting periods beginning during fiscal year 1993 or fiscal year 1994, unless the area in which the hospital is located is redesignated as a Metropolitan Statistical Area by the Office of Management and Budget for such a fiscal year.

"(2) PERMITTING HOSPITALS TO DECLINE RECLASSIFICATION.—If any hospital fails to qualify as a rural referral center under section 1886(d)(5)(C) of the Social Security Act [subsec. (d)(5)(C) of this section] as of September 30, 1992, the hospital may fail to qualify until such time as the hospital is redesignated as a Metropolitan Statistical Area by the Office of Management and Budget for such a fiscal year.

"(3) REQUIRING LUMP-SUM RETROACTIVE PAYMENT FOR HOSPITALS LOSING CLASSIFICATION.—

"(A) IN GENERAL.—In the case of a hospital described in paragraph (1), the Secretary of Health and Human Services shall make a lump-sum payment to the hospital equal to the difference between the aggregate payment made to the hospital under section 1886 of such Act (excluding outlier payments under subsection (d)(5)(A) of such section) during the period of applicability described in subparagraph (B) and the aggregate payment that would have been made to the hospital under such section if, during the period of applicability, the hospital was classified a regional referral center under section 1886(d)(5)(C) of such Act.

"(B) PERIOD OF APPLICABILITY.—In subparagraph (A), the 'period of applicability' is the period that begins on October 1, 1992, and ends on the date of the enactment of this Act [Aug. 10, 1993]."


"(A) notify such hospital of such failure to qualify. "(B) provide an opportunity for such hospital to decline such reclassification, and "(C) if the hospital declines such reclassification, administer the Social Security Act [this chapter] as a result of a decision by the Medicare Geographic Classification Review Board under section 1886(d)(10) of such Act to reclassify the hospital as being located in an urban area for fiscal year 1993, fiscal year 1994, fiscal year 1998, or fiscal year 2000 through fiscal year 2012, the Secretary of Health and Human Services shall—

"(A) notify such hospital of such failure to qualify, "(B) provide an opportunity for such hospital to decline such reclassification, and "(C) if the hospital declines such reclassification, administer the Social Security Act [this chapter] as a result of a decision by the Medicare Geographic Classification Review Board under section 1886(d)(5)(C) of the Social Security Act [subsec. (d)(5)(C) of this section] as a result of a decision by the Secretary of Health and Human Services shall make a lump-sum payment to the hospital equal to the difference between the aggregate payment made to the hospital under section 1886 of such Act (excluding outlier payments under subsection (d)(5)(A) of such section) during the period of applicability described in subparagraph (B) and the aggregate payment that would have been made to the hospital under such section if, during the period of applicability, the hospital was classified a regional referral center under section 1886(d)(5)(C) of such Act.

"(B) PERIOD OF APPLICABILITY.—In subparagraph (A), the 'period of applicability' is the period that begins on October 1, 1992, and ends on the date of the enactment of this Act [Aug. 10, 1993]."

ADJUSTMENT IN GME BASE-YEAR COSTS OF FEDERAL INSURANCE CONTRIBUTIONS FOR FISCAL YEAR 1999

Section 13563(d) of Pub. L. 103–66 provided that:

"(1) IN GENERAL.—In determining the amount of payment to be made under section 1886(h) of the Social Security Act [subsec. (h) of this section] in the case of a hospital described in paragraph (2) for cost reporting periods beginning on or after October 1, 1992, the Secretary of Health and Human Services shall redetermine the approved PTE resident amount to reflect the
amount that would have been paid the hospital if, during the hospital's base cost reporting period, the hospital had been liable for FICA taxes or for contributions to the retirement system of a State, a political subdivision of a State, or an instrumentality of such a State or political subdivision with respect to interns and residents in its medical residency training program.

(2) HOSPITALS AFFECTED.—A hospital described in this paragraph is a hospital that did not pay FICA taxes with respect to interns and residents in its medical residency training program during the hospital's base cost reporting period, but is required to pay FICA taxes or make contributions to a retirement system described in paragraph (1) with respect to such interns and residents because of the amendments made by section 11332(b) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, as amended).

(3) DEFINITIONS.—In this subsection:

(A) The 'base cost reporting period' for a hospital is the hospital's cost reporting period that began during fiscal year 1984.

(B) The term 'FICA taxes' means, with respect to a hospital, the taxes under section 3111 of the Internal Revenue Code of 1986 (26 U.S.C. 3111).

DETERMINATION OF AREA WAGE INDEX FOR DISCHARGES OCCURRING JANUARY 1, 1991 TO OCTOBER 1, 1993

Section 4002(d)(1) of Pub. L. 101–508 provided that:

(A) For purposes of section 1866(d)(3)(E) of the Social Security Act [subsection (d)(3)(E) of this section] for discharges occurring on or after January 1, 1991, and before October 1, 1993, the Secretary of Health and Human Services shall apply an area wage index determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States conducted under such section.

(B) The Secretary shall apply the wage index described in subparagraph (A) without regard to a previous survey of wages and wage-related costs.

STUDY AND REPORT ON RELATIONSHIP BETWEEN NON-WAGE-RELATED INPUT PRICES AND ADJUSTED AVERAGE STANDARDIZED AMOUNTS

Section 4002(e)(2) of Pub. L. 101–508 directed the Secretary of Health and Human Services to collect sufficient data on the input prices associated with the non-wage-related portion of the adjusted average standardized amounts established under subsection (d)(3) of this section to identify extent to which variations in such amounts among hospitals located in different geographic areas are attributable to differences in such prices, and not later than June 1, 1993, submit a report to Congress analyzing such data, with such report to include recommendations regarding a methodology for adjusting such average standardized amounts to reflect such variations.

DEADLINE FOR SUBMISSION OF APPLICATIONS TO GEOGRAPHIC CLASSIFICATION REVIEW BOARD

Section 4002(h)(2)(A) of Pub. L. 101–508 provided that: ‘For purposes of determining whether a hospital requesting a change in geographic classification for fiscal year 1992 under section 1866(d)(10) of the Social Security Act [subsection (d)(10) of this section] has met the deadline described in subparagraph (B)(ii) of such section, an application submitted under such subparagraph shall be considered to have been submitted by the first day of the preceding fiscal year if it is submitted within 60 days of the date of publication of the guidelines described in subparagraph (D)(i) of such section.’

PAYMENTS FOR MEDICAL EDUCATION COSTS

Section 4004 of Pub. L. 101–508 provided that:

(A) HOSPITAL GRADUATE MEDICAL EDUCATION REIMBURSEMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services may not, before October 1, 1991, recoup payments from a hospital because of alleged overpayments to such hospital under paragraph (A) of title XVIII of the Social Security Act [part A of the subchapter] due to a determination that the amount of payments made for graduate medical education programs exceeds the amount allowable under section 1866(h)(b)(2) of the Social Security Act [subpart (b) of this section].

(2) CAP ON ANNUAL AMOUNT OF RECOUPMENT.—With respect to overpayments to a hospital described in paragraph (1), the Secretary may not recoup more than 25 percent of the amount of such overpayments from the hospital during a fiscal year.

(3) EFFECTIVE DATE.—Paragraphs (1) and (2) shall take effect October 1, 1990.

(B) UNIVERSITY HOSPITAL NURSING EDUCATION.—

(1) IN GENERAL.—The reasonable costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) during a cost reporting period for clinical training (as defined by the Secretary) conducted on the premises of the hospitals under approved nursing and allied health education programs that are not operated by the hospital shall be allowable as reasonable costs under part A of title XVIII of the Social Security Act and reimbursed under such part on a pass-through basis.

(2) CONDITIONS FOR REIMBURSEMENT.—The reasonable costs incurred by a hospital during a cost reporting period shall be reimbursable pursuant to paragraph (1) only if—

(A) the hospital claimed and was reimbursed for such costs during the most recent cost reporting period that ended on or before October 1, 1988;

(B) the proportion of the hospital's total allowable costs that is attributable to the clinical training costs of the approved program, and allowable under (b)(1) during the cost reporting period does not exceed the proportion of total allowable costs that were attributable to the clinical training costs during the cost reporting period described in subparagraph (A);

(C) the hospital receives a benefit for the support it furnishes to such program through the provision of clinical services by nursing or allied health students participating in such program; and

(D) the costs incurred by the hospital for such program do not exceed the costs that would be incurred by the hospital if it operated the program itself.

(3) PROHIBITION AGAINST RECOUPMENT OF COSTS BY SECRETARY.—

(A) IN GENERAL.—The Secretary of Health and Human Services may not recoup payments from (or otherwise reduce or adjust payments under part A of title XVIII of the Social Security Act to) a hospital because of alleged overpayments to such hospital under such title due to a determination that costs which were reported by the hospital on its Medicare cost reports for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1990, relating to approved nursing and allied health education programs did not meet the requirements for allowable nursing and allied health education costs (as developed by the Secretary pursuant to section 1861(v) of such Act [section 1395xx(v) of this title]).

(B) REIMBURSEMENT OF AMOUNTS RECOUPED.—If, prior to the date of the enactment of this Act [Nov. 5, 1990], the Secretary has recouped payments from (or otherwise reduced or adjusted payments under part A of title XVIII of the Social Security Act to) a hospital because of overpayments described in subparagraph (A), the Secretary shall refund the amount recouped, reduced, or adjusted from the hospital.

(4) SPECIAL AUDIT TO DETERMINE COSTS.—In determining the amount of costs incurred by, claimed by, and reimbursed to, a hospital for purposes of this subsection, the Secretary shall conduct a special audit (or use such other appropriate mechanism) to ensure the accuracy of such past claims and payments.
Section 4159 of Pub. L. 101–508 provided that: "(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section]) receive payment for the operating and capital-related costs of inpatient hospital services under part A (part A of this subchapter) of the Medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of nationally-determined average standardized amounts. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program;

(B) provide for adjustments to prospectively determined rates to account for changes in a hospital’s case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, costs related to graduate medical education programs, differences in wages and wage-related costs among hospitals located in various geographic areas, and other factors the Secretary considers appropriate; and

(E) provide for the appropriate allocation of operating and capital-related costs of hospitals not subject to the new prospective payment system and distinct units of such hospitals that would be paid under such system.

(2) REPORTS.—(A) By not later than April 1, 1992, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than June 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

GUIDANCE TO INTERMEDIARIES AND HOSPITALS

Section 4005(c)(3) of Pub. L. 101–508 provided that: "The Administrator of the Health Care Financing Administration shall provide guidance to agencies and organizations performing functions pursuant to section 1886(d)(1)(B) of the Social Security Act [section 1395x(v) of this title] and to hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of such Act paragraph (A), the Secretary shall refund the amount recouped, reduced, or adjusted from the hospital.

(4) SPECIAL AUDIT TO DETERMINE COSTS.—In determining the amount of costs incurred by, claimed by, and reimbursed to, a hospital for purposes of this subsection, the Secretary shall conduct a special audit (or use such other appropriate mechanism) to insure the accuracy of such past claims and payments.

(5) EFFECTIVE DATE.—Except as provided in paragraph (3), the provisions of this subsection shall apply to cost reporting periods beginning on or after October 1, 1990.

DEVELOPMENT OF NATIONAL PROSPECTIVE PAYMENT RATES FOR CURRENT NON-PPS HOSPITALS

Section 4005(b) of Pub. L. 101–508 provided that:

(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section]) receive payment for the operating and capital-related costs of inpatient hospital services under part A (part A of this subchapter) of the Medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of nationally-determined average standardized amounts. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program;

(B) provide for adjustments to prospectively determined rates to account for changes in a hospital’s case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, costs related to graduate medical education programs, differences in wages and wage-related costs among hospitals located in various geographic areas, and other factors the Secretary considers appropriate; and

(E) provide for the appropriate allocation of operating and capital-related costs of hospitals not subject to the new prospective payment system and distinct units of such hospitals that would be paid under such system.

(2) REPORTS.—(A) By not later than April 1, 1992, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than June 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

GUIDANCE TO INTERMEDIARIES AND HOSPITALS

Section 4005(c)(3) of Pub. L. 101–508 provided that: "The Administrator of the Health Care Financing Administration shall provide guidance to agencies and organizations performing functions pursuant to section 1886(d)(1)(B) of the Social Security Act [section 1395x(v) of this title] and to hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of such Act paragraph (A), the Secretary shall refund the amount recouped, reduced, or adjusted from the hospital.

(4) SPECIAL AUDIT TO DETERMINE COSTS.—In determining the amount of costs incurred by, claimed by, and reimbursed to, a hospital for purposes of this subsection, the Secretary shall conduct a special audit (or use such other appropriate mechanism) to insure the accuracy of such past claims and payments.

(5) EFFECTIVE DATE.—Except as provided in paragraph (3), the provisions of this subsection shall apply to cost reporting periods beginning on or after October 1, 1990.

DEVELOPMENT OF NATIONAL PROSPECTIVE PAYMENT RATES FOR CURRENT NON-PPS HOSPITALS

Section 4005(b) of Pub. L. 101–508 provided that:

(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section]) receive payment for the operating and capital-related costs of inpatient hospital services under part A (part A of this subchapter) of the Medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of nationally-determined average standardized amounts. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program;

(B) provide for adjustments to prospectively determined rates to account for changes in a hospital’s case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, costs related to graduate medical education programs, differences in wages and wage-related costs among hospitals located in various geographic areas, and other factors the Secretary considers appropriate; and

(E) provide for the appropriate allocation of operating and capital-related costs of hospitals not subject to the new prospective payment system and distinct units of such hospitals that would be paid under such system.

(2) REPORTS.—(A) By not later than April 1, 1992, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than June 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

GUIDANCE TO INTERMEDIARIES AND HOSPITALS

Section 4005(c)(3) of Pub. L. 101–508 provided that: "The Administrator of the Health Care Financing Administration shall provide guidance to agencies and organizations performing functions pursuant to section 1886(d)(1)(B) of the Social Security Act [section 1395x(v) of this title] and to hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of such Act
Section 4007 of Pub. L. 101–508 provided that:

"(a) I N GENERAL.—Notwithstanding any other provision of law, for purposes of determining the amount of payment for items or services under part A of title XVIII of the Social Security Act [part A of this subchapter] including payments under section 1886 of such Act [this section] attributable to or allocated under such part during the period described in subsection (b):

"(1) The market basket percentage increase (described in section 1886(b)(3)(B)(iii) of the Social Security Act) shall be deemed to be 0 for discharges occurring during such period.

"(2) The percentage increase or decrease in the medical care expenditure category of the consumer price index applicable under section 1814(f)(2)(B) of such Act [section 1395f(i)(2)(B) of this title] shall be deemed to be 0.

"(3) The area wage index applicable to a subsection (d) hospital under section 1886(d)(3)(E) of such Act shall be deemed to be the area wage index applicable to such hospital as of September 30, 1990.

"(4) The percentage change in the consumer price index applicable under section 1886(h)(2)(D) of such Act shall be deemed to be 0.

"(b) D ESCRIPTION OF PERIOD.—The period referred to in subsection (a) is the period beginning on October 1, 1990, and ending on December 31, 1990.

Review of hospital regulations with respect to rural hospitals

Section 4008(l) of Pub. L. 101–508 provided that:

"(1) I N GENERAL.—The Secretary of Health and Human Services shall review the requirements applicable under title XVIII of the Social Security Act [this subchapter] to determine which requirements could be made less administratively and economically burdensome (without diminishing the quality of care) for hospitals defined in section 1886(d)(1)(B) of such Act [subsection (d)(1)(B) of this section] that are located in a rural area (as defined in section 1886(d)(2)(D) of such Act).

Such review shall specifically include standards related to staffing requirements.

"(2) R EPORT.—The Secretary of Health and Human Services shall report to Congress by April 1, 1992, on the results of the review conducted under subsection (a), and include conclusions on which regulations, if any, should be modified with respect to hospitals described in subsection (a).

Prohibition on cost savings policies before beginning of fiscal year


"(1) I N GENERAL.—The Secretary of Health and Human Services may not issue any proposed or final regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act [this subchapter] in a fiscal year (beginning with fiscal year 1991 and ending with fiscal year 1998) or, if later, the last fiscal year for which there is a maximum deficit amount specified under section 601(a)(1) of the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 665(a)(1)] of more than $50,000,000, except as follows:

"(A) The Secretary may issue such a proposed regulation, instruction, or other policy with respect to the fiscal year before the May 15 preceding the beginning of the fiscal year.

"(B) The Secretary may issue such a final regulation, instruction, or other policy with respect to the fiscal year on or after October 15 of the fiscal year.

prohibition of payment cycle changes


"(C) The Secretary may, at any time, issue such a proposed or final regulation, instruction, or other policy with respect to the fiscal year if required to implement specific provisions under statute.

Extension of area wage index

Section 115(a) of Pub. L. 101–403 provided that:

"For purposes of determining the amount of payment made to a hospital under part A of title XVIII of the Social Security Act [part A of this subchapter] for the operating costs of inpatient hospital services for discharges occurring on or after October 1, 1990, and on or before October 20, 1990, the Secretary of Health and Human Services, in adjusting such amount under section 1886(d)(3)(E) of such Act [subsection (d)(3)(E) of this section] to reflect the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage index, shall apply the area wage index applicable to such hospital as of September 30, 1990.

Adjustments resulting from extensions of regional floor on standardized amounts

Section 115(b)(2) of Pub. L. 101–403 provided that:

"For discharges occurring on or after October 1, 1990, the applicable percentage increase (described in section 1886(b)(3)(B) of the Social Security Act [subsection (b)(3)(B) of this section]) for discharges occurring during fiscal year 1990 is deemed to have been such percentage increase as amended by paragraph (1)."

Indexing of future applicable percentage increases

Section 6003(a)(3) of Pub. L. 101–239 provided that:

"(For discharges occurring on or after October 1, 1990, the applicable percentage increase (described in section 1886(b)(3)(B) of the Social Security Act [subsection (b)(3)(B) of this section]) for discharges occurring during fiscal year 1990 is deemed to have been such percentage increase as amended by paragraph (1)."

Continuation of sole community hospital designation for current sole community hospitals

Section 6003(e)(3) of Pub. L. 101–239 provided that:

"Any hospital classified as a sole community hospital under section 1886(d)(5)(C)(v) of the Social Security Act [subsection (d)(5)(C)(v) of this section] on the date of enactment of this Act [Dec. 19, 1989] that will no longer be classified as a sole community hospital after such date as a result of the amendments made by paragraph (1) [amending this section] shall continue to be classified as a sole community hospital for purposes of section 1886(d)(5)(D) of such Act [subsection (d)(5)(D) of this section]."

Additional payment resulting from corrections of erroneously determined wage index

Section 6003(h)(6) of Pub. L. 101–239 provided that:

"(A) I N GENERAL.—If the Secretary of Health and Human Services (hereinafter referred to as the 'Secretary') discovers an error with respect to the deter-
mation, adjustment, or computation of the area wage index described in section 1886(d)(3)(E) of the Social Security Act [subsec. (d)(3)(E) of this section] and subsequently corrects such error, the Secretary shall make an additional payment under title XVIII of such Act [this subchapter] to a hospital affected by such error for inpatient hospital discharges occurring during the period when the erroneously determined, adjusted, or computed wage index was in effect.

“(B) CONDITIONS FOR ADDITIONAL PAYMENT.—A hospital is eligible for an additional payment under subparagraph (A) only if—

“(i) the error resulted from the submission of erroneous data, except that a hospital is not eligible for such additional payment if it submitted such erroneous data;

“(ii) the error was made with respect to the survey of the 1984 wages and wage-related costs of hospitals in the United States conducted under section 1886(d)(3)(E) of the Social Security Act; and

“(iii) the correction of the error resulted in an adjustment to the area wage index of not less than 3 percentage points.

“(C) PERIOD OF APPLICABILITY.—A hospital may not receive an additional payment under subparagraph (A) for discharges occurring after October 1, 1990.”

LEGISLATIVE PROPOSAL ELIMINATING SEPARATE AVERAGE STANDARDIZED AMOUNTS

Pub. L. 101–239, title VI, §6003(k), Dec. 19, 1989, 103 Stat. 2158, directed Secretary of Health and Human Services (in such proportions as the Secretary determines to be reasonable) to design a legislative proposal eliminating the system of determining separate average standardized amounts for subsection (d) hospitals classified as being located in large urban, other urban, or rural areas, prior to repeal by Pub. L. 103–362, title VI, §601(b)(4), Nov. 10, 1998, 112 Stat. 3236.

Determination and Recommendations of Payments for Costs of Administering Blood Clotting Factors to Individuals with Hemophilia

Section 6011(b), (c) of Pub. L. 101–239 provided that:

“(b) Determining Payment Amount.—The Secretary of Health and Human Services shall determine the amount of payment made to hospitals under part A of title XVIII of the Social Security Act [part A of this subchapter] for the costs of administering blood clotting factors to individuals with hemophilia by multiplying a predetermined price per unit of blood clotting factor (determined in consultation with the Prospective Payment Assessment Commission) by the number of units provided to the individual.

“(c) Recommendations on Payments.—The Prospective Payment Assessment Commission and the Health Care Financing Administration shall develop recommendations with respect to payments to hospitals under part A of title XVIII of the Social Security Act for the costs of administering blood clotting factors to individuals with hemophilia, and shall submit such recommendations to Congress not later than 18 months after the date of enactment of this Act [Dec. 19, 1989].”

Publication of Instructions Relating to Exceptions and Adjustments in Target Amounts

Section 6015(b) of Pub. L. 101–239 provided that:

“By not later than 180 days after the date of enactment of this Act [Dec. 19, 1989], the Secretary of Health and Human Services shall publish instructions specifying the application process to be used in providing exceptions and adjustments under section 1886(b)(4)(A) of the Social Security Act [subsec. (b)(4)(A) of this section].”

Delay in Recoupment of Certain Nursing and Allied Education Costs

Section 6205(b) of Pub. L. 101–239 provided that:

“(1) The Secretary of Health and Human Services (in this subsection referred to as ‘the Secretary’) shall not, before October 1, 1990, recoup from, or otherwise reduce or adjust payments under title XVIII of the Social Security Act [this subchapter] to, hospitals because of alleged overpayments to such hospitals under such title due to a determination that costs which were reported by a hospital on its medicare cost reports relating to approved nursing and allied health education programs were allowable costs and are included in the definition of ‘operating costs of inpatient hospital services’ pursuant to section 1886(e)(4)(c) of such Act [subsec. (a)(4) of this section], so that no pass-through of such costs was permitted under that section.

“(2)(A) Before July 1, 1990, the Secretary shall issue regulations respecting payment of costs described in paragraph (1).

“(B) In issuing such regulations—

“(i) the Secretary shall allow a comment period of not less than 60 days,

“(ii) the Secretary shall consult with the Prospective Payment Assessment Commission, and

“(iii) any final rule shall not be effective prior to October 1, 1990, or 30 days after publication of the final rule in the Federal Register, whichever is later.

“(C) Such regulations shall specify:

“(i) the relationship required between an approved nursing or allied health education program and a hospital for the program’s costs to be attributed to the hospital;

“(ii) the types of costs related to nursing or allied health education programs that are allowable by Medicare;

“(iii) the distinction between costs of approved educational activities as recognized under section 1886(a)(3) of the Social Security Act [subsec. (a)(3) of this section] and educational costs treated as operating costs of inpatient hospital services; and

“(iv) the treatment of other funding sources for the program.”

INNER-CITY HOSPITAL TRIAGE DEMONSTRATION PROJECT


“(a) Establishment. — The Secretary of Health and Human Services shall establish a demonstration project in a public hospital that is located in a large urban area and that has established a triage system, under which the Secretary shall make payments out of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate in a year) for 3 years to reimburse the hospital for the reasonable costs of operating the system, including costs—

“(1) to train hospital personnel to operate and participate in the system; and

“(2) to provide services to patients who might otherwise be denied appropriate and prompt care.

“(b) Limitations on Payment. — (1) The Secretary may not make payment under the demonstration project established under subsection (a) for costs that the Secretary determines are not reasonable.

“(2) The amount of payment made under the demonstration project during a single year may not exceed $500,000.”

TRANSITION ADJUSTMENTS TO TARGET AMOUNTS FOR INPATIENT HOSPITAL SERVICES

Section 101(c)(2)(B) of title I of Pub. L. 101–234 provided that: “The Secretary of Health and Human Services shall make an appropriate adjustment to the target amount established under section 1886(b)(3)(A) of the Social Security Act [subsec. (b)(3)(A) of this section] in the case of inpatient hospital services provided to an inpatient whose stay began before January 1, 1990, in order to take into account the target amount that would have applied but for the amendments made by this title [see Tables for classification].”

ELECTION OF PERSONNEL POLICY FOR PRO-PAC EMPLOYEES

Section 8405 of Pub. L. 100–647 provided that: ‘With respect to employees of the Prospective Payment As-
assessment Commission hired before December 22, 1987, such employees shall have the option to elect within 60 days of the date of enactment of this Act [Nov. 10, 1988] to be covered under either the personnel policy in effect with respect to such employees before December 22, 1987, or under the employees' coverage provided under the last sentence of section 1886(e)(6)(D) of the Social Security Act [subsec. (e)(6)(D) of this section]."

**ADJUSTMENTS IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES**


"(1) PPS HOSPITALS.—In adjusting DRG prospective payment rates under section 1886(d) of the Social Security Act [subsec. (d) of this section], outlier cutoff points under section 1886(d)(5)(A) of such Act, and weightings factors under section 1886(d)(4) of such Act for discharges occurring on or after October 1, 1988, and before January 1, 1990, the Secretary of Health and Human Services shall, to the extent appropriate, take into consideration the reductions in payments to hospitals by (or on behalf of) Medicare beneficiaries resulting from the elimination of a day limitation on Medicare inpatient hospital services (under the amendments made by section 101 [amending section 1395d of this title])."

"(2) PPS EXEMPT HOSPITALS.—In adjusting target amounts under section 1886(b)(3) of the Social Security Act [subsec. (b)(3) of this section] for portions of cost reporting periods occurring on or after January 1, 1989, and before January 1, 1990, the Secretary shall, on a hospital-specific basis, take into consideration the reductions in payments to hospitals by (or on behalf of) Medicare beneficiaries resulting from the elimination of a day limitation on Medicare inpatient hospital services (under the amendments made by section 101 [amending section 1395d of this title]), without regard to whether such a hospital is paid on the basis described in subparagraph (A) or (B) of section 1886(b)(1) of such Act, without regard to whether any of such Medicare beneficiaries exhausted Medicare inpatient hospital insurance benefits before January 1, 1989."

[Amendment of section 104(c) of Pub. L. 100–360, set out above, by section 101(c)(1), (2)(A) of Pub. L. 101–234 effective as if included in enactment of Pub. L. 100–360, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title].

**ProPAC STUDY**

Section 203(c)(2) of Pub. L. 100–360 directed Prospective Payment Assessment Commission to conduct a study, and make recommendations to Congress and Secretary of Health and Human Services by not later than Mar. 1, 1991, concerning appropriate adjustment to payment amounts provided under subsec. (d) of this section for inpatient hospital services (under the amendments in section 101 [amending section 1395d of this title]), without regard to whether any such Medicare beneficiaries exhausted Medicare inpatient hospital insurance benefits before January 1, 1989."

[Amendment of section 203(c) of Pub. L. 100–360, set out above, by section 101(c)(1), (2)(A) of Pub. L. 101–234 effective as if included in enactment of Pub. L. 100–360, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title].

**CLINIC HOSPITAL WAGE INDICES**

Section 4004(b) of Pub. L. 100–203 provided that: "In calculating the wage index under section 1886(d) of the Social Security Act [subsec. (d) of this section] for purposes of making payment adjustments after September 30, 1988, as required under paragraphs (2)(H) and (3)(E) of such section, in the case of any institution which received the waiver specified in section 602(k) of the Social Security Amendments of 1983 [section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title], the Secretary of Health and Human Services shall include wage costs paid to related organization employees directly involved in the delivery and administration of care provided by the related organization to hospital inpatients. For purposes of the preceding sentence, the term 'wage costs' does not include costs of overhead or home office administrative salaries or any costs that are not incurred in the hospital's Metropolitan Statistical Area."

**LIMITATION ON AMOUNTS PAID IN FISCAL YEARS 1988 AND 1989**

Section 4005(c)(2)(B) of Pub. L. 100–203 provided that: "The Secretary of Health and Human Services shall take appropriate steps to ensure that the total amount paid in a fiscal year under title XVIII of the Social Security Act [this subchapter] by reason of the amendment made by paragraph (1)(B) [amending this section] does not exceed $5,000,000 in the case of fiscal year 1988 and $10,000,000 for fiscal year 1989."

**STUDY OF CRITERIA FOR CLASSIFICATION OF HOSPITALS AS RURAL REFERRAL CENTERS; REPORT**

Section 4006(d)(2) of Pub. L. 100–360 directed Secretary of Health and Human Services to conduct for a study of the criteria used for the classification of hospitals as rural referral centers, and report to Congress, by not later than Mar. 1, 1989, on the study and on recommendations for the criteria that should be applied for the classification of hospitals as rural referral centers for cost reporting periods beginning on or after Oct. 1, 1989.

**GRANT PROGRAM FOR RURAL HEALTH CARE TRANSITION**


"(1) The Administrator of the Health Care Financing Administration, in consultation with the Assistant Secretary for Health (or a designee), shall establish a program of grants to assist eligible small rural hospitals and their communities in the planning and implementation of projects to modify the type and extent of services such hospitals provide in order to adjust for one or more of the following factors:

"(A) Changes in clinical practice patterns.

"(B) Changes in service populations.

"(C) Declining demand for acute-care inpatient hospital capacity.

"(D) Declining ability to provide appropriate staffing for inpatient hospitals.

"(E) Increasing demand for ambulatory and emergency services.

"(F) Increasing demand for appropriate integration of community health services.

"(G) The need for adequate access (including appropriate transportation) to emergency care and inpatient care in areas in which a significant number of underutilized hospital beds are being eliminated.

"(H) The Administrator shall submit a final report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

Each demonstration project under this subsection shall demonstrate methods of strengthening the financial and managerial capability of the hospital involved to provide necessary services. Such methods may include programs of cooperation with other health care providers, of diversification in services furnished (including the provision of home health services), of physician recruitment, and of improved management systems. Grants under this paragraph may be used to provide in-service instruction and consultation (and such other services as the Administrator determines appropriate) via telecommunications to physicians in such rural areas (within the meaning of section 1886(d)(2)(D) of the Social Security Act [subsec. (d)(2)(D) of this section]) as are designated either class 1 or class 2 health manpower shortage areas under section 323(a)(1)(A) of the Public Health Service Act [section 323(a)(1)(A) of this title]."
hospital designated by the Secretary under section 1820(i)(2) of the Social Security Act [section 1395i–4(i)(2) of this title], or any non-Federal, short-term general acute care hospital that—

(A) is located in a rural area (as determined in accordance with subsection (d)),

(B) has less than 100 beds, and

(C) is not for profit.

(3)(A) Any eligible small rural hospital that desires to modify the type or extent of health care services that it provides in order to adjust for one or more of the factors specified in paragraph (1) may submit an application to the Administrator and a copy of such application to the Governor of the State in which it is located. The application shall specify the nature of the project proposed by the hospital, the data and information on which the project is based, and a timetable (of not more than 24 months) for completion of the project. The application shall be submitted on or before a date specified by the Administrator and shall be in such form as the Administrator may require.

(B) The Governor shall transmit to the Administrator, within a reasonable time after receiving a copy of an application pursuant to subparagraph (A), any comments with respect to the application that the Governor deems appropriate.

(C) The Governor of a State may designate an appropriate State agency to receive and comment on applications submitted under subparagraph (A).

(4) A hospital shall be considered to be located in a rural area for purposes of this section 1886(d)(3)(D) of the Social Security Act [subsec. (d)(3)(D) of this section].

(b) In determining which hospitals making application under paragraph (3) will receive grants under this subsection, the Administrator shall take into account—

(A) any comments received under paragraph (3)(B) with respect to a proposed project;

(B) the effect that the project will have on—

(i) reducing expenditures from the Federal Hospital Insurance Trust Fund,

(ii) improving the access of Medicare beneficiaries to health care of a reasonable quality;

(C) the extent to which the proposal of the hospital, using appropriate data, demonstrates an understanding of—

(i) the primary market or service area of the hospital, and

(ii) the health care needs of the elderly and disabled that are not currently being met by providers in such market or area, and

(D) the degree of coordination that may be expected between the proposed project and—

(i) other local or regional health care providers, and

(ii) community and government leaders, as evidenced by the availability of support for the project (in cash or in kind) and other relevant factors.

(6) A grant to a hospital under this subsection may not exceed $50,000 a year and may not exceed a term of 3 years.

(7)(A) Except as provided in subparagraphs (B) and (C), a hospital receiving a grant under this subsection may use the grant for any of expenses incurred in planning and implementing the project with respect to which the grant is made.

(B) A hospital receiving a grant under this subsection for a project may not use the grant to retire debt incurred with respect to any capital expenditure made prior to the date on which the project is initiated.

(C) Not more than one-third of any grant made under this subsection may be expended for capital-related costs (as defined by the Secretary for purposes of section 1886(a)(4) of the Social Security Act [subsec. (a)(4) of this section]) of the project, except that this limitation shall not apply with respect to a grant used for the purposes described in subparagraph (D).

(d) A hospital may use a grant received under this subsection to develop a plan for converting itself to a rural primary care hospital (as described in section 1820(i)(2) of the Social Security Act [section 1395i–4(i)(2) of this title]) or to develop a rural health network (as defined in section 1820(g) of such Act) in the State in which it is located if the State is receiving a grant under section 1820(a)(1).

(8)(A) A hospital receiving a grant under this section [amending this section and section 1395tt of this title and enacting provisions set out as notes under this section and section 1395tt of this title] shall furnish the Administrator with such information as the Administrator may require to evaluate the project with respect to which the grant is made and to ensure that the grant is expended for the purposes for which it was made.

(B) The Administrator shall report to the Congress at least once every 12 months on the program of grants established under this subsection. The report shall assess the functioning and status of the program, shall evaluate the progress made toward achieving the purposes of the program, and shall include any recommendations the Secretary may deem appropriate with respect to the program. In preparing the report, the Secretary shall solicit and include the comments and recommendations of private and public entities with an interest in rural health care.

(C) The Administrator shall submit a final report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

(9) For purposes of carrying out the program of grants under this subsection, there are authorized to be appropriated from the Federal Hospital Insurance Trust Fund $15,000,000 for fiscal year 1989, $25,000,000 for each of the fiscal years 1990, 1991, and 1992 and $30,000,000 for each of fiscal years 1993 through 1997.

[For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which item 6 on page 100 identifies a reporting provision which, as subsequently amended, is contained in section 4005(e)(8)(B) of Pub. L. 100–203, set out above), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.]

Section 103(a)(2) of Pub. L. 103–432 provided that:

"The amendment made by paragraph (1) [amending section 4005(e)(2) of Pub. L. 100–203] shall apply to grants made on or after October 1, 1994."


"(a) DEVELOPMENT OF DATA BASE.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall develop and place into effect a data base relating to all hospitals under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq., which data base shall be updated at least once every quarter (and maintained for the 12-month period preceding any such update). The data..."
base under this subsection may include data from preliminary cost reports (but the Secretary shall make available an updated analysis of the differences between preliminary and settled cost reports).

(2) The information described in this paragraph is as follows:

(A) Hospital discharges (classified by class of primary payer).

(B) Patient days (classified by class of primary payer).

(C) Licensed beds, staffed beds, and occupancy.

(D) Inpatient charges and revenues (classified by class of primary payer).

(E) Outpatient charges and revenues (classified by class of primary payer).

(F) Inpatient and outpatient hospital expenses (cost-center classified for operating and capital).

(G) Reasonable costs.

(H) Other income.

(I) Bad debt and charity care.

(J) Capital acquisitions.

(K) Capital assets.

The Secretary shall define a method of ‘outpatient visit’ for purposes of reporting hospital information.

(3) The Secretary shall develop the system under subsection (c) in a manner so as—

(A) to facilitate the submittal of the information in the report in an electronic form, and

(B) to be compatible with the needs of the Medicare prospective payment system.

(4) The Secretary shall prepare and submit, to the Prospective Payment Assessment Commission, the Comptroller General, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, by not later than 45 days after the end of each calendar quarter, data collected under the system.

(5) In paragraph (2),

(A) The term ‘bad debt and charity care’ has such meaning as the Secretary establishes.

(B) The term ‘class’ means, with respect to payers at least, the programs under this title XVIII of the Social Security Act [this subchapter], a State under section 1875(b)(1) of the Social Security Act [section 1875(b) of the Social Security Act (section 1875(b)(1) of the Social Security Act)), a State plan approved under title XIX of such Act [this subchapter], a State plan approved under title XIX of such Act [subchapter XIX of this chapter], other third party-payers, and other persons (including self-paying individuals).

(6) The Secretary shall set aside at least a total of $3,000,000 for fiscal years 1988, 1989, and 1990 from existing research funds or from operations funds to develop the format, according to paragraph (1) and for data collection and analysis, but total funds shall not exceed $15,000,000.

(7) The Comptroller General shall analyze the adequacy of the existing system for reporting of hospital information and the costs and benefits of data reporting under the demonstration system and will recommend improvements in hospital data collection and analysis and display of data in support of policy making.

(8) The Secretary shall consult representatives of the hospital industry in carrying out the provisions of this section.

HOSPITAL OUTLIER PAYMENTS AND POLICY

Section 4008(d) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(b)(7), July 1, 1988, 102 Stat. 771, provided that:

(1) INCREASE IN OUTLIER PAYMENTS FOR BURN CENTER DRGs.—

(A) IN GENERAL.—For discharges classified in diagnosis-related groups relating to burn cases and occurring on or after April 1, 1988, and before October 1, 1989, the marginal cost of care permitted by the Secretary of Health and Human Services under section 1886(d)(5)(A)(ii) of the Social Security Act [subsection (d)(5)(A)(ii) of this section] shall be 90 percent of the cost for outlier cases.

(B) LIMITATION ON CHANGES IN OUTLIER REGULATIONS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after the date of the enactment of this Act (Dec. 22, 1987) and before October 1, 1988, any final regulation which changes the method of payment for outlier cases under section 1886(d)(5)(A) of the Social Security Act.

(B) PROPEC REPORT.—The chairman of the Prospective Payment Assessment Commission shall report to the Congress on such analysis by not later than October 1, 1989.
physicians in developing field clinical experience in hospitals submitting applications under this subsection.

Secretary') shall enter into agreements with 10 sponsoring hospitals, as provided that:

shall ensure that four small rural hospitals located in different counties participate in the demonstration project and that—

(a) In General.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall enter into agreements with 10 sponsoring hospitals submitting applications under this subsection to conduct demonstration projects to assist resident physicians in developing field clinical experience in rural areas.

(b) Nature of Project.—Under a demonstration project conducted under subsection (a), a sponsoring hospital entering into an agreement with the Secretary under such subsection shall enter into arrangements with a small rural hospital to provide to such rural hospital, for a period of one to three months of training, physicians (in such number as the agreement under subsection (a) may provide) who have completed one year of residency training.

(c) Selection.—(1) In selecting from among applications submitted under subsection (a), the Secretary shall ensure that four small rural hospitals located in different counties participate in the demonstration project and that—

(A) Two of such hospitals are located in rural counties of more than 2,700 square miles (one of which is west of the Mississippi River and one of which is east of such river); and

(B) Two of such hospitals are located in rural counties with (as determined by the Secretary) a severe shortage of physicians (one of which is east of the Mississippi River and one of which is west of such river).

(2) The provisions of paragraph (1) shall apply with respect to applications submitted as a result of amendments made by section 6216 of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101-239, amending this note].

"(d) Clarification of Payment.—For purposes of section 1886 of the Social Security Act [this section]—

(1) With respect to subsection (d)(5)(B) of such section, any resident physician participating in the project under subsection (a) for any part of a year shall be treated as if he or she were working at the applicable supervising hospital (as determined by the Secretary) under subsection (a) on September 1 of such year (and shall not be treated as if working at the small rural hospital); and

(2) With respect to subsection (h) of such section, the payment amount permitted under such subsection for a sponsoring hospital with an agreement under subsection (a) shall be increased (for the duration of the project only) by an amount equal to the amount of any direct graduate medical education costs (as defined in paragraph (5) of such subsection (h)) incurred by such hospital in supervising the education and training activities under a project under subsection (a).

(e) Duration of Project.—Each demonstration project under subsection (a) shall be commenced not later than six months after the date of enactment of this Act (Dec. 22, 1987) or the date of the enactment of the Omnibus Budget Reconciliation Act of 1989 (Dec. 19, 1989), in the case of a project conducted as a result of the amendments made by section 6216 of such Act [Pub. L. 101-239, amending this note]) and shall be conducted for a period of three years.

"(f) Definition.—In this section, the term 'sponsoring hospital' means a hospital that receives payments under sections 1886(d)(5)(B) and 1886(h) of the Social Security Act [subsecs. (d)(5)(B) and (h) of this section]."

Prohibition on Policy by Secretary of Health and Human Services to Reduce Expenditures in Fiscal Years 1989, 1990, and 1991

Section 4039(d) of Pub. L. 100-203, as amended by Pub. L. 100-360, title IV, §426(e), July 1, 1988, 102 Stat. 814; Pub. L. 101-239, title VI, §6207(b), Dec. 19, 1989, 103 Stat. 2245, provided that: "Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after the date of the enactment of this Act [Dec. 22, 1987] and before October 15, 1990, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act [this subchapter] in fiscal year 1989 or in fiscal year 1990 or in fiscal year 1991 of more than $50,000,000."

Temporary Extension of Payment Policies for Inpatient Hospital Services

Pub. L. 100-119, title I, §107(a)(1), Sept. 29, 1987, 101 Stat. 782, as amended by Pub. L. 100-203, title IV, §4002(f)(2), Dec. 22, 1987, 101 Stat. 1330-45, provided that: "Notwithstanding any other provision of law, with respect to payments attributable to portions of cost reporting periods occurring during the period beginning on October 1, 1987, and ending on November 20, 1987 (in this paragraph referred to as the 'extension period')—

(A) temporary freeze in PPS hospital rates.—For purposes of subsection (d)(5)(B) of such section (subject to payment for inpatient hospital services under section 1886 of the Social Security Act [this section]—

(i) the "target amount" shall be deemed to be 0 percent.

(B) temporary freeze in payment basis.—

(i) Extension of Blended DRG Rate.—For purposes of subsection (d)(1) of such section, the 'applicable combined adjusted DRG prospective payment rate' for discharges occurring—

(I) during the extension period is the rate specified in subsection (d)(1)(D)(i) of such section, or

(II) after such period is the national adjusted prospective payment rate determined under subsection (d)(3) of such section.

(ii) Extension of Hospital-Specific Payment.—For the first 51 days of a cost reporting period beginning during fiscal year 1988, payment shall be made under the applicable payment basis (as determined by the Secretary) under subsection (a) on September 1 of such year (and shall not be treated as if working at the small rural hospital); and

(2) with respect to subsection (h) of such section, the payment amount permitted under such subsection for a sponsoring hospital with an agreement under subsection (a) shall be increased (for the duration of the project only) by an amount equal to the amount of any direct graduate medical education costs (as defined in paragraph (5) of such subsection (h)) incurred by such hospital in supervising the education and training activities under a project under subsection (a)."

(e) Duration of Project.—Each demonstration project under subsection (a) shall be commenced not later than six months after the date of enactment of this Act (Dec. 22, 1987) or the date of the enactment of the Omnibus Budget Reconciliation Act of 1989 (Dec. 19, 1989), in the case of a project conducted as a result of the amendments made by section 6216 of such Act [Pub. L. 101-239, amending this note]) and shall be conducted for a period of three years.

"(f) Definition.—In this section, the term 'sponsoring hospital' means a hospital that receives payments under sections 1886(d)(5)(B) and 1886(h) of the Social Security Act [subsecs. (d)(5)(B) and (h) of this section]."

Prohibition on Policy by Secretary of Health and Human Services to Reduce Expenditures in Fiscal Years 1989, 1990, and 1991

Section 4039(d) of Pub. L. 100-203, as amended by Pub. L. 100-360, title IV, §426(e), July 1, 1988, 102 Stat. 814; Pub. L. 101-239, title VI, §6207(b), Dec. 19, 1989, 103 Stat. 2245, provided that: "Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after the date of the enactment of this Act [Dec. 22, 1987] and before October 15, 1990, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act [this subchapter] in fiscal year 1989 or in fiscal year 1990 or in fiscal year 1991 of more than $50,000,000."

Temporary Extension of Payment Policies for Inpatient Hospital Services

Pub. L. 100-119, title I, §107(a)(1), Sept. 29, 1987, 101 Stat. 782, as amended by Pub. L. 100-203, title IV, §4002(f)(2), Dec. 22, 1987, 101 Stat. 1330-45, provided that: "Notwithstanding any other provision of law, with respect to payments attributable to portions of cost reporting periods occurring during the extension period, the percent specified in subsection (d)(1)(D)(ii) of such section (subject to clause (i) of this subparagraph), the target percentage and DRG percentage shall be those specified in subsection (d)(3)(A)(i) of such section, and the applicable percentage increase in a hospital's target amount shall be deemed to be 0 percent.

(C) temporary freeze in amounts of payment for capital.—For payments attributable to portions of cost reporting periods occurring during the extension period, the percent specified in subsection (g)(3)(A)(ii) of such section is deemed to be 3.5 percent.

(D) temporary freeze in return on equity reductions.—For the first 51 days of a cost reporting period beginning during fiscal year 1988, the applicable percentage and DRG percentage shall be those specified in subsection (d)(3)(A)(i) of such section, and the applicable percentage increase in a hospital's target amount shall be deemed to be 3.5 percent.

(E) temporary freeze in PPS hospital rates.—For purposes of payment under subsection (b) of such section for cost reporting periods beginning during fiscal year 1988, with respect to the first 51 days of such a period the applicable percentage increase under paragraph (3)(B) of such subsection is deemed to be 0 percent.

(Sec. 4002(f)(2) of Pub. L. 100-203 provided that the amendment of section 107(a)(1) of Pub. L. 100-119, set
out above, by section 4002(c) of Pub. L. 100–203 is effective as of Sept. 29, 1987."

FREEZING CERTAIN CHANGES IN MEDICARE PAYMENT REGULATIONS AND POLICIES

Pub. L. 100–119, title I, §107(b), Sept. 29, 1987, 101 Stat. 763, provided that:

'(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Health and Human Services is not authorized to issue after September 18, 1987, and before November 21, 1987—

'(A) any final regulation that changes the policy with respect to payment under title XVIII of the Social Security Act [this subchapter] to providers of service for reasonable costs relating to unrecovered costs associated with unpaid deductible and coinsurance amounts incurred under such title;

'(B) any final regulation, instruction, or other policy which changes the policy under such title with respect to payment for a return on equity capital for outpatient hospital services is void and of no effect.

'(2) OTHER COST SAVINGS POLICIES.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after September 18, 1987, and before November 21, 1987, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in fiscal year 1988 of more than $50,000,000. Any regulation, instruction, or policy which is issued in violation of this paragraph is void and of no effect.

'(3) EXCEPTION.—Paragraphs (1) and (2) shall not be construed to apply to any regulation, instruction, or policy required to implement the amendment made by section 9311(a) of the Omnibus Budget Reconciliation Act of 1986 (section 9311(a) of Pub. L. 99–509, which amended section 1395g of this title) (relating to periodic interim payments).

MAINTAINING CURRENT OUTLIER POLICY IN FISCAL YEAR 1987

Section 9302(b)(3) of Pub. L. 99–509 provided that: "(3) Application of section 9307(d) may not be used to impose the provisions of sections 222 of Pub. L. 92–603, amending sections 1395b–1 and 1395c of title 42, or section 222 of the Social Security Amendments of 1972 [section 222 of Pub. L. 92–603, amending sections 1395b–1 and 1395c of title 42, and section 222 of the Social Security Amendments of 1972 [section 222 of Pub. L. 92–603, amending sections 1395b–1 and 1395c of title 42] and section 1395f of this title and enacting provisions set out as a note under section 1395b–1 of this title], and

'(3) The Secretary of Health and Human Services may not issue, in final form, any regulation which is primarily intended to have the effect of slowing down claims processing, or delaying payment of claims, under such title; or

Section 9302(d)(3) of Pub. L. 99–509 provided that: "(3) The Secretary of Health and Human Services shall, within 30 days after the date of the enactment of this Act (Oct. 21, 1986), for the publication of the payments rates that will apply under section 1886 of the Social Security Act [this section], for discharges occurring on or after October 1, 1986, taking into account the amendments made by this section [amending this section], without regard to the provisions of chapter 5 of title 5, United States Code.

MISCELLANEOUS ACCOUNTING PROVISION

Section 9309(d) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, §4003(d), Dec. 22, 1987, 101 Stat. 1330–56, provided that: "(1) had a cost reporting period beginning on September 28, 29, or 30 of 1985,

'(2) is located in a State in which inpatient hospital services were paid in fiscal year 1986 pursuant to a Statewide demonstration project under section 402 of the Social Security Amendments of 1967 [section 402 of Pub. L. 95–392, enacting section 1395b–1 of this title and amending section 1395f of this title] and section 222 of the Social Security Amendments of 1972 [section 222 of Pub. L. 92–603, amending sections 1395b–1 and 1395c of title 42 and section 1395f of this title and enacting provisions set out as a note under section 1395b–1 of this title], and

'(3) elects, by notice to the Secretary of Health and Human Services by not later than April 1, 1988, to have this subchapter apply during the first 7 months of such cost reporting period the 'target percentage' shall be 75 percent and the DRG percentage shall be 25 percent, and during the remaining 5 months of such period the 'target percentage' and the DRG percentage shall each be 50 percent."

Section 4008(e) of Pub. L. 100–203 provided that the amendment of section 9307(d) of Pub. L. 99–509, set out above, by section 4008(e) of Pub. L. 100–203 is effective as if included in the enactment of Pub. L. 99–509.

TREATMENT OF CAPITAL-RELATED REGULATIONS


'(1) PROHIBITION OF ISSUANCE OF FINAL REGULATIONS ON CAPITAL-RELATED COSTS AS PART OF PAYMENT FOR OPERATING COSTS BEFORE NOVEMBER 21, 1987.—Notwithstanding any other provision of law (except as provided on paragraph (3), the Secretary of Health and Human Services may not issue, in final form, after September 1, 1986, and before November 21, 1987, any regulation that changes the methodology for computing the amount of payment for capital-related costs described in paragraph (4) for inpatient hospital services under part A of title XVIII of the Social Security Act [part A...
of this subchapter). Any regulation published in violation of the previous sentence is void and of no effect.

"(2) Not including capital-related regulations in budget baseline. Any reference in law to a regulation issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1886(b)(2)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act [subsecs. (d)(3)(A), (d)(3)(B), and (e)(4) of this section] shall not include any regulation issued or proposed with respect to capital-related costs (as defined in paragraph (4))."

EXCEPTION.—Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing section 1861(v)(1)(O) and 1866(c)(2) of the Social Security Act [section 1395v(1)(O) of this title and subsec. (g)(2) of this section] and section 1866(g)(3)(A) and (B) of the Social Security Act [subsec. (g)(3)(A) and (B) of this section] as amended by section 9303(a) of this Act.

"(4) Capital-related costs defined.—In this subsection, the term 'capital-related costs' means those capital-related costs that are specifically excluded, under the second sentence of section 1886(a)(4) of the Social Security Act [subsec. (a)(4) of this section], from the term 'operating costs of inpatient hospital services' as defined in that section for cost reporting periods beginning prior to October 1, 1987."

LIMITATION ON AUTHORITY TO ISSUE CERTAIN FINAL REGULATIONS AND INSTRUCTIONS RELATING TO HOSPITALS OR PHYSICIANS

Section 9321(d) of Pub. L. 99–509 provided that: "Notwithstanding any other provision of law, except as required to implement specific provisions required under statute and except as provided under subsection (c) [set out above] with respect to a regulation described in that subsection, the Secretary of Health and Human Services is not authorized to issue in final form after the date of the enactment of this Act [Oct. 21, 1986] and before September 1, 1987, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act [this subchapter] in fiscal year 1988 of more than $50,000,000, and which relates to hospitals or physicians."

STUDY OF METHODOLOGY FOR AREA WAGE ADJUSTMENT FOR CENTRAL CITIES; REPORT TO CONGRESS

Section 9103(b) of Pub. L. 99–272 provided that: "(1) The Secretary of Health and Human Services, in consultation with the Prospective Payment Assessment Commission, shall collect information and shall develop one or more methodologies to permit the adjustment of the wage indices used for purposes of sections 1886(d)(2)(C)(i), 1886(d)(2)(H), and 1886(d)(3)(E) of the Social Security Act [subsec. (d)(2)(C)(i), (H), and (3)(E) of this section] in order to more accurately reflect hospital labor markets, by taking into account variations in wages and wage-related costs between the central city portion of urban areas and other parts of urban areas.

"(2) The Secretary shall report to Congress on the information collected and the methodologies developed under paragraph (1) not later than May 1, 1987. The report shall include a recommendation as to the feasibility and desirability of implementing such methodologies."

CONTINUATION OF MEDICARE REIMBURSEMENT WAIVERS FOR CERTAIN HOSPITALS PARTICIPATING IN REGIONAL HOSPITAL REIMBURSEMENT DEMONSTRATIONS

Section 9108 of Pub. L. 99–272 provided that: "(a) Continuation of waivers.—A hospital reimbursement control system which, on January 1, 1985, was carrying out a demonstration under a contract which had been approved by the Secretary of Health and Human Services pursuant to section 222(a) of the Social Security Amendments of 1972 [section 222(a) of Pub. L. 92–603, set out as a note under section 1395b–1 of this title], or under section 402 of the Social Security Amendments of 1967 (as amended by section 222(b) of the Social Security Amendments of 1972) [section 1395b–1 of this title], shall be deemed to meet the requirements of section 1886(f)(4)(A) of the Social Security Act [subsec. (c)(1)(A) of this section] if such system applies—

"(1) to substantially all non-Federal acute care hospitals (as defined by the Secretary) in the geographic area served by such system on January 1, 1985, and

"(2) to the review of at least 75 percent of—

"(A) all revenues or expenses in such geographic area for inpatient hospital services, and

"(B) revenues or expenses in such geographic area for inpatient hospital services provided under the State's plan approved under title XIX (subchapter XIX of this chapter).

"(b) Approval.—In the case of a hospital cost control system described in subsection (a), the requirements of section 1886(c) of the Social Security Act [subsec. (c) of this section] which apply to States shall instead apply to such system and, for such purposes, any reference to a State is deemed a reference to such system.

"(c) Effective date.—This section shall become effective on the date of the enactment of this Act [Apr. 7, 1986].""

INFORMATION ON IMPACT OF FPS PAYMENTS ON HOSPITALS

Section 9114 of Pub. L. 99–272 provided that: "(a) Disclosure of information.—The Secretary of Health and Human Services shall make available to the Prospective Payment Assessment Commission, the Congressional Budget Office, the Comptroller General, and the Congressional Research Service the most current information on the payments being made under section 1886 of the Social Security Act [this section] to individual hospitals. Such information shall be made available in a manner that permits examination of the impact of such section on hospitals.

"(b) Confidentiality.—Information disclosed under subsection (a) shall be treated as confidential and shall not be subject to further disclosure in a manner that permits the identification of individual hospitals."

SPECIAL RULES FOR IMPLEMENTATION OF HOSPITAL REIMBURSEMENT

Section 9115 of Pub. L. 99–272 provided that: "(a) Waiver of paperwork reduction.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this subpart and implementing the amendments made by this subpart [subpart A (§§ 9101–9115) of part 1 of subtitle A of title IX of Pub. L. 99–272, see Tables for classification].

"(b) Use of interim final regulations.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subpart and the amendments made by this subpart."

APPOINTMENT OF ADDITIONAL MEMBERS TO PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Section 9127(b) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, § 1895(b)(8), Oct. 22, 1986, 100 Stat. 2933, provided that: "The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Prospective Payment Assessment Commission, as required by the amendment made by subsection (a) [amending this section], no later than 60 days after the date of the enactment of this Security Act [Apr. 7, 1986], for terms of three years, except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of
no more than eight members will expire in any one year."

STUDIES BY SECRETARY; GAO STUDY; REPORT ON UNIFORMITY OF APPROVED FTE RESIDENT AMOUNTS—Study on Foreign Medical Graduates; Establishing a Physician Identifier System; Paperwork Reduction


"(c) STUDIES BY SECRETARY.—(1) The Secretary of Health and Human Services shall conduct a study with respect to approved educational activities relating to nursing and other health professions for which reimbursement is made to hospitals under title XVIII of the Social Security Act [this subchapter]. The study shall address:

(A) the types and numbers of such programs, and number of students supported or trained under each program;

(B) the fiscal and administrative relationships between the hospitals involved and the schools with which the programs and students are affiliated; and

(C) the types and amounts of expenses of such programs for which reimbursement is made, and the financial and other contributions which accrue to the hospital as a consequence of having such programs.

The Secretary shall report the results of such study to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives prior to December 31, 1987.

(2) The Secretary shall conduct a separate study of the advisability of continuing or terminating the exception under section 1886(h)(5)(F)(ii) of the Social Security Act [subsec. (b)(5)(F)(ii) of this section] for geriatric residencies and fellowships, and of expanding such exception to cover other educational activities, particularly those which are necessary to meet the projected health care needs of Medicare beneficiaries. Such study shall also examine the adequacy of the supply of faculty in the field of geriatrics. The Secretary shall report the results of such study to the committees described in paragraph (1) prior to July 1, 1990.

(d) GAO STUDY.—(1) The Comptroller General shall conduct a study of the variation in the amounts of payments made under title XVIII of the Social Security Act [subsec. (b)(5)(F)(ii) of this section] for geriatric residencies and fellowships, and of expanding such exception to cover other educational activities, particularly those which are necessary to meet the projected health care needs of Medicare beneficiaries. Such study shall also examine the adequacy of the supply of faculty in the field of geriatrics. The Secretary shall report the results of such study to the committees described in paragraph (1) prior to July 1, 1990.

(2) In carrying out such study, the Comptroller General may utilize a sample of hospital patients and any other data sources which he deems appropriate, and shall, to the extent feasible, control for differences in severity of illness levels, age wage levels, levels of physician reasonable charges for like services and procedures, and for other factors which could affect the comparability of patients and of payments between teaching and nonteaching settings and among teaching settings. The information obtained in the study shall be coordinated with the information obtained in conducting the study of teaching physicians’ services under section 2307(c) of the Deficit Reduction Act of 1984 [section 2307(c) of Pub. L. 98–369, set out as a note under section 1395w of this title].

(3) The Comptroller General shall report the results of the study to the committees described in subsection (c)(1) prior to December 31, 1987.

(e) REPORT ON UNIFORMITY OF APPROVED FTE RESIDENT AMOUNTS.—The Secretary of Health and Human Services shall report to the committees described in subsection (c)(1), not later than December 31, 1987, on whether section 1886(h) of the Social Security Act [subsec. (h) of this section] should be revised to provide for greater uniformity in the approved FTE resident amounts established under paragraph (2) of that section, and, if so, how such revisions should be implemented.

(f) STUDY ON FOREIGN MEDICAL GRADUATES.—The Secretary of Health and Human Services shall study, and report to the committees described in subsection (c)(1), not later than December 31, 1987, respecting the use of physicians who are foreign medical graduates (within the meaning of section 1886(h)(5)(D) of the Social Security Act [subsec. (h)(5)(D) of this section]) in the provision of health care services (particularly inpatient and outpatient hospital services) to Medicare beneficiaries. Such study shall evaluate:

(1) the types of services provided;

(2) the cost of providing such services, relative to the cost of other physicians providing the services or other approaches to providing the services;

(3) any deficiencies in the quality of the services provided, and methods of assuring the quality of such services; and

(4) the impact of costs and access to services if Medicare payment for hospitals’ costs of graduate medical education of foreign medical graduates were phased out.


(h) PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this section and the amendments made by this section (amending this section and section 1395x of this title and enacting notes set out under this section and section 1395x of this title).

SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER

Section 2922(1) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, § 1895(b)(10), Oct. 22, 1986, 100 Stat. 2933, provided that: “In the case of a hospital in a State that has had a waiver approved under section 1886(c) of the Social Security Act [subsec. (c) of this section] or section 402 of the Social Security Amendments of 1987 [section 1395b–1 of this title], for cost reporting periods beginning on or after January 1, 1986, if the waiver is terminated—

(1) the Secretary of Health and Human Services shall permit the hospital to change the method by which it allocates administrative and general costs to the direct medical education cost centers to the method specified in the medicare cost report;

(2) the Secretary may make appropriate adjustments in the regional adjusted DRG prospective payment rate (for the region in which the State is located), based on the assumption that all teaching hospitals in the State use the medicare cost report; and

(3) the Secretary shall adjust the hospital-specific portion of payment under section 1886(d) of such Act [subsec. (d) of this section] for any such hospital that actually chooses to use the medicare cost report.

The Secretary shall implement this subsection based on the best available data.”

MORATORIUM ON LABORATORY PAYMENT DEMONSTRATIONS; COOPERATION IN STUDY; REPORT TO CONGRESS


“(a) Moratorium.—Prior to January 1, 1990, the Secretary of Health and Human Services shall not conduct
any demonstration projects relating to competitive bidding as a method of purchasing laboratory services under title XVIII of the Social Security Act [this subchapter]. The Secretary may contract for the design of, and site selection for, such demonstration projects.

“(b) COOPERATION IN STUDY.—The Secretary of Health and Human Services and the Comptroller General shall assist representatives of clinical laboratories in the industry’s conduct of a study to determine whether methods exist which are better than competitive bidding for purposes of utilizing competitive market forces in setting payment levels for laboratory services under title XVIII of the Social Security Act [this subchapter]. If such a study is conducted by the clinical laboratory industry, the Secretary and the Comptroller General shall comment on such study and submit such comments and the study to the Senate Committee on Finance and the House Committees on Ways and Means and Energy and Commerce.”

MEDICARE HOSPITAL AND PHYSICIAN PAYMENT PROVISIONS; EXTENSION PERIOD


“(a) MAINTAINING EXISTING HOSPITAL PAYMENT RATES.—Notwithstanding any other provision of law, the amount of payment under section 1886 of the Social Security Act [this section] for inpatient hospital services for discharges occurring (and cost reporting periods beginning) during the extension period (as defined in subsection (c)) shall be determined on the same basis as the amount of payment for such services for a discharge occurring on (or the cost reporting period beginning immediately on or before) September 30, 1985.

“(b) MAINTAINING EXISTING PAYMENT RATES FOR PHYSICIANS’ SERVICES.—Notwithstanding any other provision of law, the amount of payment under part B of title XVIII of the Social Security Act [part B of this subchapter] for physicians’ services which are furnished during the extension period (as defined in subsection (c)) shall be determined on the same basis as the amount of payment for such services furnished on September 30, 1985, and the 15-month period, referred to in section 1842(j)(1) of such Act [section 1395u(j)(1) of this title], shall be deemed to include the extension period.

“(c) EXTENSION PERIOD DEFINED.—

“(1) HOSPITAL PAYMENTS.—For purposes of subsection (a), the term ‘extension period’ means the period beginning on October 1, 1985, and ending on April 30, 1986.

“(2) PHYSICIAN PAYMENTS.—For purposes of subsection (b), the term ‘extension period’ means the period beginning on October 1, 1985, and ending on April 30, 1986.”


DEFINITION OF HOSPITAL SERVING SIGNIFICANTLY DISPROPORTIONATE NUMBER OF LOW-INCOME PATIENTS OR PATIENTS ENTITLED TO HOSPITAL INSURANCE BENEFITS FOR AGED AND DISABLED; IDENTIFICATION

Section 2315(h) of Pub. L. 98–369, as amended by Pub. L. 99–272, title IX, §9103(a)(1), Apr. 7, 1986, 100 Stat. 156, provided that:

“(a) The Secretary of Health and Human Services, in consultation with the Secretary of Labor, shall conduct a study to develop an appropriate index for purposes of adjusting payment amounts under section 1886(d) of the Social Security Act [subsection (d) of this section] to reflect area differences in average hospital wage levels, as required under paragraphs (2)(H) and (3)(E) of such section [subsec. (d)(2)(H) and (3)(E) of this section], taking into account wage differences of full time and part-time workers. The Secretary of Health and Human Services shall report the results of such study to the Congress not later than 30 days after the date of the enactment of this Act [July 18, 1984], including any changes which the Secretary determines to be necessary to provide for an appropriate index.

“(b) The Secretary shall adjust the payment amounts for hospitals for discharges occurring on or after May 1, 1986, to reflect the changes the Secretary has promulgated in final regulations (on September 3, 1985) relating to the hospital wage index under section 1886(d)(3)(E) of the Social Security Act [subsec. (d)(3)(E) of this section]. For discharges occurring after September 30, 1986, the Secretary shall provide for such periodic adjustments in the appropriate wage index used under that section as may be necessary, taking into account changes in the wage levels and relative proportions of full-time and part-time workers.

“(c) The Secretary shall conduct a study and report to the Congress on proposed criteria under which, in the case of a hospital that demonstrates to the Secretary in a current fiscal year that the adjustment being made under paragraph (2)(H) or (3)(E) of section 1886(d) of the Social Security Act [subsec. (d)(2)(H) or (3)(E) of this section] for that hospital’s discharges in that fiscal year does not accurately reflect the wage levels in the labor market serving the hospital, the Secretary, to the extent he deems appropriate, would modify such adjustment for that hospital for discharges in the subsequent fiscal year to take into account a difference in payment amounts in that current fiscal year to the hospital that resulted from such inaccuracy.”

[Section 9103(a)(2) of Pub. L. 99–272 provided that: “The amendment made by paragraph (1) [amending this note] shall be effective as if it had been included in the Deficit Reduction Act of 1984 (Pub. L. 98–369).”]

DIFFERENT TREATMENT OF CAPITAL-PROJECTS-RELATED COSTS BEFORE AND AFTER IMPLEMENTATION OF SYSTEM FOR INCLUDING SUCH COSTS UNDER PROSPECTIVELY DETERMINED PAYMENT RATE

Section 601(a)(3) of Pub. L. 99–21 provided that: “It is the intent of Congress that, in considering the implementation of a system for including capital-related costs under a prospectively determined payment rate for inpatient hospital services, costs related to capital projects for which expenditures are obligated on or after the effective date of the implementation of such a system, may or may not be distinguished and treated differently from costs of projects for which expenditures were obligated before such date.”

NEW ENGLAND HOSPITALS; CLASSIFICATION AS URBAN OR RURAL

Section 601(c) of Pub. L. 98–21 provided that: “In determining whether a hospital is in an urban or rural area for purposes of section 1886(d) of the Social Security Act [subsection (d) of this section], the Secretary of Health and Human Services shall classify any hospital located in New England as being located in an urban area if such hospital was classified as being located in
an urban area under the Standard Metropolitan Statistical Area system of classification in effect in 1979."

REPORTS, EXPERIMENTS, AND DEMONSTRATION PROJECTS RELATED TO INCLUSION IN PROSPECTIVE PAYMENT AMOUNTS OF INPATIENT HOSPITAL SERVICE COSTS ASSOCIATED WITH RELATED COSTS

Section 603(a) of title VI of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title III, §3217, July 18, 1984, 98 Stat. 1061; Pub. L. 99–509, title IX, §9305(i)(1), Oct. 21, 1986, 100 Stat. 1933; Pub. L. 101–66, title I, §1106(d), Dec. 21, 1989, 103 Stat. 720, directed Secretary of Health and Human Services to report to Congress within 18 months after Apr. 20, 1983, on legislation by which capital-related costs associated with inpatient hospital services could be included within the prospective payment amounts computed under subsection (d) of this section, further provided that the Secretary was to study and report to Congress on reimbursement of sole community hospitals based on variations in occupancy, on coordination of an information transfer between parts A and B of this subchapter, on treatment of uncompensated care costs and adjustments appropriate for large rural teaching hospitals, and on advisability of having hospitals make cost-of-care information to certain patients, and further provided that the Secretary was to study and report to Congress on a method for including hospitals outside the 50 States and the District of Columbia under a prospective payment system.

Inapplicability of Coordination of Federal Information Policy to the Collection of Information

Section 101(b)(2)(B) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, §309(a)(1), Jan. 12, 1983, 96 Stat. 2408, provided that: “Chapter 35 of title 44, United States Code, shall not apply, until January 1, 1984, to collection of information and information collection requests which the Secretary of Health and Human Services determines to be necessary to carry out the amendments made by this section [amendments by section 101(a) of Pub. L. 97–248, enacting this section and amending section 1395xx of this title].”

§1395xx. Payment of provider-based physicians and payment under certain percentage arrangements

(a) Criteria; amount of payments

(1) The Secretary shall by regulation determine criteria for distinguishing those services (including inpatient and outpatient services) rendered in hospitals or skilled nursing facilities—

(A) which constitute professional medical services, which are personally rendered for an individual patient by a physician and which contribute to the diagnosis or treatment of an individual patient, and which may be reimbursed as physicians’ services under part B, and

(B) which constitute professional services which are rendered for the general benefit to patients in a hospital or skilled nursing facility and which may be reimbursed only on a reasonable cost basis or on the bases described in section 1395ww of this title.

(2)(A) For purposes of cost reimbursement, the Secretary shall recognize as a reasonable cost of a hospital or skilled nursing facility only that portion of the costs attributable to services rendered by a physician in such hospital or facility which are services described in paragraph (1)(B), apportioned on the basis of the amount of time actually spent by such physician rendering such services.

(B) In determining the amount of the payments which may be made with respect to services described in paragraph (1)(B), after apportioning costs as required by subparagraph (A), the Secretary may not recognize as reasonable (in the efficient delivery of health services) any portion of the provider’s costs for such services to the extent that such costs exceed the reasonable compensation equivalent for such services. The reasonable compensation equivalent for any service shall be established by the Secretary in regulations.

(C) The Secretary may, upon a showing by a hospital or facility that it is unable to recruit or maintain an adequate number of physicians for the hospital or facility on account of the reimbursement limits established under this subsection, grant exceptions to such reimbursement limits as may be necessary to allow such provider to provide a compensation level sufficient to provide adequate physician services in such hospital or facility.

(b) Prohibition of recognition of payments under certain percentage agreements

(1) Except as provided in paragraph (2), in the case of a provider of services which is paid under this subchapter on a reasonable cost basis, or other basis related to costs that are reasonable, and which has entered into a contract for the purpose of having services furnished for or on behalf of it, the Secretary may not include any cost incurred by the provider under the contract if the amount payable under the contract by the provider for that cost is determined on the basis of a percentage (or other proportion) of the provider’s charges, revenues, or claim for reimbursement.

(2) Paragraph (1) shall not apply—

(A) to services furnished by a physician and described in subsection (a)(1)(B) of this section and covered by regulations in effect under subsection (a) of this section, and

(B) under regulations established by the Secretary, where the amount involved under the percentage contract is reasonable and the contract—

(i) is a customary commercial business practice, or

(ii) provides incentives for the efficient and economical operation of the provider of services.


AMENDMENTS

1983—Subsec. (a)(1)(B). Pub. L. 98–21 inserted “or on the bases described in section 1395ww of this title”.


EFFECTIVE DATE OF 1983 AMENDMENT

Amendment of Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital’s cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 904(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.
The amendments made by this section [amending this section and section 1395yy of this title] shall become effective on the date of the enactment of this Act [Sept. 3, 1982], except that section 1887(b)(1) of the Social Security Act [subsec. (b)(1) of this section] shall not apply before October 1, 1982, to services furnished by a physician and described in section 1887(a)(1)(B) of such Act [subsec. (a)(1)(B) of this section].

“(2) In the case of a contract with a provider of services entered into prior to the date of the enactment of this Act [Sept. 3, 1982], the amendment made by subsection (a) [amending this section] shall apply to payments under such contract (A) 30 days after the first date (after such date of enactment) the provider of services may unilaterally terminate the contract, or (B) one year after the date of the enactment of this Act, whichever is earlier.”

**Effective Date of Regulations**

Section 108(b), formerly §108(c), of Pub. L. 97–248, as redesignated by Pub. L. 97–448, title III, §309(a)(3), Jan. 12, 1983, 96 Stat. 2408, provided that: “The Secretary of Health and Human Services shall first promulgate regulations to carry out section 1887(a) of the Social Security Act [subsec. (a) of this section] not later than October 1, 1982. Such regulations shall become effective on October 1, 1982, and shall be effective with respect to cost reporting periods ending after September 30, 1982, but in the case of any cost reporting period beginning before October 1, 1982, any reduction in payments under title XVIII of the Social Security Act [this subchapter] to a hospital or skilled nursing facility resulting from such regulations shall be imposed only in proportion to the part of the period which occurs after September 30, 1982.”

### §1395yy. Payment to skilled nursing facilities for routine service costs

#### (a) Per diem limitations

The Secretary, in determining the amount of the payments which may be made under this subchapter with respect to routine service costs of extended care services shall not recognize as reasonable (in the efficient delivery of health services) per diem costs of such services to the extent that such per diem costs exceed the following per diem limits, except as otherwise provided in this section:

1. With respect to freestanding skilled nursing facilities located in urban areas, the limit shall be equal to 112 percent of the mean per diem routine service costs for freestanding skilled nursing facilities located in urban areas.
2. With respect to freestanding skilled nursing facilities located in rural areas, the limit shall be equal to 112 percent of the mean per diem routine service costs for freestanding skilled nursing facilities located in rural areas.
3. With respect to hospital-based skilled nursing facilities located in urban areas, the limit shall be equal to the sum of the limit for freestanding skilled nursing facilities located in urban areas, plus 50 percent of the amount by which 112 percent of the mean per diem routine service costs for hospital-based skilled nursing facilities located in urban areas exceeds the limit for freestanding skilled nursing facilities located in urban areas.
4. With respect to hospital-based skilled nursing facilities located in rural areas, the limit shall be equal to the sum of the limit for freestanding skilled nursing facilities located in rural areas, plus 50 percent of the amount by which 112 percent of the mean per diem routine service costs for hospital-based skilled nursing facilities located in rural areas exceeds the limit for freestanding skilled nursing facilities located in rural areas.

In applying this subsection the Secretary shall make appropriate adjustments to the labor related portion of the costs based upon an appropriate wage index, and shall, for cost reporting periods beginning on or after October 1, 1995, and every 2 years thereafter, provide for an update to the per diem cost limits described in this subsection, except that the limits effective for cost reporting periods beginning on or after October 1, 1997, shall be based on the limits effective for cost reporting periods beginning on or after October 1, 1996.

#### (b) Excess overhead allocations for hospital-based facilities

With respect to a hospital-based skilled nursing facility, the Secretary may not recognize as reasonable the portion of the cost differences between hospital-based and freestanding skilled nursing facilities attributable to excess overhead allocations.

#### (c) Adjustments in limitations; publication of data

The Secretary may make adjustments in the limits set forth in subsection (a) of this section with respect to any skilled nursing facility to the extent the Secretary deems appropriate, based upon case mix or circumstances beyond the control of the facility. The Secretary shall publish the data and criteria to be used for purposes of this subsection on an annual basis.

#### (d) Access to skilled nursing facilities

1. Subject to subsection (e) of this section, any skilled nursing facility may choose to be paid under this subsection on the basis of a prospective payment for all routine service costs (including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter) and capital-related costs of extended care services provided in a cost reporting period if such facility had, in the preceding cost reporting period, fewer than 1,500 patient days with respect to which payments were made under this subchapter. Such prospective payment shall be in lieu of payments which would otherwise be made for routine service costs pursuant to section 1395x(v) of this title and subsections (a) through (c) of this section and capital-related costs pursuant to section 1395x(v) of this title.

2. (A) The amount of the payment under this section shall be determined on a per diem basis.

(B) Subject to the limitations of subparagraph (C), for skilled nursing facilities located—
(i) in an urban area, the amount shall be equal to 105 percent of the mean of the per diem reasonable routine service and capital-related costs of extended care services for skilled nursing facilities in urban areas within the same region, determined without regard to the limitations of subsection (a) of this section and adjusted for different area wage levels, and
(ii) in a rural area the amount shall be equal to 105 percent of the mean of the per diem reasonable routine service and capital-related costs of extended care services for skilled nursing facilities in rural areas within the same region, determined without regard to the limitations of subsection (a) of this section and adjusted for different area wage levels.

(C) The per diem amounts determined under subparagraph (B) shall not exceed the limit on routine service costs determined under subsection (a) of this section with respect to the facility, adjusted to take into account average capital-related costs with respect to the type and location of the facility.

(3) For purposes of this subsection, urban and rural areas shall be determined in the same manner as for purposes of subsection (a) of this section, and the term “region” shall have the same meaning as under section 1395ww(d)(2)(D) of this title.

(4) The Secretary shall establish the prospective payment amounts for cost reporting periods beginning in a fiscal year at least 90 days prior to the beginning of such fiscal year, on the basis of the most recent data available for a 12-month period. A skilled nursing facility must notify the Secretary of its intention to be paid pursuant to this subsection for a cost reporting period no later than 30 days before the beginning of that period.

(5) The Secretary shall provide for a simplified cost report to be filed by facilities being paid pursuant to this subsection, which shall require only the cost information necessary for determining prospective payment amounts pursuant to paragraph (2) and reasonable costs of ancillary services.

(6) In lieu of payment on a cost basis for ancillary services provided by a facility which is being paid pursuant to this subsection, the Secretary may pay for such ancillary services on a reasonable charge basis if the Secretary determines that such payment basis will provide an equitable level of reimbursement and will ease the reporting burden of the facility.

(7) In computing the rates of payment to be made under this subsection, there shall be taken into account the costs described in the last sentence of section 1395x(v)(1)(E) of this title (relating to compliance with nursing facility requirements and of conducting nurse aide training and competency evaluation programs and competency evaluation programs).

(e) Prospective payment

(1) Payment provision

Notwithstanding any other provision of this subsection, subject to paragraphs (7), (11), and (12), the amount of the payment for all costs (as defined in paragraph (2)(B)) of covered skilled nursing facility services (as defined in paragraph (2)(A)) for each day of such services furnished—

(A) in a cost reporting period during the transition period (as defined in paragraph (2)(E)), is equal to the sum of—

(i) the non-Federal percentage of the facility-specific per diem rate (computed under paragraph (3)), and
(ii) the Federal percentage of the adjusted Federal per diem rate (determined under paragraph (4)) applicable to the facility; and

(B) after the transition period is equal to the adjusted Federal per diem rate applicable to the facility.

(2) Definitions

For purposes of this subsection:

(A) Covered skilled nursing facility services

(i) In general

The term “covered skilled nursing facility services”—

(I) means post-hospital extended care services as defined in section 1395x(i) of this title for which benefits are provided under part A of this subchapter; and

(II) includes all items and services (other than items and services described in clauses (i), (iii), and (iv)) for which payment may be made under part B of this subchapter and which are furnished to an individual who is a resident of a skilled nursing facility during the period in which the individual is provided covered post-hospital extended care services.

(ii) Services excluded

Services described in this clause are physicians’ services, services described by clauses (i) and (II) of section 1395x(s)(2)(K) of this title, certified nurse-midwife services, qualified psychologist services, services of a certified registered nurse anesthetist, items and services described in subparagraphs (F) and (O) of section 1395x(s)(2) of this title, telehealth services furnished under section 1395m(m)(4)(C)(ii)(VII) of this title, and, only with respect to services furnished during 1998, the transportation costs of electrocardiogram equipment for electrocardiogram test services (HCPCS Code R0076). Services described in this clause do not include any physical, occupational, or speech-language therapy services regardless of whether or not the services are furnished by, or under the supervision of, a physician or other health care professional.

(iii) Exclusion of certain additional items and services

Items and services described in this clause are the following:

(I) Ambulance services furnished to an individual in conjunction with renal dialysis services described in section 1395x(s)(2)(F) of this title.

(II) Chemotherapy items (identified as of July 1, 1999, by HCPCS codes
J9000–J9020; J9040–J9151; J9170–J9185; J9200–J9201; J9260–J9268; J9211; J9230–J9245; and J9265–J9660 (and as subsequently modified by the Secretary) and any additional chemotherapy administration services identified by the Secretary.

(iii) Chemotherapy administration services (identified as of July 1, 1999, by HCPCS codes 36260–36262; 36480; 36530–36535; 36640; 36823; and 96405–96542 (and as subsequently modified by the Secretary)) and any additional chemotherapy administration services identified by the Secretary.

(iv) Exclusion of certain rural health clinic services described in this clause.

(x) Exclusion of certain rural health clinic services (as defined in paragraph (1) of this title); and

(ii) Treatment of new skilled nursing facilities.

(c) Determination of facility specific per diem rates.

The Secretary shall determine a facility-specific per diem rate for each skilled nursing facility not described in paragraph (2)(A)(i)(II) for a cost reporting period as follows:

(A) Determining base payments.

The Secretary shall determine, on a per diem basis, the total of:

(i) the allowable costs of extended care services for the facility for cost reporting periods beginning in fiscal year 1995, including costs associated with facilities described in subsection (d) of this section, with appropriate adjustments (as determined by the Secretary) to non-settled cost reports or, in the case of a facility participating in the Nursing Home Case-Mix and Quality Demonstration (RUGS–III), the RUGS–III rate received by the facility during the cost reporting period beginning in 1997, and

(ii) an estimate of the amounts that would be payable under part B of this subchapter (disregarding any applicable deductibles, coinsurance, and copayments) for covered skilled nursing facility services described in paragraph (2)(A)(i)(II) furnished during the applicable cost reporting period described in clause (i) to an individual who is a resident of the facility, regardless of whether or not the payment was made to the facility or to another entity.

In making appropriate adjustments under clause (i), the Secretary shall take into account exceptions and shall take into account exemptions but, with respect to exemptions, only to the extent that routine costs do not exceed 150 percent of the routine cost limits otherwise applicable but for the exemption.

(B) Update to first cost reporting period.

The Secretary shall update the amount determined under subparagraph (A), for each
cost reporting period after the applicable cost reporting period described in subparagraph (A)(i) and up to the first cost reporting period by a factor equal to the skilled nursing facility market basket percentage increase minus 1.0 percentage point.

(C) Updating to applicable cost reporting period

The Secretary shall update the amount determined under subparagraph (B) for each cost reporting period beginning with the first cost reporting period and up to and including the cost reporting period involved by a factor equal to the facility-specific update factor.

(D) Facility-specific update factor

For purposes of this paragraph, the “facility-specific update factor” for cost reporting periods beginning during—

(i) during each of fiscal years 1998 and 1999, is equal to the skilled nursing facility market basket percentage increase for such fiscal year minus 1 percentage point, and

(ii) during each subsequent fiscal year is equal to the skilled nursing facility market basket percentage increase for such fiscal year.

(4) Federal per diem rate

(A) Determination of historical per diem for facilities

For each skilled nursing facility that received payments for post-hospital extended care services during a cost reporting period beginning in fiscal year 1995 and that was subject to (and not exempted from) the per diem limits referred to in paragraph (1) or (2) of subsection (a) of this section (and facilities described in subsection (d) of this section), the Secretary shall estimate, on a per diem basis, the total of—

(i) the allowable costs of extended care services (excluding exceptions payments) for the facility for cost reporting periods beginning in 1995 with appropriate adjustments (as determined by the Secretary) to non-settled cost reports, and

(ii) an estimate of the amounts that would be payable under part B of this subchapter (disregarding any applicable deductibles, coinsurance, and copayments) for covered skilled nursing facility services described in paragraph (2)(A)(i)(II) furnished during such period to an individual who is a resident of the facility, regardless of whether or not the payment was made to the facility or to another entity.

(B) Update to first fiscal year

The Secretary shall update the amount determined under subparagraph (A), for each cost reporting period after the cost reporting period described in subparagraph (A)(i) and up to the first cost reporting period by a factor equal to the skilled nursing facility market basket percentage increase reduced (on an annualized basis) by 1 percentage point.

(C) Computation of standardized per diem rate

The Secretary shall standardize the amount updated under subparagraph (B) for each facility by—

(i) adjusting for variations among facilities by area in the average facility wage level per diem, and

(ii) adjusting for variations in case mix per diem among facilities.

(D) Computation of weighted average per diem rates

(i) All facilities

The Secretary shall compute a weighted average per diem rate for all facilities by computing an average of the standardized amounts computed under subparagraph (C), weighted for each facility by the number of days of extended care services furnished during the cost reporting period referred to in subparagraph (A).

(ii) Freestanding facilities

The Secretary shall compute a weighted average per diem rate for freestanding facilities by computing an average of the standardized amounts computed under subparagraph (C) only for such facilities, weighted for each facility by the number of days of extended care services furnished during the cost reporting period referred to in subparagraph (A).

(iii) Separate computation

The Secretary may compute and apply such averages separately for facilities located in urban and rural areas (as defined in section 1395ww(d)(2)(D) of this title).

(E) Updating

(i) Initial period

For the initial period beginning on July 1, 1998, and ending on September 30, 1999, the Secretary shall compute an unadjusted Federal per diem rate equal to the average of the weighted average per diem rates computed under clauses (i) and (ii) of subparagraph (D), increased by skilled nursing facility market basket percentage change for such period minus 1 percentage point.

(ii) Subsequent fiscal years

The Secretary shall compute an unadjusted Federal per diem rate equal to the Federal per diem rate computed under this subparagraph—

(I) for fiscal year 2000, the rate computed for the initial period described in clause (i), increased by the skilled nursing facility market basket percentage change for the initial period minus 1 percentage point;

(II) for fiscal year 2001, the rate computed for the previous fiscal year increased by the skilled nursing facility market basket percentage change for the fiscal year;

(III) for each of fiscal years 2002 and 2003, the rate computed for the previous fiscal year increased by the skilled nurs-
ing facility market basket percentage change for the fiscal year involved minus 0.5 percentage points; and

(IV) for each subsequent fiscal year, the rate computed for the previous fiscal year increased by the skilled nursing facility market basket percentage change for the fiscal year involved.

(F) Adjustment for case mix creep

Insofar as the Secretary determines that the adjustments under subparagraph (G)(i) for a previous fiscal year (or estimates that such adjustments for a future fiscal year) did (or are likely to) result in a change in aggregate payments under this subsection during the fiscal year that are a result of changes in the coding or classification of residents that do not reflect real changes in case mix, the Secretary may adjust unadjusted Federal per diem rates for subsequent fiscal years so as to eliminate the effect of such coding or classification changes.

(G) Determination of Federal rate

The Secretary shall compute for each skilled nursing facility for each fiscal year (beginning with the initial period described in subparagraph (E)(i)) an adjusted Federal per diem rate equal to the unadjusted Federal per diem rate determined under subparagraph (E), as adjusted under subparagraph (F), and as further adjusted as follows:

(i) Adjustment for case mix

The Secretary shall provide for an appropriate adjustment to account for case mix. Such adjustment shall be based on a resident classification system, established by the Secretary, that accounts for the relative resource utilization of different patient types. The case mix adjustment shall be based on resident assessment data and other data that the Secretary considers appropriate.

(ii) Adjustment for geographic variations in labor costs

The Secretary shall adjust the portion of such per diem rate attributable to wages and wage-related costs for the area in which the facility is located compared to the national average of such costs using an appropriate wage index as determined by the Secretary. Such adjustment shall be done in a manner that does not result in aggregate payments under this subsection that are greater or less than those that would otherwise be made if such adjustment had not been made.

(iii) Adjustment for exclusion of certain additional items and services

The Secretary shall provide for an appropriate proportional reduction in payments so that beginning with fiscal year 2001, the aggregate amount of such reductions is equal to the aggregate increase in payments attributable to the exclusion effected under clause (iii) of paragraph (2)(A).

(H) Publication of information on per diem rates

The Secretary shall provide for publication in the Federal Register, before May 1, 1998 (with respect to fiscal period described in subparagraph (E)(i)) and before the August 1 preceding each succeeding fiscal year (with respect to that succeeding fiscal year), of—

(i) the unadjusted Federal per diem rates to be applied to days of covered skilled nursing facility services furnished during the fiscal year,

(ii) the case mix classification system to be applied under subparagraph (G)(i) with respect to such services during the fiscal year, and

(iii) the factors to be applied in making the area wage adjustment under subparagraph (G)(ii) with respect to such services.

(5) Skilled nursing facility market basket index and percentage

For purposes of this subsection:

(A) Skilled nursing facility market basket index

The Secretary shall establish a skilled nursing facility market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered skilled nursing facility services.

(B) Skilled nursing facility market basket percentage

(i) In general

Subject to clause (ii), the term “skilled nursing facility market basket percentage” means, for a fiscal year or other annual period and as calculated by the Secretary, the percentage change in the skilled nursing facility market basket index (established under subparagraph (A)) from the midpoint of the prior fiscal year (or period) to the midpoint of the fiscal year (or other period) involved.

(ii) Adjustment

For fiscal year 2012 and each subsequent fiscal year, after determining the percentage described in clause (i), the Secretary shall reduce such percentage by the productivity adjustment described in section 1395ww(b)(3)(B)(xi)(II) of this title. The application of the preceding sentence may result in such percentage being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year.

(6) Submission of resident assessment data

A skilled nursing facility, or a facility described in paragraph (7)(B), shall provide the Secretary, in a manner and within the timeframes prescribed by the Secretary, the resident assessment data necessary to develop and implement the rates under this subsection. For purposes of meeting such requirement, a skilled nursing facility, or a facility described in paragraph (7), may submit the resident as
(7) Treatment of Medicare swing bed hospitals

(A) Transition

Subject to subparagraph (C), the Secretary shall determine an appropriate manner in which to apply this subsection to the facilities described in subparagraph (B) (other than critical access hospitals), taking into account the purposes of this subsection, and shall provide that at the end of the transition period (as defined in paragraph (2)(E)) such facilities shall be paid only under this subsection. Payment shall not be made under this subsection to such facilities for cost reporting periods beginning before such date (not earlier than July 1, 1999) as the Secretary specifies.

(B) Facilities described

The facilities described in this subparagraph are facilities that have in effect an agreement described in section 1395tt of this title.

(C) Exemption from PPS of swing-bed services furnished in critical access hospitals

The prospective payment system established under this subsection shall not apply to services furnished by a critical access hospital pursuant to an agreement under section 1395tt of this title.

(8) Limitation on review

There shall be no administrative or judicial review under section 1395ff of this title, 1395oo of this title, or otherwise of—

(A) the establishment of Federal per diem rates under paragraph (4), including the computation of the standardized per diem rates under paragraph (4)(C), adjustments and corrections for case mix under paragraphs (4)(F) and (4)(G)(i), adjustments for variations in labor-related costs under paragraph (4)(G)(ii), and adjustments under paragraph (4)(G)(iii);

(B) the establishment of facility specific rates before July 1, 1999 (except any determination of costs paid under part A of this subchapter); and

(C) the establishment of transitional amounts under paragraph (7).

(9) Payment for certain services

In the case of an item or service furnished to a resident of a skilled nursing facility or a part of a facility that includes a skilled nursing facility (as determined under regulations) for which payment would (but for this paragraph) be made under part B of this subchapter in an amount determined in accordance with section 1395f(a)(2)(B) of this title, the amount of the payment under such part shall be the amount provided under the fee schedule for such item or service. In the case of an item or service described in clause (ii) of paragraph (2)(A) that would be payable under part A of this subchapter but for the exclusion of such item or service under such clause, payment shall be made for the item or service, in an amount otherwise determined under part B of this subchapter for such item or service, from the Federal Hospital Insurance Trust Fund under section 1395 of this title (rather than from the Federal Supplementary Medical Insurance Trust Fund under section 1395t of this title).

(10) Required coding

No payment may be made under part B of this subchapter for items and services (other than services described in paragraph (2)(A)(ii)) furnished to an individual who is a resident of a skilled nursing facility or of a part of a facility that includes a skilled nursing facility (as determined under regulations), unless the claim for such payment includes a code (or codes) under a uniform coding system specified by the Secretary that identifies the items or services furnished.

(11) Permitting facilities to waive 3-year transition

Notwithstanding paragraph (1)(A), a facility may elect to have the amount of the payment for all costs of covered skilled nursing facility services for each day of such services furnished in cost reporting periods beginning no earlier than 30 days before the date of such election determined pursuant to paragraph (1)(B).

(12) Adjustment for residents with AIDS

(A) In general

Subject to subparagraph (B), in the case of a resident of a skilled nursing facility who is afflicted with acquired immune deficiency syndrome (AIDS), the per diem amount of payment otherwise applicable (determined without regard to any increase under section 101 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, or under section 314(a) of Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000), shall be increased by 128 percent to reflect increased costs associated with such residents.

(B) Sunset

Subparagraph (A) shall not apply on and after such date as the Secretary certifies that there is an appropriate adjustment in the case mix under paragraph (4)(G)(i) to compensate for the increased costs associated with residents described in such subparagraph.

(f) Reporting of direct care expenditures

(1) In general

For cost reports submitted under this subchapter for cost reporting periods beginning on or after the date that is 2 years after March 23, 2010, skilled nursing facilities shall separately report expenditures for wages and benefits for direct care staff (breaking out (at a minimum) registered nurses, licensed professional nurses, certified nurse assistants, and other medical and therapy staff).

(2) Modification of form

The Secretary, in consultation with private sector accountants experienced with Medicare
and Medicaid nursing facility home cost reports, shall redesign such reports to meet the requirement of paragraph (1) not later than 1 year after March 23, 2010.

(3) Categorization by functional accounts

Not later than 30 months after March 23, 2010, the Secretary, working in consultation with the Medicare Payment Advisory Commission, the Medicaid and CHIP Payment and Access Commission, the Inspector General of the Department of Health and Human Services, and other expert parties the Secretary determines appropriate, shall take the expenditures listed on cost reports, as modified under paragraph (1), submitted by skilled nursing facilities and categorize such expenditures, regardless of any source of payment for such expenditures, for each skilled nursing facility into the following functional accounts on an annual basis:

(A) Spending on direct care services (including nursing, therapy, and medical services).

(B) Spending on indirect care (including housekeeping and dietary services).

(C) Capital assets (including building and land costs).

(D) Administrative services costs.

(4) Availability of information submitted

The Secretary shall establish procedures to make information on expenditures submitted under this subsection readily available to interested parties upon request, subject to such requirements as the Secretary may specify under the procedures established under this paragraph.


† REFERENCES IN TEXT


AMENDMENTS

2010—Subsec. (e)(5)(B). Pub. L. 111–148, § 4301(b), designated existing provisions as cl. (i), inserted heading, substituted “Subject to clause (ii), the term” for “The term”, and added cl. (ii).


2003—Subsec. (e)(2)(A)(i)(II). Pub. L. 108–173, § 140(a)(1), substituted “clauses (ii), (iii), and (iv)” for “clauses (i) and (ii)”.


Subsec. (e)(12). Pub. L. 108–173, § 3151(a), amended heading and text of par. (12) generally, substituting provisions relating to upward adjustment of per diem payment for residents of a skilled nursing facility with AIDS for provisions relating to per diem payment rule for certain qualified acute skilled nursing facilities.


Subsec. (e)(4)(E)(ii)(III). Pub. L. 106–554, § 1(a)(6) (title III, § 311(a)(2)), redesignated subcl. (II) as (III) and substituted “each of fiscal years 2002 and 2003” for “each of fiscal years 2001 and 2002” and “minus 0.5 percentage points” for “minus 1 percentage point”.

Former subcl. (III) redesignated (IV).


Subsec. (e)(7)(A). Pub. L. 106–554, § 1(a)(6) (title II, § 203(a)(2), (3)), in heading substituted “Transition” for “In general” and in text substituted “Subject to subparagraph (C), the for “The” and inserted “other than critical access hospitals” after “facilities described in subparagraph (B)”.

Subsec. (e)(7)(B). Pub. L. 106–554, § 1(a)(6) (title II, § 203(a)(4)), struck out “;” for which payment is made for the furnishing of extended care services on a reasonable cost basis under section 1395f(s)(2)(K) of this title (as in effect on and after such date)” before period at end.


1999—Subsec. (e)(1). Pub. L. 106–113, § 1000(a)(6) (title I, § 105(a)(1)), substituted “subject to paragraphs (7), (11), and (12)” for “subject to paragraphs (7) and (11)” in introductory provisions.


Subsec. (e)(12)(A)(i)(II). Pub. L. 106–113, § 1000(a)(6) (title I, § 103(a)(1)), substituted “items and services described in clauses (i) and (iii)” for “services described in clause (i)”.


Subsec. (e)(3)(A)(iii). Pub. L. 106–113, § 1000(a)(6) (title I, § 104(a)(1)(B)), inserted “in, in the case of a facility participating in the Nursing Home Case-Mix and Quality Demonstration (RUGS-III), the RUGS-III rate received by the facility during the cost reporting period beginning in 1997” after “to non-settled cost reports”.

Subsec. (e)(3)(A)(i). Pub. L. 106–113, § 1000(a)(6) (title I, § 104(a)(1)(A)), inserted “or, in the case of a facility participating in the Nursing Home Case-Mix and Quality Demonstration (RUGS-III), the RUGS-III rate received by the facility during the cost reporting period beginning in 1997” after “to non-settled cost reports”.

Subsec. (e)(3)(B). Pub. L. 106–113, § 1000(a)(6) (title I, § 104(a)(2)), added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows:

“(1) In general.—Subject to clause (ii), the Secretary shall update the amount determined under subparagraph (A) for each cost reporting period after the cost...
reporting period described in subparagraph (A)(i) and up to the first cost reporting period by a factor equal to the skilled nursing facility market basket percentage minus 1 percentage point.

“(ii) CERTAIN DEMONSTRATION PROJECTS.—In the case of a facility participating in the Nursing Home Case-Mix and Quality Demonstration (RUGS-III), there shall be amount described in clause (i) the RUGS-III rate received by the facility for 1997.”


Subsec. (d)(4). Pub. L. 99–514, § 1895(b)(7)(B), substituted “cost reporting periods beginning in a fiscal year” for “fiscal year” and “cost reporting period no later than 30 days before the beginning of that period” for “fiscal year within 60 days after the Secretary establishes the final prospective payment amounts for such fiscal year”.

EFFECTIVE DATE OF 2008 AMENDMENT
Amendment by Pub. L. 110–275 applicable to services furnished on or after Jan. 1, 2009, see section 149(c) of Pub. L. 110–275, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 2003 AMENDMENT
Amendment by Pub. L. 108–173, title IV, § 410(b), Dec. 8, 2003, 117 Stat. 2271, provided that: “The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 2006.”

Pub. L. 108–173, title V, § 511(b), Dec. 8, 2003, 117 Stat. 2299, provided that: “The amendment made by paragraph (1) [probably should be “subsection (a)”, amending this section] shall apply to services furnished on or after October 1, 2004.”

EFFECTIVE DATE OF 2000 AMENDMENT
Amendment by section 1(a)(6) [title II, § 203(a)] of Pub. L. 108–554 applicable to cost reporting periods beginning on or after Dec. 21, 2001, see section 1(a)(6) [title IV, § 203(c)] of Pub. L. 108–554, set out as a note under section 1395t of this title.

EFFECTIVE DATE OF 1999 AMENDMENT
Pub. L. 106–113, div. B, § 1000(a)(6) [title I, § 102(b)], Nov. 29, 1999, 113 Stat. 1586, 1501A–325, provided that: “The amendments made by subsection (a) [amending this section] shall apply to items and services furnished on or after April 1, 2000.”

Pub. L. 106–113, div. B, § 1000(a)(6) [title I, § 104(b)], Nov. 29, 1999, 113 Stat. 1586, 1501A–327, provided that: “The amendments made by subsection (a) [amending this section] shall apply to payments made under title XVIII of the Social Security Act for which payment is made under a note under section 1395t of this title.”

Amendment by section 1000(a)(6) [title III, § 321(g)(1)] of Pub. L. 106–113 effective as if included in the enactment of section 442(a) of BBA [the Balanced Budget Act of 1997, Pub. L. 105–33], set out as a note under section 1395t of this title.

Amendment by section 4432(a), (b)(3), (5)(E) of Pub. L. 105–33 effective for cost reporting periods beginning on
or after July 1, 1998, except that amendment by section
4432(b) applicable to items and services furnished on or
after July 1, 1998, see section 4432(d) of Pub. L. 105–33,
set out as a note under section 1395d–3 of this title.
Amendment by section 4511(a)(2)(E) of Pub. L. 105–33
applicable with respect to services furnished and sup-
plies provided on and after Jan. 1, 1998, see section
4511(e) of Pub. L. 105–33, set out as a note under section
1395k of this title.

**Effective Date of 1993 Amendment**

Section 13953(a)(3)(B) of Pub. L. 103–66 provided that:
‘‘The amendments made by subparagraph (A) [amend-
ing this section] shall apply to cost reporting periods
beginning on or after October 1, 1993.’’

**Effective Date of 1990 Amendment**

Section 4008(e)(3) of Pub. L. 101–508 provided that:
‘‘The amendments made by paragraphs (1) and (2)
amending this section and provisions set out as a note
below) shall take effect as if included in the enactment
L. 101–239].’’

Amendment by section 4008(h)(2)(A)(ii) of Pub. L. 101–508
effective as if included in the enactment of the Omnibus
Budget Reconciliation Act of 1987, Pub. L. 100–203, see
section 4008(h)(2)(F) of Pub. L. 101–508, set out as a note
under section 1395i–3 of this title.

**Effective Date of 1987 Amendment**

Amendment by Pub. L. 100–203 applicable to services
furnished on or after Oct. 1, 1990, without regard to
whether regulations implementing such amendment are
promulgated by such date, except as otherwise spec-
ified in section 1395i–3 of this title, see section
4205(b) of Pub. L. 100–203, as amended, set out
as an Effective Date note under section 1395i–3 of this title.

**Effective Date of 1986 Amendments**

Section 1895(b)(7)(D) of Pub. L. 99–514 provided that:
‘‘The amendments made by subparagraphs (A) and (B)
amending this section] apply to cost reporting periods
beginning on or after October 1, 1986.’’

Amendment by section 9219(b)(1)(C) of Pub. L. 99–272
effective as if originally included in the Deficit Reduc-
tion Act of 1984, Pub. L. 98–369, see section 9219(b)(1)(D)
of Pub. L. 99–272, set out as a note under section 1395u
of this title.

Section 9126(d) of Pub. L. 99–272, as amended by Pub.
L. 99–514, title XVIII, §1895(b)(7)(C), Oct. 22, 1986, 100
Stat. 2933, provided that:
‘‘(1) The amendment made by subsection (a) [amend-
ing this section] shall apply to cost reporting periods
beginning on or after October 1, 1986.

‘‘(2) The amendment made by subsection (b) [amend-
ing this section] shall become effective on the date of
the enactment of this Act [Apr. 7, 1986].’’

**Effective Date**

Section 2319(c) of Pub. L. 98–369 provided that: ‘‘The amendments made by subsections (a) [amending
section 1395x of this title] and (b) [enacting this section]
shall apply to cost reporting periods beginning on or
after July 1, 1984.’’

**STUDY ON PORTABLE DIAGNOSTIC ULTRASOUND SER-
VICES FOR BENEFICIARIES IN SKILLED NURSING FACIL-
ITIES**

2300, directed the Comptroller General of the United
States to conduct a study of portable diagnostic ultra-
sound services furnished to Medicare beneficiaries in
skilled nursing facilities and to submit to Congress a
report on the study not later than 2 years after Dec. 8,
2003.

**Special Rule for Payment for Fiscal Year 2001**

Pub. L. 106–554, §1(a)(6) (title III, §311(b)), Dec. 21,
2000, 114 Stat. 2763, 2763A–497, provided that: ‘‘Notwith-
standing the amendments made by subsection (a)
amending this section], for purposes of making pay-
ments for covered skilled nursing facility services
under section 1988(e) of the Social Security Act (42
U.S.C. 1395yy(e)) for fiscal year 2001, the Federal per
diem rate referred to in paragraph (4)(E)(i) of such sec-
section—

‘‘(1) for the period beginning on October 1, 2000, and
ending on March 31, 2001, shall be the rate determined
in accordance with the law as in effect on the day be-
fore the date of the enactment of this Act [Dec. 21,
2000]; and

‘‘(2) for the period beginning on April 1, 2001, and
ending on September 30, 2001, shall be the rate that
would have been determined under such section if
‘‘plus 1 percentage point’’ had been substituted for
‘‘minus 1 percentage point’’ under subclause (II) of
such paragraph (as in effect on the day before the
date of the enactment of this Act).

Pub. L. 106–554, §1(a)(6) (title V, §47(b)), Dec. 21,
2000, 114 Stat. 2763, 2763A–533, provided that: ‘‘The payment
increase provided under section 311(b)(2) [set out as a
note above] (relating to covered skilled nursing facility
services) shall not apply to services furnished on fiscal
year 2001 and shall not be taken into account in cal-
culating the payment amounts applicable for services
furnished after such fiscal year.’’

**GAO REPORT ON ADEQUACY OF SNF PAYMENT RATES**

Pub. L. 106–554, §1(a)(6) (title III, §311(d)), Dec. 21,
2000, 114 Stat. 2763, 2763A–498, provided that: ‘‘Not later
than the Comptroller General of the United States shall submit to Congress a report on the ade-
quacy of Medicare payment rates to skilled nursing
facilities and the extent to which Medicare contributes
to the financial viability of such facilities. Such report
shall take into account the role of private payers, med-
icaid, and case mix on the financial performance of
these facilities, and shall include an analysis (by spec-
ific RUG classification) of the number and character-
istics of such facilities.’’

**HCFA STUDY OF CLASSIFICATION SYSTEMS FOR SNF RESIDENTS**

Pub. L. 106–554, §1(a)(6) (title III, §311(e)), Dec. 21,
2000, 114 Stat. 2763, 2763A–498, provided that:
‘‘(1) STUDY.—The Secretary of Health and Human
Services shall conduct a study of the different systems
categorizing patients in Medicare skilled nursing
facilities in a manner that accounts for the relative
resource utilization of different patient types.

‘‘(2) REPORT.—Not later than January 1, 2005, the Sec-
retary shall submit to Congress a report on the study
conducted under subsection (a). Such report shall
include such recommendations regarding changes in law
as may be appropriate.’’

**GAO AUDIT OF NURSING STAFF RATIOS**

Pub. L. 106–554, §1(a)(6) (title III, §312(b)), Dec. 21,
2000, 114 Stat. 2763, 2763A–498, provided that:
‘‘(1) AUDIT.—The Comptroller General of the United
States shall conduct an audit of nursing staffing ratios
in a representative sample of Medicare skilled nursing
facilities. Such sample shall cover selected States and
shall include broad representation with respect to size,
ownership, location, and Medicare volume. Such audit
shall include an examination of payroll records and
medicaid cost reports of individual facilities.

‘‘(2) REPORT.—Not later than August 1, 2002, the
Comptroller General shall submit to Congress a report
on the audits conducted under paragraph (1). Such re-
port shall include an assessment of the impact of the
increased payments under this subtitle [subtitle B, §§311–315, of title III of §1(a)(6) of Pub. L. 106–554,
amending this section and sections 1395u, 1395y, and
1395cc of this title and enacting provisions set out as
notes under this section and section 1988(e) of the Social
Security Act], on increased nursing staff ratios and shall make recom-
recommendations as to whether increased payments under
subsection (a) [114 Stat. 2763A–498] should be continued.”

OVERSIGHT
Pub. L. 106–554, §1(a)(6) [title III, §313(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–499, provided that: “The Secretary of Health and Human Services, through the Office of the Inspector General in the Department of Health and Human Services or otherwise, shall monitor payments made under part B of the title XVIII of the Social Security Act [part B of this subchapter] for items and services furnished to residents of skilled nursing facilities during a time in which the residents are not being provided medicare covered post-hospital extended care services to ensure that there is not duplicate billing for services or excessive services provided.”

ESTABLISHMENT OF PROCESS FOR GEOGRAPHIC RECLASSIFICATION
Pub. L. 106–554, §1(a)(6) [title III, §315], Dec. 21, 2000, 114 Stat. 2763, 2763A–500, provided that:

“(a) In General.—The Secretary of Health and Human Services may establish a procedure for the geographic reclassification of a skilled nursing facility for purposes of payment for covered skilled nursing facility services under the prospective payment system established under section 1888(e) of the Social Security Act (42 U.S.C. 1395yy(e)). Such procedure may be based upon the method for geographic reclassifications for inpatient hospitals established under section 1888(d)(10) of the Social Security Act (42 U.S.C. 1395ww(d)(10)).

“(b) Requirement for Skilled Nursing Facility Wage Data.—In no case may the Secretary implement the procedure under subsection (a) before such time as the Secretary has collected data necessary to establish an area wage index for skilled nursing facilities based on wage data from such facilities.”

REPORT TO CONGRESS
Pub. L. 106–113, div. B, §1000(a)(6) [title I, §105(c)], Nov. 29, 1999, 113 Stat. 1358, 1350A–328, provided that: “Not later than March 1, 2001, the Secretary of Health and Human Services shall assess the resource use of patients of skilled nursing facilities furnishing services under the medicare program who are immuno-compromised secondary to an infectious disease, with specific diagnoses as specified by the Secretary [under paragraph (12)(C) of section 1888(e) of the Social Security Act (42 U.S.C. 1395yy(e))] to determine whether any permanent adjustments are needed to the RUGs to take into account the resource uses and costs of these patients.”

MEDICAL REVIEW PROCESS
Section 4423(c) of Pub. L. 105–33 provided that: “In order to assure that medicare beneficiaries are furnished appropriate services in skilled nursing facilities, the Secretary of Health and Human Services shall establish and implement a thorough medical review process to examine the effects of the amendments made by this section [amending this section and sections 1395i–3, 1395k, 1395l, 1395u, 1395x, 1395y, 1395cc, and 1395tt of this title] on the quality of covered skilled nursing facility services furnished to medicare beneficiaries. In developing such a medical review process, the Secretary shall place a particular emphasis on the quality of non-routine covered services and physicians’ services for which payment is made under title XVIII of the Social Security Act [this subchapter].”

CONSTRUCTION OF WAGE INDEX FOR SKILLED NURSING FACILITIES
Pub. L. 106–432, title I, §106(a), Oct. 31, 1994, 108 Stat. 4465, provided that: “Not later than 1 year after the date of the enactment of this Act [Oct. 31, 1994], the Secretary of Health and Human Services shall begin to collect data on employee compensation and paid hours of employment in skilled nursing facilities for the purpose of constructing a skilled nursing facility wage index adjustment to the routine service cost limits required under section 1888(a)(4) of the Social Security Act [subsection (a)(4) of this section].”

NO CHANGE IN LIMITS ON PER DIEM SERVICE COSTS FOR EXTENDED CARE SERVICES FOR FISCAL YEARS 1994 AND 1995
Section 13503(a)(1) of Pub. L. 103–66 provided that: “The Secretary of Health and Human Services may not provide any change in the limits on per diem routine service costs for extended care services under section 1888 of the Social Security Act [this section] for cost reporting periods beginning during fiscal years 1994 and 1995, except as may be necessary to take into account the amendments made by paragraph (3)(A) [amending this section]. The effect of the preceding sentence shall not be considered the Secretary in making adjustments pursuant to section 1888(c) of such Act to the payment limits for such services during such fiscal years.”

NO CHANGE IN PROSPECTIVE PAYMENTS FOR SERVICES FURNISHED DURING FISCAL YEARS 1994 AND 1995
Section 13503(b) of Pub. L. 103–66 provided that: “The Secretary of Health and Human Services may not change the amount of any prospective payment paid to a skilled nursing facility under section 1888(d) of the Social Security Act [subsection (d) of this section] for services furnished during cost reporting periods beginning during fiscal years 1994 and 1995, except as may be necessary to take into account the amendment made by subsection (c)(1)(A) [amending section 1395x of this title].”

PROSPECTIVE PAYMENT SYSTEM FOR SKILLED NURSING FACILITY SERVICES
Section 4008(k) of Pub. L. 101–508 provided that: “(1) Development of Proposal.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which skilled nursing facilities receive payment for extended care services under part A [part A of this subchapter] of the medicare program in order to ensure that medicare beneficiaries are furnished extended care services for individuals unable to care for themselves;

“(B) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program without jeopardizing access to extended care services for individuals unable to care for themselves;

“(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

“(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, differences in wages and wage-related costs among facilities located in various geographic areas, and other factors the Secretary considers appropriate; and

“(E) take into consideration the appropriateness of classifying patients and payments upon functional disability, cognitive impairment, and other patient characteristics.

“(2) Reports.—(A) By not later than April 1, 1991, the Secretary (acting through the Administrator of the Health Care Financing Administration) shall submit any research studies to be used in developing the pro-
posal under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

“(B) By not later than September 1, 1991, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

“(C) By not later than March 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.”

USE OF MORE RECENT DATA REGARDING ROUTINE SERVICE COSTS OF SKILLED NURSING FACILITIES

Pub. L. 101–239, title VI, § 6024, Dec. 19, 1989, 103 Stat. 2167, as amended by Pub. L. 101–508, title IV, § 4008(a)(1), Nov. 5, 1990, 104 Stat. 1388–45, provided that: “The Secretary of Health and Human Services shall determine mean per diem routine service costs for freestanding and hospital based skilled nursing facilities under section 1886(a) of the Social Security Act [subsec. (a) of this section] for cost reporting periods beginning on or after October 1, 1989, in accordance with regulations published by the Secretary that require the use of cost reports submitted by skilled nursing facilities for cost reporting periods beginning not earlier than October 1, 1988, by using cost reports submitted by skilled nursing facilities for cost reporting periods ending not earlier than January 31, 1988, and not later than December 31, 1988.”

§ 1395zz. Provider education and technical assistance

(a) Coordination of education funding

The Secretary shall coordinate the educational activities provided through medicare contractors (as defined in subsection (g) of this section, including under section 1395ddd of this title) in order to maximize the effectiveness of Federal education efforts for providers of services and suppliers.

(b) Enhanced education and training

(1) Additional resources

There are authorized to be appropriated to the Secretary (in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund) such sums as may be necessary for fiscal years beginning with fiscal year 2005.

(2) Use

The funds made available under paragraph (1) shall be used to increase the conduct by medicare contractors of education and training of providers of services and suppliers regarding billing, coding, and other appropriate items and may also be used to improve the accuracy, consistency, and timeliness of contractor responses.

(c) Tailoring education and training activities for small providers or suppliers

(1) In general

Insofar as a medicare contractor conducts education and training activities, it shall tailor such activities to meet the special needs of small providers of services or suppliers (as defined in paragraph (2)). Such education and training activities for small providers of services and suppliers may include the provision of technical assistance (such as review of billing systems and internal controls to determine program compliance and to suggest more efficient and effective means of achieving such compliance).

(2) Small provider of services or supplier

In this subsection, the term “small provider of services or supplier” means—

(A) a provider of services with fewer than 25 full-time-equivalent employees; or

(B) a supplier with fewer than 10 full-time-equivalent employees.

(d) Internet websites; FAQs

The Secretary, and each medicare contractor insofar as it provides services (including claims processing) for providers of services or suppliers, shall maintain an Internet website which—

(1) provides answers in an easily accessible format to frequently asked questions, and

(2) includes other published materials of the contractor,

that relate to providers of services and suppliers under the programs under this subchapter (and subchapter XI of this chapter insofar as it relates to such programs).

(e) Encouragement of participation in education program activities

A medicare contractor may not use a record of attendance at (or failure to attend) educational activities or other information gathered during an educational program conducted under this section or otherwise by the Secretary to select or track providers of services or suppliers for the purpose of conducting any type of audit or prepayment review.

(f) Construction

Nothing in this section or section 1395ddd(g) of this title shall be construed as providing for disclosure by a medicare contractor—

(1) of the screens used for identifying claims that will be subject to medical review; or

(2) of information that would compromise pending law enforcement activities or reveal findings of law enforcement-related audits.

(g) Definitions

For purposes of this section, the term “medicare contractor” includes the following:

(1) A medicare administrative contractor with a contract under section 1851 of this title, including a fiscal intermediary with a contract under section 1395h of this title and a carrier with a contract under section 1395u of this title.

(2) An eligible entity with a contract under section 1395ddd of this title.

Such term does not include, with respect to activities of a specific provider of services or supplier an entity that has no authority under this subchapter or subchapter IX of this chapter with respect to such activities and such provider of services or supplier.
Prior Provisions


AMENDMENTS

2003—Subsecs. (b), (c). Pub. L. 108–173, §921(d)(1), added subsec. (b) and (c).


Subsecs. (e) to (g). Pub. L. 108–173, §921(f)(1), added subsecs. (e) to (g).

Effective Date of 2003 Amendment


Small Provider Technical Assistance Demonstration Program


“(a) Establishment.—The Secretary [of Health and Human Services] shall establish a demonstration program (in this section referred to as the ‘demonstration program’) under which technical assistance described in paragraph (2) is made available, upon request and on a voluntary basis, to small providers of services or suppliers in order to improve compliance with the applicable requirements of the programs under medicare program under title XVIII of the Social Security Act [this chapter] (including provisions of title XI of such Act [subchapter XI of this chapter] insofar as they relate to such title and are not administered by the Office of the Inspector General of the Department of Health and Human Services).

“(b) Forms of Technical Assistance.—The technical assistance described in this paragraph is—

“(A) evaluation and recommendations regarding billing and related systems; and

“(B) information and assistance regarding policies and procedures under the medicare program, including coding and reimbursement.

“(c) Description of Technical Assistance.—The technical assistance provided under the demonstration program shall include a direct and in-person examination of billing systems and internal controls of small providers of services or suppliers to determine program compliance and to suggest more efficient or effective means of achieving such compliance.

“(d) GAO Evaluation.—Not later than 2 years after the date the demonstration program is first implemented, the Comptroller General, in consultation with the Inspector General of the Department of Health and Human Services, shall conduct an evaluation of the demonstration program. The evaluation shall include a determination of whether claims error rates are reduced for small providers of services or suppliers who participated in the program and the extent of improper payments made as a result of the demonstration program. The Comptroller General shall submit a report to the Secretary and the Congress on such evaluation and shall include in such report recommendations regarding the continuation or extension of the demonstration program.

“(e) Financial Participation by Providers.—The provision of technical assistance to a small provider of services or supplier under the demonstration program is conditioned upon the small provider of services or supplier paying an amount estimated (and disclosed in advance of a provider’s or supplier’s participation in the program) to be equal to 25 percent of the cost of the technical assistance.

“(f) Authorization of Appropriations.—There are authorized to be appropriated, from amounts not otherwise appropriated in the Treasury, such sums as may be necessary to carry out this section.”

§1395aaa. Contract with a consensus-based entity regarding performance measurement

(a) Contract

(1) In general

For purposes of activities conducted under this chapter, the Secretary shall identify and have in effect a contract with a consensus-based entity, such as the National Quality Forum, that meets the requirements described in subsection (c). Such contract shall provide that the entity will perform the duties described in subsection (b).  

(2) Timing for first contract

As soon as practicable after July 15, 2008, the Secretary shall enter into the first contract under paragraph (1).
(3) **Period of contract**

A contract under paragraph (1) shall be for a period of 4 years (except as may be renewed after a subsequent bidding process).

(4) **Competitive procedures**

Competitive procedures (as defined in section 132 of title 41) shall be used to enter into a contract under paragraph (1).

(b) **Duties**

The duties described in this subsection are the following:

(1) **Priority setting process**

The entity shall synthesize evidence and convene key stakeholders to make recommendations, with respect to activities conducted under this chapter, on an integrated national strategy and priorities for health care performance measurement in all applicable settings. In making such recommendations, the entity shall—

(A) ensure that priority is given to measures—

(i) that address the health care provided to patients with prevalent, high-cost chronic diseases; and

(ii) with the greatest potential for improving the quality, efficiency, and patient-centeredness of health care; and

(iii) that may be implemented rapidly due to existing evidence, standards of care, or other reasons; and

(B) take into account measures that—

(i) may assist consumers and patients in making informed health care decisions;

(ii) address health disparities across groups and areas; and

(iii) address the continuum of care a patient receives, including services furnished by multiple health care providers or practitioners and across multiple settings.

(2) **Endorsement of measures**

The entity shall provide for the endorsement of standardized health care performance measures. The endorsement process under the preceding sentence shall consider whether a measure—

(A) is evidence-based, reliable, valid, verifiable, relevant to enhanced health outcomes, actionable at the caregiver level, feasible to collect and report, and responsive to variations in patient characteristics, such as health status, language capabilities, race or ethnicity, and income level; and

(B) is consistent across types of health care providers, including hospitals and physicians.

(3) **Maintenance of measures**

The entity shall establish and implement a process to ensure that measures endorsed under paragraph (2) are updated (or retired if obsolete) as new evidence is developed.

(4) **Promotion of the development of electronic health records**

The entity shall promote the development and use of electronic health records that contain the functionality for automated collection, aggregation, and transmission of performance measurement information.

(5) **Annual report to Congress and the Secretary; secretarial publication and comment**

(A) **Annual report**

By not later than March 1 of each year (beginning with 2009), the entity shall submit to Congress and the Secretary a report containing a description of—

(i) the implementation of quality measurement initiatives under this chapter and the coordination of such initiatives with quality initiatives implemented by other payers;

(ii) the recommendations made under paragraph (1);

(iii) the performance by the entity of the duties required under the contract entered into with the Secretary under subsection (a);

(iv) gaps in endorsed quality measures, which shall include measures that are within priority areas identified by the Secretary under the national strategy established under section 280j of this title, and where quality measures are unavailable or inadequate to identify or address such gaps;

(v) areas in which evidence is insufficient to support endorsement of quality measures in priority areas identified by the Secretary under the national strategy established under section 280j of this title and where targeted research may address such gaps; and

(vi) the matters described in clauses (i) and (ii) of paragraph (7)(A).

(B) **Secretarial review and publication of annual report**

Not later than 6 months after receiving a report under subparagraph (A) for a year, the Secretary shall—

(i) review such report; and

(ii) publish such report in the Federal Register, together with any comments of the Secretary on such report.

(6) **Review and endorsement of episode grouper under the physician feedback program**

The entity shall provide for the review and, as appropriate, the endorsement of the episode grouper developed by the Secretary under section 1395w–4(n)(9)(A) of this title. Such review shall be conducted on an expedited basis.

(7) **Convening multi-stakeholder groups**

(A) **In general**

The entity shall convene multi-stakeholder groups to provide input on—

(i) the selection of quality and efficiency measures described in subparagraph (B), from among—

(I) such measures that have been endorsed by the entity; and

(II) such measures that have not been considered for endorsement by such entity but are used or proposed to be used by the Secretary for the collection or reporting of quality and efficiency measures; and
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(ii) national priorities (as identified under section 280) of this title for improvement in population health and in the delivery of health care services for consideration under the national strategy established under section 280 of this title.

(B) Quality and efficiency measures

(i) In general

Subject to clause (ii), the quality and efficiency measures described in this subparagraph are quality and efficiency measures—

(I) for use pursuant to sections 1395(f)(5)(D), 1395(f)(7), 1395(t)(17), 1395w–4(k)(2)(C), 1395cc(k)(3), 1395rr(h)(2)(A)(iiii), 1395ww(b)(3)(B)(viii), 1395ww(j)(7)(D), 1395ww(m)(5)(D), 1395ww(o)(2), 1395ww(s)(4)(D), and 1395rr(h)(3)(B)(v) of this title;

(II) for use in reporting performance information to the public; and

(III) for use in health care programs other than for use under this chapter.

(ii) Exclusion

Data sets (such as the outcome and assessment information set for home health services and the minimum data set for skilled nursing facility services) that are used for purposes of classification systems used in establishing payment rates under this subchapter shall not be quality and efficiency measures described in this subparagraph.

(C) Requirement for transparency in process

(i) In general

In convening multi-stakeholder groups under subparagraph (A) with respect to the selection of quality and efficiency measures, the entity shall provide for an open and transparent process for the activities conducted pursuant to such convening.

(ii) Selection of organizations participating in multi-stakeholder groups

The process described in clause (i) shall ensure that the selection of representatives comprising such groups provides for public nominations for, and the opportunity for public comment on, such selection.

(D) Multi-stakeholder group defined

In this paragraph, the term “multi-stakeholder group” means, with respect to a quality and efficiency measure, a voluntary collaborative of organizations representing a broad group of stakeholders interested in or affected by the use of such quality and efficiency measure.

(8) Transmission of multi-stakeholder input

Not later than February 1 of each year (beginning with 2012), the entity shall transmit to the Secretary the input of multi-stakeholder groups provided under paragraph (7).

(c) Requirements described

The requirements described in this subsection are the following:

(1) Private nonprofit

The entity is a private nonprofit entity governed by a board.

(2) Board membership

The members of the board of the entity include—

(A) representatives of health plans and health care providers and practitioners or representatives of groups representing such health plans and health care providers and practitioners;

(B) health care consumers or representatives of groups representing health care consumers; and

(C) representatives of purchasers and employers or representatives of groups representing purchasers or employers.

(3) Entity membership

The membership of the entity includes persons who have experience with—

(A) urban health care issues;

(B) safety net health care issues;

(C) rural and frontier health care issues; and

(D) health care quality and safety issues.

(4) Open and transparent

With respect to matters related to the contract with the Secretary under subsection (a), the entity conducts its business in an open and transparent manner and provides the opportunity for public comment on its activities.

(5) Voluntary consensus standards setting organization

The entity operates as a voluntary consensus standards setting organization as defined for purposes of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113) and Office of Management and Budget Revised Circular A–119 (published in the Federal Register on February 10, 1998).

(6) Experience

The entity has at least 4 years of experience in establishing national consensus standards.

(7) Membership fees

If the entity requires a membership fee for participation in the functions of the entity, such fees shall be reasonable and adjusted based on the capacity of the potential member to pay the fee. In no case shall membership fees pose a barrier to the participation of individuals or groups with low or nominal resources to participate in the functions of the entity.

(d) Funding

For purposes of carrying out this section, the Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1395i of this title and the Federal Supplementary Medical Insurance Trust Fund under section 1395t of this title (in such proportion as the Secretary determines appropriate), of $10,000,000 to the Centers for Medicare & Medicaid Services Program Management Account for each of fiscal years 2009 through 2012.

§ 1395aaa–1. Quality and efficiency measurement
(a) Multi-stakeholder group input into selection of quality and efficiency measures

The Secretary shall establish a pre-rule-making process under which the following steps occur with respect to the selection of quality and efficiency measures described in section 1395aaa(b)(7)(B) of this title:

(1) Input

Pursuant to section 1395aaa(b)(7) of this title, the entity with a contract under section 1395aaa of this title shall convene multi-stakeholder groups to provide input to the Secretary on the selection of quality and efficiency measures described in subparagraph (B) of such paragraph.

(2) Public availability of measures considered for selection

Not later than December 1 of each year (beginning with 2011), the Secretary shall make available to the public a list of quality and efficiency measures described in section 1395aaa(b)(7)(B) of this title that the Secretary is considering under this subchapter.

(3) Transmission of multi-stakeholder input

Pursuant to section 1395aaa(b)(8) of this title, not later than February 1 of each year (beginning with 2012), the entity shall trans-
(A) seek to avoid duplication of measures used; and
(B) take into consideration current innovative methodologies and strategies for quality and efficiency improvement practices in the delivery of health care services that represent best practices for such quality and efficiency improvement and measures endorsed by the entity with a contract under section 1395aa of this title since the previous review by the Secretary.

(d) Rule of construction

Nothing in this section shall preclude a State from using the quality and efficiency measures identified under sections 1320b–9a and 1320b–9b of this title.

(e) Development of quality and efficiency measures

The Administrator of the Center for Medicare & Medicaid Services shall through contracts develop quality and efficiency measures (as determined appropriate by the Administrator) for use under this chapter. In developing such measures, the Administrator shall consult with the Director of the Agency for Healthcare Research and Quality.

(f) Hospital acquired conditions

The Secretary shall, to the extent practicable, publicly report on measures for hospital-acquired conditions that are currently utilized by the Centers for Medicare & Medicaid Services for the adjustment of the amount of payment to hospitals based on rates of hospital-acquired infections.


AMENDMENTS


§ 1395bbb. Conditions of participation for home health agencies; home health quality

(a) Conditions of participation; protection of individual rights; notification of State entities; use of home health aides; medical equipment; individual’s plan of care; compliance with Federal, State, and local laws and regulations

The conditions of participation that a home health agency is required to meet under this subchapter are as follows:

(1) The agency protects and promotes the rights of each individual under its care, including each of the following rights:

(A) The right to be fully informed in advance about the care and treatment to be provided by the agency, to be fully informed in advance of any changes in the care or treatment to be provided by the agency that may affect the individual’s well-being, and (except with respect to an individual adjudged incompetent) to participate in planning care and treatment or changes in care or treatment.

(B) The right to voice grievances with respect to treatment or care that is (or fails to be) furnished without discrimination or reprisal for voicing grievances.

(C) The right to confidentiality of the clinical records described in section 1395x(o)(3) of this title.

(D) The right to have one’s property treated with respect.

(E) The right to be fully informed orally and in writing (in advance of coming under the care of the agency) of—

(i) all items and services furnished by (or under arrangements with) the agency for which payment may be made under this subchapter,

(ii) the coverage available for such items and services under this subchapter, subchapter XIX of this chapter, and any other Federal program of which the agency is reasonably aware,

(iii) any charges for items and services not covered under this subchapter and any charges the individual may have to pay with respect to items and services furnished by (or under arrangements with) the agency, and

(iv) any changes in the charges or items and services described in clause (i), (ii), or (iii).

(F) The right to be fully informed in writing (in advance of coming under the care of the agency) of the individual’s rights and obligations under this subchapter.

(G) The right to be informed of the availability of the State home health agency hotline established under section 1395aaa(a) of this title.

(2) The agency notifies the State entity responsible for the licensing or certification of the agency of a change in—

(A) the persons with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the agency,

(B) the persons who are officers, directors, agents, or managing employees (as defined in section 1320a–5(b) of this title) of the agency, and

(C) the corporation, association, or other company responsible for the management of the agency.

Such notice shall be given at the time of the change and shall include the identity of each new person or company described in the previous sentence.

(3)(A) The agency must not use as a home health aide (on a full-time, temporary, per diem, or other basis), any individual to provide items or services described in section 1395x(m) of this title on or after January 1, 1990, unless the individual—

(i) has completed a training and competency evaluation program, or a competency evaluation program, that meets the minimum standards established by the Secretary under subparagraph (D), and

(ii) is competent to provide such items and services.
For purposes of clause (i), an individual is not considered to have completed a training and competency evaluation program, or a competency evaluation program if, since the individual’s most recent completion of such a program, there has been a continuous period of 24 consecutive months during none of which the individual provided items and services described in section 1395x(m) of this title for compensation.

(B)(i) The agency must provide, with respect to individuals used as a home health aide by the agency as of July 1, 1989, for a competency evaluation program (as described in subparagraph (A)(i)) and such preparation as may be necessary for the individual to complete such a program by January 1, 1990.

(ii) The agency must provide such regular performance review and regular in-service education as assures that individuals used to provide items and services described in section 1395x(m) of this title are competent to provide those items and services.

(C) The agency must not permit an individual, other than in a training and competency evaluation program that meets the minimum standards established by the Secretary under subparagraph (D), to provide items or services of a type for which the individual has not demonstrated competency.

(D)(i) The Secretary shall establish minimum standards for the programs described in subparagraph (A) by not later than October 1, 1988.

(ii) Such standards shall include the content of the curriculum, minimum hours of training, qualification of instructors, and procedures for determination of competency.

(iii) Such standards may permit approval of programs offered by or in home health agencies, as well as outside agencies (including employee organizations), and of programs in effect on December 22, 1987: except that they may not provide for the approval of a program offered by or in a home health agency which, within the previous 2 years—

(I) has been determined to be out of compliance with subparagraph (A), (B), or (C);

(II) has been subject to an extended (or partial extended) survey under subsection (c)(2)(D) of this section;

(III) has been assessed a civil money penalty described in subsection (f)(2)(A) of this section of not less than $5,000; or

(IV) has been subject to the remedies described in subsection (e)(1) of this section or in clauses (ii) or (iii) of subsection (f)(2)(A) of this section.

(iv) Such standards shall permit a determination that an individual who has completed a training and competency evaluation program or a competency evaluation program shall be deemed for purposes of subparagraph (A) to have completed a program that is approved by the Secretary under the standards established under this subparagraph if the Secretary determines that, at the time the program was offered, the program met such standards.

(E) In this paragraph, the term “home health aide” means any individual who provides the items and services described in section 1395x(m) of this title, but does not include an individual—

(i) who is a licensed health professional (as defined in subparagraph (F)), or

(ii) who volunteers to provide such services without monetary compensation.

(F) In this paragraph, the term “licensed health professional” means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

(4) The agency includes an individual’s plan of care required under section 1395x(m) of this title as part of the clinical records described in section 1395x(o)(3) of this title.

(5) The agency operates and provides services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1320a–3 of this title) and with accepted professional standards and principles which apply to professionals providing items and services in such an agency.

(6) The agency complies with the requirement of section 1395ccc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

(b) Duty of Secretary

It is the duty and responsibility of the Secretary to assure that the conditions of participation and requirements specified in or pursuant to section 1395x(o) of this title and subsection (a) of this section and the enforcement of such conditions and requirements are adequate to protect the health and safety of individuals under the care of a home health agency and to promote the effective and efficient use of public monies.

(c) Surveys of home health agencies

(1) Any agreement entered into or renewed by the Secretary pursuant to section 1395aa of this title relating to home health agencies shall provide that the appropriate State or local agency shall conduct, without any prior notice, a standard survey of each home health agency. Any individual who notifies (or causes to be notified) a home health agency of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this paragraph in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a of this title. The Secretary shall review each State’s or local agency’s procedures for scheduling and conduct of standard surveys to assure that the State or agency has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(2)(A) Except as provided in subparagraph (B), each home health agency shall be subject to a standard survey not later than 36 months after the date of the previous standard survey con-
ducted under this paragraph. The Secretary shall establish a frequency for surveys of home health agencies within this 36-month interval commensurate with the need to assure the delivery of quality home health services.

(B) If not otherwise conducted under subparagraph (A), a standard survey (or an abbreviated standard survey) of an agency—

(i) may be conducted within 2 months of any change of ownership, administration, or management of the agency to determine whether the change has resulted in any decline in the quality of care furnished by the agency, and

(ii) shall be conducted within 2 months of when a significant number of complaints have been reported with respect to the agency to the Secretary, the State, the entity responsible for the licensing of the agency, the State or local agency responsible for maintaining a toll-free hotline and investigative unit (under section 1395aa(a) of this title), or any other appropriate Federal, State, or local agency.

(C) A standard survey conducted under this paragraph with respect to a home health agency—

(i) shall include (to the extent practicable), for a case-mix stratified sample of individuals furnished items or services by the agency—

(I) visits to the homes of such individuals, but only with the consent of such individuals, for the purpose of evaluating (in accordance with a standardized reproducible assessment instrument (or instruments) approved by the Secretary under subsection (d) of this section) the extent to which the quality and scope of items and services furnished by the agency attained and maintained the highest practicable functional capacity of each such individual as reflected in such individual’s written plan of care required under section 1395x(m) of this title and clinical records required under section 1395x(o)(3) of this title; and

(II) a survey of the quality of care and services furnished by the agency as measured by indicators of medical, nursing, and rehabilitative care;

(ii) shall be based upon a protocol that is developed, tested, and validated by the Secretary not later than January 1, 1989; and

(iii) shall be conducted by an individual—

(I) who meets minimum qualifications established by the Secretary not later than July 1, 1989,

(II) who is not serving (or has not served within the previous 2 years) as a member of the staff of, or as a consultant to, the home health agency surveyed respecting compliance with the conditions of participation specified in or pursuant to section 1395x(o) of this title or subsection (a) of this section, and

(III) who has no personal or familial financial interest in the home health agency surveyed.

(D) Each home health agency that is found, under a standard survey, to have provided substandard care and to determine whether the agency has complied with the conditions of participation specified in or pursuant to section 1395x(o) of this title or subsection (a) of this section. Any other agency may, at the Secretary’s or State’s discretion, be subject to such an extended survey (or a partial extended survey). The extended survey shall be conducted immediately after the standard survey (or, if not practical, not later than 2 weeks after the date of completion of the standard survey).

(E) Nothing in this paragraph shall be construed as requiring an extended (or partial extended) survey as a prerequisite to imposing a sanction against an agency under subsection (e) of this section on the basis of the findings of a standard survey.

(d) Assessment process; reports to Congress

(1) Not later than January 1, 1989, the Secretary shall designate an assessment instrument (or instruments) for use by an agency in complying with subsection (c)(2)(C)(i)(I) of this section.

(2)(A) Not later than January 1, 1992, the Secretary shall—

(i) evaluate the assessment process,

(ii) report to Congress on the results of such evaluation, and

(iii) based on such evaluation, make such modifications in the assessment process as the Secretary determines are appropriate.

(B) The Secretary shall periodically update the evaluation conducted under subparagraph (A), report the results of such update to Congress, and, based on such update, make such modifications in the assessment process as the Secretary determines are appropriate.

(3) The Secretary shall provide for the comprehensive training of State and Federal surveyors in matters relating to the performance of standard and extended surveys under this section, including the use of any assessment instrument (or instruments) designated under paragraph (1).

(e) Enforcement

(1) If the Secretary determines on the basis of a standard, extended, or partial extended survey or otherwise, that a home health agency that is certified for participation under this subchapter is no longer in compliance with the requirements specified in or pursuant to section 1395x(o) of this title or subsection (a) of this section and determines that the deficiencies involved immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subsection (f)(2)(A)(ii) of this section or terminate the certification of the agency, and may provide, in addition, for 1 or more of the other remedies described in subsection (f)(2)(A) of this section.

(2) If the Secretary determines on the basis of a standard, extended, or partial extended survey or otherwise, that a home health agency that is certified for participation under this subchapter is no longer in compliance with the requirements specified in or pursuant to section 1395x(o) of this title or subsection (a) of this section and determines that the deficiencies in-
volved do not immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, the Secretary may (for a period not to exceed 6 months) impose intermediate sanctions developed pursuant to subsection (f) of this section, in lieu of terminating the certification of the agency. If, after such a period of intermediate sanctions, the agency is still no longer in compliance with the requirements specified in or pursuant to section 1395x(o) of this title or subsection (a) of this section, the Secretary shall terminate the certification of the agency.

(3) If the Secretary determines that a home health agency that is certified for participation under this subchapter is in compliance with the requirements specified in or pursuant to section 1395x(o) of this title or subsection (a) of this section but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subsection (f)(2)(A)(i) of this section for the days in which it finds that the agency was not in compliance with such requirements.

The Secretary may continue payments under this subchapter with respect to a home health agency not in compliance with the requirements specified in or pursuant to section 1395x(o) of this title or subsection (a) of this section over a period of not longer than 6 months, if—

(A) the State or local survey agency finds that it is more appropriate to take alternative action to assure compliance of the agency with the requirements than to terminate the certification of the agency.

(B) the agency has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

(C) the agency agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.

The Secretary shall establish guidelines for approval of corrective actions requested by home health agencies under this subparagraph.

(f) Intermediate sanctions

(1) The Secretary shall develop and implement, by not later than April 1, 1989—

(A) a range of intermediate sanctions to apply to home health agencies under the conditions described in subsection (e) of this section, and

(B) appropriate procedures for appealing determinations relating to the imposition of such sanctions.

(2)(A) The intermediate sanctions developed under paragraph (1) shall include—

(i) civil money penalties in an amount not to exceed $10,000 for each day of noncompliance,

(ii) suspension of all or part of the payments to which a home health agency would otherwise be entitled under this subchapter with respect to items and services furnished by a home health agency on or after the date on which the Secretary determines that intermediate sanctions should be imposed pursuant to subsection (e)(2) of this section, and

(iii) the appointment of temporary management to oversee the operation of the home health agency and to protect and assure the health and safety of the individuals under the care of the agency while improvements are made in order to bring the agency into compliance with all the requirements specified in or pursuant to section 1395x(o) of this title or subsection (a) of this section.

The provisions of section 1320a-7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (i) in the same manner as such provisions apply to a penalty or proceeding under section 1320a-7a(a) of this title. The temporary management under clause (iii) shall not be terminated until the Secretary has determined that the agency has the management capability to ensure continued compliance with all the requirements referred to in that clause.

(B) The sanctions specified in subparagraph (A) are in addition to sanctions otherwise available under State or Federal law and shall not be construed as limiting other remedies, including any remedy available to an individual at common law.

(C) A finding to suspend payment under subparagraph (A)(ii) shall terminate when the Secretary finds that the home health agency is in substantial compliance with all the requirements specified in or pursuant to section 1395x(o) of this title and subsection (a) of this section.

(3) The Secretary shall develop and implement, by not later than April 1, 1989, specific procedures with respect to the conditions under which each of the intermediate sanctions developed under paragraph (1) is to be applied, including the amount of any fines and the severity of each of these sanctions. Such procedures shall be designed so as to minimize the time between identification of deficiencies and imposition of these sanctions and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.

(g) Payment on basis of location of service

A home health agency shall submit claims for payment for home health services under this subchapter only on the basis of the geographic location at which the service is furnished, as determined by the Secretary.

AMENDMENTS


1995—Subsec. (d)(A). Pub. L. 104–134 substituted “36 months” for “15 months” in first sentence and amended last sentence generally. Prior to amendment, last sentence read as follows: “The statewide average interval between standard surveys of any home health agency shall not exceed 12 months.”


Section 4207(i)(2), formerly § 4027(i)(2), of Pub. L. 101–508, as renumbered and amended by Pub. L. 103–432, title I, § 180(d)(4), (11), Oct. 31, 1994, 108 Stat. 4444, provided that “The amendments made by paragraph (1) of this section [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1997 [Pub. L. 100–203], except that the Secretary may not permit approval of a training and competency evaluation program or a competency evaluation program offered by or in a home health agency which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1994—

“(i) had its participation terminated under title XVIII of the Social Security Act [this subchapter];

“(ii) was assessed a civil money penalty not less than $5,000 for deficiencies in applicable quality standards for home health agencies;

“(iii) was subject to suspension by the Secretary of all or part of the payments to which it would otherwise be entitled under such title;

“(iv) operated under a temporary management appointed to oversee the operation of the agency and to ensure the health and safety of the agency’s patients;

“(v) pursuant to State action, was closed or had its patients transferred.”

EFFECTIVE DATE OF 1988 AMENDMENTS
Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of Title I, General Provisions.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 412(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title I, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT
Section 4022(b) of Pub. L. 100–203 provided that: “Except as otherwise specifically provided in section 1991(d) of the Social Security Act [subsec. (d) of this section] (as added by subsection (a)), the amendment made by subsection (a) [amending this section] shall become effective on the first day of the 18th calendar month to begin after the date of the enactment of this Act [Dec. 22, 1987].”

Section 4023(b) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(d)(3)(C), July 1, 1988, 102 Stat. 774, provided that: “Except as otherwise specifically provided in subsections (e) and (f) of section 1981 of the Social Security Act [subsecs. (e) and (f) of this section] (as added by subsection (a)), the amendment made by subsection (a) [amending this section] shall become effective on the first day of the 18th calendar month to begin after the date of the enactment of this Act [Dec. 22, 1987], and no intermediate sanction described in section 1981(a)(2)(A) of such Act [subsec. (f)(2)(A) of this section] shall be imposed for violations occurring before such effective date.”

EFFECTIVE DATE
Section applicable to home health agencies as of the first day of the 18th calendar month that begins after Dec. 22, 1987, except as otherwise provided, see section 4021(c) of Pub. L. 100–203, set out as an Effective Date
§ 1395ccc. Offset of payments to individuals to collect past-due obligations arising from breach of scholarship and loan contract

(a) In general

(1)(A) Subject to subparagraph (B), the Secretary shall enter into an agreement under this section with any individual who, by reason of a breach of a contract entered into by such individual pursuant to the National Health Service Corps Scholarship Program, the Physician Shortage Area Scholarship Program, or the Health Education Assistance Loan Program, owes a past-due obligation to the United States (as defined in subsection (b) of this section).

(B) The Secretary shall not enter into an agreement with an individual under this section to the extent—

(i) the individual has entered into a contract with the Secretary pursuant to section 204(a)(1) of the Public Health Service Amendments of 1987, and

(ii) the individual has fulfilled or (as determined by the Secretary) is fulfilling the terms of such contract; or

(iii) the individual is performing such physician's service obligation under a forbearance agreement entered into with the Secretary under subpart II of part D of title III of the Public Health Service Act (42 U.S.C. 254d et seq.).

(2) The agreement under this section shall provide that—

(A) deductions shall be made from the amounts otherwise payable to the individual under this subchapter, in accordance with a formula and schedule agreed to by the Secretary and the individual, until such past-due obligation (and accrued interest) have been repaid;

(B) payment under this subchapter for services provided by such individual shall be made only on an assignment-related basis;

(C) if the individual does not provide services, for which payment would otherwise be made under this subchapter, of a sufficient quantity to maintain the offset collection according to the agreed upon formula and schedule—

(i) the Secretary shall immediately inform the Attorney General, and the Attorney General shall immediately commence an action to recover the full amount of the past-due obligation, and

(ii) subject to paragraph (4), the Secretary shall immediately exclude the individual from the program under this subchapter, until such time as the entire past-due obligation has been repaid.

(3) If the individual refuses to enter into an agreement or breaches any provision of the agreement—

(A) the Secretary shall immediately inform the Attorney General, and the Attorney General shall immediately commence an action to recover the full amount of the past-due obligation, and

(B) subject to paragraph (4), the Secretary shall immediately exclude the individual from the program under this subchapter, until such time as the entire past-due obligation has been repaid.

(4) The Secretary shall not exclude an individual pursuant to paragraph (2)(C)(i) or paragraph (3)(B) if such individual is a sole community practitioner or sole source of essential specialized services in a community if a State requests that the individual not be excluded.

(b) Past-due obligation

For purposes of this section, a past-due obligation is any amount—

(1) owed by an individual to the United States by reason of a breach of a scholarship contract under section 333E of the Public Health Service Act (42 U.S.C. 254d) or under subpart III of part F of title VII of such Act (as in effect before October 1, 1976) and which has not been paid by the deadline established by the Secretary pursuant to such respective section, and has not been canceled, waived, or suspended by the Secretary pursuant to such section; or

1So in original. Probably should be ‘‘individual’s’’.
(2) owed by an individual to the United States by reason of a loan covered by Federal loan insurance under subpart I of part C of title VII of the Public Health Service Act and payment for which has not been cancelled, waived, or suspended by the Secretary under such subpart.

(c) Collection under this section shall not be exclusive

This section shall not preclude the United States from applying other provisions of law otherwise applicable to the collection of obligations owed to the United States, including (but not limited to) the use of tax refund offsets pursuant to section 372A of title 31 and the application of other procedures provided under chapter 37 of title 31.

(d) Collection from providers and health maintenance organizations

(1) In the case of an individual who owes a past-due obligation, and who is an employee of, or affiliated by a medical services agreement with, a provider having an agreement under section 372A of this title or a health maintenance organization or competitive medical plan having a contract under section 372A of this title or section 3855m of this title, the Secretary shall deduct the amounts of such past-due obligation from amounts otherwise payable to the individual under this subsection as long as the individual continues to be employed or affiliated by a medical services agreement.

(2) Deductions shall be in accordance with a formula and schedule agreed to by the Secretary, the individual and the provider, organization, or plan. The deductions shall be from the amounts otherwise payable to the individual under this subchapter to the extent of the amount collected.

(3) Such deduction shall not be made until 6 months after the Secretary notifies the provider, organization, or plan of the amount to be deducted.

(4) A deduction made under this subsection shall relieve the individual of the obligation (to the extent of the amount collected) to the United States, but the provider, organization, or plan shall have a right of action to collect from the individual the amount deducted pursuant to this subsection (including accumulated interest).

(5) No deduction shall be made under this subsection if, within the 6-month period after notice is given to the provider, organization, or plan, the individual pays the past-due obligation, or ceases to be employed by the provider, organization, or plan.

(6) The Secretary shall also apply the provisions of this subsection in the case of an individual who is a member of a group practice, if such group practice submits bills under this program as a group, rather than by individual physicians.

(e) Transfer from trust funds

Amounts equal to the amounts deducted pursuant to this section shall be transferred from the Trust Fund from which the payment to the individual, provider, or other entity would otherwise have been made, to the general fund in the Treasury, and shall be credited as payment of the past-due obligation of the individual from whom (or with respect to whom) the deduction was made.


References in Text

Section 204(a)(1) of the Public Health Service Amendments of 1987, referred to in subsec. (a)(1), is section 204(a)(1) of Pub. L. 100–177, title II, Dec. 1, 1987, 101 Stat. 1000, which is set out as a note under section 254o of this title.

The Public Health Service Act, referred to in subsecs. (a)(1)(B)(ii) and (b), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Subpart II of part D of title III of the Act was classified generally to subpart II (§ 254d et seq.) of part D of subchapter II of chapter 6A of this title.

Subpart I of part C of title VII of the Act was classified generally to subpart I (§ 294 et seq.) of part C of subchapter V of chapter 6A of this title.

Subsection (b) of section 1395cc of this title or a health maintenance organization or competitive medical plan having a contract under section 1395, as amended by Pub. L. 100–485, title I, § 102, Oct. 13, 1992, 106 Stat. 1094. See subsection (i) (292 et seq.) of part A of subchapter V of chapter 6A of this title.

Subpart III of part F of title VII of the Public Health Service Act (as in effect before October 1, 1976) was classified to subpart III (§ 258c–21 et seq.) of part F of subchapter V of chapter 6A of this title, prior to repeal by Pub. L. 94–484, title IV, § 409(a), Oct. 12, 1976, 90 Stat. 2290.

The complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

Amendments


Subsec. (a)(1)(B), Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted "an individual" for "a physician" in introductory provisions and "individual" for "physician" in cls. (i)(I) and (ii), (ii)(I), and (ii)(II).

Subsec. (a)(2)(A) to (C), Pub. L. 100–360, § 411(f)(10)(A)(i) to (C), substituted "paragraph (4)" for "paragraph (3)".


Subsec. (a)(2)(A) to (C), Pub. L. 100–360, § 411(f)(10)(A)(i), substituted "paragraph (4)" for "paragraph (3)".


Subsec. (a)(3)(B), Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted "an individual" for "a physician" and "such individual" for "such physician".

See References in Text note below.

So in original. Probably should be "individuals".
There is hereby established the Medicare Integrity Program (in this section referred to as the “Program”) under which the Secretary shall promote the integrity of the medicare program by entering into contracts in accordance with this section with eligible entities, or otherwise, to carry out the activities described in subsection (b) of this section.

(b) Activities described

The activities described in this subsection are as follows:

(1) Review of activities of providers of services or other individuals and entities furnishing items and services for which payment may be made under this subchapter (including skilled nursing facilities and home health agencies), including medical and utilization review and fraud review (employing similar standards, processes, and technologies used by private health plans, including equipment and software technologies which surpass the capability of the equipment and technologies used in the review of claims under this subchapter as of August 21, 1996).

(2) Audit of cost reports.

(3) Determinations as to whether payment should not be, or should not have been, made under this subchapter by reason of section 1395y(b) of this title, and recovery of payments that should not have been made.

(4) Education of providers of services, beneficiaries, and other persons with respect to payment integrity and benefit quality assurance issues.

(5) Developing (and periodically updating) a list of items of durable medical equipment in accordance with section 1395ddd of this title which are subject to prior authorization under such section.

(6) The Medicare-Medicaid Data Match Program in accordance with subsection (g).

(c) Eligibility of entities

An entity is eligible to enter into a contract under the Program to carry out any of the activities described in subsection (b) of this section if—

(1) the entity has demonstrated capability to carry out such activities;

(2) in carrying out such activities, the entity agrees to cooperate with the Inspector General of the Department of Health and Human Services, the Attorney General, and other law enforcement agencies, as appropriate, in the investigation and deterrence of fraud and abuse in relation to this subchapter and in other cases arising out of such activities;

(3) the entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement;

(4) the entity agrees to provide the Secretary and the Inspector General of the Department of Health and Human Services with such performance statistics (including the number and amount of overpayments recovered, the number of fraud referrals, and the return on investment of such activities by the entity) as the Secretary or the Inspector General may request; and

(5) the entity meets such other requirements as the Secretary may impose.

In the case of the activity described in subsection (b)(5) of this section, an entity shall be deemed to be eligible to enter into a contract under the Program to carry out the activity if the entity is a carrier with a contract in effect under section 1395ddd of this title.

(d) Process for entering into contracts

The Secretary shall enter into contracts under the Program in accordance with such procedures as the Secretary shall by regulation establish,
except that such procedures shall include the following:

(1) Procedures for identifying, evaluating, and resolving organizational conflicts of interest that are generally applicable to Federal acquisition and procurement.

(2) Competitive procedures to be used—
(A) when entering into new contracts under this section;
(B) when entering into contracts that may result in the elimination of responsibilities of an individual fiscal intermediary or carrier under section 202(b) of the Health Insurance Portability and Accountability Act of 1996; and
(C) at any other time considered appropriate by the Secretary.

except that the Secretary may continue to contract with entities that are carrying out the activities described in this section pursuant to agreements under section 1395h of this title or contracts under section 1395u of this title in effect on August 21, 1996.

(3) Procedures under which a contract under this section may be renewed without regard to any provision of law requiring competition if the contractor has met or exceeded the performance requirements established in the current contract.

The Secretary may enter into such contracts without regard to final rules having been promulgated.

(e) Limitation on contractor liability

The Secretary shall by regulation provide for the limitation of a contractor’s liability for actions taken to carry out a contract under the Program, and such regulation shall, to the extent the Secretary finds appropriate, employ the same or comparable standards and other substantive and procedural provisions as are contained in section 1320c–6 of this title.

(f) Recovery of overpayments

(1) Use of repayment plans

(A) In general

If the repayment, within 30 days by a provider of services or supplier, of an overpayment under this subchapter would constitute a hardship (as described in subparagraph (B)), subject to subparagraph (C), upon request of the provider of services or supplier the Secretary shall enter into a plan with the provider of services or supplier for the repayment (through offset or otherwise) of such overpayment over a period of at least 6 months but not longer than 3 years (or not longer than 5 years in the case of extreme hardship, as determined by the Secretary). Interest shall accrue on the balance through the period of repayment. Such plan shall meet terms and conditions determined to be appropriate by the Secretary.

(B) Hardship

(i) In general

For purposes of subparagraph (A), the repayment of an overpayment (or overpayments) within 30 days is deemed to constitute a hardship if—

(I) in the case of a provider of services that files cost reports, the aggregate amount of the overpayments exceeds 10 percent of the amount paid under this subchapter to the provider of services for the cost reporting period covered by the most recently submitted cost report; or
(II) in the case of another provider of services or supplier, the aggregate amount of the overpayments exceeds 10 percent of the amount paid under this subchapter to the provider of services or supplier for the previous calendar year.

(ii) Rule of application

The Secretary shall establish rules for the application of this subparagraph in the case of a provider of services or supplier that was not paid under this subchapter during the previous year or was paid under this subchapter only during a portion of that year.

(iii) Treatment of previous overpayments

If a provider of services or supplier has entered into a repayment plan under subparagraph (A) with respect to a specific overpayment amount, such payment amount under the repayment plan shall not be taken into account under clause (i) with respect to subsequent overpayment amounts.

(C) Exceptions

Subparagraph (A) shall not apply if—

(i) the Secretary has reason to suspect that the provider of services or supplier may file for bankruptcy or otherwise cease to do business or discontinue participation in the program under this subchapter; or
(ii) there is an indication of fraud or abuse committed against the program.

(D) Immediate collection if violation of repayment plan

If a provider of services or supplier fails to make a payment in accordance with a repayment plan under this paragraph, the Secretary may immediately seek to offset or otherwise recover the total balance outstanding (including applicable interest) under the repayment plan.

(E) Relation to no fault provision

Nothing in this paragraph shall be construed as affecting the application of section 1395gg(c) of this title (relating to no adjustment in the cases of certain overpayments).

(2) Limitation on recoupment

(A) In general

In the case of a provider of services or supplier that is determined to have received an overpayment under this subchapter and that seeks a reconsideration by a qualified independent contractor on such determination under section 1395ff(b)(1) of this title, the Secretary may not take any action (or authorize any other person, including any medicare contractor, as defined in subparagraph (C)) to recoup the overpayment until the date the decision on the reconsideration has been rendered. If the provisions of sec-
There shall be no administrative or judicial review under section 1395ff of this title, section 1395ddd.

(B) Collection with interest

Insofar as the determination on such appeal is against the provider of services or supplier, interest on the overpayment shall accrue on and after the date of the original notice of overpayment. Insofar as such determination against the provider of services or supplier is later reversed, the Secretary shall provide for repayment of the amount recouped plus interest at the same rate as would apply under the previous sentence for the period in which the amount was recouped.

(C) Medicare contractor defined

For purposes of this subsection, the term "medicare contractor" has the meaning given such term in section 1395zz(g) of this title.

(3) Limitation on use of extrapolation

A medicare contractor may not use extrapolation to determine overpayment amounts to be recovered by recoupment, offset, or otherwise unless the Secretary determines that—

(A) there is a sustained or high level of payment error; or

(B) documented educational intervention has failed to correct the payment error.

There shall be no administrative or judicial review under section 1395ff of this title, section 1395oo of this title, or otherwise, of determinations by the Secretary of sustained or high levels of payment errors under this paragraph.

(4) Provision of supporting documentation

In the case of a provider of services or supplier with respect to which amounts were previously overpaid, a medicare contractor may request the periodic production of records or supporting documentation for a limited sample of submitted claims to ensure that the previous practice is not continuing.

(5) Consent settlement reforms

(A) In general

The Secretary may use a consent settlement (as defined in subparagraph (D)) to settle a projected overpayment.

(B) Opportunity to submit additional information before consent settlement offer

Before offering a provider of services or supplier a consent settlement, the Secretary shall—

(i) communicate to the provider of services or supplier—

(II) the steps that the provider of services or supplier should take to address the problems; and

(ii) provide for a 45-day period during which the provider of services or supplier may furnish additional information concerning the medical records for the claims that had been reviewed.

(C) Consent settlement offer

The Secretary shall review any additional information furnished by the provider of services or supplier under subparagraph (B)(ii). Taking into consideration such information, the Secretary shall determine if there still appears to be an overpayment. If so, the Secretary—

(i) shall provide notice of such determination to the provider of services or supplier, including an explanation of the reason for such determination; and

(ii) in order to resolve the overpayment, may offer the provider of services or supplier—

(I) the opportunity for a statistically valid random sample; or

(II) a consent settlement.

The opportunity provided under clause (ii)(I) does not waive any appeal rights with respect to the alleged overpayment involved.

(D) Consent settlement defined

For purposes of this paragraph, the term "consent settlement" means an agreement between the Secretary and a provider of services or supplier whereby both parties agree to settle a projected overpayment based on less than a statistically valid sample of claims and the provider of services or supplier agrees not to appeal the claims involved.

(6) Notice of over-utilization of codes

The Secretary shall establish, in consultation with organizations representing the classes of providers of services and suppliers, a process under which the Secretary provides for notice to classes of providers of services and suppliers served by the contractor in cases in which the contractor has identified that particular billing codes may be overutilized by that class of providers of services or suppliers under the programs under this subchapter (or provisions of subchapter XI of this chapter insofar as they relate to such programs).

(7) Payment audits

(A) Written notice for post-payment audits

Subject to subparagraph (C), if a medicare contractor decides to conduct a post-payment audit of a provider of services or supplier under this subchapter, the contractor shall provide the provider of services or supplier with written notice (which may be in electronic form) of the intent to conduct such an audit.

(B) Explanation of findings for all audits

Subject to subparagraph (C), if a medicare contractor audits a provider of services or supplier under this subchapter, the contractor shall—
§ 1395ddd

(g) Medicare-Medicaid Data Match Program

(1) Expansion of Program

(A) In general

The Secretary shall enter into contracts with eligible entities for the purpose of ensuring that, beginning with 2006, the Medicare-Medicaid Data Match Program (commonly referred to as the “Medi-Medi Program”) is conducted with respect to the program established under this subchapter and State Medicaid programs under subchapter XIX for the purpose of—

(i) identifying program vulnerabilities in the program established under this subchapter and the Medicaid program established under subchapter XIX through the use of computer algorithms to look for payment anomalies (including billing or billing patterns identified with respect to service, time, or patient that appear to be suspect or otherwise implausible);

(ii) working with States, the Attorney General, and the Inspector General of the Department of Health and Human Services to coordinate appropriate actions to protect the Federal and State share of expenditures under the Medicaid program under subchapter XIX, as well as the program established under this subchapter; and

(iii) increasing the effectiveness and efficiency of both such programs through cost avoidance, savings, and recoupments of fraudulent, wasteful, or abusive expenditures.

(B) Reporting requirements

The Secretary shall make available in a timely manner any data and statistical information collected by the Medi-Medi Program to the Attorney General, the Director of the Federal Bureau of Investigation, the Inspector General of the Department of Health and Human Services, and the States (including a Medicaid fraud and abuse control unit described in section 1396b(q) of this title). Such information shall be disseminated no less frequently than quarterly.

(2) Limited waiver authority

The Secretary shall waive only such requirements of this section and of subchapters XI and XIX as are necessary to carry out paragraph (1).

(h) Use of recovery audit contractors

(1) In general

Under the Program, the Secretary shall enter into contracts with recovery audit contractors in accordance with this subsection for the purpose of identifying underpayments and overpayments and recouping overpayments under this subchapter with respect to all services for which payment is made under this subchapter. Under the contracts—

(A) payment shall be made to such a contractor only from amounts recovered;

(B) from such amounts recovered, payment—

(i) shall be made on a contingent basis for collecting overpayments; and

(ii) may be made in such amounts as the Secretary may specify for identifying underpayments; and

(C) the Secretary shall retain a portion of the amounts recovered which shall be available to the program management account of the Centers for Medicare & Medicaid Services for purposes of activities conducted under the recovery audit program under this subsection.

(2) Disposition of remaining recoveries

The amounts recovered under such contracts that are not paid to the contractor under paragraph (1) or retained by the Secretary under paragraph (1)(C) shall be applied to reduce expenditures under this subchapter.

(3) Nationwide coverage

The Secretary shall enter into contracts under paragraph (1) in a manner so as to provide for activities in all States under such a contract by not later than January 1, 2010 (not later than December 31, 2010, in the case of contracts relating to payments made under part C or D).

(4) Audit and recovery periods

Each such contract shall provide that audit and recovery activities may be conducted during a fiscal year with respect to payments made under this subchapter—

(A) during such fiscal year; and

(B) retrospectively (for a period of not more than 4 fiscal years prior to such fiscal year).

(5) Waiver

The Secretary shall waive such provisions of this subchapter as may be necessary to provide for payment of recovery audit contractors under this subsection in accordance with paragraph (1).
(6) Qualifications of contractors

(A) In general

The Secretary may not enter into a contract under paragraph (1) with a recovery audit contractor unless the contractor has staff that has the appropriate clinical knowledge of, and experience with, the payment rules and regulations under this subchapter or the contractor has, or will contract with, another entity that has such knowledgeable and experienced staff.

(B) Ineligibility of certain contractors

The Secretary may not enter into a contract under paragraph (1) with a recovery audit contractor to the extent the contractor is a fiscal intermediary under section 1395h of this title, a carrier under section 1395u of this title, or a medicare administrative contractor under section 1395kk-1 of this title.

(C) Preference for entities with demonstrated proficiency

In awarding contracts to recovery audit contractors under paragraph (1), the Secretary shall give preference to those risk entities that the Secretary determines have demonstrated more than 3 years direct management experience and a proficiency for cost control or recovery audits with private insurers, health care providers, health plans, under the Medicaid program under subchapter XIX, or under this subchapter.

(7) Construction relating to conduct of investigation of fraud

A recovery of an overpayment to an individual or entity by a recovery audit contractor under this subsection shall not be construed to prohibit the Secretary or the Attorney General from investigating and prosecuting, if appropriate, allegations of fraud or abuse arising from such overpayment.

(8) Annual report

The Secretary shall annually submit to Congress a report on the use of recovery audit contractors under this subsection. Each such report shall include information on the comparative performance of such contractors under this subsection. Each such report shall include information on the comparative performance of such contractors under this subsection. Each such report shall include information on the comparative performance of such contractors under this subsection. Each such report shall include information on the comparative performance of such contractors under this subsection. Each such report shall include information on the comparative performance of such contractors under this subsection. Each such report shall include information on the comparative performance of such contractors under this subsection.

(9) Special rules relating to parts C and D

The Secretary shall enter into contracts under paragraph (1) to require recovery audit contractors to—

(A) ensure that each MA plan under part C has an anti-fraud plan in effect and to review the effectiveness of each such anti-fraud plan;

(B) ensure that each prescription drug plan under part D has an anti-fraud plan in effect and to review the effectiveness of each such anti-fraud plan;

(C) examine claims for reinsurance payments under section 1395w–115(b) of this title to determine whether prescription drug plans submitting such claims incurred costs in excess of the allowable reinsurance costs permitted under paragraph (2) of that section; and

(D) review estimates submitted by prescription drug plans by private plans with respect to the enrollment of high cost beneficiaries (as defined by the Secretary) and to compare such estimates with the numbers of such beneficiaries actually enrolled by such plans.

(i) Evaluations and annual report

(1) Evaluations

The Secretary shall conduct evaluations of eligible entities which the Secretary contracts with under the Program not less frequently than every 3 years.

(2) Annual report

Not later than 180 days after the end of each fiscal year (beginning with fiscal year 2011), the Secretary shall submit a report to Congress which identifies—

(A) the use of funds, including funds transferred from the Federal Hospital Insurance Trust Fund under section 1395i of this title and the Federal Supplementary Insurance Trust Fund under section 1395h of this title, to carry out this section; and

(B) the effectiveness of the use of such funds.


References in Text

Section 202(b) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (d)(2)(B), is section 202(b) of Pub. L. 104–191, which amended sections 1395h and 1395u of this title.

Amendments

2010—Subsec. (a). Pub. L. 111–148, § 6402(j)(1)(C), inserted “,” or otherwise,” after “entities”.

Subsec. (c)(4), (5). Pub. L. 111–148, § 6402(j)(1)(A), added par. (4) and redesignated former par. (4) as (5).


Subsec. (h)(2). Pub. L. 111–148, § 6411(b)(2), substituted “this subchapter” for “parts A and B”.


(1) USE OF REIMBURSEMENT PLANS. —Section 1890(f)(1) of the Social Security Act [subsec. (f)(1) of this section], as added by subsection (a), shall apply to requests for reimbursement plans made after the date of the enactment of this Act [Dec. 8, 2003].

(2) LIMITATION ON REIMBURSEMENT. —Section 1890(f)(2) of the Social Security Act [subsec. (f)(2) of this section], as added by subsection (a), shall apply to requests taken after the date of the enactment of this Act.

(3) USE OF EXTRAPOLATION. —Section 1893(f)(3) of the Social Security Act [subsec. (f)(3) of this section], as added by subsection (a), shall apply to statistically valid random samples initiated after the date that is 1 year after the date of the enactment of this Act.

(4) PROVISION OF SUPPORTING DOCUMENTATION. —Section 1893(f)(4) of the Social Security Act [subsec. (f)(4) of this section], as added by subsection (a), shall take effect on the date of the enactment of this Act.

(5) CONSENT SETTLEMENT. —Section 1893(f)(5) of the Social Security Act [subsec. (f)(5) of this section], as added by subsection (a), shall apply to consent settlements entered into after the date of the enactment of this Act.

(6) NOTICE OF OVERUTILIZATION. —Not later than 1 year after the date of the enactment of this Act, the Secretary shall first establish a standard for notice of overutilization of billing codes under section 1893(f)(6) [1893(f)(6)] of the Social Security Act [probably means subsec. (f)(6) of this section], as added by subsection (a).

(7) PAYMENT AUDITS. —Section 1893(f)(7) [1893(f)(7)] of the Social Security Act [probably means subsec. (f)(7) of this section], as added by subsection (a), shall apply to audits initiated after the date of the enactment of this Act.

(8) STANDARD FOR ABNORMAL BILLING PATTERNS. —Not later than 1 year after the date of the enactment of this Act, the Secretary shall first establish a standard methodology for selection of sample claims for abnormal billing patterns under section 1893(f)(8) of the Social Security Act [subsec. (f)(8) of this section], as added by subsection (a).

ACCESS TO COORDINATION OF BENEFITS CONTRACTOR DATABASE

Pub. L. 110–432, div. B, title III, § 302(b), Dec. 20, 2006, 120 Stat. 2992, provided that: “The Secretary of Health and Human Services shall provide for access by recovery audit contractors conducting audit and recovery activities under section 1893(h) of the Social Security Act [subsec. (h) of this section], as added by subsection (a), to the database of the Coordination of Benefits Contractor of the Centers for Medicare & Medicaid Services with respect to the audit and recovery periods described in paragraph (4) of such section 1893(h).”

§ 1395eee. Payments to, and coverage of benefits under, programs of all-inclusive care for the elderly (PACE)

(a) Receipt of benefits through enrollment in PACE program; definitions for PACE program related terms

(1) Benefits through enrollment in a PACE program

In accordance with this section, in the case of an individual who is entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter and who is a PACE program eligible individual (as defined in paragraph (5)) with respect to a PACE program offered by a PACE provider under a PACE program agreement—

(A) the individual may enroll in the program under this section; and

(B) so long as the individual is so enrolled and in accordance with regulations—

(i) the individual shall receive benefits under this subchapter solely through such program; and

(ii) the PACE provider is entitled to payment under and in accordance with this section and such agreement for provision of such benefits.

(2) “PACE program” defined

For purposes of this section, the term “PACE program” means a program of all-inclusive care for the elderly that meets the following requirements:

(A) Operation

The entity operating the program is a PACE provider (as defined in paragraph (3)).

(B) Comprehensive benefits

The program provides comprehensive health care services to PACE program eligible individuals in accordance with the PACE program agreement and regulations under this section.

(C) Transition

In the case of an individual who is enrolled under the program under this section and whose enrollment ceases for any reason (including that the individual no longer qualifies as a PACE program eligible individual, the termination of a PACE program agreement, or otherwise), the program provides assistance to the individual in obtaining necessary transitional care through appropriate referrals and making the individual’s medical records available to new providers.

(3) “PACE provider” defined

(A) In general

For purposes of this section, the term “PACE provider” means an entity that—

(i) subject to subparagraph (B), is (or is a distinct part of) a public entity or a private, nonprofit entity organized for charitable purposes under section 501(c)(3) of the Internal Revenue Code of 1986; and

(ii) has entered into a PACE program agreement with respect to its operation of a PACE program.

(B) Treatment of private, for-profit providers

Clause (i) of subparagraph (A) shall not apply—

(i) to entities subject to a demonstration project waiver under subsection (h) of this section; and

(ii) after the date the report under section 4804(b) of the Balanced Budget Act of 1997 is submitted, unless the Secretary determines that any of the findings described in subparagraph (A), (B), (C), or (D) of paragraph (2) of such section are true.

(4) “PACE program agreement” defined

For purposes of this section, the term “PACE program agreement” means, with re-
spect to a PACE provider, an agreement, consistent with this section, section 1396u–4 of this title (if applicable), and regulations promulgated to carry out such sections, between the PACE provider and the Secretary, or an agreement between the PACE provider and a State administering agency for the operation of a PACE program by the provider under such sections.

(5) “PACE program eligible individual” defined

For purposes of this section, the term “PACE program eligible individual” means, with respect to a PACE program, an individual who—

(A) is 55 years of age or older;

(B) subject to subsection (c)(4) of this section, is determined under subsection (c) of this section to require the level of care required under the State medicaid plan for coverage of nursing facility services;

(C) resides in the service area of the PACE program; and

(D) meets such other eligibility conditions as may be imposed under the PACE program agreement for the program under subsection (e)(2)(A)(ii) of this section.

(6) “PACE protocol” defined

For purposes of this section, the term “PACE protocol” means the Protocol for the Program of All-inclusive Care for the Elderly (PACE), as published by On Lok, Inc., as of April 14, 1995, or any successor protocol that may be agreed upon between the Secretary and On Lok, Inc.

(7) “PACE demonstration waiver program” defined

For purposes of this section, the term “PACE demonstration waiver program means a demonstration program under either of the following sections (as in effect before the date of their repeal):

(A) Section 603(c) of the Social Security Amendments of 1983 (Public Law 98–21), as extended by section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272).

(B) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509).

(8) “State administering agency” defined

For purposes of this section, the term “State administering agency” means, with respect to the operation of a PACE program in a State, the agency of that State (which may be the single agency responsible for administration of the State plan under subchapter XIX of this chapter in the State) responsible for administering PACE program agreements under this section and section 1396u–4 of this title in the State.

(9) “Trial period” defined

(A) In general

For purposes of this section, the term “trial period” means, with respect to a PACE program operated by a PACE provider under a PACE program agreement, the first 3 contract years under such agreement with respect to such program.

(B) Treatment of entities previously operating PACE demonstration waiver programs

Each contract year (including a year occurring before the effective date of this section) during which an entity has operated a PACE demonstration waiver program shall be counted under subparagraph (A) as a contract year during which the entity operated a PACE program as a PACE provider under a PACE program agreement.

(10) “Regulations” defined

For purposes of this section, the term “regulations” refers to interim final or final regulations promulgated under subsection (f) of this section to carry out this section and section 1396u–4 of this title.

(b) Scope of benefits; beneficiary safeguards

(1) In general

Under a PACE program agreement, a PACE provider shall—

(A) provide to PACE program eligible individuals enrolled with the provider, regardless of source of payment and directly or under contracts with other entities, at a minimum—

(i) all items and services covered under this subchapter (for individuals enrolled under this section) and all items and services covered under subchapter XIX of this chapter, but without any limitation or condition as to amount, duration, or scope and without application of deductibles, co-payments, coinsurance, or other cost-sharing that would otherwise apply under this subchapter or such subchapter, respectively; and

(ii) all additional items and services specified in regulations, based upon those required under the PACE protocol;

(B) provide such enrollees access to necessary covered items and services 24 hours per day, every day of the year;

(C) provide services to such enrollees through a comprehensive, multidisciplinary health and social services delivery system which integrates acute and long-term care services pursuant to regulations; and

(D) specify the covered items and services that will not be provided directly by the entity, and to arrange for delivery of those items and services through contracts meeting the requirements of regulations.

(2) Quality assurance; patient safeguards

The PACE program agreement shall require the PACE provider to have in effect at a minimum—

(A) a written plan of quality assurance and improvement, and procedures implementing such plan, in accordance with regulations; and

(B) written safeguards of the rights of enrolled participants (including a patient bill of rights and procedures for grievances and appeals) in accordance with regulations and with other requirements of this subchapter and Federal and State law that are designed for the protection of patients.
(3) Treatment of medicare services furnished by noncontract physicians and other entities

(A) Application of medicare advantage requirement with respect to medicare services furnished by noncontract physicians and other entities

Section 1395w–22(k)(1) of this title (relating to limitations on balance billing against MA organizations for noncontract physicians and other entities with respect to services covered under this subchapter) shall apply to PACE providers, PACE program eligible individuals enrolled with such PACE providers, and physicians and other entities that do not have a contract or other agreement establishing payment amounts for services furnished to such an individual in the same manner as such section applies to MA organizations, individuals enrolled with such organizations, and physicians and other entities referred to in such section.

(B) Reference to related provision for noncontract providers of services

For the provision relating to limitations on balance billing against PACE providers for services covered under this subchapter furnished by noncontract providers of services, see section 1395cc(a)(1)(O) of this title.

(4) Reference to related provision for services covered under subchapter XIX but not under this subchapter

For provisions relating to limitations on payments to providers participating under the State plan under subchapter XIX of this chapter, shall apply to PACE providers, PACE program eligible individuals enrolled with such PACE providers, and physicians and other entities that do not have a contract or other agreement establishing payment amounts for services furnished to such an individual in the same manner as such section applies to MA organizations, individuals enrolled with such organizations, and physicians and other entities referred to in such section.

(c) Eligibility determinations

(1) In general

The determination of whether an individual is a PACE program eligible individual—

(A) shall be made under and in accordance with the PACE program agreement; and

(B) who is entitled to medical assistance under subchapter XIX of this chapter, shall be made (or who is not so entitled, may be made) by the State administering agency.

(2) Condition

An individual is not a PACE program eligible individual (with respect to payment under this section) unless the individual’s health status has been determined by the Secretary or the State administering agency, in accordance with regulations, to be comparable to the health status of individuals who have participated in the PACE demonstration waiver programs. Such determination shall be based upon information on health status and related indicators (such as medical diagnoses and measures of activities of daily living, instrumental activities of daily living, and cognitive impairment) that are part of a uniform minimum data set collected by PACE providers on potential PACE program eligible individuals.

(3) Annual eligibility recertifications

(A) In general

Subject to subparagraph (B), the determination described in subsection (a)(5)(B) of this section for an individual shall be reevaluated at least annually.

(B) Exception

The requirement of annual reevaluation under subparagraph (A) may be waived during a period in accordance with regulations in those cases where the State administering agency determines that there is no reasonable expectation of improvement or significant change in an individual’s condition during the period because of the severity of chronic condition, or degree of impairment of functional capacity of the individual involved.

(4) Continuation of eligibility

An individual who is a PACE program eligible individual may be deemed to continue to be such an individual notwithstanding a determination that the individual no longer meets the requirement of subsection (a)(5)(B) of this section if, in accordance with regulations, in the absence of continued coverage under a PACE program the individual reasonably would be expected to meet such requirement within the succeeding 6-month period.

(5) Enrollment; disenrollment

(A) Voluntary disenrollment at any time

The enrollment and disenrollment of PACE program eligible individuals in a PACE program shall be pursuant to regulations and the PACE program agreement and shall permit enrollees to voluntarily disenroll without cause at any time.

(B) Limitations on disenrollment

(i) In general

Regulations promulgated by the Secretary under this section and section 1396u–4 of this title, and the PACE program agreement, shall provide that the PACE program may not disenroll a PACE program eligible individual except—

(I) for nonpayment of premiums (if applicable) on a timely basis; or

(II) for engaging in disruptive or threatening behavior, as defined in such regulations (developed in close consultation with State administering agencies).

(ii) No disenrollment for noncompliant behavior

Except as allowed under regulations promulgated to carry out clause (i)(III), a PACE program may not disenroll a PACE program eligible individual on the ground that the individual has engaged in noncompliant behavior if such behavior is related to a mental or physical condition of the individual. For purposes of the preceding sentence, the term “noncompliant behavior” includes repeated noncompliance with medical advice and repeated failure to appear for appointments.
(iii) Timely review of proposed nonvoluntary disenrollment

A proposed disenrollment, other than a voluntary disenrollment, shall be subject to timely review and final determination by the Secretary or by the State administering agency (as applicable), prior to the proposed disenrollment becoming effective.

(d) Payments to PACE providers on capitated basis

(1) In general

In the case of a PACE provider with a PACE program agreement under this section, except as provided in this subsection or by regulations, the Secretary shall make prospective monthly payments of a capitation amount for each PACE program eligible individual enrolled under the agreement under this section in the same manner and from the same sources as payments are made to a Medicare+ Choice organization under section 1395w–23 of this title (or, for periods beginning before January 1, 1999, to an eligible organization under a risk-sharing contract under section 1395mm of this title). Such payments shall be subject to adjustment in the manner described in section 1395w–23(a)(2) of this title or section 1395mm(a)(1)(E) of this title, as the case may be.

(2) Capitation amount

The capitation amount to be applied under this subsection for a provider for a contract year shall be an amount specified in the PACE program agreement for the year. Such amount shall be based upon payment rates established for purposes of payment under section 1395w–23 of this title (or, for periods before January 1, 1999, for purposes of risk-sharing contracts under section 1395mm of this title) and shall be adjusted to take into account the comparative frailty of PACE enrollees and such other factors as the Secretary determines to be appropriate. Such amount under such an agreement shall be computed in a manner so that the total payment level for all PACE program eligible individuals enrolled under a program is less than the projected payment under this subsection for a provider for a contract year, but may be extended for additional contract years in the absence of a notice by a party to terminate and is subject to termination by the Secretary and the State administering agency at any time for cause (as provided under the agreement); (iv) shall require a PACE provider to meet all applicable State and local laws and requirements; and (v) shall contain such additional terms and conditions as the Secretary shall determine to be appropriate.

(3) Capitation rates determined without regard to the phase-out of the indirect costs of medical education from the annual Medicare Advantage capitation rate

Capitation amounts under this subsection shall be determined without regard to the application of section 1395w–23(k)(4) of this title.

(e) PACE program agreement

(1) Requirement

(A) In general

The Secretary, in close cooperation with the State administering agency, shall establish procedures for entering into, extending, and terminating PACE program agreements for the operation of PACE programs by entities that meet the requirements for a PACE provider under this section, section 1396u–4 of this title, and regulations.

(B) Numerical limitation

(i) In general

The Secretary shall not permit the number of PACE providers with which agreements are in effect under this section or under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 to exceed—

(I) 40 as of August 5, 1997; or

(II) as of each succeeding anniversary of August 5, 1997, the numerical limitation under this subparagraph for the preceding year plus 20.

Subclause (II) shall apply without regard to the actual number of agreements in effect as of a previous anniversary date.

(ii) Treatment of certain private, for-profit providers

The numerical limitation in clause (i) shall not apply to a PACE provider that—

(I) is operating under a demonstration project waiver under subsection (h) of this section; or

(II) was operating under such a waiver and subsequently qualifies for PACE provider status pursuant to subsection (a)(3)(B)(ii) of this section.

(2) Service area and eligibility

(A) In general

A PACE program agreement for a PACE program—

(i) shall designate the service area of the program;

(ii) may provide additional requirements for individuals to qualify as PACE program eligible individuals with respect to the program;

(iii) shall be effective for a contract year, but may be extended for additional contract years in the absence of a notice by a party to terminate and is subject to termination by the Secretary and the State administering agency at any time for cause (as provided under the agreement); and

(iv) shall require a PACE provider to meet all applicable State and local laws and requirements; and

(v) shall contain such additional terms and conditions as the parties may agree to, so long as such terms and conditions are consistent with this section and regulations.

(B) Service area overlap

In designating a service area under a PACE program agreement under subparagraph (A)(i), the Secretary (in consultation with the State administering agency) may exclude from designation an area that is already covered under another PACE program agreement, in order to avoid unnecessary duplication of services and avoid impairing the financial and service viability of an existing program.

(3) Data collection; development of outcome measures

(A) Data collection

(i) In general

Under a PACE program agreement, the PACE provider shall—
(I) collect data;
(II) maintain, and afford the Secretary and the State administering agency access to, the records relating to the program, including pertinent financial, medical, and personnel records; and
(III) make available to the Secretary and the State administering agency reports that the Secretary finds (in consultation with State administering agencies) necessary to monitor the operation, cost, and effectiveness of the PACE program under this section and section 1396u–4 of this title.

(ii) Requirements during trial period
During the first 3 years of operation of a PACE program (either under this section or under a PACE demonstration waiver program), the PACE provider shall provide such additional data as the Secretary specifies in regulations in order to perform the oversight required under paragraph (4)(A).

(B) Development of outcome measures
Under a PACE program agreement, the PACE provider, the Secretary, and the State administering agency shall jointly cooperate in the development and implementation of health status and quality of life outcome measures with respect to PACE program eligible individuals.

(4) Oversight
(A) Annual, close oversight during trial period
During the trial period (as defined in subsection (a)(9) of this section) with respect to a PACE program operated by a PACE provider, the Secretary (in cooperation with the State administering agency) shall conduct a comprehensive annual review of the operation of the PACE program by the provider in order to assure compliance with the requirements of this section and regulations. Such a review shall include—
(i) an on-site visit to the program site;
(ii) comprehensive assessment of a provider’s fiscal soundness;
(iii) comprehensive assessment of the provider’s capacity to provide all PACE services to all enrolled participants;
(iv) detailed analysis of the entity’s substantial compliance with all significant requirements of this section and regulations; and
(v) any other elements the Secretary or State administering agency considers necessary or appropriate.

(B) Continuing oversight
After the trial period, the Secretary (in cooperation with the State administering agency) shall continue to conduct such review of the operation of PACE providers and PACE programs as may be appropriate, taking into account the performance level of a provider and compliance of a provider with all significant requirements of this section and regulations.

(C) Disclosure
The results of reviews under this paragraph shall be reported promptly to the Secretary, the State administering agency, and enrollees.

(5) Termination of PACE provider agreements
(A) In general
Under regulations—
(i) the Secretary or a State administering agency may terminate a PACE program agreement for cause; and
(ii) a PACE provider may terminate an agreement after appropriate notice to the Secretary, the State agency, and enrollees.

(B) Causes for termination
In accordance with regulations establishing procedures for termination of PACE program agreements, the Secretary or a State administering agency may terminate a PACE program agreement with a PACE provider for, among other reasons, the fact that—
(i) the Secretary or State administering agency determines that—
(I) there are significant deficiencies in the quality of care provided to enrolled participants; or
(II) the provider has failed to comply substantially with conditions for a program or provider under this section or section 1396u–4 of this title; and

(ii) the entity has failed to develop and successfully initiate, within 30 days of the date of the receipt of written notice of such a determination, a plan to correct the deficiencies, or has failed to continue implementation of such a plan.

(C) Termination and transition procedures
An entity whose PACE provider agreement is terminated under this paragraph shall implement the transition procedures required under subsection (a)(2)(C) of this section.

(6) Secretary’s oversight; enforcement authority
(A) In general
Under regulations, if the Secretary determines (after consultation with the State administering agency) that a PACE provider is failing substantially to comply with the requirements of this section and regulations, the Secretary (and the State administering agency) may take any or all of the following actions:
(i) Condition the continuation of the PACE program agreement upon timely execution of a corrective action plan.
(ii) Withhold some or all further payments under the PACE program agreement under this section or section 1396u–4 of this title with respect to PACE program services furnished by such provider until the deficiencies have been corrected.
(iii) Terminate such agreement.

(B) Application of intermediate sanctions
Under regulations, the Secretary may provide for the application against a PACE provider of remedies described in section 1395w–27(g)(2) (or, for periods before January
Under regulations, the provisions of section 1395w–27(h) of this title (or for periods before January 1, 1999, section 1395mm(i)(9) of this title) shall apply to termination and sanctions respecting a PACE program agreement and PACE provider under this subsection in the same manner as they apply to a termination and sanctions with respect to a contract and a Medicare+Choice organization under part C of this subchapter (or for such periods an eligible organization under section 1396u–4 of this title, respectively).

(7) Procedures for termination or imposition of sanctions

Under regulations, the provisions of section 1395w–27(g)(1) (or section 1395mm(i)(6)(A) of this title for such periods) or 1396w(m)(5)(A) of this title, respectively (in relation to agreements, enrollees, and requirements under this section or section 1396u–4 of this title, respectively).

(8) Timely consideration of applications for PACE program provider status

In considering an application for PACE provider program status, the application shall be deemed approved unless the Secretary, within 90 days after the date of submission of the application to the Secretary, either denies such request in writing or informs the applicant in writing with respect to any additional information that is needed in order to make a final determination with respect to the application. After the date the Secretary receives such additional information, the application shall be deemed approved unless the Secretary, within 90 days of such date, denies such request.

(f) Regulations

(1) In general

The Secretary shall issue interim final or final regulations to carry out this section and section 1396u–4 of this title.

(2) Use of PACE protocol

(A) In general

In issuing such regulations, the Secretary shall, to the extent consistent with the provisions of this section, incorporate the requirements applied to PACE demonstration waiver programs under the PACE protocol.

(B) Flexibility

In order to provide for reasonable flexibility in adapting the PACE service delivery model to the needs of particular organizations (such as those in rural areas or those that may determine it appropriate to use nonstaff physicians according to State licensing law requirements) under this section and section 1396u–4 of this title, the Secretary (in close consultation with State administering agencies) may modify or waive provisions of the PACE protocol so long as any such modification or waiver is not inconsistent with and would not impair the essential elements, objectives, and requirements of this section, but may not modify or waive any of the following provisions:

(i) The focus on frail elderly qualifying individuals who require the level of care provided in a nursing facility.

(ii) The delivery of comprehensive, integrated acute and long-term care services.

(iii) The interdisciplinary team approach to care management and service delivery.

(iv) Capitated, integrated financing that allows the provider to pool payments received from public and private programs and individuals.

(v) The assumption by the provider of full financial risk.

(C) Continuation of modifications or waivers of operational requirements under demonstration status

If a PACE program operating under demonstration authority has contractual or other operating arrangements which are not otherwise recognized in regulation and which were in effect on July 1, 2000, the Secretary (in close consultation with, and with the concurrence of, the State administering agency) shall permit any such program to continue such arrangements so long as such arrangements are found by the Secretary and the State to be reasonably consistent with the objectives of the PACE program.

(3) Application of certain additional beneficiary and program protections

(A) In general

In issuing such regulations and subject to subparagraph (B), the Secretary may apply with respect to PACE programs, providers, and agreements such requirements of part C of this subchapter (or, for periods before January 1, 1999, section 1395mm of this title) and sections 1396b(m) and 1396u–2 of this title relating to protection of beneficiaries and program integrity as would apply to Medicare+Choice organizations under part C of this subchapter (or for such periods eligible organizations under risk-sharing contracts under section 1395mm of this title) and to medicaid managed care organizations under prepaid capitation agreements under section 1396b(m) of this title.

(B) Considerations

In issuing such regulations, the Secretary shall—

(i) take into account the differences between populations served and benefits provided under this section and under part C of this subchapter (or, for periods before January 1, 1999, section 1395mm of this title) and section 1396b(m) of this title;

(ii) not include any requirement that conflicts with carrying out PACE programs under this section; and

(iii) not include any requirement restricting the proportion of enrollees who are eligible for benefits under this subchapter or subchapter XIX of this chapter.

(4) Construction

Nothing in this subsection shall be construed as preventing the Secretary from including in regulations provisions to ensure the health and safety of individuals enrolled in a
PACE program under this section that are in addition to those otherwise provided under paragraphs (2) and (3).

(g) Waivers of requirements
With respect to carrying out a PACE program under this section, the following requirements of this subchapter (and regulations relating to such requirements) are waived and shall not apply:

(1) Section 1395d of this title, insofar as it limits coverage of institutional services.

(2) Sections 1395e, 1395f, 1395l, and 1395w of this title, insofar as such sections relate to rules for payment for benefits.

(3) Paragraphs (1) and (9) of section 1395y(a) of this title, insofar as they limit coverage of extended care services or home health services.

(4) Section 1395r(x) of this title, insofar as it imposes a 3-day prior hospitalization requirement for coverage of extended care services.

(5) Paragraphs (a) and (b) of section 1395y(a) of this title, insofar as they may prevent payment for PACE program services to individuals enrolled under PACE programs.

(h) Demonstration project for for-profit entities

(1) In general
In order to demonstrate the operation of a PACE program by a private, for-profit entity, the Secretary (in close consultation with State administering agencies) shall grant waivers from the requirement under subsection (a)(3) of this section that a PACE provider may not be a for-profit, private entity.

(2) Similar terms and conditions
(A) In general
Except as provided under subparagraph (B), and paragraph (1), the terms and conditions for operation of a PACE program by a provider under this subsection shall be the same as those for PACE providers that are nonprofit, private organizations.

(B) Numerical limitation
The number of programs for which waivers are granted under this subsection shall not exceed 10. Programs with waivers granted under this subsection shall not be counted against the numerical limitation specified in subsection (e)(1)(B) of this section.

(i) Miscellaneous provisions
Nothing in this section or section 1396a–4 of this title shall be construed as preventing a PACE provider from entering into contracts with other governmental or nongovernmental payers for the care of PACE program eligible individuals who are not eligible for benefits under part A of this subchapter, or enrolled under part B of this subchapter, or eligible for medical assistance under subchapter XIX of this title.

References in Text

Section 4804(b) of the Balanced Budget Act of 1997, referred to in subsec. (a)(3)(B)(i), is section 4804(b) of Pub. L. 105–33, which is set out as a note below.

Section 603(c) of the Social Security Amendments of 1965, referred to in subsec. (a)(7)(A), is section 603(c) of Pub. L. 98–91, title VI, Apr. 20, 1983, 97 Stat. 168, which was not classified to the Code and was repealed by Pub. L. 105–33, title IV, §4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.


For the effective date of this section, referred to in subsec. (a)(9)(B), see section 4803 of Pub. L. 105–33, set out below.

References in Section


2010—Subsecs. (h) to (j). Pub. L. 111–148, §3201(i)(1), which directed addition of subsec. (h) and the redesignation of former subsecs. (h) and (i) as (i) and (j), respectively, was repealed by Pub. L. 111–152, §1102(a). Prior to repeal, text of subsec. (h) read as follows:

"With respect to a PACE program under this section, the following provisions (and regulations relating to such provisions) shall not apply:

``(1) Section 1395w–23(j)(1)(A)(i) of this title, relating to MA area-specific non-drug monthly benchmark amount being based on competitive bids.
``(2) Section 1395w–23(d)(5) of this title, relating to the establishment of MA local plan service areas.
``(3) Section 1395w–23(n) of this title, relating to the payment of performance bonuses.
``(4) Section 1395w–23(o) of this title, relating to grandfathereing supplemental benefits for current enrollees after implementation of competitive bidding.
``(5) Section 1395w–23(p) of this title, relating to transitional extra benefits.''

See Effective Date of 2010 Amendment note below.


Change of Name
References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 110–148, set out as a note under section 1395w–21 of this title.

Effective Date of 2010 Amendment
Repeal of section 3201 of Pub. L. 111–148 and the amendments made by such section, effective as if included in the enactment of Pub. L. 111–148, see section 1102(a) of Pub. L. 111–152, set out as a note under section 1395w–21 of this title.

Effective Date of 2003 Amendment
Amendment by Pub. L. 108–173 applicable to services furnished on or after Jan. 1, 2004, see section 236(c) of
RURAL PACE PROVIDER GRANT PROGRAM


"(a) Definitions.—In this section:

"(1) CMS.—The term 'CMS' means the Centers for Medicare & Medicaid Services.

"(2) PACE program.—The term 'PACE program' has the meaning given that term in sections 1894(a)(2) and 1934(a)(2) of the Social Security Act (42 U.S.C. 1395eee(a)(2); 1396u–4(a)(2)).

"(3) PACE provider.—The term 'PACE provider' has the meaning given that term in section 1894(a)(3) or 1934(a)(3) of the Social Security Act (42 U.S.C. 1395eee(a)(3); 1396u–4(a)(3)).

"(4) Rural area.—The term 'rural area' has the meaning given that term in section 1866(d)(2)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(2)(D)).

"(5) Rural PACE pilot site.—The term 'rural PACE pilot site' means a PACE provider that has been approved to provide services in a geographic service area that is, in whole or in part, a rural area, and that has received a site development grant under this section.

"(6) Secretary.—The term 'Secretary' means the Secretary of Health and Human Services.

"(b) Site development grants and technical assistance program.—

"(1) Site development grants.—

"(A) In general.—The Secretary shall establish a process and criteria to award site development grants to qualified PACE providers that have been approved to serve a rural area.

"(B) Amount per award.—A site development grant awarded under subparagraph (A) to any individual rural PACE pilot site shall not exceed $750,000.

"(C) Number of awards.—Not more than 15 rural PACE pilot sites shall be awarded a site development grant under subparagraph (A).

"(D) Use of funds.—Funds made available under a site development grant awarded under subparagraph (A) may be used for the following expenses only to the extent such expenses are incurred in relation to establishing or delivering PACE program services in a rural area:

"(i) Feasibility analysis and planning.

"(ii) Interdisciplinary team development.

"(iii) Development of a provider network, including contract development.

"(iv) Development or adaptation of claims processing systems.

"(v) Preparation of special education and outreach efforts required for the PACE program.

"(vi) Development of expense reporting required for calculation of outlier payments or reconciliation processes.

"(vii) Development of any special quality of care or patient satisfaction data collection effort.

"(viii) Establishment of a working capital fund to sustain fixed administrative, facility, or other fixed costs until the provider reaches sufficient enrollment size.

"(ix) Startup and development costs incurred prior to the approval of the rural PACE pilot site's PACE provider application by CMS.

"(D) Limitations.—Any other efforts determined by the rural PACE pilot site to be critical to its successful startup, as approved by the Secretary.
with respect to costs incurred during the first 3 years of the site's operation.

(5) REQUIREMENT TO ACCESS RISK RESERVES PRIOR TO PACE PAYMENT.—A Rural PACE pilot site shall access and exhaust any risk reserves held or arranged for the provider (other than revenue or reserves maintained to satisfy the requirements of section 480(c) of title 42, Code of Federal Regulations) and any working capital established through a site development grant awarded under subsection (b)(1), prior to receiving any payment from the outlier fund.

(6) APPLICATION.—In order to receive an outlier expense payment under this subsection with respect to an eligible outlier participant, a rural PACE pilot site shall submit an application containing—

"(A) documentation of the costs incurred with respect to the participant;

"(B) a certification that the site has complied with the requirements under paragraph (4); and

"(C) such additional information as the Secretary may require.

"(7) APPROPRIATION.—

"(A) In general.—Out of funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary $10,000,000 to carry out this subsection for the period of fiscal years 2006 through 2010.

"(B) Availability.—Funds appropriated under subparagraph (A) shall remain available for obligation through fiscal year 2010.

"(d) EVALUATION OF PACE PROVIDERS SERVING RURAL AREA.—Not later than 40 months after the date of enactment of this Act [Feb. 8, 2006], the Secretary shall submit a report to Congress containing an evaluation of the experience of rural PACE pilot sites.

"(e) AMOUNTS IN ADDITION TO PAYMENTS UNDER SOCIAL SECURITY ACT.—Any amounts paid under the authority of this section to a PACE provider shall be in addition to payments made to the provider under section 1894 or 1934 of the Social Security Act (42 U.S.C. 1395d; 1396a–4).

FLEXIBILITY IN EXERCISING WAIVER AUTHORITY


"(1) shall approve or deny a request for a modification or a waiver of provisions of the PACE protocol not later than 90 days after the date the Secretary receives the request; and

"(2) may exercise authority to modify or waive such provisions in a manner that responds promptly to the needs of PACE programs relating to areas of employment and the use of community-based primary care physicians.

TRANSITION; REGULATIONS

Section 4893 of title IV of Pub. L. 105–33, as amended by Pub. L. 106–554, § 1(a)(6), [title IX, § 901], Dec. 21, 2000, 114 Stat. 2763, 2768A–582, provided that:

"(a) TIMELY ISSUANCE OF REGULATIONS; EFFECTIVE DATE.—The Secretary of Health and Human Services shall promulgate regulations to carry out this subtitle [title I (§§ 4801–4809) of title IV of Pub. L. 105–33, enacting this section and section 1396u–4 of this title, amending sections 1396b, 1396d, 1396e–5, and 1396w of this title, and enacting provisions set out as notes under this section and section 1395b–6 of this title] in a timely manner. Such regulations shall be designed so that entities may establish and operate PACE programs under sections 1894 and 1934 of the Social Security Act [this section and section 1396u–4 of this title] as added by sections 4801 and 4802 of this subtitle for periods beginning not later than 1 year after the date of the enactment of this Act [Aug. 5, 1997].

"(b) EXPANSION AND TRANSITION FOR PACE DEMONSTRATION PROJECT WAIVERS.—

"(1) EXPANSION IN CURRENT NUMBER AND EXTENSION OF DEMONSTRATION PROJECTS.—Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 [see subsec. (d) below], as amended by section 4118(g) of the Omnibus Budget Reconciliation Act of 1987, is amended—

"(A) in paragraph (1), by inserting before the period at the end the following: 'after the Secretary shall grant waivers of such requirements to up to the applicable numerical limitation specified in sections 1894(c)(1)(B) and 1934(c)(1)(B) of the Social Security Act [subsec. (e)(1)(B) of this section and section 1396u–4(e)(1)(B) of this title]; and

"(B) in paragraph (2)—

"(i) in subparagraph (A), by striking 'the Secretary shall grant waivers of such requirements to up to the applicable numerical limitation specified in sections 1894(c)(1)(B) and 1934(c)(1)(B) of the Social Security Act [subsec. (e)(1)(B) of this section and section 1396u–4(e)(1)(B) of this title]; and

"(ii) in subparagraph (C), by striking 'the' and inserting 'the Secretary shall grant waivers of such requirements to up to the applicable numerical limitation specified in sections 1894(c)(1)(B) and 1934(c)(1)(B) of the Social Security Act [subsec. (e)(1)(B) of this section and section 1396u–4(e)(1)(B) of this title]; and

"(C) SPECIAL CONSIDERATION.—The Secretary shall give special consideration, in the processing of applications for which payment is made on a capitated basis with an understanding that the entity was seeking to become a PACE provider.

"(3) SPECIAL CONSIDERATION.—The Secretary shall give special consideration, in the processing of applications described in paragraph (1) and the awarding of waivers described in paragraph (2), to an entity which as of May 1, 1997, through formal activities [such as entering into contracts for feasibility studies] has indicated a specific intent to become a PACE provider.

"(d) REPEAL OF CURRENT PACE DEMONSTRATION PROJECT WAIVER AUTHORITY.—
provided that:

(A) Section 609(c) of the Social Security Amendment of 1983 (Public Law 98–21) (87 Stat. 168).

(B) Section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272) (100 Stat. 183).

(C) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509) (100 Stat. 2063).

(2) Delay in application to current waivers.

(A) In general.—Subject to subparagraph (B), in the case of waivers granted with respect to a PACE program before July 1, 2000, the repeals made by paragraph (1) shall not apply until the end of a transition period (of up to 36 months) that begins on the initial effective date of such regulations, and that allows sufficient time for an orderly transition from demonstration project authority to general authority provided under the amendments made by this subtitle [subtitle I (§§4801–4804) of title IV of Pub. L. 105–33, enacting this section and section 1396u–4 of this title] and amendments sections 1396b, 1396d, 1396r–5, and 1396v of this title.

(B) State option to seek extension of current period.—A State may elect to maintain the PACE programs which (as of the date of the enactment of this Act [Aug. 5, 1997]) were operating in the State under the authority described in paragraph (1) until a date specified by the State that is not later than 4 years after the initial effective date of regulations described in subsection (a). If a State makes such an election, the repeals made by paragraph (1) shall not apply to the programs until the date so specified, but only so long as such programs continue to operate under the same terms and conditions and as to apply to such programs as of the date of the enactment of this Act, and subparagraph (A) shall not apply to such programs.

PACE Programs; Study and Reports

Section 4804(a), (b) of title IV of Pub. L. 105–33 provided that:

(a) Study.—

(1) In general.—The Secretary of Health and Human Services in close consultation with State administering agencies, as defined in sections 1894(a)(8) and 1934(a)(8) of the Social Security Act [subsection (a)(8) of this section and section 1396u–4(a)(8) of this title] shall conduct a study of the quality and cost of providing PACE program services under the Medicare and Medicaid programs under the amendments made by this subtitle [subtitle I (§§4801–4804) of title IV of Pub. L. 105–33, enacting this section and section 1396u–4 of this title and amending sections 1396b, 1396d, 1396r–5, and 1396v of this title].

(b) Study of private, for-profit providers.—Such study shall specifically compare the costs, quality, and access to services by entities that are private, for-profit entities operating under demonstration projects waivers granted under sections 1894(h) and 1934(h) of the Social Security Act [subsection (b) of this section and section 1396u–4(h) of this title] with the costs, quality, and access to services of other PACE providers.

(b) Report.—

(1) In general.—Not later than 4 years after the date of the enactment of this Act [Aug. 5, 1997], the Secretary shall submit to Congress a report on the impact of such amendments on quality and cost of services. The Secretary shall include in such report such recommendations for changes in the operation of such amendments as the Secretary deems appropriate.

(2) Treatment of private, for-profit providers.—The report shall include specific findings on whether any of the following findings is true:

(A) The number of covered lives enrolled with entities operating under demonstration project waivers under sections 1894(h) and 1934(h) of the Social Security Act is fewer than 800 (or such lesser number as the Secretary may find statistically sufficient to make determinations respecting findings described in the succeeding subparagraphs).

(B) The population enrolled with such entities is less frail than the population enrolled with other PACE providers.

(C) Access to or quality of care for individuals enrolled with such entities is lower than such access or quality for individuals enrolled with other PACE providers.

(D) The application of such section has resulted in an increase in expenditures under the Medicare or Medicaid programs above the expenditures that would have been made if such section did not apply.

§ 1395fff. Prospective payment for home health services

(a) In general

Notwithstanding section 1395x(v) of this title, the Secretary shall, for portions of cost reporting periods occurring on or after October 1, 2000, for payments for home health services in accordance with a prospective payment system established by the Secretary under this section.

(b) System of prospective payment for home health services

(1) In general

The Secretary shall establish under this subsection a prospective payment system for payment for all costs of home health services. Under the system under this subsection all services covered and paid on a reasonable cost basis under the Medicare home health benefit as of August 5, 1997, including medical supplies, shall be paid for on the basis of a prospective payment amount determined under this subsection and applicable to the services involved. In implementing the system, the Secretary may provide for a transition (of not longer than 4 years) during which a portion of such payment is based on agency-specific costs, but only if such transition does not result in aggregate payments under this subchapter that exceed the aggregate payments that would be made if such a transition did not occur.

(2) Unit of payment

In defining a prospective payment amount under the system under this subsection, the Secretary may include in such amount such payment is based on agency-specific costs, but only if such transition does not result in aggregate payments under this subchapter that exceed the aggregate payments that would be made if such a transition did not occur.

(3) Payment basis

(A) Initial basis

(i) In general

Under such system the Secretary shall provide for computation of a standard prospective payment amount (or amounts) as follows:

(I) Such amount (or amounts) shall initially be based on the most current audited cost report data available to the Secretary and shall be computed in a

...
manner so that the total amounts payable under the system for the 12-month period beginning on the date the Secretary implements the system shall be equal to the total amount that would have been made if the system had not been in effect and if section 1395x(v)(1)(L)(ix) of this title had not been enacted.

(II) For the 12-month period beginning after the period described in subclause (I), such amount (or amounts) shall be equal to the amount (or amounts) determined under subclause (I), updated under subparagraph (B).

(iii) Subject to clause (iii), for periods beginning after the period described in subclause (II), such amount (or amounts) shall be equal to the amount (or amounts) that would have been determined under subclause (I) that would have been made for fiscal year 2001 if the system had not been in effect and if section 1395x(v)(1)(L)(ix) of this title had not been enacted but if the reduction in limits described in clause (ii) had been in effect, updated under subparagraph (B).

Each such amount shall be standardized in a manner that eliminates the effect of variations in relative case mix and area wage adjustments provided under paragraph (4)(A). Under the system, the Secretary may recognize regional differences or differences based upon whether or not the services or agency are in an urbanized area.

(ii) Reduction

The reduction described in this clause is a reduction by 15 percent in the cost limits and per beneficiary limits described in section 1395x(v)(1)(L) of this title, as those limits are in effect on September 30, 2000.

(iii) Adjustment for 2014 and subsequent years

(I) In general

Subject to subclause (II), for 2014 and subsequent years, the amount (or amounts) that would otherwise be applicable under clause (i)(III) shall be adjusted by a percentage determined appropriate by the Secretary to reflect such factors as changes in the number of visits in an episode, the mix of services in an episode, the level of intensity of services in an episode, the average cost of providing care per episode, and other factors that the Secretary considers to be relevant. In conducting the analysis under the preceding sentence, the Secretary may consider differences between hospital-based and freestanding agencies, between for-profit and nonprofit agencies, and between the resource costs of urban and rural agencies. Such adjustment shall be made before the update under subparagraph (B) is applied for the year.

(ii) Home health applicable increase percentage

For purposes of this subsection, the term "home health applicable increase percentage" means, with respect to—

(I) each of fiscal years 2002 and 2003, the home health market basket percentage increase (as defined in clause (iii)) minus 1.1 percentage points;

(II) for1 the last calendar quarter of 2003 and the first calendar quarter of 2004, the home health market basket percentage increase;

(III) the last 3 calendar quarters of 2004, and all of 20052 the home health market basket percentage increase minus 0.8 percentage points;

(IV) 2006, 0 percent; and

(V) any subsequent year, subject to clauses (v) and (vi), the home health market basket percentage increase.

(iii) Home health market basket percentage increase

For purposes of this subsection, the term "home health market basket percentage increase" means, with respect to a fiscal year or year, a percentage (estimated by the Secretary before the beginning of the fiscal year or year) determined and applied with respect to the mix of goods and services included in home health services in the same manner as the market basket percentage increase under section 1395ww(b)(3)(B)(iii) of this title is determined and applied to the mix of goods and services comprising inpatient hospital services for the fiscal year or year.

(iv) Adjustment for case mix changes

Insofar as the Secretary determines that the adjustments under paragraph (4)(A)(i) for a previous fiscal year or year (or estimates that such adjustments for a future fiscal year or year) did (or are likely to)
result in a change in aggregate payments under this subsection during the fiscal year or year that are a result of changes in the coding or classification of different units of services that do not reflect real changes in case mix, the Secretary may adjust the standard prospective payment amount (or amounts) under paragraph (3) for subsequent fiscal years or years so as to eliminate the effect of such coding or classification changes.

(v) Adjustment if quality data not submitted

(I) Adjustment

For purposes of clause (i)(V), for 2007 and each subsequent year, in the case of a home health agency that does not submit data to the Secretary in accordance with subclause (II) with respect to such a year, the home health market basket percentage increase applicable under such clause for such year shall be reduced by 2 percentage points. Such reduction shall apply only with respect to the year involved, and the Secretary shall not take into account such reduction in computing the prospective payment amount under this section for a subsequent year, and the Medicare Payment Advisory Commission shall carry out the requirements under section 5201(d) of the Deficit Reduction Act of 2005.

(II) Submission of quality data

For 2007 and each subsequent year, each home health agency shall submit to the Secretary such data that the Secretary determines are appropriate for the measurement of health care quality. Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this clause.

(III) Public availability of data submitted

The Secretary shall establish procedures for making data submitted under subclause (II) available to the public. Such procedures shall ensure that a home health agency has the opportunity to review the data that is to be made public with respect to the agency prior to such data being made public.

(vi) Adjustments

After determining the home health market basket percentage increase under clause (iii), and after application of clause (v), the Secretary shall reduce such percentage—

(I) for 2015 and each subsequent year, by the productivity adjustment described in section 1395ww(b)(3)(B)(xi)(II) of this title; and

(II) for each of 2011, 2012, and 2013, by 1 percentage point.

The application of this clause may result in the home health market basket percentage increase under clause (iii) being less than 0.0 for a year, and may result in payment rates under the system under this subsection for a year being less than such payment rates for the preceding year.

(C) Adjustment for outliers

The Secretary shall reduce the standard prospective payment amount (or amounts) under this paragraph applicable to home health services furnished during a period by such proportion as will result in an aggregate reduction in payments for the period equal to 5 percent of the total payments estimated to be made based on the prospective payment system under this subsection for the period.

(4) Payment computation

(A) In general

The payment amount for a unit of home health services shall be the applicable standard prospective payment amount adjusted as follows:

(i) Case mix adjustment

The amount shall be adjusted by an appropriate case mix adjustment factor (established under subparagraph (B)).

(ii) Area wage adjustment

The portion of such amount that the Secretary estimates to be attributable to wages and wage-related costs shall be adjusted for geographic differences in such costs by an area wage adjustment factor (established under subparagraph (C)) for the area in which the services are furnished or such other area as the Secretary may specify.

(B) Establishment of case mix adjustment factors

The Secretary shall establish appropriate case mix adjustment factors for home health services in a manner that explains a significant amount of the variation in cost among different units of services.

(C) Establishment of area wage adjustment factors

The Secretary shall establish area wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services in a geographic area compared to the national average applicable level. Such factors may be the factors used by the Secretary for purposes of section 1395ww(d)(3)(E) of this title.

(5) Outliers

(A) In general

Subject to subparagraph (B), the Secretary may provide for an addition or adjustment to the payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. The total amount of the additional payments or payment adjustments made under this paragraph with respect to a fiscal year or year may not exceed 2.5 percent of the total payments projected or estimated to be made based on the prospective payment system under this subsection in that year.
(B) Program specific outlier cap

The estimated total amount of additional payments or payment adjustments made under subparagraph (A) with respect to a home health agency for a year (beginning with 2011) may not exceed an amount equal to 10 percent of the estimated total amount of payments made under this section (without regard to this paragraph) with respect to the home health agency for the year.

(6) Proration of prospective payment amounts

If a beneficiary elects to transfer to, or receive services from, another home health agency within the period covered by the prospective payment amount, the payment shall be prorated between the home health agencies involved.

(c) Requirements for payment information

With respect to home health services furnished on or after October 1, 1998, no claim for such a service may be paid under this subchapter unless—

(1) the claim has the unique identifier (provided under section 1395u(r) of this title) for the physician who prescribed the services or made the certification described in section 1395f(a)(2) or 1395m(a)(2)(A) of this title; and

(2) in the case of a service visit described in paragraph (1), (2), (3), or (4) of section 1395x(m) of this title, the claim contains a code (or codes) specified by the Secretary that identifies the length of time of the service visit, as measured in 15 minute increments.

(d) Limitation on review

There shall be no administrative or judicial review under section 1395ff of this title, 1395oo of this title, or otherwise of—

(1) the establishment of a transition period under subsection (b)(1) of this section;

(2) the definition and application of payment amounts under subsection (b)(2) of this section;

(3) the computation of initial standard prospective payment amounts under subsection (b)(3)(A) of this section (including the reduction described in clause (ii) of such subsection);

(4) the establishment of the adjustment for outliers under subsection (b)(3)(C) of this section;

(5) the establishment of case mix and area wage adjustments under subsection (b)(4) of this section; and

(6) the establishment of any adjustments for outliers under subsection (b)(6) of this section.

(e) Construction related to home health services

(1) Telecommunications

Nothing in this section shall be construed as preventing a home health agency furnishing a home health unit of service for which payment is made under the prospective payment system established by this section for such units of service from furnishing services via a telecommunication system if such services—

(A) do not substitute for in-person home health services ordered as part of a plan of care certified by a physician pursuant to section 1395f(a)(2)(C) or 1395m(a)(2)(A) of this title; and

(2) Physician certification

Nothing in this section shall be construed as waiving the requirement for a physician certification under section 1395f(a)(2)(C) or 1395m(a)(2)(A) of this title for the payment for home health services, whether or not furnished via a telecommunications system.


**Effective Date of 2000 Amendment**


**Effective Date of 1999 Amendment**

Amendment by section 1000(a)(6) [title III, §303(b)] of Pub. L. 106–113 applicable to services furnished by home health agencies for cost reporting periods beginning on or after Oct. 1, 1999, see section 1000(a)(6) [title III, §303(c)] of Pub. L. 106–113, set out as a note under section 1395x of this title.


**Effective Date**


**Study and Report on the Development of Home Health Payment Revisions in Order to Ensure Access to Care and Payment for Severity of Illness**


“(i) In general.—The Secretary of Health and Human Services, and any possible payment vulnerabilities associated with implementing potential revisions.
paragraph (1), the Secretary shall consult with appropriates as the Secretary determines appropriate.

paragraph (1), the Secretary may consider whether recommendations for such legislation and administrative actions and patient severity of illness and access to care could be measured by factors, such as—

(A) population density and relative patient access to care;

(B) variations in service costs for providing care to individuals who are dually eligible under the Medicare and Medicaid programs;

(C) the presence of severe or chronic diseases, which might be measured by multiple, discontinuous home health episodes;

(D) poverty status, such as evidenced by the receipt of Supplemental Security Income under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.); and

(E) other factors determined appropriate by the Secretary.

(3) REPORT.—Not later than March 1, 2014, the Secretary shall submit to Congress a report on the study conducted under paragraph (1), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

(4) IMPLEMENTATION.—In conducting the study under paragraph (1), the Secretary shall consult with appropriate stakeholders, such as groups representing home health agencies and groups representing Medicare beneficiaries.

(5) MEDICARE DEMONSTRATION PROJECT BASED ON THE RESULTS OF THE STUDY.—

(A) IN GENERAL.—Subject to subparagraph (D), taking into account the results of the study conducted under paragraph (1), the Secretary may, as determined appropriate, provide for a demonstration project to test whether making payment adjustments for home health services under the Medicare program would substantially improve access to care for patients with high severity levels of illness or for low-income or underserved Medicare beneficiaries.

(B) WAIVING BUDGET NEUTRALITY.—The Secretary shall not reduce the standard prospective payment amount (or amounts) under section 1885 of the Social Security Act (42 U.S.C. 1395f) applicable to home health services furnished during a period to offset any increase in payments during such period resulting from the application of the payment adjustments under subparagraph (A).

(C) NO EFFECT ON SUBSEQUENT PERIODS.—A payment adjustment resulting from the application of subparagraph (A) for a period—

(1) shall not apply to episodes and visits ending after such period; and

(2) shall not be taken into account in calculating the payment amounts applicable for episodes and visits occurring after such period.

(D) DURATION.—If the Secretary determines it appropriate to conduct the demonstration project under this subsection, the Secretary shall conduct the project for a four year period beginning not later than January 1, 2015.

(E) FUNDING.—The Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund under section 1317 of the Social Security Act (42 U.S.C. 1395d) and the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of such Act (42 U.S.C. 1395j), in such proportion as the Secretary determines appropriate, of $500,000,000 for the period of fiscal years 2015 through 2018. Such funds shall be made available for the study described in paragraph (1) and the design, implementation and evaluation of the demonstration described in this paragraph. Amounts available under this subparagraph shall be available until expended.

(F) EVALUATION AND REPORT.—If the Secretary determines it appropriate to conduct the demonstration project under this subsection, the Secretary shall—

(1) provide for an evaluation of the project; and

(2) submit to Congress, by a date specified by the Secretary, a report on the project.

(G) ADMINISTRATION.—Chapter 30 of title 44, United States Code, shall not apply with respect to this subsection.

TEMPORARY INCREASE FOR HOME HEALTH SERVICES FURNISHED IN A RURAL AREA


(a) ESTABLISHMENT.—Subject to the succeeding provisions of this section, the Secretary [of Health and Human Services] shall establish a demonstration project (in this section referred to as the ‘demonstration project’) under which the Secretary shall, as part of a plan of an episode of care for home health services established for a medicare beneficiary, permit a home health agency, directly or under arrangements with a medical adult day-care facility, to provide medical adult day-care services at a substitute for a portion of home health services that would otherwise be provided in the beneficiary’s home.

(b) PAYMENT.—

(1) IN GENERAL.—Subject to paragraph (2), the amount of payment for an episode of care for home health services, a portion of which consists of substitute medical adult day-care services, under the demonstration project shall be made at a rate equal to 95 percent of the amount that would otherwise apply for such home health services under section 1885 of the Social Security Act (42 U.S.C. 1395f). In no case may a home health agency, or a medical adult day-care facility under arrangements with a home health agency, separately charge a beneficiary for medical adult day-care services as a substitute for a portion of home health services that would otherwise be provided in the beneficiary’s home.

(2) ADJUSTMENT IN CASE OF OVERUTILIZATION OF SUBSTITUTE MEDICAL ADULT-DAY-CARE SERVICES TO ENSURE BUDGET NEUTRALITY.—The Secretary shall monitor the expenditures under the demonstration project and under title XVIII of the Social Security Act [this subchapter] for home health services. If the Secretary
estimates that the total expenditures under the demonstration project and under such title XVIII for home health services for a period determined by the Secretary exceed expenditures that would have been made under such title XVIII for home health services for such period if the demonstration project had not been conducted, the Secretary shall adjust the rate of payment to medical adult day-care facilities under paragraph (1) in order to eliminate such excess.

“(c) DEMONSTRATION PROJECT SITES.—The demonstration project established under this section shall be conducted in not more than 5 sites in States selected by the Secretary that license or certify providers of services that furnish medical adult day-care services.

“(d) DURATION.—The Secretary shall conduct the demonstration project for a period of 5 years.

“(e) VOLUNTARY PARTICIPATION.—Participation of Medicare beneficiaries in the demonstration project shall be voluntary. The total number of such beneficiaries that may participate in the project at any given time may not exceed 15,000.

“(f) PREFERENCE IN SELECTING AGENCIES.—In selecting medical adult day-care agencies to participate under the demonstration project, the Secretary shall give preference to those agencies that are currently licensed or certified through common ownership and control to furnish medical adult day-care services.

“(g) WAIVER AUTHORITY.—The Secretary may waive such requirements of title XVIII of the Social Security Act or such standards established by the Secretary as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the facility.

“(h) EVALUATION AND REPORT.—The Secretary shall conduct an evaluation of the clinical and cost-effectiveness of the demonstration project, other than waiving the requirement that an individual be homebound in order to be eligible for benefits for home health services.

“(i) STUDY.—The Secretary shall conduct a study on how non-Medicare/Medicaid OASIS information is collected and can be used by large home health agencies. Such study shall examine

“A. whether there are unique benefits from the analysis of such information that cannot be derived from other information available to, or collected by, such agencies; and

“B. the value of collecting such information by small home health agencies compared to the administrative burden related to such collection.

“In conducting the study the Secretary shall obtain recommendations from quality assessment experts in the use of such information and the necessity of small, as well as large, home health agencies collecting such information.

“(j) CONSTRUCTION.—Nothing in this section shall be construed as preventing home health agencies from collecting non-Medicare/Medicaid OASIS information for their own use.”

**TEMPORARY SUSPENSION OF OASIS REQUIREMENT FOR COLLECTION OF DATA ON NON-MEDICARE AND NON-MEDICAID PATIENTS**


“(a) IN GENERAL.—During the period described in subsection (b), the Secretary [of Health and Human Services] may not require, under section 4912(e) of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 467) [set out as a note under this section] or otherwise under OASIS, a home health agency to gather or submit information that relates to an individual who is not eligible for benefits under either title XVIII or title XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter] (such information in this section referred to as ‘non-Medicare/Medicaid OASIS information’).

“(b) PERIOD OF SUSPENSION.—The period described in this subsection—

“(1) begins on the date of the enactment of this Act [Dec. 8, 2003]; and

“(2) ends on the last day of the second month beginning after the date as of which the Secretary has published final regulations regarding the collection and use by the Centers for Medicare & Medicaid Services of non-Medicare/Medicaid OASIS information following the submission of the report required under subsection (c).

“(c) REPORT.—

“(1) STUDY.—The Secretary shall conduct a study on how non-Medicare/Medicaid OASIS information is collected and can be used by large home health agencies. Such study shall examine

“A. whether there are unique benefits from the analysis of such information that cannot be derived from other information available to, or collected by, such agencies; and

“B. the value of collecting such information by small home health agencies compared to the administrative burden related to such collection.

“In conducting the study the Secretary shall obtain recommendations from quality assessment experts in the use of such information and the necessity of small, as well as large, home health agencies collecting such information.

“(2) REPORT.—The Secretary shall submit to Congress a report on the study conducted under paragraph (1) by not later than 18 months after the date of the enactment of this Act [Dec. 8, 2003].

“(d) CONSTRUCTION.—Nothing in this section shall be construed as preventing home health agencies from collecting non-Medicare/Medicaid OASIS information for their own use.”

**MEDPAC STUDY ON MEDICARE MARGINS OF HOME HEALTH AGENCIES**


“(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study of payment margins of home health agencies under the home health prospective payment system under section 1835 of the Social Security Act (42 U.S.C. 1395kkf). Such study shall examine whether systematic differences in payment margins are related to differences in case mix (as measured by home health resource groups (HHRGs)) among such
agencies. The study shall use the partial or full-year cost reports filed by home health agencies.

"(b) Report.—Not later than 2 years after the date of the enactment of this Act [Dec. 8, 2003], the Commission shall submit to Congress a report on the study under subsection (a)."

**Special Rule for Payment for Fiscal Year 2001 Based on Adjusted Prospective Payment Amounts**

Pub. L. 106-554, §1(a)(6) [title V, §502(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–530, provided that:

"(b) General.—Notwithstanding the amendments made by subsection (a) (amending section 1395x of this title), for purposes of making payments under section 1866(b) of the Social Security Act (42 U.S.C. 1395fff(b)) for home health services furnished during fiscal year 2001, the Secretary of Health and Human Services shall—

"(1) with respect to episodes and visits ending on or after October 1, 2000, and before April 1, 2001, use the final standardized and budget neutral prospective payment amounts for 60-day episodes and standardized average per visit amounts for fiscal year 2001 as published by the Secretary in the Federal Register on July 3, 2000 (65 Fed. Reg. 41128–41214); and

"(2) with respect to episodes and visits ending on or after April 1, 2001, and before October 1, 2001, use such amounts increased by 2.2 percent.

"(2) No effect on other payments or determinations.—The Secretary shall not take the provisions of paragraph (1) into account for purposes of payments, determinations, or budget neutrality adjustments under section 1895 of the Social Security Act."

**Temporary Two-Month Periodic Interim Payment**

Pub. L. 106-554, §1(a)(6) [title V, §503], Dec. 21, 2000, 114 Stat. 2763, 2763A–530, provided that:

"(a) In General.—Notwithstanding the amendments made by section 4603(b) of BBA [Pub. L. 105-33, amending section 1395x of this title] (42 U.S.C. 1395fff note), in the case of a home health agency that was receiving periodic interim payments under section 1815(e)(2) of the Social Security Act (42 U.S.C. 1395g(e)(2)) as of September 30, 2000, and that is not described in subsection (b), the Secretary of Health and Human Services shall, as soon as practicable, make a single periodic interim payment to such agency in an amount equal to four times the last full fortnightly periodic interim payment made to such agency under the payment system in effect prior to the implementation of the prospective payment system under section 1866(b) of such Act (42 U.S.C. 1395fff(b)). Such amount of such periodic interim payment shall be included in the tentative settlement of the last cost report for the home health agency under the payment system in effect prior to the implementation of such prospective payment system, regardless of the ending date of such cost report.

"(b) Exception.—The Secretary shall not make an additional periodic interim payment under subsection (a) in the case of a home health agency (determined as of the day that such payment would otherwise be made) that—

"(1) notifies the Secretary that such agency does not want to receive such payment;

"(2) is not receiving payments pursuant to section 405.377 of title 42, Code of Federal Regulations;

"(3) is excluded from the Medicare program under title XI of the Social Security Act [subchapter XI of this chapter];

"(4) no longer has a provider agreement under section 1866 of such Act (42 U.S.C. 1395cc);

"(5) is no longer in business; or

"(6) is subject to a court order providing for the withholding of Medicare payments under title XVIII of such Act [this subchapter]."

**Temporary Increase for Home Health Services Furnished in a Rural Area**

Pub. L. 106-554, §1(a)(6) [title V, §508], Dec. 21, 2000, 114 Stat. 2763, 2763A–533, provided that:

"(a) 24-Month Increase Beginning April 1, 2001.—In the case of home health services furnished in a rural area (as defined in section 1866(d)(2)(D) of the Social Security Act (42 U.S.C. 1395fff(d)(2)(D)) on or after April 1, 2001, and before April 1, 2003, the Secretary of Health and Human Services shall increase the payment amount otherwise made under section 1866 of such Act (42 U.S.C. 1395fff) applicable to home health services furnished during a period to offset the increase in payments resulting from the application of subsection (a)."

**Clarification of Application of Temporary Payment Increases for 2001**

Pub. L. 106-554, §1(a)(6) [title V, §547(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–533, provided that:

"(1) Transitional Allowance for Full Marktfat篮kett [sic] Increase.—The payment increase provided under section 502(b)(1)(B) [set out as a note above] shall not apply to episodes and visits ending after fiscal year 2001 and shall not be taken into account in calculating the payment amounts applicable for subsequent episodes and visits.

"(2) Temporary Increase for Rural Home Health Services.—The payment increase provided under section 508(a) [set out as a note above] for the period beginning on April 1, 2001, and ending on September 30, 2002, shall not apply to episodes and visits ending after such period, and shall not be taken into account in calculating the payment amounts applicable for episodes and visits occurring after such period."

**Adjustment to Reflect Administrative Costs Not Included in the Interim Payment System**


"(a) Adjustment to Reflect Administrative Costs.—(1) In General.—In the case of a home health agency that furnishes home health services to a Medicare beneficiary, for each such beneficiary to whom the agency furnished such services during the agency’s cost reporting period beginning in fiscal year 2000, the Secretary of Health and Human Services shall pay the agency, in addition to any amount of payment made under section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)) for the beneficiary and only for such cost reporting period, an aggregate amount of $10 to defray costs incurred by the agency attributable to data collection and reporting requirements under the Outcome and Assessment Information Set (OASIS) required by reason of section 462(b) of BBA [the Balanced Budget Act of 1997, Pub. L. 105-33] (42 U.S.C. 1395fff note).

"(2) Payment Schedule.—(A) Midyear Payment.—Not later than April 1, 2000, the Secretary shall pay to a home health agency an amount that the Secretary estimates to be 50 percent of the aggregate amount payable to the agency by reason of this subsection.

"(B) Upon Settled Cost Report.—The Secretary shall pay the balance of amounts payable to an agency under this subsection on the date that the cost report submitted by the agency for the cost reporting period beginning in fiscal year 2000 is settled.

"(3) Payment from Trust Funds.—Payments under this subsection shall be made, in appropriate part as specified by the Secretary, from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund.

"(4) Definitions.—In this subsection:

"(A) Home Health Agency.—The term ‘home health agency’ has the meaning given that term.
under section 1861(o) of the Social Security Act (42 U.S.C. 1395x(o)).

"(B) HOME HEALTH SERVICES.—The term 'home health services' has the meaning given that term under section 1861(m) of such Act (42 U.S.C. 1395x(m)).

"(C) MEDICARE BENEFICIARY.—The term 'medicare beneficiary' means a beneficiary described in section 1861(v)(1)(L)(vi)(II) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)(vi)(II)).

"(b) GAO REPORT ON COSTS OF COMPLIANCE WITH OASIS DATA COLLECTION REQUIREMENTS.—

"(1) REPORT TO CONGRESS.—

"(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Nov. 29, 1999], the Comptroller General of the United States shall submit to Congress a report analyzing the base payment amounts under the prospective payment system for home health services established by the Secretary of Health and Human Services in accordance with section 1895 of the Social Security Act (42 U.S.C. 1395f).

"(B) REPORT.—Not later than 2 years after the date of the enactment of this Act [Nov. 29, 1999], MedPAC shall submit a report to Congress on the study conducted under subsection (a), together with any recommendations for legislation that MedPAC determines to be appropriate as a result of such study.

CASH MIX SYSTEM DEVELOPMENT

Section 4602(d) of Pub. L. 105–33 provided that: "The Secretary of Health and Human Services shall expand research on a prospective payment system for home health agencies under the medicare program that ties prospective payments to a unit of service, including an intensive effort to develop a reliable case mix adjuster that explains a significant amount of the variances in costs."

CASE MIX SYSTEM; SUBMISSION OF DATA

Section 4602(e) of Pub. L. 105–33 provided that: "Effective for cost reporting periods beginning on or after October 1, 1997, the Secretary of Health and Human Services may require all home health agencies to submit additional information that the Secretary considers necessary for the development of a reliable case mix system."

PROSPECTIVE PAYMENT SYSTEM CONTINGENCY

Section 4616 of Pub. L. 105–33 provided that: 

"(a) ESTIMATE.—Not later than October 1, 1997, the Secretary of Health and Human Services shall submit to the Committees on Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report that includes an estimate of the outlays that will be made under parts A and B of title XVIII of the Social Security Act [parts A and B of this subchapter] for the provision of home health services during each of fiscal years 1998 through 2002.

"(b) ANNUAL REPORT.—Not later than the end of each of years 1999 through 2002, the Secretary shall submit to such Committees a report that compares the actual outlays under such parts for such services during the fiscal year ending in the year, to the outlays estimated under subsection (a) for such fiscal year. If the Secretary finds that such actual outlays were greater than such estimated outlays for the fiscal year, the Secretary shall include in the report recommendations regarding beneficiary copayments for home health services provided under the medicare program or such other methods as will reduce the growth in outlays for home health services under the medicare program."
such terms and conditions and meet such require-
ments as the Secretary determines appro-
riate. A loan under this section shall be on
time, manner, and form specified by the Sec-
partly.

(b) Application

No loan may be provided under this section to
qualifying hospitals for payment of the capital costs of projects de-
scribed in subsection (d) of this section.

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(c) Selection criteria

(1) In general

The Secretary shall establish criteria for se-
lecting among qualifying hospitals that apply
for a loan under this section. Such criteria
shall consider the extent to which the project
for which loan is sought is nationally or re-
regionally significant, in terms of expanding or
improving the health care infrastructure of the
United States or the region or in terms of the
medical benefit that the project will have.

(2) Qualifying hospital defined

For purposes of this section, the term "qualifying hospital" means a hospital or an entity described in paragraph (3) that—
(A) is engaged in research in the causes,
prevention, and treatment of cancer; and
(B) is designated as a cancer center for the
National Cancer Institute or is designated
by the State legislature as the official can-
cer institute of the State and such designa-
tion by the State legislature occurred prior

(3) Entity described

An entity described in this paragraph is an entity that—
(A) is described in section 501(c)(3) of the
Internal Revenue Code of 1986 and exempt
from tax under section 501(a) of such Code;
(B) has at least 1 existing memorandum of
understanding or affiliation agreement with
a hospital located in the State in which the
entity is located; and
(C) retains clinical outpatient treatment
for cancer on site as well as lab research and
education and outreach for cancer in the same facility.

(d) Projects

A project described in this subsection is a project of a qualifying hospital that is designed to improve the health care infrastructure of the hospital, including construction, renovation, or other capital improvements.

(e) State and local permits

The provision of a loan under this section with
respect to a project shall not—
(1) relieve any recipient of the loan of any
obligation to obtain any required State or
local permit or approval with respect to the
project;
(2) limit the right of any unit of State or
local government to approve or regulate any
rate of return on private equity invested in
the project; or
(3) otherwise supersede any State or local
law (including any regulation) applicable to
the construction or operation of the project.

(f) Forgiveness of indebtedness

The Secretary may forgive a loan provided to
a qualifying hospital under this section under
terms and conditions that are analogous to the
loan forgiveness provision for student loans
under part D of title IV of the Higher Education
Act of 1965 (20 U.S.C. 1087a et seq.), except that
the Secretary shall condition such forgiveness
on the establishment by the hospital of—
(A) an outreach program for cancer preven-
tion, early diagnosis, and treatment that pro-
vides services to a substantial majority of the
residents of a State or region, including resi-
dents of rural areas;
(B) an outreach program for cancer preven-
tion, early diagnosis, and treatment that pro-
vides services to multiple Indian tribes; and
(C)(i) unique research resources (such as pop-
ulation databases); or
(ii) an affiliation with an entity that has
unique research resources.

(g) Funding

(1) In general

There are appropriated, out of amounts in
the Treasury not otherwise appropriated, to
carry out this section, $2,000,000,000, to remain
available during the period beginning on July
1, 2004, and ending on September 30, 2008.

(2) Administrative costs

From funds made available under paragraph
(1), the Secretary may use, for the administra-
tion of this section, not more than $2,000,000
for each of fiscal years 2004 through 2008.

(3) Availability

Amounts appropriated under this section
shall be available for obligation on July 1,
2004.

(h) Report to Congress

Not later than 4 years after December 8, 2003,
the Secretary shall submit to Congress a report
on the projects for which loans are provided
under this section and a recommendation as to
whether the Congress should authorize the Sec-
retary to continue loans under this section be-
yond fiscal year 2008.
(i) Limitation on review

There shall be no administrative or judicial review of any determination made by the Secretary under this section.


REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (c)(3)(a), is classified generally to Title 26, Internal Revenue Code.


For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2005—Subsec. (c)(2). Pub. L. 109–13, §6045(a)(1)(A), inserted “for service furnished by providers of services and suppliers under such original medicare fee-for-service program” after “entitled to”.

Subsec. (c)(2)(B). Pub. L. 109–13, §6045(a)(1)(B), inserted “‘legislature’ after ‘designated by the State’” and “and such designation by the State legislature occurred prior to December 8, 2003” before period at end.


EFFECTIVE DATE OF 2005 AMENDMENT


§1395iii. Medicare Improvement Fund

(a) Establishment

The Secretary shall establish under this subchapter a Medicare Improvement Fund (in this section referred to as the “Fund”) which shall be available to the Secretary to make improvements under the original medicare fee-for-service program under parts A and B for individuals entitled to, or enrolled for, benefits under part A or enrolled under part B including, but not limited to, an increase in the conversion factor under section 1395w–4(d) of this title to address, in whole or in part, any projected shortfall in the conversion factor for 2014 relative to the conversion factor for 2008 and adjustments to payments for items and services furnished by providers of services and suppliers under such original medicare fee-for-service program.

(b) Funding

(1) In general

There shall be available to the Fund, for expenditures from the Fund for services furnished during—

(A) fiscal year 2014, $30;

(B) fiscal year 2015, $275,000,000; and

(C) fiscal year 2020 and each subsequent fiscal year, the Secretary’s estimate, as of July 1 of the fiscal year, of the aggregate reduction in expenditures under this subchapter during the preceding fiscal year directly resulting from the reduction in payment amounts under sections 1395w–4(a)(7), 1395w–23(l)(4), 1395w–23(m)(4), and 1395ww(b)(3)(B)(ix) of this title.

(2) Payment from Trust Funds

The amount specified under paragraph (1) shall be available to the Fund, as expenditures are made from the Fund, from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in such proportion as the Secretary determines appropriate.

(3) Funding limitation

Amounts in the Fund shall be available in advance of appropriations but only if the total amount obligated from the Fund does not exceed the amount available to the Fund under paragraph (1). The Secretary may obligate funds from the Fund only if the Secretary determines (and the Chief Actuary of the Centers for Medicare & Medicaid Services and the appropriate budget officer certify) that there are available in the Fund sufficient amounts to cover all such obligations incurred consistent with the previous sentence.

(4) No effect on payments in subsequent years

In the case that expenditures from the Fund are applied to, or otherwise affect, a payment rate for an item or service under this subchapter for a year, the payment rate for such item or service shall be computed for the subsequent year as if such application or effect had never occurred.


AMENDMENTS

2010—Subsec. (b)(1)(A). Pub. L. 111–148, which directed substitution of “$30” for “$22,290,000,000”, was executed by making the substitution for “$20,740,000,000” to reflect the probable intent of Congress and the intervening amendment by Pub. L. 111–118, §1011(b)(1)(A). See 2009 Amendment note below.

Subsec. (b)(1)(B). Pub. L. 111–309 substituted “$275,000,000” for “$550,000,000”.

2009—Subsec. (a). Pub. L. 111–5, §4103(b)(1), inserted “‘medicare’ before “fee-for-service program under” and “including, but not limited to, an increase in the conversion factor under section 1395w–4(d) of this title to address, in whole or in part, any projected shortfall in the conversion factor for 2014 relative to the conversion factor for 2008 and adjustments to payments for items and services furnished by providers of services and suppliers under such original medicare fee-for-service program” before period at end.

Subsec. (b)(1). Pub. L. 111–5, §4103(b)(2)(A), substituted “during—” for “during fiscal year 2014, $2,290,000,000 and, in addition for services furnished during fiscal years 2014 through 2017, $19,900,000,000.” and added subpars. (A) and (B).

Subsec. (b)(1)(A). Pub. L. 111–118, §1011(b)(1)(A), substituted “$20,740,000,000” for “$22,290,000,000”.

Subsec. (b)(1)(B). Pub. L. 111–118, §1011(b)(1)(B)(ix) amended subpar. (B) and redesignated former subpar. (B) as (C).
§ 1395jjj. Shared savings program

(a) Establishment

(1) In general

Not later than January 1, 2012, the Secretary shall establish a shared savings program (in this section referred to as the “program”) that promotes accountability for a patient population and coordinates items and services under parts A and B, and encourages investment in infrastructure and redesigned care processes for high quality and efficient service delivery. Under such program—

(A) groups of providers of services and suppliers meeting criteria specified by the Secretary may work together to manage and coordinate care for Medicare fee-for-service beneficiaries through an accountable care organization (referred to in this section as an “ACO”); and

(B) ACOs that meet quality performance standards established by the Secretary are eligible to receive payments for shared savings under subsection (d)(2).

(b) Eligible ACOs

(1) In general

Subject to the succeeding provisions of this subsection, as determined appropriate by the Secretary, the following groups of providers of services and suppliers which have established a mechanism for shared governance are eligible to participate as ACOs under the program under this section:

(A) ACO professionals in group practice arrangements.

(B) Networks of individual practices of ACO professionals.

(C) Partnerships or joint venture arrangements between hospitals and ACO professionals.

(D) Hospitals employing ACO professionals.

(E) Such other groups of providers of services and suppliers as the Secretary determines appropriate.

(2) Requirements

An ACO shall meet the following requirements:

(A) The ACO shall be willing to become accountable for the quality, cost, and overall care of the Medicare fee-for-service beneficiaries assigned to it.

(B) The ACO shall enter into an agreement with the Secretary to participate in the program for not less than a 3-year period (referred to in this section as the “agreement period”).

(C) The ACO shall have a formal legal structure that would allow the organization to receive and distribute payments for shared savings under subsection (d)(2) to participating providers of services and suppliers.

(D) The ACO shall include primary care ACO professionals that are sufficient for the number of Medicare fee-for-service beneficiaries assigned to the ACO under subsection (c). At a minimum, the ACO shall have at least 5,000 such beneficiaries assigned to it under subsection (c) in order to be eligible to participate in the ACO program.

(E) The ACO shall provide the Secretary with such information regarding ACO professionals participating in the ACO as the Secretary determines necessary to support the assignment of Medicare fee-for-service beneficiaries to an ACO, the implementation of quality and other reporting requirements under paragraph (3), and the determination of payments for shared savings under subsection (d)(2).

(F) The ACO shall have in place a leadership and management structure that includes clinical and administrative systems.

(G) The ACO shall define processes to promote evidence-based medicine and patient engagement, report on quality and cost measures, and coordinate care, such as through the use of telehealth, remote patient monitoring, and other such enabling technologies.

(H) The ACO shall demonstrate to the Secretary that it meets patient-centeredness criteria specified by the Secretary, such as the use of patient and caregiver assessments or the use of individualized care plans.

(3) Quality and other reporting requirements

(A) In general

The Secretary shall determine appropriate measures to assess the quality of care furnished by the ACO, such as measures of—

(i) clinical processes and outcomes;

(ii) patient and, where practicable, caregiver experience of care; and

(iii) utilization (such as rates of hospital admissions for ambulatory care sensitive conditions).

(B) Reporting requirements

An ACO shall submit data in a form and manner specified by the Secretary on measures the Secretary determines necessary for the ACO to report in order to evaluate the quality of care furnished by the ACO. Such data may include care transitions across health care settings, including hospital discharge planning and post-hospital discharge follow-up by ACO professionals, as the Secretary determines appropriate.

(C) Quality performance standards

The Secretary shall establish quality performance standards to assess the quality of care furnished by ACOs. The Secretary shall seek to improve the quality of care furnished by ACOs over time by specifying higher standards, new measures, or both for purposes of assessing such quality of care.

(D) Other reporting requirements

The Secretary may, as the Secretary determines appropriate, incorporate reporting
requirements and incentive payments related to the physician quality reporting initiative (PQRI) under section 1395w–4 of this title, including such requirements and such payments related to electronic prescribing, electronic health records, and other similar initiatives under section 1395w–4 of this title, and may use alternative criteria than would otherwise apply under such section for determining whether to make such payments. The incentive payments described in the preceding sentence shall not be taken into consideration when calculating any payments otherwise made under subsection (d).

(4) No duplication in participation in shared savings programs
A provider of services or supplier that participates in any of the following shall not be eligible to participate in an ACO under this section:
(A) A model tested or expanded under section 1315a of this title that involves shared savings under this subchapter, or any other program or demonstration project that involves such shared savings.
(B) The independence at home medical practice pilot program under section 1395cc–5 of this title.

(c) Assignment of Medicare fee-for-service beneficiaries to ACOs
The Secretary shall determine an appropriate method to assign Medicare fee-for-service beneficiaries to an ACO based on their utilization of primary care services provided under this subchapter by an ACO professional described in subsection (h)(1)(A).

(d) Payments and treatment of savings

(1) Payments
(A) In general
Under the program, subject to paragraph (3), payments shall continue to be made to providers of services and suppliers participating in an ACO under the original Medicare fee-for-service program under parts A and B in the same manner as they would otherwise be made except that a participating ACO is eligible to receive payment for shared savings under paragraph (2) if—
(i) the ACO meets quality performance standards under subsection (b)(3); and
(ii) the ACO meets the requirement under subparagraph (B)(i).

(B) Savings requirement and benchmark
(i) Determining savings
In each year of the agreement period, an ACO shall be eligible to receive payment for shared savings under paragraph (2) only if the estimated average per capita Medicare expenditures under the ACO for Medicare fee-for-service beneficiaries for parts A and B services, adjusted for beneficiary characteristics, is at least the percent specified by the Secretary below the applicable benchmark under clause (ii). The Secretary shall determine the appropriate percent described in the preceding sentence to account for normal variation in expenditures under this subchapter, based upon the number of Medicare fee-for-service beneficiaries assigned to an ACO.

(ii) Establish and update benchmark
The Secretary shall estimate a benchmark for each agreement period for each ACO using the most recent available 3 years of per-beneficiary expenditures for parts A and B services for Medicare fee-for-service beneficiaries assigned to the ACO. Such benchmark shall be adjusted for beneficiary characteristics and such other factors as the Secretary determines appropriate and updated by the projected absolute amount of growth in national per capita expenditures for parts A and B services under the original Medicare fee-for-service program, as estimated by the Secretary. Such benchmark shall be reset at the start of each agreement period.

(2) Payments for shared savings
Subject to performance with respect to the quality performance standards established by the Secretary under subsection (b)(3), if an ACO meets the requirements under paragraph (1), a percent (as determined appropriate by the Secretary) of the difference between such estimated average per capita Medicare expenditures in a year, adjusted for beneficiary characteristics, under the ACO and such benchmark for the ACO may be paid to the ACO as shared savings and the remainder of such difference shall be retained by the program under this subchapter. The Secretary shall establish limits on the total amount of shared savings that may be paid to an ACO under this paragraph.

(3) Monitoring avoidance of at-risk patients
If the Secretary determines that an ACO has taken steps to avoid patients at risk in order to reduce the likelihood of increasing costs to the ACO the Secretary may impose an appropriate sanction on the ACO, including termination from the program.

(4) Termination
The Secretary may terminate an agreement with an ACO if it does not meet the quality performance standards established by the Secretary under subsection (b)(3).

(e) Administration
Chapter 35 of title 44 shall not apply to the program.

(f) Waiver authority
The Secretary may waive such requirements of sections 1320a–7a and 1320a–7b of this title and this subchapter as may be necessary to carry out the provisions of this section.

(g) Limitations on review
There shall be no administrative or judicial review under section 1395ff of this title, section 1395oo of this title, or otherwise of—
(1) the specification of criteria under subsection (a)(1)(B); and
(2) the assessment of the quality of care furnished by an ACO and the establishment of performance standards under subsection (b)(3);
(3) the assignment of Medicare fee-for-service beneficiaries to an ACO under subsection (c);
(4) the determination of whether an ACO is eligible for shared savings under subsection (d)(2) and the amount of such shared savings, including the determination of the estimated average per capita Medicare expenditures under the ACO for Medicare fee-for-service beneficiaries assigned to the ACO and the average benchmark for the ACO under subsection (d)(1)(B);
(5) the percent of shared savings specified by the Secretary under subsection (d)(2) and any limit on the total amount of shared savings established by the Secretary under such subsection; and
(6) the termination of an ACO under subsection (d)(4).

(h) Definitions

In this section:

(1) ACO professional

The term “ACO professional” means—
(A) a physician (as defined in section 1395x(r)(1) of this title); and
(B) a practitioner described in section 1395u(b)(18)(C)(i) of this title.

(2) Hospital

The term “hospital” means a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title).

(3) Medicare fee-for-service beneficiary

The term “Medicare fee-for-service beneficiary” means an individual who is enrolled in the original Medicare fee-for-service program under parts A and B and is not enrolled in an MA plan under part C, an eligible organization under section 1395mm of this title, or a PACE program under section 1395eee of this title.

(i) Option to use other payment models

(1) In general

If the Secretary determines appropriate, the Secretary may use any of the payment models described in paragraph (2) or (3) for making payments under the program rather than the payment model described in subsection (d).

(2) Partial capitation model

(A) In general

Subject to subparagraph (B), a model described in this paragraph is a partial capitation model in which an ACO is at financial risk for some, but not all, of the items and services covered under parts A and B and is not enrolled in an MA plan under part C, an eligible organization under section 1395mm of this title, or a PACE program under section 1395eee of this title.

(B) No additional program expenditures

Payments to an ACO for items and services under this subchapter for beneficiaries for a year under the partial capitation model shall be established in a manner that does not result in spending more for such ACO for such beneficiaries than would otherwise be expended for such ACO for such beneficiaries for such year if the model were not implemented, as estimated by the Secretary.

(3) Other payment models

(A) In general

Subject to subparagraph (B), a model described in this paragraph is any payment model that the Secretary determines will improve the quality and efficiency of items and services furnished under this subchapter.

(B) No additional program expenditures

Subparagraph (B) of paragraph (2) shall apply to a payment model under subparagraph (A) in a similar manner as such subparagraph (B) applies to the payment model under paragraph (2).

(j) Involvement in private payer and other third party arrangements

The Secretary may give preference to ACOs who are participating in similar arrangements with other payers.

(k) Treatment of physician group practice demonstration

During the period beginning on March 23, 2010, and ending on the date the program is established, the Secretary may enter into an agreement with an ACO under the demonstration under section 1395cc–1 of this title, subject to rebasing and other modifications deemed appropriate by the Secretary.


REFERENCES IN TEXT

Parts A, B, and C, referred to in text, are classified to sections 1395c et seq., 1395j et seq., and 1395w–21 et seq., respectively, of this title.

AMENDMENTS

2010—Subsecs. (i) to (k). Pub. L. 111–148, §10307, added subsecs. (i) to (k).

§1395kkk. Independent Payment Advisory Board

(a) Establishment

There is established an independent board to be known as the “Independent Payment Advisory Board”.

(b) Purpose

It is the purpose of this section to, in accordance with the following provisions of this section, reduce the per capita rate of growth in Medicare spending—
(1) by requiring the Chief Actuary of the Centers for Medicare & Medicaid Services to determine in each year to which this section applies (in this section referred to as “a determination year”) the projected per capita growth rate under Medicare for the second year following the determination year (in this section referred to as an “implementation year”);
(2) if the projection for the implementation year exceeds the target growth rate for that
year, by requiring the Board to develop and submit during the first year following the determination year (in this section referred to as “a proposal year”) a proposal containing recommendations to reduce the Medicare per capita growth rate to the extent required by this section; and

(3) by requiring the Secretary to implement such proposals unless Congress enacts legislation pursuant to this section.

(c) Board proposals

(1) Development

(A) In general

The Board shall develop detailed and specific proposals related to the Medicare program in accordance with the succeeding provisions of this section.

(B) Advisory reports

Beginning January 15, 2014, the Board may develop and submit to Congress advisory reports on matters related to the Medicare program, regardless of whether or not the Board submitted a proposal for such year. Such a report may, for years prior to 2020, include recommendations regarding improvements to payment systems for providers of services and suppliers who are not otherwise subject to the scope of the Board’s recommendations in a proposal under this section. Any advisory report submitted under this subparagraph shall not be subject to the rules for congressional consideration under subsection (d). In any year (beginning with 2014) that the Board is not required to submit a proposal under this section, the Board shall submit to Congress an advisory report on matters related to the Medicare program.

(2) Proposals

(A) Requirements

Each proposal submitted under this section in a proposal year shall meet each of the following requirements:

(i) If the Chief Actuary of the Centers for Medicare & Medicaid Services has made a determination under paragraph (7)(A) in the determination year, the proposal shall include recommendations so that the proposal as a whole (after taking into account recommendations under clause (v)) will result in a net reduction in total Medicare program spending in the implementation year that is at least equal to the applicable savings target established under paragraph (7)(B) for such implementation year. In determining whether a proposal meets the requirement of the preceding sentence, reductions in Medicare program spending during the 3-month period immediately preceding the implementation year shall be counted to the extent that such reductions are a result of the implementation of recommendations contained in the proposal for a change in the payment rate for an item or service that was effective during such period pursuant to subsection (e)(2)(A).

(ii) The proposal shall not include any recommendation to ration health care, raise revenues or Medicare beneficiary premiums under section 1395i-2, 1395i-2a, or 1395r of this title, increase Medicare beneficiary cost-sharing (including deductibles, coinsurance, and copayments), or otherwise restrict benefits or modify eligibility criteria.

(iii) In the case of proposals submitted prior to December 31, 2018, the proposal shall not include any recommendation that would reduce payment rates for items and services furnished, prior to December 31, 2019, by providers of services (as defined in section 1395x(u) of this title) and suppliers (as defined in section 1395x(d) of this title) scheduled, pursuant to the amendments made by section 3401 of the Patient Protection and Affordable Care Act, to receive a reduction to the inflationary payment updates of such providers of services and suppliers in excess of a reduction due to productivity in a year in which such recommendations would take effect.

(iv) As appropriate, the proposal shall include recommendations to reduce Medicare payments under parts C and D, such as reductions in direct subsidy payments to Medicare Advantage and prescription drug plans specified under paragraph (1) and (2) of section 1395w–115(a) of this title that are related to administrative expenses (including profits) for basic coverage, denying high bids or removing high bids for prescription drug coverage from the calculation of the national average monthly bid amount under section 1395w–113(a)(4) of this title, and reductions in payments to Medicare Advantage plans under clauses (i) and (ii) of section 1395w–23(a)(1)(B) of this title that are related to administrative expenses (including profits) and performance bonuses for Medicare Advantage plans under section 1395w–23(n) of this title. Any such recommendation shall not affect the base beneficiary premium percentage specified under 1395w–113(a) of this title or the full premium subsidy under section 1395w–114(a) of this title.

(v) The proposal shall include recommendations with respect to administrative funding for the Secretary to carry out the recommendations contained in the proposal.

(vi) The proposal shall only include recommendations related to the Medicare program.

(vii) If the Chief Actuary of the Centers for Medicare & Medicaid Services has made a determination described in subsection (e)(3)(B)(i)(II) in the determination year, the proposal shall be designed to help reduce the growth rate described in paragraph (8) while maintaining or enhancing beneficiary access to quality care under this subchapter.
(B) Additional considerations
In developing and submitting each proposal under this section in a proposal year, the Board shall, to the extent feasible—
(i) give priority to recommendations that extend Medicare solvency;
(ii) include recommendations that—
(I) improve the health care delivery system and health outcomes, including by promoting integrated care, care coordination, prevention and wellness, and quality and efficiency improvement; and
(II) protect and improve Medicare beneficiaries’ access to necessary and evidence-based items and services, including in rural and frontier areas;
(iii) include recommendations that target reductions in Medicare program spending to sources of excess cost growth;
(iv) consider the effects on Medicare beneficiaries of changes in payments to providers of services (as defined in section 1395x(u) of this title) and suppliers (as defined in section 1395x(d) of this title);
(v) consider the effects of the recommendations on providers of services and suppliers with actual or projected negative cost margins or payment updates;
(vi) consider the unique needs of Medicare beneficiaries who are dually eligible for Medicare and the Medicaid program under subchapter XIX; and
(vii) take into account the data and findings contained in the annual reports under subsection (n) in order to develop proposals that can most effectively promote the delivery of efficient, high quality care to Medicare beneficiaries.

(C) No increase in total Medicare program spending
Each proposal submitted under this section shall be designed in such a manner that implementation of the recommendations contained in the proposal would not be expected to result, over the 10-year period starting with the implementation year, in any increase in the total amount of net Medicare program spending relative to the total amount of net Medicare program spending that would have occurred absent such implementation.

(D) Consultation with MEDPAC
The Board shall submit a draft copy of each proposal to be submitted under this section to the Medicare Payment Advisory Commission established under section 1395b–6 of this title for its review. The Board shall submit such draft copy by not later than September 1 of the determination year.

(E) Review and comment by the Secretary
The Board shall submit a draft copy of each proposal to be submitted to Congress under this section to the Secretary for the Secretary’s review and comment. The Board shall submit such draft copy by not later than September 1 of the determination year. Not later than March 1 of the submission year, the Secretary shall submit a report to Congress on the results of such review, unless the Secretary submits a proposal under paragraph (5)(A) in that year.

(F) Consultations
In carrying out its duties under this section, the Board shall engage in regular consultations with the Medicaid and CHIP Payment and Access Commission under section 1395 of this title.

(3) Submission of Board proposal to Congress and the President
(A) In general

(i) In general
Except as provided in clause (ii) and subsection (f)(3)(B), the Board shall submit a proposal under this section to Congress and the President on January 15 of each year (beginning with 2014).  

(ii) Exception
The Board shall not submit a proposal under clause (i) in a proposal year if the year is—
(I) a year for which the Chief Actuary of the Centers for Medicare & Medicaid Services makes a determination in the determination year under paragraph (6)(A) that the growth rate described in clause (i) of such paragraph does not exceed the growth rate described in clause (ii) of such paragraph; or
(II) a year in which the Chief Actuary of the Centers for Medicare & Medicaid Services makes a determination in the determination year that the projected percentage increase (if any) for the medical care expenditure category of the Consumer Price Index for All Urban Consumers (United States city average) for the implementation year is less than the projected percentage increase (if any) in the Consumer Price Index for All Urban Consumers (all items; United States city average) for such implementation year.

(iii) Start-up period
The Board may not submit a proposal under clause (i) prior to January 15, 2014.

(B) Required information
Each proposal submitted by the Board under subparagraph (A)(i) shall include—
(i) the recommendations described in paragraph (2)(A)(i);
(ii) an explanation of each recommendation contained in the proposal and the reasons for including such recommendation;
(iii) an actuarial opinion by the Chief Actuary of the Centers for Medicare & Medicaid Services certifying that the proposal meets the requirements of subparagraphs (A)(i) and (C) of paragraph (2);
(iv) a legislative proposal that implements the recommendations; and
(v) other information determined appropriate by the Board.

(4) Presidential submission to Congress
Upon receiving a proposal from the Secretary under paragraph (5), the President shall
(5) Contingent secretarial development of proposal

If, with respect to a proposal year, the Board is required, but fails, to submit a proposal to Congress and the President by the deadline applicable under paragraph (3)(A)(i), the Secretary shall develop a detailed and specific proposal that satisfies the requirements of subparagraphs (A) and (C) (and, to the extent feasible, subparagraph (B)) of paragraph (2) and contains the information required paragraph (3)(B). By not later than January 25 of the year, the Secretary shall transmit—

(A) such proposal to the President; and
(B) a copy of such proposal to the Medicare Payment Advisory Commission for its review.

(6) Per capita growth rate projections by Chief Actuary

(A) In general

Subject to subsection (f)(3)(A), not later than April 30, 2013, and annually thereafter, the Chief Actuary of the Centers for Medicare & Medicaid Services shall determine in each such year whether—

(i) the projected Medicare per capita growth rate for the implementation year (as determined under subparagraph (B)); and
(ii) the projected Medicare per capita target growth rate for the implementation year (as determined under subparagraph (C)).

(B) Medicare per capita growth rate

(i) In general

For purposes of this section, the Medicare per capita growth rate for an implementation year shall be calculated as the projected 5-year average (ending with such year) of the growth in Medicare program spending (calculated as the sum of per capita spending under each of parts A, B, and D).

(ii) Requirement

The projection under clause (i) shall—

(I) to the extent that there is projected to be a negative update to the single conversion factor applicable to payments for physicians’ services under section 1395w–4(d) of this title furnished in the proposal year or the implementation year, assume that such update for such services is 0 percent rather than the negative percent that would otherwise apply; and
(II) take into account any delivery system reforms or other payment changes that have been enacted or published in final rules but not yet implemented as of the making of such calculation.

(C) Medicare per capita target growth rate

For purposes of this section, the Medicare per capita target growth rate for an implementation year shall be calculated as the projected 5-year average (ending with such year) percentage increase in—

(i) with respect to a determination year that is prior to 2018, the average of the projected percentage increase (if any) in—

(I) the Consumer Price Index for All Urban Consumers (all items; United States city average); and
(II) the medical care expenditure category of the Consumer Price Index for All Urban Consumers (United States city average); and

(ii) with respect to a determination year that is after 2017, the nominal gross domestic product per capita plus 1.0 percentage point.

(7) Savings requirement

(A) In general

If, with respect to a determination year, the Chief Actuary of the Centers for Medicare & Medicaid Services makes a determination under paragraph (6)(A) that the growth rate described in clause (i) of such paragraph exceeds the growth rate described in clause (ii) of such paragraph, the Chief Actuary shall establish an applicable savings target for the implementation year.

(B) Applicable savings target

For purposes of this section, the applicable savings target for an implementation year shall be an amount equal to the product of—

(i) the total amount of projected Medicare program spending for the proposal year; and
(ii) the applicable percent for the implementation year.

(C) Applicable percent

For purposes of subparagraph (B), the applicable percent for an implementation year is the lesser of—

(i) in the case of—

(I) implementation year 2015, 0.5 percent;
(II) implementation year 2016, 1.0 percent;
(III) implementation year 2017, 1.25 percent; and
(IV) implementation year 2018 or any subsequent implementation year, 1.5 percent; and

(ii) the projected excess for the implementation year (expressed as a percent) determined under subparagraph (A).

(8) Per capita rate of growth in national health expenditures

In each determination year (beginning in 2018), the Chief Actuary of the Centers for Medicare & Medicaid Services shall project the per capita rate of growth in national health expenditures for the implementation year. Such rate of growth for an implementation year shall be calculated as the projected 5-year average (ending with such year) percentage increase in national health care expenditures.

(d) Congressional consideration

(1) Introduction

(A) In general

On the day on which a proposal is submitted by the Board or the President to the
House of Representatives and the Senate under subsection (c)(3)(A)(i) or subsection (c)(4), the legislative proposal (described in subsection (c)(3)(B)(iv)) contained in the proposal shall be introduced (by request) in the Senate by the majority leader of the Senate or by Members of the Senate designated by the majority leader of the Senate and shall be introduced (by request) in the House by the majority leader of the House or by Members of the House designated by the majority leader of the House.

(B) **Not in session**

If either House is not in session on the day on which such legislative proposal is submitted, the legislative proposal shall be introduced in that House, as provided in subparagraph (A), on the first day thereafter on which that House is in session.

(C) **Any Member**

If the legislative proposal is not introduced in either House within 5 days on which that House is in session after the day on which the legislative proposal is submitted, then any Member of that House may introduce the legislative proposal.

(D) **Referral**

The legislation introduced under this paragraph shall be referred by the Presiding Officers of the respective Houses to the Committee on Finance in the Senate and to the Committee on Energy and Commerce and the Committee on Ways and Means in the House of Representatives.

(2) **Committee consideration of proposal**

(A) **Reporting bill**

Not later than April 1 of any proposal year in which a proposal is submitted by the Board or the President to Congress under this section, the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate may report the bill referred to the Committee under paragraph (1)(D) with committee amendments related to the Medicare program.

(B) **Calculations**

In determining whether a committee amendment meets the requirement of subparagraph (A), the reductions in Medicare program spending during the 3-month period immediately preceding the implementation year shall be counted to the extent that such reductions are a result of the implementation provisions in the committee amendment for a change in the payment rate for an item or service that was effective during such period pursuant to such amendment.

(C) **Committee jurisdiction**

Notwithstanding rule XV of the Standing Rules of the Senate, a committee amendment described in subparagraph (A) may include matter not within the jurisdiction of the Committee on Finance if that matter is relevant to a proposal contained in the bill submitted under subsection (c)(3).

(D) **Discharge**

If, with respect to the House involved, the committee has not reported the bill by the date required by subparagraph (A), the committee shall be discharged from further consideration of the proposal.

(3) **Limitation on changes to the Board recommendations**

(A) **In general**

It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, or amendment, pursuant to this subsection or conference report thereon, that fails to satisfy the requirements of subparagraphs (A)(i) and (C) of subsection (c)(2).

(B) **Limitation on changes to the Board recommendations in other legislation**

It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, or conference report (other than pursuant to this section) that would repeal or otherwise change the recommendations of the Board if that change would fail to satisfy the requirements of subparagraphs (A)(i) and (C) of subsection (c)(2).

(C) **Limitation on changes to this subsection**

It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, or conference report that would repeal or otherwise change this subsection.

(D) **Waiver**

This paragraph may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

(E) **Appeals**

An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this paragraph.

(4) **Expedit ed procedure**

(A) **Consideration**

A motion to proceed to the consideration of the bill in the Senate is not debatable.

(B) **Amendment**

(i) **Time limitation**

Debate in the Senate on any amendment to a bill under this section shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill, and debate on any amendment to an amendment, debatable motion, or appeal shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the bill, except that in the event the manager of the bill is in favor of any such amendment, motion, or appeal, the time in opposition thereto shall be controlled by the minority leader or such leader's designee.

(ii) **Germane**

No amendment that is not germane to the provisions of such bill shall be received.
(iii) Additional time
The leaders, or either of them, may, from the time under their control on the passage of the bill, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

(iv) Amendment not in order
It shall not be in order to consider an amendment that would cause the bill to result in a net reduction in total Medicare program spending in the implementation year that is less than the applicable savings target established under subsection (c)(7)(B) for such implementation year.

(v) Waiver and appeals
This paragraph may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

(C) Consideration by the other House

(i) In general
The expedited procedures provided in this subsection for the consideration of a bill introduced pursuant to paragraph (1) shall not apply to such a bill that is received by one House from the other House if such a bill was not introduced in the receiving House.

(ii) Before passage
If a bill that is introduced pursuant to paragraph (1) is received by one House from the other House, after introduction but before disposition of such a bill in the receiving House, then the following shall apply:

(1) The receiving House shall consider the bill introduced in that House through all stages of consideration up to, but not including, passage.
(2) The question on passage shall be put on the bill of the other House as amended by the language of the receiving House.

(iii) After passage
If a bill introduced pursuant to paragraph (1) is received by one House from the other House, after such a bill is passed by the receiving House, then the vote on passage of the bill that originates in the receiving House shall be considered to be the vote on passage of the bill received from the other House as amended by the language of the receiving House.

(iv) Disposition
Upon disposition of a bill introduced pursuant to paragraph (1) that is received by one House from the other House, it shall no longer be in order to consider the bill that originates in the receiving House.

(v) Limitation
Clauses (ii), (iii), and (iv) shall apply only to a bill received by one House from the other House if the bill—

(I) is related only to the program under this subchapter; and
(II) satisfies the requirements of subparagraphs (A)(i) and (C) of subsection (c)(2).

(D) Senate limits on debate

(i) In general
In the Senate, consideration of the bill and on all debatable motions and appeals in connection therewith shall not exceed a total of 30 hours, which shall be divided equally between the majority and minority leaders or their designees.

(ii) Motion to further limit debate
A motion to further limit debate on the bill is in order and is not debatable.

(iii) Motion or appeal
Any debatable motion or appeal is debatable for not to exceed 1 hour, to be divided equally between those favoring and those opposing the motion or appeal.

(iv) Final disposition
After 30 hours of consideration, the Senate shall proceed, without any further debate on any question, to vote on the final disposition thereof to the exclusion of all amendments not then pending before the Senate at that time and to the exclusion of all motions, except a motion to table, or to reconsider and one quorum call on demand to establish the presence of a quorum (and motions required to establish a quorum) immediately before the final vote begins.

(E) Consideration in conference

(i) In general
Consideration in the Senate and the House of Representatives on the conference report or any messages between Houses shall be limited to 10 hours, equally divided and controlled by the majority and minority leaders of the Senate or their designees and the Speaker of the House of Representatives and the minority leader of the House of Representatives or their designees.

(ii) Time limitation
Debate in the Senate on any amendment under this subparagraph shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill, and debate on any amendment to an amendment, debatable motion, or appeal shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the bill, except that in the event the manager of the bill is in favor of any such amendment, motion, or appeal, the time in opposition thereto shall be controlled by the minority leader or such leader's designee.

(iii) Final disposition
After 10 hours of consideration, the Senate shall proceed, without any further de-
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bate on any question, to vote on the final disposition thereof to the exclusion of all motions not then pending before the Senate at that time or necessary to resolve the differences between the Houses and to the exclusion of all other motions, except a motion to table, or to reconsider and one quorum call on demand to establish the presence of a quorum (and motions required to establish a quorum) immediately before the final vote begins.

(iv) Limitation

Clauses (i) through (iii) shall only apply to a conference report, message or the amendments thereto if the conference report, message, or an amendment thereto—

(I) is related only to the program under this subchapter; and

(II) satisfies the requirements of subparagraphs (A)(1) and (C) of subsection (c)(2).

(F) Veto

If the President vetoes the bill debate on a veto message in the Senate under this section shall be 1 hour equally divided between the majority and minority leaders or their designees.

(5) Rules of the Senate and House of Representatives

This subsection and subsection (f)(2) are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of bill under this section, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(e) Implementation of proposal

(1) In general

Notwithstanding any other provision of law, the Secretary shall, except as provided in paragraph (3), implement the recommendations contained in a proposal submitted by the Board or the President to Congress pursuant to this section if—

(i) prior to August 15 of the proposal year, Federal legislation is enacted that includes the following provision: “This Act supersedes the recommendations of the Board contained in the proposal submitted, in the year which includes the date of enactment of this Act, to Congress under section 1899A of the Social Security Act.”; and

(ii) in the case of implementation year 2020 and subsequent implementation years, a joint resolution described in subsection (c)(1) is enacted not later than August 15, 2017.

(B) Limited additional exception

(i) In general

Subject to clause (ii), the Secretary shall not implement the recommendations contained in a proposal submitted by the Board or the President to Congress pursuant to this section if—

(I) the Board was required to submit a proposal to Congress under this section in the year preceding the proposal year; and

(II) the Chief Actuary of the Centers for Medicare & Medicaid Services makes a determination in the determination year that the growth rate described in subsection (c)(8) exceeds the growth rate described in subsection (c)(6)(A)(i).

(ii) Limited additional exception may not be applied in two consecutive years

This subparagraph shall not apply if the recommendations contained in a proposal submitted by the Board or the President to
Congress pursuant to this section in the year preceding the proposal year were not required to be implemented by reason of this subparagraph.

(iii) No affect on requirement to submit proposals or for congressional consideration of proposals
Clause 5 (i) and (ii) shall not affect—
(I) the requirement of the Board or the President to submit a proposal to Congress in a proposal year in accordance with the provisions of this section; or
(II) Congressional consideration of a legislative proposal (described in subsection (c)(3)(B)(iv)) contained such a proposal in accordance with subsection (d).

(4) No affect on authority to implement certain provisions
Nothing in paragraph (3) shall be construed to affect the authority of the Secretary to implement any recommendation contained in a proposal or advisory report under this section to the extent that the Secretary otherwise has the authority to implement such recommendation administratively.

(5) Limitation on review
There shall be no administrative or judicial review under section 1395ff of this title, subdivision (B) which does not have a preamble; or
section 1395kkk of this title, or otherwise of the implementation by the Secretary under this subsection of the recommendations contained in a proposal.

(f) Joint resolution required to discontinue the Board
(1) In general
For purposes of subsection (e)(3)(B), a joint resolution described in this paragraph means only a joint resolution—
(A) that is introduced in 2017 by not later than February 1 of such year;
(B) which does not have a preamble;
(C) the title of which is as follows: “Joint resolution approving the discontinuation of the process for consideration and automatic implementation of the annual proposal of the Independent Payment Advisory Board under section 1899A of the Social Security Act”; and
(D) the matter after the resolving clause of which is as follows: “That Congress approves the discontinuation of the process for consideration and automatic implementation of the annual proposal of the Independent Payment Advisory Board under section 1899A of the Social Security Act.”.

(2) Procedure
(A) Referral
A joint resolution described in paragraph (1) shall be referred to the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate.

(B) Discharge
In the Senate, if the committee to which is referred a joint resolution described in para-
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graph (1), that House receives from the other House a joint resolution described in paragraph (1), then the following procedures shall apply:

(i) The joint resolution of the other House shall not be referred to a committee.
(ii) With respect to a joint resolution described in paragraph (1) of the House receiving the joint resolution—
   (I) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but
   (II) the vote on final passage shall be on the joint resolution of the other House.

(E) Excluded days

For purposes of determining the period specified in subparagraph (B), there shall be excluded any days either House of Congress is adjourned for more than 3 days during a session of Congress.

(F) Majority required for adoption

A joint resolution considered under this subsection shall require an affirmative vote of three-fifths of the Members, duly chosen and sworn, for adoption.

(3) Termination

If a joint resolution described in paragraph (1) is enacted not later than August 15, 2017—
(A) the Chief Actuary of the Medicare & Medicaid Services shall not—
   (i) make any determinations under subsection (c)(6) after May 1, 2017; or
   (ii) provide any opinion pursuant to subsection (c)(3)(B)(iii) after January 16, 2018;
(B) the Board shall not submit any proposals, advisory reports, or advisory recommendations under this section or produce the public report under subsection (n) after January 16, 2018; and
(C) the Board and the consumer advisory council under subsection (k) shall terminate on August 16, 2018.

(g) Board membership; terms of office; Chairperson; removal

(1) Membership

(A) In general
The Board shall be composed of—
(i) 15 members appointed by the President, by and with the advice and consent of the Senate; and
(ii) the Secretary, the Administrator of the Center for Medicare & Medicaid Services, and the Administrator of the Health Resources and Services Administration, all of whom shall serve ex officio as nonvoting members of the Board.

(B) Qualifications

(i) In general
The appointed membership of the Board shall include individuals with national recognition for their expertise in health finance and economics, actuarial science, health facility management, health plans and integrated delivery systems, reimbursement of health facilities, allopathic and osteopathic physicians, and other providers of health services, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives.

(ii) Inclusion
The appointed membership of the Board shall include (but not be limited to) physicians and other health professionals, experts in the area of pharmaco-economics or prescription drug benefit programs, employers, third-party payers, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research and expertise in outcomes and effectiveness research and technology assessment. Such membership shall also include representatives of consumers and the elderly.

(iii) Majority nonproviders
Individuals who are directly involved in the provision or management of the delivery of items and services covered under this subchapter shall not constitute a majority of the appointed membership of the Board.

(C) Ethical disclosure

The President shall establish a system for public disclosure by appointed members of the Board of financial and other potential conflicts of interest relating to such members. Appointed members of the Board shall be treated as officers in the executive branch for purposes of applying title I of the Ethics in Government Act of 1978 (Public Law 95–521).

(D) Conflicts of interest

No individual may serve as an appointed member if that individual engages in any other business, vocation, or employment.

(E) Consultation with Congress

In selecting individuals for nominations for appointments to the Board, the President shall consult with—
(i) the majority leader of the Senate concerning the appointment of 3 members;
(ii) the Speaker of the House of Representatives concerning the appointment of 3 members;
(iii) the minority leader of the Senate concerning the appointment of 3 members; and
(iv) the minority leader of the House of Representatives concerning the appointment of 3 members.

(2) Term of office

Each appointed member shall hold office for a term of 6 years except that—
(A) a member may not serve more than 2 full consecutive terms (but may be reappointed to 2 full consecutive terms after being appointed to fill a vacancy on the Board);
(B) a member appointed to fill a vacancy occurring prior to the expiration of the term
for which that member’s predecessor was appointed shall be appointed for the remainder of such term;

(C) a member may continue to serve after the expiration of the member’s term until a successor has taken office; and

(D) of the members first appointed under this section, 5 shall be appointed for a term of 1 year, 5 shall be appointed for a term of 3 years, and 5 shall be appointed for a term of 6 years, the term of each to be designated by the President at the time of nomination.

(3) Chairperson

(A) In general
The Chairperson shall be appointed by the President, by and with the advice and consent of the Senate, from among the members of the Board.

(B) Duties
The Chairperson shall be the principal executive officer of the Board, and shall exercise all of the executive and administrative functions of the Board, including functions of the Board with respect to—

(i) the appointment and supervision of personnel employed by the Board;

(ii) the distribution of business among personnel appointed and supervised by the Chairperson and among administrative units of the Board; and

(iii) the use and expenditure of funds.

(C) Governance
In carrying out any of the functions under subparagraph (B), the Chairperson shall be governed by the general policies established by the Board and by the decisions, findings, and determinations the Board shall by law be authorized to make.

(D) Requests for appropriations
Requests or estimates for regular, supplemental, or deficiency appropriations on behalf of the Board may not be submitted by the Chairperson without the prior approval of a majority vote of the Board.

(4) Removal
Any appointed member may be removed by the President for neglect of duty or malfeasance in office, but for no other cause.

(b) Vacancies; quorum; seal; Vice Chairperson; voting on reports

(1) Vacancies
No vacancy on the Board shall impair the right of the remaining members to exercise all the powers of the Board.

(2) Quorum
A majority of the appointed members of the Board shall constitute a quorum for the trans- action of business, but a lesser number of members may hold hearings.

(3) Seal
The Board shall have an official seal, of which judicial notice shall be taken.

(4) Vice Chairperson
The Board shall annually elect a Vice Chairperson to act in the absence or disability of the Chairperson or in case of a vacancy in the office of the Chairperson.

(5) Voting on proposals
Any proposal of the Board must be approved by the majority of appointed members present.

(i) Powers of the Board

(1) Hearings
The Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board considers advisable to carry out this section.

(2) Authority to inform research priorities for data collection
The Board may advise the Secretary on priorities for health services research, particularly as such priorities pertain to necessary changes and issues regarding payment reforms under Medicare.

(3) Obtaining official data
The Board may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairperson, the head of that department or agency shall furnish that information to the Board on an agreed upon schedule.

(4) Postal services
The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(5) Gifts
The Board may accept, use, and dispose of gifts or donations of services or property.

(6) Offices
The Board shall maintain a principal office and such field offices as it determines necessary, and may meet and exercise any of its powers at any other place.

(j) Personnel matters

(1) Compensation of members and Chairperson
Each appointed member, other than the Chairperson, shall be compensated at a rate equal to the annual rate of basic pay prescribed for level III of the Executive Schedule under section 5315 of title 5. The Chairperson shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level II of the Executive Schedule under section 5315 of title 5.

(2) Travel expenses
The appointed members shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the Board.

(3) Staff

(A) In general
The Chairperson may, without regard to the civil service laws and regulations, ap-
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point and terminate an executive director and such other additional personnel as may be necessary to enable the Board to perform its duties. The employment of an executive director shall be subject to confirmation by the Board.

(B) Compensation

The Chairperson may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5 relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(4) Detail of Government employees

Any Federal Government employee may be detailed to the Board without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(5) Procurement of temporary and intermittent services

The Chairperson may procure temporary and intermittent services under section 3109(b) of title 5 at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(k) Consumer advisory council

(1) In general

There is established a consumer advisory council to advise the Board on the impact of payment policies under this subchapter on consumers.

(2) Membership

(A) Number and appointment

The consumer advisory council shall be composed of 10 consumer representatives appointed by the Comptroller General of the United States, 1 from among each of the 10 regions established by the Secretary as of March 23, 2010.

(B) Qualifications

The membership of the council shall represent the interests of consumers and particular communities.

(3) Duties

The consumer advisory council shall, subject to the call of the Board, meet not less frequently than 2 times each year in the District of Columbia.

(4) Open meetings

Meetings of the consumer advisory council shall be open to the public.

(5) Election of officers

Members of the consumer advisory council shall elect their own officers.

(6) Application of FACA

The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the consumer advisory council except that section 14 of such Act shall not apply.

(l) Definitions

In this section:

(1) Board; Chairperson; Member

The terms “Board”, “Chairperson”, and “Member” mean the Independent Payment Advisory Board established under subsection (a) and the Chairperson and any Member thereof, respectively.

(2) Medicare

The term “Medicare” means the program established under this subchapter, including parts A, B, C, and D.

(3) Medicare beneficiary

The term “Medicare beneficiary” means an individual who is entitled to, or enrolled for, benefits under part A or enrolled for benefits under part B.

(4) Medicare program spending

The term “Medicare program spending” means program spending under parts A, B, and D net of premiums.

(m) Funding

(1) In general

There are appropriated to the Board to carry out its duties and functions—

(A) for fiscal year 2012, $15,000,000; and

(B) for each subsequent fiscal year, the amount appropriated under this paragraph for the previous fiscal year increased by the annual percentage increase in the Consumer Price Index for All Urban Consumers (all items; United States city average) as of June of the previous fiscal year.

(2) From trust funds

Sixty percent of amounts appropriated under paragraph (1) shall be derived by transfer from the Federal Hospital Insurance Trust Fund under section 1395i of this title and 40 percent of amounts appropriated under such paragraph shall be derived by transfer from the Federal Supplementary Medical Insurance Trust Fund under section 1395t of this title.

(n) Annual public report

(1) In general

Not later than July 1, 2014, and annually thereafter, the Board shall produce a public report containing standardized information on system-wide health care costs, patient access to care, utilization, and quality-of-care that allows for comparison by region, types of services, types of providers, and both private payers and the program under this subchapter.

(2) Requirements

Each report produced pursuant to paragraph (1) shall include information with respect to the following areas:

(A) The quality and costs of care for the population at the most local level determined practical by the Board (with quality and costs compared to national benchmarks and reflecting rates of change, taking into account quality measures described in section 1395aaa(b)(7)(B) of this title).

(B) Beneficiary and consumer access to care, patient and caregiver experience of
care, and the cost-sharing or out-of-pocket burden on patients.

(C) Epidemiological shifts and demographic changes.

(D) The proliferation, effectiveness, and utilization of health care technologies, including variation in provider practice patterns and costs.

(E) Any other areas that the Board determines affect overall spending and quality of care in the private sector.

(o) Advisory recommendations for non-Federal health care programs

(1) In general

Not later than January 15, 2015, and at least once every two years thereafter, the Board shall submit to Congress and the President recommendations to slow the growth in national health expenditures (excluding expenditures under this subchapter and in other Federal health care programs) while preserving or enhancing quality of care, such as recommendations—

(A) that the Secretary or other Federal agencies can implement administratively;

(B) that may require legislation to be enacted by Congress in order to be implemented;

(C) that may require legislation to be enacted by State or local governments in order to be implemented;

(D) that private sector entities can voluntarily implement; and

(E) with respect to other areas determined appropriate by the Board.

(2) Coordination

In making recommendations under paragraph (1), the Board shall coordinate such recommendations with recommendations contained in proposals and advisory reports produced by the Board under subsection (c).

(3) Available to public

The Board shall make recommendations submitted to Congress and the President under this subsection available to the public.


REFERENCES IN TEXT


AMENDMENTS

2010—Subsec. (c)(1)(B). Pub. L. 111–148, § 10320(a)(1)(A), inserted at end “in any year (beginning with 2014) that the Board is not required to submit a proposal under this section, the Board shall submit to Congress an advisory report on matters related to the Medicare program—


Subsec. (c)(3)(A)(ii). Pub. L. 111–148, § 10320(a)(1)(D)(i), inserted “submit a proposal under this section to Congress and the President’’ for “transmit a proposal under this section to Congress’’.

Subsec. (c)(3)(A)(ii). Pub. L. 111–148, § 10320(a)(1)(D)(ii), substituted “submit a proposal under this section to Congress and the President’’ for “transmit a proposal under this section to the President’’.

Subsec. (c)(3)(A)(ii). Pub. L. 111–148, § 10320(a)(1)(D)(ii), inserted “or at end of subc. (I), substituted a period for ‘;’ or’’ at end of subc. (II), and struck out subc. (III), which read as follows: ‘‘for proposal year 2019 and subsequent proposal years, a year in which the Chief Actuary of the Centers for Medicare & Medicaid Services makes a determination in the determination year that the growth rate described in paragraph (8) exceeds the growth rate described in paragraph (6)(A)(i).’’

Subsec. (c)(4). Pub. L. 111–148, § 10320(a)(1)(E), struck out “the Board under paragraph (3)(A)(i) or’’ before “the Secretary’’ and substituted “within 2 days’’ for “immediately’’.

Subsec. (c)(5). Pub. L. 111–148, § 10320(a)(1)(F), in introductory provisions, substituted “but’’ for “to but’’ and inserted “Congress and’’ after “submit a proposal to’’.

Subsec. (d)(1)(B). Pub. L. 111–148, § 10320(a)(2)(A), inserted “the Board or’’ after “a proposal is submitted by’’ and “subsections (c)(3)(A)(i) or’’ after “the Senate under’’.


Subsec. (e)(3). Pub. L. 111–148, § 10320(a)(3)(B), substituted “Exceptions’’ for “Exception’’ in par. heading, designated existing provisions as subpar. (A) and inserted heading, substituted “The Secretary shall not implement the recommendations contained in a proposal submitted in a proposal year by the Board or’’ for “The Secretary shall not be required to implement the
recommendations contained in a proposal submitted in a proposal year by", redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A) and realigned margin subpar. (B). Subsec. (f)(3)(B). Pub. L. 111–148, §10320(a)(4), substituted ‘‘, advisory reports, or advisory recommendations’’ for ‘‘or advisory reports to Congress’’ and inserted ‘‘or produce the public report under subsection (n)’’ after ‘‘this section’’. Subsecs. (n), (o). Pub. L. 111–148, §10320(a)(5), added subsecs. (n) and (o).

CHANGE OF NAME
Pub. L. 111–148, title X, §10320(b), Mar. 23, 2010, 124 Stat. 952, provided that: ‘‘Nothing in the amendments made by this section and section 1395kkk–1 of this title and amending section 1395b–6 of this title and section 207 of Title 18, Crimes and Criminal Procedure (as added by subsection (a)), substituted for ‘‘Independent Medicare Advisory Board’’ shall be deemed to be a reference to the ‘‘Independent Payment Advisory Board’’.’’

CONSTRUCTION
Pub. L. 111–148, title X, §10320(c), Mar. 23, 2010, 124 Stat. 952, provided that: ‘‘Nothing in the amendments made by this section (amending this section) shall preclude the Independent Medicare Advisory Board (now Independent Payment Advisory Board, as established under section 1899A of the Social Security Act (as added by section 3403) (42 U.S.C. 1395kkk), from solely using data from public or private sources to carry out the amendments made by subsection (a)(4).’’

§1395kkk–1. GAO study and report on determination and implementation of payment and coverage policies under the Medicare program

(1) Initial study and report

(A) Study

The Comptroller General of the United States (in this section referred to as the ‘‘Comptroller General’’) shall conduct a study on changes to payment policies, methodolo-
gies, and rates and coverage policies and methodologies under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) as a result of the recom-
mendations contained in the proposals made by the Independent Payment Advisory Board under section 1899A of such Act (42 U.S.C. 1395kkk) (as added by subsection (a)), including an analysis of the effect of such recom-
mendations on—

(i) Medicare beneficiary access to provid-
ers and items and services;

(ii) the affordability of Medicare premiums and cost-sharing (including deductibles, co-
insurance, and copayments);

(iii) the potential impact of changes on other government or private-sector pur-
chasers and payers of care; and

(iv) quality of patient care, including pa-
tient experience, outcomes, and other mea-

sures of care.

(B) Report

Not later than July 1, 2015, the Comptroller General shall submit to Congress a report con-
taining the results of the study conducted under subparagraph (A), together with recom-
mendations for such legislation and administra-
tive action as the Comptroller General de-
termines appropriate.

(2) Subsequent studies and reports

The Comptroller General shall periodically conduct such additional studies and submit re-
ports to Congress on changes to Medicare pay-
ments policies, methodologies, and rates and coverage policies and methodologies as the Comptroller General determines appropriate, in consultation with the Committee on Ways and Means and the Committee on Energy and Com-
merce of the House of Representatives and the Committee on Finance of the Senate.


REFERENCES IN TEXT

The Social Security Act, referred to in par. (1)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XVIII of the Act is classified generally to this subchapter. For com-
plete classification of this Act to the Code, see section 1395 of this title and Tables.

Subsection (a), referred to in par. (1)(A), means subsection (a) of section 3403 of Pub. L. 111–148, which enacted section 1390kkkk of this title and amended section 207 of Title 18, Crimes and Criminal Procedure.

CHARGE OF NAME

‘‘Independent Payment Advisory Board’’ substituted for ‘‘Independent Medicare Advisory Board’’ on author-
ity of section 10320(b) of Pub. L. 111–148, set out as a note under section 1395kkk of this title.

SUBCHAPTER XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

§1396. Medicaid and CHIP Payment and Access Commission

(a) Establishment

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

(b) Duties

(1) Review of access policies for all States and annual reports

MACPAC shall—

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

(B) make recommendations to Congress, the Secretary, and States concerning such access policies;

(C) by not later than March 15 of each year (beginning with 2010), submit a report to Congress containing the results of such re-
views and MACPAC’s recommendations con-
cerning such policies; and

(D) by not later than June 15 of each year (beginning with 2010), submit a report to
Congress containing an examination of issues affecting Medicaid and CHIP, including the implications of changes in health care delivery in the United States and in the market for health care services on such programs.

(2) Specific topics to be reviewed
Specifically, MACPAC shall review and assess the following:

(A) Medicaid and CHIP payment policies
Payment policies under Medicaid and CHIP, including—

(i) the factors affecting expenditures for the efficient provision of items and services in different sectors, including the process for updating payments to medical, dental, and health professionals, hospitals, residential and long-term care providers, providers of home and community based services, Federally-qualified health centers and rural health clinics, managed care entities, and providers of other covered items and services;

(ii) payment methodologies; and

(iii) the relationship of such factors and methodologies to access and quality of care for Medicaid and CHIP beneficiaries (including how such factors and methodologies enable such beneficiaries to obtain the services for which they are eligible, affect provider supply, and affect providers that serve a disproportionate share of low-income and other vulnerable populations).

(B) Eligibility policies
Medicaid and CHIP eligibility policies, including a determination of the degree to which Federal and State policies provide health care coverage to needy populations.

(C) Enrollment and retention processes
Medicaid and CHIP enrollment and retention processes, including a determination of the degree to which Federal and State policies encourage the enrollment of individuals who are eligible for such programs and screen out individuals who are ineligible, while minimizing the share of program expenses devoted to such processes.

(D) Coverage policies
Medicaid and CHIP benefit and coverage policies, including a determination of the degree to which Federal and State policies provide access to the services enrollees require to improve and maintain their health and functional status.

(E) Quality of care
Medicaid and CHIP policies as they relate to the quality of care provided under those programs, including a determination of the degree to which Federal and State policies achieve their stated goals and interact with similar goals established by other purchasers of health care services.

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

(G) Interactions with Medicare and Medicaid
Consistent with paragraph (11), the interaction of policies under Medicaid and the Medicare program under subchapter XVIII, including with respect to how such interactions affect access to services, payments, and dual eligible individuals.

(H) Other access policies
The effect of other Medicaid and CHIP policies on access to covered items and services, including policies relating to transportation and language barriers and preventive, acute, and long-term services and supports.

(3) Recommendations and reports of State-specific data
MACPAC shall—

(A) review national and State-specific Medicaid and CHIP data; and

(B) submit reports and recommendations to Congress, the Secretary, and States based on such reviews.

(4) Creation of early-warning system
MACPAC shall create an early-warning system to identify provider shortage areas, as well as other factors that adversely affect, or have the potential to adversely affect, access to care by, or the health care status of, Medicaid and CHIP beneficiaries. MACPAC shall include in the annual report required under paragraph (1)(D) a description of all such areas or problems identified with respect to the period addressed in the report.

(5) Comments on certain secretarial reports and regulations

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

(B) Regulations
MACPAC shall review Medicaid and CHIP regulations and may comment through submission of a report to the appropriate committees of Congress and the Secretary, on any such regulations that affect access, quality, or efficiency of health care.

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

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

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

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

(10) Examination of budget consequences
Before making any recommendations, MACPAC shall examine the budget consequences of such recommendations, directly or through consultation with appropriate expert entities, and shall submit with any recommendations, a report on the Federal and State-specific budget consequences of the recommendations.

(11) Consultation and coordination with MEDPAC
(A) In general
MACPAC shall consult with the Medicare Payment Advisory Commission (in this paragraph referred to as “MedPAC”) established under section 1395b–6 of this title in carrying out its duties under this section, as appropriate and particularly with respect to the issues specified in paragraph (2) as they relate to those Medicaid beneficiaries who are dually eligible for Medicare and the Medicare program under subchapter XVIII, adult Medicaid beneficiaries (who are not dually eligible for Medicare), and beneficiaries under Medicare. Responsibility for analysis of and recommendations to change Medicare policy regarding Medicare beneficiaries, including Medicare beneficiaries who are dually eligible for Medicare and Medicaid, shall rest with MedPAC.

(B) Information sharing
MACPAC and MedPAC shall have access to deliberations and records of the other such entity, respectively, upon the request of the other such entity.

(12) Consultation with States
MACPAC shall regularly consult with States in carrying out its duties under this section, including with respect to developing processes for carrying out such duties, and shall ensure that input from States is taken into account and represented in MACPAC’s recommendations and reports.

(13) Coordinate and consult with the Federal Coordinated Health Care Office
MACPAC shall coordinate and consult with the Federal Coordinated Health Care Office established under section 20811 of the Patient Protection and Affordable Care Act before making any recommendations regarding dual eligible individuals.

(14) Programmatic oversight vested in the Secretary
MACPAC’s authority to make recommendations in accordance with this section shall not affect, or be considered to duplicate, the Secretary’s authority to carry out Federal responsibilities with respect to Medicaid and CHIP.

(c) Membership
(1) Number and appointment
MACPAC shall be composed of 17 members appointed by the Comptroller General of the United States.

(2) Qualifications
(A) In general
The membership of MACPAC shall include individuals who have had direct experience as enrollees or parents or caregivers of enrollees in Medicaid or CHIP and individuals with national recognition for their expertise in Federal safety net health programs, health finance and economics, actuarial science, health plans and integrated delivery systems, reimbursement for health care, health information technology, and other providers of health services, public health, and other related fields, who provide a mix of different professions, broad geographic representation, and a balance between urban and rural representation.

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

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

1 See References in Text note below.
(D) Ethical disclosure

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

(3) Terms

(A) In general

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

(B) Vacancies

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

(4) Compensation

While serving on the business of MACPAC (including travel time), a member of MACPAC shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 335 of title 5; and while so serving away from home and the member’s regular place of business, a member may be allowed travel expenses, as authorized by the Chairman of MACPAC. Physicians serving as personnel of MACPAC may be provided a physician comparability allowance by MACPAC in the same manner as Government physicians may be provided such an allowance by an agency under section 5948 of title 5, and for such purpose subsection (i) of such section shall apply to MACPAC in the same manner as it applies to the Tennessee Valley Authority. For purposes of pay (other than pay of members of the Tennessee Valley Authority), the provisions of title 5 governing appointments in the competitive service; and

(5) Chairman; Vice Chairman

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

(6) Meetings

MACPAC shall meet at the call of the Chairman.

(d) Director and staff; experts and consultants

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

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

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

(3) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of MACPAC (without regard to section 6101 of title 41);

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

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

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

(e) Powers

(1) Obtaining official data

MACPAC may secure directly from any department or agency of the United States and, as a condition for receiving payments under sections 1396b(a) and 1397ee(a) of this title, from any State agency responsible for administering Medicaid or CHIP, information necessary to enable it to carry out this section. Upon request of the Chairman, the head of that department or agency shall furnish that information to MACPAC on an agreed upon schedule.

(2) Data collection

In order to carry out its functions, MACPAC shall—

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

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

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

(3) Access of GAO to information

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

(4) Periodic audit

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

(f) Funding

(1) Request for appropriations

MACPAC shall submit requests for appropriations (other than for fiscal year 2010) in
the same manner as the Comptroller General of the United States submits requests for appropriations, but amounts appropriated for MACPAC shall be separate from amounts appropriated for the Comptroller General of the United States.

(2) Authorization

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

(3) Funding for fiscal year 2010

(A) In general

Out of any funds in the Treasury not otherwise appropriated, there is appropriated to MACPAC to carry out the provisions of this section for fiscal year 2010, $9,000,000.

(B) Transfer of funds

Notwithstanding section 1397dd(a)(13) of this title, from the amounts appropriated in such section for fiscal year 2010, $2,000,000 is hereby transferred and made available in such fiscal year to MACPAC to carry out the provisions of this section.

(4) Availability

Amounts made available under paragraphs (2) and (3) to MACPAC to carry out the provisions of this section shall remain available until expended.


Subsec. (b)(2)(A)(ii). Pub. L. 111–148, §2801(a)(1)(B)(ii), inserted “(including how such factors and methodologies enable such beneficiaries to obtain the services for which they are eligible, affect provider supply, and affect providers that serve a disproportionate share of low-income and other vulnerable populations)” after “CHIP beneficiaries”.

Subsec. (b)(2)(B) to (H). Pub. L. 111–148, §2801(a)(1)(B)(ii)–(v), added subpars. (B) to (E) and (G), redesignated former subpars. (B) and (C) as (F) and (H), respectively, and, in subpar. (H), inserted “and preventive, acute, and long-term services and supports” after “barriers”.


Subsec. (b)(4), Pub. L. 111–148, §2801(a)(1)(C), redesignated par. (3) as (4) and substituted “, as well as other factors that adversely affect, or have the potential to adversely affect, access to care by, or the health care status of, Medicaid and CHIP beneficiaries, MACPAC shall include in the annual report required under paragraph (1)(D) a description of all such areas or problems identified with respect to the period addressed in the report.” for “or any other problems that threaten access to care or the health care status of Medicaid and CHIP beneficiaries.” Former par. (4) redesignated (5).

Subsec. (b)(5), Pub. L. 111–148, §2801(a)(1)(C), redesignated par. (4) as (5), inserted “and regulations” after “reports” in heading, designated existing provisions as subpar. (A) and inserted heading. inserted “and the Secretary” after “appropriate committees of Congress” in subpar. (A), and added subpar. (B). Former par. (5) redesignated (6).

Subsec. (b)(6) to (10). Pub. L. 111–148, §2801(a)(1)(C), (G), redesignated pars. (9) to (3) as (6) to (10), respectively, and inserted “, and shall submit with any recommendations, a report on the Federal and State-specific budget consequences of the recommendations” in par. (10) before period at end.


Subsec. (c)(2)(A), (B), Pub. L. 111–148, §2801(a)(2)(A), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which related to MACPAC membership qualifications.


Subsec. (e)(1), Pub. L. 111–148, §2801(a)(4), inserted “and, as a condition for receiving payments under sections 1396b(a) and 1397ee(a) of this title, from any State agency responsible for administering Medicaid or CHIP,” after “United States”.

Subsec. (f), Pub. L. 111–148, §2801(a)(5), substituted “Funding” for “Authorization of appropriations” in heading, inserted “(other than for fiscal year 2010)” before “in the same manner” in par. (1), and added pars. (3) and (4).

Effective Date

Pub. L. 111–3, §3, Feb. 4, 2009, 123 Stat. 10, provided that:
“(a) GENERAL EFFECTIVE DATE.—Unless otherwise provided in this Act [enacting this section and sections 247d-9, 13208–9a, 1396e–1, 1396w–2, and 1397kk to 1397ffmm of this title and section 6575 of Title 15, Commerce and Trade, transferring former section 1396 of this title to section 1396–1 of this title, amending sections 306gg, 1308, 13208–9, 13208–9a, 1396a, 1396b, 1396r–1, 1396r–4, 1396w–2, 1396w–4, 1396w–6, 1397bb to 1397jjj of this title, section 1514 of Title 19, Customs Duties, sections 5701 to 5705, 5712, 5713, 5721 to 5723, 5741, 6103, and 9801 of Title 26, Internal Revenue Code, and sections 1022, 1132, and 1181 of Title 29, Labor, enacting provisions set out as notes under section 1396g of this title, and sections 1396a, 1396d, 1396u–7, 1396u–8, 1396w–2, 1397bb to 1397ee, 1397gg, and 1397hh of this title, section 1514 of Title 19, sections 5701 to 5703, 5712, 5713, 6103, and 6655 of Title 26, and section 1181 of Title 29, amending provisions set out as a note under section 1397gg of this title, and repealing provisions set out as notes under sections 1397aa and 1397ee of this title, subject to subsections (b) through (d), this Act (and the amendments made by this Act) shall take effect on April 1, 2009, and shall apply to child health assistance and medical assistance provided on or after that date.

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

“(c) COORDINATION OF CHIP FUNDING FOR FISCAL YEAR 2009.—Notwithstanding any other provision of law, insofar as funds have been appropriated under section 219(a)(11), 219(f), or 219(l) of the Social Security Act [section 1397dd(a)(11), (k), (l) of this title], as amended by section 201 of Public Law 110–173, to provide allotments to States under CHIP for fiscal year 2009—

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

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

“(d) RELIANCE ON LAW.—With respect to amendments made by this Act (other than title VII) [enacting this section and sections 12308–9a, 1396e–1, 1396w–2, and 1397kk to 1397ffmm of this title, amending sections 219(a)(11), 219(f), or 219(l) of the Social Security Act [section 1397dd(a)(11), (k), (l) of this title], as amended by section 201 of Public Law 110–173, to provide allotments to States under CHIP for fiscal year 2009—

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

“(2) Federal financial participation for medical assistance or child health assistance furnished under title XIX or XXI, respectively, of the Social Security Act [this subchapter and subchapter XXI of this chapter] on or after such date by a State in good faith reliance on such amendments before the date of promulgation of final regulations, if any, to carry out such amendments (or before the date of guidance, if any, regarding the implementation of such amendments) shall not be denied on the basis of the State’s failure to comply with such regulations or guidance.”

PURPOSE

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

MODEL OF INTERSTATE COORDINATED ENROLLMENT AND COVERAGE PROCESS


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

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

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


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

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

DEADLINE FOR INITIAL APPOINTMENTS

Pub. L. 111–3, title V, § 506(b), Feb. 4, 2009, 123 Stat. 96, provided that: “Not later than January 1, 2010, the Comptroller General of the United States shall appoint the initial members of the Medicaid and CHIP Payment and Access Commission established under section 1900 of the Social Security Act [this section] (as added by subsection (a)).”

ANNUAL REPORT

Pub. L. 111–3, title V, § 506(c), Feb. 4, 2009, 123 Stat. 95, provided that: “Not later than January 1, 2010, and an-
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unnually thereafter, the Secretary (of Health and Human Services), in consultation with the Secretary of the Treasury, the Secretary of Labor, and the States (as defined for purposes of Medicaid), shall submit an annual report to Congress on the financial status of, enrollment in, and spending trends for, Medicaid for the fiscal year ending on September 30 of the preceding year.

NO FEDERAL FUNDING FOR ILLEGAL ALIENS:

Disallowance for Unauthorized Expenditures


DEFINITIONS

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

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

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

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

§ 1396–1. Appropriations

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


CODIFICATION

Section was formerly classified to section 1396 of this title.

AMENDMENTS


1973–Pub. L. 93–233 substituted ‘‘disabled individuals’’ for ‘‘permanently and totally disabled individuals’’.

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective with respect to payments under section 1396b of this title for calendar quarters commencing after Dec. 31, 1973, see section 13(a) of Pub. L. 93–233, set out as a note under section 1396a of this title.

§ 1396a. State plans for medical assistance

(a) Contents

A State plan for medical assistance must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State equal to not less than 40 per centum of the non-Federal share of the expenditures under the plan with respect to which payments under section 1396b of this title are authorized by this subchapter; and, effective July 1, 1969, provide for financial participation by the State equal to all of such non-Federal share or provide for distribution of funds from Federal or State sources, for carrying out the State plan, on an equalization or other basis which will assure that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan;

(3) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness;

(4) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods, and including provision for utilization of professional medical personnel in the administration and, where administered locally, supervision of administration of the plan) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency, (C) that each State or local officer, employee, or independent contractor who is responsible for the expenditure of substantial amounts of funds under the State plan, each individual who formerly was such an officer, employee, or contractor, and each partner of such an officer, employee, or contractor, and each person of such an officer, employee, or contractor, and each person of such an officer, employee, or contractor shall be prohibited from committing any act, in relation to any activity under the plan, the commission of which, in connection with any activity concerning the United States Government, by an
officer or employee of the United States Government, an individual who was such an officer or employee, or a partner of such an officer or employee is prohibited by section 207 or 208 of title 18, and (D) that each State or local officer, employee, or independent contractor who is responsible for selecting, awarding, or otherwise obtaining items and services under the State plan shall be subject to safeguards against conflicts of interest that are at least as stringent as the safeguards that apply under chapter 21 of title 41 to persons described in section 2102(a)(3) of title 41:

(5) either provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan; or provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan, except that the determination of eligibility for medical assistance under the plan shall be made by the State or local agency administering the State plan approved under subchapter I or XVI of this chapter (insofar as it relates to the aged) if the State is eligible to participate in the State plan program established under subchapter XVI of this chapter, or by the agency or agencies administering the supplemental security income program established under subchapter XVI or the State plan approved under part A of subchapter IV of this chapter if the State is not eligible to participate in the State plan program established under subchapter XVI of this chapter, or by the agency or agencies administering the State plan approved under part A of subchapter IV of this chapter if the State is not eligible to participate in the State plan program established under subchapter XVI of this chapter;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide—

(A) safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with—

(i) the administration of the plan; and

(ii) the exchange of information necessary to certify or verify the certification of eligibility of children for free or reduced price lunches under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] and free or reduced price breakfasts under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.]

and

in accordance with section 9(b) of that Act [42 U.S.C. 1758(b)], using data standards and formats established by the State agency; and

(B) that, notwithstanding the Express Lane option under subsection (e)(13), the State may enter into an agreement with the State agency administering the school lunch program established by the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.], in accordance with section 9(b) of that Act [42 U.S.C. 1758(b)], and

(8) provide—

(A) for making medical assistance available, including at least the care and services listed in paragraphs (1) through (6), (15), (21), and (28) of section 1396d(a) of this title, to—

(i) all individuals—

(I) who are receiving aid or assistance under any plan of the State approved

revision required by such section, as determined without regard to any expense, block, or other income disregard, applicable to a family of the size involved, may be certified as eligible for free lunches under the Richard B. Russell National School Lunch Act and free breakfasts under the Child Nutrition Act of 1966 without further application; and

(ii) the State agencies responsible for administering the State plan under this subchapter, and for carrying out the school lunch program established under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.] or the school breakfast program established by section 4 of the Child Nutrition Act of 1966 [42 U.S.C. 1773], cooperate in carrying out paragraphs (9)(F) and (15) of section 9(b) of that Act [42 U.S.C. 1758(b)];

(B) for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards, other than those relating to health, for such institutions,

(C) that any laboratory services paid for under such plan must be provided by a laboratory which meets the applicable requirements of section 1395x(e)(9) of this title or paragraphs (16) and (17) of section 1395x(s) of this title, or, in the case of a laboratory which is in a rural health clinic, of section 1395x(aa)(2)(G) of this title, and

(D) that the State maintain a consumer-oriented website providing useful information to consumers regarding all skilled nursing facilities and all nursing facilities in the State, including for each facility, Form 2567 State inspection reports (or a successor form), complaint investigation reports, the facility’s plan of correction, and such other information that the State or the Secretary considers useful in assisting the public to assess the quality of long term care options and the quality of care provided by individual facilities;

(10) provide—

(A) for making medical assistance available, including at least the care and services listed in paragraphs (1) through (6), (15), (21), and (28) of section 1396d(a) of this title, to—

(i) all individuals—

(I) who are receiving aid or assistance under any plan of the State approved
under subchapter I, X, XIV, or XVI of this chapter, or part A or part E of subchapter IV of this chapter (including individuals eligible under this subchapter by reason of section 602(a)(37), 606(h), or 673(b) of this title, or considered by the State to be receiving such aid as authorized under section 682(e)(6) of this title), (II)(aa) with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter (or being paid as of the date of the enactment of section 211(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) and would continue to be paid but for the enactment of that section), (bb) who are qualified severely impaired individuals (as defined in section 1396d(q) of this title), or (cc) who are under 21 years of age and with respect to whom supplemental security income benefits would be paid under subchapter XVI if subparagraphs (A) and (B) of section 1396d(3)(2)(C) of this title were applied without regard to the phrase “the first day of the month following”, (III) who are qualified pregnant women or children as defined in section 1396d(m)(1) of this title, (IV) who are described in subparagraph (A) or (B) of subsection (h)(1) of this section and whose family income does not exceed the minimum income level the State is required to establish under subsection (i)(2)(A) of this section for such a family; (V) who are qualified family members as defined in section 1396d(m)(1) of this title, (VI) who are described in subparagraph (C) of subsection (h)(1) of this section and whose family income does not exceed the income level the State is required to establish under subsection (i)(2)(B) of this section for such a family, (VII) who are described in subparagraph (D) of subsection (h)(1) of this section and whose family income does not exceed the income level the State is required to establish under subsection (i)(2)(C) of this section for such a family; or (VIII) beginning January 1, 2014, who are under 65 years of age, not pregnant, not entitled to, or enrolled for, benefits under part A of subchapter XVIII, or enrolled for benefits under part B of subchapter XVIII, and are not described in a previous clause of this clause, and whose income (as determined under subsection (e)(14)) does not exceed 133 percent of the poverty line (as defined in section 1397jj(c)(5) of this title) applicable to a family of the size involved, subject to subsection (k);

(ii) at the option of the State, to any group or groups of individuals described in section 1396d(a) of this title (or, in the case of individuals described in section 1396d(a)(1) of this title, to any reasonable categories of such individuals) who are not individuals described in clause (i) of this subparagraph but— (I) who meet the income and resources requirements of the appropriate State plan described in clause (i) or the supplemental security income program (as the case may be), (II) who would meet the income and resources requirements of the appropriate State plan described in clause (i) if their work-related child care costs were paid from their earnings rather than by a State agency as a service expenditure, (III) who would be eligible to receive aid under the appropriate State plan described in clause (i) if coverage under such plan was as broad as allowed under Federal law, (IV) with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them, aid or assistance under the appropriate State plan described in clause (i), supplemental security income benefits under subchapter XVI of this chapter, or a State supplementary payment; (V) who are in a medical institution for a period of not less than 30 consecutive days (with eligibility by reason of this subclause beginning on the first day of such period), who meet the resource requirements of the appropriate State plan described in clause (i) or the supplemental security income program, and whose income does not exceed a separate income standard established by the State which is consistent with the limit established under section 1396b(f)(4)(C) of this title, (VI) who would be eligible under the State plan under this subchapter if they were in a medical institution, with respect to whom there has been a determination that but for the provision of home or community-based services described in subsection (c), (d), or (e) of section 1396n of this title they would require the level of care provided in a hospital, nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan, and who will receive home or community-based services pursuant to a waiver granted by the Secretary under subsection (c), (d), or (e) of section 1396n of this title, (VII) who would be eligible under the State plan under this subchapter if they were in a medical institution, who are terminally ill, and who will receive hospice care pursuant to a voluntary election described in section 1396d(o) of this title;
(VIII) who is a child described in section 1396d(a)(1)(a) of this title—

(aa) for whom there is in effect an adoption assistance agreement (other than an agreement under part E of subchapter IV of this chapter) between the State and an adoptive parent or parents,

(bb) who the State agency responsible for adoption assistance has determined cannot be placed with adoptive parents without medical assistance because such child has special needs for medical or rehabilitative care, and

(cc) who was eligible for medical assistance under the State plan prior to the adoption assistance agreement being entered into, or who would have been eligible for medical assistance at such time if the eligibility standards and methodologies of the State’s foster care program under part E of subchapter IV of this chapter were applied rather than the eligibility standards and methodologies of the State’s aid to families with dependent children program under part A of subchapter IV of this chapter; 2

(IX) who are described in subsection (b)(1) of this section and are not described in clause (i)(IV), clause (i)(VI), or clause (i)(VII); 2

(X) who are described in subsection (m)(1) of this section; 2

(XI) who receive only an optional State supplementary payment based on need and paid on a regular basis, equal to the difference between the individual’s countable income and the income standard used to determine eligibility for such supplementary payment (with countable income being the income remaining after deductions as established by the State) for families with dependent children program under subchapter XVI of this chapter), which are available to all individuals in the State (but which may be based on different income standards by political subdivision according to cost of living differences), and which are paid by a State that does not have an agreement with the Commissioner of Social Security under section 1396e or 1396c of this title; 2

(XII) who are described in subsection (z)(1) of this section (relating to certain TB-infected individuals); 2

(XIII) who are in families whose income is less than 250 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9002(2) of this title) applicable to a family of the size involved, and who but for earnings in excess of the limit established under section 1396d(q)(2)(B) of this title, would be considered to be receiving supplemental security income (subject, notwithstanding section 1396o of this title, to payment of premiums or other cost-sharing charges (set on a sliding scale based on income) that the State may determine); 2

(XIV) who are optional targeted low-income children described in section 1396d(u)(2)(B) of this title; 2

(XV) who, but for earnings in excess of the limit established under section 1396d(q)(2)(B) of this title, would be considered to be receiving supplemental security income, who is at least 16, but less than 65, years of age, and whose assets, resources, and earned or unearned income (or both) do not exceed such limitations (if any) as the State may establish; 2

(XVI) who are employed individuals with a medically improved disability described in section 1396d(v)(1) of this title and whose assets, resources, and earned or unearned income (or both) do not exceed such limitations (if any) as the State may establish, but only if the State provides medical assistance to individuals described in subclause (V); 2

(XVII) who are independent foster care adolescents (as defined in section 1396d(w)(1) of this title), or who are within any reasonable categories of such adolescents specified by the State; 2

(XVIII) who are described in subsection (aa) of this section (relating to certain breast or cervical cancer patients); 2

(XIX) who are disabled children described in subsection (cc)(1); 2

(XX) beginning January 1, 2014, who are under 65 years of age and are not described in or enrolled under a previous subclause of this clause, and whose income (as determined under subsection (e)(14)) exceeds 133 percent of the poverty line (as defined in section 1397(j)(c)(5) of this title) applicable to a family of the size involved but does not exceed the highest income eligibility level established under the State plan or under a waiver of the plan, subject to subsection (hh); 2

(XXI) who are described in subsection (ii) (relating to individuals who meet certain income standards); 2 or

(XXII) who are eligible for home and community-based services under need-based criteria established under paragraph (1)(A) of section 1396m(i) of this title, or who are eligible for home and community-based services under paragraph (6) of such section, and who will receive home and community-based services pursuant to a State plan amendment under such subsection;

(B) that the medical assistance made available to any individual described in subparagraph (A)—

(i) shall not be less in amount, duration, or scope than the medical assistance made available to any other such individual, and

(ii) shall not be less in amount, duration, or scope than the medical assistance made available to individuals not described in subparagraph (A);
(C) that if medical assistance is included for any group of individuals described in section 1396d(a) of this title who are not described in subparagraph (A) or (E), then—

(i) the plan must include a description of the criteria for determining eligibility of individuals in the group for such medical assistance, (II) the amount, duration, and scope of medical assistance made available to individuals in the group, and (III) the single standard to be employed in determining income and resource eligibility for all such groups, and the methodology to be employed in determining such eligibility, which shall be no more restrictive than the methodology which would be employed under the appropriate State plan (described in subparagraph (A)(i)) to which such group is most closely categorically related in the case of other groups;

(ii) the plan must make available medical assistance—

(I) to individuals under the age of 18 who (but for income and resources) would be eligible for medical assistance as an individual described in subparagraph (A)(i), and

(II) to pregnant women, during the course of their pregnancy, who (but for income and resources) would be eligible for medical assistance as an individual described in subparagraph (A); and

(iii) such medical assistance must include (I) with respect to children under 18 and individuals entitled to institutional services, ambulatory services, and (II) with respect to pregnant women, prenatal care and delivery services; and

(iv) if such medical assistance includes services in institutions for mental diseases or in an intermediate care facility for the mentally retarded (or both) for any such group, it also must include for all groups covered at least the care and services listed in any 7 of the paragraphs numbered (1) through (24) of such section;

(D) for the inclusion of home health services for any individual who, under the State plan, is entitled to nursing facility services;

(E)(i) for making medical assistance available for medicare cost-sharing (as defined in subsection (u)(2) of this title) to qualified medicare beneficiaries described in section 1396d(p)(1) of this title but for the fact that their income exceeds the income level established by the State under section 1396d(p)(2) of this title but is less than 110 percent in 1993 and 1994, and 120 percent in 1995 and years thereafter of the official poverty line (referred to in such section) for a family of the size involved; and

(iv) subject to sections 1396u-3 and 1396d(p)(4) of this title, for making medical assistance available (but only for premiums payable with respect to months during the period beginning March 2012 and ending with February 2012) for medicare cost-sharing described in section 1396d(p)(3)(A)(i) of this title for individuals who would be qualified medicare beneficiaries described in section 1396d(p)(1) of this title but for the fact that their income exceeds the income level established by the State under section 1396d(p)(2) of this title and is at least 120 percent, but less than 135 percent, of the official poverty line (referred to in such section) for a family of the size involved and who are not otherwise eligible for medical assistance under the State plan;

(F) at the option of a State, for making medical assistance available for COBRA premiums (as defined in subsection (u)(2) of this section) for qualified COBRA continuation beneficiaries described in subsection (u)(1) of this section; and

(G) that, in applying eligibility criteria of the supplemental security income program under subchapter XVI of this chapter for purposes of determining eligibility for medical assistance under the State plan of an individual who is not receiving supplemental security income, the State will disregard the provisions of subsections (c) and (e) of section 1382b of this title; except that (I) the making available of the services described in paragraph (4), (14), or (16) of section 1396d(a) of this title to individuals meeting the age requirements prescribed therein shall not, by reason of this paragraph (10), require the making available of any such services, or the making available of such services of the same amount, duration, and scope, to individuals of any other ages, (II) the making available of supplementary medical insurance benefits under part B of subchapter XVIII of this chapter to individuals eligible therefor (either pursuant to an agreement entered into under section 1395v of this title or by reason of the payment of premiums under such subchapter by the State agency on behalf of such individuals), or provision for meeting part or all of the cost of deductibles, cost sharing, or similar charges under part B of subchapter XVIII of this chapter for individuals eligible for benefits under such part, shall not, by reason of this paragraph (10), require the making available of any such benefits, or the making available of services of the same amount, duration, and scope, to any other individuals, (III) the making available of medical assist-
ance equal in amount, duration, and scope to the medical assistance made available to individuals described in clause (A) to any classification of individuals approved by the Secretary with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them, a State supplementary payment shall not, by reason of this paragraph (10), require the making available of any such assistance, or the making available of such assistance of the same amount, duration, and scope, to any other individuals not described in clause (A), (IV) the imposition of a deductible, cost sharing, or similar charge for any item or service furnished to an individual not eligible for the exemption under section 1396a(a)(2) or (b)(2) of this title shall not require the imposition of a deductible, cost sharing, or similar charge for the same item or service furnished to an individual who is eligible for such exemption, (V) the making available of medical assistance for hospice care to terminally ill individuals who have made a voluntary election described in section 1396d(o) of this title to receive hospice care instead of medical assistance for certain other services, such assistance may not be made available in an amount, duration, or scope less than that provided under subchapter XVIII of this chapter, and the making available of such assistance shall not, by reason of this paragraph (10), require the making available of medical assistance for hospice care to other individuals or the making available of medical assistance for services waived by such terminally ill individuals, (VII) the medical assistance made available to an individual described in subsection (b)(1)(A) of this section who is eligible for medical assistance only because of subparagraph (A)(i)(XII) shall be limited to medical assistance for services related to pregnancy (including prenatal, delivery, and postpartum services) or to any other conditions which may complicate pregnancy and (XVII) if an individual described in subsection (e)(9) of this section shall not, by reason of this paragraph (10), require the making available of such services, or the making available of such services of the same amount, duration, and scope, to any individuals not included under subsection (e)(9)(A) of this section, provided such services are made available (in the same amount, duration, and scope) to all individuals described in such subsection, (X) if the plan provides for any fixed duration limit on medical assistance for inpatient hospital services (whether or not such a limit varies by medical condition or diagnosis), the plan must establish exceptions to such a limit for medically necessary inpatient hospital services furnished with respect to individuals under one year of age in a hospital defined under the State plan, pursuant to section 1396a–4(a)(1)(A) of this title, as a disproportionate share hospital and subparagraph (B) (relating to comparability) shall not be construed as requiring such an exception for other individuals, (XII) the medical assistance made available to voluntary election described in section 1396d(a)(4)(D) of this title shall not require the imposition of a deductible, cost sharing, or similar charge for the same item or service furnished to an individual described in subsection (a)(2) or (b)(2) of this title, (IX) the making available of services of the same amount, duration, and scope of such private coverage to any other individuals, (XII) the medical assistance made available to an individual who is eligible for medical assistance only because of subparagraph (F) shall be limited to medical assistance provided during the period in which such an individual requires treatment for breast or cervical cancer and (XV) the medical assistance made available to an individual described in subparagraph (A)(1) of this title including medical diagnosis and treatment services that are provided pursuant to a family planning service in a family planning setting and (XVII) if an individual is described in subclause (IX) of subparagraph (A)(i) and is also described in subclause (VIII) of that subparagraph, the medical assistance shall be made available to the

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individual through subclause (IX) instead of through subclause (VIII);

(11)(A) provide for entering into cooperative arrangements with the State agencies responsible for administering or supervising the administration of health services and vocational rehabilitation services in the State looking toward maximum utilization of such services in the provision of medical assistance under the plan, (B) provide, to the extent prescribed by the Secretary, for entering into agreements, with any agency, institution, or organization in furnishing care and services which are available under such subchapter or allotment and which are included in the State plan approved under this section;

(ii) making such provision as may be appropriate for reimbursing such agency, institution, or organization for the cost of any such care and services furnished any individual for which payment would otherwise be made to the State with respect to the individual under section 1396b of this title, and (iii) providing for coordination of information and education on pediatric vaccinations and delivery of immunization services, and (C) provide for coordination of the operations under this subchapter, including the provision of information and education on pediatric vaccinations and the delivery of immunization services, with the State’s operations under the special supplemental nutrition program for women, infants, and children under section 17 of the Child Nutrition Act of 1966; (2) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(13) provide—

(A) for a public process for determination of rates of payment under the plan for hospital services, nursing facility services, and services of intermediate care facilities for the mentally retarded; (i) proposed rates, the methodologies underlying the establishment of such rates, and justifications for the proposed rates are published,

(ii) providers, beneficiaries and their representatives, and other concerned State residents are given a reasonable opportunity for review and comment on the proposed rates, methodologies, and justifications,

(iii) final rates, the methodologies underlying the establishment of such rates, and justifications for such final rates are published, and

(iv) in the case of hospitals, such rates take into account (in a manner consistent with section 1396b-2 of this title) the situation of hospitals which serve a disproportionate number of low-income patients with special needs;

(B) for payment for hospice care in amounts no lower than the amounts, using the same methodology, used under part A of subchapter XVIII of this chapter and for payment of amounts under section 1396d(o)(3) of this title; except that in the case of hospice care which is furnished to an individual who is a resident of a nursing facility or intermediate care facility for the mentally retarded, and who would be eligible under the plan for nursing facility services or services in an intermediate care facility for the mentally retarded if he had not elected to receive hospice care, there shall be paid an additional amount, to take into account the room and board furnished by the facility, equal to at least 95 percent of the rate that would have been paid by the State under the plan for facility services in that facility for that individual; and

(C) payment for primary care services (as defined in subsection (jj)) furnished in 2013 and 2014 by a physician with a primary specialty designation of family medicine, general internal medicine, or pediatric medicine at a rate not less than the payment rate that applies to such services and physician under part B of subchapter XVIII (or, if greater, the payment rate that would be applicable under such part if the conversion factor under section 1395w-4(d) of this title for the year involved were the conversion factor under such section for 2009);

(14) provide that enrollment fees, premiums, or similar charges, and deductions, cost sharing, or similar charges, may be imposed only as provided in section 1396o of this title;

(15) provide for payment for services described in clause (B) or (C) of section 1396d(a) of this title under the plan in accordance with subsection (bb) of this section;

(16) provide for inclusion, to the extent required by regulations prescribed by the Secretary, of provisions (conforming to such regulations) with respect to the furnishing of medical assistance under the plan to individuals who are residents of the State but are absent therefrom;

(17) except as provided in subsections (e)(14), (1)(3), (m)(3), and (m)(4) of this section, include reasonable standards (which shall be comparable for all groups and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan who are not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter, based on the variations between shelter costs in urban areas and in rural areas) for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this subchapter, (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient and (in the case of any applicant or recipient who would, except for income and resources, be eligible for aid or assistance in the form of
money payments under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV, or to have paid with respect to him supplemental security income benefits under subchapter XVI of this chapter) as would not be disregarded (or set aside for future needs) in determining his eligibility for such aid, assistance, or benefits, (C) provide for reasonable evaluation of any such income or resources, and (D) do not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child who is under age 21 or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter), is blind or permanently and totally disabled, or is blind or disabled as defined in section 1382c of this title (with respect to States which are not eligible to participate in such program); and provide for flexibility in the application of such standards with respect to income by taking into account, except to the extent prescribed by the Secretary, the costs (whether in the form of insurance premiums, payments made to the State under section 1396b(f)(2)(B) of this title, or otherwise and regardless of whether such costs are reimbursed under another public program of the State or political subdivision thereof) incurred for medical care or for any other type of remedial care recognized under State law;

(18) comply with the provisions of section 1336p of this title with respect to liens, adjustments and recoveries of medical assistance correctly paid, transfers of assets, and treatment of certain trusts;

(19) provide such safeguards as may be necessary to assure that eligibility for care and services under the plan will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of the recipients;

(20) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in institutions for mental diseases—

(A) provide for having in effect such agreements or other arrangements with State authorities concerned with mental diseases, and, where appropriate, with such institutions, as may be necessary for carrying out the State plan, including arrangements for joint planning and for development of alternate methods of care, arrangements providing assurance of immediate readmittance to institutions where needed for individuals under alternate plans of care, and arrangements providing for access to patients and facilities, for furnishing information, and for making reports;

(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that there will be a periodic determination of his need for continued treatment in the institution; and

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients 65 years of age or older who would otherwise need care in such institutions, including appropriate medical treatment and other aid or assistance; for services referred to in section 303(a)(4)(A)(i) and 1383(a)(4)(A)(ii) this title which are appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out;

(21) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in public institutions for mental diseases, show that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program, including provision for utilization of community mental health centers, nursing facilities, and other alternatives to care in public institutions for mental diseases;

(22) include descriptions of (A) the kinds and numbers of professional medical personnel and supporting staff that will be used in the administration of the plan and of the responsibilities they will have, (B) the standards, for private or public institutions in which recipients of medical assistance under the plan may receive care or services, that will be utilized by the State authority or authorities responsible for establishing and maintaining such standards, (C) the cooperative arrangements with State health agencies and State vocational rehabilitation agencies entered into with a view to maximum utilization of and coordination of the provision of medical assistance with the services administered or supervised by such agencies, and (D) other standards and methods that the State will use to assure that medical or remedial care and services provided to recipients of medical assistance are of high quality;

(23) provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services, and (B) an enrollment of an individual eligible for medical assistance in a primary care management system (described in section 1396m(b)(1) of this title), a medicaid managed care organization, or a similar entity shall not restrict the choice of the qualified person from whom the individual may receive services under section 1396d(a)(4)(C) of this title, except as provided in subsection (g) of this section, in section 1396n of this title, and in section

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1396a–2(a) of this title, except that this paragraph shall not apply in the case of Puerto Rico, the Virgin Islands, and Guam, and except that nothing in this paragraph shall be construed as requiring a State to provide medical assistance for medical services furnished by a person or entity convicted of a felony under Federal or State law for an offense which the State agency determines is inconsistent with the best interests of beneficiaries under the State plan or by a provider or supplier to which a moratorium under subsection (kk)(4) is applied during the period of such moratorium;

(24) effective July 1, 1969, provide for consultative services by health agencies and other appropriate agencies of the State to hospitals, nursing facilities, home health agencies, clinics, laboratories, and such other institutions as the Secretary may specify in order to assist proper and efficient administration of this chapter, and (C) to provide information needed to determine payments due under this chapter on account of care and services furnished to individuals;

(25) provide—

(A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties (including health insurers, self-insured plans, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1167(1)]), service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service to pay for care and services available under the plan, including—

(i) the collection of sufficient information (as specified by the Secretary in regulations) to enable the State to pursue claims against such third parties, with such information being collected at the time of any determination or redetermination of eligibility for medical assistance, and

(ii) the submission to the Secretary of a plan (subject to approval by the Secretary) for pursuing claims against such third parties, which plan shall be integrated with, and be monitored as a part of the Secretary’s review of, the State’s mechanized claims processing and information retrieval systems required under section 1396b(r) of this title;

(B) that in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery, the State or local agency will seek reimbursement for such assistance to the extent of such legal liability;

(C) that in the case of an individual who is entitled to medical assistance under the State plan with respect to a service for which a third party is liable for payment, the person furnishing the service may not refuse to furnish services to an individual (who is entitled to have payment made under the plan for the person furnishes) because of a third party’s potential liability for payment for the service;

(D) that in the case of prenatal or preventive pediatric care (including early and periodic screening and diagnosis services under section 1396d(a)(4)(B) of this title) covered under the State plan, the State shall—

(i) make payment for such service in accordance with the usual payment schedule under such plan for such services without regard to the liability of a third party for payment for such services; and

(ii) seek reimbursement from such third party in accordance with subparagraph (B);

(F) that in the case of any services covered under such plan which are provided to an individual on whose behalf child support enforcement is being carried out by the State agency under part D of subchapter IV of this chapter, the State shall—

(i) make payment for such service in accordance with the usual payment schedule under such plan for such services without regard to any third-party liability for payment for such services, if such third-party liability is derived (through insurance or otherwise) from the parent whose obligation to pay support is being enforced by such agency, if payment has not been made by such third party within 30 days after such services are furnished; and

(ii) seek reimbursement from such third party in accordance with subparagraph (B);

(G) that the State prohibits any health insurer (including a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1167(1)], a self-insured plan, a service benefit plan, a managed care organization, a pharmacy benefit manager, or other party that is, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service), in enrolling an individual or in making any pay-
ments for benefits to the individual or on the individual’s behalf, from taking into account that the individual is eligible for or is provided medical assistance under a plan under this subchapter for such State, or any other State;

(H) that to the extent that payment has been made under the State plan for medical assistance in any case where a third party has a legal liability to make payment for such assistance, the State has in effect laws under which, to the extent that payment has been made under the State plan for medical assistance for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services; and

(I) that the State shall provide assurances satisfactory to the Secretary that the State has in effect laws requiring health insurers, including self-insured plans, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(1))), service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service, as a condition of doing business in the State, to—

(i) provide, with respect to individuals who are eligible (and, at State option, individuals who apply or whose eligibility for medical assistance is being evaluated in accordance with section 1396a(a)(13)(D) of this title) for, or are provided, medical assistance under the State plan under this subchapter (and, at State option, child health assistance under subchapter XXI), upon the request of the State, information to determine during what period the individual or their spouses or their dependents may be (or may have been) covered by a health insurer and the nature of the coverage that is or was provided by the health insurer (including the name, address, and identifying number of the plan) in a manner prescribed by the Secretary;

(ii) accept the State’s right of recovery and the assignment to the State of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under the State plan;

(iii) respond to any inquiry by the State regarding a claim for payment for any health care item or service that is submitted not later than 3 years after the date of the provision of such health care item or service; and

(iv) agree not to deny a claim submitted by the State solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if—

(I) the claim is submitted by the State within the 3-year period beginning on the date on which the item or service was furnished; and

(II) any action by the State to enforce its rights with respect to such claim is commenced within 6 years of the State’s submission of such claim;

(26) if the State plan includes medical assistance for inpatient mental hospital services, provide, with respect to each patient receiving such services, for a regular program of medical review (including medical evaluation) of his need for such services, and for a written plan of care;

(27) provide for agreements with every person or institution providing services under the State plan under which such person or institution agrees (A) to keep such records as are necessary fully to disclose the extent of the services provided to individuals receiving assistance under the State plan, and (B) to furnish the State agency or the Secretary with such information, regarding any payments claimed by such person or institution for providing services under the State plan, as the State agency or the Secretary may from time to time request;

(28) provide—

(A) that any nursing facility receiving payments under such plan must satisfy all the requirements of subsections (b) through (d) of section 1396c of this title as they apply to such facilities;

(B) for including in “nursing facility services” at least the items and services specified (or deemed to be specified) by the Secretary under section 1396c(f)(7) of this title and making available upon request a description of the items and services so included;

(C) for procedures to make available to the public the data and methodology used in establishing payment rates for nursing facilities under this subchapter; and

(D) for compliance (by the date specified in the respective sections) with the requirements of—

(i) section 1396c(e) of this title;

(ii) section 1396c(g) of this title (relating to responsibility for survey and certification of nursing facilities); and

(iii) sections 1396c(h)(2)(B) and 1396c(h)(2)(D) of this title (relating to establishment and application of remedies);

(29) include a State program which meets the requirements set forth in section 1396g of this title, for the licensing of administrators of nursing homes;

(30)(A) provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1396b(1)(4) of this title) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area; and

(B) provide, under the program described in subparagraph (A), that—
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(1) each admission to a hospital, intermediate care facility for the mentally retarded, or hospital for mental diseases is reviewed or screened in accordance with criteria established by medical and other professional personnel who are not themselves directly responsible for the care of the patient involved, and who do not have a significant financial interest in any such institution and are not, except in the case of a hospital, employed by the institution providing the care involved, and

(ii) the information developed from such review or screening, along with the data obtained from prior reviews of the necessity for admission and continued stay of patients by such professional personnel, shall be used as the basis for establishing the size and composition of the sample of admissions to be subject to review and evaluation by such personnel, and any such sample may be of any size up to 100 percent of all admissions and must be of sufficient size to serve the purpose of (I) identifying the patterns of care being provided and the changes occurring over time in such patterns so that the need for modification may be ascertained, and (II) subjecting admissions to early or more extensive review where information indicates that such consideration is warranted

(31) with respect to services in an intermediate care facility for the mentally retarded, or hospital for mental diseases;

(32) provide that no payment under the plan for any care or service provided to an individual shall be made to anyone other than such individual or the person or institution providing such care or service, under an assignment or power of attorney or otherwise; except that—

(A) in the case of any care or service provided by a physician, dentist, or other individual practitioner, such payment may be made (i) to the employer of such physician, dentist, or other practitioner if such physician, dentist, or practitioner is required as a condition of his employment to turn over for his fee for such care or service to his employer, or (ii) where the care or service was provided in a hospital, clinic, or other facility) to the facility in which the care or service was provided if there is a contractual arrangement between such physician, dentist, or practitioner and such facility under which such facility submits the bill for such care or service;

(B) nothing in this paragraph shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the person or institution providing the care or service involved if such assignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of such person or institution from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such person or institution under the plan is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment;

(c) in the case of services furnished (during a period that does not exceed 14 continuous days in the case of an informal reciprocal arrangement or 90 continuous days (or such longer period as the Secretary may provide) in the case of an arrangement involving per diem or other fee-for-time compensation) by, or incident to the services of, one physician to the patients of another physician who submits the claim for such services, payment shall be made to the physician submitting the claim (as if the services were furnished by, or incident to, the physician's services), but only if the claim identifies (in a manner specified by the Secretary) the physician who furnished the services; and

(D) in the case of payment for a childhood vaccine administered before October 1, 1994, to individuals entitled to medical assistance under the State plan, the State plan may make payment directly to the manufacturer of the vaccine under a voluntary replacement program agreed to by the State pursuant to which the manufacturer (i) supplies doses of the vaccine to providers administering the vaccine, (ii) periodically replaces the supply of the vaccine, and (iii) charges the State the manufacturer's price to the Centers for Disease Control and Prevention for the vaccine so administered (which price includes a reasonable amount to cover shipping and the handling of returns);

(33) provide—

(A) that the State health agency, or other appropriate State medical agency, shall be responsible for establishing a plan, consistent with regulations prescribed by the Secretary, for the review by appropriate professional health personnel of the appropriateness and quality of care and services furnished to recipients of medical assistance under the plan in order to provide guidance with respect thereto in the administration of the plan to the State agency established or designated pursuant to paragraph (5) and, where applicable, to the State agency described in the second sentence of this subsection; and

(B) that, except as provided in section 1396g(2) of this title, the State or local agency utilized by the Secretary for the purpose specified in the first sentence of section 1395aa(a)(2) of this title, or, if such agency is not the State agency which is responsible for
licensing health institutions, the State agency responsible for such licensing, will perform for the State agency administering the plan approved under this subchapter the function of determining whether institutions and agencies meet the requirements for participation in the program under such plan, except that, if the Secretary has cause to question the adequacy of such determinations, the Secretary is authorized to validate State determinations and, on that basis, make independent and binding determinations concerning the extent to which individual institutions and agencies meet the requirements for participation;

(34) provide that in the case of any individual who has been determined to be eligible for medical assistance under the plan, such assistance will be made available to him for care and services included under the plan and furnished in or after the third month before the month in which he made application (or application was made on his behalf in the case of a deceased individual) for such assistance if such individual was (or upon application would have been) eligible for such assistance at the time such care and services were furnished;

(35) provide that any disclosing entity (as defined in section 1320a–3(a)(2) of this title) receiving payments under such plan complies with the requirements of section 1320a–3 of this title;

(36) provide that within 90 days following the completion of each survey of any health care facility, laboratory, agency, clinic, or organization, by the appropriate State agency described in paragraph (9), such agency shall (in accordance with regulations of the Secretary) make public in readily available form and place the pertinent findings of each such survey relating to the compliance of each such health care facility, laboratory, clinic, agency, or organization with (A) the statutory conditions of participation imposed under this subchapter, and (B) the major additional conditions which the Secretary finds necessary in the interest of health and safety of individuals who are furnished care or services by any such facility, laboratory, clinic, agency, or organization;

(37) provide for claims payment procedures which (A) ensure that 90 per centum of claims for payment (for which no further written information or substantiation is required in order to make payment) made for services covered under the plan and furnished by health care practitioners through individual or group practices or through shared health facilities are paid within 30 days of the date of receipt of such claims and that 99 per centum of such claims are paid within 90 days of the date of receipt of such claims, and (B) provide for procedures of prepayment and postpayment claims review, including review of appropriate data with respect to the recipient and provider of a service and the nature of the service for which payment is claimed, to ensure the proper and efficient payment of claims and management of the program;

(38) require that an entity (other than an individual practitioner or a group of practitioners) that furnishes, or arranges for the furnishing of, items or services under the plan, shall supply (within such period as may be specified in regulations by the Secretary or by the single State agency which administers or supervises the administration of the plan) upon request specifically addressed to such entity by the Secretary or such State agency, the information described in section 1320a–7(b)(9) of this title;

(39) provide that the State agency shall exclude any specified individual or entity from participation in the program under the State plan for the period specified by the Secretary when required by him to do so pursuant to section 1320a–7 of this title or section 1320a–7a of this title, terminate the participation of any individual or entity in such program if (subject to such exceptions as are permitted with respect to exclusion under sections 1320a–7(c)(3)(B) and 1320a–7(d)(3)(B) of this title) participation of such individual or entity is terminated under subchapter XVIII or any other State plan under this subchapter, and provide that no payment may be made under the plan with respect to any item or service furnished by such individual or entity during such period;

(40) require each health services facility or organization which receives payments under the plan and of a type for which a uniform reporting system has been established under section 1320a(a) of this title to make reports to the Secretary of information described in such section in accordance with the uniform reporting system (established under such section) for that type of facility or organization;

(41) provide that whenever a provider of services or any other person is terminated, suspended, or otherwise sanctioned or prohibited from participating under the State plan, the State agency shall promptly notify the Secretary and, in the case of a physician and notwithstanding paragraph (7), the State medical licensing board of such action;

(42) provide that—

(A) the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan; and

(B) not later than December 31, 2010, the State shall—

(i) establish a program under which the State contracts (consistent with State law and in the same manner as the Secretary enters into contracts with recovery audit contractors under section 1395ddd(h) of this title, subject to such exceptions or requirements as the Secretary may require for purposes of this subchapter or a particular State) with 1 or more recovery audit contractors for the purpose of identifying underpayments and overpayments and recouping overpayments under the State plan and under any waiver of the State plan with respect to all or any services for which payment is made to any entity under such plan or waiver; and

(ii) provide assurances satisfactory to the Secretary that—
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(I) under such contracts, payment shall be made to such a contractor only from amounts recovered; 

(ii) from such amounts recovered, pay-

ment—

(aa) shall be made on a contingent basis for collecting overpayments; and

(bb) may be made in such amounts as the State may specify for identifying underpayments;

(iii) the State has an adequate process for entities to appeal any adverse determination made by such contractors; and

(iv) such program is carried out in accordance with such requirements as the Secretary shall specify, including—

(aa) for purposes of section 1396b(a)(7) of this title, that amounts expended by the State to carry out the program shall be considered amounts expended as necessary for the proper and efficient administration of the State plan or a waiver of the plan;

(bb) that section 1396b(d) of this title shall apply to amounts recovered under the program; and

(cc) that the State and any such contractors under contract with the State shall coordinate such recovery audit efforts with other contractors or entities performing audits of entities receiving payments under the State plan or waiver in the State, including efforts with Federal and State law enforcement with respect to the Department of Justice, including the Federal Bureau of Investigations, the Inspector General of the Department of Health and Human Services, and the State Medicaid fraud control unit; and

(43) provide for—

(A) informing all persons in the State who are under the age of 21 and who have been determined to be eligible for medical assistance, or inpatient hospital services described in section 1396d(r) of this title, of the availability of early and periodic screening, diagnostic, and treatment services as described in section 1396k of this title;

(B) providing or arranging for the provision of such screening services in all cases where they are requested,

(C) arranging for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment for the need for which is disclosed by such child health screening services, and

(D) reporting to the Secretary (in a uniform form and manner established by the Secretary, by age group and by basis of eligibility for medical assistance, and by not later than April 1 after the end of each fiscal year, beginning with fiscal year 1990) the following information relating to early and periodic screening, diagnostic, and treatment services provided under the plan during each fiscal year:

(i) the number of children provided child health screening services,

(ii) the number of children referred for corrective treatment (the need for which is disclosed by such child health screening services),

(iii) the number of children receiving dental services, and other information relating to the provision of dental services to such children described in section 1397hh(e) of this title and

(iv) the State’s results in attaining the participation goals set for the State under section 1396d(r) of this title;

(44) in each case for which payment for inpatient hospital services, services in an intermediate care facility for the mentally retarded, or inpatient mental hospital services is made under the State plan—

(A) a physician (or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician) certifies at the time of admission, or, if later, the time the individual applies for medical assistance under the State plan (and a physician, a physician assistant under the supervision of a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician, recertifies, where such services are furnished over a period of time, in such cases, at least as often as required under section 1396b(g)(5) of this title (or, in the case of services that are services provided in an intermediate care facility for the mentally retarded, every year), and—accompanied by such supporting material, appropriate to the case involved, as may be provided in regulations of the Secretary), that such services are or were required to be given on an inpatient basis because the individual needs or needed such services, and

(B) such services were furnished under a plan established and periodically reviewed and evaluated by a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician;

(45) provide for mandatory assignment of rights of payment for medical support and other medical care owed to recipients, in accordance with section 1396k of this title;

(46)(A) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title; and

(B) provide, with respect to an individual declaring to be a citizen or national of the

8 Probably means the subsec. (e) of section 1397hh relating to information on dental care for children.
United States for purposes of establishing eligibility under this subchapter, that the State shall satisfy the requirements of—

(i) section 1396b(x) of this title; or

(ii) subsection (ee);

(47) at the option of the State, provide for making ambulatory prenatal care available to pregnant women during a presumptive eligibility period in accordance with section 1396r–1 of this title and provide for making medical assistance for items and services described in subsection (a) of section 1396r–1a of this title available to children during a presumptive eligibility period in accordance with such section and provide for making medical assistance available to individuals described in subsection (a) of section 1396r–1b of this title during a presumptive eligibility period in accordance with such section;

(48) provide a method of making cards evidencing eligibility for medical assistance available to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address;

(49) provide that the State will provide information and access to certain information respecting sanctions taken against health care practitioners and providers by State licensing authorities in accordance with section 1396r–2 of this title;

(50) provide, in accordance with subsection (q) of this section, for a monthly personal needs allowance for certain institutionalized individuals and couples;

(51) meet the requirements of section 1396r–5 of this title (relating to protection of community spouses);

(52) meet the requirements of section 1396r–6 of this title (relating to extension of eligibility for medical assistance);

(53) provide—

(A) for notifying in a timely manner all individuals in the State who are determined to be eligible for medical assistance and who are pregnant women, breastfeeding or postpartum women (as defined in section 17 of the Child Nutrition Act of 1966 [42 U.S.C. 1786]), or children below the age of 5, of the availability of benefits furnished by the special supplemental nutrition program under such section, and

(B) for referring any such individual to the State agency responsible for administering such program;

(54) in the case of a State plan that provides medical assistance for covered outpatient drugs (as defined in section 1396r–8(k) of this title), comply with the applicable requirements of section 1396r–8 of this title;

(55) provide for receipt and initial processing of applications of individuals for medical assistance under subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), or (a)(10)(A)(i)(IX) of this section—

(A) at locations which are other than those used for the receipt and processing of applications for aid under part A of subchapter IV of this chapter and which include facilities defined as disproportionate share hospitals under section 1396r–4(a)(1)(A) of this title and Federally-qualified health centers described in section 1396d(1)(2)(B)9 of this title, and

(B) using applications which are other than those used for applications for aid under such part;

(56) provide, in accordance with subsection (s) of this section, for adjusted payments for certain inpatient hospital services;

(57) provide that each hospital, nursing facility, provider of home health care or personal care services, hospice program, or medicaid managed care organization (as defined in section 1396b(m)(1)(A) of this title) receiving funds under the plan shall comply with the requirements of subsection (w) of this section;

(58) provide that the State, acting through a State agency, association, or other private nonprofit entity, develop a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives that would be distributed by providers or organizations under the requirements of subsection (w) of this section;

(59) maintain a list (updated not less often than monthly, and containing each physician’s unique identifier provided under the system established under subsection (x) of this section) of all physicians who are certified to participate under the State plan;

(60) provide that the State agency shall provide assurances satisfactory to the Secretary that the State has in effect the laws relating to medical child support required under section 1396g–1 of this title;

(61) provide that the State must demonstrate that it operates a medicaid fraud and abuse control unit described in section 1396b(q) of this title that effectively carries out the functions and requirements described in such section, as determined in accordance with standards established by the Secretary, unless the State demonstrates to the satisfaction of the Secretary that the effective operation of such a unit in the State would not be cost-effective because minimal fraud exists in connection with the provision of covered services to eligible individuals under the State plan, and that beneficiaries under the plan will be protected from abuse and neglect in connection with the provision of medical assistance under the plan without the existence of such a unit;

(62) provide for a program for the distribution of pediatric vaccines to program-registered providers for the immunization of vaccine-eligible children in accordance with section 1396a of this title;

(63) provide for administration and determinations of eligibility with respect to individuals who are (or seek to be) eligible for medical assistance based on the application of section 1396d–1 of this title;

(64) provide, not later than 1 year after August 5, 1997, a mechanism to receive reports from beneficiaries and others and compile data concerning alleged instances of waste, fraud,  

9So in original. Probably should be section "1396d(2)[2][B]".
and abuse relating to the operation of this subchapter;
(65) provide that the State shall issue provider numbers for all suppliers of medical assistance consisting of durable medical equipment, as defined in section 1395x(n) of this title, and the State shall not issue or renew such a supplier number for any such supplier unless—
   (A)(i) full and complete information as to the identity of each person with an ownership or control interest (as defined in section 1320a-3(a)(3) of this title) in the supplier or in any subcontractor (as defined by the Secretary in regulations) in which the supplier directly or indirectly has a 5 percent or more ownership interest; and
   (ii) to the extent determined to be feasible under regulations of the Secretary, the name of any disclosing entity (as defined in section 1320a-3(a)(2) of this title) with respect to which a person with such an ownership or control interest in the supplier is a person with such an ownership or control interest in the disclosing entity; and
   (B) a surety bond in a form specified by the Secretary under section 1395m(a)(16)(B) of this title and in an amount that is not less than $50,000 or such comparable surety bond as the Secretary may permit under the second sentence of such section;
(66) provide for making eligibility determinations under section 1396u-5(a) of this title;
(67) provide, with respect to services covered under the State plan (but not under subchapter XVIII of this chapter) that are furnished to a PACE program eligible individual enrolled with a PACE provider by a provider participating under the State plan that does not have a contract or other agreement with the PACE provider that establishes payment amounts for such services, that such participating provider may not require the PACE provider to pay the participating provider an amount greater than the amount that would otherwise be payable for the service to the participating provider under the State plan for the State where the PACE provider is located (in accordance with regulations issued by the Secretary);
(68) provide that any entity that receives or makes annual payments under the State plan of at least $5,000,000, as a condition of receiving such payments, shall—
   (A) establish written policies for all employees of the entity (including management), and of any contractor or agent of the entity, that provide detailed information about the False Claims Act established under sections 3729 through 3733 of title 31, administrative remedies for false claims and statements established under chapter 38 of title 31, any State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in section 1320a-7(b) of this title);
   (B) include as part of such written policies, detailed provisions regarding the entity’s policies and procedures for detecting and preventing fraud, waste, and abuse; and
   (C) include in any employee handbook for the entity, a specific discussion of the laws described in subparagraph (A), the rights of employees to be protected as whistleblowers, and the entity’s policies and procedures for detecting and preventing fraud, waste, and abuse;
(69) provide that the State must comply with any requirements determined by the Secretary to be necessary for carrying out the Medicaid Integrity Program established under section 1396a-6 of this title;
(70) at the option of the State and notwithstanding paragraphs (1), (10)(B), and (23), provide for the establishment of a non-emergency medical transportation brokerage program in order to more cost-effectively provide transportation for individuals eligible for medical assistance under the State plan who need access to medical care or services and have no other means of transportation which—
   (A) may include a wheelchair van, taxi, stretcher car, bus passes and tickets, secured transportation, and such other transportation as the Secretary determines appropriate; and
   (B) may be conducted under contract with a broker who—
      (i) is selected through a competitive bidding process based on the State’s evaluation of the broker’s experience, performance, references, resources, qualifications, and costs;
      (ii) has oversight procedures to monitor beneficiary access and complaints and ensure that transport personnel are licensed, qualified, competent, and courteous;
      (iii) is subject to regular auditing and oversight by the State in order to ensure the quality of the transportation services provided and the adequacy of beneficiary access to medical care and services; and
      (iv) complies with such requirements related to prohibitions on referrals and conflict of interest as the Secretary shall establish (based on the prohibitions on physician referrals under section 1395nn of this title and such other prohibitions and requirements as the Secretary determines to be appropriate);
(71) provide that the State will implement an asset verification program as required under section 1396w of this title;
(72) provide that the State will not prevent a Federally-qualified health center from entering into contractual relationships with private practice dental providers in the provision of Federally-qualified health center services;
(73) in the case of any State in which 1 or more Indian Health Programs or Urban Indian Organizations furnishes health care services, provide for a process under which the State seeks advice on a regular, ongoing basis from designees of such Indian Health Programs and Urban Indian Organizations on matters relating to the application of this subchapter that
are likely to have a direct effect on such Indian Health Programs and Urban Indian Organizations and that—

(A) shall include solicitation of advice prior to submission of any plan amendments, waiver requests, and proposals for demonstration projects likely to have a direct effect on Indians, Indian Health Programs, or Urban Indian Organizations; and

(B) may include appointment of an advisory committee and of a designee of such Indian Health Programs and Urban Indian Organizations to the medical care advisory committee advising the State on its State plan under this subchapter;

(74) provide for maintenance of effort under the State plan or under any waiver of the plan in accordance with subsection (gg);

(75) provide that, beginning January 2015, and annually thereafter, the State shall submit a report to the Secretary that contains—

(A) the total number of enrolled and newly enrolled individuals in the State plan or under a waiver of the plan for the fiscal year ending on September 30 of the preceding calendar year, disaggregated by population, including children, parents, nonpregnant childless adults, disabled individuals, elderly individuals, and such other categories or sub-categories of individuals eligible for medical assistance under the State plan or under a waiver of the plan as the Secretary may require;

(B) a description, which may be specified by population, of the outreach and enrollment processes used by the State during such fiscal year; and

(C) any other data reporting determined necessary by the Secretary to monitor enrollment and retention of individuals eligible for medical assistance under the State plan or under a waiver of the plan;

(76) provide that any data collected under the State plan meets the requirements of section 3101 of the Public Health Service Act [42 U.S.C. 300kk];

(77) provide that the State shall comply with provider and supplier screening, oversight, and reporting requirements in accordance with subsection (kk);

(79) provide that any agent, clearinghouse, or other alternate payee (as defined by the Secretary) that submits claims on behalf of a health care provider must register with the health care delivery system of the State.

Notwithstanding paragraph (5), if on January 1, 1965, and on the date on which a State submits its plan for approval under this subchapter, the State agency which administered or supervised the administration of the plan approved under subchapter X of this chapter (or subchapter XVI of this chapter, insofar as it relates to the blind) was different from the State agency which administered or supervised the administration of the plan approved under subchapter I of this chapter (or subchapter XVI of this chapter, insofar as it relates to the aged), the State agency which administered or supervised the administration of such plan approved under subchapter X of this chapter (or subchapter XVI of this chapter, insofar as it relates to the blind) may be designated to administer or supervise the administration of the portion of the State plan for medical assistance which relates to blind individuals and a different State agency may be established or designated to ad-
minister or supervise the administration of the rest of the State plan for medical assistance; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this subchapter (except for purposes of paragraph (10)). The provisions of paragraphs (9)(A), (31), and (33) and of section 1396b(i)(4) of this title shall not apply to a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).

For purposes of paragraph (10) any individual who, for the month of August 1972, was eligible for or receiving aid or assistance under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter and who for such month was entitled to monthly insurance benefits under subchapter II of this chapter shall for purposes of this subchapter only be deemed to be eligible for financial aid or assistance for any month thereafter if such individual would have been eligible for financial aid or assistance for such month had the increase in monthly insurance benefits under subchapter II of this chapter resulting from enactment of Public Law 92-336 not been applicable to such individual.

The requirement of clause (A) of paragraph (37) with respect to a State plan may be waived by the Secretary if he finds that the State has exercised good faith in trying to meet such requirement. For purposes of this subchapter, any child who meets the requirements of paragraph (1) or (2) of section 673(b) of this title shall be deemed to be a dependent child as defined in section 696 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of subchapter IV of this chapter in the State where such child resides. Notwithstanding paragraph (10)(B) or any other provision of this subsection, a State plan shall provide medical assistance with respect to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law only in accordance with section 1396b(v) of this title.

(b) Approval by Secretary

The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for medical assistance under the plan—

(1) an age requirement of more than 65 years; or

(2) any residence requirement which excludes any individual who resides in the State, regardless of whether or not the residence is maintained permanently or at a fixed address; or

(3) any citizenship requirement which excludes any citizen of the United States.

c) Lower payment levels or applying for benefits as condition of applying for, or receiving, medical assistance

Notwithstanding subsection (b) of this section, the Secretary shall not approve any State plan for medical assistance if the State requires individuals described in subsection (b)(1) of this section to apply for assistance under the State pro-
chapter and have earned income, see section 1396a–6 of this title.

(2)(A) In the case of an individual who is enrolled with a Medicaid managed care organization (as defined in section 1396b(m)(1)(A) of this title), with a primary case manager (as defined in section 1396d(t) of this title), or with an eligible organization with a contract under section 1395mm of this title and who would (but for this paragraph) lose eligibility for benefits under this subchapter before the end of the minimum enrollment period (defined in subparagraph (B)), the State plan may provide, notwithstanding any other provision of this subchapter, that the individual shall be deemed to continue to be eligible for such benefits until the end of such minimum period, but, except for benefits furnished under section 1396d(a)(4)(C) of this title, only with respect to such benefits provided to the individual as an enrollee of such organization or entity or by or through the case manager.

(B) For purposes of subparagraph (A), the term "minimum enrollment period" means, with respect to an individual's enrollment with an organization or entity under a State plan, a period, established by the State, of not more than six months beginning on the date the individual's enrollment with the organization or entity becomes effective.

(3) At the option of the State, any individual who—

(A) is 18 years of age or younger and qualifies as a disabled individual under section 1382c(a) of this title;

(B) with respect to whom there has been a determination by the State that—

(i) the individual requires a level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded,

(ii) it is appropriate to provide such care for the individual outside such an institution, and

(iii) the estimated amount which would be expended for medical assistance for the individual for such care outside an institution is not greater than the estimated amount which would otherwise be expended for medical assistance for the individual within an appropriate institution; and

(C) if the individual were in a medical institution, would be eligible for medical assistance under the State plan under this subchapter,

shall be deemed, for purposes of this subchapter only, to be an individual with respect to whom a supplemental security income payment, or State supplemental payment, respectively, is being paid under subchapter XVI of this chapter.

(4) A child born to a woman eligible for and receiving medical assistance under a State plan on the date of the child's birth shall be deemed to have applied for medical assistance and to have been found eligible for such assistance under such plan on the date of such birth and to remain eligible for such assistance for a period of one year. During the period in which a child is deemed under the preceding sentence to be eligible for medical assistance, the medical assistance eligibility identification number of the mother shall also serve as the identification number of the child, and all claims shall be submitted and paid under such number (unless the State issues a separate identification number for the child before such period expires). Notwithstanding the preceding sentence, in the case of a child who is born in the United States to an alien mother for whom medical assistance for the delivery of the child is made available pursuant to section 1396k(v) of this title, the State immediately shall issue a separate identification number for the child upon notification by the facility at which such delivery occurred of the child's birth.

(5) A woman who, while pregnant, is eligible for, has applied for, and has received medical assistance under the State plan, shall continue to be eligible under the plan, as though she were pregnant, for all pregnancy-related and postpartum medical assistance under the plan, through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends.

(6) In the case of a pregnant woman described in subsection (a)(10) of this section who, because of a change in income of the family of which she is a member, would not otherwise continue to be described in such subsection, the woman shall be deemed to continue to be an individual described in subsection (a)(10)(A)(i)(IV) of this section and subsection (b)(1)(A) of this section without regard to such change of income through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends. The preceding sentence shall not apply in the case of a woman who has been provided ambulatory prenatal care pursuant to section 1396r–1 of this title during a presumptive eligibility period and is then, in accordance with such section, determined to be ineligible for medical assistance under the State plan.

(7) In the case of an infant or child described in subparagraph (B), (C), or (D) of subsection (b)(1) of this section or paragraph (2) of section 1396d(n) of this title—

(A) who is receiving inpatient services for which medical assistance is provided on the date the infant or child attains the maximum age with respect to which coverage is provided under the State plan for such individuals, and

(B) who, but for attaining such age, would remain eligible for medical assistance under such subsection,

the infant or child shall continue to be treated as an individual described in such respective provision until the end of the stay for which the inpatient services are furnished.

(8) If an individual is determined to be a qualified Medicare beneficiary (as defined in section 1396d(p)(1) of this title), such determination shall apply to services furnished after the end of the month in which the determination first occurs. For purposes of payment to a State under section 1396b(a) of this title, such determination shall be considered to be valid for 12 months from the date the determination is made, but not more frequently than once every 6 months for an individual.
(9)(A) At the option of the State, the plan may include as medical assistance respiratory care services for any individual who—

(i) is medically dependent on a ventilator for life support at least six hours per day;

(ii) has been so dependent for at least 30 consecutive days (or the maximum number of days authorized under the State plan, whichever is less) as an inpatient;

(iii) but for the availability of respiratory care services, would require respiratory care as an inpatient in a hospital, nursing facility, or intermediate care facility for the mentally retarded and would be eligible to have payment made for such inpatient care under the State plan;

(iv) has adequate social support services to be cared for at home; and

(v) wishes to be cared for at home.

(B) The requirements of subparagraph (A)(i) may be satisfied by a continuous stay in one or more hospitals, nursing facilities, or intermediate care facilities for the mentally retarded.

(C) For purposes of this paragraph, respiratory care services means services provided on a part-time basis in the home of the individual by a respiratory therapist or other health care professional trained in respiratory therapy (as determined by the State), payment for which is not otherwise included within other items and services furnished to such individual as medical assistance under the plan.

(10)(A) The fact that an individual, child, or pregnant woman may be denied aid under part A of subchapter IV of this chapter pursuant to section 602(a)(43) of this title shall not be construed as denying (or permitting a State to deny) medical assistance under this subchapter before the end of the minimum period, but only with respect to such benefit under this subchapter for the individual, child, or woman is not eligible for assistance under this subchapter on a basis other than the receipt of aid under such part.

(B) If an individual, child, or pregnant woman is receiving aid under part A of subchapter IV of this chapter and such aid is terminated pursuant to section 602(a)(43) of this title, the State may not discontinue medical assistance under this subchapter for the individual, child, or woman until the State has determined that the individual, child, or woman is not eligible for assistance under this subchapter on a basis other than the receipt of aid under such part.

(11)(A) In the case of an individual who is enrolled with a group health plan under section 1396e of this title and who would (but for this paragraph) lose eligibility for benefits under this subchapter before the end of the minimum enrollment period (defined in subparagraph (B)), the State plan may provide, notwithstanding any other provision of this subchapter, that the individual shall be deemed to continue to be eligible for such benefits until the end of such minimum period, but only with respect to such benefits provided to the individual as an enrollee of such plan.

(B) For purposes of subparagraph (A), the term "minimum enrollment period" means, with respect to an individual's enrollment with a group health plan, a period established by the State, of not more than 6 months beginning on the date the individual's enrollment under the plan becomes effective.

(12) At the option of the State, the plan may provide that an individual who is under an age specified by the State (not to exceed 19 years of age) and who is determined to be eligible for benefits under a State plan approved under this subchapter under subsection (a)(10)(A) of this section shall remain eligible for those benefits until the earlier of—

(A) the end of a period (not to exceed 12 months) following the determination; or

(B) the time that the individual exceeds that age.

(13) EXPRESS LANE OPTION.—

(A) IN GENERAL.—

(i) OPTION TO USE A FINDING FROM AN EXPRESS LANE AGENCY.—At the option of the State, the plan may provide that in determining eligibility under this subchapter for a child (as defined in subparagraph (G)), the State may rely on a finding made within a reasonable period (as determined by the State) from an Express Lane agency (as defined in subparagraph (F) when it determines whether a child satisfies one or more components of eligibility for medical assistance under this subchapter. The State may rely on a finding from an Express Lane agency notwithstanding sections 1396a(a)(46)(B) and 1320b–7(d) of this title or any differences in budget unit, disregard, deeming or other methodology, if the following requirements are met:

(1) PROHIBITION ON DETERMINING CHILDREN INELIGIBLE FOR COVERAGE.—If a finding from an Express Lane agency would result in a determination that a child does not satisfy an eligibility requirement for medical assistance under this subchapter and for child health assistance under subchapter XXI, the State shall determine eligibility for assistance using its regular procedures.

(2) NOTICE REQUIREMENT.—For any child who is found eligible for medical assistance under the State plan under this subchapter or child health assistance under subchapter XXI and who is subject to premiums based on an Express Lane agency's finding of such child's income level, the State shall provide notice that the child may qualify for lower premium payments if evaluated by the State using its regular policies and of the procedures for requesting such an evaluation.

(3) COMPLIANCE WITH SCREEN AND ENROLL REQUIREMENT.—The State shall satisfy the requirements under subparagraphs (A) and (B) of section 1397bb(b)(3) of this title (relating to screen and enroll) before enrolling a child in child health assistance under subchapter XXI. At its option, the State may fulfill such requirements in accordance with either option provided under subparagraph (C) of this paragraph.

(4) VERIFICATION OF CITIZENSHIP OR NATIONALITY STATUS.—The State shall satisfy the requirements of section 1396a(a)(46)(B) or 1397ee(c)(9) of this title, as applicable for verifications of citizenship or nationality status.

(V) CODING.—The State meets the requirements of subparagraph (E).
(ii) Option to apply to renewals and re-determinations.—The State may apply the provisions of this paragraph when conducting initial determinations of eligibility, re-determinations of eligibility, or both, as described in the State plan.

(B) Rules of construction.—Nothing in this paragraph shall be construed—
(i) to limit or prohibit a State from taking any actions otherwise permitted under this subchapter or subchapter XXI in determining eligibility for or enrolling children into medical assistance under this subchapter or child health assistance under subchapter XXI, or
(ii) to modify the limitations in section 1396a(a)(5) of this title concerning the agencies that may make a determination of eligibility for medical assistance under this subchapter.

(C) Options for satisfying the screen and enroll requirement.—

(i) In general.—With respect to a child whose eligibility for medical assistance under this subchapter or for child health assistance under subchapter XXI has been evaluated by a State agency using an income finding from an Express Lane agency, the State may carry out its duties under subparagraphs (A) and (B) of section 1397bb(b)(3) of this title (relating to screen and enroll) in accordance with either clause (ii) or clause (iii).

(ii) Establishing a screening threshold.—

(I) In general.—Under this clause, the State establishes a screening threshold set as a percentage of the Federal poverty level that exceeds the highest income threshold applicable under this subchapter to the child by a minimum of 30 percentage points or, at State option, a higher number of percentage points that reflects the value (as determined by the State and described in the State plan) of any differences between income methodologies used by the program administered by the Express Lane agency and the methodologies used by the State in determining eligibility for medical assistance under this subchapter.

(II) Children with income not above threshold.—If the income of a child does not exceed the screening threshold, the child is deemed to satisfy the income eligibility criteria for medical assistance under this subchapter regardless of whether such child would otherwise satisfy such criteria.

(III) Children with income above threshold.—If the income of a child exceeds the screening threshold, the child shall be considered to have an income above the Medicaid applicable income level described in section 1397(j)(b)(4) of this title and to satisfy the requirement under section 1397(j)(b)(1)(C) of this title (relating to the requirement that CHIP matching funds be used only for children not eligible for Medicaid). If such a child is enrolled in child health assistance under subchapter XXI, the State shall provide the parent, guardian, or custodial relative with the following:

(aa) Notice that the child may be eligible to receive medical assistance under the State plan under this subchapter if evaluated for such assistance under the State’s regular procedures and notice of the process through which a parent, guardian, or custodial relative can request that the State evaluate the child’s eligibility for medical assistance under this subchapter using such regular procedures.

(bb) A description of differences between the medical assistance provided under this subchapter and child health assistance under subchapter XXI, including differences in cost-sharing requirements and covered benefits.

(iii) Temporary enrollment in CHIP pending screen and enroll.—

(I) In general.—Under this clause, a State enrolls a child in health assistance under subchapter XXI for a temporary period if the child appears eligible for such assistance based on an income finding by an Express Lane agency.

(II) Determination of eligibility.—During such temporary enrollment period, the State shall determine the child’s eligibility for child health assistance under subchapter XXI or for medical assistance under this subchapter in accordance with this clause.

(III) Prompt follow up.—In making such a determination, the State shall take prompt action to determine whether the child should be enrolled in medical assistance under this subchapter or child health assistance under subchapter XXI pursuant to subparagraphs (A) and (B) of section 1397bb(b)(3) of this title (relating to screen and enroll).

(IV) Requirement for simplified determination.—In making such a determination, the State shall use procedures that, to the maximum feasible extent, reduce the burden imposed on the individual of such determination. Such procedures may not require the child’s parent, guardian, or custodial relative to provide or verify information that already has been provided to the State agency by an Express Lane agency or another source of information unless the State agency has reason to believe the information is erroneous.

(V) Availability of CHIP matching funds during temporary enrollment period.—Medical assistance for items and services that are provided to a child enrolled in subchapter XXI during a temporary enrollment period under this clause shall be treated as child health assistance under such subchapter.

(D) Option for automatic enrollment.—

(i) In general.—The State may initiate and determine eligibility for medical assistance under the State Medicaid plan or for
child health assistance under the State CHIP plan without a program application from, or on behalf of, the child based on data obtained from sources other than the child (or the child’s family), but a child can only be automatically enrolled in the State Medicaid plan or the State CHIP plan if the child or the family affirmatively consents to being enrolled through affirmation in writing, by telephone, orally, through electronic signature, or through any other means specified by the Secretary or by signature on an Express Lane agency application, if the requirement of clause (ii) is met.

(ii) INFORMATION REQUIREMENT.—The requirement of this clause is that the State informs the parent, guardian, or custodial relative of the child of the services that will be covered, appropriate methods for using such services, premium or other cost sharing charges (if any) that apply, medical support obligations (under section 1396k(a) of this title) created by enrollment (if applicable), and the actions the parent, guardian, or relative must take to maintain enrollment and renew coverage.

(E) CODING; APPLICATION TO ENROLLMENT ERROR RATES.—

(i) IN GENERAL.—For purposes of subparagraph (A)(iv), the requirement of this subparagraph for a State is that the State agrees to—

(I) assign such codes as the Secretary shall require to the children who are enrolled in the State Medicaid plan or the State CHIP plan through reliance on a finding made by an Express Lane agency for the duration of the State’s election under this paragraph;

(II) annually provide the Secretary with a statistically valid sample (that is approved by Secretary) of the children enrolled in such plans through reliance on such a finding by conducting a full Medicaid eligibility review of the children identified for such sample for purposes of determining an eligibility error rate (as described in clause (iv)) with respect to the enrollment of such children (and shall not include such children in any data or samples used for purposes of complying with a Medicaid Eligibility Quality Control (MEQC) review or a payment error rate measurement (PERM) requirement);

(III) submit the error rate determined under subclause (II) to the Secretary;

(IV) if such error rate exceeds 3 percent for either of the first 2 fiscal years in which the State elects to apply this paragraph, demonstrate to the satisfaction of the Secretary the specific corrective actions implemented by the State to improve upon such error rate; and

(V) if such error rate exceeds 3 percent for any fiscal year in which the State elects to apply this paragraph, a reduction in the amount otherwise payable to the State under section 1396b(a) of this title for quarters for that fiscal year, equal to the total amount of erroneous excess payments determined for the fiscal year only with respect to the children included in the sample for the fiscal year that are in excess of a 3 percent error rate with respect to such children.

(ii) NO PUNITIVE ACTION BASED ON ERROR RATE.—The Secretary shall not apply the error rate derived from the sample under clause (i) to the entire population of children enrolled in the State Medicaid plan or the State CHIP plan through reliance on a finding made by an Express Lane agency, or to the population of children enrolled in such plans on the basis of the State’s regular procedures for determining eligibility, or penalize the State on the basis of such error rate in any manner other than the reduction of payments provided for under clause (i)(V).

(iii) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as relieving a State that elects to apply this paragraph from being subject to a penalty under section 1396b(u) of this title, for payments made under the State Medicaid plan with respect to ineligible individuals and families that are determined to exceed the error rate permitted under that section (as determined without regard to the error rate determined under clause (i)(II)).

(iv) ERROR RATE DEFINED.—In this subparagraph, the term “error rate” means the rate of erroneous excess payments for medical assistance (as defined in section 1396b(u)(1)(D) of this title) for the period involved, except that such payments shall be limited to individuals for which eligibility determinations are made under this paragraph and except that in applying this paragraph under subchapter XXI, there shall be substituted for references to provisions of this subchapter corresponding provisions within subchapter XXI.

(F) EXPRESS LANE AGENCY.—

(i) IN GENERAL.—In this paragraph, the term “Express Lane agency” means a public agency that—

(I) is determined by the State Medicaid agency or the State CHIP agency (as applicable) to be capable of making the determinations of one or more eligibility requirements described in subparagraph (A)(I);

(II) is identified in the State Medicaid plan or the State CHIP plan; and

(III) notifies the child’s family—

(aa) that the information disclosed will be used solely for purposes of determining eligibility for medical assistance under the State Medicaid plan or for child health assistance under the State CHIP plan; and

(bb) that the information disclosed will be used solely for purposes of determining eligibility for medical assistance under the State Medicaid plan or for child health assistance under the State CHIP plan; and

(cc) that the family may elect to not have the information disclosed for such purposes; and

12So in original. Probably should be “subparagraph (A)(iv).”
(IV) enters into, or is subject to, an interagency agreement to limit the disclosure and use of the information disclosed.

(ii) INCLUSION OF SPECIFIC PUBLIC AGENCIES AND INDIAN TRIBES AND TRIBAL ORGANIZATIONS.—Such term includes the following:

(aa) The temporary assistance for needy families program funded under part A of subchapter IV.

(bb) A State program funded under part D of subchapter IV.

(cc) The State Medicaid plan.

(dd) The State CHIP plan.


(ff) The Head Start Act [42 U.S.C. 9831 et seq.].


(ii) The Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.).

(jj) The Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 1301 et seq.).

(kk) The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.).


(II) A State-specified governmental agency that has fiscal liability or legal responsibility for the accuracy of the eligibility determination findings relied on by the State.

(III) A public agency that is subject to an interagency agreement limiting the disclosure and use of the information disclosed for purposes of determining eligibility under the State Medicaid plan or the State CHIP plan.

(IV) The Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization (as defined in section 1320b-9(c) of this title).

(iii) EXCLUSIONS.—Such term does not include an agency that determines eligibility for a program established under the Social Services Block Grant established under subchapter XX or a private, for-profit organization.

(iv) RULES OF CONSTRUCTION.—Nothing in this paragraph shall be construed as—

(I) exempting a State Medicaid agency from complying with the requirements of section 1396a(a)(4) of this title relating to merit-based personnel standards for employees of the State Medicaid agency and safeguards against conflicts of interest; or

(II) authorizing a State Medicaid agency that elects to use Express Lane agencies under this subparagraph to use the Express Lane option to avoid complying with such requirements for purposes of making eligibility determinations under the State Medicaid plan.

(v) ADDITIONAL DEFINITIONS.—In this paragraph:

(I) STATE.—The term “State” means 1 of the 50 States or the District of Columbia.

(II) STATE CHIP AGENCY.—The term “State CHIP agency” means the State agency responsible for administering the State CHIP plan.

(III) STATE CHIP PLAN.—The term “State CHIP plan” means the State child health plan established under subchapter XXI and includes any waiver of such plan.

(IV) STATE MEDICAID AGENCY.—The term “State Medicaid agency” means the State agency responsible for administering the State Medicaid plan.

(V) STATE MEDICAID PLAN.—The term “State Medicaid plan” means the State plan established under subchapter XIX and includes any waiver of such plan.

(G) CHILD DEFINED.—For purposes of this paragraph, the term “child” means an individual under 19 years of age, or, at the option of a State, such higher age, not to exceed 21 years of age, as the State may elect.

(H) STATE OPTION TO RELY ON STATE INCOME TAX DATA OR RETURN.—At the option of the State, a finding from an Express Lane agency may include gross income or adjusted gross income shown by State income tax records or returns.

(I) APPLICATION.—This paragraph shall not apply with respect to eligibility determinations made after September 30, 2013.

(14) EXCLUSION OF COMPENSATION FOR PARTICIPATION IN A CLINICAL TRIAL FOR TESTING OF TREATMENTS FOR A RARE DISEASE OR CONDITION.—The first $2,000 received by an individual (who has attained 19 years of age) as compensation for participation in a clinical trial meeting the requirements of section 1320a(b)(26) of this title shall be disregarded for purposes of determining the income eligibility of such individual for medical assistance under the State plan or any waiver of such plan.

(f) Effective date of State plan as determinative of duty of State to provide medical assistance to aged, blind, or disabled individuals

Notwithstanding any other provision of this subchapter, except as provided in subsection (e) of this section and section 1382h(b)(3) of this title and section 1396r–5 of this title, except with respect to qualified disabled and working individuals (described in section 1396d(s) of this title), and except with respect to qualified medicare beneficiaries, qualified severely impaired individuals, and individuals described in subsection (m)(1) of this subsection, no State not eligible to participate in the State plan program established under subchapter XVI of this chapter shall be required to provide medical assistance to any aged, blind, or disabled individual (within the meaning of subchapter XVI of this chapter) for any month unless such State would

13So in original. The closing parenthesis probably should not appear.
be (or would have been) required to provide medical assistance to such individual for such month had its plan for medical assistance approved under this subchapter and in effect on January 1, 1972, been in effect in such month, except that for this purpose any such individual shall be deemed eligible for medical assistance under such State plan if (in addition to meeting such other requirements as are or may be imposed under the State plan) the income of any such individual as determined in accordance with section 1396(c) of this title (after deducting any supplemental security income payment and State supplementary payment made with respect to such individual, and incurred expenses for medical care as recognized under State law regardless of whether such expenses are reimbursed under another public program of the State or political subdivision thereof) is not in excess of the standard for medical assistance established under the State plan as in effect on January 1, 1972. In States which provide medical assistance to individuals pursuant to paragraph (10)(C) of subsection (a) of this section, an individual who is eligible for medical assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered an individual eligible for medical assistance under paragraph (10)(A) of that subsection if that individual is, or is eligible to be (1) an individual with respect to whom there is payable a State supplementary payment on the basis of which similarly situated individuals are eligible to receive medical assistance equal in amount, duration, and scope to that provided to individuals eligible under paragraph (10)(A) or (2) an eligible individual or eligible spouse, as defined in subchapter XVI of this chapter, with respect to whom supplemental security income benefits are payable; otherwise that individual shall be considered to be an individual eligible for medical assistance under paragraph (10)(A) of that subsection. In States which do not provide medical assistance to individuals pursuant to paragraph (10)(C) of that subsection, an individual who is eligible for medical assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered an individual eligible for medical assistance under paragraph (10)(A) of that subsection.

(g) Reduction of aid or assistance to providers of services attempting to collect from beneficiary in violation of third-party provisions

In addition to any other sanction available to a State, a State may provide for a reduction of any payment amount otherwise due with respect to a person who furnishes services under the plan in an amount equal to up to three times the amount of any payment sought to be collected by that person in violation of subsection (a)(25)(C) of this section: Provided that no payment will be made under the State plan with respect to any individual admitted to such facility after a date specified by the State.

(h) Payments for hospitals serving disproportionately number of low-income patients and for home and community care

Nothing in this subchapter (including subsections (a)(13) and (a)(30) of this section) shall be construed as authorizing the Secretary to limit the amount of payment that may be made under a plan under this subchapter for home and community care.

(i) Termination of certification for participation of and suspension of State payments to intermediate care facilities for the mentally retarded

(1) In addition to any other authority under State law, where a State determines that a 14 intermediate care facility for the mentally retarded which is certified for participation under its plan no longer substantially meets the requirements for such a facility under this subchapter and further determines that the facility’s deficiencies—

(A) immediately jeopardize the health and safety of its patients, the State shall provide for the termination of the facility’s certification for participation under the plan and may provide, or

(B) do not immediately jeopardize the health and safety of its patients, the State may, in lieu of providing for terminating the facility’s certification for participation under the plan, establish alternative remedies if the State demonstrates to the Secretary’s satisfaction that the alternative remedies are effective in deterring noncompliance and correcting deficiencies, and may provide that no payment will be made under the State plan with respect to any individual admitted to such facility after a date specified by the State.

(2) The State shall not make such a decision with respect to a facility until the facility has had a reasonable opportunity, following the initial determination that it no longer substantially meets the requirements for such a facility under this subchapter, to correct its deficiencies, and, following this period, has been given reasonable notice and opportunity for a hearing.

(3) The State’s decision to deny payment may be made effective only after such notice to the public and to the facility as may be provided for by the State, and its effectiveness shall terminate (A) when the State finds that the facility is in substantial compliance (or is making good faith efforts to achieve substantial compliance) with the requirements for such a facility under this subchapter, or (B) in the case described in paragraph (1)(B), with the end of the eleventh month following the month such decision is made effective, whichever occurs first. If a facility to which clause (B) of the previous sentence applies still fails to substantially meet the provisions of the respective section on the date specified in such clause, the State shall terminate such facility’s certification for participation under the plan effective with the first day of the first month following the month specified in such clause.

(j) Waiver or modification of subchapter requirements with respect to medical assistance program in American Samoa

Notwithstanding any other requirement of this subchapter, the Secretary may waive or modify any requirement of this subchapter with respect to the medical assistance program in American Samoa.
American Samoa and the Northern Mariana Islands, other than a waiver of the Federal medical assistance percentage, the limitation in section 1306 of this title, or the requirement that payment may be made for medical assistance only with respect to amounts expended by American Samoa or the Northern Mariana Islands for care and services described in a numbered paragraph of section 1396d(a) of this title.

(k) Minimum coverage for individuals with income at or below 133 percent of the poverty line

(1) The medical assistance provided to an individual described in subparagraph (VIII) of subsection (a)(10)(A)(i) shall consist of benchmark coverage described in section 1396u–7(b)(1) of this title or benchmark equivalent coverage described in section 1396u–7(b)(2) of this title. Such medical assistance shall be provided subject to the requirements of section 1396u–7 of this title, without regard to whether a State otherwise has elected to provide medical assistance through coverage under that section, unless an individual described in subparagraph (VIII) of subsection (a)(10)(A)(i) is also an individual for whom, under subparagraph (B) of section 1396u–7(a)(2) of this title, the State may not require enrollment in benchmark coverage described in subsection (b)(1) of section 1396u–7 of this title or benchmark equivalent coverage described in subsection (b)(2) of that section.

(2) Beginning with the first day of any fiscal year quarter that begins on or after April 1, 2010, and before January 1, 2014, a State may elect to provide medical assistance to individuals who are described in subsection (VIII) of section 1396u–7(a)(2), if that subsection were effective before January 1, 2014. A State may elect to phase-in the extension of eligibility for medical assistance to such individuals based on income, so long as the State does not extend such eligibility to individuals described in such subsection with higher income before making individuals described in such subsection with lower income eligible for medical assistance.

(3) If an individual described in subparagraph (VIII) of subsection (a)(10)(A)(i) is the parent of a child who is under 19 years of age (or such higher age as the State may have elected) who is eligible for medical assistance under the State plan or under a waiver of such plan (under that subsection or under a State plan amendment under paragraph (2)), the individual may not be enrolled under the State plan unless the individual's child is enrolled under the State plan or under a waiver of the plan or is enrolled in other health insurance coverage.

(l) Description of group

(1) Individuals described in this paragraph are—

(A) women during pregnancy (and during the 60-day period beginning on the last day of the pregnancy),

(B) infants under one year of age,

(C) children who have attained one year of age but have not attained 6 years of age, and

(D) children born after September 30, 1983 (or, at the option of a State, after any earlier date), who have attained 6 years of age but have not attained 19 years of age, who are not described in any of subclauses (I) through (III) of subsection (a)(10)(A)(i) of this section and whose family income does not exceed the income level established by the State under paragraph (2) for a family size equal to the size of the family, including the woman, infant, or child.

(2)(A)(i) For purposes of paragraph (1) with respect to individuals described in subparagraph (A) or (B) of that paragraph, the State shall establish an income level which is a percentage (not less than the percentage provided under clause (ii) and not more than 150 percent) of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(ii) The percentage provided under this clause, with respect to eligibility for medical assistance on or after—

(I) July 1, 1989, is 75 percent, or, if greater, the percentage provided under clause (iii), and

(II) April 1, 1990, 133 percent, or, if greater, the percentage provided under clause (iv).

(iii) In the case of a State which, as of July 1, 1988, has elected to provide, and provides, medical assistance to individuals described in this subsection or has enacted legislation authorizing, or appropriating funds, to provide such assistance to such individuals before July 1, 1989, the percentage provided under clause (ii)(I) shall not be less than—

(I) the percentage specified by the State in an amendment to its State plan (whether approved or not) as of July 1, 1988, or

(II) if no such percentage is specified as of July 1, 1988, the percentage established under the State’s authorizing legislation or provided for under the State’s appropriations;

but in no case shall this clause require the percentage provided under clause (ii)(I) to exceed 133 percent.

(iv) In the case of a State which, as of December 19, 1989, has established under clause (i), or has enacted legislation authorizing, or appropriating funds, to provide for, a percentage (of the income official poverty line) that is greater than 133 percent, the percentage provided under clause (ii) for medical assistance on or after April 1, 1990, shall not be less than—

(I) the percentage specified by the State in an amendment to its State plan (whether approved or not) as of December 19, 1989, or

(II) if no such percentage is specified as of December 19, 1989, the percentage established under the State’s authorizing legislation or provided for under the State’s appropriations.

(B) For purposes of paragraph (1) with respect to individuals described in subparagraph (C) of such paragraph, the State shall establish an income level which is equal to 133 percent of the...
income official poverty line described in subparagraph (A) applicable to a family of the size involved.

(C) For purposes of paragraph (1) with respect to individuals described in subparagraph (D) of that paragraph, the State shall establish an income level which is equal to 10 percent (beginning January 1, 2014, 133 percent) of the income official poverty line described in subparagraph (A) applicable to a family of the size involved.

(3) Notwithstanding subsection (a)(17) of this section, for individuals who are eligible for medical assistance because of subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), or (a)(10)(A)(ii)(IX) of this section—

(A) application of a resource standard shall be at the option of the State;

(B) any resource standard or methodology that is applied with respect to an individual described in subparagraph (A) of paragraph (1) may not be more restrictive than the resource standard or methodology that is applied under subchapter XVI of this chapter;

(C) any resource standard or methodology that is applied with respect to an individual described in subparagraph (B), (C), or (D) of paragraph (1) may not be more restrictive than the corresponding methodology that is applied under the State plan under part A of subchapter IV of this chapter;

(D) the income standard to be applied is the appropriate income standard established under paragraph (2); and

(E) family income shall be determined in accordance with the methodology employed under the State plan under part A or E of subchapter IV of this chapter (except to the extent such methodology is inconsistent with clause (D) of subsection (a)(17) of this section), and costs incurred for medical care or for any other type of remedial care shall not be taken into account.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17) of this section, require or permit such treatment for other individuals.

(4)(A) In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to provide medical assistance for pregnant women and infants under age 1 described in subsection (a)(10)(A)(i)(IV) of this section and for children described in subsection (a)(10)(A)(i)(VI) of this section in the same manner as the State would be required to provide such assistance for such individuals if the State had in effect a plan approved under this subchapter.

(B) In the case of a State which is not one of the 50 States or the District of Columbia, the State need not meet the requirement of subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), or (a)(10)(A)(i)(VII) of this section and, for purposes of paragraph (2)(A), the State may substitute for the percentage provided under clause (ii) of such paragraph any percentage.

(m) Description of individuals

(1) Individuals described in this paragraph are individuals—

(A) who are 65 years of age or older or are disabled individuals (as determined under section 1382c(a)(3) of this title),

(B) whose income (as determined under section 1382a of this title for purposes of the supplemental security income program, except as provided in paragraph (2)(C)) does not exceed an income level established by the State consistent with paragraph (2)(A), and

(C) whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum amount of resources that an individual may have and obtain benefits under that program.

(2)(A) The income level established under paragraph (1)(B) may not exceed a percentage (not more than 100 percent) of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(B) In the case of a State that provides medical assistance to individuals not described in subsection (a)(10)(A) of this section and at the State’s option, the State may use under paragraph (1)(C) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in subsection (a)(10)(A) of this section.

(C) The provisions of section 1396d(p)(2)(D) of this title shall apply to determinations of income under this subsection in the same manner as they apply to determinations of income under section 1396d(p) of this title.

(3) Notwithstanding subsection (a)(17) of this section, for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(X) of this section—

(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

(B) except as provided in section 1382a(b)(4)(B)(ii) of this title, costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17) of this section, require or permit such treatment for other individuals.

(4) Notwithstanding subsection (a)(17) of this section, for qualified medicare beneficiaries described in section 1396d(p)(1) of this title—

(A) the income standard to be applied is the income standard described in section 1396d(p)(1)(B) of this title, and

(B) except as provided in section 1382a(b)(4)(B)(ii) of this title, costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17) of this section, require or permit such treatment for other individuals.
cause of subsection (a)(17) of this section, require or permit such treatment for other individuals.

(n) Payment amounts

(1) In the case of medical assistance furnished under this subchapter for medicare cost-sharing respecting the furnishing of a service or item to a qualified medicare beneficiary, the State plan may provide payment in an amount with respect to the service or item that results in the sum of such payment amount and any amount of payment made under subchapter XVIII of this chapter with respect to the service or item exceeding the amount that is otherwise payable under the State plan for the item or service for eligible individuals who are not qualified medicare beneficiaries.

(2) In carrying out paragraph (1), a State is not required to provide any payment for any expenses incurred relating to payment for deductibles, coinsurance, or copayments for medicare cost-sharing to the extent that payment under subchapter XVIII of this chapter for the service would exceed the payment amount that otherwise would be made under the State plan under this subchapter for such service if provided to an eligible recipient other than a medicare beneficiary.

(3) In the case in which a State’s payment for medicare cost-sharing for a qualified medicare beneficiary with respect to an item or service is reduced or eliminated through the application of paragraph (2)—

(A) for purposes of applying any limitation under subchapter XVIII of this chapter on the amount that the beneficiary may be billed or charged for the service, the amount of payment made under subchapter XVIII of this chapter plus the amount of payment (if any) under the State plan shall be considered to be payment in full for the service;

(B) the beneficiary shall not have any legal liability to make payment to a provider or to an organization described in section 1396b(m)(1)(A) of this title for the service; and

(C) any lawful sanction that may be imposed upon a provider or such an organization for excess charges under this subchapter or subchapter XVIII of this chapter shall apply to the imposition of any charge imposed upon the individual in such case.

This paragraph shall not be construed as preventing payment of any medicare cost-sharing by a medicare supplemental policy or an employer retiree health plan on behalf of an individual.

(o) Certain benefits disregarded for purposes of determining post-eligibility contributions

Notwithstanding any provision of subsection (a) of this section to the contrary, a State plan under this subchapter shall provide that any supplemental security income benefits paid by reason of subparagraph (E) or (G) of section 1396a of this title to an individual who—

(1) is eligible for medical assistance under the plan, and

(2) is in a hospital, skilled nursing facility, or intermediate care facility at the time such benefits are paid,

will be disregarded for purposes of determining the amount of any post-eligibility contribution by the individual to the cost of the care and services provided by the hospital, skilled nursing facility, or intermediate care facility.

(p) Exclusion power of State; exclusion as prerequisite for medical assistance payments; “exclude” defined

(1) In addition to any other authority, a State may exclude any individual or entity for purposes of participating under the State plan under this subchapter for any reason for which the Secretary could exclude the individual or entity from participation in a program under subchapter XVIII of this chapter under section 1320a–7, 1320a–7a, or 1395cc(b)(2) of this title.

(2) In order for a State to receive payments for medical assistance under section 1396(b)(a) of this title, with respect to payments the State makes to a medicaid managed care organization (as defined in section 1396b(m) of this title) or to an entity furnishing services under a waiver approved under section 1396n(b)(1) of this title, the State must provide that it will exclude from participation, as such an organization or entity, any organization or entity that—

(A) could be excluded under section 1320a–7(b)(8) of this title (relating to owners and managing employees who have been convicted of certain crimes or received other sanctions),

(B) has, directly or indirectly, a substantial contractual relationship (as defined by the Secretary) with an individual or entity that is described in section 1320a–7(b)(8)(B) of this title, or

(C) employs or contracts with any individual or entity that is excluded from participation under this subchapter under section 1320a–7 or 1320a–7a of this title for the provision of health care, utilization review, medical social work, or administrative services or employs or contracts with any entity for the provision (directly or indirectly) through such an excluded individual or entity of such services.

(3) As used in this subsection, the term “exclude” includes the refusal to enter into or renew a participation agreement or the termination of such an agreement.

(q) Minimum monthly personal needs allowance deduction; “institutionalized individual or couple” defined

(1)(A) In order to meet the requirement of subsection (a)(50) of this section, the State plan must provide that, in the case of an institutionalized individual or couple described in subparagraph (B), in determining the amount of the individual’s or couple’s income to be applied monthly to payment for the cost of care in an institution, there shall be deducted from the monthly income (in addition to other allowances otherwise provided under the State plan) a monthly personal needs allowance—

(i) which is reasonable in amount for clothing and other personal needs of the individual (or couple) while in an institution, and

(ii) which is not less (and may be greater) than the minimum monthly personal needs allowance described in paragraph (2).

The Secretary could exclude the individual or entity from participation in a program under subchapter XVIII of this chapter under section 1320a–7, 1320a–7a, or 1395cc(b)(2) of this title.
(B) In this subsection, the term "institutionalized individual or couple" means an individual or married couple—

(i) who is an inpatient (or who are inpatients) in a medical institution or nursing facility for which payments are made under this subchapter throughout a month; and

(ii) who is or are determined to be eligible for medical assistance under the State plan.

(2) The minimum monthly personal needs allowance described in this paragraph is $30 for an institutionalized individual and $60 for an institutionalized couple (if both are aged, blind, or disabled, and their incomes are considered available to each other in determining eligibility).

(r) Disregarding payments for certain medical expenses by institutionalized individuals

(1)(A) For purposes of sections 1396a(a)(17) and 1396a–5(d)(1)(D) of this title and for purposes of a waiver under section 1396n of this title, with respect to the post-eligibility treatment of income of individuals who are institutionalized or receiving home or community-based services under such a waiver, the treatment described in subparagraph (B) shall apply, there shall be disregarded reparation payments made by the Federal Republic of Germany, and there shall be taken into account amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) medicare and other health insurance premiums, deductibles, or coinsurance, and

(ii) necessary medical or remedial care recognized under State law but not covered under the State plan under this subchapter, subject to reasonable limits the State may establish on the amount of these expenses.

(B)(i) In the case of a veteran who does not have a spouse or a child, if the veteran—

(I) receives, after the veteran has been determined to be eligible for medical assistance under the State plan under this subchapter, a veteran’s pension in excess of $90 per month, and

(II) resides in a State veterans home with respect to which the Secretary of Veterans Affairs makes per diem payments for nursing home care pursuant to section 1741(a) of title 38,

any such pension payment, including any payment made due to the need for aid and attendance, or for unreimbursed medical expenses, that is in excess of $90 per month shall be counted as income only for the purpose of applying such excess payment to the State veterans home’s cost of providing nursing home care to the veteran.

(ii) The provisions of clause (i) shall apply with respect to a surviving spouse of a veteran who does not have a child in the same manner as they apply to a veteran described in such clause.

(2)(A) The methodology to be employed in determining income and resource eligibility for individuals under subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(V), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), (a)(10)(A)(ii), (a)(10)(C)(i)(III), or (f) of this section or under section 1396d(p) of this title may be less restrictive, and shall be no more restrictive, than the methodology—

(i) in the case of groups consisting of aged, blind, or disabled individuals, under the supplemental security income program under subchapter XVI of this chapter, or

(ii) in the case of other groups, under the State plan most closely categorically related.

(B) For purposes of this subsection and subsection (a)(10) of this section, methodology is considered to be "no more restrictive" if, using the methodology, additional individuals may be eligible for medical assistance and no individuals who are otherwise eligible are made ineligible for such assistance.

(s) Adjustment in payment for hospital services furnished to low-income children under age of 6 years

In order to meet the requirements of subsection (a)(55) of this section, the State plan must provide that payments to hospitals under the plan for inpatient hospital services furnished to infants who have not attained the age of 1 year, and to children who have not attained the age of 6 years and who receive such services in a disproportionate share hospital described in section 1396r–4(b)(1) of this title, shall—

(1) if made on a prospective basis (whether per diem, per case, or otherwise) provide for an outlier adjustment in payment amounts for medically necessary inpatient hospital services involving exceptionally high costs or exceptionally long lengths of stay,

(2) not be limited by the imposition of day limits with respect to the delivery of such services to such individuals, and

(3) not be limited by the imposition of dollar limits (other than such limits resulting from prospective payments as adjusted pursuant to paragraph (1)) with respect to the delivery of such services to any such individual who has not attained their first birthday (or in the case of such an individual who is an inpatient on his first birthday until such individual is discharged).

(t) Limitation on payments to States for expenditures attributable to taxes

Nothing in this subchapter (including sections 1396(b) and 1396c(a) of this title) shall be construed as authorizing the Secretary to deny or limit payments to a State for expenditures, for medical assistance for items or services, attributable to taxes of general applicability imposed with respect to the provision of such items or services.

(u) Qualified COBRA continuation beneficiaries

(1) Individuals described in this paragraph are individuals—

(A) who are entitled to elect COBRA continuation coverage (as defined in paragraph (3)), and

(B) whose income (as determined under section 1382a of this title for purposes of the supplemental security income program) does not exceed 100 percent of the official poverty line (as defined by the Office of Management and Budget).

So in original. Probably should be “this subsection”.

17So in original. Probably should be subsection “(a)(56)”. 
(C) whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual may have and obtain benefits under that program, and
(D) with respect to whose enrollment for COBRA continuation coverage the State has determined that the savings in expenditures under this subchapter resulting from such enrollment is likely to exceed the amount of payments for COBRA premiums made.

(2) For purposes of subsection (a)(10)(F) of this section and this subsection, the term “COBRA premiums” means the applicable premium imposed with respect to COBRA continuation coverage.

(3) In this subsection, the term “COBRA continuation coverage” means coverage under a group health plan provided by an employer with 75 or more employees provided pursuant to title XXII of the Public Health Service Act [42 U.S.C. 300bb–1 et seq.], section 4980B of the Internal Revenue Code of 1986, or title VI of the Employee Retirement Income Security Act of 1974.

(4) Notwithstanding subsection (a)(17) of this section, for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(XI) of this section—
(A) the income standard to be applied is the income standard described in paragraph (1)(B), and
(B) except as provided in section 1382a(b)(4)(B)(ii) of this title, costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(10)(B) or (a)(17) of this section, require or permit such treatment for other individuals.

(v) State agency disability and blindness determinations for medical assistance eligibility
A State plan may provide for the making of determinations of disability or blindness for the purpose of determining eligibility for medical assistance under the State plan by the single State agency or its designee, and make medical assistance available to individuals whom it finds to be blind or disabled and who are determined otherwise eligible for such assistance during the period of time prior to which a final determination of disability or blindness is made by the Social Security Administration with respect to such an individual. In making such determinations, the State shall apply the definitions of disability and blindness found in section 1382c(a) of this title.

(w) Maintenance of written policies and procedures respecting advance directives
(1) For purposes of subsection (a)(57) of this section and sections 1396b(m)(1)(A) and 1396r(c)(2)(E) of this title, the requirement of this subsection is that a provider or organization—
(A) provide written information to each such individual concerning—
(i) an individual’s rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and
(ii) the provider’s or organization’s written policies respecting the implementation of such rights;
(B) to document in the individual’s medical record whether or not the individual has executed an advance directive;
(C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;
(D) to ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State) respecting advance directives; and
(E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

(2) The written information described in paragraph (1)(A) shall be provided to an adult individual—
(A) in the case of a hospital, at the time of the individual’s admission as an inpatient,
(B) in the case of a nursing facility, at the time of the individual’s admission as a resident,
(C) in the case of a provider of home health care or personal care services, in advance of the individual coming under the care of the provider,
(D) in the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program, and
(E) in the case of a Medicaid managed care organization, at the time of enrollment of the individual with the organization.

(3) Nothing in this section shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which as a matter of conscience cannot implement an advance directive.

(4) In this subsection, the term “advance directive” means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated.

(5) For construction relating to this subsection, see section 14406 of this title (relating to clarification respecting assisted suicide, euthanasia, and mercy killing).
(x) Physician identifier system; establishment

The Secretary shall establish a system, for implementation by not later than July 1, 1991, which provides for a unique identifier for each physician who furnishes services for which payment may be made under a State plan approved under this subchapter.

(y) Intermediate sanctions for psychiatric hospitals

(1) In addition to any other authority under State law, where a State determines that a psychiatric hospital which is certified for participation under its plan no longer meets the requirements for a psychiatric hospital (referred to in section 1396d(h) of this title) and further finds that the hospital's deficiencies—

(A) immediately jeopardize the health and safety of its patients, the State shall terminate the hospital's participation under the State plan; or

(B) do not immediately jeopardize the health and safety of its patients, the State may terminate the hospital's participation under the State plan, or provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the effective date of the finding, or both.

(2) Except as provided in paragraph (3), if a psychiatric hospital described in paragraph (1)(B) has not complied with the requirements for a psychiatric hospital under this subchapter—

(A) within 3 months after the date the hospital is found to be out of compliance with such requirements, the State shall provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the end of such 3-month period, or

(B) within 6 months after the date the hospital is found to be out of compliance with such requirements, no Federal financial participation shall be provided under section 1396b(a) of this title with respect to further services provided in the hospital until the State finds that the hospital is in compliance with the requirements of this subchapter.

(3) The Secretary may continue payments, over a period of not longer than 6 months from the date the hospital is found to be out of compliance with such requirements, if—

(A) the State finds that it is more appropriate to take alternative action to assure compliance of the hospital with the requirements than to terminate the certification of the hospital.

(B) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

(C) the State agrees to repay to the Federal Government payments received under this paragraph if the corrective action is not taken in accordance with the approved plan and timetable.

(2) Optional coverage of TB-related services

(1) Individuals described in this paragraph are individuals not described in subsection (a)(10)(A)(i) of this section—

(A) who are infected with tuberculosis;

(B) whose income (as determined under the State plan under this subchapter with respect to disabled individuals) does not exceed the maximum amount of income a disabled individual described in subsection (a)(10)(A)(i) of this section may have and obtain medical assistance under the plan; and

(C) whose resources (as determined under the State plan under this subchapter with respect to disabled individuals) do not exceed the maximum amount of resources a disabled individual described in subsection (a)(10)(A)(i) of this section may have and obtain medical assistance under the plan.

(2) For purposes of subsection (a)(10) of this section, the term "TB-related services" means each of the following services relating to treatment of infection with tuberculosis:

(A) Prescribed drugs.

(B) Physicians' services and services described in section 1396d(a)(2) of this title.

(C) Laboratory and X-ray services (including services to confirm the presence of infection).

(D) Clinic services and Federally-qualified health center services.

(E) Case management services (as defined in section 1396m(g)(2) of this title).

(F) Services (other than room and board) designed to encourage completion of regimens of prescribed drugs by outpatients, including services to observe directly the intake of prescribed drugs.

(aa) Certain breast or cervical cancer patients

Individuals described in this subsection are individuals who—

(1) are not described in subsection (a)(10)(A)(i) of this section;

(2) have not attained age 65;

(3) have been screened for breast and cervical cancer under the Centers for Disease Control and Prevention breast and cervical cancer early detection program established under title XV of the Public Health Service Act (42 U.S.C. 300k et seq.) in accordance with the requirements of section 1504 of that Act (42 U.S.C. 300n) and need treatment for breast or cervical cancer; and

(4) are not otherwise covered under creditable coverage, as defined in section 2701(c)1 of the Public Health Service Act (42 U.S.C. 300gg(c)), but applied without regard to paragraph (1)(F) of such section.

(bb) Payment for services provided by Federally-qualified health centers and rural health clinics

(1) In general

Beginning with fiscal year 2001 with respect to services furnished on or after January 1, 2001, and each succeeding fiscal year, the State plan shall provide for payment for services described in section 1396d(a)(2)(C) of this title furnished by a Federally-qualified health center and services described in section 1396d(a)(2)(B) of this title furnished by a rural health clinic in accordance with the provisions of this subsection.

(2) Fiscal year 2001

Subject to paragraph (4), for services furnished on and after January 1, 2001, during fis-
eral year 2001, the State plan shall provide for payment for such services in an amount (calculated on a per visit basis) that is equal to 100 percent of the average of the costs of the center or clinic of furnishing such services during fiscal years 1999 and 2000 which are reasonable and related to the cost of furnishing such services, or based on such other tests of reasonableness as the Secretary prescribes in regulations under section 1395(a)(3) of this title, or, in the case of services to which such regulations do not apply, the same methodology used under section 1395(a)(3) of this title, adjusted to take into account any increase or decrease in the scope of such services furnished by the center or clinic during fiscal year 2001.

(3) Fiscal year 2002 and succeeding fiscal years

Subject to paragraph (4), for services furnished during fiscal year 2002 or a succeeding fiscal year, the State plan shall provide for payment for such services in an amount (calculated on a per visit basis) that is equal to the amount calculated for such services under this subsection for the preceding fiscal year—

(A) increased by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) applicable to primary care services (as defined in section 1395u(i)(4) of this title) for that fiscal year; and

(B) adjusted to take into account any increase or decrease in the scope of such services furnished by the center or clinic during that fiscal year.

(4) Establishment of initial year payment amount for new centers or clinics

In any case in which an entity first qualifies as a Federally-qualified health center or rural health clinic after fiscal year 2000, the State plan shall provide for payment for services described in section 1396d(a)(2)(B) of this title furnished by the clinic in the first fiscal year in which the center or clinic so qualifies in an amount (calculated on a per visit basis) that is equal to 100 percent of the costs of furnishing such services during such fiscal year based on the rates established under this subsection for the fiscal year for other such centers or clinics located in the same or adjacent area with a similar case load or, in the absence of such a center or clinic, in accordance with the regulations and methodology referred to in paragraph (2) or based on such other tests of reasonableness as the Secretary may specify. For each fiscal year following the fiscal year in which the entity first qualifies as a Federally-qualified health center or rural health clinic, the State plan shall provide for the payment amount to be calculated in accordance with paragraph (3).

(5) Administration in the case of managed care

(A) In general

In the case of services furnished by a Federally-qualified health center or rural health clinic pursuant to a contract between the center or clinic and a managed care entity (as defined in section 1396u–2(a)(1)(B) of this title), the State plan shall provide for payment to the center or clinic by the State of a supplemental payment equal to the amount (if any) by which the amount determined under paragraphs (2), (3), and (4) of this subsection exceeds the amount of the payments provided under the contract.

(B) Payment schedule

The supplemental payment required under subparagraph (A) shall be made pursuant to a payment schedule agreed to by the State and the Federally-qualified health center or rural health clinic, but in no case less frequently than every 4 months.

(6) Alternative payment methodologies

Notwithstanding any other provision of this section, the State plan may provide for payment in any fiscal year to a Federally-qualified health center for services described in section 1396d(a)(2)(C) of this title or to a rural health clinic for services described in section 1396d(a)(2)(B) of this title in an amount which is determined under an alternative payment methodology that—

(A) is agreed to by the State and the center or clinic; and

(B) results in payment to the center or clinic of an amount which is at least equal to the amount otherwise required to be paid to the center or clinic under this section.

(cc) Disabled children eligible to receive medical assistance at option of State

(1) Individuals described in this paragraph are individuals—

(A) who are children who have not attained 19 years of age and are born—

(i) on or after January 1, 2001 (or, at the option of a State, on or after an earlier date), in the case of the second, third, and fourth quarters of fiscal year 2007;

(ii) on or after October 1, 1995 (or, at the option of a State, on or after an earlier date), in the case of each quarter of fiscal year 2008; and

(iii) after October 1, 1989, in the case of each quarter of fiscal year 2009 and each quarter of any fiscal year thereafter;

(B) who would be considered disabled under section 1382c(a)(9)(C) of this title (as determined under subchapter XVI for children but without regard to any income or asset eligibility requirements that apply under such subchapter with respect to children); and

(C) whose family income does not exceed such income level as the State establishes and does not exceed—

(i) 300 percent of the poverty line (as defined in section 1397(c)(5) of this title) applicable to a family of the size involved; or

(ii) such higher percent of such poverty line as a State may establish, except that—

(I) any medical assistance provided to an individual whose family income exceeds 300 percent of such poverty line may only be provided with State funds; and

(II) no Federal financial participation shall be provided under section 1396(a) of this title for any medical assistance provided to such an individual.

(2)(A) If an employer of a parent of an individual described in paragraph (1) offers family cov-
verage under a group health plan (as defined in section 2791(a) of the Public Health Service Act [42 U.S.C. 300gg–91(a)]), the State shall—

(i) notwithstanding section 1396e of this title, require such parent to apply for, enroll in, and pay premiums for such coverage as a condition of such parent’s child being or remaining eligible for medical assistance under subsection (a)(10)(A)(ii)(XIX) if the parent is determined eligible for such coverage and the employer contributes at least 50 percent of the total cost of annual premiums for such coverage; and

(ii) if such coverage is obtained—

(I) subject to paragraph (2) of section 1396o(h)18 of this title, reduce the premium imposed by the State under that section in an amount that reasonably reflects the premium contribution made by the parent for private coverage on behalf of a child with a disability; and

(II) treat such coverage as a third party liability under subsection (a)(25).

(B) In the case of a parent to which subparagraph (A) applies, a State, notwithstanding section 1396e of this title but subject to paragraph (1)(C)(ii), may provide for payment of any portion of the annual premium for such family coverage that the parent is required to pay. Any payments made by the State under this subparagraph shall be considered, for purposes of section 1396a(a) of this title, to be payments for medical assistance.

(dd) Electronic transmission of information

If the State agency determining eligibility for medical assistance under this subchapter or child health assistance under subchapter XXI verifies an element of eligibility based on information from an Express Lane Agency19 (as defined in subsection (e)(13)(F)), or from another public agency, then the applicant’s signature under penalty of perjury shall not be required as to such element. Any signature requirement for an application for medical assistance may be satisfied through an electronic signature, as defined in section 1710(1) of the Government Paperwork Elimination Act (44 U.S.C. 3501 note). The requirements of subparagraphs (A) and (B) of section 1320b–7(d)(2) of this title may be met through evidence in digital or electronic form.

(ee) Alternate State process for verification of citizenship or nationality declaration

(1) For purposes of subsection (a)(46)(B)(i), the requirements of this subsection with respect to an individual declaring to be a citizen or national of the United States for purposes of establishing eligibility under this subchapter, are, in lieu of requiring the individual to present satisfactory documentary evidence of citizenship or nationality under section 1396(b)(x) of this title, to present satisfactory documentary evidence of citizenship or nationality under section 1396(b)(x) of this title if the individual is not described in paragraph (2) of that section, as follows:

(A) The State submits the name and social security number of the individual to the Commissioner of Social Security as part of the program established under paragraph (2).

(B) If the State receives notice from the Commissioner of Social Security that the name or social security number, or the declaration of citizenship or nationality, of the individual is inconsistent with information in the records maintained by the Commissioner—

(i) the State makes a reasonable effort to identify and address the causes of such inconsistency, including through typographical or other clerical errors, by contacting the individual to confirm the accuracy of the name or social security number submitted or declaration of citizenship or nationality and by taking such additional actions as the Secretary, through regulation or other guidance, or the State may identify, and continues to provide the individual with medical assistance while making such effort; and

(ii) in the case such inconsistency is not resolved under clause (i), the State—

(I) notifies the individual of such fact;

(II) provides the individual with a period of 90 days from the date on which the notice required under subparagraph (I) is received by the individual to either present satisfactory documentary evidence of citizenship or nationality (as defined in section 1396b(x)(3) of this title) or resolve the inconsistency with the Commissioner of Social Security (and continues to provide the individual with medical assistance during such 90-day period); and

(III) disenrolls the individual from the State plan under this subchapter within 30 days after the end of such 90-day period if no such documentary evidence is presented or if such inconsistency is not resolved.

(2)(A) Each State electing to satisfy the requirements of this subsection for purposes of section 1396a(a)(46)(B) of this title shall establish a program under which the State submits at least monthly to the Commissioner of Social Security for comparison of the name and social security number, of each individual newly enrolled in the State plan under this subchapter that month who is not described in section 1396b(x)(2) of this title and who declares to be a United States citizen or national, with information in records maintained by the Commissioner.

(B) In establishing the State program under this paragraph, the State may enter into an agreement with the Commissioner of Social Security—

(i) to provide, through an on-line system or otherwise, for the electronic submission of, and response to, the information submitted under subparagraph (A) for an individual enrolled in the State plan under this subchapter who declares to be a citizen or national on at least a monthly basis; or

(ii) to provide for a determination of the consistency of the information submitted with the information maintained in the records of the Commissioner through such other method as agreed to by the State and the Commissioner and approved by the Secretary, provided that such method is no more burden-

18So in original. Probably should be section “1396o(h)’’.
19So in original. Probably should be “agency”.
20So in original. Probably should be followed by “a”.

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some for individuals to comply with than any burdens that may apply under a method described in clause (1).

(C) The program established under this paragraph shall provide that, in the case of any individual who is required to submit a social security number to the State under subparagraph (A) and who is unable to provide the State with such number, shall be provided with at least the reasonable opportunity to present satisfactory documentary evidence of citizenship or nationality (as defined in section 1396b(x)(3) of this title) as is provided under clauses (i) and (ii) of section 1220–7(d)(4)(A) of this title to an individual for the submission to the State of evidence indicating a satisfactory immigration status.

(3)(A) The State agency implementing the plan approved under this subchapter shall, at such times and in such form as the Secretary may specify, provide information on the percentage each month that the inconsistent submissions bears to the total submissions made for comparison for such month. For purposes of this subparagraph, a name, social security number, or declaration of citizenship or nationality of an individual shall be treated as inconsistent and included in the determination of such percentage only if—

(i) the information submitted by the individual is not consistent with information in records maintained by the Commissioner of Social Security;

(ii) the inconsistency is not resolved by the State;

(iii) the individual was provided with a reasonable period of time to resolve the inconsistency with the Commissioner of Social Security or provide satisfactory documentation of citizenship status and did not successfully resolve such inconsistency; and

(iv) payment has been made for an item or service furnished to the individual under this subchapter.

(B) If, for any fiscal year, the average monthly percentage determined under subparagraph (A) is greater than 3 percent—

(i) the State shall develop and adopt a corrective plan to review its procedures for verifying the identities of individuals seeking to enroll in the State plan under this subchapter and to identify and implement changes in such procedures to improve their accuracy; and

(ii) pay to the Secretary an amount equal to the amount which bears the same ratio to the total payments under the State plan for the fiscal year for providing medical assistance to individuals who provided inconsistent information as the number of individuals with inconsistent information in excess of 3 percent of such total submitted bears to the total number of individuals with inconsistent information.

(C) The Secretary may waive, in certain limited cases, all or part of the payment under subparagraph (B)(ii) if the State is unable to reach the allowable error rate despite a good faith effort by such State.

(D) Subparagraphs (A) and (B) shall not apply to a State for a fiscal year if there is an agreement described in paragraph (2)(B) in effect as of the close of the fiscal year that provides for the submission on a real-time basis of the information described in such paragraph.

(4) Nothing in this subsection shall affect the rights of any individual under this subchapter to appeal any disenrollment from a State plan.

(ff) Disregard of certain property in determination of eligibility of Indians

Notwithstanding any other requirement of this subchapter or any other provision of Federal or State law, a State shall disregard the following property from resources for purposes of determining the eligibility of an individual who is an Indian for medical assistance under this subchapter:

(1) Property, including real property and improvements, that is held in trust, subject to Federal restrictions, or otherwise under the supervision of the Secretary of the Interior, located on a reservation, including any federally recognized Indian Tribe’s reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established by the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], and Indian allotments on or near a reservation as designated and approved by the Bureau of Indian Affairs of the Department of the Interior.

(2) For any federally recognized Tribe not described in paragraph (1), property located within the most recent boundaries of a prior Federal reservation.

(3) Ownership interests in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights.

(4) Ownership interests in or usage rights to items not covered by paragraphs (1) through (3) that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom.

(gg) Maintenance of effort

(1) General requirement to maintain eligibility standards until State exchange is fully operational

Subject to the succeeding paragraphs of this subsection, during the period that begins on March 23, 2010, and ends on the date on which the Secretary determines that an Exchange established by the State under section 18031 of this title is fully operational, as a condition for receiving any Federal payments under section 1396(a) of this title for calendar quarters occurring during such period, a State shall not have in effect eligibility standards, methodologies, or procedures under the State plan under this subchapter or under any waiver of such plan that is in effect during that period, that are more restrictive than the eligibility standards, methodologies, or procedures, respectively, under the plan or waiver that are in effect on March 23, 2010.

(2) Continuation of eligibility standards for children until October 1, 2019

The requirement under paragraph (1) shall continue to apply to a State through Septem-
ber 30, 2019, with respect to the eligibility standards, methodologies, and procedures under the State plan under this subchapter or under any waiver of such plan that are applicable to determining the eligibility for medical assistance of any child who is under 19 years of age (or such higher age as the State may have elected).

(3) Nonapplication

During the period that begins on January 1, 2011, and ends on December 31, 2013, the requirement under paragraph (1) shall not apply to a State with respect to nonpregnant, non-disabled adults who are eligible for medical assistance under the State plan or under a waiver of the plan at the option of the State and whose income exceeds 133 percent of the poverty line (as defined in section 1397jj(c)(5) of this title) applicable to a family of the size involved if, on or after December 31, 2010, the State certifies to the Secretary that, with respect to the State fiscal year during which the certification is made, the State has a budget deficit, or with respect to the succeeding State fiscal year, the State is projected to have a budget deficit. Upon submission of such a certification to the Secretary, the requirement under paragraph (1) shall not apply to the State with respect to any remaining portion of the period described in the preceding sentence.

(4) Determination of compliance

(A) States shall apply modified adjusted gross income

A State’s determination of income in accordance with subsection (e)(14) shall not be considered to be eligibility standards, methodologies, or procedures that are more restrictive than the standards, methodologies, or procedures in effect under the State plan or under a waiver of the plan on March 23, 2010, for purposes of determining compliance with the requirements of paragraph (1), (2), or (3).

(B) States may expand eligibility or move waivered populations into coverage under the State plan

With respect to any period applicable under paragraph (1), (2), or (3), a State that applies eligibility standards, methodologies, or procedures under the State plan under this subchapter or under any waiver of the plan that are less restrictive than the eligibility standards, methodologies, or procedures, applied under the State plan or under a waiver of the plan on March 23, 2010, or that makes individuals who, on March 23, 2010, are eligible for medical assistance under a waiver of the State plan, after March 23, 2010, eligible for medical assistance through a State plan amendment with an income eligibility level that is not less than the income eligibility level that applied under the waiver, or as a result of the application of subclause (VIII) of subsection (a)(10)(A)(ii), shall not be considered to have in effect eligibility standards, methodologies, or procedures that are more restrictive than the standards, methodologies, or procedures in effect under the State plan or under a waiver of the plan on March 23, 2010, for purposes of determining compliance with the requirements of paragraph (1), (2), or (3).

(hh) State option for coverage for individuals with income that exceeds 133 percent of the poverty line

(1) A State may elect to phase-in the extension of eligibility for medical assistance to individuals described in subclause (XX) of subsection (a)(10)(A)(ii) based on the categorical group (including nonpregnant childless adults) or income, so long as the State does not extend such eligibility to individuals described in such subclause with higher income before making individuals described in such subclause with lower income eligible for medical assistance.

(2) If an individual described in subclause (XX) of subsection (a)(10)(A)(ii) is the parent of a child who is under 19 years of age (or such higher age as the State may have elected) who is eligible for medical assistance under the State plan or under a waiver of such plan, the individual may have elected).

(ii) State eligibility option for family planning services

(1) Individuals described in this subsection are individuals—

(A) whose income does not exceed an income eligibility level established by the State that does not exceed the highest income eligibility level established under the State plan under this subchapter or under any waiver of the plan or is enrolled in other health insurance coverage. For purposes of the preceding sentence, the term “parent” includes an individual treated as a caretaker relative for purposes of carrying out section 1396u–1 of this title.

(2) At the option of a State, individuals described in this subsection may include individuals who, had individuals applied on or before January 1, 2007, would have been made eligible pursuant to the standards and processes imposed by that State for benefits described in clause (XVI) of the matter following subparagraph (G) of section 1395w–4(c)(5) of this title.

(3) At the option of a State, for purposes of subsection (a)(17)(B), in determining eligibility for services under this subchapter, the State may consider only the income of the applicant or recipient.

(jj) Primary care services defined

For purposes of subsection (a)(13)(C), the term “primary care services” means—

(1) evaluation and management services that are procedure codes (for services covered under subchapter XVIII) for services in the category designated Evaluation and Management in the Healthcare Common Procedure Coding System (established by the Secretary under section 1395w–4(c)(5) of this title as of December 31, 2009, and as subsequently modified); and

21So in original. The word “section” probably should not appear.
(2) services related to immunization administration for vaccines and toxoids for which CPT codes 90465, 90466, 90467, 90468, 90471, 90472, 90473, or 90474 (as subsequently modified) apply under such System.

(kk) Provider and supplier screening, oversight, and reporting requirements

For purposes of subsection (a)(77), the requirements of this subsection are the following:

(1) Screening

The State complies with the process for screening providers and suppliers under this subchapter, as established by the Secretary under section 1395cc(j)(2) of this title.

(2) Provisional period of enhanced oversight for new providers and suppliers

The State complies with procedures to provide for a provisional period of enhanced oversight for new providers and suppliers under this subchapter, as established by the Secretary under section 1395cc(j)(3) of this title.

(3) Disclosure requirements

The State requires providers and suppliers under the State plan or under a waiver of the plan to comply with the disclosure requirements established by the Secretary under section 1395cc(j)(4) of this title.

(4) Temporary moratorium on enrollment of new providers or suppliers

(A) Temporary moratorium imposed by the Secretary

(i) In general

Subject to clause (ii), the State complies with any temporary moratorium on the enrollment of new providers or suppliers imposed by the Secretary under section 1395cc(j)(6) of this title.

(ii) Exception

A State shall not be required to comply with any temporary moratorium described in clause (i) if the State determines that the imposition of such temporary moratorium would adversely impact beneficiaries’ access to medical assistance.

(B) Moratorium on enrollment of providers and suppliers

At the option of the State, the State imposes, for purposes of entering into participation agreements with providers or suppliers under the State plan or under a waiver of the plan, periods of enrollment moratoria, or numerical caps or other limits, for providers or suppliers identified by the Secretary as being at high-risk for fraud, waste, or abuse, but only if the State determines that the imposition of any such period, cap, or other limits would not adversely impact beneficiaries’ access to medical assistance.

(5) Compliance programs

The State requires providers and suppliers under the State plan or under a waiver of the plan to establish, in accordance with the requirements of section 1395cc(j)(7) of this title, a compliance program that contains the core elements established under subparagraph (B) of that section 1395cc(j)(7) of this title for providers or suppliers within a particular industry or category.

(6) Reporting of adverse provider actions

The State complies with the national system for reporting criminal and civil convictions, sanctions, negative licensure actions, and other adverse provider actions to the Secretary, through the Administrator of the Centers for Medicare & Medicaid Services, in accordance with regulations of the Secretary.

(7) Enrollment and NPI of ordering or referring providers

The State requires—

(A) all ordering or referring physicians or other professionals to be enrolled under the State plan or under a waiver of the plan as a participating provider; and

(B) the national provider identifier of any ordering or referring physician or other professional to be specified on any claim for payment that is based on an order or referral of the physician or other professional.

(8) Other State oversight

Nothing in this subsection shall be interpreted to preclude or limit the ability of a State to engage in provider and supplier screening or enhanced provider and supplier oversight activities beyond those required by the Secretary.
917, 918, provided that, effective Jan. 1, 2014, subsection (a)(10)(A)(i) of this section is amended:
(1) by striking "or" at the end of subclause (VII); and
(2) by adding "or" at the end of subclause (VIII); and
(3) by inserting after subclause (VII) the following:

(IX) who—

(a) are under 26 years of age;
(b) are not described in or enrolled under any of such subclauses (I) through (VII) of this clause or are described in any of such subclauses but have income that exceeds the level of income applicable under the State plan for eligibility to enroll for medical assistance under such subclause;

(c) were in foster care under the responsibility of the State on the date of attaining 18 years of age or such higher age as the State has elected under section 675(b)(B)(ii)(H) of this title; and

(d) were enrolled in the State plan under this subchapter or under a waiver of the plan while in such foster care;


Pub. L. 111–148, title II, § 2202(a), (c), Mar. 23, 2010, 124 Stat. 292, provided that, effective Jan. 1, 2014, subsection (a)(47) of this section is amended as follows:

(1) by striking "at the option of the State, provide" and inserting "(A) at the option of the State, ;

(2) by inserting "and" after the semicolon; and

(3) by adding at the end the following:

(B) that any hospital that is a participating provider under the State plan may elect to be a qualified entity for purposes of determining, on the basis of preliminary information, whether any individual is eligible for medical assistance under the State plan or under a waiver of the plan for purposes of determining the individual with medical assistance during a presumptive eligibility period, in the same manner, and subject to the same requirements, as apply to the State options with respect to populations described in section 1396r–1b; and

Pub. L. 111–148, title II, § 2303(b)(2)(A), (d), Mar. 23, 2010, 124 Stat. 296, provided that, effective Mar. 23, 2010, and applicable to items and services furnished on or after such date, subsection (a)(47) of this section, as amended by section 2202(a) of Pub. L. 111–148, set out above, is amended as follows:

(1) in subparagraph (A), by inserting before the semicolon at the end the following: "and provide for making medical assistance available to individuals described in subsection (a) of section 1396r–1c of this title during a presumptive eligibility period in accordance with such section"; and

(2) in subparagraph (B), by striking "or 1396r–1b of this title and inserting "1396r–1b, or 1396r–1c of this title".

See 2010 Amendment notes below.

For repeal of amendment by section 3(e) of Pub. L. 111–255, see Effective and Termination Dates of 2010 Amendment notes below.

AMENDMENT OF SUBSECTION (e)(14)

For repeal of amendment by section 3(e) of Pub. L. 111–148, see Effective and Termination Dates of 2010 Amendment notes below.
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individuals, and individuals eligible for medical assistance for the following:

(A) Individuals who are eligible for medical assistance under the State plan or under a waiver for medical assistance for the following:

(i) Express lane agency findings.—In the case of a State that elects the Express Lane option under paragraph (13), notwithstanding subparagraphs (A), (B), and (C), the State may rely on a finding made by an Express Lane agency in accordance with that paragraph relating to the income of an individual for purposes of determining the individual’s eligibility for medical assistance under the State plan or under a waiver of the plan.

(ii) Medicare prescription drug subsidies determinations.—Subparagraphs (A), (B), and (C) shall not apply to any determinations of eligibility for premium and cost-sharing subsidies under any waiver of such plan on the basis of being blind or disabled (or being treated as being blind or disabled) without regard to whether the individual is eligible for supplemental security income benefits under subchapter XVI, and individuals who are eligible as a result of being or being deemed to be a child in foster care under the responsibility of the State.

(II) Individuals who have attained age 65.

(III) Individuals who qualify for medical assistance under the State plan or under any waiver of such plan on the basis of being blind or disabled (or being treated as being blind or disabled) without regard to whether the individual is eligible for supplemental security income benefits under subchapter XVI on the basis of being blind or disabled and including an individual who is eligible for medical assistance under the basis of paragraph (3).

(IV) Individuals described in subsection (a)(10)(C).

(V) Individuals described in any clause of subsection (a)(10)(E).

(ii) Long-term care.—Subparagraphs (A), (B), and (C) shall not apply to any determinations of eligibility of individuals for purposes of medical assistance for nursing facility services, a level of care in any institution equivalent to that of nursing facility services, home or community-based services furnished under a waiver or State plan amendment under section 1396n of this title or a waiver under section 1315 of this title, and services described in section 1396p(c)(1)(C)(ii) of this title.

(v) Grandfather of current enrollees until date of next regular redetermination.—An individual who, on January 1, 2014, is enrolled in the State plan or under a waiver of the plan and who would be determined ineligible for medical assistance solely because of the application of the modified adjusted gross income or household income standard described in subparagraph (A), shall remain eligible for medical assistance under the State plan or waiver (and subject to the same premiums and cost-sharing as applied to the individual on that date) through March 31, 2014, or the date on which the individual’s next regularly scheduled redetermination of eligibility is to occur, whichever is later.

(E) Transition planning and oversight.—Each State shall submit to the Secretary for the Secretary’s approval the income eligibility thresholds proposed to be established using modified adjusted gross income and household income, the methodologies and procedures to be used to determine income eligibility using modified adjusted gross income and household income and, if applicable, a State plan amendment establishing an optional eligibility category under subsection (a)(10)(A)(ii)(XX). To the extent practicable, the State shall use the same methodologies and procedures for purposes of making such determinations as the State used on March 23, 2010. The Secretary shall ensure that the income eligibility thresholds proposed to be established using modified adjusted gross income and household income, including under the eligibility category established under subsection (a)(10)(A)(ii)(XX), and the methodologies and procedures proposed to be used to determine income eligibility, will not result in children who would have been eligible for medical assistance under the State plan or under a waiver of the plan on March 23, 2010, no longer being eligible for such assistance.

(F) Limitation on secretarial authority. The Secretary shall not waive compliance with the requirements of this paragraph except to the extent necessary to permit a State to coordinate eligibility requirements for dual eligible individuals (as defined in section 1396n(h)(2)(B) of this title) under the State plan or under a waiver of the plan and under subchapter XVIII and individuals who require the level of care provided in a hospital, a nursing facility, or an intermediate care facility for the mentally retarded.

(G) Definitions of modified adjusted gross income and household income.—In this paragraph, the terms “modified adjusted gross income” and “household income” have the meanings given such terms in section 36B(d)(2) of the Internal Revenue Code of 1986.

(H) Continued application of medicaid rules regarding point-in-time income and sources of income.—The requirement under this paragraph for States to use modified adjusted gross income and household income to determine income eligibility for medical assistance under the State plan or under any waiver of such plan and for any other purpose applicable under the plan or waiver for which a determination of income is required shall not be construed as affecting or limiting the application of—

(i) the requirement under this subchapter and under the State plan or a waiver of the plan to determine an individual’s income as of the point in time at which an application for medical assistance under the State plan or a waiver of the plan is processed; or

(ii) any rules established under this subchapter or under the State plan or a waiver of the plan regarding sources of countable income.

(I) Treatment of portion of modified adjusted gross income.—For purposes of determining the
income eligibility of an individual for medical assistance whose eligibility is determined based on the application of modified adjusted gross income under subparagraph (A), the State shall—

(i) determine the dollar equivalent of the difference between the upper income limit on eligibility for such an individual (expressed as a percentage of the poverty line) and such upper income limit increased by 5 percentage points; and

(ii) notwithstanding the requirement in subparagraph (A) with respect to use of modified adjusted gross income, utilize as the applicable income of such individual, in determining such income eligibility, an amount equal to the modified adjusted gross income applicable to such individual reduced by such dollar equivalent amount.

See 2010 Amendment notes below.

REFERENCES IN TEXT


The Richard B. Russell National School Lunch Act, referred to in subsec. (a)(7) and (e)(13)(F)(i)(gg), is act June 4, 1946, ch. 281, 60 Stat. 230, which is classified generally to chapter 13 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

Section 602 of this title, referred to in subsec. (a)(10)(A)(i) and (e)(10), was repealed and a new section 602 enacted by Pub. L. 104-193, title I, §103(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, no longer contains a subsec. (h).


The date of the enactment of section 211(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsec. (a)(10)(A)(i)(aa), is the date of enactment of Pub. L. 104-193, which was approved Aug. 22, 1996. Section 211(a) of the Act amended section 3382c of this title.


Section 303(a)(4)(A) of this title, referred to in subsec. (a)(13)(F)(i)(Ik), is act Sept. 1, 1937, ch. 376, 49 Stat. 1046, which is classified generally to chapter 8 (§1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.


The Internal Revenue Code of 1986, referred to in subsec. (a)(13)(F)(i)(I)(mm), is classified generally to title II of the Code which is classified generally to subchapter XVII (§2001 et seq.) of title 26, Internal Revenue Code, and, as so amended, no longer contains subparagraphs.

The Public Health Service Act, referred to in subsecs. (a)(81), (a)(82)(A), (u)(3) and (aa)(3), is act July 1, 1944, ch. 373, 58 Stat. 682, Titles XV, XXII, and XXXII of this Act are classified generally to subchapters XIII (§300k et seq.), XX (§300hh–1 et seq.), and XXX (§300I et seq.), respectively, of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

Public Law 92-336, referred to in provisions following subsec. (a)(53), is Pub. L. 92-336, July 1, 1972, 86 Stat. 606, which amended sections 403, 409, 411, 415, 427, 428, and 430 of this title and sections 165, 1401, 1402, 3101, 3111, 3121, 3122, 3125, 6413, and 6654 of Title 29, Internal Revenue Code, and, as so amended, no longer contains subparagraphs.

See 2010 Amendment notes below.
that are provided pursuant to a family planning service in a family planning setting”.

Pub. L. 111–148, §2001(a)(5)(A), in concluding provisions, substituted “‘(XIV)’ for “(XIV)” and inserted before semicolon at end “and (XV) the medical assistance made available to an individual described in subparagraph (A)(i)(VIII) shall be limited to medical assistance described in subsection (E)(iv)”, as section 1710(c)(4) of Pub. L. 105–277, which is set out in a note under section 5002 of Title 44, Public Printing and Documents.


Section 1710(c) of the Government Paperwork Elimination Act (41 U.S.C. 423) is the short title for the section, referred to in subsection (a)(3), of Pub. L. 111–148, which is set out in a note under section 1710(c) of that Act.


Subsec. (a)(1)(E)(iv). Pub. L. 111–148, §2303(a)(3), in concluding provisions, substituted “‘(XV)’ for “(XIV)” and inserted before semicolon at end “and provide for making ambulatory care available to an individual described in subparagraph (A)(i)(VII) of this clause, and who are under 25 months of age”.

§ 702(a)(1)(B)], struck out ''and'' at end.

year 2000, fiscal year 2001, or fiscal year 2002, 90 percent payment for services described in clause (B) or (C) of struck out subpar. (C) which read as follows: ''(C)(i) for payment of a claim for a health care item or service''.

ute, contract, or agreement, legally responsible for ''and a health maintenance organization''.

existing provisions as subpar. (A) and added subpar. (B).


Subsec. (a)(10)(E)(iv). Pub. L. 108–173, § 103(a)(1), related to individuals who are independent foster care adolescents, as (XVII). See Construc-
tion of 1999 Amendment note below.

Subsec. (aa). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(aa)(1)], substituted “1396d(u)(2)(B) of this title” for “1396d(u)(2)(C) of this title”.

Subsec. (aa). Pub. L. 107–121, § 2(a), added (aa) relating to certain breast or cervical cancer patients.

Subsec. (aa). Pub. L. 107–121, § 2(a), substituted before semicolon at end “and provide for making med-
cal assistance available to individuals described in sub-
section (a) of section 1396b-1 of this title during a pre-
sumptive eligibility period in accordance with such sec-
tion”.-Subsec. (aa). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(aa)(1)], substituted “1396d(u)(2)(B) of this title” for “1396d(u)(2)(C) of this title”.

Subsec. (aa)(4). Pub. L. 107–121, § 2(a), inserted “,” but applied without regard to paragraph (1)(F) of such sec-
tion” before period at end.


Subsec. (a)(10)(A)(ii)(XVIII). Pub. L. 106–354, § 103(a)(1), related to individuals who are independent foster care adolescents, as (XVII). See Construc-
tion of 1999 Amendment note below.

Subsec. (a)(13)(A)(i). Pub. L. 106–169, § 121(a)(1)(A), redesignated subcl. (XII) and sub-


Subsec. (a)(13)(A)(iv). Pub. L. 106–169, § 121(a)(1)(B), which directed insertion of “or” at end of subcl. (XIV), was executed by amending subcl. (XV), related to individuals who would be considered to be receiving supplemental security income, etc. See Construction of 1999 Amendment note below.

Subsec. (aa). Pub. L. 107–121, § 2(b)(2), substituted before semicolon at end “and” for end of subcl. (XIII), was executed to subcl. (XIV). See Construc-
tion of 1999 Amendment note below.

Subsec. (aa)(2). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(aa)(1)], substituted “1396d(u)(2)(B) of this title” for “1396d(u)(2)(C) of this title”.

uals who are independent foster care adolescents, as (XVII). See Construc-
tion of 1999 Amendment note below.

Subsec. (aa)(3) of this title and (ii) in carrying out clause (i) of this section "and provide for making med-
cal assistance available to individuals described in sub-
section (a) of section 1396b-1 of this title during a pre-
sumptive eligibility period in accordance with such sec-
tion".

Subsec. (aa). Pub. L. 107–121, § 2(b)(2)(A), inserted before semicolon at end “and provide for making med-
cal assistance available to individuals described in sub-
section (a) of section 1396b-1 of this title during a pre-
sumptive eligibility period in accordance with such sec-
tion”.-Subsec. (aa). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(aa)(1)], substituted “1396d(u)(2)(B) of this title” for “1396d(u)(2)(C) of this title”.

Subsec. (aa). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(aa)(1)], substituted “1396d(u)(2)(B) of this title” for “1396d(u)(2)(C) of this title”.

Subsec. (aa)(4). Pub. L. 107–121, § 2(a), inserted “,” but applied without regard to paragraph (1)(F) of such sec-
tion” before period at end.


Subsec. (a)(10)(A)(ii)(XV). Pub. L. 106–354, § 103(a)(1), related to individuals who are independent foster care adolescents, as (XVII). See Construc-
tion of 1999 Amendment note below.


Subsec. (aa). Pub. L. 106–169, § 121(a)(1)(C), added subcl. (XV), related to individuals who would be considered to be receiving supplemental security income, etc. See Construc-
tion of 1999 Amendment note below.

Subsec. (aa). Pub. L. 106–169, § 121(a)(1)(B), which directed insertion of “or” at end of subcl. (XIV), was executed by amending subcl. (XV), related to individuals who would be considered to be receiving supplemental security income, etc. See Construction of 1999 Amendment note below.

Subsec. (aa). Pub. L. 106–169, § 121(a)(1)(B), which directed insertion of “or” at end of subcl. (XIV), was executed by amending subcl. (XV), related to individuals who would be considered to be receiving supplemental security income, etc. See Construc-
tion of 1999 Amendment note below.

Subsec. (a)(10)(A)(ii)(XVII). Pub. L. 106–354, § 103(a)(1), related to individuals who are independent foster care adolescents, as (XVII) and sub-
stituted “section 1396d(w)(1)” for “section 1396d(v)(1)”.

Subsec. (a)(10)(G). Pub. L. 106–169, § 121(c)(4), substituted “subsections (c) and (e) of section 1396b” for “section 1396b(1)(e)”.

Subsec. (aa). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(aa)(1)], substituted “fiscal year 2001, or fiscal year 2002, 90 percent for services furnished during fiscal year 2003, or 85 percent for services furnished during fiscal year 2004” of costs which are reasonable and related to the cost of furnishing such services or based on such other tests of reasonableness, as the Secretary prescribes in regula-
tions under section 1395(a)(3) of this title, or, in the case of services to which those regulations do not apply, on the same methodology used under section 1395(a)(3) of this title and (ii) in carrying out clause (i) in the case of services furnished by a Federally-quali-

Subsec. (a)(10)(A)(ii)(XVIII). Pub. L. 106–354, § 103(a)(1), related to individuals who are independent foster care adolescents, as (XVII). See Construc-
tion of 1999 Amendment note below.
laws: ‘‘a utilization and quality control peer review organization (under part B of subchapter XI of this chapter), an entity which meets the requirements of section 1396h-1 of this title, as determined by the Secretary, or a private accreditation body to conduct (on an annual basis) an independent, external review of the quality of services furnished under each contract under section 1396h-2 of this title, with the results of such review made available to the State and, upon request, to the Secretary, the Inspector General in the Department of Health and Human Services, and the Comptroller General.’’

Subsec. (a)(60). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(y)(2)], made technical amendment to reference in original act which appears in text as reference to section 1396g–2 of this title.

Subsec. (a)(61). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(a)], inserted ‘‘and’’ at end.

Subsec. (d). Pub. L. 106–113, § 1000(a)(6) [title VI, § 604a(2)(A)], struck out ‘‘(including quality review functions described in subsection (a)(30)(C) of this section)’’ after ‘‘medical or utilization review functions’’.

Pub. L. 106–113, § 1000(a)(6) [title VI, § 604a(1)], struck out ‘‘for the performance of the quality review functions described in subsection (a)(30)(C) of this section,’’ before ‘‘or a utilization and quality control peer review organization’’.

Subsec. (j). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(b)], substituted ‘‘of’’ for ‘‘of’’ after ‘‘numbered paragraph’’.


Subsec. (v). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(d)], struck out par. (1) designation before ‘‘A State plan may provide’’.

Subsec. (a). Pub. L. 105–33, § 4454(b)(1), in second sentence of flush concluding provisions, substituted ‘‘to a religious nonmedical health care institution (as defined in section 1395ss(e)(1) of this title),’’ for ‘‘to a Christian Science sanatorium operated, or listed and certified, by The Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc.’’.

Subsec. (a)(4)(C), (D). Pub. L. 105–33, § 4724(c)(1), substituted ‘‘(C)’’ for ‘‘and (C)’’, ‘‘local officer, employee, or independent contractor’’ for ‘‘local officer or employee’’, and ‘‘such an officer or employee, or contractor’’ for ‘‘such an officer or employee’’ in two places and added subpar. (D).

Subsec. (a)(9)(C). Pub. L. 105–33, § 4106(c), substituted ‘‘paragraphs (16) and (17)’’ for ‘‘paragraphs (15) and (16)’’.

Subsec. (a)(10)(A)(i)(II). Pub. L. 105–33, § 4913(a), inserted ‘‘or were being paid as of the date of the enactment of section 211(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) and would continue to be paid but for the enactment of that section’’ after ‘‘subchapter XVI of this chapter’’.


Subsec. (a)(13)(A). Pub. L. 105–33, § 4711(a)(1), added subpar. (A) and struck out former subpar. (A) which related to payment of hospital services, nursing facility services, and services in intermediate care facilities for mentally retarded by use of rates which account for various specified costs.

Subsec. (a)(13)(B). Pub. L. 105–33, § 4711(a)(1), redesignated subpar. (D) as (B), inserted ‘‘and’’ at end, and struck out former subpar. (B) which read as follows: ‘‘that the State shall provide assurances satisfactory to the Secretary that the payment methodology utilized by the State for payments to hospitals can reasonably be expected not to increase the such payments, solely as a result of a change of ownership, in excess of the increase which would result from the application of section 1396x(v)(1)(O) of this title.’’


Pub. L. 105–33, § 4712(b)(1), designated existing provisions as cl. (1) and added cl. (2).

Pub. L. 105–33, § 4712(a), inserted ‘‘(or 95 percent for services furnished during fiscal year 2000, 90 percent for services furnished during fiscal year 2001, 85 percent for services furnished during fiscal year 2002, or 70 percent for services furnished during fiscal year 2003)’’ after ‘‘100 percent’’.

Pub. L. 105–33, § 4711(a)(1), (2), (4), redesignated subpar. (E) as (C), struck out ‘‘and’’ at end, and struck out former subpar. (C) which read as follows: ‘‘that the State shall provide assurances satisfactory to the Secretary that the valuation of capital assets, for purposes of determining payment rates for nursing facilities and for intermediate care facilities for mentally retarded, will not be increased (as measured from the date of acquisition by the seller to the date of the change of ownership), solely as a result of a change of ownership, by more than the lesser of—

‘‘(i) one-half of the percentage increase (as measured over the same period of time, or, if necessary, as extrapolated retrospectively by the Secretary) in the Dodge Construction Systems Costs for Nursing Homes, applied in the aggregate with respect to those facilities which have undergone a change of ownership during the fiscal year, or

‘‘(ii) one-half of the percentage increase (as measured over the same period of time) in the Consumer Price Index for All Urban Consumers (United States city average).’’

Subsec. (a)(13)(D). (E). Pub. L. 105–33, § 4711(a)(2), redesignated subpars. (D) and (E) as (B) and (C), respectively.

Subsec. (a)(13)(F). Pub. L. 105–33, § 4711(a)(5), struck out subpar. (F) which read as follows: ‘‘for payment for home and community care (as defined in section 1396d(a) of this title and provided under such section) through rates which are reasonable and adequate to meet the costs of providing care, efficiently and economically, in conformity with applicable State and Federal laws, regulations, and quality and safety standards.’’

Subsec. (a)(23). Pub. L. 105–33, § 4724(d), struck out ‘‘except as provided in subsection (g) of this section and in section 1396n and except in the case of Puerto Rico, the Virgin Islands, and Guam, after ‘‘(23)’’ and inserted before semicolon at end ‘‘, except as provided in subsection (g) of this section and in section 1396n of this title, except that this paragraph shall not apply in the case of Puerto Rico, the Virgin Islands, and Guam, and except that nothing in this paragraph shall be construed as requiring a State to provide medical assistance for such services furnished by a person or entity convicted of a felony under Federal or State law for an offense which the State agency determines is inconsistent with the best interests of beneficiaries under the State plan’’.

Subsec. (a)(23)(B). Pub. L. 105–33, § 4701(d)(1), substituted ‘‘, in section 1396n of this title, and in section 1396u–2(a) of this title’’ for ‘‘and in section 1396n of this title’’.

Pub. L. 105–33, § 4701(b)(2)(A)(i), substituted ‘‘medicaid managed care organization’’ for ‘‘health maintenance organization’’.

Subsec. (a)(23)(A)(I). Pub. L. 105–33, § 4753(b), substituted ‘‘be integrated with, and be monitored as a part of the Secretary’s review of, the State’s mechanized claims processing and information retrieval sys-
tems required under section 1396(r)(64) of this title;" for the dash that followed "which plan shall" and struck out subcls. (I) and (II) which read as follows:

...(I) the adequacy of the services available to meet his health care needs through alternative institutional or noninstitutional services; and

...(II) be subject to any other financial penalty as a result of failure to meet conditions of approval, but shall not be subject to any other financial penalty as a result of any other monitoring, quality control, or auditing requirements;"

Subsec. (a)(25)(G) to (I). Pub. L. 105–33, § 4741(a), redesignated subpars. (H) and (I) as (G) and (H), respectively, and struck out former subpar. (G) which read as follows:

"(G) with respect to each patient" and struck out subpars. (B) and (C) which read as follows:

"(B) for periodic inspections to be made in all mental institutions within the State by one or more medical review teams (composed of physicians and other appropriate health and social service personnel) of the care being provided to each person receiving medical assistance. The inspections shall include (1) the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, (ii) the necessity and desirability of his continued placement in the institution, and (iii) the feasibility of meeting his health care needs through alternative institutional or noninstitutional services; and

"(C) for full reports to the State agency by each medical review team of the findings of each inspection under subparagraph (B), together with any recommendations;"

Subsec. (a)(31). Pub. L. 105–33, § 4751(b), substituted "provide, with respect to each patient" for "provide—"

"(A) with respect to each patient" and struck out subpars. (B) and (C) which read as follows:

"(B) with respect to each intermediate care facility for the mentally retarded within the State, for periodic on-site inspections of the care being provided to each person receiving medical assistance by one or more independent professional review teams (composed of a physician or registered nurse and other appropriate health and social service personnel), including with respect to each such person (i) the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, (ii) the necessity and desirability of his continued placement in the institution, and (iii) the feasibility of meeting his health care needs through alternative institutional or noninstitutional services; and

"(C) for full reports to the State agency by each independent professional review team of the findings of each inspection under subparagraph (B), together with any recommendations;"

Subsec. (a)(47). Pub. L. 105–33, § 4912(b)(1), inserted before semicolon at end "and provide for making medical assistance for items and services described in subsection (a) of section 1396e–1a of this title available to children during a presumptive eligibility period in accordance with such section".


Subsec. (a)(64). Pub. L. 105–33, § 4724(g)(1)(B), which directed the amendment of par. (64) by substituting "...and at end..." for the period at end, could not be executed because there was no period at end.

Pub. L. 105–33, § 4724(f), added par. (64).
Subsec. (t). Pub. L. 101–239, §2(b)(1), substituted "‘Nothing’ for ‘‘Except as provided in section 1396b(i) of this title, nothing’ and ‘‘taxes of general applicability’’ for ‘‘taxes (whether or not of general applicability)’’.”

1990—Subsec. (a)(10). Pub. L. 101–508, §4713(a)(1)(D), which directed amendment of par. (10) by adding subdiv. (XI), relating to medical assistance available to an individual described in subsection (a)(1), in the matter following subparagraph (E), was executed in the matter following subpar. (F) to reflect the probable intent of Congress and the intervening amendment by Pub. L. 101–508, §4713(a)(1)(A)–(C), which added subpar. (F). See below. Direction by section 4713(a)(1)(D) to strike "and" before "(X)" could not be executed because "and" did not appear after amendment by Pub. L. 101–508, §4402(d)(1). See below.


Subsec. (a)(10)(A)(i)(IX). Pub. L. 101–508, §4601(a)(1)(B), substituted "‘, clause (i)(VI), or clause (i)(VII)’" for "‘or clause (i)(VI)’".

Subsec. (a)(10)(C)(iv). Pub. L. 101–508, §§4711(d)(2), 4751(a)(2), amended cl. (iv) identically, substituting "through (21)" for "through (20)". (Subsec. (a)(10)(C)(ix). Pub. L. 101–508, §4711(d)(1), 4751(a)(1)(B), added cl. (ix) identical to clause (iv) of section (a)(10)(A)(iv), to cover the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter) after "take into account the costs".


Pub. L. 101–508, §4700(c)(1), substituted "‘prescribers’" for "‘may prescribe’" and "‘on the same methodology used under section 1386a(a)(3) of this title’" for "‘on such tests of reasonableness as the Secretary may prescribe in regulations under this subparagraph’".


Subsec. (a)(13)(G). Pub. L. 101–508, §4723(b), inserted "‘, payments made to the State under section 1396f(b)(2)(B) of this title,’" after "‘insurance premiums’".


Subsec. (a)(41). Pub. L. 101–508, §4751(a), substituted "‘shall promptly notify the Secretary and, in the case of a physician and notwithstanding paragraph (7), the State medical licensing board’" for "‘shall promptly notify the Secretary’".


Subsec. (a)(58). Pub. L. 101–508, §4723(c), added par. (58) relating to maintaining a list.

Pub. L. 101–508, §4751(a), added par. (58) relating to providing that a State develop a written description of advance directive laws. Subsec. (a)(62)(A). Pub. L. 101–508, §4723(b)(1), inserted "‘or with an eligible organization with a contract under section 1396p(b)(1) of this title’" after "‘section 1396m(b)(2)(A) of this title’".

Subsec. (d)(4). Pub. L. 101–508, §4603(a)(1), inserted "‘or would remain if pregnant’ after ‘remains’".

Subsec. (e)(6). Pub. L. 101–508, §4603(a)(2), substituted "‘In’ for ‘‘At the option of a State, in’’ substituted ‘‘the woman shall be deemed to continue to be’’ for ‘‘the State plan may nonetheless treat the woman as being’’, and inserted at end ‘‘The preceding sentence shall not apply in the case of a woman who has been provided ambulatory prenatal care pursuant to section 1396r–1 of this title during a presumptive eligibility period and is then, in accordance with such section, determined to be ineligible for medical assistance under the State plan.’’".


Subsec. (h). Pub. L. 101–508, §4711(c)(1)(B), inserted before period at end "or to limit the amount of payment that may be made under this chapter for home and community care".


Subsec. (l)(1)(D). Pub. L. 101–508, §4601(a)(1)(C)(ii), added subpar. (D) and struck out former subpar. (C) which read as follows: "‘If a State elects, under subsection (a)(10)(A)(i)(IX) of this section, to cover individuals not described in subparagraph (A) or (B) of paragraph (1), for purposes of that paragraph and with respect to individuals not described in such subparagraphs the State shall establish an income level which is a percentage (not more than 100 percent of the income official poverty line described in subparagraph (A))’.”


Subsec. (m)(1)(B). Pub. L. 101–508, §4501(e)(2)(A), inserted "‘except as provided in paragraph (2)(C)’" after "‘program’".


Subsec. (r)(1). Pub. L. 101–508, §4715(a), inserted "‘shall be disregarded reparation payments made by the Federal Republic of Germany and’” after "‘under such a waiver’".


Subsec. (s). Pub. L. 101–508, §4601(a), added subsec. (s).


1989—Subsec. (a)(9)(C). Pub. L. 101–239, §6115(c), substituted "‘paragraphs (15) and (16)’ for ‘‘paragraphs (14) and (15)’”.

Pub. L. 101–234 repealed Pub. L. 100–366, §204(d)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec.(a)(10)(A). Pub. L. 101–239, §605(b), substituted "‘(1) through (5), (17) and (21)’ for ‘‘(1) through (5) and (17)’” in introductory provisions.


Subsec. (a)(10)(A)(ii)(XI). Pub. L. 100–203, §907(a)(2)(B), substituted “(c), (d), or (e)” for “(c) or (d)” in text below.


Subsec. (a)(15). Pub. L. 100–360, §301(e)(2)(C), as amended by Pub. L. 100–485, §608(d)(4)(D)(iii), struck out par. (5) which read as follows: “(i) that the cost-sharing, deductible, or similar charge imposed with respect to such individual under the insurance program established by such subchapter is not met, the portion thereof which is met shall be determined on a basis reasonably related to the portion which is met with standards approved by the Secretary and included in the plan to such individual’s income or his income and resources.”

(B)(i) A State may not elect, under subsection (a)(10)(A)(ii) of this section, to cover only individuals described in paragraph (1)(A) or to cover only individuals described in section 1396d(p) of this title, or under subsection (a)(10)(A)(ii)(IX) of this section, to cover only individuals described in paragraph (1)(A) or to cover only individuals described in paragraph (1)(B).

(ii) A State may not elect, under subsection (a)(10)(A)(ii)(IX) of this section, to cover only individuals described in paragraph (1)(A) or to cover only individuals described in paragraph (1)(B).

(3) A State plan may not provide, in its election of the option of furnishing medical assistance to individuals described in subsection (a)(10)(A)(ii)(IX) of this section, that any woman described in such subsection and subsection (a)(10)(A)(ii)(X) of this section, to cover individuals described in subparagraph (C) of paragraph (1) unless the State has elected, under such subsection, to cover individuals described in the preceding subparagraphs of such paragraph.

(C) A State plan may not provide, in its election of the option of furnishing medical assistance to individuals described in paragraph (1), that such individuals must apply for benefits under part A of subchapter IV of this chapter as a condition of applying for, or receiving, medical assistance under this subchapter.
§ 4118(p)(1), (2), realigned margin of subcls. (IX) and (X).

§ 4118(p)(3)(D), substituted “‘in an intermediate care facility, and intermediate care facility for the mentally retarded’” for “‘skilled nursing facility services or intermediate care facility services’.”

§ 4211(h)(2), in introductory provision substituted “‘services in an intermediate care facility for the mentally retarded (where’” for “for ‘skilled nursing facility services (and with respect to intermediate care facility services where’” when used in the context of “in an intermediate care facility for the mentally retarded”.

§ 4211(h)(3), as amended by Pub. L. 100–93, § 8(f)(1), inserted “subsection (g) of this section’” for “‘paragraphs (12) and (13)’”.

§ 4212(e)(1)(D), substituted “‘that are services provided in an intermediate care facility for the mentally retarded for ‘skilled nursing facility services, intermediate care facility services’, or that are services provided in an intermediate care facility for the mentally retarded for ‘skilled nursing facility services, intermediate care facility services’’” when used in the context of “in an intermediate care facility for the mentally retarded”.

§ 4212(e)(1)(B), substituted “‘in an intermediate care facility’” for “‘in a skilled nursing facility or intermediate care facility’”.

§ 4118(p)(4), substituted “‘use’ for ‘provide’”.

§ 4113(b)(1), inserted “‘, an entity which meets the requirements of section 1320c-1 of this title, as determined by the Secretary,’” after “‘or a private accreditation body’”.

§ 4212(d)(2), in introductory provision substituted “‘services in an intermediate care facility for the mentally retarded where’” for “‘for ‘skilled nursing facility services (and with respect to intermediate care facility services where’”.

§ 4212(d)(3), inserted “‘except as provided in section 1396r(d) of this title,’” after “‘(A)’”.

§ 4118(m)(1)(B), struck out “‘(A)’” after “‘provide’”, the comma after “‘under the plan’”, and cls. (B) and (C) which read as follows: “‘(B) that such audits, for such entities also providing services under subsection XVIII of this chapter, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such subchapter, and (C) for payment of such proportion of costs of each such common audit as is determined under methods specified by the Secretary under section 1320a-8(a) of this title’”.

§ 4118(m)(3)(A), substituted “‘physician (or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician) certifies for ‘‘physician certificates’ and a ‘physician, a physician assistant under the supervision of a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician,’” for “‘the physician, or a physician assistant or nurse practitioner under the supervision of a physician.’”

§ 4113(b)(1), inserted “‘, an entity which meets the requirements of section 1320c-1 of this title, as determined by the Secretary,’” after “‘or a private accreditation body’”.

§ 4212(d)(2), in introductory provision substituted “‘services in an intermediate care facility for the mentally retarded where’” for “‘for ‘skilled nursing facility services (and with respect to intermediate care facility services where’”.

§ 4118(m)(1)(B), struck out “‘(A)’” after “‘provide’”, the comma after “‘under the plan’”, and cls. (B) and (C) which read as follows: “‘(B) that such audits, for such entities also providing services under subsection XVIII of this chapter, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such subchapter, and (C) for payment of such proportion of costs of each such common audit as is determined under methods specified by the Secretary under section 1320a-8(a) of this title’”.

§ 4118(m)(3)(A), substituted “‘physician (or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician) certifies for ‘‘physician certificates’ and a ‘physician, a physician assistant under the supervision of a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician,’” for “‘the physician, or a physician assistant or nurse practitioner under the supervision of a physician.’”

§ 4113(b)(1), inserted “‘, an entity which meets the requirements of section 1320c-1 of this title, as determined by the Secretary,’” after “‘or a private accreditation body’”.

§ 4212(d)(2), in introductory provision substituted “‘services in an intermediate care facility for the mentally retarded where’” for “‘for ‘skilled nursing facility services (and with respect to intermediate care facility services where’”.

§ 4118(m)(1)(B), struck out “‘(A)’” after “‘provide’”, the comma after “‘under the plan’”, and cls. (B) and (C) which read as follows: “‘(B) that such audits, for such entities also providing services under subsection XVIII of this chapter, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such subchapter, and (C) for payment of such proportion of costs of each such common audit as is determined under methods specified by the Secretary under section 1320a-8(a) of this title’”.

§ 4118(m)(3)(A), substituted “‘physician (or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician) certifies for ‘‘physician certificates’ and a ‘physician, a physician assistant under the supervision of a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician,’” for “‘the physician, or a physician assistant or nurse practitioner under the supervision of a physician.’”

§ 4113(b)(1), inserted “‘, an entity which meets the requirements of section 1320c-1 of this title, as determined by the Secretary,’” after “‘or a private accreditation body’”.

§ 4212(d)(2), in introductory provision substituted “‘services in an intermediate care facility for the mentally retarded where’” for “‘for ‘skilled nursing facility services (and with respect to intermediate care facility services where’”.

§ 4118(m)(1)(B), struck out “‘(A)’” after “‘provide’”, the comma after “‘under the plan’”, and cls. (B) and (C) which read as follows: “‘(B) that such audits, for such entities also providing services under subsection XVIII of this chapter, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such subchapter, and (C) for payment of such proportion of costs of each such common audit as is determined under methods specified by the Secretary under section 1320a-8(a) of this title’”.

§ 4118(m)(3)(A), substituted “‘physician (or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician) certifies for ‘‘physician certificates’ and a ‘physician, a physician assistant under the supervision of a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician,’” for “‘the physician, or a physician assistant or nurse practitioner under the supervision of a physician.’”

§ 4113(b)(1), inserted “‘, an entity which meets the requirements of section 1320c-1 of this title, as determined by the Secretary,’” after “‘or a private accreditation body’”.
§ 1396a

Subsec. (a)(4)(B). Pub. L. 100–203, § 4218(a)(2), substituted “a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician;” for “a physician.”


Subsec. (a)(47). Pub. L. 100–93, § 5(a)(2), (3), substituted semicolon for period at end of par. (47), relating to ambulatory prenatal care and redesignated par. (47), relating to cards evidencing eligibility, as (46).

Subsec. (a)(48). Pub. L. 100–93, § 5(a)(3), redesignated par. (47), relating to cards evidencing eligibility for medical assistance, as (46), and substituted “address;” for “address.”


Subsec. (d). Pub. L. 100–203, § 4113(b)(2)(1), inserted “an entity which meets the requirements of section 1320c–1 of this title, as determined by the Secretary, for the performance of the quality review functions described in subsection (a)(30)(C) of this section, or” after “contracts with.”

Pub. L. 100–203, § 4113(b)(2)(ii), as amended by Pub. L. 100–360, § 411(k)(7)(C), substituted “an entity or organization” for “organization (or organizations)” in two places.

Subsec. (e)(2)(A). Pub. L. 100–203, § 4113(d)(2), which directed substitution of “paragraph (2) or (iii), (E), or (G) of section 1385(b)(2) of this title,” for “section 1396a(m)(2)(G) of this title,” was repealed by Pub. L. 100–360, § 411(k)(7)(D).

Pub. L. 100–203, § 4113(a)(2), as amended by Pub. L. 100–360, § 411(k)(7)(B), substituted “paragraph (2)(B), (2)(E), (2)(G), or (6) of section 1396b(m) of this title” for “section 1396a(m)(2)(G) of this title”.

Pub. L. 100–203, § 4113(c)(2), added subpar. (C).

Subsec. (e)(3)(B)(i). Pub. L. 100–203, § 4211(h)(4), substituted “nursing facility, or intermediate care facility for the mentally retarded” for “skilled nursing facility, intermediate care facility, or intermediate care facility for the mentally retarded”.

Subsec. (e)(3)(C)(1). Pub. L. 100–203, § 4113(c)(1), substituted “nursing facility, or intermediate care facility” for “nursing facility, or intermediate care facility, or intermediate care facility for the mentally retarded”.

Subsec. (e)(3)(C)(4). Pub. L. 100–203, § 4113(c)(4), substituted “for subparagraphs (B) or (C)” for “for subparagraph (C)”.

Subsec. (e)(3)(E). Pub. L. 100–203, § 4101(e)(3), inserted “except to the extent such methodology is inconsistent with clause (D) of subsection (a)(7) of this section” after “subparagraph IV of this chapter”.

Subsec. (e)(4). Pub. L. 100–203, § 4101(a)(1)(A), designated existing provisions as subpar. (A), inserted “with respect to individuals described in subparagraph (A) or (B) of that paragraph,” substituted “185 percent” for “100 percent,” and added subpar. (B).

Subsec. (f)(3). Pub. L. 100–203, § 4118(p)(8), substituted “appropriate” after “applied is the”.


Subsec. (g)(3)(C). Pub. L. 100–203, § 4101(b)(2)(A)(iii), substituted “paragraph (C)” for “paragraph (C)”.

Subsec. (g)(3)(D). Pub. L. 100–203, § 4101(b)(2)(B)(i), substituted “paragraph (C)” for “paragraph (C)”.

Subsec. (g)(3)(E). Pub. L. 100–203, § 4101(e)(4), substituted “subparagraph (E)” for “paragraph (C)”.


Subsec. (o). Pub. L. 100–203, § 4115(b), as amended by Pub. L. 100–360, § 411(n)(2), substituted “subparagraph (E) or (G) of section 1332(e)(1) of this title” for “subparagraph (E) or (G) of section 1332(e)(1) of this title.”

Pub. L. 100–93, § 7, redesignated subsec. (l), relating to disregarding certain benefits for purposes of determining post-eligibility contributions, as (o).


1986—Subsec. (a). Pub. L. 99–509, § 9406(b), added “Notwithstanding paragraphs (10)(B) or any other provision of this subsection, a State plan shall provide medical assistance with respect to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law only in accordance with section 1396b(v) of this title.”
Pub. L. 99–272, §9528(a)(1), inserted at end “For purposes of this subchapter, any child who meets the requirements of paragraph (1) or (2) of section 673(b) of this title shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of subchapter IV of this chapter in the State where such child resides.”


Pub. L. 99–272, §9509(a), added par. (47) relating to ambulatory prenatal care.

Subsec. (b)(2). Pub. L. 99–509, §9405, inserted before semicolon “, regardless of whether or not the residence is maintained permanently or at a fixed address”.

Pub. L. 99–272, §9509(a)(2), (3), redesignated former subsec. (a)(15) as (a)(16), and struck out “after first semicolon”.


Subsec. (j). Pub. L. 99–509, §9408(c)(2), substituted “(21)” for “(20)”. Pub. L. 99–509, §9408(c)(3), substituted “(20)” for “(19)”. Pub. L. 99–272, §9505(d)(1), substituted “(19)” for “(18)”. Pub. L. 99–509, §9403(f)(1)(A), which designated former subpars. (C), (D), (E), and (F) of former subsec. (a)(10)(X), as redesignated by Pub. L. 99–272, as subpars. (A), (B), (C), and (D) respectively of subsec. (a)(10)(X), was executed by making the insertion after “(A)” of subsec. (a)(10)(X) of this section” as the probable intent of Congress.


Subsec. (s). Pub. L. 99–272, §9509(a), added par. (8).

Subsec. (t). Pub. L. 99–509, §9403(f)(3), inserted “subsection (e) of this section” as the probable intent of Congress.
women deemed by the State to be receiving such aid as authorized in section 606(g) of this title and individuals considered by the State to be receiving such aid as authorized under section 606(f) of this title, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter; and"

Subsec. (a)(10)(A)(i)(I). Pub. L. 98–378, §209(c), substituted "section 602(a)(37) or 606(h) of this title" for "section 602(a)(37) of this title".

Subsec. (a)(13)(B, C). Pub. L. 98–369, §2373(b)(3), made clarifying amendment by striking out "(A) and all that follows through ‘hospital’" the first place it appears and inserting in lieu thereof "(A) for payment to a physician for laboratory services the payment authorized by section 1395u(h) of this title. performance of which such physician, or other physi-

al performance, and (B) for payment to a hospital for items and services other than those in provision (A) and with respect to individuals to whom such payment is authorized under section 1395u(h) of this title", resulting in no change in text.


Subsec. (a)(26). Pub. L. 98–369, §2368(b), provided that cl. (1) is amended by substituting "facilities" for "homes.


Subsec. (a)(28). Pub. L. 98–369, §2335(e), struck out par. (26) generally, revised existing provisions to con-

tain "and tuberculosis' after ‘mental diseases'."

Subsec. (a)(30). Pub. L. 98–369, §2363(a)(1)(A), designated existing provisions as subpar. (A) and added subpar. (B).


Subsec. (a)(42). Pub. L. 98–369, §2373(b)(8), substituted "‘subchapter' for ‘part’ after ‘audits conducted for pur-

poses of such'".

Subsec. (a)(43). Pub. L. 98–369, §2309(g)(1), redesignated par. (44) as (43) and struck out former par. (43) which provided that if the State plan makes provision for payment to a physician for laboratory services, the performance of which such physician, or other physi-

ician with whom he shares his practice, did not person-

ally perform or supervise, the plan include provision to in-

clude that payment for such services not exceed the pay-

ment authorized by section 1396u(h) of this title.


Subsec. (a)(45). Pub. L. 98–369, §2309(g)(1), redesignated former par. (44) as (43).


Subsec. (a)(47) (par. (46). Pub. L. 98–369, §2373(b)(9), substituted "‘The provisions of paragraph (9) (A), (31), (33) and of section 1396b(i)(4) of this title shall not apply to’ for ‘For purposes of paragraph (9) (A), (26), (31), and (33), and of section 1396b(i)(4) of this title, the term ‘skilled nursing facility' and ‘nursing home' do not in-

clude’".


Subsec. (a)(49). Pub. L. 98–369, §2373(b), substituted "paragraph (10)(A)” and “paragraph (10)(C)” for “clause (10)(A)” and “clause (10)(C)”, respectively, wherever appear-

ing.

ance under a State plan because of an individual’s disposal of resources for less than fair market value, the period of ineligibility, and the eligibility of certain individuals for medical assistance under a State plan who would otherwise be ineligible because of the provisions of section 1382b(c) of this title, and added a new subsec. (j) relating to waiver or modification of requirements with respect to American Samoa medical assistance program.


Subsec. (a)(10)(A). Pub. L. 97–35, § 2171(a)(1), substituted “including at least the care and services listed in paragraphs (1) through (5) and (17) of section 1396d(a) of this title, to all individuals receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A or part E of subchapter IV of this chapter (including pregnant women deemed by the State to be receiving such aid as authorized by section 606(g) of this title and individuals considered by the State to be receiving such aid as authorized under section 641(g) of this title)” for “to all individuals receiving aid or assistance under any plan of the State approved under subchapters I, X, XIV, or XVI, or part A of subchapter IV of this chapter”.


Subsec. (a)(10)(C). Pub. L. 97–35, § 2171(a)(3), as amended by Pub. L. 97–246, § 137(a)(3), substituted provisions relating to plans for medical assistance included for any group of individuals described in section 1396d(a) of this title who are not described in subpar. (A) for provisions relating to medical assistance for any group of individuals not described in subpar. (A) and who do not meet the income and resources requirements of the appropriate State plan, or the supplementary security income program under subchapter XVI of this chapter, as the case may be, as determined in accordance with standards prescribed by the Secretary.


Subsec. (a)(11). Pub. L. 97–35, § 2182(c)(9), substituted “under or through an allotment under subchapter V of this chapter, (i) providing for utilizing such agency, institution, or organization in furnishing care and services which are available under such subchapter or allotment for “for part or all of the cost of plans or projects under subchapter V of this chapter, (ii) providing for utilizing such agency, institution, or organization in furnishing care and services which are available under such plan or project under subchapter V of this chapter”.

Subsec. (a)(13)(A). Pub. L. 97–35, §§ 2171(b), 2173(a)(1)(B), (C), struck out subpar. (A) which provided that a State plan must provide for the inclusion of some institutional and some noninstitutional care and services for the inclusion of Care and services for the inclusion of Home Health Services for any individual who is entitled to skilled nursing facility services, redesignated subpar. (B) as (A), and in subpar. (A), as so redesignated, made the subsection applicable to hospital facilities, inserted reference to rates which take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs and provide, in the case of hospital patients receiving services at an appropriate level of care under conditions similar to those described in reimbursement of subparagraph (5) of this title, for lower reimbursement rates reflecting the level of care actually received in a manner consistent with subparagraph and, substituted “safety standards and to assure that individuals eligible for medical assistance have reasonable access (taking into account geographic location and reasonable travel time) to inpatient hospital services of adequate quality” for “safety standards”.

Subsec. (a)(13)(B). Pub. L. 97–35, §§ 2171(b), 2173(a)(1)(C), struck out subpar. (B) which provided that a State plan must provide that individuals receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, for the inclusion of at least the care and services listed in paragraphs (1) through (5) and (17) of section 1396d(a) of this title, and redesignated subpar. (F) as (B).

Subsec. (a)(13)(C). Pub. L. 97–35, § 2171(b), struck out subpar. (C) which provided for care and services of individuals not included in former subpar. (B).

Subsec. (a)(13)(D). Pub. L. 97–35, § 2173(a)(1)(A), struck out subpar. (D) which provided for payment of reasonable cost of inappropriate inpatient care provided under the plan with provisions for determination of such costs with certain maximum limitations and for payment of reasonable cost of inappropriate inpatient services described in subsec. (h)(1) of this section.

Subsec. (a)(13)(E). (F). Pub. L. 97–35, § 2173(a)(1)(C), redesignated subpars. (E) and (F) as (A) and (B), respectively.


Subsec. (a)(23). Pub. L. 97–35, § 2175(a), substituted “except as provided in section 1396n and except in the case of “except in the case of”, and struck out provision that a State plan shall not be deemed to be out of compliance with the requirements of this paragraph or parts. (1) and (10) of this subsection solely by reason of the fact that the State or any political subdivision thereof has entered into a contract with an organization which has agreed to provide care and services in addition to those offered under the State plan to individuals eligible for medical assistance who reside in the geographic area served by such organization and who elect to obtain such care and services from such organization, or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic.

Subsec. (a)(25)(C). Pub. L. 97–35, § 2182, substituted “of the individual and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery, the State” for “of the individual, the State”.

Subsec. (a)(30). Pub. L. 97–35, § 2174(a), substituted “that payments are consistent” for “that payments (including payments for any drugs provided under the plan) are not in excess of reasonable charges consistent”.


Subsec. (b)(2). Pub. L. 97–35, § 2172(a), substituted “any age requirement which excludes any individual who has not attained the age of 19 and is a dependent child under part A of subchapter IV of this chapter; for “effective July 1, 1967, any age requirement which excludes any individual who has not attained the age of 21 and is or would, except for the provisions of section 609(a)(2) of this title, be a dependent child under part A of subchapter IV of this chapter; or”.


Subsec. (e). Pub. L. 97–35, § 2177(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 97–35, § 2173(b)(1), (d), as amended by Pub. L. 99–509, § 438(a), added a new subsec. (h) and repealed former subsec. (h) which related to skilled nursing and intermediate care facility services.

Subsec. (a)(13)(D)(i). Pub. L. 96–499, §§903(b), 905(a), inserted "(except where the State agency is subject to an order under section 1396m of this title)" after "payments" and "except that in the case of hospitals reimbursed for services under part A of subchapter XVIII of this chapter in accordance with section 1395f(b)(3) of this title, the plan must provide for payment of inpatient hospital services provided in such hospitals under the plan in accordance with the reimbursement system used under such section)" after "subchapter XVIII of this chapter)."

Subsec. (a)(13)(E). Pub. L. 96–499, §905(a), inserted "(except where the State agency is subject to an order under section 1396m of this title)".

Pub. L. 96–499, §962(a), substituted provisions which required a State plan for medical assistance to provide for payment of skilled nursing facility and intermediate care facility services provided under such plan through the use of rates determined in accordance with methods and standards developed by the State rather than on a reasonable cost related basis, required the filing of uniform cost reports by each facility, and required periodic audits of such reports by the State.

Subsec. (a)(33)(B). Pub. L. 96–499, §916(b)(1)(B), inserted exception authorizing the Secretary where there was cause to question the adequacy of participation determinations to make independent determinations concerning the extent to which such individuals and agencies met the requirements for participation.

Subsec. (a)(35). Pub. L. 96–499, §912(b), substituted "disclosing entity (as defined in section 1320a–3(a)(2) of this title)" for "intermediate care facility".

Subsec. (a)(39). Pub. L. 96–499, §913(c), substituted provisions requiring that State plans for medical assistance authorize the State agency to bar specified individuals from participation in the program under the State plan when required by the Secretary to do so pursuant to section 1320a–7 of this title for provisions requiring that State plans for medical assistance provide for the suspension of payments to physicians or practitioners suspended from participation in the plan upon notification by the Secretary that such physician or other individual had been suspended from participation in the plan under subchapter XVIII of this chapter.


Subsec. (g). Pub. L. 96–499, §913(d), struck out subsec. (g) related to waiver of suspension of payments to physicians or practitioners suspended from participation in approved State plans.


Subsec. (a)(23). Pub. L. 95–210, §2(c)(2), inserted "or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic after "who elect to obtain such care and services from such organization" after "when obtained under such program" as inserted by Pub. L. 95–142, §9, "or the Secretary" after "State agency" wherever appearing.


Subsec. (a)(27)(B). Pub. L. 95–142, §9, inserted "or the Secretary" after "Health Resources Agency" wherever appearing.

Subsec. (a)(32). Pub. L. 95–142, §2(a)(3), substituted provisions relating to terms, conditions, etc., for payments under an assignment or power of attorney, for provisions relating to terms, conditions, etc., for payments to anyone other than the individual receiving any care or service provided by a physician, dentist, or other individual practitioner, or such physician, dentist, or practitioner.

Subsec. (a)(35). Pub. L. 95–142, §3(c)(1)(A), substituted provisions relating to requirements for intermediate care facilities to comply with section 1320a–3 of this title for provisions relating to disclosure requirements, effective Jan. 1, 1979, applicable to intermediate care facilities with respect to ownership, corporate, status, etc.

Subsec. (a)(37). Pub. L. 95–142, §§22(b)(1)(B), 3(c)(1)(C), 70(b)(1), added subsec. (a)(37) and made and struck out minor changes in phraseology, necessitating no changes in text.

Subsec. (a)(38). Pub. L. 95–142, §§3(c)(1)(D), 70(b)(2), 19(b)(2)(A), added par. (38) and made and struck out minor changes in phraseology necessitating no changes in text.


Subsec. (g). Pub. L. 95–142, §7(c), added subsec. (g).


1975—Subsec. (a). Pub. L. 94–48, §1, added undesignated paragraph at end of subsec. (a) relating to eligibility under this subchapter of any individual who was eligible for the month of August 1975 under a State plan approved under subchapters I, X, XIV, XVI, or part A of subchapter IV of this title if such individual would have been eligible for such month had the increase in monthly insurance benefits under subchapter II of this chapter resulting from enactment of Pub. L. 92–386 not been applicable to such individual.

Subsec. (a)(23). Pub. L. 94–48, §2, inserted "except in the case of Puerto Rico, the Virgin Islands, and Guam".

Subsec. (g). Pub. L. 94–182 added subsec. (g).


1973—Subsec. (a)(5). Pub. L. 93–233, §13(a)(2)(A), (B), substituted "to administer or to supervise the administration of the plan" for "to administer the plan" and "to supervise the administration of the plan" in that order and inserted after the parenthetical phrase the conditional provision "if the State is eligible to participate in the State plan program established under subchapter XVI of this chapter, or by the agency or agencies administering the supplemental security income program established under subchapter XVI of this chapter".

Subsec. (a)(10). Pub. L. 93–233, §13(a)(3), incorporated existing text in provisions designated as cl. (A), providing therein for medical assistance to individuals with respect to whom supplemental security income benefits are paid; incorporated existing par. (B) in provisions designated as cl. (B); incorporated existing par. (B) in provisions designated as cl. (C), providing therein for individuals not meeting income and resources requirements of the supplemental security income program; substituted in cls. (B)(ii), (C), (C)(1)(i) and "medical assistance" for "medical or remedial care and services" appearing in predecessor provisions in and cl. (C)(i) "except for income and resources" for "if needy" appearing in predecessor provision; and in the exception provisions included reference to paragraph (2) of section 1396e(a) of this title in item (I), substituted "deductibles" for "the deductibles" in item (II), and added item (III).

Subsec. (a)(13)(B). Pub. L. 93–233, §13(a)(4), substituted "any plan of the State approved" for "the State's plan approved" and inserted after "part A of subchapter IV of this chapter" text reading "or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter".
Subsec. (a)(14)(A). Pub. L. 93–233, §13(a)(5), substituted “any plan of the State approved” for “a State plan approved” and “with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or who meet the income and resources requirements of the appropriate State plan, or the supplemental security income program under subchapter XVI of this chapter, as the case may be, and individuals with respect to whom there is believed to be need, who, or who would be eligible if they were not in a medical institution, to have paid with respect to them, a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in paragraph (10)(A)” for “who meet the income and resources requirements of the one of such State plans which is appropriate”.

Subsec. (a)(14)(B)(i). Pub. L. 93–233, §16(a)(6)(A)–(D), inserted after “with respect to individuals the par- enteral provision (other than individuals with respect to whom there is believed to be need, who, or who would be eligible if they were not in a medical institution, to have paid with respect to them, a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in paragraph (10)(A)”; inserted after “any such State plan” the clause “and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter”; substituted “the appropriate State plan, or the supplemental security income program under subchapter XVI of this chapter” in the case of or “the one of such State plans which is appropriate”; and struck out “or who, after December 31, 1973, are included under the State plan for medical assistance pursuant to subsection (a)(10)(B) of this section approved under this sub- chapter” preceding the hypen and cl. (i), respectively.

Subsec. (a)(17). Pub. L. 93–233, §13(a)(7)(A)–(D), (8), substituted: “any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter” for “the State’s plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter”; “except for income and resources” for “if he met the requirements as to need”; “any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, or to have paid with respect to him supplemental security income benefits under subchapter XVI of this chapter” for “a State plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter”; “such aid, assistance, or benefits” for “and amount of such aid or assistance under such plan”; and “with respect to Individuals eligible to participate in the State program established under subchapter XVI of this chapter”, is blind or permanently and totally disabled, or is blind or disabled as defined in section 1382c of this title (with respect to States which are not eligible to participate in such program) for “is blind or permanently and totally disabled”.

Subsec. (a)(18). Pub. L. 93–233, §13(a)(6), substituted “with respect to States eligible to participate in the State program established under subchapter XVI of this chapter, is blind or permanently and totally disabled, or is blind or disabled as defined in section 1382c of this title (with respect to States which are not eligible to participate in such program)” for “is blind or permanently and totally disabled”.


Subsec. (a)(34). Pub. L. 93–233, §18(o), inserted “(or application was made on his behalf in the case of a deceased individual)” after “he made application”.

Subsec. (a)(35)(A). Pub. L. 93–233, §18(r), required the intermediate care facility to supply full and complete information respecting the person who is the owner (in whole or in part) of any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the intermediate care facility or any of the property or assets of the intermediate care facility.

Subsec. (a)(35) to (37). Pub. L. 93–233, §18(x)(3)(A), (B), substituted “;” and “;” for “;” at end of par. (35); and corrected numerical sequence of paragraphs, redesignating par. (37) as (36), the original subsec. (a) having been enacted without a par. (36).

Subsec. (e). Pub. L. 93–233, §18(q), substituted “each family which was receiving aid pursuant to a plan of the State approved under part A” for “each family which was eligible for assistance pursuant to part A”, “for such aid because of increased hours of, or increased income from, employment” for “for such assistance because of increased income from employ- ment”, and “remain eligible for assistance under the plan approved under this subchapter (as though the family was receiving aid under the plan approved under part A of subchapter IV of this chapter)” for “4 calendar months following the month in which such family became ineligible for aid under the plan approved under part A of subchapter IV of this chapter because of income and resources or hours of work limitations” for “(b)(2)”. Subsec. (e) then enacted without a par. (35).

Subsec. (f). Pub. L. 93–233, §18(a), §208(a), inserted provisions exempting Christian Science sanatoriums from certain nursing facility and nursing home requirements.

Subsec. (a)(9). Pub. L. 92–603, §239(a), inserted provisions to utilize State health agency for establishing and maintaining health standards for private or public institutions in which recipients of medical assistance under the plan may receive care or services.


Subsec. (a)(13)(D). Pub. L. 92–603, §221(c)(5), 232(a), inserted provisions that the reasonable cost of inpatient hospital services shall not exceed the amount determined under section 1395x(v) of this title and inserted reference to the consistency of methods and standards with section 1320a–1 of this title for determining the reasonable cost of inpatient hospital services.


Subsec. (a)(14). Pub. L. 92–603, §280(a), substituted a nominal amount for an amount reasonably related to the recipient’s income and resources, or hours of work limitations, cost sharing, or similar charge imposed under the plan and inserted provisions covering individuals who are
not receiving aid or assistance under any state plan and who do not meet the income and resources requirements and covering individuals who are included under the state plan for medical assistance pursuant to subsec. (a)(10)(B) of this section approved under this subchapter.

Subsec. (a)(23). Pub. L. 92–603, § 240, inserted proviso following the phrase “providing for comprehensive health care programs while still complying with medicaid requirements.”

Subsec. (a)(23). Pub. L. 92–603, §§ 274(a), 278(a)(19), (b)(14), substituted “evaluation” for “evaluation and “care” for “care”” and substituted “skilled nursing facility” for “skilled nursing home” and “skilled nursing facilities” for “skilled nursing home” and “skilled nursing homes.”

Subsec. (a)(24). Pub. L. 92–603, §§ 246(a), 278(a)(20), substituted “skilled nursing facility” for “skilled nursing home” and substituted a simple reference to the requirements contained in section 1396a(a)(4) of this title for “under the plan.”

Subsec. (a)(24). Pub. L. 92–603, § 268, struck out “which provides more than a minimum level of health care services” after “intermediate care facility”.


Subsec. (d). Pub. L. 92–603, § 231, repealed subsec. (d) which related to modification of state plans for medical assistance under certain circumstances.


Subsec. (c). Pub. L. 90–248, § 241(f)(4), struck out “IV,” after “I,” and inserted “, or part A of subchapter IV of this chapter” after “XVI of this chapter”.

Effective and Termination Dates of 2010 Amendment


“(A) In General.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall take effect—

(A) on the date of enactment of this Act [Dec. 13, 2010],

(B) Extension of Effective Date for State Law Amendments.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires state legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section [amending this section, section 1738 of this title, and section 1232g of Title 20, Education], the State plan shall not be regarded as failing to comply with the requirements of this chapter, in the case of the State's plan approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, by reason of failure to meet the additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Dec. 13, 2010]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.”

Amendment by Pub. L. 111–255 effective on the earlier of the effective date of final regulations promulgated by the Commissioner of Social Security to carry out such amendments or 180 days after Oct. 5, 2010, see section 3(d) of Pub. L. 111–255, set out as a note under section 1396a of this title.


Pub. L. 111–148, title II, § 204(d), Mar. 23, 2010, 124 Stat. 282, provided that: “The amendments made by subsections (a) and (b) [amending this section] take effect on January 1, 2014.”

tion and sections 1396b, 1396c–1, and 1396w–7 of this title] take effect on January 1, 2014.

Pub. L. 111–148, title II, §2202(c), Mar. 23, 2010, 124 Stat. 296, provided that: ‘‘The amendments made by this section [amending section 1396b of this title] take effect on January 1, 2014, and apply to services furnished on or after that date.’’

Pub. L. 111–148, title II, §2301(c), Mar. 23, 2010, 124 Stat. 293, provided that:

‘‘(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section and section 1396d of this title shall take effect on the date of the enactment of this Act [Mar. 23, 2010] and shall apply to services furnished on or after such date.

‘‘(2) EXCEPTION IF STATE LEGISLATION REQUIRED.—In the case of a State plan for medical assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet such additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Mar. 23, 2010] and shall apply to items and services furnished on or after such date.

Pub. L. 111–148, title II, §2302(g), Mar. 23, 2010, 124 Stat. 304, provided that: ‘‘The amendments made by this section [amending section 1396b of this title and section 1396d of this title] shall take effect as if included in the enactment of section 1396d of the Deficit Reduction Act of 2005 (Public Law 109–171; 120 Stat. 606); and

‘‘(i) paragraph (4) of subsection (b) [amending section 1396b of this title] shall take effect as if included in the enactment of section 405 of division B of the Tax Relief and Health Care Act of 2006 (Public Law 109–432; 120 Stat. 429).

‘‘(2) RESTORATION OF ELIGIBILITY.—In the case of an individual who, during the period that began on July 1, 2006, and ends on October 1, 2009, was determined to be ineligible for medical assistance under a State Medicaid plan, including any waiver of such plan, solely as a result of the application of subsections (i)(2) and (x) of section 1903 of the Social Security Act [42 U.S.C. 1396l(i)(2), (x)] (as in effect during such period), but who would have been determined eligible for such assistance if such subsections, as amended by subsection (b), had applied to the individual, a State may deem the individual to be eligible for such assistance as of the date that the individual was determined to be ineligible for such medical assistance on such basis.

‘‘(3) SPECIAL TRANSITION RULE FOR INDIANS.—During the period that begins on January 1, 2006, and ends on the effective date of final regulations issued under subclause (II) of section 1903 of the Social Security Act (42 U.S.C. 1396l(i)(2), (x)) (as in effect during such period), the Secretary of Health and Human Services may, without respect to the effective date of such regulations, in the case of any individual who was a member of a federally recognized Indian tribe described in subsection (II) of that section who presents a document described in subclause (I) of such section that is issued by such Indian tribe, shall be deemed to have presented satisfactory evidence of citizenship or nationality for purposes of satisfying the requirement of subsection (x) of section 1903 of such Act.’’

Pub. L. 111–3, title II, §211(d), Feb. 4, 2009, 123 Stat. 54, provided that:

‘‘(1) IN GENERAL.—

‘‘(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section [amending this section and sections 1396b and 1397ee of this title] shall take effect as if included in the enactment of section 6096 of the Deficit Reduction Act of 2005 (Public Law 109–171; 120 Stat. 606); and

‘‘(ii) paragraph (4) of subsection (b) [amending section 1396b of this title] shall take effect as if included in the enactment of section 405 of division B of the Tax Relief and Health Care Act of 2006 (Public Law 109–432; 120 Stat. 429).

Effective Date of 2009 Amendment


Pub. L. 111–5, div. B, title V, §5006(f), Feb. 17, 2009, 123 Stat. 511, provided that: ‘‘The amendments made by this section [amending this section and sections 1396–1, 1396b, 1396c–2, and 1397ee of this title] shall take effect on July 1, 2009.’’

Amendment by section 113(b)(1) of Pub. L. 111–3 effective Apr. 1, 2009, and applicable to child health assistance and medical assistance provided on or after that date, with certain exceptions, see section 3 of Pub. L. 111–3, set out as an Effective Date note under section 1396 of this title.

Pub. L. 111–3, title II, §2301(f), Feb. 4, 2009, 123 Stat. 49, provided that: ‘‘The amendments made by this section [amending section 1396w–2 of this title and amending this section and section 1397gg of this title] are effective on the date of the enactment of this Act [Feb. 4, 2009].’’

Pub. L. 111–3, title II, §211(d), Feb. 4, 2009, 123 Stat. 54, provided that:

‘‘(1) IN GENERAL.—

‘‘(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section [amending this section and sections 1396b and 1397ee of this title] shall take effect as if included in the enactment of section 6096 of the Deficit Reduction Act of 2005 (Public Law 109–171; 120 Stat. 606); and

‘‘(ii) paragraph (4) of subsection (b) [amending section 1396b of this title] shall take effect as if included in the enactment of section 405 of division B of the Tax Relief and Health Care Act of 2006 (Public Law 109–432; 120 Stat. 429).

‘‘(2) RESTORATION OF ELIGIBILITY.—In the case of an individual who, during the period that began on July 1, 2006, and ends on October 1, 2009, was determined to be ineligible for medical assistance under a State Medicaid plan, including any waiver of such plan, solely as a result of the application of subsections (i)(2) and (x) of section 1903 of the Social Security Act [42 U.S.C. 1396l(i)(2), (x)] (as in effect during such period), but who would have been determined eligible for such assistance if such subsections, as amended by subsection (b), had applied to the individual, a State may deem the individual to be eligible for such assistance as of the date that the individual was determined to be ineligible for such medical assistance on such basis.

‘‘(3) SPECIAL TRANSITION RULE FOR INDIANS.—During the period that begins on July 1, 2006, and ends on the effective date of final regulations issued under subclause (II) of section 1903 of the Social Security Act (42 U.S.C. 1396l(i)(2), (x)) (as in effect during such period), the Secretary of Health and Human Services may, without respect to the effective date of such regulations, in the case of any individual who was a member of a federally recognized Indian tribe described in subclause (II) of that section who presents a document described in subclause (I) of such section that is issued by such Indian tribe, shall be deemed to have presented satisfactory evidence of citizenship or nationality for purposes of satisfying the requirement of subsection (x) of section 1903 of such Act.’’

For definition of ‘‘Medicaid’’, see section 1(c)(2) of Pub. L. 111–3, set out as a Definitions note under section 1396 of this title.


Pub. L. 111–3, title V, §501(e)(3), Feb. 4, 2009, 123 Stat. 88, provided that: ‘‘The amendments made by this subsection [amending this section and section 1397hh of this title] shall be effective for annual reports submit-
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on and after the date of the enactment of this Act [Nov. 29, 1999].

(2) The amendments made by subsections (a)(2) and (b) [amending this section and section 1396b of this title] apply as of such date as the Secretary of Health and Human Services certifies to Congress that the Secretary is fully implementing section 1932(c)(2) of the Social Security Act [42 U.S.C. 1396u-2(c)(2)].


Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(aa)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398, provided that: ‘‘Except as otherwise provided, the amendments made by this section [amending this section and sections 1396b, 1396d, 1396e–1, 1396f, 1396h–1, 1396j–1, 1396j–6, 1396k–4, 1396l–6, 1396n–6, 1396n–2, and 1396n–3 of this title] shall take effect on the date of enactment of this Act [Nov. 29, 1999].’’

Effective Date of 1997 Amendments

Amendment by section 4106(c) of Pub. L. 105–33 applicable to bone mass measurements performed on or after July 1, 1997, see section 4106(d) of Pub. L. 105–33, set out as a note under section 1395x of this title.

Amendment by section 4545(b)(1) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to items and services furnished on or after such date, with provision that the Secretary of Health and Human Services issue regulations to carry out such amendment by not later than July 1, 1998, see section 4545(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395i–5 of this title.

Amendment by section 4701(b)(2)(A)(i)–(iv), (d)(1) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on Oct. 1, 1997, except as otherwise provided, see section 4701(a) of Pub. L. 105–33, set out as a note under section 1396b of this title.

Amendment by section 4702(b)(2) of Pub. L. 105–33 applicable to primary care case management services furnished on or after Oct. 1, 1997, subject to provisions relating to extension of effective date for State law amendments, and to nonapplication to waivers, see section 4701(b)(1) of Pub. L. 105–33, set out as a note under section 1396b of this title.

Amendment by section 4709 of Pub. L. 105–33 effective Oct. 1, 1997, subject to provisions relating to extension of effective date for State law amendments, and to nonapplication to waivers, see section 4701(d) of Pub. L. 105–33, set out as a note under section 1396b of this title.

Section 4711(d) of Pub. L. 105–33 provided that: ‘‘This section [amending this section and section 1396d and 1396c of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997] and the amendments made by subsections (a) and (c) [amending this section and sections 1396d and 1396c of this title] shall apply to payments for items and services furnished on or after October 1, 1997.’’

Section 4712(b)(3) of Pub. L. 105–33 provided that: ‘‘The amendments made by this subsection [amending this section and section 1396b of this title] shall apply to services furnished on or after October 1, 1997.’’

Pub. L. 105–33, title IV, § 4712(c), Aug. 5, 1997, 111 Stat. 509, as amended by Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 608(aa)], Nov. 29, 1999, 113 Stat. 1536, 1501A–398, which provided that the amendment made by section 4712(c) was effective for services furnished on or after Oct. 1, 2001, was repealed by Pub. L. 106–554, § 1(a)(6) [title VII, § 702(c)(1), (e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–574, effective Jan. 1, 2001, and applicable to services furnished on or after such date.

Section 4714(c) of Pub. L. 105–33 provided that: ‘‘The amendments made by this section [amending this section and section 1396b of this title] shall apply to services furnished on or after the date of the enactment of this Act [Aug. 5, 1997].’’

The amendments made by subsection (a) [amending this section and section 1396d of this title] shall also apply to payment by a State for items and services furnished before such date if such payment is subject of a law suit that is based on the provisions of sections 1902(n) and 1905(p) of the Social Security Act [§ 1396a(a)(2) of this title] and that is pending as of, or is initiated after, the date of the enactment of this Act.’’

Section 4715(b) of Pub. L. 105–33 provided that: ‘‘The amendments made by this section [amending this section] shall apply on and after October 1, 1997.’’

Section 4724(c)(2) of Pub. L. 105–33 provided that: ‘‘The amendments made by paragraph (1) [amending this section] shall take effect on January 1, 1998.’’

Section 4724(e)(2) of Pub. L. 105–33 provided that: ‘‘The amendments made by paragraph (1) [amending this section] shall apply to suppliers of medical assistance for durable medical equipment furnished on or after January 1, 1998.’’

Section 4731(c) of Pub. L. 105–33 provided that: ‘‘The amendments made by this section [amending this section] shall apply to medical assistance for items and services furnished on or after October 1, 1997.’’

Section 4731(c) of Pub. L. 105–33 provided that: ‘‘Except as otherwise specifically provided, the amendments made by this section [amending this section and section 1396b of this title] shall apply to medical assistance for items and services furnished on or after October 1, 1997.’’

Section 4912(c) of Pub. L. 105–33 provided that: ‘‘The amendments made by this section [amending this section and section 1396d of this title] shall apply to medical assistance for items and services furnished on or after October 1, 1997.’’

Amendment by section 105–12, set out as an Effective Date note under section 1395i–5 of this title.

Effective Date of 1996 Amendments

Section 1(a)(2) of Pub. L. 104–248 provided that: ‘‘The amendment made by paragraph (1) [amending this section] shall be effective as if included in the enactment of the amendments made by section 4792(c)(1) of the Omnibus Budget Reconciliation Act of 1996 [Pub. L. 104–133].’’

Amendment by sections 108(k) and 114(b)–(d)(1), of Pub. L. 104–248 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified
programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 401 of Pub. L. 104-193, set out as an Effective Date note under section 601 of this title.

Section 913 of Pub. L. 104-193 provided that the amendment made by that section is effective Jan. 1, 1997.

**Effective Date of 1994 Amendments**


Amendment by Pub. L. 103-206 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-206, set out as a note under section 401 of this title.

**Effective Date of 1993 Amendment**

Amendment by section 13581(b)(2) of Pub. L. 103-66 effective Jan. 1, 1994, see section 13581(d) of Pub. L. 103-66, set out as a note under section 1396y of this title.

Section 13601(c) of Pub. L. 103-66 provided that: "The amendments made by subsections (a) and (b) (amending this section and section 1396d of this title) shall take effect as if included in the enactment of section 4721(a) of OBRA–1990 [Pub. L. 101-508]."

Amendment by section 13602(c) of Pub. L. 103-66 applicable to calendar quarters beginning on or after Oct. 1, 1993, without regard to whether or not regulations to carry out the amendments by section 13602(a)(1) and (c) of Pub. L. 103-66 have been promulgated by such date, see section 13602(d)(2) of Pub. L. 103-66, set out as a note under section 1396r-8 of this title.

Section 13603(f) of Pub. L. 103-66 provided that: "The amendments made by this section (amending this section and sections 1396d and 1396n of this title) shall apply to medical assistance furnished on or after Jan. 1, 1994, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date."

Amendment by section 13611(d)(1) of Pub. L. 103-66 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Oct. 1, 1993, without regard to whether or not final regulations to carry out the amendments by section 13611 of Pub. L. 103-66 have been promulgated by such date, see section 13611(e) of Pub. L. 103-66, set out as a note under section 1396p of this title.

Section 13622(d) of Pub. L. 103-66 provided that: "(1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) (amending this section) shall apply to calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing appropriations) in order for the State legislature that begins after the date of the enactment of this Act [Aug. 10, 1993] to meet the additional requirements imposed by the amendments made by this section, the date of the enactment of this Act shall be used as the date of enactment of the amendments made by this section for purposes of determining the effective date of the amendments to the plan to meet the additional requirements imposed by the amendments made by this section, the State legislature shall take effect January 1, 1992, without regard to whether or not regulations to carry out such amendments have been promulgated by such date."

Section 13631(e)(2) of Pub. L. 103-66 provided that: "The amendments made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 1993]."

Section 13631(f)(3) of Pub. L. 103-66 provided that: "(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and section 1396d of this title] shall apply to calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State legislature shall take effect January 1, 1992, without regard to whether or not regulations to carry out such amendments have been promulgated by such date."

Section 13581(b)(2) of Pub. L. 103-66 provided that: "The amendments made by this section [enacting section 1396s of this title, transferring former section 1396s of this title to section 1396y of this title, and amending this title and section 1396b and 1396d of this title] shall apply to payments under State plans approved under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after October 1, 1994."

**Effective Date of 1991 Amendment**

Section 2(c)(1) of Pub. L. 102-234 provided that: "The amendments made by this section [amending this section and section 1396b of this title] shall take effect January 1, 1992, without regard to whether or not regulations to carry out such amendments have been promulgated by such date."

Section 3(e)(1) of Pub. L. 102-234 provided that: "The amendments made by this section [amending this section and sections 1396b and 1396c of this title] shall take effect January 1, 1992."

**Effective Date of 1990 Amendment**

Section 402(e) of Pub. L. 101-508 provided that: "(1) The amendments made by this section [enacting section 1396c of this title and amending this section and sections 1396b and 1396d of this title] apply (except as provided under paragraph (3)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after January 1, 1991, without regard to whether or not regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation other than legislation author-
izing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsection (a) (enacting this section and sections 1396v and 1396d of this title) shall apply to calendar quarters beginning on or after January 1, 1991, without regard to whether or not regulation to implement such amendments are promulgated by such date; except that the amendments made by subsection (e) (amending this section and section 1396d of this title) shall apply to determinations of income for months beginning with January 1991."'

Section 4601(f) of Pub. L. 101–508 provided that: 'The amendments made by this section (amending this section and sections 1396v and 1396d of this title) shall apply to calendar quarters beginning on or after January 1, 1991, without regard to whether or not regulations to implement such amendments are promulgated by such date; except that the amendments made by subsection (e) (amending this section and section 1396d of this title) shall apply to determinations of income for months beginning with January 1991.'

Section 4601(b) of Pub. L. 101–508 provided that: 'In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Nov. 5, 1990]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.'

Section 4601(f) of Pub. L. 101–508 provided that: 'The amendments made by this section (amending this section and sections 1396v and 1396d of this title) shall apply to calendar quarters beginning on or after January 1, 1991, without regard to whether or not regulations to implement such amendments are promulgated by such date; except that the amendments made by subsection (e) (amending this section and section 1396d of this title) shall apply to determinations of income for months beginning with January 1991.'

Section 4601(b) of Pub. L. 101–508 provided that: 'The amendments made by this section (amending this section and sections 1396v and 1396d of this title) shall apply to calendar quarters beginning on or after January 1, 1991, without regard to whether or not regulations to implement such amendments are promulgated by such date; except that the amendments made by subsection (e) (amending this section and section 1396d of this title) shall apply to determinations of income for months beginning with January 1991.'

Section 4601(f) of Pub. L. 101–508 provided that: 'The amendments made by this section (amending this section and sections 1396v and 1396d of this title) shall apply to calendar quarters beginning on or after January 1, 1991, without regard to whether or not regulations to implement such amendments are promulgated by such date; except that the amendments made by subsection (e) (amending this section and section 1396d of this title) shall apply to determinations of income for months beginning with January 1991.'
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tion] shall apply to sanctions effected more than 60 days after the date of the enactment of this Act [Nov. 5, 1990].

Section 4756(c)(1) of Pub. L. 101–508 provided that the amendment made by that section is effective July 1, 1990.

Section 480(e)(1) of Pub. L. 101–508 provided that the amendment made by that section is effective on the date on which the Secretary promulgates standards regarding the qualifications of nursing facility administrators under section 1396f(d)(1) of this title.

Section 480(e)(19) of Pub. L. 101–508 provided that: "Except as provided in paragraphs (7), (11), and (16), the amendments made by this subsection [amending this section and section 1396b and 1396r of this title, repealing section 1396g of this title, and amending provisions set out as a note under this section] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203]."

**Effective Date of 1989 Amendments**

Amendment by section 6115(c) of Pub. L. 101–239 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 101–239, set out as a note under section 1396x of this title.

Section 6402(c) of Pub. L. 101–239 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1396b of this title] shall apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after April 1, 1990, with respect to eligibility for medical assistance on or after such date, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

"(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Dec. 19, 1989].

For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature."  

Section 6402(d)(5) of Pub. L. 101–239 provided that:

"(A) The amendments made by this subsection [amending this section and sections 1396d and 1396o of this title] apply (except as provided under subparagraph (B)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

"(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Dec. 19, 1989].

For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature."

Section 641(a)(2) of Pub. L. 101–239 provided that:  

"The amendment made by paragraph (1) [amending section 1396d of this title] shall apply to transfers occurring after the date of the enactment of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360]."


Section 641(e)(4) of Pub. L. 101–239 provided that:

"(A) Spousal Transfers.—The amendments made by paragraph (1) [amending section 1396p of this title] shall apply to transfers occurring after the date of the enactment of this Act [Dec. 19, 1989].

"(B) Other Amendments.—Except as provided in subparagraph (A), the amendments made by this subsection [amending this section and sections 1396p and 1396r–5 of this title] shall apply as if included in the enactment of section 303 of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360]."

Amendment by section 640(e) of Pub. L. 101–234 applicable Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.
Section 843(c) of Pub. L. 100–647 provided that: "The amendment made by this section [amending this section and section 1396d of this title] shall be effective as if included in the enactment of section 301 of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360]."

Amendment by section 202(c)(4) of Pub. L. 100–485 effective Oct. 1, 1990, with provision for earlier effective dates in the case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485 at such earlier effective dates, see section 204(a), (b)(1)(A) of Pub. L. 100–485, set out as a note under section 671 of this title.


"(1) The amendments made by this section [enacting section 1396r–6 of this title, amending this section and section 1396d of this title] (other than subsections (b)(3), (d), and (e) [amending this section and section 602 of this title and provisions formerly set out as a note under section 606 of this title]) shall apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after April 1, 1990 and after Jan. 1, 1990 (or, in the case of the Commonwealth of Kentucky, October 1, 1990) (without regard to whether regulations to implement such amendments are promulgated by such date), with respect to families that ceased to be eligible for aid under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter] on or after such date.

"(2) The amendment made by subsection (b)(3) [amending section 602 of this title] shall become effective on April 1, 1990, but such amendment shall not apply with respect to families that cease to be eligible for aid under part A of title IV of the Social Security Act before such date.

"(3) The amendment made by subsection (d) [amending this section] shall become effective on the effective date of section 401(g)(2) of Pub. L. 100–485, as amended by Pub. L. 101–239, title II, §254(a), Oct. 31, 1994, 108 Stat. 446, provided that:

"(1) Except as provided in paragraph (2), and in section 1905(m)(2) of the Social Security Act [section 1396d(c)(2) of this title] [as added by subsection (d)(2) of this section], the amendments made by this section [amending this section and sections 602, 607, and 1396d of this title] shall become effective on October 1, 1990.

"(2) The amendments made by this section shall not become effective with respect to Puerto Rico, American Samoa, Guam, or the Virgin Islands, until the date of the repeal of the limitations contained in section 1108(b) of the Social Security Act [section 1382(b) of this title] on payments to such jurisdictions for purposes of making maintenance payments under parts A and E of title IV of such Act [parts A and E of subchapter IV of this chapter]."

Section 234(b) of Pub. L. 101–432 provided that: "The amendment made by subsection (a) [amending section 401(g)(2) of Pub. L. 100–485, set out above] shall take effect as if included in the provision of the Family Support Act of 1988 [Pub. L. 100–485] to which the amendment relates at the time such provision became law."


Amendment by section 204(d)(3) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Amendment by section 301(e)(2) of Pub. L. 100–360 effective July 1, 1989, see section 301(h) of Pub. L. 100–360, set out as a note under section 1395v of this title.

Section 301(h) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, §608(d)(14)(K), Oct. 13, 1988, 102 Stat. 2416, provided that:

"(1) The amendments made by this section [amending this section and sections 1395v, 1396b, and 1396d of this title] apply (except as provided in subsections (e) and (f) [set out as notes under section 1395v and 1396b of this title] and under paragraph (2) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after January 1, 1989, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, with respect to medical assistance for:

"(A) monthly premiums under title XVIII of such Act [subchapter XVIII of this chapter] for months beginning with January 1989, and

"(B) items and services furnished on and after January 1, 1989.

"(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first session of the State legislature that begins after the date of the enactment of this Act [July 1, 1988]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

Section 302(f) of Pub. L. 100–360 provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1395v and 1396b–4 of this title] apply (except as provided in this subsection) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1989, with respect to eligibility for medical assistance on or after such date, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

"(2) PAYMENT ADJUSTMENT.—The amendments made by subsection (b)(2) [amending section 1396b–4 of this title] shall take effect on the date of the enactment of this Act [July 1, 1988].

"(3) DELAY FOR STATE LEGISLATION.—In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section (other than subsection (b)(2)), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

Section 303(d) of Pub. L. 100–360 effective on and after Apr. 8, 1988, with additional provision.
for supersede of certain administrative regulations, see section 303(g)(4) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Amendment by section 303(g)(1), (5) of Pub. L. 100–360 applicable to medical assistance furnished on or after Oct. 1, 1982, see section 303(g)(6) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Subsec. (a)(51)(A), as enacted by section 303(e)(2)–(4) of Pub. L. 100–360, applicable to payments under this subchapter for calendar quarters beginning on or after Sept. 30, 1989, without regard to whether or not final regulations to carry out that paragraph have been promulgated by that date, see section 303(g)(1)(A) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Subsec. (a)(51)(B), as enacted by section 303(e)(2)–(4) of Pub. L. 100–360, applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1988 (except in certain situations requiring State legislative action), without regard to whether or not final regulations to carry out that paragraph have been promulgated by that date, with an exception for resources disposed of before July 1, 1988, see section 303(g)(2)(A), (C), (5) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(k)(5), (7)(B)(D), (10)(G)(ii), (iv), (17)(B), (i)(3)(E), (H), (J), (6)(C), (D), (8)(C), and (n)(2), (4) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA: Effective Date note under section 106 of Title I, General Provisions.

**Effective Date of 1987 Amendments**

For effective date of amendment by section 4072(d) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1396x of this title.

Section 410(a)(3) of Pub. L. 100–203 provided that: ‘‘The amendments made by this subsection [amending this section] shall apply to medical assistance furnished on or after July 1, 1988.’’

Section 410(b)(3) of Pub. L. 100–203 provided that: ‘‘The amendments made by this subsection [amending this section and provisions set out below] shall apply with respect to medical assistance furnished on or after July 1, 1988.’’

Amendment by section 410(c)(2) of Pub. L. 100–203 applicable to medical assistance furnished on or after Oct. 1, 1988, see section 410(c)(3) of Pub. L. 100–203, set out as a note under section 1396d of this title.

Section 410(e)(6) of Pub. L. 100–203 provided that: ‘‘(A) The amendment made by paragraph (1) [amending this section] shall become effective on the date of enactment of this Act [Dec. 22, 1987].’’

‘‘(B) The amendments made by paragraphs (2) and (3) [amending this section] shall become effective as if they had been included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].’’

‘‘(C) The amendment made by paragraph (4) [amending this section] shall apply to elections made on or after the enactment of this Act.’’

‘‘(D) The amendment made by paragraph (5) [amending this section] shall apply as if included in the enactment of section 9401 of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].’’

Section 411(e)(2) of Pub. L. 100–203 provided that: ‘‘The amendments made by this subsection [amending this section] shall apply to services furnished on and after July 1, 1988.’’

Section 411(h)(3), formerly §411(h)(2), of Pub. L. 100–203, as renumbered and amended by Pub. L. 100–360, title IV, §411(k)(10)(G)(iii), July 1, 1988, 102 Stat. 796, provided that: ‘‘The amendments made by this subsection [amending this section and section 1396b of this title] shall apply to costs incurred after the date of the enactment of this Act [Dec. 22, 1987].’’

Amendment by section 411(h)(2) of Pub. L. 100–203 provided that: ‘‘The amendments made by paragraph (1) [amending this section and repealing section 1392a–8 of this title] shall apply to audits conducted after the date of the enactment of this Act [Dec. 22, 1987].’’

Amendment by sections 4211(b)(1), (b)(1)–(5), 4212(d)(2), (3), (e)(1) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendments are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, and except that subsec. (a)(28)(B) of this section as amended by section 4211(b) of Pub. L. 100–203 applicable to calendar quarters beginning more than 6 months after Dec. 22, 1987, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Section 4212(d)(4) of Pub. L. 100–203 provided that: ‘‘The amendments made by this subsection [amending this section and section 1396b of this title] shall not apply to a State until such date (not earlier than October 1, 1990) as of which the Secretary determines that—‘‘(A) the State has specified the resident assessment instrument under section 1919(e)(5) of the Social Security Act [section 1396r(d)(5) of this title], and ‘‘(B) the State has begun conducting surveys under section 1919(c)(2) of such Act.’’’

Amendment by section 4213(b)(1) of Pub. L. 100–203 applicable to payments under this subchapter for calendar quarters beginning on or after Dec. 22, 1987, without regard to whether regulations implementing such amendments are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(b) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by section 4218(b) of Pub. L. 100–203 provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply with respect to certifications or re-certifications during the period beginning on July 1, 1988, and ending on October 1, 1990.’’

Amendment by section 9115(b) of Pub. L. 100–203 effective July 1, 1988, see section 9115(c) of Pub. L. 100–203, set out as a note under section 1392 of this title.

Section 9119(d)(2) of Pub. L. 100–203, as added by Pub. L. 100–360, title IV, §411(n)(4), formerly §411(n)(3), July 1, 1988, 102 Stat. 807, and renumbered by Pub. L. 100–485, title VI, §606(c)(290), Oct. 13, 1988, 102 Stat. 2429, provided that: ‘‘The amendments made by paragraph (1) [amending this section] apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1988, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.’’

Amendment by sections 5(a) and 8(f) of Pub. L. 100–93, applicable, with certain exception, to payments under subchapter XIX of this chapter for calendar quarters beginning more than thirty days after Aug. 18, 1987, without regard to whether or not final regulations to carry out such amendments have been published by such date, see section 15(c) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

Amendment by section 7 of Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

**Effective Date of 1986 Amendments**

Section 19(b) of Pub. L. 99–643 provided that: ‘‘(1) Except as provided in paragraph (2), the amendments made by sections 3, 4, 5, 6, and 7 [amending this
(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act (this subchapter) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the requirements imposed by the amendments made by this section, the amendments made by this section and section 1396b of this title shall apply to medical assistance furnished to a woman on or after the date of the enactment of this Act.''

Section 1105(c)(2) of Pub. L. 99–570 provided that: "(2) Except as provided in paragraph (1), the amendments made by this section [amending this section and section 1396b of this title] shall apply to medical assistance furnished to aliens on or after January 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date."
notes under this section and section 1141 of Title 29
shall apply to calendar quarters beginning on or after
the date of the enactment of this Act [Apr. 7, 1986].

(2) In the case of a State plan for medical assistance
under title XIX of the Social Security Act [this sub-
chapter] which the Secretary of Health and Human
Services determines requires State legislation (other
than legislation appropriating funds) in order for the
plan to meet the additional requirements imposed by
the amendments made by this section, the State plan
shall not be regarded as failing to comply with the
requirements of such title solely on the basis of its fail-
ure to meet those additional requirements before the
date of the enactment of this Act.

(3) No penalty may be applied against any State for
violations of section 1902(a)(25) of the Social Security
Act [subsec. (a)(25) of this section] occurring prior to
the effective date of the amendments made by this sec-
tion.

(4) The amendment made by subsection (c) [enacting
provisions set out below] shall become effective on the
date of the enactment of this Act [Apr. 7, 1986].

Section 950(e) of Pub. L. 99–272, as amended by Pub.
2070, provided that: ‘‘The amendments made by this
section shall apply to medical assistance furnished on
or after the first calendar quarter beginning after the
date of the enactment of this Act [Apr. 7, 1986],
without regard to whether or not regulations to carry out
the requirements of such title solely on the basis of its fail-
ure to meet those additional requirements before the
date of the enactment of this Act.''

Section 950(b), (c) of Pub. L. 99–272, as amended by
2070, provided that:

‘‘(b) EFFECTIVE DATE.—The amendment made by sub-
section (a) [amending this section] shall apply to med-
ical assistance furnished on or after the first day of the
second month beginning after the date of the enact-
ment of this Act [Apr. 7, 1986].

‘‘(c) EXCEPTION.—The amendment made by sub-
section (a) [amending this section] shall not apply to any trust
or initial trust decree established prior to April 7, 1986,
solely for the benefit of a mentally retarded individual
who resides in an intermediate care facility for the
mentally retarded.''

Section 950(b) of Pub. L. 99–272 provided that:

‘‘(1) Except as provided in paragraphs (2) and (3), the
amendments made by this section [amending this sec-
tion and enacting provisions set out below] shall apply to
medical assistance furnished on or after October 1,
1984, but only with respect to changes of ownership oc-
curring on or after such date.

‘‘(2) The amendments made by this section shall not apply
with respect to a change of ownership pursuant to
an enforceable agreement entered into prior to Octo-
ber 1, 1983.

‘‘(3) In the case of a State plan for medical assistance
under title XIX of the Social Security Act [this sub-
chapter] which the Secretary of Health and Human
Services determines requires State legislation (other
than legislation appropriating funds) in order for the
plan to meet the requirements imposed by the amend-
ments made by this section, the State plan shall not be
regarded as failing to comply with the requirements of
such title solely on the basis of its failure to meet the
requirements imposed by the amendments made by this
section before the first day of the first calendar quarter
beginning after the close of the first regular session of
the State legislature that begins after the date of the
enactment of this Act [Apr. 7, 1986].’’

Section 950(d) of Pub. L. 99–272, as amended by Pub.
2070, provided that: ‘‘The amendment made by this sec-
tion [amending this section] shall apply with respect to
payment for services furnished on or after October 1,
1984, without regard to whether or not regulations to
carry out the amendment have been promulgated by
that date.''

Section 9529(a)(2) of Pub. L. 99–272 provided that:

‘‘The amendment made by paragraph (1) [amending this
section] shall apply to medical assistance furnished on
or after the first calendar quarter that begins more
than 90 days after the date of the enactment of this Act
[Apr. 7, 1986].’’

Section 9529(b)(3) of Pub. L. 99–272 provided that:

‘‘This subsection, and the amendment made by this
subsection [amending this section and enacting provi-
sions set out below], shall apply to adoption assistance
agreements entered into before, on, or after the date of
the enactment of this Act [Apr. 7, 1986].’’

Amendment by section 12305(b)(3) of Pub. L. 99–272
applicable to medical assistance furnished in or after first
calendar quarter beginning more than 90 days after
April 7, 1986, see section 12305(c) of Pub. L. 99–272, set
out as a note under section 1395f of this title.

**Effective Date of 1984 Amendments**

Amendment by Pub. L. 98–617 effective as if originally
included in the Deficit Reduction Act of 1984, Pub. L.
98–369, see section 3(c) of Pub. L. 98–617, set out as a
note under section 1395f of this title.

Amendment by section 2303(c)(1) of Pub. L. 98–369
applicable to clinical diagnostic laboratory tests fur-
ished on or after July 1, 1984, but not applicable to
clinical diagnostic laboratory tests furnished by pro-
viders or a provider operating under a waiver granted
pursuant to section 602(k) of Pub. L. 98–21, set out as a
note under section 1395y of this title, see section 2303(c)(1)
and (3) of Pub. L. 98–369, set out as a note under section
1395f of this title.

Section 2314(c)(3) of Pub. L. 98–369 provided that:

‘‘(A) Except as provided in subparagraph (B), the
amendments made by subsection (b) [amending this
section] shall apply to medical assistance furnished on
or after October 1, 1984.

(B) In the case of a State plan for medical assistance
under title XIX of the Social Security Act [this sub-
chapter] which the Secretary of Health and Human
Services determines requires State legislation in order
for the plan to meet the additional requirement im-
picted by the amendments made by this section [amend-
ing this section and section 1395x of this title and en-
acting provisions set out as a note under section 1395x of
this title], the State plan shall not be regarded as failing
to comply with the requirements of such title solely
on the basis of its failure to meet this additional
requirement before the first day of the first calendar
quarter beginning after the close of the first regular
session of the State legislature that begins after the
date of the enactment of this Act [July 18, 1984].’’

Amendment by section 2335(e) of Pub. L. 98–369 effective
July 18, 1984, see section 2335(g) of Pub. L. 98–369,
set out as a note under section 1395f of this title.

Section 2361(d) of Pub. L. 98–369 provided that:

‘‘(1) Except as provided in paragraph (2), the
amendments made by this section [amending this section
and sections 606 and 1396d of this title] shall apply to
calendar quarters beginning on or after October 1, 1984,
without regard to whether or not final regulations to
carry out such amendments have been promulgated by
such date.

‘‘(2) In the case of a State plan for medical assistance
under title XIX of the Social Security Act [this sub-
chapter] which the Secretary of Health and Human
Services determines requires State legislation in order
for the plan to meet the additional requirements im-
picted by the amendments made by this section, the
State plan shall not be regarded as failing to comply with
the requirements of such title solely on the basis of its fail-
ure to meet those additional requirements before the
first day of the first calendar quarter beginning after the
close of the first regular session of the State legislature
that begins after the date of the enactment of this Act [July 18, 1984].’’

Section 2362(b) of Pub. L. 98–369 provided that: ‘‘The
amendment made by subsection (a) [amending this
section] shall apply to children born on or after October 1,
1984.’’
Amendment by section 2363(a)(1) of Pub. L. 98-369 applicable to calendar quarters beginning on or after July 18, 1981, except that, in the case of individuals admitted to skilled nursing facilities before that date, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the legislature that begins after the date of the enactment of this Act [Aug. 13, 1981].

Section 2363(c) of Pub. L. 98-369 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1396i of this title] shall become effective on the date of the enactment of this Act [Aug. 13, 1981]."

Section 2365(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section and section 1396j of this title] shall become effective on the date of the enactment of this Act [Aug. 13, 1981]."

Section 2374(c) of Pub. L. 98-369 provided that: "The amendments made by this section (amending this section and section 1396f of this title) shall become effective on the date of the enactment of this Act [Aug. 13, 1981]."

Section 2375(b)(2) of Pub. L. 98-369 provided that: "The amendment made by paragraph (1) [amending this section] shall not apply with respect to services furnished before the date the Secretary of Health and Human Services first promulgates and has in effect final regulations (on an interim or other basis) to carry out section 1902(a)(13)(A) of the Social Security Act [subsec. (a)(13)(A) of this section] (as amended by this subsection)."

Section 2377(c) of Pub. L. 98-369 provided that: "The amendments made by this section (amending this section and section 1396 hope to meet the additional requirement before the first day of the first calendar year beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 13, 1981]."

"(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendment made by paragraph (1)(C), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar year beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 13, 1981]."

"(A) The amendments made by paragraph (1) [amending this section] shall (except as provided under subparagraph (B)) be effective with respect to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after October 1, 1981.

Section 2376(d)(2) of Pub. L. 98-369 provided that:

"(1) Except as otherwise provided in this section, any amendment to the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97-35] made by this section [amending this section and sections 1320a-1 and 1396b of title XIX of the Social Security Act] shall be effective as if it had been originally included in the provision of the Omnibus Budget Reconciliation Act of 1981 to which such amendment relates.

"(2) Except as otherwise provided in this section, any amendment to the Social Security Act [this chapter] made by the preceding provisions of this section [amending this section and sections 701, 705, 1320a-7a, 1320b-4, 1320b-9, 1320c-9, 1320c-11, 1320c-17, 1320c-21, and 1396b of this title] shall apply to reductions for calendar quarters beginning on or after June 30, 1974, and the amendments made by subsection (a)(2) [amending this section] shall take effect on October 1, 1981, except that, in the case of a State plan under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendment made by paragraph (1)(C), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to include the provisions required to be included in such State plan by subsection (a)(2) of this section before the first day of the first calendar year beginning after the close of the first reg-
ular session of the State legislature that begins after the date of enactment of this Act [Aug. 13, 1981], but the requirements previously set forth in paragraphs (1) through (3) of section 488(c) of the Social Security Act [section 603(g)(1)–(3) of this title] (prior to its repeal by this section) shall apply under title XIX of such Act to such State on and after October 1, 1981, whether or not the provisions required to be included by this section in the State plan under title XIX have been incorporated into such State plan."

For effective date, savings, and transitional provisions pertaining to amendments by section 2183(c)(9) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

**Effective Date of 1980 Amendment**

Amendment by section 902(b) of Pub. L. 96–499 effective on date on which final regulations to implement the amendments are first issued, see section 902(c) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Section 914(b)(2) of Pub. L. 96–499, as amended by Pub. L. 97–248, title I, §1157(c)(1), Sept. 3, 1982, 96 Stat. 301, provided that:

"(A) The amendments made by paragraph (1) [amending this section] shall (except as provided under subparagraph (B)) apply to cost reporting periods, beginning on or after April 1, 1981, of an entity providing services under a State plan approved under title XIX of the Social Security Act (this subchapter)."

"(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by paragraph (1), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act."
made to States under section 1396b of this title to reflect such amendment, see section 28(c) of Pub. L. 95–142, set out as a note under section 1396b of this title.

**Effective Date of 1976 Amendment**

Section 2 of Pub. L. 94–552 provided that: "The amendments made by the first section [amending this section and section 1396b of this title] shall take effect as of January 1, 1976."

**Effective Date of 1975 Amendment**

Section 111(c) of Pub. L. 94–182 provided that: "The amendments made by the first section [amending this section and sections 1396, 1396b, and 1396d of this title] shall be effective on January 1, 1975."

**Effective Date of 1974 Amendment**

Section 9(b) of Pub. L. 93–368 provided that: "The amendment made by subsection (a) [amending this section] shall be effective January 1, 1974."

**Effective Date of 1973 Amendment**

Section 13(d) of Pub. L. 93–233 provided that: "The amendments made by subsection (a) [amending this section and sections 1396, 1396b, and 1396d of this title] shall be effective with respect to payments under section 1903 of the Social Security Act [section 1396b of this title] for calendar quarters commencing after December 31, 1973."

Section 18(c–3)(4) of Pub. L. 93–233 provided that: "The amendments made by subsections (c) and (u) [amending this section and section 1396b of this title] shall be effective July 1, 1973."

**Effective Date of 1972 Amendment**

Section 238(b) of Pub. L. 92–603 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after June 30, 1972."

**Effective Date of 1971 Amendment**

Section 229(b) of Pub. L. 90–248 provided that: "The amendments made by section (a) [amending this section] shall apply with respect to calendar quarters beginning after June 30, 1970."

**Effective Date of 1970 Amendment**

Section 1902(a)(25) and 1903(r)(6)(J) of the Social Security Act [subsec. (a)(25) of this section and section 1396a of this title] effective from and after July 1, 1970, provided that: "The amendments made by subsection (a) [amending this section] shall be effective April 1, 1968."

Section 229(b) of Pub. L. 90–248 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after December 31, 1967."

Section 235(b) of Pub. L. 90–248 provided that: "An Effective Date note under section 1396g of this title."

Section 237 of Pub. L. 90–248 provided that: "The amendment made by that section is effective Apr. 1, 1968."

**Regulations**

Section 9503(c) of Pub. L. 99–272 provided that: "The Secretary of Health and Human Services shall promulgate final regulations necessary to carry out sections 1902(a)(25) and 1903(r)(6)(J) of the Social Security Act [subsec. (a)(25) of this section and section 1396a of this title] within 6 months after the date of the enactment of this Act [Apr. 7, 1986]."

**Construction of 2009 Amendment**

Pub. L. 111–5, div. B, title V, § 5006(e)(3), Feb. 17, 2009, 123 Stat. 511, provided that: “Nothing in the amendments made by this subsection [amending this section and section 1397ff of this title] shall be construed as superseding existing advisory committees, working groups, guidance, or other advisory procedures established by the Secretary of Health and Human Services..."
or by any State with respect to the provision of health care to Indians.'"

CONSTRUCTION OF 1999 AMENDMENT


'(1) the amendments made by that Act [see Tables for classification] shall be executed as if this Act [see Short Title of 1999 Amendment note under section 1396d of this title] had been enacted after the enactment of such other Act;

'(2) with respect to subsection (a)(1)(A) of this section [amending this section], any reference to subclause (XIII) is deemed a reference to subclause (XV);

'(3) with respect to subsection (a)(1)(B) of this section [amending this section], any reference to subclause (XIV) is deemed a reference to subclause (XVI);

'(4) [Amended this section.]

'(5) [Amended section 1396d of this title.]

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of Health and Human Services under subsec. (a)(4)(A) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4238(a)(3)(D) of this title.

REPORTS TO CONGRESS

Pub. L. 111–148, title II, §2001(d)(2), Mar. 23, 2010, 124 Stat. 278, provided that: "Beginning April 2013, and annually thereafter, the Secretary of Health and Human Services shall submit a report to the appropriate committees of Congress on the total enrollment and new enrollment in Medicaid for the fiscal year ending on September 30 of the preceding calendar year on a national and State-by-State basis, and shall include in each such report such recommendations for administrative or legislative changes to improve enrollment in the Medicaid program as the Secretary determines appropriate."

DEMONSTRATION PROJECT TO EVALUATE INTEGRATED CARE AROUND A HOSPITALIZATION


'(a) AUTHORITY TO CONDUCT PROJECT.—

'(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall establish a demonstration project under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) to evaluate the use of bundled payments for the provision of integrated care for a Medicaid beneficiary.

'(A) with respect to an episode of care that includes a hospitalization; and

'(B) for concurrent physicians services provided during a hospitalization.

'(2) DURATION.—The demonstration project shall begin on January 1, 2012, and shall end on December 31, 2016.

'(b) REQUIREMENTS.—The demonstration project shall be conducted in accordance with the following:

'(1) The demonstration project shall be conducted in up to 8 States, determined by the Secretary based on consideration of the potential to lower costs under the Medicaid program while improving care for Medicaid beneficiaries. A State selected to participate in the demonstration project may target the demonstration project to particular categories of beneficiaries, beneficiaries with particular diagnoses, or particular geographic regions of the State, but the Secretary shall insure [sic] that, as a whole, the demonstration project is, to the greatest extent possible, representative of the demographic and geographic composition of Medicaid beneficiaries nationally.

'(2) The demonstration project shall focus on conditions where there is evidence of an opportunity for providers of services and suppliers to improve the quality of care furnished to Medicaid beneficiaries while reducing total expenditures under the State Medicaid programs selected to participate, as determined by the Secretary.

'(3) A State selected to participate in the demonstration project shall specify the 1 or more episodes of care the State proposes to address in the project, the services to be included in the bundled payments, and the rationale for the selection of such episodes of care and services. The Secretary may modify the episodes of care as well as the services to be included in the bundled payments prior to or after approving the project. The Secretary may also vary such factors among the different States participating in the demonstration project.

'(4) The Secretary shall ensure that payments made under the demonstration project are adjusted for severity of illness and other characteristics of Medicaid beneficiaries within a category or having a diagnosis targeted as part of the demonstration project. States shall ensure that Medicaid beneficiaries are not liable for any additional cost sharing than if their care had not been subject to payment under the demonstration project.

'(5) Hospitals participating in the demonstration project shall have or establish robust discharge planning programs to ensure that Medicaid beneficiaries requiring post-acute care are appropriately placed in, or have ready access to, post-acute care settings.

'(6) The Secretary and each State selected to participate in the demonstration project shall ensure that the demonstration project does not result in the Medicaid beneficiaries whose care is subject to payment under the demonstration project being provided with less items and services for which medical assistance is provided under the State Medicaid program than the items and services for which medical assistance would have been provided to such beneficiaries under the State Medicaid program in the absence of the demonstration project.

'(c) WAIVER OF PROVISIONS.—Notwithstanding section 1115(a) of the Social Security Act (42 U.S.C. 1315(a)), the Secretary may waive such provisions of titles XIX, XVIII, and XI of that Act [42 U.S.C. 1396 et seq., 1395 et seq., 1301 et seq.] as may be necessary to accomplish the goals of the demonstration, ensure beneficiary access to acute and post-acute care, and maintain quality of care.

'(d) EVALUATION AND REPORT.—

'(1) DATA.—Each State selected to participate in the demonstration project shall provide to the Secretary, in such form and manner as the Secretary shall specify, relevant data necessary to monitor outcomes, costs, and quality, and evaluate the ratios for selection of the episodes of care and services specified by States under subsection (b)(3).

'(2) REPORT.—Not later than 1 year after the conclusion of the demonstration project, the Secretary shall submit a report to Congress on the results of the demonstration project.

PEDIATRIC ACCOUNTABLE CARE ORGANIZATION DEMONSTRATION PROJECT


'(a) AUTHORITY TO CONDUCT DEMONSTRATION.—

'(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the 'Secretary') shall establish the Pediatric Accountable Care Organization Demonstration Project to authorize a participating State to allow pediatric medical providers that meet specified requirements to be recognized as an accountable care organization for purposes of receiving incentive payments (as described under subsection (d)), in the same manner as an accountable care organization is recognized and pro-
vided with incentive payments under section 1899 of the Social Security Act (42 U.S.C. 1396jjj) (as added by section 3022).

(2) DEFINITION.—The demonstration project shall begin on January 1, 2012, and shall end on December 31, 2016.

(a) APPLICATION.—A State that desires to participate in the demonstration project under this section shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(b) REQUIREMENTS.—(1) PERFORMANCE GUIDELINES.—The Secretary, in consultation with the States and pediatric providers, shall establish guidelines to ensure that the quality of care delivered to individuals by a provider recognized as an accountable care organization under this section is not less than the quality of care that would have otherwise been provided to such individuals.

(2) SAVINGS REQUIREMENT.—A participating State, in consultation with the Secretary, shall establish an annual minimal level of savings in expenditures for items and services covered under the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) and the CHIP program under title XXI of such Act (42 U.S.C. 1397aa et seq.) that must be reached by an accountable care organization in order for such organization to receive an incentive payment under subsection (d).

(3) MINIMUM PARTICIPATION PERIOD.—A provider desiring to be recognized as an accountable care organization under the demonstration project shall enter into an agreement with the State to participate in the project for not less than a 3-year period.

(4) INCENTIVE PAYMENT.—An accountable care organization that meets the performance guidelines established by the Secretary under subsection (c)(1) and achieves savings greater than the annual minimal savings level established by the State under subsection (c)(2) shall receive an incentive payment for such year equal to a portion (as determined appropriate by the Secretary) of the amount of such excess savings. The Secretary may establish an annual cap on incentive payments for an accountable care organization.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

MEDICAID EMERGENCY PSYCHIATRIC DEMONSTRATION PROJECT


(a) AUTHORITY TO CONDUCT DEMONSTRATION PROJECT.—The Secretary of Health and Human Services (in this section referred to as the ‘Secretary’) shall establish a demonstration project under which an eligible State (as described in subsection (c)) shall provide payment under the State Medicaid plan under title XIX of the Social Security Act (42 U.S.C. 1396d dd) for the provision of medical assistance available under such plan to individuals who—

(1) have attained age 21, but have not attained age 65;

(2) are eligible for medical assistance under such plan; and

(3) require such medical assistance to stabilize an emergency medical condition.

(b) STABILIZATION REVIEW.—A State shall specify in its application described in subsection (c)(1) establish [sic] a mechanism for how it will ensure that institutionalized individuals participating in the demonstration project will determine whether or not such individuals have been stabilized (as defined in subsection (b)(5)). This mechanism shall commence before the third day of the inpatient stay. States participating in the demonstration project may manage the provision of services for the stabilization of medical emergency conditions through utilization review, authorization, or management practices, or the application of medical necessity and appropriateness criteria applicable to behavioral health.

(c) ELIGIBLE STATE DEFINED.—

(1) IN GENERAL.—An eligible State is a State that has made an application and has been selected pursuant to paragraphs (2) and (3).

(2) APPLICATION.—A State seeking to participate in the demonstration project under this section shall submit to the Secretary, at such time and in such format as the Secretary requires, an application that includes such information, provisions, and assurances, as the Secretary may require.

(3) SELECTION.—A State shall be determined eligible for the demonstration by the Secretary on a competitive basis among States with applications meeting the requirements of paragraph (1). In selecting State applications for the demonstration project, the Secretary shall seek to achieve an appropriate national balance in the geographic distribution of such projects.

(d) LENGTH OF DEMONSTRATION PROJECT.—The demonstration project established under this section shall be conducted for a period of 3 consecutive years.

(e) LIMITATIONS ON FEDERAL FUNDING.—

(1) APPROPRIATION.—

(A) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to carry out this section, $75,000,000 for fiscal year 2011.

(B) BUDGET AUTHORITY.—Subparagraph (A) constitutes budget authority in advance of appropriations Act [sic] and represents the obligation of the Federal Government to provide for the payment of the amounts appropriated under that subparagraph.

(2) 5-YEAR AVAILABILITY.—Funds appropriated under paragraph (1) shall remain available for obligation through December 31, 2015.

(3) LIMITATION ON PAYMENTS.—In no case may—

(A) the aggregate amount of payments made by the Secretary to eligible States under this section exceed $75,000,000; or

(B) payments be provided by the Secretary under this section after December 31, 2015.

(4) FUNDS ALLOCATED TO STATES.—Funds shall be allocated to eligible States on the basis of criteria, including a State’s application and the availability of funds, as determined by the Secretary.

(5) PAYMENTS TO STATES.—The Secretary shall pay to each eligible State, from its allocation under paragraph (4), an amount each quarter equal to the Federal medical assistance percentage of expenditures in the quarter for medical assistance described in subsection (a). As a condition of receiving payment, a State shall collect and report information, as determined necessary by the Secretary, for the purposes of providing Federal oversight and conducting an evaluation under subsection (f).

(6) EVALUATION AND REPORT TO CONGRESS.—

(1) EVALUATION.—The Secretary shall conduct an evaluation of the demonstration project in order to determine the impact on the functioning of the health and mental health service system and on individuals enrolled in the Medicaid program and shall include the following:

(A) An assessment of access to inpatient mental health services under the Medicaid program; average lengths of inpatient stays; and emergency room visits.

(B) An assessment of discharge planning by participating hospitals.

(C) An assessment of the impact of the demonstration project on the costs of the full range of mental health services (including inpatient, emergency and ambulatory care).

(D) An analysis of the percentage of consumers with Medicaid coverage who are admitted to inpatient facility as a result of the demonstration project as compared to those admitted to these same facilities through other means.
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"(E) A recommendation regarding whether the demonstration project should be continued after December 31, 2013, and expanded on a national basis.

"(2) REPORT.—Not later than December 31, 2013, the Secretary shall submit to Congress and make available to the public a report on the findings of the evaluation under paragraph (1).

"(g) WAIVER AUTHORITY.—

"'(1) IN GENERAL.—The Secretary shall waive the limitation of subdivision (B) following paragraph (28) of section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)) (relating to limitations on payments for care or services for individuals under 65 years of age who are patients in an institution for mental diseases) for purposes of carrying out the demonstration project under this section.

"'(2) LIMITED OTHER WAIVER AUTHORITY.—The Secretary may waive other requirements of titles XI and XIX of the Social Security Act (42 U.S.C. 1396 et seq., 1396 et seq.) (including the requirements of sections 1902(a)(1) [42 U.S.C. 1396a(a)(1)] (relating to statewide) and 1902(a)(1)(B) [probably means 1902(a)(1)(10)(B), 42 U.S.C. 1396a(a)(1)(10)(B)] (relating to comparability)) only to the extent necessary to carry out the demonstration project under this section.

"'(h) DEFINITIONS.—In this section:

"'(1) EMERGENCY MEDICAL CONDITION.—The term 'emergency medical condition' means, with respect to an individual, an individual who expresses suicidal or homicidal thoughts or grievances, if determined dangerous to self or others.

"'(2) FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—The term 'Federal medical assistance percentage' has the meaning given that term with respect to a State under section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)).

"'(3) INSTITUTION FOR MENTAL DISEASES.—The term 'institution for mental diseases' has the meaning given to that term in section 1905(i) of the Social Security Act (42 U.S.C. 1396d(i)).

"'(4) MEDICAL ASSISTANCE.—The term 'medical assistance' has the meaning given that term in section 1905(a) of the Social Security Act (42 U.S.C. 1396a(a)).

"'(5) STABILIZED.—The term 'stabilized' means, with respect to an individual, that the emergency medical condition no longer exists with respect to the individual and the individual is no longer dangerous to self or others.

"'(6) STATE.—The term 'State' has the meaning given that term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.)."

INCENTIVES FOR PREVENTION OF CHRONIC DISEASES IN MEDICAID


"'(a) INITIATIVES.—

"'(1) ESTABLISHMENT.—

"'(A) IN GENERAL.—The Secretary of Health and Human Services shall award grants to States to carry out initiatives to provide incentives to Medicaid beneficiaries who—

"'(i) successfully participate in a program described in paragraph (3) and

"'(ii) upon completion of such participation, demonstrate changes in health risk and outcomes, including the adoption and maintenance of healthy behaviors by meeting specific targets (as described in subsection (c)(2)).

"'(B) PURPOSE.—The purpose of the initiatives under this section is to test approaches that may encourage behavior modification and determine scalable solutions.

"'(2) DURATION.—

"'(A) INITIATION OF PROGRAM; RESOURCES.—The Secretary shall award grants to States beginning on January 1, 2011, or beginning on the date on which the Secretary develops program criteria, whichever is earlier. The Secretary shall develop program criteria for initiatives under this section using relevant evidence-based research and resources, including the Guide to Clinical Preventive Services, the Guide to Clinical Preventive Services, and the National Registry of Evidence-Based Programs and Practices.

"'(B) DURATION OF PROGRAM.—A State awarded a grant to carry out initiatives under this section shall carry out such initiatives within the 5-year period beginning on January 1, 2011, or beginning on the date on which the Secretary develops program criteria, whichever is earlier. Initiatives under this section shall be carried out by a State for a period of not less than 3 years.

"'(3) PROGRAM DESCRIBED.—

"'(A) IN GENERAL.—A program described in this paragraph is a comprehensive, evidence-based, widely available, and easily accessible program, proposed by the State and approved by the Secretary, that is designed and uniquely suited to address the needs of Medicaid beneficiaries and has demonstrated success in helping individuals achieve one or more of the following:

"'(i) Ceasing use of tobacco products.

"'(ii) Controlling or reducing their weight.

"'(iii) Lowering their cholesterol.

"'(iv) Lowering their blood pressure.

"'(v) Avoiding the onset of diabetes or, in the case of a diabetic, improving the management of that condition.

"'(B) CO-MORBIDITIES.—A program under this section may also address co-morbidities (including depression) that are related to any of the conditions described in subparagraph (A).

"'(C) WAIVER AUTHORITY.—The Secretary may waive the requirements of section 1902(a)(1) (relating to statewide) of the Social Security Act (42 U.S.C. 1396a(a)(1)) for a State awarded a grant to conduct an initiative under this section and shall ensure that a State makes any program described in subparagraph (A) available and accessible to Medicaid beneficiaries.

"'(D) FLEXIBILITY IN IMPLEMENTATION.—A State may enter into arrangements with providers participating in Medicaid, community-based organizations, faith-based organizations, public-private partnerships, Indian tribes, or similar entities or organizations to carry out programs described in subparagraph (A).

"'(4) APPLICATION.—Following the development of program criteria by the Secretary, a State may submit an application, in such manner and containing such information as the Secretary may require, that shall include a proposal for programs described in paragraph (3)(A) and a plan to make Medicaid beneficiaries and providers participating in Medicaid who reside in the State aware and informed about such programs.

"'(E) EDUCATION AND OUTREACH CAMPAIGN.—

"'(1) STATE AWARENESS.—The Secretary shall conduct an outreach and education campaign to make States aware of the grants under this section.

"'(2) PROVIDER AND BENEFICIARY EDUCATION.—A State awarded a grant to conduct an initiative under this section shall conduct an outreach and education campaign to make Medicaid beneficiaries and providers participating in Medicaid who reside in the State aware of the programs described in subsection (a)(3) that are to be carried out by the State under the grant.

"'(C) IMPACT.—A State awarded a grant to conduct an initiative under this section shall develop and implement a system to—

"'(1) track Medicaid beneficiary participation in the program and validate changes in health risk and outcomes with clinical data, including the adoption and maintenance of health behaviors by such beneficiaries;

"'(2) to the extent practicable, establish standards and health status targets for Medicaid beneficiaries
participating in the program and measure the degree to which such standards and targets are met; (3) evaluate the effectiveness of the program and provide the Secretary with such evaluations; (4) report to the Secretary on processes that have been developed and lessons learned from the program; and (5) report on preventive services as part of reporting on quality measures for Medicaid managed care programs.

"(d) EVALUATIONS AND REPORTS.— (1) INDEPENDENT ASSESSMENT.—The Secretary shall enter into a contract with an independent entity or organization to conduct an evaluation and assessment of the initiatives carried out by States under this section, for the purpose of determining—

(A) the effect of such initiatives on the use of health care services by Medicaid beneficiaries participating in the program;

(B) the extent to which special populations (including adults with disabilities, adults with chronic illnesses, and children with special health care needs) are able to participate in the program;

(C) the level of satisfaction of Medicaid beneficiaries with respect to the accessibility and quality of health care services provided through the program; and

(D) the administrative costs incurred by State agencies that are responsible for administration of the program.

(2) STATE REPORTING.—A State awarded a grant to carry out initiatives under this section shall submit reports to the Secretary, on a semi-annual basis, regarding the programs that are supported by the grant funds. Such report shall include information, as specified by the Secretary, regarding—

(A) the specific uses of the grant funds;

(B) an assessment of program implementation and lessons learned from the program;

(C) an assessment of quality improvements and clinical outcomes under such programs; and

(D) estimates of cost savings resulting from such programs.

(3) INITIAL REPORT.—Not later than January 1, 2014, the Secretary shall submit to Congress an initial report on such initiatives based on information provided by States through reports required under paragraph (2). The initial report shall include an interim evaluation of the effectiveness of the initiatives carried out with grants awarded under this section and a recommendation regarding whether funding for expanding or extending the initiatives should be extended beyond January 1, 2016.

(4) FINAL REPORT.—Not later than July 1, 2016, the Secretary shall submit to Congress a final report on the program that includes the results of the independent assessment required under paragraph (1), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

(e) NO EFFECT ON ELIGIBILITY FOR, OR AMOUNT OF, MEDICAID OR OTHER BENEFITS.—Any incentives provided to a Medicaid beneficiary participating in a program described in subsection (a)(3) shall not be taken into account for purposes of determining the beneficiary’s eligibility for, or amount of, benefits under the Medicaid program or any program funded in whole or in part with Federal funds.

(f) FUNDING.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated for the 5-year period beginning on January 1, 2011, $100,000,000 to the Secretary to carry out this section. Amounts appropriated under this subsection shall remain available until expended.

(g) DEFINITIONS.—In this section:

(1) MEDICAID BENEFICIARY.—The term ‘Medicaid beneficiary’ means an individual who is eligible for medical assistance under the Medicaid program or any program funded in whole or in part with Federal funds under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) and is enrolled in such plan or waiver.

(2) STATE.—The term ‘State’ has the meaning given that term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

COORDINATION OF EXPANSION OF THE RECOVERY AUDIT CONTRACTOR PROGRAM; REGULATIONS

Pub. L. 111–148, title VI, § 6411(c), Mar. 23, 2010, 124 Stat. 775, provided that: ‘‘(A) IN GENERAL.—The Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services, shall coordinate the expansion of the Recovery Audit Contractor program to Medicaid with States, particularly with respect to each State that enters into a contract with a recovery audit contractor for purposes of the State’s Medicaid program prior to December 31, 2010.

(B) REGULATIONS.—The Secretary of Health and Human Services shall promulgate regulations to carry out this subsection [amending this section] and the amendments made by this subsection, including with respect to conditions of Federal financial participation, as specified by the Secretary.’’

ANNUAL REPORT

Pub. L. 111–148, title VI, § 6411(c), Mar. 23, 2010, 124 Stat. 775, provided that: ‘‘The Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services, shall submit an annual report to Congress concerning the effectiveness of the Recovery Audit Contractor program under Medicaid and Medicare and shall include [in] such reports recommendations for expanding or improving the program.’’

PURPOSES OF 2009 AMENDMENT


(1) To provide fiscal relief to States in a period of economic downturn.

(2) To protect and maintain State Medicaid programs during a period of economic downturn, including by helping to avert cuts to provider payment rates and benefits or services, and to prevent restrictions of income eligibility requirements for such programs, but not to promote increases in such requirements.’’

LIMITATION ON WAIVER AUTHORITY

Pub. L. 111–3, title II, § 211(a)(2), Feb. 4, 2009, 123 Stat. 52, provided that: ‘‘Notwithstanding any provision of section 1115 of the Social Security Act (42 U.S.C. 1315), or any other provision of law, the Secretary [of Health and Human Services] may not waive the requirements of section 1902(a)(46)(B) of such Act (42 U.S.C. 1396a(a)(46)(B)) with respect to a State.’’

EXTENSION OF SSI WEALTH-BASED ASSET DEMONSTRATION PROJECT TO THE MEDICAID PROGRAM


DEMONSTRATION PROJECTS REGARDING HOME AND COMMUNITY-BASED ALTERNATIVES TO PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES FOR CHILDREN

Pub. L. 110–171, title VII, § 6083, Feb. 8, 2006, 120 Stat. 99, provided that: ‘‘(a) IN GENERAL.—The Secretary is authorized to conduct, during each of fiscal years 2007 through 2011,
demonstration projects (each in the section referred to as a ‘demonstration project’) in accordance with this section under which up to 10 States (as defined for purposes of title XIX of the Social Security Act (this subchapter)) are awarded grants, on a competitive basis, to test the effectiveness in improving or maintaining a child’s functional level and cost-effectiveness of providing coverage of home and community-based alternatives to psychiatric residential treatment for children enrolled in the Medicaid program under title XIX of such Act.

(b) Application of terms and conditions.—

(1) In general.—Subject to the provisions of this section, for the purposes of the demonstration projects, and only with respect to children enrolled under such demonstration projects, a psychiatric residential treatment facility (as defined in section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)), to be included in each reference in such section 1915(c) to hospitals, nursing facilities, and intermediate care facilities for the mentally retarded.

(2) State option to assure continuity of Medicaid coverage.—Upon the termination of a demonstration project under this section, the State that conducted the project may elect, only with respect to a child who is enrolled in such project on the termination date, to continue to provide medical assistance for coverage of home and community-based alternatives to psychiatric residential treatment for the child in accordance with section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)), as modified through the application of paragraph (1). Expenditures incurred for providing such medical assistance shall be treated as a home and community-based waiver program under section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)) for purposes of payment under section 1903 of such Act (42 U.S.C. 1396b).

(c) Terms of demonstration projects.—

(1) In general.—Except as otherwise provided in this section, a demonstration project shall be subject to the same terms and conditions as apply to a waiver under section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)), including the waiver of certain requirements under the first sentence of paragraph (3) of such section but not applying the second sentence of such paragraph.

(2) Budget neutrality.—In conducting the demonstration projects under this section, the Secretary shall ensure that the aggregate payments made by the Secretary under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) do not exceed the amount which the Secretary estimates would have been paid under that title if the demonstration projects under this section had not been implemented.

(3) Evaluation.—The application for a demonstration project shall include an assurance to provide for such interim and final evaluations of the demonstration project by independent third parties, and for such interim and final reports to the Secretary, as the Secretary may require.

(4) Payments to states; limitations to scope and funding.—

(1) In general.—Subject to paragraph (2), a demonstration project approved by the Secretary under this section shall be treated as a home and community-based waiver program under section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)) for purposes of payment under section 1903 of such Act (42 U.S.C. 1396b).

(2) Limitation.—In no case may the amount of payments made by the Secretary under this section for State demonstration projects for a fiscal year exceed the amount available under subsection (f)(2)(A) for such fiscal year.

(e) Secretary’s evaluation and report.—The Secretary shall conduct an interim and final evaluation of State demonstration projects under this section and shall report to the President and Congress the conclusions of such evaluations within 12 months of completing such evaluations.

(f) Funding.—

(1) In general.—For the purpose of carrying out this section, there are appropriated, from amounts in the Treasury not otherwise appropriated, for fiscal years 2007 through 2011, a total of $218,000,000, of which—

(A) the amount specified in paragraph (2) shall be available for each of fiscal years 2007 through 2011; and

(B) a total of $1,000,000 shall be available to the Secretary for the evaluations and report under subsection (e).

(2) Fiscal year limit.—

(a) In general.—For purposes of paragraph (1), the amount specified in this paragraph for a fiscal year is the amount specified in subparagraph (B) for the fiscal year plus the difference, if any, between the total amount available under this paragraph for prior fiscal years and the total amount previously expended under paragraph (1)(A) for such prior fiscal years.

(b) Fiscal year amounts.—The amount specified in this subparagraph for—

(i) fiscal year 2007 is $21,000,000;

(ii) fiscal year 2008 is $37,000,000;

(iii) fiscal year 2009 is $49,000,000;

(iv) fiscal year 2010 is $53,000,000; and

(v) fiscal year 2011 is $57,000,000.

Money follows the person rebalancing demonstration


(a) Program purpose and authority.—The Secretary is authorized to award, on a competitive basis, grants to States in accordance with this section for demonstration projects (each in this section referred to as an ‘MFP demonstration project’) designed to achieve the following objectives with respect to institutional and home and community-based long-term care services under State Medicaid programs:

(1) Rebalancing.—Increase the use of home and community-based, rather than institutional, long-term care services.

(2) Money follows the person.—Eliminate barriers or mechanisms, whether in the State law, the State Medicaid plan, the State budget, or otherwise, that prevent or restrict the flexible use of Medicaid funds to enable Medicaid-eligible individuals to receive support for appropriate and necessary long-term services in the settings of their choice.

(3) Continuity of service.—Increase the ability of the State Medicaid program to assure continued provision of home and community-based long-term care services to eligible individuals who choose to transition from an institutional to a community setting.

(4) Quality assurance and quality improvement.—Ensure that procedures are in place (at least comparable to those required under the qualified HCB program) to provide quality assurance for eligible individuals receiving Medicaid home and community-based long-term care services and to provide for continuous quality improvement in such services.

(b) Definitions.—For purposes of this section:

(1) Home and community-based long-term care services.—The term ‘home and community-based long-term care services’ means, with respect to a State Medicaid program, home and community-based services (including home health and personal care services) that are provided under the State’s qualified HCB program or that could be provided under such a program but are otherwise provided under the Medicaid program.

(2) Eligible individual.—The term ‘eligible individual’ means, with respect to an MFP demonstration project of a State, an individual in the State whose—

(A) who, immediately before beginning participation in the MFP demonstration project—
“(i) resides (and has resided for a period of not less than 90 consecutive days) in an inpatient facility;

“(iii) with respect to whom a determination has been made that, but for the provision of home and community-based long-term care services, the individual would continue to require the level of care provided in an inpatient facility and, in any case in which the State applies a more stringent level of care standard as a result of implementing the State plan option permitted under section 1915(i) of the Social Security Act [section 1396n(i) of this title], the individual must continue to require at least the level of care which had resulted in admission to the institution; and

“(B) who resides in a qualified residence beginning on the initial date of participation in the demonstration project.

Any days that an individual resides in an institution on the basis of having been admitted solely for purposes of receiving short-term rehabilitative services for a period for which payment for such services is limited under title XVIII [42 U.S.C. 1395 et seq.] shall not be taken into account for purposes of determining the 90-day period required under subparagraph (A)(i).

"(3) INPATIENT FACILITY.—The term ‘inpatient facility’ means a hospital, nursing facility, or intermediate care facility for the mentally retarded. Such term includes an institution for mental diseases, but only, with respect to a State, to the extent medical assistance is available under the State Medicaid plan for services provided by such institution.

"(4) MEDICAID.—The term ‘Medicaid’ means, with respect to a State, the State program under title XIX of the Social Security Act [this subchapter] [section 1396a of this title] or any waiver or demonstration under such title or section 1396n(i) [section 1396n(i) of this title] relating to such title.

"(5) QUALIFIED HCB PROGRAM.—The term ‘qualified HCB program’ means a program providing home and community-based long-term care services operating under Medicaid, whether or not operating under waiver authority.

"(6) QUALIFIED RESIDENCE.—The term ‘qualified residence’ means, with respect to an eligible individual—

“(A) a home owned or leased by the individual or the individual’s family member;

“(B) an apartment with an individual lease, with lockable access and egress, and which includes living, sleeping, bathing, and cooking areas over which the individual or the individual’s family has domain and control; and

“(C) a residence, in a community-based residential setting, in which no more than 4 unrelated individuals reside.

"(7) QUALIFIED EXPENDITURES.—The term ‘qualified expenditures’ means expenditures by the State under its MFP demonstration project for home and community-based long-term care services for an eligible individual participating in the MFP demonstration project, but only with respect to services furnished during the 12-month period beginning on the date the individual is discharged from an inpatient facility referred to in paragraph (2)(A)(i).

"(8) SELF-DIRECTED SERVICES.—The term ‘self-directed’ means, with respect to home and community-based long-term care services for an eligible individual, such services for the individual which are planned and purchased under the direction and control of such individual or the individual’s authorized representative (as defined by the Secretary), including the amount, duration, scope, provider, and location of such services, under the State Medicaid program consistent with the following requirements:

"(i) is an assessment of the needs, capabilities, and preferences of the individual with respect to such services.

"(B) SERVICE PLAN.—Based on such assessment, there is developed jointly with such individual or the individual’s authorized representative a plan for such services for such individual that is approved by the State and that—

“(i) specifies those services, if any, which the individual or the individual’s authorized representative would be responsible for directing;

“(ii) identifies the methods by which the individual or the individual’s authorized representative or an agency designated by an individual or representative will select, manage, and dismiss providers of such services;

“(iii) specifies the role of family members and others whose participation is sought by the individual or the individual’s authorized representative with respect to such services;

“(iv) is developed through a person-centered process that—

“(I) is directed by the individual or the individual’s authorized representative;

“(II) builds upon the individual’s capacity to engage in activities that promote community life and that respects the individual’s preferences, choices, and abilities; and

“(III) involves families, friends, and professionals as desired or required by the individual or the individual’s authorized representative.

“(v) includes appropriate risk management techniques that recognize the roles and sharing of responsibilities in obtaining services in a self-directed manner and assure the appropriateness of such plan based upon the resources and capabilities of the individual or the individual’s authorized representative;

“(vi) may include an individualized budget which identifies the dollar value of the services and supports under the control and direction of the individual or the individual’s authorized representative.

"(C) BUDGET PROCESS.—With respect to individualized budgets described in subparagraph (B)(vi), the State application under subsection (c)—

“(i) describes the method for calculating the dollar values in such budgets based on reliable costs and service utilization;

“(ii) defines a process for making adjustments in such dollar values to reflect changes in individual assessments and service plans; and

“(iii) provides a procedure to evaluate expenditures under such budgets.

“(9) STATE.—The term ‘State’ has the meaning given such term for purposes of title XIX of the Social Security Act [this subchapter].

"(C) STATE APPLICATION.—A State seeking approval of an MFP demonstration project shall submit to the Secretary, at such time and in such format as the Secretary requires, an application meeting the following requirements and containing such additional information, provisions, and assurances, as the Secretary may require:

“(1) ASSURANCE OF A PUBLIC DEVELOPMENT PROCESS.—The application contains an assurance that the State has engaged, and will continue to engage, in a public process for the design, development, and evaluation of the MFP demonstration project that allows for input from eligible individuals, the families of such individuals, authorized representatives of such individuals, providers, and other interested parties.

“(2) OPERATION IN CONNECTION WITH QUALIFIED HCB PROGRAM TO ASSURE CONTINUITY OF SERVICES.—The State will conduct the MFP demonstration project for eligible individuals in conjunction with the operation of a qualified HCB program that is in operation (or approved) in the State for such individuals in a manner that assures continuity of Medicaid coverage for such individuals so long as such individuals continue to be eligible for Medicaid assistance.

“(3) DEMONSTRATION PROJECT PERIOD.—The application shall specify the period of the MFP demonstra-
tion project, which shall include at least 2 consecutive fiscal years in the 5-fiscal-year period beginning with fiscal year 2007.

(4) Service Area. — The application shall specify the service area or areas of the MFP demonstration project, which may be a statewide area or 1 or more geographic areas of the State.

(5) Targeted Groups and Numbers of Individuals Served. — The application shall specify—

(A) the target groups of eligible individuals to be assisted to transition from an institutional facility to a qualified residence during each fiscal year of the MFP demonstration project;

(B) the projected numbers of eligible individuals in each targeted group of eligible individuals to be so assisted during each such year; and

(C) the estimated total annual qualified expenditures for each fiscal year of the MFP demonstration project.

(6) Individual Choice, Continuity of Care. — The application shall contain assurances that—

(A) each eligible individual or the individual’s authorized representative will be provided the opportunity to make an informed choice regarding whether to participate in the MFP demonstration project;

(B) each eligible individual or the individual’s authorized representative will choose the qualified residence in which the individual will reside and the setting in which the individual will receive home and community-based long-term care services;

(C) the State will continue to make available, so long as the State operates its qualified HCBS program consistent with applicable requirements, home and community-based long-term care services to each individual who completes participation in the MFP demonstration project for as long as the individual remains eligible for medical assistance for such services under such qualified HCBS program (including meeting a requirement relating to requiring a level of care provided in an inpatient facility and continuing to require such services, and, if the State applies a more stringent level of care standard as a result of implementing the State plan option permitted under section 1915(i) of the Social Security Act [section 1396n(i) of this title], meeting the requirement for at least the level of care which had resulted in the individual’s admission to the institution);

(7) Rebalancing. — The application shall—

(A) provide such information as the Secretary may require concerning the dollar amounts of State Medicaid expenditures for the fiscal year, immediately preceding the first fiscal year of the State’s MFP demonstration project, for long-term care services and the percentage of such expenditures that were for institutional long-term care services or were for home and community-based long-term care services;

(B)(i) specify the methods to be used by the State to increase, for each fiscal year during the MFP demonstration project, the dollar amount of such total expenditures for home and community-based long-term care services and the percentage of such total expenditures for long-term care services that are for home and community-based long-term care services; and

(ii) describe the extent to which the MFP demonstration project will contribute to accomplishment of objectives described in subsection (a)(2)(D) and (E); and

(8) Money Follows the Person. — The application shall describe the methods to be used by the State to eliminate any legal, budgetary, or other barriers to flexibility in the availability of Medicaid funds to pay for long-term care services for eligible individuals participating in the project in the appropriate settings of their choice, including costs to transition from an institutional setting to a qualified residence during each fiscal year of the MFP demonstration project than for the greater of such expenditures for—

(i) fiscal year 2005; or

(ii) any succeeding fiscal year before the first year of the MFP demonstration project; and

(B) in the case of a qualified HCBS program operating under a waiver under subsection (c) or (d) of section 1915 of the Social Security Act (42 U.S.C. 1396n), but for the amount awarded under a grant under this section, the State program would continue to meet the cost-effectiveness requirements of subsection (c)(2)(D) of such section or comparable requirements under subsection (d)(5) of such section, respectively.

(10) Waiver Requests. — The application shall contain or be accompanied by requests for any modification or adjustment of waivers of Medicaid requirements described in subsection (d)(3), including adjustments to the maximum numbers of individuals included and package of benefits, including one-time transitional services, provided.

(11) Quality Assurance and Quality Improvement. — The application shall include—

(A) a plan satisfactory to the Secretary for quality assurance and quality improvement for home and community-based long-term care services under the State Medicaid program, including a plan to assure the health and welfare of individuals participating in the MFP demonstration project; and

(B) an assurance that the State will cooperate in carrying out activities under subsection (f) to develop and implement continuous quality assurance and quality improvement systems for home and community-based long-term care services.

(12) Optional Program for Self-Directed Services. — If the State elects to provide for any home and community-based long-term care services as self-directed services (as defined in subsection (b)(8)) under the MFP demonstration project, the application shall provide the following:

(A) Meeting Requirements. — A description of how the project will meet the applicable requirements of such subsection for the provision of self-directed services.

(B) Voluntary Election. — A description of how eligible individuals will be provided with the opportunity to make an informed election to receive self-directed services under the project and after the end of the project.

(C) State Support in Service Plan Development. — Satisfactory assurances that the State will provide support to eligible individuals who self-direct in developing and implementing their service plans.

(D) Oversight of Receipt of Services. — Satisfactory assurances that the State will provide oversight of eligible individual’s receipt of such self-directed services, including steps to assure the quality of services provided and that the provision of such services are consistent with the service plan under such subsection.

Nothing in this section shall be construed as requiring a State to make an election under the project to provide for home and community-based long-term care services as self-directed services, or as requiring an individual to elect to receive self-directed services under the project.

(13) Reports and Evaluation. — The application shall provide that—

(A) the State will furnish to the Secretary such reports concerning the MFP demonstration project, on such timetable, in such uniform format, and containing such information as the Secretary may require, as will allow for reliable comparisons of MFP demonstration projects across States; and

(9) Maintenance of Effort and Cost-Effectiveness. — The application shall contain or be accom-
“(B) the State will participate in and cooperate with the evaluation of the MFP demonstration project;

(9) SECRETARY’S AWARD OF COMPETITIVE GRANTS.—

“(1) IN GENERAL.—The Secretary shall award grants under this section on a competitive basis to States selected from among those with applications meeting the requirements of subsection (c), in accordance with the provisions of this subsection.

“(2) SELECTION AND MODIFICATION OF STATE APPLICATIONS.—In selecting State applications for the awarding of such a grant, the Secretary—

“(A) shall take into consideration the manner in which, and extent to which, the State proposes to achieve the objectives specified in subsection (a);

“(B) shall seek to achieve an appropriate national balance in the numbers of eligible individuals, within different target groups of eligible individuals, who are assisted to transition to qualified residences under MFP demonstration projects, and in the geographic distribution of States operating MFP demonstration projects;

“(C) shall give preference to State applications proposing—

“(i) to provide transition assistance to eligible individuals within multiple target groups; and

“(ii) to provide eligible individuals with the opportunity to receive home and community-based long-term care services as self-directed services, as defined in subsection (b)(8); and

“(D) shall take such objectives into consideration in setting the annual amounts of State grant awards under this section.

(3) WAIVER AUTHORITY.—The Secretary is authorized to waive the following provisions of title XIX of the Social Security Act [this subchapter], to the extent necessary to enable a State initiative to meet the requirements and accomplish the purposes of this section:

“(A) STATENESS.—Section 1902(a)(1) [subsec. (a)(1) of this section], in order to permit implementation of a State initiative in a selected area or areas of the State.

“(B) COMPARABILITY.—Section 1902(a)(10)(B), in order to permit a State initiative to assist a selected category or categories of individuals described in subsection (b)(2)(A).

“(C) INCOME AND RESOURCES ELIGIBILITY.—Section 1902(a)(10)(C)(ii)(III), in order to permit a State to apply institutional eligibility rules to individuals transitioning to community-based care.

“(D) PROVIDER AGREEMENTS.—Section 1902(a)(27), in order to permit a State to implement self-directed services in a cost-effective manner.

“(4) CONDITIONAL APPROVAL OF OUTYEAR GRANT.—In awarding grants under this section, the Secretary shall condition the grant for the second and any subsequent fiscal years of the grant period on the following:

“(A) NUMERICAL BENCHMARKS.—The Secretary must demonstrate to the satisfaction of the Secretary that it is meeting numerical benchmarks specified in the grant agreement for—

“(i) increasing State Medicaid support for home and community-based long-term care services under subsection (c)(5); and

“(ii) numbers of eligible individuals assisted to transition to qualified residences.

“(B) QUALITY OF CARE.—The State must demonstrate to the satisfaction of the Secretary that it is meeting the requirements under subsection (c)(11) to assure the health and welfare of MFP demonstration project participants.

“(6) PAYMENTS TO STATES; CARRYOVER OF UNUSED GRANT AMOUNTS.—

“(1) PAYMENTS.—For each calendar quarter in a fiscal year during the period a State is awarded a grant under subsection (d), the Secretary shall pay to the State from its grant award for such fiscal year an amount equal to the lesser of—

“(A) the MFP-enhanced FMAP (as defined in paragraph (5)) of the amount of qualified expenditures made during such quarter; or

“(B) the total amount remaining in such grant award for such fiscal year (taking into account the application of paragraph (2)).

“(2) CARRYOVER OF UNUSED AMOUNTS.—Any portion of a State grant award for a fiscal year under this section remaining at the end of such fiscal year shall remain available to the State for the next 4 fiscal years, subject to paragraph (3).

“(3) REWARDING OF CERTAIN UNUSED AMOUNTS.—In the case of a State that the Secretary determines pursuant to subsection (d)(4) has failed to meet the conditions for continuation of a MFP demonstration project under this section in a succeeding year or years, the Secretary shall rescind the grant awards for such succeeding year or years, together with any unspent portion of an award for prior years, and shall add such amounts to the appropriation for the immediately succeeding fiscal year for grants under this section.

“(4) PREVENTING DUPLICATION OF PAYMENT.—The payment under a MFP demonstration project with respect to qualified expenditures shall be in lieu of any payment with respect to such expenditures that could otherwise be paid under Medicaid, including under section 1903(a) of the Social Security Act [section 1396a(a) of this title]. Nothing in the previous sentence shall be construed as preventing the payment under Medicaid for such expenditures in a grant year after amounts available to pay for such expenditures under the MFP demonstration project have been exhausted.

“(5) MFP-ENHANCED FMAP.—For purposes of paragraph (1)(A), the ‘MFP-enhanced FMAP’, for a State for a fiscal year, is equal to the Federal medical assistance percentage (as defined in the first sentence of section 1905(b) [section 1396c(b) of this title]) for the State increased by a number of percentage points equal to 50 percent of the number of percentage points by which (A) such Federal medical assistance percentage for the State, is less than (B) 100 percent; but in no case shall the MFP-enhanced FMAP for a State exceed 90 percent.

“(6) QUALITY ASSURANCE AND IMPROVEMENT; TECHNICAL ASSISTANCE; OVERSIGHT.—

“(1) IN GENERAL.—The Secretary, either directly or by grant or contract, shall provide for technical assistance to, and oversight of, States for purposes of upgrading quality assurance and quality improvement systems under Medicaid home and community-based waivers, including—

“(A) dissemination of information on promising practices;

“(B) guidance on system design elements addressing the unique needs of participating beneficiaries;

“(C) ongoing consultation on quality, including assistance in developing necessary tools, resources, and monitoring systems; and

“(D) guidance on remediying programmatic and systemic problems.

“(2) FUNDING.—From the amounts appropriated under subsection (b)(1) for the portion of fiscal year 2007 that begins on January 1, 2007, and ends on September 30, 2007, and for fiscal year 2008, not more than $2,400,000 shall be available to the Secretary to carry out this section remaining at the end of such fiscal year shall remain available to the State for the next 4 fiscal years, subject to paragraph (3).

“(3) RESEARCH AND EVALUATION.—

“(1) IN GENERAL.—The Secretary, directly or through grant or contract, shall provide for research on, and a national evaluation of, the program under this section, including assistance to the Secretary in preparing the final report required under paragraph (2).

“(2) THE EVALUATION.—The evaluation shall include an analysis of projected and actual savings related to the transition of individuals to qualified residences in each State conducting an MFP demonstration project.

“(2) FINAL REPORT.—The Secretary shall make a final report to the President and Congress, not later
than September 30, 2016, reflecting the evaluation described in paragraph (1) and providing findings and conclusions on the conduct and effectiveness of MFP demonstration projects.

“(3) FUNDING.—From the amounts appropriated under subsection (h)(1) for each of fiscal years 2008 through 2016, not more than $1,100,000 per year shall be available to the Secretary to carry out this subsection.

“(b) APPROPRIATIONS.—

“(1) IN GENERAL.—There are appropriated, from any funds in the Treasury not otherwise appropriated, for grants to carry out this section—

“(A) $250,000,000 for the portion of fiscal year 2007 beginning on January 1, 2007, and ending on September 30, 2007;

“(B) $300,000,000 for fiscal year 2008;

“(C) $550,000,000 for fiscal year 2009;

“(D) $450,000,000 for fiscal year 2010; and

“(E) $450,000,000 for each of fiscal years 2011 through 2016.

“(2) AVAILABILITY.—Amounts made available under paragraph (1) for a fiscal year shall remain available for the awarding of grants to States by not later than September 30, 2016.

“(3) USE OF MEDI-CAL OR SCHIP FUNDING.—From the amounts appropriated under section 1902(a)(11) of the Social Security Act (42 U.S.C. 1396a(a)(11)), provided that: ‘The amendment made by this subsection [amending section 6071 of Pub. L. 109–171, set out above] take effect 30 days after the date of enactment of this Act [Mar. 23, 2010].’"

STUDY REGARDING BARRIERS TO PARTICIPATION OF FARMWORKERS IN HEALTH PROGRAMS


“(a) IN GENERAL.—The Secretary shall conduct a study of the problems experienced by farmworkers (including their families) under Medicaid and SCHIP. Specifically, the Secretary shall examine the following:

“(1) BARRIERS TO ENROLLMENT.—Barriers to their enrollment, including a lack of outreach and enrollment assistance, eligibility worker, complicated applications and eligibility determination procedures, and linguistic and cultural barriers.

“(2) LACK OF PORTABILITY.—The lack of portability of Medicaid and SCHIP coverage for farmworkers who are determined eligible in one State but who move to other States on a seasonal or other periodic basis.

“(3) POSSIBLE SOLUTIONS.—The development of possible solutions to increase enrollment and access to benefits for farmworkers, because, in part, of the problems identified in paragraphs (1) and (2), and the associated costs of each of the possible solutions described in subsection (b).

“(b) POSSIBLE SOLUTIONS.—Possible solutions to be examined shall include each of the following:

“(1) INTERSTATE COMPACTS.—The use of interstate compacts among States that establish portability and reciprocity for eligibility for farmworkers under the Medicaid and SCHIP and potential financial incentives for States to enter into such compacts.

“(2) DEMONSTRATION PROJECTS.—The use of multi-state demonstration waiver projects under section 1115 of the Social Security Act (42 U.S.C. 1315) to develop comprehensive migrant coverage demonstration projects.

“(3) USE OF CURRENT LAW FLEXIBILITY.—Use of current law Medicaid and SCHIP State plan provisions relating to coverage of residents and out-of-State coverage.

“(4) NATIONAL MIGRANT FAMILY COVERAGE.—The development of programs of national migrant family coverage in which States could participate.

“(5) PUBLIC-PRIVATE PARTNERSHIPS.—The provision of incentives for development of public-private partnerships to develop private coverage alternatives for farmworkers.

“(6) OTHER POSSIBLE SOLUTIONS.—Such other solutions as the Secretary deems appropriate.

“(c) CONSULTATIONS.—In conducting the study, the Secretary shall consult with the following:

“(1) Farmworkers affected by the lack of portability of coverage under the Medicaid program or the State children’s health insurance program (under titles XIX and XXI of the Social Security Act [this subchapter and subchapter XXI of this chapter]).

“(2) Individuals with expertise in providing health care to farmworkers, including designees of national and local organizations representing migrant health centers and other providers.

“(3) Resources with expertise in health care financing.

“(4) Representatives of foundations and other nonprofit entities that have conducted or supported research on farmworker health care financial issues.

“(5) Representatives of Federal agencies which are involved in the provision or financing of health care to farmworkers, including the Centers for Medicare & Medicaid Services and the Health Resources and Services Administration.

“(6) Representatives of State governments.

“(7) Representatives from the farm and agricultural industries.

“(8) Designees of labor organizations representing farmworkers.

“(d) DEFINITIONS.—For purposes of this section:

“(1) FARMWORKER.—The term ‘farmworker’ means a migratory agricultural worker or seasonal agricultural worker, as such terms are defined in section 330(g)(3) of the Public Health Service Act (42 U.S.C. 254g(3)) [254b(g)(3)], and includes a family member of such a worker.

“(2) MEDICARE.—The term ‘Medicare’ means the program under title XIX of the Social Security Act [this subchapter].

“(3) SCHIP.—The term ‘SCHIP’ means the State children’s health insurance program under title XXI of the Social Security Act [subchapter XXI of this chapter].

“(4) REPORT.—Not later than one year after the date of enactment of this Act [Oct. 26, 2002], the Secretary shall transmit a report to the President and the Congress on the study conducted under this section. The report shall contain a detailed statement of findings and conclusions of the study, together with its recommendations for such legislation and administrative actions as the Secretary considers appropriate.

STUDY ON LIMITATION ON STATE PAYMENT FOR MEDICARE COST-SHARING AFFECTING ACCESS TO SERVICES FOR QUALIFIED MEDICARE BENEFICIARIES

Pub. L. 106–554, § 1(a)(6) [title I, § 125], Dec. 21, 2000, 114 Stat. 2763, 2763A–479, provided that:

“(a) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine if States are entitled to receive Medicare funds or Medicaid funds to make payment under the Medicaid program for Medicare cost-sharing for such Medicare beneficiaries, and includes a family member of such a worker.

“(b) REPORT.—Not later than one year after the date of enactment of this Act [Dec. 21, 2000], the Secretary shall submit to Congress a report on the study under subsection (a). The report shall include recommendations regarding any changes that should be made to the State payment limits under section 1902(n) for qualified Medicare beneficiaries to ensure appropriate access to services.

GAO STUDY OF FUTURE REBASING

Pub. L. 106–554, § 1(a)(6) [title VII, § 762(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–574, provided that:

“The Comptroller General of the United States shall provide for a study on the need for, and how to, rebase or refine costs for making payment under the Medicaid program
for services provided by Federally-qualified health centers and rural health clinics (as provided under the amendments made by this section (amending this section and sections 1396b and 1396i of this title and repealing provisions set out as a note under this section)). The Comptroller General shall provide for submittal of a report on such study to Congress by not later than 4 years after the date of the enactment of this Act [Dec. 21, 2000]."

GAO REPORTS
Pub. L. 106-170, title II, § 201(c), Dec. 17, 1999, 113 Stat. 1893, provided that: "Not later than 3 years after the date of the enactment of this Act [Dec. 17, 1999], the Comptroller General of the United States shall submit a report to the Congress regarding the amendments made by this section [amending this section and sections 1396b, 1396d, and 1396m of this title] that examines:

"(1) the extent to which higher health care costs for individuals with disabilities at higher income levels deter employment or progress in employment;

"(2) whether such individuals have health insurance coverage or could benefit from the State option established under such amendments to provide a medic- aid buy-in; and

"(3) how the States are exercising such option, including—

"(A) how such States are exercising the flexibility afforded them with regard to income disregards;

"(B) what income and premium levels have been set;

"(C) the degree to which States are subsidizing premiums above the dollar amount specified in section 1916(g)(2) of the Social Security Act (42 U.S.C. 1396g(g)(2)); and

"(D) the extent to which there exists any crowd-out effect."

Pub. L. 106-113, div. B, § 1000(a)(6) [title VI, § 603(b)], Nov. 29, 1999, 113 Stat. 1358, 1301A-365, provided that: "Not later than 1 year after the date of the enactment of this Act [Nov. 29, 1999], the Comptroller General of the United States shall submit a report to Congress that evaluates the effect on Federally-qualified health centers and rural health clinics and on the populations served by such centers and clinics of the phase-out and elimination of the reasonable cost basis for payment for Federally-qualified health center services and rural health clinic services provided under section 1902(a)(13)(C)(i) of the Social Security Act (42 U.S.C. 1396a(a)(13)(C)(i)), as amended by section 4712 of BBA (111 Stat. 508) [the Balanced Budget Act of 1997, Pub. L. 105-33] and subsection (a) of this section. Such report shall include an analysis of the amount, method, and impact of payments made by States that have provided for payment under title XIX of such Act [this subchapter] for such services on a basis other than payment of costs which are reasonable and related to the cost of furnishing such services, together with any recommendations for legislation, including whether a new payment system is needed, that the Comptroller General determines to be appropriate as a result of the study."

DEMONSTRATION OF COVERAGE UNDER THE MEDICAID PROGRAM OF WORKERS WITH POTENTIALLY SEVERE DISABILITIES
Pub. L. 106-170, title II, § 204, Dec. 17, 1999, 113 Stat. 1897, provided that:

"(a) STATE APPLICATION.—A State may apply to the Secretary of Health and Human Services (in this section referred to as the 'Secretary') for approval of a demonstration project (in this section referred to as a 'demonstration project') under which up to a specified maximum number of individuals who are workers with a potentially severe disability (as defined in subsection (b)(1)) are provided medical assistance equal to—

"(1) that provided under section 1905(a) of the Social Security Act (42 U.S.C. 1396a(a)) to individuals described in section 1902(a)(10)(A)(I)(XIII) of that Act (42 U.S.C. 1396a(a)(10)(A)(I)(XIII)); or

"(2) in the case of a State that has not elected to provide medical assistance under that section to such individuals, such medical assistance as the Secretary determines is an appropriate equivalent to the medical assistance described in paragraph (1).

"(b) WORKER WITH A POTENTIALLY SEVERE DISABILITY DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The term 'worker with a potentially severe disability' means, with respect to a demonstration project, an individual who—

"(A) is at least 16, but less than 65, years of age;

"(B) has a specific physical or mental impairment that, as defined by the State under the demonstration project, is reasonably expected, but for the receipt of items and services described in section 1905(a) of the Social Security Act (42 U.S.C. 1396a(a)), to become blind or disabled (as defined under section 1614(a) of the Social Security Act (42 U.S.C. 1382c(a))); and

"(C) is employed (as defined in paragraph (2)).

"(2) DEFINITION OF EMPLOYED.—An Individual is considered to be 'employed' if the individual—

"(A) is earning at least the applicable minimum wage requirement under section 6 of the Fair Labor Standards Act (29 U.S.C. 206) and working at least 40 hours per month; or

"(B) is engaged in a work effort that meets substantial and reasonable threshold criteria for hours of work, wages, or other measures, as defined under the demonstration project and approved by the Secretary.

"(o) APPROVAL OF DEMONSTRATION PROJECTS.—

"(1) IN GENERAL.—Subject to paragraph (3), the Secretary shall approve applications under subsection (a) that meet the requirements of paragraph (2) and such additional terms and conditions as the Secretary may require.

"(2) TERMS AND CONDITIONS OF DEMONSTRATION PROJECTS.—The Secretary may not approve a demonstration project under this section unless the State provides assurances satisfactory to the Secretary that the following conditions are or will be met:

"(A) MAINTENANCE OF STATE EFFORT.—Federal funds paid to a State pursuant to this section must be used to supplement, but not supplant, the level of State funds expended for workers with potentially severe disabilities under programs in effect for such individuals at the time the demonstration project is approved under this section.

"(B) INDEPENDENT EVALUATION.—The State provides for an independent evaluation of the project.

"(3) LIMITATIONS ON FEDERAL FUNDING.—

"(A) APPROPRIATION.—

"(i) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to carry out this section—

"(I) $42,000,000 for each of fiscal years 2001 through 2004; and

"(II) $41,000,000 for each of fiscal years 2005 and 2006.

"(ii) BUDGET AUTHORITY.—Clause (i) constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment of the amounts appropriated under clause (i).

"(B) LIMITATION ON PAYMENTS.—In no case may—

"(i) the aggregate amount of payments made by the Secretary to States under this section exceed $250,000,000;

"(ii) the aggregate amount of payments made by the Secretary to States for administrative expenses relating to annual reports required under subsection (d) exceed $2,000,000 of such $250,000,000; or

"(iii) payments be provided by the Secretary for a fiscal year after fiscal year 2009.
“(C) Funds allocated to States.—The Secretary shall allocate funds to States based on their applications and the availability of funds. Funds allocated to a State under a grant made under this section for a fiscal year shall remain available until expended.

(D) Funds not allocated to States.—Funds not allocated to States in the fiscal year for which they are appropriated shall remain available in succeeding fiscal years for allocation by the Secretary using the allocation formula established under this section.

(E) Payments to States.—The Secretary shall pay to each State with a demonstration project approved under this section an annual report to the Secretary on the use of funds provided under the grant. Each report shall include enrollment and financial statistics on—

(1) the total population of workers with potentially severe disabilities served by the demonstration project; and

(2) each population of such workers with a specific physical or mental impairment described in subsection (b)(1)(B) served by such project.

(2) Recommendation.—Not later than October 1, 2004, the Secretary shall submit a recommendation to the Committee on Commerce (now Committee on Energy and Commerce) of the House of Representatives and the Committee on Finance of the Senate regarding whether the demonstration project established under this section should be continued after fiscal year 2006.

(3) State Plan.—In this section, the term ‘State’ has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

MEDICAL ASSISTANCE PAYMENTS FOR ELIGIBLE FACING PROGRAM ENROLLERS

Pub. L. 105–277, div. A, §101(f) [title VII, §710], Oct. 21, 1998, 112 Stat. 2601–337, 2601–391, provided that: ‘For purposes of payments to States for medical assistance under title XIX of the Social Security Act [this subchapter] from amounts appropriated to carry out such title for fiscal year 1999 and for any subsequent fiscal year, individuals who are FACING program eligible individuals under section 1934 of that Act [section 1396u–4 of this title] and who meet the income and resource eligibility requirements of individuals who are eligible for medical assistance under section 1902(a)(10)(A)(ii)(VI) of that Act [subsec. (a)(10)(A)(ii)(VI) of this section] shall be treated as individuals described in such section 1902(a)(10)(A)(ii)(VI) during the period of their enrollment in the FACING program.’

STUDY AND REPORT BY SECRETARY OF HEALTH AND HUMAN SERVICES

Section 471(b) of Pub. L. 105–33 provided that: ‘(1) Study.—The Secretary of Health and Human Services shall study the effect on access to, and the quality of, services provided to beneficiaries of the rate-setting methods used by States pursuant to section 1902(a)(13)(A) of the Social Security Act (42 U.S.C. 1396a(a)(13)(A)), as amended by subsection (a).

(2) Report.—Not later than 4 years after the date of the enactment of this Act [Aug. 5, 1997], the Secretary of Health and Human Services shall submit a report to the appropriate committees of Congress on the conclusions of the study conducted under paragraph (1), together with any recommendations for legislation as a result of such conclusions.’

DUAL ELIGIBLES; MONITORING PAYMENTS

Section 472(e) of Pub. L. 105–33 provided that: ‘The Administrator of the Health Care Financing Adminis-
highest income standards and, based on the State's waiver of the application of any resource standard;

“(ii) eligibility for benefits under the project is limited to individuals in families with incomes below 150 percent of the income official poverty line and who are not individuals receiving benefits under title XIX of the Social Security Act;

“(iv) if the Secretary determines that it is cost-effective for the project to utilize employer coverage (as described in section 1925(b)(4)(D) of the Social Security Act [section 1396h(b)(4)(D) of this title]), the project must require an employer contribution and benefits under the State plan under title XIX of such Act will continue to be made available to individuals to the extent they are not available under the employer coverage;

“(v) the project provides for coverage of benefits consistent with subsection (b); and

“(vi) the project only imposes premiums, coinsurance, and other cost-sharing consistent with subsection (c).

”(B) The Secretary may waive the requirements of clause (i) of this paragraph (probably means subparagraph (A)) with respect to those projects described in subparagraph (B) of paragraph (1).

”(3) PERMISSIBLE RESTRICTIONS.—A project may limit eligibility to individuals whose assets are valued below a level specified by the State. For this purpose, an evaluation of such assets shall be made in a manner consistent with the standards for valuation of assets under the State plan under title XIX of the Social Security Act for individuals entitled to assistance under part A of title IV of such Act [part A of subchapter IV of this chapter]. Nothing in this section shall be construed as requiring a State to provide for eligibility for individuals for months before the month in which such eligibility is first established.

”(4) EXTENSION OF ELIGIBILITY.—A project may provide for extension of eligibility for medical assistance for individuals covered under the project in a manner similar to that provided under section 1925 of the Social Security Act to certain families receiving aid pursuant to a plan of the State approved under part A of title IV of such Act.

”(5) WAIVER OF REQUIREMENTS.—

”(A) In general.—Subject to subparagraph (B), the Secretary may waive such requirements of title XIX of the Social Security Act (except section 1903(m) of the Social Security Act [section 1396b(m) of this title]) as may be required to provide for additional coverage of individuals under projects under this section.

”(B) NONWAIVABLE PROVISIONS.—Except with respect to those projects described in subparagraph (B) of paragraph (1), the Secretary may not waive, under subparagraph (A), the statewideness requirement of section 1902(a)(1) of the Social Security Act [sec. (a)(1) of this section] or the Federal medical assistance percentage specified in section 1903(b) of such Act [section 1396d(b) of this title].

”(6) BENEFITS.

”(A) In general.—Except as provided in this subsection, the amount, duration, and scope of medical assistance made available under a project shall be the same as the amount, duration, and scope of such assistance made available to individuals entitled to medical assistance under the State plan under section 1902(a)(10)(A)(i) of the Social Security Act [subsec. (a)(10)(A)(i) of this section].

”(B) LIMITS ON BENEFITS.

”(1) REQUIRED.—Except with respect to those projects described in subparagraph (B) of paragraph (1), no medical assistance shall be made available under a project for nursing facility services or community-based long-term care services (as defined by the Secretary) or for pregnancy-related services. No medical assistance shall be made available under a project to individuals entitled to State correctional facility, county jail, local or county detention center, or other State institution.

”(B) PERMISSIBLE.—A State, with the approval of the Secretary, may limit or otherwise deny eligibility for medical assistance under the project and may limit coverage of such items and services under the project, other than early and periodic screening, diagnostic, and treatment services for children under 18 years of age.

”(3) USE OF UTILIZATION CONTROLS.—Nothing in this subsection shall be construed as limiting a State's authority to impose controls over utilization of services, including preadmission requirements, managed care provisions, use of preferred providers, and use of second opinions before surgical procedures.

”(4) PREMIUMS AND COST-SHARING.—

”(1) NONE FOR THOSE WITH INCOME BELOW THE POVERTY LINE.—Under a project, there shall be no premiums, coinsurance, or other cost-sharing for individuals whose family income level does not exceed 100 percent of the income official poverty line.

”(2) LIMIT FOR THOSE WITH INCOME ABOVE THE POVERTY LINE.—Under a project, for individuals whose family income level exceeds 100 percent, but is less than 150 percent, of the income official poverty line applicable to a family of the size involved, the monthly average amount of premiums, coinsurance, and other cost-sharing for covered items and services shall not exceed 3 percent of the family’s average gross monthly earnings.

”(5) INCOME DETERMINATION.—Each project shall provide for determinations of income in a manner consistent with the methodology used for determinations of income under title XIX of the Social Security Act [this subchapter] for individuals entitled to benefits under part A of title IV of such Act [part A of subchapter IV of this chapter].

”(6) DURATION.—Each project under this section shall commence not later than July 1, 1991 and shall be conducted for a 3-year period; except that the Secretary may terminate such a project if the Secretary determines that the project is not in substantial compliance with the requirements of this section.

”(e) LIMITS ON EXPENDITURES AND FUNDING.—

”(1) IN GENERAL.—(A) The Secretary, in conducting projects shall limit the total amount of the Federal share of benefits paid and expenses incurred under title XIX of the Social Security Act [this subchapter] to no more than $40,000,000.

”(B) Of the amounts appropriated under subparagraph (A), the Secretary shall provide that no more than one-third of such amounts shall be used to carry out the projects described in paragraph (1)(A) in section 1396d(b) of this title (for which the statewideness requirement has been waived).

”(2) NO FUNDING OF CURRENT BENEFICIARIES.—No funding shall be available under a project with respect to medical assistance provided to individuals who are otherwise eligible for medical assistance under the plan without regard to the project.

”(3) NO INCREASE IN FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—Payments to a State under a project with respect to expenditures made for medical assistance made available under the project may not exceed the Federal medical assistance percentage (as defined in section 1905(b) of the Social Security Act [section 1396d(b) of this title]) of such expenditures.

”(f) EVALUATION AND REPORT.—

”(1) EVALUATIONS.—For each project the Secretary shall provide for an evaluation to determine the effect of the project with respect to—

”(A) access to, and costs of, health care,

”(B) private health care insurance coverage, and

”(C) premiums and cost-sharing.

”(2) REPORTS.—The Secretary shall prepare and submit to Congress an interim report on the status of the projects not later than January 1, 1993, and a final report containing such summary together with such further recommendations as the Secretary may determine appropriate not later than one year after the termination of the projects.
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"(g) DEFINITIONS.—In this section:

"(1) The term 'income official poverty line' means such line as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 [section 9002(2) of this title].

"(2) The term ‘project’ refers to a demonstration project under subsection (a).

"[Section 1396a(a) of Pub. L. 103-66 provided in part that the amendment made by that section to section 4745 of Pub. L. 101-508, set out above, is effective as if included in enactment of Pub. L. 101-508.]

DEMONSTRATION PROJECT TO PROVIDE MEDICAID COVERAGE FOR HIV-POSITIVE INDIVIDUALS

Section 4747 of Pub. L. 101-508 provided that:

“(a) IN GENERAL.—Not later than 3 months after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services [hereafter in this section referred to as the "Secretary"] shall provide for 2 demonstration projects to be administered by States that submit an application under this section, through programs administered by the States under title XIX of the Social Security Act [this subchapter]. Such demonstration projects shall provide coverage for the services described in subsection (c) to individuals whose income and resources do not exceed the maximum allowable amount for eligibility for any individual in any category of disability under the State plan under section 1902 of the Social Security Act [this section], and who have tested positive for the presence of HIV virus [without regard to the presence of any symptoms of AIDS or opportunistic diseases related to AIDS].

“(b) SERVICES AVAILABLE UNDER A DEMONSTRATION PROJECT.—(1) The medical assistance made available to individuals described in section 1902(a)(10)(A) of the Social Security Act [subsec. (a)(10)(A) of this section] shall be made available to individuals described in subsection (a) who receive services under a demonstration project under such paragraph.

“(2) A demonstration project under subsection (a) shall provide services in addition to the services described in paragraph (1) which shall be limited only on the basis of medical necessity or the appropriateness of such services. To the extent not provided as described in paragraph (1), such additional services shall include—

“(A) general and preventative medical care services [including inpatient, outpatient, residential care, physician visits, clinic visits, and hospice care];

“(B) prescription drugs, including drugs for the purposes of preventative health care services;

“(C) counseling and social services;

“(D) substance abuse treatment services (including services for multiple substances abusers);

“(E) home care services (including assistance in carrying out activities of daily living);

“(F) case management;

“(G) health education services;

“(H) respite care for caregivers;

“(I) dental services; and

“(J) diagnostic and laboratory services.

“(c) AGREEMENTS WITH STATES.—(1) Each State conducting a demonstration project under subsection (a) shall enter into an agreement with a hospital and at least one other nonprofit organization submitting applications to the State. The State shall require that such hospital and other entity have a demonstrated record of case management of patients who have tested positive for the presence of HIV virus and have access to a control group of such type of patients who are not receiving State or Federal payments for medical services (or other payments from private insurance coverage) before developing symptoms of AIDS. Under such agreement, the State shall agree to pay such entity for the services provided under subsection (b) and not later than 12 months after the date of the enactment of Pub. L. 101-508, the Secretary shall provide for an evaluation of the comparative costs of providing services to individuals who have tested positive for the presence of HIV virus at an early stage after detection of such virus and those that are treated at a later stage after such detection.

“(B) The Secretary shall report to Congress on the results of the evaluation conducted under subparagraph (A) no later than 6 months after the date of termination of the demonstration projects described in this section.

“(d) FEDERAL SHARE OF COSTS.—The Federal share of the cost of services described in paragraph (3) furnished under a demonstration project conducted under paragraph (1) shall be determined by the otherwise applicable Federal matching assistance percentage pursuant to section 1905(b) of the Social Security Act [section 1396d(b) of this title].

“(e) WAIVER OF REQUIREMENTS OF THE SOCIAL SECURITY ACT.—The Secretary may waive such requirements of the Social Security Act [this chapter] as the Secretary determines to be necessary to carry out the purposes of this section.

“(f) LIMITATION ON AMOUNT OF EXPENDITURES.—The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be $5,000,000 for fiscal year 1991, $12,000,000 for fiscal year 1992, and $13,000,000 for fiscal year 1993.

PUBLIC EDUCATION CAMPAIGN

Section 4751(d) of Pub. L. 101-508 provided that:

“(1) IN GENERAL.—The Secretary, no later than 6 months after the date of enactment of this section [Nov. 5, 1990], shall develop and implement a national campaign to inform the public of the option to execute advance directives and of a patient's right to participate and direct health care decisions.

“(2) DEVELOPMENT AND DISTRIBUTION OF INFORMATION.—The Secretary shall develop or approve nationwide informational materials that would be distributed by providers under the requirements of this section [amending this section and sections 1396b and 1396c of this title and enacting provisions set out above], to inform the public and the medical and legal profession of each person's right to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment, and the existence of advance directives.

“(3) PROVIDING ASSISTANCE TO STATES.—The Secretary shall assist appropriate State agencies, associations, or other private entities in developing the State-specific materials that would be distributed by providers under the requirements of this section. The Secretary shall further assist appropriate State agencies, associations, or other private entities in ensuring that providers are provided a copy of the documents that are to be distributed under the requirements of the section.

“(4) DUTIES OF SECRETARY.—The Secretary shall mail information to Social Security recipients, [and] add a page to the medicare handbook with respect to the provisions of this section.

PHYSICIAN IDENTIFIER SYSTEM: DEADLINE AND CONSIDERATIONS

Section 4752(a)(1)(B) of Pub. L. 101-508 provided that:

"The system established under the amendment made by subparagraph (A) [amending this section] may be the same as, or different from, the system established
under section 9202(g) of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99-272, formerly set out in a note under section 1395ww of this title]."

**FOREIGN MEDICAL GRADUATE CERTIFICATION**

Section 6792(d) of Pub. L. 101–508 provided that: "(1) PASSAGE OF FMGEMS EXAMINATION IN ORDER TO OBTAIN IDENTIFIER.—The Secretary of Health and Human Service[s] shall provide, in the identifier system established under section 1902(x) of the Social Security Act [subsec. (x) of this section], that no foreign medical graduate (as defined in section 1886(h)(5)(D) of such Act [section 1395ww(h)(5)(D) of this title]) shall be issued an identifier under such system unless the individual—

"(A) has passed the FMGEMS examination (as defined in section 1886(h)(5)(E) of such Act);

"(B) has previously received certification from, or has previously passed the examination of, the Educational Commission for Foreign Medical Graduates; or

"(C) has held a license from 1 or more States continuously since 1968.

"(2) EFFECTIVE DATE.—Paragraph (1) shall apply with respect to issuance of an identifier applicable to services furnished on or after January 1, 1992.''

**EXCLUSIONS IN DETERMINATION OF INCOME AND RESOURCES UNDER THIS SUBCHAPTER**

Pub. L. 101–508, title XI, §1111(c), Nov. 5, 1990, 101 Stat. 1388–415, provided that: "Pursuant to section 1902(x) of the Social Security Act [42 U.S.C. 1396a(a)(17)], the Secretary of Health and Human Services shall promulgate regulations to exempt from any determination of income and resources (for the month of receipt and the following month) under title XIX of the Social Security Act [this subchapter] any refund of Federal income taxes made to an individual by reason of section 33 of the Internal Revenue Code of 1986 [26 U.S.C. 33] (relating to earned income tax credits), and any payment made to an individual by an employer under [former] section 3507 of such Code [26 U.S.C. 3507] (relating to advance payment of earned income credit)."

**DEVELOPMENT OF MODEL APPLICATIONS FOR MEDICAID PROGRAM**

Section 6506(b) of Pub. L. 101–239 provided that:

"(1) IN GENERAL.—The Secretary of Health and Human Services shall, by not later than 1 year after the date of the enactment of this Act [Dec. 19, 1989], develop a model application form for use in applying for benefits under title XIX of the Social Security Act [this subchapter] for individuals who are not receiving cash assistance under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter], and who have not institutionalized. In developing such model application form, the Secretary is not authorized to require that such form be adopted by States as part of their State medicaid plan.

"(2) DISSEMINATION OF MODEL FORM.—The Secretary shall provide for publication in the Federal Register of the model application form developed under paragraph (1), and shall send a copy of such form to each State agency responsible for administering a State medicaid plan."

**CLARIFICATION OF FEDERAL FINANCIAL PARTICIPATION FOR CASE-MANAGEMENT SERVICES**

Section 8415 of Pub. L. 100–667 provided that: "The Secretary of Health and Human Services may not fail or refuse to approve an amendment to a State plan under title XIX of the Social Security Act [this subchapter] that provides for coverage of case-management services described in section 1915(g)(2) of such Act [section 1396n(g)(2) of this title], or to deny payment to a State for such services under section 1906(a)(1) of such Act [section 1396a(a)(1) of this title] on the basis that a State is required to provide such services under State law or on the basis that the State has paid or is paying for such services from non-Federal funds before or after April 7, 1986. Nothing in this section shall be construed as requiring the Secretary to make payment to a State under section 1903(a)(1) of such Act for such case-management services which are provided without charge to the users of such services.''

**TREATMENT OF STATES OPERATING UNDER DEMONSTRATION PROJECTS**

Section 301(g)(1) of Pub. L. 100–360 provided that: "In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115(a) of the Social Security Act [section 1315(a) of this title], the Secretary of Health and Human Services shall require the State to meet the requirement of section 1902(a)(1)(E) of the Social Security Act [subsec. (a)(10)(E) of this section] in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under title XIX of such Act [this subchapter]."

**ADJUSTMENT IN MEDICAID PAYMENT FOR INPATIENT HOSPITAL SERVICES FURNISHED BY DISPROPORTIONATE SHARE HOSPITALS**


**AMENDMENT TO STATE PLAN TO PROVIDE ADJUSTMENT FOR SERVICES FURNISHED DURING FISCAL YEAR 1990**

Section 4211(b)(2) of Pub. L. 100–203, as amended by Pub. L. 101–508, title IV, §4801(e)(1)(B), Nov. 5, 1990, 104 Stat. 1388–215, provided that: "A plan of a State under title XIX of the Social Security Act [this subchapter] shall not be considered to have met the requirements of section 1902(a)(13)(A) of the Social Security Act [subsec. (a)(13)(A) of this section] (as amended by paragraph (1)(A) of this subsection), as of the first day of a Federal fiscal year (beginning on or after October 1, 1990), unless the State has submitted to the Secretary of Health and Human Services, as of April 1 before the fiscal year, an amendment to such State plan to provide for an appropriate adjustment in payment amounts for nursing facility services furnished during the Federal fiscal year. Each such amendment shall include a detailed description of the methodology to be used in determining the appropriate adjustment in payment amounts for nursing facility services. The Secretary shall, not later than September 30 before the fiscal year concerned, review each such plan amendment for compliance with such requirement and by such date shall approve or disapprove each such amendment. If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement. The absence of approval of such a plan amendment does not relieve the State or any nursing facility of any obligation or requirement under title XIX of the Social Security Act (as amended by this Act)."

**TECHNICAL ASSISTANCE WITH RESPECT TO FACILITIES THAT TAKE INTO ACCOUNT CASE MIX OF RESIDENTS**

Section 4211(j) of Pub. L. 100–203 provided that: "The Secretary of Health and Human Services shall, upon request by a State, furnish technical assistance with respect to the development and implementation of reimbursement methods for nursing facilities that take into account the case mix of residents in the different facilities."

**STATE UTILIZATION REVIEW SYSTEMS**

Section 9432 of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, §4118(p)(11), as added by Pub. L.
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100–360, title IV, §411(c)(10)(M), July 1, 1988, 102 Stat. 797; Pub. L. 101–508, title IV, §475(b), Nov. 5, 1990, 104 Stat. 1388–210, provided that—

"(a) General.—(1) The Secretary of Health and Human Services (in this section referred to as the ‘Secretary’) may not publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act (this subchapter) to include a program requiring second surgical opinions or a program of inpatient hospital preadmission review.

"(2) The Secretary may not, during the period beginning on the date of the enactment of the Omnibus Budget Reconciliation Act of 1990 [Nov. 5, 1990] and ending on the date that is 180 days after the date on which the report required by subsection (d) is submitted to the Congress, publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act (this subchapter) to include a program for ambulatory surgery, preadmission testing, or same-day surgery.

"(b) Report.—

"(1) The Secretary shall report to Congress, by not later than October 1, 1986, for each State in a representative sample of States—

"(A) the identity of those procedures which are high volume or high cost procedures among patients who are covered under the State medicaid plan,

"(B) the payment rates under those plans for such procedures, and the aggregate annual payment amounts made under such plans for such procedures (including the Federal share of such payment amounts),

"(C) the rate at which each such procedure is performed on medicaid patients and (to the extent that data are available) comparisons to the rate at which such procedure is performed on patients of comparable age who are not medicaid patients,

"(D) with respect to each such procedure—

"(i) the number of board certified or board eligible physicians in the State who provide care and services to medicaid patients and who perform the procedure, and

"(ii) in the case of a State with a mandatory second surgical opinion program in operation, the number of physicians described in clause (i) who provide second opinions of the type described in section 1164 of the Social Security Act [section 1320c–13 of this title] for the procedure at prevailing payment rates under the State medicaid plan, and

"(E) in the case of a State with a mandatory second surgical opinion program or a program of inpatient hospital preadmission review in operation, a description of—

"(i) the extent to which such program impedes access to necessary care and services, and

"(ii) the measures that the State has taken to address such impediments, particularly in rural areas.

"(2) Such report shall also include a list of those surgical procedures which the Secretary believes meet the following criteria and for which a mandatory second opinion program under medicaid plans may be appropriate:

"(A) The procedure is one which generally can be postponed without undue risk to the patient.

"(B) The procedure is a high volume procedure among patients who are covered under State medicaid plans or is a high cost procedure.

"(C) The procedure has a comparatively high rate of nonconfirmation upon examination by another qualified physician, there is substantial geographic variation in the rates of performance of the procedure, or there are other reasons why requiring second opinions for 100 percent of such procedures would be cost effective.

"(3) The representative sample of States required to be included in the report shall include States with mandatory second surgical opinion programs in operation, States with programs of inpatient hospital preadmission review in operation, and States with neither such program in operation.

"(4) In this subsection and subsection (d), the term ‘medicaid plan’ means a State plan approved under title XIX of the Social Security Act (this subchapter).

"(c) Study.—

"(1) The Secretary shall conduct a study of the utilization of selected medical treatments and surgical procedures by medicaid beneficiaries in order to assess the appropriateness, necessity, and effectiveness of such treatments and procedures.

"(2) The study shall analyze the extent to which there is significant variation in the rate of utilization by medicaid beneficiaries of selected treatments and procedures for different geographic areas within States and among States.

"(3) The study shall also identify underutilized, medically necessary treatments and procedures for which—

"(A) a failure to furnish could have an adverse effect on health status, and

"(B) the rate of utilization by medicaid beneficiaries is significantly less than the rate for comparable, age-adjusted populations.

"(4) The study shall be coordinated, to the extent practicable, with the research program established pursuant to section 1875(c) of the Social Security Act [section 1395ll(c) of this title], with particular regard to the relationship of the variations described in paragraph (2) to patient outcomes.

"(5) The Secretary shall submit an interim report on the results of the study, including an analysis of the geographic variations under paragraph (2), to the Congress not later than January 1, 1990, and shall report the final results of the study to the Congress not later than January 1, 1992.

"(d) Report.—The Secretary shall report to Congress, by not later than January 1, 1990, for each State in a representative sample of States—

"(1) an analysis of the procedures for which programs for ambulatory surgery, preadmission testing, and same-day surgery are appropriate for patients who are covered under the State medicaid plan, and

"(2) the effects of such programs on access of such patients to necessary care, quality of care, and costs of care.

In selecting such a sample of States, the Secretary shall include some States with medicaid plans that include such programs.

STUDY BY COMPTROLLER GENERAL OF EFFECT OF AMENDMENT TO SUBSECTION (A)(13)

Section 9509(c) of Pub. L. 99–272 directed Comptroller General to conduct a study of effects of the amendments made by this section and report results of such study to Congress two years after Apr. 7, 1986.

TASK FORCE ON TECHNOLOGY-DEPENDENT CHILDREN

Section 9520 of Pub. L. 99–272 directed Secretary of Health and Human Services, within six months after Apr. 7, 1986, to establish a task force concerning alternatives to institutional care for technology-dependent children, such task force to (1) include representatives of Federal and State agencies with responsibilities relating to child health, health insurers, large employers (including those that self-insure for health care costs), providers of health care to technology-dependent children, and parents of technology-dependent children, (2) identify barriers that prevent the provision of appropriate care in a home or community setting to meet special needs of technology-dependent children, (3) recommend changes in the provision and financing of health care in private and public health care programs (including appropriate joint public-private initiatives) so as to provide home and community-based alternatives to the institutionalization of technology-dependent children, and (4) make a final report to Sec-
Section 6532(b)(3) of Pub. L. 99–272 provided that: “In the case of an adoption assistance agreement (other than an agreement under part E of title IV of the Social Security Act [part E of subchapter IV of this chapter]) entered into before the date of the enactment of this Act [Apr. 7, 1986]—

(A) the requirements of subdivisions (aa) and (bb) of section 1902(a)(10)(A)(ii)(VIII) of the Social Security Act [subsec. (a)(10)(A)(ii)(VIII) of this section], (bb) of this section, shall be deemed to be met if the State agency responsible for adoption assistance agreements determines that—

(i) at the time of adoptive placement the child had special needs for medical or rehabilitative care that made the child difficult to place; and

(ii) there is in effect with respect to such child an adoption assistance agreement between the State and adoptive parent or parents; and

(B) the requirement of subdivision (cc) of such section shall be deemed to be met if the child was found by the State to be eligible for medical assistance prior to such agreement being entered into.

PAYMENT FOR PSYCHIATRIC HOSPITAL SERVICES

Section 2396 of Pub. L. 98–369 provided that: “The provisions of section 1902(a)(15) of the Social Security Act [subsec. (a)(15) of this section], in so far as they require a reduction of the amount of payment otherwise to be made to a public psychiatric hospital due to the level of care received in such hospital, shall not apply to payments to hospitals before July 1, 1985, and such a reduction made for payments during the 12-month period ending June 30, 1986, and during the 12-month period ending June 30, 1987, shall be one-third and two-thirds, respectively, of the amount of the reduction which would have been made without regard to this section.”

MORATORIUM ON REGULATORY ACTIONS BY SECRETARY

Section 2373(c) of Pub. L. 98–369, as amended by Pub. L. 100–93, § 9, Aug. 18, 1987, 101 Stat. 695, provided that:

“(1) The Secretary of Health and Human Services shall not take any compliance, disallowance, penalty, or other regulatory action against a State with respect to the moratorium period described in paragraph (2) by reason of such State’s plan described in paragraph (5) under title XIX of the Social Security Act [this subchapter], or any part of the plan operating pursuant to section 1902(f) of such Act [subsec. (f) of this section], or the operation thereunder, being determined to be in violation of clause (IV), (V), or (VI) of section 1902(a)(10)(A)(ii) or section 1902(a)(10)(A)(ii)(VIII) of such Act on account of such plan’s (or its operation) having a standard or methodology which the Secretary interprets as being less restrictive than the standard or methodology required under such section, provided that such plan (or its operation) does not make ineligible any individual who would be eligible but for the provisions of this subsection.

“(2) The moratorium period is the period beginning on October 1, 1981, and ending 18 months after the date of the enactment of this Act [July 18, 1984] with respect to the appropriateness, and impact on States and recipients of medical assistance, of applying standards and methodologies utilized in cash assistance programs to those recipients of medical assistance who do not receive cash assistance, and any recommendations for changes in such requirement under such plan.

“(3) The Secretary shall report to the Congress with respect to the operation of the moratorium period with respect to—

(A) the point in time at which an institutionalized individual must sell his home (in order that it not be counted as a resource); and

(B) the time period allowed for sale of a home of any such individual, who is an applicant for or recipient of medical assistance under the State plan as a medically needy individual (described in section 1902(a)(10)(C) of the Social Security Act [subsec. (a)(10)(C) of this section]) or as an optional categorically needy individual (described in section 1902(a)(10)(A)(ii) of such Act).”

[Amendment of section 2373(c) of Pub. L. 98–369, set out above, by section 9 of Pub. L. 100–93 applicable as though originally included in Pub. L. 98–369, and see section 15(e) of Pub. L. 100–93, set out as an effective date of 1987 Amendment note under section 1320a–7 of this title.]

EVALUATION AND STUDY OF REASONS FOR TERMINATION BY MEDICAID BENEFICIARIES OF MEMBERSHIP IN HEALTH MAINTENANCE ORGANIZATIONS

Section 2378(d) of Pub. L. 97–35 directed Secretary of Health and Human Services to conduct a study evaluating extent of, and reasons for, termination by medicaid beneficiaries of their memberships in health maintenance organizations, placing special emphasis on quantity and quality of medical care provided in health maintenance organizations and quality of such care when provided on a fee-for-service basis, with Secretary to submit an interim report to Congress, within two years after Aug. 13, 1981, and a final report within five years from such date containing, respectively, the interim and final findings and conclusions made as a result of such study.

CONTINUING MEDICAID ELIGIBILITY FOR CERTAIN RECIPIENTS OF VETERANS’ ADMINISTRATION PENSIONS

Section 310(b)(1) of Pub. L. 96–272 provided that:

“(A) For purposes of section 1902(a)(10)(A) of the Social Security Act [subsec. (a)(10)(A) of this section], any individual who, prior to the date of enactment of this Act [June 17, 1980] and for the month of December 1978, was eligible for and received aid or assistance under a State plan approved under title X, XIV, or XVI, or part A of title IV of such Act [subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter], or was eligible for and received supplemental security income benefits under title XVI of such Act [subchapter XVI of this chapter] (or a supplementary payment described in section 13(c) of Public Law 93–230) [set out as a note under this section], and was also in receipt of (or was a dependent, for purposes of chapter 15 of title 38, United States Code, as in effect on December 31, 1976, of an individual in receipt of] pension from the Veterans’ Administration for the month of December 1978 shall (subject to subparagraph (B)) be deemed to have been receiving such aid, assistance, supplemental security income, or supplementary payment, for each calendar month thereafter (prior to the month in which the provisions of this subparagraph cease to be effective with respect to him as determined under
subsection (B)), if such individual would have been eligible therefor in December 1978 and in the month in which the provisions of this subparagraph cease to be effective with respect to him as determined under subparagraph (B) had the increase in income of such individual (or of the family of which such individual is a member), attributable to an election (made by such individual or another member of such individual’s family) under section 306 of the Veterans’ and Survivors’ Pension Improvement Act of 1978 [section 306 of Pub. L. 95-588, set out as a note under section 521 of Title 38, Veterans’ Benefits], not occurred.

“(B)(i) The provisions of subparagraph (A) shall take effect on January 1, 1979, and shall cease to be effective, in the case of any individual, for and after the first calendar month beginning more than 10 days after an ‘informal election’ (as defined in subdivision (ii) of this subparagraph) has been made by such individual (or, if such individual is not eligible to make such an election, by a member of such individual’s family who is eligible to make such an election which affects such individual’s eligibility for aid, assistance, or benefits under a plan or program referred to in subparagraph (A)).

“(ii) The term ‘informal election’ means an election made under section 306 of the Veterans’ and Survivors’ Pension Improvement Act of 1978 [section 306 of Pub. L. 95-588, set out as a note under section 521 of Title 38] (or a reaffirmation of such an election which previously was made under such section 306) after the date of compliance by the Administrator of Veterans’ Affairs (hereinafter in this section referred to as the ‘Administrator’) with the provisions of paragraph (2)(A) with respect to the individual concerned. An individual who fails, within the time limits prescribed in paragraph (2)(B), to disaffirm an election previously made by such individual under such section 306 shall be deemed, for purposes of this section and such section 306, to have reaffirmed such election.”

Preservation of Medicaid Eligibility for Individuals to Be Eligible for Supplemental Security Income Benefits on Account of Cost-of-Living Increases in Social Security Benefits

Pub. L. 94-566, title V, §583, Oct. 29, 1976, 90 Stat. 3385, provided that: “In addition to other requirements imposed by law as a condition for the approval of any State plan under title XIX of the Social Security Act [this subchapter], there is hereby imposed the requirement (and each such State plan shall be deemed to require) that medical assistance under such plan shall be provided to any individual, for any month after June 1977 for which such individual is entitled to a monthly insurance benefit under such title II [subchapter II of this chapter] and was entitled to medical assistance furnished to individuals who are eligible for such assistance under such subchapter.”

Section 13(c) of Pub. L. 93-233 provided that: “In addition to other requirements imposed by law as conditions for the approval of any State plan under title XIX of the Social Security Act (this subchapter), there is hereby imposed (effective January 1, 1974) the requirement (and each such State plan shall be deemed to require) that medical assistance under such plan shall be provided to any individual—

“(1) for any month for which there (A) is payable with respect to such individual a supplementary payment pursuant to an agreement entered into between the State and the Secretary of Health, Education, and Welfare [now Health and Human Services] under section 1905(a) of the Social Security Act [section 1396d(a) of this title], and

“(B) is payable with respect to such individual such a supplementary payment, if the amount of the supplementary payments payable pursuant to such agreement were established without regard to paragraph (3)(A)(ii) of such section 1905(a) [set out as a note under section 1382(d) of this title], and

“(2) in like manner, and subject to the same terms and conditions, as medical assistance is provided under such plan to individuals with respect to whom benefits are payable for such month under the supplementary security income program established by title XIX of the Social Security Act [this subchapter] for aid or assistance under such plan for each month (after December 1973) that

“(1) the individual (referred to in the last sentence of section 1902(a)(10) of such Act [section 1396a(a) of this title]) with whom such person is living continues to meet the criteria (as in effect for December 1973) for aid or assistance under a State plan (referred to in such sentence), and

“(2) such person continues to have the relationship with such individual described in such sentence and meets the other criteria (referred to in such sentence) with respect to a State plan (so referred to) as such plan was in effect for December 1973.

Federal matching under title XIX of the Social Security Act [this subchapter] shall be available for the medical assistance furnished to individuals who are eligible for such assistance under this subchapter.”

Coverage of Essential Persons Under Medicaid

Section 231 of Pub. L. 93-66, title II, July 9, 1973, 87 Stat. 159, provided that: “In the case of any State plan (approved under title XIX of the Social Security Act [this subchapter]) which for December 1973 provided medical assistance to persons described in section 1396a(vi) of such Act [section 1382e(a)(vi) of this title], there is hereby imposed the requirement (and each such State plan shall be deemed to require) that medical assistance under such plan be provided to each such person (who for December 1973 was eligible for medical assistance under such plan) for each month (after December 1973) that

“(1) the individual (referred to in the last sentence of section 1902(a)(10) of such Act [section 1396a(a) of this title]) with whom such person is living continues to meet the criteria (as in effect for December 1973) for aid or assistance under a State plan (referred to in such sentence), and

“(2) such person continues to have the relationship with such individual described in such sentence and meets the other criteria (referred to in such sentence) with respect to a State plan (so referred to) as such plan was in effect for December 1973.

Federal matching under title XIX of the Social Security Act [this subchapter] shall be available for the medical assistance furnished to individuals eligible for such assistance under this subchapter.”

Persons in Medical Institutions

Section 231 of Pub. L. 93-66, title II, July 9, 1973, 87 Stat. 159, as amended by Pub. L. 93-233, §13(b)(1), Dec. 31, 1973, 87 Stat. 964, provided that: “For purposes of section 1902(a)(10) of the Social Security Act [this subchapter] and was entitled to a monthly insurance benefit under such title II [subchapter II of this chapter]. Solely for purposes of this section, payments of the type described in section 1616(a) of the Social Security Act [section 1322(a) of this title] or of the type described in section 212(a) of the Social Security Act [this subchapter] shall be deemed to be benefits under title XVI of the Social Security Act [subchapter XVI of this chapter].”

Preservation of Medicaid Eligibility for Individuals to Be Eligible for Supplemental Security Income Benefits on Account of Cost-of-Living Increases in Social Security Benefits

Pub. L. 94-566, title V, §583, Oct. 29, 1976, 90 Stat. 3385, provided that: “In addition to other requirements imposed by law as a condition for the approval of any State plan under title XIX of the Social Security Act [this subchapter], there is hereby imposed the requirement (and each such State plan shall be deemed to require) that medical assistance under such plan shall be provided to any individual, for any month after June 1977 for which such individual is entitled to a monthly insurance benefit under such title II [subchapter II of this chapter] but is not eligible for benefits under title XVI of such Act [subchapter XVI of this chapter], in like manner and subject to the same terms and conditions as are applicable under such State plan in the case of individuals who are eligible for and receiving benefits under such title XVI [subchapter XVI of this chapter] for such month, if for such month such individual would be (or could become) eligible for benefits under such title XVI [subchapter XVI of this chapter] except for amounts of income received by such individual and his spouse (if any) which are attributable to increases in the level of monthly insurance benefits payable under title II of such Act [subchapter II of this chapter] which have occurred pursuant to section 215(i) of such Act [section 415(i) of this title], in the case of such individual, since the last such month for which such individual was both eligible for (and received) benefits under such title XVI [subchapter XVI of this chapter] and was entitled to a monthly insurance benefit under such title II [subchapter II of this chapter], and, in the case of such individual’s spouse (if any), since the last such month for which such spouse was both eligible for (and received) benefits under such title II [subchapter II of this chapter] and was entitled to a monthly insurance benefit under such title II [subchapter II of this chapter]. Solely for purposes of
"(1) was an inpatient in an institution qualified for reimbursement under title XIX of the Social Security Act [this subchapter], and
"(2) was not an inpatient except for his being an inpatient in such institution) have been eligible to receive aid or assistance under a State plan approved under title I, X, XIV, or XVI of such Act [subchapter I, X, XIV, or XVI of this chapter], and
"(B), [sic] on the basis of his status as described in subparagraph (A), was included as an individual eligible for medical assistance under a State plan approved under title XIX of such Act [this subchapter] (whether or not such individual actually received aid or assistance under a State plan referred to in subparagraph (A)), shall be deemed to be receiving such aid or assistance for such month and for each succeeding month in a continuous period of months if, for each month in such period—
"(3) such individual continues to be (for all of such month) an inpatient in such an institution and would (except for being an inpatient in such institution) continue to meet the conditions of eligibility to receive aid or assistance under such plan (as such plan was in effect for December 1973), and
"(4) such individual is determined (under the utilization review and other professional audit procedures applicable to State plans approved under title XIX of the Social Security Act [this subchapter]) to be in need of care in such an institution.

Federal matching under title XIX of the Social Security Act [this subchapter] shall be available for the medical assistance furnished to individuals eligible for such aid or assistance under such section."

**BLIND AND DISABLED MEDICALLY INDIGENT PERSONS**

Section 232 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 160, as amended by Pub. L. 93–233, § 13(b)(2), Dec. 31, 1973, 87 Stat. 961, provided that: "For purposes of section 1902(a)(10) of the Social Security Act [subsec. (a)(10) of this section], any individual who, for the month of December 1973 was eligible [subsec. (a)(10) of this section] for medical assistance by reason of his having been determined to meet the criteria for blindness or disability (established by a State plan approved under title I, X, XIV, or XVI of such Act [subchapter I, X, XIV, or XVI of this chapter]), shall be deemed for purposes of title XIX [this subchapter] to be an individual who is blind or disabled within the meaning of section 1614(a) of the Social Security Act [section 1396c(a) of this title] for each month in a continuous period of months (beginning with the month of January 1974) in which for each month in such period, such individual continues to meet the criteria for blindness or disability so established by such a State plan (as it was in effect for December 1973), and the other conditions of eligibility contained in the plan of the State approved under title XIX [this subchapter] (as it was in effect in December 1973). Federal matching under title XIX of the Social Security Act [this subchapter] shall be available for the medical assistance furnished to individuals eligible for such assistance under this section."

**IMPACT OF 1972 SOCIAL SECURITY BENEFITS INCREASE UNDER PUB. L. 92–336 UPON ELIGIBILITY FOR ASSISTANCE UNDER THIS SUBCHAPTER**

Section 248E of Pub. L. 92–603, as amended by section 233 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 160, provided that: "For purposes of section 1902(a)(10) of the Social Security Act [subsec. (a)(10) of this section] any individual who, for the month of August 1972, was eligible for or receiving aid or assistance under a State plan approved under title I, X, XIV, or XVI, or part A of title IV of such Act [subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter] and who for such month was entitled to monthly insurance benefits under title II of such Act [subchapter II of this chapter], shall be deemed to be eligible for such aid or assistance for any month thereafter prior to July 1973 if such individual would have been eligible for such aid or assistance for such month had the increase in monthly insurance benefits under title II of such Act [subchapter II of this chapter] resulting from enactment of section 92–336 [see Tables] been applicable to such individual."

**NURSING HOMES ELIGIBLE FOR MATCHING FUNDS FOR HOME SERVICES WHEN MEETING STATE LICENSURE REQUIREMENTS AFTER JUNE 30, 1968**

Section 234(c) of Pub. L. 90–248 provided that: "Notwithstanding any other provision of law, after June 30, 1968, no Federal funds shall be paid to any State as Federal matching under title I, X, XIV, XVI, or XIX of the Social Security Act [subchapter I, X, XIV, XVI, or XIX of this chapter] for payments made by any nursing home for or on account of any nursing home services provided by such nursing home for any period during which such nursing home is determined not to meet fully all requirements of the State for licensure as a nursing home, except that the Secretary may prescribe a reasonable period or periods of time during which a nursing home which has formerly met such requirements will be eligible for payments which include Federal participation if during such period or periods such nursing home promptly takes all necessary steps to again meet such requirements."

**DISTRICT OF COLUMBIA: PLAN FOR MEDICAL ASSISTANCE**

Pub. L. 90–227, § 1, Dec. 27, 1967, 81 Stat. 744, provided: "(a) the Commissioner of the District of Columbia [now Mayor] (hereafter in this Act [enacting this note and provisions set out as a note under section 1388 of this title] referred to as the ‘Commissioner’) may submit under title XIX of the Social Security Act [this subchapter] to the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereafter in this Act referred to as the ‘Secretary’) a plan for medical assistance (and any modifications of such plan) to enable the District of Columbia to receive Federal financial assistance under such title for a medical assistance program established by the Commissioner under such plan.

"(b)(1) Notwithstanding any other provision of law, the Commissioner may take such action as may be necessary to submit such plan to the Secretary and to establish and carry out such medical assistance program, except that in prescribing the standards for determining eligibility for and the extent of medical assistance under the District of Columbia’s plan for medical assistance, the Commissioner may not (except to the extent required by title XIX of the Social Security Act [this subchapter])—

"(A) prescribe maximum income levels for recipients of medical assistance under such plan which exceed (i) the title XIX maximum income levels if such levels are in effect, or (ii) the Commissioner’s maximum income levels for the local medical assistance program if there are no title XIX maximum income levels in effect; or
"(B) prescribe criteria which would permit an individual or family to be eligible for such assistance if such individual or family would be ineligible, solely by reason of his or its resources, for medical assistance under the District of Columbia’s plan for medical assistance, except that in determining eligibility for and the extent of medical assistance under the District of Columbia’s plan for medical assistance, the Commissioner may not (except to the extent required by title XIX of the Social Security Act [this subchapter])—

"(A) prescribe maximum income levels for recipients of medical assistance under such plan which exceed (i) the title XIX maximum income levels if such levels are in effect; or
"(B) prescribe the term ‘the Commissioner’s maximum income levels for the local medical assistance program’ means the maximum income levels prescribed for recipients of medical assistance under the District of
Columbia’s medical assistance program in effect in the fiscal year ending June 30, 1967; and

"(C) during any of the first four calendar quarters in which medical assistance is provided under such plan there shall be deemed to be no title XIX maximum income levels in effect if the title XIX maximum income levels in effect during such quarter are higher than the Commissioner’s maximum income levels for the local medical assistance program."

§ 1396b. Payment to States

(a) Computation of amount

From the sums appropriated therefor, the Secretary (except as otherwise provided in this section) shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing January 1, 1966—

(1) an amount equal to the Federal medical assistance percentage (as defined in section 1396d(b) of this title, subject to subsections (g) and (j) of this section and section 1396c–4(f) of this title) of the total amount expended during such quarter as medical assistance under the State plan; plus

(2)(A) an amount equal to 75 percent of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to compensation or training of skilled professional medical personnel, and staff directly supporting such personnel, of the State agency or any other public agency; plus

(B) notwithstanding paragraph (1) or subparagraph (A), with respect to amounts expended for nursing aide training and competency evaluation programs, and competency evaluation programs, described in section 1396r(e)(1) of this title (including the costs for nurse aides to complete such competency evaluation programs), regardless of whether the programs are provided in or outside nursing facilities or of the skill of the personnel involved in such programs, an amount equal to 50 percent (or, for calendar quarters beginning on or after July 1, 1988, and before October 1, 1990, the lesser of 50 percent or the Federal medical assistance percentage plus 25 percentage points) of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to such programs; plus

(C) an amount equal to 75 percent of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to predetermination screening and resident review activities conducted by the State under section 1396r(e)(7) of this title; plus

(D) for each calendar quarter during—

(i) fiscal year 1991, an amount equal to 90 percent,

(ii) fiscal year 1992, an amount equal to 85 percent,

(iii) fiscal year 1993, an amount equal to 80 percent, and

(iv) fiscal year 1994 and thereafter, an amount equal to 75 percent, of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to State activities under section 1396r(g) of this title; plus

(E) an amount equal to 75 percent of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to translation or interpretation services in connection with the enrollment of, retention of, and use of services under this subchapter by, children of families for whom English is not the primary language; plus

(3) an amount equal to—

(A)(i) 90 percent of so much of the sums expended during such quarter as are attributable to the design, development, or installation of such mechanized claims processing and information retrieval systems as the Secretary determines are likely to provide more efficient, economical, and effective administration of the plan and to be compatible with the claims processing and information retrieval systems utilized in the administration of subchapter XVIII of this chapter, including the State’s share of the cost of installing such a system to be used jointly in the administration of such State’s plan and the plan of any other State approved under this chapter,

(ii) 90 percent of so much of the sums expended during any such quarter in the fiscal year ending June 30, 1972, or the fiscal year ending June 30, 1973, as are attributable to the design, development, or installation of cost determination systems for State-owned general hospitals (except that the total amount paid to all States under this clause for either such fiscal year shall not exceed $150,000), and

(iii) an amount equal to the Federal medical assistance percentage (as defined in section 1396d(b) of this title) of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to such developments or modifications of systems of the type described in clause (i) as are necessary for the efficient collection and reporting on child health measures; and

(B) 75 percent of so much of the sums expended during such quarter as are attributable to the operation of systems (whether such systems are operated directly by the State or by another person under a contract with the State) of the type described in subparagraph (A)(i) (whether or not designed, developed, or installed with assistance under such subparagraph) which are approved by the Secretary and which include provision for prompt written notice to each individual who is furnished services covered by the plan, or to each individual in a sample group of individuals who are furnished such services, of the specific services (other than confidential services) so covered, the name of the person or persons furnishing the services, the date or dates on which the services
were furnished, and the amount of the payment or payments made under the plan on account of the services; and

(C)(i) 75 per centum of the sums expended with respect to costs incurred during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to the performance of medical and utilization review by a utilization and quality control peer review organization1 or by an entity which meets the requirements of section 1320c-1 of this title, as determined by the Secretary, under a contract entered into under section 1396a(d) of this title; and

(ii) 75 percent of the sums expended with respect to costs incurred during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to the performance of independent external reviews conducted under section 1396u-2(c)(2) of this title; and

(D) 75 percent of so much of the sums expended by the State plan during a quarter in 1991, 1992, or 1993, as the Secretary determines is attributable to the statewide adoption of a drug use review program which conforms to the requirements of section 1386r-8(g) of this title;

(E) 50 percent of the sums expended with respect to costs incurred during such quarter as are attributable to providing—

(i) services to identify and educate individuals who are likely to be eligible for medical assistance under this subchapter and who have Sickle Cell Disease or who are carriers of the sickle cell gene, including education regarding how to identify such individuals; or

(ii) education regarding the risks of stroke and other complications, as well as the prevention of stroke and other complications, in individuals who are likely to be eligible for medical assistance under this subchapter and who have Sickle Cell Disease; and

(F)(i) 100 percent of so much of the sums expended during such quarter as are attributable to payments to Medicaid providers described in subsection (C)(1) to encourage the adoption and use of certified EHR technology; and

(ii) 90 percent of so much of the sums expended during such quarter as are attributable to payments for reasonable administrative expenses related to the administration of payments described in clause (i) if the State meets the condition described in subsection (t)(9); plus

(H)(i)2 90 percent of the sums expended during the quarter as are attributable to the design, development, or installation of such mechanized verification and information retrieval systems as the Secretary determines are necessary to implement section 1396a(ee) of this title (including a system described in paragraph (2)(B) thereof),3 and

(ii) 75 percent of the sums expended during the quarter as are attributable to the operation of systems to which clause (i) applies,3 plus

(4) an amount equal to 100 percent of the sums expended during the quarter which are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1320h-7(d) of this title; plus

(5) an amount equal to 90 percent of the sums expended during such quarter which are attributable to the offering, arranging, and furnishing (directly or on a contract basis) of family planning services and supplies;

(6) subject to subsection (b)(3) of this section, an amount equal to—

(A) 90 per centum of the sums expended during such a quarter within the twelve-quarter period beginning with the first quarter in which a payment is made to the State pursuant to this paragraph, and

(B) 75 percent of the sums expended during each succeeding calendar quarter, with respect to costs incurred during such quarter (as found necessary by the Secretary for the elimination of fraud in the provision and administration of medical assistance provided under the State plan) which are attributable to the establishment and operation of (including the training of personnel employed by) a State medicaid fraud control unit (described in subsection (q) of this section); plus

(7) subject to section 1396g(3)(B) of this title, an amount equal to 50 per centum of the remainder of the amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

(b) Quarterly expenditures beginning after December 31, 1969

(1) Notwithstanding the preceding provisions of this section, the amount determined under subsection (a)(1) of this section for any State for any quarter beginning after December 31, 1969, shall not take into account any amounts expended as medical assistance with respect to individuals aged 65 or over and disabled individuals entitled to hospital insurance benefits under subchapter XVIII of this chapter which would not have been so expended if the individuals involved had been enrolled in the insurance program established by part B of subchapter XVIII of this chapter, other than amounts expended under provisions of the plan of such State required by section 1396a(a)(34) of this title.

(2) For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or areawide planning agency, see section 1320a-1 of this title.

(3) The amount of funds which the Secretary is otherwise obligated to pay a State during a quarter under subsection (a)(6) of this section may not exceed the higher of—

1 So in original. Probably should be “a quality improvement organization”.
2 So in original. There is no subpar. (G).
3 So in original. The comma probably should be a semicolon.
(A) $125,000, or
(B) one-quarter of 1 per centum of the sums expended by the Federal, State, and local governments during the previous quarter in carrying out the State’s plan under this subchapter.

(4) Amounts expended by a State for the use of an enrollment broker in marketing medicaid managed care organizations and other managed care entities to eligible individuals under this subchapter shall be considered, for purposes of subsection (a)(7) of this section, to be necessary for the proper and efficient administration of the State plan but only if the following conditions are met with respect to the broker:

(A) The broker is independent of any such entity and of any health care providers (whether or not any such provider participates in the State plan under this subchapter) that provide coverage of services in the same State in which the broker is conducting enrollment activities.

(B) No person who is an owner, employee, consultant, or has a contract with the broker either has any direct or indirect financial interest with such an entity or health care provider or has been excluded from participation in the program under this subchapter or subchapter XVIII of this chapter or debarred by any Federal agency, or subject to a civil money penalty under this chapter.

(5) Notwithstanding the preceding provisions of this section, the amount determined under subsection (a)(1) of this section for any State shall be decreased in a quarter by the amount of any health care related taxes (described in subsection (w)(3)(A) of this section) that are imposed on a hospital described in subsection (w)(3)(F) of this section of such quarter.

(c) Treatment of educationally-related services

Nothing in this subchapter shall be construed as prohibiting or restricting, or authorizing the Secretary to prohibit or restrict, payment under subsection (a) of this section for medical assistance for covered services furnished to a child with a disability because such services are included in the child’s individualized education program established pursuant to part B of the Individuals with Disabilities Education Act [20 U.S.C. 1411 et seq.] furnished to an infant or toddler with a disability because such services are included in the child’s individualized family service plan adopted pursuant to part C of such Act [20 U.S.C. 1431 et seq.].

(d) Estimates of State entitlement; installments; adjustments to reflect overpayments or underpayments; time for recovery or adjustment; uncollectable or discharged debts; obligated appropriations; disputed claims

(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsections (a) and (b) of this section for each quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State’s proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2)(A) The Secretary shall then pay to the State, in such installments as he may determine, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(B) Expenditures for which payments were made to the State under subsection (a) of this section shall be treated as an overpayment to the extent that the State or local agency administering such plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 1396a(a)(25) of this title.

(C) For purposes of this subsection, when an overpayment is discovered, which was made by a State to a person or other entity, the State shall have a period of 1 year in which to recover or attempt to recover such overpayment before adjustment is made in the Federal payment to such State on account of such overpayment. Except as otherwise provided in subparagraph (D), the adjustment in the Federal payment shall be made at the end of the 1-year period, whether or not recovery was made.

(D)(i) In any case where the State is unable to recover a debt which represents an overpayment (or any portion thereof) made to a person or other entity on account of such debt having been discharged in bankruptcy or otherwise being uncollectable, no adjustment shall be made in the Federal payment to such State on account of such overpayment (or portion thereof).

(ii) In any case where the State is unable to recover a debt which represents an overpayment (or any portion thereof) made to a person or other entity due to fraud within 1 year of discovery because there is not a final determination of the amount of the overpayment under an administrative or judicial process (as applicable), including as a result of a judgment being under appeal, no adjustment shall be made in the Federal payment to such State on account of such overpayment (or portion thereof) before the date that is 30 days after the date on which a final judgment (including, if applicable, a final determination on an appeal) is made.

(3)(A) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

(B)(i) Subparagraph (A) and paragraph (2)(B) shall not apply to any amount recovered or paid to a State as part of the comprehensive settlement of November 1998 between manufacturers
of tobacco products, as defined in section 5702(d)
of the Internal Revenue Code of 1986, and State
Attorneys General, or as part of any individual
State settlement or judgment reached in litiga-
tion initiated or pursued by a State against one
of any such manufacturers.
(ii) Except as provided in subsection (i)(19)
of this section, a State may use amounts recovered
or paid to the State as part of a comprehensive
or individual settlement, or a judgment, de-
scribed in clause (i) for any expenditures deter-
mined appropriate by the State.
(4) Upon the making of any estimate by the
Secretary under this subsection, any appropria-
tions available for payments under this section
shall be deemed obligated.
(5) In any case in which the Secretary esti-
mates that there has been an overpayment
under this section to a State on the basis of a
claim by such State that has been disallowed by
the Secretary under section 1316(d) of this title,
and such State disputes such disallowance, the
amount of the Federal payment in controversy
shall, at the option of the State, be retained by
such State or recovered by the Secretary pend-
ing a final determination with respect to such
payment amount. If such final determination is
to the effect that any amount was properly dis-
allowed, and the State chose to retain payment
of the amount in controversy, the Secretary
shall offset, from any subsequent payments
made to such State under this subchapter, an
amount equal to the proper amount of the dis-
allowance plus interest on such amount dis-
allowed for the period beginning on the date
such amount was disallowed and ending on the
date of such final determination at a rate (deter-
mined by the Secretary) based on the average of
the bond equivalent of the weekly 90-day treas-
ury bill auction rates during such period.
(6)(A) Each State (as defined in subsection
(w)(7)(D) of this section) shall include, in the
first report submitted under paragraph (1) after
the end of each fiscal year, information related to—
(i) provider-related donations made to the
State or units of local government during such
fiscal year, and
(ii) health care related taxes collected by the
State or such units during such fiscal year.
(B) Each State shall include, in the first
report submitted under paragraph (1) after the
end of each fiscal year, information related to
the total amount of payment adjustments made
to individual providers (by provider), under sec-
tion 1396r–4(c) of this title during such fiscal
year.
(e) Transition costs of closures or conversions
permitted
A State plan approved under this subchapter
may include, as a cost with respect to hospital
services under the plan under this subchapter,
periodic expenditures made to reflect transi-
tional allowances established with respect to a
hospital closure or conversion under section
1395uu of this title.
(f) Limitation on Federal participation in medi-
cal assistance
(1)(A) Except as provided in paragraph (4), pay-
ment under the preceding provisions of this sec-
tion shall not be made with respect to any
amount expended as medical assistance in a cal-
dendar quarter, in any State, for any member of
a family the annual income of which exceeds the
applicable income limitation determined under
this paragraph.
(B)(i) Except as provided in clause (ii) of this
subparagraph, the applicable income limitation
with respect to any family is the amount deter-
mined, in accordance with standards prescribed
by the Secretary, to be equivalent to 133 1⁄3 per-
cent of the highest amount which would ordi-
narily be paid to a family of the same size with-
out any income or resources, in the form of
money payments, under the plan of the State
approved under part A of subchapter IV of this
chapter.
(ii) If the Secretary finds that the operation of
a uniform maximum limits payments to fami-
lies of more than one size, he may adjust the
amount otherwise determined under clause (i) to
take account of families of different sizes.
(C) The total amount of any applicable income
limitation determined under subparagraph (B)
shall, if it is not a multiple of $100 or such other
amount as the Secretary may prescribe, be
rounded to the next higher multiple of $100 or
such other amount, as the case may be.
(2)(A) In computing a family’s income for pur-
poses of paragraph (1), there shall be excluded
any costs (whether in the form of insurance pre-
miums or otherwise and regardless of whether
such costs are reimbursed under another public
program of the State or political subdivision
thereof) incurred by such family for medical
care or for any other type of remedial care rec-
ognized under State law or, (B) notwithstanding
section 1396o of this title at State option, an
amount paid by such family, at the family’s op-
tion, to the State, provided that the amount,
when combined with costs incurred in prior
months, is sufficient when excluded from the
family’s income to reduce such family’s income
below the applicable income limitation de-
scribed in paragraph (1). The amount of State
expenditures for which medical assistance is
available under subsection (a)(1) of this section
will be reduced by amounts paid to the State
pursuant to this subparagraph.
(3) For purposes of paragraph (1)(B), in the
case of a family consisting of only one individ-
ual, the “highest amount which would ordi-
narily be paid” to such family under the State’s
plan approved under part A of subchapter IV of
this chapter shall be the amount determined by
the State agency (on the basis of reasonable re-
lationship to the amounts payable under such
plan to families consisting of two or more per-
sons) to be the amount of the aid which would
ordinarily be payable under such plan to a fam-
ily (without any income or resources) consisting
of one person if such plan provided for aid to
such a family.
(4) The limitations on payment imposed by the
preceding provisions of this subsection shall not
apply with respect to any amount expended by a
State as medical assistance for any individual
described in section 1396a(a)(10)(A)(i)(III),
1396a(a)(10)(A)(i)(IV),
1396a(a)(10)(A)(i)(V),
1396a(a)(10)(A)(i)(VI),
1396a(a)(10)(A)(i)(VII),
1396a(a)(10)(A)(i)(VIII),
1396a(a)(10)(A)(i)(IX),
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1396a(a)(10)(A)(i)(X), 1396a(a)(10)(A)(i)(XII),
1396a(a)(10)(A)(i)(XV), 1396a(a)(10)(A)(i)(XVI),
or 5
1396a(a)(10)(A)(i)(XVII), 1396a(a)(10)(A)(i)(XVIII),
1396a(a)(10)(A)(i)(XIX), 1396a(a)(10)(A)(i)(XX),
1396a(a)(10)(A)(i)(XXI), 1396a(a)(10)(A)(i)(XXII),
1396d(p)(1) of this title or for any individual—
(A) who is receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV or XVI, or part A of subchapter IV, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter,
(B) who is not receiving such aid or assistance, and with respect to whom such benefits are not being paid, but (i) is eligible to receive such aid or assistance, or to have such benefits paid with respect to him, or (ii) would be eligible to receive such aid or assistance, or to have such benefits paid with respect to him if he were not in a medical institution, or
(C) with respect to whom there is being paid, or who is eligible to be paid, a per centum thereof (determined in an intermediate care facility for the mentally retarded furnished beyond 90 days), such State has an effective program of medical review of the care of patients in mental hospitals and intermediate care facilities for the mentally retarded pursuant to paragraphs (2B) and (31) of section 1396a(a) of this title whereby the professional management of each case is reviewed and evaluated at least annually by independent professional review teams. In determining the number of days on which an individual has received services described in this subsection, there shall not be counted any days with respect to which such individual is entitled to have payments made (in whole or in part) on his behalf under section 1395d of this title.

(2) The Secretary shall, as part of his validation procedures under this subsection, conduct timely sample onsite reviews of the State plans approved under this subchapter, and determine if the plan is comply with the requirements of this subsection. In cases where a State fails to submit valid claim forms in a timely manner, he shall be subject to a penalty equal to 5 percent of amounts paid for services furnished in such plan.

(3)(A) No reduction in the Federal medical assistance percentage of a State otherwise required to be imposed under this subsection shall take effect—
(i) if such reduction is due to the State’s unsatisfactory or invalid showing made with respect to a calendar quarter beginning before January 1, 1977;
(ii) before January 1, 1978;
(iii) unless a notice of such reduction has been provided to the State at least 30 days before the date such reduction takes effect; or
(iv) due to the State’s unsatisfactory or invalid showing made with respect to a calendar quarter beginning after September 30, 1977, unless notice of such reduction has been provided to the State no later than the first day of the fourth calendar quarter following the calendar quarter with respect to which such showing was made.

(B) The Secretary shall waive application of any reduction in the Federal medical assistance percentage of a State otherwise required to be imposed under paragraph (1) because a showing by the State, made under such paragraph with respect to a calendar quarter ending after January 1, 1977, and before January 1, 1978, is determined to be either unsatisfactory under such paragraph or invalid under paragraph (2), if the Secretary determines that the State’s showing made under paragraph (1) with respect to any calendar quarter ending on or before December 31, 1978, is satisfactory under such paragraph and is valid under paragraph (2).

(4)(A) The Secretary may not find the showing of a State, with respect to a calendar quarter under paragraph (1), to be satisfactory if the showing is submitted to the Secretary later than the 30th day after the last day of the calendar quarter, unless the State demonstrates to
the satisfaction of the Secretary good cause for not meeting such deadline.

(B) The Secretary shall find a showing of a State, with respect to a calendar quarter under paragraph (1), to be satisfactory under such paragraph with respect to the requirement that the State conduct annual onsite inspections in mental hospitals and intermediate care facilities for the mentally retarded under paragraphs (26) and (31) of section 1396a(a) of this title, if the showing demonstrates that the State has conducted such an onsite inspection during the 12-month period ending on the last date of the calendar quarter—

(i) in each of not less than 98 per centum of the number of such hospitals and facilities requiring such inspection, and

(ii) in every such hospital or facility which has 200 or more beds,

and that, with respect to such hospitals and facilities not inspected within such period, the State has exercised good faith and due diligence in attempting to conduct such inspection, or if the State demonstrates to the satisfaction of the Secretary that it would have made such a showing but for failings of a technical nature only.

(5) In the case of a State's unsatisfactory or invalid showing made with respect to a type of facility or institutional services in a calendar quarter, the per centum amount of the reduction of the State's Federal medical assistance percentage for that type of services under paragraph (1) is equal to 33 1/3 per centum multiplied by a fraction, the denominator of which is equal to the total number of patients receiving that type of services in that quarter under the State plan in facilities or institutions for which a showing was required to be made under this subsection, and the numerator of which is equal to the number of such patients receiving such type of services in that quarter in those facilities or institutions for which a satisfactory and valid showing was not made for that calendar quarter.

(6)(A) Recertifications required under section 1396a(a)(44) of this title shall be conducted at least every 60 days in the case of inpatient hospital services.

(B) Such recertifications in the case of services in an intermediate care facility for the mentally retarded shall be conducted at least—

(i) 60 days after the date of the initial certification,

(ii) 180 days after the date of the initial certification,

(iii) 12 months after the date of the initial certification,

(iv) 18 months after the date of the initial certification,

(v) 24 months after the date of the initial certification, and

(vi) every 12 months thereafter.

(C) For purposes of determining compliance with the schedule established by this paragraph, a recertification shall be considered to have been done on a timely basis if it was performed not later than 10 days after the recertification was otherwise required and the State meets such schedule.


(i) Payment for organ transplants; item or service furnished by excluded individual, entity, or physician; other restrictions

Payment under the preceding provisions of this section shall not be made—

(1) for organ transplant procedures unless the State plan provides for written standards respecting the coverage of such procedures and unless such standards provide that—

(A) similarly situated individuals are treated alike; and

(B) any restriction, on the facilities or practitioners which may provide such procedures, is consistent with the accessibility of high quality care to individuals eligible for the procedures under the State plan; or

(2) with respect to any amount expended for an item or service (other than an emergency item or service, not including items or services furnished in an emergency room of a hospital) furnished—

(A) under the plan by any individual or entity during any period when the individual or entity is excluded from participation under subchapter V, XVIII, or XX of this chapter or under this subchapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1385u(j)(2) of this title,

(B) at the medical direction or on the prescription of a physician, during the period when such physician is excluded from participation under subchapter V, XVIII, or XX of this chapter or under this subchapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1385u(j)(2) of this title and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person); or

(C) by any individual or entity to whom the State has failed to suspend payments under the plan during any period when there is pending an investigation of a credible allegation of fraud against the individual or entity, as determined by the State in accordance with regulations promulgated by the Secretary for purposes of section 1385y(o) of this title and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person); or

(D) by any individual or entity to whom the State determines in accordance with such regulations there is good cause not to suspend such payments; or

(3) with respect to any amount expended for inpatient hospital services furnished under the plan (other than amounts attributable to the special situation of a hospital which serves a disproportionate number of low income patients with special needs) to the extent that such amount exceeds the hospital's customary charges with respect to such services or (if such services are furnished under the plan by a public institution free of charge or at nominal charges to the public) exceeds an amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such payment which the Secretary finds will provide fair compensation to such institution for such services; or
(4) with respect to any amount expended for care or services furnished under the plan by a hospital unless such hospital has in effect a utilization review plan which meets the requirements imposed by section 1395x(k) of this title for purposes of subchapter XVIII of this chapter; and if such hospital has in effect such a utilization review plan for purposes of subchapter XVIII of this chapter, such plan shall serve as the plan required by this subsection (with the same standards and procedures and the same review committee or group) as a condition of payment under this subchapter; the Secretary is authorized to waive the requirements of this paragraph if the State agency demonstrates to his satisfaction that it has in operation utilization review procedures which are superior in their effectiveness to the procedures required under section 1395x(k) of this title; or

(5) with respect to any amount expended for any drug product for which payment may not be made under part B of subchapter XVIII of this chapter because of section 1395y(c) of this title; or

(6) with respect to any amount expended for inpatient hospital tests (other than in emergency situations) not specifically ordered by the attending physician or other responsible practitioner; or

(7) with respect to any amount expended for clinical diagnostic laboratory tests performed by a physician, independent laboratory, or hospital, to the extent such amount exceeds the amount that would be recognized under section 1395x(h) of this title for such tests performed for an individual enrolled under part B of subchapter XVIII of this chapter; or

(8) with respect to any amount expended for medical assistance (A) for nursing facility services to reimburse (or otherwise compensate) a nursing facility for payment of a civil money penalty imposed under section 1396a(h) of this title or (B) for home and community care to reimburse (or otherwise compensate) a provider of such care for payment of a civil money penalty imposed under this subchapter or subchapter XI of this chapter; or


10(A) with respect to covered outpatient drugs unless there is a rebate agreement in effect under section 1396f–8 of this title with respect to such drugs or unless section 1396f–8(a)(3) of this title applies.

(B) with respect to any amount expended for an innovator multiple source drug (as defined in section 1396f–8(k) of this title) dispensed on or after July 1, 1991, if, under applicable State law, a less expensive multiple source drug could have been dispensed, but only to the extent that such amount exceeds the upper payment limit for such multiple source drug; or

(C) with respect to covered outpatient drugs described in section 1396f–8(a)(7) of this title, unless information respecting utilization data and coding on such drugs that is required to be submitted under such section is submitted in accordance with such section, and

(D) with respect to any amount expended for reimbursement to a pharmacy under this subchapter for the ingredient cost of a covered outpatient drug for which the pharmacy has already received payment under this subchapter (other than with respect to a reasonable restocking fee for such drug); or

(11) with respect to any amount expended for physicians’ services furnished on or after the first day of the first quarter beginning more than 60 days after the date of establishment of the physician identifier system under section 1396a(x) of this title, unless the claim for the services includes the unique physician identifier provided under such system; or


(13) with respect to any amount expended to reimburse (or otherwise compensate) a nursing facility for payment of legal expenses associated with any action initiated by the facility that is dismissed on the basis that no reasonable legal ground existed for the institution of such action; or

(14) with respect to any amount expended on administrative costs to carry out the program under section 1396s of this title; or

(15) with respect to any amount expended for a single-antigen vaccine and its administration in any case in which the administration of a combined-antigen vaccine was medically appropriate (as determined by the Secretary); or

(16) with respect to any amount expended for which funds may not be used under the Assisted Suicide Funding Restriction Act of 1997 [42 U.S.C. 14401 et seq.]; or

(17) with respect to any amount expended for roads, bridges, stadiums, or any other item or service not covered under a State plan under this subchapter; or

(18) with respect to any amount expended for home health care services provided by an agency or organization unless the agency or organization provides the State agency on a continuing basis a surety bond in a form specified by the Secretary under paragraph (7) of section 1395x(o) of this title and in an amount that is not less than $50,000 or such comparable surety bond as the Secretary may permit under the last sentence of such section; or

(19) with respect to any amount expended on administrative costs to initiate or pursue litigation described in subsection (d)(3)(B) of this section;

(20) with respect to amounts expended for medical assistance provided to an individual described in subsection (XV) or (XVI) of section 1396a(a)(10)(A)(i) of this title for a fiscal year unless the State demonstrates to the satisfaction of the Secretary that the level of State funds expended for such fiscal year for programs to enable working individuals with disabilities to work (other than by purchasing such medical assistance) is not less than the level expended for such programs during the most recent State fiscal year ending before December 17, 1999;
(21) with respect to amounts expended for covered outpatient drugs described in section 1396r–8(d)(2)(K) of this title (relating to drugs when used for treatment of sexual or erectile dysfunction);

(22) with respect to amounts expended for medical assistance for an individual who declares under section 1320b–7(d)(1)(A) of this title to be a citizen or national of the United States for purposes of establishing eligibility for benefits under this subchapter, unless the requirement of section 1396a(a)(46)(B) of this title is met;

(23) with respect to amounts expended for medical assistance for covered outpatient drugs (as defined in section 1396r–8(b)(2) of this title) for which the prescription was executed in written (and non-electronic) form unless the prescription was executed on a tamper-resistant pad;

(24) if a State is required to implement an asset verification program under section 1396w of this title and fails to implement such program in accordance with such section, with respect to amounts expended by such State for medical assistance for individuals subject to asset verification under such section, unless—

(A) the State demonstrates to the Secretary’s satisfaction that the State made a good faith effort to comply;

(B) not later than 60 days after the date of a finding that the State is in noncompliance, the State submits to the Secretary (and the Secretary approves) a corrective action plan to remedy such noncompliance; and

(C) not later than 12 months after the date of such submission (and approval), the State fulfills the terms of such corrective action plan;

(25) with respect to any amounts expended for medical assistance for individuals for whom the State does not report enrollee encounter data (as defined by the Secretary) to the Medicaid Statistical Information System (MSIS) in a timely manner (as determined by the Secretary); or

(26) with respect to any amounts expended for medical assistance for individuals described in subclause (VIII) of subsection (a)(10)(A)(i) other than medical assistance provided through benchmark coverage described in section 1396u–7(b)(1) of this title or benchmark equivalent coverage described in section 1396u–7(b)(2) of this title.

Nothing in paragraph (1) shall be construed as permitting a State to provide services under its plan under this subchapter that are not reasonable in amount, duration, and scope to achieve their purpose. Paragraphs (1), (2), (16), (17), and (18) shall apply with respect to items or services furnished and amounts expended by or through a managed care entity (as defined in section 1396u–2(a)(1)(B) of this title) in the same manner as such paragraphs apply to items or services furnished and amounts expended directly by the State.

1Probably means subclause (VIII) of subsection (a)(10)(A)(i) of section 1396a of this title.

(j) Adjustment of amount

Notwithstanding the preceding provisions of this section, the amount determined under subsection (a)(1) of this section for any State for any quarter shall be adjusted in accordance with section 1396m of this title.

(k) Technical assistance to States

The Secretary is authorized to provide at the request of any State (and without cost to such State) such technical and actuarial assistance as may be necessary to assist such State to contract with any medicaid managed care organization which meets the requirements of subsection (m) of this section for the purpose of providing medical care and services to individuals who are entitled to medical assistance under this subchapter.


(m) “Medicaid managed care organization” defined; duties and functions of Secretary; payments to States; reporting requirements; remedies

(1)(A) The term “medicaid managed care organization” means a health maintenance organization, an eligible organization with a contract under section 1396m of this title, a Medicare+Choice organization with a contract under part C of subchapter XVIII of this chapter, a provider sponsored organization, or any other public or private organization, which meets the requirements of section 1396a(w) of this title and—

(i) makes services it provides to individuals eligible for benefits under this subchapter accessible to such individuals, within the area served by the organization, to the same extent as such services are made accessible to individuals (eligible for medical assistance under the State plan) not enrolled with the organization, and

(ii) has made adequate provision against the risk of insolvency, which provision is satisfactory to the State, meets the requirements of subparagraph (C)(i) (if applicable), and which assures that individuals eligible for benefits under this subchapter are in no case held liable for debts of the organization in case of the organization’s insolvency.

An organization that is a qualified health maintenance organization (as defined in section 300e–9(d) of this title) is deemed to meet the requirements of clauses (i) and (ii).

(B) The duties and functions of the Secretary, insofar as they involve making determinations as to whether an organization is a medicaid managed care organization within the meaning of subparagraph (A), shall be integrated with the administration of section 300e–11(a) and (b) of this title.

(C)(i) Subject to clause (ii), a provision meets the requirements of this subparagraph for an organization if the organization meets solvency standards established by the State for private health maintenance organizations or is licensed or certified by the State as a risk-bearing entity.

(ii) Clause (i) shall not apply to an organization if—
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(I) the organization is not responsible for the provision (directly or through arrangements with providers of services) of inpatient hospital services and physicians' services;

(II) the organization is a public entity;

(III) the solvency of the organization is guaranteed by the State; or

(IV) the organization is (or is controlled by) one or more Federally-qualified health centers and meets solvency standards established by the State for such an organization.

For purposes of subclause (IV), the term "control" means the possession, whether direct or indirect, of the power to direct or cause the direction of the management and policies of the organization through membership, board representation, or an ownership interest equal to or greater than 50.1 percent.

(2)(A) Except as provided in subparagraphs (B), (C), and (G), no payment shall be made under this subchapter to a State with respect to expenditures incurred by it for payment (determined under a prepaid capitation basis or under any other risk basis) for services provided by any entity (including a health insuring organization) which is responsible for the provision (directly or through arrangements with providers of services) of inpatient hospital services and any other service described in paragraph (2), (3), (4), (5), or (7) of section 1396d(a) of this title or for the provision of any three or more of the services described in such paragraphs unless—

(i) the Secretary has determined that the entity is a Medicaid managed care organization as defined in paragraph (1);


(iii) such services are provided for the benefit of individuals eligible for benefits under this subchapter in accordance with a contract between the State and the entity under which prepaid payments to the entity are made on an actuarially sound basis and under which the Secretary must provide prior approval for contracts providing for expenditures in excess of $1,000,000 for 1998 and, for a subsequent year, the amount established under this clause for the previous year increased by the percentage increase in the consumer price index for all urban consumers over the previous year;

(iv) such contract provides that the Secretary and the State (or any person or organization designated by either) shall have the right to audit and inspect any books and records of the entity (and of any subcontractor) that pertain (I) to the ability of the entity to bear the risk of potential financial losses, or (II) to services performed or determinations of amounts payable under the contract;

(v) such contract provides that in the entity's enrollment, reenrollment, or disenrollment of individuals who are eligible for benefits under this subchapter and eligible to enroll, reenroll, or disenroll with the entity pursuant to the contract, the entity will not discriminate among such individuals on the basis of their health status or requirements for health care services;

(vi) such contract (I) permits individuals who have elected under the plan to enroll with the entity for provision of such benefits to terminate such enrollment in accordance with section 1396d–2(a)(4) of this title, and (II) provides for notification in accordance with such section of each such individual, at the time of the individual's enrollment, of such right to terminate such enrollment;

(vii) such contract provides that, in the case of medically necessary services which were provided (I) to an individual enrolled with the entity under the contract and entitled to benefits with respect to such services under the State's plan and (II) other than through the organization because the services were immediately required due to an unforeseen illness, injury, or condition, either the entity or the State provides for reimbursement with respect to those services;

(viii) such contract provides for disclosure of information in accordance with section 1320a-3 of this title and paragraph (4) of this subsection;

(ix) such contract provides, in the case of an entity that has entered into a contract for the provision of services with a Federally-qualified health center or a rural health clinic, that the entity shall provide payment that is not less than the level and amount of payment which the entity would make for the services if the services were furnished by a provider which is not a Federally-qualified health center or a rural health clinic;

(x) any physician incentive plan that it operates meets the requirements described in section 1396b–2 of this title;

(xi) such contract provides for maintenance of sufficient patient encounter data to identify the physician who delivers services to patients and for the provision of such data to the State at a frequency and level of detail to be specified by the Secretary;

(xii) such contract, and the entity complies with the applicable requirements of section 1396a–2 of this title; and

(xiii) such contract provides that (I) covered outpatient drugs dispensed to individuals eligible for medical assistance who are enrolled with the entity shall be subject to the same rebate required by the agreement entered into under section 1396r–8 of this title as the State is subject to and that the State shall collect such rebates from manufacturers, (II) capitation rates paid to the entity shall be based on actual cost experience related to rebates and subject to the Federal regulations requiring actuarially sound rates, and (III) the entity shall report to the State, on such timely and periodic basis as specified by the Secretary in order to include in the information submitted by the State to a manufacturer and the Secretary under section 1396r–8(b)(2)(A) of this title, information on the total number of units of each dosage form and strength and package size by National Drug Code of each covered outpatient drug dispensed to individuals eligible for medical assistance who are enrolled with the entity and for which the entity is responsible for coverage of such drug under this subsection (other than covered outpatient drugs that under subsection (j)(1) of section 1396r–8 of this title are not subject to the requirements of that section) and such other...
data as the Secretary determines necessary to carry out this subsection.

(B) Subparagraph (A) except with respect to clause (ix) of subparagraph (A), does not apply with respect to payments under this subchapter to a State with respect to expenditures incurred by it for payment for services provided by an entity which—

(i) received a grant of at least $100,000 in the fiscal year ending June 30, 1976, under section 254(d)(1)(A) or 254(c)(1)(A) of this title, and for the period beginning July 1, 1976, and ending on the expiration of the period for which payments are to be made under this subchapter has been the recipient of a grant under either such section; and

(ii) provides to its enrollees, on a prepaid capitation risk basis or on any other risk basis, all of the services and benefits described in paragraphs (1), (2), (3), (4)(C), and (5) of section 1396d(a) of this title and, to the extent required by section 1396a(a)(10)(D) of this title to be provided under a State plan for medical assistance, the services and benefits described in paragraph (7) of section 1396d(a) of this title; or

(iii) which has contracted with the single State agency for the provision of services (but not including inpatient hospital services) to persons eligible under this subchapter on a prepaid risk basis prior to 1970.


(G) In the case of an entity which is receiving (and has received during the previous two years) a grant of at least $100,000 under section 254(d)(1)(A) or 254(c)(1)(A) of this title is or is receiving (and has received during the previous two years) at least $100,000 (by grant, subgrant, or subcontract) under the Appalachian Regional Development Act of 1965, and

(i) if the organization continues to have a contract under this paragraph with the State or with the manager described in such clause if the organization continues to have a contract described in section 1396d(c)(3) of this title with the State.


(4)(A) Each medicaid managed care organization which is not a health maintenance organization (as defined in section 300e–9(d) of this title), including the following transactions between the organization and a party in interest (as defined in section 300e–17(b) of this title), including the following transactions:

(i) Any sale or exchange, or leasing of any property between the organization and such a party.

(ii) Any furnishing for consideration of goods, services (including management services), or facilities between the organization and such a party, but not including salaries paid to employees for services provided in the normal course of their employment.

(iii) Any lending of money or other extension of credit between the organization and such a party.

The State or Secretary may require that information reported respecting an organization which controls, or is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

(4)(B) Each organization shall make the information reported pursuant to subparagraph (A) available to its enrollees upon reasonable request.

(5)(A) If the Secretary determines that an entity with a contract under this subsection—

(i) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, in violation of the provision of paragraph (2)(A)(vi), including expulsion or refusal to re-enroll an individual or engaging in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this subsection) by eligible individuals with the organization

(a) with a primary care case manager with a contract described in section 1396d(c)(3) of this title, or

(b) in the next month (or in the next 2 months) is not eligible for such benefits, but

(c) in the succeeding month is again eligible for such benefits, the State plan, subject to subparagraph (A)(vi), may enroll the individual for that succeeding month with the organization described in clause

(i) if the organization continues to have a contract under this paragraph with the State or with the manager described in such clause if the manager continues to have a contract described in section 1396d(c)(3) of this title with the State.

(i) acts to discriminate among individuals in violation of the provision of paragraph (2)(A)(vi), including expulsion or refusal to re-enroll an individual or engaging in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this subsection) by eligible individuals with the organization

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whose medical condition or history indicates a need for substantial future medical services;

(iv) misrepresents or falsifies information that is furnished—

(I) to the Secretary or the State under this subsection,
or

(II) to an individual or to any other entity under this subsection,3 or

(v) fails to comply with the requirements of section 1395mm(i)(8) of this title,

the Secretary may provide, in addition to any other remedies available under law, for any of the remedies described in subparagraph (B).

(B) The remedies described in this subparagraph are—

(i) civil money penalties of not more than $25,000 for each determination under subparagraph (A), or, with respect to a determination under clause (iii) or (iv)(I) of such subparagraph, of not more than $100,000 for each such determination, plus, with respect to a determination under subparagraph (A)(iii), double the excess amount charged in violation of such subparagraph (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned), and plus, with respect to a determination under subparagraph (A)(ii), double the excess amount charged in violation of such subparagraph.

(ii) denial of payment to the State for medical assistance furnished under the contract under this subsection for individuals enrolled after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (i) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(6)(A) For purposes of this subsection and section 1396a(e)(2)(A) of this title, in the case of the State of New Jersey, the term ‘contract’ shall be deemed to include an undertaking by the State agency, in the State plan under this subchapter, to operate a program meeting all requirements of this subsection.

(B) The undertaking described in subparagraph (A) must provide—

(i) for the establishment of a separate entity responsible for the operation of a program meeting the requirements of this subsection, which entity may be a subdivision of the State agency administering the State plan under this subchapter;

(ii) for separate accounting for the funds used to operate such program; and

(iii) for setting the capitation rates and any other payment rates for services provided in accordance with this subsection using a methodology satisfactory to the Secretary designed to ensure that total Federal matching payments under this subchapter for such services will be lower than the matching payments that would be made for the same services, if provided under the State plan on a fee for service basis to an actuarially equivalent population.

(C) The undertaking described in subparagraph (A) shall be subject to approval (and annual reapproval) by the Secretary in the same manner as a contract under this subsection.

(D) The undertaking described in subparagraph (A) shall not be eligible for a waiver under section 1396n(b) of this title.


(o) Restrictions on authorized payments to States

Notwithstanding the preceding provisions of this section, no payment shall be made to a State under the preceding provisions of this section for expenditures for medical assistance provided for an individual under its State plan approved under this subchapter to the extent that a private insurer (as defined by the Secretary by regulation and including group health plans defined in section 1167(1) of title 29), a service benefit plan, and a health maintenance organization would have been obligated to provide such assistance but for a provision of its insurance contract which has the effect of limiting or excluding such obligation because the individual is eligible for or is provided medical assistance under the plan.

(p) Assignment of rights of payment; incentive payments for enforcement and collection

(1) When a political subdivision of a State makes, for the State of which it is a political subdivision, or one State makes, for another State, the enforcement and collection of rights of support or payment assigned under section 1396k of this title, pursuant to a cooperative arrangement under such section (either within or outside of such State), there shall be paid to such political subdivision or such other State from amounts which would otherwise represent the Federal share of payments for medical assistance provided to the eligible individuals on whose behalf such enforcement and collection was made, an amount equal to 15 percent of any amount collected which is attributable to such rights of support or payment.

(2) Where more than one jurisdiction is involved in such enforcement or collection, the amount of the incentive payment determined under paragraph (1) shall be allocated among the jurisdictions in a manner to be prescribed by the Secretary.

(q) “State medicaid fraud control unit” defined

For the purposes of this section, the term “State medicaid fraud control unit” means a single identifiable entity of the State government which possesses statewide authority to prosecute individuals for criminal violations, (B) is in a State the constitution of which does not provide for the criminal prosecution of individuals by a statewide authority and has formal procedures, ap-
proved by the Secretary, that (i) assure its referral of suspected criminal violations relating to the program under this subchapter to the appropriate authority or authorities in the State for prosecution and (ii) assure its assistance of, and coordination with, such authority or authorities in such prosecutions, or (C) has a formal working relationship with the office of the State Attorney General and has formal procedures (including procedures for its referral of suspected criminal violations to such office) which are approved by the Secretary and which provide effective coordination of activities between the entity and such office with respect to the detection, investigation, and prosecution of suspected criminal violations relating to the program under this subchapter.

(3) The entity's function is conducting a statewide program for the investigation and prosecution of violations of all applicable State laws regarding any and all aspects of fraud in connection with (A) any aspect of the provision of medical assistance and the activities of providers of such assistance under the State plan under this subchapter; and (B) upon the approval of the Inspector General of the relevant Federal agency, any aspect of the provision of health care services and activities of providers of such services under any Federal health care program (as defined in section 1320a–7b(f)(1) of this title), if the suspected fraud or violation of law in such case or investigation is primarily related to the State plan under this subchapter.

(4)(A) The entity has—

(i) procedures for reviewing complaints of abuse or neglect of patients in health care facilities which receive payments under the State plan under this subchapter;

(ii) at the option of the entity, procedures for reviewing complaints of abuse or neglect of patients residing in board and care facilities; and

(iii) procedures for acting upon such complaints under the criminal laws of the State or for referring such complaints to other State agencies for action.

(B) For purposes of this paragraph, the term "board and care facility" means a residential setting which receives payment (regardless of whether such payment is made under the State plan under this subchapter) from or on behalf of two or more unrelated adults who reside in such facility, and for whom one or both of the following is provided:

(i) Nursing care services provided by, or under the supervision of, a registered nurse, licensed practical nurse, or licensed nursing assistant.

(ii) A substantial amount of personal care services that assist residents with the activities of daily living, including personal hygiene, dressing, bathing, eating, toileting, ambulation, transfer, positioning, self-medication, body care, travel to medical services, essential shopping, meal preparation, laundry, and housework.

(5) The entity provides for the collection, or referral for collection to a single State agency, of overpayments that are made under the State plan or under any Federal health care program (as so defined) to health care facilities and that are discovered by the entity in carrying out its activities. All funds collected in accordance with this paragraph shall be credited exclusively to, and available for expenditure under, the Federal health care program (including the State plan under this subchapter) that was subject to the activity that was the basis for the collection.

(6) The entity employs such auditors, attorneys, investigators, and other necessary personnel and is organized in such a manner as is necessary to promote the effective and efficient conduct of the entity's activities.

(7) The entity submits to the Secretary an application and annual reports containing such information as the Secretary determines, by regulation, to be necessary to determine whether the entity meets the other requirements of this subsection.

(r) Mechanized claims processing and information retrieval systems; operational, etc., requirements

(1) In order to receive payments under subsection (a) of this section for use of automated data systems in administration of the State plan under this subchapter, a State must, in addition to meeting the requirements of paragraph (3), have in operation mechanized claims processing and information retrieval systems that meet the requirements of this subsection and that the Secretary has found—

(A) are adequate to provide efficient, economical, and effective administration of such State plan;

(B) are compatible with the claims processing and information retrieval systems used in the administration of subchapter XVIII of this chapter, and for this purpose—

(i) have a uniform identification coding system for providers, other payees, and beneficiaries under this subchapter or subchapter XVIII of this chapter;

(ii) provide liaison between States and carriers and intermediaries with agreements under subchapter XVIII of this chapter to facilitate timely exchange of appropriate data;

(iii) provide for exchange of data between the States and the Secretary with respect to persons sanctioned under this subchapter or subchapter XVIII of this chapter; and

(iv) effective for claims filed on or after October 1, 2010, incorporate compatible methodologies of the National Correct Coding Initiative administered by the Secretary (or any successor initiative to promote correct coding and to control improper coding leading to inappropriate payment) and such other methodologies of that Initiative (or such other national correct coding methodologies) as the Secretary identifies in accordance with paragraph (4);

(C) are capable of providing accurate and timely data;

(D) are complying with the applicable provisions of part C of subchapter XI of this chapter;
(E) are designed to receive provider claims in standard formats to the extent specified by the Secretary; and

(F) effective for claims filed on or after January 1, 1999, provide for electronic transmission of claims data in the format specified by the Secretary and consistent with the Medicaid Statistical Information System (MSIS) (including detailed individual enrollee encounter data and other information that the Secretary may find necessary and including, for data submitted to the Secretary on or after January 1, 2010, data elements from the automated data system that the Secretary determines to be necessary for program integrity, program oversight, and administration, at such frequency as the Secretary shall determine).

(2) In order to meet the requirements of this paragraph, mechanized claims processing and information retrieval systems must meet the following requirements:

(A) The systems must be capable of developing provider, physician, and patient profiles which are sufficient to provide specific information as to the use of covered types of services and items, including prescribed drugs.

(B) The State must provide that information on probable fraud or abuse which is obtained from, or developed by, the systems, is made available to the State’s Medicaid fraud control unit (if any) certified under subsection (q) of this section.

(C) The systems must meet all performance standards and other requirements for initial approval developed by the Secretary.

(3) In order to meet the requirements of this paragraph, a State must have in operation an eligibility determination system which provides for data matching through the Public Assistance Reporting Information System (PARIS) facilitated by the Secretary (or any successor system), including matching with medical assistance programs operated by other States.

(4) For purposes of paragraph (1)(B)(iv), the Secretary shall do the following:

(A) Not later than September 1, 2010:

(i) Identify those methodologies of the National Correct Coding Initiative administered by the Secretary (or any successor initiative to promote correct coding and to control improper coding leading to inappropriate payment) which are compatible to claims filed under this subchapter.

(ii) Identify those methodologies of such Initiative (or such other national correct coding methodologies) that should be incorporated into claims filed under this subchapter with respect to items or services for which States provide medical assistance under this subchapter and no national correct coding methodologies have been established under such Initiative with respect to subchapter XVIII.

(iii) Notify States of the methodologies identified under subparagraphs (A) and (B) (and of any other national correct coding methodologies identified under subparagraph (B)); and

(ii) how States are to incorporate such methodologies into claims filed under this subchapter.

(B) Not later than March 1, 2011, submit a report to Congress that includes the notice to States under clause (ii) of subparagraph (A) and an analysis supporting the identification of the methodologies made under clauses (i) and (ii) of subparagraph (A).

(s) Limitations on certain physician referrals

Notwithstanding the preceding provisions of this section, no payment shall be made to a State under this section for expenditures for medical assistance under the State plan consisting of a designated health service (as defined in subsection (h)(6) of section 1395nn of this title) furnished to an individual on the basis of the basis of a referral that would result in the denial of payment for the service under subchapter XVIII of this chapter if such subchapter provided for coverage of such service to the same extent and under the same terms and conditions as under the State plan, and subsections (f) and (g)(5) of such section shall apply to a provider of such a designated health service for which payment may be made under this subchapter in the same manner as such subsections apply to a provider of such a service for which payment may be made under such subchapter.

(t) Payments to encourage adoption and use of certified EHR technology

(1) For purposes of subsection (a)(3)(F), the payments described in this paragraph to encourage the adoption and use of certified EHR technology are payments made by the State in accordance with this subsection—

(A) to Medicaid providers described in paragraph (2)(A) not in excess of 85 percent of net average allowable costs (as defined in paragraph (3)(E)) for certified EHR technology (and support services including maintenance and training that is for, or is necessary for the adoption and operation of, such technology) with respect to such providers; and

(B) to Medicaid providers described in paragraph (2)(B) not in excess of the maximum amount permitted under paragraph (5) for the provider involved.

(2) In this subsection and subsection (a)(3)(F), the term “Medicaid provider” means—

(A) an eligible professional (as defined in paragraph (3)(B))—

(i) who is not hospital-based and has at least 30 percent of the professional’s patient volume (as estimated in accordance with a methodology established by the Secretary) attributable to individuals who are receiving medical assistance under this subchapter;

(ii) who is not described in clause (i), who is a pediatrician, who is not hospital-based, and who has at least 20 percent of the professional’s patient volume (as estimated in accordance with a methodology established by the Secretary) attributable to individuals who are receiving medical assistance under this subchapter; and

(iii) who practices predominantly in a Federally qualified health center or rural health clinic and has at least 30 percent of the pro-
Medicaid provider under this subsection unless an eligible professional shall not qualify as a
any right to payment under sections 1395w–4(l) and 1395w–23(l) of this title with respect to the eligible professional has been waived in a manner specified by the Secretary. For purposes of calculating patient volume under subparagraph (A)(iii), insofar as it is related to uncompensated care, the Secretary may require the adjustment of such uncompensated care data so that it would be an appropriate proxy for charity care, including a downward adjustment to eliminate bad debt data from uncompensated care. In applying subparagraphs (A) and (B)(ii), the methodology established by the Secretary for patient volume shall include individuals enrolled in a Medicaid managed care plan (under section subsection (m) or section 1396u–2 of this title).

(3) In this subsection and subsection (a)(3)(F):
(A) The term “certified EHR technology” means a qualified electronic health record (as defined in *300jj*(13) of this title) that is certified pursuant to section 300j–11(c)(4)(B) of this title as meeting standards adopted under section 300j–11 of this title that are applicable to the type of record involved (as determined by the Secretary, such as an ambulatory electronic health record for office-based physicians or an inpatient hospital electronic health record for hospitals).
(B) The term “eligible professional” means a—

(i) physician;
(ii) dentist;
(iii) certified nurse mid-wife;
(iv) nurse practitioner; and
(v) physician assistant insofar as the assistant is practicing in a rural health clinic that is led by a physician assistant or is practicing in a Federally qualified health center that is so led.
(C) The term “average allowable costs” means, with respect to certified EHR technology of Medicaid providers described in paragraph (2)(A) for—

(i) the first year of payment with respect to such a provider, the average costs for the purchase and initial implementation or upgrade of such technology (and support services including training that is for, or is necessary for the adoption and initial operation of such technology) for such providers, as determined by the Secretary based upon studies conducted under paragraph (4)(C);

(4)(A) With respect to a Medicaid provider described in paragraph (2)(A), subject to subparagraph (B), in no case shall—

(i) the net average allowable costs under this subsection for the first year of payment (which may not be later than 2016), which is intended to cover the costs described in paragraph (3)(C)(i), exceed $25,000 (or such lesser amount as the Secretary determines based on studies conducted under paragraph (C));

(ii) the net average allowable costs under this subsection for a subsequent year of payment, which is intended to cover costs described in paragraph (3)(C)(ii), exceed $10,000; and

(iii) payments be made for costs described in clause (ii) after 2021 or over a period of longer than 5 years.

(4)(B) In the case of Medicaid provider described in paragraph (2)(A)(ii), the dollar

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amounts specified in subparagraph (A) shall be 2/3 of the dollar amounts otherwise specified.

(C) For the purposes of determining average allowable costs under this subsection, the Secretary shall study the average costs to Medicaid providers described in paragraph (2)(A) of purchase and initial implementation and upgrade of certified EHR technology described in paragraph (3)(C)(i) and the average costs to such providers of operations, maintenance, and use of such technology described in paragraph (3)(C)(ii). In determining such costs for such providers, the Secretary may utilize studies of such amounts submitted by States.

(5)(A) In no case shall the payments described in paragraph (1)(B) with respect to a Medicaid provider described in paragraph (2)(B) exceed—

(i) in the aggregate the product of—

(I) the overall hospital EHR amount for the provider computed under subparagraph (B); and

(II) the Medicaid share for such provider computed under subparagraph (C):

(ii) in any year 50 percent of the product described in clause (i); and

(iii) in any 2-year period 90 percent of such product.

(B) For purposes of this paragraph, the overall hospital EHR amount, with respect to a Medicaid provider, is the sum of the applicable amounts specified in section 1395ww(n)(2)(A) of this title for such provider for the first 4 payment years (as estimated by the Secretary) determined as if the Medicare share specified in clause (i) of such section were 1. The Secretary shall establish, in consultation with the State, the overall hospital EHR amount for each such Medicaid provider eligible for payments under paragraph (1)(B). For purposes of this subparagraph in computing the amounts under section 1395ww(n)(2)(C) of this title for payment years after the first payment year, the Secretary shall assume that in subsequent payment years discharges increase at the average annual rate of growth of the most recent 3 years for which discharge data are available per year.

(C) The Medicaid share computed under this subparagraph, for a Medicaid provider for a period specified by the Secretary, shall be calculated in the same manner as the Medicare share under section 1395ww(n)(2)(D) of this title for such a hospital and period, except that there shall be substituted for the numerator under clause (i) of such section the amount that is equal to the number of inpatient-bed-days (as established by the Secretary) which are attributable to individuals who are receiving medical assistance under this subchapter and who are not described in section 1395ww(n)(2)(D)(i) of this title. In computing inpatient-bed-days under the previous sentence, the Secretary shall take into account inpatient-bed-days attributable to inpatient-bed-days that are paid for individuals enrolled in a Medicaid managed care plan (under subsection (m) or section 1396u-2 of this title).

(D) In no case may the payments described in paragraph (1)(B) with respect to a Medicaid provider described in paragraph (2)(B) be paid—

(i) for any year beginning after 2016 unless the provider has been provided payment under paragraph (1)(B) for the previous year; and

(ii) over a period of more than 6 years of payment.

(6) Payments described in paragraph (1) are not in accordance with this subsection unless the following requirements are met:

(A)(i) The State provides assurances satisfactory to the Secretary that amounts received under subsection (a)(3)(F) with respect to payments to a Medicaid provider are paid, subject to clause (ii), directly to such provider (or to an employer or facility to which such provider has assigned payments) without any deduction or rebate.

(ii) Amounts described in clause (i) may also be paid to an entity promoting the adoption of certified EHR technology, as designated by the State, if participation in such a payment arrangement is voluntary for the eligible professional involved and if such entity does not retain more than 5 percent of such payments for costs not related to certified EHR technology and support services including maintenance and training) that is for, or is necessary for the operation of, such technology.

(B) A Medicaid provider described in paragraph (2)(A) is responsible for payment of the remaining 15 percent of the net average allowable cost and shall be determined to have met such responsibility to the extent that the payment to the Medicaid provider is not in excess of 85 percent of the net average allowable cost.

(C)(i) Subject to clause (ii), with respect to payments to a Medicaid provider—

(I) for the first year of payment to the Medicaid provider under this subsection, the Medicaid provider demonstrates that it is engaged in efforts to adopt, implement, or upgrade certified EHR technology; and

(II) for a year of payment, other than the first year of payment to the Medicaid provider under this subsection, the Medicaid provider demonstrates meaningful use of certified EHR technology through a means that is approved by the State and acceptable to the Secretary, and that may be based upon the methodologies applied under section 1395ww–4(o) or 1395w(n) of this title.

(ii) In the case of a Medicaid provider who has completed adopting, implementing, or upgrading such technology prior to the first year of payment to the Medicaid provider under this subsection, clause (1)(I) shall not apply and clause (1)(II) shall apply to each year of payment to the Medicaid provider under this subsection, including the first year of payment.

(D) To the extent specified by the Secretary, the certified EHR technology is compatible with State or Federal administrative management systems.

For purposes of subparagraph (B), a Medicaid provider described in paragraph (2)(A) may accept payments for the costs described in such subparagraph from a State or local government. For purposes of subparagraph (C), in establishing the means described in such subparagraph, which may include clinical quality reporting to the State, the State shall ensure that populations with unique needs, such as children, are appropriately addressed.
(7) With respect to Medicaid providers described in paragraph (2)(A), the Secretary shall ensure coordination of payment with respect to such providers under sections 1395w–4(o) and 1395w–23(l) of this title and under this subsection to ensure no duplication of funding. Such coordination shall include, to the extent practicable, a data matching process between State Medicaid agencies and the Centers for Medicare & Medicaid Services using national provider identifiers. For such purposes, the Secretary may require the submission of such data relating to payments to such Medicaid providers as the Secretary may specify.

(8) In carrying out paragraph (6)(C), the State and Secretary shall seek, to the maximum extent practicable, to avoid duplicative requirements from Federal and State governments to demonstrate meaningful use of certified EHR technology under this subchapter and subchapter XVIII. In doing so, the Secretary may deem satisfaction of requirements for such meaningful use for a payment year under subchapter XVIII to be sufficient to qualify as meaningful use under this subsection. The Secretary may also specify the reporting periods under this subsection in order to carry out this paragraph.

(9) In order to be provided Federal financial participation under subsection (a)(3)(F)(i), a State must demonstrate to the satisfaction of the Secretary, that the State—

(A) is using the funds provided for the purposes of administering payments under this subsection, including tracking of meaningful use by Medicaid providers;

(B) is conducting adequate oversight of the program under this subsection, including routine tracking of meaningful use attestations and reporting mechanisms; and

(C) is pursuing initiatives to encourage the adoption of certified EHR technology to promote health care quality and the exchange of health care information under this subchapter, subject to applicable laws and regulations governing such exchange.

(10) The Secretary shall periodically submit reports to the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on status, progress, and oversight of payments described in paragraph (1), including steps taken to carry out paragraph (7). Such reports shall also describe the extent of adoption of certified EHR technology among Medicaid providers resulting from the provisions of this subsection and any improvements in health outcomes, clinical quality, or efficiency resulting from such adoption.

(u) Limitation of Federal financial participation in erroneous medical assistance expenditures

(I) A notwithstanding subsection (a)(1) of this section, if the ratio of a State’s erroneous excess payments for medical assistance (as defined in subparagraph (D)) to its total expenditures for medical assistance under the State plan approved under this subchapter exceeds 0.03, for the period consisting of the third and fourth quarters of fiscal year 1983, or for any full fiscal year thereafter, then the Secretary shall make no payment for such period or fiscal year with respect to so much of such erroneous excess payments as exceeds such allowable error rate of 0.03.

(3) The Secretary may waive, in certain limited cases, all or part of the reduction required under subparagraph (A) with respect to any State if such State is unable to reach the allowable error rate for a period or fiscal year despite a good faith effort by such State.

(C) In estimating the amount to be paid to a State under subsection (d) of this section, the Secretary shall take into consideration the limitation on Federal financial participation imposed by subparagraph (A) and shall reduce the estimate he makes under subsection (d)(1) of this section, for purposes of payment to the State under subsection (d)(3) of this section, in light of any expected erroneous excess payments for medical assistance (estimated in accordance with such criteria, including sampling procedures, as he may prescribe and subject to subsequent adjustment, if necessary, under subsection (d)(2) of this section). For purposes of this subsection, the term “erroneous excess payments for medical assistance” means the total of—

(I) payments under the State plan with respect to ineligible individuals and families, and

(II) overpayments on behalf of eligible individuals and families.

(iv) In determining the amount of erroneous excess payments for medical assistance to an ineligible individual or family under clause (i)(I), if such ineligibility is the result of an error in determining the amount of the resources of such individual or family, the amount of the erroneous excess payment shall be the smaller of (I) the amount of the payment with respect to such individual or family, or (II) the difference between the actual amount of such resources and the allowable resource level established under the State plan.

(iii) In determining the amount of erroneous excess payments for medical assistance to an ineligible individual or family under clause (i)(II), the amount of the erroneous excess payment shall be the smaller of (I) the amount of the payment on behalf of the individual or family, or (II) the difference between the actual amount incurred for medical care by the individual or family and the amount which should have been incurred in order to establish eligibility for medical assistance.

(iv) In determining the amount of erroneous excess payments, there shall not be included any error resulting from a failure of an individual to cooperate or give correct information with respect to third-party liability as required under section 1396k(a)(1)(C) or 602(a)(26)(C) of this title or with respect to payments made in violation of section 1396c of this title.
of this title), for items and services described in subsection (a) of section 1396r-1a of this title provided to a child during a presumptive eligibility period under such section, or for medical assistance provided to an individual described in subsection (a) of section 1396r-1b of this title during a presumptive eligibility period under such section.

(E) For purposes of subparagraph (D), there shall be excluded, in determining both erroneous excess payments for medical assistance and total expenditures for medical assistance—

(i) payments with respect to any individual whose eligibility therefor was determined exclusively by the Secretary under an agreement pursuant to section 1383c of this title and such other classes of individuals as the Secretary may by regulation prescribe whose eligibility was determined in part under such an agreement; and

(ii) payments made as the result of a technical error.

(2) The State agency administering the plan approved under this subchapter shall, at such times and in such form as the Secretary may specify, provide information on the rates of erroneous excess payments made (or expected, with respect to future periods specified by the Secretary) in connection with its administration of such plan, together with any other data he requests that are reasonably necessary for him to carry out the provisions of this sub-section.

(3)(A) If a State fails to cooperate with the Secretary in providing information necessary to carry out this subsection, the Secretary, directly or through contractual or such other arrangements as he may find appropriate, shall establish the error rates for that State on the basis of the best data reasonably available to him and in accordance with such techniques for sampling and estimating as he finds appropriate.

(B) In any case in which it is necessary for the Secretary to exercise his authority under subparagraph (A) to determine a State’s error rates for a fiscal year, the amount that would otherwise be payable to such State under this subchapter for quarters in such year shall be reduced by the costs incurred by the Secretary in making (directly or otherwise) such determination.

(4) This sub-section shall not apply with respect to Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, or American Samoa.

(v) Medical assistance to aliens not lawfully admitted for permanent residence

(1) Notwithstanding the preceding provisions of this section, except as provided in paragraphs (2) and (4), no payment may be made to a State under this section for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

(2) Payment shall be made under this section for care and services that are furnished to an alien described in paragraph (1) only if—

(A) such care and services are necessary for the treatment of an emergency medical condition of the alien,

(B) such alien otherwise meets the eligibility requirements for medical assistance under the State plan approved under this subchapter (other than the requirement of the receipt of aid or assistance under subchapter IV of this chapter, supplemental security income benefits under subchapter XVI of this chapter, or a State supplementary payment), and

(C) such care and services are not related to an organ transplant procedure.

(3) For purposes of this subsection, the term “emergency medical condition” means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

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

(B) serious impairment to bodily functions, or

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

(4)(A) A State may elect (in a plan amendment under this subchapter) to provide medical assistance under this subchapter, notwithstanding sections 1611(a), 1612(b), 1613, and 1631 of title 8, to children and pregnant women who are lawfully residing in the United States (including battered individuals described in section 1641(c) of title 8) and who are otherwise eligible for such assistance, within either or both of the following eligibility categories:

(i) Pregnant women

Women during pregnancy (and during the 60-day period beginning on the last day of the pregnancy).

(ii) Children

Individuals under 21 years of age, including optional targeted low-income children described in section 1396d(u)(2)(B) of this title.

(B) In the case of a State that has elected to provide medical assistance to a category of aliens under subparagraph (A), no debt shall accrue under an affidavit of support against any sponsor of such an alien on the basis of provision of assistance to such category and the cost of such assistance shall not be considered as an unreimbursed cost.

(C) As part of the State’s ongoing eligibility redetermination requirements and procedures for an individual provided medical assistance as a result of an election by the State under subparagraph (A), a State shall verify that the individual continues to lawfully reside in the United States using the documentation presented to the State by the individual on initial enrollment. If the State cannot successfully verify that the individual is lawfully residing in the United States in this manner, it shall require that the individual provide the State with further documentation or other evidence to verify that the individual is lawfully residing in the United States.
(w) Prohibition on use of voluntary contributions, and limitation on use of provider-specific taxes to obtain Federal financial participation under Medicaid

(1)(A) Notwithstanding the previous provisions of this section, for purposes of determining the amount to be paid to a State (as defined in paragraph (7)(D)) under subsection (a)(1) of this section for quarters in any fiscal year, the total amount expended during such fiscal year as medical assistance under the State plan (as determined without regard to this subsection) shall be reduced by the sum of any revenues received by the State (or by a unit of local government in the State) during the fiscal year—

(i) from provider-related donations (as defined in paragraph (2)(A)), other than—

(I) bona fide provider-related donations (as defined in paragraph (2)(B)), and

(II) donations described in paragraph (2)(C);

(ii) from health care related taxes (as defined in paragraph (3)(A)), other than broad-based health care related taxes (as defined in paragraph (3)(B));

(iii) from a broad-based health care related tax, if there is in effect a hold harmless provision (described in paragraph (4)) with respect to the tax; or

(iv) only with respect to State fiscal years (or portions thereof) occurring on or after January 1, 1992, and before October 1, 1995, from broad-based health care related taxes to the extent the amount of such taxes collected exceeds the limit established under paragraph (5).

(B) Notwithstanding the previous provisions of this section, for purposes of determining the amount to be paid to a State under subsection (a)(7) of this section for all quarters in a Federal fiscal year (beginning with fiscal year 1993), the total amount expended during the fiscal year for administrative expenditures under the State plan (as determined without regard to this subsection) shall be reduced by the sum of any revenues received by the State (or by a unit of local government in the State) during such quarters from donations described in paragraph (2)(C), to the extent the amount of such donations exceeds 10 percent of the amounts expended under the State plan under this subchapter during the fiscal year for purposes described in paragraphs (2), (3), (4), (6), and (7) of subsection (a) of this section.

(C)(i) Except as otherwise provided in clause (ii), subparagraph (A)(i) shall apply to donations received on or after January 1, 1992.

(ii) Subject to the limits described in clause (iii) and subparagraph (E), subparagraph (A)(i) shall not apply to donations received before the effective date specified in subparagraph (F) if such donations are received under programs in effect or as described in State plan amendments or related documents submitted to the Secretary by September 30, 1991, and applicable to State fiscal year 1992, as demonstrated by State plan amendments, written agreements, State budget documentation, or other documentary evidence in existence on that date.

(iii) In applying clause (ii) in the case of donations received in State fiscal year 1993, the maximum amount of such donations to which such clause may be applied may not exceed the total amount of such donations received in the corresponding period in State fiscal year 1992 (or not later than 5 days after the last day of the corresponding period).

(D)(i) Except as otherwise provided in clause (ii), subparagraphs (A)(ii) and (A)(iii) shall apply to taxes received on or after January 1, 1992.

(ii) Subparagraphs (A)(ii) and (A)(iii) shall not apply to impermissible taxes (as defined in clause (iii)) received before the effective date specified in subparagraph (F) to the extent the taxes (including the tax rate or base) were in effect, or the legislation or regulations imposing such taxes were enacted or adopted, as of November 22, 1991.

(iii) In this subparagraph and subparagraph (E), the term “impermissible tax” means a health care related tax for which a reduction may be made under clause (ii) or (iii) of subparagraph (A).

(E)(i) In no case may the total amount of donations and taxes permitted under the exception provided in subparagraphs (C)(ii) and (D)(ii) for the portion of State fiscal year 1992 occurring during calendar year 1992 exceed the limit under paragraph (5) minus the total amount of broad-based health care related taxes received in the portion of that fiscal year.

(ii) In no case may the total amount of donations and taxes permitted under the exception provided in subparagraphs (C)(ii) and (D)(ii) for State fiscal year 1993 exceed the limit under paragraph (5) minus the total amount of broad-based health care related taxes received in that fiscal year.

(F) In this paragraph in the case of a State—

(i) except as provided in clause (iii), with a State fiscal year beginning on or before July 1, the effective date is October 1, 1992,

(ii) except as provided in clause (iii), with a State fiscal year that begins after July 1, the effective date is January 1, 1993, or

(iii) with a State legislature which is not scheduled to have a regular legislative session in 1992, with a State legislature which is not scheduled to have a regular legislative session in 1993, or with a provider-specific tax enacted on November 4, 1991, the effective date is July 1, 1993.

(2)(A) In this subsection (except as provided in paragraph (6)), the term “provider-related donation” means any donation or other voluntary payment (whether in cash or in kind) made (directly or indirectly) to a State or unit of local government by—

(i) a health care provider (as defined in paragraph (7)(B)),

(ii) an entity related to a health care provider (as defined in paragraph (7)(C)), or

(iii) an entity providing goods or services under the State plan for which payment is made to the State under paragraph (2), (3), (4), (6), or (7) of subsection (a) of this section.

(B) For purposes of paragraph (1)(A)(i)(I), the term “bona fide provider-related donation” means a provider-related donation that has no direct or indirect relationship (as determined by the Secretary) to payments made under this
Secretary. The Secretary may by regulation published by the State to the satisfaction of the subchapter to that provider, to providers for the direct cost (including costs of training and of preparing and distributing outreach materials) of State or local agency personnel who are stationed at the hospital, clinic, or similar entity to determine the eligibility of individuals for medical assistance under this subchapter and to provide outreach services to eligible or potentially eligible individuals.

(3)(A) In this subsection (except as provided in paragraph (6)), the term "health care related tax" means a tax (as defined in paragraph (7)(F)) that—

(i) is related to health care items or services, or to the provision of, the authority to provide, or payment for, such items or services, or

(ii) is not limited to such items or services but provides for treatment of individuals or entities that are providing or paying for such items or services that is different from the treatment provided to other individuals or entities.

In applying clause (i), a tax is considered to relate to health care items or services if at least 85 percent of the burden of such tax falls on health care providers.

(B) In this subsection, the term "broad-based health care related tax" means a health care related tax which is imposed with respect to a class of health care items or services (as described in paragraph (7)(A)) or with respect to providers of such items or services and which, except as provided in subparagraphs (D), (E), and (F)—

(i) is imposed at least with respect to all items or services in the class furnished by all non-Federal, nonpublic providers in the State (or, in the case of a tax imposed by a unit of local government, the area over which the unit has jurisdiction) or is imposed with respect to all non-Federal, nonpublic providers in the class; and

(ii) is imposed uniformly (in accordance with subparagraph (C)).

(C)(i) Subject to clause (ii), for purposes of subparagraph (B)(i), a tax is considered to be imposed uniformly if—

(I) in the case of a tax consisting of a licensing fee or similar tax on a class of health care items or services (or providers of such items or services), the amount of the tax imposed is the same for every provider providing items or services within the class;

(II) in the case of a tax consisting of a licensing fee or similar tax imposed on a class of health care items or services (or providers of such services) on the basis of the number of beds (licensed or otherwise) of the provider, the amount of the tax is the same for each bed of each provider of such items or services in the class;

(III) in the case of a tax based on revenues or receipts with respect to a class of items or services (or providers of items or services) the tax is imposed at a uniform rate for all items and services (or providers of such items or services) in the class on all the gross revenues or receipts, or net operating revenues, relating to the provision of all such items or services (or all such providers) in the State (or, in the case of a tax imposed by a unit of local government within the State, in the area over which the unit has jurisdiction); or

(IV) in the case of any other tax, the State establishes to the satisfaction of the Secretary that the tax is imposed uniformly.

(ii) Subject to subparagraphs (D) and (E), a tax imposed with respect to a class of health care items and services is not considered to be imposed uniformly if the tax provides for any credits, exclusions, or deductions which have as their purpose or effect the return to providers of all or a portion of the tax paid in a manner that is inconsistent with subclauses (I) and (II) of subparagraph (E)(ii) or provides for a hold harmless provision described in paragraph (4).

(D) A tax imposed with respect to a class of health care items and services is considered to be imposed uniformly—

(i) notwithstanding that the tax is not imposed with respect to items or services (or the providers thereof) for which payment is made under a State plan under this subchapter or subchapter XVIII of this chapter, or

(ii) in the case of a tax described in subparagraph (C)(i)(III), notwithstanding that the tax provides for exclusion (in whole or in part) of revenues or receipts from a State plan under this subchapter or subchapter XVIII of this chapter.

(E)(i) A State may submit an application to the Secretary requesting that the Secretary treat a tax as a broad-based health care related tax, notwithstanding that the tax does not apply to all health care items or services in class (or all providers of such items and services), provides for a credit, deduction, or exclusion, is not applied uniformly, or otherwise does not meet the requirements of subparagraph (B) or (C). Permissible waivers may include exemptions for rural or sole-community providers.

(ii) The Secretary shall approve such an application if the State establishes to the satisfaction of the Secretary that—

(I) the net impact of the tax and associated expenditures under this subchapter as proposed by the State is generally redistributive in nature, and

(II) the amount of the tax is not directly correlated to payments under this subchapter for items or services with respect to which the tax is imposed.

The Secretary shall by regulation specify types of credits, exclusions, and deductions that will be considered to meet the requirements of this subparagraph.

(F) In no case shall a tax not qualify as a broad-based health care related tax under this
paragraph because it does not apply to a hospital that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code and that does not accept payment under the State plan under this subchapter or under subchapter XVIII of this chapter.

(4) For purposes of paragraph (1)(A)(iii), there is in effect a hold harmless provision with respect to a broad-based health care related tax imposed with respect to a class of items or services if the Secretary determines that any of the following applies:

(A) The State or other unit of government imposing the tax provides (directly or indirectly) for a payment (other than under this subchapter) to taxpayers and the amount of such payment is positively correlated either to the amount of such tax or to the difference between the amount of the tax and the amount of payment under the State plan.

(B) All or any portion of the payment made under this subchapter to the taxpayer varies based only upon the amount of the total tax paid.

(C)(i) The State or other unit of government imposing the tax provides (directly or indirectly) for any payment, offset, or waiver that guarantees to hold taxpayers harmless for any portion of the costs of the tax.

(ii) For purposes of clause (i), a determination of the existence of an indirect guarantee shall be made under paragraph (3)(i) of section 333.68(f) of title 42, Code of Federal Regulations, as in effect on November 1, 2006, except that for portions of fiscal years beginning on or after January 1, 2006, and before October 1, 2011, “5.5 percent” shall be substituted for “6 percent” each place it appears.

The provisions of this paragraph shall not prevent the use of the tax to reimburse health care providers in a class for expenditures under this subchapter nor preclude States from relying on such reimbursement to justify or explain the tax in the legislative process.

(5)(A) For purposes of this subsection, the limit under this subparagraph with respect to a State is an amount equal to 25 percent (or, if greater, the State base percentage, as defined in subparagraph (B)) of the non-Federal share of the total amount expended under the State plan during a State fiscal year (or portion thereof), as it would be determined pursuant to paragraph (1)(A) without regard to paragraph (1)(A)(iv).

(B)(i) In subparagraph (A), the term “State base percentage” means, with respect to a State, an amount (expressed as a percentage) equal to—

(I) the total of the amount of health care related taxes (whether or not broad-based) and the amount of provider-related donations (whether or not bona fide) projected to be collected (in accordance with clause (ii)) during State fiscal year 1992, divided by

(II) the non-Federal share of the total amount estimated to be expended under the State plan during such State fiscal year.

(ii) For purposes of clause (i)(I), in the case of a tax that is not in effect throughout State fiscal year 1992 or the rate (or base) of which is increased during such fiscal year, the Secretary shall project the amount to be collected during such fiscal year as if the tax (or increase) were in effect during the entire State fiscal year.

(C)(i) The total amount of health care related taxes under subparagraph (B)(i)(I) shall be determined by the Secretary based on only those taxes (including the tax rate or base) which were in effect, or for which legislation or regulations imposing such taxes were enacted or adopted, as of November 22, 1991.

(ii) The amount of provider-related donations under subparagraph (B)(i)(I) shall be determined by the Secretary based on programs in effect on September 30, 1991, and applicable to State fiscal year 1992, as demonstrated by State plan amendments, written agreements, state budget documentation, or other documentary evidence in existence on that date.

(iii) The amount of expenditures described in subparagraph (B)(i)(II) shall be determined by the Secretary based on the best data available as of December 12, 1991.

(6)(A) Notwithstanding the provisions of this subsection, the Secretary may not restrict States' use of funds where such funds are derived from State or local taxes (or funds appropriated to State university teaching hospitals) transferred from or certified by units of government within a State as the non-Federal share of expenditures under this subchapter, regardless of whether the unit of government is also a health care provider, except as provided in section 1396a(a)(2) of this title, unless the transferred funds are derived by the unit of government from donations or taxes that would not otherwise be recognized as the non-Federal share under this section.

(B) For purposes of this subsection, funds the use of which the Secretary may not restrict under subparagraph (A) shall not be considered to be a provider-related donation or a health care related tax.

(7) For purposes of this subsection:

(A) Each of the following shall be considered a separate class of health care items and services:

(i) Inpatient hospital services.

(ii) Outpatient hospital services.

(iii) Nursing facility services (other than services of intermediate care facilities for the mentally retarded).

(iv) Services of intermediate care facilities for the mentally retarded.

(v) Physicians' services.

(vi) Home health care services.

(vii) Outpatient prescription drugs.

(viii) Services of managed care organizations (including health maintenance organizations, preferred provider organizations, and such other similar organizations as the Secretary may specify by regulation).

(ix) Such other classification of health care items and services consistent with this subparagraph as the Secretary may establish by regulation.

(B) The term “health care provider” means an individual or person that receives payments for the provision of health care items or services.

(C) An entity is considered to be “related” to a health care provider if the entity—
(i) is an organization, association, corporation or partnership formed by or on behalf of health care providers;

(ii) is a person with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the provider;

(iii) is the employee, spouse, parent, child, or sibling of the provider (or of a person described in clause (ii)); or

(iv) has a similar, close relationship (as defined in regulations) to the provider.

(D) The term “State” means only the 50 States and the District of Columbia but does not include any State whose entire program under this subchapter is operated under a waiver granted under section 1315 of this title.

(E) The “State fiscal year” means, with respect to a specified year, a State fiscal year ending in that specified year.

(F) The term “tax” includes any licensing fee, assessment, or other mandatory payment, but does not include payment of a criminal or civil fine or penalty (other than a fine or penalty imposed in lieu of or instead of a fee, assessment, or other mandatory payment).

(G) The term “unit of local government” means, with respect to a State, a city, county, special purpose district, or other governmental unit in the State.

(x) Satisfactory documentary evidence of citizenship or nationality by individual declaring to be citizen or national of United States

(1) For purposes of section 1396a(a)(46)(B)(i) of this title, the requirement of this subsection is, with respect to an individual declaring to be a citizen or national of the United States, that, subject to paragraph (2), there is presented satisfactory documentary evidence of citizenship or nationality (as defined in paragraph (3)) of the individual.

(2) The requirement of paragraph (1) shall not apply to an individual declaring to be a citizen or national of the United States who is eligible for medical assistance under this subchapter—

(A) and is entitled to or enrolled for benefits under any part of subchapter XVIII;

(B) and is receiving—

(i) disability insurance benefits under section 422 of this title or monthly insurance benefits under section 402 of this title based on such individual’s disability (as defined in section 423(d) of this title); or

(ii) supplemental security income benefits under subchapter XVI;

(C) and with respect to whom—

(i) child welfare services are made available under part B of subchapter IV on the basis of being a child in foster care; or

(ii) adoption or foster care assistance is made available under part E of subchapter IV;

(D) pursuant to the application of section 1396a(e)(4) of this title (and, in the case of an individual who is eligible for medical assistance on such basis, the individual shall be deemed to have provided satisfactory documentary evidence of citizenship or nationality and shall not be required to provide further documentary evidence on any date that occurs during or after the period in which the individual is eligible for medical assistance on such basis); or

(E) on such basis as the Secretary may specify under which satisfactory documentary evidence of citizenship or nationality has been previously presented.

(3)(A) For purposes of this subsection, the term “satisfactory documentary evidence of citizenship or nationality” means—

(i) any document described in subparagraph (B); or

(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

(B) The following are documents described in this subparagraph:

(i) A United States passport.

(ii) Form N–550 or N–570 (Certificate of Naturalization).

(iii) Form N–560 or N–561 (Certificate of United States Citizenship).

(iv) A valid State-issued driver’s license or other identity document described in section 1324a(b)(1)(D) of title 8, but only if the State issuing the license or such document requires proof of United States citizenship before issuance of such license or document or obtains a social security number from the applicant and verifies before certification that such number is valid and assigned to the applicant who is a citizen.

(v)(D) Except as provided in subclause (II), a document issued by a federally recognized Indian tribe evidencing membership or enrollment in, or affiliation with, such tribe (such as a tribal enrollment card or certificate of degree of Indian blood).

(II) With respect to those federally recognized Indian tribes located within States having an international border whose membership includes individuals who are not citizens of the United States, the Secretary shall, after consulting with such tribes, issue regulations authorizing the presentation of such other forms of documentation (including tribal documentation, if appropriate) that the Secretary determines to be satisfactory documentary evidence of citizenship or nationality for purposes of satisfying the requirement of this subsection.

(vi) Such other document as the Secretary may specify, by regulation, that provides proof of United States citizenship or nationality and that provides a reliable means of documentation of personal identity.

(C) The following are documents described in this subparagraph:

(i) A certificate of birth in the United States.

(ii) Form FS–545 or Form DS–1350 (Certification of Birth Abroad).

(iii) Form I–197 (United States Citizen Identification Card).


(v) Such other document (not described in subparagraph (B)(iv)) as the Secretary may specify that provides proof of United States citizenship or nationality.
(D) The following are documents described in this subparagraph:
   (i) Any identity document described in section 1324a(b)(1)(D) of title 8.
   (ii) Any other documentation of personal identity of such other type as the Secretary finds, by regulation, provides a reliable means of identification.
   (E) A reference in this paragraph to a form includes a reference to any successor form.

(4) In the case of an individual declaring to be a citizen or national of the United States with respect to whom a State requires the presentation of satisfactory documentary evidence of citizenship or nationality under section 1396a(a)(46)(B)(i) of this title, the individual shall be provided at least the reasonable opportunity to present satisfactory documentary evidence of citizenship or nationality under this subsection as is provided under clauses (i) and (ii) of section 1320b–7(d)(4)(A) of this title to an individual for the submittal to the State of evidence indicating a satisfactory immigration status.

(5) Nothing in subparagraph (A) or (B) of section 1396a(a)(46) of this title, the preceding paragraphs of this subsection, or the Deficit Reduction Act of 2005, including section 6036 of such Act, shall be construed as changing the requirement of section 1396a(e)(4) of this title that a child born in the United States to an alien mother for whom medical assistance for the delivery of such child is available as treatment of an emergency medical condition pursuant to subsection (v) shall be deemed eligible for medical assistance during the first year of such child’s life.

(y) Payments for establishment of alternate non-emergency services providers

(1) Payments

   In addition to the payments otherwise provided under subsection (a), subject to paragraph (2), the Secretary shall provide for payments to States under such subsection for the establishment of alternate non-emergency service providers (as defined in section 1396e–1(e)(5)(B) of this title), or networks of such providers.

(2) Limitation

   The total amount of payments under this subsection shall not exceed $50,000,000 during the 4-year period beginning with 2006. This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Secretary to provide for the payment of amounts provided under this subsection.

(3) Preference

   In providing for payments to States under this subsection, the Secretary shall provide preference to States that establish, or provide for, alternate non-emergency services providers or networks of such providers that—
   (A) serve rural or underserved areas where beneficiaries under this subchapter may not have regular access to providers of primary care services; or
   (B) are in partnership with local community hospitals.

(4) Form and manner of payment

   Payment to a State under this subsection shall be made only upon the filing of such application in such form and in such manner as the Secretary shall specify. Payment to a State under this subsection shall be made in the same manner as other payments under subsection (a).

(2) Medicaid transformation payments

   (1) In general

      In addition to the payments provided under subsection (a), subject to paragraph (4), the Secretary shall provide for payments to States for the adoption of innovative methods to improve the effectiveness and efficiency in providing medical assistance under this subchapter.

   (2) Permissible uses of funds

      The following are examples of innovative methods for which funds provided under this subsection may be used:
      (A) Methods for reducing patient error rates through the implementation and use of electronic health records, electronic clinical decision support tools, or e-prescribing programs.
      (B) Methods for improving rates of collection from estates of amounts owed under this subchapter.
      (C) Methods for reducing waste, fraud, and abuse under the program under this subchapter, such as reducing improper payment rates as measured by annual payment error rate measurement (PERM) project rates.
      (D) Implementation of a medication risk management program as part of a drug use review program under section 1396b–8 of this title.
      (E) Methods in reducing, in clinically appropriate ways, expenditures under this subchapter for covered outpatient drugs, particularly in the categories of greatest drug utilization, by increasing the utilization of generic drugs through the use of education programs and other incentives to promote greater use of generic drugs.
      (F) Methods for improving access to primary and specialty physician care for the uninsured using integrated university-based hospital and clinic systems.

   (3) Application; terms and conditions

      (A) In general

         No payments shall be made to a State under this subsection unless the State applies to the Secretary for such payments in a form, manner, and time specified by the Secretary.

      (B) Terms and conditions

         Such payments are made under such terms and conditions consistent with this subsection as the Secretary prescribes.

      (C) Annual report

         Payment to a State under this subsection is conditioned on the State submitting to
the Secretary an annual report on the programs supported by such payment. Such report shall include information on—
   (i) the specific uses of such payment;  
(ii) an assessment of quality improvements and clinical outcomes under such programs; and  
(iii) estimates of cost savings resulting from such programs.

(4) Funding

(A) Limitation on funds

The total amount of payments under this subsection shall be equal to, and shall not exceed—
   (i) $75,000,000 for fiscal year 2007; and  
(ii) $75,000,000 for fiscal year 2008.

This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Secretary to provide for the payment of amounts provided under this subsection.

(B) Allocation of funds

The Secretary shall specify a method for allocating the funds made available under this subsection among States. Such method shall provide preference for States that demonstrate programs that target health providers that treat significant numbers of Medicaid beneficiaries. Such method shall provide that not less than 25 percent of such funds shall be allocated among States the population of which (as determined according to data collected by the United States Census Bureau) as of July 1, 2004, was more than 105 percent of the population of the respective State (as so determined) as of April 1, 2000.

(C) Form and manner of payment

Payment to a State under this subsection shall be made in the same manner as other payments under subsection (a). There is no requirement for State matching funds to receive payments under this subsection.

(5) Medication risk management program

(A) In general

For purposes of this subsection, the term "medication risk management program" means a program for targeted beneficiaries that ensures that covered outpatient drugs are appropriately used to optimize therapeutic outcomes through improved medication use and to reduce the risk of adverse events.

(B) Elements

Such program may include the following elements:

(i) The use of established principles and standards for drug utilization review and best practices to analyze prescription drug claims of targeted beneficiaries and identify outlier physicians.

(ii) On an ongoing basis provide outlier physicians—
    (A) a comprehensive pharmacy claims history for each targeted beneficiary under their care; and  
    (B) information regarding the frequency and cost of relapses and hospitalizations of targeted beneficiaries under the physician's care; and  
(iii) applicable best practice guidelines and empirical references.

(iii) Monitor outlier physician's prescribing, such as failure to refill, dosage strengths, and provide incentives and information to encourage the adoption of best clinical practices.

(C) Targeted beneficiaries

For purposes of this paragraph, the term "targeted beneficiaries" means Medicaid eligible beneficiaries who are identified as having high prescription drug costs and medical costs, such as individuals with behavioral disorders or multiple chronic diseases who are taking multiple medications.

Subsec. (m)(6)(B)(iv). Pub. L. 106–113, §1000(a)(6) [title VI, §606(b)(2)(C)], struck out cl. (iv) which read as follows: “that the State agency will contract, for purposes of meeting the requirement under section 1396a(a)(30)(C) of this title, with an organization or entity that under section 1320c–3 of this title services provided by an eligible organization pursuant to a contract under section 1396m of this title for the purpose of determining whether the quality of services meets professionally recognized standards of health care.”

Subsec. (e). Pub. L. 106–113, §1000(a)(6) [title VI, §608(j)], struck out second closing parenthesis after “section 1167(1) of title 29”.


Subsec. (q)(4). Pub. L. 106–170, §407(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The entity has procedures for reviewing complaints of the abuse and neglect of patients of health care facilities which receive payments under the State plan under this subchapter, and, where appropriate, for acting upon such complaints under the criminal laws of the State or for referring them to other State agencies for action.”

Subsec. (q)(5). Pub. L. 106–170, §407(b), inserted “or under any Federal health care program (as so defined)” before “to health care facilities” and inserted at end “All funds collected in accordance with this paragraph shall be credited exclusively to, and available for expenditure under, the Federal health care program (including the State plan under this subchapter) that was subject to the activity that was the basis for the collection.”

Subsec. (w)(1)(B). Pub. L. 106–113, §1000(a)(6) [title VI, §608(k)(1)], substituted “purposes” for “purposes”.


Subsec. (b)(5). Pub. L. 105–33, §4722(b), added par. (5).


Subsec. (d)(7)(A)(viii). Pub. L. 106–32, §4892(b)(v), inserted “or who is a PACE program eligible individual enrolled in a PACE program under section 1396a–4 of this title,” after “section 1396a(a)(10)(A) of this title.”

Subsec. (i)(2)(B). Pub. L. 105–33, §4724(a)(1), substituted “or” for “and” at end.


(viii) as follows: “Services of a Medicaid managed care organization with a contract under subsection (m) of this section.”


Subsec. (x)(2)(D). Pub. L. 109–171, §6036(a)(2), added subpar. (D) and struck out former subpar. (B) which read as follows: “on the basis of receiving supplemental security income benefits under subchapter XVI; or”.


Subsec. (c). Pub. L. 108–446 substituted “part C” for “part H”.


Subsec. (d)(3). Pub. L. 106–31, §3031(a), designated existing provisions as subpar. (A) and added subpar. (B).


Subsec. (f)(2). Pub. L. 106–113, §1000(a)(6) [title VI, §608(g)], struck out second period at end.


Pub. L. 106–113, §1000(a)(6) [title VI, §608(a)], substituted “‘1396a(a)(10)(A)(i)(XVII),’” after “‘1396a(a)(10)(A)(i)(XVI),’”.


Subsec. (m)(1)(A). Pub. L. 105–33, § 4701(b)(1), in introductory provisions, substituted "The term 'medicaid managed care organization' means a health maintenance organization, an eligible organization with a contract under section 1395mm of this title or a Medicare+Choice organization with a contract under part C of subchapter XVIII of this chapter, a provider sponsored organization, or an organization, which meets the requirements of section 1396a(w) of this title and—" for "The term ‘health maintenance organization’ means a public or private organization organized under the laws of any State, which meets the requirement of section 1396a(w) of this title and—" and inserted as closing provisions "An organization that is a qualified health maintenance organization (as defined in section 300e–9(d) of this title) is deemed to meet the requirements of clauses (i) and (ii)."


Subsec. (m)(2)(B). Pub. L. 105–33, § 4712(b)(2), struck out subpar. (F) which read as follows: "(i) a contract with an entity described in subparagraph (E) or (G), with a qualified health maintenance organization (as defined in section 300e–9(d) of this title) which meets the requirement of subparagraph (A)(ii), or with an eligible organization with a contract under section 1395mm of this title which meets the requirement of subparagraph (A)(ii), or "(ii) a program pursuant to an undertaking described in paragraph (6) in which at least 25 percent of the membership enrolled on a prepaid basis consists of individuals who (I) are not insured for benefits under part B of subchapter XVIII of this chapter, and (II) are eligible to receive benefits under this subchapter;".

Subsec. (m)(2)(C). Pub. L. 105–33, § 4712(c), struck out subpars. (D) and (E) which read as follows: "(D) In the case of a health maintenance organization, an eligible organization with a contract under section 1395mm of this title or a Medicare+Choice organization with a contract under part C of subchapter XVIII of this chapter, a provider sponsored organization, or an organization, which meets the requirements of section 1396a(w) of this title and—" and inserted as closing provisions "An organization that is a qualified health maintenance organization (as defined in section 300e–9(d) of this title) is deemed to meet the requirements of clauses (i) and (ii)."


Subsec. (m)(2)(E). Pub. L. 105–33, § 4706(2)(C), added subpar. (C) which read as follows: "(C) Subparagraph (A)(ii) shall not apply with respect to expenditures incurred by it for payment for services by an entity during the three-year period beginning on October 8, 1976, or beginning on the date the entity qualifies as a health maintenance organization (as determined by the Secretary), whichever occurs later, but only if the entity demonstrates to the satisfaction of the Secretary by the submission of plans for each year of such three-year period that it is making continuous efforts and progress toward achieving compliance with subparagraph (A)(ii)."

"(D) In the case of a health maintenance organization that is a public entity, the Secretary may modify or waive the requirement described in subparagraph (A)(ii) but only if the Secretary determines that the organization has taken and is taking reasonable efforts to enroll individuals who are not entitled to benefits under the State plan approved under this subchapter or under subchapter XVIII of this chapter.

"(E) In the case of a health maintenance organization that—"

"(i) is a nonprofit organization with at least 25,000 members,"

"(ii) is and has been a qualified health maintenance organization (as defined in section 300e–9(d) of this title) for a period of at least four years,"

"(iii) provides basic health services through members of the staff of the organization,"

"(iv) is located in an area designated as medically underserved under section 300e–17 of this title, and"

"(v) previously received a waiver of the requirement described in subparagraph (A)(ii) under section 1315 of this title,"

"the Secretary may modify or waive the requirement described in subparagraph (A)(ii) but only if the Secretary determines that special circumstances warrant such modification or waiver and that the organization has taken and is taking reasonable efforts to enroll individuals who are not entitled to benefits under the State plan approved under this subchapter or under subchapter XVIII of this chapter.


Subsec. (m)(2)(G). Pub. L. 105–33, § 4706(2)(E), struck out subpar. (F) which read as follows: "In the case of—"

"(i) a contract with an entity described in subparagraph (E) or (G), with a qualified health maintenance organization (as defined in section 300e–9(d) of this title) which meets the requirement of subparagraph (A)(ii), or "(ii) a program pursuant to an undertaking described in paragraph (6) in which at least 25 percent of the membership enrolled on a prepaid basis consists of individuals who (I) are not insured for benefits under part B of subchapter XVIII of this chapter, and (II) are eligible to receive benefits under this subchapter, and (III) a State plan may restrict the period in which requests for termination of enrollment without cause under subparagraph (A)(i) of this title are made at the rates of payment specified in section 1396u–2(a)(4) of this title;" for "with respect to enrollees under this subchapter that are under contract with a health maintenance organization, an eligible organization with a contract under section 1395mm of this title or a Medicare+Choice organization with a contract under part C of subchapter XVIII of this chapter, a provider sponsored organization, or an organization, which meets the requirements of section 1396a(w) of this title and—" and inserted as closing provisions "An organization that is a qualified health maintenance organization (as defined in section 300e–9(d) of this title) is deemed to meet the requirements of clauses (i) and (ii)."

Subsec. (m)(2)(H). Pub. L. 105–33, § 4702(b)(1)(B), in concluding provisions, inserted before period at end "or in part by any governmental entity" had the opportunity at the time of enrollment in the program to elect other coverage of health care costs that would have been paid in whole or in part by any governmental entity, a State plan may restrict the period in which requests for termination of enrollment without cause under subparagraph (A)(i) of this title are permitted to the first month of each period of enrollment, each such period of enrollment not to exceed six months in duration, but only if the State provides notification, at least twice per year, to individuals enrolled with such entity or organization of the right to terminate such enrollment and the restriction on the exercise of this right. Such restriction shall not apply to requests for termination of enrollment for cause.

Subsec. (m)(3)(G). Pub. L. 105–33, § 4703(b)(1)(B), substituted "clause (i)" for "clauses (i) and (ii)".

Subsec. (m)(3)(H). Pub. L. 105–33, § 4703(b)(1)(B), in concluding provisions, inserted before period at end "or with the manager described in such clause if the manager continues to have a contract described in section 1396d(x)(3) of this title with the State.

section on or before October 7, 1980, shall be deemed to be initially approved for purposes of this subsection.''

Secretary for purposes of subsection (a)(3)(B) of this section and detailed in an advance planning document approved by the Secretary are operational on or before the deadline established under subparagraph (B).

The deadline for operation of such systems for a State is September 30, 1985.

If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2)(A) and (7) of subsection (a) of this section without being subject to per centum reductions set forth in subparagraph (C) of this paragraph, a State must provide that mechanized claims processing and information retrieval systems of the type described in subsection (a)(3)(B) of this section and detailed in an advance planning document approved by the Secretary are operational on or before the deadline established under subparagraph (B). (B) The deadline for approval of such systems for a State is September 30, 1985.

If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2)(A) and (7) of subsection (a) of this section without being subject to the per centum reductions set forth in subparagraph (C) of this paragraph, a State must provide that mechanized claims processing and information retrieval systems of the type described in subsection (a)(3)(B) of this section and detailed in an advance planning document approved by the Secretary are operational on or before the deadline established under subparagraph (B). (B) The deadline for approval of such systems for a State is September 30, 1985.

If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2)(A) and (7) of subsection (a) of this section without being subject to the per centum reductions set forth in subparagraph (C) of this paragraph, a State must provide that mechanized claims processing and information retrieval systems of the type described in subsection (a)(3)(B) of this section and detailed in an advance planning document approved by the Secretary are operational on or before the deadline established under subparagraph (B). (B) The deadline for approval of such systems for a State is September 30, 1985.

If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2)(A) and (7) of subsection (a) of this section without being subject to the per centum reductions set forth in subparagraph (C) of this paragraph, a State must provide that mechanized claims processing and information retrieval systems of the type described in subsection (a)(3)(B) of this section and detailed in an advance planning document approved by the Secretary are operational on or before the deadline established under subparagraph (B). (B) The deadline for approval of such systems for a State is September 30, 1985.

If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2)(A) and (7) of subsection (a) of this section without being subject to the per centum reductions set forth in subparagraph (C) of this paragraph, a State must provide that mechanized claims processing and information retrieval systems of the type described in subsection (a)(3)(B) of this section and detailed in an advance planning document approved by the Secretary are operational on or before the deadline established under subparagraph (B). (B) The deadline for approval of such systems for a State is September 30, 1985.

If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2)(A) and (7) of subsection (a) of this section without being subject to the per centum reductions set forth in subparagraph (C) of this paragraph, a State must provide that mechanized claims processing and information retrieval systems of the type described in subsection (a)(3)(B) of this section and detailed in an advance planning document approved by the Secretary are operational on or before the deadline established under subparagraph (B). (B) The deadline for approval of such systems for a State is September 30, 1985.

If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2)(A) and (7) of subsection (a) of this section without being subject to the per centum reductions set forth in subparagraph (C) of this paragraph, a State must provide that mechanized claims processing and information retrieval systems of the type described in subsection (a)(3)(B) of this section and detailed in an advance planning document approved by the Secretary are operational on or before the deadline established under subparagraph (B). (B) The deadline for approval of such systems for a State is September 30, 1985.

If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2)(A) and (7) of subsection (a) of this section without being subject to the per centum reductions set forth in subparagraph (C) of this paragraph, a State must provide that mechanized claims processing and information retrieval systems of the type described in subsection (a)(3)(B) of this section and detailed in an advance planning document approved by the Secretary are operational on or before the deadline established under subparagraph (B). (B) The deadline for approval of such systems for a State is September 30, 1985.

If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2)(A) and (7) of subsection (a) of this section without being subject to the per centum reductions set forth in subparagraph (C) of this paragraph, a State must provide that mechanized claims processing and information retrieval systems of the type described in subsection (a)(3)(B) of this section and detailed in an advance planning document approved by the Secretary are operational on or before the deadline established under subparagraph (B). (B) The deadline for approval of such systems for a State is September 30, 1985.

If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2)(A) and (7) of subsection (a) of this section without being subject to the per centum reductions set forth in subparagraph (C) of this paragraph, a State must provide that mechanized claims processing and information retrieval systems of the type described in subsection (a)(3)(B) of this section and detailed in an advance planning document approved by the Secretary are operational on or before the deadline established under subparagraph (B). (B) The deadline for approval of such systems for a State is September 30, 1985.

If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2)(A) and (7) of subsection (a) of this section without being subject to the per centum reductions set forth in subparagraph (C) of this paragraph, a State must provide that mechanized claims processing and information retrieval systems of the type described in subsection (a)(3)(B) of this section and detailed in an advance planning document approved by the Secretary are operational on or before the deadline established under subparagraph (B). (B) The deadline for approval of such systems for a State is September 30, 1985.

If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2)(A) and (7) of subsection (a) of this section without being subject to the per centum reductions set forth in subparagraph (C) of this paragraph, a State must provide that mechanized claims processing and information retrieval systems of the type described in subsection (a)(3)(B) of this section and detailed in an advance planning document approved by the Secretary are operational on or before the deadline established under subparagraph (B). (B) The deadline for approval of such systems for a State is September 30, 1985.
1396c–8(a)(2) of this title with respect to the drugs so dispensed in all States, and (B) effective January 1, 1993, the State provides for drug use review in accordance with section 1396c–8(c) of this title; or.

Subsec. (i)(11). Pub. L. 101–306, §13633(c)(2), redesignated par. (12) as (11), transferred such par. to appear after par. (10), and substituted semicolon for period at end of former par. (11) redesignated (10).


Subsec. (o). Pub. L. 101–306, §13622(a)(2), substituted “‘regulation and including a group health plan (as defined in section 1167(1) of title 29), a service benefit plan, and a health maintenance organization’” for “‘regulation’”.


1991—Subsec. (a)(1). Pub. L. 102–234, §3(b)(2)(B), inserted “and section 1396c–4(f) of this title” after “of this section”.

Subsec. (e)(1). Pub. L. 102–234, §2(b)(2), substituted “a disability” for “handicapped child”, “Individuals with Disabilities Education Act” for “Education of the Handicapped Act”, and “and infant or toddler with a disability” for “a handicapped infant or toddler”.


Subsec. (f)(10). Pub. L. 102–234, §2(b)(2), struck out par. (19) added by Pub. L. 101–508, §470(b)(2)(B), which required the Secretary to determine that it is a health maintenance organization within the meaning of paragraph (1), for which no such determination has been made within 90 days of the submission of the application, to request such entity to submit an application for determination of the purposes of this subchapter that such entity is such a health maintenance organization. Such provisional determination shall remain in effect until such time as the Secretary makes a determination regarding the entity’s qualification under paragraph (1).”


Subsec. (m)(2)(B). Pub. L. 101–508, §470(b)(2), inserted “‘except with respect to clause (ix) of subparagraph (A),’ after the Secretary determines”.


Subsec. (m)(3). Pub. L. 101–508, §4732(d)(2), struck out par. (3) which read as follows: “A State may, in the case of an entity which has submitted an application to the Secretary for determination that it is a health maintenance organization within the meaning of paragraph (1) and for which no such determination has been made within 90 days of the submission of the application, make a provisional determination for the purposes of this subchapter that such entity is such a health maintenance organization. Such provisional determination shall remain in effect until such time as the Secretary makes a determination regarding the entity’s qualification under paragraph (1).”


Subsec. (u)(1)(D)(iv). Pub. L. 101–508, §4902(b), which directed amendment of subpart (C) by inserting before period at end of “or with respect to payments made in violation of section 1396e of this title”, was executed to subj. (D)(iv) to reflect the probable intent of Congress because subj. (C) does not have a cl. (iv).

1989—Subsec. (a)(2)(B). Pub. L. 101–239, §6001(b)(5)(A), inserted “‘including the costs for nurse aides to complete such competency evaluation programs’” after “1396(e)(1) of this title” and “‘or, for calendar quarters beginning on or after July 1, 1988, and before July 1, 1989, the lesser of 90 percent or the Federal medical assistance percentage plus 25 percentage points’” after “50 percent”.


Subsec. (i)(2). Pub. L. 101–239, §6111(d)(2), inserted “‘including items or services furnished in an emergency room of a hospital’ after “emergency item or service’”.

Subsec. (i)(5). Pub. L. 101–234 repealed Pub. L. 100–360, §202(h)(2), and provided that the provisions of law
amended or repealed by such section are restored or revived as if such section had not been enacted, see 1968 Amendment note below.


Subsec. (g)(4)(B). Pub. L. 100–203, §4212(d)(1)(B), substituted “and intermediate care facilities for the mentally retarded” for “skilled nursing facilities, and intermediate care facilities”.

Subsec. (g)(6)(B) to (D). Pub. L. 100–203, §4212(d)(1)(C), redesignated subpar. (C) as (B) and substituted “services in an intermediate care facility for the mentally retarded” for “intermediate care facilities”, re-designated subpar. (D) as (C), and struck out former subpar. (B) which read as follows: “Such recertifications in the case of nursing facility services shall be conducted at least—

(i) 30 days after the date of the initial certification,

(ii) 60 days after the date of the initial certification, and

(iv) every 60 days thereafter.”

Subsec. (g)(7). Pub. L. 100–203, §4212(d)(1)(D), struck out par. (7) which read as follows: “It is the duty and responsibility of the Secretary to assure that standards which govern the provision of care in skilled nursing facilities and intermediate care facilities under plans approved under this subchapter, and the enforcement of such standards, are adequate to protect the health and safety of residents and to promote the effective and efficient use of public monies.”

Subsec. (h). Pub. L. 100–203, §4211(g)(1), struck out subsec. (h) which related to reduction by Secretary of amount otherwise considered as expenditures under State plan where reasonable cost differential between statewide average cost of skilled nursing facility services and statewide average cost of intermediate care facility services does not exist for any calendar quarter beginning after June 30, 1973.

Subsec. (i). Pub. L. 100–203, §411(b)(1)(B), inserted sentence at end that nothing in par. (1) be construed as permitting a State to provide services under its plan under this subchapter that are not reasonable in amount, duration, and scope to achieve their purpose.

Subsec. (j)(1). Pub. L. 100–203, §411(b)(1)(A), substituted “and (j)” for “and (h), and (j)”.

Subsec. (a)(2)(A) to (C). Pub. L. 100–203, §4211(d)(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).


Subsec. (a)(3)(C). Pub. L. 100–203–80, §411(b)(3), substituted “or by an entity which meets the requirements of section 1320a–1 of this title, as determined by the Secretary,” after “organization.”

Subsec. (a)(7). Pub. L. 100–203, §421(e)(2), inserted “subject to section 1396a(g)(3)(B) of this title, after “(7)”.

Subsec. (f)(2). Pub. L. 100–203, §411(b)(1), as added by Pub. L. 100–360, §411(k)(10)(C)(ii), substituted “whether in the form of insurance premiums or otherwise and regardless of whether such costs are reimbursed under another public program of the State or political subdivision thereof” for “(whether in the form of insurance premiums or otherwise)”.
Subsec. (m)(2)(B)(i)(II). Pub. L. 98–369, §2373(b)(12)(B), substituted “of section 1396d(a)(1) of this title” for “of such section”.


Subsec. (m)(2)(E), (F). Pub. L. 98–369, §2364(2), added subpars. (E) and (F).


1983—Subsec. (t)(3). Pub. L. 97–448 substituted “purpose” for “purpose” and “the lower of the Federal medical assistance percentage for the State in effect for fiscal year 1981, or the Federal medical assistance percentage for the State in effect for fiscal year 1982” for “the Federal medical assistance percentage for States in effect for fiscal year 1981, disregarding any change in such percentage after fiscal year 1981”.


Subsec. (t)(3). Pub. L. 97–248, §157(g), struck out “without regard to section 609 of this title” after “consisting of one person if such plan”.

Subsec. (g)(1). Pub. L. 97–248, §137(b)(11), inserted “or which is a qualified health maintenance organization (as defined in section 300e–2(1) of this title)”.

Subsec. (g)(1)(A). Pub. L. 97–248, §137(b)(12), substituted “provided in an institution for the mentally retarded” for “described in section 1396d(d) of this title”.

Subsec. (k). Pub. L. 97–248, §137(b)(13), substituted “subsection (m) of this section” for “section 1396mm of this title”.

Subsec. (m)(2)(A). Pub. L. 97–248, §137(b)(14), substituted “or” for “and” before “(II)” in cl. (iv), and substituted “unforeseen” for “unforeseen” in cl. (vii)(II).


Subsec. (s)(1)(A). Pub. L. 97–248, §137(b)(15)(A), (B), in provisions following cl. (iii), substituted “fiscal year 1982” for “fiscal year 1981”, and subsections (a)(6) and (t) of this section, without regard to payments for claims relating to expenditures made for medical assistance for services received through a facility of the Indian Health Service,” for “subsection (t) of this section”.

Subsec. (s)(1)(C). Pub. L. 97–248, §137(b)(15)(C), inserted “a program in operation under”, before “a plan approved”.

Subsec. (s)(3)(D). Pub. L. 97–248, §137(b)(15)(D), substituted “that” for “determines that” for “most recent year (which shall consist of a 12-month period determined by the Secretary for this purpose)” for “most recent calendar year”, and “2- or 3-year period” for “3 calendar year period”, and struck out “calendar” wherever appearing.


Subsec. (s)(5)(A)(I). Pub. L. 97–248, §137(b)(15)(F), inserted “including amounts saved, to the extent such amounts can be documented to the satisfaction of the Secretary, by reason of the suspension or termination of a provider or other person for fraud or abuse, but only during the period of such suspension or termination or, if shorter, the 1-year period beginning on the date of such termination” for “recover or diverted”.

Subsec. (s)(5)(B). Pub. L. 97–248, §137(b)(27), inserted “or quarters” after “carried forward to the following quarter”.


1981 Amendment note below.

Subsec. (t)(1)(A). Pub. L. 97–248, §137(b)(16)(A), substituted “payments under subsection (a)(6) of this section, interest paid under subsection (d)(5) of this section, and payments for claims relating to expenditures made for medical assistance for services received through a facility of the Indian Health Service” for “interest paid under subsection (d)(5) of this section”.


Subsec. (t)(2)(A). Pub. L. 97–248, §137(b)(16)(A), substituted “payments under subsection (a)(6) of this section, interest paid under subsection (d)(5) of this section, and payments for claims relating to expenditures made for medical assistance for services received through a facility of the Indian Health Service” for “interest paid under subsection (d)(5) of this section”.


1981—Subsec. (a)(3)(B). Pub. L. 97–35, §2133(m), substituted “and” for “plus” at the end of subpar. (B) and added subpar. (C).

Subsec. (d)(5). Pub. L. 97–35, §2163, substituted “determination at a rate” for “determination (but not to exceed a period of twelve months with respect to disallowances made prior to October 1, 1981, or six months with respect to disallowances made thereafter) at a rate”.


Subsec. (g)(1)(A). Pub. L. 97–35, §2183(a), inserted “and the physician, or a physician assistant or nurse practitioner under the supervision of a physician” and the case of services that are intermediate care facility services described in section 1396d(d) of this title, every year” in parenthetical text.

Subsec. (i)(1). Pub. L. 97–35, §2174(b), struck out par. (1) which provided that payments shall not be made with respect to any amount paid for items or services furnished under the plan after Dec. 31, 1972, to the extent that such amount exceeds the charge which would have been determined to be reasonable for such items or services under fourth and fifth sentences of section 1395b(a)(3) of this title.


Subsec. (m)(1)(A). Pub. L. 97–35, §2178(a)(1), inserted “Health Maintenance Organization” substantially, and substituted reference to public and private organizations making services to individuals eligible for benefits under this subchapter and which makes adequate provision against the risk of insolvency for reference to a legal entity which provides health services to individuals enrolled in such organization and providing services and benefits to individuals eligible for benefits under specified provisions of this subchapter.

Subsec. (m)(2)(A). Pub. L. 97–35, §2178(a)(2), in cl. (i), substituted “75 percent of the membership of the entity which is enrolled on a prepaid basis” for “the membership of the entity”, and added cls. (iii) to (VII).

Subsec. (n). Pub. L. 97–35, §2106(b)(3), struck out “of this section” after “section 1395cc of this title” thereby
perfecting the amendment made by Pub. L. 96–499, §905(c)(2).
Subsec. (s). Pub. L. 97–35, §2161(c)(1), as amended by Pub. L. 97–248, §137(a)(2), repealed subsec. (s) which provided for reduction in medicaid payments to States, limitations on reductions, States included, and percentage reductions reduced under certain circumstances. See Effective Date of 1981 Amendment note below.
Subsec. (a)(6). Pub. L. 96–499, §963, substituted “such a quarter within the twelve-quarter period beginning with the first quarter in which a payment is made to the State pursuant to this paragraph, and (B) 75 per cent of the sums expended during each succeeding calendar quarter” for “each quarter beginning on or after October 1, 1977, and ending before October 1, 1980”.
Subsec. (j). Pub. L. 96–499, §905(c)(1), substituted provisions relating to the adjustment of amounts determined under subsec. (a)(1) of this section in accordance with section 1396m of this title for provisions relating to orders for suspension of payment.
Subsec. (n). Pub. L. 96–499, §905(c)(2), struck out “or is subject to a suspension of payment order issued under subsection (j)” after “section 1395c of this title”.
1979—Subsec. (m)(2)(C). Pub. L. 96–79 substituted “the date the entity qualifies as a health maintenance organization (as determined by the Secretary) for “the date the entity enters into a contract with the State under this subchapter for the provision of health services on a prepaid risk basis”.
1978—Subsec. (m)(1)(B). Pub. L. 95–559 struck out “shall be administered through the Assistant Secretary for Health and in the Office of the Assistant Secretary for Health, and the administration of such duties and functions” after “subparagraph (A).”
1977—Subsec. (a)(3)(B). Pub. L. 95–142, §10(a), inserted provisions relating to notice to individuals in a sample group and provisions exempting notice respecting conditions of which the entity consists of individuals who (I) are insured for benefits under this subchapter; in subpar. (B), made payment limitations inapplicable to individual with respect to whom such benefits are not being paid, and in cls. (i) and (ii) inserted “with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, (B) and (C)”.
1975—Subsec. (g)(1)(C). Pub. L. 94–182, §105(a), added subpar. (C) substituting “individuals who are recipients of money payments under a State plan approved under subchapter I, X, XIV, or part A of subchapter IV of this chapter, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance available to individuals described in section 1396a(a)(10)(A) of this title” for “individuals who are recipients of money payments under a State plan approved under subchapter I, X, XIV, or part A of subchapter IV of this chapter, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter; in subpar. (A) after “individuals sixty-five years of age or older”.
Subsec. (a)(5). Pub. L. 95–233, §18(1)(t), struck out “as found necessary by the Secretary (for the proper and efficient administration of the plan)” after “such quarter”.
Subsec. (b). Pub. L. 93–233, §§18(b)(2), (u), (x)(6), inserted in par. (2) after “individuals sixty-five years of age or older” text reading “and disabled individuals entitled to hospital insurance benefits under subchapter II of this chapter” and end text reading “other than amounts expended under provisions of the plan of such State required by section 1396a(a)(34) of this title,” and redesignated paras. (2) and (3) as (1) and (2), respectively.
Subsec. (d)(1). Pub. L. 92–233, §18(1)(B), struck out reference to subsec. (c) of this section.
Subsec. (d)(4). Pub. L. 93–233, §18(a)(12), in subpar. (A), made payment limitations inapplicable to individual with respect to whom such benefits are being paid under subchapter XVI of this chapter; in subpar. (B), made payment limitations inapplicable to individual with respect to whom such benefits are being paid under subchapter XVI of this chapter; in subpar. (C), redesignated as cl. (i) former cl. (iii), substituting “less than one-half of the membership of the entity consists of individuals who (I) are insured for benefits under part B of subchapter XVIII of this chapter or for benefits under both parts A and B of such subchapter, or (II) are eligible to receive benefits under this subchapter” for “more than one-half of the membership of which consists of individuals who are insured under parts A and B of subchapter XVIII of this chapter or recipients of benefits under this subchapter.”
Subsecs. (o) and (p). Pub. L. 95–142, §11(a), added subsecs. (o) and (p).
Subsec. (q). Pub. L. 95–142, §17(c), added subsec. (q).
1976—Subsec. (l). Pub. L. 94–552 repealed subsec. (l) which provided for reduction of amount of payments to States found not to be in compliance with section 1396g of this title.
Subsec. (a)(1). Pub. L. 93–233, §§13(a)(11), 18(c)(1), substituted “individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or part A of subchapter IV of this chapter, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, (B) and (C)”.
Subsec. (a)(5). Pub. L. 93–233, §18(a), substituted “sums expended with respect to costs incurred” for “sums expended”.
Subsec. (a)(5). Pub. L. 95–233, §18(1)(t), struck out “as found necessary by the Secretary (for the proper and efficient administration of the plan)” after “such quarter”.
Subsec. (b). Pub. L. 93–233, §§18(b)(2), (u), (x)(6), inserted in par. (2) after “individuals sixty-five years of age or older” text reading “and disabled individuals entitled to hospital insurance benefits under subchapter II of this chapter” and end text reading “, other than amounts expended under provisions of the plan of such State required by section 1396a(a)(34) of this title,” and redesignated paras. (2) and (3) as (1) and (2), respectively.
Subsec. (d)(1). Pub. L. 92–233, §18(1)(B), struck out reference to subsec. (c) of this section.
Subsec. (d)(4). Pub. L. 93–233, §18(a)(12), in subpar. (A), made payment limitations inapplicable to individual with respect to whom such benefits are being paid under subchapter XVI of this chapter; in subpar. (B), made payment limitations inapplicable to individual with respect to whom such benefits are being paid under subchapter XVI of this chapter; in subpar. (C), redesignated as cl. (i) former cl. (iii), substituting “has determined that the entity is a health maintenance organization” for “has not determined to be a health maintenance organization”;
and redesignated as cl. (ii) former cl. (ii), substituting “less than one-half of the membership of the entity consists of individuals who (I) are insured for benefits under part B of subchapter XVIII of this chapter or for benefits under both parts A and B of such subchapter, or (II) are eligible to receive benefits under this subchapter” for “more than one-half of the membership of which consists of individuals who are insured under parts A and B of subchapter XVIII of this chapter or recipients of benefits under this subchapter.”
and added subpar. (C).

**Effective Date of 2008 Amendment**

Pub. L. 110–379, §3(b), Oct. 8, 2008, 122 Stat. 4075, provided that:

“(1) In General.—Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] take effect on October 1, 2009.

“(2) Extension of Effective Date for State Law Amendment.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Oct. 8, 2008]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.”

**Effective Date of 2006 Amendment**


**Effective Date of 2005 Amendment**


**Effective Date of 2004 Amendment**

Pub. L. 108–357, title VII, §712(d), Oct. 22, 2004, 118 Stat. 1561, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 1396d of this title] take effect on the date of enactment of this Act [Oct. 22, 2004] and apply to medical assistance and services provided under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) on or after that date.”

**Effective Date of 2000 Amendments**

Amendment by section 702(c)(1) of Pub. L. 106–554 effective Jan. 1, 2001, and applicable to services furnished on or after such date, see section 1(a)(6) [title VII, §702(e)] of Pub. L. 106–554, set out as a note under section 1396a of this title.

Pub. L. 106–554, §1(a)(6) [title VII, §710(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–378, provided that:

“(1) The amendment made by subsection (a)(1) [amending this section] shall be effective as if included in the enactment of section 121 of the Foster Care Independence Act of 1999 (Public Law 106–113) and enacting provisions set out as notes under section 1396a of this title).

“(2) The amendment made by subsection (a)(2) [amending this section] shall be effective as if included in the enactment of the Breast and Cervical Cancer Prevention and Treatment Act of 2000 (Public Law 106–354).”

Amendment by Pub. L. 106–354 applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, without regard to whether final regulations to carry out such amendments have been promulgated by such date, see section 2(d) of Pub. L. 106–354, set out as a note under section 1396a of this title.

**Effective Date of 1999 Amendments**

Amendment by section 201(a)(4), (b) of Pub. L. 106–170 applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, see section 201(d) of Pub. L. 106–170, set out as a note under section 1396a of this title.


Amendment by section 1000(a)(6) [title VI, §604(a)(2), (b)(2)] of Pub. L. 106–113 applicable as of such date as the Secretary of Health and Human Services certifies to Congress that the Secretary is fully implementing section 1396a–2(c)(2) of this title, see section 1000(a)(6) [title VI, §604(c)(2)] of Pub. L. 106–112, set out as a note under section 1396a of this title.

amendment made by section 1002(a)(6) (title VI, §608(aa)(2)) is effective as if included in the enactment of HBA (the Balanced Budget Act of 1997, Pub. L. 105–33).

Amendment by section 1002(a)(6) (title VI, §608(e)-(k)) of Pub. L. 106–113 effective Nov. 29, 1999, see section 1002(a)(6) (title VI, §608(bb)) of Pub. L. 106–113, set out as a note under section 1396a of this title.

Pub. L. 106–31, title III, §3031(c), May 21, 1999, 113 Stat. 104, provided that: "This section [amending this section] and the amendments made by this section shall apply to amounts paid to a State prior to, on, or after the date of the enactment of this Act [May 21, 1999]."

**Effective Date of 1997 Amendments**

Section 162 of Pub. L. 105–100 provided that the amendment made by that section is effective as if included in the enactment of subtitle J (§§4001–4215) of title IV of the Balanced Budget Act of 1997, Pub. L. 105–33.

Section 4710 of title IV of Pub. L. 105–33 provided that:

"(a) **General Effective Date.**—Except as otherwise provided in this chapter (chapter 1 (§§4701–4710) of title IV of Pub. L. 105–33, enacting section 1396a–2 of this title, amending this section and sections 1320a–3, 1320a–7b, 1396a, 1396d, 1396e, 1396r–6, 1396r–8, 1396u–2, and 1396v of this title, and enacting provisions set out as a note under section 1396a–2 of this title) and section 4759 [enacting provisions set out as a note under section 1396a of this title], the amendments made by this chapter shall take effect on the date of the enactment of this Act [Aug. 5, 1997]."

"(b) **Specific Effective Dates.**—Subject to subsection (c) and section 4759—

"(1) **PCCM Option.**—The amendments made by section 4702 [amending this section and sections 1396a and 1396d of this title] shall apply to primary care case management services furnished on or after Oct. 1, 1997.

"(2) **75:25 Rule.**—The amendments made by section 4703 [amending this section and section 1396r–6 of this title] apply to contracts under section 1903(m) of the Social Security Act (42 U.S.C. 1396b(m)) on and after June 20, 1997.

"(3) **Quality Standards.**—Section 3182(c)(1) of the Social Security Act (section 1396a–2(c)(1) of this title), as added by section 4760(a), shall take effect on January 1, 1999.

"(4) **Solvency Standards.**—In general. The amendments made by section 4706 [amending this section] shall apply to contracts entered into or renewed on or after Oct. 1, 1998.

"(b) **Transition Rule.**—In the case of an organization that as of the date of the enactment of this Act [Aug. 5, 1997] has entered into a contract under section 1903(m) of the Social Security Act [subsec. (c) of this section] with a State for the provision of medical assistance under title XIX of such Act [this subchapter] under which the organization assumes full financial risk and is receiving capitalization payments, the amendment made by section 4706 shall not apply to such organization until 3 years after the date of the enactment of this Act.

"(5) **Sanctions for Noncompliance.**—Section 1362(c) of the Social Security Act [section 1396u–2(e) of this title], as added by section 4707(a), shall apply to contracts entered into or renewed on or after April 1, 1998.

"(6) **Limitation on FFP for Enrollment Brokers.**—The amendment made by section 4707(b) [amending this section] shall apply to amounts expended on or after Oct. 1, 1997.

"(7) **6-Month Guaranteed Eligibility.**—The amendments made by section 4709 [amending section 1396a of this title] shall take effect on October 1, 1997.

"(c) **Nonapplication to Waivers.**—Nothing in this chapter (or the amendments made by this chapter) shall be construed as affecting the terms and conditions of any waiver, or the authority of the Secretary of Health and Human Services with respect to any such waiver, under section 1115 or 1915 of the Social Security Act (42 U.S.C. 1315, 1396n)."

Amendment by section 4712(b)(2) of Pub. L. 105–33 applicable to services furnished on or after Oct. 1, 1997, see section 4712(b)(3) of Pub. L. 105–33, set out as a note under section 1396a of this title.


Section 4722(d) of Pub. L. 105–33 provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxes imposed before, on, or after the date of the enactment of this Act [Aug. 5, 1997] and the amendment made by subsection (b) [amending this section] shall apply to taxes imposed on or after such date."

Section 4724(b) of Pub. L. 105–33 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to home health care services furnished on or after January 1, 1998.

Section 4742(b) of Pub. L. 105–33 provided that: "The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 4753(a) of Pub. L. 105–33 effective Jan. 1, 1996, except as otherwise specifically provided, see section 4753(c) of Pub. L. 105–33, set out as a note under section 1396a of this title.

Amendment by section 4912(b) of Pub. L. 105–33 effective Aug. 5, 1997, see section 4912(c) of Pub. L. 105–33, set out as a note under section 1396a of this title.

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14463 of this title.

**Effective Date of 1996 Amendments**

Section 1(b)(2) of Pub. L. 104–248 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to physicians' services furnished on or after January 1, 1992."

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 115 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

**Effective Date of 1993 Amendment**


Amendment by section 13604(b) of Pub. L. 103–66 provided that: "(1) Subject to paragraph (2), the amendments made by subsection (a) [amending this section] shall apply as
Amendment by section 4751(b)(1) of Pub. L. 101–508 applicable with respect to services furnished on or after first day of first month beginning more than 1 year after Nov. 5, 1990, see section 4751(c) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4752(b)(2) of Pub. L. 101–508 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to contract years beginning on or after the date of the establishment of the system described in section 1902(x) of the Social Security Act [section 1396a(x) of this title]."

Section 4801(a)(9) of Pub. L. 101–508 provided that: "Except as provided in paragraph (6), the amendments made by this subsection [amending this section and section 1366 of this title] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203]."

Section 4801(e)(16)(B) of Pub. L. 101–508 provided that: "The amendments made by subparagraph (A) [amending this section] shall apply with respect to actions initiated on or after the date of the enactment of this Act [Nov. 5, 1990]."

Effective Date of 1989 Amendments

Amendment by section 6401(b) of Pub. L. 101–239 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Apr. 1, 1990, with respect to eligibility for medical assistance on or after such date, without regard to whether or not final regulations to carry out the amendments by section 6401 of Pub. L. 101–239 have been promulgated by such date, see section 6401(c) of Pub. L. 101–239, set out as a note under section 1396a of this title.


Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

Effective Date of 1988 Amendments

Amendment by section 4704(b)(1), (2) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1988, Pub. L. 100–360, see section 608(k)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 4704(c) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 100–485, set out as a note under section 704 of this title.

Section 4705(b)(2) of Pub. L. 101–508 applicable to items dispensed on or after Jan. 1, 1990, see section 202(h)(2) of Pub. L. 100–360, set out as a note under section 1396a of this title.

Section 301(f) of Pub. L. 100–360 provided that the amendment made by that section shall have effect, as though included in the enactment of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509.

Amendment by section 303(c)(3) of Pub. L. 100–360 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1989, with respect to eligibility for medical assistance on or after that date, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date, see section 302(f) of Pub. L. 100–360, set out as a note under section 1396a of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendments by section 411(a)(3)(A), (B)(iii), (k)(6)(B)(ix), (7)(A), (D), (10)(D), (G)(ii) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA: Effective Date note under section 106 of Title 1, General Provisions.

Section 411(k)(12)(B) of Pub. L. 100–360 provided that: "The amendment made by subparagraph (A) [amending
this section] shall apply to actions occurring on or after the date of the enactment of this Act [July 1, 1988]."

Section 411(k)(13)(B) of Pub. L. 100–360 provided that:

"The amendment made by subparagraph (A) [amending this section] shall be effective as if included in the enactment of section 9507 of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272]."

Amendment by section 411(h)(1) of Pub. L. 100–203 applicable to costs incurred after Dec. 22, 1987, see section 4118(b)(3) of Pub. L. 100–203, as amended, set out as a note under section 1396a of this title.

Amendments by sections 4212(d)(1), (g)(i), 4212(c)(1), (2), (d)(1), (e)(2) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendments are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by section 4212(d)(1) of Pub. L. 100–203 not applicable until such date as of which the State has specified the resident assessment instrument under section 1396(r)(5) of this title, and the State has begun conducting surveys under section 1396(r)(2) of this title, see section 4212(d)(4) of Pub. L. 100–203, set out as a note under section 1396a of this title.

Amendment by section 4212(d)(2) of Pub. L. 100–203 applicable to payments under this subchapter for calendar quarters beginning on or after Dec. 22, 1987, without regard to whether regulations implementing such amendments are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

**Effective Date of 1986 Amendments**


Amendment by Pub. L. 100–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 1212 of Title 26, Internal Revenue Code.

Amendment by section 9401(c)(2) of Pub. L. 99–509 applicable to medical assistance furnished in calendar quarters beginning on or after Apr. 1, 1987, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date, see section 9401(f) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9403(c) of Pub. L. 99–509 applicable to medical assistance furnished in calendar quarters beginning on or after Apr. 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9407(d) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9431(b)(2) of Pub. L. 99–509 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9431(c) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Section 9431(a)(3) of Pub. L. 99–509 provided that:

"(A) The amendments made by paragraph (1) [amending this section] shall take effect 6 months after the date of the enactment of this Act [Oct. 21, 1986]."

"(B) The amendment made by paragraph (2) [amending this section] shall take effect on the date of the enactment of this Act and shall apply to contracts entered into, renewed, or extended after the end of the 30-day period beginning on the date of the enactment of this Act."

Amendment by section 9530(b), (f) of Pub. L. 99–272 applicable to calendar quarters beginning on or after Apr. 1, 1987, except as otherwise provided, see section 9530(g), set out as a note under section 1396a of this title.

Section 9530(b) of Pub. L. 99–272 provided that: "The amendments made by subsection (a) [amending this section] shall apply to medical assistance furnished on or after Jan. 1, 1987."

Section 9530(b) of Pub. L. 99–272 provided that: "The amendments made by this section [amending this section] shall apply to overpayments identified for quarters beginning on or after Oct. 1, 1985."


"(2)(A) As excepted as provided in subparagraph (B) and in paragraph (3), the amendments made by paragraph (1) [amending this section] shall apply to expenditures incurred for health insurance organizations which first become operational on or after January 1, 1986. For purposes of this paragraph, a health insurance organization is not considered to be operational until the date on which it first enrols patients.

"(B) In the case of a health insurance organization—"

"(i) which first becomes operational on or after January 1, 1986, but

"(ii) for which the Secretary of Health and Human Services has waived, under section 1915(b) of the Social Security Act [section 1396n(b) of this title] and before such date, certain requirements of section 1902 of such Act [section 1396a of this title], clauses (ii) and (vi) of section 1903(m)(2)(A) of such Act [subsec. (m)(2)(A)(ii) and (vi) of this section] shall not apply during the period for which such waiver is effective.

"(C) In the case of the Hartford Health Network, Inc., clauses (ii) and (vi) of section 1903(m)(2)(A) of the Social Security Act shall not apply during the period for which a waiver by the Secretary of Health and Human Services, under section 1915(b) of such Act, of certain requirements of section 1902 of such Act is in effect (pursuant to a request for a waiver under section 1915(b) of such Act submitted before January 1, 1986).

"(D) Nothing in section 1903(m)(1)(A) of the Social Security Act shall be construed as requiring a health-insuring organization to be organized under the health maintenance organizations laws of a State.

"(3)(A) Subject to subparagraph (C), in the case of up to 3 health insurance organizations which are described..."
in subparagraph (B), in the case of any health insuring organization described in such subparagraph that is operated by a public entity established by Ventura County, and in the case of any health insuring organization described in such subparagraph that is operated by a public entity established by Merced County, which first became operational on or after January 1, 1986, and which are designated by the Governor, and approved by the Legislature, of California, the amendments made by paragraph (1) shall not apply.

(B) A health insuring organization described in this subparagraph is one that—

"(i) is operated directly by a public entity established by a county government in the State of California, which first became operational on or after January 1, 1986, and which substantially impairs access to covered services of adequate quality where medically necessary;

"(ii) provides for a payment adjustment for a disproportionate share hospital (as defined under State law consistent with section 1923 of the Social Security Act [sec. 1923(a) of the Social Security Act]), a county health maintenance organization established under the Knox-Keene Act (Cal. Health and Safety Code, section 1340 et seq.) and the Waxman-Duffy Act (Cal. Welfare and Institutions Code, section 14540 et seq.);

"(iv) assures a reasonable choice of providers, which includes providers that have historically served medicaid beneficiaries and which does not impose any restriction which substantially impairs access to covered services of adequate quality where medically necessary;"

"(v) provides for payment, in the case of children's hospital services provided to medicaid beneficiaries who are under 21 years of age, who are children with special health care needs under title V of the Social Security Act (subchapter V of this chapter), and who are receiving care coordination services under such title, at rates determined by the California Medical Assistance Commission,

"(C) Subparagraph (A) shall not apply with respect to any period for which the Secretary of Health and Human Services determines that the number of medicaid beneficiaries enrolled with health insuring organizations described in subparagraph (B) exceeds 16 percent of the number of such beneficiaries in the State of California,

"(D) In this paragraph, the term 'medicaid beneficiary' means an individual who is entitled to medical assistance under the State plan under title XIX of the Social Security Act (this subchapter), other than a qualified medicare beneficiary who is only entitled to such assistance because of section 1902(a)(10)(E) of such title [section 1902(a)(10)(E) of this title]."

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"(i) is operated directly by a public entity established by a county government in the State of California, which first became operational on or after January 1, 1986, and which substantially impairs access to covered services of adequate quality where medically necessary;"

"(ii) provides for a payment adjustment for a disproportionate share hospital (as defined under State law consistent with section 1923 of the Social Security Act [sec. 1923(a) of the Social Security Act]), a county health maintenance organization established under the Knox-Keene Act (Cal. Health and Safety Code, section 1340 et seq.) and the Waxman-Duffy Act (Cal. Welfare and Institutions Code, section 14540 et seq.);"

Amendment by Pub. L. 97–488 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–488, set out as a note under section 2301 of this title.

Effective Date of 1982 Amendment

Section 133(b) of Pub. L. 97–248 provided that: "The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Sept. 3, 1982]."

Amendment by section 137(a)(1), (2) of Pub. L. 97–248 effective as if originally included in the provision of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, to which such amendment relates, see section 137(d)(1) of Pub. L. 97–248, set out as a note under section 1996a of this title.

Amendment by section 137(b)(11)–(16), (27) of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1996a of this title.

Amendment by section 137(g) of Pub. L. 97–248 provided that the amendment made by that section is effective Oct. 1, 1982.

Amendment by section 146(b) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

Effective Date of 1981 Amendment

Amendment by section 2101(a)(2) of Pub. L. 97–35 applicable only to services furnished by a hospital during any accounting year beginning on or after Oct. 1, 1981, see section 2101(c)(2) of Pub. L. 97–35, set out as an Effective Date note under section 1399nn of this title.

Amendment by section 2108(b)(2) of Pub. L. 97–35 provided that: "The amendment made by paragraph (1) [amending this section] shall apply only to amounts expended on or after Oct. 1, 1981."


Amendment by section 2161(c)(1) of Pub. L. 97–295, as amended by Pub. L. 97–248, title I, §137(a)(2), Sept. 3, 1982, 96 Stat. 376, provided that the amendment made by such section 2161(c)(1) is effective for calendar quarters beginning on or after Oct. 1, 1984.

Amendment by section 2161(c)(2) of Pub. L. 97–325, as amended by Pub. L. 97–248, title I, §137(a)(2), Sept. 3, 1982, 96 Stat. 376, provided that the amendment made by such section
216(c)(2) is effective after payments for the first quarter of fiscal year 1985.

Section 216(b) of Pub. L. 97–35 provided that: “The amendments made by subsection (a) [amending this section] shall apply to tests occurring on or after October 1, 1981.”

Amendment by section 217(b) of Pub. L. 97–35 applicable to services furnished on or after Oct. 1, 1981, see section 217(c) of Pub. L. 97–35, set out as a note under section 1396a of this title.

Amendment by section 218(a) of Pub. L. 97–35 applicable with respect to services furnished, under a State plan approved under this subchapter, on or before Oct. 1, 1981, except that such amendments not applicable with respect to services furnished by a health maintenance organization under a State plan approved under this subchapter entered into before such date, or after the expiration of the one-year period beginning on such date, whichever occurs first.”

Effective Date of 1980 Amendment
Section 961(b) of Pub. L. 96–490 provided that: “The amendment made by subsection (a) [amending this section] shall be effective with respect to expenditures for services furnished on or after October 1, 1980.”

Effective Date of 1977 Amendments
Amendment by section 3(c)(2) of Pub. L. 95–142 effective Jan. 1, 1978, see section 3(e) of Pub. L. 95–142, set out as an Effective Date note under section 1396a–3 of this title.

Amendment by section 8(c) of Pub. L. 95–142 with respect to contracts, agreements, etc., made on or after the first day of the fourth month beginning after the date of the enactment of this Act, see section 217(c) of Pub. L. 97–35, set out as a note under section 1396a of this title.

Section 218(b) of Pub. L. 97–35 provided that: “The amendments made by subsection (a) [amending this section] shall apply to payments made to States for calendar quarters beginning on or after October 1, 1981.”

Effective Date of 1975 Amendments
Amendment by section 207(b) of Pub. L. 92–603 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after the first day of the first calendar month which begins not less than 90 days after the date of enactment of this Act [Oct. 8, 1976] under contracts under such title entered into or renegotiated after such date, or the expiration of the 1-year period beginning on such date, whichever occurs first.”

Effective Date of 1973 Amendments
Amendment by section 233(c) of Pub. L. 92–603 effective with respect to payments under this section for calendar quarters commencing after Dec. 31, 1973, see section 234(b) of Pub. L. 93–66, set out as a note under section 1396a–5 of this title.

Amendment by section 18(u) of Pub. L. 93–233 effective with respect to calendar quarters beginning after September 30, 1977.

Amendment by section 20(c) of Pub. L. 95–142, as amended by Pub. L. 95–163, set out as a note under section 1396a of this title, except as otherwise provided therein, effective January 1, 1973.

“(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1396a of this title] shall become effective on or after January 1, 1977.

“(2) The amount of any reduction in the Federal medical assistance percentage of a State, otherwise required to be imposed under section 1902(g)(1) of the Social Security Act [subsec. (g)(1) of this section] because of an unsatisfactory or invalid showing made by such State with respect to a calendar quarter beginning on or after January 1, 1977, shall be determined under such section as amended by this section. Paragraph (B) of paragraph (4) of section 1903(f) of such Act [subsec. (g)(4) of this section], as added by this section, shall apply to any showing made by a State under such section with respect to a calendar quarter beginning on or after January 1, 1977.”

Effective Date of 1976 Amendments

Section 223(b) of Pub. L. 94–460 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to payments under title XIX of the Social Security Act [this subchapter] to States for services provided—

“(1) after the date of enactment of subsection (a) [Oct. 8, 1976] under contracts under such title entered into or renegotiated after such date, or

“(2) after the expiration of the 1-year period beginning on such date, whichever occurs first.”

Effective Date of 1975 Amendment
Amendment by section 111(b) of Pub. L. 94–182 effective January 1, 1976, except as otherwise provided therein, see section 111(c) of Pub. L. 94–182, set out as a note under section 1396a of this title.

Effective Date of 1973 Amendments
Amendment by section 13(a)(11), (12) of Pub. L. 93–233 effective with respect to payments under this section for calendar quarters commencing after Dec. 31, 1973, see section 13(d) of Pub. L. 93–233, set out as a note under section 1396a of this title.

Amendment by section 18(u) of Pub. L. 93–233 effective July 1, 1973, see section 18(z–3)(4) of Pub. L. 93–233, set out as a note under section 1396a of this title.

Section 233(b) of Pub. L. 92–603 provided that: “The amendment made by subsection (a) [amending this section] shall be applicable in the case of expenditures for skilled nursing services and for intermediate care facility services furnished in calendar quarters which begin after December 31, 1972.”

Effective Date of 1972 Amendment
Section 207(b) of Pub. L. 92–603 provided that: “The amendments made by subsection (a) [amending this section] shall, except as otherwise provided therein, be effective July 1, 1973.

Amendment by section 226(c) of Pub. L. 92–603 effective with respect to services provided on or after July 1, 1973, see section 226(f) of Pub. L. 92–603, set out as an Effective Date note under section 1395mm of this title.

Amendment by section 233(c) of Pub. L. 92–603 applicable with respect to services furnished by hospitals in accounting periods beginning after Dec. 31, 1972, see section 233(f) of Pub. L. 92–603, set out as a note under section 1395f of this title. See, also, section 16 of Pub. L. 92–233, set out as an Effective Date note under section 1395f of this title.

Section 233(b) of Pub. L. 92–603 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to expenditures under State plans approved under title XIX of the Social Security Act [this subchapter], made after June 30, 1971.”
Section 237(d)(1) of Pub. L. 92–603 provided that: “The amendments made by subsections (a)(1) and (b) [amending this section and section 706 of this title] shall apply with respect to services furnished in calendar quarters beginning after June 30, 1973.”


Effective Date of 1968 Amendments

Section 220(b) of Pub. L. 90–248 provided that:

“(b)(1) In the case of any State whose plan under title XIX of the Social Security Act [this subchapter] is approved by the Secretary of Health, Education, and Welfare under section 1902 [section 1906a of this title] prior to July 25, 1967, the amendment made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after the date of enactment of this Act [Jan. 2, 1968].

“(2) In the case of any State whose plan under title XIX of the Social Security Act [this subchapter] was approved by the Secretary of Health, Education, and Welfare under section 1902 of the Social Security Act [section 1966a of this title] prior to July 25, 1967, amendments made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after June 30, 1968, except that—

“(A) with respect to the third and fourth calendar quarters of 1968, such subsection shall be applied by substituting in subsection (f) of section 1903 of the Social Security Act [subsection (f) of this section] the term ‘133 1/3 percent’ for 133 1/3 percent each time such latter figure appears in such subsection (f), and

“(B) with respect to all calendar quarters during 1969, such subsection shall be applied by substituting in subsection (f) of section 1903 of such Act [subsec. (f) of this section] 140 percent for 133 1/3 percent each time such latter figure appears in such subsection (f),”

Section 222(d) of Pub. L. 90–248, as amended by section 303(a)(2) of Pub. L. 90–364, provided that the amendment made by such section 222(d) is effective with respect to calendar quarters beginning after December 31, 1969.

Section 225(b) of Pub. L. 90–248 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to expenditures made after December 31, 1967.”

Section 303(b) of Pub. L. 90–364 provided that: “The amendments made by subsection (a) [amending this section] shall be effective with respect to calendar quarters beginning after December 31, 1967.”

Regulations

Pub. L. 111–3, title VI, §615, Feb. 4, 2009, 123 Stat. 102, provided that:

“(a) IN GENERAL.—Nothing in section 1903(w) of the Social Security Act (42 U.S.C. 1396w) shall be construed by the Secretary of Health and Human Services as prohibiting a State’s use of funds as the non-Federal share of expenditures under title XIX of such Act (this subchapter) where such funds are transferred from or certified by a publicly-owned regional medical center located in another State and described in subsection (b), so long as the Secretary determines that such use of funds is proper and in the interest of the program under title XIX.

“(b) CENTER DESCRIBED.—A center described in this subsection is a publicly-owned regional medical center that—

“(1) provides level 1 trauma and burn care services;

“(2) provides level 3 neonatal care services;

“(3) is obligated to serve all patients, regardless of ability to pay;

“(4) is located within a Standard Metropolitan Statistical Area (SMSA) that includes at least 3 States;

“(5) provides services as a tertiary care provider for patients residing within a 125-mile radius; and

“(6) meets the criteria for a disproportionate share hospital under section 1923 of such Act (42 U.S.C. 1396–4) in at least one State other than the State in which the center is located.”

Pub. L. 106–173, title X, §1001(e), Dec. 8, 2003, 117 Stat. 2431, provided that:

“(1) IN GENERAL.—Nothing in section 1903(w) of the Social Security Act (42 U.S.C. 1396w) shall be construed by the Secretary [of Health and Human Services] as prohibiting a State’s use of funds as the non-Federal share of expenditures under title XIX of such Act (this subchapter) where such funds are transferred from or certified by a publicly-owned regional medical center located in another State and described in paragraph (2), so long as the Secretary determines that
such use of funds is proper and in the interest of the program under title XIX.

"(2) CENTER DESCRIBED.—A center described in this paragraph is a publicly-owned regional medical center that—

"(A) provides level 1 trauma and burn care services;

"(B) provides level 3 neonatal care services;

"(C) is obligated to serve all patients, regardless of State of origin;

"(D) is located within a Standard Metropolitan Statistical Area (SMSA) that includes at least 3 States, including the States described in paragraph (1);

"(E) serves as a tertiary care provider for patients residing within a 250 mile radius; and

"(F) meets the criteria for a disproportionate share hospital under section 1923 of such Act [section 1396e–4 of this title] in at least one State other than the one in which the center is located.

"(3) EFFECTIVE PERIOD.—This subsection shall apply through December 31, 2005.

TREATMENT OF DONATION OR TAX PROCEEDS PRIOR TO EFFECTIVE DATE OF SUBSECTION (W)

Section 2(c)(2) of Pub. L. No. 102–234 provided that: "Except as specifically provided in section 1903(w) of the Social Security Act (subsec. (w) of this section) and notwithstanding any other provision of such Act (chapter 5 of title XIX of the Social Security Act) the Secretary of Health and Human Services may not, with respect to expenditures prior to the effective date specified in section 1903(w)(1)(F) of such Act, disallow any claim submitted by a State for, or otherwise withhold Federal financial participation with respect to, amounts expended for medical assistance under title XIX of the Social Security Act [this subchapter] by reason of the fact that the source of the funds used to constitute the non-Federal share of such expenditures is a tax imposed on, or a donation received from, a health care provider, or on the ground that the amount of any donation or tax proceeds must be credited against the amount of the expenditure.

TEMPORARY INCREASE IN FEDERAL MATCH FOR ADMINISTRATIVE COSTS

Section 4401(b)(2) of Pub. L. No. 101–508 provided that: "The per centum to be applied under section 1903(a)(7) of the Social Security Act (subsec. (a)(7) of this section) for amounts expended during calendar quarters in fiscal year 1991 which are attributable to administrative activities necessary to carry out section 1927 (other than subsection (g)) of such Act [section 1396c–8 of this title] shall be 75 percent, rather than 50 percent; after fiscal year 1991, the match shall revert back to 50 percent.

REPORT ON ERRORS IN ELIGIBILITY DETERMINATIONS: ERROR RATE TRANSITION RULES

Section 4907 of Pub. L. No. 101–508 directed Secretary of Health and Human Services to report to Congress, by not later than July 1, 1991, on error rates by States in determining eligibility of individuals described in subparagraph (A) or (B) of section 1396a–11 of this title for medical assistance under plans approved under this subchapter, and directed that there should not be taken into account for purposes of subparagraph (u) of this section, payments and expenditures for medical assistance attributable to medical assistance for individuals described in such subparagraph (A) or (B), and made on or after July 1, 1989, and before the first calendar quarter beginning after the date of the submission of the report.

MEDICALLY NECESSARY INCOME LEVELS FOR CERTAIN 1-MEMBER FAMILIES

Section 4718 of Pub. L. No. 101–508 provided that: "(a) IN GENERAL.—For purposes of section 1903(f)(1)(B) [probably means subsec. (f)(1)(B) of this section], for payments made before, on, or after the date of the enactment of this Act [Nov. 5, 1990], a State described in subparagraph (B) may use, in determining the 'highest income level which would ordinarily be paid to a family of the same size' (under the State’s plan approved under part A of title IV of such Act [probably means part A of chapter IV of this title]) in the case of a family consisting only of one individual and without regard to whether or not such plan provides for aid to families consisting only of one individual, an amount reasonably related to the highest money payment which would ordinarily be made under such a plan to a family of two without income or resources.

"(b) STATES COVERED.—Subsection (a) shall only apply to a State the State plan of which (under title XIX of the Social Security Act (this subchapter)) as of June 1, 1989, provided for the policy described in such paragraph. For purposes of the previous sentence, a State plan includes all the matter included in a State plan under section 2373(c)(5) of the Deficit Reduction Act of 1984 [Pub. L. No. 98–369, set out as a note under section 1396a of this title] (as amended by section 9 of the Medicare and Medicaid Patient and Program Protection Act of 1987 [Pub. L. No. 100–93])."

DAY HABILITATION AND RELATED SERVICES

Section 6411(g) of Pub. L. No. 101–239 provided that: "(1) PROHIBITION OF DISALLOWANCE PENDING ISSUANCE OF REGULATIONS.—Except as specifically permitted under paragraph (3), the Secretary of Health and Human Services may not—

"(A) withhold, suspend, disallow, or deny Federal financial participation under section 1903(a) of the Social Security Act (subsec. (a) of this section) for day habilitation and related services under paragraph (9) or (13) of section 1905(a) of such Act [section 1395l(a)(9), (13) of this title] on behalf of persons with mental retardation or with related conditions pursuant to a provision of its State plan as approved on or before June 30, 1989, or

"(B) withdraw Federal approval of any such State plan provision.

"(2) REQUIREMENTS FOR REGULATION.—A final regulation described in this paragraph is a regulation, promulgated after a notice of proposed rule-making and a period of at least 60 days for public comment, that—

"(A) specifies the types of day habilitation and related services that a State may cover under paragraph (9) or (13) of section 1905(a) of the Social Security Act (section 1395l(a)(9), (13) of this title) on behalf of persons with mental retardation or with related conditions, and

"(B) any requirements respecting such coverage.

"(3) PROSPECTIVE APPLICATION OF REGULATION.—If the Secretary promulgates a final regulation described in paragraph (2) and the Secretary determines that a State plan under title XIX of the Social Security Act (this subchapter) does not comply with such regulation, the Secretary shall notify the State of the determination and its basis, and such determination shall not apply to day habilitation and related services furnished before the first day of the first calendar quarter beginning after the date of the notice to the State.

NURSE AIDE TRAINING AND EVALUATION PROGRAMS: ALLOCATION OF COSTS BEFORE OCTOBER 1, 1990

Section 6901(b)(5)(B) of Pub. L. No. 101–239 provided that: "In making payments under section 1903(a)(2)(B) of the Social Security Act (subsec. (a)(2)(B) of this section) for amounts expended for nurse aide training and competency evaluation programs, and competency evaluation programs, described in section 1919(e)(1) of such Act [section 1396f–11 of this title], in the case of activities conducted before October 1, 1990, the Secretary of Health and Human Services shall not take into account, or allocate amounts on the basis of, the proportion of residents of nursing facilities that is entitled to benefits under title XVIII or XIX of such Act [this subchapter and subchapter XVIII of this chapter]."

CLARIFICATION OF FEDERAL MATCHING RATE FOR SURVEY AND CERTIFICATION ACTIVITIES

Section 6901(d)(2) of Pub. L. No. 101–239 provided that: "During the period before October 1, 1990, the Federal
percentage matching payment rate under section 1903(a) of the Social Security Act [subsection (a) of this section] for so much of the sums expended under a State plan under title XIX of such Act [this subchapter] as are attributable to compensation or training of personnel responsible for inspecting public or private skilled nursing or intermediate care facilities to individuals receiving medical assistance to determine compliance with health or safety standards shall be 75 percent."

QUALITY CONTROL TRANSITION PROVISIONS
Section 608(h) of Pub. L. 100–485 provided that: "There shall not be taken into account, for purposes of section 1903(a) of the Social Security Act [subsection (a) of this section], payments and expenditures for medical assistance which are made on or after January 1, 1989, and before July 1, 1989, and which are attributable to Medicare-cost (sic) sharing for qualified Medicare beneficiaries (as defined in section 1905(p) of such Act [section 1396(d)(p) of this title])."

DELAY QUALITY CONTROL SANCTIONS FOR MEDICAID
Section 4117 of Pub. L. 100–203 provided that: "The Secretary of Health and Human Services shall not, prior to July 1, 1988, implement any reductions in payments to States pursuant to section 1903(a) of the Social Security Act [subsection (a) of this section] or any provision of law described in subsection (c) of section 133 of the Tax Equity and Fiscal Responsibility Act of 1982 (section 133(c) of Pub. L. 97–248, set out below)."

TEMPORARY TECHNICAL ERROR DEFINITION
Section 4118(a) of Pub. L. 100–203 provided that: "For purposes of section 1903(a)(1)(E)(I) of the Social Security Act [subsection (a)(1)(E)(I) of this section], effective for the period beginning on the date of enactment of this Act [Dec. 22, 1987] and ending December 31, 1988, a 'technical error' is an error in eligibility condition (such as assignment of social security numbers and assignment of rights to third-party benefits as a condition of eligibility) that, if corrected, would not result in a difference in the amount of medical assistance paid."

ENHANCED FUNDING FOR NURSE AIDE TRAINING
Section 4211(d)(2) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(k)(3)(P), July 1, 1988, 102 Stat. 803, provided that: "For the 4 calendar quarters (beginning with the calendar quarter that begins on July 1, 1988), with respect to payment under section 1903(a)(2)(B) of the Social Security Act [subsection (a)(2)(B) of this section] to a State for additional amounts expended by the State under its plan approved under title XIX of such Act [this subchapter] for nursing aide training and competency evaluation programs, and competency evaluation programs, described in section 1903(a)(2)(E)(i) of such Act [section 1903(a)(2)(E)(i) of this title], any reference to '50 percent' is deemed a reference to any additional percentage of Federal medical assistance percentage (determined under section 1905(b) of such Act [section 1905(b) of this title]) plus 25 percentage points but not to exceed 90 percent."

EXPENSES INCURRED FOR REVIEW OF CARE PROVIDED TO RESIDENTS OF NURSING FACILITIES
Section 4212(c)(3) of Pub. L. 100–203 provided that: "For purposes of section 1903(a) of the Social Security Act [subsection (a) of this section], proper expenses incurred by a State for medical review by independent professionals of the care provided to residents of nursing facilities who are entitled to medical assistance under title XIX of such Act [this subchapter] shall be reimbursable as expenses necessary for the proper and efficient administration of the State plan under that title."

QUALITY CONTROL STUDIES AND PENALTY MORATORIUM

"(a) STUDIES.—(1) The Secretary of Health and Human Services (hereafter referred to in this section as the 'Secretary') shall conduct a study of quality control systems for the Aid to Families with Dependent Children Program under title IV–A of the Social Security Act [part A of subchapter IV of this chapter] and for the Medicaid Program under title XIX of such Act [this subchapter]. The study shall examine how best to operate such systems in order to obtain information which will allow program managers to improve the quality of administration, and provide reasonable data on the basis of which Federal funding may be withheld for States with excessive levels of erroneous payments.

"(2) The Secretary shall also contract with the National Academy of Sciences to conduct a concurrent independent study for the purpose described in paragraph (1). For purposes of such study, the Secretary shall provide to the National Academy of Sciences any relevant data available to the Secretary at the onset of the study and on an ongoing basis.

"(3) The Secretary and the National Academy of Sciences shall report the results of their respective studies to the Congress within one year after the date the Secretary and the National Academy of Sciences enter into the contract required under paragraph (2).

"(b) MORATORIUM ON PENALTIES.—(1) During the 24-month period beginning with the first calendar quarter which begins after the date of the enactment of this Act [Apr. 7, 1988] (hereafter in this section referred to as the 'moratorium period'), the Secretary shall not impose any reductions in payments to States pursuant to section 403(i) of the Social Security Act [section 403(i) of this title] (or any prior regulations), or pursuant to any comparable provision of law relating to the programs under title IV–A of such Act [part A of subchapter IV of this chapter] in Puerto Rico, Guam, the Virgin Islands, American Samoa, or the Northern Marian Islands.

"(2) During the moratorium period, the Secretary and the States shall continue to operate the quality control systems in effect under title IV–A of the Social Security Act, and to calculate the error rates under the provisions referred to in paragraph (1).

"(c) RESTRUCTURED QUALITY CONTROL SYSTEMS.—(1) Not later than 6 months after the date on which the results of both studies required under subsection (a)(3) have been reported, the Secretary shall publish regulations which shall—

"(A) restructure the quality control systems under title XIX of the Social Security Act [this subchapter] to the extent the Secretary determines to be appropriate, taking into account the studies conducted under subsection (a); and

"(B) establish, taking into account the studies conducted under subsection (a), criteria for adjusting the reductions which shall be made for quarters prior to the implementation of the restructured quality control systems so as to eliminate reductions for those quarters which would not be required if the restructured quality control systems had been in effect during those quarters.

"(2) Beginning with the first calendar quarter after the moratorium period, the Secretary shall implement the revised quality control systems under title XIX, and shall reduce payments to States—

"(A) for quarters after the moratorium period in accordance with the restructured quality control systems; and

"(B) for quarters in and before the moratorium period, as provided under the regulations described in paragraph (1)(B).
“(d) EFFECTIVE DATE.—This section shall become effective on the date of the enactment of this Act [Apr. 7, 1966].”

EFFECTIVENESS OF LAWS LIMITING FEDERAL FINANCIAL PARTICIPATION WITH RESPECT TO ERRONEOUS PAYMENTS MADE BY STATES UNDER A STATE PLAN APPROVED UNDER THIS SUBCHAPTER

Section 1396(o) of Pub. L. 97–248 provided that: ‘‘No provision of law limiting Federal financial participation with respect to erroneous payments made by States under a State plan approved under title XIX of the Social Security Act [this subchapter] (including any provision contained in, or incorporated by reference into, any appropriation Act or resolution making continuing appropriations), other than the limitations contained in section 1903 of such Act [this section], shall be effective with respect to payments to States under section 1903 for quarters beginning on or after October 1, 1982, unless such provision of law is enacted after the date of the date of the enactment of this Act [Sept. 3, 1982] and expressly provides that such limitation is in addition to or in lieu of the limitations contained in section 1903 of the Social Security Act.’’

MEDICAID PAYMENTS FOR INDIAN HEALTH SERVICE FACILITIES TO BE PAID ENTIRELY BY FEDERAL FUNDS; EXCLUSION OF PAYMENTS TO STATES IN COMPUTATION OF TARGET AMOUNT OF FEDERAL MEDICAID EXPENDITURES

Pub. L. 97–92, §§ 102, 118, Dec. 15, 1981, 95 Stat. 1193, 1197, as amended by Pub. L. 97–363, title II, § 230, Oct. 30, 1982, 96 Stat. 1410, provided, for the period Dec. 15, 1981, to not later than Sept. 30, 1982, that: ‘‘Notwithstanding section 1903(s) of the Social Security Act [subsec. (s) of this section], all medicaid payments to the States for Indian health service facilities as defined by section 1911 of the Social Security Act [section 1396 of this title] shall be paid entirely by Federal funds, and notwithstanding section 1903(u) of the Social Security Act [subsec. (t) of this section], all medicaid payments to the States for Indian health service facilities shall not be included in the computation of the target amount of Federal medicaid expenditures.’’

PROMULGATION OF REGULATIONS FOR IMPLEMENTATION OF AMENDMENTS BY SECTION 17 OF PUB. L. 95–142

Section 17(c)(2) of Pub. L. 95–142 required Secretary of Health, Education, and Welfare to establish regulations, not later than 90 days after Oct. 25, 1977, to carry out amendments made by section 17 (amending sections 1395b–1 and 1396b of this title). See section 1302 of this title.

DEFERRAL OF IMPLEMENTATION OF DECREASES IN MATCHING FUNDS

Section 6 of Pub. L. 95–59, June 30, 1977, 91 Stat. 255, provided that: ‘‘Notwithstanding the provisions of subsection (g) of section 1903 of the Social Security Act [subsec. (g) of this section], the amount payable to any State for the calendar quarters during the period commencing April 1, 1977, and ending September 30, 1977, on account of expenditures made under a State plan approved under title XIX of such Act [this subchapter], shall not be decreased by reason of the application of the provisions of such subsection with respect to any period for which such State plan was in operation prior to April 1, 1977.’’

COMPREHENSIVE CARE AND SERVICES FOR ELIGIBLE INDIVIDUALS BY JULY 1, 1977; REQUIREMENT INAPPLICABLE FOR ANY PERIOD PRIOR TO JULY 1, 1971; REGULATIONS; ADVICE TO STATES

Section 2(b) of Pub. L. 91–56, which provided that subsection (e) of this section was inapplicable to the period prior to July 1, 1971, and which authorized the Secretary to issue regulations, was repealed by Pub. L. 92–603, title II, § 230, Oct. 30, 1972, 86 Stat. 1410.

EXEMPTION OF PUERTO RICO, THE VIRGIN ISLANDS, AND GUAM FROM LIMITATIONS ON FEDERAL PAYMENTS FOR MEDICAL ASSISTANCE

Section 240(d) of Pub. L. 90–248 provided that: ‘‘The amendment made by section 220(a) of this Act [amending this section] shall not apply in the case of Puerto Rico, the Virgin Islands, or Guam.’’

NONDUPlication OF PAYMENTS TO STATES; LIMITATION ON INSTITUTIONAL CARE

Section 121(b) of Pub. L. 93–97, as amended by section 240D of Pub. L. 92–603, provided that: ‘‘No payment may be made to any State under title I, IV, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter] with respect to any period before July 1, 1971, and which authorized the Secretary to issue regulations, was repealed by Pub. L. 92–603, title II, § 230, Oct. 30, 1972, 86 Stat. 1410.

§ 1396b–1. Payment adjustment for health care-acquired conditions

(a) In general

The Secretary of Health and Human Services (in this subsection referred to as the ‘‘Secretary’’) shall identify current State practices that prohibit payment for health care-acquired conditions and shall incorporate the practices identified, or elements of such practices, which the Secretary determines appropriate for application to the Medicaid program in regulations. Such regulations shall be effective as of July 1, 2011, and shall prohibit payments to States under section 1903 of the Social Security Act [42 U.S.C. 1396b] for any amounts expended for providing medical assistance for health care-acquired conditions specified in the regulations. The regulations shall ensure that the prohibition on payment for health care-acquired conditions shall not result in a loss of access to care or services for Medicaid beneficiaries.

(b) Health care-acquired condition

In this section, the term ‘‘health care-acquired condition’’ means a medical condition for which an individual was diagnosed that could be identified by a secondary diagnostic code described in section 1856(d)(4)(D)(iv) of the Social Security Act (42 U.S.C. 1395ww(d)(4)(D)(iv)).

(c) Medicare provisions

In carrying out this section, the Secretary shall apply to State plans (or waivers) under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] the regulations promulgated pursu-
ant to section 1396(d)(4)(D) of such Act (42 U.S.C. 1395ww(d)(4)(D)) relating to the prohibition of payments based on the presence of a secondary diagnosis code specified by the Secretary in such regulations, as appropriate for the Medicaid program. The Secretary may exclude certain conditions identified under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] for non-payment under title XIX of such Act when the Secretary finds the inclusion of such conditions to be inapplicable to beneficiaries under title XIX. (Pub. L. 111–148, title II, §2702, Mar. 23, 2010, 124 Stat. 318.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XIX of the Act is classified generally to this subchapter. Title XVIII of the Act is classified generally to subchapter XVIII (1395 et seq.) of this chapter. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

Section was enacted as part of the Part B of the 1992 Act and the Part B of the 1993 Act, and not as part of the Social Security Act which comprises this chapter.

§ 1396c. Operation of State plans

If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this subchapter, finds—

1. that the plan has been so changed that it no longer complies with the provisions of section 1396a of this title; or
2. that in the administration of the plan there is a failure to comply substantially with any such provision;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply. Unless he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).


§ 1396d. Definitions

For purposes of this subchapter—

(a) Medical assistance

The term “medical assistance” means payment of part or all of the cost of the following care and services or the care and services themselves, or both (if provided in or after the third month before the month in which the recipient makes application for assistance or, in the case of medicare cost-sharing with respect to a qualified medicare beneficiary described in subsection (p)(1) of this section, if provided after the month in which the individual becomes such a beneficiary) for individuals, and, with respect to physicians’ or dentists’ services, at the option of the State, to individuals (other than individuals with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid for them under a State supplemental payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title) not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter, who are—

1. under the age of 21, or, at the option of the State, under the age of 20, 19, or 18 as the State may choose,
2. relatives specified in section 606(b)(1) of this title with whom a child is living if such child is (or would, if needy, be) a dependent child under part A of subchapter IV of this chapter,
3. 65 years of age or older,
4. blind, with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter,
5. 18 years of age or older and permanently and totally disabled, with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter,
6. persons essential (as described in the second sentence of this subsection) to individuals receiving aid or assistance under State plans approved under subchapter I, X, XIV, or XVI of this chapter,
7. blind or disabled as defined in section 1823 of this title, with respect to States not eligible to participate in the State plan program established under subchapter XVI of this chapter,
8. pregnant women,
9. individuals provided extended benefits under section 1396r–6 of this title,
10. individuals described in section 1396a(u)(1) of this title,
11. individuals described in section 1396a(z)(1) of this title,
12. employed individuals with a medically improved disability (as defined in subsection (v) of this section),
13. individuals described in section 1396a(aa) of this title,
14. individuals described in section 1396a(a)(10)(A)(i)(VIII) or 1396a(a)(10)(A)(i)(IX) of this title,
15. individuals described in section 1396a(a)(10)(A)(ii)(XX) of this title,
16. individuals described in section 1396a(ii) of this title, or
17. individuals who are eligible for home and community-based services under needs-based criteria established under paragraph (1)(A) of section 1396n(i) of this title, or who are eligible for home and community-based services under paragraph (6) of such section,

1 See References in Text note below.
and who will receive home and community-based services pursuant to a State plan amendment under such subsection,

but whose income and resources are insufficient to meet all of such cost—

(1) inpatient hospital services (other than services in an institution for mental diseases);
(2)(A) outpatient hospital services, (B) consistent with State law permitting such services, rural health clinic services (as defined in subsection (l)(1) of this section) and any other ambulatory services which are offered by a rural health clinic (as defined in subsection (l)(1) of this section) and which are otherwise included in the plan, and (C) Federally-qualified health center services (as defined in subsection (l)(2) of this section) and any other ambulatory services furnished by a Federally-qualified health center and which are otherwise included in the plan;
(3) other laboratory and X-ray services;
(4)(A) nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older; (B) early and periodic screening, diagnostic, and treatment services (as defined in subsection (r) of this section) for individuals who are eligible under the plan and are under the age of 21; (C) family planning services and supplies furnished (directly or under arrangements with others) to individuals of child-bearing age (including minors who can be considered to be sexually active) who are eligible under the State plan and who desire such services and supplies; and (D) counseling and pharmacotherapy for cessation of tobacco use by pregnant women (as defined in subsection (bb));
(5)(A) physicians' services furnished by a physician (as defined in section 1395x(r)(1) of this title), whether furnished in the office, the patient's home, a hospital, or a nursing facility, or elsewhere, and (B) medical and surgical services furnished by a dentist (described in section 1395x(r)(2) of this title) to the extent such services may be performed under State law by either by a doctor of medicine or by a doctor of dental surgery or dental medicine and would be described in clause (A) if furnished by a physician (as defined in section 1395x(r)(1) of this title);
(6) medical care, or any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law;
(7) home health care services;
(8) private duty nursing services;
(9) clinic services furnished by or under the direction of a physician, without regard to whether the clinic itself is administered by a physician, including such services furnished outside the clinic by clinic personnel to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address;
(10) dental services;
(11) physical therapy and related services;
(12) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;
(13) other diagnostic, screening, preventive, and rehabilitative services, including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level;
(14) inpatient hospital services and nursing facility services for individuals 65 years of age or over in an institution for mental diseases;
(15) services in an intermediate care facility for the mentally retarded (other than in an institution for mental diseases) for individuals who are determined, in accordance with section 1396a(a)(31) of this title, to be in need of such care;
(16) effective January 1, 1973, inpatient psychiatric hospital services for individuals under age 21, as defined in subsection (h) of this section;
(17) services furnished by a nurse-midwife (as defined in section 1395x(gg) of this title) which the nurse-midwife is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the nurse-midwife is under the supervision of, or associated with, a physician or other health care provider, and without regard to whether or not the services are performed in the area of management of the care of mothers and babies throughout the maternity cycle;
(18) hospice care (as defined in subsection (a) of this section);
(19) case management services (as defined in section 1396a(c)(2) of this title) and TB-related services described in section 1396a(g)(2)(F) of this title;
(20) respiratory care services (as defined in section 1396a(e)(9)(C) of this title);
(21) services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner (as defined by the Secretary) which the certified pediatric nurse practitioner or certified family nurse practitioner is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the certified pediatric nurse practitioner or certified family nurse practitioner is under the supervision of, or associated with, a physician or other health care provider;
(22) home and community care (to the extent allowed and as defined in section 1396t of this title) for functionally disabled elderly individuals;
(23) community supported living arrangements services (to the extent allowed and as defined in section 1396a of this title);
(24) personal care services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease that are (A) authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State, (B) provided by an indi-
vidual who is qualified to provide such services and who is not a member of the individual's family, and (C) furnished in a home or other location;

(25) primary care case management services (as defined in subsection (t) of this section);

(26) services furnished under a PACE program under section 1396u-4 of this title to PACE program eligible individuals enrolled under the program under such section;

(27) subject to subsection (x) of this section, primary and secondary medical strategies and treatment and services for individuals who have Sickle Cell Disease;

(28) freestanding birth center services (as defined in subsection (l)(3)(A) and other ambulatory services that are offered by a freestanding birth center (as defined in subsection (l)(3)(B)) and that are otherwise included in the plan; and

(29) any other medical care, and any other type of remedial care recognized under State law, specified by the Secretary,

except as otherwise provided in paragraph (16), such term does not include—

(A) any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution); or

(B) any such payments with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for mental diseases.

For purposes of clause (vi) of the preceding sentence, a person shall be considered essential to another individual if such person is the spouse of and is living with such individual, the needs of such person are taken into account in determining the amount of aid or assistance furnished to such individual (under a State plan approved under subchapter I, X, XIV, or XVI of this chapter), and such person is determined, under such a State plan, to be essential to the well-being of such individual. The payment described in the first sentence may include expenditures for medicare cost-sharing and for premiums under part B of this chapter for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan under part B of this chapter for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter XIV of this chapter, and are received under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available under paragraph (1)(A) of section 1396d(a)(10)(A) of this title, and, except in the case of individuals 65 years of age or older and disabled individuals entitled to health insurance benefits under subchapter XVIII of this chapter who are not enrolled under part B of subchapter XVIII of this chapter, other insurance premiums for medical or any other type of remedial care or the cost thereof. No service (including counseling) shall be excluded from the definition of “medical assistance” solely because it is provided as a treatment service for alcoholism or drug dependency.

(b) Federal medical assistance percentage; State percentage; Indian health care percentage

Subject to subsections (y), (z), and (aa) and section 1396u-3(d) of this title, the term “Federal medical assistance percentage” for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum, (2) the Federal medical assistance percentage for Puerto Rico, the Virgin Islands, Guam, the Northern Marianas Islands, and American Samoa shall be 55 percent, (3) for purposes of this subchapter and subchapter XXI of this chapter, the Federal medical assistance percentage for the District of Columbia shall be 70 percent, and (4) the Federal medical assistance percentage for any State shall be determined and promulgated in accordance with the provisions of section 1301(a)(8)(A)(ii)(XVIII) of this title. The Federal medical assistance percentage for any State shall be determined and promulgated in accordance with the provisions of section 1301(a)(8)(B)(ii)(XVIII) of this title. Notwithstanding the first sentence of this section, the Federal medical assistance percentage shall be 100 per centum with respect to amounts expended as medical assistance for services which are received through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined in section 1603 of title 25). Notwithstanding the first sentence of this subsection, in the case of a State plan that meets the condition described in subsection (u)(1) of this section, with respect to expenditures (other than expenditures under section 1396r-4 of this title) described in subsection (u)(2)(A) of this section or subsection (u)(3) of this section for the State for a fiscal year, and that do not exceed the amount of the State’s available allotment under section 1397dd of this title, the Federal medical assistance percentage is equal to the enhanced FMAP described in section 1397ee(b) of this title.

(c) Nursing facility

For definition of the term “nursing facility”, see section 1396r(a) of this title.

(d) Intermediate care facility for mentally retarded

The term “intermediate care facility for the mentally retarded” means an institution (or distinct part thereof) for the mentally retarded or persons with related conditions if—

(1) the primary purpose of such institution (or distinct part thereof) is to provide health or rehabilitative services for mentally retarded individuals and the institution meets such standards as may be prescribed by the Secretary;
(2) the mentally retarded individual with respect to whom a request for payment is made under a plan approved under this subchapter is receiving active treatment under such a program; and

(3) in the case of a public institution, the State or political subdivision responsible for the operation of such institution has agreed that the non-Federal expenditures in any calendar quarter prior to January 1, 1975, with respect to services furnished to patients in such institution (or distinct part thereof) in the State will not, because of payments made under this subchapter, be reduced below the average amount expended for such services in such institution in the four quarters immediately preceding the quarter in which the State in which such institution is located elected to make such services available under its plan approved under this subchapter.

(e) Physicians' services

In the case of any State the State plan of which (as approved under this subchapter)—

(1) does not provide for the payment of services (other than services covered under section 1396a(a)(12) of this title) provided by an optometrist; but

(2) at a prior period did provide for the payment of services referred to in paragraph (1);

the term "physicians' services" (as used in subsection (a)(5) of this section) shall include services of the type which an optometrist is legally authorized to perform where the State plan specifically provides that the terms "physicians' services", as employed in such plan, includes services of the type which an optometrist is legally authorized to perform, and shall be reimbursed whether furnished by a physician or an optometrist.

(f) Nursing facility services

For purposes of this subchapter, the term "nursing facility services" means services which are or were required to be given an individual who needs or needed on a daily basis nursing care (provided directly by or requiring the supervision of nursing personnel) or other rehabilitation services which as a practical matter can only be provided in a nursing facility on an inpatient basis.

(g) Chiropractors' services

If the State plan includes provision of chiropractors' services, such services include only—

(1) services provided by a chiropractor (A) who is licensed as such by the State and (B) who meets uniform minimum standards promulgated by the Secretary under section 1395x(r)(5) of this title; and

(2) services which consist of treatment by means of manual manipulation of the spine which the chiropractor is legally authorized to perform by the State.

(h) Inpatient psychiatric hospital services for individuals under age 21

(1) For purposes of paragraph (16) of subsection (a) of this section, the term "inpatient psychiatric hospital services for individuals under age 21" includes only—

(A) inpatient services which are provided in an institution (or distinct part thereof) which is a psychiatric hospital as defined in section 1395x(f) of this title or in another inpatient setting that the Secretary has specified in regulations;

(B) inpatient services which, in the case of any individual (i) involve active treatment which meets such standards as may be prescribed in regulations by the Secretary, and (ii) a team, consisting of physicians and other personnel qualified to make determinations with respect to mental health conditions and the treatment thereof, has determined are necessary on an inpatient basis and can reasonably be expected to improve the condition, by reason of which such services are necessary, to the extent that eventually such services will no longer be necessary; and

(C) inpatient services which, in the case of any individual, are provided prior to (i) the date such individual attains age 21, or (ii) the date such individual who was receiving such services in the period immediately preceding the date on which he attained age 21, (I) the date such individual no longer requires such services, or (II) if earlier, the date such individual attains age 22.

(2) Such term does not include services provided during any calendar quarter under the State plan of any State if the total amount of the funds expended, during such quarter, by the State (and the political subdivisions thereof) from non-Federal funds for inpatient services included under paragraph (1), and for active psychiatric care and treatment provided on an outpatient basis for eligible mentally ill children, is less than the average quarterly amount of the funds expended, during the 4-quarter period ending December 31, 1971, by the State (and the political subdivisions thereof) from non-Federal funds for such services.

(i) Institution for mental diseases

The term "institution for mental diseases" means a hospital, nursing facility, or other institution of more than 15 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services.

(j) State supplementary payment

The term "State supplementary payment" means any cash payment made by a State on a regular basis to an individual who is receiving supplemental security income benefits under subchapter XVI of this chapter or who would but for his income be eligible to receive such benefits, as assistance based on need in supplementation of such benefits (as determined by the Commissioner of Social Security), but only to the extent that such payments are made with respect to an individual with respect to whom supplemental security income benefits are payable under subchapter XVI of this chapter, or would but for his income be payable under that subchapter.

(k) Supplemental security income benefits

Increased supplemental security income benefits payable pursuant to section 211 of Public Law 93-66 shall not be considered supplemental security income benefits payable under subchapter XVI of this chapter.
(l) Rural health clinics

(1) The terms “rural health clinic services” and “rural health clinic” have the meanings given such terms in section 1395x(aa) of this title, except that (A) clause (i) of section 1395x(aa)(2) of this title shall not apply to such terms, and (B) the physician arrangement required under section 1395x(aa)(2)(B) of this title shall only apply with respect to rural health clinic services and, with respect to other ambulatory care services, the physician arrangement required shall be only such as may be required under the State plan for those services.

(2)(A) The term “Federally-qualified health center services” means services of the type described in subparagraphs (A) through (C) of section 1395x(aa)(1) of this title when furnished to an individual as an2 patient of a Federally-qualified health center and, for this purpose, any reference to a rural health clinic or a physician described in section 1395x(aa)(2)(B) of this title is deemed a reference to a Federally-qualified health center or a physician at the center, respectively.

(B) The term “Federally-qualified health center” means an entity which—

(i) is receiving a grant under section 254b of this title,

(ii) is receiving funding from such a grant under a contract with the recipient of such a grant, and

(iii) meets the requirements to receive a grant under section 254b of this title,

(iv) has been determined by the Secretary to meet the requirements applicable to a birth attendant.

(m) Qualified family member

(1) Subject to paragraph (2), the term “qualified family member” means an individual (other than a qualified pregnant woman or child, as defined in subsection (n) of this section) who is a member of a family which would be receiving aid under the State plan under part A of subchapter IV of this chapter pursuant to section 607 of this title if the State had not exercised the option under section 607(b)(2)(B)(i) of this title.

(2) No individual shall be a qualified family member for any period after September 30, 1998.

(n) “Qualified pregnant woman or child” defined

The term “qualified pregnant woman or child” means—

(1) a pregnant woman who—

(A) would be eligible for aid to families with dependent children under part A of subchapter IV of this chapter (or would be eligible for such aid if coverage under the State plan under part A of subchapter IV of this chapter included aid to families with dependent children of unemployed parents pursuant to section 607 of this title) if her child had been born and was living with her in the month such aid would be paid, and such pregnancy has been medically verified;

(B) is a member of a family which would be eligible for aid under the State plan under part A of subchapter IV of this chapter pursuant to section 607 of this title if the plan required the payment of aid pursuant to such section; or

(C) otherwise meets the income and resources requirements of a State plan under part A of subchapter IV of this chapter; and

(2) a child who has not attained the age of 19, who was born after September 30, 1983 (or such earlier date as the State may designate), and who meets the income and resources requirements of the State plan under part A of subchapter IV of this chapter.
(o) Optional hospice benefits

(1)(A) Subject to subparagraphs (B) and (C), the term “hospice care” means the care described in section 1395x(dd)(1) of this title furnished by a hospice program (as defined in section 1395x(dd)(2) of this title) to a terminally ill individual who has voluntarily elected (in accordance with paragraph (2)) to have payment made for hospice care instead of having payment made for certain benefits described in section 1395x(dd)(2)(A) of this title and for which payment may otherwise be made under subchapter (2) to have payment made for hospice care instead of having payment made for certain benefits described in section 1395x(dd)(2)(A) of this title and for which payment may otherwise be made under subchapter XVIII of this chapter and intermediate care facility services under the plan. For purposes of such election, hospice care may be provided to an individual while such individual is a resident of a skilled nursing facility or intermediate care facility, but the only payment made under the State plan shall be for the hospice care.

(B) For purposes of this subchapter, with respect to the definition of hospice program under section 1395x(dd)(2) of this title, the Secretary may allow an agency or organization to make the assurance under subparagraph (A) of such section without taking into account any individual who is afflicted with acquired immune deficiency syndrome (AIDS).

(C) A voluntary election to have payment made for hospice care for a child (as defined by the State) shall not constitute a waiver of any rights of the child to be provided with, or to have payment made under this subchapter, hospice care instead of having payment made for hospice care instead of having payment made for certain benefits described in section 1395x(dd)(2)(A) of this title and for which payment may otherwise be made under subchapter XVIII of this chapter and intermediate care facility services under the plan. For purposes of such election, hospice care may be provided to an individual while such individual is a resident of a skilled nursing facility or intermediate care facility, but the only payment made under the State plan shall be for the hospice care.

(2) An individual’s voluntary election under this subsection—

(A) shall be made in accordance with procedures that are established by the State and that are consistent with the procedures established under section 1395x(dd)(2) of this title;

(B) shall be for such a period or periods (which need not be the same periods described in subsection (d)(1) of this title) as the State may establish; and

(C) may be revoked at any time without a showing of cause and may be modified so as to change the hospice program with respect to which a previous election was made.

(3) In the case of an individual—

(A) who is residing in a nursing facility or intermediate care facility for the mentally retarded and is receiving medical assistance for services in such facility under the plan,

(B) who is entitled to benefits under part A of subchapter XVIII of this chapter and has elected, under section 1395x(dd) of this title, to receive hospice care under such part, and

(C) with respect to whom the hospice program under such subchapter and the nursing facility or intermediate care facility for the mentally retarded have entered into a written agreement under which the program takes full responsibility for the professional management of the individual’s hospice care and the facility agrees to provide room and board to the individual,

instead of any payment otherwise made under the plan with respect to the facility’s services, the State shall provide for payment to the hospice program of an amount equal to the additional amount determined in section 1396(a)(13)(B) of this title and, if the individual is an individual described in section 1396a(10)(A) of this title, shall provide for payment of any coinsurance amounts imposed under section 1395c(a)(4) of this title.

(p) Qualified medicare beneficiary; medicare cost-sharing

(1) The term “qualified medicare beneficiary” means an individual—

(A) who is entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter (including an individual entitled to such benefits pursuant to an enrollment under section 1395i–2 of this title, but not including an individual entitled to such benefits only pursuant to an enrollment under section 1395i–2a of this title),

(B) whose income (as determined under section 1392a of this title for purposes of the supplemental security income program, except as provided in paragraph (2)(D)) does not exceed an income level established by the State consistent with paragraph (2), and

(C) whose resources (as determined under section 1392b of this title for purposes of the supplemental security income program) do not exceed the maximum resource level applied for the year under subparagraph (D) of section 1395w–114(a)(3) of this title (determined without regard to the life insurance policy exclusion provided under subparagraph (G) of such section) applicable to an individual or to the individual and the individual’s spouse (as the case may be).

(2)(A) The income level established under paragraph (1)(B) shall be at least the percent provided under subparagraph (B) (but not more than 100 percent) of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(B) Except as provided in subparagraph (C), the percent provided under this clause, with respect to eligibility for medical assistance on or after—

(i) January 1, 1989, is 85 percent,

(ii) January 1, 1990, is 90 percent, and

(iii) January 1, 1991, is 100 percent.

(C) In the case of a State which has elected treatment under section 1396a(f) of this title and which, as of January 1, 1987, used an income standard for individuals age 65 or older which was more restrictive than the income standard established under the supplemental security income program under subchapter XVI of this chapter, the percent provided under subparagraph (B), with respect to eligibility for medical assistance on or after—

(i) January 1, 1989, is 80 percent,

(ii) January 1, 1990, is 85 percent, and

(iii) January 1, 1991, is 95 percent, and
(iv) January 1, 1992, is 100 percent.

(D)(i) In determining under this subsection the income of an individual who is entitled to monthly insurance benefits under subchapter II of this chapter for a transition month (as defined in clause (ii)) in a year, such income shall not include any amounts attributable to an increase in the level of monthly insurance benefits payable under such subchapter which have occurred pursuant to section 415(i) of this title for benefits payable for months beginning with December of the previous year.

(ii) For purposes of clause (i), the term “transition month” means each month in a year through the month following the month in which the annual revision of the official poverty line, referred to in subparagraph (A), is published.

(3) The term “medicare cost-sharing” means (subject to section 1396a(n)(2) of this title) the following costs incurred with respect to a qualified medicare beneficiary, without regard to whether the costs incurred were for items and services for which medical assistance is otherwise available under the plan:

(A) premiums under section 1395l–2 or 1395l–2a of this title, and

(B) coinsurance under subchapter XVIII of this chapter (including coinsurance described in section 1395e of this title).

(C) deductibles established under subchapter XVIII of this chapter (including those described in section 1395e of this title and section 1385(b) of this title).

(D) the difference between the amount that is paid under section 1395l(a) of this title and the amount that would be paid under such section if any reference to “80 percent” therein were deemed a reference to “100 percent”.

Such term also may include, at the option of a State, premiums for enrollment of a qualified medicare beneficiary with an eligible organization under section 1395sm of this title.

(4) Notwithstanding any other provision of this subchapter, in the case of a State (other than the 50 States and the District of Columbia)—

(A) the requirement stated in section 1396a(a)(10)(E) of this title shall be optional, and

(B) for purposes of paragraph (2), the State may substitute for the percent provided under subparagraph (B) of section 1396a(a)(10)(E)(iii) of this title the percent of such paragraph any percent.

In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirement of section 1396a(a)(10)(E) of this title in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

§ 1396d TITLE 42—THE PUBLIC HEALTH AND WELFARE

(5)(A) The Secretary shall develop and distribute to States a simplified application form for use by individuals (including both qualified medicare beneficiaries and specified low-income medicare beneficiaries) in applying for medical assistance for medicare cost-sharing under this subchapter in the States which elect to use such form. Such form shall be easily readable by applicants and uniform nationally. The Secretary shall provide for the translation of such application form into at least the 10 languages (other than English) that are most often used by individuals applying for hospital insurance benefits under section 426 or 426–1 of this title and shall make the translated forms available to the States and to the Commissioner of Social Security.

(B) In developing such form, the Secretary shall consult with beneficiary groups and the States.

(6) For provisions relating to outreach efforts to increase awareness of the availability of medicare cost-sharing, see section 1320b–14 of this title.

(q) Qualified severely impaired individual

The term “qualified severely impaired individual” means an individual under age 65—

(1) who for the month preceding the first month to which this subsection applies to such individual—

(A) received (i) a payment of supplemental security income benefits under section 1382(b) of this title on the basis of blindness or disability, (ii) a supplementary payment under section 1382e of this title or under section 212 of Public Law 93–66 on such basis, (iii) a payment of monthly benefits under section 1382h(a) of this title, or (iv) a supplementary payment under section 1382e(c)(3), and

(B) was eligible for medical assistance under the State plan approved under this subchapter; and

(2) with respect to whom the Commissioner of Social Security determines that—

(A) the individual continues to be blind or continues to have the disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, continues to meet all non-disability-related requirements for eligibility for benefits under subchapter XVI of this chapter;

(B) the income of such individual would not, except for his earnings, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382(b)(i) of this title (if he were otherwise eligible for such payments),

(C) the lack of eligibility for benefits under this subchapter would seriously inhibit his ability to continue or obtain employment, and

(D) the individual’s earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under subchapter XVI of this chapter (including any federally administered State supplementary payments), this subchapter, and publicly funded attendant care services (in-
including personal care assistance) that would be available to him in the absence of such earnings.

In the case of an individual who is eligible for medical assistance pursuant to section 1382h(b) of this title in June, 1987, the individual shall be a qualified severely impaired individual for so long as such individual meets the requirements of paragraph (2).

(c) Early and periodic screening, diagnostic, and treatment services

The term “early and periodic screening, diagnostic, and treatment services” means the following items and services:

(1) Screening services—

(A) which are provided—

(i) at intervals which meet reasonable standards of medical and dental practice, as determined by the State after consultation with recognized medical and dental organizations involved in child health care and, with respect to immunizations under subparagraph (B)(iii), in accordance with the schedule referred to in section 1396s(c)(2)(B)(i) of this title for pediatric vaccines, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of certain physical or mental illnesses or conditions; and

(B) which shall at a minimum include—

(i) a comprehensive health and developmental history (including assessment of both physical and mental health development),

(ii) a comprehensive unclothed physical exam,

(iii) appropriate immunizations (according to the schedule referred to in section 1396s(c)(2)(B)(i) of this title for pediatric vaccines) according to age and health history,

(iv) laboratory tests (including lead blood level assessment appropriate for age and risk factors), and

(v) health education (including anticipatory guidance).

(2) Vision services—

(A) which are provided—

(i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include diagnosis and treatment for defects in vision, including eyeglasses.

(3) Dental services—

(A) which are provided—

(i) at intervals which meet reasonable standards of dental practice, as determined by the State after consultation with recognized dental organizations involved in child health care, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include relief of pain and infections, restoration of teeth, and maintenance of dental health.

(4) Hearing services—

(A) which are provided—

(i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include diagnosis and treatment for defects in hearing, including hearing aids.

(5) Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan.

Nothing in this subchapter shall be construed as limiting providers of early and periodic screening, diagnostic, and treatment services to providers who are qualified to provide all of the items and services described in the previous sentence or as preventing a provider that is qualified under the plan to furnish one or more (but not all) of such items or services from being qualified to provide such items and services as part of early and periodic screening, diagnostic, and treatment services. The Secretary shall, not later than July 1, 1990, and every 12 months thereafter, develop and set annual participation goals for each State for participation of individuals who are covered under the State plan under this subchapter in early and periodic screening, diagnostic, and treatment services.

(a) Qualified disabled and working individual

The term “qualified disabled and working individual” means an individual—

(1) who is entitled to enroll for hospital insurance benefits under part A of subchapter XVIII of this chapter under section 1395l–2a of this title;

(2) whose income (as determined under section 1382a of this title for purposes of the supplemental security income program) does not exceed 200 percent of the official poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved;

(3) whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual or a couple (in the case of an individual with a spouse) may have and obtain benefits for supplemental security income benefits under subchapter XVI of this chapter; and
(4) who is not otherwise eligible for medical assistance under this subchapter.

(t) Primary care case management services; primary care case manager; primary care case management contract; and primary care

(1) The term “primary care case management services” means case-management related services (including locating, coordinating, and monitoring of health care services) provided by a primary care case manager under a primary care case management contract.

(2) The term “primary care case manager” means any of the following that provides services of the type described in paragraph (1) under a contract referred to in such paragraph:

(A) A physician, a physician group practice, or an entity employing or having other arrangements with physicians to provide such services.

(B) At State option—

(i) a nurse practitioner (as described in subsection (a)(21) of this section);

(ii) a certified nurse-midwife (as defined in section 1395x(gg) of this title); or

(iii) a physician assistant (as defined in section 1395x(aa)(5) of this title).

(3) The term “primary care case management contract” means a contract between a primary care case manager and a State under which the manager undertakes to locate, coordinate, and monitor covered primary care (and such other services as may be specified under the contract) to all individuals enrolled with the manager, and which—

(A) provides for reasonable and adequate hours of operation, including 24-hour availability of information, referral, and treatment with respect to medical emergencies;

(B) restricts enrollment to individuals residing sufficiently near a service delivery site of the manager to be able to reach that site within a reasonable time using available and affordable modes of transportation;

(C) provides for arrangements with, or referrals to, sufficient numbers of physicians and other appropriate health care professionals to ensure that services under the contract can be furnished to enrollees promptly and without compromise to quality of care;

(D) prohibits discrimination on the basis of health status or requirements for health care services in enrollment, disenrollment, or re-enrollment of individuals eligible for medical assistance under this subchapter;

(E) provides for a right for an enrollee to terminate enrollment in accordance with section 1396a–2(a)(4) of this title; and

(F) complies with the other applicable provisions of section 1396a–2 of this title.

(4) For purposes of this subsection, the term “primary care” includes all health care services customarily provided in accordance with State licensure and certification laws and regulations, and all laboratory services customarily provided by or through a general practitioner, family medicine physician, internal medicine physician, obstetrician/gynecologist, or pediatrician.

(u) Conditions for State plans

(1) The conditions described in this paragraph for a State plan are as follows:

(A) The State is complying with the requirement of section 1397ee(d)(1) of this title.

(B) The plan provides for such reporting of information about expenditures and payments attributable to the operation of this subsection as the Secretary deems necessary in order to carry out the fourth sentence of subsection (b) of this section.

(2)(A) For purposes of subsection (b) of this section, the expenditures described in this subparagraph are expenditures for medical assistance for optional targeted low-income children described in subparagraph (B).

(B) For purposes of this paragraph, the term “optional targeted low-income child” means a targeted low-income child as defined in section 1397jj(b)(1) of this title (determined without regard to that portion of subparagraph (C) of such section concerning eligibility for medical assistance under this subchapter) who would not qualify for medical assistance under the State plan under this subchapter as in effect on March 31, 1997 (but taking into account the expansion of age of eligibility effected through the operation of section 1396a(1)(D) of this title). Such term excludes any child eligible for medical assistance only by reason of section 1396a(10)(A)(i)(XIX) of this title.

(3) For purposes of subsection (b) of this section, the expenditures described in this paragraph are expenditures for medical assistance for children who are born before October 1, 1983, and who would be described in section 1396a(1)(D) of this title if they had been born on or after such date, and who are not eligible for such assistance under the State plan under this subchapter based on such State plan as in effect as of March 31, 1997.

(4) The limitations on payment under subsections (f) and (g) of section 1308 of this title shall not apply to Federal payments made under section 1396b(a)(1) of this title based on an enhanced FMAP described in section 1397ee(b) of this title.

(v) Employed individual with a medically improved disability

(1) The term “employed individual with a medically improved disability” means an individual who—

(A) is at least 16, but less than 65, years of age;

(B) is employed (as defined in paragraph (2));

(C) ceases to be eligible for medical assistance under section 1396a(a)(10)(A)(i)(XV) of this title because the individual, by reason of medical improvement, is determined at the time of a regularly scheduled continuing disability review to no longer be eligible for benefits under section 423(d) or 1382c(a)(3) of this title; and

(D) continues to have a severe medically determinable impairment, as determined under regulations of the Secretary.

(2) For purposes of paragraph (1), an individual is considered to be “employed” if the individual—

(A) is earning at least the applicable minimum wage requirement under section 206 of title 29 and working at least 40 hours per month; or
(B) is engaged in a work effort that meets substantial and reasonable threshold criteria for hours of work, wages, or other measures, as defined by the State and approved by the Secretary.

(w) Independent foster care adolescent

(1) For purposes of this subchapter, the term “independent foster care adolescent” means an individual—
(A) who is under 21 years of age;
(B) who, on the individual’s 18th birthday, was in foster care under the responsibility of a State; and
(C) whose assets, resources, and income do not exceed such levels (if any) as the State may establish consistent with paragraph (2).

(2) The levels established by a State under paragraph (1)(C) may not be less than the corresponding levels applied by the State under section 1396u–1(b) of this title.

(3) A State may limit the eligibility of independent foster care adolescents under section 1396a(a)(10)(A)(ii)(XVII) of this title to those individuals with respect to whom foster care maintenance payments or independent living services were furnished under a program funded under part E of subchapter IV of this chapter before the date the individuals attained 18 years of age.

(x) Strategies, treatment, and services

For purposes of subsection (a)(27) of this section, the strategies, treatment, and services described in that subsection include the following:

(1) Chronic blood transfusion (with deferoxamine chelation) to prevent stroke in individuals with Sickle Cell Disease who have been identified as being at high risk for stroke.

(2) Genetic counseling and testing for individuals with Sickle Cell Disease or the sickle cell trait to allow health care professionals to treat such individuals and to prevent symptoms of Sickle Cell Disease.

(3) Other treatment and services to prevent individuals who have Sickle Cell Disease and who have had a stroke from having another stroke.

(y) Increased FMAP for medical assistance for newly eligible mandatory individuals

(1) Amount of increase

Notwithstanding subsection (b), the Federal medical assistance percentage for a State that is one of the 50 States or the District of Columbia, with respect to amounts expended by such State for medical assistance for newly eligible individuals described in subparagraph (VIII) of section 1396a(a)(10)(A)(i) of this title, shall be equal to—

(A) 100 percent for calendar quarters in 2014, 2015, and 2016;
(B) 95 percent for calendar quarters in 2017;
(C) 94 percent for calendar quarters in 2018;
(D) 93 percent for calendar quarters in 2019; and
(E) 90 percent for calendar quarters in 2020 and each year thereafter.

(2) Definitions

In this subsection:

(A) Newly eligible

The term “newly eligible” means, with respect to an individual described in subparagraph (VIII) of section 1396a(a)(10)(A)(i) of this title, an individual who is not under 19 years of age (or such higher age as the State may have elected) and who, as of December 1, 2009, is not eligible under the State plan or under a waiver of the plan for full benefits or for benchmark coverage described in subparagraph (A), (B), or (C) of section 1396u–7(b)(1) of this title or benchmark equivalent coverage described in section 1396u–7(b)(2) of this title that has an aggregate actuarial value that is at least actuarially equivalent to benchmark coverage described in subparagraph (A), (B), or (C) of section 1396u–7(b)(1) of this title, or is eligible but not enrolled (or is on a waiting list) for such benefits or coverage through a waiver under the plan that has a capped or limited enrollment that is full.

(B) Full benefits

The term “full benefits” means, with respect to an individual, medical assistance for all services covered under the State plan under this subchapter that is not less in amount, duration, or scope, or is determined by the Secretary to be substantially equivalent, to the medical assistance available for an individual described in section 1396a(a)(10)(A)(i) of this title.

(2) Equitable support for certain States

(1)(A) During the period that begins on January 1, 2014, and ends on December 31, 2015, notwithstanding subsection (b), the Federal medical assistance percentage otherwise determined under subsection (b) with respect to a fiscal year occurring during that period shall be increased by 2.2 percentage points for any State described in subparagraph (B) for amounts expended for medical assistance for individuals who are not newly eligible (as defined in subsection (y)(2)) individuals described in subparagraph (A) for fiscal years 2014, 2015, and 2016; and

(B) For purposes of subparagraph (A), a State described in this subparagraph is a State that—

(i) is an expansion State described in paragraph (3); and

(ii) has not been approved by the Secretary to divert a portion of the DSH allotment for a State to the costs of providing medical assistance or other health benefits coverage under a waiver that is in effect on July 2009.7

(2)(A) For calendar quarters in 2014 and each year thereafter, the Federal medical assistance percentage otherwise determined under subsection (b) for an expansion State described in paragraph (3) with respect to medical assistance for individuals described in section 1396a(a)(10)(A)(i)(VIII) of this title who are non-

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pregnant childless adults with respect to whom
the State may require enrollment in benchmark
coverage under section 1396u-7 of this title shall
be equal to the percent specified in subparagraph (B)(i) for such year.

(B)(i) The percent specified in this subparagraph for a State for a year is equal to the Fed-
eral medical assistance percentage (as defined in
the first sentence of subsection (b)) for the State
increased by a number of percentage points
equal to the transition percentage (specified in
clause (i) for the year) of the number of per-
centage points by which—

(I) such Federal medical assistance
percentage for the State, is less than

(II) the percent specified in subsection (y)(1)
for the year.

(ii) The transition percentage specified in this
clause for—

(1) 2014 is 50 percent;

(2) 2015 is 60 percent;

(3) 2016 is 70 percent;

(4) 2017 is 80 percent;

(5) 2018 is 90 percent; and

(6) 2019 and each subsequent year is 100 per-
cent.

(3) A State is an expansion State if, on March
23, 2010, the State offers health benefits coverage
statewide to parents and nonpregnant, childless
adults whose income is at least 100 percent of
the poverty line, that includes inpatient hos-
pital services, is not dependent on access to em-
ployer coverage, employer contribution, or em-
ployment and is not limited to premium assist-
ance, hospital-only benefits, a high deductible
health plan, or alternative benefits under a dem-
onstration program authorized under section
1396u-8 of this title. A State that offers health
benefits coverage to only parents or only non-
pregnant childless adults described in the pre-
ceding sentence shall not be considered to be an
expansion State.

(aa) Special adjustment to FMAP determination
for certain States recovering from a major
disaster

(1) Notwithstanding subsection (b), beginning
January 1, 2011, the Federal medical assistance
percentage for a fiscal year for a disaster-recover-
y FMAP adjustment State shall be equal to the
following:

(A) In the case of the first fiscal year (or
part of a fiscal year) for which this subsection
applies to the State, the Federal medical as-
sistance percentage determined for the fiscal
year without regard to this subsection, sub-
section (y), subsection (z), and section 10202 of
the Patient Protection and Affordable Care Act, increased by 50 percent of the
number of percentage points by which the Federal medical assistance percentage determined for the State for the fiscal year without regard to this subsection, subsection (y), subsection (z), and section 10202 of the Patient Protection and Affordable Care Act, is less than the Federal medical assistance percentage determined for the State for the preceding fiscal year after the application of only subsection (a) of section 5001 of Public Law 111-5 (if applicable to the preceding fiscal year) and without regard

to this subsection, subsection (y), and sub-
sections (b) and (c) of section 5001 of Public
Law 111-5.

(B) In the case of the second or any succeed-
ing fiscal year for which this subsection ap-
plies to the State, the Federal medical as-
sistance percentage determined for the State
for the fiscal year without regard to this sub-
section, subsection (y), subsection (z), and
section 10202 of the Patient Protection and Af-
fordable Care Act, is less than the Federal
medical assistance percentage determined for the State for the preceding fiscal year un-
der this subsection.

(2) In this subsection, the term “disaster-re-
covery FMAP adjustment State” means a State
that is one of the 50 States or the District of Co-
lumbia, for which, at any time during the pre-
ceding 7 fiscal years, the President has declared
a major disaster under section 401 of the Robert
T. Stafford Disaster Relief and Emergency Assis-
tance Act [42 U.S.C. 5170] and determined as a
result of such disaster that every county or parish
in the State warrant individual and public
assistance or public assistance from the Federal
Government under such Act [42 U.S.C. 5121 et
seq.] and for which—

(A) in the case of the first fiscal year (or
part of a fiscal year) for which this subsection
applies to the State, the Federal medical as-
sistance percentage determined for the State
for the fiscal year without regard to this sub-
section, subsection (y), subsection (z), and sec-
tion 10202 of the Patient Protection and Af-
fordable Care Act, is less than the Federal
medical assistance percentage determined for the State for the preceding fiscal year after
the application of only subsection (a) of section
5001 of Public Law 111-5 (if applicable to the
preceding fiscal year) and without regard

(b) In the case of the second or any succeed-
ing fiscal year for which this subsection ap-
plies to the State, the Federal medical as-
sistance percentage determined for the State
for the fiscal year without regard to this sub-
section, subsection (y), subsection (z), and
section 10202 of the Patient Protection and Af-
fordable Care Act, is less than the Federal
medical assistance percentage determined for
the State for the preceding fiscal year under
this subsection.

(B) In the case of the second or any succeed-
ing fiscal year for which this subsection applies to the State, the Federal medical assistance percentage determined for the State for the fiscal year without regard to this subsection, subsection (y), subsection (z), and section 10202 of the Patient Protection and Affordable Care Act, is less than the Federal medical assistance percentage determined for the State for the preceding fiscal year under this subsection.

(3) The Federal medical assistance percentage
determined for a disaster-recovery FMAP ad-
justment State under paragraph (1) shall apply
for purposes of this subchapter (other than with
respect to disproportionate share hospital pay-
ments described in section 1396r-4 of this title
and payments under this subchapter that are based on the enhanced FMAP described in
1397ee(b) of this title) and shall not apply with
respect to payments under subchapter IV (other

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82019 and each subsequent year is 100 per-
cent.
than under part E of subchapter IV) or payments under subchapter XXI.

(bb) Counseling and pharmacotherapy for cessation of tobacco use by pregnant women

(1) For purposes of this subchapter, the term ‘‘counseling and pharmacotherapy for cessation of tobacco use by pregnant women’’ means diagnostic, therapy, and counseling services and pharmacotherapy (including the coverage of prescription and non-prescription tobacco cessation agents approved by the Food and Drug Administration) for cessation of tobacco use by pregnant women who use tobacco products or who are being treated for tobacco use that is furnished—
(A) by or under the supervision of a physician; or
(B) by any other health care professional who—
(i) is legally authorized to furnish such services under State law (or the State regulatory mechanism provided by State law) of the State in which the services are furnished; and
(ii) is authorized to receive payment for other services under this subchapter or is designated by the Secretary for this purpose.

(2) Subject to paragraph (3), such term is limited to—
(A) services recommended with respect to pregnant women in “Treating Tobacco Use and Dependence: 2008 Update: A Clinical Practice Guideline”, published by the Public Health Service in May 2008, or any subsequent modification of such Guideline; and
(B) such other services that the Secretary recognizes to be effective for cessation of tobacco use by pregnant women.

(3) Such term shall not include coverage for drugs or biologicals that are not otherwise covered under this subchapter.

(cc) Requirement for certain States

Notwithstanding subsections (y), (z), and (aa), in the case of a State that requires political subdivisions within the State to contribute toward the non-Federal share of expenditures required under the State plan under section 1396a(a)(2) of this title, the State shall not be eligible for an increase in its Federal medical assistance percentage under such subsections if it requires that political subdivisions pay a greater percentage of the non-Federal share of such expenditures, or a greater percentage of the non-Federal share of payments under section 1396a–4 of this title, than the respective percentages that would have been required by the State under the State plan under this subchapter, State law, or both, as in effect on December 31, 2008, and without regard to any such increase. Voluntary contributions by a political subdivision to the non-Federal share of expenditures under the State plan under this subchapter or to the non-Federal share of payments under section 1396a–4 of this title, shall not be considered to be required contributions for purposes of this subsection. The treatment of voluntary contributions, and the treatment of contributions required by a State under the State plan under this subchapter, or State law, as provided by this subsection, shall also apply to the increases in the Federal medical assistance percentage under section 5001 of the American Recovery and Reinvestment Act of 2009.

(dd) Increased FMAP for additional expenditures for primary care services

Notwithstanding subsection (b), with respect to the portion of the amounts expended for medical assistance for services described in section 1396a(a)(13)(C) of this title furnished on or after January 1, 2013, and before January 1, 2015, that is attributable to the amount by which the minimum payment rate required under such section (or, by application, section 1396u–2(f) of this title) exceeds the payment rate applicable to such services under the State plan as of July 1, 2009, the Federal medical assistance percentage for a State that is one of the 50 States or the District of Columbia shall be equal to 100 percent. The preceding sentence does not prohibit the payment of Federal financial participation based on the Federal medical assistance percentage for amounts in excess of those specified in such sentence.

vides medical assistance for services and vaccines described in subparagraphs (A) and (B) of subsection (a)(13), and prohibits cost-sharing for such services and vaccines, the Federal medical assistance percentage, as determined under this subsection and subsection (g) (without regard to paragraph (1)(C) of such subsection), shall be increased by 1 percentage point with respect to medical assistance for such services and vaccines and for items and services described in subsection (a)(4)(D).".

See 2010 Amendment notes below.

REFERENCES IN TEXT


The Indian Self-Determination Act, referred to in subsec. (b)(2)(B), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2260, which is classified principally to part A (§450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (b)(2)(B), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, Title V of the Act is classified generally to subchapter IV (§1651 et seq.) of chapter 18 of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.


Section 5001 of Public Law 111–5, which is set out as a note under this section.

Section 10202 of the Patient Protection and Affordable Care Act, referred to in subsec. (aa)(1), (2), is section 10202 of Pub. L. 111–148, which is set out as a note under this section.


Section 5001 of the American Recovery and Reinvestment Act of 2009, referred to in subsec. (cc), is section 5001 of Pub. L. 111–5, which is set out as a note under this section.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–148, §204, inserted "or the care and services themselves, or both" before "(if provided in or after"

by introductory provisions.


Subsec. (b). Pub. L. 111–148, §4106(b), (c), Mar. 23, 2010, 124 Stat. 559, 560, provided that, effective Jan. 1, 2013, subsection (a)(13) of this section is amended to read as follows:

(13) other diagnostic, screening, preventive, and rehabilitative services, including—

(A) any clinical preventive services that are assigned a grade of A or B by the United States Preventive Services Task Force;

(B) with respect to an adult individual, approved vaccines recommended by the Advisory Committee on Immunization Practices (an advisory committee established by the Secretary, acting through the Director of the Centers for Disease Control and Prevention) and their administration; and

(C) any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level;

AMENDMENT OF SUBSECTION (b)

Pub. L. 111–148, title IV, §4106(b), (c), Mar. 23, 2010, 124 Stat. 559, 560, provided that, effective Jan. 1, 2013, subsection (b) of this section is amended in the first sentence—

(1) by striking "and (4)" and inserting "(4)"; and

(2) by inserting before the period the following: "and (5) in the case of a State that pro-
Subsec. (a)(13). Pub. L. 111–148, §4106(a), amended par. (13) generally. Prior to amendment, par. (13) read as follows: “other diagnostic, screening, preventive, and rehabilitative services, including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level.”


Pub. L. 111–148, §4107(b), substituted “(4)” for “and (4)” and inserted before period at end of first sentence “, and (5) in the case of a State that provides medical assistance for services and vaccines described in subparagraphs (A) and (B) of subsection (a)(13), and prohibits cost-sharing for such services and vaccines, the Federal medical assistance percentage, as determined under this subsection and subsection (y) (without regard to paragraph (1)(C) of such subsection), shall be increased by 1 percentage point with respect to medical assistance for such services and vaccines and for items and services described in subsection (a)(4)(D)”.

Pub. L. 111–148, §2301(a)(5), substituted “subsections (y) and (aa)” for “subsection (y)” in first sentence.

Pub. L. 111–148, §2050(c)(1), substituted “shall be 55 percent” for “shall be 50 per centum” in first sentence.

Pub. L. 111–148, §2050(c)(5), substituted “subsection (y) and” before “section 1396u–3 of this title” in first sentence.


Subsec. (o)(1)(A). Pub. L. 111–148, §2302(a)(1), substituted “subparagraphs (B) and (C)” for “subparagraph (B)”.


Subsec. (y)(1)(A) (notwithstanding the period provided for in subsection (y)(1)(B)) as subsec. (z)(5) and realigned margins.

Subsec. (aa)(1), (2). Pub. L. 111–148, §10201(c)(5), substituted “without regard to this subsection, subsection (y), subsection (z), and section 10202 of the Patient Protection and Affordable Care Act” for “without regard to this subsection and subsection (y)” wherever appearing.


2009—Subsec. (p)(1)(C). Pub. L. 110–275, §112, inserted “or, effective beginning with January 1, 2010, whose resources (as so determined) do not exceed the maximum resource level applied for the year under subparagraph (D) of section 1395w–114(a)(3) of this title (determined without regard to the insurance policy exclusion provided under subparagraph (G) of such section applicable to an individual or to the individual and the individual’s spouse (as the case may be)”) before period at end.

Subsec. (p)(5)(A). Pub. L. 110–275, §118(a), inserted at end “The Secretary shall provide for the translation of such application form into at least the 10 languages (other than English) that are most often used by individuals applying for hospital insurance benefits under section 426 or 426–1 of this title and shall make the translated forms available to the States and to the Commissioner of Social Security.”


Subsec. (b). Pub. L. 106–554, § 1(a)(6) [title VIII, § 802(d)(1)], in last sentence, substituted “the State’s available allotment under section 1397dd of this title for the State’s allotment under section 1397dd of this title (not taking into account reductions under section 1397dd(d)(2) of this title) for the fiscal year reduced by the amount of any payments made under section 1397ee of this title to the State from such allotment for such fiscal year”.

Pub. L. 106–334, § 2(c), in first sentence, struck out “and” before “(3)” and inserted before period at end “as and (4) the Federal medical assistance percentage shall be equal to the enhanced FMAP described in section 1397ee(b) of this title with respect to medical assistance provided to individuals who are eligible for such assistance only on the basis of section 1396a(a)(10)(A)(i)(VIII) of this title”. Subsec. (p)(5). Pub. L. 106–554, § 1(a)(6) [title VII, § 709(a)], added par. (5).


Subsec. (u)(1)(B), Pub. L. 106–554, § 1(a)(6) [title VIII, § 802(d)(2)], struck out “and section 1397dd(d) of this title” before period at end.


Subsec. (a)(15). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608a(a)(3)], substituted “1996a(a)(31) of this title” for “1396a(a)(31) of this title”.

Subsec. (b). Pub. L. 106–113, § 1000(a)(6) [title VI, § 605a(a)], inserted “(other than expenditures under section 1396e-4 of this title)” after “with respect to expenditures” in last sentence.

Subsec. (j). Pub. L. 106–113, § 1000(a)(6) [title VI, § 608(l)], substituted “83 percent” for “83 percent, ...”.


Subsec. (v). Pub. L. 106–169, § 121(c)(5)(A), redesignated subsec. (v), related to independent foster care adolescent, as (w).


Subsec. (w). Pub. L. 106–169, § 121(a)(2), redesignated subsec. (v) as (w) and substituted “1396a(a)(31) of this title” for “1396a(a)(31) of this title”.


Subsec. (a)(27). Pub. L. 105–33, § 4092(a)(1), redesignated par. (26) as (26) and substituted comma for period at end.


Subsec. (b). Pub. L. 105–100, § 162(1), inserted “for the State for a fiscal year, and that do not exceed the amount of the State’s allotment under section 1397dd of this title (not taking into account reductions under section 1397dd(d)(2) of this title) for the fiscal year reduced by the amount of any payments made under section 1397ee of this title to the State from such allotment for such fiscal year.” after “subsection (u)(3) of this section”.

Pub. L. 105–33, § 4911(a)(2), inserted at end “Notwithstanding the first sentence of this subsection, in the case of a State plan that meets the condition described in subsection (u)(1) of this section, with respect to expenditures described in subsection (u)(2)(A) of this section, or subsection (u)(3) of this section the Federal medical assistance percentage is equal to the enhanced FMAP described in section 1397ee(b) of this title.”.

Pub. L. 105–33, § 4732(b), substituted “Subject to section 1396a(a)(31) of this title, the term ‘The term’ for ‘(The term)’. Pub. L. 106–334, § 4725(b)(1), in first sentence, substituted “(2)” for “(2)” and inserted before period “, and (3) for purposes of this subchapter and section XXI of this chapter, and the Federal medical assistance percentage for the District of Columbia shall be 70 percent”.

Subsec. (j)(2)(B)(iii). Pub. L. 105–33, § 4712(d)(1), inserted “including requirements of the Secretary that an entity may not be owned, controlled, or operated by another entity,” after “such a grant,”.

Subsec. (o)(3). Pub. L. 105–33, § 4711(c)(1), substituted “amount determined in section 1396a(a)(33)(B) of this title” for “amount described in section 1396a(a)(15)(D) of this title” in concluding provisions.

Subsec. (p)(3). Pub. L. 105–33, § 4714(a)(2), inserted “subject to section 1396a(n)(2) of this title” after “means” in introductory provisions.


Subsec. (u)(1)(B). Pub. L. 105–100, § 162(2)(A), substituted “the fourth sentence of subsection (b) of this section” for “paragraph (2)”. Subsec. (u)(2)(A). Pub. L. 105–100, § 162(2)(B), substituted “paragraph (B)” for “paragraph (C), but not in excess, for a State for a fiscal year, of the amount described in paragraph (B) for the State and fiscal year”.

Subsec. (u)(2)(B). Pub. L. 105–100, § 162(2)(C), added subpar. (B) and struck out former subpars. (B) and (C) which read as follows: “(B) The amount described in this subparagraph, for a State for a fiscal year, is the amount of the State’s allotment under section 1397dd of this title (not taking into account reductions under section 1397dd(d)(2) of this title) for the fiscal year reduced by the amount of any payments made under section 1397ee of this title to the State from such allotment for such fiscal year.”.

Subsec. (u)(3). Pub. L. 105–100, § 162(2)(D), substituted “described in this paragraph” for “described in this subparagraph” and “March 31, 1997” for “April 15, 1997”.


Subsec. (a)(7). Pub. L. 103–66, § 1306(a)(1), struck out “including personal care services (A) prescribed by a physician for an individual in accordance with a plan of treatment, (B) provided by an individual who is qualified to provide such services and who is not a member of the individual’s family, (C) supervised by a registered nurse, and (D) furnished in a home or other location; but not including such services furnished to an inpatient or resident of a nursing facility” after “services”.

Subsec. (a)(17). Pub. L. 103–66, § 1306(a)(1), inserted before semicolon at end “, and with regard to whether or not the services are performed in the area of management of the care of mothers and babies throughout the maternity cycle”.


Subsec. (a)(24). Pub. L. 101–508, § 4712(a)(2), (3), which directed amendment of subsec. (a) by redesignating par. (23) as (24) and adding a new par. (25), was executed by adding the new par. (23), there being no former par. (23).

Subsec. (a)(25). Pub. L. 101–508, § 4712(a)(2), (3), which directed amendment of subsec. (a) by redesignating par. (24) as (25) and adding a new par. (26), was executed by adding the new par. (24), there being no former par. (24).

Subsec. (b)(1)(A). Pub. L. 101–508, § 4755(a)(1)(A), inserted “or in another inpatient setting that the Secretary has specified in regulations” after “section 1396d of this title”.


Subsec. (b)(2)(B). Pub. L. 101–508, § 4704(d)(2), which directed amendment of subpar. (B) by inserting “and includes an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 99–668),” after and below cl. (ii), was executed by inserting the new language after cl. (ii) to reflect the probable intent of Congress and the intervening redesignation of former cl. (i) as (ii) by Pub. L. 101–508, § 4704(c)(3). See below.


Subsec. (b)(2)(B)(iii). Pub. L. 101–508, § 4601(a)(2), substituted “age of 19” for “age of 7 (or any age designated by the State that exceeds 7 but does not exceed 19)”.

Subsec. (b)(1)(A). Pub. L. 101–508, § 4717, inserted “and for which payment may otherwise be made under subchapter XVII of this chapter” after “section 1395d of this title”.

Subsec. (c)(3). Pub. L. 101–508, § 4705(a)(1), struck out “a State which elects not to provide medical assistance for hospice care, but provides medical assistance for skilled nursing or intermediate care facility services with respect to” after “in the case of” in introductory provisions.

Pub. L. 101–508, § 4705(a)(3), (4), in concluding provisions, substituted “the additional amount described in section 1396a(a)(3)(D) of this title” for “the amounts allocated under the plan for room and board in the facility, in accordance with the rates established under section 1396a(a)(13) of this title,” and struck out at end “For purposes of this paragraph and section 1396a(a)(13) of this title, the term ‘room and board’ includes performance of personal care services, including assistance in activities of daily living, in-seating activities, administration of medication, maintaining the cleanliness of a resident’s room, and supervising and assisting in the use of durable medical equipment and prescribed therapies.”

Subsec. (c)(3)(A). Pub. L. 101–508, § 4705(a)(2), substituted “nursing facility or intermediate care facility for the mentally retarded” for “skilled nursing or intermediate care facility”.

Subsec. (p)(1)(B). Pub. L. 101–508, § 4501(e)(1)(A), which directed amendment of subpar. (B) by inserting “as provided in paragraph (2)(D)” after “supplementary social security income program”, was executed by inserting the new language after “supplemental security income program” to reflect the probable intent of Congress.

Subsec. (p)(2)(B). Pub. L. 101–508, § 4501(a)(1), inserted “and” at end of cl. (ii), substituted “100 percent.” for “95 percent,” and in cl. (iii), and struck out cl. (iv) which read as follows: “(iv) Services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level”.

Subsec. (a)(22). Pub. L. 101–508, § 4711(a)(1), which directed amendment of par. (22) by striking “and” at end, could not be executed because the word did not appear.

under section 1315 of this title, the Secretary shall require the State to meet the requirements of section 1396a(a)(10)(E) of this title in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

Subsec. (p)(4)(B). Pub. L. 101–508, § 4501(c)(1), inserted "or section 1396a(a)(10)(E)(ii) of this title" after "subparagraph (B)".

1989—Subsec. (a)(2)(D) Pub. L. 101–239, § 6404(d), substituted ", or requiring the Secretary to provide to the State" for ", or requiring the Secretary to provide to the State as required under the plan covered under".

Pub. L. 101–239, § 6402(c)(1), which directed addition of cl. (C) relating to ambulatory services, was repealed by Pub. L. 101–508, § 4703(d)(1).


Pub. L. 101–239, § 6402(c)(1), which added direction of cl. (C) relating to ambulatory services, was repealed by Pub. L. 101–508, § 4703(d)(1).

Subsec. (a)(2)(B). Pub. L. 101–239, § 6403(d)(2), amended cl. (B) generally. Prior to amendment, cl. (B) read as follows: "effective July 1, 1969, such early and periodic screening and diagnosis of individuals who are eligible for, or requiring medical care for, defects and chronic conditions discovered thereby, as may be provided in regulations of the Secretary; and"

Pub. L. 101–239, § 6404(b), designated existing provisions as par. (1), redesignated former cls. (1) and (2) as (A) and (B), respectively, and added par. (2).

Subsec. (a)(1)(A). Pub. L. 101–239, § 6404(d)(4)(B), inserted ", but not including an individual entitled to Medicare benefits for prescription drugs under subsection (a)(12) of this section, under the plan covered under the State plan for".


Pub. L. 100–485, § 608(d)(14)(A), substituted "shall be at least the percent provided under subparagraph (B) (but not more then 100 percent)" for "may not exceed a percentage (not more than 100 percent)".

Pub. L. 100–360, § 301(b)(1), as amended by Pub. L. 100–485, § 608(d)(14)(A), substituted "shall be at least the percent provided under subparagraph (B) (but not more then 100 percent)" for "may not exceed a percentage (not more than 100 percent)".

Pub. L. 100–360, § 301(c)(3)(A), which directed amendment of subpart of subparagraph (A) by striking "(2)(A)" and inserting "(2)(A)".

Pub. L. 100–360, § 301(b)(1), formerly § 301(b)(1), designated "Deductibles" for "Subject to paragraph (4) (and section 1395c of this title)" after "section 1395c-2 of this title".


Subsec. (p)(3)(A)(ii). Pub. L. 101–234, § 201(b)(1), substituted "Deductibles" for "Subject to paragraph (4) in this subchapter (and section 1395c of this title)" after "section 1395c of this title and section 1395b of this title"

Subsec. (p)(3)(A). Pub. L. 101–239, § 6404(d)(14)(A), substituted "paragraph 1395c of this title, section 1395b of this title, and section 1395m(c)(1) of this title".

Subsec. (p)(4)(B). Pub. L. 101–234, § 201(b)(4), redesignated paragraphs (5) and (4) as (4) and (3), respectively.

Subsec. (p)(1)(D). Pub. L. 100–485, § 608(d)(14)(A), added subpart (B). (B) and struck out former subpar. (B) which read as follows: "In a State which provides medical assistance to individuals described in section 1396a(a)(10)(A) of this title, the State may provide to such beneficiaries, before charges for covered outpatient drugs for a year reach such deductible amount, benefits for prescribed drugs in the same amount, duration, and scope as the benefits made available under the State plan for individuals described in section 1396a(a)(10)(A)

Subsec. (p)(1)(C). Pub. L. 101–360, § 301(d)(2), formerly § 301(d)(2), as amended by Pub. L. 100–485, § 608(d)(14)(E)(ii), inserted "without regard to whether the costs incurred were for items and services for which medical assistance is otherwise available under the plan" after "qualified medicare beneficiary" in introductory provisions.


Subsec. (p)(3). Pub. L. 100–360, § 301(d)(1), as added by Pub. L. 100–485, § 608(d)(14)(G)(ii), inserted "without regard to whether the costs incurred were for items and services for which medical assistance is otherwise available under the plan" after "qualified medicare beneficiary" in introductory provisions.

Subsec. (p)(3)(A). Pub. L. 100–360, § 301(d)(2), formerly § 301(d)(2), as renumbered by Pub. L. 100–485, § 608(d)(14)(E)(ii), substituted "paragraph 1395c of this title, section 1395b of this title, and section 1395m(c)(1) of this title".

Subsec. (p)(4)(B). Pub. L. 100–485, § 608(d)(14)(E)(ii), inserted "without regard to whether the costs incurred were for items and services for which medical assistance is otherwise available under the plan" after "qualified medicare beneficiary" in introductory provisions.

Subsec. (p)(3)(C). Pub. L. 100–360, § 301(d)(3), as renumbered by Pub. L. 100–485, § 608(d)(14)(E)(ii), substituted "paragraph 1395c of this title, section 1395b of this title, and section 1395m(c)(1) of this title". The amendment is effective as if inserted in section 1396a(a)(10)(A) of this title.

1988—Subsec. (p)(1)(B). Pub. L. 100–485, § 608(d)(14)(B), inserted "without regard to whether the costs incurred were for items and services for which medical assistance is otherwise available under the plan" after "qualified medicare beneficiary" in introductory provisions.

Subsec. (p)(3)(B). Pub. L. 100–360, § 301(d)(3), as renumbered by Pub. L. 100–485, § 608(d)(14)(E)(ii), substituted "paragraph 1395c of this title, section 1395b of this title, and section 1395m(c)(1) of this title". The amendment is effective as if inserted in section 1396a(a)(10)(A) of this title.
§608(d)(14)(G)(i), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “Deductibles and coinsurance described in section 1395e of this title.”

Subsec. (p)(3)(C). Pub. L. 100–360, §301(d)(3), as renumbered and amended by Pub. L. 100–485, §618(d)(14)(F), (G)(i), amended subpar. (C) generally, prior to amendment, subpar. (C) read as follows: “The annual deductible described in section 1395(b) of this title.”


Pub. L. 100–203, §4103(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (a)(9). Pub. L. 100–203, §4105(a), inserted provision including services furnished to an eligible individual who does not reside in a permanent dwelling or have a fixed home or mailing address.

Subsec. (a)(14). Pub. L. 100–203, §4211(h)(6)(B), substituted “skilled nursing facility services” for “skilled nursing facility services, and intermediate care facility services”.

Subsec. (a)(15). Pub. L. 100–203, §4211(h)(6)(C), substituted “services in an intermediate care facility for the mentally retarded (other than “for “intermediate care facility services (other than such services”.

Subsec. (a)(17). Pub. L. 100–203, §4073(d)(1), as amended by Pub. L. 100–360, §411(h)(4)(E), substituted “(as defined in section 1395x(g)(g) of this title)” for “(as defined in subsection (m) of this section)”.

Subsec. (c). Pub. L. 100–203, §4211(e)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) defined “intermediate care facility”.

Subsec. (d). Pub. L. 100–203, §4211(e)(2), substituted “intermediate care facility for the mentally retarded” for “intermediate care facility” and “means an” for “may include services in a public”, and in par. (3) inserted “in the case of a public institution” after “(3)”.

Subsec. (f). Pub. L. 100–203, §4211(e)(6), struck out “skilled” before “nursing” in four places and before “rehabilitation”.

Subsec. (i). Pub. L. 100–203, §4211(e)(4), struck out subsection which provided that for purposes of this subchapter “skilled nursing facility” also includes any institution which is located in a State on an Indian reservation and is certified by the Secretary as being a rehabilitation facility which is located in a State on an Indian reservation and is certified by the Secretary as being a rehabilitation facility.

Subsec. (m). Pub. L. 100–203, §4073(d)(2), struck out subsec. (m) which defined “nurse-midwife”. See section 1395x(g)(g) of this title.

Subsec. (n)(2). Pub. L. 100–203, §4101(c)(1), substituted “has not attained the age of 7 (or any age designated by the State that exceeds 7 but does not exceed 8)” for “is under 5 years of age”.

Subsec. (o)(1). Pub. L. 100–203, §4114, as amended by Pub. L. 100–360, §411(k)(8)(A), designated existing provisions as subpar. (A), substituted “Subject to subparagraph (B), the “The”, and added subpar. (B).


1986—Subsec. (a). Pub. L. 99–359, §9403(b), inserted “and the Medicare beneficiary described in subsection (p)(1) of this section, if provided after the month in which the individual becomes such a beneficiary after makes application for assistance”.


1978—Subsec. (c). Pub. L. 95–292 added cl. (4) to first sentence relating to a requirement that intermediate care facilities meet section 1396(x)(14) of this title with respect to protection to patients' personal funds, and inserted reference to that cl. (4) in provisions covering intermediate care facilities on Indian reservations.

1977—Subsec. (a)(2). Pub. L. 95–210, §2(a), designated existing provisions as cl. (A) and added cl. (B).


1976—Subsec. (b). Pub. L. 94–437 inserted provision requiring that the Federal medical assistance percentage be 100 per centum for services received through an Indian Health Service facility.

1973—Subsec. (a). Pub. L. 93–233, §13(a)(13), substituted in introductory text "individuals (other than individuals with respect to whom there is being paid, who are eligible or would be eligible if they were not in a medical institution, to have paid with respect to them a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title) not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter," for "individuals not receiving aid or assistance under the State's plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter".

Subsec. (a)(4). Pub. L. 93–233, §13(a)(14), inserted "with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter," after "blind."

Subsec. (a)(3)(B). Pub. L. 93–233, §13(a)(15), substituted "with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter" for "or"

Subsec. (a)(vi). Pub. L. 93–233, §13(a)(16), inserted "or" at end of text.


Subsec. (a)(16). Pub. L. 93–233, §18(x)(7), substituted "age 21, as defined in subsection (b) of this section; and" for "under 21, as defined in subsection (e) of this section;"

Subsec. (b). Pub. L. 93–233, §18(y)(2), struck out "; except that the Secretary shall promulgate such percentage as soon as possible after July 30, 1965, which promulgation shall be conclusive in each of the six quarters in the period beginning January 1, 1966, and ending with the close of June 30, 1966;" after "section 1396a(a)(10)(A) of this title".

Subsec. (c). Pub. L. 93–233, §18(x)(8), substituted "skilled nursing facility" for "skilled nursing home" wherever appearing.

Subsec. (h)(1)(B). Pub. L. 93–233, §18(w), substituted "(i) involve active treatment for" for "(i) which", respectively.

Subsec. (h)(2). Pub. L. 93–233, §18(x)(10), substituted "paragraph (1)" for "paragraph (e)(1)"


Subsecs. (j), (k). Pub. L. 93–233, §13(a)(18), added subsecs. (j) and (k).

1972—Subsec. (a). Pub. L. 92–603, §290(b), in text following redesignated subsec. (a)(17) substituted "as otherwise provided in paragraph (16)," for "that that."


Subsec. (a)(5). Pub. L. 92–603, §§278(a)(22), 280, substituted "skilled nursing facility" for "skilled nursing home" and inserted "furnished by a physician (as defined in section 1395a(r)(1) of this title) after "physicians' services."


Subsec. (a)(15) to (17). Pub. L. 92–603, §299(a), added par. (16) and redesignated existing pars. (15) and (16) as (17) and (18), respectively.

Subsec. (c). Pub. L. 92–603, §299L(a), inserted provision defining "intermediate care facility" with respect to any institution located in a State on an Indian reservation.


Subsec. (g). Pub. L. 92–603, §275(a), added subsec. (g).


Subsecs. (c), (d). Pub. L. 92–223, §4(a)(2), added subsecs. (c) and (d).

1968—Subsec. (a). Pub. L. 90–238, §230, inserted ", and with respect to physicians' or dentists' services, at the option of the State, to individuals not receiving aid or assistance under the State's plan approved under subchapter I, X, XIV, XVI, or part A of subchapter IV of this chapter," after "individuals"

Subsec. (a)(11). Pub. L. 90–248, §241(f)(6), inserted "part A" before "subchapter IV".


Subsec. (b). Pub. L. 90–248, §248(e), substituted in cl. (2) of first sentence "50" for "55".

Section 2402(d)(2)(B) of Pub. L. 111–148, effective Mar. 23, 2010, and applicable to items and services furnished on or after that date, see section 2402(d) of Pub. L. 111–148, set out as an Effective and Termination Dates of 2010 Amendment note under section 1396a of this title.

Amendment by section 2303(a)(4) of Pub. L. 111–148 effective Mar. 23, 2010, and applicable to items and services furnished on or after such date, see section 2303(d) of Pub. L. 111–148, set out as an Effective and Termination Dates of 2010 Amendment note under section 1396a of this title.

Amendment by section 2303(a)(4)(A) of Pub. L. 111–148 effective May 1, 2010, and applicable to items and services furnished on or after such date, see section 2303(d) of Pub. L. 111–148, set out as an Effective and Termination Dates of 2010 Amendment note under section 1396a of this title.

Amendment by section 2402(d)(2)(B) of Pub. L. 111–148 effective on the first day of the first fiscal year quarter that begins after Mar. 23, 2010, see section 2402(g) of Pub. L. 111–148, set out as an Effective and Termination Dates of 2010 Amendment note under section 1396a of this title.

Amendment by section 4106(c) of Pub. L. 111–148 effective Mar. 23, 2010, and applicable to items and services furnished on or after such date, see section 4106(c) of Pub. L. 111–148, set out as an Effective and Termination Dates of 2010 Amendment note under section 1396a of this title.
Effective Date of 2008 Amendment
Pub. L. 110–275, title I, § 118(b), July 15, 2008, 122 Stat. 2508, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2010."

Effective Date of 2006 Amendment
Amendment by Pub. L. 109–171 applicable to medical assistance for items and services furnished on or after Jan. 1, 2007, see section 6962(d) of Pub. L. 109–171, set out as a note under section 1396a of this title.

Effective Date of 2004 Amendment
Amendment by Pub. L. 108–357 effective Oct. 22, 2004, and applicable to medical assistance and services provided under this subchapter on or after that date, see section 712(d) of Pub. L. 108–357, set out as a note under section 1396b of this title.

Effective Date of 2000 Amendments
Pub. L. 106–554, § 1(a)(6) [title VII, § 709(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–578, provided that: "The amendment made by subsection (a) [amending this section] shall take effect 1 year after the date of the enactment of this Act [Dec. 21, 2000], regardless of whether regulations have been promulgated to carry out such amendment by such date. The Secretary of Health and Human Services shall develop the uniform application form under such amendment by not later than 9 months after the date of the enactment of this Act."

Pub. L. 106–554, § 1(a)(6) [title VIII, § 802(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–582, provided that: "The amendments made by this section [amending this section and sections 1397dd, 1397ee, and 1389(f) of this title] shall be effective as if included in the enactment of section 4901 of the BBA [Pub. L. 105–33] (111 Stat. 552)."

Amendment by section 1(a)(6) [title IX, § 911(a)(2)] of Pub. L. 106–554 effective one year after Dec. 21, 2000, see section 1(a)(6) [title IX, § 911(c)] of Pub. L. 106–554, set out as an Effective Date note under section 1320b–14 of this title.

Amendment by Pub. L. 106–554 applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, without regard to whether final regulations to carry out such amendments have been promulgated by such date, see section 2(d) of Pub. L. 106–554, set out as a note under section 1396a of this title.

Effective Date of 1999 Amendments
Amendment by Pub. L. 106–170 applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, see section 201(d) of Pub. L. 106–170, set out as a note under section 1396a of this title.

Amendment by section 121(a)(2) of Pub. L. 106–189 applicable to medical assistance for items and services furnished on or after Oct. 1, 1999, see section 121(b) of Pub. L. 106–189, set out as a note under section 1396a of this title.

Pub. L. 106–113, div. B, § 1000(a)(6) [title VI, § 605(b)], Nov. 29, 1999, 113 Stat. 1538, 1501A–396, provided that: "The amendment made by subsection (a) [amending this section] takes effect on October 1, 1999, and applies to expenditures made on or after such date."


Amendment by section 1000(a)(6) [title VI, § 608(b)], (m) of Pub. L. 106–113 effective Nov. 29, 1999, see section 1000(a)(6) [title VI, § 608(bb)] of Pub. L. 106–113, set out as a note under section 1396a of this title.

Effective Date of 1997 Amendments
Section 162 of Pub. L. 105–100 provided that the amendment made by that section is effective as if included in the enactment of subtitle J (§§ 4901–4923) of title IV of the Balanced Budget Act of 1997, Pub. L. 105–33.

Amendment by section 4722(a) of Pub. L. 105–33 applicable to primary care case management services furnished on or after Oct. 1, 1997, subject to provisions relating to extension of effective date for State law amendments, and to nonapplication to waivers, see section 4713(b)(1) of Pub. L. 105–33, set out as a note under section 1396b of this title.

Amendment by section 4711(c)(1) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to payment for items and services furnished on or after Oct. 1, 1997, see section 4711(d) of Pub. L. 105–33, set out as a note under section 1396a of this title.

Section 4712(d)(2) of Pub. L. 105–33 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 4714(a)(2) of Pub. L. 105–33 applicable to payment for (and with respect to provider agreements with respect to) items and services furnished on or after Aug. 5, 1997, and to payment by a State for items and services furnished before such date if such payment is subject of lawsuit that is based on subsection (p) of this section and section 1396a(n) of this title and that is pending as of, or is initiated after Aug. 5, 1997, see section 4714(c) of Pub. L. 105–33, set out as a note under section 1396b of this title.

Section 4725(b)(2) of Pub. L. 105–33 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to-

"(A) items and services furnished on or after Oct. 1, 1997;

"(B) payments made on a capitation or other risk-base for coverage occurring on or after such date; and

"(C) payments attributable to DSH allotments for such States determined under section 1923(f) of such Act (42 U.S.C. 1396r–4(f)) for fiscal years beginning with fiscal year 1998."

Effective Date of 1996 Amendment

Effective Date of 1994 Amendment

Effective Date of 1993 Amendment
Amendment by section 13601(a) of Pub. L. 103–66 effective as if included in enactment of section 4721(a) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, see section 13601(c) of Pub. L. 103–66, set out as a note under section 1396a of this title.

Amendment by section 13603(e) of Pub. L. 103–66 applicable to medical assistance furnished on or after Jan. 1, 1994, without regard to whether or not final regulations to carry out the amendments by section 13603 of Pub. L. 103–66 have been promulgated by such date, see section 13603(f) of Pub. L. 103–66, set out as a note under section 1396a of this title.

Section 13605(b) of Pub. L. 103–66 provided that: "The amendment made by subsection (a) [amending this section] shall apply to calendar quarters beginning on or after July 1, 1995."

Amendment by section 13631(f)(2) of Pub. L. 103–66 applicable, except as otherwise provided, to calendar
quarters beginning on or after Oct. 1, 1990, without regard to whether or not final regulations to carry out the amendments by section 13631(f)(3) of Pub. L. 103–66, set out as a note under section 1396a of this title.

Section 13631(g)(2) of Pub. L. 101–66 provided that: ‘‘The amendments made by subparagraph (A) and (B) of paragraph (1) [amending this section] shall first apply 90 days after the date the schedule referred to in subparagraph (A)(i) and subparagraph (B)(iii) of section 1905(r)(1) of the Social Security Act [subsection (r)(1)(B)(iii) of this section] (as amended by such respective subparagraphs) is first established.’’

Effective Date of 1990 Amendment
Amendment by section 4402(d)(2) of Pub. L. 101–508 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Jan. 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4402 of Pub. L. 101–508 have been promulgated by such date, see section 4402(e) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4501(a), (c), (e)(1) of Pub. L. 101–508 applicable to calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to implement the amendments by section 4501 of Pub. L. 101–508 are promulgated by such date, except that amendment by section 4501(e)(1) of Pub. L. 101–508 is applicable to determinations of income for months beginning with January 1991, see section 4501(f) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4601(a)(2) of Pub. L. 101–508 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4601 of Pub. L. 101–508 have been promulgated by such date, see section 4601(b) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4704(c), (d), (e)(1) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239, see section 4704(f) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4705(b) of Pub. L. 101–508 provided that: ‘‘The amendments made by subsection (a) [amending this section] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239, as amended, set out as a note under section 1396a of this title].’’

Amendment by section 4711(a) of Pub. L. 101–508 applicable to home and community care furnished on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4711 of Pub. L. 101–508 have been promulgated by such date, see section 4711(e) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4712(a) of Pub. L. 101–508 applicable to community supported living arrangements services furnished on or after the later of July 1, 1991, or 30 days after the publication of regulations setting forth interim requirements under section 1396u(h) of this title without regard to whether or not final regulations to carry out the amendments by section 4712 of Pub. L. 101–508 have been promulgated by such date, see section 4712(c) of Pub. L. 101–508, set out as an Effective Date note under section 1396a of this title.

Amendment by section 4713(b) of Pub. L. 101–508 applicable to medical assistance furnished on or after Jan. 1, 1991, see section 4713(c) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4719(b) of Pub. L. 101–508 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].’’

Section 4721(b) of Pub. L. 101–508 provided that: ‘‘The amendment made by this section [amending this section] shall become effective with respect to personal care services provided on or after October 1, 1991.’’

Section 4753(a)(1)(B) of Pub. L. 101–508 provided that: ‘‘The amendment made by subparagraph (A) [amending this section] shall be effective as if included in the enactment of the Deficit Reduction Act of 1984 [Pub. L. 98–369].’’

Effective Date of 1989 Amendments
Amendment by section 6403(a), (c), (d)(2) of Pub. L. 101–239 effective Apr. 1, 1990, without regard to whether or not final regulations to carry out the amendments by section 6403 of Pub. L. 101–239 have been promulgated by such date, see section 6403(e) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by section 6404(a), (b) of Pub. L. 101–239 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Apr. 1, 1990, without regard to whether or not final regulations to carry out the amendments by section 6404 of Pub. L. 101–239 have been promulgated by such date, see section 6404(d) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by section 6405(a) of Pub. L. 101–239 effective with respect to services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner on or after July 1, 1990, see section 6405(c) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by section 6408(d)(2), (4)(A), (B) of Pub. L. 101–239 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations to carry out the amendments by section 6408(d)(2) of Pub. L. 101–239 have been promulgated by such date, see section 6408(d)(5) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

Effective Date of 1988 Amendments
Amendment by Pub. L. 100–647 effective as if included in the enactment of section 301 of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 8434(c) of Pub. L. 100–647, set out as a note under section 1396a of this title.

Amendment by section 303(b)(2) of Pub. L. 100–485 applicable to payments under this subchapter for calendar quarters beginning on or after Apr. 1, 1990 (or, in the case of the Commonwealth of Kentucky, Oct. 1, 1990) (without regard to whether regulations to implement such amendment are promulgated by such date), with respect to families that cease to be eligible for aid under part A of subchapter IV of this chapter on or after that date, see section 303(f)(1) of Pub. L. 100–485, set out as a note under section 1396a of this title.

Amendment by section 491(d)(2) of Pub. L. 100–485 effective Oct. 1, 1990, except as provided in subsec. (m)(2) of this section and not effective for Puerto Rico, Guam, American Samoa, and the Virgin Islands, until the date of repeal of limitations contained in section 1308(a) of this title on payments to such jurisdictions for purposes of making maintenance payments under this part and part E of this subchapter, see section 491(g) of Pub. L. 100–485, as amended, set out as a note under section 1396a of this title.

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

Amendment by section 608(c)(3) of Pub. L. 100–485 effective Oct. 13, 1988, see section 608(c)(2) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 301(a)(2)–(d) of Pub. L. 100–360 applicable, except as otherwise provided, to payments...
under this subchapter for calendar quarters beginning on or after Jan. 1, 1989, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

"(A) The amendments made by subsection (a) [amending this section] apply (except as provided under subparagraph (B)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after the [sic] July 1, 1986, without regard to whether or not final regulations to carry out the amendments have been promulgated by that date.

"(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendments made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Apr. 7, 1986]."

Amendment by section 9505(e) of Pub. L. 99–272 provided that: "The amendments made by this section shall be treated as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by section 9403(b), (d), (g)(3) of Pub. L. 99–509 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9403(b) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9406(b) of Pub. L. 99–509 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether regulations to implement such amendments are promulgated by such date, see section 9406(c) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9408(c)(1) of Pub. L. 99–509 applicable to services furnished on or after Oct. 21, 1986, see section 9408(d) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9501(d)(1) of Pub. L. 99–272 provided that: "(A) The amendments made by subsection (a) [amending this section] apply (except as provided under section 1396r of this title) to medical assistance furnished on or after July 18, 1984, as failing to comply with the requirements of such title.

"(B) For purposes of section 1905(n)(2) of the Social Security Act [section 1396r of this title] (as amended by subsection (a) [probably means "subsection (c)"]) for medical assistance furnished during fiscal year 1989, any reference to "age of 7" is deemed to be a reference to "age of 6".

Amendment by section 9405(c)(3) of Pub. L. 100–203 provided that: "(1) The amendment made by subsection (a) [amending this section] applies (except as provided under section 1396r of this title) to medical assistance furnished on or after July 18, 1984, as failing to comply with the requirements of such title.

"(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendments made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [July 1, 1988]."

Effective Date of 1984 Amendment

Amendment by section 2335(f) of Pub. L. 98–369 effective July 18, 1984, see section 2335(g) of Pub. L. 98–369, set out as a note under section 1396f of this title.

Amendment by section 2340(b) of Pub. L. 98–369 effective July 18, 1984, see section 2340(c) of Pub. L. 98–369, set out as a note under section 1396x of this title.

Amendment by section 2361(b) of Pub. L. 98–369 applicable to calendar quarters beginning on or after Oct. 1, 1984, without regard to whether or not final regulations to carry out the amendment have been promulgated by such date, except as otherwise provided, see section 2361(d) of Pub. L. 98–369, set out as a note under section 1396a of this title.

Amendment by section 2371(b) of Pub. L. 98–369 provided that: "The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [July 18, 1984]."

Effective Date of 1982 Amendment

Amendment by section 137(b)(17), (18) of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

**Effective Date of 1981 Amendment**
Amendment by section 2172(b) of Pub. L. 97–35 effective Aug. 13, 1981, see section 2172(c) of Pub. L. 97–35, set out as a note under section 1396a of this title.

**Effective Date of 1980 Amendment**
For effective date of amendment by Pub. L. 96–499, see section 965(c) of Pub. L. 96–499, set out as a note under section 1396a of this title.

**Effective Date of 1978 Amendment**
Section 8(d)(1) of Pub. L. 95–292 provided that: "The amendments made by subsections (a) and (b) [amending this section] shall become effective on July 1, 1978."

**Effective Date of 1977 Amendment**
Amendment by Pub. L. 95–210 applicable to medical assistance provided, under a State plan approved under subchapter XIX of this chapter, on and after the first day of the first calendar quarter that begins more than six months after Dec. 13, 1977, with exception for plans requiring State legislation, see section 2(f) of Pub. L. 95–210, set out as a note under section 1396cc of this title.

**Effective Date of 1973 Amendment**
Amendment by section 13(a)(13)–(18) of Pub. L. 93–233 effective with respect to payments under section 1396b of this title for calendar quarters commencing after Dec. 31, 1973, see section 13(d) of Pub. L. 93–233, set out as a note under section 1396a of this title.

**Effective Date of 1972 Amendment**
Section 212(b) of Pub. L. 92–603 provided that: "The provisions of subsection (e) of section 1905 of the Social Security Act [subsec. (e) of this section] (as added by subsection (a) of this section) shall be applicable in the case of services performed on or after the date of enactment of this Act [Oct. 30, 1972]."

Amendment by section 247(b) of Pub. L. 92–603 effective with respect to services furnished after Dec. 31, 1972, see section 247(c) of Pub. L. 92–603, set out as a note under section 1396c of this title.

Section 275(b) of Pub. L. 92–603 provided that: "The amendment made by this section [amending this section] shall be effective with respect to services furnished after June 30, 1973."

Section 297(b) of Pub. L. 92–603 provided that: "The amendment made by this section [amending this section] shall apply with respect to services furnished after December 31, 1972."

**Effective Date of 1971 Amendment**

**Effective Date of 1968 Amendment**
Section 246(e) of Pub. L. 90–248 provided that the amendment made by that section is effective with respect to quarters after 1967.

**Construction of 2004 Amendment**
Pub. L. 108–357, title VII, §712(a)(2), Oct. 22, 2004, 118 Stat. 1558, provided that: "Nothing in subsections (a)(27) or (x) of section 1905 of the Social Security Act (42 U.S.C. 1396d), as added by paragraph (1), shall be construed as implying that a State Medicaid program under title XIX of such Act [this subchapter] could not have treated, prior to the date of enactment of this Act [Oct. 22, 2004], any of the primary and secondary medical strategies and treatment and services described in such subsections as medical assistance under such program, including as early and periodic screening, diagnostic, and treatment services under section 1905(r) of such Act [subsec. (r) of this section]."

**Construction of 1999 Amendment**
Amendment by Pub. L. 106–170 to be executed as if Pub. L. 106–169 had been enacted after the enactment of Pub. L. 106–170, see section 121(c)(1) of Pub. L. 106–169, set out as a note under section 1396a of this title.

**Incentives for States to Offer Home and Community-Based Services as a Long-Term Care Alternative to Nursing Homes**

"(a) STATE BALANCING INCENTIVE PAYMENTS PROGRAM.—Notwithstanding section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), in the case of a balancing incentive payment State, as defined in subsection (b), that meets the conditions described in subsection (c), during the balancing incentive period, the Federal medical assistance percentage determined for the State under section 1905(b) of such Act and, if applicable, increased under subsection (2) or (aa) shall be increased by the applicable percentage points determined under subsection (d) with respect to eligible medical assistance expenditures described in subsection (e).

"(b) BALANCING INCENTIVE PAYMENT STATE.—A balancing incentive payment State is a State—

"(1) in which less than 50 percent of the total expenditures for medical assistance under the State Medicaid program for a fiscal year for long-term services and supports (as defined by the Secretary under subsection (f)(1)(B)(a)(ii)(I) of section 1396d of such Act) are for non-institutionally-based long-term services and supports described in subsection (f)(1)(B); and

"(2) that submits an application and meets the conditions described in subsection (c); and

"(3) that is selected by the Secretary to participate in the State balancing incentive payment program established under this section.

"(c) CONDITIONS.—The conditions described in this subsection are the following:

"(1) APPLICATION.—The State submits an application to the Secretary that includes, in addition to such other information as the Secretary shall require—

"(A) a proposed budget that details the State’s plan to expand and diversify medical assistance for non-institutionally-based long-term services and supports described in subsection (f)(1)(B) under the State Medicaid program during the balancing incentive period and achieve the target spending percentage applicable to the State under paragraph (2), including through structural changes to how the State furnishes such assistance, such as through the establishment of a ‘no wrong door—single entry point system’, optional presumptive eligibility, case management services, and the use of core standardized assessment instruments, and that includes a description of the new or expanded offerings of such services that the State will provide and the projected costs of such services; and

"(B) in the case of a State that proposes to expand the provision of home and community-based services under its State Medicaid program through a State plan amendment under section 1915(i) of the Social Security Act (42 U.S.C. 1396n(i)), the option of the State, an election to increase the income eligibility for such services from 150 percent of the poverty line to such higher percentage as the State may establish for such purpose, not to exceed 300 percent of the supplemental security income benefit rate established by section 1611(b)(1) of the Social Security Act (42 U.S.C. 1382(b)(1))."

"(2) TARGET SPENDING PERCENTAGES—

"(A) In the case of a balancing incentive payment State in which less than 25 percent of the total expendi-
penditures for long-term services and supports under the State Medicaid program for fiscal year 2009 are for home and community-based services, the target spending percentage for the State to achieve by not later than October 1, 2015, is that 25 percent of the total expenditures for long-term services and supports under the State Medicaid program are for home and community-based services.

"(B) In the case of any other balancing incentive payment State, the target spending percentage for the State to achieve by not later than October 1, 2015, is that 50 percent of the total expenditures for long-term services and supports under the State Medicaid program are for home and community-based services.

"(3) MAINTENANCE OF ELIGIBILITY REQUIREMENTS.—The State does not apply eligibility standards, methodologies, or procedures in effect for such purposes on December 31, 2010.

"(4) USE OF ADDITIONAL FUNDS.—The State agrees to use the additional Federal funds paid to the State as a result of this section only for purposes of providing new or expanded offerings of non-institutionally-based long-term services and supports described in subsection (f)(1)(B) under the State Medicaid program that are more restrictive than the eligibility standards, methodologies, or procedures in effect for such purposes on December 31, 2010.

"(5) STRUCTURAL CHANGES.—The State agrees to make, not later than the end of the 6-month period that begins on the date the State submits an application under this section, the following changes:

"(A) ‘NO WRONG DOOR—SINGLE ENTRANCE POINT SYSTEM.’—Development of a statewide system to enable consumers to access all long-term services and supports through an agency, organization, coordinated network, or portal, in accordance with such standards as the State shall establish and that shall provide information regarding the availability of such services, how to apply for such services, referral services for services and supports otherwise available in the community, and determinations of financial and functional eligibility for such services and supports, or assistance with assessment processes for financial and functional eligibility.

"(B) CONFLICT-FREE CASE MANAGEMENT SERVICES.—Conflict-free case management services to develop a service plan, arrange for services and supports, support the beneficiary (and, if appropriate, the beneficiary’s caregivers) in directing the provision of services and supports for the beneficiary, and conduct ongoing monitoring to assure that services and supports are delivered to meet the beneficiary’s needs and achieve intended outcomes.

"(C) CORE STANDARDIZED ASSESSMENT INSTRUMENTS.—Development of core standardized assessment instruments for determining eligibility and core population-specific outcomes measures and accessible to providers.

"(D) OUTCOME MEASURES.—Outcomes measures data on a selected set of core population-specific outcomes measures agreed upon by the Secretary and the State that are accessible to providers and include:

"(i) measures of beneficiary and family caregiver experience with providers;

"(ii) measures of beneficiary and family caregiver satisfaction with services; and

"(iii) measures for achieving desired outcomes appropriate to a specific beneficiary, including employment, participation in community life, health stability, and prevention of loss in function.

"(d) APPLICABLE PERCENTAGE POINTS INCREASE IN FMAP.—The applicable percentage points increase is—

"(1) in the case of a balancing incentive payment State subject to the target spending percentage described in subsection (c)(2)(A), 5 percentage points; and

"(2) in the case of any other balancing incentive payment State, 2 percentage points.

"(e) ELIGIBLE MEDICAL ASSISTANCE EXPENDITURES.—

"(1) IN GENERAL.—Subject to paragraph (2), medical assistance described in this subsection is medical assistance for non-institutionally-based long-term services and supports described in subsection (f)(1)(B) that is provided by a balancing incentive payment State under its State Medicaid program during the balancing incentive payment period.

"(2) LIMITATION ON PAYMENTS.—In no case may the aggregate amount of payments made by the Secretary to balancing incentive payment States under this section during the balancing incentive period exceed $3,000,000,000.

"(f) DEFINITIONS.—In this section:

"(1) LONG-TERM SERVICES AND SUPPORTS DEFINED.—The term ‘long-term services and supports’ has the meaning given that term by Secretary and may include any of the following (as defined for purposes of State Medicaid programs):

"(i) State Medicaid program.

"(ii) Personal care services.

"(iii) Services in an intermediate care facility for individuals with intellectual disability and developmental disabilities.

"(iv) Services described in subsection (a)(26) of section 1905 of such Act [42 U.S.C. 1396n(a)(26)] (relating to PACE program services).

"(2) The term ‘PACE program’ means the program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] and under any waiver approved with respect to such State plan.''

"(g) IMPLEMENTATION.—The Secretary shall, not later than October 1, 2011, and ends on September 30, 2015.

"(v) Self-directed personal assistance services.

"(v) MEASURES.—Services not provided in an institution, including the following:

"(i) Nursing facility services.

"(ii) Services described in subsection (a)(15) of section 1905 of such Act [42 U.S.C. 1396n(a)(15)].

"(3) PACE PROGRAM.—The term ‘PACE program’ means the program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] and under any waiver approved with respect to such State plan.''

"(h) IMPLEMENTATION.—The Secretary shall, not later than October 1, 2011, and ends on September 30, 2015.
§ 1396d
TITLE 42—THE PUBLIC HEALTH AND WELFARE

Temporary Increase of Medicaid FMAP


(a) Permitting Maintenance of FMAP.—Subject to subsections (e), (f), and (g) if the FMAP determined without regard to this section for a State for—

(i) fiscal year 2009 is less than the FMAP as so determined for fiscal year 2008, the FMAP for the State for fiscal year 2008 shall be substituted for the State’s FMAP for fiscal year 2009, before the application of this section; and

(ii) fiscal year 2010 is less than the FMAP as so determined for fiscal year 2009 or fiscal year 2009 (after the application of paragraph (1)), the greater of such FMAP for the State for fiscal year 2008 or fiscal year 2009 shall be substituted for the State’s FMAP for fiscal year 2010, before the application of this section; and

(iii) fiscal year 2011 is less than the FMAP as so determined for fiscal year 2009 or fiscal year 2009 (after the application of paragraph (1)), or fiscal year 2010 (after the application of paragraph (2)), the greatest of such FMAP for the State for fiscal year 2008, fiscal year 2009, or fiscal year 2010 shall be substituted for the State’s FMAP for fiscal year 2011, before the application of this section, but only for the first 3 calendar quarters in fiscal year 2011.

(b) Additional Percentage Point Increase.—

(1) In general.—Subject to subsections (e), (f), and (g) and paragraphs (2) and (3), for each State for calendar quarters during the recession adjustment period (as defined in subsection (h)(3)), the FMAP (after the application of subsection (a)) shall be increased (without regard to any limitation otherwise specified in section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) by 6.2 percentage points.

(2) Special Election for Territories.—In the case of a State that is not one of the 50 States or the District of Columbia, paragraph (1) shall only apply if the State makes a one-time election, in a form and manner specified by the Secretary and for the entire recession adjustment period, to apply the increase in FMAP under paragraph (1) and a 15 percent increase under subsection (d) instead of applying a 30 percent increase under subsection (d).

(3) Phase-down of General Increase.—

(A) Second Quarter of Fiscal Year 2011.—For each State, for the second quarter of fiscal year 2011, the FMAP percentage increase for the State under paragraph (1) or (2) (as applicable) shall be 3.2 percentage points.

(B) Third Quarter of Fiscal Year 2011.—For each State, for the third quarter of fiscal year 2011, the FMAP percentage increase for the State under paragraph (1) or (2) (as applicable) shall be 1.2 percentage points.

(C) Additional Relief Based on Increase in Unemployment.—

(1) In general.—Subject to subsections (e), (f), and (g), if a State is a qualifying State under paragraph (2) for a calendar quarter occurring during the recession adjustment period, the FMAP for the State shall be further increased by the number of percentage points equal to the product of—

(A) the State percentage applicable for the State under section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) after the application of subsection (a) and after the application of 1/2 of the increase under subsection (b); and

(B) the applicable percent determined in paragraph (3) for the calendar quarter (or, if greater, for a previous such calendar quarter).

(2) Qualifying Criteria.—

(A) In general.—For purposes of paragraph (1), a State qualifies for additional relief under this subsection for a calendar quarter occurring during the recession adjustment period if the State is 1 of the 50 States or the District of Columbia and the State satisfies any of the following criteria for the quarter:

(i) The State unemployment increase percentage (as defined in paragraph (4) for the quarter is at least 1.5 percentage points but less than 2.5 percentage points.

(ii) The State unemployment increase percentage for the quarter is at least 2.5 percentage points but less than 3.5 percentage points.

(iii) The State unemployment increase percentage for the quarter is at least 3.5 percentage points.

(B) Maintenance of Status.—If a State qualifies for additional relief under this subsection for a calendar quarter, it shall be deemed to have qualified for such relief for each subsequent calendar quarter ending before January 1, 2011.

(3) Applicable Percent.—

(A) In general.—For purposes of paragraph (1), subject to subparagraph (B), the applicable percent is—

(i) 5.5 percent, if the State satisfies the criteria described in paragraph (2)(A)(i) for the calendar quarter;

(ii) 8.5 percent if the State satisfies the criteria described in paragraph (2)(A)(ii) for the calendar quarter; and

(iii) 11.5 percent if the State satisfies the criteria described in paragraph (2)(A)(iii) for the calendar quarter.

(B) Maintenance of Higher Applicable Percent.—

(i) Hold Harmless Period.—If the percent applied to a State under subparagraph (A) for any calendar quarter in the recession adjustment period beginning on or after January 1, 2009, and ending before January 1, 2011, (sic) (determined without regard to this subparagraph) is less than the percent applied for the preceding quarter (as so determined), the higher applicable percent shall continue in effect for each subsequent calendar quarter ending before January 1, 2011.

(ii) Notice of Lower Applicable Percent.—The Secretary shall notify a State at least 60 days prior to applying any lower applicable percent to the State under this paragraph.

(4) Computation of State Unemployment Increase Percentage.—

(A) In General.—In this subsection, the ‘State unemployment increase percentage’ for a State for a calendar quarter is equal to the number of percentage points (if any) by which—

(i) the average monthly unemployment rate for the State for months in the most recent previous 3-consecutive-month period for which data are available, subject to subparagraph (C); exceeds—

(ii) the lowest average monthly unemployment rate for the State for any 3-consecutive-month period preceding the period described in clause (i) and beginning on or after January 1, 2006.

(B) Average Monthly Unemployment Rate Defined.—In this paragraph, the term ‘average monthly unemployment rate’ means the average of the monthly number unemployed, divided by the average of the monthly civilian labor force, seasonally adjusted, as determined based on the most recent monthly publications of the Bureau of Labor Statistics of the Department of Labor.

(C) Special Rule.—With respect to—

(i) the first 2 calendar quarters of the recession adjustment period, the most recent previous 3-consecutive-month period described in subparagraph (A)(i) shall be the 3-consecutive-month period beginning with October 2008; and

(ii) the last 2 calendar quarters of the recession adjustment period, the most recent previous 3-consecutive-month period described in subparagraph (A)(i) shall be the 3-consecutive-month period beginning with December 2009, or, if re-
sults in a higher applicable percent under paragraph (3), any 3-consecutive-month period that begins after December 2009 and ends before January 1, 2010.

“(d) Increase in Cap on Medicaid Payments to Territories.—Subject to subsections (f) and (g), with respect to the entire fiscal years occurring during the recession adjustment period and with respect to fiscal years only a portion of which occurs during such period (and in proportion to the portion of the fiscal year that occurs during such period), the amounts otherwise determined for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa under subsections (f) and (g) of section 1106 of the Social Security Act (42 U.S.C. 1308) shall each be increased by 30 percent (or, in the case of an election under subsection (b)(2), 15 percent). In the case of such an election by a territory, subsection (a)(1) of such section shall be applied without regard to any increase in payments made to the territory under part E of title IV of such Act (part E of subchapter IV of this chapter) that is attributable to the increase in FMAP effected under subsection (b) for the territory.

“(e) Special Rules.—The increases in the FMAP for a State under this section shall apply for purposes of title XIX of the Social Security Act [this subchapter] and shall not apply with respect to—

“(1) disproportionate share hospital payments described in section 1923 of such Act (42 U.S.C. 1396–4);
“(2) payments under title IV of such Act (42 U.S.C. 601 et seq.) (except the increases under subsections (a) and (b) and payments under part E of title IV of such Act (42 U.S.C. 670 et seq.) and, for purposes of the application of this section to the District of Columbia, payments under such part shall be deemed to be made on the basis of the FMAP applied with respect to such District for purposes of title XIX (this subchapter) and as increased under subsection (b));
“(3) payments under title XXI of such Act (42 U.S.C. 1397aa et seq.);
“(4) any payments under title XIX of such Act (this subchapter) that are based on the enhanced FMAP described in section 2105(b) of such Act (42 U.S.C. 1396ee(b)); or
“(5) any payments under title XIX of such Act (this subchapter) that are attributable to expenditures for medical assistance provided to individuals made eligible under a State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) (except the increases under subsections (a) and (b)) and, for purposes of the application of this section to the District of Columbia, payments under such part shall be deemed to be made on the basis of the FMAP applied with respect to such District for purposes of title XIX (this subchapter) and as increased under subsection (b)).

“(f) Compliance with Prompt Pay Requirements.—

“(A) Application to Practitioners.—

“(i) In General.—Subject to the succeeding provisions of this subparagraph, no State shall be eligible for an increased FMAP rate as provided under this section for any claim received by a State from a practitioner subject to the terms of section 1902(a)(37)(A) of the Social Security Act (42 U.S.C. 1396a(a)(37)(A)) for such period during any period in which that State has failed to meet the applicable percentage of the amount of claims paid to practitioners described in such subparagraph for each calendar quarter (as such requirements pertain to claims described in such subparagraph) during such period.

“(ii) Reporting Requirement.—Each State shall report to the Secretary, on a quarterly basis, its compliance with the requirements of clause (i) as such requirements pertain to claims made for covered services during each calendar quarter.

“(iii) Waiver Authority.—The Secretary may waive the application of clause (i) to a State, or the reporting requirement imposed under clause (ii), during any period in which there are exigent circumstances, including natural disasters, that prevent the timely processing of claims or the submission of such a report.

“(g) Application to Claims.—Clauses (i) and (ii) shall only apply to claims made for covered services after the date of enactment of this Act [Feb. 17, 2009].

“(h) Application to Nursing Facilities and Hospitals.—

“(i) In General.—Subject to clause (ii), the provisions of subparagraph (A) shall apply with respect to a nursing facility or hospital, insofar as it is paid under title XIX of the Social Security Act [this subchapter] on the basis of submission of claims, in the same or similar manner (but within the same timeframe) as such provisions apply to practitioners described in such subparagraph.
§ 1396d

(1) Grace period.—Notwithstanding clause (1), no period of ineligibility shall be imposed against a State prior to June 1, 2009, on the basis of the State failing to pay a claim in accordance with such clause.

(3) State’s application toward rainy day fund.—A State is not eligible for an increase in its FMAP under subsection (b) or (c) or an increase in a cap amount under subsection (d), if any amounts attributable (directly or indirectly) to such increase are deposited or credited into any reserve or rainy day fund of the State.

(4) No waiver authority.—Except as provided in paragraph (2)(A)(iii), the Secretary may not waive the application of this subsection or subsection (g) under section 1115 of the Social Security Act (42 U.S.C. 1315) or otherwise.

(5) Limitation of FMAP to 100 percent.—In no case shall any increase in FMAP under this section result in an FMAP that exceeds 100 percent.

(6) Treatment of certain expenditures.—With respect to expenditures described in section 2106(a)(1)(B) of the Social Security Act (42 U.S.C. 1396a(a)(1)(B)), as in effect before April 1, 2009, that are made during the period beginning on October 1, 2008, and ending on March 31, 2009, any additional Federal funds that are paid to a State as a result of this section that are attributable to such expenditures shall not be counted against any allotment under section 1104 of such Act (42 U.S.C. 1396d).

(g) Requirements.—

(1) State reports.—Each State that is paid additional Federal funds as a result of this section shall, not later than March 31, 2012, submit a report to the Secretary, in such form and such manner as the Secretary shall determine, regarding how the additional Federal funds were expended.

(2) Additional requirement for certain states.—In the case of a State that requires political subdivisions within the State to contribute toward the Federal share of expenditures under the State Medicaid plan required under section 1902(a)(2) of the Social Security Act (42 U.S.C. 1396a(a)(2)), the State is not eligible for an increase in its FMAP under subsection (b) or (c), or an increase in a cap amount under subsection (d), if it requires that such political subdivisions pay for quarters during the recession adjustment period a greater percentage of the non-Federal share of such expenditures, or a greater percentage of the non-Federal share of payments under section 1923 of such Act (42 U.S.C. 1396e–4), than the respective percentage that would have been required by the State under such plan on September 30, 2008, prior to application of this section.

(3) Certification by chief executive officer.—No additional Federal funds shall be paid to a State as a result of this section with respect to a calendar quarter occurring during the period beginning on January 1, 2011, and ending on June 30, 2011, unless, not later than 45 days after the date of enactment of this paragraph, the chief executive officer of the State certifies that the State will request and use such additional Federal funds.

(h) Definitions.—In this section, except as otherwise provided:

(1) FMAP.—The term ‘FMAP’ means the Federal medical assistance percentage, as defined in section 1902(b) of the Social Security Act (42 U.S.C. 1396b(b)), as determined without regard to this section except as otherwise specified.

(2) Poverty line.—The term ‘poverty line’ has the meaning given such term in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by such section.

(3) Recession adjustment period.—The term ‘recession adjustment period’ means the period beginning on October 1, 2008, and ending on June 30, 2011.

(4) Secretary.—The term ‘Secretary’ means the Secretary of Health and Human Services.

(5) State.—The term ‘State’ has the meaning given such term in section 1101(a)(1) of the Social Security Act (42 U.S.C. 1301(a)(1)) for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).
tion and insurance fund contributions in the use of Bureau of Economic Affairs calculations for the FMAP and for Medicaid and on possible alternative methodologies to mitigate such problems.

"(e) FMAP Defined.—For purposes of this section, the term ‘FMAP’ means the Federal medical assistance percentage, as defined in section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)(2))."

(For definitions of ‘Medicaid’ and ‘Secretary’, see section 1(c) of Pub. L. 111–3, set out as a Definitions note under section 1396 of this title.)

TEMPORARY STATE FISCAL RELIEF


ALASKA FMAPS

Pub. L. 110–554, §1(a)(6) [title VII, §706], Dec. 21, 2000, 114 Stat. 2763, 2763A–577, provided that: ‘‘Notwithstanding the first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), only with respect to each of fiscal years 2001 through 2005, for purposes of titles XIX and XXI of the Social Security Act [this subchapter and subchapter XXI of this chapter], the State medical assistance percentage for Alaska shall be that percentage which bears the same ratio to 15 percent as the square of the adjusted per capita income of Alaska (determined by dividing the State’s 3-year average per capita income by 1.05) bears to the square of the per capita income of the 50 States.’’

Section 472(a) of Pub. L. 105–33 provided that: ‘‘Notwithstanding the first sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), the Federal medical assistance percentage determined under such sentence for Alaska shall be 59.8 percent but only with respect to—

‘‘(1) items and services furnished under a State plan under title XIX (this subchapter) or under a State child health plan under title XXI of such Act (subchapter XXI of this chapter) during fiscal years 1998, 1999, and 2000;

‘‘(2) payments made on a capitation or other risk-basis under such titles for coverage occurring during such period; and

‘‘(3) payments under title XIX of such Act attributable to DSH allotments for such State determined under section 1923(f) of such Act (42 U.S.C. 1396s–4(f)) for such fiscal years.’’

EPSDT BENEFIT STUDY AND REPORT

Section 474 of Pub. L. 105–33 provided that:

‘‘(a) STUDY.—

‘‘(1) IN GENERAL.—The Secretary of Health and Human Services, in consultation with Governors, directors of State medicaid programs, the American Academy of Actuaries, and representatives of appropriate provider and beneficiary organizations, shall conduct a study of the provision of early and periodic screening, diagnostic, and treatment services under the medicaid program under title XIX of the Social Security Act [this subchapter] in accordance with the requirements of section 1905(r) of such Act (42 U.S.C. 1396d(r)).

‘‘(2) REQUIRED CONTENTS.—The study conducted under paragraph (1) shall include examination of the actuarial value of the provision of such services under the medicaid program and an examination of the portions of such actuarial value that are attributable to paragraph (5) of section 1906(r) of such Act and to the second sentence of such section.

‘‘(b) REPORT.—Not later than 12 months after the date of the enactment of this Act [Aug. 5, 1997], the Secretary of Health and Human Services shall submit a report to Congress on the results of the study conducted under subsection (a).’’

REFERENCES TO PROVISIONS OF PART A OF SUBCHAPTER IV CONSIDERED REFERENCES TO SUCH PROVISIONS AS IN EFFECT JULY 16, 1996

For provisions that certain references to provisions of part A (§401 et seq.) of subchapter IV of this chapter be considered references to such provisions of part A as in effect July 16, 1996, see section 1396u–1(a) of this title.

LIMITATION ON DISALLOWANCES OR DEFERRAL OF FEDERAL FINANCIAL PARTICIPATION FOR CERTAIN IN-PATIENT PSYCHIATRIC HOSPITAL SERVICES FOR INDIVIDUALS UNDER AGE 21

Section 406 of Pub. L. 101–508 provided that:

‘‘(a) IN GENERAL.—(1) If the Secretary of Health and Human Services makes a determination that a psychiatric facility has failed to comply with certification of need requirements for inpatient psychiatric hospital services for individuals under age 21 pursuant to section 1905(b) of the Social Security Act [subsec. (b) of this section], such determination has not been subject to a final judicial decision, any disallowance or deferral of Federal financial participation under such Act [this chapter] based on such determination shall only apply to the period of time beginning with the first day of noncompliance and ending with the date by which the psychiatric facility develops documentation (using plan of care or utilization review procedures) of the need for inpatient care with respect to such individuals.

‘‘(2) Any disallowance of Federal financial participation under title XIX of the Social Security Act [this subchapter] relating to the failure of a psychiatric facility to comply with certification of need requirements—

‘‘(A) shall not exceed 25 percent of the amount of Federal financial participation for the period described in paragraph (1); and

‘‘(B) shall not apply to any fiscal year before the fiscal year that is 3 years before the fiscal year in which the determination of noncompliance described in paragraph (1) is made.

‘‘(b) EFFECTIVE DATE.—Subsection (a) shall apply to disallowance actions and deferrals of Federal financial participation with respect to services provided before the date of enactment of this Act [Nov. 5, 1990].’’

INTERMEDIATE CARE FACILITY: ACCESS AND VISITATION RIGHTS

Section 411(h)(3)(C), formerly §411(h)(3)(C), of Pub. L. 100–360, as redesignated by Pub. L. 100–485, title VI, §608(d)(2)(E), Oct. 13, 1988, 102 Stat. 2286, provided that: ‘‘Effective as of the date of the enactment of this Act [July 1, 1988] and until the effective date of section 1919(c) of such Act [section 1396r(c) of this title, see Effective Date note set out under section 1396r of this title], section 1905(c) of the Social Security Act [subsec. (c) of this section] is deemed to include the requirement described in section 1919(c)(3)(A) of such Act (as inserted by section 4211(a)(3) of OBRA).’’

REGULATIONS FOR INTERMEDIATE CARE FACILITIES FOR MENTALLY RETARDED

Section 9514 of Pub. L. 99–272 provided that: ‘‘The Secretary of Health and Human Services shall promulgate proposed regulations revising standards for intermediate care facilities for the mentally retarded under title XIX of the Social Security Act [this subchapter] within 60 days after the date of the enactment of this Act [Apr. 7, 1986].’’

LIFE SAFETY CODE RECOGNITION

Section 9515 of Pub. L. 99–272 provided that: ‘‘For purposes of section 1905(c) of the Social Security Act [subsec. (c) of this section], an intermediate care facility
§ 1396e. Enrollment of individuals under group health plans

(a) Requirements of each State plan; guidelines

Each State plan—

(1) may implement guidelines established by the Secretary, consistent with subsection (b) of this section, to identify those cases in which enrollment of an individual otherwise entitled to medical assistance under this subchapter in a group health plan (in which the individual is otherwise eligible to be enrolled) is cost-effective (as defined in subsection (e)(2) of this section);

(2) may require, in case of an individual so identified and as a condition of the individual being or remaining eligible for medical assistance under this subchapter and subject to subsection (b)(2) of this section, notwithstanding any other provision of this subchapter, that the individual (or in the case of a child, the child’s parent) apply for enrollment in the group health plan; and

(3) in the case of such enrollment (except as provided in subsection (c)(1)(B) of this section), shall provide for payment of all enrollment premiums for such enrollment and all deductibles, coinsurance, and other cost-sharing obligations for such other members shall be treated as payments for medical assistance for eligible individuals, if it would be cost-effective (taking into account payment of all such premiums), but

(ii) payment of deductibles, coinsurance, and other cost-sharing obligations for such other members shall not be treated as payments for medical assistance for eligible individuals.

(b) Timing of enrollment; failure to enroll

(1) In establishing guidelines under subsection (a)(1) of this section, the Secretary shall take into account that an individual may only be eligible to enroll in group health plans at limited times and only if other individuals (not entitled to medical assistance under the plan) are also enrolled in the plan simultaneously.

(2) If a parent of a child fails to enroll the child in a group health plan in accordance with subsection (a)(2) of this section, such failure shall not affect the child’s eligibility for benefits under this subchapter.

(c) Premiums considered payments for medical assistance; eligibility

(1)(A) In the case of payments of premiums, deductibles, coinsurance, and other cost-sharing obligations under this section shall be considered, for purposes of section 1396a(a) of this title, to be payments for medical assistance.

(B) If all members of a family are not eligible for medical assistance under this subchapter and enrollment of the members so eligible in a group health plan is not possible without also enrolling members not so eligible—

(i) payment of premiums for enrollment of such other members shall be treated as payments for medical assistance for eligible individuals, if it would be cost-effective (taking into account payment of all such premiums), but

(ii) payment of deductibles, coinsurance, and other cost-sharing obligations for such other members shall not be treated as payments for medical assistance for eligible individuals.


(e) Definitions

In this section:

(1) The term “group health plan” has the meaning given such term in section 5000(b)(1) of the Internal Revenue Code of 1986, and includes the provision of continuation coverage by such a plan pursuant to title XXII of the Public Health Service Act (42 U.S.C. 300bb-1 et seq.), section 4980B of the Internal Revenue Code of 1986, or title VI of the Employee Retirement Income Security Act of 1974.

(2) The term “cost-effective” has the meaning given that term in section 1397e(e)(3)(A) of this title.
§ 1396c–1. Premium assistance option for children

(a) In general

A State may elect to offer a premium assistance subsidy (as defined in subsection (c)) for qualified employer-sponsored coverage (as defined in subsection (b)) to all individuals under age 19 who are entitled to medical assistance under this subchapter (and to the parent of such an individual) who have access to such coverage if the State meets the requirements of this section and the offering of such a subsidy is cost-effective, as defined for purposes of section 1397ee(c)(3)(A) of this title.

(b) Qualified employer-sponsored coverage

(1) In general

Subject to paragraph (2), in this paragraph, the term "qualified employer-sponsored coverage" means a group health plan or health insurance coverage offered through an employer—

(A) that qualifies as creditable coverage as a group health plan under section 2701(c)(1) of the Public Health Service Act; 1

(B) for which the employer contribution toward any premium for such coverage is at least 40 percent; and

(C) that is offered to all individuals in a manner that would be considered a nondiscriminatory eligibility classification for purposes of paragraph (3)(A)(ii) of section 105(h) of the Internal Revenue Code of 1986 (but determined without regard to clause (i) of subparagraph (B) of such paragraph).

(2) Exception

Such term does not include coverage consisting of—

(A) benefits provided under a health flexible spending arrangement (as defined in section 106(c)(2) of the Internal Revenue Code of 1986); or

(B) a high deductible health plan (as defined in section 223(c)(2) of such Code), without regard to whether the plan is purchased in conjunction with a health savings account (as defined under section 223(d) of such Code).

(3) Treatment as third party liability

The State shall treat the coverage provided under qualified employer-sponsored coverage as a third party liability under section 1396a(a)(25) of this title.

(c) Premium assistance subsidy

In this section, the term "premium assistance subsidy" means the amount of the employee contribution for enrollment in the qualified employer-sponsored coverage by the individual under age 19 or by the individual's family. Premium assistance subsidies under this section shall be considered, for purposes of section 1396b(a) of this title, to be a payment for medical assistance.

1 So in original. The second closing parenthesis probably should not appear.

2 See References in Text note below.
§ 1396e–1

TITLES 42—THE PUBLIC HEALTH AND WELFARE

(d) Voluntary participation

(1) Employers

Participation by an employer in a premium assistance subsidy offered by a State under this section shall be voluntary. An employer may notify a State that it elects to opt-out of being directly paid a premium assistance subsidy on behalf of an employee.

(2) Beneficiaries

No subsidy shall be provided to an individual under age 19 under this section unless the individual (or the individual’s parent) voluntarily elects to receive such a subsidy. A State may not require such an election as a condition of receipt of medical assistance. State may not require, as a condition of an individual under age 19 (or the individual’s parent) being or remaining eligible for medical assistance under this subchapter, apply for enrollment in qualified employer-sponsored coverage under this section.

(3) Opt-out permitted for any month

A State shall establish a process for permitting the parent of an individual under age 19 receiving a premium assistance subsidy to disenroll the individual from the qualified employer-sponsored coverage.

(e) Requirement to pay premiums and cost-sharing and provide supplemental coverage

In the case of the participation of an individual under age 19 (or the individual’s parent) in a premium assistance subsidy under this section for qualified employer-sponsored coverage, the State shall provide for payment of all enrollee premiums for enrollment in such coverage and all deductibles, coinsurance, and other cost-sharing obligations for items and services otherwise covered under the State plan under this subchapter (exceeding the amount otherwise permitted under section 1396o of this title or, if applicable, section 1396o–1 of this title). The fact that an individual under age 19 (or a parent) elects to enroll in qualified employer-sponsored coverage under this section shall not change the individual’s (or parent’s) eligibility for medical assistance under the State plan, except insofar as section 1396a(a)(25) of this title provides that payments for such assistance shall first be made under such coverage.


AMENDMENT OF SECTION


(1) in the section catchline, by striking “option for children”;

(2) in subsection (a)—

(A) [Omitted]

(B) by striking “under age 19”;

(C) by inserting “in the case of an individual under age 19,” after “(and”;

(3) in subsection (c), in the first sentence, by striking “under age 19”; and

(4) in subsection (d)—

(A) in paragraph (2)—

(i) in the first sentence, by striking “under age 19”;

(ii) by striking the third sentence and inserting “A State may not require, as a condition of an individual (or the individual’s parent) being or remaining eligible for medical assistance under this subchapter, that the individual (or the individual’s parent) apply for enrollment in qualified employer-sponsored coverage under this section.”;

(B) in paragraph (3), by striking “the parent of an individual under age 19” and inserting “an individual (or the parent of an individual)”;

(i) in the first sentence, by striking “under age 19” each place it appears.

See 2010 Amendment notes below.

REFERENCES IN TEXT

Section 2701 of the Public Health Service Act, referred to in subdiv. (b)(1)(A), in section 2701 of act July 1, 1944, which was classified to section 300gg of this title, was renumbered section 2704, effective for plan years beginning on or after Jan. 1, 2014, with certain exceptions, and amended, by Pub. L. 111–148, title I, §§1201(2), 1563(c)(1), formerly §1562(c)(1), title X, §10107(b)(1), Mar. 23, 2010, 124 Stat. 154, 264, 911, and was transferred to section 300gg–3 of this title. A new section 2701 of act July 1, 1944, related to fair health insurance, was added, effective for plan years beginning on or after Jan. 1, 2014, and amended, by Pub. L. 111–148, title I, §1201(4), title X, §1010(ka), Mar. 23, 2010, 124 Stat. 155, 892, and is classified to section 300gg–3 of this title.

The Internal Revenue Code of 1986, referred to in subdiv. (b)(1)(C), (2), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS


Subsec. (a). Pub. L. 111–148, §10203(b)(2), struck out “and the offering of such a subsidy is cost-effective, as defined for purposes of section 1396ee(c)(3)(A) of this title” before period at end.

Pub. L. 111–148, §2003(a)(1)(B), (C), struck out “under age 19” after “all individuals” and inserted “in the case of an individual under age 19,” after “(and”.

Pub. L. 111–148, §2003(a)(1)(A), which directed substitution of “shall” for “may elect to”, was not executed because of Pub. L. 111–148, §10203(b)(2), set out as a note under this section.

Subsec. (c). Pub. L. 111–148, §2003(a)(2), struck out “under age 19” after “by the individual”.

Subsec. (d)(2). Pub. L. 111–148, §2003(a)(3)(A), struck out “under age 19” after “to an individual” and substituted “A State may not require, as a condition of an individual (or the individual’s parent) being or remaining eligible for medical assistance under this subchapter, that the individual (or the individual’s parent) apply for enrollment in qualified employer-sponsored coverage under this section.” for “State may not require, as a condition of an individual under age 19 (or the individual’s parent) being or remaining eligible for medical assistance under this subchapter, apply for enrollment in qualified employer-sponsored coverage under this section.”

Subsec. (d)(3). Pub. L. 111–148, §2003(a)(3)(B), substituted “an individual (or the parent of an individual)” for “the parent of an individual under age 19”.


So in original. Probably should be preceded by “A”.
Section effective Apr. 1, 2009, and applicable to child health assistance and medical assistance provided on or after that date, with certain exceptions, see section 3 of Pub. L. 111-5, set out as a note under section 1396 of this title.

EFFECT OF CERTAIN AMENDMENT BY PUB. L. 111-148

Pub. L. 111-148, title X, § 10203(b)(2)(B), Mar. 23, 2010, 124 Stat. 927, provided that: ''This Act shall be applied without regard to subparagraph (A) of section 2003(a)(1) of this Act [amending this section] and that subparagraph shall be deemed null, void, and of no effect.''

§ 1396f. Observance of religious beliefs

Nothing in this subchapter shall be construed to require any State which has a plan approved under this subchapter to compel any person to undergo any medical screening, examination, diagnosis, or treatment or to accept any other health care or services provided under such plan for any purpose (other than for the purpose of discovering and preventing the spread of infectious or contagious disease or for the purpose of protecting environmental health), if such person objects (or, in case such person is a child, his parent or guardian objects) thereto on religious grounds.


§ 1396g. State programs for licensing of administrators of nursing homes

(a) Nature of State program

For purposes of section 1396a(a)(29) of this title, a State program for the licensing of administrators of nursing homes is a program which provides that no nursing home within the State may operate except under the supervision of an administrator licensed in the manner provided in this section.

(b) Licensing by State agency or board representative of concerned professions and institutions

Licensing of nursing home administrators shall be carried out by the agency of the State responsible for licensing under the healing arts licensing act of the State, or, in the absence of such act or such an agency, a board representative of the professions and institutions concerned with care of chronically ill and infirm aged patients and established to carry out the purposes of this section.

(c) Functions and duties of State agency or board

It shall be the function and duty of such agency or board to—

(1) develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to ensure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators; (2) develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards; (3) issue licenses to individuals determined, after the application of procedures for enforcement of such standards, to meet such standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards; (4) establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards; (5) receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards; and (6) conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such.

(d) Waiver of standards other than good character or suitability standards

No State shall be considered to have failed to comply with the provisions of section 1396a(a)(29) of this title because the agency or board of such State (established pursuant to subsection (b) of this section) shall have granted any waiver, with respect to any individual who, during all of the three calendar years immediately preceding the calendar year in which the requirements prescribed in section 1396a(a)(29) of this title are first met by the State, has served as a nursing home administrator, of any of the standards developed, imposed, and enforced by such agency or board pursuant to subsection (c) of this section.

(e) “Nursing home” and “nursing home administrator” defined

As used in this section, the term—

(1) "nursing home" means any institution or facility defined as such for licensing purposes under State law, or, if State law does not employ the term nursing home, the equivalent term or terms as determined by the Secretary, but does not include a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title). 1

1 So in original. The period probably should be "i.; and".
(2) "nursing home administrator" means any individual who is charged with the general administration of a nursing home whether or not such individual has an ownership interest in such home and whether or not his functions and duties are shared with one or more other individuals.


REPEAL OF SECTION

Pub. L. 101–308, title IV, §4801(e)(11), Nov. 5, 1990, 104 Stat. 1386–217, provided that, effective on the date on which the Secretary promulgates standards regarding the qualifications of nursing facility administrators under section 1396r(f)(4) of this title, this section is repealed.

CODIFICATION

Another section 1908 of act Aug. 14, 1935, was renumbered section 1908a and is classified to section 1396g–1 of this title.

AMENDMENTS

1997—Subsec. (e)(1). Pub. L. 105–33 which directed substitution of "a religious nonmedical health care institution (as defined in section 1395a(a)(1) of this title), for "a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts; and" in "Section 1908(e)(1) (42 U.S.C. 1396g–1(e)(1))" of the Social Security Act," was omitted. Subsec. (e)(1) of this section to reflect the probable intent of Congress, because section 1396g–1 of this title, which is also section 1908 of the Social Security Act, does not have a subsec. (e).

1996—Subsec. (e)(1). Pub. L. 104–193, which directed substitution of "The Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc." for "The First Church of Christ, Scientist, Boston, Massachusetts" in section 1908(e)(1) of the Social Security Act (42 U.S.C. 1396g–1(e)(1)) could not be executed to this section or section 1396g–1 of this title, both of which are section 1908. Section 1396g–1 does not have a subsec. (e) and subsec. (e)(1) of this section does not contain the quoted language with the word "the" capitalized.

1973—Subsec. (d). Pub. L. 93–233 struck out second sentence reading substantially the same as the first sentence but containing the following additional text reading "other than such standards as relate to good character or suitability if—"

"(1) such waiver is for a period which ends after being in effect for two years or on June 30, 1972, whichever is earlier; and"

"(2) there is provided in the State (during all of the period for which waiver is in effect), a program of training and instruction designed to enable all individuals with respect to whom any such waiver is granted, to attain the qualifications necessary in order to meet such standards" and also "calendar year" instead of "three calendar years" and reference to "subsection (c)(1) of this section" instead of "subsection (c)(1) of this section".

Subsec. (e). Pub. L. 93–233 redesignated subsec. (g) as (e), and repealed prior subsec. (e) relating to authorization of appropriations for fiscal years 1968 through 1972 and to limitation of grants.


Subsec. (g). Pub. L. 93–233, redesignated subsec. (g) as (f), inserted references to the grant of waivers to individuals who, during all of the three calendar years immediately preceding the calendar year in which the requirements prescribed in section 1396a(a)(29) of this title are first met by the State, have served as nursing home administrators and substituted "subsection (c)(1)" for "subsection (b)(1)".

Subsec. (h)(1). Pub. L. 92–603, §268(b), inserted "but does not include a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts" after "Secretary".

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective Aug. 5, 1997, and applicable to items and services furnished on or after such date, with provision that Secretary of Health and Human Services issue regulations to carry out such amendment by not later than July 1, 1998, see section 4454(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395i–5 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 913 of Pub. L. 104–193 provided that the amendment made by that section is effective Jan. 1, 1997.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 268(b) of Pub. L. 92–603 effective Oct. 30, 1972, see section 268(c) of Pub. L. 92–603, set out as a note under section 1396a of this title.

EFFECTIVE DATE

Section 268(c) of Pub. L. 92–603 provided that: "Except as otherwise specified in the text thereof, the amendments made by this section [enacting this section and amending section 1396a of this title] shall take effect on July 1, 1970."
child, to enroll such child under such family coverage upon application by the child’s other parent or by the State agency administering the program under this subchapter or part D of subchapter IV of this chapter; and

(C) not to disenroll (or eliminate coverage of) such a child unless the insurer is provided satisfactory written evidence that—

(i) such court or administrative order is no longer in effect, or

(ii) the child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of such disenrollment.

(3) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an employer doing business in the State, a law that requires such employer—

(A) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

(B) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child’s other parent or by the State agency administering the program under this subchapter or part D of subchapter IV of this chapter; and

(C) not to disenroll (or eliminate coverage of) any such child unless—

(i) the employer is provided satisfactory written evidence that—

(I) such court or administrative order is no longer in effect, or

(II) the child is or will be enrolled in comparable health coverage which will take effect not later than the effective date of such disenrollment, or

(ii) the employer has eliminated family health coverage for all of its employees; and

(D) to withhold from such employee’s compensation the employee’s share (if any) of premiums for health coverage (except that the amount so withheld may not exceed the maximum amount permitted to be withheld under section 167a(b) of title 15), and to pay such share of premiums to the insurer, except that the Secretary may provide by regulation for appropriate circumstances under which an employer may withhold less than such employee’s share of such premiums.

(4) A law that prohibits an insurer from imposing requirements on a State agency, which has been assigned the rights of an individual eligible for medical assistance under this subchapter and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual so covered.

(5) A law that requires an insurer, in any case in which a child has health coverage through the insurer of a noncustodial parent—

(A) to provide such information to the custodial parent as may be necessary for the child to obtain benefits through such coverage;

(B) to permit the custodial parent (or provider, with the custodial parent’s approval) to submit claims for covered services without the approval of the noncustodial parent; and

(C) to make payment on claims submitted in accordance with subparagraph (B) directly to such custodial parent, the provider, or the State agency.

(6) A law that permits the State agency under this subchapter to garnish the wages, salary, or other employment income of, and requires witholding amounts from State tax refunds to, any person who—

(A) is required by court or administrative order to provide coverage of the costs of health services to a child who is eligible for medical assistance under this subchapter, for

(B) has received payment from a third party for the costs of such services to such child, but

(C) has not used such payments to reimburse, as appropriate, either the other parent or guardian of such child or the provider of such services,

the extent necessary to reimburse the State agency for expenditures for such costs under its plan under this subchapter, but any claims for current or past-due child support shall take priority over any such claims for the costs of such services.

(b) “Insurer” defined

For purposes of this section, the term “insurer” includes a group health plan, as defined in section 1167(1) of title 29, a health maintenance organization, and an entity offering a service benefit plan.


Effective Date

Section 13623(c) of Pub. L. 103–66 provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 1396a of this title] apply to calendar quarters beginning on or after April 1, 1994, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

“(2) In the case of a State plan under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Aug. 10, 1993]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.”
§ 1396h. State false claims act requirements for increased State share of recoveries

(a) In general

Notwithstanding section 1396d(b) of this title, if a State has in effect a law relating to false or fraudulent claims that meets the requirements of subsection (b), the Federal medical assistance percentage with respect to any amounts recovered under a State action brought under such law shall be decreased by 10 percentage points.

(b) Requirements

For purposes of subsection (a), the requirements of this subsection are that the Inspector General of the Department of Health and Human Services, in consultation with the Attorney General, determines that the State has in effect a law that meets the following requirements:

(1) The law establishes liability to the State for false or fraudulent claims described in section 3729 of title 31 with respect to any expenditure described in section 1396(a) of this title.

(2) The law contains provisions that are at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims as those described in sections 3730 through 3732 of title 31.

(3) The law contains a requirement for filing an action under seal for 60 days with review by the State Attorney General.

(4) The law contains a civil penalty that is not less than the amount of the civil penalty authorized under section 3729 of title 31.

(c) Deemed compliance

A State that, as of January 1, 2007, has a law in effect that meets the requirements of subsection (b) shall be deemed to be in compliance with such requirements for so long as the law continues to meet such requirements.

(d) No preclusion of broader laws

Nothing in this section shall be construed as prohibiting a State that has in effect a law that establishes liability to the State for false or fraudulent claims described in section 3729 of title 31, with respect to programs in addition to the State program under this subchapter, or with respect to expenditures in addition to expenditures described in section 1396(a) of this title, from being considered to be in compliance with the requirements of subsection (a) so long as the law meets such requirements.


Prior Provisions


Effective Date


§ 1396i. Certification and approval of rural health clinics and intermediate care facilities for mentally retarded

(a)(1) Whenever the Secretary certifies a facility in a State to be qualified as a rural health clinic under subchapter XIX of this chapter, such facility shall be deemed to meet the standards for certification as a rural health clinic for purposes of providing rural health clinic services under this title.

(2) The Secretary shall notify the State agency administering the medical assistance plan of his approval or disapproval of any facility in that State which has applied for certification by him as a qualified rural health clinic.

(b)(1) The Secretary may cancel approval of any intermediate care facility for the mentally retarded at any time if he finds on the basis of a determination made by him as provided in section 1396(a)(33)(B) of this title that a facility fails to meet the requirements contained in section 1396(a)(31) of this title or section 1396(d) of this title, or if he finds grounds for termination of his agreement with the facility pursuant to section 1395cc(b) of this title.

(2) Any intermediate care facility for the mentally retarded which is dissatisfied with a determination by the Secretary that it no longer qualifies as an intermediate care facility for the mentally retarded for purposes of this subchapter, shall be entitled to a hearing by the Secretary to the same extent as is provided in section 405(b) of this title and to judicial review of the Secretary’s final decision after such hearing as is provided in section 405(g) of this title, except that, in applying such sections and in applying section 405(l) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively. Any agreement between such facility and the State agency shall remain in effect until the period for filing a request for a hearing has expired or, if a request has been filed, until a decision has been made by the Secretary; except that the agreement shall not be extended if the Secretary makes a written determination, specifying the reasons therefor, that the continuation of provider status constitutes...
an immediate and serious threat to the health and safety of patients, and the Secretary certifies that the facility has been notified of its deficiencies and has failed to correct them.


**AMENDMENTS**


1994—Subsec. (b)(2). Pub. L. 103–296 inserted before period at end of first sentence “except that, in so applying such sections and in applying section 404(l) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively”.


Subsec. (b)(1). Pub. L. 101–239, §6901(d)(5)(B)–(D), substituted “any intermediate care facility for the mentally retarded” for “any skilled nursing or intermediate care facility”, “section 1396a(a)(31) of this title or section 1396d(d) of this title” for “section 1396a(a)(28) of this title or section 1396c of this title or section 1396e of this title or section 1396c of this title or section 1396e(c) of this title”, and “the intermediate care facility for the mentally retarded” for “the skilled nursing facility or intermediate care facility”.


1987—Pub. L. 100–203 struck out “skilled nursing facilities and” before “of” in section catchline, redesignated subsecs. (b) and (c) as (a) and (b), respectively, and struck out former subsec. (a) which related to certification and approval of skilled nursing facilities.

1980—Subsec. (c). Pub. L. 96–499 added subsec. (c). (a) Amendment by Pub. L. 95–210 applicable to medical assistance provided, under a State plan approved under subchapter XIX of this chapter, on and after first day of first calendar quarter that begins more than six months after Dec. 13, 1977, with exception for plans requiring State legislation, see section 2(f) of Pub. L. 95–210, set out as an Effective Date of 1977 Amendment.

(b) Facilities deemed to meet requirements upon submission of acceptable plan for achieving compliance

A facility of the Indian Health Service (including a hospital, nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan), whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 1603 of title 25), shall be eligible for reimbursement for medical assistance provided under a State plan if and for so long as it meets all of the conditions and requirements which are applicable generally to such facilities under this subchapter.
the extent of its actual compliance with such conditions and requirements, during the first twelve months after the month in which such plan is submitted.

(c) Agreement to reimburse State agency for providing care and services

The Secretary is authorized to enter into agreements with the State agency for the purpose of reimbursing such agency for health care and services provided in Indian Health Service facilities to Indians who are eligible for medical assistance under the State plan.

(d) Cross reference

For provisions relating to the authority of certain Indian tribes, tribal organizations, and Alaska Native health organizations to elect to directly bill for, and to receive payment for, health care services provided by a hospital or clinic of such tribes or organizations and for which payment may be made under this subchapter, see section 1645 of title 25.


REFERENCES IN TEXT

Section 1645 of title 25, referred to in subsec. (d), was amended generally by Pub. L. 111–148, title X, §202(a), Mar. 23, 2010, 124 Stat. 935, and, as so amended, no longer contains provisions relating to direct billing of Medicare, Medicaid, and other third party payors.

AMENDMENTS


1987—Subsecs. (a), (b). Pub. L. 100–203, §4118(f)(1)(A), as amended by Pub. L. 100–360, §1114(b)(8), substituted “nursing facility,” for “any other type of facility which provides services of a type otherwise covered under the State plan” for “nursing facility.”


EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–417 effective Oct. 1, 2000, see section 3(c) of Pub. L. 106–417, set out as a note under section 1396i of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4118(f)(2) of Pub. L. 100–203 provided that: “The amendments made by paragraph (1) [amending this section] shall apply to health care services performed on or after the date of the enactment of this Act (Dec. 22, 1987).”

Amendment by section 4211(h)(8) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

AGREEMENTS TO REIMBURSE STATE AGENCY FOR HEALTH CARE AND SERVICES PROVIDED BY AGENCY TO INDIANS

Pub. L. 94–437, title IV, §402(b), Sept. 30, 1976, 90 Stat. 1409, which authorized Secretary to enter into agreements to reimburse State agencies for health care and services provided in Service facilities to Indians eligible for medical assistance under this subchapter, was repealed by Pub. L. 100–713, title IV, §401(b), Nov. 23, 1988, 102 Stat. 4818, applicable to services performed on or after the Nov. 23, 1988.

PAYMENTS INTO SPECIAL FUND TO IMPROVE INDIAN HEALTH SERVICE FACILITIES TO ACHIEVE COMPLIANCE WITH CONDITIONS AND REQUIREMENTS

Pub. L. 94–437, title IV, §402(c), Sept. 30, 1976, 90 Stat. 1409, as amended by Pub. L. 100–713, title IV, §401(a), Nov. 23, 1988, 102 Stat. 4818, provided that payments to which any Indian Health Service facility was entitled by reason of this section were to be placed in a special fund of the Secretary for improvements of facilities of the Service to comply with requirements of this subchapter, required minimum funding for each service unit making collections for such facilities, and provided for section 402(c) of Pub. L. 94–437 to cease to apply when Secretary determined that substantially all such facilities complied with requirements of this subchapter, prior to the general amendment of section 402 of Pub. L. 94–437 by Pub. L. 102–573, title IV, §401(b)(1), Oct. 29, 1992, 106 Stat. 4565.

Similar provisions are contained in section 401(c) of Pub. L. 94–437, which is classified to section 1641(c) of Title 25, Indians.

MEDICAID PAYMENTS NOT CONSIDERED IN DETERMINING APPROPRIATIONS FOR INDIAN HEALTH CARE

Pub. L. 94–437, title IV, §402(d), Sept. 30, 1976, 90 Stat. 1410, provided that any payments received for services provided recipients under this section were not to be considered in determining appropriations for the provision of health care and services to Indians, prior to the general amendment of section 402 of Pub. L. 94–437 by Pub. L. 102–573, title IV, §401(b)(1), Oct. 29, 1992, 106 Stat. 4565.

Similar provisions are contained in section 401(a) of Pub. L. 94–437, which is classified to section 1641(a) of Title 25, Indians.
gible for medical assistance under this subchapter and on whose behalf the individual has the legal authority to execute an assignment of such rights, to support (specified as support for the purpose of medical care by a court or administrative order) and to payment for medical care from any third party;

(B) to cooperate with the State in establishing the paternity of such person (referred to in subparagraph (A)) if the person is a child born out of wedlock, and (ii) in obtaining support and payments (described in subparagraph (A)) for himself and for such person, unless (in either case) the individual is described in section 1396a(g)(1)(A) of this title or the individual is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved; and

(C) to cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the plan, unless such individual has good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved;

(2) provide for entering into cooperative arrangements (including financial arrangements), with any appropriate agency of any State (including, with respect to the enforcement and collection of rights of payment for medical care by or through a parent, with a State’s agency established or designated under section 654(3) of this title) and with appropriate courts and law enforcement officials, to assist the agency or agencies administering the State plan with respect to (A) the enforcement and collection of rights to support or payment made on behalf of an individual who has the legal authority to execute an assignment of such rights, to support (specified as support for the purpose of medical care by a court or administrative order) and to payment for medical care from any third party;

(b) Such part of any amount collected by the State under an assignment made under the provisions of this section shall be retained by the State as is necessary to reimburse it for medical assistance payments made on behalf of an individual with respect to whom such assignment was executed (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing of such medical assistance), and the remainder of such amount collected shall be paid to such individual.


 EFFECTIVE DATE OF 1990 AMENDMENT

Section 4606(b) of Pub. L. 101–508 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].”

 EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 applicable to calendar quarters beginning on or after Apr. 7, 1986, except as otherwise provided, see section 9503(g)(1), (2) of Pub. L. 99–272, set out as a note under section 1396c of this title.

 EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise provided, see section 2367(c) of Pub. L. 98–369, set out as a note under section 1396a of this title.

§1396f. Hospital providers of nursing facility services

(a) Notwithstanding any other provision of this subchapter, payment may be made, in accordance with this section, under a State plan approved under this subchapter for nursing facility services furnished by a hospital which has in effect an agreement under section 1395tt of this title and which, with respect to the provision of such services, meets the requirements of subsections (b) through (d) of section 1396c of this title.

(b) (1) Except as provided in paragraph (3), payment to any such hospital, for any nursing facility services furnished pursuant to subsection (a) of this section, shall be at a rate equal to the average rate per patient-day paid for routine services during the previous calendar year under the State plan for nursing facilities, respectively, located in the State in which the hospital is located.

(2) With respect to any period for which a hospital has an agreement under section 1395tt of this title, in order to allocate routine costs between hospital and long-term care services, the total reimbursement for routine services due under the plan for medical assistance may be made at a rate equal to the average rate per patient-day paid for routine services during the previous calendar year under the State plan for nursing facilities, respectively, located in the State in which the hospital is located.

(3) Payment to all such hospitals, for any nursing facility services furnished pursuant to subsection (a) of this section, may be made at a payment rate established by the State in accordance with the requirements of section 1396a(a)(13)(A) of this title.


1So in original, “. . . respectively,” probably should not appear.

AMENDMENTS


Subsec. (a). Pub. L. 100–203, §4211(h)(9)(B), substituted “nursing facility services” for “skilled nursing facility services and intermediate care facility services” and inserted “and which, with respect to the provision of such services, meets the requirements of subsections (b) through (d) of section 1396r of this title” before period at end.

Subsec. (b)(1). Pub. L. 100–203, §4211(h)(9)(C), substituted “nursing facility services” for “skilled nursing or intermediate care facility services” and “nursing facilities” for “skilled nursing and intermediate care facilities”.

Subsec. (b)(3). Pub. L. 100–203, §4211(h)(9)(D), substituted “Except as provided in paragraph (3), payment for ‘Payment’” for “Enactment of this Act”.

Effective Date of 1987 Amendment

Amendment by Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Effective Date of 1984 Amendment

Section 2369(b) of Pub. L. 98–369, 98 Stat. 389, provided that: “The amendments made by this section [amending this section] shall apply to payments for services furnished after the date of the enactment of this Act [July 18, 1984].”

Effective Date

Section effective on date on which final regulations to implement the section are first issued, see section 904(d) of Pub. L. 96–499, set out as an Effective Date note under section 1396tt of this title.

§ 1396m. Withholding of Federal share of payments for certain medicare providers

(a) Adjustment of Federal matching payments

The Secretary may adjust, in accordance with this section, the Federal matching payment to a State with respect to expenditures for medical assistance for care or services furnished in any quarter by—

(1) an institution (A) which has or previously had in effect an agreement with the Secretary under section 1395cc of this title; and (B)(i) from which the Secretary has been unable to recover overpayments made under subchapter XVIII of this chapter, or (ii) from which the Secretary has been unable to collect the information necessary to enable him to determine the amount (if any) of the overpayments made to such institution under subchapter XVIII of this chapter and to which the institution or person would otherwise be entitled under this subchapter.

(b) Reductions in payments to and by States

The Secretary may (subject to the remaining provisions of this section) reduce payment to a State under this subchapter for any quarter by an amount equal to the lesser of the Federal matching share of payments to any institution or person specified in subsection (a) of this section, or the total overpayments to such institution or person under subchapter XVIII of this chapter, and may require the State to reduce its payment to such institution or person by such amount.

(c) Notice

The Secretary shall not make any adjustment in the payment to a State, nor require any adjustment in the payment to an institution or person, pursuant to subsection (b) of this section until after he has provided adequate notice (which shall be not less than 60 days) to the State agency and the institution or person.

(d) Regulations

The Secretary shall by regulation provide procedures for implementation of this section, which procedures shall (1) determine the amount of the Federal payment to which the institution or person would otherwise be entitled under this section which shall be treated as a setoff against overpayments under subchapter XVIII of this chapter, and (2) assure the restoration to the institution or person of amounts withheld under this section which are ultimately determined to be in excess of overpayments under subchapter XVIII of this chapter and to which the institution or person would otherwise be entitled under this subchapter.

(e) Restoration to trust funds of recovered amounts

The Secretary shall restore to the trust funds established under sections 1395i and 1395t of this title, as appropriate, amounts recovered under this section as setoffs against overpayments under subchapter XVIII of this chapter.

(f) Liability of States for withheld payments

Notwithstanding any other provision of this subchapter, an institution or person shall not be entitled to recover from any State any amount in payment for medical care and services under this subchapter which is withheld by the State agency pursuant to an order by the Secretary under subsection (b) of this section.
§ 1396n. Compliance with State plan and payment provisions

(a) Activities deemed as compliance

A State shall not be deemed to be out of compliance with the requirements of paragraphs (1), (10), or (23) of section 1396a(a) of this title solely by reason of the fact that the State (or any political subdivision thereof)—

(1) has entered into—

(A) a contract with an organization which has agreed to provide care and services in addition to those offered under the State plan to individuals eligible for medical assistance who reside in the geographic area served by such organization and who elect to obtain such care and services from such organization, or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic; or

(B) arrangements through a competitive bidding process or otherwise for the purchase of laboratory services referred to in section 1396d(a)(3) of this title or medical devices if the Secretary has found that—

(i) adequate services or devices will be available under such arrangements, and

(ii) any such laboratory services will be provided only through laboratories—

(I) which meet the applicable requirements of section 1395x(e)(9) of this title or paragraphs (16) and (17) of section 1395x(a) of this title, and such additional requirements as the Secretary may require, and

(II) no more than 75 percent of whose charges for such services are for services provided to individuals who are entitled to benefits under this subchapter or under part A or part B of subchapter XVIII of this chapter; or

(2) restricts for a reasonable period of time the provider or providers from which an individual (eligible for medical assistance for items or services under the State plan) can receive such items or services, if—

(A) the State has found, after notice and opportunity for a hearing (in accordance with procedures established by the State), that the individual has utilized such items or services at a frequency or amount not medically necessary (as determined in accordance with utilization guidelines established by the State), and

(B) under such restriction, individuals eligible for medical assistance for such services have reasonable access (taking into account geographic location and reasonable travel time) to such services of adequate quality.

(b) Waivers to promote cost-effectiveness and efficiency

The Secretary, to the extent he finds it to be cost-effective and efficient and not inconsistent with the purposes of this subchapter, may waive such requirements of section 1396a of this title (other than subsection (s)) (other than sections 1396a(a)(15), 1396a(bb), and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State—

(1) to implement a primary care case-management system or a specialty physician services arrangement which restricts the provider from (or through) whom an individual (eligible for medical assistance under this subchapter) can obtain medical care services (other than in emergency circumstances), if such restriction does not substantially impair access to such services of adequate quality where medically necessary,

(2) to allow a locality to act as a central broker in assisting individuals (eligible for medical assistance under this subchapter) in selecting among competing health care plans, if such restriction does not substantially impair access to services of adequate quality where medically necessary,

(3) to share (through provision of additional services) with recipients of medical assistance under the State plan cost savings resulting from use by the recipient of more cost-effective medical care, and

(4) to restrict the provider from (or through) whom an individual (eligible for medical assistance under this subchapter) can obtain services (other than in emergency circumstances) to providers or practitioners who undertake to provide such services and who meet, accept, and comply with the reimbursement, quality, and utilization standards under the State plan, which standards shall be consistent with the requirements of section 1396r–4 of this title and are consistent with access, quality, and efficient and economic provision of covered care and services, if such restriction does not discriminate among classes of providers on grounds unrelated to their demonstrated effectiveness and efficiency in providing those services and if providers under such restriction are paid on a timely basis in the same manner as health care practitioners must be paid under section 1396a(a)(37)(A) of this title.

No waiver under this subsection may restrict the choice of the individual in receiving services under section 1396d(a)(4)(C) of this title. Subsection (h)(2) shall apply to a waiver under this subsection.

(c) Waiver respecting medical assistance requirement in State plan; scope, etc.; “habilitation services” defined; imposition of certain regulatory limits prohibited; computation of expenditures for certain disabled patients; coordinated services; substitution of participants

(1) The Secretary may by waiver provide that a State plan approved under this subchapter may include as “medical assistance” under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan. For purposes of this subsection, the term “room and board”
shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.

(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that—

(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services;

(B) the State will provide, with respect to individuals who—

(i) are entitled to medical assistance for inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded under the State plan,

(ii) may require such services, and

(iii) may be eligible for such home or community-based care under such waiver,

for an evaluation of the need for inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded;

(C) such individuals who are determined to be likely to require the level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded are informed of the feasible alternatives, if available under the waiver, at the choice of such individuals, to the provision of inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded;

(D) under such waiver the average per capita expenditure estimated by the State in any fiscal year for medical assistance provided with respect to such individuals does not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for such individuals if the waiver had not been granted; and

(E) the State will provide to the Secretary annually, consistent with a data collection plan designed by the Secretary, information on the impact of the waiver granted under this subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

(3) A waiver granted under this subsection may include a waiver of the requirements of section 1396a(a)(1) of this title (relating to state-wideness), section 1396a(a)(10)(B) of this title (relating to comparability), and section 1396a(a)(10)(C)(i)(III) of this title (relating to income and resource rules applicable in the community). A waiver under this subsection (other than a waiver described in subsection (h)(2)) shall be for an initial term of three years and, upon the request of a State, shall be extended for additional five-year periods unless the Secretary determines that for the previous waiver period the assurances provided under paragraph (2) have not been met. A waiver may provide, with respect to post-eligibility treatment of individuals receiving services under that waiver, that the maximum amount of the individual’s income which may be disregarded for any month for the maintenance needs of the individual may be an amount greater than the maximum allowed for that purpose under regulations in effect on July 1, 1985.

(4) A waiver granted under this subsection may, consistent with paragraph (2)—

(A) limit the individuals provided benefits under such waiver to individuals with respect to whom the State has determined that there is a reasonable expectation that the amount of medical assistance provided with respect to the individual under such waiver will not exceed the amount of such medical assistance provided for such individual if the waiver did not apply, and

(B) provide medical assistance to individuals (to the extent consistent with written plans of care, which are subject to the approval of the State) for case management services, homemaker/home health aide services and personal care services, adult day health services, habilitation services, respite care, and such other services requested by the State as the Secretary may approve and for day treatment or other partial hospitalization services, psycho-social rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness.

Except as provided under paragraph (2)(D), the Secretary may not restrict the number of hours or days of respite care in any period which a State may provide under a waiver under this subsection.

(5) For purposes of paragraph (4)(B), the term “habilitation services”—

(A) means services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community based settings; and

(B) includes (except as provided in subparagraph (C)) prevocational, educational, and supported employment services; but

(C) does not include—

(i) special education and related services (as such terms are defined in section 1401 of title 20) which otherwise are available to the individual through a local educational agency;

(ii) vocational rehabilitation services which otherwise are available to the individual through a program funded under section 730 of title 29.

(6) The Secretary may not require, as a condition of approval of a waiver under this section under paragraph (2)(D), that the actual total expenditures for home and community-based services under the waiver (and a claim for Federal financial participation in expenditures for the services) cannot exceed the approved estimates for these services. The Secretary may not deny Federal financial payment with respect to serv-
ences under such a waiver on the ground that, in order to comply with paragraph (2)(D), a State has failed to comply with such a requirement.

(7)(A) In making estimates under paragraph (2)(D) in the case of a waiver that applies only to individuals with a particular illness or condition who are inpatients in, or who would require the level of care provided in, hospitals, nursing facilities, or intermediate care facilities for the mentally retarded, the State may determine the average per capita expenditure that would have been made in a fiscal year for those individuals under the State plan separately from the expenditures for other individuals who are inpatients in, or who would require the level of care provided in, those respective facilities.

(B) In making estimates under paragraph (2)(D) in the case of a waiver that applies only to individuals with developmental disabilities who are inpatients in a nursing facility and whom the State has determined, on the basis of an evaluation under paragraph (2)(B), to need the level of services provided by an intermediate care facility for the mentally retarded, the State may determine the average per capita expenditures that would have been made in a fiscal year for those individuals under the State plan on the basis of the average per capita expenditures under the State plan for services to individuals who are inpatients in an intermediate care facility for the mentally retarded, without regard to the availability of beds for such inpatients.

(C) In making estimates under paragraph (2)(D) in the case of a waiver to the extent that it applies to individuals with mental retardation or a related condition who are resident in an intermediate care facility for the mentally retarded the participation of which under the State plan is terminated, the State may determine the average per capita expenditures that would have been made in a fiscal year for those individuals without regard to any such termination.

(8) The State agency administering the plan under this subchapter may, whenever appropriate, enter into cooperative arrangements with the State agency responsible for administering the program for children with special health care needs under subchapter V of this chapter in order to assure improved access to coordinated services to meet the needs of such children.

(9) In the case of any waiver under this subsection which contains a limit on the number of individuals who shall receive home or community-based services, the State may substitute additional individuals to receive such services to replace any individuals who die or become ineligible for services under the State plan.

(10) The Secretary shall not limit to fewer than 200 the number of individuals in the State who may receive home and community-based services under a waiver under this subsection.

(d) Home and community-based services for elderly

(1) Subject to paragraph (2), the Secretary shall grant a waiver to provide that a State plan approved under this subchapter shall include as "medical assistance" under such plan payment for part or all of the cost of home or community-based services (other than room and board) which are provided pursuant to a written plan of care to individuals 65 years of age or older with respect to whom there has been a determination that but for the provision of such services the individuals would be likely to require the level of care provided in a skilled nursing facility or intermediate care facility the cost of which could be reimbursed under the State plan. For purposes of this subsection, the term "room and board" shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.

(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that—

(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services;

(B) with respect to individuals 65 years of age or older who—

(i) are entitled to medical assistance for skilled nursing or intermediate care facility services under the State plan,

(ii) may require such services, and

(iii) may be eligible for such home or community-based services under such waiver,

the State will provide for an evaluation of the need for such skilled nursing facility or intermediate care facility services; and

(C) such individuals who are determined to be likely to require the level of care provided in a skilled nursing facility or intermediate care facility are informed of the feasible alternatives to the provision of skilled nursing facility or intermediate care facility services, which such individuals may choose if available under the waiver.

Each State with a waiver under this subsection shall provide to the Secretary annually, consistent with a reasonable data collection plan designed by the Secretary, information on the impact of the waiver granted under this subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

(3) A waiver granted under this subsection may include a waiver of the requirements of section 1396a(a)(10)(C)(i)(III) of this title (relating to comparability), if such waiver is granted under section 1396a(a)(10)(C)(i)(II) of this title (relating to state-awdiness), and section 1396a(a)(10)(C)(i)(III) of this title (relating to state-awdiness). Subject to a termination by the State (with notice to the Secretary) at any time, a waiver under this subsection (other than a waiver described in subsection (h)(2)) shall be for an initial term of 3 years and, upon the request of a State, shall be extended for additional 5-year
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reside in a community-based care setting.

and well-being of individuals and their ability to receive services under the waiver, that the maximum amount of the individual’s income which may be disregarded for any month is equal to the amount that may be allowed for that purpose under a waiver under subsection (c) of this section.

(4) A waiver under this subsection may, consistent with paragraph (2), provide medical assistance to individuals for case management services, homemaker/home health aide services and personal care services, adult day health services, respite care, and other medical and social services that can contribute to the health and well-being of individuals and their ability to reside in a community-based care setting.

(5)(A) In the case of a State having a waiver approved under this subsection, notwithstanding any other provision of section 1396b of this title, to the contrary, the total amount expended by the State for medical assistance with respect to skilled nursing facility services, intermediate care facility services, and home and community-based services under the State plan for individuals 65 years of age or older during a waiver year under this subsection may not exceed the projected amount determined under subparagraph (B).

(B) For purposes of subparagraph (A), the projected amount under this subparagraph is the sum of the following:

(i) The aggregate amount of the State’s medical assistance under this subchapter for skilled nursing facility services and intermediate care facility services furnished to individuals who have attained the age of 65 for the base year increased by a percentage which is equal to the lesser of 7 percent times the number of years (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year involved or the sum of

(I) the percentage increase (based on an appropriate market-basket index representing the costs of elements of such services) between the beginning of the base year and the beginning of the waiver year involved, plus

(II) the percentage increase between the beginning of the base year and the beginning of the waiver year involved in the number of residents in the State who have attained the age of 65, plus

(III) 2 percent for each year (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year.

(ii) The aggregate amount of the State’s medical assistance under this subchapter for home and community-based services for individuals who have attained the age of 65 for the base year increased by a percentage which is equal to the lesser of 7 percent times the number of years (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year involved or the sum of—

(I) the percentage increase (based on an appropriate market-basket index representing the costs of elements of such services) between the beginning of the base year and the beginning of the waiver year involved, plus

(II) the percentage increase between the beginning of the base year and the beginning of the waiver year involved in the number of residents in the State who have attained the age of 65, plus

(III) 2 percent for each year (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year.

(iii) The Secretary shall develop and promulgate by regulation (by not later than October 1, 1989)—

(I) a method, based on an index of appropriately weighted indicators of changes in the wages and prices of the mix of goods and services which comprise both skilled nursing facility services and intermediate care facility services (regardless of the source of payment for such services), for projecting the percentage increase for purposes of clause (i)(I);

(II) a method, based on an index of appropriately weighted indicators of changes in the wages and prices of the mix of goods and services which comprise home and community-based services (regardless of the source of payment for such services), for projecting the percentage increase for purposes of clause (i)(II); and

(III) a method for projecting, on a State specific basis, the percentage increase in the number of residents in each State who are over 65 years of age for any period.

The Secretary shall develop (by not later than October 1, 1989) a method for projecting, on a State-specific basis, the percentage increase in the number of residents in each State who are over 65 years of age for any period. Effective on and after the date the Secretary promulgates the regulation under clause (iii), any reference in this subparagraph to the “lesser of 7 percent” shall be deemed to be a reference to the “greater of 7 percent”.

(iv) If there is enacted after December 22, 1987, an Act which amends this subchapter whose provisions become effective on or after such date and which results in an increase in the aggregate amount of medical assistance under this subchapter for nursing facility services and home and community-based services for individuals who have attained the age of 65 years, the Secretary, at the request of a State with a waiver under this subsection for a waiver year or years and in close consultation with the State, shall adjust the projected amount computed under this subparagraph for the waiver year or years to take into account such increase.

(C) In this paragraph:

(i) The term “home and community-based services” includes services described in sections 1396d(a)(7) and 1396d(a)(8) of this title, services described in subsection (c)(4)(B) of this section, services described in paragraph (4), and personal care services.
(ii)(I) Subject to subclause (II), the term "base year" means the most recent year ending before December 22, 1987 for which actual final expenditures under this subchapter have been reported to, and accepted by, the Secretary.

(II) For purposes of subparagraph (C), in the case of a State that does not report expenditures on the basis of the age categories described in such subparagraph for a year ending before December 22, 1987, the term "base year" means fiscal year 1989.

(iii) The term "intermediate care facility services" does not include services furnished in an institution certified in accordance with section 1396d(d) of this title.

(6)(A) A determination by the Secretary to deny a request for a waiver (or extension of waiver) under this subsection shall be subject to review to the extent provided under section 1316(b) of this title.

(B) Notwithstanding any other provision of this chapter, if the Secretary denies a request of the State for an extension of a waiver under this subsection, any waiver under this subsection in effect on the date such request is made shall remain in effect for a period of not less than 90 days after the date on which the Secretary denies such request (or, if the State seeks review of such determination in accordance with subparagraph (A), the date on which a final determination is made with respect to such review).

(e) Waiver for children infected with AIDS or drug dependent at birth

(1)(A) Subject to paragraph (2), the Secretary shall grant a waiver to provide that a State plan approved under this subchapter shall include all medical assistance under such plan payment for part or all of the cost of nursing care, respite care, physicians' services, prescribed drugs, medical devices and supplies, transportation services, and such other services requested by the State as the Secretary may approve which are provided pursuant to a written plan of care to a child described in subparagraph (B) with respect to whom there has been a determination that but for the provision of such services the infants would be likely to require the level of care provided in a hospital or nursing facility the cost of which could be reimbursed under the State plan.

(B) Children described in this subparagraph are individuals under 5 years of age who—

(i) at the time of birth were infected with (or tested positively for) the etiologic agent for acquired immune deficiency syndrome (AIDS),
(ii) have such syndrome, or
(iii) at the time of birth were dependent on heroin, cocaine, or phencyclidine,

and with respect to whom adoption or foster care assistance is (or will be) made available under part E of subchapter IV of this chapter.

(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that the provision of case management services under this subsection shall not restrict the choice of the individual to receive medical assistance in violation of section 1396a(a)(23) of

(f) Monitor of implementation of waivers; termination of waiver for noncompliance; time limitation for action on requests for plan approval, amendments, or waivers

(1) The Secretary shall monitor the implementation of waivers granted under this section to assure that the requirements for such waiver are being met and shall, after notice and opportunity for a hearing, terminate any such waiver where he finds noncompliance has occurred.

(2) A request to the Secretary from a State for approval of a proposed State plan or plan amendment or a waiver of a requirement of this subchapter submitted by the Secretary pursuant to this subchapter shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, denies such request in writing or informs the State agency in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 days of such date, denies such request.

(g) Optional targeted case management services

(1) A State may provide, as medical assistance, case management services under the plan without regard to the requirements of section 1396a(a)(1) of this title and section 1396a(a)(10)(B) of this title. The provision of case management services under this subchapter shall not restrict the choice of the individual to receive medical assistance in violation of section 1396a(a)(23) of
this title. A State may limit the provision of case management services under this subsection to individuals with acquired immune deficiency syndrome (AIDS), or with AIDS-related conditions, or with either, or to individuals described in section 1396a(a)(1)(A) of this title and a State may limit the provision of case management services under this subsection to individuals with chronic mental illness. The State may limit the case managers available with respect to case management services for eligible individuals with developmental disabilities or with chronic mental illness in order to ensure that the case managers for such individuals are capable of ensuring that such individuals receive needed services.

(2) For purposes of this subsection:

(A)(i) The term ‘case management services’ means services which will assist individuals eligible under the plan in gaining access to needed medical, social, educational, and other services.

(ii) Such term includes the following:

(I) Assessment of an eligible individual to determine service needs, including activities that focus on needs identification, to determine the need for any medical, educational, social, or other services. Such assessment activities include the following:

(aa) Taking client history.

(bb) Identifying the needs of the individual, and completing related documentation.

(cc) Gathering information from other sources such as family members, medical providers, social workers, and educators, if necessary, to form a complete assessment of the eligible individual.

(II) Development of a specific care plan based on the information collected through an assessment, that specifies the goals and actions to address the medical, social, educational, and other services needed by the eligible individual, including activities such as ensuring the active participation of the eligible individual and with the individual (or the individual’s authorized health care decision maker) and others to develop such goals and identify a course of action to respond to the assessed needs of the eligible individual.

(III) Referral and related activities to help an individual obtain needed services, including activities that help link eligible individuals with medical, social, educational providers or other programs and services that are capable of providing needed services, such as making referrals to providers for needed services and scheduling appointments for the individual.

(IV) Monitoring and followup activities, including activities and contacts that are necessary to ensure the care plan is effectively implemented and adequately addressing the needs of the eligible individual, and which may be with the individual, family members, providers, or other entities and conducted as frequently as necessary to help determine such matters as—

(aa) whether services are being furnished in accordance with an individual’s care plan;

(bb) whether the services in the care plan are adequate; and

(cc) whether there are changes in the needs or status of the eligible individual, and if so, making necessary adjustments in the care plan and service arrangements with providers.

(iii) Such term does not include the direct delivery of an underlying medical, educational, social, or other service to which an eligible individual has been referred, including, with respect to the direct delivery of foster care services, services such as (but not limited to) the following:

(I) Research gathering and completion of documentation required by the foster care program.

(II) Assessing adoption placements.

(III) Recruiting or interviewing potential foster care parents.

(IV) Serving legal papers.

(V) Home investigations.

(VI) Providing transportation.

(VII) Administering foster care subsidies.

(VIII) Making placement arrangements.

(B) The term ‘targeted case management services’ are case management services that are furnished without regard to the requirements of section 1396a(a)(1) of this title and section 1396a(a)(10)(B) of this title to specific classes of individuals or to individuals who reside in specified areas.

(3) With respect to contacts with individuals who are not eligible for medical assistance under the State plan or, in the case of targeted case management services, individuals who are eligible for such assistance but are not part of the target population specified in the State plan, such contacts—

(A) are considered an allowable case management activity, when the purpose of the contact is directly related to the management of the eligible individual’s care; and

(B) are not considered an allowable case management activity if such contacts relate directly to the identification and management of the noneligible or nontargeted individual’s needs and care.

(4)(A) In accordance with section 1396a(a)(25) of this title, Federal financial participation only is available under this subchapter for case management services or targeted case management services if there are no other third parties liable to pay for such services, including as reimbursement under a medical, social, educational, or other program.

(B) A State shall allocate the costs of any part of such services which are reimbursable under another federally funded program in accordance with OMB Circular A-87 (or any related or successor guidance or regulations regarding allocation of costs among federally funded programs) under an approved cost allocation program.

(5) Nothing in this subsection shall be construed as affecting the application of rules with respect to third party liability under programs, or activities carried out under title XXVI of the Public Health Service Act [42 U.S.C. 300f et seq.] or by the Indian Health Service.
(h) Period of waivers; continuations

(1) No waiver under this section (other than a waiver under subsection (c), (d), or (e), or a waiver described in paragraph (2)) may extend over a period of longer than two years unless the State requests continuation of such waiver, and such request shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State agency in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 days of such date, denies such request.

(2)(A) Notwithstanding subsections (c)(3) and (d)(3), any waiver under subsection (b), (c), or (d), or a waiver under section 1915 of this title, that provides medical assistance for dual eligible individuals (including any such waivers under which non dual eligible individuals may be enrolled in addition to dual eligible individuals) may be conducted for a period of 5 years and, upon the request of the State, may be extended for additional 5-year periods unless the Secretary determines that for the previous waiver period the conditions for the waiver have not been met or it would no longer be cost-effective and efficient, or consistent with the purposes of this subchapter, to extend the waiver.

(B) In this paragraph, the term “dual eligible individual” means an individual who is entitled to, or enrolled for, benefits under part A of subchapter XVIII, or enrolled for benefits under part B of subchapter XVIII, and is eligible for medical assistance under the State plan under this subchapter or under a waiver of such plan.

(i) State plan amendment option to provide home and community-based services for elderly and disabled individuals

(1) In general

Subject to the succeeding provisions of this subsection, a State may provide through a State plan amendment for the provision of medical assistance for home and community-based services (within the scope of services described in paragraph (4)(B) of subsection (c) for which the Secretary has the authority to approve a waiver and not including room and board) for individuals eligible for medical assistance under the State plan whose income does not exceed 150 percent of the poverty line (as defined in section 1396r(f)(5) of this title), without determining that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded, but only if the State meets the following requirements:

(A) Needs-based criteria for eligibility for, and receipt of, home and community-based services

The State establishes needs-based criteria for determining an individual’s eligibility under the State plan for medical assistance for such home and community-based services, and if the individual is eligible for such services, the specific home and community-based services that the individual will receive.

(B) Establishment of more stringent needs-based eligibility criteria for institutionalized care

The State establishes needs-based criteria for determining whether an individual requires the level of care provided in a hospital, a nursing facility, or an intermediate care facility for the mentally retarded under the State plan or under any waiver of such plan that are more stringent than the needs-based criteria established under subparagraph (A) for determining eligibility for home and community-based services.

(C) Projection of number of individuals to be provided home and community-based services

The State submits to the Secretary, in such form and manner, and upon such frequency as the Secretary shall specify, the projected number of individuals to be provided home and community-based services.

(D) Criteria based on individual assessment

(i) In general

The criteria established by the State for purposes of subparagraphs (A) and (B) requires an assessment of an individual’s support needs and capabilities, and may take into account the inability of the individual to perform 2 or more activities of daily living (as defined in section 7702(b)(2)(B) of the Internal Revenue Code of 1986) or the need for significant assistance to perform such activities, and such other risk factors as the State determines to be appropriate.

(ii) Adjustment authority

The State plan amendment provides the State with the option to modify the criteria established under subparagraph (A) (without having to obtain prior approval from the Secretary) in the event that the enrollment of individuals eligible for home and community-based services exceeds the projected enrollment submitted for purposes of subparagraph (C), but only if—

(I) the State provides at least 60 days notice to the Secretary and the public of the proposed modification;

(II) the State deems an individual receiving home and community-based services on the basis of the most recent version of the criteria in effect prior to the effective date of the modification to continue to be eligible for such services after the effective date of the modification; and

(III) after the effective date of such modification, the State, at a minimum, applies the criteria for determining whether an individual requires the level of care provided in a hospital, a nursing facility, or an intermediate care facility.
for the mentally retarded under the State plan or under any waiver of such plan which applied prior to the application of the more stringent criteria developed under subparagraph (B).

(E) Independent evaluation and assessment

(i) Eligibility determination

The State uses an independent evaluation for making the determinations described in subparagraphs (A) and (B).

(ii) Assessment

In the case of an individual who is determined to be eligible for home and community-based services, the State uses an independent assessment, based on the needs of the individual to—

(I) determine a necessary level of services and supports to be provided, consistent with an individual’s physical and mental capacity;

(II) prevent the provision of unnecessary or inappropriate care; and

(III) establish an individualized care plan for the individual in accordance with subparagraph (G).

(F) Assessment

The independent assessment required under subparagraph (E)(ii) shall include the following:

(i) An objective evaluation of an individual’s inability to perform 2 or more activities of daily living (as defined in section 7702B(c)(2)(B) of the Internal Revenue Code of 1986) or the need for significant assistance to perform such activities.

(ii) A face-to-face evaluation of the individual by an individual trained in the assessment and evaluation of individuals whose physical or mental conditions trigger a potential need for home and community-based services.

(iii) Where appropriate, consultation with the individual’s family, spouse, guardian, or other responsible individual.

(iv) Consultation with appropriate treating and consulting health and support professionals caring for the individual.

(v) An examination of the individual’s relevant history, medical records, and care and support needs, guided by best practices and research on effective strategies that result in improved health and quality of life outcomes.

(vi) If the State offers individuals the option to self-direct the purchase of, or control the receipt of, home and community-based service, an evaluation of the ability of the individual or the individual’s representative to self-direct the purchase of, or control the receipt of, such services if the individual so elects.

(G) Individualized care plan

(i) In general

In the case of an individual who is determined to be eligible for home and community-based services, the State uses the independent assessment required under subparagraph (E)(ii) to establish a written individualized care plan for the individual.

(ii) Plan requirements

The State ensures that the individualized care plan for an individual—

(I) is developed—

(aa) in consultation with the individual, the individual’s treating physician, health care or support professional, or other appropriate individuals, as defined by the State, and, where appropriate the individual’s family, caregiver, or representative; and

(bb) taking into account the extent of, and need for, any family or other supports for the individual;

(II) identifies the necessary home and community-based services to be furnished to the individual (or, if the individual elects to self-direct the purchase of, or control the receipt of, such services, funded for the individual); and

(III) is reviewed at least annually and as needed when there is a significant change in the individual’s circumstances.

(iii) State option to offer election for self-directed services

(I) Individual choice

At the option of the State, the State may allow an individual or the individual’s representative to elect to receive self-directed home and community-based services in a manner which gives them the most control over such services consistent with the individual’s abilities and the requirements of subclauses (II) and (III).

(II) Self-directed services

The term “self-directed” means, with respect to the home and community-based services offered under the State plan amendment, such services for the individual which are planned and purchased under the direction and control of such individual or the individual’s authorized representative, including the amount, duration, scope, provider, and location of such services, under the State plan consistent with the following requirements:

(aa) Assessment

There is an assessment of the needs, capabilities, and preferences of the individual with respect to such services.

(bb) Service plan

Based on such assessment, there is developed jointly with such individual or the individual’s authorized representative a plan for such services for such individual that is approved by the State and that satisfies the requirements of subclause (III).

(III) Plan requirements

For purposes of subclause (II)(bb), the requirements of this subclause are that the plan—

(aa) specifies those services which the individual or the individual’s au-
The authorized representative would be responsible for directing:

(bb) identifies the methods by which the individual or the individual’s authorized representative will select, manage, and dismiss providers of such services;

(cc) specifies the role of family members and others whose participation is sought by the individual or the individual’s authorized representative with respect to such services;

(dd) is developed through a person-centered process that is directed by the individual or the individual’s authorized representative, builds upon the individual’s capacity to engage in activities that promote community life and that respects the individual’s preferences, choices, and abilities, and involves families, friends, and professionals as desired or required by the individual or the individual’s authorized representative;

(ex) includes appropriate risk management techniques that recognize the roles and sharing of responsibilities in obtaining services in a self-directed manner and assure the appropriateness of such plan based upon the resources and capabilities of the individual or the individual’s authorized representative; and

(ff) may include an individualized budget which identifies the dollar value of the services and supports under the control and direction of the individual or the individual’s authorized representative.

(IV) Budget process

With respect to individualized budgets described in subclause (III)(ff), the State plan amendment—

(aa) describes the method for calculating the dollar values in such budgets based on reliable costs and service utilization;

(bb) defines a process for making adjustments in such dollar values to reflect changes in individual assessments and service plans; and

(cc) provides a procedure to evaluate expenditures under such budgets.

(H) Quality assurance; conflict of interest standards

(i) Quality assurance

The State ensures that the provision of home and community-based services meets Federal and State guidelines for quality assurance.

(ii) Conflict of interest standards

The State establishes standards for the conduct of the independent evaluation and the independent assessment to safeguard against conflicts of interest.

(I) Redeterminations and appeals

The State allows for at least annual redeterminations of eligibility, and appeals in accordance with the frequency of, and manner in which, redeterminations and appeals of eligibility are made under the State plan.

(J) Presumptive eligibility for assessment

The State, at its option, elects to provide for a period of presumptive eligibility (not to exceed a period of 60 days) only for those individuals that the State has reason to believe may be eligible for home and community-based services. Such presumptive eligibility shall be limited to medical assistance for carrying out the independent evaluation and assessment under subparagraph (E) to determine an individual’s eligibility for such services and if the individual is so eligible, the specific home and community-based services that the individual will receive.

(2) Definition of individual's representative

In this section, the term “individual’s representative” means, with respect to an individual, a parent, a family member, or a guardian of the individual, an advocate for the individual, or any other individual who is authorized to represent the individual.

(3) Nonapplication

A State may elect in the State plan amendment approved under this section to not comply with the requirements of section 1396a(a)(10)(B) of this title (relating to comparability) and section 1396a(a)(10)(C)(i)(III) of this title (relating to income and resource rules applicable in the community), but only for purposes of provided home and community-based services in accordance with such amendment. Any such election shall not be construed to apply to the provision of services to an individual receiving medical assistance in an institutionalized setting as a result of a determination that the individual requires the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded.

(4) No effect on other waiver authority

Nothing in this subsection shall be construed as affecting the option of a State to offer home and community-based services under a waiver under subsections (c) or (d) of this section or under section 1315 of this title.

(5) Continuation of Federal financial participation for medical assistance provided to individuals as of effective date of State plan amendment

Notwithstanding paragraph (1)(B), Federal financial participation shall continue to be available for an individual who is receiving medical assistance in an institutionalized setting, or home and community-based services provided under a waiver under this section or section 1315 of this title that is in effect as of the effective date of the State plan amendment submitted under this subsection, as a result of a determination that the individual requires the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded, without regard to whether such individuals satisfy the more stringent eligibility criteria established under that paragraph, until such time as the
individual is discharged from the institution or waiver program or no longer requires such level of care.

(6) State option to provide home and community-based services to individuals eligible for services under a waiver

(A) In general

A State that provides home and community-based services in accordance with this subsection to individuals who satisfy the needs-based criteria for the receipt of such services established under paragraph (1)(A) may, in addition to continuing to provide such services to such individuals, elect to provide home and community-based services under a waiver approved for the State under subsection (c), (d), or (e) or under section 1315 of this title to provide such services, but only for those individuals whose income does not exceed 300 percent of the supplemental security income benefit rate established by section 1382(b)(1) of this title.

(B) Application of same requirements for individuals satisfying needs-based criteria

Subject to subparagraph (C), a State shall provide home and community-based services to individuals under this paragraph in the same manner and subject to the same requirements as apply under the other paragraphs of this subsection to the provision of home and community-based services to individuals who satisfy the needs-based criteria established under paragraph (1)(A).

(C) Authority to offer different type, amount, duration, or scope of home and community-based services

A State may offer home and community-based services to individuals under this paragraph that differ in type, amount, duration, or scope from the home and community-based services offered for individuals who satisfy the needs-based criteria established under paragraph (1)(A), so long as such services are within the scope of services described in paragraph (4)(B) of subsection (c) for which the Secretary has the authority to approve a waiver and do not include room or board.

(7) State option to offer home and community-based services to specific, targeted populations

(A) In general

A State may elect in a State plan amendment under this subsection to target the provision of home and community-based services under this subsection to specific populations and to differ the type, amount, or scope of such services to such specific populations.

(B) 5-year term

(i) In general

An election by a State under this paragraph shall be for a period of 5 years.

(ii) Phase-in of services and eligibility permitted during initial 5-year period

A State making an election under this paragraph may, during the first 5-year period for which the election is made, phase-in the enrollment of eligible individuals, or the provision of services to such individuals, or both, so long as all eligible individuals in the State for such services are enrolled, and all such services are provided, before the end of the initial 5-year period.

(C) Renewal

An election by a State under this paragraph may be renewed for additional 5-year terms if the Secretary determines, prior to beginning 1 of each such renewal period, that the State has—

(i) adhered to the requirements of this subsection and paragraph in providing services under such an election; and

(ii) met the State's objectives with respect to quality improvement and beneficiary outcomes.

(j) Optional choice of self-directed personal assistance services

(1) A State may provide, as "medical assistance", payment for part or all of the cost of self-directed personal assistance services (other than room and board) under the plan which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that, but for the provision of such services, the individuals would require and receive personal care services under the plan, or home and community-based services provided pursuant to a waiver under subsection (c). Self-directed personal assistance services may not be provided under this subsection to individuals who reside in a home or property that is owned, operated, or controlled by a provider of services, not related by blood or marriage.

(2) The Secretary shall not grant approval for a State self-directed personal assistance services program under this section unless the State provides assurances satisfactory to the Secretary of the following:

A State that provides home and community-based services to specific populations, or both, so long as the eligibility for such services is within the scope of services described in paragraph (4)(B) of subsection (c) for which the Secretary has the authority to approve a waiver and do not include room or board.

1 So in original. Probably should be preceded by "the".
plan, or home and community-based services under a waiver granted under subsection (c) are informed of the feasible alternatives, if available under the State’s self-directed personal assistance services program, at the choice of such individuals, to the provision of personal care services under the plan, or personal assistance services under a waiver granted under subsection (c).

(D) The State will provide for a support system that ensures participants in the self-directed personal assistance services program are appropriately assessed and counseled prior to enrollment and are able to manage their budgets. Additional counseling and management support may be provided at the request of the participant.

(E) The State will provide to the Secretary an annual report on the number of individuals served and total expenditures on their behalf in the aggregate. The State shall also provide an evaluation of overall impact on the health and welfare of participating individuals compared to non-participants every three years.

(3) A State may provide self-directed personal assistance services under the State plan without regard to the requirements of section 1396a(a)(1) of this title and may limit the number of persons served without regard to section 1396a(a)(10)(B) of this title.

(4)(A) For purposes of this subsection, the term “self-directed personal assistance services” means personal care and related services, or home and community-based services otherwise available under the plan under this subchapter or subsection (c), that are provided to an eligible participant under a self-directed personal assistance services program under this section, under which individuals, within an approved self-directed services plan and budget, purchase personal assistance and related services, and permit participants to hire, fire, supervise, and manage the individuals providing such services.

(B) At the election of the State—

(i) a participant may choose to use any individual capable of providing the assigned tasks including legally liable relatives as paid providers of the services; and

(ii) the individual may use the individual’s budget to acquire items that increase independence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance.

(5) For purpose of this section, the term “approved self-directed services plan and budget” means, with respect to a participant, the establishment of a plan and budget for the provision of self-directed personal assistance services, consistent with the following requirements:

(A) Self-direction

The participant (or in the case of a participant who is a minor child, the participant’s parent or guardian, or in the case of an incapacitated adult, another individual recognized by State law to act on behalf of the participant) exercises choice and control over the budget, planning, and purchase of self-directed personal assistance services, including the amount, duration, scope, provider, and location of service provision.

(B) Assessment of needs

There is an assessment of the needs, strengths, and preferences of the participants for such services.

(C) Service plan

A plan for such services (and supports for such services) for the participant has been developed and approved by the State based on such assessment through a person-centered process that—

(i) builds upon the participant’s capacity to engage in activities that promote community life and that respects the participant’s preferences, choices, and abilities; and

(ii) involves families, friends, and professionals in the planning or delivery of services or supports as desired or required by the participant.

(D) Service budget

A budget for such services and supports for the participant has been developed and approved by the State based on such assessment and plan and on a methodology that uses valid, reliable cost data, is open to public inspection, and includes a calculation of the expected cost of such services if those services were not self-directed. The budget may not restrict access to other medically necessary care and services furnished under the plan and approved by the State but not included in the budget.

(E) Application of quality assurance and risk management

There are appropriate quality assurance and risk management techniques used in establishing and implementing such plan and budget that recognize the roles and responsibilities in obtaining services in a self-directed manner and assure the appropriateness of such plan and budget based on the participant’s resources and capabilities.

(6) A State may employ a financial management entity to make payments to providers, track costs, and make reports under the program. Payment for the activities of the financial management entity shall be at the administrative rate established in section 1396b(a) of this title.

(k) State plan option to provide home and community-based attendant services and supports

(1) In general

Subject to the succeeding provisions of this subsection, beginning October 1, 2011, a State may provide through a State plan amendment for the provision of medical assistance for home and community-based attendant services and supports for individuals who are eligible for medical assistance under the State plan whose income does not exceed 150 percent of the poverty line (as defined in section 1397j)(c)(5) of this title) or, if greater, the in-
come level applicable for an individual who has been determined to require an institutional level of care to be eligible for nursing facility services under the State plan and with respect to whom there has been a determination that, but for the provision of such services, the individuals would require the level of care provided in a hospital, a nursing facility, an intermediate care facility for the mentally retarded, or an institution for mental diseases, the cost of which could be reimbursed under the State plan, but only if the individual chooses to receive such home and community-based attendant services and supports, and only if the State meets the following requirements:

(A) Availability

The State shall make available home and community-based attendant services and supports to eligible individuals, as needed, to assist in accomplishing activities of daily living, instrumental activities of daily living, and health-related tasks through hands-on assistance, supervision, or cueing—

(i) under a person-centered plan of services and supports that is based on an assessment of functional need and that is agreed to in writing by the individual or, as appropriate, the individual’s representative;

(ii) in a home or community setting, which does not include a nursing facility, institution for mental diseases, or an intermediate care facility for the mentally retarded;

(iii) under an agency-provider model or other model (as defined in paragraph (6)(C)); and

(iv) the furnishing of which—

(I) is selected, managed, and dismissed by the individual, or, as appropriate, with assistance from the individual’s representative;

(II) is controlled, to the maximum extent possible, by the individual or where appropriate, the individual’s representative, regardless of who may act as the employer of record; and

(III) provided by an individual who is qualified to provide such services, including family members (as defined by the Secretary).

(B) Included services and supports

In addition to assistance in accomplishing activities of daily living, instrumental activities of daily living, and health-related tasks, the home and community-based attendant services and supports made available include—

(i) the acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish activities of daily living, instrumental activities of daily living, and health-related tasks;

(ii) back-up systems or mechanisms (such as the use of beepers or other electronic devices) to ensure continuity of services and supports; and

(iii) voluntary training on how to select, manage, and dismiss attendants.

(C) Excluded services and supports

Subject to subparagraph (D), the home and community-based attendant services and supports made available do not include—

(i) room and board costs for the individual;

(ii) special education and related services provided under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.] and vocational rehabilitation services provided under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.];

(iii) assistive technology devices and assistive technology services other than those under (1)(B)(i);

(iv) medical supplies and equipment; or

(v) home modifications.

(D) Permissible services and supports

The home and community-based attendant services and supports may include—

(i) expenditures for transition costs such as rent and utility deposits, first month’s rent and utilities, bedding, basic kitchen supplies, and other necessities required for an individual to make the transition from a nursing facility, institution for mental diseases, or intermediate care facility for the mentally retarded to a community-based home setting where the individual resides; and

(ii) expenditures relating to a need identified in an individual’s person-centered plan of services that increase independence or substitute for human assistance, to the extent that expenditures would otherwise be made for the human assistance.

(2) Increased Federal financial participation

For purposes of payments to a State under section 1396b(a)(1) of this title, with respect to amounts expended by the State to provide medical assistance under the State plan for home and community-based attendant services and supports to eligible individuals in accordance with this subsection during a fiscal year quarter occurring during the period described in paragraph (1), the Federal medical assistance percentage applicable to the State (as determined under section 1396d(b) of this title) shall be increased by 6 percentage points.

(3) State requirements

In order for a State plan amendment to be approved under this subsection, the State shall—

(A) develop and implement such amendment in collaboration with a Development and Implementation Council established by the State that includes a majority of members with disabilities, elderly individuals, and their representatives and consults and collaborates with such individuals;

(B) provide consumer controlled home and community-based attendant services and supports to individuals on a statewide basis, in a manner that provides such services and supports in the most integrated setting appropriate to the individual’s needs, and without regard to the individual’s age, type or nature of disability, severity of disability,
or the form of home and community-based attendant services and supports that the individual requires in order to lead an independent life;

(C) with respect to expenditures during the first full fiscal year in which the State plan amendment is implemented, maintain or exceed the level of State expenditures for medical assistance that is provided under section 1396d(a) of this title, this section, section 1315 of this title, or otherwise to individuals with disabilities or elderly individuals attributable to the preceding fiscal year;

(D) establish and maintain a comprehensive, continuous quality assurance system with respect to community-based attendant services and supports that—

(i) includes standards for agency-based and other delivery models with respect to training, appeals for denials and reconsideration procedures of an individual plan, and other factors as determined by the Secretary;

(ii) incorporates feedback from consumers and their representatives, disability organizations, providers, families of disabled or elderly individuals, members of the community, and others and maximizes consumer independence and consumer control;

(iii) monitors the health and well-being of each individual who receives home and community-based attendant services and supports, including a process for the mandatory reporting, investigation, and resolution of allegations of neglect, abuse, or exploitation in connection with the provision of such services and supports; and

(iv) provides information about the provisions of the quality assurance required under clauses (i) through (iii) to each individual receiving such services; and

(E) collect and report information, as determined necessary by the Secretary, for the purposes of approving the State plan amendment, providing Federal oversight, and conducting an evaluation under paragraph (5)(A), including data regarding how the State provides home and community-based attendant services and supports and other home and community-based services, the cost of such services and supports, and how the State provides individuals with disabilities who otherwise qualify for institutional care under the State plan or under a waiver the choice to instead receive home and community-based services in lieu of institutional care.

(4) Compliance with certain laws

A State shall ensure that, regardless of whether the State uses an agency-provider model or other models to provide home and community-based attendant services and supports under a State plan amendment under this subsection, such services and supports are provided in accordance with the requirements of the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.] and applicable Federal and State laws regarding—

(A) withholding and payment of Federal and State income and payroll taxes;

(B) the provision of unemployment and workers compensation insurance;

(C) maintenance of general liability insurance; and

(D) occupational health and safety.

(5) Evaluation, data collection, and report to Congress

(A) Evaluation

The Secretary shall conduct an evaluation of the provision of home and community-based attendant services and supports under this subsection in order to determine the effectiveness of the provision of such services and supports in allowing the individuals receiving such services and supports to lead an independent life to the maximum extent possible; the impact on the physical and emotional health of the individuals who receive such services; and an comparative analysis of the costs of services provided under the State plan amendment under this subsection and those provided under institutional care in a nursing facility, institution for mental diseases, or an intermediate care facility for the mentally retarded.

(B) Data collection

The State shall provide the Secretary with the following information regarding the provision of home and community-based attendant services and supports under this subsection for each fiscal year for which such services and supports are provided:

(i) The number of individuals who are estimated to receive home and community-based attendant services and supports under this subsection during the fiscal year.

(ii) The number of individuals that received such services and supports during the preceding fiscal year.

(iii) The specific number of individuals served by type of disability, age, gender, education level, and employment status.

(iv) Whether the specific individuals have been previously served under any other home and community based services program under the State plan or under a waiver.

(C) Reports

Not later than—

(i) December 31, 2013, the Secretary shall submit to Congress and make available to the public an interim report on the findings of the evaluation under subparagraph (A); and

(ii) December 31, 2015, the Secretary shall submit to Congress and make available to the public a final report on the findings of the evaluation under subparagraph (A).

(6) Definitions

In this subsection:

(A) Activities of daily living

The term “activities of daily living” includes tasks such as eating, toileting,
grooming, dressing, bathing, and transferring.

(B) Consumer controlled

The term “consumer controlled” means a method of selecting and providing services and supports that allow the individual, or where appropriate, the individual’s representative, maximum control of the home and community-based attendant services and supports, regardless of who acts as the employer of record.

(C) Delivery models

(i) Agency-provider model

The term “agency-provider model” means, with respect to the provision of home and community-based attendant services and supports for an individual, subject to paragraph (4), a method of providing consumer controlled services and supports under which entities contract for the provision of such services and supports.

(ii) Other models

The term “other models” means, subject to paragraph (4), methods, other than an agency-provider model, for the provision of consumer controlled services and supports. Such models may include the provision of vouchers, direct cash payments, or use of a fiscal agent to assist in obtaining services.

(D) Health-related tasks

The term “health-related tasks” means specific tasks related to the needs of an individual, which can be delegated or assigned by licensed health-care professionals under State law to be performed by an attendant.

(E) Individual’s representative

The term “individual’s representative” means a parent, family member, guardian, advocate, or other authorized representative of an individual.

(F) Instrumental activities of daily living

The term “instrumental activities of daily living” includes (but is not limited to) meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone or other media, and traveling around and participating in the community.


The Individuals with Disabilities Education Act, referred to in subsec. (k)(1)(C)(ii), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, which is classified generally to chapter 16 (§701 et seq.) of Title 20, Education.


The Fair Labor Standards Act of 1938, referred to in subsec. (k)(1)(C)(ii), is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 29 and Tables.

The Public Health Service Act, referred to in subsec. (g)(5), is act July 1, 1944, ch. 373, 58 Stat. 682. Title XXIV of the Act is classified generally to subchapter XXIV (§300ff et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.


The Social Security Act, referred to in subsec. (k)(4), is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 29 and Tables.

Amendments

2010—Subsec. (b). Pub. L. 111–148, §3601(b)(1)(A), inserted at end of concluding provisions “Subsection (b)(2) shall apply to a waiver under this subsection.”

Subsec. (c)(3). Pub. L. 111–148, §3601(b)(1)(B), inserted “other than a waiver described in subsection (b)(2))’’ after “A waiver under this subsection”.

Subsec. (d)(3). Pub. L. 111–148, §3601(b)(1)(C), which directed insertion of “(other than a waiver described in subsection (b)(2))’’ after “A waiver under this subsection” in second sentence, was executed by making the insertion after “A waiver under this subsection”, to reflect the probable intent of Congress.

So in original. Probably should be followed by a period.
Subsec. (c)(7). Pub. L. 100–360, §4111(k)(3)(A)(ii), substituted paragraph (4), and personal care services furnished pursuant to a waiver under subsection (c) of this section''.

Subsec. (d). Pub. L. 100–203, §4211(b)(10), substituted services, nursing facility services, or services in an intermediate care facility for the mentally retarded for ''nursing facility, or intermediate care facility services''.

Subsec. (e). Pub. L. 100–203, §4211(h)(10)(D), substituted ''nursing facility, or intermediate care facility for the mentally retarded'' for ''or nursing facility or intermediate care facility for the mentally retarded''.

Subsec. (f). Pub. L. 100–203, §4211(h)(10)(F), substituted ''nursing facility or intermediate care facility for the mentally retarded'' for ''or skilled nursing facility or intermediate care facility''.

Subsec. (g). Pub. L. 100–203, §4118(k), inserted at end ''The State may limit the case managers available with respect to case management services for eligible individuals with developmental disabilities or with chronic mental illness in order to ensure that the case managers for such individuals are capable of ensuring that such individuals receive needed services''.

Subsec. (h). Pub. L. 100–203, §4118(b), added par. (10).


Subsec. (j). Pub. L. 100–203, §4118(b)(1), inserted at end ''The Secretary shall not limit to fewer than 200'' for ''No waiver under this subsection shall limit'' followed by all other amendments appearing before end of subpar. (A) this section for ''under such waiver''.

Subsec. (k). Pub. L. 100–203, §4118(p)(10), in closing provisions inserted such after need for''.

section may restrict the choice of the individual in receiving services under section 1396d(a)(4)(C) of this title.


Pub. L. 99–272, § 9502(b)(1), inserted provision relating to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would continue to receive inpatient hospital services, skilled nursing facility services, or intermediate care facility services because they are dependent on ventilator support the cost of which is reimbursed under the State plan.

Subsec. (c)(2)(B). Pub. L. 99–509, § 9411(a)(2), substituted "inpatient hospital, skilled nursing facility, or" for "skilled nursing facility or" in cl. (i) and inserted "inpatient hospital," after "need for" in concluding provision following cl. (iii).

Subsec. (c)(2)(C). Pub. L. 99–272, § 9502(b)(2), inserted "hospital or" after "provided in", and "inpatient hospital services or" after "the provision of".

Subsec. (c)(2)(D). Pub. L. 99–272, § 9502(c)(1), inserted "100 percent of" after "does not exceed".

Subsec. (c)(3). Pub. L. 99–509, § 9411(c), substituted "and section 1396a(a)(10)(B) of this title (relating to comparability)" for "and section 1396a(a)(10) of this title".

Pub. L. 99–272, § 9502(g), substituted "additional five-year periods" for "additional three-year periods", and "previously waivered period" for "previous three-year period".

Pub. L. 99–272, § 9502(e), inserted at end "A waiver may provide, with respect to post-eligibility treatment of income of all individuals receiving services under that waiver, that the maximum amount of the individual's income which may be disregarded for any month for the maintenance needs of the individual may be an amount greater than the maximum allowed for that purpose under regulations in effect on July 1, 1985."

Subsec. (c)(4)(B). Pub. L. 99–509, § 9411(d), inserted before the period "and for day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness"

Subsec. (c)(5). Pub. L. 99–272, § 9502(a), added par. (5).


Subsec. (c)(7). Pub. L. 99–509, § 9411(a)(3), amended par. (7) generally. Prior to amendment, par. (7) read as follows: "In making estimates under paragraph (2)(D) in the case of a waiver which applies only to physically disabled individuals who are inpatients in skilled nursing facilities, hospital services, or hospital services, skilled nursing facility services, or intermediate care facility services because they are dependent on ventilator support the cost of which is reimbursed under the State plan separate from the expenditures for medical assistance for home and community-based services furnished on or after January 1, 2007."


Subsec. (g)(1). Pub. L. 99–509, § 9411(b), inserted provision at end allowing a State to limit case management services to AIDS victims or to individuals with chronic mental illness.

1984—Subsec. (c)(1). Pub. L. 98–369 substituted "under this subchapter" for "under this part".

1983—Subsec. (c)(2)(B). Pub. L. 97–448 substituted "need for such skilled nursing facility or intermediate care facility services" for "need for such services" in provisions following cl. (iii).

1982—Subsec. (b). Pub. L. 97–248, § 137(b)(19)(A), struck out "and section 1396b(m) of this title" after "section 1396a of this title".

Subsec. (b)(1). Pub. L. 97–248, § 137(b)(20), inserted "primary care" before "case-management system", and substituted "medical care services" for "primary care services".

Subsec. (c)(1). Pub. L. 97–248, § 137(b)(21), inserted "payment for part or all of the cost of" after "medical assistance under such plan".

Subsec. (c)(2)(B). Pub. L. 97–248, § 137(b)(22), redesignated existing provisions as clis. (i) and (ii) and added cl. (iii).

Subsec. (c)(3). Pub. L. 97–248, § 137(b)(23), substituted "section 1396a(a)(1) of this title" for "subsection (a)(1) of this section" and "section 1396a(a)(10) of this title" for "subsection (a)(10) of this title".

Subsec. (c)(4). Pub. L. 97–248, § 137(b)(24), substituted "this subsection" for "this section".

Subsec. (f). Pub. L. 97–248, § 137(b)(25), inserted "approval of" before "a proposed State plan".

1981—Subsecs. (c) to (e). Pub. L. 97–35, § 2176, added subsec. (c), redesignated former subsec. (c) as (d) and inserted "other than a waiver under subsection (c) of this section", and redesignated former subsec. (d) as (e).


**Effective Date of 2010 Amendment**

Amendment by section 2402(b). (c), (e), (f) of Pub. L. 111–148 effective on the first day of the first fiscal year quarter that begins after Mar. 23, 2010, see section 2402(g) of Pub. L. 111–148, set out as an Effective and Termination Dates of 2010 Amendment note under section 1396a of this title.

**Effective Date of 2006 Amendment**

Pub. L. 109–171, title VI, § 6052(c), Feb. 8, 2006, 120 Stat. 95, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2006."

Pub. L. 109–171, title VI, § 6087(c), Feb. 8, 2006, 120 Stat. 127, provided that: "The amendments made by sections (a) and (b) [amending this section] take effect on January 1, 2007, and apply to expenditures for medical assistance for home and community-based services provided in accordance with section 1915(s)(I) of the Social Security Act [subsec. (i) of this section] (as added by subsections (a) and (b) [probably means subsec. (a)(i)] or after that date)."

Pub. L. 109–171, title VI, § 6087(b), Feb. 8, 2006, 120 Stat. 130, provided that: "The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 2007."

**Effective Date of 2002 Amendment**

Amendment by Pub. L. 107–121 effective as if included in the enactment of section 702 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 as enacted into law by section 1(a)(6) of Pub. L. 106–554, see section 2(c)(2) of Pub. L. 107–121, set out as a note under section 1396a of this title.

**Effective Date of 2000 Amendment**

Amendment by Pub. L. 106–554 effective Jan. 1, 2001, and applicable to services furnished on or after such date, see section 1(a)(6) [title VII, § 702(c)] of Pub. L. 106–554, set out as a note under section 1396a of this title.

**Effective Date of 1999 Amendment**


Amendment by section 1000(a)(6) [title VI, § 608(a)] of Pub. L. 106–113 effective Nov. 29, 1999, see section 1000(a)(6) [title VI, § 608(b)] of Pub. L. 106–113, set out as a note under section 1396a of this title.

**Effective Date of 1997 Amendment**

Amendment by section 4106(c) of Pub. L. 105–33 applicable to bone mass measurements performed on or after...
after July 1, 1998, see section 4018(d) of Pub. L. 105–33, set out as a note under section 1395x of this title.

Section 474(b) of Pub. L. 105–33 provided that: "The amendments made by subsection (a) [amending this section] apply to services furnished on or after October 1, 1997."

**Effective Date of 1993 Amendment**

Amendment by Pub. L. 103–66 applicable to medical assistance furnished on or after Jan. 1, 1994, without regard to whether or not final regulations to carry out the amendments by section 13603 of Pub. L. 103–66 have been promulgated by such date, see section 13603(c) of Pub. L. 103–66, set out as a note under section 1396a of this title.

**Effective Date of 1990 Amendments**

Amendment by section 4604(c) of Pub. L. 101–508 effective with respect to payments under this subchapter for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4604 of Pub. L. 101–508 have been promulgated by such date, see section 4604(d) of Pub. L. 101–508, set out as a note under section 1396a of this title.


Section 4742(b) of Pub. L. 101–508 provided that: "The amendment made by subsection (a) [amending this section] shall take effect as of the first calendar quarter beginning more than 30 days after the date of the enactment of this Act [Nov. 5, 1990]."

Section 4742(c) of Pub. L. 101–508 provided that: "The amendment made by paragraph (1) [amending this section] shall apply as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97–35]."

**Effective Date of 1989 Amendments**

Amendment by section 6115(c) of Pub. L. 101–239 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 101–239, set out as a note under section 1395x of this title.

Section 6111(c)(4) of Pub. L. 101–239 provided that: "The amendment made by paragraph (2) [amending this section] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203]."


Section 4742(d)(2) of Pub. L. 101–508 provided that: "The amendment made by paragraph (1) [amending this section] shall apply if as included in the enactment of the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97–35]."

**Effective Date of 1988 Amendments**

Amendment by section 6115(c) of Pub. L. 101–239 applicable to screening mammography performed on or after Jan. 1, 1994, see section 6115(d) of Pub. L. 101–239, set out as a note under section 1395x of this title.


**Effective Date of 1987 Amendments**

For effective date of amendment by section 4972(d) of Pub. L. 100–203, see section 4972(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Section 4102(a)(2) of Pub. L. 100–203 provided that: "The amendments made by paragraph (1) [amending this section] shall become effective on January 1, 1988."

Section 4118(a)(2) of Pub. L. 100–203 provided that: "The amendment made by paragraph (1) [amending this section] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509]."

Section 4118(b)(2) of Pub. L. 100–203 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to requests for continuation of waivers received after the date of the enactment of this Act [Dec. 22, 1987]."

Section 4118(p)(10) of Pub. L. 100–203 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 99–509.

Amendment by section 4211(h)(10) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

**Effective Date of 1986 Amendments**

Amendment by section 9320(b)(3) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(l), (k) of Pub. L. 99–509, as amended, set out as notes under section 1396k of this title.

Section 9411(e) of Pub. L. 99–509 provided that: "The amendments made by this section [amending this section] shall apply to applications for waivers for (or renewals thereof) approved on or after the date of the enactment of this Act [Oct. 21, 1986]."


"(1) HABILITATION SERVICES. — The amendment made by subsection (a) [amending this section] shall be effective for services furnished on or after the date of the enactment of this Act [Apr. 7, 1986] to individuals eligible for services under a waiver granted under section 608(f)(2) of Pub. L. 100–485 effective Oct. 13, 1988, see section 608(g)(2) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 6115(c) of Pub. L. 101–239 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1396m of this title.

Except as specifically provided in section 411(a) of Pub. L. 100–360, amendment by section 411(k)(3), (10)(A), (H), (1), (17)(A), (18)(B)(G) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1997, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective date note under section 106 of Title I, General Provisions.
1915(c) of the Social Security Act [subsec. (c) of this section], without regard to whether such individuals were receiving institutional services before their participation in the waiver.

"(2) HOSPITALIZED PATIENTS.—The amendments made by subsection (b) [amending this section] shall be effective for services furnished on or after October 1, 1985.

"(3) PROHIBITION OF REGULATORY LIMITS AND TREATMENT OF CERTAIN PHYSICALLY DISABLED INDIVIDUALS.—The amendments made by subsections (c) and (d) [amending this section] shall apply to applications for waivers (or renewals thereof) filed before, on, or after the date of the enactment of this Act [Apr. 7, 1986] and for services furnished on or after August 13, 1981.

"(4) INCOME STANDARDS.—The amendments made by subsection (e) [amending this section] shall apply to waivers (or renewals thereof) approved before, on, or after the date of the enactment of this Act [Apr. 7, 1986].

"(5) WAIVER EXTENSIONS.—Subsection (f) [enacting provisions set out below] shall apply to waivers expiring on or after September 30, 1985, and before September 30, 1986.

"(6) WAIVER RENEWALS.—The amendments made by subsection (g) [amending this section] shall become effective on September 30, 1986.

"(7) COORDINATED SERVICES AND SUBSTITUTION OF PARTICIPANTS.—The amendments made by subsections (b) and (i) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986]."

Section 5050(b) of Pub. L. 99–272, as amended by Pub. L. 100–203, title IX, §9436(d)(1), Oct. 21, 1986, 100 Stat. 2070, provided that: "The amendments made by this section [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Apr. 7, 1986], without regard to whether or not regulations to carry out the amendments have been promulgated by that date."

Section 4118(b) of Pub. L. 100–203 provided that the amendment made by this section to section 5050(1) of Pub. L. 99–272, set out above, is effective as if included as a part of this section as this section was amended by section 4118(b) of Pub. L. 100–203.

**EFFECTIVE DATE OF 1983 AMENDMENT**

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

**EFFECTIVE DATE OF 1982 AMENDMENT**

Section 137(b)(19)(B) of Pub. L. 97–248 provided that: "The amendment made by subparagraph (A) [amending this section] shall not apply with respect to any waiver if such waiver was granted, and the arrangement covered by the waiver was in place, prior to August 10, 1982."

Amendment by section 137(b)(20)–(25) of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

**EFFECTIVE DATE OF 1981 AMENDMENT**

Section 217(b) of Pub. L. 97–35 provided that: "The amendment made by this section [amending this section] shall become effective 90 days after the date of the enactment of this Act [Aug. 13, 1981]."

**REGULATIONS**

Pub. L. 109–171, title VI, §606(b), Feb. 8, 2006, 120 Stat. 127, provided that:

"(1) IN GENERAL.—The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, shall consult with consumers, health and social service providers and other professionals knowledgeable about long-term care services and supports to design an individualized, self-directed, community-supported life; and

"(2) provide the support and coordination needed for a beneficiary in need of such services (and their family caregivers or representative, if applicable) to design an individualized, self-directed, community-supported life; and

"(3) improve coordination among, and the regulation of, all providers of such services under federally and State-funded programs in order to—

"(A) achieve a more consistent administration of policies and procedures across programs in relation to the provision of such services; and

"(B) oversee and monitor all service system functions to assure—

"(i) coordination of, and effectiveness of, eligibility determinations and individual assessments;

"(ii) development and service monitoring of a complaint system, a management system, a system to qualify and monitor providers, and systems for role-setting and individual budget determinations; and

"(ii) an adequate number of qualified direct care workers to provide self-directed personal assistance services."

**QUALITY OF CARE MEASURES**

Pub. L. 109–171, title VI, §606(b), Feb. 8, 2006, 120 Stat. 127, provided that:

"(1) IN GENERAL.—The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, shall consult with consumers, health and social service providers and other professionals knowledgeable about long-term care services and supports to design an individualized, self-directed, community-supported life; and

"(2) provide the support and coordination needed for a beneficiary in need of such services (and their family caregivers or representative, if applicable) to design an individualized, self-directed, community-supported life; and

"(3) improve coordination among, and the regulation of, all providers of such services under federally and State-funded programs in order to—

"(A) achieve a more consistent administration of policies and procedures across programs in relation to the provision of such services; and

"(B) oversee and monitor all service system functions to assure—

"(i) coordination of, and effectiveness of, eligibility determinations and individual assessments;

"(ii) development and service monitoring of a complaint system, a management system, a system to qualify and monitor providers, and systems for role-setting and individual budget determinations; and

"(ii) an adequate number of qualified direct care workers to provide self-directed personal assistance services."
Security Act (subsec. (c) of this section) for individuals with mental retardation or a related condition in a State, the Secretary of Health and Human Services shall permit the State to adjust the estimate of average per capita expenditures submitted under paragraph (2)(D) of such section, with respect to such expenditures made on or after January 1, 1969, to take into account increases in expenditures for, or utilization of, intermediate care facilities for the mentally retarded resulting from implementation of section 1919(e)(7)(A) of such Act (section 1396e(e)(7)(A) of this title).''

EXTENSIONS OF WAIVERS UNDER SUBSECTION (c)

Section 4102(c) of Pub. L. 100–203 provided that: "In the case of a State which, as of December 1, 1967, has a waiver approved with respect to elderly individuals under section 1915(c)(of the Social Security Act (subsec. (c) of this section), which waiver is scheduled to expire before July 1, 1988, if the State notifies the Secretary of Health and Human Services of the State's intention to file an application for a waiver under section 1915(d) of such Act (as amended by subsection (a) of this section), the Secretary shall extend approval of the State's waiver, under section 1915(c)(of such Act, on the same terms and conditions through September 30, 1988.''

Section 5902(f) of Pub. L. 99–272 provided that: "The Secretary of Health and Human Services shall extend, upon request of the State, any waiver under section 1915(d) of such Act as amended by subsection (a) of this section, the Secretary shall extend approval of the State's waiver, under section 1915(c)(of such Act, on the same terms and conditions through September 30, 1988.''

§ 1396e. Use of enrollment fees, premiums, deductions, cost sharing, and similar charges

(a) Imposition of certain charges under plan in case of individuals described in section 1396a(a)(10)(A) or (E)

Subject to subsections (g), (i), and (j) of this section, the State plan shall provide that in the case of individuals described in subparagraph (A) or (E)(i) of section 1396a(a)(10) of this title who are eligible under the plan—

1. no enrollment fee, premium, or similar charge will be imposed under the plan (except for a premium imposed under subsection (c) of this section);  
2. no deduction, cost sharing or similar charge will be imposed under the plan with respect to—

(A) services furnished to individuals under 18 years of age (and, at the option of the State, individuals under 21, 20, or 19 years of age, or any reasonable category of individuals 18 years of age or over), 
(B) services furnished to pregnant women, if such services relate to the pregnancy or to any other medical condition which may complicate the pregnancy, and counseling and pharmacotherapy for cessation of tobacco use by pregnant women (as defined in section 1396d(bb) of this title) and covered outpatient drugs (as defined in subsection (k)(2) of section 1396e–8 of this title and including nonprescription drugs described in subsection (d)(2) of such section) that are prescribed for purposes of promoting, and when used to promote, tobacco cessation by pregnant women in accordance with the Guideline referred to in section 1396d(bb)(2)(A) of this title (or, at the option of the State, any services furnished to pregnant women),
(C) services furnished to any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs,
(D) emergency services (as defined by the Secretary), family planning services and supplies described in section 1396d(a)(4)(E) of this title,
(E) services furnished to an individual who is receiving hospice care (as defined in section 1396d(o) of this title); and

3. any deduction, cost sharing, or similar charge imposed under the plan with respect to other such individuals or other care and services will be nominal in amount (as determined by the Secretary in regulations) which shall, if the definition of “nominal” under the regulations in effect on July 1, 1982 is changed, take into account the level of cash assistance provided in such State and such other criteria as the Secretary determines to be appropriate; except that a deduction, cost-sharing, or similar charge of up to twice the nominal amount established for outpatient services may be imposed by a State under a waiver granted by the Secretary for services received at a hospital emergency room if the services are not emergency services (referred to in paragraph (2)(D)) and the State has established to the satisfaction of the Secretary that individuals eligible for services under the plan have actually available and accessible to them alternative sources of nonemergency, outpatient services.

(b) Imposition of certain charges under plan in case of individuals other than those described in section 1396a(a)(10)(A) or (E)

The State plan shall provide that in the case of individuals other than those described in subparagraph (A) or (E) of section 1396a(a)(10) of this title who are eligible under the plan—

1. there may be imposed an enrollment fee, premium, or similar charge, which (as determined in accordance with standards prescribed by the Secretary) is related to the individual’s income,

2. no deduction, cost sharing, or similar charge will be imposed under the plan with respect to—

(A) services furnished to individuals under 18 years of age (and, at the option of the State, individuals under 21, 20, or 19 years of age, or any reasonable category of individuals 18 years of age or over),

(B) services furnished to pregnant women, if such services relate to the pregnancy or to any other medical condition which may complicate the pregnancy, and counseling and pharmacotherapy for cessation of tobacco use by pregnant women (as defined in section 1396d(bb) of this title) and covered outpatient drugs (as defined in subsection (k)(2) of section 1396e–8 of this title and including nonprescription drugs described in subsection (d)(2) of such section) that are prescribed for purposes of promoting, and when used to promote, tobacco cessation by pregnant women in accordance with the Guideline referred to in section 1396d(bb)(2)(A) of this title (or, at the option of the State, any services furnished to pregnant women),
prescribed for purposes of promoting, and when used to promote, tobacco cessation by pregnant women in accordance with the Guideline referred to in section 1396d(bb)(2)(A) of this title (or, at the option of the Secretary, any services furnished to pregnant women).

(C) services furnished to any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs.

(D) emergency services (as defined by the Secretary), family planning services and supplies described in section 1396d(a)(4)(C) of this title, or

(E) services furnished to an individual who is receiving hospice care (as defined in section 1396d(o) of this title); and

(3) any deduction, cost sharing, or similar charge imposed under the plan with respect to other such individuals or other care and services will be nominal in amount (as determined by the Secretary in regulations which shall, if the definition of "nominal" under the regulations in effect on July 1, 1982 is changed, take into account the level of cash assistance provided in such State and such other criteria as the Secretary determines to be appropriate); except that a deduction, cost-sharing, or similar charge of up to twice the nominal amount established for outpatient services may be imposed by a State under a waiver granted by the Secretary for services received at a hospital emergency room if the services are not emergency services (referred to in paragraph (2)(D)) and the State has established to the satisfaction of the Secretary that individuals eligible for services under the plan have actually available and accessible to them alternative sources of nonemergency, outpatient services.

(c) Imposition of monthly premium; persons affected; amount; prepaid; use of funds from other programs

(1) The State plan of a State may at the option of the State provide for imposing a monthly premium (in an amount that does not exceed the limit established under paragraph (2)) with respect to an individual described in subparagraph (A) or (B) of section 1396a(l)(1) of this title who is receiving medical assistance on the basis of section 1396a(a)(10)(A)(ii)(IX) of this title and whose family income (as determined in accordance with the methodology specified in section 1396a(l)(3) of this title) equals or exceeds 150 percent of the official poverty line referred to in that section provided with respect to the individuals described in section 1396a(s) of this title whose income (as determined in accordance with section 1396a(a)(10)(A)(ii)(IX) of this title) equals or exceeds 150 percent of the official poverty line referred to in section 1396a(l)(3) of this title who is receiving medical assistance in the area, and

(3) A State shall not require prepayment of a premium imposed pursuant to paragraph (1) and shall not terminate eligibility of an individual for medical assistance under this subchapter on the basis of failure to pay any such premium until such failure continues for a period of not less than 60 days. The State may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.

(4) A State may permit State or local funds available under other programs to be used for payment of a premium imposed under paragraph (1). Payment of a premium with such funds shall not be counted as income to the individual with respect to whom such payment is made.

(d) Premiums for qualified disabled and working individuals described in section 1396d(s)

With respect to a qualified disabled and working individual described in section 1396d(s) of this title whose income (as determined under paragraph (3) of that section) exceeds 150 percent of the official poverty line referred to in that paragraph, the State plan of a State may provide for the charging of a premium (expressed as a percentage of the medicare cost-sharing described in section 1396d(p)(3)(A)(i) of this title provided with respect to the individual) according to a sliding scale under which such percentage increases from 0 percent to 100 percent, in reasonable increments (as determined by the Secretary), as the individual’s income increases from 150 percent of such poverty line to 200 percent of such poverty line.

(e) Prohibition of denial of services on basis of individual’s inability to pay certain charges

The State plan shall require that no provider participating under the State plan may deny care or services to an individual eligible for such care or services under the plan on account of such individual’s inability to pay a deduction, cost sharing, or similar charge. The requirements of this subsection shall not extinguish the liability of the individual to whom the care or services were furnished for payment of the deduction, cost sharing, or similar charge.

(f) Charges imposed under waiver authority of Secretary

No deduction, cost sharing, or similar charge may be imposed under any waiver authority of the Secretary, except as provided in subsections (a)(3) and (b)(3) of this section and section 1396o-1 of this title, unless such waiver is for a demonstration project which the Secretary finds after public notice and opportunity for comment—

(1) will test a unique and previously untested use of copayments,

(2) is limited to a period of not more than two years,

(3) will provide benefits to recipients of medical assistance which can reasonably be expected to be equivalent to the risks to the recipients, until such failure continues for a period of not less than 60 days. The State may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.

(4) A State may permit State or local funds available under other programs to be used for payment of a premium imposed under paragraph (1). Payment of a premium with such funds shall not be counted as income to the individual with respect to whom such payment is made.

(d) Premiums for qualified disabled and working individuals described in section 1396d(s)

With respect to a qualified disabled and working individual described in section 1396d(s) of this title whose income (as determined under paragraph (3) of that section) exceeds 150 percent of the official poverty line referred to in that paragraph, the State plan of a State may provide for the charging of a premium (expressed as a percentage of the medicare cost-sharing described in section 1396d(p)(3)(A)(i) of this title provided with respect to the individual) according to a sliding scale under which such percentage increases from 0 percent to 100 percent, in reasonable increments (as determined by the Secretary), as the individual’s income increases from 150 percent of such poverty line to 200 percent of such poverty line.

(e) Prohibition of denial of services on basis of individual’s inability to pay certain charges

The State plan shall require that no provider participating under the State plan may deny care or services to an individual eligible for such care or services under the plan on account of such individual’s inability to pay a deduction, cost sharing, or similar charge. The requirements of this subsection shall not extinguish the liability of the individual to whom the care or services were furnished for payment of the deduction, cost sharing, or similar charge.

(f) Charges imposed under waiver authority of Secretary

No deduction, cost sharing, or similar charge may be imposed under any waiver authority of the Secretary, except as provided in subsections (a)(3) and (b)(3) of this section and section 1396o-1 of this title, unless such waiver is for a demonstration project which the Secretary finds after public notice and opportunity for comment—

(1) will test a unique and previously untested use of copayments,

(2) is limited to a period of not more than two years,

(3) will provide benefits to recipients of medical assistance which can reasonably be expected to be equivalent to the risks to the recipients, until such failure continues for a period of not less than 60 days. The State may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.

(4) A State may permit State or local funds available under other programs to be used for payment of a premium imposed under paragraph (1). Payment of a premium with such funds shall not be counted as income to the individual with respect to whom such payment is made.
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(5) is voluntary, or makes provision for assumption of liability for preventable damage to the health of recipients of medical assistance resulting from involuntary participation.

(g) Individuals provided medical assistance under section 1396a(a)(10)(A)(ii)(XV) or (XVI)

With respect to individuals provided medical assistance only under subclause (XV) or (XVI) of section 1396a(a)(10)(A)(ii) of this title—

(1) a State may (in a uniform manner for individuals described in either such subclause)—

(A) require such individuals to pay premiums or other cost-sharing charges set on a sliding scale based on income that the State may determine; and

(B) require payment of 100 percent of such premiums for all years in the case of such an individual who has income for a year that exceeds 250 percent of the income official poverty line (referred to in subsection (c)(1) of this section) applicable to a family of the size involved, except that in the case of such an individual who has income for a year that does not exceed 450 percent of such poverty line, such requirement may only apply to the extent such premiums do not exceed 7.5 percent of such income; and

(2) such State shall require payment of 100 percent of such premiums for a year by such an individual whose adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986) for such year exceeds $75,000, except that a State may choose to subsidize such premiums by using State funds which may not be federally matched under this subchapter.

(h) Indexing nominal cost sharing

In applying this section and subsections (e) and (g) of section 1396a-1 of this title, with respect to cost sharing that is “nominal” in amount, the Secretary shall increase such “nominal” amounts for each year (beginning with 2006) by the annual percentage increase in the medical care component of the consumer price index for all urban consumers (U.S. city average) as rounded up in an appropriate manner.

(i) State option to impose income-related premiums for families of disabled children

(1) With respect to disabled children provided medical assistance under section 1396a(a)(10)(A)(ii)(XIX) of this title, subject to paragraph (2), a State may (in a uniform manner for such children) require the families of such children to pay monthly premiums set on a sliding scale based on family income.

(2) A premium requirement imposed under paragraph (1) may only apply to the extent that—

(A) in the case of a disabled child described in that paragraph whose family income—

(i) does not exceed 200 percent of the poverty line, the aggregate amount of such premium and any premium that the parent is required to pay for family coverage under section 1396a(cc)(2)(A)(i) of this title and other cost-sharing charges do not exceed 5 percent of the family’s income; and

(ii) exceeds 200, but does not exceed 300, percent of the poverty line, the aggregate amount of such premium and any premium that the parent is required to pay for family coverage under section 1396a(cc)(2)(A)(i) of this title and other cost-sharing charges do not exceed 7.5 percent of the family’s income; and

(B) the requirement is imposed consistent with section 1396a(cc)(2)(A)(ii)(I) of this title.

(3) A State shall not require prepayment of a premium imposed pursuant to paragraph (1) and shall not terminate eligibility of a child under section 1396a(a)(10)(A)(ii)(XIX) of this title for medical assistance under this subchapter on the basis of failure to pay any such premium until such failure continues for a period of at least 60 days from the date on which the premium became past due. The State may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.

(j) No premiums or cost sharing for Indians furnished items or services directly by Indian health programs or through referral under contract health services

(1) No cost sharing for items or services furnished to Indians through Indian health programs

(A) In general

No enrollment fee, premium, or similar charge, and no deduction, copayment, cost sharing, or similar charge shall be imposed against an Indian who is furnished an item or service or to an Indian who is eligible for assistance under such subchapter who is an Indian.

(B) No reduction in amount of payment to Indian health providers

Payment due under this subchapter to the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization or through referral under contract health services for the furnishing of an item or service to an Indian who is eligible for assistance under such subchapter, may not be reduced by the amount of any enrollment fee, premium, or similar charge, or any deduction, copayment, cost sharing, or similar charge that would be due from the Indian by virtue of the operation of sub-paragraph (A).

(2) Rule of construction

Nothing in this subsection shall be construed as restricting the application of any other limitations on the imposition of premiums or cost sharing that may apply to an individual receiving medical assistance under this subchapter who is an Indian.

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REFERENCES IN TEXT

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

AMENDMENTS

2010—Subsecs. (a)(2)(B), (b)(2)(B). Pub. L. 111–148 inserted “—”, and counseling and pharmacotherapy for cessation of tobacco use by pregnant women (as defined in section 1396d(bb)) of this title and covered outpatient drugs (as defined in subsection (k)(2) of section 1396–8 of this title and including nonprescription drugs described in subsection (d)(2) of such section) that are prescribed for purposes of promoting, and when used to promote, tobacco cessation by pregnant women in accordance with the Guidelines referred to in section 1396d(bb)(2)(A) of this title” after “complicate the pregnancy”.

2009—Subsec. (a). Pub. L. 111–5, §5006(a)(1)(A), substituted “(i), and (j)” for “and (j)” in introductory provisions.


2006—Subsec. (a). Pub. L. 109–171, §6062(b)(1), substituted “subsections (g) and (i)” for “subsection (g)” in introductory provisions.

Subsec. (f). Pub. L. 109–171, §6041(b)(1), inserted “and section 1996–1 of this title” after “(b)(3) of this section”.


1999—Subsec. (a). Pub. L. 106–170, §201(a)(3)(A), substituted “Subject to subsection (g) of this section, the State plan for ‘The State plan’ in introductory provisions”.


1997—Subsec. (a)(2)(D). Pub. L. 105–33, §4708(b)(1), struck out “‘or services furnished to such an individual by a health maintenance organization (as defined in section 1396b(m) of this title) in which he is enrolled’, after “section 1996a(a)(4)(C) of this title’’.”.

Subsec. (b)(3)(D). Pub. L. 105–33, §4708(b)(2), struck out “(or the option of the State) services furnished to such an individual by a health maintenance organization (as defined in section 1396b(m) of this title) in which he is enrolled,” after “section 1396d(a)(4)(C) of this title’’.

1996—Subsec. (a). Pub. L. 101–239, §6408(d)(3)(A), substituted “‘paragraph (A) or (E)(i)’” for “‘paragraph (A) or (E)(i)’” in introductory provisions.

Subsecs. (d) to (f). Pub. L. 101–239, §6408(d)(3)(B), (C), added subsec. (d) and redesignated former subsec. (d) as (e) and (f), respectively.

1988—Subsec. (c)(1). Pub. L. 100–360 struck out “nonfarm” after “150 percent of the”.

Subsec. (a)(1). Pub. L. 100–203, §4101(d)(1)(A), inserted “‘except for a premium imposed under subsection (c) of this section’” after “plan’’.”


Subsecs. (c) to (e). Pub. L. 100–203, §4101(d)(1)(B), (C), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1986—Subsec. (a). Pub. L. 99–509 substituted “subparagraph (A) or (E) of section 1396a(a)(10) of this title’’ for “section 1396a(a)(10)(A) of this title’’.


Subsec. (b). Pub. L. 99–509 substituted “subparagraph (A) or (E) of section 1396a(a)(10) of this title’’ for “section 1396a(a)(10)(A) of this title’’.


1983—Subsec. (c). Pub. L. 97–448, §309(b)(19), (20), substituted “‘is voluntary, or makes provision” for “in which participation is voluntary, or in which provision is made’’.

EFFECTIVE DATE OF 2010 AMENDMENT


EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 effective July 1, 2009, see section 5006(f) of Pub. L. 111–5, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title VI, §6041(c), Feb. 8, 2006, 120 Stat. 85, provided that: “The amendments made by this section [enacting section 1396e–1 of this title and amending this section] shall apply to cost sharing imposed for items and services furnished on or after March 31, 2006.’’

Amendment by Pub. L. 105–35 applicable to medical assistance for items and services furnished on or after Jan. 1, 2006, see section 6302(d) of Pub. L. 109–171, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, see section 201(d) of Pub. L. 106–170, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, see section 4710 of Pub. L. 105–33, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations have been promulgated by such date, see section 6408(d)(5) of Pub. L. 101–239, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.


Effective Date of 1987 Amendment
Section 410(d)(2) of Pub. L. 100–203 provided that: "The amendments made by paragraph (1) [amending this section] shall become effective on July 1, 1988."
Amendment by section 4211(b)(11) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396s of this title, with transitional rule, see section 4211(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396s of this title.

Effective Date of 1986 Amendments
Amendment by Pub. L. 99–509 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9403(h) of Pub. L. 99–509, set out as a note under section 1396a of this title.
Amendment by Pub. L. 99–272 applicable to medical assistance provided for hospice care furnished on or after Apr. 7, 1986, see section 6505(e) of Pub. L. 99–272, set out as a note under section 1396a of this title.

Effective Date of 1983 Amendment
Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

Effective Date
Section 131(d), formerly §131(c), of Pub. L. 97–248, redesignated by section 309(a)(8) of Pub. L. 97–448, provided that:
"(1) Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 1396a of this title] shall become effective on October 1, 1982.
(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Sept. 3, 1982]."

§ 1396e–1. State option for alternative premiums and cost sharing

(a) State flexibility

(1) In general

Notwithstanding sections 1396d and 1396a(a)(10)(B) of this title, but subject to paragraph (2), a State, at its option and through a State plan amendment, may impose premiums and cost sharing for any group of individuals (as specified by the State) and for any type of services (other than drugs for which cost sharing may be imposed under subsection (c) and non-emergency services furnished in a hospital emergency department for which cost sharing may be imposed under subsection (e)), and may vary such premiums and cost sharing among such groups or types, consistent with the limitations established under this section. Nothing in this section shall be construed as superseding (or preventing the application of) subsection (g), (i), or (j) of section 1396b of this title.

(2) Exemption for individuals with family income not exceeding 100 percent of the poverty line

(A) In general

Paragraph (1) and subsection (d) shall not apply, and sections 1396e and 1396a(a)(10)(B) of this title shall continue to apply, in the case of an individual whose family income does not exceed 100 percent of the poverty line applicable to a family of the size involved.

(B) Limit on aggregate cost sharing

To the extent cost sharing under subsections (c) and (e) or under section 1396e of this title is imposed against individuals described in subparagraph (A), the limitation under subsection (b)(1)(B)(ii) on the total aggregate amount of cost sharing shall apply to such cost sharing for all individuals in a family described in subparagraph (A) in the same manner as such limitations apply to cost sharing and families described in subsection (b)(1)(B)(ii).

(3) Definitions

In this section:

(A) Premium

The term "premium" includes any enrollment fee or similar charge.

(B) Cost sharing

The term "cost sharing" includes any deduction, copayment, or similar charge.

(b) Limitations on exercise of authority

(1) Individuals with family income between 100 and 150 percent of the poverty line

In the case of an individual whose family income exceeds 100 percent, but does not exceed 150 percent of the poverty line applicable to a family of the size involved—

(A) no premium may be imposed under the plan; and

(B) with respect to cost sharing—

(i) the cost sharing imposed under subsection (a) with respect to any item or service may not exceed 10 percent of the cost of such item or service; and

(ii) the total aggregate amount of cost sharing imposed under this section (including any cost sharing imposed under subsection (c) or (e)) for all individuals in the family may not exceed 5 percent of the family income of the family involved, as applied on a quarterly or monthly basis (as specified by the State).

(2) Individuals with family income above 150 percent of the poverty line

In the case of an individual whose family income exceeds 150 percent of the poverty line applicable to a family of the size involved—

(A) the total aggregate amount of premiums and cost sharing imposed under this section (including any cost sharing imposed under subsection (c) or (e)) for all individuals in the family may not exceed 5 percent
of the family income of the family involved, as applied on a quarterly or monthly basis (as specified by the State); and

(B) with respect to cost sharing, the cost sharing imposed with respect to any item or service under subsection (a) may not exceed 20 percent of the cost of such item or service.

(3) Additional limitations

(A) Premiums

No premiums shall be imposed under this section with respect to the following:

(i) Individuals under 18 years of age that are required to be provided medical assistance under section 1396a(a)(10)(A)(i) of this title, and including individuals with respect to whom child welfare services are made available under part B of subchapter IV on the basis of being a child in foster care and individuals with respect to whom adoption or foster care assistance is made available under part E of such subchapter, without regard to age.

(ii) Pregnant women.

(iii) Any terminally ill individual who is receiving hospice care (as defined in section 1396d(e) of this title).

(iv) Any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual’s income required for personal needs.

(v) Women who are receiving medical assistance by virtue of the application of sections 1396a(a)(10)(A)(ii)(XVIII) and 1396a(aa) of this title.

(vi) Disabled children who are receiving medical assistance by virtue of the application of sections 1396a(a)(10)(A)(ii)(XIX) and 1396a(cc) of this title.

(vii) An Indian who is furnished an item or service directly by the Indian Health Service, an Indian Tribe, Tribal Organization or Urban Indian Organization or through referral under contract health services.

(B) Cost sharing

Subject to the succeeding provisions of this section, no cost sharing shall be imposed under subsection (a) with respect to the following:

(i) Services furnished to individuals under 18 years of age that are required to be provided medical assistance under section 1396a(a)(10)(A)(i) of this title, and including services furnished to individuals with respect to whom child welfare services are made available under part B of subchapter IV on the basis of being a child in foster care or and 1 individuals with respect to whom adoption or foster care as-

1 So in original.
(6) Construction

Nothing in this section shall be construed—

(A) as preventing a State from further limiting the premiums and cost sharing imposed under this section beyond the limitations provided under this section;

(B) as affecting the authority of the Secretary through waiver to modify limitations on premiums and cost sharing under this section; or

(C) as affecting any such waiver of requirements in effect under this subchapter before February 8, 2006, with regard to the imposition of premiums and cost sharing.

(e) Special rules for cost sharing for prescription drugs

(1) In general

In order to encourage beneficiaries to use drugs (in this subsection referred to as “preferred drugs”) identified by the State as the most (or more) cost effective prescription drugs within a class of drugs (as defined by the State), with respect to one or more groups of beneficiaries specified by the State, subject to paragraphs (2) and (3), the State may—

(A) provide cost sharing (instead of the level of cost sharing otherwise permitted under section 1396o of this title, but subject to paragraphs (2) and (3)) with respect to drugs that are not preferred drugs within a class; and

(B) waive or reduce the cost sharing otherwise applicable for preferred drugs within such class and shall not apply any such cost sharing for such preferred drugs for individuals for whom cost sharing may not be imposed under subsection (a) due to the application of subsection (b)(3)(B).

(2) Limitations

(A) By income group

In no case may the cost sharing under paragraph (1)(A) with respect to a non-preferred drug exceed—

(i) in the case of an individual whose family income does not exceed 150 percent of the poverty line applicable to a family of the size involved, the amount of nominal cost sharing (as otherwise determined under section 1396o of this title); or

(ii) in the case of an individual whose family income exceeds 150 percent of the poverty line applicable to a family of the size involved, 20 percent of the cost of the drug.

(B) Limitation to nominal for exempt populations

In the case of an individual who is not subject to cost sharing under subsection (a) due to the application of paragraph (1)(B), any cost sharing under paragraph (1)(A) with respect to a non-preferred drug may not exceed a nominal amount (as otherwise determined under section 1396o of this title).

(C) Continued application of aggregate cap

In addition to the limitations imposed under subparagraphs (A) and (B), any cost sharing under paragraph (1)(A) continues to be subject to the aggregate cap on cost sharing applied under subsection (a)(2)(B) or under paragraph (1) or (2) of subsection (b), as the case may be.

(3) Waiver

In carrying out paragraph (1), a State shall provide for the application of cost sharing levels applicable to a preferred drug in the case of a drug that is not a preferred drug if the prescribing physician determines that the preferred drug for treatment of the same condition either would not be as effective for the individual or would have adverse effects for the individual or both.

(4) Exclusion authority

Nothing in this subsection shall be construed as preventing a State from excluding specified drugs or classes of drugs from the application of paragraph (1).

(d) Enforceability of premiums and other cost sharing

(1) Premiums

Notwithstanding section 1396o(c)(3) of this title and section 1396a(a)(10)(B) of this title, a State may, at its option, condition the provision of medical assistance for an individual upon prepayment of a premium authorized to be imposed under this section, or may terminate eligibility for such medical assistance on the basis of failure to pay such a premium but shall not terminate eligibility of an individual for medical assistance under this subchapter on the basis of failure to pay any such premium until such failure continues for a period of not less than 60 days. A State may apply the previous sentence for some or all groups of beneficiaries as specified by the State and may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.

(2) Cost sharing

Notwithstanding section 1396o(e) of this title or any other provision of law, a State may permit a provider participating under the State plan to require, as a condition for the provision of care, items, or services to an individual entitled to medical assistance under this subchapter for such care, items, or services, the payment of any cost sharing authorized to be imposed under this section with respect to such care, items, or services. Nothing in this paragraph shall be construed as preventing a provider from reducing or waiving the application of such cost sharing on a case-by-case basis.

(e) State option for permitting hospitals to impose cost sharing for non-emergency care furnished in an emergency department

(1) In general

Notwithstanding section 1396o of this title and section 1396a(a)(1) of this title or the previous provisions of this section, but subject to the limitations of paragraph (2), a State may, by amendment to its State plan under this subchapter, permit a hospital to impose cost sharing for non-emergency services furnished
(A) Access to non-emergency room provider

The individual has actually available and accessible (as such terms are applied by the Secretary under section 1396o(b)(3) of this title) an alternate non-emergency services provider with respect to such services.

(B) Notice

The hospital must inform the beneficiary after receiving an appropriate medical screening examination under section 1395dd of this title and after a determination has been made that the individual does not have an emergency medical condition, but before providing the non-emergency services, of the following:

(i) The hospital may require the payment of the State specified cost sharing before the service can be provided.

(ii) The name and location of an alternate non-emergency services provider (described in subparagraph (A)) that is actually available and accessible (as described in such subparagraph).

(iii) The fact that such alternate provider can provide the services without the imposition of cost sharing described in clause (i).

(iv) The hospital provides a referral to coordinate scheduling of this treatment.

Nothing in this subsection shall be construed as preventing a State from applying (or waiving) cost sharing otherwise permissible under this section to services described in clause (iii).

(2) Limitations

(A) Individuals with family income between 100 and 150 percent of the poverty line

In the case of an individual described in subsection (b)(1) who is not described in subparagraph (B), the cost sharing imposed under this subsection may not exceed twice the amount determined to be nominal under this section of this title, subject to the percentage of income limitation otherwise applicable under subsection (b)(1)(B)(ii).

(B) Application to exempt populations

In the case of an individual described in subsection (a)(2)(A) or who is not subject to cost sharing under subsection (b)(3)(B) with respect to non-emergency services described in paragraph (1), a State may impose cost sharing under paragraph (1) for care in an amount that does not exceed a nominal amount (as otherwise determined under section 1396o of this title) so long as no cost sharing is imposed to receive such care through an outpatient department or other alternative health care provider in the geographic area of the hospital emergency department involved.

(C) Continued application of aggregate cap; relation to other cost sharing

In addition to the limitations imposed under subparagraphs (A) and (B), any cost sharing under paragraph (1) is subject to the aggregate cap on cost sharing applied under subsection (a)(2)(B) or under paragraph (1) or (2) of subsection (b), as the case may be. Cost sharing imposed for services under this subsection shall be instead of any cost sharing that may be imposed for such services under subsection (a) or section 1396o of this title.

(3) Construction

Nothing in this section shall be construed—

(A) to limit a hospital’s obligations with respect to screening and stabilizing treatment of an emergency medical condition under section 1395dd of this title; or

(B) to modify any obligations under either State or Federal standards relating to the application of a prudent-layperson standard with respect to payment or coverage of emergency services by any managed care organization.

(4) Definitions

For purposes of this subsection:

(A) Non-emergency services

The term “non-emergency services” means any care or services furnished in an emergency department of a hospital that do not constitute an appropriate medical screening examination or stabilizing examination and treatment required to be provided by the hospital under section 1395dd of this title.

(B) Alternate non-emergency services provider

The term “alternative non-emergency services provider” means, with respect to non-emergency services for the diagnosis or treatment of a condition, a health care provider, such as a physician’s office, health care clinic, community health center, hospital outpatient department, or similar health care provider, that can provide clinically appropriate services for the diagnosis or treatment of a condition contemporaneously with the provision of the non-emergency services that would be provided in an emergency department of a hospital for the diagnosis or treatment of a condition, and that is participating in the program under this subchapter.


AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–148, §2102(b), substituted “(i), or (j)’’ for “or (i)’’.

Subsec. (b)(3)(B)(ii). Pub. L. 111–148, §4107(c)(2), inserted “, and counseling and pharmacotherapy for cessation of tobacco use by pregnant women (as defined in section 1396d(bb) of this title)” after “complicate the pregnancy”.


2006—Subsec. (a)(1). Pub. L. 109–432, § 405(a)(3)(A), substituted “subsection (g) or (i) of section 1396d” for “section 1396d(g)” in second sentence.

Subsec. (a)(2), (3). Pub. L. 109–432, § 405(a)(1)(B), (C), added par. (2) and redesignated former par. (2) as (3).


Subsec. (b)(3)(B)(i). Pub. L. 109–432, § 405(a)(4)(B), substituted “child welfare services” for “aid or assistance is made available under part B of subchapter IV on the basis of being a child in foster care” in text.

Subsec. (b)(3)(B)(ii). Pub. L. 109–432, § 405(a)(4)(B), substituted “most (or more) cost effective” for “least (or more) cost effective” in introductory provisions.

Subsec. (c)(1)(B). Pub. L. 109–432, § 405(a)(2)(E), struck out “most (or more) cost effective” in heading and “under subsection (b)(1)” in text.


Subsec. (d). Pub. L. 109–171, § 6043(a), substituted “least (or more) cost effective” for “most (or more) cost effective” in heading, added subsec. (d), and set out as a note under section 1396b of this title.

Section applicable to cost sharing imposed for items and services furnished on or after Mar. 31, 2006, see Amendment by section 6043(a) of Pub. L. 109–171 applicable to non-emergency services furnished on or after Jan. 1, 2007, see section 6043(c) of Pub. L. 109–171, set out as an Effective Date of 2006 Amendment note under section 1396b of this title.

§ 1396p. Liens, adjustments and recoveries, and transfers of assets

(a) Imposition of lien against property of an individual on account of medical assistance rendered to him under a State plan

(1) No lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the State plan, except—

(A) pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual, or

(B) in the case of the real property of an individual—

(i) who is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs, and

(ii) with respect to whom the State determines, after notice and opportunity for a hearing (in accordance with procedures established by the State), that he cannot reasonably be expected to be discharged from the medical institution and to return home, except as provided in paragraph (2).

(2) No lien may be imposed under paragraph (1)(B) on such individual’s home if—

(A) the spouse of such individual,

(B) such individual’s child who is under age 21, or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1380a of this title,

(C) a sibling of such individual (who has an equity interest in such home and who was residing in such individual’s home for a period of
is lawfully residing in such home.

(3) Any lien imposed with respect to an individual pursuant to paragraph (1)(B) shall dissolve upon that individual’s discharge from the medical institution and return home.

(b) Adjustment or recovery of medical assistance correctly paid under a State plan

(1) No adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan may be made, except that the State shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan in the case of the following individuals:

(A) In the case of an individual described in subsection (a)(1)(B) of this section, the State shall seek adjustment or recovery of any medical assistance paid on account of medical institution and return home.

(B) In the case of an individual who was 55 years of age or older when the individual received such medical assistance, the State shall seek adjustment or recovery from the individual's estate, but only for medical assistance consisting of—

(i) nursing facility services, home and community-based services, and related hospital and prescription drug services, or

(ii) at the option of the State, any items or services under the State plan (but not including medical assistance for Medicare cost-sharing or for benefits described in section 1396a(a)(10)(E) of this title).

(C)(i) In the case of an individual who has received (or is entitled to receive) benefits under a long-term care insurance policy in connection with which assets or resources are disregarded in the manner described in clause (ii), except as provided in such clause, the State shall seek adjustment or recovery from the individual’s estate on account of medical assistance paid on behalf of the individual for nursing facility and other long-term care services.

(ii) Clause (i) shall not apply in the case of an individual who received medical assistance under a State plan of a State which had a State plan amendment approved as of May 14, 1993, and which satisfies clause (iv), or which has a State plan amendment that provides for a qualified State long-term care insurance partnership (as defined in clause (iii)) which provided for the disregard of any assets or resources—

(I) to the extent that payments are made under a long-term care insurance policy; or

(II) because an individual has received (or is entitled to receive) benefits under a long-term care insurance policy.

(iii) For purposes of this paragraph, the term “qualified State long-term care insurance partnership” means an approved State plan amendment under this subchapter that provides for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy if the following requirements are met:

(I) The policy covers an insured who was a resident of such State when coverage first became effective under the policy.

(II) The policy is a qualified long-term care insurance policy (as defined in section 7702B(b) of the Internal Revenue Code of 1986) issued not earlier than the effective date of the State plan amendment.

(III) The policy meets the model regulations and the requirements of the model Act specified in paragraph (5).

(IV) If the policy is sold to an individual who—

(aa) has not attained age 61 as of the date of purchase, the policy provides compound annual inflation protection; and

(bb) has attained age 61 but has not attained age 76 as of such date, the policy provides some level of inflation protection; and

(cc) has attained age 76 as of such date, the policy may (but is not required to) provide some level of inflation protection.

(V) The State Medicaid agency under section 1396a(a)(5) of this title provides information and technical assistance to the State insurance department on the insurance department’s role of assuring that any individual who sells a long-term care insurance policy under the partnership receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care.

(VI) The issuer of the policy provides regular reports to the Secretary, in accordance with regulations of the Secretary, that include notification regarding when benefits provided under the policy have been paid and the amount of such benefits paid, notification regarding when the policy otherwise terminates, and such other information as the Secretary determines may be appropriate to the administration of such partnerships.

(VII) The State does not impose any requirement affecting the terms or benefits of such a policy unless the State imposes such requirement on long-term care insurance policies without regard to whether the policy is covered under the partnership or is offered in connection with such a partnership.

In the case of a long-term care insurance policy which is exchanged for another such policy, subclause (I) shall be applied based on the coverage of the first such policy that was exchanged. For purposes of this clause and paragraph (5), the term “long-term care insurance policy” includes a certificate issued under a group insurance contract.

(iv) With respect to a State which had a State plan amendment approved as of May 14, 1993, such a State satisfies this clause for purposes of clause (ii) if the Secretary determines that the State plan amendment provides for consumer protection standards which are no
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The regulations of the Secretary required under clause (ii)(VI) shall be promulgated after consultation with the National Association of Insurance Commissioners, issuers of long-term care insurance policies, States with experience with long-term care insurance partnership plans, other States, and representatives of consumers of long-term care insurance policies, and shall specify the type and format of the data and information to be reported and the frequency with which such reports are to be made. The Secretary, as appropriate, shall provide copies of the reports provided in accordance with that clause to the State involved.

(vi) The Secretary, in consultation with other appropriate Federal agencies, issuers of long-term care insurance, the National Association of Insurance Commissioners, State insurance commissioners, States with experience with long-term care insurance partnership plans, other States, and representatives of consumers of long-term care insurance policies, shall develop recommendations for Congress to authorize and fund a uniform minimum data set to be reported electronically by all issuers of long-term care insurance policies under qualified State long-term care insurance partnerships to a secure, centralized electronic query and report-generating mechanism that the State, the Secretary, and other Federal agencies can access.

(2) Any adjustment or recovery under paragraph (1) may be made only after the death of the individual’s surviving spouse, if any, and only at a time—

(A) when he has no surviving child who is under age 21, or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate) exempt income, resources, and property that are exempt from the application of this subsection as of April 1, 2003, under manual instructions issued to carry out this subsection (as in effect on such date) because of the Federal responsibility for Indian Tribes and Alaska Native Villages. Nothing in this subparagraph shall be construed as preventing the Secretary from providing additional estate recovery exemptions under this subchapter for Indians.

(3)(A) The State agency shall establish procedures (in accordance with standards specified by the Secretary) under which the agency shall waive the application of this clause (other than paragraph (1)(C)) if such application would work an undue hardship as determined on the basis of criteria established by the Secretary.

(B) The standards specified by the Secretary under subparagraph (A) shall require that the procedures established by the State agency under subparagraph (A) exempt income, resources, and property that are exempt from the application of this subsection as of April 1, 2003, under manual instructions issued to carry out this subsection (as in effect on such date) because of the Federal responsibility for Indian Tribes and Alaska Native Villages. Nothing in this subparagraph shall be construed as preventing the Secretary from providing additional estate recovery exemptions under this subchapter for Indians.

(4) For purposes of this subsection, the term “estate”, with respect to a deceased individual—

(A) shall include all real and personal property and other assets included within the individual’s estate, as defined for purposes of State probate law; and

(B) may include, at the option of the State (and shall include, in the case of an individual to whom paragraph (1)(C)(i) applies), any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

(5)(A) For purposes of clause (iii)(III), the model regulations and the requirements of the model Act specified in this paragraph are:

(i) In the case of the model regulation, the following requirements:

(I) Section 6A (relating to guaranteed renewal or noncancellability), other than paragraph (5) thereof, and the requirements of section 6B of the model Act relating to such section 6A.

(II) Section 6B (relating to prohibitions on limitations and exclusions) other than paragraph (7) thereof.

(III) Section 6C (relating to extension of benefits).

(IV) Section 6D (relating to continuation or conversion of coverage).

(V) Section 6E (relating to discontinuance and replacement of policies).

(VI) Section 7 (relating to unintentional lapse).

(VII) Section 8 (relating to disclosure), other than sections 8F, 8G, 8H, and 8I thereof.

(VIII) Section 9 (relating to required disclosure of rating practices to consumer).

(IX) Section 11 (relating to prohibitions against post-claims underwriting).

(X) Section 12 (relating to minimum standards).

(XI) Section 14 (relating to application forms and replacement coverage).

(XII) Section 15 (relating to reporting requirements).
(XIII) Section 22 (relating to filing requirements for marketing).

(XIV) Section 23 (relating to standards for marketing), including inaccurate completion of medical histories, other than paragraphs (1), (6), and (9) of section 23C.

(XV) Section 24 (relating to suitability).

(XVI) Section 25 (relating to prohibition against preexisting conditions and probationary periods in replacement policies or certificates).

(XVII) The provisions of section 26 relating to contingent nonforfeiture benefits, if the policyholder declines the offer of a nonforfeiture provision described in paragraph (4).

(XVIII) Section 29 (relating to standard format outline of coverage).

(XIX) Section 30 (relating to requirement to deliver shopper's guide).

(ii) In the case of the model Act, the following:

(I) Section 6C (relating to preexisting conditions).

(II) Section 6D (relating to prior hospitalization).

(III) The provisions of section 8 relating to contingent nonforfeiture benefits.

(IV) Section 6F (relating to right to return).

(V) Section 6G (relating to outline of coverage).

(VI) Section 6H (relating to requirements for certificates under group plans).

(VII) Section 6J (relating to policy summary).

(VIII) Section 6K (relating to monthly reports on accelerated death benefits).

(IX) Section 7 (relating to incontestability period).

(B) For purposes of this paragraph and paragraph (1)(C)—

(i) the terms “model regulation” and “model Act” mean the long-term care insurance model regulation, and the long-term care insurance model Act, respectively, promulgated by the National Association of Insurance Commissioners (as adopted as of October 2000);

(ii) any provision of the model regulation or model Act listed under subparagraph (A) shall be treated as including any other provision of such regulation or Act necessary to implement the provision; and

(iii) with respect to a long-term care insurance policy issued in a State, the policy shall be deemed to meet applicable requirements of the model regulation or the model Act if the State plan amendment under paragraph (1)(C)(iii) provides that the State insurance commissioner for the State certifies (in a manner satisfactory to the Secretary) that the policy meets such requirements.

(C) Not later than 12 months after the National Association of Insurance Commissioners issues a revision, update, or other modification of a model regulation or model Act provision specified in subparagraph (A), or of any provision of such regulation or Act that is substantially related to a provision specified in such subparagraph, the Secretary shall review the changes made to the provision, determine whether incorporating such changes into the corresponding provision specified in such subparagraph would improve qualified State long-term care insurance partnerships, and if so, shall incorporate the changes into such provision.

(c) Taking into account certain transfers of assets

(1)(A) In order to meet the requirements of this subsection for purposes of section 1396(a)(18) of this title, the State plan must provide that if an institutionalized individual or the spouse of such an individual (or, at the option of a State, a noninstitutionalized individual or the spouse of such an individual) disposes of assets for less than fair market value on or after the look-back date specified in subparagraph (B)(i), the individual is ineligible for medical assistance for services described in subparagraph (C)(i) (or, in the case of a noninstitutionalized individual, for the services described in subparagraph (C)(ii)) during the period beginning on the date specified in subparagraph (D) and equal to the number of months specified in subparagraph (B).

(B)(i) The look-back date specified in this subparagraph is a date that is 36 months (or, in the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual pursuant to paragraph (3)(A)(iii) or (3)(B)(ii) of subsection (d) of this section or in the case of any other disposal of assets made on or after February 8, 2006, 60 months) before the date specified in clause (ii).

(ii) The date specified in this clause, with respect to—

(I) an institutionalized individual is the first date as of which the individual both is an institutionalized individual and has applied for medical assistance under the State plan, or

(II) a noninstitutionalized individual is the date on which the individual applies for medical assistance under the State plan or, if later, the date on which the individual disposes of assets for less than fair market value.

(C)(i) The services described in this subparagraph with respect to an institutionalized individual are the following:

(I) Nursing facility services.

(II) A level of care in any institution equivalent to that of nursing facility services.

(III) Home or community-based services furnished under a waiver granted under subsection (c) or (d) of section 1396n of this title.

(ii) The services described in this subparagraph with respect to a noninstitutionalized individual are services (not including any services described in clause (i) that are described in paragraph (7), (22), or (24) of section 1396d(a) of this title, and, at the option of a State, other long-term care services for which medical assistance is otherwise available under the State plan to individuals requiring long-term care.

(D)(i) In the case of a transfer of assets made before February 8, 2006, the date specified in this subparagraph is the first day of the first month during or after which assets have been trans-
ferred for less than fair market value and which does not occur in any other periods of ineligibility under this subsection.

(ii) In the case of a transfer of asset made on or after February 8, 2006, the date specified in this subparagraph is the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care described in subparagraph (C) based on an approved application for such care but for the application of the penalty period, whichever is later, and which does not occur during any other period of ineligibility under this subsection.

(E)(i) With respect to an institutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall be equal to—

(I) the total, cumulative uncompensated value of all assets transferred by the individual (or individual’s spouse) on or after the look-back date specified in subparagraph (B)(i), divided by

(II) the average monthly cost to a private patient of nursing facility services in the State (or, at the option of the State, in the community in which the individual is institutionalized) at the time of application.

(ii) With respect to a noninstitutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall not be greater than a number equal to—

(I) the total, cumulative uncompensated value of all assets transferred by the individual (or individual’s spouse) on or after the look-back date specified in subparagraph (B)(i), divided by

(II) the average monthly cost to a private patient of nursing facility services in the State (or, at the option of the State, in the community in which the individual is institutionalized) at the time of application.

(iii) The number of months of ineligibility otherwise determined under clause (i) or (ii) with respect to the disposal of an asset shall be reduced—

(I) in the case of periods of ineligibility determined under clause (i), by the number of months of ineligibility applicable to the individual under clause (ii) as a result of such disposal, and

(ii) in the case of periods of ineligibility determined under clause (ii), by the number of months of ineligibility applicable to the individual under clause (i) as a result of such disposal.

(iv) A State shall not round down, or otherwise disregard any fractional period of ineligibility determined under clause (i) or (ii) with respect to the disposal of assets.

(F) For purposes of this paragraph, the purchase of an annuity shall be treated as the disposal of an asset for less than fair market value unless—

(i) the State is named as such a beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual under this subchapter; or

(ii) the State is named as such a beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any such remainder for less than fair market value.

(G) For purposes of this paragraph with respect to a transfer of assets, the term “assets” includes an annuity purchased by or on behalf of an annuitant who has applied for medical assistance with respect to nursing facility services or other long-term care services under this subchapter unless—

(i) the annuity is—

(I) an annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986; or

(II) purchased with proceeds from—

(aa) an account or trust described in subsection (a), (c), or (p) of section 408 of such Code;

(bb) a simplified employee pension (within the meaning of section 403(b)(7) of such Code); or

(cc) a Roth IRA described in section 408A of such Code; or

(ii) the annuity—

(I) is irrevocable and nonassignable;

(II) is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration); and

(III) provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.

(H) Notwithstanding the preceding provisions of this paragraph, in the case of an individual (or individual’s spouse) who makes multiple fractional transfers of assets in more than 1 month for less than fair market value on or after the applicable look-back date specified in subparagraph (B), a State may determine the period of ineligibility applicable to such individual under this paragraph by—

(i) treating the total, cumulative uncompensated value of all assets transferred by the individual (or individual’s spouse) during all months on or after the look-back date specified in subparagraph (B) as 1 transfer for purposes of clause (i) or (ii) (as the case may be) of subparagraph (E); and

(ii) beginning such period on the earliest date which would apply under subparagraph (D) to any of such transfers.

(I) For purposes of this paragraph with respect to a transfer of assets, the term “assets” includes funds used to purchase a promissory note, loan, or mortgage unless such note, loan, or mortgage—

(i) has a repayment term that is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration);

(ii) provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made; and

(iii) prohibits the cancellation of the balance upon the death of the lender.
In the case of a promissory note, loan, or mortgage that does not satisfy the requirements of clauses (i) through (iii), the value of such note, loan, or mortgage shall be the outstanding balance due as of the date of the individual’s application for medical assistance for services described in subparagraph (C).

(J) For purposes of this paragraph with respect to a transfer of assets, the term “assets” includes the purchase of a life estate interest in another individual’s home unless the purchaser resides in the home for a period of at least 1 year after the date of the purchase.

(2) An individual shall not be ineligible for medical assistance by reason of paragraph (1) to the extent that—

(A) the assets transferred were a home and title to the home was transferred to—

(i) the spouse of such individual;

(ii) a child of such individual who is under age 21, or (II) (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1382c of this title;

(iii) a sibling of such individual who has an equity interest in such home and who was residing in such individual’s home for a period of at least one year immediately before the date the individual becomes an institutionalized individual; or

(iv) a son or daughter of such individual (other than a child described in clause (ii)) who was residing in such individual’s home for a period of at least two years immediately before the date the individual becomes an institutionalized individual, and who (as determined by the State) provided care to such individual which permitted such individual to reside at home rather than in such an institution or facility;

(B) the assets—

(i) were transferred to the individual’s spouse or to another for the sole benefit of the individual’s spouse,

(ii) were transferred from the individual’s spouse to another for the sole benefit of the individual’s spouse,

(iii) were transferred to, or to a trust (including a trust described in subsection (d)(4) of this section) established solely for the benefit of, the individual’s child described in subparagraph (A)(ii)(II), or

(iv) were transferred to a trust (including a trust described in subsection (d)(4) of this section) established solely for the benefit of an individual under 65 years of age who is disabled (as defined in section 1382c(a)(3) of this title);

(C) a satisfactory showing is made to the State (in accordance with regulations promulgated by the Secretary) that (i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or (iii) all assets transferred for less than fair market value have been returned to the individual; or

(D) the State determines, under procedures established by the State (in accordance with standards specified by the Secretary), that the denial of eligibility would work an undue hardship as determined on the basis of criteria established by the Secretary.

The procedures established under subparagraph (D) shall permit the facility in which the institutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual for the personal representative of the individual. While an application for an undue hardship waiver is pending under subparagraph (D) in the case of an individual who is a resident of a nursing facility, if the application meets such criteria as the Secretary specifies, the State may provide for payments for nursing facility services in order to hold the bed for the individual at the facility, but not in excess of payments for 30 days.

(c) For purposes of this subsection, in the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual’s ownership or control of such asset.

(4) A State (including a State which has elected treatment under section 1396a(f) of this title) may not provide for any period of ineligibility for an individual due to transfer of resources for less than fair market value except in accordance with this subsection. In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance under a State plan for such individual, a State shall, using a reasonable methodology (as specified by the Secretary), apportion such period of ineligibility (or any portion of such period) among the individual and the individual’s spouse if the spouse otherwise becomes eligible for medical assistance under the State plan.

(5) In this subsection, the term “resources” has the meaning given such term in section 1382b of this title, without regard to the exclusion described in subsection (a)(1) thereof.

(d) Treatment of trust amounts

(1) For purposes of determining an individual’s eligibility for, or amount of, benefits under a State plan under this subchapter, subject to paragraph (4), the rules specified in paragraph (3) shall apply to a trust established by such individual.

(2)(A) For purposes of this subsection, an individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the following individuals established such trust other than by will:

(i) The individual,

(ii) The individual’s spouse.

(iii) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual’s spouse.
(iv) A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual’s spouse.

(B) In the case of a trust the corpus of which includes assets of an individual (as determined under subparagraph (A)) and assets of any other person or persons, the provisions of this subsection shall apply to the portion of the trust attributable to the assets of the individual.

(C) Subject to paragraph (4), this subsection shall apply without regard to—

(i) the purposes for which a trust is established,

(ii) whether the trustees have or exercise any discretion under the trust,

(iii) any restrictions on when or whether distributions may be made from the trust, or

(iv) any restrictions on the use of distributions from the trust.

(3)(A) In the case of a revocable trust—

(i) the corpus of the trust shall be considered resources available to the individual,

(ii) payments from the trust to or for the benefit of the individual shall be considered income of the individual, and

(iii) any other payments from the trust shall be considered assets disposed of by the individual for purposes of subsection (c) of this section.

(B) In the case of an irrevocable trust—

(i) if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income—

(I) to or for the benefit of the individual, shall be considered income of the individual, and

(II) for any other purpose, shall be considered a transfer of assets by the individual subject to subsection (c) of this section; and

(ii) any portion of the trust from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed of by the individual for purposes of subsection (c) of this section, and the value of the trust shall be determined for purposes of such subsection by including the amount of any payments made from such portion of the trust after such date.

(4) This subsection shall not apply to any of the following trusts:

(A) A trust containing the assets of an individual under age 65 who is disabled (as defined in section 1382c(a)(3) of this title) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of such individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter.

(B) A trust established in a State for the benefit of an individual if—

(i) the trust is composed only of pension, Social Security, and other income to the individual (and accumulated income in the trust),

(ii) the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter; and

(iii) the State makes medical assistance available to individuals described in section 1396a(a)(10)(A)(ii)(V) of this title, but does not make such assistance available to individuals for purposes of nursing facility services under section 1396a(a)(10)(C) of this title.

(C) A trust containing the assets of an individual who is disabled (as defined in section 1382c(a)(3) of this title) that meets the following conditions:

(i) The trust is established and managed by a non-profit association.

(ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1382c(a)(3) of this title) by the parent, grandparent, legal guardian of such individuals, by such individuals, or by a court.

(iv) To the extent that amounts remaining in the beneficiary’s account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this subchapter.

(5) The State agency shall establish procedures (in accordance with standards specified by the Secretary) under which the agency waives the application of this subsection with respect to an individual if the individual establishes that such application would work an undue hardship on the individual as determined on the basis of criteria established by the Secretary.

(6) The term ‘‘trust’’ includes any legal instrument or device that is similar to a trust but includes an annuity only to such extent and in such manner as the Secretary specifies.

(e) Disclosure and treatment of annuities

(1) In order to meet the requirements of this section for purposes of section 1396a(a)(18) of this title, a State shall require, as a condition for the provision of medical assistance for services described in subsection (c)(1)(C)(i) (relating to long-term care services) for an individual, the application of the individual for such assistance (including any recertification of eligibility for such assistance) shall disclose a description of any interest the individual or community spouse has in an annuity (or similar financial
instrument, as may be specified by the Secretary, regardless of whether the annuity is irrevocable or is treated as an asset. Such application or recertification form shall include a statement that under paragraph (2) the State becomes a remainder beneficiary under such an annuity or similar financial instrument by virtue of the provision of such medical assistance.

(2)(A) In the case of disclosure concerning an annuity under subsection (c)(1)(F), the State shall notify the issuer of the annuity of the right of the State under such subsection as a preferred remainder beneficiary in the annuity for medical assistance furnished to the individual. Nothing in this paragraph shall be construed as preventing such an issuer from notifying persons with any other remainder interest of the State’s remainder interest under such subsection.

(B) In the case of such an issuer receiving notice under subparagraph (A), the State may require the issuer to notify the State when there is a change in the amount of income or principal being withdrawn from the amount that was being withdrawn at the time of the most recent disclosure described in paragraph (1). A State shall take such information into account in determining the amount of the State’s obligations for medical assistance or in the individual’s eligibility for such assistance.

(C) The Secretary may provide guidance to States on categories of transactions that may be treated as a transfer of asset for less than fair market value.

(4) Nothing in this subsection shall be construed as preventing a State from denying eligibility for medical assistance for an individual based on the income or resources derived from an annuity described in paragraph (1).

(f) Disqualification for long-term care assistance for individuals with substantial home equity

(1)(A) Notwithstanding any other provision of this subchapter, subject to subparagraphs (B) and (C) of this paragraph and paragraph (2), in determining eligibility of an individual for medical assistance with respect to nursing facility services or other long-term care services, the individual shall not be eligible for such assistance if the individual’s equity interest in the individual’s home exceeds $500,000.

(B) A State may elect, without regard to the requirements of section 1396a(a)(1) of this title (relating to statewideness) and section 1396a(a)(10)(B) of this title (relating to comparability), to apply subparagraph (A) by substituting for “$500,000”, an amount that exceeds such amount, but does not exceed $750,000.

(C) The dollar amounts specified in this paragraph shall be increased, beginning with 2011, from year to year based on the percentage increase in the consumer price index for all urban consumers (all items; United States city average), rounded to the nearest $1,000.

(2) Paragraph (1) shall not apply with respect to an individual if—

(A) the spouse of such individual, or

(b) such individual’s child who is under age 21, or (with respect to States eligible to participate in the State program established under subchapter XVI) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1382c of this title, is lawfully residing in the individual’s home.

(3) Nothing in this subsection shall be construed as preventing an individual from using a reverse mortgage or home equity loan to reduce the individual’s total equity interest in the home.

(4) The Secretary shall establish a process whereby paragraph (1) is waived in the case of a demonstrated hardship.

(g) Treatment of entrance fees of individuals residing in continuing care retirement communities

(1) In general

For purposes of determining an individual’s eligibility for, or amount of, benefits under a State plan under this subchapter, the rules specified in paragraph (2) shall apply to individuals residing in continuing care retirement communities or life care communities that collect an entrance fee on admission from such individuals.

(2) Treatment of entrance fee

For purposes of this subsection, an individual’s entrance fee in a continuing care retirement community or life care community shall be considered a resource available to the individual to the extent that—

(A) the individual has the ability to use the entrance fee, or the contract provides that the entrance fee may be used, to pay for care should other resources or income of the individual be insufficient to pay for such care;

(B) the individual is eligible for a refund of any remaining entrance fee when the individual dies or terminates the continuing care retirement community or life care community contract and leaves the community; and

(C) the entrance fee does not confer an ownership interest in the continuing care retirement community or life care community.

(h) Definitions

In this section, the following definitions shall apply:

(1) The term “assets”, with respect to an individual, includes all income and resources of the individual and of the individual’s spouse, including any income or resources which the individual or such individual’s spouse is entitled to but does not receive because of action—

(A) by the individual or such individual’s spouse,

(B) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual’s spouse, or

(C) by any person, including any court or administrative body, acting at the direction or upon the request of the individual or such individual’s spouse.

(2) The term “income” has the meaning given such term in section 1382a of this title.
(3) The term “institutionalized individual” means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in section 1396a(a)(10)(A)(ii)(VI) of this title.

(4) The term “noninstitutionalized individual” means an individual receiving any of the services specified in subsection (c)(1)(C)(ii) of this section.

(5) The term “resources” has the meaning given such term in section 1383b of this title, without regard (in the case of an institutionalized individual) to the exclusion described in subsection (a)(1) of such section.


REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (b)(1)(C)(iii)(II) and (c)(1)(G)(i), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2009—Subsec. (b)(3). Pub. L. 111–5 designated existing provisions as subpar. (A) and added subpar. (B).


2006—Subsec. (b)(1)(C)(ii). Pub. L. 109–171, §123(b), Apr. 11, 2006, inserted “(and which satisfies clause (iv), or which has a State plan amendment that provides for a qualified State long-term care insurance partnership (as defined in clause (iii))” after “1993,” in introductory provisions.


Subsec. (c)(1)(B)(i). Pub. L. 109–171, §6011(a), inserted “in the case of any other disposal of assets made on or after February 8, 2006” before “40 months”.

Subsec. (c)(1)(D). Pub. L. 109–171, §6011(b), designated existing provisions as cl. (i), substituted “In the case of a transfer of assets made before February 8, 2006, the date” for “The date”, and added cl. (ii).


Subsec. (c)(2). Pub. L. 109–171, §6011(e), substituted period for semicolon at end and inserted concluding provisions.


Pub. L. 109–171, §6012(a), redesignated subsec. (e) as (f).

Subsec. (g). Pub. L. 109–171, §6015(b), added subsec. (g). Former subsec. (g) redesignated (h).

Pub. L. 109–171, §6014(a), redesignated subsec. (f) as (g).

Subsec. (h). Pub. L. 109–171, §6015(b), redesignated subsec. (g) as (h).

1993—Subsec. (b)(1). Pub. L. 103–66, §13612(a), substituted “except that the State shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan in the case of the following individuals:” and subpars. (A) to (C) for “except—” and former subpars. (A) to (B) which read as follows:

“(A) In the case of an individual described in subsection (a)(1)(B) of this section, from his estate or upon the sale of the property subject to a lien imposed on account of medical assistance paid on behalf of such individual, and

“(B) In the case of any other individual who was 65 years of age or older when he received such assistance, from his estate.”


Subsec. (c)(1). Pub. L. 103–66, §13611(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “In order to meet the requirements of this subsection (for purposes of section 1396a(a)(6)(B) of this title), the State plan must provide for a period of ineligibility for nursing facility services and for a level of care in a medical institution equivalent to that of nursing facility services and for services under section 1396c(c) of this title in the case of an institutionalized individual (as defined in paragraph (3)) who, or whose spouse, at any time during or after the 30-month period immediately before the date the individual becomes an institutionalized individual (if the individual is entitled to medical assistance under the State plan on such date or, if the individual is not so entitled, the date the individual applies for such assistance while an institutionalized individual, disposed of resources for less than fair market value. The period of ineligibility shall begin with the month in which such resources were transferred and the number of months in such period shall be equal to the lesser of—

“(A) 30 months, or

“(B) the total uncompensated value of the resources so transferred, divided by (i) the average cost, to a private patient at the time of the application, of nursing facility services in the State or, at State option, in the community in which the individual is institutionalized.”


Subsec. (c)(2)(B). Pub. L. 103–66, §13611(a)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “the resources were transferred to or from (or to another for the sole benefit of) the individual’s spouse, or (ii) to the individual’s child described in subparagraph (A)(ii)(II);”.

Subsec. (c)(2)(C). Pub. L. 103–66, §13611(a)(2)(C), in introductory provisions, substituted “with regulations” for “with any regulations”, in cl. (i), substituted “assets for “resources” and “or” for “and”, and added cl. (iii).

Subsec. (c)(2)(D). Pub. L. 103–66, §13611(a)(2)(D), amended subpar. (D) generally. Prior to amendment,
subpar. (D) read as follows: "the State determines that denial of eligibility would work an undue hardship."

Subsec. (c)(3). Pub. L. 103–66, §13611(a)(2)(E), added par. (3) and struck out former par. (3) which read as follows: "In this subsection, the term 'institutionalized individual' means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made on a level of care provided in a nursing facility, or who is described in section 1396a(a)(10)(A)(ii)(VI) of this title." for "in a nursing facility or nursing facility.

Subsec. (c)(4). Pub. L. 103–66, §13611(a)(2)(F), inserted at end "in the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance under a State plan for such individual, a State shall, using a reasonable methodology (as specified by the Secretary), apportion such period of ineligibility (or any portion of such period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State plan."


Subsec. (c)(2)(B)(ii), (iii). Pub. L. 101–239, §6111(e)(1)(B)(ii), struck out "or" after "subparagraph (A)(ii)(II)" in cl. (i) and struck out cl. (iii) which read as follows: "(i) if the individual's spouse if such spouse does not transfer such resources to another person other than the spouse for less than fair market value;"

1988—Subsec. (c), Pub. L. 100–360, §303(b), amended subsec. (c) generally, substituting pars. (1) to (4) relating to taking into account certain transfers of assets, for former pars. (1) to (3) relating to denial of medical assistance, period of eligibility, and exceptions.

Subsec. (c)(1). Pub. L. 100–485, §608(d)(16)(B)(i), substituted "period of ineligibility for nursing facility services", amended by Pub. L. 100–360, §411(c)(3), substituted "a nursing facility", title VI, §6011, added after the date of enactment of this Act [Feb. 8, 2006, 120 Stat. 64, provided that: "The amendments made by this section shall apply to transfers made on or after the date of the enactment of this Act [Feb. 8, 2006]."


Subsec. (c)(2)(A)(ii). Pub. L. 100–485, §608(d)(16)(B)(iii), substituted "the individual becomes an institutionalized individual" for "of such individual's admission to the medical institution or nursing facility."

Subsec. (c)(2)(B). Pub. L. 100–485, §608(d)(16)(B)(iv), inserted at end "section 1396c–5(c)(2) of this title," for "section 1396c–5(c)(2) of this title, or the individual's child who is blind or permanently and totally disabled", and added cl. (ii).


Subsec. (c)(2)(B)(ii). Pub. L. 97–468, §309(b)(22), substituted in subcl. (I) "can" for "cannot" and struck out from subcl. (IV) the introductory word "if."

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 effective July 1, 2009, see section 5006(c) of Pub. L. 111–5, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–275, title I, §115(b), July 15, 2008, 122 Stat. 2507, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as of January 1, 2010."

EFFECTIVE DATE OF 2006 AMENDMENT


Pub. L. 109–171, title VI, §6012(a), added par. (5), provided that: "The amendment made by subsection (a) [amending this section] shall apply to individuals who are determined eligible for medical assistance with respect to nursing facility services or other long-term care services based on an application filed on or after January 1, 2006."

Pub. L. 109–171, title VI, §6014(a)(2), added subpar. (D) read as follows: "(A) to medical assistance provided for services furnished before the date of enactment; (B) with respect to assets disposed of on or before the date of enactment; or (C) with respect to trusts established on or before the date of enactment of this Act; or (D) with respect to the purchase of an annuity occurring on or after the date of enactment of this Act [Feb. 8, 2006]."


Subsec. (c)(3). Pub. L. 100–485, §608(d)(16)(B)(vi), substituted "in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made on a level of care provided in a nursing facility, or who is described in section 1988(b)(2)(A)(ii)(VI) of this title," for "in a medical institution or nursing facility."


Subsec. (c)(2)(B)(ii). Pub. L. 100–203, §4211(h)(12)(B), as amended by Pub. L. 100–360, §411(c)(3), substituted "a nursing facility", title VI, §6011, added after the date of enactment of this Act [Feb. 8, 2006, 120 Stat. 64, provided that: "The amendments made by section [amending this section] shall apply to transfers made on or after the date of the enactment of this Act [Feb. 8, 2006]."


Subsec. (c)(3). Pub. L. 100–485, §608(d)(16)(B)(vi), substituted "in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made on a level of care provided in a nursing facility, or who is described in section 1988(b)(2)(A)(ii)(VI) of this title," for "in a medical institution or nursing facility."


Subsec. (c)(2)(B)(ii). Pub. L. 100–203, §4211(h)(12)(B), as amended by Pub. L. 100–360, §411(c)(3), substituted "a nursing facility", title VI, §6011, added after the date of enactment of this Act [Feb. 8, 2006, 120 Stat. 64, provided that: "The amendments made by section [amending this section] shall apply to transfers made on or after the date of the enactment of this Act [Feb. 8, 2006]."

which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

**Effective Date of 1993 Amendment**

Section 13611(c) of Pub. L. 103–66 provided that:

"(1) The amendments made by this section [amending this section and sections 1396a and 1396r–5 of this title] shall apply, except as provided in this subsection, to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

"(2) The amendments made by this section shall not apply—

(A) to medical assistance provided for services furnished before October 1, 1993,

(B) with respect to assets disposed of on or before the date of the enactment of this Act [Aug. 10, 1993], or

(C) with respect to trusts established on or before the date of the enactment of this Act.

"(3) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter], which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsection (b) [amending this section], the State plan shall not be regarded as failing to comply with the requirements imposed by such amendment solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 10, 1993]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature."

Section 13612(d) of Pub. L. 103–66 provided that:

"(1) Except as provided in subparagraph (B), the amendments made by this section [amending this section] shall apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

"(2) The amendments made by this section shall not apply—

(A) to medical assistance provided for services furnished before October 1, 1993,

(B) with respect to assets disposed of on or before the date of the enactment of this Act [Aug. 10, 1993], or

(C) with respect to trusts established on or before the date of the enactment of this Act.

"(3) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements imposed by such amendment solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 10, 1993]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature."

"(4) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsection (b) [amending this section], the State plan shall not be regarded as failing to comply with the requirements imposed by such amendment solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 10, 1993]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature."

**Effective Date of 1988 Amendments**

Amendment by Pub. L. 100–203 applicable to transfers occurring after Dec. 19, 1988, see section 611(e)(4) of Pub. L. 101–239, set out as a note under section 1396a of this title.

**Effective Date of 1987 Amendments**

Amendment by Pub. L. 100–385 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 689(g)(1) of Pub. L. 100–360, set out as a note under section 704 of this title.

Amendment by section 303(b) of Pub. L. 100–360 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1988, but not applicable with respect to inter-spousal transfers occurring before Oct. 1, 1989, see section 303(g)(2), (5) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(h)(3)(I) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title I, General Provisions.

**Effective Date of 1987 Amendment**

Amendment by Pub. L. 100–385 applicable to nursing facility services furnished after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r–5 of this title.

**Effective Date of 1983 Amendment**

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, set out as a note under section 1396a of this title.

**Availability of Hardship Waivers**


"(1) under which an undue hardship exists when application of the transfer of assets provision would deprive the individual—

(A) of medical care such that the individual's health or life would be endangered; or

(B) of food, clothing, shelter, or other necessities of life; and

"(2) which provides for—

(A) notice to recipients that an undue hardship waiver will be granted; and

(B) a timely process for determining whether an undue hardship waiver will be granted; and
“(C) a process under which an adverse determination can be appealed.”

EXPANSION OF STATE LONG-TERM CARE PARTNERSHIP PROGRAM


“(a) EXPANSION AUTHORITY.—

“(1) IN GENERAL.—[Amended this section.]

“(2) STATE REPORTING REQUIREMENTS.—Nothing in clauses (ii)(VI) and (v) of section 1917(b)(1)(C) of the Social Security Act [subsec. (b)(1)(C)(ii)(VI), (v) of this subsection] (as added by paragraph (1)) shall be construed as prohibiting a State from requiring an issuer of a long-term care insurance policy sold in the State (regardless of whether the policy is issued under a qualified State long-term care insurance partnership under section 1917(b)(1)(C)(iii) of such Act) to require the issuer to report information or data to the State that is in addition to the information or data required under such clauses.

“(3) EFFECTIVE DATE.—A State plan amendment that provides for a qualified State long-term care insurance partnership under the amendments made by paragraph (1) may provide that such amendment is effective for long-term care insurance policies issued on or after a date, specified in the amendment, that is not earlier than the first day of the first calendar quarter in which the plan amendment was submitted to the Secretary of Health and Human Services.

“(b) STANDARDS FOR RECIPROCAL RECOGNITION AMONG PARTNERSHIP STATES.—In order to permit portability in long-term care insurance policies purchased under State long-term care insurance partnerships, the Secretary of Health and Human Services shall develop, not later than January 1, 2007, and in consultation with the National Association of Insurance Commissioners, issuers of long-term care insurance policies, States with experience with long-term care insurance partnership plans, other States, and representatives of consumers of long-term care insurance policies, standards for uniform recognition of such policies among States with qualified State long-term care insurance partnerships under which—

“(1) benefits paid under such policies will be treated the same by all such States; and

“(2) States with such partnerships shall be subject to such standards unless the State notifies the Secretary in writing of the State’s election to be exempt from such standards.

“(c) ANNUAL REPORTS TO CONGRESS.—

“(1) IN GENERAL.—The Secretary of Health and Human Services shall annually report to Congress on the long-term care insurance partnerships established in accordance with section 1917(b)(1)(C)(ii) of the Social Security Act (42 U.S.C. 1396q(c)(ii)) (as amended by subsection (a)(1)). Such reports shall include analyses of the extent to which such partnerships expand or limit access of individuals to long-term care and the impact of such partnerships on Federal and State expenditures under the Medicare and Medicaid programs. Nothing in this section shall be construed as requiring the Secretary to conduct an independent review of each long-term care insurance policy offered under or in connection with such a partnership.

“(2) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary of Health and Human Services, $1,000,000 for the period of fiscal years 2006 through 2010 to carry out paragraph (1).

“(d) NATIONAL CLEARINGHOUSE FOR LONG-TERM CARE INFORMATION.—

“(1) ESTABLISHMENT.—The Secretary of Health and Human Services shall establish a National Clearinghouse for Long-Term Care Information. The Clearinghouse may be established through a contract or interagency agreement.

“(2) DUTIES.—

“(A) IN GENERAL.—The National Clearinghouse for Long-Term Care Information shall—

“(i) educate consumers with respect to the availability and limitations of coverage for long-term care under the Medicaid program and provide contact information for obtaining State-specific information on long-term care coverage, including eligibility and estate recovery requirements under State Medicaid programs;

“(ii) provide objective information to assist consumers with the decisionmaking process for determining whether to purchase long-term care insurance or to pursue other private market alternatives for purchasing long-term care and provide contact information for additional objective resources on planning for long-term care needs;

“(iii) maintain a list of States with State long-term care insurance partnerships under the Medicaid program that provide reciprocal recognition of long-term care insurance policies issued under such partnerships; and

“(iv) include information regarding the CLASS program established under title XXXII of the Public Health Service Act [42 U.S.C. 300l/ et seq.] and information regarding how benefits provided under a CLASS Independence Benefit Plan differ from disability insurance benefits.

“(B) REQUIREMENT.—In providing information to consumers on long-term care in accordance with this subsection, the National Clearinghouse for Long-Term Care Information shall not advocate in favor of a specific long-term care insurance provider or a specific long-term care insurance policy.

“(3) APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to carry out this subsection, $3,000,000 for each of fiscal years 2006 through 2015.”

§1396q. Application of provisions of subchapter II relating to subpoenas

The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this subchapter to the same extent as they are applicable with respect to subchapter II of this chapter, except that, in so applying such subsections and in applying section 405(i) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.


AMENDMENTS

1994—Pub. L. 103–296 inserted before period at end “, except that, in so applying such subsections, and in applying section 405(i) of this title thereto, with respect to this subchapter, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively”.

EFFECTIVE DATE OF 1994 AMENDMENT


EFFECTIVE DATE

Section 2370(b) of Pub. L. 98–369 provided that: ‘‘The amendment made by this section (enacting this sec-
§ 1396r. Requirements for nursing facilities

(a) "Nursing facility" defined

In this subchapter, the term "nursing facility" means an institution (or a distinct part of an institution) which—

(1) is primarily engaged in providing to residents—

(A) skilled nursing care and related services for residents who require medical or nursing care,

(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or

(C) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, and is not primarily for the care and treatment of mental diseases;

(2) has in effect a transfer agreement (meeting the requirements of section 1395x(l) of this title) with one or more hospitals having agreements in effect under section 1396cc of this title; and

(3) meets the requirements for a nursing facility described in subsections (b), (c), and (d) of this section.

Such term also includes any facility which is located in a State on an Indian reservation and is certified by the Secretary as meeting the requirements of paragraph (1) and subsections (b), (c), and (d) of this section.

(b) Requirements relating to provision of services

(1) Quality of life

(A) In general

A nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

(B) Quality assessment and assurance

A nursing facility must maintain a quality assessment and assurance committee, consisting of the director of nursing services, a physician designated by the facility, and at least 3 other members of the facility's staff, which (i) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and (ii) develops and implements appropriate plans of action to correct identified quality deficiencies. A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.

(2) Scope of services and activities under plan of care

A nursing facility must provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident in accordance with a written plan of care which—

(A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;

(B) is initially prepared, with the participation to the extent practicable of the resident or the resident's family or legal representative, by a team which includes the resident's attending physician and a registered professional nurse with responsibility for the resident; and

(C) is periodically reviewed and revised by such team after each assessment under paragraph (3).

(3) Residents' assessment

(A) Requirement

A nursing facility must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity, which assessment—

(i) describes the resident's capability to perform daily life functions and significant impairments in functional capacity;

(ii) is based on a uniform minimum data set specified by the Secretary under subsection (f)(6)(A) of this section;

(iii) uses an instrument which is specified by the State under subsection (e)(5) of this section; and

(iv) includes the identification of medical problems.

(B) Certification

(i) In general

Each such assessment must be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the completion of the assessment. Each individual who completes a portion of such an assessment shall sign and certify as to the accuracy of that portion of the assessment.

(ii) Penalty for falsification

(I) An individual who willfully and knowingly certifies under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $1,000 with respect to each assessment.

(II) An individual who willfully and knowingly causes another individual to certify under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $5,000 with respect to each assessment.

(III) The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this clause in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(iii) Use of independent assessors

If a State determines, under a survey under subsection (g) of this section or
otherwise, that there has been a knowing and willful certification of false assessments under this paragraph, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

(C) Frequency

(i) In general

Such an assessment must be conducted—

(I) promptly upon (but no later than 14 days after the date of) admission for each individual admitted on or after October 1, 1990, and by not later than October 1, 1991, for each resident of the facility on that date;

(II) promptly after a significant change in the resident’s physical or mental condition; and

(III) in no case less often than once every 12 months.

(ii) Resident review

The nursing facility must examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident’s assessment to assure the continuing accuracy of the assessment.

(D) Use

The results of such an assessment shall be used in developing, reviewing, and revising the resident’s plan of care under paragraph (2).

(E) Coordination

Such assessments shall be coordinated with any State-required preadmission screening program to the maximum extent practicable in order to avoid duplicative testing and effort. In addition, a nursing facility shall notify the State mental health authority or State mental retardation or developmental disability authority, as applicable, promptly after a significant change in the physical or mental condition of a resident who is mentally ill or mentally retarded.

(F) Requirements relating to preadmission screening for mentally ill and mentally retarded individuals

Except as provided in clauses (ii) and (iii) of subsection (e)(7)(A) of this section, a nursing facility must notify the State mental health authority or State mental retardation or developmental disability authority has determined prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires specialized services for mental retardation.

A State mental health authority and a State mental retardation or developmental disability authority may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).

(4) Provision of services and activities

(A) In general

To the extent needed to fulfill all plans of care described in paragraph (2), a nursing facility must provide (or arrange for the provision of)—

(i) nursing and related services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(ii) medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident;

(iv) dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident;

(v) an on-going program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident;

(vi) routine dental services (to the extent covered under the State plan) and emergency dental services to meet the needs of each resident; and

(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.

The services provided or arranged by the facility must meet professional standards of quality.

(B) Qualified persons providing services

Services described in clauses (i), (ii), (iii), (iv), and (vi) of subparagraph (A) must be provided by qualified persons in accordance with each resident’s written plan of care.

(C) Required nursing care; facility waivers

(i) General requirements

With respect to nursing facility services provided on or after October 1, 1990, a nursing facility—
§ 1396r

(5) Required training of nurse aides

(A) In general

(i) Except as provided in clause (ii), a nursing facility must not use on a full-time basis any individual as a nurse aide in the facility on or after October 1, 1990, for more than 4 months unless the individual—

(I) has completed a training and competency evaluation program, or a competency evaluation program, approved by the State under subsection (e)(1)(A) of this section, and

(II) is competent to provide nursing or nursing-related services.

(ii) A nursing facility must not use on a temporary, per diem, leased, or on any other basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).

(B) Offering competency evaluation programs for current employees

A nursing facility must provide, for individuals used as a nurse aide by the facility as of January 1, 1990, for a competency evaluation program approved by the State, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use such an individual as a nurse aide unless the facility has inquired of any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information concerning the individual.

(C) Competency

The nursing facility must not permit an individual, other than in a training and competency evaluation program approved by the State, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use such an individual as a nurse aide unless the facility has inquired of any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information concerning the individual.

(D) Re-training required

For purposes of subparagraph (A), if, since an individual’s most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual performed nursing or nursing-related services for monetary compensation, such individual shall complete a new training and competency evaluation program, or a new competency evaluation program.

(E) Regular in-service education

The nursing facility must provide such regular performance review and regular in-service education as assures that individuals used as nurse aides are competent to perform services as nurse aides, including training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

(F) “Nurse aide” defined

In this paragraph, the term “nurse aide” means any individual providing nursing or nursing-related services to residents in a nursing facility, but does not include an individual—

(i) who is a licensed health professional (as defined in subparagraph (G)) or a registered dietician, or
(ii) who volunteers to provide such services without monetary compensation.

Such term includes an individual who provides such services through an agency or under a contract with the facility.

(G) Licensed health professional defined

In this paragraph, the term “licensed health professional” means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

(6) Physician supervision and clinical records

A nursing facility must—

(A) require that the health care of every resident be provided under the supervision of a physician (or, at the option of a State, under the supervision of a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician);

(B) provide for having a physician available to furnish necessary medical care in case of emergency; and

(C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents’ assessments (described in paragraph (3)), as well as the results of any pre-admission screening conducted under subsection (e)(7) of this section.

(7) Required social services

In the case of a nursing facility with more than 120 beds, the facility must have at least one social worker (with at least a bachelor’s degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services.

(8) Information on nurse staffing

(A) In general

A nursing facility shall post daily for each shift the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. The information shall be displayed in a uniform manner (as specified by the Secretary) and in a clearly visible place.

(B) Publication of data

A nursing facility shall, upon request, make available to the public the nursing staff data described in subparagraph (A).

(c) Requirements relating to residents’ rights

(1) General rights

(A) Specified rights

A nursing facility must protect and promote the rights of each resident, including each of the following rights:

(i) Free choice

The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident’s well-being, and (except with respect to a resident adjudged incompetent) to participate in planning care and treatment or changes in care and treatment.

(ii) Free from restraints

The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident’s medical symptoms. Restraints may only be imposed—

(I) to ensure the physical safety of the resident or other residents, and

(II) only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary until such an order could reasonably be obtained).

(iii) Privacy

The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups.

(iv) Confidentiality

The right to confidentiality of personal and clinical records and to access to current clinical records of the resident upon request by the resident or the resident’s legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request.

(v) Accommodation of needs

The right—

(I) to reside and receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and

(II) to receive notice before the room or room of the resident in the facility is changed.

(vi) Grievances

The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(vii) Participation in resident and family groups

The right of the resident to organize and participate in resident groups in the facility and the right of the resident’s family to meet in the facility with the families of other residents in the facility.

(viii) Participation in other activities

The right of the resident to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.
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1396r–5(c)(1)(B) of this title; (ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights) including the notice (if any) of the State developed under subsection (e)(6) of this section; (iii) inform each resident who is entitled to medical assistance under this subchapter—(I) at the time of admission to the facility or, if later, at the time the resident becomes eligible for such assistance, of the items and services (including those specified under section 1396a(a)(28)(B) of this title) that are included in nursing facility services under the State plan and for which the resident may not be charged (except as permitted in section 1396e of this title), and of those other items and services that the facility offers and for which the resident may be charged and the amount of the charges for such items and services, and (II) of changes in the charges imposed for items and services described in that subclause; and (iv) inform each other resident, in writing before or at the time of admission and periodically during the resident’s stay, of services available in the facility and of related charges for such services, including any charges for services not covered under subchapter XVIII of this chapter or by the facility’s basic per diem charge.

The written description of legal rights under this subparagraph shall include a description of the protection of personal funds under paragraph (6) and a statement that a resident may file a complaint with a State survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility.

(C) Rights of incompetent residents

In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this subchapter shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident’s behalf.

(D) Use of psychopharmacologic drugs

Psychopharmacologic drugs may be administered only on the orders of a physician and only as part of a plan (included in the written plan of care described in paragraph (2)) designed to eliminate or modify the symptoms for which the drugs are prescribed and only if, at least annually an independent, external consultant reviews the appropriateness of the drug plan of each resident receiving such drugs.

(2) Transfer and discharge rights

(A) In general

A nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless—(i) the transfer or discharge is necessary to meet the resident’s welfare and the resident’s welfare cannot be met in the facility; (ii) the transfer or discharge is appropriate because the resident’s health has improved sufficiently so the resident no longer needs the services provided by the facility; (iii) the safety of individuals in the facility is endangered; (iv) the health of individuals in the facility would otherwise be endangered; (v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this subchapter or subchapter XVIII of this chapter on the resident’s behalf) for a stay at the facility; or (vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (iv), the basis for the transfer or discharge must be documented in the resident’s clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident’s physician, and in the case described in clause (iv) the documentation must be made by a physician. For
purposes of clause (v), in the case of a resident who becomes eligible for assistance under this subchapter after admission to the facility, only charges which may be imposed under this subchapter shall be considered to be allowable.

(B) Pre-transfer and pre-discharge notice

(i) In general

Before effecting a transfer or discharge of a resident, a nursing facility must—

(I) notify the resident (and, if known, an immediate family member of the resident or legal representative) of the transfer or discharge and the reasons therefor;

(II) record the reasons in the resident’s clinical record (including any documentation required under subparagraph (A)), and

(III) include in the notice the items described in clause (iii).

(ii) Timing of notice

The notice under clause (i)(I) must be made at least 30 days in advance of the resident’s transfer or discharge except—

(I) in a case described in clause (iii) or (iv) of subparagraph (A);

(II) in a case described in clause (ii) of subparagraph (A), where the resident’s health improves sufficiently to allow a more immediate transfer or discharge;

(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident’s urgent medical needs; or

(IV) in a case where a resident has not resided in the facility for 30 days.

In the case of such exceptions, notice must be given as many days before the date of transfer or discharge as is practicable.

(iii) Items included in notice

Each notice under clause (i) must include—

(I) for transfers or discharges effected on or after October 1, 1989, notice of the resident’s right to appeal the transfer or discharge under the State process established under subsection (e)(3) of this section;

(II) the name, mailing address, and telephone number of the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]),

(III) in the case of residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy system for developmentally disabled individuals established under sub-title C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15041 et seq.]; and

(IV) in the case of mentally ill residents (as defined in subsection (e)(7)(G)(i) of this section), the mailing address and telephone number of the agency responsible for the protection and advocacy system for mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act [42 U.S.C. 10801 et seq.].

(C) Orientation

A nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(D) Notice on bed-hold policy and readmission

(i) Notice before transfer

Before a resident of a nursing facility is transferred for hospitalization or therapeutic leave, a nursing facility must provide written notice to the resident and an immediate family member or legal representative concerning—

(I) the provisions of the State plan under this subchapter regarding the period (if any) during which the resident will be permitted under the State plan to return and resume residence in the facility, and

(II) the policies of the facility regarding such a period, which policies must be consistent with clause (iii).

(ii) Notice upon transfer

At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility must provide written notice to the resident and an immediate family member or legal representative of the duration of any period described in clause (i).

(iii) Permitting resident to return

A nursing facility must establish and follow a written policy under which a resident—

(I) who is eligible for medical assistance for nursing facility services under a State plan,

(II) who is transferred from the facility for hospitalization or therapeutic leave, and

(III) whose hospitalization or therapeutic leave exceeds a period paid for under the State plan for the holding of a bed in the facility for the resident,

will be permitted to be readmitted to the facility immediately upon the first availability of a bed in a semiprivate room in the facility if, at the time of readmission, the resident requires the services provided by the facility.

(E) Information respecting advance directives

A nursing facility must comply with the requirement of section 1396a(w) of this title (relating to maintaining written policies and procedures respecting advance directives).

\[2\] See References in Text note below.
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(1) In general

In the case of a nursing facility that voluntarily withdraws from participation in a State plan under this subchapter but continues to provide services of the type provided by nursing facilities,

(I) The facility’s voluntary withdrawal from participation is not an acceptable basis for the transfer or discharge of residents of the facility who were residing in the facility on the day before the effective date of the withdrawal (including those residents who were not entitled to medical assistance as of such day);

(II) The provisions of this section continue to apply to such residents until the date of their discharge from the facility; and

(III) In the case of each individual who begins residence in the facility after the effective date of such withdrawal, the facility shall provide notice orally and in a prominent manner in writing on a separate page at the time the individual begins residence of the information described in clause (ii) and shall obtain from each such individual at such time an acknowledgment of receipt of such information that is in writing, signed by the individual, and separate from other documents signed by such individual.

Nothing in this subparagraph shall be construed as affecting any requirement of a participation agreement that a nursing facility must—

(A) Admissions

B) Permit immediate access to a resident, subject to the resident’s right to deny or withdraw consent at any time; and

(C) Permit immediate access to a resident, subject to reasonable restrictions and the resident’s right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

(D) Permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident’s right to deny or withdraw consent at any time; and

(E) Permit representatives of the State ombudsman (described in paragraph (2)(B)(ii)(II)) with the permission of the resident (or the resident’s legal representative) and consistent with State law, to examine a resident’s clinical records.

(2) The nursing facility must—

(A) Permit reasonable access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman or agency described in subclause (II), (III), or (IV) of paragraph (2)(B)(iii), or by the resident’s individual physician;

(B) Permit immediate access to a resident, subject to the resident’s right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

(C) Permit immediate access to a resident, subject to reasonable restrictions and the resident’s right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

(D) Permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident’s right to deny or withdraw consent at any time; and

(E) Permit representatives of the State ombudsman (described in paragraph (2)(B)(ii)(II)) with the permission of the resident (or the resident’s legal representative) and consistent with State law, to examine a resident’s clinical records.

(B) In general

A nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services required under the State plan for all individuals regardless of source of payment.

(C) Construction

(i) Nothing prohibiting any charges for non-medicaid patients

Subparagraph (A) shall not be construed as prohibiting a nursing facility from charging any amount for services furnished, consistent with the notice in paragraph (1)(B) describing such charges.

(ii) No additional services required

Subparagraph (A) shall not be construed as requiring a State to offer additional services on behalf of a resident than are otherwise provided under the State plan.

(D) Admissions

With respect to admissions practices, a nursing facility must—
(i) Not require individuals applying to reside or residing in the facility to waive their rights to benefits under this subchapter or subchapter XVIII of this chapter, (II) subject to subparagraph (B)(v), not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this subchapter or subchapter XVIII of this chapter, and (III) prominently display in the facility written information, and provide to such individuals oral and written information, about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits;

(ii) not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility; and

(iii) in the case of an individual who is entitled to medical assistance for nursing facility services, not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan under this subchapter, any gift, money, donation, or other consideration as a precondition of admitting (or expediting the admission of) the individual to the facility or as a requirement for the individual’s continued stay in the facility.

(B) Construction

(i) No preemption of stricter standards

Subparagraph (A) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under the State plan with respect to admissions practices of nursing facilities.

(ii) Contracts with legal representatives

Subparagraph (A)(ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident’s income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident’s income or resources for such care.

(iii) Charges for additional services requested

Subparagraph (A)(iii) shall not be construed as preventing a facility from charging a resident, eligible for medical assistance under the State plan, for items or services the resident has requested and received and that are not specified in the State plan as included in the term “nursing facility services”.

(iv) Bona fide contributions

Subparagraph (A)(iii) shall not be construed as prohibiting a nursing facility from soliciting, accepting, or receiving a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the resident (or potential resident), but only to the extent that such contribution is not a condition of admission, expediting admission, or continued stay in the facility.

(v) Treatment of continuing care retirement communities admission contracts

Notwithstanding subclause (II) of subparagraph (A)(i), subject to subsections (c) and (d) of section 1396r–5 of this title, contracts for admission to a State licensed, registered, certified, or equivalent continuing care retirement community or life care community, including services in a nursing facility that is part of such community, may require residents to spend on their care resources declared for the purposes of admission before applying for medical assistance.

(6) Protection of resident funds

(A) In general

The nursing facility—

(i) may not require residents to deposit their personal funds with the facility, and

(ii) upon the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

(B) Management of personal funds

Upon written authorization of a resident under subparagraph (A)(ii), the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(i) Deposit

The facility must deposit any amount of personal funds in excess of $50 with respect to a resident in an interest bearing account (or accounts) that is separate from any of the facility’s operating accounts and credits all interest earned on such separate account to such account. With respect to any other personal funds, the facility must maintain such funds in a non-interest bearing account or petty cash fund.

(ii) Accounting and records

The facility must assure a full and complete separate accounting of each such resident’s personal funds, maintain a written record of all financial transactions involving the personal funds of a resident deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record.

(iii) Notice of certain balances

The facility must notify each resident receiving medical assistance under the State plan under this subchapter when the amount in the resident’s account reaches $200 less than the dollar amount determined under section 1382(a)(3)(B) of this title and the fact that if the amount in the account (in addition to the value of the resident’s other nonexempt resources) reaches the amount determined under such section the resident may lose eligibility for such medical assistance or for benefits under subchapter XVI of this chapter.
(iv) Conveyance upon death

Upon the death of a resident with such an account, the facility must convey promptly the resident’s personal funds (and a final accounting of such funds) to the individual administering the resident’s estate.

(C) Assurance of financial security

The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

(D) Limitation on charges to personal funds

The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under this subchapter or subchapter XVIII of this chapter.

(7) Limitation on charges in case of medicaid-eligible individuals

(A) In general

A nursing facility may not impose charges, for certain medicaid-eligible individuals for nursing facility services covered by the State under its plan under this subchapter, that exceed the payment amounts established by the State for such services under this subchapter.

(B) “Certain medicaid-eligible individual” defined

In subparagraph (A), the term “certain medicaid-eligible individual” means an individual who is entitled to medical assistance for nursing facility services in the facility under this subchapter but with respect to whom such benefits are not being paid because, in determining the amount of the individual’s income to be applied monthly to payment for the costs of such services, the amount of such income exceeds the payment amounts established by the State for such services under this subchapter.

(8) Posting of survey results

A nursing facility must post in a place readily accessible to residents, and family members and legal representatives of residents, the results of the most recent survey of the facility conducted under subsection (g) of this section.

(d) Requirements relating to administration and other matters

(1) Administration

(A) In general

A nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident (consistent with requirements established under subsection (f)(5) of this section).

(B) Required notices

If a change occurs in—

(i) the persons with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the facility,

(ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1320a–5(b) of this title) of the facility,

(iii) the corporation, association, or other company responsible for the management of the facility, or

(iv) the individual who is the administrator or director of nursing of the facility,

the nursing facility must provide notice to the State agency responsible for the licensing of the facility, at the time of the change, of the change and of the identity of each new person, company, or individual described in the respective clause.

(C) Nursing facility administrator

The administrator of a nursing facility must meet standards established by the Secretary under subsection (f)(4) of this section.

(2) Licensing and Life Safety Code

(A) Licensing

A nursing facility must be licensed under applicable State and local law.

(B) Life Safety Code

A nursing facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that—

(i) the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiver would not adversely affect the health and safety of residents or personnel, and

(ii) the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents of and personnel in nursing facilities.

(3) Sanitary and infection control and physical environment

A nursing facility must—

(A) establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection, and

(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public.

(4) Miscellaneous

(A) Compliance with Federal, State, and local laws and professional standards

A nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1320a–3 of this title) and with accepted professional standards and principles which apply to professionals providing services in such a facility.
(B) Other

A nursing facility must meet such other requirements relating to the health and safety of residents or relating to the physical facilities thereof as the Secretary may find necessary.

(e) State requirements relating to nursing facility requirements

As a condition of approval of its plan under this subchapter, a State must provide for the following:

(1) Specification and review of nurse aide training and competency evaluation programs and of nurse aide competency evaluation programs

The State must—

(A) by not later than January 1, 1989, specify those training and competency evaluation programs, and those competency evaluation programs, that the State approves for purposes of subsection (b)(5) of this section and that meet the requirements established under subsection (f)(2) of this section, and

(B) by not later than January 1, 1990, provide for the review and reapproval of such programs, at a frequency and using a methodology consistent with the requirements established under subsection (f)(2)(A)(iii) of this section.

The failure of the Secretary to establish requirements under subsection (f)(2) of this section shall not relieve any State of its responsibility under this paragraph.

(2) Nurse aide registry

(A) In general

By not later than January 1, 1989, the State shall establish and maintain a registry of all individuals who have satisfactorily completed a nurse aide training and competency evaluation program, or a nurse aide competency evaluation program, approved under paragraph (i) in the State, or any individual described in subparagraph (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989.

(B) Information in registry

The registry under subparagraph (A) shall provide (in accordance with regulations of the Secretary) for the inclusion of specific documented findings by a State under subsection (g)(1)(C) of this section of resident neglect or abuse or misappropriation of resident property involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings. The State shall make available to the public information in the registry. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any such statement in the registry relating to the finding or a clear and accurate summary of such a statement.

(C) Prohibition against charges

A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).

(3) State appeals process for transfers and discharges

The State, for transfers and discharges from nursing facilities effected on or after October 1, 1989, must provide for a fair mechanism, meeting the guidelines established under subsection (f)(3) of this section, for hearing appeals on transfers and discharges of residents of such facilities; but the failure of the Secretary to establish such guidelines under such subsection shall not relieve any State of its responsibility under this paragraph.

(4) Nursing facility administrator standards

By not later than July 1, 1989, the State must have implemented and enforced the nursing facility administrator standards developed under subsection (f)(4) of this section respecting the qualification of administrators of nursing facilities.

(5) Specification of resident assessment instrument

Effective July 1, 1990, the State shall specify the instrument to be used by nursing facilities in the State in complying with the requirement of subsection (b)(3)(A)(ii) of this section. Such instrument shall be—

(A) one of the instruments designated under subsection (f)(6)(B) of this section, or

(B) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary under subsection (f)(6)(A) of this section.

(6) Notice of medicaid rights

Each State, as a condition of approval of its plan under this subchapter, effective April 1, 1988, must develop (and periodically update) a written notice of the rights and obligations of residents of nursing facilities (and spouses of such residents) under this subchapter.

(7) State requirements for preadmission screening and resident review

(A) Preadmission screening

(i) In general

Effective January 1, 1989, the State must have in effect a preadmission screening program, for making determinations (using any criteria developed under subsection (f)(8) of this section) described in subsection (b)(3)(F) of this section for mentally ill and mentally retarded individuals (as defined in subparagraph (G)) who are admitted to nursing facilities on or after January 1, 1989. The failure of the Secretary to develop minimum criteria under subsection (f)(8) of this section shall not relieve any State of its responsibility to have a preadmission screening program under this subparagraph or to perform resident reviews under subparagraph (B).

(ii) Clarification with respect to certain readmissions

The preadmission screening program under clause (i) need not provide for deter-
minations in the case of the readmission to a nursing facility of an individual who, after being admitted to the nursing facility, was transferred for care in a hospital.

(iii) Exception for certain hospital discharges

The preadmission screening program under clause (i) shall not apply to the admission to a nursing facility of an individual—
(I) who is admitted to the facility directly from a hospital after receiving acute inpatient care at the hospital,
(II) who requires nursing facility services for the condition for which the individual received care in the hospital, and
(III) whose attending physician has certified, before admission to the facility, that the individual is likely to require less than 30 days of nursing facility services.

(B) State requirement for resident review

(i) For mentally ill residents

As of April 1, 1990, in the case of each resident of a nursing facility who is mentally ill, the State mental health authority must review and determine (using any criteria developed under subsection (f)(8) of this section and based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority)—
(I) whether or not the resident, because of the resident’s physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an inpatient psychiatric hospital for individuals under age 21 (as described in section 1396d(h) of this title) or of an institution for mental diseases providing medical assistance to individuals 65 years of age or older; and
(II) whether or not the resident requires specialized services for mental illness.

(ii) For mentally retarded residents

As of April 1, 1990, in the case of each resident of a nursing facility who is mentally retarded, the State mental retardation or developmental disability authority must review and determine (using any criteria developed under subsection (f)(8) of this section)—
(I) whether or not the resident, because of the resident’s physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an intermediate care facility described under section 1396d(d) of this title; and
(II) whether or not the resident requires specialized services for mental retardation.

(iii) Review required upon change in resident’s condition

A review and determination under clause (i) or (ii) must be conducted promptly after a nursing facility has notified the State mental health authority or State mental retardation or developmental disability authority, as applicable, under subsection (b)(3)(E) of this section with respect to a mentally ill or mentally retarded resident, that there has been a significant change in the resident’s physical or mental condition.

(iv) Prohibition of delegation

A State mental health authority, a State mental retardation or developmental disability authority, and a State may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).

(C) Response to preadmission screening and resident review

As of April 1, 1990, the State must meet the following requirements:

(i) Long-term residents not requiring nursing facility services, but requiring specialized services

In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require specialized services for mental illness or mental retardation, and who has continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident’s family or legal representative and care-givers—
(I) inform the resident of the institutional and noninstitutional alternatives covered under the State plan for the resident,
(II) offer the resident the choice of remaining in the facility or of receiving covered services in an alternative appropriate institutional or noninstitutional setting,
(III) clarify the effect on eligibility for services under the State plan if the resident chooses to leave the facility (including its effect on readmission to the facility), and
(IV) regardless of the resident’s choice, provide for (or arrange for the provision of) such specialized services for the mental illness or mental retardation.

A State shall not be denied payment under this subchapter for nursing facility services for a resident described in this clause because the resident does not require the level of services provided by such a facility, if the resident chooses to remain in such a facility.

(ii) Other residents not requiring nursing facility services, but requiring specialized services

In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require specialized services for mental illness or mental retar-
dation, and who has not continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident’s family or legal representative and care-givers—

(I) arrange for the safe and orderly discharge of the resident from the facility, consistent with the requirements of subsection (c)(2) of this section,

(II) prepare and orient the resident for such discharge, and

(III) provide for (or arrange for the provision of) such specialized services for the mental illness or mental retardation.

(iii) Residents not requiring nursing facility services and not requiring specialized services

In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility and not to require specialized services for mental illness or mental retardation, the State must—

(I) arrange for the safe and orderly discharge of the resident from the facility, consistent with the requirements of subsection (c)(2) of this section, and

(II) prepare and orient the resident for such discharge.

(iv) Annual report

Each State shall report to the Secretary annually concerning the number and disposition of residents described in each of clauses (ii) and (iii).

(D) Denial of payment

(i) For failure to conduct preadmission screening or review

No payment may be made under section 1396b(a) of this title with respect to nursing facility services furnished to an individual for whom a determination is required under subsection (b) of this section or subparagraph (B) but for whom the determination is not made.

(ii) For certain residents not requiring nursing facility level of services

No payment may be made under section 1396b(a) of this title with respect to nursing facility services furnished to an individual (other than an individual described in subparagraph (C)(i)) who does not require the level of services provided by a nursing facility.

(E) Permitting alternative disposition plans

With respect to residents of a nursing facility who are mentally retarded or mentally ill and who are determined under subparagraph (B) not to require the level of services of such a facility, but who require specialized services for mental illness or mental retardation, a State and the nursing facility shall be considered to be in compliance with the requirements of subparagraphs (A) through (C) of this paragraph if, before April 1, 1989, the State and the Secretary have entered into an agreement relating to the disposal of such residents of the facility and the State is in compliance with such agreement. Such an agreement may provide for the disposition of the residents after the date specified in subparagraph (C). The State may revise such an agreement, subject to the approval of the Secretary, before October 1, 1991, but only if, under the revised agreement, all residents subject to the agreement who do not require the level of services of such a facility are discharged from the facility by not later than April 1, 1994.

(F) Appeals procedures

Each State, as a condition of approval of its plan under this subchapter, effective January 1, 1989, must have in effect an appeals process for individuals adversely affected by determinations under subparagraph (A) or (B).

(G) Definitions

In this paragraph and in subsection (b)(3)(F) of this section:

(i) An individual is considered to be “mentally ill” if the individual has a serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health) and does not have a primary diagnosis of dementia (including Alzheimer’s disease or a related disorder) or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a serious mental illness.

(ii) An individual is considered to be “mentally retarded” if the individual is mentally retarded or a person with a related condition (as described in section 1396d(d) of this title).

(iii) The term “specialized services” has the meaning given such term by the Secretary in regulations, but does not include, in the case of a resident of a nursing facility, services within the scope of services which the facility must provide or arrange for its residents under subsection (b)(4) of this section.

(f) Responsibilities of Secretary relating to nursing facility requirements

(1) General responsibility

It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in nursing facilities under State plans approved under this subchapter, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

(2) Requirements for nurse aide training and competency evaluation programs and for nurse aide competency evaluation programs

(A) In general

For purposes of subsections (b)(5) and (e)(1)(A) of this section, the Secretary shall establish, by not later than September 1, 1988—
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(i) requirements for the approval of nurse aide training and competency evaluation programs, including requirements relating to (I) the areas to be covered in such a program (including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents’ rights) and content of the curriculum (including, in the case of initial training and, if the Secretary determines appropriate, in the case of ongoing training, dementia management training, and patient abuse prevention training)\(^3\), (II) minimum hours of initial and ongoing training and retraining (including not less than 75 hours in the case of initial training), (III) qualifications of instructors, and (IV) procedures for determination of competency;

(ii) requirements for the approval of nurse aide competency evaluation programs, including requirement relating to the areas to be covered in such a program, including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents’ rights, and procedures for determination of competency;

(iii) requirements respecting the minimum frequency and methodology to be used by a State in reviewing such programs’ compliance with the requirements for such programs; and

(iv) requirements, under both such programs, that—

(I) provide procedures for determining competency that permit a nurse aide, at the nurse aide’s option, to establish competency through procedures or methods other than the passing of a written examination and to have the competency evaluation conducted at the nursing facility at which the aide is (or will be) employed (unless the facility is described in subparagraph (B)(ii));

(II) prohibit the imposition on a nurse aide who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program of any charges (including any charges for textbooks and other required course materials and any charges for the competency evaluation) for either such program, and

(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing such program, the State shall provide for the reimbursement of costs incurred in completing such program on a prorata basis during the period in which the nurse aide is so employed.

(B) Approval of certain programs

Such requirements—

(i) may permit approval of programs offered by or in facilities, as well as outside facilities (including employee organizations), and of programs in effect on December 22, 1987;

(ii) shall permit a State to find that an individual who has completed (before July 1, 1989) a nurse aide training and competency evaluation program shall be deemed to have completed such a program approved under subsection (b)(5) of this section if the State determines that, at the time the program was offered, the program met the requirements for approval under such paragraph; and

(iii) subject to subparagraphs (C) and (D), shall prohibit approval of such a program—

(I) offered by or in a nursing facility which, within the previous 2 years—

(a) has operated under a waiver under subsection (b)(4)(C)(ii) of this section that was granted on the basis of a demonstration that the facility is unable to provide the nursing care required under subsection (b)(4)(C)(i) of this section for a period in excess of 48 hours during a week;

(b) has been subject to an extended (or partial extended) survey under section 1395i–3(g)(2)(B)(i) of this title or subsection (g)(2)(B)(i) of this section; or

(c) has been assessed a civil money penalty described in section 1395i–3(h)(2)(B)(i) of this title or subsection (h)(2)(B)(i) of this title or subsection (g)(2)(B)(i) of this section; or

(II) offered by or in a nursing facility unless the State makes the determination, upon an individual’s completion of the program, that the individual is competent to provide nursing and nursing-related services in nursing facilities.

A State may not delegate (through subcontract or otherwise) its responsibility under clause (iii)(II) to the nursing facility.

(C) Waiver authorized

Clause (ii)(I) of subparagraph (B) shall not apply to a program offered in (but not by) a nursing facility (or skilled nursing facility for purposes of subchapter XVIII of this chapter) in a State if the State—

(i) determines that there is no other such program offered within a reasonable distance of the facility.

(ii) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and

\(^3\)So in original. Probably should be followed by a closing parenthesis.

\(^4\)So in original. Probably should be “clause”.
(iii) provides notice of such determination and assurances to the State long-term care ombudsman.

(D) Waiver of disapproval of nurse-aide training programs

Upon application of a nursing facility, the Secretary may waive the application of subparagraph (B)(iii)(I)(c) if the imposition of the civil monetary penalty was not related to the quality of care provided to residents of the facility. Nothing in this subparagraph shall be construed as eliminating any requirement upon a facility to pay a civil monetary penalty described in the preceding sentence.

(3) Federal guidelines for State appeals process for transfers and discharges

For purposes of subsections (c)(2)(B)(iii) and (e)(3) of this section, by not later than October 1, 1988, the Secretary shall establish guidelines for minimum standards which State appeals processes under subsection (e)(3) of this section must meet to provide a fair mechanism for hearing appeals on transfers and discharges of residents from nursing facilities.

(4) Secretarial standards qualification of administrators

For purposes of subsections (d)(1)(C) and (e)(4) of this section, the Secretary shall develop, by not later than March 1, 1988, standards to be applied in assuring the qualifications of administrators of nursing facilities.

(5) Criteria for administration

The Secretary shall establish criteria for assessing a nursing facility’s compliance with the requirement of subsection (d)(1) of this section with respect to—

(A) its governing body and management,

(B) agreements with hospitals regarding transfers of residents to and from the hospitals and to and from other nursing facilities,

(C) disaster preparedness,

(D) direction of medical care by a physician,

(E) laboratory and radiological services,

(F) clinical records, and

(G) resident and advocate participation.

(6) Specification of resident assessment data set and instruments

The Secretary shall—

(A) not later than January 1, 1989, specify a minimum data set of core elements and common definitions for use by nursing facilities in conducting the assessments required under subsection (b)(3) of this section, and establish guidelines for utilization of the data set; and

(B) by not later than April 1, 1990, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subsection (e)(5)(A) of this section for use by nursing facilities in complying with the requirements of subsection (b)(3)(A)(iii) of this section.

(7) List of items and services furnished in nursing facilities not chargeable to the personal funds of a resident

(A) Regulations required

Pursuant to the requirement of section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, the Secretary shall issue regulations, on or before the first day of the seventh month to begin after December 22, 1987, that define those costs which may be charged to the personal funds of residents in nursing facilities who are individuals receiving medical assistance with respect to nursing facility services under this subchapter and those costs which are to be included in the payment amount under this subchapter for nursing facility services.

(B) Rule if failure to publish regulations

If the Secretary does not issue the regulations under subparagraph (A) on or before the date required in that subparagraph, in the case of a resident of a nursing facility who is eligible to receive benefits for nursing facility services under this subchapter, for purposes of section 1396a(a)(28) of this title, the Secretary shall be deemed to have promulgated regulations under this paragraph which provide that the costs which may not be charged to the personal funds of such resident (and for which payment is considered to be made under this subchapter) include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.

(8) Federal minimum criteria and monitoring for preadmission screening and resident review

(A) Minimum criteria

The Secretary shall develop, by not later than October 1, 1988, minimum criteria for States to use in making determinations under subsections (b)(3)(F) and (e)(7)(B) of this section and in permitting individuals adversely affected to appeal such determinations, and shall notify the States of such criteria.

(B) Monitoring compliance

The Secretary shall review, in a sufficient number of cases to allow reasonable inferences, each State’s compliance with the requirements of subsection (e)(7)(C)(ii) of this section (relating to discharge and placement for active treatment of certain residents).

(9) Criteria for monitoring State waivers

The Secretary shall develop, by not later than October 1, 1988, criteria and procedures for monitoring State performances in granting waivers pursuant to subsection (b)(4)(C)(ii) of this section.

(10) Special focus facility program

(A) In general

The Secretary shall conduct a special focus facility program for enforcement of requirements for nursing facilities that the Secretary has identified as having substan-
Survey and certification process

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(tially failed to meet applicable requirements of this chapter.

(B) Periodic surveys

Under such program the Secretary shall conduct surveys of each facility in the program not less often than once every 6 months.

(g) Survey and certification process

(1) State and Federal responsibility

(A) In general

Under each State plan under this subchapter, the State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of nursing facilities (other than facilities of the State) with the requirements of subsections (b), (c), and (d) of this section. The Secretary shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of State nursing facilities with the requirements of such subsections.

(B) Educational program

Each State shall conduct periodic educational programs for the staff and residents (and their representatives) of nursing facilities in order to present current regulations, procedures, and policies under this section.

(C) Investigation of allegations of resident neglect and abuse and misappropriation of resident property

The State shall provide, through the agency responsible for surveys and certification of nursing facilities under this subsection, for a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a resident in a nursing facility or by another individual used by the facility in providing services to such a resident. The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property by a nurse aide of a resident in a nursing facility or by another individual used by the facility in providing services to such a resident, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority. A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

(D) Removal of name from nurse aide registry

(i) In general

In the case of a finding of neglect under subparagraph (C), the State shall establish a procedure to permit a nurse aide to petition the State to have his or her name removed from the registry upon a determination by the State that—

(I) the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect; and

(II) the neglect involved in the original finding was a singular occurrence.

(ii) Timing of determination

In no case shall a determination on a petition submitted under clause (i) be made prior to the expiration of the 1-year period beginning on the date on which the name of the petitioner was added to the registry under subparagraph (C).

(E) Construction

The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

(2) Surveys

(A) Annual standard survey

(i) In general

Each nursing facility shall be subject to a standard survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) a nursing facility of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The Secretary shall review each State’s procedures for scheduling and conduct of standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(ii) Contents

Each standard survey shall include, for a case-mix stratified sample of residents—

(I) a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and the physical environment,

(II) written plans of care provided under subsection (b)(2) of this section and an audit of the residents’ assessments under subsection (b)(3) of this section to determine the accuracy of such assessments and the adequacy of such plans of care, and

(III) a review of compliance with residents’ rights under subsection (c) of this section.

(iii) Frequency

(1) In general

Each nursing facility shall be subject to a standard survey not later than 15 months after the date of the previous
standard survey conducted under this subparagraph. The statewide average interval between standard surveys of a nursing facility shall not exceed 12 months.

(II) Special surveys

If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 2 months of any change of ownership, administration, management of a nursing facility, or director of nursing in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

(B) Extended surveys

(i) In general

Each nursing facility which is found, under a standard survey, to have provided substandard quality of care shall be subject to an extended survey. Any other facility may, at the Secretary’s or State’s discretion, be subject to such an extended survey (or a partial extended survey).

(ii) Timing

The extended survey shall be conducted immediately after the standard survey (or, if not practicable, not later than 2 weeks after the date of completion of the standard survey).

(iii) Contents

In such an extended survey, the survey team shall review and identify the policies and procedures which produced such substandard quality of care and shall determine whether the facility has complied with all the requirements described in subsections (b), (c), and (d) of this section. Such review shall include an expansion of the size of the sample of residents’ assessments reviewed and a review of the staffing, of in-service training, and, if appropriate, of contracts with consultants.

(iv) Construction

Nothing in this paragraph shall be construed as requiring an extended or partial extended survey as a prerequisite to imposing a sanction against a facility under subsection (h) of this section on the basis of findings in a standard survey.

(C) Survey protocol

Standard and extended surveys shall be conducted—

(i) based upon a protocol which the Secretary has developed, tested, and validated by not later than January 1, 1990, and

(ii) by individuals, of a survey team, who meet such minimum qualifications as the Secretary establishes by not later than such date.

The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications shall not relieve any State of its responsibility (or the Secretary of the Secretary’s responsibility) to conduct surveys under this subsection.

(D) Consistency of surveys

Each State shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

(E) Survey teams

(i) In general

Surveys under this subsection shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse).

(ii) Prohibition of conflicts of interest

A State may not use as a member of a survey team under this subsection an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance with the requirements of subsections (b), (c), and (d) of this section, or who has a personal or familial financial interest in the facility being surveyed.

(iii) Training

The Secretary shall provide for the comprehensive training of State and Federal surveyors in the conduct of standard and extended surveys under this subsection, including the auditing of resident assessments and plans of care. No individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

(3) Validation surveys

(A) In general

The Secretary shall conduct onsite surveys of a representative sample of nursing facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number to allow inferences about the adequacies of each State’s surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (2). If the State has determined that an individual nursing facility meets the requirements of subsections (b), (c), and (d) of this section, the Secretary determines that the facility does not meet such requirements, the Secretary’s determination as to the facility’s noncompliance with such requirements is binding and supersedes that of the State survey.

(B) Scope

With respect to each State, the Secretary shall conduct surveys under subparagraph (A) each year with respect to at least 5 percent of the number of nursing facilities surveyed by the State in the year, but in no case less than 5 nursing facilities in the State.

(C) Reduction in administrative costs for substandard performance

If the Secretary finds, on the basis of such surveys, that a State has failed to perform
surveys as required under paragraph (2) or that a State’s survey and certification performance otherwise is not adequate, the Secretary may provide for the training of survey teams in the State and shall provide for a reduction of the payment otherwise made to the State under section 1396b(a)(2)(D) of this title with respect to a quarter equal to 33 percent multiplied by a fraction, the denominator of which is equal to the total number of residents in nursing facilities surveyed by the Secretary that quarter and the numerator of which is equal to the total number of residents in nursing facilities which were found pursuant to such surveys to be not in compliance with any of the requirements of subsections (b), (c), and (d) of this section. A State that is dissatisfied with the Secretary’s findings under this subparagraph may obtain reconsideration and review under that section of the Secretary’s determination under section 1316(a)(1) of this title.

(D) Special surveys of compliance

Where the Secretary has reason to question the compliance of a nursing facility with any of the requirements of subsections (b), (c), and (d) of this section, the Secretary may conduct a survey of the facility and, on the basis of that survey, make independent and binding determinations concerning the extent to which the nursing facility meets such requirements.

(4) Investigation of complaints and monitoring nursing facility compliance

Each State shall maintain procedures and adequate staff to—

(A) investigate complaints of violations of requirements by nursing facilities, and

(B) monitor, on-site, on a regular, as needed basis, a nursing facility’s compliance with the requirements of subsections (b), (c), and (d) of this section, if—

(i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

(ii) the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

(iii) the State has reason to question the compliance of the facility with such requirements.

A State may maintain and utilize a specialized team (including an attorney, an auditor, and appropriate health care professionals) for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against substandard nursing facilities.

(5) Disclosure of results of inspections and activities

(A) Public information

Each State, and the Secretary, shall make available to the public—

(i) information respecting all surveys and certifications made respecting nursing facilities, including statements of deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans of correction,

(ii) copies of cost reports of such facilities filed under this subchapter or under subchapter XVIII of this chapter,

(iii) copies of statements of ownership under section 1320a–3 of this title, and

(iv) information disclosed under section 1320a–5 of this title.

(B) Notice to ombudsman

Each State shall notify the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3060 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]) of the State’s findings of noncompliance with any of the requirements of subsections (b), (c), and (d) of this section, or of any adverse action taken against a nursing facility under paragraphs (1), (2), or (3) of subsection (b) of this section, with respect to a nursing facility in the State.

(C) Notice to physicians and nursing facility administrator licensing board

If a State finds that a nursing facility has provided substandard quality of care, the State shall notify—

(i) the attending physician of each resident with respect to which such finding is made, and

(ii) any State board responsible for the licensing of the nursing facility administrator of the facility.

(D) Access to fraud control units

Each State shall provide its State medical aid fraud and abuse control unit (established under section 1396(q) of this title) with access to all information of the State agency responsible for surveys and certifications under this subsection.

(E) Submission of survey and certification information to the Secretary

In order to improve the timeliness of information made available to the public under subparagraph (A) and provided on the Nursing Home Compare Medicare website, under subsection (i), each State shall submit information respecting any survey or certification made respecting a nursing facility (including any enforcement actions taken by the State) to the Secretary not later than the date on which the State sends such information to the facility. The Secretary shall use the information submitted under the preceding sentence to update the information provided on the Nursing Home Compare Medicare website as expeditiously as practicable but not less frequently than quarterly.

(h) Enforcement process

(1) In general

If a State finds, on the basis of a standard, extended, or partial extended survey under...
subsection (g)(2) of this section or otherwise, that a nursing facility no longer meets a requirement of subsection (b), (c), or (d) of this section, and further finds that the facility’s deficiencies—

(A) immediately jeopardize the health or safety of its residents, the State shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii), or terminate the facility’s participation under the State plan and may provide, in addition, for one or more of the other remedies described in paragraph (2); or

(B) do not immediately jeopardize the health or safety of its residents, the State may—

(i) terminate the facility’s participation under the State plan,
(ii) provide for one or more of the remedies described in paragraph (2), or
(iii) do both.

Nothing in this paragraph shall be construed as restricting the remedies available to a State to remedy a nursing facility’s deficiencies. If a State finds that a nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but, as of a previous date, did not meet such requirements, the State may provide for a civil money penalty under paragraph (2)(A)(ii) for the days in which it finds that the facility was not in compliance with such requirements.

(2) Specified remedies

(A) Listing

Except as provided in subparagraph (B)(ii), each State shall establish by law (whether statute or regulation) at least the following remedies:

(i) Denial of payment under the State plan with respect to any individual admitted to the nursing facility involved after such notice to the public and to the facility as may be provided for by the State.

(ii) A civil money penalty assessed and collected, with interest, for each day in which the facility is or was out of compliance with a requirement of subsection (b), (c), or (d) of this section. Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition of compliance with such requirements, the State may provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the State may provide for other specified remedies, such as directed plans of correction.

(B) Deadline and guidance

(i) Except as provided in clause (ii), as a condition for approval of a State plan for calendar quarters beginning on or after October 1, 1989, each State shall establish the remedies described in clauses (i) through (iv) of subparagraph (A) by not later than October 1, 1989. The Secretary shall provide, through regulations by not later than October 1, 1988, guidance to States in establishing such remedies; but the failure of the Secretary to provide such guidance shall not relieve a State of the responsibility for establishing such remedies.

(ii) A State may establish alternative remedies (other than termination of participation) other than those described in clauses (i) through (iv) of subparagraph (A), if the State demonstrates to the Secretary’s satisfaction that the alternative remedies are as effective in deterring noncompliance and correcting deficiencies as those described in subparagraph (A).

(C) Assuring prompt compliance

If a nursing facility has not complied with any of the requirements of subsections (b), (c), and (d) of this section, within 3 months after the date the facility is found to be out of compliance with such requirements, the State shall impose the remedy described in subparagraph (A)(i) for all individuals who are admitted to the facility after such date.

(D) Repeated noncompliance

In the case of a nursing facility which, on 3 consecutive standard surveys conducted under subsection (g)(2) of this section, has been found to have provided substandard quality of care, the State shall (regardless of what other remedies are provided)—

(i) impose the remedy described in subparagraph (A)(i), and
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(3) Secretarial authority

(A) For State nursing facilities

With respect to a State nursing facility, the Secretary shall have the authority and duties of a State under this subsection, including the authority to impose remedies described in clauses (i), (ii), and (iii) of paragraph (2)(A).

(B) Other nursing facilities

With respect to any other nursing facility in a State, if the Secretary finds that a nursing facility no longer meets a requirement of subsection (b), (c), (d), or (e) of this section, and further finds that the facility’s deficiencies—

(i) immediately jeopardize the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subparagraph (C)(iii), or terminate the facility’s participation under the State plan and may provide, in addition, for one or more of the other remedies described in subparagraph (C); or

(ii) do not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described in subparagraph (C).

Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a nursing facility’s deficiencies. If the Secretary finds that a nursing facility meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (C)(ii) for the days on which he finds that the facility was not in compliance with such requirements.

(C) Specified remedies

The Secretary may take the following actions with respect to a finding that a facility has not met an applicable requirement:

(i) Denial of payment

The Secretary may deny any further payments to the State for medical assistance furnished by the facility to all individuals in the facility or to individuals admitted to the facility after the effective date of the finding.

(ii) Authority with respect to civil money penalties in certain circumstances

Subject to subclause (II), in the case where a facility self-reports and promptly corrects a deficiency for which a penalty was imposed under this clause not later than 10 calendar days after the date of such imposition, the Secretary may reduce the amount of the penalty imposed by not more than 50 percent.

(III) Prohibitions on reduction for certain deficiencies

(aa) Repeat deficiencies

The Secretary may not reduce the amount of a penalty under subclause (II) if the Secretary had reduced a penalty imposed on the facility in the preceding year under such subclause with respect to a repeat deficiency.

(bb) Certain other deficiencies

The Secretary may not reduce the amount of a penalty under subclause (II) if the penalty is imposed on the facility for a deficiency that is found to result in a pattern of harm or widespread harm, immediately jeopardizes the health or safety of a resident or residents of the facility, or results in the death of a resident of the facility.

(IV) Collection of civil money penalties

In the case of a civil money penalty imposed under this clause, the Secretary shall issue regulations that—

(aa) subject to item (cc), not later than 30 days after the imposition of the penalty, provide for the facility to have the opportunity to participate in an informal dispute reso-
The temporary management under this clause shall not be terminated under sub-
clause (II) until the Secretary has determined that the facility has the manage-
ment capability to ensure continued com-
pliance with all the requirements of sub-
sections (b), (c), and (d) of this section.

The Secretary shall specify criteria, as to when and how each of such remedies is to be
applied, the amounts of any fines, and the severity of each of these remedies, to be used
in the imposition of such remedies. Such cri-
tera shall be designed so as to minimize the
time between the identification of violations
and final imposition of the remedies and
shall provide for the imposition of incremen-
tally more severe fines for repeated or un-
corrected deficiencies. In addition, the Sec-
retary may provide for other specified rem-
edies, such as directed plans of correction.

(D) Continuation of payments pending reme-
diata

The Secretary may continue payments,
over a period of not longer than 6 months
after the effective date of the findings, under
this subchapter with respect to a nursing fa-
cility not in compliance with a requirement
of subsection (b), (c), or (d) of this section,
if—

(i) the State survey agency finds that it
is more appropriate to take alternative ac-
tion to assure compliance of the facility
with the requirements than to terminate
the certification of the facility, and

(ii) the State has submitted a plan and
timetable for corrective action to the Sec-
retary for approval and the Secretary ap-
proves the plan of corrective action.

The Secretary shall establish guidelines for
approval of corrective actions requested by
States under this subparagraph.

(4) Effective period of denial of payment

A finding to deny payment under this sub-
section shall terminate when the State or Sec-
retary (or both, as the case may be) finds that
the facility is in substantial compliance with
all the requirements of subsections (b), (c),
and (d) of this section.

(5) Immediate termination of participation for
facility where State or Secretary finds non-
compliance and immediate jeopardy

If either the State or the Secretary finds
that a nursing facility has not met a require-
ment of subsection (b), (c), or (d) of this sec-
tion, and finds that the failure immediately
jeopardizes the health or safety of its resi-
dents, the State or the Secretary, respec-
tively4 shall notify the other of such finding,
and the State or the Secretary, respectively,
shall take immediate action to remove the
jeopardy and correct the deficiencies through
the remedy specified in paragraph (2)(A)(iii) or
(3)(C)(iii), or terminate the facility’s partici-
pation under the State plan. If the facility’s
participation in the State plan is terminated
by either the State or the Secretary, the State
shall provide for the safe and orderly transfer
of the residents eligible under the State plan

4So in original. Probably should be followed by a comma.
consistent with the requirements of subsection (c)(2) of this section.

(6) Special rules where State and Secretary do not agree on finding of noncompliance

(A) State finding of noncompliance and no secretarial finding of noncompliance

If the Secretary finds that a nursing facility has not met all the requirements of subsections (b), (c), and (d) of this section, and that the failure does not immediately jeopardize the health or safety of its residents, the State’s findings shall control and the remedies imposed by the Secretary shall be applied.

(B) Secretarial finding of noncompliance and no State finding of noncompliance

If the Secretary finds that a nursing facility has not met all the requirements of subsections (b), (c), and (d) of this section, and that the failure does not immediately jeopardize the health or safety of its residents, but the State has not made such a finding, the Secretary—

(i) may impose any remedies specified in paragraph (3)(C) with respect to the facility; and

(ii) shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D).

(7) Special rules for timing of termination of participation where remedies overlap

If both the Secretary and the State find that a nursing facility has not met all the requirements of subsections (b), (c), and (d) of this section, and neither finds that the failure immediately jeopardizes the health or safety of its residents—

(A)(i) if both find that the facility’s participation under the State plan should be terminated, the State’s timing of any termination shall control so long as the termination date does not occur later than 6 months after the date of the finding to terminate;

(ii) if the Secretary, but not the State, finds that the facility’s participation under the State plan should be terminated, the Secretary shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D); or

(iii) if the State, but not the Secretary, finds that the facility’s participation under the State plan should be terminated, the State’s decision to terminate, and timing of such termination, shall control; and

(B)(i) if the Secretary or the State, but not both, establishes one or more remedies which are additional or alternative to the remedy of terminating the facility’s participation under the State plan, such additional or alternative remedies shall also be applied, or

(ii) if both the Secretary and the State establish one or more remedies which are additional or alternative to the remedy of terminating the facility’s participation under the State plan, only the additional or alternative remedies of the Secretary shall apply.
(ii) Links to State Internet websites with information regarding State survey and certification programs, links to Form 2567 State inspection reports (or a successor form) on such websites, information to guide consumers in how to interpret and understand such reports, and the facility plan of correction or other response to such report. Any such links shall be posted on a timely basis.

(iii) The standardized complaint form developed under section 1320a–7(f) of this title, including explanatory material on what complaint forms are, how they are used, and how to file a complaint with the State survey and certification program and the State long-term care ombudsman program.

(iv) Exception on such website (or a successor website) described in subparagraph (A) is included.

(A) In general

The Secretary shall consult—

(i) that were committed inside of the facility; and

(ii) with respect to such instances of violations or crimes committed outside of the facility, that were violations or crimes that resulted in the serious bodily injury of an elder.

(B) Deadline for provision of information

(i) In general

Except as provided in clause (ii), the Secretary shall ensure that the information described in subparagraph (A) is included on such website (or a successor website) not later than 1 year after March 23, 2010.

(ii) Exception

The Secretary shall ensure that the information described in subparagraph (A)(i) is included on such website (or a successor website) not later than the date on which the requirements under section 1320a–7(g) of this title are implemented.

(2) Review and modification of website

(A) In general

The Secretary shall establish a process—

(i) to review the accuracy, clarity of presentation, timeliness, and comprehensiveness of information reported on such website as of the day before March 23, 2010; and

(ii) not later than 1 year after March 23, 2010, to modify or revamp such website in accordance with the review conducted under clause (i).

(B) Consultation

In conducting the review under subparagraph (A)(i), the Secretary shall consult with—

(i) State long-term care ombudsman programs;

(ii) consumer advocacy groups;

(iii) provider stakeholder groups;

(iv) skilled nursing facility employees and their representatives; and

(v) any other representatives of programs or groups the Secretary determines appropriate.

(j) Construction

Where requirements or obligations under this section are identical to those provided under section 1396i–3 of this title, the fulfillment of those requirements or obligations under section 1396i–3 of this title shall be considered to be the fulfillment of the corresponding requirements or obligations under this section.

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(ii) post notice of the availability of such reports in areas of the facility that are prominent and accessible to the public.

The facility shall not make available under clause (i) identifying information about complaintants or residents.

REFERENCES IN TEXT


Section 307(a)(12) of the Act was repealed by Pub. L. 106–402, Oct. 30, 2000, 114 Stat. 1677. Subtitle C of the Act probably means subtitl...
of this section, a nursing facility” for “A nursing facility” in introductory provisions.


Subsec. (b)(4)(C)(ii). Pub. L. 101–508, § 4801(e)(5)(A), substituted “To the extent that a facility is unable to meet the requirements of clause (i), a State may waive such requirements with respect to the facility if” for “A State may waive the requirement of subclause (I) or (II) of clause (i) with respect to a facility if” in introductory provisions.

Subsec. (b)(4)(C)(ii)(IV), (V). Pub. L. 101–508, § 4801(e)(5)(B)(–D), which directed amendment of cl. (i) by adding subcls. (IV) and (V) at the end, was executed by adding subcl. (IV) and after subcl. (III) and before concluding provisions to reflect the probable intent of Congress.

Subsec. (b)(5)(A). Pub. L. 101–508, § 4801(a)(2), designated existing provision as cl. (i), substituted “Except as provided in clause (ii), a nursing facility” for “A nursing facility” and “on a full-time basis” for “on a full-time basis (or on a part-time or other basis)”.

Subsec. (b)(5)(C). Pub. L. 101–508, § 4801(a)(3), substituted “any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information” for “the State registry established under subsection (e)(2)(A) of this section as to information in the registry”.

Subsec. (b)(5)(D). Pub. L. 101–508, § 4801(a)(4), inserted before period at end “, or a new competency evaluation program”.

Subsec. (b)(5)(F)(i). Pub. L. 101–508, § 4801(e)(6), substituted “(G) or a registered dietician” for “(G)”.

Subsec. (b)(6)(A). Pub. L. 101–508, § 4801(d)(1), inserted before semicolon at end “(or, at the option of a State, under the supervision of a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician)”.

Subsec. (c)(1)(A). Pub. L. 101–508, § 4801(e)(8)(B), inserted at end “A resident’s exercise of a right to refuse transfer under clause (x) shall not affect the resident’s eligibility or entitlement to medical assistance under this subchapter or a State’s entitlement to Federal medical assistance under this subchapter with respect to services furnished to such a resident after such transfer under clause (x)”.

Subsec. (c)(1)(A)(iv). Pub. L. 101–508, § 4801(e)(9), inserted before period at end “and to access to current clinical records of the resident upon request by the resident or the resident’s legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request”.


Subsec. (c)(1)(B)(i). Pub. L. 101–508, § 4801(e)(10), inserted “including the notice (if any) of the State developed under subsection (e)(6) of this section” after “in such rights)”.


Subsec. (c)(7). (8). Pub. L. 101–508, § 4801(e)(7)(A), added par. (7) and redesignated former par. (7) as (8).

Subsec. (e)(1)(A). Pub. L. 101–508, § 4801(e)(18), substituted “under subsection (f)(2) of this section” for “under clause (i) or (ii) of subsection (f)(2) of this section” in preceding section.

Subsec. (e)(2)(A). Pub. L. 101–508, § 4801(e)(12)(A), inserted “, or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989 after “in the State”.


Subsec. (e)(7)(A). Pub. L. 101–508, § 4801(b)(2)(B), substituted existing provision as cl. (i), inserted cl. (i) heading, and added clss. (ii) and (iii).

Subsec. (e)(7)(B). Pub. L. 101–508, § 4801(b)(8), substituted “specialized services” for “active treatment”.


Subsec. (e)(7)(C)(ii) to (iv). Pub. L. 101–508, § 4801(b)(8), substituted “specialized services” for “active treatment” wherever appearing.


Subsec. (e)(7)(E). Pub. L. 101–508, § 4801(b)(8), substituted “specialized services” for “active treatment”.

Pub. L. 101–508, § 4801(b)(6), inserted at end “The State may revise such an agreement, subject to the approval of the Secretary, before October 1, 1991, but only if, under the revised agreement, all residents subject to the agreement who do not require the level of services of such a facility are discharged from the facility by not later than April 1, 1994.”

Pub. L. 101–508, § 4801(b)(3)(B), substituted “the requirements of subparagraphs (A) through (C) of this paragraph” for “the requirement of this paragraph”.

Subsec. (e)(7)(G)(i). Pub. L. 101–508, § 4801(b)(7), substituted “serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health)” for “primary or secondary diagnosis of mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition)” and inserted before period at end “or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a serious mental illness”.

Subsec. (e)(7)(G)(ii). Pub. L. 101–508, § 4801(b)(8), substituted “specialized services” for “active treatment”.

Pub. L. 101–508, § 4801(a)(5)(B), inserted “who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program” after “nurse aide”.


Subsec. (g)(1)(C). Pub. L. 101–508, § 4801(e)(13), added at end “A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.”

Subsec. (g)(5)(A)(i). Pub. L. 101–508, § 4801(e)(14), substituted “deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans” for “deficiencies and plans”.

Subsec. (g)(5)(B). Pub. L. 101–508, § 4801(e)(15), substituted “or of any adverse action taken against a nursing facility under paragraphs (1), (2), or (3) of subsection (h) of this section, with respect”.


Subsec. (c)(1)(A)(ii). Pub. L. 101–239, § 6901(d)(4)(A), substituted “Secretary until such an order could reasonably be obtained” for “Secretary until such an order could reasonably be obtained”.


Subsec. (d)(2)(A)(i). Pub. L. 101–239, § 6901(d)(4)(C), substituted “content of the curriculum” for “content of the curriculum”.凡会议中，a nursing facility” for “A nursing facility”.
$608(d)(27)(I), substituted "on the basis of that survey" for "on that basis".


Subsec. (j)(2)(B). Pub. L. 100–360, §411(h)(8)(B)(i), struck out "or otherwise" after "regulations".

Subsec. (k)(3)(C)(ii). Pub. L. 100–360, §411(h)(7)(A), substituted ". The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title" for "and the Secretary shall impose and collect such a penalty in the same manner as civil money penalties are imposed and collected under section 1320a–7a of this title".

Subsec. (l)(5). Pub. L. 100–360, §411(h)(8)(B)(iii), substituted "State or the Secretary, respectively" for "State and the Secretary".

Subsec. (m). Pub. L. 100–360, §411(h)(7)(B), inserted "by such facilities" after "be made available".

Subsec. (n)(6)(B), added par. (7).

Subsecs. (e) and (f) of this section, contained two subsecs. (c), the first of which amended this section and the second of which enacted provisions set out as a note below, was amended by Pub. L. 100–360, §411(h)(3)(C)(ii), to delete the designation, heading, and directory language of the first subsec. (c), resulting in subsecs. (e) and (f) being added by section 4211(a)(3) of Pub. L. 100–203, which enacted subsecs. (a) to (d) of this section.

Subsec. (g). Pub. L. 100–203, §4212(a), added subsec. (g).


**Effective Date of 2010 Amendment**


Amendment by section 6101(c)(2) of Pub. L. 111–148 effective 1 year after Mar. 23, 2010, see section 6111(c) of Pub. L. 111–148, set out as a note under section 1395i–3 of this title.

Amendment by section 6101(c)(2) of Pub. L. 111–148 effective 1 year after Mar. 23, 2010, see section 6121(c) of Pub. L. 111–148, set out as a note under section 1395i–3 of this title.

**Effective Date of 2006 Amendment**


**Effective Date of 2003 Amendment**


**Effective Date of 2000 Amendment**


**Effective Date of 1999 Amendment**

Pub. L. 106–4, §2(b), Mar. 25, 1999, 113 Stat. 8, provided that: "The amendment made by subsection (a) [amending this section] applies to voluntary withdrawals from participation occurring on or after the date of the enactment of this Act [Mar. 25, 1999]."

**Effective Date of 1997 Amendment**

Section 4754(b) of Pub. L. 105–33 provided that: ‘‘The amendments made by this section [amending this section] take effect on the date of the enactment of this Act [Aug. 5, 1997].’’

**Effective Date of 1996 Amendment**

Section 1(b) of Pub. L. 104–315 provided that: ‘‘The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 19, 1996].’’

Section 2(c) of Pub. L. 104–315 provided that: ‘‘The amendments made by this section [amending this section] shall apply to changes in physical or mental condition occurring on or after the date of the enactment of this Act [Oct. 19, 1996].’’

**Effective Date of 1992 Amendment**

Amendment by Pub. L. 102–375 applicable with respect to fiscal year 1992, see section 905(b)(6) of Pub. L. 102–375, set out as a note under section 1395i–3 of this title.

Amendment by section 4751(b)(2) of Pub. L. 101–508 applicable with respect to services furnished on or after the first day of the first month beginning more than 1 year after Nov. 5, 1990, see section 4751(c) of Pub. L. 101–508, set out as a note under section 1395a of this title.

Section 4801(a)(6)(B) of Pub. L. 101–508 provided that: ‘‘The amendments made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203], except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

‘‘(i) had its participation terminated under title XVIII of the Social Security Act [subchapter XVIII of this chapter] or under the State plan under title XIX of such Act [this subchapter];

‘‘(ii) was subject to a denial of payment under either such title;

‘‘(iii) was assessed a civil money penalty not less than $5,000 for deficiencies in nursing facility standards;

‘‘(iv) operated under a temporary management appointment to oversee the operation of the facility and to ensure the health and safety of the facility’s residents; or

‘‘(v) pursuant to State action, was closed or had its residents transferred.’’


Section 4801(b)(9) of Pub. L. 101–508 provided that:
"(A) In general.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].

"(B) Exception.—The amendments made by paragraphs (4), (6), and (8) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990], without regard to whether or not regulations to implement such amendments have been promulgated.

Section 4801(d)(2) of Pub. L. 101–508 provided that: "The amendment made by paragraph (1) [amending this section] applies with respect to nursing facility services furnished on or after October 1, 1990, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date."

Section 4801(e)(7)(B) of Pub. L. 101–508 provided that: "The amendments made by subparagraph (A) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990], without regard to whether or not regulations to implement such amendments have been promulgated."

Amendment by section 4801(e)(2)–(6), (8)–(10), (12)–(15), and (18) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 4801(e)(19) of Pub. L. 101–508, set out as a note under section 1396a of this title.

**Effective Date of 1989 Amendment**

Amendment by section 6901(b)(1), (4)(A) of Pub. L. 101–239 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, and amendment by section 6901(b)(3) of Pub. L. 101–239 applicable to nurse aide training and competency evaluation programs, and nurse aide competency evaluation programs, offered on or after end of 90-day period beginning on Dec. 19, 1989, but not to affect competency evaluations conducted under programs offered before end of that period, see section 6901(b)(6) of Pub. L. 101–239, set out as a note under section 1396l–3 of this title.


**Effective Date of 1988 Amendments**

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 609(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 303(a)(2) of Pub. L. 100–360 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Sept. 30, 1989, without regard to whether or not final regulations to carry out such amendment has been promulgated by such date, see section 303(c)(1)(A), (5) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(h)(2)(A)–(D), (F)–(K), (L)(1), (3)(A), (B), (C)(1), (III), (D), (5), (6)(A), (B), (7), and (8)(A), (B) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA Effective Date note under section 196 of Title I, General Provisions.

**Effective Date**

Section 4214 of title IV of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(l)(10), July 1, 1988, 102 Stat. 806, provided that: "(a) New Requirements and Survey and Certification Process.—Except as otherwise specifically provided in section 1919 of the Social Security Act [this section], the amendments made by sections 1232a–7B, 1396a, 1396b, 1396d, 1396j, 1396l, 1396n, 1396o, 1396p, 1396r, and 1396v of this title, redesignating section 1396r of this title as section 1396v–3 of this title, and amending provisions set out as a note under section 1396v–3 of this title and 4212 [amending sections 1396cc, 1396b, 1396v, and 1396r of this title] (relating to nursing facility requirements and survey and certification requirements) shall apply to nursing facility services furnished on or after October 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date, except that section 1902(a)(28)(B) of the Social Security Act [section 1396a(a)(28)(B) of this title] (as amended by section 4211(b) of this Act), relating to requiring State medical assistance plans to specify the services included in nursing facility services, shall apply to calendar quarters beginning more than 6 months after the date of the enactment of this Act [Dec. 22, 1987], without regard to whether regulations to implement such section are promulgated by such date.

"(b) Enforcement.—(1) Except as otherwise specifically provided in section 1919 of the Social Security Act [this section], the amendments made by section 4211 of this Act (amending this section and sections 1396a and 1396b of this title) apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after the date of the enactment of this Act [Dec. 22, 1987], without regard to whether regulations to implement such amendments are promulgated by such date.

"(2) In applying the amendments made by this part [part 2 of subtitle C (§§4211–4218) of title IV of Pub. L. 100–203, see Tables for classification] for services furnished before October 1, 1990:

"(A) any reference to a nursing facility is deemed a reference to a skilled nursing facility or intermediate care facility (other than an intermediate care facility for the mentally retarded), and

"(B) with respect to such a skilled nursing facility or intermediate care facility, any reference to a requirement of subsection (b), (c), or (d) of section 1919 of the Social Security Act [subsec. (b), (c), or (d) of this section], is deemed a reference to the provisions of section 1861(j) or section 1905(c), respectively, of the Social Security Act [section 1395a(j) or 1396d(c) of this title].

"(c) Waiver of Paperwork Reduction.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this part and implementing the amendments made by this part."
Section 4801(b)(1) of Pub. L. 101–508 provided that: "The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 or section 1919(e)(7)(D) of the Social Security Act [section 1396c of this title and subsection (e)(7)(D) of this section] on the basis of the State's failure to meet the requirement of section 1919(e)(7)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing minimum criteria under section 1919(f)(8)(A) of such Act. If the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.""
qualified entity, as defined in section 1396r–1a of this title.

The term “qualified provider” also includes a provider with—

(c) Duties of State agency, qualified providers, and presumptively eligible pregnant women

(1) The State agency shall provide qualified providers with—

(A) such forms as are necessary for a pregnant woman to make application for medical assistance under the State plan, and

(B) information on how to assist such women in completing and filing such forms.

(2) A qualified provider that determines under subsection (b)(1)(A) of this section that a pregnant woman is presumptively eligible for medical assistance under a State plan shall—

(A) notify the State agency of the determination within 5 working days after the date on which determination is made, and

(B) inform the woman at the time the determination is made.

(3) A pregnant woman who is determined by a qualified provider to be presumptively eligible for medical assistance under a State plan shall make application for medical assistance under such plan by not later than the last day of the month following the month during which the determination is made.

(d) Ambulatory prenatal care as medical assistance

Notwithstanding any other provision of this subchapter, ambulatory prenatal care that—

(1) is furnished to a pregnant woman—

(A) during a presumptive eligibility period, and

(B) by a provider that is eligible for payments under the State plan; and

(2) is included in the care and services covered by a State plan;

shall be treated as medical assistance provided by such plan for purposes of section 1396b of this title.

(e) Option to provide presumptive eligibility

If the State has elected the option to provide a presumptive eligibility period under this section or section 1396r–1a of this title, the State may elect to provide a presumptive eligibility period (as defined in subsection (b)(1)) for individuals who are eligible for medical assistance under clause (i)(VIII) or clause (ii)(XX) of subsection (a)(10)(A) of section 1396a–1 of this title in the same manner as the State provides for such a period under this section or section 1396r–1a of this title, subject to such guidance as the Secretary shall establish.


AMENDMENT OF SUBSECTION (e)


REFERENCES IN TEXT


The Indian Self-Determination Act (Public Law 93–638), referred to in subsec. (b)(2)(D)(iv), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, which is classified principally to Part A (§450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 1920 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS


So in original. Probably means subsection (a)(10)(A) of section 1396a of this title.
Amendment by Pub. L. 111–3 effective Apr. 1, 2009, and applicable to child health assistance and medical assistance provided on or after that date, with certain exceptions, see section 3 of Pub. L. 111–3, set out as an Effective Date note under section 1396d of this title.

**Effective Date of 1990 Amendment**

Amendment by section 608(e) of Pub. L. 100–485, § 411(k)(16)(B), as redesignated by Pub. L. 100–360, § 411(k)(16)(A), set out as a note under section 1396d of this title.

**Effective Date of 1988 Amendments**

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

**Section applicable to ambulatory prenatal care furnished in calendar quarters beginning on or after Apr. 1, 1987, without regard to whether or not final regulations to carry out such section have been promulgated, see section 9407(d) of Pub. L. 99–509, set out as an Effective Date of 1988 Amendment note under section 1396a of this title.**

§ 1396r–1a. Presumptive eligibility for children

(a) In general

A State plan approved under section 1396a of this title may provide for making medical assistance with respect to health care items and services covered under the State plan available to a child during a presumptive eligibility period.

(b) Definitions; regulations

For purposes of this section:

(1) The term “child” means an individual under 19 years of age.

(2) The term “presumptive eligibility period” means, with respect to a child, the period that—

(A) begins with the date on which a qualified entity determines, on the basis of preliminary information, that the family income of the child does not exceed the applicable income level of eligibility under the State plan, and

(B) ends with (and includes) the earlier of—

(i) the day on which a determination is made with respect to the eligibility of the child for medical assistance under the State plan, or

(ii) in the case of a child on whose behalf an application is not filed by the last day of the month following the month during which the entity makes the determination referred to in subparagraph (A), such last day.

(3) Subject to subparagraph (B), the term “qualified entity” means any entity that—

(I) is eligible for payments under a State plan approved under this subchapter and provides items and services described in subsection (a) of this section, (II) is authorized to determine eligibility of a child to participate in a Head Start program under the Head Start Act (42 U.S.C. 9831 et seq.), eligibility of a child to receive child care services for which financial assistance is provided under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9838 et seq.), eligibility of an infant or child to receive assistance under the special supplemental nutrition program for women, infants, and children (WIC) under section 1786 of this title; eligibility of a child for medical as-

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So in original. A comma probably should appear after “title”.
assistance under the State plan under this subchapter, or eligibility of a child for child health assistance under the program funded under subchapter XXI of this chapter, (III) is an elementary school or secondary school, as such terms are defined in section 2001 of title 20, an elementary or secondary school operated or supported by the Bureau of Indian Affairs, a State or tribal child support enforcement agency, an organization that is providing emergency food and shelter under a grant under the Stewart B. McKinney Homeless Assistance Act, or a State or tribal office or entity involved in enrollment in the program under this subchapter, under part A of subchapter IV of this chapter, under subchapter XXI of this chapter, or that determines eligibility for any assistance or benefits provided under any program of public or assisted housing that receives Federal funds, including the program under section 8 [42 U.S.C. 1437f] or any other section of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) or under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.), or (IV) any other entity the State so deems, as approved by the Secretary; and
(ii) is determined by the State agency to be capable of making determinations of the type described in paragraph (2).

(B) The Secretary may issue regulations further limiting those entities that may become qualified entities in order to prevent fraud and abuse and for other reasons.

(C) Nothing in this section shall be construed as preventing a State from limiting the classes of entities that may become qualified entities, consistent with any limitations imposed under subparagraph (B).

(c) Application for medical assistance; procedure upon determination of presumptive eligibility

(1) The State agency shall provide qualified entities with—
(A) such forms as are necessary for an application to be made on behalf of a child for medical assistance under the State plan, and
(B) information on how to assist parents, guardians, and other persons in completing and filing such forms.

(2) A qualified entity that determines under subsection (b)(2) of this section that a child is presumptively eligible for medical assistance under a State plan shall—
(A) notify the State agency of the determination within 5 working days after the date on which determination is made, and
(B) inform the parent or custodian of the child at the time the determination is made that an application for medical assistance under the State plan is required to be made no later than the last day of the month following the month during which the determination is made.

(3) In the case of a child who is determined by a qualified entity to be presumptively eligible for medical assistance under a State plan, the parent, guardian, or other person shall make application on behalf of the child for medical assistance under such plan by not later than the last day of the month following the month during which the determination is made, which application may be the application used for the receipt of medical assistance by individuals described in section 1396a(l)(1) of this title.

(d) Treatment of medical assistance

Notwithstanding any other provision of this subchapter, medical assistance for items and services described in subsection (a) of this section that—
(1) are furnished to a child—
(A) during a presumptive eligibility period,
(B) by an entity that is eligible for payments under the State plan; and
(2) are included in the care and services covered by a State plan;
shall be treated as medical assistance provided by such plan for purposes of section 1396b of this title.


REFERENCES IN TEXT


The Head Start Act, referred to in subsec. (b)(3)(A)(i)(II), is subchapter B (§§635–657) of chapter 8 of title 20, Education.

The United States Housing Act of 1937, referred to in subsec. (b)(3)(A)(i)(III), is act Aug. 27, 1937, ch. 853, 50 Stat. 716, as amended, which is classified principally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.


See References in Text note below.

§ 1396a–1a  TITLE 42—THE PUBLIC HEALTH AND WELFARE  Page 3524
chapter 43 (§ 4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

AMENDMENTS


Pub. L. 106-554, § 1(a)(6) [title VII, § 708(a)(2)], inserted before semicolon “eligibility of a child for medical assistance under the State plan under this subchapter, or eligibility of a child for child health assistance under the program funded under subchapter XXI of this chapter, (III) is an elementary school or secondary school, as such terms are defined in section 8801 of title 20, an elementary or secondary school operated or supported by the Bureau of Indian Affairs, a State or tribal child support enforcement agency, an organization that is providing emergency food and shelter under a grant under the Stewart B. McKinney Homeless Assistance Act, or a State or tribal office or entity involved in enrollment in the program under this subchapter, under part A of subchapter IV of this chapter, under subchapter XXI of this chapter, or that determines eligibility for any assistance or benefits provided under any program of public or assisted housing that receives Federal funds, including the program under section 8 or any other section of the United States Housing Act of 1937 (25 U.S.C. 4101 et seq.) or under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.), or (IV) any other entity the State so deems, as approved by the Secretary”.

Pub. L. 106-554, § 1(a)(6) [title VII, § 708(a)(1)], substituted “(II)” for “or (II)”.


§ 1396r–1b. Presumptive eligibility for certain breast or cervical cancer patients

(a) State option

A State plan approved under section 1396a of this title may provide for making medical assistance available to an individual described in section 1396a(aa) of this title (relating to certain breast or cervical cancer patients) during a presumptive eligibility period.

(b) Definitions

For purposes of this section:

(1) Presumptive eligibility period

The term “presumptive eligibility period” means, with respect to an individual described in subsection (a) of this section, the period that—

(A) begins with the date on which a qualified entity determines, on the basis of preliminary information, that the individual is described in section 1396a(aa) of this title; and

(B) ends with (and includes) the earlier of—

(i) the day on which a determination is made with respect to the eligibility of such individual for services under the State plan; or

(ii) in the case of such an individual who does not file an application by the last day of the month following the month during which the entity makes the determination referred to in subparagraph (A), such last day.

(2) Qualified entity

(A) In general

Subject to subparagraph (B), the term “qualified entity” means any entity that—

(i) is eligible for payments under a State plan approved under this subchapter; and

(ii) is determined by the State agency to be capable of making determinations of the type described in paragraph (1)(A).

(B) Regulations

The Secretary may issue regulations further limiting those entities that may become qualified entities in order to prevent fraud and abuse and for other reasons.

(c) Administration

(1) In general

The State agency shall provide qualified entities with—

(A) such forms as are necessary for an application to be made by an individual described in subsection (a) of this section for medical assistance under the State plan; and

(B) information on how to assist such individuals in completing and filing such forms.

(2) Notification requirements

A qualified entity that determines under subsection (b)(1)(A) of this section that an individual described in subsection (a) of this section is presumptively eligible for medical assistance under a State plan shall—

(A) notify the State agency of the determination within 5 working days after the date on which determination is made; and

(B) inform such individual at the time the determination is made that an application for medical assistance under the State plan is required to be made by not later than the last day of the month following the month during which the determination is made.

(3) Application for medical assistance

In the case of an individual described in subsection (a) of this section who is determined by a qualified entity to be presumptively eligible for medical assistance under a State plan—

(A) notify the State agency of the determination within 5 working days after the date on which determination is made; and

(B) inform such individual at the time the determination is made that an application for medical assistance under the State plan is required to be made by not later than the last day of the month following the month during which the determination is made.

(d) Payment

Notwithstanding any other provision of this subchapter, medical assistance that—

(1) is furnished to an individual described in subsection (a) of this section—

(A) during a presumptive eligibility period; and

(B) by a entity that is eligible for payments under the State plan; and

1So in original. Probably should be “an”.

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(2) is included in the care and services covered by the State plan.

shall be treated as medical assistance provided by such plan for purposes of clause (4) of the first sentence of section 1396d(b) of this title.


EFFECTIVE DATE

Section applicable to medical assistance for items and services furnished on or after Oct. 1, 2000, without regard to whether final regulations to carry out such amendments have been promulgated by such date, see section 2(d) of Pub. L. 106–354, set out as an Effective Date of 2000 Amendment note under section 1396a of this title.

§ 1396r–1c. Presumptive eligibility for family planning services

(a) State option

State\(^1\) plan approved under section 1396a of this title may provide for making medical assistance available to an individual described in section 1396a(ii) of this title (relating to individuals who meet certain income eligibility standard) during a presumptive eligibility period. In the case of an individual described in section 1396a(ii) of this title, such medical assistance shall be limited to family planning services and supplies described in 1396d(a)(4)(C)\(^2\) of this title and, at the State’s option, medical diagnosis and treatment services that are provided in conjunction with a family planning service in a family planning setting.

(b) Definitions

For purposes of this section:

(1) Presumptive eligibility period

The term “presumptive eligibility period” means, with respect to an individual described in subsection (a), the period that—

(A) begins with the date on which a qualified entity determines, on the basis of preliminary information, that the individual is described in section 1396a(ii) of this title; and

(B) ends with (and includes) the earlier of—

(i) the day on which a determination is made with respect to the eligibility of such individual for services under the State plan; or

(ii) in the case of such an individual who does not file an application by the last day of the month following the month during which the determination is referred to in subparagraph (A), such last day.

(2) Qualified entity

(A) In general

Subject to subparagraph (B), the term “qualified entity” means any entity that—

(i) is eligible for payments under a State plan approved under this subchapter; and

(ii) is determined by the State agency to be capable of making determinations of the type described in paragraph (1)(A).

(B) Rule of construction

Nothing in this paragraph shall be construed as preventing a State from limiting the classes of entities that may become qualified entities in order to prevent fraud and abuse.

(c) Administration

(1) In general

The State agency shall provide qualified entities with—

(A) such forms as are necessary for an application to be made by an individual described in subsection (a) for medical assistance under a State plan; and

(B) information on how to assist such individuals in completing and filing such forms.

(2) Notification requirements

A qualified entity that determines under subsection (b)(1)(A) that an individual described in subsection (a) is presumptively eligible for medical assistance under a State plan shall—

(A) notify the State agency of the determination within 5 working days after the date on which determination is made; and

(B) inform such individual at the time the determination is made that an application for medical assistance is required to be made by not later than the last day of the month following the month during which the determination is made.

(3) Application for medical assistance

In the case of an individual described in subsection (a) who is determined by a qualified entity to be presumptively eligible for medical assistance under a State plan, the individual shall apply for medical assistance by not later than the last day of the month following the month during which the determination is made.

(d) Payment

Notwithstanding any other provision of law, medical assistance that—

(1) is furnished to an individual described in subsection (a)—

(A) during a presumptive eligibility period; and

(B) by a\(^3\) entity that is eligible for payments under the State plan; and

(2) is included in the care and services covered by the State plan,

shall be treated as medical assistance provided by such plan for purposes of clause (4) of the first sentence of section 1396d(b) of this title.


EFFECTIVE DATE

Section effective Mar. 23, 2010, and applicable to items and services furnished on or after such date, see section 2303(d) of Pub. L. 111–148, set out as an Effective and Termination Dates of 2010 Amendment note under section 1396a of this title.

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\(^1\) So in original. Probably should be preceded by “A”.

\(^2\) So in original. Probably should be preceded by “section”.

\(^3\) So in original. Probably should be “an”. 
§ 1396r–2. Information concerning sanctions taken by State licensing authorities against health care practitioners and providers

(a) Information reporting requirement

The requirement referred to in section 1396a(a)(49) of this title is that the State must provide for the following:

(1) Information reporting system

(A) Licensing or certification actions

The State must have in effect a system of reporting the following information with respect to formal proceedings (as defined by the Secretary in regulations) concluded against a health care practitioner or entity by a State licensing or certification agency:

(i) Any adverse action taken by such licensing authority as a result of the proceeding, including any revocation or suspension of a license (and the length of any such suspension), reprimand, censure, or probation.

(ii) Any dismissal or closure of the proceedings by reason of the practitioner or entity surrendering the license or leaving the State or jurisdiction.

(iii) Any other loss of license or the right to apply for, or renew, a license by the practitioner or entity, whether by operation of law, voluntary surrender, non-renewability, or otherwise.

(iv) Any negative action or finding by such authority, organization, or entity regarding the practitioner or entity.

(B) Other final adverse actions

The State must have in effect a system of reporting information with respect to any final adverse action (not including settlements in which no findings of liability have been made) taken against a health care provider, supplier, or practitioner by a State law or fraud enforcement agency.

(2) Access to documents

The State must provide the Secretary (or an entity designated by the Secretary) with access to such documents of a State licensing or certification agency or State law or fraud enforcement agency as the Secretary determines to be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations described in such paragraph for the purpose of carrying out this chapter.

(b) Form of information

The information described in subsection (a)(1) of this section shall be provided to the Secretary (or to an appropriate private or public agency, under suitable arrangements made by the Secretary with respect to receipt, storage, protection of confidentiality, and dissemination of information) in such a form and manner as the Secretary determines to be appropriate in order to provide for activities of the Secretary under this chapter and in order to provide, directly or through suitable arrangements made by the Secretary, information—

(1) to agencies administering Federal health care programs, including private entities administering such programs under contract,

(2) to State licensing or certification agencies and Federal agencies responsible for the licensing and certification of health care providers, suppliers, and licensed health care practitioners;

(3) to State agencies administering or supervising the administration of State health care programs (as defined in section 1320a–7(h) of this title),

(4) to utilization and quality control peer review organizations described in part B of subchapter XI of this chapter and to appropriate entities with contracts under section 1320c–3(a)(4)(C) of this title with respect to eligible organizations reviewed under the contracts, but only with respect to information provided pursuant to subsection (a)(1)(A),

(5) to State law or fraud enforcement agencies,

(6) to hospitals and other health care entities (as defined in section 431 of the Health Care Quality Improvement Act of 1986 [42 U.S.C. 11151]), with respect to physicians or other licensed health care practitioners that have entered (or may be entering) into an employment or affiliation relationship with, or have applied for clinical privileges or appointments to the medical staff of, such hospitals or other health care entities (and such information shall be deemed to be disclosed pursuant to section 427 [42 U.S.C. 11137] of, and be subject to the provisions of, that Act [42 U.S.C. 11101 et seq.]), but only with respect to information provided pursuant to subsection (a)(1)(A),

(7) to health plans (as defined in section 1320a–7(c) of this title),

(8) to the Attorney General and such other law enforcement officials as the Secretary deems appropriate, and

(9) upon request, to the Comptroller General, in order for such authorities to determine the fitness of individuals to provide health care services, to protect the health and safety of individuals receiving health care through such programs, and to protect the fiscal integrity of such programs.

(c) Confidentiality of information provided

The Secretary shall provide for suitable safeguards for the confidentiality of the information furnished under subsection (a) of this section. Nothing in this subsection shall prevent the disclosure of such information by a party which is otherwise authorized, under applicable State law, to make such disclosure.

(d) Disclosure and correction of information

(1) Disclosure

With respect to information reported pursuant to subsection (a)(1), the Secretary shall—

(A) provide for disclosure of the information, upon request, to the health care practitioner who, or the entity that, is the subject of the information reported; and

(B) establish procedures for the case where the health care practitioner or entity dis-
putes the accuracy of the information reported.

(2) Corrections

Each State licensing or certification agency and State law or fraud enforcement agency shall report corrections of information already reported about any formal proceeding or final adverse action described in subsection (a), in such form and manner as the Secretary prescribes by regulation.

(e) Fees for disclosure

The Secretary may establish or approve reasonable fees for the disclosure of information under this section. The amount of such a fee may not exceed the costs of processing the requests for disclosure and of providing such information. Such fees shall be available to the Secretary to cover such costs.

(f) Protection from liability for reporting

No person or entity, including any agency designated by the Secretary in subsection (b), shall be held liable in any civil action with respect to any reporting of information as required under this section, without knowledge of the falsity of the information contained in the report.

(g) References

For purposes of this section:

(1) State licensing or certification agency

The term “State licensing or certification agency” includes any authority of a State (or of a political subdivision thereof) responsible for the licensing of health care practitioners (or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners) or entities.

(2) State law or fraud enforcement agency

The term “State law or fraud enforcement agency” includes—

(A) a State law enforcement agency; and

(B) a State Medicaid fraud control unit (as defined in section 1396b(q) of this title).

(3) Final adverse action

(A) In general

Subject to subparagraph (B), the term “final adverse action” includes—

(i) civil judgments against a health care provider, supplier, or practitioner in State court related to the delivery of a health care item or service;

(ii) State criminal convictions related to the delivery of a health care item or service;

(iii) exclusion from participation in State health care programs (as defined in section 1320d-1) or of a political subdivision thereof;

(iv) any licensing or certification action described in subsection (a)(1)(A) taken against a supplier by a State licensing or certification agency; and

(v) any other adjudicated actions or decisions that the Secretary shall establish by regulation.

(B) Exception

Such term does not include any action with respect to a malpractice claim.

(h) Appropriate coordination

In implementing this section, the Secretary shall provide for the maximum appropriate coordination with part B of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11131 et seq.) and section 1320a-7e of this title.


REFERENCES IN TEXT


The Health Care Quality Improvement Act of 1986 and that Act, referred to in subsects. (b)(6) and (h), are title IV of Pub. L. 99–660, Nov. 14, 1986, 100 Stat. 3784, which is classified generally to chapter 117 (§11101 et seq.) of this title. Part B of the Act is classified generally to subchapter II (§11131 et seq.) of chapter 117 of this title.

For complete classification of this Act to the Code, see Short Title note set out under section 11101 of this title and Tables.

PRIOR PROVISIONS

A prior section 1921 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–148, §6403(b)(1)(A)(ii), redesignated subpars. (A) to (D) as cls. (i) to (iv), respectively, of subpar. (A).

Pub. L. 111–148, §6403(b)(1)(A)(ii), which directed adding subpar. (A) and striking out “The State” and all that follows through the “semicolon”, was executed by adding subpar. (A) and striking out “The State must have in effect a system of reporting the following information with respect to formal proceedings (as defined by the Secretary in regulations) concluded against a health care practitioner or entity by any authority of the State (or of a political subdivision thereof) responsible for the licensing of health care practitioners (or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners) or entities”:’, to reflect the probable intent of Congress.

Subsec. (a)(1)(A)(ii). Pub. L. 111–148, §6403(b)(1)(A)(ii), substituted “license or the right to apply for, or renew, a license by” for “the license of” and inserted “nonrenewability,” after “voluntary surrender,”.


Subsec. (a)(2). Pub. L. 111–148, §6403(b)(1)(A)(ii), substituted “a State licensing or certification agency or State law or fraud enforcement agency” for “the authority described in paragraph (1)”.

Subsec. (b)(2). Pub. L. 111–148, §6403(b)(2)(A), added par. (2) and struck out former par. (2) which read as follows: “to licensing authorities described in subsection (a)(1) of this section,”.

Subsec. (b)(4). Pub. L. 111–148, §6403(b)(2)(B), inserted “, but only with respect to information provided pursuant to subsection (a)(1)(A)” before comma at end.

Subsec. (b)(5). Pub. L. 111–148, §6403(b)(2)(C), added par. (5) and struck out former par. (5) which read as follows: “(to State Medicaid fraud control units (as defined in section 1396b(q) of this title),”.

Subsec. (b)(6). Pub. L. 111–148, §6403(b)(2)(B), inserted “, but only with respect to information provided pursuant to subsection (a)(1)(A)” before comma at end.

Subsec. (b)(7). Pub. L. 111–148, §6403(b)(2)(D), (E), added par. (7) and redesignated former pars. (7) and (8) as (8) and (9), respectively.
Subsecs. (d) to (g), Pub. L. 111–148, § 6403(b)(3), added subsecs. (d) to (g). Former subsec. (d) redesignated (h).

Subsec. (h), Pub. L. 111–148, § 6403(b)(4), redesignated subsec. (d) as (h) and substituted “in implementing this section, the Secretary shall provide for the maximum appropriate coordination with part B of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 1320a–7e and section 1320a–7e of this title).” for “The Secretary shall provide for the maximum appropriate coordination in the implementation of subsection (a) of this section and section 422 of the Health Care Quality Improvement Act of 1986.”

1990—Subsec. (a)(1). Pub. L. 101–508, § 4752(f)(1)(A), inserted “or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners” after “health care practitioners” in introductory provisions.


Effective Date of 2010 Amendment
Amendment by Pub. L. 111–148 effective on the first day after the final day of the transition period defined in section 6403(d)(5) of Pub. L. 111–148, see section 6403(d)(6) of Pub. L. 111–148, set out as a Transition Process; Regulations; Effective Date of 2010 Amendment note under section 1320a–7e of this title.

Effective Date of 1990 Amendment
Section 4752(f)(2) of Pub. L. 101–508 provided that: “The amendments made by paragraph (1) [amending this section] shall apply to State information reporting systems as of January 1, 1992, without regard to whether or not the Secretary of Health and Human Services has promulgated any regulations to carry out such amendments by such date.”

Effective Date
Section applicable, with certain exceptions, to payments under subchapter XIX of this chapter for calendar quarters beginning more than thirty days after Aug. 18, 1987, without regard to whether or not final regulations to carry out this section have been published by that date, see section 15(c)(1), (2) of Pub. L. 100–38 set out as an Effective Date of 1987 Amendment note under section 1320a–7 of this title.

§ 1396r–3. Correction and reduction plans for intermediate care facilities for mentally retarded
(a) Written plans to remedy substantial deficiencies; time for submission
If the Secretary finds that an intermediate care facility for the mentally retarded has substantial deficiencies which do not pose an immediate threat to the health and safety of residents (including failure to provide active treatment), the State may elect, subject to the limitations in this section, to—

(1) submit, within the number of days specified by the Secretary in regulations which apply to submission of compliance plans with respect to deficiencies of such type, a written plan of correction which details the extent of the facility’s current compliance with the standards promulgated by the Secretary, including all deficiencies identified during a validation survey, and which provides for a timetable for completion of necessary steps to correct all staffing deficiencies within 6 months, and a timetable for rectifying all physical plant deficiencies within 6 months; or

(2) submit, within a time period consisting of the number of days specified for submissions under paragraph (1) plus 35 days, a written plan for permanently reducing the number of certified beds, within a maximum of 36 months, in order to permit any noncomplying buildings (or distinct parts thereof) to be vacated and any staffing deficiencies to be corrected (hereinafter in this section referred to as a “reduction plan”).

(b) Conditions for approval of reduction plans
As conditions of approval of any reduction plan submitted pursuant to subsection (a)(2) of this section, the State must—

(1) provide for a hearing to be held at the affected facility at least 35 days prior to submission of the reduction plan, with reasonable notice thereof to the staff and residents of the facility, responsible members of the residents’ families, and the general public;

(2) demonstrate that the State has successfully provided home and community services similar to the services proposed to be provided under the reduction plan for similar individuals eligible for medical assistance; and

(3) provide assurances that the requirements of subsection (c) of this section shall be met with respect to the reduction plan.

(c) Contents of reduction plan
The reduction plan must—

(1) identify the number and service needs of existing facility residents to be provided home or community services and the timetable for providing such services, in 6 month intervals, within the 36-month period;

(2) describe the methods to be used to select such residents for home and community services and to develop the alternative home and community services to meet their needs effectively;

(3) describe the necessary safeguards that will be applied to protect the health and welfare of the former residents of the facility who are to receive home or community services, including adequate standards for consumer and provider participation and assurances that applicable State licensure and applicable State and Federal certification requirements will be met in providing such home or community services;

(4) provide that residents of the affected facility who are eligible for medical assistance while in the facility shall, at their option, be placed in another setting (or another part of the affected facility) so as to retain their eligibility for medical assistance;

(5) specify the actions which will be taken to protect the health and safety of, and to provide active treatment for, the residents who remain in the affected facility while the reduction plan is in effect;

(6) provide that the ratio of qualified staff to residents at the affected facility (or the part thereof) which is subject to the reduction plan will be the higher of—

(A) the ratio which the Secretary determines is necessary in order to assure the health and safety of the residents of such facility (or part thereof); or

(B) the ratio which was in effect at the time that the finding of substantial deficiencies (referred to in subsection (a) of this section) was made; and
(7) provide for the protection of the interests of employees affected by actions under the reduction plan, including—
   (A) arrangements to preserve employee rights and benefits;
   (B) training and retraining of such employees where necessary;
   (C) redeployment of such employees to community settings under the reduction plan; and
   (D) making maximum efforts to guarantee the employment of such employees (but this requirement shall not be construed to guarantee the employment of any employee).

(d) Notice and comment; approval of more than 15 reduction plans in any fiscal year; corrections costing $2,000,000 or more

(1) The Secretary must provide for a period of not less than 30 days after the submission of a reduction plan by a State, during which comments on such reduction plan may be submitted to the Secretary, before the Secretary approves or disapproves such reduction plan.

(2) If the Secretary approves more than 15 reduction plans under this section in any fiscal year, any reduction plans approved in addition to the first 15 such plans approved, must be for a facility (or part thereof) for which the costs of correcting the substantial deficiencies (referred to in subsection (a) of this section) are $2,000,000 or greater (as demonstrated by the State to the satisfaction of the Secretary).

(e) Termination of provider agreements; disallowance of percentage amounts for purposes of Federal financial participation

(1) If the Secretary, at the conclusion of the 6-month plan of correction described in subsection (a)(1) of this section, determines that the State has substantially failed to correct the deficiencies described in subsection (a) of this section, the Secretary may terminate the facility’s provider agreement in accordance with the provisions of section 1396i(b) of this title.

(2) In the case of a reduction plan described in subsection (a)(2) of this section, if the Secretary determines, at the conclusion of the initial 6-month period or any 6-month interval thereafter, that the State has substantially failed to meet the requirements of subsection (c) of this section, the Secretary shall—
   (A) terminate the facility’s provider agreement in accordance with the provisions of section 1396i(b) of this title; or
   (B) if the State has failed to meet such requirements despite good faith efforts, disallow, for purposes of Federal financial participation, an amount equal to 5 percent of the cost of care for all eligible individuals in the facility for each month for which the State fails to meet such requirements.

(f) Applicability of section limited to plans approved by January 1, 1990

The provisions of this section shall apply only to plans of correction and reduction plans approved by the Secretary by January 1, 1990.


PRIOR PROVISIONS

A prior section 1922 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS


Subsec. (c)(5). Pub. L. 100–647, §8433(a)(2), inserted “, and to provide active treatment for,” after “safety of”.

Subsec. (e)(1), (2)(A). Pub. L. 100–360, §411(l)(6)(E), substituted “1396e(b)” for “1396e(c)”.

Subsec. (f). Pub. L. 100–647, §8433(a)(3), substituted “by January 1, 1990” for “within 3 years after the effective date of final regulations implementing this section”.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8433(b) of Pub. L. 100–647 provided that: “The amendments made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Nov. 10, 1988], and shall apply to any proceeding where there has not yet been a final determination by the Secretary (as defined for purposes of judicial review) as of the date of the enactment of this Act. . . .

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section 9516(b) of Pub. L. 99–272 provided that:

“(1) The amendment made by this section [enacting this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].

“(2) The Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to section 1919 of the Social Security Act [this section] within 60 days after the date of the enactment of this Act, and shall allow a period of 30 days for comment thereon prior to promulgating final regulations implementing such section.’’.

REGULATIONS

Section 4217 of Pub. L. 100–203 provided that:

“(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act [Dec. 22, 1987], the Secretary of Health and Human Services shall promulgate final regulations to implement the amendments made by section 9516 of the Consolidated Omnibus Budget Reconciliation Act of 1985 [enacting this section].

“(b) The regulations promulgated under paragraph (1) shall be effective as if promulgated on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Apr. 7, 1986].’’.

REPORT TO CONGRESS ON IMPLEMENTATION AND RESULTS OF THIS SECTION

Section 9516(c) of Pub. L. 99–272, as amended by Pub. L. 100–203, title IV, §4211(l), Dec. 22, 1987, 101 Stat. 1330–207, directed Secretary of Health and Human Services to submit a report to Congress on implementation and results of this section, such report to be submitted not later than 30 months after the effective date of final regulations promulgated to implement this section.
§ 1396r-4. Adjustment in payment for inpatient hospital services furnished by disproportionate share hospitals

(a) Implementation of requirement

(1) A State plan under this subchapter shall not be considered to meet the requirement of section 1396a(a)(13)(A)(iv) of this title (insofar as it requires payments to hospitals to take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs), as of July 1, 1988, unless the State has submitted to the Secretary, by not later than such date, an amendment to such plan that—

(A) specifically defines the hospitals so described (and includes in such definition any disproportionate share hospital described in subsection (b)(1) of this section which meets the requirements of subsection (d) of this section), and

(B) provides, effective for inpatient hospital services provided on or after July 1, 1988, for an appropriate increase in the rate or amount of payment for such services provided by such hospitals, consistent with subsection (c) of this section.

(2)(A) In order to be considered to have met such requirement of section 1396a(a)(13)(A) of this title as of July 1, 1989, the State must submit to the Secretary by not later than April 1, 1989, the State plan amendment described in paragraph (1), consistent with subsection (c) of this section, effective for inpatient hospital services provided on or after July 1, 1989.

(B) In order to be considered to have met such requirement of section 1396a(a)(13)(A) of this title as of July 1, 1990, the State must submit to the Secretary by not later than April 1, 1990, the State plan amendment described in paragraph (1), consistent with subsections (c) and (f) of this section, effective for inpatient hospital services provided on or after July 1, 1990.

(C) If a State plan under this subchapter provides for payments for inpatient hospital services on a prospective basis (whether per diem, per case, or otherwise), in order for the plan to be considered to have met such requirement of section 1396a(a)(13)(A) of this title as of July 1, 1989, the State must submit to the Secretary by not later than April 1, 1989, a hospital which meets the requirements of disproportionate share hospital if—

(A) the hospital's medicaid inpatient utilization rate (as defined in paragraph (2)) is at least one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the State; or

(B) the hospital's low-income utilization rate (as defined in paragraph (2)) exceeds 25 percent.

(2) For purposes of paragraph (1)(A), the term "medicaid inpatient utilization rate" means, for a hospital, a fraction (expressed as a percentage), the numerator of which is the hospital's number of inpatient days attributable to patients who (for such days) were eligible for medical assistance under a State plan approved under this subchapter in a period (regardless of whether such patients receive medical assistance on a fee-for-service basis or through a managed care entity), and the denominator of which is the total number of the hospital's inpatient days in that period. In this paragraph, the term "inpatient day" includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.

(3) For purposes of paragraph (1)(B), the term "low-income utilization rate" means, for a hospital, the sum of—

(A) the fraction (expressed as a percentage)

(i) the numerator of which is the sum (for a period) of (I) the total revenues paid the hospital for patient services under a State plan under this subchapter (regardless of whether the services were furnished on a fee-for-service basis or through a managed care entity) and (II) the amount of the cash subsidies for patient services received directly from State and local governments, and

(ii) the denominator of which is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the period; and
(B) a fraction (expressed as a percentage)—
   (i) the numerator of which is the total amount of the hospital's charges for inpatient hospital services which are attributable to charity care in a period, less the portion of any cash subsidies described in clause (i)(II) of subparagraph (A) in the period reasonably attributable to inpatient hospital services, and
   (ii) the denominator of which is the total amount of the hospital's charges for inpatient hospital services in the hospital in the period.

The numerator under subparagraph (B)(i) shall not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under a State plan approved under this subchapter).

(4) The Secretary may not restrict a State's authority to designate hospitals as disproportionate share hospitals under this section. The previous sentence shall not be construed to affect the authority of the Secretary to reduce payments pursuant to section 1396b(w)(1)(A)(iii) of this title if the Secretary determines that, as a result of such designations, there is in effect a hold harmless provision described in section 1396b(w)(4) of this title.

(c) Payment adjustment

Subject to subsections (f) and (g) of this section, in order to be consistent with this subsection, a payment adjustment for a disproportionate share hospital must either—

(1) be in an amount equal to at least the product of (A) the amount paid under the State plan to the hospital for operating costs for inpatient hospital services (of the kind described in section 1395ww(a)(4) of this title), and (B) the hospital's disproportionate share adjustment percentage (established under section 1395ww(d)(5)(F)(iv) of this title);

(2) provide for a minimum specified additional payment amount (or increased percentage payment) and (without regard to whether the hospital is described in subparagraph (A) or (B) of subsection (b)(1) of this section) for an increase in such a payment amount (or percentage payment) in proportion to the percentage by which the hospital's medicaid utilization rate (as defined in section 1395ww(d)(5)(F)(vi) of this title) exceeds one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the State or the hospital's low-income utilization rate (as defined in paragraph 1(b)(3) of this section); or

(3) provide for a minimum specified additional payment amount (or increased percentage payment) that varies according to type of hospital under a methodology that—
   (A) applies equally to all hospitals of each type; and
   (B) results in an adjustment for each type of hospital that is reasonably related to the cost, volume, or proportion of services provided to patients eligible for medical assistance under a State plan approved under this subchapter or to low-income patients, except that, for purposes of paragraphs (1)(B) and (2)(A) of subsection (a) of this section, the payment adjustment for a disproportionate share hospital is consistent with this subsection if the appropriate increase in the rate or amount of payment is equal to at least one-third of the increase otherwise applicable under this subsection (in the case of such paragraph (1)(B)) and at least two-thirds of such increase (in the case of such paragraph (2)(A)). In the case of a hospital described in subsection (d)(2)(A)(i) of this section (relating to children's hospitals), in computing the hospital's disproportionate share adjustment percentage for purposes of paragraph (1)(B) of this subsection, the disproportionate share patient percentage (defined in section 1395ww(d)(5)(F)(vi) of this title) shall be computed by substituting for the fraction described in subclause (I) of such section the fraction described in subclause (II) of that section. If a State elects in a State plan amendment under subsection (a) of this section to provide the payment adjustment described in paragraph (2), the State must include in the amendment a detailed description of the specific methodology to be used in determining the specified additional payment amount (or increased percentage payment) to be made to each hospital qualifying for such a payment adjustment and must publish at least annually the name of each hospital qualifying for such a payment adjustment and the amount of such payment adjustment made for each such hospital.

(d) Requirements to qualify as disproportionate share hospital

(1) Except as provided in paragraph (2), no hospital may be defined or deemed as a disproportionate share hospital under a State plan under this subchapter or under subsection (b) of this section unless the hospital has at least 2 obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to individuals who are entitled to medical assistance for such services under such State plan.

(2)(A) Paragraph (1) shall not apply to a hospital—
   (i) the inpatients of which are predominantly individuals under 18 years of age; or
   (ii) which does not offer nonemergency obstetric services to the general population as of December 22, 1987.

(B) In the case of a hospital located in a rural area (as defined for purposes of section 1395ww of this title), in paragraph (1) the term 'obstetrician' includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

(3) No hospital may be defined or deemed as a disproportionate share hospital under a State plan under this subchapter or under subsection (b) or (e) of this section unless the hospital has a medicaid inpatient utilization rate (as defined in subsection (b)(2) of this section) of not less than 1 percent.

(e) Special rule

(1) A State plan shall be considered to meet the requirement of section 1396a(a)(13)(A)(iv) of this title (insofar as it requires payments to
hospitals to take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs) without regard to the requirement of subsection (a) of this section if (A)(i) the plan provided for payment adjustments based on a pooling arrangement involving a majority of the hospitals participating under the plan for disproportionate share hospitals as of January 1, 1984, or (ii) the plan as of January 1, 1987, provided for payment adjustments based on a statewide pooling arrangement involving all acute care hospitals and the arrangement provides for reimbursement of the total amount of uncompensated care provided by each participating hospital, (B) the aggregate amount of the payment adjustments under the plan for such hospitals is not less than the aggregate amount of such adjustments otherwise required to be made under such subsection, and (C) the plan meets the requirements otherwise required to be made under such subsection, and (C) the plan meets the requirement of subsection (d)(3) of this section and such payment adjustments are made consistent with the last sentence of subsection (c) of this section.

(2) In the case of a State that used a health insuring organization before January 1, 1986, to administer a portion of its plan on a statewide basis, beginning on July 1, 1988—

(A) the requirements of subsections (b) and (c) of this section (other than the last sentence of subsection (c) of this section) shall not apply if the aggregate amount of the payment adjustments under the plan for disproportionate share hospitals (as defined under the State plan) is not less than the aggregate amount of payment adjustments otherwise required to be made if such subsections applied,

(B) subsection (d)(2)(B) of this section shall apply to hospitals located in urban areas, as well as in rural areas,

(C) subsection (d)(3) of this section shall apply, and

(D) subsection (g) of this section shall apply.

(f) Limitation on Federal financial participation

(1) In general

Payment under section 1396b(a) of this title shall not be made to a State with respect to any payment adjustment made under this section for hospitals in a State for quarters in a fiscal year in excess of the disproportionate share hospital (as defined under the State plan) is not less than the aggregate amount of payment adjustments otherwise required to be made if such subsections applied,

(B) subsection (d)(2)(B) of this section shall apply to hospitals located in urban areas, as well as in rural areas,

(C) subsection (d)(3) of this section shall apply, and

(D) subsection (g) of this section shall apply.

(2) State DSH allotments for fiscal years 1998 through 2002

Subject to paragraph (4), the DSH allotment for a State for each fiscal year during the period beginning with fiscal year 1998 and ending with fiscal year 2002 is determined in accordance with the following table:

<table>
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<tr>
<th>State or District</th>
<th>DSH Allotment (in millions of dollars)</th>
</tr>
</thead>
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<tr>
<td></td>
<td>FY 98</td>
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<tr>
<td>Arkansas</td>
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(3) State DSH allotments for fiscal year 2003 and thereafter

(2) In general

Except as provided in paragraphs (6) and (7) and subparagraph (E), the DSH allotment for any State for fiscal year 2003 and each succeeding fiscal year is equal to the DSH allotment for the State for the preceding fiscal year under paragraph (2) or this paragraph, increased, subject to subparagraphs (B) and (C) and paragraph (5), by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average), for the previous fiscal year.

(B) Limitation

The DSH allotment for a State shall not be increased under subparagraph (A) for a fiscal year to the extent that such an increase would result in the DSH allotment for the year exceeding the greater of—

(i) the DSH allotment for the previous year, or
(ii) 12 percent of the total amount of expenditures under the State plan for medical assistance during the fiscal year.

(C) Special, temporary increase in allotments on a one-time, non-cumulative basis

The DSH allotment for any State (other than a State with a DSH allotment determined under paragraph (5))—

(i) for fiscal year 2004 is equal to 116 percent of the DSH allotment for the State for fiscal year 2003 under this paragraph, notwithstanding subparagraph (B); and

(ii) for each succeeding fiscal year is equal to the DSH allotment for the State for fiscal year 2004 or, in the case of fiscal years beginning with the fiscal year specified in subparagraph (D) for that State, the DSH allotment for the State for the previous fiscal year increased by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average), for the previous fiscal year.

(D) Fiscal year specified

For purposes of subparagraph (C)(ii), the fiscal year specified in this subparagraph for a State is the first fiscal year for which the Secretary estimates that the DSH allotment for that State will equal (or no longer exceed) the DSH allotment for that State for the previous fiscal year increased by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average), for the previous fiscal year.

(E) Temporary increase in allotments during recession

(i) In general

Subject to clause (ii), the DSH allotment for any State—

(I) for fiscal year 2009 is equal to 102.5 percent of the DSH allotment that would be determined under this paragraph for the State for fiscal year 2009 without application of this subparagraph, notwithstanding subparagraphs (B) and (C);

(II) for fiscal year 2010 is equal to 102.5 percent of the DSH allotment for the State for fiscal year 2009, as determined under subclause (I); and

(III) for each succeeding fiscal year is equal to the DSH allotment for the State under this paragraph determined without applying subclauses (I) and (II).

(ii) Application

Clause (i) shall not apply to a State for a year in the case that the DSH allotment for such State for such year under this paragraph determined without applying clause (i) would grow higher than the DSH allotment specified under clause (i) for the State for such year.

(4) Special rule for fiscal years 2001 and 2002

(A) In general

Notwithstanding paragraph (2), the DSH allotment for any State for—

(i) fiscal year 2001 shall be the DSH allotment determined under paragraph (2) for fiscal year 2000 increased, subject to subparagraph (B) and paragraph (5), by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average) for fiscal year 2001.

(B) Limitation

Subparagraph (B) of paragraph (3) shall apply to subparagraph (A) of this paragraph in the same manner as that subparagraph (B) applies to paragraph (3)(A).

(C) No application to allotments after fiscal year 2002

The DSH allotment for any State for fiscal year 2003 or any succeeding fiscal year shall be determined under paragraph (3) without regard to the DSH allotments determined under subparagraph (A) of this paragraph.

(5) Special rule for low DSH States

(A) For fiscal years 2001 through 2003 for extremely low DSH States

In the case of a State in which the total expenditures under the State plan (including Federal and State shares) for disproportionate share hospital adjustments under this section for fiscal year 1999, as reported to the Administrator of the Health Care Financing Administration as of August 31, 2000, is greater than 0 but less than 1 percent of the State’s total amount of expenditures under the State plan for medical assistance during the fiscal year, the DSH allotment for fiscal year 2001 shall be increased to 1 percent of the State’s total amount of expenditures under such plan for such assistance during such fiscal year. In subsequent fiscal years before fiscal year 2004, such increased allotment is subject to an increase for inflation as provided in paragraph (3)(A).

(B) For fiscal year 2004 and subsequent fiscal years

In the case of a State in which the total expenditures under the State plan (including Federal and State shares) for disproportionate share hospital adjustments under this section for fiscal year 2000, as reported to the Administrator of the Centers for Medicare & Medicaid Services as of August 31, 2003, is greater than 0 but less than 3 percent of the State’s total amount of expenditures under the State plan for medical assistance during the fiscal year, the DSH allotment for the State with respect to—

(i) fiscal year 2004 shall be the DSH allotment for the State for fiscal year 2003 increased by 16 percent;

(ii) each succeeding fiscal year before fiscal year 2009 shall be the DSH allotment for the State for the previous fiscal year increased by 16 percent; and

(iii) fiscal year 2009 and any subsequent fiscal year, shall be the DSH allotment for the State for the previous year subject to an increase for inflation as provided in paragraph (3)(A).
(6) Allotment adjustments

(A) Tennessee

(i) In general

Only with respect to fiscal year 2007, the DSH allotment for Tennessee for such fiscal year, notwithstanding the table set forth in paragraph (2) or the terms of the TennCare Demonstration Project in effect for the State, shall be the greater of—

(I) the amount that the Secretary determines is equal to the Federal medical assistance percentage component attributable to disproportionate share hospital payment adjustments for the demonstration year ending in 2006 that is reflected in the budget neutrality provision of the TennCare Demonstration Project; and

(ii) the amount specified in the first sentence for fiscal year 2007.

(ii) Limitation on amount of payment adjustments eligible for Federal financial participation

Payment under section 1396b(a) of this title shall not be made to Tennessee with respect to the aggregate amount of any payment adjustments made under this section for hospitals in the State for fiscal year 2007, 2008, 2009, 2010, 2011, or for period2 in fiscal year 2012 described in clause (i) that is in excess of 30 percent of the DSH allotment for the State for such fiscal year or period determined pursuant to clause (i).

(iii) State plan amendment

The Secretary shall permit Tennessee to submit an amendment to its State plan under this subchapter that describes the methodology to be used by the State to identify and make payments to disproportionate share hospitals, including children’s hospitals and institutions for mental diseases or other mental health facilities. The Secretary may not approve such plan amendment unless the methodology described in the amendment is consistent with the requirements under this section for making payment adjustments to disproportionate share hospitals. For purposes of demonstrating budget neutrality under the TennCare Demonstration Project, payment adjustments made pursuant to a State plan amendment approved in accordance with this subparagraph shall be considered expenditures under such project.

(iv) Offset of Federal share of payment adjustments for fiscal years 2007 through 2011 and the first calendar quarter of fiscal year 2012 against Essential Access Hospital supplemental pool payments under the TennCare Demonstration Project

(I) The total amount of Essential Access Hospital supplemental pool payments that may be made under the TennCare Demonstration Project for fiscal year 2007, 2008, 2009, 2010, 2011, or for a period in fiscal year 2012 described in clause (i) shall be reduced on a dollar for dollar basis by the amount of any payments made under section 1396b(a) of this title to Tennessee with respect to payment adjustments made under this section for hospitals in the State for such fiscal year or period.

(II) The sum of the total amount of payments made under section 1396b(a) of this title to Tennessee with respect to payment adjustments made under this section for fiscal years 2007 through 2011, shall be $2,500,000. Only with respect to each of fiscal years 2008, 2009, 2010, 2011, or for a period in fiscal year 2012, the DSH allotment for Tennessee for such fiscal year or period shall not exceed the State’s DSH allotment for such fiscal year or period established under clause (i).

(v) Allotment for 2d, 3rd, and 4th quarters of fiscal year 2012 and for fiscal year 2013

Notwithstanding the table set forth in paragraph (2):

(I) 2d, 3rd, and 4th quarters of fiscal year 2012

In the case of a State that has a DSH allotment of $0 for the 2d, 3rd, and 4th quarters of fiscal year 2012, the DSH allotment shall be $47,200,000 for such quarters.

(II) Fiscal year 2013

In the case of a State that has a DSH allotment of $0 for fiscal year 2013, the DSH allotment shall be $53,100,000 for such fiscal year.

(B) Hawaii

(i) In general

Only with respect to each of fiscal years 2007 through 2011, the DSH allotment for Hawaii for such fiscal year, notwithstanding the table set forth in paragraph (2), shall be $10,000,000. Only with respect to fiscal year 2012 for the period ending on December 31, 2011, the DSH allotment for Hawaii for such portion of the fiscal year, notwithstanding the table set forth in paragraph (2), shall be $2,500,000.

(ii) State plan amendment

The Secretary shall permit Hawaii to submit an amendment to its State plan under this subchapter that describes the methodology to be used by the State to identify and make payments to dispropor-

2So in original. Probably should be preceded by “a”.

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(7) Medicaid DSH reductions

(A) Reductions

(i) In general

For each of fiscal years 2014 through 2020 the Secretary shall effect the following reductions:

(I) Reduction in DSH allotments

The Secretary shall reduce DSH allotments to States in the amount specified under the DSH health reform methodology under subparagraph (B) for the State for the fiscal year.

(II) Reductions in payments

The Secretary shall reduce payments to States under section 1396b(a) of this title for each calendar quarter in the fiscal year, in the manner specified in clause (iii), in an amount equal to ¼ of the DSH allotment reduction under subsection (I) for the State for the fiscal year.

(ii) Aggregate reductions

The aggregate reductions in DSH allotments for all States under clause (I)(I) shall be equal to—

(I) $500,000,000 for fiscal year 2014;
(II) $600,000,000 for fiscal year 2015;
(III) $600,000,000 for fiscal year 2016;
(IV) $1,200,000,000 for fiscal year 2017;
(V) $5,000,000,000 for fiscal year 2018;
(VI) $5,600,000,000 for fiscal year 2019; and
(VII) $4,000,000,000 for fiscal year 2020.

The Secretary shall distribute such aggregate reductions among States in accordance with subparagraph (B).

(iii) Manner of payment reduction

The amount of the payment reduction under clause (i)(II) for a State for a quarter shall be deemed an overpayment to the State under this subchapter to be disallowed against the State’s regular quarterly draw for all spending under section 1396b(d)(2) of this title. Such a disallowance is not subject to a reconsideration under subsections (d) and (e) of section 1316 of this title.

(iv) Definition

In this paragraph, the term “State” means the 50 States and the District of Columbia.

(B) DSH Health Reform methodology

The Secretary shall carry out subparagraph (A) through use of a DSH Health Reform methodology that meets the following requirements:

(i) The methodology imposes the largest percentage reductions on the States that—

(I) have the lowest percentages of uninsured individuals (determined on the basis of data from the Bureau of the Census, audited hospital cost reports, and other information likely to yield accurate data) during the most recent year for which such data are available; or

(II) do not target their DSH payments on—

(aa) hospitals with high volumes of Medicaid inpatients (as defined in subsection (b)(1)(A)); and

(bb) hospitals that have high levels of uncompensated care (excluding bad debt).

(ii) The methodology imposes a smaller percentage reduction on low DSH States described in paragraph (5)(B).

(iii) The methodology takes into account the extent to which the DSH allotment for a State was included in the budget neutrality provision of the QUEST Demonstration Project.

(7) Medicaid DSH reductions

(A) Reductions

(i) In general

For each of fiscal years 2014 through 2020 the Secretary shall effect the following reductions:

(I) Reduction in DSH allotments

The Secretary shall reduce DSH allotments to States in the amount specified under the DSH health reform methodology under subparagraph (B) for the State for the fiscal year.

(II) Reductions in payments

The Secretary shall reduce payments to States under section 1396b(a) of this title for each calendar quarter in the fiscal year, in the manner specified in clause (iii), in an amount equal to ¼ of the DSH allotment reduction under subsection (I) for the State for the fiscal year.

(ii) Aggregate reductions

The aggregate reductions in DSH allotments for all States under clause (I)(I) shall be equal to—

(I) $500,000,000 for fiscal year 2014;
(II) $600,000,000 for fiscal year 2015;
(III) $600,000,000 for fiscal year 2016;
(IV) $1,200,000,000 for fiscal year 2017;
(V) $5,000,000,000 for fiscal year 2018;
(VI) $5,600,000,000 for fiscal year 2019; and
(VII) $4,000,000,000 for fiscal year 2020.

The Secretary shall distribute such aggregate reductions among States in accordance with subparagraph (B).

(iii) Manner of payment reduction

The amount of the payment reduction under clause (i)(II) for a State for a quarter shall be deemed an overpayment to the State under this subchapter to be disallowed against the State’s regular quarterly draw for all spending under section 1396b(d)(2) of this title. Such a disallowance is not subject to a reconsideration under subsections (d) and (e) of section 1316 of this title.

(iv) Definition

In this paragraph, the term “State” means the 50 States and the District of Columbia.

(B) DSH Health Reform methodology

The Secretary shall carry out subparagraph (A) through use of a DSH Health Reform methodology that meets the following requirements:

(i) The methodology imposes the largest percentage reductions on the States that—

(I) have the lowest percentages of uninsured individuals (determined on the basis of data from the Bureau of the Census, audited hospital cost reports, and other information likely to yield accurate data) during the most recent year for which such data are available; or

(II) do not target their DSH payments on—

(aa) hospitals with high volumes of Medicaid inpatients (as defined in subsection (b)(1)(A)); and

(bb) hospitals that have high levels of uncompensated care (excluding bad debt).

(ii) The methodology imposes a smaller percentage reduction on low DSH States described in paragraph (5)(B).

(iii) The methodology takes into account the extent to which the DSH allotment for a State was included in the budget neutrality provision of the QUEST Demonstration Project.
(g) Limit on amount of payment to hospital

(1) Amount of adjustment subject to uncompensated costs

(A) In general

A payment adjustment during a fiscal year shall not be considered to be consistent with subsection (c) of this section with respect to a hospital if the payment adjustment exceeds the costs incurred during the year of furnishing hospital services (as determined by the Secretary and net of payments under this subchapter, other than under this section, and by uninsured patients) by the hospital to individuals who either are eligible for medical assistance under the State plan or have no health insurance (or other source of third party coverage) for services provided during the year. For purposes of the preceding sentence, payments made to a hospital for services provided to indigent patients made by a State or a unit of local government within a State shall not be considered to be a source of third party payment.

(B) Limit to public hospitals during transition period

With respect to payment adjustments during a State fiscal year that begins before January 1, 1995, subparagraph (A) shall apply only to hospitals owned or operated by a State (or by an instrumentality or a unit of government within a State).

(C) Modifications for private hospitals

With respect to hospitals that are not owned or operated by a State (or by an instrumentality or a unit of government within a State), the Secretary may make such modifications to the manner in which the limitation on payment adjustments is applied to such hospitals as the Secretary considers appropriate.

(2) Additional amount during transition period for certain hospitals with high disproportionate share

(A) In general

In the case of a hospital with high disproportionate share (as defined in subparagraph (B)), a payment adjustment during a State fiscal year that begins before January 1, 1995, shall be considered consistent with subsection (c) of this section if the payment adjustment does not exceed 200 percent of the costs of furnishing hospital services described in paragraph (1)(A) during the year, but only if the Governor of the State certifies to the satisfaction of the Secretary that the hospital’s applicable minimum amount is used for health services during the year. In determining the amount that is used for such services during a year, there shall be excluded any amounts received under the Public Health Service Act [42 U.S.C. 201 et seq.] subchapter V of this chapter, subchapter XVIII of this chapter, or from third party payors (not including the State plan under this subchapter) that are used for providing such services during the year.

(B) “Hospital with high disproportionate share” defined

In subparagraph (A), a hospital is a “hospital with high disproportionate share” if—

(i) the hospital is owned or operated by a State (or by an instrumentality or a unit of government within a State); and

(ii) the hospital—

(1) meets the requirement described in subsection (b)(1)(A) of this section, or

(2) has the largest number of inpatient days attributable to individuals entitled to benefits under the State plan of any hospital in such State for the previous State fiscal year.

(C) “Applicable minimum amount” defined

In subparagraph (A), the “applicable minimum amount” for a hospital for a fiscal year is equal to the difference between the amount of the hospital’s payment adjustment for the fiscal year and the costs to the hospital of furnishing hospital services described in paragraph (1)(A) during the fiscal year.

(h) Limitation on certain State DSH expenditures

(1) In general

Payment under section 1396b(a) of this title shall not be made to a State with respect to any payment adjustments made under this section for quarters in a fiscal year (beginning with fiscal year 1998) to institutions for mental diseases or other mental health facilities, to the extent the aggregate of such adjustments in the fiscal year exceeds the lesser of the following:

(A) 1995 IMD DSH payment adjustments

The total State DSH expenditures that are attributable to fiscal year 1995 for payments to institutions for mental diseases and other mental health facilities (based on reporting data specified by the State on HCFA Form 64 as mental health DSH, and as approved by the Secretary).

(B) Applicable percentage of 1995 total DSH payment allotment

The amount of such payment adjustments which are equal to the applicable percentage of the Federal share of payment adjustments made to hospitals in the State under subsection (c) of this section that are attributable to the 1995 DSH allotment for the State for payments to institutions for mental diseases and other mental health facilities (based on reporting data specified by the State on HCFA Form 64 as mental health DSH, and as approved by the Secretary).

(2) Applicable percentage

(A) In general

For purposes of paragraph (1), the applicable percentage with respect to—

(i) each of fiscal years 1998, 1999, and 2000, is the percentage determined under subparagraph (B); or

(ii) a succeeding fiscal year is the lesser of the percentage determined under subparagraph (B) or the following percentage:
(I) For fiscal year 2001, 50 percent.
(II) For fiscal year 2002, 40 percent.
(III) For each succeeding fiscal year, 33 percent.

(B) 1995 percentage
The percentage determined under this subparagraph is the ratio (determined as a percentage) of—
(i) the Federal share of payment adjustments made to hospitals in the State under subsection (c) of this section that are attributable to the 1995 DSH allotment for the State (as reported by the State not later than January 1, 1997, on HCFA Form 64, and as approved by the Secretary) for payments to institutions for mental diseases and other mental health facilities, to
(ii) the State 1995 DSH spending amount.

(C) State 1995 DSH spending amount
For purposes of subparagraph (B)(ii), the “State 1995 DSH spending amount”, with respect to a State, is the Federal medical assistance percentage (for fiscal year 1995) of the payment adjustments made under subsection (c) of this section under the State plan that are attributable to the fiscal year 1995 DSH allotment for the State (as reported by the Secretary).

(i) Requirement for direct payment
(1) In general
No payment may be made under section 1396b(a)(1) of this title with respect to a payment adjustment made under this section, for services furnished by a hospital on or after October 1, 1997, with respect to individuals eligible for medical assistance under the State plan who are enrolled with a managed care arrangement unless a payment, equal to the appropriate share hospital that received a payment adjustment provided pursuant to a payment arrangement in effect on July 1, 1997.

Paragraph (1) shall not apply to a payment adjustment provided pursuant to a payment arrangement in effect on July 1, 1997.

(j) Annual reports and other requirements regarding payment adjustments
With respect to fiscal year 2004 and each fiscal year thereafter, the Secretary shall require a State, as a condition of receiving a payment under section 1396b(a)(1) of this title with respect to a payment adjustment made under this section, to do the following:

(1) Report
The State shall submit an annual report that includes the following:
(A) An identification of each disproportionate share hospital that received a payment adjustment under this section for the preceding fiscal year and the amount of the payment adjustment made to such hospital for the preceding fiscal year.
(B) Such other information as the Secretary determines necessary to ensure the appropriateness of the payment adjustments made under this section for the preceding fiscal year.

(2) Independent certified audit
The State shall annually submit to the Secretary an independent certified audit that verifies each of the following:
(A) The extent to which hospitals in the State have reduced their uncompensated care costs to reflect the total amount of claimed expenditures made under this section.
(B) Payments under this section to hospitals that comply with the requirements of subsection (g) of this section.
(C) Only the uncompensated care costs of providing inpatient hospital and outpatient hospital services to individuals described in paragraph (1)(A) of such subsection are included in the calculation of the hospital-specific limits under such subsection.
(D) The State included all payments under this subchapter, including supplemental payments, in the calculation of such hospital-specific limits.
(E) The State has separately documented and retained a record of all of its costs under this subchapter, claimed expenditures under this subchapter, uninsured costs in determining payment adjustments under this section, and any payments made on behalf of the uninsured from payment adjustments under this section.

Amendments

2010—Subsec. (f)(1). Pub. L. 111–148, § 2551(a)(1), substituted ‘‘, (3), and (7)’’ for ‘‘and (3)’’.
Subsec. (f)(3)(A). Pub. L. 111–148, § 2551(a)(2), substituted ‘‘paragraphs (6) and (7)’’ for ‘‘paragraph (6)’’.


Subsec. (f)(6)(A)(i). Pub. L. 111–148, § 10201(e)(1)(A)(i), substituted ‘‘paragraph (6) and subparagraph (E)’’ for ‘‘paragraph (6)’’.


Subsec. (f)(6)(B)(i). Pub. L. 111–275, § 202(3), substituted ‘‘each of fiscal years 2007 through 2009 for ’’fiscal year 2007’’ in first sentence, inserted last sentence, and struck out former last sentence which read as follows: ‘‘Only with respect to fiscal year 2008 for the period ending on June 30, 2008, the DSH allotment for Hawaii for such portion of the fiscal year, notwithstanding the table set forth in paragraph (2), shall be $7,500,000.’’

Subsec. (f)(6)(A)(ii). Pub. L. 110–173, § 204(2)(B), inserted ‘‘or for a period in fiscal year 2008 described in clause (i) after “fiscal year 2007” and “or period” after “such fiscal year”’’.
Subsec. (f)(6)(A)(iv). Pub. L. 110–173, § 204(3)(C), inserted ‘‘and fiscal year 2008’’ after ‘‘fiscal year 2007’’ in heading, ‘‘or for a period in fiscal year 2008 described in clause (i) after “fiscal year 2007” in subcl. (i) and (ii), “or period” after “for such fiscal year” in subcl. (i), and “or period” after “such fiscal year” in two places in subcl. (ii).’’
Subsec. (f)(6)(B)(i). Pub. L. 110–173, § 204(3), inserted at end ‘‘Only with respect to fiscal year 2008 for the period ending on June 30, 2008, the DSH allotment for Tennessee for such portion of the fiscal year, notwithstanding the table set forth in paragraph (2), shall be $7,500,000.’’
§ 701(a)(2)(B)], inserted "and paragraph (5)" after "sub-
§ 701(a)(1)(A)(ii)], redesignated par. (4) as (6).
§ 701(a)(1)(A)(iii)], added par. (4). Former par. (4) redes-
ignated (6).
§ 1396a(a)(13)(A)(iv)" for "1396a(a)(13)(A)"
A State's plan under title XIX of the Social Security
substituted "A State plan under this subchapter" for
replaced in the definition of "DSH'' for "The DSH'' and "subparagraphs (B) and
paragraph (5) of this section)" before "shall not apply".
Subsec. (a)(1). Pub. L. 100–360, § 411(k)(6)(B)(ii), (iii), (iv), redesignated existing provisions as cls. (A) and (B), and in cl. (A) designated existing provisions as subcl. (i) and added subcl. (ii).
Subsec. (a)(2)(A). Pub. L. 100–360, § 411(k)(6)(A)(i), substituted "Subject to subsection (f) of this section, in order" for "In
Subsec. (a)(3). Pub. L. 100–360, § 411(k)(6)(A)(iii), in-
Subsec. (b)(5). Pub. L. 101–508, § 470(b)(1), struck out before semicolon at end “or the hospital’s low-income utilization rate (as defined in paragraph (b)(3) of this section)
Subsec. (c)(3). Pub. L. 101–508, § 470(a), added par. (3).
Subsec. (c)(2). Pub. L. 101–508, § 470(b), struck out “during the 3-year period” before “beginning on”.
1989—Subsec. (e)(1). Pub. L. 101–239 designated portion of existing provisions as cls. (A) and (B), and in cl. (A) designated existing provisions as subcl. (i) and added subcl. (ii).
Subsec. (a). Pub. L. 100–203, § 411(k)(6)(B)(IV), struck out “of Health and Human Services” after “to the Secretary” wherever appearing in pars. (1) and (2).
Subsect. (a)(1). Pub. L. 100–360, § 411(k)(6)(B)(II), (iii), substituted “A State plan under this subchapter” for “A State’s plan under title XIX of the Social Security Act”, and made technical amendment to reference to section 1396a(a)(13)(A) of this title involving underlying provisions of original act.
Subsec. (a)(2)(A). Pub. L. 100–360, § 411(k)(6)(A)(I), substituted “April 1, 1989” for “such date” and inserted before period at end “, effective for inpatient hospital services provided on or after July 1, 1989”.
Subsec. (a)(2)(B). Pub. L. 100–360, § 411(k)(6)(A)(II), substituted “April 1, 1990” for “such date” and inserted before period at end “…, effective for inpatient hospital services provided on or after July 1, 1990”.
Subsec. (a)(4). Pub. L. 100–360, § 411(k)(6)(A)(I)(II), (III), (IV), inserted par. (4) designation and made technical amendment to reference to section 1396b(c)(4) of this title involving underlying provisions of original act.
Subsec. (b)(2). Pub. L. 100–360, §411(k)(6)(A)(vi), substituted “a State plan” for “the State plan”.

Pub. L. 100–360, §411(k)(6)(B)(vi), as amended by Pub. L. 100–485, §608(d)(26)(F), substituted “under this subchapter” for “under subchapter XIX of this chapter”.


Pub. L. 100–360, §411(k)(6)(A)(vi), inserted “less the portion of any cash subsidies described in clause (i)(II) in the period reasonably attributable to inpatient hospital services” after “charity care in a period”.

Subsec. (c). Pub. L. 100–485, §608(d)(26)(E), substituted “this subsection” for “subsection (c)” in concluding provisions.

Pub. L. 100–360, §411(k)(6)(A)(vi)(I), (II), (V), in concluding provisions, substituted “paragraphs (1)(B) and (2)(A) of subsection (a) of this section” for “paragraphs (2)(A) and (2)(B), such paragraph (1)(B) for “paragraph (2)(A)”, and such paragraph (2)(A) for “paragraph (2)(B)” and inserted “at least” before “one-third” and “two-thirds”.

Pub. L. 100–360, §411(k)(6)(A)(vi)(VI), inserted at end “in the case of a hospital described in subsection (d)(2)(A) of this section (relating to children’s hospitals), in computing the hospital’s disproportionate share adjustment percentage for purposes of paragraph (1)(B) of this subsection, the disproportionate patient percentage (defined in section 1395ww(d)(5)(F)(vi) of this title) shall be computed by substituting for the fraction described in subclause (I) of such section the fraction described in subclause (II) of that section. If a State elects in a State plan amendment under subsection (a) of this section to provide the payment adjustment described in paragraph (2), the State must include in the amendment a detailed description of the specific methodology to be used in determining the specified additional payment amount (or increased percentage payment) to be made to each hospital qualifying for such a payment adjustment and must publish at least annually the name of each hospital qualifying for such a payment adjustment and the amount of such payment adjustment made for each such hospital.”


Subsec. (c)(2). Pub. L. 100–360, §411(k)(6)(A)(vi)(IV), as amended by Pub. L. 100–485, §608(d)(26)(A), inserted “without regard to whether the hospital is described in subparagraph (A) or (B) of subsection (b)(1) of this section” after “payment and”.


Subsec. (e). Pub. L. 100–360, §411(k)(6)(A)(vii), as amended by Pub. L. 100–485, §608(d)(26)(B), (C), designated existing provisions as par. (1), inserted “based on a pooling arrangement involving a majority of the hospitals participating under the plan” after first reference to “payment adjustments”, added par. (2) and substituted “Statewide” for “Statewide in part (2).”

**Effective Date of 2010 Amendment**

(amending this section) shall apply to payments to States under section 1903(a) of the Social Security Act [section 1396(a) of this title] for payments to hospitals made under State plans after—

(i) the end of the State fiscal year that ends during 1994, or

(ii) in the case of a State with a State legislature which is not scheduled to have a regular legislative session in 1994, the end of the State fiscal year that ends during 1995;

without regard to whether or not final regulations to carry out such amendments have been promulgated by either such date.

"(B) Delay in Implementation for Private Hospitals.—With respect to a hospital that is not owned or operated by a State (or by an instrumentality or a unit of government within a State), the amendments made by this subsection shall apply to payments to States under section 1903(a) for payments to hospitals made under State plans for State fiscal years that begin during or after 1995, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date."

**Effective Date of 1991 Amendment**

Amendments by Pub. L. 100–234 effective Jan. 1, 1992, see section 3(e)(1) of Pub. L. 100–234, set out as a note under section 1396a of this title.

**Effective Date of 1990 Amendment**

Section 4721(e) of the Balanced Budget Act of 1997 (Public Law 104–4), as so amended, shall be applied without regard to paragraph (1).

(2) Special Rule.—With respect to California, section 4721(e) of the Balanced Budget Act of 1997 (Public Law 104–35; 111 Stat. 514), as so amended, shall be applied without regard to paragraph (1).

(3) Period Described.—The period described in this paragraph is the period that begins with respect to a State, on the first day of the first State fiscal year that begins after September 30, 2002, and ends on the last day of the succeeding State fiscal year.

(4) Application to Waivers.—With respect to a State operating under a waiver of the requirements of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) under section 1115 of such Act (42 U.S.C. 1315), the amount by which any payment adjustment made by the State under title XIX of such Act (42 U.S.C. 1396 et seq.), after the application of section 4721(e) of the Balanced Budget Act of 1997 under paragraph (1) to such State, exceeds the costs of furnishing hospital services provided by hospitals described in such section shall be fully reflected as an increase in the baseline expenditure limit for such waiver.

Assistant for Certain Public Hospitals

Pub. L. 106–554, § 1(a)(6) [title VII, § 701(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–571, provided that:

"(1) In General.—Beginning with fiscal year 2002, notwithstanding section 1923(f) of the Social Security Act (42 U.S.C. 1396r–4(f)) and subject to paragraph (3), with respect to a State, payment adjustments made under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) [this subchapter] to a hospital described in paragraph (2) shall be made without regard to the DSH allotment limitation for the State determined under section 1923(f) of that Act (42 U.S.C. 1396r–4(f)).

(2) Hospital Described.—A hospital is described in this paragraph if the hospital—

(a) is owned or operated by a State (as defined for purposes of title XIX of the Social Security Act [this subchapter]), or by an instrumentality or a unit of government within a State (as so defined);

(b) as of October 1, 2000—

(i) is in existence and operating as a hospital described in subparagraph (a); and

(ii) is not receiving disproportionate share hospital payments from the State in which it is located under title XIX of such Act [this subchapter]; and

(c) has a low-income utilization rate (as defined in section 1923(b)(3) of the Social Security Act (42 U.S.C. 1396r–4(b)(3))) in excess of 65 percent.

(3) Limitation on Expenditures.—

(A) In General.—With respect to any fiscal year, the aggregate amount of Federal financial participation that may be provided for payment adjustments described in paragraph (1) for that fiscal year for all States may not exceed the amount described in subparagraph (B) for the fiscal year.

(B) Amount Described.—The amount described in this subparagraph for a fiscal year is as follows:

(i) For fiscal year 2002, $15,000,000.

(ii) For fiscal year 2003, $176,000,000.

(iii) For fiscal year 2004, $209,000,000.

(iv) For fiscal year 2005, $330,000,000.

(v) For fiscal year 2006 and each fiscal year thereafter, $375,000,000.

DSH Payment Accountability Standards

Pub. L. 106–554, § 1(a)(6) [title VII, § 701(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–572, provided that: "Not later than September 30, 2002, the Secretary of Health and
Human Services shall implement accountability standards to ensure that Federal funds provided with respect to disproportionate share hospital adjustments made under section 1923 of the Social Security Act (42 U.S.C. 1396u–4) are used to reimburse States and hospitals eligible for such payment adjustments for providing uncompensated health care to low-income patients and are otherwise made in accordance with the requirements of section 1923 of that Act.’’

DSH ALLOTMENTS FOR SPECIFIC YEARS

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 105–277, div. A, §101(f) [title VII, §704], Oct. 21, 1998, 112 Stat. 2681–337, 2681–389, provided that: ‘‘Notwithstanding section 1923(f)(2) of the Social Security Act [subsection (f)(2) of this section] by reason of paragraph (10) or (17) of section 1936a(a) of this title to be $33,000,000.’’

Similar provisions were contained in the following prior appropriations acts:

CALIFORNIA TRANSITION RULE
Pub. L. 105–33, title IV, §4721(e), Aug. 5, 1997, 111 Stat. 514, as amended by Pub. L. 106–113, div. B, §1000(a)(6) [title VI, §607(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–396, provided that: ‘‘Effective January 1, 1997, California is deemed to be a State that has had in effect a plan approved under this subchapter in the same manner as the State would be required to meet such requirement if the State had had in effect a plan approved under this subchapter.’’

In determining the eligibility for medical assistance of an institutionalized spouse (as defined in subsection (h)(1) of this section), the provisions of this section supersede any other provision of this subchapter (including sections 1396a(a)(17) and 1396a(f) of this title) which is inconsistent with them.

No comparable treatment required
Any different treatment provided under this section for institutionalized spouses shall not, by reason of paragraph (10) or (17) of section 1396a(a) of this title, require such treatment for other individuals.

Does not affect certain determinations
Except as this section specifically provides, this section does not apply to—
(A) the determination of what constitutes income or resources, or
(B) the methodology and standards for determining and evaluating income and resources.

Application in certain States and territories
(A) Application in States operating under demonstration projects
In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

(B) No application in commonwealths and territories
This section shall only apply to a State that is one of the 50 States or the District of Columbia.

Application to individuals receiving services under PACE programs
This section applies to individuals receiving institutional or noninstitutional services under a PACE demonstration waiver program (as defined in section 1396u–4(a)(7) of this title) or under a PACE program under section 1396u–4 or 1395eee of this title.

(b) Rules for treatment of income
(1) Separate treatment of income
During any month in which an institutionalized spouse is in the institution, except as provided in paragraph (2), no income of the community spouse shall be deemed available to the institutionalized spouse.
(2) Attribution of income
In determining the income of an institutionalized spouse or community spouse for purposes of the post-eligibility income determination described in subsection (d) of this section, except as otherwise provided in this section and regardless of any State laws relating to community property or the division of marital property, the following rules apply:

(A) Non-trust property
Subject to subparagraphs (C) and (D), in the case of income not from a trust, unless the instrument providing the income otherwise specifically provides—

(i) if payment of income is made solely in the name of the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

(ii) if payment of income is made in the names of the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

(iii) if payment of income is made in the names of the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse’s interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

(B) Trust property
In the case of a trust—

(i) except as provided in clause (ii), income shall be attributed in accordance with the provisions of this subchapter (including sections 1396a(a)(17) and 1396d of this title), and

(ii) income shall be considered available to each spouse as provided in the trust, or, in the absence of a specific provision in the trust—

(I) if payment of income is made solely to the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

(II) if payment of income is made to both the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

(III) if payment of income is made to the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse’s interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

(C) Property with no instrument
In the case of income not from a trust in which there is no instrument establishing ownership, subject to subparagraph (D), one-half of the income shall be considered to be available to the institutionalized spouse and one-half to the community spouse.

(D) Rebutting ownership
The rules of subparagraphs (A) and (C) are superseded to the extent that an institutionalized spouse can establish, by a preponderance of the evidence, that the ownership interests in income are other than as provided under such subparagraphs.

(c) Rules for treatment of resources

(1) Computation of spousal share at time of institutionalization

(A) Total joint resources
There shall be computed (as of the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse)—

(i) the total value of the resources to the extent either the institutionalized spouse or the community spouse has an ownership interest, and

(ii) a spousal share which is equal to ½ of such total value.

(B) Assessment
At the request of an institutionalized spouse or community spouse, at the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse and upon the receipt of relevant documentation of resources, the State shall promptly assess and document the total value described in subparagraph (A)(i) and shall provide a copy of such assessment and documentation to each spouse and shall retain a copy of the assessment for use under this section. If the request is not part of an application for medical assistance under this subchapter, the State may, at its option as a condition of providing the assessment, require payment of a fee not exceeding the reasonable expenses of providing and documenting the assessment. At the time of providing the copy of the assessment, the State shall include a notice indicating that the spouse will have a right to a fair hearing under subsection (e)(2) of this section.

(2) Attribution of resources at time of initial eligibility determination

In determining the resources of an institutionalized spouse at the time of application for benefits under this subchapter, regardless of any State laws relating to community property or the division of marital property—

(A) except as provided in subparagraph (B), all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse, and

(B) resources shall be considered to be available to an institutionalized spouse, but only to the extent that the amount of such resources exceeds the amount computed under subsection (f)(2)(A) of this section (as of the time of application for benefits).

(3) Assignment of support rights
The institutionalized spouse shall not be ineligible by reason of resources determined
under paragraph (2) to be available for the cost of care where—

(A) the institutionalized spouse has assigned to the State any rights to support from the community spouse;

(B) the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the State has the right to bring a support proceeding against a community spouse without such assignment; or

(C) the State determines that denial of eligibility would work an undue hardship.

(4) Separate treatment of resources after eligibility for benefits established

During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for benefits under this subchapter, no resources of the community spouse shall be deemed available to the institutionalized spouse.

(5) Resources defined

In this section, the term "resources" does not include—

(A) resources excluded under subsection (a) or (d) of section 1382b of this title, and

(B) resources that would be excluded under section 1382b(a)(2)(A) of this title but for the limitation on total value described in such section.

(d) Protecting income for community spouse

(1) Allowances to be offset from income of institutionalized spouse

After an institutionalized spouse is determined or redetermined to be eligible for medical assistance, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

(A) A personal needs allowance (described in section 1396a(q)(1) of this title), in an amount not less than the amount specified in section 1396a(q)(2) of this title.

(B) A community spouse monthly income allowance (as defined in paragraph (2)), but only to the extent income of the institutionalized spouse is made available to (or for the benefit of) the community spouse.

(C) A family allowance, for each family member, equal to at least ½ of the amount by which the amount described in paragraph (3)(A)(i) exceeds the amount of the monthly income of that family member.

(D) Amounts for incurred expenses for medical or remedial care for the institutionalized spouse (as provided under section 1396a(r) of this title).

In subparagraph (C), the term "family member" only includes minor or dependent children, dependent parents, or dependent siblings of the institutionalized or community spouse who are residing with the community spouse.

(2) Community spouse monthly income allowance defined

In this section (except as provided in paragraph (5)), the "community spouse monthly income allowance" for a community spouse is an amount by which—

(A) except as provided in subsection (e) of this section, the minimum monthly maintenance needs allowance (established under and in accordance with paragraph (3)) for the spouse, exceeds

(B) the amount of monthly income otherwise available to the community spouse (determined without regard to such an allowance).

(3) Establishment of minimum monthly maintenance needs allowance

(A) In general

Each State shall establish a minimum monthly maintenance needs allowance for each community spouse which, subject to subparagraph (C), is equal to or exceeds—

(i) the applicable percent (described in subparagraph (B)) of ½ of the income official poverty line (defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of this title) for a family unit of 2 members; plus

(ii) an excess shelter allowance (as defined in paragraph (4)).

A revision of the official poverty line referred to in clause (i) shall apply to medical assistance furnished during and after the second calendar quarter that begins after the date of publication of the revision.

(B) Applicable percent

For purposes of subparagraph (A)(i), the "applicable percent" described in this paragraph, effective as of—

(i) September 30, 1989, is 122 percent,

(ii) July 1, 1991, is 133 percent, and

(iii) July 1, 1992, is 150 percent.

(C) Cap on minimum monthly maintenance needs allowance

The minimum monthly maintenance needs allowance established under subparagraph (A) may not exceed $1,500 (subject to adjustment under subsections (e) and (g) of this section).

(4) Excess shelter allowance defined

In paragraph (3)(A)(ii), the term "excess shelter allowance" means, for a community spouse, the amount by which the sum of—

(A) the spouse's expenses for rent or mortgage payment (including principal and interest), taxes and insurance and, in the case of a condominium or cooperative, required maintenance charge, for the community spouse's principal residence, and

(B) the standard utility allowance (used by the State under section 2014(e) of title 7) or, if the State does not use such an allowance, the spouse's actual utility expenses,

exceeds 30 percent of the amount described in paragraph (3)(A)(i), except that, in the case of a condominium or cooperative, for which a maintenance charge is included under subparagraph (A), any allowance under subparagraph (B) shall be reduced to the extent the maintenance charge includes utility expenses.
(5) Court ordered support

If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall be not less than the amount of the monthly income so ordered.

(6) Application of “income first” rule to revision of community spouse resource allowance

For purposes of this subsection and subsections (c) and (e), a State must consider that all income of the institutionalized spouse that could be made available to a community spouse, in accordance with the calculation of the community spouse monthly income allowance under this subsection, has been made available before the State allocates to the community spouse an amount of resources adequate to provide the difference between the minimum monthly maintenance needs allowance and all income available to the community spouse.

(e) Notice and fair hearing

(1) Notice

Upon—
(A) a determination of eligibility for medical assistance of an institutionalized spouse, or
(B) a request by either the institutionalized spouse, or the community spouse, or a representative acting on behalf of either spouse,

each State shall notify both spouses (in the case described in subparagraph (A)) or the spouse making the request (in the case described in subparagraph (B)) of the amount of the community spouse monthly income allowance (described in subsection (d)(1)(B) of this section), of the amount of any family allowances (described in subsection (d)(1)(C) of this section), of the method for computing the amount of the community spouse resources allowance permitted under subsection (f) of this section, and of the spouse’s right to a fair hearing under this subsection respecting ownership or availability of income or resources, and the determination of the community spouse monthly income or resource allowance.

(2) Fair hearing

(A) In general

If either the institutionalized spouse or the community spouse is dissatisfied with a determination of—
(i) the community spouse monthly income allowance;
(ii) the amount of monthly income otherwise available to the community spouse (as applied under subsection (d)(2)(B) of this section);
(iii) the computation of the spousal share of resources under subsection (c)(1) of this section;
(iv) the attribution of resources under subsection (c)(2) of this section; or
(v) the determination of the community spouse resource allowance (as defined in subsection (f)(2) of this section);

such spouse is entitled to a fair hearing described in section 1396a(a)(3) of this title with respect to such determination if an application for benefits under this subchapter has been made on behalf of the institutionalized spouse. Any such hearing respecting the determination of the community spouse resource allowance shall be held within 30 days of the date of the request for the hearing.

(B) Revision of minimum monthly maintenance needs allowance

If either such spouse establishes that the community spouse needs income, above the level otherwise provided by the minimum monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, there shall be substituted, for the minimum monthly maintenance needs allowance in subsection (d)(2)(A) of this section, an amount adequate to provide such additional income as is necessary.

(C) Revision of community spouse resource allowance

If either such spouse establishes that the community spouse resource allowance (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse’s income to the minimum monthly maintenance needs allowance, there shall be substituted, for the community spouse resource allowance under subsection (f)(2) of this section, an amount adequate to provide such a minimum monthly maintenance needs allowance.

(f) Permitting transfer of resources to community spouse

(1) In general

An institutionalized spouse may, without regard to section 1396p(c)(1) of this title, transfer an amount equal to the community spouse resource allowance (as defined in paragraph (2)), but only to the extent the resources of the institutionalized spouse are transferred to (or for the sole benefit of) the community spouse. The transfer under the preceding sentence shall be made as soon as practicable after the date of the initial determination of eligibility, taking into account such time as may be necessary to obtain a court order under paragraph (3).

(2) Community spouse resource allowance defined

In paragraph (1), the “community spouse resource allowance” for a community spouse is an amount (if any) by which—
(i) $12,000 (subject to adjustment under subsection (g) of this section), or, if greater (but not to exceed the amount specified in clause (ii)(II)) an amount specified under the State plan,
(ii) the lesser of (I) the spousal share computed under subsection (c)(1) of this section, or (II) $90,000 (subject to adjustment under subsection (g) of this section),
(iii) the amount established under subsection (e)(2) of this section; or
(iv) the amount transferred under a court order under paragraph (3);

exceeds

(B) the amount of the resources otherwise available to the community spouse (determined without regard to such an allowance).

(3) Transfers under court orders

If a court has entered an order against an institutionalized spouse for the support of the community spouse, section 1396p of this title shall not apply to amounts of resources transferred pursuant to such order for the support of the spouse or a family member (as defined in subsection (d)(1) of this section).

(g) Indexing dollar amounts

For services furnished during a calendar year after 1989, the dollar amounts specified in subsections (d)(3)(C), (f)(2)(A)(i), and (f)(2)(A)(ii)(II) of this section shall be increased by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved.

(h) Definitions

In this section:

(1) The term “institutionalized spouse” means an individual who—

(A) is in a medical institution or nursing facility or who (at the option of the State) is described in section 1396a(a)(10)(A)(ii)(VI) of this title, and

(B) is married to a spouse who is not in a medical institution or nursing facility; but

does not include any such individual who is not likely to meet the requirements of subparagraph (A) for at least 30 consecutive days.

(2) The term “community spouse” means the spouse of an institutionalized spouse.


CODIFICATION


AMENDMENTS


**Effective Date of 2006 Amendment**
Pub. L. 109–171, title VI, §6013(b), Feb. 8, 2006, 120 Stat. 64, provided that: “The amendment made by subsection (a) [amending this section] shall apply to transfers and allocations made on or after the date of the enactment of this Act [Feb. 8, 2006] by individuals who become institutionalized spouses on or after such date.”

**Effective Date of 1994 Amendment**

**Effective Date of 1993 Amendment**
Amendment by section 1361(d)(2) of Pub. L. 101–66 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Oct. 1, 1993, without regard to whether or not final regulations to carry out the amendments by section 1361 of Pub. L. 101–66 have been promulgated by such date, see section 1361(e) of Pub. L. 101–66, set out as a note under section 1369 of this title.

**Effective Date of 1990 Amendment**
Section 471(d) of Pub. L. 101–508 provided that: ‘’The amendments made [by this section] (amending this section) shall take effect as if included in the enactment of section 303 of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 101–300].’’

**Effective Date of 1989 Amendment**

**Effective Date of 1988 Amendment**
Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 1369a of this title.

**Effective Date**
Section 3003(g) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, §608(d)(16)(D), Oct. 13, 1988, 102 Stat. 2418, provided that:

‘’(1)(A) The amendments made by this section [enacting this section and amending sections 1382, 1382b, 1396p, 1396r, and 1396s of this title] apply (except as provided in this subsection) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after October 1, 1989, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

‘’(B) Section 1924 of the Social Security Act [this section] (as inserted by subsection (a)) shall only apply to institutionalized individuals who begin continuous periods of institutionalization after October 1, 1989, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

‘’(2)(A) The amendment made by subsection (b) [amending section 1396p of this title and section 1902(a)(51)(B) of the Social Security Act [section 1396p of this title], except as provided in paragraph (5)] to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1988, or the date of the enactment of this Act [July 1, 1988], without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

‘’(B) Section 1917(c) of the Social Security Act [section 1396p(c) of this title], as amended by subsection (b) of this section, shall apply to resources disposed of on or after July 1, 1988, except that such section shall not apply with respect to inter-spousal transfers occurring before October 1, 1989.

‘’(C) Notwithstanding subparagraphs (A) and (B), a State may continue to apply the policies contained in the State plan as of June 30, 1988, with respect to resources disposed of before July 1, 1988, and the laws and policies established by the Secretary as failing to comply with the requirements of such title solely on the basis of its failure to meet such additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

‘’(3) The amendments made by subsection (c) [amending sections 1382 and 1382b of this title] shall apply to transfers occurring on or after July 1, 1988, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

‘’(4) The amendment made by subsection (d) [amending section 1969a of this title] shall be effective on and after April 8, 1988. The final rule of the Health Care Financing Administration published on February 8, 1988 (53 Federal Register 3566) is superseded to the extent inconsistent with the amendment made by subsection (d).

‘’(5) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section (other than paragraphs (1) and (5) of subsection (e) [amending section 1969a of this title]), the State plan shall not be required to comply with the requirements of such title solely on the basis of its failure to meet such additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

‘’(6) The amendments made by paragraphs (1) and (5) of subsection (e) [amending section 1969a of this title] shall apply to medical assistance furnished on or after October 1, 1982.’’

**Protection for Recipients of Home and Community-Based Services Against Spousal impoverishment**
Pub. L. 111–148, title II, §2404, Mar. 23, 2010, 124 Stat. 305, provided that: “During the 5-year period that begins on January 1, 2014, section 1924(h)(1)(A) of the Social Security Act (42 U.S.C. 1396h–5(h)(1)(A)) shall be applied as though ‘‘is eligible for medical assistance for home and community-based services provided under subsection (c), (d), or (i) of section 1915 [42 U.S.C. 1396n], under a waiver approved under section 1115 [42 U.S.C. 1315], or who is eligible for such medical assistance by reason of determining eligible under section 1962(a)(10)(C) [42 U.S.C. 1396a(a)(10)(C)] or by reason of section 1902(i) [42 U.S.C. 1396a(i)] or otherwise on the basis of a reduction of income based on costs incurred for medical or other remedial care, or who is eligible for medical assistance for home and community-based attendant services and supports under section 1915(i) [42 U.S.C. 1315(i)]’’ were substituted in such section as they appear in section 1902(a)(10)(A)(i)(VI) [42 U.S.C. 1396a(a)(10)(A)(i)(VI)].’’
§ 1396r–6. Extension of eligibility for medical assistance
(a) Initial 6-month extension
(1) Requirement
(A) In general

Notwithstanding any other provision of this subchapter but subject to subparagraph (B) and paragraph (5), each State plan approved under this subchapter must provide that each family which was receiving aid pursuant to a plan of the State approved under part A of subchapter IV of this chapter in at least 3 of the 6 months immediately preceding the month in which such family becomes ineligible for such aid, because of hours of, or income from, employment of the caretaker relative (as defined in subsection (e) of this section) or because of section 602(a)(8)(B)(ii)(II) of this title (providing for a time-limited earned income disregard), shall, subject to paragraph (3) and without any reapplication for benefits under the plan, remain eligible for assistance under the plan approved under this subchapter during the immediately succeeding 6-month period in accordance with this subsection.

(B) State option to waive requirement for 3 months before receipt of medical assistance

A State may, at its option, elect also to apply subparagraph (A) in the case of a family that was receiving such aid for fewer than three months or that had applied for and was eligible for such aid for fewer than 3 months during the 6 immediately preceding months described in such subparagraph.

(2) Notice of benefits

Each State, in the notice of termination of aid under part A of subchapter IV of this chapter sent to a family meeting the requirements of paragraph (1)—

(A) shall notify the family of its right to extended medical assistance under this subsection and include in the notice a description of the reporting requirement of subsection (b)(2)(B)(i) of this section and of the circumstances (described in paragraph (3)) under which such extension may be terminated; and

(B) shall include a card or other evidence of the family’s entitlement to assistance under this subchapter for the period provided in this subsection.

(3) Termination of extension

(A) No dependent child

Subject to subparagraphs (B) and (C), extension of assistance during the 6-month period described in paragraph (1) to a family shall terminate (during such period) at the close of the first month in which the family ceases to include a child, whether or not the child is (or would if needy be) a dependent child under part A of subchapter IV of this chapter.

(B) Notice before termination

No termination of assistance shall become effective under subparagraph (A) until the State has provided the family with notice of the grounds for the termination.

(C) Continuation in certain cases until redetermination

With respect to a child who would cease to receive medical assistance because of subparagraph (A) but who may be eligible for assistance under the State plan because the child is described in clause (i) of section 1396d(a) of this title or clause (i)(IV), (i)(VI), (i)(VII), or (i)(IX) of section 1396a(a)(10)(A) of this title, the State may not discontinue such assistance under such subparagraph until the State has determined that the child is not eligible for assistance under the plan.

(4) Scope of coverage

(A) In general

Subject to subparagraph (B), during the 6-month extension period under this subsection, the amount, duration, and scope of medical assistance made available with respect to a family shall be the same as if the family were still receiving aid under the plan approved under part A of subchapter IV of this chapter.

(B) State medicaid “wrap-around” option

A State, at its option, may pay a family’s expenses for premiums, deductibles, coinsurance, and similar costs for health insurance or other health coverage offered by an employer of the caretaker relative or by an employer of the absent parent of a dependent child. In the case of such coverage offered by an employer of the caretaker relative—

(i) the State may require the caretaker relative, as a condition of extension of coverage under this subsection for the caretaker and the caretaker’s family, to make application for such employer coverage, but only if—

(I) the caretaker relative is not required to make financial contributions for such coverage (whether through payroll deduction, payment of deductibles, coinsurance, or similar costs, or otherwise), and

(II) the State provides, directly or otherwise, for payment of any of the premium amount, deductible, coinsurance, or similar expense that the employee is otherwise required to pay; and

(ii) the State shall treat the coverage under such an employer plan as a third party liability (under section 1396a(a)(25) of this title).

Payments for premiums, deductibles, coinsurance, and similar expenses under this subparagraph shall be considered, for purposes of section 1396b(a) of this title, to be payments for medical assistance.

(5) Option of 12-month initial eligibility period

A State may elect to treat any reference in this subsection to a 6-month period (or 6 months) as a reference to a 12-month period (or 12 months). In the case of such an election, subsection (b) shall not apply.
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(b) Additional 6-month extension

(1) Requirement

Notwithstanding any other provision of this subchapter but subject to subsection (a)(5), each State plan approved under this subchapter shall provide that the State shall offer to each family, which has received assistance during the entire 6-month period under subsection (a) of this section and which meets the requirement of paragraph (2)(B)(i), in the last month of the period the option of extending coverage under this subsection for the succeeding 6-month period, subject to paragraph (3).

(2) Notice and reporting requirements

(A) Notices

(i) Notice during initial extension period of option and requirements

Each State, during the 3rd and 6th month of any extended assistance furnished to a family under subsection (a) of this section, shall notify the family of the family’s option for additional extended assistance under this subsection. Each such notice shall include (I) in the 3rd month notice, a statement of the reporting requirement under subparagraph (B)(i), and, in the 6th month notice, a statement of the reporting requirement under subparagraph (B)(ii), (II) a statement as to whether any premiums are required for such additional extended assistance, and (III) a description of other out-of-pocket expenses, benefits, reporting and payment procedures, and any pre-existing condition limitations, waiting periods, or other coverage limitations imposed under any alternative coverage options offered under paragraph (4)(D). The 6th month notice under this subparagraph shall describe the amount of any premium required of a particular family for each of the first 3 months of additional extended assistance under this subsection.

(ii) Notice during additional extension period of reporting requirements and premiums

Each State, during the 3rd month of any additional extended assistance furnished to a family under this subsection, shall notify the family of the reporting requirement under subparagraph (B)(ii) and a statement of the amount of any premium required for such extended assistance for the succeeding 3 months.

(B) Reporting requirements

(i) During initial extension period

Each State shall require (as a condition for additional extended assistance under this subsection) that a family receiving extended assistance under subsection (a) of this section report to the State, not later than the 21st day of the following month in the period of extended assistance under subsection (a) of this section, on the family’s gross monthly earnings and on the family’s costs for such child care as is necessary for the employment of the caretaker relative in each of the 3 preceding months.

(ii) During additional extension period

Each State shall require that a family receiving extended assistance under this subsection report to the State, not later than the 21st day of the 1st month and of the 4th month in the period of additional extended assistance under this subsection, on the family’s gross monthly earnings and on the family’s costs for such child care as is necessary for the employment of the caretaker relative in each of the 3 preceding months.

(iii) Clarification on frequency of reporting

A State may not require that a family receiving extended assistance under this subsection or subsection (a) of this section report more frequently than as required under clause (i) or (ii).

(3) Termination of extension

(A) In general

Subject to subparagraphs (B) and (C), extension of assistance during the 6-month period described in paragraph (1) to a family shall terminate (during the period) as follows:

(i) No dependent child

The extension shall terminate at the close of the first month in which the family ceases to include a child, whether or not the child is (or would if needy be) a dependent child under part A of subchapter IV of this chapter.

(ii) Failure to pay any premium

If the family fails to pay any premium for a month under paragraph (5) by the 21st day of the following month, the extension shall terminate at the close of that following month, unless the family has established, to the satisfaction of the State, good cause for the failure to pay such premium on a timely basis.

(iii) Quarterly income reporting and test

The extension under this subsection shall terminate at the close of the 1st or 4th month of the 6-month period if—

(I) the family fails to report to the State, by the 21st day of such month, the information required under paragraph (2)(B)(ii), unless the family has established, to the satisfaction of the State, good cause for the failure to report on a timely basis;

(II) the caretaker relative had no earnings in one or more of the previous 3 months, unless such lack of any earnings was due to an involuntary loss of employment, illness, or other good cause, established to the satisfaction of the State; or
(III) the State determines that the family’s average gross monthly earnings (less such costs for such child care as is necessary for the employment of the caretaker relative) during the immediately preceding 3-month period exceed 185 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

Information described in clause (iii)(I) shall be subject to the restrictions on use and disclosure of information provided under section 602(a)(9) of this title. Instead of terminating a family’s extension under clause (iii)(I), a State, at its option, may provide for suspension of the extension until the month after the month in which the family reports information required under paragraph (2)(B)(ii), but only if the family’s extension has not otherwise been terminated under subclause (II) or (III) of clause (i). The State shall make determinations under clause (iii)(II) for a family each time a report under paragraph (2)(B)(ii) for the family is received.

(B) Notice before termination

No termination of assistance shall become effective under subparagraph (A) until the State has provided the family with notice of the grounds for the termination, which notice shall include (in the case of termination under subparagraph (A)(i)) a description of how the family may reestablish eligibility for medical assistance under the State plan. No such termination shall be effective earlier than 10 days after the date of mailing of such notice.

(C) Continuation in certain cases until redetermination

(i) Dependent children

With respect to a child who would cease to receive medical assistance because of subparagraph (A)(i) but who may be eligible for assistance under the State plan because the child is described in clause (i) of section 1396a(a)(10) of this title or clause (i)(IV), (i)(VI), (i)(VII), or (ii)(IX) of section 1396a(a)(10)(A) of this title, the State may not discontinue such assistance under such subparagraph until the State has determined that the child is not eligible for assistance under the plan.

(ii) Medically needy

With respect to an individual who would cease to receive medical assistance because of clause (ii) or (iii) of subparagraph (A) but who may be eligible for assistance under the State plan because the individual is within a category of person for which medical assistance under the State plan is available under section 1396a(a)(10)(C) of this title (relating to medically needy individuals), the State may not discontinue such assistance under such subparagraph until the State has determined that the individual is not eligible for assistance under the plan.

(4) Coverage

(A) In general

During the extension period under this subsection—

(i) the State plan shall offer to each family medical assistance which (subject to subparagraphs (B) and (C)) is the same amount, duration, and scope as would be made available to the family if it were still receiving aid under the plan approved under part A of subchapter IV of this chapter, and

(ii) the State plan may offer alternative coverage described in subparagraph (D).

(B) Elimination of most non-acute care benefits

At a State’s option and notwithstanding any other provision of this subchapter, a State may choose not to provide medical assistance under this subsection with respect to any (or all) of the items and services described in paragraphs (4)(A), (6), (7), (8), (11), (13), (14), (15), (16), (18), (20), and (21) of section 1396d(a) of this title.

(C) State medicaid “wrap-around” option

At a State’s option, the State may elect to apply the option described in subsection (a)(4)(B) of this section (relating to “wrap-around” coverage) for families electing medical assistance under this subsection in the same manner as such option applies to families provided extended eligibility for medical assistance under subsection (a) of this section.

(D) Alternative assistance

At a State’s option, the State may offer families a choice of health care coverage under one or more of the following, instead of the medical assistance otherwise made available under this subsection:

(i) Enrollment in family option of employer plan

Enrollment of the caretaker relative and dependent children in a family option of the group health plan offered to the caretaker relative.

(ii) Enrollment in family option of State employee plan

Enrollment of the caretaker relative and dependent children in a family option within the options of the group health plan or plans offered by the State to State employees.

(iii) Enrollment in State uninsured plan

Enrollment of the caretaker relative and dependent children in a basic State health plan offered by the State to individuals in the State (or areas of the State) otherwise unable to obtain health insurance coverage.

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2See References in Text note below.
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(iv) Enrollment in medicaid managed care organization

Enrollment of the caretaker relative and dependent children in a medicaid managed care organization (as defined in section 1396b(m)(1)(A) of this title).

If a State elects to offer an option to enroll a family under this subparagraph, the State shall pay any premiums and other costs for such enrollment imposed on the family and may pay deductibles and coinsurance imposed on the family. A State’s payment of premiums for the enrollment of families under this subparagraph (not including any premiums otherwise payable by an employer and less the amount of premiums collected from such families under paragraph (5)) and payment of any deductibles and coinsurance shall be considered, for purposes of section 1396b(a)(1) of this title, to be payments for medical assistance.

(E) Prohibition on cost-sharing for maternity and preventive pediatric care

(i) In general

If a State offers any alternative option under subparagraph (D) for families, under each such option the State must assure that care described in clause (ii) is available without charge to the families through—

(I) payment of any deductibles, coinsurance, and other cost-sharing respecting such care, or

(II) providing coverage under the State plan for such care without any cost-sharing, or any combination of such mechanisms.

(ii) Care described

The care described in this clause consists of—

(I) services related to pregnancy (including prenatal, delivery, and post partum services), and

(II) ambulatory preventive pediatric care (including ambulatory early and periodic screening, diagnosis, and treatment services under section 1396d(a)(4)(B) of this title) for each child who meets the age and date of birth requirements to be a qualified child under section 1396d(a)(2) of this title.

(5) Premium

(A) Permitted

Notwithstanding any other provision of this subchapter (including section 1396c of this title), a State may impose a premium for a family for additional extended coverage under this subsection for a premium payment period (as defined in subparagraph (D)(i)), but only if the family’s average gross monthly earnings (less the average monthly costs for such child care as is necessary for the employment of the caretaker relative) for the premium base period exceed 100 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(B) Level may vary by option offered

The level of such premium may vary, for the same family, for each option offered by a State under paragraph (4)(D).

(C) Limit on premium

In no case may the amount of any premium under this paragraph for a family for a month in either of the premium payment periods described in subparagraph (D)(i) exceed 3 percent of the family’s average gross monthly earnings (less the average monthly costs for such child care as is necessary for the employment of the caretaker relative) during the premium base period (as defined in subparagraph (D)(ii)).

(D) Definitions

In this paragraph:

(i) A “premium payment period” described in this clause is a 3-month period beginning with the 1st or 4th month of the 6-month additional extension period provided under this subsection.

(ii) The term “premium base period” means, with respect to a particular premium payment period, the period of 3 consecutive months the last of which is 4 months before the beginning of that premium payment period.

(c) Applicability in States and territories

(1) States operating under demonstration projects

In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315(a) of this title, the Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

(2) Inapplicability in commonwealths and territories

The provisions of this section shall only apply to the 50 States and the District of Columbia.

(d) General disqualification for fraud

(1) Ineligibility for aid

This section shall not apply to an individual who is a member of a family which has received aid under part A of subchapter IV of this chapter if the State makes a finding that, at any time during the last 6 months in which the family was receiving such aid before otherwise being provided extended eligibility under this section, the individual was ineligible for such aid because of fraud.

(2) General disqualifications

For additional provisions relating to fraud and program abuse, see sections 1320a–7, 1320a–7a, and 1320a–7b of this title.

(e) “Caretaker relative” defined

In this section, the term “caretaker relative” has the meaning of such term as used in part A of subchapter IV of this chapter.
(f) Sunset
This section shall not apply with respect to families that cease to be eligible for aid under part A of subchapter IV of this chapter after February 29, 2012.

(g) Collection and reporting of participation information
(1) Collection of information from States
Each State shall collect and submit to the Secretary (and make publicly available), in a format specified by the Secretary, information on average monthly enrollment and average monthly participation rates for adults under this section and of the number and percentage of children who become ineligible for medical assistance under this section whose medical assistance is continued under another eligibility category or who are enrolled under the State's child health plan under subchapter XXI. Such information shall be submitted at the same time and frequency in which other enrollment information under this subchapter is submitted to the Secretary.

(2) Annual reports to Congress
Using the information submitted under paragraph (1), the Secretary shall submit to Congress annual reports concerning enrollment and participation rates described in such paragraph.

(194, 178, 194, 178)
Subsec. (b)(3)(A)(i). Pub. L. 101–239, §4611(i)(1), substituted “a child, whether or not the child is” for “a child who is”.

Subsec. (b)(3)(C)(i). Pub. L. 101–239, §4611(i)(3), substituted “of section 1396d(a) of this title or clause (i)(IV), (i)(VI), or (i)(IX) of section 1396a(a)(10)(A) of this title” for “or (v) of section 1396d(a) of this title”.

1988—Subsec. (b)(5)(C). Pub. L. 100–247, which directed the amendment of subsec. (b)(5)(C) by inserting “(less the average monthly costs for such child care as is necessary for the employment of the caretaker relative)” after “gross monthly earnings”, was executed to subsec. (b)(5)(C) to reflect the probable intent of Congress.

**Effective Date of 2009 Amendment**

Amendment by section 5004(a)(1) of Pub. L. 111–5 effective July 1, 2009, see section 5004(a)(2) of Pub. L. 111–5, set out as a note under section 1396a of this title.

Pub. L. 111–5, div. B, title V, §5004(e), Feb. 17, 2009, 123 Stat. 505, provided that: “The amendments made by subsections (b) through (d) [amending this section] shall take effect on July 1, 2009.”

**Effective Date of 2003 Amendment**


**Effective Date of 1997 Amendment**

Amendment by section 4701(b)(2)(A)(i), (D) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, see section 4701(a) of Pub. L. 105–33, set out as a note under section 1396d of this title.

Amendment by section 4703(b)(2) of Pub. L. 105–33 applicable to contracts under section 1396(m) of this title on and after June 20, 1997, subject to provisions relating to extension of effective date for State law amendments, and to nonapplication to waivers, see section 4701(b)(2) of Pub. L. 105–33, set out as a note under section 1396d of this title.

**Effective Date of 1996 Amendment**

Amendment by Pub. L. 104–193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

**Effective Date of 1990 Amendment**

Amendment by section 4601(a)(3)(B) of Pub. L. 101–508 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4601 of Pub. L. 101–508 have been promulgated by such date, see section 4601(b) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4716(b) of Pub. L. 105–33 provided that: “The amendments made by subsection (a) [amending this section] shall be effective as if included in the enactment of the Family Support Act of 1988 [Pub. L. 100–485].”

**Effective Date of 1989 Amendment**

Section 6411(i)(1)(i) of Pub. L. 101–239 provided that: “The amendments made by this subsection [amending this section and provisions set out as a note under section 602 of this title] shall be effective as if included in the enactment of the Family Support Act of 1988 [Pub. L. 100–485].”

**Effective Date of 1988 Amendment**

Section 8436(b) of Pub. L. 100–647 provided that: “The amendments made by subsection (a) [amending this section] shall be effective as if included in the enactment of the Family Support Act of 1988 [Pub. L. 100–485].”

**References to Provisions of Part A of Subchapter IV Considered References to Such Provisions as in Effect July 16, 1996**

For provisions that certain references to provisions of part A (§601 et seq.) of subchapter IV of this chapter shall be considered references to such provisions of part A as in effect July 16, 1996, see section 1396a–1(a) of this title.

**Study and Report to Congress on Impact of Medicaid Extension Provisions**

Section 333(c) of Pub. L. 100–485 directed Secretary of Health and Human Services to conduct a study of impact of Medicaid extension provisions under this section, with particular focus on costs of such provisions and impact on welfare dependency, and report to Congress on results of such study not later than Apr. 1, 1993.


**Effective Date of Repeal**

Section 4713(b) of Pub. L. 105–33 provided that: “As added by section 201(a) [repealing this section] shall apply to services furnished on or after October 1, 1997.”

**§1396r–8. Payment for covered outpatient drugs**

(a) Requirement for rebate agreement

(1) In general

In order for payment to be available under section 1396b(a) of this title or under part B of subchapter XVIII of this chapter for covered outpatient drugs of a manufacturer, the manufacturer must have entered into and have in effect a rebate agreement described in subsection (b) of this section with the Secretary, on behalf of States (except that, the Secretary may authorize a State to enter directly into agreements with a manufacturer), and must meet the requirements of paragraph (5) (with respect to drugs purchased by a covered entity on or after the first day of the first month that begins after November 4, 1992) and paragraph (6). Any agreement between a State and a manufacturer prior to April 1, 1991, shall be deemed to have been entered into on January 1, 1991, and payment to such manufacturer shall be retroactively calculated as if the agreement between the manufacturer and the State had been entered into on January 1, 1991. If a manufacturer has not entered into such an agreement before March 1, 1991, such an agree-
(3) Authorizing payment for drugs not covered under rebate agreements

Paragraph (1), and section 1396b(i)(10)(A) of this title, shall not apply to the dispensing of a single source drug or innovator multiple source drug if (A) the State has made a determination that the availability of the drug is essential to the health of beneficiaries under the State plan for medical assistance; (i) such drug has been given a rating of I-A by the Food and Drug Administration; and (ii) the physician has obtained approval for use of the drug in advance of its dispensing in accordance with a prior authorization program described in subsection (d) of this section, or (II) the Secretary has reviewed and approved the State’s determination under subparagraph (A); or (B) the Secretary determines that in the first calendar quarter of 1991, there were extenuating circumstances.

(4) Effect on existing agreements

In the case of a rebate agreement in effect between a State and a manufacturer on November 5, 1990, such agreement, for the initial agreement period specified therein, shall be considered to be a rebate agreement in compliance with this section with respect to that State, if the State agrees to report to the Secretary any rebates paid pursuant to the agreement under section 256b(a) of this title, and not submit to any manufacturer a claim for a rebate payment under subsection (b) of this section with respect to such a drug.

(B) “Covered entity” defined

In this subsection, the term “covered entity” means an entity described in section 256b(a)(4) of this title.

(C) Establishment of alternative mechanism to ensure against duplicate discounts or rebates

If the Secretary does not establish a mechanism under section 256b(a)(5)(A) of this title within 12 months of November 4, 1992, the following requirements shall apply:

(i) Entities

Each covered entity shall inform the single State agency under section 1396a(a)(5) of this title when it is seeking reimbursement from the State plan for medical assistance described in section 1396d(a)(12) of this title with respect to a unit of any covered outpatient drug which is subject to an agreement under section 256b(a) of this title.

(ii) State agency

Each such single State agency shall provide a means by which a covered entity shall indicate on any drug reimbursement claims form (or format, where electronic claims management is used) that a unit of the drug that is the subject of the form is subject to an agreement under section 256b of this title, and not submit to any manufacturer a claim for a rebate payment under subsection (b) of this section with respect to such a drug.

(D) Effect of subsequent amendments

In determining whether an agreement under subparagraph (A) meets the requirements of section 256b of this title, the Secretary shall not take into account any amendments to such section that are enacted after November 4, 1992.

(E) Determination of compliance

A manufacturer is deemed to meet the requirements of this paragraph if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of section 256b of this title (as in effect immediately after November 4, 1992) and would have entered into an agreement under such section (as such section was in effect at such time), but for a legislative change in such section after November 4, 1992.

(6) Requirements relating to master agreements for drugs procured by Department of Veterans Affairs and certain other Federal agencies

(A) In general

A manufacturer meets the requirements of this paragraph if the manufacturer complies with the provisions of section 8126 of title 38, including the requirement of entering into a master agreement with the Secretary of Veterans Affairs under such section.

(B) Effect of subsequent amendments

In determining whether a master agreement described in subparagraph (A) meets
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the requirements of section 8126 of title 38, the Secretary shall not take into account any amendments to such section that are enacted after November 4, 1992.

(C) Determination of compliance

A manufacturer is deemed to meet the requirements of this paragraph if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of section 8126 of title 38, (as in effect immediately after November 4, 1992) and would have entered into an agreement under such section (as such section was in effect at such time), but for a legislative change in such section after November 4, 1992.

(7) Requirement for submission of utilization data for certain physician administered drugs

(A) Single source drugs

In order for payment to be available under section 1396b(a) of this title for a covered outpatient drug that is a single source drug that is physician administered under this subchapter (as determined by the Secretary), and that is administered on or after January 1, 2006, the State shall provide for the collection and submission of such utilization data and coding (such as J-codes and National Drug Code numbers) for each such drug as the Secretary may specify as necessary to identify the manufacturer of the drug required to secure rebates under this section (as such section was in effect at such time), but for a legislative change in such section after November 4, 1992.

(B) Multiple source drugs

(ii) Requirement

In order for payment to be available under section 1396b(a) of this title for a covered outpatient drug that is a multiple source drug that is physician administered (as determined by the Secretary), that is on the list published under clause (i), and that is administered on or after January 1, 2008, the State shall provide for the submission of such utilization data and coding (such as J-codes and National Drug Code numbers) for each such drug as the Secretary may specify as necessary to identify the manufacturer of the drug in order to secure rebates under this section.

(C) Use of NDC codes

Not later than January 1, 2007, the information shall be submitted under subparagraphs (A) and (B)(ii) using National Drug Code codes unless the Secretary specifies that an alternative coding system should be used.

(D) Hardship waiver

The Secretary may delay the application of subparagraph (A) or (B)(ii), or both, in the case of a State to prevent hardship to States which require additional time to implement the reporting system required under the respective subparagraph.

(b) Terms of rebate agreement

(1) Periodic rebates

(A) In general

A rebate agreement under this subsection shall require the manufacturer to provide, to each State plan approved under this subchapter, a rebate for a rebate period in an amount specified in subsection (c) of this section for covered outpatient drugs of the manufacturer dispensed after December 31, 1990, for which payment was made under the State plan for such period, including such drugs dispensed to individuals enrolled with a medicaid managed care organization if the organization is responsible for coverage of such drugs. Such rebate shall be paid by the manufacturer not later than 30 days after the date of receipt of the information described in paragraph (2) for the period involved.

(B) Offset against medical assistance

Amounts received by a State under this section (or under an agreement authorized by the Secretary under subsection (a)(1) of this section or an agreement described in subsection (a)(4) of this section) in any quarter shall be considered to be a reduction in the amount expended under the State plan in the quarter for medical assistance for purposes of section 1396b(a)(1) of this title.

(C) Special rule for increased minimum rebate percentage

(i) In general

In addition to the amounts applied as a reduction under subparagraph (B), for rebate periods beginning on or after January 1, 2010, during a fiscal year, the Secretary shall reduce payments to a State under section 1396b(a) of this title in the manner specified in clause (II), in an amount equal to the product of—

(I) 100 percent minus the Federal medical assistance percentage applicable to the rebate period for the State; and

(II) the amounts received by the State under such subparagraph that are attributable (as estimated by the Secretary based on utilization and other data) to the increase in the minimum rebate percentage effected by the amendments made by subsections (a)(1), (b), and (d) of section 2501 of the Patient Protection and Affordable Care Act, taking into account the additional drugs included under the amendments made by subsection (c) of section 2501 of such Act.

The Secretary shall adjust such payment reduction for a calendar quarter to the ex-
(ii) Manner of payment reduction

The amount of the payment reduction under clause (i) for a State for a quarter shall be deemed an overpayment to the State under this subchapter to be disallowed against the State's regular quarterly draw for all Medicaid spending under section 1396b(d)(2) of this title. Such a disallowance is not subject to a reconsideration under section 1316(d) of this title.

(2) State provision of information

(A) State responsibility

Each State agency under this subchapter shall report to each manufacturer not later than 60 days after the end of each rebate period and in a form consistent with a standard reporting format established by the Secretary, information on the total number of units of each dosage form and strength and package size of each covered outpatient drug dispensed after December 31, 1990, for which payment was made under the plan during the period, including such information reported by each Medicaid managed care organization, and shall promptly transmit a copy of such report to the Secretary.

(B) Audits

A manufacturer may audit the information provided (or required to be provided) under subparagraph (A). Adjustments to rebates shall be made to the extent that information indicates that utilization was greater or less than the amount previously specified.

(3) Manufacturer provision of price information

(A) In general

Each manufacturer with an agreement in effect under this section shall report to the Secretary—

(i) not later than 30 days after the last day of each rebate period under the agreement—

(I) on the average manufacturer price (as defined in subsection (k)(1) for covered outpatient drugs for the rebate period under the agreement (including for all such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(c))); and

(II) for single source drugs and innovator multiple source drugs (including all such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act), on the manufacturer's best price (as defined in subsection (c)(1)(C)) for such drugs for the rebate period under the agreement;

(ii) not later than 30 days after the date of entering into an agreement under this section on the average manufacturer price (as defined in subsection (k)(1) of this section) as of October 1, 1990 for each of the manufacturer's covered outpatient drugs (including for such drugs that are sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act); and

(iii) for calendar quarters beginning on or after January 1, 2004, in conjunction with reporting required under clause (i) and by National Drug Code (including package size)—

(I) the manufacturer's average sales price (as defined in section 1395w–3a(c) of this title) and the total number of units specified under section 1395w–3a(b)(2)(A) of this title;

(II) if required to make payment under section 1395w–3a of this title, the manufacturer's wholesale acquisition cost, as defined in subsection (c)(6) of such section; and

(III) information on those sales that were made at a nominal price or otherwise described in section 1395w–3a(c)(2)(B) of this title;

for a drug or biological described in subparagraph (C), (D), (E), or (G) of section 1395u(o)(1) of this title or section 1395rr(b)(13)(A)(ii) of this title, and, for calendar quarters beginning on or after January 1, 2007 and only with respect to the information described in subclause (III), for covered outpatient drugs.2

(iv) not later than 30 days after the last day of each month of a rebate period under the agreement, on the manufacturer's total number of units that are used to calculate the monthly average manufacturer price for each covered outpatient drug;

Information reported under this subparagraph is subject to audit by the Inspector General of the Department of Health and Human Services. Beginning July 1, 2006, the Secretary shall provide on a monthly basis to States under subparagraph (D)(v) the most recently reported average manufacturer prices for single source drugs and for multiple source drugs and shall, on at least a quarterly basis, update the information posted on the website under subparagraph (D)(v) (relating to the weighted average of the most recently reported monthly average manufacturer prices).

(B) Verification surveys of average manufacturer price and manufacturer's average sales price

The Secretary may survey wholesalers and manufacturers that directly distribute their covered outpatient drugs, when necessary, to verify manufacturer prices and manufacturer's average sales prices (including wholesale acquisition cost) if required to make payment reported under subparagraph (A). The Secretary may impose a civil monetary pen-
aly in an amount not to exceed $100,000 on a wholesaler, manufacturer, or direct seller, if the wholesaler, manufacturer, or direct seller of a covered outpatient drug refuses a request for information about charges or prices by the Secretary in connection with a survey under this subparagraph or knowingly provides false information. The provisions of section 1320a–7a of this title (other than subsections (a) (with respect to amounts of penalties or additional assessments) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7(a) of this title.

(C) Penalties

(i) Failure to provide timely information

In the case of a manufacturer with an agreement under this section that fails to provide information required under subparagraph (A) on a timely basis, the amount of the penalty shall be increased by $10,000 for each day in which such information has not been provided and such amount shall be paid to the Treasury, and, if such information is not reported within 90 days of the deadline imposed, the agreement shall be suspended for services furnished after the end of such 90-day period and until the date such information is reported (but in no case shall such suspension be for a period of less than 30 days).

(ii) False information

Any manufacturer with an agreement under this section that knowingly provides false information is subject to a civil money penalty in an amount not to exceed $100,000 for each item of false information. Such civil money penalties are in addition to other penalties as may be prescribed by law. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7(a) of this title.

(D) Confidentiality of information

Notwithstanding any other provision of law, information disclosed by manufacturers or wholesalers under this paragraph or under an agreement with the Secretary of Veterans Affairs described in subsection (a)(6)(A)(ii) of this section (other than the wholesale acquisition cost for purposes of carrying out section 1395w–3a of this title) is confidential and shall not be disclosed by the Secretary or the Secretary of Veterans Affairs or a State agency (or contractor therewith) in a form which discloses the identity of a specific manufacturer or wholesaler, prices charged for drugs by such manufacturer or wholesaler, except—

(i) as the Secretary determines to be necessary to carry out this section, to carry out section 1395w–3a of this title (including the determination and implementation of the payment amount), or to carry out section 1395w–3b of this title,

(ii) to permit the Comptroller General to review the information provided,

(iii) to permit the Director of the Congressional Budget Office to review the information provided,

(iv) to States to carry out this subchapter, and

(v) to the Secretary to disclose (through a website accessible to the public) the weighted average of the most recently reported monthly average manufacturer prices and the average retail survey price determined for each multiple source drug in accordance with subsection (f).

The previous sentence shall also apply to information disclosed under section 1395w–102(d)(2) or 1395w–104(c)(2)(E) of this title and drug pricing data reported under the first sentence of section 1395w–141(1)(1) of this title.

(4) Length of agreement

(A) In general

A rebate agreement shall be effective for an initial period of not less than 1 year and shall be automatically renewed for a period of not less than 1 year unless terminated under subparagraph (B).

(B) Termination

(i) By the Secretary

The Secretary may provide for termination of a rebate agreement for violation of the requirements of the agreement or other good cause shown. Such termination shall not be effective earlier than 60 days after the date of notice of such termination. The Secretary shall provide, upon request, a manufacturer with a hearing concerning such a termination, but such hearing shall not delay the effective date of the termination.

(ii) By a manufacturer

A manufacturer may terminate a rebate agreement under this section for any reason. Any such termination shall not be effective until the calendar quarter beginning at least 60 days after the date the manufacturer provides notice to the Secretary.

(iii) Effectiveness of termination

Any termination under this subparagraph shall not affect rebates due under the agreement before the effective date of its termination.

(iv) Notice to States

In the case of a termination under this subparagraph, the Secretary shall provide notice of such termination to the States within not less than 30 days before the effective date of such termination.

(v) Application to terminations of other agreements

The provisions of this subparagraph shall apply to the terminations of agreements described in section 256b(a)(1) of this title.

See References in Text note below.
and master agreements described in section 8126(a) of title 38.

(C) Delay before reentry
In the case of any rebate agreement with a manufacturer under this section which is terminated, another such agreement with the manufacturer (or a successor manufacturer) may not be entered into until a period of 1 calendar quarter has elapsed since the date of the termination, unless the Secretary finds good cause for an earlier reinstatement of such an agreement.

(c) Determination of amount of rebate

(1) Basic rebate for single source drugs and innovator multiple source drugs

(A) In general
Except as provided in paragraph (2), the amount of the rebate specified in this subsection for a rebate period (as defined in subsection (k)(8) of this section) with respect to each dosage form and strength of a single source drug or an innovator multiple source drug shall be equal to the product of—

(i) the total number of units of each dosage form and strength paid for under the State plan in the rebate period (as reported by the State); and

(ii) subject to subparagraph (B)(ii), the greater of—

(I) the difference between the average manufacturer price and the best price (as defined in subparagraph (C)) for the dosage form and strength of the drug, or

(II) the minimum rebate percentage (specified in subparagraph (B)(i)) of such average manufacturer price,

for the rebate period.

(B) Range of rebates required

(i) Minimum rebate percentage
For purposes of subparagraph (A)(ii), the “minimum rebate percentage” for rebate periods beginning—

(I) after December 31, 1990, and before October 1, 1992, is 12.5 percent;

(II) after September 30, 1992, and before January 1, 1993, exceed 25 percent of the average manufacturer price; or

(III) after December 31, 1993, and before January 1, 1994, is 15.7 percent;

(IV) after December 31, 1994, and before January 1, 1996, is 15.2 percent;

(V) after December 31, 1995, and before January 1, 2010, is 15.1 percent; and

(VI) except as provided in clause (iii), after December 31, 2009, is 23.1 percent.

(ii) Temporary limitation on maximum rebate amount
In no case shall the amount applied under subparagraph (A)(ii) for a rebate period beginning—

(I) before January 1, 1992, exceed 25 percent of the average manufacturer price; or


(iii) Minimum rebate percentage for certain drugs

(I) In general
In the case of a single source drug or an innovator multiple source drug described in subclause (II), the minimum rebate percentage for rebate periods specified in clause (i)(VI) is 17.1 percent.

(II) Drug described
For purposes of subclause (I), a single source drug or an innovator multiple source drug described in this subclause is any of the following drugs:

(aa) A clotting factor for which a separate furnishing payment is made under section 1395u(o)(5) of this title and which is included on a list of such factors specified and updated regularly by the Secretary.

(bb) A drug approved by the Food and Drug Administration exclusively for pediatric indications.

(C) “Best price” defined
For purposes of this section—

(i) In general
The term “best price” means, with respect to a single source drug or innovator multiple source drug of a manufacturer (including the lowest price available to any entity for any such drug of a manufacturer that is sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(c)]), the lowest price available from the manufacturer during the rebate period to any wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States, excluding—

(I) any prices charged on or after October 1, 1992, to the Indian Health Service, the Department of Veterans Affairs, a State home receiving funds under section 1741 of title 38, the Department of Defense, the Public Health Service, or a covered entity described in subsection (a)(5)(B) of this section (including inpatient prices charged to hospitals described in section 236b(a)(4)(L) of this title);

(II) any prices charged under the Federal Supply Schedule of the General Services Administration;

(III) any prices used under a State pharmaceutical assistance program;

(IV) any depot prices and single award contract prices, as defined by the Secretary, of any agency of the Federal Government;

(V) the prices negotiated from drug manufacturers for covered discount card drugs under an endorsed discount card program under section 1395w–141 of this title; and

(VI) any prices charged which are negotiated by a prescription drug plan under part D of subchapter XVIII of this chapter, by an MA–PD plan under part C

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of such subchapter with respect to covered Part D drugs or by a qualified prescription drug plan (as defined in section 1395w–112(a)(2) of this title) with respect to such drugs on behalf of individuals entitled to benefits under part A or enrolled under part B of such subchapter, or any discounts provided by manufacturers under the Medicare coverage gap discount program under section 1395w–114a of this title.

(ii) Special rules

The term ‘best price’—

(I) shall be inclusive of cash discounts, free goods that are contingent on any purchase requirement, volume discounts, and rebates (other than rebates under this section);

(ii) shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package;

(iii) shall not take into account prices that are merely nominal in amount; and

(iv) in the case of a manufacturer that approves, allows, or otherwise permits any other drug of the manufacturer to be sold under a new drug application approved under section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(c)], shall be inclusive of the lowest price for such authorized drug available from the manufacturer during the rebate period to any manufacturer, wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States, excluding those prices described in subclauses (I) through (IV) of clause (i).

(iii) Application of auditing and record-keeping requirements

With respect to a covered entity described in section 256b(a)(4)(L) of this title, any drug purchased for inpatient use shall be subject to the auditing and record-keeping requirements described in section 256b(a)(5)(C) of this title.

(D) Limitation on sales at a nominal price

(i) In general

For purposes of subparagraph (C)(i)(III) and subsection (b)(3)(A)(iii)(III), only sales by a manufacturer of covered outpatient drugs at nominal prices to the following shall be considered to be sales at a nominal price or merely nominal in amount:

(I) A covered entity described in section 256b(a)(4) of this title.

(II) An intermediate care facility for the mentally retarded.

(III) A State-owned or operated nursing facility.

(IV) An entity that—

(aa) is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Act or is State-owned or operated; and

(bb) would be a covered entity described in section 256b(a)(4) of this title insofar as the entity provides the same type of services to the same type of populations as a covered entity described in such section provides, but does not receive funding under a provision of law referred to in such section;

(V) A public or nonprofit entity, or an entity based on an institution of higher learning whose primary purpose is to provide health care services to students of that institution, that provides a service or services described under section 300(a) of this title.

(VI) Any other facility or entity that the Secretary determines is a safety net provider to which sales of such drugs at a nominal price would be appropriate based on the factors described in clause (ii).

(ii) Factors

The factors described in this clause with respect to a facility or entity are the following:

(I) The type of facility or entity.

(II) The services provided by the facility or entity.

(III) The patient population served by the facility or entity.

(IV) The number of other facilities or entities eligible to purchase at nominal prices in the same service area.

(iii) Nonapplication

Clause (i) shall not apply with respect to sales by a manufacturer at a nominal price of covered outpatient drugs pursuant to a master agreement under section 8126 of title 38.

(iv) Rule of construction

Nothing in this subparagraph shall be construed to alter any existing statutory or regulatory prohibition on services with respect to an entity described in clause (i) such that a sale would be lawful if it were not to be considered a sale at a nominal price for purposes of this paragraph.

(2) Additional rebate for single source and innovator multiple source drugs

(A) In general

The amount of the rebate specified in this subsection for a rebate period, with respect to each dosage form and strength of a single source drug or an innovator multiple source drug, shall be increased by an amount equal to the product of—

(i) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the State plan for the rebate period; and

(ii) the amount (if any) by which—

(I) the average manufacturer price for the dosage form and strength of the drug for the period, exceeds

(II) the average manufacturer price for such dosage form and strength for the calendar quarter beginning July 1, 1990 (without regard to whether or not the drug has been sold or transferred to an entity, including a division or subsidiary...
of the manufacturer, after the first day of such quarter), increased by the percentage by which the consumer price index for all urban consumers (United States city average) for the month before the month in which the rebate period begins exceeds such index for September 1990.

(B) Treatment of subsequently approved drugs

In the case of a covered outpatient drug approved by the Food and Drug Administration after October 1, 1990, clause (ii)(II) of subparagraph (A) shall be applied by substituting “the first full calendar quarter after the day on which the drug was first marketed” for “the calendar quarter beginning July 1, 1990” and “the month prior to the first month of the first full calendar quarter after the day on which the drug was first marketed” for “September 1990”.

(C) Treatment of new formulations

In the case of a drug that is a line extension of a single source drug or an innovator multiple source drug that is an oral solid dosage form, the rebate obligation with respect to such drug under this section shall be the amount computed under this section for such new drug or, if greater, the product of—

(i) the average manufacturer price of the line extension of a single source drug or an innovator multiple source drug that is an oral solid dosage form;

(ii) the highest additional rebate (calculated as a percentage of average manufacturer price) under this section for any strength of the original single source drug or innovator multiple source drug; and

(iii) the total number of units of each dosage form and strength of the line extension product paid for under the State plan in the rebate period (as reported by the State).

In this subparagraph, the term “line extension” means, with respect to a drug, a new formulation of the drug, such as an extended release formulation.

(D) Maximum rebate amount

In no case shall the sum of the amounts applied under paragraph (1)(A)(ii) and this paragraph with respect to each dosage form and strength of a single source drug or an innovator multiple source drug for a rebate period beginning after December 31, 2009, exceed 100 percent of the average manufacturer price of the drug.

(3) Rebate for other drugs

(A) In general

The amount of the rebate paid to a State for a rebate period with respect to each dosage form and strength of covered outpatient drugs (other than single source drugs and innovator multiple source drugs) shall be equal to the product of—

(i) the applicable percentage (as described in subparagraph (B)) of the average manufacturer price for the dosage form and strength for the rebate period, and

(ii) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the State plan for the rebate period.

(B) “Applicable percentage” defined

For purposes of subparagraph (A)(i), the “applicable percentage” for rebate periods beginning—

(i) before January 1, 1994, is 10 percent,

(ii) after December 31, 1993, and before January 1, 2010, is 11 percent; and

(iii) after December 31, 2009, is 13 percent.

(d) Limitations on coverage of drugs

(1) Permissible restrictions

(A) A State may subject to prior authorization any covered outpatient drug. Any such prior authorization program shall comply with the requirements of paragraph (5).

(B) A State may exclude or otherwise restrict coverage of a covered outpatient drug if—

(i) the prescribed use is not for a medically accepted indication (as defined in subsection (k)(6) of this section);

(ii) the drug is contained in the list referred to in paragraph (2);

(iii) the drug is subject to such restrictions pursuant to an agreement between a manufacturer and a State authorized by the Secretary under subsection (a)(1) of this section or in effect pursuant to subsection (a)(4) of this section; or

(iv) the State has excluded coverage of the drug from its formulary established in accordance with paragraph (4).

(2) List of drugs subject to restriction

The following drugs or classes of drugs, or their medical uses, may be excluded from coverage or otherwise restricted:

(A) Agents when used for anorexia, weight loss, or weight gain.

(B) Agents when used to promote fertility.

(C) Agents when used for cosmetic purposes or hair growth.

(D) Agents when used for the symptomatic relief of cough and colds.

(E) Agents when used to promote smoking cessation.

(F) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.

(G) Nonprescription drugs.

(H) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.

(I) Barbiturates.

(J) Benzodiazepines.

(K) Agents when used for the treatment of sexual or erectile dysfunction, unless such agents are used to treat a condition, other than sexual or erectile dysfunction, for which the agents have been approved by the Food and Drug Administration.

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6So in original. The semicolon probably should be a comma.
(3) Update of drug listings

The Secretary shall, by regulation, periodically update the list of drugs or classes of drugs described in paragraph (2) or their medical uses, which the Secretary has determined, based on data collected by surveillance and utilization review programs of State medical assistance programs, to be subject to clinical abuse or inappropriate use.

(4) Requirements for formularies

A State may establish a formulary if the formulary meets the following requirements:

(A) The formulary is developed by a committee consisting of physicians, pharmacists, and other appropriate individuals appointed by the Governor of the State (or, at the option of the State, the State’s drug use review board established under subsection (g)(3) of this section).

(B) Except as provided in subparagraph (C), the formulary includes the covered outpatient drugs of any manufacturer which has entered into and complies with an agreement under subsection (a) of this section (other than any drug excluded from coverage or otherwise restricted under paragraph (2)).

(C) A covered outpatient drug may be excluded with respect to the treatment of a specific disease or condition for an identified population (if any) only if, based on the drug’s labeling (or, in the case of a drug the prescription use of which is not approved under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] but is a medically accepted indication, based on information from the appropriate compendia described in subsection (k)(6) of this section), the excluded drug does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome of such treatment for such population over other drugs included in the formulary and there is a written explanation (available to the public) of the basis for the exclusion.

(D) The State plan permits coverage of a drug excluded from the formulary (other than any drug excluded from coverage or otherwise restricted under paragraph (2)) pursuant to a prior authorization program that is consistent with paragraph (5).

(E) The formulary meets such other requirements as the Secretary may impose in order to achieve program savings consistent with protecting the health of program beneficiaries.

A prior authorization program established by a State under paragraph (5) is not a formulary subject to the requirements of this paragraph.

(5) Requirements of prior authorization programs

A State plan under this subchapter may require, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this section, with respect to drugs dispensed on or after July 1, 1991, the approval of the drug before its dispensing for any medically accepted indication (as defined in subsection (k)(6) of this section) only if the system providing for such approval—

(A) provides response by telephone or other telecommunication device within 24 hours of a request for prior authorization; and

(B) except with respect to the drugs on the list referred to in paragraph (2), provides for the dispensing of at least 72-hour supply of a covered outpatient prescription drug in an emergency situation (as defined by the Secretary).

(6) Other permissible restrictions

A State may impose limitations, with respect to all such drugs in a therapeutic class, on the minimum or maximum quantities per prescription or on the number of refills, if such limitations are necessary to discourage waste, and may address instances of fraud or abuse by individuals in any manner authorized under this chapter.

(e) Treatment of pharmacy reimbursement limits

(1) In general

During the period beginning on January 1, 1991, and ending on December 31, 1994—

(A) a State may not reduce the payment limits established by regulation under this subchapter or any limitation described in paragraph (3) with respect to the ingredient cost of a covered outpatient drug or the dispensing fee for such a drug below the limits in effect as of January 1, 1991, and

(B) except as provided in paragraph (2), the Secretary may not modify by regulation the formula established under sections 447.331 through 447.334 of title 42, Code of Federal Regulations, in effect on November 5, 1990, to reduce the limits described in subparagraph (A).

(2) Special rule

If a State is not in compliance with the regulations described in paragraph (1)(B), paragraph (1)(A) shall not apply to such State until such State is in compliance with such regulations.

(3) Effect on State maximum allowable cost limitations

This section shall not supersede or affect provisions in effect prior to January 1, 1991, or after December 31, 1994, relating to any maximum allowable cost limitation established by a State for payment by the State for covered outpatient drugs, and rebates shall be made under this section without regard to whether or not payment by the State for such drugs is subject to such a limitation or the amount of such a limitation.

(4) Establishment of upper payment limits

Subject to paragraph (5), the Secretary shall establish a Federal upper reimbursement limit for each multiple source drug for which the FDA has rated three or more products therapeutically and pharmacologically equivalent, regardless of whether all such additional formulations are rated as such and shall use only

See 1993 Amendment note below.
such formulations when determining any such upper limit.

(5) **Use of amp in upper payment limits**

The Secretary shall calculate the Federal upper reimbursement limit established under paragraph (4) as no less than 175 percent of the weighted average (determined on the basis of utilization) of the most recently reported monthly average manufacturer prices for pharmaceutically and therapeutically equivalent multiple source drug products that are available for purchase by retail community pharmacies on a nationwide basis. The Secretary shall implement a smoothing process for average manufacturer prices. Such process shall be similar to the smoothing process used in determining the average sales price of a drug or biological under section 1395w–3a of this title.

(f) **Survey of retail prices; State payment and utilization rates; and performance rankings**

(1) **Survey of retail prices**

(A) **Use of vendor**

The Secretary may contract services for—

(i) with respect to a retail community pharmacy, the determination on a monthly basis of retail survey prices for covered outpatient drugs that represent a nationwide average of consumer purchase prices for such drugs, net of all discounts and rebates (to the extent any information with respect to such discounts and rebates is available); and

(ii) the notification of the Secretary when a drug product that is therapeutically and pharmaceutically equivalent and bioequivalent becomes generally available.

(B) **Secretary response to notification of availability of multiple source products**

If contractor notifies the Secretary under subparagraph (A)(ii) that a drug product described in such subparagraph has become generally available, the Secretary shall make a determination, within 7 days after receiving such notification, as to whether the product is now described in subsection (e)(4).^3

(C) **Use of competitive bidding**

In contracting for such services, the Secretary shall competitively bid for an outside vendor that has a demonstrated history in—

(i) surveying and determining, on a representative nationwide basis, retail prices for ingredient costs of prescription drugs;

(ii) working with retail community pharmacies, commercial payers, and States in obtaining and disseminating such price information; and

(iii) collecting and reporting such price information on at least a monthly basis.

In contracting for such services, the Secretary may waive such provisions of the Federal Acquisition Regulation as are necessary for the efficient implementation of this subsection, other than provisions relating to confidentiality of information and such other provisions as the Secretary determines appropriate.

(D) **Additional provisions**

A contract with a vendor under this paragraph shall include such terms and conditions as the Secretary shall specify, including the following:

(i) The vendor must monitor the marketplace and report to the Secretary each time there is a new covered outpatient drug generally available.

(ii) The vendor must update the Secretary no less often than monthly on the retail survey prices for covered outpatient drugs.

(iii) The contract shall be effective for a term of 2 years.

(E) **Availability of information to States**

Information on retail survey prices obtained under this paragraph, including applicable information on single source drugs, shall be provided to States on at least a monthly basis. The Secretary shall devise and implement a means for providing access to each State agency designated under section 1396a(a)(5) of this title with responsibility for the administration or supervision of the administration of the State plan under this subchapter of the retail survey price determined under this paragraph.

(2) **Annual State report**

Each State shall annually report to the Secretary information on—

(A) the payment rates under the State plan under this subchapter for covered outpatient drugs;

(B) the dispensing fees paid under such plan for such drugs; and

(C) utilization rates for noninnovator multiple source drugs under such plan.

(3) **Annual State performance rankings**

(A) **Comparative analysis**

The Secretary annually shall compare, for the 50 most widely prescribed drugs identified by the Secretary, the national retail sales price data (collected under paragraph (1)) for such drugs with data on prices under this subchapter of each such drug for each State.

(B) **Availability of information**

The Secretary shall submit to Congress and the States full information regarding the annual rankings made under subparagraph (A).

(4) **Appropriation**

Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary of Health and Human Services $5,000,000 for each of fiscal years 2006 through 2010 to carry out this subsection.

(g) **Drug use review**

(1) **In general**

(A) In order to meet the requirement of section 1396l(i)(10)(B) of this title, a State shall provide, by not later than January 1, 1993, for a drug use review program described in paragraph (2) for covered outpatient drugs in order to assure that prescriptions (1) are appro-
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Use against predetermined standards, consistent with the following:

1. The program shall be designed to educate physicians and pharmacists to identify and reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists, and patients, or associated with specific drugs or groups of drugs, as well as potential and actual severe adverse reactions to drugs including education on therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse.

2. The program shall assess data on drug use against predetermined standards, consistent with the following:
   (i) compendia which shall consist of the following:
      (1) American Hospital Formulary Service Drug Information;
      (2) United States Pharmacopeia-Drug Information (or its successor publications); and
      (3) the DRUGDEX Information System;
   (ii) the peer-reviewed medical literature.

3. The program shall assess data on drug use against predetermined standards, consistent with the following:
   (A) Prospective drug review
   (i) The State plan shall provide for a review of drug therapy before each prescription is filled or delivered to an individual receiving benefits under this subsection, typically at the point-of-sale or point of distribution. The review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions (including serious interactions with non-prescription or over-the-counter drugs), incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse. Each State shall use the compendia and literature referred to in paragraph (1)(B) as its source of standards for such review.
   (ii) As part of the State’s prospective drug use review program under this subparagraph applicable State law shall establish standards for counseling of individuals receiving benefits under this subchapter by pharmacists which includes at least the following:
      (I) The pharmacist must offer to discuss with each individual receiving benefits under this subchapter or caregiver of such individual (in person, whenever practicable, or through access to a telephone service which is toll-free for long-distance calls) who presents a prescription, matters which in the exercise of the pharmacist’s professional judgment (consistent with State law respecting the provision of such information), the pharmacist deems significant including the following:
         (aa) The name and description of the medication.
         (bb) The route, dosage form, dosage, route of administration, and duration of drug therapy.
         (cc) Special directions and precautions for preparation, administration and use by the patient.
         (dd) Common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur.
         (ee) Techniques for self-monitoring drug therapy.
         (ff) Proper storage.
         (gg) Prescription refill information.
         (hh) Action to be taken in the event of a missed dose.
   (B) Retrospective drug use review
   (i) A reasonable effort must be made by the pharmacist to obtain, record, and maintain at least the following information regarding individuals receiving benefits under this subchapter:
      (aa) Name, address, telephone number, date of birth (or age) and gender.
      (bb) Individual history where significant, including disease state or states, known allergies and drug reactions, and a comprehensive list of medications and relevant devices.
      (cc) Pharmacist comments relevant to the individual’s drug therapy.

Nothing in this clause shall be construed as requiring a pharmacist to provide consultation when an individual receiving benefits under this subchapter or caregiver of such individual refuses such consultation, or to require verification of the offer to provide consultation or a refusal of such offer.

(B) Retrospective drug use review

The program shall provide, through its mechanized drug claims processing and information retrieval systems (approved by the Secretary under section 1396b(r) of this title) or otherwise, for the ongoing periodic examination of claims data and other records in order to identify patterns of
fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists and individuals receiving benefits under this subchapter, or associated with specific drugs or groups of drugs.

(C) Application of standards

The program shall, on an ongoing basis, assess data on drug use against explicit predetermined standards (using the compendia and literature referred to in subsection 8 (1)(B) as the source of standards for such assessment) including but not limited to monitoring for therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, and clinical abuse/misuse and, as necessary, introduce remedial strategies, in order to improve the quality of care and to conserve program funds or personal expenditures.

(D) Educational program

The program shall, through its State drug use review board established under paragraph (3), either directly or through contracts with accredited health care educational institutions, State medical societies or State pharmacists associations/societies or other organizations as specified by the State, and using data provided by the State drug use review board on common drug therapy problems, provide for active and ongoing educational outreach programs (including the activities described in paragraph (3)(C)(iii) of this subsection) to educate practitioners on common drug therapy problems with the aim of improving prescribing or dispensing practices.

(3) State drug use review board

(A) Establishment

Each State shall provide for the establishment of a drug use review board (hereinafter referred to as the “DUR Board”) either directly or through a contract with a private organization.

(B) Membership

The membership of the DUR Board shall include health care professionals who have recognized knowledge and expertise in one or more of the following:

(i) The clinically appropriate prescribing of covered outpatient drugs.
(ii) The clinically appropriate dispensing and monitoring of covered outpatient drugs.
(iii) Drug use review, evaluation, and intervention.
(iv) Medical quality assurance.

The membership of the DUR Board shall be made up at least 1⁄2 but no more than 51 percent licensed and actively practicing physicians and at least 1⁄2 * * * * licensed and actively practicing pharmacists.

(C) Activities

The activities of the DUR Board shall include but not be limited to the following:

(i) Retrospective DUR as defined in section 8 (2)(B).
(ii) Application of standards as defined in section 8 (2)(C).
(iii) Ongoing interventions for physicians and pharmacists, targeted toward therapy problems or individuals identified in the course of retrospective drug use reviews performed under this subsection. Intervention programs shall include, in appropriate instances, at least:

(I) Information dissemination sufficient to ensure the ready availability to physicians and pharmacists in the State of information concerning its duties, powers, and basis for its standards;
(II) written, oral, or electronic reminders containing patient-specific or drug-specific (or both) information and suggested changes in prescribing or dispensing practices, communicated in a manner designed to ensure the privacy of patient-related information;
(III) use of face-to-face discussions between health care professionals who are experts in rational drug therapy and selected prescribers and pharmacists who have been targeted for educational intervention, including discussion of optimal prescribing, dispensing, or pharmacy care practices, and follow-up face-to-face discussions; and
(IV) intensified review or monitoring of selected prescribers or dispensers.

The Board shall re-evaluate interventions after an appropriate period of time to determine if the intervention improved the quality of drug therapy, to evaluate the success of the interventions and make modifications as necessary.

(D) Annual report

Each State shall require the DUR Board to prepare a report on an annual basis. The State shall submit a report on an annual basis to the Secretary which shall include a description of the activities of the Board, including the nature and scope of the prospective and retrospective drug use review programs, a summary of the interventions used, an assessment of the impact of these educational interventions on quality of care, and an estimate of the cost savings generated as a result of such program. The Secretary shall utilize such report in evaluating the effectiveness of each State’s drug use review program.

(h) Electronic claims management

(1) In general

In accordance with chapter 35 of title 44 (relating to coordination of Federal information policy), the Secretary shall encourage each State agency to establish, as its principal means of processing claims for covered outpatient drugs under this subchapter, a point-of-sale electronic claims management system, for the purpose of performing on-line, real
time eligibility verifications, claims data capture, adjudication of claims, and assisting pharmacists (and other authorized persons) in applying for and receiving payment.

(2) Encouragement

In order to carry out paragraph (1)—

(A) for calendar quarters during fiscal years 1991 and 1992, expenditures under the State plan attributable to development of a system described in paragraph (1) shall receive Federal financial participation under section 1396(b)(3)(A)(i) of this title (at a matching rate of 90 percent) if the State acquires, through applicable competitive procurement process in the State, the most cost-effective telecommunications network and automatic data processing services and equipment; and

(B) the Secretary may permit, in the procurement described in subparagraph (A) in the application of part 433 of title 42, Code of Federal Regulations, and parts 95, 205, and 307 of title 45, Code of Federal Regulations, the substitution of the State's request for proposal in competitive procurement for advance planning and implementation documents otherwise required.

(i) Omitted

(j) Exemption of organized health care settings

(1) Covered outpatient drugs are not subject to the requirements of this section if such drugs are—

(A) dispensed by health maintenance organizations, including Medicaid managed care organizations that contract under section 1396b(m) of this title; and

(B) subject to discounts under section 256b of this title.

(2) The State plan shall provide that a hospital (providing medical assistance under such plan) that dispenses covered outpatient drugs using drug formulary systems, and bills the plan no more than the hospital's purchasing costs for covered outpatient drugs (as determined under the State plan) shall not be subject to the requirements of this section.

(3) Nothing in this subsection shall be construed as providing that amounts for covered outpatient drugs paid by the institutions described in this subsection should not be taken into account for purposes of determining the best price as described in subsection (c) of this section.

(k) Definitions

In this section—

(1) Average manufacturer price

(A) In general

Subject to subparagraph (B), the term ‘average manufacturer price’ means, with respect to a covered outpatient drug of a manufacturer for a rebate period, the average price paid to the manufacturer for the drug in the United States by

(i) wholesalers for drugs distributed to retail community pharmacies; and

(ii) retail community pharmacies that purchase drugs directly from the manufacturer.

(B) Exclusion of customary prompt pay discounts and other payments

(i) In general

The average manufacturer price for a covered outpatient drug shall exclude—

(I) customary prompt pay discounts extended to wholesalers;

(II) bona fide service fees paid by manufacturers to wholesalers or retail community pharmacy, anything but not limited to) distribution service fees, inventory management fees, product stocking allowances, and fees associated with administrative services agreements and patient care programs (such as medication compliance programs and patient education programs);

(III) reimbursement by manufacturers for recalled, damaged, expired, or otherwise unsalable returned goods, including (but not limited to) reimbursement for the cost of the goods and any reimbursement of costs associated with return goods handling and processing, reverse logistics, and drug destruction;

(IV) payments received from, and rebates or discounts provided to, pharmacy benefit managers, managed care organizations, health maintenance organizations, insurers, hospitals, clinics, mail order pharmacies, long term care providers, manufacturers, or any other entity that does not conduct business as a wholesaler or a retail community pharmacy, unless the drug is an inhalation, infusion, instilled, implanted, or injectable drug that is not generally dispensed through a retail community pharmacy; and

(V) discounts provided by manufacturers under section 1395w–114a of this title.

(ii) Inclusion of other discounts and payments

Notwithstanding clause (i), any other discounts, rebates, payments, or other financial transactions that are received by, paid by, or passed through to, retail community pharmacies shall be included in the average manufacturer price for a covered outpatient drug.

(C) Inclusion of section 505(c) drugs

In the case of a manufacturer that approves, allows, or otherwise permits any drug of the manufacturer to be sold under a new drug application approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(c)), such term shall be inclusive of the average price paid for such drug by wholesalers for drugs distributed to retail community pharmacies.

(2) Covered outpatient drug

Subject to the exceptions in paragraph (3), the term ‘covered outpatient drug’ means—

(A) of those drugs which are treated as prescribed drugs for purposes of section 1396d(a)(12) of this title, a drug which may be dispensed only upon prescription (except as provided in paragraph (5)), and—
(i) which is approved for safety and effectiveness as a prescription drug under section 505 [21 U.S.C. 355] or 507 of the Federal Food, Drug, and Cosmetic Act or which is approved under section 505(j) of such Act [21 U.S.C. 355(j)];

(ii)(I) which was commercially used or sold in the United States before October 10, 1962, or which is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) which has not been the subject of a final determination by the Secretary that it is a “new drug” (within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 321(p)]) or an action brought by the Secretary under section 301, 302(a), or 304(a) of such Act [21 U.S.C. 331, 332(a), 334(a)] to enforce section 502(f) or 505(a) of such Act [21 U.S.C. 352(f), 355(a)];

(iii)(I) which is described in section 107(c)(3) of the Drug Amendments of 1962 and for which the Secretary has determined there is a compelling justification for its medical need, or is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) for which the Secretary has not issued a notice of an opportunity for a hearing under section 505(e) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(e)] on a proposed order of the Secretary to withdraw approval of an application for such drug under such section because the Secretary has determined that the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling; and

(B) a biological product, other than a vaccine which—

(i) may only be dispensed upon prescription,

(ii) is licensed under section 262 of this title, and

(iii) is produced at an establishment licensed under such section to produce such product; and

(C) insulin certified under section 506 of the Federal Food, Drug, and Cosmetic Act.

(3) Limiting definition

The term “covered outpatient drug” does not include any drug, biological product, or insulin provided as part of, or as incident to and in the same setting as, any of the following (and for which payment may be made under this subchapter as part of payment for the following and not as direct reimbursement for the drug):

(A) Inpatient hospital services.

(B) Hospice services.

(C) Dental services, except that drugs for which the State plan authorizes direct reimbursement to the dispensing dentist are covered outpatient drugs.

(D) Physicians’ services.

(E) Outpatient hospital services.

(F) Nursing facility services and services provided by an intermediate care facility for the mentally retarded.

(G) Other laboratory and x-ray services.

(H) Renal dialysis.

Such term also does not include any such drug or product for which a National Drug Code number is not required by the Food and Drug Administration or a drug or biological used for a medical indication which is not a medically accepted indication. Any drug, biological product, or insulin excluded from the definition of such term as a result of this paragraph shall be treated as a covered outpatient drug for purposes of determining the best price (as defined in subsection (c)(1)(C) of this section) for such drug, biological product, or insulin.

(4) Nonprescription drugs

If a State plan for medical assistance under this subchapter includes coverage of prescribed drugs as described in section 1396d(a)(12) of this title and permits coverage of drugs which may be sold without a prescription (commonly referred to as “over-the-counter” drugs), if they are prescribed by a physician (or other person authorized to prescribe under State law), such a drug shall be regarded as a covered outpatient drug.

(5) Manufacturer

The term “manufacturer” means any entity which is engaged in—

(A) the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or

(B) in the packaging, repackaging, labeling, relabeling, or distribution of prescription drug products.

Such term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law.

(6) Medically accepted indication

The term “medically accepted indication” means any use for a covered outpatient drug which is approved under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] or the use of which is supported by one or more citations included or approved for inclusion in any of the compendia described in subsection (g)(1)(B)(i) of this section.

(7) Multiple source drug; innovator multiple source drug; noninnovator multiple source drug; single source drug

(A) Defined

(i) Multiple source drug

The term “multiple source drug” means, with respect to a rebate period, a covered outpatient drug (not including any drug described in paragraph (5)) for which there at least 1 other drug product which—

10So in original. Probably should be “biological product”.

(ii) Innovator multiple source drug

The term “innovator multiple source drug” means a multiple source drug for which the innovator is entitled to a rebate for the rebate period.
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(10) Retail community pharmacy

The term “retail community pharmacy” means an independent pharmacy, a chain pharmacy, a supermarket pharmacy, or a mass merchandiser pharmacy that is licensed as a pharmacy by the State and that dispenses medications to the general public at retail prices. Such term does not include a pharmacy that dispenses prescription medications to patients primarily through the mail, nursing home pharmacies, long-term care facility pharmacies, hospital pharmacies, clinics, charitable or not-for-profit pharmacies, or pharmacy benefit managers.

(11) Wholesaler

The term “wholesaler” means a drug wholesaler that is engaged in wholesale distribution of prescription drugs to retail community pharmacies, including (but not limited to) manufacturers, repackers, distributors, own-label distributors, private-label distributors, jobbers, brokers, warehouses (including manufacturer’s and distributor’s warehouses, chain drug warehouses, and wholesale drug warehouses) independent wholesale drug traders, and retail community pharmacies that conduct wholesale distributions.


Amendment of Subsection (d)

Pub. L. 111–148, title II, § 2502, Mar. 23, 2010, 124 Stat. 310, provided that, applicable to services furnished on or after Jan. 1, 2014, subsection (d) of this section is amended:

(1) in paragraph (2)—

(A) by striking subparagraphs (E), (I), and (J), respectively; and

(B) by redesignating subparagaphs (F), (G), (H), and (K) as subparagraphs (E), (F), (G), and (H), respectively; and

(2) by adding at the end the following new paragraph:
(7) Non-excludable drugs

The following drugs or classes of drugs, or their medical uses, shall not be excluded from coverage:

(A) Agents when used to promote smoking cessation, including agents approved by the Food and Drug Administration under the over-the-counter monograph process for purposes of promoting, and when used to promote, tobacco cessation.

(B) Barbiturates.

(C) Benzodiazepines.

Pub. L. 111–148, title IV, § 4107(b), (d), Mar. 23, 2010, 124 Stat. 560, 561, provided that, effective Oct. 1, 2010, subsection (d)(2)(F) of this section, as redesignated by section 2502(a) of Pub. L. 111–148, is amended by inserting before the period at the end: “, except, in the case of pregnant women when recommended in accordance with the guidelines referred to in section 1396d(bb)(2)(A) of this title, agents approved by the Food and Drug Administration under the over-the-counter monograph process for purposes of promoting, and when used to promote, tobacco cessation”.

See 2010 Amendment notes below.

REFERENCES IN TEXT

The amendments made by subsections (a)(1), (b), (c), and (d) of section 2601 of the Patient Protection and Affordable Care Act, referred to in subsec. (b)(1)(C)(1)(II), mean the amendments made by section 2501(a)(1), (b), (c), and (d) of Pub. L. 111–148, which amended this section and section 1396b of this title.


Section 2561 of this title, except in the case of pregnant women when recommended in accordance with the guidelines referred to in section 1396d(bb)(2)(A) of this title, agents approved by the Food and Drug Administration under the over-the-counter monograph process for purposes of promoting, and when used to promote, tobacco cessation”.

See 2010 Amendment notes below.

AMENDMENTS

2010—Subsec. (a)(5)(B). Pub. L. 111–309 substituted a period for “and a children’s hospital described in section 1395ww(d)(1)(B)(iii) of this title which meets the requirements of clauses (i) and (ii) of section 256b(b)(4)(L) of this title and which would meet the requirements of clause (ii) of such section if that clause were applied by taking into account the percentage of care provided by the hospital to patients eligible for medical assistance under a State plan under this subchapter.”

Subsec. (b)(1)(A). Pub. L. 111–148, § 2501(c)(2)(A)(i), inserted “, including such drugs dispensed to individuals enrolled with a Medicaid managed care organization if the organization is responsible for coverage of such drugs” after “for such period”.

Subsec. (b)(1)(B). Pub. L. 111–148, § 2501(c)(2)(A)(ii), inserted “and” after cl. (iii), was executed by adding cl. (iv) after cl. (iii), to reflect the probable intent of Congress.

Subsec. (b)(2)(A). Pub. L. 111–148, § 2501(c)(3)(A)(ii), inserted “including such information reported by each Medicaid managed care organization,” after “for which payment was made under the plan during the period,”.

Subsec. (b)(3)(A). Pub. L. 111–148, § 2503(b)(1)(B), which directed insertion, in the second sentence, of “(relating to the weighted average of the most recently reported monthly average manufacturer prices)” after “(D)(v)” was executed by making the insertion in concluding provisions to reflect the probable intent of Congress.

Subsec. (b)(3)(A)(iv). Pub. L. 111–148, § 2503(b)(1)(A), which directed, in the first sentence, addition of cl. (iv) after cl. (iii), was executed by adding cl. (iv) after cl. (iii) to reflect the probable intent of Congress.

Subsec. (b)(3)(D)(v). Pub. L. 111–148, § 2503(b)(2), substituted “the weighted average of the most recently reported monthly average manufacturer prices” after “(D)(v)” for “average manufacturer prices”.


Pub. L. 111–148, § 2501(a)(1)(A), struck out “and” at end of subcl. (IV), inserted “and before January 1, 2010” after “December 31, 1995.”, and substituted “; and” for period at end in subcl. (V), and added subcl. (VI).


Subsec. (c)(1)(C)(i)(VI). Pub. L. 111–148, § 3301(d)(2), inserted “, or any discounts provided by manufacturers under the Medicare coverage gap discount program under section 1395w–114a of this title” before period at end.

Subsec. (c)(2)(C). Pub. L. 111–152, § 1206(a), amended subpar. (C) generally. Prior to amendment, text read as follows:

“(I) IN GENERAL.—Except as provided in clause (ii), in the case of a drug that is a new formulation, such as an extended-release formulation, of a single source drug or an innovator multiple source drug, the rebate obligation with respect to the drug under this section shall be the amount computed under this section for the new formulation of the drug or, if greater, the product of—

“(I) the highest additional rebate (calculated as a percentage of average manufacturer price) under this

CODIFICATION

Subsec. (i) of this section, which required the Secretary to transmit to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives an annual report on the operation of this section in the preceding fiscal year, terminate, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 9 on page 93 of House Document No. 105–7.

PRIOR PROVISIONS

A prior section 1927 of Act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

REFERENCES IN TEXT

The amendments made by subsections (a)(1), (b), (c), and (d) of section 2601 of the Patient Protection and Affordable Care Act, referred to in subsec. (b)(1)(C)(1)(II), mean the amendments made by section 2501(a)(1), (b), (c), and (d) of Pub. L. 111–148, which amended this section and section 1396b of this title.


The Internal Revenue Code of 1986, referred to in subsec. (c)(1)(D)(i)(IV)(aa), was in the original “section 340(b)(a)(4) of the Public Health Service Act”, and was translated as meaning section 340(b)(a)(4) of the Public Health Service Act, which defines “covered entity”, to reflect the probable intent of Congress.

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (d)(4)(C) and (k)(6), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to subsecs. (d)(4)(C) and (k)(6), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

Paragraph (4) and subsection (e)(4), referred to in subsecs. (e)(5) and (f)(1)(B), probably means text that was editorially designated as par. (4) of subsec. (e). See 1993 Amendment note below.


Section 107(c)(3) of the Drug Amendments of 1962, referred to in subsec. (k)(2)(A)(iii)(I), is section 107(c)(3) of Pub. L. 87–781 which is set out in an Effective Date of 1962 Amendment note under section 251 of Title 21, Food and Drugs.

section for any strength of the original single source drug or innovator multiple source drug; and

(III) the total number of units of each dosage form and strength of the original single source drug or innovator multiple source drug paid for under the State plan in the rebate period (as reported by the State).

(II) No application to new formulations of orphan drugs—Clause (i) shall not apply to a new formulation of a covered outpatient drug that is or has been designated under section 526 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(b)) for a rare disease or condition, without regard to whether the period of market exclusivity for the drug under section 527 of such Act has expired or the specific indication for use of the drug.


Subsec. (e)(2). Pub. L. 111–148, §2502(a)(1), redesignated subpar. (E) as (D) and struck out former subpar. (E).

Subsec. (f)(1)(A)(iv). Pub. L. 111–148, §2502(a)(1), redesignated subpar. (D) as (C) and struck out former subpar. (D).


Public Law 109–171, §2501(b), designated subpars. (IV) and (V) and redesignated former subcl. (IV) as (V).

Subsec. (c)(2)(D)(iv). Pub. L. 111–148, §221(a)(1), added subcls. (IV) and (V) and redesignated former subcl. (IV) as (V).


2009—Subsec. (c)(1)(D)(i)(IV) to (VI). Pub. L. 111–8, §221(a)(1), added subcls. (IV) and (V) and redesignated former subcl. (IV) as (V).


2006—Subsec. (a)(5)(B). Pub. L. 109–171, §6004(a), inserted before period at end of cl. (i) and a child's "oral and a child's "oral" after "oral and a child's" in cl. (ii).

Subsec. (c)(2)(F). Pub. L. 111–148, §4107(b), inserted "and" after semicolon at end of cl. (i), struck out former cl. (ii), and added cl. (iii).


(2) as (3) and struck out former subpar. (E).

Subsec. (e)(4). Pub. L. 111–148, §2503(a)(1)(A), struck out cl. (i) and struck out former cl. (i) which read as follows:

"(I) Barbiturates.

(II) Benzodiazepines.

(III) Schedule II drugs.

(IV) Other drugs referenced by the Secretary under subsection (f)."

Subsec. (d)(2)(F). Pub. L. 111–148, §4107(b), inserted "and" after semicolon at end of cl. (i), struck out former cl. (ii), and added cl. (iii).

Subsec. (d)(2)(G) to (K). Pub. L. 111–148, §2502(a)(1), redesignated subpars. (H) and (K) as (G) and (H), respectively, and struck out subpars. (I) and (J) which read as follows:

"(I) Barbiturates.

(II) Benzodiazepines.

(III) Schedule II drugs.

(IV) Other drugs referenced by the Secretary under subsection (f)."

Subsec. (e)(5). Pub. L. 111–148, §2503(a)(1)(B), added par. (5) and struck out former par. (6). Prior to amendment, text read as follows: "Effective January 1, 2007, in applying the Federal upper reimbursement limit under paragraph (4) and section 447.32(b) of title 42 of the Code of Federal Regulations, the Secretary shall substitute 250 percent of the average manufacturer price (as computed without regard to customary prompt pay discounts extended to wholesalers) for 150 percent of the published price of a drug."
Subsec. (e)(4). Pub. L. 109–171, §6001(a)(1), which directed insertion of “Subject to paragraph (5), the Secretary for “The Secretary” and insertion of “(or, effective January 1, 2007, two or more)” after “at least more” in subsec. (e)(4), was executed to the last par. of subsec. (e) to reflect the probable intent of Congress. See 1993 Amendment note below.
Subsec. (g)(1)(B)(i)(II). Pub. L. 109–171, §6001(f)(1), which directed insertion of “(or its successor publica-
tions)” after “United States Pharmacopoeia–Drug In-
formation”, was executed by making insertion after “States Pharmacopoeia–Drug Information” to re-
fect the probable intent of Congress.
serted “, or to require verification of the offer to pro-
vide consultation or a refusal of such offer” before period at end of concluding provisions.
Subsec. (k)(1). Pub. L. 109–171, §6001(c)(1), designated existing provisions as subpar. (A), inserted “Subject to subparagraph (B), the term” for “The term”, struck out “,” after deducting cus-
tomary prompt pay discounts” before period at end, and added subpar. (B).
stituted “is” for “are” in subcls. (I), (II), and (III).
serted “and manufacturer’s average sales price” after “average manufacturer price” in heading and “and manufacturer’s average sales prices (including whole-
sale acquisition cost)” after “average manufacturer price” in text.
serted “other than the wholesale acquisition cost for purposes of carrying out section 1395w–3a of this chapter” after “section 1396d(a) of this title”.
serted “or under part B of subchapter XVIII of this title” after “section 1396d(a) of this title:”.
Pub. L. 108–173, §105(b), which directed insertion of “and drug pricing data reported under the first sen-
tence of section 1395w–104(c)(2)(E) of this title” in last sentence, “and drug pricing data reported under the first sen-
tence of section 1395w–104(c)(2)(E) of this title” in concluding provisions to reflect the probable intent of Congress. See 1993 Amendment note below.
Subsec. (g)(2)(A)(i)(II). Pub. L. 108–173, §1000(a)(6) [title VI, §608(a)], substituted “shall become effective as of the date on which the agreement is entered into or, at State option, on any date thereafter on or before” for “shall not be effective until”.
Subsec. (g)(2)(A)(i)(II). Pub. L. 108–173, §1000(a)(6) [title VI, §608(a)(1)], substituted “individuals” for “in-
dividuals”.
Subsec. (i)(1). Pub. L. 108–113, §1000(a)(6) [title VI, §608(u)(3)(A)], substituted “distributors” for “dis-
tributors”.
(III) as (IV).
Subsec. (j)(1). Pub. L. 105–33, §707(b)(2)(A)(x), substi-
tuted “health maintenance organizations, including medicaid managed care organizations” for “Health Maintenance Organizations, including those or-
organizations”.
(A) by substituting “dispensed after December 31, 1990, for which payment was made under the State plan for such period” for “dispensed under the plan during the quarter (or other period as the Secretary may specify),” was executed by making the substitution for “dispensed under the plan during the quarter (or such other period as the Secretary may specify)” to reflect the probable intent of Congress.
Pub. L. 103–66, §13602(a)(2)(A)(i)(I), substituted “for a rebate period” for “each calendar quarter (or period-
ically in accordance with a schedule specified by the Secretary)”. Pub. L. 103–66, §13602(a)(2)(A)(i)(II), substi-
tuted “each rebate period” for “each calendar quarter and “units of each dosage form and strength and package size” for “dosage units”, inserted “after December 31, 1990, for which payment was made” after “dispensed”, and substituted “during the period” for “during the quarter”.
Subsec. (c). Pub. L. 103–66, §13602(a)(1), added subsec. (c) and struck out former subsec. (c), which related to determination of amount of rebate for certain drugs. Pub. L. 103–18 substituted “such drug, except that for the calendar quarter beginning after September 30, 1992, and before January 1, 1993, the amount of the re-
bate may not exceed 50 percent of such average manufac-
turer price;” for “such drug;” in par. (1)(B)(ii)(II).
Subsecs. (d) to (f). Pub. L. 103–66, §13602(a)(1), added subsecs. (d) and (e), struck out former subsec. (d), consisting of pars. (1) to (8) relating to limitations on coverage of drugs, (e) relating to denial of Federal financial participation in certain cases, and (f)(1) relating to reductions in pharmacy reimbursement limits, and struck out par. designation for former par. (2) of sub-
sec. (f) without supplying a new designation. The text of former subsec. (f)(2) is now the last par. of subsec.
Subsec. (k)(1). Pub. L. 103–66, §13602(a)(2)(B)(i), substi-
tuted “rebate period” for “calendar quarter” and in-
serted before period at end “; after deducting cus-
tomary prompt pay discounts”.
tional Drug Code number is not required by the Food and Drug Administration or a drug or biological used" for “which is used” and inserted at end “Any drug, biological product, or insulin excluded from the definition of such term as a result of this paragraph shall be treated as a covered outpatient drug for purposes of determining the best price (as defined in subsection (c)(1)(C) of this section) for such drug, biological product, or insulin.”


Subsec. (k)(3)(F). Pub. L. 103–66, §1396o(a)(2)(B)(1)(II), which directed amendment of subpar. (F) by substituting “services and services provided by an intermediate care facility for the mentally retarded” for “services”, was executed by making the substitution for “services” to reflect the probable intent of Congress because the word “services” did not appear.

Subsec. (k)(4). Pub. L. 103–66, §1396o(a)(2)(B)(1)(III), substituted “the use of which is supported by one or more citations included or approved for inclusion in any of the compendia described in subsection (a)(1)(B)(1) of this section.” for “which appears in peer-reviewed medical literature or which is accepted in one or more of the following compendia: the American Medical Association Drug Evaluations, and the United States Pharmacopoeia—Drug Information.”


Subsec. (k)(8), (9). Pub. L. 103–66, §1396o(a)(2)(A)(ii), added par. (8) and redesignated former par. (8) as (9).

1992—Subsec. (a). Pub. L. 102–565, §601(b)(1), substituted “manufacturer”, and must meet the requirements of paragraph (5) (with respect to drugs purchased by a covered entity on or after the first day of the first month that begins after November 4, 1992) and paragraph (6)” for “manufacturer”.


Subsec. (b)(3)(D). Pub. L. 102–585, §601(b)(3), substituted “this paragraph or under an agreement with the Secretary of Veterans Affairs described in subsection (a)(6)(A)(ii) of this section” for “this paragraph for “Secretary” and “except—” and cl. (i) to (iii) for “except as the Secretary determines to be necessary to carry out this section and to permit the Comptroller General to review the information provided.”

Subsec. (b)(4)(B)(ii). Pub. L. 102–585, §601(b)(4)(i), (ii), substituted “the calendar quarter beginning at least 60 days” for “such period” and “the manufacturer provides notice to the Secretary” for “of the notice as the Secretary may provide (but not beyond the term of the agreement)”.


Subsec. (c)(1)(B)(i). Pub. L. 102–585, §601(c)(1), which directed the substitution of “October 1, 1992,” for “January 1, 1993,” was executed by making the substitution in introductory provisions and in subcl. (II), to reflect the probable intent of Congress.

Substituted “the difference between the average manufacturer price for a drug and 85 percent of such price, or “(II) the difference between the average manufacturer price for a drug and the best price (as defined in paragraph (2)(B) for such quarter (or period) for such drug.”

Subsec. (c)(1)(C). Pub. L. 102–585, §601(a), substituted “(excluding any prices charged on or after October 1, 1992, to the Indian Health Service, the Department of Veterans Affairs, a State home receiving funds under section 1741 of title 38, the Department of Defense, the Public Health Service, or a covered entity described in subsection (a)(5)(B) of this section, any prices charged under the Federal Supply Schedule of the General Services Administration, or any prices used under a State pharmaceutical assistance program, and excluding” for “(excluding”.

Effective Date of 2010 Amendment


Pub. L. 111–148, title II, §2506(d), Mar. 23, 2010, 124 Stat. 312, provided that: “The amendments made by this section [amending this section] shall take effect on the first day of the first calendar year quarter that begins at least 180 days after the date of enactment of this Act [Mar. 23, 2010], without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.”

Amendment by section 3301(d)(2) of Pub. L. 111–148 applicable to drugs dispensed on or after July 1, 2010, see section 3301(d)(1) of Pub. L. 111–148, set out as a note under section 1320a–7b of this title.

Amendment by section 4107(b) of Pub. L. 111–148 effective Oct. 1, 2010, see section 4107(d) of Pub. L. 111–148, set out as a note under section 1320a–7b of this title.

Effective Date of 2009 Amendment


Effective Date of 2006 Amendment

L. 109–91, set out as a note under section 1396b of this title.

**Effective Date of 2003 Amendment**


**Effective Date of 1999 Amendment**


**Effective Date of 1997 Amendment**

Amendment by Pub. L. 105–33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, see section 4710 of Pub. L. 105–33, set out as a note under section 1396b of this title.

**Effective Date of 1993 Amendments**

Section 1396a(d) of Pub. L. 103–66 provided that: “(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1396a and 1396b of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].”

“(2) The amendment made by subsection (a)(1) [amending this section] (insofar as such subsection amends section 1927(d) of the Social Security Act [subsection (d) of this section]) and the amendment made by subsection (c) [amending section 1396a of this title] shall apply to calendar quarters beginning on or after Oct. 1, 1993, without regard to whether or not regulations to carry out such amendments have been promulgated by such date.”

The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 601(c) of the Veterans Health Care Act of 1992 [Pub. L. 102–585].

**Effective Date of 1992 Amendment**

Section 601(e) of Pub. L. 102–585 provided that: “The amendments made by this section [amending this section] shall apply with respect to payments made by a State for multiple source drugs under a State Medicaid plan shall continue to apply through September 30, 2009, for purposes of the availability of Federal financial participation for such payments; and...

“(2) the Secretary of Health and Human Services shall not, prior to October 1, 2009, finalize, implement, enforce, or otherwise take any action (through promulgation of regulation, issuance of regulatory guidance, use of Federal payment audit procedures, or other administrative action, policy, or practice, including a Medical Assistance Manual transmittal or letter to State Medicaid directors) to impose the specific upper limit established under section 147.516(b) of title 42, Code of Federal Regulations as published on July 17, 2007 (72 Federal Register 39142).”

**(b) Temporary Suspension of Updated Publicly Available AMP Data.—Notwithstanding clause (v) of section 1927(b)(3)(D) of the Social Security Act (42 U.S.C. 1396r–8(b)(3)(D)), the Secretary of Health and Human Services shall not, prior to October 1, 2009, make publicly available any AMP disclosed to the Secretary.”

“(c) Definitions.—In this subsection:

“(1) The term ‘multiple source drug’ has the meaning given that term in section 1927(k)(7)(A)(i) of the Social Security Act (42 U.S.C. 1396r–8(k)(7)(A)(i)).

“(2) The term ‘AMP’ has the meaning given ‘average manufacturer price’ in section 1927(k)(1) of the Social Security Act (42 U.S.C. 1396r–8(k)(1)) and ‘AMP’ in section 447.504(a) of title 42, Code of Federal Regulations as published on July 17, 2007 (72 Federal Register 39142).”

**Application of 2003 Amendment to Physician Specialties**

Amendment by section 303 of Pub. L. 108–173, insofar as applicable to payments for drugs or biologicals and drug administration services furnished by physicians, is applicable only to physicians in the specialties of hematology, hematology/oncology, and medical oncology under subchapter XVIII of this chapter, see section 303(j) of Pub. L. 108–173, set out as a note under section 1395u of this title.

Notwithstanding section 303(j) of Pub. L. 108–173 (see note above), amendment by section 303 of Pub. L. 108–173 also applicable to payments for drugs or biologicals and drug administration services furnished by physicians in specialties other than the specialties of hematology, hematology/oncology, and medical oncology, see section 304 of Pub. L. 108–173, set out as a note under section 1395u of this title.

**Reports on Best Price Changes and Payment of Rebates**

Section 601(d) of Pub. L. 108–585 provided that not later than 90 days after the expiration of each calendar quarter beginning on or after Oct. 1, 1992, and ending on or before Dec. 31, 1995, Secretary of Health and Human Services was to submit to Congress a report containing information as to percentage of single source drugs whose best price either increased, decreased, or stayed...
the same in comparison to best price during previous calendar quarter, median and mean percentage increase or decrease of such price, and, with respect to drugs for which manufacturers were required to pay rebates under subsec. (c) of this section, Secretary’s best estimate, on State-by-State and national aggregate basis, of total amount of rebates paid under subsec. (c) of this section and percentages of such total amounts attributable to rebates paid under pars. (1) to (3) of subsec. (c) of this section, limited consideration to drugs which are considered significant expenditures under medical program, and contained requirements for initial report.

**DEMONSTRATION PROJECTS TO EVALUATE EFFICIENCY AND COST-EFFECTIVENESS OF PROSPECTIVE DRUG UTILIZATION REVIEW**

Section 4401(c) of title IV of Pub. L. 101–508 directed Secretary of Health and Human Services to establish statewide demonstration projects to evaluate efficiency and cost-effectiveness of prospective drug utilization review and to evaluate impact on quality of care and cost-effectiveness of paying pharmacists under this subchapter whether or not drugs were dispensed for drug use review services, with two reports to be submitted to Congress, the first not later than Jan. 1, 1994, and the second not later than Jan. 1, 1995.

**STUDY OF DRUG PURCHASING AND BILLING PRACTICES IN HEALTH CARE INDUSTRY; REPORT**

Section 4401(d) of title IV of Pub. L. 101–508, as amended by Pub. L. 104–316, title I, §122(i), Oct. 19, 1996, 110 Stat. 3837, provided for various studies and reports as follows: (1) directed Comptroller General to conduct study of drug purchasing and billing activities of various health care systems, and to submit report to Secretary of Health and Human Services and to Congress by not later than May 1, 1991; (2) directed Comptroller General to submit to Secretary and Congress report on changes in prices charged by manufacturers for prescription drugs to Department of Veterans Affairs, other Federal programs, hospital pharmacies, and other purchasing groups and managed care plans; (3) directed Secretary, acting in consultation with Comptroller General, to study prior approval procedures utilized by State medical assistance programs conducted under this subchapter, and to submit report to Congress by not later than Dec. 31, 1991; (4) directed Secretary to conduct study on adequacy of current reimbursement rates to pharmacies under each State medical assistance program conducted under this subchapter, and to submit report to Congress by not later than Dec. 31, 1991; and (5) directed Secretary to undertake study of relationship between State medical assistance plans and Federal and State acquisition and reimbursement policies for vaccines and accessibility of vaccinations and immunization to children, and to report to Congress not later than one year after Nov. 5, 1990.

**§ 1396s. Program for distribution of pediatric vaccines**

**(a) Establishment of program**

**_(1) In general_**

In order to meet the requirement of section 1396a(a)(62) of this title, each State shall establish a pediatric vaccine distribution program (which may be administered by the State department of health), consistent with the requirements of this section, under which—

(A) each vaccine-eligible child (as defined in subsection (b) of this section), in receiving an immunization with a qualified pediatric vaccine (as defined in subsection (h)(6) of this section) from a program-registered provider (as defined in subsection (c) of this section) on or after October 1, 1994, is entitled to receive the immunization without charge for the cost of such vaccine; and

(B)(i) each program-registered provider who administers such a pediatric vaccine to a vaccine-eligible child on or after such date is entitled to receive such vaccine under the program without charge either for the vaccine or its delivery to the provider, and (ii) no vaccine is distributed under the program to a provider unless the provider is a program-registered provider.

**_(2) Delivery of sufficient quantities of pediatric vaccines to immunize federally vaccine-eligible children_**

**_(A) In general_**

The Secretary shall provide under subsection (d) of this section for the purchase and delivery on behalf of each State meeting the requirement of section 1396a(a)(62) of this title (or, with respect to vaccines administered by an Indian tribe or tribal organization to Indian children, directly to the tribe or organization), without charge to the State, of such quantities of qualified pediatric vaccines as may be necessary for the administration of such vaccines to all federally vaccine-eligible children in the State on or after October 1, 1994. This paragraph constitutes authority in advance of appropriations Acts, and represents the obligation of the Federal Government to provide for the purchase and delivery to States of the vaccines (or payment under subparagraph (C)) in accordance with this paragraph.

**_(B) Special rules where vaccine is unavailable_**

To the extent that a sufficient quantity of a vaccine is not available for purchase or delivery under subsection (d) of this section, the Secretary shall provide for the purchase and delivery of the available vaccine in accordance with priorities established by the Secretary, with priority given to federally vaccine-eligible children unless the Secretary finds there are other public health considerations.

**_(C) Special rules where State is a manufacturer_**

(i) Payments in lieu of vaccines

In the case of a State that manufactures a pediatric vaccine the Secretary, instead of providing the vaccine on behalf of a State under subparagraph (A), shall provide to the State an amount equal to the value of the quantity of such vaccine that otherwise would have been delivered on behalf of the State under such subparagraph, but only if the State agrees that such payments will only be used for purposes relating to pediatric immunizations.

(ii) Determination of value

In determining the amount to pay a State under clause (i) with respect to a pediatric vaccine, the value of the quantity of vaccine shall be determined on the basis of the price in effect for the qualified pediatric vaccine under contracts under sub-
section (d) of this section. If more than 1 such contract is in effect, the Secretary shall determine such value on the basis of the average of the prices under the contracts, after weighting each such price in relation to the quantity of vaccine under the contract involved.

(b) Vaccine-eligible children
For purposes of this section:

(1) In general

The term “vaccine-eligible child” means a child who is a federally vaccine-eligible child (as defined in paragraph (2)) or a State vaccine-eligible child (as defined in paragraph (3)).

(2) Federally vaccine-eligible child

(A) In general

The term “federally vaccine-eligible child” means any of the following children:

(i) A medicaid-eligible child.

(ii) A child who is not insured.

(iii) A child who (I) is administered a qualified pediatric vaccine by a federally-qualified health center (as defined in section 1396d(a)(2)(B) of this title) or a rural health clinic (as defined in section 1396d(a)(1) of this title), and (II) is not insured with respect to the vaccine.

(iv) A child who is an Indian (as defined in subsection (h)(3) of this section).

(B) Definitions

In subparagraph (A):

(i) The term “medicaid-eligible” means, with respect to a child, a child who is entitled to medical assistance under a state plan approved under this subchapter.

(ii) The term “insured” means, with respect to a child—

(I) for purposes of subparagraph (A)(i), that the child is enrolled under, and entitled to benefits under, a health insurance policy or plan, including a group health plan, a prepaid health plan, or an employee welfare benefit plan under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) and section (d)(2)(B) of this title; and

(II) for purposes of subparagraph (A)(iii)(II) with respect to a pediatric vaccine, that the child is entitled to benefits under such a health insurance policy or plan, but such benefits are not available with respect to the cost of the pediatric vaccine.

(3) State vaccine-eligible child

The term “State vaccine-eligible child” means, with respect to a State and a qualified pediatric vaccine, a child who is within a class of children for which the State is purchasing the vaccine pursuant to subsection (d)(4)(B) of this section.

(c) Program-registered providers

(1) Defined

In this section, except as otherwise provided, the term “program-registered provider” means, with respect to a State, any health care provider that—

(A) is licensed or otherwise authorized for administration of pediatric vaccines under the law of the State in which the administration occurs (subject to section 254(e) of this title), without regard to whether or not the provider participates in the plan under this subchapter;

(B) submits to the State an executed provider agreement described in paragraph (2); and

(C) has not been found, by the Secretary or the State, to have violated such agreement or other applicable requirements established by the Secretary or the State consistent with this section.

(2) Provider agreement

A provider agreement for a provider under this paragraph is an agreement (in such form and manner as the Secretary may require) that the provider agrees as follows:

(A)(i) Before administering a qualified pediatric vaccine to a child, the provider will ask a parent of the child such questions as are necessary to determine whether the child is a vaccine-eligible child, but the provider need not independently verify the answers to such questions.

(ii) The provider will, for a period of time specified by the Secretary, maintain records of responses made to the questions.

(iii) The provider will, upon request, make such records available to the State and to the Secretary, subject to section 1396a(a)(7) of this title.

(B)(i) Subject to clause (ii), the provider will comply with the schedule, regarding the appropriate periodicity, dosage, and contraindications applicable to pediatric vaccines, that is established and periodically reviewed and, as appropriate, revised by the advisory committee referred to in subsection (e) of this section, except in such cases as, in the provider’s medical judgment subject to accepted medical practice, such compliance is medically inappropriate.

(ii) The provider will provide pediatric vaccines in compliance with applicable State law, including any such law relating to any religious or other exemption.

(C)(i) In administering a qualified pediatric vaccine to a vaccine-eligible child, the provider will not impose a charge for the cost of the vaccine. A program-registered provider is not required under this section to administer such a vaccine to each child for whom an immunization with the vaccine is sought from the provider.

(ii) The provider may impose a fee for the administration of a qualified pediatric vaccine so long as the fee in the case of a federally vaccine-eligible child does not exceed the costs of such administration (as determined by the Secretary based on actual regional costs for such administration).

(iii) The provider will not deny administration of a qualified pediatric vaccine to a vaccine-eligible child due to the inability of the child’s parent to pay an administration fee.
(3) Encouraging involvement of providers

Each program under this section shall provide, in accordance with criteria established by the Secretary—

(A) for encouraging the following to become program-registered providers: private health care providers, the Indian Health Service, health care providers that receive funds under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.], and health programs or facilities operated by Indian tribes or tribal organizations; and

(B) for identifying, with respect to any population of vaccine-eligible children, a substantial portion of whose parents have a limited ability to speak the English language, those program-registered providers who are able to communicate with the population involved in the language and cultural context that is most appropriate.

(4) State requirements

Except as the Secretary may permit in order to prevent fraud and abuse and for related purposes, a State may not impose additional qualifications or conditions, in addition to the requirements of paragraph (1), in order that a provider qualify as a program-registered provider under this section. This subsection does not limit the exercise of State authority under section 1396a(n)(3)(B) of this title.

(d) Negotiation of contracts with manufacturers

(1) In general

For the purpose of meeting obligations under this section, the Secretary shall negotiate and enter into contracts with manufacturers of pediatric vaccines consistent with the requirements of this subsection and, to the maximum extent practicable, consolidate such contracting with any other contracting activities conducted by the Secretary to purchase vaccines. The Secretary may enter into such contracts under which the Federal Government is obligated to make outlays, the budget authority for which is not provided for in advance in appropriations Acts, for the purchase and delivery of pediatric vaccines under subsection (a)(2)(A) of this section.

(2) Authority to decline contracts

The Secretary may decline to enter into such contracts and may modify or extend such contracts.

(3) Contract price

(A) In general

The Secretary, in negotiating the prices at which pediatric vaccines will be purchased and delivered from a manufacturer under this subsection, shall take into account quantities of vaccines to be purchased by States under the option under paragraph (4)(B).

(B) Negotiation of discounted price for current vaccines

With respect to contracts entered into under this subsection for a pediatric vaccine for which the Centers for Disease Control and Prevention has a contract in effect under section 247b(j)(1) of this title as of May 1, 1993, no price for the purchase of such vaccine for vaccine-eligible children shall be agreed to by the Secretary under this subsection if the price per dose of such vaccine (including delivery costs and any applicable excise tax established under section 4331 of the Internal Revenue Code of 1986) exceeds the price per dose for the vaccine in effect under such a contract as of such date increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) from May 1993 to the month before the month in which such contract is entered into.

(C) Negotiation of discounted price for new vaccines

With respect to contracts entered into for a pediatric vaccine not described in subparagraph (B), the price for the purchase of such vaccine shall be a discounted price negotiated by the Secretary that may be established without regard to such subparagraph.

(4) Quantities and terms of delivery

Under such contracts—

(A) the Secretary shall provide, consistent with paragraph (6), for the purchase and delivery on behalf of States (and tribes and tribal organizations) of quantities of pediatric vaccines for federally vaccine-eligible children; and

(B) each State, at the option of the State, shall be permitted to obtain additional quantities of pediatric vaccines (subject to amounts specified to the Secretary for the State in advance of negotiations) through purchasing the vaccines from the manufacturers at the applicable price negotiated by the Secretary consistent with paragraph (3), if (i) the State agrees that the vaccines will be used to provide immunizations only for children who are not federally vaccine-eligible children and (ii) the State provides to the Secretary such information (at a time and manner specified by the Secretary, including in advance of negotiations under paragraph (1)) as the Secretary determines to be necessary, to provide for quantities of pediatric vaccines for the State to purchase pursuant to this subsection and to determine annually the percentage of the vaccine market that is purchased pursuant to this section and this subparagraph.

The Secretary shall enter into the initial negotiations under the preceding sentence not later than 180 days after August 10, 1993.

(5) Charges for shipping and handling

The Secretary may enter into a contract referred to in paragraph (1) only if the manufacturer involved agrees to submit to the Secretary such reports as the Secretary determines to be appropriate to assure compliance with the contract and if, with respect to a State program under this section that does not provide for the direct delivery of qualified pediatric vaccines, the manufacturer involved agrees that the manufacturer will provide for the delivery of the vaccines on behalf of the State in accordance with such program and
will not impose any charges for the costs of such delivery (except to the extent such costs are provided for in the price established under paragraph (3)).

(6) Assuring adequate supply of vaccines

The Secretary, in negotiations under paragraph (1), shall negotiate for quantities of pediatric vaccines such that an adequate supply of such vaccines will be maintained to meet unanticipated needs for the vaccines. For purposes of the preceding sentence, the Secretary shall negotiate for a 6-month supply of vaccines in addition to the quantity that the Secretary otherwise would provide for in such negotiations. In carrying out this paragraph, the Secretary shall consider the potential for outbreaks of the diseases with respect to which the vaccines have been developed.

(7) Multiple suppliers

In the case of the pediatric vaccine involved, the Secretary shall, as appropriate, enter into a contract referred to in paragraph (1) with each manufacturer of the vaccine that meets the terms and conditions of the Secretary for an award of such a contract (including terms and conditions regarding safety and quality). With respect to multiple contracts entered into pursuant to this paragraph, the Secretary may have in effect different prices under each of such contracts and, with respect to a purchase by States pursuant to paragraph (4)(B), the Secretary shall determine which of such contracts will be applicable to the purchase.

(e) Use of pediatric vaccines list

The Secretary shall use, for the purpose of the purchase, delivery, and administration of pediatric vaccines under this section, the list established (and periodically revised and as appropriate revised) by the Advisory Committee on Immunization Practices (an advisory committee established by the Secretary, acting through the Director of the Centers for Disease Control and Prevention).

(f) Requirement of State maintenance of immunization laws

In the case of a State that has in effect as of May 1, 1993, a law that requires some or all health insurance policies or plans to provide some coverage with respect to a pediatric vaccine, a State program under this section does not comply with the requirements of this section unless the State certifies to the Secretary that the State has not modified or repealed such law in a manner that reduces the amount of coverage so required.

(g) Termination

This section, and the requirement of section 1396a(a)(62) of this title, shall cease to be in effect beginning on such date as may be prescribed in Federal law providing for immunization services for all children as part of a broad-based reform of the national health care system.

(h) Definitions

For purposes of this section:

(1) The term “child” means an individual 18 years of age or younger.

(2) The term “immunization” means an immunization against a vaccine-preventable disease.

(3) The terms “Indian”, “Indian tribe” and “tribal organization” have the meanings given such terms in section 4 of the Indian Health Care Improvement Act [25 U.S.C. 1601].

(4) The term “manufacturer” means any corporation, organization, or institution, whether public or private (including Federal, State, and local departments, agencies, and instrumentalities), which manufactures, imports, processes, or distributes under its label any pediatric vaccine. The term “manufacturing” means to manufacture, import, process, or distribute a vaccine.

(5) The term “parent” includes, with respect to a child, an individual who qualifies as a legal guardian under State law.

(6) The term “pediatric vaccine” means a vaccine included on the list under subsection (e) of this section.

(7) The term “program-registered provider” has the meaning given such term in subsection (c) of this section.

(8) The term “qualified pediatric vaccine” means a pediatric vaccine with respect to which a contract is in effect under subsection (d) of this section.

(9) The terms “vaccine-eligible child”, “federally vaccine-eligible child”, and “State vaccine-eligible child” have the meaning given such terms in subsection (b) of this section.


REFERENCES IN TEXT


The Indian Health Care Improvement Act, referred to in subsec. (c)(3)(A), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended, Title V of the Act is classified generally to subchapter IV (§1551 et seq.) of chapter 18 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1551 of Title 25 and Tables.


PRIOR PROVISIONS


EFFECTIVE DATE

Section applicable to payments under State plans approved under this subchapter for calendar quarters beginning on or after Oct. 1, 1994, see section 13631(i) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 1396a of this title.

§ 1396t. Home and community care for functionally disabled elderly individuals

(a) “Home and community care” defined

In this subchapter, the term “home and community care” means one or more of the follow-
(c) Determinations of functional disability

(1) In general

In this section, an individual is “functionally disabled” if the individual—

(A) is unable to perform without substantial assistance from another individual at least 2 of the following 3 activities of daily living: toileting, transferring, and eating; or

(B) has a primary or secondary diagnosis of Alzheimer’s disease and is (i) unable to perform without substantial human assistance (including verbal reminding or physical cueing) or supervision at least 2 of the following 5 activities of daily living: bathing, dressing, toileting, transferring, and eating; or (ii) cognitively impaired so as to require substantial supervision from another individual because he or she engages in inappropriate behaviors that pose serious health or safety hazards to himself or herself or others.

(2) Assessments of functional disability

(A) Requests for assessments

If a State has elected to provide home and community care under this section, upon the request of an individual who is 65 years of age or older and who meets the requirements of subsection (b)(1)(C) of this section (or another person on such individual’s behalf), the State shall provide for a comprehensive functional assessment under this subparagraph which—

(i) is used to determine whether or not the individual is functionally disabled,

(ii) is based on a uniform minimum data set specified by the Secretary under subparagraph (C)(i), and

(iii) uses an instrument which has been specified by the State under subparagraph (B).

No fee may be charged for such an assessment.
(B) Specification of assessment instrument
The State shall specify the instrument to be used in the State in complying with the requirement of subparagraph (A)(iii) which instrument shall be—
(i) one of the instruments designated under subparagraph (C)(ii); or
(ii) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary in subparagraph (C)(i).

(C) Specification of assessment data set and instruments
The Secretary shall—
(i) not later than July 1, 1991—
(I) specify a minimum data set of core elements and common definitions for use in conducting the assessments required under subparagraph (A); and
(II) establish guidelines for use of the data set; and
(ii) by not later than July 1, 1991, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subparagraph (B) for use in complying with the requirements of subparagraph (A).

(D) Periodic review
Each individual who qualifies as a functionally disabled elderly individual shall have the individual’s assessment periodically reviewed and revised not less often than once every 12 months.

(E) Conduct of assessment by interdisciplinary teams
An assessment under subparagraph (A) and a review under subparagraph (D) must be conducted by an interdisciplinary team designated by the State. The Secretary shall permit a State to provide for assessments and reviews through teams under contracts—
(i) with public organizations; or
(ii) with nonpublic organizations which do not provide home and community care or nursing facility services and do not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides, community care or nursing facility services.

(F) Contents of assessment
The interdisciplinary team must—
(i) identify in each such assessment or review each individual’s functional disabilities and need for home and community care, including information about the individual’s health status, home and community environment, and informal support system; and
(ii) based on such assessment or review, determine whether the individual is (or continues to be) functionally disabled.

The results of such an assessment or review shall be used in establishing, reviewing, and revising the individual’s ICCP under subsection (d)(1) of this section.

(G) Appeal procedures
Each State which elects to provide home and community care under this section must have in effect an appeals process for individuals adversely affected by determinations under subparagraph (F).

(d) Individual community care plan (ICCP)

(1) “Individual community care plan” defined
In this section, the terms “individual community care plan” and “ICCP” mean, with respect to a functionally disabled elderly individual, a written plan which—
(A) is established, and is periodically reviewed and revised, by a qualified case manager after a face-to-face interview with the individual or primary caregiver and based upon the most recent comprehensive functional assessment of such individual conducted under subsection (c)(2) of this section;
(B) specifies, within any amount, duration, and scope limitations imposed on home and community care provided under the State plan, the home and community care to be provided to such individual under the plan, and indicates the individual’s preferences for the types and providers of services; and
(C) may specify other services required by such individual.

An ICCP may also designate the specific providers (qualified to provide home and community care under the State plan) which will provide the home and community care described in subparagraph (B). Nothing in this section shall be construed as authorizing an ICCP or the State to restrict the specific persons or individuals (who are competent to provide home and community care under the State plan) who will provide the home and community care described in subparagraph (B).

(2) “Qualified community care case manager” defined
In this section, the term “qualified community care case manager” means a nonprofit or public agency or organization which—
(A) has experience or has been trained in establishing, and in periodically reviewing and revising, individual community care plans and in the provision of case management services to the elderly;
(B) is responsible for (i) assuring that home and community care covered under the State plan and specified in the ICCP is being provided, (ii) visiting each individual’s home or community setting where care is being provided not less often than once every 90 days, and (iii) informing the elderly individual or primary caregiver on how to contact the case manager if service providers fail to properly provide services or other similar problems occur;
(C) in the case of a nonpublic agency, does not provide home and community care or nursing facility services and does not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or re-
lished or developed by the Secretary under subsection (k) of this section. Such requirements shall include—

(A) the requirement that individuals providing care are competent to provide such care; and

(B) the rights specified in paragraph (2).

(2) Specified rights

The rights specified in this paragraph are as follows:

(A) The right to be fully informed in advance, orally and in writing, of the care to be provided, to be fully informed in advance of any changes in care to be provided, and (except with respect to an individual determined incompetent) to participate in planning care or changes in care.

(B) The right to voice grievances with respect to services that are (or fail to be) furnished without discrimination or reprisal for voicing grievances, and to be told how to complain to State and local authorities.

(C) The right to confidentiality of personal and clinical records.

(D) The right to privacy and to have one’s property treated with respect.

(E) The right to refuse all or part of any care and to be informed of the likely consequences of such refusal.

(F) The right to education or training for oneself and for members of one’s family or household on the management of care.

(G) The right to be free from physical or mental abuse, corporal punishment, and any physical or chemical restraints imposed for purposes of discipline or convenience and not included in an individual’s ICCP.

(H) The right to be fully informed orally and in writing of the individual’s rights.

(I) Guidelines for such minimum compensation for individuals providing such care as will assure the availability and continuity of competent individuals to provide such care for functionally disabled individuals who have functional disabilities of varying levels of severity.

(J) Any other rights established by the Secretary.

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1So in original. Probably should not be capitalized.
(g) Minimum requirements for small community care settings

(1) “Small community care setting” defined

In this section, the term “small community care setting” means—

(A) a nonresidential setting that serves more than 2 and less than 8 individuals; or

(B) a residential setting in which more than 2 and less than 8 unrelated adults reside and in which personal services (other than merely board) are provided in conjunction with residing in the setting.

(2) Minimum requirements

A small community care setting in which community care is provided under this section must—

(A) meet such requirements as are published or developed by the Secretary under subsection (k) of this section;

(B) meet the requirements of paragraphs (1)(A), (1)(C), (1)(D), (3), and (6) of section 1396r(c) of this title, to the extent applicable to such a setting;

(C) inform each individual receiving community care under this section in the setting, orally and in writing at the time the individual first receives community care in the setting, of the individual’s legal rights with respect to such a setting and the care provided in the setting;

(D) meet any applicable State or local requirements regarding certification or licensure;

(E) meet any applicable State and local zoning, building, and housing codes, and State and local fire and safety regulations; and

(F) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents.

(h) Minimum requirements for large community care settings

(1) “Large community care setting” defined

In this section, the term “large community care setting” means—

(A) a nonresidential setting in which more than 8 individuals are served; or

(B) a residential setting in which more than 8 unrelated adults reside and in which personal services are provided in conjunction with residing in the setting in which home and community care under this section is provided.

(2) Minimum requirements

A large community care setting in which community care is provided under this section must—

(A) meet such requirements as are published or developed by the Secretary under subsection (k) of this section;

(B) meet the requirements of paragraphs (1)(A), (1)(C), (1)(D), (3), and (6) of section 1396r(c) of this title, to the extent applicable to such a setting;

(C) inform each individual receiving community care under this section in the setting, orally and in writing at the time the individual first receives home and community care in the setting, of the individual’s legal rights with respect to such a setting and the care provided in the setting; and

(D) meet the requirements of paragraphs (2) and (3) of section 1396r(d) of this title (relating to administration and other matters) in the same manner as such requirements apply to nursing facilities under such section; except that, in applying the requirement of section 1396r(d)(2) of this title (relating to life safety code), the Secretary shall provide for the application of such life safety requirements (if any) that are appropriate to the setting.

(3) Disclosure of ownership and control interests and exclusion of repeated violators

A community care setting—

(A) must disclose persons with an ownership or control interest (including such persons as defined in section 1320a–3(a)(3) of this title) in the setting; and

(B) may not have, as a person with an ownership or control interest in the setting, any individual or person who has been excluded from participation in the program under this subchapter or who has had such an ownership or control interest in one or more community care settings which have been found repeatedly to be substandard or to have failed to meet the requirements of paragraph (2).

(i) Survey and certification process

(1) Certifications

(A) Responsibilities of the State

Under each State plan under this subchapter, the State shall be responsible for certifying the compliance of providers of home and community care and community care settings with the applicable requirements of subsections (f), (g) and (h) of this section. The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

(B) Responsibilities of the Secretary

The Secretary shall be responsible for certifying the compliance of State providers of home and community care, and of State community care settings in which such care is provided, with the requirements of subsections (f), (g) and (h) of this section.

(C) Frequency of certifications

Certification of providers and settings under this subsection shall occur no less frequently than once every 12 months.

(2) Reviews of providers

(A) In general

The certification under this subsection with respect to a provider of home or community care must be based on a periodic review of the provider’s performance in providing the care required under ICCP’s in accordance with the requirements of subsection (f) of this section.

(B) Special reviews of compliance

Where the Secretary has reason to question the compliance of a provider of home or
community care with any of the requirements of subsection (f) of this section, the Secretary may conduct a review of the provider and, on the basis of that review, make independent and binding determinations concerning the extent to which the provider meets such requirements.

(3) Surveys of community care settings

(A) In general

The certification under this subsection with respect to community care settings must be based on a survey. Such survey for such a setting must be conducted without prior notice to the setting. Any individual who notifies (or causes to be notified) a community care setting of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7(a) of this title. The Secretary shall review each State’s procedures for scheduling and conducting such surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(B) Survey protocol

Surveys under this paragraph shall be conducted based upon a protocol which the Secretary has provided for under subsection (k) of this section.

(C) Prohibition of conflict of interest in survey team membership

A State and the Secretary may not use as a member of a survey team under this paragraph an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the community care setting being surveyed (or the person responsible for such setting) respecting compliance with the requirements of subsection (g) or (h) of this section or who has a personal or familial financial interest in the setting being surveyed.

(D) Validation surveys of community care settings

The Secretary shall conduct onsite surveys of a representative sample of community care settings in each State, within 2 months of the date of surveys conducted under subparagraph (A) by the State, in a sufficient number to allow inferences about the adequacies of each State’s surveys conducted under subparagraph (A). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under subparagraph (B). If the State has determined that an individual setting meets the requirements of subsection (g) of this section, but the Secretary determines that the setting does not meet such requirements, the Secretary’s determination as to the setting’s noncompliance with such requirements is binding and supersedes that of the State survey.

(E) Special surveys of compliance

Where the Secretary has reason to question the compliance of a community care setting with any of the requirements of subsection (g) or (h) of this section, the Secretary may conduct a survey of the setting and, on the basis of that survey, make independent and binding determinations concerning the extent to which the setting meets such requirements.

(4) Investigation of complaints and monitoring of providers and settings

Each State and the Secretary shall maintain procedures and adequate staff to investigate complaints of violations of applicable requirements imposed on providers of community care or on community care settings under subsections (f), (g) and (h) of this section.

(5) Investigation of allegations of individual neglect and abuse and misappropriation of individual property

The State shall provide, through the agency responsible for surveys and certification of providers of home or community care and community care settings under this subsection, for a process for the receipt, review, and investigation of allegations of individual neglect and abuse (including injuries of unknown source) by individuals providing such care or in such setting and of misappropriation of individual property by such individuals. The State shall, after notice to the individual involved and a reasonable opportunity for hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that an individual has neglected or abused an individual receiving community care or misappropriated such individual’s property, the State shall notify the individual against whom the finding is made. A State shall not make a finding that a person has neglected an individual receiving community care if the person demonstrates that such neglect was caused by factors beyond the control of the person. The State shall provide for public disclosure of findings under this paragraph upon request and for inclusion, in any such disclosure of such findings, of any brief statement (or of a clear and accurate summary thereof) of the individual disputing such findings.

(6) Disclosure of results of inspections and activities

(A) Public information

Each State, and the Secretary, shall make available to the public—

(i) information respecting all surveys, reviews, and certifications made under this subsection respecting providers of home or community care and community care settings, including statements of deficiencies,

(ii) copies of cost reports (if any) of such providers and settings filed under this subchapter,

(iii) copies of statements of ownership under section 1320a–3 of this title, and
(iv) information disclosed under section 1320a–5 of this title.

(B) Notices of substandard care

If a State finds that—

(i) a provider of home or community care has provided care of substandard quality with respect to an individual, the State shall make a reasonable effort to notify promptly (I) an immediate family member of such individual and (II) individuals receiving home or community care from that provider under this subchapter, or

(ii) a community care setting is substandard, the State shall make a reasonable effort to notify promptly (I) individuals receiving community care in that setting, and (II) immediate family members of such individuals.

(C) Access to fraud control units

Each State shall provide its State medicaid fraud and abuse control unit (established under section 1336b(q) of this title) with access to all information of the State agency responsible for surveys, reviews, and certifications under this subsection.

(j) Enforcement process for providers of community care

(1) State authority

(A) In general

If a State finds, on the basis of a review under subsection (i)(2) of this section or otherwise, that a provider of home or community care no longer meets the requirements of this section, the State may terminate the provider’s participation under the State plan and may provide in addition for a civil money penalty. Nothing in this subparagraph shall be construed as restricting the remedies available to a State to remedy a provider’s deficiencies. If the State finds that a provider meets such requirements but, as of a previous period, did not meet such requirements, the State may provide for a civil money penalty under paragraph (2)(A) for the period during which it finds that the provider was not in compliance with such requirements.

(B) Civil money penalty

(i) In general

Each State shall establish by law (whether statute or regulation) at least the following remedy: A civil money penalty assessed and collected, with interest, for each day in which the provider is or was out of compliance with a requirement of this section. Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty under subsection (i)(3)(A) of this section) may be applied to reimbursement of individuals for personal funds lost due to a failure of home or community care providers to meet the requirements of this section. The State also shall specify criteria, as to when and how this remedy is to be applied and the amounts of any penalties. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the penalties and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

(ii) Deadline and guidance

Each State which elects to provide home and community care under this section must establish the civil money penalty remedy described in clause (i) applicable to all providers of community care covered under this section. The Secretary shall provide, through regulations or otherwise by not later than July 1, 1990, guidance to States in establishing such remedy; but the failure of the Secretary to provide such guidance shall not relieve a State of the responsibility for establishing such remedy.

(2) Secretarial authority

(A) For State providers

With respect to a State provider of home or community care, the Secretary shall have the authority and duties of a State under this subsection, except that the civil money penalty remedy described in subparagraph (C) shall be substituted for the civil money penalty remedy described in paragraph (1)(B)(i).

(B) Other providers

With respect to any other provider of home or community care in a State, if the Secretary finds that a provider no longer meets a requirement of this section, the Secretary may terminate the provider’s participation under the State plan and may provide, in addition, for a civil money penalty under subparagraph (C). If the Secretary finds that a provider meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (C) for the period during which the Secretary finds that the provider was not in compliance with such requirements.

(C) Civil money penalty

If the Secretary finds on the basis of a review under subsection (i)(2) of this section or otherwise that a home or community care provider no longer meets the requirements of this section, the Secretary shall impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The Secretary shall specify criteria, as to when and how this remedy is to be applied and the amounts of any penalties. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the penalties and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.
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(k) Secretarial responsibilities

(1) Publication of interim requirements

(A) In general

The Secretary shall publish, by December 1, 1991, a proposed regulation that sets forth interim requirements, consistent with subparagraph (B), for the provision of home and community care and for community care settings, including—

(i) the requirements of subsection (c)(2) of this section (relating to comprehensive functional assessments, including the use of assessment instruments), of subsection (d)(2)(E) of this section (relating to qualifications for qualified case managers), of subsection (f) of this section (relating to minimum requirements for home and community care), of subsection (g) of this section (relating to minimum requirements for small community care settings), and of subsection (h) of this section (relating to minimum requirements for large community care settings), and

(ii) survey protocols (for use under subsection (1)(3)(A) of this section) which relate to such requirements.

(B) Minimum protections

Interim requirements under subparagraph (A) and final requirements under paragraph (2) shall assure, through methods other than reliance on State licensure processes, that individuals receiving home and community care are protected from neglect, physical and sexual abuse, financial exploitation, inappropriate involuntary restraint, and the provision of health care services by unqualified personnel in community care settings.

(2) Development of final requirements

The Secretary shall develop, by not later than October 1, 1992—

(A) final requirements, consistent with paragraph (1)(B), respecting the provision of appropriate, quality home and community care and respecting community care settings under this section, and including at least the requirements referred to in paragraph (1)(A)(i), and

(B) survey protocols and methods for evaluating and assuring the quality of community care settings.

The Secretary may, from time to time, revise such requirements, protocols, and methods.

(3) No delegation to States

The Secretary’s authority under this subsection shall not be delegated to States.

(4) No prevention of more stringent requirements by States

Nothing in this section shall be construed as preventing States from imposing requirements that are more stringent than the requirements published or developed by the Secretary under this subsection.

(l) Waiver of Statewideness

States may waive the requirement of section 1396a(a)(1) of this title (related to Statewideness) for a program of home and community care under this section.

(m) Limitation on amount of expenditures as medical assistance

(1) Limitation on amount

The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be for fiscal year 1991, $40,000,000, for fiscal year 1992, $70,000,000, for fiscal year 1993, $130,000,000, for fiscal year 1994, $160,000,000, and for fiscal year 1995, $180,000,000.

(2) Assurance of entitlement to service

A State which receives Federal medical assistance for expenditures for home and community care under this section must provide home and community care specified under the Individual Community Care Plan under subsection (d) of this section to individuals described in subsection (b) of this section for the duration of the election period, without regard to the amount of funds available to the State under paragraph (1). For purposes of this paragraph, an election period is the period of 4 or more calendar quarters elected by the State, and approved by the Secretary, for the provision of home and community care under this section.

(3) Limitation on eligibility

The State may limit eligibility for home and community care under this section during an election period under paragraph (2) to reasonable classifications (based on age, degree of functional disability, and need for services).

(4) Allocation of medical assistance

The Secretary shall establish a limitation on the amount of Federal medical assistance available to any State during the State’s election period under paragraph (2). The limitation under this paragraph shall take into account the limitation under paragraph (1) and the number of elderly individuals age 65 or over residing in such State in relation to the number of such elderly individuals in the United States during 1990. For purposes of the previous sentence, elderly individuals shall, to the maximum extent practicable, be low-income elderly individuals.


C O D I F I C A T I O N


A M E N D M E N T S


E F F E C T I V E D A T E

Section applicable to home and community care furnished on or after July 1, 1991, without regard to wheth-
er or not final regulations to carry out the amend-
ments made by section 4711 of Pub. L. 101–508 have been
promulgated by such date, see section 4711(e) of Pub. L.
101–508, set out as an Effective Date of 1990 Amendment
note under section 1396a of this title.

§ 1396u. Community supported living arrange-
ments services

(a) Community supported living arrangements
services

In this subchapter, the term “community sup-
ported living arrangements services” means one
or more of the following services meeting the re-
quirements of subsection (b) of this section pro-
vided in a State eligible to provide services
under this section (as defined in subsection (d)
of this section) to assist a developmentally dis-
abled individual (as defined in subsection (b)
of this section) in activities of daily living nec-
necessary to permit such individual to live in the
individual’s own home, apartment, family home,
or rental unit furnished in a community sup-
ported living arrangement setting:

1. Personal assistance.
2. Training and habilitation services (ne-
necessary to assist the individual in achieving in-
creased integration, independence and produc-
tivity).
3. 24-hour emergency assistance (as defined
by the Secretary).
4. Assistive technology.
5. Adaptive equipment.
6. Other services (as approved by the Sec-
retary, except those services described in sub-
section (g) of this section).
7. Support services necessary to aid an indi-
vidual to participate in community activities.

(b) “Developmentally disabled individual” de-

In this subchapter the term,1 “development-
ally disabled individual” means an individ-
ual who as defined by the Secretary is described
within the term “mental retardation and relat-
ed conditions” as defined in regulations as in ef-
fect on July 1, 1990, and who is residing with the
individual’s family or legal guardian in such in-
dividual’s own home in which no more than 3
other recipients of services under this section
are residing and without regard to whether or
not such individual is at risk of institutionaliza-
tion (as defined by the Secretary).

(c) Criteria for selection of participating States

The Secretary shall develop criteria to review
the applications of States submitted under this
section to provide community supported living
arrangements services. The Secretary shall pro-
vide in such criteria that during the first 5 years
of the provision of services under this section
that no less than 2 and no more than 8 States
shall be allowed to receive Federal financial par-
ticipation for providing the services described in
this section.

(d) Quality assurance

A State selected by the Secretary to provide
services under this section shall in order to con-
continue to receive Federal financial participation
for providing services under this section be re-
quired to establish and maintain a quality as-
surance program, that provides that—

1. The State will certify and survey provid-
ers of services under this section (such surveys
to be unannounced and average at least 1 a
year);
2. The State shall adopt standards for survey
and certification that include—
   (A) minimum qualifications and training
   requirements for provider staff;
   (B) financial operating standards; and
   (C) a consumer grievance process;
3. The State will provide a system that al-
 lows for monitoring boards consisting of pro-
viders, family members, consumers, and neigh-
bors;
4. The State will establish reporting pro-
dures to make available information to the
public;
5. The State will provide ongoing monitor-
ing of the health and well-being of each recipi-
ent;
6. The State will provide the services de-
fined in subsection (a) of this section in ac-
cordance with an individual support plan (as
defined by the Secretary in regulations); and
7. The State plan amendment under this sec-
tion shall be reviewed by the State Council on
Developmental Disabilities established under
section 125 of the Developmental Disabilities
Assistance and Bill of Rights Act of 2000 [42
U.S.C. § 15025] and the protection and advocacy
system established under subtitle C of that
Act [42 U.S.C. 15041 et seq.].

The Secretary shall not approve a quality assur-
ance plan under this subsection and allow a
State to continue to receive Federal financial par-
ticipation under this section unless the State
provides for public hearings on the plan prior to
adoption and implementation of its plan under
this subsection.

(e) Maintenance of effort

States selected by the Secretary to receive
Federal financial participation to provide serv-
ces under this section shall maintain current
levels of spending for such services in order to
be eligible to continue to receive Federal finan-
cial participation for the provision of such serv-
ces under this section.

(f) Excluded services

No Federal financial participation shall be al-
lowed for the provision of the following services
under this section:

1. Room and board.
2. Cost of prevocational, vocational and
supported employment.

(g) Waiver of requirements

The Secretary may waive such provisions of
this subchapter as necessary to carry out the
provisions of this section including the follow-
ing requirements of this subchapter—

1. comparability of amount, duration, and
scope of services; and
2. statewideness.
§ 1396u–1

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(h) Minimum protections

(1) Publication of interim and final requirements

(A) In general

The Secretary shall publish, by July 1, 1991, a regulation (that shall be effective on an interim basis pending the promulgation of final regulations), and by October 1, 1992, a final regulation, that sets forth interim and final requirements, respectively, consistent with subparagraph (B), to protect the health, safety, and welfare of individuals receiving community supported living arrangements services.

(B) Minimum protections

Interim and final requirements under subparagraph (A) shall assure, through methods other than reliance on State licensure processes or the State quality assurance programs under subsection (d) of this section, that—

(i) individuals receiving community supported living arrangements services are protected from neglect, physical and sexual abuse, and financial exploitation;

(ii) a provider of community supported living arrangements services may not use individuals who have been convicted of child or client abuse, neglect, or mistreatment or of a felony involving physical harm to an individual and shall take all reasonable steps to determine whether applicants for employment by the provider have histories indicating involvement in child or client abuse, neglect, or mistreatment or a criminal record involving physical harm to an individual;

(iii) individuals or entities delivering such services are not unjustly enriched as a result of abusive financial arrangements (such as owner lease-backs); and

(iv) individuals or entities delivering such services to clients, or relatives of such individuals, are prohibited from being financial beneficiaries of life insurance policies purchased by (or on behalf of) such clients.

(2) Specified remedies

If the Secretary finds that a provider has not met an applicable requirement under subsection (h) of this section, the Secretary shall impose a civil money penalty in an amount not to exceed $10,000 for each day of non-compliance. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(i) Treatment of funds

Any funds expended under this section for medical assistance shall be in addition to funds expended for any existing services covered under the State plan, including any waiver services for which an individual receiving services under this program is already eligible.

(j) Limitation on amounts of expenditures as medical assistance

The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be for fiscal year 1991, $5,000,000; for fiscal year 1992, $10,000,000, for fiscal year 1993, $20,000,000, for fiscal year 1994, $30,000,000, for fiscal year 1995, $35,000,000, and for fiscal years thereafter such sums as provided by Congress.


REFERENCES IN TEXT


CODIFICATION


AMENDMENTS


EFFECTIVE DATE

Section 4712(c) of Pub. L. 101–508 provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 1396d of this title] shall apply to community supported living arrangements services furnished on or after the later of July 1, 1991, or 30 days after the publication of regulations setting forth interim requirements under subsection (h) [probably means subsec. (h) of this section] without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

“(2) APPLICATION PROCESS.—The Secretary of Health and Human Services shall provide that the applications required to be submitted by States under this section shall be received and approved prior to the effective date specified in paragraph (1).”

§ 1396u–1. Assuring coverage for certain low-income families

(a) References to subchapter IV–A are references to pre-welfare-reform provisions

Subject to the succeeding provisions of this section, with respect to a State any reference in this subchapter (or any other provision of law in relation to the operation of this subchapter) to a provision of part A of subchapter IV of this chapter, or a State plan under such part (or a provision of such a plan), including income and resource standards and income and resource methodologies under such part or plan, shall be
(b) Application of pre-welfare-reform eligibility criteria

(1) In general
For purposes of this subchapter, subject to paragraphs (2) and (3), in determining eligibility for medical assistance—

(A) an individual shall be treated as receiving aid or assistance under a State plan approved under part A of subchapter IV of this chapter only if the individual meets—

(i) the income and resource standards for determining eligibility under such plan, and

(ii) the eligibility requirements of such plan under subsections (a) through (c) of section 606 of this title and section 607(a) of this title,
as in effect as of July 16, 1996; and

(B) the income and resource methodologies under such plan as of such date shall be used in the determination of whether any individual meets income and resource standards under such plan.

(2) State option
For purposes of applying this section, a State—

(A) may lower its income standards applicable with respect to part A of subchapter IV of this chapter, but not below the income standards applicable under its State plan under such part on May 1, 1988;

(B) may increase income or resource standards under the State plan referred to in paragraph (1) over a period (beginning after July 16, 1996) by a percentage that does not exceed the percentage increase in the Consumer Price Index for all urban consumers (all items; United States city average) over such period; and

(C) may use income and resource methodologies that are less restrictive than the methodologies used under the State plan under such part as of July 16, 1996.

(3) Option to terminate medical assistance for failure to meet work requirement

(A) Individuals receiving cash assistance under TANF
In the case of an individual who—

(i) is receiving cash assistance under a State program funded under part A of subchapter IV of this chapter,

(ii) is eligible for medical assistance under this subchapter on a basis not related to section 1396a(l) of this title, and

(iii) has the cash assistance under such program terminated pursuant to section 607(e)(1)(B) of this title (as in effect on or after the welfare reform effective date) because of refusing to work,

the State may terminate such individual’s eligibility for medical assistance under this subchapter until such time as there no longer is a basis for the termination of such cash assistance because of such refusal.

(B) Exception for children
Subparagraph (A) shall not be construed as permitting a State to terminate medical assistance for a minor child who is not the head of a household receiving assistance under a State program funded under part A of subchapter IV of this chapter.

(c) Treatment for purposes of transitional coverage provisions

(1) Transition in the case of child support collections

The provisions of section 606(h) of this title (as in effect on July 16, 1996) shall apply, in relation to this subchapter, with respect to individuals (and families composed of individuals) who are described in subsection (b)(1)(A) of this section, in the same manner as they applied before such date with respect to individuals who became ineligible for aid to families with dependent children as a result (wholly or partly) of the collection of child or spousal support under part D of subchapter IV of this chapter.

(2) Transition in the case of earnings from employment

For continued medical assistance in the case of individuals (and families composed of individuals) described in subsection (b)(1)(A) of this section who would otherwise become ineligible because of hours or income from employment, see sections 1396r–6 and 1396a(e)(1) of this title.

(d) Waivers

In the case of a waiver of a provision of part A of subchapter IV of this chapter in effect with respect to a State as of July 16, 1996, or which is submitted to the Secretary before August 22, 1996, and approved by the Secretary on or before July 1, 1997, if the waiver affects eligibility of individuals for medical assistance under this subchapter, such waiver may (but need not) continue to be applied, at the option of the State, in relation to this subchapter after the date the waiver would otherwise expire.

(e) State option to use 1 application form

Nothing in this section, or part A of subchapter IV of this chapter, shall be construed as preventing a State from providing for the same application form for assistance under a State program funded under part A of subchapter IV of this chapter (on or after the welfare reform effective date) and for medical assistance under this subchapter.

(f) Additional rules of construction

(1) With respect to the reference in section 1396a(a)(5) of this title to a State plan approved under part A of subchapter IV of this chapter, a State may treat such reference as a reference either to a State program funded under such part (as in effect on and after the welfare reform effective date) or to the State plan under this subchapter.

(2) Any reference in section 1396a(a)(55) of this title to a State plan approved under part A of subchapter IV of this chapter shall be deemed a reference to a State program funded under such part.
§ 1396u–2. Provisions relating to managed care

(a) State option to use managed care

(1) Use of medicaid managed care organizations and primary care case managers

(A) In general

Subject to the succeeding provisions of this section, and notwithstanding paragraph (1), (10)(B), or (23)(A) of section 1396(a) of this title, a State—

(i) may require an individual who is eligible for medical assistance under the State plan under this subchapter to enroll with a managed care entity as a condition of receiving such assistance (and, with respect to assistance furnished by or under arrangements with such entity, to receive such assistance through the entity), if—

(I) the entity and the contract with the State meet the applicable requirements of this section and section 1396b(m) of this title or section 1396l(t) of this title, and

(II) the requirements described in the succeeding paragraphs of this subsection are met; and

(ii) may restrict the number of provider agreements with managed care entities under the State plan if such restriction does not substantially impair access to services.

(B) “Managed care entity” defined

In this section, the term “managed care entity” means—

(i) a medicaid managed care organization, as defined in section 1396b(m)(1)(A) of this title, that provides or arranges for services for enrollees under a contract pursuant to section 1396b(m) of this title; and

(ii) a primary care case manager, as defined in section 1396l(t)(2) of this title.

References in Text

For effective date, with respect to a State, of title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (as specified in section 116 of such Act), referred to in subsec. (1), see section 116 of Pub. L. 104–193, set out as an Effective Date note under section 601 of this title.

Prior Provisions

A prior section 1931 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS


Subsec. (h)(4). Pub. L. 106–113, §1000(a)(6) (title VI, §602(a)(2)), struck out heading and text of par. (4). Prior to amendment, text read as follows: “This subsection shall only apply with respect to a State for expenditures incurred during the first 12 calendar quarters in which the State program funded under part A of subchapter IV of this chapter (as in effect on and after the welfare reform effective date) is in effect.”

Effective Date of 1999 Amendment


Effective Date

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.

§ 1396u–2. Provisions relating to managed care

(a) State option to use managed care

(1) Use of medicaid managed care organizations and primary care case managers

(A) In general

Subject to the succeeding provisions of this section, and notwithstanding paragraph (1), (10)(B), or (23)(A) of section 1396(a) of this title, a State—

(i) may require an individual who is eligible for medical assistance under the State plan under this subchapter to enroll with a managed care entity as a condition of receiving such assistance (and, with respect to assistance furnished by or under arrangements with such entity, to receive such assistance through the entity), if—

(I) the entity and the contract with the State meet the applicable requirements of this section and section 1396b(m) of this title or section 1396l(t) of this title, and

(II) the requirements described in the succeeding paragraphs of this subsection are met; and

(ii) may restrict the number of provider agreements with managed care entities under the State plan if such restriction does not substantially impair access to services.

(B) “Managed care entity” defined

In this section, the term “managed care entity” means—

(i) a medicaid managed care organization, as defined in section 1396b(m)(1)(A) of this title, that provides or arranges for services for enrollees under a contract pursuant to section 1396b(m) of this title; and

(ii) a primary care case manager, as defined in section 1396l(t)(2) of this title.

References in Text

For effective date, with respect to a State, of title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (as specified in section 116 of such Act), referred to in subsec. (1), see section 116 of Pub. L. 104–193, set out as an Effective Date note under section 601 of this title.

Prior Provisions

A prior section 1931 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS


Subsec. (h)(4). Pub. L. 106–113, §1000(a)(6) (title VI, §602(a)(2)), struck out heading and text of par. (4). Prior to amendment, text read as follows: “This subsection shall only apply with respect to a State for expenditures incurred during the first 12 calendar quarters in which the State program funded under part A of subchapter IV of this chapter (as in effect on and after the welfare reform effective date) is in effect.”

Effective Date of 1999 Amendment


Effective Date

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as a note under section 601 of this title.
(2) Special rules
   (A) Exemption of certain children with special needs

A State may not require under paragraph (1) the enrollment in a managed care entity of an individual under 19 years of age who—
   (i) is eligible for supplemental security income under subchapter XVI of this chapter;
   (ii) is described in section 701(a)(1)(D) of this title;
   (iii) is described in section 1396a(e)(3) of this title;
   (iv) is receiving foster care or adoption assistance under part E of subchapter IV of this chapter; or
   (v) is in foster care or otherwise in an out-of-home placement.

(B) Exemption of medicare beneficiaries

A State may not require under paragraph (1) the enrollment in a managed care entity of an individual who is a qualified medicare beneficiary (as defined in section 1396d(p)(1) of this title) or an individual otherwise eligible for benefits under subchapter XVIII of this chapter.

(C) Indian enrollment

A State may not require under paragraph (1) the enrollment in a managed care entity of an individual who is an Indian (as defined in section 4(c) of the Indian Health Care Improvement Act of 1976 (25 U.S.C. 1603(c))) unless the entity is one of the following (and only if such entity is participating under the plan):
   (i) The Indian Health Service.
   (ii) An Indian health program operated by an Indian tribe or tribal organization pursuant to a contract, grant, cooperative agreement, or compact with the Indian Health Service pursuant to the Indian Self-Determination Act [25 U.S.C. 450f et seq.].
   (iii) An urban Indian health program operated by an urban Indian organization pursuant to a grant or contract with the Indian Health Service pursuant to title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.].

(3) Choice of coverage

(A) In general

A State must permit an individual to choose a managed care entity from not less than two such entities that meet the applicable requirements of this section, and of section 1396b(m) of this title or section 1396d(t) of this title.

(B) State option

At the option of the State, a State shall be considered to meet the requirements of subparagraph (A) in the case of an individual residing in a rural area, if the State requires the individual to enroll with a managed care entity if such entity—
   (i) permits the individual to receive such assistance through not less than two physicians or case managers (to the extent that at least two physicians or case managers are available to provide such assistance in the area), and
   (ii) permits the individual to obtain such assistance from any other provider in appropriate circumstances (as established by the State under regulations of the Secretary).

(C) Treatment of certain county-operated health insuring organizations

A State shall be considered to meet the requirement of subparagraph (A) if—
   (i) the managed care entity in which the individual is enrolled is a health-insuring organization which—
      (I) first became operational prior to January 1, 1986, or
      (II) is described in section 1396b(m)(2)(A)(vi) of this title,
   (ii) permits the individual to obtain such assistance from any other provider in appropriate circumstances (as established by the State under regulations of the Secretary), and
   (iii) at least two such entities that meet the applicable requirements of this section, and of section 1396b(m)(2)(A)(vi) of this title), and
   (iv) is described in section 1396a(e)(3) of this title, and
   (v) is for an individual who is an Indian (as defined in section 1396d(p)(1) of this title), and
   (vi) is described in section 4(c) of the Indian Health Care Improvement Act of 1976 (25 U.S.C. 1603(c)) unless the entity is one of the following (and only if such entity is participating under the plan):

(4) Process for enrollment and termination and change of enrollment

As conditions under paragraph (1)(A)—

(A) In general

The State, enrollment broker (if any), and managed care entity shall permit an individual eligible for medical assistance under the State plan under this subchapter who is enrolled with the entity under this subchapter to terminate (or change) such enrollment—
   (i) for cause at any time (consistent with section 1396b(m)(2)(A)(vi) of this title), and
   (ii) without cause—
      (I) during the 90-day period beginning on the date the individual receives notice of such enrollment, and
      (II) at least every 12 months thereafter.

(B) Notice of termination rights

The State shall provide for notice to each such individual of the opportunity to terminate (or change) enrollment under such conditions. Such notice shall be provided at least 60 days before each annual enrollment opportunity described in subparagraph (A)(II).

(C) Enrollment priorities

In carrying out paragraph (1)(A), the State shall establish a method for establishing enrollment priorities in the case of a managed care entity that does not have sufficient capacity to enroll all such individuals seeking enrollment under which individuals already enrolled with the entity are given priority in continuing enrollment with the entity.

(D) Default enrollment process

In carrying out paragraph (1)(A), the State shall establish a default enrollment process—
   (i) under which any such individual who does not enroll with a managed care entity
during the enrollment period specified by the State shall be enrolled by the State with such an entity which has not been found to be out of substantial compliance with the applicable requirements of this section and of section 1396b(m) of this title or section 1396d(t) of this title; and

(ii) that takes into consideration—

(I) maintaining existing provider-individual relationships or relationships with providers that have traditionally served beneficiaries under this subchapter; and

(II) if maintaining such provider relationships is not possible, the equitable distribution of such individuals among qualified managed care entities available to enroll such individuals, consistent with the enrollment capacities of the entities.

(5) Provision of information

(A) Information in easily understood form

Each State, enrollment broker, or managed care entity shall provide all enrollment notices and informational and instructional materials relating to such an entity under this subchapter in a manner and form which may be easily understood by enrollees and potential enrollees of the entity who are eligible for medical assistance under the State plan under this subchapter.

(B) Information to enrollees and potential enrollees

Each managed care entity that is a Medicaid managed care organization shall, upon request, make available to enrollees and potential enrollees of the organization’s service area information concerning the following:

(i) Providers

The identity, locations, qualifications, and availability of health care providers that participate with the organization.

(ii) Enrollee rights and responsibilities

The rights and responsibilities of enrollees.

(iii) Grievance and appeal procedures

The procedures available to an enrollee and a health care provider to challenge or appeal the failure of the organization to cover a service.

(iv) Information on covered items and services

All items and services that are available to enrollees under the contract between the State and the organization that are covered either directly or through a method of referral and prior authorization. Each managed care entity that is a primary care case manager shall, upon request, make available to enrollees and potential enrollees in the organization’s service area the information described in clause (iii).

(C) Comparative information

A State that requires individuals to enroll with managed care entities under paragraph (1)(A) shall annually (and upon request) provide, directly or through the managed care entity, to such individuals a list identifying the managed care entities that are (or will be) available and information (presented in a comparative, chart-like form) relating to the following for each such entity offered:

(i) Benefits and cost-sharing

The benefits covered and cost-sharing imposed by the entity.

(ii) Service area

The service area of the entity.

(iii) Quality and performance

To the extent available, quality and performance indicators for the benefits under the entity.

(D) Information on benefits not covered under managed care arrangement

A State, directly or through managed care entities, shall, on or before an individual enrolls with such an entity under this subchapter, inform the enrollee in a written and prominent manner of any benefits to which the enrollee may be entitled to under this subchapter but which are not made available to the enrollee through the entity. Such information shall include information on where and how such enrollees may access benefits not made available to the enrollee through the entity.

(b) Beneficiary protections

(1) Specification of benefits

Each contract with a managed care entity under section 1396b(m) of this title or under section 1396d(t)(3) of this title shall specify the benefits the provision (or arrangement) for which the entity is responsible.

(2) Assuring coverage to emergency services

(A) In general

Each contract with a Medicaid managed care organization under section 1396b(m) of this title and each contract with a primary care case manager under section 1396d(t)(3) of this title shall require the organization or manager—

(i) to provide coverage for emergency services (as defined in subparagraph (B)) without regard to prior authorization or the emergency care provider’s contractual relationship with the organization or manager, and

(ii) to comply with guidelines established under section 1395w–22(d)(2) of this title (respecting coordination of post-stabilization care) in the same manner as such guidelines apply to Medicare+Choice plans offered under part C of subchapter XVIII of this chapter.

The requirement under clause (ii) shall first apply 30 days after the date of promulgation of the guidelines referred to in such clause.

(B) “Emergency services” defined

In subparagraph (A)(i), the term “emergency services” means, with respect to an individual enrolled with an organization,
covered inpatient and outpatient services that—

(i) are furnished by a provider that is qualified to furnish such services under this subchapter; and

(ii) are needed to evaluate or stabilize an emergency medical condition (as defined in subparagraph (C)).

(C) “Emergency medical condition” defined

In subparagraph (B)(ii), the term “emergency medical condition” means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—

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

(ii) serious impairment to bodily functions, or

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

(D) Emergency services furnished by non-contract providers

Any provider of emergency services that does not have in effect a contract with a Medicaid managed care entity that establishes payment amounts for services furnished to a beneficiary enrolled in the entity’s Medicaid managed care plan must accept as payment in full no more than the amounts (less any payments for indirect costs of medical education and direct costs of graduate medical education) that it could collect if the beneficiary received medical assistance under this subchapter other than through enrollment in such an entity. In a State where rates paid to hospitals under the State plan for general acute care hospitals or the average contract rate that would apply under the State plan for general acute care hospitals or the average contract rate that would apply under such plan for tertiary hospitals.

(3) Protection of enrollee-provider communications

(A) In general

Subject to subparagraphs (B) and (C), under a contract under section 1396b(m) of this title a medicaid managed care organization (in relation to an individual enrolled under the contract) shall not prohibit or otherwise restrict a covered health care professional (as defined in subparagraph (D)) from advising such an individual who is a patient of the professional about the health status of the individual or medical care or treatment for the individual’s condition or disease, regardless of whether benefits for such care or treatment are provided under the contract, if the professional is acting within the lawful scope of practice.

(B) Construction

Subparagraph (A) shall not be construed as requiring a medicaid managed care organization to provide, reimburse for, or provide coverage of, a counseling or referral service if the organization—

(i) objects to the provision of such service on moral or religious grounds; and

(ii) in the manner and through the written instrumentalities such organization deems appropriate, makes available information on its policies regarding such service to prospective enrollees before or during enrollment and to enrollees within 90 days after the date that the organization adopts a change in policy regarding such a counseling or referral service.

Nothing in this subparagraph shall be construed to affect disclosure requirements under State law or under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.].

(C) “Health care professional” defined

For purposes of this paragraph, the term “health care professional” means a physician (as defined in section 1395x(r) of this title) or other health care professional if coverage for the professional’s services is provided under the contract referred to in subparagraph (A) for the services of the professional. Such term includes a podiatrist, optometrist, chiropractor, psychologist, dentist, physician assistant, physical or occupational therapist and therapy assistant, speech-language pathologist, audiologist, registered or licensed practical nurse (including nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, and certified nurse-midwife), licensed certified social worker, registered respiratory therapist, and certified respiratory therapy technician.

(4) Grievance procedures

Each medicaid managed care organization shall establish an internal grievance procedure under which an enrollee who is eligible for medical assistance under the State plan under this subchapter, or a provider on behalf of such an enrollee, may challenge the denial of coverage of or payment for such assistance.

(5) Demonstration of adequate capacity and services

Each medicaid managed care organization shall provide the State and the Secretary with adequate assurances (in a time and manner determined by the Secretary) that the organization, with respect to a service area, has the capacity to serve the expected enrollment in such service area, including assurances that the organization—

(A) offers an appropriate range of services and access to preventive and primary care services for the population expected to be enrolled in such service area, and

(B) maintains a sufficient number, mix, and geographic distribution of providers of services.
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(c) Quality assurance standards

not discriminate with respect to participation, provider who is acting within the scope of the reimbursement, or indemnification as to any provider's license or certification under applicable State law, solely on the basis of such license or certification. This paragraph shall not be construed to prohibit an organization designed to maintain quality and control costs consistent with the responsibilities of the organization.

(7) Antidiscrimination

A medicaid managed care organization shall not discriminate with respect to participation, reimbursement, or indemnification as to any provider who is acting within the scope of the provider's license or certification under applicable State law, solely on the basis of such license or certification. This paragraph shall not be construed to prohibit an organization from including providers only to the extent necessary to meet the needs of the organization's enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the organization.

(8) Compliance with certain maternity and mental health requirements

Each medicaid managed care organization shall comply with the requirements of subpart 2 of part A of title XXVII of the Public Health Service Act insofar as such requirements apply and are effective with respect to a health insurance issuer that offers group health insurance coverage.

(c) Quality assurance standards

(1) Quality assessment and improvement strategy

(A) In general

If a State provides for contracts with medicaid managed care organizations under section 1396b(m) of this title, the State shall develop and implement a quality assessment and improvement strategy consistent with this paragraph. Such strategy shall include the following:

(i) Access standards

Standards for access to care so that covered services are available within reasonable timeframes and in a manner that ensures continuity of care and adequate primary care and specialized services capacity.

(ii) Other measures

Examination of other aspects of care and service directly related to the improvement of quality of care (including grievance procedures and marketing and information standards).

(iii) Monitoring procedures

Procedures for monitoring and evaluating the quality and appropriateness of care and services to enrollees that reflect the full spectrum of populations enrolled under the contract and that includes requirements for provision of quality assurance data to the State using the data and information set that the Secretary has specified for use under part C of subchapter XVIII of this chapter or such alternative data as the Secretary approves, in consultation with the State.

(iv) Periodic review

Regular, periodic examinations of the scope and content of the strategy.

(B) Standards

The strategy developed under subparagraph (A) shall be consistent with standards that the Secretary first establishes within 1 year after August 5, 1997. Such standards shall not preempt any State standards that are more stringent than such standards. Guidelines relating to quality assurance that are applied under section 1396n(b)(1) of this title shall apply under this subsection until the effective date of standards for quality assurance established under this sub paragraph.

(C) Monitoring

The Secretary shall monitor the development and implementation of strategies under subparagraph (A).

(D) Consultation

The Secretary shall conduct activities under subparagraphs (B) and (C) in consultation with the States.

(2) External independent review of managed care activities

(A) Review of contracts

(i) In general

Each contract under section 1396b(m) of this title with a medicaid managed care organization shall provide for an annual (as appropriate) external independent review conducted by a qualified independent entity of the quality outcomes and timeliness of, and access to, the items and services for which the organization is responsible under the contract. The requirement for such a review shall not apply until after the date that the Secretary establishes the identification method described in clause (ii).

(ii) Qualifications of reviewer

The Secretary, in consultation with the States, shall establish a method for the identification of entities that are qualified to conduct reviews under clause (i).

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TITLE 42—THE PUBLIC HEALTH AND WELFARE
(iii) Use of protocols

The Secretary, in coordination with the National Governors’ Association, shall contract with an independent quality review organization (such as the National Committee for Quality Assurance) to develop the protocols to be used in external independent reviews conducted under this paragraph on and after January 1, 1999.

(iv) Availability of results

The results of each external independent review conducted under this subparagraph shall be available to participating health care providers, enrollees, and potential enrollees of the organization, except that the results may not be made available in a manner that discloses the identity of any individual patient.

(B) Nonduplication of accreditation

A State may provide that, in the case of a medicaid managed care organization that is accredited by a private independent entity (such as those described in section 1395w–22(e)(4) of this title) or that has an external review conducted under section 1395w–22(e)(3) of this title, the external review activities conducted under subparagraph (A) with respect to the organization shall not be duplicative of review activities conducted as part of the accreditation process or the external review conducted under such section.

(C) Deemed compliance for medicare managed care organizations

At the option of a State, the requirements of subparagraph (A) shall not apply with respect to a medicaid managed care organization if the organization is an eligible organization with a contract in effect under section 1395mm of this title or a Medicare+Choice organization with a contract in effect under part C of subchapter XVIII of this chapter and the organization has had a contract in effect under section 1396d(t)(3) of this title at least during the previous 2-year period.

(d) Protections against fraud and abuse

(1) Prohibiting affiliations with individuals debarred by Federal agencies

(A) In general

A managed care entity may not knowingly—

(i) have a person described in subparagraph (C) as a director, officer, partner, or person with beneficial ownership of more than 5 percent of the entity’s equity, or

(ii) have an employment, consulting, or other agreement with a person described in such subparagraph for the provision of items and services that are significant and material to the entity’s obligations under its contract with the State.

(B) Effect of noncompliance

If a State finds that a managed care entity is not in compliance with clause (i) or (ii) of subparagraph (A), the State—

(i) shall notify the Secretary of such noncompliance;

(ii) may continue an existing agreement with the entity unless the Secretary (in consultation with the Inspector General of the Department of Health and Human Services) directs otherwise; and

(iii) may not renew or otherwise extend the duration of an existing agreement with the entity unless the Secretary (in consultation with the Inspector General of the Department of Health and Human Services) provides to the State and to Congress a written statement describing compelling reasons that exist for renewing or extending the agreement.

(C) Persons described

A person is described in this subparagraph if such person—

(i) is debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in nonprocurement activities under regulations issued pursuant to Executive Order No. 12549 or under guidelines implementing such order; or

(ii) is an affiliate (as defined in such Regulation) of a person described in clause (i).

(2) Restrictions on marketing

(A) Distribution of materials

(i) In general

A managed care entity, with respect to activities under this subchapter, may not distribute directly or through any agent or independent contractor marketing materials within any State—

(I) without the prior approval of the State, and

(II) that contain false or materially misleading information.

The requirement of subclause (I) shall not apply with respect to a State until such date as the Secretary specifies in consultation with such State.

(ii) Consultation in review of market materials

In the process of reviewing and approving such materials, the State shall provide for consultation with a medical care advisory committee.

(B) Service market

A managed care entity shall distribute marketing materials to the entire service area of such entity covered under the contract under section 1396b(m) of this title or section 1396d(b)(3) of this title.

(C) Prohibition of tie-ins

A managed care entity, or any agency of such entity, may not seek to influence an individual’s enrollment with the entity in conjunction with the sale of any other insurance.

(D) Prohibiting marketing fraud

Each managed care entity shall comply with such procedures and conditions as the Secretary prescribes in order to ensure that, before an individual is enrolled with the en-
tity, the individual is provided accurate oral and written information sufficient to make an informed decision whether or not to enroll.

(E) Prohibition of “cold-call” marketing

Each managed care entity shall not, directly or indirectly, conduct door-to-door, telephonic, or other “cold-call” marketing of enrollment under this subchapter.

(3) State conflict-of-interest safeguards in medicaid risk contracting

A medicaid managed care organization may not enter into a contract with any State under section 1396b(m) of this title unless the State has in effect conflict-of-interest safeguards with respect to officers and employees of the State with responsibilities relating to contracts with such organizations or to the default enrollment process described in subsection (a)(4)(C)(ii) of this section that are at least as effective as the Federal safeguards provided under chapter 21 of title 41, against conflicts of interest that apply with respect to Federal procurement officials with comparable responsibilities with respect to such contracts.

(4) Use of unique physician identifier for participating physicians

Each medicaid managed care organization shall require each physician providing services to enrollees eligible for medical assistance under the State plan under this subchapter to have a unique identifier in accordance with the system established under section 1320d–2(b) of this title.

(e) Sanctions for noncompliance

(1) Use of intermediate sanctions by the State to enforce requirements

(A) In general

A State may not enter into or renew a contract under section 1396b(m) of this title unless the State has established intermediate sanctions, which may include any of the types described in paragraph (2), other than the termination of a contract with a medicaid managed care organization, which the State may impose against a medicaid managed care organization with such a contract, if the organization—

(i) fails substantially to provide medically necessary items and services that are required (under law or under such organization’s contract with the State) to be provided to an enrollee covered under the contract;

(ii) imposes premiums or charges on enrollees in excess of the premiums or charges permitted under this subchapter;

(iii) acts to discriminate among enrollees on the basis of their health status or requirements for health care services, including expulsion or refusal to reenroll an individual, except as permitted by this subchapter, or engaging in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment with the organization by eligible individuals whose medical condition or history indicates a need for substantial future medical services;

(iv) misrepresents or falsifies information that is furnished—

(I) to the Secretary or the State under this subchapter; or

(II) to an enrollee, potential enrollee, or a health care provider under such subchapter; or

(v) fails to comply with the applicable requirements of section 1396b(m)(2)(A)(x) of this title.

The State may also impose such intermediate sanction against a managed care entity if the State determines that the entity distributed directly or through any agent or independent contractor marketing materials in violation of subsection (d)(2)(A)(i)(II) of this section.

(B) Rule of construction

Clause (i) of subparagraph (A) shall not apply to the provision of abortion services, except that a State may impose a sanction on any medicaid managed care organization that has a contract to provide abortion services if the organization does not provide such services as provided for under the contract.

(2) Intermediate sanctions

The sanctions described in this paragraph are as follows:

(A) Civil money penalties as follows:

(i) Except as provided in clause (ii), (iii), or (iv), not more than $25,000 for each determination under paragraph (1)(A).

(ii) With respect to a determination under clause (iii) or (iv)(i) of paragraph (1)(A), not more than $100,000 for each such determination.

(iii) With respect to a determination under paragraph (1)(A)(i), double the excess amount charged in violation of such subsection (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned).

(iv) Subject to clause (ii), with respect to a determination under paragraph (1)(A)(iii), $15,000 for each individual not enrolled as a result of a practice described in such subsection.

(B) The appointment of temporary management

(i) to oversee the operation of the medicaid managed care organization upon a finding by the State that there is continued egregious behavior by the organization or there is a substantial risk to the health of enrollees; or

(ii) to assure the health of the organization’s enrollees, if there is a need for temporary management while—

(I) there is an orderly termination or reorganization of the organization; or

(II) improvements are made to remedy the violations found under paragraph (1), except that temporary management under this subparagraph may not be terminated until the State has determined that the
medicaid managed care organization has the capability to ensure that the violations shall not recur.

(C) Permitting individuals enrolled with the managed care entity to terminate enrollment without cause, and notifying such individuals of such right to terminate enrollment.

(D) Suspension or default of all enrollment of individuals under this subchapter after the date the Secretary or the State notifies the entity of a determination of a violation of any requirement of section 1396b(m) of this title or this section.

(E) Suspension of payment to the entity under this subchapter for individuals enrolled after the date the Secretary or State notifies the entity of such a determination and until the Secretary or State is satisfied that the basis for such determination has been corrected and is not likely to recur.

(3) Treatment of chronic substandard entities

In the case of a medicaid managed care organization which has repeatedly failed to meet the requirements of section 1396b(m) of this title and this section, the State shall (regardless of what other sanctions are provided) impose the sanctions described in subparagraphs (B) and (C) of paragraph (2).

(4) Authority to terminate contract

(A) In general

In the case of a managed care entity which has failed to meet the requirements of this part or a contract under section 1396b(m) or 1396d(t)(3) of this title, the State shall have the authority to terminate such contract with the entity and to enroll such entity’s enrollees with other managed care entities (or to permit such enrollees to receive medical assistance under the State plan under this subchapter other than through a managed care entity).

(B) Availability of hearing prior to termination of contract

A State may not terminate a contract with a managed care entity under subparagraph (A) unless the entity is provided with a hearing prior to the termination.

(C) Notice and right to disenroll in cases of termination hearing

A State may—

(i) notify individuals enrolled with a managed care entity which is the subject of a hearing to terminate the entity’s contract with the State of the hearing, and

(ii) in the case of such an entity, permit such enrollees to disenroll immediately with the entity without cause.

(5) Other protections for managed care entities against sanctions imposed by State

Before imposing any sanction against a managed care entity other than termination of the entity’s contract, the State shall provide the entity with notice and such other due process protections as the State may provide, except that a State may not provide a managed care entity with a pre-termination hearing before imposing the sanction described in paragraph (2)(B).

(f) Timeliness of payment; adequacy of payment for primary care services

A contract under section 1396b(m) of this title with a medicaid managed care organization shall provide that the organization shall make payment to health care providers for items and services which are subject to the contract and that are furnished to individuals eligible for medical assistance under the State plan under this subchapter who are enrolled with the organization on a timely basis consistent with the claims payment procedures described in section 1396a(a)(37)(A) of this title, unless the health care provider and the organization agree to an alternate payment schedule and, in the case of primary care services described in section 1396a(a)(13)(C) of this title, consistent with the minimum payment rates specified in such section (regardless of the manner in which such payments are made, including in the form of capitation or partial capitation).

(g) Identification of patients for purposes of making DSH payments

Each contract with a managed care entity under section 1396b(m) or under section 1396d(t)(3) of this title shall require the entity either—

(1) to report to the State information necessary to determine the hospital services provided under the contract (and the identity of hospitals providing such services) for purposes of applying sections 1395ww(d)(5)(F) and 1396t–4 of this title; or

(2) to include a sponsorship code in the identification card issued to individuals covered under this subchapter in order that a hospital may identify a patient as being entitled to benefits under this subchapter.

(h) Special rules with respect to Indian enrollees, Indian health care providers, and Indian managed care entities

(1) Enrollee option to select an Indian health care provider as primary care provider

In the case of a non-Indian Medicaid managed care entity that—

(A) has an Indian enrolled with the entity; and

(B) has an Indian health care provider that is participating as a primary care provider within the network of the entity,

insofar as the Indian is otherwise eligible to receive services from such Indian health care provider and the Indian health care provider has the capacity to provide primary care services to such Indian, the contract with the entity under section 1396b(m) of this title or under section 1396d(t)(3) of this title shall require, as a condition of receiving payment under such contract, that the Indian shall be allowed to choose such Indian health care provider as the Indian’s primary care provider under the entity.

(2) Assurance of payment to Indian health care providers for provision of covered services

Each contract with a managed care entity under section 1396b(m) of this title or under
section 1396d(t)(3) of this title shall require any such entity, as a condition of receiving payment under such contract, to satisfy the following requirements:

(A) Demonstration of access to Indian health care providers and application of alternative payment arrangements

Subject to subparagraph (C), to—

(i) demonstrate that the number of Indian health care providers that are participating providers with respect to such entity are sufficient to ensure timely access to covered Medicaid managed care services for those Indian enrollees who are eligible to receive services from such providers; and

(ii) agree to pay Indian health care providers, whether such providers are participating or nonparticipating providers with respect to the entity, for covered Medicaid managed care services provided to those Indian enrollees who are eligible to receive services from such providers at a rate equal to the rate negotiated between such entity and the provider involved or, if such a rate has not been negotiated, at a rate that is not less than the level and amount of payment which the entity would make for the services if the services were furnished by a participating provider which is not an Indian health care provider.

The Secretary shall establish procedures for applying the requirements of clause (i) in States where there are no or few Indian health providers.

(B) Prompt payment

To agree to make prompt payment (consistent with rule for prompt payment of providers under section 1396u-2(f) of this title) to Indian health care providers that are participating providers with respect to such entity or, in the case of an entity to which subparagraph (A)(ii) or (C) applies, that the entity is required to pay in accordance with that subparagraph.

(C) Application of special payment requirements for federally-qualified health centers and for services provided by certain Indian health care providers

(i) Federally-qualified health centers

(I) Managed care entity payment requirement

To agree to pay any Indian health care provider that is a federally-qualified health center under this subchapter but not a participating provider with respect to the entity, for the provision of covered Medicaid managed care services by such provider to an Indian enrollee of the entity at a rate equal to the amount of payment that the entity would pay a federally-qualified health center that is a participating provider with respect to the entity but is not an Indian health care provider for such services.

(II) Continued application of State requirement to make supplemental payment

Nothing in subclause (I) or subparagraph (A) or (B) shall be construed as waiving the application of section 1396a(bb)(5) of this title regarding the State plan requirement to make any supplemental payment due under such section to a federally-qualified health center for services furnished by such center to an enrollee of a managed care entity (regardless of whether the federally-qualified health center is or is not a participating provider with the entity).

(ii) Payment rate for services provided by certain Indian health care providers

If the amount paid by a managed care entity to an Indian health care provider that is not a federally-qualified health center for services provided by the provider to an Indian enrollee with the managed care entity is less than the rate that applies to the provision of such services by the provider under the State plan, the plan shall provide for payment to the Indian health care provider, whether the provider is a participating or nonparticipating provider with respect to the entity, of the difference between such applicable rate and the amount paid by the managed care entity to the provider for such services.

(D) Construction

Nothing in this paragraph shall be construed as waiving the application of standards to assure that payments are consistent with efficiency, economy, and quality of care).

(3) Special rule for enrollment for Indian managed care entities

Regarding the application of a Medicaid managed care program to Indian Medicaid managed care entities, an Indian Medicaid managed care entity may restrict enrollment under such program to Indians in the same manner as Indian Health Programs may restrict the delivery of services to Indians.

(4) Definitions

For purposes of this subsection:

(A) Indian health care provider

The term "Indian health care provider" means an Indian Health Program or an Urban Indian Organization.

(B) Indian Medicaid managed care entity

The term "Indian Medicaid managed care entity" means a managed care entity that is controlled (within the meaning of the last sentence of section 1396b(m)(1)(C) of this title) by the Indian Health Service, a Tribe, Tribal Organization, or Urban Indian Organization, or a consortium, which may be composed of 1 or more Tribes, Tribal Organizations, or Urban Indian Organizations, and which also may include the Service.
(C) Non-Indian Medicaid managed care entity

The term “non-Indian Medicaid managed care entity” means a managed care entity that is not an Indian Medicaid managed care entity.

(D) Covered Medicaid managed care services

The term “covered Medicaid managed care services” means, with respect to an individual enrolled with a managed care entity, items and services for which benefits are available with respect to the individual under the contract between the entity and the State involved.

(E) Medicaid managed care program

The term “Medicaid managed care program” means a program under sections 1396b(m), 1396d(t), and 1396u–2 of this title and includes a managed care program operating under a waiver under section 1396n(b) or 1315 of this title or otherwise.


REFERENCES IN TEXT

Section 4(c) of the Indian Health Care Improvement Act of 1976, referred to in subsec. (a)(2)(C), probably means section 4(c) of the Indian Health Care Improvement Act, as was redesignated section 4(13) of the Act by Pub. L. 111–148, title I, §§1001(5), 1563(c)(2), March 21, 2010, 124 Stat. 1053.

The term “Medicaid managed care program” means a program under sections 1396b(m), 1396d(t), and 1396u–2 of this title and includes a managed care program operating under a waiver under section 1396n(b) or 1315 of this title or otherwise.

Amendments


Change of Name

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

Effective Date of 2009 Amendment

Amendment by Pub. L. 111–5 effective July 1, 2009, see section 5003 of Pub. L. 111–5, set out as a note under section 1398a of this title.

Effective Date of 2006 Amendment

Pub. L. 109–171, title VI, §608(b), Feb. 8, 2006, 120 Stat. 121, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2007.”

Effective Date of 2000 Amendment

§ 1396u–3. State coverage of medicare cost-sharing for additional low-income medicare beneficiaries

(a) In general
A State plan under this subchapter shall provide, under section 1396a(a)(10)(E)(iv) of this title and subject to the succeeding provisions of this section and through a plan amendment, for medical assistance for payment of the cost of medicare cost-sharing described in such section on behalf of all individuals described in such section (in this section referred to as “qualifying individuals”) who are selected to receive such assistance under subsection (b) of this section.

(b) Selection of qualifying individuals
A State shall select qualifying individuals, and provide such individuals with assistance, under this section consistent with the following:

(1) All qualifying individuals may apply
The State shall permit all qualifying individuals to apply for assistance during a calendar year.

(2) Selection on first-come, first-served basis

(A) In general
For each calendar year (beginning with 1998), from (and to the extent of) the amount of the allocation under subsection (c) of this section for the State for the fiscal year ending in such calendar year, the State shall select qualifying individuals who apply for the assistance in the order in which they apply.

(B) Carryover
For calendar years after 1998, the State shall give preference to individuals who were provided such assistance (or other assistance described in section 1396a(a)(10)(E) of this title) in the last month of the previous year and who continue to be (or become) qualifying individuals.

(3) Limit on number of individuals based on allocation
The State shall limit the number of qualifying individuals selected with respect to assistance in a calendar year so that the aggregate amount of such assistance provided to such individuals in such year is estimated to be equal to (but not exceed) the State’s allocation under subsection (c) of this section for the fiscal year ending in such calendar year.

(4) Receipt of assistance during duration of year
If a qualifying individual is selected to receive assistance under this section for a month in a year, the individual is entitled to receive such assistance for the remainder of the year if the individual continues to be a qualifying individual. The fact that an individual is selected to receive assistance under this section at any time during a year does not entitle the individual to continued assistance for any succeeding year.

(c) Allocation

(1) Total allocation
The total amount available for allocation under this section for—
(A) fiscal year 1998 is $200,000,000;
(B) fiscal year 1999 is $250,000,000;
(C) fiscal year 2000 is $300,000,000;
(D) fiscal year 2001 is $350,000,000; and
(E) each of fiscal years 2002 and 2003 is $400,000,000.

(2) Allocation to States
The Secretary shall provide for the allocation of the total amount described in paragraph (1) for a fiscal year, among the States that executed a plan amendment in accordance with subsection (a) of this section, based upon the Secretary’s estimate of the ratio of—
(A) an amount equal to the total number of individuals described in section 1396a(a)(10)(E)(iv) of this title in the State; to
(B) the sum of the amounts computed under subparagraph (A) for all eligible States.
(d) Applicable FMAP
With respect to assistance described in section 1396a(a)(10)(E)(iv) of this title furnished in a State for calendar quarters in a calendar year—
(1) to the extent that such assistance does not exceed the State’s allocation under subsection (c) of this section for the fiscal year ending in the calendar year, the Federal medical assistance percentage shall be equal to 100 percent; and
(2) to the extent that such assistance exceeds such allocation, the Federal medical assistance percentage is 9 percent.

(e) Limitation on entitlement
Except as specifically provided under this section, nothing in this subchapter shall be construed as establishing any entitlement of individuals described in section 1396a(a)(10)(E)(iv) of this title to assistance described in such section.

(f) Coverage of costs through part B of medicare program
For each fiscal year, the Secretary shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund under section 1395t of this title to the appropriate account in the Treasury that provides for payments under section 1396a(a) of this title with respect to medical assistance provided under this section, of an amount equivalent to the total of the amount of payments made under such section that is attributable to this section and such transfer shall be treated as an expenditure from such Trust Fund for purposes of section 1395r of this title.

(g) Special rules
(1) In general
With respect to each period described in paragraph (2), a State shall select qualifying individuals, subject to paragraph (3), and provide such individuals with assistance, in accordance with the provisions of this section as in effect with respect to calendar year 2003, except that for such purpose—
(A) references in the preceding subsections of this section to a year, whether fiscal or calendar, shall be deemed to be references to such period; and
(B) the total allocation amount under subsection (c) of this section for such period shall be the amount described in paragraph (2) for that period.

(2) Periods and total allocation amounts described
For purposes of this subsection—
(A) for the period that begins on January 1, 2004, and ends on September 30, 2004, the total allocation amount is $300,000,000;
(B) for the period that begins on October 1, 2004, and ends on December 31, 2004, the total allocation amount is $300,000,000;
(C) for the period that begins on January 1, 2005, and ends on September 30, 2005, the total allocation amount is $300,000,000;
(D) for the period that begins on October 1, 2005, and ends on December 31, 2005, the total allocation amount is $300,000,000;
(E) for the period that begins on January 1, 2006, and ends on September 30, 2006, the total allocation amount is $300,000,000;
(F) for the period that begins on October 1, 2006, and ends on December 31, 2006, the total allocation amount is $100,000,000;
(G) for the period that begins on January 1, 2007, and ends on September 30, 2007, the total allocation amount is $300,000,000;
(H) for the period that begins on October 1, 2007, and ends on December 31, 2007, the total allocation amount is $100,000,000;
(I) for the period that begins on January 1, 2008, and ends on September 30, 2008, the total allocation amount is $350,000,000;
(J) for the period that begins on October 1, 2008, and ends on December 31, 2008, the total allocation amount is $130,000,000;
(K) for the period that begins on January 1, 2009, and ends on September 30, 2009, the total allocation amount is $150,000,000;
(L) for the period that begins on October 1, 2009, and ends on December 31, 2009, the total allocation amount is $150,000,000;
(M) for the period that begins on January 1, 2010, and ends on September 30, 2010, the total allocation amount is $462,500,000;
(N) for the period that begins on October 1, 2010, and ends on December 31, 2010, the total allocation amount is $165,000,000;
(O) for the period that begins on January 1, 2011, and ends on September 30, 2011, the total allocation amount is $720,000,000;
(P) for the period that begins on October 1, 2011, and ends on December 31, 2011, the total allocation amount is $280,000,000; and
(Q) for the period that begins on January 1, 2012, and ends on February 29, 2012, the total allocation amount is $150,000,000.

(3) Rules for periods that begin after January 1
For any specific period described in subparagraph (B), (D), (F), (H), (J), (L), (N), or (P) of paragraph (2), the following applies:
(A) The specific period shall be treated as a continuation of the immediately preceding period in that calendar year for purposes of applying subsection (b)(2) of this section and qualifying individuals who received assistance in the last month of such immediately preceding period shall be deemed to be selected for the specific period (without the need to complete an application for assistance for such period).
(B) The limit to be applied under subsection (b)(3) of this section for the specific period shall be the same as the limit applied under such subsection for the immediately preceding period.
(C) The ratio to be applied under subsection (c)(2) of this section for the specific period shall be the same as the ratio applied under such subsection for the immediately preceding period.

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PRER VISIONS

A prior section 1933 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS


2010—Subsec. (g)(2)(M). Pub. L. 111–127, § 3(1), substituted “$42,500,000” for “$412,500,000”.

Subsec. (g)(2)(N). Pub. L. 111–127, § 3(2), substituted “$315,000,000” for “$300,000,000”.


Subsec. (g)(3). Pub. L. 111–309, § 110(b)(2), substituted “(N), or (P)” for “or (N)” in introductory provisions.


Subsec. (g)(3). Pub. L. 111–5, § 5005(b)(2), added subpars. (N), or (P)” for “or (N)” in introductory provisions.

2008—Subsec. (g)(2)(J). Pub. L. 110–379, § 2(1), substituted “$125,000,000” for “$150,000,000”.

Pub. L. 110–379, § 2(2), inserted “and” before “in introductory provisions”.


Subsec. (g)(3). Pub. L. 110–90, § 3(b)(2), substituted “(F), or (H)” for “or (F)” in introductory provisions.


Effective Date of Amendment

Amendment by Pub. L. 110–90 effective as of Sept. 30, 2007, see section 3(c) of Pub. L. 110–90, set out as a note under section 1396a of this title.

Effective Date of Amendment


Effective Date of Amendment


Program of all-inclusive care for elderly (PACE)

(a) State option

(1) In general

A State may elect to provide medical assistance under this section with respect to PACE program services to PACE program eligible individuals who are eligible for medical assistance under the State plan and who are enrolled in a PACE program under a PACE program agreement. Such individuals need not be eligible for benefits under part A, or enrolled under part B, of subchapter XVIII of this chapter to be eligible to enroll under this section. In the case of an individual enrolled with a PACE program pursuant to such an election—

(A) the individual shall receive benefits under the plan solely through such program, and

(B) the PACE provider shall receive payment in accordance with the PACE program agreement for provision of such benefits.

A State may establish a numerical limit on the number of individuals who may be enrolled in a PACE program under a PACE program agreement.

(2) “PACE program” defined

For purposes of this section, the term “PACE program” means a program of all-inclusive care for the elderly that meets the following requirements:

(A) Operation

The entity operating the program is a PACE provider (as defined in paragraph (3)).

(B) Comprehensive benefits

The program provides comprehensive health care services to PACE program eligible individuals in accordance with the PACE program agreement and regulations under this section.

(C) Transition

In the case of an individual who is enrolled under the program under this section and

“(ii) the total number of individuals described in section 1396a(a)(10)(E)(iv)(II) of this title in the State; to”.


Pub. L. 108–89, § 401(c), added subsec. (g).

Subsec. (g)(2)(A). Pub. L. 108–173, § 103(f)(2)(B), substituted “$300,000,000” for “$150,000,000”.


Prior Provisions

A prior section 1933 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.
whose enrollment ceases for any reason (including that the individual no longer qualifies as a PACE program eligible individual, the termination of a PACE program agreement, or otherwise), the program provides assistance to the individual in obtaining necessary transitional care through appropriate referrals and making the individual’s medical records available to new providers.

(3) “PACE provider” defined
(A) In general
For purposes of this section, the term “PACE provider” means an entity that—
(i) subject to subparagraph (B), is (or is a distinct part of) a public entity or a private, nonprofit entity organized for charitable purposes under section 501(c)(3) of the Internal Revenue Code of 1986, and
(ii) has entered into a PACE program agreement with respect to its operation of a PACE program.
(B) Treatment of private, for-profit providers
Clause (i) of subparagraph (A) shall not apply—
(i) to entities subject to a demonstration project waiver under subsection (h) of this section; and
(ii) after the date the report under section 4804(b) of the Balanced Budget Act of 1997 is submitted, unless the Secretary determines that any of the findings described in subparagraph (A), (B), (C), or (D) of paragraph (2) of such section are true.

(4) “PACE program agreement” defined
For purposes of this section, the term “PACE program agreement” means, with respect to a PACE provider, an agreement, consistent with this section, section 1395eee of this title (if applicable), and regulations promulgated under subsection (f) of this section and regulations promulgated under section 1395eee of this title, to which the PACE provider agrees, in writing, to operate a PACE program in a State, subject to subsection (c)(4) of this section, determined under subsection (c) of this section to require the level of care required under the State Medicaid plan for coverage of nursing facility services; (C) resides in the service area of the PACE program; and
(D) meets such other eligibility conditions as may be imposed under the PACE program agreement for the program under subsection (e)(2)(A)(ii) of this section.

(6) “PACE protocol” defined
For purposes of this section, the term “PACE protocol” means the Protocol for the Program of All-inclusive Care for the Elderly (PACE), as published by On Lok, Inc., as of April 14, 1995, or any successor protocol that may be agreed upon between the Secretary and On Lok, Inc.

(7) “PACE demonstration waiver program” defined
For purposes of this section, the term “PACE demonstration waiver program” means a demonstration program under either of the following sections (as in effect before the date of their repeal):
(A) Section 603(c) of the Social Security Amendments of 1983 (Public Law 98–21), as extended by section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272).
(B) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509).

(8) “State administering agency” defined
For purposes of this section, the term “State administering agency” means, with respect to the operation of a PACE program in a State, the agency of that State (which may be the single agency responsible for administration of the State plan under this subchapter in the State) responsible for administering PACE program agreements under this section and section 1395eee of this title in the State.

(9) “Trial period” defined
(A) In general
For purposes of this section, the term “trial period” means, with respect to a PACE program operated by a PACE provider under a PACE program agreement, the first 3 contract years under such agreement with respect to such program.
(B) Treatment of entities previously operating PACE demonstration waiver programs
Each contract year (including a year occurring before the effective date of this section) during which an entity has operated a PACE demonstration waiver program shall be counted under subparagraph (A) as a contract year during which the entity operated a PACE program as a PACE provider under a PACE program agreement.

(10) “Regulations” defined
For purposes of this section, the term “regulations” refers to interim final or final regulations promulgated under subsection (f) of this section to carry out this section and section 1395eee of this title.

(b) Scope of benefits; beneficiary safeguards
(1) In general
Under a PACE program agreement, a PACE provider shall—
(A) provide to PACE program eligible individuals, regardless of source of payment and directly or under contracts with other entities, at a minimum—
(i) all items and services covered under subchapter XVIII of this chapter (for individuals enrolled under section 1395eee of this title) and all items and services covered under this subchapter, but without any limitation or condition as to amount,
duration, or scope and without application of deductibles, copayments, coinsurance, or other cost-sharing that would otherwise apply under such subchapter or this subchapter, respectively; and

(i) all additional items and services specified in regulations, based upon those required under the PACE protocol;

(B) provide such enrollees access to necessary covered items and services 24 hours per day, every day of the year;

(C) provide services to such enrollees through a comprehensive, multidisciplinary health and social services delivery system which integrates acute and long-term care services pursuant to regulations; and

(D) specify the covered items and services that will not be provided directly by the entity, and to arrange for delivery of those items and services through contracts meeting the requirements of regulations.

(2) Quality assurance; patient safeguards

The PACE program agreement shall require the PACE provider to have in effect at a minimum—

(A) a written plan of quality assurance and improvement, and procedures implementing such plan, in accordance with regulations, and

(B) written safeguards of the rights of enrolled participants (including a patient bill of rights and procedures for grievances and appeals) in accordance with regulations and with other requirements of this subchapter and Federal and State law designed for the protection of patients.

(3) Treatment of medicare services furnished by noncontract physicians and other entities

(A) Application of medicare advantage requirement with respect to medicare services furnished by noncontract physicians and other entities

Section 1395w–22(k)(1) of this title (relating to limitations on balance billing against MA organizations for noncontract physicians and other entities with respect to services covered under subchapter XVIII of this chapter) shall apply to PACE providers, PACE program eligible individuals enrolled with such PACE providers, and physicians and other entities that do not have a contract or other agreement establishing payment amounts for services furnished to enrollees of that PACE provider, see section 1396a(a)(67) of this title.

(B) Reference to related provision for noncontract providers of services

For the provision relating to limitations on balance billing against PACE providers for services covered under subchapter XVIII of this chapter furnished by noncontract providers of services, see section 1396cc(a)(1)(O) of this title.

(4) Reference to related provision for services covered under this subchapter but not under subchapter XVIII

For provisions relating to limitations on payments to providers participating under the State plan under this subchapter that do not have a contract or other agreement with a PACE provider establishing payment amounts for services covered under such plan (but not under subchapter XVIII of this chapter) when such services are furnished to enrollees of that PACE provider, see section 1396a(a)(67) of this title.

(c) Eligibility determinations

(1) In general

The determination of—

(A) whether an individual is a PACE program eligible individual shall be made under and in accordance with the PACE program agreement, and

(B) who is entitled to medical assistance under this subchapter shall be made (or who is not so entitled, may be made) by the State administering agency.

(2) Condition

An individual is not a PACE program eligible individual (with respect to payment under this section) unless the individual's health status has been determined by the Secretary or the State administering agency, in accordance with regulations, to be comparable to the health status of individuals who have participated in the PACE demonstration waiver programs. Such determination shall be based upon information on health status and related indicators (such as medical diagnoses and measures of activities of daily living, instrumental activities of daily living, and cognitive impairment) that are part of a uniform minimum data set collected by PACE providers on potential eligible individuals.

(3) Annual eligibility recertifications

(A) In general

Subject to subparagraph (B), the determination described in subsection (a)(5)(B) of this section for an individual shall be reevaluated at least annually.

(B) Exception

The requirement of annual reevaluation under subparagraph (A) may be waived during a period in accordance with regulations in those cases in which the State administering agency determines that there is no reasonable expectation of improvement or significant change in an individual's condition during the period because of the severity of chronic condition, or degree of impairment of functional capacity of the individual involved.

(4) Continuation of eligibility

An individual who is a PACE program eligible individual may be deemed to continue to be such an individual notwithstanding a determination that the individual no longer meets the requirement of subsection (a)(5)(B) of this section if, in accordance with regulations, in the absence of continued coverage under a
PACE program the individual reasonably would be expected to meet such requirement within the succeeding 6-month period.

(5) Enrollment; disenrollment

(A) Voluntary disenrollment at any time

The enrollment and disenrollment of PACE program eligible individuals in a PACE program shall be pursuant to regulations and the PACE program agreement and shall permit enrollees to voluntarily disenroll without cause at any time.

(B) Limitations on disenrollment

(i) In general

Regulations promulgated by the Secretary under this section and section 1395eee of this title, and the PACE program agreement, shall provide that the PACE program may not disenroll a PACE program eligible individual except—

(I) for nonpayment of premiums (if applicable) on a timely basis; or

(II) for engaging in disruptive or threatening behavior, as defined in such regulations (developed in close consultation with State administering agencies).

(ii) No disenrollment for noncompliant behavior

Except as allowed under regulations promulgated to carry out clause (i)(II), a PACE program may not disenroll a PACE program eligible individual on the ground that the individual has engaged in noncompliant behavior if such behavior is related to a mental or physical condition of the individual. For purposes of the preceding sentence, the term “noncompliant behavior” includes repeated noncompliance with medical advice and repeated failure to appear for appointments.

(iii) Timely review of proposed voluntary disenrollment

A proposed disenrollment, other than a voluntary disenrollment, shall be subject to timely review and final determination by the Secretary or by the State administering agency (as applicable), prior to the proposed disenrollment becoming effective.

(d) Payments to PACE providers on a capitated basis

(1) In general

In the case of a PACE provider with a PACE program agreement under this section, except as provided in this subsection or by regulations, the State shall make prospective monthly payments of a capitation amount for each PACE program eligible individual enrolled under the agreement under this section.

(2) Capitation amount

The capitation amount to be applied under this subsection for a provider for a contract year shall be an amount specified in the PACE program agreement for the year. Such amount shall be an amount, specified under the PACE agreement, which is less than the amount that would otherwise have been made under the State plan if the individuals were not so enrolled and shall be adjusted to take into account the comparative frailty of PACE enrollees and such other factors as the Secretary determines to be appropriate. The payment under this section shall be in addition to any payment made under section 1395eee of this title for individuals who are enrolled in a PACE program under such section.

(e) PACE program agreement

(1) Requirement

(A) In general

The Secretary, in close cooperation with the State administering agency, shall establish procedures for entering into, extending, and terminating PACE program agreements for the operation of PACE programs by entities that meet the requirements for a PACE provider under this section, section 1395eee of this title, and regulations.

(B) Numerical limitation

(i) In general

The Secretary shall not permit the number of PACE providers with which agreements are in effect under this section or under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 to exceed—

(I) 40 as of August 5, 1997, or

(II) as of each succeeding anniversary of August 5, 1997, the numerical limitation under this subparagraph for the preceding year plus 20.

Subclause (II) shall apply without regard to the actual number of agreements in effect as of a previous anniversary date.

(ii) Treatment of certain private, for-profit providers

The numerical limitation in clause (i) shall not apply to a PACE provider that—

(I) is operating under a demonstration project waiver under subsection (h) of this section, or

(II) was operating under such a waiver and subsequently qualifies for PACE provider status pursuant to subsection (a)(3)(B)(i) of this section.

(2) Service area and eligibility

(A) In general

A PACE program agreement for a PACE program—

(i) shall designate the service area of the program;

(ii) may provide additional requirements for individuals to qualify as PACE program eligible individuals with respect to the program;

(iii) shall be effective for a contract year, but may be extended for additional contract years in the absence of a notice by a party to terminate, and is subject to termination by the Secretary and the State administering agency at any time for cause (as provided under the agreement);

(iv) shall require a PACE provider to meet all applicable State and local laws and requirements; and
(v) shall contain such additional terms and conditions as the parties may agree to, so long as such terms and conditions are consistent with this section and regulations.

(B) Service area overlap
In designating a service area under a PACE program agreement under subparagraph (A)(i), the Secretary (in consultation with the State administering agency) may exclude from designation an area that is already covered under another PACE program agreement, in order to avoid unnecessary duplication of services and avoid impairing the financial and service viability of an existing program.

(3) Data collection; development of outcome measures

(A) Data collection
(i) In general
Under a PACE program agreement, the PACE provider shall—
(I) collect data;
(II) maintain, and afford the Secretary and the State administering agency access to, the records relating to the program, including pertinent financial, medical, and personnel records; and
(III) submit to the Secretary and the State administering agency such reports as the Secretary finds (in consultation with State administering agencies) necessary to monitor the operation, cost, and effectiveness of the PACE program.

(ii) Requirements during trial period
During the first 3 years of operation of a PACE program (either under this section or under a PACE demonstration waiver program), the PACE provider shall provide such additional data as the Secretary specifies in regulations in order to perform the oversight required under paragraph (4)(A).

(B) Development of outcome measures
Under a PACE program agreement, the PACE provider, the Secretary, and the State administering agency shall jointly cooperate in the development and implementation of health status and quality of life outcome measures with respect to PACE program eligible individuals.

(4) Oversight

(A) Annual, close oversight during trial period
During the trial period (as defined in subsection (a)(9) of this section) with respect to a PACE program operated by a PACE provider, the Secretary (in cooperation with the State administering agency) shall conduct a comprehensive annual review of the operation of the PACE program by the provider in order to assure compliance with the requirements of this section and regulations. Such a review shall include—
(I) an onsite visit to the program site;
(II) comprehensive assessment of a provider’s fiscal soundness;
(iii) comprehensive assessment of the provider’s capacity to provide all PACE services to all enrolled participants;
(iv) detailed analysis of the entity’s substantial compliance with all significant requirements of this section and regulations; and
(v) any other elements the Secretary or the State administering agency considers necessary or appropriate.

(B) Continuing oversight
After the trial period, the Secretary (in cooperation with the State administering agency) shall continue to conduct such review of the operation of the PACE providers and PACE programs as may be appropriate, taking into account the performance level of a provider and compliance of a provider with all significant requirements of this section and regulations.

(C) Disclosure
The results of reviews under this paragraph shall be reported promptly to the PACE provider, along with any recommendations for changes to the provider’s program, and shall be made available to the public upon request.

(5) Termination of PACE provider agreements

(A) In general
Under regulations—
(I) the Secretary or a State administering agency may terminate a PACE program agreement for cause, and
(II) a PACE provider may terminate such an agreement after appropriate notice to the Secretary, the State administering agency, and enrollees.

(B) Causes for termination
In accordance with regulations establishing procedures for termination of PACE program agreements, the Secretary or a State administering agency may terminate a PACE program agreement with a PACE provider for, among other reasons, the fact that—
(I) the Secretary or State administering agency determines that—

(1) there are significant deficiencies in the quality of care provided to enrolled participants; or
(II) the provider has failed to comply substantially with conditions for a program or provider under this section or section 1395eee of this title; and
(ii) the entity has failed to develop and successfully initiate, within 30 days of the date of the receipt of written notice of such a determination, a plan to correct the deficiencies, or has failed to continue implementation of such a plan.

(C) Termination and transition procedures
An entity whose PACE provider agreement is terminated under this paragraph shall implement the transition procedures required under subsection (a)(2)(C) of this section.
(6) Secretary’s oversight; enforcement authority

(A) In general

Under regulations, if the Secretary determines (after consultation with the State administering agency) that a PACE provider is failing substantially to comply with the requirements of this section and regulations, the Secretary (and the State administering agency) may take any or all of the following actions:

(i) Condition the continuation of the PACE program agreement upon timely execution of a corrective action plan.

(ii) Withhold some or all further payments under the PACE program agreement under this section or section 1395eee of this title with respect to PACE program services furnished by such provider until the deficiencies have been corrected.

(iii) Terminate such agreement.

(B) Application of intermediate sanctions

Under regulations, the Secretary may provide for the application against a PACE provider of remedies described in section 1395w–27(g)(2) (or, for periods before January 1, 1999, section 1395mm(i)(6)(B) of this title) or 1396v(m)(6)(B) of this title in the case of violations by the provider of the type described in section 1395w–27(g)(1) (or 1395mm(i)(6)(A) of this title for such periods) or 1396v(m)(5)(A) of this title, respectively (in relation to agreements, enrollees, and requirements under section 1395eee of this title or this section, respectively).

(7) Procedures for termination or imposition of sanctions

Under regulations, the provisions of section 1395w–27(h) of this title (or for periods before January 1, 1999, section 1395mm(i)(9) of this title) shall apply to termination and sanctions respecting a PACE program agreement and PACE provider under this subsection in the same manner as they apply to a termination and sanctions with respect to a contract and a Medicare+Choice organization under part C of subchapter XVIII of this chapter (or for such periods an eligible organization under section 1395mm of this title).

(8) Timely consideration of applications for PACE program provider status

In considering an application for PACE provider program status, the application shall be deemed approved unless the Secretary, within 90 days after the date of the submission of the application to the Secretary, either denies such request in writing or informs the applicant in writing with respect to any additional information that is needed in order to make a final determination with respect to the application. After the date the Secretary receives such additional information, the application shall be deemed approved unless the Secretary, within 90 days of such date, denies such request.

(f) Regulations

(1) In general

The Secretary shall issue interim final or final regulations to carry out this section and section 1395eee of this title.

(2) Use of PACE protocol

(A) In general

In issuing such regulations, the Secretary shall, to the extent consistent with the provisions of this section, incorporate the requirements applied to PACE demonstration waiver programs under the PACE protocol.

(B) Flexibility

In order to provide for reasonable flexibility in adapting the PACE service delivery model to the needs of particular organizations (such as those in rural areas or those that may determine it appropriate to use nonstaff physicians according to State licensing law requirements) under this section and section 1395eee of this title, the Secretary (in close consultation with State administering agencies) may modify or waive provisions of the PACE protocol so long as any such modification or waiver is not inconsistent with and would not impair the essential elements, objectives, and requirements of this section, but may not modify or waive any of the following provisions:

(i) The focus on frail elderly qualifying individuals who require the level of care provided in a nursing facility.

(ii) The delivery of comprehensive, integrated acute and long-term care services.

(iii) The interdisciplinary team approach to care management and service delivery.

(iv) Capitated, integrated financing that allows the provider to pool payments received from public and private programs and individuals.

(v) The assumption by the provider of full financial risk.

(C) Continuation of modifications or waivers of operational requirements under demonstration status

If a PACE program operating under demonstration authority has contractual or other operating arrangements which are not otherwise recognized in regulation and which were in effect on July 1, 2000, the Secretary (in close consultation with, and with the concurrence of, the State administering agency) shall permit any such program to continue such arrangements so long as such arrangements are found by the Secretary and the State to be reasonably consistent with the objectives of the PACE program.

(3) Application of certain additional beneficiary and program protections

(A) In general

In issuing such regulations and subject to subparagraph (B), the Secretary may apply with respect to PACE programs, providers, and agreements such requirements of part C of subchapter XVIII of this chapter (or, for

1So in original. Probably should be followed by a comma.
(b) Demonstrated project for for-profit entities

(1) In general

In order to demonstrate the operation of a PACE program by a private, for-profit entity, the Secretary (in close consultation with State administering agencies) shall grant waivers from the requirement under subsection (a)(3) of this section that a PACE provider may not be a for-profit, private entity.

(2) Similar terms and conditions

(A) In general

Except as provided under subparagraph (B), and paragraph (1), the terms and conditions for operation of a PACE program by a provider under this subsection shall be the same as those for PACE providers that are nonprofit, private organizations.

(B) Numerical limitation

The number of programs for which waivers are granted under this subsection shall not exceed 10. Programs with waivers granted under this subsection shall not be counted against the numerical limitation specified in subsection (e)(1)(B) of this section.

(i) Post-eligibility treatment of income

A State may provide for post-eligibility treatment of income for individuals enrolled in PACE programs under this section in the same manner as a State treats post-eligibility income for individuals receiving services under a waiver under section 1396n(c) of this title.

(j) Miscellaneous provisions

Nothing in this section or section 1395eee of this title shall be construed as preventing a PACE provider from entering into contracts with other governmental or nongovernmental payers for the care of PACE program eligible individuals who are not eligible for benefits under part A, or enrolled under part B, of subchapter XVIII of this chapter or eligible for medical assistance under this chapter.


REFERENCES IN TEXT


Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, referred to in subsecs. (a)(7)(B) and (e)(1)(B)(i), is section 9412(b) of Pub. L. 99–509, title IX, Oct. 21, 1986, 100 Stat. 2062, which was not classified to the Code and was repealed by Pub. L. 105–33, title IV, § 4803(d), Aug. 5, 1997, 111 Stat. 550, subject to transition provisions.

For the effective date of this section, referred to in subsec. (a)(9)(B), see section 4803 of Pub. L. 105–33, set out as a Transition; Regulations note under section 1395eee of this title.
PRIOR PROVISIONS
A prior section 1934 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS


CHANGE OF NAME
References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

EFFECTIVE DATE OF 2000 AMENDMENT
Amendment by Pub. L. 106–554 effective as if included in the enactment of Pub. L. 105–33, see section 1(a)(6) (title IX, § 902(c)) of Pub. L. 106–554, set out as a note under section 1395see of this title.

§ 1396u–5. Special provisions relating to medicare prescription drug benefit
(a) Requirements relating to medicare prescription drug low-income subsidies, medicare transitional prescription drug assistance, and medicare cost-sharing
As a condition of its State plan under this subchapter under section 1396a(a)(66) of this title and receipt of any Federal financial assistance under section 1396b of this title subject to subsection (e) of this section, a State shall do the following:

(1) Information for transitional prescription drug assistance verification
The State shall provide the Secretary with information to carry out section 1395w–141(f)(3)(B)(i) of this title.

(2) Eligibility determinations for low-income subsidies
The State shall—
(A) make determinations of eligibility for premium and cost-sharing subsidies under and in accordance with section 1395w–114 of this title;
(B) inform the Secretary of such determinations in cases in which such eligibility is established; and
(C) otherwise provide the Secretary with such information as may be required to carry out part D, other than part 4, of subchapter XVIII of this chapter (including section 1395w–114 of this title).

(3) Screening for eligibility, and enrollment of, beneficiaries for medicare cost-sharing
As part of making an eligibility determination required under paragraph (2) for an individual, the State shall make a determination of the individual’s eligibility for medical assistance for any medicare cost-sharing de-scribed in section 1396d(p)(3) of this title and, if the individual is eligible for any such medicare cost-sharing, offer enrollment to the individual under the State plan (or under a waiver of such plan).

(4) Consideration of data transmitted by the Social Security Administration for purposes of Medicare Savings Program
The State shall accept data transmitted under section 1320b–14(c)(3) of this title and act on such data in the same manner and in accordance with the same deadlines as if the data constituted an initiation of an application for benefits under the Medicare Savings Program (as defined for purposes of such section) that had been submitted directly by the applicant. The date of the individual’s application for the low income subsidy program from which the data have been derived shall constitute the date of filing of such application for benefits under the Medicare Savings Program.

(b) Regular Federal subsidy of administrative costs
The amounts expended by a State in carrying out subsection (a) of this section are expenditures reimbursable under the appropriate paragraph of section 1396b(a) of this title.

(c) Federal assumption of medicaid prescription drug costs for dually eligible individuals
(1) Phased-down State contribution
(A) In general
Each of the 50 States and the District of Columbia for each month beginning with January 2006 shall provide for payment under this subsection to the Secretary of the product of—
(I) the amount computed under paragraph (2)(A) for the State and month;
(ii) the total number of full-benefit dual eligible individuals (as defined in paragraph (6)) for such State and month; and
(iii) the factor for the month specified in paragraph (5).

(B) Form and manner of payment
Payment under subparagraph (A) shall be made in a manner specified by the Secretary that is similar to the manner in which State payments are made under an agreement entered into under section 1395v of this title, except that all such payments shall be deposited into the Medicare Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund.

(C) Compliance
If a State fails to pay to the Secretary an amount required under subparagraph (A), interest shall accrue on such amount at the rate provided under section 1396b(d)(5) of this title. The amount so owed and applicable interest shall be immediately offset against amounts otherwise payable to the State under section 1396b(a) of this title subject to subsection (e) of this section, in accordance with the Federal Claims Collection Act of 1996 and applicable regulations.

1 See References in Text note below.
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(D) Data match
The Secretary shall perform such periodic data matches as may be necessary to identify and compute the number of full-benefit dual eligible individuals for purposes of computing the amount under subparagraph (A).

(2) Amount
(A) In general
The amount computed under this paragraph for a State described in paragraph (1) and for a month in a year is equal to—

(i) $\frac{1}{12}$ of the product of—

(I) the base year State medicaid per capita expenditures for covered part D drugs for full-benefit dual eligible individuals (as computed under paragraph (3)); and

(II) the estimated actuarial value of prescription drug benefits provided under a capitated managed care plan per full-benefit dual eligible individual for 2003, determined using such data as the Secretary determines appropriate.

(B) Gross per capita medicaid expenditures for prescription drugs
(i) In general
The gross per capita medicaid expenditures for prescription drugs for 2003 under this subparagraph is equal to the expenditures, including dispensing fees, for the State under this subchapter during 2003 for covered outpatient drugs, determined per full-benefit dual-eligible-individual for such individuals not receiving medical assistance for such drugs through a medicaid managed care plan.

(ii) Determination
In determining the amount under clause (i), the Secretary shall—

(I) use data from the Medicaid Statistical Information System (MSIS) and other available data;

(II) exclude expenditures attributable to covered outpatient prescription drugs that are not covered part D drugs (as defined in section 1395w–102(e) of this title, including drugs described in subparagraph (K) of section 1396r–8(d)(2) of this title); and

(III) reduce such expenditures by the product of such portion and the adjustment factor (described in clause (iii)).

(iii) Adjustment factor
The adjustment factor described in this clause for a State is equal to the ratio for the State for 2003 of—

(I) aggregate payments under agreements under section 1396r–8 of this title; to

(II) the gross expenditures under this subchapter for covered outpatient drugs referred to in clause (i).

Such factor shall be determined based on information reported by the State in the medicaid financial management reports (form CMS–64) for the 4 quarters of calendar year 2003 and such other data as the Secretary may require.

(C) Weighted average
The weighted average under subparagraph (A) shall be determined taking into account—

(i) with respect to subparagraph (A)(i), the average number of full-benefit dual eligible individuals in 2003 who are not described in clause (ii); and

(ii) with respect to subparagraph (A)(ii), the average number of full-benefit dual eligible individuals in such year who received in 2003 medical assistance for covered outpatient drugs through a medicaid managed care plan.

(4) Applicable growth factor
The applicable growth factor under this paragraph for—

(A) each of 2004, 2005, and 2006, is the average annual percent change (to that year from the previous year) of the per capita amount of prescription drug expenditures (as determined based on the most recent National Health Expenditure projections for the years involved); and

(B) a succeeding year, is the annual percentage increase specified in section 1395w–102(b)(6) of this title for the year.

(5) Factor
The factor under this paragraph for a month—

(A) in 2006 is 90 percent;

(B) in 2007 is 88% percent;

(C) in 2008 is 86% percent;

(D) in 2009 is 85 percent;

(E) in 2010 is 83% percent;

(F) in 2011 is 81% percent;

(G) in 2012 is 80 percent;

(H) in 2013 is 78% percent;

(I) in 2014 is 76% percent; or
(J) after December 2014, is 75 percent.

(6) Full-benefit dual eligible individual defined

(A) In general

For purposes of this section, the term “full-benefit dual eligible individual” means for a State for a month an individual who—

(i) has coverage for the month for covered part D drugs under a prescription drug plan under part D of subchapter XVIII of this chapter, or under an MA–PD plan under part C of such subchapter; and

(ii) is determined eligible by the State for medical assistance for full benefits under this subchapter for such month under section 1396a(a)(10)(A) or 1396a(a)(10)(C) of this title, by reason of section 1396a(f) of this title, or under any other category of eligibility for medical assistance for full benefits under this subchapter, as determined by the Secretary.

(B) Treatment of medically needy and other individuals required to spend down

In applying subparagraph (A) in the case of an individual determined to be eligible by the State for medical assistance under section 1396a(a)(10)(C) of this title or by reason of section 1396a(f) of this title, the individual shall be treated as meeting the requirement of subparagraph (A)(ii) for any month if such medical assistance is provided for in any part of the month.

(d) Coordination of prescription drug benefits

(1) Medicare as primary payor

In the case of a part D eligible individual (as defined in section 1395w–101(a)(3)(A) of this title) who is described in subsection (c)(6)(A)(ii) of this section, notwithstanding any other provision of this subchapter, medical assistance is not available under this subchapter for such drugs (or for any cost-sharing respecting such drugs), and the rules under this subchapter relating to the provision of medical assistance for such drugs shall not apply. The provision of benefits with respect to such drugs shall not be considered as the provision of care or services under the plan under this subchapter. No payment may be made under section 1396b(a) of this title for prescribed drugs for which medical assistance is not available pursuant to this paragraph.

(2) Coverage of certain excludable drugs

In the case of medical assistance under this subchapter with respect to a covered outpatient drug (other than a covered part D drug) furnished to an individual who is enrolled in a prescription drug plan under part D of subchapter XVIII of this chapter or an MA–PD plan under part C of such subchapter, the State may elect to provide such medical assistance in the manner otherwise provided in the case of individuals who are not full-benefit dual eligible individuals or through an arrangement with such plan.

(e) Treatment of territories

(1) In general

In the case of a State, other than the 50 States and the District of Columbia—

(A) the previous provisions of this section shall not apply to residents of such State; and

(B) if the State establishes and submits to the Secretary a plan described in paragraph (2) (for providing medical assistance with respect to the provision of prescription drugs to part D eligible individuals), the amount otherwise determined under section 1308(f) of this title (as increased under section 1308(g) of this title) for the State shall be increased by the amount for the fiscal period specified in paragraph (3).

(2) Plan

The Secretary shall determine that a plan is described in this paragraph if the plan—

(A) provides medical assistance with respect to the provision of covered part D drugs (as defined in section 1395w–102(e) of this title) to low-income part D eligible individuals;

(B) provides assurances that additional amounts received by the State that are attributable to the operation of this sub-section shall be used only for such assistance and related administrative expenses and that no more than 10 percent of the amount specified in paragraph (3)(A) for the State for any fiscal period shall be used for such administrative expenses; and

(C) meets such other criteria as the Secretary may establish.

(3) Increased amount

(A) In general

The amount specified in this paragraph for a State for a year is equal to the product of—

(i) the aggregate amount specified in subparagraph (B); and

(ii) the ratio (as estimated by the Secretary) of—

(I) the number of individuals who are entitled to benefits under part A ² or enrolled under part B ² and who reside in the State (as determined by the Secretary based on the most recent available data before the beginning of the year); to

(II) the sum of such numbers for all States that submit a plan described in paragraph (2).

(B) Aggregate amount

The aggregate amount specified in this subparagraph for—

(i) the last 3 quarters of fiscal year 2006, is equal to $29,125,000; or

(ii) fiscal year 2007, is equal to $37,500,000; or

(iii) a subsequent year, is equal to the aggregate amount specified in this subparagraph for the previous year increased by annual percentage increase specified in section 1395w–102(b)(6) of this title for the year involved.

(4) Report

The Secretary shall submit to Congress a report on the application of this sub-section and

²See References in Text note below.
may include in the report such recommendations as the Secretary deems appropriate.


REFERENCES IN TEXT

No act with the title Federal Claims Collection Act of 1966, referred to in subsec. (c)(1)(C), has been enacted. However, Pub. L. 89–508, July 19, 1966, 80 Stat. 308, was known as the Federal Claims Collection Act of 1966. Sections 2, 3, and 5 of Pub. L. 89–508, which enacted sections 951, 952, and 954, respectively, of former Title 31, Money and Finance, were repealed by Pub. L. 97–258, §5(b), Sept. 13, 1982, 96 Stat. 877, the first section of which enacted Title 31, Money and Finance. For disposition of sections of former Title 31 into revised Title 31, see Table preceding section 101 of Title 31. For complete classification of Pub. L. 89–508 to the Code, see Tables.

Prior Provisions

A prior section 1935 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

Amendments


2005—Subsec. (c)(3)(B)(ii)(II). Pub. L. 109–91 inserted ‘‘… including drugs described in subparagraph (K) of section 1396r–8(d)(2) of this title’’ after ‘‘section 1395w–102(e) of this title’’.

2003—Subsec. (a). Pub. L. 108–173, §103(d)(1)(A), inserted ‘‘subject to subsection (e) of this section’’ after ‘‘section 1396b(a) of this title’’ in introductory provisions.


Effective Date of 2008 Amendment


Effective Date of 2005 Amendment

Amendment by Pub. L. 109–91 applicable to drugs dispensed on or after Jan. 1, 2006, see section 104(d) of Pub. L. 109–91, set out as a note under section 1396b of this title.

§1396u–6. Medicaid Integrity Program

(a) In general

There is hereby established the Medicaid Integrity Program (in this section referred to as the ‘‘Program’’) under which the Secretary shall promote the integrity of the program under this subchapter by entering into contracts in accordance with this section with eligible entities to carry out the activities described in subsection (b).

(b) Activities described

Activities described in this subsection are as follows:

(1) Review of the actions of individuals or entities furnishing items or services (whether on a fee-for-service, risk, or other basis) for which payment may be made under a State plan approved under this subchapter (or under any waiver of such plan approved under section 1315 of this title) to determine whether fraud, waste, or abuse has occurred, is likely to occur, or whether such actions have any potential for resulting in an expenditure of funds under this subchapter in a manner which is not intended under the provisions of this subchapter.

(2) Audit of claims for payment for items or services furnished, or administrative services rendered, under a State plan under this subchapter, including—

(A) cost reports;

(B) consulting contracts; and

(C) risk contracts under section 1396b(m) of this title.

(3) Identification of overpayments to individuals or entities receiving Federal funds under this subchapter.

(4) Education or training, including at such national, State, or regional conferences as the Secretary may establish, of State or local officials, employees, or independent contractors responsible for the administration or supervision of the administration of the State plan under this subchapter, providers of services, managed care entities, beneficiaries, and other individuals with respect to payment integrity and quality of care.

(c) Eligible entity and contracting requirements

(1) In general

An entity is eligible to enter into a contract under the Program to carry out any of the activities described in subsection (b) if the entity satisfies the requirements of paragraphs (2) and (3).

(2) Eligibility requirements

The requirements of this paragraph are the following:

(A) The entity has demonstrated capability to carry out the activities described in subsection (b).

(B) In carrying out such activities, the entity agrees to cooperate with the Inspector General of the Department of Health and Human Services, the Attorney General, and other law enforcement agencies, as appropriate, in the investigation and deterrence of fraud and abuse in relation to this subchapter and in other cases arising out of such activities.

(C) The entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement.

(D) The entity agrees to provide the Secretary and the Inspector General of the Department of Health and Human Services with such performance statistics (including the number and amount of overpayments recovered, the number of fraud referrals, and the return on investment of such activities by the entity) as the Secretary or the Inspector General may request.
(E) The entity meets such other requirements as the Secretary may impose.

(3) Contracting requirements

The entity has contracted with the Secretary in accordance with such procedures as the Secretary shall by regulation establish, except that such procedures shall include the following:

(A) Procedures for identifying, evaluating, and resolving organizational conflicts of interest that are generally applicable to Federal acquisition and procurement.

(B) Competitive procedures to be used—

(i) when entering into new contracts under this section;

(ii) when entering into contracts that may result in the elimination of responsibilities under section 202(b) of the Health Insurance Portability and Accountability Act of 1996; and

(iii) at any other time considered appropriate by the Secretary.

(C) Procedures under which a contract under this section may be renewed without regard to any provision of law requiring competition if the contractor has met or exceeded the performance requirements established in the current contract.

The Secretary may enter into such contracts without regard to final rules having been promulgated.

(4) Limitation on contractor liability

The Secretary shall by regulation provide for the limitation of a contractor’s liability for actions taken to carry out a contract under the Program, and such regulation shall, to the extent the Secretary finds appropriate, employ the same or comparable standards and other substantive and procedural provisions as are contained in section 1320c–6 of this title.

(d) Comprehensive plan for program integrity

(1) 5-year plan

With respect to the 5-fiscal year period beginning with fiscal year 2006, and each such 5-fiscal year period that begins thereafter, the Secretary shall establish a comprehensive plan for ensuring the integrity of the program established under this subchapter by combating fraud, waste, and abuse.

(2) Consultation

Each 5-fiscal year plan established under paragraph (1) shall be developed by the Secretary in consultation with the Attorney General, the Director of the Federal Bureau of Investigation, the Comptroller General of the United States, the Inspector General of the Department of Health and Human Services, and State officials with responsibility for controlling provider fraud and abuse under State plans under this subchapter.

(e) Appropriation

(1) In general

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to carry out the Medicaid Integrity Program under this section, without further appropriation—

(A) for fiscal year 2006, $5,000,000;

(B) for each of fiscal years 2007 and 2008, $50,000,000;

(C) for each of fiscal years 2009 and 2010, $75,000,000; and

(D) for each fiscal year after fiscal year 2010, the amount appropriated under this paragraph for the previous fiscal year, increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) over the previous year.

(2) Availability; authority for use of funds

(A) Availability

Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

(B) Authority for use of funds for transportation and travel expenses for attendees at education, training, or consultative activities

(i) In general

The Secretary may use amounts appropriated pursuant to paragraph (1) to pay for transportation and the travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business, of individuals described in subsection (b)(4) who attend education, training, or consultative activities conducted under the authority of that subsection.

(ii) Public disclosure

The Secretary shall make available on a website of the Centers for Medicare & Medicaid Services that is accessible to the public—

(I) the total amount of funds expended for each conference conducted under the authority of subsection (b)(4); and

(II) the amount of funds expended for each such conference that were for transportation and for travel expenses.

(3) Increase in cms staffing devoted to protecting Medicaid program integrity

From the amounts appropriated under paragraph (1), the Secretary shall increase by 100 the number of full-time equivalent employees whose duties consist solely of protecting the integrity of the Medicaid program established under this section by providing effective support and assistance to States to combat provider fraud and abuse.

(4) Evaluations

The Secretary shall conduct evaluations of eligible entities which the Secretary contracts with under the Program not less frequently than every 3 years.

(5) Annual report

Not later than 180 days after the end of each fiscal year (beginning with fiscal year 2006), the Secretary shall submit a report to Congress which identifies—

(A) the use of funds appropriated pursuant to paragraph (1); and
B) the effectiveness of the use of such funds.


REFERENCES IN TEXT


Prior Provisions

A prior section 1936 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1395b and 1396 of this title.

AMENDMENTS


Subsec. (c)(4), (5). Pub. L. 110–146, §1402(j)(2)(B), added par. (4) and redesignated former par. (4) as (5).

2006—Subsec. (b)(4). Pub. L. 109–379, §5(a)(1)(A), substituted “Education or training, including at such national, State, or regional conferences as the Secretary may establish, of State or local officers, employees, or independent contractors responsible for the administration or the supervision of the administration of the State plan under this subchapter,” for “‘Education of’. Subsec. (e)(2). Pub. L. 110–379, §5(a)(1)(B), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “Amounts appropriated pursuant to paragraph (1) shall remain available until expended.”


Effective Date of 2008 Amendment


§1396u–7. State flexibility in benefit packages

(a) State option of providing benchmark benefits

(1) Authority

(A) In general

Notwithstanding section 1396a(a)(1) of this title (relating to statewideness), section 1396a(a)(10)(B) of this title (relating to comparability) and any other provision of this subchapter which would be directly contrary to the authority under this section and subject to subsection 1(E), a State, at its option as a State plan amendment, may provide for medical assistance under this subchapter to individuals within one or more groups of individuals specified by the State through coverage that—

(i) provides benchmark coverage described in subsection (b)(1) or benchmark equivalent coverage described in subsection (b)(2); and

(ii) for any individual described in section 1396a(a)(10)(B) of this title who is eligible under the State plan in accordance with paragraphs (10) and (17) of section 1396a(a) of this title, consists of the items and services described in section 1396a(a)(10)(B) of this title (relating to early and periodic screening, diagnostic, and treatment services defined in section 1396d(r) of this title) and provided in accordance with the requirements of section 1396a(a)(43) of this title.

(B) Limitation

The State may only exercise the option under subparagraph (A) for an individual eligible under subclause (VIII) of section 1396a(a)(10)(A)(i) of this title or under an eligibility category that had been established under the State plan on or before February 8, 2006.

(C) Option of additional benefits

In the case of coverage described in subparagraph (A), a State, at its option, may provide such additional benefits as the State may specify.

(D) Treatment as medical assistance

Payment of premiums for such coverage under this subsection shall be treated as payment of other insurance premiums described in the third sentence of section 1396d(a) of this title.

(E) Rule of construction

Nothing in this paragraph shall be construed as—

(i) requiring a State to offer all or any of the items and services required by subparagraph (A)(ii) through an issuer of benchmark coverage described in subsection (b)(1) or benchmark equivalent coverage described in subsection (b)(2);

(ii) preventing a State from offering all or any of the items and services required by subparagraph (A)(ii) through an issuer of benchmark coverage described in subsection (b)(1) or benchmark equivalent coverage described in subsection (b)(2); or

(iii) affecting a child’s entitlement to care and services described in sections (a)(4)(B) and (r) of section 1396d of this title and provided in accordance with section 1396a(a)(43) of this title whether provided through benchmark coverage, benchmark equivalent coverage, or otherwise.

(2) Application

(A) In general

Except as provided in subparagraph (B), a State may require that a full-benefit eligible individual (as defined in subparagraph (C))
within a group obtain benefits under this subchapter through enrollment in coverage described in paragraph (1)(A). A State may apply the previous sentence to individuals within 1 or more groups of such individuals.

(B) Limitation on application

A State may not require under subparagraph (A) an individual to obtain benefits through enrollment described in paragraph (1)(A) if the individual is within one of the following categories of individuals:

(i) Mandatory pregnant women

The individual is a pregnant woman who is required to be covered under the State plan under section 1396a(a)(10)(A)(i) of this title.

(ii) Blind or disabled individuals

The individual qualifies for medical assistance under the State plan on the basis of being blind or disabled (or being treated as being blind or disabled) without regard to whether the individual is eligible for supplemental security income benefits under subchapter XVI on the basis of being blind or disabled and including an individual who is eligible for medical assistance on the basis of section 1396a(e)(3) of this title.

(iii) Dual eligibles

The individual is entitled to benefits under any part of subchapter XVIII.

(iv) Terminally ill hospice patients

The individual is terminally ill and is receiving benefits for hospice care under this subchapter.

(v) Eligible on basis of institutionalization

The individual is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, and is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual’s income required for personal needs.

(vi) Medically frail and special medical needs individuals

The individual is medically frail or otherwise an individual with special medical needs (as identified in accordance with regulations of the Secretary).

(vii) Beneficiaries qualifying for long-term care services

The individual qualifies based on medical condition for medical assistance for long-term care services described in section 1396p(c)(1)(C) of this title.

(viii) Children in foster care receiving child welfare services and children receiving foster care or adoption assistance

The individual is an individual with respect to whom child welfare services are made available under part B of subchapter IV on the basis of being a child in foster care or with respect to whom adoption or foster care assistance is made available under part E of such subchapter, without regard to age.

(ix) TANF and section 1396u–1 parents

The individual qualifies for medical assistance on the basis of eligibility to receive assistance under a State plan funded under part A of subchapter IV (as in effect on or after the welfare reform effective date defined in section 1396u–1(i) of this title).

(x) Women in the breast or cervical cancer program

The individual is a woman who is receiving medical assistance by virtue of the application of sections 1396a(a)(10)(A)(i)(XVIII) and 1396a(aa) of this title.

(xi) Limited services beneficiaries

The individual—

(I) qualifies for medical assistance on the basis of section 1396a(a)(10)(C)(ii)(XI) of this title; or

(II) is not a qualified alien (as defined in section 1641 of title 8) and receives care and services necessary for the treatment of an emergency medical condition in accordance with section 1396b(v) of this title.

(C) Full-benefit eligible individuals

(i) In general

For purposes of this paragraph, subject to clause (ii), the term “full-benefit eligible individual” means for a State for a month an individual who is determined eligible by the State for medical assistance for all services defined in section 1396a(a) of this title which are covered under the State plan under this subchapter for such month under section 1396a(a)(10)(A) of this title or under any other category of eligibility for medical assistance for all such services under this subchapter, as determined by the Secretary.

(ii) Exclusion of medically needy and spend-down populations

Such term shall not include an individual determined to be eligible by the State for medical assistance under section 1396a(a)(10)(C) of this title or by reason of section 1396a(f) of this title or otherwise eligible based on a reduction of income based on costs incurred for medical or other remedial care.

(b) Benchmark benefit packages

(1) In general

For purposes of subsection (a)(1), subject to paragraphs (5) and (6), each of the following coverages shall be considered to be benchmark coverage:

(A) FEHBP-equivalent health insurance coverage

The standard Blue Cross/Blue Shield preferred provider option service benefit plan, described in and offered under section 8903(1) of title 5.
(B) State employee coverage

A health benefits coverage plan that is offered and generally available to State employees in the State involved.

(C) Coverage offered through HMO

The health insurance coverage plan that—
(i) is offered by a health maintenance organization (as defined in section 300gg–81(b)(3) of this title), and
(ii) has the largest insured commercial, non-medicaid enrollment of covered lives of such coverage plans offered by such a health maintenance organization in the State involved.

(D) Secretary-approved coverage

Any other health benefits coverage that the Secretary determines, upon application by a State, provides appropriate coverage for the population proposed to be provided such coverage.

(2) Benchmark-equivalent coverage

For purposes of subsection (a)(1), subject to paragraphs (5) and (6)\(^2\) coverage that meets the following requirement shall be considered to be benchmark-equivalent coverage:

(A) Inclusion of basic services

The coverage includes benefits for items and services within each of the following categories of basic services:
(i) Inpatient and outpatient hospital services.
(ii) Physicians’ surgical and medical services.
(iii) Laboratory and x-ray services.
(iv) Coverage of prescription drugs.
(v) Mental health services.
(vi) Well-baby and well-child care, including age-appropriate immunizations.
(vii) Other appropriate preventive services, as designated by the Secretary.

(B) Aggregate actuarial value equivalent to benchmark package

The coverage has an aggregate actuarial value that is at least actuarially equivalent to one of the benchmark benefit packages described in paragraph (1).

(C) Substantial actuarial value for additional services included in benchmark package

With respect to each of the following categories of additional services for which coverage is provided under the benchmark benefit package used under subparagraph (B), the coverage has an actuarial value that is equal to at least 75 percent of the actuarial value of the coverage of that category of services in such package:
(i) Vision services.
(ii) Hearing services.

(3) Determination of actuarial value

The actuarial value of coverage of benchmark benefit packages shall be set forth in an actuarial opinion in an actuarial report that has been prepared—
(A) by an individual who is a member of the American Academy of Actuaries;
(B) using generally accepted actuarial principles and methodologies;
(C) using a standardized set of utilization and price factors;
(D) using a standardized population that is representative of the population involved;
(E) applying the same principles and factors in comparing the value of different coverage (or categories of services);
(F) without taking into account any differences in coverage based on the method of delivery or means of cost control or utilization used; and
(G) taking into account the ability of a State to reduce benefits by taking into account the increase in actuarial value of benefits coverage offered under this subchapter that results from the limitations on cost sharing under such coverage.

The actuary preparing the opinion shall select and specify in the memorandum the standardized set and population to be used under subparagraphs (C) and (D).

(4) Coverage of rural health clinic and FQHC services

Notwithstanding the previous provisions of this section, a State may not provide for medical assistance through enrollment of an individual with benchmark coverage or benchmark equivalent coverage under this section unless—
(A) the individual has access, through such coverage or otherwise, to services described in subparagraphs (B) and (C) of section 1396d(a)(2) of this title; and
(B) payment for such services is made in accordance with the requirements of section 1396a(bb) of this title.

(5) Minimum standards

Effective January 1, 2014, any benchmark benefit package under paragraph (1) or benchmark equivalent coverage under paragraph (2) must provide at least essential health benefits as described in section 18022(b) of this title.

(6) Mental health services parity

(A) In general

In the case of any benchmark benefit package under paragraph (1) or benchmark equivalent coverage under paragraph (2) that is offered by an entity that is not a medicaid managed care organization and that provides both medical and surgical benefits and mental health or substance use disorder benefits, the entity shall ensure that the financial requirements and treatment limitations applicable to such mental health or substance use disorder benefits comply with the requirements of section 300gg–4(a) of this title in the same manner as such requirements apply to a group health plan.

(B) Deemed compliance

Coverage provided with respect to an individual described in section 1396d(a)(4)(B) of this title and covered under the State plan under section 1396a(a)(10)(A) of this title of the services described in section 1396d(a)(4)(B) of this title (relating to early and periodic screening, diagnostic, and

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\(^2\)So in original. Probably should be followed by a comma.
treatment services defined in section 1396(d)(r) of this title) and provided in accordance with section 1396a(a)(43) of this title, shall be deemed to satisfy the requirements of subparagraph (A).

(7) Coverage of family planning services and supplies

Notwithstanding the previous provisions of this section, a State may not provide for medical assistance through enrollment of an individual with benchmark coverage or benchmark-equivalent coverage under this section unless such coverage includes for any individual described in section 1396d(a)(4)(C) of this title, medical assistance for family planning services and supplies in accordance with such section.

(c) Publication of provisions affected

With respect to a State plan amendment to provide benchmark benefits in accordance with subsections (a) and (b) that is approved by the Secretary, the Secretary shall publish on the Internet website of the Centers for Medicare & Medicaid Services, a list of the provisions of this subchapter that the Secretary has determined do not apply in order to enable the State to carry out the plan amendment and the reason for each such determination on the date such approval is made, and shall publish such list in the Federal Register and not later than 30 days after such date of approval.

(Aug. 14, 1935, ch. 531, title XIX, §1396u–8, set out as an Effective and Termination Dates of 2010 Amendment note under section 1396a of this title.)

AMENDMENT OF SUBSECTION (a)(2)(B)(viii)


Prior Provisions

A prior section 1937 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

Amendments


Subsec. (b)(1). Pub. L. 111–148, §2001(c)(1), inserted “subject to paragraphs (5) and (6),” before “each of the following” in introductory provisions.


Subsec. (b)(3). Pub. L. 111–148, §2001(c)(3)(B), added cl. (iv) and (v) and redesignated former cl. (iv) as (vi) and (vii), respectively.

So in original.
tion for the provision of alternative benefits consistent with subsection (c) for eligible population groups in one or more geographic areas of the State specified by the State. An amendment under the previous sentence is referred to in this section as a “State demonstration program”.

(2) Initial demonstration
(A) In general
The demonstration program under this section shall begin on January 1, 2007. During the first 5 years of such program, the Secretary shall not approve more than 10 States to conduct demonstration programs under this section, with each State demonstration program covering 1 or more geographic areas specified by the State. After such 5-year period—

(i) unless the Secretary finds, taking into account cost-effectiveness, quality of care, and other criteria that the Secretary specifies, that a State demonstration program previously implemented has been unsuccessful, such a demonstration program may be extended or made permanent in the State; and

(ii) unless the Secretary finds, taking into account cost-effectiveness, quality of care, and other criteria that the Secretary specifies, that all State demonstration programs previously implemented were unsuccessful, other States may implement State demonstration programs.

(B) GAO report
(i) In general
Not later than 3 months after the end of the 5-year period described in subparagraph (A), the Comptroller General of the United States shall submit a report to Congress evaluating the demonstration programs conducted under this section during such period.

(ii) Appropriation
Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Comptroller General of the United States, $550,000 for the period of fiscal years 2007 through 2010 to carry out clause (i).

(3) Approval
The Secretary shall not approve a State demonstration program under paragraph (1) unless the program includes the following:

(A) Creating patient awareness of the high cost of medical care.

(B) Providing incentives to patients to seek preventive care services.

(C) Reducing inappropriate use of health care services.

(D) Enabling patients to take responsibility for health outcomes.

(E) Providing enrollment counselors and ongoing education activities.

(F) Providing transactions involving health opportunity accounts to be conducted electronically and without cash.

(G) Providing access to negotiated provider payment rates consistent with this section.

Nothing in this section shall be construed as preventing a State demonstration program from providing incentives for patients obtaining appropriate preventive care (as defined for purposes of section 223(c)(2)(C) of the Internal Revenue Code of 1986), such as additional account contributions for an individual demonstrating healthy prevention practices.

(4) No requirement for statewideness
Nothing in this section or any other provision of law shall be construed to require that a State must provide for the implementation of a State demonstration program on a Statewide basis.

(b) Eligible population groups
(1) In general
A State demonstration program under this section shall specify the eligible population groups consistent with paragraphs (2) and (3).

(2) Eligibility limitations during initial demonstration period
During the initial 5 years of the demonstration program under this section, a State demonstration program shall not apply to any of the following individuals:

(A) Individuals who are 65 years of age or older.

(B) Individuals who are disabled, regardless of whether or not their eligibility for medical assistance under this subchapter is based on such disability.

(C) Individuals who are eligible for medical assistance under this subchapter only because they are (or were within the previous 60 days) pregnant.

(D) Individuals who have been eligible for medical assistance for a continuous period of less than 3 months.

(3) Additional limitations
A State demonstration program shall not apply to any individual within a category of individuals described in section 1396u–7(a)(2)(B) of this title.

(4) Limitations
(A) State option
This subsection shall not be construed as preventing a State from further limiting eligibility.

(B) On enrollees in Medicaid managed care organizations
Insofar as the State provides for eligibility of individuals who are enrolled in Medicaid managed care organizations, such individuals may participate in the State demonstration program only if the State provides assurances satisfactory to the Secretary that the following conditions are met with respect to any such organization:

(i) In no case may the number of such individuals enrolled in the organization who participate in the program exceed 5 percent of the total number of individuals enrolled in such organization.

(ii) The proportion of enrollees in the organization who so participate is not sig-
nificantly disproportionate to the proportion of such enrollees in other such organizations who participate.

(iii) The State has provided for an appropriate adjustment in the per capita payments to the organization to account for such participation, taking into account differences in the likely use of health services between enrollees who so participate and enrollees who do not so participate.

(5) Voluntary participation
An eligible individual shall be enrolled in a State demonstration program only if the individual voluntarily enrolls. Except in such hardship cases as the Secretary shall specify, such an enrollment shall be effective for a period of 12 months, but may be extended for additional periods of 12 months each with the consent of the individual.

(6) 1-year moratorium for reenrollment
An eligible individual who, for any reason, is disenrolled from a State demonstration program conducted under this section shall not be permitted to reenroll in such program before the end of the 1-year period that begins on the effective date of such disenrollment.

(c) Alternative benefits
(1) In general
The alternative benefits provided under this section shall consist, consistent with this subsection, of at least—
(A) coverage for medical expenses in a year for items and services for which benefits are otherwise provided under this subchapter after an annual deductible described in paragraph (2) has been met; and
(B) contribution into a health opportunity account.

Nothing in subparagraph (A) shall be construed as preventing a State from providing for coverage of preventive care (referred to in subsection (a)(3)) within the alternative benefits without regard to the annual deductible.

(2) Annual deductible
The amount of the annual deductible described in paragraph (1)(A) shall be at least 100 percent, but no more than 110 percent, of the annualized amount of contributions to the health opportunity account under subsection (d)(2)(A)(i), determined without regard to any limitation described in subsection (d)(2)(C)(i)(II).

(3) Access to negotiated provider payment rates
(A) Fee-for-service enrollees
In the case of an individual who is participating in a State demonstration program who is not enrolled with a Medicaid managed care organization, the State shall provide that the individual may obtain demonstration program Medicaid services from any provider described in clause (ii) of subparagraph (A) at payment rates that do not exceed the payment rates that may be imposed under that clause.

(B) Treatment under medicaid managed care plans
In the case of an individual who is participating in a State demonstration program and is enrolled with a Medicaid managed care organization, the State shall enter into an arrangement with the organization under which the individual may obtain demonstration program Medicaid services from any provider described in clause (ii) of subparagraph (A) at payment rates that do not exceed the payment rates that may be imposed under that clause.

(C) Computation
The payment rates described in subparagraphs (A) and (B) shall be computed without regard to any cost sharing that would be otherwise applicable under sections 1396o and 1396o–1 of this title.

(D) Definitions
For purposes of this paragraph:
(i) The term ‘demonstration program Medicaid services’ means, with respect to an individual participating in a State demonstration program, services for which the individual would be provided medical assistance under this subchapter but for the application of the deductible described in paragraph (1)(A).
(ii) The term ‘participating provider’ means—
(I) with respect to an individual described in subparagraph (A), a health care provider that has entered into a participation agreement with the State for the provision of services to individuals entitled to benefits under the State plan; or
(II) with respect to an individual described in subparagraph (B) who is enrolled in a Medicaid managed care organization, a health care provider that has entered into an arrangement for the provision of services to enrollees of the organization under this subchapter.

(4) No effect on subsequent benefits
Except as provided under paragraphs (1) and (2), alternative benefits for an eligible individual shall consist of the benefits otherwise provided to the individual, including cost sharing relating to such benefits.

(5) Overriding cost sharing and comparability requirements for alternative benefits
The provisions of this subchapter relating to cost sharing for benefits (including sections 1396o and 1396o–1 of this title) shall not apply with respect to benefits to which the annual deductible under paragraph (1)(A) applies. The provisions of section 1396u(a)(10)(B) of this title (relating to comparability) shall not apply with respect to the provision of alternative benefits (as described in this subsection).
(6) Treatment as medical assistance

Subject to subparagraphs (D) and (E) of subsection (d)(2), payments for alternative benefits under this section (including contributions into a health opportunity account) shall be treated as medical assistance for purposes of section 1396b(a) of this title.

(7) Use of tiered deductible and cost sharing

(A) In general

A State—

(i) may vary the amount of the annual deductible applied under paragraph (1)(A) based on the income of the family involved so long as it does not favor families with higher income over those with lower income; and

(ii) may vary the amount of the maximum out-of-pocket cost sharing (as defined in subparagraph (B)) based on the income of the family involved so long as it does not favor families with higher income over those with lower income.

(B) Maximum out-of-pocket cost sharing

For purposes of subparagraph (A)(ii), the term “maximum out-of-pocket cost sharing” means, for an individual or family, the amount by which the annual deductible level applied under paragraph (1)(A) to the individual or family exceeds the balance in the health opportunity account for the individual or family.

(8) Contributions by employers

Nothing in this section shall be construed as preventing an employer from providing health benefits coverage consisting of the coverage described in paragraph (1)(A) to individuals who are provided alternative benefits under this section.

(d) Health opportunity account

(1) In general

For purposes of this section, the term “health opportunity account” means an account that meets the requirements of this subsection.

(2) Contributions

(A) In general

No contribution may be made into a health opportunity account except—

(i) contributions by the State under this subchapter; and

(ii) contributions by other persons and entities, such as charitable organizations, as permitted under section 1396b(w) of this title.

(B) State contribution

A State shall specify the contribution amount that shall be deposited under subparagraph (A)(i) into a health opportunity account.

(C) Limitation on annual State contribution provided and permitting imposition of maximum account balance

(i) In general

A State—

(I) may impose limitations on the maximum contributions that may be deposited under subparagraph (A)(i) into a health opportunity account in a year; and

(II) may limit contributions into such an account once the balance in the account reaches a level specified by the State; and

(III) subject to clauses (ii) and (iii) and subparagraph (D)(i), may not provide contributions described in subparagraph (A)(i) to a health opportunity account on behalf of an individual or family to the extent the amount of such contributions (including both State and Federal shares) exceeds, on an annual basis, $2,500 for each individual (or family member) who is an adult and $1,000 for each individual (or family member) who is a child.

(ii) Indexing of dollar limitations

For each year after 2006, the dollar amounts specified in clause (i)(III) shall be annually increased by the Secretary by a percentage that reflects the annual percentage increase in the medical care component of the consumer price index for all urban consumers.

(iii) Budget neutral adjustment

A State may provide for dollar limitations in excess of those specified in clause (i)(III) (as increased under clause (ii)) for specified individuals if the State provides assurances satisfactory to the Secretary that contributions otherwise made to other individuals will be reduced in a manner so as to provide for aggregate contributions that do not exceed the aggregate contributions that would otherwise be permitted under this subparagraph.

(D) Limitations on Federal matching

(i) State contribution

A State may contribute under subparagraph (A)(i) amounts to a health opportunity account in excess of the limitations provided under subparagraph (C)(i)(III), but no Federal financial participation shall be provided under section 1396b(a) of this title with respect to contributions in excess of such limitations.

(ii) No FFP for private contributions

No Federal financial participation shall be provided under section 1396b(a) of this title with respect to any contributions described in subparagraph (A)(ii) to a health opportunity account.

(E) Application of different matching rates

The Secretary shall provide a method under which, for expenditures made from a health opportunity account for medical care for which the Federal matching rate under section 1396b(a) of this title exceeds the Federal medical assistance percentage, a State may obtain payment under such section at such higher matching rate for such expenditures.

(3) Use

(A) General uses

(i) In general

Subject to the succeeding provisions of this paragraph, amounts in a health oppor-
(ii) General limitation

Subject to subparagraph (B)(ii), in no case shall such account be used for pay-
ment for health care expenditures that are not payment of medical care (as defined by
section 213(d) of the Internal Revenue Code of 1986).

(iii) State restrictions

In applying clause (i), a State may re-
strict payment for—
(I) providers of items and services to
providers that are licensed or otherwise
authorized under State law to provide
the item or service and may deny pay-
ment for such a provider on the basis
that the provider has been found, whether
with respect to this subchapter or any
other health benefit program, to have
failed to meet quality standards or to
have committed 1 or more acts of fraud
or abuse; and
(II) items and services insofar as the
State finds they are not medically ap-
propriate or necessary.

(iv) Electronic withdrawals

The State demonstration program shall
provide for a method whereby withdrawals
may be made from the account for such
purposes using an electronic system and
shall not permit withdrawals from the ac-
count in cash.

(B) Maintenance of health opportunity ac-
count after becoming ineligible for public benefit

(i) In general

Notwithstanding any other provision of
law, if an account holder of a health oppor-
tunity account becomes ineligible for ben-
teis under this subchapter because of an
increase in income or assets—
(I) no additional contribution shall be
made into the account under paragraph
(2)(A)(ii);
(II) subject to clause (iii), the balance
in the account shall be reduced by 25 per-
cent; and
(III) subject to the succeeding provi-
sions of this subparagraph, the account
shall remain available to the account
holder for 3 years after the date on which
the individual becomes ineligible for
such benefits for withdrawals under the
same terms and conditions as if the ac-
count holder remained eligible for such
benefits, and such withdrawals shall be
treated as medical assistance in accord-
ance with subsection (c)(6).

(ii) Special rules

Withdrawals under this subparagraph
from an account—
(I) shall be available for the purchase
of health insurance coverage; and
(II) may, subject to clause (iv), be
made available (at the option of the
State) for such additional expenditures
(such as job training and tuition ex-
penses) specified by the State (and ap-
proved by the Secretary) as the State
may specify.

(iii) Exception from 25 percent savings to
Government for private contributions

Clause (i)(II) shall not apply to the por-
tion of the account that is attributable to
contributions described in paragraph
(2)(A)(i). For purposes of accounting for
such contributions, withdrawals from a
health opportunity account shall first be
attributed to contributions described in
paragraph (2)(A)(i).

(iv) Condition for non-health withdrawals

No withdrawal may be made from an ac-
count under clause (ii)(II) unless the ac-
count holder has participated in the pro-
gram under this section for at least 1 year.

(v) No requirement for continuation of cov-
erage

An account holder of a health oppor-
tunity account, after becoming ineligible
for medical assistance under this sub-
chapter, is not required to purchase high-
deductible or other insurance as a condi-
tion of maintaining or using the account.

(4) Administration

A State may coordinate administration of
health opportunity accounts through the use
of a third party administrator and reasonable
expenditures for the use of such administrator
shall be reimbursable to the State in the same
manner as other administrative expenditures
under section 1396b(a)(7) of this title.

(5) Treatment

Amounts in, or contributed to, a health op-
portunity account shall not be counted as in-
come or assets for purposes of determining eli-
gram under this section for at least 1 year.

(6) Unauthorized withdrawals

A State may establish procedures—
(A) to penalize or remove an individual
from the health opportunity account based
on nonqualified withdrawals by the individ-
ual from such an account; and
(B) to recoup costs that derive from such
nonqualified withdrawals.

(Aug. 14, 1935, ch. 531, title XIX, §1938, as added
Stat. 113.)

References in Text
The Internal Revenue Code of 1986, referred to in sub-
secs. (a)(3) and (d)(3)(A)(ii), is classified generally to
Title 26, Internal Revenue Code.

Prior Provisions
A prior section 1938 of act Aug. 14, 1935, was renum-ered section 1909 and is classified to section 1396v of
this title.

Prohibiting initiation of new health opportunity
account demonstration programs

provided that: ‘‘After the date of the enactment of this
Act (Feb. 4, 2009), the Secretary of Health and Human
§ 1396v. References to laws directly affecting medicaid program

(a) Authority or requirements to cover additional individuals

For provisions of law which make additional individuals eligible for medical assistance under this subchapter, see the following:

(1) AFDC

(A) Section 602(a)(32) of this title (relating to individuals who are deemed recipients of aid but for whom a payment is not made).

(B) Section 602(a)(37) of this title (relating to individuals who lose AFDC eligibility due to increased collection of child or spousal support).

(C) Section 606(h) of this title (relating to individuals who lose AFDC eligibility due to increased earnings).

(D) Section 682(e)(6) of this title (relating to certain individuals participating in work supplementation programs).

(2) SSI

(A) Section 1382(e) of this title (relating to treatment of couples sharing an accommodation in a facility).

(B) Section 1382h of this title (relating to benefits for individuals who perform substantial gainful activity despite severe medical impairment).

(C) Section 1383c(b) of this title (relating to preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula).

(D) Section 1383c(c) of this title (relating to individuals who lose eligibility for SSI benefits due to entitlement to child’s insurance benefits under section 402(d) of this title).

(E) Section 1383c(d) of this title (relating to individuals who lose eligibility for SSI benefits due to entitlement to early widow’s or widowers’ insurance benefits under section 402(e) or (f) of this title).

(3) Foster care and adoption assistance

Sections 672(h) and 673(b) of this title (relating to medical assistance for children in foster care and for adopted children).

(4) Refugee assistance

Section 1522(e)(5) of title 8 (relating to medical assistance for certain refugees).

(5) Miscellaneous

(A) Section 230 of Public Law 93–66 (relating to deeming eligible for medical assistance certain essential persons).

(B) Section 231 of Public Law 93–66 (relating to deeming eligible for medical assistance certain persons in medical institutions).

(C) Section 232 of Public Law 93–66 (relating to deeming eligible for medical assistance certain blind and disabled medically indigent persons).

(D) Section 13(c) of Public Law 93–233 (relating to deeming eligible for medical assistance certain individuals receiving mandatory State supplementary payments).

(E) Section 503 of Public Law 94–566 (relating to deeming eligible for medical assistance certain individuals who would be eligible for supplemental security income benefits but for cost-of-living increases in social security benefits).

(F) Section 310(b)(1) of Public Law 96–272 (relating to continuing medicaid eligibility for certain recipients of Department of Veterans Affairs pensions).

(b) Additional State plan requirements

For other provisions of law that establish additional requirements for State plans to be approved under this subchapter, see the following:

(1) Section 1392g of this title (relating to requirement for operation of certain State supplementation programs).

(2) Section 212(a) of Public Law 93–66 (relating to requiring mandatory minimum State supplementation of SSI benefits program).


References in Text

Section 602 of this title, referred to in subsec. (a)(1)(A), (b), was repealed and a new section 602 enacted by Pub. L. 104–193, title I, § 109(a)(1), Aug. 22, 1996, 110 Stat. 2112, and, as so enacted, subsec. (a) of section 602 no longer contains a par. (32) or (37).


Section 13(c) of Public Law 93–233, referred to in subsec. (a)(5)(D), is section 13(c) of Pub. L. 93–233, Dec. 31, 1973, 87 Stat. 965, which is set out as a note under section 1396a of this title.


Section 310(b)(1) of Public Law 96–272, referred to in subsec. (a)(5)(F), is section 310(b)(1) of Pub. L. 96–272, title III, June 17, 1980, 94 Stat. 531, which is set out as a note under section 1396a of this title.

Section 212(a) of Public Law 93–66, referred to in subsec. (b)(2), is section 212(a) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1392 of this title.

**Codification**

Section was formerly classified to section 1396s of this title prior to renumbering by Pub. L. 103–66.

**Amendments**


Subsec. (a)(1)(D). Pub. L. 100–485, §202(c)(5), substituted “section 682(c)(6) of this title” for “section 614(g) of this title”.


1987—Subsec. (a)(1), Pub. L. 100–203, §4118(p)(9), as amended by Pub. L. 100–360, §411(k)(10)(L), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

“(1) AFDC.—(A) Section 602(a)(32) of this title (relating to individuals who are deemed recipients of aid but for whom a payment is not made). Section 602(a)(32) of this title (relating to individuals who are deemed recipients of aid but for whom a payment is not made). (B) Section 602(c)(6) of this title (relating to individuals who are deemed recipients of aid but for whom a payment is not made)...

“(2) SSQ.—(A) Section 1382h of this title (relating to benefits for individuals who perform substantial gainful activity despite severe medical impairment).

“(B) Section 1382d(b) of this title (relating to preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula).

“(C) Section 1383 of this title (relating to individuals who lose eligibility for SSI benefits due to entitlement to child’s insurance benefits under section 402(d) of this title)."


1986—Subsec. (a)(1). Pub. L. 99–514, §1885(c)(5)(A), redesignated subpars. (B) and (C) as (C) and (D), respectively, and inserted at beginning of subpar. (A) “Section 602(a)(32) of this title (relating to individuals who are deemed recipients of aid but for whom a payment is not made).”

Subsec. (a)(2). Pub. L. 99–643, which directed amendment of section 1902(a)(2) of the Social Security Act by designating existing provisions as subpar. (A) and adding subpar. (B) relating to section 1386c of this title (relates to individuals who lose eligibility for SSI benefits due to entitlement to child’s insurance benefits, was executed to this section, section 1921 of the Social Security Act, to reflect the probable intent of Congress and the redesignation of section 1920 of the Social Security Act as section 1921 by Pub. L. 99–509.

Pub. L. 99–514, §1885(c)(5)(B), designated existing provisions as subpar. (A) and added subpar. (B) relating to section 1383c(b) of this title as it relates to preservation of benefit status for certain disabled widows and widowers.

Subsec. (a)(3). Pub. L. 99–514, §1885(c)(5)(C), substituted “Sections 672(h) and 673(b) of this title” for “Section 673(b) of this title”.

**Effective Date of 1988 Amendments**

Amendment by section 202(c)(5) of Pub. L. 100–485 effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates, as section 204 of Pub. L. 100–485, set out as a note under section 671 of this title.

Amendment by section 608(d)(28) of Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–393, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(k)(6)(B)(i), (10)(L), (n)(3) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–393, effective as if included in the enactment of such provision in Pub. L. 100–203, set out as a note to Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

**Effective Date of 1986 Amendments**

Amendment by Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.


**References to Provisions of Part A of Subchapter IV Considered References to Such Provisions As in Effect July 15, 1996**

For provisions that certain references to provisions of part A (§601 et seq.) of subchapter IV of this chapter be considered references to such provisions of part A as in effect July 15, 1996, see section 1396a-1(a) of this title.

§1396w. Asset verification through access to information held by financial institutions

**(a) Implementation**

**(1) In general**

Subject to the provisions of this section, each State shall implement an asset verification program described in subsection (b), for purposes of determining or redetermining the eligibility of an individual for medical assistance under the State plan under this subchapter.
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(2) Plan submittal

In order to meet the requirement of paragraph (1), each State shall—

(A) submit not later than a deadline specified by the Secretary consistent with paragraph (3), a State plan amendment under this subchapter that describes how the State intends to implement the asset verification program; and

(B) provide for implementation of such program for eligibility determinations and redeterminations made on or after 6 months after the deadline established for submittal of such plan amendment.

(3) Phase-in

(A) In general

(i) Implementation in current asset verification demo States

The Secretary shall require those States specified in subparagraph (C) (to which an asset verification program has been applied before June 30, 2008) to implement an asset verification program under this subsection by the end of fiscal year 2009.

(ii) Implementation in other States

The Secretary shall require other States to submit and implement an asset verification program under this subsection in such a manner consistent with the approach used by the aggregate for all such other States, to enrollment of approximately, but not less than, the following percentage of enrollees, in the aggregate for all such other States, by the end of the fiscal year involved:

(I) 12.5 percent by the end of fiscal year 2009.

(II) 25 percent by the end of fiscal year 2010.

(III) 50 percent by the end of fiscal year 2011.

(IV) 75 percent by the end of fiscal year 2012.

(V) 100 percent by the end of fiscal year 2013.

(B) Consideration

In selecting States under subparagraph (A)(ii), the Secretary shall consult with the States involved and take into account the feasibility of implementing asset verification programs in each such State.

(C) States specified

The States specified in this subparagraph are California, New York, and New Jersey.

(D) Construction

Nothing in subparagraph (A)(ii) shall be construed as preventing a State from requesting, and the Secretary from approving, the implementation of an asset verification program in advance of the deadline otherwise established under such subparagraph.

(4) Exemption of territories

This section shall only apply to the 50 States and the District of Columbia.

(b) Asset verification program

(1) In general

For purposes of this section, an asset verification program means a program described in paragraph (2) under which a State—

(A) requires each applicant for, or recipient of, medical assistance under the State plan under this subchapter on the basis of being aged, blind, or disabled to provide authorization by such applicant or recipient (and any other person whose resources are required by law to be disclosed to determine the eligibility of the applicant or recipient for such assistance) for the State to obtain (subject to the cost reimbursement requirements of section 1115(a) of the Right to Financial Privacy Act 1 [12 U.S.C. 3415] but at no cost to the applicant or recipient) from any financial institution (within the meaning of section 1101(1) of such Act [12 U.S.C. 3401(1)]) any financial record (within the meaning of section 1101(2) of such Act) held by the institution with respect to the applicant or recipient (and such other person, as applicable), whenever the State determines the record is needed in connection with a determination with respect to such eligibility for (or the amount or extent of) such medical assistance; and

(B) uses the authorization provided under subparagraph (A) to verify the financial resources of such applicant or recipient (and such other person, as applicable), in order to determine or redetermine the eligibility of such applicant or recipient for medical assistance under the State plan.

(2) Program described

A program described in this paragraph is a program for verifying individual assets in a manner consistent with the approach used by the Commissioner of Social Security under section 1383(e)(1)(B)(i) of this title.

(c) Duration of authorization

Notwithstanding section 1104(a)(1) of the Right to Financial Privacy Act 1 [12 U.S.C. 3404(a)(1)], an authorization provided to a State under subsection (b)(1) shall remain effective until the earliest of—

(1) the rendering of a final adverse decision on the applicant’s application for medical assistance under the State’s plan under this subchapter;

(2) the cessation of the recipient’s eligibility for such medical assistance; or

(3) the express revocation by the applicant or recipient (or such other person described in subsection (b)(1), as applicable) of the authorization, in a written notification to the State.

(d) Treatment of Right to Financial Privacy Act requirements

(1) An authorization obtained by the State under subsection (b)(1) shall be considered to meet the requirements of the Right to Financial Privacy Act 1 for purposes of section 1103(a) of such Act [12 U.S.C. 3403(a)], and need not be furnished to the financial institution, notwith-

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1 See References in Text note below.

§ 1396w–1. Medicaid Improvement Fund

(a) Establishment

The Secretary shall establish under this subchapter a Medicaid Improvement Fund (in this section referred to as the “Fund”) which shall be available to the Secretary to improve the management of the Medicaid program by the Centers for Medicare & Medicaid Services, including oversight of contracts and contractors and evaluation of demonstration projects. Payments made for activities under this subsection shall be in addition to payments that would otherwise be made for such activities.

(b) Funding

(1) In general

There shall be available to the Fund, for expenditures from the Fund—

(A) for fiscal year 2014, $0; and

(B) for each of fiscal years 2015 through 2018, $0.

(2) Funding limitation

Amounts in the Fund shall be available in advance of appropriations but only if the total amount obligated from the Fund does not exceed the amount available to the Fund under paragraph (1). The Secretary may obligate funds from the Fund only if the Secretary determines (and the Chief Actuary of the Centers for Medicare & Medicaid Services and the appropriate budget officer certify) that there are available in the Fund sufficient amounts to cover all such obligations incurred consistent with the previous sentence.


AMENDMENTS

2010—Subsec. (b)(1)(A). Pub. L. 111–148, §2007(b)(1), which directed substitution of “$30” for “$100,000,000”, was executed by making the substitution for “$30,000,000”, to reflect the probable intent of Congress and intervening amendment by Pub. L. 111–127. See below.


§ 1396w–2. Authorization to receive relevant information

(a) In general

Notwithstanding any other provision of law, a Federal or State agency or private entity in pos-
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section of the sources of data directly relevant to eligibility determinations under this subchapter (including eligibility files maintained by Express Lane agencies described in section 1396a(e)(13)(F) of this title, information described in paragraph (2) or (3) of section 1320b–7(a) of this title, vital records information about births in any State, and information described in sections 653(i) and 1396a(a)(25)(1) of this title) is authorized to convey such data or information to the State agency administering the State plan under this subchapter, to the extent such conveyance meets the requirements of subsection (b).

(b) Requirements for conveyance

Data or information may be conveyed pursuant to subsection (a) only if the following requirements are met:

(1) The individual whose circumstances are described in the data or information (or such individual's parent, guardian, caretaker relative, or authorized representative) has either provided advance consent to disclosure or has not objected to disclosure after receiving advance notice of disclosure and a reasonable opportunity to object.

(2) Such data or information are used solely for the purposes of—

(A) identifying individuals who are eligible or potentially eligible for medical assistance under this subchapter and enrolling or attempting to enroll such individuals in the State plan; and

(B) verifying the eligibility of individuals for medical assistance under the State plan.

(3) An interagency or other agreement, consistent with standards developed by the Secretary—

(A) prevents the unauthorized use, disclosure, or modification of such data and otherwise meets applicable Federal requirements safeguarding privacy and data security; and

(B) requires the State agency administering the State plan to use the data and information obtained under this section to seek to enroll individuals in the plan.

(c) Penalties for improper disclosure

(1) Civil money penalty

A private entity described in the 1st subsection (a) that publishes, discloses, or makes known in any manner, or to any extent not authorized by Federal law, any information obtained under this section shall be fined not more than $10,000 or imprisoned not more than 1 year, or both, for each such unauthorized publication or disclosure.

(d) Rule of construction

The limitations and requirements that apply to disclosure pursuant to this section shall not be construed to prohibit the conveyance or disclosure of data or information otherwise permitted under Federal law (without regard to this section).


AUTHORIZATION FOR STATES ELECTING EXPRESS LANE OPTION TO RECEIVE CERTAIN DATA DIRECTLY RELEVANT TO DETERMINING ELIGIBILITY AND CORRECT AMOUNT OF ASSISTANCE

Pub. L. 111–3, title II, § 203(e), Feb. 4, 2009, 123 Stat. 49, provided that: "The Secretary shall enter into such agreements as are necessary to permit a State that elects the Express Lane option under section 1902(e)(13) of the Social Security Act (42 U.S.C. 1396a(e)(13)) to receive data directly relevant to eligibility determinations and determining the correct amount of benefits under a State child health plan under CHIP or a State plan under Medicaid from the following:

(1) The National Directory of New Hires established under section 453(i) of the Social Security Act (42 U.S.C. 653(i)).

(2) Data regarding enrollment in insurance that may help to facilitate outreach and enrollment under the State Medicaid plan, the State CHIP plan, and such other programs as the Secretary may specify.

[For definitions of "CHIP", "Medicaid", and "Secretary", see section 1(c) of Pub. L. 111–3, set out as a Definitions note under section 1396 of this title.]

§ 1396w–3. Enrollment simplification and coordination with State health insurance exchanges

(a) Condition for participation in Medicaid

As a condition of the State plan under this subchapter and receipt of any Federal financial assistance under section 1396(b) of this title for calendar quarters beginning after January 1, 2014, a State shall ensure that the requirements of subsection (b) is 1 met.

(b) Enrollment simplification and coordination with State health insurance exchanges and CHIP

(1) In general

A State shall establish procedures for—

(A) enabling individuals, through an Internet website that meets the requirements of paragraph (4), to apply for medical assistance under the State plan or under a waiver of the plan to be enrolled in the State plan or waiver, to renew their enrollment in the plan or waiver, and to consent to enrollment or reenrollment in the State plan through electronic signature;

(B) enrolling, without any further determination by the State and through such website, individuals who are identified by an Exchange established by the State under section 18031 of this title as being eligible for—

1 So in original. Probably should be "are".
(i) medical assistance under the State plan or under a waiver of the plan; or
(ii) child health assistance under the State child health plan under subchapter XXI;

(C) ensuring that individuals who apply for but are determined to be ineligible for medical assistance under the State plan or a waiver or ineligible for child health assistance under the State child health plan under subchapter XXI, are screened for eligibility for enrollment in qualified health plans offered through such an Exchange and, if applicable, premium assistance for the purchase of a qualified health plan under section 36B of the Internal Revenue Code of 1986 (and, if applicable, advance payment of such assistance under section 18082 of this title), and, if eligible, enrolled in such a plan without having to submit an additional or separate application, and that such individuals receive information regarding reduced cost-sharing for eligible individuals under section 18071 of this title, and any other assistance or subsidies available for coverage obtained through the Exchange;

(D) ensuring that the State agency responsible for administering the State plan under this subchapter (in this section referred to as the "State Medicaid agency"), the State agency responsible for administering the State child health plan under subchapter XXI (in this section referred to as the "State CHIP agency") and an Exchange established by the State under section 19031 of this title utilize a secure electronic interface sufficient to allow for a determination of an individual's eligibility for such medical assistance, child health assistance, or premium assistance, and enrollment in the State plan under this subchapter, subchapter XXI, or a qualified health plan, as appropriate;

(E) coordinating, for individuals who are enrolled in the State plan or under a waiver of the plan and who are also enrolled in a qualified health plan under such an Exchange, and for individuals who are enrolled in the State child health plan under subchapter XXI and who are also enrolled in a qualified health plan, the provision of medical assistance or child health assistance to such individuals with the coverage provided under the qualified health plan in which they are enrolled, including services described in paragraph (4) of this title (relating to early and periodic screening, diagnostic, and treatment services defined in section 1396d(r) of this title) and provided in accordance with the requirements of section 1396a(a)(43) of this title; and

(F) conducting outreach to and enrolling vulnerable and underserved populations eligible for medical assistance under this subchapter or for child health assistance under subchapter XXI, including children, unaccompanied homeless youth, children and youth with special health care needs, pregnant women, racial and ethnic minorities, rural populations, victims of abuse or trauma, individuals with mental health or substance-related disorders, and individuals with HIV/AIDS.

(2) Agreements with State health insurance exchanges

The State Medicaid agency and the State CHIP agency may enter into an agreement with an Exchange established by the State under section 18031 of this title under which the State Medicaid agency or State CHIP agency may determine whether a State resident is eligible for premium assistance for the purchase of a qualified health plan under section 36B of the Internal Revenue Code of 1986 (and, if applicable, advance payment of such assistance under section 18082 of this title), so long as the agreement meets such conditions and requirements as the Secretary of the Treasury may prescribe to reduce administrative costs and the likelihood of eligibility errors and disruptions in coverage.

(3) Streamlined enrollment system

The State Medicaid agency and State CHIP agency shall participate in and comply with the requirements for the system established under section 18033 of this title (relating to streamlined procedures for enrollment through an Exchange, Medicaid, and CHIP).

(4) Enrollment website requirements

The procedures established by State under paragraph (1) shall include establishing and having in operation, not later than January 1, 2014, an Internet website that is linked to any website of an Exchange established by the State under section 18031 of this title and to the State CHIP agency (if different from the State Medicaid agency) and allows an individual who is eligible for medical assistance under the State plan or under a waiver of the plan and who is eligible to receive premium credit assistance for the purchase of a qualified health plan under section 36B of the Internal Revenue Code of 1986 to compare the benefits, premiums, and cost-sharing applicable to the individual under the State plan or waiver with the benefits, premiums, and cost-sharing available to the individual under a qualified health plan offered through such an Exchange, including, in the case of a child, the coverage that would be provided for the child through the State plan or waiver with the coverage that would be provided to the child through enrollment in family coverage under that plan and as supplemental coverage by the State under the State plan or waiver.

(5) Continued need for assessment for home and community-based services

Nothing in paragraph (1) shall limit or modify the requirement that the State assess an individual for purposes of providing home and community-based services under the State plan or under any waiver of such plan for individuals described in subsection (a)(10)(A)(ii)(VI).²


²Probably means subsection (a)(10)(A)(ii)(VI) of section 1396a of this title.
§ 1396w–4

STATE OPTION TO PROVIDE COORDINATED CARE THROUGH A HEALTH HOME FOR INDIVIDUALS WITH CHRONIC CONDITIONS

(a) In general

Notwithstanding section 1396a(a)(1) of this title (relating to statewideness), section 1396a(a)(10)(B) of this title (relating to comparability), and any other provision of this subchapter for which the Secretary determines it is necessary to waive in order to implement this section, beginning January 1, 2011, a State, at its option as a State plan amendment, may provide for medical assistance under this subchapter to eligible individuals with chronic conditions who select a designated provider (as described under subsection (h)(5)), a team of health care professionals (as described under subsection (h)(6)) operating with such a provider, or a health team (as described under subsection (h)(7)) as the individual’s health home for purposes of providing the individual with health home services.

(b) Health home qualification standards

The Secretary shall establish standards for qualification as a designated provider for the purpose of being eligible to be a health home for purposes of this section.

(c) Payments

(1) In general

A State shall provide a designated provider, a team of health care professionals operating with such a provider, or a health team with payments for the provision of health home services to each eligible individual with chronic conditions that selects such provider, team of health care professionals, or health team as the individual’s health home. Payments made to a designated provider, a team of health care professionals operating with such a provider, or a health team for such services shall be treated as medical assistance for purposes of the individual’s health home. Such payments shall be equal to 90 percent.

(2) Methodology

(A) In general

The State shall specify in the State plan amendment the methodology the State will use for determining payment for the provision of health home services. Such methodology for determining payment—

(i) may be tiered to reflect, with respect to each eligible individual with chronic conditions provided such services by a designated provider, a team of health care professionals operating with such a provider, or a health team, as well as the severity or number of each such individual’s chronic conditions or the specific capabilities of the provider, team of health care professionals, or health team; and

(ii) shall be established consistent with section 1396a(a)(30)(A) of this title.

(B) Alternate models of payment

The methodology for determining payment for provision of health home services under this section shall not be limited to a per-member per-month basis and may provide (as proposed by the State and subject to approval by the Secretary) for alternate models of payment.

(3) Planning grants

(A) In general

Beginning January 1, 2011, the Secretary may award planning grants to States for purposes of developing a State plan amendment under this section. A planning grant awarded to a State under this paragraph shall remain available until expended.

(B) State contribution

A State awarded a planning grant shall contribute an amount equal to the State percentage determined under section 1396d(b) of this title (without regard to section 5001 of Public Law 111–5) for each fiscal year for which the grant is awarded.

(C) Limitation

The total amount of payments made to States under this paragraph shall not exceed $25,000,000.

(d) Hospital referrals

A State shall include in the State plan amendment a requirement for hospitals that are participating providers under the State plan or a waiver of such plan to establish procedures for referring any eligible individuals with chronic conditions who seek or need treatment in a hospital emergency department to designated providers.

(e) Coordination

A State shall consult and coordinate, as appropriate, with the Substance Abuse and Mental Health Services Administration in addressing issues regarding the prevention and treatment of mental illness and substance abuse among eligible individuals with chronic conditions.

(f) Monitoring

A State shall include in the State plan amendment—

(1) a methodology for tracking avoidable hospital readmissions and calculating savings that result from improved chronic care coordination and management under this section; and

(2) a proposal for use of health information technology in providing health home services under this section and improving service delivery and coordination across the care continuum (including the use of wireless patient technology to improve coordination and management of care and patient adherence to recommendations made by their provider).

(g) Report on quality measures

As a condition for receiving payment for health home services provided to an eligible individual with chronic conditions, a designated...
provider shall report to the State, in accordance with such requirements as the Secretary shall specify, on all applicable measures for determining the quality of such services. When appropriate and feasible, a designated provider shall use health information technology in providing the State with such information.

(h) Definitions
In this section:

(1) Eligible individual with chronic conditions
   (A) In general
      Subject to subparagraph (B), the term “eligible individual with chronic conditions” means an individual who—
      (i) is eligible for medical assistance under the State plan or under a waiver of such plan; and
      (ii) has at least—
         (I) 2 chronic conditions;
         (II) 1 chronic condition and is at risk of having a second chronic condition; or
         (III) 1 serious and persistent mental health condition.
   (B) Rule of construction
      Nothing in this paragraph shall prevent the Secretary from establishing higher levels as to the number or severity of chronic or mental health conditions for purposes of determining eligibility for receipt of health home services under this section.

(2) Chronic condition
The term “chronic condition” has the meaning given that term by the Secretary and shall include, but is not limited to, the following:
   (A) A mental health condition.
   (B) Substance use disorder.
   (C) Asthma.
   (D) Diabetes.
   (E) Heart disease.
   (F) Being overweight, as evidenced by having a Body Mass Index (BMI) over 25.

(3) Health home
The term “health home” means a designated provider (including a provider that operates in coordination with a team of health care professionals) or a health team selected by an eligible individual with chronic conditions to provide health home services.

(4) Health home services
   (A) In general
      The term “health home services” means comprehensive and timely high-quality services described in subparagraph (B) that are provided by a designated provider, a team of health care professionals operating with such a provider, or a health team.
   (B) Services described
      The services described in this subparagraph are—
      (i) comprehensive care management;
      (ii) care coordination and health promotion;
      (iii) comprehensive transitional care, including appropriate follow-up, from patient to other settings;
      (iv) patient and family support (including authorized representatives);
      (v) referral to community and social support services, if relevant; and
      (vi) use of health information technology to link services, as feasible and appropriate.

(5) Designated provider
The term “designated provider” means a physician, clinical practice or clinical group practice, rural clinic, community health center, community mental health center, home health agency, or any other entity or provider (including pediatricians, gynecologists, and obstetricians) that is determined by the State and approved by the Secretary to be qualified to be a health home for eligible individuals with chronic conditions on the basis of documentation evidencing that the physician, practice, or clinic—
   (A) has the systems and infrastructure in place to provide health home services; and
   (B) satisfies the qualification standards established by the Secretary under subsection (b).

(6) Team of health care professionals
The term “team of health care professionals” means a team of health professionals (as described in the State plan amendment) that may—
   (A) include physicians and other professionals, such as a nurse care coordinator, nutritionist, social worker, behavioral health professional, or any professionals deemed appropriate by the State; and
   (B) be free standing, virtual, or based at a hospital, community health center, community mental health center, rural clinic, clinical practice or clinical group practice, academic health center, or any entity deemed appropriate by the State and approved by the Secretary.

(7) Health team
The term “health team” has the meaning given such term for purposes of section 256a–1 of this title.


References in Text
Section 5001 of Public Law 111–5, referred to in subsec. (c)(3)(B), is set out as a note under section 1396d of this title.

Survey and Interim Report
   “(A) IN GENERAL.—Not later than January 1, 2014, the Secretary of Health and Human Services shall survey States that have elected the option under section 1945 of the Social Security Act (42 U.S.C. 1396w–4) (as added by subsection (a)) and report to Congress on the nature, extent, and use of such option, particularly as it pertains to—
      “(i) hospital admission rates;
      “(ii) chronic disease management;
      “(iii) coordination of care for individuals with chronic conditions;
      “(iv) assessment of program implementation;
      “(v) processes and lessons learned (as described in subparagraph (B));
      “(vi) assessment of quality improvements and clinical outcomes under such option; and
§ 1396w–5. Addressing health care disparities

(a) Evaluating data collection approaches

The Secretary shall evaluate approaches for the collection of data under this subchapter and subchapter XXI, to be performed in conjunction with existing quality reporting requirements and programs under this subchapter and subchapter XXI, that allow for the ongoing, accurate, and timely collection and evaluation of data on disparities in health care services and performance on the basis of race, ethnicity, sex, primary language, and disability status. In conducting such evaluation, the Secretary shall consider the following objectives:

(1) Protecting patient privacy.

(2) Minimizing the administrative burdens of data collection and reporting on States, providers, and health plans participating under this subchapter or subchapter XXI.

(3) Improving program data under this subchapter and subchapter XXI on race, ethnicity, sex, primary language, and disability status.

(b) Reports to Congress

(1) Report on evaluation

Not later than 18 months after March 23, 2010, the Secretary shall submit to Congress a report on the evaluation conducted under subsection (a). Such report shall, taking into consideration the results of such evaluation—

(A) identify approaches (including defining methodologies) for identifying and collecting and evaluating data on health care disparities on the basis of race, ethnicity, sex, primary language, and disability status for the programs under this subchapter and subchapter XXI; and

(B) include recommendations on the most effective strategies and approaches to reporting HEDIS quality measures as required under section 1398w–22(e)(3) of this title and other nationally recognized quality performance measures, as appropriate, on such bases.

(2) Reports on data analyses

Not later than 4 years after March 23, 2010, and 4 years thereafter, the Secretary shall submit to Congress a report that includes recommendations for improving the identification of health care disparities for beneficiaries under this subchapter and under subchapter XXI based on analyses of the data collected under subsection (c).

(c) Implementing effective approaches

Not later than 24 months after March 23, 2010, the Secretary shall implement the approaches identified in the report submitted under subsection (b)(1) for the ongoing, accurate, and timely collection and evaluation of data on health care disparities on the basis of race, ethnicity, sex, primary language, and disability status.


SUBCHAPTER XX—BLOCK GRANTS TO STATES FOR SOCIAL SERVICES AND ELDER JUSTICE

AMENDMENTS


Division A—Block Grants to States for Social Services

§ 1397. Purposes of division; authorization of appropriations

For the purposes of consolidating Federal assistance to States for social services into a single grant, increasing State flexibility in using social service grants, and encouraging each State, as far as practicable under the conditions in that State, to furnish services directed at the goals of—

1. achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

2. achieving or maintaining self-sufficiency, including reduction or prevention of dependency;

3. preventing or remediying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families;

4. preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and

5. securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions,

there are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the purposes of this division.


PRIOR PROVISIONS


AMENDMENTS

2010—Pub. L. 111–148, §6703(d)(1)(B), which directed substitution of “this division” for “this subchapter” wherever appearing in subtitle 1 of title XX of act Aug. 14, 1935, was executed to the concluding provisions of this section, which is in subtitle A of title XX of act Aug. 14, 1935, to reflect the probable intent of Congress. Pub. L. 111–148, §6703(d)(1)(A), substituted “division” for “subchapter” in section catchline.
§ 1397a. Payments to States

(a) Amount; covered services

(1) Each State shall be entitled to payment under this division for each fiscal year in an amount equal to its allotment for such fiscal year, to be used by such State for services directed at the goals set forth in section 1397 of this title, subject to the requirements of this division.

(2) For purposes of paragraph (1)—

(A) services which are directed at the goals set forth in section 1397 of this title include, but are not limited to, child care services, protective services for children and adults, services for children and adults in foster care, services related to the management and maintenance of the home, day care services for adults, transportation services, family planning services, training and related services, employment services, information, referral, and counseling services, the preparation and delivery of meals, health support services and appropriate combinations of services designed to meet the special needs of children, the aged, the mentally retarded, the blind, the emotionally disturbed, the physically handicapped, and alcoholics and drug addicts; and

(B) expenditures for such services may include expenditures for—

(i) administration (including planning and evaluation);

(ii) personnel training and retraining directly related to the provision of those services (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions); and

(iii) conferences or workshops, and training or retraining through grants to nonprofit organizations within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 or to individuals with social services expertise, or through financial assistance to individuals participating in such conferences, workshops, and training or retraining (and this clause shall apply with respect to all persons involved in the delivery of such services).

(b) Funding requirements

The Secretary shall make payments in accordance with section 6503 of title 31 to each State from its allotment for use under this division.

(c) Expenditure of funds

Payments to a State from its allotment for any fiscal year must be expended by the State in such fiscal year or in the succeeding fiscal year.

(d) Transfers of funds

A State may transfer up to 10 percent of its allotment under section 1397b of this title for any fiscal year for its use for that year under other provisions of Federal law providing block grants for support of health services, health promotion and disease prevention activities, or low-income home energy assistance (or any combination of those activities). Amounts allotted to a State under any provisions of Federal law referred to in the preceding sentence and transferred by a State for use in carrying out the purposes of this division shall be treated as if they were paid to the State under this division but shall not affect the computation of the State’s allotment under this division. The State shall inform the Secretary of any such transfer of funds.

(e) Use of portion of funds

A State may use a portion of the amounts described in subsection (a) of this section for the purpose of purchasing technical assistance from public or private entities if the State determines that such assistance is required in developing, implementing, or administering programs funded under this division.

(f) Authority to use vouchers

A State may use funds provided under this division to provide vouchers, for services directed at the goals set forth in section 1397 of this title, to families, including—

(1) families who have become ineligible for assistance under a State program funded under part A of subchapter IV of this chapter by reason of a durational limit on the provision of such assistance; and

(2) families denied cash assistance under the State program funded under part A of subchapter IV of this chapter for a child who is born to a member of the family who is—

(A) a recipient of assistance under the program; or

(B) a person who received such assistance at any time during the 10-month period ending with the birth of the child.


REFERENCES IN TEXT


PRIOR PROVISIONS

§ 1397b

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§ 1397b

REQUIREMENTS OF CHILD DAY CARE SERVICES


§ 1397b. Allocations

(a) Computation of amounts for jurisdictions of Puerto Rico, Guam, etc.

The allotment for any fiscal year to each of the jurisdictions of Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands shall be an amount which bears the same ratio to the amount specified in subsection (c) of this section as the amount which was specified for allocation to the particular jurisdiction involved for the fiscal year 1981 under section 1397a(a)(2)(C) of this title (as in effect prior to Aug. 13, 1981) bore to $2,900,000,000. The allotment for fiscal year 1989 and each succeeding fiscal year to American Samoa shall be an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands for that fiscal year as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.

(b) Computation of amounts for each State other than jurisdictions of Puerto Rico, Guam, etc.

The allotment for any fiscal year for each State other than the jurisdictions of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands shall be an amount which bears the same ratio to—

(1) the amount specified in subsection (c) of this section, reduced by

(2) the total amount allotted to those jurisdictions for that fiscal year under subsection (a) of this section,

as the population of that State bears to the population of all the States (other than Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands) as determined by the Secretary (on the basis of the most recent data available from the Department of Commerce) and promulgated prior to the first day of the third month of the preceding fiscal year.

(c) Appropriations

The amount specified for purposes of subsections (a) and (b) of this section shall be—

(1) $2,400,000,000 for the fiscal year 1982;

(2) $2,450,000,000 for the fiscal year 1983;

(3) $2,700,000,000 for the fiscal years 1984, 1985, 1986, 1987, and 1988;

(4) $2,750,000,000 for the fiscal year 1988;

(5) $2,800,000,000 for the fiscal years 1990 through 1995;

(6) $2,381,000,000 for the fiscal year 1996;

(7) $2,380,000,000 for the fiscal year 1997;

(8) $2,299,000,000 for the fiscal year 1998;

(9) $2,380,000,000 for the fiscal year 1999;

(10) $2,380,000,000 for the fiscal year 2000; and

(11) $1,700,000,000 for the fiscal year 2001.


AMENDMENTS

2010—Pub. L. 111–114, which directed substitution of “this division” for “this subchapter” wherever appearing in subtitle I of title XX of act Aug. 14, 1935, was executed by making the substitution wherever appearing in this section, which is in subtitle A of title XX of act Aug. 14, 1935, to reflect the probable intent of Congress.


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

TEMPORARY SUSPENSION OF CHILD DAY CARE SERVICES REQUIREMENTS


Prior Provisions


Amendments

1988—Subsec. (c)(7). Pub. L. 105–178 added par. (7) and struck out former par. (7) which read as follows: ‘‘$2,380,000,000 for each of the fiscal years 1997 through 2002; and’’. Subsec. (c)(8). Pub. L. 105–277 added par. (8) and struck out former par. (8) which read as follows: ‘‘$2,380,000,000 for the fiscal year 1998;’’. Pub. L. 105–178 added par. (8) which read as follows: ‘‘$2,380,000,000 for the fiscal year 2003 and each succeeding fiscal year.’’ Subsec. (c)(9) to (11). Pub. L. 105–178 added pars. (9) to (11).

1996—Subsec. (c)(5) to (8). Pub. L. 104–193 added pars. (5) to (8) and struck out former par. (5) which read as follows: ‘‘$2,800,000,000 for each fiscal year after fiscal year 1996.’’. Subsec. (c)(3). Pub. L. 101–239, §8016(1), substituted ‘‘1987, and 1989;’’ for ‘‘and 1987, and for each succeeding fiscal year other than the fiscal year 1988; and’’. Subsec. (c)(5). Pub. L. 101–239, §8016(2), (3), added par. (5).

1987—Subsec. (a). Pub. L. 100–203, §9135(a)(2)(A), inserted at end ‘‘(The allotment for fiscal year 1989 and each succeeding fiscal year to American Samoa shall be an amount which bears the same ratio to the amount allotted to the Northern Marianas Islands for that fiscal year as the population of American Samoa bears to the population of the Northern Marianas Islands determined on the basis of the most recent data available at the time such allotment is determined.’’ Subsec. (b). Pub. L. 100–203, §9135(a)(2)(B), inserted ‘‘American Samoa,’’ after ‘‘the Virgin Islands,’’ in two places. Subsec. (c)(2). Pub. L. 100–203, §9135(a)(2), struck out ‘‘and’’ after ‘‘1983.’’. Subsec. (c)(3). Pub. L. 100–203, §9135(a)(3), substituted ‘‘years 1984, 1985, 1986, and 1987, and for each succeeding fiscal year other than the fiscal year 1988; and’’ for ‘‘year 1984 and each succeeding fiscal year.’’ Subsec. (c)(4). Pub. L. 100–203, §9135(a)(4), added par. (4).

1986—Subsec. (b). Pub. L. 99–514, §1883(e)(1)(B), struck out ‘‘subject to subsection (d) of this section’’ after ‘‘promulgated’’. Subsec. (d). Pub. L. 99–514, §1883(e)(1)(A), struck out subsec. (d) which read as follows: ‘‘The determination and promulgation required by subsection (b) of this section with respect to the fiscal year 1982 shall be made as soon as possible after August 13, 1981.’’. 1983—Subsec. (c)(3). Pub. L. 98–135 substituted ‘‘$2,700,000,000 for the fiscal year 1984 and each succeeding fiscal year.’’ for ‘‘$2,500,000,000 for the fiscal year 1984.’’

Subsec. (c)(4). Pub. L. 98–135 struck out pars. (4) and (5) which provided, respectively, for an amount of $2,600,000,000 for fiscal year 1985 and $2,700,000,000 for fiscal year 1986 and succeeding fiscal years.

1982—Subsec. (b). Pub. L. 97–248 inserted ‘‘(other than Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands)’’ in provisions following cl. (2).

Effective Date of 1988 Amendments


Effective Date of 1987 Amendment

Amendment by section 9135(a)(2) of Pub. L. 100–203 applicable with respect to fiscal years beginning on or after Oct. 1, 1988, see section 9135(c) of Pub. L. 100–203, set out as a note under section 623 of this title.

Effective Date of 1982 Amendment


Requirement That Additional Funds Supplement and Not Supplant Funds Available from Other Sources

Section 9135(b) of Pub. L. 100–203 provided that: ‘‘The additional $50,000,000 made available to the States for the fiscal year 1985 pursuant to the amendments made by subsection (a) [amending this section] shall— ‘‘(A) be used only for the purpose of providing additional services under title XX of the Social Security Act [this subchapter]; and ‘‘(B) be expended only to supplement the level of any funds that would, in the absence of the additional funds appropriated pursuant to such amendments, be available from other sources (including any amounts available under title XX of the Social Security Act without regard to such amendments) for services in accordance with such title, and shall in no case supplant such funds from other sources or reduce the level thereof.’’

Appropriations

Pub. L. 98–473, title IV, §401, Oct. 12, 1984, 98 Stat. 2195, provided that: ‘‘(a)(1) Notwithstanding any provision of title XX of the Social Security Act [this subchapter], the amount applicable under section 2003(a)(2)(B) of such Act (subsection (c)(3) of this section) shall be $2,725,000,000 for fiscal year 1985. Of such amount, $25,000,000 shall be allotted and used in accordance with this section. ‘‘(2) In addition to any other amounts appropriated under this resolution [Pub. L. 98–473] or any Act, there are hereby appropriated $25,000,000 for fiscal year 1985, for carrying out title XX of the Social Security Act, to be used in accordance with the provisions of this section. ‘‘(3) Amounts appropriated under this section shall remain available until September 30, 1985, without regard to section 102 of this resolution. ‘‘(4) Except as otherwise provided in this section, each State’s allotment of the additional amounts authorized and appropriated under this section shall be the same proportion of $25,000,000 as such State’s proportional allotment of other title XX funds for fiscal year 1985, as determined under section 2003 of the Social Security Act [this section].’’

‘‘(b) The additional $25,000,000 made available to the States for fiscal year 1985 pursuant to subsection (a) shall—"
"(1) be used only for the purpose of providing training and retraining (including training in the prevention of child abuse in child care settings) to providers of licensed or registered child care services, operators and staffs (including those receiving in-service training) of facilities where licensed or registered child care services are provided, State licensing and enforcement officials, and parents;

"(2) be expended only to supplement the level of any funds that would, in the absence of the additional funds appropriated under this section, be available from other sources (including any amounts available under title XX of the Social Security Act [this subchapter] without regard to this section) for the purpose specified in paragraph (1), and shall in no case supplant such funds from other sources or reduce the level thereof; and

"(3) be separately accounted for in the reports and audits provided for in section 2006 of the Social Security Act [section 1397e of this title]."

"(c)(1) In order to provide guidance and assistance to the States in utilizing funds allocated pursuant to title XX of the Social Security Act [this subchapter], not later than 3 months after the date of enactment of this Act [Oct. 12, 1984], the Secretary shall draft and distribute to the States for their consideration, a Model Child Care Standards Act containing—

(A) minimum licensing or registration standards for day care centers, group homes, and family day care homes regarding matters including—

(i) the training, development, supervision, and evaluation of staff;

(ii) staff qualification requirements, by job classification;

(iii) staff-child ratios;

(iv) probation periods for new staff;

(v) employment history checks for staff; and

(vi) parent visitation; and

(B) Any State receiving an allotment under such title from the funds made available as a result of subsection (a) shall have in effect, not later than September 30, 1985—

(i) procedures, established by State law or regulation, to provide for employment history and background checks; and

(ii) provisions of State law, enacted in accordance with the provisions of Public Law 92-544 (86 Stat. 115) [§ 1397c. State reporting requirements]

for all operators, staff or employees, or prospective operators, staff or employees of child care facilities (including any facility or program having primary custody of children for 20 hours or more per week), juvenile detention, correction or treatment facilities, with the objective of protecting the children involved and promoting such children's safety and welfare while receiving service through such facilities or programs.

"(B) In the case of any State not meeting the requirements of subparagraph (A) by September 30, 1985, such State's allotment for fiscal year 1986 or 1987 shall be reduced in the aggregate by an amount equal to one-half of the amount by which such State's allotment under such title was increased for fiscal year 1985 as a result of subsection (a).

"(d) The determination and promulgation required by section 2003(b) of the Social Security Act [subsec. (b) of this section] with respect to the fiscal year 1983 (to take into account the preceding provisions of this section) shall be made as soon as possible after the date of the enactment of this Act [Oct. 12, 1984]."

§ 1397c. State reporting requirements

Prior to expenditure by a State of payments made to it under section 1397a of this title for any fiscal year, the State shall report on the intended use of the payments the State is to receive under this division, including information on the types of activities to be supported and the categories or characteristics of individuals to be served. The report shall be transmitted to the Secretary and made public within the State in such manner as to facilitate comment by any person (including any Federal or other public agency) during development of the report and after its completion. The report shall be revised throughout the year as may be necessary to reflect substantial changes in the activities assisted under this division, and any revision shall be subject to the requirements of the previous sentence.


Prior Provisions


Amendments

2010—Pub. L. 111–148, which directed substitution of "this division" for "this subchapter" wherever appearing in subtitle I of title XX of act Aug. 14, 1935, was executed by making the substitution in two places in this section, which is in subtitle A of title XX act Aug. 14, 1935, to reflect the probable intent of Congress.

§ 1397d. Limitation on use of grants; waiver

(a) Except as provided in subsection (b) of this section, grants made under this division may not be used by the State, or by any other person with which the State makes arrangements to carry out the purposes of this division—

(1) for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility;

(2) for the provision of cash payments for costs of subsistence or for the provision of room and board (other than costs of subsistence during rehabilitation, room and board provided for a short term as an integral but subordinate part of a social service, or temporary emergency shelter provided as a protective service);

(3) for payment of the wages of any individual as a social service (other than payment of the wages of welfare recipients employed in the provision of child day care services);

(4) for the provision of medical care (other than family planning services, rehabilitation services, or initial detoxification of an alcoholic or drug dependent individual) unless it is an integral but subordinate part of a social service for which grants may be used under this division;

(5) for social services (except services to an alcoholic or drug dependent individual or rehabilitation services) provided in and by employees of any hospital, skilled nursing facility, intermediate care facility, or prison, to any individual living in such institution; and

(6) for the provision of any educational service which the State makes generally available to its residents without cost and without regard to their income;
(7) for any child day care services unless such services meet applicable standards of State and local law;
(8) for the provision of cash payments as a service (except as otherwise provided in this section);
(9) for payment for any item or service (other than an emergency item or service) furnished—
   (A) by an individual or entity during the period when such individual or entity is excluded under this division or subchapter V, XVIII, or XIX of this chapter pursuant to section 1320a-7, 1320a-7a, 1320c-5, or 1395u(j)(2) of this title, or
   (B) at the medical direction or on the prescription of a physician during the period when the physician is excluded under this division or subchapter V, XVIII, or XIX of this chapter pursuant to section 1320a-7, 1320a-7a, 1320c-5, or 1395u(j)(2) of this title and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person); or
(10) in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997 [42 U.S.C. 14401 et seq.].

(b) The Secretary may waive the limitation contained in subsection (a)(1) and (4) of this section upon the State’s request for such a waiver if he finds that the request describes extraordinary circumstances to justify the waiver and that permitting the waiver will contribute to the State’s ability to carry out the purposes of this division.

(2) to subsection (a)(10), Pub. L. 105-12 added par. (10).

1988—Subsec. (a)(9)(A), (B). Pub. L. 100-360, §411(k)(10)(D), as amended by Pub. L. 100-485, §608(d)(26)(K)(ii), substituted “under this subchapter or subchapter V, XVIII, or XIX of this chapter pursuant to section 1320a-7, 1320a-7a, 1320c-5, or 1395u(j)(2) of this title” for “pursuant to section 1320a-7 of this title or section 1320a-7a of this title from participation in the program under this subchapter”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105-12, set out as an Effective Date note under section 14401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

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

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

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100-93, set out as a note under section 1320a-7 of this title.

$1397e. Administrative and fiscal accountability

(a) Reporting requirements; form, contents, etc.

Each State shall prepare reports on its activities carried out with funds made available (or transferred for use) under this division. Reports shall be prepared annually, covering the most recently completed fiscal year, and shall be in such form and contain such information (including but not limited to the information specified in subsection (c) of this section) as the State finds necessary to provide an accurate description of such activities, to secure a complete record of the purposes for which funds were spent, and to determine the extent to which funds were spent in a manner consistent with the reports required by section 1397c of this title. The State shall make copies of the reports required by this section available for public inspection within the State and shall transmit a copy to the Secretary. Copies shall also be provided, upon request, to any interested public agency, and each such agency may provide its views on these reports to the Congress.

(b) Audits; implementation, etc.

Each State shall, not less often than every two years, audit its expenditures from amounts transferred for use under this division to reflect the probable intent of Congress.
received (or transferred for use) under this division. Such State audits shall be conducted by an entity independent of any agency administering activities funded under this division, in accordance with generally accepted auditing principles. Within 30 days following the completion of each audit, the State shall submit a copy of that audit to the legislature of the State and to the Secretary. Each State shall repay to the United States amounts ultimately found not to have been expended in accordance with this division, or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this division.

(c) State reports on expenditure and use of social services funds

Each report prepared and transmitted by a State under subsection (a) of this section shall set forth (with respect to the fiscal year covered by the report)—

(1) the number of individuals who received services paid for in whole or in part with funds made available under this division, showing separately the number of children and the number of adults who received such services, and broken down in each case to reflect the types of services and circumstances involved;

(2) the amount spent in providing each such type of service, showing separately for each type of service the amount spent per child recipient and the amount spent per adult recipient;

(3) the criteria applied in determining eligibility for services such as income eligibility guidelines, fee scales, the effect of public assistance benefits, and any requirements for enrollment in school or training programs; and

(4) the methods by which services were provided, showing separately the services provided by public agencies and those provided by private agencies, and broken down in each case to reflect the types of services and circumstances involved.

The Secretary shall establish uniform definitions of services for use by the States in preparing the information required by this subsection, and make such other provision as may be necessary or appropriate to assure that compliance with the requirements of this subsection will not be unduly burdensome on the States.

(d) Additional accounting requirements

For other provisions requiring States to account for Federal grants, see section 6503 of title 31.


AMENDMENTS

2010—Pub. L. 111–148, which directed substitution of “this division” for “this subchapter” wherever appearing in subtitle I of title XX of act Aug. 14, 1935, was executed by making the substitution wherever appearing in this section, which is in subtitle A of title XX act Aug. 14, 1935, to reflect the probable intent of Congress. 1988—Subsec. (a). Pub. L. 100–485, §607(1), substituted “Reports shall be prepared annually, covering the most recently completed fiscal year, and shall be in such form and contain such information (including but not limited to the information specified in subsection (c) of this section)” for “Reports shall be in such form, contain such information, and be of such frequency (but not less often than every two years)” in second sentence.

Subsecs. (c), (d). Pub. L. 100–485, §607(3), added subsec. (c) and redesignated former subsec. (c) as (d).


EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2364(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§ 1397f. Additional grants

(a) Entitlement

(1) In general

In addition to any payment under section 1397a of this title, each State shall be entitled to—

(A) 2 grants under this section for each qualified empowerment zone in the State; and

(B) 1 grant under this section for each qualified enterprise community in the State.

(2) Amount of grants

(A) Empowerment grants

The amount of each grant to a State under this section for a qualified empowerment zone shall be—

(i) if the zone is designated in an urban area, $50,000,000, multiplied by that proportion of the population of the zone that resides in the State; or

(ii) if the zone is designated in a rural area, $20,000,000, multiplied by such proportion.

(B) Enterprise grants

The amount of the grant to a State under this section for a qualified enterprise community shall be 1/5 of $200,000,000, multiplied by that proportion of the population of the community that resides in the State.

(C) Population determinations

The Secretary shall make population determinations for purposes of this paragraph based on the most recent decennial census data available.
(3) Timing of grants

(A) Qualified empowerment zones

With respect to each qualified empowerment zone, the Secretary shall make—

(i) 1 grant under this section to each State in which the zone lies, on the date of the designation of the zone under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986; and

(ii) 1 grant under this section to each such State, on the 1st day of the 1st fiscal year that begins after the date of the designation.

(B) Qualified enterprise communities

With respect to each qualified enterprise community, the Secretary shall make 1 grant under this section to each State in which the community lies, on the date of the designation of the community under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986.

(4) Funding

$1,000,000,000 shall be made available to the Secretary for grants under this section.

(b) Program options

Notwithstanding section 1397d(a) of this title:

(1) In order to prevent and remedy the neglect and abuse of children, a State may use amounts paid under this section to make grants to, or enter into contracts with, entities to provide residential or nonresidential drug and alcohol prevention and treatment programs that offer comprehensive services for pregnant women and mothers, and their children.

(2) In order to assist disadvantaged adults and youths in achieving and maintaining self-sufficiency, a State may use amounts paid under this section to make grants to, or enter into contracts with—

(A) organizations operated for profit or not for profit, for the purpose of training and employing disadvantaged adults and youths in construction, rehabilitation, or improvement of affordable housing, public infrastructure, and community facilities; and

(B) nonprofit organizations and community or junior colleges, for the purpose of enabling such entities to provide short-term training courses in entrepreneurism and self-employment, and other training that will promote individual self-sufficiency and the interests of the community.

(3) A State may use amounts paid under this section to make grants to, or enter into contracts with, nonprofit community-based organizations to enable such organizations to provide activities designed to promote and protect the interests of children and families, outside of school hours, including keeping schools open during evenings and weekends for mentoring and study.

(4) In order to assist disadvantaged adults and youths in achieving and maintaining economic self-support, a State may use amounts paid under this section to—

(A) fund services designed to promote community and economic development in qualified empowerment zones and qualified enterprise communities, such as skills training, job counseling, transportation services, housing counseling, financial management, and business counseling;

(B) assist in emergency and transitional shelter for disadvantaged families and individuals; or

(C) support programs that promote home ownership, education, or other routes to economic independence for low-income families and individuals.

(e) Use of grants

(1) In general

Subject to subsection (d) of this section, each State that receives a grant under this section with respect to an area shall use the grant—

(A) for services directed only at the goals set forth in paragraphs (1), (2), and (3) of section 1397 of this title;

(B) in accordance with the strategic plan for the area; and

(C) for activities that benefit residents of the area for which the grant is made.

(2) Technical assistance

A State may use a portion of any grant made under this section in the manner described in section 1397a(e) of this title.

(d) Remittance of certain amounts

(1) Portion of grant upon termination of designation

Each State to which an amount is paid under this subsection during a fiscal year with respect to an area the designation of which under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986 ends before the end of the fiscal year shall remit to the Secretary an amount equal to the total of the amounts so paid with respect to the area, multiplied by that proportion of the fiscal year remaining after the designation ends.

(2) Amounts paid to the States and not obligated within 2 years

Each State shall remit to the Secretary any amount paid to the State under this section that is not obligated by the end of the 2-year period that begins with the date of the payment.

(e) Reallocation of remaining funds

(1) Remitted amounts

The amount specified in section 1397b(c) of this title for any fiscal year is hereby increased by the total of the amounts remitted during the fiscal year pursuant to subsection (d) of this section.

(2) Amounts not paid to the States

The amount specified in section 1397b(c) of this title for fiscal year 1998 is hereby increased by the amount made available for grants under this section that has not been paid to any State by the end of fiscal year 1997.

(f) Definitions

As used in this section:
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(1) Qualified empowerment zone

The term “qualified empowerment zone” means, with respect to a State, an area—
(A) which has been designated (other than by the Secretary of the Interior) as an empowerment zone under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986;
(B) with respect to which the designation is in effect;
(C) the strategic plan for which is a qualified plan; and
(D) part or all of which is in the State.

(2) Qualified enterprise community

The term “qualified enterprise community” means, with respect to a State, an area—
(A) which has been designated (other than by the Secretary of the Interior) as an enterprise community under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986;
(B) with respect to which the designation is in effect;
(C) the strategic plan for which is a qualified plan; and
(D) part or all of which is in the State.

(3) Strategic plan

The term “strategic plan” means, with respect to an area, the plan contained in the application for designation of the area under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986.

(4) Qualified plan

The term “qualified plan” means, with respect to an area, a plan that—
(A) includes a detailed description of the activities proposed for the area that are to be funded with amounts provided under this section;
(B) contains a commitment that the amounts provided under this section to any State for the area will not be used to supplant Federal or non-Federal funds for services and activities which promote the purposes of this section;
(C) was developed in cooperation with the local government or governments with jurisdiction over the area; and
(D) to the extent that any State will not use the amounts provided under this section for the area in the manner described in subsection (b) of this section, explains the reasons why not.

(5) Rural area

The term “rural area” has the meaning given such term in section 1393(a)(2) of the Internal Revenue Code of 1986.

(6) Urban area

The term “urban area” has the meaning given such term in section 1393(a)(3) of the Internal Revenue Code of 1986.

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a)(3), (d)(1), and (f), is classified generally to Title 26, Internal Revenue Code.

Prior Provisions


Amendments

1994—Subsecs. (e), (f). Pub. L. 103–432 added subsec. (e) and redesignated former subsec. (e) as (f).

§ 1397g. Demonstration projects to address health professions workforce needs

(a) Demonstration projects to provide low-income individuals with opportunities for education, training, and career advancement to address health professions workforce needs

(1) Authority to award grants

The Secretary, in consultation with the Secretary of Labor, shall award grants to eligible entities to conduct demonstration projects that are designed to provide eligible individuals with the opportunity to obtain education and training for occupations in the health care field that pay well and are expected to either experience labor shortages or be in high demand.

(2) Requirements

(A) Aid and supportive services

(i) In general

A demonstration project conducted by an eligible entity awarded a grant under this section shall, if appropriate, provide eligible individuals participating in the project with financial aid, child care, case management, and other supportive services.

(ii) Treatment

Any aid, services, or incentives provided to an eligible beneficiary participating in a demonstration project under this section shall not be considered income, and shall not be taken into account for purposes of determining the individual’s eligibility for, or amount of, benefits under any means-tested program.

(B) Consultation and coordination

An eligible entity applying for a grant to carry out a demonstration project under this section shall demonstrate in the application that the entity has consulted with the State authority responsible for administering the State TANF program, the local workforce investment board in the area in which the project is to be conducted (unless the applicant is such board), the State workforce investment board established under section 2821 of title 29, and the State Apprenticeship Agency recognized under the Act of August 16, 1937 (commonly known as the “National Apprenticeship Act”) [29 U.S.C. 50 et seq.] (or if no agency has been recognized in the
So in original. Probably should be “an”.

(C) Assurances of opportunities for Indian populations

The Secretary shall award at least 3 grants under this subsection to an eligible entity that is an Indian tribe, tribal organization, or Tribal College or University.

(A) Eligible entities

An eligible entity awarded a grant to conduct a demonstration project under this subsection shall submit interim reports to the Secretary on the activities conducted under the project and a final report on such activities upon the conclusion of the entity’s participation in the project. Such reports shall include assessments of the effectiveness of such activities with respect to improving outcomes for the eligible individuals participating in the project and with respect to addressing health professions workforce needs in the areas in which the project is conducted.

(B) Evaluation

The Secretary shall, by grant, contract, or interagency agreement, evaluate the demonstration projects conducted under this subsection. Such evaluation shall include identification of successful activities for creating opportunities for developing and sustaining, particularly with respect to low-income individuals and other entry-level workers, a health professions workforce that has accessible entry points, that meets high standards for education, training, certification, and professional development, and that provides increased wages and affordable benefits, including health care coverage, that are responsive to the workforce’s needs.

(C) Report to Congress

The Secretary shall submit interim reports and, based on the evaluation conducted under subparagraph (B), a final report to Congress on the demonstration projects conducted under this subsection.

(4) Definitions

In this subsection:

(A) Eligible entity

The term “eligible entity” means a State, an Indian tribe or tribal organization, an institution of higher education, a local workforce investment board established under section 2832 of title 29, a sponsor of an apprenticeship program registered under the National Apprenticeship Act [29 U.S.C. 50 et seq.] or a community-based organization.

(B) Eligible individual

(i) In general

The term “eligible individual” means a individual receiving assistance under the State TANF program.

(ii) Other low-income individuals

Such term may include other low-income individuals described by the eligible entity in its application for a grant under this section.

(C) Indian tribe; tribal organization

The terms “Indian tribe” and “tribal organization” have the meaning given such terms in section 450b of title 25.

(D) Institution of higher education

The term “institution of higher education” has the meaning given that term in section 1001 of title 20.

(E) State

The term “State” means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

(F) State TANF program

The term “State TANF program” means the temporary assistance for needy families program funded under part A of subchapter IV.

(G) Tribal College or University

The term “Tribal College or University” has the meaning given that term in section 1059c(b) of title 20.

(b) Demonstration project to develop training and certification programs for personal or home care aides

(1) Authority to award grants

Not later than 18 months after March 23, 2010, the Secretary shall award grants to eligible entities that are States to conduct demonstration projects for purposes of developing core training competencies and certification programs for personal or home care aides. The Secretary shall:

(A) evaluate the efficacy of the core training competencies described in paragraph (3)(A) for newly hired personal or home care aides and the methods used by States to implement such core training competencies in accordance with the issues specified in paragraph (3)(B); and

(B) ensure that the number of hours of training provided by States under the demonstration project with respect to such core training competencies are not less than the number of hours of training required under any applicable State or Federal law or regulation.

(2) Duration

A demonstration project shall be conducted under this subsection for not less than 3 years.

(3) Core training competencies for personal or home care aides

(A) In general

The core training competencies for personal or home care aides described in this subparagraph include competencies with respect to the following areas:

(i) The role of the personal or home care aide (including differences between a per-
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B) Application and eligibility

A State seeking to participate in the project shall—
(i) submit an application to the Secretary containing such information and at such time as the Secretary may specify;
(ii) meet the selection criteria established under subparagraph (C); and
(iii) meet such additional criteria as the Secretary may specify.

(C) Selection criteria

In selecting States to participate in the program, the Secretary shall establish criteria to ensure (if applicable with respect to the activities involved)—
(i) geographic and demographic diversity;
(ii) that participating States offer medical assistance for personal care services under the State Medicaid plan;
(iii) that the existing training standards for personal or home care aides in each participating State—
(I) are different from such standards in the other participating States; and
(II) are different from the core training competencies described in paragraph (3)(A);
(iv) that participating States do not reduce the number of hours of training required under applicable State law or regulation after being selected to participate in the project; and
(v) that participating States recruit a minimum number of eligible health and long-term care providers to participate in the project.

D) Technical assistance

The Secretary shall provide technical assistance to States in developing written materials and protocols for such core training competencies.

(5) Evaluation and report

(A) Evaluation

The Secretary shall develop an experimental or control group testing protocol in consultation with an independent evaluation contractor selected by the Secretary. Such contractor shall evaluate—
(i) the impact of core training competencies described in paragraph (3)(A), including curricula developed to implement such core training competencies, for personal or home care aides within each participating State on job satisfaction, mastery of job skills, beneficiary and family caregiver satisfaction with services, and additional measures determined by the Secretary in consultation with the expert panel;
(ii) the impact of providing such core training competencies on the existing training infrastructure and resources of States; and
(iii) whether a minimum number of hours of initial training should be required for personal or home care aides and, if so, what minimum number of hours should be required.
(B) Reports
   (i) Report on initial implementation
      Not later than 2 years after March 23, 2010, the Secretary shall submit to Congress a report on the initial implementation of activities conducted under the demonstration project, including any available results of the evaluation conducted under subparagraph (A) with respect to such activities, together with such recommendations for legislation or administrative action as the Secretary determines appropriate.
   (ii) Final report
      Not later than 1 year after the completion of the demonstration project, the Secretary shall submit to Congress a report containing the results of the evaluation conducted under subparagraph (A), together with such recommendations for legislation or administrative action as the Secretary determines appropriate.

(6) Definitions
   In this subsection:
   (A) Eligible health and long-term care provider
      The term “eligible health and long-term care provider” means a personal or home care agency (including personal or home care public authorities), a nursing home, a home health agency (as defined in section 1395x(o) of this title), or any other health care provider the Secretary determines appropriate which—
      (i) is licensed or authorized to provide services in a participating State; and
      (ii) receives payment for services under subchapter XIX.
   (B) Personal care services
      The term “personal care services” has the meaning given such term for purposes of subchapter XIX.
   (C) Personal or home care aide
      The term “personal or home care aide” means an individual who helps individuals who are elderly, disabled, ill, or mentally disabled (including an individual with Alzheimer’s disease or other dementia) to live in their own home or a residential care facility (such as a nursing home, assisted living facility, or any other facility the Secretary determines appropriate) by providing routine personal care services and other appropriate services to the individual.
   (D) State
      The term “State” has the meaning given that term for purposes of subchapter XIX.

(c) Funding
   (1) In general
      Subject to paragraph (2), out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary to carry out subsections (a) and (b), $85,000,000 for each of fiscal years 2010 through 2014.
   (2) Training and certification programs for personal and home care aides
      With respect to the demonstration projects under subsection (b), the Secretary shall use $5,000,000 of the amount appropriated under paragraph (1) for each of fiscal years 2010 through 2012 to carry out such projects. No funds appropriated under paragraph (1) shall be used to carry out demonstration projects under subsection (b) after fiscal year 2012.

(d) Nonapplication
   (1) In general
      Except as provided in paragraph (2), the preceding sections of this division shall not apply to grants awarded under this section.
   (2) Limitations on use of grants
      Section 1397d(a) of this title (other than paragraph (6)) shall apply to a grant awarded under this section to the same extent and in the same manner as such section applies to payments to States under this division.


REFERENCES IN TEXT
The Act of August 16, 1937, referred to in subsec. (a)(2)(B), (4)(A), is act Aug. 16, 1937, ch. 663, 50 Stat. 664, popularly known as the National Apprenticeship Act, which is classified generally to chapter 4C (§50 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 50 of Title 29 and Tables.

Part A of subchapter IV, referred to in subsec. (a)(4)(F), is classified to §601 et seq. of this title.

AMENDMENTS
2010—Subsec. (d). Pub. L. 111–148, §6703(d)(1)(B), which directed substitution of “this division” for “this subchapter” wherever appearing in subtitle 1 of title XX of act Aug. 14, 1935, was executed by making the substitution in two places in subsec. (d) of this section, which is in subtitle A of title XX act Aug. 14, 1935, to reflect the probable intent of Congress.

§1397h. Program for early detection of certain medical conditions related to environmental health hazards

(a) Program establishment
The Secretary shall establish a program in accordance with this section to make competitive grants to eligible entities specified in subsection (b) for the purpose of—
   (1) screening at-risk individuals (as defined in subsection (c)(1)) for environmental health conditions (as defined in subsection (c)(3)); and
   (2) developing and disseminating public information and education concerning—
      (A) the availability of screening under the program under this section;
      (B) the detection, prevention, and treatment of environmental health conditions; and
      (C) the availability of Medicare benefits for certain individuals diagnosed with environmental health conditions under section 1385rr–1 of this title.

(b) Eligible entities
   (1) In general
      For purposes of this section, an eligible entity is an entity described in paragraph (2)
which submits an application to the Secretary in such form and manner, and containing such information and assurances, as the Secretary determines appropriate.

(2) Types of eligible entities
The entities described in this paragraph are the following:
(A) A hospital or community health center.
(B) A Federally qualified health center.
(C) A facility of the Indian Health Service.
(D) A National Cancer Institute-designated cancer center.
(E) An agency of any State or local government.
(F) A nonprofit organization.
(G) Any other entity the Secretary determines appropriate.

(c) Definitions
In this section:
(1) At-risk individual
The term ‘‘at-risk individual’’ means an individual who—
(A)(i) as demonstrated in such manner as the Secretary determines appropriate, has been present for an aggregate total of 6 months in the geographic area subject to an emergency declaration specified under paragraph (2), during a period ending—
(I) not less than 10 years prior to the date of such individual’s application under subparagraph (B); and
(II) prior to the implementation of all the remedial and removal actions specified in the Record of Decision for Operating Unit 4 and the Record of Decision for Operating Unit 7; or
(ii) meets such other criteria as the Secretary determines appropriate considering the type of environmental health condition at issue; and
(B) has submitted an application (or has an application submitted on the individual’s behalf), to an eligible entity receiving a grant under this section, for screening under the program under this section.
(2) Emergency declaration
The term ‘‘emergency declaration’’ means a declaration of a public health emergency under section 9604(a) of title 9.
(3) Environmental health condition
The term ‘‘environmental health condition’’ means—
(A) asbestosis, pleural thickening, or pleural plaques, as established by—
(i) interpretation by a ‘‘B Reader’’ qualified physician of a plain chest x-ray or interpretation of a computed tomographic radiograph of the chest by a qualified physician, as determined by the Secretary; or
(ii) such other diagnostic standards as the Secretary specifies;
(B) mesothelioma, or malignancies of the lung, colon, rectum, larynx, stomach, esophagus, pharynx, or ovary, as established by—
(i) pathologic examination of biopsy tissue;
(ii) cytology from bronchioalveolar lavage;
(iii) such other diagnostic standards as the Secretary specifies; and
(C) any other medical condition which the Secretary determines is caused by exposure to a hazardous substance or pollutant or contaminant at a Superfund site to which an emergency declaration applies, based on such criteria and as established by such diagnostic standards as the Secretary specifies.
(4) Hazardous substance; pollutant; contaminant
The terms ‘‘hazardous substance’’, ‘‘pollutant’’, and ‘‘contaminant’’ have the meanings given those terms in section 9601 of this title.
(5) Superfund site
The term ‘‘Superfund site’’ means a site included on the National Priorities List developed by the President in accordance with section 9605(a)(8)(B) of this title.

(d) Health coverage unaffected
Nothing in this section shall be construed to affect any coverage obligation of a governmental or private health plan or program relating to an at-risk individual.

(e) Funding
(1) In general
Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary, to carry out the program under this section—
(A) $23,000,000 for the period of fiscal years 2010 through 2014; and
(B) $20,000,000 for each 5-fiscal year period thereafter.
(2) Availability
Funds appropriated under paragraph (1) shall remain available until expended.

(f) Nonapplication
(1) In general
Except as provided in paragraph (2), the preceding sections of this subchapter shall not apply to grants awarded under this section.
(2) Limitations on use of grants
Section 1397d(a) of this title shall apply to a grant awarded under this section to the same extent and in the same manner as such section applies to payments to States under this subchapter, except that paragraph (4) of such section shall not be construed to prohibit grantees from conducting screening for environmental health conditions as authorized under this section.


CODIFICATION
Pub. L. 111–148, title X, § 10323(b), Mar. 23, 2010, 124 Stat. 957, which directed amendment of title XX of that Act, which is this division, to reflect the probable intent of Congress.
§ 1397j. Definitions

In this division:

(1) Abuse

The term "abuse" means the knowing infliction of physical or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm.

(2) Adult protective services

The term "adult protective services" means such services provided to adults as the Secretary may specify and includes services such as—

(A) receiving reports of adult abuse, neglect, or exploitation;

(B) investigating the reports described in subparagraph (A);

(C) case planning, monitoring, evaluation, and other case work and services; and

(D) providing, arranging for, or facilitating the provision of medical, social service, economic, legal, housing, law enforcement, or other protective, emergency, or support services.

(3) Caregiver

The term "caregiver" means an individual who has the responsibility for the care of an elder, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law, and means a family member or other individual who provides (on behalf of such individual or of a public or private agency, organization, or institution) compensated or uncompensated care to an elder who needs supportive services in any setting.

(4) Direct care

The term "direct care" means care by an employee or contractor who provides assistance or long-term care services to a recipient.

(5) Elder

The term "elder" means an individual age 60 or older.

(6) Elder justice

The term "elder justice" means—

(A) from a societal perspective, efforts to—

(i) prevent, detect, treat, intervene in, and prosecute elder abuse, neglect, and exploitation; and

(ii) protect elders with diminished capacity while maximizing their autonomy; and

(B) from an individual perspective, the recognition of an elder's rights, including the right to be free of abuse, neglect, and exploitation.

(7) Eligible entity

The term "eligible entity" means a State or local government agency, Indian tribe or tribal organization, or any other public or private entity that is engaged in and has expertise in issues relating to elder justice or in a field necessary to promote elder justice efforts.

(8) Exploitation

The term "exploitation" means the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an elder for monetary or personal benefit, profit, or gain, or that results in depriving an elder of rightful access to, or use of, benefits, resources, belongings, or assets.

(9) Fiduciary

The term "fiduciary"—

(A) means a person or entity with the legal responsibility—

(i) to make decisions on behalf of and for the benefit of another person; and

(ii) to act in good faith and with fairness; and

(B) includes a trustee, a guardian, a conservator, an executor, an agent under a financial power of attorney or health care power of attorney, or a representative payee.

(10) Grant

The term "grant" includes a contract, cooperative agreement, or other mechanism for providing financial assistance.

(11) Guardianship

The term "guardianship" means—

(A) the process by which a State court determines that an adult individual lacks capacity to make decisions about self-care or property, and appoints another individual or entity known as a guardian, as a conservator, or by a similar term, as a surrogate decisionmaker;

(B) the manner in which the court-appointed surrogate decisionmaker carries out duties to the individual and the court; or

(C) the manner in which the court exercises oversight of the surrogate decisionmaker.

(12) Indian tribe

(A) In general

The term "Indian tribe" has the meaning given such term in section 450b of title 25.

(B) Inclusion of Pueblo and Rancheria

The term "Indian tribe" includes any Pueblo or Rancheria.

(13) Law enforcement

The term "law enforcement" means the full range of potential responders to elder abuse, neglect, and exploitation including—

(A) police, sheriffs, detectives, public safety officers, and corrections personnel;

(B) prosecutors;

(C) medical examiners;

(D) investigators; and

(E) coroners.

(14) Long-term care

(A) In general

The term "long-term care" means supportive and health services specified by the Secretary for individuals who need assistance because the individuals have a loss of capacity for self-care due to illness, disability, or vulnerability.

(B) Loss of capacity for self-care

For purposes of subparagraph (A), the term "loss of capacity for self-care" means an in-
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ability to engage in 1 or more activities of daily living, including eating, dressing, bathing, management of one’s financial affairs, and other activities the Secretary determines appropriate.

(15) Long-term care facility
The term “long-term care facility” means a residential care provider that arranges for, or directly provides, long-term care.

(16) Neglect
The term “neglect” means—
(A) the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an elder; or
(B) self-neglect.

(17) Nursing facility
(A) In general
The term “nursing facility” has the meaning given such term under section 1396d of this title.

(B) Inclusion of skilled nursing facility
The term “nursing facility” includes a skilled nursing facility (as defined in section 1396d(2) of this title).

(18) Self-neglect
The term “self-neglect” means an adult’s inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including—
(A) obtaining essential food, clothing, shelter, and medical care;
(B) obtaining goods and services necessary to maintain physical health, mental health, or general safety; or
(C) managing one’s own financial affairs.

(19) Serious bodily injury
(A) In general
The term “serious bodily injury” means an injury—
(i) involving extreme physical pain;
(ii) involving substantial risk of death; or
(iii) involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or
(iv) requiring medical intervention such as surgery, hospitalization, or physical rehabilitation.

(B) Criminal sexual abuse
Serious bodily injury shall be considered to have occurred if the conduct causing the injury is conduct described in section 2241 (relating to aggravated sexual abuse) or 2242 (relating to sexual abuse) of title 18 or any similar offense under State law.

(20) Social
The term “social”, when used with respect to a service, includes adult protective services.

(21) State legal assistance developer
The term “State legal assistance developer” means an individual described in section 3058g(a)(2) of this title.

(22) State Long-Term Care Ombudsman
The term “State Long-Term Care Ombudsman” means the State Long-Term Care Ombudsman described in section 3058g(a)(2) of this title.


§ 1397j–1. General provisions

(a) Protection of privacy
In pursuing activities under this division, the Secretary shall ensure the protection of individual health privacy consistent with the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 and applicable State and local privacy regulations.

(b) Rule of construction
Nothing in this division shall be construed to interfere with or abridge an elder’s right to practice his or her religion through reliance on prayer alone for healing when this choice—
(1) is contemporaneously expressed, either orally or in writing, with respect to a specific illness or injury which the elder has at the time of the decision by an elder who is competent at the time of the decision;
(2) is previously set forth in a living will, health care proxy, or other advance directive document that is validly executed and applied under State law; or
(3) may be unambiguously deduced from the elder’s life history.


§ 1397k. Elder Justice Coordinating Council

(a) Establishment
There is established within the Office of the Secretary an Elder Justice Coordinating Council (in this section referred to as the “Council”).

(b) Membership
(1) In general
The Council shall be composed of the following members:
(A) The Secretary (or the Secretary’s designee).
(B) The Attorney General (or the Attorney General’s designee).
(C) The head of each Federal department or agency or other governmental entity identified by the Chair referred to in subsection (d) as having responsibilities, or administering programs, relating to elder abuse, neglect, and exploitation.

(2) Requirement
Each member of the Council shall be an officer or employee of the Federal Government.
(c) Vacancies
Any vacancy in the Council shall not affect its powers, but shall be filled in the same manner as the original appointment was made.

(d) Chair
The member described in subsection (b)(1)(A) shall be Chair of the Council.

(e) Meetings
The Council shall meet at least 2 times per year, as determined by the Chair.

(f) Duties
(1) In general
The Council shall make recommendations to the Secretary for the coordination of activities of the Department of Health and Human Services, the Department of Justice, and other relevant Federal, State, local, and private agencies and entities, relating to elder abuse, neglect, and exploitation and other crimes against elders.

(2) Report
Not later than the date that is 2 years after March 23, 2010, and every 2 years thereafter, the Council shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report that—
(A) describes the activities and accomplishments of, and challenges faced by—
(i) the Council; and
(ii) the entities represented on the Council; and
(B) makes such recommendations for legislation, model laws, or other action as the Council determines to be appropriate.

(g) Powers of the Council
(1) Information from Federal agencies
Subject to the requirements of section 1397j–1(a) of this title, the Council may secure directly from any Federal department or agency such information as the Council considers necessary to carry out this section. Upon request of the Chair of the Council, the head of such department or agency shall furnish such information to the Council.

(2) Postal services
The Council may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(h) Travel expenses
The members of the Council shall not receive compensation for the performance of services for the Council. The members shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Council. Notwithstanding section 1342 of title 5, the Secretary may accept the voluntary and uncompensated services of the members of the Council.

(i) Detail of Government employees
Any Federal Government employee may be detailed to the Council without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(j) Status as permanent Council
Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council.

(k) Authorization of appropriations
There are authorized to be appropriated such sums as are necessary to carry out this section.

References in Text
Section 14 of the Federal Advisory Committee Act, referred to in subsec. (j), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 1397k–1. Advisory Board on Elder Abuse, Neglect, and Exploitation

(a) Establishment
There is established a board to be known as the “Advisory Board on Elder Abuse, Neglect, and Exploitation” (in this section referred to as the “Advisory Board”) to create short- and long-term multidisciplinary strategic plans for the development of the field of elder justice and to make recommendations to the Elder Justice Coordinating Council established under section 1397k of this title.

(b) Composition
The Advisory Board shall be composed of 27 members appointed by the Secretary from among members of the general public who are individuals with experience and expertise in elder abuse, neglect, and exploitation prevention, detection, treatment, intervention, or prosecution.

(c) Solicitation of nominations
The Secretary shall publish a notice in the Federal Register soliciting nominations for the appointment of members of the Advisory Board under subsection (b).

(d) Terms
(1) In general
Each member of the Advisory Board shall be appointed for a term of 3 years, except that, of the members first appointed—
(A) 9 shall be appointed for a term of 3 years;
(B) 9 shall be appointed for a term of 2 years; and
(C) 9 shall be appointed for a term of 1 year.

(2) Vacancies
(A) In general
Any vacancy on the Advisory Board shall not affect its powers, but shall be filled in the same manner as the original appointment was made.

(B) Filling unexpired term
An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.
(3) Expiration of terms
The term of any member shall not expire before the date on which the member’s successor takes office.

(e) Election of officers
The Advisory Board shall elect a Chair and Vice Chair from among its members. The Advisory Board shall elect its initial Chair and Vice Chair at its initial meeting.

(f) Duties
(1) Enhance communication on promoting quality of, and preventing abuse, neglect, and exploitation in, long-term care
The Advisory Board shall develop collaborative and innovative approaches to improve the quality of, including preventing abuse, neglect, and exploitation in, long-term care.

(2) Collaborative efforts to develop consensus around the management of certain quality-related factors
(A) In general
The Advisory Board shall establish multidisciplinary panels to address, and develop consensus on, subjects relating to improving the quality of long-term care. At least 1 such panel shall address, and develop consensus on, methods for managing resident-to-resident abuse in long-term care.

(B) Activities conducted
The multidisciplinary panels established under subparagraph (A) shall examine relevant research and data, identify best practices with respect to the subject of the panel, determine the best way to carry out those best practices in a practical and feasible manner, and determine an effective manner of distributing information on such subject.

(3) Report
Not later than the date that is 18 months after March 23, 2010, and annually thereafter, the Advisory Board shall prepare and submit to the Elder Justice Coordinating Council, the Committee on Finance of the Senate, and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives a report containing—
(A) information on the status of Federal, State, and local public and private elder justice activities;
(B) recommendations (including recommended priorities) regarding—
(i) elder justice programs, research, training, services, practice, enforcement, and coordination;
(ii) coordination between entities pursuing elder justice efforts and those involved in related areas that may inform or overlap with elder justice efforts, such as activities to combat violence against women and child abuse and neglect; and
(iii) activities relating to adult fiduciary systems, including guardianship and other fiduciary arrangements;
(C) recommendations for specific modifications needed in Federal and State laws (including regulations) or for programs, research, and training to enhance prevention, detection, and treatment (including diagnosis) of, intervention in (including investigation of), and prosecution of elder abuse, neglect, and exploitation;
(D) recommendations on methods for the most effective coordinated national data collection with respect to elder justice, and elder abuse, neglect, and exploitation; and
(E) recommendations for a multidisciplinary strategic plan to guide the effective and efficient development of the field of elder justice.

(g) Powers of the Advisory Board
(1) Information from Federal agencies
Subject to the requirements of section 1397j–1(a) of this title, the Advisory Board may secure directly from any Federal department or agency such information as the Advisory Board considers necessary to carry out this section. Upon request of the Chair of the Advisory Board, the head of such department or agency shall furnish such information to the Advisory Board.

(2) Sharing of data and reports
The Advisory Board may request from any entity pursuing elder justice activities under the Elder Justice Act of 2009 or an amendment made by that Act, any data, reports, or recommendations generated in connection with such activities.

(3) Postal services
The Advisory Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(h) Travel expenses
The members of the Advisory Board shall not receive compensation for the performance of services for the Advisory Board. The members shall be allowed travel expenses for up to 4 meetings per year, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Advisory Board. Notwithstanding section 1342 of title 31, the Secretary may accept the voluntary and uncompensated services of the members of the Advisory Board.

(i) Detail of Government employees
Any Federal Government employee may be detailed to the Advisory Board without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(j) Status as permanent advisory committee
Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory board.1

(k) Authorization of appropriations
There are authorized to be appropriated such sums as are necessary to carry out this section.

1 So in original. Probably should be “Advisory Board”.


Section 14 of the Federal Advisory Committee Act, referred to in subsec. (j), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 1397k–2. Research protections
(a) Guidelines
The Secretary shall promulgate guidelines to assist researchers working in the area of elder abuse, neglect, and exploitation, with issues relating to human subject protections.

(b) Definition of legally authorized representative for application of regulations
For purposes of the application of subpart A of part 46 of title 45, Code of Federal Regulations, to research conducted under this subpart, the term “legally authorized representative” means, unless otherwise provided by law, the individual or judicial or other body authorized under the applicable law to consent to medical treatment on behalf of another person.


§ 1397k–3. Authorization of appropriations
There are authorized to be appropriated to carry out this subpart—
(1) for fiscal year 2011, $6,500,000; and
(2) for each of fiscal years 2012 through 2014, $7,000,000.


SUBPART B—ELDER ABUSE, NEGLECT, AND EXPLOITATION FORENSIC CENTERS

§ 1397l. Establishment and support of elder abuse, neglect, and exploitation forensic centers
(a) In general
The Secretary, in consultation with the Attorney General, shall make grants to eligible entities to establish and operate stationary and mobile forensic centers, to develop forensic expertise regarding, and provide services relating to, elder abuse, neglect, or exploitation.

(b) Stationary forensic centers
The Secretary shall make 4 of the grants described in subsection (a) to institutions of higher education with demonstrated expertise in forensics or commitment to preventing or treating elder abuse, neglect, or exploitation.

(c) Mobile centers
The Secretary shall make 6 of the grants described in subsection (a) to appropriate entities to establish and operate mobile forensic centers.

(d) Authorized activities
(1) Development of forensic markers and methodologies
An eligible entity that receives a grant under this section shall use funds made available through the grant to assist in determining whether abuse, neglect, or exploitation occurred and whether a crime was committed and to conduct research to describe and disseminate information on—
(A) forensic markers that indicate a case in which elder abuse, neglect, or exploitation may have occurred; and
(B) methodologies for determining, in such a case, when and how health care, emergency service, social and protective services, and legal service providers should intervene and when the providers should report the case to law enforcement authorities.

(2) Development of forensic expertise
An eligible entity that receives a grant under this section shall use funds made available through the grant to develop forensic expertise regarding elder abuse, neglect, and exploitation in order to provide medical and forensic evaluation, therapeutic intervention, victim support and advocacy, case review, and case tracking.

(3) Collection of evidence
The Secretary, in coordination with the Attorney General, shall use data made available by grant recipients under this section to develop the capacity of geriatric health care professionals and law enforcement to collect forensic evidence, including collecting forensic evidence relating to a potential determination of elder abuse, neglect, or exploitation.

(e) Application
To be eligible to receive a grant under this section, an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(f) Authorization of appropriations
There are authorized to be appropriated to carry out this section—
(1) for fiscal year 2011, $4,000,000;
(2) for fiscal year 2012, $6,000,000; and
(3) for each of fiscal years 2013 and 2014, $8,000,000.


PART II—PROGRAMS TO PROMOTE ELDER JUSTICE

§ 1397m. Enhancement of long-term care
(a) Grants and incentives for long-term care staffing
(1) In general
The Secretary shall carry out activities, including activities described in paragraphs (2) and (3), to provide incentives for individuals to train for, seek, and maintain employment providing direct care in long-term care.
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(2) Specific programs to enhance training, recruitment, and retention of staff

(A) Coordination with Secretary of Labor to recruit and train long-term care staff

The Secretary shall coordinate activities under this subsection with the Secretary of Labor in order to provide incentives for individuals to train for and seek employment providing direct care in long-term care.

(B) Career ladders and wage or benefit increases to increase staffing in long-term care

(i) In general

The Secretary shall make grants to eligible entities to carry out programs through which the entities—

(I) offer, to employees who provide direct care to residents of an eligible entity or individuals receiving community-based long-term care from an eligible entity, continuing training and varying levels of certification, based on observed clinical care practices and the amount of time the employees spend providing direct care; and

(II) provide, or make arrangements to provide, bonuses or other increased compensation or benefits to employees who achieve certification under such a program.

(ii) Application

To be eligible to receive a grant under this subparagraph, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require (which may include evidence of consultation with the State in which the eligible entity is located with respect to carrying out activities funded under the grant).

(iii) Authority to limit number of applicants

Nothing in this subparagraph shall be construed as prohibiting the Secretary from limiting the number of applicants for a grant under this subparagraph.

(3) Specific programs to improve management practices

(A) In general

The Secretary shall make grants to eligible entities to enable the entities to provide training and technical assistance.

(B) Authorized activities

An eligible entity that receives a grant under subparagraph (A) shall use funds made available through the grant to provide training and technical assistance regarding management practices using methods that are demonstrated to promote retention of individuals who provide direct care, such as—

(i) the establishment of standard human resource policies that reward high performance, including policies that provide for improved wages and benefits on the basis of job reviews;

(ii) the establishment of motivational and thoughtful work organization practices;

(iii) the creation of a workplace culture that respects and values caregivers and their needs;

(iv) the promotion of a workplace culture that respects the rights of residents of an eligible entity or individuals receiving community-based long-term care from an eligible entity and results in improved care for the residents or the individuals; and

(v) the establishment of other programs that promote the provision of high quality care, such as a continuing education program that provides additional hours of training, including on-the-job training, for employees who are certified nurse aides.

(C) Application

To be eligible to receive a grant under this paragraph, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require (which may include evidence of consultation with the State in which the eligible entity is located with respect to carrying out activities funded under the grant).

(D) Authority to limit number of applicants

Nothing in this paragraph shall be construed as prohibiting the Secretary from limiting the number of applicants for a grant under this paragraph.

(4) Accountability measures

The Secretary shall develop accountability measures to ensure that the activities conducted using funds made available under this subsection benefit individuals who provide direct care and increase the stability of the long-term care workforce.

(5) Definitions

In this subsection:

(A) Community-based long-term care

The term “community-based long-term care” has the meaning given such term by the Secretary.

(B) Eligible entity

The term “eligible entity” means the following:

(i) A long-term care facility.

(ii) A community-based long-term care entity (as defined by the Secretary).

(b) Certified EHR technology grant program

(1) Grants authorized

The Secretary is authorized to make grants to long-term care facilities for the purpose of assisting such entities in offsetting the costs related to purchasing, leasing, developing, and implementing certified EHR technology (as defined in section 1395w–4(o)(4) of this title) designed to improve patient safety and reduce adverse events and health care complications resulting from medication errors.

(2) Use of grant funds

Funds provided under grants under this subsection may be used for any of the following:

(A) Purchasing, leasing, and installing computer software and hardware, including handheld computer technologies.
(B) Making improvements to existing computer software and hardware.

(C) Making upgrades and other improvements to existing computer software and hardware to enable e-prescribing.

(D) Providing education and training to eligible long-term care facility staff on the use of such technology to implement the electronic transmission of prescription and patient information.

(3) Application

(A) In general

To be eligible to receive a grant under this subsection, a long-term care facility shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require (which may include evidence of consultation with the State in which the long-term care facility is located with respect to carrying out activities funded under the grant).

(B) Authority to limit number of applicants

Nothing in this subsection shall be construed as prohibiting the Secretary from limiting the number of applicants for a grant under this subsection.

(4) Participation in State health exchanges

A long-term care facility that receives a grant under this subsection shall, where available, participate in activities conducted by a State or a qualified State-designated entity (as defined in section 300jj–33(f) of this title) under a grant under section 300jj–33 of this title to coordinate care and for other purposes determined appropriate by the Secretary.

(5) Accountability measures

The Secretary shall develop accountability measures to ensure that the activities conducted using funds made available under this subsection help improve patient safety and reduce adverse events and health care complications resulting from medication errors.

(c) Adoption of standards for transactions involving clinical data by long-term care facilities

(1) Standards and compatibility

The Secretary shall adopt electronic standards for the exchange of clinical data by long-term care facilities, including, where available, standards for messaging and nomenclature. Standards adopted by the Secretary under the preceding sentence shall be compatible with standards established under part C of subchapter XI, standards established under subsections (b)(2)(B)(i) and (e)(4) of section 1397m–1 of this title, and general health information technology standards.

(2) Electronic submission of data to the Secretary

(A) In general

Not later than 10 years after March 23, 2010, the Secretary shall have procedures in place to accept the optional electronic submission of clinical data by long-term care facilities pursuant to the standards adopted under paragraph (1).

(B) Rule of construction

Nothing in this subsection shall be construed to require a long-term care facility to submit clinical data electronically to the Secretary.

(3) Regulations

The Secretary shall promulgate regulations to carry out this subsection. Such regulations shall require a State, as a condition of the receipt of funds under this part, to conduct such data collection and reporting as the Secretary determines are necessary to satisfy the requirements of this subsection.

(d) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

(1) for fiscal year 2011, $20,000,000;

(2) for fiscal year 2012, $17,500,000; and

(3) for each of fiscal years 2013 and 2014, $15,000,000.


References in Text

Part C of subchapter XI, referred to in subsec. (c)(1), is classified to section 1320d et seq. of this title.

§ 1397m–1. Adult protective services functions and grant programs

(a) Secretarial responsibilities

(1) In general

The Secretary shall ensure that the Department of Health and Human Services—

(A) provides funding authorized by this part to State and local adult protective services offices that investigate reports of the abuse, neglect, and exploitation of elders;

(B) collects and disseminates data annually relating to the abuse, exploitation, and neglect of elders in coordination with the Department of Justice;

(C) develops and disseminates information on best practices regarding, and provides training on, carrying out adult protective services;

(D) conducts research related to the provision of adult protective services; and

(E) provides technical assistance to States and other entities that provide or fund the provision of adult protective services, including through grants made under subsections (b) and (c).

(2) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection, $3,000,000 for fiscal year 2011 and $4,000,000 for each of fiscal years 2012 through 2014.

(b) Grants to enhance the provision of adult protective services

(1) Establishment

There is established an adult protective services grant program under which the Secretary shall annually award grants to States
in the amounts calculated under paragraph (2) for the purposes of enhancing adult protective services provided by States and local units of government.

(2) Amount of payment

(A) In general

Subject to the availability of appropriations and subparagraphs (B) and (C), the amount paid to a State for a fiscal year under the program under this subsection shall equal the amount appropriated for that year to carry out this subsection multiplied by the percentage of the total number of elders who reside in the United States who reside in that State.

(B) Guaranteed minimum payment amount

(i) 50 States

Subject to clause (ii), if the amount determined under subparagraph (A) for a State for a fiscal year is less than 0.75 percent of the amount appropriated for such year, the Secretary shall increase such determined amount so that the total amount paid under this subsection to the State for the year is equal to 0.75 percent of the amount so appropriated.

(ii) Territories

In the case of a State other than 1 of the 50 States, clause (i) shall be applied as if each reference to “0.75” were a reference to “0.1”.

(C) Pro rata reductions

The Secretary shall make such pro rata reductions to the amounts described in subparagraph (A) as are necessary to comply with the requirements of subparagraph (B).

(3) Authorized activities

(A) Adult protective services

Funds made available pursuant to this subsection may only be used by States and local units of government to provide adult protective services and may not be used for any other purpose.

(B) Use by agency

Each State receiving funds pursuant to this subsection shall provide such funds to the agency or unit of State government having legal responsibility for providing adult protective services within the State.

(C) Supplement not supplant

Each State or local unit of government shall use funds made available pursuant to this subsection to supplement and not supplant other Federal, State, and local public funds expended to provide adult protective services in the State.

(4) State reports

Each State receiving funds under this subsection shall submit to the Secretary, at such time and in such manner as the Secretary may require, a report on the number of elders served by the grants awarded under this subsection.

(5) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection, $100,000,000 for each of fiscal years 2011 through 2014.

(c) State demonstration programs

(1) Establishment

The Secretary shall award grants to States for the purposes of conducting demonstration programs in accordance with paragraph (2).

(2) Demonstration programs

Funds made available pursuant to this subsection may be used by States and local units of government to conduct demonstration programs that test—

(A) training modules developed for the purpose of detecting or preventing elder abuse;

(B) methods to detect or prevent financial exploitation of elders;

(C) methods to detect elder abuse;

(D) whether training on elder abuse forensics enhances the detection of elder abuse by employees of the State or local unit of government; or

(E) other matters relating to the detection or prevention of elder abuse.

(3) Application

To be eligible to receive a grant under this subsection, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(4) State reports

Each State that receives funds under this subsection shall submit to the Secretary a report at such time, in such manner, and containing such information as the Secretary may require on the results of the demonstration program conducted by the State using funds made available under this subsection.

(5) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection, $25,000,000 for each of fiscal years 2011 through 2014.

In the case of a State other than 1 of the 50 States, clause (i) shall be applied as if each reference to “0.75” were a reference to “0.1”.

§ 1397m–2. Long-term care ombudsman program grants and training

(a) Grants to support the long-term care ombudsman program

(1) In general

The Secretary shall make grants to eligible entities with relevant expertise and experience in abuse and neglect in long-term care facilities or long-term care ombudsman programs and responsibilities, for the purpose of—

(A) improving the capacity of State long-term care ombudsman programs to respond to and resolve complaints about abuse and neglect;

(B) conducting pilot programs with State long-term care ombudsman offices or local ombudsman entities; and

(C) providing support for such State long-term care ombudsman programs and such pilot programs (such as through the establishment of a national long-term care ombudsman resource center).
(2) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection—
(A) for fiscal year 2011, $5,000,000;
(B) for fiscal year 2012, $7,500,000; and
(C) for each of fiscal years 2013 and 2014, $10,000,000.

(b) Ombudsman training programs

(1) In general

The Secretary shall establish programs to provide and improve ombudsman training with respect to elder abuse, neglect, and exploitation for national organizations and State long-term care ombudsman programs.

(2) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection, for each of fiscal years 2011 through 2014, $10,000,000.


§ 1397m–3. Provision of information regarding, and evaluations of, elder justice programs

(a) Provision of information

To be eligible to receive a grant under this part, an applicant shall agree—
(1) except as provided in paragraph (2), to provide the eligible entity conducting an evaluation under subsection (b) of the activities funded through the grant with such information as the eligible entity may require in order to conduct such evaluation; or
(2) in the case of an applicant for a grant under section 1397m(b) of this title, to provide the Secretary with such information as the Secretary may require to conduct an evaluation or audit under subsection (c).

(b) Use of eligible entities to conduct evaluations

(1) Evaluations required

Except as provided in paragraph (2), the Secretary shall—
(A) reserve a portion (not less than 2 percent) of the funds appropriated with respect to each program carried out under this part; and
(B) use the funds reserved under subparagraph (A) to provide assistance to eligible entities to conduct evaluations of the activities funded under each program carried out under this part.

(2) Certified EHR technology grant program not included

The provisions of this subsection shall not apply to the certified EHR technology grant program under section 1397m(b) of this title.

(3) Authorized activities

A recipient of assistance described in paragraph (1)(B) shall use the funds made available through the assistance to conduct a validated evaluation of the effectiveness of the activities funded under a program carried out under this part.

(4) Applications

To be eligible to receive assistance under paragraph (1)(B), an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including a proposal for the evaluation.

(5) Reports

Not later than a date specified by the Secretary, an eligible entity receiving assistance under paragraph (1)(B) shall submit to the Secretary the results of the evaluation conducted using such assistance together with such recommendations as the entity determines to be appropriate.

(c) Evaluations and audits of certified EHR technology grant program by the Secretary

(1) Evaluations

The Secretary shall conduct an evaluation of the activities funded under the certified EHR technology grant program under section 1397m(b) of this title. Such evaluation shall include an evaluation of whether the funding provided under the grant is expended only for the purposes for which it is made.

(2) Audits

The Secretary shall conduct appropriate audits of grants made under section 1397m(b) of this title.


§ 1397m–4. Report

Not later than October 1, 2014, the Secretary shall submit to the Elder Justice Coordinating Council established under section 1397k of this title, the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives, and the Committee on Finance of the Senate a report—
(1) compiling, summarizing, and analyzing the information contained in the State reports submitted under subsections (b)(4) and (c)(4) of section 1397m–1 of this title; and
(2) containing such recommendations for legislative or administrative action as the Secretary determines to be appropriate.


§ 1397m–5. Rule of construction

Nothing in this division shall be construed as—
(1) limiting any cause of action or other relief related to obligations under this division that is available under the law of any State, or political subdivision thereof; or
(2) creating a private cause of action for a violation of this division.

SUBCHAPTER XXI—STATE CHILDREN’S HEALTH INSURANCE PROGRAM

§ 1397aa. Purpose; State child health plans

(a) Purpose

The purpose of this subchapter is to provide funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage for children. Such assistance shall be provided primarily for obtaining health benefits coverage through—

(1) obtaining coverage that meets the requirements of section 1397cc of this title, or

(2) providing benefits under the State’s Medicaid plan under subchapter XIX of this chapter, or a combination of both.

(b) State child health plan required

A State is not eligible for payment under section 1397ee of this title unless the State has submitted to the Secretary under section 1397ff of this title a plan that—

(1) sets forth how the State intends to use the funds provided under this subchapter to provide child health assistance to needy children consistent with the provisions of this subchapter, and

(2) has been approved under section 1397ff of this title.

(c) State entitlement

This subchapter constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment to States of amounts provided under section 1397dd of this title.

(d) Effective date

No State is eligible for payments under section 1397ee of this title for child health assistance for coverage provided for periods beginning before October 1, 1997.


REFERENCES TO SCHIP AND STATE CHILDREN’S HEALTH INSURANCE PROGRAM

Pub. L. 106–113, div. B, § 1000(a)(6) [title VII, § 704], Nov. 29, 1999, 113 Stat. 1536, 1501A–402, which provided that, in official communications concerning this subchapter, the terms “SCHIP” and “State children’s health insurance program” were to be used instead of “CHIP” and “children’s health insurance program”, respectively, was repealed by Pub. L. 111–3, title VI, § 612, Feb. 4, 2009, 123 Stat. 101.

§ 1397bb. General contents of State child health plan; eligibility; outreach

(a) General background and description

A State child health plan shall include a description, consistent with the requirements of this subchapter, of—

(1) the extent to which, and manner in which, children in the State, including targeted low-income children and other classes of children classified by income and other relevant factors, currently have creditable health coverage (as defined in section 1397jj(c)(2) of this title);

(2) current State efforts to provide or obtain creditable health coverage for uncovered children, including the steps the State is taking to identify and enroll all uncovered children who are eligible to participate in public health insurance programs and health insurance programs that involve public-private partnerships;

(3) how the plan is designed to be coordinated with such efforts to increase coverage of children under creditable health coverage;

(4) the child health assistance provided under the plan for targeted low-income children, including the proposed methods of delivery, and utilization control systems;

(5) eligibility standards consistent with subsection (b) of this section;

(6) outreach activities consistent with subsection (c) of this section; and

(7) methods (including monitoring) used—

(A) to assure the quality and appropriateness of care, particularly with respect to well-baby care, well-child care, and immunizations provided under the plan, and

(B) to assure access to covered services, including emergency services and services described in section 1397cc(c)(5) of this title.

(b) General description of eligibility standards and methodology

(1) Eligibility standards

(A) In general

The plan shall include a description of the standards used to determine the eligibility of targeted low-income children for child health assistance under the plan. Such standards may include (to the extent consistent with this subchapter) those relating to the geographic areas to be served by the plan, age, income and resources (including any standards relating to spenddowns and disposition of resources), residency, disability status (so long as any standard relating to such status does not restrict eligibility), access to or coverage under other health coverage, and duration of eligibility. Such standards may not discriminate on the basis of diagnosis.

(B) Limitations on eligibility standards

Such eligibility standards—

(i) shall, within any defined group of covered targeted low-income children, not cover such children with higher family income without covering children with a lower family income;

(ii) may not deny eligibility based on a child having a preexisting medical condition;

(iii) may not apply a waiting period (including a waiting period to carry out paragraph (3)(C)) in the case of a targeted low-income pregnant woman provided pregnancy-related assistance under section 1397ll of this title;

(iv) at State option, may not apply a waiting period in the case of a child provided dental-only supplemental coverage under section 1397jj(b)(5) of this title; and
methods of establishing and continuing eligibility and enrollment.

(3) Eligibility screening; coordination with other health coverage programs

The plan shall include a description of procedures to be used to ensure—

(A) through both intake and followup screening, that only targeted low-income children are furnished child health assistance under the State child health plan;

(B) that children found through the screening to be eligible for medical assistance under the State medical plan under subchapter XIX of this chapter are enrolled for such assistance under such plan;

(C) that the insurance provided under the State child health plan does not substitute for coverage under group health plans;

(D) the provision of child health assistance to targeted low-income children in the State who are Indians (as defined in section 1603(c)(1) of title 25); and

(E) coordination with other public and private programs providing creditable coverage for low-income children.

(4) Reduction of administrative barriers to enrollment

(A) In general

Subject to subparagraph (B), the plan shall include a description of the procedures used to reduce administrative barriers to the enrollment of children and pregnant women who are eligible for medical assistance under subchapter XIX or for child health assistance or health benefits coverage under this subchapter. Such procedures shall be established and revised as often as the State determines appropriate to take into account the most recent information available to the State regarding such barriers.

(B) Deemed compliance if joint application and renewal process that permits application other than in person

A State shall be deemed to comply with subparagraph (A) if the State’s application and renewal forms and supplemental forms (if any) and information verification process is the same for purposes of establishing and renewing eligibility for children and pregnant women for medical assistance under subchapter XIX and child health assistance.

1See References in Text note below.

under this subchapter, and such process does not require an application to be made in person or a face-to-face interview.

(5) Nonentitlement

Nothing in this subchapter shall be construed as providing an individual with an entitlement to child health assistance under a State child health plan.

(c) Outreach and coordination

A State child health plan shall include a description of the procedures to be used by the State to accomplish the following:

(1) Outreach

Outreach (through community health workers and others) to families of children likely to be eligible for child health assistance under the plan or under other public or private health coverage programs to inform these families of the availability of, and to assist them in enrolling their children in, such a program.

(2) Coordination with other health insurance programs

Coordination of the administration of the State program under this subchapter with other public and private health insurance programs.

(3) Premium assistance subsidies

In the case of a State that provides for premium assistance subsidies under the State child health plan in accordance with paragraph (2)(B), (3), or (10) of section 1397ee(c) of this title, or a waiver approved under section 1315 of this title, outreach, education, and enrollment assistance for families of children likely to be eligible for such subsidies, to inform such families of the availability of, and to assist them in enrolling their children in, such subsidies, and for employers likely to provide coverage that is eligible for such subsidies, including the specific, significant resources the State intends to apply to educate employers about the availability of premium assistance subsidies under the State child health plan.


REFERENCES IN TEXT


ADDITIONS


1See References in Text note below.
§ 1397cc

TITLE 42—THE PUBLIC HEALTH AND WELFARE

Page 3652

Coverage requirements for children’s health insurance

(a) Required scope of health insurance coverage

The child health assistance provided to a targeted low-income child under the plan in the form described in paragraph (1) of section 1397aa(a) of this title shall consist, consistent with paragraphs (5), (6), and (7) of subsection (c) of this section, of any of the following:

(1) Benchmark coverage

Health benefits coverage that is at least equivalent to the benefits coverage in a benchmark benefit package described in subsection (b) of this section.

(2) Benchmark-equivalent coverage

Health benefits coverage that meets the following requirements:

(A) Inclusion of basic services

The coverage includes benefits for items and services within each of the categories of basic services described in subsection (c)(1) of this section.

(B) Aggregate actuarial value equivalent to benchmark package

The coverage has an aggregate actuarial value that is at least actuarially equivalent to one of the benchmark benefit packages.

(C) Substantial actuarial value for additional services included in benchmark package

With respect to each of the categories of additional services described in subsection (c)(2) of this section for which coverage is provided under the benchmark benefit package used under subparagraph (B), the coverage has an actuarial value that is equal to at least 75 percent of the actuarial value of the coverage of that category of services in such package.

(3) Existing comprehensive State-based coverage

Health benefits coverage under an existing comprehensive State-based program, described in subsection (d)(1) of this section.

(4) Secretary-approved coverage

Any other health benefits coverage that the Secretary determines, upon application by a State, provides appropriate coverage for the population of targeted low-income children proposed to be provided such coverage.

(b) Benchmark benefit packages

The benchmark benefit packages are as follows:

(1) FEHBP-equivalent children’s health insurance coverage

The standard Blue Cross/Blue Shield preferred provider option service benefit plan, described in and offered under section 8903(1) of title 5.

(2) State employee coverage

A health benefits coverage plan that is offered and generally available to State employees in the State involved.

(3) Coverage offered through HMO

The health insurance coverage plan that—

(A) is offered by a health maintenance organization (as defined in section 2791(b)(3) of the Public Health Service Act [42 U.S.C. 300gg–91(b)(3)], and

(B) has the largest insured commercial, non-medicaid enrollment of covered lives of such coverage plans offered by such a health maintenance organization in the State involved.

(c) Categories of services; determination of actuarial value of coverage

(1) Categories of basic services

For purposes of this section, the categories of basic services described in this paragraph are as follows:

(A) Inpatient and outpatient hospital services.

(B) Physicians’ surgical and medical services.

(C) Laboratory and x-ray services.

(D) Well-baby and well-child care, including age-appropriate immunizations.

(2) Categories of additional services

For purposes of this section, the categories of additional services described in this paragraph are as follows:

(A) Coverage of prescription drugs.

(B) Vision services.

(C) Hearing services.

(3) Treatment of other categories

Nothing in this subsection shall be construed as preventing a State child health plan from providing coverage of benefits that are not within a category of services described in paragraph (1) or (2).

(4) Determination of actuarial value

The actuarial value of coverage of benchmark benefit packages, coverage offered under the State child health plan, and coverage of any categories of additional services under benchmark benefit packages and under coverage offered by such a plan, shall be set forth in an actuarial opinion in an actuarial report that has been prepared—
(A) by an individual who is a member of the American Academy of Actuaries;
(B) using generally accepted actuarial principles and methodologies;
(C) using a standardized set of utilization and price factors;
(D) using a standardized population that is representative of privately insured children of the age of children who are expected to be covered under the State child health plan;
(E) applying the same principles and factors in comparing the value of different coverage (or categories of services);
(F) without taking into account any differences in coverage based on the method of delivery or means of cost control or utilization used; and
(G) taking into account the ability of a State to reduce benefits by taking into account the increase in actuarial value of benefits coverage offered under the State child health plan that results from the limitations on cost sharing under such coverage.

The actuary preparing the opinion shall select and specify in the memorandum the standardized set and population to be used under subparagraphs (C) and (D).

(5) Dental benefits

(A) In general

The child health assistance provided to a targeted low-income child shall include coverage of dental services necessary to prevent disease and promote oral health, restore oral structures to health and function, and treat emergency conditions.

(B) Permitting use of dental benchmark plans by certain States

A State may elect to meet the requirement of subparagraph (A) through dental coverage that is equivalent to a benchmark dental benefit package described in subparagraph (C).

(C) Benchmark dental benefit packages

The benchmark dental benefit packages are as follows:

(i) FEHBP children’s dental coverage

A dental benefits plan under chapter 89A of title 5 that has been selected most frequently by employees seeking dependent coverage, among such plans that provide such dependent coverage, in either of the previous 2 plan years.

(ii) State employee dependent dental coverage

A dental benefits plan that is offered and generally available to State employees in the State involved and that has been selected most frequently by employees seeking dependent coverage, among such plans that provide such dependent coverage, in either of the previous 2 plan years.

(iii) Coverage offered through commercial dental plan

A dental benefits plan that has the largest insured commercial, non-medicaid enrollment of dependent covered lives of such plans that is offered in the State involved.

(6) Mental health services parity

(A) In general

In the case of a State child health plan that provides both medical and surgical benefits and mental health or substance use disorder benefits, such plan shall ensure that the financial requirements and treatment limitations applicable to such mental health or substance use disorder benefits comply with the requirements of section 2705(a) of the Public Health Service Act in the same manner as such requirements apply to a group health plan.

(B) Deemed compliance

To the extent that a State child health plan includes coverage with respect to an individual described in section 1396d(a)(4)(B) of this title and covered under the State plan under section 1396a(a)(10)(A) of this title of the services described in section 1396d(a)(4)(B) of this title (relating to early and periodic screening, diagnostic, and treatment services defined in section 1396d(r) of this title) and provided in accordance with section 1396a(a)(43) of this title, such plan shall be deemed to satisfy the requirements of subparagraph (A).

(7) Construction on prohibited coverage

Nothing in this section shall be construed as requiring any health benefits coverage offered under the plan to provide coverage for items or services for which payment is prohibited under this subchapter, notwithstanding that any benchmark benefit package includes coverage for such an item or service.

(8) Availability of coverage for items and services furnished through school-based health centers

Nothing in this subchapter shall be construed as limiting a State’s ability to provide child health assistance for covered items and services that are furnished through school-based health centers (as defined in section 1397jj(c)(9) of this title).

(d) Description of existing comprehensive State-based coverage

(1) In general

A program described in this paragraph is a child health coverage program that—

(A) includes coverage of a range of benefits;
(B) is administered or overseen by the State and receives funds from the State;
(C) is offered in New York, Florida, or Pennsylvania; and
(D) was offered as of August 5, 1997.

(2) Modifications

A State may modify a program described in paragraph (1) from time to time so long as it continues to meet the requirement of subparagraph (A) and does not reduce the actuarial value of the coverage under the program below the lower of—

1 See References in Text note below.
(A) the actuarial value of the coverage under the program as of August 5, 1997, or
(B) the actuarial value described in subsection (a)(2)(B) of this section,
evaluated as of the time of the modification.

(e) Cost-sharing

(1) Description; general conditions

(A) Description
A State child health plan shall include a description, consistent with this subsection, of the amount (if any) of premiums, deductibles, coinsurance, and other cost sharing imposed. Any such charges shall be imposed pursuant to a public schedule.

(B) Protection for lower income children
The State child health plan may only vary premiums, deductibles, coinsurance, and other cost sharing based on the family income of targeted low-income children in a manner that does not favor children from families with higher income over children from families with lower income.

(2) No cost sharing on benefits for preventive services or pregnancy-related assistance
The State child health plan may not impose deductibles, coinsurance, or other cost sharing with respect to benefits for services within the category of services described in subsection (c)(1)(D) of this section or for pregnancy-related assistance.

(3) Limitations on premiums and cost-sharing

(A) Children in families with income below 150 percent of poverty line
In the case of a targeted low-income child whose family income is at or below 150 percent of the poverty line, the State child health plan may not impose—
   (i) an enrollment fee, premium, or similar charge that exceeds the maximum monthly charge permitted consistent with standards established to carry out section 1396o(b)(1) of this title (with respect to individuals described in such section); and
   (ii) a deductible, cost sharing, or similar charge that exceeds an amount that is nominal (as determined consistent with regulations referred to in section 1396o(a)(3) of this title, with such appropriate adjustment for inflation or other reasons as the Secretary determines to be reasonable).

(B) Other children
For children not described in subparagraph (A), subject to paragraphs (1)(B) and (2), any premiums, deductibles, coinsurance or similar charges imposed under the State child health plan may be imposed on a sliding scale related to income, except that the total annual aggregate cost-sharing with respect to all targeted low-income children in a family under this subchapter may not exceed 5 percent of such family’s income for the year involved.

(C) Premium grace period
The State child health plan—
   (i) shall afford individuals enrolled under the plan a grace period of at least 30 days from the beginning of a new coverage period to make premium payments before the individual’s coverage under the plan may be terminated; and
   (ii) shall provide to such an individual, not later than 7 days after the first day of such grace period, notice—
      (I) that failure to make a premium payment within the grace period will result in termination of coverage under the State child health plan; and
      (II) of the individual’s right to challenge the proposed termination pursuant to the applicable Federal regulations.

For purposes of clause (i), the term “new coverage period” means the month immediately following the last month for which the premium has been paid.

(4) Relation to medicaid requirements
Nothing in this subsection shall be construed as affecting the rules relating to the use of enrollment fees, premiums, deductions, cost sharing, and similar charges in the case of targeted low-income children who are provided child health assistance in the form of coverage under a medicaid program under section 1397aaa(a)(2) of this title.

(f) Application of certain requirements

(1) Restriction on application of preexisting condition exclusions
   (A) In general
   Subject to subparagraph (B), the State child health plan shall not permit the imposition of any preexisting condition exclusion for covered benefits under the plan.

   (B) Group health plans and group health insurance coverage
   If the State child health plan provides for benefits through payment for, or a contract with, a group health plan or group health insurance coverage, the plan may permit the imposition of a preexisting condition exclusion but only insofar as it is permitted under the applicable provisions of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1181 et seq.] and title XXVII of the Public Health Service Act [42 U.S.C. 300gg et seq.].

(2) Compliance with other requirements
Coverage offered under this section shall comply with the requirements of subpart 2 of part A of title XXVII of the Public Health Service Act insofar as such requirements apply with respect to a health insurance issuer that offers group health insurance coverage.

(3) Compliance with managed care requirements
   The State child health plan shall provide for the application of subsections (a)(4), (a)(5), (b), (c), (d), and (e) of section 1396u-2 of this title (relating to requirements for managed care) to coverage, State agencies, enrollment brokers, managed care entities, and managed care organizations under this subchapter in the same manner as such subsections apply to coverage and such entities and organizations under subchapter XIX.

REFERENCES IN TEXT

Section 2705 of the Public Health Service Act, referred to in subsec. (c)(6)(A), is section 2705 of act July 1, 1944, which was classified to section 300gg-5 of this title, was renumbered section 2726 and amended by Pub. L. 111–148, title I, §§106(b)(1), 1563(c)(4), formerly §1562(c)(4), title X, §10197(b)(1), Mar. 23, 2010, 124 Stat. 130, 265, 911, and was transferred to section 300gg-26 of this title.

A new section 2705 of act July 1, 1944, related to prohibiting discrimination against individual participants and beneficiaries based on health status, was added, effective for plan years beginning on or after Jan. 1, 2014, and amended by Pub. L. 111–148, title I, §1203(5), (6), Mar. 23, 2010, 124 Stat. 154, 156, and is classified to section 300gg-4 of this title.


The Public Health Service Act, referred to in subsec. (f), is act July 1, 1944, ch. 373, 58 Stat. 682. Title XXVII of the Act is classified generally to subchapter XXV (§300gg et seq.) of chapter 6A of this title. Subpart A of subchapter XXVII of the Act may refer to subpart II of part A of subchapter XXV of chapter 6A of this title. Pub. L. 111–148, title I, §§1001(5), 1563(c)(2), (11), formerly §1562(c)(2), (11), title X, §10197(b)(1), Mar. 23, 2010, 124 Stat. 130, 265, 911, amended part A by inserting “SUBPART II—IMPROVING COVERAGE” (preceding section 300gg–11 of this title), by striking out “SUBPART 2—OTHER REQUIREMENTS” (preceding section 300gg–4 of this title), and by redesignating subpart 4 as subpart 2 “EXCLUSION OF PLANS; ENFORCEMENT; PREEMPTION” (preceding section 300gg–21 of this title). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

AMENDMENTS


Pub. L. 111–3, §501(a)(1)(A)(i), substituted “paragraphs (5) and (7) of subsection (c)” for “subsection (c)(5)” in introductory provisions.


Subsec. (c)(2)(B) to (D), Pub. L. 111–3, §502(b)(2), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read as follows: “Mental health services.”


Subsec. (c)(8). Pub. L. 111–3, §505(a), added par. (8).

Subsec. (c)(2). Pub. L. 111–3, §111(b)(1), inserted “or pregnancy-related assistance” after “preventive services” in heading and “or for pregnancy-related assistance” before period at end.


Subsec. (c)(3). Pub. L. 111–3, §403(a), added par. (3).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by sections 111(b)(1), 502, and 505(a) of Pub. L. 111–3 effective Apr. 1, 2009, and applicable to child health assistance and medical assistance provided on or after that date, with certain exceptions, see section 3 of Pub. L. 111–3, set out as an Effective Date note under section 1396 of this title.

Pub. L. 111–3, title IV, §403(b), Feb. 4, 2009, 123 Stat. 84, provided that: “The amendment made by subsection (a) [amending this section] shall apply to contracts years for health plans beginning on or after July 1, 2009.”

Amendment by section 501(a)(1) of Pub. L. 111–3 applicable to coverage of items and services furnished on or after Oct. 1, 2009, see section 501(a)(3) of Pub. L. 111–3, set out as a note under section 1397(b) of this title.

Pub. L. 111–3, title V, §504(b), Feb. 4, 2009, 123 Stat. 90, provided that: “The amendment made by subsection (a) [amending this section] shall apply to new coverage periods beginning on or after the date of the enactment of this Act [Feb. 4, 2009].”

§1397dd. Allotments

(a) Appropriation; total allotment

For the purpose of providing allotments to States under this section, subject to subsection (d), there is appropriated, out of any money in the Treasury not otherwise appropriated—

(1) for fiscal year 1998, $4,295,000,000;
(2) for fiscal year 1999, $4,275,000,000;
(3) for fiscal year 2000, $4,275,000,000;
(4) for fiscal year 2001, $4,275,000,000;
(5) for fiscal year 2002, $3,150,000,000;
(6) for fiscal year 2003, $3,150,000,000;
(7) for fiscal year 2004, $3,150,000,000;
(8) for fiscal year 2005, $4,050,000,000;
(9) for fiscal year 2006, $4,050,000,000;
(10) for fiscal year 2007, $5,000,000,000; 1
(11) for fiscal year 2008, $5,000,000,000; 1
(12) for fiscal year 2009, $10,562,000,000;
(13) for fiscal year 2010, $12,520,000,000;
(14) for fiscal year 2011, $13,459,000,000;
(15) for fiscal year 2012, $14,902,000,000;
(16) for fiscal year 2013, $17,406,000,000;
(17) for fiscal year 2014, $19,147,000,000; and
(18) for fiscal year 2015, for purposes of making 2 semi-annual allotments—

(A) $2,850,000,000 for the period beginning on October 1, 2014, and ending on March 31, 2015, and

(B) $2,850,000,000 for the period beginning on April 1, 2015, and ending on September 30, 2015.

(b) Allotments to 50 States and District of Columbia

(1) In general

Subject to paragraph (4) and subsections (d) and (m), of the amount available for allotment under subsection (a) of this section for a fiscal year, reduced by the amount of allotments made under subsection (c) of this section (determined without regard to paragraph (4) thereof) for the fiscal year, the Secretary shall allot to each State (other than a State described in such subsection) with a State child health plan approved under this subchapter the same proportion as the ratio of—

(A) the product of (i) the number of children described in paragraph (2) for the State for the fiscal year and (ii) the State cost factor for that State (established under paragraph (3)); to

(B) the sum of the products computed under subparagraph (A).

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§ 1397dd

The number of children described in this paragraph for a State for—
(i) each of fiscal years 1998 and 1999 is equal to the number of low-income children in the State with no health insurance coverage for the fiscal year;
(ii) fiscal year 2000 is equal to—
(I) 75 percent of the number of low-income children in the State for the fiscal year with no health insurance coverage, plus
(II) 25 percent of the number of low-income children in the State for the fiscal year;
and
(iii) each succeeding fiscal year is equal to—
(I) 50 percent of the number of low-income children in the State for the fiscal year with no health insurance coverage, plus
(II) 50 percent of the number of low-income children in the State for the fiscal year.

(B) Determination of number of children

For purposes of subparagraph (A), a determination of the number of low-income children (and of such children who have no health insurance coverage) for a State for each of the most recent 3 years before the beginning of the calendar year in which such fiscal year begins,

The number of children described in this paragraph for—
(i) each of fiscal years 1998 and 1999 is equal to the number of low-income children in the State with no health insurance coverage for the fiscal year;
(ii) each succeeding fiscal year is equal to—
(I) 50 percent of the number of low-income children in the State with no health insurance coverage for the fiscal year;
and
(ii) 0.85 multiplied by the ratio of—
(I) the annual average wages per employee for the State for such year (as determined under subparagraph (B)), to
(II) the annual average wages per employee for the 50 States and the District of Columbia.

(B) Annual average wages per employee

For purposes of subparagraph (A), the “State cost factor” for a State for a fiscal year is equal to the average of the annual wages per employee for the State or for the 50 States and the District of Columbia for employees in the health services industry (SIC code 8000).
(ii) Subsection (b) State

The term “subsection (b) State” means one of the 50 States or the District of Columbia.

(c) Allotments to territories

(1) In general

Of the amount available for allotment under subsection (a) of this section for a fiscal year, subject to subsections (d) and (m)(4), the Secretary shall allot 0.25 percent among each of the commonwealths and territories described in paragraph (3) in the same proportion as the percentage specified in paragraph (2) for such commonwealth or territory bears to the sum of such percentages for all such commonwealths or territories so described.

(2) Percentage

The percentage specified in this paragraph for—

(A) Puerto Rico is 91.6 percent,
(B) Guam is 3.5 percent,
(C) the Virgin Islands is 2.6 percent,
(D) American Samoa is 1.2 percent, and
(E) the Northern Mariana Islands is 1.1 percent.

(3) Commonwealths and territories

A commonwealth or territory described in this paragraph is any of the following if it has a State child health plan approved under this subchapter:

(A) Puerto Rico.
(B) Guam.
(C) The Virgin Islands.
(D) American Samoa.
(E) The Northern Mariana Islands.

(4) Additional allotment

(A) In general

In addition to the allotment under paragraph (1), the Secretary shall allot each commonwealth and territory described in paragraph (3) the applicable percentage specified in paragraph (2) of the amount appropriated under subparagraph (B).

(B) Appropriations

For purposes of providing allotments pursuant to subparagraph (A), there is appropriated, out of any money in the Treasury not otherwise appropriated $32,000,000 for fiscal year 1999, $34,200,000 for each of fiscal years 2000 and 2001, $36,700,000 for each of fiscal years 2002 through 2004, $32,400,000 for each of fiscal years 2005 and 2006, and $40,000,000 for each of fiscal years 2007 through 2009.

(d) Additional allotments to eliminate funding shortfalls

(1) Appropriation; allotment authority

For the purpose of providing additional allotments to shortfall States described in paragraph (2), there is appropriated, out of any money in the Treasury not otherwise appropriated, $283,000,000 for fiscal year 2006.

(2) Shortfall States described

For purposes of paragraph (1), a shortfall State described in this paragraph is a State with a State child health plan approved under this subchapter for which the Secretary determines, on the basis of the most recent data available to the Secretary as of December 16, 2005, that the projected expenditures under such plan for such State for fiscal year 2006 will exceed the sum of—

(A) the amount of the State’s allotments for each of fiscal years 2004 and 2005 that will not be expended by the end of fiscal year 2006;
(B) the amount, if any, that is to be redistributed to the State during fiscal year 2006 in accordance with subsection (f); and
(C) the amount of the State’s allotment for fiscal year 2006.

(3) Allotments

In addition to the allotments provided under subsections (b) and (c), subject to paragraph (4), of the amount available for the additional allotments under paragraph (1) for fiscal year 2006, the Secretary shall allot—

(A) to each shortfall State described in paragraph (2) such amount as the Secretary determines will eliminate the estimated shortfall described in such paragraph for the State; and
(B) to each commonwealth or territory described in subsection (c)(3), the same proportion as the proportion of the commonwealth’s or territory’s allotment under subsection (c) (determined without regard to subsection (f)) to 1.05 percent of the amount appropriated under paragraph (1).

(4) Use of additional allotment

Additional allotments provided under this subsection are only available for amounts expended under a State plan approved under this subchapter for child health assistance for targeted low-income children.

(5) 1-year availability; no redistribution of unexpended additional allotments

Notwithstanding subsections (e) and (f), amounts allotted to a State pursuant to this subsection for fiscal year 2006 shall only remain available for expenditure by the State through September 30, 2006. Any amounts of such allotments that remain unexpended as of such date shall not be subject to redistribution under subsection (f) and shall revert to the Treasury on October 1, 2006.

(e) Availability of amounts allotted

(1) In general

Except as provided in paragraph (2), amounts allotted to a State pursuant to this section—

(A) for each of fiscal years 1998 through 2006, shall remain available for expenditure by the State through the end of the second succeeding fiscal year; and
(B) for fiscal year 2009 and each fiscal year thereafter, shall remain available for expenditure by the State through the end of the succeeding fiscal year.

(2) Availability of amounts redistributed

Amounts redistributed to a State under subsection (f) shall be available for expenditure
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(1) Procedure for redistribution of unused allotments

(1) In general
The Secretary shall determine an appropriate procedure for redistribution of allotments from States that were provided allotments under this section for a fiscal year but that do not expend all of the amount of such allotments during the period in which such allotments are available for expenditure under subsection (e) of this section, to States that the Secretary determines with respect to the fiscal year for which unused allotments are available for redistribution under this subsection, are shortfall States described in paragraph (2) for such fiscal year, but not to exceed the amount of the shortfall described in paragraph (2)(C).

(2) Shortfall States described

(A) In general
For purposes of paragraph (1), with respect to a fiscal year, a shortfall State described in this subparagraph is a State with a State child health plan approved under this subchapter for which the Secretary estimates on the basis of the most recent data available to the Secretary, that the projected expenditures under such plan for the State for the fiscal year will exceed the sum of—
(i) the amount of the State’s allotments for any preceding fiscal years that remains available for expenditure and that will not be expended by the end of the immediately preceding fiscal year;
(ii) the amount (if any) of the child enrollment contingency fund payment under subsection (n); and
(iii) the amount of the State’s allotment for the fiscal year.

(B) Proration rule
If the amounts available for redistribution under paragraph (1) for a fiscal year are less than the total amounts of the estimated shortfalls determined for the year under subparagraph (A), the amount to be redistributed under such paragraph for each shortfall State shall be reduced proportionally.

(C) Retrospective adjustment
The Secretary may adjust the estimates and determinations made under paragraph (1) and this paragraph with respect to a fiscal year as necessary on the basis of the amounts reported by States not later than November 30 of the succeeding fiscal year, as approved by the Secretary.

(g) Rule for redistribution and extended availability of fiscal years 1998, 1999, 2000, and 2001 allotments

(1) Amount redistributed

(A) In general
In the case of a State that spends all of its allotment under subsection (b) or (c) of this section for fiscal year 1998 by the end of fiscal year 2000, or for fiscal year 1999 by the end of fiscal year 2001, or for fiscal year 2000 by the end of fiscal year 2002, or for fiscal year 2001 by the end of fiscal year 2003, the Secretary shall redistribute to the State under subsection (f) of this section (from the fiscal year 1998, 1999, 2000, or 2001 allotments of other States, respectively, as determined by the application of paragraphs (2) and (3) with respect to the respective fiscal year) the following amount:

(i) State
In the case of one of the 50 States or the District of Columbia, with respect to—
(I) the fiscal year 1998 allotment, the amount by which the State’s expenditures under this subchapter in fiscal years 1998, 1999, and 2000 exceed the State’s allotment for fiscal year 1998 under subsection (b) of this section;
(II) the fiscal year 1999 allotment, the amount by which the State’s expenditures under this subchapter in fiscal years 1999, 2000, and 2001 exceed the State’s allotment for fiscal year 1999 under subsection (b) of this section;
(III) the fiscal year 2000 allotment, the amount specified in subparagraph (C)(i) (less the total of the amounts under clause (ii) for such fiscal year), multiplied by the ratio of the amount specified in subparagraph (C)(ii) for the State to the amount specified in subparagraph (C)(iii); or
(IV) the fiscal year 2001 allotment, the amount specified in subparagraph (D)(i) (less the total of the amounts under clause (ii) for such fiscal year), multiplied by the ratio of the amount specified in subparagraph (D)(ii) for the State to the amount specified in subparagraph (D)(iii).

(ii) Territory
In the case of a commonwealth or territory described in subsection (c)(3) of this section, an amount that bears the same ratio to 1.05 percent of the total amount described in paragraph (2)(D)(i) as the ratio of the commonwealth’s or territory’s fiscal year 1998, 1999, 2000, or 2001 allotment under subsection (c) of this section (as the case may be) bears to the total of all such allotments for such fiscal year under such subsection.

(B) Expenditure rules
An amount redistributed to a State under this paragraph—
(i) shall not be included in the determination of the State’s allotment for any fiscal year under this section;
(ii) notwithstanding subsection (e) of this section, with respect to fiscal year 1998, 1999, or 2000, shall remain available for expenditure by the State through the end of fiscal year 2004;
(iii) notwithstanding subsection (e) of this section, with respect to fiscal year 2001, shall remain available for expendi-
ture by the State through the end of fiscal year 2005; and
(iv) shall be counted as being expended with respect to a fiscal year allotment in accordance with applicable regulations of the Secretary.

(C) Amounts used in computing redistributions for fiscal year 2000

For purposes of subparagraph (A)(i)(III)—
(i) the amount specified in this clause is the amount specified in paragraph (2)(B)(i)(I) for fiscal year 2000, less the total amount remaining available pursuant to paragraph (2)(A)(iii);
(ii) the amount specified in this clause for a State is the amount by which the State’s expenditures under this subchapter in fiscal years 2000, 2001, and 2002 exceed the State’s allotment for fiscal year 2000 under subsection (b) of this section; and
(iii) the amount specified in this clause is the sum, for all States entitled to a redistribution under subparagraph (A) from the allotments for fiscal year 2000, of the amounts specified in clause (ii).

(D) Amounts used in computing redistributions for fiscal year 2001

For purposes of subparagraph (A)(i)(IV)—
(i) the amount specified in this clause is the amount specified in paragraph (2)(B)(i)(I) for fiscal year 2001, less the total amount remaining available pursuant to paragraph (2)(A)(iv);
(ii) the amount specified in this clause for a State is the amount by which the State’s expenditures under this subchapter in fiscal years 2001, 2002, and 2003 exceed the State’s allotment for fiscal year 2001 under subsection (b) of this section; and
(iii) the amount specified in this clause is the sum, for all States entitled to a redistribution under subparagraph (A) from the allotments for fiscal year 2001, of the amounts specified in clause (ii).

(2) Extension of availability of portion of unexpended fiscal years 1998 through 2001 allotments

(A) In general

Notwithstanding subsection (e) of this section:

(i) Fiscal year 1998 allotment

Of the amounts allotted to a State pursuant to this section for fiscal year 1998 that were not expended by the State by the end of fiscal year 2000, the amount specified in subparagraph (B) for fiscal year 1998 for such State shall remain available for expenditure by the State through the end of fiscal year 2004.

(ii) Fiscal year 1999 allotment

Of the amounts allotted to a State pursuant to this subchapter for fiscal year 1999 that were not expended by the State by the end of fiscal year 2001, the amount specified in subparagraph (B) for fiscal year 1999 for such State shall remain available for expenditure by the State through the end of fiscal year 2004.

(iii) Fiscal year 2000 allotment

Of the amounts allotted to a State pursuant to this section for fiscal year 2000 that were not expended by the State by the end of fiscal year 2002, 50 percent of that amount shall remain available for expenditure by the State through the end of fiscal year 2004.

(iv) Fiscal year 2001 allotment

Of the amounts allotted to a State pursuant to this section for fiscal year 2001 that were not expended by the State by the end of fiscal year 2003, 50 percent of that amount shall remain available for expenditure by the State through the end of fiscal year 2005.

(B) Amount remaining available for expenditure

The amount specified in this subparagraph for a State for a fiscal year is equal to—
(i) the amount by which (I) the total amount available for redistribution under subsection (f) of this section from the allotments for that fiscal year, exceeds (II) the total amounts redistributed under paragraph (1) for that fiscal year, multiplied by
(ii) the ratio of the amount of such State’s unexpended allotment for that fiscal year to the total amount described in clause (i)(I) for that fiscal year.

(C) Use of up to 10 percent of retained 1998 allotments for outreach activities

Notwithstanding section 1397ee(c)(2)(A) of this title, with respect to any State described in subparagraph (A)(i), the State may use up to 10 percent of the amount specified in subparagraph (B) for fiscal year 1998 for expenditures for outreach activities approved by the Secretary.

(3) Determination of amounts

For purposes of calculating the amounts described in paragraphs (1) and (2) relating to the allotment for fiscal year 1998, fiscal year 1999, fiscal year 2000, or fiscal year 2001, the Secretary shall use the amounts reported by the States not later than December 15, 2000, November 30, 2001, November 30, 2002, or November 30, 2003, respectively, on HCFA Form 21 or CMS Form 64 or CMS Form 21, as the case may be, as approved by the Secretary.

(h) Special rules to address fiscal year 2007 shortfalls

(1) Redistribution of unused fiscal year 2004 allotments

(A) In general

Notwithstanding subsection (f) and subject to subparagraphs (C) and (D), with respect to months beginning during fiscal year 2007, the Secretary shall provide for a redistribution under such subsection from the allotments for fiscal year 2004 under subsection (b) that are not expended by the end of fiscal year 2006, to a shortfall State described in sub-

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paragraph (B), such amount as the Secretary determines will eliminate the estimated shortfall described in such subparagraph for such State for the month.

(B) Shortfall State described

For purposes of this paragraph, a shortfall State described in this subparagraph is a State with a State child health plan approved under this subchapter for which the Secretary estimates, on a monthly basis using the most recent data available to the Secretary as of such month, that the projected expenditures under such plan for such State for fiscal year 2007 will exceed the sum of—

(i) the amount of the State’s allotments for each of fiscal years 2005 and 2006 that was not expended by the end of fiscal year 2006; and

(ii) the amount of the State’s allotment for fiscal year 2007.

(C) Funds redistributed in the order in which States realize funding shortfalls

The Secretary shall redistribute the amounts available for redistribution under subparagraph (A) to shortfall States described in subparagraph (B) in the order in which such States realize monthly funding shortfalls under this subchapter for fiscal year 2007. The Secretary shall only make redistributions under this paragraph to the extent that such amounts are available for such redistributions.

(D) Proration rule

If the amounts available for redistribution under subparagraph (A) for a month are less than the total amounts of the estimated shortfalls determined for the month under that subparagraph, the amount computed under such subparagraph for each shortfall State shall be reduced proportionally.

(2) Funding part of shortfall for fiscal year 2007 through redistribution of certain unused fiscal year 2005 allotments

(A) In general

Subject to subparagraphs (C) and (D) and paragraph (3)(B), with respect to months beginning during fiscal year 2007 after March 31, 2007, the Secretary shall provide for a redistribution under subsection (f) from amounts made available for redistribution under paragraph (3) to each shortfall State described in subparagraph (B), such amount as the Secretary determines will eliminate the estimated shortfall described in such subparagraph for such State for the month.

(B) Shortfall State described

For purposes of this paragraph, a shortfall State described in this subparagraph is a State with a State child health plan approved under this subchapter for which the Secretary estimates, on a monthly basis using the most recent data available to the Secretary as of March 31, 2007, that the projected expenditures under such plan for such State for fiscal year 2007 will exceed the sum of—

(i) the amount of the State’s allotments for each of fiscal years 2005 and 2006 that was not expended by the end of fiscal year 2006; and

(ii) the amount, if any, that is to be redistributed to the State in accordance with paragraph (1); and

(iii) the amount of the State’s allotment for fiscal year 2007.

(C) Funds redistributed in the order in which States realize funding shortfalls

The Secretary shall redistribute the amounts available for redistribution under subparagraph (A) to shortfall States described in subparagraph (B) in the order in which such States realize monthly funding shortfalls under this subchapter for fiscal year 2007. The Secretary shall only make redistributions under this paragraph to the extent that such amounts are available for such redistributions.

(D) Proration rule

If the amounts available for redistribution under paragraph (3) for a month are less than the total amounts of the estimated shortfalls determined for the month under subparagraph (A), the amount computed under such subparagraph for each shortfall State shall be reduced proportionally.

(3) Treatment of certain States with fiscal year 2005 allotments unexpended at the end of the first half of fiscal year 2007

(A) Identification of States

The Secretary, on the basis of the most recent data available to the Secretary as of March 31, 2007—

(i) shall identify those States that received an allotment for fiscal year 2005 under subsection (b) which have not expended all of such allotment by March 31, 2007; and

(ii) for each such State shall estimate—

(I) the portion of such allotment that was not so expended by such date; and

(II) whether the State is described in subparagraph (B).

(B) States with funds in excess of 200 percent of need

A State described in this subparagraph is a State for which the Secretary determines, on the basis of the most recent data available to the Secretary as of March 31, 2007, that the total of all available allotments under this subchapter to the State as of such date, is at least equal to 200 percent of the total projected expenditures under this subchapter for the State for fiscal year 2007.

(C) Redistribution and limitation on availability of portion of unused allotments for certain States

(i) In general

In the case of a State identified under subparagraph (A)(i) that is also described in subparagraph (B), notwithstanding subsection (e), the applicable amount de-
scribed in clause (ii) shall not be available for expenditure by the State on or after April 1, 2007, and shall be redistributed in accordance with paragraph (2).

(ii) Applicable amount
For purposes of clause (i), the applicable amount described in this clause is the lesser of—
(I) 50 percent of the amount described in subparagraph (A)(i)(I); or
(II) $20,000,000.

(4) Additional amounts to eliminate remainder of fiscal year 2007 funding shortfalls

(A) In general
From the amounts provided in advance in appropriations Acts, the Secretary shall allot to each remaining shortfall State described in subparagraph (B) such amount as the Secretary determines will eliminate the estimated shortfall described in such subparagraph for the State for fiscal year 2007.

(B) Remaining shortfall State described
For purposes of subparagraph (A), a remaining shortfall State is a State with a State child health plan approved under this subchapter for which the Secretary estimates, on a monthly basis using the most recent data available to the Secretary as of May 25, 2007, that the projected Federal expenditures for fiscal year 2007 will exceed the sum of—
(i) the amount of the State’s allotments for each of fiscal years 2005 and 2006 that will not be expended by the end of fiscal year 2006;
(ii) the amount of the State’s allotment for fiscal year 2007; and
(iii) the amounts, if any, that are to be redistributed to the State during fiscal year 2007 in accordance with paragraphs (1) and (2).

(5) Retrospective adjustment

(A) In general
The Secretary may adjust the estimates and determinations made under paragraphs (1), (2), (3), and (4) as necessary on the basis of the most recent data available to the Secretary as of March 31, 2007.

(B) Funding of any retrospective adjustments only from unexpended 2005 allotments
Notwithstanding subsections (e) and (f), to the extent the Secretary determines it necessary to adjust the estimates and determinations made for purposes of paragraphs (1), (2), and (3), the Secretary may use only the allotments for fiscal year 2005 under subsection (b) that remain unexpended through the end of fiscal year 2007 for providing any additional amounts to States described in paragraph (2)(B) (without regard to whether such unexpended allotments are from States described in paragraph (3)(B)).

(C) Rules of construction
Nothing in this subsection shall be construed as—
(i) authorizing the Secretary to use the allotments for fiscal year 2006 or 2007 under subsection (b) of States described in paragraph (3)(B) to provide additional amounts to States described in paragraph (2)(B) for purposes of eliminating the funding shortfall for such States for fiscal year 2007; or
(ii) limiting the authority of the Secretary to redistribute the allotments for fiscal year 2005 under subsection (b) that remain unexpended through the end of fiscal year 2007 and are available for redistribution under subsection (f) after the application of subparagraph (B).

(6) 1-year availability; no further redistribution

Notwithstanding subsections (e) and (f), amounts redistributed or allotted to a State pursuant to this subsection for fiscal year 2007 shall only remain available for expenditure by the State through September 30, 2007, and any amounts of such redistributions or allotments that remain unexpended as of such date, shall not be subject to redistribution under subsection (f). Nothing in the preceding sentence shall be construed as limiting the authority of the Secretary to adjust the determinations made under paragraphs (1), (2), (3), and (4) in accordance with paragraph (5).

(7) Definition of State
For purposes of this subsection, the term “State” means a State that receives an allotment for fiscal year 2007 under subsection (b).

(i) Redistribution of unused fiscal year 2005 allotments to States with estimated funding shortfalls for fiscal year 2008

(1) In general
Notwithstanding subsection (f) and subject to paragraphs (3) and (4), with respect to months beginning during fiscal year 2008, the Secretary shall provide for a redistribution under such subsection from the allotments for fiscal year 2005 under subsection (b) that are not expended by the end of fiscal year 2007, to a fiscal year 2008 shortfall State described in paragraph (2), such amount as the Secretary determines will eliminate the estimated shortfall described in such paragraph for such State for the month.

(2) Fiscal year 2008 shortfall State described
A fiscal year 2008 shortfall State described in this paragraph is a State with a State child health plan approved under this subchapter for which the Secretary estimates, on a monthly basis using the most recent data available to the Secretary as of such month, that the projected expenditures under such plan for such State for fiscal year 2008 will exceed the sum of—
(A) the amount of the State’s allotments for each of fiscal years 2006 and 2007 that was
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not expended by the end of fiscal year 2007; and
(B) the amount of the State’s allotment for fiscal year 2008.

(3) Funds redistributed in the order in which States realize funding shortfalls

The Secretary shall redistribute the amounts available for redistribution under paragraph (1) to fiscal year 2008 shortfall States described in paragraph (2) in the order in which such States realize monthly funding shortfalls under this subchapter for fiscal year 2008. The Secretary shall only make redistributions under this subsection to the extent that there are unexpended fiscal year 2005 allotments under subsection (b) available for such redistributions.

(4) Proration rule

If the amounts available for redistribution under paragraph (1) are less than the total amounts of the estimated shortfalls determined for the month under that paragraph, the amount computed under such paragraph for each fiscal year 2008 shortfall State for the month shall be reduced proportionally.

(5) Retrospective adjustment

The Secretary may adjust the estimates and determinations made to carry out this subsection as necessary on the basis of the amounts reported by States not later than November 30, 2007, on CMS Form 64 or CMS Form 21, as the case may be, and as approved by the Secretary.

(6) 1-year availability; no further redistribution

Notwithstanding subsections (e) and (f), amounts redistributed to a State pursuant to this subsection for fiscal year 2008 shall only remain available for expenditure by the State through September 30, 2008, and any amounts of such redistributions that remain unexpended as of such date, shall not be subject to redistribution under subsection (f).

(j) Additional allotments to eliminate funding shortfalls for fiscal year 2008

(1) Appropriation; allotment authority

For the purpose of providing additional allotments described in subparagraphs (A) and (B) of paragraph (3), there is appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary, not to exceed $1,600,000,000 for fiscal year 2008.

(2) Shortfall States described

For purposes of paragraph (3), a shortfall State described in this paragraph is a State with a State child health plan approved under this subchapter for which the Secretary estimates, on the basis of the most recent data available to the Secretary as of November 30, 2007, that the Federal share amount of the projected expenditures under such plan for such State for fiscal year 2008 will exceed the sum of—

(A) the amount of the State’s allotments for each of fiscal years 2006 and 2007 that will not be expended by the end of fiscal year 2007;
(B) the amount, if any, that is to be redistributed to the State during fiscal year 2008 in accordance with subsection (i); and
(C) the amount of the State’s allotment for fiscal year 2008.

(3) Allotments

In addition to the allotments provided under subsections (b) and (c), subject to paragraph (4), of the amount available for the additional allotments under paragraph (1) for fiscal year 2008, the Secretary shall allot—

(A) to each shortfall State described in paragraph (2) not described in subparagraph (B), such amount as the Secretary determines will eliminate the estimated shortfall described in such paragraph for the State; and
(B) to each commonwealth or territory described in subsection (c)(3), an amount equal to the percentage specified in subsection (c)(2) for the commonwealth or territory multiplied by 1.05 percent of the sum of the amounts determined for each shortfall State under subparagraph (A).

(4) Proration rule

If the amounts available for additional allotments under paragraph (1) are less than the total of the amounts determined under subparagraphs (A) and (B) of paragraph (3), the amounts computed under such subparagraphs shall be reduced proportionally.

(5) Retrospective adjustment

The Secretary may adjust the estimates and determinations made to carry out this subsection as necessary on the basis of the amounts reported by States not later than November 30, 2008, on CMS Form 64 or CMS Form 21, as the case may be, and as approved by the Secretary.

(6) One-year availability; no redistribution of unexpended additional allotments

Notwithstanding subsections (e) and (f), amounts allotted to a State pursuant to this subsection for fiscal year 2008, subject to paragraph (5), shall only remain available for expenditure by the State through September 30, 2008. Any amounts of such allotments that remain unexpended as of such date shall not be subject to redistribution under subsection (f).

(k) Redistribution of unused fiscal year 2006 allotments to States with estimated funding shortfalls during fiscal year 2009

(1) In general

Notwithstanding subsection (f) and subject to paragraphs (3) and (4), with respect to months beginning during fiscal year 2009, the Secretary shall provide for a redistribution under such subsection from the allotments for fiscal year 2006 under subsection (b) that are not expended by the end of fiscal year 2008, to a fiscal year 2009 shortfall State described in paragraph (2), such amount as the Secretary determines will eliminate the estimated shortfall described in such paragraph for such State for the month.

(2) Fiscal year 2009 shortfall State described

A fiscal year 2009 shortfall State described in this paragraph is a State with a State child
health plan approved under this subchapter for which the Secretary estimates, on a monthly basis using the most recent data available to the Secretary as of such month, that the Federal share amount of the projected expenditures under such plan for such State for the first 2 quarters of fiscal year 2009 will exceed the sum of—

(A) the amount of the State’s allotments for each of fiscal years 2007 and 2008 that was not expended by the end of fiscal year 2008; and

(B) the amount of the State’s allotment for fiscal year 2009.

(3) Funds redistributed in the order in which States realize funding shortfalls

The Secretary shall redistribute the amounts available for redistribution under paragraph (1) to fiscal year 2009 shortfall States described in paragraph (2) in the order in which such States realize monthly funding shortfalls under this subchapter for fiscal year 2009. The Secretary shall only make redistributions under this subsection to the extent that there are unexpended fiscal year 2006 allotments under subsection (b) available for such redistributions.

(4) Proration rule

If the amounts available for redistribution under paragraph (1) are less than the total amount of the estimated shortfalls determined for the month under that paragraph, the amount computed under such paragraph for each fiscal year 2009 shortfall State for the month shall be reduced proportionally.

(5) Retrospective adjustment

The Secretary may adjust the estimates and determinations made to carry out this subsection as necessary on the basis of the amounts reported by States not later than May 31, 2009, on CMS Form 64 or CMS Form 21, as the case may be, and as approved by the Secretary.

(6) Availability; no further redistribution

Notwithstanding subsections (e) and (f), amounts redistributed to a State pursuant to this subsection for fiscal year 2009 shall only remain available for expenditure by the State through September 30, 2009, and any amounts of such redistributions that remain unexpended as of such date, shall not be subject to redistribution under subsection (f).

(l) Additional allotments to eliminate funding shortfalls for the first 2 quarters of fiscal year 2009

(1) Appropriation; allotment authority

For the purpose of providing additional allotments described in subparagraphs (A) and (B) of paragraph (3), there is appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary, not to exceed $275,000,000 for the first 2 quarters of fiscal year 2009.

(2) Shortfall States described

For purposes of paragraph (3), a shortfall State described in this paragraph is a State with a State child health plan approved under this subchapter for which the Secretary estimates, on the basis of the most recent data available to the Secretary, that the Federal share amount of the projected expenditures under such plan for such State for the first 2 quarters of fiscal year 2009 will exceed the sum of—

(A) the amount of the State’s allotments for each of fiscal years 2007 and 2008 that will not be expended by the end of fiscal year 2008;

(B) the amount, if any, that is to be redistributed to the State during fiscal year 2009 in accordance with subsection (k); and

(C) the amount of the State’s allotment for fiscal year 2009.

(3) Allotments

In addition to the allotments provided under subsections (b) and (c), subject to paragraph (4), of the amount available for the additional allotments under paragraph (1) for the first 2 quarters of fiscal year 2009, the Secretary shall allot—

(A) to each shortfall State described in paragraph (2) not described in subparagraph (B) such amount as the Secretary determines will eliminate the estimated shortfall described in such paragraph for the State; and

(B) to each commonwealth or territory described in subsection (c)(3), an amount equal to the percentage specified in subsection (c)(2) for the commonwealth or territory multiplied by 1.05 percent of the sum of the amounts determined for each shortfall State under subparagraph (A).

(4) Proration rule

If the amounts available for additional allotments under paragraph (1) are less than the total of the amounts determined under subparagraphs (A) and (B) of paragraph (3), the amounts computed under such subparagraphs shall be reduced proportionally.

(5) Retrospective adjustment

The Secretary may adjust the estimates and determinations made to carry out this subsection as necessary on the basis of the amounts reported by States not later than May 31, 2009, on CMS Form 64 or CMS Form 21, as the case may be, and as approved by the Secretary.

(6) Availability; no redistribution of unexpended additional allotments

Notwithstanding subsections (e) and (f), amounts allotted to a State pursuant to this subsection for fiscal year 2009, subject to paragraph (5), shall only remain available for expenditure by the State through March 31, 2009. Any amounts of such allotments that remain unexpended as of such date shall not be subject to redistribution under subsection (f).

(m) Allotments for fiscal years 2009 through 2015

(1) For fiscal year 2009

(A) For the 50 States and the District of Columbia

Subject to the succeeding provisions of this paragraph and paragraph (4), the Sec-
For fiscal years 2010 through 2014

(a)(12) to each of the commonwealths and the amount made available under subsection (b), multiplied by the allotment increase factor determined under paragraph (5) for fiscal year 2009.

(ii) The amount allotted to the State for fiscal year 2008 under subsection (b), multiplied by the allotment increase factor determined under paragraph (5) for fiscal year 2009.

(iii) The projected total Federal payments to the State under this subchapter for fiscal year 2009, as determined on the basis of the February 2009 projections certified by the State to the Secretary by not later than March 31, 2009.

(B) For the commonwealths and territories

Subject to the succeeding provisions of this paragraph and paragraph (4), the Secretary shall allot for fiscal year 2009 from the amount made available under subsection (a)(12) to each of the commonwealths and territories described in subsection (c)(3) an amount equal to the highest amount of Federal payments to the commonwealth or territory under this subchapter for any fiscal year occurring during the period of fiscal years 1999 through 2008, multiplied by the allotment increase factor determined under paragraph (5) for fiscal year 2009, except that subparagraph (B) thereof shall be applied by substituting “the United States” for “the State”.

(C) Adjustment for qualifying States

In the case of a qualifying State described in paragraph (2) of section 1397ee(g) of this title, the Secretary shall permit the State to submit a revised projection described in subparagraph (A)(iii) in order to take into account changes in such projections attributable to the application of paragraph (4) of such section.

(2) For fiscal years 2010 through 2014

(A) In general

Subject to paragraphs (4) and (6), from the amount made available under paragraphs (13) through (15) of subsection (a) for each of fiscal years 2010 through 2012, respectively, the Secretary shall compute a State allotment for each State (including the District of Columbia and each commonwealth and territory) for each such fiscal year as follows:

(i) Growth factor update for fiscal year 2010

For fiscal year 2010, the allotment of the State is equal to the sum of—

(I) the amount of the State allotment under paragraph (1) for fiscal year 2009; and

(II) the amount of any payments made to the State under section (n) for fiscal year 2009, multiplied by the allotment increase factor under paragraph (5) for fiscal year 2010.

(ii) Rebasining in fiscal year 2011

For fiscal year 2011, the allotment of the State is equal to the Federal payments to the State that are attributable to (and countable towards) the total amount of allotments available under this section to the State in fiscal year 2010 (including payments made to the State under subsection (n) for fiscal year 2010 as well as amounts redistributed to the State in fiscal year 2010), multiplied by the allotment increase factor under paragraph (5) for fiscal year 2011.

(iii) Growth factor update for fiscal year 2012

For fiscal year 2012, the allotment of the State is equal to the sum of—

(I) the amount of the State allotment under clause (ii) for fiscal year 2011; and

(II) the amount of any payments made to the State under subsection (n) for fiscal year 2011, multiplied by the allotment increase factor under paragraph (5) for fiscal year 2012.

(B) Fiscal years 2013 and 2014

Subject to paragraphs (4) and (6), from the amount made available under paragraphs (16) and (17) of subsection (a) for fiscal years 2013 and 2014, respectively, the Secretary shall compute a State allotment for each State (including the District of Columbia and each commonwealth and territory) for each such fiscal year as follows:

(i) Rebasining in fiscal year 2013

For fiscal year 2013, the allotment of the State is equal to the Federal payments to the State that are attributable to (and countable towards) the total amount of allotments available under this section to the State in fiscal year 2012 (including payments made to the State under subsection (n) for fiscal year 2012 as well as amounts redistributed to the State in fiscal year 2012), multiplied by the allotment increase factor under paragraph (5) for fiscal year 2013.

(ii) Growth factor update for fiscal year 2014

For fiscal year 2014, the allotment of the State is equal to the sum of—

(I) the amount of the State allotment under clause (i) for fiscal year 2013; and

(II) the amount of any payments made to the State under subsection (n) for fiscal year 2013, multiplied by the allotment increase factor under paragraph (5) for fiscal year 2014.

(3) For fiscal year 2015

(A) First half

Subject to paragraphs (4) and (6), from the amount made available under subparagraph (A) of paragraph (18) of subsection (a) for the semi-annual period described in such paragraph, increased by the amount of the appro-
provision for such period under section 108 of the Children’s Health Insurance Program Reauthorization Act of 2009, the Secretary shall compute a State allotment for each State (including the District of Columbia and each commonwealth and territory) for such semi-annual period in an amount equal to the first half ratio (described in subparagraph (D)) of the amount described in subparagraph (C).

(B) Second half

Subject to paragraphs (4) and (6), from the amount made available under subparagraph (B) of paragraph (18) of subsection (a) for the semi-annual period described in such paragraph, the Secretary shall compute a State allotment for each State (including the District of Columbia and each commonwealth and territory) for such semi-annual period in an amount equal to the amount made available under such subparagraph, multiplied by the ratio of—

(i) the amount of the allotment to such State under subparagraph (A); to

(ii) the total of the amount of all of the allotments made available under such subparagraph.

(C) Full year amount based on rebased amount

The amount described in this subparagraph for a State is equal to the Federal payments to the State that are attributable to (and countable towards) the total amount of allotments available under this section to the State in fiscal year 2014 (including payments made to the State under subsection (n) for fiscal year 2014 as well as amounts redistributed to the State in fiscal year 2014), multiplied by the allotment increase factor under paragraph (5) for fiscal year 2015.

(D) First half ratio

The first half ratio described in this subparagraph is the ratio of—

(i) the sum of—

(I) the amount made available under subsection (a)(18)(A); and

(II) the amount of the appropriation for such period under section 108 of the Children’s Health Insurance Program Reauthorization Act of 2009; to

(ii) the sum of the—

(I) amount described in clause (i); and

(II) the amount made available under subsection (a)(18)(B).

(4) Proration rule

If, after the application of this subsection without regard to this paragraph, the sum of the allotments determined under paragraph (1), (2), or (3) for a fiscal year (or, in the case of fiscal year le of the allotment for any State under such paragraph for such fiscal year or period on a proportional basis.

(5) Allotment increase factor

The allotment increase factor under this paragraph for a fiscal year is equal to the product of the following:

(A) Per capita health care growth factor

1 plus the percentage increase in the projected per capita amount of National Health Expenditures from the calendar year in which the previous fiscal year ends to the calendar year in which the fiscal year involved ends, as most recently published by the Secretary before the beginning of the fiscal year.

(B) Child population growth factor

1 plus the percentage increase (if any) in the population of children in the State from July 1 in the previous fiscal year to July 1 in the fiscal year involved, as determined by the Secretary based on the most recent published estimates of the Bureau of the Census before the beginning of the fiscal year involved, plus 1 percentage point.

(6) Increase in allotment to account for approved program expansions

In the case of one of the 50 States or the District of Columbia that—

(A) has submitted to the Secretary, and has approved by the Secretary, a State plan amendment or waiver request relating to an expansion of eligibility for children or benefits under this subchapter that becomes effective for a fiscal year (beginning with fiscal year 2010 and ending with fiscal year 2015); and

(B) has submitted to the Secretary, before the August 31 preceding the beginning of the fiscal year, a request for an expansion allotment adjustment under this paragraph for such fiscal year that specifies—

(i) the additional expenditures that are attributable to the eligibility or benefit expansion provided under the amendment or waiver described in subparagraph (A), which is certified by the State and submitted to the Secretary before not later than August 31 preceding the beginning of the fiscal year; and

(ii) the extent to which such additional expenditures are projected to exceed the allotment of the State or District for the fiscal year, subject to paragraph (4), the amount of the allotment of the State or District under this subsection for such fiscal year shall be increased by the excess amount described in subparagraph (B)(i). A State or District may only obtain an increase under this paragraph for an allotment for fiscal year 2010, fiscal year 2012, or fiscal year 2014.

(7) Adjustment of fiscal year 2010 allotments to account for changes in projected spending for certain previously approved expansion programs

For purposes of recalculating the fiscal year 2010 allotment, in the case of one of the 50 States or the District of Columbia that has an approved State plan amendment effective January 1, 2006, to provide child health assistance through the provision of benefits under the
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State plan under subchapter XIX for children from birth through age 5 whose family income does not exceed 200 percent of the poverty line, the Secretary shall increase the allotment by an amount that would be equal to the Federal share of expenditures that would have been claimed at the enhanced FMAP rate rather than the Federal medical assistance percentage matching rate for such population.

(8) Availability of amounts for semi-annual periods in fiscal year 2015

Each semi-annual allotment made under paragraph (3) for a period in fiscal year 2015 shall remain available for expenditure under this subchapter for periods after the end of such fiscal year in the same manner as if the allotment had been made available for the entire fiscal year.

(n) Child Enrollment Contingency Fund

(1) Establishment

There is hereby established in the Treasury of the United States a fund which shall be known as the “Child Enrollment Contingency Fund” (in this subsection referred to as the “Fund”). Amounts in the Fund shall be available without further appropriations for payments under this subsection.

(2) Deposits into Fund

(A) Initial and subsequent appropriations

Subject to subparagraphs (B) and (D), out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Fund—

(i) for fiscal year 2009, an amount equal to 20 percent of the amount made available under paragraph (12) of subsection (a) for the fiscal year; and

(ii) for each of fiscal years 2010 through 2014 (and for each of the semi-annual allotment periods for fiscal year 2015), such sums as are necessary for making payments to eligible States for such fiscal year or period, but not in excess of the aggregate cap described in subparagraph (B).

(B) Aggregate cap

The total amount available for payment from the Fund for each of fiscal years 2010 through 2014 (and for each of the semi-annual allotment periods for fiscal year 2015), taking into account deposits made under subparagraph (C), shall not exceed 20 percent of the amount made available under subsection (a) for the fiscal year or period.

(C) Investment of Fund

The Secretary of the Treasury shall invest, in interest bearing securities of the United States, such currently available portions of the Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

(D) Availability of excess funds for performance bonuses

Any amounts in excess of the aggregate cap described in subparagraph (B) for a fiscal year or period shall be made available for purposes of carrying out section 1397ee(a)(3) of this title for any succeeding fiscal year and the Secretary of the Treasury shall reduce the amount in the Fund by the amount so made available.

(3) Child Enrollment Contingency Fund payments

(A) In general

If a State’s expenditures under this subchapter in fiscal year 2009, fiscal year 2010, fiscal year 2011, fiscal year 2012, fiscal year 2013, fiscal year 2014, or a semi-annual allotment period for fiscal year 2015, exceed the total amount of allotments available under this section to the State in the fiscal year or period (determined without regard to any redistribution it receives under subsection (f) that is available for expenditure during such fiscal year or period, but including any carryover from a previous fiscal year) and if the average monthly unduplicated number of children enrolled under the State plan under this subchapter (including children receiving health care coverage through funds under this subchapter pursuant to a waiver under section 1315 of this title) during such fiscal year or period exceeds its target average number of such enrollees (as determined under subparagraph (B)(i)) for that fiscal year or period, subject to subparagraph (D), the Secretary shall pay to the State from the Fund an amount equal to the product of—

(i) the amount by which such average monthly caseload exceeds such target number of enrollees; and

(ii) the projected per capita expenditures under the State child health plan (as determined under subparagraph (C) for the fiscal year), multiplied by the enhanced FMAP (as defined in section 1397ee(b) of this title) for the State and fiscal year involved (or in which the period occurs).

(B) Target average number of child enrollees

In this paragraph, the target average number of child enrollees for a State—

(i) for fiscal year 2009 is equal to the monthly average unduplicated number of children enrolled in the State child health plan under this subchapter (including such children receiving health care coverage through funds under this subchapter pursuant to a waiver under section 1315 of this title) during fiscal year 2008 increased by the population growth for children in that State for the year ending on June 30, 2007 (as estimated by the Bureau of the Census) plus 1 percentage point; or

(ii) for a subsequent fiscal year or semi-annual period occurring in a fiscal year is equal to the target average number of child enrollees for the State for the previous fiscal year increased by the child population growth factor described in subsection (m)(5)(B) for the State for the prior fiscal year.

(C) Projected per capita expenditures

For purposes of subparagraph (A)(ii), the projected per capita expenditures under a State child health plan—
(i) for fiscal year 2009 is equal to the average per capita expenditures (including both State and Federal financial participation) under such plan for the targeted low-income children counted in the average monthly caseload. For purposes of this paragraph during fiscal year 2008, increased by the annual percentage increase in the projected per capita amount of National Health Expenditures (as estimated by the Secretary) for 2009; or
(ii) for a subsequent fiscal year (or semi-annual period occurring in a fiscal year) is equal to the projected per capita expenditures under such plan for the previous fiscal year (as determined under clause (i) or this clause) increased by the annual percentage increase in the projected per capita amount of National Health Expenditures (as estimated by the Secretary) for the year in which such subsequent fiscal year ends.

(D) Proration rule

If the amounts available for payment from the Fund for a fiscal year or period are less than the total amount of payments determined under subparagraph (A) for the fiscal year or period, the amount to be paid under such subparagraph to each eligible State shall be reduced proportionally.

(E) Timely payment; reconciliation

Payment under this paragraph for a fiscal year or period shall be made before the end of the fiscal year or period based upon the most recent data for expenditures and enrollment and the provisions of subsection (e) of section 1397ee of this title shall apply to enrollment and the provisions of subsection (e) of the fiscal year or period based upon the year or period shall be made before the end of the fiscal year or period.

(F) Continued reporting

For purposes of this paragraph and subsection (f), the State shall submit to the Secretary the State’s projected Federal expenditures, even if the amount of such expenditures exceeds the total amount of allotments available to the State in such fiscal year or period.

(G) Application to commonwealths and territories

No payment shall be made under this paragraph to a commonwealth or territory described in subsection (c)(3) until such time as the Secretary, for the collection and reporting of reliable data regarding the enrollment of children described in subparagraphs (A) and (B) in order to accurately determine the commonwealth’s or territory’s eligibility for, and amount of payment, under this paragraph.


AMENDMENTS

2010—Subsec. (a)(16) to (18). Pub. L. 111–148, § 10203(d)(1), added pars. (16) to (18) and struck out former par. (16) which read as follows: “for fiscal year 2013, for purposes of making 2 semi-annual allotments—(A) $2,850,000,000 for the period beginning on October 1, 2012, and ending on March 31, 2013, and (B) $2,850,000,000 for the period beginning on April 1, 2013, and ending on September 30, 2013.’’


Subsec. (b)(1). Pub. L. 111–3, § 101(1), substituted “subsections (d) and (m)” for “subject to subsection (d)” in introductory provisions.

Subsec. (c)(1). Pub. L. 111–3, § 102(2), substituted “subsections (d) and (m)” for “subsection (d)”.

Subsec. (e). Pub. L. 111–3, § 105, amended subsec. (e) generally. Prior to amendment, text read as follows: “Amounts allotted to a State pursuant to this section for a fiscal year shall remain available for expenditure by the State through the end of the second succeeding fiscal year; except that amounts reallocated to a State under subsection (f) of this section shall be available for expenditure by the State through the end of the fiscal year in which they are reallocated.”

Subsec. (f). Pub. L. 111–3, § 106(a)(1), designated existing provisions as pars. (1), inserted heading, substituted “States that the Secretary determines with respect to the fiscal year for which unused allotments are available for redistribution under this subsection, are short­fall States described in paragraph (2) for such fiscal year, but not to exceed the amount of the shortfall described in paragraph (2)(A) for each such State (as may be adjusted under paragraph (2)(C))” for “States that have fully expended the amount of their allotments under this section,” and added par. (2).


Pub. L. 111–3, § 1092(3), added subsec. (m) and (n). Pub. L. 111–3, § 1092(3), added subsec. (m) and (n).


Subsec. (d)(3). Added cl. (i).

Subsec. (d)(4). Pub. L. 110–28, § 7001(a)(2), struck out former par. (4). Former text read as follows: “(A) EXPENDITURES LIMITED TO COVERAGE FOR POPULATIONS ELIGIBLE ON OCTOBER 1, 2006.—A State shall use amounts redistributed under this subsection for expenditures for providing child health assistance or other health benefits coverage to an individual who is not a child or a pregnant woman, the Federal medical assistance percentage (as defined in the first sentence of section 1396d(b) of this title) applicable to the State for the fiscal year shall apply to such expenditures for purposes of making payments to the State under section (a) of section 1397f of this title from such amounts.”

Subsec. (d)(5). Pub. L. 110–28, § 7001(b)(3), substituted “(3), and (4)” for “and (3)”.

Subsec. (d)(6). Pub. L. 110–28, § 7001(b)(4), inserted “or allotted” after “redistributed” and “or allotments” after “redistributed” in first sentence and substituted “(3), and (4)” for “and (3)” in second sentence.


Subsec. (c)(1). Pub. L. 109–171, § 6101(b)(3), inserted “subject to subsection (d),” after “for a fiscal year,”.


Subsec. (g)(3). Pub. L. 108–173 inserted “or CMS Form 64 or CMS Form 21, as the case may be,” after “HCFA Form 64 or HCFA Form 21.”


2005—Subsec. (b)(1). Pub. L. 106–554, § 1(a)(6) [title VII, § 802(d)(3)(A)], in introductory provisions, struck out “and subsection (d) of this section” after “Subject to paragraph (4)”.

Subsec. (c)(1). Pub. L. 106–554, § 1(a)(6) [title VIII, § 802(d)(3)(B)], struck out “subject to subsection (d) of this section,” after “for a fiscal year,”.

Subsec. (d). Pub. L. 106–554, § 1(a)(6) [title VIII, § 802(b)], struck out heading and text of subsec. (d). Text read as follows: “The amount of the allotment otherwise provided to a State under subsection (b) or (c) of this section for a fiscal year shall be reduced by the sum of—

"(1) the amount (if any) of the payments made to the State under section 1396a(a) of this title for expenditures claimed by the State during such fiscal year that is attributable to the provision of medical care;"
assistance to a child during a presumptive eligibility period under section 1396d–1a of this title, and
(2) the amount (if any) of the payments made to that State under section 1396d–1a of this title for expenditures claimed by the State during such fiscal year that is attributable to the provision of medical assistance to a child for which payment is made under section 1396d–1a(1) of this title on the basis of an enhanced FMAP under the fourth sentence of section 1396d(b) of this title.

Subsec. (g). Pub. L. 106–554, §1(a)(6) [title VIII, §701(a)] added subsec. (g).


Subsec. (b)(2)(A)(ii). Pub. L. 106–113, §1000(a)(6) [title VII, §701(a)(1)(B)], substituted “the calendar year in which such fiscal year begins” for “the fiscal year”.

Subsec. (b)(3)(B). Pub. L. 106–113, §1000(a)(6) [title VII, §705(a)], substituted “all the States,” for “all the States.”

Pub. L. 106–113, §1000(a)(6) [title VII, §701(a)(4)], substituted “the calendar year in which such fiscal year begins” for “the fiscal year involved”.

Subsec. (b)(4). Pub. L. 106–113, §1000(a)(6) [title VII, §702(a)(2)] amended heading and text of par. (4) generally. Prior to amendment, text read as follows: “In no case shall the amount of the allotment under this subsection for one of the 50 States or the District of Columbia for a year be less than $2,000,000. To the extent that the application of the previous sentence results in an increase in the allotment to a State above the amount otherwise provided, the allotments for the other States and the District of Columbia under this subsection shall be reduced in a pro rata manner (but not below $2,000,000) so that the total of such allotments in a fiscal year does not exceed the amount otherwise provided for allotment under paragraph (1) for that fiscal year.”

Subsec. (c)(4)(B). Pub. L. 106–113, §1000(a)(6) [title VII, §702], inserted before period at end “$34,200,000 for each of fiscal years 2002 through 2004, $32,400,000 for each of fiscal years 2000 and 2001, $25,200,000 for each of fiscal years 1999 through 2000, and $24,000,000 for each of fiscal years 2005 and 2006, and $40,000,000 for fiscal year 2007.”

1998—Subsec. (b)(1). Pub. L. 105–277, §101(f) [title VII, §706(b)], inserted “(determined without regard to paragraph (4) thereof)” after “subsection (c) of this section.”


1997—Subsec. (a)(1). Pub. L. 105–100, §162(b)(A), substituted “$4,275,000,000” for “$4,255,000,000.”

Subsec. (b)(4). Pub. L. 105–100, §162(b), substituted “in” for “subject to paragraph (5), in.”

Subsec. (c)(2)(C). Pub. L. 105–100, §162(b)(C), inserted “the” before “Virgin Islands.”

Subsec. (c)(3)(C), (E). Pub. L. 105–100, §162(b)(C), substituted “The” for “the”.

Subsec. (d)(1). Pub. L. 105–100, §162(b)(A), substituted “for expenditures claimed by the State” for “for calendar quarters.”

Subsec. (d)(2). Pub. L. 105–100, §162(b)(B), added par. (2) and struck out former par. (2) which read as follows: “the amount of payments under such section during such period that is attributable to the provision of medical assistance to a child for which payment is made under section 1396d–1 of this title on the basis of an enhanced FMAP under section 1396d(b) of this title.”

Effective Date of 2010 Amendment


Effective Date of 2009 Amendment

Amendment by sections 101–103, 105, and 106(b) of Pub. L. 111–3 effective Apr. 1, 2009, and applicable to child health assistance and medical assistance provided or on or after that date, with certain exceptions, see section 3 of Pub. L. 111–3, set out as an Effective Date note under section 1396 of this title.


Termination Date of 2007 Amendment

Pub. L. 110–92, §136(e), Sept. 29, 2007, 121 Stat. 995, which provided that the amendments made by subsecs. (c) and (d) of section 136, amending this section and section 1396d of this title, were effective through Dec. 31, 2007, or, if earlier, the date of the enactment of an Act that provides funding for fiscal year 2008 and for one or more subsequent fiscal years for the Children’s Health Insurance Program under this subchapter, was repealed by Pub. L. 110–173, title II, §201(b)(3), Dec. 29, 2007, 121 Stat. 2510.

Effective Date of 2006 Amendment


Effective Date of 2003 Amendment

Pub. L. 108–74, §1(a)(4), Aug. 15, 2003, 117 Stat. 895, provided that: “This subsection [amending this section], and the amendments made by this subsection, shall be effective as if this subsection had been enacted on September 30, 2002, and amounts under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) from allotments for fiscal years 1998 through 2000 are available for expenditure on and after October 1, 2002, under the amendments made by this subsection as if this subsection had been enacted on September 30, 2002.”

Effective Date of 2000 Amendment


Amendment by section 802(b), (d)(3) of Pub. L. 106–554 effective as if included in the enactment of section 4901 of Pub. L. 105–33, see section 1(a)(6) [title VIII, §802(c)] of Pub. L. 106–554, set out as a note under section 1396d of this title.

Effective Date of 1999 Amendment


Effective Date of 1997 Amendment

Section 162 of Pub. L. 105–100 provided that the amendment made by that section is effective as if included in the enactment of subtitle J (§§ 4901–4923) of title IV of the Balanced Budget Act of 1997, Pub. L. 105–33.

Authority To Transfer Subchapter XXI Appropriations to Subchapter XIX Appropriation Account As Reimbursement for Medicaid Expenditures for Medicaid Expansion SCHIP Services

Pub. L. 106–554, §1(a)(6) [title VIII, §802(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–581, provided that: “Notwith-
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standing any other provision of law, all amounts appropriated under title XXI [of the Social Security Act, this subchapter] and allotted to a State pursuant to section (b) or (c) of section 2104 of the Social Security Act (42 U.S.C. 1397dd) for fiscal years 1998 through 2000 (including any amounts that, but for this provision, would be considered to have expired) and not expended for expenditures described in subparagraphs (A), (B), or (C) or (D) of section 2105 of the Social Security Act (42 U.S.C. 1397ee) for medical assistance described in subparagraphs (A), (B), or (C) or (D) of section 2105 of the Social Security Act (42 U.S.C. 1397ee) (as amended by subsection (a)), shall be available to reimburse the Grants to States for Medicaid account in an amount equal to the total payments made to such State under section 1903(a) of such Act (42 U.S.C. 1396b(a)) for expenditures in such years for medical assistance described in subparagraphs (A), (B), or (C) or (D) of section 2105 of the Social Security Act (42 U.S.C. 1397ee) (as so amended)."

Determination of Number of Children and State Cost Factors for Fiscal Years 1998 and 1999


(1) the number of children under clause (i) of such section shall be the number of low-income children specified for the State in Column B of the table on pages 48101–48102 of the Federal Register published on September 12, 1997, adjusted by the Census Bureau as necessary to treat children as being without health insurance if they have access to health care funded by the Indian Health Service but do not have health insurance; and

(2) the State cost factor under clause (ii) of such section shall be the State cost factor specified for the State in Column C of such table.”

§ 1397ee. Payments to States

(a) Payments

(1) In general

Subject to the succeeding provisions of this section, the Secretary shall pay to each State with a plan approved under this subchapter, from its allotment under section 1397dd of this title, an amount for each quarter equal to the enhanced FMAP (or, in the case of expenditures described in subparagraph (C) or (D), the higher of 75 percent or the sum of the enhanced FMAP plus 5 percentage points) of expenditures in the quarter—

(A) for child health assistance under the plan for targeted low-income children in the form of providing medical assistance for which payment is made on the basis of an enhanced FMAP under the fourth sentence of section 1396d(b) of this title;

(B) [reserved]

(C) for child health assistance under the plan for targeted low-income children in the form of providing health benefits coverage that meets the requirements of section 1397cc of this title; and

(D) only to the extent permitted consistent with subsection (c) of this section—

(i) for payment for other child health assistance for targeted low-income children;

(ii) for expenditures for health services initiatives under the plan for improving the health of children (including targeted low-income children and other low-income children);

(iii) for expenditures for outreach activities as provided in section 1397b(b)(1) of this title under the plan;

(iv) for translation or interpretation services in connection with the enrollment of, retention of, and use of services under this subchapter by, individuals for whom English is not their primary language (as found necessary by the Secretary for the proper and efficient administration of the State plan); and

(v) for other reasonable costs incurred by the State to administer the plan.

(2) Order of payments

Payments under paragraph (1) from a State’s allotment shall be made in the following order:

(A) First, for expenditures for items described in paragraph (1)(A).

(B) Second, for expenditures for items described in paragraph (1)(B).

(C) Third, for expenditures for items described in paragraph (1)(C).

(D) Fourth, for expenditures for items described in paragraph (1)(D).

(3) Performance bonus payment to offset additional Medicaid and CHIP child enrollment costs resulting from enrollment and retention efforts

(A) In general

In addition to the payments made under paragraph (1), for each fiscal year (beginning with fiscal year 2009 and ending with fiscal year 2013), the Secretary shall pay from amounts made available under subparagraph (E), to each State that meets the condition under paragraph (4) for the fiscal year, an amount equal to the amount described in subparagraph (E), to each State for a fiscal year, as a single payment not later than the last day of the first calendar quarter of the following fiscal year.

(B) Amount for above baseline Medicaid child enrollment costs

Subject to subparagraph (E), the amount described in this subparagraph for a State for a fiscal year is equal to the sum of the following amounts:

(i) First tier above baseline Medicaid enrollees

An amount equal to the number of first tier above baseline child enrollees (as determined under subparagraph (C)(i)) under subchapter XIX for the State and fiscal year, multiplied by 15 percent of the projected per capita State Medicaid expenditures (as determined under subparagraph (D)) for the State and fiscal year under subchapter XIX.

(ii) Second tier above baseline Medicaid enrollees

An amount equal to the number of second tier above baseline child enrollees (as determined under subparagraph (C)(ii)) under subchapter XIX for the State and
The number of first tier above baseline child enrollees for a State for a fiscal year under subchapter XIX is equal to the number (if any, as determined by the Secretary) by which—

(I) the monthly average unduplicated number of qualifying children (as defined in subparagraph (P)) enrolled during the fiscal year under subchapter XIX; exceeds

(II) the baseline number of enrollees described in clause (iii) for the State and fiscal year under subchapter XIX, but not to exceed 10 percent of the baseline number of enrollees described in subclause (II).

(ii) Second tier above baseline child enrollees

The number of second tier above baseline child enrollees for a State for a fiscal year under subchapter XIX is equal to the number (if any, as determined by the Secretary) by which—

(I) the monthly average unduplicated number of qualifying children (as defined in subparagraph (P)) enrolled during the fiscal year under subchapter XIX as described in clause (i)(I); exceeds

(II) the sum of the baseline number of child enrollees described in clause (iii) for the State and fiscal year under subchapter XIX, and the maximum number of first tier above baseline child enrollees for the State and fiscal year under subchapter XIX, as determined under clause (i).

(iii) Baseline number of child enrollees

Subject to subparagraph (H), the baseline number of child enrollees for a State under subchapter XIX—

(I) for fiscal year 2009 is equal to the monthly average unduplicated number of qualifying children enrolled in the State plan under subchapter XIX during fiscal year 2007 increased by the population growth for children in that State from 2007 to 2009 (as estimated by the Bureau of the Census) plus 4 percentage points, and further increased by the population growth for children in that State from 2008 to 2009 (as estimated by the Bureau of the Census) plus 4 percentage points; and

(II) for each of fiscal years 2010, 2011, and 2012, is equal to the baseline number of child enrollees for the State for the previous fiscal year under subchapter XIX, increased by the population growth for children in that State from the calendar year in which the respective fiscal year begins to the succeeding calendar year (as estimated by the Bureau of the Census) plus 3 percentage points; and

(III) for each of fiscal years 2013, 2014, and 2015, is equal to the baseline number of child enrollees for the State for the previous fiscal year under subchapter XIX, increased by the population growth for children in that State from the calendar year in which the respective fiscal year begins to the succeeding calendar year (as estimated by the Bureau of the Census) plus 3.5 percentage points; and

(IV) for a subsequent fiscal year is equal to the baseline number of child enrollees for the State for the previous fiscal year under subchapter XIX, increased by the population growth for children in that State from the calendar year in which the respective fiscal year begins to the succeeding calendar year (as estimated by the Bureau of the Census) plus 2 percentage points.

Subject to subparagraph (H), the amount of Federal financial participation for children for a State for a fiscal year under subchapter XIX is equal to the average per capita amount of National Health Expenditures (as estimated by the Secretary) for the calendar year in which the respective subsequent fiscal year ends and multiplied by the Federal medical assistance percentage (as defined in section 1396d(b) of this title) for the fiscal year involved.

(E) Amounts available for payments

(i) Initial appropriation

Out of any money in the Treasury not otherwise appropriated, there are appropriated $3,225,000,000 for fiscal year 2009 for making payments under this paragraph, to be available until expended.

(ii) Transfers

Notwithstanding any other provision of this subchapter, the following amounts shall also be available, without fiscal year limitation, for making payments under this paragraph:

(I) Unobligated national allotment

(aa) Fiscal years 2009 through 2012

As of December 31 of fiscal year 2009, and as of December 31 of each succeed-
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par. (16).

So in original. Subsec. (a) of this section does not contain a subsec. (m).

So in original. This section does not contain a subsec. (m).

(II) Unexpended allotments not used for redistribution

As of November 15 of each of fiscal years 2010 through 2013, the total amount of allotments made to States under section 1397dd(f) of this title during the period beginning on April 1, 2013, and ending on September 30, 2013, that is available for obligation.

(iii) Proportional reduction

If the sum of the amounts otherwise payable under this paragraph for a fiscal year exceeds the amount available for the fiscal year under this subparagraph, the amount to be paid under this paragraph to each State shall be reduced proportionally.

(F) Qualifying children defined

(i) In general

For purposes of this subsection, subject to clauses (ii) and (iii), the term “qualifying children” means children who meet the eligibility criteria (including income, categorical eligibility, age, and immigration status criteria) in effect as of July 1, 2008, for enrollment under subchapter XIX, taking into account criteria applied as of such date under subchapter XIX pursuant to a waiver under section 1315 of this title.

(ii) Limitation

A child described in clause (i) who is provided medical assistance during a presumptive eligibility period under section 1396la of this title shall be considered to be a “qualifying child” only if the child is determined to be eligible for medical assistance under subchapter XIX.

(iii) Exclusion

Such term does not include any children for whom the State has made an election to provide medical assistance under paragraph (4) of section 1396b(v) of this title or any children enrolled on or after October 1, 2013.

(G) Application to commonwealths and territories

The provisions of subparagraph (G) of section 1397ddn(b) of this title shall apply with respect to payment under this paragraph in the same manner as such provisions apply to payment under such section.

(H) Application to States that implement a Medicaid expansion for children after fiscal year 2008

In the case of a State that provides coverage under section 115 of the Children’s Health Insurance Program Reauthorization Act of 2009 for any fiscal year after fiscal year 2008—

(i) any child enrolled in the State plan under subchapter XIX through the application of such an election shall be disregarded from the determination for the State of the monthly average unduplicated number of qualifying children enrolled in such plan during the first 3 fiscal years in which such an election is in effect; and

(ii) in determining the baseline number of child enrollees for the State for any fiscal year subsequent to such first 3 fiscal years, the baseline number of child enrollees for the State under subchapter XIX for the third of such fiscal years shall be the monthly average unduplicated number of qualifying children enrolled in the State plan under subchapter XIX for such third fiscal year.

(4) Enrollment and retention provisions for children

For purposes of paragraph (3)(A), a State meets the condition of this paragraph for a fiscal year if it is implementing at least 5 of the following enrollment and retention provisions (treating each subparagraph as a separate en-
The entire fiscal year:

(A) Continuous eligibility

The State has elected the option of continuous eligibility for a full 12 months for all children described in section 1396a(e)(12) of this title under subchapter XIX under 19 years of age, as well as applying such policy under its State child health plan under this subchapter.

(B) Liberalization of asset requirements

The State meets the requirement specified in either of the following clauses:

(i) Elimination of asset test

The State does not apply any asset or resource test for eligibility for children under subchapter XIX or this subchapter.

(ii) Administrative verification of assets

The State—

(I) permits a parent or caretaker relative who is applying on behalf of a child for medical assistance under subchapter XIX or child health assistance under this subchapter to declare and certify by signature under penalty of perjury information relating to family assets for purposes of determining and redetermining financial eligibility; and

(II) takes steps to verify assets through means other than by requiring documentation from parents and applicants except in individual cases of discrepancies or where otherwise justified.

(C) Elimination of in-person interview requirement

The State does not require an application of a child for medical assistance under subchapter XIX (or for child health assistance under this subchapter), including an application for renewal of such assistance, to be made in person nor does the State require a face-to-face interview, unless there are discrepancies or individual circumstances justifying an in-person application or face-to-face interview.

(D) Use of joint application for Medicaid and CHIP

The application form and supplemental forms (if any) and information verification process is the same for purposes of establishing and renewing eligibility for children for medical assistance under subchapter XIX and child health assistance under this subchapter.

(E) Automatic renewal (use of administrative renewal)

(i) In general

The State provides, in the case of renewal of a child’s eligibility for medical assistance under subchapter XIX or child health assistance under this subchapter, a pre-printed form completed by the State based on the information available to the State and notice to the parent or caretaker relative of the child that eligibility of the child will be renewed and continued based on such information unless the State is provided other information. Nothing in this clause shall be construed as preventing a State from verifying, through electronic and other means, the information so provided.

(ii) Satisfaction through demonstrated use of ex parte process

A State shall be treated as satisfying the requirement of clause (i) if renewal of eligibility of children under subchapter XIX or this subchapter is determined without any requirement for an in-person interview, unless sufficient information is not in the State’s possession and cannot be acquired from other sources (including other State agencies) without the participation of the applicant or the applicant’s parent or caretaker relative.

(F) Presumptive eligibility for children

The State is implementing section 1396d–1a of this title under subchapter XIX as well as, pursuant to section 1397gg(e)(1) of this title, under this subchapter.

(G) Express Lane

The State is implementing the option described in section 1396a(e)(12) of this title under subchapter XIX as well as, pursuant to section 1397gg(e)(1) of this title, under this subchapter.

(H) Premium assistance subsidies

The State is implementing the option of providing premium assistance subsidies under subsection (c)(10) or section 1396e–1 of this title.

(b) Enhanced FMAP

For purposes of subsection (a) of this section, the “enhanced FMAP”, for a State for a fiscal year, is equal to the Federal medical assistance percentage (as defined in the first sentence of section 1396d(b) of this title) for the State increased by a number of percentage points equal to 30 percent of the number of percentage points by which (1) such Federal medical assistance percentage for the State, is less than (2) 100 percent; but in no case shall the enhanced FMAP for a State exceed 85 percent. Notwithstanding the preceding sentence, during the period that begins on October 1, 2015, and ends on September 30, 2019, the enhanced FMAP determined for a State for a fiscal year (or for any portion of a fiscal year occurring during such period) shall be increased by 23 percentage points, but in no case shall exceed 100 percent. The increase in the enhanced FMAP under the preceding sentence shall not apply with respect to determining the payment to a State under subsection (a)(1) for expenditures described in subparagraph (D)(iv), paragraphs (8), (9), (11) of subsection (c), or clause (4) of the first sentence of section 1396d(b) of this title.

(c) Limitation on certain payments for certain expenditures

(1) General limitations

Funds provided to a State under this subchapter shall only be used to carry out the purposes of this subchapter (as described in
section 1397aa of this title) and may not include coverage of a nonpregnant childless adult, and any health insurance coverage provided with such funds may include coverage of abortion only if necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest. For purposes of the preceding sentence, a caretaker relative (as such term is defined for purposes of carrying out section 1396u–1 of this title) shall not be considered a childless adult.

(2) Limitation on expenditures not used for medicaid or health insurance assistance

(A) In general

Except as provided in this paragraph, the amount of payment that may be made under subsection (a) of this section for a fiscal year for expenditures for items described in paragraph (1)(D) of such subsection shall not exceed 10 percent of the total amount of expenditures for which payment is made under subparagraphs (A), (C), and (D) of paragraph (1) of such subsection.

(B) Waiver authorized for cost-effective alternative

The limitation under subparagraph (A) on expenditures for items described in subsection (a)(1)(D) of this section shall not apply to the extent that a State establishes to the satisfaction of the Secretary that—

(i) coverage provided to targeted low-income children through such expenditures meets the requirements of section 1397cc of this title;

(ii) the cost of such coverage is not greater, on an average per child basis, than the cost of coverage that would otherwise be provided under section 1397cc of this title; and

(iii) such coverage is provided through the use of a community-based health delivery system, such as through contracts with health centers receiving funds under section 254b of this title or with hospitals such as those that receive disproportionate share payment adjustments under section 1395ww(d)(5)(F) or 1396r–4 of this title.

(C) Nonapplication to certain expenditures

The limitation under subparagraph (A) shall not apply with respect to the following expenditures:

(i) Expenditures to increase outreach to, and the enrollment of, Indian children under this subchapter and subchapter XIX

Expenditures for outreach activities to families of Indian children likely to be eligible for child health assistance under the plan or medical assistance under the State plan under subchapter XIX (or under a waiver of such plan), to inform such families of the availability of, and to assist them in enrolling their children in, such plans, including such activities conducted under grants, contracts, or agreements entered into under section 1320b–9(a) of this title.

(ii) Expenditures to comply with citizenship or nationality verification requirements

Expenditures necessary for the State to comply with paragraph (9)(A).

(iii) Expenditures for outreach to increase the enrollment of children under this subchapter and subchapter XIX through premium assistance subsidies

Expenditures for outreach activities to families of children likely to be eligible for premium assistance subsidies in accordance with paragraph (2)(B), (3), or (10), or a waiver approved under section 1315 of this title, to inform such families of the availability of, and to assist them in enrolling their children in, such subsidies, and to employers likely to provide qualified employer-sponsored coverage (as defined in subparagraph (B) of such paragraph), but not to exceed an amount equal to 1.25 percent of the maximum amount permitted to be expended under subparagraph (A) for items described in subsection (a)(1)(D).

(iv) Payment error rate measurement (PERM) expenditures

Expenditures related to the administration of the payment error rate measurement (PERM) requirements applicable to the State child health plan in accordance with the Improper Payments Information Act of 2002 and parts 431 and 457 of title 42, Code of Federal Regulations (or any related or successor guidance or regulations).

(3) Waiver for purchase of family coverage

Payment may be made to a State under subsection (a)(1) of this section for the purchase of family coverage under a group health plan or health insurance coverage that includes coverage of targeted low-income children only if the State establishes to the satisfaction of the Secretary that—

(A) purchase of such coverage is cost-effective relative to—

(i) the amount of expenditures under the State child health plan, including administrative expenditures, that the State would have made to provide comparable coverage of the targeted low-income child involved or the family involved (as applicable); or

(ii) the aggregate amount of expenditures that the State would have made under the State child health plan, including administrative expenditures, for providing coverage under such plan for all such children or families; and

(B) such coverage shall not be provided if it would otherwise substitute for health insurance coverage that would be provided to such children but for the purchase of family coverage.

(4) Use of non-Federal funds for State matching requirement

Amounts provided by the Federal Government, or services assisted or subsidized to any

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3So in original. Probably means subpar. (B) of par. (10).
significant extent by the Federal Government, may not be included in determining the amount of non-Federal contributions required under subsection (a) of this section.

(5) Offset of receipts attributable to premiums and other cost-sharing

For purposes of subsection (a) of this section, the amount of the expenditures under the plan shall be reduced by the amount of any premiums and other cost-sharing received by the State.

(6) Prevention of duplicative payments

(A) Other health plans

No payment shall be made to a State under this section for expenditures for child health assistance provided for a targeted low-income child under its plan to the extent that a private insurer (as defined by the Secretary by regulation and including a group health plan (as defined in section 1167(j) of title 29), a service benefit plan, and a health maintenance organization) would have been obligated to provide such assistance but for a provision of its insurance contract which has the effect of limiting or excluding such obligation because the individual is eligible for or is provided child health assistance under the plan.

(B) Other Federal governmental programs

Except as provided in subparagraph (A) or (B) of subsection (a)(1) of this section or any other provision of law, no payment shall be made to a State under this section for expenditures for child health assistance provided for a targeted low-income child under its plan to the extent that payment has been made or can reasonably be expected to be made promptly (as determined in accordance with regulations) under any other federally operated or financed health care insurance program, other than an insurance program operated or financed by the Indian Health Service, as identified by the Secretary. For purposes of this paragraph, rules similar to the rules for overpayments under section 1396b(d)(2) of this title shall apply.

(7) Limitation on payment for abortions

(A) In general

Payment shall not be made to a State under this section for any amount expended under the State plan to pay for any abortion or to assist in the purchase, in whole or in part, of health benefit coverage that includes coverage of abortion.

(B) Exception

Subparagraph (A) shall not apply to an abortion only if necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest.

(C) Rule of construction

Nothing in this section shall be construed as affecting the expenditure by a State, locality, or private person or entity of State, local, or private funds (other than funds expended under the State plan) for any abortion or for health benefits coverage that includes coverage of abortion.

(8) Limitation on matching rate for expenditures for child health assistance provided to children whose effective family income exceeds 300 percent of the poverty line

(A) FMAP applied to expenditures

Except as provided in subparagraph (B), for fiscal years beginning with fiscal year 2009, the Federal medical assistance percentage (as determined under section 1396a(b) of this title without regard to clause (4) of such section) shall be substituted for the enhanced FMAP under subsection (a)(1) with respect to any expenditures for providing child health assistance or health benefits coverage for a targeted low-income child whose effective family income would exceed 300 percent of the poverty line but for the application of a general exclusion of a block of income that is not determined by type of expense or type of income.

(B) Exception

Subparagraph (A) shall not apply to any State that, on February 4, 2009, has an approved State plan amendment or waiver to provide, or has enacted a State law to submit a State plan amendment to provide, expenditures described in such subparagraph under the State child health plan.

(9) Citizenship documentation requirements

(A) In general

No payment may be made under this section with respect to an individual who has, or is, declared to be a citizen or national of the United States for purposes of establishing eligibility under this subchapter unless the State meets the requirements of section 1396a(a)(46)(B) of this title with respect to the individual.

(B) Enhanced payments

Notwithstanding subsection (b), the enhanced FMAP with respect to payments under subsection (a) for expenditures described in clause (i) or (ii) of section 1396b(a)(3)(G) of this title necessary to comply with subparagraph (A) shall in no event be less than 90 percent and 75 percent respectively.

(10) State option to offer premium assistance

(A) In general

A State may elect to offer a premium assistance subsidy (as defined in subparagraph (C)) for qualified employer-sponsored coverage (as defined in subparagraph (B)) to all targeted low-income children who are eligible for child health assistance under the plan and have access to such coverage in accordance with the requirements of this paragraph if the offering of such a subsidy is cost-effective, as defined for purposes of paragraph (3)(A). No subsidy shall be provided to a targeted low-income child under this paragraph unless the child (or the child’s parent) voluntarily elects to receive such a subsidy. A State may not require such an election as a condition of receipt of child health assistance.
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**B) Qualified employer-sponsored coverage**

(i) In general

Subject to clause (ii), in this paragraph, the term “qualified employer-sponsored coverage” means a group health plan or health insurance coverage offered through an employer—

(I) that qualifies as creditable coverage as a group health plan under section 2701(c)(1) of the Public Health Service Act; ⁴

(II) for which the employer contribution toward any premium for such coverage is at least 40 percent; and

(iii) that is offered to all individuals in a manner that would be considered a nondiscriminatory eligibility classification for purposes of paragraph (3)(A)(ii) of section 105(h) of the Internal Revenue Code of 1986 (but determined without regard to clause (i) of subparagraph (B) of such paragraph).

(ii) Exception

Such term does not include coverage consisting of—

(I) benefits provided under a health flexible spending arrangement (as defined in section 106(c)(2) of the Internal Revenue Code of 1986); or

(II) a high deductible health plan (as defined in section 223(c)(2) of such Code), without regard to whether the plan is purchased in conjunction with a health savings account (as defined under section 223(d) of such Code).

**C) Premium assistance subsidy**

(i) In general

In this paragraph, the term “premium assistance subsidy” means, with respect to a targeted low-income child, the amount equal to the difference between the employee contribution required for enrollment only of the employee under qualified employer-sponsored coverage and the employee contribution required for enrollment of the employee and the child in such coverage, less any applicable premium cost-sharing applied under the State child health plan (subject to the limitations imposed under section 1397cc(e) of this title, including the requirement to count the total amount of the employee contribution required for enrollment of the employee and the child in such coverage toward the annual aggregate cost-sharing limit applied under paragraph (3)(B) of such section).

(ii) State payment option

A State may provide a premium assistance subsidy either as reimbursement to an employee for out-of-pocket expenditures or, subject to clause (iii), directly to the employee’s employer.

(iii) Employer opt-out

An employer may notify a State that it elects to opt-out of being directly paid a premium assistance subsidy on behalf of an employee. In the event of such a notification, an employer shall withhold the total amount of the employee contribution required for enrollment of the employee and the child in the qualified employer-sponsored coverage and the State shall pay the premium assistance subsidy directly to the employee.

(iv) Treatment as child health assistance

Expenditures for the provision of premium assistance subsidies shall be considered child health assistance described in paragraph (1)(C) of subsection (a) for purposes of making payments under that subsection.

**D) Application of secondary payor rules**

The State shall be a secondary payor for any items or services provided under the qualified employer-sponsored coverage for which the State provides child health assistance under the State child health plan.

**E) Requirement to provide supplemental coverage for benefits and cost-sharing protection provided under the State child health plan**

(i) In general

Notwithstanding section 1397j(b)(1)(C) of this title, the State shall provide for each targeted low-income child enrolled in qualified employer-sponsored coverage, supplemental coverage consisting of—

(I) items or services that are not covered, or are only partially covered, under the qualified employer-sponsored coverage; and

(II) cost-sharing protection consistent with section 1397cc(e) of this title.

(ii) Record keeping requirements

For purposes of carrying out clause (i), a State may elect to directly pay out-of-pocket expenditures for cost-sharing imposed under the qualified employer-sponsored coverage and collect or not collect all or any portion of such expenditures from the parent of the child.

**F) Application of waiting period imposed under the State**

Any waiting period imposed under the State child health plan prior to the provision of child health assistance to a targeted low-income child under the State plan shall apply to the same extent to the provision of a premium assistance subsidy for the child under this paragraph.

**G) Opt-out permitted for any month**

A State shall establish a process for permitting the parent of a targeted low-income child receiving a premium assistance subsidy to disenroll the child from the qualified employer-sponsored coverage and enroll the child in, and receive child health assistance under, the State child health plan, effective on the first day of any month for which the child is eligible for such assistance and in a manner that ensures continuity of coverage for the child.

—

⁴See References in Text note below.
(H) Application to parents

If a State provides child health assistance or health benefits coverage to parents of a targeted low-income child in accordance with section 1397kk(b) of this title, the State may elect to offer a premium assistance subsidy to a parent of a targeted low-income child who is eligible for such a subsidy under this paragraph in the same manner as the State offers such a subsidy for the enrollment of the child in qualified employer-sponsored coverage, except that—

(i) the amount of the premium assistance subsidy shall be increased to take into account the cost of the enrollment of the parent in the qualified employer-sponsored coverage or, at the option of the State if the State determines it cost-effective, the cost of the enrollment of the child’s family in such coverage; and

(ii) any reference in this paragraph to a child is deemed to include a reference to the parent or, if applicable under clause (i), the family of the child.

(I) Additional State option for providing premium assistance

(i) In general

A State may establish an employer-family premium assistance purchasing pool for employers with less than 250 employees who have at least 1 employee who is a pregnant woman eligible for assistance under the State child health plan (including through the application of an option described in section 1397ff(f) of this title) or a member of a family with at least 1 targeted low-income child and to provide a premium assistance subsidy under this paragraph for enrollment in coverage made available through such pool.

(ii) Access to choice of coverage

A State that elects the option under clause (i) shall identify and offer access to not less than 2 private health plans that are health benefits coverage that is equivalent to the benefits coverage in a benchmark benefit package described in section 1397cc(b) of this title or benchmark-equivalent coverage that meets the requirements of section 1397cc(a)(2) of this title for employees described in clause (i).

(iii) Clarification of payment for administrative expenditures

Nothing in this subparagraph shall be construed as permitting payment under this section for administrative expenditures attributable to the establishment or operation of such pool, except to the extent that such payment would otherwise be permitted under this subchapter.

(J) No effect on premium assistance waiver programs

Nothing in this paragraph shall be construed as limiting the authority of a State to offer premium assistance under section 1396e or 1396e–1 of this title, a waiver described in paragraph (2)(B) or (3), a waiver approved under section 1315 of this title, or other authority in effect prior to February 4, 2009.

(K) Notice of availability

If a State elects to provide premium assistance subsidies in accordance with this paragraph, the State shall—

(i) include on any application or enrollment form for child health assistance a notice of the availability of premium assistance subsidies for the enrollment of targeted low-income children in qualified employer-sponsored coverage;

(ii) provide, as part of the application and enrollment process under the State child health plan, information describing the availability of premium assistance subsidies and how to elect to obtain such a subsidy; and

(iii) establish such other procedures as the State determines necessary to ensure that parents are fully informed of the choices for receiving child health assistance under the State child health plan or through the receipt of premium assistance subsidies.

(L) Application to qualified employer-sponsored benchmark coverage

If a group health plan or health insurance coverage offered through an employer is certified by an actuary as health benefits coverage that is equivalent to the benefits coverage in a benchmark benefit package described in section 1397cc(b) of this title or benchmark-equivalent coverage that meets the requirements of section 1397cc(a)(2) of this title, the State may provide premium assistance subsidies for enrollment of targeted low-income children in such group health plan or health insurance coverage in the same manner as such subsidies are provided under this paragraph for enrollment in qualified employer-sponsored coverage, but without regard to the requirement to provide supplemental coverage for benefits and cost-sharing protection provided under the State child health plan under subparagraph (E).

(M) Coordination with medicaid

In the case of a targeted low-income child who receives child health assistance through a State plan under subchapter XIX and who voluntarily elects to receive a premium assistance subsidy under this section, the provisions of section 1396e–1 of this title shall apply and shall supersede any other provisions of this paragraph that are inconsistent with such section.

(11) Enhanced payments

Notwithstanding subsection (b), the enhanced FMAP with respect to payments under subsection (a) for expenditures related to the administration of the payment error rate measurement (PERM) requirements applicable to the State child health plan in accordance with the Improper Payments Information Act of 2002 and parts 431 and 457 of title 42, Code of Federal Regulations (or any related or successor guidance or regulations) shall in no event be less than 90 percent.
(d) Maintenance of effort

(1) In medicaid eligibility standards

No payment may be made under subsection (a) of this section with respect to child health assistance provided under a State child health plan if the State adopts income and resource standards and methodologies for purposes of determining a child’s eligibility for medical assistance under the State plan under subchapter XIX of this chapter that are more restrictive than those applied as of June 1, 1997, except as required under section 1396a(e)(14) of this title.

(2) In amounts of payment expended for certain State-funded health insurance programs for children

(A) In general

The amount of the allotment for a State in a fiscal year (beginning with fiscal year 1999) shall be reduced by the amount by which—

(i) the total of the State children’s health insurance expenditures in the preceding fiscal year, is less than

(ii) the total of such expenditures in fiscal year 1996.

(B) State children’s health insurance expenditures

The term “State children’s health insurance expenditures” means the following:

(i) The State share of expenditures under this subchapter.

(ii) The State share of expenditures under subchapter XIX of this chapter that are attributable to an enhanced FMAP under the fourth sentence of section 1396d(b) of this title.

(iii) State expenditures under health benefits coverage under an existing comprehensive State-based program, described in section 1397cc(d) of this title.

(3) Continuation of eligibility standards for children until October 1, 2019

(A) In general

During the period that begins on March 23, 2010, and ends on September 30, 2019, as a condition of receiving payments under section 1396(a) of this title, a State shall not have in effect eligibility standards, methodologies, or procedures under its State child health plan (including any waiver under such plan) for children (including children provided medical assistance for which payment is made under section 1397ee(a)(1)(A) of this title) that are more restrictive than the eligibility standards, methodologies, or procedures, respectively, under such plan or waiver as in effect on March 23, 2010.

(B) Assurance of exchange coverage for targeted low-income children unable to be provided child health assistance as a result of funding shortfalls

In the event that allotments provided under section 1397dd of this title are insufficient to provide coverage to all children who are eligible to be targeted low-income children under the State child health plan under this subchapter, a State shall establish procedures to ensure that such children are screened for eligibility for medical assistance under the State plan under subchapter XIX or a waiver of that plan and, if found eligible, enrolled in such plan or a waiver. In the case of such children who, as a result of such screening, are determined to not be eligible for medical assistance under the State plan or a waiver under subchapter XIX, the State shall establish procedures to ensure that the children are enrolled in a qualified health plan that has been certified by the Secretary under subparagraph (C) and is offered through an Exchange established by the State under section 18031 of this title. For purposes of eligibility for premium assistance for the purchase of a qualified health plan under section 36B of the Internal Revenue Code of 1986 and reduced cost-sharing under section 18071 of this title, children described in the preceding sentence shall be deemed to be ineligible for coverage under the State child health plan.

(C) Certification of comparability of pediatric coverage offered by qualified health plans

With respect to each State, the Secretary, not later than April 1, 2015, shall review the benefits offered for children and the cost-sharing imposed with respect to such benefits by qualified health plans offered through an Exchange established by the State under section 18031 of this title and shall certify those plans that offer benefits for children and impose cost-sharing with respect to such benefits that the Secretary determines are at least comparable to the benefits offered and cost-sharing protections provided under the State child health plan.

(e) Advance payment; retrospective adjustment

The Secretary may make payments under this section for each quarter on the basis of advance estimates of expenditures submitted by the State and such other investigation as the Secretary may find necessary, and may reduce or increase the payments as necessary to adjust for
any overpayment or underpayment for prior quarters.

(f) Flexibility in submittal of claims

Nothing in this section or subsections (e) and (f) of section 1397dd of this title shall be construed as preventing a State from claiming as expenditures in the quarter expenditures that were incurred in a previous quarter.

(g) Authority for qualifying States to use certain funds for Medicaid expenditures

(1) State option

(A) In general

Notwithstanding any other provision of law, subject to paragraph (4), a qualifying State (as defined in paragraph (2)) may elect to use not more than 20 percent of any allotment under section 1397dd of this title for fiscal year 1998, 1999, 2000, 2001, 2004, 2005, 2006, 2007, or 2008 (insofar as it is available under subsections (e) and (g) of such section) for payments under subchapter XIX of this chapter in accordance with subparagraph (B), instead of for expenditures under this subchapter.

(B) Payments to States

(i) In general

In the case of a qualifying State that has elected the option described in subparagraph (A), subject to the availability of funds under such subparagraph with respect to the State, the Secretary shall pay the State an amount each quarter equal to the additional amount that would have been paid to the State under subchapter XIX of this chapter with respect to expenditures described in clause (ii) if the enhanced FMAP (as determined under subsection (b) of this section) had been substituted for the Federal medical assistance percentage (as defined in section 1396d(b) of this title).

(ii) Expenditures described

For purposes of this subparagraph, the expenditures described in this clause are expenditures, made after August 15, 2003, and during the period in which funds are available to the qualifying State for use under subparagraph (A), for medical assistance under subchapter XIX of this chapter to individuals who have not attained age 19 and whose family income exceeds 150 percent of the poverty line.

(iii) No impact on determination of budget neutrality for waivers

In the case of a qualifying State that uses amounts paid under this subsection for expenditures described in clause (ii) that are incurred under a waiver approved for the State, any budget neutrality determinations with respect to such waiver shall be determined without regard to such amounts paid.

(2) Qualifying State

In this subsection, the term “qualifying State” means a State that, on and after April 15, 1997, has an income eligibility standard that is at least 184 percent of the poverty line with respect to any 1 or more categories of children (other than infants) who are eligible for medical assistance under section 1396a(a)(10)(A) of this title, or, in the case of a State that has a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that was first implemented on August 1, 1994, or July 1, 1995, has an income eligibility standard under such waiver for children that is at least 185 percent of the poverty line, or, in the case of a State that has a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that was first implemented on January 1, 1994, has an income eligibility standard under such waiver for children who lack health insurance that is at least 185 percent of the poverty line, or, in the case of a State that had a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that was first implemented on October 1, 1993, had an income eligibility standard under such waiver for children that was at least 185 percent of the poverty line and on and after July 1, 1998, has an income eligibility standard for children under section 1396a(a)(10)(A) of this title or a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that is at least 185 percent of the poverty line.

(3) Construction

Nothing in paragraphs (1) and (2) shall be construed as modifying the requirements applicable to States implementing State child health plans under this subchapter.

(4) Option for allotments for fiscal years 2009 through 2015

(A) Payment of enhanced portion of matching rate for certain expenditures

In the case of expenditures described in subparagraph (B), a qualifying State (as defined in paragraph (2)) may elect to be paid from the State’s allotment made under section 1397dd of this title for any of fiscal years 2009 through 2015 (insofar as the allotment is available to the State under subsections (e) and (m) of such section) an amount each quarter equal to the additional amount that would have been paid to the State under subchapter XIX with respect to such expenditures if the enhanced FMAP (as determined under subsection (b)) had been substituted for the Federal medical assistance percentage (as defined in section 1396d(b) of this title).

(B) Expenditures described

For purposes of subparagraph (A), the expenditures described in this subparagraph are expenditures made after February 4, 2009, and during the period in which funds are available to the qualifying State for use under subparagraph (A), the provision of medical assistance to individuals residing in the State who are eligible for medical assistance under the State plan under subchapter XIX or under a waiver of such plan and who have not attained age 19 (or, if a State has

REFERENCES IN TEXT

AMENDMENTS


Subsec. (a)(3)(F)(III). Pub. L. 111–148, §2101(c), inserted at end “Notwithstanding the preceding sentence, during the period that begins on October 1, 2013, and ends on September 30, 2019, the enhanced FMAP determined for a State for a fiscal year (or for any portion of a fiscal year occurring during such period) shall be increased by 23 percentage points, but in no case shall exceed 100 percent. The increase in the enhanced FMAP under the preceding sentence shall not apply with respect to determining the payment to a State under subchapter XIX of this title, except as required under section 1396a(e)(14) of this title.”


Subsec. (c)(10)(A). Pub. L. 111–148, §10203(b)(3), inserted “if the offering of such a subsidy is cost-effective, as defined for purposes of paragraph (3)(A)” before period at end of first sentence.

Subsec. (c)(10)(M), (N). Pub. L. 111–148, §10203(b)(3)(B), (C), redesignated subpar. (M) as (N) and struck out former subpar. (M). Prior to amendment, text read as follows: “Premium assistance subsidies for qualified employer-sponsored coverage offered under this paragraph shall be deemed to meet the requirement of subparagraph (A) of paragraph (3).”

Subsec. (d)(1). Pub. L. 111–148, §2101(b)(2), inserted “, except as required under section 1396a(e)(14) of this title” before period at end.


Subsec. (d)(3)(B). Pub. L. 111–148, §10203(c)(2)(B), substituted “screened for eligibility for medical assistance under the State plan under subchapter XIX or a waiver of that plan and, if found eligible, enrolled in such plan or a waiver. In the case of such children who, as a result of such screening, are determined to not be eligible for medical assistance under the State plan or a waiver under subchapter XIX, the State shall establish procedures to ensure that the children are enrolled in a qualified health plan that has been certified by the Secretary under subparagraph (C) and is offered” for “provided coverage”.

Pub. L. 111–148, §10201(g), inserted at end “For purposes of eligibility for premium assistance for the purchase of a qualified health plan under section 36B of the Internal Revenue Code of 1986 and reduced cost-sharing under section 18071 of this title, children described in the preceding sentence shall be deemed to be ineligible for coverage under the State child health plan.”


2009—Subsec. (a)(1). Pub. L. 111–3, §113(a)(1), 201(b)(1)(A), substituted “or, in the case of expenditures described in subparagraph (D)(iv), the higher of 75 percent or the sum of the enhanced FMAP plus 5 percentage points” for “or, in the case of expenditures described in subparagraph (B), the Federal medical assistance percentage (as defined in the first sentence of section 1396d(b) of this title)” in introductory provisions.

Subsec. (a)(1)(B). Pub. L. 111–3, §113(a)(2), added subpar. (B) “(reserved)” and struck out former subpar. (D) which read as follows: “for the provision of medical assistance on behalf of a child during a presumptive eligibility period under section 1396r–1a of this title.”


Subsec. (c)(3)(A). Pub. L. 111–3, § 301(a)(2)(A), substituted “relative to” for “relative to the amounts that the State would have paid to obtain comparable coverage only of the targeted low-income children involved,” and added cls. (i) and (ii).

Subsec. (c)(8). Pub. L. 111–3, § 114(a), added par. (8).

Subsec. (c)(9). Pub. L. 111–3, § 211(c)(1), added par. (9).


Subsec. (g)(1)(A). Pub. L. 111–3, § 107(a)(1), inserted “subject to paragraph (4),” after “Notwithstanding any other provision of law,” and substituted “or 2008” for “2005” after “Notwithstanding any other provision of law,” and substituted “or 2008” for “or 2007”.


2005—Subsec. (c)(1). Pub. L. 109–171, § 6102(b), inserted “‘and may not include coverage of a nonpregnant childless adult’ after ‘section 1397aa of this title’” and “‘For purposes of the preceding sentence, a caretaker relative (as such term is defined for purposes of carrying out section 1396u–1 of this title) shall not be considered a childless adult.’” at end.


Subsec. (g)(2). Pub. L. 108–127 substituted “194” for “185” the first place appearing, inserted “August 1, 1994, or before ‘July 1, 1995,’ and inserted before period at end “, or, in the case of a State that had a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that was first implemented on October 1, 1993, had an income eligibility standard for children under section 1396a(a)(18)(A) of this title or a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that is at least 185 percent of the poverty line under this title or a statewide waiver in effect under section 1396a(a)(18)(A) of this title or a statewide waiver in effect under section 1315 of this title with respect to subchapter XIX of this chapter that is at least 185 percent of the poverty line under this title”.

Subsec. (c)(2)(C), (D), (E). Pub. L. 108–127 struck out former subsec. (C) heading, introductory provisions, and subpar. (A) and (B), struck out former subsec. heading and introductory provisions, redesignated former pars. (1) and (2) as subs. (C) and (D), respectively, of par. (1) and realigned margins, redesignated subs. (A) to (D) of former par. (2) as cls. (i) to (iv), respectively, of par. (2) and realigned margins, added par. (2). Prior to amendment, introductory provisions read as follows: “Subject to the succeeding provisions of this section, the Secretary shall pay to each State with a plan approved under this subchapter, from its allotment under section 2105(c)(3), an amount for each quarter that is at least 185 percent of the poverty line under this title based on an enhanced FMAP described in section 1396u–1 of this title,”.


Subsec. (c)(2)(B). Pub. L. 106–554, § 114(a)(6) [title VIII, § 802(d)(4)(C)], substituted “Except as provided in subparagraph (A) or (B) of subsection (a)(1) of this section or any other provision of law,” for “Except as otherwise provided by law,”.

Subsec. (d)(2)(B)(i). Pub. L. 106–554, § 114(a)(6) [title VIII, § 802(d)(4)(B)], added subsec. (d)(2)(B)(ii). Prior to amendment, payment shall not be made under subsection (a) of this section for expenditures for items described in subsection (a) of this section or any other provision of law,” for “Except as otherwise provided by law,”.

Subsec. (d)(2)(B)(ii). Pub. L. 106–554, § 114(a)(6) [title VIII, § 802(d)(4)(C)], substituted “Except as provided in subparagraph (A) or (B) of subsection (a)(1) of this section or any other provision of law,” for “Except as otherwise provided by law,”.


2007—Subsec. (c)(2)(A). Pub. L. 105–100, § 162(5), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Except as provided in this paragraph, payment shall not be made under subsection (a) of this section for expenditures for items described in subsection (a) of this section (other than paragraph (1)) for a quarter in a fiscal year to the extent the total of such expenditures exceeds 10 percent of the sum of—

‘‘(i) the total Federal payments made under subsection (a) of this section for such quarter in the fiscal year; and

‘‘(ii) the total Federal payments made under section 1396a(a)(1) of this title based on an enhanced FMAP described in section 1396u–1(2) of this title for such quarter.’’


Effective Date of 2010 Amendment


Effective Date of 2009 Amendment

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

Amendment by section 211(c) of Pub. L. 111–3 effective Jan. 1, 2010, see section 211(d)(1)(A) of Pub. L. 111–3, set out as a note under section 1396a of this title.
§ 1397ee  TITLE 42—THE PUBLIC HEALTH AND WELFARE

TERMINATION DATE OF 2007 AMENDMENT

EFFECTIVE DATE OF 2006 AMENDMENT
Amendment by section 6102(d) of Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, and applicable to any waiver, experimental, pilot, or demonstration project that is approved on or after that date, see section 6102(d) of Pub. L. 109–171, set out as a note under section 1396 of this title.
Pub. L. 109–171, title VI, § 6103(b), Feb. 8, 2006, 120 Stat. 132, provided that: ‘‘The amendment made by this section [amending section 1397gg of this title] shall apply to expenditures made under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) on or after October 1, 2005.’’

EFFECTIVE DATE OF 2003 AMENDMENT
Pub. L. 108–127, § 1903(u), Nov. 17, 2003, 117 Stat. 1354, provided that: ‘‘Nothing in the amendment made by that section is effective as if included in the enactment of Pub. L. 108–74.’’

EFFECTIVE DATE OF 2000 AMENDMENT
Amendment by Pub. L. 106–554 effective as if included in the enactment of section 4901 of Pub. L. 106–333, see section 1a(a)(8) (title VIII, § 802(f)) of Pub. L. 106–554, set out as a note under section 1396d of this title.

EFFECTIVE DATE OF 1997 AMENDMENT
Section 162 of Pub. L. 105–100 provided in part that the amendment made by that section is effective as if included in the enactment of title IV of the Balanced Budget Act of 1997, Pub. L. 105–33.

CONSTRUCTION OF 2009 AMENDMENT
Pub. L. 111–3, title I, § 114(b), Feb. 4, 2009, 123 Stat. 35, provided that: ‘‘(1) changing any income eligibility level for children under title XXI of the Social Security Act [this subchapter]; or
‘‘(2) changing the flexibility provided States under such title to establish the income eligibility level for targeted low-income children under a State child health plan and the methodologies used by the State to determine income or assets under such plan.’’

PAYMENT ERROR RATE MEASUREMENT REQUIREMENTS
‘‘(b) FINAL RULE REQUIRED TO BE IN EFFECT FOR ALL STATES.—Notwithstanding parts 431 and 457 of title 42, Code of Federal Regulations (as in effect on September 1, 2007, responsible for the development, direction, implementation, and evaluation of eligibility reviews and associated activities; and
‘‘(c) clearly defined responsibilities and deadlines for States in implementing any corrective action plans; and
‘‘(2) provide that the payment error rate determined for a State shall not take into account payment errors resulting from the State’s verification of an applicant’s self-declaration or self-certification of eligibility for, and the correct amount of, medical assistance or child health assistance, if the State processes for verifying an applicant’s self-declaration or self-certification satisfies the requirements for such process applicable under regulations promulgated by the Secretary or otherwise approved by the Secretary.
‘‘(d) OPTION FOR APPLICATION OF DATA FOR STATES IN FIRST APPLICATION CYCLE UNDER THE INTERIM FINAL RULE.—After the new final rule implementing the PERM requirements in accordance with the requirements of subsection (c) is in effect for all States, a State for which the PERM requirements were first in effect under an interim final rule for fiscal year 2007 or under a final rule for fiscal year 2008 may elect to accept any payment error rate determined in whole or in part for the State on the basis of data for that fiscal year or may elect to not have any payment error rate determined on the basis of such data and, instead, be treated as if fiscal year 2010 or fiscal year 2011 were the first fiscal year for which the PERM requirements apply to the State.
‘‘(e) HARMONIZATION OF MEQC AND PERM.—
‘‘(1) REDUCTION OF REDUNDANCIES.—The Secretary shall review the Medicaid Eligibility Quality Control (in this subsection referred to as the ‘MEQC’) requirements with the PERM requirements and coordinate consistent implementation of both sets of requirements, while reducing redundancies.
‘‘(2) STATE OPTION TO APPLY PERM DATA.—A State may, for purposes of determining the erroneous excess payments for medical assistance ratio applicable to the State for a fiscal year under section 1903(u) of the Social Security Act (42 U.S.C. 1396b(u)) to substitute data resulting from the application of the PERM requirements to the State after the new final rule implementing such requirements is in effect for all States for data obtained from the application of the MEQC requirements to the State with respect to a fiscal year.
‘‘(3) STATE OPTION TO APPLY MEQC DATA.—For purposes of satisfying the requirements of subpart Q of part 431 of title 42, Code of Federal Regulations, relating to Medicaid eligibility reviews, a State may elect to substitute data obtained through MEQC reviews conducted in accordance with section 1903(u) of the Social Security Act (42 U.S.C. 1396b(u)) for data required for purposes of PERM requirements, but only if the State MEQC requirements are based on a broad, representative sample of Medicaid applicants or enrollees in the States.
‘‘(4) IDENTIFICATION OF IMPROVED STATE-SPECIFIC SAMPLE SIZES.—The Secretary shall establish State-specific sample sizes for application of the PERM requirements with respect to State child health plans for fiscal years

State-specific error rate for fiscal year 2009 or fiscal year 2010.

(c) REQUIREMENTS FOR NEW FINAL RULE.—For purposes of subsection (b), the requirements of this subsection are that the new final rule implementing the PERM requirements shall—
‘‘(1) include—
‘‘(A) clearly defined criteria for errors for both States and providers;
‘‘(B) a clearly defined process for appealing error determinations by—
‘‘(i) review contractors; or
‘‘(ii) the agency and personnel described in section 431.974(a)(2) of title 42, Code of Federal Regulations, as in effect on September 1, 2007, responsible for the development, direction, implementation, and evaluation of eligibility reviews and associated activities; and
‘‘(C) clearly defined responsibilities and deadlines for States in implementing any corrective action plans; and
‘‘(2) provide that the payment error rate determined for a State shall not take into account payment errors resulting from the State’s verification of an applicant’s self-declaration or self-certification of eligibility for, and the correct amount of, medical assistance or child health assistance, if the State processes for verifying an applicant’s self-declaration or self-certification satisfies the requirements for such process applicable under regulations promulgated by the Secretary or otherwise approved by the Secretary.

(d) OPTION FOR APPLICATION OF DATA FOR STATES IN FIRST APPLICATION CYCLE UNDER THE INTERIM FINAL RULE.—After the new final rule implementing the PERM requirements in accordance with the requirements of subsection (c) is in effect for all States, a State for which the PERM requirements were first in effect under an interim final rule for fiscal year 2007 or under a final rule for fiscal year 2008 may elect to accept any payment error rate determined in whole or in part for the State on the basis of data for that fiscal year or may elect to not have any payment error rate determined on the basis of such data and, instead, be treated as if fiscal year 2010 or fiscal year 2011 were the first fiscal year for which the PERM requirements apply to the State.

(e) HARMONIZATION OF MEQC AND PERM.—

(1) REDUCTION OF REDUNDANCIES.—The Secretary shall review the Medicaid Eligibility Quality Control (in this subsection referred to as the ‘MEQC’) requirements with the PERM requirements and coordinate consistent implementation of both sets of requirements, while reducing redundancies.

(2) STATE OPTION TO APPLY PERM DATA.—A State may, for purposes of determining the erroneous excess payments for medical assistance ratio applicable to the State for a fiscal year under section 1903(u) of the Social Security Act (42 U.S.C. 1396b(u)) to substitute data resulting from the application of the PERM requirements to the State after the new final rule implementing such requirements is in effect for all States for data obtained from the application of the MEQC requirements to the State with respect to a fiscal year.

(3) STATE OPTION TO APPLY MEQC DATA.—For purposes of satisfying the requirements of subpart Q of part 431 of title 42, Code of Federal Regulations, relating to Medicaid eligibility reviews, a State may elect to substitute data obtained through MEQC reviews conducted in accordance with section 1903(u) of the Social Security Act (42 U.S.C. 1396b(u)) for data required for purposes of PERM requirements, but only if the State MEQC requirements are based on a broad, representative sample of Medicaid applicants or enrollees in the States.

(4) IDENTIFICATION OF IMPROVED STATE-SPECIFIC SAMPLE SIZES.—The Secretary shall establish State-specific sample sizes for application of the PERM requirements with respect to State child health plans for fiscal years

State-specific error rate for fiscal year 2009 or fiscal year 2010.
beginning with the first fiscal year that begins on or after the date on which the new final rule is in effect for all States, on the basis of such information as the Secretary determines appropriate. In establishing such sample sizes, the Secretary shall, to the greatest extent practicable—

“(1) minimize the administrative cost burden on States under Medicaid and CHIP; and

“(2) maintain State flexibility to manage such programs.”

“(g) TIME FOR PROMULGATION OF FINAL RULE.—The final rule implementing the PERM requirements under subsection (b) shall be promulgated not later than 6 months after the date of enactment of this Act [Feb. 4, 2009].”

[For definitions of “CHIP”, “Medicaid”, and “Secretary”, see section 1(c) of Pub. L. 111–3, set out as a Definitions note under section 1396 of this title.]

§ 1397ff. Process for submission, approval, and amendment of State child health plans

(a) Initial plan

(1) In general

As a condition of receiving payment under section 1397ee of this title, a State shall submit to the Secretary a State child health plan that meets the applicable requirements of this subchapter.

(2) Approval

Except as the Secretary may provide under subsection (e) of this section, a State plan submitted under paragraph (1)—

(A) shall be approved for purposes of this subchapter, and

(B) shall be effective beginning with a calendar quarter that is specified in the plan, but in no case earlier than October 1, 1997.

(b) Plan amendments

(1) In general

A State may amend, in whole or in part, its State child health plan at any time through transmittal of a plan amendment.

(2) Approval

Except as the Secretary may provide under subsection (e) of this section, an amendment to a State plan submitted under paragraph (1)—

(A) shall be approved for purposes of this subchapter, and

(B) shall be effective as provided in paragraph (3).

(3) Effective dates for amendments

(A) In general

Subject to the succeeding provisions of this paragraph, an amendment to a State plan shall take effect on one or more effective dates specified in the amendment.

(B) Amendments relating to eligibility or benefits

(i) Notice requirement

Any plan amendment that eliminates or restricts eligibility or benefits under the plan shall not be effective for longer than a 60-day period unless the amendment has been transmitted to the Secretary before the end of such period.

(ii) Timely transmittal

Any plan amendment that eliminates or restricts eligibility or benefits under the plan shall not be effective for longer than a 60-day period unless the amendment has been transmitted to the Secretary before the end of such period.

(C) Other amendments

Any plan amendment that is not described in subparagraph (B) and that becomes effective in a State fiscal year may not remain in effect after the end of such fiscal year (or, if later, the end of the 90-day period on which it becomes effective) unless the amendment has been transmitted to the Secretary.

(c) Disapproval of plans and plan amendments

(1) Prompt review of plan submittals

The Secretary shall promptly review State plans and plan amendments submitted under this section to determine if they substantially comply with the requirements of this subchapter.

(2) 90-day approval deadlines

A State plan or plan amendment is considered approved unless the Secretary notifies the State in writing, within 90 days after receipt of the plan or amendment, that the plan or amendment is disapproved (and the reasons for disapproval) or that specified additional information is needed.

(3) Correction

In the case of a disapproval of a plan or plan amendment, the Secretary shall provide a State with a reasonable opportunity for correction before taking financial sanctions against the State on the basis of such disapproval.

(d) Program operation

(1) In general

The State shall conduct the program in accordance with the plan (and any amendments) approved under subsection (c) of this section and with the requirements of this subchapter.

(2) Violations

The Secretary shall establish a process for enforcing requirements under this subchapter. Such process shall provide for the withholding of funds in the case of substantial noncompliance with such requirements. In the case of an enforcement action against a State under this paragraph, the Secretary shall provide a State with a reasonable opportunity for correction before taking financial sanctions against the State on the basis of such an action.

(e) Continued approval

An approved State child health plan shall continue in effect unless and until the State amends the plan under subsection (b) of this section or the Secretary finds, under subsection (d) of this section, substantial noncompliance of the plan with the requirements of this subchapter.

§ 1397gg. Strategic objectives and performance goals; plan administration

(a) Strategic objectives and performance goals

(1) Description
A State child health plan shall include a description of—
(A) the strategic objectives,
(B) the performance goals, and
(C) the performance measures,
the State has established for providing child health assistance to targeted low-income children under the plan and otherwise for maximizing health benefits coverage for other low-income children and children generally in the State.

(2) Strategic objectives
Such plan shall identify specific strategic objectives relating to increasing the extent of creditable health coverage among targeted low-income children and other low-income children.

(3) Performance goals
Such plan shall specify one or more performance goals for each such strategic objective so identified.

(4) Performance measures
Such plan shall describe how performance under the plan will be—
(A) measured through objective, independently verifiable means, and
(B) compared against performance goals, in order to determine the State’s performance under this subchapter.

(b) Records, reports, audits, and evaluation

(1) Data collection, records, and reports
A State child health plan shall include an assurance that the State will collect the data, maintain the records, and furnish the reports to the Secretary, at the times and in the standardized format the Secretary may require in order to enable the Secretary to monitor State program administration and compliance and to evaluate and compare the effectiveness of State plans under this subchapter.

(2) State assessment and study
A State child health plan shall include a description of the State’s plan for the annual assessments and reports under section 1397hh(a) of this title and the evaluation required by section 1397hh(b) of this title.

(3) Audits
A State child health plan shall include an assurance that the State will afford the Secretary access to any records or information relating to the plan for the purposes of review or audit.

(c) Program development process
A State child health plan shall include a description of the process used to involve the public in the design and implementation of the plan and the method for ensuring ongoing public involvement.

(d) Program budget
A State child health plan shall include a description of the budget for the plan. The description shall be updated periodically as necessary and shall include details on the planned use of funds and the sources of the non-Federal share of plan expenditures, including any requirements for cost-sharing by beneficiaries.

(e) Application of certain general provisions
The following sections of this chapter shall apply to States under this subchapter in the same manner as they apply to a State under subchapter XIX of this chapter:

(1) Subchapter XIX provisions
(A) Section 1396a(a)(4)(C) of this title (relating to conflict of interest standards).
(B) Section 1396a(a)(72) of this title (relating to limiting FQHC contracting for provision of dental services).
(C) Section 1396a(a)(73) of this title (relating to requiring certain States to seek advice from designees of Indian Health Programs and Urban Indian Organizations).
(D) Subsections (a)(77) and (kk) of section 1396a of this title (relating to provider and supplier screening, oversight, and reporting requirements).
(E) Section 1396a(e)(13) of this title (relating to the State option to rely on findings from an Express Lane agency to help evaluate a child’s eligibility for medical assistance).
(F) Section 1396a(e)(14) of this title (relating to income determined using modified adjusted gross income and household income).
(G) Section 1396a(bb) of this title (relating to payment for services provided by Federally-qualified health centers and rural health clinics).
(H) Section 1396a(ff) of this title (relating to disregard of certain property for purposes of making eligibility determinations).
(I) Paragraphs (2), (16), and (17) of section 1396b(i) of this title (relating to limitations on payment).
(J) Paragraph (4) of section 1396b(v) of this title (relating to optional coverage of categories of lawfully residing immigrant children or pregnant women), but only if the State has elected to apply such paragraph with respect to such category of children or pregnant women under subchapter XIX.
(K) Section 1396b(w) of this title (relating to limitations on provider taxes and donations).
(L) Section 1396e–1a of this title (relating to presumptive eligibility for children).
(M) Subsections (a)(2)(C) and (h) of section 1396a–2 of this title.
(N) Section 1396w–2 of this title (relating to authorization to receive data directly relevant to eligibility determinations).
(O) Section 1396w–3(b) of this title (relating to coordination with State Exchanges and the State Medicaid agency).

(2) Subchapter XI provisions
(A) Section 1315 of this title (relating to waiver authority).
(B) Section 1316 of this title (relating to administrative and judicial review), but only insofar as consistent with this subchapter.
(C) Section 1320a–3 of this title (relating to disclosure of ownership and related information).
(D) Section 1320a–5 of this title (relating to disclosure of information about certain convicted individuals).
(E) Section 1320a–7a of this title (relating to civil monetary penalties).
(F) to redesignate subsection (c) of this title (relating to criminal penalties for certain additional charges).

(G) Section 1320b–2 of this title (relating to periods within which claims must be filed).

(f) Limitation of waiver authority

Notwithstanding subsection (e)(2)(A) and section 1315(a) of this title:

(1) The Secretary may not approve a waiver, experimental, pilot, or demonstration project that would allow funds made available under this subchapter to be used to provide child health assistance or other health benefits coverage to a nonpregnant childless adult or a parent (as defined in section 1397kk(c)(2)(A) of this title), who is not pregnant, of a targeted low-income child.

(2) The Secretary may not approve, extend, renew, or amend a waiver, experimental, pilot, or demonstration project with respect to a State after February 4, 2009, that would waive or modify the requirements of section 1397kk of this title.


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(2) The Secretary may not approve, extend, renew, or amend a waiver, experimental, pilot, or demonstration project with respect to a State after February 4, 2009, that would waive or modify the requirements of section 1397kk of this title.
§ 1397bb  TITLE 42—THE PUBLIC HEALTH AND WELFARE

Subsec. (f). Pub. L. 111–3, §112(a)(2)(A)(i), substituted "section 1315(a) of this title," for "section 1315(a) of this title, the Secretary" and inserted par. (1) designation and "The Secretary" before "may not approve a waiver, ."
Subsec. (f)(1). Pub. L. 111–3, §112(a)(2)(A)(ii), inserted "or a parent (as defined in section 1397kk(c)(2)(A) of this title), who is not pregnant, of a targeted low-income child after "nonpregnant childless adult," and struck out last sentence which read as follows: "For purposes of the preceding sentence, a caretaker relative (as such term is defined for purposes of carrying out section 1396a–1 of this title) shall not be considered a childless adult."

Effective Date of 2009 Amendment
Amendment by Pub. L. 111–5 effective July 1, 2009, see section 5006(f) of Pub. L. 111–5, set out as a note under section 1396a of this title.

Except as otherwise provided, amendment by Pub. L. 111–3 effective Apr. 1, 2009, and applicable to child health assistance and medical assistance provided on or after that date, see section 3 of Pub. L. 111–3, set out as a note under section 1396 of this title.


Pub. L. 111–3, title V, §503(a)(2), Feb. 4, 2009, 123 Stat. 89, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to services provided on or after October 1, 2009."

Effective Date of 2006 Amendment
Pub. L. 109–191, title VI, §6102(d), Feb. 8, 2006, 120 Stat. 132, provided that: "This section [amending this section and section 1397ee of this title and enacting provisions set out as a note below] and the amendments made by this section shall take effect as if enacted on October 1, 2005, and shall apply to any waiver, experimental, pilot, or demonstration project that is approved on or after that date."

Rule of Construction

"(1) authorize the waiver of any provision of title XIX or XXI of the Social Security Act (42 U.S.C. 1396 et seq., 1397aa et seq.) that is not otherwise authorized to be waived under such titles or under title XI of such Act (42 U.S.C. 1310 et seq.) as of the date of enactment of this Act (Feb. 8, 2006);

"(2) imply congressional approval of any waiver, experimental, pilot, or demonstration project affecting funds made available under the State children's health insurance program under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) or any amendment to such a waiver or project that has been approved as of such date of enactment; or

"(3) apply to any waiver, experimental, pilot, or demonstration project that would allow funds made available under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) to be used to provide child health assistance or other health benefits coverage to a nonpregnant childless adult that is approved before the date of enactment of this Act or to any extension, renewal, or amendment of such a waiver or project that is approved on or after such date of enactment."

§ 1397bb. Annual reports; evaluations

(a) Annual report

Subject to subsection (e), the State shall—

(1) assess the operation of the State plan under this subchapter in each fiscal year, including the progress made in reducing the number of uncovered low-income children; and

(2) report to the Secretary, by January 1 following the end of the fiscal year, on the result of the assessment.

(b) State evaluations

(1) In general

By March 31, 2000, each State that has a State child health plan shall submit to the Secretary an evaluation that includes each of the following:

(A) An assessment of the effectiveness of the State plan in increasing the number of children with creditable health coverage.

(B) A description and analysis of the effectiveness of elements of the State plan, including—

(i) the characteristics of the children and families assisted under the State plan including age of the children, family income, and the assisted child’s access to or coverage by other health insurance prior to the State plan and after eligibility for the State plan ends,

(ii) the quality of health coverage provided including the types of benefits provided,

(iii) the amount and level (including payment of part or all of any premium) of assistance provided by the State,

(iv) the service area of the State plan,

(v) the time limits for coverage of a child under the State plan,

(vi) the State’s choice of health benefits coverage and other methods used for providing child health assistance, and

(vii) the sources of non-Federal funding used in the State plan.

(C) An assessment of the effectiveness of other public and private programs in the State in increasing the availability of affordable quality individual and family health insurance for children.

(D) A review and assessment of State activities to coordinate the plan under this
subchapter with other public and private programs providing health care and health care financing, including medicaid and maternal and child health services.

(E) An analysis of changes and trends in the State that affect the provision of accessible, affordable, quality health insurance and health care to children.

(F) A description of any plans the State has for improving the availability of health insurance and health care for children.

(G) Recommendations for improving the program under this subchapter.

(H) Any other matters the State and the Secretary consider appropriate.

(2) Report of the Secretary
The Secretary shall submit to Congress and make available to the public by December 31, 2001, a report based on the evaluations submitted by States under paragraph (1), containing any conclusions and recommendations the Secretary considers appropriate.

(c) Federal evaluation
(1) In general
The Secretary, directly or through contracts or interagency agreements, shall conduct an independent evaluation of 10 States with approved child health plans.

(2) Selection of States
In selecting States for the evaluation conducted under this subsection, the Secretary shall choose 10 States that utilize diverse approaches to providing child health assistance, represent various geographic areas (including a mix of rural and urban areas), and contain a significant portion of uncovered children.

(3) Matters included
In addition to the elements described in subsection (b)(1) of this section, the evaluation conducted under this subsection shall include each of the following:

(A) Surveys of the target population (enrollees, disenrollees, and individuals eligible for but not enrolled in the program under this subchapter).

(B) Evaluation of effective and ineffective outreach and enrollment practices with respect to children (for both the program under this subchapter and the medicaid program under subchapter XIX of this chapter), and identification of enrollment barriers and key elements of effective outreach and enrollment practices, including practices (such as through community health workers and others) that have successfully enrolled hard-to-reach populations such as children who are eligible for medical assistance under subchapter XIX of this chapter but have not been enrolled previously in the medicaid program under that subchapter.

(C) Evaluation of the extent to which State medicaid eligibility practices and procedures under the medicaid program under subchapter XIX of this chapter are a barrier to the enrollment of children under that program, and the extent to which coordination (or lack of coordination) between that program and the program under this subchapter affects the enrollment of children under both programs.

(D) An assessment of the effect of cost-sharing on utilization, enrollment, and coverage retention.

(E) Evaluation of disenrollment or other retention issues, such as switching to private coverage, failure to pay premiums, or barriers in the recertification process.

(4) Submission to Congress
Not later than December 31, 2001, the Secretary shall submit to Congress the results of the evaluation conducted under this subsection.

(5) Subsequent evaluation using updated information
(A) In general
The Secretary, directly or through contracts or interagency agreements, shall conduct an independent subsequent evaluation of 10 States with approved child health plans.

(B) Selection of States and matters included
Paragraphs (2) and (3) shall apply to such subsequent evaluation in the same manner as such provisions apply to the evaluation conducted under paragraph (1).

(C) Submission to Congress
Not later than December 31, 2011, the Secretary shall submit to Congress the results of the evaluation conducted under this paragraph.

(D) Funding
Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $10,000,000 for fiscal year 2010 for the purpose of conducting the evaluation authorized under this paragraph. Amounts appropriated under this subparagraph shall remain available for expenditure through fiscal year 2012.

(d) Access to records for IG and GAO audits and evaluations
For the purpose of evaluating and auditing the program established under this subchapter, or subchapter XIX, the Secretary, the Office of Inspector General, and the Comptroller General shall have access to any books, accounts, records, correspondence, and other documents that are related to the expenditure of Federal funds under this subchapter and that are in the possession, custody, or control of States receiving Federal funds under this subchapter or political subdivisions thereof, or any grantee or contractor of such States or political subdivisions.

(e) Information required for inclusion in State annual report
The State shall include the following information in the annual report required under subsection (a):

(1) Eligibility criteria, enrollment, and retention data (including data with respect to continuity of coverage or duration of benefits).

¹So in original. Two subsecs. (e) have been enacted.
(2) Data regarding the extent to which the State uses process measures with respect to determining the eligibility of children under the State child health plan, including measures such as 12-month continuous eligibility, self-declaration of income for applications or renewals, or presumptive eligibility.

(3) Data regarding denials of eligibility and redeterminations of eligibility.

(4) Data regarding access to primary and specialty services, access to networks of care, and care coordination provided under the State child health plan, using quality care and consumer satisfaction measures included in the Consumer Assessment of Healthcare Providers and Systems (CAHPS) survey.

(5) If the State provides child health assistance in the form of premium assistance for the purchase of coverage under a group health plan, data regarding the provision of such assistance, including the extent to which employer-sponsored health insurance coverage is available for children eligible for child health assistance under the State child health plan, the range of the monthly amount of such assistance provided on behalf of a child or family, the number of children or families provided such assistance on a monthly basis, the income of the children or families provided such assistance, the benefits and cost-sharing protection provided under the State child health plan to supplement the coverage purchased with such premium assistance, the effective strategies the State engages in to reduce any administrative barriers to the provision of such assistance, and the effects, if any, of the provision of such assistance on preventing the coverage provided under the State child health plan from substituting for coverage provided under—employer-sponsored health insurance offered in the State.

(6) To the extent applicable, a description of any State activities that are designed to reduce the number of uncovered children in the State, including through a State health insurance offered in the State, including through a State health insurance offered in the State.

(7) Data collected and reported in accordance with section 300k(k) of this title, with respect to individuals enrolled in the State child health plan and, in the case of enrollees under 19 years of age, their parents or legal guardians, including data regarding the primary language of such individuals, parents, and legal guardians.

(e) Information on dental care for children

(1) In general

Each annual report under subsection (a) shall include the following information with respect to care and services described in section 1396(r)(2) of this title provided to targeted low-income children enrolled in the State child health plan under this subchapter at any time during the year involved:

(A) The number of enrolled children by age grouping used for reporting purposes under section 1396(r)(3) of this title.

(B) For children within each such age grouping, information of the type contained in questions 12(a)–(c) of CMS Form 416 (that consists of the number of enrolled targeted low income children who receive any preventive, or restorative dental care under the State plan).

(C) For the age grouping that includes children 8 years of age, the number of such children who have received a protective sealant on at least one permanent molar tooth.

(2) Inclusion of information on enrollees in managed care plans

The information under paragraph (1) shall include information on children who are enrolled in managed care plans and other private health plans and contracts with such plans under this subchapter on at least onepermanent molar tooth. Such information shall be provided for the reporting of such information by such plans to the State.


AMENDMENTS

2010—Subsec. (e)(7). Pub. L. 111–148, which directed amendment of subsec. (e) by adding par. (7) at end, was executed to the subsec. (e) added by Pub. L. 111–3, § 402(a)(2), relating to information required for inclusion in State annual report, to reflect the probability intent of Congress.


Subsec. (c)(3)(B). Pub. L. 111–3, § 201(b)(2)(B)(ii), inserted “(such as through community health workers and others)” after “including practices”.

Subsec. (c)(5). Pub. L. 111–3, § 603, added par. (5) and struck out former par. (5). Prior to amendment, text read as follows: “Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $10,000,000 for fiscal year 2000 for the purpose of conducting the evaluation authorized under this subsection. Amounts appropriated under this paragraph shall remain available for expenditure through fiscal year 2002.”


1999—Subsecs. (c), (d). Pub. L. 106–113 added subsecs. (c) and (d).

 EFFECTIVE DATE OF 2009 AMENDMENT

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

\[\text{So in original. The comma probably should not appear.}\]

**Standardized Reporting Format**

Pub. L. 111–3, title IV, § 402(b), Feb. 4, 2009, 123 Stat. 83, provided that:

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Feb. 4, 2009], the Secretary [of Health and Human Services] shall specify a standardized format for States to use for reporting the information required under subsection (e) of this section, as added by subsection (a)(2).

"(2) TRANSITION PERIOD FOR STATES.—Each State that is required to submit a report under subsection (a) of section 2108 of the Social Security Act [subsec. (a) of this section] that includes the information required under subsection (e) of such section may use up to 3 reporting periods to transition to the reporting of such information in accordance with the standardized format specified by the Secretary under paragraph (1)."

§ 1397ii. Miscellaneous provisions

(a) Relation to other laws

(1) HIPAA

Health benefits coverage provided under section 1397aa(a)(1) of this title (and coverage provided under a waiver under section 1397ee(c)(2)(B) of this title) shall be treated as creditable coverage for purposes of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1181 et seq.], title XXVII of the Public Health Service Act [42 U.S.C. 300gg et seq.], and subtitle K of the Internal Revenue Code of 1986.

(2) ERISA

Nothing in this subchapter shall be construed as affecting or modifying section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144) with respect to a group health plan (as defined in section 2791(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–91(a)(1))).

(b) Adjustment to Current Population Survey to include State-by-State data relating to children without health insurance coverage

(1) In general

The Secretary of Commerce shall make appropriate adjustments to the annual Current Population Survey conducted by the Bureau of the Census in order to produce statistically reliable annual State data on the number of low-income children who do not have health insurance coverage, so that real changes in the uninsurance rates of children can reasonably be detected. The Current Population Survey should produce data under this subsection that categorizes such children by family income, age, and race or ethnicity. The adjustments made to produce such data shall include, where appropriate, expanding the sample size used in the State sampling units, expanding the number of sampling units in a State, and an appropriate verification element.

(2) Additional requirements

In addition to making the adjustments required to produce the data described in paragraph (1), with respect to data collection occurring for fiscal years beginning with fiscal year 2009, in appropriate consultation with the Secretary of Health and Human Services, the Secretary of Commerce shall do the following:

(A) Make appropriate adjustments to the Current Population Survey to develop more accurate State-specific estimates of the number of children enrolled in health coverage under subchapter XIX or this subchapter.

(B) Make appropriate adjustments to the Current Population Survey to improve the survey estimates used to determine a high-performing State under section 1397kk(b)(3)(B) of this title and any other data necessary for carrying out this subchapter.

(C) Include health insurance survey information in the American Community Survey related to children.

(D) Assess whether American Community Survey estimates, once such survey data are first available, produce more reliable estimates than the Current Population Survey with respect to the purposes described in subparagraph (B).

(E) On the basis of the assessment required under subparagraph (D), recommend to the Secretary of Health and Human Services whether American Community Survey estimates should be used in lieu of, or in some combination with, Current Population Survey estimates for the purposes described in subparagraph (B).

(F) Continue making the adjustments described in the last sentence of paragraph (1) with respect to expansion of the sample size used in State sampling units, the number of sampling units in a State, and using an appropriate verification element.

(3) Authority for the Secretary of Health and Human Services to transition to the use of all, or some combination of, ACS estimates upon recommendation of the Secretary of Commerce

If, on the basis of the assessment required under paragraph (2)(D), the Secretary of Commerce recommends to the Secretary of Health and Human Services that American Community Survey estimates should be used in lieu of, or in some combination with, Current Population Survey estimates for the purposes described in paragraph (2)(B), the Secretary of Health and Human Services, in consultation with the States, may provide for a period during which the Secretary may transition from carrying out such purposes through the use of Current Population Survey estimates to the use of American Community Survey estimates (in lieu of, or in combination with the Current Population Survey estimates, as recommended), provided that any such transition is implemented in a manner that is designed to avoid adverse impacts upon States with approved State child health plans under this subchapter.

(4) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $20,000,000 for fiscal
year 2009 and each fiscal year thereafter for the purpose of carrying out this subsection (except that only with respect to fiscal year 2008, there are appropriated $20,000,000 for the purpose of carrying out this subsection, to remain available until expended).


REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (a)(1), is act July 1, 1944, ch. 737, 58 Stat. 262. Title XXVII of the Act is classified generally to subchapter XXV (§300gg et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (a)(1), is classified generally to Title 26, Internal Revenue Code. Subtitle K of such Code appears at section 6001 et seq. of Title 26.

AMENDMENTS
2010—Subsec. (b)(2)(B). Pub. L. 111–148 substituted "a high-performing State under section 1397kk(b)(3)(B) of this title" for "the population growth factor under section 1397dd(m)(5)(B) of this title".


Pub. L. 111–3, § 602(a), substituted "$20,000,000 for fiscal year 2009" for "$10,000,000 for fiscal year 2000".

Subsec. (b)(3), (4). Pub. L. 111–3, § 602(b), added par. (3) and redesignated former par. (2) as (4).

2007—Subsec. (b)(2). Pub. L. 110–173 inserted before period at end "(except that only with respect to fiscal year 2008, there are appropriated $20,000,000 for the purpose of carrying out this subsection, to remain available until expended)"


Subsec. (b). Pub. L. 106–113, § 1000(a)(6) [title VII, §703(a)], added subsec. (b).

EFFECTIVE DATE OF 2010 AMENDMENT

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

§ 1397jj. Definitions
(a) Child health assistance
For purposes of this subchapter, the term "child health assistance" means payment for part or all of the cost of health benefits coverage for targeted low-income children that includes any of the following (and includes, in the case described in section 1397ee(a)(1)(D)(i) of this title, payment for part or all of the cost of providing any of the following), as specified under the State plan:

(1) Inpatient hospital services.
(2) Outpatient hospital services.
(3) Physician services.
(4) Surgical services.
(5) Clinic services (including health center services) and other ambulatory health care services.
(6) Prescription drugs and biologicals and the administration of such drugs and biologicals, only if such drugs and biologicals are not furnished for the purpose of causing, or assisting in causing, the death, suicide, euthanasia, or mercy killing of a person.
(7) Over-the-counter medications.
(8) Laboratory and radiological services.
(9) Prenatal care and prepregnancy family planning services and supplies.
(10) Inpatient mental health services, other than services described in paragraph (18) but including services furnished in a State-operated mental hospital and including residential or other 24-hour therapeutically planned structured services.
(11) Outpatient mental health services, other than services described in paragraph (19) but including services furnished in a State-operated mental hospital and including community-based services.
(12) Durable medical equipment and other medically-related or remedial devices (such as prosthetic devices, implants, eyeglasses, hearing aids, dental devices, and adaptive devices).
(13) Disposable medical supplies.
(14) Home and community-based health care services and related supportive services (such as home health nursing services, home health aide services, personal care, assistance with activities of daily living, chore services, day care services, respite care services, training for family members, and minor modifications to the home).
(15) Nursing care services (such as nurse practitioner services, nurse midwife services, advanced practice nurse services, private duty nursing care, pediatric nurse services, and respiratory care services) in a home, school, or other setting.
(16) Abortion only if necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest.
(17) Dental services.
(18) Inpatient substance abuse treatment services and residential substance abuse treatment services.
(19) Outpatient substance abuse treatment services.
(20) Case management services.
(21) Care coordination services.
(22) Physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders.
(23) Hospice care (concurrent, in the case of an individual who is a child, with care related to the treatment of the child’s condition with respect to which a diagnosis of terminal illness has been made).

(24) Any other medical, diagnostic, screening, preventive, restorative, remedial, therapeutic, or rehabilitative services (whether in a facility, home, school, or other setting) if recognized by State law and only if the service is—

(A) prescribed by or furnished by a physician or other licensed or registered practitioner within the scope of practice as defined by State law,

(B) performed under the general supervision or at the direction of a physician, or

(C) furnished by a health care facility that is operated by a State or local government or is licensed under State law and operating within the scope of the license.

(25) Premiums for private health care insurance coverage.

(26) Medical transportation.

(27) Enabling services (such as transportation, translation, and outreach services) only if designed to increase the accessibility of primary and preventive health care services for eligible low-income individuals.

(28) Any other health care services or items specified by the Secretary and not excluded under this section.

(b) "Targeted low-income child" defined

For purposes of this subchapter—

(1) In general

Subject to paragraph (2), the term "targeted low-income child" means a child—

(A) who has been determined eligible by the State for child health assistance under the State plan;

(B)(i) who is a low-income child, or

(ii) who is a child—

(I) whose family income (as determined under the State child health plan) exceeds the medicaid applicable income level (as defined in paragraph (4)), but does not exceed 50 percentage points above the medicaid applicable income level;

(II) whose family income (as so determined) does not exceed the medicaid applicable income level (as defined in paragraph (4)) but determined as if “June 1, 1997” were substituted for “March 31, 1997”; or

(III) who resides in a State that does not have a medicaid applicable income level (as defined in paragraph (4)); and

(C) who is not found to be eligible for medical assistance under subchapter XIX of this chapter or, subject to paragraph (5), covered under a group health plan or under health insurance coverage (as such terms are defined in section 1397jj of this title).

(2) Children excluded

Such term does not include—

(A) a child who is an inmate of a public institution or a patient in an institution for mental diseases; or

(B) except as provided in paragraph (6), a child who is a member of a family that is eligible for health benefits coverage under a State health benefits plan on the basis of a family member’s employment with a public agency in the State.

(3) Special rule

A child shall not be considered to be described in paragraph (1)(C) notwithstanding that the child is covered under a health insurance coverage program that has been in operation since before July 1, 1997, and that is offered by a State which receives no Federal funds for the program’s operation.

(4) Medicaid applicable income level

The term “medicaid applicable income level” means, with respect to a child, the effective income level (expressed as a percent of the poverty line) that has been specified under the State plan under subchapter XIX of this chapter (including under a waiver authorized by the Secretary or under section 1396a(r)(2) of this title), as of March 31, 1997, for the child to be eligible for medical assistance under section 1396a(l)(2) or 1396d(n)(2) of this title (as selected by a State) for the age of such child.

(5) Option for States with a separate CHIP program to provide dental-only supplemental coverage

(A) In general

Subject to subparagraphs (B) and (C), in the case of any child who is enrolled in a group health plan or health insurance coverage offered through an employer who would, but for the application of paragraph (1)(C), satisfy the requirements for being a targeted low-income child under a State child health plan that is implemented under this subchapter, a State may waive the application of such paragraph to the child in order to provide—

(i) dental coverage consistent with the requirements for dental coverage consistent with the requirements of subsection (c)(3)(B) of section 1397cc of this title; or

(ii) cost-sharing protection for dental coverage consistent with such requirements and the requirements of subsection (c)(3)(B) of such section.

(B) Limitation

A State may limit the application of a waiver of paragraph (1)(C) to children whose family income does not exceed a level specified by the State, so long as the level so specified does not exceed the maximum income level otherwise established for other children under the State child health plan.

(C) Conditions

A State may not offer dental-only supplemental coverage under this paragraph unless the State satisfies the following conditions:

(i) Income eligibility

The State child health plan under this subchapter—

(I) has the highest income eligibility standard permitted under this subchapter (or a waiver) as of January 1, 2009;
(II) does not limit the acceptance of applications for children or impose any numerical limitation, waiting list, or similar limitation on the eligibility of such children for child health assistance under such State plan; and

(III) provides benefits to all children in the State who apply for and meet eligibility standards.

(ii) No more favorable treatment

The State child health plan may not provide more favorable dental coverage or cost-sharing protection for dental coverage to children provided dental-only supplemental coverage under this paragraph than the dental coverage and cost-sharing protection for dental coverage provided to targeted low-income children who are eligible for the full range of child health assistance provided under the State child health plan.

(6) Exceptions to exclusion of children of employees of a public agency in the State

(A) In general

A child shall not be considered to be described in paragraph (2)(B) if—

(i) the public agency that employs a member of the child’s family to which such paragraph applies satisfies subparagraph (B); or

(ii) subparagraph (C) applies to such child.

(B) Maintenance of effort with respect to agency contribution for family coverage

For purposes of subparagraph (A)(i), a public agency satisfies this subparagraph if the amount of annual agency expenditures made on behalf of employees enrolled in health coverage paid for by the agency that includes dependent coverage for the most recent State fiscal year is not less than the amount of such expenditures made by the agency for the 1997 State fiscal year, increased by the percentage increase in the medical care expenditure category of the Consumer Price Index for All-Urban Consumers (all items: U.S. City Average) for such preceding fiscal year.

(C) Hardship exception

For purposes of subparagraph (A)(ii), this subparagraph applies to a child if the State determines that the annual aggregate amount of premiums and cost-sharing imposed for coverage of the family of the child would exceed 5 percent of such family’s income for the year involved.

(c) Additional definitions

For purposes of this subchapter:

(1) Child

The term “child” means an individual under 19 years of age.

(2) Creditable health coverage

The term “creditable health coverage” has the meaning given the term “creditable coverage” under section 2701(c) of the Public Health Service Act (42 U.S.C. 300gg(c)) and includes coverage that meets the requirements of section 1397cc of this title provided to a targeted low-income child under this subchapter or under a waiver approved under section 1397cc(c)(2)(B) of this title (relating to a direct service waiver).

(3) Group health plan; health insurance coverage; etc.

The terms “group health plan”, “group health insurance coverage”, and “health insurance coverage” have the meanings given such terms in section 300gg-91 of this title.

(4) Low-income child

The term “low-income child” means a child whose family income is at or below 200 percent of the poverty line for a family of the size involved.

(5) Poverty line defined

The term “poverty line” has the meaning given such term in section 9902(2) of this title, including any revision required by such section.

(6) Preexisting condition exclusion

The term “preexisting condition exclusion” has the meaning given such term in section 2701(b)(1)(A) of the Public Health Service Act (42 U.S.C. 300gg(b)(1)(A)).

(7) State child health plan; plan

Unless the context otherwise requires, the terms “State child health plan” and “plan” mean a State child health plan approved under section 1397ff of this title.

(8) Uncovered child

The term “uncovered child” means a child that does not have creditable health coverage.

(9) School-based health center

(A) In general

The term “school-based health center” means a health clinic that—

(i) is located in or near a school facility of a school district or board of an Indian tribe or tribal organization;

(ii) is organized through school, community, and health provider relationships;

(iii) is administered by a sponsoring facility;

(iv) provides through health professionals primary health services to children in accordance with State and local law, including laws relating to licensure and certification; and

(v) satisfies such other requirements as a State may establish for the operation of such a clinic.

(B) Sponsoring facility

For purposes of subparagraph (A)(iii), the term “sponsoring facility” includes any of the following:

(i) A hospital.

(ii) A public health department.

(iii) A community health center.

(iv) A nonprofit health care agency.

(v) A local educational agency (as defined under section 7801 of title 20).
(vi) A program administered by the Indian Health Service or the Bureau of Indian Affairs or operated by an Indian tribe or a tribal organization.


REFERENCES IN TEXT

Section 2701 of the Public Health Service Act, referred to in subsec. (c)(2), (6), is section 2701 of act July 1, 1944, which was classified to section 300gg–91 of this title, was renumbered section 2794, effective for plan years beginning on or after Jan. 1, 2014, with certain exceptions, and amended, by Pub. L. 111–148, title I, §§ 1201(2), 1563(c)(1), formerly §1562(c)(1), title X, § 1010(b)(1), Mar. 23, 2010, 124 Stat. 154, 264, 911, and was transferred to section 300gg–3 of this title. A new section 2794 of act July 1, 1944, related to fair health insurance premiums, was added, effective for plan years beginning on or after Jan. 1, 2014, and amended, by Pub. L. 111–148, title I, § 1201(4), title X, § 1010(a)(1), Mar. 23, 2010, 124 Stat. 155, 892, and is classified to section 300gg–91 of this title.

AMENDMENTS

2010—Subsec. (a)(23). Pub. L. 111–148, § 2302(b), which directed insertion of “(concurrent, in the case of an individual who is a child, with care related to the treatment of the child’s condition with respect to which a diagnosis of terminal illness has been made)” after “hospecare”, was executed by making the insertion after “hospecare”, to reflect the probable intent of Congress.


Subsec. (c)(3). Pub. L. 111–148, § 2302(a)(7), substituted “local educational agency (as defined under section 7801 of title 20)” for “school or school system”.

2009—Subsec. (b)(1)(C). Pub. L. 111–13, § 501(b)(1)(A), inserted “subject to paragraph (5),” before “subchapter XIX of this chapter”.


Subsec. (c)(7). Pub. L. 111–3, § 505(b), added par. (9).


1997—Subsec. (b)(1)(B)(ii). Pub. L. 105–100, § 162(3)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “is a child whose family income (as determined under the State child health plan) exceeds the medicaid applicable income level (as defined in paragraph (4)), but does not exceed 50 percentage points above the medicaid applicable income level; and”.

Subsec. (b)(4). Pub. L. 105–100, § 162(3)(B), substituted “March 31, 1997” for “June 1, 1997” and “1396d(n)(2)” or “1396d(n)(2) of this title (as selected by a State)” for “1396a(i)(2)” or “1396a(i)(2) of this title”.

Subsec. (c)(5). Pub. L. 105–100, § 162(9), made technical amendment to reference in original act which appears in text as reference to section 300gg–91 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT


EFFECTIVE DATE OF 2009 AMENDMENT

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

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the enactment of section 4901 of Pub. L. 106–33, see section 1a(a)(6) (title VIII, § 802(f)) of Pub. L. 106–554, set out as a note under section 1396d of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 162 of Pub. L. 105–100 provided in part that the amendment made by that section is effective as if included in the enactment of subtitle J (§§ 4901–4923) of title IV of the Balanced Budget Act of 1997, Pub. L. 105–33.

CHIP ELIGIBILITY FOR CHILDREN INELIGIBLE FOR MEDICAID AS A RESULT OF ELIMINATION OF DISREGARDS

Pub. L. 111–148, title II, § 2101(f), Mar. 23, 2010, 124 Stat. 287, provided that: “Notwithstanding any other provision of law, a State shall treat any child who is determined to be ineligible for medical assistance under the State Medicaid plan or under a waiver of the plan as a result of the elimination of the application of an income disregard based on expense or type of income, as required under section 1902(e)(14) of the Social Security Act (42 U.S.C. 1396a(e)(14)) (as added by this Act), as a targeted low-income child under section 2110(b) (42 U.S.C. 1397j)(b) (unless the child is excluded under paragraph (2) of that section) and shall provide child health assistance to the child under the State child health plan (whether implemented under title XIX or XXI, or both, of the Social Security Act (42 U.S.C. 1396 et seq., 1397aa et seq.)).”

§ 1397kk. Phase-out of coverage for nonpregnant childless adults; conditions for coverage of parents

(a) Termination of coverage for nonpregnant childless adults

(1) No new CHIP waivers; automatic extensions at State option through 2009

Notwithstanding section 1315 of this title or any other provision of this subchapter, except as provided in this subsection—

(A) the Secretary shall not on or after February 4, 2009, approve or renew a waiver, experimental, pilot, or demonstration project that would allow funds made available under this subchapter to be used to provide child health assistance or other health benefits coverage to a nonpregnant childless adult; and

(B) notwithstanding the terms and conditions of any existing waiver, the provisions of paragraph (2) shall apply for purposes of any period beginning on or after January 1, 2010, in determining the period to which the waiver applies, the individuals eligible to be covered by the waiver, and the amount of the Federal payment under this subchapter.
(2) Termination of CHIP coverage under applicable existing waivers at the end of 2009

(A) In general

No funds shall be available under this subchapter for child health assistance or other health benefits coverage that is provided to a nonpregnant childless adult under an applicable existing waiver after December 31, 2009.

(B) Extension upon State request

If an applicable existing waiver described in subparagraph (A) would otherwise expire before January 1, 2010, notwithstanding the requirements of subsections (e) and (f) of section 1315 of this title, a State may submit, not later than September 30, 2009, a request to the Secretary for an extension of the waiver. The Secretary shall approve a request for an extension of an applicable existing waiver submitted pursuant to this subparagraph, but only through December 31, 2009.

(C) Application of enhanced FMAP

The enhanced FMAP determined under section 1397ee(b) of this title shall apply to expenditures under an applicable existing waiver for the provision of child health assistance or other health benefits coverage to a nonpregnant childless adult during the period beginning on February 4, 2009, and ending on December 31, 2009.

(3) State option to apply for Medicaid waiver to continue coverage for nonpregnant childless adults

(A) In general

Each State for which coverage under an applicable existing waiver is terminated under paragraph (2)(A) may submit, not later than September 30, 2009, an application to the Secretary for a waiver under section 1315 of this title for a Medicaid childless adults waiver to provide medical assistance to a nonpregnant childless adult whose coverage is so terminated (in this subsection referred to as a "Medicaid nonpregnant childless adults waiver").

(B) Deadline for approval

The Secretary shall make a decision to approve or deny an application for a Medicaid nonpregnant childless adults waiver submitted under subparagraph (A) within 90 days of the date of the submission of the application. If no decision has been made by the Secretary as of December 31, 2009, on the application of a State for a Medicaid nonpregnant childless adults waiver that was submitted to the Secretary by September 30, 2009, the application shall be deemed approved.

(C) Standard for budget neutrality

The budget neutrality requirement applicable with respect to expenditures for medical assistance under a Medicaid nonpregnant childless adults waiver shall—

(i) in the case of fiscal year 2010, allow expenditures for medical assistance under subchapter XIX for all such adults to not exceed the total amount of payments made to the State under paragraph (2)(B) for fiscal year 2009, increased by the percentage increase (if any) in the projected nominal per capita amount of National Health Expenditures for 2010 over 2009, as most recently published by the Secretary; and

(ii) in the case of any succeeding fiscal year, allow such expenditures to not exceed the amount in effect under this subparagraph for the preceding fiscal year, increased by the percentage increase (if any) in the projected nominal per capita amount of National Health Expenditures for the calendar year that begins during the year involved over the preceding calendar year, as most recently published by the Secretary.

(b) Rules and conditions for coverage of parents of targeted low-income children

(1) Two-year period; automatic extension at State option through fiscal year 2011

(A) No new CHIP waivers

Notwithstanding section 1315 of this title or any other provision of this subchapter, except as provided in this subsection—

(i) the Secretary shall not on or after February 4, 2009, approve or renew a waiver, experimental, pilot, or demonstration project that would allow funds made available under this subchapter to be used to provide child health assistance or other health benefits coverage to a parent of a targeted low-income child; and

(ii) notwithstanding the terms and conditions of an applicable existing waiver, the provisions of paragraphs (2) and (3) shall apply for purposes of any fiscal year beginning on or after October 1, 2011, in determining the period to which the waiver applies, the individuals eligible to be covered by the waiver, and the amount of the Federal payment under this subchapter.

(B) Extension upon State request

If an applicable existing waiver described in subparagraph (A) would otherwise expire before October 1, 2011, and the State requests an extension of such waiver, the Secretary shall grant such an extension, but only, subject to paragraph (2)(A), through September 30, 2011.

(C) Application of enhanced FMAP

The enhanced FMAP determined under section 1397ee(b) of this title shall apply to expenditures under an applicable existing waiver for the provision of child health assistance or other health benefits coverage to a parent of a targeted low-income child during the third and fourth quarters of fiscal year 2009 and during fiscal years 2010 and 2011.

(2) Rules for fiscal years 2012 through 2013

(A) Payments for coverage limited to block grant funded from State allotment

Any State that provides child health assistance or health benefits coverage under an applicable existing waiver for a parent of
a targeted low-income child may elect to continue to provide such assistance or coverage through fiscal year 2012 or 2013, subject to the same terms and conditions that applied under the applicable existing waiver, unless otherwise modified in subparagraph (B).

(B) Terms and conditions

(i) Block grant set aside from State allotment

If the State makes an election under subparagraph (A), the Secretary shall set aside for the State for each such fiscal year an amount equal to the Federal share of 110 percent of the State’s projected expenditures under the applicable existing waiver for providing child health assistance or health benefits coverage to all parents of targeted low-income children enrolled under such waiver for the fiscal year (as certified by the State and submitted to the Secretary by not later than August 31 of the preceding fiscal year). In the case of fiscal year 2013, the set aside for any State shall be computed separately for each period described in subparagraphs (A) and (B) of section 1397dd(a)(16) of this title and any reduction in the allotment for either such period under section 1397dd(m)(4) of this title shall be allocated on a pro rata basis to such set aside.

(ii) Payments from block grant

The Secretary shall pay the State from the amount set aside under clause (i) for the fiscal year, an amount for each quarter of such fiscal year equal to the applicable percentage determined under clause (iii) or (iv) for expenditures in the quarter for providing child health assistance or health benefits coverage to a parent of a targeted low-income child.

(iii) Enhanced FMAP only in fiscal year 2012 for States with significant child outreach or that achieve child coverage benchmarks; FMAP for any other States

For purposes of clause (ii), the applicable percentage for any quarter of fiscal year 2012 is equal to—

(I) the enhanced FMAP determined under section 1397ee(b) of this title in the case of a State that meets the outreach or coverage benchmarks described in any of subparagraph (A), (B), or (C) of paragraph (3) for fiscal year 2011; or

(II) the Federal medical assistance percentage (as determined under section 1396d(b) of this title without regard to clause (4) of such section) in the case of any other State.

(iv) Amount of Federal matching payment in 2013

For purposes of clause (ii), the applicable percentage for any quarter of fiscal year 2013 is equal to—

(I) the REMAP percentage if—

(aa) the applicable percentage for the State under clause (iii) was the enhanced FMAP for fiscal year 2012; and

(bb) the State met either of the coverage benchmarks described in subparagraph (B) or (C) of paragraph (3) for fiscal year 2012; or

(II) the Federal medical assistance percentage (as so determined) in the case of any State to which subclause (I) does not apply.

For purposes of subclause (I), the REMAP percentage is the percentage which is the sum of such Federal medical assistance percentage and a number of percentage points equal to one-half of the difference between such Federal medical assistance percentage and such enhanced FMAP.

(v) No Federal payments other than from block grant set aside

No payments shall be made to a State for expenditures described in clause (ii) after the total amount set aside under clause (i) for a fiscal year has been paid to the State.

(vi) No increase in income eligibility level for parents

No payments shall be made to a State from the amount set aside under clause (i) for a fiscal year for expenditures for providing child health assistance or health benefits coverage to a parent of a targeted low-income child whose family income exceeds the income eligibility level applied under the applicable existing waiver to parents of targeted low-income children on February 4, 2009.

(3) Outreach or coverage benchmarks

For purposes of paragraph (2), the outreach or coverage benchmarks described in this paragraph are as follows:

(A) Significant child outreach campaign

The State—

(i) was awarded a grant under section 1397mm of this title for fiscal year 2011; or

(ii) implemented 1 or more of the enrollment and retention provisions described in section 1397ee(a)(4) of this title for such fiscal year; or

(iii) has submitted a specific plan for outreach for such fiscal year.

(B) High-performing State

The State, on the basis of the most timely and accurate published estimates of the Bureau of the Census, ranks in the lowest ½ of States in terms of the State’s percentage of low-income children without health insurance.

(C) State increasing enrollment of low-income children

The State qualified for a performance bonus payment under section 1397ee(a)(3)(B) of this title for the most recent fiscal year applicable under such section.

(4) Rules of construction

Nothing in this subsection shall be construed as prohibiting a State from submitting an application to the Secretary for a waiver...
under section 1315 of this title of the State plan under subchapter XIX to provide medical assistance to a parent of a targeted low-income child that was provided child health assistance or health benefits coverage under an applicable existing waiver.

(c) Applicable existing waiver
For purposes of this section—

(1) In general
The term “applicable existing waiver” means a waiver, experimental, pilot, or demonstration project under section 1315 of this title, grandfathered under section 6102(c)(3) of the Deficit Reduction Act of 2005, or otherwise conducted under authority that—

(A) would allow funds made available under this subchapter to be used to provide child health assistance or other health benefits coverage to—

(i) a parent of a targeted low-income child;

(ii) a nonpregnant childless adult; or

(iii) individuals described in both clauses (i) and (ii); and

(B) was in effect during fiscal year 2009.

(2) Definitions

(A) Parent
The term “parent” includes a caretaker relative (as such term is used in carrying out section 1396a–1 of this title) and a legal guardian.

(B) Nonpregnant childless adult
The term “nonpregnant childless adult” has the meaning given such term by section 1397gg(f) of this title.

§1397ll. Optional coverage of targeted low-income pregnant women through a State plan amendment

(a) In general
Subject to the succeeding provisions of this section, a State may elect through an amendment to its State child health plan under section 1397bb of this title to provide pregnancy-related assistance under such plan for targeted low-income pregnant women.

(b) Conditions
A State may only elect the option under subsection (a) if the following conditions are satisfied:

(1) Minimum income eligibility levels for pregnant women and children
The State has established an income eligibility level—

(A) for pregnant women under subsection (a)(10)(A)(i)(III), (a)(10)(A)(i)(IV), or (1)(1)(A) of section 1396a of this title that is at least 185 percent (or such higher percent as the State has in effect with regard to pregnant women under this subchapter) of the poverty line applicable to a family of the size involved, but in no case lower than the percent in effect under any such subsection as of July 1, 2008; and

(B) for children under 19 years of age under this subchapter (or subchapter XIX) that is at least 200 percent of the poverty line applicable to a family of the size involved.

(2) No CHIP income eligibility level for pregnant women lower than the State's Medicaid level
The State does not apply an effective income level for pregnant women under the State plan amendment that is lower than the effective income level (expressed as a percent of the poverty line and considering applicable income disregards) specified under subsection (a)(10)(A)(i)(III), (a)(10)(A)(i)(IV), or (1)(1)(A) of section 1396a of this title, on February 4, 2009, to be eligible for medical assistance as a pregnant woman.

(3) No coverage for higher income pregnant women without covering lower income pregnant women
The State does not provide coverage for pregnant women with higher family income without covering pregnant women with a lower family income.

(4) Application of requirements for coverage of targeted low-income children
The State provides pregnancy-related assistance for targeted low-income pregnant women in the same manner, and subject to the same requirements, as the State provides child health assistance for targeted low-income children under the State child health plan, and in addition to providing child health assistance for such women.

(5) No preexisting condition exclusion or waiting period
The State does not apply any exclusion of benefits for pregnancy-related assistance based on any preexisting condition or any waiting period (including any waiting period imposed to carry out section 1397bb(b)(3)(C) of this title) for receipt of such assistance.

(6) Application of cost-sharing protection
The State provides pregnancy-related assistance to a targeted low-income woman consistent with the cost-sharing protections under section 1397cc(e) of this title and applies the limitation on total annual aggregate cost sharing imposed under paragraph (3)(B) of such section to the family of such a woman.

(7) No waiting list for children
The State does not impose, with respect to the enrollment under the State child health
plan of targeted low-income children during the quarter, any enrollment cap or other numerical limitation on enrollment, any waiting list, any procedures designed to delay the consideration of applications for enrollment, or similar limitation with respect to enrollment.

(c) Option to provide presumptive eligibility
A State that elects the option under subsection (a) and satisfies the conditions described in subsection (b) may elect to apply section 1396r–1 of this title (relating to presumptive eligibility for pregnant women) to the State child health plan in the same manner as such section applies to the State plan under subchapter XIX.

(d) Definitions
For purposes of this section:

(1) Pregnancy-related assistance
The term "pregnancy-related assistance" has the meaning given the term "child health assistance" in section 1397jj(a) of this title with respect to an individual during the period described in paragraph (2)(A).

(2) Targeted low-income pregnant woman
The term "targeted low-income pregnant woman" means an individual—

(A) during pregnancy and through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends;

(B) whose family income exceeds 185 percent (or, if higher, the percent applied under subsection (b)(1)(A)) of the poverty line applicable to a family of the size involved, but does not exceed the income eligibility level established under the State child health plan under this subchapter for a targeted low-income child; and

(C) who satisfies the requirements of paragraphs (1)(A), (1)(C), (2), and (3) of section 1397jj(b) of this title in the same manner as a child applying for child health assistance would have to satisfy such requirements.

(e) Automatic enrollment for children born to women receiving pregnancy-related assistance
If a child is born to a targeted low-income pregnant woman who was receiving pregnancy-related assistance under this section on the date of the child’s birth, the child shall be deemed to have applied for child health assistance under the State child health plan and to have been found eligible for such assistance under such plan or to have applied for medical assistance under subchapter XIX and to have been found eligible for such assistance under such subchapter, as appropriate, on the date of such birth and to remain eligible for such assistance until the child attains 1 year of age. During the period in which a child is deemed under the preceding sentence to be eligible for child health or medical assistance, the child health or medical assistance eligibility identification number of the mother shall also serve as the identification number of the child, and all claims shall be submitted and paid under such number (unless the State issues a separate identification number for the child before such period expires).

(f) States providing assistance through other options

(1) Continuation of other options for providing assistance
The option to provide assistance in accordance with the preceding subsections of this section shall not limit any other option for a State to provide—

(A) child health assistance through the application of sections 1397b(b)(2), 457.622(c)(5), and 457.626(a)(3) of title 42, Code of Federal Regulations (as in effect after the final rule adopted by the Secretary and set forth at 67 Fed. Reg. 61956–61974 (October 2, 2002)), or

(B) pregnancy-related services through the application of any waiver authority (as in effect on June 1, 2008).

(2) Clarification of authority to provide postpartum services
Any State that provides child health assistance under any authority described in paragraph (1) may continue to provide such assistance, as well as postpartum services, through the end of the month in which the 60-day period (beginning on the last day of the pregnancy) ends, in the same manner as such assistance and postpartum services would be provided if provided under the State plan under subchapter XIX, but only if the mother would otherwise satisfy the eligibility requirements that apply under the State child health plan (other than with respect to age) during such period.

(3) No inference
Nothing in this subsection shall be construed—

(A) to infer congressional intent regarding the legality or illegality of the content of the sections specified in paragraph (1)(A); or

(B) to modify the authority to provide pregnancy-related services under a waiver specified in paragraph (1)(B).

(Effective Date)

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

§ 1397mm. Grants to improve outreach and enrollment

(a) Outreach and enrollment grants; national campaign

(1) In general
From the amounts appropriated under subsection (g), subject to paragraph (2), the Secretary shall award grants to eligible entities during the period of fiscal years 2009 through 2015 to conduct outreach and enrollment efforts that are designed to increase the enrollment and participation of eligible children under this subchapter and subchapter XIX.
(2) **Ten percent set aside for national enrollment campaign**

An amount equal to 10 percent of the funds appropriated under subsection (g) shall be used by the Secretary to award grants to Indian Health Service providers and urban Indian organizations receiving funds under title V of the Indian Health Care Improvement Act (25 U.S.C. 1651 et seq.) for outreach to, and enrollment of, children who are Indians.

(c) **Application**

An eligible entity that desires to receive a grant under subsection (a) shall submit an application to the Secretary in such form and manner, and containing such information, as the Secretary may decide. Such application shall include—

(1) evidence demonstrating that the entity includes members who have access to, and credibility with, ethnic or low-income populations in the communities in which activities funded under the grant are to be conducted;

(2) evidence demonstrating that the entity has the ability to address barriers to enrollment, such as lack of awareness of eligibility, stigma concerns and punitive fears associated with receipt of benefits, and other cultural barriers to applying for and receiving child health assistance or medical assistance;

(3) specific quality or outcomes performance measures to evaluate the effectiveness of activities funded by a grant awarded under this section; and

(4) an assurance that the eligible entity shall—

(A) conduct an assessment of the effectiveness of such activities against the performance measures;

(B) cooperate with the collection and reporting of enrollment data and other information in order for the Secretary to conduct such assessments; and

(C) in the case of an eligible entity that is not the State, provide the State with enrollment data and other information as necessary for the State to make necessary projections of eligible children and pregnant women.

(d) **Dissemination of enrollment data and information determined from effectiveness assessments; annual report**

The Secretary shall—

(1) make publicly available the enrollment data and information collected and reported in accordance with subsection (c)(4)(B); and

(2) submit an annual report to Congress on the outreach and enrollment activities conducted with funds appropriated under this section.

(e) **Maintenance of effort for States awarded grants; no match required for any eligible entity awarded a grant**

(1) **State maintenance of effort**

In the case of a State that is awarded a grant under this section, the State share of funds expended for outreach and enrollment activities under the State child health plan shall not be less than the State share of such funds expended in the first fiscal year preceding the first fiscal year for which the grant is awarded.

(2) **No matching requirement**

No eligible entity awarded a grant under subsection (a) shall be required to provide any matching funds as a condition for receiving the grant.

(f) **Definitions**

In this section:

(1) **Eligible entity**

The term “eligible entity” means any of the following:

(A) A State with an approved child health plan under this subchapter.

(B) A local government.

(C) An Indian tribe or tribal consortium, a tribal organization, an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act (25 U.S.C. 1651 et seq.), or an Indian Health Service provider.

(D) A Federal health safety net organization.

(E) A national, State, local, or community-based public or nonprofit private organization, including organizations that use community health workers or community-based doula programs.

(F) A faith-based organization or consortium, to the extent that a grant awarded to such an entity is consistent with the requirements of section 300x-65 of this title relating to a grant award to nongovernmental entities.

(G) An elementary or secondary school.

(2) **Federal health safety net organization**

The term “Federal health safety net organization” means—

(A) a Federally-qualified health center (as defined in section 319d(b)(2)(B) of this title);

(B) a hospital defined as a disproportionate share hospital for purposes of section 1396r-4 of this title;
(C) a covered entity described in section 2560(b)(a)(4) of this title; and
(D) any other entity or consortium that serves children under a federally funded program, including the special supplemental nutrition program for women, infants, and children (WIC) established under section 1786 of this title, the Head Start and Early Head Start programs under the Head Start Act (42 U.S.C. 9801 et seq.), the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.), and an elementary or secondary school.

3 Indians; Indian tribe; tribal organization; urban Indian organization

The terms “Indian”, “Indian tribe”, “tribal organization”, and “urban Indian organization” have the meanings given such terms in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1663).

4 Community health worker

The term “community health worker” means an individual who promotes health or nutrition within the community in which the individual resides—
(A) by serving as a liaison between communities and health care agencies;
(B) by providing guidance and social assistance to community residents;
(C) by enhancing community residents’ ability to effectively communicate with health care providers;
(D) by providing culturally and linguistically appropriate health or nutrition education;
(E) by advocating for individual and community health or nutrition needs; and
(F) by providing referral and followup services.

(g) Appropriation

There is appropriated, out of any money in the Treasury not otherwise appropriated, $140,000,000 for the period of fiscal years 2009 through 2015, for the purpose of awarding grants under this section. Amounts appropriated and paid under the authority of this section shall be in addition to amounts appropriated under section 1396dd of this title to be paid to States in accordance with section 1396ee of this title, including with respect to expenditures for outreach activities in accordance with subsections (a)(1)(D)(iii) and (c)(2)(C) of that section.

(h) National enrollment campaign

From the amounts made available under subsection (a)(2), the Secretary shall develop and implement a national enrollment campaign to improve the enrollment of underserved child populations in the programs established under this subchapter and subchapter XIX. Such campaign may include—
(1) the establishment of partnerships with the Secretary of Education and the Secretary of Agriculture to develop national campaigns to link the eligibility and enrollment systems for the assistance programs each Secretary administers that often serve the same children;
(2) the integration of information about the programs established under this subchapter and subchapter XIX in public health awareness campaigns administered by the Secretary;
(3) increased financial and technical support for enrollment hotlines maintained by the Secretary to ensure that all States participate in such hotlines;
(4) the establishment of joint public awareness outreach initiatives with the Secretary of Education and the Secretary of Labor regarding the importance of health insurance to building strong communities and the economy;
(5) the development of special outreach materials for Native Americans or for individuals with limited English proficiency; and
(6) such other outreach initiatives as the Secretary determines would increase public awareness of the programs under this subchapter and subchapter XIX.


REFERENCES IN TEXT

The Indian Health Care Improvement Act, referred to in subsections (b)(2) and (f)(1)(C), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400. Title V of the Act is classified generally to subchapter IV (§1651 et seq.) of chapter 18 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1651 of this title and Tables.


Section 1400a, Pub. L. 85–441, title I, §102, June 4, 1958, 72 Stat. 172, authorized Secretary to enter into agreement.

AMENDMENTS

Subsec. (g). Pub. L. 111–148, §10203(d)(2)(E)(ii), substituted “$140,000,000 for the period of fiscal years 2009 through 2013” for “$100,000,000 for the period of fiscal years 2009 through 2013”.

EFFECTIVE DATE

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

CHAPTER 7A—TEMPORARY UNEMPLOYMENT COMPENSATION PROGRAM

§§ 1400 to 1400v. Omitted